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CHAPTER 1—MONOPOLIES AND COMBINATIONS IN RESTRAINT OF TRADE

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HISTORICAL NOTE

This chapter includes among other statutory provisions the Sherman Act, comprising sections 1 to 7 of this title, the Clayton Act, comprising sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of this title and sections 52 and 53 of Title 29, Labor, the Wilson Tariff Act, comprising sections 8 and 9 of this title, the Robinson-Patman Price Discrimination Act, comprising sections 13, 13a, 13b, and 21a of this title, the

"Expediting Act", sections 28 and 29 of this title, and the "Hart-Scott-Rodino Antitrust Improvements Act of 1976", comprising sections 15c to 15h, 18a, and 66 of this title. For complete classification of the Hart-Scott-Rodino Act, see Short Title note under section 1 of this title.

CONGRESSIONAL INVESTIGATION OF MONOPOLY

Joint Res. June 16, 1938, ch. 456, 52 Stat. 705, created a Temporary National Economic Committee which was authorized to make a full investigation on monopoly and the concentration of economic power in and financial control over production and distribution of goods and services. The time for submitting the final report under Joint Res. June 16, 1938, ch. 456, 52 Stat. 705, as amended Apr. 26, 1939, ch. 104, §§1, 2, 53 Stat. 624, was extended to Apr. 3, 1941, by Joint Res. Dec. 16, 1940, ch. 932, 54 Stat. 1225. The committee's report was presented to Congress on Mar. 31, 1941, and was published in Senate Document No. 35.

EXECUTIVE ORDER NO. 12022

Ex. Ord. No. 12022, Dec. 1, 1977, 42 F.R. 61441, as amended by Ex. Ord. No. 12052, Apr. 7, 1978, 43 F.R. 15133, which related to the National Commission for the Review of Antitrust Laws and Procedures, was revoked by Ex. Ord. No. 12258, Dec. 31, 1980, 46 F.R. 1251, formerly set out as a note under section 14 of the Appendix to Title 5, Government Organization and Employees.

§1. Trusts, etc., in restraint of trade illegal; penalty

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $100,000,000 if a corporation, or, if any other person, $1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

(July 2, 1890, ch. 647, §1, 26 Stat. 209; Aug. 17, 1937, ch. 690, title VIII, 50 Stat. 693; July 7, 1955, ch. 281, 69 Stat. 282; Pub. L. 93–528, §3, Dec. 21, 1974, 88 Stat. 1708; Pub. L. 94–145, §2, Dec. 12, 1975, 89 Stat. 801; Pub. L. 101–588, §4(a), Nov. 16, 1990, 104 Stat. 2880; Pub. L. 108–237, title II, §215(a), June 22, 2004, 118 Stat. 668.)

AMENDMENTS

2004—Pub. L. 108–237 substituted "$100,000,000" for "$10,000,000", "$1,000,000" for "$350,000", and "10" for "three".

1990—Pub. L. 101–588 substituted "$10,000,000" for "one million dollars" and "$350,000" for "one hundred thousand dollars".

1975—Pub. L. 94–145 struck out from first sentence two provisos granting anti-trust exemption to State fair trade laws.

1974—Pub. L. 93–528 substituted "a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years" for "a misdemeanor, and on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year".

1955—Act July 7, 1955, substituted "fifty thousand dollars" for "five thousand dollars".

1937—Act Aug. 17, 1937, inserted two provisos.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–72, §4, Nov. 20, 2001, 115 Stat. 650, provided that: "This Act [enacting and amending provisions set out as notes under this section] and the amendments made by this Act shall take effect on September 30, 2001."

EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 94–145, §4, Dec. 12, 1974, 89 Stat. 801, provided that: "The amendments made by sections 2 and 3 of this Act [amending this section and section 45 of this title] shall take effect upon the expiration of the ninety-day period which begins on the date of enactment of this Act [Dec. 12, 1975]."

SHORT TITLE OF 2009 AMENDMENT

Pub. L. 111–30, §1, June 19, 2009, 123 Stat. 1775, provided that: "This Act [enacting and amending

provisions set out as notes under this section] may be cited as the 'Antitrust Criminal Penalty Enhancement and Reform Act of 2004 Extension Act'."

SHORT TITLE OF 2008 AMENDMENT

Pub. L. 110–327, §1, Sept. 30, 2008, 122 Stat. 3566, provided that: "This Act [amending provisions set out as a note under this section] may be cited as the 'Need-Based Educational Aid Act of 2008'."

SHORT TITLE OF 2007 AMENDMENT

Pub. L. 110–6, §1, Feb. 26, 2007, 121 Stat. 61, provided that: "This Act [amending provisions set out as a note under this section] may be cited as the 'Antitrust Modernization Commission Extension Act of 2007'."

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–237, title II, §201, June 22, 2004, 118 Stat. 665, provided that: "This title [amending this section and sections 2, 3, and 16 of this title and enacting provisions set out as notes under this section and section 16 of this title] may be cited as the 'Antitrust Criminal Penalty Enhancement and Reform Act of 2004'."

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107–273, div. C, title IV, §14101, Nov. 2, 2002, 116 Stat. 1921, provided that: "This title [amending sections 3, 12, 27, and 44 of this title, section 225 of Title 7, Agriculture, section 1413 of Title 30, Mineral Lands and Mining, and section 2135 of Title 42, The Public Health and Welfare, repealing sections 30 and 31 of this title, enacting provisions set out as a note under section 3 of this title, amending provisions set out as notes under this section and section 8 of this title, and repealing provisions set out as notes under section 15 of this title and section 41309 of Title 49, Transportation] may be cited as the 'Antitrust Technical Corrections Act of 2002'."

SHORT TITLE OF 2001 AMENDMENT

Pub. L. 107–72, §1, Nov. 20, 2001, 115 Stat. 648, provided that: "This Act [enacting and amending provisions set out as notes under this section] may be cited as the 'Need-Based Educational Aid Act of 2001'."

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–297, §1, Oct. 27, 1998, 112 Stat. 2824, provided that: "This Act [enacting section 26b of this title and provisions set out as a note under section 26b of this title] may be cited as the 'Curt Flood Act of 1998'."

SHORT TITLE OF 1997 AMENDMENTS

Pub. L. 105–43, §1, Sept. 17, 1997, 111 Stat. 1140, provided that: "This Act [enacting and amending provisions set out as notes below] may be cited as the 'Need-Based Educational Aid Antitrust Protection Act of 1997'."

Pub. L. 105–26, §1, July 3, 1997, 111 Stat. 241, provided that: "This Act [amending sections 37 and 37a of this title and enacting provisions set out as notes under section 37 of this title] may be cited as the 'Charitable Donation Antitrust Immunity Act of 1997'."

SHORT TITLE OF 1995 AMENDMENT

Pub. L. 104–63, §1, Dec. 8, 1995, 109 Stat. 687, provided that: "This Act [enacting sections 37 and 37a of this title and provisions set out as a note under section 37 of this title] may be cited as the 'Charitable Gift Annuity Antitrust Relief Act of 1995'."

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–588, §1, Nov. 16, 1990, 104 Stat. 2879, provided: "That this Act [amending this section and sections 2, 3, 15a, and 19 of this title and repealing section 20 of this title] may be cited as the 'Antitrust Amendments Act of 1990'."

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98–544, §1, Oct. 24, 1984, 98 Stat. 2750, provided: "That this Act [enacting sections 34 to 36 of this title and provisions set out as a note under section 34 of this title] may be cited as the 'Local Government Antitrust Act of 1984'."

SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97–290, title IV, §401, Oct. 8, 1982, 96 Stat. 1246, provided that: "This title [enacting section 6a of

this title and amending section 45 of this title] may be cited as the 'Foreign Trade Antitrust Improvements Act of 1982'."

SHORT TITLE OF 1980 AMENDMENT

Pub. L. 96–493, §1, Dec. 2, 1980, 94 Stat. 2568, provided: "That this Act [enacting section 26a of this title] may be cited as the 'Gasohol Competition Act of 1980'."

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94–435, §1, Sept. 30, 1976, 90 Stat. 1383, provided: "That this Act [enacting sections 15c to 15h, 18a, and 66 of this title, amending sections 12, 15b, 16, 26, and 1311 to 1314 of this title, section 1505 of Title 18, Crimes and Criminal Procedure, and section 1407 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as notes under sections 8, 15c, 18a, and 1311 of this title] may be cited as the 'Hart-Scott-Rodino Antitrust Improvements Act of 1976'."

SHORT TITLE OF 1975 AMENDMENT

Pub. L. 94–145, §1, Dec. 12, 1975, 89 Stat. 801, provided: "That this Act [amending this section and section 45 of this title and enacting provisions set out as a note under this section] may be cited as the 'Consumer Goods Pricing Act of 1975'."

SHORT TITLE OF 1974 AMENDMENT

Pub. L. 93–528, §1, Dec. 21, 1974, 88 Stat. 1706, provided: "That this Act [amending this section and section 2, 3, 16, 28, and 29 of this title, section 401 of Title 47, Telecommunications, and sections 43, 44, and 45 of former Title 49, Transportation, and enacting provisions set out as notes under this section and section 29 of this title] may be cited as the 'Antitrust Procedures and Penalties Act'."

SHORT TITLE

Pub. L. 94–435, title III, §305(a), Sept. 30, 1976, 90 Stat. 1397, added immediately following the enacting clause of act July 2, 1890, the following: "That this Act [this section and sections 2 to 7 of this title] may be cited as the 'Sherman Act'."

ANTITRUST ENFORCEMENT ENHANCEMENTS AND COOPERATION INCENTIVES

Pub. L. 108–237, title II, §§211–214, June 22, 2004, 118 Stat. 666, 667, as amended by Pub. L. 111–30, §2, June 19, 2009, 123 Stat. 1775; Pub. L. 111–190, §§1–4, June 9, 2010, 124 Stat. 1275, 1276, provided that:

"SEC. 211. SUNSET.

"(a) IN GENERAL.—Except as provided in subsection (b), the provisions of sections 211 through 214 of this subtitle [this note] shall cease to have effect 16 years after the date of enactment of this Act [June 22, 2004].

"(b) EXCEPTIONS.—With respect to—

"(1) a person who receives a marker on or before the date on which the provisions of section 211 through 214 of this subtitle shall cease to have effect that later results in the execution of an antitrust leniency agreement; or

"(2) an applicant who has entered into an antitrust leniency agreement on or before the date on which the provisions of sections 211 through 214 of this subtitle shall cease to have effect,

the provisions of sections 211 through 214 of this subtitle shall continue in effect.

"SEC. 212. DEFINITIONS.

"In this subtitle [subtitle A (§§211–215) of title II of Pub. L. 108–237, amending this section and sections 2 and 3 of this title and enacting this note]:

"(1) ANTITRUST DIVISION.—The term 'Antitrust Division' means the United States Department of Justice Antitrust Division.

"(2) ANTITRUST LENIENCY AGREEMENT.—The term 'antitrust leniency agreement,' or 'agreement,' means a leniency letter agreement, whether conditional or final, between a person and the Antitrust Division pursuant to the Corporate Leniency Policy of the Antitrust Division in effect on the date of execution of the agreement.

"(3) ANTITRUST LENIENCY APPLICANT.—The term 'antitrust leniency applicant,' or 'applicant,' means, with respect to an antitrust leniency agreement, the person that has entered into the agreement.

"(4) CLAIMANT.—The term 'claimant' means a person or class, that has brought, or on whose behalf has been brought, a civil action alleging a violation of section 1 or 3 of the Sherman Act [15 U.S.C. 1, 3] or any similar State law, except that the term does not include a State or a subdivision of a State with respect

to a civil action brought to recover damages sustained by the State or subdivision.

"(5) COOPERATING INDIVIDUAL.—The term 'cooperating individual' means, with respect to an antitrust leniency agreement, a current or former director, officer, or employee of the antitrust leniency applicant who is covered by the agreement.

"(6) MARKER.—The term 'marker' means an assurance given by the Antitrust Division to a candidate for corporate leniency that no other company will be considered for leniency, for some finite period of time, while the candidate is given an opportunity to perfect its leniency application.

"(7) PERSON.—The term 'person' has the meaning given it in subsection (a) of the first section of the Clayton Act [15 U.S.C. 12(a)].

"SEC. 213. LIMITATION ON RECOVERY.

"(a) IN GENERAL.—Subject to subsection (d), in any civil action alleging a violation of section 1 or 3 of the Sherman Act [15 U.S.C. 1, 3], or alleging a violation of any similar State law, based on conduct covered by a currently effective antitrust leniency agreement, the amount of damages recovered by or on behalf of a claimant from an antitrust leniency applicant who satisfies the requirements of subsection (b), together with the amounts so recovered from cooperating individuals who satisfy such requirements, shall not exceed that portion of the actual damages sustained by such claimant which is attributable to the commerce done by the applicant in the goods or services affected by the violation.

"(b) REQUIREMENTS.—Subject to subsection (c), an antitrust leniency applicant or cooperating individual satisfies the requirements of this subsection with respect to a civil action described in subsection (a) if the court in which the civil action is brought determines, after considering any appropriate pleadings from the claimant, that the applicant or cooperating individual, as the case may be, has provided satisfactory cooperation to the claimant with respect to the civil action, which cooperation shall include—

"(1) providing a full account to the claimant of all facts known to the applicant or cooperating individual, as the case may be, that are potentially relevant to the civil action;

"(2) furnishing all documents or other items potentially relevant to the civil action that are in the possession, custody, or control of the applicant or cooperating individual, as the case may be, wherever they are located; and

"(3)(A) in the case of a cooperating individual—

"(i) making himself or herself available for such interviews, depositions, or testimony in connection with the civil action as the claimant may reasonably require; and

"(ii) responding completely and truthfully, without making any attempt either falsely to protect or falsely to implicate any person or entity, and without intentionally withholding any potentially relevant information, to all questions asked by the claimant in interviews, depositions, trials, or any other court proceedings in connection with the civil action; or

"(B) in the case of an antitrust leniency applicant, using its best efforts to secure and facilitate from cooperating individuals covered by the agreement the cooperation described in clauses (i) and (ii) and subparagraph (A).

"(c) TIMELINESS.—The court shall consider, in making the determination concerning satisfactory cooperation described in subsection (b), the timeliness of the applicant's or cooperating individual's cooperation with the claimant.

"(d) COOPERATION AFTER EXPIRATION OF STAY OR PROTECTIVE ORDER.—If the Antitrust Division does obtain a stay or protective order in a civil action based on conduct covered by an antitrust leniency agreement, once the stay or protective order, or a portion thereof, expires or is terminated, the antitrust leniency applicant and cooperating individuals shall provide without unreasonable delay any cooperation described in paragraphs (1) and (2) of subsection (b) that was prohibited by the expired or terminated stay or protective order, or the expired or terminated portion thereof, in order for the cooperation to be deemed satisfactory under such paragraphs.

"(e) CONTINUATION.—Nothing in this section shall be construed to modify, impair, or supersede the provisions of sections 4, 4A, and 4C of the Clayton Act [15 U.S.C. 15, 15a, 15c] relating to the recovery of costs of suit, including a reasonable attorney's fee, and interest on damages, to the extent that such recovery is authorized by such sections.

"SEC. 214. RIGHTS, AUTHORITIES, AND LIABILITIES NOT AFFECTED.

"Nothing in this subtitle [subtitle A (§§211–215) of title II of Pub. L. 108–237, amending this section and sections 2 and 3 of this title and enacting this note] shall be construed to—

"(1) affect the rights of the Antitrust Division to seek a stay or protective order in a civil action based on conduct covered by an antitrust leniency agreement to prevent the cooperation described in section 213(b) of this subtitle from impairing or impeding the investigation or prosecution by the Antitrust Division

of conduct covered by the agreement;

"(2) create any right to challenge any decision by the Antitrust Division with respect to an antitrust leniency agreement; or

"(3) affect, in any way, the joint and several liability of any party to a civil action described in section 213(a) of this subtitle, other than that of the antitrust leniency applicant and cooperating individuals as provided in section 213(a) of this subtitle."

[Pub. L. 111–190, §6, June 9, 2010, 124 Stat. 1276, provided that: "The amendments made by section 1 [amending section 211 of Pub. L. 108–237, set out above] shall take effect immediately before June 22, 2010."]

[Pub. L. 111–30, §3, June 19, 2009, 123 Stat. 1775, provided that: "The amendment made by section 2 [amending section 211(a) of Pub. L. 108–237, set out above] shall take effect immediately before June 22, 2009."]

ANTITRUST MODERNIZATION COMMISSION

Pub. L. 107–273, div. C, title I, subtitle D, Nov. 2, 2002, 116 Stat. 1856, as amended by Pub. L. 110–6, §2, Feb. 26, 2007, 121 Stat. 61, provided that:

"SEC. 11051. SHORT TITLE.

"This subtitle may be cited as the 'Antitrust Modernization Commission Act of 2002'.

"SEC. 11052. ESTABLISHMENT.

"There is established the Antitrust Modernization Commission (in this subtitle referred to as the 'Commission').

"SEC. 11053. DUTIES OF THE COMMISSION.

"The duties of the Commission are—

"(1) to examine whether the need exists to modernize the antitrust laws and to identify and study related issues;

"(2) to solicit views of all parties concerned with the operation of the antitrust laws;

"(3) to evaluate the advisability of proposals and current arrangements with respect to any issues so identified; and

"(4) to prepare and to submit to Congress and the President a report in accordance with section 11058.

"SEC. 11054. MEMBERSHIP.

"(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 12 members appointed as follows:

"(1) Four members, no more than 2 of whom shall be of the same political party, shall be appointed by the President. The President shall appoint members of the opposing party only on the recommendation of the leaders of Congress from that party.

"(2) Two members shall be appointed by the majority leader of the Senate.

"(3) Two members shall be appointed by the minority leader of the Senate.

"(4) Two members shall be appointed by the Speaker of the House of Representatives.

"(5) Two members shall be appointed by the minority leader of the House of Representatives.

"(b) INELIGIBILITY FOR APPOINTMENT.—Members of Congress shall be ineligible for appointment to the Commission.

"(c) TERM OF APPOINTMENT.—

"(1) IN GENERAL.—Subject to paragraph (2), members of the Commission shall be appointed for the life of the Commission.

"(2) EARLY TERMINATION OF APPOINTMENT.—If a member of the Commission who is appointed to the Commission as—

"(A) an officer or employee of a government ceases to be an officer or employee of such government; or

"(B) an individual who is not an officer or employee of a government becomes an officer or employee of a government;

then such member shall cease to be a member of the Commission on the expiration of the 90-day period beginning on the date such member ceases to be such officer or employee of such government, or becomes an officer or employee of a government, as the case may be.

"(d) QUORUM.—Seven members of the Commission shall constitute a quorum, but a lesser number may conduct meetings.

"(e) APPOINTMENT DEADLINE.—Initial appointments under subsection (a) shall be made not later than

60 days after the date of enactment of this Act [Nov. 2, 2002].

"(f) MEETINGS.—The Commission shall meet at the call of the chairperson. The first meeting of the Commission shall be held not later than 30 days after the date on which all members of the Commission are first appointed under subsection (a) or funds are appropriated to carry out this subtitle, whichever occurs later.

"(g) VACANCY.—A vacancy on the Commission shall be filled in the same manner as the initial appointment is made.

"(h) CONSULTATION BEFORE APPOINTMENT.—Before appointing members of the Commission, the President, the majority and minority leaders of the Senate, the Speaker of the House of Representatives, and the minority leader of the House of Representatives shall consult with each other to ensure fair and equitable representation of various points of view in the Commission.

"(i) CHAIRPERSON; VICE CHAIRPERSON.—The President shall select the chairperson of the Commission from among its appointed members. The leaders of Congress from the opposing party of the President shall select the vice chairperson of the Commission from among its remaining members.

"SEC. 11055. COMPENSATION OF THE COMMISSION.

"(a) PAY.—

"(1) NONGOVERNMENT EMPLOYEES.—Each member of the Commission who is not otherwise employed by a government shall be entitled to receive the daily equivalent of the annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5 United States Code, as in effect from time to time, for each day (including travel time) during which such member is engaged in the actual performance of duties of the Commission.

"(2) GOVERNMENT EMPLOYEES.—A member of the Commission who is an officer or employee of a government shall serve without additional pay (or benefits in the nature of compensation) for service as a member of the Commission.

"(b) TRAVEL EXPENSES.—Members of the Commission shall receive travel expenses, including per diem in lieu of subsistence, in accordance with subchapter I of chapter 57 of title 5, United States Code.

"SEC. 11056. STAFF OF COMMISSION; EXPERTS AND CONSULTANTS.

"(a) STAFF.—

"(1) APPOINTMENT.—The chairperson of the Commission may, without regard to the provisions of chapter 51 of title 5 of the United States Code (relating to appointments in the competitive service), appoint and terminate an executive director and such other staff as are necessary to enable the Commission to perform its duties. The appointment of an executive director shall be subject to approval by the Commission.

"(2) COMPENSATION.—The chairperson of the Commission may fix the compensation of the executive director and other staff without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 of the United States Code (relating to classification of positions and General Schedule pay rates), except that the rate of pay for the executive director and other staff may not exceed the rate of basic pay payable for level V of the Executive Schedule under section 5315 of title 5 United States Code, as in effect from time to time.

"(b) EXPERTS AND CONSULTANTS.—The Commission may procure temporary and intermittent services of experts and consultants in accordance with section 3109(b) of title 5, United States Code.

"SEC. 11057. POWERS OF THE COMMISSION.

"(a) HEARINGS AND MEETINGS.—The Commission, or a member of the Commission if authorized by the Commission, may hold such hearings, sit and act at such time and places, take such testimony, and receive such evidence, as the Commission considers to be appropriate. The Commission or a member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission or such member.

"(b) OFFICIAL DATA.—The Commission may obtain directly from any executive agency (as defined in section 105 of title 5 of the United States Code) or court information necessary to enable it to carry out its duties under this subtitle. On the request of the chairperson of the Commission, and consistent with any other law, the head of an executive agency or of a Federal court shall provide such information to the Commission.

"(c) FACILITIES AND SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission on a reimbursable basis such facilities and support services as the Commission may request. On request of the Commission, the head of an executive agency may make any of the facilities or services of such agency available to the Commission, on a reimbursable or nonreimbursable basis, to assist the Commission in carrying out its duties under this subtitle.

"(d) EXPENDITURES AND CONTRACTS.—The Commission or, on authorization of the Commission, a

member of the Commission may make expenditures and enter into contracts for the procurement of such supplies, services, and property as the Commission or such member considers to be appropriate for the purpose of carrying out the duties of the Commission. Such expenditures and contracts may be made only to such extent or in such amounts as are provided in advance in appropriation Acts.

"(e) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

"(f) GIFTS, BEQUESTS, AND DEVISES.—The Commission may accept, use, and dispose of gifts, bequests, or devises of services or property, both real and personal, for the purpose of aiding or facilitating the work of the Commission. Gifts, bequests, or devises of money and proceeds from sales of other property received as gifts, bequests, or devises shall be deposited in the Treasury and shall be available for disbursement upon order of the Commission.

"SEC. 11058. REPORT.

"Not later than 3 years after the first meeting of the Commission, the Commission shall submit to Congress and the President a report containing a detailed statement of the findings and conclusions of the Commission, together with recommendations for legislative or administrative action the Commission considers to be appropriate.

"SEC. 11059. TERMINATION OF COMMISSION.

"The Commission shall cease to exist 60 days after the date on which the report required by section 11058 is submitted.

"SEC. 11060. AUTHORIZATION OF APPROPRIATIONS.

"There is authorized to be appropriated $4,000,000 to carry out this subtitle."

YEAR 2000 INFORMATION AND READINESS DISCLOSURE

Pub. L. 105–271, Oct. 19, 1998, 112 Stat. 2386, as amended by Pub. L. 107–273, div. C, title IV, §14102(e), Nov. 2, 2002, 116 Stat. 1922, known as the Year 2000 Information and Readiness Disclosure Act, provided for the free disclosure and exchange of information about computer processing problems, solutions, test practices and test results, and related matters in connection with the transition to the year 2000.

APPLICATION OF ANTITRUST LAWS TO AWARD OF NEED-BASED EDUCATIONAL AID

Pub. L. 107–72, §3, Nov. 20, 2001, 115 Stat. 648, provided that:

"(a) STUDY.—

"(1) IN GENERAL.—The Comptroller General shall conduct a study of the effect of the antitrust exemption on institutional student aid under section 568 of the Improving America's Schools Act of 1994 (15 U.S.C. 1 note) [Pub. L. 103–382, see below].

"(2) CONSULTATION.—The Comptroller General shall have final authority to determine the content of the study under paragraph (1), but in determining the content of the study, the Comptroller General shall consult with—

"(A) the institutions of higher education participating under the antitrust exemption under section 568 of the Improving America's Schools Act of 1994 (15 U.S.C. 1 note) (referred to in this Act [see Short Title of 2001 Amendment note above] as the 'participating institutions');

"(B) the Antitrust Division of the Department of Justice; and

"(C) other persons that the Comptroller General determines are appropriate.

"(3) MATTERS STUDIED.—

"(A) IN GENERAL.—The study under paragraph (1) shall—

"(i) examine the needs analysis methodologies used by participating institutions;

"(ii) identify trends in undergraduate costs of attendance and institutional undergraduate grant aid among participating institutions, including—

"(I) the percentage of first-year students receiving institutional grant aid;

"(II) the mean and median grant eligibility and institutional grant aid to first-year students; and

"(III) the mean and median parental and student contributions to undergraduate costs of attendance for first year students receiving institutional grant aid;

"(iii) to the extent useful in determining the effect of the antitrust exemption under section 568 of the Improving America's Schools Act of 1994 (15 U.S.C. 1 note), examine—

"(I) comparison data, identified in clauses (i) and (ii), from institutions of higher education that do not participate under the antitrust exemption under section 568 of the Improving America's Schools Act of 1994 (15 U.S.C. 1 note); and

"(II) other baseline trend data from national benchmarks; and

"(iv) examine any other issues that the Comptroller General determines are appropriate, including other types of aid affected by section 568 of the Improving America's Schools Act of 1994 (15 U.S.C. 1 note).

"(B) ASSESSMENT.—

"(i) IN GENERAL.—The study under paragraph (1) shall assess what effect the antitrust exemption on institutional student aid has had on institutional undergraduate grant aid and parental contribution to undergraduate costs of attendance.

"(ii) CHANGES OVER TIME.—The assessment under clause (i) shall consider any changes in institutional undergraduate grant aid and parental contribution to undergraduate costs of attendance over time for institutions of higher education, including consideration of—

"(I) the time period prior to adoption of the consensus methodologies at participating institutions; and

"(II) the data examined pursuant to subparagraph (A)(iii).

"(b) REPORT.—

"(1) IN GENERAL.—Not later than September 30, 2006, the Comptroller General shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that contains the findings and conclusions of the Comptroller General regarding the matters studied under subsection (a).

"(2) IDENTIFYING INDIVIDUAL INSTITUTIONS.—The Comptroller General shall not identify an individual institution of higher education in information submitted in the report under paragraph (1) unless the information on the institution is available to the public.

"(c) RECORDKEEPING REQUIREMENT.—

"(1) IN GENERAL.—For the purpose of completing the study under subsection (a)(1), a participating institution shall—

"(A) collect and maintain for each academic year until the study under subsection (a)(1) is completed—

"(i) student-level data that is sufficient, in the judgment of the Comptroller General, to permit the analysis of expected family contributions, identified need, and undergraduate grant aid awards; and

"(ii) information on formulas used by the institution to determine need; and

"(B) submit the data and information under paragraph (1) to the Comptroller General at such time as the Comptroller General may reasonably require.

"(2) NON-PARTICIPATING INSTITUTIONS.—Nothing in this subsection shall be construed to require an institution of higher education that does not participate under the antitrust exemption under section 568 of the Improving America's Schools Act of 1994 (15 U.S.C. 1 note) to collect and maintain data under this subsection."

Pub. L. 103–382, title V, §568(a)–(d), Oct. 20, 1994, 108 Stat. 4060, 4061, as amended by Pub. L. 105–43, §2(a), Sept. 17, 1997, 111 Stat. 1140; Pub. L. 105–244, title I, §102(a)(3), Oct. 7, 1998, 112 Stat. 1618; Pub. L. 107–72, §2, Nov. 20, 2001, 115 Stat. 648; Pub. L. 110–327, §2, Sept. 30, 2008, 122 Stat. 3566, provided that:

"(a) EXEMPTION.—It shall not be unlawful under the antitrust laws for 2 or more institutions of higher education at which all students admitted are admitted on a need-blind basis, to agree or attempt to agree—

"(1) to award such students financial aid only on the basis of demonstrated financial need for such aid;

"(2) to use common principles of analysis for determining the need of such students for financial aid if the agreement to use such principles does not restrict financial aid officers at such institutions in their exercising independent professional judgment with respect to individual applicants for such financial aid;

"(3) to use a common aid application form for need-based financial aid for such students if the agreement to use such form does not restrict such institutions in their requesting from such students, or in their using, data in addition to the data requested on such form; or

"(4) to exchange through an independent third party, before awarding need-based financial aid to any of such students who is commonly admitted to the institutions of higher education involved, data submitted by the student so admitted, the student's family, or a financial institution on behalf of the student or the student's family relating to assets, liabilities, income, expenses, the number of family members, and the number of the student's siblings in college, if each of such institutions of higher education is permitted to retrieve such data only once with respect to the student.

"(b) LIMITATIONS.—Subsection (a) shall not apply with respect to—

"(1) any financial aid or assistance authorized by the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) [and 42 U.S.C. 2751 et seq.]; or

"(2) any contract, combination, or conspiracy with respect to the amount or terms of any prospective

financial aid award to a specific individual.

"(c) DEFINITIONS.—For purposes of this section—

"(1) the term 'alien' has the meaning given such term in section 101(3) [101(a)(3)] of the Immigration and Nationality Act (8 U.S.C. 1101(3) [1101(a)(3)]);

"(2) the term 'antitrust laws' has the meaning given such term in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent such section applies to unfair methods of competition;

"(3) the term 'institution of higher education' has the meaning given such term in section 101 of the Higher Education Act of 1965 [20 U.S.C. 1001];

"(4) the term 'lawfully admitted for permanent residence' has the meaning given such term in section 101(20) [101(a)(20)] of the Immigration and Nationality Act (8 U.S.C. 1101(20) [1101(a)(20)]);

"(5) the term 'national of the United States' has the meaning given such term in section 101(22) [101(a)(22)] of the Immigration and Nationality Act (8 U.S.C. 1101(22) [1101(a)(22)]);

"(6) the term 'on a need-blind basis' means without regard to the financial circumstances of the student involved or the student's family; and

"(7) the term 'student' means, with respect to an institution of higher education, a national of the United States or an alien admitted for permanent residence who is admitted to attend an undergraduate program at such institution on a full-time basis.

"(d) EXPIRATION.—Subsection (a) shall expire on September 30, 2015."

[Pub. L. 105–43, §2(b), Sept. 17, 1997, 111 Stat. 1140, provided that: "The amendments made by subsection (a) [amending section 568(a)–(d) of Pub. L. 103–382, set out above] shall take effect immediately before September 30, 1997."]

§2. Monopolizing trade a felony; penalty

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $100,000,000 if a corporation, or, if any other person, $1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

(July 2, 1890, ch. 647, §2, 26 Stat. 209; July 7, 1955, ch. 281, 69 Stat. 282; Pub. L. 93–528, §3, Dec. 21, 1974, 88 Stat. 1708; Pub. L. 101–588, §4(b), Nov. 16, 1990, 104 Stat. 2880; Pub. L. 108–237, title II, §215(b), June 22, 2004, 118 Stat. 668.)

AMENDMENTS

2004—Pub. L. 108–237 substituted "$100,000,000" for "$10,000,000", "$1,000,000" for "$350,000", and "10" for "three".

1990—Pub. L. 101–588 substituted "$10,000,000" for "one million dollars" and "$350,000" for "one hundred thousand dollars".

1974—Pub. L. 93–528 substituted "a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years" for "a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year".

1955—Act July 7, 1955, substituted "fifty thousand dollars" for "five thousand dollars".

§3. Trusts in Territories or District of Columbia illegal; combination a felony

(a) Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a

felony, and, on conviction thereof, shall be punished by fine not exceeding $100,000,000 if a corporation, or, if any other person, $1,000,000, or by imprisonment not exceeding 10 years, or both said punishments, in the discretion of the court.

(b) Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce in any Territory of the United States or of the District of Columbia, or between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia, and any State or States or foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $100,000,000 if a corporation, or, if any other person, $1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

(July 2, 1890, ch. 647, §3, 26 Stat. 209; July 7, 1955, ch. 281, 69 Stat. 282; Pub. L. 93–528, §3, Dec. 21, 1974, 88 Stat. 1708; Pub. L. 101–588, §4(c), Nov. 16, 1990, 104 Stat. 2880; Pub. L. 107–273, div. C, title IV, §14102(b), Nov. 2, 2002, 116 Stat. 1921; Pub. L. 108–237, title II, §215(c), June 22, 2004, 118 Stat. 668.)

AMENDMENTS

2004—Pub. L. 108–237, which directed the substitution of "$100,000,000" for "$10,000,000", "$1,000,000" for "$350,000", and "10" for "three", was executed by making each substitution in both subsecs. (a) and (b) to reflect the probable intent of Congress.

2002—Pub. L. 107–273 designated existing provisions as subsec. (a) and added subsec. (b).

1990—Pub. L. 101–588 substituted "$10,000,000" for "one million dollars" and "$350,000" for "one hundred thousand dollars".

1974—Pub. L. 93–528 substituted "a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years" for "a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year".

1955—Act July 7, 1955, substituted "fifty thousand dollars" for "five thousand".

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–273, div. C, title IV, §14103, Nov. 2, 2002, 116 Stat. 1922, provided that:

"(a) EFFECTIVE DATE.—Except as provided in subsection (b), this subtitle [probably means this title, amending this section and sections 12, 27, and 44 of this title, section 225 of Title 7, Agriculture, section 1413 of Title 30, Mineral Lands and Mining, and section 2135 of Title 42, The Public Health and Welfare, repealing sections 30 and 31 of this title, enacting provisions set out as a note under section 1 of this title, amending provisions set out as notes under sections 1 and 8 of this title, and repealing provisions set out as notes under section 15 of this title and section 41309 of Title 49, Transportation] and the amendments made by this subtitle shall take effect on the date of enactment of this Act [Nov. 2, 2002].

"(b) APPLICATION TO CASES.—(1) Section 14102(f) [repealing section 30 of this title] shall apply to cases pending on or after the date of the enactment of this Act.

"(2) The amendments made by subsections (a), (b), and (c) of section 14102 [amending this section and sections 12 and 44 of this title, section 225 of Title 7, Agriculture, section 1413 of Title 30, Mineral Lands and Mining, and section 2135 of Title 42, The Public Health and Welfare, repealing section 31 of this title, amending provisions set out as a note under section 8 of this title, and repealing provisions set out as a note under section 15 of this title] shall apply only with respect to cases commenced on or after the date of enactment of this Act."

§4. Jurisdiction of courts; duty of United States attorneys; procedure

The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of sections 1 to 7 of this title; and it shall be the duty of the several United States attorneys, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court

shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

(July 2, 1890, ch. 647, §4, 26 Stat. 209; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167; June 25, 1948, ch. 646, §1, 62 Stat. 909.)

CODIFICATION

Act Mar. 3, 1911, vested jurisdiction in "district" courts, instead of "circuit" courts.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States attorneys" for "district attorneys of the United States". See section 541 et seq. of Title 28, Judiciary and Judicial Procedure.

§5. Bringing in additional parties

Whenever it shall appear to the court before which any proceeding under section 4 of this title may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

(July 2, 1890, ch. 647, §5, 26 Stat. 210.)

§6. Forfeiture of property in transit

Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section 1 of this title, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

(July 2, 1890, ch. 647, §6, 26 Stat. 210.)

§6a. Conduct involving trade or commerce with foreign nations

Sections 1 to 7 of this title shall not apply to conduct involving trade or commerce (other than import trade or import commerce) with foreign nations unless—

(1) such conduct has a direct, substantial, and reasonably foreseeable effect—

(A) on trade or commerce which is not trade or commerce with foreign nations, or on import trade or import commerce with foreign nations; or

(B) on export trade or export commerce with foreign nations, of a person engaged in such trade or commerce in the United States; and

(2) such effect gives rise to a claim under the provisions of sections 1 to 7 of this title, other than this section.

If sections 1 to 7 of this title apply to such conduct only because of the operation of paragraph (1)(B), then sections 1 to 7 of this title shall apply to such conduct only for injury to export business in the United States.

(July 2, 1890, ch. 647, §7, as added Pub. L. 97–290, title IV, §402, Oct. 8, 1982, 96 Stat. 1246.)

PRIOR PROVISIONS

A prior section 7 of act July 2, 1890, ch. 647, 26 Stat. 210, related to suits by persons injured by acts in violation of sections 1 to 7 of this title and was classified as a note under section 15 of this title, prior to repeal by act July 7, 1955, ch. 283, §3, 69 Stat. 283, effective six months after July 7, 1955.

§7. "Person" or "persons" defined

The word "person", or "persons", wherever used in sections 1 to 7 of this title shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

(July 2, 1890, ch. 647, §8, 26 Stat. 210.)

§8. Trusts in restraint of import trade illegal; penalty

Every combination, conspiracy, trust, agreement, or contract is declared to be contrary to public policy, illegal, and void when the same is made by or between two or more persons or corporations, either of whom, as agent or principal, is engaged in importing any article from any foreign country into the United States, and when such combination, conspiracy, trust, agreement, or contract is intended to operate in restraint of lawful trade, or free competition in lawful trade or commerce, or to increase the market price in any part of the United States of any article or articles imported or intended to be imported into the United States, or of any manufacture into which such imported article enters or is intended to enter. Every person who shall be engaged in the importation of goods or any commodity from any foreign country in violation of this section, or who shall combine or conspire with another to violate the same, is guilty of a misdemeanor, and on conviction thereof in any court of the United States such person shall be fined in a sum not less than $100 and not exceeding $5,000, and shall be further punished by imprisonment, in the discretion of the court, for a term not less than three months nor exceeding twelve months.

(Aug. 27, 1894, ch. 349, §73, 28 Stat. 570; Feb. 12, 1913, ch. 40, 37 Stat. 667.)

AMENDMENTS

1913—Act Feb. 12, 1913, inserted "as agent or principal".

SHORT TITLE

Section 77, formerly §78, of act Aug. 27, 1894, as added by Pub. L. 94–435, title III, §305(d), Sept. 30, 1976, 90 Stat. 1397; renumbered §77 and amended Pub. L. 107–273, div. C, title IV, §14102(c)(1)(B), Nov. 2, 2002, 116 Stat. 1921, provided that: "Sections 73, 74, 75, and 76 of this Act [enacting sections 8 to 11 of this title] may be cited as the 'Wilson Tariff Act'."

§9. Jurisdiction of courts; duty of United States attorneys; procedure

The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of section 8 of this title; and it shall be the duty of the several United States attorneys, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petitions setting forth the case and praying that such violations shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

(Aug. 27, 1894, ch. 349, §74, 28 Stat. 570; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167; June 25, 1948, ch. 646, §1, 62 Stat. 909.)

CODIFICATION

Act Mar. 3, 1911, vested jurisdiction in "district" courts, instead of "circuit" courts.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States attorneys" for "district attorneys of the

United States". See section 541 et seq. of Title 28, Judiciary and Judicial Procedure.

§10. Bringing in additional parties

Whenever it shall appear to the court before which any proceeding under section 9 of this title may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

(Aug. 27, 1894, ch. 349, §75, 28 Stat. 570.)

§11. Forfeiture of property in transit

Any property owned under any contract or by any combination, or pursuant to any conspiracy, and being the subject thereof, mentioned in section 8 of this title, imported into and being within the United States or being in the course of transportation from one State to another, or to or from a Territory or the District of Columbia, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

(Aug. 27, 1894, ch. 349, §76, 28 Stat. 570; Feb. 12, 1913, ch. 40, 37 Stat. 667.)

AMENDMENTS

1913—Act Feb. 12, 1913, substituted "imported into and being within the United States or" for "and".

§12. Definitions; short title

(a) "Antitrust laws," as used herein, includes the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety; sections seventy-three to seventy-six, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," of August twenty-seventh, eighteen hundred and ninety-four; an Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,' " approved February twelfth, nineteen hundred and thirteen; and also this Act.

"Commerce," as used herein, means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: *Provided*, That nothing in this Act contained shall apply to the Philippine Islands.

The word "person" or "persons" wherever used in this Act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

(b) This Act may be cited as the "Clayton Act".

(Oct. 15, 1914, ch. 323, §1, 38 Stat. 730; Pub. L. 94–435, title III, §305(b), Sept. 30, 1976, 90 Stat. 1397; Pub. L. 107–273, div. C, title IV, §14102(c)(2)(A), Nov. 2, 2002, 116 Stat. 1921.)

REFERENCES IN TEXT

Words "herein" and "this Act", referred to in the three paragraphs of subsec. (a), mean the Clayton Act. For classification of the Clayton Act to the Code, see last paragraph hereunder.

The Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety, referred to in subsec. (a), is act July 2, 1890, ch. 647, 26

Stat. 209, as amended, known as the Sherman Act, which is classified to sections 1 to 7 of this title.

The Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," of August twenty-seventh, eighteen hundred and ninety-four, referred to in subsec. (a), is act Aug. 27, 1894, ch. 349, 28 Stat. 509, as amended, known as the Wilson Tariff Act. Sections seventy-three to seventy-six thereof are set out as sections 8 to 11 of this title.

The Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes'," approved February twelfth, nineteen hundred and thirteen, referred to in subsec. (a), is act Feb. 12, 1913, ch. 40, 37 Stat. 667, as amended, which is classified to sections 8 and 11 of this title.

The Clayton Act, referred to in subsec. (b), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, which is classified to sections 12, 13, 14 to 19, 21, and 22 to 27 of this title, and sections 52 and 53 of Title 29, Labor. Sections 9 and 21 to 25 of the act were repealed by act June 25, 1948, ch. 645, §21, 62 Stat. 862, eff. Sept. 1, 1948, and their provisions are now covered by sections 402, 660, 3285 and 3691 of Title 18, Crimes and Criminal Procedure, except that former section 23 of the act is obsolete and not now covered. Sections 17 to 19 of the act were repealed by act June 25, 1948, ch. 646, §39, 62 Stat. 992, eff. Sept. 1, 1948, and their provisions are now covered by rule 65 of the Federal Rules of Civil Procedure, set out in the Appendix to Title 28, Judiciary and Judicial Procedure. For complete classification of this Act to the Code, see Tables.

CODIFICATION

The 3d par. of subsec. (a) is also classified to section 53 of Title 29, Labor.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–273 substituted "seventy-three to seventy-six" for "seventy-three to seventy-seven" in first par.

1976—Pub. L. 94–435 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–273 effective Nov. 2, 2002, and applicable only with respect to cases commenced on or after Nov. 2, 2002, see section 14103 of Pub. L. 107–273, set out as a note under section 3 of this title.

§13. Discrimination in price, services, or facilities

(a) Price; selection of customers

It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided*, That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered: *Provided, however*, That the Federal Trade Commission may, after due investigation and hearing to all interested parties, fix and establish quantity limits, and revise the same as it finds necessary, as to particular commodities or classes of commodities, where it finds that available purchasers in greater quantities are so few as to render differentials on account thereof unjustly discriminatory or promotive of monopoly in any line of commerce; and the foregoing shall then not be construed to permit differentials based on differences in quantities greater than those so fixed and established: *And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade: *And provided further*, That nothing herein

contained shall prevent price changes from time to time where in response to changing conditions affecting the market for or the marketability of the goods concerned, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) Burden of rebutting prima-facie case of discrimination

Upon proof being made, at any hearing on a complaint under this section, that there has been discrimination in price or services or facilities furnished, the burden of rebutting the prima-facie case thus made by showing justification shall be upon the person charged with a violation of this section, and unless justification shall be affirmatively shown, the Commission is authorized to issue an order terminating the discrimination: *Provided, however*, That nothing herein contained shall prevent a seller rebutting the prima-facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.

(c) Payment or acceptance of commission, brokerage, or other compensation

It shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(d) Payment for services or facilities for processing or sale

It shall be unlawful for any person engaged in commerce to pay or contact for the payment of anything of value to or for the benefit of a customer of such person in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(e) Furnishing services or facilities for processing, handling, etc.

It shall be unlawful for any person to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(f) Knowingly inducing or receiving discriminatory price

It shall be unlawful for any person engaged in commerce, in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by this section.

(Oct. 15, 1914, ch. 323, §2, 38 Stat. 730; June 19, 1936, ch. 592, §1, 49 Stat. 1526.)

AMENDMENTS

1936—Act June 19, 1936, amended section generally.

SHORT TITLE

Act June 19, 1936, which amended this section and added sections 13a, 13b, and 21a of this title, is popularly known as the Robinson-Patman Act, as the Robinson-Patman Antidiscrimination Act, and also as the Robinson-Patman Price Discrimination Act.

§13a. Discrimination in rebates, discounts, or advertising service charges;

underselling in particular localities; penalties

It shall be unlawful for any person engaged in commerce, in the course of such commerce, to be a party to, or assist in, any transaction of sale, or contract to sell, which discriminates to his knowledge against competitors of the purchaser, in that, any discount, rebate, allowance, or advertising service charge is granted to the purchaser over and above any discount, rebate, allowance, or advertising service charge available at the time of such transaction to said competitors in respect of a sale of goods of like grade, quality, and quantity; to sell, or contract to sell, goods in any part of the United States at prices lower than those exacted by said person elsewhere in the United States for the purpose of destroying competition, or eliminating a competitor in such part of the United States; or, to sell, or contract to sell, goods at unreasonably low prices for the purpose of destroying competition or eliminating a competitor.

Any person violating any of the provisions of this section shall, upon conviction thereof, be fined not more than $5,000 or imprisoned not more than one year, or both.

(June 19, 1936, ch. 592, §3, 49 Stat. 1528.)

§13b. Cooperative association; return of net earnings or surplus

Nothing in this Act shall prevent a cooperative association from returning to its members, producers, or consumers the whole, or any part of, the net earnings or surplus resulting from its trading operations, in proportion to their purchases or sales from, to, or through the association.

(June 19, 1936, ch. 592, §4, 49 Stat. 1528.)

REFERENCES IN TEXT

This Act, referred to in text, is act June 19, 1936, ch. 592, 49 Stat. 1526, popularly known as the Robinson-Patman Antidiscrimination Act and also as the Robinson-Patman Price Discrimination Act, which enacted sections 13a, 13b, and 21a of this title and amended section 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 13 of this title and Tables.

§13c. Exemption of non-profit institutions from price discrimination provisions

Nothing in the Act approved June 19, 1936, known as the Robinson-Patman Antidiscrimination Act, shall apply to purchases of their supplies for their own use by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit.

(May 26, 1938, ch. 283, 52 Stat. 446.)

REFERENCES IN TEXT

The Act approved June 19, 1936, known as the Robinson-Patman Antidiscrimination Act, referred to in text, is act June 19, 1936, ch. 592, 49 Stat. 1526, also known as the Robinson-Patman Price Discrimination Act, which enacted sections 13a, 13b, and 21a of this title and amended section 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 13 of this title and Tables.

§14. Sale, etc., on agreement not to use goods of competitor

It shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, whether patented or unpatented, for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of

a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

(Oct. 15, 1914, ch. 323, §3, 38 Stat. 731.)

§15. Suits by persons injured

(a) Amount of recovery; prejudgment interest

Except as provided in subsection (b) of this section, any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee. The court may award under this section, pursuant to a motion by such person promptly made, simple interest on actual damages for the period beginning on the date of service of such person's pleading setting forth a claim under the antitrust laws and ending on the date of judgment, or for any shorter period therein, if the court finds that the award of such interest for such period is just in the circumstances. In determining whether an award of interest under this section for any period is just in the circumstances, the court shall consider only—

(1) whether such person or the opposing party, or either party's representative, made motions or asserted claims or defenses so lacking in merit as to show that such party or representative acted intentionally for delay, or otherwise acted in bad faith;

(2) whether, in the course of the action involved, such person or the opposing party, or either party's representative, violated any applicable rule, statute, or court order providing for sanctions for dilatory behavior or otherwise providing for expeditious proceedings; and

(3) whether such person or the opposing party, or either party's representative, engaged in conduct primarily for the purpose of delaying the litigation or increasing the cost thereof.

(b) Amount of damages payable to foreign states and instrumentalities of foreign states

(1) Except as provided in paragraph (2), any person who is a foreign state may not recover under subsection (a) of this section an amount in excess of the actual damages sustained by it and the cost of suit, including a reasonable attorney's fee.

(2) Paragraph (1) shall not apply to a foreign state if—

(A) such foreign state would be denied, under section 1605(a)(2) of title 28, immunity in a case in which the action is based upon a commercial activity, or an act, that is the subject matter of its claim under this section;

(B) such foreign state waives all defenses based upon or arising out of its status as a foreign state, to any claims brought against it in the same action;

(C) such foreign state engages primarily in commercial activities; and

(D) such foreign state does not function, with respect to the commercial activity, or the act, that is the subject matter of its claim under this section as a procurement entity for itself or for another foreign state.

(c) Definitions

For purposes of this section—

(1) the term "commercial activity" shall have the meaning given it in section 1603(d) of title 28, and

(2) the term "foreign state" shall have the meaning given it in section 1603(a) of title 28.

(Oct. 15, 1914, ch. 323, §4, 38 Stat. 731; Pub. L. 96–349, §4(a)(1), Sept. 12, 1980, 94 Stat. 1156; Pub. L. 97–393, Dec. 29, 1982, 96 Stat. 1964.)

REFERENCES IN TEXT

The antitrust laws, referred to in subsec. (a), are defined in section 12 of this title.

PRIOR PROVISIONS

Section supersedes two former similar sections enacted by act July 2, 1890, ch. 647, §7, 26 Stat. 210, and act Aug. 27, 1894, ch. 349, §77, 28 Stat. 570, each of which were restricted in operation to the particular act cited. Section 7 of act July 2, 1890, was repealed by act July 7, 1955, ch. 283, §3, 69 Stat. 283, effective six months after July 7, 1955. Section 77 of act Aug. 27, 1894, was repealed by Pub. L. 107–273, div. C, title IV, §§14102(c)(1)(A), 14103, Nov. 2, 2002, 116 Stat. 1921, 1922, effective Nov. 2, 2002, and applicable only with respect to cases commenced on or after Nov. 2, 2002.

AMENDMENTS

1982—Pub. L. 97–393 designated existing provisions as subsec. (a), inserted "Except as provided in subsection (b) of this section,", and added subsecs. (b) and (c).

1980—Pub. L. 96–349 inserted provisions respecting award of prejudgment interest including considerations for the court in determining whether an award is just under the circumstances.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–349, §4(b), Sept. 12, 1980, 94 Stat. 1157, provided that: "The amendments made by this section [amending this section and sections 15a and 15c of this title] shall apply only with respect to actions commenced after the date of the enactment of this Act [Sept 12, 1980]."

§15a. Suits by United States; amount of recovery; prejudgment interest

Whenever the United States is hereafter injured in its business or property by reason of anything forbidden in the antitrust laws it may sue therefor in the United States district court for the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by it sustained and the cost of suit. The court may award under this section, pursuant to a motion by the United States promptly made, simple interest on actual damages for the period beginning on the date of service of the pleading of the United States setting forth a claim under the antitrust laws and ending on the date of judgment, or for any shorter period therein, if the court finds that the award of such interest for such period is just in the circumstances. In determining whether an award of interest under this section for any period is just in the circumstances, the court shall consider only—

(1) whether the United States or the opposing party, or either party's representative, made motions or asserted claims or defenses so lacking in merit as to show that such party or representative acted intentionally for delay or otherwise acted in bad faith;

(2) whether, in the course of the action involved, the United States or the opposing party, or either party's representative, violated any applicable rule, statute, or court order providing for sanctions for dilatory behavior or otherwise providing for expeditious proceedings;

(3) whether the United States or the opposing party, or either party's representative, engaged in conduct primarily for the purpose of delaying the litigation or increasing the cost thereof; and

(4) whether the award of such interest is necessary to compensate the United States adequately for the injury sustained by the United States.

(Oct. 15, 1914, ch. 323, §4A, as added July 7, 1955, ch. 283, §1, 69 Stat. 282; amended Pub. L. 96–349, §4(a)(2), Sept. 12, 1980, 94 Stat. 1156; Pub. L. 101–588, §5, Nov. 16, 1990, 104 Stat. 2880.)

REFERENCES IN TEXT

The antitrust laws, referred to in text, are defined in section 12 of this title.

AMENDMENTS

1990—Pub. L. 101–588 substituted "threefold the" for "actual".

1980—Pub. L. 96–349 inserted provisions respecting award of prejudgment interest including considerations for the court in determining whether an award is just under the circumstances.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–349 applicable only with respect to actions commenced after Sept. 12, 1980, see

section 4(b) of Pub. L. 96–349, set out as a note under section 15 of this title.

EFFECTIVE DATE

Section effective six months after July 7, 1955, see note set out under section 15b of this title.

§15b. Limitation of actions

Any action to enforce any cause of action under section 15, 15a, or 15c of this title shall be forever barred unless commenced within four years after the cause of action accrued. No cause of action barred under existing law on the effective date of this Act shall be revived by this Act.

(Oct. 15, 1914, ch. 323, §4B, as added July 7, 1955, ch. 283, §1, 69 Stat. 283; amended Pub. L. 94–435, title III, §302(1), Sept. 30, 1976, 90 Stat. 1396.)

REFERENCES IN TEXT

The effective date of this Act, referred to in text, probably refers to the effective date of act July 7, 1955, ch. 283, 69 Stat. 282, which was six months after July 7, 1955.

This Act, referred to in text, probably refers to act July 7, 1955.

AMENDMENTS

1976—Pub. L. 94–435 substituted "section 15, 15a, or 15c" for "sections 15 or 15a".

EFFECTIVE DATE

Act July 7, 1955, ch. 283, §4, 69 Stat. 283, provided: "This Act [enacting this section and section 15a of this title, amending section 16 of this title, and repealing provisions set out as a note under section 15 of this title] shall take effect six months after its enactment [July 7, 1955]."

§15c. Actions by State attorneys general

(a) Parens patriae; monetary relief; damages; prejudgment interest

(1) Any attorney general of a State may bring a civil action in the name of such State, as parens patriae on behalf of natural persons residing in such State, in any district court of the United States having jurisdiction of the defendant, to secure monetary relief as provided in this section for injury sustained by such natural persons to their property by reason of any violation of sections 1 to 7 of this title. The court shall exclude from the amount of monetary relief awarded in such action any amount of monetary relief (A) which duplicates amounts which have been awarded for the same injury, or (B) which is properly allocable to (i) natural persons who have excluded their claims pursuant to subsection (b)(2) of this section, and (ii) any business entity.

(2) The court shall award the State as monetary relief threefold the total damage sustained as described in paragraph (1) of this subsection, and the cost of suit, including a reasonable attorney's fee. The court may award under this paragraph, pursuant to a motion by such State promptly made, simple interest on the total damage for the period beginning on the date of service of such State's pleading setting forth a claim under the antitrust laws and ending on the date of judgment, or for any shorter period therein, if the court finds that the award of such interest for such period is just in the circumstances. In determining whether an award of interest under this paragraph for any period is just in the circumstances, the court shall consider only—

(A) whether such State or the opposing party, or either party's representative, made motions or asserted claims or defenses so lacking in merit as to show that such party or representative acted intentionally for delay or otherwise acted in bad faith;

(B) whether, in the course of the action involved, such State or the opposing party, or either party's representative, violated any applicable rule, statute, or court order providing for sanctions for dilatory behavior or other wise providing for expeditious proceedings; and

(C) whether such State or the opposing party, or either party's representative, engaged in conduct primarily for the purpose of delaying the litigation or increasing the cost thereof.

(b) Notice; exclusion election; final judgment

(1) In any action brought under subsection (a)(1) of this section, the State attorney general shall, at such times, in such manner, and with such content as the court may direct, cause notice thereof to be given by publication. If the court finds that notice given solely by publication would deny due process of law to any person or persons, the court may direct further notice to such person or persons according to the circumstances of the case.

(2) Any person on whose behalf an action is brought under subsection (a)(1) of this section may elect to exclude from adjudication the portion of the State claim for monetary relief attributable to him by filing notice of such election with the court within such time as specified in the notice given pursuant to paragraph (1) of this subsection.

(3) The final judgment in an action under subsection (a)(1) of this section shall be res judicata as to any claim under section 15 of this title by any person on behalf of whom such action was brought and who fails to give such notice within the period specified in the notice given pursuant to paragraph (1) of this subsection.

(c) Dismissal or compromise of action

An action under subsection (a)(1) of this section shall not be dismissed or compromised without the approval of the court, and notice of any proposed dismissal or compromise shall be given in such manner as the court directs.

(d) Attorneys' fees

In any action under subsection (a) of this section—

(1) the amount of the plaintiffs' attorney's fee, if any, shall be determined by the court; and

(2) the court may, in its discretion, award a reasonable attorney's fee to a prevailing defendant upon a finding that the State attorney general has acted in bad faith, vexatiously, wantonly, or for oppressive reasons.

(Oct. 15, 1914, ch. 323, §4C, as added Pub. L. 94–435, title III, §301, Sept. 30, 1976, 90 Stat. 1394; amended Pub. L. 96–349, §4(a)(3), Sept. 12, 1980, 94 Stat. 1157.)

REFERENCES IN TEXT

The antitrust laws, referred to in subsec. (a)(2), are defined in section 12 of this title.

AMENDMENTS

1980—Subsec. (a)(2). Pub. L. 96–349 inserted provisions respecting award of prejudgment interest including considerations for the court in determining whether an award is just under the circumstances.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–349 applicable only with respect to actions commenced after Sept. 12, 1980, see section 4(b) of Pub. L. 96–349, set out as a note under section 15 of this title.

EFFECTIVE DATE

Pub. L. 94–435, title III, §304, Sept. 30, 1976, 90 Stat. 1396, provided that: "The amendments to the Clayton Act made by section 301 of this Act [enacting this section and sections 15d to 15h of this title] shall not apply to any injury sustained prior to the date of enactment of this Act [Sept. 30, 1976]."

§15d. Measurement of damages

In any action under section 15c(a)(1) of this title, in which there has been a determination that a defendant agreed to fix prices in violation of sections 1 to 7 of this title, damages may be proved and assessed in the aggregate by statistical or sampling methods, by the computation of illegal overcharges, or by such other reasonable system of estimating aggregate damages as the court in its discretion may permit without the necessity of separately proving the individual claim of, or amount of damage to, persons on whose behalf the suit was brought.

(Oct. 15, 1914, ch. 323, §4D, as added Pub. L. 94–435, title III, §301, Sept. 30, 1976, 90 Stat. 1395.)

EFFECTIVE DATE

Injuries sustained prior to Sept. 30, 1976, not covered by this section, see section 304 of Pub. L. 94–435, set out as a note under section 15c of this title.

§15e. Distribution of damages

Monetary relief recovered in an action under section 15c(a)(1) of this title shall—

(1) be distributed in such manner as the district court in its discretion may authorize; or

(2) be deemed a civil penalty by the court and deposited with the State as general revenues;

subject in either case to the requirement that any distribution procedure adopted afford each person a reasonable opportunity to secure his appropriate portion of the net monetary relief.

(Oct. 15, 1914, ch. 323, §4E, as added Pub. L. 94–435, title III, §301, Sept. 30, 1976, 90 Stat. 1395.)

EFFECTIVE DATE

Injuries sustained prior to Sept. 30, 1976, not covered by this section, see section 304 of Pub. L. 94–435, set out as a note under section 15c of this title.

§15f. Actions by Attorney General

(a) Notification to State attorney general

Whenever the Attorney General of the United States has brought an action under the antitrust laws, and he has reason to believe that any State attorney general would be entitled to bring an action under this Act based substantially on the same alleged violation of the antitrust laws, he shall promptly give written notification thereof to such State attorney general.

(b) Availability of files and other materials

To assist a State attorney general in evaluating the notice or in bringing any action under this Act, the Attorney General of the United States shall, upon request by such State attorney general, make available to him, to the extent permitted by law, any investigative files or other materials which are or may be relevant or material to the actual or potential cause of action under this Act.

(Oct. 15, 1914, ch. 323, §4F, as added Pub. L. 94–435, title III, §301, Sept. 30, 1976, 90 Stat. 1395.)

REFERENCES IN TEXT

The antitrust laws, referred to in subsec. (a), are defined in section 12 of this title.

This Act, referred to in text, is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, known as the Clayton Act, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of this title, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of this title and Tables.

EFFECTIVE DATE

Injuries sustained prior to Sept. 30, 1976, not covered by this section, see section 304 of Pub. L. 94–435, set out as a note under section 15c of this title.

§15g. Definitions

For the purposes of sections 15c, 15d, 15e, and 15f of this title:

(1) The term "State attorney general" means the chief legal officer of a State, or any other person authorized by State law to bring actions under section 15c of this title, and includes the Corporation Counsel of the District of Columbia, except that such term does not include any person employed or retained on—

(A) a contingency fee based on a percentage of the monetary relief awarded under this section; or

(B) any other contingency fee basis, unless the amount of the award of a reasonable attorney's fee to a prevailing plaintiff is determined by the court under section 15c(d)(1) of this title.

(2) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

(3) The term "natural persons" does not include proprietorships or partnerships.

(Oct. 15, 1914, ch. 323, §4G, as added Pub. L. 94–435, title III, §301, Sept. 30, 1976, 90 Stat. 1396.)

EFFECTIVE DATE

Injuries sustained prior to Sept. 30, 1976, not covered by this section, see section 304 of Pub. L. 94–435, set out as a note under section 15c of this title.

§15h. Applicability of parens patriae actions

Sections 15c, 15d, 15e, 15f, and 15g of this title shall apply in any State, unless such State provides by law for its nonapplicability in such State.

(Oct. 15, 1914, ch. 323, §4H, as added Pub. L. 94–435, title III, §301, Sept. 30, 1976, 90 Stat. 1396.)

EFFECTIVE DATE

Injuries sustained prior to Sept. 30, 1976, not covered by this section, see section 304 of Pub. L. 94–435, set out as a note under section 15c of this title.

§16. Judgments

(a) Prima facie evidence; collateral estoppel

A final judgment or decree heretofore or hereafter rendered in any civil or criminal proceeding brought by or on behalf of the United States under the antitrust laws to the effect that a defendant has violated said laws shall be prima facie evidence against such defendant in any action or proceeding brought by any other party against such defendant under said laws as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto: *Provided*, That this section shall not apply to consent judgments or decrees entered before any testimony has been taken. Nothing contained in this section shall be construed to impose any limitation on the application of collateral estoppel, except that, in any action or proceeding brought under the antitrust laws, collateral estoppel effect shall not be given to any finding made by the Federal Trade Commission under the antitrust laws or under section 45 of this title which could give rise to a claim for relief under the antitrust laws.

(b) Consent judgments and competitive impact statements; publication in Federal Register; availability of copies to the public

Any proposal for a consent judgment submitted by the United States for entry in any civil proceeding brought by or on behalf of the United States under the antitrust laws shall be filed with the district court before which such proceeding is pending and published by the United States in the Federal Register at least 60 days prior to the effective date of such judgment. Any written comments relating to such proposal and any responses by the United States thereto, shall also be filed with such district court and published by the United States in the Federal Register within such sixty-day period. Copies of such proposal and any other materials and documents which the United States considered determinative in formulating such proposal, shall also be made available to the public at the district court and in such other districts as the court may subsequently direct. Simultaneously with the filing of such proposal, unless otherwise instructed by the court, the United States shall file with the district court, publish in the Federal Register, and thereafter furnish to any person upon request, a competitive impact statement which shall recite—

(1) the nature and purpose of the proceeding;

(2) a description of the practices or events giving rise to the alleged violation of the antitrust

laws;

(3) an explanation of the proposal for a consent judgment, including an explanation of any unusual circumstances giving rise to such proposal or any provision contained therein, relief to be obtained thereby, and the anticipated effects on competition of such relief;

(4) the remedies available to potential private plaintiffs damaged by the alleged violation in the event that such proposal for the consent judgment is entered in such proceeding;

(5) a description of the procedures available for modification of such proposal; and

(6) a description and evaluation of alternatives to such proposal actually considered by the United States.

(c) Publication of summaries in newspapers

The United States shall also cause to be published, commencing at least 60 days prior to the effective date of the judgment described in subsection (b) of this section, for 7 days over a period of 2 weeks in newspapers of general circulation of the district in which the case has been filed, in the District of Columbia, and in such other districts as the court may direct—

(i) a summary of the terms of the proposal for consent judgment,

(ii) a summary of the competitive impact statement filed under subsection (b) of this section,

(iii) and a list of the materials and documents under subsection (b) of this section which the United States shall make available for purposes of meaningful public comment, and the place where such materials and documents are available for public inspection.

(d) Consideration of public comments by Attorney General and publication of response

During the 60-day period as specified in subsection (b) of this section, and such additional time as the United States may request and the court may grant, the United States shall receive and consider any written comments relating to the proposal for the consent judgment submitted under subsection (b) of this section. The Attorney General or his designee shall establish procedures to carry out the provisions of this subsection, but such 60-day time period shall not be shortened except by order of the district court upon a showing that (1) extraordinary circumstances require such shortening and (2) such shortening is not adverse to the public interest. At the close of the period during which such comments may be received, the United States shall file with the district court and cause to be published in the Federal Register a response to such comments. Upon application by the United States, the district court may, for good cause (based on a finding that the expense of publication in the Federal Register exceeds the public interest benefits to be gained from such publication), authorize an alternative method of public dissemination of the public comments received and the response to those comments.

(e) Public interest determination

(1) Before entering any consent judgment proposed by the United States under this section, the court shall determine that the entry of such judgment is in the public interest. For the purpose of such determination, the court shall consider—

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

(2) Nothing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.

(f) Procedure for public interest determination

In making its determination under subsection (e) of this section, the court may—

(1) take testimony of Government officials or experts or such other expert witnesses, upon motion of any party or participant or upon its own motion, as the court may deem appropriate;

(2) appoint a special master and such outside consultants or expert witnesses as the court may deem appropriate; and request and obtain the views, evaluations, or advice of any individual, group or agency of government with respect to any aspects of the proposed judgment or the effect of such judgment, in such manner as the court deems appropriate;

(3) authorize full or limited participation in proceedings before the court by interested persons or agencies, including appearance amicus curiae, intervention as a party pursuant to the Federal Rules of Civil Procedure, examination of witnesses or documentary materials, or participation in any other manner and extent which serves the public interest as the court may deem appropriate;

(4) review any comments including any objections filed with the United States under subsection (d) of this section concerning the proposed judgment and the responses of the United States to such comments and objections; and

(5) take such other action in the public interest as the court may deem appropriate.

(g) Filing of written or oral communications with the district court

Not later than 10 days following the date of the filing of any proposal for a consent judgment under subsection (b) of this section, each defendant shall file with the district court a description of any and all written or oral communications by or on behalf of such defendant, including any and all written or oral communications on behalf of such defendant by any officer, director, employee, or agent of such defendant, or other person, with any officer or employee of the United States concerning or relevant to such proposal, except that any such communications made by counsel of record alone with the Attorney General or the employees of the Department of Justice alone shall be excluded from the requirements of this subsection. Prior to the entry of any consent judgment pursuant to the antitrust laws, each defendant shall certify to the district court that the requirements of this subsection have been complied with and that such filing is a true and complete description of such communications known to the defendant or which the defendant reasonably should have known.

(h) Inadmissibility as evidence of proceedings before the district court and the competitive impact statement

Proceedings before the district court under subsections (e) and (f) of this section, and the competitive impact statement filed under subsection (b) of this section, shall not be admissible against any defendant in any action or proceeding brought by any other party against such defendant under the antitrust laws or by the United States under section 15a of this title nor constitute a basis for the introduction of the consent judgment as prima facie evidence against such defendant in any such action or proceeding.

(i) Suspension of limitations

Whenever any civil or criminal proceeding is instituted by the United States to prevent, restrain, or punish violations of any of the antitrust laws, but not including an action under section 15a of this title, the running of the statute of limitations in respect to every private or State right of action arising under said laws and based in whole or in part on any matter complained of in said proceeding shall be suspended during the pendency thereof and for one year thereafter: *Provided, however*, That whenever the running of the statute of limitations in respect of a cause of action arising under section 15 or 15c of this title is suspended hereunder, any action to enforce such cause of action shall be forever barred unless commenced either within the period of suspension or within four years after the cause of action accrued.

(Oct. 15, 1914, ch. 323, §5, 38 Stat. 731; July 7, 1955, ch. 283, §2, 69 Stat. 283; Pub. L. 93–528, §2, Dec. 21, 1974, 88 Stat. 1706; Pub. L. 94–435, title III, §302(2), Sept. 30, 1976, 90 Stat. 1396; Pub. L. 96–349, §5(a), Sept. 12, 1980, 94 Stat. 1157; Pub. L. 108–237, title II, §221(b), June 22, 2004, 118 Stat. 668.)

REFERENCES IN TEXT

The antitrust laws, referred to in subsecs. (a), (b), and (g) to (i), are defined in section 12 of this title.

AMENDMENTS

2004—Subsec. (d). Pub. L. 108–237, §221(b)(1), inserted at end "Upon application by the United States, the district court may, for good cause (based on a finding that the expense of publication in the Federal Register exceeds the public interest benefits to be gained from such publication), authorize an alternative method of public dissemination of the public comments received and the response to those comments."

Subsec. (e). Pub. L. 108–237, §221(b)(2), designated introductory provisions as par. (1), substituted "court shall" for "court may", added subpars. (A) and (B) and par. (2), and struck out former pars. (1) and (2) which read as follows:

"(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

"(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial."

Subsec. (g). Pub. L. 108–237, §221(b)(3), inserted "by any officer, director, employee, or agent of such defendant" before ", or other person" in first sentence.

1980—Subsec. (a). Pub. L. 96–349 made collateral estoppel inapplicable in any action or proceeding brought under the antitrust laws to any finding made by the Commission under the antitrust laws or under section 45 of this title which could give rise to a claim for relief under the antitrust laws; struck out "or by the United States under section 15a of this title," after "under said laws"; and deleted from proviso "or to judgments or decrees entered in actions under section 15a of this title" after "testimony has been taken".

1976—Pub. L. 94–435 substituted "private or State right of action" for "private right of action" and "section 15 or 15c" for "section 15".

1974—Subsecs. (b) to (i). Pub. L. 93–528 added subsecs. (b) to (h) and redesignated former subsec. (b) as (i).

1955—Act July 7, 1955, substituted subsec. (a) for first paragraph, to provide that final judgments in actions under the antitrust laws by the United States shall be prima facie evidence in damage suits by the United States as well as in private damage suits, and substituted subsec. (b) for second paragraph, to provide for a one-year suspension of limitations.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–349, §5(b), Sept. 12, 1980, 94 Stat. 1157, provided that: "The amendments made by this section [amending this section] shall apply only with respect to actions commenced after the date of the enactment of this Act [Sept. 12, 1980]."

SUSPENSION OF LIMITATION

Act Oct. 10, 1942, ch. 589, 56 Stat. 781, as amended June 30, 1945, ch. 213, 59 Stat. 306, provided for the suspension of any existing statutes of limitations relating to violations of antitrust laws now indictable or subject to civil proceedings under any existing statutes, until June 30, 1946.

FINDINGS AND PURPOSES OF 2004 AMENDMENT

Pub. L. 108–237, title II, §221(a), June 22, 2004, 118 Stat. 668, provided that:

"(1) FINDINGS.—Congress finds that—

"(A) the purpose of the Tunney Act [probably means section 2 of Pub. L. 93–528 which amended this section] was to ensure that the entry of antitrust consent judgments is in the public interest; and

"(B) it would misconstrue the meaning and Congressional intent in enacting the Tunney Act to limit the discretion of district courts to review antitrust consent judgments solely to determining whether entry of those consent judgments would make a 'mockery of the judicial function'.

"(2) PURPOSES.—The purpose of this section [amending this section] is to effectuate the original Congressional intent in enacting the Tunney Act and to ensure that United States settlements of civil antitrust suits are in the public interest."

§17. Antitrust laws not applicable to labor organizations

The labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or

conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.

(Oct. 15, 1914, ch. 323, §6, 38 Stat. 731.)

REFERENCES IN TEXT

The antitrust laws, referred to in text, are defined in section 12 of this title.

§18. Acquisition by one corporation of stock of another

No person engaged in commerce or in any activity affecting commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another person engaged also in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

No person shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of one or more persons engaged in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition, of such stocks or assets, or of the use of such stock by the voting or granting of proxies or otherwise, may be substantially to lessen competition, or to tend to create a monopoly.

This section shall not apply to persons purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce or in any activity affecting commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or short line constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or otherwise of any other common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.

Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: *Provided*, That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or made illegal by the antitrust laws, nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

Nothing contained in this section shall apply to transactions duly consummated pursuant to authority given by the Secretary of Transportation, Federal Power Commission, Surface Transportation Board, the Securities and Exchange Commission in the exercise of its jurisdiction under section 79j of this title,[1] the United States Maritime Commission, or the Secretary of Agriculture under any statutory provision vesting such power in such Commission, Board, or Secretary.

(Oct. 15, 1914, ch. 323, §7, 38 Stat. 731; Dec. 29, 1950, ch. 1184, 64 Stat. 1125; Pub. L. 96–349, §6(a), Sept. 12, 1980, 94 Stat. 1157; Pub. L. 98–443, §9(l), Oct. 4, 1984, 98 Stat. 1708; Pub. L. 104–88, title III, §318(1), Dec. 29, 1995, 109 Stat. 949; Pub. L. 104–104, title VI, §601(b)(3), Feb. 8, 1996, 110 Stat. 143.)

REFERENCES IN TEXT

Section 79j of this title, referred to in text, was repealed by Pub. L. 109–58, title XII, §1263, Aug. 8, 2005, 119 Stat. 974.

AMENDMENTS

1996—Pub. L. 104–104, in sixth par., struck out "Federal Communications Commission," after "Secretary of Transportation,".

1995—Pub. L. 104–88, in sixth par., substituted "Surface Transportation Board" for "Interstate Commerce Commission" and inserted ", Board," after "vesting such power in such Commission".

1984—Pub. L. 98–443 substituted "Secretary of Transportation" for "Civil Aeronautics Board" and "Commission or Secretary" for "Commission, Secretary, or Board" in sixth par.

1980—Pub. L. 96–349, substituted "person" for "corporation" wherever appearing in first and second pars.; substituted "persons" for "corporations" in second par. and first sentence of third par.; and inserted "or in any activity affecting commerce" after "commerce" wherever appearing in first, second, and third pars.

1950—Act Dec. 29, 1950, amended section generally so as to prohibit the acquisition of the whole or any part of the assets of another corporation when the effect of the acquisition may substantially lessen competition or tend to create a monopoly.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98–443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–349, §6(b), Sept. 12, 1980, 94 Stat. 1158, provided that: "The amendments made by this section [amending this section] shall apply only with respect to acquisitions made after the date of the enactment of this Act [Sept. 12, 1980]."

TRANSFER OF FUNCTIONS

Federal Power Commission terminated and functions, personnel, property, funds, etc., transferred to Secretary of Energy (except for certain functions transferred to Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291, and 7293 of Title 42, The Public Health and Welfare.

Executive and administrative functions of Maritime Commission transferred to Chairman of Maritime Commission by Reorg. Plan No. 6 of 1949, eff. Aug. 19, 1949, 14 F.R. 5228, 63 Stat. 1069, which was repealed by Pub. L. 109–304, §19, Oct. 6, 2006, 120 Stat. 1710, and was formerly set out in the Appendix to Title 5, Government Organization and Employees.

United States Maritime Commission abolished by Reorg. Plan No. 21 of 1950, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1273, which was superseded in part by Reorg. Plan No. 7 of 1961, §305, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840, repealed in part by Pub. L. 109–304, §19, Oct. 6, 2006, 120 Stat. 1710, and remains only partially set out in the Appendix to Title 5. Reorg. Plan No. 21 of 1950 transferred part of Commission's functions and part of functions of its Chairman, to Federal Maritime Board and Chairman thereof, such Board having been created by that Plan as an agency within Department of Commerce with an independent status in some respects, and transferred remainder of such Commission's functions and functions of its Chairman to Secretary of Commerce, with power vested in Secretary to authorize their performance by Maritime Administrator (the head of Maritime Administration, which likewise established by the Plan in Department of Commerce) with provision that Chairman of Federal Maritime Board should, ex officio, be such Administrator.

Section 304 of Reorg. Plan No. 7 of 1961, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840, set out in the Appendix to Title 5, abolished Federal Maritime Board, including offices of members of Board. Functions of Board transferred either to Federal Maritime Commission, by section 103 of Reorg. Plan No. 7 of 1961, which was repealed by Pub. L. 109–304, §19, Oct. 6, 2006, 120 Stat. 1710 and formerly set out in the Appendix to

Title 5, or to Secretary of Commerce, by section 202 of Reorg. Plan No. 7 of 1961, set out in the Appendix to Title 5.

Maritime Administration of Department of Commerce transferred to Department of Transportation, and all related functions of Secretary and other officers and offices of Department of Commerce transferred to Department of Transportation and vested in Secretary of Transportation, by Maritime Act of 1981, Pub. L. 97–31, Aug. 6, 1981, 95 Stat. 151, which was repealed in part by Pub. L. 109–304, §19, Oct. 6, 2006, 120 Stat. 1710. See section 109 of Title 49, Transportation.

[1] *See References in Text note below.*

§18a. Premerger notification and waiting period

(a) Filing

Except as exempted pursuant to subsection (c) of this section, no person shall acquire, directly or indirectly, any voting securities or assets of any other person, unless both persons (or in the case of a tender offer, the acquiring person) file notification pursuant to rules under subsection (d)(1) of this section and the waiting period described in subsection (b)(1) of this section has expired, if—

(1) the acquiring person, or the person whose voting securities or assets are being acquired, is engaged in commerce or in any activity affecting commerce; and

(2) as a result of such acquisition, the acquiring person would hold an aggregate total amount of the voting securities and assets of the acquired person—

(A) in excess of $200,000,000 (as adjusted and published for each fiscal year beginning after September 30, 2004, in the same manner as provided in section 19(a)(5) of this title to reflect the percentage change in the gross national product for such fiscal year compared to the gross national product for the year ending September 30, 2003); or

(B)(i) in excess of $50,000,000 (as so adjusted and published) but not in excess of $200,000,000 (as so adjusted and published); and

(ii)(I) any voting securities or assets of a person engaged in manufacturing which has annual net sales or total assets of $10,000,000 (as so adjusted and published) or more are being acquired by any person which has total assets or annual net sales of $100,000,000 (as so adjusted and published) or more;

(II) any voting securities or assets of a person not engaged in manufacturing which has total assets of $10,000,000 (as so adjusted and published) or more are being acquired by any person which has total assets or annual net sales of $100,000,000 (as so adjusted and published) or more; or

(III) any voting securities or assets of a person with annual net sales or total assets of $100,000,000 (as so adjusted and published) or more are being acquired by any person with total assets or annual net sales of $10,000,000 (as so adjusted and published) or more.

In the case of a tender offer, the person whose voting securities are sought to be acquired by a person required to file notification under this subsection shall file notification pursuant to rules under subsection (d) of this section.

(b) Waiting period; publication; voting securities

(1) The waiting period required under subsection (a) of this section shall—

(A) begin on the date of the receipt by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (hereinafter referred to in this section as the "Assistant Attorney General") of—

(i) the completed notification required under subsection (a) of this section, or

(ii) if such notification is not completed, the notification to the extent completed and a statement of the reasons for such noncompliance,

from both persons, or, in the case of a tender offer, the acquiring person; and

(B) end on the thirtieth day after the date of such receipt (or in the case of a cash tender offer, the fifteenth day), or on such later date as may be set under subsection (e)(2) or (g)(2) of this section.

(2) The Federal Trade Commission and the Assistant Attorney General may, in individual cases, terminate the waiting period specified in paragraph (1) and allow any person to proceed with any acquisition subject to this section, and promptly shall cause to be published in the Federal Register a notice that neither intends to take any action within such period with respect to such acquisition.

(3) As used in this section—

(A) The term "voting securities" means any securities which at present or upon conversion entitle the owner or holder thereof to vote for the election of directors of the issuer or, with respect to unincorporated issuers, persons exercising similar functions.

(B) The amount or percentage of voting securities or assets of a person which are acquired or held by another person shall be determined by aggregating the amount or percentage of such voting securities or assets held or acquired by such other person and each affiliate thereof.

(c) Exempt transactions

The following classes of transactions are exempt from the requirements of this section—

(1) acquisitions of goods or realty transferred in the ordinary course of business;

(2) acquisitions of bonds, mortgages, deeds of trust, or other obligations which are not voting securities;

(3) acquisitions of voting securities of an issuer at least 50 per centum of the voting securities of which are owned by the acquiring person prior to such acquisition;

(4) transfers to or from a Federal agency or a State or political subdivision thereof;

(5) transactions specifically exempted from the antitrust laws by Federal statute;

(6) transactions specifically exempted from the antitrust laws by Federal statute if approved by a Federal agency, if copies of all information and documentary material filed with such agency are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General;

(7) transactions which require agency approval under section 1467a(e) of title 12, section 1828(c) of title 12, or section 1842 of title 12, except that a portion of a transaction is not exempt under this paragraph if such portion of the transaction (A) is subject to section 1843(k) of title 12; and (B) does not require agency approval under section 1842 of title 12;

(8) transactions which require agency approval under section 1843 of title 12 or section 1464 of title 12, if copies of all information and documentary material filed with any such agency are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General at least 30 days prior to consummation of the proposed transaction, except that a portion of a transaction is not exempt under this paragraph if such portion of the transaction (A) is subject to section 1843(k) of title 12; and (B) does not require agency approval under section 1843 of title 12;

(9) acquisitions, solely for the purpose of investment, of voting securities, if, as a result of such acquisition, the securities acquired or held do not exceed 10 per centum of the outstanding voting securities of the issuer;

(10) acquisitions of voting securities, if, as a result of such acquisition, the voting securities acquired do not increase, directly or indirectly, the acquiring person's per centum share of outstanding voting securities of the issuer;

(11) acquisitions, solely for the purpose of investment, by any bank, banking association, trust company, investment company, or insurance company, of (A) voting securities pursuant to a plan of reorganization or dissolution; or (B) assets in the ordinary course of its business; and

(12) such other acquisitions, transfers, or transactions, as may be exempted under subsection (d)(2)(B) of this section.

(d) Commission rules

The Federal Trade Commission, with the concurrence of the Assistant Attorney General and by rule in accordance with section 553 of title 5, consistent with the purposes of this section—

(1) shall require that the notification required under subsection (a) of this section be in such form and contain such documentary material and information relevant to a proposed acquisition as is necessary and appropriate to enable the Federal Trade Commission and the Assistant Attorney General to determine whether such acquisition may, if consummated, violate the antitrust laws; and

(2) may—

(A) define the terms used in this section;

(B) exempt, from the requirements of this section, classes of persons, acquisitions, transfers, or transactions which are not likely to violate the antitrust laws; and

(C) prescribe such other rules as may be necessary and appropriate to carry out the purposes of this section.

(e) Additional information; waiting period extensions

(1)(A) The Federal Trade Commission or the Assistant Attorney General may, prior to the expiration of the 30-day waiting period (or in the case of a cash tender offer, the 15-day waiting period) specified in subsection (b)(1) of this section, require the submission of additional information or documentary material relevant to the proposed acquisition, from a person required to file notification with respect to such acquisition under subsection (a) of this section prior to the expiration of the waiting period specified in subsection (b)(1) of this section, or from any officer, director, partner, agent, or employee of such person.

(B)(i) The Assistant Attorney General and the Federal Trade Commission shall each designate a senior official who does not have direct responsibility for the review of any enforcement recommendation under this section concerning the transaction at issue, to hear any petition filed by such person to determine—

(I) whether the request for additional information or documentary material is unreasonably cumulative, unduly burdensome, or duplicative; or

(II) whether the request for additional information or documentary material has been substantially complied with by the petitioning person.

(ii) Internal review procedures for petitions filed pursuant to clause (i) shall include reasonable deadlines for expedited review of such petitions, after reasonable negotiations with investigative staff, in order to avoid undue delay of the merger review process.

(iii) Not later than 90 days after December 21, 2000, the Assistant Attorney General and the Federal Trade Commission shall conduct an internal review and implement reforms of the merger review process in order to eliminate unnecessary burden, remove costly duplication, and eliminate undue delay, in order to achieve a more effective and more efficient merger review process.

(iv) Not later than 120 days after December 21, 2000, the Assistant Attorney General and the Federal Trade Commission shall issue or amend their respective industry guidance, regulations, operating manuals and relevant policy documents, to the extent appropriate, to implement each reform in this subparagraph.

(v) Not later than 180 days after December 21, 2000, the Assistant Attorney General and the Federal Trade Commission shall each report to Congress—

(I) which reforms each agency has adopted under this subparagraph;

(II) which steps each has taken to implement such internal reforms; and

(III) the effects of such reforms.

(2) The Federal Trade Commission or the Assistant Attorney General, in its or his discretion, may extend the 30-day waiting period (or in the case of a cash tender offer, the 15-day waiting period) specified in subsection (b)(1) of this section for an additional period of not more than 30 days (or in the case of a cash tender offer, 10 days) after the date on which the Federal Trade Commission or the Assistant Attorney General, as the case may be, receives from any person to whom a request is made under paragraph (1), or in the case of tender offers, the acquiring person, (A) all the information and documentary material required to be submitted pursuant to such a request, or (B) if such request is not fully complied with, the information and documentary material submitted and a statement of the

reasons for such noncompliance. Such additional period may be further extended only by the United States district court, upon an application by the Federal Trade Commission or the Assistant Attorney General pursuant to subsection (g)(2) of this section.

(f) Preliminary injunctions; hearings

If a proceeding is instituted or an action is filed by the Federal Trade Commission, alleging that a proposed acquisition violates section 18 of this title, or section 45 of this title, or an action is filed by the United States, alleging that a proposed acquisition violates such section 18 of this title, or section 1 or 2 of this title, and the Federal Trade Commission or the Assistant Attorney General (1) files a motion for a preliminary injunction against consummation of such acquisition pendente lite, and (2) certifies the United States district court for the judicial district within which the respondent resides or carries on business, or in which the action is brought, that it or he believes that the public interest requires relief pendente lite pursuant to this subsection, then upon the filing of such motion and certification, the chief judge of such district court shall immediately notify the chief judge of the United States court of appeals for the circuit in which such district court is located, who shall designate a United States district judge to whom such action shall be assigned for all purposes.

(g) Civil penalty; compliance; power of court

(1) Any person, or any officer, director, or partner thereof, who fails to comply with any provision of this section shall be liable to the United States for a civil penalty of not more than $10,000 for each day during which such person is in violation of this section. Such penalty may be recovered in a civil action brought by the United States.

(2) If any person, or any officer, director, partner, agent, or employee thereof, fails substantially to comply with the notification requirement under subsection (a) of this section or any request for the submission of additional information or documentary material under subsection (e)(1) of this section within the waiting period specified in subsection (b)(1) of this section and as may be extended under subsection (e)(2) of this section, the United States district court—

(A) may order compliance;

(B) shall extend the waiting period specified in subsection (b)(1) of this section and as may have been extended under subsection (e)(2) of this section until there has been substantial compliance, except that, in the case of a tender offer, the court may not extend such waiting period on the basis of a failure, by the person whose stock is sought to be acquired, to comply substantially with such notification requirement or any such request; and

(C) may grant such other equitable relief as the court in its discretion determines necessary or appropriate,

upon application of the Federal Trade Commission or the Assistant Attorney General.

(h) Disclosure exemption

Any information or documentary material filed with the Assistant Attorney General or the Federal Trade Commission pursuant to this section shall be exempt from disclosure under section 552 of title 5, and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this section is intended to prevent disclosure to either body of Congress or to any duly authorized committee or subcommittee of the Congress.

(i) Construction with other laws

(1) Any action taken by the Federal Trade Commission or the Assistant Attorney General or any failure of the Federal Trade Commission or the Assistant Attorney General to take any action under this section shall not bar any proceeding or any action with respect to such acquisition at any time under any other section of this Act or any other provision of law.

(2) Nothing contained in this section shall limit the authority of the Assistant Attorney General or the Federal Trade Commission to secure at any time from any person documentary material, oral testimony, or other information under the Antitrust Civil Process Act [15 U.S.C. 1311 et seq.], the Federal Trade Commission Act [15 U.S.C. 41 et seq.], or any other provision of law.

(j) Omitted

(k) Extensions of time

If the end of any period of time provided in this section falls on a Saturday, Sunday, or legal public holiday (as defined in section 6103(a) of title 5), then such period shall be extended to the end of the next day that is not a Saturday, Sunday, or legal public holiday.

(Oct. 15, 1914, ch. 323, §7A, as added Pub. L. 94–435, title II, §201, Sept. 30, 1976, 90 Stat. 1390; amended Pub. L. 98–620, title IV, §402(10)(A), Nov. 8, 1984, 98 Stat. 3358; Pub. L. 101–73, title XII, §1214, Aug. 9, 1989, 103 Stat. 529; Pub. L. 106–102, title I, §133(c), Nov. 12, 1999, 113 Stat. 1383; Pub. L. 106–553, §1(a)(2) [title VI, §630(a), (c), (d)], Dec. 21, 2000, 114 Stat. 2762, 2762A–108, 2762A–110.)

REFERENCES IN TEXT

The antitrust laws, referred to in subsecs. (c), (d), are defined in section 12 of this title.

This Act, referred to in subsec. (i)(1), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, known as the Clayton Act, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of this title, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of this title and Tables.

The Federal Trade Commission Act, referred to in subsec. (i)(2), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

The Antitrust Civil Process Act, referred to in subsec. (i)(2), is Pub. L. 87–664, Sept. 19, 1962, 76 Stat. 548, as amended, which is classified generally to chapter 34 (§1311 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1311 of this title and Tables.

CODIFICATION

December 21, 2000, referred to in subsec. (e)(1)(B), was in the original "the date of the enactment of this Act" which was translated as meaning the date of enactment of Pub. L. 106–553, which enacted subsec. (e)(1)(B), to reflect the probable intent of Congress.

Subsection (j), which required the Federal Trade Commission, with the concurrence of the Assistant Attorney General, to report annually to Congress on the operation of this section, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 172 of House Document No. 103–7.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–553, §1(a)(2) [title VI, §630(a)], amended subsec. (a) generally, reenacting introductory provisions, par. (1), and concluding provisions without change, adding par. (2), and striking out former pars. (2) and (3) which read as follows:

"(2)(A) any voting securities or assets of a person engaged in manufacturing which has annual net sales or total assets of $10,000,000 or more are being acquired by any person which has total assets or annual net sales of $100,000,000 or more;

"(B) any voting securities or assets of a person not engaged in manufacturing which has total assets of $10,000,000 or more are being acquired by any person which has total assets or annual net sales of $100,000,000 or more; or

"(C) any voting securities or assets of a person with annual net sales or total assets of $100,000,000 or more are being acquired by any person with total assets or annual net sales of $10,000,000 or more; and

"(3) as a result of such acquisition, the acquiring person would hold—

"(A) 15 per centum or more of the voting securities or assets of the acquired person, or

"(B) an aggregate total amount of the voting securities and assets of the acquired person in excess of $15,000,000."

Subsec. (e)(1). Pub. L. 106–553, §1(a)(2) [title VI, §630(c)], designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (e)(2). Pub. L. 106–553, §1(a)(2) [title VI, §630(d)(1)], substituted "30 days" for "20 days".

Subsec. (k). Pub. L. 106–553, §1(a)(2) [title VI, §630(d)(2)], added subsec. (k).

1999—Subsec. (c)(7). Pub. L. 106–102, §133(c)(1), inserted before semicolon at end ", except that a portion of a transaction is not exempt under this paragraph if such portion of the transaction (A) is subject to section 1843(k) of title 12; and (B) does not require agency approval under section 1842 of title 12".

Subsec. (c)(8). Pub. L. 106–102, §133(c)(2), inserted before semicolon at end ", except that a portion of a

transaction is not exempt under this paragraph if such portion of the transaction (A) is subject to section 1843(k) of title 12; and (B) does not require agency approval under section 1843 of title 12".

1989—Subsec. (c)(7). Pub. L. 101–73, §1214(1), inserted reference to section 1467a(e) of title 12.

Subsec. (c)(8). Pub. L. 101–73, §1214(2), struck out reference to section 1726 or 1730a(e) of title 12.

1984—Subsec. (f)(2). Pub. L. 98–620 struck out designation "(A)" before "upon the filing", and struck out subpar. (B) which had provided that if the Federal Trade Commission or the Assistant Attorney General certified that he or it believed that the public interest required relief pendente lite pursuant to this subsection, the motion for a preliminary injunction had to be set down for hearing by the district judge so designated at the earliest practicable time, would take precedence over all matters except older matters of the same character and trials pursuant to section 3161 of title 18, and had to be in every way expedited.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–553, §1(a)(2) [title VI, §630(e)], Dec. 21, 2000, 114 Stat. 2762, 2762A–111, provided that: "This section [amending this section and provisions set out as a note under this section] and the amendments made by this section shall take effect on the 1st day of the 1st month that begins more than 30 days after the date of the enactment of this Act [Dec. 21, 2000]."

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–102 effective 120 days after Nov. 12, 1999, see section 161 of Pub. L. 106–102, set out as a note under section 24 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE

Pub. L. 94–435, title II, §202, Sept. 30, 1976, 90 Stat. 1394, provided that: "The amendment made by section 201 of this Act [enacting this section] shall take effect 150 days after the date of enactment of this Act [Sept. 30, 1976], except that subsection (d) of section 7A of the Clayton Act [subsec. (d) of this section] (as added by section 201 of this Act) shall take effect on the date of enactment of this Act."

ASSESSMENT AND COLLECTION OF FILING FEES

Pub. L. 101–162, title VI, §605, Nov. 21, 1989, 103 Stat. 1031, as amended by Pub. L. 101–302, title II, May 25, 1990, 104 Stat. 217; Pub. L. 102–395, title I, Oct. 6, 1992, 106 Stat. 1847; Pub. L. 103–317, title I, Aug. 26, 1994, 108 Stat. 1739; Pub. L. 106–553, §1(a)(2) [title VI, §630(b)], Dec. 21, 2000, 114 Stat. 2762, 2762A–109, provided that:

"(a) Five working days after enactment of this Act [Nov. 21, 1989] and thereafter, the Federal Trade Commission shall assess and collect filing fees established in subsection (b) which shall be paid by persons acquiring voting securities or assets who are required to file premerger notifications by the [sic] section 7A of the Clayton Act (15 U.S.C. 18a) and the regulations promulgated thereunder. For purposes of said Act, no notification shall be considered filed until payment of the fee required by this section. Fees collected pursuant to this section shall be divided evenly between and credited to the appropriations, Federal Trade Commission, 'Salaries and Expenses' and Department of Justice, 'Salaries and Expenses, Antitrust Division': *Provided*, That fees in excess of $40,000,000 in fiscal year 1990 shall be deposited to the credit of the Treasury of the United States: *Provided further*, That fees made available to the Federal Trade Commission and the Antitrust Division herein shall remain available until expended.

"(b) The filing fees referred to in subsection (a) are—

"(1) $45,000 if the aggregate total amount determined under section 7A(a)(2) of the Clayton Act (15 U.S.C. 18a(a)(2)) is less than $100,000,000 (as adjusted and published for each fiscal year beginning after September 30, 2004, in the same manner as provided in section 8(a)(5) of the Clayton Act (15 U.S.C. 19(a)(5)) to reflect the percentage change in the gross national product for such fiscal year compared to the gross national product for the year ending September 30, 2003);

"(2) $125,000 if the aggregate total amount determined under section 7A(a)(2) of the Clayton Act (15 U.S.C. 18a(a)(2)) is not less than $100,000,000 (as so adjusted and published) but less than $500,000,000 (as so adjusted and published); and

"(3) $280,000 if the aggregate total amount determined under section 7A(a)(2) of the Clayton Act (15 U.S.C. 18a(a)(2)) is not less than $500,000,000 (as so adjusted and published)."

§19. Interlocking directorates and officers

(a)(1) No person shall, at the same time, serve as a director or officer in any two corporations (other than banks, banking associations, and trust companies) that are—

(A) engaged in whole or in part in commerce; and

(B) by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the antitrust laws;

if each of the corporations has capital, surplus, and undivided profits aggregating more than $10,000,000 as adjusted pursuant to paragraph (5) of this subsection.

(2) Notwithstanding the provisions of paragraph (1), simultaneous service as a director or officer in any two corporations shall not be prohibited by this section if—

(A) the competitive sales of either corporation are less than $1,000,000, as adjusted pursuant to paragraph (5) of this subsection;

(B) the competitive sales of either corporation are less than 2 per centum of that corporation's total sales; or

(C) the competitive sales of each corporation are less than 4 per centum of that corporation's total sales.

For purposes of this paragraph, "competitive sales" means the gross revenues for all products and services sold by one corporation in competition with the other, determined on the basis of annual gross revenues for such products and services in that corporation's last completed fiscal year. For the purposes of this paragraph, "total sales" means the gross revenues for all products and services sold by one corporation over that corporation's last completed fiscal year.

(3) The eligibility of a director or officer under the provisions of paragraph (1) shall be determined by the capital, surplus and undivided profits, exclusive of dividends declared but not paid to stockholders, of each corporation at the end of that corporation's last completed fiscal year.

(4) For purposes of this section, the term "officer" means an officer elected or chosen by the Board of Directors.

(5) For each fiscal year commencing after September 30, 1990, the $10,000,000 and $1,000,000 thresholds in this subsection shall be increased (or decreased) as of October 1 each year by an amount equal to the percentage increase (or decrease) in the gross national product, as determined by the Department of Commerce or its successor, for the year then ended over the level so established for the year ending September 30, 1989. As soon as practicable, but not later than January 31 of each year, the Federal Trade Commission shall publish the adjusted amounts required by this paragraph.

(b) When any person elected or chosen as a director or officer of any corporation subject to the provisions hereof is eligible at the time of his election or selection to act for such corporation in such capacity, his eligibility to act in such capacity shall not be affected by any of the provisions hereof by reason of any change in the capital, surplus and undivided profits, or affairs of such corporation from whatever cause, until the expiration of one year from the date on which the event causing ineligibility occurred.

(Oct. 15, 1914, ch. 323, §8, 38 Stat. 732; May 15, 1916, ch. 120, 39 Stat. 121; May 26, 1920, ch. 206, 41 Stat. 626; Mar. 9, 1928, ch. 165, 45 Stat. 253; Mar. 2, 1929, ch. 581, 45 Stat. 1536; Aug. 23, 1935, ch. 614, §329, 49 Stat. 717; Pub. L. 101–588, §2, Nov. 16, 1990, 104 Stat. 2879; Pub. L. 103–203, §1, Dec. 17, 1993, 107 Stat. 2368.)

REFERENCES IN TEXT

The antitrust laws, referred to in subsec. (a)(1)(B), are defined in section 12 of this title.

AMENDMENTS

1993—Subsec. (a)(5). Pub. L. 103–203 substituted "January 31" for "October 30".

1990—Pub. L. 101–588 amended section generally, completely revising it in form by substituting text divided into a subsec. (a) consisting of five numbered paragraphs and a subsec. (b) consisting of a single unnumbered paragraph for former provisions which had consisted of a series of five undesignated paragraphs, and in substance by increasing the jurisdictional threshold for application of the section to corporations from

$1,000,000 in net worth to $10,000,000 in net worth, creating three "de minimis" exceptions to applications of the section in cases of insignificant competitive overlaps, and expanding the section to cover officers elected or chosen by the Board of Directors.

1935—Act Aug. 23, 1935, amended section generally.

1929—Act Mar. 2, 1929, amended second par.

1928—Act Mar. 9, 1928, amended second par.

§19a. Repealed. Aug. 23, 1935, ch. 614, §329, 49 Stat. 717

Section, act Oct. 15, 1914, ch. 323, §8a, as added June 16, 1933, ch. 89, §33, 48 Stat. 194, related to interlocking corporations or partnerships making loans on securities.

§20. Repealed. Pub. L. 101–588, §3, Nov. 16, 1990, 104 Stat. 2880

Section, act Oct. 15, 1914, ch. 323, §10, 38 Stat. 734, related to a $50,000 yearly, aggregate limitation on purchases and contracts between a common carrier and any entity with whom such carrier has any form of interlocking directorate, etc., required filing with ICC of a full statement of transactions excluded from such limitation, and set forth fines and penalties for violation of such limitation.

§21. Enforcement provisions

(a) Commission, Board, or Secretary authorized to enforce compliance

Authority to enforce compliance with sections 13, 14, 18, and 19 of this title by the persons respectively subject thereto is vested in the Surface Transportation Board where applicable to common carriers subject to jurisdiction under subtitle IV of title 49; in the Federal Communications Commission where applicable to common carriers engaged in wire or radio communication or radio transmission of energy; in the Secretary of Transportation where applicable to air carriers and foreign air carriers subject to part A of subtitle VII of title 49; in the Board of Governors of the Federal Reserve System where applicable to banks, banking associations, and trust companies; and in the Federal Trade Commission where applicable to all other character of commerce to be exercised as follows:

(b) Issuance of complaints for violations; hearing; intervention; filing of testimony; report; cease and desist orders; reopening and alteration of reports or orders

Whenever the Commission, Board, or Secretary vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of sections 13, 14, 18, and 19 of this title, it shall issue and serve upon such person and the Attorney General a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission, Board, or Secretary requiring such person to cease and desist from the violation of the law so charged in said complaint. The Attorney General shall have the right to intervene and appear in said proceeding and any person may make application, and upon good cause shown may be allowed by the Commission, Board, or Secretary, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the Commission, Board, or Secretary. If upon such hearing the Commission, Board, or Secretary, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing, in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations, and divest itself of the stock, or other share capital, or assets, held or rid itself of the directors chosen contrary to the provisions of sections 18 and 19 of this title, if any there be, in the manner and within the time fixed by said order. Until the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, or, if

a petition for review has been filed within such time then until the record in the proceeding has been filed in a court of appeals of the United States, as hereinafter provided, the Commission, Board, or Secretary may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section. After the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, the Commission, Board, or Secretary may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any report or order made or issued by it under this section, whenever in the opinion of the Commission, Board, or Secretary conditions of fact or of law have so changed as to require such action or if the public interest shall so require: *Provided, however,* That the said person may, within sixty days after service upon him or it of said report or order entered after such a reopening, obtain a review thereof in the appropriate court of appeals of the United States, in the manner provided in subsection (c) of this section.

(c) Review of orders; jurisdiction; filing of petition and record of proceeding; conclusiveness of findings; additional evidence; modification of findings; finality of judgment and decree

Any person required by such order of the commission, board, or Secretary to cease and desist from any such violation may obtain a review of such order in the court of appeals of the United States for any circuit within which such violation occurred or within which such person resides or carries on business, by filing in the court, within sixty days after the date of the service of such order, a written petition praying that the order of the commission, board, or Secretary be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the commission, board, or Secretary, and thereupon the commission, board, or Secretary shall file in the court the record in the proceeding, as provided in section 2112 of title 28. Upon such filing of the petition the court shall have jurisdiction of the proceeding and of the question determined therein concurrently with the commission, board, or Secretary until the filing of the record, and shall have power to make and enter a decree affirming, modifying, or setting aside the order of the commission, board, or Secretary, and enforcing the same to the extent that such order is affirmed, and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors pendente lite. The findings of the commission, board, or Secretary as to the facts, if supported by substantial evidence, shall be conclusive. To the extent that the order of the commission, board, or Secretary is affirmed, the court shall issue its own order commanding obedience to the terms of such order of the commission, board, or Secretary. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, board, or Secretary, the court may order such additional evidence to be taken before the commission, board, or Secretary, and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission, board, or Secretary may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and shall file such modified or new findings, which if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28.

(d) Exclusive jurisdiction of Court of Appeals

Upon the filing of the record with its jurisdiction of the court of appeals to affirm, enforce, modify, or set aside orders of the commission, board, or Secretary shall be exclusive.

(e) Liability under antitrust laws

No order of the commission, board, or Secretary or judgment of the court to enforce the same shall in anywise relieve or absolve any person from any liability under the antitrust laws.

(f) Service of complaints, orders and other processes

Complaints, orders, and other processes of the commission, board, or Secretary under this section

may be serviced by anyone duly authorized by the commission, board, or Secretary, either (1) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (2) by leaving a copy thereof at the residence or the principal office or place of business of such person; or (3) by mailing by registered or certified mail a copy thereof addressed to such person at his or its residence or principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post office receipt for said complaint, order, or other process mailed by registered or certified mail as aforesaid shall be proof of the service of the same.

(g) Finality of orders generally

Any order issued under subsection (b) of this section shall become final—

(1) upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time; but the commission, board, or Secretary may thereafter modify or set aside its order to the extent provided in the last sentence of subsection (b) of this section; or

(2) upon the expiration of the time allowed for filing a petition for certiorari, if the order of the commission, board, or Secretary has been affirmed, or the petition for review has been dismissed by the court of appeals, and no petition for certiorari has been duly filed; or

(3) upon the denial of a petition for certiorari, if the order of the commission, board, or Secretary has been affirmed or the petition for review has been dismissed by the court of appeals; or

(4) upon the expiration of thirty days from the date of issuance of the mandate of the Supreme Court, if such Court directs that the order of the commission, board, or Secretary be affirmed or the petition for review be dismissed.

(h) Finality of orders modified by Supreme Court

If the Supreme Court directs that the order of the commission, board, or Secretary be modified or set aside, the order of the commission, board, or Secretary rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of thirty days from the time it was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected to accord with the mandate, in which event the order of the commission, board, or Secretary shall become final when so corrected.

(i) Finality of orders modified by Court of Appeals

If the order of the commission, board, or Secretary is modified or set aside by the court of appeals, and if (1) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court then the order of the commission, board, or Secretary rendered in accordance with the mandate of the court of appeals shall become final on the expiration of thirty days from the time such order of the commission, board, or Secretary was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected so that it will accord with the mandate, in which event the order of the commission, board, or Secretary shall become final when so corrected.

(j) Finality of orders issued on rehearing ordered by Court of Appeals or Supreme Court

If the Supreme Court orders a rehearing; or if the case is remanded by the court of appeals to the commission, board, or Secretary for a rehearing, and if (1) the time allowed for filing a petition for certiorari has expired, and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the order of the commission, board, or Secretary rendered upon such rehearing shall become final in the same manner as though no prior order of the commission, board, or Secretary had been rendered.

(k) "Mandate" defined

As used in this section the term "mandate", in case a mandate has been recalled prior to the

expiration of thirty days from the date of issuance thereof, means the final mandate.

(l) Penalties

Any person who violates any order issued by the commission, board, or Secretary under subsection (b) of this section after such order has become final, and while such order is in effect, shall forfeit and pay to the United States a civil penalty of not more than $5,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the United States. Each separate violation of any such order shall be a separate offense, except that in the case of a violation through continuing failure or neglect to obey a final order of the commission, board, or Secretary each day of continuance of such failure or neglect shall be deemed a separate offense.

(Oct. 15, 1914, ch. 323, §11, 38 Stat. 734; June 19, 1934, ch. 652, title VII, §702(d), formerly title VI, §602(d), 48 Stat. 1102; renumbered Pub. L. 98–549, §6(a), Oct. 30, 1984, 98 Stat. 2804; Aug. 23, 1935, ch. 614, §203(a), 49 Stat. 704; June 23, 1938, ch. 601, §1107(g), 52 Stat. 1028; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Dec. 29, 1950, ch. 1184, 64 Stat. 1125; Pub. L. 85–726, title XIV, §1401(b), Aug. 23, 1958, 72 Stat. 806; Pub. L. 85–791, §4, Aug. 28, 1958, 72 Stat. 943; Pub. L. 86–107, §1, July 23, 1959, 73 Stat. 243; Pub. L. 98–443, §9(m), Oct. 4, 1984, 98 Stat. 1708; Pub. L. 98–620, title IV, §402(10)(B), Nov. 8, 1984, 98 Stat. 3358; Pub. L. 104–88, title III, §318(2), Dec. 29, 1995, 109 Stat. 949.)

REFERENCES IN TEXT

The antitrust laws, referred to in subsec. (e), are defined in section 12 of this title.

CODIFICATION

In subsec. (a), "part A of subtitle VII of title 49" substituted for "the Federal Aviation Act of 1958 [49 App. U.S.C. 1301 et seq.]" on authority of Pub. L. 103–272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49.

AMENDMENTS

1995—Subsec. (a). Pub. L. 104–88 substituted "Surface Transportation Board where applicable to common carriers subject to jurisdiction under subtitle IV of title 49" for "Interstate Commerce Commission where applicable to common carriers subject to the Interstate Commerce Act, as amended".

1984—Subsec. (a). Pub. L. 98–443, §9(m)(1), substituted "Secretary of Transportation where applicable to air carriers and foreign air carriers subject to the Federal Aviation Act of 1958" for "Civil Aeronautics Board where applicable to air carriers and foreign air carriers subject to the Civil Aeronautics Act of 1938".

Subsec. (b). Pub. L. 98–443, §9(m)(2), substituted "Commission, Board, or Secretary" for "Commission or Board" wherever appearing.

Subsecs. (c), (d). Pub. L. 98–443, §9(m)(3), substituted "commission, board, or Secretary" for "commission or board" wherever appearing.

Subsec. (e). Pub. L. 98–620 struck out provision that such proceedings in the court of appeals had to be given precedence over other cases pending therein, and had to be in every way expedited.

Pub. L. 98–443, §9(m)(3), substituted "commission, board, or Secretary" for "commission or board".

Subsecs. (f) to (j), (l). Pub. L. 98–443, §9(m)(3), substituted "commission, board, or Secretary" for "commission or board" wherever appearing.

1959—Pub. L. 86–107 amended section generally, and among other changes, authorized the Commission or Board, upon notice and opportunity for hearing, in cases where a petition for review has not been filed within the time allowed, to reopen and alter, modify, or set aside, in whole or in part, any report or order, whenever conditions of fact or law have so changed as to require such action or if the public interest so requires, and added subsecs. (g) to (k), providing for finality of orders, and subsec. (l), prescribing the civil penalty for violation of orders.

1958—Pub. L. 85–791, §4(a), struck out "a transcript of" after "Until" in last sentence of second par.

Pub. L. 85–791, §4(b), substituted in first sentence of third par., "file the record in the proceeding, as provided in section 2112 of title 28" for "certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the Commission or Board", and in second sentence of third par., struck out "and transcript" after "application", inserted "concurrently with the Commission or Board until the filing of the record", and struck out "upon the pleadings, testimony, and proceedings set forth in such transcript" after "make and enter".

Pub. L. 85–791, §4(c), substituted in second sentence of fourth par., "transmitted by the clerk of the court

to" for "served upon" and "shall file in the court the record in the proceeding, as provided in section 2112 of title 28" for "forthwith shall certify and file in the court a transcript of the record in the proceeding, as hereinbefore provided", and in third sentence of fourth paragraph substituted "such petition" for "the transcript" and inserted "determined as provided in section 1009(e) of title 5,".

Pub. L. 85–791, §4(d), substituted in fifth par., "Upon the filing of the record with it the" for "The".

1950—Act Dec. 29, 1950, amended section generally to allow the Attorney General to intervene and appear in any proceeding brought by any Commission or Board to enforce sections 13, 14, 18, and 19 of this title, but the amendment in nowise affects the jurisdiction of the Department of Justice to enforce these sections in the courts.

1938—Act June 23, 1938, inserted "in the Civil Aeronautics Authority where applicable to air carriers and foreign air carriers subject to the Civil Aeronautics Act of 1938", and "authority" after "commission" wherever appearing.

1935—Act Aug. 23, 1935, changed the name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

1934—Act June 19, 1934, amended first par.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals".

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

Amendment by Pub. L. 98–443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98–443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1959 AMENDMENT

Section 2 of Pub. L. 86–107 provided that: "The amendments made by section 1 [amending this section] shall have no application to any proceeding initiated before the date of enactment of this Act [July 23, 1959] under the third or fourth paragraph of section 11 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914 (38 Stat. 734, as amended; 15 U.S.C. 21) [this section]. Each such proceeding shall be governed by the provisions of such section as they existed on the day preceding the date of enactment of this Act."

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

§21a. Actions and proceedings pending prior to June 19, 1936; additional and continuing violations

Nothing herein contained shall affect rights of action arising, or litigation pending, or orders of the Federal Trade Commission issued and in effect or pending on review, based on section 13 of this title, prior to June 19, 1936: *Provided*, That where, prior to June 19, 1936, the Federal Trade Commission has issued an order requiring any person to cease and desist from a violation of section 13 of this title, and such order is pending on review or is in effect, either as issued or as affirmed or modified by a court of competent jurisdiction, and the Commission shall have reason to believe that such person has committed, used or carried on, since June 19, 1936, or is committing, using or carrying on, any act, practice or method in violation of any of the provisions of said section 13 of this title, it may reopen such original proceedings and may issue and serve upon such person its complaint, supplementary to the original complaint, stating its charges in that respect. Thereupon the same proceedings shall be had upon such supplementary complaint as provided in section 21 of this

title. If upon such hearing the Commission shall be of the opinion that any act, practice, or method charged in said supplementary complaint has been committed, used, or carried on since June 19, 1936, or is being committed, used or carried on, in violation of said section 13 of this title, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and serve upon such person its order modifying or amending its original order to include any additional violations of law so found. Thereafter the provisions of section 21 of this title, as to review and enforcement of orders of the Commission shall in all things apply to such modified or amended order. If upon review as provided in said section 21 of this title the court shall set aside such modified or amended order, the original order shall not be affected thereby, but it shall be and remain in force and effect as fully and to the same extent as if such supplementary proceedings had not been taken.

(June 19, 1936, ch. 592, §2, 49 Stat. 1527.)

REFERENCES IN TEXT

Nothing herein contained, referred to in text, probably means nothing contained in act June 19, 1936, ch. 592, 49 Stat. 1526, popularly known as the Robinson-Patman Antidiscrimination Act and also as the Robinson-Patman Price Discrimination Act, which enacted sections 13a, 13b, and 21a of this title and amended section 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 13 of this title and Tables.

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

§22. District in which to sue corporation

Any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.

(Oct. 15, 1914, ch. 323, §12, 38 Stat. 736.)

REFERENCES IN TEXT

The antitrust laws, referred to in text, are defined in section 12 of this title.

§23. Suits by United States; subpoenas for witnesses

In any suit, action, or proceeding brought by or on behalf of the United States subpoenas for witnesses who are required to attend a court of the United States in any judicial district in any case, civil or criminal, arising under the antitrust laws may run into any other district: *Provided*, That in civil cases no writ of subpoena shall issue for witnesses living out of the district in which the court is held at a greater distance than one hundred miles from the place of holding the same without the permission of the trial court being first had upon proper application and cause shown.

(Oct. 15, 1914, ch. 323, §13, 38 Stat. 736.)

REFERENCES IN TEXT

The antitrust laws, referred to in text, are defined in section 12 of this title.

§24. Liability of directors and agents of corporation

Whenever a corporation shall violate any of the penal provisions of the antitrust laws, such violation shall be deemed to be also that of the individual directors, officers, or agents of such

corporation who shall have authorized, ordered, or done any of the acts constituting in whole or in part such violation, and such violation shall be deemed a misdemeanor, and upon conviction therefor of any such director, officer, or agent he shall be punished by a fine of not exceeding $5,000 or by imprisonment for not exceeding one year, or by both, in the discretion of the court.

(Oct. 15, 1914, ch. 323, §14, 38 Stat. 736.)

REFERENCES IN TEXT

The antitrust laws, referred to in text, are defined in section 12 of this title.

§25. Restraining violations; procedure

The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of this Act, and it shall be the duty of the several United States attorneys, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition, the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition, and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises. Whenever it shall appear to the court before which any such proceeding may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned whether they reside in the district in which the court is held or not, and subpoenas to that end may be served in any district by the marshal thereof.

(Oct. 15, 1914, ch. 323, §15, 38 Stat. 736; June 25, 1948, ch. 646, §1, 62 Stat. 909.)

REFERENCES IN TEXT

This Act, referred to in text, is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, which is classified generally to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of this title, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of this title and Tables.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States attorneys" for "district attorneys of the United States". See section 541 et seq. of Title 28, Judiciary and Judicial Procedure.

§26. Injunctive relief for private parties; exception; costs

Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, including sections 13, 14, 18, and 19 of this title, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: *Provided*, That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit for injunctive relief against any common carrier subject to the jurisdiction of the Surface Transportation Board under subtitle IV of title 49. In any action under this section in which the plaintiff substantially prevails, the court shall award the cost of suit, including a reasonable attorney's fee, to such plaintiff.

(Oct. 15, 1914, ch. 323, §16, 38 Stat. 737; Pub. L. 94–435, title III, §302(3), Sept. 30, 1976, 90 Stat. 1396; Pub. L. 104–88, title III, §318(3), Dec. 29, 1995, 109 Stat. 949.)

REFERENCES IN TEXT

The antitrust laws, referred to in text, are defined in section 12 of this title.

AMENDMENTS

1995—Pub. L. 104–88 substituted "for injunctive relief against any common carrier subject to the jurisdiction of the Surface Transportation Board under subtitle IV of title 49" for "in equity for injunctive relief against any common carrier subject to the provisions of the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission."

1976—Pub. L. 94–435 inserted provision authorizing court to award costs, including attorneys' fees, to a successful plaintiff.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

§26a. Restrictions on the purchase of gasohol and synthetic motor fuel

(a) Limitations on the use of credit instruments; sales, resales, and transfers

Except as provided in subsection (b) of this section, it shall be unlawful for any person engaged in commerce, in the course of such commerce, directly or indirectly to impose any condition, restriction, agreement, or understanding that—

(1) limits the use of credit instruments in any transaction concerning the sale, resale, or transfer of gasohol or other synthetic motor fuel of equivalent usability in any case in which there is no similar limitation on transactions concerning such person's conventional motor fuel; or

(2) otherwise unreasonably discriminates against or unreasonably limits the sale, resale, or transfer of gasohol or other synthetic motor fuel of equivalent usability in any case in which such synthetic or conventional motor fuel is sold for use, consumption, or resale within the United States.

(b) Credit fees; equivalent conventional motor fuel sales; labeling of pumps; product liability disclaimers; advertising support; furnishing facilities

(1) Nothing in this section or in any other provision of law in effect on December 2, 1980, which is specifically applicable to the sale of petroleum products shall preclude any person referred to in subsection (a) of this section from imposing a reasonable fee for credit on the sale, resale, or transfer of the gasohol or other synthetic motor fuel referred to in subsection (a) of this section if such fee equals no more than the actual costs to such person of extending that credit.

(2) The prohibitions in this section shall not apply to any person who makes available sufficient supplies of gasohol and other synthetic motor fuels of equivalent usability to satisfy his customers' needs for such products, if the gasohol and other synthetic fuels are made available on terms and conditions which are equivalent to the terms and conditions on which such person's conventional motor fuel products are made available.

(3) Nothing in this section shall—

(A) preclude any person referred to in subsection (a) of this section from requiring reasonable labeling of pumps dispensing the gasohol or other synthetic motor fuel referred to in subsection (a) of this section to indicate, as appropriate, that such gasohol or other synthetic motor fuel is not manufactured, distributed, or sold by such person;

(B) preclude such person from issuing appropriate disclaimers of product liability for damage resulting from use of the gasohol or other synthetic motor fuel;

(C) require such person to provide advertising support for the gasohol or other synthetic motor fuel; or

(D) require such person to furnish or provide, at such person's own expense, any additional pumps, tanks, or other related facilities required for the sale of the gasohol or other synthetic motor fuel.

(c) "United States" defined

As used in this section, "United States" includes the several States, the District of Columbia, any territory of the United States, and any insular possession or other place under the jurisdiction of the United States.

(Oct. 15, 1914, ch. 323, §26, as added Pub. L. 96–493, §2, Dec. 2, 1980, 94 Stat. 2568.)

SHORT TITLE

For short title of Pub. L. 96–493 as the "Gasohol Competition Act of 1980", see section 1 of Pub. L. 96–493, set out as a Short Title of 1980 Amendment note under section 1 of this title.

§26b. Application of antitrust laws to professional major league baseball

(a) Major league baseball subject to antitrust laws

Subject to subsections (b) through (d) of this section, the conduct, acts, practices, or agreements of persons in the business of organized professional major league baseball directly relating to or affecting employment of major league baseball players to play baseball at the major league level are subject to the antitrust laws to the same extent such conduct, acts, practices, or agreements would be subject to the antitrust laws if engaged in by persons in any other professional sports business affecting interstate commerce.

(b) Limitation of section

No court shall rely on the enactment of this section as a basis for changing the application of the antitrust laws to any conduct, acts, practices, or agreements other than those set forth in subsection (a) of this section. This section does not create, permit or imply a cause of action by which to challenge under the antitrust laws, or otherwise apply the antitrust laws to, any conduct, acts, practices, or agreements that do not directly relate to or affect employment of major league baseball players to play baseball at the major league level, including but not limited to—

(1) any conduct, acts, practices, or agreements of persons engaging in, conducting or participating in the business of organized professional baseball relating to or affecting employment to play baseball at the minor league level, any organized professional baseball amateur or first-year player draft, or any reserve clause as applied to minor league players;

(2) the agreement between organized professional major league baseball teams and the teams of the National Association of Professional Baseball Leagues, commonly known as the "Professional Baseball Agreement", the relationship between organized professional major league baseball and organized professional minor league baseball, or any other matter relating to organized professional baseball's minor leagues;

(3) any conduct, acts, practices, or agreements of persons engaging in, conducting or participating in the business of organized professional baseball relating to or affecting franchise expansion, location or relocation, franchise ownership issues, including ownership transfers, the relationship between the Office of the Commissioner and franchise owners, the marketing or sales of the entertainment product of organized professional baseball and the licensing of intellectual property rights owned or held by organized professional baseball teams individually or collectively;

(4) any conduct, acts, practices, or agreements protected by Public Law 87–331 (15 U.S.C. § 1291 et seq.) (commonly known as the "Sports Broadcasting Act of 1961");

(5) the relationship between persons in the business of organized professional baseball and umpires or other individuals who are employed in the business of organized professional baseball by such persons; or

(6) any conduct, acts, practices, or agreements of persons not in the business of organized professional major league baseball.

(c) Standing to sue

Only a major league baseball player has standing to sue under this section. For the purposes of this section, a major league baseball player is—

(1) a person who is a party to a major league player's contract, or is playing baseball at the major league level; or

(2) a person who was a party to a major league player's contract or playing baseball at the major league level at the time of the injury that is the subject of the complaint; or

(3) a person who has been a party to a major league player's contract or who has played baseball at the major league level, and who claims he has been injured in his efforts to secure a subsequent major league player's contract by an alleged violation of the antitrust laws: *Provided however*, That for the purposes of this paragraph, the alleged antitrust violation shall not include any conduct, acts, practices, or agreements of persons in the business of organized professional baseball relating to or affecting employment to play baseball at the minor league level, including any organized professional baseball amateur or first-year player draft, or any reserve clause as applied to minor league players; or

(4) a person who was a party to a major league player's contract or who was playing baseball at the major league level at the conclusion of the last full championship season immediately preceding the expiration of the last collective bargaining agreement between persons in the business of organized professional major league baseball and the exclusive collective bargaining representative of major league baseball players.

(d) Conduct, acts, practices, or agreements subject to antitrust laws

(1) As used in this section, "person" means any entity, including an individual, partnership, corporation, trust or unincorporated association or any combination or association thereof. As used in this section, the National Association of Professional Baseball Leagues, its member leagues and the clubs of those leagues, are not "in the business of organized professional major league baseball".

(2) In cases involving conduct, acts, practices, or agreements that directly relate to or affect both employment of major league baseball players to play baseball at the major league level and also relate to or affect any other aspect of organized professional baseball, including but not limited to employment to play baseball at the minor league level and the other areas set forth in subsection (b) of this section, only those components, portions or aspects of such conduct, acts, practices, or agreements that directly relate to or affect employment of major league players to play baseball at the major league level may be challenged under subsection (a) of this section and then only to the extent that they directly relate to or affect employment of major league baseball players to play baseball at the major league level.

(3) As used in subsection (a) of this section, interpretation of the term "directly" shall not be governed by any interpretation of section 151 et seq. of title 29, United States Code (as amended).

(4) Nothing in this section shall be construed to affect the application to organized professional baseball of the nonstatutory labor exemption from the antitrust laws.

(5) The scope of the conduct, acts, practices, or agreements covered by subsection (b) of this section shall not be strictly or narrowly construed.

(Oct. 15, 1914, ch. 323, §27, as added Pub. L. 105–297, §3, Oct. 27, 1998, 112 Stat. 2824.)

REFERENCES IN TEXT

The antitrust laws, referred to in text, are defined in section 12 of this title.

Public Law 87–331, referred to in subsec. (b)(4), is Pub. L. 87–331, Sept. 30, 1961, 75 Stat. 732, as amended, which is classified generally to chapter 32 (§1291 et seq.) of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Another section 27 of act Oct. 15, 1914, ch. 323, was renumbered section 28 and is classified to section 27 of this title.

PURPOSE

Pub. L. 105–297, §2, Oct. 27, 1998, 112 Stat. 2824, provided that: "It is the purpose of this legislation to state that major league baseball players are covered under the antitrust laws (i.e., that major league baseball players will have the same rights under the antitrust laws as do other professional athletes, e.g., football and basketball players), along with a provision that makes it clear that the passage of this Act [enacting this

section and provisions set out as a note under section 1 of this title] does not change the application of the antitrust laws in any other context or with respect to any other person or entity."

§27. Effect of partial invalidity

If any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

(Oct. 15, 1914, ch. 323, §28, formerly §26, 38 Stat. 740; renumbered §27, Pub. L. 96–493, §2, Dec. 2, 1980, 94 Stat. 2568; renumbered §28, Pub. L. 107–273, div. C, title IV, §14102(d), Nov. 2, 2002, 116 Stat. 1922.)

REFERENCES IN TEXT

This Act, referred to in text, is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, known as the Clayton Act, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of this title, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of this title and Tables.

§27a. Transferred

CODIFICATION

Section, act Oct. 15, 1914, ch. 323, §27, as added Pub. L. 105–297, §3, Oct. 27, 1998, 112 Stat. 2824, which related to application of antitrust laws to professional major league baseball, was transferred to section 26b of this title.

§28. Repealed. Pub. L. 98–620, title IV, §402(11), Nov. 8, 1984, 98 Stat. 3358

Section, acts Feb. 11, 1903, ch. 544, §1, 32 Stat. 823; June 25, 1910, ch. 428, 36 Stat. 854; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167; Apr. 6, 1942, ch. 210, §1, 56 Stat. 198; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Dec. 21, 1974, Pub. L. 93–528, §4, 88 Stat. 1708, related to expedition of actions by the United States involving general public importance.

EFFECTIVE DATE OF REPEAL

Repeal not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§29. Appeals

(a) Court of appeals; review by Supreme Court

Except as otherwise expressly provided by this section, in every civil action brought in any district court of the United States under the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890, or any other Acts having like purpose that have been or hereafter may be enacted, in which the United States is the complainant and equitable relief is sought, any appeal from a final judgement entered in any such action shall be taken to the court of appeals pursuant to sections 1291 and 2107 of title 28. Any appeal from an interlocutory order entered in any such action shall be taken to the court of appeals pursuant to sections 1292(a)(1) and 2107 of title 28 but not otherwise. Any judgment entered by the court of appeals in any such action shall be subject to review by the Supreme Court upon a writ of certiorari as provided in section 1254(1) of title 28.

(b) Direct appeals to Supreme Court

An appeal from a final judgment pursuant to subsection (a) of this section shall lie directly to the Supreme Court, if, upon application of a party filed within fifteen days of the filing of a notice of appeal, the district judge who adjudicated the case enters an order stating that immediate consideration of the appeal by the Supreme Court is of general public importance in the administration of justice. Such order shall be filed within thirty days after the filing of a notice of appeal. When such an order is filed, the appeal and any cross appeal shall be docketed in the time and manner prescribed by the rules of the Supreme Court. The Supreme Court shall thereupon either (1) dispose of the appeal and any cross appeal in the same manner as any other direct appeal authorized by law, or (2) in its discretion, deny the direct appeal and remand the case to the court of appeals, which shall then have jurisdiction to hear and determine the same as if the appeal and any cross appeal therein had been docketed in the court of appeals in the first instance pursuant to subsection (a) of this section.

(Feb. 11, 1903, ch. 544, §2, 32 Stat. 823; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167; June 9, 1944, ch. 239, 58 Stat. 272; June 25, 1948, ch. 646, §17, 62 Stat. 989; Pub. L. 93–528, §5, Dec. 21, 1974, 88 Stat. 1709.)

REFERENCES IN TEXT

The Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890, referred to in subsec. (a), is known as the Sherman Act, and is classified to sections 1 to 7 of this title.

CODIFICATION

Section was previously set out in both this section and in section 45 of former Title 49, Transportation.

AMENDMENTS

1974—Pub. L. 93–528 substituted provisions for appeals to the court of appeals from civil actions in district courts where equitable relief is sought, review by the Supreme Court of judgments of courts of appeals, and for direct appeals to the Supreme Court of cases involving general public importance, for provisions that appeals from final judgments of district courts lie to the Supreme Court only.

1948—Act June 25, 1948, amended section generally to strike out provisions relating to time for appeal, procedure, etc. See sections 2101 and 2109 of Title 28, Judiciary and Judicial Procedure.

1944—Act June 9, 1944, provided for certification of case to circuit court of appeals when there was no quorum of Justices of the Supreme Court qualified to participate in the consideration of the case and for designation of circuit judges in the event of disqualification from hearing the case.

CHANGE OF NAME

Act Mar. 3, 1911, which transferred the powers and duties of the circuit courts to the district courts, substituted "district court" for "circuit court".

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93–528, §7, Dec. 21, 1974, 88 Stat. 1710, provided that: "The amendment made by section 5 of this Act [amending this section] shall not apply to an action in which a notice of appeal to the Supreme Court has been filed on or before the fifteenth day following the date of enactment of this Act [Dec. 21, 1974]. Appeal in any such action shall be taken pursuant to the provisions of section 2 of the Act of February 11, 1903 (32 Stat. 823), as amended (15 U.S.C. 29; [former] 49 U.S.C. 45) which were in effect on the day preceding the date of enactment of this Act."

EFFECTIVE DATE OF 1948 AMENDMENT

Section 38 of act June 25, 1948, provided that the amendment made by that act is effective Sept. 1, 1948.

EFFECTIVE DATE OF 1944 AMENDMENT

Act June 9, 1944, ch. 239, 58 Stat. 272, provided in part: "This Act [this section] shall apply to every case pending before the Supreme Court of the United States on the date of its enactment [June 9, 1944]."

SHORT TITLE

Act Feb. 11, 1903, which enacted sections 28 and 29 of this title, is commonly known as the "Expediting Act".

§30. Repealed. Pub. L. 107–273, div. C, title IV, §14102(f), Nov. 2, 2002, 116 Stat. 1922

Section, act Mar. 3, 1913, ch. 114, 37 Stat. 731, provided that depositions for use in suits in equity brought under sections 1 to 7 of this title would be open to public.

EFFECTIVE DATE OF REPEAL

Repeal effective Nov. 2, 2002, and applicable to cases pending on or after Nov. 2, 2002, see section 14103 of Pub. L. 107–273, set out as an Effective Date of 2002 Amendment note under section 3 of this title.

§31. Repealed. Pub. L. 107–273, div. C, title IV, §14102(a), Nov. 2, 2002, 116 Stat. 1921

Section, act Aug. 24, 1912, ch. 390, §11, 37 Stat. 567, related to closure of Panama Canal to violators of antitrust laws.

EFFECTIVE DATE OF REPEAL

Repeal effective Nov. 2, 2002, and applicable only with respect to cases commenced on or after Nov. 2, 2002, see section 14103 of Pub. L. 107–273, set out as a note under section 3 of this title.

§§32, 33. Repealed. Pub. L. 91–452, title II, §§209, 210, Oct. 15, 1970, 84 Stat. 929

Section 32, act Feb. 25, 1903, ch. 755, §1, 32 Stat. 904, granted immunity from prosecution to witnesses testifying or producing evidence, documentary or otherwise, in any proceeding, suit, or prosecution under section 1 to 11 of this title. See section 6001 et seq. of Title 18, Crimes and Criminal Procedure.

Section 33, act June 30, 1906, ch. 3920, 34 Stat. 798, provided that, under the immunity provisions of former section 32 of this title, immunity was to extend only to a natural person who, in obedience to a subpoena, testified or produced evidence.

EFFECTIVE DATE OF REPEAL

Repeal effective on sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91–452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

SAVINGS PROVISION

Repeal of sections by Pub. L. 91–452 not to affect any immunity to which any individual was entitled under sections by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91–452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

§34. Definitions applicable to sections 34 to 36

For purposes of sections 34 to 36 of this title—

(1) the term "local government" means—

(A) a city, county, parish, town, township, village, or any other general function governmental unit established by State law, or

(B) a school district, sanitary district, or any other special function governmental unit established by State law in one or more States,

(2) the term "person" has the meaning given it in subsection (a) of the first section of the Clayton Act [15 U.S.C. 12(a)], but does not include any local government as defined in paragraph (1) of this section, and

(3) the term "State" has the meaning given it in section 4G(2) of the Clayton Act (15 U.S.C. 15g(2)).

(Pub. L. 98–544, §2, Oct. 24, 1984, 98 Stat. 2750.)

EFFECTIVE DATE

Pub. L. 98–544, §6, Oct. 24, 1984, 98 Stat. 2751, provided that: "This Act [enacting this section, sections 35 and 36 of this title, and provisions set out as a note under section 1 of this title] shall take effect thirty days before the date of the enactment of this Act [Oct. 24, 1984]."

§35. Recovery of damages, etc., for antitrust violations from any local government, or official or employee thereof acting in an official capacity

(a) Prohibition in general

No damages, interest on damages, costs, or attorney's fees may be recovered under section 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or 15c) from any local government, or official or employee thereof acting in an official capacity.

(b) Preconditions for attachment of prohibition; prima facie evidence for nonapplication of prohibition

Subsection (a) of this section shall not apply to cases commenced before the effective date of this Act unless the defendant establishes and the court determines, in light of all the circumstances, including the stage of litigation and the availability of alternative relief under the Clayton Act, that it would be inequitable not to apply this subsection to a pending case. In consideration of this section, existence of a jury verdict, district court judgment, or any stage of litigation subsequent thereto, shall be deemed to be prima facie evidence that subsection (a) of this section shall not apply.

(Pub. L. 98–544, §3, Oct. 24, 1984, 98 Stat. 2750.)

REFERENCES IN TEXT

For the effective date of this Act, referred to in subsec. (b), see Effective Date note below.

The Clayton Act, referred to in subsecs. (a) and (b), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of this title and to sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of this title and Tables.

EFFECTIVE DATE

Section effective thirty days before Oct. 24, 1984, see section 6 of Pub. L. 98–544, set out as a note under section 34 of this title.

§36. Recovery of damages, etc., for antitrust violations on claim against person based on official action directed by local government, or official or employee thereof acting in an official capacity

(a) Prohibition in general

No damages, interest on damages, costs or attorney's fees may be recovered under section 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or 15c) in any claim against a person based on any official action directed by a local government, or official or employee thereof acting in an official capacity.

(b) Nonapplication of prohibition for cases commenced before effective date of provisions

Subsection (a) of this section shall not apply with respect to cases commenced before the effective date of this Act.

(Pub. L. 98–544, §4, Oct. 24, 1984, 98 Stat. 2750.)

REFERENCES IN TEXT

For effective date of this Act, referred to in subsec. (b), see Effective Date note below.

EFFECTIVE DATE

Section effective thirty days before Oct. 24, 1984, see section 6 of Pub. L. 98–544, set out as a note under section 34 of this title.

§37. Immunity from antitrust laws

(a) Inapplicability of antitrust laws

Except as provided in subsection (d) of this section, the antitrust laws, and any State law similar to any of the antitrust laws, shall not apply to charitable gift annuities or charitable remainder trusts.

(b) Immunity

Except as provided in subsection (d) of this section, any person subjected to any legal proceeding for damages, injunction, penalties, or other relief of any kind under the antitrust laws, or any State law similar to any of the antitrust laws, on account of setting or agreeing to rates of return or other terms for, negotiating, issuing, participating in, implementing, or otherwise being involved in the planning, issuance, or payment of charitable gift annuities or charitable remainder trusts shall have immunity from suit under the antitrust laws, including the right not to bear the cost, burden, and risk of discovery and trial, for the conduct set forth in this subsection.

(c) Treatment of certain annuities and trusts

Any annuity treated as a charitable gift annuity, or any trust treated as a charitable remainder trust, either—

(1) in any filing by the donor with the Internal Revenue Service; or

(2) in any schedule, form, or written document provided by or on behalf of the donee to the donor;

shall be conclusively presumed for the purposes of this section and section 37a of this title to be respectively a charitable gift annuity or a charitable remainder trust, unless there has been a final determination by the Internal Revenue Service that, for fraud or otherwise, the donor's annuity or trust did not qualify respectively as a charitable gift annuity or charitable remainder trust when created.

(d) Limitation

Subsections (a) and (b) of this section shall not apply with respect to the enforcement of a State law similar to any of the antitrust laws, with respect to charitable gift annuities, or charitable remainder trusts, created after the State enacts a statute, not later than December 8, 1998, that expressly provides that subsections (a) and (b) of this section shall not apply with respect to such charitable gift annuities and such charitable remainder trusts.

(Pub. L. 104–63, §2, Dec. 8, 1995, 109 Stat. 687; Pub. L. 105–26, §2(1), July 3, 1997, 111 Stat. 241.)

REFERENCES IN TEXT

For definition of "antitrust laws", referred to in text, see section 37a(1) of this title.

AMENDMENTS

1997—Pub. L. 105–26 amended section generally. Prior to amendment, section related to modification of antitrust laws to allow two or more charitable organizations to use, or to agree to use, the same annuity rate in issuing one or more charitable gift annuities and to limitations on such conduct.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–26, §3, July 3, 1997, 111 Stat. 242, provided that: "This Act [see Short Title of 1997 Amendments note set out under section 1 of this title], and the amendments made by this Act, shall apply with respect to all conduct occurring before, on, or after the date of the enactment of this Act [July 3, 1997] and shall apply in all administrative and judicial actions pending on or commenced after the date of the enactment of this Act."

EFFECTIVE DATE

Pub. L. 104–63, §4, Dec. 8, 1995, 109 Stat. 688, provided that: "This Act [enacting this section, section 37a

of this title, and provisions set out as a note under section 1 of this title] shall apply with respect to conduct occurring before, on, or after the date of the enactment of this Act [Dec. 8, 1995]."

STUDY AND REPORT

Pub. L. 105–26, §4, July 3, 1997, 111 Stat. 242, provided that:

"(a) STUDY AND REPORT.—The Attorney General shall carry out a study to determine the effect of this Act [see Short Title of 1997 Amendments note set out under section 1 of this title] on markets for noncharitable annuities, charitable gift annuities, and charitable remainder trusts. The Attorney General shall prepare a report summarizing the results of the study.

"(b) DETAILS OF STUDY AND REPORT.—The report referred to in subsection (a) shall include any information on possible inappropriate activity resulting from this Act and any recommendations for legislative changes, including recommendations for additional enforcement resources.

"(c) SUBMISSION OF REPORT.—The Attorney General shall submit the report referred to in subsection (a) to the Chairman and the ranking member of the Committee on the Judiciary of the House of Representatives, and to the Chairman and the ranking member of the Committee on the Judiciary of the Senate, not later than 27 months after the date of the enactment of this Act [July 3, 1997]."

§37a. Definitions

For purposes of this section and section 37 of this title:

(1) Antitrust laws

The term "antitrust laws" has the meaning given it in subsection (a) of section 12 of this title, except that such term includes section 45 of this title to the extent that such section 45 applies to unfair methods of competition.

(2) Charitable remainder trust

The term "charitable remainder trust" has the meaning given it in section 664(d) of title 26.

(3) Charitable gift annuity

The term "charitable gift annuity" has the meaning given it in section 501(m)(5) of title 26.

(4) Final determination

The term "final determination" includes an Internal Revenue Service determination, after exhaustion of donor's and donee's administrative remedies, disallowing the donor's charitable deduction for the year in which the initial contribution was made because of the donee's failure to comply at such time with the requirements of section 501(m)(5) or 664(d), respectively, of title 26.

(5) Person

The term "person" has the meaning given it in subsection (a) of section 12 of this title.

(6) State

The term "State" has the meaning given it in section 15g(2) of this title.

(Pub. L. 104–63, §3, Dec. 8, 1995, 109 Stat. 687; Pub. L. 105–26, §2(2), July 3, 1997, 111 Stat. 242.)

AMENDMENTS

1997—Pars. (1), (2). Pub. L. 105–26, §2(2)(A)–(C), added par. (2), redesignated former par. (2) as (1), and struck out heading and text of former par. (1). Text read as follows: "The term 'annuity rate' means the percentage of the fair market value of a gift (determined as of the date of the gift) given in exchange for a charitable gift annuity, that represents the amount of the annual payment to be made to 1 or 2 annuitants over the life of either or both under the terms of the agreement to give such gift in exchange for such annuity."

Pars. (4) to (6). Pub. L. 105–26, §2(2)(D), (E), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–26 applicable with respect to all conduct occurring before, on, or after July 3, 1997, and applicable in all administrative and judicial actions pending on or commenced after July 3, 1997, see section 3 of Pub. L. 105–26, set out as a note under section 37 of this title.

EFFECTIVE DATE

Section applicable with respect to conduct occurring before, on, or after Dec. 8, 1995, see section 4 of Pub. L. 104–63, set out as a note under section 37 of this title.

§37b. Confirmation of antitrust status of graduate medical resident matching programs

(a) Findings and purposes

(1) Findings

Congress makes the following findings:

(A) For over 50 years, most United States medical school seniors and the large majority of graduate medical education programs (popularly known as "residency programs") have chosen to use a matching program to match medical students with residency programs to which they have applied. These matching programs have been an integral part of an educational system that has produced the finest physicians and medical researchers in the world.

(B) Before such matching programs were instituted, medical students often felt pressure, at an unreasonably early stage of their medical education, to seek admission to, and accept offers from, residency programs. As a result, medical students often made binding commitments before they were in a position to make an informed decision about a medical specialty or a residency program and before residency programs could make an informed assessment of students' qualifications. This situation was inefficient, chaotic, and unfair and it often led to placements that did not serve the interests of either medical students or residency programs.

(C) The original matching program, now operated by the independent non-profit National Resident Matching Program and popularly known as "the Match", was developed and implemented more than 50 years ago in response to widespread student complaints about the prior process. This Program includes on its board of directors individuals nominated by medical student organizations as well as by major medical education and hospital associations.

(D) The Match uses a computerized mathematical algorithm, as students had recommended, to analyze the preferences of students and residency programs and match students with their highest preferences from among the available positions in residency programs that listed them. Students thus obtain a residency position in the most highly ranked program on their list that has ranked them sufficiently high among its preferences. Each year, about 85 percent of participating United States medical students secure a place in one of their top 3 residency program choices.

(E) Antitrust lawsuits challenging the matching process, regardless of their merit or lack thereof, have the potential to undermine this highly efficient, pro-competitive, and long-standing process. The costs of defending such litigation would divert the scarce resources of our country's teaching hospitals and medical schools from their crucial missions of patient care, physician training, and medical research. In addition, such costs may lead to abandonment of the matching process, which has effectively served the interests of medical students, teaching hospitals, and patients for over half a century.

(2) Purposes

It is the purpose of this section to—

(A) confirm that the antitrust laws do not prohibit sponsoring, conducting, or participating in a graduate medical education residency matching program, or agreeing to do so; and

(B) ensure that those who sponsor, conduct or participate in such matching programs are not subjected to the burden and expense of defending against litigation that challenges such matching programs under the antitrust laws.

(b) Application of antitrust laws to graduate medical education residency matching programs

(1) Definitions

In this subsection:

(A) Antitrust laws

The term "antitrust laws"—

(i) has the meaning given such term in subsection (a) of section 12 of this title, except that such term includes section 45 of this title to the extent such section 45 applies to unfair methods of competition; and

(ii) includes any State law similar to the laws referred to in clause (i).

(B) Graduate medical education program

The term "graduate medical education program" means—

(i) a residency program for the medical education and training of individuals following graduation from medical school;

(ii) a program, known as a specialty or subspecialty fellowship program, that provides more advanced training; and

(iii) an institution or organization that operates, sponsors or participates in such a program.

(C) Graduate medical education residency matching program

The term "graduate medical education residency matching program" means a program (such as those conducted by the National Resident Matching Program) that, in connection with the admission of students to graduate medical education programs, uses an algorithm and matching rules to match students in accordance with the preferences of students and the preferences of graduate medical education programs.

(D) Student

The term "student" means any individual who seeks to be admitted to a graduate medical education program.

(2) Confirmation of antitrust status

It shall not be unlawful under the antitrust laws to sponsor, conduct, or participate in a graduate medical education residency matching program, or to agree to sponsor, conduct, or participate in such a program. Evidence of any of the conduct described in the preceding sentence shall not be admissible in Federal court to support any claim or action alleging a violation of the antitrust laws.

(3) Applicability

Nothing in this section shall be construed to exempt from the antitrust laws any agreement on the part of 2 or more graduate medical education programs to fix the amount of the stipend or other benefits received by students participating in such programs.

(c) Effective date

This section shall take effect on April 10, 2004, shall apply to conduct whether it occurs prior to, on, or after April 10, 2004, and shall apply to all judicial and administrative actions or other proceedings pending on April 10, 2004.

(Pub. L. 108–218, title II, §207, Apr. 10, 2004, 118 Stat. 611.)

§38. Association of marine insurance companies; application of antitrust laws

(a) Whenever used in this section—

(1) The term "association" means any association, exchange, pool, combination, or other arrangement for concerted action; and

(2) The term "marine insurance companies" means any persons, companies, or associations, authorized to write marine insurance or reinsurance under the laws of the United States or of a State, Territory, District, or possession thereof.

(b) Nothing contained in the "antitrust laws" as designated in section 12 of this title, shall be

construed as declaring illegal an association entered into by marine insurance companies for the following purposes: To transact a marine insurance and reinsurance business in the United States and in foreign countries and to reinsure or otherwise apportion among its membership the risks undertaken by such association or any of the component members.

(June 5, 1920, ch. 250, §29, 41 Stat. 1000.)

CODIFICATION

Section was classified to section 885 of the former Appendix to Title 46, prior to the completion of the enactment of Title 46, Shipping, by Pub. L. 109–304, Oct. 6, 2006, 120 Stat. 1485.

CHAPTER 2—FEDERAL TRADE COMMISSION; PROMOTION OF EXPORT TRADE AND PREVENTION OF UNFAIR METHODS OF COMPETITION

SUBCHAPTER I—FEDERAL TRADE COMMISSION

Sec.

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70a. Violations of Federal Trade Commission Act.
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SUBCHAPTER I—FEDERAL TRADE COMMISSION

§41. Federal Trade Commission established; membership; vacancies; seal

A commission is created and established, to be known as the Federal Trade Commission (hereinafter referred to as the Commission), which shall be composed of five Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. Not more than three of the Commissioners shall be members of the same political party. The first Commissioners appointed shall continue in office for terms of three, four, five, six, and seven years, respectively, from September 26, 1914, the term of each to be designated by the President, but their successors shall be appointed for terms of seven years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the Commissioner whom he shall succeed: *Provided, however,* That upon the expiration of his term of office a Commissioner shall continue to serve until his successor shall have been appointed and shall have qualified..[1] The President shall choose a chairman from the Commission's membership. No Commissioner shall engage in any other business, vocation, or employment. Any Commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the Commission shall not impair the right of the remaining Commissioners to exercise all the powers of the Commission.

The Commission shall have an official seal, which shall be judicially noticed.

(Sept. 26, 1914, ch. 311, §1, 38 Stat. 717; Mar. 21, 1938, ch. 49, §1, 52 Stat. 111; 1950 Reorg. Plan No. 8, §3, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265.)

AMENDMENTS

1938—Act Mar. 21, 1938, inserted proviso clause to third sentence.

TRANSFER OF FUNCTIONS

Executive and administrative functions of Federal Trade Commission, with certain reservations, transferred to Chairman of such Commission by Reorg. Plan No. 8 of 1950, set out below.

Functions of Federal Trade Commission (1) under Flammable Fabrics Act [section 1191 et seq. of this title] and under this subchapter to extent that such functions relate to administration of Flammable Fabrics Act, and (2) under Act of August 2, 1956, [section 1211 et seq. of this title], transferred to Consumer Product Safety Commission by section 30 of Act Oct. 27, 1972, Pub. L. 92–573 [section 2079 of this title].

By section 3 of act Sept. 26, 1914, Bureau of Corporations abolished and all employees and functions of said Bureau transferred to Federal Trade Commission.

CLARIFICATION OF STATUS OF SUBSIDIARIES AND AFFILIATES

Pub. L. 106–102, title I, §133(a), (b), Nov. 12, 1999, 113 Stat. 1383, provided that:

"(a) CLARIFICATION OF FEDERAL TRADE COMMISSION JURISDICTION.—Any person that directly or indirectly controls, is controlled directly or indirectly by, or is directly or indirectly under common control with, any bank or savings association (as such terms are defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813]) and is not itself a bank or savings association shall not be deemed to be a bank or savings association for purposes of any provisions applied by the Federal Trade Commission under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

"(b) SAVINGS PROVISION.—No provision of this section [amending section 18a of this title] shall be construed as restricting the authority of any Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813]) under any Federal banking law, including section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818]."

REORGANIZATION PLAN NO. 8 OF 1950

EFF. MAY 24, 1950, 15 F.R. 3175, 64 STAT. 1264

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, March 13, 1950, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949 [see 5 U.S.C. 901 et seq.].

FEDERAL TRADE COMMISSION

SECTION 1. TRANSFER OF FUNCTIONS TO THE CHAIRMAN

(a) Subject to the provisions of subsection (b) of this section, there are hereby transferred from the Federal Trade Commission, hereinafter referred to as the Commission, to the Chairman of the Commission, hereinafter referred to as the Chairman, the executive and administrative functions of the Commission, including functions of the Commission with respect to (1) the appointment and supervision of personnel employed under the Commission, (2) the distribution of business among such personnel and among administrative units of the Commission, and (3) the use and expenditure of funds.

(b)(1) In carrying out any of his functions under the provisions of this section the Chairman shall be governed by general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make.

(2) The appointment by the Chairman of the heads of major administrative units under the Commission shall be subject to the approval of the Commission.

(3) Personnel employed regularly and full time in the immediate offices of members of the Commission other than the Chairman shall not be affected by the provisions of this reorganization plan.

(4) There are hereby reserved to the Commission its functions with respect to revising budget estimates and with respect to determining upon the distribution of appropriated funds according to major programs and purposes.

SEC. 2. PERFORMANCE OF TRANSFERRED FUNCTIONS

The Chairman may from time to time make such provisions as he shall deem appropriate authorizing the performance by any officer, employee, or administrative unit under his jurisdiction of any function transferred to the Chairman by the provisions of this reorganization plan.

SEC. 3. DESIGNATION OF CHAIRMAN

The functions of the Commission with respect to choosing a Chairman from among the membership of the Commission are hereby transferred to the President.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 8 of 1950, prepared in accordance with the Reorganization Act of 1949 and providing for reorganizations in the Federal Trade Commission. My reasons for transmitting this plan are stated in any accompanying general message.

After investigation I have found and hereby declare that each reorganization included in Reorganization Plan No. 8 of 1950 is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949.

The taking effect of the reorganizations included in this plan may not in itself result in substantial immediate savings. However, many benefits in improved operations are probable during the next years which will result in a reduction in expenditures as compared with those that would be otherwise necessary. An itemization of these reductions in advance of actual experience under this plan is not practicable.

HARRY S. TRUMAN.

REORGANIZATION PLAN NO. 4 OF 1961

EFF. JULY 9, 1961, 26 F.R. 6191, 75 STAT. 837

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, May 9, 1961, pursuant to the provisions of the Reorganization Act of 1949, 63 Stat. 203, as amended [see 5 U.S.C. 901 et seq.].

FEDERAL TRADE COMMISSION

SECTION 1. AUTHORITY TO DELEGATE

(a) In addition to its existing authority, the Federal Trade Commission, hereinafter referred to as the "Commission", shall have the authority to delegate, by published order or rule, any of its functions to a division of the Commission, an individual Commissioner, a hearing examiner, or an employee or employee board, including functions with respect to hearing, determining, ordering, certifying, reporting or otherwise

acting as to any work, business, or matter; *Provided, however*, That nothing herein contained shall be deemed to supersede the provisions of section 7(a) of the Administrative Procedure Act (60 Stat. 241), as amended [see 5 U.S.C. 556].

(b) With respect to the delegation of any of its functions, as provided in subsection (a) of this section, the Commission shall retain a discretionary right to review the action of any such division of the Commission, individual Commissioner, hearing examiner, employee or employee board, upon its own initiative or upon petition of a party to or an intervenor in such action, within such time and in such manner as the Commission shall by rule prescribe: *Provided, however*, That the vote of a majority of the Commission less one member thereof shall be sufficient to bring any such action before the Commission for review.

(c) Should the right to exercise such discretionary review be declined, or should no such review be sought within the time stated in the rules promulgated by the Commission, then the action of any such division of the Commission, individual Commissioner, hearing examiner, employee or employee board, shall, for all purposes, including appeal or review thereof, be deemed to be the action of the Commission.

SEC. 2. TRANSFER OF FUNCTIONS TO THE CHAIRMAN

In addition to the functions transferred by the provisions of Reorganization Plan No. 8 of 1950 (64 Stat. 1264) [set out as a note under this section], there are hereby transferred from the Commission to the Chairman of the Commission the functions of the Commission with respect to the assignment of Commission personnel, including Commissioners, to perform such functions as may have been delegated by the Commission to Commission personnel, including Commissioners, pursuant to section 1 of this reorganization plan.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 4 of 1961, prepared in accordance with the Reorganization Act of 1949, as amended, and providing for reorganization in the Federal Trade Commission.

This Reorganization Plan No. 4 of 1961 follows upon my message of April 13, 1961, to the Congress of the United States. It is believed that the taking effect of the reorganizations included in this plan will provide for greater efficiency in the dispatch of the business of the Federal Trade Commission.

The plan provides for greater flexibility in the handling of the business before the Commission, permitting its disposition at different levels so as better to promote its efficient dispatch. Thus matters both of an adjudicatory and regulatory nature may, depending upon their importance and their complexity, be finally consummated by divisions of the Commission, individual Commissioners, hearing examiners, and, subject to the provisions of section 7(a) of the Administrative Procedure Act (60 Stat. 241), by other employees. This will relieve the Commissioners from the necessity of dealing with many matters of lesser importance and thus conserve their time for the consideration of major matters of policy and planning. There is, however, reserved to the Commission as a whole the right to review any such decision, report or certification either upon its own initiative or upon the petition of a party or intervenor demonstrating to the satisfaction of the Commission the desirability of having the matter reviewed at the top level.

Provision is also made, in order to maintain the fundamental bipartisan concept explicit in the basic statute creating the Commission, for mandatory review of any such decision, report or certification upon the vote of a majority of the Commission less one member.

Inasmuch as the assignment of delegated functions in particular cases and with reference to particular problems to divisions of the Commission, to Commissioners, to hearing examiners, to employees and boards of employees must require continuous and flexible handling, depending both upon the amount and nature of the business, that function is placed in the Chairman by section 2 of the plan.

By providing sound organizational arrangements, the taking effect of the reorganizations included in the accompanying reorganization plan will make possible more economical and expeditious administration of the affected functions. It is, however, impracticable to itemize at this time the reductions of expenditures which it is probable will be brought about by such taking effect.

After investigation, I have found and hereby declare that each reorganization included in the reorganization plan transmitted herewith is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949, as amended.

I recommend that the Congress allow the reorganization plan to become effective.

JOHN F. KENNEDY.

[1] *So in original.*

§42. Employees; expenses

Each commissioner shall receive a salary, payable in the same manner as the salaries of the judges of the courts of the United States. The commission shall appoint a secretary, who shall receive a salary, and it shall have authority to employ and fix the compensation of such attorneys, special experts, examiners, clerks, and other employees as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress.

With the exception of the secretary, a clerk to each Commissioner, the attorneys, and such special experts and examiners as the Commission may from time to time find necessary for the conduct of its work, all employees of the Commission shall be a part of the classified civil service, and shall enter the service under such rules and regulations as may be prescribed by the Commission and by the Director of the Office of Personnel Management.

All of the expenses of the Commission, including all necessary expenses for transportation incurred by the Commissioners or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Commission.

Until otherwise provided by law, the Commission may rent suitable offices for its use.

The Government Accountability Office shall receive and examine all accounts of expenditures of the Commission.

(Sept. 26, 1914, ch. 311, §2, 38 Stat. 718; June 10, 1921, ch. 18, title III, §304, 42 Stat. 24; 1978 Reorg. Plan No. 2, §102, 43 F.R. 36037, 92 Stat. 3783; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814.)

REFERENCES IN TEXT

The classified civil service, referred to in second par., means the "competitive service", see section 2102 of Title 5, Government Organization and Employees. Rules and regulations of the Civil Service Commission for entry into the service are prescribed generally under authority of section 3301 et seq. of Title 5.

CODIFICATION

In the first par., provisions that fixed the salary of the commissioners have been omitted as obsolete. The positions of chairman and members of the commission are now under the Executive Schedule, see sections 5414 and 5315 of Title 5, Government Organization and Employees.

Provisions that fixed the salary of the secretary of the commission, payable in like manner, have been omitted as obsolete. The position is now subject to chapter 51 and subchapter III of chapter 53 (relating to classification and General Schedule pay rates) and section 5504 (relating to biweekly pay periods) of Title 5.

TRANSFER OF FUNCTIONS

"Director of the Office of Personnel Management" substituted in text for "Civil Service Commission" pursuant to Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in the United States Civil Service Commission to the Director of the Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

"Government Accountability Office" substituted in text for "General Accounting Office" pursuant to section 8(b) of Pub. L. 108–271, set out as a note under section 702 of Title 31, Money and Finance, which redesignated the General Accounting Office and any references thereto as the Government Accountability Office. Previously, "General Accounting Office" substituted in text for "Auditor for the State and Other Departments" pursuant to act June 10, 1921, which transferred all powers and duties of the Comptroller, six auditors, and certain other employees of the Treasury to the General Accounting Office. See section 701 et seq. of Title 31.

§43. Office and place of meeting

The principal office of the Commission shall be in the city of Washington, but it may meet and exercise all its powers at any other place. The Commission may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

(Sept. 26, 1914, ch. 311, §3, 38 Stat. 719.)

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

§44. Definitions

The words defined in this section shall have the following meaning when found in this subchapter, to wit:

"Commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

"Corporation" shall be deemed to include any company, trust, so-called Massachusetts trust, or association, incorporated or unincorporated, which is organized to carry on business for its own profit or that of its members, and has shares of capital or capital stock or certificates of interest, and any company, trust, so-called Massachusetts trust, or association, incorporated or unincorporated, without shares of capital or capital stock or certificates of interest, except partnerships, which is organized to carry on business for its own profit or that of its members.

"Documentary evidence" includes all documents, papers, correspondence, books of account, and financial and corporate records.

"Acts to regulate commerce" means subtitle IV of title 49 and the Communications Act of 1934 [47 U.S.C. 151 et seq.] and all Acts amendatory thereof and supplementary thereto.

"Antitrust Acts" means the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890; also sections 73 to 76, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", approved August 27, 1894; also the Act entitled "An Act to amend sections 73 and 76 of the Act of August 27, 1894, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes' ", approved February 12, 1913; and also the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914.

"Banks" means the types of banks and other financial institutions referred to in section 57a(f)(2) of this title.

"Foreign law enforcement agency" means—

(1) any agency or judicial authority of a foreign government, including a foreign state, a political subdivision of a foreign state, or a multinational organization constituted by and comprised of foreign states, that is vested with law enforcement or investigative authority in civil, criminal, or administrative matters; and

(2) any multinational organization, to the extent that it is acting on behalf of an entity described in paragraph (1).

(Sept. 26, 1914, ch. 311, §4, 38 Stat. 719; Mar. 21, 1938, ch. 49, §2, 52 Stat. 111; Pub. L. 102–242, title II, §212(g)(1), Dec. 19, 1991, 105 Stat. 2302; Pub. L. 107–273, div. C, title IV, §14102(c)(2)(B), Nov. 2, 2002, 116 Stat. 1921; Pub. L. 109–455, §§2, 13, Dec. 22, 2006, 120 Stat. 3372, 3382; Pub. L. 112–203, §1, Dec. 4, 2012, 126 Stat. 1484.)

AMENDMENT OF SECTION

For repeal of amendment by section 13 of Pub. L. 109–455, see Termination Date of 2006

Amendment note below.

REFERENCES IN TEXT

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

The Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, referred to in the text, is known as the Sherman Act, and is classified to sections 1 to 7 of this title.

Sections 73 to 76, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", approved August 27, 1894, referred to in text, are known as the Wilson Tariff Act. Sections 73 to 76 are classified to sections 8 to 11 of this title.

Act February 12, 1913, is set out as amendments to sections 8 and 11 of this title.

The Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, referred to in text, is the Clayton Act. For classification of the Act to the Code, see References in Text note set out under section 12 of this title.

CODIFICATION

"Subtitle IV of title 49" substituted in text for "the Act entitled 'An Act to regulate commerce', approved February 14, 1887, and all Acts amendatory thereof and supplementary thereto" on authority of Pub. L. 95–473, §3(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV of Title 49, Transportation.

AMENDMENTS

2012—Pub. L. 112–203, §1, amended Pub. L. 109–455, §13. See 2006 Amendment note below.

2006—Pub. L. 109–455, §2, which added par. defining "Foreign law enforcement agency", was repealed by Pub. L. 109–455, §13, as amended by Pub. L. 112–203, §1. See Termination Date of 2006 Amendment note below.

2002—Pub. L. 107–273 substituted "73 to 76" for "73 to 77" in par. defining "Antitrust Acts".

1991—Pub. L. 102–242 added par. defining "Banks".

1938—Act Mar. 21, 1938, amended section generally.

TERMINATION DATE OF 2006 AMENDMENT

Pub. L. 109–455, §13, Dec. 22, 2006, 120 Stat. 3382, as amended by Pub. L. 112–203, §1, Dec. 4, 2012, 126 Stat. 1484, provided that: "Effective September 30, 2020, this Act [enacting sections 57b–2a, 57b–2b, 57c–1, and 57c–2 of this title, amending this section, sections 45, 46, 56, 57b–2, and 58 of this title, and section 3412 of Title 12, Banks and Banking, and enacting provisions set out as notes under this section and section 58 of this title], and the amendments made by this Act, are repealed, and any provision of law amended by this Act shall be amended to read as if this Act had not been enacted into law."

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–273 effective Nov. 2, 2002, and applicable only with respect to cases commenced on or after Nov. 2, 2002, see section 14103 of Pub. L. 107–273, set out as a note under section 3 of this title.

PRESERVATION OF EXISTING AUTHORITY

Pub. L. 109–455, §12, Dec. 22, 2006, 120 Stat. 3382, provided that: "The authority provided by this Act [see Termination Date of 2006 Amendment note above], and by the Federal Trade Commission Act (15 U.S.C. 41 et seq.) and the Right to Financial Privacy Act [of 1978] (12 U.S.C. 3401 et seq.), as such Acts are amended by this Act, is in addition to, and not in lieu of, any other authority vested in the Federal Trade Commission or any other officer of the United States."

[Section 12 of Pub. L. 109–455, set out above, repealed effective Sept. 30, 2020, see section 13 of Pub. L. 109–455, as amended by section 1 of Pub. L. 112–203, set out as a Termination Date of 2006 Amendment note above.]

§45. Unfair methods of competition unlawful; prevention by Commission

(a) Declaration of unlawfulness; power to prohibit unfair practices; inapplicability to foreign

trade

(1) Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.

(2) The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, savings and loan institutions described in section 57a(f)(3) of this title, Federal credit unions described in section 57a(f)(4) of this title, common carriers subject to the Acts to regulate commerce, air carriers and foreign air carriers subject to part A of subtitle VII of title 49, and persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as amended [7 U.S.C. 181 et seq.], except as provided in section 406(b) of said Act [7 U.S.C. 227(b)], from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce.

(3) This subsection shall not apply to unfair methods of competition involving commerce with foreign nations (other than import commerce) unless—

(A) such methods of competition have a direct, substantial, and reasonably foreseeable effect—

(i) on commerce which is not commerce with foreign nations, or on import commerce with foreign nations; or

(ii) on export commerce with foreign nations, of a person engaged in such commerce in the United States; and

(B) such effect gives rise to a claim under the provisions of this subsection, other than this paragraph.

If this subsection applies to such methods of competition only because of the operation of subparagraph (A)(ii), this subsection shall apply to such conduct only for injury to export business in the United States.

(4)(A) For purposes of subsection (a), the term "unfair or deceptive acts or practices" includes such acts or practices involving foreign commerce that—

(i) cause or are likely to cause reasonably foreseeable injury within the United States; or

(ii) involve material conduct occurring within the United States.

(B) All remedies available to the Commission with respect to unfair and deceptive acts or practices shall be available for acts and practices described in this paragraph, including restitution to domestic or foreign victims.

(b) Proceeding by Commission; modifying and setting aside orders

Whenever the Commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition or unfair or deceptive act or practice in or affecting commerce, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the Commission to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the Commission. If upon such hearing the Commission shall be of the opinion that the method of competition or the act or practice in question is prohibited by this subchapter, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition or such act or practice. Until the expiration of the time allowed for filing a petition for review, if no such petition has been duly

filed within such time, or, if a petition for review has been filed within such time then until the record in the proceeding has been filed in a court of appeals of the United States, as hereinafter provided, the Commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section. After the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, the Commission may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part any report or order made or issued by it under this section, whenever in the opinion of the Commission conditions of fact or of law have so changed as to require such action or if the public interest shall so require, except that (1) the said person, partnership, or corporation may, within sixty days after service upon him or it of said report or order entered after such a reopening, obtain a review thereof in the appropriate court of appeals of the United States, in the manner provided in subsection (c) of this section; and (2) in the case of an order, the Commission shall reopen any such order to consider whether such order (including any affirmative relief provision contained in such order) should be altered, modified, or set aside, in whole or in part, if the person, partnership, or corporation involved files a request with the Commission which makes a satisfactory showing that changed conditions of law or fact require such order to be altered, modified, or set aside, in whole or in part. The Commission shall determine whether to alter, modify, or set aside any order of the Commission in response to a request made by a person, partnership, or corporation under paragraph [1] (2) not later than 120 days after the date of the filing of such request.

(c) Review of order; rehearing

Any person, partnership, or corporation required by an order of the Commission to cease and desist from using any method of competition or act or practice may obtain a review of such order in the court of appeals of the United States, within any circuit where the method of competition or the act or practice in question was used or where such person, partnership, or corporation resides or carries on business, by filing in the court, within sixty days from the date of the service of such order, a written petition praying that the order of the Commission be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission, and thereupon the Commission shall file in the court the record in the proceeding, as provided in section 2112 of title 28. Upon such filing of the petition the court shall have jurisdiction of the proceeding and of the question determined therein concurrently with the Commission until the filing of the record and shall have power to make and enter a decree affirming, modifying, or setting aside the order of the Commission, and enforcing the same to the extent that such order is affirmed and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgement to prevent injury to the public or to competitors pendente lite. The findings of the Commission as to the facts, if supported by evidence, shall be conclusive. To the extent that the order of the Commission is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of such order of the Commission. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28.

(d) Jurisdiction of court

Upon the filing of the record with it the jurisdiction of the court of appeals of the United States to affirm, enforce, modify, or set aside orders of the Commission shall be exclusive.

(e) Exemption from liability

No order of the Commission or judgement of court to enforce the same shall in anywise relieve or absolve any person, partnership, or corporation from any liability under the Antitrust Acts.

(f) Service of complaints, orders and other processes; return

Complaints, orders, and other processes of the Commission under this section may be served by anyone duly authorized by the Commission, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the residence or the principal office or place of business of such person, partnership, or corporation; or (c) by mailing a copy thereof by registered mail or by certified mail addressed to such person, partnership, or corporation at his or its residence or principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post office receipt for said complaint, order, or other process mailed by registered mail or by certified mail as aforesaid shall be proof of the service of the same.

(g) Finality of order

An order of the Commission to cease and desist shall become final—

(1) Upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time; but the Commission may thereafter modify or set aside its order to the extent provided in the last sentence of subsection (b).

(2) Except as to any order provision subject to paragraph (4), upon the sixtieth day after such order is served, if a petition for review has been duly filed; except that any such order may be stayed, in whole or in part and subject to such conditions as may be appropriate, by—

(A) the Commission;

(B) an appropriate court of appeals of the United States, if (i) a petition for review of such order is pending in such court, and (ii) an application for such a stay was previously submitted to the Commission and the Commission, within the 30-day period beginning on the date the application was received by the Commission, either denied the application or did not grant or deny the application; or

(C) the Supreme Court, if an applicable petition for certiorari is pending.

(3) For purposes of subsection (m)(1)(B) of this section and of section 57b(a)(2) of this title, if a petition for review of the order of the Commission has been filed—

(A) upon the expiration of the time allowed for filing a petition for certiorari, if the order of the Commission has been affirmed or the petition for review has been dismissed by the court of appeals and no petition for certiorari has been duly filed;

(B) upon the denial of a petition for certiorari, if the order of the Commission has been affirmed or the petition for review has been dismissed by the court of appeals; or

(C) upon the expiration of 30 days from the date of issuance of a mandate of the Supreme Court directing that the order of the Commission be affirmed or the petition for review be dismissed.

(4) In the case of an order provision requiring a person, partnership, or corporation to divest itself of stock, other share capital, or assets, if a petition for review of such order of the Commission has been filed—

(A) upon the expiration of the time allowed for filing a petition for certiorari, if the order of the Commission has been affirmed or the petition for review has been dismissed by the court of appeals and no petition for certiorari has been duly filed;

(B) upon the denial of a petition for certiorari, if the order of the Commission has been affirmed or the petition for review has been dismissed by the court of appeals; or

(C) upon the expiration of 30 days from the date of issuance of a mandate of the Supreme Court directing that the order of the Commission be affirmed or the petition for review be

dismissed.

(h) Modification or setting aside of order by Supreme Court

If the Supreme Court directs that the order of the Commission be modified or set aside, the order of the Commission rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of thirty days from the time it was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected to accord with the mandate, in which event the order of the Commission shall become final when so corrected.

(i) Modification or setting aside of order by Court of Appeals

If the order of the Commission is modified or set aside by the court of appeals, and if (1) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the order of the Commission rendered in accordance with the mandate of the court of appeals shall become final on the expiration of thirty days from the time such order of the Commission was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected so that it will accord with the mandate, in which event the order of the Commission shall become final when so corrected.

(j) Rehearing upon order or remand

If the Supreme Court orders a rehearing; or if the case is remanded by the court of appeals to the Commission for a rehearing, and if (1) the time allowed for filing a petition for certiorari has expired, and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the order of the Commission rendered upon such rehearing shall become final in the same manner as though no prior order of the Commission had been rendered.

(k) "Mandate" defined

As used in this section the term "mandate", in case a mandate has been recalled prior to the expiration of thirty days from the date of issuance thereof, means the final mandate.

(l) Penalty for violation of order; injunctions and other appropriate equitable relief

Any person, partnership, or corporation who violates an order of the Commission after it has become final, and while such order is in effect, shall forfeit and pay to the United States a civil penalty of not more than $10,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the Attorney General of the United States. Each separate violation of such an order shall be a separate offense, except that in a case of a violation through continuing failure to obey or neglect to obey a final order of the Commission, each day of continuance of such failure or neglect shall be deemed a separate offense. In such actions, the United States district courts are empowered to grant mandatory injunctions and such other and further equitable relief as they deem appropriate in the enforcement of such final orders of the Commission.

(m) Civil actions for recovery of penalties for knowing violations of rules and cease and desist orders respecting unfair or deceptive acts or practices; jurisdiction; maximum amount of penalties; continuing violations; de novo determinations; compromise or settlement procedure

(1)(A) The Commission may commence a civil action to recover a civil penalty in a district court of the United States against any person, partnership, or corporation which violates any rule under this subchapter respecting unfair or deceptive acts or practices (other than an interpretive rule or a rule violation of which the Commission has provided is not an unfair or deceptive act or practice in violation of subsection (a)(1) of this section) with actual knowledge or knowledge fairly implied on the basis of objective circumstances that such act is unfair or deceptive and is prohibited by such rule. In such action, such person, partnership, or corporation shall be liable for a civil penalty of not more than $10,000 for each violation.

(B) If the Commission determines in a proceeding under subsection (b) of this section that any act or practice is unfair or deceptive, and issues a final cease and desist order, other than a consent order,

with respect to such act or practice, then the Commission may commence a civil action to obtain a civil penalty in a district court of the United States against any person, partnership, or corporation which engages in such act or practice—

(1) after such cease and desist order becomes final (whether or not such person, partnership, or corporation was subject to such cease and desist order), and

(2) with actual knowledge that such act or practice is unfair or deceptive and is unlawful under subsection (a)(1) of this section.

In such action, such person, partnership, or corporation shall be liable for a civil penalty of not more than $10,000 for each violation.

(C) In the case of a violation through continuing failure to comply with a rule or with subsection (a)(1) of this section, each day of continuance of such failure shall be treated as a separate violation, for purposes of subparagraphs (A) and (B). In determining the amount of such a civil penalty, the court shall take into account the degree of culpability, any history of prior such conduct, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

(2) If the cease and desist order establishing that the act or practice is unfair or deceptive was not issued against the defendant in a civil penalty action under paragraph (1)(B) the issues of fact in such action against such defendant shall be tried de novo. Upon request of any party to such an action against such defendant, the court shall also review the determination of law made by the Commission in the proceeding under subsection (b) of this section that the act or practice which was the subject of such proceeding constituted an unfair or deceptive act or practice in violation of subsection (a) of this section.

(3) The Commission may compromise or settle any action for a civil penalty if such compromise or settlement is accompanied by a public statement of its reasons and is approved by the court.

(n) Standard of proof; public policy considerations

The Commission shall have no authority under this section or section 57a of this title to declare unlawful an act or practice on the grounds that such act or practice is unfair unless the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. In determining whether an act or practice is unfair, the Commission may consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination.

(Sept. 26, 1914, ch. 311, §5, 38 Stat. 719; Mar. 21, 1938, ch. 49, §3, 52 Stat. 111; June 23, 1938, ch. 601, title XI, §1107(f), 52 Stat. 1028; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Mar. 16, 1950, ch. 61, §4(c), 64 Stat. 21; July 14, 1952, ch. 745, §2, 66 Stat. 632; Pub. L. 85–726, title XIV, §§1401(b), 1411, Aug. 23, 1958, 72 Stat. 806, 809; Pub. L. 85–791, §3, Aug. 28, 1958, 72 Stat. 942; Pub. L. 85–909, §3, Sept. 2, 1958, 72 Stat. 1750; Pub. L. 86–507, §1(13), June 11, 1960, 74 Stat. 200; Pub. L. 93–153, title IV, §408(c), (d), Nov. 16, 1973, 87 Stat. 591, 592; Pub. L. 93–637, title II, §§201(a), 204(b), 205(a), Jan. 4, 1975, 88 Stat. 2193, 2200; Pub. L. 94–145, §3, Dec. 12, 1975, 89 Stat. 801; Pub. L. 96–37, §1(a), July 23, 1979, 93 Stat. 95; Pub. L. 96–252, §2, May 28, 1980, 94 Stat. 374; Pub. L. 97–290, title IV, §403, Oct. 8, 1982, 96 Stat. 1246; Pub. L. 98–620, title IV, §402(12), Nov. 8, 1984, 98 Stat. 3358; Pub. L. 100–86, title VII, §715(a)(1), Aug. 10, 1987, 101 Stat. 655; Pub. L. 103–312, §§4, 6, 9, Aug. 26, 1994, 108 Stat. 1691, 1692, 1695; Pub. L. 109–455, §§3, 13, Dec. 22, 2006, 120 Stat. 3372, 3382; Pub. L. 112–203, §1, Dec. 4, 2012, 126 Stat. 1484.)

AMENDMENT OF SECTION

For repeal of amendment by section 13 of Pub. L. 109–455, see Termination Date of 2006 Amendment note below.

REFERENCES IN TEXT

The Packers and Stockyards Act, 1921, as amended, referred to in subsec. (a)(2), is act Aug. 15, 1921, ch. 64, 42 Stat. 159, as amended, which is classified to chapter 9 (§181 et seq.) of Title 7, Agriculture. For

complete classification of this Act to the Code, see section 181 of Title 7 and Tables.

CODIFICATION

In subsec. (a)(2), "part A of subtitle VII of title 49" substituted for "the Federal Aviation Act of 1958 [49 App. U.S.C. 1301 et seq.]" on authority of Pub. L. 103–272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

In subsec. (c), "section 1254 of title 28" substituted for "section 240 of the Judicial Code [28 U.S.C. 347]" on authority of act June 25, 1948, ch. 646, 62 Stat. 869, the first section of which enacted Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

2012—Subsec. (a)(4). Pub. L. 112–203, §1, amended Pub. L. 109–455, §13. See 2006 Amendment note below.

2006—Subsec. (a)(4). Pub. L. 109–455, §3, which added par. (4) extending the definition of unfair or deceptive acts or practices to include certain ones involving foreign commerce, was repealed by Pub. L. 109–455, §13, as amended by Pub. L. 112–203, §1. See Termination Date of 2006 Amendment note below.

1994—Subsec. (g)(1). Pub. L. 103–312, §6(d), substituted a period for "; or" at end.

Subsec. (g)(2). Pub. L. 103–312, §6(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "Upon the expiration of the time allowed for filing a petition for certiorari, if the order of the Commission has been affirmed, or the petition for review dismissed by the court of appeals, and no petition for certiorari has been duly filed; or".

Subsec. (g)(3). Pub. L. 103–312, §6(b), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "Upon the denial of a petition for certiorari, if the order of the Commission has been affirmed or the petition for review dismissed by the court of appeals; or".

Subsec. (g)(4). Pub. L. 103–312, §6(c), amended par. (4) generally. Prior to amendment, par. (4) read as follows: "Upon the expiration of thirty days from the date of issuance of the mandate of the Supreme Court, if such Court directs that the order of the Commission be affirmed or the petition for review dismissed."

Subsec. (m)(1)(B). Pub. L. 103–312, §4(a), inserted ", other than a consent order," after "a final cease and desist order" in introductory provisions.

Subsec. (m)(2). Pub. L. 103–312, §4(b), inserted at end "Upon request of any party to such an action against such defendant, the court shall also review the determination of law made by the Commission in the proceeding under subsection (b) of this section that the act or practice which was the subject of such proceeding constituted an unfair or deceptive act or practice in violation of subsection (a) of this section."

Subsec. (n). Pub. L. 103–312, §9, added subsec. (n).

1987—Subsec. (a)(2). Pub. L. 100–86 inserted "Federal credit unions described in section 57a(f)(4) of this title," after "section 57a(f)(3) of this title,".

1984—Subsec. (e). Pub. L. 98–620 struck out provision that such proceedings in the court of appeals had to be given precedence over other cases pending therein, and had to be in every way expedited.

1982—Subsec. (a)(3). Pub. L. 97–290 added par. (3).

1980—Subsec. (b). Pub. L. 96–252 added cl. (2) and provision following cl. (2) requiring that the Commission determine whether to alter, modify, or set aside any order of the Commission in response to a request made by a person, partnership, or corporation under paragraph (2) not later than 120 days after the date of the filing of such request.

1979—Subsec. (a)(2). Pub. L. 96–37 added savings and loan institutions described in section 57a(f)(3) of this title to the enumeration of entities exempted from the Commission's power to prevent the use of unfair methods of competition and unfair or deceptive acts or practices.

1975—Pub. L. 93–637, §201(a), substituted "in or affecting commerce" for "in commerce" wherever appearing.

Subsec. (a). Pub. L. 94–145 struck out pars. (2) to (5) which permitted fair trade pricing of articles for retail sale and State enactment of nonsigner provisions, and redesignated par. (6) as (2).

Subsec. (m). Pub. L. 93–637, §§204(b), 205(a), added subsec. (m). Former subsec. (m), relating to the election by the Commission to appear in its own name after notifying and consulting with and giving the Attorney General 10 days to take the action proposed by the Commission, was struck out.

1973—Subsec. (l). Pub. L. 93–153, §408(c), raised the maximum civil penalty for each violation to $10,000 and inserted provisions empowering the United States District Courts to grant mandatory injunctions and such other and further equitable relief as they might deem appropriate for the enforcement of final Commission orders.

Subsec. (m). Pub. L. 93–153, §408(d), added subsec. (m).

1960—Subsec. (f). Pub. L. 86–507 substituted "mailing a copy thereof by registered mail or by certified mail" for "registering and mailing a copy thereof", and "mailed by registered mail or by certified mail" for "registered and mailed".

1958—Subsec. (a)(6). Pub. L. 85–909 substituted "persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as amended," for "persons, partnerships or corporations subject to the Packers and Stockyards Act, 1921,".

Pub. L. 85–726, §1411, substituted "Federal Aviation Act of 1958" for "Civil Aeronautics Act of 1938".

Subsec. (b). Pub. L. 85–791, §3(a), struck out "the transcript of" before "the record in the proceeding" in sixth sentence.

Subsec. (c). Pub. L. 85–791, §3(b), in second sentence, substituted "transmitted by the clerk of the court to" for "served upon", and "Commission shall file in the court the record in the proceeding, as provided in section 2112 of title 28" for "Commission forthwith shall certify and file in the court a transcript of the entire record in the proceeding, including all the evidence taken and the report and order of the Commission", and which, in third sentence struck out "and transcript" after "petition", inserted "concurrently with the Commission until the filing of the record" and struck out "upon the pleadings, evidence, and proceedings set forth in such transcript" before "a decree affirming".

Subsec. (d). Pub. L. 85–791, §3(c), substituted "Upon the filing of the record with it the" for "The".

1952—Subsec. (a). Act July 14, 1952, amended subsec. (a) generally to permit fair trade pricing of articles for retail sale.

1950—Subsec. (l). Act Mar. 16, 1950, inserted last sentence to make each separate violation of a cease and desist order as a separate offense, except that each day of a continuing failure to obey a final order shall be a separate offense.

1938—Subsec. (a). Act June 23, 1938, inserted "air carriers and foreign air carriers subject to chapter 9 of title 49" in second par.

Act Mar. 21, 1938, amended section generally.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals".

TERMINATION DATE OF 2006 AMENDMENT

Amendment by section 3 of Pub. L. 109–455 repealed effective Sept. 30, 2020, and provisions amended by Pub. L. 109–455 to be amended to read as if Pub. L. 109–455 had not been enacted, see section 13 of Pub. L. 109–455, set out as a note under section 44 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–312, §15, Aug. 26, 1994, 108 Stat. 1697, provided that:

"(a) IN GENERAL.—Except as provided in subsections (b), (c), (d), and (e), the provisions of this Act [enacting section 57b–5 of this title, amending this section and sections 53, 57a, 57b–1, 57b–2, 57c, and 58 of this title, and enacting provisions set out as notes under sections 57c and 58 of this title] shall take effect on the date of enactment of this Act [Aug. 26, 1994].

"(b) APPLICABILITY OF SECTION 5.—The amendment made by section 5 of this Act [amending section 57a of this title] shall apply only to rulemaking proceedings initiated after the date of enactment of this Act. Such amendment shall not be construed to affect in any manner a rulemaking proceeding which was initiated before the date of enactment of this Act [Aug. 26, 1994].

"(c) APPLICABILITY OF SECTION 6.—The amendments made by section 6 of this Act [amending this section] shall apply only with respect to cease and desist orders issued under section 5 of the Federal Trade Commission Act (15 U.S.C. 45) after the date of enactment of this Act [Aug. 26, 1994]. These amendments shall not be construed to affect in any manner a cease and desist order which was issued before the date of enactment of this Act.

"(d) APPLICABILITY OF SECTIONS 7 AND 8.—The amendments made by sections 7 and 8 of this Act [amending sections 57b–1 and 57b–2 of this title] shall apply only with respect to compulsory process issued after the date of enactment of this Act [Aug. 26, 1994].

"(e) APPLICABILITY OF SECTION 9.—The amendments made by section 9 of this Act [amending this section] shall apply only with respect to cease and desist orders issued under section 5 of the Federal Trade Commission Act (15 U.S.C. 45), or to rules promulgated under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) after the date of enactment of this Act [Aug. 26, 1994]. These amendments shall not be construed to affect in any manner a cease and desist order which was issued, or a rule which was promulgated, before the date of enactment of this Act. These amendments shall not be construed to affect in any manner a

cease and desist order issued after the date of enactment of this Act, if such order was issued pursuant to remand from a court of appeals or the Supreme Court of an order issued by the Federal Trade Commission before the date of enactment of this Act."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–252, §23, May 28, 1980, 94 Stat. 397, provided that: "The provisions of this Act [enacting sections 57a–1 and 57b–1 to 57b–4 of this title, amending this section and sections 46, 50, 57a, 57c, and 58 of this title, and enacting provisions set out as notes under sections 46, 57a, 57a–1, 57c, and 58 of this title], and the amendments made by this Act, shall take effect on the date of the enactment of this Act [May 28, 1980]."

EFFECTIVE DATE OF 1975 AMENDMENTS

Amendment by Pub. L. 94–145 effective upon expiration of ninety-day period beginning on Dec. 12, 1975, see section 4 of Pub. L. 94–145, set out as a note under section 1 of this title.

Amendment by section 204(b) of Pub. L. 93–637 not applicable to any civil action commenced before Jan. 4, 1975, see section 204(c) of Pub. L. 93–637, set out as a note under section 56 of this title.

Pub. L. 93–637, §205(b), Jan. 4, 1975, 88 Stat. 2201, provided that: "The amendment made by subsection (a) of this section [amending this section] shall not apply to any violation, act, or practice to the extent that such violation, act, or practice occurred before the date of enactment of this Act [Jan. 4, 1975]."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–726 effective on 60th day following the date on which the Administrator of the Federal Aviation Agency first appointed under Pub. L. 85–726 qualifies and takes office, see section 1505(2) of Pub. L. 85–726. The Administrator was appointed, qualified, and took office on Oct. 31, 1958.

EFFECTIVE DATE OF 1950 AMENDMENT

Amendment by act Mar. 16, 1950, effective July 1, 1950, see note set out under section 347 of Title 21, Food and Drugs.

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE COVERING GRANT OF DISTRICT SUBPENA ENFORCEMENT AUTHORITY AND AUTHORITY TO GRANT PRELIMINARY INJUNCTIVE RELIEF

Pub. L. 93–153, §408(a), (b), Nov. 16, 1973, 87 Stat. 591, provided that:

"(a)(1) The Congress hereby finds that the investigative and law enforcement responsibilities of the Federal Trade Commission have been restricted and hampered because of inadequate legal authority to enforce subpenas and to seek preliminary injunctive relief to avoid unfair competitive practices.

"(2) The Congress further finds that as a direct result of this inadequate legal authority significant delays have occurred in a major investigation into the legality of the structure, conduct, and activities of the petroleum industry, as well as in other major investigations designed to protect the public interest.

"(b) It is the purpose of this Act [amending this section and sections 46, 53, and 56 of this title] to grant the Federal Trade Commission the requisite authority to insure prompt enforcement of the laws the Commission administers by granting statutory authority to directly enforce subpenas issued by the Commission and to seek preliminary injunctive relief to avoid unfair competitive practices."

PURPOSE OF ACT JULY 14, 1952

Act July 14, 1952, ch. 745, §1, 66 Stat. 631, provided: "That it is the purpose of this Act [amending this section] to protect the rights of States under the United States Constitution to regulate their internal affairs and more particularly to enact statutes and laws, and to adopt policies, which authorize contracts and agreements prescribing minimum or stipulated prices for the resale of commodities and to extend the minimum or stipulated prices prescribed by such contracts and agreements to persons who are not parties thereto. It is the further purpose of this Act to permit such statutes, laws, and public policies to apply to commodities, contracts, agreements, and activities in or affecting interstate or foreign commerce."

[1] *So in original. Probably should be "clause".*

§45a. Labels on products

To the extent any person introduces, delivers for introduction, sells, advertises, or offers for sale in commerce a product with a "Made in the U.S.A." or "Made in America" label, or the equivalent thereof, in order to represent that such product was in whole or substantial part of domestic origin, such label shall be consistent with decisions and orders of the Federal Trade Commission issued pursuant to section 45 of this title. This section only applies to such labels. Nothing in this section shall preclude the application of other provisions of law relating to labeling. The Commission may periodically consider an appropriate percentage of imported components which may be included in the product and still be reasonably consistent with such decisions and orders. Nothing in this section shall preclude use of such labels for products that contain imported components under the label when the label also discloses such information in a clear and conspicuous manner. The Commission shall administer this section pursuant to section 45 of this title and may from time to time issue rules pursuant to section 553 of title 5 for such purpose. If a rule is issued, such violation shall be treated by the Commission as a violation of a rule under section 57a of this title regarding unfair or deceptive acts or practices. This section shall be effective upon publication in the Federal Register of a Notice of the provisions of this section. The Commission shall publish such notice within six months after September 13, 1994.

(Pub. L. 103–322, title XXXII, §320933, Sept. 13, 1994, 108 Stat. 2135.)

CODIFICATION

Section was enacted as part of the Violent Crime Control and Law Enforcement Act of 1994, and not as part of the Federal Trade Commission Act which comprises this subchapter.

§46. Additional powers of Commission

The Commission shall also have power—

(a) Investigation of persons, partnerships, or corporations

To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any person, partnership, or corporation engaged in or whose business affects commerce, excepting banks, savings and loan institutions described in section 57a(f)(3) of this title, Federal credit unions described in section 57a(f)(4) of this title, and common carriers subject to the Act to regulate commerce, and its relation to other persons, partnerships, and corporations.

(b) Reports of persons, partnerships, and corporations

To require, by general or special orders, persons, partnerships, and corporations, engaged in or whose business affects commerce, excepting banks, savings and loan institutions described in section 57a(f)(3) of this title, Federal credit unions described in section 57a(f)(4) of this title, and common carriers subject to the Act to regulate commerce, or any class of them, or any of them, respectively, to file with the Commission in such form as the Commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the Commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective persons, partnerships, and corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the Commission may prescribe, and shall be filed with the Commission within such reasonable period as the Commission may prescribe, unless additional time be granted in any case by the Commission.

(c) Investigation of compliance with antitrust decrees

Whenever a final decree has been entered against any defendant corporation in any suit brought by the United States to prevent and restrain any violation of the antitrust Acts, to make investigation, upon its own initiative, of the manner in which the decree has been or is being carried out, and upon the application of the Attorney General it shall be its duty to make such investigation. It shall transmit to the Attorney General a report embodying its findings and recommendations as a result of any such investigation, and the report shall be made public in the discretion of the Commission.

(d) Investigations of violations of antitrust statutes

Upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust Acts by any corporation.

(e) Readjustment of business of corporations violating antitrust statutes

Upon the application of the Attorney General to investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the antitrust Acts in order that the corporation may thereafter maintain its organization, management, and conduct of business in accordance with law.

(f) Publication of information; reports

To make public from time to time such portions of the information obtained by it hereunder as are in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use: *Provided*, That the Commission shall not have any authority to make public any trade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential, except that the Commission may disclose such information (1) to officers and employees of appropriate Federal law enforcement agencies or to any officer or employee of any State law enforcement agency upon the prior certification of an officer of any such Federal or State law enforcement agency that such information will be maintained in confidence and will be used only for official law enforcement purposes, and (2) to any officer or employee of any foreign law enforcement agency under the same circumstances that making material available to foreign law enforcement agencies is permitted under section 57b–2(b) of this title.

(g) Classification of corporations; regulations

From time to time classify corporations and (except as provided in section 57a(a)(2) of this title) to make rules and regulations for the purpose of carrying out the provisions of this subchapter.

(h) Investigations of foreign trade conditions; reports

To investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable.

(i) Investigations of foreign antitrust law violations

With respect to the International Antitrust Enforcement Assistance Act of 1994 [15 U.S.C. 6201 et seq.], to conduct investigations of possible violations of foreign antitrust laws (as defined in section 12 of such Act [15 U.S.C. 6211]).

(j) Investigative assistance for foreign law enforcement agencies

(1) In general

Upon a written request from a foreign law enforcement agency to provide assistance in accordance with this subsection, if the requesting agency states that it is investigating, or engaging in enforcement proceedings against, possible violations of laws prohibiting fraudulent or deceptive commercial practices, or other practices substantially similar to practices prohibited by any provision of the laws administered by the Commission, other than Federal antitrust laws (as

defined in section 12(5) of the International Antitrust Enforcement Assistance Act of 1994 (15 U.S.C. 6211(5))), to provide the assistance described in paragraph (2) without requiring that the conduct identified in the request constitute a violation of the laws of the United States.

(2) Type of assistance

In providing assistance to a foreign law enforcement agency under this subsection, the Commission may—

(A) conduct such investigation as the Commission deems necessary to collect information and evidence pertinent to the request for assistance, using all investigative powers authorized by this subchapter; and

(B) when the request is from an agency acting to investigate or pursue the enforcement of civil laws, or when the Attorney General refers a request to the Commission from an agency acting to investigate or pursue the enforcement of criminal laws, seek and accept appointment by a United States district court of Commission attorneys to provide assistance to foreign and international tribunals and to litigants before such tribunals on behalf of a foreign law enforcement agency pursuant to section 1782 of title 28.

(3) Criteria for determination

In deciding whether to provide such assistance, the Commission shall consider all relevant factors, including—

(A) whether the requesting agency has agreed to provide or will provide reciprocal assistance to the Commission;

(B) whether compliance with the request would prejudice the public interest of the United States; and

(C) whether the requesting agency's investigation or enforcement proceeding concerns acts or practices that cause or are likely to cause injury to a significant number of persons.

(4) International agreements

If a foreign law enforcement agency has set forth a legal basis for requiring execution of an international agreement as a condition for reciprocal assistance, or as a condition for provision of materials or information to the Commission, the Commission, with prior approval and ongoing oversight of the Secretary of State, and with final approval of the agreement by the Secretary of State, may negotiate and conclude an international agreement, in the name of either the United States or the Commission, for the purpose of obtaining such assistance, materials, or information. The Commission may undertake in such an international agreement to—

(A) provide assistance using the powers set forth in this subsection;

(B) disclose materials and information in accordance with subsection (f) and section 57b–2(b) of this title; and

(C) engage in further cooperation, and protect materials and information received from disclosure, as authorized by this subchapter.

(5) Additional authority

The authority provided by this subsection is in addition to, and not in lieu of, any other authority vested in the Commission or any other officer of the United States.

(6) Limitation

The authority granted by this subsection shall not authorize the Commission to take any action or exercise any power with respect to a bank, a savings and loan institution described in section 57a(f)(3) of this title, a Federal credit union described in section 57a(f)(4) of this title, or a common carrier subject to the Act to regulate commerce, except in accordance with the undesignated proviso following the last designated subsection of this section.

(7) Assistance to certain countries

The Commission may not provide investigative assistance under this subsection to a foreign law enforcement agency from a foreign state that the Secretary of State has determined, in accordance with section 2405(j) of the Appendix to title 50, has repeatedly provided support for acts of

international terrorism, unless and until such determination is rescinded pursuant to section 2405(j)(4) of the Appendix to title 50.

(k) Referral of evidence for criminal proceedings

(1) In general

Whenever the Commission obtains evidence that any person, partnership, or corporation, either domestic or foreign, has engaged in conduct that may constitute a violation of Federal criminal law, to transmit such evidence to the Attorney General, who may institute criminal proceedings under appropriate statutes. Nothing in this paragraph affects any other authority of the Commission to disclose information.

(2) International information

The Commission shall endeavor to ensure, with respect to memoranda of understanding and international agreements it may conclude, that material it has obtained from foreign law enforcement agencies acting to investigate or pursue the enforcement of foreign criminal laws may be used for the purpose of investigation, prosecution, or prevention of violations of United States criminal laws.

(l) Expenditures for cooperative arrangements

To expend appropriated funds for—

(1) operating expenses and other costs of bilateral and multilateral cooperative law enforcement groups conducting activities of interest to the Commission and in which the Commission participates; and

(2) expenses for consultations and meetings hosted by the Commission with foreign government agency officials, members of their delegations, appropriate representatives and staff to exchange views concerning developments relating to the Commission's mission, development and implementation of cooperation agreements, and provision of technical assistance for the development of foreign consumer protection or competition regimes, such expenses to include necessary administrative and logistic expenses and the expenses of Commission staff and foreign invitees in attendance at such consultations and meetings including—

(A) such incidental expenses as meals taken in the course of such attendance;

(B) any travel and transportation to or from such meetings; and

(C) any other related lodging or subsistence.

Provided, That the exception of "banks, savings and loan institutions described in section 57a(f)(3) of this title, Federal credit unions described in section 57a(f)(4) of this title, and common carriers subject to the Act to regulate commerce" from the Commission's powers defined in subsections (a), (b), and (j) of this section, shall not be construed to limit the Commission's authority to gather and compile information, to investigate, or to require reports or answers from, any person, partnership, or corporation to the extent that such action is necessary to the investigation of any person, partnership, or corporation, group of persons, partnerships, or corporations, or industry which is not engaged or is engaged only incidentally in banking, in business as a savings and loan institution, in business as a Federal credit union, or in business as a common carrier subject to the Act to regulate commerce.

The Commission shall establish a plan designed to substantially reduce burdens imposed upon small businesses as a result of requirements established by the Commission under clause (b) relating to the filing of quarterly financial reports. Such plan shall (1) be established after consultation with small businesses and persons who use the information contained in such quarterly financial reports; (2) provide for a reduction of the number of small businesses required to file such quarterly financial reports; and (3) make revisions in the forms used for such quarterly financial reports for the purpose of reducing the complexity of such forms. The Commission, not later than December 31, 1980, shall submit such plan to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Energy and Commerce of the House of Representatives. Such plan shall take effect not later than October 31, 1981.

No officer or employee of the Commission or any Commissioner may publish or disclose

information to the public, or to any Federal agency, whereby any line-of-business data furnished by a particular establishment or individual can be identified. No one other than designated sworn officers and employees of the Commission may examine the line-of-business reports from individual firms, and information provided in the line-of-business program administered by the Commission shall be used only for statistical purposes. Information for carrying out specific law enforcement responsibilities of the Commission shall be obtained under practices and procedures in effect on May 28, 1980, or as changed by law.

Nothing in this section (other than the provisions of clause (c) and clause (d)) shall apply to the business of insurance, except that the Commission shall have authority to conduct studies and prepare reports relating to the business of insurance. The Commission may exercise such authority only upon receiving a request which is agreed to by a majority of the members of the Committee on Commerce, Science, and Transportation of the Senate or the Committee on Energy and Commerce of the House of Representatives. The authority to conduct any such study shall expire at the end of the Congress during which the request for such study was made.

(Sept. 26, 1914, ch. 311, §6, 38 Stat. 721; Pub. L. 93–153, title IV, §408(e), Nov. 16, 1973, 87 Stat. 592; Pub. L. 93–637, title II, §§201(b), 202(b), 203(a), Jan. 4, 1975, 88 Stat. 2193, 2198; Pub. L. 96–37, §1(b), July 23, 1979, 93 Stat. 95; Pub. L. 96–252, §§3–5(a), May 28, 1980, 94 Stat. 374, 375; Pub. L. 100–86, title VII, §715(a), (b), Aug. 10, 1987, 101 Stat. 655; Pub. L. 103–437, §5(a), Nov. 2, 1994, 108 Stat. 4582; Pub. L. 103–438, §3(e)(2)(A), Nov. 2, 1994, 108 Stat. 4598; Pub. L. 109–455, §§4(a), (b), (d), 13, Dec. 22, 2006, 120 Stat. 3372, 3373, 3375, 3382; Pub. L. 112–203, §1, Dec. 4, 2012, 126 Stat. 1484.)

AMENDMENT OF SECTION

For repeal of amendment by section 13 of Pub. L. 109–455, see Termination Date of 2006 Amendment note below.

REFERENCES IN TEXT

The Act to regulate commerce, referred to in subsecs. (a), (b), (j)(6), and the proviso following subsec. (l), is defined in section 44 of this title.

The International Antitrust Enforcement Assistance Act of 1994, referred to in subsec. (i), is Pub. L. 103–438, Nov. 2, 1994, 108 Stat. 4597, which is classified principally to chapter 88 (§6201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

AMENDMENTS

2012—Pub. L. 112–203, §1, amended Pub. L. 109–455, §13. See 2006 Amendment notes below.

2006—Pub. L. 109–455, §4(d), which substituted "subsections (a), (b), and (j)" for "clauses (a) and (b)" in proviso following subsec. (l), was repealed by Pub. L. 109–455, §13, as amended by Pub. L. 112–203, §1. See Termination Date of 2006 Amendment note below.

Subsec. (f). Pub. L. 109–455, §4(a), which inserted "(1)" after "disclose such information", substituted "purposes, and" for "purposes.", and added par. (2) providing for conditional disclosure to officers and employees of foreign law enforcement, was repealed by Pub. L. 109–455, §13, as amended by Pub. L. 112–203, §1. See Termination Date of 2006 Amendment note below.

Subsecs. (j) to (l). Pub. L. 109–455, §4(b), which added subsecs. (j) to (l) relating to investigative assistance for foreign law enforcement agencies, referral of evidence for criminal proceedings, and expenditures for cooperative arrangements, respectively, was repealed by Pub. L. 109–455, §13, as amended by Pub. L. 112–203, §1. See Termination Date of 2006 Amendment note below.

1994—Pub. L. 103–437, in first and third undesignated pars. following proviso after subsec. (h), substituted "Committee on Energy and Commerce" for "Committee on Interstate and Foreign Commerce".

Subsec. (i). Pub. L. 103–438 added subsec. (i).

1987—Pub. L. 100–86, §715(b), in proviso following subsec. (h), inserted reference to Federal credit unions described in section 57a(f)(4) of this title and reference to in business as a Federal credit union.

Subsecs. (a), (b). Pub. L. 100–86, §715(a)(1), (2), inserted reference to Federal credit unions described in section 57a(f)(4) of this title.

1980—Pub. L. 96–252, §§3(b)–5(a), inserted three undesignated paragraphs following proviso after subsec. (h) requiring the Commission to establish a plan to reduce burdens imposed upon small businesses by the

quarterly financial reporting requirements under subsec. (b) of this section, prohibiting Commissioners and officers and employees of the Commission from publishing or disclosing information whereby line-of-business data furnished by particular establishments or individuals can be identified, and, with certain exceptions, making this section inapplicable to the business of insurance.

Subsec. (f). Pub. L. 96–252, §3(a), substituted "as are" for ", except trade secrets and names of customers, as it shall deem expedient" and inserted proviso restricting Commission's authority to make public trade secrets or commercial or financial information which is obtained from any person and which is privileged or confidential.

1979—Pub. L. 96–37, §1(b)(3), in proviso following subsec. (h), inserted references to savings and loan institutions and to persons, partnerships, corporations, groups of persons, partnerships, or corporations or industries that are not engaged or are engaged only incidentally in business as savings and loan institutions.

Subsecs. (a), (b). Pub. L. 96–37, §1(b)(1), (2), inserted reference to savings and loan institutions described in section 57a(f)(3) of this title.

1975—Pub. L. 93–637, §203(a)(3), in proviso following subsec. (h), substituted "any person, partnership, or corporation to the extent that such action is necessary to the investigation of any person, partnership, or corporation, group of persons, partnerships, or corporations," for "any such corporation to the extent that such action is necessary to the investigation of any corporation, group of corporations,".

Subsec. (a). Pub. L. 93–637, §§201(b), 203(a)(1), substituted "in or whose business affects commerce" for "in commerce", "person, partnership, or corporation" for "corporation", and "persons, partnerships, and corporations" for "corporations and to individuals, associations, and partnerships".

Subsec. (b). Pub. L. 93–637, §§201(b), 203(a)(2), substituted "in or whose business affects commerce" for "in commerce", "special orders, persons, partnerships, and corporations, engaged in or whose business affects commerce, excepting" for "special orders, corporations engaged in or whose business affects commerce, excepting", and "respective persons, partnerships, and corporations" for "respective corporations".

Subsec. (g). Pub. L. 93–637, §202(b), inserted "(except as provided in section 57a(a)(2) of this title)" before "to make rules and regulations".

1973—Pub. L. 93–153 inserted proviso following subsec. (h) that the Commission's investigatory powers to gather and compile information, investigate, and require reports or answers is not curtailed as regards banks and common carriers when the investigation in question is an investigation of a corporation, group of corporations, or industry not engaged or engaged only incidentally in banking or in business as a common carrier subject to the Act to regulate commerce notwithstanding provisions excepting banks and common carriers subject to the Act from the exercise of the Commission's power to investigate and require reports from corporations.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

TERMINATION DATE OF 2006 AMENDMENT

Amendment by section 4(a), (b), (d) of Pub. L. 109–455 repealed effective Sept. 30, 2020, and provisions amended by Pub. L. 109–455 to be amended to read as if Pub. L. 109–455 had not been enacted, see section 13 of Pub. L. 109–455, set out as a note under section 44 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–252 effective May 28, 1980, see section 23 of Pub. L. 96–252, set out as a note under section 45 of this title.

APPLICABILITY OF 1975 AMENDMENT TO SUBSECTION (G) OF THIS SECTION

For applicability to rules promulgated or proposed under subsec. (g) of this section prior to Jan. 4, 1975, of amendment made to said subsec. (g) by section 202(b) of Act Jan. 4, 1975, see "Applicability" provisions of section 202(c) of Act Jan. 4, 1975, set out as a note under section 57a of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under

section 41 of this title.

STUDY AND EVALUATION OF EFFECTIVENESS OF STATE POLICIES AND PROGRAMS RELATING TO REGULATION OF CERTAIN HEALTH INSURANCE POLICIES

Pub. L. 96–252, §5(b), May 28, 1980, 94 Stat. 376, provided that: "The amendment made in subsection (a) [adding undesignated paragraph authorizing studies and reports relating to the business of insurance] shall not be construed to prohibit the Federal Trade Commission from participating with the Secretary of Health and Human Services in a comprehensive study and evaluation of the comparative effectiveness of various State policies and programs relating to the regulation of health insurance policies available for purchase by individuals who are eligible for benefits under the program of health insurance benefits established in title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.]."

EX. ORD. NO. 10544. INSPECTION OF INCOME TAX RETURNS BY FEDERAL TRADE COMMISSION

Ex. Ord. No. 10544, July 12, 1954, 19 F.R. 4289, provided:

By virtue of the authority vested in me by section 55(a) of the Internal Revenue Code (53 Stat. 29; 54 Stat. 1008; 55 Stat. 722) and in the interest of the internal management of the Government, it is hereby ordered that corporation income tax returns made for the year 1953 and subsequent years shall be open to inspection by the Federal Trade Commission as an aid in executing the powers conferred upon such Commission by the Federal Trade Commission Act of September 26, 1914, 38 Stat. 717, [this subchapter], such inspection to be in accordance and upon compliance with the rules and regulations prescribed by the Secretary of the Treasury in the Treasury decision relating to the inspection of returns by the Federal Trade Commission, approved by me this date [T.D. 6080, 19 F.R. 4308].

This Executive Order shall be effective upon its filing for publication in the Federal Register.

DWIGHT D. EISENHOWER.

§46a. Concurrent resolution essential to authorize investigations

After June 16, 1933, no new investigations shall be initiated by the Commission as the result of a legislative resolution, except the same be a concurrent resolution of the two Houses of Congress.

(June 16, 1933, ch. 101, §1, 48 Stat. 291.)

CODIFICATION

Section was not enacted as part of the Federal Trade Commission Act which comprises this subchapter.

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

§47. Reference of suits under antitrust statutes to Commission

In any suit in equity brought by or under the direction of the Attorney General as provided in the antitrust Acts, the court may, upon the conclusion of the testimony therein, if it shall be then of opinion that the complainant is entitled to relief, refer said suit to the Commission, as a master in chancery, to ascertain and report an appropriate form of decree therein. The Commission shall proceed upon such notice to the parties and under such rules of procedure as the court may prescribe, and upon the coming in of such report such exceptions may be filed and such proceedings had in relation thereto as upon the report of a master in other equity causes, but the court may adopt or reject such report, in whole or in part, and enter such decree as the nature of the case may in its judgment require.

(Sept. 26, 1914, ch. 311, §7, 38 Stat. 722.)

REFERENCES IN TEXT

The words "In any suit in equity brought by or under the direction of the Attorney General as provided in

the antitrust Acts" have reference to actions under sections 4, 9, and 25 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

§48. Information and assistance from departments

The several departments and bureaus of the Government when directed by the President shall furnish the Commission, upon its request, all records, papers, and information in their possession relating to any corporation subject to any of the provisions of this subchapter, and shall detail from time to time such officials and employees to the Commission as he may direct.

(Sept. 26, 1914, ch. 311, §8, 38 Stat. 722.)

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

§49. Documentary evidence; depositions; witnesses

For the purposes of this subchapter the Commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any person, partnership, or corporation being investigated or proceeded against; and the Commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the Commission may sign subpoenas, and members and examiners of the Commission may administer oaths and affirmations, examine witnesses, and receive evidence.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the Commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, partnership, or corporation issue an order requiring such person, partnership, or corporation to appear before the Commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Upon the application of the Attorney General of the United States, at the request of the Commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person, partnership, or corporation to comply with the provisions of this subchapter or any order of the Commission made in pursuance thereof.

The Commission may order testimony to be taken by deposition in any proceeding or investigation pending under this subchapter at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission as hereinbefore provided.

Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States and witnesses whose depositions are taken and the

persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(Sept. 26, 1914, ch. 311, §9, 38 Stat. 722; Pub. L. 91–452, title II, §211, Oct. 15, 1970, 84 Stat. 929; Pub. L. 93–637, title II, §203(b), Jan. 4, 1975, 88 Stat. 2198.)

AMENDMENTS

1975—First par. Pub. L. 93–637, §203(b)(1), substituted "person, partnership, or corporation" for "corporation".

Third par. Pub. L. 93–637, §203(b)(2), substituted "person, partnership, or corporation" for "corporation or other person" wherever appearing.

Fourth par. Pub. L. 93–637, §203(b)(3), substituted "person, partnership, or corporation" for "person or corporation".

1970—Seventh par. Pub. L. 91–452 struck out provisions which granted immunity from prosecution for any natural person testifying or producing evidence, documentary or otherwise, before the commission in obedience to a subpoena issued by it.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–452 effective on sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91–452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

SAVINGS PROVISION

Amendment by Pub. L. 91–452 not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91–452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

§50. Offenses and penalties

Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry or to produce any documentary evidence, if in his power to do so, in obedience to an order of a district court of the United States directing compliance with the subpoena or lawful requirement of the Commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than $1,000 nor more than $5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

Any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this subchapter, or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any person, partnership, or corporation subject to this subchapter, or who shall willfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such person, partnership, or corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such person, partnership, or corporation, or who shall willfully refuse to submit to the Commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such person, partnership, or corporation in his possession or within his control, shall be deemed guilty of an offense against the United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than $1,000 nor more than $5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

If any persons, partnership, or corporation required by this subchapter to file any annual or special

report shall fail so to do within the time fixed by the Commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of $100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the case of a corporation or partnership in the district where the corporation or partnership has its principal office or in any district in which it shall do business, and in the case of any person in the district where such person resides or has his principal place of business. It shall be the duty of the various United States attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of the forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Any officer or employee of the Commission who shall make public any information obtained by the Commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $5,000, or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

(Sept. 26, 1914, ch. 311, §10, 38 Stat. 723; June 25, 1948, ch. 646, §1, 62 Stat. 909; Pub. L. 93–637, title II, §203(c), Jan. 4, 1975, 88 Stat. 2199; Pub. L. 96–252, §6, May 28, 1980, 94 Stat. 376.)

AMENDMENTS

1980—First par. Pub. L. 96–252 inserted "any" after "produce" and "an order of a district court of the United States directing compliance with" after "obedience to".

1975—Second par. Pub. L. 93–637, §203(c)(1), substituted "person, partnership, or corporation" for "corporation" wherever appearing.

Third par. Pub. L. 93–637, §203(c)(2), substituted "If any persons, partnership, or corporation" for "If any corporation", and "in the case of a corporation or partnership in the district where the corporation or partnership has its principal office or in any district in which it shall do business, and in the case of any person in the district where such person resides or has his principal place of business" for "in the district where the corporation has its principal office or in any district in which it shall do business".

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States attorneys" for "district attorneys". See section 541 et seq. of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–252 effective May 28, 1980, see section 23 of Pub. L. 96–252, set out as a note under section 45 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

§51. Effect on other statutory provisions

Nothing contained in this subchapter shall be construed to prevent or interfere with the enforcement of the provisions of the antitrust Acts or the Acts to regulate commerce, nor shall anything contained in this subchapter be construed to alter, modify, or repeal the said antitrust Acts or the Acts to regulate commerce or any part or parts thereof.

(Sept. 26, 1914, ch. 311, §11, 38 Stat. 724.)

§52. Dissemination of false advertisements

(a) Unlawfulness

It shall be unlawful for any person, partnership, or corporation to disseminate, or cause to be

disseminated, any false advertisement—

(1) By United States mails, or in or having an effect upon commerce, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly the purchase of food, drugs, devices, services, or cosmetics; or

(2) By any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in or having an effect upon commerce, of food, drugs, devices, services, or cosmetics.

(b) Unfair or deceptive act or practice

The dissemination or the causing to be disseminated of any false advertisement within the provisions of subsection (a) of this section shall be an unfair or deceptive act or practice in or affecting commerce within the meaning of section 45 of this title.

(Sept. 26, 1914, ch. 311, §12, as added Mar. 21, 1938, ch. 49, §4, 52 Stat. 114; amended Pub. L. 93–637, title II, §201(c), Jan. 4, 1975, 88 Stat. 2193; Pub. L. 103–297, §8, Aug. 16, 1994, 108 Stat. 1550.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–297 inserted "services," after "devices," in pars. (1) and (2).
1975—Subsec. (a). Pub. L. 93–637 substituted "in or having an effect upon commerce," for "in commerce".
Subsec. (b). Pub. L. 93–637 substituted "in or affecting commerce" for "in commerce".

§53. False advertisements; injunctions and restraining orders

(a) Power of Commission; jurisdiction of courts

Whenever the Commission has reason to believe—

(1) that any person, partnership, or corporation is engaged in, or is about to engage in, the dissemination or the causing of the dissemination of any advertisement in violation of section 52 of this title, and

(2) that the enjoining thereof pending the issuance of a complaint by the Commission under section 45 of this title, and until such complaint is dismissed by the Commission or set aside by the court on review, or the order of the Commission to cease and desist made thereon has become final within the meaning of section 45 of this title, would be to the interest of the public,

the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States or in the United States court of any Territory, to enjoin the dissemination or the causing of the dissemination of such advertisement. Upon proper showing a temporary injunction or restraining order shall be granted without bond. Any suit may be brought where such person, partnership, or corporation resides or transacts business, or wherever venue is proper under section 1391 of title 28. In addition, the court may, if the court determines that the interests of justice require that any other person, partnership, or corporation should be a party in such suit, cause such other person, partnership, or corporation to be added as a party without regard to whether venue is otherwise proper in the district in which the suit is brought. In any suit under this section, process may be served on any person, partnership, or corporation wherever it may be found.

(b) Temporary restraining orders; preliminary injunctions

Whenever the Commission has reason to believe—

(1) that any person, partnership, or corporation is violating, or is about to violate, any provision of law enforced by the Federal Trade Commission, and

(2) that the enjoining thereof pending the issuance of a complaint by the Commission and until such complaint is dismissed by the Commission or set aside by the court on review, or until the order of the Commission made thereon has become final, would be in the interest of the public—

the Commission by any of its attorneys designated by it for such purpose may bring suit in a

district court of the United States to enjoin any such act or practice. Upon a proper showing that, weighing the equities and considering the Commission's likelihood of ultimate success, such action would be in the public interest, and after notice to the defendant, a temporary restraining order or a preliminary injunction may be granted without bond: *Provided, however,* That if a complaint is not filed within such period (not exceeding 20 days) as may be specified by the court after issuance of the temporary restraining order or preliminary injunction, the order or injunction shall be dissolved by the court and be of no further force and effect: *Provided further,* That in proper cases the Commission may seek, and after proper proof, the court may issue, a permanent injunction. Any suit may be brought where such person, partnership, or corporation resides or transacts business, or wherever venue is proper under section 1391 of title 28. In addition, the court may, if the court determines that the interests of justice require that any other person, partnership, or corporation should be a party in such suit, cause such other person, partnership, or corporation to be added as a party without regard to whether venue is otherwise proper in the district in which the suit is brought. In any suit under this section, process may be served on any person, partnership, or corporation wherever it may be found.

(c) Service of process; proof of service

Any process of the Commission under this section may be served by any person duly authorized by the Commission—

(1) by delivering a copy of such process to the person to be served, to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served;

(2) by leaving a copy of such process at the residence or the principal office or place of business of such person, partnership, or corporation; or

(3) by mailing a copy of such process by registered mail or certified mail addressed to such person, partnership, or corporation at his, or her, or its residence, principal office, or principal place or business.

The verified return by the person serving such process setting forth the manner of such service shall be proof of the same.

(d) Exception of periodical publications

Whenever it appears to the satisfaction of the court in the case of a newspaper, magazine, periodical, or other publication, published at regular intervals—

(1) that restraining the dissemination of a false advertisement in any particular issue of such publication would delay the delivery of such issue after the regular time therefor, and

(2) that such delay would be due to the method by which the manufacture and distribution of such publication is customarily conducted by the publisher in accordance with sound business practice, and not to any method or device adopted for the evasion of this section or to prevent or delay the issuance of an injunction or restraining order with respect to such false advertisement or any other advertisement,

the court shall exclude such issue from the operation of the restraining order or injunction.

(Sept. 26, 1914, ch. 311, §13, as added Mar. 21, 1938, ch. 49, §4, 52 Stat. 114; amended Pub. L. 93–153, title IV, §408(f), Nov. 16, 1973, 87 Stat. 592; Pub. L. 103–312, §10, Aug. 26, 1994, 108 Stat. 1695.)

AMENDMENTS

1994—Subsecs. (a), (b). Pub. L. 103–312, §10(a), in concluding provisions, substituted "Any suit may be brought where such person, partnership, or corporation resides or transacts business, or wherever venue is proper under section 1391 of title 28. In addition, the court may, if the court determines that the interests of justice require that any other person, partnership, or corporation should be a party in such suit, cause such other person, partnership, or corporation to be added as a party without regard to whether venue is otherwise

proper in the district in which the suit is brought. In any suit under this section, process may be served on any person, partnership, or corporation wherever it may be found." for "Any such suit shall be brought in the district in which such person, partnership, or corporation resides or transacts business."

Subsecs. (c), (d). Pub. L. 103–312, §10(b), added subsec. (c) and redesignated former subsec. (c) as (d).

1973—Subsecs. (b), (c). Pub. L. 93–153 added subsec. (b) and redesignated former subsec. (b) as (c).

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

§54. False advertisements; penalties

(a) Imposition of penalties

Any person, partnership, or corporation who violates any provision of section 52(a) of this title shall, if the use of the commodity advertised may be injurious to health because of results from such use under the conditions prescribed in the advertisement thereof, or under such conditions as are customary or usual, or if such violation is with intent to defraud or mislead, be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than $5,000 or by imprisonment for not more than six months, or by both such fine and imprisonment; except that if the conviction is for a violation committed after a first conviction of such person, partnership, or corporation, for any violation of such section, punishment shall be by a fine of not more than $10,000 or by imprisonment for not more than one year, or by both such fine and imprisonment: *Provided*, That for the purposes of this section meats and meat food products duly inspected, marked, and labeled in accordance with rules and regulations issued under the Meat Inspection Act [21 U.S.C. 601 et seq.] shall be conclusively presumed not injurious to health at the time the same leave official "establishments."

(b) Exception of advertising medium or agency

No publisher, radio-broadcast licensee, or agency or medium for the dissemination of advertising, except the manufacturer, packer, distributor, or seller of the commodity to which the false advertisement relates, shall be liable under this section by reason of the dissemination by him of any false advertisement, unless he has refused, on the request of the Commission, to furnish the Commission the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in the United States, who caused him to disseminate such advertisement. No advertising agency shall be liable under this section by reason of the causing by it of the dissemination of any false advertisement, unless it has refused, on the request of the Commission, to furnish the Commission the name and post-office address of the manufacturer, packer, distributor, or seller, residing in the United States, who caused it to cause the dissemination of such advertisement.

(Sept. 26, 1914, ch. 311, §14, as added Mar. 21, 1938, ch. 49, §4, 52 Stat. 114.)

REFERENCES IN TEXT

The Meat Inspection Act, referred to in subsec. (a), is act Mar. 4, 1907, ch. 2907, titles I to IV, as added Dec. 15, 1967, Pub. L. 90–201, 81 Stat. 584, as amended, which is classified to subchapters I to IV (§601 et seq.) of chapter 12 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 601 of Title 21 and Tables.

EFFECTIVE DATE

Act Mar. 21, 1938, ch. 49, §5(b), 52 Stat. 117, provided: "Section 14 of the Federal Trade Commission Act [this section] added to such Act by section 4 of this Act, shall take effect on the expiration of sixty days after the date of the enactment of this Act [Mar. 21, 1938]."

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under

section 41 of this title.

§55. Additional definitions

For the purposes of sections 52 to 54 of this title—

(a) False advertisement

(1) The term "false advertisement" means an advertisement, other than labeling, which is misleading in a material respect; and in determining whether any advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which the advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the commodity to which the advertisement relates under the conditions prescribed in said advertisement, or under such conditions as are customary or usual. No advertisement of a drug shall be deemed to be false if it is disseminated only to members of the medical profession, contains no false representation of a material fact, and includes, or is accompanied in each instance by truthful disclosure of, the formula showing quantitatively each ingredient of such drug.

(2) In the case of oleomargarine or margarine an advertisement shall be deemed misleading in a material respect if in such advertisement representations are made or suggested by statement, word, grade designation, design, device, symbol, sound, or any combination thereof, that such oleomargarine or margarine is a dairy product, except that nothing contained herein shall prevent a truthful, accurate, and full statement in any such advertisement of all the ingredients contained in such oleomargarine or margarine.

(b) Food

The term "food" means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.

(c) Drug

The term "drug" means (1) articles recognized in the official United States Pharmacopoeia, official Homoeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and (2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (3) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any article specified in clause (1), (2), or (3); but does not include devices or their components, parts, or accessories.

(d) Device

The term "device" (except when used in subsection (a) of this section) means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is—

(1) recognized in the official National Formulary, or the United States Pharmacopeia, or any supplement to them,

(2) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals, or

(3) intended to affect the structure or any function of the body of man or other animals, and

which does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

(e) Cosmetic

The term "cosmetic" means (1) articles to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof intended for cleansing, beautifying,

promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component of any such article; except that such term shall not include soap.

(f) Oleomargarine or margarine

For the purposes of this section and section 347 of title 21, the term "oleomargarine" or "margarine" includes—

(1) all substances, mixtures, and compounds known as oleomargarine or margarine;

(2) all substances, mixtures, and compounds which have a consistence similar to that of butter and which contain any edible oils or fats other than milk fat if made in imitation or semblance of butter.

(Sept. 26, 1914, ch. 311, §15, as added Mar. 21, 1938, ch. 49, §4, 52 Stat. 114; amended Mar. 16, 1950, ch. 61, §4(a), (b), 64 Stat. 21; Pub. L. 94–295, §3(a)(1)(B), May 28, 1976, 90 Stat. 575.)

AMENDMENTS

1976—Subsec. (d). Pub. L. 94–295 expanded definition of "device" to include implements, machines, implants, in vitro reagents, and other similar or related articles, added recognition in the National Formulary or the United States Pharmacopeia, or any supplement to the Formulary or Pharmacopeia, to the enumeration of conditions under which a device may qualify for inclusion under this chapter, and inserted requirements that a device be one which does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

1950—Subsec. (a). Act Mar. 16, 1950, §4(a), designated existing provisions as par. (1) and added par. (2) relating to oleomargarine.

Subsec. (f). Act Mar. 16, 1950, §4(b), added subsec. (f).

EFFECTIVE DATE OF 1950 AMENDMENT

Amendment by act Mar. 16, 1950, effective July 1, 1950, see note set out under section 347 of Title 21, Food and Drugs.

§56. Commencement, defense, intervention and supervision of litigation and appeal by Commission or Attorney General

(a) Procedure for exercise of authority to litigate or appeal

(1) Except as otherwise provided in paragraph (2) or (3), if—

(A) before commencing, defending, or intervening in, any civil action involving this subchapter (including an action to collect a civil penalty) which the Commission, or the Attorney General on behalf of the Commission, is authorized to commence, defend, or intervene in, the Commission gives written notification and undertakes to consult with the Attorney General with respect to such action; and

(B) the Attorney General fails within 45 days after receipt of such notification to commence, defend, or intervene in, such action;

the Commission may commence, defend, or intervene in, and supervise the litigation of, such action and any appeal of such action in its own name by any of its attorneys designated by it for such purpose.

(2) Except as otherwise provided in paragraph (3), in any civil action—

(A) under section 53 of this title (relating to injunctive relief);

(B) under section 57b of this title (relating to consumer redress);

(C) to obtain judicial review of a rule prescribed by the Commission, or a cease and desist order issued under section 45 of this title;

(D) under the second paragraph of section 49 of this title (relating to enforcement of a subpena) and under the fourth paragraph of such section (relating to compliance with section 46 of this title); or

(E) under section 57b–2a of this title;

the Commission shall have exclusive authority to commence or defend, and supervise the litigation of, such action and any appeal of such action in its own name by any of its attorneys designated by it for such purpose, unless the Commission authorizes the Attorney General to do so. The Commission shall inform the Attorney General of the exercise of such authority and such exercise shall not preclude the Attorney General from intervening on behalf of the United States in such action and any appeal of such action as may be otherwise provided by law.

(3)(A) If the Commission makes a written request to the Attorney General, within the 10-day period which begins on the date of the entry of the judgment in any civil action in which the Commission represented itself pursuant to paragraph (1) or (2), to represent itself through any of its attorneys designated by it for such purpose before the Supreme Court in such action, it may do so, if—

(i) the Attorney General concurs with such request; or

(ii) the Attorney General, within the 60-day period which begins on the date of the entry of such judgment—

(a) refuses to appeal or file a petition for writ of certiorari with respect to such civil action, in which case he shall give written notification to the Commission of the reasons for such refusal within such 60-day period; or

(b) the Attorney General fails to take any action with respect to the Commission's request.

(B) In any case where the Attorney General represents the Commission before the Supreme Court in any civil action in which the Commission represented itself pursuant to paragraph (1) or (2), the Attorney General may not agree to any settlement, compromise, or dismissal of such action, or confess error in the Supreme Court with respect to such action, unless the Commission concurs.

(C) For purposes of this paragraph (with respect to representation before the Supreme Court), the term "Attorney General" includes the Solicitor General.

(4) If, prior to the expiration of the 45-day period specified in paragraph (1) of this section or a 60-day period specified in paragraph (3), any right of the Commission to commence, defend, or intervene in, any such action or appeal may be extinguished due to any procedural requirement of any court with respect to the time in which any pleadings, notice of appeal, or other acts pertaining to such action or appeal may be taken, the Attorney General shall have one-half of the time required to comply with any such procedural requirement of the court (including any extension of such time granted by the court) for the purpose of commencing, defending, or intervening in the civil action pursuant to paragraph (1) or for the purpose of refusing to appeal or file a petition for writ of certiorari and the written notification or failing to take any action pursuant to paragraph 3(A)(ii).

(5) The provisions of this subsection shall apply notwithstanding chapter 31 of title 28, or any other provision of law.

(b) Certification by Commission to Attorney General for criminal proceedings

Whenever the Commission has reason to believe that any person, partnership, or corporation is liable for a criminal penalty under this subchapter, the Commission shall certify the facts to the Attorney General, whose duty it shall be to cause appropriate criminal proceedings to be brought.

(c) Foreign litigation

(1) Commission attorneys

With the concurrence of the Attorney General, the Commission may designate Commission attorneys to assist the Attorney General in connection with litigation in foreign courts on particular matters in which the Commission has an interest.

(2) Reimbursement for foreign counsel

The Commission is authorized to expend appropriated funds, upon agreement with the Attorney General, to reimburse the Attorney General for the retention of foreign counsel for litigation in foreign courts and for expenses related to litigation in foreign courts in which the Commission has an interest.

(3) Limitation on use of funds

Nothing in this subsection authorizes the payment of claims or judgments from any source other than the permanent and indefinite appropriation authorized by section 1304 of title 31.

(4) Other authority

The authority provided by this subsection is in addition to any other authority of the Commission or the Attorney General.

(Sept. 26, 1914, ch. 311, §16, as added Mar. 21, 1938, ch. 49, §4, 52 Stat. 114; amended Pub. L. 93–153, title IV, §408(g), Nov. 16, 1973, 87 Stat. 592; Pub. L. 93–637, title II, §204(a), Jan. 4, 1975, 88 Stat. 2199; Pub. L. 109–455, §§5, 7(b), 13, Dec. 22, 2006, 120 Stat. 3375, 3379, 3382; Pub. L. 112–203, §1, Dec. 4, 2012, 126 Stat. 1484.)

AMENDMENT OF SECTION

For repeal of amendment by section 13 of Pub. L. 109–455, see Termination Date of 2006 Amendment note below.

AMENDMENTS

2012—Pub. L. 112–203, §1, amended Pub. L. 109–455, §13. See 2006 Amendment notes below.

2006—Subsec. (a)(2)(E). Pub. L. 109–455, §7(b), which added subpar. (E) reading "under section 57b–2a of this title;", was repealed by Pub. L. 109–455, §13, as amended by Pub. L. 112–203, §1. See Termination Date of 2006 Amendment note below.

Subsec. (c). Pub. L. 109–455, §5, which added subsec. (c) relating to attorneys used and money expended for foreign litigation, was repealed by Pub. L. 109–455, §13, as amended by Pub. L. 112–203, §1. See Termination Date of 2006 Amendment note below.

1975—Pub. L. 93–637 substituted provisions authorizing the Commission at its election to appear in court by its own name and designate its attorneys for such purpose, for provisions relating to the certification of facts by the Commission to the Attorney General who brought the appropriate proceedings, or, after compliance with section 45(m) of this title, itself brought the appropriate proceedings.

1973—Pub. L. 93–153 inserted provisions authorizing the Federal Trade Commission to itself cause appropriate proceedings to be brought after compliance with the requirements of section 45(m) of this title.

TERMINATION DATE OF 2006 AMENDMENT

Amendment by sections 5 and 7(b) of Pub. L. 109–455 repealed effective Sept. 30, 2020, and provisions amended by Pub. L. 109–455 to be amended to read as if Pub. L. 109–455 had not been enacted, see section 13 of Pub. L. 109–455, set out as a note under section 44 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 93–637, title II, §204(c), Jan. 4, 1975, 88 Stat. 2200, provided that: "The amendment and repeal made by this section [amending this section and repealing section 45(m) of this title] shall not apply to any civil action commenced before the date of enactment of this Act [Jan. 4, 1975]."

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

§57. Separability clause

If any provision of this subchapter, or the application thereof to any person, partnership, or corporation, or circumstance, is held invalid, the remainder of this subchapter, and the application of such provisions to any other person, partnership, corporation, or circumstance, shall not be affected thereby.

(Sept. 26, 1914, ch. 311, §17, as added Mar. 21, 1938, ch. 49, §4, 52 Stat. 114.)

§57a. Unfair or deceptive acts or practices rulemaking proceedings

(a) Authority of Commission to prescribe rules and general statements of policy

(1) Except as provided in subsection (h) of this section, the Commission may prescribe—

(A) interpretive rules and general statements of policy with respect to unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 45(a)(1) of this title), and

(B) rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 45(a)(1) of this title), except that the Commission shall not develop or promulgate any trade rule or regulation with regard to the regulation of the development and utilization of the standards and certification activities pursuant to this section. Rules under this subparagraph may include requirements prescribed for the purpose of preventing such acts or practices.

(2) The Commission shall have no authority under this subchapter, other than its authority under this section, to prescribe any rule with respect to unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 45(a)(1) of this title). The preceding sentence shall not affect any authority of the Commission to prescribe rules (including interpretive rules), and general statements of policy, with respect to unfair methods of competition in or affecting commerce.

(b) Procedures applicable

(1) When prescribing a rule under subsection (a)(1)(B) of this section, the Commission shall proceed in accordance with section 553 of title 5 (without regard to any reference in such section to sections 556 and 557 of such title), and shall also (A) publish a notice of proposed rulemaking stating with particularity the text of the rule, including any alternatives, which the Commission proposes to promulgate, and the reason for the proposed rule; (B) allow interested persons to submit written data, views, and arguments, and make all such submissions publicly available; (C) provide an opportunity for an informal hearing in accordance with subsection (c) of this section; and (D) promulgate, if appropriate, a final rule based on the matter in the rulemaking record (as defined in subsection (e)(1)(B) of this section), together with a statement of basis and purpose.

(2)(A) Prior to the publication of any notice of proposed rulemaking pursuant to paragraph (1)(A), the Commission shall publish an advance notice of proposed rulemaking in the Federal Register. Such advance notice shall—

(i) contain a brief description of the area of inquiry under consideration, the objectives which the Commission seeks to achieve, and possible regulatory alternatives under consideration by the Commission; and

(ii) invite the response of interested parties with respect to such proposed rulemaking, including any suggestions or alternative methods for achieving such objectives.

(B) The Commission shall submit such advance notice of proposed rulemaking to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Energy and Commerce of the House of Representatives. The Commission may use such additional mechanisms as the Commission considers useful to obtain suggestions regarding the content of the area of inquiry before the publication of a general notice of proposed rulemaking under paragraph (1)(A).

(C) The Commission shall, 30 days before the publication of a notice of proposed rulemaking pursuant to paragraph (1)(A), submit such notice to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Energy and Commerce of the House of Representatives.

(3) The Commission shall issue a notice of proposed rulemaking pursuant to paragraph (1)(A) only where it has reason to believe that the unfair or deceptive acts or practices which are the subject of the proposed rulemaking are prevalent. The Commission shall make a determination that unfair or deceptive acts or practices are prevalent under this paragraph only if—

(A) it has issued cease and desist orders regarding such acts or practices, or

(B) any other information available to the Commission indicates a widespread pattern of unfair or deceptive acts or practices.

(c) Informal hearing procedure

The Commission shall conduct any informal hearings required by subsection (b)(1)(C) of this section in accordance with the following procedure:

(1)(A) The Commission shall provide for the conduct of proceedings under this subsection by hearing officers who shall perform their functions in accordance with the requirements of this subsection.

(B) The officer who presides over the rulemaking proceedings shall be responsible to a chief presiding officer who shall not be responsible to any other officer or employee of the Commission. The officer who presides over the rulemaking proceeding shall make a recommended decision based upon the findings and conclusions of such officer as to all relevant and material evidence, except that such recommended decision may be made by another officer if the officer who presided over the proceeding is no longer available to the Commission.

(C) Except as required for the disposition of ex parte matters as authorized by law, no presiding officer shall consult any person or party with respect to any fact in issue unless such officer gives notice and opportunity for all parties to participate.

(2) Subject to paragraph (3) of this subsection, an interested person is entitled—

(A) to present his position orally or by documentary submission (or both), and

(B) if the Commission determines that there are disputed issues of material fact it is necessary to resolve, to present such rebuttal submissions and to conduct (or have conducted under paragraph (3)(B)) such cross-examination of persons as the Commission determines (i) to be appropriate, and (ii) to be required for a full and true disclosure with respect to such issues.

(3) The Commission may prescribe such rules and make such rulings concerning proceedings in such hearings as may tend to avoid unnecessary costs or delay. Such rules or rulings may include (A) imposition of reasonable time limits on each interested person's oral presentations, and (B) requirements that any cross-examination to which a person may be entitled under paragraph (2) be conducted by the Commission on behalf of that person in such manner as the Commission determines (i) to be appropriate, and (ii) to be required for a full and true disclosure with respect to disputed issues of material fact.

(4)(A) Except as provided in subparagraph (B), if a group of persons each of whom under paragraphs (2) and (3) would be entitled to conduct (or have conducted) cross-examination and who are determined by the Commission to have the same or similar interests in the proceeding cannot agree upon a single representative of such interests for purposes of cross-examination, the Commission may make rules and rulings (i) limiting the representation of such interest, for such purposes, and (ii) governing the manner in which such cross-examination shall be limited.

(B) When any person who is a member of a group with respect to which the Commission has made a determination under subparagraph (A) is unable to agree upon group representation with the other members of the group, then such person shall not be denied under the authority of subparagraph (A) the opportunity to conduct (or have conducted) cross-examination as to issues affecting his particular interests if (i) he satisfies the Commission that he has made a reasonable and good faith effort to reach agreement upon group representation with the other members of the group and (ii) the Commission determines that there are substantial and relevant issues which are not adequately presented by the group representative.

(5) A verbatim transcript shall be taken of any oral presentation, and cross-examination, in an informal hearing to which this subsection applies. Such transcript shall be available to the public.

(d) Statement of basis and purpose accompanying rule; "Commission" defined; judicial review of amendment or repeal of rule; violation of rule

(1) The Commission's statement of basis and purpose to accompany a rule promulgated under subsection (a)(1)(B) of this section shall include (A) a statement as to the prevalence of the acts or practices treated by the rule; (B) a statement as to the manner and context in which such acts or practices are unfair or deceptive; and (C) a statement as to the economic effect of the rule, taking into account the effect on small business and consumers.

(2)(A) The term "Commission" as used in this subsection and subsections (b) and (c) of this section includes any person authorized to act in behalf of the Commission in any part of the rulemaking proceeding.

(B) A substantive amendment to, or repeal of, a rule promulgated under subsection (a)(1)(B) of this section shall be prescribed, and subject to judicial review, in the same manner as a rule prescribed under such subsection. An exemption under subsection (g) of this section shall not be treated as an amendment or repeal of a rule.

(3) When any rule under subsection (a)(1)(B) of this section takes effect a subsequent violation thereof shall constitute an unfair or deceptive act or practice in violation of section 45(a)(1) of this title, unless the Commission otherwise expressly provides in such rule.

(e) Judicial review; petition; jurisdiction and venue; rulemaking record; additional submissions and presentations; scope of review and relief; review by Supreme Court; additional remedies

(1)(A) Not later than 60 days after a rule is promulgated under subsection (a)(1)(B) of this section by the Commission, any interested person (including a consumer or consumer organization) may file a petition, in the United States Court of Appeals for the District of Columbia circuit or for the circuit in which such person resides or has his principal place of business, for judicial review of such rule. Copies of the petition shall be forthwith transmitted by the clerk of the court to the Commission or other officer designated by it for that purpose. The provisions of section 2112 of title 28 shall apply to the filing of the rulemaking record of proceedings on which the Commission based its rule and to the transfer of proceedings in the courts of appeals.

(B) For purposes of this section, the term "rulemaking record" means the rule, its statement of basis and purpose, the transcript required by subsection (c)(5) of this section, any written submissions, and any other information which the Commission considers relevant to such rule.

(2) If the petitioner or the Commission applies to the court for leave to make additional oral submissions or written presentations and shows to the satisfaction of the court that such submissions and presentations would be material and that there were reasonable grounds for the submissions and failure to make such submissions and presentations in the proceeding before the Commission, the court may order the Commission to provide additional opportunity to make such submissions and presentations. The Commission may modify or set aside its rule or make a new rule by reason of the additional submissions and presentations and shall file such modified or new rule, and the rule's statement of basis of purpose, with the return of such submissions and presentations. The court shall thereafter review such new or modified rule.

(3) Upon the filing of the petition under paragraph (1) of this subsection, the court shall have jurisdiction to review the rule in accordance with chapter 7 of title 5 and to grant appropriate relief, including interim relief, as provided in such chapter. The court shall hold unlawful and set aside the rule on any ground specified in subparagraphs (A), (B), (C), or (D) of section 706(2) of title 5 (taking due account of the rule of prejudicial error), or if—

(A) the court finds that the Commission's action is not supported by substantial evidence in the rulemaking record (as defined in paragraph (1)(B) of this subsection) taken as a whole, or

(B) the court finds that—

(i) a Commission determination under subsection (c) of this section that the petitioner is not entitled to conduct cross-examination or make rebuttal submissions, or

(ii) a Commission rule or ruling under subsection (c) of this section limiting the petitioner's cross-examination or rebuttal submissions,

has precluded disclosure of disputed material facts which was necessary for fair determination by the Commission of the rulemaking proceeding taken as a whole.

The term "evidence", as used in this paragraph, means any matter in the rulemaking record.

(4) The judgment of the court affirming or setting aside, in whole or in part, any such rule shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28.

(5)(A) Remedies under the preceding paragraphs of this subsection are in addition to and not in lieu of any other remedies provided by law.

(B) The United States Courts of Appeal shall have exclusive jurisdiction of any action to obtain judicial review (other than in an enforcement proceeding) of a rule prescribed under subsection (a)(1)(B) of this section, if any district court of the United States would have had jurisdiction of such action but for this subparagraph. Any such action shall be brought in the United States Court of Appeals for the District of Columbia circuit, or for any circuit which includes a judicial district in which the action could have been brought but for this subparagraph.

(C) A determination, rule, or ruling of the Commission described in paragraph (3)(B)(i) or (ii) may be reviewed only in a proceeding under this subsection and only in accordance with paragraph (3)(B). Section 706(2)(E) of title 5 shall not apply to any rule promulgated under subsection (a)(1)(B) of this section. The contents and adequacy of any statement required by subsection (b)(1)(D) of this section shall not be subject to judicial review in any respect.

(f) Definitions of banks, savings and loan institutions, and Federal credit unions

(1) Repealed. Pub. L. 111–203, title X, §1092(2), July 21, 2010, 124 Stat. 2095

(2) DEFINITION.—For purposes of this subchapter, the term "bank" means—

(A) national banks and Federal branches and Federal agencies of foreign banks;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.]; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than banks referred to in subparagraph (A) or (B)) and insured State branches of foreign banks.

(3) For purposes of this subchapter, the term "savings and loan institution" has the same meaning as in section 1813 of title 12.

(4) For purposes of this subchapter, the term "Federal credit union" has the same meaning as in sections 1766 and 1786 of title 12.

The terms used in this paragraph [1] that are not defined in this subchapter or otherwise defined in section 1813(s) of title 12 shall have the meaning given to them in section 3101 of title 12.

(g) Exemptions and stays from application of rules; procedures

(1) Any person to whom a rule under subsection (a)(1)(B) of this section applies may petition the Commission for an exemption from such rule.

(2) If, on its own motion or on the basis of a petition under paragraph (1), the Commission finds that the application of a rule prescribed under subsection (a)(1)(B) of this section to any person or class or [2] persons is not necessary to prevent the unfair or deceptive act or practice to which the rule relates, the Commission may exempt such person or class from all or part of such rule. Section 553 of title 5 shall apply to action under this paragraph.

(3) Neither the pendency of a proceeding under this subsection respecting an exemption from a rule, nor the pendency of judicial proceedings to review the Commission's action or failure to act under this subsection, shall stay the applicability of such rule under subsection (a)(1)(B) of this section.

(h) Restriction on rulemaking authority of Commission respecting children's advertising proceedings pending on May 28, 1980

The Commission shall not have any authority to promulgate any rule in the children's advertising proceeding pending on May 28, 1980, or in any substantially similar proceeding on the basis of a determination by the Commission that such advertising constitutes an unfair act or practice in or affecting commerce.

(i) Meetings with outside parties

(1) For purposes of this subsection, the term "outside party" means any person other than (A) a Commissioner; (B) an officer or employee of the Commission; or (C) any person who has entered into a contract or any other agreement or arrangement with the Commission to provide any goods or services (including consulting services) to the Commission.

(2) Not later than 60 days after May 28, 1980, the Commission shall publish a proposed rule, and not later than 180 days after May 28, 1980, the Commission shall promulgate a final rule, which shall authorize the Commission or any Commissioner to meet with any outside party concerning any rulemaking proceeding of the Commission. Such rule shall provide that—

(A) notice of any such meeting shall be included in any weekly calendar prepared by the Commission; and

(B) a verbatim record or a summary of any such meeting, or of any communication relating to any such meeting, shall be kept, made available to the public, and included in the rulemaking record.

(j) Communications by investigative personnel with staff of Commission concerning matters outside rulemaking record prohibited

Not later than 60 days after May 28, 1980, the Commission shall publish a proposed rule, and not later than 180 days after May 28, 1980, the Commission shall promulgate a final rule, which shall prohibit any officer, employee, or agent of the Commission with any investigative responsibility or other responsibility relating to any rulemaking proceeding within any operating bureau of the Commission, from communicating or causing to be communicated to any Commissioner or to the personal staff of any Commissioner any fact which is relevant to the merits of such proceeding and which is not on the rulemaking record of such proceeding, unless such communication is made available to the public and is included in the rulemaking record. The provisions of this subsection shall not apply to any communication to the extent such communication is required for the disposition of ex parte matters as authorized by law.

(Sept. 26, 1914, ch. 311, §18, as added Pub. L. 93–637, title II, §202(a), Jan. 4, 1975, 88 Stat. 2193; amended Pub. L. 96–37, §1(c), July 23, 1979, 93 Stat. 95; Pub. L. 96–221, title VI, §610(b), Mar. 31, 1980, 94 Stat. 174; Pub. L. 96–252, §§7–11(a), 12, May 28, 1980, 94 Stat. 376–379; Pub. L. 100–86, title VII, §715(c), Aug. 10, 1987, 101 Stat. 655; Pub. L. 101–73, title VII, §744(t), Aug. 9, 1989, 103 Stat. 441; Pub. L. 102–242, title II, §212(g)(2), Dec. 19, 1991, 105 Stat. 2302; Pub. L. 102–550, title XVI, §1604(a)(9), Oct. 28, 1992, 106 Stat. 4082; Pub. L. 103–312, §§3, 5, Aug. 26, 1994, 108 Stat. 1691, 1692; Pub. L. 103–437, §5(a), Nov. 2, 1994, 108 Stat. 4582; Pub. L. 109–351, title VII, §725(g), Oct. 13, 2006, 120 Stat. 2002; Pub. L. 109–356, title I, §123(g), Oct. 16, 2006, 120 Stat. 2029; Pub. L. 111–203, title X, §1092, July 21, 2010, 124 Stat. 2094.)

REFERENCES IN TEXT

Sections 25 and 25A of the Federal Reserve Act, referred to in subsec. (f)(2)(B), are classified to subchapters I (§601 et seq.) and II (§611 et seq.), respectively, of chapter 6 of Title 12, Banks and Banking.

PRIOR PROVISIONS

A prior section 18 of act Sept. 26, 1914, ch. 311, was renumbered section 28 and is classified to section 58 of this title.

AMENDMENTS

2010—Subsec. (f). Pub. L. 111–203, §1092(1), inserted subsec. heading.

Subsec. (f)(1). Pub. L. 111–203, §1092(2), struck out par. (1) which related to prevention of unfair or deceptive acts or practices in or affecting commerce.

Subsec. (f)(2). Pub. L. 111–203, §1092(4)(A), substituted "Definition" for "Enforcement" in heading and "For purposes of this subchapter, the term 'bank' means" for "Compliance with regulations prescribed under this subsection shall be enforced under section 1818 of title 12, in the case of" in introductory provisions.

Subsec. (f)(2)(A). Pub. L. 111–203, §1092(4)(B), struck out ", by the division of consumer affairs established by the Office of the Comptroller of the Currency" before semicolon at end.

Subsec. (f)(2)(B). Pub. L. 111–203, §1092(4)(C), substituted "25A" for "25(a)" and struck out ", by the division of consumer affairs established by the Board of Governors of the Federal Reserve System" before "; and".

Subsec. (f)(2)(C). Pub. L. 111–203, §1092(4)(D), inserted "than" after "other" and struck out ", by the division of consumer affairs established by the Board of Directors of the Federal Deposit Insurance Corporation" before period at end.

Subsec. (f)(3). Pub. L. 111–203, §1092(5), substituted "For purposes of this subchapter, the term 'savings and loan institution' has the same meaning as in" for "Compliance with regulations prescribed under this subsection shall be enforced under section 1818 of title 12 with respect to savings associations as defined in".

Subsec. (f)(4). Pub. L. 111–203, §1092(6), substituted "For purposes of this subchapter, the term 'Federal credit union' has the same meaning as in" for "Compliance with regulations prescribed under this subsection shall be enforced with respect to Federal credit unions under".

Subsec. (f)(5) to (7). Pub. L. 111–203, §1092(3), struck out pars. (5) to (7) which related to violation of regulations, authority to make rules relating to compliance, and annual report to Congress by each agency exercising authority.

2006—Subsec. (f)(2)(A), (B). Pub. L. 109–351 and Pub. L. 109–356 amended par. (2) identically, striking out ", banks operating under the code of law for the District of Columbia," after "national banks" in subpar. (A) and "and banks operating under the code of law for the District of Columbia" after "(other than national banks" in subpar. (B).

1994—Subsec. (a)(1). Pub. L. 103–312, §3(b), substituted "subsection (h)" for "subsection (i)" in introductory provisions.

Subsec. (b)(2)(B), (C). Pub. L. 103–437 substituted "Committee on Energy and Commerce" for "Committee on Interstate and Foreign Commerce".

Subsec. (b)(3). Pub. L. 103–312, §5, added par. (3).

Subsecs. (h) to (k). Pub. L. 103–312, §3(a), redesignated subsecs. (i) to (k) as (h) to (j), respectively, and struck out former subsec. (h) which provided for compensation for attorney fees, expert witness fees, etc., incurred in rulemaking proceedings, limitation on amount, and establishment of small business outreach program.

1992—Subsec. (f)(2)(A). Pub. L. 102–550 substituted "division" for "divisions".

1991—Subsec. (f). Pub. L. 102–242, §212(g)(2)(B), inserted at end "The terms used in this paragraph that are not defined in this subchapter or otherwise defined in section 1813(s) of title 12 shall have the meaning given to them in section 3101 of title 12."

Subsec. (f)(2). Pub. L. 102–242, §212(g)(2)(A), added par. (2) and struck out former par. (2) which read as follows: "Compliance with regulations prescribed under this subsection shall be enforced under section 1818 of title 12, in the case of—

"(A) national banks and banks operating under the code of law for the District of Columbia, by the division of consumer affairs established by the Comptroller of the Currency;

"(B) member banks of the Federal Reserve System (other than banks referred to in subparagraph (A)) by the division of consumer affairs established by the Board of Governors of the Federal Reserve System; and

"(C) banks insured by the Federal Deposit Insurance Corporation (other than banks referred to in subparagraph (A) or (B)), by the division of consumer affairs established by the Board of Directors of the Federal Deposit Insurance Corporation."

1989—Subsec. (f)(3). Pub. L. 101–73 amended par. (3) generally. Prior to amendment, par. (3) read as follows: "Compliance with regulations prescribed under this subsection shall be enforced under section 5 of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464) with respect to Federal savings and loan associations, section 407 of the National Housing Act (12 U.S.C. 1730) with respect to insured institutions, and sections 6(i) and 17 of the Federal Home Loan Bank Act (12 U.S.C. 1426(i), 1437) with respect to savings and loan institutions which are members of a Federal Home Loan Bank, by a division of consumer affairs to be established by the Federal Home Loan Bank Board pursuant to the Federal Home Loan Bank Act."

1987—Subsec. (f)(1). Pub. L. 100–86, §715(c)(1), (2), in second sentence inserted "and the National Credit Union Administration Board (with respect to Federal credit unions described in paragraph (4))" and in last sentence inserted "or Federal credit unions described in paragraph (4)," in two places, substituted "any such" for "either such", and inserted ", savings and loan institutions or Federal credit unions".

Subsec. (f)(4) to (7). Pub. L. 100–86, §715(c)(3), added par. (4) and redesignated former pars. (4) to (6) as (5) to (7), respectively.

1980—Subsec. (a)(1). Pub. L. 96–252, §§7, 11(a)(2), in provisions preceding subpar. (A) substituted "Except as provided in subsection (i) of this section, the" for "The" and in subpar. (B) inserted ", except that the Commission shall not develop or promulgate any trade rule or regulation with regard to the regulation of the development and utilization of the standards and certification activities pursuant to this section" after "section 45(a)(1) of this title)".

Subsec. (b). Pub. L. 96–252, §§8(a), 11(a)(3), designated existing provisions as par. (1) and cls. (1) to (4) thereof as subpars. (A) to (D) and, subpar. (A) thereof, inserted "the text of the rule, including any alternatives, which the Commission proposes to promulgate, and" after "particularity", and added par. (2).

Subsec. (c). Pub. L. 96–252, §8(b)(1), in provisions preceding par. (1) substituted "subsection (b)(1)(C)" for "subsection (b)(3)".

Subsec. (c)(1). Pub. L. 96–252, §9(a)(2), added par. (1). Former par. (1) redesignated (2).

Subsec. (c)(2). Pub. L. 96–252, §9(a)(1), (b)(1), redesignated former par. (1) as (2), substituted "paragraph (3)" for "paragraph (2)" and "paragraph (3)(B)" for "paragraph (2)(B)". Former par. (2) redesignated (3).

Subsec. (c)(3). Pub. L. 96–252, §9(a)(1), (b)(2), redesignated former par. (2) as (3) and substituted "paragraph (2)" for "paragraph (1)". Former par. (3) redesignated (4).

Subsec. (c)(4), (5). Pub. L. 96–252, §9(a)(1), (b)(3), redesignated former par. (3) as (4) and substituted in subpar. (A) "paragraph (2) and (3)" for "paragraphs (1) and (2)". Former par. (4) redesignated (5).

Subsec. (e). Pub. L. 96–252, §§8(b)(2), 9(c), substituted in par. (1)(B) "subsection (c)(5)" for "subsection (c)(4)" and in par. (5)(C) "subsection (b)(1)(D)" for "subsection (b)(4)".

Subsec. (f)(6). Pub. L. 96–221 struck out requirement that the report be made not later than every March 15.

Subsec. (h)(2). Pub. L. 96–252, §10(b), substituted provisions reserving an amount equal to 25 percent of the amount appropriated for the payment of compensation under this subsection to be available solely for the payment of compensation to persons who either would be regulated by a proposed rule or represent persons who would be so regulated for provisions restricting the aggregate amount of compensation paid under this subsection in any fiscal year to all persons, who in rulemaking proceedings in which they receive compensation, are persons who would be regulated by the proposed rule or represent persons who would be so regulated, to an amount not in excess of 25 percent of the aggregate amount paid as compensation under this subsection.

Subsec. (h)(3). Pub. L. 96–252, §10(a), (e), temporarily added par. (3) and redesignated former par. (3) as (4). See Effective and Termination Dates of 1980 Amendments note below.

Subsec. (h)(4). Pub. L. 96–252, §10(a), (c), (e), temporarily redesignated former par. (3) as (4) and substituted "$750,000" for "$1,000,000". See Effective and Termination Dates of 1980 Amendments note below.

Subsec. (h)(5). Pub. L. 96–252, §10(d), (e), added par. (5) to be redesignated (4) effective Sept. 30, 1983. See Effective and Termination Dates of 1980 Amendments note below.

Subsec. (i). Pub. L. 96–252, §11(a)(1), added subsec. (i).

Subsecs. (j), (k). Pub. L. 96–252, §12, added subsecs. (j) and (k).

1979—Subsec. (f)(1). Pub. L. 96–37, §1(c)(1), inserted provisions relating to savings and loan institutions and to regulations with respect to savings and loan institutions promulgated by Federal Home Loan Bank Board.

Subsec. (f)(3) to (6). Pub. L. 96–37, §1(c)(2), added par. (3) and redesignated former pars. (3) to (5) as (4) to (6), respectively.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 5 of Pub. L. 103–312 applicable only to rulemaking proceedings initiated after Aug. 26, 1994, and not to be construed to affect in any manner a rulemaking proceeding initiated before such date, see section 15(b) of Pub. L. 103–312, set out as a note under section 45 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

EFFECTIVE AND TERMINATION DATES OF 1980 AMENDMENTS

Pub. L. 96–252, §10(e), May 28, 1980, 94 Stat. 378, provided that: "The amendments made in subsection (a) and subsection (c) [amending this section] are repealed, effective at the end of fiscal year 1982. Effective upon such repeal, paragraph (5) of section 18(h) of the Federal Trade Commission Act [subsec. (h)(5) of this section], as added by subsection (d), is redesignated as paragraph (4) of section 18(h) of such Act."

Pub. L. 97–377, title I, §101(d), Dec. 21, 1982, 96 Stat. 1866, 1870, provided in part that: "Notwithstanding any other provision of law, the provisions of sections 10 [amending this section and enacting provision set out as first paragraph of this note], 11(b) [set out as a note below], 18 [set out as a note under section 57c of this title], 20 [set out as a note under section 57c of this title] and 21 [enacting section 57a–1 of this title and enacting a provision set out as a note under section 57a–1 of this title], of the Federal Trade Commission Improvements Act of 1980 (Public Law 96–252; 94 Stat. 374) are hereby extended until the termination date set forth in section 102(c) of H.J. Res. 631 [Sept. 30, 1983] as enacted into law [Pub. L. 97–377], notwithstanding subsections 10(e) [see paragraph above] and 21(i) [set out as a note under section 57a–1 of this title] of the Federal Trade Commission Improvements Act of 1980 (Public Law 96–252; 94 Stat. 374)."

Pub. L. 96–252, §11(c), May 28, 1980, 94 Stat. 379, provided that: "The amendments made in subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [May 28, 1980]. The children's advertising proceeding pending on the date of the enactment of this Act shall not proceed further until such time as the Commission has complied with section 18(b)(1)(A) of the Federal Trade Commission Act [subsec. (b)(1)(A) of this section], as amended by subsection (a)(3) and as so redesignated in section 8(a). In any such further proceeding, interested parties shall be given a reasonable opportunity to present their views in accordance with section 18(b)(1)(B) of the Federal Trade Commission Act, as so redesignated in section 8(a) [subsec. (b)(1)(B) of this section], section 18(b)(1)(C) of such Act, as so redesignated in section 8(a) [subsec. (b)(1)(C) of this section], and section 18(c) of such Act (15 U.S.C. 57a(c))."

Amendment by Pub. L. 96–252 effective May 28, 1980, see section 23 of Pub. L. 96–252, set out as an Effective Date of 1980 Amendment note under section 45 of this title.

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as an Effective Date of 1980 Amendment note under section 1602 of this title.

RESTRICTION ON USE OF FUNDS FOR PURPOSE OF INITIATING NEW RULEMAKING PROCEEDING

Section 11(b) of Pub. L. 96–252 prohibited the Federal Trade Commission from using any funds authorized to be appropriated to carry out this subchapter for fiscal year 1980, 1981, or 1982 (or 1983 as extended by Pub. L. 97–377, title I §101(d), Dec. 21, 1982, 96 Stat. 1870), under section 57c of this title, for the purpose of initiating any new rulemaking proceeding under this section which was intended to result in, or which might result in, the promulgation of any rule by the Commission which prohibited or otherwise regulated any commercial advertising on the basis of a determination by the Commission that such commercial advertising constituted an unfair act or practice in or affecting commerce.

RESTRICTION ON USE OF FUNDS RESPECTING REGULATION OF FUNERAL INDUSTRY; EXCEPTION

Section 19 of Pub. L. 96–252 prohibited the Federal Trade Commission from using any funds authorized to be appropriated to carry out this subchapter for fiscal year 1980, 1981, or 1982, under section 57c of this title to issue the proposed trade regulation rule which was published in the Federal Register of Aug. 29, 1975, beginning at page 39901, and which relates to the regulation of funeral industry practices, in final form or a substantially similar proposed or final trade regulation rule unless the final rule met specific requirements and the Commission followed specific procedures.

OVERSIGHT HEARINGS WITH RESPECT TO FEDERAL TRADE COMMISSION

Section 22 of Pub. L. 96–252 required the Consumer Subcommittee of the Committee on Commerce, Science, and Transportation of the Senate to conduct an oversight hearing with respect to the Federal Trade Commission at least once during the first 6 calendar months, and at least once during the last 6 calendar months, of each of the fiscal years 1980, 1981, and 1982.

APPLICABILITY OF UNFAIR OR DECEPTIVE ACTS OR PRACTICES RULEMAKING PROCEDURES TO RULES CLASSIFYING CORPORATIONS PROMULGATED PRIOR TO

JANUARY 4, 1975

Pub. L. 93–637, title II, §202(c), Jan. 4, 1975, 88 Stat. 2198, provided that:

"(1) The amendments made by subsections (a) and (b) of this section [enacting this section and amending section 46 of this title] shall not affect the validity of any rule which was promulgated under section 6(g) of the Federal Trade Commission Act [section 46(g) of this title] prior to the date of enactment of this section [Jan. 4, 1975]. Any proposed rule under section 6(g) of such Act with respect to which presentation of data, views, and arguments was substantially completed before such date may be promulgated in the same manner and with the same validity as such rule could have been promulgated had this section not been enacted.

"(2) If a rule described in paragraph (1) of this subsection is valid and if section 18 of the Federal Trade Commission Act [this section] would have applied to such rule had such rule been promulgated after the date of enactment of this Act, any substantive change in the rule after it has been promulgated shall be made in accordance with such section 18."

STUDY, EVALUATION, AND REPORT BY FEDERAL TRADE COMMISSION AND ADMINISTRATIVE CONFERENCE OF UNITED STATES ON UNFAIR OR DECEPTIVE ACTS OR PRACTICES; RULEMAKING PROCEDURES

Section 202(d) of Pub. L. 93–637, as amended by Pub. L. 94–299, §2, May 29, 1976, 90 Stat. 588; Pub. L. 95–558, Nov. 1, 1978, 92 Stat. 2130, required the Federal Trade Commission and the Administrative Conference of the United States, not later than June 30, 1979, to conduct a study and submit a report to Congress on the rulemaking procedures under section 57a of this title.

[1] So in original.

[2] So in original. Probably should be "of".

§57a–1. Omitted

CODIFICATION

Section, Pub. L. 96–252, §21(a)–(h), May 28, 1980, 94 Stat. 393; H. Res. 549, Mar. 25, 1980; Pub. L. 98–620, title IV, §402(13), Nov. 8, 1984, 98 Stat. 3358, provided procedures for review by Congress of final rules promulgated by the Federal Trade Commission.

EFFECTIVE DATE; TERMINATION DATE

Pub. L. 96–252, §21(i), May 28, 1980, 94 Stat. 396, provided that: "The provisions of this section shall take effect on the date of the enactment of this Act [May 28, 1980] and shall cease to have any force or effect after September 30, 1982."

Pub. L. 97–377, title I, §101(d), Dec. 21, 1982, 96 Stat. 1870, provided in part that notwithstanding any other provision of law, the provisions of section 21 of the Federal Trade Commission Improvements Act of 1980 [Pub. L. 96–252], which enacted this section and enacted provisions set out as a note under this section, were extended until Sept. 30, 1983, notwithstanding section 21(i) of such Act.

§57b. Civil actions for violations of rules and cease and desist orders respecting unfair or deceptive acts or practices

(a) Suits by Commission against persons, partnerships, or corporations; jurisdiction; relief for dishonest or fraudulent acts

(1) If any person, partnership, or corporation violates any rule under this subchapter respecting unfair or deceptive acts or practices (other than an interpretive rule, or a rule violation of which the Commission has provided is not an unfair or deceptive act or practice in violation of section 45(a) of this title), then the Commission may commence a civil action against such person, partnership, or corporation for relief under subsection (b) of this section in a United States district court or in any court of competent jurisdiction of a State.

(2) If any person, partnership, or corporation engages in any unfair or deceptive act or practice

(within the meaning of section 45(a)(1) of this title) with respect to which the Commission has issued a final cease and desist order which is applicable to such person, partnership, or corporation, then the Commission may commence a civil action against such person, partnership, or corporation in a United States district court or in any court of competent jurisdiction of a State. If the Commission satisfies the court that the act or practice to which the cease and desist order relates is one which a reasonable man would have known under the circumstances was dishonest or fraudulent, the court may grant relief under subsection (b) of this section.

(b) Nature of relief available

The court in an action under subsection (a) of this section shall have jurisdiction to grant such relief as the court finds necessary to redress injury to consumers or other persons, partnerships, and corporations resulting from the rule violation or the unfair or deceptive act or practice, as the case may be. Such relief may include, but shall not be limited to, rescission or reformation of contracts, the refund of money or return of property, the payment of damages, and public notification respecting the rule violation or the unfair or deceptive act or practice, as the case may be; except that nothing in this subsection is intended to authorize the imposition of any exemplary or punitive damages.

(c) Conclusiveness of findings of Commission in cease and desist proceedings; notice of judicial proceedings to injured persons, etc.

(1) If (A) a cease and desist order issued under section 45(b) of this title has become final under section 45(g) of this title with respect to any person's, partnership's, or corporation's rule violation or unfair or deceptive act or practice, and (B) an action under this section is brought with respect to such person's, partnership's, or corporation's rule violation or act or practice, then the findings of the Commission as to the material facts in the proceeding under section 45(b) of this title with respect to such person's, partnership's, or corporation's rule violation or act or practice, shall be conclusive unless (i) the terms of such cease and desist order expressly provide that the Commission's findings shall not be conclusive, or (ii) the order became final by reason of section 45(g)(1) of this title, in which case such finding shall be conclusive if supported by evidence.

(2) The court shall cause notice of an action under this section to be given in a manner which is reasonably calculated, under all of the circumstances, to apprise the persons, partnerships, and corporations allegedly injured by the defendant's rule violation or act or practice of the pendency of such action. Such notice may, in the discretion of the court, be given by publication.

(d) Time for bringing of actions

No action may be brought by the Commission under this section more than 3 years after the rule violation to which an action under subsection (a)(1) of this section relates, or the unfair or deceptive act or practice to which an action under subsection (a)(2) of this section relates; except that if a cease and desist order with respect to any person's, partnership's, or corporation's rule violation or unfair or deceptive act or practice has become final and such order was issued in a proceeding under section 45(b) of this title which was commenced not later than 3 years after the rule violation or act or practice occurred, a civil action may be commenced under this section against such person, partnership, or corporation at any time before the expiration of one year after such order becomes final.

(e) Availability of additional Federal or State remedies; other authority of Commission unaffected

Remedies provided in this section are in addition to, and not in lieu of, any other remedy or right of action provided by State or Federal law. Nothing in this section shall be construed to affect any authority of the Commission under any other provision of law.

(Sept. 26, 1914, ch. 311, §19, as added Pub. L. 93–637, title II, §206(a), Jan. 4, 1975, 88 Stat. 2201.)

EFFECTIVE DATE

Pub. L. 93–637, title II, §206(b), Jan. 4, 1975, 88 Stat. 2202, provided that: "The amendment made by subsection (a) of this section [enacting this section] shall not apply to—

"(1) any violation of a rule to the extent that such violation occurred before the date of enactment of this Act [Jan. 4, 1975], or

"(2) any act or practice with respect to which the Commission issues a cease-and-desist order, to the extent that such act or practice occurred before the date of enactment of this Act [Jan. 4, 1975], unless such order was issued after such date and the person, partnership or corporation against whom such an order was issued had been notified in the complaint, or in the notice or order attached thereto, that consumer redress may be sought."

§57b–1. Civil investigative demands

(a) Definitions

For purposes of this section:

(1) The terms "civil investigative demand" and "demand" mean any demand issued by the commission under subsection (c)(1) of this section.

(2) The term "Commission investigation" means any inquiry conducted by a Commission investigator for the purpose of ascertaining whether any person is or has been engaged in any unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 45(a)(1) of this title) or in any antitrust violations.

(3) The term "Commission investigator" means any attorney or investigator employed by the Commission who is charged with the duty of enforcing or carrying into effect any provisions relating to unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 45(a)(1) of this title) or any provisions relating to antitrust violations.

(4) The term "custodian" means the custodian or any deputy custodian designated under section 57b–2(b)(2)(A) of this title.

(5) The term "documentary material" includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document.

(6) The term "person" means any natural person, partnership, corporation, association, or other legal entity, including any person acting under color or authority of State law.

(7) The term "violation" means any act or omission constituting an unfair or deceptive act or practice in or affecting commerce (within the meaning of section 45(a)(1) of this title) or any antitrust violation.

(8) The term "antitrust violation" means—

(A) any unfair method of competition (within the meaning of section 45(a)(1) of this title);

(B) any violation of the Clayton Act [15 U.S.C. 12 et seq.] or of any other Federal statute that prohibits, or makes available to the Commission a civil remedy with respect to, any restraint upon or monopolization of interstate or foreign trade or commerce;

(C) with respect to the International Antitrust Enforcement Assistance Act of 1994 [15 U.S.C. 6201 et seq.], any violation of any of the foreign antitrust laws (as defined in section 12 of such Act [15 U.S.C. 6211]) with respect to which a request is made under section 3 of such Act [15 U.S.C. 6202]; or

(D) any activity in preparation for a merger, acquisition, joint venture, or similar transaction, which if consummated, may result in any such unfair method of competition or in any such violation.

(b) Actions conducted by Commission respecting unfair or deceptive acts or practices in or affecting commerce

For the purpose of investigations performed pursuant to this section with respect to unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 45(a)(1) of this title); all actions of the Commission taken under section 46 and section 49 of this title shall be conducted pursuant to subsection (c) of this section.

(c) Issuance of demand; contents; service; verified return; sworn certificate; answers; taking of oral testimony

(1) Whenever the Commission has reason to believe that any person may be in possession,

custody, or control of any documentary material or tangible things, or may have any information, relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 45(a)(1) of this title), or to antitrust violations, the Commission may, before the institution of any proceedings under this subchapter, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such documentary material for inspection and copying or reproduction, to submit such tangible things, to file written reports or answers to questions, to give oral testimony concerning documentary material or other information, or to furnish any combination of such material, answers, or testimony.

(2) Each civil investigative demand shall state the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation.

(3) Each civil investigative demand for the production of documentary material shall—

(A) describe each class of documentary material to be produced under the demand with such definiteness and certainty as to permit such material to be fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(C) identify the custodian to whom such material shall be made available.

(4) Each civil investigative demand for the submission of tangible things shall—

(A) describe each class of tangible things to be submitted under the demand with such definiteness and certainty as to permit such things to be fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time within which the things so demanded may be assembled and submitted; and

(C) identify the custodian to whom such things shall be submitted.

(5) Each civil investigative demand for written reports or answers to questions shall—

(A) propound with definiteness and certainty the reports to be produced or the questions to be answered;

(B) prescribe a date or dates at which time written reports or answers to questions shall be submitted; and

(C) identify the custodian to whom such reports or answers shall be submitted.

(6) Each civil investigative demand for the giving of oral testimony shall—

(A) prescribe a date, time, and place at which oral testimony shall be commenced; and

(B) identify a Commission investigator who shall conduct the investigation and the custodian to whom the transcript of such investigation shall be submitted.

(7)(A) Any civil investigative demand may be served by any Commission investigator at any place within the territorial jurisdiction of any court of the United States.

(B) Any such demand or any enforcement petition filed under this section may be served upon any person who is not found within the territorial jurisdiction of any court of the United States, in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign nation.

(C) To the extent that the courts of the United States have authority to assert jurisdiction over such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by such person that such district court would have if such person were personally within the jurisdiction of such district court.

(8) Service of any civil investigative demand or any enforcement petition filed under this section may be made upon a partnership, corporation, association, or other legal entity by—

(A) delivering a duly executed copy of such demand or petition to any partner, executive officer, managing agent, or general agent of such partnership, corporation, association, or other

legal entity, or to any agent of such partnership, corporation, association, or other legal entity authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or other legal entity;

(B) delivering a duly executed copy of such demand or petition to the principal office or place of business of the partnership, corporation, association, or other legal entity to be served; or

(C) depositing a duly executed copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such partnership, corporation, association, or other legal entity at its principal office or place of business.

(9) Service of any civil investigative demand or of any enforcement petition filed under this section may be made upon any natural person by—

(A) delivering a duly executed copy of such demand or petition to the person to be served; or

(B) depositing a duly executed copy in the United States mails by registered or certified mail, return receipt requested, duly addressed to such person at his residence or principal office or place of business.

(10) A verified return by the individual serving any civil investigative demand or any enforcement petition filed under this section setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand or enforcement petition.

(11) The production of documentary material in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the custodian.

(12) The submission of tangible things in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the tangible things required by the demand and in the possession, custody, or control of the person to whom the demand is directed have been submitted to the custodian.

(13) Each reporting requirement or question in a civil investigative demand shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for the objection shall be stated in lieu of an answer, and it shall be submitted under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by any person responsible for answering each reporting requirement or question, to the effect that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted.

(14)(A) Any Commission investigator before whom oral testimony is to be taken shall put the witness on oath or affirmation and shall personally, or by any individual acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed. After the testimony is fully transcribed, the Commission investigator before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian.

(B) Any Commission investigator before whom oral testimony is to be taken shall exclude from the place where the testimony is to be taken all other persons except the person giving the testimony, his attorney, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

(C) The oral testimony of any person taken pursuant to a civil investigative demand shall be taken in the judicial district of the United States in which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the Commission investigator before whom

the oral testimony of such person is to be taken and such person.

(D)(i) Any person compelled to appear under a civil investigative demand for oral testimony pursuant to this section may be accompanied, represented, and advised by an attorney. The attorney may advise such person, in confidence, either upon the request of such person or upon the initiative of the attorney, with respect to any question asked of such person.

(ii) Such person or attorney may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may properly be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person shall not otherwise object to or refuse to answer any question, and shall not himself or through his attorney otherwise interrupt the oral examination. If such person refuses to answer any question, the Commission may petition the district court of the United States pursuant to this section for an order compelling such person to answer such question.

(iii) If such person refuses to answer any question on grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of section 6004 of title 18.

(E)(i) After the testimony of any witness is fully transcribed, the Commission investigator shall afford the witness (who may be accompanied by an attorney) a reasonable opportunity to examine the transcript. The transcript shall be read to or by the witness, unless such examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the Commission investigator with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign.

(ii) If the transcript is not signed by the witness during the 30-day period following the date upon which the witness is first afforded a reasonable opportunity to examine it, the Commission investigator shall sign the transcript and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with any reasons given for the failure to sign.

(F) The Commission investigator shall certify on the transcript that the witness was duly sworn by him and that the transcript is a true record of the testimony given by the witness, and the Commission investigator shall promptly deliver the transcript or send it by registered or certified mail to the custodian.

(G) The Commission investigator shall furnish a copy of the transcript (upon payment of reasonable charges for the transcription) to the witness only, except that the Commission may for good cause limit such witness to inspection of the official transcript of his testimony.

(H) Any witness appearing for the taking of oral testimony pursuant to a civil investigative demand shall be entitled to the same fees and mileage which are paid to witnesses in the district courts of the United States.

(d) Procedures for demand material

Materials received as a result of a civil investigative demand shall be subject to the procedures established in section 57b–2 of this title.

(e) Petition for enforcement

Whenever any person fails to comply with any civil investigative demand duly served upon him under this section, or whenever satisfactory copying or reproduction of material requested pursuant to the demand cannot be accomplished and such person refuses to surrender such material, the Commission, through such officers or attorneys as it may designate, may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person, a petition for an order of such court for the enforcement of this section. All process of any court to which application may be made as provided in this subsection may be served in any judicial district.

(f) Petition for order modifying or setting aside demand

(1) Not later than 20 days after the service of any civil investigative demand upon any person

under subsection (c) of this section, or at any time before the return date specified in the demand, whichever period is shorter, or within such period exceeding 20 days after service or in excess of such return date as may be prescribed in writing, subsequent to service, by any Commission investigator named in the demand, such person may file with the Commission a petition for an order by the Commission modifying or setting aside the demand.

(2) The time permitted for compliance with the demand in whole or in part, as deemed proper and ordered by the Commission, shall not run during the pendency of such petition at the Commission, except that such person shall comply with any portions of the demand not sought to be modified or set aside. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of the demand to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of such person.

(g) Custodial control of documentary material, tangible things, reports, etc.

At any time during which any custodian is in custody or control of any documentary material, tangible things, reports, answers to questions, or transcripts of oral testimony given by any person in compliance with any civil investigative demand, such person may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this section or section 57b–2 of this title.

(h) Jurisdiction of court

Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section. Any final order so entered shall be subject to appeal pursuant to section 1291 of title 28. Any disobedience of any final order entered under this section by any court shall be punished as a contempt of such court.

(i) Commission authority to issue subpoenas or make demand for information

Notwithstanding any other provision of law, the Commission shall have no authority to issue a subpoena or make a demand for information, under authority of this subchapter or any other provision of law, unless such subpoena or demand for information is signed by a Commissioner acting pursuant to a Commission resolution. The Commission shall not delegate the power conferred by this section to sign subpoenas or demands for information to any other person.

(j) Applicability of this section

The provisions of this section shall not—

(1) apply to any proceeding under section 45(b) of this title, any proceeding under section 11(b) of the Clayton Act (15 U.S.C. 21(b)), or any adjudicative proceeding under any other provision of law; or

(2) apply to or affect the jurisdiction, duties, or powers of any agency of the Federal Government, other than the Commission, regardless of whether such jurisdiction, duties, or powers are derived in whole or in part, by reference to this subchapter.

(Sept. 26, 1914, ch. 311, §20, as added Pub. L. 96–252, §13, May 28, 1980, 94 Stat. 380; amended Pub. L. 103–312, §7, Aug. 26, 1994, 108 Stat. 1693; Pub. L. 103–438, §3(e)(2)(B), Nov. 2, 1994, 108 Stat. 4598.)

REFERENCES IN TEXT

The Clayton Act, referred to in subsec. (a)(8)(B), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of this title, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of this title and Tables.

The International Antitrust Enforcement Assistance Act of 1994, referred to in subsec. (a)(8)(C), is Pub. L. 103–438, Nov. 2, 1994, 108 Stat. 4597, which is classified principally to chapter 88 (§6201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

PRIOR PROVISIONS

A prior section 20 of act Sept. 26, 1914, ch. 311, was renumbered section 24 and is classified to section 57c of this title.

AMENDMENTS

1994—Subsec. (a)(2). Pub. L. 103–312, §7(a)(1), inserted before period at end "or in any antitrust violations".

Subsec. (a)(3). Pub. L. 103–312, §7(a)(2), inserted before period at end "or any provisions relating to antitrust violations".

Subsec. (a)(7). Pub. L. 103–312, §7(a)(3), inserted before period at end "or any antitrust violation".

Subsec. (a)(8). Pub. L. 103–438 amended par. (8) generally. Prior to amendment, par. (8) read as follows: "The term 'antitrust violation' means any unfair method of competition (within the meaning of section 45(a)(1) of this title), any violation of the Clayton Act, any violation of any other Federal statute that prohibits, or makes available to the Commission a civil remedy with respect to, any restraint upon or monopolization of interstate or foreign trade or commerce, or any activity in preparation for a merger, acquisition, joint venture, or similar transaction, which if consummated, may result in such an unfair method of competition or violation."

Pub. L. 103–312, §7(a)(4), added par. (8).

Subsec. (c)(1). Pub. L. 103–312, §7(b)(1), inserted "or tangible things" after "control of any documentary material", "or to antitrust violations," after "section 45(a)(1) of this title),", and "to submit such tangible things," after "copying or reproduction,".

Subsec. (c)(4) to (14). Pub. L. 103–312, §7(b)(2), added pars. (4) and (12) and redesignated former pars. (4) to (10), (11), and (12) as (5) to (11), (13), and (14), respectively.

Subsec. (g). Pub. L. 103–312, §7(c), inserted ", tangible things" after "documentary material".

Subsec. (j)(1). Pub. L. 103–312, §7(d), inserted before semicolon at end ", any proceeding under section 11(b) of the Clayton Act (15 U.S.C. 21(b)), or any adjudicative proceeding under any other provision of law".

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–312 applicable only with respect to compulsory process issued after Aug. 26, 1994, see section 15(d) of Pub. L. 103–312, set out as a note under section 45 of this title.

EFFECTIVE DATE

Section effective May 28, 1980, see section 23 of Pub. L. 96–252, set out as an Effective Date of 1980 Amendment note under section 45 of this title.

§57b–2. Confidentiality

(a) Definitions

For purposes of this section:

(1) The term "material" means documentary material, tangible things, written reports or answers to questions, and transcripts of oral testimony.

(2) The term "Federal agency" has the meaning given it in section 552(e) [1] of title 5.

(b) Procedures respecting documents, tangible things, or transcripts of oral testimony received pursuant to compulsory process or investigation

(1) With respect to any document, tangible thing, or transcript of oral testimony received by the Commission pursuant to compulsory process in an investigation, a purpose of which is to determine whether any person may have violated any provision of the laws administered by the Commission, the procedures established in paragraph (2) through paragraph (7) shall apply.

(2)(A) The Commission shall designate a duly authorized agent to serve as custodian of documentary material, tangible things, or written reports or answers to questions, and transcripts of oral testimony, and such additional duly authorized agents as the Commission shall determine from time to time to be necessary to serve as deputies to the custodian.

(B) Any person upon whom any demand for the production of documentary material has been duly served shall make such material available for inspection and copying or reproduction to the custodian designated in such demand at the principal place of business of such person (or at such

other place as such custodian and such person thereafter may agree or prescribe in writing or as the court may direct pursuant to section 57b–1(h) of this title) on the return date specified in such demand (or on such later date as such custodian may prescribe in writing). Such person may upon written agreement between such person and the custodian substitute copies for originals of all or any part of such material.

(3)(A) The custodian to whom any documentary material, tangible things, written reports or answers to questions, and transcripts of oral testimony are delivered shall take physical possession of such material, reports or answers, and transcripts, and shall be responsible for the use made of such material, reports or answers, and transcripts, and for the return of material, pursuant to the requirements of this section.

(B) The custodian may prepare such copies of the documentary material, written reports or answers to questions, and transcripts of oral testimony, and may make tangible things available, as may be required for official use by any duly authorized officer or employee of the Commission under regulations which shall be promulgated by the Commission. Notwithstanding subparagraph (C), such material, things, and transcripts may be used by any such officer or employee in connection with the taking of oral testimony under this section.

(C) Except as otherwise provided in this section, while in the possession of the custodian, no documentary material, tangible things, reports or answers to questions, and transcripts of oral testimony shall be available for examination by any individual other than a duly authorized officer or employee of the Commission without the consent of the person who produced the material, things, or transcripts. Nothing in this section is intended to prevent disclosure to either House of the Congress or to any committee or subcommittee of the Congress, except that the Commission immediately shall notify the owner or provider of any such information of a request for information designated as confidential by the owner or provider.

(D) While in the possession of the custodian and under such reasonable terms and conditions as the Commission shall prescribe—

(i) documentary material, tangible things, or written reports shall be available for examination by the person who produced the material, or by any duly authorized representative of such person; and

(ii) answers to questions in writing and transcripts of oral testimony shall be available for examination by the person who produced the testimony or by his attorney.

(4) Whenever the Commission has instituted a proceeding against a person, partnership, or corporation, the custodian may deliver to any officer or employee of the Commission documentary material, tangible things, written reports or answers to questions, and transcripts of oral testimony for official use in connection with such proceeding. Upon the completion of the proceeding, the officer or employee shall return to the custodian any such material so delivered which has not been received into the record of the proceeding.

(5) If any documentary material, tangible things, written reports or answers to questions, and transcripts of oral testimony have been produced in the course of any investigation by any person pursuant to compulsory process and—

(A) any proceeding arising out of the investigation has been completed; or

(B) no proceeding in which the material may be used has been commenced within a reasonable time after completion of the examination and analysis of all such material and other information assembled in the course of the investigation;

then the custodian shall, upon written request of the person who produced the material, return to the person any such material which has not been received into the record of any such proceeding (other than copies of such material made by the custodian pursuant to paragraph (3)(B)).

(6) The custodian of any documentary material, written reports or answers to questions, and transcripts of oral testimony may deliver to any officers or employees of appropriate Federal law enforcement agencies, in response to a written request, copies of such material for use in connection with an investigation or proceeding under the jurisdiction of any such agency. The custodian of any

tangible things may make such things available for inspection to such persons on the same basis. Such materials shall not be made available to any such agency until the custodian received certification of any officer of such agency that such information will be maintained in confidence and will be used only for official law enforcement purposes. Such documentary material, results of inspections of tangible things, written reports or answers to questions, and transcripts of oral testimony may be used by any officer or employee of such agency only in such manner and subject to such conditions as apply to the Commission under this section. The custodian may make such materials available to any State law enforcement agency upon the prior certification of any officer of such agency that such information will be maintained in confidence and will be used only for official law enforcement purposes. The custodian may make such material available to any foreign law enforcement agency upon the prior certification of an appropriate official of any such foreign law enforcement agency, either by a prior agreement or memorandum of understanding with the Commission or by other written certification, that such material will be maintained in confidence and will be used only for official law enforcement purposes, if—

(A) the foreign law enforcement agency has set forth a bona fide legal basis for its authority to maintain the material in confidence;

(B) the materials are to be used for purposes of investigating, or engaging in enforcement proceedings related to, possible violations of—

(i) foreign laws prohibiting fraudulent or deceptive commercial practices, or other practices substantially similar to practices prohibited by any law administered by the Commission;

(ii) a law administered by the Commission, if disclosure of the material would further a Commission investigation or enforcement proceeding; or

(iii) with the approval of the Attorney General, other foreign criminal laws, if such foreign criminal laws are offenses defined in or covered by a criminal mutual legal assistance treaty in force between the government of the United States and the foreign law enforcement agency's government;

(C) the appropriate Federal banking agency (as defined in section 1813(q) of title 12) or, in the case of a Federal credit union, the National Credit Union Administration, has given its prior approval if the materials to be provided under subparagraph (B) are requested by the foreign law enforcement agency for the purpose of investigating, or engaging in enforcement proceedings based on, possible violations of law by a bank, a savings and loan institution described in section 57a(f)(3) of this title, or a Federal credit union described in section 57a(f)(4) of this title; and

(D) the foreign law enforcement agency is not from a foreign state that the Secretary of State has determined, in accordance with section 2405(j) of the Appendix to title 50, has repeatedly provided support for acts of international terrorism, unless and until such determination is rescinded pursuant to section 2405(j)(4) of the Appendix to title 50.

Nothing in the preceding sentence authorizes the disclosure of material obtained in connection with the administration of the Federal antitrust laws or foreign antitrust laws (as defined in paragraphs (5) and (7), respectively, of section 6211 of this title) to any officer or employee of a foreign law enforcement agency.

(7) In the event of the death, disability, or separation from service in the Commission of the custodian of any documentary material, tangible things, written reports or answers to questions, and transcripts of oral testimony produced under any demand issued under this subchapter, or the official relief of the custodian from responsibility for the custody and control of such material, the Commission promptly shall—

(A) designate under paragraph (2)(A) another duly authorized agent to serve as custodian of such material; and

(B) transmit in writing to the person who produced the material or testimony notice as to the identity and address of the successor so designated.

Any successor designated under paragraph (2)(A) as a result of the requirements of this paragraph

shall have (with regard to the material involved) all duties and responsibilities imposed by this section upon his predecessor in office with regard to such material, except that he shall not be held responsible for any default or dereliction which occurred before his designation.

(c) Information considered confidential

(1) All information reported to or otherwise obtained by the Commission which is not subject to the requirements of subsection (b) of this section shall be considered confidential when so marked by the person supplying the information and shall not be disclosed, except in accordance with the procedures established in paragraph (2) and paragraph (3).

(2) If the Commission determines that a document marked confidential by the person supplying it may be disclosed because it is not a trade secret or commercial or financial information which is obtained from any person and which is privileged or confidential, within the meaning of section 46(f) of this title, then the Commission shall notify such person in writing that the Commission intends to disclose the document at a date not less than 10 days after the date of receipt of notification.

(3) Any person receiving such notification may, if he believes disclosure of the document would cause disclosure of a trade secret, or commercial or financial information which is obtained from any person and which is privileged or confidential, within the meaning of section 46(f) of this title, before the date set for release of the document, bring an action in the district court of the United States for the district within which the documents are located or in the United States District Court for the District of Columbia to restrain disclosure of the document. Any person receiving such notification may file with the appropriate district court or court of appeals of the United States, as appropriate, an application for a stay of disclosure. The documents shall not be disclosed until the court has ruled on the application for a stay.

(d) Particular disclosures allowed

(1) The provisions of subsection (c) of this section shall not be construed to prohibit—

(A) the disclosure of information to either House of the Congress or to any committee or subcommittee of the Congress, except that the Commission immediately shall notify the owner or provider of any such information of a request for information designated as confidential by the owner or provider;

(B) the disclosure of the results of any investigation or study carried out or prepared by the Commission, except that no information shall be identified nor shall information be disclosed in such a manner as to disclose a trade secret of any person supplying the trade secret, or to disclose any commercial or financial information which is obtained from any person and which is privileged or confidential;

(C) the disclosure of relevant and material information in Commission adjudicative proceedings or in judicial proceedings to which the Commission is a party; or

(D) the disclosure to a Federal agency of disaggregated information obtained in accordance with section 3512 [1] of title 44, except that the recipient agency shall use such disaggregated information for economic, statistical, or policymaking purposes only, and shall not disclose such information in an individually identifiable form.

(2) Any disclosure of relevant and material information in Commission adjudicative proceedings or in judicial proceedings to which the Commission is a party shall be governed by the rules of the Commission for adjudicative proceedings or by court rules or orders, except that the rules of the Commission shall not be amended in a manner inconsistent with the purposes of this section.

(e) Effect on other statutory provisions limiting disclosure

Nothing in this section shall supersede any statutory provision which expressly prohibits or limits particular disclosures by the Commission, or which authorizes disclosures to any other Federal agency.

(f) Exemption from public disclosure

(1) In general

Any material which is received by the Commission in any investigation, a purpose of which is to determine whether any person may have violated any provision of the laws administered by the Commission, and which is provided pursuant to any compulsory process under this subchapter or which is provided voluntarily in place of such compulsory process shall not be required to be disclosed under section 552 of title 5 or any other provision of law, except as provided in paragraph (2)(B) of this section.

(2) Material obtained from a foreign source

(A) In general

Except as provided in subparagraph (B) of this paragraph, the Commission shall not be required to disclose under section 552 of title 5 or any other provision of law—

(i) any material obtained from a foreign law enforcement agency or other foreign government agency, if the foreign law enforcement agency or other foreign government agency has requested confidential treatment, or has precluded such disclosure under other use limitations, as a condition of providing the material;

(ii) any material reflecting a consumer complaint obtained from any other foreign source, if that foreign source supplying the material has requested confidential treatment as a condition of providing the material; or

(iii) any material reflecting a consumer complaint submitted to a Commission reporting mechanism sponsored in part by foreign law enforcement agencies or other foreign government agencies.

(B) Savings provision

Nothing in this subsection shall authorize the Commission to withhold information from the Congress or prevent the Commission from complying with an order of a court of the United States in an action commenced by the United States or the Commission.

(Sept. 26, 1914, ch. 311, §21, as added Pub. L. 96–252, §14, May 28, 1980, 94 Stat. 385; amended Pub. L. 103–312, §8, Aug. 26, 1994, 108 Stat. 1694; Pub. L. 109–455, §§6, 13, Dec. 22, 2006, 120 Stat. 3376, 3382; Pub. L. 112–203, §1, Dec. 4, 2012, 126 Stat. 1484.)

AMENDMENT OF SECTION

For repeal of amendment by section 13 of Pub. L. 109–455, see Termination Date of 2006 Amendment note below.

REFERENCES IN TEXT

Section 552(e) of title 5, referred to in subsec. (a)(2), was redesignated section 552(f) of Title 5, Government Organization and Employees, by section 1802(b) of Pub. L. 99–570.

Section 3512 of title 44, referred to in subsec. (d)(1)(D), which related to requirements for the collection of information by independent Federal regulatory agencies, was a part of chapter 35 of Title 44, Public Printing and Documents. Chapter 35 was amended generally by the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and subsequently by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

PRIOR PROVISIONS

A prior section 21 of act Sept. 26, 1914, ch. 311, was renumbered section 28 and is classified to section 58 of this title.

AMENDMENTS

2012—Pub. L. 112–203, §1, amended Pub. L. 109–455, §13. See 2006 Amendment notes below.

2006—Subsec. (b)(6). Pub. L. 109–455, §6(a), which inserted at end "The custodian may make such material available to any foreign law enforcement agency upon the prior certification of an appropriate official of any such foreign law enforcement agency, either by a prior agreement or memorandum of understanding with the Commission or by other written certification, that such material will be maintained in confidence and will be used only for official law enforcement purposes, if—", added subpars. (A) to (D) setting forth

conditions for making materials available to foreign law enforcement agencies, and inserted concluding provisions restricting disclosure of certain antitrust materials, was repealed by Pub. L. 109–455, §13, as amended by Pub. L. 112–203, §1. See Termination Date of 2006 Amendment note below.

Subsec. (f). Pub. L. 109–455, §6(b), which inserted heading "Exemption from public disclosure" and amended text of subsec. (f) generally, was repealed by Pub. L. 109–455, §13, as amended by Pub. L. 112–203, §1. Prior to amendment by section 6(b), text read as follows: "Any material which is received by the Commission in any investigation, a purpose of which is to determine whether any person may have violated any provision of the laws administered by the Commission, and which is provided pursuant to any compulsory process under this subchapter or which is provided voluntarily in place of such compulsory process shall be exempt from disclosure under section 552 of title 5." See Termination Date of 2006 Amendment note below.

1994—Subsec. (a)(1). Pub. L. 103–312, §8(1), inserted "tangible things," after "documentary material,".

Subsec. (b)(1). Pub. L. 103–312, §8(2), inserted ", tangible thing," after "document".

Subsec. (b)(2)(A). Pub. L. 103–312, §8(3), inserted "tangible things," after "documentary material,".

Subsec. (b)(3). Pub. L. 103–312, §8(4), in subpar. (A), inserted "tangible things," after "documentary material,", in subpar. (B), inserted ", and may make tangible things available," after "transcripts of oral testimony" and ", things," after "such material", in subpar. (C), inserted "tangible things," after "documentary material," and ", things," after "material", and in subpar. (D)(i), inserted ", tangible things," after "documentary material".

Subsec. (b)(4), (5). Pub. L. 103–312, §8(5), (6), inserted "tangible things," after "documentary material,".

Subsec. (b)(6). Pub. L. 103–312, §8(7), inserted "The custodian of any tangible things may make such things available for inspection to such persons on the same basis." after first sentence, and "results of inspections of tangible things," after "Such documentary material,".

Subsec. (b)(7). Pub. L. 103–312, §8(8), inserted "tangible things," after "documentary material,".

TERMINATION DATE OF 2006 AMENDMENT

Amendment by section 6 of Pub. L. 109–455 repealed effective Sept. 30, 2020, and provisions amended by Pub. L. 109–455 to be amended to read as if Pub. L. 109–455 had not been enacted, see section 13 of Pub. L. 109–455, set out as a note under section 44 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–312 applicable only with respect to compulsory process issued after Aug. 26, 1994, see section 15(d) of Pub. L. 103–312, set out as a note under section 45 of this title.

EFFECTIVE DATE

Section effective May 28, 1980, see section 23 of Pub. L. 96–252, set out as an Effective Date of 1980 Amendment note under section 45 of this title.

[1] *See References in Text note below.*

§57b–2a. Confidentiality and delayed notice of compulsory process for certain third parties

(a) Application with other laws

The Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) and chapter 121 of title 18 shall apply with respect to the Commission, except as otherwise provided in this section.

(b) Procedures for delay of notification or prohibition of disclosure

The procedures for delay of notification or prohibition of disclosure under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) and chapter 121 of title 18, including procedures for extensions of such delays or prohibitions, shall be available to the Commission, provided that, notwithstanding any provision therein—

(1) a court may issue an order delaying notification or prohibiting disclosure (including extending such an order) in accordance with the procedures of section 1109 of the Right to Financial Privacy Act (12 U.S.C. 3409) (if notification would otherwise be required under that Act), or section 2705 of title 18 (if notification would otherwise be required under chapter 121 of that title), if the presiding judge or magistrate judge finds that there is reason to believe that such

notification or disclosure may cause an adverse result as defined in subsection (g) of this section; and

(2) if notification would otherwise be required under chapter 121 of title 18, the Commission may delay notification (including extending such a delay) upon the execution of a written certification in accordance with the procedures of section 2705 of that title if the Commission finds that there is reason to believe that notification may cause an adverse result as defined in subsection (g) of this section.

(c) Ex parte application by Commission

(1) In general

If neither notification nor delayed notification by the Commission is required under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) or chapter 121 of title 18, the Commission may apply ex parte to a presiding judge or magistrate judge for an order prohibiting the recipient of compulsory process issued by the Commission from disclosing to any other person the existence of the process, notwithstanding any law or regulation of the United States, or under the constitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or the District of Columbia. The presiding judge or magistrate judge may enter such an order granting the requested prohibition of disclosure for a period not to exceed 60 days if there is reason to believe that disclosure may cause an adverse result as defined in subsection (g). The presiding judge or magistrate judge may grant extensions of this order of up to 30 days each in accordance with this subsection, except that in no event shall the prohibition continue in force for more than a total of 9 months.

(2) Application

This subsection shall apply only in connection with compulsory process issued by the Commission where the recipient of such process is not a subject of the investigation or proceeding at the time such process is issued.

(3) Limitation

No order issued under this subsection shall prohibit any recipient from disclosing to a Federal agency that the recipient has received compulsory process from the Commission.

(d) No liability for failure to notify

If neither notification nor delayed notification by the Commission is required under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) or chapter 121 of title 18, the recipient of compulsory process issued by the Commission under this subchapter shall not be liable under any law or regulation of the United States, or under the constitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or the District of Columbia, or under any contract or other legally enforceable agreement, for failure to provide notice to any person that such process has been issued or that the recipient has provided information in response to such process. The preceding sentence does not exempt any recipient from liability for—

(1) the underlying conduct reported;

(2) a failure to comply with the record retention requirements under section 1104(c) of the Right to Financial Privacy Act (12 U.S.C. 3404[c]), where applicable; or

(3) any failure to comply with any obligation the recipient may have to disclose to a Federal agency that the recipient has received compulsory process from the Commission or intends to provide or has provided information to the Commission in response to such process.

(e) Venue and procedure

(1) In general

All judicial proceedings initiated by the Commission under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.), chapter 121 of title 18, or this section may be brought in the United

States District Court for the District of Columbia or any other appropriate United States District Court. All ex parte applications by the Commission under this section related to a single investigation may be brought in a single proceeding.

(2) In camera proceedings

Upon application by the Commission, all judicial proceedings pursuant to this section shall be held in camera and the records thereof sealed until expiration of the period of delay or such other date as the presiding judge or magistrate judge may permit.

(f) Section not to apply to antitrust investigations or proceedings

This section shall not apply to an investigation or proceeding related to the administration of Federal antitrust laws or foreign antitrust laws (as defined in paragraphs (5) and (7), respectively, of section 6211 of this title).

(g) Adverse result defined

For purposes of this section the term "adverse result" means—

(1) endangering the life or physical safety of an individual;

(2) flight from prosecution;

(3) the destruction of, or tampering with, evidence;

(4) the intimidation of potential witnesses; or

(5) otherwise seriously jeopardizing an investigation or proceeding related to fraudulent or deceptive commercial practices or persons involved in such practices, or unduly delaying a trial related to such practices or persons involved in such practices, including, but not limited to, by—

(A) the transfer outside the territorial limits of the United States of assets or records related to fraudulent or deceptive commercial practices or related to persons involved in such practices;

(B) impeding the ability of the Commission to identify persons involved in fraudulent or deceptive commercial practices, or to trace the source or disposition of funds related to such practices; or

(C) the dissipation, fraudulent transfer, or concealment of assets subject to recovery by the Commission.

(Sept. 26, 1914, ch. 311, §21A, as added Pub. L. 109–455, §7(a), Dec. 22, 2006, 120 Stat. 3377.)

REPEAL OF SECTION

For repeal of section by section 13 of Pub. L. 109–455, see Effective Date of Repeal note below.

REFERENCES IN TEXT

The Right to Financial Privacy Act, referred to in subsecs. (a) to (e), probably means the Right to Financial Privacy Act of 1978, Pub. L. 95–630, title XI, Nov. 10, 1978, 92 Stat. 3697, as amended, which is classified generally to chapter 35 (§3401 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 3401 of Title 12 and Tables.

EFFECTIVE DATE OF REPEAL

Section repealed effective Sept. 30, 2020, see section 13 of Pub. L. 109–455, as amended by section 1 of Pub. L. 112–203, set out as a Termination Date of 2006 Amendment note under section 44 of this title.

§57b–2b. Protection for voluntary provision of information

(a) In general

(1) No liability for providing certain material

An entity described in paragraphs (2) or (3) of subsection (d) that voluntarily provides material to the Commission that such entity reasonably believes is relevant to—

(A) a possible unfair or deceptive act or practice, as defined in section 45(a) of this title; or

(B) assets subject to recovery by the Commission, including assets located in foreign jurisdictions;

shall not be liable to any person under any law or regulation of the United States, or under the constitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or the District of Columbia, for such provision of material or for any failure to provide notice of such provision of material or of intention to so provide material.

(2) Limitations

Nothing in this subsection shall be construed to exempt any such entity from liability—

(A) for the underlying conduct reported; or

(B) to any Federal agency for providing such material or for any failure to comply with any obligation the entity may have to notify a Federal agency prior to providing such material to the Commission.

(b) Certain financial institutions

An entity described in paragraph (1) of subsection (d) shall, in accordance with section 5318(g)(3) of title 31, be exempt from liability for making a voluntary disclosure to the Commission of any possible violation of law or regulation, including—

(1) a disclosure regarding assets, including assets located in foreign jurisdictions—

(A) related to possibly fraudulent or deceptive commercial practices;

(B) related to persons involved in such practices; or

(C) otherwise subject to recovery by the Commission; or

(2) a disclosure regarding suspicious chargeback rates related to possibly fraudulent or deceptive commercial practices.

(c) Consumer complaints

Any entity described in subsection (d) that voluntarily provides consumer complaints sent to it, or information contained therein, to the Commission shall not be liable to any person under any law or regulation of the United States, or under the constitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or the District of Columbia, for such provision of material or for any failure to provide notice of such provision of material or of intention to so provide material. This subsection shall not provide any exemption from liability for the underlying conduct.

(d) Application

This section applies to the following entities, whether foreign or domestic:

(1) A financial institution as defined in section 5312 of title 31.

(2) To the extent not included in paragraph (1), a bank or thrift institution, a commercial bank or trust company, an investment company, a credit card issuer, an operator of a credit card system, and an issuer, redeemer, or cashier of travelers' checks, money orders, or similar instruments.

(3) A courier service, a commercial mail receiving agency, an industry membership organization, a payment system provider, a consumer reporting agency, a domain name registrar or registry acting as such, and a provider of alternative dispute resolution services.

(4) An Internet service provider or provider of telephone services.

(Sept. 26, 1914, ch. 311, §21B, as added Pub. L. 109–455, §8, Dec. 22, 2006, 120 Stat. 3380.)

REPEAL OF SECTION

For repeal of section by section 13 of Pub. L. 109–455, see Effective Date of Repeal note below.

EFFECTIVE DATE OF REPEAL

Section repealed effective Sept. 30, 2020, see section 13 of Pub. L. 109–455, as amended by section 1 of Pub. L. 112–203, set out as a Termination Date of 2006 Amendment note under section 44 of this title.

§57b–3. Rulemaking process

(a) Definitions

For purposes of this section:

(1) The term "rule" means any rule promulgated by the Commission under section 46 or section 57a of this title, except that such term does not include interpretive rules, rules involving Commission management or personnel, general statements of policy, or rules relating to Commission organization, procedure, or practice. Such term does not include any amendment to a rule unless the Commission—

(A) estimates that such amendment will have an annual effect on the national economy of $100,000,000 or more;

(B) estimates that such amendment will cause a substantial change in the cost or price of goods or services which are used extensively by particular industries, which are supplied extensively in particular geographic regions, or which are acquired in significant quantities by the Federal Government, or by State or local governments; or

(C) otherwise determines that such amendment will have a significant impact upon persons subject to regulation under such amendment and upon consumers.

(2) The term "rulemaking" means any Commission process for formulating or amending a rule.

(b) Notice of proposed rulemaking; regulatory analysis; contents; issuance

(1) In any case in which the Commission publishes notice of a proposed rulemaking, the Commission shall issue a preliminary regulatory analysis relating to the proposed rule involved. Each preliminary regulatory analysis shall contain—

(A) a concise statement of the need for, and the objectives of, the proposed rule;

(B) a description of any reasonable alternatives to the proposed rule which may accomplish the stated objective of the rule in a manner consistent with applicable law; and

(C) for the proposed rule, and for each of the alternatives described in the analysis, a preliminary analysis of the projected benefits and any adverse economic effects and any other effects, and of the effectiveness of the proposed rule and each alternative in meeting the stated objectives of the proposed rule.

(2) In any case in which the Commission promulgates a final rule, the Commission shall issue a final regulatory analysis relating to the final rule. Each final regulatory analysis shall contain—

(A) a concise statement of the need for, and the objectives of, the final rule;

(B) a description of any alternatives to the final rule which were considered by the Commission;

(C) an analysis of the projected benefits and any adverse economic effects and any other effects of the final rule;

(D) an explanation of the reasons for the determination of the Commission that the final rule will attain its objectives in a manner consistent with applicable law and the reasons the particular alternative was chosen; and

(E) a summary of any significant issues raised by the comments submitted during the public comment period in response to the preliminary regulatory analysis, and a summary of the assessment by the Commission of such issues.

(3)(A) In order to avoid duplication or waste, the Commission is authorized to—

(i) consider a series of closely related rules as one rule for purposes of this subsection; and

(ii) whenever appropriate, incorporate any data or analysis contained in a regulatory analysis issued under this subsection in the statement of basis and purpose to accompany any rule promulgated under section 57a(a)(1)(B) of this title, and incorporate by reference in any preliminary or final regulatory analysis information contained in a notice of proposed rulemaking or a statement of basis and purpose.

(B) The Commission shall include, in each notice of proposed rulemaking and in each publication of a final rule, a statement of the manner in which the public may obtain copies of the preliminary

and final regulatory analyses. The Commission may charge a reasonable fee for the copying and mailing of regulatory analyses. The regulatory analyses shall be furnished without charge or at a reduced charge if the Commission determines that waiver or reduction of the fee is in the public interest because furnishing the information primarily benefits the general public.

(4) The Commission is authorized to delay the completion of any of the requirements established in this subsection by publishing in the Federal Register, not later than the date of publication of the final rule involved, a finding that the final rule is being promulgated in response to an emergency which makes timely compliance with the provisions of this subsection impracticable. Such publication shall include a statement of the reasons for such finding.

(5) The requirements of this subsection shall not be construed to alter in any manner the substantive standards applicable to any action by the Commission, or the procedural standards otherwise applicable to such action.

(c) Judicial review

(1) The contents and adequacy of any regulatory analysis prepared or issued by the Commission under this section, including the adequacy of any procedure involved in such preparation or issuance, shall not be subject to any judicial review in any court, except that a court, upon review of a rule pursuant to section 57a(e) of this title, may set aside such rule if the Commission has failed entirely to prepare a regulatory analysis.

(2) Except as specified in paragraph (1), no Commission action may be invalidated, remanded, or otherwise affected by any court on account of any failure to comply with the requirements of this section.

(3) The provisions of this subsection do not alter the substantive or procedural standards otherwise applicable to judicial review of any action by the Commission.

(d) Regulatory agenda; contents; publication dates in Federal Register

(1) The Commission shall publish at least semiannually a regulatory agenda. Each regulatory agenda shall contain a list of rules which the Commission intends to propose or promulgate during the 12-month period following the publication of the agenda. On the first Monday in October of each year, the Commission shall publish in the Federal Register a schedule showing the dates during the current fiscal year on which the semiannual regulatory agenda of the Commission will be published.

(2) For each rule listed in a regulatory agenda, the Commission shall—

(A) describe the rule;

(B) state the objectives of and the legal basis for the rule; and

(C) specify any dates established or anticipated by the Commission for taking action, including dates for advance notice of proposed rulemaking, notices of proposed rulemaking, and final action by the Commission.

(3) Each regulatory agenda shall state the name, office address, and office telephone number of the Commission officer or employee responsible for responding to any inquiry relating to each rule listed.

(4) The Commission shall not propose or promulgate a rule which was not listed on a regulatory agenda unless the Commission publishes with the rule an explanation of the reasons the rule was omitted from such agenda.

(Sept. 26, 1914, ch. 311, §22, as added Pub. L. 96–252, §15, May 28, 1980, 94 Stat. 388.)

EFFECTIVE DATE

Section effective May 28, 1980, see section 23 of Pub. L. 96–252, set out as an Effective Date of 1980 Amendment note under section 45 of this title.

§57b–4. Good faith reliance on actions of Board of Governors

(a) "Board of Governors" defined

For purposes of this section, the term "Board of Governors' means the Board of Governors" of the Federal Reserve System.

(b) Use as defense

Notwithstanding any other provision of law, if—

(1) any person, partnership, or corporation engages in any conduct or practice which allegedly constitutes a violation of any Federal law with respect to which the Board of Governors of the Federal Reserve System has rulemaking authority; and

(2) such person, partnership, or corporation engaged in such conduct or practice in good faith reliance upon, and in conformity with, any rule, regulation, statement of interpretation, or statement of approval prescribed or issued by the Board of Governors under such Federal law;

then such good faith reliance shall constitute a defense in any administrative or judicial proceeding commenced against such person, partnership, or corporation by the Commission under this subchapter or in any administrative or judicial proceeding commenced against such person, partnership, or corporation by the Attorney General of the United States, upon request made by the Commission, under any provision of law.

(c) Applicability of subsection (b)

The provisions of subsection (b) of this section shall apply regardless of whether any rule, regulation, statement of interpretation, or statement of approval prescribed or issued by the Board of Governors is amended, rescinded, or held to be invalid by judicial authority or any other authority after a person, partnership, or corporation has engaged in any conduct or practice in good faith reliance upon, and in conformity with, such rule, regulation, statement of interpretation, or statement of approval.

(d) Request for issuance of statement or interpretation concerning conduct or practice

If, in any case in which—

(1) the Board of Governors has rulemaking authority with respect to any Federal law; and

(2) the Commission is authorized to enforce the requirements of such Federal law;

any person, partnership, or corporation submits a request to the Board of Governors for the issuance of any statement of interpretation or statement of approval relating to any conduct or practice of such person, partnership, or corporation which may be subject to the requirements of such Federal law, then the Board of Governors shall dispose of such request as soon as practicable after the receipt of such.

(Sept. 26, 1914, ch. 311, §23, as added Pub. L. 96–252, §16, May 28, 1980, 94 Stat. 390.)

EFFECTIVE DATE

Section effective May 28, 1980, see section 23 of Pub. L. 96–252, set out as an Effective Date of 1980 Amendment note under section 45 of this title.

§57b–5. Agricultural cooperatives

(a) The Commission shall not have any authority to conduct any study, investigation, or prosecution of any agricultural cooperative for any conduct which, because of the provisions of sections 291 and 292 of title 7, is not a violation of any of the antitrust Acts or this subchapter.

(b) The Commission shall not have any authority to conduct any study or investigation of any agricultural marketing orders.

(Sept. 26, 1914, ch. 311, §24, as added Pub. L. 103–312, §2, Aug. 26, 1994, 108 Stat. 1691.)

PRIOR PROVISIONS

A prior section 24 of act Sept. 26, 1914, was renumbered section 25 and is classified to section 57c of this title.

§57c. Authorization of appropriations

There are authorized to be appropriated to carry out the functions, powers, and duties of the Commission not to exceed $92,700,000 for fiscal year 1994; not to exceed $99,000,000 for fiscal year 1995; not to exceed $102,000,000 for fiscal year 1996; not to exceed $107,000,000 for fiscal year 1997; and not to exceed $111,000,000 for fiscal year 1998.

(Sept. 26, 1914, ch. 311, §25, formerly §20, as added Pub. L. 93–367, title II, §207, Jan. 4, 1975, 88 Stat. 2203; amended Pub. L. 94–299, §1, May 29, 1976, 90 Stat. 588; renumbered §24 and amended Pub. L. 96–252, §§13, 17, May 28, 1980, 94 Stat. 380, 391; renumbered §25 and amended Pub. L. 103–312, §§2, 14, Aug. 26, 1994, 108 Stat. 1691, 1697; Pub. L. 104–216, §2, Oct. 1, 1996, 110 Stat. 3019.)

PRIOR PROVISIONS

A prior section 25 of act Sept. 26, 1914, was renumbered section 28 and is classified to section 58 of this title.

AMENDMENTS

1996—Pub. L. 104–216 struck out "and" before "not to exceed $102,000,000" and inserted before period at end "; not to exceed $107,000,000 for fiscal year 1997; and not to exceed $111,000,000 for fiscal year 1998".

1994—Pub. L. 103–312, §14, amended section generally. Prior to amendment, section read as follows: "There are authorized to be appropriated to carry out the functions, powers, and duties of the Federal Trade Commission not to exceed $42,000,000 for the fiscal year ending June 30, 1975; not to exceed $47,091,000 for the fiscal year ending June 30, 1976; not to exceed $50,000,000 for the fiscal year ending in 1977; not to exceed $70,000,000 for the fiscal year ending September 30, 1980; not to exceed $75,000,000 for the fiscal year ending September 30, 1981; and not to exceed $80,000,000 for the fiscal year ending September 30, 1982."

1980—Pub. L. 96–252, §17, substituted "1977; not to exceed $70,000,000 for the fiscal year ending September 30, 1980; not to exceed $75,000,000 for the fiscal year ending September 30, 1981; and not to exceed $80,000,000 for the fiscal year ending September 30, 1982" for "1977. For fiscal years ending after 1977, there may be appropriated to carry out such functions, powers, and duties, only such sums as the Congress may hereafter authorize by law".

1976—Pub. L. 94–299 substituted "$47,091,000" for "$46,000,000".

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–252 effective May 28, 1980, see section 23 of Pub. L. 96–252, set out as a note under section 45 of this title.

INTERVENTION BY COMMISSION IN CERTAIN PROCEEDINGS

Pub. L. 103–312, §11, Aug. 26, 1994, 108 Stat. 1696, provided that:

"(a) LIMITATION ON USE OF AUTHORIZED FUNDS.—The Federal Trade Commission shall not have any authority to use any funds which are authorized to be appropriated to carry out the Federal Trade Commission Act (15 U.S.C. 41 et seq.) for fiscal years 1994, 1995, and 1996 for the purpose of submitting statements to, appearing before, or intervening in the proceedings of, any Federal or State agency or State legislative body concerning proposed rules or legislation that the agency or legislative body is considering unless the Commission advises the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives regarding such action as soon as possible.

"(b) CONTENTS OF NOTICE TO CONGRESS.—The notice required in subsection (a) shall include the name of the agency or legislator involved, the date of such action, and a concise statement regarding the nature and purpose of such action."

RESTRICTION ON USE OF FUNDS TO CANCEL REGISTRATION OF TRADEMARKS

Section 18 of Pub. L. 96–252 prohibited the Federal Trade Commission from using any funds authorized to be appropriated to carry out this subchapter for fiscal year 1980, 1981, or 1982 (or 1983 as extended by Pub. L. 97–377, title I §101(d), Dec. 21, 1982, 96 Stat. 1870), under this section, for the purpose of taking any action under 15 U.S.C. 1064 with respect to the cancellation of the registration of any mark on the ground that such mark has become the common descriptive name of an article or substance.

RESTRICTION ON USE OF FUNDS RESPECTING STUDY, INVESTIGATION, OR PROSECUTION OF ANY AGRICULTURAL COOPERATIVE OR STUDY OR INVESTIGATION OF ANY AGRICULTURAL MARKETING ORDERS

Section 20 of Pub. L. 96–252 prohibited the Federal Trade Commission from using any funds authorized to be appropriated to carry out this subchapter for fiscal year 1980, 1981, or 1982 (or 1983 as extended by Pub. L. 97–377, title I §101(d), Dec. 21, 1982, 96 Stat. 1870), under this section, for the purpose of conducting any study, investigation, or prosecution of any agricultural cooperative for any conduct which, because of the provisions of the Capper-Volstead Act (7 U.S.C. 291 et seq.), was not a violation of any Federal antitrust Act or this subchapter or for the purpose of conducting any study or investigation of any agricultural marketing orders.

§57c–1. Staff exchanges

(a) In general

The Commission may—

(1) retain or employ officers or employees of foreign government agencies on a temporary basis as employees of the Commission pursuant to section 42 of this title or section 3101 or section 3109 of title 5; and

(2) detail officers or employees of the Commission to work on a temporary basis for appropriate foreign government agencies.

(b) Reciprocity and reimbursement

The staff arrangements described in subsection (a) need not be reciprocal. The Commission may accept payment or reimbursement, in cash or in kind, from a foreign government agency to which this section is applicable, or payment or reimbursement made on behalf of such agency, for expenses incurred by the Commission, its members, and employees in carrying out such arrangements.

(c) Standards of conduct

A person appointed under subsection (a)(1) shall be subject to the provisions of law relating to ethics, conflicts of interest, corruption, and any other criminal or civil statute or regulation governing the standards of conduct for Federal employees that are applicable to the type of appointment.

(Sept. 26, 1914, ch. 311, §25A, as added Pub. L. 109–455, §9, Dec. 22, 2006, 120 Stat. 3381.)

REPEAL OF SECTION

For repeal of section by section 13 of Pub. L. 109–455, see Effective Date of Repeal note below.

EFFECTIVE DATE OF REPEAL

Section repealed effective Sept. 30, 2020, see section 13 of Pub. L. 109–455, as amended by section 1 of Pub. L. 112–203, set out as a Termination Date of 2006 Amendment note under section 44 of this title.

§57c–2. Reimbursement of expenses

The Commission may accept payment or reimbursement, in cash or in kind, from a domestic or foreign law enforcement agency, or payment or reimbursement made on behalf of such agency, for expenses incurred by the Commission, its members, or employees in carrying out any activity pursuant to a statute administered by the Commission without regard to any other provision of law. Any such payments or reimbursements shall be considered a reimbursement to the appropriated funds of the Commission.

(Sept. 26, 1914, ch. 311, §26, as added Pub. L. 109–455, §11(2), Dec. 22, 2006, 120 Stat. 3381.)

REPEAL OF SECTION

For repeal of section by section 13 of Pub. L. 109–455, see Effective Date of Repeal note below.

PRIOR PROVISIONS

A prior section 26 of act Sept. 26, 1914, was renumbered section 28 and is classified to section 58 of this title.

EFFECTIVE DATE OF REPEAL

Section repealed effective Sept. 30, 2020, see section 13 of Pub. L. 109–455, as amended by section 1 of Pub. L. 112–203, set out as a Termination Date of 2006 Amendment note under section 44 of this title.

§58. Short title

This subchapter may be cited as the "Federal Trade Commission Act".

(Sept. 26, 1914, ch. 311, §28, formerly §18, as added Mar. 21, 1938, ch. 49, §4, 52 Stat. 114; renumbered §21, Pub. L. 93–637, title II, §202(a), Jan. 4, 1975, 88 Stat. 2193; renumbered §25, Pub. L. 96–252, §13, May 28, 1980, 94 Stat. 380; renumbered §26, Pub. L. 103–312, §2, Aug. 26, 1994, 108 Stat. 1691; renumbered §28, Pub. L. 109–455, §11(1), Dec. 22, 2006, 120 Stat. 3381.)

AMENDMENT OF SECTION

For repeal of amendment renumbering this section by section 13 of Pub. L. 109–455, see Termination Date of 2006 Amendment note below.

TERMINATION DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–455 repealed effective Sept. 30, 2020, and provisions amended by Pub. L. 109–455 to be amended to read as if Pub. L. 109–455 had not been enacted, see section 13 of Pub. L. 109–455, as amended by section 1 of Pub. L. 112–203, set out as a note under section 44 of this title.

SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109–455, §1, Dec. 22, 2006, 120 Stat. 3372, provided that: "This Act [enacting sections 57b–2a, 57b–2b, 57c–1, and 57c–2 of this title, amending this section, sections 44, 45, 46, 56, and 57b–2 of this title, and section 3412 of Title 12, Banks and Banking, and enacting provisions set out as notes under section 44 of this title] may be cited as the 'Undertaking Spam, Spyware, And Fraud Enforcement With Enforcers beyond Borders Act of 2006' or the 'U.S. SAFE WEB Act of 2006'."

[Section 1 of Pub. L. 109–455, set out above, repealed effective Sept. 30, 2020, see section 13 of Pub. L. 109–455, as amended by section 1 of Pub. L. 112–203, set out as a Termination Date of 2006 Amendment note under section 44 of this title.]

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–216, §1, Oct. 1, 1996, 110 Stat. 3019, provided that: "This Act [amending section 57c of this title] may be cited as the 'Federal Trade Commission Reauthorization Act of 1996'."

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–312, §1(a), Aug. 26, 1994, 108 Stat. 1691, provided that: "This Act [enacting section 57b–5 of this title, amending this section and sections 45, 53, 57a, 57b–1, 57b–2, and 57c of this title, and enacting provisions set out as notes under sections 45 and 57c of this title] may be cited as the 'Federal Trade Commission Act Amendments of 1994'."

SHORT TITLE OF 1980 AMENDMENT

Pub. L. 96–252, §1, May 28, 1980, 94 Stat. 374, provided that "This Act [enacting sections 57a–1 and 57b–1 to 57b–4 of this title, amending this section and sections 45, 46, 50, 57a, and 57c of this title, and enacting provisions set out as notes under sections 45, 46, 57a, 57a–1, and 57c of this title] may be cited as the 'Federal Trade Commission Improvements Act of 1980'."

SUBCHAPTER II—PROMOTION OF EXPORT TRADE

§61. Export trade; definitions

The words "export trade" wherever used in this subchapter mean solely trade or commerce in goods, wares, or merchandise exported, or in the course of being exported from the United States or any Territory thereof to any foreign nation; but the words "export trade" shall not be deemed to include the production, manufacture, or selling for consumption or for resale, within the United States or any Territory thereof, of such goods, wares, or merchandise, or any act in the course of such production, manufacture, or selling for consumption or for resale.

The words "trade within the United States" wherever used in this subchapter mean trade or commerce among the several States or in any Territory of the United States, or in the District of Columbia, or between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or between the District of Columbia and any State or States.

The word "association" wherever used in this subchapter means any corporation or combination, by contract or otherwise, of two or more persons, partnerships, or corporations.

(Apr. 10, 1918, ch. 50, §1, 40 Stat. 516.)

§62. Export trade and antitrust legislation

Nothing contained in the Sherman Act [15 U.S.C. 1 et seq.] shall be construed as declaring to be illegal an association entered into for the sole purpose of engaging in export trade and actually engaged solely in such export trade, or an agreement made or act done in the course of export trade by such association, provided such association, agreement, or act is not in restraint of trade within the United States, and is not in restraint of the export trade of any domestic competitor of such association: *Provided*, That such association does not, either in the United States or elsewhere, enter into any agreement, understanding, or conspiracy, or do any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein.

(Apr. 10, 1918, ch. 50, §2, 40 Stat. 517.)

CODIFICATION

"Sherman Act [15 U.S.C. 1 et seq.]" substituted in text for "Act entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies,' approved July second, eighteen hundred and ninety" on authority of the enacting clause of that Act set out as a Short Title note under section 1 of this title.

§63. Acquisition of stock of export trade corporation

Nothing contained in section 18 of this title shall be construed to forbid the acquisition or ownership by any corporation of the whole or any part of the stock or other capital of any corporation organized solely for the purpose of engaging in export trade, and actually engaged solely in such export trade, unless the effect of such acquisition or ownership may be to restrain trade or substantially lessen competition within the United States.

(Apr. 10, 1918, ch. 50, §3, 40 Stat. 517.)

§64. Unfair methods of competition in export trade

The prohibition against "unfair methods of competition" and the remedies provided for enforcing said prohibition contained in the Federal Trade Commission Act [15 U.S.C. 41 et seq.] shall be construed as extending to unfair methods of competition used in export trade against competitors engaged in export trade, even though the acts constituting such unfair methods are done without the territorial jurisdiction of the United States.

(Apr. 10, 1918, ch. 50, §4, 40 Stat. 517.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in text, is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of this chapter. For complete classification of this Act to the Code, see section 58 of this title and Tables.

CODIFICATION

"Federal Trade Commission Act [15 U.S.C. 41 et seq.]" substituted in text for "Act entitled 'An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,' approved September twenty-sixth, nineteen hundred and fourteen" on authority of section 18 of that Act [15 U.S.C. 58].

§65. Information required from export trade corporation; powers of Federal Trade Commission

Every association which engages solely in export trade, within thirty days after its creation, shall file with the Federal Trade Commission a verified written statement setting forth the location of its offices or places of business and the names and addresses of all its officers and of all its stockholders or members, and if a corporation, a copy of its certificate or articles of incorporation and bylaws, and if unincorporated, a copy of its articles or contract of association, and on the 1st day of January of each year every association engaged solely in export trade shall make a like statement of the location of its offices or places of business and the names and addresses of all its officers and of all its stockholders or members and of all amendments to and changes in its articles or certificate of incorporation or in its articles or contract of association. It shall also furnish to the Commission such information as the Commission may require as to its organization business, conduct, practices, management, and relation to other associations, corporations, partnerships, and individuals. Any association which shall fail so to do shall not have the benefit of the provisions of sections 62 and 63 of this title, and it shall also forfeit to the United States the sum of $100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the association has its principal office, or in any district in which it shall do business. It shall be the duty of the various United States attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of the forfeiture. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Whenever the Federal Trade Commission shall have reason to believe that an association or any agreement made or act done by such association is in restraint of trade within the United States or in restraint of the export trade of any domestic competitor of such association, or that an association either in the United States or elsewhere has entered into any agreement, understanding, or conspiracy, or done any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein, it shall summon such association, its officers, and agents to appear before it, and thereafter conduct an investigation into the alleged violations of law. Upon investigation, if it shall conclude that the law has been violated, it may make to such association recommendations for the readjustment of its business, in order that it may thereafter maintain its organization and management and conduct its business in accordance with law. If such association fails to comply with the recommendations of the Federal Trade Commission, said Commission shall refer its findings and recommendations to the Attorney General of the United States for such action thereon as he may deem proper.

For the purpose of enforcing these provisions the Federal Trade Commission shall have all the powers, so far as applicable, given it in the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(Apr. 10, 1918, ch. 50, §5, 40 Stat. 517; June 25, 1948, ch. 646, §1, 62 Stat. 909.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in text, is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of this chapter. For complete classification of this Act to the Code, see section 58 of this title and Tables.

CODIFICATION

"Federal Trade Commission Act [15 U.S.C. 41 et seq.]" substituted in text for "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," on authority of section 18 of that Act [15 U.S.C. 58].

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States attorneys" for "district attorneys". See section 541 of Title 28, Judiciary and Judicial Procedure.

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

§66. Short title

This subchapter may be cited as the "Webb-Pomerene Act".

(Apr. 10, 1918, ch. 50, §6, as added Pub. L. 94–435, title III, §305(c), Sept. 30, 1976, 90 Stat. 1397.)

SUBCHAPTER III—LABELING OF WOOL PRODUCTS

§68. Definitions

As used in this subchapter—

(a) The term "person" means an individual, partnership, corporation, association, or any other form of business enterprise, plural or singular, as the case demands.

(b) The term "wool" means the fiber from the fleece of the sheep or lamb or hair of the Angora or Cashmere goat (and may include the so-called specialty fibers from the hair of the camel, alpaca, llama, and vicuna) which has never been reclaimed from any woven or felted wool product.

(c) The term "recycled wool" means (1) the resulting fiber when wool has been woven or felted into a wool product which, without ever having been utilized in any way by the ultimate consumer, subsequently has been made into a fibrous state, or (2) the resulting fiber when wool or reprocessed wool has been spun, woven, knitted, or felted into a wool product which, after having been used in any way by the ultimate consumer, subsequently has been made into a fibrous state.

(d) The term "wool product" means any product, or any portion of a product, which contains, purports to contain, or in any way is represented as containing wool or recycled wool.

(e) The term "Commission" means the Federal Trade Commission.

(f) The term "Federal Trade Commission Act" means the Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914, as amended, and the Federal Trade Commission Act approved March 21, 1938.

(g) The term "commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

(h) The term "Territory" includes the insular possessions of the United States and also any Territory of the United States.

(Oct. 14, 1940, ch. 871, §2, 54 Stat. 1128; Pub. L. 96–242, §1, May 5, 1980, 94 Stat. 344.)

REFERENCES IN TEXT

The Act of September 26, 1914, referred to in subsec. (f), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as

amended, which is classified generally to subchapter I (§41 et seq.) of this chapter. For complete classification of this Act to the Code, see section 58 of this title and Tables.

The Federal Trade Commission Act approved March 21, 1938, referred to in subsec. (f), is act Mar. 21, 1938, ch. 49, 52 Stat. 111, as amended. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1980—Subsec. (c). Pub. L. 96–242, §1(a), substituted "recycled wool" for "reprocessed wool" as term defined, designated existing definition as cl. (1), and added cl. (2).

Subsecs. (d) to (i). Pub. L. 96–242, §1(b)–(d), redesignated subsecs. (e) to (i) as (d) to (h), respectively, and, in subsec. (d) as so redesignated, substituted "containing wool or recycled wool" for "containing wool, reprocessed wool, or reused wool". Former subsec. (d), which defined term "reused wool", was struck out.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–242, §3, May 5, 1980, 94 Stat. 344, provided that: "The amendments made by this Act [amending this section and section 68b of this title] shall take effect with respect to wool products manufactured on or after the date sixty days after the date of enactment of this Act [May 5, 1980]."

EFFECTIVE DATE

Act Oct. 14, 1940, ch. 871, §12, 54 Stat. 1133, provided that: "This Act [this subchapter] shall take effect nine months after the date of its passage."

SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109–428, §1, Dec. 20, 2006, 120 Stat. 2913, provided that: "This Act [amending section 68b of this title and enacting provisions set out as a note under section 68b of this title] may be cited as the 'Wool Suit Fabric Labeling Fairness and International Standards Conforming Act'."

SHORT TITLE

Act Oct. 14, 1940, ch. 871, §1, 54 Stat. 1128, provided that: "This Act [this subchapter] may be cited as the 'Wool Products Labeling Act of 1939'."

SEPARABILITY

Act Oct. 14, 1940, ch. 871, §13, 54 Stat. 1133, provided that: "If any provision of this Act [this subchapter], or the application thereof to any person, partnership, corporation, or circumstance is held invalid, the remainder of the Act and the application of such provision to any other person, partnership, corporation, or circumstance shall not be affected thereby."

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

§68a. Misbranding declared unlawful

The introduction, or manufacture for introduction, into commerce, or the sale, transportation, or distribution, in commerce, of any wool product which is misbranded within the meaning of this subchapter or the rules and regulations hereunder, is unlawful and shall be an unfair method of competition, and an unfair and deceptive act or practice, in commerce under the Federal Trade Commission Act; and any person who shall manufacture or deliver for shipment or ship or sell or offer for sale in commerce, any such wool product which is misbranded within the meaning of this subchapter and the rules and regulations hereunder is guilty of an unfair method of competition, and an unfair and deceptive act or practice, in commerce within the meaning of the Federal Trade Commission Act.

This section shall not apply—

(a) To any common carrier or contract carrier in respect to a wool product shipped or delivered for shipment in commerce in the ordinary course of its business; or

(b) To any person manufacturing, delivering for shipment, shipping, selling, or offering for sale, for exportation from the United States to any foreign country a wool product branded in accordance

with the specifications of the purchaser and in accordance with the laws of such country.
(Oct. 14, 1940, ch. 871, §3, 54 Stat. 1129.)

§68b. Misbranded wool products

(a) False identification; affixation of label, etc., contents

A wool product shall be misbranded—

(1) If it is falsely or deceptively stamped, tagged, labeled, or otherwise identified.

(2) If a stamp, tag, label, or other means of identification, or substitute therefor under section 68c of this title, is not on or affixed to the wool product and does not show—

(A) the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool; (2) recycled wool; (3) each fiber other than wool if said percentage by weight of such fiber is 5 per centum or more; and (4) the aggregate of all other fibers: *Provided*, That deviation of the fiber contents of the wool product from percentages stated on the stamp, tag, label, or other means of identification, shall not be misbranding under this section if the person charged with misbranding proves such deviation resulted from unavoidable variations in manufacture and despite the exercise of due care to make accurate the statements on such stamp, tag, label, or other means of identification.

(B) the maximum percentage of the total weight of the wool product, of any nonfibrous loading, filling, or adulterating matter.

(C) the name of the manufacturer of the wool product and/or the name of one or more persons subject to section 68a of this title with respect to such wool product.

(D) the name of the country where processed or manufactured.

(3) In the case of a wool product containing a fiber other than wool, if the percentages by weight of the wool contents thereof are not shown in words and figures plainly legible.

(4) In the case of a wool product represented as wool, if the percentages by weight of the wool content thereof are not shown in words and figures plainly legible, or if the total fiber weight of such wool product if not 100 per centum wool exclusive of ornamentation not exceeding 5 per centum of such total fiber weight.

(5) In the case of a wool product stamped, tagged, labeled, or otherwise identified as—

(A) "Super 80's" or "80's", if the average diameter of wool fiber of such wool product does not average 19.75 microns or finer;

(B) "Super 90's" or "90's", if the average diameter of wool fiber of such wool product does not average 19.25 microns or finer;

(C) "Super 100's" or "100's", if the average diameter of wool fiber of such wool product does not average 18.75 microns or finer;

(D) "Super 110's" or "110's", if the average diameter of wool fiber of such wool product does not average 18.25 microns or finer;

(E) "Super 120's" or "120's", if the average diameter of wool fiber of such wool product does not average 17.75 microns or finer;

(F) "Super 130's" or "130's", if the average diameter of wool fiber of such wool product does not average 17.25 microns or finer;

(G) "Super 140's" or "140's", if the average diameter of wool fiber of such wool product does not average 16.75 microns or finer;

(H) "Super 150's" or "150's", if the average diameter of wool fiber of such wool product does not average 16.25 microns or finer;

(I) "Super 160's" or "160's", if the average diameter of wool fiber of such wool product does not average 15.75 microns or finer;

(J) "Super 170's" or "170's", if the average diameter of wool fiber of such wool product does not average 15.25 microns or finer;

(K) "Super 180's" or "180's", if the average diameter of wool fiber of such wool product does

not average 14.75 microns or finer;

(L) "Super 190's" or "190's", if the average diameter of wool fiber of such wool product does not average 14.25 microns or finer;

(M) "Super 200's" or "200's", if the average diameter of wool fiber of such wool product does not average 13.75 microns or finer;

(N) "Super 210's" or "210's", if the average diameter of wool fiber of such wool product does not average 13.25 microns or finer;

(O) "Super 220's" or "220's", if the average diameter of wool fiber of such wool product does not average 12.75 microns or finer;

(P) "Super 230's" or "230's", if the average diameter of wool fiber of such wool product does not average 12.25 microns or finer;

(Q) "Super 240's" or "240's", if the average diameter of wool fiber of such wool product does not average 11.75 microns or finer; and

(R) "Super 250's" or "250's", if the average diameter of wool fiber of such wool product does not average 11.25 microns or finer.

In each such case, the average fiber diameter of such wool product may be subject to such standards or deviations as adopted by regulation by the Commission.

(6) In the case of a wool product stamped, tagged, labeled, or otherwise identified as cashmere, if—

(A) such wool product is not the fine (dehaired) undercoat fibers produced by a cashmere goat (capra hircus laniger);

(B) the average diameter of the fiber of such wool product exceeds 19 microns; or

(C) such wool product contains more than 3 percent (by weight) of cashmere fibers with average diameters that exceed 30 microns.

The average fiber diameter may be subject to a coefficient of variation around the mean that shall not exceed 24 percent.

(b) Additional information

In addition to information required in this section, the stamp, tag, label, or other means of identification, or substitute therefor under section 68c of this title, may contain other information not violating the provisions of this subchapter or the rules and regulations of the Commission.

(c) Substitute identification

If any person subject to section 68a of this title with respect to a wool product finds or has reasonable cause to believe its stamp, tag, label, or other means of identification, or substitute therefor under section 68c of this title, does not contain the information required by this subchapter, he may replace same with a substitute containing the information so required.

(d) Designations on linings, paddings, etc.

This section shall not be construed as requiring designation on garments or articles of apparel of fiber content of any linings, paddings, stiffening, trimmings, or facings, except those concerning which express or implied representations of fiber content are customarily made, nor as requiring designation of fiber content of products which have an insignificant or inconsequential textile content: *Provided*, That if any such article or product purports to contain or in any manner is represented as containing wool, this section shall be applicable thereto and the information required shall be separately set forth and segregated.

The Commission, after giving due notice and opportunity to be heard to interested persons, may determine and publicly announce the classes of such articles concerning which express or implied representations of fiber content are customarily made, and those products which have an insignificant or inconsequential textile content.

(e) False or deceptive advertising in mail order promotions

For the purposes of this subchapter, a wool product shall be considered to be falsely or deceptively

advertised in any mail order promotional material which is used in the direct sale or direct offering for sale of such wool product, unless such wool product description states in a clear and conspicuous manner that such wool product is processed or manufactured in the United States of America, or imported, or both.

(f) Location of label, etc.

For purposes of this subchapter, any wool product shall be misbranded if a stamp, tag, label, or other identification conforming to the requirements of this section is not on or affixed to the inside center of the neck midway between the shoulder seams or, if such product does not contain a neck, in the most conspicuous place on the inner side of such product, unless it is on or affixed on the outer side of such product or in the case of hosiery items, on the outer side of such product or package.

(Oct. 14, 1940, ch. 871, §4, 54 Stat. 1129; Pub. L. 96–242, §2, May 5, 1980, 94 Stat. 344; Pub. L. 98–417, title III, §§304, 305, Sept. 24, 1984, 98 Stat. 1604; Pub. L. 109–428, §2(a), Dec. 20, 2006, 120 Stat. 2913.)

AMENDMENTS

2006—Subsec. (a)(5), (6). Pub. L. 109–428 added pars. (5) and (6).
1984—Subsec. (a)(2)(D). Pub. L. 98–417, §304, added subpar. (D).
Subsecs. (e), (f). Pub. L. 98–417, §305, added subsecs. (e) and (f).
1980—Subsec. (a)(2)(A). Pub. L. 96–242 substituted "recycled wool" for "reprocessed wool" as cl. (2), struck out cl. (3) "reused wool", and redesignated existing cls. (4) and (5) as (3) and (4), respectively.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–428, §2(b), Dec. 20, 2006, 120 Stat. 2915, provided that: "The amendments made by this section [amending this section] shall apply to wool products manufactured on or after January 1, 2007."

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–417, title III, §307, Sept. 24, 1984, 98 Stat. 1605, provided that: "The amendments made by this title [amending this section and sections 68c and 70b of this title] shall be effective ninety days after the date of enactment of this Act [Sept. 24, 1984]."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–242 effective with respect to wool products manufactured on or after the date sixty days after May 5, 1980, see section 3 of Pub. L. 96–242, set out as a note under section 68 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

§68c. Stamp, tag, label, or other identification

(a) Affixing; retention until sale

Any person manufacturing for introduction, or first introducing into commerce a wool product shall affix thereto the stamp, tag, label, or other means of identification required by this subchapter, and the same, or substitutes therefor containing identical information with respect to content of the wool product or any other products contained therein in an amount of 5 per centum or more by weight and other information required under section 68b of this title, shall be and remain affixed to such wool product, whether it remains in its original state or is contained in garments or other articles made in whole or in part therefrom, until sold to the consumer: *Provided*, That the name of the manufacturer of the wool product need not appear on the substitute stamp, tag, or label if the name of the person who affixes the substitute appears thereon.

(b) Removal or mutilation

Any person who shall cause or participate in the removal or mutilation of any stamp, tag, label, or

other means of identification affixed to a wood [1] product with intent to violate the provisions of this subchapter, is guilty of an unfair method of competition, and an unfair and deceptive act or practice, in commerce within the meaning of the Federal Trade Commission Act.

(c) Packages of wool products

For the purposes of subsections (a) and (b) of this section, any package of wool products intended for sale to the ultimate consumer shall also be considered a wool product and shall have affixed to it a stamp, tag, label, or other means of identification bearing the information required by section 68b of this title, with respect to the wool products contained therein, unless such package of wool products is transparent to the extent that it allows for the clear reading of the stamp, tag, label, or other means of identification affixed to the wool product, or in the case of hosiery items this section shall not be construed as requiring the affixing of a stamp, tag, label, or other means of identification to each hosiery product contained in a package if (1) such hosiery products are intended for sale to the ultimate consumer in such package, (2) such package has affixed to it a stamp, tag, label, or other means of identification bearing, with respect to the hosiery products contained therein, the information required by section 68b of this title,[2] and (3) the information on the stamp, tag, label, or other means of identification affixed to such package is equally applicable with respect to each hosiery product contained therein.

(Oct. 14, 1940, ch. 871, §5, 54 Stat. 1130; Pub. L. 98–417, title III, §306, Sept. 24, 1984, 98 Stat. 1605.)

CODIFICATION

Section 68b of this title, the second time it appears in subsec. (c), was in the original "subsection (4)" and was translated as reading "section 4" as the probable intent of Congress.

AMENDMENTS

1984—Pub. L. 98–417 designated existing first and second pars. as subsecs. (a) and (b), respectively, and added subsec. (c).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–417 effective 90 days after Sept. 24, 1984, see section 307 of Pub. L. 98–417, set out as a note under section 68b of this title.

[1] So in original. Probably should be "wool".

[2] See Codification note.

§68d. Enforcement of subchapter

(a) Authority of Commission

Except as otherwise specifically provided herein, this subchapter shall be enforced by the Federal Trade Commission under rules, regulations, and procedure provided for in the Federal Trade Commission Act.

The Commission is authorized and directed to prevent any person from violating the provisions of this subchapter in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this subchapter; and any such person violating the provisions of this subchapter shall be subject to the penalties and entitled to the privileges and immunities provided in said Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though the applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this subchapter.

The Commission is authorized and directed to make rules and regulations for the manner and form of disclosing information required by this subchapter, and for segregation of such information for

different portions of a wool product as may be necessary to avoid deception or confusion, and to make such further rules and regulations under and in pursuance of the terms of this subchapter as may be necessary and proper for administration and enforcement.

The Commission is also authorized to cause inspections, analyses, tests, and examinations to be made of any wool products subject to this subchapter; and to cooperate with any department or agency of the Government, with any State, Territory, or possession, or with the District of Columbia; or with any department, agency, or political subdivision thereof; or with any person.

(b) Maintenance of records by wool manufacturers

Every manufacturer of wool products shall maintain proper records showing the fiber content as required by this subchapter of all wool products made by him, and shall preserve such records for at least three years.

The neglect or refusal to maintain and so preserve such records is unlawful, and any such manufacturer who neglects or refuses to maintain and so preserve such records shall forfeit to the United States the sum of $100 for each day of such failure, which shall accrue to the United States and be recoverable in a civil action.

(Oct. 14, 1940, ch. 871, §6, 54 Stat. 1131.)

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

§68e. Condemnation and injunction proceedings

(a) Grounds for condemnation; disposition of merchandise

Any wool products shall be liable to be proceeded against in the district court of the United States for the district in which found, and to be seized for confiscation by process of libel for condemnation, if the Commission has reasonable cause to believe such wool products are being manufactured or held for shipment, or shipped, or held for sale or exchange after shipment, in commerce in violation of the provisions of this subchapter, and if after notice from the Commission the provisions of this subchapter with respect to said products are not shown to be complied with. Proceedings in such libel cases shall conform as nearly as may be to suits in rem in admiralty, and may be brought by the Commission.

If such wool products are condemned by the court, they shall be disposed of, in the discretion of the court, by destruction; by sale; by delivery to the owner or claimant thereof upon payment of legal costs and charges and upon execution of good and sufficient bond to the effect that such wool products will not be disposed of until properly stamped, tagged, labeled, or otherwise identified under the provisions of this subchapter; or by such charitable disposition as the court may deem proper. If such wool products are disposed of by sale, the proceeds, less legal costs and charges, shall be paid into the Treasury of the United States.

(b) Grounds for temporary injunction or restraining order; issuance without bond

Whenever the Commission has reason to believe that—

(1) Any person is violating, or is about to violate, sections 68a, 68c, 68f, or 68g of this title, and that

(2) It would be to the public interest to enjoin such violation until complaint is issued by the Commission under the Federal Trade Commission Act and such complaint dismissed by the Commission or set aside by the court on review, or until order to cease and desist made thereon by the Commission has become final within the meaning of the Federal Trade Commission Act,

the Commission may bring suit in the district court of the United States or in the United States court of any Territory, for the district or Territory in which such person resides or transacts business,

to enjoin such violation, and upon proper showing a temporary injunction or restraining order shall be granted without bond.

(Oct. 14, 1940, ch. 871, §7, 54 Stat. 1131.)

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

§68f. Exclusion of misbranded wool products

All wool products imported into the United States, except those made more than twenty years prior to such importation, shall be stamped, tagged, labeled, or otherwise identified in accordance with the provisions of this subchapter and all invoices of such wool products required under the Act of June 17, 1930 (c. 497, title IV, 46 Stat. 719), shall set forth, in addition to the matter therein specified, the information with respect to said wool products required under the provisions of this subchapter, which information shall be in the invoices prior to their certification under said Act of June 17, 1930.

The falsification of, or failure to set forth, said information in said invoices, or the falsification or perjury of the consignee's declaration provided for in said Act of June 17, 1930, insofar as it relates to said information, shall be an unfair method of competition, and an unfair and deceptive act, or practice, in commerce under the Federal Trade Commission Act; and any person who falsifies, or fails to set forth, said information in said invoices, or who falsifies or perjures said consignee's declaration insofar as it relates to said information, may thenceforth be prohibited by the Commission from importing, or participating in the importation of, any wool products into the United States except upon filing bond with the Secretary of the Treasury in a sum double the value of said wool products and any duty thereon, conditioned upon compliance with the provisions of this subchapter.

A verified statement from the manufacturer or producer of such wool products showing their fiber content as required under the provisions of this subchapter may be required under regulations prescribed by the Secretary of the Treasury.

(Oct. 14, 1940, ch. 871, §8, 54 Stat. 1132.)

REFERENCES IN TEXT

Provisions covering invoices of wool products required under the Act of June 17, 1930 (c. 497, title IV, 46 Stat. 719), referred to in text, are set out as section 1481 et seq. of Title 19, Customs Duties.

Provisions covering certification of invoices under the Act of June 17, 1930, referred to in text, are set out as section 1482 of Title 19.

Provisions covering the consignee's declaration under the Act of June 17, 1930, referred to in text, are set out in section 1485 of Title 19.

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

§68g. Guaranty

(a) Avoidance of liability; requirements

No person shall be guilty under section 68a of this title if he establishes a guaranty received in good faith signed by and containing the name and address of the person residing in the United States by whom the wool product guaranteed was manufactured and/or from whom it was received, that said wool product is not misbranded under the provisions of this subchapter.

Said guaranty shall be either (1) a separate guaranty specifically designating the wool product guaranteed, in which case it may be on the invoice or other paper relating to said wool product; or (2) a continuing guaranty filed with the Commission applicable to all wool products handled by a guarantor in such form as the Commission by rules and regulations may prescribe.

(b) Furnishing false guaranty

Any person who furnishes a false guaranty, except a person relying upon a guaranty to the same effect received in good faith signed by and containing the name and address of the person residing in the United States by whom the wool product guaranteed was manufactured and/or from whom it was received, with reason to believe the wool product falsely guaranteed may be introduced, sold, transported, or distributed in commerce, is guilty of an unfair method of competition, and an unfair and deceptive act or practice, in commerce within the meaning of the Federal Trade Commission Act.

(Oct. 14, 1940, ch. 871, §9, 54 Stat. 1132.)

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

§68h. Criminal penalty

Any person who willfully violates sections 68a, 68c, 68f, or 68g(b) of this title shall be guilty of a misdemeanor and upon conviction shall be fined not more than $5,000, or be imprisoned not more than one year, or both, in the discretion of the court: *Provided*, That nothing herein shall limit other provisions of this subchapter.

Whenever the Commission has reason to believe any person is guilty of a misdemeanor under this section, it shall certify all pertinent facts to the Attorney General, whose duty it shall be to cause appropriate proceedings to be brought for the enforcement of the provisions of this section against such person.

(Oct. 14, 1940, ch. 871, §10, 54 Stat. 1133.)

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

§68i. Application of other laws

The provision of this subchapter shall be held to be in addition to, and not in substitution for or limitation of, the provisions of any other Act of the United States.

(Oct. 14, 1940, ch. 871, §11, 54 Stat. 1133.)

§68j. Exceptions from subchapter

None of the provisions of this subchapter shall be construed to apply to the manufacture, delivery for shipment, shipment, sale, or offering for sale any carpets, rugs, mats, or upholsteries, nor to any person manufacturing, delivering for shipment, shipping, selling, or offering for sale any carpets, rugs, mats, or upholsteries.

(Oct. 14, 1940, ch. 871, §14, 54 Stat. 1133.)

SUBCHAPTER IV—LABELING OF FUR PRODUCTS

§69. Definitions

As used in this subchapter—

(a) The term "person" means an individual, partnership, corporation, association, business trust, or any organized group of any of the foregoing.

(b) The term "fur" means any animal skin or part thereof with hair, fleece, or fur fibers attached thereto, either in its raw or processed state, but shall not include such skins as are to be converted into leather or which in processing shall have the hair, fleece, or fur fiber completely removed.

(c) The term "used fur" means fur in any form which has been worn or used by an ultimate consumer.

(d) The term "fur product" means any article of wearing apparel made in whole or in part of fur or used fur.

(e) The term "waste fur" means the ears, throats, or scrap pieces which have been severed from the animal pelt, and shall include mats or plates made therefrom.

(f) The term "invoice" means a written account, memorandum, list, or catalog, which is issued in connection with any commercial dealing in fur products or furs, and describes the particulars of any fur products or furs, transported or delivered to a purchaser, consignee, factor, bailee, correspondent, or agent, or any other person who is engaged in dealing commercially in fur products or furs.

(g) The term "Commission" means the Federal Trade Commission.

(h) The term "Federal Trade Commission Act" means the Act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914, as amended [15 U.S.C. 41 et seq.].

(i) The term "Fur Products Name Guide" means the register issued by the Commission pursuant to section 69e of this title.

(j) The term "commerce" means commerce between any State, Territory, or possession of the United States, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or within any Territory or possession or the District of Columbia.

(k) The term "United States" means the several States, the District of Columbia, and the Territories and possessions of the United States.

(Aug. 8, 1951, ch. 298, §2, 65 Stat. 175; Pub. L. 106–476, title I, §1443(b), Nov. 9, 2000, 114 Stat. 2167; Pub. L. 111–313, §2(a), Dec. 18, 2010, 124 Stat. 3326.)

REFERENCES IN TEXT

The act approved September 26, 1914, referred to in subsec. (h), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, known as the Federal Trade Commission Act, which is classified generally to subchapter I (§41 et seq.) of this chapter. For complete classification of this Act to the Code, see section 58 of this title and Tables.

AMENDMENTS

2010—Subsec. (d). Pub. L. 111–313 struck out "; except that such term shall not include such articles (other than any dog or cat fur product to which section 1308 of title 19 applies) as the Commission shall exempt by reason of the relatively small quantity or value of the fur or used fur contained therein" after "used fur".

2000—Subsec. (d). Pub. L. 106–476 inserted "(other than any dog or cat fur product to which section 1308 of title 19 applies)" after "shall not include such articles".

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–313, §2(b), Dec. 18, 2010, 124 Stat. 3326, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the date that is 90 days after the date of the enactment of this Act [Dec. 18, 2010]."

EFFECTIVE DATE

Act Aug. 8, 1951, ch. 298, §14, 65 Stat. 181, provided that: "This Act [this subchapter], except section 7 [section 69e of this title], shall take effect one year after the date of its enactment [Aug. 8, 1951]."

SHORT TITLE OF 2010 AMENDMENT

Pub. L. 111–313, §1, Dec. 18, 2010, 124 Stat. 3326, provided that: "This Act [amending this section and section 69a of this title and enacting provisions set out as a note under this section] may be cited as the 'Truth in Fur Labeling Act of 2010'."

SHORT TITLE

Act Aug. 8, 1951, ch. 298, §1, 65 Stat. 175, provided: "That this Act [this subchapter] may be cited as the 'Fur Products Labeling Act' ".

SEPARABILITY

Act Aug. 8, 1951, ch. 298, §13, 65 Stat. 181, provided that: "If any provision of this Act [this subchapter] or the application thereof to any person or circumstance is held invalid, the remainder of the Act [this subchapter] and the application of such provision to any other person or circumstance shall not be affected thereby."

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

§69a. Violations of Federal Trade Commission Act

(a) Introduction or manufacture for introduction into commerce, sale, advertising or offering for sale in commerce

The introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product which is misbranded or falsely or deceptively advertised or invoiced, within the meaning of this subchapter or the rules and regulations prescribed under section 69f(b) of this title, is unlawful and shall be an unfair method of competition, and an unfair and deceptive act or practice, in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(b) Manufacture for sale, sale, advertising, offering for sale, transportation or distribution

The manufacture for sale, sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, and which is misbranded or falsely or deceptively advertised or invoiced, within the meaning of this subchapter or the rules and regulations prescribed under section 69f(b) of this title, is unlawful and shall be an unfair method of competition, and an unfair and deceptive act or practice, in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(c) Introduction into commerce, sale, advertising or offering for sale in commerce or transportation or distribution

The introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur which is falsely or deceptively advertised or falsely or deceptively invoiced, within the meaning of this subchapter or the rules and regulations prescribed under section 69f(b) of this title, is unlawful and shall be an unfair method of competition, and an unfair and deceptive act or practice, in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(d) Removal or mutilation of label

Except as provided in subsection (e) of this section, it shall be unlawful to remove or mutilate, or cause or participate in the removal or mutilation of, prior to the time any fur product is sold and delivered to the ultimate consumer, any label required by this subchapter to be affixed to such fur product, and any person violating this subsection is guilty of an unfair method of competition, and an unfair or deceptive act or practice, in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(e) Substitution of labels; records

Any person introducing, selling, advertising, or offering for sale, in commerce, or processing for commerce, a fur product, or any person selling, advertising, offering for sale or processing a fur product which has been shipped and received in commerce, may substitute for the label affixed to such product pursuant to section 69b of this title, a label conforming to the requirements of such section, and such label may show in lieu of the name or other identification shown pursuant to section 69b(2)(E) of this title on the label so removed, the name or other identification of the person making the substitution. Any person substituting a label shall keep such records as will show the information set forth on the label that he removed and the name or names of the person or persons from whom such fur product was received, and shall preserve such records for at least three years. Neglect or refusal to maintain and preserve such records is unlawful, and any person who shall fail to maintain and preserve such records shall forfeit to the United States the sum of $100 for each day of such failure which shall accrue to the United States and be recoverable by a civil action. Any person substituting a label who shall fail to keep and preserve such records, or who shall by such substitution misbrand a fur product, shall be guilty of an unfair method of competition, and an unfair or deceptive act or practice, in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(f) Application of section to common carrier or freight forwarder

Subsections (a), (b), and (c) of this section shall not apply to any common carrier, contract carrier or freight forwarder in respect of a fur product or fur shipped, transported, or delivered for shipment in commerce in the ordinary course of business.

(g) Exemption for particular sales

No provision of this subchapter shall apply to a fur product—

(1) the fur of which was obtained from an animal through trapping or hunting; and

(2) when sold in a face to face transaction at a place such as a residence, craft fair, or other location used on a temporary or short term basis, by the person who trapped or hunted the animal, where the revenue from the sale of apparel or fur products is not the primary source of income of such person.

(Aug. 8, 1951, ch. 298, §3, 65 Stat. 176; Pub. L. 111–313, §3, Dec. 18, 2010, 124 Stat. 3326.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in text, is defined in section 69 of this title.

AMENDMENTS

2010—Subsec. (g). Pub. L. 111–313 added subsec. (g).

§69b. Misbranded fur products

For the purposes of this subchapter, a fur product shall be considered to be misbranded—

(1) if it is falsely or deceptively labeled or otherwise falsely or deceptively identified, or if the label contains any form of misrepresentation or deception, directly or by implication, with respect to such fur product;

(2) if there is not affixed to the fur product a label showing in words and figures plainly legible—

(A) the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to section 69e(c) of this title;

(B) that the fur product contains or is composed of used fur, when such is the fact;

(C) that the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(D) that the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;

(E) the name, or other identification issued and registered by the Commission, of one or more of the persons who manufacture such fur product for introduction into commerce, introduce it into commerce, sell it in commerce, advertise or offer it for sale in commerce, or transport or distribute it in commerce;

(F) the name of the country of origin of any imported furs used in the fur product;

(3) if the label required by paragraph (2)(A) of this section sets forth the name or names of any animal or animals other than the name or names provided for in such paragraph.

(Aug. 8, 1951, ch. 298, §4, 65 Stat. 177.)

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

§69c. False advertising and invoicing

(a) For the purposes of this subchapter, a fur product or fur shall be considered to be falsely or deceptively advertised if any advertisement, representation, public announcement, or notice which is intended to aid, promote, or assist directly or indirectly in the sale or offering for sale of such fur product or fur—

(1) does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to section 69e(c) of this title;

(2) does not show that the fur is used fur or that the fur product contains used fur, when such is the fact;

(3) does not show that the fur product or fur is bleached, dyed, or otherwise artificially colored fur when such is the fact;

(4) does not show that the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;

(5) contains the name or names of any animal or animals other than the name or names specified in paragraph (1) of this subsection, or contains any form of misrepresentation or deception, directly or by implication, with respect to such fur product or fur;

(6) does not show the name of the country of origin of any imported furs or those contained in a fur product.

(b) For the purposes of this subchapter, a fur product or fur shall be considered to be falsely or deceptively invoiced—

(1) if such fur product or fur is not invoiced to show—

(A) the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to section 69e(c) of this title;

(B) that the fur product contains or is composed of used fur, when such is the fact;

(C) that the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(D) that the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;

(E) the name and address of the person issuing such invoice;

(F) the name of the country of origin of any imported furs or those contained in a fur product;

(2) if such invoice contains the name or names of any animal or animals other than the name or names specified in paragraph (1)(A) of this subsection, or contains any form of misrepresentation or deception, directly or by implication, with respect to such fur product or fur.

(Aug. 8, 1951, ch. 298, §5, 65 Stat. 178.)

§69d. Fur products imported into United States

(a) Necessity of proper labelling; additional information

Fur products imported into the United States shall be labeled so as not to be misbranded within the meaning of section 69b of this title; and all invoices of fur products and furs required under title IV of the Tariff Act of 1930, as amended [19 U.S.C. 1401 et seq.], shall set forth, in addition to the matters therein specified, information conforming with the requirements of section 69c(b) of this title, which information shall be included in the invoices prior to their certification under the Tariff Act of 1930, as amended [19 U.S.C. 1202 et seq.].

(b) Violations of Federal Trade Commission Act

The falsification of, or failure to set forth, said information in said invoices, or the falsification or perjury of the consignee's declaration provided for in the Tariff Act of 1930, as amended [19 U.S.C. 1202 et seq.], insofar as it relates to said information, shall be an unfair method of competition, and an unfair and deceptive act or practice, in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.]; and any person who falsifies, or fails to set forth, said information in said invoices, or who falsifies or perjures said consignee's declaration insofar as it relates to said information, may thenceforth be prohibited by the Commission from importing, or participating in the importation of, any fur products or furs into the United States except upon filing bond with the Secretary of the Treasury in a sum double the value of said fur products and furs, and any duty thereon, conditioned upon compliance with the provisions of this section.

(c) Verified statement of compliance

A verified statement from the manufacturer, producer of, or dealer in, imported fur products and furs showing information required under the provisions of this subchapter may be required under regulations prescribed by the Secretary of the Treasury.

(Aug. 8, 1951, ch. 298, §6, 65 Stat. 178.)

REFERENCES IN TEXT

The Tariff Act of 1930, referred to in subsecs. (a) and (b), is act June 17, 1930, ch. 497, 46 Stat. 590, as amended, which is classified generally to chapter 4 (§1202 et seq.) of Title 19, Customs Duties. Title IV of the Tariff Act of 1930 is classified generally to subtitle III (§1401 et seq.) of chapter 4 of Title 19. For complete classification of this Act to the Code, see section 1654 of Title 19 and Tables.

The Federal Trade Commission Act, referred to in subsec. (b), is defined in section 69 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

§69e. Name guide for fur products

(a) Fur Products Name Guide

The Commission shall, with the assistance and cooperation of the Department of Agriculture and the Department of the Interior, within six months after August 8, 1951, issue, after holding public hearings, a register setting forth the names of hair, fleece, and fur-bearing animals, which shall be known as the Fur Products Name Guide. The names used shall be the true English names for the animals in question, or in the absence of a true English name for an animal, the name by which such animal can be properly identified in the United States.

(b) Additions and deletions; public hearing

The Commission may, from time to time, with the assistance and cooperation of the Department

of Agriculture and Department of the Interior, after holding public hearings, add to or delete from such register the name of any hair, fleece, or fur-bearing animal.

(c) Prevention of confusion or deception

If the name of an animal (as set forth in the Fur Products Name Guide) connotes a geographical origin or significance other than the true country or place of origin of such animal, the Commission may require whenever such name is used in setting forth the information required by this subchapter, such qualifying statements as it may deem necessary to prevent confusion or deception.

(Aug. 8, 1951, ch. 298, §7, 65 Stat. 179.)

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

§69f. Enforcement of subchapter

(a) Enforcement by Federal Trade Commission

(1) Except as otherwise specifically provided in this subchapter, sections 69a, 69d, and 69h(b) of this title shall be enforced by the Federal Trade Commission under rules, regulations, and procedure provided for in the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(2) The Commission is authorized and directed to prevent any person from violating the provisions of sections 69a, 69d, and 69h(b) of this title in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act [15 U.S.C. 41 et seq.] were incorporated into and made a part of this subchapter; and any such person violating any provision of section 69a, 69d, or 69h(b) of this title shall be subject to the penalties and entitled to the privileges and immunities provided in said Federal Trade Commission Act as though the applicable terms and provisions of the said Act were incorporated into and made a part of this subchapter.

(b) Rules and regulations for disclosure of information

The Commission is authorized and directed to prescribe rules and regulations governing the manner and form of disclosing information required by this subchapter, and such further rules and regulations as may be necessary and proper for purposes of administration and enforcement of this subchapter.

(c) Inspection, analysis, tests for fur products; cooperation with other governmental agencies

The Commission is authorized (1) to cause inspections, analyses, tests, and examinations to be made of any fur product or fur subject to this subchapter; and (2) to cooperate, on matters related to the purposes of this subchapter, with any department or agency of the Government; with any State, Territory, or possession, or with the District of Columbia; or with any department, agency, or political subdivision thereof; or with any person.

(d) Maintenance of records by manufacturer or dealer

(1) Every manufacturer or dealer in fur products or furs shall maintain proper records showing the information required by this subchapter with respect to all fur products or furs handled by him, and shall preserve such records for at least three years.

(2) The neglect or refusal to maintain and preserve such records is unlawful, and any such manufacturer or dealer who neglects or refuses to maintain and preserve such records shall forfeit to the United States the sum of $100 for each day of such failure which shall accrue to the United States and be recoverable by a civil action.

(Aug. 8, 1951, ch. 298, §8, 65 Stat. 179.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (a), is defined in section 69 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

§69g. Condemnation and injunction proceedings

(a) Grounds for condemnation; disposition of merchandise

(1) Any fur product or fur shall be liable to be proceeded against in the district court of the United States for the district in which found, and to be seized for confiscation by process of libel for condemnation, if the Commission has reasonable cause to believe such fur product or fur is being manufactured or held for shipment, or shipped, or held for sale or exchange after shipment, in commerce, in violation of the provisions of this subchapter, and if after notice from the Commission the provisions of this subchapter with respect to such fur product or fur are not shown to be complied with. Proceedings in such libel cases shall conform as nearly as may be to suits in rem in admiralty, and may be brought by the Commission.

(2) If such fur products or furs are condemned by the court, they shall be disposed of, in the discretion of the court, by destruction, by sale, by delivery to the owner or claimant thereof upon payment of legal costs and charges and upon execution of good and sufficient bond to the effect that such fur or fur products will not be disposed of until properly marked, advertised, and invoiced as required under the provisions of this subchapter; or by such charitable disposition as the court may deem proper. If such furs or fur products are disposed of by sale, the proceeds, less legal costs and charges, shall be paid into the Treasury of the United States as miscellaneous receipts.

(b) Grounds for temporary injunction or restraining order; issuance without bond

Whenever the Commission has reason to believe that—

(1) any person is volating,[1] or is about to violate, section 69a, 69d, or 69h(b) of this title; and

(2) it would be to the public interest to enjoin such violation until complaint is issued by the Commission under the Federal Trade Commission Act [15 U.S.C. 41 et seq.] and such complaint dismissed by the Commission or set aside by the court on review, or until order to cease and desist made thereon by the Commission has become final within the meaning of said Act,

the Commission may bring suit in the district court of the United States or in the United States court of any Territory, for the district or Territory in which such person resides or transacts business, to enjoin such violation, and upon proper showing a temporary injunction or restraining order shall be granted without bond.

(Aug. 8, 1951, ch. 298, §9, 65 Stat. 180.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (b)(2), is defined in section 69 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

[1] So in original. Probably should be "violating,".

§69h. Guaranty

(a) Avoidance of liability; requirements

No person shall be guilty under section 69a of this title if he establishes a guaranty received in good faith signed by and containing the name and address of the person residing in the United States by whom the fur product or fur guaranteed was manufactured or from whom it was received, that said fur product is not misbranded or that said fur product or fur is not falsely advertised or invoiced under the provisions of this subchapter. Such guaranty shall be either (1) a separate guaranty specifically designating the fur product or fur guaranteed, in which case it may be on the invoice or other paper relating to such fur product or fur; or (2) a continuing guaranty filed with the Commission applicable to any fur product or fur handled by a guarantor, in such form as the Commission by rules and regulations may prescribe.

(b) Furnishing false guaranty

It shall be unlawful for any person to furnish, with respect to any fur product or fur, a false guaranty (except a person relying upon a guaranty to the same effect received in good faith signed by and containing the name and address of the person residing in the United States by whom the fur product or fur guaranteed was manufactured or from whom it was received) with reason to believe the fur product or fur falsely guaranteed may be introduced, sold, transported, or distributed in commerce, and any person who violates the provisions of this subsection is guilty of an unfair method of competition, and an unfair or deceptive act or practice, in commerce within the meaning of the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(Aug. 8, 1951, ch. 298, §10, 65 Stat. 181.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (b), is defined in section 69 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

§69i. Criminal penalty

(a) Any person who willfully violates section 69a, 69d, or 69h(b) of this title shall be guilty of a misdemeanor and upon conviction shall be fined not more than $5,000, or be imprisoned not more than one year, or both, in the discretion of the court.

(b) Whenever the Commission has reason to believe any person is guilty of a misdemeanor under this section, it shall certify all pertinent facts to the Attorney General, whose duty it shall be to cause appropriate proceedings to be brought for the enforcement of the provisions of this section against such person.

(Aug. 8, 1951, ch. 298, §11, 65 Stat. 181.)

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

§69j. Application of other laws

The provisions of this subchapter shall be held to be in addition to, and not in substitution for or limitation of, the provisions of any other Act of Congress.

(Aug. 8, 1951, ch. 298, §12, 65 Stat. 181.)

SUBCHAPTER V—TEXTILE FIBER PRODUCTS IDENTIFICATION

§70. Definitions

As used in this subchapter—

(a) The term "person" means an individual, partnership, corporation, association or any other form of business enterprise.

(b) The term "fiber" or "textile fiber" means a unit of matter which is capable of being spun into a yarn or made into a fabric by bonding or by interlacing in a variety of methods including weaving, knitting, braiding, felting, twisting, or webbing, and which is the basic structural element of textile products.

(c) The term "natural fiber" means any fiber that exists as such in the natural state.

(d) The term "manufactured fiber" means any fiber derived by a process of manufacture from any substance which, at any point in the manufacturing process, is not a fiber.

(e) The term "yarn" means a strand of textile fiber in a form suitable for weaving, knitting, braiding, felting, webbing, or otherwise fabricating into a fabric.

(f) The term "fabric" means any material woven, knitted, felted, or otherwise produced from, or in combination with, any natural or manufactured fiber, yarn, or substitute therefor.

(g) The term "household textile articles" means articles of wearing apparel, costumes and accessories, draperies, floor coverings, furnishings, beddings, and other textile goods of a type customarily used in a household regardless of where used in fact.

(h) The term "textile fiber product" means—

(1) any fiber, whether in the finished or unfinished state, used or intended for use in household textile articles;

(2) any yarn or fabric, whether in the finished or unfinished state, used or intended for use in household textile articles; and

(3) any household textile article made in whole or in part of yarn or fabric;

except that such term does not include a product required to be labeled under the Wool Products Labeling Act of 1939 [15 U.S.C. 68 et seq.].

(i) The term "affixed" means attached to the textile fiber product in any manner.

(j) The term "Commission" means the Federal Trade Commission.

(k) The term "commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation or between the District of Columbia and any State or Territory or foreign nation.

(l) The term "Territory" includes the insular possessions of the United States, and also any Territory of the United States.

(m) The term "ultimate consumer" means a person who obtains a textile fiber product by purchase or exchange with no intent to sell or exchange such textile fiber product in any form.

(Pub. L. 85–897, §2, Sept. 2, 1958, 72 Stat. 1717.)

REFERENCES IN TEXT

The Wool Products Labeling Act of 1939, referred to in subsec. (h)(3), is act Oct. 14, 1940, ch. 871, 54 Stat. 1128, as amended, which is classified generally to subchapter III (§68 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 68 of this title and Tables.

EFFECTIVE DATE

Pub. L. 85–897, §15, Sept. 2, 1958, 72 Stat. 1724, provided that: "This Act [this subchapter] shall take effect eighteen months after enactment [Sept. 2, 1958], except for the promulgation of rules and regulations by the Commission, which shall be promulgated within nine months after the enactment of this Act. The Commission shall provide for the exception of any textile fiber product acquired prior to the effective date of this Act."

SHORT TITLE

Pub. L. 85–897, §1, Sept. 2, 1958, 72 Stat. 1717, provided: "That this Act [this subchapter] may be cited as the 'Textile Fiber Products Identification Act'."

SEPARABILITY

Pub. L. 85–897, §13, Sept. 2, 1958, 72 Stat. 1723, provided that: "If any provision of this Act [this subchapter], or the application thereof to any person, as that term is herein defined, is held invalid, the remainder of the Act and the application of the remaining provisions to any person shall not be affected thereby."

§70a. Violations of Federal Trade Commission Act

(a) Introduction or manufacture for introduction into commerce, sale, advertising or offering for sale in commerce

The introduction, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product which is misbranded or falsely or deceptively advertised within the meaning of this subchapter or the rules and regulations promulgated thereunder, is unlawful, and shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(b) Sale, offering for sale, advertising, delivery, transportation of products advertised for sale in commerce

The sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce, and which is misbranded or falsely or deceptively advertised, within the meaning of this subchapter or the rules and regulations promulgated thereunder, is unlawful, and shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(c) Sale, offering for sale, advertising, delivery, transportation of products after shipment in commerce

The sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, which is misbranded or falsely or deceptively advertised, within the meaning of this subchapter or the rules and regulations promulgated thereunder, is unlawful, and shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(d) Application of section to common carrier, freight forwarder, etc.

This section shall not apply—

(1) to any common carrier or contract carrier or freight forwarder with respect to a textile fiber product received, shipped, delivered, or handled by it for shipment in the ordinary course of its business;

(2) to any processor or finisher in performing a contract for the account of a person subject to the provisions of this subchapter if the processor or finisher does not change the textile fiber content of the textile fiber product contrary to the terms of such contract;

(3) with respect to the manufacture, delivery for transportation, transportation, sale, or offering for sale of a textile fiber product for exportation from the United States to any foreign country;

(4) to any publisher or other advertising agency or medium for the dissemination of advertising or promotional material, except the manufacturer, distributor, or seller of the textile fiber product to which the false or deceptive advertisement relates, if such publisher or other advertising agency or medium furnishes to the Commission, upon request, the name and post office address of the

manufacturer, distributor, seller, or other person residing in the United States, who caused the dissemination of the advertising material; or

(5) to any textile fiber product until such product has been produced by the manufacturer or processor in the form intended for sale or delivery to, or for use by, the ultimate consumer: *Provided,* That this exemption shall apply only if such textile fiber product is covered by an invoice or other paper relating to the marketing or handling of the textile fiber product and such invoice or paper correctly discloses the information with respect to the textile fiber product which would otherwise be required under section 70b of this title to be on the stamp, tag, label, or other identification and the name and address of the person issuing the invoice or paper.

(Pub. L. 85–897, §3, Sept. 2, 1958, 72 Stat. 1718.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsecs. (a) to (c), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of this chapter. For complete classification of this Act to the Code, see section 58 of this title and Tables.

§70b. Misbranded and falsely advertised textile fiber products

(a) False or deceptive identification

Except as otherwise provided in this subchapter, a textile fiber product shall be misbranded if it is falsely or deceptively stamped, tagged, labeled, invoiced, advertised, or otherwise identified as to the name or amount of constituent fibers contained therein.

(b) Stamp, tag, label or other means of identification; contents

Except as otherwise provided in this subchapter, a textile fiber product shall be misbranded if a stamp, tag, label, or other means of identification, or substitute therefor authorized by section 70c of this title, is not on or affixed to the product showing in words and figures plainly legible, the following:

(1) The constituent fiber or combination of fibers in the textile fiber product, designating with equal prominence each natural or manufactured fiber in the textile fiber product by its generic name in the order of predominance by the weight thereof if the weight of such fiber is 5 per centum or more of the total fiber weight of the product, but nothing in this section shall be construed as prohibiting the use of a nondeceptive trademark in conjunction with a designated generic name: *Provided,* That exclusive of permissible ornamentation, any fiber or group of fibers present in an amount of 5 per centum or less by weight of the total fiber content shall not be designated by the generic name or the trademark of such fiber or fibers, but shall be designated only as "other fiber" or "other fibers" as the case may be, but nothing in this section shall be construed as prohibiting the disclosure of any fiber present in a textile fiber product which has a clearly established and definite functional significance where present in the amount contained in such product.

(2) The percentage of each fiber present, by weight, in the total fiber content of the textile fiber product, exclusive of ornamentation not exceeding 5 per centum by weight of the total fiber content: *Provided*, That, exclusive of permissible ornamentation, any fiber or group of fibers present in an amount of 5 per centum or less by weight of the total fiber content shall not be designated by the generic name or trademark of such fiber or fibers, but shall be designated only as "other fiber" or "other fibers" as the case may be but nothing in this section shall be construed as prohibiting the disclosure of any fiber present in a textile fiber product which has a clearly established and definite functional significance where present in the amount stated: *Provided further,* That in the case of a textile fiber product which contains more than one kind of fiber, deviation in the fiber content of any fiber in such product, from the amount stated on the stamp, tag, label, or other identification shall not be a misbranding under this section unless such deviation is in excess of reasonable tolerances which shall be established by the Commission: *And provided further,* That any such deviation which exceeds said tolerances shall not be a

misbranding if the person charged proves that the deviation resulted from unavoidable variations in manufacture and despite due care to make accurate the statements on the tag, stamp, label, or other identification.

(3) The name, or other identification issued and registered by the Commission, of the manufacturer of the product or one or more persons subject to section 70a of this title with respect to such product.

(4) If it is an imported textile fiber product the name of the country where processed or manufactured.

(5) If it is a textile fiber product processed or manufactured in the United States, it be so identified.

(c) False or deceptive advertisement

For the purposes of this subchapter, a textile fiber product shall be considered to be falsely or deceptively advertised if any disclosure or implication of fiber content is made in any written advertisement which is used to aid, promote, or assist directly or indirectly in the sale or offering for sale of such textile fiber product, unless the same information as that required to be shown on the stamp, tag, label, or other identification under subsection (b)(1) and (2) of this section is contained in the heading, body, or other part of such written advertisement, except that the percentages of the fiber present in the textile fiber product need not be stated.

(d) Additional information allowed

In addition to the information required in this section, the stamp, tag, label, or other means of identification, or advertisement may contain other information not violating the provisions of this subchapter.

(e) Labelling of packages

For purposes of this subchapter, in addition to the textile fiber products contained therein, a package of textile fiber products intended for sale to the ultimate consumer shall be misbranded unless such package has affixed to it a stamp, tag, label, or other means of identification bearing the information required by subsection (b) of this section, with respect to such contained textile fiber products, or is transparent to the extent it allows for the clear reading of the stamp, tag, label, or other means of identification on the textile fiber product, or in the case of hosiery items, this section shall not be construed as requiring the affixing of a stamp, tag, label, or other means of identification to each hosiery product contained in a package if (1) such hosiery products are intended for sale to the ultimate consumer in such package, (2) such package has affixed to it a stamp, tag, label, or other means of identification bearing, with respect to the hosiery products contained therein, the information required by subsection (b) of this section, and (3) the information on the stamp, tag, label, or other means of identification affixed to such package is equally applicable with respect to each textile fiber product contained therein.

(f) Fabric severed from bolts, pieces or rolls of fabric

This section shall not be construed as requiring designation of the fiber content of any portion of fabric, when sold at retail, which is severed from bolts, pieces, or rolls of fabric labeled in accordance with the provisions of this section at the time of such sale: *Provided*, That if any portion of fabric severed from a bolt, piece, or roll of fabric is in any manner represented as containing percentages of natural or manufactured fibers, other than that which is set forth on the labeled bolt, piece, or roll, this section shall be applicable thereto, and the information required shall be separately set forth and segregated as required by this section.

(g) Advertisement of textile product by use of name or symbol of fur-bearing animal

For the purposes of this subchapter, a textile fiber product shall be considered to be falsely or deceptively advertised if the name or symbol of any fur-bearing animal is used in the advertisement of such product unless such product, or the part thereof in connection with which the name or symbol of a fur-bearing animal is used, is a fur or fur product within the meaning of the Fur Products Labeling Act [15 U.S.C. 69 et seq.]: *Provided, however*, That where a textile fiber product contains

the hair or fiber of a fur-bearing animal, the name of such animal, in conjunction with the word "fiber", "hair", or "blend", may be used.

(h) Reused stuffing

For the purposes of this subchapter, a textile fiber product shall be misbranded if it is used as stuffing in any upholstered product, mattress, or cushion after having been previously used as stuffing in any other upholstered product, mattress, or cushion, unless the upholstered product, mattress, or cushion containing such textile fiber product bears a stamp, tag, or label approved by the Commission indicating in words plainly legible that it contains reused stuffing.

(i) Mail order catalog or promotional material

For the purposes of this subchapter, a textile fiber product shall be considered to be falsely or deceptively advertised in any mail order catalog or mail order promotional material which is used in the direct sale or direct offering for sale of such textile fiber product, unless such textile fiber product description states in a clear and conspicuous manner that such textile fiber product is processed or manufactured in the United States of America, or imported, or both.

(j) Location of stamp, tag, label, or other identification

For purposes of this subchapter, any textile fiber product shall be misbranded if a stamp, tag, label, or other identification conforming to the requirements of this section is not on or affixed to the inside center of the neck midway between the shoulder seams or, if such product does not contain a neck, in the most conspicuous place on the inner side of such product, unless it is on or affixed on the outer side of such product, or in the case of hosiery items on the outer side of such product or package.

(k) Marking of certain sock products

(1) Notwithstanding any other provision of law, socks provided for in subheading 6115.92.90, 6115.93.90, 6115.99.18, 6111.20.60, 6111.30.50, or 6111.90.50 of the Harmonized Tariff Schedule of the United States, as in effect on September 1, 2003, shall be marked as legibly, indelibly, and permanently as the nature of the article or package will permit in such a manner as to indicate to the ultimate consumer in the United States the English name of the country of origin of the article. The marking required by this subsection shall be on the front of the package, adjacent to the size designation of the product, and shall be set forth in such a manner as to be clearly legible, conspicuous, and readily accessible to the ultimate consumer.

(2) EXCEPTIONS.—Any package that contains several different types of goods and includes socks classified under subheading 6115.92.90, 6115.93.90, 6115.99.18, 6111.20.60, 6111.30.50, or 6111.90.50 of the Harmonized Tariff Schedule of the United States, as in effect on September 1, 2003, shall not be subject to the requirements of paragraph (1).

(Pub. L. 85–897, §4, Sept. 2, 1958, 72 Stat. 1719; Pub. L. 89–35, §§1, 2, June 5, 1965, 79 Stat. 124; Pub. L. 98–417, title III, §§301–303, Sept. 24, 1984, 98 Stat. 1603, 1604; Pub. L. 108–429, title II, §2004(h)(1), Dec. 3, 2004, 118 Stat. 2594.)

REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsec. (k), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of Title 19, Customs Duties.

The Fur Products Labeling Act, referred to in subsec. (g), is act Aug. 8, 1951, ch. 298, 65 Stat. 175, as amended, which is classified generally to subchapter IV (§69 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 69 of this title and Tables.

AMENDMENTS

2004—Subsec. (k). Pub. L. 108–429 added subsec. (k).

1984—Subsec. (b)(5). Pub. L. 98–417, §301, added par. (5).

Subsec. (e). Pub. L. 98–417, §302, amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: "This section shall not be construed as requiring the affixing of a stamp, tag, label, or other means of identification to each textile fiber product contained in a package if (1) such textile fiber products are intended for sale to the ultimate consumer in such package, (2) such package has affixed to it a stamp, tag, label, or other means of identification bearing, with respect to the textile fiber products contained therein, the

information required by subsection (b) of this section, and (3) the information on the stamp, tag, label, or other means of identification affixed to such package is equally applicable with respect to each textile fiber product contained therein."

Subsecs. (i), (j). Pub. L. 98–417, §303, added subsecs. (i) and (j).

1965—Subsec. (b)(1). Pub. L. 89–35, §1, inserted ", but nothing in this section shall be construed as prohibiting the disclosure of any fiber present in a textile fiber product which has a clearly established and definite functional significance where present in the amount contained in such product".

Subsec. (b)(2). Pub. L. 89–35, §2, inserted ", but nothing in this section shall be construed as prohibiting the disclosure of any fiber present in a textile fiber product which has a clearly established and definite functional significance where present in the amount stated".

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–429, title II, §2004(h)(2), Dec. 3, 2004, 118 Stat. 2594, provided that: "The amendment made by paragraph (1) [amending this section] shall take effect on the date that is 15 months after the date of enactment of this Act [Dec. 3, 2004], and on and after the date that is 15 months after such date of enactment, any provision of part 303 of title 16, Code of Federal Regulations, that is inconsistent with such amendment shall not apply."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–417 effective 90 days after Sept. 24, 1984, see section 307 of Pub. L. 98–417, set out as a note under section 68b of this title.

§70c. Removal of stamp, tag, label, or other identification

(a) Removal or mutilation after shipment in commerce

After shipment of a textile fiber product in commerce it shall be unlawful, except as provided in this subchapter, to remove or mutilate, or cause or participate in the removal or mutilation of, prior to the time any textile fiber product is sold and delivered to the ultimate consumer, any stamp, tag, label, or other identification required by this subchapter to be affixed to such textile fiber product, and any person violating this section shall be guilty of an unfair method of competition, and an unfair or deceptive act or practice, under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(b) Substitution of stamp, tag, etc.

Any person—

(1) introducing, selling, advertising, or offering for sale, in commerce, or importing into the United States, a textile fiber product subject to the provisions of this subchapter, or

(2) selling, advertising, or offering for sale a textile fiber product whether in its original state or contained in other textile fiber products, which has been shipped, advertised, or offered for sale, in commerce,

may substitute for the stamp, tag, label, or other means of identification required to be affixed to such textile product pursuant to section 70b(b) of this title, a stamp, tag, label, or other means of identification conforming to the requirements of section 70b(b) of this title, and such substituted stamp, tag, label, or other means of identification shall show the name or other identification issued and registered by the Commission of the person making the substitution.

(c) Affixing of stamp, tag, etc. to individual unit of broken package

If any person other than the ultimate consumer breaks a package which bears a stamp, tag, label, or other means of identification conforming to the requirements of section 70b of this title, and if such package contains one or more units of a textile fiber product to which a stamp, tag, label, or other identification conforming to the requirements of section 70b of this title is not affixed, such person shall affix a stamp, tag, label, or other identification bearing the information on the stamp, tag, label, or other means of identification attached to such broken package to each unit of textile fiber product taken from such broken package.

(Pub. L. 85–897, §5, Sept. 2, 1958, 72 Stat. 1720.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (a), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of this chapter. For complete classification of this Act to the Code, see section 58 of this title and Tables.

§70d. Records

(a) Maintenance and preservation by manufacturer

Every manufacturer of textile fiber products subject to this subchapter shall maintain proper records showing the fiber content as required by this subchapter of all such products made by him, and shall preserve such records for at least three years.

(b) Maintenance and preservation by person substituting stamp, tag, etc.

Any person substituting a stamp, tag, label, or other identification pursuant to section 70c(b) of this title shall keep such records as will show the information set forth on the stamp, tag, label, or other identification that he removed and the name or names of the person or persons from whom such textile fiber product was received, and shall preserve such records for at least three years.

(c) Neglect or refusal to maintain or preserve records

The neglect or refusal to maintain or preserve the records required by this section is unlawful, and any person neglecting or refusing to maintain such records shall be guilty of an unfair method of competition, and an unfair or deceptive act or practice, in commerce, under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(Pub. L. 85–897, §6, Sept. 2, 1958, 72 Stat. 1721.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (c), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of this chapter. For complete classification of this Act to the Code, see section 58 of this title and Tables.

§70e. Enforcement

(a) Enforcement by Federal Trade Commission

Except as otherwise specifically provided herein, this subchapter shall be enforced by the Federal Trade Commission under rules, regulations, and procedure provided for in the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(b) Terms of Federal Trade Commission Act incorporated into this subchapter

The Commission is authorized and directed to prevent any person from violating the provisions of this subchapter in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act [15 U.S.C. 41 et seq.] were incorporated into and made a part of this subchapter; and any such person violating the provisions of this subchapter shall be subject to the penalties and entitled to the privileges and immunities provided in said Federal Trade Commission Act, in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though the applicable terms and provisions of the said Federal Trade Commission Act were incorporated into and made a part of this subchapter.

(c) Rules and regulations by Federal Trade Commission

The Commission is authorized and directed to make such rules and regulations, including the establishment of generic names of manufactured fibers, under and in pursuance of the terms of this subchapter as may be necessary and proper for administration and enforcement.

(d) Inspection, analyses, tests, etc.

The Commission is authorized to cause inspections, analyses, tests, and examinations to be made of any product subject to this subchapter.

(Pub. L. 85–897, §7, Sept. 2, 1958, 72 Stat. 1721.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsecs. (a) and (b), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of this chapter. For complete classification of this Act to the Code, see section 58 of this title and Tables.

§70f. Injunction proceedings

Whenever the Commission has reason to believe—

(a) that any person is doing, or is about to do, an act which by section 70a, 70c, 70d, 70g, or 70h(b) of this title is declared to be unlawful; and

(b) that it would be to the public interest to enjoin the doing of such act until complaint is issued by the Commission under the Federal Trade Commission Act [15 U.S.C. 41 et seq.] and such complaint is dismissed by the Commission or set aside by the court on review or until an order to cease and desist made thereon by the Commission has become final within the meaning of the Federal Trade Commission Act,

the Commission may bring suit in the district court of the United States or in the United States court of any Territory, for the district or Territory in which such person resides or transacts business, to enjoin the doing of such act and upon proper showing a temporary injunction or restraining order shall be granted without bond.

(Pub. L. 85–897, §8, Sept. 2, 1958, 72 Stat. 1721.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in text, is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of this chapter. For complete classification of this Act to the Code, see section 58 of this title and Tables.

§70g. Exclusion of misbranded textile fiber products

All textile fiber products imported into the United States shall be stamped, tagged, labeled, or otherwise identified in accordance with the provisions of section 70b of this title, and all invoices of such products required pursuant to section 1484 of title 19, shall set forth, in addition to the matter therein specified, the information with respect to said products required under the provisions of section 70b(b) of this title, which information shall be in the invoices prior to their certification, if such certification is required pursuant to section 1484 of title 19. The falsification of, or failure to set forth the required information in such invoices, or the falsification or perjury of the consignee's declaration provided for in section 1485 of title 19, insofar as it relates to such information, is unlawful, and shall be an unfair method of competition, and an unfair and deceptive act or practice, in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.]; and any person who falsifies, or perjures the consignee's declaration insofar as it relates to such information, may thenceforth be prohibited by the Commission from importing, or participating in the importation of, any textile fiber product into the United States except upon filing bond with the Secretary of the Treasury in a sum double the value of said products and any duty thereon, conditioned upon compliance with the provisions of this subchapter. A verified statement from the manufacturer or producer of such products showing their fiber content as required under the provisions of this subchapter may be required under regulation prescribed by the Secretary of the Treasury.

(Pub. L. 85–897, §9, Sept. 2, 1958, 72 Stat. 1722.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in text, is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of this chapter. For complete classification of this Act to the Code, see section 58 of this title and Tables.

§70h. Guaranty

(a) Avoidance of liability; requirements

No person shall be guilty of an unlawful act under section 70a of this title if he establishes a guaranty received in good faith, signed by and containing the name and address of the person residing in the United States by whom the textile fiber product guaranteed was manufactured or from whom it was received, that said product is not misbranded or falsely invoiced under the provisions of this subchapter. Said guaranty shall be (1) a separate guaranty specifically designating the textile fiber product guaranteed, in which case it may be on the invoice or other paper relating to said product; or (2) a continuing guaranty given by seller to the buyer applicable to all textile fiber products sold to or to be sold to buyer by seller in a form as the Commission, by rules and regulations, may prescribe; or (3) a continuing guaranty filed with the Commission applicable to all textile fiber products handled by a guarantor in such form as the Commission by rules and regulations may prescribe.

(b) Furnishing false guaranty

The furnishing of a false guaranty, except where the person furnishing such false guaranty relies on a guaranty to the same effect received in good faith signed by and containing the name and address of the person residing in the United States by whom the product guaranteed was manufactured or from whom it was received, is unlawful, and shall be an unfair method of competition, and an unfair and deceptive act or practice, in commerce, within the meaning of the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(Pub. L. 85–897, §10, Sept. 2, 1958, 72 Stat. 1722.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (b), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of this chapter. For complete classification of this Act to the Code, see section 58 of this title and Tables.

§70i. Criminal penalty

(a) Any person who willfully does an act which by section 70a, 70c, 70d, 70g, or 70h(b) of this title is declared to be unlawful shall be guilty of a misdemeanor and upon conviction shall be fined not more than $5,000 or be imprisoned not more than one year, or both, in the discretion of the court: *Provided*, That nothing in this section shall limit any other provision of this subchapter.

(b) Whenever the Commission has reason to believe that any person is guilty of a misdemeanor under this section, it may certify all pertinent facts to the Attorney General. If, on the basis of the facts certified, the Attorney General concurs in such belief, it shall be his duty to cause appropriate proceedings to be brought for the enforcement of the provisions of this section against such person.

(Pub. L. 85–897, §11, Sept. 2, 1958, 72 Stat. 1723.)

§70j. Exemptions

(a) None of the provisions of this subchapter shall be construed to apply to—

(1) upholstery stuffing, except as provided in section 70b(h) of this title;

(2) outer coverings of furniture, mattresses, and box springs;

(3) linings or interlinings incorporated primarily for structural purposes and not for warmth;

(4) filling or padding incorporated primarily for structural purposes and not for warmth;

(5) stiffenings, trimmings, facings, or interfacings;
(6) backings of, and paddings or cushions to be used under, floor coverings;
(7) sewing and handicraft threads;
(8) bandages, surgical dressings, and other textile fiber products, the labeling of which is subject to the requirements of the Federal Food, Drug and Cosmetic Act of 1938, as amended [21 U.S.C. 301 et seq.];
(9) waste materials not intended for use in a textile fiber product;
(10) textile fiber products incorporated in shoes or overshoes or similar outer footwear;
(11) textile fiber products incorporated in headwear, handbags, luggage, brushes, lampshades, or toys, catamenial devices, adhesive tapes and adhesive sheets, cleaning cloths impregnated with chemicals, or diapers.

The exemption provided for any article by paragraph (3) or (4) of this subsection shall not be applicable if any representation as to fiber content of such article is made in any advertisement, label, or other means of identification covered by section 70b of this title.

(b) The Commission may exclude from the provisions of this subchapter other textile fiber products (1) which have an insignificant or inconsequential textile fiber content, or (2) with respect to which the disclosure of textile fiber content is not necessary for the protection of the ultimate consumer.

(Pub. L. 85–897, §12, Sept. 2, 1958, 72 Stat. 1723.)

REFERENCES IN TEXT

The Federal Food, Drug and Cosmetic Act of 1938, referred to in subsec. (a)(8), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

§70k. Application of other laws

The provisions of this subchapter shall be held to be in addition to, and not in substitution for or limitation of, the provisions of any other Act of the United States.

(Pub. L. 85–897, §14, Sept. 2, 1958, 72 Stat. 1724.)

SUBCHAPTER VI—PREVENTION OF UNFAIR METHODS OF COMPETITION

§71. "Person" defined

When used in this subchapter the term "person" includes partnerships, corporations, and associations.

(Sept. 8, 1916, ch. 463, title VIII, §800, 39 Stat. 798.)

§72. Repealed. Pub. L. 108–429, title II, §2006(a), Dec. 3, 2004, 118 Stat. 2597

Section, act Sept. 8, 1916, ch. 463, title VIII, §801, 39 Stat. 798, related to importation or sale of articles at less than market value or wholesale price.

SAVINGS PROVISION

Pub. L. 108–429, title II, §2006(b), Dec. 3, 2004, 118 Stat. 2597, provided that: "The repeal made by subsection (a) [repealing this section] shall not affect any action under section 801 of the Act referred to in subsection (a) [this section] that was commenced before the date of the enactment of this Act [Dec. 3, 2004]

and is pending on such date."

§73. Agreements involving restrictions in favor of imported goods

If any article produced in a foreign country is imported into the United States under any agreement, understanding, or condition that the importer thereof or any other person in the United States shall not use, purchase, or deal in, or shall be restricted in his using, purchasing, or dealing in, the articles of any other person, there shall be levied, collected, and paid thereon, in addition to the duty otherwise imposed by law, a special duty equal to double the amount of such duty: *Provided*, That the above shall not be interpreted to prevent the establishing in this country on the part of a foreign producer of an exclusive agency for the sale in the United States of the products of said foreign producer or merchant, nor to prevent such exclusive agent from agreeing not to use, purchase, or deal in the article of any other person, but this proviso shall not be construed to exempt from the provisions of this section any article imported by such exclusive agent if such agent is required by the foreign producer or if it is agreed between such agent and such foreign producer that any agreement, understanding or condition set out in this section shall be imposed by such agent upon the sale or other disposition of such article to any person in the United States.

(Sept. 8, 1916, ch. 463, title VIII, §802, 39 Stat. 799.)

§74. Rules and regulations

The Secretary of the Treasury shall make such rules and regulations as are necessary for the carrying out of the provisions of section 73 of this title.

(Sept. 8, 1916, ch. 463, title VIII, §803, 39 Stat. 799.)

§75. Retaliation against country prohibiting importations

Whenever any country, dependency, or colony shall prohibit the importation of any article the product of the soil or industry of the United States and not injurious to health or morals, the President shall have power to prohibit, during the period such prohibition is in force, the importation into the United States of similar articles, or in case the United States does not import similar articles from that country, then other articles, the products of such country, dependency, or colony.

And the Secretary of the Treasury, with the approval of the President, shall make such rules and regulations as are necessary for the execution of the provisions of this section.

(Sept. 8, 1916, ch. 463, title VIII, §804, 39 Stat. 799.)

§76. Retaliation against restriction of importations in time of war

Whenever, during the existence of a war in which the United States is not engaged, the President shall be satisfied that there is reasonable ground to believe that under the laws, regulations, or practices of any country, colony, or dependency contrary to the law and practice of nations, the importation into their own or any other country, dependency, or colony of any article the product of the soil or industry of the United States and not injurious to health or morals is prevented or restricted the President is authorized and empowered to prohibit or restrict during the period such prohibition or restriction is in force, the importation into the United States of similar or other articles, products of such country, dependency, or colony as in his opinion the public interest may require; and in such case he shall make proclamation stating the article or articles which are prohibited from importation into the United States; and any person or persons who shall import, or attempt or conspire to import, or be concerned in importing, such article or articles, into the United States contrary to the prohibition in such proclamation, shall be liable to a fine of not less than $2,000 nor

more than $50,000, or to imprisonment not to exceed two years, or both, in the discretion of the court. The President may change, modify, revoke, or renew such proclamation in his discretion.

(Sept. 8, 1916, ch. 463, title VIII, §805, 39 Stat. 799.)

§77. Discrimination against neutral Americans in time of war

Whenever, during the existence of a war in which the United States is not engaged, the President shall be satisfied that there is reasonable ground to believe that any vessel, American or foreign, is, on account of the laws, regulations, or practices of a belligerent Government, making or giving any undue or unreasonable preference or advantage in any respect whatsoever to any particular person, company, firm, or corporation, or any particular description of traffic in the United States or its possessions or to any citizens of the United States residing in neutral countries abroad, or is subjecting any particular person, company, firm, or corporation or any particular description of traffic in the United States or its possessions, or any citizens of the United States residing in neutral countries abroad to any undue or unreasonable prejudice, disadvantage, injury, or discrimination in regard to accepting, receiving, transporting, or delivering, or refusing to accept, receive, transfer, or deliver any cargo, freight, or passengers, or in any other respect whatsoever, he is authorized and empowered to direct the detention of such vessels by withholding clearance or by formal notice forbidding departure, and to revoke, modify, or renew any such direction.

Whenever, during the existence of a war in which the United States is not engaged, the President shall be satisfied that there is reasonable ground to believe that under the laws, regulations, or practices of any belligerent country or Government, American ships or American citizens are not accorded any of the facilities of commerce which the vessels or citizens of that belligerent country enjoy in the United States or its possessions, or are not accorded by such belligerent equal privileges or facilities of trade with vessels or citizens of any nationality other than that of such belligerent, the President is authorized and empowered to withhold clearance from one or more vessels of such belligerent country until such belligerent shall restore to such American vessels and American citizens reciprocal liberty of commerce and equal facilities of trade; or the President may direct that similar privileges and facilities, if any, enjoyed by vessels or citizens of such belligerent in the United States or its possessions be refused to vessels or citizens of such belligerent; and in such case he shall make proclamation of his direction, stating the facilities and privileges which shall be refused, and the belligerent to whose vessels or citizens they are to be refused, and thereafter the furnishing of such prohibited privileges and facilities to any vessel or citizen of the belligerent named in such proclamation shall be unlawful; and he may change, modify, revoke, or renew such proclamation; and any person or persons who shall furnish or attempt or conspire to furnish or be concerned in furnishing or in the concealment of furnishing facilities or privileges to ships or persons contrary to the prohibition in such proclamation shall be liable to a fine of not less than $2,000 nor more than $50,000 or to imprisonment not to exceed two years, or both, in the discretion of the court.

In case any vessel which is detained by virtue of this subchapter shall depart or attempt to depart from the jurisdiction of the United States without clearance or other lawful authority, the owner or master or person or persons having charge or command of such vessel shall be severally liable to a fine of not less than $2,000 nor more than $10,000, or to imprisonment not to exceed two years, or both, and in addition such vessel shall be forfeited to the United States.

The President of the United States is authorized and empowered to employ such part of the land or naval forces of the United States as shall be necessary to carry out the purposes of this subchapter.

(Sept. 8, 1916, ch. 463, title VIII, §806, 39 Stat. 799.)

DELEGATION OF FUNCTIONS

For delegation to Secretary of Homeland Security of authority vested in President by this section, see section 1(j), (k) of Ex. Ord. No. 10637, Sept. 16, 1955, 20 F.R. 7025, as amended, set out as a note under section 301 of Title 3, The President.

CHAPTER 2A—SECURITIES AND TRUST INDENTURES

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SUBCHAPTER I—DOMESTIC SECURITIES

§77a. Short title

This subchapter may be cited as the "Securities Act of 1933".

(May 27, 1933, ch. 38, title I, §1, 48 Stat. 74.)

SHORT TITLE OF 2012 AMENDMENT

Pub. L. 112–142, §1, July 9, 2012, 126 Stat. 989, provided that: "This Act [amending section 77c of this title] may be cited as the 'Church Plan Investment Clarification Act'."

Pub. L. 112–106, title III, §301, Apr. 5, 2012, 126 Stat. 315, provided that: "This title [enacting section 77d–1 of this title, amending sections 77d, 77r, 78c, 78l, and 78o of this title, and enacting provisions set out as notes under sections 77d, 77r, 78c, and 78l of this title] may be cited as the 'Capital Raising Online While Deterring Fraud and Unethical Non-Disclosure Act of 2012' or the 'CROWDFUND Act'."

SHORT TITLE OF 1980 AMENDMENT

Pub. L. 96–477, title VI, §601, Oct. 21, 1980, 94 Stat. 2294, provided that: "This title [amending sections 77b and 77d of this title] may be cited as the 'Small Business Issuers' Simplification Act of 1980'."

§77b. Definitions; promotion of efficiency, competition, and capital formation

(a) Definitions

When used in this subchapter, unless the context otherwise requires—

(1) The term "security" means any note, stock, treasury stock, security future, security-based swap, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

(2) The term "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust, any unincorporated organization, or a government or political subdivision thereof. As used in this paragraph the term "trust" shall include only a trust where the interest or interests of the beneficiary or beneficiaries are evidenced by a security.

(3) The term "sale" or "sell" shall include every contract of sale or disposition of a security or interest in a security, for value. The term "offer to sell", "offer for sale", or "offer" shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. The terms defined in this paragraph and the term "offer to buy" as used in subsection (c) of section 77e of this title shall not include preliminary negotiations or agreements between an issuer (or any person directly or indirectly controlling or controlled by an issuer, or under direct or indirect common control with an issuer) and any underwriter or among underwriters who are or are to be in privity of contract with an issuer (or any person directly or indirectly controlling or controlled by an issuer, or under direct or indirect common control with an issuer). Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been offered and sold for value. The issue or transfer of a right or privilege, when originally issued or transferred with a security, giving the holder of such security the right to convert such security into another security of the same issuer or of another person, or giving a right to subscribe to another security of the same issuer or of another person, which right cannot be exercised until some future date, shall not be deemed to be an offer or sale of such other security; but the issue or transfer of such other security upon the exercise of such right of conversion or subscription shall be deemed a sale of such other security. Any offer or sale of a security futures product by or on behalf of the issuer of the securities underlying the security futures product, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell the underlying securities. Any offer or sale of a security-based swap by or on behalf of the issuer of the securities upon which such security-based swap is based or is referenced, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell such securities. The publication or distribution by a broker or dealer of a research report about an emerging growth company that is the subject of a proposed public offering of the common equity securities of such emerging growth company pursuant to a registration statement that the issuer proposes to file, or has filed, or that is effective shall be deemed for purposes of paragraph (10) of this subsection and section 77e(c) of this title not to constitute an offer for sale or offer to sell a security, even if the broker or dealer is participating or will participate in the registered offering of the securities of the issuer. As used in this paragraph, the term "research report" means a written, electronic, or oral communication that includes information, opinions, or recommendations with respect to securities of an issuer or an analysis of a security or an issuer, whether or not it provides information reasonably sufficient upon which to base an investment decision.

(4) The term "issuer" means every person who issues or proposes to issue any security; except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having

a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued; except that in the case of an unincorporated association which provides by its articles for limited liability of any or all of its members, or in the case of a trust, committee, or other legal entity, the trustees or members thereof shall not be individually liable as issuers of any security issued by the association, trust, committee, or other legal entity; except that with respect to equipment-trust certificates or like securities, the term "issuer" means the person by whom the equipment or property is or is to be used; and except that with respect to fractional undivided interests in oil, gas, or other mineral rights, the term "issuer" means the owner of any such right or of any interest in such right (whether whole or fractional) who creates fractional interests therein for the purpose of public offering.

(5) The term "Commission" means the Securities and Exchange Commission.

(6) The term "Territory" means Puerto Rico, the Virgin Islands, and the insular possessions of the United States.

(7) The term "interstate commerce" means trade or commerce in securities or any transportation or communication relating thereto among the several States or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia.

(8) The term "registration statement" means the statement provided for in section 77f of this title, and includes any amendment thereto and any report, document, or memorandum filed as part of such statement or incorporated therein by reference.

(9) The term "write" or "written" shall include printed, lithographed, or any means of graphic communication.

(10) The term "prospectus" means any prospectus, notice, circular, advertisement, letter, or communication, written or by radio or television, which offers any security for sale or confirms the sale of any security; except that (a) a communication sent or given after the effective date of the registration statement (other than a prospectus permitted under subsection (b) of section 77j of this title) shall not be deemed a prospectus if it is proved that prior to or at the same time with such communication a written prospectus meeting the requirements of subsection (a) of section 77j of this title at the time of [1] such communication was sent or given to the person to whom the communication was made, and (b) a notice, circular, advertisement, letter, or communication in respect of a security shall not be deemed to be a prospectus if it states from whom a written prospectus meeting the requirements of section 77j of this title may be obtained and, in addition, does no more than identify the security, state the price thereof, state by whom orders will be executed, and contain such other information as the Commission, by rules or regulations deemed necessary or appropriate in the public interest and for the protection of investors, and subject to such terms and conditions as may be prescribed therein, may permit.

(11) The term "underwriter" means any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission. As used in this paragraph the term "issuer" shall include, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer.

(12) The term "dealer" means any person who engages either for all or part of his time, directly or indirectly, as agent, broker, or principal, in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.

(13) The term "insurance company" means a company which is organized as an insurance company, whose primary and predominant business activity is the writing of insurance or the

reinsuring of risks underwritten by insurance companies, and which is subject to supervision by the insurance commissioner, or a similar official or agency, of a State or territory or the District of Columbia; or any receiver or similar official or any liquidating agent for such company, in his capacity as such.

(14) The term "separate account" means an account established and maintained by an insurance company pursuant to the laws of any State or territory of the United States, the District of Columbia, or of Canada or any province thereof, under which income, gains and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.

(15) The term "accredited investor" shall mean—

(i) a bank as defined in section 77c(a)(2) of this title whether acting in its individual or fiduciary capacity; an insurance company as defined in paragraph (13) of this subsection; an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.] or a business development company as defined in section 2(a)(48) of that Act [15 U.S.C. 80a–2(a)(48)]; a Small Business Investment Company licensed by the Small Business Administration; or an employee benefit plan, including an individual retirement account, which is subject to the provisions of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.], if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act [29 U.S.C. 1002(21)], which is either a bank, insurance company, or registered investment adviser; or

(ii) any person who, on the basis of such factors as financial sophistication, net worth, knowledge, and experience in financial matters, or amount of assets under management qualifies as an accredited investor under rules and regulations which the Commission shall prescribe.

(16) The terms "security future", "narrow-based security index", and "security futures product" have the same meanings as provided in section 78c(a)(55) of this title.

(17) The terms "swap" and "security-based swap" have the same meanings as in section 1a of title 7.

(18) The terms "purchase" or "sale" of a security-based swap shall be deemed to mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.

(19) The term "emerging growth company" means an issuer that had total annual gross revenues of less than $1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest 1,000,000) during its most recently completed fiscal year. An issuer that is an emerging growth company as of the first day of that fiscal year shall continue to be deemed an emerging growth company until the earliest of—

(A) the last day of the fiscal year of the issuer during which it had total annual gross revenues of $1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest 1,000,000) or more;

(B) the last day of the fiscal year of the issuer following the fifth anniversary of the date of the first sale of common equity securities of the issuer pursuant to an effective registration statement under this subchapter;

(C) the date on which such issuer has, during the previous 3-year period, issued more than $1,000,000,000 in non-convertible debt; or

(D) the date on which such issuer is deemed to be a "large accelerated filer", as defined in section 240.12b–2 of title 17, Code of Federal Regulations, or any successor thereto.

(b) Consideration of promotion of efficiency, competition, and capital formation

Whenever pursuant to this subchapter the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

(May 27, 1933, ch. 38, title I, §2, 48 Stat. 74; June 6, 1934, ch. 404, title II, §201, 48 Stat. 905; Aug. 10, 1954, ch. 667, title I, §§1–4, 68 Stat. 683, 684; Pub. L. 86–70, §12(a), June 25, 1959, 73 Stat. 143; Pub. L. 86–624, §7(a), July 12, 1960, 74 Stat. 412; Pub. L. 91–547, §27(a), Dec. 14, 1970, 84 Stat. 1433; Pub. L. 96–477, title VI, §603, Oct. 21, 1980, 94 Stat. 2294; Pub. L. 97–303, §1, Oct. 13, 1982, 96 Stat. 1409; Pub. L. 100–181, title II, §§201, 202, Dec. 4, 1987, 101 Stat. 1252; Pub. L. 104–290, title I, §106(a), Oct. 11, 1996, 110 Stat. 3424; Pub. L. 105–353, title III, §301(a)(1), Nov. 3, 1998, 112 Stat. 3235; Pub. L. 106–554, §1(a)(5) [title II, §208(a)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–434; Pub. L. 111–203, title VII, §768(a), July 21, 2010, 124 Stat. 1800; Pub. L. 112–106, title I, §§101(a), 105(a), Apr. 5, 2012, 126 Stat. 307, 310.)

AMENDMENT OF SECTION

Unless otherwise provided, amendment by subtitle B (§§761–774) of title VII of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see 2010 Amendment notes and Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (a)(15)(i), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a–51 of this title and Tables.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(15)(i), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended, which is classified principally to chapter 18 (§1001 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

CODIFICATION

Words "Philippine Islands" deleted from definition of term "Territory" under authority of Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352, which granted independence to the Philippine Islands. Proc. No. 2695 was issued pursuant to section 1394 of Title 22, Foreign Relations and Intercourse, and is set out as a note under that section.

AMENDMENTS

2012—Subsec. (a)(3). Pub. L. 112–106, §105(a), inserted at end "The publication or distribution by a broker or dealer of a research report about an emerging growth company that is the subject of a proposed public offering of the common equity securities of such emerging growth company pursuant to a registration statement that the issuer proposes to file, or has filed, or that is effective shall be deemed for purposes of paragraph (10) of this subsection and section 77e(c) of this title not to constitute an offer for sale or offer to sell a security, even if the broker or dealer is participating or will participate in the registered offering of the securities of the issuer. As used in this paragraph, the term 'research report' means a written, electronic, or oral communication that includes information, opinions, or recommendations with respect to securities of an issuer or an analysis of a security or an issuer, whether or not it provides information reasonably sufficient upon which to base an investment decision."

Subsec. (a)(19). Pub. L. 112–106, §101(a), added par. (19).

2010—Subsec. (a)(1). Pub. L. 111–203, §768(a)(1), inserted "security-based swap," after "security future,".

Subsec. (a)(3). Pub. L. 111–203, §768(a)(2), inserted at end "Any offer or sale of a security-based swap by or on behalf of the issuer of the securities upon which such security-based swap is based or is referenced, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell such securities."

Subsec. (a)(17), (18). Pub. L. 111–203, §768(a)(3), added pars. (17) and (18).

2000—Subsec. (a)(1). Pub. L. 106–554, §1(a)(5) [title II, §208(a)(1)(A)], inserted "security future," after "treasury stock,".

Subsec. (a)(3). Pub. L. 106–554, §1(a)(5) [title II, §208(a)(1)(B)], inserted at end "Any offer or sale of a

security futures product by or on behalf of the issuer of the securities underlying the security futures product, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell the underlying securities."

Subsec. (a)(16). Pub. L. 106–554, §1(a)(5) [title II, §208(a)(1)(C)], added par. (16).

1998—Subsec. (a)(15)(i). Pub. L. 105–353 made technical amendment to reference in original act which appears in text as reference to section 77c(a)(2) of this title and inserted "of this subsection" after "paragraph (13)".

1996—Pub. L. 104–290 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1987—Par. (5). Pub. L. 100–181, §201, substituted "Securities and Exchange Commission" for "Federal Trade Commission".

Par. (6). Pub. L. 100–181, §202, struck out reference to Canal Zone.

1982—Par. (1). Pub. L. 97–303 inserted "any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency," after "mineral rights,".

1980—Par. (15). Pub. L. 96–477 added par. (15).

1970—Pars. (13), (14). Pub. L. 91–547 added pars. (13) and (14).

1960—Par. (6). Pub. L. 86–624 struck out reference to Hawaii.

1959—Par. (6). Pub. L. 86–70 struck out reference to Alaska.

1954—Act Aug. 10, 1954, in pars. (3), (8), (10), and (11), redefined term "sale" so as to distinguish between "offers" and "sales", clarified definition of "registration statement", and conformed definition of "prospectus" to changes made by act Aug. 10, 1954, to sections 77e and 77j of this title.

1934—Act June 6, 1934, amended pars. (1), (4), and (10).

EFFECTIVE DATE OF 2012 AMENDMENT

Pub. L. 112–106, title I, §101(d), Apr. 5, 2012, 126 Stat. 308, provided that: "Notwithstanding section 2(a)(19) of the Securities Act of 1933 [15 U.S.C. 77b(a)(19)] and section 3(a)(80) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(80)], an issuer shall not be an emerging growth company for purposes of such Acts [15 U.S.C. 77a et seq., 78a et seq.] if the first sale of common equity securities of such issuer pursuant to an effective registration statement under the Securities Act of 1933 [15 U.S.C. 77a et seq.] occurred on or before December 8, 2011."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–203, title VII, §774, July 21, 2010, 124 Stat. 1802, provided that: "Unless otherwise provided, the provisions of this subtitle [subtitle B (§§761–774) of title VII of Pub. L. 111–203, enacting subchapter II (§8341 et seq.) of chapter 109 and sections 78c–3 to 78c–5, 78j–2, 78m–1, and 78o–10 of this title, amending this section and sections 77b–1, 77e, 77q, 78c, 78c–1, 78f, 78i, 78j, 78m, 78o, 78p, 78q–1, 78t, 78u–1, 78u–2, 78bb, 78dd, 78mm, 80a–2, and 80b–2 of this title, and amending provisions set out as a note under section 78c of this title] shall take effect on the later of 360 days after the date of the enactment of this subtitle [July 21, 2010] or, to the extent a provision of this subtitle requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of this subtitle."

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–547 effective Dec. 14, 1970, see section 30 of Pub. L. 91–547, set out as a note under section 80a–52 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Act Aug. 10, 1954, ch. 667, §501, 68 Stat. 689, provided that: "This Act [amending this section and sections 77c to 77e, 77j, 77l, 77q, 77v, 77ccc to 77fff, 77xxx, 78k, 78l, 80a–2 and 80a–24 of this title] shall take effect sixty days after the date of its enactment [Aug. 10, 1954]."

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

ADJUSTING THE ACCREDITED INVESTOR STANDARD

Pub. L. 111–203, title IV, §413, July 21, 2010, 124 Stat. 1577, provided that:

"(a) IN GENERAL.—The [Securities and Exchange] Commission shall adjust any net worth standard for an accredited investor, as set forth in the rules of the Commission under the Securities Act of 1933 [15 U.S.C. 77a et seq.], so that the individual net worth of any natural person, or joint net worth with the spouse of that person, at the time of purchase, is more than $1,000,000 (as such amount is adjusted periodically by rule of the Commission), excluding the value of the primary residence of such natural person, except that during the 4-year period that begins on the date of enactment of this Act [July 21, 2010], any net worth standard shall be $1,000,000, excluding the value of the primary residence of such natural person.

"(b) REVIEW AND ADJUSTMENT.—

"(1) INITIAL REVIEW AND ADJUSTMENT.—

"(A) INITIAL REVIEW.—The Commission may undertake a review of the definition of the term 'accredited investor', as such term applies to natural persons, to determine whether the requirements of the definition, excluding the requirement relating to the net worth standard described in subsection (a), should be adjusted or modified for the protection of investors, in the public interest, and in light of the economy.

"(B) ADJUSTMENT OR MODIFICATION.—Upon completion of a review under subparagraph (A), the Commission may, by notice and comment rulemaking, make such adjustments to the definition of the term 'accredited investor', excluding adjusting or modifying the requirement relating to the net worth standard described in subsection (a), as such term applies to natural persons, as the Commission may deem appropriate for the protection of investors, in the public interest, and in light of the economy.

"(2) SUBSEQUENT REVIEWS AND ADJUSTMENT.—

"(A) SUBSEQUENT REVIEWS.—Not earlier than 4 years after the date of enactment of this Act [July 21, 2010], and not less frequently than once every 4 years thereafter, the Commission shall undertake a review of the definition, in its entirety, of the term 'accredited investor', as defined in section 230.215 of title 17, Code of Federal Regulations, or any successor thereto, as such term applies to natural persons, to determine whether the requirements of the definition should be adjusted or modified for the protection of investors, in the public interest, and in light of the economy.

"(B) ADJUSTMENT OR MODIFICATION.—Upon completion of a review under subparagraph (A), the Commission may, by notice and comment rulemaking, make such adjustments to the definition of the term 'accredited investor', as defined in section 230.215 of title 17, Code of Federal Regulations, or any successor thereto, as such term applies to natural persons, as the Commission may deem appropriate for the protection of investors, in the public interest, and in light of the economy."

[1] *So in original.*

§77b–1. Swap agreements

(a) [Reserved]

(b) Security-based swap agreements

(1) The definition of "security" in section 77b(a)(1) of this title does not include any security-based swap agreement (as defined in section 78c(a)(78) of this title).

(2) The Commission is prohibited from registering, or requiring, recommending, or suggesting, the registration under this subchapter of any security-based swap agreement (as defined in section 78c(a)(78) of this title). If the Commission becomes aware that a registrant has filed a registration statement with respect to such a swap agreement, the Commission shall promptly so notify the registrant. Any such registration statement with respect to such a swap agreement shall be void and of no force or effect.

(3) The Commission is prohibited from—

(A) promulgating, interpreting, or enforcing rules; or

(B) issuing orders of general applicability;

under this subchapter in a manner that imposes or specifies reporting or recordkeeping requirements, procedures, or standards as prophylactic measures against fraud, manipulation, or insider trading with respect to any security-based swap agreement (as defined in section 78c(a)(78) of this title).

(4) References in this subchapter to the "purchase" or "sale" of a security-based swap agreement shall be deemed to mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap agreement (as defined in section 78c(a)(78) of this title), as the context may require.

(May 27, 1933, ch. 38, title I, §2A, as added Pub. L. 106–554, §1(a)(5) [title III, §302(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–451; amended Pub. L. 111–203, title VII, §762(c)(1), July 21, 2010, 124 Stat. 1759.)

AMENDMENT OF SECTION

Unless otherwise provided, amendment by subtitle B (§§761–774) of title VII of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see 2010 Amendment notes and Effective Date of 2010 Amendment note below.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, §762(c)(1)(A), struck out subsec. (a) and reserved subsec. (a) designation. Text read as follows: "The definition of 'security' in section 77b(a)(1) of this title does not include any non-security-based swap agreement (as defined in section 206C of the Gramm-Leach-Bliley Act)."

Subsec. (b). Pub. L. 111–203, §762(c)(1)(B), substituted "(as defined in section 78c(a)(78) of this title)" for "(as defined in section 206B of the Gramm-Leach-Bliley Act)" wherever appearing.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761–774) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111–203, set out as a note under section 77b of this title.

§77c. Classes of securities under this subchapter

(a) Exempted securities

Except as hereinafter expressly provided, the provisions of this subchapter shall not apply to any of the following classes of securities:

(1) Reserved.

(2) Any security issued or guaranteed by the United States or any territory thereof, or by the District of Columbia, or by any State of the United States, or by any political subdivision of a State or territory, or by any public instrumentality of one or more States or territories, or by any person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States; or any certificate of deposit for any of the foregoing; or any security issued or guaranteed by any bank; or any security issued by or representing an interest in or a direct obligation of a Federal Reserve bank; or any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term "investment company" under section 3(c)(3) of the Investment Company Act of 1940 [15 U.S.C. 80a–3(c)(3)]; or any security which is an industrial development bond (as defined in section 103(c)(2) [1] of title 26) the interest on which is excludable from gross income under section 103(a)(1) [1] of title 26 if, by reason of the application of paragraph (4) or (6) of section 103(c) [1] of title 26 (determined as if paragraphs (4)(A), (5), and (7) were not included in such section 103(c)),[1] paragraph (1) of such section 103(c) [1] does not apply to such security; or any interest or participation in a single trust fund, or in a collective trust fund maintained by a bank, or any security arising out of a contract issued by an insurance company, which interest, participation, or security is issued in connection with (A) a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of title 26, (B) an annuity

plan which meets the requirements for the deduction of the employer's contributions under section 404(a)(2) of title 26, (C) a governmental plan as defined in section 414(d) of title 26 which has been established by an employer for the exclusive benefit of its employees or their beneficiaries for the purpose of distributing to such employees or their beneficiaries the corpus and income of the funds accumulated under such plan, if under such plan it is impossible, prior to the satisfaction of all liabilities with respect to such employees and their beneficiaries, for any part of the corpus or income to be used for, or diverted to, purposes other than the exclusive benefit of such employees or their beneficiaries, or (D) a church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940 [15 U.S.C. 80a–3(c)(14)], other than any plan described in subparagraph (A), (B), (C), or (D) of this paragraph (i) the contributions under which are held in a single trust fund or in a separate account maintained by an insurance company for a single employer and under which an amount in excess of the employer's contribution is allocated to the purchase of securities (other than interests or participations in the trust or separate account itself) issued by the employer or any company directly or indirectly controlling, controlled by, or under common control with the employer, (ii) which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of title 26 (other than a person participating in a church plan who is described in section 414(e)(3)(B) of title 26), or (iii) which is a plan funded by an annuity contract described in section 403(b) of title 26 (other than a retirement income account described in section 403(b)(9) of title 26, to the extent that the interest or participation in such single trust fund or collective trust fund is issued to a church, a convention or association of churches, or an organization described in section 414(e)(3)(A) of title 26 establishing or maintaining the retirement income account or to a trust established by any such entity in connection with the retirement income account). The Commission, by rules and regulations or order, shall exempt from the provisions of section 77e of this title any interest or participation issued in connection with a stock bonus, pension, profit-sharing, or annuity plan which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of title 26, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this subchapter. For purposes of this paragraph, a security issued or guaranteed by a bank shall not include any interest or participation in any collective trust fund maintained by a bank; and the term "bank" means any national bank, or banking institution organized under the laws of any State, territory, or the District of Columbia, the business of which is substantially confined to banking and is supervised by the State or territorial banking commission or similar official; except that in the case of a common trust fund or similar fund, or a collective trust fund, the term "bank" has the same meaning as in the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.];

(3) Any note, draft, bill of exchange, or banker's acceptance which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited;

(4) Any security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any person, private stockholder, or individual, or any security of a fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940 [15 U.S.C. 80a–3(c)(10)(B)];

(5) Any security issued (A) by a savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, which is supervised and examined by State or Federal authority having supervision over any such institution; or (B) by (i) a farmer's cooperative organization exempt from tax under section 521 of title 26, (ii) a corporation described in section 501(c)(16) of title 26 and exempt from tax under section 501(a) of title 26, or (iii) a corporation described in section 501(c)(2) of title 26 which is exempt from tax under section

501(a) of title 26 and is organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization or corporation described in clause (i) or (ii);

(6) Any interest in a railroad equipment trust. For purposes of this paragraph "interest in a railroad equipment trust" means any interest in an equipment trust, lease, conditional sales contract, or other similar arrangement entered into, issued, assumed, guaranteed by, or for the benefit of, a common carrier to finance the acquisition of rolling stock, including motive power;

(7) Certificates issued by a receiver or by a trustee or debtor in possession in a case under title 11, with the approval of the court;

(8) Any insurance or endowment policy or annuity contract or optional annuity contract, issued by a corporation subject to the supervision of the insurance commissioner, bank commissioner, or any agency or officer performing like functions, of any State or Territory of the United States or the District of Columbia;

(9) Except with respect to a security exchanged in a case under title 11, any security exchanged by the issuer with its existing security holders exclusively where no commission or other remuneration is paid or given directly or indirectly for soliciting such exchange;

(10) Except with respect to a security exchanged in a case under title 11, any security which is issued in exchange for one or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, where the terms and conditions of such issuance and exchange are approved, after a hearing upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities in such exchange shall have the right to appear, by any court, or by any official or agency of the United States, or by any State or Territorial banking or insurance commission or other governmental authority expressly authorized by law to grant such approval;

(11) Any security which is a part of an issue offered and sold only to persons resident within a single State or Territory, where the issuer of such security is a person resident and doing business within or, if a corporation, incorporated by and doing business within, such State or Territory.

(12) Any equity security issued in connection with the acquisition by a holding company of a bank under section 1842(a) of title 12 or a savings association under section 1467a(e) of title 12, if—

(A) the acquisition occurs solely as part of a reorganization in which security holders exchange their shares of a bank or savings association for shares of a newly formed holding company with no significant assets other than securities of the bank or savings association and the existing subsidiaries of the bank or savings association;

(B) the security holders receive, after that reorganization, substantially the same proportional share interests in the holding company as they held in the bank or savings association, except for nominal changes in shareholders' interests resulting from lawful elimination of fractional interests and the exercise of dissenting shareholders' rights under State or Federal law;

(C) the rights and interests of security holders in the holding company are substantially the same as those in the bank or savings association prior to the transaction, other than as may be required by law; and

(D) the holding company has substantially the same assets and liabilities, on a consolidated basis, as the bank or savings association had prior to the transaction.

For purposes of this paragraph, the term "savings association" means a savings association (as defined in section 1813(b) of title 12) the deposits of which are insured by the Federal Deposit Insurance Corporation.

(13) Any security issued by or any interest or participation in any church plan, company or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940 [15 U.S.C. 80a–3(c)(14)].

(14) Any security futures product that is—

(A) cleared by a clearing agency registered under section 78q–1 of this title or exempt from registration under subsection (b)(7) of such section 78q–1; and

(B) traded on a national securities exchange or a national securities association registered pursuant to section 78o–3(a) of this title.

(b) Additional exemptions

(1) Small issues exemptive authority

The Commission may from time to time by its rules and regulations, and subject to such terms and conditions as may be prescribed therein, add any class of securities to the securities exempted as provided in this section, if it finds that the enforcement of this subchapter with respect to such securities is not necessary in the public interest and for the protection of investors by reason of the small amount involved or the limited character of the public offering; but no issue of securities shall be exempted under this subsection where the aggregate amount at which such issue is offered to the public exceeds $5,000,000.

(2) Additional issues

The Commission shall by rule or regulation add a class of securities to the securities exempted pursuant to this section in accordance with the following terms and conditions:

(A) The aggregate offering amount of all securities offered and sold within the prior 12-month period in reliance on the exemption added in accordance with this paragraph shall not exceed $50,000,000.

(B) The securities may be offered and sold publicly.

(C) The securities shall not be restricted securities within the meaning of the Federal securities laws and the regulations promulgated thereunder.

(D) The civil liability provision in section 77l(a)(2) of this title shall apply to any person offering or selling such securities.

(E) The issuer may solicit interest in the offering prior to filing any offering statement, on such terms and conditions as the Commission may prescribe in the public interest or for the protection of investors.

(F) The Commission shall require the issuer to file audited financial statements with the Commission annually.

(G) Such other terms, conditions, or requirements as the Commission may determine necessary in the public interest and for the protection of investors, which may include—

(i) a requirement that the issuer prepare and electronically file with the Commission and distribute to prospective investors an offering statement, and any related documents, in such form and with such content as prescribed by the Commission, including audited financial statements, a description of the issuer's business operations, its financial condition, its corporate governance principles, its use of investor funds, and other appropriate matters; and

(ii) disqualification provisions under which the exemption shall not be available to the issuer or its predecessors, affiliates, officers, directors, underwriters, or other related persons, which shall be substantially similar to the disqualification provisions contained in the regulations adopted in accordance with section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 77d note).

(3) Limitation

Only the following types of securities may be exempted under a rule or regulation adopted pursuant to paragraph (2): equity securities, debt securities, and debt securities convertible or exchangeable to equity interests, including any guarantees of such securities.

(4) Periodic disclosures

Upon such terms and conditions as the Commission determines necessary in the public interest and for the protection of investors, the Commission by rule or regulation may require an issuer of a class of securities exempted under paragraph (2) to make available to investors and file with the Commission periodic disclosures regarding the issuer, its business operations, its financial

condition, its corporate governance principles, its use of investor funds, and other appropriate matters, and also may provide for the suspension and termination of such a requirement with respect to that issuer.

(5) Adjustment

Not later than 2 years after April 5, 2012,[1] and every 2 years thereafter, the Commission shall review the offering amount limitation described in paragraph (2)(A) and shall increase such amount as the Commission determines appropriate. If the Commission determines not to increase such amount, it shall report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on its reasons for not increasing the amount.

(c) Securities issued by small investment company

The Commission may from time to time by its rules and regulations and subject to such terms and conditions as may be prescribed therein, add to the securities exempted as provided in this section any class of securities issued by a small business investment company under the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.] if it finds, having regard to the purposes of that Act, that the enforcement of this subchapter with respect to such securities is not necessary in the public interest and for the protection of investors.

(May 27, 1933, ch. 38, title I, §3, 48 Stat. 75; June 6, 1934, ch. 404, title II, §202, 48 Stat. 906; Feb. 4, 1887, ch. 104, title II, §214, as added Aug. 9, 1935, ch. 498, 49 Stat. 557; amended June 29, 1938, ch. 811, §15, 52 Stat. 1240; May 15, 1945, ch. 122, 59 Stat. 167; Aug. 10, 1954, ch. 667, title I, §5, 68 Stat. 684; Pub. L. 85–699, title III, §307(a), Aug. 21, 1958, 72 Stat. 694; Pub. L. 91–373, title IV, §401(a), Aug. 10, 1970, 84 Stat. 718; Pub. L. 91–547, §27(b), (c), Dec. 14, 1970, 84 Stat. 1434; Pub. L. 91–565, Dec. 19, 1970, 84 Stat. 1480; Pub. L. 91–567, §6(a), Dec. 22, 1970, 84 Stat. 1498; Pub. L. 94–210, title III, §308(a)(1), (3), Feb. 5, 1976, 90 Stat. 56, 57; Pub. L. 95–283, §18, May 21, 1978, 92 Stat. 275; Pub. L. 95–425, §2, Oct. 6, 1978, 92 Stat. 962; Pub. L. 95–598, title III, §306, Nov. 6, 1978, 92 Stat. 2674; Pub. L. 96–477, title III, §301, title VII, §701, Oct. 21, 1980, 94 Stat. 2291, 2294; Pub. L. 97–261, §19(d), Sept. 20, 1982, 96 Stat. 1121; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–181, title II, §§203, 204, Dec. 4, 1987, 101 Stat. 1252; Pub. L. 103–325, title III, §320, Sept. 23, 1994, 108 Stat. 2225; Pub. L. 104–62, §3, Dec. 8, 1995, 109 Stat. 684; Pub. L. 104–290, title V, §508(b), Oct. 11, 1996, 110 Stat. 3447; Pub. L. 106–102, title II, §221(a), Nov. 12, 1999, 113 Stat. 1401; Pub. L. 106–554, §1(a)(5) [title II, §208(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–435; Pub. L. 108–359, §1(b), Oct. 25, 2004, 118 Stat. 1666; Pub. L. 111–203, title IX, §985(a)(1), July 21, 2010, 124 Stat. 1933; Pub. L. 112–106, title IV, §401(a), Apr. 5, 2012, 126 Stat. 323; Pub. L. 112–142, §2, July 9, 2012, 126 Stat. 989.)

REFERENCES IN TEXT

Section 103 of title 26, referred to in subsec. (a)(2), which related to interest on certain governmental obligations was amended generally by Pub. L. 99–514, title XIII, §1301(a), Oct. 22, 1986, 100 Stat. 2602, and as so amended relates to interest on State and local bonds. Section 103(b)(2) (formerly section 103(c)(2)), which prior to the general amendment defined industrial development bond, relates to the applicability of the interest exclusion to arbitrage bonds.

The Investment Company Act of 1940, referred to in subsec. (a)(2), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a–51 of this title and Tables.

Section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, referred to in subsec. (b)(2)(G)(ii), is section 926 of Pub. L. 111–203, which is set out as a note under section 77d of this title.

April 5, 2012, referred to in subsec. (b)(5), was in the original "the date of enactment of the Small Company Capital Formation Act of 2011", and was translated as meaning the date of enactment of the Jumpstart Our Business Startups Act, Pub. L. 112–106, which enacted subsec. (b)(5), to reflect the probable intent of Congress.

The Small Business Investment Act of 1958, referred to in subsec. (c), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, as amended, which is classified principally to chapter 14B (§661 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

AMENDMENTS

2012—Subsec. (a)(2). Pub. L. 112–142 inserted "(other than a retirement income account described in section 403(b)(9) of title 26, to the extent that the interest or participation in such single trust fund or collective trust fund is issued to a church, a convention or association of churches, or an organization described in section 414(e)(3)(A) of title 26 establishing or maintaining the retirement income account or to a trust established by any such entity in connection with the retirement income account)" after "403(b) of title 26" and "(other than a person participating in a church plan who is described in section 414(e)(3)(B) of title 26)" after "(ii) which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of title 26".

Subsec. (b). Pub. L. 112–106 inserted subsec. heading, designated existing provisions as par. (1), inserted par. heading, and added pars. (2) to (5).

2010—Subsec. (a)(4). Pub. L. 111–203 substituted "individual," for "individual;".

2004—Subsec. (a)(2). Pub. L. 108–359 struck out "or" before "(C) a governmental plan" and substituted "or (D) a church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940, other than any plan described in subparagraph (A), (B), (C), or (D)" for "other than any plan described in clause (A), (B), or (C)".

2000—Subsec. (a)(14). Pub. L. 106–554 added par. (14).

1999—Subsec. (a)(2). Pub. L. 106–102 substituted "or any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term 'investment company' under section 3(c)(3) of the Investment Company Act of 1940" for "or any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian".

1996—Subsec. (a)(13). Pub. L. 104–290 added par. (13).

1995—Subsec. (a)(4). Pub. L. 104–62 inserted at end "or any security of a fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940;".

1994—Subsec. (a)(12). Pub. L. 103–325 added par. (12).

1987—Subsec. (a)(1). Pub. L. 100–181, §203, substituted "Reserved." for "Any security which, prior to or within sixty days after May 27, 1933, has been sold or disposed of by the issuer or bona fide offered to the public, but this exemption shall not apply to any new offering of any such security by an issuer or underwriter subsequent to such sixty days;".

Subsec. (a)(5)(A). Pub. L. 100–181, §204, struck out ", except that the foregoing exemption shall not apply with respect to any such security where the issuer takes from the total amount paid or deposited by the purchaser, by way of any fee, cash value or other device whatsoever, either upon termination of the investment at maturity or before maturity, an aggregate amount in excess of 3 per centum of the face value of such security" after "any such institution".

1986—Subsec. (a)(2), (5). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954" wherever appearing, which for purposes of codification was translated as "title 26" thus requiring no change in text.

1982—Subsec. (a)(6). Pub. L. 97–261 struck out provisions relating to any security issued by a motor carrier subject to provisions of section 314 [11302] of title 49.

1980—Subsec. (a)(2). Pub. L. 96–477, §701, provided that single trust funds did not have to be maintained by banks in order to qualify for exemption from the provisions of this subchapter, substituted provisions relating to securities arising out of contracts issued by insurance companies for provisions relating to separate accounts maintained by insurance companies, provided that an interest, participation, or security could be issued in connection with certain governmental plans as defined in section 414(d) of title 26 and qualify for exemption from the provisions of this subchapter, and excluded from exemption plans described in cls. (A), (B), or (C) of par. (2) which were funded by annuity contracts described in section 403(b) of title 26.

Subsec. (b). Pub. L. 96–477, §301, substituted "$5,000,000" for "$2,000,000".

1978—Subsec. (a)(7). Pub. L. 95–598, §306(a), substituted "or debtor in possession in a case under title 11" for "in bankruptcy".

Subsec. (a)(9), (10). Pub. L. 95–598, §306(b), substituted "Except with respect to a security exchanged in a case under title 11, any" for "Any".

Subsec. (b). Pub. L. 95–425 substituted "$2,000,000" for "$1,500,000".

Pub. L. 95–283 substituted "$1,500,000" for "$500,000".

1976—Subsec. (a)(6). Pub. L. 94–210 substituted provisions relating to any security issued by a motor carrier subject to the provisions of section 314 of title 49 or any interest in a railroad equipment trust, and provisions defining "interest in a railroad equipment trust", for provisions relating to any security issued by a common or contract carrier, subject to the provisions of section 20a of title 49.

1970—Subsec. (a)(2). Pub. L. 91–567 exempted any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian, any security which is an industrial development bond the interest on which is excludable from gross income under section 103(a)(1) of title 26, any interest or participation in a single or collective trust fund maintained by a bank or in a separate account maintained by an insurance company which interest or participation is issued in connection with a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of title 26, or an annuity plan which meets the requirements for the deduction of the employer's contribution under section 404(a)(2) of title 26, directed the Commission to exempt from the provisions of section 77e of this title any interest or participation issued in connection with a stock bonus, pension, profit-sharing, or annuity plan which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of title 26 if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors, and provided that for the purposes of this paragraph a security issued or guaranteed by a bank shall not include any interest or participation in any collective trust fund maintained by a bank, and that in the case of a common trust fund or similar fund, or a collective trust fund, the term "bank" has the same meaning as in the Investment Company Act of 1940.

Pub. L. 91–547, §27(b), struck out reference to industrial development bonds the interest on which is excludable from gross income under section 103(a)(1) of title 26; and exempted from registration provisions interests or participations in common trust funds maintained by a bank for collective investment of assets held by it in a fiduciary capacity interests or participations in bank collective trust funds maintained for funding of employees' stock bonus, pension, or profit-sharing plans; interests or participations in separate accounts maintained by insurance companies for funding certain stock-bonus, pension, or profit-sharing plans which meet the requirements for qualification under section 401 of title 26; and interests or participations issued by bank collective trust funds or insurance company separate accounts for funding certain stock-bonus, pension, profit-sharing, or annuity plans when the Commission by rule, regulation, or order determines this to be necessary in the public interest; provided that a security issued or guaranteed by a bank shall not include any interest or participation in any collective trust fund maintained by a bank; substituted where first appearing "security issued or guaranteed by any bank" for "security issued or guaranteed by any national bank, or by any banking institution organized under the laws of any State or Territory or the District of Columbia, the business of which is substantially confined to banking and is supervised by the State or Territorial banking commission or similar official", the latter provision now incorporated in a separate definition of term "bank"; and made the Investment Company Act definition of bank applicable as in the case of a common trust fund or similar fund, or a collective trust fund.

Pub. L. 91–373 inserted reference to industrial development bonds the interest on which is excludable from gross income under section 103(a)(1) of title 26.

Subsec. (a)(5). Pub. L. 91–547, §27(c), designated existing provisions as cl. (A), included cooperative bank issues, required the issuer to be an institution which is supervised and examined by State or Federal authority having supervision over such institution, struck out "substantially all the business of which is confined to the making of loans to members" after "similar institution" and substituted provisions designated as cl. (B) for prior provision relating to a security issued by a farmers' cooperative association as defined in paragraphs (12), (13), and (14) of section 103 of the Revenue Act of 1932.

Subsec. (b). Pub. L. 91–565 substituted "$500,000" for "$300,000".

1958—Subsec. (c). Pub. L. 85–699 added subsec. (c).

1954—Subsec. (a)(11). Act Aug. 10, 1954, inserted "offered and" before "sold".

1945—Subsec. (b). Act May 15, 1945, substituted "$300,000" for "$100,000".

1938—Subsec. (a)(6). Act June 29, 1938, reenacted par. (6) without change.

1935—Subsec. (a)(6). Act Feb. 4, 1887, as added by act Aug. 9, 1935, included a security issued by a contract carrier.

1934—Subsec. (a). Act June 6, 1934, amended pars. (2), (4), and (8) and added pars. (9) to (11).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–102, title II, §225, Nov. 12, 1999, 113 Stat. 1402, provided that: "This subtitle [subtitle B

(§§211–225) of title II of Pub. L. 106–102, enacting section 80b–10a of this title and amending this section and sections 78c, 80a–2, 80a–3, 80a–9, 80a–10, 80a–17, 80a–26, 80a–34, and 80b–2 of this title] shall take effect 18 months after the date of the enactment of this Act [Nov. 12, 1999]."

EFFECTIVE DATE OF 1995 AMENDMENT

Pub. L. 104–62, §7, Dec. 8, 1995, 109 Stat. 686, provided that: "This Act [enacting section 80a–3a of this title, amending this section and sections 78c, 78l, 80a–3, 80a–7, and 80b–3 of this title, and enacting provisions set out as a note under section 80a–51 of this title] and the amendments made by this Act shall apply in all administrative and judicial actions pending on or commenced after the date of enactment of this Act [Dec. 8, 1995], as a defense to any claim that any person, security, interest, or participation of the type described in this Act and the amendments made by this Act is subject to the provisions of the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.], or the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.], or any State statute or regulation preempted as provided in section 6 of this Act [enacting section 80a–3a of this title], except as otherwise specifically provided in such Acts or State law."

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–261, §31, Sept. 20, 1982, 96 Stat. 1129, provided that:

"(a) Except as provided in subsections (b) and (c) of this section, this Act [see Tables for classification] shall take effect on the 60th day after the date of enactment of this Act [Sept. 20, 1982].

"(b) The amendment made by section 10(e)(4) of this Act [amending provisions set out as a note under former section 10706 of Title 49, Transportation] shall take effect on October 1, 1982.

"(c) The provisions of sections 6(g) and 30 of this Act [amending former sections 10922 and 10525 of Title 49, respectively] shall take effect on the date of enactment of this Act [Sept. 20, 1982]."

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598 set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–210, §308(d)(1), Feb. 5, 1976, 90 Stat. 57, provided that: "The amendments made by subsection (a) of this section [amending this section, section 77s of this title, and section 314 of former Title 49, Transportation] shall take effect on the 60th day after the date of enactment of this Act [Feb. 5, 1976], but shall not apply to any bona fide offering of a security made by the issuer, or by or through an underwriter, before such 60th day."

EFFECTIVE DATE OF 1970 AMENDMENTS

Pub. L. 91–567, §6(d), Dec. 22, 1970, 84 Stat. 1499, provided that: "The amendments made by this section [amending this section and sections 77ddd and 78c of this title] shall apply with respect to securities sold after January 1, 1970."

Amendment by Pub. L. 91–547 effective Dec. 14, 1970, see section 30 of Pub. L. 91–547, set out as a note under section 80a–52 of this title.

Pub. L. 91–373, title IV, §401(c), Aug. 10, 1970, 84 Stat. 718, provided that: "The amendments made by this section [amending this section and section 78c of this title] shall apply with respect to securities sold after January 1, 1970."

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

REPEALS

Section 214 of act Feb. 4, 1887 (the Interstate Commerce Act), as added Aug. 9, 1935, ch. 498, 49 Stat. 557, cited as a credit to this section, was repealed by Pub. L. 97–449, §7(b), Jan. 12, 1983, 96 Stat. 2443, 2444.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

FURTHER PROMOTING THE ADOPTION OF THE NAIC MODEL REGULATIONS THAT ENHANCE PROTECTION OF SENIORS AND OTHER CONSUMERS

Pub. L. 111–203, title IX, §989J, July 21, 2010, 124 Stat. 1949, provided that:

"(a) IN GENERAL.—The Commission shall treat as exempt securities described under section 3(a)(8) of the Securities Act of 1933 (15 U.S.C. 77c(a)(8)) any insurance or endowment policy or annuity contract or optional annuity contract—

"(1) the value of which does not vary according to the performance of a separate account;

"(2) that—

"(A) satisfies standard nonforfeiture laws or similar requirements of the applicable State at the time of issue; or

"(B) in the absence of applicable standard nonforfeiture laws or requirements, satisfies the Model Standard Nonforfeiture Law for Life Insurance or Model Standard Nonforfeiture Law for Individual Deferred Annuities, or any successor model law, as published by the National Association of Insurance Commissioners; and

"(3) that is issued—

"(A) on and after June 16, 2013, in a State, or issued by an insurance company that is domiciled in a State, that—

"(i) adopts rules that govern suitability requirements in the sale of an insurance or endowment policy or annuity contract or optional annuity contract, which shall substantially meet or exceed the minimum requirements established by the Suitability in Annuity Transactions Model Regulation adopted by the National Association of Insurance Commissioners in March 2010; and

"(ii) adopts rules that substantially meet or exceed the minimum requirements of any successor modifications to the model regulations described in subparagraph (A) within 5 years of the adoption by the Association of any further successors thereto; or

"(B) by an insurance company that adopts and implements practices on a nationwide basis for the sale of any insurance or endowment policy or annuity contract or optional annuity contract that meet or exceed the minimum requirements established by the National Association of Insurance Commissioners Suitability in Annuity Transactions Model Regulation (Model 275), and any successor thereto, and is therefore subject to examination by the State of domicile of the insurance company, or by any other State where the insurance company conducts sales of such products, for the purpose of monitoring compliance under this section.

"(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect whether any insurance or endowment policy or annuity contract or optional annuity contract that is not described in this section is or is not an exempt security under section 3(a)(8) of the Securities Act of 1933 (15 U.S.C. 77c(a)(8))."

[For definitions of terms used in section 989J of Pub. L. 111–203, set out above, see section 5301 of Title 12, Banks and Banking.]

SECURITIES AND INVESTMENT COMPANY PROVISIONS INAPPLICABLE TO CERTAIN LIFE INSURANCE BENEFITS ISSUED PRIOR TO MARCH 23, 1959

Pub. L. 91–547, §29, Dec. 14, 1970, 84 Stat. 1436, provided that: "The provisions of the Securities Act of 1933 [this subchapter] and the Investment Company Act of 1940 [section 80a–1 et seq. of this title] shall not apply, except for purposes of definition of terms used in this section, to any interest or participation (including any separate account or other fund providing for the sharing of income or gains and losses, and any interest or participation in such account or fund) in any contract, certificate, or policy providing for life insurance benefits which was issued prior to March 23, 1959, by an insurance company, if (1) the form of such contract, certificate, or policy was approved by the insurance commissioner, or similar official or agency, of a State, territory or the District of Columbia, and (2) under such contract, certificate, or policy not to exceed 49 per centum of the gross premiums or other consideration paid was to be allocated to a separate account or other fund providing for the sharing of income or gains and losses. Nothing herein contained shall be taken to imply that any such interest or participation constitutes a 'security' under any other laws of the United States."

[1] *See References in Text note below.*

§77d. Exempted transactions

(a) The provisions of section 77e of this title shall not apply to—

(1) transactions by any person other than an issuer, underwriter, or dealer.

(2) transactions by an issuer not involving any public offering.

(3) transactions by a dealer (including an underwriter no longer acting as an underwriter in respect of the security involved in such transaction), except—

(A) transactions taking place prior to the expiration of forty days after the first date upon which the security was bona fide offered to the public by the issuer or by or through an underwriter,

(B) transactions in a security as to which a registration statement has been filed taking place prior to the expiration of forty days after the effective date of such registration statement or prior to the expiration of forty days after the first date upon which the security was bona fide offered to the public by the issuer or by or through an underwriter after such effective date, whichever is later (excluding in the computation of such forty days any time during which a stop order issued under section 77h of this title is in effect as to the security), or such shorter period as the Commission may specify by rules and regulations or order, and

(C) transactions as to securities constituting the whole or a part of an unsold allotment to or subscription by such dealer as a participant in the distribution of such securities by the issuer or by or through an underwriter.

With respect to transactions referred to in clause (B), if securities of the issuer have not previously been sold pursuant to an earlier effective registration statement the applicable period, instead of forty days, shall be ninety days, or such shorter period as the Commission may specify by rules and regulations or order.

(4) brokers' transactions executed upon customers' orders on any exchange or in the over-the-counter market but not the solicitation of such orders.

(5) transactions involving offers or sales by an issuer solely to one or more accredited investors, if the aggregate offering price of an issue of securities offered in reliance on this paragraph does not exceed the amount allowed under section 77c(b)(1) of this title, if there is no advertising or public solicitation in connection with the transaction by the issuer or anyone acting on the issuer's behalf, and if the issuer files such notice with the Commission as the Commission shall prescribe.

(6) transactions involving the offer or sale of securities by an issuer (including all entities controlled by or under common control with the issuer), provided that—

(A) the aggregate amount sold to all investors by the issuer, including any amount sold in reliance on the exemption provided under this paragraph during the 12-month period preceding the date of such transaction, is not more than $1,000,000;

(B) the aggregate amount sold to any investor by an issuer, including any amount sold in reliance on the exemption provided under this paragraph during the 12-month period preceding the date of such transaction, does not exceed—

(i) the greater of $2,000 or 5 percent of the annual income or net worth of such investor, as applicable, if either the annual income or the net worth of the investor is less than $100,000; and

(ii) 10 percent of the annual income or net worth of such investor, as applicable, not to exceed a maximum aggregate amount sold of $100,000, if either the annual income or net worth of the investor is equal to or more than $100,000;

(C) the transaction is conducted through a broker or funding portal that complies with the requirements of section 77d–1(a) of this title; and

(D) the issuer complies with the requirements of section 77d–1(b) of this title.

(b) [1] Offers and sales exempt under section 230.506 of title 17, Code of Federal Regulations (as revised pursuant to section 201 of the Jumpstart Our Business Startups Act) shall not be deemed public offerings under the Federal securities laws as a result of general advertising or general solicitation.

(b)(1) [1] With respect to securities offered and sold in compliance with Rule 506 of Regulation D

under this subchapter, no person who meets the conditions set forth in paragraph (2) shall be subject to registration as a broker or dealer pursuant to section 78o(a)(1) of this title,[2] solely because—

(A) that person maintains a platform or mechanism that permits the offer, sale, purchase, or negotiation of or with respect to securities, or permits general solicitations, general advertisements, or similar or related activities by issuers of such securities, whether online, in person, or through any other means;

(B) that person or any person associated with that person co-invests in such securities; or

(C) that person or any person associated with that person provides ancillary services with respect to such securities.

(2) The exemption provided in paragraph (1) shall apply to any person described in such paragraph if—

(A) such person and each person associated with that person receives no compensation in connection with the purchase or sale of such security;

(B) such person and each person associated with that person does not have possession of customer funds or securities in connection with the purchase or sale of such security; and

(C) such person is not subject to a statutory disqualification as defined in section 78c(a)(39) of this title [2] and does not have any person associated with that person subject to such a statutory disqualification.

(3) For the purposes of this subsection, the term "ancillary services" means—

(A) the provision of due diligence services, in connection with the offer, sale, purchase, or negotiation of such security, so long as such services do not include, for separate compensation, investment advice or recommendations to issuers or investors; and

(B) the provision of standardized documents to the issuers and investors, so long as such person or entity does not negotiate the terms of the issuance for and on behalf of third parties and issuers are not required to use the standardized documents as a condition of using the service.

(May 27, 1933, ch. 38, title I, §4, 48 Stat. 77; June 6, 1934, ch. 404, title II, §203, 48 Stat. 906; Aug. 10, 1954, ch. 667, title I, §6, 68 Stat. 684; Pub. L. 88–467, §12, Aug. 20, 1964, 78 Stat. 580; Pub. L. 94–29, §30, June 4, 1975, 89 Stat. 169; Pub. L. 96–477, title VI, §602, Oct. 21, 1980, 94 Stat. 2294; Pub. L. 111–203, title IX, §944(a), July 21, 2010, 124 Stat. 1897; Pub. L. 112–106, title II, §201(b), (c), title III, §302(a), title IV, §401(c), Apr. 5, 2012, 126 Stat. 314, 315, 325.)

REFERENCES IN TEXT

Section 201 of the Jumpstart Our Business Startups Act, referred to in subsec. (b), is section 201 of Pub. L. 112–106, which amended this section and enacted provisions set out as a note under this section.

Section 78o(a)(1) of this title, referred to in subsec. (b)(1), was in the original "section 15(a)(1) of this title" and was translated as meaning section 15(a)(1) of the Securities Exchange Act of 1934 to reflect the probable intent of Congress.

Section 78c(a)(39) of this title, referrred to in subsec. (b)(2)(C), was in the original "section 3(a)(39) of this title" and was translated as meaning section 3(a)(39) of the Securities Exchange Act of 1934 to reflect the probable intent of Congress.

AMENDMENTS

2012—Pub. L. 112–106, §201(b)(1), (c)(1), made identical amendments, designating existing provisions as subsec. (a).

Subsec. (a)(5). Pub. L. 112–106, §401(c), which directed amendment of this section by substituting "section 77c(b)(1)" for "section 77c(b)" in par. (5), was executed by making the substitution in subsec. (a)(5) to reflect the probable intent of Congress and the amendment by Pub. L. 112–106, §201(b)(1), (c)(1). See above.

Subsec. (a)(6). Pub. L. 112–106, §302(a), which directed amendment of this section by adding par. (6) at the end, was executed by making the addition at the end of subsec. (a) to reflect the probable intent of Congress and the amendment by Pub. L. 112–106, §201(b)(1), (c)(1). See above.

Subsec. (b). Pub. L. 112–106, §201(c)(2), added subsec. (b) relating to securities offered and sold in compliance with Rule 506 of Regulation D under this subchapter.

Pub. L. 112–106, §201(b)(2), added subsec. (b) relating to offers and sales exempt under section 230.506 of

title 17, Code of Federal Regulations.

2010—Pars. (5), (6). Pub. L. 111–203 redesignated par. (6) as (5) and struck out former par. (5) which related to exemption for certain transactions involving offers or sales of one or more promissory notes directly secured by a first lien on a single parcel of real estate upon which is located a dwelling or other residential or commercial structure, and exemption for certain transactions between entities involving non-assignable contracts to buy or sell the foregoing securities which are to be completed within two years.

1980—Par. (6). Pub. L. 96–477 added par. (6).

1975—Par. (5). Pub. L. 94–29 added par. (5).

1964—Pub. L. 88–467 substituted "shall not apply to—" for "shall not apply to any of the following transactions:" in introductory text.

Par. (1). Pub. L. 88–467 reenacted existing first provision of par. (1) and struck out second and third provisions, which are incorporated in pars. (2) and (3)(A) to (C).

Par. (2). Pub. L. 88–467 redesignated existing second provision of par. (1) as (2). Former par. (2) redesignated (4).

Par. (3). Pub. L. 88–467 redesignated existing third provision of par. (1) as (3), designated the excepted transactions as cls. (A) to (C), inserted in cl. (B) "or such shorter period as the Commission may specify by rules and regulations or order" and inserted sentence relating to the applicable period to transactions referred to in clause (B).

Par. (4). Pub. L. 88–467 redesignated former par. (2) as (4) and substituted "over-the-counter market" for "open or counter market".

1954—Act Aug. 10, 1954, reduced from 1 year to 40 days the period during which the delivery of a prospectus is required in trading transactions as distinguished from initial distribution of the new securities.

1934—Act June 6, 1934, among other changes, repealed par. (3), provisions of which were replaced by section 77c(9), (10) of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–467 effective Aug. 20, 1964, see section 13 of Pub. L. 88–467, set out as a note under section 78c of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

MODIFICATION OF EXEMPTION RULES

Pub. L. 112–106, title II, §201(a), Apr. 5, 2012, 126 Stat. 313, provided that:

"(1) Not later than 90 days after the date of the enactment of this Act [Apr. 5, 2012], the Securities and Exchange Commission shall revise its rules issued in section 230.506 of title 17, Code of Federal Regulations, to provide that the prohibition against general solicitation or general advertising contained in section 230.502(c) of such title shall not apply to offers and sales of securities made pursuant to section 230.506, provided that all purchasers of the securities are accredited investors. Such rules shall require the issuer to take reasonable steps to verify that purchasers of the securities are accredited investors, using such methods as determined by the Commission. Section 230.506 of title 17, Code of Federal Regulations, as revised pursuant to this section, shall continue to be treated as a regulation issued under section 4(2) of the Securities Act of 1933 ([now] 15 U.S.C. 77d[(a)](2)).

"(2) Not later than 90 days after the date of enactment of this Act, the Securities and Exchange Commission

shall revise subsection (d)(1) of section 230.144A of title 17, Code of Federal Regulations, to provide that securities sold under such revised exemption may be offered to persons other than qualified institutional buyers, including by means of general solicitation or general advertising, provided that securities are sold only to persons that the seller and any person acting on behalf of the seller reasonably believe is a qualified institutional buyer."

RULEMAKING

Pub. L. 112–106, title III, §302(c), Apr. 5, 2012, 126 Stat. 320, provided that: "Not later than 270 days after the date of enactment of this Act [Apr. 5, 2012], the Securities and Exchange Commission (in this title [enacting section 77d–1 of this title, amending sections 77d, 77r, 78c, 78l, and 78o of this title, and enacting provisions set out as notes under sections 77d, 77r, 78c, and 78l of this title] referred to as the 'Commission') shall issue such rules as the Commission determines may be necessary or appropriate for the protection of investors to carry out sections 4(6) [probably means "section 4(a)(6)"] and section 4A of the Securities Act of 1933 [15 U.S.C. 77d(a)(6), 77d–1], as added by this title. In carrying out this section, the Commission shall consult with any securities commission (or any agency or office performing like functions) of the States, any territory of the United States, and the District of Columbia, which seeks to consult with the Commission, and with any applicable national securities association."

DISQUALIFICATION

Pub. L. 112–106, title III, §302(d), Apr. 5, 2012, 126 Stat. 320, provided that:

"(1) IN GENERAL.—Not later than 270 days after the date of enactment of this Act [Apr. 5, 2012], the [Securities and Exchange] Commission shall, by rule, establish disqualification provisions under which—

"(A) an issuer shall not be eligible to offer securities pursuant to section 4(6) [probably means "section 4(a)(6)"] of the Securities Act of 1933 [15 U.S.C. 77d(a)(6)], as added by this title; and

"(B) a broker or funding portal shall not be eligible to effect or participate in transactions pursuant to that section 4(6).

"(2) INCLUSIONS.—Disqualification provisions required by this subsection shall—

"(A) be substantially similar to the provisions of section 230.262 of title 17, Code of Federal Regulations (or any successor thereto); and

"(B) disqualify any offering or sale of securities by a person that—

"(i) is subject to a final order of a State securities commission (or an agency or officer of a State performing like functions), a State authority that supervises or examines banks, savings associations, or credit unions, a State insurance commission (or an agency or officer of a State performing like functions), an appropriate Federal banking agency, or the National Credit Union Administration, that—

"(I) bars the person from—

"(aa) association with an entity regulated by such commission, authority, agency, or officer;

"(bb) engaging in the business of securities, insurance, or banking; or

"(cc) engaging in savings association or credit union activities; or

"(II) constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct within the 10-year period ending on the date of the filing of the offer or sale; or

"(ii) has been convicted of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing with the Commission."

DISQUALIFYING FELONS AND OTHER "BAD ACTORS" FROM REGULATION D OFFERINGS

Pub. L. 111–203, title IX, §926, July 21, 2010, 124 Stat. 1851, provided that: "Not later than 1 year after the date of enactment of this Act [July 21, 2010], the Commission shall issue rules for the disqualification of offerings and sales of securities made under section 230.506 of title 17, Code of Federal Regulations, that—

"(1) are substantially similar to the provisions of section 230.262 of title 17, Code of Federal Regulations, or any successor thereto; and

"(2) disqualify any offering or sale of securities by a person that—

"(A) is subject to a final order of a State securities commission (or an agency or officer of a State performing like functions), a State authority that supervises or examines banks, savings associations, or credit unions, a State insurance commission (or an agency or officer of a State performing like functions), an appropriate Federal banking agency, or the National Credit Union Administration, that—

"(i) bars the person from—

"(I) association with an entity regulated by such commission, authority, agency, or officer;

"(II) engaging in the business of securities, insurance, or banking; or

"(III) engaging in savings association or credit union activities; or

"(ii) constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct within the 10-year period ending on the date of the filing of the offer or sale; or

"(B) has been convicted of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing with the Commission."

[For definitions of terms used in section 926 of Pub. L. 111–203, set out above, see section 5301 of Title 12, Banks and Banking.]

[1] *So in original. Two subsecs. (b) have been enacted.*

[2] *See References in Text note below.*

§77d–1. Requirements with respect to certain small transactions

(a) Requirements on intermediaries

A person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others pursuant to section 77d(6) [1] of this title shall—

(1) register with the Commission as—

(A) a broker; or

(B) a funding portal (as defined in section 78c(a)(80) [2] of this title);

(2) register with any applicable self-regulatory organization (as defined in section 78c(a)(26) of this title);

(3) provide such disclosures, including disclosures related to risks and other investor education materials, as the Commission shall, by rule, determine appropriate;

(4) ensure that each investor—

(A) reviews investor-education information, in accordance with standards established by the Commission, by rule;

(B) positively affirms that the investor understands that the investor is risking the loss of the entire investment, and that the investor could bear such a loss; and

(C) answers questions demonstrating—

(i) an understanding of the level of risk generally applicable to investments in startups, emerging businesses, and small issuers;

(ii) an understanding of the risk of illiquidity; and

(iii) an understanding of such other matters as the Commission determines appropriate, by rule;

(5) take such measures to reduce the risk of fraud with respect to such transactions, as established by the Commission, by rule, including obtaining a background and securities enforcement regulatory history check on each officer, director, and person holding more than 20 percent of the outstanding equity of every issuer whose securities are offered by such person;

(6) not later than 21 days prior to the first day on which securities are sold to any investor (or such other period as the Commission may establish), make available to the Commission and to potential investors any information provided by the issuer pursuant to subsection (b);

(7) ensure that all offering proceeds are only provided to the issuer when the aggregate capital raised from all investors is equal to or greater than a target offering amount, and allow all investors to cancel their commitments to invest, as the Commission shall, by rule, determine appropriate;

(8) make such efforts as the Commission determines appropriate, by rule, to ensure that no investor in a 12-month period has purchased securities offered pursuant to section 77d(6) [1] of this title that, in the aggregate, from all issuers, exceed the investment limits set forth in section 77d(6)(B) [1] of this title;

(9) take such steps to protect the privacy of information collected from investors as the Commission shall, by rule, determine appropriate;

(10) not compensate promoters, finders, or lead generators for providing the broker or funding portal with the personal identifying information of any potential investor;

(11) prohibit its directors, officers, or partners (or any person occupying a similar status or performing a similar function) from having any financial interest in an issuer using its services; and

(12) meet such other requirements as the Commission may, by rule, prescribe, for the protection of investors and in the public interest.

(b) Requirements for issuers

For purposes of section 77d(6) [1] of this title, an issuer who offers or sells securities shall—

(1) file with the Commission and provide to investors and the relevant broker or funding portal, and make available to potential investors—

(A) the name, legal status, physical address, and website address of the issuer;

(B) the names of the directors and officers (and any persons occupying a similar status or performing a similar function), and each person holding more than 20 percent of the shares of the issuer;

(C) a description of the business of the issuer and the anticipated business plan of the issuer;

(D) a description of the financial condition of the issuer, including, for offerings that, together with all other offerings of the issuer under section 77d(6) [1] of this title within the preceding 12-month period, have, in the aggregate, target offering amounts of—

(i) $100,000 or less—

(I) the income tax returns filed by the issuer for the most recently completed year (if any); and

(II) financial statements of the issuer, which shall be certified by the principal executive officer of the issuer to be true and complete in all material respects;

(ii) more than $100,000, but not more than $500,000, financial statements reviewed by a public accountant who is independent of the issuer, using professional standards and procedures for such review or standards and procedures established by the Commission, by rule, for such purpose; and

(iii) more than $500,000 (or such other amount as the Commission may establish, by rule), audited financial statements;

(E) a description of the stated purpose and intended use of the proceeds of the offering sought by the issuer with respect to the target offering amount;

(F) the target offering amount, the deadline to reach the target offering amount, and regular updates regarding the progress of the issuer in meeting the target offering amount;

(G) the price to the public of the securities or the method for determining the price, provided that, prior to sale, each investor shall be provided in writing the final price and all required disclosures, with a reasonable opportunity to rescind the commitment to purchase the securities;

(H) a description of the ownership and capital structure of the issuer, including—

(i) terms of the securities of the issuer being offered and each other class of security of the issuer, including how such terms may be modified, and a summary of the differences between such securities, including how the rights of the securities being offered may be materially limited, diluted, or qualified by the rights of any other class of security of the issuer;

(ii) a description of how the exercise of the rights held by the principal shareholders of the issuer could negatively impact the purchasers of the securities being offered;

(iii) the name and ownership level of each existing shareholder who owns more than 20 percent of any class of the securities of the issuer;

(iv) how the securities being offered are being valued, and examples of methods for how

such securities may be valued by the issuer in the future, including during subsequent corporate actions; and

(v) the risks to purchasers of the securities relating to minority ownership in the issuer, the risks associated with corporate actions, including additional issuances of shares, a sale of the issuer or of assets of the issuer, or transactions with related parties; and

(I) such other information as the Commission may, by rule, prescribe, for the protection of investors and in the public interest;

(2) not advertise the terms of the offering, except for notices which direct investors to the funding portal or broker;

(3) not compensate or commit to compensate, directly or indirectly, any person to promote its offerings through communication channels provided by a broker or funding portal, without taking such steps as the Commission shall, by rule, require to ensure that such person clearly discloses the receipt, past or prospective, of such compensation, upon each instance of such promotional communication;

(4) not less than annually, file with the Commission and provide to investors reports of the results of operations and financial statements of the issuer, as the Commission shall, by rule, determine appropriate, subject to such exceptions and termination dates as the Commission may establish, by rule; and

(5) comply with such other requirements as the Commission may, by rule, prescribe, for the protection of investors and in the public interest.

(c) Liability for material misstatements and omissions

(1) Actions authorized

(A) In general

Subject to paragraph (2), a person who purchases a security in a transaction exempted by the provisions of section 77d(6) [1] of this title may bring an action against an issuer described in paragraph (2), either at law or in equity in any court of competent jurisdiction, to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if such person no longer owns the security.

(B) Liability

An action brought under this paragraph shall be subject to the provisions of section 77l(b) of this title and section 77m of this title, as if the liability were created under section 77l(a)(2) of this title.

(2) Applicability

An issuer shall be liable in an action under paragraph (1), if the issuer—

(A) by the use of any means or instruments of transportation or communication in interstate commerce or of the mails, by any means of any written or oral communication, in the offering or sale of a security in a transaction exempted by the provisions of section 77d(6) [1] of this title, makes an untrue statement of a material fact or omits to state a material fact required to be stated or necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading, provided that the purchaser did not know of such untruth or omission; and

(B) does not sustain the burden of proof that such issuer did not know, and in the exercise of reasonable care could not have known, of such untruth or omission.

(3) Definition

As used in this subsection, the term "issuer" includes any person who is a director or partner of the issuer, and the principal executive officer or officers, principal financial officer, and controller or principal accounting officer of the issuer (and any person occupying a similar status or

performing a similar function) that offers or sells a security in a transaction exempted by the provisions of section 77d(6) [1] of this title, and any person who offers or sells the security in such offering.

(d) Information available to States

The Commission shall make, or shall cause to be made by the relevant broker or funding portal, the information described in subsection (b) and such other information as the Commission, by rule, determines appropriate, available to the securities commission (or any agency or office performing like functions) of each State and territory of the United States and the District of Columbia.

(e) Restrictions on sales

Securities issued pursuant to a transaction described in section 77d(6) [1] of this title—

(1) may not be transferred by the purchaser of such securities during the 1-year period beginning on the date of purchase, unless such securities are transferred—

(A) to the issuer of the securities;

(B) to an accredited investor;

(C) as part of an offering registered with the Commission; or

(D) to a member of the family of the purchaser or the equivalent, or in connection with the death or divorce of the purchaser or other similar circumstance, in the discretion of the Commission; and

(2) shall be subject to such other limitations as the Commission shall, by rule, establish.

(f) Applicability

Section 77d(6) [1] of this title shall not apply to transactions involving the offer or sale of securities by any issuer that—

(1) is not organized under and subject to the laws of a State or territory of the United States or the District of Columbia;

(2) is subject to the requirement to file reports pursuant to section 78m of this title or section 78o(d) of this title;

(3) is an investment company, as defined in section 80a–3 of this title, or is excluded from the definition of investment company by section 80a–3(b) of this title or section 80a–3(c) of this title; or

(4) the Commission, by rule or regulation, determines appropriate.

(g) Rule of construction

Nothing in this section or section 77d(6) [1] of this title shall be construed as preventing an issuer from raising capital through methods not described under section 77d(6) [1] of this title.

(h) Certain calculations

(1) Dollar amounts

Dollar amounts in section 77d(6) [1] of this title and subsection (b) of this section shall be adjusted by the Commission not less frequently than once every 5 years, by notice published in the Federal Register to reflect any change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics.

(2) Income and net worth

The income and net worth of a natural person under section 77d(6)(B) [1] of this title shall be calculated in accordance with any rules of the Commission under this subchapter regarding the calculation of the income and net worth, respectively, of an accredited investor.

(May 27, 1933, ch. 38, title I, §4A, as added Pub. L. 112–106, title III, §302(b), Apr. 5, 2012, 126 Stat. 315.)

REFERENCES IN TEXT

Section 77d(6) of this title, referred to in text, was redesignated section 77d(a)(6) of this title by Pub. L. 112–106, title II, §201(b)(1), (c)(1), Apr. 5, 2012, 126 Stat. 314.

[1] *See References in Text note below.*

[2] *So in original. Two pars. (a)(80) of section 78c have been enacted.*

§77e. Prohibitions relating to interstate commerce and the mails

(a) Sale or delivery after sale of unregistered securities

Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly—

(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise; or

(2) to carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale.

(b) Necessity of prospectus meeting requirements of section 77j of this title

It shall be unlawful for any person, directly or indirectly—

(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to carry or transmit any prospectus relating to any security with respect to which a registration statement has been filed under this subchapter, unless such prospectus meets the requirements of section 77j of this title; or

(2) to carry or cause to be carried through the mails or in interstate commerce any such security for the purpose of sale or for delivery after sale, unless accompanied or preceded by a prospectus that meets the requirements of subsection (a) of section 77j of this title.

(c) Necessity of filing registration statement

It shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under section 77h of this title.

(d) Limitation

Notwithstanding any other provision of this section, an emerging growth company or any person authorized to act on behalf of an emerging growth company may engage in oral or written communications with potential investors that are qualified institutional buyers or institutions that are accredited investors, as such terms are respectively defined in section 230.144A and section 230.501(a) of title 17, Code of Federal Regulations, or any successor thereto, to determine whether such investors might have an interest in a contemplated securities offering, either prior to or following the date of filing of a registration statement with respect to such securities with the Commission, subject to the requirement of subsection (b)(2).

(e) Security-based swaps

Notwithstanding the provisions of section 77c or 77d of this title, unless a registration statement meeting the requirements of section 77j(a) of this title is in effect as to a security-based swap, it shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, offer to buy or purchase or sell a security-based swap to any person who is not an eligible contract participant as defined in section 1a(18) of title 7.

(May 27, 1933, ch. 38, title I, §5, 48 Stat. 77; June 6, 1934, ch. 404, title II, §204, 48 Stat. 906; Aug. 10, 1954, ch. 667, title I, §7, 68 Stat. 684; Pub. L. 111–203, title VII, §768(b), July 21, 2010, 124 Stat. 1801; Pub. L. 112–106, title I, §105(c), Apr. 5, 2012, 126 Stat. 311.)

AMENDMENT OF SECTION

Unless otherwise provided, amendment by subtitle B (§§761–774) of title VII of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see 2010 Amendment notes and Effective Date of 2010 Amendment note below.

AMENDMENTS

2012—Subsecs. (d), (e). Pub. L. 112–106 added subsec. (d) and redesignated former subsec. (d) as (e).

2010—Subsec. (d). Pub. L. 111–203 added subsec. (d).

1954—Subsec. (a)(1). Act Aug. 10, 1954, struck out "or offer to buy" after "to sell".

Subsec. (b). Act Aug. 10, 1954, in par. (1) substituted "with respect to which a registration statement has been filed" for "registered" and in par. (2) omitted "to" after "to carry or" and inserted "subsection (a) of" before "section 77j of this title".

Subsec. (c). Act Aug. 10, 1954, added subsec. (c).

1934—Act June 6, 1934, repealed subsec. (c), the provisions of which were replaced by section 77c(a)(11) of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761–774) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111–203, set out as a note under section 77b of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

INCREASED ACCESS TO FOREIGN BUSINESS INFORMATION

Pub. L. 104–290, title I, §109, Oct. 11, 1996, 110 Stat. 3426, provided that: "Not later than 1 year after the date of enactment of this Act [Oct. 11, 1996], the Commission shall adopt rules under the Securities Act of 1933 [15 U.S.C. 77a et seq.] concerning the status under the registration provisions of the Securities Act of 1933 of foreign press conferences and foreign press releases by persons engaged in the offer and sale of securities."

§77f. Registration of securities

(a) Method of registration

Any security may be registered with the Commission under the terms and conditions hereinafter provided, by filing a registration statement in triplicate, at least one of which shall be signed by each issuer, its principal executive officer or officers, its principal financial officer, its comptroller or principal accounting officer, and the majority of its board of directors or persons performing similar functions (or, if there is no board of directors or persons performing similar functions, by the majority of the persons or board having the power of management of the issuer), and in case the issuer is a foreign or Territorial person by its duly authorized representative in the United States; except that when such registration statement relates to a security issued by a foreign government, or political subdivision thereof, it need be signed only by the underwriter of such security. Signatures of all such persons when written on the said registration statements shall be presumed to have been so written by authority of the person whose signature is so affixed and the burden of proof, in the event such authority shall be denied, shall be upon the party denying the same. The affixing of any signature without the authority of the purported signer shall constitute a violation of this subchapter.

A registration statement shall be deemed effective only as to the securities specified therein as proposed to be offered.

(b) Registration fee

(1) Fee payment required

At the time of filing a registration statement, the applicant shall pay to the Commission a fee at a rate that shall be equal to $92 per $1,000,000 of the maximum aggregate price at which such securities are proposed to be offered, except that during fiscal year 2003 and any succeeding fiscal year such fee shall be adjusted pursuant to paragraph (2).

(2) Annual adjustment

For each fiscal year, the Commission shall by order adjust the rate required by paragraph (1) for such fiscal year to a rate that, when applied to the baseline estimate of the aggregate maximum offering prices for such fiscal year, is reasonably likely to produce aggregate fee collections under this subsection that are equal to the target fee collection amount for such fiscal year.

(3) Pro rata application

The rates per $1,000,000 required by this subsection shall be applied pro rata to amounts and balances of less than $1,000,000.

(4) Review and effective date

In exercising its authority under this subsection, the Commission shall not be required to comply with the provisions of section 553 of title 5. An adjusted rate prescribed under paragraph (2) and published under paragraph (5) shall not be subject to judicial review. An adjusted rate prescribed under paragraph (2) shall take effect on the first day of the fiscal year to which such rate applies.

(5) Publication

The Commission shall publish in the Federal Register notices of the rate applicable under this subsection and under sections 78m(e) and 78n(g) [1] of this title for each fiscal year not later than August 31 of the fiscal year preceding the fiscal year to which such rate applies, together with any estimates or projections on which such rate is based.

(6) Definitions

For purposes of this subsection:

(A) Target fee collection amount

The target fee collection amount for each fiscal year is determined according to the following table:

Fiscal year:	Target fee collection amount
2002	$377,000,000
2003	$435,000,000
2004	$467,000,000
2005	$570,000,000
2006	$689,000,000
2007	$214,000,000
2008	$234,000,000
2009	$284,000,000
2010	$334,000,000
2011	$394,000,000
2012	$425,000,000
2013	$455,000,000

2014	$485,000,000
2015	$515,000,000
2016	$550,000,000
2017	$585,000,000
2018	$620,000,000
2019	$660,000,000
2020	$705,000,000
2021 and each fiscal year thereafter	An amount that is equal to the target fee collection amount for the prior fiscal year, adjusted by the rate of inflation.

(B) Baseline estimate of the aggregate maximum offering prices

The baseline estimate of the aggregate maximum offering prices for any fiscal year is the baseline estimate of the aggregate maximum offering price at which securities are proposed to be offered pursuant to registration statements filed with the Commission during such fiscal year as determined by the Commission, after consultation with the Congressional Budget Office and the Office of Management and Budget, using the methodology required for projections pursuant to section 907 of title 2.

(c) Time registration effective

The filing with the Commission of a registration statement, or of an amendment to a registration statement, shall be deemed to have taken place upon the receipt thereof, but the filing of a registration statement shall not be deemed to have taken place unless it is accompanied by a United States postal money order or a certified bank check or cash for the amount of the fee required under subsection (b) of this section.

(d) Information available to public

The information contained in or filed with any registration statement shall be made available to the public under such regulations as the Commission may prescribe, and copies thereof, photostatic or otherwise, shall be furnished to every applicant at such reasonable charge as the Commission may prescribe.

(e) Emerging growth companies

(1) In general

Any emerging growth company, prior to its initial public offering date, may confidentially submit to the Commission a draft registration statement, for confidential nonpublic review by the staff of the Commission prior to public filing, provided that the initial confidential submission and all amendments thereto shall be publicly filed with the Commission not later than 21 days before the date on which the issuer conducts a road show, as such term is defined in section 230.433(h)(4) of title 17, Code of Federal Regulations, or any successor thereto.

(2) Confidentiality

Notwithstanding any other provision of this subchapter, the Commission shall not be compelled to disclose any information provided to or obtained by the Commission pursuant to this subsection. For purposes of section 552 of title 5, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552. Information described in or obtained pursuant to this subsection shall be deemed to constitute confidential information for purposes of section 78x(b)(2) of this title.

(May 27, 1933, ch. 38, title I, §6, 48 Stat. 78; Pub. L. 89–289, §1, Oct. 22, 1965, 79 Stat. 1051; Pub. L. 100–181, title II, §205, Dec. 4, 1987, 101 Stat. 1252; Pub. L. 104–290, title IV, §404, Oct. 11,

1996, 110 Stat. 3441; Pub. L. 107–123, §4, Jan. 16, 2002, 115 Stat. 2393; Pub. L. 111–203, title IX, §991(b)(1), July 21, 2010, 124 Stat. 1951; Pub. L. 112–106, title I, §106(a), Apr. 5, 2012, 126 Stat. 312.)

REFERENCES IN TEXT

Sections 78m(e) and 78n(g) of this title, referred to in subsec. (b)(5), were in the original, "sections 13(e) and 14(g)" and were translated as meaning sections 13(e) and 14(g) of the Securities Exchange Act of 1934 to reflect the probable intent of Congress.

AMENDMENTS

2012—Subsec. (e). Pub. L. 112–106 added subsec. (e).

2010—Subsec. (b). Pub. L. 111–203, §991(b)(1)(A)–(G), in par. (5), substituted "target fee" for "target offsetting" and, in par. (11)(A), substituted "Target fee" for "Target offsetting" in heading and table and "target fee" for "target offsetting" in introductory provisions, redesignated pars. (2), (5), (7), (10), and (11) as (1), (2), (3), (5), and (6), respectively, and struck out former pars. (1), (3), (4), (6), (8), and (9) which related to recovery of cost of services, offsetting collections, prohibition of treatment of fees as general revenues, final rate adjustment, review and effective date of rates, and rate during lapse of appropriation, respectively.

Subsec. (b)(1). Pub. L. 111–203, §991(b)(1)(H), substituted "paragraph (2)." for "paragraph (5) or (6)."

Subsec. (b)(2). Pub. L. 111–203, §991(b)(1)(I), substituted "For each fiscal year" for "For each of the fiscal years 2003 through 2011" and "paragraph (1)" for "paragraph (2)".

Subsec. (b)(4). Pub. L. 111–203, §991(b)(1)(J), added par. (4). Former par. (4) struck out.

Subsec. (b)(5). Pub. L. 111–203, §991(b)(1)(K), substituted "August 31" for "April 30".

Subsec. (b)(6)(A). Pub. L. 111–203, §991(b)(1)(L), substituted "each fiscal year" for "each of the fiscal years 2002 through 2011" in introductory provisions and, in table, added items for fiscal years 2012 to 2021 and each fiscal year thereafter.

2002—Subsec. (b)(2) to (11). Pub. L. 107–123 added pars. (2) to (11) and struck out former pars. (2) to (5), which required fee payment, set out rates for general revenue and offsetting collection fees, and required pro rata rates for amounts and balances equal to less than $1,000,000.

1996—Subsec. (b). Pub. L. 104–290 inserted heading and amended text of subsec. (b) generally. Prior to amendment, text read as follows: "At the time of filing a registration statement the applicant shall pay to the Commission a fee of one-fiftieth of 1 per centum of the maximum aggregate price at which such securities are proposed to be offered, but in no case shall such fee be less than $100."

1987—Subsec. (e). Pub. L. 100–181 struck out subsec. (e) which provided that no registration statement should be filed within the first 40 days following May 27, 1933.

1965—Subsec. (b). Pub. L. 89–289 substituted "one-fiftieth" for "one one-hundredth" and "$100" for "$25".

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–203, title IX, §991(b)(4), July 21, 2010, 124 Stat. 1953, provided that: "The amendments made by this subsection [amending this section and sections 78m and 78n of this title] shall take effect on October 1, 2011, except that for fiscal year 2012, the [Securities and Exchange] Commission shall publish the rate established under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)), as amended by this Act, on August 31, 2011."

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–123 effective Oct. 1, 2001, except that authorities provided by subsec. (b)(9) of this section to not apply until Oct. 1, 2002, see section 11 of Pub. L. 107–123, set out as a note under section 78ee of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Pub. L. 89–289, §2, Oct. 22, 1965, 79 Stat. 1051, provided that: "The amendment made by the first section of this Act [amending this section] shall take effect January 1, 1966."

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

INCREASE IN REGISTRATION FEES AND DEPOSIT INTO TREASURY

Pub. L. 105–46, §113, Sept. 30, 1997, 111 Stat. 1156, provided that the amount made available to the

Securities and Exchange Commission, under the heading Salaries and Expenses, was to include, in addition to direct appropriations, the amount collected under the fee rate and offsetting collection authority contained in Public Law 104–208, which fee rate and offsetting collection authority was to remain in effect during the period of Pub. L. 105–46 which provided continuing appropriations for fiscal year 1998.

Pub. L. 104–208, div. A, title I, §101(a) [title V], Sept. 30, 1996, 110 Stat. 3009, 3009–61, which provided in part that on Sept. 30, 1996, the rate of fees under subsec. (b) of this section were increased from one-fiftieth of one percentum to one-thirty-third of one percentum, and such increase was to be deposited as an offsetting collection to this appropriation, to remain available until expended, to recover costs of services of the securities registration process, was from the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1997, and was not repeated in subsequent appropriations acts. Similar provisions were contained in the following prior appropriation acts:

Pub. L. 104–134, title I, §101[(a)] [title V], Apr. 26, 1996, 110 Stat. 1321, 1321–60; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327.

Pub. L. 104–99, title II, §209, Jan. 26, 1996, 110 Stat. 37.

Pub. L. 104–56, §119, Nov. 20, 1995, 109 Stat. 552.

Pub. L. 104–54, §119, Nov. 19, 1995, 109 Stat. 544.

Pub. L. 104–31, §120, Sept. 30, 1995, 109 Stat. 282.

Pub. L. 103–352, Oct. 10, 1994, 108 Stat. 3148.

Pub. L. 103–121, title I, Oct. 27, 1993, 107 Stat. 1168.

Pub. L. 102–395, title I, Oct. 6, 1992, 106 Stat. 1848.

Pub. L. 102–140, title I, Oct. 28, 1991, 105 Stat. 798.

Pub. L. 101–515, title V, Nov. 5, 1990, 104 Stat. 2139.

Pub. L. 101–162, title V, Nov. 21, 1989, 103 Stat. 1022.

[1] *See References in Text note below.*

§77g. Information required in registration statement

(a) Information required in registration statement

(1) In general

The registration statement, when relating to a security other than a security issued by a foreign government, or political subdivision thereof, shall contain the information, and be accompanied by the documents, specified in Schedule A of section 77aa of this title, and when relating to a security issued by a foreign government, or political subdivision thereof, shall contain the information, and be accompanied by the documents, specified in Schedule B of section 77aa of this title; except that the Commission may by rules or regulations provide that any such information or document need not be included in respect of any class of issuers or securities if it finds that the requirement of such information or document is inapplicable to such class and that disclosure fully adequate for the protection of investors is otherwise required to be included within the registration statement. If any accountant, engineer, or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the registration statement, or is named as having prepared or certified a report or valuation for use in connection with the registration statement, the written consent of such person shall be filed with the registration statement. If any such person is named as having prepared or certified a report or valuation (other than a public official document or statement) which is used in connection with the registration statement, but is not named as having prepared or certified such report or valuation for use in connection with the registration statement, the written consent of such person shall be filed with the registration statement unless the Commission dispenses with such filing as impracticable or as involving undue hardship on the person filing the registration statement. Any such registration statement shall contain such other information, and be accompanied by such other documents, as the Commission may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of investors.

(2) Treatment of emerging growth companies

An emerging growth company—

(A) need not present more than 2 years of audited financial statements in order for the registration statement of such emerging growth company with respect to an initial public offering of its common equity securities to be effective, and in any other registration statement to be filed with the Commission, an emerging growth company need not present selected financial data in accordance with section 229.301 of title 17, Code of Federal Regulations, for any period prior to the earliest audited period presented in connection with its initial public offering; and

(B) may not be required to comply with any new or revised financial accounting standard until such date that a company that is not an issuer (as defined under section 7201 of this title) is required to comply with such new or revised accounting standard, if such standard applies to companies that are not issuers.

(b) Registration statement for blank check companies

(1) The Commission shall prescribe special rules with respect to registration statements filed by any issuer that is a blank check company. Such rules may, as the Commission determines necessary or appropriate in the public interest or for the protection of investors—

(A) require such issuers to provide timely disclosure, prior to or after such statement becomes effective under section 77h of this title, of (i) information regarding the company to be acquired and the specific application of the proceeds of the offering, or (ii) additional information necessary to prevent such statement from being misleading;

(B) place limitations on the use of such proceeds and the distribution of securities by such issuer until the disclosures required under subparagraph (A) have been made; and

(C) provide a right of rescission to shareholders of such securities.

(2) The Commission may, as it determines consistent with the public interest and the protection of investors, by rule or order exempt any issuer or class of issuers from the rules prescribed under paragraph (1).

(3) For purposes of paragraph (1) of this subsection, the term "blank check company" means any development stage company that is issuing a penny stock (within the meaning of section 78c(a)(51) of this title) and that—

(A) has no specific business plan or purpose; or

(B) has indicated that its business plan is to merge with an unidentified company or companies.

(c) Disclosure requirements

(1) In general

The Commission shall adopt regulations under this subsection requiring each issuer of an asset-backed security to disclose, for each tranche or class of security, information regarding the assets backing that security.

(2) Content of regulations

In adopting regulations under this subsection, the Commission shall—

(A) set standards for the format of the data provided by issuers of an asset-backed security, which shall, to the extent feasible, facilitate comparison of such data across securities in similar types of asset classes; and

(B) require issuers of asset-backed securities, at a minimum, to disclose asset-level or loan-level data, if such data are necessary for investors to independently perform due diligence, including—

(i) data having unique identifiers relating to loan brokers or originators;

(ii) the nature and extent of the compensation of the broker or originator of the assets backing the security; and

(iii) the amount of risk retention by the originator and the securitizer of such assets.

(d) Registration statement for asset-backed securities

Not later than 180 days after July 21, 2010, the Commission shall issue rules relating to the registration statement required to be filed by any issuer of an asset-backed security (as that term is defined in section 78c(a)(77) [1] of this title) that require any issuer of an asset-backed security—

(1) to perform a review of the assets underlying the asset-backed security; and

(2) to disclose the nature of the review under paragraph (1).

(May 27, 1933, ch. 38, title I, §7, 48 Stat. 78; Pub. L. 101–429, title V, §508, Oct. 15, 1990, 104 Stat. 956; Pub. L. 111–203, title IX, §§942(b), 945, July 21, 2010, 124 Stat. 1897, 1898; Pub. L. 112–106, title I, §102(b)(1), Apr. 5, 2012, 126 Stat. 309.)

REFERENCES IN TEXT

Section 78c(a)(77) of this title, referred to in subsec. (d), was redesignated section 78c(a)(79) of this title by Pub. L. 112–106, title I, §101(b)(1), Apr. 5, 2012, 126 Stat. 307.

AMENDMENTS

2012—Subsec. (a). Pub. L. 112–106 inserted subsec. heading, designated existing provisions as par. (1), inserted par. heading, and added par. (2).

2010—Subsec. (c). Pub. L. 111–203, §942(b), added subsec. (c).

Subsec. (d). Pub. L. 111–203, §945, added subsec. (d).

1990—Pub. L. 101–429 designated existing provision as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–429, §1(c), Oct. 15, 1990, 104 Stat. 931, provided that:

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this Act [enacting sections 77h–1, 78q–2, 78u–2, and 78u–3 of this title, amending this section and sections 77t, 78c, 78o, 78o–3, 78o–4, 78q–1, 78u, 78u–1, 78w, 78cc, 80a–9, 80a–41, 80b–3, 80b–9, and 80b–14 of this title, and enacting provisions set out as notes under sections 78a, 78o, and 78s of this title] shall be effective upon enactment [Oct. 15, 1990].

"(2) CIVIL PENALTIES.—

"(A) IN GENERAL.—No civil penalty may be imposed pursuant to the amendments made by this Act on the basis of conduct occurring before the date of enactment of this Act [Oct. 15, 1990].

"(B) ACCOUNTING AND DISGORGEMENT.—Subparagraph (A) shall not operate to preclude the Securities and Exchange Commission from ordering an accounting or disgorgement pursuant to the amendments made by this Act.

"(3) SPECIAL RULES FOR TITLE V.—

"(A) SECTIONS 503 AND 504.—Except as provided in subparagraph (C), sections 503 [amending section 78c of this title] and 504 [amending section 78o of this title and enacting provisions set out as a note under section 78o of this title] shall be effective 12 months after the date of enactment of this Act [Oct. 15, 1990] or upon the issuance of final regulations initially implementing such section [Such regulations were issued effective Apr. 28, 1992. See 57 F.R. 18004, 18037.], whichever is earlier.

"(B) SECTIONS 505 AND 508.—Except as provided in subparagraph (C), sections 505 [amending section 78o of this title] and 508 [amending this section] shall be effective 18 months after the date of enactment of this Act or upon the issuance of final regulations initially implementing such sections [Such regulations were issued effective Apr. 28, 1992. See 57 F.R. 18004, 18037.], whichever is earlier.

"(C) COMMENCEMENT OF RULEMAKING.—Not later than 180 days after the date of enactment of this Act, the Commission shall commence rulemaking proceedings to implement sections 503, 505, and 508."

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

OTHER DISCLOSURES

Pub. L. 112–106, title I, §102(c), Apr. 5, 2012, 126 Stat. 310, provided that: "An emerging growth company may comply with section 229.303(a) of title 17, Code of Federal Regulations, or any successor thereto, by providing information required by such section with respect to the financial statements of the emerging growth company for each period presented pursuant to section 7(a) of the Securities Act of 1933 (15 U.S.C. 77g(a)). An emerging growth company may comply with section 229.402 of title 17, Code of Federal Regulations, or any successor thereto, by disclosing the same information as any issuer with a market value of outstanding voting and nonvoting common equity held by non-affiliates of less than $75,000,000."

[1] *See References in Text note below.*

§77h. Taking effect of registration statements and amendments thereto

(a) Effective date of registration statement

Except as hereinafter provided, the effective date of a registration statement shall be the twentieth day after the filing thereof or such earlier date as the Commission may determine, having due regard to the adequacy of the information respecting the issuer theretofore available to the public, to the facility with which the nature of the securities to be registered, their relationship to the capital structure of the issuer and the rights of holders thereof can be understood, and to the public interest and the protection of investors. If any amendment to any such statement is filed prior to the effective date of such statement, the registration statement shall be deemed to have been filed when such amendment was filed; except that an amendment filed with the consent of the Commission, prior to the effective date of the registration statement, or filed pursuant to an order of the Commission, shall be treated as a part of the registration statement.

(b) Incomplete or inaccurate registration statement

If it appears to the Commission that a registration statement is on its face incomplete or inaccurate in any material respect, the Commission may, after notice by personal service or the sending of confirmed telegraphic notice not later than ten days after the filing of the registration statement, and opportunity for hearing (at a time fixed by the Commission) within ten days after such notice by personal service or the sending of such telegraphic notice, issue an order prior to the effective date of registration refusing to permit such statement to become effective until it has been amended in accordance with such order. When such statement has been amended in accordance with such order the Commission shall so declare and the registration shall become effective at the time provided in subsection (a) of this section or upon the date of such declaration, whichever date is the later.

(c) Effective date of amendment to registration statement

An amendment filed after the effective date of the registration statement, if such amendment, upon its face, appears to the Commission not to be incomplete or inaccurate in any material respect, shall become effective on such date as the Commission may determine, having due regard to the public interest and the protection of investors.

(d) Untrue statements or omissions in registration statement

If it appears to the Commission at any time that the registration statement includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, the Commission may, after notice by personal service or the sending of confirmed telegraphic notice, and after opportunity for hearing (at a time fixed by the Commission) within fifteen days after such notice by personal service or the sending of such telegraphic notice, issue a stop order suspending the effectiveness of the registration statement. When such statement has been amended in accordance with such stop order, the Commission shall so declare and thereupon the stop order shall cease to be effective.

(e) Examination for issuance of stop order

The Commission is empowered to make an examination in any case in order to determine whether a stop order should issue under subsection (d) of this section. In making such examination the

Commission or any officer or officers designated by it shall have access to and may demand the production of any books and papers of, and may administer oaths and affirmations to and examine, the issuer, underwriter, or any other person, in respect of any matter relevant to the examination, and may, in its discretion, require the production of a balance sheet exhibiting the assets and liabilities of the issuer, or its income statement, or both, to be certified to by a public or certified accountant approved by the Commission. If the issuer or underwriter shall fail to cooperate, or shall obstruct or refuse to permit the making of an examination, such conduct shall be proper ground for the issuance of a stop order.

(f) Notice requirements

Any notice required under this section shall be sent to or served on the issuer, or, in case of a foreign government or political subdivision thereof, to or on the underwriter, or, in the case of a foreign or Territorial person, to or on its duly authorized representative in the United States named in the registration statement, properly directed in each case of telegraphic notice to the address given in such statement.

(May 27, 1933, ch. 38, title I, §8, 48 Stat. 79; Aug. 22, 1940, ch. 686, title III, §301, 54 Stat. 857.)

AMENDMENTS

1940—Subsec. (a). Act Aug. 22, 1940, amended subsec. (a) generally.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§77h–1. Cease-and-desist proceedings

(a) Authority of Commission

If the Commission finds, after notice and opportunity for hearing, that any person is violating, has violated, or is about to violate any provision of this subchapter, or any rule or regulation thereunder, the Commission may publish its findings and enter an order requiring such person, and any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation of the same provision, rule, or regulation. Such order may, in addition to requiring a person to cease and desist from committing or causing a violation, require such person to comply, or to take steps to effect compliance, with such provision, rule, or regulation, upon such terms and conditions and within such time as the Commission may specify in such order. Any such order may, as the Commission deems appropriate, require future compliance or steps to effect future compliance, either permanently or for such period of time as the Commission may specify, with such provision, rule, or regulation with respect to any security, any issuer, or any other person.

(b) Hearing

The notice instituting proceedings pursuant to subsection (a) of this section shall fix a hearing date not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the Commission with the consent of any respondent so served.

(c) Temporary order

(1) In general

Whenever the Commission determines that the alleged violation or threatened violation specified in the notice instituting proceedings pursuant to subsection (a) of this section, or the continuation thereof, is likely to result in significant dissipation or conversion of assets, significant harm to investors, or substantial harm to the public interest, including, but not limited to, losses to the Securities Investor Protection Corporation, prior to the completion of the proceedings, the

Commission may enter a temporary order requiring the respondent to cease and desist from the violation or threatened violation and to take such action to prevent the violation or threatened violation and to prevent dissipation or conversion of assets, significant harm to investors, or substantial harm to the public interest as the Commission deems appropriate pending completion of such proceeding. Such an order shall be entered only after notice and opportunity for a hearing, unless the Commission determines that notice and hearing prior to entry would be impracticable or contrary to the public interest. A temporary order shall become effective upon service upon the respondent and, unless set aside, limited, or suspended by the Commission or a court of competent jurisdiction, shall remain effective and enforceable pending the completion of the proceedings.

(2) Applicability

This subsection shall apply only to a respondent that acts, or, at the time of the alleged misconduct acted, as a broker, dealer, investment adviser, investment company, municipal securities dealer, government securities broker, government securities dealer, or transfer agent, or is, or was at the time of the alleged misconduct, an associated person of, or a person seeking to become associated with, any of the foregoing.

(d) Review of temporary orders

(1) Commission review

At any time after the respondent has been served with a temporary cease-and-desist order pursuant to subsection (c) of this section, the respondent may apply to the Commission to have the order set aside, limited, or suspended. If the respondent has been served with a temporary cease-and-desist order entered without a prior Commission hearing, the respondent may, within 10 days after the date on which the order was served, request a hearing on such application and the Commission shall hold a hearing and render a decision on such application at the earliest possible time.

(2) Judicial review

Within—

(A) 10 days after the date the respondent was served with a temporary cease-and-desist order entered with a prior Commission hearing, or

(B) 10 days after the Commission renders a decision on an application and hearing under paragraph (1), with respect to any temporary cease-and-desist order entered without a prior Commission hearing,

the respondent may apply to the United States district court for the district in which the respondent resides or has its principal place of business, or for the District of Columbia, for an order setting aside, limiting, or suspending the effectiveness or enforcement of the order, and the court shall have jurisdiction to enter such an order. A respondent served with a temporary cease-and-desist order entered without a prior Commission hearing may not apply to the court except after hearing and decision by the Commission on the respondent's application under paragraph (1) of this subsection.

(3) No automatic stay of temporary order

The commencement of proceedings under paragraph (2) of this subsection shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(4) Exclusive review

Section 77i(a) of this title shall not apply to a temporary order entered pursuant to this section.

(e) Authority to enter order requiring accounting and disgorgement

In any cease-and-desist proceeding under subsection (a) of this section, the Commission may enter an order requiring accounting and disgorgement, including reasonable interest. The Commission is authorized to adopt rules, regulations, and orders concerning payments to investors, rates of interest, periods of accrual, and such other matters as it deems appropriate to implement this subsection.

(f) Authority of the Commission to prohibit persons from serving as officers or directors

In any cease-and-desist proceeding under subsection (a) of this section, the Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 77q(a)(1) of this title or the rules or regulations thereunder, from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 78l of this title, or that is required to file reports pursuant to section 78o(d) of this title, if the conduct of that person demonstrates unfitness to serve as an officer or director of any such issuer.

(g) Authority to impose money penalties

(1) Grounds

In any cease-and-desist proceeding under subsection (a), the Commission may impose a civil penalty on a person if the Commission finds, on the record, after notice and opportunity for hearing, that—

(A) such person—

(i) is violating or has violated any provision of this subchapter, or any rule or regulation issued under this subchapter; or

(ii) is or was a cause of the violation of any provision of this subchapter, or any rule or regulation thereunder; and

(B) such penalty is in the public interest.

(2) Maximum amount of penalty

(A) First tier

The maximum amount of a penalty for each act or omission described in paragraph (1) shall be $7,500 for a natural person or $75,000 for any other person.

(B) Second tier

Notwithstanding subparagraph (A), the maximum amount of penalty for each such act or omission shall be $75,000 for a natural person or $375,000 for any other person, if the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

(C) Third tier

Notwithstanding subparagraphs (A) and (B), the maximum amount of penalty for each such act or omission shall be $150,000 for a natural person or $725,000 for any other person, if—

(i) the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

(ii) such act or omission directly or indirectly resulted in—

(I) substantial losses or created a significant risk of substantial losses to other persons; or

(II) substantial pecuniary gain to the person who committed the act or omission.

(3) Evidence concerning ability to pay

In any proceeding in which the Commission may impose a penalty under this section, a respondent may present evidence of the ability of the respondent to pay such penalty. The Commission may, in its discretion, consider such evidence in determining whether such penalty is in the public interest. Such evidence may relate to the extent of the ability of the respondent to continue in business and the collectability of a penalty, taking into account any other claims of the United States or third parties upon the assets of the respondent and the amount of the assets of the respondent.

(May 27, 1933, ch. 38, title I, §8A, as added Pub. L. 101–429, title I, §102, Oct. 15, 1990, 104 Stat. 933; amended Pub. L. 107–204, title XI, §1105(b), July 30, 2002, 116 Stat. 809; Pub. L. 111–203, title IX, §929P(a)(1), July 21, 2010, 124 Stat. 1862.)

AMENDMENTS

2010—Subsec. (g). Pub. L. 111–203 added subsec. (g).

2002—Subsec. (f). Pub. L. 107–204 added subsec. (f).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE

Section effective Oct. 15, 1990, with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(1) and (2) of Pub. L. 101–429, set out in an Effective Date of 1990 Amendment note under section 77g of this title.

§77i. Court review of orders

(a) Any person aggrieved by an order of the Commission may obtain a review of such order in the court of appeals of the United States, within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such Court, within sixty days after the entry of such order, a written petition praying that the order of the Commission be modified or be set aside in whole or in part. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission, and thereupon the Commission shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission. The finding of the Commission as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the hearing before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The jurisdiction of the court shall be exclusive and its judgment and decree, affirming, modifying, or setting aside, in whole or in part, any order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(b) The commencement of proceedings under subsection (a) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(May 27, 1933, ch. 38, title I, §9, 48 Stat. 80; Pub. L. 85–791, §9, Aug. 28, 1958, 72 Stat. 945; Pub. L. 100–181, title II, §206, Dec. 4, 1987, 101 Stat. 1252.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–181 substituted "court of appeals" for "Circuit Court of Appeals", "United States Court of Appeals for the District of Columbia, by filing in such Court" for "Court of Appeals of the District of Columbia, by filing in such court", and "section 1254 of title 28" for "sections 239 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 346 and 347)".

1958—Subsec. (a). Pub. L. 85–791, in second sentence, substituted "transmitted by the clerk of the court to" for "served upon", struck out "certify and" before "file in the court", struck out "a transcript of" after "file in the court", and inserted "as provided in section 2112 of title 28".

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§77j. Information required in prospectus

(a) Information in registration statement; documents not required

Except to the extent otherwise permitted or required pursuant to this subsection or subsections (c), (d), or (e) of this section—

(1) a prospectus relating to a security other than a security issued by a foreign government or political subdivision thereof, shall contain the information contained in the registration statement, but it need not include the documents referred to in paragraphs (28) to (32), inclusive, of schedule A of section 77aa of this title;

(2) a prospectus relating to a security issued by a foreign government or political subdivision thereof shall contain the information contained in the registration statement, but it need not include the documents referred to in paragraphs (13) and (14) of schedule B of section 77aa of this title;

(3) notwithstanding the provisions of paragraphs (1) and (2) of this subsection when a prospectus is used more than nine months after the effective date of the registration statement, the information contained therein shall be as of a date not more than sixteen months prior to such use, so far as such information is known to the user of such prospectus or can be furnished by such user without unreasonable effort or expense;

(4) there may be omitted from any prospectus any of the information required under this subsection which the Commission may by rules or regulations designate as not being necessary or appropriate in the public interest or for the protection of investors.

(b) Summarizations and omissions allowed by rules and regulations

In addition to the prospectus permitted or required in subsection (a) of this section, the Commission shall by rules or regulations deemed necessary or appropriate in the public interest or for the protection of investors permit the use of a prospectus for the purposes of subsection (b)(1) of section 77e of this title which omits in part or summarizes information in the prospectus specified in subsection (a) of this section. A prospectus permitted under this subsection shall, except to the extent the Commission by rules or regulations deemed necessary or appropriate in the public interest or for the protection of investors otherwise provides, be filed as part of the registration statement but shall not be deemed a part of such registration statement for the purposes of section 77k of this title. The Commission may at any time issue an order preventing or suspending the use of a prospectus permitted under this subsection, if it has reason to believe that such prospectus has not been filed (if required to be filed as part of the registration statement) or includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which such prospectus is or is to be used, not misleading. Upon issuance of an order under this subsection, the Commission shall give notice of the issuance of such order and opportunity for hearing by personal service or the sending of confirmed telegraphic notice. The Commission shall vacate or modify the order at any time for good cause or if such prospectus has been filed or amended in accordance with such order.

(c) Additional information required by rules and regulations

Any prospectus shall contain such other information as the Commission may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of investors.

(d) Classification of prospectuses

In the exercise of its powers under subsections (a), (b), or (c) of this section, the Commission shall have authority to classify prospectuses according to the nature and circumstances of their use or the nature of the security, issue, issuer, or otherwise, and, by rules and regulations and subject to such terms and conditions as it shall specify therein, to prescribe as to each class the form and contents which it may find appropriate and consistent with the public interest and the protection of investors.

(e) Information in conspicuous part of prospectus

The statements or information required to be included in a prospectus by or under authority of

subsections (a), (b), (c), or (d) of this section, when written, shall be placed in a conspicuous part of the prospectus and, except as otherwise permitted by rules or regulations, in type as large as that used generally in the body of the prospectus.

(f) Prospectus consisting of radio or television broadcast

In any case where a prospectus consists of a radio or television broadcast, copies thereof shall be filed with the Commission under such rules and regulations as it shall prescribe. The Commission may by rules and regulations require the filing with it of forms and prospectuses used in connection with the offer or sale of securities registered under this subchapter.

(May 27, 1933, ch. 38, title I, §10, 48 Stat. 81; June 6, 1934, ch. 404, title II, §205, 48 Stat. 906; Aug. 10, 1954, ch. 667, title I, §8, 68 Stat. 685.)

AMENDMENTS

1954—Act Aug. 10, 1954, complemented changes in section 77e of this title by act Aug. 10, 1954, permitted offering activities in the waiting period and in so doing rearranged the sequence of the subsections, added new text contained in subsec. (b), and renumbered subsecs. (c) and (d) as (e) and (f), respectively.

1934—Subsec. (b)(1). Act June 6, 1934, amended par. (1).

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§77k. Civil liabilities on account of false registration statement

(a) Persons possessing cause of action; persons liable

In case any part of the registration statement, when such part became effective, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, any person acquiring such security (unless it is proved that at the time of such acquisition he knew of such untruth or omission) may, either at law or in equity, in any court of competent jurisdiction, sue—

(1) every person who signed the registration statement;

(2) every person who was a director of (or person performing similar functions) or partner in the issuer at the time of the filing of the part of the registration statement with respect to which his liability is asserted;

(3) every person who, with his consent, is named in the registration statement as being or about to become a director, person performing similar functions, or partner;

(4) every accountant, engineer, or appraiser, or any person whose profession gives authority to a statement made by him, who has with his consent been named as having prepared or certified any part of the registration statement, or as having prepared or certified any report or valuation which is used in connection with the registration statement, with respect to the statement in such registration statement, report, or valuation, which purports to have been prepared or certified by him;

(5) every underwriter with respect to such security.

If such person acquired the security after the issuer has made generally available to its security holders an earning statement covering a period of at least twelve months beginning after the effective date of the registration statement, then the right of recovery under this subsection shall be conditioned on proof that such person acquired the security relying upon such untrue statement in the registration statement or relying upon the registration statement and not knowing of such omission,

but such reliance may be established without proof of the reading of the registration statement by such person.

(b) Persons exempt from liability upon proof of issues

Notwithstanding the provisions of subsection (a) of this section no person, other than the issuer, shall be liable as provided therein who shall sustain the burden of proof—

(1) that before the effective date of the part of the registration statement with respect to which his liability is asserted (A) he had resigned from or had taken such steps as are permitted by law to resign from, or ceased or refused to act in, every office, capacity, or relationship in which he was described in the registration statement as acting or agreeing to act, and (B) he had advised the Commission and the issuer in writing that he had taken such action and that he would not be responsible for such part of the registration statement; or

(2) that if such part of the registration statement became effective without his knowledge, upon becoming aware of such fact he forthwith acted and advised the Commission, in accordance with paragraph (1) of this subsection, and, in addition, gave reasonable public notice that such part of the registration statement had become effective without his knowledge; or

(3) that (A) as regards any part of the registration statement not purporting to be made on the authority of an expert, and not purporting to be a copy of or extract from a report or valuation of an expert, and not purporting to be made on the authority of a public official document or statement, he had, after reasonable investigation, reasonable ground to believe and did believe, at the time such part of the registration statement became effective, that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading; and (B) as regards any part of the registration statement purporting to be made upon his authority as an expert or purporting to be a copy of or extract from a report or valuation of himself as an expert, (i) he had, after reasonable investigation, reasonable ground to believe and did believe, at the time such part of the registration statement became effective, that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or (ii) such part of the registration statement did not fairly represent his statement as an expert or was not a fair copy of or extract from his report or valuation as an expert; and (C) as regards any part of the registration statement purporting to be made on the authority of an expert (other than himself) or purporting to be a copy of or extract from a report or valuation of an expert (other than himself), he had no reasonable ground to believe and did not believe, at the time such part of the registration statement became effective, that the statements therein were untrue or that there was an omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that such part of the registration statement did not fairly represent the statement of the expert or was not a fair copy of or extract from the report or valuation of the expert; and (D) as regards any part of the registration statement purporting to be a statement made by an official person or purporting to be a copy of or extract from a public official document, he had no reasonable ground to believe and did not believe, at the time such part of the registration statement became effective, that the statements therein were untrue, or that there was an omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that such part of the registration statement did not fairly represent the statement made by the official person or was not a fair copy of or extract from the public official document.

(c) Standard of reasonableness

In determining, for the purpose of paragraph (3) of subsection (b) of this section, what constitutes reasonable investigation and reasonable ground for belief, the standard of reasonableness shall be that required of a prudent man in the management of his own property.

(d) Effective date of registration statement with regard to underwriters

If any person becomes an underwriter with respect to the security after the part of the registration statement with respect to which his liability is asserted has become effective, then for the purposes of

paragraph (3) of subsection (b) of this section such part of the registration statement shall be considered as having become effective with respect to such person as of the time when he became an underwriter.

(e) Measure of damages; undertaking for payment of costs

The suit authorized under subsection (a) of this section may be to recover such damages as shall represent the difference between the amount paid for the security (not exceeding the price at which the security was offered to the public) and (1) the value thereof as of the time such suit was brought, or (2) the price at which such security shall have been disposed of in the market before suit, or (3) the price at which such security shall have been disposed of after suit but before judgment if such damages shall be less than the damages representing the difference between the amount paid for the security (not exceeding the price at which the security was offered to the public) and the value thereof as of the time such suit was brought: *Provided*, That if the defendant proves that any portion or all of such damages represents other than the depreciation in value of such security resulting from such part of the registration statement, with respect to which his liability is asserted, not being true or omitting to state a material fact required to be stated therein or necessary to make the statements therein not misleading, such portion of or all such damages shall not be recoverable. In no event shall any underwriter (unless such underwriter shall have knowingly received from the issuer for acting as an underwriter some benefit, directly or indirectly, in which all other underwriters similarly situated did not share in proportion to their respective interests in the underwriting) be liable in any suit or as a consequence of suits authorized under subsection (a) of this section for damages in excess of the total price at which the securities underwritten by him and distributed to the public were offered to the public. In any suit under this or any other section of this subchapter the court may, in its discretion, require an undertaking for the payment of the costs of such suit, including reasonable attorney's fees, and if judgment shall be rendered against a party litigant, upon the motion of the other party litigant, such costs may be assessed in favor of such party litigant (whether or not such undertaking has been required) if the court believes the suit or the defense to have been without merit, in an amount sufficient to reimburse him for the reasonable expenses incurred by him, in connection with such suit, such costs to be taxed in the manner usually provided for taxing of costs in the court in which the suit was heard.

(f) Joint and several liability; liability of outside director

(1) Except as provided in paragraph (2), all or any one or more of the persons specified in subsection (a) of this section shall be jointly and severally liable, and every person who becomes liable to make any payment under this section may recover contribution as in cases of contract from any person who, if sued separately, would have been liable to make the same payment, unless the person who has become liable was, and the other was not, guilty of fraudulent misrepresentation.

(2)(A) The liability of an outside director under subsection (e) of this section shall be determined in accordance with section 78u–4(f) of this title.

(B) For purposes of this paragraph, the term "outside director" shall have the meaning given such term by rule or regulation of the Commission.

(g) Offering price to public as maximum amount recoverable

In no case shall the amount recoverable under this section exceed the price at which the security was offered to the public.

(May 27, 1933, ch. 38, title I, §11, 48 Stat. 82; June 6, 1934, ch. 404, title II, §206, 48 Stat. 907; Pub. L. 104–67, title II, §201(b), Dec. 22, 1995, 109 Stat. 762; Pub. L. 105–353, title III, §301(a)(2), Nov. 3, 1998, 112 Stat. 3235.)

AMENDMENTS

1998—Subsec. (f)(2)(A). Pub. L. 105–353 made technical amendment to reference in original act which appears in text as reference to section 78u–4(f) of this title.

1995—Subsec. (f). Pub. L. 104–67 designated existing provisions as par. (1), substituted "Except as provided in paragraph (2), all" for "All", and added par. (2).

1934—Subsec. (a). Act June 6, 1934, inserted last par.

Subsecs. (b)(3), (c) to (e). Act June 6, 1934, amended subsecs. (b)(3) and (c) to (e).

EFFECTIVE DATE OF 1995 AMENDMENT

Pub. L. 104–67, title II, §202, Dec. 22, 1995, 109 Stat. 762, provided that: "The amendments made by this title [amending this section and section 78u–4 of this title] shall not affect or apply to any private action arising under the securities laws commenced before and pending on the date of enactment of this Act [Dec. 22, 1995]."

CONSTRUCTION OF 1995 AMENDMENT

Nothing in amendment by Pub. L. 104–67 to be deemed to create or ratify any implied right of action, or to prevent Commission, by rule or regulation, from restricting or otherwise regulating private actions under Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), see section 203 of Pub. L. 104–67, set out as a Construction note under section 78j–1 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§77*l*. Civil liabilities arising in connection with prospectuses and communications

(a) In general

Any person who—

(1) offers or sells a security in violation of section 77e of this title, or

(2) offers or sells a security (whether or not exempted by the provisions of section 77c of this title, other than paragraphs (2) and (14) of subsection (a) of said section), by the use of any means or instruments of transportation or communication in interstate commerce or of the mails, by means of a prospectus or oral communication, which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of such untruth or omission), and who shall not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission,

shall be liable, subject to subsection (b) of this section, to the person purchasing such security from him, who may sue either at law or in equity in any court of competent jurisdiction, to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if he no longer owns the security.

(b) Loss causation

In an action described in subsection (a)(2) of this section, if the person who offered or sold such security proves that any portion or all of the amount recoverable under subsection (a)(2) of this section represents other than the depreciation in value of the subject security resulting from such part of the prospectus or oral communication, with respect to which the liability of that person is asserted, not being true or omitting to state a material fact required to be stated therein or necessary to make the statement not misleading, then such portion or amount, as the case may be, shall not be recoverable.

(May 27, 1933, ch. 38, title I, §12, 48 Stat. 84; Aug. 10, 1954, ch. 667, title I, §9, 68 Stat. 686; Pub. L. 104–67, title I, §105, Dec. 22, 1995, 109 Stat. 757; Pub. L. 106–554, §1(a)(5) [title II, §208(a)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–435.)

AMENDMENTS

2000—Subsec. (a)(2). Pub. L. 106–554 substituted "paragraphs (2) and (14)" for "paragraph (2)".

1995—Pub. L. 104–67 designated existing provisions as subsec. (a), inserted heading, inserted ", subject to subsection (b) of this section," after "shall be liable" in concluding provisions, and added subsec. (b).

1954—Act Aug. 10, 1954, inserted "offers or" before "sells" in pars. (1) and (2).

EFFECTIVE DATE OF 1995 AMENDMENT

Pub. L. 104–67, title I, §108, Dec. 22, 1995, 109 Stat. 758, provided that: "The amendments made by this title [enacting sections 77z–1, 77z–2, 78u–4, and 78u–5 of this title and amending this section and sections 77t, 78o, 78t, and 78u of this title and section 1964 of Title 18, Crimes and Criminal Procedure] shall not affect or apply to any private action arising under title I of the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] or title I of the Securities Act of 1933 [15 U.S.C. 77a et seq.], commenced before and pending on the date of enactment of this Act [Dec. 22, 1995]."

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

CONSTRUCTION OF 1995 AMENDMENT

Nothing in amendment by Pub. L. 104–67 to be deemed to create or ratify any implied right of action, or to prevent Commission, by rule or regulation, from restricting or otherwise regulating private actions under Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), see section 203 of Pub. L. 104–67, set out as a Construction note under section 78j–1 of this title.

§77m. Limitation of actions

No action shall be maintained to enforce any liability created under section 77k or 77l(a)(2) of this title unless brought within one year after the discovery of the untrue statement or the omission, or after such discovery should have been made by the exercise of reasonable diligence, or, if the action is to enforce a liability created under section 77l(a)(1) of this title, unless brought within one year after the violation upon which it is based. In no event shall any such action be brought to enforce a liability created under section 77k or 77l(a)(1) of this title more than three years after the security was bona fide offered to the public, or under section 77l(a)(2) of this title more than three years after the sale.

(May 27, 1933, ch. 38, title I, §13, 48 Stat. 84; June 6, 1934, ch. 404, title II, §207, 48 Stat. 908; Pub. L. 105–353, title III, §301(a)(3), Nov. 3, 1998, 112 Stat. 3235.)

AMENDMENTS

1998—Pub. L. 105–353 substituted "77l(a)(2)" for "77l(2)" in two places and "77l(a)(1)" for "77l(1)" in two places.

1934—Act June 6, 1934, substituted "one year" for "two years", "three years" for "ten years", and inserted "or under section 77l(2) of this title more than three years after the sale".

§77n. Contrary stipulations void

Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of this subchapter or of the rules and regulations of the Commission shall be void.

(May 27, 1933, ch. 38, title I, §14, 48 Stat. 84.)

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§77*o*. Liability of controlling persons

(a) Controlling persons

Every person who, by or through stock ownership, agency, or otherwise, or who, pursuant to or in

connection with an agreement or understanding with one or more other persons by or through stock ownership, agency, or otherwise, controls any person liable under sections 77k or 77l of this title, shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable, unless the controlling person had no knowledge of or reasonable ground to believe in the existence of the facts by reason of which the liability of the controlled person is alleged to exist.

(b) Prosecution of persons who aid and abet violations

For purposes of any action brought by the Commission under subparagraph (b) or (d) of section 77t of this title, any person that knowingly or recklessly provides substantial assistance to another person in violation of a provision of this subchapter, or of any rule or regulation issued under this subchapter, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided.

(May 27, 1933, ch. 38, title I, §15, 48 Stat. 84; June 6, 1934, ch. 404, title II, §208, 48 Stat. 908; Pub. L. 111–203, title IX, §929M(a), July 21, 2010, 124 Stat. 1861.)

AMENDMENTS

2010—Pub. L. 111–203 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1934—Act June 6, 1934, exempted from liability controlling persons having no knowledge or reasonable grounds for belief.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

§77p. Additional remedies; limitation on remedies

(a) Remedies additional

Except as provided in subsection (b) of this section, the rights and remedies provided by this subchapter shall be in addition to any and all other rights and remedies that may exist at law or in equity.

(b) Class action limitations

No covered class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private party alleging—

(1) an untrue statement or omission of a material fact in connection with the purchase or sale of a covered security; or

(2) that the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security.

(c) Removal of covered class actions

Any covered class action brought in any State court involving a covered security, as set forth in subsection (b) of this section, shall be removable to the Federal district court for the district in which the action is pending, and shall be subject to subsection (b) of this section.

(d) Preservation of certain actions

(1) Actions under State law of State of incorporation

(A) Actions preserved

Notwithstanding subsection (b) or (c) of this section, a covered class action described in subparagraph (B) of this paragraph that is based upon the statutory or common law of the State in which the issuer is incorporated (in the case of a corporation) or organized (in the case of any other entity) may be maintained in a State or Federal court by a private party.

(B) Permissible actions

A covered class action is described in this subparagraph if it involves—

(i) the purchase or sale of securities by the issuer or an affiliate of the issuer exclusively from or to holders of equity securities of the issuer; or

(ii) any recommendation, position, or other communication with respect to the sale of securities of the issuer that—

(I) is made by or on behalf of the issuer or an affiliate of the issuer to holders of equity securities of the issuer; and

(II) concerns decisions of those equity holders with respect to voting their securities, acting in response to a tender or exchange offer, or exercising dissenters' or appraisal rights.

(2) State actions

(A) In general

Notwithstanding any other provision of this section, nothing in this section may be construed to preclude a State or political subdivision thereof or a State pension plan from bringing an action involving a covered security on its own behalf, or as a member of a class comprised solely of other States, political subdivisions, or State pension plans that are named plaintiffs, and that have authorized participation, in such action.

(B) "State pension plan" defined

For purposes of this paragraph, the term "State pension plan" means a pension plan established and maintained for its employees by the government of the State or political subdivision thereof, or by any agency or instrumentality thereof.

(3) Actions under contractual agreements between issuers and indenture trustees

Notwithstanding subsection (b) or (c) of this section, a covered class action that seeks to enforce a contractual agreement between an issuer and an indenture trustee may be maintained in a State or Federal court by a party to the agreement or a successor to such party.

(4) Remand of removed actions

In an action that has been removed from a State court pursuant to subsection (c) of this section, if the Federal court determines that the action may be maintained in State court pursuant to this subsection, the Federal court shall remand such action to such State court.

(e) Preservation of State jurisdiction

The securities commission (or any agency or office performing like functions) of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions.

(f) Definitions

For purposes of this section, the following definitions shall apply:

(1) Affiliate of the issuer

The term "affiliate of the issuer" means a person that directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with, the issuer.

(2) Covered class action

(A) In general

The term "covered class action" means—

(i) any single lawsuit in which—

(I) damages are sought on behalf of more than 50 persons or prospective class members, and questions of law or fact common to those persons or members of the prospective class, without reference to issues of individualized reliance on an alleged misstatement or omission, predominate over any questions affecting only individual persons or members; or

(II) one or more named parties seek to recover damages on a representative basis on behalf of themselves and other unnamed parties similarly situated, and questions of law or fact common to those persons or members of the prospective class predominate over any questions affecting only individual persons or members; or

(ii) any group of lawsuits filed in or pending in the same court and involving common questions of law or fact, in which—

(I) damages are sought on behalf of more than 50 persons; and

(II) the lawsuits are joined, consolidated, or otherwise proceed as a single action for any purpose.

(B) Exception for derivative actions

Notwithstanding subparagraph (A), the term "covered class action" does not include an exclusively derivative action brought by one or more shareholders on behalf of a corporation.

(C) Counting of certain class members

For purposes of this paragraph, a corporation, investment company, pension plan, partnership, or other entity, shall be treated as one person or prospective class member, but only if the entity is not established for the purpose of participating in the action.

(D) Rule of construction

Nothing in this paragraph shall be construed to affect the discretion of a State court in determining whether actions filed in such court should be joined, consolidated, or otherwise allowed to proceed as a single action.

(3) Covered security

The term "covered security" means a security that satisfies the standards for a covered security specified in paragraph (1) or (2) of section 77r(b) of this title at the time during which it is alleged that the misrepresentation, omission, or manipulative or deceptive conduct occurred, except that such term shall not include any debt security that is exempt from registration under this subchapter pursuant to rules issued by the Commission under section 77d(2) [1] of this title.

(May 27, 1933, ch. 38, title I, §16, 48 Stat. 84; Pub. L. 105–353, title I, §101(a)(1), Nov. 3, 1998, 112 Stat. 3227.)

REFERENCES IN TEXT

Section 77d(2) of this title, referred to in subsec. (f)(3), was redesignated section 77d(a)(2) of this title by Pub. L. 112–106, title II, §201(b)(1), (c)(1), Apr. 5, 2012, 126 Stat. 314.

AMENDMENTS

1998—Pub. L. 105–353 amended section catchline and text generally. Prior to amendment, text read as follows: "The rights and remedies provided by this subchapter shall be in addition to any and all other rights and remedies that may exist at law or in equity."

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–353, title I, §101(c), Nov. 3, 1998, 112 Stat. 3233, provided that: "The amendments made by this section [amending this section and sections 77v, 77z–1, 78u–4, and 78bb of this title] shall not affect or apply to any action commenced before and pending on the date of enactment of this Act [Nov. 3, 1998]."

[1] *See References in Text note below.*

§77q. Fraudulent interstate transactions

(a) Use of interstate commerce for purpose of fraud or deceit

It shall be unlawful for any person in the offer or sale of any securities (including security-based

swaps) or any security-based swap agreement (as defined in section 78c(a)(78) [1] of this title) by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly—

(1) to employ any device, scheme, or artifice to defraud, or

(2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

(b) Use of interstate commerce for purpose of offering for sale

It shall be unlawful for any person, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, to publish, give publicity to, or circulate any notice, circular, advertisement, newspaper, article, letter, investment service, or communication which, though not purporting to offer a security for sale, describes such security for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

(c) Exemptions of section 77c not applicable to this section

The exemptions provided in section 77c of this title shall not apply to the provisions of this section.

(d) Authority with respect to security-based swap agreements

The authority of the Commission under this section with respect to security-based swap agreements (as defined in section 78c(a)(78) of this title) shall be subject to the restrictions and limitations of section 77b–1(b) of this title.

(May 27, 1933, ch. 38, title I, §17, 48 Stat. 84; Aug. 10, 1954, ch. 667, title I, §10, 68 Stat. 686; Pub. L. 106–554, §1(a)(5) [title III, §302(b), (c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–452; Pub. L. 111–203, title VII, §762(c)(2), July 21, 2010, 124 Stat. 1759.)

AMENDMENT OF SECTION

Unless otherwise provided, amendment by subtitle B (§§761–774) of title VII of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see 2010 Amendment notes and Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

Section 78c(a)(78) of this title, referred to in subsec. (a), was in the original "section 3(a)(78) of the Securities Exchange Act", and was translated as meaning section 3(a)(78) of act June 6, 1934, ch. 404, to reflect the probable intent of Congress.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, §762(c)(2)(A), in introductory provisions, inserted "(including security-based swaps)" after "securities" and substituted "(as defined in section 78c(a)(78) of this title)" for "(as defined in section 206B of the Gramm-Leach-Bliley Act)".

Subsec. (d). Pub. L. 111–203, §762(c)(2)(B), substituted "78c(a)(78) of this title" for "206B of the Gramm-Leach-Bliley Act".

2000—Subsec. (a). Pub. L. 106–554, §1(a)(5) [title III, §302(b)], amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "It shall be unlawful for any person in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly—

"(1) to employ any device, scheme, or artifice to defraud, or

"(2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances

under which they were made, not misleading, or

"(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser."

Subsec. (d). Pub. L. 106–554, §1(a)(5) [title III, §302(c)], added subsec. (d).

1954—Subsec. (a). Act Aug. 10, 1954, inserted "offer or" before "sale" in introductory text.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761–774) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111–203, set out as a note under section 77b of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

[1] *See References in Text note below.*

§77r. Exemption from State regulation of securities offerings

(a) Scope of exemption

Except as otherwise provided in this section, no law, rule, regulation, or order, or other administrative action of any State or any political subdivision thereof—

(1) requiring, or with respect to, registration or qualification of securities, or registration or qualification of securities transactions, shall directly or indirectly apply to a security that—

(A) is a covered security; or

(B) will be a covered security upon completion of the transaction;

(2) shall directly or indirectly prohibit, limit, or impose any conditions upon the use of—

(A) with respect to a covered security described in subsection (b) of this section, any offering document that is prepared by or on behalf of the issuer; or

(B) any proxy statement, report to shareholders, or other disclosure document relating to a covered security or the issuer thereof that is required to be and is filed with the Commission or any national securities organization registered under section 78o–3 of this title, except that this subparagraph does not apply to the laws, rules, regulations, or orders, or other administrative actions of the State of incorporation of the issuer; or

(3) shall directly or indirectly prohibit, limit, or impose conditions, based on the merits of such offering or issuer, upon the offer or sale of any security described in paragraph (1).

(b) Covered securities

For purposes of this section, the following are covered securities:

(1) Exclusive Federal registration of nationally traded securities

A security is a covered security if such security is—

(A) listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange, or listed, or authorized for listing, on the National Market System of the Nasdaq Stock Market (or any successor to such entities);

(B) listed, or authorized for listing, on a national securities exchange (or tier or segment thereof) that has listing standards that the Commission determines by rule (on its own initiative or on the basis of a petition) are substantially similar to the listing standards applicable to securities described in subparagraph (A); or

(C) a security of the same issuer that is equal in seniority or that is a senior security to a security described in subparagraph (A) or (B).

(2) Exclusive Federal registration of investment companies

A security is a covered security if such security is a security issued by an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.].

(3) Sales to qualified purchasers

A security is a covered security with respect to the offer or sale of the security to qualified purchasers, as defined by the Commission by rule. In prescribing such rule, the Commission may define the term "qualified purchaser" differently with respect to different categories of securities, consistent with the public interest and the protection of investors.

(4) Exemption in connection with certain exempt offerings

A security is a covered security with respect to a transaction that is exempt from registration under this subchapter pursuant to—

(A) paragraph (1) or (3) of section 77d [1] of this title, and the issuer of such security files reports with the Commission pursuant to section 78m or 78o(d) of this title;

(B) section 77d(4) [1] of this title;

(C) section 77d(6) [1] of this title;

(D) [2] a rule or regulation adopted pursuant to section 77c(b)(2) of this title and such security is—

(i) offered or sold on a national securities exchange; or

(ii) offered or sold to a qualified purchaser, as defined by the Commission pursuant to paragraph (3) with respect to that purchase or sale;

(D) [2] section 77c(a) of this title, other than the offer or sale of a security that is exempt from such registration pursuant to paragraph (4), (10), or (11) of such section, except that a municipal security that is exempt from such registration pursuant to paragraph (2) of such section is not a covered security with respect to the offer or sale of such security in the State in which the issuer of such security is located; or

(E) Commission rules or regulations issued under section 77d(2) [1] of this title, except that this subparagraph does not prohibit a State from imposing notice filing requirements that are substantially similar to those required by rule or regulation under section 77d(2) [1] of this title that are in effect on September 1, 1996.

(c) Preservation of authority

(1) Fraud authority

Consistent with this section, the securities commission (or any agency or office performing like functions) of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions, in connection with securities or securities transactions [3]

(A) with respect to—

(i) fraud or deceit; or

(ii) unlawful conduct by a broker, dealer, or funding portal; and

(B) in connection to [4] a transaction described under section 77d(6) [1] of this title, with respect to—

(i) fraud or deceit; or

(ii) unlawful conduct by a broker, dealer, funding portal, or issuer.

(2) Preservation of filing requirements

(A) Notice filings permitted

Nothing in this section prohibits the securities commission (or any agency or office performing like functions) of any State from requiring the filing of any document filed with the

Commission pursuant to this subchapter, together with annual or periodic reports of the value of securities sold or offered to be sold to persons located in the State (if such sales data is not included in documents filed with the Commission), solely for notice purposes and the assessment of any fee, together with a consent to service of process and any required fee.

(B) Preservation of fees

(i) In general

Until otherwise provided by law, rule, regulation, or order, or other administrative action of any State or any political subdivision thereof, adopted after October 11, 1996, filing or registration fees with respect to securities or securities transactions shall continue to be collected in amounts determined pursuant to State law as in effect on the day before October 11, 1996.

(ii) Schedule

The fees required by this subparagraph shall be paid, and all necessary supporting data on sales or offers for sales required under subparagraph (A), shall be reported on the same schedule as would have been applicable had the issuer not relied on the exemption provided in subsection (a) of this section.

(C) Availability of preemption contingent on payment of fees

(i) In general

During the period beginning on October 11, 1996, and ending 3 years after October 11, 1996, the securities commission (or any agency or office performing like functions) of any State may require the registration of securities issued by any issuer who refuses to pay the fees required by subparagraph (B).

(ii) Delays

For purposes of this subparagraph, delays in payment of fees or underpayments of fees that are promptly remedied shall not constitute a refusal to pay fees.

(D) Fees not permitted on listed securities

Notwithstanding subparagraphs (A), (B), and (C), no filing or fee may be required with respect to any security that is a covered security pursuant to subsection (b)(1) of this section, or will be such a covered security upon completion of the transaction, or is a security of the same issuer that is equal in seniority or that is a senior security to a security that is a covered security pursuant to subsection (b)(1) of this section.

(F) [5] Fees not permitted on crowdfunded securities

Notwithstanding subparagraphs (A), (B), and (C), no filing or fee may be required with respect to any security that is a covered security pursuant to subsection (b)(4)(B), or will be such a covered security upon completion of the transaction, except for the securities commission (or any agency or office performing like functions) of the State of the principal place of business of the issuer, or any State in which purchasers of 50 percent or greater of the aggregate amount of the issue are residents, provided that for purposes of this subparagraph, the term "State" includes the District of Columbia and the territories of the United States.

(3) Enforcement of requirements

Nothing in this section shall prohibit the securities commission (or any agency or office performing like functions) of any State from suspending the offer or sale of securities within such State as a result of the failure to submit any filing or fee required under law and permitted under this section.

(d) Definitions

For purposes of this section, the following definitions shall apply:

(1) Offering document

The term "offering document"—

(A) has the meaning given the term "prospectus" in section 77b(a)(10) of this title, but without regard to the provisions of subparagraphs (a) and (b) of that section; and

(B) includes a communication that is not deemed to offer a security pursuant to a rule of the Commission.

(2) Prepared by or on behalf of the issuer

Not later than 6 months after October 11, 1996, the Commission shall, by rule, define the term "prepared by or on behalf of the issuer" for purposes of this section.

(3) State

The term "State" has the same meaning as in section 78c of this title.

(4) Senior security

The term "senior security" means any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness, and any stock of a class having priority over any other class as to distribution of assets or payment of dividends.

(May 27, 1933, ch. 38, title I, §18, 48 Stat. 85; Pub. L. 104–290, title I, §102(a), Oct. 11, 1996, 110 Stat. 3417; Pub. L. 105–353, title III, §§301(a)(4), 302, Nov. 3, 1998, 112 Stat. 3235, 3237; Pub. L. 111–203, title IX, §985(a)(2), July 21, 2010, 124 Stat. 1933; Pub. L. 112–106, title III, §305(a), (b)(2), (c), (d)(2), title IV, §401(b), Apr. 5, 2012, 126 Stat. 322, 323, 325.)

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (b)(2), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a–51 of this title and Tables.

Section 77d(1), (2), (3), (4), and (6) of this title, referred to in subsecs. (b)(4)(A) to (C), (E) and (c)(1)(B), were redesignated section 77d(a)(1), (2), (3), (4), and (6), respectively, of this title by Pub. L. 112–106, title II, §201(b)(1), (c)(1), Apr. 5, 2012, 126 Stat. 314.

AMENDMENTS

2012—Subsec. (b)(4)(C). Pub. L. 112–106, §305(a)(2), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (b)(4)(D). Pub. L. 112–106, §401(b), added subpar. (D) relating to section 77c(b)(2) of this title.

Pub. L. 112–106, §305(a)(1), redesignated subpar. (C), relating to section 77c(a) of this title, as (D). Former subpar (D) redesignated (E).

Subsec. (b)(4)(E). Pub. L. 112–106, §305(a)(1), redesignated subpar. (D) as (E).

Subsec. (c)(1). Pub. L. 112–106, §305(b)(2), substituted ", in connection with securities or securities transactions" for "with respect to fraud or deceit, or unlawful conduct by a broker or dealer, in connection with securities or securities transactions." and added subpars. (A) and (B).

Subsec. (c)(1)(A)(ii). Pub. L. 112–106, §305(d)(2), which directed amendment of subsec. (c)(1) by substituting ", dealer, or funding portal" for "or dealer", was executed by making the substitution in subpar. (A)(ii) as added by Pub. L. 112–106, §305(b)(2).

Subsec. (c)(2)(F). Pub. L. 112–106, §305(c), added subpar. (F).

2010—Subsec. (b)(1)(C). Pub. L. 111–203, §985(a)(2)(A), substituted "(C) a security" for "(C) is a security".

Subsec. (c)(2)(B)(i). Pub. L. 111–203, §985(a)(2)(B), substituted "State or" for "State, or".

1998—Subsec. (b)(1)(A). Pub. L. 105–353, §301(a)(4)(A), inserted ", or authorized for listing," after "Exchange, or listed".

Subsec. (b)(4)(C). Pub. L. 105–353, §302, substituted "paragraph (4), (10), or (11)" for "paragraph (4) or (11)".

Subsec. (c)(2)(B)(i), (C)(i). Pub. L. 105–353, §301(a)(4)(B), (C), made technical amendments to references in original act which appear in text as references to October 11, 1996.

Subsec. (d)(1)(A). Pub. L. 105–353, §301(a)(4)(D), substituted "section 77b(a)(10)" for "section 77b(10)" and "subparagraphs (a) and (b)" for "subparagraphs (A) and (B)".

Subsec. (d)(2). Pub. L. 105–353, §301(a)(4)(E), made technical amendment to reference in original act which appears in text as reference to October 11, 1996.

Subsec. (d)(4). Pub. L. 105–353, §301(a)(4)(F), substituted "The term" for "For purposes of this paragraph,

the term".

1996—Pub. L. 104–290 substituted "Exemption from State regulation of securities offerings" for "State control of securities" as section catchline and amended text generally. Prior to amendment, text read as follows: "Nothing in this subchapter shall affect the jurisdiction of the securities commission (or any agency or office performing like functions) of any State or Territory of the United States, or the District of Columbia, over any security or any person."

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CLARIFICATION OF THE PRESERVATION OF STATE ENFORCEMENT AUTHORITY

Pub. L. 112–106, title III, §305(b)(1), Apr. 5, 2012, 126 Stat. 322, provided that: The amendments made by subsection (a) [amending this section] relate solely to State registration, documentation, and offering requirements, as described under section 18(a) of [the] Securities Act of 1933 (15 U.S.C. 77r(a)), and shall have no impact or limitation on other State authority to take enforcement action with regard to an issuer, funding portal, or any other person or entity using the exemption from registration provided by section 4(6) [probably means "section 4(a)(6)"] of that Act [15 U.S.C. 77d(a)(6)]."

STUDY AND REPORT ON UNIFORMITY OF STATE REGULATORY REQUIREMENTS

Pub. L. 104–290, title I, §102(b), Oct. 11, 1996, 110 Stat. 3420, provided that: "The Commission shall conduct a study, after consultation with States, issuers, brokers, and dealers, on the extent to which uniformity of State regulatory requirements for securities or securities transactions has been achieved for securities that are not covered securities (within the meaning of section 18 of the Securities Act of 1933 [15 U.S.C. 77r], as amended by paragraph (1) of this subsection). Not later than 1 year after the date of enactment of this Act [Oct. 11, 1996], the Commission shall submit a report to the Congress on the results of such study."

[1] See References in Text note below.

[2] So in original. There are two subpars. (D).

[3] So in original. The words "in connection with securities or securities transactions" probably should be part of subpar. (A).

[4] So in original. Probably should be "with".

[5] So in original. No subpar. (E) has been enacted.

§77r–1. Preemption of State law

(a) Authority to purchase, hold, and invest in securities; securities considered as obligations of United States

(1) Any person, trust, corporation, partnership, association, business trust, or business entity created pursuant to or existing under the laws of the United States or any State shall be authorized to purchase, hold, and invest in securities that are—

(A) offered and sold pursuant to section 77d(5) [1] of this title,
(B) mortgage related securities (as that term is defined in section 78c(a)(41) of this title),
(C) small business related securities (as defined in section 78c(a)(53) of this title), or
(D) securities issued or guaranteed by the Federal Home Loan Mortgage Corporation or the

Federal National Mortgage Association,

to the same extent that such person, trust, corporation, partnership, association, business trust, or business entity is authorized under any applicable law to purchase, hold or invest in obligations issued by or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof.

(2) Where State law limits the purchase, holding, or investment in obligations issued by the United States by such a person, trust, corporation, partnership, association, business trust, or business entity, such securities that are—

(A) offered and sold pursuant to section 77d(5) [1] of this title,

(B) mortgage related securities (as that term is defined in section 78c(a)(41) of this title),

(C) small business related securities (as defined in section 78c(a)(53) of this title), or

(D) securities issued or guaranteed by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association,

shall be considered to be obligations issued by the United States for purposes of the limitation.

(b) Exception; validity of contracts under prior law

The provisions of subsection (a) of this section shall not apply with respect to a particular person, trust, corporation, partnership, association, business trust, or business entity or class thereof in any State that, prior to the expiration of seven years after October 3, 1984, enacts a statute that specifically refers to this section and either prohibits or provides for a more limited authority to purchase, hold, or invest in such securities by any person, trust, corporation, partnership, association, business trust, or business entity or class thereof than is provided in subsection (a) of this section. The enactment by any State of any statute of the type described in the preceding sentence shall not affect the validity of any contractual commitment to purchase, hold, or invest that was made prior thereto and shall not require the sale or other disposition of any securities acquired prior thereto.

(c) Registration and qualification requirements; exemption; subsequent enactment by State

Any securities that are offered and sold pursuant to section 77d(5) [1] of this title, that are mortgage related securities (as that term is defined in section 78c(a)(41) of this title), or that are small business related securities (as defined in section 78c(a)(53) of this title) shall be exempt from any law of any State with respect to or requiring registration or qualification of securities or real estate to the same extent as any obligation issued by or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof. Any State may, prior to the expiration of seven years after October 3, 1984, enact a statute that specifically refers to this section and requires registration or qualification of any such security on terms that differ from those applicable to any obligation issued by the United States.

(d) Implementation

(1) Limitation

The provisions of subsections (a) and (b) of this section concerning small business related securities shall not apply with respect to a particular person, trust, corporation, partnership, association, business trust, or business entity or class thereof in any State that, prior to the expiration of 7 years after September 23, 1994, enacts a statute that specifically refers to this section and either prohibits or provides for a more limited authority to purchase, hold, or invest in such small business related securities by any person, trust, corporation, partnership, association, business trust, or business entity or class thereof than is provided in this section. The enactment by any State of any statute of the type described in the preceding sentence shall not affect the validity of any contractual commitment to purchase, hold, or invest that was made prior to such enactment, and shall not require the sale or other disposition of any small business related securities acquired prior to the date of such enactment.

(2) State registration or qualification requirements

Any State may, not later than 7 years after September 23, 1994, enact a statute that specifically refers to this section and requires registration or qualification of any small business related securities on terms that differ from those applicable to any obligation issued by the United States.

(Pub. L. 98–440, title I, §106, Oct. 3, 1984, 98 Stat. 1691; Pub. L. 103–325, title II, §207, Sept. 23, 1994, 108 Stat. 2199.)

REFERENCES IN TEXT

Section 77d(5) of this title, referred to in subsecs. (a)(1)(A), (2)(A) and (c), was redesignated section 77d(a)(5) of this title by Pub. L. 112–106, title II, §201(b)(1), (c)(1), Apr. 5, 2012, 126 Stat. 314.

CODIFICATION

Section was enacted as part of the Secondary Mortgage Market Enhancement Act of 1984, and not as part of the Securities Act of 1933, which comprises this subchapter.

AMENDMENTS

1994—Subsec. (a)(1)(B) to (D). Pub. L. 103–325, §207(a), struck out "or" at end of subpar. (B), added subpar. (C), and redesignated former subpar. (C) as (D).

Subsec. (a)(2)(B) to (D). Pub. L. 103–325, §207(b), struck out "or" at end of subpar. (B), added subpar. (C), and redesignated former subpar. (C) as (D).

Subsec. (c). Pub. L. 103–325, §207(c), in first sentence substituted ", that" for "or that" before "are mortgage related securities" and inserted ", or that are small business related securities (as defined in section 78c(a)(53) of this title)" before "shall be exempt".

Subsec. (d). Pub. L. 103–325, §207(d), added subsec. (d).

[1] *See References in Text note below.*

§77s. Special powers of Commission

(a) Rules and regulations

The Commission shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this subchapter, including rules and regulations governing registration statements and prospectuses for various classes of securities and issuers, and defining accounting, technical, and trade terms used in this subchapter. Among other things, the Commission shall have authority, for the purposes of this subchapter, to prescribe the form or forms in which required information shall be set forth, the items or details to be shown in the balance sheet and earning statement, and the methods to be followed in the preparation of accounts, in the appraisal or valuation of assets and liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and nonrecurring income, in the differentiation of investment and operating income, and in the preparation, where the Commission deems it necessary or desirable, of consolidated balance sheets or income accounts of any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer. The rules and regulations of the Commission shall be effective upon publication in the manner which the Commission shall prescribe. No provision of this subchapter imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the Commission, notwithstanding that such rule or regulation may, after such act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(b) Recognition of accounting standards

(1) In general

In carrying out its authority under subsection (a) of this section and under section 13(b) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(b)], the Commission may recognize, as "generally accepted" for purposes of the securities laws, any accounting principles established by a standard setting body—

(A) that—

(i) is organized as a private entity;

(ii) has, for administrative and operational purposes, a board of trustees (or equivalent body) serving in the public interest, the majority of whom are not, concurrent with their service on such board, and have not been during the 2-year period preceding such service, associated persons of any registered public accounting firm;

(iii) is funded as provided in section 7219 of this title;

(iv) has adopted procedures to ensure prompt consideration, by majority vote of its members, of changes to accounting principles necessary to reflect emerging accounting issues and changing business practices; and

(v) considers, in adopting accounting principles, the need to keep standards current in order to reflect changes in the business environment, the extent to which international convergence on high quality accounting standards is necessary or appropriate in the public interest and for the protection of investors; and

(B) that the Commission determines has the capacity to assist the Commission in fulfilling the requirements of subsection (a) of this section and section 13(b) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(b)], because, at a minimum, the standard setting body is capable of improving the accuracy and effectiveness of financial reporting and the protection of investors under the securities laws.

(2) Annual report

A standard setting body described in paragraph (1) shall submit an annual report to the Commission and the public, containing audited financial statements of that standard setting body.

(c) Production of evidence

For the purpose of all investigations which, in the opinion of the Commission, are necessary and proper for the enforcement of this subchapter, any member of the Commission or any officer or officers designated by it are empowered to administer oaths and affirmations, subpena witnesses, take evidence, and require the production of any books, papers, or other documents which the Commission deems relevant or material to the inquiry. Such attendance of witnesses and the production of such documentary evidence may be required from any place in the United States or any Territory at any designated place of hearing.

(d) Federal and State cooperation

(1) The Commission is authorized to cooperate with any association composed of duly constituted representatives of State governments whose primary assignment is the regulation of the securities business within those States, and which, in the judgment of the Commission, could assist in effectuating greater uniformity in Federal-State securities matters. The Commission shall, at its discretion, cooperate, coordinate, and share information with such an association for the purposes of carrying out the policies and projects set forth in paragraphs (2) and (3).

(2) It is the declared policy of this subsection that there should be greater Federal and State cooperation in securities matters, including—

(A) maximum effectiveness of regulation,

(B) maximum uniformity in Federal and State regulatory standards,

(C) minimum interference with the business of capital formation, and

(D) a substantial reduction in costs and paperwork to diminish the burdens of raising investment capital (particularly by small business) and to diminish the costs of the administration of the Government programs involved.

(3) The purpose of this subsection is to engender cooperation between the Commission, any such association of State securities officials, and other duly constituted securities associations in the following areas:

(A) the sharing of information regarding the registration or exemption of securities issues applied for in the various States;

(B) the development and maintenance of uniform securities forms and procedures; and

(C) the development of a uniform exemption from registration for small issuers which can be agreed upon among several States or between the States and the Federal Government. The Commission shall have the authority to adopt such an exemption as agreed upon for Federal purposes. Nothing in this chapter shall be construed as authorizing preemption of State law.

(4) In order to carry out these policies and purposes, the Commission shall conduct an annual conference as well as such other meetings as are deemed necessary, to which representatives from such securities associations, securities self-regulatory organizations, agencies, and private organizations involved in capital formation shall be invited to participate.

(5) For fiscal year 1982, and for each of the three succeeding fiscal years, there are authorized to be appropriated such amounts as may be necessary and appropriate to carry out the policies, provisions, and purposes of this subsection. Any sums so appropriated shall remain available until expended.

(6) Notwithstanding any other provision of law, neither the Commission nor any other person shall be required to establish any procedures not specifically required by the securities laws, as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(47)], or by chapter 5 of title 5, in connection with cooperation, coordination, or consultation with—

(A) any association referred to in paragraph (1) or (3) or any conference or meeting referred to in paragraph (4), while such association, conference, or meeting is carrying out activities in furtherance of the provisions of this subsection; or

(B) any forum, agency, or organization, or group referred to in section 80c–1 of this title, while such forum, agency, organization, or group is carrying out activities in furtherance of the provisions of such section 80c–1.

As used in this paragraph, the terms "association", "conference", "meeting", "forum", "agency", "organization", and "group" include any committee, subgroup, or representative of such entities.

(e) Evaluation of rules or programs

For the purpose of evaluating any rule or program of the Commission issued or carried out under any provision of the securities laws, as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), and the purposes of considering, proposing, adopting, or engaging in any such rule or program or developing new rules or programs, the Commission may—

(1) gather information from and communicate with investors or other members of the public;

(2) engage in such temporary investor testing programs as the Commission determines are in the public interest or would protect investors; and

(3) consult with academics and consultants, as necessary to carry out this subsection.

(f) Rule of construction

For purposes of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), any action taken under subsection (e) shall not be construed to be a collection of information.

(g) Funding for the GASB

(1) In general

The Commission may, subject to the limitations imposed by section 15B of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4), require a national securities association registered under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] to establish—

(A) a reasonable annual accounting support fee to adequately fund the annual budget of the Governmental Accounting Standards Board (referred to in this subsection as the "GASB"); and

(B) rules and procedures, in consultation with the principal organizations representing State governors, legislators, local elected officials, and State and local finance officers, to provide for the equitable allocation, assessment, and collection of the accounting support fee established under subparagraph (A) from the members of the association, and the remittance of all such accounting support fees to the Financial Accounting Foundation.

(2) Annual budget

For purposes of this subsection, the annual budget of the GASB is the annual budget reviewed and approved according to the internal procedures of the Financial Accounting Foundation.

(3) Use of funds

Any fees or funds collected under this subsection shall be used to support the efforts of the GASB to establish standards of financial accounting and reporting recognized as generally accepted accounting principles applicable to State and local governments of the United States.

(4) Limitation on fee

The annual accounting support fees collected under this subsection for a fiscal year shall not exceed the recoverable annual budgeted expenses of the GASB (which may include operating expenses, capital, and accrued items).

(5) Rules of construction

(A) Fees not public monies

Accounting support fees collected under this subsection and other receipts of the GASB shall not be considered public monies of the United States.

(B) Limitation on authority of the Commission

Nothing in this subsection shall be construed to—

(i) provide the Commission or any national securities association direct or indirect oversight of the budget or technical agenda of the GASB; or

(ii) affect the setting of generally accepted accounting principles by the GASB.

(C) Noninterference with States

Nothing in this subsection shall be construed to impair or limit the authority of a State or local government to establish accounting and financial reporting standards.

(May 27, 1933, ch. 38, title I, §19, 48 Stat. 85; June 6, 1934, ch. 404, title II, §209, 48 Stat. 908; Pub. L. 94–210, title III, §308(a)(2), Feb. 5, 1976, 90 Stat. 57; Pub. L. 96–477, title V, §505, Oct. 21, 1980, 94 Stat. 2292; Pub. L. 100–181, title II, §207, Dec. 4, 1987, 101 Stat. 1252; Pub. L. 107–204, title I, §108(a), July 30, 2002, 116 Stat. 768; Pub. L. 111–203, title IX, §§912, 978(a), 985(a)(3), July 21, 2010, 124 Stat. 1824, 1924, 1933.)

REFERENCES IN TEXT

The Paperwork Reduction Act, referred to in subsec. (f), probably means chapter 35 (§3501 et seq.) of Title 44, Public Printing and Documents. See Short Title note set out under section 3501 of Title 44.

The Securities Exchange Act of 1934, referred to in subsec. (g)(1), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

AMENDMENTS

2010—Subsec. (d)(6)(A). Pub. L. 111–203, §985(a)(3), which directed substitution of "in paragraph (1) or (3)" for "in paragraph (1) of (3)", could not be executed because the phrase "in paragraph (1) of (3)" did not appear.

Subsecs. (e), (f). Pub. L. 111–203, §912, added subsecs. (e) and (f).

Subsec. (g). Pub. L. 111–203, §978(a), added subsec. (g).

2002—Subsecs. (b) to (d). Pub. L. 107–204 added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

1987—Subsec. (c)(6). Pub. L. 100–181 added par. (6).

1980—Subsec. (c). Pub. L. 96–477 added subsec. (c).

1976—Subsec. (a). Pub. L. 94–210 struck out provisions relating to rules and regulations applicable to any common carrier subject to the provisions of section 20 of title 49.

1934—Subsec. (a). Act June 6, 1934, inserted "technical" in first sentence and inserted last sentence.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see

section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–477 effective Jan. 1, 1981, see section 507 of Pub. L. 96–477, set out as an Effective Date note under section 80c of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–210 effective on 60th day after Feb. 5, 1976, but not applicable to any bona fide offering of a security made by the issuer, or by or through an underwriter, before such 60th day, see section 308(d)(1) of Pub. L. 94–210, set out as a note under section 77c of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§77t. Injunctions and prosecution of offenses

(a) Investigation of violations

Whenever it shall appear to the Commission, either upon complaint or otherwise, that the provisions of this subchapter, or of any rule or regulation prescribed under authority thereof, have been or are about to be violated, it may, in its discretion, either require or permit such person to file with it a statement in writing, under oath, or otherwise, as to all the facts and circumstances concerning the subject matter which it believes to be in the public interest to investigate, and may investigate such facts.

(b) Action for injunction or criminal prosecution in district court

Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this subchapter, or of any rule or regulation prescribed under authority thereof, the Commission may, in its discretion, bring an action in any district court of the United States, or United States court of any Territory, to enjoin such acts or practices, and upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices to the Attorney General who may, in his discretion, institute the necessary criminal proceedings under this subchapter. Any such criminal proceeding may be brought either in the district wherein the transmittal of the prospectus or security complained of begins, or in the district wherein such prospectus or security is received.

(c) Writ of mandamus

Upon application of the Commission, the district courts of the United States and the United States courts of any Territory shall have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of this subchapter or any order of the Commission made in pursuance thereof.

(d) Money penalties in civil actions

(1) Authority of Commission

Whenever it shall appear to the Commission that any person has violated any provision of this subchapter, the rules or regulations thereunder, or a cease-and-desist order entered by the Commission pursuant to section 77h–1 of this title, other than by committing a violation subject to a penalty pursuant to section 78u–1 of this title, the Commission may bring an action in a United States district court to seek, and the court shall have jurisdiction to impose, upon a proper showing, a civil penalty to be paid by the person who committed such violation.

(2) Amount of penalty

(A) First tier

The amount of the penalty shall be determined by the court in light of the facts and circumstances. For each violation, the amount of the penalty shall not exceed the greater of (i) $5,000 for a natural person or $50,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation.

(B) Second tier

Notwithstanding subparagraph (A), the amount of penalty for each such violation shall not exceed the greater of (i) $50,000 for a natural person or $250,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation, if the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

(C) Third tier

Notwithstanding subparagraphs (A) and (B), the amount of penalty for each such violation shall not exceed the greater of (i) $100,000 for a natural person or $500,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation, if—

(I) the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

(II) such violation directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.

(3) Procedures for collection

(A) Payment of penalty to Treasury

A penalty imposed under this section shall be payable into the Treasury of the United States, except as otherwise provided in section 7246 of this title and section 78u–6 of this title.

(B) Collection of penalties

If a person upon whom such a penalty is imposed shall fail to pay such penalty within the time prescribed in the court's order, the Commission may refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court.

(C) Remedy not exclusive

The actions authorized by this subsection may be brought in addition to any other action that the Commission or the Attorney General is entitled to bring.

(D) Jurisdiction and venue

For purposes of section 77v of this title, actions under this section shall be actions to enforce a liability or a duty created by this subchapter.

(4) Special provisions relating to a violation of a cease-and-desist order

In an action to enforce a cease-and-desist order entered by the Commission pursuant to section 77h–1 of this title, each separate violation of such order shall be a separate offense, except that in the case of a violation through a continuing failure to comply with such an order, each day of the failure to comply with the order shall be deemed a separate offense.

(e) Authority of court to prohibit persons from serving as officers and directors

In any proceeding under subsection (b) of this section, the court may prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who violated section 77q(a)(1) of this title from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 78l of this title or that is required to file reports pursuant to section 78o(d) of this title if the person's conduct demonstrates unfitness to serve as an officer or director of any such issuer.

(f) Prohibition of attorneys' fees paid from Commission disgorgement funds

Except as otherwise ordered by the court upon motion by the Commission, or, in the case of an administrative action, as otherwise ordered by the Commission, funds disgorged as the result of an action brought by the Commission in Federal court, or as a result of any Commission administrative action, shall not be distributed as payment for attorneys' fees or expenses incurred by private parties seeking distribution of the disgorged funds.

(g) Authority of a court to prohibit persons from participating in an offering of penny stock

(1) In general

In any proceeding under subsection (a) of this section against any person participating in, or, at the time of the alleged misconduct, who was participating in, an offering of penny stock, the court may prohibit that person from participating in an offering of penny stock, conditionally or unconditionally, and permanently or for such period of time as the court shall determine.

(2) Definition

For purposes of this subsection, the term "person participating in an offering of penny stock" includes any person engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of, any penny stock. The Commission may, by rule or regulation, define such term to include other activities, and may, by rule, regulation, or order, exempt any person or class of persons, in whole or in part, conditionally or unconditionally, from inclusion in such term.

(May 27, 1933, ch. 38, title I, §20, 48 Stat. 86; Pub. L. 100–181, title II, §208, Dec. 4, 1987, 101 Stat. 1253; Pub. L. 101–429, title I, §101, Oct. 15, 1990, 104 Stat. 932; Pub. L. 104–67, title I, §103(b)(1), Dec. 22, 1995, 109 Stat. 756; Pub. L. 107–204, title III, §§305(a)(2), 308(d)(3), title VI, §603(b), July 30, 2002, 116 Stat. 779, 785, 795; Pub. L. 111–203, title IX, §923(a)(1), July 21, 2010, 124 Stat. 1849.)

AMENDMENTS

2010—Subsec. (d)(3)(A). Pub. L. 111–203 inserted "and section 78u–6 of this title" after "section 7246 of this title".

2002—Subsec. (d)(3)(A). Pub. L. 107–204, §308(d)(3), inserted ", except as otherwise provided in section 7246 of this title" before period at end.

Subsec. (e). Pub. L. 107–204, §305(a)(2), substituted "unfitness" for "substantial unfitness".

Subsec. (g). Pub. L. 107–204, §603(b), added subsec. (g).

1995—Subsec. (f). Pub. L. 104–67 added subsec. (f).

1990—Subsecs. (d), (e). Pub. L. 101–429 added subsecs. (d) and (e).

1987—Subsec. (b). Pub. L. 100–181, §208(a), inserted first sentence and struck out former first sentence containing similar provisions.

Subsec. (c). Pub. L. 100–181, §208(b), amended subsec. (c) generally.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–67 not to affect or apply to any private action arising under this subchapter or title I of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), commenced before and pending on Dec. 22, 1995, see section 108 of Pub. L. 104–67, set out as a note under section 77l of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–429 effective Oct. 15, 1990, with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(1) and (2) of Pub. L. 101–429, set out in a note under section 77g of this title.

CONSTRUCTION OF 1995 AMENDMENT

Nothing in amendment by Pub. L. 104–67 to be deemed to create or ratify any implied right of action, or to prevent Commission, by rule or regulation, from restricting or otherwise regulating private actions under

Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), see section 203 of Pub. L. 104–67, set out as a Construction note under section 78j–1 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§77u. Hearings by Commission

All hearings shall be public and may be held before the Commission or an officer or officers of the Commission designated by it, and appropriate records thereof shall be kept.

(May 27, 1933, ch. 38, title I, §21, 48 Stat. 86.)

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§77v. Jurisdiction of offenses and suits

(a) Federal and State courts; venue; service of process; review; removal; costs

The district courts of the United States and the United States courts of any Territory shall have jurisdiction of offenses and violations under this subchapter and under the rules and regulations promulgated by the Commission in respect thereto, and, concurrent with State and Territorial courts, except as provided in section 77p of this title with respect to covered class actions, of all suits in equity and actions at law brought to enforce any liability or duty created by this subchapter. Any such suit or action may be brought in the district wherein the defendant is found or is an inhabitant or transacts business, or in the district where the offer or sale took place, if the defendant participated therein, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found. In any action or proceeding instituted by the Commission under this subchapter in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure shall not apply to a subpoena issued under the preceding sentence. Judgments and decrees so rendered shall be subject to review as provided in sections 1254, 1291, 1292, and 1294 of title 28. Except as provided in section 77p(c) of this title, no case arising under this subchapter and brought in any State court of competent jurisdiction shall be removed to any court of the United States. No costs shall be assessed for or against the Commission in any proceeding under this subchapter brought by or against it in the Supreme Court or such other courts.

(b) Contumacy or refusal to obey subpena; contempt

In case of contumacy or refusal to obey a subpena issued to any person, any of the said United States courts, within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides, upon application by the Commission may issue to such person an order requiring such person to appear before the Commission, or one of its examiners designated by it, there to produce documentary evidence if so ordered, or there to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(c) Extraterritorial jurisdiction

The district courts of the United States and the United States courts of any Territory shall have jurisdiction of an action or proceeding brought or instituted by the Commission or the United States

alleging a violation of section 77q(a) of this title involving—

(1) conduct within the United States that constitutes significant steps in furtherance of the violation, even if the securities transaction occurs outside the United States and involves only foreign investors; or

(2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.

(May 27, 1933, ch. 38, title I, §22, 48 Stat. 86; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, §32(b), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Aug. 10, 1954, ch. 667, title I, §11, 68 Stat. 686; Pub. L. 91–452, title II, §213, Oct. 15, 1970, 84 Stat. 929; Pub. L. 100–181, title II, §209, Dec. 4, 1987, 101 Stat. 1253; Pub. L. 105–353, title I, §101(a)(3), Nov. 3, 1998, 112 Stat. 3230; Pub. L. 111–203, title IX, §§929E(a), 929P(b)(1), July 21, 2010, 124 Stat. 1853, 1864.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (a), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

CODIFICATION

As originally enacted subsec. (a) contained references to the Supreme Court of the District of Columbia. Act June 25, 1936, substituted "the district court of the United States for the District of Columbia" for "the Supreme Court of the District of Columbia", and act June 25, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "district court of the United States for the District of Columbia". Pub. L. 100–181 struck out reference to the United States District Court for the District of Columbia. Previously, such reference had been editorially eliminated as superfluous in view of section 132(a) of Title 28, Judiciary and Judicial Procedure, which provides that "There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district", and section 88 of Title 28 which provides that "the District of Columbia constitutes one judicial district".

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, §929E(a), inserted after second sentence "In any action or proceeding instituted by the Commission under this subchapter in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure shall not apply to a subpoena issued under the preceding sentence."

Subsec. (c). Pub. L. 111–203, §929P(b)(1), added subsec. (c).

1998—Subsec. (a). Pub. L. 105–353 inserted "except as provided in section 77p of this title with respect to covered class actions," after "Territorial courts," in first sentence and substituted "Except as provided in section 77p(c) of this title, no case" for "No case" in penultimate sentence.

1987—Subsec. (a). Pub. L. 100–181 substituted "United States and" for "United States, the", struck out ", and the United States District Court for the District of Columbia" after "Territory", and substituted "sections 1254, 1291, 1292, and 1294 of title 28" for "sections 128 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 225 and 347)". See Codification note above.

1970—Subsec. (c). Pub. L. 91–452 struck out subsec. (c) which related to immunity from prosecution of any individual compelled to testify or produce evidence, documentary or otherwise, after claiming his privilege against self-incrimination.

1954—Subsec. (a). Act Aug. 10, 1954, inserted "offer or" before "sale" in second sentence.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–353 not to affect or apply to any action commenced before and pending on Nov. 3, 1998, see section 101(c) of Pub. L. 105–353, set out as a note under section 77p of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–452 effective on sixtieth day following Oct. 15, 1970, see section 260 of Pub. L.

91–452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

SAVINGS PROVISION

Amendment by Pub. L. 91–452 not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91–452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§77w. Unlawful representations

Neither the fact that the registration statement for a security has been filed or is in effect nor the fact that a stop order is not in effect with respect thereto shall be deemed a finding by the Commission that the registration statement is true and accurate on its face or that it does not contain an untrue statement of fact or omit to state a material fact, or be held to mean that the Commission has in any way passed upon the merits of, or given approval to, such security. It shall be unlawful to make, or cause to be made to any prospective purchaser any representation contrary to the foregoing provisions of this section.

(May 27, 1933, ch. 38, title I, §23, 48 Stat. 87.)

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§77x. Penalties

Any person who willfully violates any of the provisions of this subchapter, or the rules and regulations promulgated by the Commission under authority thereof, or any person who willfully, in a registration statement filed under this subchapter, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, shall upon conviction be fined not more than $10,000 or imprisoned not more than five years, or both.

(May 27, 1933, ch. 38, title I, §24, 48 Stat. 87; Pub. L. 94–29, §27(a), June 4, 1975, 89 Stat. 163.)

AMENDMENTS

1975—Pub. L. 94–29 substituted "$10,000" for "$5,000".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§77y. Jurisdiction of other Government agencies over securities

Nothing in this subchapter shall relieve any person from submitting to the respective supervisory units of the Government of the United States information, reports, or other documents that may be required by any provision of law.

(May 27, 1933, ch. 38, title I, §25, 48 Stat. 87.)

§77z. Separability

If any provision of this chapter, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this chapter, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

(May 27, 1933, ch. 38, title I, §26, 48 Stat. 88.)

§77z–1. Private securities litigation

(a) Private class actions

(1) In general

The provisions of this subsection shall apply to each private action arising under this subchapter that is brought as a plaintiff class action pursuant to the Federal Rules of Civil Procedure.

(2) Certification filed with complaint

(A) In general

Each plaintiff seeking to serve as a representative party on behalf of a class shall provide a sworn certification, which shall be personally signed by such plaintiff and filed with the complaint, that—

(i) states that the plaintiff has reviewed the complaint and authorized its filing;

(ii) states that the plaintiff did not purchase the security that is the subject of the complaint at the direction of plaintiff's counsel or in order to participate in any private action arising under this subchapter;

(iii) states that the plaintiff is willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary;

(iv) sets forth all of the transactions of the plaintiff in the security that is the subject of the complaint during the class period specified in the complaint;

(v) identifies any other action under this subchapter, filed during the 3-year period preceding the date on which the certification is signed by the plaintiff, in which the plaintiff has sought to serve, or served, as a representative party on behalf of a class; and

(vi) states that the plaintiff will not accept any payment for serving as a representative party on behalf of a class beyond the plaintiff's pro rata share of any recovery, except as ordered or approved by the court in accordance with paragraph (4).

(B) Nonwaiver of attorney-client privilege

The certification filed pursuant to subparagraph (A) shall not be construed to be a waiver of the attorney-client privilege.

(3) Appointment of lead plaintiff

(A) Early notice to class members

(i) In general

Not later than 20 days after the date on which the complaint is filed, the plaintiff or plaintiffs shall cause to be published, in a widely circulated national business-oriented

publication or wire service, a notice advising members of the purported plaintiff class—

(I) of the pendency of the action, the claims asserted therein, and the purported class period; and

(II) that, not later than 60 days after the date on which the notice is published, any member of the purported class may move the court to serve as lead plaintiff of the purported class.

(ii) Multiple actions

If more than one action on behalf of a class asserting substantially the same claim or claims arising under this subchapter is filed, only the plaintiff or plaintiffs in the first filed action shall be required to cause notice to be published in accordance with clause (i).

(iii) Additional notices may be required under Federal rules

Notice required under clause (i) shall be in addition to any notice required pursuant to the Federal Rules of Civil Procedure.

(B) Appointment of lead plaintiff

(i) In general

Not later than 90 days after the date on which a notice is published under subparagraph (A)(i), the court shall consider any motion made by a purported class member in response to the notice, including any motion by a class member who is not individually named as a plaintiff in the complaint or complaints, and shall appoint as lead plaintiff the member or members of the purported plaintiff class that the court determines to be most capable of adequately representing the interests of class members (hereafter in this paragraph referred to as the "most adequate plaintiff") in accordance with this subparagraph.

(ii) Consolidated actions

If more than one action on behalf of a class asserting substantially the same claim or claims arising under this subchapter has been filed, and any party has sought to consolidate those actions for pretrial purposes or for trial, the court shall not make the determination required by clause (i) until after the decision on the motion to consolidate is rendered. As soon as practicable after such decision is rendered, the court shall appoint the most adequate plaintiff as lead plaintiff for the consolidated actions in accordance with this subparagraph.

(iii) Rebuttable presumption

(I) In general

Subject to subclause (II), for purposes of clause (i), the court shall adopt a presumption that the most adequate plaintiff in any private action arising under this subchapter is the person or group of persons that—

(aa) has either filed the complaint or made a motion in response to a notice under subparagraph (A)(i);

(bb) in the determination of the court, has the largest financial interest in the relief sought by the class; and

(cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

(II) Rebuttal evidence

The presumption described in subclause (I) may be rebutted only upon proof by a member of the purported plaintiff class that the presumptively most adequate plaintiff—

(aa) will not fairly and adequately protect the interests of the class; or

(bb) is subject to unique defenses that render such plaintiff incapable of adequately representing the class.

(iv) Discovery

For purposes of this subparagraph, discovery relating to whether a member or members of

the purported plaintiff class is the most adequate plaintiff may be conducted by a plaintiff only if the plaintiff first demonstrates a reasonable basis for a finding that the presumptively most adequate plaintiff is incapable of adequately representing the class.

(v) Selection of lead counsel

The most adequate plaintiff shall, subject to the approval of the court, select and retain counsel to represent the class.

(vi) Restrictions on professional plaintiffs

Except as the court may otherwise permit, consistent with the purposes of this section, a person may be a lead plaintiff, or an officer, director, or fiduciary of a lead plaintiff, in no more than 5 securities class actions brought as plaintiff class actions pursuant to the Federal Rules of Civil Procedure during any 3-year period.

(4) Recovery by plaintiffs

The share of any final judgment or of any settlement that is awarded to a representative party serving on behalf of a class shall be equal, on a per share basis, to the portion of the final judgment or settlement awarded to all other members of the class. Nothing in this paragraph shall be construed to limit the award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class to any representative party serving on behalf of the class.

(5) Restrictions on settlements under seal

The terms and provisions of any settlement agreement of a class action shall not be filed under seal, except that on motion of any party to the settlement, the court may order filing under seal for those portions of a settlement agreement as to which good cause is shown for such filing under seal. For purposes of this paragraph, good cause shall exist only if publication of a term or provision of a settlement agreement would cause direct and substantial harm to any party.

(6) Restrictions on payment of attorneys' fees and expenses

Total attorneys' fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a reasonable percentage of the amount of any damages and prejudgment interest actually paid to the class.

(7) Disclosure of settlement terms to class members

Any proposed or final settlement agreement that is published or otherwise disseminated to the class shall include each of the following statements, along with a cover page summarizing the information contained in such statements:

(A) Statement of plaintiff recovery

The amount of the settlement proposed to be distributed to the parties to the action, determined in the aggregate and on an average per share basis.

(B) Statement of potential outcome of case

(i) Agreement on amount of damages

If the settling parties agree on the average amount of damages per share that would be recoverable if the plaintiff prevailed on each claim alleged under this subchapter, a statement concerning the average amount of such potential damages per share.

(ii) Disagreement on amount of damages

If the parties do not agree on the average amount of damages per share that would be recoverable if the plaintiff prevailed on each claim alleged under this subchapter, a statement from each settling party concerning the issue or issues on which the parties disagree.

(iii) Inadmissibility for certain purposes

A statement made in accordance with clause (i) or (ii) concerning the amount of damages shall not be admissible in any Federal or State judicial action or administrative proceeding, other than an action or proceeding arising out of such statement.

(C) Statement of attorneys' fees or costs sought

If any of the settling parties or their counsel intend to apply to the court for an award of attorneys' fees or costs from any fund established as part of the settlement, a statement indicating which parties or counsel intend to make such an application, the amount of fees and costs that will be sought (including the amount of such fees and costs determined on an average per share basis), and a brief explanation supporting the fees and costs sought.

(D) Identification of lawyers' representatives

The name, telephone number, and address of one or more representatives of counsel for the plaintiff class who will be reasonably available to answer questions from class members concerning any matter contained in any notice of settlement published or otherwise disseminated to the class.

(E) Reasons for settlement

A brief statement explaining the reasons why the parties are proposing the settlement.

(F) Other information

Such other information as may be required by the court.

(8) Attorney conflict of interest

If a plaintiff class is represented by an attorney who directly owns or otherwise has a beneficial interest in the securities that are the subject of the litigation, the court shall make a determination of whether such ownership or other interest constitutes a conflict of interest sufficient to disqualify the attorney from representing the plaintiff class.

(b) Stay of discovery; preservation of evidence

(1) In general

In any private action arising under this subchapter, all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss, unless the court finds, upon the motion of any party, that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party.

(2) Preservation of evidence

During the pendency of any stay of discovery pursuant to this subsection, unless otherwise ordered by the court, any party to the action with actual notice of the allegations contained in the complaint shall treat all documents, data compilations (including electronically recorded or stored data), and tangible objects that are in the custody or control of such person and that are relevant to the allegations, as if they were the subject of a continuing request for production of documents from an opposing party under the Federal Rules of Civil Procedure.

(3) Sanction for willful violation

A party aggrieved by the willful failure of an opposing party to comply with paragraph (2) may apply to the court for an order awarding appropriate sanctions.

(4) Circumvention of stay of discovery

Upon a proper showing, a court may stay discovery proceedings in any private action in a State court as necessary in aid of its jurisdiction, or to protect or effectuate its judgments, in an action subject to a stay of discovery pursuant to this subsection.

(c) Sanctions for abusive litigation

(1) Mandatory review by court

In any private action arising under this subchapter, upon final adjudication of the action, the court shall include in the record specific findings regarding compliance by each party and each attorney representing any party with each requirement of Rule 11(b) of the Federal Rules of Civil Procedure as to any complaint, responsive pleading, or dispositive motion.

(2) Mandatory sanctions

If the court makes a finding under paragraph (1) that a party or attorney violated any requirement of Rule 11(b) of the Federal Rules of Civil Procedure as to any complaint, responsive pleading, or dispositive motion, the court shall impose sanctions on such party or attorney in accordance with Rule 11 of the Federal Rules of Civil Procedure. Prior to making a finding that any party or attorney has violated Rule 11 of the Federal Rules of Civil Procedure, the court shall give such party or attorney notice and an opportunity to respond.

(3) Presumption in favor of attorneys' fees and costs

(A) In general

Subject to subparagraphs (B) and (C), for purposes of paragraph (2), the court shall adopt a presumption that the appropriate sanction—

(i) for failure of any responsive pleading or dispositive motion to comply with any requirement of Rule 11(b) of the Federal Rules of Civil Procedure is an award to the opposing party of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation; and

(ii) for substantial failure of any complaint to comply with any requirement of Rule 11(b) of the Federal Rules of Civil Procedure is an award to the opposing party of the reasonable attorneys' fees and other expenses incurred in the action.

(B) Rebuttal evidence

The presumption described in subparagraph (A) may be rebutted only upon proof by the party or attorney against whom sanctions are to be imposed that—

(i) the award of attorneys' fees and other expenses will impose an unreasonable burden on that party or attorney and would be unjust, and the failure to make such an award would not impose a greater burden on the party in whose favor sanctions are to be imposed; or

(ii) the violation of Rule 11(b) of the Federal Rules of Civil Procedure was de minimis.

(C) Sanctions

If the party or attorney against whom sanctions are to be imposed meets its burden under subparagraph (B), the court shall award the sanctions that the court deems appropriate pursuant to Rule 11 of the Federal Rules of Civil Procedure.

(d) Defendant's right to written interrogatories

In any private action arising under this subchapter in which the plaintiff may recover money damages only on proof that a defendant acted with a particular state of mind, the court shall, when requested by a defendant, submit to the jury a written interrogatory on the issue of each such defendant's state of mind at the time the alleged violation occurred.

(May 27, 1933, ch. 38, title I, §27, as added Pub. L. 104–67, title I, §101(a), Dec. 22, 1995, 109 Stat. 737; amended Pub. L. 105–353, title I, §101(a)(2), title III, §301(a)(5), Nov. 3, 1998, 112 Stat. 3230, 3235.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsecs. (a)(1), (3)(A)(iii), (B)(iii)(I)(cc), (vi), (b)(2), and (c), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1998—Pub. L. 105–353, §301(a)(5), made technical correction relating to placement of section in subchapter.

Subsec. (b)(4). Pub. L. 105–353, §101(a)(2), added par. (4).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(a)(2) of Pub. L. 105–353 not to affect or apply to any action commenced before and pending on Nov. 3, 1998, see section 101(c) of Pub. L. 105–353, set out as a note under section 77p of this title.

EFFECTIVE DATE

Section not to affect or apply to any private action arising under this subchapter or title I of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), commenced before and pending on Dec. 22, 1995, see section 108 of Pub. L. 104–67, set out as an Effective Date of 1995 Amendment note under section 77l of this title.

CONSTRUCTION

Nothing in section to be deemed to create or ratify any implied right of action, or to prevent Commission, by rule or regulation, from restricting or otherwise regulating private actions under Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), see section 203 of Pub. L. 104–67, set out as a note under section 78j–1 of this title.

§77z–2. Application of safe harbor for forward-looking statements

(a) Applicability

This section shall apply only to a forward-looking statement made by—

(1) an issuer that, at the time that the statement is made, is subject to the reporting requirements of section 78m(a) or section 78o(d) of this title;

(2) a person acting on behalf of such issuer;

(3) an outside reviewer retained by such issuer making a statement on behalf of such issuer; or

(4) an underwriter, with respect to information provided by such issuer or information derived from information provided by the issuer.

(b) Exclusions

Except to the extent otherwise specifically provided by rule, regulation, or order of the Commission, this section shall not apply to a forward-looking statement—

(1) that is made with respect to the business or operations of the issuer, if the issuer—

(A) during the 3-year period preceding the date on which the statement was first made—

(i) was convicted of any felony or misdemeanor described in clauses (i) through (iv) of section 78o(b)(4)(B) of this title; or

(ii) has been made the subject of a judicial or administrative decree or order arising out of a governmental action that—

(I) prohibits future violations of the antifraud provisions of the securities laws;

(II) requires that the issuer cease and desist from violating the antifraud provisions of the securities laws; or

(III) determines that the issuer violated the antifraud provisions of the securities laws;

(B) makes the forward-looking statement in connection with an offering of securities by a blank check company;

(C) issues penny stock;

(D) makes the forward-looking statement in connection with a rollup transaction; or

(E) makes the forward-looking statement in connection with a going private transaction; or

(2) that is—

(A) included in a financial statement prepared in accordance with generally accepted accounting principles;

(B) contained in a registration statement of, or otherwise issued by, an investment company;

(C) made in connection with a tender offer;

(D) made in connection with an initial public offering;

(E) made in connection with an offering by, or relating to the operations of, a partnership, limited liability company, or a direct participation investment program; or

(F) made in a disclosure of beneficial ownership in a report required to be filed with the Commission pursuant to section 78m(d) of this title.

(c) Safe harbor

(1) In general

Except as provided in subsection (b) of this section, in any private action arising under this subchapter that is based on an untrue statement of a material fact or omission of a material fact necessary to make the statement not misleading, a person referred to in subsection (a) of this section shall not be liable with respect to any forward-looking statement, whether written or oral, if and to the extent that—

(A) the forward-looking statement is—

(i) identified as a forward-looking statement, and is accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the forward-looking statement; or

(ii) immaterial; or

(B) the plaintiff fails to prove that the forward-looking statement—

(i) if made by a natural person, was made with actual knowledge by that person that the statement was false or misleading; or

(ii) if made by a business entity, was—

(I) made by or with the approval of an executive officer of that entity, and

(II) made or approved by such officer with actual knowledge by that officer that the statement was false or misleading.

(2) Oral forward-looking statements

In the case of an oral forward-looking statement made by an issuer that is subject to the reporting requirements of section 78m(a) or section 78o(d) of this title, or by a person acting on behalf of such issuer, the requirement set forth in paragraph (1)(A) shall be deemed to be satisfied—

(A) if the oral forward-looking statement is accompanied by a cautionary statement—

(i) that the particular oral statement is a forward-looking statement; and

(ii) that the actual results could differ materially from those projected in the forward-looking statement; and

(B) if—

(i) the oral forward-looking statement is accompanied by an oral statement that additional information concerning factors that could cause actual results to differ materially from those in the forward-looking statement is contained in a readily available written document, or portion thereof;

(ii) the accompanying oral statement referred to in clause (i) identifies the document, or portion thereof, that contains the additional information about those factors relating to the forward-looking statement; and

(iii) the information contained in that written document is a cautionary statement that satisfies the standard established in paragraph (1)(A).

(3) Availability

Any document filed with the Commission or generally disseminated shall be deemed to be readily available for purposes of paragraph (2).

(4) Effect on other safe harbors

The exemption provided for in paragraph (1) shall be in addition to any exemption that the Commission may establish by rule or regulation under subsection (g) of this section.

(d) Duty to update

Nothing in this section shall impose upon any person a duty to update a forward-looking statement.

(e) Dispositive motion

On any motion to dismiss based upon subsection (c)(1) of this section, the court shall consider any

statement cited in the complaint and cautionary statement accompanying the forward-looking statement, which are not subject to material dispute, cited by the defendant.

(f) Stay pending decision on motion

In any private action arising under this subchapter, the court shall stay discovery (other than discovery that is specifically directed to the applicability of the exemption provided for in this section) during the pendency of any motion by a defendant for summary judgment that is based on the grounds that—

(1) the statement or omission upon which the complaint is based is a forward-looking statement within the meaning of this section; and

(2) the exemption provided for in this section precludes a claim for relief.

(g) Exemption authority

In addition to the exemptions provided for in this section, the Commission may, by rule or regulation, provide exemptions from or under any provision of this subchapter, including with respect to liability that is based on a statement or that is based on projections or other forward-looking information, if and to the extent that any such exemption is consistent with the public interest and the protection of investors, as determined by the Commission.

(h) Effect on other authority of Commission

Nothing in this section limits, either expressly or by implication, the authority of the Commission to exercise similar authority or to adopt similar rules and regulations with respect to forward-looking statements under any other statute under which the Commission exercises rulemaking authority.

(i) Definitions

For purposes of this section, the following definitions shall apply:

(1) Forward-looking statement

The term "forward-looking statement" means—

(A) a statement containing a projection of revenues, income (including income loss), earnings (including earnings loss) per share, capital expenditures, dividends, capital structure, or other financial items;

(B) a statement of the plans and objectives of management for future operations, including plans or objectives relating to the products or services of the issuer;

(C) a statement of future economic performance, including any such statement contained in a discussion and analysis of financial condition by the management or in the results of operations included pursuant to the rules and regulations of the Commission;

(D) any statement of the assumptions underlying or relating to any statement described in subparagraph (A), (B), or (C);

(E) any report issued by an outside reviewer retained by an issuer, to the extent that the report assesses a forward-looking statement made by the issuer; or

(F) a statement containing a projection or estimate of such other items as may be specified by rule or regulation of the Commission.

(2) Investment company

The term "investment company" has the same meaning as in section 80a–3(a) of this title.

(3) Penny stock

The term "penny stock" has the same meaning as in section 78c(a)(51) of this title, and the rules and regulations, or orders issued pursuant to that section.

(4) Going private transaction

The term "going private transaction" has the meaning given that term under the rules or regulations of the Commission issued pursuant to section 78m(e) of this title.

(5) Securities laws

The term "securities laws" has the same meaning as in section 78c of this title.

(6) Person acting on behalf of an issuer

The term "person acting on behalf of an issuer" means an officer, director, or employee of the issuer.

(7) Other terms

The terms "blank check company", "rollup transaction", "partnership", "limited liability company", "executive officer of an entity" and "direct participation investment program", have the meanings given those terms by rule or regulation of the Commission.

(May 27, 1933, ch. 38, title I, §27A, as added Pub. L. 104–67, title I, §102(a), Dec. 22, 1995, 109 Stat. 749; amended Pub. L. 105–353, title III, §301(a)(5), Nov. 3, 1998, 112 Stat. 3235; Pub. L. 111–203, title IX, §985(a)(4), July 21, 2010, 124 Stat. 1933.)

AMENDMENTS

2010—Subsec. (c)(1)(B)(ii). Pub. L. 111–203 substituted comma for semicolon after "entity" in introductory provisions.

1998—Pub. L. 105–353 made technical correction relating to placement of section in subchapter.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE

Section not to affect or apply to any private action arising under this subchapter or title I of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), commenced before and pending on Dec. 22, 1995, see section 108 of Pub. L. 104–67, set out as an Effective Date of 1995 Amendment note under section 77l of this title.

CONSTRUCTION

Nothing in section deemed to create or ratify any implied right of action, or to prevent Commission, by rule or regulation, from restricting or otherwise regulating private actions under Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), see section 203 of Pub. L. 104–67, set out as a note under section 78j–1 of this title.

§77z–2a. Conflicts of interest relating to certain securitizations

(a) In general

An underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, of an asset-backed security (as such term is defined in section 78c of this title, which for the purposes of this section shall include a synthetic asset-backed security), shall not, at any time for a period ending on the date that is one year after the date of the first closing of the sale of the asset-backed security, engage in any transaction that would involve or result in any material conflict of interest with respect to any investor in a transaction arising out of such activity.

(b) Rulemaking

Not later than 270 days after July 21, 2010, the Commission shall issue rules for the purpose of implementing subsection (a).

(c) Exception

The prohibitions of subsection (a) shall not apply to—

(1) risk-mitigating hedging activities in connection with positions or holdings arising out of the underwriting, placement, initial purchase, or sponsorship of an asset-backed security, provided that such activities are designed to reduce the specific risks to the underwriter, placement agent, initial purchaser, or sponsor associated with positions or holdings arising out of such underwriting, placement, initial purchase, or sponsorship; or

(2) purchases or sales of asset-backed securities made pursuant to and consistent with—

(A) commitments of the underwriter, placement agent, initial purchaser, or sponsor, or any

affiliate or subsidiary of any such entity, to provide liquidity for the asset-backed security, or

(B) bona fide market-making in the asset backed security.

(d) Rule of construction

This subsection [1] shall not otherwise limit the application of section 78o–11 of this title.

(May 27, 1933, ch. 38, title I, §27B, as added Pub. L. 111–203, title VI, §621(a), July 21, 2010, 124 Stat. 1631.)

EFFECTIVE DATE

Pub. L. 111–203, title VI, §621(b), July 21, 2010, 124 Stat. 1632, provided that: "Section 27B of the Securities Act of 1933 [15 U.S.C. 77z–2a], as added by this section, shall take effect on the effective date of final rules issued by the [Securities and Exchange] Commission under subsection (b) of such section 27B, except that subsections (b) and (d) of such section 27B shall take effect on the date of enactment of this Act [July 21, 2010]."

[1] So in original. Probably should be "section".

§77z–3. General exemptive authority

The Commission, by rule or regulation, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this subchapter or of any rule or regulation issued under this subchapter, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

(May 27, 1933, ch. 38, title I, §28, as added Pub. L. 104–290, title I, §105(a), Oct. 11, 1996, 110 Stat. 3424; amended Pub. L. 105–353, title III, §301(a)(5), Nov. 3, 1998, 112 Stat. 3235.)

AMENDMENTS

1998—Pub. L. 105–353 made technical correction relating to placement of section in subchapter.

§77aa. Schedule of information required in registration statement

SCHEDULE A

(1) The name under which the issuer is doing or intends to do business;

(2) the name of the State or other sovereign power under which the issuer is organized;

(3) the location of the issuer's principal business office, and if the issuer is a foreign or territorial person, the name and address of its agent in the United States authorized to receive notice;

(4) the names and addresses of the directors or persons performing similar functions, and the chief executive, financial and accounting officers, chosen or to be chosen if the issuer be a corporation, association, trust, or other entity; of all partners, if the issuer be a partnership; and of the issuer, if the issuer be an individual; and of the promoters in the case of a business to be formed, or formed within two years prior to the filing of the registration statement;

(5) the names and addresses of the underwriters;

(6) the names and addresses of all persons, if any, owning of record or beneficially, if known, more than 10 per centum of any class of stock of the issuer, or more than 10 per centum in the aggregate of the outstanding stock of the issuer as of a date within twenty days prior to the filing of the registration statement;

(7) the amount of securities of the issuer held by any person specified in paragraphs (4), (5), and (6) of this schedule, as of a date within twenty days prior to the filing of the registration statement, and, if possible, as of one year prior thereto, and the amount of the securities, for which the

registration statement is filed, to which such persons have indicated their intention to subscribe;

(8) the general character of the business actually transacted or to be transacted by the issuer;

(9) a statement of the capitalization of the issuer, including the authorized and outstanding amounts of its capital stock and the proportion thereof paid up, the number and classes of shares in which such capital stock is divided, par value thereof, or if it has no par value, the stated or assigned value thereof, a description of the respective voting rights, preferences, conversion and exchange rights, rights to dividends, profits, or capital of each class, with respect to each other class, including the retirement and liquidation rights or values thereof;

(10) a statement of the securities, if any, covered by options outstanding or to be created in connection with the security to be offered, together with the names and addresses of all persons, if any, to be allotted more than 10 per centum in the aggregate of such options;

(11) the amount of capital stock of each class issued or included in the shares of stock to be offered;

(12) the amount of the funded debt outstanding and to be created by the security to be offered, with a brief description of the date, maturity, and character of such debt, rate of interest, character of amortization provisions, and the security, if any, therefor. If substitution of any security is permissible, a summarized statement of the conditions under which such substitution is permitted. If substitution is permissible without notice, a specific statement to that effect;

(13) the specific purposes in detail and the approximate amounts to be devoted to such purposes, so far as determinable, for which the security to be offered is to supply funds, and if the funds are to be raised in part from other sources, the amounts thereof and the sources thereof, shall be stated;

(14) the remuneration, paid or estimated to be paid, by the issuer or its predecessor, directly or indirectly, during the past year and ensuing year to (a) the directors or persons performing similar functions, and (b) its officers and other persons, naming them wherever such remuneration exceeded $25,000 during any such year;

(15) the estimated net proceeds to be derived from the security to be offered;

(16) the price at which it is proposed that the security shall be offered to the public or the method by which such price is computed and any variation therefrom at which any portion of such security is proposed to be offered to any persons or classes of persons, other than the underwriters, naming them or specifying the class. A variation in price may be proposed prior to the date of the public offering of the security, but the Commission shall immediately be notified of such variation;

(17) all commissions or discounts paid or to be paid, directly or indirectly, by the issuer to the underwriters in respect of the sale of the security to be offered. Commissions shall include all cash, securities, contracts, or anything else of value, paid, to be set aside, disposed of, or understandings with or for the benefit of any other persons in which any underwriter is interested, made, in connection with the sale of such security. A commission paid or to be paid in connection with the sale of such security by a person in which the issuer has an interest or which is controlled or directed by, or under common control with, the issuer shall be deemed to have been paid by the issuer. Where any such commission is paid the amount of such commission paid to each underwriter shall be stated;

(18) the amount or estimated amounts, itemized in reasonable detail, of expenses, other than commissions specified in paragraph (17) of this schedule, incurred or borne by or for the account of the issuer in connection with the sale of the security to be offered or properly chargeable thereto, including legal, engineering, certification, authentication, and other charges;

(19) the net proceeds derived from any security sold by the issuer during the two years preceding the filing of the registration statement, the price at which such security was offered to the public, and the names of the principal underwriters of such security;

(20) any amount paid within two years preceding the filing of the registration statement or intended to be paid to any promoter and the consideration for any such payment;

(21) the names and addresses of the vendors and the purchase price of any property, or good will, acquired or to be acquired, not in the ordinary course of business, which is to be defrayed in whole or in part from the proceeds of the security to be offered, the amount of any commission payable to any person in connection with such acquisition, and the name or names of such person or persons,

together with any expense incurred or to be incurred in connection with such acquisition, including the cost of borrowing money to finance such acquisition;

(22) full particulars of the nature and extent of the interest, if any, of every director, principal executive officer, and of every stockholder holding more than 10 per centum of any class of stock or more than 10 per centum in the aggregate of the stock of the issuer, in any property acquired, not in the ordinary course of business of the issuer, within two years preceding the filing of the registration statement or proposed to be acquired at such date;

(23) the names and addresses of counsel who have passed on the legality of the issue;

(24) dates of and parties to, and the general effect concisely stated of every material contract made, not in the ordinary course of business, which contract is to be executed in whole or in part at or after the filing of the registration statement or which contract has been made not more than two years before such filing. Any management contract or contract providing for special bonuses or profit-sharing arrangements, and every material patent or contract for a material patent right, and every contract by or with a public utility company or an affiliate thereof, providing for the giving or receiving of technical or financial advice or service (if such contract may involve a charge to any party thereto at a rate in excess of $2,500 per year in cash or securities or anything else of value), shall be deemed a material contract;

(25) a balance sheet as of a date not more than ninety days prior to the date of the filing of the registration statement showing all of the assets of the issuer, the nature and cost thereof, whenever determinable, in such detail and in such form as the Commission shall prescribe (with intangible items segregated), including any loan in excess of $20,000 to any officer, director, stockholder or person directly or indirectly controlling or controlled by the issuer, or person under direct or indirect common control with the issuer. All the liabilities of the issuer in such detail and such form as the Commission shall prescribe, including surplus of the issuer showing how and from what sources such surplus was created, all as of a date not more than ninety days prior to the filing of the registration statement. If such statement be not certified by an independent public or certified accountant, in addition to the balance sheet required to be submitted under this schedule, a similar detailed balance sheet of the assets and liabilities of the issuer, certified by an independent public or certified accountant, of a date not more than one year prior to the filing of the registration statement, shall be submitted;

(26) a profit and loss statement of the issuer showing earnings and income, the nature and source thereof, and the expenses and fixed charges in such detail and such form as the Commission shall prescribe for the latest fiscal year for which such statement is available and for the two preceding fiscal years, year by year, or, if such issuer has been in actual business for less than three years, then for such time as the issuer has been in actual business, year by year. If the date of the filing of the registration statement is more than six months after the close of the last fiscal year, a statement from such closing date to the latest practicable date. Such statement shall show what the practice of the issuer has been during the three years or lesser period as to the character of the charges, dividends or other distributions made against its various surplus accounts, and as to depreciation, depletion, and maintenance charges, in such detail and form as the Commission shall prescribe, and if stock dividends or avails from the sale of rights have been credited to income, they shall be shown separately with a statement of the basis upon which the credit is computed. Such statement shall also differentiate between any recurring and nonrecurring income and between any investment and operating income. Such statement shall be certified by an independent public or certified accountant;

(27) if the proceeds, or any part of the proceeds, of the security to be issued is to be applied directly or indirectly to the purchase of any business, a profit and loss statement of such business certified by an independent public or certified accountant, meeting the requirements of paragraph (26) of this schedule, for the three preceding fiscal years, together with a balance sheet, similarly certified, of such business, meeting the requirements of paragraph (25) of this schedule of a date not more than ninety days prior to the filing of the registration statement or at the date such business was acquired by the issuer if the business was acquired by the issuer more than ninety days prior to the filing of the registration statement;

(28) a copy of any agreement or agreements (or, if identical agreements are used, the forms

thereof) made with any underwriter, including all contracts and agreements referred to in paragraph (17) of this schedule;

(29) a copy of the opinion or opinions of counsel in respect to the legality of the issue, with a translation of such opinion, when necessary, into the English language;

(30) a copy of all material contracts referred to in paragraph (24) of this schedule, but no disclosure shall be required of any portion of any such contract if the Commission determines that disclosure of such portion would impair the value of the contract and would not be necessary for the protection of the investors;

(31) unless previously filed and registered under the provisions of this subchapter, and brought up to date, (a) a copy of its articles of incorporation, with all amendments thereof and of its existing bylaws or instruments corresponding thereto, whatever the name, if the issuer be a corporation; (b) copy of all instruments by which the trust is created or declared, if the issuer is a trust; (c) a copy of its articles of partnership or association and all other papers pertaining to its organization, if the issuer is a partnership, unincorporated association, joint-stock company, or any other form of organization; and

(32) a copy of the underlying agreements or indentures affecting any stock, bonds, or debentures offered or to be offered.

In case of certificates of deposit, voting trust certificates, collateral trust certificates, certificates of interest or shares in unincorporated investment trusts, equipment trust certificates, interim or other receipts for certificates, and like securities, the Commission shall establish rules and regulations requiring the submission of information of a like character applicable to such cases, together with such other information as it may deem appropriate and necessary regarding the character, financial or otherwise, of the actual issuer of the securities and/or the person performing the acts and assuming the duties of depositor or manager.

SCHEDULE B

(1) Name of borrowing government or subdivision thereof;

(2) specific purposes in detail and the approximate amounts to be devoted to such purposes, so far as determinable, for which the security to be offered is to supply funds, and if the funds are to be raised in part from other sources, the amounts thereof and the sources thereof, shall be stated;

(3) the amount of the funded debt and the estimated amount of the floating debt outstanding and to be created by the security to be offered, excluding intergovernmental debt, and a brief description of the date, maturity, character of such debt, rate of interest, character of amortization provisions, and the security, if any, therefor. If substitution of any security is permissible, a statement of the conditions under which such substitution is permitted. If substitution is permissible without notice, a specific statement to that effect;

(4) whether or not the issuer or its predecessor has, within a period of twenty years prior to the filing of the registration statement, defaulted on the principal or interest of any external security, excluding intergovernmental debt, and, if so, the date, amount, and circumstances of such default, and the terms of the succeeding arrangement, if any;

(5) the receipts, classified by source, and the expenditures, classified by purpose, in such detail and form as the Commission shall prescribe for the latest fiscal year for which such information is available and the two preceding fiscal years, year by year;

(6) the names and addresses of the underwriters;

(7) the name and address of its authorized agent, if any, in the United States;

(8) the estimated net proceeds to be derived from the sale in the United States of the security to be offered;

(9) the price at which it is proposed that the security shall be offered in the United States to the public or the method by which such price is computed. A variation in price may be proposed prior to the date of the public offering of the security, but the Commission shall immediately be notified of such variation;

(10) all commissions paid or to be paid, directly or indirectly, by the issuer to the underwriters in respect of the sale of the security to be offered. Commissions shall include all cash, securities, contracts, or anything else of value, paid, to be set aside, disposed of, or understandings with or for the benefit of any other persons in which the underwriter is interested, made, in connection with the sale of such security. Where any such commission is paid, the amount of such commission paid to each underwriter shall be stated;

(11) the amount or estimated amounts, itemized in reasonable detail, of expenses, other than the commissions specified in paragraph (10) of this schedule, incurred or borne by or for the account of the issuer in connection with the sale of the security to be offered or properly chargeable thereto, including legal, engineering, certification, and other charges;

(12) the names and addresses of counsel who have passed upon the legality of the issue;

(13) a copy of any agreement or agreements made with any underwriter governing the sale of the security within the United States; and

(14) an agreement of the issuer to furnish a copy of the opinion or opinions of counsel in respect to the legality of the issue, with a translation, where necessary, into the English language. Such opinion shall set out in full all laws, decrees, ordinances, or other acts of Government under which the issue of such security has been authorized.

(May 27, 1933, ch. 38, title I, schedules A, B, 48 Stat. 88, 91; Pub. L. 105–353, title III, §301(a)(6), Nov. 3, 1998, 112 Stat. 3235.)

AMENDMENTS

1998—Schedule A, par. (28). Pub. L. 105–353 substituted "identical" for "identic".

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

SUBCHAPTER II—FOREIGN SECURITIES

§77bb. "Corporation of Foreign Security Holders"; creation; principal office; branch offices

For the purpose of protecting, conserving, and advancing the interests of the holders of foreign securities in default, there is hereby created a body corporate with the name "Corporation of Foreign Security Holders" (herein called the "Corporation"). The principal office of the Corporation shall be located in the District of Columbia, but there may be established agencies or branch offices in any city or cities of the United States under rules and regulations prescribed by the board of directors.

(May 27, 1933, ch. 38, title II, §201, 48 Stat. 92.)

§77cc. Directors of Corporation; appointment, term of office, and removal

The control and management of the Corporation shall be vested in a board of six directors, who shall be appointed and hold office in the following manner: As soon as practicable after the date this chapter takes effect the Federal Trade Commission (hereinafter in this subchapter called "Commission") shall appoint six directors, and shall designate a chairman and a vice chairman from among their number. After the directors designated as chairman and vice chairman cease to be directors, their successors as chairman and vice chairman shall be elected by the board of directors itself. Of the directors first appointed, two shall continue in office for a term of two years, two for a term of four years, and two for a term of six years, from the date this chapter takes effect, the term of

each to be designated by the Commission at the time of appointment. Their successors shall be appointed by the Commission, each for a term of six years from the date of the expiration of the term for which his predecessor was appointed, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of such predecessor. No person shall be eligible to serve as a director who within the five years preceding has had any interest, direct or indirect, in any corporation, company, partnership, bank, or association which has sold or offered for sale any foreign securities. The office of a director shall be vacated if the board of directors shall, at a meeting specially convened for that purpose, by resolution passed by a majority of at least two-thirds of the board of directors, remove such member from office, provided that the member whom it is proposed to remove shall have seven days' notice sent to him of such meeting, and that he may be heard.

(May 27, 1933, ch. 38, title II, §202, 48 Stat. 93.)

§77dd. Powers and duties of Corporation, generally

The Corporation shall have power to adopt, alter, and use a corporate seal; to make contracts; to lease such real estate as may be necessary for the transaction of its business; to sue and be sued, to complain and to defend, in any court of competent jurisdiction, State or Federal; to require from trustees, financial agents, or dealers in foreign securities information relative to the original or present holders of foreign securities and such other information as may be required, and to issue subpenas therefor; to take over the functions of any fiscal and paying agents of any foreign securities in default; to borrow money for the purposes of this subchapter, and to pledge as collateral for such loans any securities deposited with the Corporation pursuant to this subchapter; by and with the consent and approval of the Commission to select, employ, and fix the compensation of officers, directors, members of committees, employees, attorneys, and agents of the Corporation, without regard to the provisions of other laws applicable to the employment and compensation of officers or employees of the United States; to define their authority and duties, require bonds of them and fix the penalties thereof, and to dismiss at pleasure such officers, employees, attorneys, and agents; and to prescribe, amend, and repeal, by its board of directors, bylaws, rules, and regulations governing the manner in which its general business may be conducted and the powers granted to it by law may be exercised and enjoyed, together with provisions for such committees and the functions thereof as the board of directors may deem necessary for facilitating its business under this subchapter. The board of directors of the Corporation shall determine and prescribe the manner in which its obligations shall be incurred and its expenses allowed and paid.

(May 27, 1933, ch. 38, title II, §203, 48 Stat. 93.)

§77ee. Directors of Corporation, powers and duties generally

The board of directors may—

(1) Convene meetings of holders of foreign securities.

(2) Invite the deposit and undertake the custody of foreign securities which have defaulted in the payment either of principal or interest, and issue receipts or certificates in the place of securities so deposited.

(3) Appoint committees from the directors of the Corporation and/or all other persons to represent holders of any class or classes of foreign securities which have defaulted in the payment either of principal or interest and determine and regulate the functions of such committees. The chairman and vice chairman of the board of directors shall be ex officio chairman and vice chairman of each committee.

(4) Negotiate and carry out, or assist in negotiating and carrying out, arrangements for the resumption of payments due or in arrears in respect of any foreign securities in default or for rearranging the terms on which such securities may in future be held or for converting and exchanging the same for new securities or for any other object in relation thereto; and under this

paragraph any plan or agreement made with respect to such securities shall be binding upon depositors, providing that the consent of holders resident in the United States of 60 per centum of the securities deposited with the Corporation shall be obtained.

(5) Undertake, superintend, or take part in the collection and application of funds derived from foreign securities which come into the possession of or under the control or management of the Corporation.

(6) Collect, preserve, publish, circulate, and render available in readily accessible form, when deemed essential or necessary, documents, statistics, reports, and information of all kinds in respect of foreign securities, including particularly records of foreign external securities in default and records of the progress made toward the payment of past-due obligations.

(7) Take such steps as it may deem expedient with the view of securing the adoption of clear and simple forms of foreign securities and just and sound principles in the conditions and terms thereof.

(8) Generally, act in the name and on behalf of the holders of foreign securities the care or representation of whose interests may be entrusted to the Corporation; conserve and protect the rights and interests of holders of foreign securities issued, sold, or owned in the United States; adopt measures for the protection, vindication, and preservation or reservation of the rights and interests of holders of foreign securities either on any default in or on breach or contemplated breach of the conditions on which such foreign securities may have been issued, or otherwise; obtain for such holders such legal and other assistance and advice as the board of directors may deem expedient; and do all such other things as are incident or conducive to the attainment of the above objects.

(May 27, 1933, ch. 38, title II, §204, 48 Stat. 94.)

§77ff. Accounts and annual balance sheet of Corporation; audits

The board of directors shall cause accounts to be kept of all matters relating to or connected with the transactions and business of the Corporation, and cause a general account and balance sheet of the Corporation to be made out in each year, and cause all accounts to be audited by one or more auditors who shall examine the same and report thereon to the board of directors.

(May 27, 1933, ch. 38, title II, §205, 48 Stat. 94.)

§77gg. Annual report by Corporation; printing and distribution

The Corporation shall make, print, and make public an annual report of its operations during each year, send a copy thereof, together with a copy of the account and balance sheet and auditor's report, to the Commission and to both Houses of Congress, and provide one copy of such report but not more than one on the application of any person and on receipt of a sum not exceeding $1: *Provided*, That the board of directors in its discretion may distribute copies gratuitously.

(May 27, 1933, ch. 38, title II, §206, 48 Stat. 95.)

§77hh. Assessments by Corporation on holders of foreign securities

The Corporation may in its discretion levy charges, assessed on a pro rata basis, on the holders of foreign securities deposited with it: *Provided*, That any charge levied at the time of depositing securities with the Corporation shall not exceed one fifth of 1 per centum of the face value of such securities: *Provided further*, That any additional charges shall bear a close relationship to the cost of operations and negotiations including those enumerated in sections 77dd and 77ee of this title and shall not exceed 1 per centum of the face value of such securities.

(May 27, 1933, ch. 38, title II, §207, 48 Stat. 95.)

§77ii. Subscriptions accepted by Corporation as loans; repayment

The Corporation may receive subscriptions from any person, foundation with a public purpose, or agency of the United States Government, and such subscriptions may, in the discretion of the board of directors, be treated as loans repayable when and as the board of directors shall determine.

(May 27, 1933, ch. 38, title II, §208, 48 Stat. 95.)

§77jj. Loans to Corporation from Reconstruction Finance Corporation authorized

The Reconstruction Finance Corporation is authorized to loan out of its funds not to exceed $75,000 for the use of the Corporation.

(May 27, 1933, ch. 38, title II, §209, 48 Stat. 95.)

ABOLITION OF RECONSTRUCTION FINANCE CORPORATION

Section 6(a) of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647, set out as a note under section 601 of this title, abolished the Reconstruction Finance Corporation.

§77kk. Representations by Corporation as acting for Department of State or United States forbidden; interference with foreign negotiations forbidden

Notwithstanding the foregoing provisions of this subchapter, it shall be unlawful for, and nothing in this subchapter shall be taken or construed as permitting or authorizing, the Corporation in this subchapter created, or any committee of said Corporation, or any person or persons acting for or representing or purporting to represent it—

(a) to claim or assert or pretend to be acting for or to represent the Department of State or the United States Government;

(b) to make any statements or representations of any kind to any foreign government or its officials or the officials of any political subdivision of any foreign government that said Corporation or any committee thereof or any individual or individuals connected therewith were speaking or acting for the said Department of State or the United States Government; or

(c) to do any act directly or indirectly which would interfere with or obstruct or hinder or which might be calculated to obstruct, hinder, or interfere with the policy or policies of the said Department of State or the Government of the United States or any pending or contemplated diplomatic negotiations, arrangements, business or exchanges between the Government of the United States or said Department of State and any foreign government or any political subdivision thereof.

(May 27, 1933, ch. 38, title II, §210, 48 Stat. 95.)

§77*ll*. Effective date of subchapter

This subchapter shall not take effect until the President finds that its taking effect is in the public interest and by proclamation so declares.

(May 27, 1933, ch. 38, title II, §211, 48 Stat. 95.)

§77mm. Short title

This subchapter may be cited as the "Corporation of Foreign Bondholders Act, 1933."

(May 27, 1933, ch. 38, title II, §212, 48 Stat. 95.)

SUBCHAPTER III—TRUST INDENTURES

§77aaa. Short title

This subchapter may be cited as the "Trust Indenture Act of 1939."

(May 27, 1933, ch. 38, title III, §301, as added Aug. 3, 1939, ch. 411, 53 Stat. 1149.)

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–550, title IV, §401, Nov. 15, 1990, 104 Stat. 2721, provided that: "This title [amending sections 77ccc to 77eee, 77iii to 77rrr, and 77vvv of this title] may be cited as the 'Trust Indenture Reform Act of 1990'."

§77bbb. Necessity for regulation

(a) Practices adversely affecting public

Upon the basis of facts disclosed by the reports of the Securities and Exchange Commission made to the Congress pursuant to section 78jj of this title and otherwise disclosed and ascertained, it is hereby declared that the national public interest and the interest of investors in notes, bonds, debentures, evidences of indebtedness, and certificates of interest or participation therein, which are offered to the public, are adversely affected—

(1) when the obligor fails to provide a trustee to protect and enforce the rights and to represent the interests of such investors, notwithstanding the fact that (A) individual action by such investors for the purpose of protecting and enforcing their rights is rendered impracticable by reason of the disproportionate expense of taking such action, and (B) concerted action by such investors in their common interest through representatives of their own selection is impeded by reason of the wide dispersion of such investors through many States, and by reason of the fact that information as to the names and addresses of such investors generally is not available to such investors;

(2) when the trustee does not have adequate rights and powers, or adequate duties and responsibilities, in connection with matters relating to the protection and enforcement of the rights of such investors; when, notwithstanding the obstacles to concerted action by such investors, and the general and reasonable assumption by such investors that the trustee is under an affirmative duty to take action for the protection and enforcement of their rights, trust indentures (A) generally provide that the trustee shall be under no duty to take any such action, even in the event of default, unless it receives notice of default, demand for action, and indemnity, from the holders of substantial percentages of the securities outstanding thereunder, and (B) generally relieve the trustee from liability even for its own negligent action or failure to act;

(3) when the trustee does not have resources commensurate with its responsibilities, or has any relationship to or connection with the obligor or any underwriter of any securities of the obligor, or holds, beneficially or otherwise, any interest in the obligor or any such underwriter, which relationship, connection, or interest involves a material conflict with the interests of such investors;

(4) when the obligor is not obligated to furnish to the trustee under the indenture and to such investors adequate current information as to its financial condition, and as to the performance of its obligations with respect to the securities outstanding under such indenture; or when the communication of such information to such investors is impeded by the fact that information as to the names and addresses of such investors generally is not available to the trustee and to such investors;

(5) when the indenture contains provisions which are misleading or deceptive, or when full and fair disclosure is not made to prospective investors of the effect of important indenture provisions; or

(6) when, by reason of the fact that trust indentures are commonly prepared by the obligor or underwriter in advance of the public offering of the securities to be issued thereunder, such investors are unable to participate in the preparation thereof, and, by reason of their lack of understanding of the situation, such investors would in any event be unable to procure the correction of the defects enumerated in this subsection.

(b) Declaration of policy

Practices of the character above enumerated have existed to such an extent that, unless regulated, the public offering of notes, bonds, debentures, evidences of indebtedness, and certificates of interest or participation therein, by the use of means and instruments of transportation and communication in interstate commerce and of the mails, is injurious to the capital markets, to investors, and to the general public; and it is hereby declared to be the policy of this subchapter, in accordance with which policy all the provisions of this subchapter shall be interpreted, to meet the problems and eliminate the practices, enumerated in this section, connected with such public offerings.

(May 27, 1933, ch. 38, title III, §302, as added Aug. 3, 1939, ch. 411, 53 Stat. 1150.)

REFERENCES IN TEXT

Section 78jj of this title, referred to in subsec. (a), was omitted from the Code.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§77ccc. Definitions

When used in this subchapter, unless the context otherwise requires—

(1) Any term defined in section 2 of the Securities Act of 1933 [15 U.S.C. 77b], and not otherwise defined in this section shall have the meaning assigned to such term in such section 2 [15 U.S.C. 77b].

(2) The terms "sale", "sell", "offer to sell", "offer for sale", and "offer" shall include all transactions included in such terms as provided in paragraph (3) of section 2(a) of the Securities Act of 1933 [15 U.S.C. 77b(a)], except that an offer or sale of a certificate of interest or participation shall be deemed an offer or sale of the security or securities in which such certificate evidences an interest or participation if and only if such certificate gives the holder thereof the right to convert the same into such security or securities.

(3) The term "prospectus" shall have the meaning assigned to such term in paragraph (10) of section 2(a) of the Securities Act of 1933 [15 U.S.C. 77b(a)], except that in the case of securities which are not registered under the Securities Act of 1933 [15 U.S.C. 77a et seq.], such term shall not include any communication (A) if it is proved that prior to or at the same time with such communication a written statement if any required by section 77fff of this title was sent or given to the persons to whom the communication was made, or (B) if such communication states from whom such statement may be obtained (if such statement is required by rules or regulations under paragraphs (1) or (2) of subsection (b) of section 77fff of this title) and, in addition, does no more than identify the security, state the price thereof, state by whom orders will be executed and contain such other information as the Commission, by rules or regulations deemed necessary or appropriate in the public interest or for the protection of investors, and subject to such terms and conditions as may be prescribed therein, may permit.

(4) The term "underwriter" means any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission.

(5) The term "director" means any director of a corporation, or any individual performing similar functions with respect to any organization whether incorporated or unincorporated.

(6) The term "executive officer" means the president, every vice president, every trust officer, the cashier, the secretary, and the treasurer of a corporation, and any individual customarily performing similar functions with respect to any organization whether incorporated or unincorporated, but shall not include the chairman of the board of directors.

(7) The term "indenture" means any mortgage, deed of trust, trust or other indenture, or similar instrument or agreement (including any supplement or amendment to any of the foregoing), under which securities are outstanding or are to be issued, whether or not any property, real or personal, is, or is to be, pledged, mortgaged, assigned, or conveyed thereunder.

(8) The term "application" or "application for qualification" means the application provided for in section 77eee of this title or section 77ggg of this title, and includes any amendment thereto and any report, document, or memorandum accompanying such application or incorporated therein by reference.

(9) The term "indenture to be qualified" means (A) the indenture under which there has been or is to be issued a security in respect of which a particular registration statement has been filed, or (B) the indenture in respect of which a particular application has been filed.

(10) The term "indenture trustee" means each trustee under the indenture to be qualified, and each successor trustee.

(11) The term "indenture security" means any security issued or issuable under the indenture to be qualified.

(12) The term "obligor", when used with respect to any such indenture security, means every person (including a guarantor) who is liable thereon, and, if such security is a certificate of interest or participation, such term means also every person (including a guarantor) who is liable upon the security or securities in which such certificate evidences an interest or participation; but such term shall not include the trustee under an indenture under which certificates of interest or participation, equipment trust certificates, or like securities are outstanding.

(13) The term "paying agent", when used with respect to any such indenture security, means any person authorized by an obligor thereon (A) to pay the principal of or interest on such security on behalf of such obligor, or (B) if such security is a certificate of interest or participation, equipment trust certificate, or like security, to make such payment on behalf of the trustee.

(14) The term "State" means any State of the United States.

(15) The term "Commission" means the Securities and Exchange Commission.

(16) The term "voting security" means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a person, or any security issued under or pursuant to any trust, agreement, or arrangement whereby a trustee or trustees or agent or agents for the owner or holder of such security are presently entitled to vote in the direction or management of the affairs of a person; and a specified percentage of the voting securities of a person means such amount of the outstanding voting securities of such person as entitles the holder or holders thereof to cast such specified percentage of the aggregate votes which the holders of all the outstanding voting securities of such person are entitled to cast in the direction or management of the affairs of such person.

(17) The terms "Securities Act of 1933" [15 U.S.C. 77a et seq.] and "Securities Exchange Act of 1934" [15 U.S.C. 78a et seq.] shall be deemed to refer, respectively, to such Acts, as amended, whether amended prior to or after the enactment of this subchapter.

(18) The term "Bankruptcy Act" means the Bankruptcy Act or title 11.

(May 27, 1933, ch. 38, title III, §303, as added Aug. 3, 1939, ch. 411, 53 Stat. 1151; amended Aug. 10, 1954, ch. 667, title III, §301, 68 Stat. 686; Pub. L. 95–598, title III, §307, Nov. 6, 1978, 92 Stat. 2674; Pub. L. 100–181, title V, §§501, 502, Dec. 4, 1987, 101 Stat. 1260; Pub. L. 101–550, title IV, §402, Nov. 15, 1990, 104 Stat. 2722; Pub. L. 105–353, title III, §301(e)(1), Nov. 3, 1998, 112 Stat. 3237; Pub. L. 111–203, title IX, §986(b)(1), July 21, 2010, 124 Stat. 1935.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in pars. (3) and (17), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of this chapter. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Securities Exchange Act of 1934, referred to in par. (17), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

The Bankruptcy Act, referred to in par. (18), is act July 1, 1898, ch. 541, 30 Stat. 544, as amended, which was classified generally to former Title 11, Bankruptcy. The Act was repealed effective Oct. 1, 1979, by Pub. L. 95–598, §§401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11.

AMENDMENTS

2010—Par. (17). Pub. L. 111–203 added par. (17) and struck out former par. (17) which read as follows: "The terms 'Securities Act of 1933,' 'Securities Exchange Act of 1934,' and 'Public Utility Holding Company Act of 1935' shall be deemed to refer, respectively, to such Acts, as amended, whether amended prior to or after the enactment of this subchapter."

1998—Pars. (2), (3). Pub. L. 105–353 substituted "section 2(a)" for "section 2".

1990—Par. (8). Pub. L. 101–550 inserted "section 77eee of this title or" after "provided for in".

1987—Par. (4). Pub. L. 100–181, §501, substituted "undertaking" for "undertakng".

Par. (12). Pub. L. 100–181, §502, inserted "(including a guarantor)" after "person" in two places.

1978—Par. (18). Pub. L. 95–598 substituted "Bankruptcy Act or title 11" for "Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, as amended, whether amended prior to or after August 3, 1939".

1954—Pars. (1) to (4). Act Aug. 10, 1954, made formal changes in order to conform to amendments made by act Aug. 10, 1954, to sections 77b, 77e, and 77j of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598 set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§77ddd. Exempted securities and transactions

(a) Specific securities exempted

The provisions of this subchapter shall not apply to any of the following securities:

(1) any security other than (A) a note, bond, debenture, or evidence of indebtedness, whether or not secured, or (B) a certificate of interest or participation in any such note, bond, debenture, or evidence of indebtedness, or (C) a temporary certificate for, or guarantee of, any such note, bond, debenture, evidence of indebtedness, or certificate;

(2) any certificate of interest or participation in two or more securities having substantially different rights and privileges, or a temporary certificate for any such certificate;

(3) Repealed. Pub. L. 101–550, title IV, §403(1)(A), Nov. 15, 1990, 104 Stat. 2722.

(4)(A) any security exempted from the provisions of the Securities Act of 1933 [15 U.S.C. 77a et seq.] by paragraphs (2) to (8), (11), or (13) of section 3(a) thereof [15 U.S.C. 77c(a)];

(B) any security exempted from the provisions of the Securities Act of 1933, as amended [15 U.S.C. 77a et seq.], by paragraph (2) of subsection 3(a) thereof, as amended by section 401 of the Employment Security Amendments of 1970 [15 U.S.C. 77c(a)(2)];

(5) any security issued under a mortgage indenture as to which a contract of insurance under the National Housing Act [12 U.S.C. 1701 et seq.] is in effect; and any such security shall be deemed to be exempt from the provisions of the Securities Act of 1933 [15 U.S.C. 77a et seq.] to the same extent as though such security were specifically enumerated in section 3(a)(2) of such Act [15 U.S.C. §77c(a)(2)];

(6) any note, bond, debenture, or evidence of indebtedness issued or guaranteed by a foreign government or by a subdivision, department, municipality, agency, or instrumentality thereof;

(7) any guarantee of any security which is exempted by this subsection;

(8) any security which has been or is to be issued otherwise than under an indenture, but this exemption shall not be applied within a period of twelve consecutive months to an aggregate principal amount of securities of the same issuer greater than the figure stated in section 3(b) of the Securities Act of 1933 [15 U.S.C. 77c(b)] limiting exemptions thereunder, or such lesser amount as the Commission may establish by its rules and regulations;

(9) any security which has been or is to be issued under an indenture which limits the aggregate principal amount of securities at any time outstanding thereunder to $10,000,000, or such lesser amount as the Commission may establish by its rules and regulations, but this exemption shall not be applied within a period of thirty-six consecutive months to more than $10,000,000 aggregate principal amount of securities of the same issuer, or such lesser amount as the Commission may establish by its rules and regulations; or

(10) any security issued under a mortgage or trust deed indenture as to which a contract of insurance under title XI of the National Housing Act [12 U.S.C. 1749aaa et seq.] is in effect; and any such security shall be deemed to be exempt from the provisions of the Securities Act of 1933 [15 U.S.C. 77a et seq.] to the same extent as though such security were specifically enumerated in section 3(a)(2), as amended, of the Securities Act of 1933 [15 U.S.C. 77c(a)(2)].

In computing the aggregate principal amount of securities to which the exemptions provided by paragraphs (8) and (9) of this subsection may be applied, securities to which the provisions of sections 77eee and 77fff of this title would not have applied, irrespective of the provisions of those paragraphs, shall be disregarded.

(b) Application of sections 77eee and 77fff

The provisions of sections 77eee and 77fff of this title shall not apply (1) to any of the transactions exempted from the provisions of section 5 of the Securities Act of 1933 [15 U.S.C. 77e] by section 4 thereof [15 U.S.C. 77d] or (2) to any transaction which would be so exempted but for the last sentence of paragraph (11) of section 2(a) of such Act [15 U.S.C. 77b(a)].

(c) Securities issued or proposed to be issued under indenture

The Commission shall, on application by the issuer and after opportunity for hearing thereon, by order exempt from any one or more provisions of this subchapter any security issued or proposed to be issued under any indenture under which, at the time such application is filed, securities referred to in paragraph (3) of subsection (a) of this section are outstanding or on January 1, 1959, such securities were outstanding, if and to the extent that the Commission finds that compliance with such provision or provisions, through the execution of a supplemental indenture or otherwise—

(1) would require, by reason of the provisions of such indenture, or the provisions of any other indenture or agreement made prior to August 3, 1939, or the provisions of any applicable law, the consent of the holders of securities outstanding under any such indenture or agreement; or

(2) would impose an undue burden on this issuer, having due regard to the public interest and the interests of investors.

(d) Exemptions in public interest

The Commission may, by rules or regulations upon its own motion, or by order on application by

an interested person, exempt conditionally or unconditionally any person, registration statement, indenture, security or transaction, or any class or classes of persons, registration statements, indentures, securities, or transactions, from any one or more of the provisions of this subchapter, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by this subchapter. The Commission shall by rules and regulations determine the procedures under which an exemption under this subsection shall be granted, and may, in its sole discretion, decline to entertain any application for an order of exemption under this subsection.

(e) Securities issued by small investment company

The Commission may from time to time by its rules and regulations, and subject to such terms and conditions as may be prescribed herein, add to the securities exempted as provided in this section any class of securities issued by a small business investment company under the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.] if it finds, having regard to the purposes of that Act, that the enforcement of this subchapter with respect to such securities is not necessary in the public interest and for the protection of investors.

(May 27, 1933, ch. 38, title III, §304, as added Aug. 3, 1939, ch. 411, 53 Stat. 1153; amended Aug. 10, 1954, ch. 667, title III, §302, 68 Stat. 687; Pub. L. 85–699, title III, §307(b), Aug. 21, 1958, 72 Stat. 694; Pub. L. 86–760, Sept. 13, 1960, 74 Stat. 902; Pub. L. 89–754, title V, §504(b), Nov. 3, 1966, 80 Stat. 1278; Pub. L. 91–567, §6(c), Dec. 22, 1970, 84 Stat. 1499; Pub. L. 96–477, title III, §302, Oct. 21, 1980, 94 Stat. 2291; Pub. L. 101–550, title IV, §403, Nov. 15, 1990, 104 Stat. 2722; Pub. L. 104–290, title V, §508(e), Oct. 11, 1996, 110 Stat. 3448; Pub. L. 105–353, title III, §301(e)(2), Nov. 3, 1998, 112 Stat. 3237; Pub. L. 111–203, title IX, §985(c)(1), July 21, 2010, 124 Stat. 1934.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (a)(4), (5), and (10), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of this chapter. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The National Housing Act, referred to in subsec. (a)(5), is act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified generally to chapter 13 (§1701 et seq.) of Title 12, Banks and Banking. Provisions of that act relating to insurance of mortgages are contained in section 1707 et seq. of Title 12. Title XI of the National Housing Act, is classified to subchapter IX–B (§1749aaa et seq.) of chapter 13 of Title 12. For complete classification of this Act to the Code, see References in Text note set out under section 1701 of Title 12 and Tables.

The Small Business Investment Act of 1958, referred to in subsec. (e), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, which is classified principally to chapter 14B (§661 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–203 substituted "section 2(a) of such Act" for "section 2 of such Act".

1998—Subsec. (a)(4)(A). Pub. L. 105–353 substituted "(13) of section" for "(14) of subsection".

1996—Subsec. (a)(4)(A). Pub. L. 104–290 substituted "(11), or (14)" for "or (11)".

1990—Subsec. (a)(3). Pub. L. 101–550, §403(1)(A), struck out par. (3) which read as follows: "any security which, prior to or within six months after August 3, 1939, has been sold or disposed of by the issuer or bona fide offered to the public, but this exemption shall not apply to any new offering of any such security by an issuer subsequent to such six months;".

Subsec. (a)(4)(A). Pub. L. 101–550, §403(1)(B), struck out ", as heretofore amended," after "1933".

Subsec. (d). Pub. L. 101–550, §403(2), added subsec. (d) and struck out former subsec. (d) which read as follows: "The Commission may, on application by the issuer and after opportunity for hearing thereon, by order exempt from any one or more of the provisions of this subchapter any security issued or proposed to be issued by a person organized and existing under the laws of a foreign government or a political subdivision thereof, if and to the extent that the Commission finds that compliance with such provision or provisions is not necessary in the public interest and for the protection of investors."

1980—Subsec. (a)(8). Pub. L. 96–477, §302(a), substituted "an aggregate principal amount of securities of the same issuer greater than the figure stated in section 3(b) of the Securities Act of 1933 limiting exemptions

thereunder, or such lesser amount as the Commission may establish by its rules and regulations" for "more than $250,000 aggregate principal amount of any securities of the same issuer".

Subsec. (a)(9). Pub. L. 96–477, §302(b), substituted "$10,000,000, or such lesser amount as the Commission may establish by its rules and regulations" for "$1,000,000 or less", "more than $10,000,000" for "more than $1,000,000", and inserted ", or such lesser amount as the Commission may establish by its rules and regulations" after "same issuer".

1970—Subsec. (a)(4). Pub. L. 91–567 designated existing provisions as cl. (A) and added cl. (B).

1966—Subsec. (a)(10). Pub. L. 89–754 added par. (10).

1960—Subsec. (c). Pub. L. 86–760 inserted "or on January 1, 1959, such securities were outstanding".

1958—Subsec. (e). Pub. L. 85–699 added subsec. (e).

1954—Subsec. (b). Act Aug. 10, 1954, struck out "as heretofore amended,".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–567 applicable with respect to securities sold after Jan. 1, 1970, see section 6(d) of Pub. L. 91–567, set out as a note under section 77c of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§77eee. Securities required to be registered under Securities Act

(a) Information required

Subject to the provisions of section 77ddd of this title, a registration statement relating to a security shall include the following information and documents, as though such inclusion were required by the provisions of section 7 of the Securities Act of 1933 [15 U.S.C. 77g]—

(1) such information and documents as the Commission may by rules and regulations prescribe in order to enable the Commission to determine whether any person designated to act as trustee under the indenture under which such security has been or is to be issued is eligible to act as such under subsection (a) of section 77jjj of this title; and

(2) an analysis of any provisions of such indenture with respect to (A) the definition of what shall constitute a default under such indenture, and the withholding of notice to the indenture security holders of any such default, (B) the authentication and delivery of the indenture securities and the application of the proceeds thereof, (C) the release or the release and substitution of any property subject to the lien of the indenture, (D) the satisfaction and discharge of the indenture, and (E) the evidence required to be furnished by the obligor upon the indenture securities to the trustee as to compliance with the conditions and covenants provided for in such indenture.

The information and documents required by paragraph (1) of this subsection with respect to the person designated to act as indenture trustee shall be contained in a separate part of such registration statement, which part shall be signed by such person. Such part of the registration statement shall be deemed to be a document filed pursuant to this subchapter, and the provisions of sections 11, 12, 17, and 24 of the Securities Act of 1933 [15 U.S.C. 77k, 77l, 77q, 77x] shall not apply to statements therein or omissions therefrom.

(b) Refusal of registration statement

(1) Except as may be permitted by paragraph (2) of this subsection, the Commission shall issue an order prior to the effective date of registration refusing to permit such a registration statement to become effective, if it finds that—

(A) the security to which such registration statement relates has not been or is not to be issued under an indenture; or

(B) any person designated as trustee under such indenture is not eligible to act as such under subsection (a) of section 77jjj of this title;

but no such order shall be issued except after notice and opportunity for hearing within the periods and in the manner required with respect to refusal orders pursuant to section 8(b) of the Securities Act of 1933 [15 U.S.C. 77h(b)]. If and when the Commission deems that the objections on which such order was based have been met, the Commission shall enter an order rescinding such refusal order, and the registration shall become effective at the time provided in section 8(a) of the Securities Act of 1933 [15 U.S.C. 77h(a)], or upon the date of such rescission, whichever shall be the later.

(2) In the case of securities registered under the Securities Act of 1933 [15 U.S.C. 77a et seq.], which securities are eligible to be issued, offered, or sold on a delayed basis by or on behalf of the registrant, the Commission shall not be required to issue an order pursuant to paragraph (1) of subsection (b) of this section for failure to designate a trustee eligible to act under subsection (a) of section 77jjj of this title if, in accordance with such rules and regulations as may be prescribed by the Commission, the issuer of such securities files an application for the purpose of determining such trustee's eligibility under subsection (a) of section 77jjj of this title. The Commission shall issue an order prior to the effective date of such application refusing to permit the application to become effective, if it finds that any person designated as trustee under such indenture is not eligible to act as such under subsection (a) of section 77jjj of this title, but no order shall be issued except after notice and opportunity for hearing within the periods and in the manner required with respect to refusal orders pursuant to section 8(b) of the Securities Act of 1933 [15 U.S.C. 77h(b)]. If after notice and opportunity for hearing the Commission issues an order under this provision, the obligor shall within 5 calendar days appoint a trustee meeting the requirements of subsection (a) of section 77jjj of this title. No such appointment shall be effective and such refusal order shall not be rescinded by the Commission until a person eligible to act as trustee under subsection (a) of section 77jjj of this title has been appointed. If no order is issued, an application filed pursuant to this paragraph shall be effective the tenth day after filing thereof or such earlier date as the Commission may determine, having due regard to the adequacy of information provided therein, the public interest, and the protection of investors.

(c) Information required in prospectus

A prospectus relating to any such security shall include to the extent the Commission may prescribe by rules and regulations as necessary and appropriate in the public interest or for the protection of investors, as though such inclusion were required by section 10 of the Securities Act of 1933 [15 U.S.C. 77j], a written statement containing the analysis set forth in the registration statement, of any indenture provisions with respect to the matters specified in paragraph (2) of subsection (a) of this section, together with a supplementary analysis, prepared by the Commission, of such provisions and of the effect thereof, if, in the opinion of the Commission, the inclusion of such supplementary analysis is necessary or appropriate in the public interest or for the protection of investors, and the Commission so declares by order after notice and, if demanded by the issuer, opportunity for hearing thereon. Such order shall be entered prior to the effective date of registration, except that if opportunity for hearing thereon is demanded by the issuer such order shall be entered within a reasonable time after such opportunity for hearing.

(d) Applicability of other statutory provisions

The provisions of sections 11, 12, 17, and 24 of the Securities Act of 1933 [15 U.S.C. 77k, 77l, 77q, 77x], and the provisions of sections 77www and 77yyy of this title, shall not apply to statements in or omissions from any analysis required under the provisions of this section or section 77fff or 77ggg of this title.

(May 27, 1933, ch. 38, title III, §305, as added Aug. 3, 1939, ch. 411, 53 Stat. 1154; amended Aug. 10, 1954, ch. 667, title III, §303, 68 Stat. 687; Pub. L. 101–550, title IV, §404, Nov. 15, 1990, 104 Stat. 2722.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (b)(2), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, as amended, which is classified generally to subchapter I (§77a et seq.) of this chapter. For complete classification of this Act to the Code, see section 77a of this title and Tables.

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101–550, §404(1), struck out "or has a conflicting interest as defined in subsection (b) of section 77jjj of this title" after "section 77jjj of this title".

Subsec. (b). Pub. L. 101–550, §404(2), designated existing provisions as par. (1), substituted "Except as may be permitted by paragraph (2) of this subsection, the Commission shall issue" for "The Commission shall issue", redesignated former par. (1) as subpar. (a) and inserted "or" at end, struck out former par. (2) which authorized Commission to prohibit a registration statement from taking effect if it finds that such indenture does not conform to requirements of sections 77jjj to 77rrr of this title, redesignated former par. (3) as subpar. (B) and struck out "or has any conflicting interest as defined in subsection (b) of section 77jjj of this title" after "section 77jjj of this title", and added par. (2).

1954—Subsec. (c). Act Aug. 10, 1954, authorized the Commission to prescribe by rule and regulation the extent to which summaries of indenture provisions must be contained in prospectuses.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§77fff. Securities not registered under Securities Act

(a) Prohibitions affecting unregistered securities not issued under indenture

In the case of any security which is not registered under the Securities Act of 1933 [15 U.S.C. 77a et seq.] and to which this subsection is applicable notwithstanding the provisions of section 77ddd of this title, unless such security has been or is to be issued under an indenture and an application for qualification is effective as to such indenture, it shall be unlawful for any person, directly or indirectly—

(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise; or

(2) to carry or cause to be carried through the mails or interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale.

(b) Prohibitions affecting unregistered securities issued under indenture

In the case of any security which is not registered under the Securities Act of 1933 [15 U.S.C. 77a et seq.], but which has been or is to be issued under an indenture as to which an application for qualification is effective, it shall be unlawful for any person, directly or indirectly—

(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to carry or transmit any prospectus relating to any such security, unless such prospectus, to the extent the Commission may prescribe by rules and regulations as necessary and appropriate in the public interest or for the protection of investors, includes or is accompanied by a written statement that contains the information specified in subsection (c) of section 77eee of this title; or

(2) to carry or to cause to be carried through the mails or in interstate commerce any such

security for the purpose of sale or for delivery after sale, unless, to the extent the Commission may prescribe by rules and regulations as necessary or appropriate in the public interest or for the protection of investors, accompanied or preceded by a written statement that contains the information specified in subsection (c) of section 77eee of this title.

(c) Necessity of issuance under indenture; application for qualification

It shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell through the use or medium of any prospectus or otherwise any security which is not registered under the Securities Act of 1933 [15 U.S.C. 77a et seq.] and to which this subsection is applicable notwithstanding the provisions of section 77ddd of this title, unless such security has been or is to be issued under an indenture and an application for qualification has been filed as to such indenture, or while the application is the subject of a refusal order or stop order or (prior to qualification) any public proceeding or examination under section 77ggg(c) of this title.

(May 27, 1933, ch. 38, title III, §306, as added Aug. 3, 1939, ch. 411, 53 Stat. 1155; amended Aug. 10, 1954, ch. 667, title III, §304, 68 Stat. 687.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsecs. (a) to (c), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, as amended, which is classified generally to subchapter I (§77a et seq.) of this chapter. For complete classification of this Act to the Code, see section 77a of this title and Tables.

AMENDMENTS

1954—Subsec. (b). Act Aug. 10, 1954, authorized the Commission to prescribe the extent to which summaries of indenture provisions must be used in the sale of specified types of securities.

Subsec. (c). Act Aug. 10, 1954, added subsec. (c).

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§77ggg. Qualification of indentures covering securities not required to be registered

(a) Application; information required; availability of information to public

In the case of any security which is not required to be registered under the Securities Act of 1933 [15 U.S.C. 77a et seq.] and to which subsection (a) of section 77fff of this title is applicable notwithstanding the provisions of section 77ddd of this title, an application for qualification of the indenture under which such security has been or is to be issued shall be filed with the Commission by the issuer of such security. Each such application shall be in such form, and shall be signed in such manner, as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors. Each such application shall include the information and documents required by subsection (a) of section 77eee of this title. The information and documents required by paragraph (1) of such subsection with respect to the person designated to act as indenture trustee shall be contained in a separate part of such application, which part shall be signed by such person. Each such application shall also include such of the other information and documents which would be required to be filed in order to register such indenture security under the Securities Act of 1933 as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors. An application may be withdrawn

by the applicant at any time prior to the effective date thereof. Subject to the provisions of section 77uuu of this title, the information and documents contained in or filed with any application shall be made available to the public under such regulations as the Commission may prescribe, and copies thereof, photostatic or otherwise, shall be furnished to every applicant therefor at such reasonable charge as the Commission may prescribe.

(b) Filing of application

The filing with the Commission of an application, or of an amendment to an application, shall be deemed to have taken place upon the receipt thereof by the Commission.

(c) Applicability of other statutory provisions

The provisions of section 77h of this title and the provisions of subsection (b) of section 77eee of this title shall apply with respect to every such application, as though such application were a registration statement filed pursuant to the provisions of the Securities Act of 1933 [15 U.S.C. 77a et seq.].

(May 27, 1933, ch. 38, title III, §307, as added Aug. 3, 1939, ch. 411, 53 Stat. 1156; amended Pub. L. 107–123, §7, Jan. 16, 2002, 115 Stat. 2397.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsecs. (a) and (c), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, as amended, which is classified generally to subchapter I (§77a et seq.) of this chapter. For complete classification of this Act to the Code, see section 77a of this title and Tables.

AMENDMENTS

2002—Subsec. (b). Pub. L. 107–123 substituted "Commission" for "Commission, but, in the case of an application, only if it is accompanied or preceded by payment to the Commission of a filing fee in the amount of $100, such payment to be made in cash or by United States postal money order or certified or bank check, or in such other medium of payment as the Commission may authorize by rule and regulation".

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–123 effective Oct. 1, 2001, see section 11 of Pub. L. 107–123, set out as a note under section 78ee of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§77hhh. Integration of procedure with Securities Act and other Acts

(a) Incorporation by reference

The Commission, by such rules and regulations or orders as it deems necessary or appropriate in the public interest or for the protection of investors, shall authorize the filing of any information or documents required to be filed with the Commission under this subchapter, or under the Securities Act of 1933 [15 U.S.C. 77a et seq.] or the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], by incorporating by reference any information or documents on file with the Commission under this subchapter or under any such Act.

(b) Consolidation of applications, reports, etc.

The Commission, by such rules and regulations or orders as it deems necessary or appropriate in the public interest or for the protection of investors, shall provide for the consolidation of applications, reports, and proceedings under this subchapter with registration statements, applications, reports, and proceedings under the Securities Act of 1933 [15 U.S.C. 77a et seq.] or the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.].

(May 27, 1933, ch. 38, title III, §308, as added Aug. 3, 1939, ch. 411, 53 Stat. 1156; amended Pub.

L. 111–203, title IX, §986(b)(2), July 21, 2010, 124 Stat. 1936.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsecs. (a) and (b), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of this chapter. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Securities Exchange Act of 1934, referred to in subsecs. (a) and (b), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

AMENDMENTS

2010—Pub. L. 111–203 substituted "Securities Act of 1933 or the Securities Exchange Act of 1934" for "Securities Act of 1933, the Securities Exchange Act of 1934, or the Public Utility Holding Company Act of 1935" in subsecs. (a) and (b).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§77iii. Effective time of qualification

(a) Effective time of registration or application for qualification of indenture

The indenture under which a security has been or is to be issued shall be deemed to have been qualified under this subchapter—

(1) when registration becomes effective as to such security; or

(2) when an application for the qualification of such indenture becomes effective, pursuant to section 77ggg of this title.

(b) Stop orders after effective time of qualification

After qualification has become effective as to the indenture under which a security has been or is to be issued, no stop order shall be issued pursuant to section 77h(d) of this title, suspending the effectiveness of the registration statement relating to such security or of the application for qualification of such indenture, except on one or more of the grounds specified in section 77h of this title, or the failure of the issuer to file an application as provided for by section 77eee(b)(2) of this title.

(c) Effect of subsequent rule or regulation on qualification

The making, amendment, or rescission of a rule, regulation, or order under the provisions of this subchapter (except to the extent authorized by subsection (a) of section 77nnn of this title with respect to rules and regulations prescribed pursuant to such subsection) shall not affect the qualification, form, or interpretation of any indenture as to which qualification became effective prior to the making, amendment, or rescission of such rule, regulation, or order.

(d) Liability of trustee under qualified indenture

No trustee under an indenture which has been qualified under this subchapter shall be subject to any liability because of any failure of such indenture to comply with any of the provisions of this subchapter, or any rule, regulation, or order thereunder.

(e) Power of Commission to conduct investigation

Nothing in this subchapter shall be construed as empowering the Commission to conduct an

investigation or other proceeding for the purpose of determining whether the provisions of an indenture which has been qualified under this subchapter are being complied with, or to enforce such provisions.

(May 27, 1933, ch. 38, title III, §309, as added Aug. 3, 1939, ch. 411, 53 Stat. 1157; amended Pub. L. 101–550, title IV, §405, Nov. 15, 1990, 104 Stat. 2723.)

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–550 inserted before period at end ", or the failure of the issuer to file an application as provided for by section 77eee(b)(2) of this title".

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§77jjj. Eligibility and disqualification of trustee

(a) Persons eligible for appointment as trustee

(1) There shall at all times be one or more trustees under every indenture qualified or to be qualified pursuant to this subchapter, at least one of whom shall at all times be a corporation organized and doing business under the laws of the United States or of any State or Territory or of the District of Columbia or a corporation or other person permitted to act as trustee by the Commission (referred to in this subchapter as the institutional trustee), which (A) is authorized under such laws to exercise corporate trust powers, and (B) is subject to supervision or examination by Federal, State, Territorial, or District of Columbia authority. The Commission may, pursuant to such rules and regulations as it may prescribe, or by order on application, permit a corporation or other person organized and doing business under the laws of a foreign government to act as sole trustee under an indenture qualified or to be qualified pursuant to this subchapter, if such corporation or other person (i) is authorized under such laws to exercise corporate trust powers, and (ii) is subject to supervision or examination by authority of such foreign government or a political subdivision thereof substantially equivalent to supervision or examination applicable to United States institutional trustees. In prescribing such rules and regulations or making such order, the Commission shall consider whether under such laws, a United States institutional trustee is eligible to act as sole trustee under an indenture relating to securities sold within the jurisdiction of such foreign government.

(2) Such institution [1] trustee shall have at all times a combined capital and surplus of a specified minimum amount, which shall not be less than $150,000. If such institutional trustee publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, the indenture may provide that, for the purposes of this paragraph, the combined capital and surplus of such trustee shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

(3) If the indenture to be qualified requires or permits the appointment of one or more co-trustees in addition to such institutional trustee, the rights, powers, duties, and obligations conferred or imposed upon the trustees or any of them shall be conferred or imposed upon and exercised or performed by such institutional trustee, or such institutional trustee and such co-trustees jointly, except to the extent that under any law of any jurisdiction in which any particular act or acts are to be performed, such institutional trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties, and obligations shall be exercised and performed by such co-trustees.

(4) In the case of certificates of interest or participation, the indenture trustee or trustees shall have the legal power to exercise all of the rights, powers, and privileges of a holder of the security or securities in which such certificates evidence an interest or participation.

(5) No obligor upon the indenture securities or person directly or indirectly controlling, controlled by, or under common control with such obligor shall serve as trustee upon such indenture securities.

(b) Disqualification of trustee

If any indenture trustee has or shall acquire any conflicting interest as hereinafter defined—

(i) then, within 90 days after ascertaining that it has such conflicting interest, and if the default (as defined in the next sentence) to which such conflicting interest relates has not been cured or duly waived or otherwise eliminated before the end of such 90-day period, such trustee shall either eliminate such conflicting interest or, except as otherwise provided below in this subsection, resign, and the obligor upon the indenture securities shall take prompt steps to have a successor appointed in the manner provided in the indenture;

(ii) in the event that such trustee shall fail to comply with the provisions of clause (i) of this subsection, such trustee shall, within 10 days after the expiration of such 90-day period, transmit notice of such failure to the indenture security holders in the manner and to the extent provided in subsection (c) of section 77mmm of this title; and

(iii) subject to the provisions of subsection (e) of section 77ooo of this title, unless such trustee's duty to resign is stayed as provided below in this subsection, any security holder who has been a bona fide holder of indenture securities for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of such trustee, and the appointment of a successor, if such trustee fails, after written request thereof by such holder to comply with the provisions of clause (i) of this subsection.

For the purposes of this subsection, an indenture trustee shall be deemed to have a conflicting interest if the indenture securities are in default (as such term is defined in such indenture, but exclusive of any period of grace or requirement of notice) and—

(1) such trustee is trustee under another indenture under which any other securities, or certificates of interest or participation in any other securities, of an obligor upon the indenture securities are outstanding or is trustee for more than one outstanding series of securities, as hereafter defined, under a single indenture of an obligor, unless—

(A) the indenture securities are collateral trust notes under which the only collateral consists of securities issued under such other indenture,

(B) such other indenture is a collateral trust indenture under which the only collateral consists of indenture securities, or

(C) such obligor has no substantial unmortgaged assets and is engaged primarily in the business of owning, or of owning and developing and/or operating, real estate, and the indenture to be qualified and such other indenture are secured by wholly separate and distinct parcels of real estate:

Provided, That the indenture to be qualified shall automatically be deemed (unless it is expressly provided therein that such provision is excluded) to contain a provision excluding from the operation of this paragraph other series under such indenture, and any other indenture or indentures under which other securities, or certificates of interest or participation in other securities, of such an obligor are outstanding, if—

(i) the indenture to be qualified and any such other indenture or indentures (and all series of securities issuable thereunder) are wholly unsecured and rank equally, and such other indenture or indentures (and such series) are specifically described in the indenture to be qualified or are thereafter qualified under this subchapter, unless the Commission shall have found and declared by order pursuant to subsection (b) of section 77eee of this title or subsection (c) of section 77ggg of this title that differences exist between the provisions of the indenture (or such series) to be qualified and the provisions of such other indenture or indentures (or such series) which are so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as such under one of such indentures, or

(ii) the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under the indenture to be qualified and such other indenture or under more than one outstanding series under a single indenture is

not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as such under one of such indentures or with respect to such series;

(2) such trustee or any of its directors or executive officers is an underwriter for an obligor upon the indenture securities;

(3) such trustee directly or indirectly controls or is directly or indirectly controlled by or is under direct or indirect common control with an underwriter for an obligor upon the indenture securities;

(4) such trustee or any of its directors or executive officers is a director, officer, partner, employee, appointee, or representative of an obligor upon the indenture securities, or of an underwriter (other than the trustee itself) for such an obligor who is currently engaged in the business of underwriting, except that—

(A) one individual may be a director and/or an executive officer of the trustee and a director and/or an executive officer of such obligor, but may not be at the same time an executive officer of both the trustee and of such obligor,

(B) if and so long as the number of directors of the trustee in office is more than nine, one additional individual may be a director and/or an executive officer of the trustee and a director of such obligor, and

(C) such trustee may be designated by any such obligor or by any underwriter for any such obligor, to act in the capacity of transfer agent, registrar, custodian, paying agent, fiscal agent, escrow agent, or depositary, or in any other similar capacity, or, subject to the provisions of paragraph (1) of this subsection, to act as trustee, whether under an indenture or otherwise;

(5) 10 per centum or more of the voting securities of such trustee is beneficially owned either by an obligor upon the indenture securities or by any director, partner or executive officer thereof, or 20 per centum or more of such voting securities is beneficially owned, collectively by any two or more of such persons; or 10 per centum or more of the voting securities of such trustee is beneficially owned either by an underwriter for any such obligor or by any director, partner, or executive officer thereof, or is beneficially owned, collectively, by any two or more such persons;

(6) such trustee is the beneficial owner of, or holds as collateral security for an obligation which is in default as hereinafter defined—

(A) 5 per centum or more of the voting securities, or 10 per centum or more of any other class of security, of an obligor upon the indenture securities, not including indentures [2] securities and securities issued under any other indenture under which such trustee is also trustee, or

(B) 10 per centum or more of any class of security of an underwriter for any such obligor;

(7) such trustee is the beneficial owner of, or holds as collateral security for an obligation which is in default as hereinafter defined, 5 per centum or more of the voting securities of any person who, to the knowledge of the trustee, owns 10 per centum or more of the voting securities of, or controls directly or indirectly or is under direct or indirect common control with, an obligor upon the indenture securities;

(8) such trustee is the beneficial owner of, or holds as collateral security for an obligation which is in default as hereinafter defined, 10 per centum or more of any class of security of any person who, to the knowledge of the trustee, owns 50 per centum or more of the voting securities of an obligor upon the indenture securities;

(9) such trustee owns, on the date of default upon the indenture securities (as such term is defined in such indenture but exclusive of any period of grace or requirement of notice) or any anniversary of such default while such default upon the indenture securities remains outstanding, in the capacity of executor, administrator, testamentary or inter vivos trustee, guardian, committee or conservator, or in any other similar capacity, an aggregate of 25 per centum or more of the voting securities, or of any class of security, of any person, the beneficial ownership of a specified

percentage of which would have constituted a conflicting interest under paragraph (6), (7), or (8) of this subsection. As to any such securities of which the indenture trustee acquired ownership through becoming executor, administrator or testamentary trustee of an estate which include them, the provisions of the preceding sentence shall not apply for a period of not more than 2 years from the date of such acquisition, to the extent that such securities included in such estate do not exceed 25 per centum of such voting securities or 25 per centum of any such class of security. Promptly after the dates of any such default upon the indenture securities and annually in each succeeding year that the indenture securities remain in default the trustee shall make a check of its holding of such securities in any of the above-mentioned capacities as of such dates. If the obligor upon the indenture securities fails to make payment in full of principal or interest under such indenture when and as the same becomes due and payable, and such failure continues for 30 days thereafter, the trustee shall make a prompt check of its holdings of such securities in any of the above-mentioned capacities as of the date of the expiration of such 30-day period, and after such date, notwithstanding the foregoing provisions of this paragraph, all such securities so held by the trustee, with sole or joint control over such securities vested in it, shall be considered as though beneficially owned by such trustee, for the purposes of paragraphs (6), (7), and (8) of this subsection; or

(10) except under the circumstances described in paragraphs [3] (1), (3), (4), (5) or (6) of section 77kkk(b) of this title, the trustee shall be or shall become a creditor of the obligor.

For purposes of paragraph (1) of this subsection, and of section 77ppp(a) of this title, the term "series of securities" or "series" means a series, class or group of securities issuable under an indenture pursuant to whose terms holders of one such series may vote to direct the indenture trustee, or otherwise take action pursuant to a vote of such holders, separately from holders of another such series: *Provided*, That "series of securities" or "series" shall not include any series of securities issuable under an indenture if all such series rank equally and are wholly unsecured.

The specification of percentages in paragraphs (5) to (9), inclusive, of this subsection shall not be construed as indicating that the ownership of such percentages of the securities of a person is or is not necessary or sufficient to constitute direct or indirect control for the purposes of paragraph (3) or (7) of this subsection.

For the purposes of paragraphs (6), (7), (8), and (9) of this subsection—

(A) the terms "security" and "securities" shall include only such securities as are generally known as corporate securities, but shall not include any note or other evidence of indebtedness issued to evidence an obligation to repay moneys lent to a person by one or more banks, trust companies, or banking firms, or any certificate of interest or participation in any such note or evidence of indebtedness;

(B) an obligation shall be deemed to be in default when a default in payment of principal shall have continued for thirty days or more, and shall not have been cured; and

(C) the indenture trustee shall not be deemed the owner or holder of (i) any security which it holds as collateral security (as trustee or otherwise) for any obligation which is not in default as above defined, or (ii) any security which it holds as collateral security under the indenture to be qualified, irrespective of any default thereunder, or (iii) any security which it holds as agent for collection, or as custodian, escrow agent or depositary, or in any similar representative capacity.

For the purposes of this subsection, the term "underwriter" when used with reference to an obligor upon the indenture securities means every person who, within one year prior to the time as of which the determination is made, was an underwriter of any security of such obligor outstanding at the time of the determination.

Except in the case of a default in the payment of the principal of or interest on any indenture security, or in the payment of any sinking or purchase fund installment, the indenture trustee shall not be required to resign as provided by this subsection if such trustee shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that—

(i) the default under the indenture may be cured or waived during a reasonable period and under the procedures described in such application, and

(ii) a stay of the trustee's duty to resign will not be inconsistent with the interests of holders of the indenture securities. The filing of such an application shall automatically stay the performance of the duty to resign until the Commission orders otherwise.

Any resignation of an indenture trustee shall become effective only upon the appointment of a successor trustee and such successor's acceptance of such an appointment.

(May 27, 1933, ch. 38, title III, §310, as added Aug. 3, 1939, ch. 411, 53 Stat. 1157; amended Pub. L. 101–550, title IV, §§406–408, Nov. 15, 1990, 104 Stat. 2723, 2724; Pub. L. 111–203, title IX, §986(b)(3), July 21, 2010, 124 Stat. 1936.)

AMENDMENTS

2010—Subsec. (c). Pub. L. 111–203 struck out subsec. (c). Text read as follows: "The Public Utility Holding Company Act of 1935 shall not be held to establish or authorize the establishment of any standards regarding the eligibility and qualifications of any trustee or prospective trustee under an indenture to be qualified under this subchapter, or regarding the provisions to be included in any such indenture with respect to the eligibility and qualifications of the trustee thereunder, other than those established by the provisions of this section."

1990—Subsec. (a)(1). Pub. L. 101–550, §406(1)–(4), substituted "There shall" for "The indenture to be qualified shall require that there shall", and "under every indenture qualified or to be qualified pursuant to this subchapter" for "thereunder", inserted "or a corporation or other person permitted to act as trustee by the Commission" before "(referred to", and inserted at end "The Commission may, pursuant to such rules and regulations as it may prescribe, or by order on application, permit a corporation or other person organized and doing business under the laws of a foreign government to act as sole trustee under an indenture qualified or to be qualified pursuant to this subchapter, if such corporation or other person (i) is authorized under such laws to exercise corporate trust powers, and (ii) is subject to supervision or examination by authority of such foreign government or a political subdivision thereof substantially equivalent to supervision or examination applicable to United States institutional trustees. In prescribing such rules and regulations or making such order, the Commission shall consider whether under such laws, a United States institutional trustee is eligible to act as sole trustee under an indenture relating to securities sold within the jurisdiction of such foreign government."

Subsec. (a)(2). Pub. L. 101–550, §406(5), which directed the substitution of "Such institution" for "The indenture to be qualified shall require that such institution", was executed by making the substitution for "The indenture to be qualified shall require that such institutional", as the probable intent of Congress.

Subsec. (a)(3). Pub. L. 101–550, §406(6), struck out "such indenture shall provide that" before "the rights".

Subsec. (a)(4). Pub. L. 101–550, §406(7), (8), struck out "the indenture to be qualified shall require that" before "the indenture" and inserted "shall" after "trustee or trustees".

Subsec. (a)(5). Pub. L. 101–550, §407, added par. (5).

Subsec. (b). Pub. L. 101–550, §408, amended subsec. (b) generally.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

[1] *So in original. Probably should be "institutional".*

[2] *So in original. Probably should be "indenture".*

[3] *So in original. Probably should be "paragraph".*

§77kkk. Preferential collection of claims against obligor

(a) Trustee as creditor of obligor

Subject to the provisions of subsection (b) of this section, if the indenture trustee shall be, or shall become, a creditor, directly or indirectly, secured or unsecured, of an obligor upon the indenture securities, within three months prior to a default as defined in the last paragraph of this subsection, or subsequent to such a default, then, unless and until such default shall be cured, such trustee shall set apart and hold in a special account for the benefit of the trustee individually and the indenture security holders—

(1) an amount equal to any and all reductions in the amount due and owing upon any claim as such creditor in respect of principal or interest, effected after the beginning of such three months' period and valid as against such obligor and its other creditors, except any such reduction resulting from the receipt or disposition of any property described in paragraph (2) of this subsection, or from the exercise of any right of setoff which the trustee could have exercised if a petition in bankruptcy had been filed by or against such obligor upon the date of such default; and

(2) all property received in respect of any claim as such creditor, either as security therefor, or in satisfaction or composition thereof, or otherwise, after the beginning of such three months' period, or an amount equal to the proceeds of any such property, if disposed of, subject, however, to the rights, if any, of such obligor and its other creditors in such property or such proceeds.

Nothing herein contained shall affect the right of the indenture trustee—

(A) to retain for its own account (i) payments made on account of any such claim by any person (other than such obligor) who is liable thereon, and (ii) the proceeds of the bona fide sale of any such claim by the trustee to a third person, and (iii) distributions made in cash, securities, or other property in respect of claims filed against such obligor in bankruptcy or receivership or in proceedings for reorganization pursuant to the Bankruptcy Act or applicable State law;

(B) to realize, for its own account, upon any property held by it as security for any such claim, if such property was so held prior to the beginning of such three months' period;

(C) to realize, for its own account, but only to the extent of the claim hereinafter mentioned, upon any property held by it as security for any such claim, if such claim was created after the beginning of such three months' period and such property was received as security therefor simultaneously with the creation thereof, and if the trustee shall sustain the burden of proving that at the time such property was so received the trustee had no reasonable cause to believe that a default as defined in the last paragraph of this subsection would occur within three months; or

(D) to receive payment on any claim referred to in paragraph (B) or (C) of this subsection, against the release of any property held as security for such claim as provided in said paragraph (B) or (C), as the case may be, to the extent of the fair value of such property.

For the purposes of paragraphs (B), (C), and (D) of this subsection, property substituted after the beginning of such three months' period for property held as security at the time of such substitution shall, to the extent of the fair value of the property released, have the same status as the property released, and, to the extent that any claim referred to in any of such paragraphs is created in renewal of or in substitution for or for the purpose of repaying or refunding any preexisting claim of the indenture trustee as such creditor, such claim shall have the same status as such preexisting claim.

If the trustee shall be required to account, the funds and property held in such special account and the proceeds thereof shall be apportioned between the trustee and the indenture security holders in such manner that the trustee and the indenture security holders realize, as a result of payments from such special account and payments of dividends on claims filed against such obligor in bankruptcy or receivership or in proceedings for reorganization pursuant to the Bankruptcy Act or applicable State law, the same percentage of their respective claims, figured before crediting to the claim of the trustee anything on account of the receipt by it from such obligor of the funds and property in such special account and before crediting to the respective claims of the trustee and the indenture security

holders dividends on claims filed against such obligor in bankruptcy or receivership or in proceedings for reorganization pursuant to the Bankruptcy Act or applicable State law, but after crediting thereon receipts on account of the indebtedness represented by their respective claims from all sources other than from such dividends and from the funds and property so held in such special account. As used in this paragraph, with respect to any claim, the term "dividends" shall include any distribution with respect to such claim, in bankruptcy or receivership or in proceedings for reorganization pursuant to the Bankruptcy Act or applicable State law, whether such distribution is made in cash, securities, or other property, but shall not include any such distribution with respect to the secured portion, if any, of such claim. The court in which such bankruptcy, receivership, or proceeding for reorganization is pending shall have jurisdiction (i) to apportion between the indenture trustee and the indenture security holders, in accordance with the provisions of this paragraph, the funds and property held in such special account and the proceeds thereof, or (ii) in lieu of such apportionment, in whole or in part, to give to the provisions of this paragraph due consideration in determining the fairness of the distributions to be made to the indenture trustee and the indenture security holders with respect to their respective claims, in which event it shall not be necessary to liquidate or to appraise the value of any securities or other property held in such special account or as security for any such claim, or to make a specific allocation of such distributions as between the secured and unsecured portions of such claims, or otherwise to apply the provisions of this paragraph as a mathematical formula.

Any indenture trustee who has resigned or been removed after the beginning of such three months' period shall be subject to the provisions of this subsection as though such resignation or removal had not occurred. Any indenture trustee who has resigned or been removed prior to the beginning of such three months' period shall be subject to the provisions of this subsection if and only if the following conditions exist—

(i) the receipt of property or reduction of claim which would have given rise to the obligation to account, if such indenture trustee had continued as trustee, occurred after the beginning of such three months' period; and

(ii) such receipt of property or reduction of claim occurred within three months after such resignation or removal.

As used in this subsection, the term "default" means any failure to make payment in full of principal or interest, when and as the same becomes due and payable, under any indenture which has been qualified under this subchapter, and under which the indenture trustee is trustee and the person of whom the indenture trustee is directly or indirectly a creditor is an obligor; and the term "indenture security holder" means all holders of securities outstanding under any such indenture under which any such default exists. In any case commenced under the Bankruptcy Act of July 1, 1898, or any amendment thereto enacted prior to November 6, 1978, all references to periods of three months shall be deemed to be references to periods of four months.

(b) Exclusion of creditor relationship arising from specified classes

The indenture to be qualified shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to contain provisions excluding from the operation of subsection (a) of this section a creditor relationship arising from—

(1) the ownership or acquisition of securities issued under any indenture, or any security or securities having a maturity of one year or more at the time of acquisition by the indenture trustee;

(2) advances authorized by a receivership or bankruptcy court of competent jurisdiction, or by the indenture, for the purpose of preserving the property subject to the lien of the indenture or of discharging tax liens or other prior liens or encumbrances on the trust estate, if notice of such advance and of the circumstances surrounding the making thereof is given to the indenture security holders, at the time and in the manner provided in the indenture;

(3) disbursements made in the ordinary course of business in the capacity of trustee under an indenture, transfer agent, registrar, custodian, paying agent, fiscal agent or depositary, or other similar capacity;

(4) an indebtedness created as a result of services rendered or premises rented; or an

indebtedness created as a result of goods or securities sold in a cash transaction as defined in the indenture;

(5) the ownership of stock or of other securities of a corporation organized under the provisions of section 25(a) [1] of the Federal Reserve Act, as amended [12 U.S.C. 611 et seq.], which is directly or indirectly a creditor of an obligor upon the indenture securities; or

(6) the acquisition, ownership, acceptance, or negotiation of any drafts, bills of exchange, acceptances, or obligations which fall within the classification of self-liquidating paper as defined in the indenture.

(May 27, 1933, ch. 38, title III, §311, as added Aug. 3, 1939, ch. 411, 53 Stat. 1161; amended Pub. L. 101–550, title IV, §409, Nov. 15, 1990, 104 Stat. 2728; Pub. L. 111–203, title IX, §986(b)(4), July 21, 2010, 124 Stat. 1936.)

REFERENCES IN TEXT

Section 25(a) of the Federal Reserve Act, as amended, referred to in subsec. (b)(5), which is classified to subchapter II (§611 et seq.) of chapter 6 of Title 12, Banks and Banking, was renumbered section 25A of that act by Pub. L. 102–242, title I, §142(e)(2), Dec. 19, 1991, 105 Stat. 2281.

AMENDMENTS

2010—Subsec. (c). Pub. L. 111–203 struck out subsec. (c) which related to issue or sale of securities by a registered holding company.

1990—Subsec. (a). Pub. L. 101–550, §409(1)–(4), struck out "the indenture to be qualified shall provide that" before "if" in first par., substituted "If" for "The indenture to be qualified shall provide that, if" in third par., substituted "three months" for "four months" and "three months' " for "four months' " wherever appearing, and inserted at end "In any case commenced under the Bankruptcy Act of July 1, 1898, or any amendment thereto enacted prior to November 6, 1978, all references to periods of three months shall be deemed to be references to periods of four months."

Subsec. (b). Pub. L. 101–550, §409(5), substituted "shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to" for "may".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

[1] *See References in Text note below.*

§77*lll*. Bondholders' lists

(a) Periodic filing of information by obligor with trustee

Each obligor upon the indenture securities shall furnish or cause to be furnished to the institutional trustee thereunder at stated intervals of not more than six months, and at such other times as such trustee may request in writing, all information in the possession or control of such obligor, or of any of its paying agents, as to the names and addresses of the indenture security holders, and requiring such trustee to preserve, in as current a form as is reasonably practicable, all such information so furnished to it or received by it in the capacity of paying agent.

(b) Access of information to security holders

Within five business days after the receipt by the institutional trustee of a written application by any three or more indenture security holders stating that the applicants desire to communicate with other indenture security holders with respect to their rights under such indenture or under the

indenture securities, and accompanied by a copy of the form of proxy or other communication which such applicants propose to transmit, and by reasonable proof that each such applicant has owned an indenture security for a period of at least six months preceding the date of such application, such institutional trustee shall, at its election, either—

(1) afford to such applicants access to all information so furnished to or received by such trustee; or

(2) inform such applicants as to the approximate number of indenture security holders according to the most recent information so furnished to or received by such trustee, and as to the approximate cost of mailing to such indenture security holders the form of proxy or other communication, if any, specified in such application.

If such trustee shall elect not to afford to such applicants access to such information, such trustee shall, upon the written request of such applicants, mail to all such indenture security holders copies of the form of proxy or other communication which is specified in such request, with reasonable promptness after a tender to such trustee of the material to be mailed and of payment, or provision for the payment, of the reasonable expenses of such mailing, unless within five days after such tender, such trustee shall mail to such applicants, and file with the Commission together with a copy of the material to be mailed, a written statement to the effect that, in the opinion of such trustee, such mailing would be contrary to the best interests of the indenture security holders or would be in violation of applicable law. Such written statement shall specify the basis of such opinion. After opportunity for hearing upon the objections specified in the written statement so filed, the Commission may, and if demanded by such trustee or by such applicants shall, enter an order either sustaining one or more of such objections or refusing to sustain any of them. If the Commission shall enter an order refusing to sustain any of such objections, or if, after the entry of an order sustaining one or more of such objections, the Commission shall find, after notice and opportunity for hearing, that all objections so sustained have been met, and shall enter an order so declaring, such trustee shall mail copies of such material to all such indenture security holders with reasonable promptness after the entry of such order and the renewal of such tender.

(c) Disclosure of information deemed not violative of any law

The disclosure of any such information as to the names and addresses of the indenture security holders in accordance with the provisions of this section, regardless of the source from which such information was derived, shall not be deemed to be a violation of any existing law, or of any law hereafter enacted which does not specifically refer to this section, nor shall such trustee be held accountable by reason of mailing any material pursuant to a request made under subsection (b) of this section.

(May 27, 1933, ch. 38, title III, §312, as added Aug. 3, 1939, ch. 411, 53 Stat. 1164; amended Pub. L. 101–550, title IV, §410, Nov. 15, 1990, 104 Stat. 2728.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–550, §410(1), (2), substituted "Each obligor" for "The indenture to be qualified shall contain provisions requiring each obligor" and "indenture securities shall" for "indenture securities to".

Subsec. (b). Pub. L. 101–550, §410(3), substituted "Within" for "The indenture to be qualified shall also contain provisions requiring that, within".

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§77mmm. Reports by indenture trustee

(a) Report to security holders; time; contents

The indenture trustee shall transmit to the indenture security holders as hereinafter provided, at stated intervals of not more than 12 months, a brief report with respect to any of the following events which may have occurred within the previous 12 months (but if no such event has occurred within such period no report need be transmitted):— [1]

(1) any change to its eligibility and its qualifications under section 77jjj of this title;

(2) the creation of or any material change to a relationship specified in paragraph [2] (1) through (10) of section 77jjj(b) of this title;

(3) the character and amount of any advances made by it, as indenture trustee, which remain unpaid on the date of such report, and for the reimbursement of which it claims or may claim a lien or charge, prior to that of the indenture securities, on the trust estate or on property or funds held or collected by it as such trustee, if such advances so remaining unpaid aggregate more than one-half of 1 per centum of the principal amount of the indenture securities outstanding on such date;

(4) any change to the amount, interest rate, and maturity date of all other indebtedness owning to it in its individual capacity, on the date of such report, by the obligor upon the indenture securities, with a brief description of any property held as collateral security therefor, except an indebtedness based upon a creditor relationship arising in any manner described in paragraphs (2), (3), (4), or (6) of subsection (b) of section 77kkk of this title;

(5) any change to the property and funds physically in its possession as indenture trustee on the date of such report;

(6) any release, or release and substitution, of property subject to the lien of the indenture (and the consideration therefor, if any) which it has not previously reported;

(7) any additional issue of indenture securities which it has not previously reported; and

(8) any action taken by it in the performance of its duties under the indenture which it has not previously reported and which in its opinion materially affects the indenture securities or the trust estate, except action in respect of a default, notice of which has been or is to be withheld by it in accordance with an indenture provision authorized by subsection (b) of section 77ooo of this title.

(b) Additional reports to security holders

The indenture trustee shall transmit to the indenture security holders as hereinafter provided, within the times hereinafter specified, a brief report with respect to—

(1) the release, or release and substitution, of property subject to the lien of the indenture (and the consideration therefor, if any) unless the fair value of such property, as set forth in the certificate or opinion required by paragraph (1) of subsection (d) of section 77nnn of this title, is less than 10 per centum of the principal amount of indenture securities outstanding at the time of such release, or such release and substitution, such report to be so transmitted within 90 days after such time; and

(2) the character and amount of any advances made by it as such since the date of the last report transmitted pursuant to the provisions of subsection (a) of this section (or if no such report has yet been so transmitted, since the date of execution of the indenture), for the reimbursement of which it claims or may claim a lien or charge, prior to that of the indenture securities, on the trust estate or on property or funds held or collected by it as such trustee, and which it has not previously reported pursuant to this paragraph, if such advances remaining unpaid at any time aggregate more than 10 per centum of the principal amount of indenture securities outstanding at such time, such report to be so transmitted within 90 days after such time.

(c) Additional parties to whom reports to be transmitted

Reports pursuant to this section shall be transmitted by mail—

(1) to all registered holders of indenture securities, as the names and addresses of such holders appear upon the registration books of the obligor upon the indenture securities;

(2) to such holders of indenture securities as have, within the two years preceding such transmission, filed their names and addresses with the indenture trustee for that purpose; and

(3) except in the case of reports pursuant to subsection (b) of this section, to all holders of indenture securities whose names and addresses have been furnished to or received by the

indenture trustee pursuant to section 77lll of this title.

(d) Filing of report with stock exchanges

A copy of each such report shall, at the time of such transmission to indenture security holders, be filed with each stock exchange upon which the indenture securities are listed, and also with the Commission.

(May 27, 1933, ch. 38, title III, §313, as added Aug. 3, 1939, ch. 411, 53 Stat. 1165; amended Pub. L. 101–550, title IV, §§411, 412, Nov. 15, 1990, 104 Stat. 2729; Pub. L. 105–353, title III, §301(e)(3), Nov. 3, 1998, 112 Stat. 3237.)

AMENDMENTS

1998—Subsec. (a)(4). Pub. L. 105–353, §301(e)(3)(A), inserted "any change to" before "the amount".

Subsec. (a)(6). Pub. L. 105–353, §301(e)(3)(B), struck out "any change to" before "any release".

1990—Subsec. (a). Pub. L. 101–550, §411(1), (2), substituted "The indenture trustee shall" for "The indenture to be qualified shall contain provisions requiring the indenture trustee to" and inserted "any of the following events which may have occurred within the previous 12 months (but if no such event has occurred within such period no report need be transmitted):" after "a brief report with respect to".

Subsec. (a)(1). Pub. L. 101–550, §411(3), (4), inserted "any change to" before "its eligibility" and struck out ", or in lieu thereof, if to the best of its knowledge it has continued to be eligible and qualified under such section, a written statement to such effect" after "of this title".

Subsec. (a)(2). Pub. L. 101–550, §411(5), added par. (2) and redesignated former par. (2) as (3).

Subsec. (a)(3), (4). Pub. L. 101–550, §411(5)(A), redesignated pars. (2) and (3) as (3) and (4), respectively. Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 101–550, §411(5)(A), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Pub. L. 101–550, §411(3), inserted "any change to" after the paragraph designation.

Subsec. (a)(6). Pub. L. 101–550, §411(5)(A), redesignated par. (5) as (6). Former par. (6) redesignated (7).

Pub. L. 101–550, §411(3), inserted "any change to" after the paragraph designation.

Subsec. (a)(7), (8). Pub. L. 101–550, §411(5)(A), redesignated pars. (6) and (7) as (7) and (8), respectively.

Subsec. (b). Pub. L. 101–550, §412(1), substituted "The indenture trustee shall" for "The indenture to be qualified shall also contain provisions requiring the indenture trustee to".

Subsec. (c). Pub. L. 101–550, §412(2), substituted "Reports" for "The indenture to be qualified shall also provide that reports".

Subsec. (d). Pub. L. 101–550, §412(3), substituted "A copy" for "The indenture to be qualified shall also provide that a copy".

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

[1] So in original. The colon probably should not appear.

[2] So in original. Probably should be "paragraphs".

§77nnn. Reports by obligor; evidence of compliance with indenture provisions

(a) Periodic reports

Each person who, as set forth in the registration statement or application, is or is to be an obligor upon the indenture securities covered thereby shall—

(1) file with the indenture trustee copies of the annual reports and of the information, documents, and other reports (or copies of such portions of any of the foregoing as the Commission may by rules and regulations prescribe) which such obligor is required to file with the Commission pursuant to section 78m or 78o(d) of this title; or, if the obligor is not required to file information, documents, or reports pursuant to either of such sections, then to file with the indenture trustee and the Commission, in accordance with rules and regulations prescribed by the

Commission, such of the supplementary and periodic information, documents, and reports which may be required pursuant to section 78m of this title, in respect of a security listed and registered on a national securities exchange as may be prescribed in such rules and regulations;

(2) file with the indenture trustee and the Commission, in accordance with rules and regulations prescribed by the Commission, such additional information, documents, and reports with respect to compliance by such obligor with the conditions and covenants provided for in the indenture, as may be required by such rules and regulations, including, in the case of annual reports, if required by such rules and regulations, certificates or opinions of independent public accountants, conforming to the requirements of subsection (e) of this section, as to compliance with conditions or covenants, compliance with which is subject to verification by accountants, but no such certificate or opinion shall be required as to any matter specified in clauses (A), (B), or (C) of paragraph (3) of subsection (c) of this section;

(3) transmit to the holders of the indenture securities upon which such person is an obligor, in the manner and to the extent provided in subsection (c) of section 77mmm of this title, such summaries of any information, documents, and reports required to be filed by such obligor pursuant to the provisions of paragraph (1) or (2) of this subsection as may be required by rules and regulations prescribed by the Commission; and

(4) furnish to the indenture trustee, not less often than annually, a brief certificate from the principal executive officer, principal financial officer or principal accounting officer as to his or her knowledge of such obligor's compliance with all conditions and covenants under the indenture. For purposes of this paragraph, such compliance shall be determined without regard to any period of grace or requirement of notice provided under the indenture.

The rules and regulations prescribed under this subsection shall be such as are necessary or appropriate in the public interest or for the protection of investors, having due regard to the types of indentures, and the nature of the business of the class of obligors affected thereby, and the amount of indenture securities outstanding under such indentures, and, in the case of any such rules and regulations prescribed after the indentures to which they apply have been qualified under this subchapter, the additional expense, if any, of complying with such rules and regulations. Such rules and regulations may be prescribed either before or after qualification becomes effective as to any such indenture.

(b) Evidence of recording of indenture

If the indenture to be qualified is or is to be secured by the mortgage or pledge of property, the obligor upon the indenture securities shall furnish to the indenture trustee—

(1) promptly after the execution and delivery of the indenture, an opinion of counsel (who may be of counsel for such obligor) either stating that in the opinion of such counsel the indenture has been properly recorded and filed so as to make effective the lien intended to be created thereby, and reciting the details of such action, or stating that in the opinion of such counsel no such action is necessary to make such lien effective; and

(2) at least annually after the execution and delivery of the indenture, an opinion of counsel (who may be of counsel for such obligor) either stating that in the opinion of such counsel such action has been taken with respect to the recording, filing, re-recording, and refiling of the indenture as is necessary to maintain the lien of such indenture, and reciting the details of such action, or stating that in the opinion of such counsel no such action is necessary to maintain such lien.

(c) Evidence of compliance with conditions precedent

The obligor upon the indenture securities shall furnish to the indenture trustee evidence of compliance with the conditions precedent, if any, provided for in the indenture (including any covenants compliance with which constitutes a condition precedent) which relate to the authentication and delivery of the indenture securities, to the release or the release and substitution of

property subject to the lien of the indenture, to the satisfaction and discharge of the indenture, or to any other action to be taken by the indenture trustee at the request or upon the application of such obligor. Such evidence shall consist of the following:

(1) certificates or opinions made by officers of such obligor who are specified in the indenture, stating that such conditions precedent have been complied with;

(2) an opinion of counsel (who may be of counsel for such obligor) stating that in his opinion such conditions precedent have been complied with; and

(3) in the case of conditions precedent compliance with which is subject to verification by accountants (such as conditions with respect to the preservation of specified ratios, the amount of net quick assets, negative-pledge clauses, and other similar specific conditions), a certificate or opinion of an accountant, who, in the case of any such conditions precedent to the authentication and delivery of indenture securities, and not otherwise, shall be an independent public accountant selected or approved by the indenture trustee in the exercise of reasonable care, if the aggregate principal amount of such indenture securities and of other indenture securities authenticated and delivered since the commencement of the then current calendar year (other than those with respect to which a certificate or opinion of an accountant is not required, or with respect to which a certificate or opinion of an independent public accountant has previously been furnished) is 10 per centum or more of the aggregate amount of the indenture securities at the time outstanding; but no certificate or opinion need be made by any person other than an officer or employee of such obligor who is specified in the indenture, as to (A) dates or periods not covered by annual reports required to be filed by the obligor, in the case of conditions precedent which depend upon a state of facts as of a date or dates or for a period or periods different from that required to be covered by such annual reports, or (B) the amount and value of property additions, except as provided in paragraph (3) of subsection (d) of this section, or (C) the adequacy of depreciation, maintenance, or repairs.

(d) Certificates of fair value

If the indenture to be qualified is or is to be secured by the mortgage or pledge of property or securities, the obligor upon the indenture securities shall furnish to the indenture trustee a certificate or opinion of an engineer, appraiser, or other expert as to the fair value—

(1) of any property or securities to be released from the lien of the indenture, which certificate or opinion shall state that in the opinion of the person making the same the proposed release will not impair the security under such indenture in contravention of the provisions thereof, and requiring further that such certificate or opinion shall be made by an independent engineer, appraiser, or other expert, if the fair value of such property or securities and of all other property or securities released since the commencement of the then current calendar year, as set forth in the certificates or opinions required by this paragraph, is 10 per centum or more of the aggregate principal amount of the indenture securities at the time outstanding; but such a certificate or opinion of an independent engineer, appraiser, or other expert shall not be required in the case of any release of property or securities, if the fair value thereof as set forth in the certificate or opinion required by this paragraph is less than $25,000 or less than 1 per centum of the aggregate principal amount of the indenture securities at the time outstanding;

(2) to such obligor of any securities (other than indenture securities and securities secured by a lien prior to the lien of the indenture upon property subject to the lien of the indenture), the deposit of which with the trustee is to be made the basis for the authentication and delivery of indenture securities, the withdrawal of cash constituting a part of the trust estate or the release of property or securities subject to the lien of the indenture, and requiring further that if the fair value to such obligor of such securities and of all other such securities made the basis of any such authentication and delivery, withdrawal, or release since the commencement of the then current calendar year, as set forth in the certificates or opinions required by this paragraph, is 10 per centum or more of the aggregate principal amount of the indenture securities at the time outstanding, such certificate or opinion shall be made by an independent engineer, appraiser, or other expert and, in the case of the authentication and delivery of indenture securities, shall cover the fair value to such obligor of all other such securities so deposited since the commencement of the current calendar year as to

which a certificate or opinion of an independent engineer, appraiser, or other expert has not previously been furnished; but such a certificate of an independent engineer, appraiser, or other expert shall not be required with respect to any securities so deposited, if the fair value thereof to such obligor as set forth in the certificate or opinion required by this paragraph is less than $25,000 or less than 1 per centum of the aggregate principal amount of the indenture securities at the time outstanding; and

(3) to such obligor of any property the subjection of which to the lien of the indenture is to be made the basis for the authentication and delivery of indenture securities, the withdrawal of cash constituting a part of the trust estate, or the release of property or securities subject to the lien of the indenture, and requiring further that if

(A) within six months prior to the d'te of acquisition thereof by such obligor, such property has been used or operated, by a person or persons other than such obligor, in a business similar to that in which it has been or is to be used or operated by such obligor, and

(B) the fair value to such obligor of such property as set forth in such certificate or opinion is not less than $25,000 and not less than 1 per centum of the aggregate principal amount of the indenture securities at the time outstanding,

such certificate or opinion shall be made by an independent engineer, appraiser, or other expert and, in the case of the authentication and delivery of indenture securities, shall cover the fair value to the obligor of any property so used or operated which has been so subjected to the lien of the indenture since the commencement of the then current calendar year, and as to which a certificate or opinion of an independent engineer, appraiser, or other expert has not previously been furnished.

The indenture to be qualified shall automatically be deemed (unless it is expressly provided therein that such provision is excluded) to provide that any such certificate or opinion may be made by an officer or employee of the obligor upon the indenture securities who is duly authorized to make such certificate or opinion by the obligor from time to time, except in cases in which this subsection requires that such certificate or opinion be made by an independent person. In such cases, such certificate or opinion shall be made by an independent engineer, appraiser, or other expert selected or approved by the indenture trustee in the exercise of reasonable care.

(e) Recitals as to basis of certificate or opinion

Each certificate or opinion with respect to compliance with a condition or covenant provided for in the indenture (other than certificates provided pursuant to subsection (a)(4) of this section) shall include (1) a statement that the person making such certificate or opinion has read such covenant or condition; (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (3) a statement that, in the opinion of such person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and (4) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with.

(f) Parties may provide for additional evidence

Nothing in this section shall be construed either as requiring the inclusion in the indenture to be qualified of provisions that the obligor upon the indenture securities shall furnish to the indenture trustee any other evidence of compliance with the conditions and covenants provided for in the indenture than the evidence specified in this section, or as preventing the inclusion of such provisions in such indenture, if the parties so agree.

(May 27, 1933, ch. 38, title III, §314, as added Aug. 3, 1939, ch. 411, 53 Stat. 1167; amended Pub. L. 101–550, title IV, §413, Nov. 15, 1990, 104 Stat. 2729.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–550, §413(1)–(6), in introductory provision substituted "Each" for "The

indenture to be qualified shall contain provisions requiring each" and inserted "shall" after "thereby" and in pars. (1) to (3) struck out "to" after the paragraph designation, and directed the addition of par. (4) at the end which was executed by inserting par. (4) after par. (3) to reflect the probable intent of Congress.

Subsec. (b). Pub. L. 101–550, §413(7), (8), struck out "such indenture shall contain provisions requiring" before "the obligor" and substituted "securities shall furnish" for "securities to furnish".

Subsec. (c). Pub. L. 101–550, §413(9), (10), substituted "The obligor" for "The indenture to be qualified shall contain provisions requiring the obligor" and "securities shall furnish" for "securities to furnish".

Subsec. (d). Pub. L. 101–550, §413(11), (13), (14), substituted "the obligor upon the indenture securities shall furnish to the indenture trustee a certificate or opinion of an engineer, appraiser, or other expert as to the fair value" for "such indenture shall contain provisions" in introductory provisions and "The indenture to be qualified shall automatically be deemed (unless it is expressly provided therein that such provision is excluded) to provide that" for "If the indenture to be qualified so provides," and "duly authorized to make such certificate or opinion by the obligor from time to time" for "specified in the indenture" in penultimate sentence.

Subsec. (d)(1) to (3). Pub. L. 101–550, §413(12), which directed that "requiring the obligor upon the indenture securities to furnish to the indenture trustee a certificate or opinion of an engineer, appraiser or other expert as to the fair value" be struck out after the paragraph designations in pars. (1) to (3), was executed by striking out "requiring the obligor upon the indenture securities to furnish to the indenture trustee a certificate or opinion of an engineer, appraiser, or other expert as to the fair value", as the probable intent of Congress.

Subsec. (e). Pub. L. 101–550, §413(15), inserted "(other than certificates provided pursuant to subsection (a)(4) of this section)" after "indenture".

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§77*ooo*. Duties and responsibility of the trustee

(a) Duties prior to default

The indenture to be qualified shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to provide that, prior to default (as such term is defined in such indenture)—

(1) the indenture trustee shall not be liable except for the performance of such duties as are specifically set out in such indenture; and

(2) the indenture trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, in the absence of bad faith on the part of such trustee, upon certificates or opinions conforming to the requirements of the indenture;

but the indenture trustee shall examine the evidence furnished to it pursuant to section 77nnn of this title to determine whether or not such evidence conforms to the requirements of the indenture.

(b) Notice of defaults

The indenture trustee shall give to the indenture security holders, in the manner and to the extent provided in subsection (c) of section 77mmm of this title, notice of all defaults known to the trustee, within ninety days after the occurrence thereof: *Provided*, That such indenture shall automatically be deemed (unless it is expressly provided therein that such provision is excluded) to provide that, except in the case of default in the payment of the principal of or interest on any indenture security, or in the payment of any sinking or purchase fund installment, the trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee, or a trust committee of directors and/or responsible officers, of the trustee in good faith determine that the withholding of such notice is in the interests of the indenture security holders.

(c) Duties of the trustee in case of default

The indenture trustee shall exercise in case of default (as such term is defined in such indenture)

such of the rights and powers vested in it by such indenture, and to use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(d) Responsibility of the trustee

The indenture to be qualified shall not contain any provisions relieving the indenture trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that—

(1) such indenture shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to contain the provisions authorized by paragraphs (1) and (2) of subsection (a) of this section;

(2) such indenture shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to contain provisions protecting the indenture trustee from liability for any error of judgment made in good faith by a responsible officer or officers of such trustee, unless it shall be proved that such trustee was negligent in ascertaining the pertinent facts; and

(3) such indenture shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to contain provisions protecting the indenture trustee with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the holders of not less than a majority in principal amount of the indenture securities at the time outstanding (determined as provided in subsection (a) of section 77ppp of this title) relating to the time, method, and place of conducting any proceeding for any remedy available to such trustee, or exercising any trust or power conferred upon such trustee, under such indenture.

(e) Undertaking for costs

The indenture to be qualified shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to contain provisions to the effect that all parties thereto, including the indenture security holders, agree that the court may in its discretion require, in any suit for the enforcement of any right or remedy under such indenture, or in any suit against the trustee for any action taken or omitted by it as trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorney's fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant: *Provided*, That the provisions of this subsection shall not apply to any suit instituted by such trustee, to any suit instituted by any indenture security holder, or group of indenture security holders, holding in the aggregate more than 10 per centum in principal amount of the indenture securities outstanding, or to any suit instituted by any indenture security holder for the enforcement of the payment of the principal of or interest on any indenture security, on or after the respective due dates expressed in such indenture security.

(May 27, 1933, ch. 38, title III, §315, as added Aug. 3, 1939, ch. 411, 53 Stat. 1171; amended Pub. L. 101–550, title IV, §414, Nov. 15, 1990, 104 Stat. 2730.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–550, §414(1), (2), substituted "The indenture to be qualified shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to" for "The indenture to be qualified may" and "the indenture trustee shall examine" for "such indenture shall contain provisions requiring the indenture trustee to examine".

Subsec. (b). Pub. L. 101–550, §414(3), (4), substituted "The indenture trustee shall" for "The indenture to be qualified shall contain provisions requiring the indenture trustee to" and "That such indenture shall automatically be deemed (unless it is expressly provided therein that such provision is excluded) to" for "That such indenture may".

Subsec. (c). Pub. L. 101–550, §414(3), substituted "The indenture trustee shall" for "The indenture to be qualified shall contain provisions requiring the indenture trustee to".

Subsec. (d)(1) to (3). Pub. L. 101–550, §414(5), substituted "such indenture shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to" for "such indenture may".

Subsec. (e). Pub. L. 101–550, §414(1), substituted "The indenture to be qualified shall automatically be

deemed (unless it is expressly provided therein that any such provision is excluded) to" for "The indenture to be qualified may".

§77ppp. Directions and waivers by bondholders; prohibition of impairment of holder's right to payment; record date

(a) Directions and waivers by bondholders

The indenture to be qualified—

(1) shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to contain provisions authorizing the holders of not less than a majority in principal amount of the indenture securities or if expressly specified in such indenture, of any series of securities at the time outstanding (A) to direct the time, method, and place of conducting any proceeding for any remedy available to such trustee, or exercising any trust or power conferred upon such trustee, under such indenture, or (B) on behalf of the holders of all such indenture securities, to consent to the waiver of any past default and its consequences; or

(2) may contain provisions authorizing the holders of not less than 75 per centum in principal amount of the indenture securities or if expressly specified in such indenture, of any series of securities at the time outstanding to consent on behalf of the holders of all such indenture securities to the postponement of any interest payment for a period not exceeding three years from its due date.

For the purposes of this subsection and paragraph (3) of subsection (d) of section 77ooo of this title, in determining whether the holders of the required principal amount of indenture securities have concurred in any such direction or consent, indenture securities owned by any obligor upon the indenture securities, or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with any such obligor, shall be disregarded, except that for the purposes of determining whether the indenture trustee shall be protected in relying on any such direction or consent, only indenture securities which such trustee knows are so owned shall be so disregarded.

(b) Prohibition of impairment of holder's right to payment

Notwithstanding any other provision of the indenture to be qualified, the right of any holder of any indenture security to receive payment of the principal of and interest on such indenture security, on or after the respective due dates expressed in such indenture security, or to institute suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such holder, except as to a postponement of an interest payment consented to as provided in paragraph (2) of subsection (a) of this section, and except that such indenture may contain provisions limiting or denying the right of any such holder to institute any such suit, if and to the extent that the institution or prosecution thereof or the entry of judgment therein would, under applicable law, result in the surrender, impairment, waiver, or loss of the lien of such indenture upon any property subject to such lien.

(c) Record date

The obligor upon any indenture qualified under this subchapter may set a record date for purposes of determining the identity of indenture security holders entitled to vote or consent to any action by vote or consent authorized or permitted by subsection (a) of this section. Unless the indenture provides otherwise, such record date shall be the later of 30 days prior to the first solicitation of such consent or the date of the most recent list of holders furnished to the trustee pursuant to section 77lll of this title prior to such solicitation.

(May 27, 1933, ch. 38, title III, §316, as added Aug. 3, 1939, ch. 411, 53 Stat. 1172; amended Pub. L. 101–550, title IV, §415, Nov. 15, 1990, 104 Stat. 2731.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–550, §415(1)–(3), in introductory provisions struck out "may contain provisions" after "qualified", in par. (1) inserted "shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to contain provisions" before "authorizing the holders" and "or if expressly specified in such indenture, of any series of securities" after "principal amount of the indenture securities", and in par. (2) inserted "may contain provisions" before "authorizing the holders" and "or if expressly specified in such indenture, of any series of securities" after "principal amount of the indenture securities".

Subsec. (b). Pub. L. 101–550, §415(5), which directed the substitution of "of the indenture to be qualified" for "thereof", was executed by making the substitution for "thereof" the first time appearing, as the probable intent of Congress.

Subsec. (c). Pub. L. 101–550, §415(6), added subsec. (c).

§77qqq. Special powers of trustee; duties of paying agents

(a) The indenture trustee shall be authorized—

(1) in the case of a default in payment of the principal of any indenture security, when and as the same shall become due and payable, or in the case of a default in payment of the interest on any such security, when and as the same shall become due and payable and the continuance of such default for such period as may be prescribed in such indenture, to recover judgment, in its own name and as trustee of an express trust, against the obligor upon the indenture securities for the whole amount of such principal and interest remaining unpaid; and

(2) to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of such trustee and of the indenture security holders allowed in any judicial proceedings relative to the obligor upon the indenture securities, its creditors, or its property.

(b) Each paying agent shall hold in trust for the benefit of the indenture security holders or the indenture trustee all sums held by such paying agent for the payment of the principal of or interest on the indenture securities, and shall give to such trustee notice of any default by any obligor upon the indenture securities in the making of any such payment.

(May 27, 1933, ch. 38, title III, §317, as added Aug. 3, 1939, ch. 411, 53 Stat. 1173; amended Pub. L. 101–550, title IV, §416, Nov. 15, 1990, 104 Stat. 2731; Pub. L. 111–203, title IX, §985(c)(2), July 21, 2010, 124 Stat. 1934.)

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111–203 substituted "(1) in the" for "(1) , in the".

1990—Subsec. (a). Pub. L. 101–550, §416(1)–(3), in introductory provisions, substituted "trustee shall be authorized" for "to be qualified shall contain provisions", in par. (1) struck out "authorizing the indenture trustee" after the paragraph designation, and in par. (2) struck out "authorizing such trustee" after the paragraph designation.

Subsec. (b). Pub. L. 101–550, §416(4), substituted "Each" for "The indenture to be qualified shall provide that each".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

§77rrr. Effect of prescribed indenture provisions

(a) Imposed duties to control

If any provision of the indenture to be qualified limits, qualifies, or conflicts with the duties imposed by operation of subsection (c) of this section, the imposed duties shall control.

(b) Additional provisions

The indenture to be qualified may contain, in addition to provisions specifically authorized under this subchapter to be included therein, any other provisions the inclusion of which is not in contravention of any provision of this subchapter.

(c) Provisions governing qualified indentures

The provisions of sections 77jjj to and including 77qqq of this title that impose duties on any person (including provisions automatically deemed included in an indenture unless the indenture provides that such provisions are excluded) are a part of and govern every qualified indenture, whether or not physically contained therein, shall be deemed retroactively to govern each indenture heretofore qualified, and prospectively to govern each indenture hereafter qualified under this subchapter and shall be deemed retroactively to amend and supersede inconsistent provisions in each such indenture heretofore qualified. The foregoing provisions of this subsection shall not be deemed to effect the inclusion (by retroactive amendment or otherwise) in the text of any indenture heretofore qualified of any of the optional provisions contemplated by section 77jjj(b)(1), 77kkk(b), 77nnn(d), 77ooo(a), 77ooo(b), 77ooo(d), 77ooo(e), or 77ppp(a)(1) of this title.

(May 27, 1933, ch. 38, title III, §318, as added Aug. 3, 1939, ch. 411, 53 Stat. 1173; amended Pub. L. 101–550, title IV, §417, Nov. 15, 1990, 104 Stat. 2731.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–550, §417(1), added subsec. (a) and struck out former subsec. (a) which read as follows: "The indenture to be qualified shall provide that if any provision thereof limits, qualifies, or conflicts with another provision which is required to be included in such indenture by any of sections 77jjj to 77qqq of this title, inclusive, such required provision shall control."

Subsec. (c). Pub. L. 101–550, §417(2), added subsec. (c).

§77sss. Rules, regulations, and orders

(a) Authority of Commission; subject matter of rules, etc.

The Commission shall have authority from time to time to make, issue, amend, and rescind such rules and regulations and such orders as it may deem necessary or appropriate in the public interest or for the protection of investors to carry out the provisions of this subchapter, including rules and regulations defining accounting, technical, and trade terms used in this subchapter. Among other things, the Commission shall have authority, (1) by rules and regulations, to prescribe for the purposes of section 77jjj(b) of this title the method (to be fixed in indentures to be qualified under this subchapter) of calculating percentages of voting securities and other securities; (2) by rules and regulations, to prescribe the definitions of the terms "cash transaction" and "self-liquidating paper" which shall be included in indentures to be qualified under this subchapter, which definitions shall include such of the creditor relationships referred to in paragraphs (4) and (6) of subsection (b) of section 77kkk of this title as to which the Commission determines that the application of subsection (a) of section 77kkk of this title is not necessary in the public interest or for the protection of investors, having due regard for the purposes of such subsection; and (3) for the purposes of this subchapter, to prescribe the form or forms in which information required in any statement, application, report, or other document filed with the Commission shall be set forth. For the purpose of its rules or regulations the Commission may classify persons, securities, indentures, and other matters within its jurisdiction and prescribe different requirements for different classes of persons, securities, indentures, or matters.

(b) Rules and regulations effective upon publication

Subject to the provisions of chapter 15 of title 44 and regulations prescribed under the authority thereof, the rules and regulations of the Commission under this subchapter shall be effective upon publication in the manner which the Commission shall prescribe, or upon such later date as may be provided in such rules and regulations.

(c) Exemption from liability for any acts taken in good faith in conformity with rules, etc.

No provision of this subchapter imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or order of the Commission, notwithstanding that such rule, regulation, or order may, after such act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(May 27, 1933, ch. 38, title III, §319, as added Aug. 3, 1939, ch. 411, 53 Stat. 1173; Pub. L. 105–353, title III, §301(e)(4), Nov. 3, 1998, 112 Stat. 3237.)

AMENDMENTS

1998—Subsec. (b). Pub. L. 105–353 substituted "chapter 15 of title 44" for "the Federal Register Act".

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§77ttt. Hearings by Commission

Hearings may be public and may be held before the Commission, any member or members thereof, or any officer or officers of the Commission designated by it, and appropriate records thereof shall be kept.

(May 27, 1933, ch. 38, title III, §320, as added Aug. 3, 1939, ch. 411, 53 Stat. 1174.)

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§77uuu. Special powers of the Commission

(a) Investigatory powers

For the purpose of any investigation or any other proceeding which, in the opinion of the Commission, is necessary and proper for the enforcement of this subchapter, any member of the Commission, or any officer thereof designated by it, is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records which the Commission deems relevant or material to the inquiry. Such attendance of witnesses and the production of any such books, papers, correspondence, memoranda, contracts, agreements, or other records may be required from any place in the United States or in any Territory at any designated place of investigation or hearing. In addition, the Commission shall have the powers with respect to investigations and hearings, and with respect to the enforcement of, and offenses and violations under, this subchapter and rules and regulations and orders prescribed under the authority thereof, provided in sections 77t and 77v(b), (c) of this title.

(b) Availability of reports from other offices; restrictions

The Treasury Department, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Reserve Banks, and the Federal Deposit Insurance Corporation are authorized, under such conditions as they may prescribe, to make available to the Commission such reports, records, or other information as they may have available with respect to trustees or prospective trustees under indentures qualified or to be qualified under this subchapter, and to make through their examiners or other employees for the use of the Commission, examinations of such trustees or prospective trustees. Every such trustee or prospective trustee shall, as a condition precedent to qualification of such indenture, consent that reports of examinations by Federal, State,

Territorial, or District authorities may be furnished by such authorities to the Commission upon request therefor.

Notwithstanding any provision of this subchapter, no report, record, or other information made available to the Commission under this subsection, no report of an examination made under this subsection for the use of the Commission, no report of an examination made of any trustee or prospective trustee by any Federal, State, Territorial, or District authority having jurisdiction to examine or supervise such trustee, no report made by any such trustee or prospective trustee to any such authority, and no correspondence between any such authority and any such trustee or prospective trustee, shall be divulged or made known or available by the Commission or any member, officer, agent, or employee thereof, to any person other than a member, officer, agent, or employee of the Commission: *Provided*, That the Commission may make available to the Attorney General of the United States, in confidence, any information obtained from such records, reports of examination, other reports, or correspondence, and deemed necessary by the Commission, or requested by him, for the purpose of enabling him to perform his duties under this subchapter.

(c) Investigation of prospective trustees

Any investigation of a prospective trustee, or any proceeding or requirement for the purpose of obtaining information regarding a prospective trustee, under any provision of this subchapter, shall be limited—

(1) to determining whether such prospective trustee is qualified to act as trustee under the provisions of subsection (b) of section 77jjj of this title;

(2) to requiring the inclusion in the registration statement or application of information with respect to the eligibility of such prospective trustee under paragraph (1) of subsection (a) of section 77jjj of this title; and

(3) to requiring the inclusion in the registration statement or application of the most recent published report of condition of such prospective trustee, as described in paragraph (2) of subsection (a) of section 77jjj of this title, or, if the indenture does not contain the provision with respect to combined capital and surplus authorized by the last sentence of paragraph (2) of subsection (a) of section 77jjj of this title, to determining whether such prospective trustee is eligible to act as such under paragraph (2) of subsection (a) of section 77jjj of this title.

(d) Appointment and compensation of employees; lease and allocation of real property

The provisions section 78d(b) of this title shall be applicable with respect to the power of the Commission—

(1) to appoint and fix the compensation of such employees as may be necessary for carrying out its functions under this subchapter, and

(2) to lease and allocate such real property as may be necessary for carrying out its functions under this subchapter.

(May 27, 1933, ch. 38, title III, §321, as added Aug. 3, 1939, ch. 411, 53 Stat. 1174; amended Pub. L. 101–550, title I, §104(b), Nov. 15, 1990, 104 Stat. 2714.)

AMENDMENTS

1990—Subsec. (d). Pub. L. 101–550 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "The provisions of section 78d(b) of this title shall be applicable with respect to the power of the Commission to appoint and fix the compensation of such officers, attorneys, examiners, and other experts, and such other officers and employees, as may be necessary for carrying out its functions under this subchapter."

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions of officers, agencies and employees of Department of the Treasury to Secretary of the Treasury, made by Reorg. Plan No. 26 of 1950, §1, eff. July 31, 1950, 15 F.R. 4935, 64 Stat.

1280. See section 321(c)(2) of Title 31, Money and Finance.

§77vvv. Judicial review

(a) Review of orders

Orders of the Commission under this subchapter (including orders pursuant to the provisions of sections 77eee(b) and 77ggg(c) of this title) shall be subject to review in the same manner, upon the same conditions, and to the same extent, as provided in section 9 of the Securities Act of 1933 [15 U.S.C. 77i], with respect to orders of the Commission under such Act.

(b) Jurisdiction of offenses and suits

Jurisdiction of offenses and violations under, and jurisdiction and venue of suits and actions brought to enforce any liability or duty created by, this subchapter, or any rules or regulations or orders prescribed under the authority thereof, shall be as provided in section 22(a) of the Securities Act of 1933 [15 U.S.C. 77v(a)].

(May 27, 1933, ch. 38, title III, §322, as added Aug. 3, 1939, ch. 411, 53 Stat. 1175; amended Pub. L. 101–550, title IV, §418, Nov. 15, 1990, 104 Stat. 2732.)

REFERENCES IN TEXT

Such Act, referred to in subsec. (a), means the Securities Act of 1933, approved May 27, 1933, ch. 38, title I, 48 Stat. 74, as amended, which is classified generally to subchapter I (§77a et seq.) of this chapter. For complete classification of this Act to the Code, see section 77a of this title and Tables.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–550 inserted "or duty" after "any liability".

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§77www. Liability for misleading statements

(a) Any person who shall make or cause to be made any statement in any application, report, or document filed with the Commission pursuant to any provisions of this subchapter, or any rule, regulation, or order thereunder, which statement was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or who shall omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, shall be liable to any person (not knowing that such statement was false or misleading or of such omission) who, in reliance upon such statement or omission, shall have purchased or sold a security issued under the indenture to which such application, report, or document relates, for damages caused by such reliance, unless the person sued shall prove that he acted in good faith and had no knowledge that such statement was false or misleading or of such omission. A person seeking to enforce such liability may sue at law or in equity in any court of competent jurisdiction. In any such suit the court may, in its discretion, require an undertaking for the payment of the costs of such suit and assess reasonable costs, including reasonable attorneys' fees, against either party litigant, having due regard to the merits and good faith of the suit or defense. No action shall be maintained to enforce any liability created under this section unless brought within one year after the discovery of the facts constituting the cause of action and within three years after such cause of action accrued.

(b) The rights and remedies provided by this subchapter shall be in addition to any and all other rights and remedies that may exist under the Securities Act of 1933 [15 U.S.C. 77a et seq.] or the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], or otherwise at law or in equity; but no

person permitted to maintain a suit for damages under the provisions of this subchapter shall recover, through satisfaction of judgment in one or more actions, a total amount in excess of his actual damages on account of the act complained of.

(May 27, 1933, ch. 38, title III, §323, as added Aug. 3, 1939, ch. 411, 53 Stat. 1176; amended Pub. L. 111–203, title IX, §986(b)(5), July 21, 2010, 124 Stat. 1936.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (b), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of this chapter. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (b), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–203 substituted "Securities Act of 1933 or the Securities Exchange Act of 1934" for "Securities Act of 1933, or the Securities Exchange Act of 1934, or the Public Utility Holding Company Act of 1935".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§77xxx. Unlawful representations

It shall be unlawful for any person in offering, selling or issuing any security to represent or imply in any manner whatsoever that any action or failure to act by the Commission in the administration of this subchapter means that the Commission has in any way passed upon the merits of, or given approval to, any trustee, indenture or security, or any transaction or transactions therein, or that any such action or failure to act with regard to any statement or report filed with or examined by the Commission pursuant to this subchapter or any rule, regulation, or order thereunder, has the effect of a finding by the Commission that such statement or report is true and accurate on its face or that it is not false or misleading.

(May 27, 1933, ch. 38, title III, §324, as added Aug. 3, 1939, ch. 411, 53 Stat. 1176; amended Aug. 10, 1954, ch. 667, title III, §305, 68 Stat. 688.)

AMENDMENTS

1954—Act Aug. 10, 1954, substituted "offering, selling, or issuing" for "issuing or selling".

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§77yyy. Penalties

Any person who willfully violates any provision of this subchapter or any rule, regulation, or order thereunder, or any person who willfully, in any application, report, or document filed or required to be filed under the provisions of this subchapter or any rule, regulation, or order thereunder, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, shall upon conviction be fined not more than $10,000 or imprisoned not more than five years, or both.

(May 27, 1933, ch. 38, title III, §325, as added Aug. 3, 1939, ch. 411, 53 Stat. 1177; amended Pub. L. 94–29, §27(d), June 4, 1975, 89 Stat. 163.)

AMENDMENTS

1975—Pub. L. 94–29 substituted "$10,000" for "$5,000".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

§77zzz. Effect on existing law

Except as otherwise expressly provided, nothing in this subchapter shall affect (1) the jurisdiction of the Commission under the Securities Act of 1933 [15 U.S.C. 77a et seq.] or the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] over any person, security, or contract, or (2) the rights, obligations, duties, or liabilities of any person under such acts; nor shall anything in this subchapter affect the jurisdiction of any other commission, board, agency, or officer of the United States or of any State or political subdivision of any State, over any person or security, insofar as such jurisdiction does not conflict with any provision of this subchapter or any rule, regulation, or order thereunder.

(May 27, 1933, ch. 38, title III, §326, as added Aug. 3, 1939, ch. 411, 53 Stat. 1177; amended Pub. L. 111–203, title IX, §986(b)(6), July 21, 2010, 124 Stat. 1936.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in text, is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of this chapter. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Securities Exchange Act of 1934, referred to in text, is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

AMENDMENTS

2010—Pub. L. 111–203 substituted "Securities Act of 1933 or the Securities Exchange Act of 1934" for "Securities Act of 1933, or the Securities Exchange Act of 1934, or the Public Utility Holding Company Act of 1935,".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§77aaaa. Contrary stipulations void

Any condition, stipulation, or provision binding any person to waive compliance with any

provision of this subchapter or with any rule, regulation, or order thereunder shall be void.

(May 27, 1933, ch. 38, title III, §327, as added Aug. 3, 1939, ch. 411, 53 Stat. 1177.)

§77bbbb. Separability

If any provision of this subchapter or the application of such provision to any person or circumstance shall be held invalid, the remainder of the subchapter and the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

(May 27, 1933, ch. 38, title III, §328, as added Aug. 3, 1939, ch. 411, 53 Stat. 1177.)

CHAPTER 2B—SECURITIES EXCHANGES

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§78a. Short title

This chapter may be cited as the "Securities Exchange Act of 1934."

(June 6, 1934, ch. 404, title I, §1, 48 Stat. 881.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "This Act" meaning the Securities Exchange Act of 1934, act June 6, 1934, ch. 404. The act was divided into two titles as follows: "Title I—Regulation of Securities Exchanges" and "Title II—Amendments to Securities Act of 1933." This section was section 1 of title I of the Act, which title, as amended, is set out as sections 78a to 78d–5, 78e to 78l, 78m, 78m–1, 78n to 78o, 78o–3, 78o–4, 78o–5 to 78o–7, 78o–10 to 78u–6, 78v to 78dd–1, 78ee to 78hh, 78mm, and 78pp of this title. Sections 78kk, 78ll, 78nn, and 78oo of this title, which were directed to be added at the end of the Securities Exchange Act of 1934, have been treated in the Code as added to title I of the Act to reflect the probable intent of Congress. See Codification notes set out under those sections. Title II of the act amended or repealed sections 77b to 77e, 77j, 77k, 77m, 77o, and 77s, and added former sections 78ii and 78jj of this title. For complete classification of this Act to the Code, see Tables.

SHORT TITLE OF 2012 AMENDMENT

Pub. L. 112–106, §1, Apr. 5, 2012, 126 Stat. 306, provided that: "This Act [enacting section 77d–1 of this title, amending sections 77b, 77c, 77d, 77e to 77g, 77r, 78c, 78k–1, 78l, 78m, 78n, 78n–1, 78o, 78o–6, 7213, and 7262 of this title, enacting provisions set out as notes under sections 77a, 77b, 77d, 77g, 77r, 78c, 78d, 78l, and 78o–6 of this title, and amending provisions set out as a note under section 78l of this title] may be cited as the 'Jumpstart Our Business Startups Act'."

SHORT TITLE OF 2010 AMENDMENT

Pub. L. 111–203, title IX, §901, July 21, 2010, 124 Stat. 1822, provided that: "This title [see Tables for classification] may be cited as the 'Investor Protection and Securities Reform Act of 2010'."

SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109–291, §1, Sept. 29, 2006, 120 Stat. 1327, provided that: "This Act [enacting section 78o–7 of this title, amending sections 78c, 78o, 78q, 78u–2, 80a–2, 80a–9, 80b–2, and 80b–3 of this title, section 4519 of Title 12, Banks and Banking, section 1087–2 of Title 20, Education, and section 181 of Title 23, Highways, and enacting provisions set out as notes under section 78o–7 of this title] may be cited as the 'Credit Rating Agency Reform Act of 2006'."

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–458, title VII, §7803(a), Dec. 17, 2004, 118 Stat. 3861, provided that: "This section [amending sections 78l and 78o–5 of this title] may be cited as the 'Emergency Securities Response Act of 2004'."

SHORT TITLE OF 2002 AMENDMENTS

Pub. L. 107–204, title XI, §1101, July 30, 2002, 116 Stat. 807, provided that: "This title [amending sections 77h–1, 78u–3, and 78ff of this title and sections 1512 and 1513 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as a note under section 994 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'Corporate Fraud Accountability Act of 2002'."

Pub. L. 107–123, §1, Jan. 16, 2002, 115 Stat. 2390, provided that: "This Act [enacting chapter 48 of Title 5, Government Organization and Employees, amending sections 77f, 77ggg, 78d, 78m, 78n, and 78ee of this title, sections 3132 and 5373 of Title 5, and section 1833b of Title 12, Banks and Banking, and enacting provisions set out as notes under section 78ee of this title and section 4802 of Title 5] may be cited as the 'Investor and Capital Markets Fee Relief Act'."

SHORT TITLE OF 1998 AMENDMENTS

Pub. L. 105–366, §1, Nov. 10, 1998, 112 Stat. 3302, provided that: "This Act [enacting section 78dd–3 of this title, amending sections 78dd–1, 78dd–2, and 78ff of this title, and enacting provisions set out as notes under section 78dd–1 of this title] may be cited as the 'International Anti-Bribery and Fair Competition Act of 1998'."

Pub. L. 105–353, §1, Nov. 3, 1998, 112 Stat. 3227, provided that: "This Act [amending sections 77b, 77k, 77m, 77p, 77r, 77v, 77z–1 to 77z–3, 77aa, 77ccc, 77ddd, 77mmm, 77sss, 78c, 78d, 78g, 78n, 78o, 78o–4, 78o–5, 78q, 78s, 78t, 78u–4, 78z, 78bb, 78ee, 78kk, 78ll, 80a–2, 80a–3, 80a–12, 80a–18, 80a–29, 80a–30, 80b–3, and 80b–18a of this title and enacting provisions set out as notes under this section and sections 77p and 78u of this title] may be cited as the 'Securities Litigation Uniform Standards Act of 1998'."

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–290, §1(a), Oct. 11, 1996, 110 Stat. 3416, provided that: "This Act [enacting sections 77z–3, 78mm, and 80b–3a of this title, amending sections 77b, 77c, 77f, 77r, 77ddd, 78c, 78d, 78g, 78h, 78o, 78q, 78bb, 78ee, 78kk, 80a–2, 80a–3, 80a–6, 80a–12, 80a–24, 80a–26, 80a–27, 80a–29, 80a–30, 80a–34, 80a–54, 80a–60, 80a–63, 80b–2, 80b–3, 80b–5, and 80b–18a of this title and section 1002 of Title 29, Labor, and enacting provisions set out as notes under this section, sections 77e, 77r, 78b, 78n, 78o, 78ee, 80a–2, 80a–3, 80a–24, 80a–51, 80b–2, 80b–3a, 80b–10, and 80b–20 of this title, and section 1002 of Title 29] may be cited as the 'National Securities Markets Improvement Act of 1996'."

Pub. L. 104–290, title I, §101, Oct. 11, 1996, 110 Stat. 3417, provided that: "This title [enacting sections 77z–3 and 78mm of this title, amending sections 77b, 77r, 78c, 78g, 78h, 78o, 78q, 78bb, and 80a–2 of this title, and enacting provisions set out as notes under sections 77e and 77r of this title] may be cited as the 'Capital Markets Efficiency Act of 1996'."

Pub. L. 104–290, title IV, §401, Oct. 11, 1996, 110 Stat. 3441, provided that: "This title [amending sections 77f, 78d, 78ee, and 78kk of this title and enacting provisions set out as notes under this section and section 78ee of this title] may be cited as the 'Securities and Exchange Commission Authorization Act of 1996'."

SHORT TITLE OF 1995 AMENDMENT

Pub. L. 104–67, §1(a), Dec. 22, 1995, 109 Stat. 737, provided that: "This Act [enacting sections 77z–1, 77z–2, 78j–1, 78u–4, and 78u–5 of this title, amending sections 77k, 77l, 77t, 78o, 78t, 78u, and 78u–4 of this title and section 1964 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as notes under sections 77k, 77l, and 78j–1 of this title] may be cited as the 'Private Securities Litigation Reform Act of 1995'."

SHORT TITLE OF 1994 AMENDMENTS

Pub. L. 103–389, §1, Oct. 22, 1994, 108 Stat. 4081, provided that: "This Act [amending section 78l of this title] may be cited as the 'Unlisted Trading Privileges Act of 1994'."

Pub. L. 103–325, title II, §201, Sept. 23, 1994, 108 Stat. 2198, provided that: "This subtitle [subtitle A (§§201–210) of title II of Pub. L. 103–325 enacting section 1835 of Title 12, Banks and Banking, amending sections 77r–1, 78c, 78g, 78h, and 78k of this title and sections 24, 1464, and 1757 of Title 12, and enacting provisions set out as notes under section 78b of this title and section 3305 of Title 12] may be cited as the 'Small Business Loan Securitization and Secondary Market Enhancement Act of 1994'."

SHORT TITLE OF 1993 AMENDMENT

Pub. L. 103–202, §1(a), Dec. 17, 1993, 107 Stat. 2344, provided that: "This Act [enacting section 3130 of Title 31, Money and Finance, amending sections 78c, 78f, 78n, 78o, 78o–3, 78o–5, 78s, and 78w of this title, and enacting provisions set out as notes under this section, sections 78f, 78n, and 78o–5 of this title, and section 3121 of Title 31] may be cited as the 'Government Securities Act Amendments of 1993'."

Pub. L. 103–202, title III, §301, Dec. 17, 1993, 107 Stat. 2359, provided that: "This title [amending sections 78f, 78n, and 78o–3 of this title and enacting provisions set out as notes under sections 78f and 78n of this title] may be cited as the 'Limited Partnership Rollup Reform Act of 1993'."

SHORT TITLE OF 1990 AMENDMENTS

Pub. L. 101–550, §1, Nov. 15, 1990, 104 Stat. 2713, provided that: "This Act [amending sections 77ccc to 77eee, 77iii to 77rrr, 77uuu, 77vvv, 78c, 78d, 78n, 78o, 78o–4, 78o–5, 78q–1, 78x, 78kk, 79z–5, 80a–2, 80a–9, 80a–44, 80a–45, 80b–2, 80b–3, 80b–10, and 80b–18 of this title and enacting provisions set out as notes under this section and sections 77aaa and 78n of this title] may be cited as the 'Securities Acts Amendments of 1990'."

Pub. L. 101–550, title I, §101, Nov. 15, 1990, 104 Stat. 2713, provided that: "This title [amending sections 77uuu, 78d, 78kk, 79z–5, 80a–45, and 80b–18 of this title] may be cited as the 'Securities and Exchange

Commission Authorization Act of 1990'."

Pub. L. 101–550, title II, §201, Nov. 15, 1990, 104 Stat. 2714, provided that: "This title [amending sections 78c, 78d, 78o, 78o–4, 78o–5, 78q–1, 78x, 80a–2, 80a–9, 80a–44, 80b–2, 80b–3, and 80b–10 of this title] may be cited as the 'International Securities Enforcement Cooperation Act of 1990'."

Pub. L. 101–550, title III, §301, Nov. 15, 1990, 104 Stat. 2721, provided that: "This title [amending section 78n of this title and enacting provisions set out as a note under section 78n of this title] may be cited as the 'Shareholder Communications Improvement Act of 1990'."

Pub. L. 101–432, §1, Oct. 16, 1990, 104 Stat. 963, provided that: "This Act [enacting section 1831l of Title 12, Banks and Banking, amending sections 78i, 78l, 78m, 78o–5, 78q, 78q–1, and 78y of this title, and enacting provisions set out as notes under sections 78b and 78q–1 of this title] may be cited as the 'Market Reform Act of 1990'."

Pub. L. 101–429, §1(a), Oct. 15, 1990, 104 Stat. 931, provided that: "This Act [enacting sections 77h–1, 78q–2, 78u–2, and 78u–3 of this title, amending sections 77g, 77t, 78c, 78o, 78o–3, 78o–4, 78q–1, 78u, 78u–1, 78w, 78cc, 80a–9, 80a–41, 80b–3, 80b–9, and 80b–14 of this title, and enacting provisions set out as notes under this section and sections 77g, 78o, and 78s of this title] may be cited as the 'Securities Enforcement Remedies and Penny Stock Reform Act of 1990'."

Pub. L. 101–429, title V, §501, Oct. 15, 1990, 104 Stat. 951, provided that: "This title [enacting section 78q–2 of this title, amending sections 77g, 78c, 78o, 78o–3, and 78cc of this title, and enacting provisions set out as notes under sections 78o and 78s of this title] may be cited as the 'Penny Stock Reform Act of 1990'."

SHORT TITLE OF 1988 AMENDMENTS

Pub. L. 100–704, §1, Nov. 19, 1988, 102 Stat. 4677, provided that: "This Act [enacting sections 78t–1, 78u–1, and 80b–4a of this title, amending sections 78c, 78o, 78u, 78ff, and 78kk of this title, and enacting provisions set out as notes under sections 78b, 78o, and 78u–1 of this title] may be cited as the 'Insider Trading and Securities Fraud Enforcement Act of 1988'."

Pub. L. 100–418, title V, §5001, Aug. 23, 1988, 102 Stat. 1415, provided that: "This part [part I (§§5001–5003) of subtitle A of title I of Pub. L. 100–418, amending sections 78m, 78dd–1, 78dd–2, and 78ff of this title and enacting provisions set out as a note under section 78dd–1 of this title] may be cited as the 'Foreign Corrupt Practices Act Amendments of 1988'."

SHORT TITLE OF 1987 AMENDMENT

Pub. L. 100–181, §1, Dec. 4, 1987, 101 Stat. 1249, provided that: "This Act [enacting sections 78d–1, 78d–2, and 78ll of this title, amending sections 77b, 77c, 77f, 77i, 77s, 77t, 77v, 77ccc, 78c, 78d, 78f, 78k–1, 78l, 78m, 78o, 78o–4, 78o–5, 78q, 78q–1, 78u, 78w, 78aa, 78bb, 78kk, 78lll, 79h, 79r, 79x, 79y, 79z–4, 80a–2, 80a–3, 80a–5, 80a–6, 80a–9, 80a–12, 80a–15, 80a–17, 80a–18, 80a–20, 80a–21, 80a–22, 80a–24, 80a–26, 80a–28, 80a–35, 80a–41, 80a–52, 80a–53, 80a–54, 80a–56, 80b–2, 80b–3, 80b–5, 80b–9, 80b–11, 80b–13, and 80b–14 of this title, and repealing sections 78d–1, 78d–2, and 78jj of this title] may be cited as the 'Securities and Exchange Commission Authorization Act of 1987'."

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–571, §1(a), Oct. 28, 1986, 100 Stat. 3208, provided that: "This Act [enacting section 78o–5 of this title and section 9110 of Title 31, Money and Finance, amending sections 78c, 78o, 78o–3, 78q, 78w, 78y, 80a–9, and 80b–3 of this title and section 3121 of Title 31, and enacting provisions set out as notes under section 78o–5 of this title] may be cited as the 'Government Securities Act of 1986'."

SHORT TITLE OF 1985 AMENDMENT

Pub. L. 99–222, §1, Dec. 28, 1985, 99 Stat. 1737, provided that: "This Act [amending section 78n of this title and enacting a provision set out as a note under section 78n of this title] may be cited as the 'Shareholder Communications Act of 1985'."

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98–376, §1, Aug. 10, 1984, 98 Stat. 1264, provided that: "This Act [amending sections 78c, 78o, 78t, 78u, and 78ff of this title and enacting provisions set out as a note under section 78c of this title] may be cited as the 'Insider Trading Sanctions Act of 1984'."

SHORT TITLE OF 1977 AMENDMENT

Pub. L. 95–213, title I, §101, Dec. 19, 1977, 91 Stat. 1494, provided that: "This title [enacting sections 78dd–1 and 78dd–2 of this title and amending sections 78m and 78ff of this title] may be cited as the 'Foreign Corrupt Practices Act of 1977'."

Pub. L. 95–213, title II, §201, Dec. 19, 1977, 91 Stat. 1498, provided that: "This title [amending sections 78m and 78o of this title] may be cited as the 'Domestic and Foreign Investment Improved Disclosure Act of 1977'."

SHORT TITLE OF 1975 AMENDMENT

Pub. L. 94–29, §1, June 4, 1975, 89 Stat. 97, provided: "That this Act [enacting sections 78k–1, 78o–4, 78q–1, and 78kk of this title, amending sections 77d, 77x, 77yyy, 78b, 78c, 78d–1, 78f, 78h, 78k, 78l, 78m, 78o, 78o–3, 78q, 78s, 78u, 78w, 78x, 78y, 78bb, 78ee, 78ff, 78iii, 79z–3, 80a–9, 80a–10, 80a–13, 80a–15, 80a–16, 80a–18, 80a–31, 80a–35, 80a–48, 80b–3, 80b–4, and 80b–17 of this title, and enacting provisions set out as notes under sections 78b and 78f of this title] may be cited as the 'Securities Acts Amendments of 1975'."

SHORT TITLE OF 1964 AMENDMENT

Pub. L. 88–467, §1, Aug. 20, 1964, 78 Stat. 565, provided: "That this Act [amending sections 77d, 78c, 78l to 78o, 78o–3, 78p, 78t, 78w, and 78ff of this title and enacting provisions set out as a note under section 78c of this title] may be cited as the 'Securities Acts Amendments of 1964'."

SHORT TITLE OF 1936 AMENDMENT

Act May 27, 1936, ch. 462, 49 Stat. 1375, enacting sections 78l–1, 78o–1, 78o–2, and 78hh–1 of this title, and amending sections 78l, 78o, 78q, 78r, 78t, 78u, 78w, and 78ff of this title, is popularly known as the Unlisted Securities Trading Act.

SEVERABILITY

Pub. L. 104–290, §3, Oct. 11, 1996, 110 Stat. 3417, provided: "If any provision of this Act [see Short Title of 1996 Amendment note above], an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby."

CONGRESSIONAL FINDINGS OF 1998 AMENDMENT

Pub. L. 105–353, §2, Nov. 3, 1998, 112 Stat. 3227, provided that: "The Congress finds that—

"(1) the Private Securities Litigation Reform Act of 1995 [see Short Title of 1995 Amendment note above] sought to prevent abuses in private securities fraud lawsuits;

"(2) since enactment of that legislation, considerable evidence has been presented to Congress that a number of securities class action lawsuits have shifted from Federal to State courts;

"(3) this shift has prevented that Act from fully achieving its objectives;

"(4) State securities regulation is of continuing importance, together with Federal regulation of securities, to protect investors and promote strong financial markets; and

"(5) in order to prevent certain State private securities class action lawsuits alleging fraud from being used to frustrate the objectives of the Private Securities Litigation Reform Act of 1995, it is appropriate to enact national standards for securities class action lawsuits involving nationally traded securities, while preserving the appropriate enforcement powers of State securities regulators and not changing the current treatment of individual lawsuits."

PURPOSES OF 1996 AMENDMENT

Pub. L. 104–290, title IV, §402, Oct. 11, 1996, 110 Stat. 3441, provided: "The purposes of this title [see Short Title of 1996 Amendment note above] are—

"(1) to authorize appropriations for the Commission for fiscal year 1997; and

"(2) to reduce over time the rates of fees charged under the Federal securities laws."

DEFINITIONS

Pub. L. 104–290, §2, Oct. 11, 1996, 110 Stat. 3417, provided: "For purposes of this Act [see Short Title of 1996 Amendment note above]—

"(1) the term 'Commission' means the Securities and Exchange Commission; and

"(2) the term 'State' has the same meaning as in section 3 of the Securities Exchange Act of 1934 [15 U.S.C. 78c]."

§78b. Necessity for regulation

For the reasons hereinafter enumerated, transactions in securities as commonly conducted upon securities exchanges and over-the-counter markets are effected with a national public interest which makes it necessary to provide for regulation and control of such transactions and of practices and matters related thereto, including transactions by officers, directors, and principal security holders, to require appropriate reports, to remove impediments to and perfect the mechanisms of a national market system for securities and a national system for the clearance and settlement of securities transactions and the safeguarding of securities and funds related thereto, and to impose requirements necessary to make such regulation and control reasonably complete and effective, in order to protect interstate commerce, the national credit, the Federal taxing power, to protect and make more effective the national banking system and Federal Reserve System, and to insure the maintenance of fair and honest markets in such transactions:

(1) Such transactions (a) are carried on in large volume by the public generally and in large part originate outside the States in which the exchanges and over-the-counter markets are located and/or are effected by means of the mails and instrumentalities of interstate commerce; (b) constitute an important part of the current of interstate commerce; (c) involve in large part the securities of issuers engaged in interstate commerce; (d) involve the use of credit, directly affect the financing of trade, industry, and transportation in interstate commerce, and directly affect and influence the volume of interstate commerce; and affect the national credit.

(2) The prices established and offered in such transactions are generally disseminated and quoted throughout the United States and foreign countries and constitute a basis for determining and establishing the prices at which securities are bought and sold, the amount of certain taxes owing to the United States and to the several States by owners, buyers, and sellers of securities, and the value of collateral for bank loans.

(3) Frequently the prices of securities on such exchanges and markets are susceptible to manipulation and control, and the dissemination of such prices gives rise to excessive speculation, resulting in sudden and unreasonable fluctuations in the prices of securities which (a) cause alternately unreasonable expansion and unreasonable contraction of the volume of credit available for trade, transportation, and industry in interstate commerce, (b) hinder the proper appraisal of the value of securities and thus prevent a fair calculation of taxes owing to the United States and to the several States by owners, buyers, and sellers of securities, and (c) prevent the fair valuation of collateral for bank loans and/or obstruct the effective operation of the national banking system and Federal Reserve System.

(4) National emergencies, which produce widespread unemployment and the dislocation of trade, transportation, and industry, and which burden interstate commerce and adversely affect the general welfare, are precipitated, intensified, and prolonged by manipulation and sudden and unreasonable fluctuations of security prices and by excessive speculation on such exchanges and markets, and to meet such emergencies the Federal Government is put to such great expense as to burden the national credit.

(June 6, 1934, ch. 404, title I, §2, 48 Stat. 881; Pub. L. 94–29, §2, June 4, 1975, 89 Stat. 97; Pub. L. 111–203, title IX, §985(b)(1), July 21, 2010, 124 Stat. 1933.)

AMENDMENTS

2010—Pub. L. 111–203 substituted "effected" for "affected" in introductory provisions.

1975—Pub. L. 94–29 inserted "to remove impediments to and perfect the mechanisms of a national market system for securities and a national system for the clearance and settlement of securities transactions and the safeguarding of securities and funds related thereto," after "require appropriate reports," in introductory provisions.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 94–29, §31(a), June 4, 1975, 89 Stat. 170, provided that: "This Act [enacting sections 78k–1, 78o–4,

78q–1, and 78kk of this title, amending this section and sections 77d, 77x, 77yyy, 78c, 78d–1, 78f, 78h, 78k, 78l, 78m, 78o, 78o–3, 78q, 78s, 78u, 78w, 78x, 78y, 78bb, 78ee, 78ff, 78iii, 79z–3, 80a–9, 80a–10, 80a–13, 80a–15, 80a–16, 80a–18, 80a–31, 80a–35, 80a–48, 80b–3, 80b–4, and 80b–17 of this title, and enacting provisions set out as notes under sections 78a and 78f of this title] shall become effective on the date of its enactment [June 4, 1975] except as hereinafter provided. The amendments made by this Act to sections 3(a)(12), 6(a) through (d), 11A(b), 15(a), 15A, 15B(a), 17A(b), and (c), and 19(g) of the Securities Exchange Act of 1934 [sections 78c(a)(12), 78f(a) through (d), 78k–1(b), 78o(a), 78o–3, 78o–4(a), 78q–1(b) and (c), and 78s(g) of this title] shall become effective one hundred eighty days after the date of enactment of this Act [June 4, 1975], and the amendments made by this Act to section 31 of the Securities Exchange Act of 1934 [section 78ee of this title] shall become effective on January 1, 1976. Neither the provisions of section 3(a)(3), 6(b)(2), or 6(c)(1) of the Securities Exchange Act of 1934 (as amended by this Act) [section 78c(a)(3), 78f(b)(2), or 78f(c)(1) of this title] nor any rule or regulation thereunder shall apply so as to deprive any person of membership in any national securities exchange (or its successor) of which such person was, on the date of enactment of this Act [June 4, 1975], a member or a member firm as defined in the constitution of such exchange or so as to deny membership in any such exchange (or its successor) to any natural person who is or becomes associated with such member or member firm."

STUDY AND REPORT ON IMPACT OF TECHNOLOGICAL ADVANCES ON SECURITIES MARKETS

Pub. L. 104–290, title V, §510(a), Oct. 11, 1996, 110 Stat. 3450, provided that:

"(1) STUDY.—

"(A) IN GENERAL.—The Commission shall conduct a study of—

"(i) the impact of technological advances and the use of on-line information systems on the securities markets, including steps that the Commission has taken to facilitate the electronic delivery of prospectuses to institutional and other investors;

"(ii) how such technologies have changed the way in which the securities markets operate; and

"(iii) any steps taken by the Commission to address such changes.

"(B) CONSIDERATIONS.—In conducting the study under subparagraph (A), the Commission shall consider how the Commission has adapted its enforcement policies and practices in response to technological developments with regard to—

"(i) disclosure, prospectus delivery, and other customer protection regulations;

"(ii) intermediaries and exchanges in the domestic and international financial services industry;

"(iii) reporting by issuers, including communications with holders of securities;

"(iv) the relationship of the Commission with other national regulatory authorities and organizations to improve coordination and cooperation; and

"(v) the relationship of the Commission with State regulatory authorities and organizations to improve coordination and cooperation.

"(2) REPORT.—Not later than 1 year after the date of enactment of this Act [Oct. 11, 1996], the Commission shall submit a report to the Congress on the results of the study conducted under paragraph (1)."

JOINT STUDY ON IMPACT OF ADDITIONAL SECURITIES BASED ON POOLED OBLIGATIONS

Pub. L. 103–325, title II, §209, Sept. 23, 1994, 108 Stat. 2202, provided that:

"(a) JOINT STUDY REQUIRED.—The Board and the Commission shall conduct a joint study of the impact of the provisions of this subtitle [subtitle A [§§201–210 of title II of Pub. L. 103–325], see Short Title of 1994 Amendment note set out under section 78a of this title] (including the amendments made by this subtitle) on the credit and securities markets. Such study shall evaluate—

"(1) the impact of the provisions of this subtitle on the availability of credit for business and commercial enterprises in general, and the availability of credit in particular for—

"(A) businesses in low- and moderate-income areas;

"(B) businesses owned by women and minorities;

"(C) community development efforts;

"(D) community development financial institutions;

"(E) businesses in different geographical regions; and

"(F) a diversity of types of businesses;

"(2) the structure and operation of the markets that develop for small business related securities and commercial mortgage related securities, including the types of entities (such as pension funds and insurance companies) that are significant purchasers of such securities, the extent to which such entities are

sophisticated investors, the use of credit enhancements in obtaining investment-grade ratings, any conflicts of interest that arise in such markets, and any adverse effects of such markets on commercial real estate ventures, pension funds, or pension fund beneficiaries;

"(3) the extent to which the provisions of this subtitle with regard to margin requirements, the number of eligible investment rating categories, preemption of State law, and the treatment of such securities as government securities for the purpose of State investment limitations, affect the structure and operation of such markets; and

"(4) in view of the findings made pursuant to paragraphs (2) and (3), any additional suitability or disclosure requirements or other investor protections that should be required.

"(b) REPORTS.—

"(1) IN GENERAL.—The Board and the Commission shall submit to the Congress a report on the results of the study required by subsection (a) before the end of—

"(A) the 2-year period beginning on the date of enactment of this Act [Sept. 23, 1994];

"(B) the 4-year period beginning on such date of enactment; and

"(C) the 6-year period beginning on such date of enactment.

"(2) CONTENTS OF REPORT.—Each report required under paragraph (1) shall contain or be accompanied by such recommendations for administrative or legislative action as the Board and the Commission consider appropriate and may include recommendations regarding the need to develop a system for reporting additional information concerning investments by the entities described in subsection (a)(2).

"(c) DEFINITIONS.—As used in this section—

"(1) the term 'Board' means the Board of Governors of the Federal Reserve System; and

"(2) the term 'Commission' means the Securities and Exchange Commission."

INTERMARKET COORDINATION; REPORTS TO CONGRESS

Pub. L. 101–432, §8(a), Oct. 16, 1990, 104 Stat. 976, provided that: "The Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System, the Chairman of the Securities and Exchange Commission, and the Chairman of the Commodity Futures Trading Commission, shall report to the Congress not later than May 31, 1991, and annually thereafter until May 31, 1995, on the following:

"(1) the efforts their respective agencies have made relating to the coordination of regulatory activities to ensure the integrity and competitiveness of United States financial markets;

"(2) the efforts their respective agencies have made to formulate coordinated mechanisms across marketplaces to protect the payments and market systems during market emergencies;

"(3) the views of their respective agencies with respect to the adequacy of margin levels and use of leverage by market participants; and

"(4) such other issues and concerns relating to the soundness, stability, and integrity of domestic and international capital markets as may be appropriate.

The agencies shall cooperate in the development of their reports, and prior to submitting its report to Congress, each agency shall provide copies to the other agencies."

SECURITIES LAWS STUDY

Pub. L. 100–704, §7, Nov. 19, 1988, 102 Stat. 4682, directed Securities and Exchange Commission to study and investigate adequacy of Federal securities laws and regulations for protection of the public interest and interests of investors, specified subjects for the study and investigation and authority of Commission in conducting the study and investigation, directed Commission to supply interim information to Congress on the progress of, and any impediments to completing, the study and investigation, directed Commission to report to Congress on results of the study and investigation within 18 months after the date funds are appropriated for the study and investigation, including in such report the Commission's recommendations.

FOREIGN INVESTMENT STUDY

Pub. L. 93–479, Oct. 26, 1974, 88 Stat. 1450, directed Secretary of the Treasury and Secretary of Commerce to conduct a comprehensive, overall study of foreign direct and portfolio investments in the United States and submit to Congress an interim report twelve months after Oct. 26, 1974, and not later than one and one-half years after Oct. 26, 1974, a full and complete report of the findings made under the study authorized, together with such recommendations as they considered appropriate.

EX. ORD. NO. 12631. WORKING GROUP ON FINANCIAL MARKETS

Ex. Ord. No. 12631, Mar. 18, 1988, 53 F.R. 9421, provided:

By virtue of the authority vested in me as President by the Constitution and laws of the United States of

America, and in order to establish a Working Group on Financial Markets, it is hereby ordered as follows:

SECTION 1. *Establishment*. (a) There is hereby established a Working Group on Financial Markets (Working Group). The Working Group shall be composed of:

(1) the Secretary of the Treasury, or his designee;

(2) the Chairman of the Board of Governors of the Federal Reserve System, or his designee;

(3) the Chairman of the Securities and Exchange Commission, or his designee; and

(4) the Chairman of the Commodity Futures Trading Commission, or her designee.

(b) The Secretary of the Treasury, or his designee, shall be the Chairman of the Working Group.

SEC. 2. *Purposes and Functions*. (a) Recognizing the goals of enhancing the integrity, efficiency, orderliness, and competitiveness of our Nation's financial markets and maintaining investor confidence, the Working Group shall identify and consider:

(1) the major issues raised by the numerous studies on the events in the financial markets surrounding October 19, 1987, and any of those recommendations that have the potential to achieve the goals noted above; and

(2) the actions, including governmental actions under existing laws and regulations (such as policy coordination and contingency planning), that are appropriate to carry out these recommendations.

(b) The Working Group shall consult, as appropriate, with representatives of the various exchanges, clearinghouses, self-regulatory bodies, and with major market participants to determine private sector solutions wherever possible.

(c) The Working Group shall report to the President initially within 60 days (and periodically thereafter) on its progress and, if appropriate, its views on any recommended legislative changes.

SEC. 3. *Administration*. (a) The heads of Executive departments, agencies, and independent instrumentalities shall, to the extent permitted by law, provide the Working Group such information as it may require for the purpose of carrying out this Order.

(b) Members of the Working Group shall serve without additional compensation for their work on the Working Group.

(c) To the extent permitted by law and subject to the availability of funds therefor, the Department of the Treasury shall provide the Working Group with such administrative and support services as may be necessary for the performance of its functions.

RONALD REAGAN.

§78c. Definitions and application

(a) Definitions

When used in this chapter, unless the context otherwise requires—

(1) The term "exchange" means any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange.

(2) The term "facility" when used with respect to an exchange includes its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service.

(3)(A) The term "member" when used with respect to a national securities exchange means (i) any natural person permitted to effect transactions on the floor of the exchange without the services of another person acting as broker, (ii) any registered broker or dealer with which such a natural person is associated, (iii) any registered broker or dealer permitted to designate as a representative such a natural person, and (iv) any other registered broker or dealer which agrees to be regulated by such exchange and with respect to which the exchange undertakes to enforce compliance with the provisions of this chapter, the rules and regulations thereunder, and its own

rules. For purposes of sections 78f(b)(1), 78f(b)(4), 78f(b)(6), 78f(b)(7), 78f(d), 78q(d), 78s(d), 78s(e), 78s(g), 78s(h), and 78u of this title, the term "member" when used with respect to a national securities exchange also means, to the extent of the rules of the exchange specified by the Commission, any person required by the Commission to comply with such rules pursuant to section 78f(f) of this title.

(B) The term "member" when used with respect to a registered securities association means any broker or dealer who agrees to be regulated by such association and with respect to whom the association undertakes to enforce compliance with the provisions of this chapter, the rules and regulations thereunder, and its own rules.

(4) BROKER.—

(A) IN GENERAL.—The term "broker" means any person engaged in the business of effecting transactions in securities for the account of others.

(B) EXCEPTION FOR CERTAIN BANK ACTIVITIES.—A bank shall not be considered to be a broker because the bank engages in any one or more of the following activities under the conditions described:

(i) THIRD PARTY BROKERAGE ARRANGEMENTS.—The bank enters into a contractual or other written arrangement with a broker or dealer registered under this chapter under which the broker or dealer offers brokerage services on or off the premises of the bank if—

(I) such broker or dealer is clearly identified as the person performing the brokerage services;

(II) the broker or dealer performs brokerage services in an area that is clearly marked and, to the extent practicable, physically separate from the routine deposit-taking activities of the bank;

(III) any materials used by the bank to advertise or promote generally the availability of brokerage services under the arrangement clearly indicate that the brokerage services are being provided by the broker or dealer and not by the bank;

(IV) any materials used by the bank to advertise or promote generally the availability of brokerage services under the arrangement are in compliance with the Federal securities laws before distribution;

(V) bank employees (other than associated persons of a broker or dealer who are qualified pursuant to the rules of a self-regulatory organization) perform only clerical or ministerial functions in connection with brokerage transactions including scheduling appointments with the associated persons of a broker or dealer, except that bank employees may forward customer funds or securities and may describe in general terms the types of investment vehicles available from the bank and the broker or dealer under the arrangement;

(VI) bank employees do not receive incentive compensation for any brokerage transaction unless such employees are associated persons of a broker or dealer and are qualified pursuant to the rules of a self-regulatory organization, except that the bank employees may receive compensation for the referral of any customer if the compensation is a nominal one-time cash fee of a fixed dollar amount and the payment of the fee is not contingent on whether the referral results in a transaction;

(VII) such services are provided by the broker or dealer on a basis in which all customers that receive any services are fully disclosed to the broker or dealer;

(VIII) the bank does not carry a securities account of the customer except as permitted under clause (ii) or (viii) of this subparagraph; and

(IX) the bank, broker, or dealer informs each customer that the brokerage services are provided by the broker or dealer and not by the bank and that the securities are not deposits or other obligations of the bank, are not guaranteed by the bank, and are not insured by the Federal Deposit Insurance Corporation.

(ii) TRUST ACTIVITIES.—The bank effects transactions in a trustee capacity, or effects

transactions in a fiduciary capacity in its trust department or other department that is regularly examined by bank examiners for compliance with fiduciary principles and standards, and—

(I) is chiefly compensated for such transactions, consistent with fiduciary principles and standards, on the basis of an administration or annual fee (payable on a monthly, quarterly, or other basis), a percentage of assets under management, or a flat or capped per order processing fee equal to not more than the cost incurred by the bank in connection with executing securities transactions for trustee and fiduciary customers, or any combination of such fees; and

(II) does not publicly solicit brokerage business, other than by advertising that it effects transactions in securities in conjunction with advertising its other trust activities.

(iii) PERMISSIBLE SECURITIES TRANSACTIONS.—The bank effects transactions in—

(I) commercial paper, bankers acceptances, or commercial bills;

(II) exempted securities;

(III) qualified Canadian government obligations as defined in section 24 of title 12, in conformity with section 78o–5 of this title and the rules and regulations thereunder, or obligations of the North American Development Bank; or

(IV) any standardized, credit enhanced debt security issued by a foreign government pursuant to the March 1989 plan of then Secretary of the Treasury Brady, used by such foreign government to retire outstanding commercial bank loans.

(iv) CERTAIN STOCK PURCHASE PLANS.—

(I) EMPLOYEE BENEFIT PLANS.—The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of any pension, retirement, profit-sharing, bonus, thrift, savings, incentive, or other similar benefit plan for the employees of that issuer or its affiliates (as defined in section 1841 of title 12), if the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan.

(II) DIVIDEND REINVESTMENT PLANS.—The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of that issuer's dividend reinvestment plan, if—

(aa) the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan; and

(bb) the bank does not net shareholders' buy and sell orders, other than for programs for odd-lot holders or plans registered with the Commission.

(III) ISSUER PLANS.—The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of a plan or program for the purchase or sale of that issuer's shares, if—

(aa) the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan or program; and

(bb) the bank does not net shareholders' buy and sell orders, other than for programs for odd-lot holders or plans registered with the Commission.

(IV) PERMISSIBLE DELIVERY OF MATERIALS.—The exception to being considered a broker for a bank engaged in activities described in subclauses (I), (II), and (III) will not be affected by delivery of written or electronic plan materials by a bank to employees of the issuer, shareholders of the issuer, or members of affinity groups of the issuer, so long as such materials are—

(aa) comparable in scope or nature to that permitted by the Commission as of November 12, 1999; or

(bb) otherwise permitted by the Commission.

(v) SWEEP ACCOUNTS.—The bank effects transactions as part of a program for the investment or reinvestment of deposit funds into any no-load, open-end management investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.] that holds itself out as a money market fund.

(vi) AFFILIATE TRANSACTIONS.—The bank effects transactions for the account of any affiliate of the bank (as defined in section 1841 of title 12) other than—

(I) a registered broker or dealer; or

(II) an affiliate that is engaged in merchant banking, as described in section 1843(k)(4)(H) of title 12.

(vii) PRIVATE SECURITIES OFFERINGS.—The bank—

(I) effects sales as part of a primary offering of securities not involving a public offering, pursuant to section 3(b), 4(2),[1] or 4(5) [1] of the Securities Act of 1933 [15 U.S.C. 77c(b), 77d(a)(2), 77d(a)(5)] or the rules and regulations issued thereunder;

(II) at any time after the date that is 1 year after November 12, 1999, is not affiliated with a broker or dealer that has been registered for more than 1 year in accordance with this chapter, and engages in dealing, market making, or underwriting activities, other than with respect to exempted securities; and

(III) if the bank is not affiliated with a broker or dealer, does not effect any primary offering described in subclause (I) the aggregate amount of which exceeds 25 percent of the capital of the bank, except that the limitation of this subclause shall not apply with respect to any sale of government securities or municipal securities.

(viii) SAFEKEEPING AND CUSTODY ACTIVITIES.—

(I) IN GENERAL.—The bank, as part of customary banking activities—

(aa) provides safekeeping or custody services with respect to securities, including the exercise of warrants and other rights on behalf of customers;

(bb) facilitates the transfer of funds or securities, as a custodian or a clearing agency, in connection with the clearance and settlement of its customers' transactions in securities;

(cc) effects securities lending or borrowing transactions with or on behalf of customers as part of services provided to customers pursuant to division (aa) or (bb) or invests cash collateral pledged in connection with such transactions;

(dd) holds securities pledged by a customer to another person or securities subject to purchase or resale agreements involving a customer, or facilitates the pledging or transfer of such securities by book entry or as otherwise provided under applicable law, if the bank maintains records separately identifying the securities and the customer; or

(ee) serves as a custodian or provider of other related administrative services to any individual retirement account, pension, retirement, profit sharing, bonus, thrift savings, incentive, or other similar benefit plan.

(II) EXCEPTION FOR CARRYING BROKER ACTIVITIES.—The exception to being considered a broker for a bank engaged in activities described in subclause (I) shall not apply if the bank, in connection with such activities, acts in the United States as a carrying broker (as such term, and different formulations thereof, are used in section 78o(c)(3) of this title and the rules and regulations thereunder) for any broker or dealer, unless such carrying broker activities are engaged in with respect to government securities (as defined in paragraph (42) of this subsection).

(ix) IDENTIFIED BANKING PRODUCTS.—The bank effects transactions in identified banking products as defined in section 206 of the Gramm-Leach-Bliley Act.

(x) MUNICIPAL SECURITIES.—The bank effects transactions in municipal securities.

(xi) DE MINIMIS EXCEPTION.—The bank effects, other than in transactions referred to in clauses (i) through (x), not more than 500 transactions in securities in any calendar year, and such transactions are not effected by an employee of the bank who is also an employee of a broker or dealer.

(C) EXECUTION BY BROKER OR DEALER.—The exception to being considered a broker for a bank engaged in activities described in clauses (ii), (iv), and (viii) of subparagraph (B) shall not apply if the activities described in such provisions result in the trade in the United States of any security that is a publicly traded security in the United States, unless—

(i) the bank directs such trade to a registered broker or dealer for execution;

(ii) the trade is a cross trade or other substantially similar trade of a security that—

(I) is made by the bank or between the bank and an affiliated fiduciary; and

(II) is not in contravention of fiduciary principles established under applicable Federal or State law; or

(iii) the trade is conducted in some other manner permitted under rules, regulations, or orders as the Commission may prescribe or issue.

(D) FIDUCIARY CAPACITY.—For purposes of subparagraph (B)(ii), the term "fiduciary capacity" means—

(i) in the capacity as trustee, executor, administrator, registrar of stocks and bonds, transfer agent, guardian, assignee, receiver, or custodian under a uniform gift to minor act, or as an investment adviser if the bank receives a fee for its investment advice;

(ii) in any capacity in which the bank possesses investment discretion on behalf of another; or

(iii) in any other similar capacity.

(E) EXCEPTION FOR ENTITIES SUBJECT TO SECTION 78O(e).[1] —The term "broker" does not include a bank that—

(i) was, on the day before November 12, 1999, subject to section 78o(e) [1] of this title; and

(ii) is subject to such restrictions and requirements as the Commission considers appropriate.

(F) JOINT RULEMAKING REQUIRED.—The Commission and the Board of Governors of the Federal Reserve System shall jointly adopt a single set of rules or regulations to implement the exceptions in subparagraph (B).

(5) DEALER.—

(A) IN GENERAL.—The term "dealer" means any person engaged in the business of buying and selling securities (not including security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants) for such person's own account through a broker or otherwise.

(B) EXCEPTION FOR PERSON NOT ENGAGED IN THE BUSINESS OF DEALING .—The term "dealer" does not include a person that buys or sells securities (not including security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants) for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business.

(C) EXCEPTION FOR CERTAIN BANK ACTIVITIES.—A bank shall not be considered to be a dealer because the bank engages in any of the following activities under the conditions described:

(i) PERMISSIBLE SECURITIES TRANSACTIONS.—The bank buys or sells—

(I) commercial paper, bankers acceptances, or commercial bills;

(II) exempted securities;

(III) qualified Canadian government obligations as defined in section 24 of title 12, in conformity with section 78o–5 of this title and the rules and regulations thereunder, or obligations of the North American Development Bank; or

(IV) any standardized, credit enhanced debt security issued by a foreign government pursuant to the March 1989 plan of then Secretary of the Treasury Brady, used by such foreign government to retire outstanding commercial bank loans.

(ii) INVESTMENT, TRUSTEE, AND FIDUCIARY TRANSACTIONS.—The bank buys or sells securities for investment purposes—

(I) for the bank; or

(II) for accounts for which the bank acts as a trustee or fiduciary.

(iii) ASSET-BACKED TRANSACTIONS.—The bank engages in the issuance or sale to qualified investors, through a grantor trust or other separate entity, of securities backed by or representing an interest in notes, drafts, acceptances, loans, leases, receivables, other obligations (other than securities of which the bank is not the issuer), or pools of any such obligations predominantly originated by—

(I) the bank;

(II) an affiliate of any such bank other than a broker or dealer; or

(III) a syndicate of banks of which the bank is a member, if the obligations or pool of obligations consists of mortgage obligations or consumer-related receivables.

(iv) IDENTIFIED BANKING PRODUCTS.—The bank buys or sells identified banking products, as defined in section 206 of the Gramm-Leach-Bliley Act.

(6) The term "bank" means (A) a banking institution organized under the laws of the United States or a Federal savings association, as defined in section 1462(5) [1] of title 12, (B) a member bank of the Federal Reserve System, (C) any other banking institution or savings association, as defined in section 1462(4) [1] of title 12, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency pursuant to section 92a of title 12, and which is supervised and examined by State or Federal authority having supervision over banks or savings associations, and which is not operated for the purpose of evading the provisions of this chapter, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph.

(7) The term "director" means any director of a corporation or any person performing similar functions with respect to any organization, whether incorporated or unincorporated.

(8) The term "issuer" means any person who issues or proposes to issue any security; except that with respect to certificates of deposit for securities, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued; and except that with respect to equipment-trust certificates or like securities, the term "issuer" means the person by whom the equipment or property is, or is to be, used.

(9) The term "person" means a natural person, company, government, or political subdivision, agency, or instrumentality of a government.

(10) The term "security" means any note, stock, treasury stock, security future, security-based swap, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, any put, call, straddle, option, or privilege on any security,

certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or in general, any instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing; but shall not include currency or any note, draft, bill of exchange, or banker's acceptance which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited.

(11) The term "equity security" means any stock or similar security; or any security future on any such security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the Commission shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as it may prescribe in the public interest or for the protection of investors, to treat as an equity security.

(12)(A) The term "exempted security" or "exempted securities" includes—

(i) government securities, as defined in paragraph (42) of this subsection;

(ii) municipal securities, as defined in paragraph (29) of this subsection;

(iii) any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term "investment company" under section 3(c)(3) of the Investment Company Act of 1940 [15 U.S.C. 80a–3(c)(3)];

(iv) any interest or participation in a single trust fund, or a collective trust fund maintained by a bank, or any security arising out of a contract issued by an insurance company, which interest, participation, or security is issued in connection with a qualified plan as defined in subparagraph (C) of this paragraph;

(v) any security issued by or any interest or participation in any pooled income fund, collective trust fund, collective investment fund, or similar fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940 [15 U.S.C. 80a–3(c)(10)(B)];

(vi) solely for purposes of sections 78l, 78m, 78n, and 78p of this title, any security issued by or any interest or participation in any church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940 [15 U.S.C. 80a–3(c)(14)]; and

(vii) such other securities (which may include, among others, unregistered securities, the market in which is predominantly intrastate) as the Commission may, by such rules and regulations as it deems consistent with the public interest and the protection of investors, either unconditionally or upon specified terms and conditions or for stated periods, exempt from the operation of any one or more provisions of this chapter which by their terms do not apply to an "exempted security" or to "exempted securities".

(B)(i) Notwithstanding subparagraph (A)(i) of this paragraph, government securities shall not be deemed to be "exempted securities" for the purposes of section 78q–1 of this title.

(ii) Notwithstanding subparagraph (A)(ii) of this paragraph, municipal securities shall not be deemed to be "exempted securities" for the purposes of sections 78o and 78q–1 of this title.

(C) For purposes of subparagraph (A)(iv) of this paragraph, the term "qualified plan" means (i) a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of title 26, (ii) an annuity plan which meets the requirements for the deduction of the employer's contribution under section 404(a)(2) of title 26, (iii) a governmental plan as defined in section 414(d) of title 26 which has been established by an employer for the exclusive benefit of its employees or their beneficiaries for the purpose of distributing to such employees or their beneficiaries the corpus and income of the funds accumulated under such plan, if under such plan it is impossible, prior to the satisfaction of all liabilities with respect to such employees and their beneficiaries, for any part of the corpus or income to be used for, or diverted to, purposes other than the exclusive benefit of such employees or their beneficiaries, or (iv) a church plan, company,

or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940 [15 U.S.C. 80a–3(c)(14)], other than any plan described in clause (i), (ii), or (iii) of this subparagraph which (I) covers employees some or all of whom are employees within the meaning of section 401(c) of title 26, or (II) is a plan funded by an annuity contract described in section 403(b) of title 26.

(13) The terms "buy" and "purchase" each include any contract to buy, purchase, or otherwise acquire. For security futures products, such term includes any contract, agreement, or transaction for future delivery. For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.

(14) The terms "sale" and "sell" each include any contract to sell or otherwise dispose of. For security futures products, such term includes any contract, agreement, or transaction for future delivery. For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.

(15) The term "Commission" means the Securities and Exchange Commission established by section 78d of this title.

(16) The term "State" means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States.

(17) The term "interstate commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State, or between any State and any place or ship outside thereof. The term also includes intrastate use of (A) any facility of a national securities exchange or of a telephone or other interstate means of communication, or (B) any other interstate instrumentality.

(18) The term "person associated with a broker or dealer" or "associated person of a broker or dealer" means any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer, or any employee of such broker or dealer, except that any person associated with a broker or dealer whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of section 78o(b) of this title (other than paragraph (6) thereof).

(19) The terms "investment company", "affiliated person", "insurance company", "separate account", and "company" have the same meanings as in the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.].

(20) The terms "investment adviser" and "underwriter" have the same meanings as in the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.].

(21) The term "person associated with a member" or "associated person of a member" when used with respect to a member of a national securities exchange or registered securities association means any partner, officer, director, or branch manager of such member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such member, or any employee of such member.

(22)(A) The term "securities information processor" means any person engaged in the business of (i) collecting, processing, or preparing for distribution or publication, or assisting, participating in, or coordinating the distribution or publication of, information with respect to transactions in or quotations for any security (other than an exempted security) or (ii) distributing or publishing (whether by means of a ticker tape, a communications network, a terminal display device, or otherwise) on a current and continuing basis, information with respect to such transactions or quotations. The term "securities information processor" does not include any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation, any self-regulatory organizations, any bank, broker, dealer, building and loan, savings and loan, or homestead association, or cooperative bank, if such bank, broker, dealer, association, or cooperative bank would be deemed to be a securities information processor solely by reason of functions performed by such institutions as part of customary banking, brokerage, dealing,

association, or cooperative bank activities, or any common carrier, as defined in section 153 of title 47, subject to the jurisdiction of the Federal Communications Commission or a State commission, as defined in section 153 of title 47, unless the Commission determines that such carrier is engaged in the business of collecting, processing, or preparing for distribution or publication, information with respect to transactions in or quotations for any security.

(B) The term "exclusive processor" means any securities information processor or self-regulatory organization which, directly or indirectly, engages on an exclusive basis on behalf of any national securities exchange or registered securities association, or any national securities exchange or registered securities association which engages on an exclusive basis on its own behalf, in collecting, processing, or preparing for distribution or publication any information with respect to (i) transactions or quotations on or effected or made by means of any facility of such exchange or (ii) quotations distributed or published by means of any electronic system operated or controlled by such association.

(23)(A) The term "clearing agency" means any person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities or who provides facilities for comparison of data respecting the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of securities settlement responsibilities. Such term also means any person, such as a securities depository, who (i) acts as a custodian of securities in connection with a system for the central handling of securities whereby all securities of a particular class or series of any issuer deposited within the system are treated as fungible and may be transferred, loaned, or pledged by bookkeeping entry without physical delivery of securities certificates, or (ii) otherwise permits or facilitates the settlement of securities transactions or the hypothecation or lending of securities without physical delivery of securities certificates.

(B) The term "clearing agency" does not include (i) any Federal Reserve bank, Federal home loan bank, or Federal land bank; (ii) any national securities exchange or registered securities association solely by reason of its providing facilities for comparison of data respecting the terms of settlement of securities transactions effected on such exchange or by means of any electronic system operated or controlled by such association; (iii) any bank, broker, dealer, building and loan, savings and loan, or homestead association, or cooperative bank if such bank, broker, dealer, association, or cooperative bank would be deemed to be a clearing agency solely by reason of functions performed by such institution as part of customary banking, brokerage, dealing, association, or cooperative banking activities, or solely by reason of acting on behalf of a clearing agency or a participant therein in connection with the furnishing by the clearing agency of services to its participants or the use of services of the clearing agency by its participants, unless the Commission, by rule, otherwise provides as necessary or appropriate to assure the prompt and accurate clearance and settlement of securities transactions or to prevent evasion of this chapter; (iv) any life insurance company, its registered separate accounts, or a subsidiary of such insurance company solely by reason of functions commonly performed by such entities in connection with variable annuity contracts or variable life policies issued by such insurance company or its separate accounts; (v) any registered open-end investment company or unit investment trust solely by reason of functions commonly performed by it in connection with shares in such registered open-end investment company or unit investment trust, or (vi) any person solely by reason of its performing functions described in paragraph (25)(E) of this subsection.

(24) The term "participant" when used with respect to a clearing agency means any person who uses a clearing agency to clear or settle securities transactions or to transfer, pledge, lend, or hypothecate securities. Such term does not include a person whose only use of a clearing agency is (A) through another person who is a participant or (B) as a pledgee of securities.

(25) The term "transfer agent" means any person who engages on behalf of an issuer of securities or on behalf of itself as an issuer of securities in (A) countersigning such securities upon issuance; (B) monitoring the issuance of such securities with a view to preventing unauthorized issuance, a function commonly performed by a person called a registrar; (C) registering the transfer of such securities; (D) exchanging or converting such securities; or (E) transferring record

ownership of securities by bookkeeping entry without physical issuance of securities certificates. The term "transfer agent" does not include any insurance company or separate account which performs such functions solely with respect to variable annuity contracts or variable life policies which it issues or any registered clearing agency which performs such functions solely with respect to options contracts which it issues.

(26) The term "self-regulatory organization" means any national securities exchange, registered securities association, or registered clearing agency, or (solely for purposes of sections 78s(b), 78s(c), and 78w(b) [1] of this title) the Municipal Securities Rulemaking Board established by section 78o–4 of this title.

(27) The term "rules of an exchange", "rules of an association", or "rules of a clearing agency" means the constitution, articles of incorporation, bylaws, and rules, or instruments corresponding to the foregoing, of an exchange, association of brokers and dealers, or clearing agency, respectively, and such of the stated policies, practices, and interpretations of such exchange, association, or clearing agency as the Commission, by rule, may determine to be necessary or appropriate in the public interest or for the protection of investors to be deemed to be rules of such exchange, association, or clearing agency.

(28) The term "rules of a self-regulatory organization" means the rules of an exchange which is a national securities exchange, the rules of an association of brokers and dealers which is a registered securities association, the rules of a clearing agency which is a registered clearing agency, or the rules of the Municipal Securities Rulemaking Board.

(29) The term "municipal securities" means securities which are direct obligations of, or obligations guaranteed as to principal or interest by, a State or any political subdivision thereof, or any agency or instrumentality of a State or any political subdivision thereof, or any municipal corporate instrumentality of one or more States, or any security which is an industrial development bond (as defined in section 103(c)(2) [1] of title 26) the interest on which is excludable from gross income under section 103(a)(1) [1] of title 26 if, by reason of the application of paragraph (4) or (6) of section 103(c) [1] of title 26 (determined as if paragraphs (4)(A), (5), and (7) were not included in such section 103(c)),[1] paragraph (1) of such section 103(c) [1] does not apply to such security.

(30) The term "municipal securities dealer" means any person (including a separately identifiable department or division of a bank) engaged in the business of buying and selling municipal securities for his own account, through a broker or otherwise, but does not include—

(A) any person insofar as he buys or sells such securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business; or

(B) a bank, unless the bank is engaged in the business of buying and selling municipal securities for its own account other than in a fiduciary capacity, through a broker or otherwise: *Provided, however*, That if the bank is engaged in such business through a separately identifiable department or division (as defined by the Municipal Securities Rulemaking Board in accordance with section 78o–4(b)(2)(H) of this title), the department or division and not the bank itself shall be deemed to be the municipal securities dealer.

(31) The term "municipal securities broker" means a broker engaged in the business of effecting transactions in municipal securities for the account of others.

(32) The term "person associated with a municipal securities dealer" when used with respect to a municipal securities dealer which is a bank or a division or department of a bank means any person directly engaged in the management, direction, supervision, or performance of any of the municipal securities dealer's activities with respect to municipal securities, and any person directly or indirectly controlling such activities or controlled by the municipal securities dealer in connection with such activities.

(33) The term "municipal securities investment portfolio" means all municipal securities held for investment and not for sale as part of a regular business by a municipal securities dealer or by a person, directly or indirectly, controlling, controlled by, or under common control with a municipal securities dealer.

(34) The term "appropriate regulatory agency" means—

(A) When used with respect to a municipal securities dealer:

(i) the Comptroller of the Currency, in the case of a national bank, a subsidiary or a department or division of any such bank, a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary or department or division of any such Federal savings association;

(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System, a subsidiary or a department or division thereof, a bank holding company, a subsidiary of a bank holding company which is a bank other than a bank specified in clause (i), (iii), or (iv) of this subparagraph, a subsidiary or a department or division of such subsidiary, or a savings and loan holding company;

(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System), a subsidiary or department or division of any such bank, a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary or a department or division of any such State savings association; and

(iv) the Commission in the case of all other municipal securities dealers.

(B) When used with respect to a clearing agency or transfer agent:

(i) the Comptroller of the Currency, in the case of a national bank, a subsidiary of any such bank, a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary of any such Federal savings association;

(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System, a subsidiary thereof, a bank holding company, a subsidiary of a bank holding company that is a bank other than a bank specified in clause (i) or (iii) of this subparagraph, or a savings and loan holding company;

(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System), a subsidiary of any such bank, a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary of any such State savings association; and

(iv) the Commission in the case of all other clearing agencies and transfer agents.

(C) When used with respect to a participant or applicant to become a participant in a clearing agency or a person requesting or having access to services offered by a clearing agency:

(i) The Comptroller of the Currency, in the case of a national bank or a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation [2] when the appropriate regulatory agency for such clearing agency is not the Commission;

(ii) the Board of Governors of the Federal Reserve System in the case of a State member bank of the Federal Reserve System, a bank holding company, or a subsidiary of a bank holding company, a subsidiary of a bank holding company that is a bank other than a bank specified in clause (i) or (iii) of this subparagraph, or a savings and loan holding company when the appropriate regulatory agency for such clearing agency is not the Commission;

(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System) or a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance

Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation; and [3] when the appropriate regulatory agency for such clearing agency is not the Commission; [4]

(iv) the Commission in all other cases.

(D) When used with respect to an institutional investment manager which is a bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.]:

(i) the Comptroller of the Currency, in the case of a national bank or a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation;

(ii) the Board of Governors of the Federal Reserve System, in the case of any other member bank of the Federal Reserve System; and

(iii) the Federal Deposit Insurance Corporation, in the case of any other insured bank or a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation.

(E) When used with respect to a national securities exchange or registered securities association, member thereof, person associated with a member thereof, applicant to become a member thereof or to become associated with a member thereof, or person requesting or having access to services offered by such exchange or association or member thereof, or the Municipal Securities Rulemaking Board, the Commission.

(F) When used with respect to a person exercising investment discretion with respect to an account; [5]

(i) the Comptroller of the Currency, in the case of a national bank or a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation;

(ii) the Board of Governors of the Federal Reserve System in the case of any other member bank of the Federal Reserve System;

(iii) the Federal Deposit Insurance Corporation, in the case of any other bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.] or a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation; and

(iv) the Commission in the case of all other such persons.

(G) When used with respect to a government securities broker or government securities dealer, or person associated with a government securities broker or government securities dealer:

(i) the Comptroller of the Currency, in the case of a national bank, a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act [12 U.S.C. 1813(b)(2)]), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a Federal branch or Federal agency of a foreign bank (as such terms are used in the International Banking Act of 1978 [12 U.S.C. 3101 et seq.]);

(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System, a foreign bank, an uninsured State branch or State agency of a foreign bank, a commercial lending company owned or controlled by a foreign bank (as such terms are used in the International Banking Act of 1978), or a corporation organized or having an agreement with the Board of Governors of the Federal Reserve System pursuant to section 25 or section 25A of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.];

(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the

Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System or a Federal savings bank), a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act [12 U.S.C. 1813(b)(3)]), the deposits of which are insured by the Federal Deposit Insurance Corporation, or an insured State branch of a foreign bank (as such terms are used in the International Banking Act of 1978); and

(iv) the Commission, in the case of all other government securities brokers and government securities dealers.

(H) When used with respect to an institution described in subparagraph (D), (F), or (G) of section 1841(c)(2), or held under section 1843(f) of title 12—

(i) the Comptroller of the Currency, in the case of a national bank;

(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System or any corporation chartered under section 25A of the Federal Reserve Act [12 U.S.C. 611 et seq.];

(iii) the Federal Deposit Insurance Corporation, in the case of any other bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.]; or

(iv) the Commission in the case of all other such institutions.

As used in this paragraph, the terms "bank holding company" and "subsidiary of a bank holding company" have the meanings given them in section 1841 of title 12. As used in this paragraph, the term "savings and loan holding company" has the same meaning as in section 1467a(a) of title 12.

(35) A person exercises "investment discretion" with respect to an account if, directly or indirectly, such person (A) is authorized to determine what securities or other property shall be purchased or sold by or for the account, (B) makes decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for such investment decisions, or (C) otherwise exercises such influence with respect to the purchase and sale of securities or other property by or for the account as the Commission, by rule, determines, in the public interest or for the protection of investors, should be subject to the operation of the provisions of this chapter and the rules and regulations thereunder.

(36) A class of persons or markets is subject to "equal regulation" if no member of the class has a competitive advantage over any other member thereof resulting from a disparity in their regulation under this chapter which the Commission determines is unfair and not necessary or appropriate in furtherance of the purposes of this chapter.

(37) The term "records" means accounts, correspondence, memorandums, tapes, discs, papers, books, and other documents or transcribed information of any type, whether expressed in ordinary or machine language.

(38) The term "market maker" means any specialist permitted to act as a dealer, any dealer acting in the capacity of block positioner, and any dealer who, with respect to a security, holds himself out (by entering quotations in an inter-dealer communications system or otherwise) as being willing to buy and sell such security for his own account on a regular or continuous basis.

(39) A person is subject to a "statutory disqualification" with respect to membership or participation in, or association with a member of, a self-regulatory organization, if such person—

(A) has been and is expelled or suspended from membership or participation in, or barred or suspended from being associated with a member of, any self-regulatory organization, foreign equivalent of a self-regulatory organization, foreign or international securities exchange, contract market designated pursuant to section 5 of the Commodity Exchange Act (7 U.S.C. 7), or any substantially equivalent foreign statute or regulation, or futures association registered under section 17 of such Act (7 U.S.C. 21), or any substantially equivalent foreign statute or regulation, or has been and is denied trading privileges on any such contract market or foreign equivalent;

(B) is subject to—

(i) an order of the Commission, other appropriate regulatory agency, or foreign financial

regulatory authority—

(I) denying, suspending for a period not exceeding 12 months, or revoking his registration as a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, security-based swap dealer, or major security-based swap participant or limiting his activities as a foreign person performing a function substantially equivalent to any of the above; or

(II) barring or suspending for a period not exceeding 12 months his being associated with a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, security-based swap dealer, major security-based swap participant, or foreign person performing a function substantially equivalent to any of the above;

(ii) an order of the Commodity Futures Trading Commission denying, suspending, or revoking his registration under the Commodity Exchange Act (7 U.S.C. 1 et seq.); or

(iii) an order by a foreign financial regulatory authority denying, suspending, or revoking the person's authority to engage in transactions in contracts of sale of a commodity for future delivery or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent thereof;

(C) by his conduct while associated with a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, security-based swap dealer, or major security-based swap participant, or while associated with an entity or person required to be registered under the Commodity Exchange Act, has been found to be a cause of any effective suspension, expulsion, or order of the character described in subparagraph (A) or (B) of this paragraph, and in entering such a suspension, expulsion, or order, the Commission, an appropriate regulatory agency, or any such self-regulatory organization shall have jurisdiction to find whether or not any person was a cause thereof;

(D) by his conduct while associated with any broker, dealer, municipal securities dealer, government securities broker, government securities dealer, security-based swap dealer, major security-based swap participant, or any other entity engaged in transactions in securities, or while associated with an entity engaged in transactions in contracts of sale of a commodity for future delivery or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent thereof, has been found to be a cause of any effective suspension, expulsion, or order by a foreign or international securities exchange or foreign financial regulatory authority empowered by a foreign government to administer or enforce its laws relating to financial transactions as described in subparagraph (A) or (B) of this paragraph;

(E) has associated with him any person who is known, or in the exercise of reasonable care should be known, to him to be a person described by subparagraph (A), (B), (C), or (D) of this paragraph; or

(F) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (D), (E), (H), or (G) of paragraph (4) of section 78o(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) or any other felony within ten years of the date of the filing of an application for membership or participation in, or to become associated with a member of, such self-regulatory organization, is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4), has willfully made or caused to be made in any application for membership or participation in, or to become associated with a member of, a self-regulatory organization, report required to be filed with a self-regulatory organization, or proceeding before a self-regulatory organization, any statement which was at the time, and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application, report, or proceeding any material fact which is required to be stated therein.

(40) The term "financial responsibility rules" means the rules and regulations of the

Commission or the rules and regulations prescribed by any self-regulatory organization relating to financial responsibility and related practices which are designated by the Commission, by rule or regulation, to be financial responsibility rules.

(41) The term "mortgage related security" means a security that meets standards of credit-worthiness as established by the Commission, and either:

(A) represents ownership of one or more promissory notes or certificates of interest or participation in such notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of such notes, certificates, or participations of amounts payable under, such notes, certificates, or participations), which notes:

(i) are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, on a residential manufactured home as defined in section 5402(6) of title 42, whether such manufactured home is considered real or personal property under the laws of the State in which it is to be located, or on one or more parcels of real estate upon which is located one or more commercial structures; and

(ii) were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution which is supervised and examined by a Federal or State authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to sections 1709 and 1715b of title 12, or, where such notes involve a lien on the manufactured home, by any such institution or by any financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to section 1703 of title 12; or

(B) is secured by one or more promissory notes or certificates of interest or participations in such notes (with or without recourse to the issuer thereof) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, on notes meeting the requirements of subparagraphs (A)(i) and (ii) or certificates of interest or participations in promissory notes meeting such requirements.

For the purpose of this paragraph, the term "promissory note", when used in connection with a manufactured home, shall also include a loan, advance, or credit sale as evidence [6] by a retail installment sales contract or other instrument.

(42) The term "government securities" means—

(A) securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States;

(B) securities which are issued or guaranteed by the Tennessee Valley Authority or by corporations in which the United States has a direct or indirect interest and which are designated by the Secretary of the Treasury for exemption as necessary or appropriate in the public interest or for the protection of investors;

(C) securities issued or guaranteed as to principal or interest by any corporation the securities of which are designated, by statute specifically naming such corporation, to constitute exempt securities within the meaning of the laws administered by the Commission;

(D) for purposes of sections 78o–5 and 78q–1 of this title, any put, call, straddle, option, or privilege on a security described in subparagraph (A), (B), or (C) other than a put, call, straddle, option, or privilege—

(i) that is traded on one or more national securities exchanges; or

(ii) for which quotations are disseminated through an automated quotation system operated by a registered securities association; or

(E) for purposes of sections 78o, 78o–5, and 78q–1 of this title as applied to a bank, a qualified Canadian government obligation as defined in section 24 of title 12.

(43) The term "government securities broker" means any person regularly engaged in the business of effecting transactions in government securities for the account of others, but does not include—

(A) any corporation the securities of which are government securities under subparagraph (B) or (C) of paragraph (42) of this subsection; or

(B) any person registered with the Commodity Futures Trading Commission, any contract market designated by the Commodity Futures Trading Commission, such contract market's affiliated clearing organization, or any floor trader on such contract market, solely because such person effects transactions in government securities that the Commission, after consultation with the Commodity Futures Trading Commission, has determined by rule or order to be incidental to such person's futures-related business.

(44) The term "government securities dealer" means any person engaged in the business of buying and selling government securities for his own account, through a broker or otherwise, but does not include—

(A) any person insofar as he buys or sells such securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business;

(B) any corporation the securities of which are government securities under subparagraph (B) or (C) of paragraph (42) of this subsection;

(C) any bank, unless the bank is engaged in the business of buying and selling government securities for its own account other than in a fiduciary capacity, through a broker or otherwise; or

(D) any person registered with the Commodity Futures Trading Commission, any contract market designated by the Commodity Futures Trading Commission, such contract market's affiliated clearing organization, or any floor trader on such contract market, solely because such person effects transactions in government securities that the Commission, after consultation with the Commodity Futures Trading Commission, has determined by rule or order to be incidental to such person's futures-related business.

(45) The term "person associated with a government securities broker or government securities dealer" means any partner, officer, director, or branch manager of such government securities broker or government securities dealer (or any person occupying a similar status or performing similar functions), and any other employee of such government securities broker or government securities dealer who is engaged in the management, direction, supervision, or performance of any activities relating to government securities, and any person directly or indirectly controlling, controlled by, or under common control with such government securities broker or government securities dealer.

(46) The term "financial institution" means—

(A) a bank (as defined in paragraph (6) of this subsection);

(B) a foreign bank (as such term is used in the International Banking Act of 1978); and

(C) a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act [12 U.S.C. 1813(b)]) the deposits of which are insured by the Federal Deposit Insurance Corporation.

(47) The term "securities laws" means the Securities Act of 1933 (15 U.S.C. 77a et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), the Sarbanes-Oxley Act of 2002 [15 U.S.C. 7201 et seq.], the Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.), the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.), the Investment Advisers Act of 1940 (15 U.S.C. 80b et seq.) [15 U.S.C. 80b–1 et seq.], and the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.).

(48) The term "registered broker or dealer" means a broker or dealer registered or required to register pursuant to section 78o or 78o–4 of this title, except that in paragraph (3) of this subsection and sections 78f and 78o–3 of this title the term means such a broker or dealer and a

government securities broker or government securities dealer registered or required to register pursuant to section 78o–5(a)(1)(A) of this title.

(49) The term "person associated with a transfer agent" and "associated person of a transfer agent" mean any person (except an employee whose functions are solely clerical or ministerial) directly engaged in the management, direction, supervision, or performance of any of the transfer agent's activities with respect to transfer agent functions, and any person directly or indirectly controlling such activities or controlled by the transfer agent in connection with such activities.

(50) The term "foreign securities authority" means any foreign government, or any governmental body or regulatory organization empowered by a foreign government to administer or enforce its laws as they relate to securities matters.

(51)(A) The term "penny stock" means any equity security other than a security that is—

(i) registered or approved for registration and traded on a national securities exchange that meets such criteria as the Commission shall prescribe by rule or regulation for purposes of this paragraph;

(ii) authorized for quotation on an automated quotation system sponsored by a registered securities association, if such system (I) was established and in operation before January 1, 1990, and (II) meets such criteria as the Commission shall prescribe by rule or regulation for purposes of this paragraph;

(iii) issued by an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.];

(iv) excluded, on the basis of exceeding a minimum price, net tangible assets of the issuer, or other relevant criteria, from the definition of such term by rule or regulation which the Commission shall prescribe for purposes of this paragraph; or

(v) exempted, in whole or in part, conditionally or unconditionally, from the definition of such term by rule, regulation, or order prescribed by the Commission.

(B) The Commission may, by rule, regulation, or order, designate any equity security or class of equity securities described in clause (i) or (ii) of subparagraph (A) as within the meaning of the term "penny stock" if such security or class of securities is traded other than on a national securities exchange or through an automated quotation system described in clause (ii) of subparagraph (A).

(C) In exercising its authority under this paragraph to prescribe rules, regulations, and orders, the Commission shall determine that such rule, regulation, or order is consistent with the public interest and the protection of investors.

(52) The term "foreign financial regulatory authority" means any (A) foreign securities authority, (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent, or other financial activities, or (C) membership organization a function of which is to regulate participation of its members in activities listed above.

(53)(A) The term "small business related security" means a security that meets standards of credit-worthiness as established by the Commission, and either—

(i) represents an interest in 1 or more promissory notes or leases of personal property evidencing the obligation of a small business concern and originated by an insured depository institution, insured credit union, insurance company, or similar institution which is supervised and examined by a Federal or State authority, or a finance company or leasing company; or

(ii) is secured by an interest in 1 or more promissory notes or leases of personal property (with or without recourse to the issuer or lessee) and provides for payments of principal in relation to payments, or reasonable projections of payments, on notes or leases described in clause (i).

(B) For purposes of this paragraph—

(i) an "interest in a promissory note or a lease of personal property" includes ownership rights, certificates of interest or participation in such notes or leases, and rights designed to assure servicing of such notes or leases, or the receipt or timely receipt of amounts payable under such notes or leases;

(ii) the term "small business concern" means a business that meets the criteria for a small business concern established by the Small Business Administration under section 632(a) of this title;

(iii) the term "insured depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813]; and

(iv) the term "insured credit union" has the same meaning as in section 1752 of title 12.

(54) QUALIFIED INVESTOR.—

(A) DEFINITION.—Except as provided in subparagraph (B), for purposes of this chapter, the term "qualified investor" means—

(i) any investment company registered with the Commission under section 8 of the Investment Company Act of 1940 [15 U.S.C. 80a–8];

(ii) any issuer eligible for an exclusion from the definition of investment company pursuant to section 3(c)(7) of the Investment Company Act of 1940 [15 U.S.C. 80a–3(c)(7)];

(iii) any bank (as defined in paragraph (6) of this subsection), savings association (as defined in section 3(b) of the Federal Deposit Insurance Act [12 U.S.C. 1813(b)]), broker, dealer, insurance company (as defined in section 2(a)(13) of the Securities Act of 1933 [15 U.S.C. 77b(a)(13)]), or business development company (as defined in section 2(a)(48) of the Investment Company Act of 1940 [15 U.S.C. 80a–2(a)(48)]);

(iv) any small business investment company licensed by the United States Small Business Administration under section 301(c) [15 U.S.C. 681(c)] or (d) [1] of the Small Business Investment Act of 1958;

(v) any State sponsored employee benefit plan, or any other employee benefit plan, within the meaning of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.], other than an individual retirement account, if the investment decisions are made by a plan fiduciary, as defined in section 3(21) of that Act [29 U.S.C. 1002(21)], which is either a bank, savings and loan association, insurance company, or registered investment adviser;

(vi) any trust whose purchases of securities are directed by a person described in clauses (i) through (v) of this subparagraph;

(vii) any market intermediary exempt under section 3(c)(2) of the Investment Company Act of 1940 [15 U.S.C. 80a–3(c)(2)];

(viii) any associated person of a broker or dealer other than a natural person;

(ix) any foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978 [12 U.S.C. 3101(7)]);

(x) the government of any foreign country;

(xi) any corporation, company, or partnership that owns and invests on a discretionary basis, not less than $25,000,000 in investments;

(xii) any natural person who owns and invests on a discretionary basis, not less than $25,000,000 in investments;

(xiii) any government or political subdivision, agency, or instrumentality of a government who owns and invests on a discretionary basis not less than $50,000,000 in investments; or

(xiv) any multinational or supranational entity or any agency or instrumentality thereof.

(B) ALTERED THRESHOLDS FOR ASSET-BACKED SECURITIES AND LOAN PARTICIPATIONS.—For purposes of subsection (a)(5)(C)(iii) of this section and section 206(a)(5) of the Gramm-Leach-Bliley Act, the term "qualified investor" has the meaning given such term by subparagraph (A) of this paragraph except that clauses (xi) and (xii) shall be applied by substituting "$10,000,000" for "$25,000,000".

(C) ADDITIONAL AUTHORITY.—The Commission may, by rule or order, define a

"qualified investor" as any other person, taking into consideration such factors as the financial sophistication of the person, net worth, and knowledge and experience in financial matters.

(55)(A) The term "security future" means a contract of sale for future delivery of a single security or of a narrow-based security index, including any interest therein or based on the value thereof, except an exempted security under paragraph (12) of this subsection as in effect on January 11, 1983 (other than any municipal security as defined in paragraph (29) of this subsection as in effect on January 11, 1983). The term "security future" does not include any agreement, contract, or transaction excluded from the Commodity Exchange Act [7 U.S.C. 1 et seq.] under section 2(c), 2(d), 2(f), or 2(g) of the Commodity Exchange Act [7 U.S.C. 2(c), (d), (f), (g)] (as in effect on December 21, 2000) or sections 27 to 27f of title 7.

(B) The term "narrow-based security index" means an index—

(i) that has 9 or fewer component securities;

(ii) in which a component security comprises more than 30 percent of the index's weighting;

(iii) in which the five highest weighted component securities in the aggregate comprise more than 60 percent of the index's weighting; or

(iv) in which the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting have an aggregate dollar value of average daily trading volume of less than $50,000,000 (or in the case of an index with 15 or more component securities, $30,000,000), except that if there are two or more securities with equal weighting that could be included in the calculation of the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting, such securities shall be ranked from lowest to highest dollar value of average daily trading volume and shall be included in the calculation based on their ranking starting with the lowest ranked security.

(C) Notwithstanding subparagraph (B), an index is not a narrow-based security index if—

(i)(I) it has at least nine component securities;

(II) no component security comprises more than 30 percent of the index's weighting; and

(III) each component security is—

(aa) registered pursuant to section 78l of this title;

(bb) one of 750 securities with the largest market capitalization; and

(cc) one of 675 securities with the largest dollar value of average daily trading volume;

(ii) a board of trade was designated as a contract market by the Commodity Futures Trading Commission with respect to a contract of sale for future delivery on the index, before December 21, 2000;

(iii)(I) a contract of sale for future delivery on the index traded on a designated contract market or registered derivatives transaction execution facility for at least 30 days as a contract of sale for future delivery on an index that was not a narrow-based security index; and

(II) it has been a narrow-based security index for no more than 45 business days over 3 consecutive calendar months;

(iv) a contract of sale for future delivery on the index is traded on or subject to the rules of a foreign board of trade and meets such requirements as are jointly established by rule or regulation by the Commission and the Commodity Futures Trading Commission;

(v) no more than 18 months have passed since December 21, 2000, and—

(I) it is traded on or subject to the rules of a foreign board of trade;

(II) the offer and sale in the United States of a contract of sale for future delivery on the index was authorized before December 21, 2000; and

(III) the conditions of such authorization continue to be met; or

(vi) a contract of sale for future delivery on the index is traded on or subject to the rules of a board of trade and meets such requirements as are jointly established by rule, regulation, or order by the Commission and the Commodity Futures Trading Commission.

(D) Within 1 year after December 21, 2000, the Commission and the Commodity Futures Trading Commission jointly shall adopt rules or regulations that set forth the requirements under clause (iv) of subparagraph (C).

(E) An index that is a narrow-based security index solely because it was a narrow-based security index for more than 45 business days over 3 consecutive calendar months pursuant to clause (iii) of subparagraph (C) shall not be a narrow-based security index for the 3 following calendar months.

(F) For purposes of subparagraphs (B) and (C) of this paragraph—

(i) the dollar value of average daily trading volume and the market capitalization shall be calculated as of the preceding 6 full calendar months; and

(ii) the Commission and the Commodity Futures Trading Commission shall, by rule or regulation, jointly specify the method to be used to determine market capitalization and dollar value of average daily trading volume.

(56) The term "security futures product" means a security future or any put, call, straddle, option, or privilege on any security future.

(57)(A) The term "margin", when used with respect to a security futures product, means the amount, type, and form of collateral required to secure any extension or maintenance of credit, or the amount, type, and form of collateral required as a performance bond related to the purchase, sale, or carrying of a security futures product.

(B) The terms "margin level" and "level of margin", when used with respect to a security futures product, mean the amount of margin required to secure any extension or maintenance of credit, or the amount of margin required as a performance bond related to the purchase, sale, or carrying of a security futures product.

(C) The terms "higher margin level" and "higher level of margin", when used with respect to a security futures product, mean a margin level established by a national securities exchange registered pursuant to section 78f(g) of this title that is higher than the minimum amount established and in effect pursuant to section 78g(c)(2)(B) of this title.

(58) AUDIT COMMITTEE.—The term "audit committee" means—

(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer; and

(B) if no such committee exists with respect to an issuer, the entire board of directors of the issuer.

(59) REGISTERED PUBLIC ACCOUNTING FIRM.—The term "registered public accounting firm" has the same meaning as in section 2 of the Sarbanes-Oxley Act of 2002 [15 U.S.C. 7201].

(60) CREDIT RATING.—The term "credit rating" means an assessment of the creditworthiness of an obligor as an entity or with respect to specific securities or money market instruments.

(61) CREDIT RATING AGENCY.—The term "credit rating agency" means any person—

(A) engaged in the business of issuing credit ratings on the Internet or through another readily accessible means, for free or for a reasonable fee, but does not include a commercial credit reporting company;

(B) employing either a quantitative or qualitative model, or both, to determine credit ratings; and

(C) receiving fees from either issuers, investors, or other market participants, or a combination thereof.

(62) NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.—The term "nationally recognized statistical rating organization" means a credit rating agency that—

(A) issues credit ratings certified by qualified institutional buyers, in accordance with section 78o–7(a)(1)(B)(ix) of this title, with respect to—

(i) financial institutions, brokers, or dealers;
(ii) insurance companies;
(iii) corporate issuers;
(iv) issuers of asset-backed securities (as that term is defined in section 1101(c) of part 229 of title 17, Code of Federal Regulations, as in effect on September 29, 2006);
(v) issuers of government securities, municipal securities, or securities issued by a foreign government; or
(vi) a combination of one or more categories of obligors described in any of clauses (i) through (v); and

(B) is registered under section 78o–7 of this title.

(63) PERSON ASSOCIATED WITH A NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.—The term "person associated with" a nationally recognized statistical rating organization means any partner, officer, director, or branch manager of a nationally recognized statistical rating organization (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a nationally recognized statistical rating organization, or any employee of a nationally recognized statistical rating organization.
(64) QUALIFIED INSTITUTIONAL BUYER.—The term "qualified institutional buyer" has the meaning given such term in section 230.144A(a) of title 17, Code of Federal Regulations, or any successor thereto.
(65) ELIGIBLE CONTRACT PARTICIPANT.—The term "eligible contract participant" has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).
(66) MAJOR SWAP PARTICIPANT.—The term "major swap participant" has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).
(67) MAJOR SECURITY-BASED SWAP PARTICIPANT.—
(A) IN GENERAL.—The term "major security-based swap participant" means any person—
(i) who is not a security-based swap dealer; and
(ii)(I) who maintains a substantial position in security-based swaps for any of the major security-based swap categories, as such categories are determined by the Commission, excluding both positions held for hedging or mitigating commercial risk and positions maintained by any employee benefit plan (or any contract held by such a plan) as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) for the primary purpose of hedging or mitigating any risk directly associated with the operation of the plan;
(II) whose outstanding security-based swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets; or
(III) that is a financial entity that—
(aa) is highly leveraged relative to the amount of capital such entity holds and that is not subject to capital requirements established by an appropriate Federal banking agency; and
(bb) maintains a substantial position in outstanding security-based swaps in any major security-based swap category, as such categories are determined by the Commission.

(B) DEFINITION OF SUBSTANTIAL POSITION.—For purposes of subparagraph (A), the Commission shall define, by rule or regulation, the term "substantial position" at the threshold that the Commission determines to be prudent for the effective monitoring, management, and oversight of entities that are systemically important or can significantly impact the financial system of the United States. In setting the definition under this subparagraph, the Commission shall consider the person's relative position in uncleared as opposed to cleared security-based swaps and may take into consideration the value and quality of collateral held against counterparty exposures.

(C) SCOPE OF DESIGNATION.—For purposes of subparagraph (A), a person may be designated as a major security-based swap participant for 1 or more categories of security-based swaps without being classified as a major security-based swap participant for all classes of security-based swaps.

(68) SECURITY-BASED SWAP.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term "security-based swap" means any agreement, contract, or transaction that—

(i) is a swap, as that term is defined under section 1a of the Commodity Exchange Act [7 U.S.C. 1a] (without regard to paragraph (47)(B)(x) of such section); and

(ii) is based on—

(I) an index that is a narrow-based security index, including any interest therein or on the value thereof;

(II) a single security or loan, including any interest therein or on the value thereof; or

(III) the occurrence, nonoccurrence, or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event directly affects the financial statements, financial condition, or financial obligations of the issuer.

(B) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—The term "security-based swap" shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a security-based swap pursuant to subparagraph (A), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a security-based swap pursuant to subparagraph (A), except that the master agreement shall be considered to be a security-based swap only with respect to each agreement, contract, or transaction under the master agreement that is a security-based swap pursuant to subparagraph (A).

(C) EXCLUSIONS.—The term "security-based swap" does not include any agreement, contract, or transaction that meets the definition of a security-based swap only because such agreement, contract, or transaction references, is based upon, or settles through the transfer, delivery, or receipt of an exempted security under paragraph (12), as in effect on January 11, 1983 (other than any municipal security as defined in paragraph (29) as in effect on January 11, 1983), unless such agreement, contract, or transaction is of the character of, or is commonly known in the trade as, a put, call, or other option.

(D) MIXED SWAP.—The term "security-based swap" includes any agreement, contract, or transaction that is as described in subparagraph (A) and also is based on the value of 1 or more interest or other rates, currencies, commodities, instruments of indebtedness, indices, quantitative measures, other financial or economic interest or property of any kind (other than a single security or a narrow-based security index), or the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence (other than an event described in subparagraph (A)(ii)(III)).

(E) RULE OF CONSTRUCTION REGARDING USE OF THE TERM INDEX.—The term "index" means an index or group of securities, including any interest therein or based on the value thereof.

(69) SWAP.—The term "swap" has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(70) PERSON ASSOCIATED WITH A SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED SWAP PARTICIPANT.—

(A) IN GENERAL.—The term "person associated with a security-based swap dealer or major security-based swap participant" or "associated person of a security-based swap dealer or major security-based swap participant" means—

(i) any partner, officer, director, or branch manager of such security-based swap dealer or major security-based swap participant (or any person occupying a similar status or performing similar functions);

(ii) any person directly or indirectly controlling, controlled by, or under common control with such security-based swap dealer or major security-based swap participant; or

(iii) any employee of such security-based swap dealer or major security-based swap participant.

(B) EXCLUSION.—Other than for purposes of section 78o–10(l)(2) of this title, the term "person associated with a security-based swap dealer or major security-based swap participant" or "associated person of a security-based swap dealer or major security-based swap participant" does not include any person associated with a security-based swap dealer or major security-based swap participant whose functions are solely clerical or ministerial.

(71) SECURITY-BASED SWAP DEALER.—

(A) IN GENERAL.—The term "security-based swap dealer" means any person who—

(i) holds themself out as a dealer in security-based swaps;

(ii) makes a market in security-based swaps;

(iii) regularly enters into security-based swaps with counterparties as an ordinary course of business for its own account; or

(iv) engages in any activity causing it to be commonly known in the trade as a dealer or market maker in security-based swaps.

(B) DESIGNATION BY TYPE OR CLASS.—A person may be designated as a security-based swap dealer for a single type or single class or category of security-based swap or activities and considered not to be a security-based swap dealer for other types, classes, or categories of security-based swaps or activities.

(C) EXCEPTION.—The term "security-based swap dealer" does not include a person that enters into security-based swaps for such person's own account, either individually or in a fiduciary capacity, but not as a part of regular business.

(D) DE MINIMIS EXCEPTION.—The Commission shall exempt from designation as a security-based swap dealer an entity that engages in a de minimis quantity of security-based swap dealing in connection with transactions with or on behalf of its customers. The Commission shall promulgate regulations to establish factors with respect to the making of any determination to exempt.

(72) APPROPRIATE FEDERAL BANKING AGENCY.—The term "appropriate Federal banking agency" has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

(73) BOARD.—The term "Board" means the Board of Governors of the Federal Reserve System.

(74) PRUDENTIAL REGULATOR.—The term "prudential regulator" has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(75) SECURITY-BASED SWAP DATA REPOSITORY.—The term "security-based swap data repository" means any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, security-based swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for security-based swaps.

(76) SWAP DEALER.—The term "swap dealer" has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(77) SECURITY-BASED SWAP EXECUTION FACILITY.—The term "security-based swap execution facility" means a trading system or platform in which multiple participants have the ability to execute or trade security-based swaps by accepting bids and offers made by multiple

participants in the facility or system, through any means of interstate commerce, including any trading facility, that—

(A) facilitates the execution of security-based swaps between persons; and

(B) is not a national securities exchange.

(78) SECURITY-BASED SWAP AGREEMENT.—

(A) IN GENERAL.—For purposes of sections 78i, 78j, 78p, 78t, and 78u–1 of this title, and section 17 of the Securities Act of 1933 (15 U.S.C. 77q), the term "security-based swap agreement" means a swap agreement as defined in section 206A of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) of which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein.

(B) EXCLUSIONS.—The term "security-based swap agreement" does not include any security-based swap.

(79) ASSET-BACKED SECURITY.—The term "asset-backed security"—

(A) means a fixed-income or other security collateralized by any type of self-liquidating financial asset (including a loan, a lease, a mortgage, or a secured or unsecured receivable) that allows the holder of the security to receive payments that depend primarily on cash flow from the asset, including—

(i) a collateralized mortgage obligation;

(ii) a collateralized debt obligation;

(iii) a collateralized bond obligation;

(iv) a collateralized debt obligation of asset-backed securities;

(v) a collateralized debt obligation of collateralized debt obligations; and

(vi) a security that the Commission, by rule, determines to be an asset-backed security for purposes of this section; and

(B) does not include a security issued by a finance subsidiary held by the parent company or a company controlled by the parent company, if none of the securities issued by the finance subsidiary are held by an entity that is not controlled by the parent company.

(80) [7] EMERGING GROWTH COMPANY.—The term "emerging growth company" means an issuer that had total annual gross revenues of less than $1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest 1,000,000) during its most recently completed fiscal year. An issuer that is an emerging growth company as of the first day of that fiscal year shall continue to be deemed an emerging growth company until the earliest of—

(A) the last day of the fiscal year of the issuer during which it had total annual gross revenues of $1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest 1,000,000) or more;

(B) the last day of the fiscal year of the issuer following the fifth anniversary of the date of the first sale of common equity securities of the issuer pursuant to an effective registration statement under the Securities Act of 1933;

(C) the date on which such issuer has, during the previous 3-year period, issued more than $1,000,000,000 in non-convertible debt; or

(D) the date on which such issuer is deemed to be a "large accelerated filer", as defined in section 240.12b–2 of title 17, Code of Federal Regulations, or any successor thereto.

(80) [7] FUNDING PORTAL.—The term "funding portal" means any person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others, solely pursuant to section 4(6) [1] of the Securities Act of 1933 (15 U.S.C. 77d(6)), that does not—

(A) offer investment advice or recommendations;

(B) solicit purchases, sales, or offers to buy the securities offered or displayed on its website or portal;

(C) compensate employees, agents, or other persons for such solicitation or based on the sale of securities displayed or referenced on its website or portal;

(D) hold, manage, possess, or otherwise handle investor funds or securities; or

(E) engage in such other activities as the Commission, by rule, determines appropriate.

(b) Power to define technical, trade, accounting, and other terms

The Commission and the Board of Governors of the Federal Reserve System, as to matters within their respective jurisdictions, shall have power by rules and regulations to define technical, trade, accounting, and other terms used in this chapter, consistently with the provisions and purposes of this chapter.

(c) Application to governmental departments or agencies

No provision of this chapter shall apply to, or be deemed to include, any executive department or independent establishment of the United States, or any lending agency which is wholly owned, directly or indirectly, by the United States, or any officer, agent, or employee of any such department, establishment, or agency, acting in the course of his official duty as such, unless such provision makes specific reference to such department, establishment, or agency.

(d) Issuers of municipal securities

No issuer of municipal securities or officer or employee thereof acting in the course of his official duties as such shall be deemed to be a "broker", "dealer", or "municipal securities dealer" solely by reason of buying, selling, or effecting transactions in the issuer's securities.

(e) Charitable organizations

(1) Exemption

Notwithstanding any other provision of this chapter, but subject to paragraph (2) of this subsection, a charitable organization, as defined in section 3(c)(10)(D) of the Investment Company Act of 1940 [15 U.S.C. 80a–3(c)(10)(D)], or any trustee, director, officer, employee, or volunteer of such a charitable organization acting within the scope of such person's employment or duties with such organization, shall not be deemed to be a "broker", "dealer", "municipal securities broker", "municipal securities dealer", "government securities broker", or "government securities dealer" for purposes of this chapter solely because such organization or person buys, holds, sells, or trades in securities for its own account in its capacity as trustee or administrator of, or otherwise on behalf of or for the account of—

(A) such a charitable organization;

(B) a fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940 [15 U.S.C. 80a–3(c)(10)(B)]; or

(C) a trust or other donative instrument described in section 3(c)(10)(B) of the Investment Company Act of 1940 [15 U.S.C. 80a–3(c)(10)(B)], or the settlors (or potential settlors) or beneficiaries of any such trust or other instrument.

(2) Limitation on compensation

The exemption provided under paragraph (1) shall not be available to any charitable organization, or any trustee, director, officer, employee, or volunteer of such a charitable organization, unless each person who, on or after 90 days after December 8, 1995, solicits donations on behalf of such charitable organization from any donor to a fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940 [15 U.S.C. 80a–3(c)(10)(B)], is either a volunteer or is engaged in the overall fund raising activities of a charitable organization and receives no commission or other special compensation based on the number or the value of donations collected for the fund.

(f) Consideration of promotion of efficiency, competition, and capital formation

Whenever pursuant to this chapter the Commission is engaged in rulemaking, or in the review of a

rule of a self-regulatory organization, and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

(g) Church plans

No church plan described in section 414(e) of title 26, no person or entity eligible to establish and maintain such a plan under title 26, no company or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940 [15 U.S.C. 80a–3(c)(14)], and no trustee, director, officer or employee of or volunteer for such plan, company, account, person, or entity, acting within the scope of that person's employment or activities with respect to such plan, shall be deemed to be a "broker", "dealer", "municipal securities broker", "municipal securities dealer", "government securities broker", "government securities dealer", "clearing agency", or "transfer agent" for purposes of this chapter—

(1) solely because such plan, company, person, or entity buys, holds, sells, trades in, or transfers securities or acts as an intermediary in making payments in connection with transactions in securities for its own account in its capacity as trustee or administrator of, or otherwise on behalf of, or for the account of, any church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940 [15 U.S.C. 80a–3(c)(14)]; and

(2) if no such person or entity receives a commission or other transaction-related sales compensation in connection with any activities conducted in reliance on the exemption provided by this subsection.

(h) Limited exemption for funding portals

(1) In general

The Commission shall, by rule, exempt, conditionally or unconditionally, a registered funding portal from the requirement to register as a broker or dealer under section 78o(a)(1) of this title, provided that such funding portal—

(A) remains subject to the examination, enforcement, and other rulemaking authority of the Commission;

(B) is a member of a national securities association registered under section 78o–3 of this title; and

(C) is subject to such other requirements under this chapter as the Commission determines appropriate under such rule.

(2) National securities association membership

For purposes of sections 78o(b)(8) and 78o–3 of this title, the term "broker or dealer" includes a funding portal and the term "registered broker or dealer" includes a registered funding portal, except to the extent that the Commission, by rule, determines otherwise, provided that a national securities association shall only examine for and enforce against a registered funding portal rules of such national securities association written specifically for registered funding portals.

(June 6, 1934, ch. 404, title I, §3, 48 Stat. 882; Aug. 23, 1935, ch. 614, §203(a), 49 Stat. 704; Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352; Pub. L. 86–70, §12(b), June 25, 1959, 73 Stat. 143; Pub. L. 86–624, §7(b), July 12, 1960, 74 Stat. 412; Pub. L. 88–467, §2, Aug. 20, 1964, 78 Stat. 565; Pub. L. 91–373, title IV, §401(b), Aug. 10, 1970, 84 Stat. 718; Pub. L. 91–547, §28(a), (b), Dec. 14, 1970, 84 Stat. 1435; Pub. L. 91–567, §6(b), Dec. 22, 1970, 84 Stat. 1499; Pub. L. 94–29, §3, June 4, 1975, 89 Stat. 97; Pub. L. 95–283, §16, May 21, 1978, 92 Stat. 274; Pub. L. 96–477, title VII, §702, Oct. 21, 1980, 94 Stat. 2295; Pub. L. 97–303, §2, Oct. 13, 1982, 96 Stat. 1409; Pub. L. 98–376, §6(a), Aug. 10, 1984, 98 Stat. 1265; Pub. L. 98–440, title I, §101, Oct. 3, 1984, 98 Stat. 1689; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99–571, title I, §102(a)–(d), Oct. 28, 1986, 100 Stat. 3214–3216; Pub. L. 100–181, title III, §§301–306, Dec. 4, 1987, 101 Stat. 1253, 1254; Pub. L. 100–704, §6(a), Nov. 19, 1988, 102 Stat. 4681; Pub. L. 101–73, title VII, §744(u)(1), Aug. 9, 1989, 103 Stat. 441; Pub. L. 101–429, title V, §503, Oct. 15, 1990, 104 Stat. 952; Pub. L.

101–550, title II, §§203(b), 204, Nov. 15, 1990, 104 Stat. 2717, 2718; Pub. L. 103–202, title I, §§106(b)(2)(A), 109(a), Dec. 17, 1993, 107 Stat. 2350, 2352; Pub. L. 103–325, title II, §202, title III, §347(a), Sept. 23, 1994, 108 Stat. 2198, 2241; Pub. L. 104–62, §4(a), (b), Dec. 8, 1995, 109 Stat. 684; Pub. L. 104–290, title I, §106(b), title V, §508(c), Oct. 11, 1996, 110 Stat. 3424, 3447; Pub. L. 105–353, title III, §301(b)(1)–(4), Nov. 3, 1998, 112 Stat. 3235, 3236; Pub. L. 106–102, title II, §§201, 202, 207, 208, 221(b), 231(b)(1), Nov. 12, 1999, 113 Stat. 1385, 1390, 1394, 1395, 1401, 1406; Pub. L. 106–554, §1(a)(5) [title II, §201], Dec. 21, 2000, 114 Stat. 2763, 2763A–413; Pub. L. 107–204, §2(b), title II, §205(a), title VI, §604(c)(1)(A), July 30, 2002, 116 Stat. 749, 773, 796; Pub. L. 108–359, §1(c)(1), Oct. 25, 2004, 118 Stat. 1666; Pub. L. 108–386, §8(f)(1)–(3), Oct. 30, 2004, 118 Stat. 2232; Pub. L. 108–447, div. H, title V, §520(1), Dec. 8, 2004, 118 Stat. 3267; Pub. L. 109–291, §3(a), Sept. 29, 2006, 120 Stat. 1328; Pub. L. 109–351, title I, §101(a)(1), title IV, §401(a)(1), (2), Oct. 13, 2006, 120 Stat. 1968, 1971, 1972; Pub. L. 111–203, title III, §376(1), title VII, §761(a), title IX, §§932(b), 939(e), 941(a), 944(b), 985(b)(2), 986(a)(1), July 21, 2010, 124 Stat. 1566, 1754, 1883, 1886, 1890, 1898, 1933, 1935; Pub. L. 112–106, title I, §101(b), title III, §304(a)(1), (b), Apr. 5, 2012, 126 Stat. 307, 321, 322.)

AMENDMENT OF SECTION

Unless otherwise provided, amendment by subtitle B (§§761–774) of title VII of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see 2010 Amendment notes and Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b), (c), (e)(1), (f), and (g), and (h)(1)(C), was in the original "this title". See References in Text note set out under section 78a of this title.

The Investment Company Act of 1940, referred to in subsec. (a)(4)(B)(v), (19), (47), (51)(A)(iii), is title I of act Aug. 20, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a–51 of this title and Tables.

Section 4(2), (5), and (6) of the Securities Act of 1933, referred to in subsec. (a)(4)(B)(vii)(I) and (80) defining "funding portal", was redesignated section 4(a)(2), (5), and (6), respectively, of that Act by Pub. L. 112–106, title II, §201(b)(1), (c)(1), Apr. 5, 2012, 126 Stat. 314, and is classified to section 77d(a)(2), (5), and (6) of this title.

This chapter, referred to in subsec. (a)(4)(B)(vii)(II), was in the original "this Act". See References in Text note set out under section 78a of this title.

Section 206 of the Gramm-Leach-Bliley Act, referred to in subsec. (a)(4)(B)(ix), (5)(C)(iv), (54)(B), is section 206 of Pub. L. 106–102, which is set out as a note below.

Subsec. (e) of section 78o of this title, referred to in subsec. (a)(4)(E), was redesignated (f) by Pub. L. 111–203, title IX, §929X(c)(1), July 21, 2010, 124 Stat. 1870.

Section 1462 of title 12, referred to in subsec. (a)(6)(A), (C), was amended by Pub. L. 111–203, title III, §369(2)(C), July 21, 2010, 124 Stat. 1557, by redesignating pars. (4) and (5) as (2) and (3), respectively.

The Investment Advisers Act of 1940, referred to in subsec. (a)(20), (47), is title II of act Aug. 20, 1940, ch. 686, 54 Stat. 847, which is classified generally to subchapter II (§80b–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80b–20 of this title and Tables.

Section 78w(b) of this title, referred to in subsec. (a)(26), was omitted from the Code.

Section 103 of title 26, referred to in subsec. (a)(29), which related to interest on certain governmental obligations, was amended generally by Pub. L. 99–514, title XIII, §1301(a), Oct. 22, 1986, 100 Stat. 2602, and, as so amended, relates to interest on State and local bonds. Section 103(b)(2) (formerly section 103(c)(2)), which prior to the general amendment defined industrial development bond, relates to the applicability of the interest exclusion to arbitrage bonds.

The Federal Deposit Insurance Act, referred to in subsec. (a)(34)(D), (F)(iii), (H)(iii), is act Sept. 21, 1950, ch. 967, §2, 64 Stat. 873, which is classified generally to chapter 16 (§1811 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of Title 12 and Tables.

The International Banking Act of 1978, referred to in subsec. (a)(34)(G)(i) to (iii), (46)(B), is Pub. L. 95–369, Sept. 17, 1978, 92 Stat. 607, which enacted chapter 32 (§3101 et seq.) and sections 347d and 611a of

Title 12, Banks and Banking, amended sections 72, 378, 614, 615, 618, 619, 1813, 1815, 1817, 1818, 1820, 1821, 1822, 1823, 1828, 1829b, 1831b, and 1841 of Title 12, and enacted provisions set out as notes under sections 247, 611a, and 3101 of Title 12 and formerly set out as notes under sections 36, 247, and 601 of Title 12. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of Title 12 and Tables.

Section 25 of the Federal Reserve Act, referred to in subsec. (a)(34)(G)(ii), is classified to subchapter I (§601 et seq.) of chapter 6 of Title 12, Banks and Banking. Section 25A of the Federal Reserve Act, referred to in subsec. (a)(34)(G)(ii), (H)(ii), is classified to subchapter II (§611 et seq.) of chapter 6 of Title 12.

The Commodity Exchange Act, referred to in subsec. (a)(39)(B)(ii), (C), (55)(A), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

The Securities Act of 1933, referred to in subsec. (a)(47) and (80)(B) defining "emerging growth company", is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (a)(47), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified generally to this chapter (§78a et seq.). For complete classification of this Act to the Code, see section 78a of this title and Tables.

The Sarbanes-Oxley Act of 2002, referred to in subsec. (a)(47), is Pub. L. 107–204, July 30, 2002, 116 Stat. 745. Section 2 of the Act enacted section 7201 of this title and amended this section. For complete classification of this Act to the Code, see Short Title note set out under section 7201 of this title and Tables.

The Trust Indenture Act of 1939, referred to in subsec. (a)(47), is title III of act May 27, 1933, ch. 38, as added Aug. 3, 1939, ch. 411, 53 Stat. 1149, which is classified generally to subchapter III (§77aaa et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77aaa of this title and Tables.

The Securities Investor Protection Act of 1970, referred to in subsec. (a)(47), is Pub. L. 91–598, Dec. 30, 1970, 84 Stat. 1636, which is classified generally to chapter 2B–1 (§78aaa et seq.) of this title. For complete classification of this Act to the Code, see section 78aaa of this title and Tables.

Section 301(d) of the Small Business Investment Act of 1958, referred to in subsec. (a)(54)(A)(iv), was classified to section 681(d) of this title and was repealed by Pub. L. 104–208, div. D, title II, §208(b)(3)(A), Sept. 30, 1996, 110 Stat. 3009–742.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(54)(A)(v), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 832, which is classified principally to chapter 18 (§1001 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

Section 206A of the Gramm-Leach-Bliley Act, referred to in subsec. (a)(78)(A), is section 206A of Pub. L. 106–102, which is set out as a note below.

CODIFICATION

Words "Philippine Islands" deleted from definition of term "State" in subsec. (a)(16) under authority of Proc. No. 2695, which granted independence to the Philippine Islands. Proc. No. 2695 was issued pursuant to section 1394 of Title 22, Foreign Relations and Intercourse, and is set out as a note under that section.

AMENDMENTS

2012—Subsec. (a)(77), (79). Pub. L. 112–106, §101(b)(1), redesignated par. (77) defining "asset-backed security" as (79).

Subsec. (a)(80). Pub. L. 112–106, §304(b), added par. (80) defining "funding portal".

Pub. L. 112–106, §101(b)(2), added par. (80) defining "emerging growth company".

Subsec. (h). Pub. L. 112–106, §304(a)(1), added subsec. (h).

2010—Subsec. (a)(4)(B)(vii)(I). Pub. L. 111–203, §944(b), substituted "4(5)" for "4(6)".

Subsec. (a)(5)(A), (B). Pub. L. 111–203, §761(a)(1), inserted "(not including security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants)" after "securities".

Subsec. (a)(10). Pub. L. 111–203, §761(a)(2), inserted "security-based swap," after "security future,".

Subsec. (a)(13). Pub. L. 111–203, §761(a)(3), inserted at end "For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require."

Subsec. (a)(14). Pub. L. 111–203, §761(a)(4), inserted at end "For security-based swaps, such terms include

the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require."

Subsec. (a)(34). Pub. L. 111–203, §376(1)(G), struck out ", and the term 'District of Columbia savings and loan association' means any association subject to examination and supervision by the Office of Thrift Supervision under section 1466a of title 12" after "section 1841 of title 12" in concluding provisions.

Subsec. (a)(34)(A)(i). Pub. L. 111–203, §376(1)(A)(i), substituted "a subsidiary or a department or division of any such bank, a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary or department or division of any such Federal savings association" for "or a subsidiary or a department or division of any such bank".

Subsec. (a)(34)(A)(ii). Pub. L. 111–203, §376(1)(A)(ii), substituted "a subsidiary or a department or division of such subsidiary, or a savings and loan holding company" for "or a subsidiary or a department or division of such subsidiary".

Subsec. (a)(34)(A)(iii). Pub. L. 111–203, §376(1)(A)(iii), substituted "a subsidiary or department or division of any such bank, a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary or a department or division of any such State savings association; and" for "or a subsidiary or department or division thereof;".

Subsec. (a)(34)(A)(iv), (v). Pub. L. 111–203, §376(1)(A)(iv), (v), redesignated cl. (v) as (iv) and struck out former cl. (iv) which read as follows: "the Director of the Office of Thrift Supervision, in the case of a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b))), the deposits of which are insured by the Federal Deposit Insurance Corporation, a subsidiary or a department or division of any such savings association, or a savings and loan holding company; and".

Subsec. (a)(34)(B)(i). Pub. L. 111–203, §376(1)(B)(i), substituted "a subsidiary of any such bank, a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary of any such Federal savings association" for "or a subsidiary of any such bank".

Subsec. (a)(34)(B)(ii). Pub. L. 111–203, §376(1)(B)(ii), substituted "a subsidiary of a bank holding company that is a bank other than a bank specified in clause (i) or (iii) of this subparagraph, or a savings and loan holding company" for "or a subsidiary of a bank holding company which is a bank other than a bank specified in clause (i), (iii), or (iv) of this subparagraph".

Subsec. (a)(34)(B)(iii). Pub. L. 111–203, §376(1)(B)(iii), substituted "a subsidiary of any such bank, a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary of any such State savings association; and" for "or a subsidiary thereof;".

Subsec. (a)(34)(B)(iv), (v). Pub. L. 111–203, §376(1)(B)(iv), (v), redesignated cl. (v) as (iv) and struck out former cl. (iv) which read as follows: "the Director of the Office of Thrift Supervision, in the case of a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary of any such savings association, or a savings and loan holding company; and".

Subsec. (a)(34)(C)(i). Pub. L. 111–203, §376(1)(C)(i), inserted "or a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation" after "bank".

Subsec. (a)(34)(C)(ii). Pub. L. 111–203, §376(1)(C)(ii), substituted "a subsidiary of a bank holding company that is a bank other than a bank specified in clause (i) or (iii) of this subparagraph, or a savings and loan holding company" for "or a subsidiary of a bank holding company which is a bank other than a bank specified in clause (i), (iii), or (iv) of this subparagraph".

Subsec. (a)(34)(C)(iii). Pub. L. 111–203, §376(1)(C)(iii), inserted "or a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation; and" after "System)".

Subsec. (a)(34)(C)(iv), (v). Pub. L. 111–203, §376(1)(C)(iv), (v), redesignated cl. (v) as (iv) and struck out former cl. (iv) which read as follows: "the Director of the Office of Thrift Supervision, in the case of a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b))), the deposits of which are insured by the Federal Deposit Insurance Corporation, a savings and loan holding company, or a subsidiary of a savings and loan holding company when the appropriate regulatory agency for such clearing agency is not the Commission; and".

Subsec. (a)(34)(D)(i). Pub. L. 111–203, §376(1)(D)(i), inserted "or a Federal savings association (as defined

in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation" after "bank".

Subsec. (a)(34)(D)(ii) to (iv). Pub. L. 111–203, §376(1)(D)(ii)–(v), in cl. (ii), inserted "and" at end, redesignated cl. (iv) as (iii), in cl. (iii), inserted "or a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation" after "bank", and struck out former cl. (iii) which read as follows: "the Director of the Office of Thrift Supervision, in the case of a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b))) the deposits of which are insured by the Federal Deposit Insurance Corporation; and".

Subsec. (a)(34)(F)(i). Pub. L. 111–203, §376(1)(E)(i), inserted "or a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation" after "bank".

Subsec. (a)(34)(F)(ii) to (v). Pub. L. 111–203, §376(1)(E)(ii)–(iv), redesignated cls. (iii) to (v) as (ii) to (iv), respectively, in cl. (iii), inserted "or a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation" before semicolon, and struck out former cl. (ii) which read as follows: "the Director of the Office of Thrift Supervision, in the case of a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b))), the deposits of which are insured by the Federal Deposit Insurance Corporation; and".

Subsec. (a)(34)(G)(i). Pub. L. 111–203, §376(1)(F)(i), inserted ", a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act), the deposits of which are insured by the Federal Deposit Insurance Corporation," after "national bank".

Subsec. (a)(34)(G)(iii). Pub. L. 111–203, §376(1)(F)(ii), inserted ", a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act), the deposits of which are insured by the Federal Deposit Insurance Corporation," after "savings bank)" and inserted "and" at end.

Subsec. (a)(34)(G)(iv), (v). Pub. L. 111–203, §376(1)(F)(iii), (iv), redesignated cl. (v) as (iv) and struck out former cl. (iv) which read as follows: "the Director of the Office of Thrift Supervision, in the case of a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act) the deposits of which are insured by the Federal Deposit Insurance Corporation;".

Subsec. (a)(39)(B)(i)(I). Pub. L. 111–203, §761(a)(5)(A)(i), substituted "government securities dealer, security-based swap dealer, or major security-based swap participant" for "or government securities dealer".

Subsec. (a)(39)(B)(i)(II). Pub. L. 111–203, §761(a)(5)(A)(ii), inserted "security-based swap dealer, major security-based swap participant," after "government securities dealer,".

Subsec. (a)(39)(C). Pub. L. 111–203, §761(a)(5)(B), substituted "government securities dealer, security-based swap dealer, or major security-based swap participant" for "or government securities dealer".

Subsec. (a)(39)(D). Pub. L. 111–203, §761(a)(5)(C), inserted "security-based swap dealer, major security-based swap participant," after "government securities dealer,".

Subsec. (a)(41). Pub. L. 111–203, §939(e)(1), substituted "meets standards of credit-worthiness as established by the Commission" for "is rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization" in introductory provisions.

Subsec. (a)(47). Pub. L. 111–203, §986(a)(1), struck out "the Public Utility Holding Company Act of 1935," before "the Trust Indenture Act of 1939".

Subsec. (a)(53)(A). Pub. L. 111–203, §939(e)(2), substituted "meets standards of credit-worthiness as established by the Commission" for "is rated in 1 of the 4 highest rating categories by at least 1 nationally recognized statistical rating organization" in introductory provisions.

Subsec. (a)(55)(A). Pub. L. 111–203, §985(b)(2)(A), made technical amendment to reference in original act which appears in text as reference to paragraph (12) of this subsection.

Subsec. (a)(62). Pub. L. 111–203, §932(b), redesignated subpars. (B) and (C) as (A) and (B), respectively, and struck out former subpar. (A) which read as follows: "has been in business as a credit rating agency for at least the 3 consecutive years immediately preceding the date of its application for registration under section 78o–7 of this title;".

Subsec. (a)(65) to (76). Pub. L. 111–203, §761(a)(6), added pars. (65) to (76).

Subsec. (a)(77). Pub. L. 111–203, §941(a), which directed amendment of subsec. (a) by adding par. (77) relating to asset-backed security "at the end", was executed by making the addition after par. (78) to reflect the probable intent of Congress. See Effective Date of 2010 Amendment note below.

Pub. L. 111–203, §761(a)(6), added par. (77) relating to security-based swap execution facility.

Subsec. (a)(78). Pub. L. 111–203, §761(a)(6), added par. (78).

Subsec. (g). Pub. L. 111–203, §985(b)(2)(B), substituted "account, person" for "account person" in

introductory provisions.

2006—Subsec. (a)(4)(F). Pub. L. 109–351, §101(a)(1), added subpar. (F).

Subsec. (a)(6)(A). Pub. L. 109–351, §401(a)(1)(A), inserted "or a Federal savings association, as defined in section 1462(5) of title 12" after "a banking institution organized under the laws of the United States".

Subsec. (a)(6)(C). Pub. L. 109–351, §401(a)(1)(B), inserted "or savings association, as defined in section 1462(4) of title 12" after "other banking institution" and "or savings associations" after "having supervision over banks".

Subsec. (a)(34). Pub. L. 109–351, §401(a)(2)(G), inserted at end of concluding provisions "As used in this paragraph, the term 'savings and loan holding company' has the same meaning as in section 1467a(a) of title 12."

Subsec. (a)(34)(A)(ii). Pub. L. 109–351, §401(a)(2)(A)(i), substituted "clause (i), (iii), or (iv)" for "clause (i) or (iii)".

Subsec. (a)(34)(A)(iv), (v). Pub. L. 109–351, §401(a)(2)(A)(ii)–(iv), added cl. (iv) and redesignated former cl. (iv) as (v).

Subsec. (a)(34)(B)(ii). Pub. L. 109–351, §401(a)(2)(B)(i), substituted "clause (i), (iii), or (iv)" for "clause (i) or (iii)".

Subsec. (a)(34)(B)(iv), (v). Pub. L. 109–351, §401(a)(2)(B)(ii)–(iv), added cl. (iv) and redesignated former cl. (iv) as (v).

Subsec. (a)(34)(C)(ii). Pub. L. 109–351, §401(a)(2)(C)(i), substituted "clause (i), (iii), or (iv)" for "clause (i) or (iii)".

Subsec. (a)(34)(C)(iv), (v). Pub. L. 109–351, §401(a)(2)(C)(ii)–(iv), added cl. (iv) and redesignated former cl. (iv) as (v).

Subsec. (a)(34)(D)(iii), (iv). Pub. L. 109–351, §401(a)(2)(D), added cl. (iii) and redesignated former cl. (iii) as (iv).

Subsec. (a)(34)(F)(ii) to (v). Pub. L. 109–351, §401(a)(2)(E), added cl. (ii) and redesignated former cls. (ii) to (iv) as (iii) to (v), respectively.

Subsec. (a)(34)(H). Pub. L. 109–351, §401(a)(2)(F), moved subpar. (H) and inserted it immediately after subpar. (G).

Subsec. (a)(60) to (64). Pub. L. 109–291 added pars. (60) to (64).

2004—Subsec. (a)(12)(C)(iv). Pub. L. 108–359 added cl. (iv).

Subsec. (a)(34)(A)(i), (B)(i), (C)(i), (D)(i), (F)(i). Pub. L. 108–386, §8(f)(1), struck out "or a bank operating under the Code of Law for the District of Columbia" after "national bank".

Subsec. (a)(34)(G)(i). Pub. L. 108–386, §8(f)(2), struck out ", a bank in the District of Columbia examined by the Comptroller of the Currency," after "national bank".

Subsec. (a)(34)(H)(i). Pub. L. 108–386, §8(f)(3), struck out "or a bank in the District of Columbia examined by the Comptroller of the Currency" after "national bank".

Subsec. (a)(42)(B). Pub. L. 108–447 inserted "by the Tennessee Valley Authority or" after "issued or guaranteed".

2002—Subsec. (a)(39)(F). Pub. L. 107–204, §604(c)(1)(A), inserted ", or is subject to an order or finding," before "enumerated" and substituted "(H), or (G)" for "or (G)".

Subsec. (a)(47). Pub. L. 107–204, §2(b), inserted "the Sarbanes-Oxley Act of 2002," before "the Public Utility Holding Company Act of 1935".

Subsec. (a)(58), (59). Pub. L. 107–204, §205(a), added pars. (58) and (59).

2000—Subsec. (a)(10). Pub. L. 106–554, §1(a)(5) [title II, §201(1)], inserted "security future," after "treasury stock,".

Subsec. (a)(11). Pub. L. 106–554, §1(a)(5) [title II, §201(2)], added par. (11) and struck out former par. (11) which read as follows: "The term 'equity security' means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the Commission shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as it may prescribe in the public interest or for the protection of investors, to treat as an equity security."

Subsec. (a)(13), (14). Pub. L. 106–554, §1(a)(5) [title II, §201(3), (4)], inserted at end "For security futures products, such term includes any contract, agreement, or transaction for future delivery."

Subsec. (a)(55) to (57). Pub. L. 106–554, §1(a)(5) [title II, §201(5)], added pars. (55) to (57).

1999—Subsec. (a)(4). Pub. L. 106–102, §201, inserted heading and amended text of par. (4) generally. Prior to amendment, text read as follows: "The term 'broker' means any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank."

Subsec. (a)(5). Pub. L. 106–102, §202, inserted heading and amended text of par. (5) generally. Prior to

amendment, text read as follows: "The term 'dealer' means any person engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, or any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business."

Subsec. (a)(12)(A)(iii). Pub. L. 106–102, §221(b), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: "any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian;".

Subsec. (a)(34)(H). Pub. L. 106–102, §231(b)(1), added subpar. (H) at end of par. (34).

Subsec. (a)(42)(E). Pub. L. 106–102, §208, added subpar. (E).

Subsec. (a)(54). Pub. L. 106–102, §207, added par. (54).

1998—Subsec. (a)(10). Pub. L. 105–353, §301(b)(1), substituted "deposit for" for "deposit, for".

Subsec. (a)(12)(A)(vi). Pub. L. 105–353, §301(b)(2), realigned margins.

Subsec. (a)(22)(A). Pub. L. 105–353, §301(b)(3), substituted "section 153" for "section 153(h)" and for "section 153(t)".

Subsec. (a)(39)(B)(i). Pub. L. 105–353, §301(b)(4), substituted "of the Commission" for "to the Commission" in introductory provisions.

1996—Subsec. (a)(12)(A)(vi), (vii). Pub. L. 104–290, §508(c)(1), added cl. (vi) and redesignated former cl. (vi) as (vii).

Subsecs. (f), (g). Pub. L. 104–290, §§106(b), 508(c)(2), added subsecs. (f) and (g), respectively.

1995—Subsec. (a)(12)(A)(iv) to (vi). Pub. L. 104–62, §4(a), struck out "and" at end of cl. (iv), added cl. (v), and redesignated former cl. (v) as (vi).

Subsec. (e). Pub. L. 104–62, §4(b), added subsec. (e).

1994—Subsec. (a)(41)(A)(i). Pub. L. 103–325, §347(a), substituted "on a residential" for "or on a residential" and inserted before semicolon ", or on one or more parcels of real estate upon which is located one or more commercial structures".

Subsec. (a)(53). Pub. L. 103–325, §202, added par. (53).

1993—Subsec. (a)(12)(B)(ii). Pub. L. 103–202, §106(b)(2)(A), substituted "sections 78o and 78q–1" for "sections 78o, 78o–3 (other than subsection (g)(3)), and 78q–1".

Subsec. (a)(34)(G)(ii) to (iv). Pub. L. 103–202, §109(a)(1), amended cls. (ii) to (iv) generally. Prior to amendment, cls. (ii) to (iv) read as follows:

"(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System, a foreign bank, a State branch or a State agency of a foreign bank, or a commercial lending company owned or controlled by a foreign bank (as such terms are used in the International Banking Act of 1978);

"(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System or a Federal savings bank);

"(iv) the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;".

Subsec. (a)(46). Pub. L. 103–202, §109(a)(2), amended par. (46) generally. Prior to amendment, par. (46) read as follows: "The term 'financial institution' means (A) a bank (as such term is defined in paragraph (6) of this subsection), (B) a foreign bank, and (C) an insured institution (as such term is defined in section 1724 of title 12)."

Subsec. (a)(52). Pub. L. 103–202, §109(a)(3), redesignated par. (51) defining "foreign financial regulatory authority" as (52).

1990—Subsec. (a)(39)(A). Pub. L. 101–550, §203(b)(1), inserted "foreign equivalent of a self-regulatory organization, foreign or international securities exchange," after "self-regulatory organization,", "or any substantially equivalent foreign statute or regulation," after "(7 U.S.C. 7)," and "(7 U.S.C. 21),", and "or foreign equivalent" after "contract market".

Subsec. (a)(39)(B). Pub. L. 101–550, §203(b)(2), added subpar. (B) and struck out former subpar. (B) which read as follows: "is subject to an order of the Commission or other appropriate regulatory agency denying, suspending for a period not exceeding twelve months, or revoking his registration as a broker, dealer, municipal securities dealer, government securities broker, or government securities dealer, or barring or suspending for a period not exceeding 12 months his being associated with a broker, dealer, municipal securities dealer, government securities broker, or government securities dealer, or is subject to an order of the Commodity Futures Trading Commission denying, suspending, or revoking his registration under the Commodity Exchange Act (7 U.S.C. 1 et seq.);".

Subsec. (a)(39)(D). Pub. L. 101–550, §203(b)(4), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (a)(39)(E). Pub. L. 101–550, §203(b)(3), (5), redesignated subpar. (D) as (E) and substituted "(A), (B), (C), or (D)" for "(A), (B), or (C)". Former subpar. (E) redesignated (F).

Subsec. (a)(39)(F). Pub. L. 101–550, §203(b)(3), (6), redesignated subpar. (E) as (F), substituted "(D), (E), or (G)" for "(D) or (E)", and inserted "or any other felony" before "within ten years".

Subsec. (a)(51). Pub. L. 101–550, §204, added par. (51) defining "foreign financial regulatory authority".

Pub. L. 101–429 added par. (51) defining "penny stock".

1989—Subsec. (a)(34). Pub. L. 101–73, §744(u)(1)(B), substituted "Office of Thrift Supervision" for "Federal Home Loan Bank Board" in concluding provisions.

Subsec. (a)(34)(G)(iv) to (vi). Pub. L. 101–73, §744(u)(1)(A), added cl. (iv), redesignated cl. (vi) as (v), and struck out former cls. (iv) and (v) which read as follows:

"(iv) the Federal Home Loan Bank Board, in the case of a Federal savings and loan association, Federal savings bank, or District of Columbia savings and loan association;

"(v) the Federal Savings and Loan Insurance Corporation, in the case of an institution insured by the Federal Savings and Loan Insurance Corporation (other than a Federal savings and loan association, Federal savings bank, or District of Columbia savings and loan association);".

1988—Subsec. (a)(50). Pub. L. 100–704 added par. (50).

1987—Subsec. (a)(6)(C). Pub. L. 100–181, §301, substituted "under the authority of the Comptroller of the Currency pursuant to section 92a of title 12" for "under section 11(k) of the Federal Reserve Act, as amended".

Subsec. (a)(16). Pub. L. 100–181, §302, struck out reference to Canal Zone.

Subsec. (a)(22)(B). Pub. L. 100–181, §303, substituted "association, or any" and "own behalf, in" for "association or any" and "own behalf in", respectively.

Subsec. (a)(34)(C)(ii). Pub. L. 100–181, §304, substituted "State" for "state".

Subsec. (a)(39)(B). Pub. L. 100–181, §305, substituted "months, or revoking" for "months, revoking" and "barring or suspending for a period not exceeding 12 months his" for "barring his".

Subsec. (a)(47). Pub. L. 100–181, §306(1), added par. (47).

Subsec. (a)(49). Pub. L. 100–181, §306(2), added par. (49).

1986—Subsec. (a)(12). Pub. L. 99–571, §102(a), in amending par. (12) generally, expanded definition of "exempted security" or "exempted securities" to include government securities as defined in par. (42) of this subsection, provided that such securities not be deemed exempt for purposes of section 78q–1 of this title, substituted section 78o–3(g)(3) of this title for section 78o–3(b)(6), (11), and (g)(2) of this title in provision relating to municipal securities as not being "exempted securities" and defined "qualified plan" to mean qualified stock bonus, pension, or profit-sharing plan, qualified annuity plan, or governmental plan.

Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

Subsec. (a)(29). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

Subsec. (a)(34). Pub. L. 99–571, §102(b)(2), inserted ", and the term 'District of Columbia savings and loan association' means any association subject to examination and supervision by the Federal Home Loan Bank Board under section 1466a of title 12" in concluding provisions.

Subsec. (a)(34)(G). Pub. L. 99–571, §102(b)(1), added subpar. (G).

Subsec. (a)(39)(B). Pub. L. 99–571, §102(c)(1)(A), which directed insertion of "or other appropriate regulatory agency" after "Commission" was executed by making the insertion after "Commission" the first place appearing as the probable intent of Congress.

Pub. L. 99–571, §102(c)(1)(B), substituted "municipal securities dealer, government securities broker, or government securities dealer" for "or municipal securities dealer" in two places.

Subsec. (a)(39)(C). Pub. L. 99–571, §102(c)(2), substituted "municipal securities dealer, government securities broker, or government securities dealer" for "or municipal securities dealer" and inserted ", an appropriate regulatory agency," after "the Commission".

Subsec. (a)(42) to (46), (48). Pub. L. 99–571, §102(d), added pars. (42) to (46) and (48).

1984—Subsec. (a)(39)(A). Pub. L. 98–376, §6(a)(1), inserted ", contract market designated pursuant to section 5 of the Commodity Exchange Act (7 U.S.C. 7), or futures association registered under section 17 of such Act (7 U.S.C. 21), or has been and is denied trading privileges on any such contract market".

Subsec. (a)(39)(B). Pub. L. 98–376, §6(a)(2), inserted ", or is subject to an order of the Commodity Futures Trading Commission denying, suspending, or revoking his registration under the Commodity Exchange Act (7 U.S.C. 1 et seq.)".

Subsec. (a)(39)(C). Pub. L. 98–376, §6(a)(3), inserted "or while associated with an entity or person required to be registered under the Commodity Exchange Act,".

Subsec. (a)(41). Pub. L. 98–440 added par. (41).

1982—Subsec. (a)(10). Pub. L. 97–303 inserted "any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency," after "for a security,".

1980—Subsec. (a)(12). Pub. L. 96–477 included within definition of "exempted security" interests or participation in single trust funds, provided that qualifying interests, participation, or securities could be issued in connection with certain governmental plans as defined in section 414(d) of title 26, substituted provisions relating to securities arising out of contracts issued by insurance companies for provisions relating to separate accounts maintained by insurance companies, and excluded from definition of "exempted security" any plans described in cls. (A), (B), or (C) of par. (12) which were funded by annuity contracts described in section 403(b) of title 26.

1978—Subsec. (a)(40). Pub. L. 95–283 added par. (40).

1975—Subsec. (a)(3). Pub. L. 94–29, §3(1), redefined term "member" to recognize the elimination of fixed commission rates in the case of exchanges, inserted definition of term when used in the case of registered securities associations, expanded definition of term when used with respect to an exchange to include any natural person permitted to effect transactions on the floor of an exchange without the services of another person acting as broker, any registered broker or dealer with which such natural person is associated, any registered broker or dealer permitted to designate a natural person as its representative on the floor of an exchange, and any other registered broker or dealer which agrees to be regulated by an exchange and with respect to whom the exchange has undertaken to enforce compliance with its rules, this chapter, and the rules and regulations thereunder, introduced the concept of including among members any person required to comply with the rules of an exchange to the extent specified by the Commission in accordance with section 78f(f) of this title, and expanded definition of term when used with respect to a registered securities association to include any broker or dealer who has agreed to be regulated and with respect to whom the association undertakes to enforce compliance with its own rules, this chapter, and the rules and regulations thereunder.

Subsec. (a)(9). Pub. L. 94–29, §3(2), substituted "a natural person, company, government, or political subdivision, agency, or instrumentality of a government" for "an individual, a corporation, a partnership, an association, a joint-stock company, a business trust, or an unincorporated organization".

Subsec. (a)(12). Pub. L. 94–29, §3(3), brought brokers and dealers engaged exclusively in municipal securities business within the registration provisions of this chapter by transferring the existing description of municipal securities to subsec. (a)(29) and by inserting in its place provisions revoking the exempt status of municipal securities for purposes of sections 78o, 78o–3 (except subsections (b)(6), (b)(11), and (g)(2) thereof) and 78q–1 of this title.

Subsec. (a)(17). Pub. L. 94–29, §3(4), expanded definition of "interstate commerce" to establish that the intrastate use of any facility of an exchange, any telephones or other interstate means of communication, or any other interstate instrumentality constitutes a use of the jurisdictional means for purposes of this chapter.

Subsec. (a)(18). Pub. L. 94–29, §3(4), expanded definition to include persons under common control with the broker or dealer and struck out references to the classification of the persons, including employees, controlled by a broker or a dealer.

Subsec. (a)(19). Pub. L. 94–29, §3(4), substituted " 'separate account', and 'company' " for "and 'separate account'."

Subsec. (a)(21). Pub. L. 94–29, §3(5), broadened definition of term "person associated with a member" to encompass a person associated with a broker or dealer which is a member of an exchange by restating directly the definition of a "person associated with a broker or dealer" in subsec. (a)(18).

Subsec. (a)(22) to (39). Pub. L. 94–29, §3(6), added pars. (22) to (39).

Subsec. (b). Pub. L. 94–29, §3(7), substituted "accounting, and other terms used in this chapter, consistently with the provisions and purposes of this chapter" for "and accounting terms used in this chapter insofar as such definitions are not inconsistent with the provisions of this chapter".

Subsec. (d). Pub. L. 94–29, §3(8), added subsec. (d).

1970—Subsec. (a)(12). Pub. L. 91–567 inserted provisions which brought within definition of "exempted security" any security which is an industrial development bond the interest on which is excludable from gross income under section 103(a)(1) of title 26 if, by reason of the application of section 103(c)(4) or (6) of title 26, section 103(c)(1) does not apply to such security. Such amendment was also made by Pub. L. 91–373.

Pub. L. 91–547, §28(a), struck out reference to industrial development bonds the interest on which is excludable from gross income under section 103(a)(1) of title 26; and included as exempted securities interests or participations in common trust funds maintained by a bank for collective investment of assets held

by it in a fiduciary capacity; interests or participations in bank collective trust funds maintained for funding of employees' stock-bonus, pension, or profit-sharing plans; interests or participations in separate accounts maintained by insurance companies for funding certain stock-bonus, pension, or profit-sharing plans which meet the requirements for qualification under section 401 of title 26; and such other securities as the Commission by rules and regulations deems necessary in the public interest.

Pub. L. 91–373 inserted provisions which brought within definition of "exempted security" any security which is an industrial development bond the interest on which is excludable from gross income under section 103(a)(1) of title 26 if, by reason of the application of section 103(c)(4) or (6) of title 26, section 103(c)(1) does not apply to such security. Such amendment was also made by Pub. L. 91–567.

Subsec. (a)(19). Pub. L. 91–547, §28(b), provided for term "separate account" the same meaning as in the Investment Company Act of 1940.

1964—Subsec. (a)(18) to (21). Pub. L. 88–467 added pars. (18) to (21).

1960—Subsec. (a)(16). Pub. L. 86–624 struck out reference to Hawaii.

1959—Subsec. (a)(16). Pub. L. 86–70 struck out reference to Alaska.

CHANGE OF NAME

Act Aug. 23, 1935, substituted "Board of Governors of the Federal Reserve System" for "Federal Reserve Board".

EFFECTIVE DATE OF 2012 AMENDMENT

Notwithstanding subsec. (a)(80) of this section, issuer not to be an emerging growth company for purposes of the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) if the first sale of common equity securities of such issuer pursuant to an effective registration statement under the Securities Act of 1933 occurred on or before Dec. 8, 2011, see section 101(d) of Pub. L. 112–106, set out as a note under section 77b of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 932(b), 941(a), 944(b), 985(b)(2), and 986(a)(1) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 Title 12, Banks and Banking.

Amendment by section 376(1) of Pub. L. 111–203 effective on the transfer date, see section 351 of Pub. L. 111–203, set out as a note under section 906 of Title 2, The Congress.

Amendment by section 761(a) of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761–774) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111–203, set out as a note under section 77b of this title.

Amendment by section 939(e) of Pub. L. 111–203 effective 2 years after July 21, 2010, see section 939(g) of Pub. L. 111–203, set out as a note under section 24a of Title 12, Banks and Banking.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–386 effective Oct. 30, 2004, and, except as otherwise provided, applicable with respect to fiscal year 2005 and each succeeding fiscal year, see sections 8(i) and 9 of Pub. L. 108–386, set out as notes under section 321 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by sections 201, 202, 207, and 208 of Pub. L. 106–102 effective at the end of the 18-month period beginning on Nov. 12, 1999, see section 209 of Pub. L. 106–102, set out as a note under section 1828 of Title 12, Banks and Banking.

Amendment by section 221(b) of Pub. L. 106–102 effective 18 months after Nov. 12, 1999, see section 225 of Pub. L. 106–102, set out as a note under section 77c of this title.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–62 applicable as defense to any claim in administrative and judicial actions pending on or commenced after Dec. 8, 1995, that any person, security, interest, or participation of type described in Pub. L. 104–62 is subject to the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, or any State statute or regulation preempted as provided in section 80a–3a of this title, except as specifically provided in such statutes, see section 7 of Pub. L. 104–62, set out as a note under section 77c of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 347(a) of Pub. L. 103–325 effective upon date of promulgation of final regulations under section 347(c) of Pub. L. 103–325, see section 347(d) of Pub. L. 103–325, set out as an Effective Date of 1994 Amendment note under section 24 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–429 effective 12 months after Oct. 15, 1990, with provision to commence rulemaking proceedings to implement such amendment note later than 180 days after Oct. 15, 1990, and with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(2), (3)(A), (C) of Pub. L. 101–429, set out in a note under section 77g of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–704, except for amendment by section 6, not applicable to actions occurring before Nov. 19, 1988, see section 9 of Pub. L. 100–704, set out as a note under section 78o of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–571 effective 270 days after Oct. 28, 1986, see section 401 of Pub. L. 99–571, set out as an Effective Date note under section 78o–5 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–376, §7, Aug. 10, 1984, 98 Stat. 1266, provided that: "The amendments made by this Act [amending this section and sections 78o, 78t, 78u, and 78ff of this title] shall become effective immediately upon enactment of this Act [Aug. 10, 1984]."

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, except for amendment of subsec. (a)(12) by Pub. L. 94–29 to be effective 180 days after June 4, 1975, with provisions of subsec. (a)(3), as amended by Pub. L. 94–29, or rules or regulations thereunder, not to apply in a way so as to deprive any person of membership in any national securities exchange (or its successor) of which such person was, on June 4, 1975, a member or a member firm as defined in the constitution of such exchange, or so as to deny membership in any such exchange (or its successor) to any natural person who is or becomes associated with such member or member firm, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1970 AMENDMENTS

For effective date of amendment by Pub. L. 91–567, see section 6(d) of Pub. L. 91–567, set out as a note under section 77c of this title.

Amendment by Pub. L. 91–547 effective Dec. 14, 1970, see section 30 of Pub L. 91–547, set out as a note under section 80a–52 of this title.

For effective date of amendment by Pub. L. 91–373, see section 401(c) of Pub. L. 91–373, set out as a note under section 77c of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–467, §13, Aug. 20, 1964, 78 Stat. 580, provided that: "The amendments made by this Act shall take effect as follows:

"(1) The effective date of section 12(g)(1) of the Securities Exchange Act of 1934, as added by section 3(c) of this Act [section 78l(g)(1) of this title], shall be July 1, 1964.

"(2) The effective date of the amendments to sections 12(b) and 15(a) of the Securities Exchange Act of 1934 [sections 78l(b) and 78o(a) of this title], contained in sections 3(a) and 6(a), respectively, of this Act shall be July 1, 1964.

"(3) All other amendments contained in this Act [amending this section and sections 77d, 78l, 78m, 78n, 78o, 78o–3, 78p, 78t, 78w, and 78ff of this title] shall take effect on the date of its enactment [Aug. 20, 1964]."

REGULATIONS

Pub. L. 109–351, title I, §101(a)(2)–(c), Oct. 13, 2006, 120 Stat. 1968, provided that:

"(2) TIMING.—Not later than 180 days after the date of the enactment of this Act [Oct. 13, 2006], the Securities and Exchange Commission (in this section [enacting this note and amending 15 U.S.C. 78c] referred to as the 'Commission') and the Board of Governors of the Federal Reserve System (hereafter in this section referred to as the 'Board') shall jointly issue a proposed single set of rules or regulations to

define the term 'broker' in accordance with section 3(a)(4) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(4)], as amended by this subsection.

"(3) RULEMAKING SUPERSEDES PREVIOUS RULEMAKING.—A final single set of rules or regulations jointly adopted in accordance with this section shall supersede any other proposed or final rule issued by the Commission on or after the date of enactment of section 201 of the Gramm-Leach-Bliley Act [Nov. 12, 1999] with regard to the exceptions to the definition of a broker under section 3(a)(4)(B) of the Securities Exchange Act of 1934. No such other rule, whether or not issued in final form, shall have any force or effect on or after that date of enactment.

"(b) CONSULTATION.—Prior to jointly adopting the single set of final rules or regulations required by this section, the Commission and the Board shall consult with and seek the concurrence of the Federal banking agencies concerning the content of such rulemaking in implementing section 3(a)(4)(B) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(4)(B)], as amended by this section and section 201 of the Gramm-Leach-Bliley Act [Pub. L. 106–102].

"(c) DEFINITION.—For purposes of this section, the term 'Federal banking agencies' means the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Federal Deposit Insurance Corporation."

CONSTRUCTION OF 1993 AMENDMENT

Amendment by Pub. L. 103–202 not to be construed to govern initial issuance of any public debt obligation or to grant any authority to (or extend any authority of) the Securities and Exchange Commission, any appropriate regulatory agency, or a self-regulatory organization to prescribe any procedure, term, or condition of such initial issuance, to promulgate any rule or regulation governing such initial issuance, or to otherwise regulate in any manner such initial issuance, see section 111 of Pub. L. 103–202, set out as a note under section 78o–5 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

RULEMAKING

Pub. L. 112–106, title III, §304(a)(2), Apr. 5, 2012, 126 Stat. 322, provided that: "The [Securities and Exchange] Commission shall issue a rule to carry out section 3(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78c[(h)]), as added by this subsection, not later than 270 days after the date of enactment of this Act [Apr. 5, 2012]."

OPT-IN RIGHT FOR EMERGING GROWTH COMPANIES

Pub. L. 112–106, title I, §107, Apr. 5, 2012, 126 Stat. 312, provided that:

"(a) IN GENERAL.—With respect to an exemption provided to emerging growth companies under this title [amending this section and sections 77b, 77e to 77g, 78k–1, 78m, 78n, 78n–1, 78o–6, 7213, and 7262 of this title, enacting provisions set out as notes under this section and sections 77b, 77g, and 78o–6 of this title, and amending provisions set out as a note under section 78l of this title], or an amendment made by this title, an emerging growth company may choose to forgo such exemption and instead comply with the requirements that apply to an issuer that is not an emerging growth company.

"(b) SPECIAL RULE.—Notwithstanding subsection (a), with respect to the extension of time to comply with new or revised financial accounting standards provided under section 7(a)(2)(B) of the Securities Act of 1933 [15 U.S.C. 77g(a)(2)(B)] and section 13(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(a)], as added by section 102(b), if an emerging growth company chooses to comply with such standards to the same extent that a non-emerging growth company is required to comply with such standards, the emerging growth company—

"(1) must make such choice at the time the company is first required to file a registration statement, periodic report, or other report with the [Securities and Exchange] Commission under section 13 of the Securities Exchange Act of 1934 [15 U.S.C. 78m] and notify the Securities and Exchange Commission of such choice;

"(2) may not select some standards to comply with in such manner and not others, but must comply with all such standards to the same extent that a non-emerging growth company is required to comply with such standards; and

"(3) must continue to comply with such standards to the same extent that a non-emerging growth company is required to comply with such standards for as long as the company remains an emerging growth

company."

STATE OPT OUT

Pub. L. 103–325, title III, §347(e), Sept. 23, 1994, 108 Stat. 2241, provided that: "Notwithstanding the amendments made by this section [amending this section and section 24 of Title 12, Banks and Banking], a note that is directly secured by a first lien on one or more parcels of real estate upon which is located one or more commercial structures shall not be considered to be a mortgage related security under section 3(a)(41) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(41)] in any State that, prior to the expiration of 7 years after the date of enactment of this Act [Sept. 23, 1994], enacts a statute that specifically refers to this section and either prohibits or provides for a more limited authority to purchase, hold, or invest in such securities by any person, trust, corporation, partnership, association, business trust, or business entity or class thereof than is provided by the amendments made by this subsection. The enactment by any State of any statute of the type described in the preceding sentence shall not affect the validity of any contractual commitment to purchase, hold, or invest that was made prior thereto, and shall not require the sale or other disposition of any securities acquired prior thereto."

DEFINITIONS

Pub. L. 112–106, title I, §101(c), Apr. 5, 2012, 126 Stat. 308, provided that: "As used in this title [amending this section and sections 77b, 77e to 77g, 78k–1, 78m, 78n, 78n–1, 78o–6, 7213, and 7262 of this title, enacting provisions set out as notes under this section and sections 77b, 77g, and 78o–6 of this title, and amending provisions set out as a note under section 78l of this title], the following definitions shall apply:

"(1) COMMISSION.—The term 'Commission' means the Securities and Exchange Commission.

"(2) INITIAL PUBLIC OFFERING DATE.—The term 'initial public offering date' means the date of the first sale of common equity securities of an issuer pursuant to an effective registration statement under the Securities Act of 1933 [15 U.S.C. 77a et seq.]."

Pub. L. 106–554, §1(a)(5) [title III, §301(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–451, provided that: "As used in the amendment made by subsection (a) [enacting sections 206A to 206C of Pub. L. 106—102, set out below], the term 'security' has the same meaning as in section 2(a)(1) of the Securities Act of 1933 [15 U.S.C. 77b(a)(1)] or section 3(a)(10) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(10)]."

Pub. L. 106–102, title II, §206, Nov. 12, 1999, 113 Stat. 1393, as amended by Pub. L. 111–203, title VII, §742(b), July 21, 2010, 124 Stat. 1733, provided that:

"(a) DEFINITION OF IDENTIFIED BANKING PRODUCT.—Except as provided in subsection (e) [sic], for purposes of paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4), (5)), the term 'identified banking product' means—

"(1) a deposit account, savings account, certificate of deposit, or other deposit instrument issued by a bank;

"(2) a banker's acceptance;

"(3) a letter of credit issued or loan made by a bank;

"(4) a debit account at a bank arising from a credit card or similar arrangement;

"(5) a participation in a loan which the bank or an affiliate of the bank (other than a broker or dealer) funds, participates in, or owns that is sold—

"(A) to qualified investors; or

"(B) to other persons that—

"(i) have the opportunity to review and assess any material information, including information regarding the borrower's creditworthiness; and

"(ii) based on such factors as financial sophistication, net worth, and knowledge and experience in financial matters, have the capability to evaluate the information available, as determined under generally applicable banking standards or guidelines; or

"(6) any swap agreement, including credit and equity swaps, except that an equity swap that is sold directly to any person other than a qualified investor (as defined in section 3(a)(54) of the Securities Act of 1934 [15 U.S.C. 78c(a)(54)]) shall not be treated as an identified banking product.

"(b) DEFINITION OF SWAP AGREEMENT.—For purposes of subsection (a)(6), the term 'swap agreement' means any individually negotiated contract, agreement, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets, but does not include any other identified banking product, as defined in paragraphs (1) through (5) of subsection (a).

"(c) CLASSIFICATION LIMITED.—Classification of a particular product as an identified banking product pursuant to this section shall not be construed as finding or implying that such product is or is not a security

for any purpose under the securities laws, or is or is not an account, agreement, contract, or transaction for any purpose under the Commodity Exchange Act [7 U.S.C. 1 et seq.].

"(d) INCORPORATED DEFINITIONS.—For purposes of this section, the terms 'bank' and 'qualified investor' have the same meanings as given in section 3(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)], as amended by this Act."

Pub. L. 106–102, title II, §§206A—206C, as added by Pub. L. 106–554, §1(a)(5) [title III, §301(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–449, and amended by Pub. L. 111–203, title VII, §762(a), (b), July 21, 2010, 124 Stat. 1759, provided that:

"SEC. 206A. SWAP AGREEMENT.

"(a) IN GENERAL.—Except as provided in subsection (b), as used in this section, the term 'swap agreement' means any agreement, contract, or transaction that—

"(1) is a put, call, cap, floor, collar, or similar option of any kind for the purchase or sale of, or based on the value of, one or more interest or other rates, currencies, commodities, indices, quantitative measures, or other financial or economic interests or property of any kind;

"(2) provides for any purchase, sale, payment or delivery (other than a dividend on an equity security) that is dependent on the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence;

"(3) provides on an executory basis for the exchange, on a fixed or contingent basis, of one or more payments based on the value or level of one or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind, or any interest therein or based on the value thereof, and that transfers, as between the parties to the transaction, in whole or in part, the financial risk associated with a future change in any such value or level without also conveying a current or future direct or indirect ownership interest in an asset (including any enterprise or investment pool) or liability that incorporates the financial risk so transferred, including any such agreement, contract, or transaction commonly known as an interest rate swap, including a rate floor, rate cap, rate collar, cross-currency rate swap, basis swap, currency swap, equity index swap, equity swap, debt index swap, debt swap, credit spread, credit default swap, credit swap, weather swap, or commodity swap;

"(4) provides for the purchase or sale, on a fixed or contingent basis, of any commodity, currency, instrument, interest, right, service, good, article, or property of any kind; or

"(5) is any combination or permutation of, or option on, any agreement, contract, or transaction described in any of paragraphs (1) through (4).

"(b) EXCLUSIONS.—The term 'swap agreement' does not include—

"(1) any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof;

"(2) any put, call, straddle, option, or privilege entered into on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78f(a)] relating to foreign currency;

"(3) any agreement, contract, or transaction providing for the purchase or sale of one or more securities on a fixed basis;

"(4) any agreement, contract, or transaction providing for the purchase or sale of one or more securities on a contingent basis, unless such agreement, contract, or transaction predicates such purchase or sale on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of a party other than a party to the agreement, contract, or transaction;

"(5) any note, bond, or evidence of indebtedness that is a security as defined in section 2(a)(1) of the Securities Act of 1933 [15 U.S.C. 77b(a)(1)] or section 3(a)(10) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(10)]; or

"(6) any agreement, contract, or transaction that is—

"(A) based on a security; and

"(B) entered into directly or through an underwriter (as defined in section 2(a) of the Securities Act of 1933 [15 U.S.C. 77b(a)]) by the issuer of such security for the purposes of raising capital, unless such agreement, contract, or transaction is entered into to manage a risk associated with capital raising.

"(c) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—As used in this section, the term 'swap agreement' shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a swap agreement pursuant to subsections (a) and (b), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a swap agreement pursuant to subsections (a) and (b), except that the master agreement shall be considered to be a swap agreement only with respect to each agreement,

contract, or transaction under the master agreement that is a swap agreement pursuant to subsections (a) and (b)."

[SECS. 206B, 206C. REPEALED. PUB. L. 111–203, TITLE VII, §762(A), JULY 21, 2010, 124 STAT. 1759.]

[Amendment by section 762(a), (b) of Pub. L. 111–203 to sections 206A–206C of Pub. L. 106–102, set out above, effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761–774) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B.]

[1] See References in Text note below.

[2] So in original. Probably should be followed by a comma.

[3] So in original. The "; and" probably should be a comma.

[4] So in original. Probably should be followed by "and".

[5] So in original. The semicolon probably should be a colon.

[6] So in original. Probably should be "evidenced".

[7] So in original. Two pars. (80) have been enacted.

§78c–1. Swap agreements

(a) [Reserved]

(b) Security-based swap agreements

(1) The definition of "security" in section 78c(a)(10) of this title does not include any security-based swap agreement.

(2) The Commission is prohibited from registering, or requiring, recommending, or suggesting, the registration under this chapter of any security-based swap agreement. If the Commission becomes aware that a registrant has filed a registration application with respect to such a swap agreement, the Commission shall promptly so notify the registrant. Any such registration with respect to such a swap agreement shall be void and of no force or effect.

(3) Except as provided in section 78p(a) of this title with respect to reporting requirements, the Commission is prohibited from—

(A) promulgating, interpreting, or enforcing rules; or

(B) issuing orders of general applicability;

under this chapter in a manner that imposes or specifies reporting or recordkeeping requirements, procedures, or standards as prophylactic measures against fraud, manipulation, or insider trading with respect to any security-based swap agreement.

(4) References in this chapter to the "purchase" or "sale" of a security-based swap agreement shall be deemed to mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap agreement, as the context may require.

(June 6, 1934, ch. 404, title I, §3A, as added Pub. L. 106–554, §1(a)(5) [title III, §303(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–452; amended Pub. L. 111–203, title VII, §762(d)(1), July 21, 2010, 124 Stat. 1760.)

AMENDMENT OF SECTION

Unless otherwise provided, amendment by subtitle B (§§761–774) of title VII of Pub. L. 111–203

effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see 2010 Amendment notes and Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(2) to (4), was in the original "this title". See References in Text note set out under section 78a of this title.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, §762(d)(1)(A), struck out subsec. (a) and reserved that subsec. Prior to amendment, text read as follows: "The definition of 'security' in section 78c(a)(10) of this title does not include any non-security-based swap agreement (as defined in section 206C of the Gramm-Leach-Bliley Act)."

Subsec. (b). Pub. L. 111–203, §762(d)(1)(B), struck out "(as defined in section 206B of the Gramm-Leach-Bliley Act)" after "security-based swap agreement" wherever appearing.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761–774) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111–203, set out as a note under section 77b of this title.

§78c–2. Securities-related derivatives

(a) Any agreement, contract, or transaction (or class thereof) that is exempted by the Commodity Futures Trading Commission pursuant to section 6(c)(1) of title 7 with the condition that the Commission exercise concurrent jurisdiction over such agreement, contract, or transaction (or class thereof) shall be deemed a security for purposes of the securities laws.

(b) With respect to any agreement, contract, or transaction (or class thereof) that is exempted by the Commodity Futures Trading Commission pursuant to section 6(c)(1) of title 7 with the condition that the Commission exercise concurrent jurisdiction over such agreement, contract, or transaction (or class thereof), references in the securities laws to the "purchase" or "sale" of a security shall be deemed to include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under such agreement, contract, or transaction, as the context may require.

(June 6, 1934, ch. 404, title I, §3B, as added Pub. L. 111–203, title VII, §717(b), July 21, 2010, 124 Stat. 1651.)

EFFECTIVE DATE

Section effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1a of Title 7, Agriculture.

§78c–3. Clearing for security-based swaps

(a) In general

(1) Standard for clearing

It shall be unlawful for any person to engage in a security-based swap unless that person submits such security-based swap for clearing to a clearing agency that is registered under this chapter or a clearing agency that is exempt from registration under this chapter if the security-based swap is required to be cleared.

(2) Open access

The rules of a clearing agency described in paragraph (1) shall—

(A) prescribe that all security-based swaps submitted to the clearing agency with the same terms and conditions are economically equivalent within the clearing agency and may be offset with each other within the clearing agency; and

(B) provide for non-discriminatory clearing of a security-based swap executed bilaterally or on or through the rules of an unaffiliated national securities exchange or security-based swap execution facility.

(b) Commission review

(1) Commission-initiated review

(A) The Commission on an ongoing basis shall review each security-based swap, or any group, category, type, or class of security-based swaps to make a determination that such security-based swap, or group, category, type, or class of security-based swaps should be required to be cleared.

(B) The Commission shall provide at least a 30-day public comment period regarding any determination under subparagraph (A).

(2) Swap submissions

(A) A clearing agency shall submit to the Commission each security-based swap, or any group, category, type, or class of security-based swaps that it plans to accept for clearing and provide notice to its members (in a manner to be determined by the Commission) of such submission.

(B) Any security-based swap or group, category, type, or class of security-based swaps listed for clearing by a clearing agency as of July 21, 2010, shall be considered submitted to the Commission.

(C) The Commission shall—

(i) make available to the public any submission received under subparagraphs (A) and (B);

(ii) review each submission made under subparagraphs (A) and (B), and determine whether the security-based swap, or group, category, type, or class of security-based swaps, described in the submission is required to be cleared; and

(iii) provide at least a 30-day public comment period regarding its determination whether the clearing requirement under subsection (a)(1) shall apply to the submission.

(3) Deadline

The Commission shall make its determination under paragraph (2)(C) not later than 90 days after receiving a submission made under paragraphs (2)(A) and (2)(B), unless the submitting clearing agency agrees to an extension for the time limitation established under this paragraph.

(4) Determination

(A) In reviewing a submission made under paragraph (2), the Commission shall review whether the submission is consistent with section 78q–1 of this title.

(B) In reviewing a security-based swap, group of security-based swaps or class of security-based swaps pursuant to paragraph (1) or a submission made under paragraph (2), the Commission shall take into account the following factors:

(i) The existence of significant outstanding notional exposures, trading liquidity and adequate pricing data.

(ii) The availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded.

(iii) The effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the clearing agency available to clear the contract.

(iv) The effect on competition, including appropriate fees and charges applied to clearing.

(v) The existence of reasonable legal certainty in the event of the insolvency of the relevant clearing agency or 1 or more of its clearing members with regard to the treatment of customer and security-based swap counterparty positions, funds, and property.

(C) In making a determination under subsection (b)(1) or paragraph (2)(C) that the clearing requirement shall apply, the Commission may require such terms and conditions to the requirement as the Commission determines to be appropriate.

(5) Rules

Not later than 1 year after July 21, 2010, the Commission shall adopt rules for a clearing agency's submission for review, pursuant to this subsection, of a security-based swap, or a group, category, type, or class of security-based swaps, that it seeks to accept for clearing. Nothing in this paragraph limits the Commission from making a determination under paragraph (2)(C) for security-based swaps described in paragraph (2)(B).

(c) Stay of clearing requirement

(1) In general

After making a determination pursuant to subsection (b)(2), the Commission, on application of a counterparty to a security-based swap or on its own initiative, may stay the clearing requirement of subsection (a)(1) until the Commission completes a review of the terms of the security-based swap (or the group, category, type, or class of security-based swaps) and the clearing arrangement.

(2) Deadline

The Commission shall complete a review undertaken pursuant to paragraph (1) not later than 90 days after issuance of the stay, unless the clearing agency that clears the security-based swap, or group, category, type, or class of security-based swaps, agrees to an extension of the time limitation established under this paragraph.

(3) Determination

Upon completion of the review undertaken pursuant to paragraph (1), the Commission may—

(A) determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the security-based swap, or group, category, type, or class of security-based swaps, must be cleared pursuant to this subsection if it finds that such clearing is consistent with subsection (b)(4); or

(B) determine that the clearing requirement of subsection (a)(1) shall not apply to the security-based swap, or group, category, type, or class of security-based swaps.

(4) Rules

Not later than 1 year after July 21, 2010, the Commission shall adopt rules for reviewing, pursuant to this subsection, a clearing agency's clearing of a security-based swap, or a group, category, type, or class of security-based swaps, that it has accepted for clearing.

(d) Prevention of evasion

(1) In general

The Commission shall prescribe rules under this section (and issue interpretations of rules prescribed under this section), as determined by the Commission to be necessary to prevent evasions of the mandatory clearing requirements under this chapter.

(2) Duty of Commission to investigate and take certain actions

To the extent the Commission finds that a particular security-based swap or any group, category, type, or class of security-based swaps that would otherwise be subject to mandatory clearing but no clearing agency has listed the security-based swap or the group, category, type, or class of security-based swaps for clearing, the Commission shall—

(A) investigate the relevant facts and circumstances;

(B) within 30 days issue a public report containing the results of the investigation; and

(C) take such actions as the Commission determines to be necessary and in the public interest, which may include requiring the retaining of adequate margin or capital by parties to the security-based swap or the group, category, type, or class of security-based swaps.

(3) Effect on authority

Nothing in this subsection—

(A) authorizes the Commission to adopt rules requiring a clearing agency to list for clearing a security-based swap or any group, category, type, or class of security-based swaps if the clearing of the security-based swap or the group, category, type, or class of security-based swaps would threaten the financial integrity of the clearing agency; and

(B) affects the authority of the Commission to enforce the open access provisions of subsection (a)(2) with respect to a security-based swap or the group, category, type, or class of security-based swaps that is listed for clearing by a clearing agency.

(e) Reporting transition rules

Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:

(1) Security-based swaps entered into before July 21, 2010, shall be reported to a registered security-based swap data repository or the Commission no later than 180 days after the effective date of this section.

(2) Security-based swaps entered into on or after July 21, 2010, shall be reported to a registered security-based swap data repository or the Commission no later than the later of—

(A) 90 days after such effective date; or

(B) such other time after entering into the security-based swap as the Commission may prescribe by rule or regulation.

(f) Clearing transition rules

(1) Security-based swaps entered into before July 21, 2010, are exempt from the clearing requirements of this subsection if reported pursuant to subsection (e)(1).

(2) Security-based swaps entered into before application of the clearing requirement pursuant to this section are exempt from the clearing requirements of this section if reported pursuant to subsection (e)(2).

(g) Exceptions

(1) In general

The requirements of subsection (a)(1) shall not apply to a security-based swap if 1 of the counterparties to the security-based swap—

(A) is not a financial entity;

(B) is using security-based swaps to hedge or mitigate commercial risk; and

(C) notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into non-cleared security-based swaps.

(2) Option to clear

The application of the clearing exception in paragraph (1) is solely at the discretion of the counterparty to the security-based swap that meets the conditions of subparagraphs (A) through (C) of paragraph (1).

(3) Financial entity definition

(A) In general

For the purposes of this subsection, the term "financial entity" means—

(i) a swap dealer;

(ii) a security-based swap dealer;

(iii) a major swap participant;

(iv) a major security-based swap participant;

(v) a commodity pool as defined in section 1a(10) of title 7;

(vi) a private fund as defined in section 80b–2(a) of this title;

(vii) an employee benefit plan as defined in paragraphs (3) and (32) of section 1002 of title 29;

(viii) a person predominantly engaged in activities that are in the business of banking or financial in nature, as defined in section 1843(k) of title 12.

(B) Exclusion

The Commission shall consider whether to exempt small banks, savings associations, farm credit system institutions, and credit unions, including—

(i) depository institutions with total assets of $10,000,000,000 or less;

(ii) farm credit system institutions with total assets of $10,000,000,000 or less; or

(iii) credit unions with total assets of $10,000,000,000 or less.

(4) Treatment of affiliates

(A) In general

An affiliate of a person that qualifies for an exception under this subsection (including affiliate entities predominantly engaged in providing financing for the purchase of the merchandise or manufactured goods of the person) may qualify for the exception only if the affiliate, acting on behalf of the person and as an agent, uses the security-based swap to hedge or mitigate the commercial risk of the person or other affiliate of the person that is not a financial entity.

(B) Prohibition relating to certain affiliates

The exception in subparagraph (A) shall not apply if the affiliate is—

(i) a swap dealer;

(ii) a security-based swap dealer;

(iii) a major swap participant;

(iv) a major security-based swap participant;

(v) an issuer that would be an investment company, as defined in section 80a–3 of this title, but for paragraph (1) or (7) of subsection (c) of that section;

(vi) a commodity pool; or

(vii) a bank holding company with over $50,000,000,000 in consolidated assets.

(C) Transition rule for affiliates

An affiliate, subsidiary, or a wholly owned entity of a person that qualifies for an exception under subparagraph (A) and is predominantly engaged in providing financing for the purchase or lease of merchandise or manufactured goods of the person shall be exempt from the margin requirement described in section 78o–10(e) of this title and the clearing requirement described in subsection (a) with regard to security-based swaps entered into to mitigate the risk of the financing activities for not less than a 2-year period beginning on July 21, 2010.

(5) Election of counterparty

(A) Security-based swaps required to be cleared

With respect to any security-based swap that is subject to the mandatory clearing requirement under subsection (a) and entered into by a security-based swap dealer or a major security-based swap participant with a counterparty that is not a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant, the counterparty shall have the sole right to select the clearing agency at which the security-based swap will be cleared.

(B) Security-based swaps not required to be cleared

With respect to any security-based swap that is not subject to the mandatory clearing requirement under subsection (a) and entered into by a security-based swap dealer or a major security-based swap participant with a counterparty that is not a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant, the counterparty—

(i) may elect to require clearing of the security-based swap; and

(ii) shall have the sole right to select the clearing agency at which the security-based swap

will be cleared.

(6) Abuse of exception

The Commission may prescribe such rules or issue interpretations of the rules as the Commission determines to be necessary to prevent abuse of the exceptions described in this subsection. The Commission may also request information from those persons claiming the clearing exception as necessary to prevent abuse of the exceptions described in this subsection.

(h) Trade execution

(1) In general

With respect to transactions involving security-based swaps subject to the clearing requirement of subsection (a)(1), counterparties shall—

(A) execute the transaction on an exchange; or

(B) execute the transaction on a security-based swap execution facility registered under section 78c–4 of this title or a security-based swap execution facility that is exempt from registration under section 78c–4(e) of this title.

(2) Exception

The requirements of subparagraphs (A) and (B) of paragraph (1) shall not apply if no exchange or security-based swap execution facility makes the security-based swap available to trade or for security-based swap transactions subject to the clearing exception under subsection (g).

(i) Board approval

Exemptions from the requirements of this section to clear a security-based swap or execute a security-based swap through a national securities exchange or security-based swap execution facility shall be available to a counterparty that is an issuer of securities that are registered under section 78l of this title or that is required to file reports pursuant to section 78o(d) of this title, only if an appropriate committee of the issuer's board or governing body has reviewed and approved the issuer's decision to enter into security-based swaps that are subject to such exemptions.

(j) Designation of chief compliance officer

(1) In general

Each registered clearing agency shall designate an individual to serve as a chief compliance officer.

(2) Duties

The chief compliance officer shall—

(A) report directly to the board or to the senior officer of the clearing agency;

(B) in consultation with its board, a body performing a function similar thereto, or the senior officer of the registered clearing agency, resolve any conflicts of interest that may arise;

(C) be responsible for administering each policy and procedure that is required to be established pursuant to this section;

(D) ensure compliance with this chapter (including regulations issued under this chapter) relating to agreements, contracts, or transactions, including each rule prescribed by the Commission under this section;

(E) establish procedures for the remediation of noncompliance issues identified by the compliance officer through any—

(i) compliance office review;

(ii) look-back;

(iii) internal or external audit finding;

(iv) self-reported error; or

(v) validated complaint; and

(F) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

(3) Annual reports

(A) In general

In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

(i) the compliance of the registered clearing agency or security-based swap execution facility of the compliance officer with respect to this chapter (including regulations under this chapter); and

(ii) each policy and procedure of the registered clearing agency of the compliance officer (including the code of ethics and conflict of interest policies of the registered clearing agency).

(B) Requirements

A compliance report under subparagraph (A) shall—

(i) accompany each appropriate financial report of the registered clearing agency that is required to be furnished to the Commission pursuant to this section; and

(ii) include a certification that, under penalty of law, the compliance report is accurate and complete.

(June 6, 1934, ch. 404, title I, §3C, as added Pub. L. 111–203, title VII, §763(a), July 21, 2010, 124 Stat. 1762.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1) and (d)(1), was in the original "this Act", and this chapter, referred to in subsec. (j)(2)(D), (3)(A)(i), was in the original "this title". See References in Text note set out under section 78a of this title.

For the effective date of this section, referred to in subsec. (e), see section 774 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 77b of this title.

Subsection (c) of that section, referred to in subsec. (g)(4)(B)(v), was in the original "subsection (c) of that Act", and was translated as meaning subsec. (c) of section 3 of act Aug. 22, 1940, ch. 686, to reflect the probable intent of Congress.

EFFECTIVE DATE

Section effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761–774) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 77b of this title.

§78c–4. Security-based swap execution facilities

(a) Registration

(1) In general

No person may operate a facility for the trading or processing of security-based swaps, unless the facility is registered as a security-based swap execution facility or as a national securities exchange under this section.

(2) Dual registration

Any person that is registered as a security-based swap execution facility under this section shall register with the Commission regardless of whether the person also is registered with the Commodity Futures Trading Commission as a swap execution facility.

(b) Trading and trade processing

A security-based swap execution facility that is registered under subsection (a) may—

(1) make available for trading any security-based swap; and

(2) facilitate trade processing of any security-based swap.

(c) Identification of facility used to trade security-based swaps by national securities exchanges

A national securities exchange shall, to the extent that the exchange also operates a security-based swap execution facility and uses the same electronic trade execution system for listing and executing trades of security-based swaps on or through the exchange and the facility, identify whether electronic trading of such security-based swaps is taking place on or through the national securities exchange or the security-based swap execution facility.

(d) Core principles for security-based swap execution facilities

(1) Compliance with core principles

(A) In general

To be registered, and maintain registration, as a security-based swap execution facility, the security-based swap execution facility shall comply with—

(i) the core principles described in this subsection; and

(ii) any requirement that the Commission may impose by rule or regulation.

(B) Reasonable discretion of security-based swap execution facility

Unless otherwise determined by the Commission, by rule or regulation, a security-based swap execution facility described in subparagraph (A) shall have reasonable discretion in establishing the manner in which it complies with the core principles described in this subsection.

(2) Compliance with rules

A security-based swap execution facility shall—

(A) establish and enforce compliance with any rule established by such security-based swap execution facility, including—

(i) the terms and conditions of the security-based swaps traded or processed on or through the facility; and

(ii) any limitation on access to the facility;

(B) establish and enforce trading, trade processing, and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means—

(i) to provide market participants with impartial access to the market; and

(ii) to capture information that may be used in establishing whether rule violations have occurred; and

(C) establish rules governing the operation of the facility, including rules specifying trading procedures to be used in entering and executing orders traded or posted on the facility, including block trades.

(3) Security-based swaps not readily susceptible to manipulation

The security-based swap execution facility shall permit trading only in security-based swaps that are not readily susceptible to manipulation.

(4) Monitoring of trading and trade processing

The security-based swap execution facility shall—

(A) establish and enforce rules or terms and conditions defining, or specifications detailing—

(i) trading procedures to be used in entering and executing orders traded on or through the facilities of the security-based swap execution facility; and

(ii) procedures for trade processing of security-based swaps on or through the facilities of the security-based swap execution facility; and

(B) monitor trading in security-based swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of

trading and comprehensive and accurate trade reconstructions.

(5) Ability to obtain information

The security-based swap execution facility shall—

(A) establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in this subsection;

(B) provide the information to the Commission on request; and

(C) have the capacity to carry out such international information-sharing agreements as the Commission may require.

(6) Financial integrity of transactions

The security-based swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of security-based swaps entered on or through the facilities of the security-based swap execution facility, including the clearance and settlement of security-based swaps pursuant to section 78c–3(a)(1) of this title.

(7) Emergency authority

The security-based swap execution facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, as is necessary and appropriate, including the authority to liquidate or transfer open positions in any security-based swap or to suspend or curtail trading in a security-based swap.

(8) Timely publication of trading information

(A) In general

The security-based swap execution facility shall make public timely information on price, trading volume, and other trading data on security-based swaps to the extent prescribed by the Commission.

(B) Capacity of security-based swap execution facility

The security-based swap execution facility shall be required to have the capacity to electronically capture and transmit and disseminate trade information with respect to transactions executed on or through the facility.

(9) Recordkeeping and reporting

(A) In general

A security-based swap execution facility shall—

(i) maintain records of all activities relating to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of 5 years; and

(ii) report to the Commission, in a form and manner acceptable to the Commission, such information as the Commission determines to be necessary or appropriate for the Commission to perform the duties of the Commission under this chapter.

(B) Requirements

The Commission shall adopt data collection and reporting requirements for security-based swap execution facilities that are comparable to corresponding requirements for clearing agencies and security-based swap data repositories.

(10) Antitrust considerations

Unless necessary or appropriate to achieve the purposes of this chapter, the security-based swap execution facility shall not—

(A) adopt any rules or taking [1] any actions that result in any unreasonable restraint of trade; or

(B) impose any material anticompetitive burden on trading or clearing.

(11) Conflicts of interest

The security-based swap execution facility shall—

(A) establish and enforce rules to minimize conflicts of interest in its decision-making process; and

(B) establish a process for resolving the conflicts of interest.

(12) Financial resources

(A) In general

The security-based swap execution facility shall have adequate financial, operational, and managerial resources to discharge each responsibility of the security-based swap execution facility, as determined by the Commission.

(B) Determination of resource adequacy

The financial resources of a security-based swap execution facility shall be considered to be adequate if the value of the financial resources—

(i) enables the organization to meet its financial obligations to its members and participants notwithstanding a default by the member or participant creating the largest financial exposure for that organization in extreme but plausible market conditions; and

(ii) exceeds the total amount that would enable the security-based swap execution facility to cover the operating costs of the security-based swap execution facility for a 1-year period, as calculated on a rolling basis.

(13) System safeguards

The security-based swap execution facility shall—

(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and automated systems, that—

(i) are reliable and secure; and

(ii) have adequate scalable capacity;

(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for—

(i) the timely recovery and resumption of operations; and

(ii) the fulfillment of the responsibilities and obligations of the security-based swap execution facility; and

(C) periodically conduct tests to verify that the backup resources of the security-based swap execution facility are sufficient to ensure continued—

(i) order processing and trade matching;

(ii) price reporting;

(iii) market surveillance; and

(iv) maintenance of a comprehensive and accurate audit trail.

(14) Designation of chief compliance officer

(A) In general

Each security-based swap execution facility shall designate an individual to serve as a chief compliance officer.

(B) Duties

The chief compliance officer shall—

(i) report directly to the board or to the senior officer of the facility;

(ii) review compliance with the core principles in this subsection;

(iii) in consultation with the board of the facility, a body performing a function similar to that of a board, or the senior officer of the facility, resolve any conflicts of interest that may arise;

(iv) be responsible for establishing and administering the policies and procedures required to be established pursuant to this section;

(v) ensure compliance with this chapter and the rules and regulations issued under this chapter, including rules prescribed by the Commission pursuant to this section;

(vi) establish procedures for the remediation of noncompliance issues found during—

(I) compliance office reviews;

(II) look backs;

(III) internal or external audit findings;

(IV) self-reported errors; or

(V) through validated complaints; and

(vii) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

(C) Annual reports

(i) In general

In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

(I) the compliance of the security-based swap execution facility with this chapter; and

(II) the policies and procedures, including the code of ethics and conflict of interest policies, of the security-based security-based [2] swap execution facility.

(ii) Requirements

The chief compliance officer shall—

(I) submit each report described in clause (i) with the appropriate financial report of the security-based swap execution facility that is required to be submitted to the Commission pursuant to this section; and

(II) include in the report a certification that, under penalty of law, the report is accurate and complete.

(e) Exemptions

The Commission may exempt, conditionally or unconditionally, a security-based swap execution facility from registration under this section if the Commission finds that the facility is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Commodity Futures Trading Commission.

(f) Rules

The Commission shall prescribe rules governing the regulation of security-based swap execution facilities under this section.

(June 6, 1934, ch. 404, title I, §3D, as added Pub. L. 111–203, title VII, §763(c), July 21, 2010, 124 Stat. 1769.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (d)(9)(A)(ii), (10), (14)(B)(v), (C)(i)(I), was in the original "this title". See References in Text note set out under section 78a of this title.

EFFECTIVE DATE

Section effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761–774) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 77b of this title.

[1] *So in original. Probably should be "take".*

[2] *So in original.*

§78c–5. Segregation of assets held as collateral in security-based swap transactions

(a) Registration requirement

It shall be unlawful for any person to accept any money, securities, or property (or to extend any credit in lieu of money, securities, or property) from, for, or on behalf of a security-based swaps customer to margin, guarantee, or secure a security-based swap cleared by or through a clearing agency (including money, securities, or property accruing to the customer as the result of such a security-based swap), unless the person shall have registered under this chapter with the Commission as a broker, dealer, or security-based swap dealer, and the registration shall not have expired nor been suspended nor revoked.

(b) Cleared security-based swaps

(1) Segregation required

A broker, dealer, or security-based swap dealer shall treat and deal with all money, securities, and property of any security-based swaps customer received to margin, guarantee, or secure a security-based swap cleared by or though [1] a clearing agency (including money, securities, or property accruing to the security-based swaps customer as the result of such a security-based swap) as belonging to the security-based swaps customer.

(2) Commingling prohibited

Money, securities, and property of a security-based swaps customer described in paragraph (1) shall be separately accounted for and shall not be commingled with the funds of the broker, dealer, or security-based swap dealer or be used to margin, secure, or guarantee any trades or contracts of any security-based swaps customer or person other than the person for whom the same are held.

(c) Exceptions

(1) Use of funds

(A) In general

Notwithstanding subsection (b), money, securities, and property of a security-based swaps customer of a broker, dealer, or security-based swap dealer described in subsection (b) may, for convenience, be commingled and deposited in the same 1 or more accounts with any bank or trust company or with a clearing agency.

(B) Withdrawal

Notwithstanding subsection (b), such share of the money, securities, and property described in subparagraph (A) as in the normal course of business shall be necessary to margin, guarantee, secure, transfer, adjust, or settle a cleared security-based swap with a clearing agency, or with any member of the clearing agency, may be withdrawn and applied to such purposes, including the payment of commissions, brokerage, interest, taxes, storage, and other charges, lawfully accruing in connection with the cleared security-based swap.

(2) Commission action

Notwithstanding subsection (b), in accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, any money, securities, or property of the security-based swaps customer of a broker, dealer, or security-based swap dealer described in subsection (b) may be commingled and deposited as provided in this section with any other money, securities, or property received by the broker, dealer, or security-based swap dealer and required by the Commission to be separately accounted for and treated and dealt with as belonging to the security-based swaps customer of the broker, dealer, or security-based swap dealer.

(d) Permitted investments

Money described in subsection (b) may be invested in obligations of the United States, in general obligations of any State or of any political subdivision of a State, and in obligations fully guaranteed as to principal and interest by the United States, or in any other investment that the Commission may by rule or regulation prescribe, and such investments shall be made in accordance with such rules and regulations and subject to such conditions as the Commission may prescribe.

(e) Prohibition

It shall be unlawful for any person, including any clearing agency and any depository institution, that has received any money, securities, or property for deposit in a separate account or accounts as provided in subsection (b) to hold, dispose of, or use any such money, securities, or property as belonging to the depositing broker, dealer, or security-based swap dealer or any person other than the swaps customer of the broker, dealer, or security-based swap dealer.

(f) Segregation requirements for uncleared security-based swaps

(1) Segregation of assets held as collateral in uncleared security-based swap transactions

(A) Notification

A security-based swap dealer or major security-based swap participant shall be required to notify the counterparty of the security-based swap dealer or major security-based swap participant at the beginning of a security-based swap transaction that the counterparty has the right to require segregation of the funds of other property supplied to margin, guarantee, or secure the obligations of the counterparty.

(B) Segregation and maintenance of funds

At the request of a counterparty to a security-based swap that provides funds or other property to a security-based swap dealer or major security-based swap participant to margin, guarantee, or secure the obligations of the counterparty, the security-based swap dealer or major security-based swap participant shall—

(i) segregate the funds or other property for the benefit of the counterparty; and

(ii) in accordance with such rules and regulations as the Commission may promulgate, maintain the funds or other property in a segregated account separate from the assets and other interests of the security-based swap dealer or major security-based swap participant.

(2) Applicability

The requirements described in paragraph (1) shall—

(A) apply only to a security-based swap between a counterparty and a security-based swap dealer or major security-based swap participant that is not submitted for clearing to a clearing agency; and

(B)(i) not apply to variation margin payments; or

(ii) not preclude any commercial arrangement regarding—

(I) the investment of segregated funds or other property that may only be invested in such investments as the Commission may permit by rule or regulation; and

(II) the related allocation of gains and losses resulting from any investment of the segregated funds or other property.

(3) Use of independent third-party custodians

The segregated account described in paragraph (1) shall be—

(A) carried by an independent third-party custodian; and

(B) designated as a segregated account for and on behalf of the counterparty.

(4) Reporting requirement

If the counterparty does not choose to require segregation of the funds or other property supplied to margin, guarantee, or secure the obligations of the counterparty, the security-based swap dealer or major security-based swap participant shall report to the counterparty of the security-based swap dealer or major security-based swap participant on a quarterly basis that the back office procedures of the security-based swap dealer or major security-based swap participant

relating to margin and collateral requirements are in compliance with the agreement of the counterparties.

(g) Bankruptcy

A security-based swap, as defined in section 78c(a)(68) of this title shall be considered to be a security as such term is used in section 101(53A)(B) and subchapter III of title 11.[2] An account that holds a security-based swap, other than a portfolio margining account referred to in section 78o(c)(3)(C) of this title shall be considered to be a securities account, as that term is defined in section 741 of title 11. The definitions of the terms "purchase" and "sale" in section 78c(a)(13) and (14) of this title shall be applied to the terms "purchase" and "sale", as used in section 741 of title 11. The term "customer", as defined in section 741 of title 11, excludes any person, to the extent that such person has a claim based on any open repurchase agreement, open reverse repurchase agreement, stock borrowed agreement, non-cleared option, or non-cleared security-based swap except to the extent of any margin delivered to or by the customer with respect to which there is a customer protection requirement under section 78o(c)(3) of this title or a segregation requirement.

(June 6, 1934, ch. 404, title I, §3E, as added Pub. L. 111–203, title VII, §763(d), July 21, 2010, 124 Stat. 1774.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this title". See References in Text note set out under section 78a of this title.

EFFECTIVE DATE

Section effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761–774) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 77b of this title.

[1] So in original. Probably should be "through".

[2] So in original.

§78d. Securities and Exchange Commission

(a) Establishment; composition; limitations on commissioners; terms of office

There is hereby established a Securities and Exchange Commission (hereinafter referred to as the "Commission") to be composed of five commissioners to be appointed by the President by and with the advice and consent of the Senate. Not more than three of such commissioners shall be members of the same political party, and in making appointments members of different political parties shall be appointed alternately as nearly as may be practicable. No commissioner shall engage in any other business, vocation, or employment than that of serving as commissioner, nor shall any commissioner participate, directly or indirectly, in any stock-market operations or transactions of a character subject to regulation by the Commission pursuant to this chapter. Each commissioner shall hold office for a term of five years and until his successor is appointed and has qualified, except that he shall not so continue to serve beyond the expiration of the next session of Congress subsequent to the expiration of said fixed term of office, and except (1) any commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (2) the terms of office of the commissioners first taking office after June 6, 1934, shall expire as designated by the President at the time of nomination, one at the end of one year, one at the end of two years, one at the end of three years, one at the end of four years, and one at the end of five years, after June 6, 1934.

(b) Appointment and compensation of staff and leasing authority

(1) Appointment and compensation

The Commission shall appoint and compensate officers, attorneys, economists, examiners, and other employees in accordance with section 4802 of title 5.

(2) Reporting of information

In establishing and adjusting schedules of compensation and benefits for officers, attorneys, economists, examiners, and other employees of the Commission under applicable provisions of law, the Commission shall inform the heads of the agencies referred to under section 1833b of title 12 and Congress of such compensation and benefits and shall seek to maintain comparability with such agencies regarding compensation and benefits.

(3) Leasing authority

Nothwithstanding [1] any other provision of law, the Commission is authorized to enter directly into leases for real property for office, meeting, storage, and such other space as is necessary to carry out its functions, and shall be exempt from any General Services Administration space management regulations or directives.

(c) Acceptance of travel support for Commission activities from non-Federal sources; regulations

Notwithstanding any other provision of law, in accordance with regulations which the Commission shall prescribe to prevent conflicts of interest, the Commission may accept payment and reimbursement, in cash or in kind, from non-Federal agencies, organizations, and individuals for travel, subsistence, and other necessary expenses incurred by Commission members and employees in attending meetings and conferences concerning the functions or activities of the Commission. Any payment or reimbursement accepted shall be credited to the appropriated funds of the Commission. The amount of travel, subsistence, and other necessary expenses for members and employees paid or reimbursed under this subsection may exceed per diem amounts established in official travel regulations, but the Commission may include in its regulations under this subsection a limitation on such amounts.

(d) Acceptance of relocation expenses from former employers by professional fellows program participants

Notwithstanding any other provision of law, former employers of participants in the Commission's professional fellows programs may pay such participants their actual expenses for relocation to Washington, District of Columbia, to facilitate their participation in such programs, and program participants may accept such payments.

(e) Fee payments

Notwithstanding any other provision of law, whenever any fee is required to be paid to the Commission pursuant to any provision of the securities laws or any other law, the Commission may provide by rule that such fee shall be paid in a manner other than in cash and the Commission may also specify the time that such fee shall be determined and paid relative to the filing of any statement or document with the Commission.

(f) Reimbursement of expenses for assisting foreign securities authorities

Notwithstanding any other provision of law, the Commission may accept payment and reimbursement, in cash or in kind, from a foreign securities authority, or made on behalf of such authority, for necessary expenses incurred by the Commission, its members, and employees in carrying out any investigation pursuant to section 78u(a)(2) of this title or in providing any other assistance to a foreign securities authority. Any payment or reimbursement accepted shall be considered a reimbursement to the appropriated funds of the Commission.

(g) Office of the Investor Advocate

(1) Office established

There is established within the Commission the Office of the Investor Advocate (in this

subsection referred to as the "Office").

(2) Investor Advocate

(A) In general

The head of the Office shall be the Investor Advocate, who shall—

(i) report directly to the Chairman; and

(ii) be appointed by the Chairman, in consultation with the Commission, from among individuals having experience in advocating for the interests of investors in securities and investor protection issues, from the perspective of investors.

(B) Compensation

The annual rate of pay for the Investor Advocate shall be equal to the highest rate of annual pay for other senior executives who report to the Chairman of the Commission.

(C) Limitation on service

An individual who serves as the Investor Advocate may not be employed by the Commission—

(i) during the 2-year period ending on the date of appointment as Investor Advocate; or

(ii) during the 5-year period beginning on the date on which the person ceases to serve as the Investor Advocate.

(3) Staff of Office

The Investor Advocate, after consultation with the Chairman of the Commission, may retain or employ independent counsel, research staff, and service staff, as the Investor Advocate deems necessary to carry out the functions, powers, and duties of the Office.

(4) Functions of the Investor Advocate

The Investor Advocate shall—

(A) assist retail investors in resolving significant problems such investors may have with the Commission or with self-regulatory organizations;

(B) identify areas in which investors would benefit from changes in the regulations of the Commission or the rules of self-regulatory organizations;

(C) identify problems that investors have with financial service providers and investment products;

(D) analyze the potential impact on investors of—

(i) proposed regulations of the Commission; and

(ii) proposed rules of self-regulatory organizations registered under this chapter; and

(E) to the extent practicable, propose to the Commission changes in the regulations or orders of the Commission and to Congress any legislative, administrative, or personnel changes that may be appropriate to mitigate problems identified under this paragraph and to promote the interests of investors.

(5) Access to documents

The Commission shall ensure that the Investor Advocate has full access to the documents of the Commission and any self-regulatory organization, as necessary to carry out the functions of the Office.

(6) Annual reports

(A) Report on objectives

(i) In general

Not later than June 30 of each year after 2010, the Investor Advocate shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the objectives of the Investor Advocate for the following fiscal year.

(ii) Contents

Each report required under clause (i) shall contain full and substantive analysis and explanation.

(B) Report on activities

(i) In general

Not later than December 31 of each year after 2010, the Investor Advocate shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the activities of the Investor Advocate during the immediately preceding fiscal year.

(ii) Contents

Each report required under clause (i) shall include—

(I) appropriate statistical information and full and substantive analysis;

(II) information on steps that the Investor Advocate has taken during the reporting period to improve investor services and the responsiveness of the Commission and self-regulatory organizations to investor concerns;

(III) a summary of the most serious problems encountered by investors during the reporting period;

(IV) an inventory of the items described in subclause (III) that includes—

(aa) identification of any action taken by the Commission or the self-regulatory organization and the result of such action;

(bb) the length of time that each item has remained on such inventory; and

(cc) for items on which no action has been taken, the reasons for inaction, and an identification of any official who is responsible for such action;

(V) recommendations for such administrative and legislative actions as may be appropriate to resolve problems encountered by investors; and

(VI) any other information, as determined appropriate by the Investor Advocate.

(iii) Independence

Each report required under this paragraph shall be provided directly to the Committees listed in clause (i) without any prior review or comment from the Commission, any commissioner, any other officer or employee of the Commission, or the Office of Management and Budget.

(iv) Confidentiality

No report required under clause (i) may contain confidential information.

(7) Regulations

The Commission shall, by regulation, establish procedures requiring a formal response to all recommendations submitted to the Commission by the Investor Advocate, not later than 3 months after the date of such submission.

(8) Ombudsman

(A) Appointment

Not later than 180 days after the date on which the first Investor Advocate is appointed under paragraph (2)(A)(i),[2] the Investor Advocate shall appoint an Ombudsman, who shall report directly to the Investor Advocate.

(B) Duties

The Ombudsman appointed under subparagraph (A) shall—

(i) act as a liaison between the Commission and any retail investor in resolving problems that retail investors may have with the Commission or with self-regulatory organizations;

(ii) review and make recommendations regarding policies and procedures to encourage

persons to present questions to the Investor Advocate regarding compliance with the securities laws; and

(iii) establish safeguards to maintain the confidentiality of communications between the persons described in clause (ii) and the Ombudsman.

(C) Limitation

In carrying out the duties of the Ombudsman under subparagraph (B), the Ombudsman shall utilize personnel of the Commission to the extent practicable. Nothing in this paragraph shall be construed as replacing, altering, or diminishing the activities of any ombudsman or similar office of any other agency.

(D) Report

The Ombudsman shall submit a semiannual report to the Investor Advocate that describes the activities and evaluates the effectiveness of the Ombudsman during the preceding year. The Investor Advocate shall include the reports required under this section in the reports required to be submitted by the Inspector Advocate under paragraph (6).

(h) Examiners

(1) Division of Trading and Markets

The Division of Trading and Markets of the Commission, or any successor organizational unit, shall have a staff of examiners who shall—

(A) perform compliance inspections and examinations of entities under the jurisdiction of that Division; and

(B) report to the Director of that Division.

(2) Division of Investment Management

The Division of Investment Management of the Commission, or any successor organizational unit, shall have a staff of examiners who shall—

(A) perform compliance inspections and examinations of entities under the jurisdiction of that Division; and

(B) report to the Director of that Division.

(i) Securities and Exchange Commission Reserve Fund

(1) Reserve Fund established

There is established in the Treasury of the United States a separate fund, to be known as the "Securities and Exchange Commission Reserve Fund" (referred to in this subsection as the "Reserve Fund").

(2) Reserve Fund amounts

(A) In general

Except as provided in subparagraph (B), any registration fees collected by the Commission under section 77f(b) of this title or section 80a–24(f) of this title shall be deposited into the Reserve Fund.

(B) Limitations

For any 1 fiscal year—

(i) the amount deposited in the Fund may not exceed $50,000,000; and

(ii) the balance in the Fund may not exceed $100,000,000.

(C) Excess fees

Any amounts in excess of the limitations described in subparagraph (B) that the Commission collects from registration fees under section 77f(b) of this title or section 80a–24(f) of this title shall be deposited in the General Fund of the Treasury of the United States and shall not be available for obligation by the Commission.

(3) Use of amounts in Reserve Fund

The Commission may obligate amounts in the Reserve Fund, not to exceed a total of $100,000,000 in any 1 fiscal year, as the Commission determines is necessary to carry out the functions of the Commission. Any amounts in the reserve fund shall remain available until expended. Not later than 10 days after the date on which the Commission obligates amounts under this paragraph, the Commission shall notify Congress of the date, amount, and purpose of the obligation.

(4) Rule of construction

Amounts collected and deposited in the Reserve Fund shall not be construed to be Government funds or appropriated monies and shall not be subject to apportionment for the purpose of chapter 15 of title 31 or under any other authority.

(June 6, 1934, ch. 404, title I, §4, 48 Stat. 885; Oct. 28, 1949, ch. 782, title XI, §1106(a), 63 Stat. 972; Pub. L. 86–619, §3, July 12, 1960, 74 Stat. 408; Pub. L. 86–771, Sept. 13, 1960, 74 Stat. 913; Pub. L. 88–426, title III, §305(20), Aug. 14, 1964, 78 Stat. 425; Pub. L. 98–38, §1, June 6, 1983, 97 Stat. 205; Pub. L. 100–181, title III, §307, Dec. 4, 1987, 101 Stat. 1254; Pub. L. 101–550, title I, §103, title II, §207, Nov. 15, 1990, 104 Stat. 2713, 2721; Pub. L. 104–290, title IV, §406, Oct. 11, 1996, 110 Stat. 3444; Pub. L. 105–353, title II, §203, Nov. 3, 1998, 112 Stat. 3234; Pub. L. 107–123, §8(d)(2), Jan. 16, 2002, 115 Stat. 2399; Pub. L. 111–203, title IX, §§915, 919D, 965, 991(e)(1), July 21, 2010, 124 Stat. 1830, 1840, 1911, 1954.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (g)(4)(D)(ii), was in the original "this title". See References in Text note set out under section 78a of this title.

AMENDMENTS

2010—Subsec. (g). Pub. L. 111–203, §915, added subsec. (g).

Subsec. (g)(8). Pub. L. 111–203, §919D, added par. (8).

Subsec. (h). Pub. L. 111–203, §965, added subsec. (h).

Subsec. (i). Pub. L. 111–203, §991(e)(1), added subsec. (i).

2002—Subsec. (b)(1), (2). Pub. L. 107–123 added pars. (1) and (2) and struck out former pars. (1) and (2), which authorized the Commission to appoint and compensate officers, attorneys, examiners, and other experts as needed, and to select, appoint, and compensate professional economists.

1998—Subsec. (b)(2), (3). Pub. L. 105–353 added par. (2) and redesignated former par. (2) as (3).

1996—Subsec. (e). Pub. L. 104–290 inserted before period at end "and the Commission may also specify the time that such fee shall be determined and paid relative to the filing of any statement or document with the Commission".

1990—Subsec. (b). Pub. L. 101–550, §103, inserted heading, designated existing provision as par. (1) and inserted heading, and added par. (2).

Subsec. (f). Pub. L. 101–550, §207, added subsec. (f).

1987—Subsec. (e). Pub. L. 100–181 added subsec. (e).

1983—Subsecs. (c), (d). Pub. L. 98–38 added subsecs. (c) and (d).

1964—Subsec. (a). Pub. L. 88–426 repealed provisions which prescribed the compensation of the Chairman and the Commissioners.

1960—Subsec. (a). Pub. L. 86–771 authorized the chairman to receive an additional $500 a year.

Pub. L. 86–619 increased the salary of each commissioner from $15,000 to $20,000 a year, and provided for continuation in office of a commissioner upon termination of his term until a successor is appointed and has qualified, not beyond expiration of next session of Congress subsequent to the expiration of said fixed term of office.

1949—Subsec. (b). Act Oct. 28, 1949, substituted "Classification Act of 1949" for "Classification Act of 1923".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 915, 919D, and 965 of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Pub. L. 111–203, title IX, §991(e)(2), July 21, 2010, 124 Stat. 1955, provided that: "The amendment made by this subsection [amending this section] shall take effect on October 1, 2011."

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–123 effective Oct. 1, 2001, see section 11 of Pub. L. 107–123, set out as a note under section 78ee of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

For effective date of amendment by Pub. L. 88–426, see section 501 of Pub. L. 88–426.

REPEALS

Act Oct. 28, 1949, ch. 782, set out in the credit of this section, was repealed (subject to a savings clause) by Pub. L. 89–554, Sept. 6, 1966, §8, 80 Stat. 632, 655.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out below.

OUTREACH BY THE COMMISSION

Pub. L. 112–106, title VII, §701, Apr. 5, 2012, 126 Stat. 327, provided that: "The Securities and Exchange Commission shall provide online information and conduct outreach to inform small and medium sized businesses, women owned businesses, veteran owned businesses, and minority owned businesses of the changes made by this Act [see Short Title of 2012 Amendment note set out under section 78a of this title]."

PAY AUTHORITY FOR EMPLOYMENT OF EXPERTS AND CONSULTANTS

Pub. L. 111–203, title IX, §929G(c), July 21, 2010, 124 Stat. 1856, provided that: "The [Securities and Exchange] Commission may set the rate of pay for experts and consultants appointed under the authority of section 3109 of title 5, United States Code, in the same manner in which it sets the rate of pay for employees of the Commission."

1950 REORGANIZATION PLAN NO. 10

15 F.R. 3175, 64 STAT. 1265

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, March 13, 1950, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949 [see 5 U.S.C. 901 et seq.].

SECURITIES AND EXCHANGE COMMISSION

SECTION 1. TRANSFER OF FUNCTIONS TO THE CHAIRMAN

(a) Subject to the provisions of subsection (b) of this section there are hereby transferred from the Securities and Exchange Commission, hereinafter referred to as the Commission, to the Chairman of the Commission, hereinafter referred to as the Chairman, the executive and administrative functions of the Commission, including functions of the Commission with respect to (1) the appointment and supervision of personnel employed under the Commission, (2) the distribution of business among such personnel and among administrative units of the Commission, and (3) the use and expenditure of funds.

(b)(1) In carrying out any of his functions under the provisions of this section the Chairman shall be governed by general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make.

(2) The appointment by the Chairman of the heads of major administrative units under the Commission shall be subject to the approval of the Commission.

(3) Personnel employed regularly and full time in the immediate offices of Commissioners other than the Chairman shall not be affected by the provisions of this reorganization plan.

(4) There are hereby reserved to the Commission its functions with respect to revising budget estimates and with respect to determining upon the distribution of appropriated funds according to major programs and purposes.

SEC. 2. PERFORMANCE OF TRANSFERRED FUNCTIONS

The Chairman may from time to time make such provisions as he shall deem appropriate authorizing the performance by any officer, employee, or administrative unit under his jurisdiction of any function transferred to the Chairman by the provisions of section 1 of this reorganization plan.

SEC. 3. DESIGNATION OF CHAIRMAN

The functions of the Commission with respect to choosing a Chairman from among the Commissioners composing the Commission are hereby transferred to the President.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 10 of 1950, prepared in accordance with the Reorganization Act of 1949 and providing for reorganizations in the Securities and Exchange Commission. My reasons for transmitting this plan are stated in an accompanying general message.

After investigation I have found and hereby declare that each reorganization included in Reorganization Plan No. 10 of 1950 is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949.

The taking effect of the reorganizations included in this plan may not in itself result in substantial immediate savings. However, many benefits in improved operations are probable during the next years which will result in a reduction in expenditures as compared with those that would be otherwise necessary. An itemization of these reductions in advance of actual experience under this plan is not practicable.

HARRY S. TRUMAN.

[1] So in original. Probably should be "Notwithstanding".

[2] So in original. Probably should be "(2)(A)(ii),".

§78d–1. Delegation of functions by Commission

(a) Authorization; functions delegable; eligible persons; application of other laws

In addition to its existing authority, the Securities and Exchange Commission shall have the authority to delegate, by published order or rule, any of its functions to a division of the Commission, an individual Commissioner, an administrative law judge, or an employee or employee board, including functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter. Nothing in this section shall be deemed to supersede the provisions of section 556(b) of title 5, or to authorize the delegation of the function of rulemaking as defined in subchapter II of chapter 5 of title 5, with reference to general rules as distinguished from rules of particular applicability, or of the making of any rule pursuant to section 78s(c) of this title.

(b) Right of review; procedure

With respect to the delegation of any of its functions, as provided in subsection (a) of this section, the Commission shall retain a discretionary right to review the action of any such division of the Commission, individual Commissioner, administrative law judge, employee, or employee board, upon its own initiative or upon petition of a party to or intervenor in such action, within such time and in such manner as the Commission by rule shall prescribe. The vote of one member of the Commission shall be sufficient to bring any such action before the Commission for review. A person or party shall be entitled to review by the Commission if he or it is adversely affected by action at a delegated level which (1) denies any request for action pursuant to section 77h(a) or section 77h(c) of this title or the first sentence of section 78l(d) of this title; (2) suspends trading in a security pursuant to section 78l(k) of this title; or (3) is pursuant to any provision of this chapter in a case of adjudication, as defined in section 551 of title 5, not required by this chapter to be determined on the record after notice and opportunity for hearing (except to the extent there is involved a matter described in section 554(a)(1) through (6) of such title 5).

(c) Finality of delegated action

If the right to exercise such review is declined, or if no such review is sought within the time stated in the rules promulgated by the Commission, then the action of any such division of the Commission, individual Commissioner, administrative law judge, employee, or employee board,

shall, for all purposes, including appeal or review thereof, be deemed the action of the Commission.

(June 6, 1934, ch. 404, title I, §4A, as added Pub. L. 100–181, title III, §308(a), Dec. 4, 1987, 101 Stat. 1254.)

PRIOR PROVISIONS

A prior section 78d–1, Pub. L. 87–592, §1, Aug. 20, 1962, 76 Stat. 394; Pub. L. 94–29, §25, June 4, 1975, 89 Stat. 163; Pub. L. 95–251, §2(a)(4), Mar. 27, 1978, 92 Stat. 183, provided for subject matter similar to the provisions comprising this section, prior to repeal by section 308(b) of Pub. L. 100–181.

§78d–2. Transfer of functions with respect to assignment of personnel to chairman

In addition to the functions transferred by the provisions of Reorganization Plan Numbered 10 of 1950 (64 Stat. 1265), there are hereby transferred from the Commission to the Chairman of the Commission the functions of the Commission with respect to the assignment of Commission personnel, including Commissioners, to perform such functions as may have been delegated by the Commission to the Commission personnel, including Commissioners, pursuant to section 78d–1 of this title.

(June 6, 1934, ch. 404, title I, §4B, as added Pub. L. 100–181, title III, §308(a), Dec. 4, 1987, 101 Stat. 1255.)

REFERENCES IN TEXT

Reorganization Plan Numbered 10 of 1950 (64 Stat. 1265), referred to in text, is set out as a note under section 78d of this title.

PRIOR PROVISIONS

A prior section 78d–2, Pub. L. 87–592, §2, Aug. 20, 1962, 76 Stat. 395, provided for subject matter similar to the provisions comprising this section, prior to repeal by section 308(b) of Pub. L. 100–181.

§78d–3. Appearance and practice before the Commission

(a) Authority to censure

The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found by the Commission, after notice and opportunity for hearing in the matter—

(1) not to possess the requisite qualifications to represent others;

(2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or

(3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations issued thereunder.

(b) Definition

With respect to any registered public accounting firm or associated person, for purposes of this section, the term "improper professional conduct" means—

(1) intentional or knowing conduct, including reckless conduct, that results in a violation of applicable professional standards; and

(2) negligent conduct in the form of—

(A) a single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which the registered public accounting firm or associated person knows, or should know, that heightened scrutiny is warranted; or

(B) repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission.

(June 6, 1934, ch. 404, title I, §4C, as added Pub. L. 107–204, title VI, §602, July 30, 2002, 116 Stat.

794.)

§78d–4. Additional duties of Inspector General

(a) Suggestion submissions by Commission employees

(1) Hotline established

The Inspector General of the Commission shall establish and maintain a telephone hotline or other electronic means for the receipt of—

(A) suggestions by employees of the Commission for improvements in the work efficiency, effectiveness, and productivity, and the use of the resources, of the Commission; and

(B) allegations by employees of the Commission of waste, abuse, misconduct, or mismanagement within the Commission.

(2) Confidentiality

The Inspector General shall maintain as confidential—

(A) the identity of any individual who provides information by the means established under paragraph (1), unless the individual requests otherwise, in writing; and

(B) at the request of any such individual, any specific information provided by the individual.

(b) Consideration of reports

The Inspector General shall consider any suggestions or allegations received by the means established under subsection (a)(1), and shall recommend appropriate action in relation to such suggestions or allegations.

(c) Recognition

The Inspector General may recognize any employee who makes a suggestion under subsection (a)(1) (or by other means) that would or does—

(1) increase the work efficiency, effectiveness, or productivity of the Commission; or

(2) reduce waste, abuse, misconduct, or mismanagement within the Commission.

(d) Report

The Inspector General of the Commission shall submit to Congress an annual report containing a description of—

(1) the nature, number, and potential benefits of any suggestions received under subsection (a);

(2) the nature, number, and seriousness of any allegations received under subsection (a);

(3) any recommendations made or actions taken by the Inspector General in response to substantiated allegations received under subsection (a); and

(4) any action the Commission has taken in response to suggestions or allegations received under subsection (a).

(e) Funding

The activities of the Inspector General under this subsection shall be funded by the Securities and Exchange Commission Investor Protection Fund established under section 78u–6 of this title.

(June 6, 1934, ch. 404, title I, §4D, as added Pub. L. 111–203, title IX, §966, July 21, 2010, 124 Stat. 1912.)

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of Title 12, Banks and Banking.

§78d–5. Deadline for completing enforcement investigations and compliance examinations and inspections

(a) Enforcement investigations

(1) In general

Not later than 180 days after the date on which Commission staff provide [1] a written Wells notification to any person, the Commission staff shall either file an action against such person or provide notice to the Director of the Division of Enforcement of its intent to not file an action.

(2) Exceptions for certain complex actions

Notwithstanding paragraph (1), if the Director of the Division of Enforcement of the Commission or the Director's designee determines that a particular enforcement investigation is sufficiently complex such that a determination regarding the filing of an action against a person cannot be completed within the deadline specified in paragraph (1), the Director of the Division of Enforcement of the Commission or the Director's designee may, after providing notice to the Chairman of the Commission, extend such deadline as needed for one additional 180-day period. If after the additional 180-day period the Director of the Division of Enforcement of the Commission or the Director's designee determines that a particular enforcement investigation is sufficiently complex such that a determination regarding the filing of an action against a person cannot be completed within the additional 180-day period, the Director of the Division of Enforcement of the Commission or the Director's designee may, after providing notice to and receiving approval of the Commission, extend such deadline as needed for one or more additional successive 180-day periods.

(b) Compliance examinations and inspections

(1) In general

Not later than 180 days after the date on which Commission staff completes the on-site portion of its compliance examination or inspection or receives all records requested from the entity being examined or inspected, whichever is later, Commission staff shall provide the entity being examined or inspected with written notification indicating either that the examination or inspection has concluded, has concluded without findings, or that the staff requests the entity undertake corrective action.

(2) Exception for certain complex actions

Notwithstanding paragraph (1), if the head of any division or office within the Commission responsible for compliance examinations and inspections or his designee determines that a particular compliance examination or inspection is sufficiently complex such that a determination regarding concluding the examination or inspection, or regarding the staff requests the entity undertake corrective action, cannot be completed within the deadline specified in paragraph (1), the head of any division or office within the Commission responsible for compliance examinations and inspections or his designee may, after providing notice to the Chairman of the Commission, extend such deadline as needed for one additional 180-day period.

(June 6, 1934, ch. 404, title I, §4E, as added Pub. L. 111–203, title IX, §929U, July 21, 2010, 124 Stat. 1867.)

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of Title 12, Banks and Banking.

[1] *So in original. Probably should be "provides".*

§78d–6. Report and certification of internal supervisory controls

(a) Annual reports and certification

Not later than 90 days after the end of each fiscal year, the Commission shall submit a report to

the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the conduct by the Commission of examinations of registered entities, enforcement investigations, and review of corporate financial securities filings.

(b) Contents of reports

Each report under subsection (a) shall contain—

(1) an assessment, as of the end of the most recent fiscal year, of the effectiveness of—

(A) the internal supervisory controls of the Commission; and

(B) the procedures of the Commission applicable to the staff of the Commission who perform examinations of registered entities, enforcement investigations, and reviews of corporate financial securities filings;

(2) a certification that the Commission has adequate internal supervisory controls to carry out the duties of the Commission described in paragraph (1)(B); and

(3) a summary by the Comptroller General of the United States of the review carried out under subsection (d).[1]

(c) Certification

(1) Signature

The certification under subsection (b)(2) shall be signed by the Director of the Division of Enforcement, the Director of the Division of Corporation Finance, and the Director of the Office of Compliance Inspections and Examinations (or the head of any successor division or office).

(2) Content of certification

Each individual described in paragraph (1) shall certify that the individual—

(A) is directly responsible for establishing and maintaining the internal supervisory controls of the Division or Office of which the individual is the head;

(B) is knowledgeable about the internal supervisory controls of the Division or Office of which the individual is the head;

(C) has evaluated the effectiveness of the internal supervisory controls during the 90-day period ending on the final day of the fiscal year to which the report relates; and

(D) has disclosed to the Commission any significant deficiencies in the design or operation of internal supervisory controls that could adversely affect the ability of the Division or Office to consistently conduct inspections, or investigations, or reviews of filings with professional competence and integrity.

(d) New Director or Acting Director

Notwithstanding subsection (a), if the Director of the Division of Enforcement, the Director of the Division of Corporate Finance, or the Director of the Office of Compliance Inspections and Examinations has served as Director of the Division or Office for less than 90 days on the date on which a report is required to be submitted under subsection (a), the Commission may submit the report on the date on which the Director has served as Director for 90 days. If there is no Director of the Division of Enforcement, the Division of Corporate Finance, or the Office of Compliance Inspections and Examinations, on the date on which a report is required to be submitted under subsection (a), the Acting Director of the Division or Office may make the certification required under subsection (c).

(e) Review by the Comptroller General

(1) Report

The Comptroller General of the United States shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report that contains a review of the adequacy and effectiveness of the internal supervisory control structure and procedures described in subsection (b)(1), not less frequently

than once every 3 years, at a time to coincide with the publication of the reports of the Commission under this section.

(2) Authority to hire experts

The Comptroller General of the United States may hire independent consultants with specialized expertise in any area relevant to the duties of the Comptroller General described in this section, in order to assist the Comptroller General in carrying out such duties.

(Pub. L. 111–203, title IX, §961, July 21, 2010, 124 Stat. 1907.)

CODIFICATION

Section was enacted as part of the Investor Protection and Securities Reform Act of 2010 and also as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and not as part of the Securities Exchange Act of 1934 which comprises this chapter.

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of Title 12, Banks and Banking.

DEFINITIONS

For definitions of terms used in this section, see section 5301 of Title 12, Banks and Banking.

[1] *So in original. Probably should be "(e)."*

§78d–7. Triennial report on personnel management

(a) Triennial report required

Once every 3 years, the Comptroller General of the United States shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the quality of personnel management by the Commission.

(b) Contents of report

Each report under subsection (a) shall include—

(1) an evaluation of—

(A) the effectiveness of supervisors in using the skills, talents, and motivation of the employees of the Commission to achieve the goals of the Commission;

(B) the criteria for promoting employees of the Commission to supervisory positions;

(C) the fairness of the application of the promotion criteria to the decisions of the Commission;

(D) the competence of the professional staff of the Commission;

(E) the efficiency of communication between the units of the Commission regarding the work of the Commission (including communication between divisions and between subunits of a division) and the efforts by the Commission to promote such communication;

(F) the turnover within subunits of the Commission, including the consideration of supervisors whose subordinates have an unusually high rate of turnover;

(G) whether there are excessive numbers of low-level, mid-level, or senior-level managers;

(H) any initiatives of the Commission that increase the competence of the staff of the Commission;

(I) the actions taken by the Commission regarding employees of the Commission who have failed to perform their duties and circumstances under which the Commission has issued to employees a notice of termination; and

(J) such other factors relating to the management of the Commission as the Comptroller General determines are appropriate;

(2) an evaluation of any improvements made with respect to the areas described in paragraph (1) since the date of submission of the previous report; and

(3) recommendations for how the Commission can use the human resources of the Commission more effectively and efficiently to carry out the mission of the Commission.

(c) Consultation

In preparing the report under subsection (a), the Comptroller General shall consult with current employees of the Commission, retired employees and other former employees of the Commission, the Inspector General of the Commission, persons that have business before the Commission, any union representing the employees of the Commission, private management consultants, academics, and any other source that the Comptroller General deems appropriate.

(d) Report by Commission

Not later than 90 days after the date on which the Comptroller General submits each report under subsection (a), the Commission shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report describing the actions taken by the Commission in response to the recommendations contained in the report under subsection (a).

(e) Reimbursements for cost of reports

(1) Reimbursements required

The Commission shall reimburse the Government Accountability Office for the full cost of making the reports under this section, as billed therefor by the Comptroller General.

(2) Crediting and use of reimbursements

Such reimbursements shall—

(A) be credited to the appropriation account "Salaries and Expenses, Government Accountability Office" current when the payment is received; and

(B) remain available until expended.

(f) Authority to hire experts

The Comptroller General of the United States may hire independent consultants with specialized expertise in any area relevant to the duties of the Comptroller General described in this section, in order to assist the Comptroller General in carrying out such duties.

(Pub. L. 111–203, title IX, §962, July 21, 2010, 124 Stat. 1908.)

CODIFICATION

Section was enacted as part of the Investor Protection and Securities Reform Act of 2010 and also as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and not as part of the Securities Exchange Act of 1934 which comprises this chapter.

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of Title 12, Banks and Banking.

DEFINITION

For definition of "Commission" as used in this section, see section 5301 of Title 12, Banks and Banking.

§78d–8. Annual financial controls audit

(a) Reports of Commission

(1) Annual reports required

Not later than 6 months after the end of each fiscal year, the Commission shall publish and submit to Congress a report that—

(A) describes the responsibility of the management of the Commission for establishing and

maintaining an adequate internal control structure and procedures for financial reporting; and

(B) contains an assessment of the effectiveness of the internal control structure and procedures for financial reporting of the Commission during that fiscal year.

(2) Attestation

The reports required under paragraph (1) shall be attested to by the Chairman and chief financial officer of the Commission.

(b) Report by Comptroller General

(1) Report required

Not later than 6 months after the end of the first fiscal year after July 21, 2010, the Comptroller General of the United States shall submit a report to Congress that assesses—

(A) the effectiveness of the internal control structure and procedures of the Commission for financial reporting; and

(B) the assessment of the Commission under subsection (a)(1)(B).

(2) Attestation

The Comptroller General shall attest to, and report on, the assessment made by the Commission under subsection (a).

(c) Reimbursements for cost of reports

(1) Reimbursements required

The Commission shall reimburse the Government Accountability Office for the full cost of making the reports under subsection (b), as billed therefor by the Comptroller General.

(2) Crediting and use of reimbursements

Such reimbursements shall—

(A) be credited to the appropriation account "Salaries and Expenses, Government Accountability Office" current when the payment is received; and

(B) remain available until expended.

(Pub. L. 111–203, title IX, §963, July 21, 2010, 124 Stat. 1910.)

CODIFICATION

Section was enacted as part of the Investor Protection and Securities Reform Act of 2010 and also as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and not as part of the Securities Exchange Act of 1934 which comprises this chapter.

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of Title 12, Banks and Banking.

DEFINITION

For definition of "Commission" as used in this section, see section 5301 of Title 12, Banks and Banking.

§78d–9. Report on oversight of national securities associations

(a) Report required

Not later than 2 years after July 21, 2010, and every 3 years thereafter, the Comptroller General of the United States shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report that includes an evaluation of the oversight by the Commission of national securities associations registered under section 78o–3 of this title with respect to—

(1) the governance of such national securities associations, including the identification and management of conflicts of interest by such national securities associations, together with an analysis of the impact of any conflicts of interest on the regulatory enforcement or rulemaking by

such national securities associations;

(2) the examinations carried out by the national securities associations, including the expertise of the examiners;

(3) the executive compensation practices of such national securities associations;

(4) the arbitration services provided by the national securities associations;

(5) the review performed by national securities associations of advertising by the members of the national securities associations;

(6) the cooperation with and assistance to State securities administrators by the national securities associations to promote investor protection;

(7) how the funding of national securities associations is used to support the mission of the national securities associations, including—

(A) the methods of funding;

(B) the sufficiency of funds;

(C) how funds are invested by the national securities association pending use; and

(D) the impact of the methods, sufficiency, and investment of funds on regulatory enforcement by the national securities associations;

(8) the policies regarding the employment of former employees of national securities associations by regulated entities;

(9) the ongoing effectiveness of the rules of the national securities associations in achieving the goals of the rules;

(10) the transparency of governance and activities of the national securities associations; and

(11) any other issue that has an impact, as determined by the Comptroller General, on the effectiveness of such national securities associations in performing their mission and in dealing fairly with investors and members; [1]

(b) Reimbursements for cost of reports

(1) Reimbursements required

The Commission shall reimburse the Government Accountability Office for the full cost of making the reports under subsection (a), as billed therefor by the Comptroller General.

(2) Crediting and use of reimbursements

Such reimbursements shall—

(A) be credited to the appropriation account "Salaries and Expenses, Government Accountability Office" current when the payment is received; and

(B) remain available until expended.

(Pub. L. 111–203, title IX, §964, July 21, 2010, 124 Stat. 1910.)

CODIFICATION

Section was enacted as part of the Investor Protection and Securities Reform Act of 2010 and also as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and not as part of the Securities Exchange Act of 1934 which comprises this chapter.

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of Title 12, Banks and Banking.

DEFINITIONS

For definitions of terms used in this section, see section 5301 of Title 12, Banks and Banking.

[1] *So in original. The semicolon probably should be a period.*

§78e. Transactions on unregistered exchanges

It shall be unlawful for any broker, dealer, or exchange, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce for the purpose of using any facility of an exchange within or subject to the jurisdiction of the United States to effect any transaction in a security, or to report any such transaction, unless such exchange (1) is registered as national securities exchange under section 78f of this title, or (2) is exempted from such registration upon application by the exchange because, in the opinion of the Commission, by reason of the limited volume of transactions effected on such exchange, it is not practicable and not necessary or appropriate in the public interest or for the protection of investors to require such registration.

(June 6, 1934, ch. 404, title I, §5, 48 Stat. 885.)

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§78f. National securities exchanges

(a) Registration; application

An exchange may be registered as a national securities exchange under the terms and conditions hereinafter provided in this section and in accordance with the provisions of section 78s(a) of this title, by filing with the Commission an application for registration in such form as the Commission, by rule, may prescribe containing the rules of the exchange and such other information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(b) Determination by Commission requisite to registration of applicant as a national securities exchange

An exchange shall not be registered as a national securities exchange unless the Commission determines that—

(1) Such exchange is so organized and has the capacity to be able to carry out the purposes of this chapter and to comply, and (subject to any rule or order of the Commission pursuant to section 78q(d) or 78s(g)(2) of this title) to enforce compliance by its members and persons associated with its members, with the provisions of this chapter, the rules and regulations thereunder, and the rules of the exchange.

(2) Subject to the provisions of subsection (c) of this section, the rules of the exchange provide that any registered broker or dealer or natural person associated with a registered broker or dealer may become a member of such exchange and any person may become associated with a member thereof.

(3) The rules of the exchange assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer.

(4) The rules of the exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

(5) The rules of the exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this chapter matters not related to the purposes of this chapter or the administration of the exchange.

(6) The rules of the exchange provide that (subject to any rule or order of the Commission

pursuant to section 78q(d) or 78s(g)(2) of this title) its members and persons associated with its members shall be appropriately disciplined for violation of the provisions of this chapter, the rules or regulations thereunder, or the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

(7) The rules of the exchange are in accordance with the provisions of subsection (d) of this section, and in general, provide a fair procedure for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange or a member thereof.

(8) The rules of the exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.

(9)(A) The rules of the exchange prohibit the listing of any security issued in a limited partnership rollup transaction (as such term is defined in paragraphs (4) and (5) of section 78n(h) of this title), unless such transaction was conducted in accordance with procedures designed to protect the rights of limited partners, including—

(i) the right of dissenting limited partners to one of the following:

(I) an appraisal and compensation;

(II) retention of a security under substantially the same terms and conditions as the original issue;

(III) approval of the limited partnership rollup transaction by not less than 75 percent of the outstanding securities of each of the participating limited partnerships;

(IV) the use of a committee of limited partners that is independent, as determined in accordance with rules prescribed by the exchange, of the general partner or sponsor, that has been approved by a majority of the outstanding units of each of the participating limited partnerships, and that has such authority as is necessary to protect the interest of limited partners, including the authority to hire independent advisors, to negotiate with the general partner or sponsor on behalf of the limited partners, and to make a recommendation to the limited partners with respect to the proposed transaction; or

(V) other comparable rights that are prescribed by rule by the exchange and that are designed to protect dissenting limited partners;

(ii) the right not to have their voting power unfairly reduced or abridged;

(iii) the right not to bear an unfair portion of the costs of a proposed limited partnership rollup transaction that is rejected; and

(iv) restrictions on the conversion of contingent interests or fees into non-contingent interests or fees and restrictions on the receipt of a non-contingent equity interest in exchange for fees for services which have not yet been provided.

(B) As used in this paragraph, the term "dissenting limited partner" means a person who, on the date on which soliciting material is mailed to investors, is a holder of a beneficial interest in a limited partnership that is the subject of a limited partnership rollup transaction, and who casts a vote against the transaction and complies with procedures established by the exchange, except that for purposes of an exchange or tender offer, such person shall file an objection in writing under the rules of the exchange during the period during which the offer is outstanding.

(10)(A) The rules of the exchange prohibit any member that is not the beneficial owner of a security registered under section 78l of this title from granting a proxy to vote the security in connection with a shareholder vote described in subparagraph (B), unless the beneficial owner of the security has instructed the member to vote the proxy in accordance with the voting instructions of the beneficial owner.

(B) A shareholder vote described in this subparagraph is a shareholder vote with respect to the election of a member of the board of directors of an issuer, executive compensation, or any other

significant matter, as determined by the Commission, by rule, and does not include a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.].

(C) Nothing in this paragraph shall be construed to prohibit a national securities exchange from prohibiting a member that is not the beneficial owner of a security registered under section 78l of this title from granting a proxy to vote the security in connection with a shareholder vote not described in subparagraph (A).

(c) Denial of membership in national exchanges; denial of association with member; conditions; limitation of membership

(1) A national securities exchange shall deny membership to (A) any person, other than a natural person, which is not a registered broker or dealer or (B) any natural person who is not, or is not associated with, a registered broker or dealer.

(2) A national securities exchange may, and in cases in which the Commission, by order, directs as necessary or appropriate in the public interest or for the protection of investors shall, deny membership to any registered broker or dealer or natural person associated with a registered broker or dealer, and bar from becoming associated with a member any person, who is subject to a statutory disqualification. A national securities exchange shall file notice with the Commission not less than thirty days prior to admitting any person to membership or permitting any person to become associated with a member, if the exchange knew, or in the exercise of reasonable care should have known, that such person was subject to a statutory disqualification. The notice shall be in such form and contain such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(3)(A) A national securities exchange may deny membership to, or condition the membership of, a registered broker or dealer if (i) such broker or dealer does not meet such standards of financial responsibility or operational capability or such broker or dealer or any natural person associated with such broker or dealer does not meet such standards of training, experience, and competence as are prescribed by the rules of the exchange or (ii) such broker or dealer or person associated with such broker or dealer has engaged and there is a reasonable likelihood he may again engage in acts or practices inconsistent with just and equitable principles of trade. A national securities exchange may examine and verify the qualifications of an applicant to become a member and the natural persons associated with such an applicant in accordance with procedures established by the rules of the exchange.

(B) A national securities exchange may bar a natural person from becoming a member or associated with a member, or condition the membership of a natural person or association of a natural person with a member, if such natural person (i) does not meet such standards of training, experience, and competence as are prescribed by the rules of the exchange or (ii) has engaged and there is a reasonable likelihood he may again engage in acts or practices inconsistent with just and equitable principles of trade. A national securities exchange may examine and verify the qualifications of an applicant to become a person associated with a member in accordance with procedures established by the rules of the exchange and require any person associated with a member, or any class of such persons, to be registered with the exchange in accordance with procedures so established.

(C) A national securities exchange may bar any person from becoming associated with a member if such person does not agree (i) to supply the exchange with such information with respect to its relationship and dealings with the member as may be specified in the rules of the exchange and (ii) to permit the examination of its books and records to verify the accuracy of any information so supplied.

(4) A national securities exchange may limit (A) the number of members of the exchange and (B) the number of members and designated representatives of members permitted to effect transactions on the floor of the exchange without the services of another person acting as broker: *Provided, however*, That no national securities exchange shall have the authority to decrease the number of memberships in such exchange, or the number of members and designated representatives of members permitted to effect transactions on the floor of such exchange without the services of

another person acting as broker, below such number in effect on May 1, 1975, or the date such exchange was registered with the Commission, whichever is later: *And provided further*, That the Commission, in accordance with the provisions of section 78s(c) of this title, may amend the rules of any national securities exchange to increase (but not to decrease) or to remove any limitation on the number of memberships in such exchange or the number of members or designated representatives of members permitted to effect transactions on the floor of the exchange without the services of another person acting as broker, if the Commission finds that such limitation imposes a burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.

(d) Discipline of national securities exchange members and persons associated with members; summary proceedings

(1) In any proceeding by a national securities exchange to determine whether a member or person associated with a member should be disciplined (other than a summary proceeding pursuant to paragraph (3) of this subsection), the exchange shall bring specific charges, notify such member or person of, and give him an opportunity to defend against, such charges, and keep a record. A determination by the exchange to impose a disciplinary sanction shall be supported by a statement setting forth—

(A) any act or practice in which such member or person associated with a member has been found to have engaged, or which such member or person has been found to have omitted;

(B) the specific provision of this chapter, the rules or regulations thereunder, or the rules of the exchange which any such act or practice, or omission to act, is deemed to violate; and

(C) the sanction imposed and the reasons therefor.

(2) In any proceeding by a national securities exchange to determine whether a person shall be denied membership, barred from becoming associated with a member, or prohibited or limited with respect to access to services offered by the exchange or a member thereof (other than a summary proceeding pursuant to paragraph (3) of this subsection), the exchange shall notify such person of, and give him an opportunity to be heard upon, the specific grounds for denial, bar, or prohibition or limitation under consideration and keep a record. A determination by the exchange to deny membership, bar a person from becoming associated with a member, or prohibit or limit a person with respect to access to services offered by the exchange or a member thereof shall be supported by a statement setting forth the specific grounds on which the denial, bar, or prohibition or limitation is based.

(3) A national securities exchange may summarily (A) suspend a member or person associated with a member who has been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a member of any self-regulatory organization, (B) suspend a member who is in such financial or operating difficulty that the exchange determines and so notifies the Commission that the member cannot be permitted to continue to do business as a member with safety to investors, creditors, other members, or the exchange, or (C) limit or prohibit any person with respect to access to services offered by the exchange if subparagraph (A) or (B) of this paragraph is applicable to such person or, in the case of a person who is not a member, if the exchange determines that such person does not meet the qualification requirements or other prerequisites for such access and such person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the exchange. Any person aggrieved by any such summary action shall be promptly afforded an opportunity for a hearing by the exchange in accordance with the provisions of paragraph (1) or (2) of this subsection. The Commission, by order, may stay any such summary action on its own motion or upon application by any person aggrieved thereby, if the Commission determines summarily or after notice and opportunity for hearing (which hearing may consist solely of the submission of affidavits or presentation of oral arguments) that such stay is consistent with the public interest and the protection of investors.

(e) Commissions, allowances, discounts, and other fees

(1) On and after June 4, 1975, no national securities exchange may impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members: *Provided,*

however, That until May 1, 1976, the preceding provisions of this paragraph shall not prohibit any such exchange from imposing or fixing any schedule of commissions, allowances, discounts, or other fees to be charged by its members for acting as broker on the floor of the exchange or as odd-lot dealer: *And provided further*, That the Commission, in accordance with the provisions of section 78s(b) of this title as modified by the provisions of paragraph (3) of this subsection, may—

(A) permit a national securities exchange, by rule, to impose a reasonable schedule or fix reasonable rates of commissions, allowances, discounts, or other fees to be charged by its members for effecting transactions on such exchange prior to November 1, 1976, if the Commission finds that such schedule or fixed rates of commissions, allowances, discounts, or other fees are in the public interest; and

(B) permit a national securities exchange, by rule, to impose a schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members for effecting transactions on such exchange after November 1, 1976, if the Commission finds that such schedule or fixed rates of commissions, allowances, discounts, or other fees (i) are reasonable in relation to the costs of providing the service for which such fees are charged (and the Commission publishes the standards employed in adjudging reasonableness) and (ii) do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter, taking into consideration the competitive effects of permitting such schedule or fixed rates weighed against the competitive effects of other lawful actions which the Commission is authorized to take under this chapter.

(2) Notwithstanding the provisions of section 78s(c) of this title, the Commission, by rule, may abrogate any exchange rule which imposes a schedule or fixes rates of commissions, allowances, discounts, or other fees, if the Commission determines that such schedule or fixed rates are no longer reasonable, in the public interest, or necessary to accomplish the purposes of this chapter.

(3)(A) Before approving or disapproving any proposed rule change submitted by a national securities exchange which would impose a schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members for effecting transactions on such exchange, the Commission shall afford interested persons (i) an opportunity for oral presentation of data, views, and arguments and (ii) with respect to any such rule concerning transactions effected after November 1, 1976, if the Commission determines there are disputed issues of material fact, to present such rebuttal submissions and to conduct (or have conducted under subparagraph (B) of this paragraph) such cross-examination as the Commission determines to be appropriate and required for full disclosure and proper resolution of such disputed issues of material fact.

(B) The Commission shall prescribe rules and make rulings concerning any proceeding in accordance with subparagraph (A) of this paragraph designed to avoid unnecessary costs or delay. Such rules or rulings may (i) impose reasonable time limits on each interested person's oral presentations, and (ii) require any cross-examination to which a person may be entitled under subparagraph (A) of this paragraph to be conducted by the Commission on behalf of that person in such manner as the Commission determines to be appropriate and required for full disclosure and proper resolution of disputed issues of material fact.

(C)(i) If any class of persons, the members of which are entitled to conduct (or have conducted) cross-examination under subparagraphs (A) and (B) of this paragraph and which have, in the view of the Commission, the same or similar interests in the proceeding, cannot agree upon a single representative of such interests for purposes of cross-examination, the Commission may make rules and rulings specifying the manner in which such interests shall be represented and such cross-examination conducted.

(ii) No member of any class of persons with respect to which the Commission has specified the manner in which its interests shall be represented pursuant to clause (i) of this subparagraph shall be denied, pursuant to such clause (i), the opportunity to conduct (or have conducted) cross-examination as to issues affecting his particular interests if he satisfies the Commission that he has made a reasonable and good faith effort to reach agreement upon group representation and there are substantial and relevant issues which would not be presented adequately by group representation.

(D) A transcript shall be kept of any oral presentation and cross-examination.

(E) In addition to the bases specified in section 78y(a) of this title, a reviewing Court may set aside an order of the Commission under section 78s(b) of this title approving an exchange rule imposing a schedule or fixing rates of commissions, allowances, discounts, or other fees, if the Court finds—

(1) a Commission determination under subparagraph (A) of this paragraph that an interested person is not entitled to conduct cross-examination or make rebuttal submissions, or

(2) a Commission rule or ruling under subparagraph (B) of this paragraph limiting the petitioner's cross-examination or rebuttal submissions,

has precluded full disclosure and proper resolution of disputed issues of material fact which were necessary for fair determination by the Commission.

(f) Compliance of non-members with exchange rules

The Commission, by rule or order, as it deems necessary or appropriate in the public interest and for the protection of investors, to maintain fair and orderly markets, or to assure equal regulation, may require—

(1) any person not a member or a designated representative of a member of a national securities exchange effecting transactions on such exchange without the services of another person acting as a broker, or

(2) any broker or dealer not a member of a national securities exchange effecting transactions on such exchange on a regular basis,

to comply with such rules of such exchange as the Commission may specify.

(g) Notice registration of security futures product exchanges

(1) Registration required

An exchange that lists or trades security futures products may register as a national securities exchange solely for the purposes of trading security futures products if—

(A) the exchange is a board of trade, as that term is defined by the Commodity Exchange Act (7 U.S.C. 1a(2)) [7 U.S.C. 1 et seq.], that has been designated a contract market by the Commodity Futures Trading Commission and such designation is not suspended by order of the Commodity Futures Trading Commission; and

(B) such exchange does not serve as a market place for transactions in securities other than—

(i) security futures products; or

(ii) futures on exempted securities or groups or indexes of securities or options thereon that have been authorized under section 2(a)(1)(C) of the Commodity Exchange Act [7 U.S.C. 2(a)(1)(C)].

(2) Registration by notice filing

(A) Form and content

An exchange required to register only because such exchange lists or trades security futures products may register for purposes of this section by filing with the Commission a written notice in such form as the Commission, by rule, may prescribe containing the rules of the exchange and such other information and documents concerning such exchange, comparable to the information and documents required for national securities exchanges under subsection (a) of this section, as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. If such exchange has filed documents with the Commodity Futures Trading Commission, to the extent that such documents contain information satisfying the Commission's informational requirements, copies of such documents may be filed with the Commission in lieu of the required written notice.

(B) Immediate effectiveness

Such registration shall be effective contemporaneously with the submission of notice, in written or electronic form, to the Commission, except that such registration shall not be

effective if such registration would be subject to suspension or revocation.

(C) Termination

Such registration shall be terminated immediately if any of the conditions for registration set forth in this subsection are no longer satisfied.

(3) Public availability

The Commission shall promptly publish in the Federal Register an acknowledgment of receipt of all notices the Commission receives under this subsection and shall make all such notices available to the public.

(4) Exemption of exchanges from specified provisions

(A) Transaction exemptions

An exchange that is registered under paragraph (1) of this subsection shall be exempt from, and shall not be required to enforce compliance by its members with, and its members shall not, solely with respect to those transactions effected on such exchange in security futures products, be required to comply with, the following provisions of this chapter and the rules thereunder:

(i) Subsections (b)(2), (b)(3), (b)(4), (b)(7), (b)(9), (c), (d), and (e) of this section.

(ii) Section 78h of this title.

(iii) Section 78k of this title.

(iv) Subsections (d), (f), and (k) [1] of section 78q of this title.

(v) Subsections (a), (f), and (h) of section 78s of this title.

(B) Rule change exemptions

An exchange that registered under paragraph (1) of this subsection shall also be exempt from submitting proposed rule changes pursuant to section 78s(b) of this title, except that—

(i) such exchange shall file proposed rule changes related to higher margin levels, fraud or manipulation, recordkeeping, reporting, listing standards, or decimal pricing for security futures products, sales practices for security futures products for persons who effect transactions in security futures products, or rules effectuating such exchange's obligation to enforce the securities laws pursuant to section 78s(b)(7) of this title;

(ii) such exchange shall file pursuant to sections 78s(b)(1) and 78s(b)(2) of this title proposed rule changes related to margin, except for changes resulting in higher margin levels; and

(iii) such exchange shall file pursuant to section 78s(b)(1) of this title proposed rule changes that have been abrogated by the Commission pursuant to section 78s(b)(7)(C) of this title.

(5) Trading in security futures products

(A) In general

Subject to subparagraph (B), it shall be unlawful for any person to execute or trade a security futures product until the later of—

(i) 1 year after December 21, 2000; or

(ii) such date that a futures association registered under section 17 of the Commodity Exchange Act [7 U.S.C. 21] has met the requirements set forth in section 78o–3(k)(2) of this title.

(B) Principal-to-principal transactions

Notwithstanding subparagraph (A), a person may execute or trade a security futures product transaction if—

(i) the transaction is entered into—

(I) on a principal-to-principal basis between parties trading for their own accounts or as described in section 1a(18)(B)(ii) of the Commodity Exchange Act [7 U.S.C. 1a(18)(B)(ii)]; and

(II) only between eligible contract participants (as defined in subparagraphs (A), (B)(ii),

and (C) of such section 1a(18) [7 U.S.C. 1a(18)(A), (B)(ii), (C)]) at the time at which the persons enter into the agreement, contract, or transaction; and

(ii) the transaction is entered into on or after the later of—

(I) 8 months after December 21, 2000; or

(II) such date that a futures association registered under section 17 of the Commodity Exchange Act [7 U.S.C. 21] has met the requirements set forth in section 78o–3(k)(2) of this title.

(h) Trading in security futures products

(1) Trading on exchange or association required

It shall be unlawful for any person to effect transactions in security futures products that are not listed on a national securities exchange or a national securities association registered pursuant to section 78o–3(a) of this title.

(2) Listing standards required

Except as otherwise provided in paragraph (7), a national securities exchange or a national securities association registered pursuant to section 78o–3(a) of this title may trade only security futures products that (A) conform with listing standards that such exchange or association files with the Commission under section 78s(b) of this title and (B) meet the criteria specified in section 2(a)(1)(D)(i) of the Commodity Exchange Act [7 U.S.C. 2(a)(1)(D)(i)].

(3) Requirements for listing standards and conditions for trading

Such listing standards shall—

(A) except as otherwise provided in a rule, regulation, or order issued pursuant to paragraph (4), require that any security underlying the security future, including each component security of a narrow-based security index, be registered pursuant to section 78l of this title;

(B) require that if the security futures product is not cash settled, the market on which the security futures product is traded have arrangements in place with a registered clearing agency for the payment and delivery of the securities underlying the security futures product;

(C) be no less restrictive than comparable listing standards for options traded on a national securities exchange or national securities association registered pursuant to section 78o–3(a) of this title;

(D) except as otherwise provided in a rule, regulation, or order issued pursuant to paragraph (4), require that the security future be based upon common stock and such other equity securities as the Commission and the Commodity Futures Trading Commission jointly determine appropriate;

(E) require that the security futures product is cleared by a clearing agency that has in place provisions for linked and coordinated clearing with other clearing agencies that clear security futures products, which permits the security futures product to be purchased on one market and offset on another market that trades such product;

(F) require that only a broker or dealer subject to suitability rules comparable to those of a national securities association registered pursuant to section 78o–3(a) of this title effect transactions in the security futures product;

(G) require that the security futures product be subject to the prohibition against dual trading in section 4j of the Commodity Exchange Act (7 U.S.C. 6j) and the rules and regulations thereunder or the provisions of section 78k(a) of this title and the rules and regulations thereunder, except to the extent otherwise permitted under this chapter and the rules and regulations thereunder;

(H) require that trading in the security futures product not be readily susceptible to manipulation of the price of such security futures product, nor to causing or being used in the manipulation of the price of any underlying security, option on such security, or option on a group or index including such securities;

(I) require that procedures be in place for coordinated surveillance among the market on

which the security futures product is traded, any market on which any security underlying the security futures product is traded, and other markets on which any related security is traded to detect manipulation and insider trading;

(J) require that the market on which the security futures product is traded has in place audit trails necessary or appropriate to facilitate the coordinated surveillance required in subparagraph (I);

(K) require that the market on which the security futures product is traded has in place procedures to coordinate trading halts between such market and any market on which any security underlying the security futures product is traded and other markets on which any related security is traded; and

(L) require that the margin requirements for a security futures product comply with the regulations prescribed pursuant to section 78g(c)(2)(B) of this title, except that nothing in this subparagraph shall be construed to prevent a national securities exchange or national securities association from requiring higher margin levels for a security futures product when it deems such action to be necessary or appropriate.

(4) Authority to modify certain listing standard requirements

(A) Authority to modify

The Commission and the Commodity Futures Trading Commission, by rule, regulation, or order, may jointly modify the listing standard requirements specified in subparagraph (A) or (D) of paragraph (3) to the extent such modification fosters the development of fair and orderly markets in security futures products, is necessary or appropriate in the public interest, and is consistent with the protection of investors.

(B) Authority to grant exemptions

The Commission and the Commodity Futures Trading Commission, by order, may jointly exempt any person from compliance with the listing standard requirement specified in subparagraph (E) of paragraph (3) to the extent such exemption fosters the development of fair and orderly markets in security futures products, is necessary or appropriate in the public interest, and is consistent with the protection of investors.

(5) Requirements for other persons trading security future products

It shall be unlawful for any person (other than a national securities exchange or a national securities association registered pursuant to section 78o–3(a) of this title) to constitute, maintain, or provide a marketplace or facilities for bringing together purchasers and sellers of security future products or to otherwise perform with respect to security future products the functions commonly performed by a stock exchange as that term is generally understood, unless a national securities association registered pursuant to section 78o–3(a) of this title or a national securities exchange of which such person is a member—

(A) has in place procedures for coordinated surveillance among such person, the market trading the securities underlying the security future products, and other markets trading related securities to detect manipulation and insider trading;

(B) has rules to require audit trails necessary or appropriate to facilitate the coordinated surveillance required in subparagraph (A); and

(C) has rules to require such person to coordinate trading halts with markets trading the securities underlying the security future products and other markets trading related securities.

(6) Deferral of options on security futures trading

No person shall offer to enter into, enter into, or confirm the execution of any put, call, straddle, option, or privilege on a security future, except that, after 3 years after December 21, 2000, the Commission and the Commodity Futures Trading Commission may by order jointly determine to permit trading of puts, calls, straddles, options, or privileges on any security future authorized to be traded under the provisions of this chapter and the Commodity Exchange Act [7 U.S.C. 1 et seq.].

(7) Deferral of linked and coordinated clearing

(A) Notwithstanding paragraph (2), until the compliance date, a national securities exchange or national securities association registered pursuant to section 78o–3(a) of this title may trade a security futures product that does not—

(i) conform with any listing standard promulgated to meet the requirement specified in subparagraph (E) of paragraph (3); or

(ii) meet the criterion specified in section 2(a)(1)(D)(i)(IV) of the Commodity Exchange Act [7 U.S.C. 2(a)(1)(D)(i)(IV)].

(B) The Commission and the Commodity Futures Trading Commission shall jointly publish in the Federal Register a notice of the compliance date no later than 165 days before the compliance date.

(C) For purposes of this paragraph, the term "compliance date" means the later of—

(i) 180 days after the end of the first full calendar month period in which the average aggregate comparable share volume for all security futures products based on single equity securities traded on all national securities exchanges, any national securities associations registered pursuant to section 78o–3(a) of this title, and all other persons equals or exceeds 10 percent of the average aggregate comparable share volume of options on single equity securities traded on all national securities exchanges and any national securities associations registered pursuant to section 78o–3(a) of this title; or

(ii) 2 years after the date on which trading in any security futures product commences under this chapter.

(i) Rules to avoid duplicative regulation of dual registrants

Consistent with this chapter, each national securities exchange registered pursuant to subsection (a) of this section shall issue such rules as are necessary to avoid duplicative or conflicting rules applicable to any broker or dealer registered with the Commission pursuant to section 78o(b) of this title (except paragraph (11) thereof), that is also registered with the Commodity Futures Trading Commission pursuant to section 4f(a) of the Commodity Exchange Act [7 U.S.C. 6f(a)] (except paragraph (2) thereof), with respect to the application of—

(1) rules of such national securities exchange of the type specified in section 78o(c)(3)(B) of this title involving security futures products; and

(2) similar rules of national securities exchanges registered pursuant to subsection (g) of this section and national securities associations registered pursuant to section 78o–3(k) of this title involving security futures products.

(j) Procedures and rules for security future products

A national securities exchange registered pursuant to subsection (a) of this section shall implement the procedures specified in subsection (h)(5)(A) of this section and adopt the rules specified in subparagraphs (B) and (C) of subsection (h)(5) of this section not later than 8 months after the date of receipt of a request from an alternative trading system for such implementation and rules.

(k) Rules relating to security futures products traded on foreign boards of trade

(1) To the extent necessary or appropriate in the public interest, to promote fair competition, and consistent with the promotion of market efficiency, innovation, and expansion of investment opportunities, the protection of investors, and the maintenance of fair and orderly markets, the Commission and the Commodity Futures Trading Commission shall jointly issue such rules, regulations, or orders as are necessary and appropriate to permit the offer and sale of a security futures product traded on or subject to the rules of a foreign board of trade to United States persons.

(2) The rules, regulations, or orders adopted under paragraph (1) shall take into account, as appropriate, the nature and size of the markets that the securities underlying the security futures product reflect.

(l) Security-based swaps

It shall be unlawful for any person to effect a transaction in a security-based swap with or for a

person that is not an eligible contract participant, unless such transaction is effected on a national securities exchange registered pursuant to subsection (b).

(June 6, 1934, ch. 404, title I, §6, 48 Stat. 885; Pub. L. 94–29, §4, June 4, 1975, 89 Stat. 104; Pub. L. 100–181, title III, §§309–312, Dec. 4, 1987, 101 Stat. 1255; Pub. L. 103–202, title III, §303(b), Dec. 17, 1993, 107 Stat. 2365; Pub. L. 106–554, §1(a)(5) [title II, §§202(a), 206(a), (i), (k)(2), (l)], Dec. 21, 2000, 114 Stat. 2763, 2763A–416, 2763A–426, 2763A–433, 2763A–434; Pub. L. 111–203, title VII, §§721(e)(8), 734(b)(2), 763(e), title IX, §957, July 21, 2010, 124 Stat. 1671, 1718, 1777, 1906.)

AMENDMENT OF SECTION

Unless otherwise provided, amendments by subtitle A (§§711–754) and subtitle B (§§761–774) of title VII of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of either subtitle A or B requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A or B, see 2010 Amendment notes and Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b) to (e), (g)(4)(A), (h)(3)(G), (7)(C)(ii), and (i), was in the original "this title". This chapter, referred to in subsec. (h)(6), was in the original "this Act". See References in Text note set out under section 78a of this title.

The Investment Company Act of 1940, referred to in subsec. (b)(10)(B), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a–51 of this title and Tables.

The Commodity Exchange Act, referred to in subsecs. (g)(1)(A) and (h)(6), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. Section 1a(2) of Title 7 was redesignated section 1a(6) by Pub. L. 111–203, title VII, §721(a)(1), July 21, 2010, 124 Stat. 1658. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

Subsection (k) of section 78q of this title, referred to in subsec. (g)(4)(A)(iv), was redesignated subsec. (j) by Pub. L. 111–203, title VI, §617(a)(2), July 21, 2010, 124 Stat. 1616.

AMENDMENTS

2010—Subsec. (b)(9). Pub. L. 111–203, §957(1), designated introductory provisions and subpars. (A) to (D) as subpar. (A), redesignated former subpars. (A) to (D) as cls. (i) to (iv), respectively, of subpar. (A) and realigned margins, redesignated former cls. (i) to (v) of subpar. (A) as subcls. (I) to (V), respectively, of cl. (i) and realigned margins, and designated concluding provisions as subpar. (B).

Subsec. (b)(10). Pub. L. 111–203, §957(2), added par. (10).

Subsec. (g)(1)(A). Pub. L. 111–203, §734(b)(2), substituted "that has been designated" for "that—(i) has been designated" and "and" for "or" at end and struck out cl. (ii) which read as follows: "is registered as a derivative transaction execution facility under section 5a of the Commodity Exchange Act and such registration is not suspended by the Commodity Futures Trading Commission; and".

Subsec. (g)(5)(B)(i)(I). Pub. L. 111–203, §721(e)(8)(A), substituted "section 1a(18)(B)(ii)" for "section 1a(12)(B)(ii)".

Subsec. (g)(5)(B)(i)(II). Pub. L. 111–203, §721(e)(8)(B), substituted "section 1a(18)" for "section 1a(12)".

Subsec. (l). Pub. L. 111–203, §763(e), added subsec. (l).

2000—Subsec. (g). Pub. L. 106–554, §1(a)(5) [title II, §202(a)], added subsec. (g).

Subsec. (h). Pub. L. 106–554, §1(a)(5) [title II, §206(a)], added subsec. (h).

Subsec. (i). Pub. L. 106–554, §1(a)(5) [title II, §206(i)], added subsec. (i).

Subsec. (j). Pub. L. 106–554, §1(a)(5) [title II, §206(k)(2)], added subsec. (j).

Subsec. (k). Pub. L. 106–554, §1(a)(5) [title II, §206(l)], added subsec. (k).

1993—Subsec. (b)(9). Pub. L. 103–202 added par. (9).

1987—Subsec. (c)(2). Pub. L. 100–181, §309, substituted "protection of investors shall" for "protection shall".

Subsec. (c)(3)(A). Pub. L. 100–181, §310, substituted "associated" for "association".

Subsec. (c)(4). Pub. L. 100–181, §311, substituted "may limit (A)" for "may (A) limit".

Subsec. (e)(1). Pub. L. 100–181, §312(1), substituted "paragraph (3) of this subsection" for "paragraph (4) of this section".

Subsec. (e)(3), (4). Pub. L. 100–181, §312(2), (3), redesignated par. (4) as (3) and, in subpar. (E), substituted "fixing" for "fixes" in introductory provisions, "subparagraph (A) of this paragraph" for "paragraph

(4)(A) of this subsection" in cl. (1), and "subparagraph (B) of this paragraph" for "paragraph (4)(B) of this subsection" in cl. (2), and struck out former par. (3) which read as follows: "Until December 31, 1976, the Commission, on a regular basis, shall file with the Speaker of the House and the President of the Senate information concerning the effect on the public interest, protection of investors, and maintenance of fair and orderly markets of the absence of any schedule or fixed rates of commissions, allowances, discounts, or other fees to be charged by members of any national securities exchange for effecting transactions on such exchange."

1975—Pub. L. 94–29 restructured the entire section and, in addition, authorized the Commission to require an exchange to file such documents and information as it deems necessary or appropriate in the public interest or for the protection of investors and to prescribe the form and substance of an exchange's application for registration, expanded to eight the number of explicit statutory requirements that must be satisfied before an exchange may be registered as a national securities exchange, set forth the authority of a national securities exchange to admit or deny persons membership or association with members, prescribed exchange procedures for instituting disciplinary actions, denying membership, and summarily suspending members or persons associated with members, specified the authority of national securities exchanges to impose schedules or fix rates of commissions, allowances, discounts, or other fees to be charged by its members for transacting business on the exchange, and empowered the Commission to regulate any broker or dealer who effects transactions on an exchange on a regular basis but who is not a member of that exchange and any person who effects transactions on an exchange without the services of another person acting as broker.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 957 of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Amendment by sections 721(e)(8) and 734(b)(2) of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of Title 7, Agriculture.

Amendment by section 763(e) of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761–774) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111–203, set out as a note under section 77b of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–202, title III, §304, Dec. 17, 1993, 107 Stat. 2367, provided that:

"(a) EFFECTIVE DATE.—

"(1) IN GENERAL.—The amendments made by section 303 [amending this section and section 78o–3 of this title] shall become effective 12 months after the date of enactment of this Act [Dec. 17, 1993].

"(2) RULEMAKING AUTHORITY.—Notwithstanding paragraph (1), the authority of the Securities and Exchange Commission, a registered securities association, and a national securities exchange to commence rulemaking proceedings for the purpose of issuing rules pursuant to the amendments made by section 303 is effective on the date of enactment of this Act.

"(3) REVIEW OF FILINGS PRIOR TO EFFECTIVE DATE.—Prior to the effective date of regulations promulgated pursuant to this title [amending this section and sections 78n and 78o–3 of this title and enacting provisions set out as notes under sections 78a and 78n of this title], the Securities and Exchange Commission shall continue to review and declare effective registration statements and amendments thereto relating to limited partnership rollup transactions in accordance with applicable regulations then in effect.

"(b) EFFECT ON EXISTING AUTHORITY.—The amendments made by this title [amending this section and sections 78n and 78o–3 of this title] shall not limit the authority of the Securities and Exchange Commission, a registered securities association, or a national securities exchange under any provision of the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], or preclude the Commission or such association or exchange from imposing, under any other such provision, a remedy or procedure required to be imposed under such amendments."

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, except for amendment of subsecs. (a) through (d) by Pub. L. 94–29 to be effective 180 days after June 4, 1975, with provisions of subsecs. (b)(2) and (c)(6), as amended by Pub. L. 94–29, or rules or regulations thereunder, not to apply in a way so as to deprive any

person of membership in any national securities exchange (or its successor) of which such person was, on June 4, 1975, a member or a member firm as defined in the constitution of such exchange, or so as to deny membership in any such exchange (or its successor) to a natural person who is or becomes associated with such member or member firm, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CHANGES IN ORGANIZATION AND RULES OF NATIONAL SECURITIES EXCHANGES AND REGISTERED SECURITIES ASSOCIATIONS

Pub. L. 94–29, §31(b), June 4, 1975, 89 Stat. 170, provided that: "If it appears to the Commission at any time within one year of the effective date of any amendment made by this Act [see Short Title of 1975 Amendment note under section 78a of this title] to the Securities Exchange Act of 1934 that the organization or rules of any national securities exchange or registered securities association registered with the Commission on the date of enactment of this Act [June 4, 1975] do not comply with such Act as amended, the Commission shall so notify such exchange or association in writing, specifying the respects in which the exchange or association is not in compliance with such Act. On and after the one hundred eightieth day following the date of receipt of such notice by a national securities exchange or registered securities association, the Commission, without regard to the provisions of section 19(h) of the Securities Exchange Act of 1934 [section 78s(h) of this title], as amended by this Act, is authorized by order, to suspend the registration of any such exchange or association or impose limitations on the activities, functions, and operations of any such exchange or association, if the Commission finds, after notice and opportunity for hearing, that the organization or rules of such exchange or association do not comply with such Act. Any such suspension or limitation shall continue in effect until the Commission, by order, declares that such exchange or association is in compliance with such requirements."

[1] *See References in Text note below.*

§78g. Margin requirements

(a) Rules and regulations for extension of credit; standard for initial extension; undermargined accounts

For the purpose of preventing the excessive use of credit for the purchase or carrying of securities, the Board of Governors of the Federal Reserve System shall, prior to October 1, 1934, and from time to time thereafter, prescribe rules and regulations with respect to the amount of credit that may be initially extended and subsequently maintained on any security (other than an exempted security or a security futures product). For the initial extension of credit, such rules and regulations shall be based upon the following standard: An amount not greater than whichever is the higher of—

(1) 55 per centum of the current market price of the security, or

(2) 100 per centum of the lowest market price of the security during the preceding thirty-six calendar months, but not more than 75 per centum of the current market price.

Such rules and regulations may make appropriate provision with respect to the carrying of undermargined accounts for limited periods and under specified conditions; the withdrawal of funds or securities; the substitution or additional purchases of securities; the transfer of accounts from one lender to another; special or different margin requirements for delayed deliveries, short sales, arbitrage transactions, and securities to which paragraph (2) of this subsection does not apply; the bases and the methods to be used in calculating loans, and margins and market prices; and similar administrative adjustments and details. For the purposes of paragraph (2) of this subsection, until July 1, 1936, the lowest price at which a security has sold on or after July 1, 1933, shall be considered as the lowest price at which such security has sold during the preceding thirty-six calendar months.

(b) Lower and higher margin requirements

Notwithstanding the provisions of subsection (a) of this section, the Board of Governors of the Federal Reserve System, may, from time to time, with respect to all or specified securities or transactions, or classes of securities, or classes of transactions, by such rules and regulations (1) prescribe such lower margin requirements for the initial extension or maintenance of credit as it deems necessary or appropriate for the accommodation of commerce and industry, having due regard to the general credit situation of the country, and (2) prescribe such higher margin requirements for the initial extension or maintenance of credit as it may deem necessary or appropriate to prevent the excessive use of credit to finance transactions in securities.

(c) Unlawful credit extension to customers

(1) Prohibition

It shall be unlawful for any member of a national securities exchange or any broker or dealer, directly or indirectly, to extend or maintain credit or arrange for the extension or maintenance of credit to or for any customer—

(A) on any security (other than an exempted security), except as provided in paragraph (2), in contravention of the rules and regulations which the Board of Governors of the Federal Reserve System (hereafter in this section referred to as the "Board") shall prescribe under subsections (a) and (b) of this section; or

(B) without collateral or on any collateral other than securities, except in accordance with such rules and regulations as the Board may prescribe—

(i) to permit under specified conditions and for a limited period any such member, broker, or dealer to maintain a credit initially extended in conformity with the rules and regulations of the Board; and

(ii) to permit the extension or maintenance of credit in cases where the extension or maintenance of credit is not for the purpose of purchasing or carrying securities or of evading or circumventing the provisions of subparagraph (A).

(2) Margin regulations

(A) Compliance with margin rules required

It shall be unlawful for any broker, dealer, or member of a national securities exchange to, directly or indirectly, extend or maintain credit to or for, or collect margin from any customer on, any security futures product unless such activities comply with the regulations—

(i) which the Board shall prescribe pursuant to subparagraph (B); or

(ii) if the Board determines to delegate the authority to prescribe such regulations, which the Commission and the Commodity Futures Trading Commission shall jointly prescribe pursuant to subparagraph (B).

If the Board delegates the authority to prescribe such regulations under clause (ii) and the Commission and the Commodity Futures Trading Commission have not jointly prescribed such regulations within a reasonable period of time after the date of such delegation, the Board shall prescribe such regulations pursuant to subparagraph (B).

(B) Criteria for issuance of rules

The Board shall prescribe, or, if the authority is delegated pursuant to subparagraph (A)(ii), the Commission and the Commodity Futures Trading Commission shall jointly prescribe, such regulations to establish margin requirements, including the establishment of levels of margin (initial and maintenance) for security futures products under such terms, and at such levels, as the Board deems appropriate, or as the Commission and the Commodity Futures Trading Commission jointly deem appropriate—

(i) to preserve the financial integrity of markets trading security futures products;

(ii) to prevent systemic risk;

(iii) to require that—

(I) the margin requirements for a security future product be consistent with the margin requirements for comparable option contracts traded on any exchange registered pursuant to section 78f(a) of this title; and

(II) initial and maintenance margin levels for a security future product not be lower than the lowest level of margin, exclusive of premium, required for any comparable option contract traded on any exchange registered pursuant to section 78f(a) of this title, other than an option on a security future;

except that nothing in this subparagraph shall be construed to prevent a national securities exchange or national securities association from requiring higher margin levels for a security future product when it deems such action to be necessary or appropriate; and

(iv) to ensure that the margin requirements (other than levels of margin), including the type, form, and use of collateral for security futures products, are and remain consistent with the requirements established by the Board, pursuant to subparagraphs (A) and (B) of paragraph (1).

(3) Exception

This subsection and the rules and regulations issued under this subsection shall not apply to any credit extended, maintained, or arranged by a member of a national securities exchange or a broker or dealer to or for a member of a national securities exchange or a registered broker or dealer—

(A) a substantial portion of whose business consists of transactions with persons other than brokers or dealers; or

(B) to finance its activities as a market maker or an underwriter;

except that the Board may impose such rules and regulations, in whole or in part, on any credit otherwise exempted by this paragraph if the Board determines that such action is necessary or appropriate in the public interest or for the protection of investors.

(d) Unlawful credit extension in violation of rules and regulations; exceptions to application of rules, etc.

(1) Prohibition

It shall be unlawful for any person not subject to subsection (c) of this section to extend or maintain credit or to arrange for the extension or maintenance of credit for the purpose of purchasing or carrying any security, in contravention of such rules and regulations as the Board shall prescribe to prevent the excessive use of credit for the purchasing or carrying of or trading in securities in circumvention of the other provisions of this section. Such rules and regulations may impose upon all loans made for the purpose of purchasing or carrying securities limitations similar to those imposed upon members, brokers, or dealers by subsection (c) of this section and the rules and regulations thereunder.

(2) Exceptions

This subsection and the rules and regulations issued under this subsection shall not apply to any credit extended, maintained, or arranged—

(A) by a person not in the ordinary course of business;

(B) on an exempted security;

(C) to or for a member of a national securities exchange or a registered broker or dealer—

(i) a substantial portion of whose business consists of transactions with persons other than brokers or dealers; or

(ii) to finance its activities as a market maker or an underwriter;

(D) by a bank on a security other than an equity security; or

(E) as the Board shall, by such rules, regulations, or orders as it may deem necessary or appropriate in the public interest or for the protection of investors, exempt, either unconditionally or upon specified terms and conditions or for stated periods, from the operation

of this subsection and the rules and regulations thereunder.

(3) Board authority

The Board may impose such rules and regulations, in whole or in part, on any credit otherwise exempted by subparagraph (C) if it determines that such action is necessary or appropriate in the public interest or for the protection of investors.

(e) Effective date of this section and rules and regulations

The provisions of this section or the rules and regulations thereunder shall not apply on or before July 1, 1937, to any loan or extension of credit made prior to June 6, 1934, or to the maintenance, renewal, or extension of any such loan or credit, except to the extent that the Board of Governors of the Federal Reserve System may by rules and regulations prescribe as necessary to prevent the circumvention of the provisions of this section or the rules and regulations thereunder by means of withdrawals of funds or securities, substitutions of securities, or additional purchases or by any other device.

(f) Unlawful receipt of credit; exemptions

(1) It is unlawful for any United States person, or any foreign person controlled by a United States person or acting on behalf of or in conjunction with such person, to obtain, receive, or enjoy the beneficial use of a loan or other extension of credit from any lender (without regard to whether the lender's office or place of business is in a State or the transaction occurred in whole or in part within a State) for the purpose of (A) purchasing or carrying United States securities, or (B) purchasing or carrying within the United States of any other securities, if, under this section or rules and regulations prescribed thereunder, the loan or other credit transaction is prohibited or would be prohibited if it had been made or the transaction had otherwise occurred in a lender's office or other place of business in a State.

(2) For the purposes of this subsection—

(A) The term "United States person" includes a person which is organized or exists under the laws of any State or, in the case of a natural person, a citizen or resident of the United States; a domestic estate; or a trust in which one or more of the foregoing persons has a cumulative direct or indirect beneficial interest in excess of 50 per centum of the value of the trust.

(B) The term "United States security" means a security (other than an exempted security) issued by a person incorporated under the laws of any State, or whose principal place of business is within a State.

(C) The term "foreign person controlled by a United States person" includes any noncorporate entity in which United States persons directly or indirectly have more than a 50 per centum beneficial interest, and any corporation in which one or more United States persons, directly or indirectly, own stock possessing more than 50 per centum of the total combined voting power of all classes of stock entitled to vote, or more than 50 per centum of the total value of shares of all classes of stock.

(3) The Board of Governors of the Federal Reserve System may, in its discretion and with due regard for the purposes of this section, by rule or regulation exempt any class of United States persons or foreign persons controlled by a United States person from the application of this subsection.

(g) Effect of bona fide agreement for delayed delivery of mortgage related security

Subject to such rules and regulations as the Board of Governors of the Federal Reserve System may adopt in the public interest and for the protection of investors, no member of a national securities exchange or broker or dealer shall be deemed to have extended or maintained credit or arranged for the extension or maintenance of credit for the purpose of purchasing a security, within the meaning of this section, by reason of a bona fide agreement for delayed delivery of a mortgage related security or a small business related security against full payment of the purchase price thereof upon such delivery within one hundred and eighty days after the purchase, or within such shorter period as the Board of Governors of the Federal Reserve System may prescribe by rule or regulation.

(June 6, 1934, ch. 404, title I, §7, 48 Stat. 886; Aug. 23, 1935, ch. 614, §203(a), 49 Stat. 704; Pub. L. 90–437, July 29, 1968, 82 Stat. 452; Pub. L. 91–508, title III, §301(a), Oct. 26, 1970, 84 Stat. 1124; Pub. L. 98–440, title I, §102, Oct. 3, 1984, 98 Stat. 1690; Pub. L. 103–325, title II, §203, Sept. 23, 1994, 108 Stat. 2199; Pub. L. 104–290, title I, §104(a), Oct. 11, 1996, 110 Stat. 3422; Pub. L. 105–353, title III, §301(b)(5), (6), Nov. 3, 1998, 112 Stat. 3236; Pub. L. 106–554, §1(a)(5) [title II, §206(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–429; Pub. L. 111–203, title IX, §929, July 21, 2010, 124 Stat. 1852.)

AMENDMENTS

2010—Subsec. (c)(1)(A). Pub. L. 111–203 substituted "; or" for "; and" at end.

2000—Subsec. (a). Pub. L. 106–554, §1(a)(5) [title II, §206(b)(1)], inserted "or a security futures product" after "exempted security" in introductory provisions.

Subsec. (c)(1)(A). Pub. L. 106–554, §1(a)(5) [title II, §206(b)(2)], inserted "except as provided in paragraph (2)," after "security),".

Subsec. (c)(2), (3). Pub. L. 106–554, §1(a)(5) [title II, §206(b)(3), (4)], added par. (2) and redesignated former par. (2) as (3).

1998—Subsecs. (a), (b). Pub. L. 105–353, §301(b)(5), substituted "Board of Governors of the Federal Reserve System" for "Federal Reserve Board".

Subsec. (d). Pub. L. 105–353, §301(b)(6), substituted "exceptions" for "exception" in heading.

1996—Subsec. (c). Pub. L. 104–290, §104(a)(1), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: "It shall be unlawful for any member of a national securities exchange or any broker or dealer, directly or indirectly, to extend or maintain credit or arrange for the extension or maintenance of credit to or for any customer—

"(1) on any security (other than an exempted security), in contravention of the rules and regulations which the Board of Governors of the Federal Reserve System shall prescribe under subsections (a) and (b) of this section;

"(2) without collateral or on any collateral other than securities, except in accordance with such rules and regulations as the Board of Governors of the Federal Reserve System may prescribe (A) to permit under specified conditions and for a limited period any such member, broker, or dealer to maintain a credit initially extended in conformity with the rules and regulations of the Board of Governors of the Federal Reserve System, and (B) to permit the extension or maintenance of credit in cases where the extension or maintenance of credit is not for the purpose of purchasing or carrying securities or of evading or circumventing the provisions of paragraph (1) of this subsection."

Subsec. (d). Pub. L. 104–290, §104(a)(2), amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows: "It shall be unlawful for any person not subject to subsection (c) of this section to extend or maintain credit or to arrange for the extension or maintenance of credit for the purpose of purchasing or carrying any security, in contravention of such rules and regulations as the Board of Governors of the Federal Reserve System shall prescribe to prevent the excessive use of credit for the purchasing or carrying of or trading in securities in circumvention of the other provisions of this section. Such rules and regulations may impose upon all loans made for the purpose of purchasing or carrying securities limitations similar to those imposed upon members, brokers, or dealers by subsection (c) of this section and the rules and regulations thereunder. This subsection and the rules and regulations thereunder shall not apply (A) to a loan made by a person not in the ordinary course of his business, (B) to a loan on an exempted security, (C) to a loan to a dealer to aid in the financing of the distribution of securities to customers not through the medium of a national securities exchange, (D) to a loan by a bank on a security other than an equity security, or (E) to such other loans as the Board of Governors of the Federal Reserve System shall, by such rules and regulations as it may deem necessary or appropriate in the public interest or for the protection of investors, exempt, either unconditionally or upon specified terms and conditions or for stated periods, from the operation of this subsection and the rules and regulations thereunder."

1994—Subsec. (g). Pub. L. 103–325 inserted "or a small business related security" after "mortgage related security".

1984—Subsec. (g). Pub. L. 98–440 added subsec. (g).

1970—Subsec. (f). Pub. L. 91–508 added subsec. (f).

1968—Subsec. (a). Pub. L. 90–437, §1(1), struck out "registered on a national securities exchange" after "(other than an exempted security)".

Subsec. (c). Pub. L. 90–437, §1(2), struck out "who transacts a business in securities through the medium of any such member" after "any broker or dealer", in par. (1) struck out "registered on a national securities

exchange" after "(other than an exempted security)", and in par. (2) substituted "other than securities" for "other than exempted securities and/or securities registered upon a national securities exchange".

Subsec. (d). Pub. L. 90–437, §1(3), struck out "registered on a national securities exchange" after "the purpose of purchasing or carrying any security", and "registered on national securities exchanges" after "the purpose of purchasing or carrying securities".

CHANGE OF NAME

Act Aug. 23, 1935, in subsec. (e), substituted "Board of Governors of the Federal Reserve System" for "Federal Reserve Board".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–508 effective on first day of seventh calendar month which begins after Oct. 26, 1970, except as otherwise provided in section 401(c) of Pub. L. 91–508, see section 401(a) of Pub. L. 91–508, set out as a note under section 1951 of Title 12, Banks and Banking.

Pub. L. 91–508, title IV, §401(c), Oct. 26, 1970, 84 Stat. 1125, provided that: "The Board of Governors of the Federal Reserve System may by regulation provide that the amendment made by title III [amending this section] shall be effective on any date not earlier than the publication of the regulation in the Federal Register and not later than the first day of the thirteenth calendar month which begins after the date of enactment [Oct. 26, 1970]."

VALIDITY OF RULES AND REGULATIONS

Pub. L. 91–508, title III, §301(b), Oct. 26, 1970, 84 Stat. 1125, provided that: "The amendment made by subsection (a) of this section [amending this section] does not affect the continuing validity of any rule or regulation under section 7 of the Securities Exchange Act of 1934 [this section] in effect prior to the effective date of the amendment."

§78h. Restrictions on borrowing and lending by members, brokers, and dealers

It shall be unlawful for any registered broker or dealer, member of a national securities exchange, or broker or dealer who transacts a business in securities through the medium of any member of a national securities exchange, directly or indirectly—

(a) In contravention of such rules and regulations as the Commission shall prescribe for the protection of investors to hypothecate or arrange for the hypothecation of any securities carried for the account of any customer under circumstances (1) that will permit the commingling of his securities without his written consent with the securities of any other customer, (2) that will permit such securities to be commingled with the securities of any person other than a bona fide customer, or (3) that will permit such securities to be hypothecated, or subjected to any lien or claim of the pledgee, for a sum in excess of the aggregate indebtedness of such customers in respect of such securities.

(b) To lend or arrange for the lending of any securities carried for the account of any customer without the written consent of such customer or in contravention of such rules and regulations as the Commission shall prescribe for the protection of investors.

(June 6, 1934, ch. 404, title I, §8, 48 Stat. 888; Aug. 23, 1935, ch. 614, §203(a), 49 Stat. 704; Pub. L. 94–29, §5, June 4, 1975, 89 Stat. 109; Pub. L. 98–440, title I, §103, Oct. 3, 1984, 98 Stat. 1690; Pub. L. 103–325, title II, §204, Sept. 23, 1994, 108 Stat. 2199; Pub. L. 104–290, title I, §104(b), Oct. 11, 1996, 110 Stat. 3423.)

AMENDMENTS

1996—Pub. L. 104–290 redesignated subsecs. (b) and (c) as (a) and (b), respectively, and struck out former subsec. (a) which related to borrowing in ordinary course of business as broker or dealer on any security, except exempted security, registered on national securities exchange.

1994—Subsec. (a). Pub. L. 103–325 inserted "or a small business related security" after "mortgage related security" in last sentence.

1984—Subsec. (a). Pub. L. 98–440 inserted provision that no person shall be deemed to have borrowed within the ordinary course of business, within the meaning of this subsection, by reason of a bona fide agreement for delayed delivery of a mortgage related security under certain conditions.

1975—Pub. L. 94–29, §5(1), substituted "any registered broker or dealer, member of a national securities exchange, or broker or dealer who transacts a business in securities through the medium of any member of a national securities exchange" for "any member of a national securities exchange, or any broker or dealer who transacts a business in securities through the medium of any such member" in provisions preceding subsec. (a).

Subsecs. (b) to (d). Pub. L. 94–29, §5(2), redesignated subsecs. (c) and (d) as (b) and (c), respectively, and in subsec. (c) as so redesignated inserted "or in contravention of such rules and regulations as the Commissioner shall prescribe for the protection of investors" after "written consent of such customer". Former subsec. (b), which covered the maximum allowable aggregate indebtedness of brokers, was struck out.

CHANGE OF NAME

Act Aug. 23, 1935, substituted "Board of Governors of the Federal Reserve System" for "Federal Reserve Board".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§78i. Manipulation of security prices

(a) Transactions relating to purchase or sale of security

It shall be unlawful for any person, directly or indirectly, by the use of the mails or any means or instrumentality of interstate commerce, or of any facility of any national securities exchange, or for any member of a national securities exchange—

(1) For the purpose of creating a false or misleading appearance of active trading in any security other than a government security, or a false or misleading appearance with respect to the market for any such security, (A) to effect any transaction in such security which involves no change in the beneficial ownership thereof, or (B) to enter an order or orders for the purchase of such security with the knowledge that an order or orders of substantially the same size, at substantially the same time, and at substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties, or (C) to enter any order or orders for the sale of any such security with the knowledge that an order or orders of substantially the same size, at substantially the same time, and at substantially the same price, for the purchase of such security, has been or will be entered by or for the same or different parties.

(2) To effect, alone or with 1 or more other persons, a series of transactions in any security registered on a national securities exchange, any security not so registered, or in connection with any security-based swap or security-based swap agreement with respect to such security creating actual or apparent active trading in such security, or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others.

(3) If a dealer, broker, security-based swap dealer, major security-based swap participant, or other person selling or offering for sale or purchasing or offering to purchase the security, a security-based swap, or a security-based swap agreement with respect to such security, to induce the purchase or sale of any security registered on a national securities exchange, any security not so registered, any security-based swap, or any security-based swap agreement with respect to such security by the circulation or dissemination in the ordinary course of business of information to the

effect that the price of any such security will or is likely to rise or fall because of market operations of any 1 or more persons conducted for the purpose of raising or depressing the price of such security.

(4) If a dealer, broker, security-based swap dealer, major security-based swap participant, or other person selling or offering for sale or purchasing or offering to purchase the security, a security-based swap, or security-based swap agreement with respect to such security, to make, regarding any security registered on a national securities exchange, any security not so registered, any security-based swap, or any security-based swap agreement with respect to such security, for the purpose of inducing the purchase or sale of such security, such security-based swap, or such security-based swap agreement any statement which was at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, and which that person knew or had reasonable ground to believe was so false or misleading.

(5) For a consideration, received directly or indirectly from a broker, dealer, security-based swap dealer, major security-based swap participant, or other person selling or offering for sale or purchasing or offering to purchase the security, a security-based swap, or security-based swap agreement with respect to such security, to induce the purchase of any security registered on a national securities exchange, any security not so registered, any security-based swap, or any security-based swap agreement with respect to such security by the circulation or dissemination of information to the effect that the price of any such security will or is likely to rise or fall because of the market operations of any 1 or more persons conducted for the purpose of raising or depressing the price of such security.

(6) To effect either alone or with one or more other persons any series of transactions for the purchase and/or sale of any security other than a government security for the purpose of pegging, fixing, or stabilizing the price of such security in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(b) Transactions relating to puts, calls, straddles, options, futures, or security-based swaps

It shall be unlawful for any person to effect, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors—

(1) any transaction in connection with any security whereby any party to such transaction acquires—

(A) any put, call, straddle, or other option or privilege of buying the security from or selling the security to another without being bound to do so;

(B) any security futures product on the security; or

(C) any security-based swap involving the security or the issuer of the security;

(2) any transaction in connection with any security with relation to which such person has, directly or indirectly, any interest in any—

(A) such put, call, straddle, option, or privilege;

(B) such security futures product; or

(C) such security-based swap; or

(3) any transaction in any security for the account of any person who such person has reason to believe has, and who actually has, directly or indirectly, any interest in any—

(A) such put, call, straddle, option, or privilege;

(B) such security futures product with relation to such security; or

(C) any security-based swap involving such security or the issuer of such security.

(c) Endorsement or guarantee of puts, calls, straddles, or options

It shall be unlawful for any broker, dealer, or member of a national securities exchange directly or indirectly to endorse or guarantee the performance of any put, call, straddle, option, or privilege in relation to any security other than a government security, in contravention of such rules and

regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(d) Transactions relating to short sales of securities

It shall be unlawful for any person, directly or indirectly, by the use of the mails or any means or instrumentality of interstate commerce, or of any facility of any national securities exchange, or for any member of a national securities exchange to effect, alone or with one or more other persons, a manipulative short sale of any security. The Commission shall issue such other rules as are necessary or appropriate to ensure that the appropriate enforcement options and remedies are available for violations of this subsection in the public interest or for the protection of investors.

(e) Registered warrant, right, or convertible security not included in "put", "call", "straddle", or "option"

The terms "put", "call", "straddle", "option", or "privilege" as used in this section shall not include any registered warrant, right, or convertible security.

(f) Persons liable; suits at law or in equity

Any person who willfully participates in any act or transaction in violation of subsections (a), (b), or (c) of this section, shall be liable to any person who shall purchase or sell any security at a price which was affected by such act or transaction, and the person so injured may sue in law or in equity in any court of competent jurisdiction to recover the damages sustained as a result of any such act or transaction. In any such suit the court may, in its discretion, require an undertaking for the payment of the costs of such suit, and assess reasonable costs, including reasonable attorneys' fees, against either party litigant. Every person who becomes liable to make any payment under this subsection may recover contribution as in cases of contract from any person who, if joined in the original suit, would have been liable to make the same payment. No action shall be maintained to enforce any liability created under this section, unless brought within one year after the discovery of the facts constituting the violation and within three years after such violation.

(g) Subsection (a) not applicable to exempted securities

The provisions of subsection (a) of this section shall not apply to an exempted security.

(h) Foreign currencies and security futures products

(1) Notwithstanding any other provision of law, the Commission shall have the authority to regulate the trading of any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency (but not, with respect to any of the foregoing, an option on a contract for future delivery other than a security futures product).

(2) Notwithstanding the Commodity Exchange Act [7 U.S.C. 1 et seq.], the Commission shall have the authority to regulate the trading of any security futures product to the extent provided in the securities laws.

(i) Limitations on practices that affect market volatility

It shall be unlawful for any person, by the use of the mails or any means or instrumentality of interstate commerce or of any facility of any national securities exchange, to use or employ any act or practice in connection with the purchase or sale of any equity security in contravention of such rules or regulations as the Commission may adopt, consistent with the public interest, the protection of investors, and the maintenance of fair and orderly markets—

(1) to prescribe means reasonably designed to prevent manipulation of price levels of the equity securities market or a substantial segment thereof; and

(2) to prohibit or constrain, during periods of extraordinary market volatility, any trading practice in connection with the purchase or sale of equity securities that the Commission determines (A) has previously contributed significantly to extraordinary levels of volatility that have threatened the maintenance of fair and orderly markets; and (B) is reasonably certain to engender such levels of volatility if not prohibited or constrained.

In adopting rules under paragraph (2), the Commission shall, consistent with the purposes of this subsection, minimize the impact on the normal operations of the market and a natural person's freedom to buy or sell any equity security.

(j) [1] Limitation on Commission authority

The authority of the Commission under this section with respect to security-based swap agreements shall be subject to the restrictions and limitations of section 78c–1(b) of this title.

(j) [1] Regulations relating to security-based swaps

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security-based swap, in connection with which such person engages in any fraudulent, deceptive, or manipulative act or practice, makes any fictitious quotation, or engages in any transaction, practice, or course of business which operates as a fraud or deceit upon any person. The Commission shall, for the purposes of this subsection, by rules and regulations define, and prescribe means reasonably designed to prevent, such transactions, acts, practices, and courses of business as are fraudulent, deceptive, or manipulative, and such quotations as are fictitious.

(June 6, 1934, ch. 404, title I, §9, 48 Stat. 889; Pub. L. 97–303, §3, Oct. 13, 1982, 96 Stat. 1409; Pub. L. 101–432, §6(a), Oct. 16, 1990, 104 Stat. 975; Pub. L. 106–554, §1(a)(5) [title II, §205(a)(1), (2), title III, §303(b), (c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–425, 2763A–426, 2763A–453, 2763A–454; Pub. L. 111–203, title VII, §§762(d)(2), 763(f), (g), title IX, §§929L(1), 929X(b), July 21, 2010, 124 Stat. 1760, 1777, 1861, 1870.)

AMENDMENT OF SECTION

Unless otherwise provided, amendment by subtitle B (§§761–774) of title VII of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see 2010 Amendment notes and Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in subsec. (h)(2), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, §929L(1)(A), substituted "other than a government security" for "registered on a national securities exchange" wherever appearing.

Subsec. (a)(2) to (5). Pub. L. 111–203, §762(d)(2)(A), added pars. (2) to (5) and struck out former pars. (2) to (5) which prohibited certain actions in the purchase or sale of a security or a security-based swap agreement, such as making false or misleading statements or creating conditions to raise or depress the price of such security.

Subsec. (b). Pub. L. 111–203, §929L(1)(B), struck out "by use of any facility of a national securities exchange," after "effect," in introductory provisions.

Subsec. (b)(1) to (3). Pub. L. 111–203, §763(f), added pars. (1) to (3) and struck out former pars. (1) to (3) which read as follows:

"(1) any transaction in connection with any security whereby any party to such transaction acquires (A) any put, call, straddle, or other option or privilege of buying the security from or selling the security to another without being bound to do so; or (B) any security futures product on the security; or

"(2) any transaction in connection with any security with relation to which he has, directly or indirectly, any interest in any (A) such put, call, straddle, option, or privilege; or (B) such security futures product; or

"(3) any transaction in any security for the account of any person who he has reason to believe has, and who actually has, directly or indirectly, any interest in any (A) such put, call, straddle, option, or privilege; or (B) such security futures product with relation to such security."

Subsec. (c). Pub. L. 111–203, §929L(1)(C), inserted "broker, dealer, or" after "unlawful for any".

Pub. L. 111–203, §929L(1)(A), substituted "other than a government security" for "registered on a national securities exchange".

Subsecs. (d) to (i). Pub. L. 111–203, §929X(b), added subsec. (d) and redesignated former subsecs. (d) to (h) as (e) to (i), respectively. Former subsec. (i), relating to limitation on Commission authority, redesignated (j).

Subsec. (j). Pub. L. 111–203, §929X(b)(1), redesignated subsec. (i), relating to limitation on Commission authority, as (j).

Pub. L. 111–203, §763(g), added subsec. (j) relating to regulations relating to security-based swaps.

Pub. L. 111–203, §762(d)(2)(B), which directed amendment of subsec. (i) by striking out "(as defined in section 206B of the Gramm-Leach-Bliley Act)", was executed by making the strike out after "security-based swap agreements" in subsec. (j) relating to limitation on Commission authority, to reflect the probable intent of Congress and the redesignation of subsec. (i) as (j) by Pub. L. 111–203, §929X(b)(1). See above and Effective Date of 2010 Amendment notes below.

2000—Subsec. (a)(2) to (5). Pub. L. 106–554, §1(a)(5) [title III, §303(b)], amended pars. (2) to (5) generally. Prior to amendment, pars. (2) to (5) read as follows:

"(2) To effect, alone or with one or more other persons, a series of transactions in any security registered on a national securities exchange creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others.

"(3) If a dealer or broker, or other person selling or offering for sale or purchasing or offering to purchase the security, to induce the purchase or sale of any security registered on a national securities exchange by the circulation or dissemination in the ordinary course of business of information to the effect that the price of any such security will or is likely to rise or fall because of market operations of any one or more persons conducted for the purpose of raising or depressing the prices of such security.

"(4) If a dealer or broker, or other person selling or offering for sale or purchasing or offering to purchase the security, to make, regarding any security registered on a national securities exchange, for the purpose of inducing the purchase or sale of such security, any statement which was at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, and which he knew or had reasonable ground to believe was so false or misleading.

"(5) For a consideration, received directly or indirectly from a dealer or broker, or other person selling or offering for sale or purchasing or offering to purchase the security, to induce the purchase or sale of any security registered on a national securities exchange by the circulation or dissemination of information to the effect that the price of any such security will or is likely to rise or fall because of the market operations of any one or more persons conducted for the purpose of raising or depressing the price of such security."

Subsec. (b)(1). Pub. L. 106–554, §1(a)(5) [title II, §205(a)(1)(A)], inserted "(A)" after "acquires" and substituted "; or (B) any security futures product on the security; or" for "; or".

Subsec. (b)(2). Pub. L. 106–554, §1(a)(5) [title II, §205(a)(1)(B)], inserted "(A)" after "interest in any" and substituted "; or (B) such security futures product; or" for "; or".

Subsec. (b)(3). Pub. L. 106–554, §1(a)(5) [title II, §205(a)(1)(C)], inserted "(A)" after "interest in any" and "; or (B) such security futures product" after "privilege".

Subsec. (g). Pub. L. 106–554, §1(a)(5) [title II, §205(a)(2)], designated existing provisions as par. (1), inserted "other than a security futures product" after "future delivery", and added par. (2).

Subsec. (i). Pub. L. 106–554, §1(a)(5) [title III, §303(c)], added subsec. (i).

1990—Subsec. (h). Pub. L. 101–432 added subsec. (h).

1982—Subsec. (f). Pub. L. 97–303, §3(1), substituted "The provisions of subsection (a) of this section shall not apply" for "The provisions of this section shall not apply".

Subsec. (g). Pub. L. 97–303, §3(2), added subsec. (g).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 929L(1) and 929X(b) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 Title 12, Banks and Banking.

Amendment by sections 762(d)(2) and 763(f), (g) of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761–774) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111–203, set out as a note under section 77b of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

[1] *So in original. Two subsecs. (j) have been enacted.*

§78j. Manipulative and deceptive devices

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange—

(a)(1) To effect a short sale, or to use or employ any stop-loss order in connection with the purchase or sale, of any security other than a government security, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(2) Paragraph (1) of this subsection shall not apply to security futures products.

(b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, or any securities-based swap agreement [1] any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(c)(1) To effect, accept, or facilitate a transaction involving the loan or borrowing of securities in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(2) Nothing in paragraph (1) may be construed to limit the authority of the appropriate Federal banking agency (as defined in section 1813(q) of title 12), the National Credit Union Administration, or any other Federal department or agency having a responsibility under Federal law to prescribe rules or regulations restricting transactions involving the loan or borrowing of securities in order to protect the safety and soundness of a financial institution or to protect the financial system from systemic risk.

Rules promulgated under subsection (b) of this section that prohibit fraud, manipulation, or insider trading (but not rules imposing or specifying reporting or recordkeeping requirements, procedures, or standards as prophylactic measures against fraud, manipulation, or insider trading), and judicial precedents decided under subsection (b) of this section and rules promulgated thereunder that prohibit fraud, manipulation, or insider trading, shall apply to security-based swap agreements to the same extent as they apply to securities. Judicial precedents decided under section 77q(a) of this title and sections 78i, 78o, 78p, 78t, and 78u–1 of this title, and judicial precedents decided under applicable rules promulgated under such sections, shall apply to security-based swap agreements to the same extent as they apply to securities.

(June 6, 1934, ch. 404, title I, §10, 48 Stat. 891; Pub. L. 106–554, §1(a)(5) [title II, §206(g), title III, §303(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–432, 2763A–454; Pub. L. 111–203, title VII, §762(d)(3), title IX, §§929L(2), 984(a), July 21, 2010, 124 Stat. 1761, 1861, 1932.)

AMENDMENT OF SECTION

Unless otherwise provided, amendment by subtitle B (§§761–774) of title VII of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see 2010 Amendment notes and Effective Date of 2010 Amendment note below.

AMENDMENTS

2010—Pub. L. 111–203, §762(d)(3)(B), which directed amendment of the matter following subsection (b)

"by striking '(as defined in section 206B of the Gramm-Leach-Bliley Act), in each place that such terms appear' ", was executed by striking out "(as defined in section 206B of the Gramm-Leach-Bliley Act)" after "security-based swap agreements" in two places in concluding provisions following subsec. (c) to reflect the probable intent of Congress.

Subsec. (a)(1). Pub. L. 111–203, §929L(2), substituted "other than a government security" for "registered on a national securities exchange".

Subsec. (b). Pub. L. 111–203, §762(d)(3)(A), struck out "(as defined in section 206B of the Gramm-Leach-Bliley Act)," after "securities-based swap agreement".

Subsec. (c). Pub. L. 111–203, §984(a), which directed amendment of this section by adding subsec. (c) at the end, was executed by adding subsec. (c) after subsec. (b) to reflect the probable intent of Congress.

2000—Pub. L. 106–554, §1(a)(5) [title III, §303(d)(2)], inserted concluding provisions at end.

Subsec. (a). Pub. L. 106–554, §1(a)(5) [title II, §206(g)], designated existing provisions as par. (1) and added par. (2).

Subsec. (b). Pub. L. 106–554, §1(a)(5) [title III, §303(d)(1)], inserted "or any securities-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act)," before "any manipulative or deceptive device".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 929L(2) and 984(a) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 Title 12, Banks and Banking.

Amendment by section 762(d)(3) of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761–774) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111–203, set out as a note under section 77b of this title.

REGULATIONS

Pub. L. 111–203, title IX, §984(b), July 21, 2010, 124 Stat. 1933, provided that: "Not later than 2 years after the date of enactment of this Act [July 21, 2010], the Commission shall promulgate rules that are designed to increase the transparency of information available to brokers, dealers, and investors, with respect to the loan or borrowing of securities."

[For definitions of terms used in section 984(b) of Pub. L. 111–203, set out above, see section 5301 of Title 12, Banks and Banking.]

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

PROHIBITION OF INSIDER TRADING

Pub. L. 112–105, §4(a), Apr. 4, 2012, 126 Stat. 292, provided that: "Members of Congress and employees of Congress are not exempt from the insider trading prohibitions arising under the securities laws, including section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. 78j(b)] and Rule 10b–5 thereunder."

APPLICATION OF INSIDER TRADING LAWS

Pub. L. 112–105, §9(b)(1), Apr. 4, 2012, 126 Stat. 297, provided that: "Executive branch employees, judicial officers, and judicial employees are not exempt from the insider trading prohibitions arising under the securities laws, including section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. 78j(b)] and Rule 10b–5 thereunder."

[1] *So in original. Probably should be followed by a comma.*

§78j–1. Audit requirements

(a) In general

Each audit required pursuant to this chapter of the financial statements of an issuer by a registered public accounting firm shall include, in accordance with generally accepted auditing standards, as

may be modified or supplemented from time to time by the Commission—

(1) procedures designed to provide reasonable assurance of detecting illegal acts that would have a direct and material effect on the determination of financial statement amounts;

(2) procedures designed to identify related party transactions that are material to the financial statements or otherwise require disclosure therein; and

(3) an evaluation of whether there is substantial doubt about the ability of the issuer to continue as a going concern during the ensuing fiscal year.

(b) Required response to audit discoveries

(1) Investigation and report to management

If, in the course of conducting an audit pursuant to this chapter to which subsection (a) of this section applies, the registered public accounting firm detects or otherwise becomes aware of information indicating that an illegal act (whether or not perceived to have a material effect on the financial statements of the issuer) has or may have occurred, the firm shall, in accordance with generally accepted auditing standards, as may be modified or supplemented from time to time by the Commission—

(A)(i) determine whether it is likely that an illegal act has occurred; and

(ii) if so, determine and consider the possible effect of the illegal act on the financial statements of the issuer, including any contingent monetary effects, such as fines, penalties, and damages; and

(B) as soon as practicable, inform the appropriate level of the management of the issuer and assure that the audit committee of the issuer, or the board of directors of the issuer in the absence of such a committee, is adequately informed with respect to illegal acts that have been detected or have otherwise come to the attention of such firm in the course of the audit, unless the illegal act is clearly inconsequential.

(2) Response to failure to take remedial action

If, after determining that the audit committee of the board of directors of the issuer, or the board of directors of the issuer in the absence of an audit committee, is adequately informed with respect to illegal acts that have been detected or have otherwise come to the attention of the firm in the course of the audit of such firm, the registered public accounting firm concludes that—

(A) the illegal act has a material effect on the financial statements of the issuer;

(B) the senior management has not taken, and the board of directors has not caused senior management to take, timely and appropriate remedial actions with respect to the illegal act; and

(C) the failure to take remedial action is reasonably expected to warrant departure from a standard report of the auditor, when made, or warrant resignation from the audit engagement;

the registered public accounting firm shall, as soon as practicable, directly report its conclusions to the board of directors.

(3) Notice to Commission; response to failure to notify

An issuer whose board of directors receives a report under paragraph (2) shall inform the Commission by notice not later than 1 business day after the receipt of such report and shall furnish the registered public accounting firm making such report with a copy of the notice furnished to the Commission. If the registered public accounting firm fails to receive a copy of the notice before the expiration of the required 1-business-day period, the registered public accounting firm shall—

(A) resign from the engagement; or

(B) furnish to the Commission a copy of its report (or the documentation of any oral report given) not later than 1 business day following such failure to receive notice.

(4) Report after resignation

If a registered public accounting firm resigns from an engagement under paragraph (3)(A), the firm shall, not later than 1 business day following the failure by the issuer to notify the

Commission under paragraph (3), furnish to the Commission a copy of the report of the firm (or the documentation of any oral report given).

(c) Auditor liability limitation

No registered public accounting firm shall be liable in a private action for any finding, conclusion, or statement expressed in a report made pursuant to paragraph (3) or (4) of subsection (b) of this section, including any rule promulgated pursuant thereto.

(d) Civil penalties in cease-and-desist proceedings

If the Commission finds, after notice and opportunity for hearing in a proceeding instituted pursuant to section 78u–3 of this title, that a registered public accounting firm has willfully violated paragraph (3) or (4) of subsection (b) of this section, the Commission may, in addition to entering an order under section 78u–3 of this title, impose a civil penalty against the registered public accounting firm and any other person that the Commission finds was a cause of such violation. The determination to impose a civil penalty and the amount of the penalty shall be governed by the standards set forth in section 78u–2 of this title.

(e) Preservation of existing authority

Except as provided in subsection (d) of this section, nothing in this section shall be held to limit or otherwise affect the authority of the Commission under this chapter.

(f) Definitions

As used in this section, the term "illegal act" means an act or omission that violates any law, or any rule or regulation having the force of law. As used in this section, the term "issuer" means an issuer (as defined in section 78c of this title), the securities of which are registered under section 78l of this title, or that is required to file reports pursuant to section 78o(d) of this title, or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a et seq.), and that it has not withdrawn.

(g) Prohibited activities

Except as provided in subsection (h) of this section, it shall be unlawful for a registered public accounting firm (and any associated person of that firm, to the extent determined appropriate by the Commission) that performs for any issuer any audit required by this chapter or the rules of the Commission under this chapter or, beginning 180 days after the date of commencement of the operations of the Public Company Accounting Oversight Board established under section 7211 of this title (in this section referred to as the "Board"), the rules of the Board, to provide to that issuer, contemporaneously with the audit, any non-audit service, including—

(1) bookkeeping or other services related to the accounting records or financial statements of the audit client;
(2) financial information systems design and implementation;
(3) appraisal or valuation services, fairness opinions, or contribution-in-kind reports;
(4) actuarial services;
(5) internal audit outsourcing services;
(6) management functions or human resources;
(7) broker or dealer, investment adviser, or investment banking services;
(8) legal services and expert services unrelated to the audit; and
(9) any other service that the Board determines, by regulation, is impermissible.

(h) Preapproval required for non-audit services

A registered public accounting firm may engage in any non-audit service, including tax services, that is not described in any of paragraphs (1) through (9) of subsection (g) of this section for an audit client, only if the activity is approved in advance by the audit committee of the issuer, in accordance with subsection (i) of this section.

(i) Preapproval requirements

(1) In general

(A) Audit committee action

All auditing services (which may entail providing comfort letters in connection with securities underwritings or statutory audits required for insurance companies for purposes of State law) and non-audit services, other than as provided in subparagraph (B), provided to an issuer by the auditor of the issuer shall be preapproved by the audit committee of the issuer.

(B) De minimis exception

The preapproval requirement under subparagraph (A) is waived with respect to the provision of non-audit services for an issuer, if—

(i) the aggregate amount of all such non-audit services provided to the issuer constitutes not more than 5 percent of the total amount of revenues paid by the issuer to its auditor during the fiscal year in which the non-audit services are provided;

(ii) such services were not recognized by the issuer at the time of the engagement to be non-audit services; and

(iii) such services are promptly brought to the attention of the audit committee of the issuer and approved prior to the completion of the audit by the audit committee or by 1 or more members of the audit committee who are members of the board of directors to whom authority to grant such approvals has been delegated by the audit committee.

(2) Disclosure to investors

Approval by an audit committee of an issuer under this subsection of a non-audit service to be performed by the auditor of the issuer shall be disclosed to investors in periodic reports required by section 78m(a) of this title.

(3) Delegation authority

The audit committee of an issuer may delegate to 1 or more designated members of the audit committee who are independent directors of the board of directors, the authority to grant preapprovals required by this subsection. The decisions of any member to whom authority is delegated under this paragraph to preapprove an activity under this subsection shall be presented to the full audit committee at each of its scheduled meetings.

(4) Approval of audit services for other purposes

In carrying out its duties under subsection (m)(2) of this section, if the audit committee of an issuer approves an audit service within the scope of the engagement of the auditor, such audit service shall be deemed to have been preapproved for purposes of this subsection.

(j) Audit partner rotation

It shall be unlawful for a registered public accounting firm to provide audit services to an issuer if the lead (or coordinating) audit partner (having primary responsibility for the audit), or the audit partner responsible for reviewing the audit, has performed audit services for that issuer in each of the 5 previous fiscal years of that issuer.

(k) Reports to audit committees

Each registered public accounting firm that performs for any issuer any audit required by this chapter shall timely report to the audit committee of the issuer—

(1) all critical accounting policies and practices to be used;

(2) all alternative treatments of financial information within generally accepted accounting principles that have been discussed with management officials of the issuer, ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the registered public accounting firm; and

(3) other material written communications between the registered public accounting firm and the management of the issuer, such as any management letter or schedule of unadjusted differences.

(l) Conflicts of interest

It shall be unlawful for a registered public accounting firm to perform for an issuer any audit

service required by this chapter, if a chief executive officer, controller, chief financial officer, chief accounting officer, or any person serving in an equivalent position for the issuer, was employed by that registered independent public accounting firm and participated in any capacity in the audit of that issuer during the 1-year period preceding the date of the initiation of the audit.

(m) Standards relating to audit committees

(1) Commission rules

(A) In general

Effective not later than 270 days after July 30, 2002, the Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with the requirements of any portion of paragraphs (2) through (6).

(B) Opportunity to cure defects

The rules of the Commission under subparagraph (A) shall provide for appropriate procedures for an issuer to have an opportunity to cure any defects that would be the basis for a prohibition under subparagraph (A), before the imposition of such prohibition.

(2) Responsibilities relating to registered public accounting firms

The audit committee of each issuer, in its capacity as a committee of the board of directors, shall be directly responsible for the appointment, compensation, and oversight of the work of any registered public accounting firm employed by that issuer (including resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or related work, and each such registered public accounting firm shall report directly to the audit committee.

(3) Independence

(A) In general

Each member of the audit committee of the issuer shall be a member of the board of directors of the issuer, and shall otherwise be independent.

(B) Criteria

In order to be considered to be independent for purposes of this paragraph, a member of an audit committee of an issuer may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee—

(i) accept any consulting, advisory, or other compensatory fee from the issuer; or

(ii) be an affiliated person of the issuer or any subsidiary thereof.

(C) Exemption authority

The Commission may exempt from the requirements of subparagraph (B) a particular relationship with respect to audit committee members, as the Commission determines appropriate in light of the circumstances.

(4) Complaints

Each audit committee shall establish procedures for—

(A) the receipt, retention, and treatment of complaints received by the issuer regarding accounting, internal accounting controls, or auditing matters; and

(B) the confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters.

(5) Authority to engage advisers

Each audit committee shall have the authority to engage independent counsel and other advisers, as it determines necessary to carry out its duties.

(6) Funding

Each issuer shall provide for appropriate funding, as determined by the audit committee, in its

capacity as a committee of the board of directors, for payment of compensation—

(A) to the registered public accounting firm employed by the issuer for the purpose of rendering or issuing an audit report; and

(B) to any advisers employed by the audit committee under paragraph (5).

(June 6, 1934, ch. 404, title I, §10A, as added Pub. L. 104–67, title III, §301(a), Dec. 22, 1995, 109 Stat. 762; amended Pub. L. 107–204, title II, §§201(a), 202–204, 205(b), (d), 206, title III, §301, July 30, 2002, 116 Stat. 771–775; Pub. L. 111–203, title IX, §985(b)(3), July 21, 2010, 124 Stat. 1933.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b)(1), (e), (g), (k), and (l), was in the original "this title". See References in Text note set out under section 78a of this title.

The Securities Act of 1933, referred to in subsec. (f), is title I of act May 27, 1933, ch. 38, 48 Stat. 74, as amended, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

AMENDMENTS

2010—Subsec. (i)(1)(B). Pub. L. 111–203 substituted "minimis" for "minimus" in heading and "the non-audit" for "the nonaudit" in cl. (i).

2002—Subsec. (a). Pub. L. 107–204, §205(b)(1), substituted "a registered public accounting firm" for "an independent public accountant" in introductory provisions.

Subsec. (b)(1). Pub. L. 107–204, §205(b)(2), (4)(A), in introductory provisions, substituted "the registered public accounting firm" for "the independent public accountant" and "the firm" for "the accountant".

Subsec. (b)(1)(B). Pub. L. 107–204, §205(b)(4)(B), substituted "such firm" for "such accountant".

Subsec. (b)(2). Pub. L. 107–204, §205(b)(2), (4)(A), (B), in introductory provisions, substituted "the firm" for "the accountant", "such firm" for "such accountant", and "the registered public accounting firm" for "the independent public accountant" and, in concluding provisions, substituted "the registered public accounting firm" for "the independent public accountant".

Subsec. (b)(3). Pub. L. 107–204, §205(b)(2), substituted "the registered public accounting firm" for "the independent public accountant" wherever appearing in introductory provisions.

Subsec. (b)(4). Pub. L. 107–204, §205(b)(1), (4)(A), (C), substituted "a registered public accounting firm" for "an independent public accountant", "the firm" for "the accountant", and "the report of the firm" for "the accountant's report".

Subsec. (c). Pub. L. 107–204, §205(b)(3), substituted "No registered public accounting firm" for "No independent public accountant".

Subsec. (d). Pub. L. 107–204, §205(b)(1), (2), substituted "a registered public accounting firm" for "an independent public accountant" and "the registered public accounting firm" for "the independent public accountant".

Subsec. (f). Pub. L. 107–204, §205(d), substituted "Definitions" for "Definition" in heading and inserted at end "As used in this section, the term 'issuer' means an issuer (as defined in section 78c of this title), the securities of which are registered under section 78l of this title, or that is required to file reports pursuant to section 78o(d) of this title, or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a et seq.), and that it has not withdrawn."

Subsecs. (g), (h). Pub. L. 107–204, §201(a), added subsecs. (g) and (h).

Subsec. (i). Pub. L. 107–204, §202, added subsec. (i).

Subsec. (j). Pub. L. 107–204, §203, added subsec. (j).

Subsec. (k). Pub. L. 107–204, §204, added subsec. (k).

Subsec. (l). Pub. L. 107–204, §206, added subsec. (l).

Subsec. (m). Pub. L. 107–204, §301, added subsec. (m).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE

Pub. L. 104–67, title III, §301(b), Dec. 22, 1995, 109 Stat. 764, provided that: "The amendment made by subsection (a) [enacting this section] shall apply to each annual report—

"(1) for any period beginning on or after January 1, 1996, with respect to any registrant that is required

to file selected quarterly financial data pursuant to the rules or regulations of the Securities and Exchange Commission; and

"(2) for any period beginning on or after January 1, 1997, with respect to any other registrant."

CONSTRUCTION

Pub. L. 104–67, title II, §203, Dec. 22, 1995, 109 Stat. 762, provided that: "Nothing in this Act [see Short Title of 1995 Amendment note set out under section 78a of this title] or the amendments made by this Act shall be deemed to create or ratify any implied private right of action, or to prevent the Commission, by rule or regulation, from restricting or otherwise regulating private actions under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.]."

§78j–2. Position limits and position accountability for security-based swaps and large trader reporting

(a) Position limits

As a means reasonably designed to prevent fraud and manipulation, the Commission shall, by rule or regulation, as necessary or appropriate in the public interest or for the protection of investors, establish limits (including related hedge exemption provisions) on the size of positions in any security-based swap that may be held by any person. In establishing such limits, the Commission may require any person to aggregate positions in—

(1) any security-based swap and any security or loan or group of securities or loans on which such security-based swap is based, which such security-based swap references, or to which such security-based swap is related as described in paragraph (68) of section 78c(a) of this title, and any other instrument relating to such security or loan or group or index of securities or loans; or

(2) any security-based swap and—

(A) any security or group or index of securities, the price, yield, value, or volatility of which, or of which any interest therein, is the basis for a material term of such security-based swap as described in paragraph (68) of section 78c(a) of this title; and

(B) any other instrument relating to the same security or group or index of securities described under subparagraph (A).

(b) Exemptions

The Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person or class of persons, any security-based swap or class of security-based swaps, or any transaction or class of transactions from any requirement the Commission may establish under this section with respect to position limits.

(c) SRO rules

(1) In general

As a means reasonably designed to prevent fraud or manipulation, the Commission, by rule, regulation, or order, as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter, may direct a self-regulatory organization—

(A) to adopt rules regarding the size of positions in any security-based swap that may be held by—

(i) any member of such self-regulatory organization; or

(ii) any person for whom a member of such self-regulatory organization effects transactions in such security-based swap; and

(B) to adopt rules reasonably designed to ensure compliance with requirements prescribed by the Commission under this subsection.

(2) Requirement to aggregate positions

In establishing the limits under paragraph (1), the self-regulatory organization may require such

member or person to aggregate positions in—

(A) any security-based swap and any security or loan or group or narrow-based security index of securities or loans on which such security-based swap is based, which such security-based swap references, or to which such security-based swap is related as described in section 78c(a)(68) of this title, and any other instrument relating to such security or loan or group or narrow-based security index of securities or loans; or

(B)(i) any security-based swap; and

(ii) any security-based swap and any other instrument relating to the same security or group or narrow-based security index of securities.

(d) Large trader reporting

The Commission, by rule or regulation, may require any person that effects transactions for such person's own account or the account of others in any securities-based swap or uncleared security-based swap and any security or loan or group or narrow-based security index of securities or loans as set forth in paragraphs (1) and (2) of subsection (a) under this section to report such information as the Commission may prescribe regarding any position or positions in any security-based swap or uncleared security-based swap and any security or loan or group or narrow-based security index of securities or loans and any other instrument relating to such security or loan or group or narrow-based security index of securities or loans as set forth in paragraphs (1) and (2) of subsection (a) under this section.

(June 6, 1934, ch. 404, title I, §10B, as added Pub. L. 111–203, title VII, §763(h), July 21, 2010, 124 Stat. 1778.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c)(1), was in the original "this title". See References in Text note set out under section 78a of this title.

EFFECTIVE DATE

Section effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761–774) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 77b of this title.

§78j–3. Compensation committees

(a) Independence of compensation committees

(1) Listing standards

The Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any equity security of an issuer, other than an issuer that is a controlled company, limited partnership, company in bankruptcy proceedings, open-ended management investment company that is registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.], or a foreign private issuer that provides annual disclosures to shareholders of the reasons that the foreign private issuer does not have an independent compensation committee, that does not comply with the requirements of this subsection.

(2) Independence of compensation committees

The rules of the Commission under paragraph (1) shall require that each member of the compensation committee of the board of directors of an issuer be—

(A) a member of the board of directors of the issuer; and

(B) independent.

(3) Independence

The rules of the Commission under paragraph (1) shall require that, in determining the definition of the term "independence" for purposes of paragraph (2), the national securities

exchanges and the national securities associations shall consider relevant factors, including—

(A) the source of compensation of a member of the board of directors of an issuer, including any consulting, advisory, or other compensatory fee paid by the issuer to such member of the board of directors; and

(B) whether a member of the board of directors of an issuer is affiliated with the issuer, a subsidiary of the issuer, or an affiliate of a subsidiary of the issuer.

(4) Exemption authority

The rules of the Commission under paragraph (1) shall permit a national securities exchange or a national securities association to exempt a particular relationship from the requirements of paragraph (2), with respect to the members of a compensation committee, as the national securities exchange or national securities association determines is appropriate, taking into consideration the size of an issuer and any other relevant factors.

(b) Independence of compensation consultants and other compensation committee advisers

(1) In general

The compensation committee of an issuer may only select a compensation consultant, legal counsel, or other adviser to the compensation committee after taking into consideration the factors identified by the Commission under paragraph (2).

(2) Rules

The Commission shall identify factors that affect the independence of a compensation consultant, legal counsel, or other adviser to a compensation committee of an issuer. Such factors shall be competitively neutral among categories of consultants, legal counsel, or other advisers and preserve the ability of compensation committees to retain the services of members of any such category, and shall include—

(A) the provision of other services to the issuer by the person that employs the compensation consultant, legal counsel, or other adviser;

(B) the amount of fees received from the issuer by the person that employs the compensation consultant, legal counsel, or other adviser, as a percentage of the total revenue of the person that employs the compensation consultant, legal counsel, or other adviser;

(C) the policies and procedures of the person that employs the compensation consultant, legal counsel, or other adviser that are designed to prevent conflicts of interest;

(D) any business or personal relationship of the compensation consultant, legal counsel, or other adviser with a member of the compensation committee; and

(E) any stock of the issuer owned by the compensation consultant, legal counsel, or other adviser.

(c) Compensation committee authority relating to compensation consultants

(1) Authority to retain compensation consultant

(A) In general

The compensation committee of an issuer, in its capacity as a committee of the board of directors, may, in its sole discretion, retain or obtain the advice of a compensation consultant.

(B) Direct responsibility of compensation committee

The compensation committee of an issuer shall be directly responsible for the appointment, compensation, and oversight of the work of a compensation consultant.

(C) Rule of construction

This paragraph may not be construed—

(i) to require the compensation committee to implement or act consistently with the advice or recommendations of the compensation consultant; or

(ii) to affect the ability or obligation of a compensation committee to exercise its own judgment in fulfillment of the duties of the compensation committee.

(2) Disclosure

In any proxy or consent solicitation material for an annual meeting of the shareholders (or a special meeting in lieu of the annual meeting) occurring on or after the date that is 1 year after July 21, 2010, each issuer shall disclose in the proxy or consent material, in accordance with regulations of the Commission, whether—

(A) the compensation committee of the issuer retained or obtained the advice of a compensation consultant; and

(B) the work of the compensation consultant has raised any conflict of interest and, if so, the nature of the conflict and how the conflict is being addressed.

(d) Authority to engage independent legal counsel and other advisers

(1) In general

The compensation committee of an issuer, in its capacity as a committee of the board of directors, may, in its sole discretion, retain and obtain the advice of independent legal counsel and other advisers.

(2) Direct responsibility of compensation committee

The compensation committee of an issuer shall be directly responsible for the appointment, compensation, and oversight of the work of independent legal counsel and other advisers.

(3) Rule of construction

This subsection may not be construed—

(A) to require a compensation committee to implement or act consistently with the advice or recommendations of independent legal counsel or other advisers under this subsection; or

(B) to affect the ability or obligation of a compensation committee to exercise its own judgment in fulfillment of the duties of the compensation committee.

(e) Compensation of compensation consultants, independent legal counsel, and other advisers

Each issuer shall provide for appropriate funding, as determined by the compensation committee in its capacity as a committee of the board of directors, for payment of reasonable compensation—

(1) to a compensation consultant; and

(2) to independent legal counsel or any other adviser to the compensation committee.

(f) Commission rules

(1) In general

Not later than 360 days after July 21, 2010, the Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with the requirements of this section.

(2) Opportunity to cure defects

The rules of the Commission under paragraph (1) shall provide for appropriate procedures for an issuer to have a reasonable opportunity to cure any defects that would be the basis for the prohibition under paragraph (1), before the imposition of such prohibition.

(3) Exemption authority

(A) In general

The rules of the Commission under paragraph (1) shall permit a national securities exchange or a national securities association to exempt a category of issuers from the requirements under this section, as the national securities exchange or the national securities association determines is appropriate.

(B) Considerations

In determining appropriate exemptions under subparagraph (A), the national securities exchange or the national securities association shall take into account the potential impact of the requirements of this section on smaller reporting issuers.

(g) Controlled company exemption

(1) In general

This section shall not apply to any controlled company.

(2) Definition

For purposes of this section, the term "controlled company" means an issuer—

(A) that is listed on a national securities exchange or by a national securities association; and

(B) that holds an election for the board of directors of the issuer in which more than 50 percent of the voting power is held by an individual, a group, or another issuer.

(June 6, 1934, ch. 404, title I, §10C, as added Pub. L. 111–203, title IX, §952(a), July 21, 2010, 124 Stat. 1900.)

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (a)(1), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a–51 of this title and Tables.

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of Title 12, Banks and Banking.

§78j–4. Recovery of erroneously awarded compensation policy

(a) Listing standards

The Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that does not comply with the requirements of this section.

(b) Recovery of funds

The rules of the Commission under subsection (a) shall require each issuer to develop and implement a policy providing—

(1) for disclosure of the policy of the issuer on incentive-based compensation that is based on financial information required to be reported under the securities laws; and

(2) that, in the event that the issuer is required to prepare an accounting restatement due to the material noncompliance of the issuer with any financial reporting requirement under the securities laws, the issuer will recover from any current or former executive officer of the issuer who received incentive-based compensation (including stock options awarded as compensation) during the 3-year period preceding the date on which the issuer is required to prepare an accounting restatement, based on the erroneous data, in [1] excess of what would have been paid to the executive officer under the accounting restatement.

(June 6, 1934, ch. 404, title I, §10D, as added Pub. L. 111–203, title IX, §954, July 21, 2010, 124 Stat. 1904.)

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of Title 12, Banks and Banking.

[1] So in original. Probably should be "compensation in".

§78k. Trading by members of exchanges, brokers, and dealers

(a) Trading for own account or account of associated person; exceptions

(1) It shall be unlawful for any member of a national securities exchange to effect any transaction on such exchange for its own account, the account of an associated person, or an account with respect to which it or an associated person thereof exercises investment discretion: *Provided, however*, That this paragraph shall not make unlawful—

(A) any transaction by a dealer acting in the capacity of market maker;

(B) any transaction for the account of an odd-lot dealer in a security in which he is so registered;

(C) any stabilizing transaction effected in compliance with rules under section 78j(b) of this title to facilitate a distribution of a security in which the member effecting such transaction is participating;

(D) any bona fide arbitrage transaction, any bona fide hedge transaction involving a long or short position in an equity security and a long or short position in a security entitling the holder to acquire or sell such equity security, or any risk arbitrage transaction in connection with a merger, acquisition, tender offer, or similar transaction involving a recapitalization;

(E) any transaction for the account of a natural person, the estate of a natural person, or a trust created by a natural person for himself or another natural person;

(F) any transaction to offset a transaction made in error;

(G) any other transaction for a member's own account provided that (i) such member is primarily engaged in the business of underwriting and distributing securities issued by other persons, selling securities to customers, and acting as broker, or any one or more of such activities, and whose gross income normally is derived principally from such business and related activities and (ii) such transaction is effected in compliance with rules of the Commission which, as a minimum, assure that the transaction is not inconsistent with the maintenance of fair and orderly markets and yields priority, parity, and precedence in execution to orders for the account of persons who are not members or associated with members of the exchange;

(H) any transaction for an account with respect to which such member or an associated person thereof exercises investment discretion if such member—

(i) has obtained, from the person or persons authorized to transact business for the account, express authorization for such member or associated person to effect such transactions prior to engaging in the practice of effecting such transactions;

(ii) furnishes the person or persons authorized to transact business for the account with a statement at least annually disclosing the aggregate compensation received by the exchange member in effecting such transactions; and

(iii) complies with any rules the Commission has prescribed with respect to the requirements of clauses (i) and (ii); and

(I) any other transaction of a kind which the Commission, by rule, determines is consistent with the purposes of this paragraph, the protection of investors, and the maintenance of fair and orderly markets.

(2) The Commission, by rule, as it deems necessary or appropriate in the public interest and for the protection of investors, to maintain fair and orderly markets, or to assure equal regulation of exchange markets and markets occurring otherwise than on an exchange, may regulate or prohibit:

(A) transactions on a national securities exchange not unlawful under paragraph (1) of this subsection effected by any member thereof for its own account (unless such member is acting in the capacity of market maker or odd-lot dealer), the account of an associated person, or an account with respect to which such member or an associated person thereof exercises investment discretion;

(B) transactions otherwise than on a national securities exchange effected by use of the mails or any means or instrumentality of interstate commerce by any member of a national securities exchange, broker, or dealer for the account of such member, broker, or dealer (unless such

member, broker, or dealer is acting in the capacity of a market maker) [1] the account of an associated person, or an account with respect to which such member, broker, or dealer or associated person thereof exercises investment discretion; and

(C) transactions on a national securities exchange effected by any broker or dealer not a member thereof for the account of such broker or dealer (unless such broker or dealer is acting in the capacity of market maker), the account of an associated person, or an account with respect to which such broker or dealer or associated person thereof exercises investment discretion.

(3) The provisions of paragraph (1) of this subsection insofar as they apply to transactions on a national securities exchange effected by a member thereof who was a member on February 1, 1978 shall not become effective until February 1, 1979. Nothing in this paragraph shall be construed to impair or limit the authority of the Commission to regulate or prohibit such transactions prior to February 1, 1979, pursuant to paragraph (2) of this subsection.

(b) Registration of members as odd-lot dealers and specialists

When not in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest and for the protection of investors, to maintain fair and orderly markets, or to remove impediments to and perfect the mechanism of a national market system, the rules of a national securities exchange may permit (1) a member to be registered as an odd-lot dealer and as such to buy and sell for his own account so far as may be reasonably necessary to carry on such odd-lot transactions, and (2) a member to be registered as a specialist. Under the rules and regulations of the Commission a specialist may be permitted to act as a broker and dealer or limited to acting as a broker or dealer. It shall be unlawful for a specialist or an official of the exchange to disclose information in regard to orders placed with such specialist which is not available to all members of the exchange, to any person other than an official of the exchange, a representative of the Commission, or a specialist who may be acting for such specialist: *Provided, however*, That the Commission, by rule, may require disclosure to all members of the exchange of all orders placed with specialists, under such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors. It shall also be unlawful for a specialist permitted to act as a broker and dealer to effect on the exchange as broker any transaction except upon a market or limited price order.

(c) Exemptions from provisions of section and rules and regulations

If because of the limited volume of transactions effected on an exchange, it is in the opinion of the Commission impracticable and not necessary or appropriate in the public interest or for the protection of investors to apply any of the foregoing provisions of this section or the rules and regulations thereunder, the Commission shall have power, upon application of the exchange and on a showing that the rules of such exchange are otherwise adequate for the protection of investors, to exempt such exchange and its members from any such provision or rules and regulations.

(d) Prohibition on extension of credit by broker-dealer

It shall be unlawful for a member of a national securities exchange who is both a dealer and a broker, or for any person who both as a broker and a dealer transacts a business in securities through the medium of a member or otherwise, to effect through the use of any facility of a national securities exchange or of the mails or of any means or instrumentality of interstate commerce, or otherwise in the case of a member, (1) any transaction in connection with which, directly or indirectly, he extends or maintains or arranges for the extension or maintenance of credit to or for a customer on any security (other than an exempted security) which was a part of a new issue in the distribution of which he participated as a member of a selling syndicate or group within thirty days prior to such transaction: *Provided*, That credit shall not be deemed extended by reason of a bona fide delayed delivery of (i) any such security against full payment of the entire purchase price thereof upon such delivery within thirty-five days after such purchase or (ii) any mortgage related security or any small business related security against full payment of the entire purchase price thereof upon such delivery within one hundred and eighty days after such purchase, or within such shorter period

as the Commission may prescribe by rule or regulation, or (2) any transaction with respect to any security (other than an exempted security) unless, if the transaction is with a customer, he discloses to such customer in writing at or before the completion of the transaction whether he is acting as a dealer for his own account, as a broker for such customer, or as a broker for some other person.

(June 6, 1934, ch. 404, title I, §11, 48 Stat. 891; Aug. 10, 1954, ch. 667, title II, §201, 68 Stat. 686; Pub. L. 94–29, §6, June 4, 1975, 89 Stat. 110; Pub. L. 95–283, §18(a), May 21, 1978, 92 Stat. 275; Pub. L. 98–440, title I, §104, Oct. 3, 1984, 98 Stat. 1690; Pub. L. 103–68, §1, Aug. 11, 1993, 107 Stat. 691; Pub. L. 103–325, title II, §205, Sept. 23, 1994, 108 Stat. 2199.)

AMENDMENTS

1994—Subsec. (d)(1)(ii). Pub. L. 103–325 inserted "or any small business related security" after "mortgage related security".

1993—Subsec. (a)(1)(E). Pub. L. 103–68, §1(1), struck out "(other than an investment company)" after "trust".

Subsec. (a)(1)(H), (I). Pub. L. 103–68, §1(2)–(4), added subpar. (H) and redesignated former subpar. (H) as (I).

1984—Subsec. (d)(1). Pub. L. 98–440 designated existing provisions of par. (1) as cl. (i) and added cl. (ii).

1978—Subsec. (a)(3). Pub. L. 95–283 substituted "February 1, 1978" for "May 1, 1975", and "February 1, 1979" for "May 1, 1978" in two places.

1975—Subsec. (a). Pub. L. 94–29, §6(2), prohibited stock exchange members from effecting any transaction on the exchange for its own account, the account of an associated person, or an account with respect to which the member or an associated person exercises investment discretion, exempted from that prohibition 8 types of transactions, and authorized the Commission, as it deems necessary or appropriate in the public interest or for the protection of investors, to regulate or prohibit the specifically exempted transactions, certain transactions otherwise that on a national securities exchange, and transactions on a national securities exchange effected by a broker or dealer not a member thereof for the account of such broker or dealer, the account of an associated person, or an account with respect to which such broker, dealer, or associated person exercises investment discretion.

Subsec. (b). Pub. L. 94–29, §6(2), struck out requirement that specialist's dealings be limited to those transactions reasonably necessary to permit him to maintain a fair and orderly market, expanded the Commission's rulemaking authority in the area of specialist's dealings so that the Commission may define responsibilities and restrict activities of specialists in response to changing conditions in the market, expanded the standards to be followed by the Commission in exercising its rulemaking power to include the maintenance of fair and orderly markets and the removal of impediments to and the perfection of the mechanism of a national market system, and inserted specific reference to the Commission's power to limit the activity of a specialist to that of a broker or dealer.

Subsec. (e). Pub. L. 94–29, §6(3), struck out subsec. (e) which directed the Commission to make a study, to be submitted on or before Jan. 3, 1936, of the feasibility of segregating the functions of dealer and broker.

1954—Subsec. (d). Act Aug. 10, 1954, reduced from 6 months to 30 days the prohibition period against extending credit to purchasers of a new issue by dealers.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–283, §18(b), May 21, 1978, 92 Stat. 275, provided that: "The amendment made by subsection (a) of this section [amending this section] shall be effective as of May 1, 1978."

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

[1] *So in original. Probably should be followed by a comma.*

§78k–1. National market system for securities; securities information processors

(a) Congressional findings; facilitating establishment of national market system for securities; designation of qualified securities

(1) The Congress finds that—

(A) The securities markets are an important national asset which must be preserved and strengthened.

(B) New data processing and communications techniques create the opportunity for more efficient and effective market operations.

(C) It is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure—

(i) economically efficient execution of securities transactions;

(ii) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets;

(iii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities;

(iv) the practicability of brokers executing investors' orders in the best market; and

(v) an opportunity, consistent with the provisions of clauses (i) and (iv) of this subparagraph, for investors' orders to be executed without the participation of a dealer.

(D) The linking of all markets for qualified securities through communication and data processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to best execution of such orders.

(2) The Commission is directed, therefore, having due regard for the public interest, the protection of investors, and the maintenance of fair and orderly markets, to use its authority under this chapter to facilitate the establishment of a national market system for securities (which may include subsystems for particular types of securities with unique trading characteristics) in accordance with the findings and to carry out the objectives set forth in paragraph (1) of this subsection. The Commission, by rule, shall designate the securities or classes of securities qualified for trading in the national market system from among securities other than exempted securities. (Securities or classes of securities so designated hereinafter [1] in this section referred to as "qualified securities".)

(3) The Commission is authorized in furtherance of the directive in paragraph (2) of this subsection—

(A) to create one or more advisory committees pursuant to the Federal Advisory Committee Act (which shall be in addition to the National Market Advisory Board established pursuant to subsection (d) of this section) and to employ one or more outside experts;

(B) by rule or order, to authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority under this chapter in planning, developing, operating, or regulating a national market system (or a subsystem thereof) or one or more facilities thereof; and

(C) to conduct studies and make recommendations to the Congress from time to time as to the possible need for modifications of the scheme of self-regulation provided for in this chapter so as to adapt it to a national market system.

(b) Securities information processors; registration; withdrawal of registration; access to services; censure; suspension or revocation of registration

(1) Except as otherwise provided in this section, it shall be unlawful for any securities information processor unless registered in accordance with this subsection, directly or indirectly, to make use of

the mails or any means or instrumentality of interstate commerce to perform the functions of a securities information processor. The Commission, by rule or order, upon its own motion or upon application, may conditionally or unconditionally exempt any securities information processor or class of securities information processors or security or class of securities from any provision of this section or the rules or regulations thereunder, if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of this section, including the maintenance of fair and orderly markets in securities and the removal of impediments to and perfection of the mechanism of a national market system: *Provided, however*, That a securities information processor not acting as the exclusive processor of any information with respect to quotations for or transactions in securities is exempt from the requirement to register in accordance with this subsection unless the Commission, by rule or order, finds that the registration of such securities information processor is necessary or appropriate in the public interest, for the protection of investors, or for the achievement of the purposes of this section.

(2) A securities information processor may be registered by filing with the Commission an application for registration in such form as the Commission, by rule, may prescribe containing the address of its principal office, or offices, the names of the securities and markets for which it is then acting and for which it proposes to act as a securities information processor, and such other information and documents as the Commission, by rule, may prescribe with regard to performance capability, standards and procedures for the collection, processing, distribution, and publication of information with respect to quotations for and transactions in securities, personnel qualifications, financial condition, and such other matters as the Commission determines to be germane to the provisions of this chapter and the rules and regulations thereunder, or necessary or appropriate in furtherance of the purposes of this section.

(3) The Commission shall, upon the filing of an application for registration pursuant to paragraph (2) of this subsection, publish notice of the filing and afford interested persons an opportunity to submit written data, views, and arguments concerning such application. Within ninety days of the date of the publication of such notice (or within such longer period as to which the applicant consents) the Commission shall—

(A) by order grant such registration, or

(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within one hundred eighty days of the date of publication of notice of the filing of the application for registration. At the conclusion of such proceedings the Commission, by order, shall grant or deny such registration. The Commission may extend the time for the conclusion of such proceedings for up to sixty days if it finds good cause for such extension and publishes its reasons for so finding or for such longer periods as to which the applicant consents.

The Commission shall grant the registration of a securities information processor if the Commission finds that such securities information processor is so organized, and has the capacity, to be able to assure the prompt, accurate, and reliable performance of its functions as a securities information processor, comply with the provisions of this chapter and the rules and regulations thereunder, carry out its functions in a manner consistent with the purposes of this section, and, insofar as it is acting as an exclusive processor, operate fairly and efficiently. The Commission shall deny the registration of a securities information processor if the Commission does not make any such finding.

(4) A registered securities information processor may, upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any registered securities information processor is no longer in existence or has ceased to do business in the capacity specified in its application for registration, the Commission, by order, shall cancel the registration.

(5)(A) If any registered securities information processor prohibits or limits any person in respect of access to services offered, directly or indirectly, by such securities information processor, the

registered securities information processor shall promptly file notice thereof with the Commission. The notice shall be in such form and contain such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Any prohibition or limitation on access to services with respect to which a registered securities information processor is required by this paragraph to file notice shall be subject to review by the Commission on its own motion, or upon application by any person aggrieved thereby filed within thirty days after such notice has been filed with the Commission and received by such aggrieved person, or within such longer period as the Commission may determine. Application to the Commission for review, or the institution of review by the Commission on its own motion, shall not operate as a stay of such prohibition or limitation, unless the Commission otherwise orders, summarily or after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of the submission of affidavits or presentation of oral arguments). The Commission shall establish for appropriate cases an expedited procedure for consideration and determination of the question of a stay.

(B) In any proceeding to review the prohibition or limitation of any person in respect of access to services offered by a registered securities information processor, if the Commission finds, after notice and opportunity for hearing, that such prohibition or limitation is consistent with the provisions of this chapter and the rules and regulations thereunder and that such person has not been discriminated against unfairly, the Commission, by order, shall dismiss the proceeding. If the Commission does not make any such finding or if it finds that such prohibition or limitation imposes any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter, the Commission, by order, shall set aside the prohibition or limitation and require the registered securities information processor to permit such person access to services offered by the registered securities information processor.

(6) The Commission, by order, may censure or place limitations upon the activities, functions, or operations of any registered securities information processor or suspend for a period not exceeding twelve months or revoke the registration of any such processor, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest, necessary or appropriate for the protection of investors or to assure the prompt, accurate, or reliable performance of the functions of such securities information processor, and that such securities information processor has violated or is unable to comply with any provision of this chapter or the rules or regulations thereunder.

(c) Rules and regulations covering use of mails or other means or instrumentalities of interstate commerce; reports of purchase or sale of qualified securities; limiting registered securities transactions to national securities exchanges

(1) No self-regulatory organization, member thereof, securities information processor, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to collect, process, distribute, publish, or prepare for distribution or publication any information with respect to quotations for or transactions in any security other than an exempted security, to assist, participate in, or coordinate the distribution or publication of such information, or to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any such security in contravention of such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter to—

(A) prevent the use, distribution, or publication of fraudulent, deceptive, or manipulative information with respect to quotations for and transactions in such securities;

(B) assure the prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in such securities and the fairness and usefulness of the form and content of such information;

(C) assure that all securities information processors may, for purposes of distribution and publication, obtain on fair and reasonable terms such information with respect to quotations for and transactions in such securities as is collected, processed, or prepared for distribution or publication by any exclusive processor of such information acting in such capacity;

(D) assure that all exchange members, brokers, dealers, securities information processors, and,

subject to such limitations as the Commission, by rule, may impose as necessary or appropriate for the protection of investors or maintenance of fair and orderly markets, all other persons may obtain on terms which are not unreasonably discriminatory such information with respect to quotations for and transactions in such securities as is published or distributed by any self-regulatory organization or securities information processor;

(E) assure that all exchange members, brokers, and dealers transmit and direct orders for the purchase or sale of qualified securities in a manner consistent with the establishment and operation of a national market system; and

(F) assure equal regulation of all markets for qualified securities and all exchange members, brokers, and dealers effecting transactions in such securities.

(2) The Commission, by rule, as it deems necessary or appropriate in the public interest or for the protection of investors, may require any person who has effected the purchase or sale of any qualified security by use of the mails or any means or instrumentality of interstate commerce to report such purchase or sale to a registered securities information processor, national securities exchange, or registered securities association and require such processor, exchange, or association to make appropriate distribution and publication of information with respect to such purchase or sale.

(3)(A) The Commission, by rule, is authorized to prohibit brokers and dealers from effecting transactions in securities registered pursuant to section 78l(b) of this title otherwise than on a national securities exchange, if the Commission finds, on the record after notice and opportunity for hearing, that—

(i) as a result of transactions in such securities effected otherwise than on a national securities exchange the fairness or orderliness of the markets for such securities has been affected in a manner contrary to the public interest or the protection of investors;

(ii) no rule of any national securities exchange unreasonably impairs the ability of any dealer to solicit or effect transactions in such securities for his own account or unreasonably restricts competition among dealers in such securities or between dealers acting in the capacity of market makers who are specialists in such securities and such dealers who are not specialists in such securities, and

(iii) the maintenance or restoration of fair and orderly markets in such securities may not be assured through other lawful means under this chapter.

The Commission may conditionally or unconditionally exempt any security or transaction or any class of securities or transactions from any such prohibition if the Commission deems such exemption consistent with the public interest, the protection of investors, and the maintenance of fair and orderly markets.

(B) For the purposes of subparagraph (A) of this paragraph, the ability of a dealer to solicit or effect transactions in securities for his own account shall not be deemed to be unreasonably impaired by any rule of an exchange fairly and reasonably prescribing the sequence in which orders brought to the exchange must be executed or which has been adopted to effect compliance with a rule of the Commission promulgated under this chapter.

(4) The Commission is directed to review any and all rules of national securities exchanges which limit or condition the ability of members to effect transactions in securities otherwise than on such exchanges.

(5) No national securities exchange or registered securities association may limit or condition the participation of any member in any registered clearing agency.

(6) TICK SIZE.—

(A) STUDY AND REPORT.—The Commission shall conduct a study examining the transition to trading and quoting securities in one penny increments, also known as decimalization. The study shall examine the impact that decimalization has had on the number of initial public offerings since its implementation relative to the period before its implementation. The study shall also examine the impact that this change has had on liquidity for small and middle capitalization company securities and whether there is sufficient economic incentive to support trading

operations in these securities in penny increments. Not later than 90 days after April 5, 2012, the Commission shall submit to Congress a report on the findings of the study.

(B) DESIGNATION.—If the Commission determines that the securities of emerging growth companies should be quoted and traded using a minimum increment of greater than $0.01, the Commission may, by rule not later than 180 days after April 5, 2012, designate a minimum increment for the securities of emerging growth companies that is greater than $0.01 but less than $0.10 for use in all quoting and trading of securities in any exchange or other execution venue.

(d) National Market Advisory Board

(1) Not later than one hundred eighty days after June 4, 1975, the Commission shall establish a National Market Advisory Board (hereinafter in this section referred to as the "Advisory Board") to be composed of fifteen members, not all of whom shall be from the same geographical area of the United States, appointed by the Commission for a term specified by the Commission of not less than two years or more than five years. The Advisory Board shall consist of persons associated with brokers and dealers (who shall be a majority) and persons not so associated who are representative of the public and, to the extent feasible, have knowledge of the securities markets of the United States.

(2) It shall be the responsibility of the Advisory Board to formulate and furnish to the Commission its views on significant regulatory proposals made by the Commission or any self-regulatory organization concerning the establishment, operation, and regulation of the markets for securities in the United States.

(3)(A) The Advisory Board shall study and make recommendations to the Commission as to the steps it finds appropriate to facilitate the establishment of a national market system. In so doing, the Advisory Board shall assume the responsibilities of any advisory committee appointed to advise the Commission with respect to the national market system which is in existence at the time of the establishment of the Advisory Board.

(B) The Advisory Board shall study the possible need for modifications of the scheme of self-regulation provided for in this chapter so as to adapt it to a national market system, including the need for the establishment of a new self-regulatory organization (hereinafter in this section referred to as a "National Market Regulatory Board" or "Regulatory Board") to administer the national market system. In the event the Advisory Board determines a National Market Regulatory Board should be established, it shall make recommendations as to:

(i) the point in time at which a Regulatory Board should be established;

(ii) the composition of a Regulatory Board;

(iii) the scope of the authority of a Regulatory Board;

(iv) the relationship of a Regulatory Board to the Commission and to existing self-regulatory organizations; and

(v) the manner in which a Regulatory Board should be funded.

The Advisory Board shall report to the Congress, on or before December 31, 1976, the results of such study and its recommendations, including such recommendations for legislation as it deems appropriate.

(C) In carrying out its responsibilities under this paragraph, the Advisory Board shall consult with self-regulatory organizations, brokers, dealers, securities information processors, issuers, investors, representatives of Government agencies, and other persons interested or likely to participate in the establishment, operation, or regulation of the national market system.

(e) National markets system for security futures products

(1) Consultation and cooperation required

With respect to security futures products, the Commission and the Commodity Futures Trading Commission shall consult and cooperate so that, to the maximum extent practicable, their respective regulatory responsibilities may be fulfilled and the rules and regulations applicable to security futures products may foster a national market system for security futures products if the Commission and the Commodity Futures Trading Commission jointly determine that such a system would be consistent with the congressional findings in subsection (a)(1) of this section. In

accordance with this objective, the Commission shall, at least 15 days prior to the issuance for public comment of any proposed rule or regulation under this section concerning security futures products, consult and request the views of the Commodity Futures Trading Commission.

(2) Application of rules by order of CFTC

No rule adopted pursuant to this section shall be applied to any person with respect to the trading of security futures products on an exchange that is registered under section 78f(g) of this title unless the Commodity Futures Trading Commission has issued an order directing that such rule is applicable to such persons.

(June 6, 1934, ch. 404, title I, §11A, as added Pub. L. 94–29, §7, June 4, 1975, 89 Stat. 111; amended Pub. L. 98–620, title IV, §402(14), Nov. 8, 1984, 98 Stat. 3358; Pub. L. 100–181, title III, §§313, 314, Dec. 4, 1987, 101 Stat. 1256; Pub. L. 106–554, §1(a)(5) [title II, §206(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–430; Pub. L. 112–106, title I, §106(b), Apr. 5, 2012, 126 Stat. 312.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title". See References in Text note set out under section 78a of this title.

The Federal Advisory Committee Act, referred to in subsec. (a)(3)(A), is Pub. L. 92–436, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2012—Subsec. (c)(6). Pub. L. 112–106 added par. (6).

2000—Subsec. (e). Pub. L. 106–554 added subsec. (e).

1987—Subsec. (b)(2). Pub. L. 100–181, §313(1), substituted "transactions" for "transaction".

Subsec. (c)(4). Pub. L. 100–181, §313(2), struck out "On or before the ninetieth day following June 4, 1975, the Commission shall (i) report to the Congress the results of its review, including the effects on competition of such rules, and (ii) commence a proceeding in accordance with the provisions of section 78s(c) of this title to amend any such rule imposing a burden on competition which does not appear to the Commission to be necessary or appropriate in furtherance of the purposes of this chapter. The Commission shall conclude any such proceeding within ninety days of the date of publication of notice of its commencement."

Subsec. (e). Pub. L. 100–181, §314, struck out subsec. (e) which read as follows: "The Commission is authorized and directed to make a study of the extent to which persons excluded from the definitions of 'broker' and 'dealer' maintain accounts on behalf of public customers for buying and selling securities registered under section 78l of this title and whether such exclusions are consistent with the protection of investors and the other purposes of this chapter. The Commission shall report to the Congress, on or before December 31, 1976, the results of its study together with such recommendations for legislation as it deems advisable."

1984—Subsec. (c)(4). Pub. L. 98–620 struck out designation "(A)" after "(4)", and struck out subpar. (B) which provided that review pursuant to section 78y(b) of this title of any rule promulgated by the Commission in accordance with any proceeding commenced pursuant to this paragraph would, except as to causes the court considers of greater importance, take precedence on the docket over all other causes and had to be assigned for consideration at the earliest practicable date and expedited in every way.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE

Section effective June 4, 1975, except for subsec. (b) which is effective 180 days after June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

[1] *So in original. Probably should be "are hereinafter".*

§78*l*. Registration requirements for securities

(a) General requirement of registration

It shall be unlawful for any member, broker, or dealer to effect any transaction in any security (other than an exempted security) on a national securities exchange unless a registration is effective as to such security for such exchange in accordance with the provisions of this chapter and the rules and regulations thereunder. The provisions of this subsection shall not apply in respect of a security futures product traded on a national securities exchange.

(b) Procedure for registration; information

A security may be registered on a national securities exchange by the issuer filing an application with the exchange (and filing with the Commission such duplicate originals thereof as the Commission may require), which application shall contain—

(1) Such information, in such detail, as to the issuer and any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the issuer, and any guarantor of the security as to principal or interest or both, as the Commission may by rules and regulations require, as necessary or appropriate in the public interest or for the protection of investors, in respect of the following:

(A) the organization, financial structure, and nature of the business;

(B) the terms, position, rights, and privileges of the different classes of securities outstanding;

(C) the terms on which their securities are to be, and during the preceding three years have been, offered to the public or otherwise;

(D) the directors, officers, and underwriters, and each security holder of record holding more than 10 per centum of any class of any equity security of the issuer (other than an exempted security), their remuneration and their interests in the securities of, and their material contracts with, the issuer and any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the issuer;

(E) remuneration to others than directors and officers exceeding $20,000 per annum;

(F) bonus and profit-sharing arrangements;

(G) management and service contracts;

(H) options existing or to be created in respect of their securities;

(I) material contracts, not made in the ordinary course of business, which are to be executed in whole or in part at or after the filing of the application or which were made not more than two years before such filing, and every material patent or contract for a material patent right shall be deemed a material contract;

(J) balance sheets for not more than the three preceding fiscal years, certified if required by the rules and regulations of the Commission by a registered public accounting firm;

(K) profit and loss statements for not more than the three preceding fiscal years, certified if required by the rules and regulations of the Commission by a registered public accounting firm; and

(L) any further financial statements which the Commission may deem necessary or appropriate for the protection of investors.

(2) Such copies of articles of incorporation, bylaws, trust indentures, or corresponding documents by whatever name known, underwriting arrangements, and other similar documents of, and voting trust agreements with respect to, the issuer and any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the issuer as the Commission may require as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security.

(3) Such copies of material contracts, referred to in paragraph (1)(I) above, as the Commission

may require as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security.

(c) Additional or alternative information

If in the judgment of the Commission any information required under subsection (b) of this section is inapplicable to any specified class or classes of issuers, the Commission shall require in lieu thereof the submission of such other information of comparable character as it may deem applicable to such class of issuers.

(d) Effective date of registration; withdrawal of registration

If the exchange authorities certify to the Commission that the security has been approved by the exchange for listing and registration, the registration shall become effective thirty days after the receipt of such certification by the Commission or within such shorter period of time as the Commission may determine. A security registered with a national securities exchange may be withdrawn or stricken from listing and registration in accordance with the rules of the exchange and, upon such terms as the Commission may deem necessary to impose for the protection of investors, upon application by the issuer or the exchange to the Commission; whereupon the issuer shall be relieved from further compliance with the provisions of this section and section 78m of this title and any rules or regulations under such sections as to the securities so withdrawn or stricken. An unissued security may be registered only in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(e) Exemption from provisions of section for period ending not later than July 1, 1935

Notwithstanding the foregoing provisions of this section, the Commission may by such rules and regulations as it deems necessary or appropriate in the public interest or for the protection of investors, permit securities listed on any exchange at the time the registration of such exchange as a national securities exchange becomes effective, to be registered for a period ending not later than July 1, 1935, without complying with the provisions of this section.

(f) Unlisted trading privileges for security originally listed on another national exchange

(1)(A) Notwithstanding the preceding subsections of this section, any national securities exchange, in accordance with the requirements of this subsection and the rules hereunder, may extend unlisted trading privileges to—

(i) any security that is listed and registered on a national securities exchange, subject to subparagraph (B); and

(ii) any security that is otherwise registered pursuant to this section, or that would be required to be so registered except for the exemption from registration provided in subparagraph (B) or (G) of subsection (g)(2) of this section, subject to subparagraph (E) of this paragraph.

(B) A national securities exchange may not extend unlisted trading privileges to a security described in subparagraph (A)(i) during such interval, if any, after the commencement of an initial public offering of such security, as is or may be required pursuant to subparagraph (C).

(C) Not later than 180 days after October 22, 1994, the Commission shall prescribe, by rule or regulation, the duration of the interval referred to in subparagraph (B), if any, as the Commission determines to be necessary or appropriate for the maintenance of fair and orderly markets, the protection of investors and the public interest, or otherwise in furtherance of the purposes of this chapter. Until the earlier of the effective date of such rule or regulation or 240 days after October 22, 1994, such interval shall begin at the opening of trading on the day on which such security commences trading on the national securities exchange with which such security is registered and end at the conclusion of the next day of trading.

(D) The Commission may prescribe, by rule or regulation such additional procedures or requirements for extending unlisted trading privileges to any security as the Commission deems necessary or appropriate for the maintenance of fair and orderly markets, the protection of investors and the public interest, or otherwise in furtherance of the purposes of this chapter.

(E) No extension of unlisted trading privileges to securities described in subparagraph (A)(ii) may occur except pursuant to a rule, regulation, or order of the Commission approving such extension or extensions. In promulgating such rule or regulation or in issuing such order, the Commission—

(i) shall find that such extension or extensions of unlisted trading privileges is consistent with the maintenance of fair and orderly markets, the protection of investors and the public interest, and otherwise in furtherance of the purposes of this chapter;

(ii) shall take account of the public trading activity in such securities, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system; and

(iii) shall not permit a national securities exchange to extend unlisted trading privileges to such securities if any rule of such national securities exchange would unreasonably impair the ability of a dealer to solicit or effect transactions in such securities for its own account, or would unreasonably restrict competition among dealers in such securities or between such dealers acting in the capacity of market makers who are specialists and such dealers who are not specialists.

(F) An exchange may continue to extend unlisted trading privileges in accordance with this paragraph only if the exchange and the subject security continue to satisfy the requirements for eligibility under this paragraph, including any rules and regulations issued by the Commission pursuant to this paragraph, except that unlisted trading privileges may continue with regard to securities which had been admitted on such exchange prior to July 1, 1964, notwithstanding the failure to satisfy such requirements. If unlisted trading privileges in a security are discontinued pursuant to this subparagraph, the exchange shall cease trading in that security, unless the exchange and the subject security thereafter satisfy the requirements of this paragraph and the rules issued hereunder.

(G) For purposes of this paragraph—

(i) a security is the subject of an initial public offering if—

(I) the offering of the subject security is registered under the Securities Act of 1933 [15 U.S.C. 77a et seq.]; and

(II) the issuer of the security, immediately prior to filing the registration statement with respect to the offering, was not subject to the reporting requirements of section 78m or 78o(d) of this title; and

(ii) an initial public offering of such security commences at the opening of trading on the day on which such security commences trading on the national securities exchange with which such security is registered.

(2)(A) At any time within 60 days of commencement of trading on an exchange of a security pursuant to unlisted trading privileges, the Commission may summarily suspend such unlisted trading privileges on the exchange. Such suspension shall not be reviewable under section 78y of this title and shall not be deemed to be a final agency action for purposes of section 704 of title 5. Upon such suspension—

(i) the exchange shall cease trading in the security by the close of business on the date of such suspension, or at such time as the Commission may prescribe by rule or order for the maintenance of fair and orderly markets, the protection of investors and the public interest, or otherwise in furtherance of the purposes of this chapter; and

(ii) if the exchange seeks to extend unlisted trading privileges to the security, the exchange shall file an application to reinstate its ability to do so with the Commission pursuant to such procedures as the Commission may prescribe by rule or order for the maintenance of fair and orderly markets, the protection of investors and the public interest, or otherwise in furtherance of the purposes of this chapter.

(B) A suspension under subparagraph (A) shall remain in effect until the Commission, by order,

grants approval of an application to reinstate, as described in subparagraph (A)(ii).

(C) A suspension under subparagraph (A) shall not affect the validity or force of an extension of unlisted trading privileges in effect prior to such suspension.

(D) The Commission shall not approve an application by a national securities exchange to reinstate its ability to extend unlisted trading privileges to a security unless the Commission finds, after notice and opportunity for hearing, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets, the protection of investors and the public interest, and otherwise in furtherance of the purposes of this chapter. If the application is made to reinstate unlisted trading privileges to a security described in paragraph (1)(A)(ii), the Commission—

(i) shall take account of the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such a security, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system; and

(ii) shall not grant any such application if any rule of the national securities exchange making application under this subsection would unreasonably impair the ability of a dealer to solicit or effect transactions in such security for its own account, or would unreasonably restrict competition among dealers in such security or between such dealers acting in the capacity of marketmakers who are specialists and such dealers who are not specialists.

(3) Notwithstanding paragraph (2), the Commission shall by rules and regulations suspend unlisted trading privileges in whole or in part for any or all classes of securities for a period not exceeding twelve months, if it deems such suspension necessary or appropriate in the public interest or for the protection of investors or to prevent evasion of the purposes of this chapter.

(4) On the application of the issuer of any security for which unlisted trading privileges on any exchange have been continued or extended pursuant to this subsection, or of any broker or dealer who makes or creates a market for such security, or of any other person having a bona fide interest in the question of termination or suspension of such unlisted trading privileges, or on its own motion, the Commission shall by order terminate, or suspend for a period not exceeding twelve months, such unlisted trading privileges for such security if the Commission finds, after appropriate notice and opportunity for hearing, that such termination or suspension is necessary or appropriate in the public interest or for the protection of investors.

(5) In any proceeding under this subsection in which appropriate notice and opportunity for hearing are required, notice of not less than ten days to the applicant in such proceeding, to the issuer of the security involved, to the exchange which is seeking to continue or extend or has continued or extended unlisted trading privileges for such security, and to the exchange, if any, on which such security is listed and registered, shall be deemed adequate notice, and any broker or dealer who makes or creates a market for such security, and any other person having a bona fide interest in such proceeding, shall upon application be entitled to be heard.

(6) Any security for which unlisted trading privileges are continued or extended pursuant to this subsection shall be deemed to be registered on a national securities exchange within the meaning of this chapter. The powers and duties of the Commission under this chapter shall be applicable to the rules of an exchange in respect of any such security. The Commission may, by such rules and regulations as it deems necessary or appropriate in the public interest or for the protection of investors, either unconditionally or upon specified terms and conditions, or for stated periods, exempt such securities from the operation of any provision of section 78m, 78n, or 78p of this title.

(g) Registration of securities by issuer; exemptions

(1) Every issuer which is engaged in interstate commerce, or in a business affecting interstate commerce, or whose securities are traded by use of the mails or any means or instrumentality of interstate commerce shall—

(A) within 120 days after the last day of its first fiscal year ended on which the issuer has total assets exceeding $10,000,000 and a class of equity security (other than an exempted security) held of record by either—

(i) 2,000 persons, or

(ii) 500 persons who are not accredited investors (as such term is defined by the Commission), and

(B) in the case of an issuer that is a bank or a bank holding company, as such term is defined in section 1841 of title 12, not later than 120 days after the last day of its first fiscal year ended after the effective date of this subsection, on which the issuer has total assets exceeding $10,000,000 and a class of equity security (other than an exempted security) held of record by 2,000 or more persons,

register such security by filing with the Commission a registration statement (and such copies thereof as the Commission may require) with respect to such security containing such information and documents as the Commission may specify comparable to that which is required in an application to register a security pursuant to subsection (b) of this section. Each such registration statement shall become effective sixty days after filing with the Commission or within such shorter period as the Commission may direct. Until such registration statement becomes effective it shall not be deemed filed for the purposes of section 78r of this title. Any issuer may register any class of equity security not required to be registered by filing a registration statement pursuant to the provisions of this paragraph. The Commission is authorized to extend the date upon which any issuer or class of issuers is required to register a security pursuant to the provisions of this paragraph.

(2) The provisions of this subsection shall not apply in respect of—

(A) any security listed and registered on a national securities exchange.

(B) any security issued by an investment company registered pursuant to section 80a–8 of this title.

(C) any security, other than permanent stock, guaranty stock, permanent reserve stock, or any similar certificate evidencing nonwithdrawable capital, issued by a savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, which is supervised and examined by State or Federal authority having supervision over any such institution.

(D) any security of an issuer organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any private shareholder or individual; or any security of a fund that is excluded from the definition of an investment company under section 80a–3(c)(10)(B) of this title.

(E) any security of an issuer which is a "cooperative association" as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended [12 U.S.C. 1141 et seq.], or a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined.

(F) any security issued by a mutual or cooperative organization which supplies a commodity or service primarily for the benefit of its members and operates not for pecuniary profit, but only if the security is part of a class issuable only to persons who purchase commodities or services from the issuer, the security is transferable only to a successor in interest or occupancy of premises serviced or to be served by the issuer, and no dividends are payable to the holder of the security.

(G) any security issued by an insurance company if all of the following conditions are met:

(i) Such insurance company is required to and does file an annual statement with the Commissioner of Insurance (or other officer or agency performing a similar function) of its domiciliary State, and such annual statement conforms to that prescribed by the National Association of Insurance Commissioners or in the determination of such State commissioner, officer or agency substantially conforms to that so prescribed.

(ii) Such insurance company is subject to regulation by its domiciliary State of proxies, consents, or authorizations in respect of securities issued by such company and such regulation conforms to that prescribed by the National Association of Insurance Commissioners.

(iii) After July 1, 1966, the purchase and sales of securities issued by such insurance

company by beneficial owners, directors, or officers of such company are subject to regulation (including reporting) by its domiciliary State substantially in the manner provided in section 78p of this title.

(H) any interest or participation in any collective trust funds maintained by a bank or in a separate account maintained by an insurance company which interest or participation is issued in connection with (i) a stock-bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of title 26, (ii) an annuity plan which meets the requirements for deduction of the employer's contribution under section 404(a)(2) of title 26, or (iii) a church plan, company, or account that is excluded from the definition of an investment company under section 80a–3(c)(14) of this title.

(3) The Commission may by rules or regulations or, on its own motion, after notice and opportunity for hearing, by order, exempt from this subsection any security of a foreign issuer, including any certificate of deposit for such a security, if the Commission finds that such exemption is in the public interest and is consistent with the protection of investors.

(4) Registration of any class of security pursuant to this subsection shall be terminated ninety days, or such shorter period as the Commission may determine, after the issuer files a certification with the Commission that the number of holders of record of such class of security is reduced to less than 300 persons, or, in the case of a bank or a bank holding company, as such term is defined in section 1841 of title 12, 1,200 persons persons.[1] The Commission shall after notice and opportunity for hearing deny termination of registration if it finds that the certification is untrue. Termination of registration shall be deferred pending final determination on the question of denial.

(5) For the purposes of this subsection the term "class" shall include all securities of an issuer which are of substantially similar character and the holders of which enjoy substantially similar rights and privileges. The Commission may for the purpose of this subsection define by rules and regulations the terms "total assets" and "held of record" as it deems necessary or appropriate in the public interest or for the protection of investors in order to prevent circumvention of the provisions of this subsection. For purposes of this subsection, a security futures product shall not be considered a class of equity security of the issuer of the securities underlying the security futures product. For purposes of determining whether an issuer is required to register a security with the Commission pursuant to paragraph (1), the definition of "held of record" shall not include securities held by persons who received the securities pursuant to an employee compensation plan in transactions exempted from the registration requirements of section 5 of the Securities Act of 1933 [15 U.S.C. 77e].

(6) EXCLUSION FOR PERSONS HOLDING CERTAIN SECURITIES.—The Commission shall, by rule, exempt, conditionally or unconditionally, securities acquired pursuant to an offering made under section 4(6) [2] of the Securities Act of 1933 [15 U.S.C. 77d(a)(6)] from the provisions of this subsection.

(h) Exemption by rules and regulations from certain provisions of section

The Commission may by rules and regulations, or upon application of an interested person, by order, after notice and opportunity for hearing, exempt in whole or in part any issuer or class of issuers from the provisions of subsection (g) of this section or from section 78m, 78n, or 78o(d) of this title or may exempt from section 78p of this title any officer, director, or beneficial owner of securities of any issuer, any security of which is required to be registered pursuant to subsection (g) hereof, upon such terms and conditions and for such period as it deems necessary or appropriate, if the Commission finds, by reason of the number of public investors, amount of trading interest in the securities, the nature and extent of the activities of the issuer, income or assets of the issuer, or otherwise, that such action is not inconsistent with the public interest or the protection of investors. The Commission may, for the purposes of any of the above-mentioned sections or subsections of this chapter, classify issuers and prescribe requirements appropriate for each such class.

(i) Securities issued by banks

In respect of any securities issued by banks and savings associations the deposits of which are insured in accordance with the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.], the powers, functions, and duties vested in the Commission to administer and enforce this section and sections 78j–1(m), 78m, 78n(a), 78n(c), 78n(d), 78n(f), and 78p of this title, and sections 7241, 7242, 7243, 7244, 7261(b), 7262, 7264, and 7265 of this title, (1) with respect to national banks and Federal savings associations, the accounts of which are insured by the Federal Deposit Insurance Corporation [3] are vested in the Comptroller of the Currency, (2) with respect to all other member banks of the Federal Reserve System are vested in the Board of Governors of the Federal Reserve System, and (3) with respect to all other insured banks and State savings associations, the accounts of which are insured by the Federal Deposit Insurance Corporation, are vested in the Federal Deposit Insurance Corporation. The Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation shall have the power to make such rules and regulations as may be necessary for the execution of the functions vested in them as provided in this subsection. In carrying out their responsibilities under this subsection, the agencies named in the first sentence of this subsection shall issue substantially similar regulations to regulations and rules issued by the Commission under this section and sections 78j–1(m), 78m, 78n(a), 78n(c), 78n(d), 78n(f), and 78p of this title, and sections 7241, 7242, 7243, 7244, 7261(b), 7262, 7264, and 7265 of this title, unless they find that implementation of substantially similar regulations with respect to insured banks and insured institutions are not necessary or appropriate in the public interest or for protection of investors, and publish such findings, and the detailed reasons therefor, in the Federal Register. Such regulations of the above-named agencies, or the reasons for failure to publish such substantially similar regulations to those of the Commission, shall be published in the Federal Register within 120 days of October 28, 1974, and, thereafter, within 60 days of any changes made by the Commission in its relevant regulations and rules.

(j) Denial, suspension, or revocation of registration; notice and hearing

The Commission is authorized, by order, as it deems necessary or appropriate for the protection of investors to deny, to suspend the effective date of, to suspend for a period not exceeding twelve months, or to revoke the registration of a security, if the Commission finds, on the record after notice and opportunity for hearing, that the issuer, of such security has failed to comply with any provision of this chapter or the rules and regulations thereunder. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security the registration of which has been and is suspended or revoked pursuant to the preceding sentence.

(k) Trading suspensions; emergency authority

(1) Trading suspensions

If in its opinion the public interest and the protection of investors so require, the Commission is authorized by order—

(A) summarily to suspend trading in any security (other than an exempted security) for a period not exceeding 10 business days, and

(B) summarily to suspend all trading on any national securities exchange or otherwise, in securities other than exempted securities, for a period not exceeding 90 calendar days.

The action described in subparagraph (B) shall not take effect unless the Commission notifies the President of its decision and the President notifies the Commission that the President does not disapprove of such decision. If the actions described in subparagraph (A) or (B) involve a security futures product, the Commission shall consult with and consider the views of the Commodity Futures Trading Commission.

(2) Emergency orders

(A) In general

The Commission, in an emergency, may by order summarily take such action to alter,

supplement, suspend, or impose requirements or restrictions with respect to any matter or action subject to regulation by the Commission or a self-regulatory organization under the securities laws, as the Commission determines is necessary in the public interest and for the protection of investors—

(i) to maintain or restore fair and orderly securities markets (other than markets in exempted securities);

(ii) to ensure prompt, accurate, and safe clearance and settlement of transactions in securities (other than exempted securities); or

(iii) to reduce, eliminate, or prevent the substantial disruption by the emergency of—

(I) securities markets (other than markets in exempted securities), investment companies, or any other significant portion or segment of such markets; or

(II) the transmission or processing of securities transactions (other than transactions in exempted securities).

(B) Effective period

An order of the Commission under this paragraph shall continue in effect for the period specified by the Commission, and may be extended. Except as provided in subparagraph (C), an order of the Commission under this paragraph may not continue in effect for more than 10 business days, including extensions.

(C) Extension

An order of the Commission under this paragraph may be extended to continue in effect for more than 10 business days if, at the time of the extension, the Commission finds that the emergency still exists and determines that the continuation of the order beyond 10 business days is necessary in the public interest and for the protection of investors to attain an objective described in clause (i), (ii), or (iii) of subparagraph (A). In no event shall an order of the Commission under this paragraph continue in effect for more than 30 calendar days.

(D) Security futures

If the actions described in subparagraph (A) involve a security futures product, the Commission shall consult with and consider the views of the Commodity Futures Trading Commission.

(E) Exemption

In exercising its authority under this paragraph, the Commission shall not be required to comply with the provisions of—

(i) section 78s(c) of this title; or

(ii) section 553 of title 5.

(3) Termination of emergency actions by President

The President may direct that action taken by the Commission under paragraph (1)(B) or paragraph (2) of this subsection shall not continue in effect.

(4) Compliance with orders

No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security in contravention of an order of the Commission under this subsection unless such order has been stayed, modified, or set aside as provided in paragraph (5) of this subsection or has ceased to be effective upon direction of the President as provided in paragraph (3).

(5) Limitations on review of orders

An order of the Commission pursuant to this subsection shall be subject to review only as provided in section 78y(a) of this title. Review shall be based on an examination of all the information before the Commission at the time such order was issued. The reviewing court shall not enter a stay, writ of mandamus, or similar relief unless the court finds, after notice and hearing

before a panel of the court, that the Commission's action is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(6) Consultation

Prior to taking any action described in paragraph (1)(B), the Commission shall consult with and consider the views of the Secretary of the Treasury, the Board of Governors of the Federal Reserve System, and the Commodity Futures Trading Commission, unless such consultation is impracticable in light of the emergency.

(7) Definition

For purposes of this subsection, the term "emergency" means—

(A) a major market disturbance characterized by or constituting—

(i) sudden and excessive fluctuations of securities prices generally, or a substantial threat thereof, that threaten fair and orderly markets; or

(ii) a substantial disruption of the safe or efficient operation of the national system for clearance and settlement of transactions in securities, or a substantial threat thereof; or

(B) a major disturbance that substantially disrupts, or threatens to substantially disrupt—

(i) the functioning of securities markets, investment companies, or any other significant portion or segment of the securities markets; or

(ii) the transmission or processing of securities transactions.

(l) Issuance of any security in contravention of rules and regulations; application to annuity contracts and variable life policies

It shall be unlawful for an issuer, any class of whose securities is registered pursuant to this section or would be required to be so registered except for the exemption from registration provided by subsection (g)(2)(B) or (g)(2)(G) of this section, by the use of any means or instrumentality of interstate commerce, or of the mails, to issue, either originally or upon transfer, any of such securities in a form or with a format which contravenes such rules and regulations as the Commission may prescribe as necessary or appropriate for the prompt and accurate clearance and settlement of transactions in securities. The provisions of this subsection shall not apply to variable annuity contracts or variable life policies issued by an insurance company or its separate accounts.

(June 6, 1934, ch. 404, title I, §12, 48 Stat. 892; May 27, 1936, ch. 462, §1, 49 Stat. 1375; Aug. 10, 1954, ch. 667, title II, §202, 68 Stat. 686; Pub. L. 88–467, §3, Aug. 20, 1964, 78 Stat. 565; Pub. L. 90–439, §1, July 29, 1968, 82 Stat. 454; Pub. L. 91–547, §28(c), Dec. 14, 1970, 84 Stat. 1435; Pub. L. 93–495, title I, §105(b), Oct. 28, 1974, 88 Stat. 1503; Pub. L. 94–29, §§8, 9, June 4, 1975, 89 Stat. 117, 118; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–181, title III, §314, Dec. 4, 1987, 101 Stat. 1256; Pub. L. 101–73, title VII, §744(u)(2), Aug. 9, 1989, 103 Stat. 441; Pub. L. 101–432, §2, Oct. 16, 1990, 104 Stat. 963; Pub. L. 103–389, §2, Oct. 22, 1994, 108 Stat. 4081; Pub. L. 104–62, §4(d), Dec. 8, 1995, 109 Stat. 685; Pub. L. 106–554, §1(a)(5) [title II, §§206(e), 208(b)(1), (2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–431, 2763A–435; Pub. L. 107–204, §3(b)(4), title II, §205(c)(1), July 30, 2002, 116 Stat. 749, 774; Pub. L. 108–359, §1(c)(2), Oct. 25, 2004, 118 Stat. 1666; Pub. L. 108–386, §8(f)(4), Oct. 30, 2004, 118 Stat. 2232; Pub. L. 108–458, title VII, §7803(b), (c), Dec. 17, 2004, 118 Stat. 3861, 3862; Pub. L. 111–203, title III, §376(2), title IX, §986(a)(2), July 21, 2010, 124 Stat. 1569, 1935; Pub. L. 112–106, title III, §303(a), title V, §§501, 502, title VI, §601(a), Apr. 5, 2012, 126 Stat. 321, 325, 326.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (f), and (j), was in the original "this title". See References in Text note set out under section 78a of this title.

The Securities Act of 1933, referred to in subsec. (f)(1)(G)(i)(I), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The effective date of this subsection, referred to in subsec. (g)(1)(B), probably means the date of enactment of Pub. L. 112–106, which amended subsec. (g) of this section and was approved Apr. 5, 2012.

The Agricultural Marketing Act, approved June 15, 1929, as amended, referred to in subsec. (g)(2)(E), is act June 15, 1929, ch. 24, 46 Stat. 11, which is classified generally to chapter 7A (§1141 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1141j(e) of Title 12 and Tables.

Section 4(6) of the Securities Act of 1933, referred to in subsec. (g)(6), was redesignated section 4(a)(6) of that Act by Pub. L. 112–106, title II, §201(b)(1), (c)(1), Apr. 5, 2012, 126 Stat. 314, and is classified to section 77d(a)(6) of this title.

The Federal Deposit Insurance Act, referred to in subsec. (i), is act Sept. 21, 1950, ch. 967, §2, 64 Stat. 873, which is classified generally to chapter 16 (§1811 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of Title 12 and Tables.

AMENDMENTS

2012—Subsec. (g)(1)(A). Pub. L. 112–106, §501, amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "within one hundred and twenty days after the last day of its first fiscal year ended after July 1, 1964, on which the issuer has total assets exceeding $1,000,000 and a class of equity security (other than an exempted security) held of record by seven hundred and fifty or more persons; and".

Subsec. (g)(1)(B). Pub. L. 112–106, §601(a)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "within one hundred and twenty days after the last day of its first fiscal year ended after two years from July 1, 1964, on which the issuer has total assets exceeding $1,000,000 and a class of equity security (other than an exempted security) held of record by five hundred or more but less than seven hundred and fifty persons,".

Subsec. (g)(4). Pub. L. 112–106, §601(a)(2), substituted "300 persons, or, in the case of a bank or a bank holding company, as such term is defined in section 1841 of title 12, 1,200 persons" for "three hundred".

Subsec. (g)(5). Pub. L. 112–106, §502, which directed that subsec. (g)(5) "as amended by section 302" of Pub. L. 112–106 be amended "in subparagraph (A)" by inserting at end "For purposes of determining whether an issuer is required to register a security with the Commission pursuant to paragraph (1), the definition of 'held of record' shall not include securities held by persons who received the securities pursuant to an employee compensation plan in transactions exempted from the registration requirements of section 5 of the Securities Act of 1933.", was executed by making the insertion at end of par. (5) to reflect the probable intent of Congress. Section 302 of Pub. L. 112–106 did not amend this section, and subsec. (g)(5) does not contain subpars.

Subsec. (g)(6). Pub. L. 112–106, §303(a), added par. (6).

2010—Subsec. (i). Pub. L. 111–203, §376(2)(C), substituted "and the Federal Deposit Insurance Corporation" for "the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision" in second sentence.

Subsec. (i)(1). Pub. L. 111–203, §376(2)(A), inserted "and Federal savings associations, the accounts of which are insured by the Federal Deposit Insurance Corporation" after "national banks".

Subsec. (i)(3), (4). Pub. L. 111–203, §376(2)(B), substituted "and (3) with respect to all other insured banks and State savings associations, the accounts of which are insured by the Federal Deposit Insurance Corporation, are vested in the Federal Deposit Insurance Corporation" for "(3) with respect to all other insured banks are vested in the Federal Deposit Insurance Corporation, and (4) with respect to savings associations the accounts of which are insured by the Federal Deposit Insurance Corporation are vested in the Office of Thrift Supervision".

Subsec. (k)(7). Pub. L. 111–203, §986(a)(2), amended par. (7) generally. Prior to amendment, par. (7) contained similar provisions defining the term "emergency" and provided that, notwithstanding section 78c(a)(47) of this title, the term "securities laws" did not include the Public Utility Holding Company Act of 1935.

2004—Subsec. (g)(2)(H)(iii). Pub. L. 108–359 added cl. (iii).

Subsec. (i)(1). Pub. L. 108–386 struck out "and banks operating under the Code of Law for the District of Columbia" after "national banks".

Subsec. (k)(2). Pub. L. 108–458, §7803(b)(1), amended par. (2) generally. Prior to amendment, par. (2) provided Commission authority to make emergency orders.

Subsec. (k)(6), (7). Pub. L. 108–458, §7803(c), added pars. (6) and (7) and struck out heading and text of former par. (6). Text read as follows: "For purposes of this subsection, the term 'emergency' means a major market disturbance characterized by or constituting—

"(A) sudden and excessive fluctuations of securities prices generally, or a substantial threat thereof, that threaten fair and orderly markets, or

"(B) a substantial disruption of the safe or efficient operation of the national system for clearance and

settlement of securities, or a substantial threat thereof."

2002—Subsec. (b)(1)(J), (K). Pub. L. 107–204, §205(c)(1), substituted "a registered public accounting firm" for "independent public accountants".

Subsec. (i). Pub. L. 107–204, §3(b)(4)(B), substituted "and 78p of this title, and sections 7241, 7242, 7243, 7244, 7261(b), 7262, 7264, and 7265 of this title," for "and 78p of this title," in two places.

Pub. L. 107–204, §3(b)(4)(A), substituted "this section and sections 78j–1(m), 78m" for "this section and sections 78m" in two places.

2000—Subsec. (a). Pub. L. 106–554, §1(a)(5) [title II, §208(b)(1)], inserted at end "The provisions of this subsection shall not apply in respect of a security futures product traded on a national securities exchange."

Subsec. (g)(5). Pub. L. 106–554, §1(a)(5) [title II, §208(b)(2)], inserted at end "For purposes of this subsection, a security futures product shall not be considered a class of equity security of the issuer of the securities underlying the security futures product."

Subsec. (k)(1). Pub. L. 106–554, §1(a)(5) [title II, §206(e)(1)], inserted at end "If the actions described in subparagraph (A) or (B) involve a security futures product, the Commission shall consult with and consider the views of the Commodity Futures Trading Commission."

Subsec. (k)(2)(B). Pub. L. 106–554, §1(a)(5) [title II, §206(e)(2)], inserted after first sentence "If the actions described in subparagraph (A) involve a security futures product, the Commission shall consult with and consider the views of the Commodity Futures Trading Commission."

1995—Subsec. (g)(2)(D). Pub. L. 104–62 inserted before period at end "; or any security of a fund that is excluded from the definition of an investment company under section 80a–3(c)(10)(B) of this title".

1994—Subsec. (f)(1), (2). Pub. L. 103–389, §2(a), added pars. (1) and (2) and struck out former pars. (1) and (2) which related to extension of unlisted trading privileges for securities originally listed on another national exchange and approval process for application for extension of such privileges, respectively.

Subsec. (f)(3). Pub. L. 103–389, §2(b), substituted "Notwithstanding paragraph (2), the Commission" for "The Commission".

1990—Subsec. (k). Pub. L. 101–432 amended subsec. (k) generally. Prior to amendment, subsec. (k) read as follows: "If in its opinion the public interest and the protection of investors so require, the Commission is authorized summarily to suspend trading in any security (other than an exempted security) for a period not exceeding ten days, or with the approval of the President, summarily to suspend all trading on any national securities exchange or otherwise, in securities other than exempted securities, for a period not exceeding ninety days. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security in which trading is so suspended."

1989—Subsec. (i). Pub. L. 101–73, in first sentence, inserted "and savings associations" after "securities issued by banks", struck out "or institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation" before ", the powers, functions, and duties", inserted new cl. (4) and struck out former cl. (4) which read "with respect to institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation are vested in the Federal Home Loan Bank Board", and, in second sentence, substituted "Office of Thrift Supervision" for "Federal Home Loan Bank Board".

1987—Subsec. (m). Pub. L. 100–181 struck out subsec. (m) which read as follows: "The Commission is authorized and directed to make a study and investigation of the practice of recording the ownership of securities in the records of the issuer in other than the name of the beneficial owner of such securities to determine (1) whether such practice is consistent with the purposes of this chapter, with particular reference to subsection (g) of this section and sections 78m, 78n, 78o(d), 78p, and 78q–1 of this title, and (2) whether steps can be taken to facilitate communications between issuers and the beneficial owners of their securities while at the same time retaining the benefits of such practice. The Commission shall report to the Congress its preliminary findings within six months after June 4, 1975, and its final conclusions and recommendations within one year of such date."

1986—Subsec. (g)(2)(H). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

1975—Subsec. (f)(1). Pub. L. 94–29, §8(1), added subpar. (C) and in provisions following subpar. (C), substituted "is based" for "was originally based" and "remains listed and registered on a national securities exchange" for "shall remain listed and registered on any other national securities exchange".

Subsec. (f)(2). Pub. L. 94–29, §8(1), substituted "after notice and opportunity for hearing" for "after appropriate notice and opportunity for hearing" and "consistent with the maintenance of fair and orderly markets and the protection of investors" for "necessary or appropriate in the public interest or for the protection of investors" in existing provisions and added the enumeration of matters to be taken into account

by the Commission in considering an application for the extension of unlisted trading privileges to a security not listed and registered on a national securities exchange.

Subsec. (f)(6). Pub. L. 94–29, §8(2), substituted "this chapter" for "section 78s(b) of this title".

Subsecs. (j) to (m). Pub. L. 94–29, §9, added subsecs. (j) to (m).

1974—Subsec. (i). Pub. L. 93–495 added coverage of institutions insured by the Federal Savings and Loan Insurance Corporation, cl. (4), and provisions authorizing the Federal Home Loan Bank Board to promulgate necessary rules and regulations, and substituted provisions relating to issuance of regulations in order to implement agency responsibility under this subsec. for provisions relating to the binding effect of rules, regulations, forms or orders issued or adopted by the Commission pursuant to this chapter.

1970—Subsec. (g)(2)(H). Pub. L. 91–547 added subpar. (H).

1968—Subsec. (i). Pub. L. 90–439 inserted "78n(d), 78n(f)," after "78n(c)".

1964—Subsec. (b)(1)(I) to (L). Pub. L. 88–467, §3(a)(1), (2), added subpar. (I) and redesignated former subpars. (I) to (K) as (J) to (L), respectively.

Subsec. (b)(3). Pub. L. 88–467, §3(a)(3), added par. (3).

Subsec. (f)(1). Pub. L. 88–467, §3(b), designated first par. as (1), redesignated cl. (1) as cl. (A) and substituted therein "July 1, 1964" for "March 1, 1934", redesignated cl. (2) as cl. (B) and struck out the provision for continuation of unlisted trading privileges, which is now incorporated in concluding sentence, and struck out cl. (3) which permitted a national security exchange to extend unlisted trading privileges to any security in respect to which there was available information substantially equivalent to that available in respect to a security duly listed and registered on a national securities exchange, so long as the registration statement was effective and the reports and data continued to be filed.

Subsec. (f)(2). Pub. L. 88–467, §3(b), designated first sentence of second par. as (2) and substituted therein "finds, after appropriate notice and opportunity for hearing, that the extension" for "finds that the continuation or extension", and struck out second through sixth sentences of such second par. which related as follows: the second sentence, to notice and opportunity for hearing, now incorporated in par. (2); the third sentence, to conditions (respecting sufficiently widespread public distribution and sufficient public trading activity) for approval of application to extend unlisted trading privileges to any security pursuant to former clauses (2) and (3) of subsec. (f); the fourth sentence, to terms and conditions (subjecting issuer, officers, and directors of issuer, and beneficial owners of more than 10 per centum of the securities to duties equivalent to duties if the securities were registered on a national security exchange) for approval of application to extend unlisted trading privileges to any security pursuant to former clause (3) of subsec. (f); the fifth sentence, to requirement for differentiation by national security exchanges between quotations or transactions in listed securities and in securities with unlisted trading privileges, now covered by section 78s(b) of this title; the sixth sentence, to grouping under separate headings of quotations or transactions in listed securities and in securities with unlisted trading privileges, in the publication of quotations or transactions.

Subsec. (f)(3). Pub. L. 88–467, §3(b), designated third par. as (3).

Subsec. (f)(4). Pub. L. 88–467, §3(b), designated second sentence of fourth par. as (4), struck out "by reason of inadequate public distribution of such security in the vicinity of said exchange, or by reason of inadequate public trading activity or of the character of trading therein on said exchange," before "such termination or suspension is necessary", and struck out first sentence of fourth par. which provided for the termination under certain conditions of unlisted trading privileges continued for any security pursuant to former cl. (1) of subsec. (f), now incorporated in par. (1)(A) of subsec. (f).

Subsec. (f)(5), (6). Pub. L. 88–467, §3(b), designated fifth and sixth pars. as (5) and (6).

Subsecs. (g) to (i). Pub. L. 88–467, §3(c)–(e), added subsecs. (g) to (i).

1954—Subsec. (d). Act Aug. 10, 1954, repealed last sentence requiring that rules and regulations limit the registration of unissued security to specified cases.

1936—Subsec. (f). Act May 27, 1936, amended first par. and added subsequent pars.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 986(a)(2) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Amendment by section 376(2) of Pub. L. 111–203 effective on the transfer date, see section 351 of Pub. L. 111–203, set out as a note under section 906 of Title 2, The Congress.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–386 effective Oct. 30, 2004, and, except as otherwise provided, applicable with respect to fiscal year 2005 and each succeeding fiscal year, see sections 8(i) and 9 of Pub. L. 108–386, set out

as notes under section 321 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–62 applicable as defense to any claim in administrative and judicial actions pending on or commenced after Dec. 8, 1995, that any person, security, interest, or participation of type described in Pub. L. 104–62 is subject to the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, or any State statute or regulation preempted as provided in section 80a–3a of this title, except as specifically provided in such statutes, see section 7 of Pub. L. 104–62, set out as a note under section 77c of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–547 effective Dec. 14, 1970, see section 30 of Pub. L. 91–547, set out as a note under section 80a–52 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by section 3(a), (c) of Pub. L. 88–467 effective July 1, 1964, and amendment by section 3(b), (d), (e) of Pub. L. 88–467 effective Aug. 20, 1964, see section 13 of Pub. L. 88–467, set out as a note under section 78c of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

RULEMAKING

Pub. L. 112–106, title III, §303(b), Apr. 5, 2012, 126 Stat. 321, provided that: "The [Securities and Exchange] Commission shall issue a rule to carry out section 12(g)(6) of the Securities Exchange Act of 1934 (15 U.S.C. 78c) [probably should be 15 U.S.C. 78l(g)(6)], as added by this section, not later than 270 days after the date of enactment of this Act [Apr. 5, 2012]."

Pub. L. 112–106, title V, §503, Apr. 5, 2012, 126 Stat. 326, provided that: "The Securities and Exchange Commission shall revise the definition of 'held of record' pursuant to section 12(g)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)(5)) to implement the amendment made by section 502 [amending this section]. The Commission shall also adopt safe harbor provisions that issuers can follow when determining whether holders of their securities received the securities pursuant to an employee compensation plan in transactions that were exempt from the registration requirements of section 5 of the Securities Act of 1933 [15 U.S.C. 77e]."

Pub. L. 112–106, title VI, §602, Apr. 5, 2012, 126 Stat. 327, provided that: "Not later than 1 year after the date of enactment of this Act [Apr. 5, 2012], the Securities and Exchange Commission shall issue final regulations to implement this title [amending this section and section 78o of this title] and the amendments made by this title."

ADDITIONAL DISCLOSURE REQUIREMENTS

Pub. L. 111–203, title IX, §953(b), July 21, 2010, 124 Stat. 1904, as amended by Pub. L. 112–106, title I, §102(a)(3), Apr. 5, 2012, 126 Stat. 309, provided that:

"(1) IN GENERAL.—The Commission shall amend section 229.402 of title 17, Code of Federal Regulations, to require each issuer, other than an emerging growth company, as that term is defined in section 3(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)], to disclose in any filing of the issuer described in section 229.10(a) of title 17, Code of Federal Regulations (or any successor thereto)—

"(A) the median of the annual total compensation of all employees of the issuer, except the chief executive officer (or any equivalent position) of the issuer;

"(B) the annual total compensation of the chief executive officer (or any equivalent position) of the issuer; and

"(C) the ratio of the amount described in subparagraph (A) to the amount described in subparagraph (B).

"(2) TOTAL COMPENSATION.—For purposes of this subsection, the total compensation of an employee of an issuer shall be determined in accordance with section 229.402(c)(2)(x) of title 17, Code of Federal Regulations, as in effect on the day before the date of enactment of this Act [July 21, 2010]."

[For definitions of "Commission" and "issuer" as used in section 953(b) of Pub. L. 111–203, set out above, see section 5301 of Title 12, Banks and Banking.]

[1] *So in original.*

[2] *See References in Text note below.*

[3] *So in original. Probably should be followed by a comma.*

§78*l*–1. Applications for unlisted trading privileges deemed filed under section 78l of this title

Any application to continue unlisted trading privileges for any security heretofore filed by any exchange and approved by the Commission pursuant to clause (1) of subsection (f) of section 78l of this title and rules and regulations thereunder shall be deemed to have been filed and approved pursuant to clause (1) of said subsection (f).

(May 27, 1936, ch. 462, §2, 49 Stat. 1377.)

CODIFICATION

Section was not enacted as a part of the Securities Exchange Act of 1934 which comprises this chapter.

§78m. Periodical and other reports

(a) Reports by issuer of security; contents

Every issuer of a security registered pursuant to section 78l of this title shall file with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security—

(1) such information and documents (and such copies thereof) as the Commission shall require to keep reasonably current the information and documents required to be included in or filed with an application or registration statement filed pursuant to section 78l of this title, except that the Commission may not require the filing of any material contract wholly executed before July 1, 1962.

(2) such annual reports (and such copies thereof), certified if required by the rules and regulations of the Commission by independent public accountants, and such quarterly reports (and such copies thereof), as the Commission may prescribe.

Every issuer of a security registered on a national securities exchange shall also file a duplicate original of such information, documents, and reports with the exchange. In any registration statement, periodic report, or other reports to be filed with the Commission, an emerging growth company need not present selected financial data in accordance with section 229.301 of title 17, Code of Federal Regulations, for any period prior to the earliest audited period presented in connection with its first registration statement that became effective under this chapter or the Securities Act of 1933 [15 U.S.C. 77a et seq.] and, with respect to any such statement or reports, an emerging growth company may not be required to comply with any new or revised financial

accounting standard until such date that a company that is not an issuer (as defined under section 7201 of this title) is required to comply with such new or revised accounting standard, if such standard applies to companies that are not issuers.

(b) Form of report; books, records, and internal accounting; directives

(1) The Commission may prescribe, in regard to reports made pursuant to this chapter, the form or forms in which the required information shall be set forth, the items or details to be shown in the balance sheet and the earnings statement, and the methods to be followed in the preparation of reports, in the appraisal or valuation of assets and liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and nonrecurring income, in the differentiation of investment and operating income, and in the preparation, where the Commission deems it necessary or desirable, of separate and/or consolidated balance sheets or income accounts of any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer; but in the case of the reports of any person whose methods of accounting are prescribed under the provisions of any law of the United States, or any rule or regulation thereunder, the rules and regulations of the Commission with respect to reports shall not be inconsistent with the requirements imposed by such law or rule or regulation in respect of the same subject matter (except that such rules and regulations of the Commission may be inconsistent with such requirements to the extent that the Commission determines that the public interest or the protection of investors so requires).

(2) Every issuer which has a class of securities registered pursuant to section 78l of this title and every issuer which is required to file reports pursuant to section 78o(d) of this title shall—

(A) make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer;

(B) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that—

(i) transactions are executed in accordance with management's general or specific authorization;

(ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets;

(iii) access to assets is permitted only in accordance with management's general or specific authorization; and

(iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences; and

(C) notwithstanding any other provision of law, pay the allocable share of such issuer of a reasonable annual accounting support fee or fees, determined in accordance with section 7219 of this title.

(3)(A) With respect to matters concerning the national security of the United States, no duty or liability under paragraph (2) of this subsection shall be imposed upon any person acting in cooperation with the head of any Federal department or agency responsible for such matters if such act in cooperation with such head of a department or agency was done upon the specific, written directive of the head of such department or agency pursuant to Presidential authority to issue such directives. Each directive issued under this paragraph shall set forth the specific facts and circumstances with respect to which the provisions of this paragraph are to be invoked. Each such directive shall, unless renewed in writing, expire one year after the date of issuance.

(B) Each head of a Federal department or agency of the United States who issues a directive pursuant to this paragraph shall maintain a complete file of all such directives and shall, on October 1 of each year, transmit a summary of matters covered by such directives in force at any time during the previous year to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

(4) No criminal liability shall be imposed for failing to comply with the requirements of paragraph

(2) of this subsection except as provided in paragraph (5) of this subsection.

(5) No person shall knowingly circumvent or knowingly fail to implement a system of internal accounting controls or knowingly falsify any book, record, or account described in paragraph (2).

(6) Where an issuer which has a class of securities registered pursuant to section 78l of this title or an issuer which is required to file reports pursuant to section 78o(d) of this title holds 50 per centum or less of the voting power with respect to a domestic or foreign firm, the provisions of paragraph (2) require only that the issuer proceed in good faith to use its influence, to the extent reasonable under the issuer's circumstances, to cause such domestic or foreign firm to devise and maintain a system of internal accounting controls consistent with paragraph (2). Such circumstances include the relative degree of the issuer's ownership of the domestic or foreign firm and the laws and practices governing the business operations of the country in which such firm is located. An issuer which demonstrates good faith efforts to use such influence shall be conclusively presumed to have complied with the requirements of paragraph (2).

(7) For the purpose of paragraph (2) of this subsection, the terms "reasonable assurances" and "reasonable detail" mean such level of detail and degree of assurance as would satisfy prudent officials in the conduct of their own affairs.

(c) Alternative reports

If in the judgment of the Commission any report required under subsection (a) of this section is inapplicable to any specified class or classes of issuers, the Commission shall require in lieu thereof the submission of such reports of comparable character as it may deem applicable to such class or classes of issuers.

(d) Reports by persons acquiring more than five per centum of certain classes of securities

(1) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is registered pursuant to section 78l of this title, or any equity security of an insurance company which would have been required to be so registered except for the exemption contained in section 78l(g)(2)(G) of this title, or any equity security issued by a closed-end investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.] or any equity security issued by a Native Corporation pursuant to section 1629c(d)(6) of title 43, or otherwise becomes or is deemed to become a beneficial owner of any of the foregoing upon the purchase or sale of a security-based swap that the Commission may define by rule, and is directly or indirectly the beneficial owner of more than 5 per centum of such class shall, within ten days after such acquisition or within such shorter time as the Commission may establish by rule, file with the Commission, a statement containing such of the following information, and such additional information, as the Commission may by rules and regulations, prescribe as necessary or appropriate in the public interest or for the protection of investors—

(A) the background, and identity, residence, and citizenship of, and the nature of such beneficial ownership by, such person and all other persons by whom or on whose behalf the purchases have been or are to be effected;

(B) the source and amount of the funds or other consideration used or to be used in making the purchases, and if any part of the purchase price is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading such security, a description of the transaction and the names of the parties thereto, except that where a source of funds is a loan made in the ordinary course of business by a bank, as defined in section 78c(a)(6) of this title, if the person filing such statement so requests, the name of the bank shall not be made available to the public;

(C) if the purpose of the purchases or prospective purchases is to acquire control of the business of the issuer of the securities, any plans or proposals which such persons may have to liquidate such issuer, to sell its assets to or merge it with any other persons, or to make any other major change in its business or corporate structure;

(D) the number of shares of such security which are beneficially owned, and the number of shares concerning which there is a right to acquire, directly or indirectly, by (i) such person, and (ii) by each associate of such person, giving the background, identity, residence, and citizenship of

each such associate; and

(E) information as to any contracts, arrangements, or understandings with any person with respect to any securities of the issuer, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guaranties of loans, guaranties against loss or guaranties of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements, or understandings have been entered into, and giving the details thereof.

(2) If any material change occurs in the facts set forth in the statement filed with the Commission, an amendment shall be filed with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(3) When two or more persons act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding, or disposing of securities of an issuer, such syndicate or group shall be deemed a "person" for the purposes of this subsection.

(4) In determining, for purposes of this subsection, any percentage of a class of any security, such class shall be deemed to consist of the amount of the outstanding securities of such class, exclusive of any securities of such class held by or for the account of the issuer or a subsidiary of the issuer.

(5) The Commission, by rule or regulation or by order, may permit any person to file in lieu of the statement required by paragraph (1) of this subsection or the rules and regulations thereunder, a notice stating the name of such person, the number of shares of any equity securities subject to paragraph (1) which are owned by him, the date of their acquisition and such other information as the Commission may specify, if it appears to the Commission that such securities were acquired by such person in the ordinary course of his business and were not acquired for the purpose of and do not have the effect of changing or influencing the control of the issuer nor in connection with or as a participant in any transaction having such purpose or effect.

(6) The provisions of this subsection shall not apply to—

(A) any acquisition or offer to acquire securities made or proposed to be made by means of a registration statement under the Securities Act of 1933 [15 U.S.C. 77a et seq.];

(B) any acquisition of the beneficial ownership of a security which, together with all other acquisitions by the same person of securities of the same class during the preceding twelve months, does not exceed 2 per centum of that class;

(C) any acquisition of an equity security by the issuer of such security;

(D) any acquisition or proposed acquisition of a security which the Commission, by rules or regulations or by order, shall exempt from the provisions of this subsection as not entered into for the purpose of, and not having the effect of, changing or influencing the control of the issuer or otherwise as not comprehended within the purposes of this subsection.

(e) Purchase of securities by issuer

(1) It shall be unlawful for an issuer which has a class of equity securities registered pursuant to section 78l of this title, or which is a closed-end investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.], to purchase any equity security issued by it if such purchase is in contravention of such rules and regulations as the Commission, in the public interest or for the protection of investors, may adopt (A) to define acts and practices which are fraudulent, deceptive, or manipulative, and (B) to prescribe means reasonably designed to prevent such acts and practices. Such rules and regulations may require such issuer to provide holders of equity securities of such class with such information relating to the reasons for such purchase, the source of funds, the number of shares to be purchased, the price to be paid for such securities, the method of purchase, and such additional information, as the Commission deems necessary or appropriate in the public interest or for the protection of investors, or which the Commission deems to be material to a determination whether such security should be sold.

(2) For the purpose of this subsection, a purchase by or for the issuer or any person controlling, controlled by, or under common control with the issuer, or a purchase subject to control of the issuer or any such person, shall be deemed to be a purchase by the issuer. The Commission shall have

power to make rules and regulations implementing this paragraph in the public interest and for the protection of investors, including exemptive rules and regulations covering situations in which the Commission deems it unnecessary or inappropriate that a purchase of the type described in this paragraph shall be deemed to be a purchase by the issuer for purposes of some or all of the provisions of paragraph (1) of this subsection.

(3) At the time of filing such statement as the Commission may require by rule pursuant to paragraph (1) of this subsection, the person making the filing shall pay to the Commission a fee at a rate that, subject to paragraph (4), is equal to $92 per $1,000,000 of the value of securities proposed to be purchased. The fee shall be reduced with respect to securities in an amount equal to any fee paid with respect to any securities issued in connection with the proposed transaction under section 6(b) of the Securities Act of 1933 [15 U.S.C. 77f(b)], or the fee paid under that section shall be reduced in an amount equal to the fee paid to the Commission in connection with such transaction under this paragraph.

(4) ANNUAL ADJUSTMENT.—For each fiscal year, the Commission shall by order adjust the rate required by paragraph (3) for such fiscal year to a rate that is equal to the rate (expressed in dollars per million) that is applicable under section 6(b) of the Securities Act of 1933 [15 U.S.C. 77f(b)] for such fiscal year.

(5) FEE COLLECTIONS.—Fees collected pursuant to this subsection for fiscal year 2012 and each fiscal year thereafter shall be deposited and credited as general revenue of the Treasury and shall not be available for obligation.

(6) EFFECTIVE DATE; PUBLICATION.—In exercising its authority under this subsection, the Commission shall not be required to comply with the provisions of section 553 of title 5. An adjusted rate prescribed under paragraph (4) shall be published and take effect in accordance with section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)).

(7) PRO RATA APPLICATION.—The rates per $1,000,000 required by this subsection shall be applied pro rata to amounts and balances of less than $1,000,000.

(f) Reports by institutional investment managers

(1) Every institutional investment manager which uses the mails, or any means or instrumentality of interstate commerce in the course of its business as an institutional investment manager and which exercises investment discretion with respect to accounts holding equity securities of a class described in subsection (d)(1) of this section or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap that the Commission may define by rule, having an aggregate fair market value on the last trading day in any of the preceding twelve months of at least $100,000,000 or such lesser amount (but in no case less than $10,000,000) as the Commission, by rule, may determine, shall file reports with the Commission in such form, for such periods, and at such times after the end of such periods as the Commission, by rule, may prescribe, but in no event shall such reports be filed for periods longer than one year or shorter than one quarter. Such reports shall include for each such equity security held on the last day of the reporting period by accounts (in aggregate or by type as the Commission, by rule, may prescribe) with respect to which the institutional investment manager exercises investment discretion (other than securities held in amounts which the Commission, by rule, determines to be insignificant for purposes of this subsection), the name of the issuer and the title, class, CUSIP number, number of shares or principal amount, and aggregate fair market value of each such security. Such reports may also include for accounts (in aggregate or by type) with respect to which the institutional investment manager exercises investment discretion such of the following information as the Commission, by rule, prescribes—

(A) the name of the issuer and the title, class, CUSIP number, number of shares or principal amount, and aggregate fair market value or cost or amortized cost of each other security (other than an exempted security) held on the last day of the reporting period by such accounts;

(B) the aggregate fair market value or cost or amortized cost of exempted securities (in aggregate or by class) held on the last day of the reporting period by such accounts;

(C) the number of shares of each equity security of a class described in subsection (d)(1) of this section held on the last day of the reporting period by such accounts with respect to which the

institutional investment manager possesses sole or shared authority to exercise the voting rights evidenced by such securities;

(D) the aggregate purchases and aggregate sales during the reporting period of each security (other than an exempted security) effected by or for such accounts; and

(E) with respect to any transaction or series of transactions having a market value of at least $500,000 or such other amount as the Commission, by rule, may determine, effected during the reporting period by or for such accounts in any equity security of a class described in subsection (d)(1) of this section—

(i) the name of the issuer and the title, class, and CUSIP number of the security;

(ii) the number of shares or principal amount of the security involved in the transaction;

(iii) whether the transaction was a purchase or sale;

(iv) the per share price or prices at which the transaction was effected;

(v) the date or dates of the transaction;

(vi) the date or dates of the settlement of the transaction;

(vii) the broker or dealer through whom the transaction was effected;

(viii) the market or markets in which the transaction was effected; and

(ix) such other related information as the Commission, by rule, may prescribe.

(2) The Commission shall prescribe rules providing for the public disclosure of the name of the issuer and the title, class, CUSIP number, aggregate amount of the number of short sales of each security, and any additional information determined by the Commission following the end of the reporting period. At a minimum, such public disclosure shall occur every month.

(3) The Commission, by rule, or order, may exempt, conditionally or unconditionally, any institutional investment manager or security or any class of institutional investment managers or securities from any or all of the provisions of this subsection or the rules thereunder.

(4) The Commission shall make available to the public for a reasonable fee a list of all equity securities of a class described in subsection (d)(1) of this section, updated no less frequently than reports are required to be filed pursuant to paragraph (1) of this subsection. The Commission shall tabulate the information contained in any report filed pursuant to this subsection in a manner which will, in the view of the Commission, maximize the usefulness of the information to other Federal and State authorities and the public. Promptly after the filing of any such report, the Commission shall make the information contained therein conveniently available to the public for a reasonable fee in such form as the Commission, by rule, may prescribe, except that the Commission, as it determines to be necessary or appropriate in the public interest or for the protection of investors, may delay or prevent public disclosure of any such information in accordance with section 552 of title 5. Notwithstanding the preceding sentence, any such information identifying the securities held by the account of a natural person or an estate or trust (other than a business trust or investment company) shall not be disclosed to the public.

(5) In exercising its authority under this subsection, the Commission shall determine (and so state) that its action is necessary or appropriate in the public interest and for the protection of investors or to maintain fair and orderly markets or, in granting an exemption, that its action is consistent with the protection of investors and the purposes of this subsection. In exercising such authority the Commission shall take such steps as are within its power, including consulting with the Comptroller General of the United States, the Director of the Office of Management and Budget, the appropriate regulatory agencies, Federal and State authorities which, directly or indirectly, require reports from institutional investment managers of information substantially similar to that called for by this subsection, national securities exchanges, and registered securities associations, (A) to achieve uniform, centralized reporting of information concerning the securities holdings of and transactions by or for accounts with respect to which institutional investment managers exercise investment discretion, and (B) consistently with the objective set forth in the preceding subparagraph, to avoid unnecessarily duplicative reporting by, and minimize the compliance burden on, institutional investment managers. Federal authorities which, directly or indirectly, require reports from institutional investment managers of information substantially similar to that called for by this

subsection shall cooperate with the Commission in the performance of its responsibilities under the preceding sentence. An institutional investment manager which is a bank, the deposits of which are insured in accordance with the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.], shall file with the appropriate regulatory agency a copy of every report filed with the Commission pursuant to this subsection.

(6)(A) For purposes of this subsection the term "institutional investment manager" includes any person, other than a natural person, investing in or buying and selling securities for its own account, and any person exercising investment discretion with respect to the account of any other person.

(B) The Commission shall adopt such rules as it deems necessary or appropriate to prevent duplicative reporting pursuant to this subsection by two or more institutional investment managers exercising investment discretion with respect to the same amount.[1]

(g) Statement of equity security ownership

(1) Any person who is directly or indirectly the beneficial owner of more than 5 per centum of any security of a class described in subsection (d)(1) of this section or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap that the Commission may define by rule shall file with the Commission a statement setting forth, in such form and at such time as the Commission may, by rule, prescribe—

(A) such person's identity, residence, and citizenship; and

(B) the number and description of the shares in which such person has an interest and the nature of such interest.

(2) If any material change occurs in the facts set forth in the statement filed with the Commission, an amendment shall be filed with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(3) When two or more persons act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding, or disposing of securities of an issuer, such syndicate or group shall be deemed a "person" for the purposes of this subsection.

(4) In determining, for purposes of this subsection, any percentage of a class of any security, such class shall be deemed to consist of the amount of the outstanding securities of such class, exclusive of any securities of such class held by or for the account of the issuer or a subsidiary of the issuer.

(5) In exercising its authority under this subsection, the Commission shall take such steps as it deems necessary or appropriate in the public interest or for the protection of investors (A) to achieve centralized reporting of information regarding ownership, (B) to avoid unnecessarily duplicative reporting by and minimize the compliance burden on persons required to report, and (C) to tabulate and promptly make available the information contained in any report filed pursuant to this subsection in a manner which will, in the view of the Commission, maximize the usefulness of the information to other Federal and State agencies and the public.

(6) The Commission may, by rule or order, exempt, in whole or in part, any person or class of persons from any or all of the reporting requirements of this subsection as it deems necessary or appropriate in the public interest or for the protection of investors.

(h) Large trader reporting

(1) Identification requirements for large traders

For the purpose of monitoring the impact on the securities markets of securities transactions involving a substantial volume or a large fair market value or exercise value and for the purpose of otherwise assisting the Commission in the enforcement of this chapter, each large trader shall—

(A) provide such information to the Commission as the Commission may by rule or regulation prescribe as necessary or appropriate, identifying such large trader and all accounts in or through which such large trader effects such transactions; and

(B) identify, in accordance with such rules or regulations as the Commission may prescribe

as necessary or appropriate, to any registered broker or dealer by or through whom such large trader directly or indirectly effects securities transactions, such large trader and all accounts directly or indirectly maintained with such broker or dealer by such large trader in or through which such transactions are effected.

(2) Recordkeeping and reporting requirements for brokers and dealers

Every registered broker or dealer shall make and keep for prescribed periods such records as the Commission by rule or regulation prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter, with respect to securities transactions that equal or exceed the reporting activity level effected directly or indirectly by or through such registered broker or dealer of or for any person that such broker or dealer knows is a large trader, or any person that such broker or dealer has reason to know is a large trader on the basis of transactions in securities effected by or through such broker or dealer. Such records shall be available for reporting to the Commission, or any self-regulatory organization that the Commission shall designate to receive such reports, on the morning of the day following the day the transactions were effected, and shall be reported to the Commission or a self-regulatory organization designated by the Commission immediately upon request by the Commission or such a self-regulatory organization. Such records and reports shall be in a format and transmitted in a manner prescribed by the Commission (including, but not limited to, machine readable form).

(3) Aggregation rules

The Commission may prescribe rules or regulations governing the manner in which transactions and accounts shall be aggregated for the purpose of this subsection, including aggregation on the basis of common ownership or control.

(4) Examination of broker and dealer records

All records required to be made and kept by registered brokers and dealers pursuant to this subsection with respect to transactions effected by large traders are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission as the Commission deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter.

(5) Factors to be considered in Commission actions

In exercising its authority under this subsection, the Commission shall take into account—

(A) existing reporting systems;

(B) the costs associated with maintaining information with respect to transactions effected by large traders and reporting such information to the Commission or self-regulatory organizations; and

(C) the relationship between the United States and international securities markets.

(6) Exemptions

The Commission, by rule, regulation, or order, consistent with the purposes of this chapter, may exempt any person or class of persons or any transaction or class of transactions, either conditionally or upon specified terms and conditions or for stated periods, from the operation of this subsection, and the rules and regulations thereunder.

(7) Authority of Commission to limit disclosure of information

Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information required to be kept or reported under this subsection. Nothing in this subsection shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency requesting information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552.

(8) Definitions

For purposes of this subsection—

(A) the term "large trader" means every person who, for his own account or an account for which he exercises investment discretion, effects transactions for the purchase or sale of any publicly traded security or securities by use of any means or instrumentality of interstate commerce or of the mails, or of any facility of a national securities exchange, directly or indirectly by or through a registered broker or dealer in an aggregate amount equal to or in excess of the identifying activity level;

(B) the term "publicly traded security" means any equity security (including an option on individual equity securities, and an option on a group or index of such securities) listed, or admitted to unlisted trading privileges, on a national securities exchange, or quoted in an automated interdealer quotation system;

(C) the term "identifying activity level" means transactions in publicly traded securities at or above a level of volume, fair market value, or exercise value as shall be fixed from time to time by the Commission by rule or regulation, specifying the time interval during which such transactions shall be aggregated;

(D) the term "reporting activity level" means transactions in publicly traded securities at or above a level of volume, fair market value, or exercise value as shall be fixed from time to time by the Commission by rule, regulation, or order, specifying the time interval during which such transactions shall be aggregated; and

(E) the term "person" has the meaning given in section 78c(a)(9) of this title and also includes two or more persons acting as a partnership, limited partnership, syndicate, or other group, but does not include a foreign central bank.

(i) Accuracy of financial reports

Each financial report that contains financial statements, and that is required to be prepared in accordance with (or reconciled to) generally accepted accounting principles under this chapter and filed with the Commission shall reflect all material correcting adjustments that have been identified by a registered public accounting firm in accordance with generally accepted accounting principles and the rules and regulations of the Commission.

(j) Off-balance sheet transactions

Not later than 180 days after July 30, 2002, the Commission shall issue final rules providing that each annual and quarterly financial report required to be filed with the Commission shall disclose all material off-balance sheet transactions, arrangements, obligations (including contingent obligations), and other relationships of the issuer with unconsolidated entities or other persons, that may have a material current or future effect on financial condition, changes in financial condition, results of operations, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses.

(k) Prohibition on personal loans to executives

(1) In general

It shall be unlawful for any issuer (as defined in section 7201 of this title), directly or indirectly, including through any subsidiary, to extend or maintain credit, to arrange for the extension of credit, or to renew an extension of credit, in the form of a personal loan to or for any director or executive officer (or equivalent thereof) of that issuer. An extension of credit maintained by the issuer on July 30, 2002, shall not be subject to the provisions of this subsection, provided that there is no material modification to any term of any such extension of credit or any renewal of any such extension of credit on or after July 30, 2002.

(2) Limitation

Paragraph (1) does not preclude any home improvement and manufactured home loans (as that term is defined in section 1464 of title 12), consumer credit (as defined in section 1602 of this title), or any extension of credit under an open end credit plan (as defined in section 1602 of this

title), or a charge card (as defined in section 1637(c)(4)(e) of this title), or any extension of credit by a broker or dealer registered under section 78o of this title to an employee of that broker or dealer to buy, trade, or carry securities, that is permitted under rules or regulations of the Board of Governors of the Federal Reserve System pursuant to section 78g of this title (other than an extension of credit that would be used to purchase the stock of that issuer), that is—

(A) made or provided in the ordinary course of the consumer credit business of such issuer;

(B) of a type that is generally made available by such issuer to the public; and

(C) made by such issuer on market terms, or terms that are no more favorable than those offered by the issuer to the general public for such extensions of credit.

(3) Rule of construction for certain loans

Paragraph (1) does not apply to any loan made or maintained by an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), if the loan is subject to the insider lending restrictions of section 375b of title 12.

(l) Real time issuer disclosures

Each issuer reporting under subsec. (a) of this section or section 78o(d) of this title shall disclose to the public on a rapid and current basis such additional information concerning material changes in the financial condition or operations of the issuer, in plain English, which may include trend and qualitative information and graphic presentations, as the Commission determines, by rule, is necessary or useful for the protection of investors and in the public interest.

(m) Public availability of security-based swap transaction data

(1) In general

(A) Definition of real-time public reporting

In this paragraph, the term "real-time public reporting" means to report data relating to a security-based swap transaction, including price and volume, as soon as technologically practicable after the time at which the security-based swap transaction has been executed.

(B) Purpose

The purpose of this subsection is to authorize the Commission to make security-based swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery.

(C) General rule

The Commission is authorized to provide by rule for the public availability of security-based swap transaction, volume, and pricing data as follows:

(i) With respect to those security-based swaps that are subject to the mandatory clearing requirement described in section 78c–3(a)(1) of this title (including those security-based swaps that are excepted from the requirement pursuant to section 78c–3(g) of this title), the Commission shall require real-time public reporting for such transactions.

(ii) With respect to those security-based swaps that are not subject to the mandatory clearing requirement described in section 78c–3(a)(1) of this title, but are cleared at a registered clearing agency, the Commission shall require real-time public reporting for such transactions.

(iii) With respect to security-based swaps that are not cleared at a registered clearing agency and which are reported to a security-based swap data repository or the Commission under section 78c–3(a)(6) of this title,[2] the Commission shall require real-time public reporting for such transactions, in a manner that does not disclose the business transactions and market positions of any person.

(iv) With respect to security-based swaps that are determined to be required to be cleared under section 78c–3(b) of this title but are not cleared, the Commission shall require real-time public reporting for such transactions.

(D) Registered entities and public reporting

The Commission may require registered entities to publicly disseminate the security-based swap transaction and pricing data required to be reported under this paragraph.

(E) Rulemaking required

With respect to the rule providing for the public availability of transaction and pricing data for security-based swaps described in clauses (i) and (ii) of subparagraph (C), the rule promulgated by the Commission shall contain provisions—

(i) to ensure such information does not identify the participants;

(ii) to specify the criteria for determining what constitutes a large notional security-based swap transaction (block trade) for particular markets and contracts;

(iii) to specify the appropriate time delay for reporting large notional security-based swap transactions (block trades) to the public; and

(iv) that take into account whether the public disclosure will materially reduce market liquidity.

(F) Timeliness of reporting

Parties to a security-based swap (including agents of the parties to a security-based swap) shall be responsible for reporting security-based swap transaction information to the appropriate registered entity in a timely manner as may be prescribed by the Commission.

(G) Reporting of swaps to registered security-based swap data repositories

Each security-based swap (whether cleared or uncleared) shall be reported to a registered security-based swap data repository.

(H) Registration of clearing agencies

A clearing agency may register as a security-based swap data repository.

(2) Semiannual and annual public reporting of aggregate security-based swap data

(A) In general

In accordance with subparagraph (B), the Commission shall issue a written report on a semiannual and annual basis to make available to the public information relating to—

(i) the trading and clearing in the major security-based swap categories; and

(ii) the market participants and developments in new products.

(B) Use; consultation

In preparing a report under subparagraph (A), the Commission shall—

(i) use information from security-based swap data repositories and clearing agencies; and

(ii) consult with the Office of the Comptroller of the Currency, the Bank for International Settlements, and such other regulatory bodies as may be necessary.

(C) Authority of Commission

The Commission may, by rule, regulation, or order, delegate the public reporting responsibilities of the Commission under this paragraph in accordance with such terms and conditions as the Commission determines to be appropriate and in the public interest.

(n) Security-based swap data repositories

(1) Registration requirement

It shall be unlawful for any person, unless registered with the Commission, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a security-based swap data repository.

(2) Inspection and examination

Each registered security-based swap data repository shall be subject to inspection and examination by any representative of the Commission.

(3) Compliance with core principles

(A) In general

To be registered, and maintain registration, as a security-based swap data repository, the security-based swap data repository shall comply with—

(i) the requirements and core principles described in this subsection; and

(ii) any requirement that the Commission may impose by rule or regulation.

(B) Reasonable discretion of security-based swap data repository

Unless otherwise determined by the Commission, by rule or regulation, a security-based swap data repository described in subparagraph (A) shall have reasonable discretion in establishing the manner in which the security-based swap data repository complies with the core principles described in this subsection.

(4) Standard setting

(A) Data identification

(i) In general

In accordance with clause (ii), the Commission shall prescribe standards that specify the data elements for each security-based swap that shall be collected and maintained by each registered security-based swap data repository.

(ii) Requirement

In carrying out clause (i), the Commission shall prescribe consistent data element standards applicable to registered entities and reporting counterparties.

(B) Data collection and maintenance

The Commission shall prescribe data collection and data maintenance standards for security-based swap data repositories.

(C) Comparability

The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on clearing agencies in connection with their clearing of security-based swaps.

(5) Duties

A security-based swap data repository shall—

(A) accept data prescribed by the Commission for each security-based swap under subsection (b);

(B) confirm with both counterparties to the security-based swap the accuracy of the data that was submitted;

(C) maintain the data described in subparagraph (A) in such form, in such manner, and for such period as may be required by the Commission;

(D)(i) provide direct electronic access to the Commission (or any designee of the Commission, including another registered entity); and

(ii) provide the information described in subparagraph (A) in such form and at such frequency as the Commission may require to comply with the public reporting requirements set forth in subsection (m);

(E) at the direction of the Commission, establish automated systems for monitoring, screening, and analyzing security-based swap data;

(F) maintain the privacy of any and all security-based swap transaction information that the security-based swap data repository receives from a security-based swap dealer, counterparty, or any other registered entity; and

(G) on a confidential basis pursuant to section 78x of this title, upon request, and after notifying the Commission of the request, make available all data obtained by the security-based swap data repository, including individual counterparty trade and position data, to—

(i) each appropriate prudential regulator;

(ii) the Financial Stability Oversight Council;

(iii) the Commodity Futures Trading Commission;
(iv) the Department of Justice; and
(v) any other person that the Commission determines to be appropriate, including—
(I) foreign financial supervisors (including foreign futures authorities);
(II) foreign central banks; and
(III) foreign ministries.

(H) CONFIDENTIALITY AND INDEMNIFICATION AGREEMENT.—Before the security-based swap data repository may share information with any entity described in subparagraph (G)—

(i) the security-based swap data repository shall receive a written agreement from each entity stating that the entity shall abide by the confidentiality requirements described in section 78x of this title relating to the information on security-based swap transactions that is provided; and

(ii) each entity shall agree to indemnify the security-based swap data repository and the Commission for any expenses arising from litigation relating to the information provided under section 78x of this title.

(6) Designation of chief compliance officer

(A) In general

Each security-based swap data repository shall designate an individual to serve as a chief compliance officer.

(B) Duties

The chief compliance officer shall—

(i) report directly to the board or to the senior officer of the security-based swap data repository;

(ii) review the compliance of the security-based swap data repository with respect to the requirements and core principles described in this subsection;

(iii) in consultation with the board of the security-based swap data repository, a body performing a function similar to the board of the security-based swap data repository, or the senior officer of the security-based swap data repository, resolve any conflicts of interest that may arise;

(iv) be responsible for administering each policy and procedure that is required to be established pursuant to this section;

(v) ensure compliance with this chapter (including regulations) relating to agreements, contracts, or transactions, including each rule prescribed by the Commission under this section;

(vi) establish procedures for the remediation of noncompliance issues identified by the chief compliance officer through any—

(I) compliance office review;
(II) look-back;
(III) internal or external audit finding;
(IV) self-reported error; or
(V) validated complaint; and

(vii) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

(C) Annual reports

(i) In general

In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

(I) the compliance of the security-based swap data repository of the chief compliance

officer with respect to this chapter (including regulations); and

(II) each policy and procedure of the security-based swap data repository of the chief compliance officer (including the code of ethics and conflict of interest policies of the security-based swap data repository).

(ii) Requirements

A compliance report under clause (i) shall—

(I) accompany each appropriate financial report of the security-based swap data repository that is required to be furnished to the Commission pursuant to this section; and

(II) include a certification that, under penalty of law, the compliance report is accurate and complete.

(7) Core principles applicable to security-based swap data repositories

(A) Antitrust considerations

Unless necessary or appropriate to achieve the purposes of this chapter, the swap data repository shall not—

(i) adopt any rule or take any action that results in any unreasonable restraint of trade; or

(ii) impose any material anticompetitive burden on the trading, clearing, or reporting of transactions.

(B) Governance arrangements

Each security-based swap data repository shall establish governance arrangements that are transparent—

(i) to fulfill public interest requirements; and

(ii) to support the objectives of the Federal Government, owners, and participants.

(C) Conflicts of interest

Each security-based swap data repository shall—

(i) establish and enforce rules to minimize conflicts of interest in the decision-making process of the security-based swap data repository; and

(ii) establish a process for resolving any conflicts of interest described in clause (i).

(D) Additional duties developed by Commission

(i) In general

The Commission may develop 1 or more additional duties applicable to security-based swap data repositories.

(ii) Consideration of evolving standards

In developing additional duties under subparagraph (A),[3] the Commission may take into consideration any evolving standard of the United States or the international community.

(iii) Additional duties for Commission designees

The Commission shall establish additional duties for any registrant described in subsection (m)(2)(C) in order to minimize conflicts of interest, protect data, ensure compliance, and guarantee the safety and security of the security-based swap data repository.

(8) Required registration for security-based swap data repositories

Any person that is required to be registered as a security-based swap data repository under this subsection shall register with the Commission, regardless of whether that person is also licensed under the Commodity Exchange Act [7 U.S.C. 1 et seq.] as a swap data repository.

(9) Rules

The Commission shall adopt rules governing persons that are registered under this subsection.

(o) Beneficial ownership

For purposes of this section and section 78p of this title, a person shall be deemed to acquire

beneficial ownership of an equity security based on the purchase or sale of a security-based swap, only to the extent that the Commission, by rule, determines after consultation with the prudential regulators and the Secretary of the Treasury, that the purchase or sale of the security-based swap, or class of security-based swap, provides incidents of ownership comparable to direct ownership of the equity security, and that it is necessary to achieve the purposes of this section that the purchase or sale of the security-based swaps, or class of security-based swap, be deemed the acquisition of beneficial ownership of the equity security.

(p) Disclosures relating to conflict minerals originating in the Democratic Republic of the Congo

(1) Regulations

(A) In general

Not later than 270 days after July 21, 2010, the Commission shall promulgate regulations requiring any person described in paragraph (2) to disclose annually, beginning with the person's first full fiscal year that begins after the date of promulgation of such regulations, whether conflict minerals that are necessary as described in paragraph (2)(B), in the year for which such reporting is required, did originate in the Democratic Republic of the Congo or an adjoining country and, in cases in which such conflict minerals did originate in any such country, submit to the Commission a report that includes, with respect to the period covered by the report—

(i) a description of the measures taken by the person to exercise due diligence on the source and chain of custody of such minerals, which measures shall include an independent private sector audit of such report submitted through the Commission that is conducted in accordance with standards established by the Comptroller General of the United States, in accordance with rules promulgated by the Commission, in consultation with the Secretary of State; and

(ii) a description of the products manufactured or contracted to be manufactured that are not DRC conflict free ("DRC conflict free" is defined to mean the products that do not contain minerals that directly or indirectly finance or benefit armed groups in the Democratic Republic of the Congo or an adjoining country), the entity that conducted the independent private sector audit in accordance with clause (i), the facilities used to process the conflict minerals, the country of origin of the conflict minerals, and the efforts to determine the mine or location of origin with the greatest possible specificity.

(B) Certification

The person submitting a report under subparagraph (A) shall certify the audit described in clause (i) of such subparagraph that is included in such report. Such a certified audit shall constitute a critical component of due diligence in establishing the source and chain of custody of such minerals.

(C) Unreliable determination

If a report required to be submitted by a person under subparagraph (A) relies on a determination of an independent private sector audit, as described under subparagraph (A)(i), or other due diligence processes previously determined by the Commission to be unreliable, the report shall not satisfy the requirements of the regulations promulgated under subparagraph (A)(i).

(D) DRC conflict free

For purposes of this paragraph, a product may be labeled as "DRC conflict free" if the product does not contain conflict minerals that directly or indirectly finance or benefit armed groups in the Democratic Republic of the Congo or an adjoining country.

(E) Information available to the public

Each person described under paragraph (2) shall make available to the public on the Internet

website of such person the information disclosed by such person under subparagraph (A).

(2) Person described

A person is described in this paragraph if—

(A) the person is required to file reports with the Commission pursuant to paragraph (1)(A); and

(B) conflict minerals are necessary to the functionality or production of a product manufactured by such person.

(3) Revisions and waivers

The Commission shall revise or temporarily waive the requirements described in paragraph (1) if the President transmits to the Commission a determination that—

(A) such revision or waiver is in the national security interest of the United States and the President includes the reasons therefor; and

(B) establishes a date, not later than 2 years after the initial publication of such exemption, on which such exemption shall expire.

(4) Termination of disclosure requirements

The requirements of paragraph (1) shall terminate on the date on which the President determines and certifies to the appropriate congressional committees, but in no case earlier than the date that is one day after the end of the 5-year period beginning on July 21, 2010, that no armed groups continue to be directly involved and benefitting from commercial activity involving conflict minerals.

(5) Definitions

For purposes of this subsection, the terms "adjoining country", "appropriate congressional committees", "armed group", and "conflict mineral" have the meaning given those terms under section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

(q) Disclosure of payments by resource extraction issuers

(1) Definitions

In this subsection—

(A) the term "commercial development of oil, natural gas, or minerals" includes exploration, extraction, processing, export, and other significant actions relating to oil, natural gas, or minerals, or the acquisition of a license for any such activity, as determined by the Commission;

(B) the term "foreign government" means a foreign government, a department, agency, or instrumentality of a foreign government, or a company owned by a foreign government, as determined by the Commission;

(C) the term "payment"—

(i) means a payment that is—

(I) made to further the commercial development of oil, natural gas, or minerals; and

(II) not de minimis; and

(ii) includes taxes, royalties, fees (including license fees), production entitlements, bonuses, and other material benefits, that the Commission, consistent with the guidelines of the Extractive Industries Transparency Initiative (to the extent practicable), determines are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals;

(D) the term "resource extraction issuer" means an issuer that—

(i) is required to file an annual report with the Commission; and

(ii) engages in the commercial development of oil, natural gas, or minerals;

(E) the term "interactive data format" means an electronic data format in which pieces of information are identified using an interactive data standard; and

(F) the term "interactive data standard" means [4] standardized list of electronic tags that mark information included in the annual report of a resource extraction issuer.

(2) Disclosure

(A) Information required

Not later than 270 days after July 21, 2010, the Commission shall issue final rules that require each resource extraction issuer to include in an annual report of the resource extraction issuer information relating to any payment made by the resource extraction issuer, a subsidiary of the resource extraction issuer, or an entity under the control of the resource extraction issuer to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals, including—

(i) the type and total amount of such payments made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas, or minerals; and

(ii) the type and total amount of such payments made to each government.

(B) Consultation in rulemaking

In issuing rules under subparagraph (A), the Commission may consult with any agency or entity that the Commission determines is relevant.

(C) Interactive data format

The rules issued under subparagraph (A) shall require that the information included in the annual report of a resource extraction issuer be submitted in an interactive data format.

(D) Interactive data standard

(i) In general

The rules issued under subparagraph (A) shall establish an interactive data standard for the information included in the annual report of a resource extraction issuer.

(ii) Electronic tags

The interactive data standard shall include electronic tags that identify, for any payments made by a resource extraction issuer to a foreign government or the Federal Government—

(I) the total amounts of the payments, by category;

(II) the currency used to make the payments;

(III) the financial period in which the payments were made;

(IV) the business segment of the resource extraction issuer that made the payments;

(V) the government that received the payments, and the country in which the government is located;

(VI) the project of the resource extraction issuer to which the payments relate; and

(VII) such other information as the Commission may determine is necessary or appropriate in the public interest or for the protection of investors.

(E) International transparency efforts

To the extent practicable, the rules issued under subparagraph (A) shall support the commitment of the Federal Government to international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals.

(F) Effective date

With respect to each resource extraction issuer, the final rules issued under subparagraph (A) shall take effect on the date on which the resource extraction issuer is required to submit an annual report relating to the fiscal year of the resource extraction issuer that ends not earlier than 1 year after the date on which the Commission issues final rules under subparagraph (A).

(3) Public availability of information

(A) In general

To the extent practicable, the Commission shall make available online, to the public, a

compilation of the information required to be submitted under the rules issued under paragraph (2)(A).

(B) Other information

Nothing in this paragraph shall require the Commission to make available online information other than the information required to be submitted under the rules issued under paragraph (2)(A).

(4) Authorization of appropriations

There are authorized to be appropriated to the Commission such sums as may be necessary to carry out this subsection.

(r) Disclosure of certain activities relating to Iran

(1) In general

Each issuer required to file an annual or quarterly report under subsection (a) shall disclose in that report the information required by paragraph (2) if, during the period covered by the report, the issuer or any affiliate of the issuer—

(A) knowingly engaged in an activity described in subsection (a) or (b) of section 5 of the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note);

(B) knowingly engaged in an activity described in subsection (c)(2) of section 8513 of title 22 or a transaction described in subsection (d)(1) of that section;

(C) knowingly engaged in an activity described in section 8514a(b)(2) of title 22; or

(D) knowingly conducted any transaction or dealing with—

(i) any person the property and interests in property of which are blocked pursuant to Executive Order No. 13224 (66 Fed. Reg. 49079; relating to blocking property and prohibiting transactions with persons who commit, threaten to commit, or support terrorism);

(ii) any person the property and interests in property of which are blocked pursuant to Executive Order No. 13382 (70 Fed. Reg. 38567; relating to blocking of property of weapons of mass destruction proliferators and their supporters); or

(iii) any person or entity identified under section 560.304 of title 31, Code of Federal Regulations (relating to the definition of the Government of Iran) without the specific authorization of a Federal department or agency.

(2) Information required

If an issuer or an affiliate of the issuer has engaged in any activity described in paragraph (1), the issuer shall disclose a detailed description of each such activity, including—

(A) the nature and extent of the activity;

(B) the gross revenues and net profits, if any, attributable to the activity; and

(C) whether the issuer or the affiliate of the issuer (as the case may be) intends to continue the activity.

(3) Notice of disclosures

If an issuer reports under paragraph (1) that the issuer or an affiliate of the issuer has knowingly engaged in any activity described in that paragraph, the issuer shall separately file with the Commission, concurrently with the annual or quarterly report under subsection (a), a notice that the disclosure of that activity has been included in that annual or quarterly report that identifies the issuer and contains the information required by paragraph (2).

(4) Public disclosure of information

Upon receiving a notice under paragraph (3) that an annual or quarterly report includes a disclosure of an activity described in paragraph (1), the Commission shall promptly—

(A) transmit the report to—

(i) the President;

(ii) the Committee on Foreign Affairs and the Committee on Financial Services of the House of Representatives; and

(iii) the Committee on Foreign Relations and the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(B) make the information provided in the disclosure and the notice available to the public by posting the information on the Internet website of the Commission.

(5) Investigations

Upon receiving a report under paragraph (4) that includes a disclosure of an activity described in paragraph (1) (other than an activity described in subparagraph (D)(iii) of that paragraph), the President shall—

(A) initiate an investigation into the possible imposition of sanctions under the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note), section 8513 or 8514a of title 22, an Executive order specified in clause (i) or (ii) of paragraph (1)(D), or any other provision of law relating to the imposition of sanctions with respect to Iran, as applicable; and

(B) not later than 180 days after initiating such an investigation, make a determination with respect to whether sanctions should be imposed with respect to the issuer or the affiliate of the issuer (as the case may be).

(6) Sunset

The provisions of this subsection shall terminate on the date that is 30 days after the date on which the President makes the certification described in section 8551(a) of title 22.

(June 6, 1934, ch. 404, title I, §13, 48 Stat. 894; Pub. L. 88–467, §4, Aug. 20, 1964, 78 Stat. 569; Pub. L. 90–439, §2, July 29, 1968, 82 Stat. 454; Pub. L. 91–567, §§1, 2, Dec. 22, 1970, 84 Stat. 1497; Pub. L. 94–29, §10, June 4, 1975, 89 Stat. 119; Pub. L. 94–210, title III, §308(b), Feb. 5, 1976, 90 Stat. 57; Pub. L. 95–213, title I, §102, title II, §§202, 203, Dec. 19, 1977, 91 Stat. 1494, 1498, 1499; Pub. L. 98–38, §2(a), June 6, 1983, 97 Stat. 205; Pub. L. 100–181, title III, §§315, 316, Dec. 4, 1987, 101 Stat. 1256; Pub. L. 100–241, §12(d), Feb. 3, 1988, 101 Stat. 1810; Pub. L. 100–418, title V, §5002, Aug. 23, 1988, 102 Stat. 1415; Pub. L. 101–432, §3, Oct. 16, 1990, 104 Stat. 964; Pub. L. 107–123, §5, Jan. 16, 2002, 115 Stat. 2395; Pub. L. 107–204, title I, §109(i), formerly §109(h), title IV, §§401(a), 402(a), 409, July 30, 2002, 116 Stat. 771, 785, 787, 791, renumbered §109(i), Pub. L. 111–203, title IX, §982(h)(3), July 21, 2010, 124 Stat. 1930; Pub. L. 111–203, title VII, §§763(i), 766(b), (c), (e), title IX, §§929R(a), 929X(a), 985(b)(4), 991(b)(2), title XV, §§1502(b), 1504, July 21, 2010, 124 Stat. 1779, 1799, 1866, 1870, 1933, 1952, 2213, 2220; Pub. L. 112–106, title I, §102(b)(2), Apr. 5, 2012, 126 Stat. 309; Pub. L. 112–158, title II, §219(a), Aug. 10, 2012, 126 Stat. 1235.)

AMENDMENT OF SECTION

Unless otherwise provided, amendment by subtitle B (§§761–774) of title VII of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see 2010 Amendment notes and Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", and this chapter, referred to in subsecs. (b)(1), (h)(1), (2), (4), (6), (i), and (n)(6)(B)(v), (C)(i)(I), (7)(A), was in the original "this title". See References in Text note set out under section 78a of this title.

The Securities Act of 1933, referred to in subsecs. (a) and (d)(6)(A), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Investment Company Act of 1940, referred to in subsecs. (d)(1) and (e)(1), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a–51 of this title and Tables.

The Federal Deposit Insurance Act, referred to in subsec. (f)(5), is act Sept. 21, 1950, ch. 967, §2, 64 Stat. 873, which is classified generally to chapter 16 (§1811 et seq.) of Title 12, Banks and Banking. For complete

classification of this Act to the Code, see Short Title note set out under section 1811 of Title 12 and Tables.

Section 7201 of this title, referred to in subsec. (k)(1), was in the original "section 2 of the Sarbanes-Oxley Act of 2002", Pub. L. 107–204, which enacted section 7201 of this title and amended section 78c of this title.

The Commodity Exchange Act, referred to in subsec. (n)(8), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, referred to in subsec. (p)(5), is section 1502 of Pub. L. 111–203, which amended this section and enacted provisions set out as a note below.

Executive Order No. 13224, referred to in subsec. (r)(1)(D)(i), is Ex. Ord. No. 13224, Sept. 23, 2001, 66 F.R. 49079, which is listed in a table under section 1701 of Title 50, War and National Defense.

Executive Order No. 13382, referred to in subsec. (r)(1)(D)(ii), is Ex. Ord. No. 13382, June 28, 2005, 70 F.R. 38567, which is listed in a table under section 1701 of Title 50, War and National Defense.

AMENDMENTS

2012—Subsec. (a). Pub. L. 112–106 inserted at end of concluding provisions "In any registration statement, periodic report, or other reports to be filed with the Commission, an emerging growth company need not present selected financial data in accordance with section 229.301 of title 17, Code of Federal Regulations, for any period prior to the earliest audited period presented in connection with its first registration statement that became effective under this chapter or the Securities Act of 1933 and, with respect to any such statement or reports, an emerging growth company may not be required to comply with any new or revised financial accounting standard until such date that a company that is not an issuer (as defined under section 7201 of this title) is required to comply with such new or revised accounting standard, if such standard applies to companies that are not issuers."

Subsec. (r). Pub. L. 112–158 added subsec. (r).

2010—Subsec. (b)(1). Pub. L. 111–203, §985(b)(4), substituted "earnings statement" for "earning statement".

Subsec. (b)(2)(C). Pub. L. 111–203, §982(h)(3), amended Pub. L. 107–204, §109. See 2002 Amendment note below.

Subsec. (d)(1). Pub. L. 111–203, §929R(a)(1), in introductory provisions, inserted "or within such shorter time as the Commission may establish by rule" after "within ten days after such acquisition" and struck out "send to the issuer of the security at its principal executive office, by registered or certified mail, send to each exchange where the security is traded, and" before "file with the Commission".

Pub. L. 111–203, §766(b)(1), in introductory provisions, inserted "or otherwise becomes or is deemed to become a beneficial owner of any of the foregoing upon the purchase or sale of a security-based swap that the Commission may define by rule, and" after "section 1629c(d)(6) of title 43,".

Subsec. (d)(2). Pub. L. 111–203, §929R(a)(2), struck out "in the statements to the issuer and the exchange, and" after "facts set forth" and "shall be transmitted to the issuer and the exchange and" after "an amendment".

Subsec. (e)(3). Pub. L. 111–203, §991(b)(2)(A), substituted "paragraph (4)" for "paragraphs (5) and (6)".

Subsec. (e)(4) to (6). Pub. L. 111–203, §991(b)(2)(B), (C), added pars. (4) to (6) and struck out former pars. (4) to (6) which related to offsetting collections, annual adjustment of rate, and final rate adjustment, respectively.

Subsec. (e)(8) to (10). Pub. L. 111–203, §991(b)(2)(D), struck out pars. (8) to (10) which related to review and effective date of adjusted rate, collection of fees upon lapse of appropriation, and publication of rate, respectively.

Subsec. (f)(1). Pub. L. 111–203, §766(c), which directed insertion of "or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap that the Commission may define by rule," after "subsection (d)(1) of this section", was executed by making the insertion after "section 13(d)(1) of this title", which was translated to "subsection (d)(1) of this section", to reflect the probable intent of Congress.

Subsec. (f)(2) to (6). Pub. L. 111–203, §929X(a), added par. (2) and redesignated former pars. (2) to (5) as (3) to (6), respectively.

Subsec. (g)(1). Pub. L. 111–203, §929R(a)(3), struck out "shall send to the issuer of the security and" before "shall file" in introductory provisions.

Pub. L. 111–203, §766(b)(2), in introductory provisions, inserted "or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap that the Commission may define by rule" after "subsection (d)(1) of this section".

Subsec. (g)(2). Pub. L. 111–203, §929R(a)(4), struck out "sent to the issuer and" after "the statement" and

"shall be transmitted to the issuer and" after "an amendment".

Subsecs. (m), (n). Pub. L. 111–203, §763(i), added subsecs. (m) and (n).

Subsec. (o). Pub. L. 111–203, §766(e), added subsec. (o).

Subsec. (p). Pub. L. 111–203, §1502(b), added subsec. (p).

Subsec. (q). Pub. L. 111–203, §1504, added subsec. (q).

2002—Subsec. (b)(2)(C). Pub. L. 107–204, §109(i), formerly §109(h), renumbered §109(i) by Pub. L. 111–203, §982(h)(3), added subpar. (C).

Subsec. (e)(3). Pub. L. 107–123, §5(1), substituted "a fee at a rate that, subject to paragraphs (5) and (6), is equal to $92 per $1,000,000 of the value of securities proposed to be purchased" for "a fee of 1/50 of 1 per centum of the value of securities proposed to be purchased".

Subsec. (e)(4) to (10). Pub. L. 107–123, §5(2), added pars. (4) to (10).

Subsecs. (i), (j). Pub. L. 107–204, §401(a), added subsecs. (i) and (j).

Subsec. (k). Pub. L. 107–204, §402(a), added subsec. (k).

Subsec. (l). Pub. L. 107–204, §409, added subsec. (l).

1990—Subsec. (h). Pub. L. 101–432 added subsec. (h).

1988—Subsec. (b)(4) to (7). Pub. L. 100–418 added pars. (4) to (7).

Subsec. (d)(1). Pub. L. 100–241 inserted "or any equity security issued by a Native Corporation pursuant to section 1629c(d)(6) of title 43".

1987—Subsec. (c). Pub. L. 100–181, §315, struck out "of" after "thereof".

Subsec. (h). Pub. L. 100–181, §316, struck out subsec. (h) which required Commission to report to Congress within thirty months of Dec. 19, 1977, with respect to effectiveness of ownership reporting requirements contained in this chapter and desirability and feasibility of reducing or otherwise modifying the 5 per centum threshold used in subsecs. (d)(1) and (g)(1) of this section.

1983—Subsec. (e)(3). Pub. L. 98–38 added par. (3).

1977—Subsec. (b). Pub. L. 95–213, §102, designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (d)(1). Pub. L. 95–213, §202, inserted references to residence and citizenship of persons and to nature of beneficial ownership of persons in subpar. (A), and inserted references to background, identity, residence, and citizenship of associates of persons in subpar. (D).

Subsecs. (g), (h). Pub. L. 95–213, §203, added subsecs. (g) and (h).

1976—Subsec. (b). Pub. L. 94–210 substituted provisions relating to exceptions for inconsistent rules and regulations, for provisions relating to reporting requirements for carriers subject to the provisions of section 20 of title 49, or other carriers required to make reports of the same general character as those required under section 20 of title 49.

1975—Subsec. (f). Pub. L. 94–29 added subsec. (f).

1970—Subsec. (d)(1). Pub. L. 91–567, §1(a), included equity securities of insurance companies which would have been required to be registered except for the exemption contained in section 78l(g)(2)(G) of this title, and substituted "5 per centum" for "10 per centum".

Subsec. (d)(5), (6). Pub. L. 91–567, §1(b), added par. (5) and redesignated former par. (5) as (6).

Subsec. (e)(2). Pub. L. 91–567, §2, inserted provisions empowering the Commission to make rules and regulations implementing the paragraph in the public interest and for the protection of investors.

1968—Subsecs. (d), (e). Pub. L. 90–439 added subsecs. (d) and (e).

1964—Subsec. (a). Pub. L. 88–467 substituted provisions which require the issuer of a security registered pursuant to section 78l of this title to file reports with the Commission rather than with the exchange and to furnish the exchange with duplicate originals and prohibit the Commission from requiring the filing of any material contract wholly executed before July 1, 1962 for former provisions which required the issuer of a security registered on a national securities exchange to file certain reports with the exchange and to file duplicates with the Commission.

EFFECTIVE DATE OF 2012 AMENDMENT

Pub. L. 112–158, title II, §219(b), Aug. 10, 2012, 126 Stat. 1236, provided that: "The amendment made by subsection (a) [amending this section] shall take effect with respect to reports required to be filed with the Securities and Exchange Commission after the date that is 180 days after the date of the enactment of this Act [Aug. 10, 2012]."

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 929R(a), 929X(a), 982(h)(3), 985(b)(4), 1502(b), and 1504 of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as

an Effective Date note under section 5301 of Title 12, Banks and Banking.

Amendment by sections 763(i) and 766(b), (c), (e) of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761–774) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111–203, set out as a note under section 77b of this title.

Amendment by section 991(b)(2) of Pub. L. 111–203 effective Oct. 1, 2011, see section 991(b)(4) of Pub. L. 111–203, set out as a note under section 77f of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–123 effective Oct. 1, 2001, except that authorities provided by subsec. (e)(9) of this section to not apply until Oct. 1, 2002, see section 11 of Pub. L. 107–123, set out as a note under section 78ee of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–210 not applicable to any report by any person with respect to a fiscal year of such person which began before Feb. 5, 1976, see section 308(d)(2) of Pub. L. 94–210, set out as a note under section 80a–3 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–467 effective Aug. 20, 1964, see section 13 of Pub. L. 88–467, set out as a note under section 78c of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

ELIMINATION OF EXEMPTION FROM FAIR DISCLOSURE RULE

Pub. L. 111–203, title IX, §939B, July 21, 2010, 124 Stat. 1887, provided that: "Not later than 90 days after the date of enactment of this subtitle [July 21, 2010], the Securities [and] Exchange Commission shall revise Regulation FD (17 C.F.R. 243.100) to remove from such regulation the exemption for entities whose primary business is the issuance of credit ratings (17 C.F.R. 243.100(b)(2)(iii))."

CONFLICT MINERALS

Pub. L. 111–203, title XV, §1502, July 21, 2010, 124 Stat. 2213, provided that:

"(a) SENSE OF CONGRESS ON EXPLOITATION AND TRADE OF CONFLICT MINERALS ORIGINATING IN THE DEMOCRATIC REPUBLIC OF THE CONGO.—It is the sense of Congress that the exploitation and trade of conflict minerals originating in the Democratic Republic of the Congo is helping to finance conflict characterized by extreme levels of violence in the eastern Democratic Republic of the Congo, particularly sexual- and gender-based violence, and contributing to an emergency humanitarian situation therein, warranting the provisions of section 13(p) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(p)], as added by subsection (b).

"(b) [Amended this section.]

"(c) STRATEGY AND MAP TO ADDRESS LINKAGES BETWEEN CONFLICT MINERALS AND ARMED GROUPS.—

"(1) STRATEGY.—

"(A) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [July 21, 2010], the Secretary of State, in consultation with the Administrator of the United States Agency for International Development, shall submit to the appropriate congressional committees a strategy to address the linkages between human rights abuses, armed groups, mining of conflict minerals, and commercial products.

"(B) CONTENTS.—The strategy required by subparagraph (A) shall include the following:

"(i) A plan to promote peace and security in the Democratic Republic of the Congo by supporting efforts of the Government of the Democratic Republic of the Congo, including the Ministry of Mines and other relevant agencies, adjoining countries, and the international community, in

particular the United Nations Group of Experts on the Democratic Republic of Congo, to—

"(I) monitor and stop commercial activities involving the natural resources of the Democratic Republic of the Congo that contribute to the activities of armed groups and human rights violations in the Democratic Republic of the Congo; and

"(II) develop stronger governance and economic institutions that can facilitate and improve transparency in the cross-border trade involving the natural resources of the Democratic Republic of the Congo to reduce exploitation by armed groups and promote local and regional development.

"(ii) A plan to provide guidance to commercial entities seeking to exercise due diligence on and formalize the origin and chain of custody of conflict minerals used in their products and on their suppliers to ensure that conflict minerals used in the products of such suppliers do not directly or indirectly finance armed conflict or result in labor or human rights violations.

"(iii) A description of punitive measures that could be taken against individuals or entities whose commercial activities are supporting armed groups and human rights violations in the Democratic Republic of the Congo.

"(2) MAP.—

"(A) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [July 21, 2010], the Secretary of State shall, in accordance with the recommendation of the United Nations Group of Experts on the Democratic Republic of the Congo in their December 2008 report—

"(i) produce a map of mineral-rich zones, trade routes, and areas under the control of armed groups in the Democratic Republic of the Congo and adjoining countries based on data from multiple sources, including—

"(I) the United Nations Group of Experts on the Democratic Republic of the Congo;

"(II) the Government of the Democratic Republic of the Congo, the governments of adjoining countries, and the governments of other Member States of the United Nations; and

"(III) local and international nongovernmental organizations;

"(ii) make such map available to the public; and

"(iii) provide to the appropriate congressional committees an explanatory note describing the sources of information from which such map is based and the identification, where possible, of the armed groups or other forces in control of the mines depicted.

"(B) DESIGNATION.—The map required under subparagraph (A) shall be known as the 'Conflict Minerals Map', and mines located in areas under the control of armed groups in the Democratic Republic of the Congo and adjoining countries, as depicted on such Conflict Minerals Map, shall be known as 'Conflict Zone Mines'.

"(C) UPDATES.—The Secretary of State shall update the map required under subparagraph (A) not less frequently than once every 180 days until the date on which the disclosure requirements under paragraph (1) of section 13(p) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(p)], as added by subsection (b), terminate in accordance with the provisions of paragraph (4) of such section 13(p).

"(D) PUBLICATION IN FEDERAL REGISTER.—The Secretary of State shall add minerals to the list of minerals in the definition of conflict minerals under section 1502 [amending this section and enacting this note], as appropriate. The Secretary shall publish in the Federal Register notice of intent to declare a mineral as a conflict mineral included in such definition not later than one year before such declaration.

"(d) REPORTS.—

"(1) BASELINE REPORT.—Not later than 1 year after the date of the enactment of this Act [July 21, 2010] and annually thereafter until the termination of the disclosure requirements under section 13(p) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(p)], the Comptroller General of the United States shall submit to appropriate congressional committees a report that includes an assessment of the rate of sexual- and gender-based violence in war-torn areas of the Democratic Republic of the Congo and adjoining countries.

"(2) REGULAR REPORT ON EFFECTIVENESS.—Not later than 2 years after the date of the enactment of this Act [July 21, 2010] and annually thereafter, the Comptroller General of the United States shall submit to the appropriate congressional committees a report that includes the following:

"(A) An assessment of the effectiveness of section 13(p) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(p)], as added by subsection (b), in promoting peace and security in the Democratic Republic of the Congo and adjoining countries.

"(B) A description of issues encountered by the Securities and Exchange Commission in carrying out the provisions of such section 13(p).

"(C)(i) A general review of persons described in clause (ii) and whether information is publicly

available about—

"(I) the use of conflict minerals by such persons; and

"(II) whether such conflict minerals originate from the Democratic Republic of the Congo or an adjoining country.

"(ii) A person is described in this clause if—

"(I) the person is not required to file reports with the Securities and Exchange Commission pursuant to section 13(p)(1)(A) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(p)(1)(A)], as added by subsection (b); and

"(II) conflict minerals are necessary to the functionality or production of a product manufactured by such person.

"(3) REPORT ON PRIVATE SECTOR AUDITING.—Not later than 30 months after the date of the enactment of this Act [July 21, 2010], and annually thereafter, the Secretary of Commerce shall submit to the appropriate congressional committees a report that includes the following:

"(A) An assessment of the accuracy of the independent private sector audits and other due diligence processes described under section 13(p) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(p)].

"(B) Recommendations for the processes used to carry out such audits, including ways to—

"(i) improve the accuracy of such audits; and

"(ii) establish standards of best practices.

"(C) A listing of all known conflict mineral processing facilities worldwide.

"(e) DEFINITIONS.—For purposes of this section:

"(1) ADJOINING COUNTRY.—The term 'adjoining country', with respect to the Democratic Republic of the Congo, means a country that shares an internationally recognized border with the Democratic Republic of the Congo.

"(2) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term 'appropriate congressional committees' means—

"(A) the Committee on Appropriations, the Committee on Foreign Affairs, the Committee on Ways and Means, and the Committee on Financial Services of the House of Representatives; and

"(B) the Committee on Appropriations, the Committee on Foreign Relations, the Committee on Finance, and the Committee on Banking, Housing, and Urban Affairs of the Senate.

"(3) ARMED GROUP.—The term 'armed group' means an armed group that is identified as perpetrators of serious human rights abuses in the annual Country Reports on Human Rights Practices under sections 116(d) and 502B(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n(d) and 2304(b)) relating to the Democratic Republic of the Congo or an adjoining country.

"(4) CONFLICT MINERAL.—The term 'conflict mineral' means—

"(A) columbite-tantalite (coltan), cassiterite, gold, wolframite, or their derivatives; or

"(B) any other mineral or its derivatives determined by the Secretary of State to be financing conflict in the Democratic Republic of the Congo or an adjoining country.

"(5) UNDER THE CONTROL OF ARMED GROUPS.—The term 'under the control of armed groups' means areas within the Democratic Republic of the Congo or adjoining countries in which armed groups—

"(A) physically control mines or force labor of civilians to mine, transport, or sell conflict minerals;

"(B) tax, extort, or control any part of trade routes for conflict minerals, including the entire trade route from a Conflict Zone Mine to the point of export from the Democratic Republic of the Congo or an adjoining country; or

"(C) tax, extort, or control trading facilities, in whole or in part, including the point of export from the Democratic Republic of the Congo or an adjoining country."

CONSULTATION

Pub. L. 106–102, title II, §241, Nov. 12, 1999, 113 Stat. 1407, provided that:

"(a) IN GENERAL.—The Securities and Exchange Commission shall consult and coordinate comments with the appropriate Federal banking agency before taking any action or rendering any opinion with respect to the manner in which any insured depository institution or depository institution holding company reports loan loss reserves in its financial statement, including the amount of any such loan loss reserve.

"(b) DEFINITIONS.—For purposes of subsection (a), the terms 'insured depository institution', 'depository institution holding company', and 'appropriate Federal banking agency' have the same meaning as given in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813]."

ASSIGNMENT OF FUNCTION RELATING TO GRANTING OF AUTHORITY FOR ISSUANCE OF

CERTAIN DIRECTIVES

Memorandum of President of the United States, May 5, 2006, 71 F.R. 27943, provided:

Memorandum for the Director of National Intelligence

By virtue of the authority vested in me by the Constitution and laws of the United States, including section 301 of title 3, United States Code, I hereby assign to you the function of the President under section 13(b)(3)(A) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78m(b)(3)(A)). In performing such function, you should consult the heads of departments and agencies, as appropriate.

You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

[1] *So in original. Probably should be "account."*

[2] *So in original. Section 78c–3(a) of this title does not contain a par. (6).*

[3] *So in original. Probably should be "clause (i),".*

[4] *So in original. The word "a" probably should appear.*

§78m–1. Reporting and recordkeeping for certain security-based swaps

(a) Required reporting of security-based swaps not accepted by any clearing agency or derivatives clearing organization

(1) In general

Each security-based swap that is not accepted for clearing by any clearing agency or derivatives clearing organization shall be reported to—

(A) a security-based swap data repository described in section 78m(n) of this title; or

(B) in the case in which there is no security-based swap data repository that would accept the security-based swap, to the Commission pursuant to this section within such time period as the Commission may by rule or regulation prescribe.

(2) Transition rule for preenactment security-based swaps

(A) Security-based swaps entered into before July 21, 2010

Each security-based swap entered into before July 21, 2010, the terms of which have not expired as of July 21, 2010, shall be reported to a registered security-based swap data repository or the Commission by a date that is not later than—

(i) 30 days after issuance of the interim final rule; or

(ii) such other period as the Commission determines to be appropriate.

(B) Commission rulemaking

The Commission shall promulgate an interim final rule within 90 days of July 21, 2010, providing for the reporting of each security-based swap entered into before July 21, 2010, as referenced in subparagraph (A).

(C) Effective date

The reporting provisions described in this section shall be effective upon July 21, 2010.

(3) Reporting obligations

(A) Security-based swaps in which only 1 counterparty is a security-based swap dealer or major security-based swap participant

With respect to a security-based swap in which only 1 counterparty is a security-based swap dealer or major security-based swap participant, the security-based swap dealer or major security-based swap participant shall report the security-based swap as required under

paragraphs (1) and (2).

(B) Security-based swaps in which 1 counterparty is a security-based swap dealer and the other a major security-based swap participant

With respect to a security-based swap in which 1 counterparty is a security-based swap dealer and the other a major security-based swap participant, the security-based swap dealer shall report the security-based swap as required under paragraphs (1) and (2).

(C) Other security-based swaps

With respect to any other security-based swap not described in subparagraph (A) or (B), the counterparties to the security-based swap shall select a counterparty to report the security-based swap as required under paragraphs (1) and (2).

(b) Duties of certain individuals

Any individual or entity that enters into a security-based swap shall meet each requirement described in subsection (c) if the individual or entity did not—

(1) clear the security-based swap in accordance with section 78c–3(a)(1) of this title; or

(2) have the data regarding the security-based swap accepted by a security-based swap data repository in accordance with rules (including timeframes) adopted by the Commission under this chapter.

(c) Requirements

An individual or entity described in subsection (b) shall—

(1) upon written request from the Commission, provide reports regarding the security-based swaps held by the individual or entity to the Commission in such form and in such manner as the Commission may request; and

(2) maintain books and records pertaining to the security-based swaps held by the individual or entity in such form, in such manner, and for such period as the Commission may require, which shall be open to inspection by—

(A) any representative of the Commission;

(B) an appropriate prudential regulator;

(C) the Commodity Futures Trading Commission;

(D) the Financial Stability Oversight Council; and

(E) the Department of Justice.

(d) Identical data

In prescribing rules under this section, the Commission shall require individuals and entities described in subsection (b) to submit to the Commission a report that contains data that is not less comprehensive than the data required to be collected by security-based swap data repositories under this chapter.

(June 6, 1934, ch. 404, title I, §13A, as added Pub. L. 111–203, title VII, §766(a), July 21, 2010, 124 Stat. 1797.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b)(2) and (d), was in the original "this title". See References in Text note set out under section 78a of this title.

EFFECTIVE DATE

Section effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761–774) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 77b of this title.

§78m–2. Reporting requirements regarding coal or other mine safety

(a) Reporting mine safety information

Each issuer that is required to file reports pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(a), 78o(d)] and that is an operator, or that has a subsidiary that is an operator, of a coal or other mine shall include, in each periodic report filed with the Commission under the securities laws on or after July 21, 2010, the following information for the time period covered by such report:

(1) For each coal or other mine of which the issuer or a subsidiary of the issuer is an operator—

(A) the total number of violations of mandatory health or safety standards that could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard under section 104 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 814) for which the operator received a citation from the Mine Safety and Health Administration;

(B) the total number of orders issued under section 104(b) of such Act (30 U.S.C. 814(b));

(C) the total number of citations and orders for unwarrantable failure of the mine operator to comply with mandatory health or safety standards under section 104(d) of such Act (30 U.S.C. 814(d));

(D) the total number of flagrant violations under section 110(b)(2) of such Act (30 U.S.C. 820(b)(2));

(E) the total number of imminent danger orders issued under section 107(a) of such Act (30 U.S.C. 817(a));

(F) the total dollar value of proposed assessments from the Mine Safety and Health Administration under such Act (30 U.S.C. 801 et seq.); and

(G) the total number of mining-related fatalities.

(2) A list of such coal or other mines, of which the issuer or a subsidiary of the issuer is an operator, that receive written notice from the Mine Safety and Health Administration of—

(A) a pattern of violations of mandatory health or safety standards that are of such nature as could have significantly and substantially contributed to the cause and effect of coal or other mine health or safety hazards under section 104(e) of such Act (30 U.S.C. 814(e)); or

(B) the potential to have such a pattern.

(3) Any pending legal action before the Federal Mine Safety and Health Review Commission involving such coal or other mine.

(b) Reporting shutdowns and patterns of violations

Beginning on and after July 21, 2010, each issuer that is an operator, or that has a subsidiary that is an operator, of a coal or other mine shall file a current report with the Commission on Form 8–K (or any successor form) disclosing the following regarding each coal or other mine of which the issuer or subsidiary is an operator:

(1) The receipt of an imminent danger order issued under section 107(a) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 817(a)).

(2) The receipt of written notice from the Mine Safety and Health Administration that the coal or other mine has—

(A) a pattern of violations of mandatory health or safety standards that are of such nature as could have significantly and substantially contributed to the cause and effect of coal or other mine health or safety hazards under section 104(e) of such Act (30 U.S.C. 814(e)); or

(B) the potential to have such a pattern.

(c) Rule of construction

Nothing in this section shall be construed to affect any obligation of a person to make a disclosure under any other applicable law in effect before, on, or after July 21, 2010.

(d) Commission authority

(1) Enforcement

A violation by any person of this section, or any rule or regulation of the Commission issued under this section, shall be treated for all purposes in the same manner as a violation of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or the rules and regulations issued thereunder, consistent with the provisions of this section, and any such person shall be subject to the same penalties, and to the same extent, as for a violation of such Act or the rules or regulations issued thereunder.

(2) Rules and regulations

The Commission is authorized to issue such rules or regulations as are necessary or appropriate for the protection of investors and to carry out the purposes of this section.

(e) Definitions

In this section—

(1) the terms "issuer" and "securities laws" have the meaning given the terms in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c);

(2) the term "coal or other mine" means a coal or other mine, as defined in section 3 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 802), that is subject to the provisions of such Act (30 U.S.C. 801 et seq.); and

(3) the term "operator" has the meaning given the term in section 3 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 802).

(f) Effective date

This section shall take effect on the day that is 30 days after July 21, 2010.

(Pub. L. 111–203, title XV, §1503, July 21, 2010, 124 Stat. 2218.)

REFERENCES IN TEXT

Such Act, referred to in subsecs. (a)(1)(F) and (e)(2), is the Federal Mine Safety and Health Act of 1977, Pub. L. 91–173, Dec. 30, 1969, 83 Stat. 742, which is classified principally to chapter 22 (§801 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 30 and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (d)(1), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 78a of this title and Tables.

CODIFICATION

Section was enacted as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and not as part of the Securities Exchange Act of 1934 which comprises this chapter.

DEFINITIONS

For definitions of terms used in this section, see section 5301 of Title 12, Banks and Banking.

§78n. Proxies

(a) Solicitation of proxies in violation of rules and regulations

(1) It shall be unlawful for any person, by the use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any security (other than an exempted security) registered pursuant to section 78l of this title.

(2) The rules and regulations prescribed by the Commission under paragraph (1) may include—

(A) a requirement that a solicitation of proxy, consent, or authorization by (or on behalf of) an issuer include a nominee submitted by a shareholder to serve on the board of directors of the issuer; and

(B) a requirement that an issuer follow a certain procedure in relation to a solicitation described

in subparagraph (A).

(b) Giving or refraining from giving proxy in respect of any security carried for account of customer

(1) It shall be unlawful for any member of a national securities exchange, or any broker or dealer registered under this chapter, or any bank, association, or other entity that exercises fiduciary powers, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, to give, or to refrain from giving a proxy, consent, authorization, or information statement in respect of any security registered pursuant to section 78l of this title, or any security issued by an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.], and carried for the account of a customer.

(2) With respect to banks, the rules and regulations prescribed by the Commission under paragraph (1) shall not require the disclosure of the names of beneficial owners of securities in an account held by the bank on December 28, 1985, unless the beneficial owner consents to the disclosure. The provisions of this paragraph shall not apply in the case of a bank which the Commission finds has not made a good faith effort to obtain such consent from such beneficial owners.

(c) Information to holders of record prior to annual or other meeting

Unless proxies, consents, or authorizations in respect of a security registered pursuant to section 78l of this title, or a security issued by an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.], are solicited by or on behalf of the management of the issuer from the holders of record of such security in accordance with the rules and regulations prescribed under subsection (a) of this section, prior to any annual or other meeting of the holders of such security, such issuer shall, in accordance with rules and regulations prescribed by the Commission, file with the Commission and transmit to all holders of record of such security information substantially equivalent to the information which would be required to be transmitted if a solicitation were made, but no information shall be required to be filed or transmitted pursuant to this subsection before July 1, 1964.

(d) Tender offer by owner of more than five per centum of class of securities; exceptions

(1) It shall be unlawful for any person, directly or indirectly, by use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, to make a tender offer for, or a request or invitation for tenders of, any class of any equity security which is registered pursuant to section 78l of this title, or any equity security of an insurance company which would have been required to be so registered except for the exemption contained in section 78l(g)(2)(G) of this title, or any equity security issued by a a closed-end investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.], if, after consummation thereof, such person would, directly or indirectly, be the beneficial owner of more than 5 per centum of such class, unless at the time copies of the offer or request or invitation are first published or sent or given to security holders such person has filed with the Commission a statement containing such of the information specified in section 78m(d) of this title, and such additional information as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors. All requests or invitations for tenders or advertisements making a tender offer or requesting or inviting tenders of such a security shall be filed as a part of such statement and shall contain such of the information contained in such statement as the Commission may by rules and regulations prescribe. Copies of any additional material soliciting or requesting such tender offers subsequent to the initial solicitation or request shall contain such information as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors, and shall be filed with the Commission not later than the time copies of such material are first published or sent or

given to security holders. Copies of all statements, in the form in which such material is furnished to security holders and the Commission, shall be sent to the issuer not later than the date such material is first published or sent or given to any security holders.

(2) When two or more persons act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding, or disposing of securities of an issuer, such syndicate or group shall be deemed a "person" for purposes of this subsection.

(3) In determining, for purposes of this subsection, any percentage of a class of any security, such class shall be deemed to consist of the amount of the outstanding securities of such class, exclusive of any securities of such class held by or for the account of the issuer or a subsidiary of the issuer.

(4) Any solicitation or recommendation to the holders of such a security to accept or reject a tender offer or request or invitation for tenders shall be made in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(5) Securities deposited pursuant to a tender offer or request or invitation for tenders may be withdrawn by or on behalf of the depositor at any time until the expiration of seven days after the time definitive copies of the offer or request or invitation are first published or sent or given to security holders, and at any time after sixty days from the date of the original tender offer or request or invitation, except as the Commission may otherwise prescribe by rules, regulations, or order as necessary or appropriate in the public interest or for the protection of investors.

(6) Where any person makes a tender offer, or request or invitation for tenders, for less than all the outstanding equity securities of a class, and where a greater number of securities is deposited pursuant thereto within ten days after copies of the offer or request or invitation are first published or sent or given to security holders than such person is bound or willing to take up and pay for, the securities taken up shall be taken up as nearly as may be pro rata, disregarding fractions, according to the number of securities deposited by each depositor. The provisions of this subsection shall also apply to securities deposited within ten days after notice of an increase in the consideration offered to security holders, as described in paragraph (7), is first published or sent or given to security holders.

(7) Where any person varies the terms of a tender offer or request or invitation for tenders before the expiration thereof by increasing the consideration offered to holders of such securities, such person shall pay the increased consideration to each security holder whose securities are taken up and paid for pursuant to the tender offer or request or invitation for tenders whether or not such securities have been taken up by such person before the variation of the tender offer or request or invitation.

(8) The provisions of this subsection shall not apply to any offer for, or request or invitation for tenders of, any security—

(A) if the acquisition of such security, together with all other acquisitions by the same person of securities of the same class during the preceding twelve months, would not exceed 2 per centum of that class;

(B) by the issuer of such security; or

(C) which the Commission, by rules or regulations or by order, shall exempt from the provisions of this subsection as not entered into for the purpose of, and not having the effect of, changing or influencing the control of the issuer or otherwise as not comprehended within the purposes of this subsection.

(e) Untrue statement of material fact or omission of fact with respect to tender offer

It shall be unlawful for any person to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or to engage in any fraudulent, deceptive, or manipulative acts or practices, in connection with any tender offer or request or invitation for tenders, or any solicitation of security holders in opposition to or in favor of any such offer, request, or invitation. The Commission shall, for the purposes of this subsection, by rules and regulations define, and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative.

(f) Election or designation of majority of directors of issuer by owner of more than five per centum of class of securities at other than meeting of security holders

If, pursuant to any arrangement or understanding with the person or persons acquiring securities in a transaction subject to subsection (d) of this section or subsection (d) of section 78m of this title, any persons are to be elected or designated as directors of the issuer, otherwise than at a meeting of security holders, and the persons so elected or designated will constitute a majority of the directors of the issuer, then, prior to the time any such person takes office as a director, and in accordance with rules and regulations prescribed by the Commission, the issuer shall file with the Commission, and transmit to all holders of record of securities of the issuer who would be entitled to vote at a meeting for election of directors, information substantially equivalent to the information which would be required by subsection (a) or (c) of this section to be transmitted if such person or persons were nominees for election as directors at a meeting of such security holders.

(g) Filing fees

(1)(A) At the time of filing such preliminary proxy solicitation material as the Commission may require by rule pursuant to subsection (a) of this section that concerns an acquisition, merger, consolidation, or proposed sale or other disposition of substantially all the assets of a company, the person making such filing, other than a company registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.], shall pay to the Commission the following fees:

(i) for preliminary proxy solicitation material involving an acquisition, merger, or consolidation, if there is a proposed payment of cash or transfer of securities or property to shareholders, a fee at a rate that, subject to paragraph (4), is equal to $92 per $1,000,000 of such proposed payment, or of the value of such securities or other property proposed to be transferred; and

(ii) for preliminary proxy solicitation material involving a proposed sale or other disposition of substantially all of the assets of a company, a fee at a rate that, subject to paragraph (4), is equal to $92 per $1,000,000 of the cash or of the value of any securities or other property proposed to be received upon such sale or disposition.

(B) The fee imposed under subparagraph (A) shall be reduced with respect to securities in an amount equal to any fee paid to the Commission with respect to such securities in connection with the proposed transaction under section 77f(b) of this title, or the fee paid under that section shall be reduced in an amount equal to the fee paid to the Commission in connection with such transaction under this subsection. Where two or more companies involved in an acquisition, merger, consolidation, sale, or other disposition of substantially all the assets of a company must file such proxy material with the Commission, each shall pay a proportionate share of such fee.

(2) At the time of filing such preliminary information statement as the Commission may require by rule pursuant to subsection (c) of this section, the issuer shall pay to the Commission the same fee as required for preliminary proxy solicitation material under paragraph (1) of this subsection.

(3) At the time of filing such statement as the Commission may require by rule pursuant to subsection (d)(1) of this section, the person making the filing shall pay to the Commission a fee at a rate that, subject to paragraph (4), is equal to $92 per $1,000,000 of the aggregate amount of cash or of the value of securities or other property proposed to be offered. The fee shall be reduced with respect to securities in an amount equal to any fee paid with respect to such securities in connection with the proposed transaction under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)), or the fee paid under that section shall be reduced in an amount equal to the fee paid to the Commission in connection with such transaction under this subsection.

(4) ANNUAL ADJUSTMENT.—For each fiscal year, the Commission shall by order adjust the rate required by paragraphs (1) and (3) for such fiscal year to a rate that is equal to the rate (expressed in dollars per million) that is applicable under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)) for such fiscal year.

(5) FEE COLLECTION.—Fees collected pursuant to this subsection for fiscal year 2012 and each fiscal year thereafter shall be deposited and credited as general revenue of the Treasury and shall not be available for obligation.

(6) REVIEW; EFFECTIVE DATE; PUBLICATION.—In exercising its authority under this subsection, the Commission shall not be required to comply with the provisions of section 553 of title 5. An adjusted rate prescribed under paragraph (4) shall be published and take effect in accordance with section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)).

(7) PRO RATA APPLICATION.—The rates per $1,000,000 required by this subsection shall be applied pro rata to amounts and balances of less than $1,000,000.

(8) Notwithstanding any other provision of law, the Commission may impose fees, charges, or prices for matters not involving any acquisition, merger, consolidation, sale, or other disposition of assets described in this subsection, as authorized by section 9701 of title 31, or otherwise.

(h) Proxy solicitations and tender offers in connection with limited partnership rollup transactions

(1) Proxy rules to contain special provisions

It shall be unlawful for any person to solicit any proxy, consent, or authorization concerning a limited partnership rollup transaction, or to make any tender offer in furtherance of a limited partnership rollup transaction, unless such transaction is conducted in accordance with rules prescribed by the Commission under subsections (a) and (d) of this section as required by this subsection. Such rules shall—

(A) permit any holder of a security that is the subject of the proposed limited partnership rollup transaction to engage in preliminary communications for the purpose of determining whether to solicit proxies, consents, or authorizations in opposition to the proposed limited partnership rollup transaction, without regard to whether any such communication would otherwise be considered a solicitation of proxies, and without being required to file soliciting material with the Commission prior to making that determination, except that—

(i) nothing in this subparagraph shall be construed to limit the application of any provision of this chapter prohibiting, or reasonably designed to prevent, fraudulent, deceptive, or manipulative acts or practices under this chapter; and

(ii) any holder of not less than 5 percent of the outstanding securities that are the subject of the proposed limited partnership rollup transaction who engages in the business of buying and selling limited partnership interests in the secondary market shall be required to disclose such ownership interests and any potential conflicts of interests in such preliminary communications;

(B) require the issuer to provide to holders of the securities that are the subject of the limited partnership rollup transaction such list of the holders of the issuer's securities as the Commission may determine in such form and subject to such terms and conditions as the Commission may specify;

(C) prohibit compensating any person soliciting proxies, consents, or authorizations directly from security holders concerning such a limited partnership rollup transaction—

(i) on the basis of whether the solicited proxy, consent, or authorization either approves or disapproves the proposed limited partnership rollup transaction; or

(ii) contingent on the approval, disapproval, or completion of the limited partnership rollup transaction;

(D) set forth disclosure requirements for soliciting material distributed in connection with a limited partnership rollup transaction, including requirements for clear, concise, and comprehensible disclosure with respect to—

(i) any changes in the business plan, voting rights, form of ownership interest, or the compensation of the general partner in the proposed limited partnership rollup transaction from each of the original limited partnerships;

(ii) the conflicts of interest, if any, of the general partner;

(iii) whether it is expected that there will be a significant difference between the exchange values of the limited partnerships and the trading price of the securities to be issued in the

limited partnership rollup transaction;

(iv) the valuation of the limited partnerships and the method used to determine the value of the interests of the limited partners to be exchanged for the securities in the limited partnership rollup transaction;

(v) the differing risks and effects of the limited partnership rollup transaction for investors in different limited partnerships proposed to be included, and the risks and effects of completing the limited partnership rollup transaction with less than all limited partnerships;

(vi) the statement by the general partner required under subparagraph (E);

(vii) such other matters deemed necessary or appropriate by the Commission;

(E) require a statement by the general partner as to whether the proposed limited partnership rollup transaction is fair or unfair to investors in each limited partnership, a discussion of the basis for that conclusion, and an evaluation and a description by the general partner of alternatives to the limited partnership rollup transaction, such as liquidation;

(F) provide that, if the general partner or sponsor has obtained any opinion (other than an opinion of counsel), appraisal, or report that is prepared by an outside party and that is materially related to the limited partnership rollup transaction, such soliciting materials shall contain or be accompanied by clear, concise, and comprehensible disclosure with respect to—

(i) the analysis of the transaction, scope of review, preparation of the opinion, and basis for and methods of arriving at conclusions, and any representations and undertakings with respect thereto;

(ii) the identity and qualifications of the person who prepared the opinion, the method of selection of such person, and any material past, existing, or contemplated relationships between the person or any of its affiliates and the general partner, sponsor, successor, or any other affiliate;

(iii) any compensation of the preparer of such opinion, appraisal, or report that is contingent on the transaction's approval or completion; and

(iv) any limitations imposed by the issuer on the access afforded to such preparer to the issuer's personnel, premises, and relevant books and records;

(G) provide that, if the general partner or sponsor has obtained any opinion, appraisal, or report as described in subparagraph (F) from any person whose compensation is contingent on the transaction's approval or completion or who has not been given access by the issuer to its personnel and premises and relevant books and records, the general partner or sponsor shall state the reasons therefor;

(H) provide that, if the general partner or sponsor has not obtained any opinion on the fairness of the proposed limited partnership rollup transaction to investors in each of the affected partnerships, such soliciting materials shall contain or be accompanied by a statement of such partner's or sponsor's reasons for concluding that such an opinion is not necessary in order to permit the limited partners to make an informed decision on the proposed transaction;

(I) require that the soliciting material include a clear, concise, and comprehensible summary of the limited partnership rollup transaction (including a summary of the matters referred to in clauses (i) through (vii) of subparagraph (D) and a summary of the matter referred to in subparagraphs (F), (G), and (H)), with the risks of the limited partnership rollup transaction set forth prominently in the fore part thereof;

(J) provide that any solicitation or offering period with respect to any proxy solicitation, tender offer, or information statement in a limited partnership rollup transaction shall be for not less than the lesser of 60 calendar days or the maximum number of days permitted under applicable State law; and

(K) contain such other provisions as the Commission determines to be necessary or appropriate for the protection of investors in limited partnership rollup transactions.

(2) Exemptions

The Commission may, consistent with the public interest, the protection of investors, and the

purposes of this chapter, exempt by rule or order any security or class of securities, any transaction or class of transactions, or any person or class of persons, in whole or in part, conditionally or unconditionally, from the requirements imposed pursuant to paragraph (1) or from the definition contained in paragraph (4).

(3) Effect on Commission authority

Nothing in this subsection limits the authority of the Commission under subsection (a) or (d) of this section or any other provision of this chapter or precludes the Commission from imposing, under subsection (a) or (d) of this section or any other provision of this chapter, a remedy or procedure required to be imposed under this subsection.

(4) "Limited partnership rollup transaction" defined

Except as provided in paragraph (5), as used in this subsection, the term "limited partnership rollup transaction" means a transaction involving the combination or reorganization of one or more limited partnerships, directly or indirectly, in which—

(A) some or all of the investors in any of such limited partnerships will receive new securities, or securities in another entity, that will be reported under a transaction reporting plan declared effective before December 17, 1993, by the Commission under section 78k–1 of this title;

(B) any of the investors' limited partnership securities are not, as of the date of filing, reported under a transaction reporting plan declared effective before December 17, 1993, by the Commission under section 78k–1 of this title;

(C) investors in any of the limited partnerships involved in the transaction are subject to a significant adverse change with respect to voting rights, the term of existence of the entity, management compensation, or investment objectives; and

(D) any of such investors are not provided an option to receive or retain a security under substantially the same terms and conditions as the original issue.

(5) Exclusions from definition

Notwithstanding paragraph (4), the term "limited partnership rollup transaction" does not include—

(A) a transaction that involves only a limited partnership or partnerships having an operating policy or practice of retaining cash available for distribution and reinvesting proceeds from the sale, financing, or refinancing of assets in accordance with such criteria as the Commission determines appropriate;

(B) a transaction involving only limited partnerships wherein the interests of the limited partners are repurchased, recalled, or exchanged in accordance with the terms of the preexisting limited partnership agreements for securities in an operating company specifically identified at the time of the formation of the original limited partnership;

(C) a transaction in which the securities to be issued or exchanged are not required to be and are not registered under the Securities Act of 1933 [15 U.S.C. 77a et seq.];

(D) a transaction that involves only issuers that are not required to register or report under section 78l of this title, both before and after the transaction;

(E) a transaction, except as the Commission may otherwise provide by rule for the protection of investors, involving the combination or reorganization of one or more limited partnerships in which a non-affiliated party succeeds to the interests of a general partner or sponsor, if—

(i) such action is approved by not less than 662/3 percent of the outstanding units of each of the participating limited partnerships; and

(ii) as a result of the transaction, the existing general partners will receive only compensation to which they are entitled as expressly provided for in the preexisting limited partnership agreements; or

(F) a transaction, except as the Commission may otherwise provide by rule for the protection of investors, in which the securities offered to investors are securities of another entity that are

reported under a transaction reporting plan declared effective before December 17, 1993, by the Commission under section 78k–1 of this title, if—

(i) such other entity was formed, and such class of securities was reported and regularly traded, not less than 12 months before the date on which soliciting material is mailed to investors; and

(ii) the securities of that entity issued to investors in the transaction do not exceed 20 percent of the total outstanding securities of the entity, exclusive of any securities of such class held by or for the account of the entity or a subsidiary of the entity.

(i) Disclosure of pay versus performance

The Commission shall, by rule, require each issuer to disclose in any proxy or consent solicitation material for an annual meeting of the shareholders of the issuer a clear description of any compensation required to be disclosed by the issuer under section 229.402 of title 17, Code of Federal Regulations (or any successor thereto), including, for any issuer other than an emerging growth company, information that shows the relationship between executive compensation actually paid and the financial performance of the issuer, taking into account any change in the value of the shares of stock and dividends of the issuer and any distributions. The disclosure under this subsection may include a graphic representation of the information required to be disclosed.

(j) Disclosure of hedging by employees and directors

The Commission shall, by rule, require each issuer to disclose in any proxy or consent solicitation material for an annual meeting of the shareholders of the issuer whether any employee or member of the board of directors of the issuer, or any designee of such employee or member, is permitted to purchase financial instruments (including prepaid variable forward contracts, equity swaps, collars, and exchange funds) that are designed to hedge or offset any decrease in the market value of equity securities—

(1) granted to the employee or member of the board of directors by the issuer as part of the compensation of the employee or member of the board of directors; or

(2) held, directly or indirectly, by the employee or member of the board of directors.

(June 6, 1934, ch. 404, title I, §14, 48 Stat. 895; Pub. L. 88–467, §5, Aug. 20, 1964, 78 Stat. 569; Pub. L. 90–439, §3, July 29, 1968, 82 Stat. 455; Pub. L. 91–567, §§3–5, Dec. 22, 1970, 84 Stat. 1497; Pub. L. 98–38, §2(b), June 6, 1983, 97 Stat. 205; Pub. L. 99–222, §2, Dec. 28, 1985, 99 Stat. 1737; Pub. L. 101–550, title III, §302, Nov. 15, 1990, 104 Stat. 2721; Pub. L. 103–202, title III, §302(a), Dec. 17, 1993, 107 Stat. 2359; Pub. L. 105–353, title III, §301(b)(7), Nov. 3, 1998, 112 Stat. 3236; Pub. L. 107–123, §6, Jan. 16, 2002, 115 Stat. 2396; Pub. L. 111–203, title IX, §§953(a), 955, 971(a), 991(b)(3), July 21, 2010, 124 Stat. 1903, 1904, 1915, 1953; Pub. L. 112–106, title I, §102(a)(2), Apr. 5, 2012, 126 Stat. 309.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b) and (h)(1)(A), (2), (3), was in the original "this title". See References in Text note set out under section 78a of this title.

The Investment Company Act of 1940, referred to in subsecs. (b)(1), (c), (d)(1), and (g)(1)(A), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a–51 of this title and Tables.

The Securities Act of 1933, referred to in subsec. (h)(5)(C), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, as amended, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

AMENDMENTS

2012—Subsec. (i). Pub. L. 112–106 inserted ", for any issuer other than an emerging growth company," after "including".

2010—Subsec. (a). Pub. L. 111–203, §971(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (g)(1)(A). Pub. L. 111–203, §991(b)(3)(A), substituted "paragraph (4)" for "paragraphs (5) and (6)" in cls. (i) and (ii).

Subsec. (g)(3). Pub. L. 111–203, §991(b)(3)(B), substituted "paragraph (4)" for "paragraphs (5) and (6)".

Subsec. (g)(4) to (6). Pub. L. 111–203, §991(b)(3)(C), (D), added pars. (4) to (6) and struck out former pars. (4) to (6) which related to deposit and crediting of fees as offsetting collections, annual adjustment of rates, and final rate adjustment, respectively.

Subsec. (g)(8) to (11). Pub. L. 111–203, §991(b)(3)(E), (F), redesignated par. (11) as (8) and struck out former pars. (8) to (10) which related to review and effective date of adjusted rate, collection of fees upon lapse of appropriation, and publication of rate, respectively.

Subsec. (i). Pub. L. 111–203, §953(a), added subsec. (i).

Subsec. (j). Pub. L. 111–203, §955, added subsec. (j).

2002—Subsec. (g)(1)(A)(i), (ii), (3). Pub. L. 107–123, §6(1), substituted "a fee at a rate that, subject to paragraphs (5) and (6), is equal to $92 per $1,000,000 of" for "a fee of 1/50 of 1 per centum of".

Subsec. (g)(4) to (11). Pub. L. 107–123, §6(2), (3), added pars. (4) to (10) and redesignated former par. (4) as (11).

1998—Subsec. (g)(4). Pub. L. 105–353 substituted "consolidation, sale," for "consolidation sale,".

1993—Subsec. (h). Pub. L. 103–202 added subsec. (h).

1990—Subsec. (b)(1). Pub. L. 101–550, §302(a), substituted "section 78l of this title, or any security issued by an investment company registered under the Investment Company Act of 1940," for "section 78l of this title" and "authorization, or information statement" for "or authorization".

Subsec. (c). Pub. L. 101–550, §302(b), substituted "title, or a security issued by an investment company registered under the Investment Company Act of 1940," for "title".

1985—Subsec. (b). Pub. L. 99–222 designated existing provision as par. (1), inserted "or any bank, association, or other entity that exercises fiduciary powers," after "under this chapter,", and added par. (2).

1983—Subsec. (g). Pub. L. 98–38 added subsec. (g).

1970—Subsec. (d)(1). Pub. L. 91–567, §3, included equity securities of an insurance company which would have been required to be registered except for the exemption contained in section 78l(g)(2)(G) of this title, and substituted "5 per centum" for "10 per centum".

Subsec. (d)(8). Pub. L. 91–567, §4, struck out cl. (A) which excluded offers for, or invitations for tenders of, securities proposed to be made by means of a registration statement under the Securities Act of 1933, and redesignated cls. (B) to (D) as (A) to (C), respectively.

Subsec. (e). Pub. L. 91–567, §5, inserted provisions requiring the Commission, for the purposes of the subsection, by rules and regulations to define, and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative.

1968—Subsecs. (d) to (f). Pub. L. 90–439 added subsecs. (d) to (f).

1964—Subsec. (a). Pub. L. 88–467, §5(a), substituted provisions which make it unlawful for any person, in contravention of the Commission's rules and regulations, to solicit, or to permit the use of his name to solicit, proxies in respect of any security registered pursuant to section 78l of this title for former provisions which limited the Commission's rulemaking authority to proxies relating to securities listed and registered on a national securities exchange.

Subsec. (b). Pub. L. 88–467, §5(b), substituted provisions which make it unlawful for members of a national securities exchange and brokers and dealers registered under this chapter, in contravention of such rules as may be prescribed by the Commission, to give, or to refrain from giving proxies, consents, and other authorizations in respect of any security registered under section 78l of this title carried for the account of customers for former provisions which limited the Commission's rulemaking authority only to the giving of proxies in respect to listed securities carried for the account of customers by members of the national securities exchanges and by brokers or dealers who conduct business through the medium of an exchange member, and deleted the reference to brokers and dealers who transacted business through the medium of an exchange member as being now covered by brokers and dealers registered under this chapter.

Subsec. (c). Pub. L. 88–467, §5(c), added subsec. (c).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 953(a), 955, and 971(a) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Amendment by section 991(b)(3) of Pub. L. 111–203 effective Oct. 1, 2011, see section 991(b)(4) of Pub. L. 111–203, set out as a note under section 77f of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–123 effective Oct. 1, 2001, except that authorities provided by subsec. (g)(9) of this section to not apply until Oct. 1, 2002, see section 11 of Pub. L. 107–123, set out as a note under section

78ee of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–550, title III, §303, Nov. 15, 1990, 104 Stat. 2721, provided that: "The amendments made by section 302 of this title [amending this section] shall take effect upon the expiration of 180 days after the date of enactment of this Act [Nov. 15, 1990]."

EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99–222, §3, Dec. 28, 1985, 99 Stat. 1737, provided that: "The amendments made by this Act [amending this section] shall become effective one year after the date of enactment of this Act [Dec. 28, 1985]."

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–467 effective Aug. 20, 1964, see section 13 of Pub. L. 88–467, set out as a note under section 78c of this title.

REGULATIONS

Pub. L. 111–203, title IX, §971(b), (c), July 21, 2010, 124 Stat. 1915, provided that:

"(b) REGULATIONS.—The Commission may issue rules permitting the use by a shareholder of proxy solicitation materials supplied by an issuer of securities for the purpose of nominating individuals to membership on the board of directors of the issuer, under such terms and conditions as the Commission determines are in the interests of shareholders and for the protection of investors.

"(c) EXEMPTIONS.—The Commission may, by rule or order, exempt an issuer or class of issuers from the requirement made by this section [amending this section] or an amendment made by this section. In determining whether to make an exemption under this subsection, the Commission shall take into account, among other considerations, whether the requirement in the amendment made by subsection (a) disproportionately burdens small issuers."

[For definitions of terms used in section 971(b), (c) of Pub. L. 111–203, set out above, see section 5301 of Title 12, Banks and Banking.]

Pub. L. 103–202, title III, §302(b), Dec. 17, 1993, 107 Stat. 2363, provided that: "The Securities and Exchange Commission shall conduct rulemaking proceedings and prescribe final regulations under the Securities Act of 1933 [15 U.S.C. 77a et seq.] and the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] to implement the requirements of section 14(h) of the Securities Exchange Act of 1934 [15 U.S.C. 78n(h)], as amended by subsection (a), and such regulations shall become effective not later than 12 months after the date of enactment of this Act [Dec. 17, 1993]."

CONSTRUCTION OF 1993 AMENDMENT

Amendment by Pub. L. 103–202 not to limit authority of Securities and Exchange Commission, a registered securities association, or a national securities exchange under any provision of this chapter or preclude the Commission or such association or exchange from imposing a remedy or procedure required to be imposed under such amendment, see section 304(b) of Pub. L. 103–202, set out in an Effective Date of 1993 Amendment note under section 78f of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

STUDY AND REPORT ON SHAREHOLDER ACCESS TO PROXY STATEMENTS

Pub. L. 104–290, title V, §510(b), Oct. 11, 1996, 110 Stat. 3450, provided that:

"(1) STUDY.—The Commission shall conduct a study of—

"(A) whether shareholder access to proxy statements pursuant to section 14 of the Securities Exchange Act of 1934 [15 U.S.C. 78n] has been impaired by recent statutory, judicial, or regulatory changes; and

"(B) the ability of shareholders to have proposals relating to corporate practices and social issues included as part of proxy statements.

"(2) REPORT.—Not later than 1 year after the date of enactment of this Act [Oct. 11, 1996], the Commission shall submit a report to the Congress on the results of the study conducted under paragraph (1), together with any recommendations for regulatory or legislative changes that it considers necessary to improve shareholder access to proxy statements."

EVALUATION OF FAIRNESS OPINION PREPARATION, DISCLOSURE, AND USE

Pub. L. 103–202, title III, §302(c), Dec. 17, 1993, 107 Stat. 2363, provided that:

"(1) EVALUATION REQUIRED.—The Comptroller General of the United States shall, within 18 months after the date of enactment of this Act [Dec. 17, 1993], conduct a study of—

"(A) the use of fairness opinions in limited partnership rollup transactions;

"(B) the standards which preparers use in making determinations of fairness;

"(C) the scope of review, quality of analysis, qualifications and methods of selection of preparers, costs of preparation, and any limitations imposed by issuers on such preparers;

"(D) the nature and quality of disclosures provided with respect to such opinions;

"(E) any conflicts of interest with respect to the preparation of such opinions; and

"(F) the usefulness of such opinions to limited partners.

"(2) REPORT REQUIRED.—Not later than the end of the 18-month period referred to in paragraph (1), the Comptroller General of the United States shall submit to the Congress a report on the evaluation required by paragraph (1)."

§78n–1. Shareholder approval of executive compensation

(a) Separate resolution required

(1) In general

Not less frequently than once every 3 years, a proxy or consent or authorization for an annual or other meeting of the shareholders for which the proxy solicitation rules of the Commission require compensation disclosure shall include a separate resolution subject to shareholder vote to approve the compensation of executives, as disclosed pursuant to section 229.402 of title 17, Code of Federal Regulations, or any successor thereto.

(2) Frequency of vote

Not less frequently than once every 6 years, a proxy or consent or authorization for an annual or other meeting of the shareholders for which the proxy solicitation rules of the Commission require compensation disclosure shall include a separate resolution subject to shareholder vote to determine whether votes on the resolutions required under paragraph (1) will occur every 1, 2, or 3 years.

(3) Effective date

The proxy or consent or authorization for the first annual or other meeting of the shareholders occurring after the end of the 6-month period beginning on July 21, 2010, shall include—

(A) the resolution described in paragraph (1); and

(B) a separate resolution subject to shareholder vote to determine whether votes on the resolutions required under paragraph (1) will occur every 1, 2, or 3 years.

(b) Shareholder approval of golden parachute compensation

(1) Disclosure

In any proxy or consent solicitation material (the solicitation of which is subject to the rules of the Commission pursuant to subsection (a)) for a meeting of the shareholders occurring after the end of the 6-month period beginning on July 21, 2010, at which shareholders are asked to approve an acquisition, merger, consolidation, or proposed sale or other disposition of all or substantially all the assets of an issuer, the person making such solicitation shall disclose in the proxy or consent solicitation material, in a clear and simple form in accordance with regulations to be promulgated by the Commission, any agreements or understandings that such person has with any named executive officers of such issuer (or of the acquiring issuer, if such issuer is not the acquiring issuer) concerning any type of compensation (whether present, deferred, or contingent) that is based on or otherwise relates to the acquisition, merger, consolidation, sale, or other disposition of all or substantially all of the assets of the issuer and the aggregate total of all such compensation that may (and the conditions upon which it may) be paid or become payable to or on behalf of such executive officer.

(2) Shareholder approval

Any proxy or consent or authorization relating to the proxy or consent solicitation material containing the disclosure required by paragraph (1) shall include a separate resolution subject to shareholder vote to approve such agreements or understandings and compensation as disclosed, unless such agreements or understandings have been subject to a shareholder vote under subsection (a).

(c) Rule of construction

The shareholder vote referred to in subsections (a) and (b) shall not be binding on the issuer or the board of directors of an issuer, and may not be construed—

(1) as overruling a decision by such issuer or board of directors;

(2) to create or imply any change to the fiduciary duties of such issuer or board of directors;

(3) to create or imply any additional fiduciary duties for such issuer or board of directors; or

(4) to restrict or limit the ability of shareholders to make proposals for inclusion in proxy materials related to executive compensation.

(d) Disclosure of votes

Every institutional investment manager subject to section 78m(f) of this title shall report at least annually how it voted on any shareholder vote pursuant to subsections (a) and (b), unless such vote is otherwise required to be reported publicly by rule or regulation of the Commission.

(e) Exemption

(1) In general

The Commission may, by rule or order, exempt any other issuer or class of issuers from the requirement under subsection (a) or (b). In determining whether to make an exemption under this subsection, the Commission shall take into account, among other considerations, whether the requirements under subsections (a) and (b) disproportionately burdens [1] small issuers.

(2) Treatment of emerging growth companies

(A) In general

An emerging growth company shall be exempt from the requirements of subsections (a) and (b).

(B) Compliance after termination of emerging growth company treatment

An issuer that was an emerging growth company but is no longer an emerging growth company shall include the first separate resolution described under subsection (a)(1) not later than the end of—

(i) in the case of an issuer that was an emerging growth company for less than 2 years after the date of first sale of common equity securities of the issuer pursuant to an effective registration statement under the Securities Act of 1933 [15 U.S.C. 77a et seq.], the 3-year period beginning on such date; and

(ii) in the case of any other issuer, the 1-year period beginning on the date the issuer is no longer an emerging growth company.

(June 6, 1934, ch. 404, title I, §14A, as added Pub. L. 111–203, title IX, §951, July 21, 2010, 124 Stat. 1899; amended Pub. L. 112–106, title I, §102(a)(1), Apr. 5, 2012, 126 Stat. 308.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (e)(2)(B)(i), is title I of act May 27, 1933, ch. 38, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

AMENDMENTS

2012—Subsec. (e). Pub. L. 112–106 designated existing provisions as par. (1), inserted heading, substituted "any other issuer" for "an issuer", and added par. (2).

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of Title 12, Banks and Banking.

[1] *So in original. Probably should be "burden".*

§78n–2. Corporate governance

Not later than 180 days after July 21, 2010, the Commission shall issue rules that require an issuer to disclose in the annual proxy sent to investors the reasons why the issuer has chosen—

(1) the same person to serve as chairman of the board of directors and chief executive officer (or in equivalent positions); or

(2) different individuals to serve as chairman of the board of directors and chief executive officer (or in equivalent positions of the issuer).

(June 6, 1934, ch. 404, title I, §14B, as added Pub. L. 111–203, title IX, §972, July 21, 2010, 124 Stat. 1915.)

CODIFICATION

July 21, 2010, referred to in text, was in the original "the date of enactment of this subsection", and was translated as meaning the date of enactment of Pub. L. 111–203, which enacted this section, to reflect the probable intent of Congress.

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of Title 12, Banks and Banking.

§78*o*. Registration and regulation of brokers and dealers

(a) Registration of all persons utilizing exchange facilities to effect transactions; exemptions

(1) It shall be unlawful for any broker or dealer which is either a person other than a natural person or a natural person not associated with a broker or dealer which is a person other than a natural person (other than such a broker or dealer whose business is exclusively intrastate and who does not make use of any facility of a national securities exchange) to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless such broker or dealer is registered in accordance with subsection (b) of this section.

(2) The Commission, by rule or order, as it deems consistent with the public interest and the protection of investors, may conditionally or unconditionally exempt from paragraph (1) of this subsection any broker or dealer or class of brokers or dealers specified in such rule or order.

(b) Manner of registration of brokers and dealers

(1) A broker or dealer may be registered by filing with the Commission an application for registration in such form and containing such information and documents concerning such broker or dealer and any persons associated with such broker or dealer as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Within forty-five days of the date of the filing of such application (or within such longer period as to which the applicant consents), the Commission shall—

(A) by order grant registration, or

(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within one hundred twenty days of the date of the filing of the application for registration. At the conclusion of such proceedings, the Commission, by order, shall grant or deny

such registration. The Commission may extend the time for conclusion of such proceedings for up to ninety days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The Commission shall grant such registration if the Commission finds that the requirements of this section are satisfied. The order granting registration shall not be effective until such broker or dealer has become a member of a registered securities association, or until such broker or dealer has become a member of a national securities exchange, if such broker or dealer effects transactions solely on that exchange, unless the Commission has exempted such broker or dealer, by rule or order, from such membership. The Commission shall deny such registration if it does not make such a finding or if it finds that if the applicant were so registered, its registration would be subject to suspension or revocation under paragraph (4) of this subsection.

(2)(A) An application for registration of a broker or dealer to be formed or organized may be made by a broker or dealer to which the broker or dealer to be formed or organized is to be the successor. Such application, in such form as the Commission, by rule, may prescribe, shall contain such information and documents concerning the applicant, the successor, and any persons associated with the applicant or the successor, as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. The grant or denial of registration to such an applicant shall be in accordance with the procedures set forth in paragraph (1) of this subsection. If the Commission grants such registration, the registration shall terminate on the forty-fifth day after the effective date thereof, unless prior thereto the successor shall, in accordance with such rules and regulations as the Commission may prescribe, adopt the application for registration as its own.

(B) Any person who is a broker or dealer solely by reason of acting as a municipal securities dealer or municipal securities broker, who so acts through a separately identifiable department or division, and who so acted in such a manner on June 4, 1975, may, in accordance with such terms and conditions as the Commission, by rule, prescribes as necessary and appropriate in the public interest and for the protection of investors, register such separately identifiable department or division in accordance with this subsection. If any such department or division is so registered, the department or division and not such person himself shall be the broker or dealer for purposes of this chapter.

(C) Within six months of the date of the granting of registration to a broker or dealer, the Commission, or upon the authorization and direction of the Commission, a registered securities association or national securities exchange of which such broker or dealer is a member, shall conduct an inspection of the broker or dealer to determine whether it is operating in conformity with the provisions of this chapter and the rules and regulations thereunder: *Provided, however*, That the Commission may delay such inspection of any class of brokers or dealers for a period not to exceed six months.

(3) Any provision of this chapter (other than section 78e of this title and subsection (a) of this section) which prohibits any act, practice, or course of business if the mails or any means or instrumentality of interstate commerce is used in connection therewith shall also prohibit any such act, practice, or course of business by any registered broker or dealer or any person acting on behalf of such a broker or dealer, irrespective of any use of the mails or any means or instrumentality of interstate commerce in connection therewith.

(4) The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding twelve months, or revoke the registration of any broker or dealer if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest and that such broker or dealer, whether prior or subsequent to becoming such, or any person associated with such broker or dealer, whether prior or subsequent to becoming so associated—

(A) has willfully made or caused to be made in any application for registration or report required to be filed with the Commission or with any other appropriate regulatory agency under this chapter, or in any proceeding before the Commission with respect to registration, any statement which was at the time and in the light of the circumstances under which it was made

false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which is required to be stated therein.

(B) has been convicted within ten years preceding the filing of any application for registration or at any time thereafter of any felony or misdemeanor or of a substantially equivalent crime by a foreign court of competent jurisdiction which the Commission finds—

(i) involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, any substantially equivalent activity however denominated by the laws of the relevant foreign government, or conspiracy to commit any such offense;

(ii) arises out of the conduct of the business of a broker, dealer, municipal securities dealer municipal advisor,,[1] government securities broker, government securities dealer, investment adviser, bank, insurance company, fiduciary, transfer agent, nationally recognized statistical rating organization, foreign person performing a function substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act (7 U.S.C. 1 et seq.) or any substantially equivalent foreign statute or regulation;

(iii) involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds, or securities, or substantially equivalent activity however denominated by the laws of the relevant foreign government; or

(iv) involves the violation of section 152, 1341, 1342, or 1343 or chapter 25 or 47 of title 18 or a violation of a substantially equivalent foreign statute.

(C) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, municipal securities dealer municipal advisor,,[1] government securities broker, government securities dealer, security-based swap dealer, major security-based swap participant, transfer agent, nationally recognized statistical rating organization, foreign person performing a function substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation, or as an affiliated person or employee of any investment company, bank, insurance company, foreign entity substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security.

(D) has willfully violated any provision of the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.], the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.], the Commodity Exchange Act, this chapter, the rules or regulations under any of such statutes, or the rules of the Municipal Securities Rulemaking Board, or is unable to comply with any such provision.

(E) has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, this chapter, the rules or regulations under any of such statutes, or the rules of the Municipal Securities Rulemaking Board, or has failed reasonably to supervise, with a view to preventing violations of the provisions of such statutes, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision. For the purposes of this subparagraph (E) no person shall be deemed to have failed reasonably to supervise any other person, if—

(i) there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person, and

(ii) such person has reasonably discharged the duties and obligations incumbent upon him by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with.

(F) is subject to any order of the Commission barring or suspending the right of the person to be associated with a broker, dealer, security-based swap dealer, or a major security-based swap participant;

(G) has been found by a foreign financial regulatory authority to have—

(i) made or caused to be made in any application for registration or report required to be filed with a foreign financial regulatory authority, or in any proceeding before a foreign financial regulatory authority with respect to registration, any statement that was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any application or report to the foreign financial regulatory authority any material fact that is required to be stated therein;

(ii) violated any foreign statute or regulation regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded on or subject to the rules of a contract market or any board of trade;

(iii) aided, abetted, counseled, commanded, induced, or procured the violation by any person of any provision of any statutory provisions enacted by a foreign government, or rules or regulations thereunder, empowering a foreign financial regulatory authority regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded on or subject to the rules of a contract market or any board of trade, or has been found, by a foreign financial regulatory authority, to have failed reasonably to supervise, with a view to preventing violations of such statutory provisions, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision; or

(H) is subject to any final order of a State securities commission (or any agency or officer performing like functions), State authority that supervises or examines banks, savings associations, or credit unions, State insurance commission (or any agency or office performing like functions), an appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), or the National Credit Union Administration, that—

(i) bars such person from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities; or

(ii) constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.

(5) Pending final determination whether any registration under this subsection shall be revoked, the Commission, by order, may suspend such registration, if such suspension appears to the Commission, after notice and opportunity for hearing, to be necessary or appropriate in the public interest or for the protection of investors. Any registered broker or dealer may, upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any registered broker or dealer is no longer in existence or has ceased to do business as a broker or dealer, the Commission, by order, shall cancel the registration of such broker or dealer.

(6)(A) With respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a broker or dealer, or any person participating, or, at the time of the alleged misconduct, who was participating, in an offering of any penny stock, the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—

(i) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of this subsection;

(ii) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this paragraph; or

(iii) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4).

(B) It shall be unlawful—

(i) for any person as to whom an order under subparagraph (A) is in effect, without the consent of the Commission, willfully to become, or to be, associated with a broker or dealer in contravention of such order, or to participate in an offering of penny stock in contravention of such order;

(ii) for any broker or dealer to permit such a person, without the consent of the Commission, to become or remain, a person associated with the broker or dealer in contravention of such order, if such broker or dealer knew, or in the exercise of reasonable care should have known, of such order; or

(iii) for any broker or dealer to permit such a person, without the consent of the Commission, to participate in an offering of penny stock in contravention of such order, if such broker or dealer knew, or in the exercise of reasonable care should have known, of such order and of such participation.

(C) For purposes of this paragraph, the term "person participating in an offering of penny stock" includes any person acting as any promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock. The Commission may, by rule or regulation, define such term to include other activities, and may, by rule, regulation, or order, exempt any person or class of persons, in whole or in part, conditionally or unconditionally, from such term.

(7) No registered broker or dealer or government securities broker or government securities dealer registered (or required to register) under section 78o–5(a)(1)(A) of this title shall effect any transaction in, or induce the purchase or sale of, any security unless such broker or dealer meets such standards of operational capability and such broker or dealer and all natural persons associated with such broker or dealer meet such standards of training, experience, competence, and such other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors. The Commission shall establish such standards by rules and regulations, which may—

(A) specify that all or any portion of such standards shall be applicable to any class of brokers and dealers and persons associated with brokers and dealers;

(B) require persons in any such class to pass tests prescribed in accordance with such rules and regulations, which tests shall, with respect to any class of partners, officers, or supervisory employees (which latter term may be defined by the Commission's rules and regulations and as so defined shall include branch managers of brokers or dealers) engaged in the management of the broker or dealer, include questions relating to bookkeeping, accounting, internal control over cash and securities, supervision of employees, maintenance of records, and other appropriate matters; and

(C) provide that persons in any such class other than brokers and dealers and partners, officers, and supervisory employees of brokers or dealers, may be qualified solely on the basis of compliance with such standards of training and such other qualifications as the Commission finds appropriate.

The Commission, by rule, may prescribe reasonable fees and charges to defray its costs in carrying out this paragraph, including, but not limited to, fees for any test administered by it or under its direction. The Commission may cooperate with registered securities associations and national

securities exchanges in devising and administering tests and may require registered brokers and dealers and persons associated with such brokers and dealers to pass tests administered by or on behalf of any such association or exchange and to pay such association or exchange reasonable fees or charges to defray the costs incurred by such association or exchange in administering such tests.

(8) It shall be unlawful for any registered broker or dealer to effect any transaction in, or induce or attempt to induce the purchase or sale of, any security (other than or [2] commercial paper, bankers' acceptances, or commercial bills), unless such broker or dealer is a member of a securities association registered pursuant to section 78o–3 of this title or effects transactions in securities solely on a national securities exchange of which it is a member.

(9) The Commission by rule or order, as it deems consistent with the public interest and the protection of investors, may conditionally or unconditionally exempt from paragraph (8) of this subsection any broker or dealer or class of brokers or dealers specified in such rule or order.

(10) For the purposes of determining whether a person is subject to a statutory disqualification under section 78f(c)(2), 78o–3(g)(2), or 78q–1(b)(4)(A) of this title, the term "Commission" in paragraph (4)(B) of this subsection shall mean "exchange", "association", or "clearing agency", respectively.

(11) BROKER/DEALER REGISTRATION WITH RESPECT TO TRANSACTIONS IN SECURITY FUTURES PRODUCTS.—

(A) NOTICE REGISTRATION.—

(i) CONTENTS OF NOTICE.—Notwithstanding paragraphs (1) and (2), a broker or dealer required to register only because it effects transactions in security futures products on an exchange registered pursuant to section 78f(g) of this title may register for purposes of this section by filing with the Commission a written notice in such form and containing such information concerning such broker or dealer and any persons associated with such broker or dealer as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. A broker or dealer may not register under this paragraph unless that broker or dealer is a member of a national securities association registered under section 78o–3(k) of this title.

(ii) IMMEDIATE EFFECTIVENESS.—Such registration shall be effective contemporaneously with the submission of notice, in written or electronic form, to the Commission, except that such registration shall not be effective if the registration would be subject to suspension or revocation under paragraph (4).

(iii) SUSPENSION.—Such registration shall be suspended immediately if a national securities association registered pursuant to section 78o–3(k) of this title suspends the membership of that broker or dealer.

(iv) TERMINATION.—Such registration shall be terminated immediately if any of the above stated conditions for registration set forth in this paragraph are no longer satisfied.

(B) EXEMPTIONS FOR REGISTERED BROKERS AND DEALERS.—A broker or dealer registered pursuant to the requirements of subparagraph (A) shall be exempt from the following provisions of this chapter and the rules thereunder with respect to transactions in security futures products:

(i) Section 78h of this title.

(ii) Section 78k of this title.

(iii) Subsections (c)(3) and (c)(5) of this section.

(iv) Section 78o–4 of this title.

(v) Section 78o–5 of this title.

(vi) Subsections (d), (e), (f), (g), (h), and (i) [3] of section 78q of this title.

(12) EXEMPTION FOR SECURITY FUTURES PRODUCT EXCHANGE MEMBERS.—

(A) REGISTRATION EXEMPTION.—A natural person shall be exempt from the registration requirements of this section if such person—

(i) is a member of a designated contract market registered with the Commission as an

exchange pursuant to section 78f(g) of this title;

(ii) effects transactions only in securities on the exchange of which such person is a member; and

(iii) does not directly accept or solicit orders from public customers or provide advice to public customers in connection with the trading of security futures products.

(B) OTHER EXEMPTIONS.—A natural person exempt from registration pursuant to subparagraph (A) shall also be exempt from the following provisions of this chapter and the rules thereunder:

(i) Section 78h of this title.

(ii) Section 78k of this title.

(iii) Subsections (c)(3), (c)(5), and (e) of this section.

(iv) Section 78o–4 of this title.

(v) Section 78o–5 of this title.

(vi) Subsections (d), (e), (f), (g), (h), and (i) [3] of section 78q of this title.

(c) Use of manipulative or deceptive devices; contravention of rules and regulations

(1)(A) No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than commercial paper, bankers' acceptances, or commercial bills), or any security-based swap agreement by means of any manipulative, deceptive, or other fraudulent device or contrivance.

(B) No broker, dealer, or municipal securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security or any security-based swap agreement involving a municipal security by means of any manipulative, deceptive, or other fraudulent device or contrivance.

(C) No government securities broker or government securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or to attempt to induce the purchase or sale of, any government security or any security-based swap agreement involving a government security by means of any manipulative, deceptive, or other fraudulent device or contrivance.

(2)(A) No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) otherwise than on a national securities exchange of which it is a member, in connection with which such broker or dealer engages in any fraudulent, deceptive, or manipulative act or practice, or makes any fictitious quotation.

(B) No broker, dealer, or municipal securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security in connection with which such broker, dealer, or municipal securities dealer engages in any fraudulent, deceptive, or manipulative act or practice, or makes any fictitious quotation.

(C) No government securities broker or government securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or induce or attempt to induce the purchase or sale of, any government security in connection with which such government securities broker or government securities dealer engages in any fraudulent, deceptive, or manipulative act or practice, or makes any fictitious quotation.

(D) The Commission shall, for the purposes of this paragraph, by rules and regulations define, and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative and such quotations as are fictitious.

(E) The Commission shall, prior to adopting any rule or regulation under subparagraph (C), consult with and consider the views of the Secretary of the Treasury and each appropriate regulatory

agency. If the Secretary of the Treasury or any appropriate regulatory agency comments in writing on a proposed rule or regulation of the Commission under such subparagraph (C) that has been published for comment, the Commission shall respond in writing to such written comment before adopting the proposed rule. If the Secretary of the Treasury determines, and notifies the Commission, that such rule or regulation, if implemented, would, or as applied does (i) adversely affect the liquidity or efficiency of the market for government securities; or (ii) impose any burden on competition not necessary or appropriate in furtherance of the purposes of this section, the Commission shall, prior to adopting the proposed rule or regulation, find that such rule or regulation is necessary and appropriate in furtherance of the purposes of this section notwithstanding the Secretary's determination.

(3)(A) No broker or dealer (other than a government securities broker or government securities dealer, except a registered broker or dealer) shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security (except a government security) or commercial paper, bankers' acceptances, or commercial bills) in contravention of such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest or for the protection of investors to provide safeguards with respect to the financial responsibility and related practices of brokers and dealers including, but not limited to, the acceptance of custody and use of customers' securities and the carrying and use of customers' deposits or credit balances. Such rules and regulations shall (A) require the maintenance of reserves with respect to customers' deposits or credit balances, and (B) no later than September 1, 1975, establish minimum financial responsibility requirements for all brokers and dealers.

(B) Consistent with this chapter, the Commission, in consultation with the Commodity Futures Trading Commission, shall issue such rules, regulations, or orders as are necessary to avoid duplicative or conflicting regulations applicable to any broker or dealer registered with the Commission pursuant to subsection (b) of this section (except paragraph (11) thereof), that is also registered with the Commodity Futures Trading Commission pursuant to section 4f(a) of the Commodity Exchange Act [7 U.S.C. 6f(a)] (except paragraph (2) thereof), with respect to the application of: (i) the provisions of section 78h of this title, subsection (c)(3) of this section, and section 78q of this title and the rules and regulations thereunder related to the treatment of customer funds, securities, or property, maintenance of books and records, financial reporting, or other financial responsibility rules, involving security futures products; and (ii) similar provisions of the Commodity Exchange Act [7 U.S.C. 1 et seq.] and rules and regulations thereunder involving security futures products.

(C) Notwithstanding any provision of sections 2(a)(1)(C)(i) or 4d(a)(2) of the Commodity Exchange Act [7 U.S.C. 2(a)(1)(C)(i), 6d(a)(2)] and the rules and regulations thereunder, and pursuant to an exemption granted by the Commission under section 78mm of this title or pursuant to a rule or regulation, cash and securities may be held by a broker or dealer registered pursuant to subsection (b)(1) and also registered as a futures commission merchant pursuant to section 4f(a)(1) of the Commodity Exchange Act [7 U.S.C. 6f(a)(1)], in a portfolio margining account carried as a futures account subject to section 4d of the Commodity Exchange Act [7 U.S.C. 6d] and the rules and regulations thereunder, pursuant to a portfolio margining program approved by the Commodity Futures Trading Commission, and subject to subchapter IV of chapter 7 of title 11 and the rules and regulations thereunder. The Commission shall consult with the Commodity Futures Trading Commission to adopt rules to ensure that such transactions and accounts are subject to comparable requirements to the extent practicable for similar products.

(4) If the Commission finds, after notice and opportunity for a hearing, that any person subject to the provisions of section 78l, 78m, 78n of this title or subsection (d) of this section or any rule or regulation thereunder has failed to comply with any such provision, rule, or regulation in any material respect, the Commission may publish its findings and issue an order requiring such person, and any person who was a cause of the failure to comply due to an act or omission the person knew

or should have known would contribute to the failure to comply, to comply, or to take steps to effect compliance, with such provision or such rule or regulation thereunder upon such terms and conditions and within such time as the Commission may specify in such order.

(5) No dealer (other than a specialist registered on a national securities exchange) acting in the capacity of market maker or otherwise shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or a municipal security) in contravention of such specified and appropriate standards with respect to dealing as the Commission, by rule, shall prescribe as necessary or appropriate in the public interest and for the protection of investors, to maintain fair and orderly markets, or to remove impediments to and perfect the mechanism of a national market system. Under the rules of the Commission a dealer in a security may be prohibited from acting as a broker in that security.

(6) No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security, municipal security, commercial paper, bankers' acceptances, or commercial bills) in contravention of such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest and for the protection of investors or to perfect or remove impediments to a national system for the prompt and accurate clearance and settlement of securities transactions, with respect to the time and method of, and the form and format of documents used in connection with, making settlements of and payments for transactions in securities, making transfers and deliveries of securities, and closing accounts. Nothing in this paragraph shall be construed (A) to affect the authority of the Board of Governors of the Federal Reserve System, pursuant to section 78g of this title, to prescribe rules and regulations for the purpose of preventing the excessive use of credit for the purchase or carrying of securities, or (B) to authorize the Commission to prescribe rules or regulations for such purpose.

(7) In connection with any bid for or purchase of a government security related to an offering of government securities by or on behalf of an issuer, no government securities broker, government securities dealer, or bidder for or purchaser of securities in such offering shall knowingly or willfully make any false or misleading written statement or omit any fact necessary to make any written statement made not misleading.

(8) PROHIBITION OF REFERRAL FEES.—No broker or dealer, or person associated with a broker or dealer, may solicit or accept, directly or indirectly, remuneration for assisting an attorney in obtaining the representation of any person in any private action arising under this chapter or under the Securities Act of 1933 [15 U.S.C. 77a et seq.].

(d) Supplementary and periodic information

(1) In general

Each issuer which has filed a registration statement containing an undertaking which is or becomes operative under this subsection as in effect prior to August 20, 1964, and each issuer which shall after such date file a registration statement which has become effective pursuant to the Securities Act of 1933, as amended [15 U.S.C. 77a et seq.], shall file with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, such supplementary and periodic information, documents, and reports as may be required pursuant to section 78m of this title in respect of a security registered pursuant to section 78l of this title. The duty to file under this subsection shall be automatically suspended if and so long as any issue of securities of such issuer is registered pursuant to section 78l of this title. The duty to file under this subsection shall also be automatically suspended as to any fiscal year, other than the fiscal year within which such registration statement became effective, if, at the beginning of such fiscal year, the securities of each class, other than any class of asset-backed securities, to which the registration statement relates are held of record by less than 300 persons, or, in the case of bank [4] or a bank holding company, as such term is defined in section 1841 of title 12, 1,200 persons persons.[1] For the purposes of this subsection, the term "class" shall be construed to include all securities of an issuer

which are of substantially similar character and the holders of which enjoy substantially similar rights and privileges. The Commission may, for the purpose of this subsection, define by rules and regulations the term "held of record" as it deems necessary or appropriate in the public interest or for the protection of investors in order to prevent circumvention of the provisions of this subsection. Nothing in this subsection shall apply to securities issued by a foreign government or political subdivision thereof.

(2) Asset-backed securities

(A) Suspension of duty to file

The Commission may, by rule or regulation, provide for the suspension or termination of the duty to file under this subsection for any class of asset-backed security, on such terms and conditions and for such period or periods as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

(B) Classification of issuers

The Commission may, for purposes of this subsection, classify issuers and prescribe requirements appropriate for each class of issuers of asset-backed securities.

(e) Notices to customers regarding securities lending

Every registered broker or dealer shall provide notice to its customers that they may elect not to allow their fully paid securities to be used in connection with short sales. If a broker or dealer uses a customer's securities in connection with short sales, the broker or dealer shall provide notice to its customer that the broker or dealer may receive compensation in connection with lending the customer's securities. The Commission, by rule, as it deems necessary or appropriate in the public interest and for the protection of investors, may prescribe the form, content, time, and manner of delivery of any notice required under this paragraph.

(f) Compliance with this chapter by members not required to be registered

The Commission, by rule, as it deems necessary or appropriate in the public interest and for the protection of investors or to assure equal regulation, may require any member of a national securities exchange not required to register under this section and any person associated with any such member to comply with any provision of this chapter (other than subsection (a) of this section) or the rules or regulations thereunder which by its terms regulates or prohibits any act, practice, or course of business by a "broker or dealer" or "registered broker or dealer" or a "person associated with a broker or dealer," respectively.

(g) Prevention of misuse of material, nonpublic information

Every registered broker or dealer shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such broker's or dealer's business, to prevent the misuse in violation of this chapter, or the rules or regulations thereunder, of material, nonpublic information by such broker or dealer or any person associated with such broker or dealer. The Commission, as it deems necessary or appropriate in the public interest or for the protection of investors, shall adopt rules or regulations to require specific policies or procedures reasonably designed to prevent misuse in violation of this chapter (or the rules or regulations thereunder) of material, nonpublic information.

(h) Requirements for transactions in penny stocks

(1) In general

No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any penny stock by any customer except in accordance with the requirements of this subsection and the rules and regulations prescribed under this subsection.

(2) Risk disclosure with respect to penny stocks

Prior to effecting any transaction in any penny stock, a broker or dealer shall give the customer

a risk disclosure document that—

(A) contains a description of the nature and level of risk in the market for penny stocks in both public offerings and secondary trading;

(B) contains a description of the broker's or dealer's duties to the customer and of the rights and remedies available to the customer with respect to violations of such duties or other requirements of Federal securities laws;

(C) contains a brief, clear, narrative description of a dealer market, including "bid" and "ask" prices for penny stocks and the significance of the spread between the bid and ask prices;

(D) contains the toll free telephone number for inquiries on disciplinary actions established pursuant to section 78o–3(i) of this title;

(E) defines significant terms used in the disclosure document or in the conduct of trading in penny stocks; and

(F) contains such other information, and is in such form (including language, type size, and format), as the Commission shall require by rule or regulation.

(3) Commission rules relating to disclosure

The Commission shall adopt rules setting forth additional standards for the disclosure by brokers and dealers to customers of information concerning transactions in penny stocks. Such rules—

(A) shall require brokers and dealers to disclose to each customer, prior to effecting any transaction in, and at the time of confirming any transaction with respect to any penny stock, in accordance with such procedures and methods as the Commission may require consistent with the public interest and the protection of investors—

(i) the bid and ask prices for penny stock, or such other information as the Commission may, by rule, require to provide customers with more useful and reliable information relating to the price of such stock;

(ii) the number of shares to which such bid and ask prices apply, or other comparable information relating to the depth and liquidity of the market for such stock; and

(iii) the amount and a description of any compensation that the broker or dealer and the associated person thereof will receive or has received in connection with such transaction;

(B) shall require brokers and dealers to provide, to each customer whose account with the broker or dealer contains penny stocks, a monthly statement indicating the market value of the penny stocks in that account or indicating that the market value of such stock cannot be determined because of the unavailability of firm quotes; and

(C) may, as the Commission finds necessary or appropriate in the public interest or for the protection of investors, require brokers and dealers to disclose to customers additional information concerning transactions in penny stocks.

(4) Exemptions

The Commission, as it determines consistent with the public interest and the protection of investors, may by rule, regulation, or order exempt in whole or in part, conditionally or unconditionally, any person or class of persons, or any transaction or class of transactions, from the requirements of this subsection. Such exemptions shall include an exemption for brokers and dealers based on the minimal percentage of the broker's or dealer's commissions, commission-equivalents, and markups received from transactions in penny stocks.

(5) Regulations

It shall be unlawful for any person to violate such rules and regulations as the Commission shall prescribe in the public interest or for the protection of investors or to maintain fair and orderly markets—

(A) as necessary or appropriate to carry out this subsection; or

(B) as reasonably designed to prevent fraudulent, deceptive, or manipulative acts and practices with respect to penny stocks.

(i) Limitations on State law

(1) Capital, margin, books and records, bonding, and reports

No law, rule, regulation, or order, or other administrative action of any State or political subdivision thereof shall establish capital, custody, margin, financial responsibility, making and keeping records, bonding, or financial or operational reporting requirements for brokers, dealers, municipal securities dealers, government securities brokers, or government securities dealers that differ from, or are in addition to, the requirements in those areas established under this chapter. The Commission shall consult periodically the securities commissions (or any agency or office performing like functions) of the States concerning the adequacy of such requirements as established under this chapter.

(2) Funding portals

(A) Limitation on State laws

Except as provided in subparagraph (B), no State or political subdivision thereof may enforce any law, rule, regulation, or other administrative action against a registered funding portal with respect to its business as such.

(B) Examination and enforcement authority

Subparagraph (A) does not apply with respect to the examination and enforcement of any law, rule, regulation, or administrative action of a State or political subdivision thereof in which the principal place of business of a registered funding portal is located, provided that such law, rule, regulation, or administrative action is not in addition to or different from the requirements for registered funding portals established by the Commission.

(C) Definition

For purposes of this paragraph, the term "State" includes the District of Columbia and the territories of the United States.

(3) De minimis transactions by associated persons

No law, rule, regulation, or order, or other administrative action of any State or political subdivision thereof may prohibit an associated person of a broker or dealer from effecting a transaction described in paragraph (3) for a customer in such State if—

(A) such associated person is not ineligible to register with such State for any reason other than such a transaction;

(B) such associated person is registered with a registered securities association and at least one State; and

(C) the broker or dealer with which such person is associated is registered with such State.

(4) Described transactions

(A) In general

A transaction is described in this paragraph if—

(i) such transaction is effected—

(I) on behalf of a customer that, for 30 days prior to the day of the transaction, maintained an account with the broker or dealer; and

(II) by an associated person of the broker or dealer—

(aa) to which the customer was assigned for 14 days prior to the day of the transaction; and

(bb) who is registered with a State in which the customer was a resident or was present for at least 30 consecutive days during the 1-year period prior to the day of the transaction; or

(ii) the transaction is effected—

(I) on behalf of a customer that, for 30 days prior to the day of the transaction, maintained an account with the broker or dealer; and

(II) during the period beginning on the date on which such associated person files an application for registration with the State in which the transaction is effected and ending on the earlier of—

(aa) 60 days after the date on which the application is filed; or

(bb) the date on which such State notifies the associated person that it has denied the application for registration or has stayed the pendency of the application for cause.

(B) Rules of construction

For purposes of subparagraph (A)(i)(II)—

(i) each of up to 3 associated persons of a broker or dealer who are designated to effect transactions during the absence or unavailability of the principal associated person for a customer may be treated as an associated person to which such customer is assigned; and

(ii) if the customer is present in another State for 30 or more consecutive days or has permanently changed his or her residence to another State, a transaction is not described in this paragraph, unless the associated person of the broker or dealer files an application for registration with such State not later than 10 business days after the later of the date of the transaction, or the date of the discovery of the presence of the customer in the other State for 30 or more consecutive days or the change in the customer's residence.

(j) [5] Rulemaking to extend requirements to new hybrid products

(1) Consultation

Prior to commencing a rulemaking under this subsection, the Commission shall consult with and seek the concurrence of the Board concerning the imposition of broker or dealer registration requirements with respect to any new hybrid product. In developing and promulgating rules under this subsection, the Commission shall consider the views of the Board, including views with respect to the nature of the new hybrid product; the history, purpose, extent, and appropriateness of the regulation of the new product under the Federal banking laws; and the impact of the proposed rule on the banking industry.

(2) Limitation

The Commission shall not—

(A) require a bank to register as a broker or dealer under this section because the bank engages in any transaction in, or buys or sells, a new hybrid product; or

(B) bring an action against a bank for a failure to comply with a requirement described in subparagraph (A),

unless the Commission has imposed such requirement by rule or regulation issued in accordance with this section.

(3) Criteria for rulemaking

The Commission shall not impose a requirement under paragraph (2) of this subsection with respect to any new hybrid product unless the Commission determines that—

(A) the new hybrid product is a security; and

(B) imposing such requirement is necessary and appropriate in the public interest and for the protection of investors.

(4) Considerations

In making a determination under paragraph (3), the Commission shall consider—

(A) the nature of the new hybrid product; and

(B) the history, purpose, extent, and appropriateness of the regulation of the new hybrid product under the Federal securities laws and under the Federal banking laws.

(5) Objection to Commission regulation

(A) Filing of petition for review

The Board may obtain review of any final regulation described in paragraph (2) in the United

States Court of Appeals for the District of Columbia Circuit by filing in such court, not later than 60 days after the date of publication of the final regulation, a written petition requesting that the regulation be set aside. Any proceeding to challenge any such rule shall be expedited by the Court of Appeals.

(B) Transmittal of petition and record

A copy of a petition described in subparagraph (A) shall be transmitted as soon as possible by the Clerk of the Court to an officer or employee of the Commission designated for that purpose. Upon receipt of the petition, the Commission shall file with the court the regulation under review and any documents referred to therein, and any other relevant materials prescribed by the court.

(C) Exclusive jurisdiction

On the date of the filing of the petition under subparagraph (A), the court has jurisdiction, which becomes exclusive on the filing of the materials set forth in subparagraph (B), to affirm and enforce or to set aside the regulation at issue.

(D) Standard of review

The court shall determine to affirm and enforce or set aside a regulation of the Commission under this subsection, based on the determination of the court as to whether—

(i) the subject product is a new hybrid product, as defined in this subsection;

(ii) the subject product is a security; and

(iii) imposing a requirement to register as a broker or dealer for banks engaging in transactions in such product is appropriate in light of the history, purpose, and extent of regulation under the Federal securities laws and under the Federal banking laws, giving deference neither to the views of the Commission nor the Board.

(E) Judicial stay

The filing of a petition by the Board pursuant to subparagraph (A) shall operate as a judicial stay, until the date on which the determination of the court is final (including any appeal of such determination).

(F) Other authority to challenge

Any aggrieved party may seek judicial review of the Commission's rulemaking under this subsection pursuant to section 78y of this title.

(6) Definitions

For purposes of this subsection:

(A) New hybrid product

The term "new hybrid product" means a product that—

(i) was not subjected to regulation by the Commission as a security prior to the date of the enactment of the Gramm-Leach-Bliley Act [Nov. 12, 1999];

(ii) is not an identified banking product as such term is defined in section 206 of such Act; and

(iii) is not an equity swap within the meaning of section 206(a)(6) of such Act.

(B) Board

The term "Board" means the Board of Governors of the Federal Reserve System.

(j) [5] Limitation on Commission authority

The authority of the Commission under this section with respect to security-based swap agreements shall be subject to the restrictions and limitations of section 78c–1(b) of this title.

(k) [6] Registration or succession to a United States broker or dealer

In determining whether to permit a foreign person or an affiliate of a foreign person to register as a United States broker or dealer, or succeed to the registration of a United States broker or dealer, the

Commission may consider whether, for a foreign person, or an affiliate of a foreign person that presents a risk to the stability of the United States financial system, the home country of the foreign person has adopted, or made demonstrable progress toward adopting, an appropriate system of financial regulation to mitigate such risk.

(l) [7] Termination of a United States broker or dealer

For a foreign person or an affiliate of a foreign person that presents such a risk to the stability of the United States financial system, the Commission may determine to terminate the registration of such foreign person or an affiliate of such foreign person as a broker or dealer in the United States, if the Commission determines that the home country of the foreign person has not adopted, or made demonstrable progress toward adopting, an appropriate system of financial regulation to mitigate such risk.

(k) [8] Standard of conduct

(1) In general

Notwithstanding any other provision of this chapter or the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.], the Commission may promulgate rules to provide that, with respect to a broker or dealer, when providing personalized investment advice about securities to a retail customer (and such other customers as the Commission may by rule provide), the standard of conduct for such broker or dealer with respect to such customer shall be the same as the standard of conduct applicable to an investment adviser under section 211 of the Investment Advisers Act of 1940 [15 U.S.C. 80b–11]. The receipt of compensation based on commission or other standard compensation for the sale of securities shall not, in and of itself, be considered a violation of such standard applied to a broker or dealer. Nothing in this section shall require a broker or dealer or registered representative to have a continuing duty of care or loyalty to the customer after providing personalized investment advice about securities.

(2) Disclosure of range of products offered

Where a broker or dealer sells only proprietary or other limited range of products, as determined by the Commission, the Commission may by rule require that such broker or dealer provide notice to each retail customer and obtain the consent or acknowledgment of the customer. The sale of only proprietary or other limited range of products by a broker or dealer shall not, in and of itself, be considered a violation of the standard set forth in paragraph (1).

(l) [9] Other matters

The Commission shall—

(1) facilitate the provision of simple and clear disclosures to investors regarding the terms of their relationships with brokers, dealers, and investment advisers, including any material conflicts of interest; and

(2) examine and, where appropriate, promulgate rules prohibiting or restricting certain sales practices, conflicts of interest, and compensation schemes for brokers, dealers, and investment advisers that the Commission deems contrary to the public interest and the protection of investors.

(m) Harmonization of enforcement

The enforcement authority of the Commission with respect to violations of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer shall include—

(1) the enforcement authority of the Commission with respect to such violations provided under this chapter; and

(2) the enforcement authority of the Commission with respect to violations of the standard of conduct applicable to an investment adviser under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.], including the authority to impose sanctions for such violations, and

the Commission shall seek to prosecute and sanction violators of the standard of conduct

applicable to a broker or dealer providing personalized investment advice about securities to a retail customer under this chapter to [10] same extent as the Commission prosecutes and sanctions violators of the standard of conduct applicable to an investment advisor under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.].

(n) Disclosures to retail investors

(1) In general

Notwithstanding any other provision of the securities laws, the Commission may issue rules designating documents or information that shall be provided by a broker or dealer to a retail investor before the purchase of an investment product or service by the retail investor.

(2) Considerations

In developing any rules under paragraph (1), the Commission shall consider whether the rules will promote investor protection, efficiency, competition, and capital formation.

(3) Form and contents of documents and information

Any documents or information designated under a rule promulgated under paragraph (1) shall—

(A) be in a summary format; and

(B) contain clear and concise information about—

(i) investment objectives, strategies, costs, and risks; and

(ii) any compensation or other financial incentive received by a broker, dealer, or other intermediary in connection with the purchase of retail investment products.

(o) Authority to restrict mandatory pre-dispute arbitration

The Commission, by rule, may prohibit, or impose conditions or limitations on the use of, agreements that require customers or clients of any broker, dealer, or municipal securities dealer to arbitrate any future dispute between them arising under the Federal securities laws, the rules and regulations thereunder, or the rules of a self-regulatory organization if it finds that such prohibition, imposition of conditions, or limitations are in the public interest and for the protection of investors.

(June 6, 1934, ch. 404, title I, §15, 48 Stat. 895; May 27, 1936, ch. 462, §3, 49 Stat. 1377; June 25, 1938, ch. 677, §2, 52 Stat. 1075; Pub. L. 88–467, §6, Aug. 20, 1964, 78 Stat. 570; Pub. L. 91–598, §11(d), formerly §7(d), Dec. 30, 1970, 84 Stat. 1653, renumbered §11(d), Pub. L. 95–283, §9, May 21, 1978, 92 Stat. 260; Pub. L. 94–29, §11, June 4, 1975, 89 Stat. 121; Pub. L. 95–213, title II, §204, Dec. 19, 1977, 91 Stat. 1500; Pub. L. 98–38, §3(a), June 6, 1983, 97 Stat. 206; Pub. L. 98–376, §§4, 6(b), Aug. 10, 1984, 98 Stat. 1265; Pub. L. 99–571, title I, §102(e), (f), Oct. 28, 1986, 100 Stat. 3218; Pub. L. 100–181, title III, §317, Dec. 4, 1987, 101 Stat. 1256; Pub. L. 100–704, §3(b)(1), Nov. 19, 1988, 102 Stat. 4679; Pub. L. 101–429, title V, §§504(a), 505, Oct. 15, 1990, 104 Stat. 952, 953; Pub. L. 101–550, title II, §203(a), (c)(1), Nov. 15, 1990, 104 Stat. 2715, 2718; Pub. L. 103–202, title I, §§105, 106(b)(2)(B), 109(b)(2), 110, Dec. 17, 1993, 107 Stat. 2348, 2350, 2353; Pub. L. 104–67, title I, §103(a), Dec. 22, 1995, 109 Stat. 756; Pub. L. 104–290, title I, §103(a), Oct. 11, 1996, 110 Stat. 3420; Pub. L. 105–353, title III, §301(b)(8), Nov. 3, 1998, 112 Stat. 3236; Pub. L. 106–102, title II, §205, Nov. 12, 1999, 113 Stat. 1391; Pub. L. 106–554, §1(a)(5) [title II, §§203(a)(1), (b), 206(h), title III, §303(e), (f)], Dec. 21, 2000, 114 Stat. 2763, 2763A–421, 2763A–422, 2763A–432, 2763A–454, 2763A–455; Pub. L. 107–204, title VI, §604(a), (c)(1)(B)(ii), July 30, 2002, 116 Stat. 795, 796; Pub. L. 109–291, §4(b)(1)(A), Sept. 29, 2006, 120 Stat. 1337; Pub. L. 111–203, title I, §173(c), title VII, §§713(a), 762(d)(4), 766(d), title IX, §§913(g)(1), (h)(1), 919, 921(a), 925(a)(1), 929L(3), 929X(c), 942(a), 975(g), 985(b)(5)(A), July 21, 2010, 124 Stat. 1440, 1646, 1761, 1799, 1828, 1829, 1837, 1841, 1850, 1861, 1870, 1896, 1923, 1933; Pub. L. 112–106, title III, §305(d)(1), title VI, §601(b), Apr. 5, 2012, 126 Stat. 323, 326.)

AMENDMENT OF SECTION

Unless otherwise provided, amendments by subtitle A (§§711–754) and subtitle B (§§761–774) of title VII of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of either subtitle A or B requires a rulemaking, not less than 60 days after publication of

the final rule or regulation implementing such provision of subtitle A or B, see 2010 Amendment notes and Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b)(2)(B), (C), (3), (4)(A), (D), (E), (11)(B), (12)(B), (c)(3)(B), (8), (f), (g), and (i)(1), was in the original "this title", and this chapter, referred to in subsecs. (k)(1) and (m), was in the original "this Act". See References in Text note set out under section 78a of this title.

The Commodity Exchange Act, referred to in subsecs. (b)(4)(B)(ii), (C) to (E) and (c)(3)(B), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

The Securities Act of 1933, referred to in subsecs. (b)(4)(D), (E), (c)(8), and (d)(1), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter 1 (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Investment Advisers Act of 1940, referred to in subsecs. (b)(4)(D), (E), (k)(1), and (m), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, which is classified generally to subchapter II (§80b–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80b–20 of this title and Tables.

The Investment Company Act of 1940, referred to in subsec. (b)(4)(D), (E), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter 1 (§80a–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a–51 of this title and Tables.

Subsection (i) of section 78q of this title, referred to in subsec. (b)(11)(B)(vi), (12)(B)(vi), was struck out and subsec. (j) was redesignated (i) by Pub. L. 111–203, title VI, §617(a), July 21, 2010, 124 Stat. 1616.

Section 206 of the Gramm-Leach-Bliley Act, referred to in subsec. (j)(6)(A)(ii), (iii), is section 206 of Pub. L. 106–102, which is set out as a note under section 78c of this title.

AMENDMENTS

2012—Subsec. (d)(1). Pub. L. 112–106, §601(b), substituted "300 persons, or, in the case of bank or a bank holding company, as such term is defined in section 1841 of title 12, 1,200 persons" for "three hundred".

Subsec. (i)(2) to (4). Pub. L. 112–106, §305(d)(1), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

2010—Subsec. (b)(1). Pub. L. 111–203, §985(b)(5)(A)(ii), in concluding provisions, inserted "The order granting registration shall not be effective until such broker or dealer has become a member of a registered securities association, or until such broker or dealer has become a member of a national securities exchange, if such broker or dealer effects transactions solely on that exchange, unless the Commission has exempted such broker or dealer, by rule or order, from such membership." after "are satisfied."

Subsec. (b)(1)(B). Pub. L. 111–203, §985(b)(5)(A)(i), struck out "The order granting registration shall not be effective until such broker or dealer has become a member of a registered securities association, or until such broker or dealer has become a member of a national securities exchange if such broker or dealer effects transactions solely on that exchange, unless the Commission has exempted such broker or dealer, by rule or order, from such membership." after "grant or deny such registration."

Subsec. (b)(4). Pub. L. 111–203, §975(g)(1), inserted "municipal advisor," after "municipal securities dealer" in subpars. (B)(ii) and (C).

Subsec. (b)(4)(C). Pub. L. 111–203, §766(d)(1), inserted "security-based swap dealer, major security-based swap participant," after "government securities dealer,".

Subsec. (b)(4)(F). Pub. L. 111–203, §766(d)(2), substituted "broker, dealer, security-based swap dealer, or a major security-based swap participant" for "broker or dealer".

Subsec. (b)(6)(A). Pub. L. 111–203, §925(a)(1), substituted ", or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization," for ", or bar such person from being associated with a broker or dealer," in introductory provisions.

Subsec. (c). Pub. L. 111–203, §975(g)(2), inserted "broker, dealer, or" before "municipal securities dealer" in par. (1)(B) and in two places in par. (2)(B).

Subsec. (c)(1)(A). Pub. L. 111–203, §929L(3), struck out "otherwise than on a national securities exchange of which it is a member" after "commercial bills)".

Pub. L. 111–203, §762(d)(4)(A), struck out "(as defined in section 206B of the Gramm-Leach-Bliley Act)," after "security-based swap agreement".

Subsec. (c)(1)(B), (C). Pub. L. 111–203, §762(d)(4)(B), struck out "(as defined in section 206B of the Gramm-Leach-Bliley Act)" after "security-based swap agreement".

Subsec. (c)(3)(C). Pub. L. 111–203, §713(a), added subpar. (C).

Subsec. (d). Pub. L. 111–203, §942(a), inserted subsec. heading, designated existing provisions as par. (1), inserted par. heading, inserted ", other than any class of asset-backed securities," after "securities of each class", and added par. (2).

Subsecs. (e) to (h). Pub. L. 111–203, §929X(c), added subsec. (e) and redesignated former subsecs. (e) to (g) as (f) to (h), respectively. Former subsec. (h) redesignated (i) relating to limitations on State law.

Subsec. (i). Pub. L. 111–203, §929X(c)(1), redesignated subsec. (h) as (i). Former subsec. (i), relating to rulemaking to extend requirements to new hybrid products, redesignated (j).

Subsec. (j). Pub. L. 111–203, §929X(c)(1), redesignated subsec. (i), relating to rulemaking to extend requirements to new hybrid products, as (j).

Pub. L. 111–203, §762(d)(4)(C), (D), redesignated subsec. (i), relating to limitation on Commission authority, as (j) and struck out "(as defined in section 206B of the Gramm-Leach-Bliley Act)" after "security-based swap agreements".

Subsecs. (k), (l). Pub. L. 111–203, §913(g)(1), added subsec. (k) relating to standard of conduct and subsec. (l) relating to other matters.

Pub. L. 111–203, §173(c), added subsec. (k) relating to registration or succession to a United States broker or dealer and subsec. (l) relating to termination of a United States broker or dealer.

Subsec. (m). Pub. L. 111–203, §913(h)(1), added subsec. (m).

Subsec. (n). Pub. L. 111–203, §919, added subsec. (n).

Subsec. (o). Pub. L. 111–203, §921(a), added subsec. (o).

2006—Subsec. (b)(4)(B)(ii), (C). Pub. L. 109–291 inserted "nationally recognized statistical rating organization," after "transfer agent,".

2002—Subsec. (b)(4)(F). Pub. L. 107–204, §604(a)(1), added subpar. (F) and struck out former subpar. (F) which read as follows: "is subject to an order of the Commission entered pursuant to paragraph (6) of this subsection (b) barring or suspending the right of such person to be associated with a broker or dealer."

Subsec. (b)(4)(H). Pub. L. 107–204, §604(a)(2), added subpar. (H).

Subsec. (b)(6)(A)(i). Pub. L. 107–204, §604(c)(1)(B)(ii), substituted ", or is subject to an order or finding," for "or omission".

2000—Subsec. (b)(11). Pub. L. 106–554, §1(a)(5) [title II, §203(a)(1)], added par. (11).

Subsec. (b)(12). Pub. L. 106–554, §1(a)(5) [title II, §203(b)], added par. (12).

Subsec. (c)(1). Pub. L. 106–554, §1(a)(5) [title III, §303(e)], amended par. (1) generally. Prior to amendment, par. (1) consisted of subpars. (A) to (E) prohibiting use of mails or instrumentality of interstate commerce for transactions in securities by manipulative, deceptive, or other fraudulent device, requiring the Commission, by regulation, to define such devices as manipulative, deceptive or fraudulent, and providing for consultation with the Secretary of the Treasury and other agencies prior to adoption of regulations.

Subsec. (c)(3). Pub. L. 106–554, §1(a)(5) [title II, §206(h)], designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (i). Pub. L. 106–554, §1(a)(5) [title III, §303(f)], added subsec. (i) relating to limitation on Commission authority.

1999—Subsec. (i). Pub. L. 106–102 added subsec. (i) relating to rulemaking to extend requirements to new hybrid products.

1998—Subsec. (c)(8). Pub. L. 105–353, §301(b)(8)(A), realigned margins.

Subsec. (h)(2). Pub. L. 105–353, §301(b)(8)(B), substituted "effecting" for "affecting" in introductory provisions.

Subsec. (h)(3)(A)(i)(II)(bb). Pub. L. 105–353, §301(b)(8)(C), inserted "or" after semicolon at end.

Subsec. (h)(3)(A)(ii)(I). Pub. L. 105–353, §301(b)(8)(D), substituted "maintained" for "maintains".

Subsec. (h)(3)(B)(ii). Pub. L. 105–353, §301(b)(8)(E), substituted "associated" for "association".

1996—Subsec. (h). Pub. L. 104–290 added subsec. (h).

1995—Subsec. (c)(8). Pub. L. 104–67 added par. (8).

1993—Subsec. (b)(1)(B). Pub. L. 103–202, §109(b)(2), inserted "The order granting registration shall not be effective until such broker or dealer has become a member of a registered securities association, or until such broker or dealer has become a member of a national securities exchange if such broker or dealer effects transactions solely on that exchange, unless the Commission has exempted such broker or dealer, by rule or order, from such membership." before "The Commission may extend".

Subsec. (b)(7). Pub. L. 103–202, §106(b)(2)(B), inserted "or government securities broker or government securities dealer registered (or required to register) under section 78o–5(a)(1)(A) of this title" after "No registered broker or dealer" in introductory provisions.

Subsec. (c)(1). Pub. L. 103–202, §105(b), inserted subpar. designation "(A)" after "(1)", substituted "contrivance." along with subpar. designation "(B)" and "No municipal securities dealer" for "contrivance, and

no municipal securities dealer", substituted "contrivance." along with subpar. (C), subpar. designation "(D)" and "The Commission shall" for "contrivance. The Commission shall", and added subpar. (E).

Subsec. (c)(2). Pub. L. 103–202, §105(a), inserted subpar. designation "(A)" after "(2)", substituted "fictitious quotation." along with subpar. designation "(B)" and "No municipal securities dealer" for "fictitious quotation, and no municipal securities dealer", substituted "fictitious quotation." along with subpar. (C), subpar. designation "(D)" and "The Commission shall" for "fictitious quotation. The Commission shall", and added subpar. (E).

Subsec. (c)(7). Pub. L. 103–202, §110, added par. (7).

1990—Subsec. (b)(4)(B). Pub. L. 101–550, §203(a)(1), inserted "or of a substantially equivalent crime by a foreign court of competent jurisdiction" after "misdemeanor".

Subsec. (b)(4)(B)(i). Pub. L. 101–550, §203(a)(2), inserted "any substantially equivalent activity however denominated by the laws of the relevant foreign government," after "burglary,".

Subsec. (b)(4)(B)(ii). Pub. L. 101–550, §203(a)(3), inserted "foreign person performing a function substantially equivalent to any of the above," after "transfer agent," and "or any substantially equivalent foreign statute or regulation" before semicolon at end.

Subsec. (b)(4)(B)(iii). Pub. L. 101–550, §203(a)(4), inserted ", or substantially equivalent activity however denominated by the laws of the relevant foreign government" after "securities".

Subsec. (b)(4)(B)(iv). Pub. L. 101–550, §203(a)(5), inserted "or a violation of a substantially equivalent foreign statute" after "title 18".

Subsec. (b)(4)(C). Pub. L. 101–550, §203(a)(6), inserted "foreign person performing a function substantially equivalent to any of the above," after "transfer agent,", "or any substantially equivalent foreign statute or regulation" after "Commodity Exchange Act" wherever appearing, and "foreign entity substantially equivalent to any of the above," after "insurance company,".

Subsec. (b)(4)(G). Pub. L. 101–550, §203(a)(7), added subpar. (G).

Subsec. (b)(6). Pub. L. 101–429, §504(a), amended par. (6) generally. Prior to amendment, par. (6) read as follows: "The Commission, by order, shall censure or place limitations on the activities or functions of any person associated, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated with a broker or dealer, or suspend for a period not exceeding twelve months or bar any such person from being associated with a broker or dealer, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed or omitted any act or omission enumerated in subparagraph (A), (D), (E), or (G) of paragraph (4) of this subsection, has been convicted of any offense specified in subparagraph (B) of said paragraph (4) within ten years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of said paragraph (4). It shall be unlawful for any person as to whom such an order suspending or barring him from being associated with a broker or dealer is in effect willfully to become, or to be, associated with a broker or dealer without the consent of the Commission, and it shall be unlawful for any broker or dealer to permit such a person to become, or remain, a person associated with him without the consent of the Commission, if such broker or dealer knew, or in the exercise of reasonable care should have known, of such order."

Pub. L. 101–550, §203(c)(1), substituted "(A), (D), (E), or (G)" for "(A), (D), or (E)".

Subsec. (g). Pub. L. 101–429, §505, added subsec. (g).

1988—Subsec. (f). Pub. L. 100–704 added subsec. (f).

1987—Subsec. (b)(4)(B)(ii). Pub. L. 100–181, §317(1), substituted "fiduciary, transfer agent, or" for "fiduciary, or any".

Subsec. (b)(4)(C). Pub. L. 100–181, §317(2), added subpar. (C) and struck out former subpar. (C) which read as follows: "is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, entity or person required to be registered under the Commodity Exchange Act, municipal securities dealer, government securities broker, or government securities dealer, or as an affiliated person or employee of any investment company, bank, entity or person required to be registered under such Act, or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security."

Subsec. (b)(6). Pub. L. 100–181, §317(3), substituted "seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated" for "or seeking to become associated," in first sentence.

Subsec. (b)(10). Pub. L. 100–181, §317(4), substituted "78q–1(b)(4)(A)" for "78q–1(b)(4)(B)".

1986—Subsec. (b)(4)(A). Pub. L. 99–571, §102(e)(1), inserted "or with any other appropriate regulatory agency".

Subsec. (b)(4)(B)(ii). Pub. L. 99–571, §102(e)(2), inserted "government securities broker, government securities dealer,".

Subsec. (b)(4)(C). Pub. L. 99–571, §102(e)(3), substituted "municipal securities dealer, government securities broker, or government securities dealer," for "or municipal securities dealer,".

Subsec. (b)(8). Pub. L. 99–571, §102(e)(4), substituted "any registered broker or dealer" for "any broker or dealer required to register pursuant to this chapter" and struck out "an exempted security" after "other than".

Subsec. (c)(3). Pub. L. 99–571, §102(f), inserted "(other than a government securities broker or government securities dealer, except a registered broker or dealer)" and "(except a government security)".

1984—Subsec. (b)(4)(B)(ii). Pub. L. 98–376, §6(b)(1), substituted "fiduciary, or any entity or person required to be registered under the Commodity Exchange Act (7 U.S.C. 1 et seq.)" for "or fiduciary".

Subsec. (b)(4)(C). Pub. L. 98–376, §6(b)(2), inserted "entity or person required to be registered under the Commodity Exchange Act," and "entity or person required to be registered under such Act".

Subsec. (b)(4)(D), (E). Pub. L. 98–376, §6(b)(3), inserted "the Commodity Exchange Act,".

Subsec. (c)(4). Pub. L. 98–376, §4, inserted reference to section 78n of this title and "and any person who was a cause of the failure to comply due to an act or omission the person knew or should have known would contribute to the failure to comply,".

1983—Subsec. (b)(8). Pub. L. 98–38, §3(a)(1), added par. (8) and struck out former par. (8), which had directed that, in addition to the fees and charges authorized by par. (7) of this subsection, each registered broker or dealer not a member of a registered securities association pay to the Commission such reasonable fees and charges as necessary to defray the costs of the additional regulatory duties required to be performed by the Commission because such broker or dealer effected transactions in securities otherwise than on a national securities exchange of which it was a member and was not a member of a registered securities association, and that the Commission, by rule, establish such fees and charges.

Subsec. (b)(9). Pub. L. 98–38, §3(a)(2), added par. (9) and struck out former par. (9), which had provided that no broker or dealer subject to par. (8) of this subsection could effect any transaction in, or induce the purchase or sale of, any security (otherwise than on a national securities exchange of which it was a member) in contravention of such rules and regulations as the Commission might prescribe designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

1977—Subsec. (d). Pub. L. 95–213 authorized the Commission to define, for purposes of this subsection, term "held of record".

1975—Pub. L. 94–29, §11(1), amended section catchline.

Subsec. (a). Pub. L. 94–29, §11(2), required registration with the Commission of all persons utilizing an exchange's facilities to effect transactions.

Subsec. (b). Pub. L. 94–29, §11(2), expanded coverage to include municipal securities dealers, permitted nonbank municipal securities dealers and brokers to register company departments or divisions conducting municipal securities activities rather than the company of which the department or division is a part, subjected municipal securities and associated persons thereof to the Commission's enforcement and disciplinary powers, updated the list of statutory offenses which bar a person from becoming a broker-dealer or an associated person of a broker-dealer, expanded Commission regulatory control to include all brokers and dealers executing transactions on exchanges of which such brokers and dealers are not members, required any registered broker-dealer who is not a member of a registered securities association to pay the Commission fees imposed by it to defray the costs of the additional regulatory duties to be performed by the Commission, and clarified the power of national securities exchanges, registered securities associations, and registered clearing agencies to make determinations as to whether a person is subject to statutory disqualification.

Subsec. (c)(1). Pub. L. 94–29, §11(3), expanded the Commission's authority to define devices, contrivances, acts, and practices deemed manipulative, deceptive, and otherwise fraudulent for municipal securities dealers as well as for brokers and dealers.

Subsec. (c)(2). Pub. L. 94–29, §11(3), expanded the Commission's authority to define quotations deemed to be fictitious for municipal securities dealers as well as for brokers and dealers.

Subsec. (c)(3). Pub. L. 94–29, §11(3), inserted requirement that rules and regulations be promulgated no later than Sept. 1, 1975, establishing minimum financial responsibility requirements for all brokers and dealers.

Subsec. (c)(5). Pub. L. 94–29, §11(4), substituted provisions authorizing the Commission to regulate trading activities of market makers other than specialists registered on a national securities exchange for provisions authorizing the Commission summarily to suspend trading, otherwise than on a national securities exchange, in any security other than an exempted security for a period not exceeding 10 days if the public interest and the protection of investors so requires.

Subsec. (c)(6). Pub. L. 94–29, §11(5), added par. (6).

Subsec. (e). Pub. L. 94–29, §11(6), added subsec. (e).

1970—Subsec. (c)(3). Pub. L. 91–598 extended Commission's rulemaking power to both the exchange and the over-the-counter markets, striking out "otherwise than on a national securities exchange" before "in contravention of such rules and regulations" and substituting "shall prescribe" for "may prescribe" and provided for safeguards with respect to the related practices of brokers and dealers, including customers' securities and customers' deposits or credit balances, and maintenance of reserves with respect to such deposits or credit balances.

1964—Subsec. (a). Pub. L. 88–467, §6(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (b)(1). Pub. L. 88–467, §6(b), designated first par. as (1) and substituted "persons associated with such broker or dealer" for "person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such broker or dealer,".

Subsec. (b)(2). Pub. L. 88–467, §6(b), designated second par. as (2) and substituted "associated with the applicant" for "directly or indirectly controlling or controlled by, or under direct or indirect common control with, the applicant".

Subsec. (b)(3). Pub. L. 88–467, §6(b), designated third par. as (3) and substituted "effective date of the registration" for "effective date thereof".

Subsec. (b)(4). Pub. L. 88–467, §6(b), added par. (4).

Subsec. (b)(5). Pub. L. 88–467, §6(b), designated first sentence of fourth par, as (5), provided for censure and for suspension for period not exceeding twelve months, substituted the language "that such broker or dealer, whether prior or subsequent to becoming such, or any person associated with such broker or dealer, whether prior or subsequent to becoming so associated" for "that (1) such broker or dealer whether prior or subsequent to becoming such, or (2) any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), or any person directly or indirectly controlling or controlled by such broker or dealer, whether prior or subsequent to becoming such", substituted in clause (A) the provision respecting false or misleading statements in any report required to, be filed with the Commission for such statements in any document supplemental to application for registration and inserted in such clause (A) the material fact omission provision, designated existing provisions of clause (B) as items (i) and (ii), included in item (ii) the business of investment broker, and added items (iii) and (iv), provided in clause (C) for enjoyment from acting as an investment adviser, underwriter, broker, or dealer, or as an affiliated person or employee of any investment company, bank, or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity, made clause (D) applicable to violations of the Investment Advisers Act of 1940 and the Investment Company Act of 1940, and added clauses (E) and (F).

Subsec. (b)(6). Pub. L. 88–467, §6(b), designated second through fifth sentences of fourth par. as (6) and, in provision constituting first sentence of par. (6) substituted "any registration under this subsection" for "any such registration" and inserted "(which may consist solely of affidavits and oral argument)" after "opportunity for hearing".

Subsec. (b)(7) to (10). Pub. L. 88–467, §6(b), added pars. (7) to (10).

Subsec. (c)(4), (5). Pub. L. 88–467, §6(c), added pars. (4) and (5).

Subsec. (d). Pub. L. 88–467, §6(d), substituted provisions which require every issuer filing a registration statement under the Securities Act of 1933 to file for the fiscal year in which the registration statement becomes effective such reports as may be required by the Commission under section 78m of this title and provide for suspension of duty to file reports for any later fiscal years if at the beginning of such fiscal year the securities to which the registration statement relates are held of record by less than three hundred persons for former provisions which required the registration statement filed under the Securities Act to contain an undertaking if the value of the securities offered plus the value of other outstanding securities of the same class amounted to $2,000,000 or more and suspended the duty to file if the value of securities outstanding was reduced to less than $1,000,000 or the issuer had become subject to an equivalent reporting requirement and deleted "or to any other security which the Commission may by rules and regulations exempt as not comprehended within the purposes of this subsection" after "political subdivision thereof".

1938—Subsec. (c)(2), (3). Act June 25, 1938, added pars. (2) and (3).

1936—Act May 27, 1936, amended section generally.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 173(c), 913(g)(1), (h)(1), 919, 921(a), 925(a)(1), 929L(3), 929X(c), 942(a), and 985(b)(5)(A) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Amendment by section 713(a) of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of Title 7, Agriculture.

Amendment by sections 762(d)(4) and 766(d) of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761–774) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111–203, set out as a note under section 77b of this title.

Pub. L. 111–203, title IX, §975(i), July 21, 2010, 124 Stat. 1923, provided that: "This section [amending this section and sections 78o–3, 78o–4, and 78q of this title], and the amendments made by this section, shall take effect on October 1, 2010."

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–102 effective at the end of the 18-month period beginning on Nov. 12, 1999, see section 209 of Pub. L. 106–102, set out as a note under section 1828 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–67 not to affect or apply to any private action arising under this chapter or title I of the Securities Act of 1933 (15 U.S.C. 77a et seq.), commenced before and pending on Dec. 22, 1995, see section 108 of Pub. L. 104–67, set out as a note under section 77l of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 504(a) of Pub. L. 101–429 effective 12 months after Oct. 15, 1990, with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(2), (3)(A) of Pub. L. 101–429, set out in a note under section 77g of this title.

Amendment by section 505 of Pub. L. 101–429 effective 18 months after Oct. 15, 1990, with provision to commence rulemaking proceedings to implement such amendment not later than 180 days after Oct. 15, 1990, and with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(2), (3)(B), (C) of Pub. L. 101–429, set out in a note under section 77g of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–704, §9, Nov. 19, 1988, 102 Stat. 4684, provided that: "The amendments made by this Act [enacting sections 78t–1, 78u–1, and 80b–4a of this title and amending this section and sections 78c, 78u, 78ff, and 78kk of this title], except for section 6 [amending sections 78c and 78u of this title], shall not apply to any actions occurring before the date of enactment of this Act [Nov. 19, 1988]."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–571 effective 270 days after Oct. 28, 1986, see section 401 of Pub. L. 99–571, set out as an Effective Date note under section 78o–5 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment Pub. L. 98–376 effective Aug. 10, 1984, see section 7 of Pub. L. 98–376, set out as a note under section 78c of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98–38, §3(b), June 6, 1983, 97 Stat. 207, provided that: "The amendments made by subsection (a) [amending this section] shall become effective six months after the date of enactment of this Act [June 6, 1983]."

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, except for amendment of subsec. (a) by Pub. L. 94–29 which is effective 180 days after June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–467 of subsec. (a) of this section effective July 1, 1964, and of subsecs. (b), (c)(4), (5), and (d) of this section effective Aug. 20, 1964, see section 13 of Pub. L. 88–467, set out as a note under section 78c of this title.

CONSTRUCTION OF 1995 AMENDMENT

Nothing in amendment by Pub. L. 104–67 to be deemed to create or ratify any implied right of action, or to prevent Commission, by rule or regulation, from restricting or otherwise regulating private actions under this chapter, see section 203 of Pub. L. 104–67, set out as a Construction note under section 78j–1 of this title.

CONSTRUCTION OF 1993 AMENDMENT

Amendment by sections 105, 106(b)(2)(B), and 109(b)(2) of Pub. L. 103–202 not to be construed to govern initial issuance of any public debt obligation or to grant any authority to (or extend any authority of) the Securities and Exchange Commission, any appropriate regulatory agency, or a self-regulatory organization to prescribe any procedure, term, or condition of such initial issuance, to promulgate any rule or regulation governing such initial issuance, or to otherwise regulate in any manner such initial issuance, see section 111 of Pub. L. 103–202, set out as a note under section 78o–5 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

STUDY AND RULEMAKING REGARDING OBLIGATIONS OF BROKERS, DEALERS, AND INVESTMENT ADVISERS

Pub. L. 111–203, title IX, §913(a)–(f), July 21, 2010, 124 Stat. 1824–1827, provided that:

"(a) DEFINITION.—For purposes of this section, the term 'retail customer' means a natural person, or the legal representative of such natural person, who—

"(1) receives personalized investment advice about securities from a broker or dealer or investment adviser; and

"(2) uses such advice primarily for personal, family, or household purposes.

"(b) STUDY.—The Commission shall conduct a study to evaluate—

"(1) the effectiveness of existing legal or regulatory standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized investment advice and recommendations about securities to retail customers imposed by the Commission and a national securities association, and other Federal and State legal or regulatory standards; and

"(2) whether there are legal or regulatory gaps, shortcomings, or overlaps in legal or regulatory standards in the protection of retail customers relating to the standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized investment advice about securities to retail customers that should be addressed by rule or statute.

"(c) CONSIDERATIONS.—In conducting the study required under subsection (b), the Commission shall consider—

"(1) the effectiveness of existing legal or regulatory standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized investment advice and recommendations about securities to retail customers imposed by the Commission and a national securities association, and other Federal and State legal or regulatory standards;

"(2) whether there are legal or regulatory gaps, shortcomings, or overlaps in legal or regulatory standards in the protection of retail customers relating to the standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized investment advice about securities to retail customers that should be addressed by rule or statute;

"(3) whether retail customers understand that there are different standards of care applicable to brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers in the provision of personalized investment advice about securities to retail customers;

"(4) whether the existence of different standards of care applicable to brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers is a source of confusion for retail customers regarding the quality of personalized investment advice that retail customers receive;

"(5) the regulatory, examination, and enforcement resources devoted to, and activities of, the Commission, the States, and a national securities association to enforce the standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with

investment advisers when providing personalized investment advice and recommendations about securities to retail customers, including—

"(A) the effectiveness of the examinations of brokers, dealers, and investment advisers in determining compliance with regulations;

"(B) the frequency of the examinations; and

"(C) the length of time of the examinations;

"(6) the substantive differences in the regulation of brokers, dealers, and investment advisers, when providing personalized investment advice and recommendations about securities to retail customers;

"(7) the specific instances related to the provision of personalized investment advice about securities in which—

"(A) the regulation and oversight of investment advisers provide greater protection to retail customers than the regulation and oversight of brokers and dealers; and

"(B) the regulation and oversight of brokers and dealers provide greater protection to retail customers than the regulation and oversight of investment advisers;

"(8) the existing legal or regulatory standards of State securities regulators and other regulators intended to protect retail customers;

"(9) the potential impact on retail customers, including the potential impact on access of retail customers to the range of products and services offered by brokers and dealers, of imposing upon brokers, dealers, and persons associated with brokers or dealers—

"(A) the standard of care applied under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) for providing personalized investment advice about securities to retail customers of investment advisers, as interpreted by the Commission and the courts; and

"(B) other requirements of the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.);

"(10) the potential impact of eliminating the broker and dealer exclusion from the definition of 'investment adviser' under section 202(a)(11)(C) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)(C)), in terms of—

"(A) the impact and potential benefits and harm to retail customers that could result from such a change, including any potential impact on access to personalized investment advice and recommendations about securities to retail customers or the availability of such advice and recommendations;

"(B) the number of additional entities and individuals that would be required to register under, or become subject to, the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.), and the additional requirements to which brokers, dealers, and persons associated with brokers and dealers would become subject, including—

"(i) any potential additional associated person licensing, registration, and examination requirements; and

"(ii) the additional costs, if any, to the additional entities and individuals; and

"(C) the impact on Commission and State resources to—

"(i) conduct examinations of registered investment advisers and the representatives of registered investment advisers, including the impact on the examination cycle; and

"(ii) enforce the standard of care and other applicable requirements imposed under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.);

"(11) the varying level of services provided by brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers to retail customers and the varying scope and terms of retail customer relationships of brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers with such retail customers;

"(12) the potential impact upon retail customers that could result from potential changes in the regulatory requirements or legal standards of care affecting brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers relating to their obligations to retail customers regarding the provision of investment advice, including any potential impact on—

"(A) protection from fraud;

"(B) access to personalized investment advice, and recommendations about securities to retail customers; or

"(C) the availability of such advice and recommendations;

"(13) the potential additional costs and expenses to—

"(A) retail customers regarding and the potential impact on the profitability of their investment

decisions; and

"(B) brokers, dealers, and investment advisers resulting from potential changes in the regulatory requirements or legal standards affecting brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers relating to their obligations, including duty of care, to retail customers; and

"(14) any other consideration that the Commission considers necessary and appropriate in determining whether to conduct a rulemaking under subsection (f).

"(d) REPORT.—

"(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act [July 21, 2010], the Commission shall submit a report on the study required under subsection (b) to—

"(A) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

"(B) the Committee on Financial Services of the House of Representatives.

"(2) CONTENT REQUIREMENTS.—The report required under paragraph (1) shall describe the findings, conclusions, and recommendations of the Commission from the study required under subsection (b), including—

"(A) a description of the considerations, analysis, and public and industry input that the Commission considered, as required under subsection (b), to make such findings, conclusions, and policy recommendations; and

"(B) an analysis of whether [sic] any identified legal or regulatory gaps, shortcomings, or overlap in legal or regulatory standards in the protection of retail customers relating to the standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized investment advice about securities to retail customers.

"(e) PUBLIC COMMENT.—The Commission shall seek and consider public input, comments, and data in order to prepare the report required under subsection (d).

"(f) RULEMAKING.—The Commission may commence a rulemaking, as necessary or appropriate in the public interest and for the protection of retail customers (and such other customers as the Commission may by rule provide), to address the legal or regulatory standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized investment advice about securities to such retail customers. The Commission shall consider the findings[,] conclusions, and recommendations of the study required under subsection (b)."

[For definitions of terms used in section 913(a)–(f) of Pub. L. 111–203, set out above, see section 5301 of Title 12, Banks and Banking.]

STUDY AND REPORT ON BROKER-DEALER UNIFORMITY

Pub. L. 104–290, title V, §510(d), Oct. 11, 1996, 110 Stat. 3451, provided that:

"(1) STUDY.—The Commission, after consultation with registered securities associations, national securities exchanges, and States, shall conduct a study of the impact of disparate State licensing requirements on associated persons of registered brokers or dealers and methods for States to attain uniform licensing requirements for such persons.

"(2) REPORT.—Not later than 1 year after the date of enactment of this Act [Oct. 11, 1996], the Commission shall submit to the Congress a report on the study conducted under paragraph (1). Such report shall include recommendations concerning appropriate methods described in paragraph (1)(B), including any necessary legislative changes to implement such recommendations."

PENNY STOCK REFORM; CONGRESSIONAL STATEMENT OF FINDINGS

Pub. L. 101–429, title V, §502, Oct. 15, 1990, 104 Stat. 951, provided that: "The Congress finds the following:

"(1) The maintenance of an honest and healthy primary and secondary market for securities offerings is essential to enhancing long-term capital formation and economic growth and providing legitimate investment opportunities for individuals and institutions.

"(2) Protecting investors in new securities is a critical component in the maintenance of an honest and healthy market for such securities.

"(3) Protecting issuers of new securities and promoting the capital formation process on behalf of small companies are fundamental concerns in maintaining a strong economy and viable trading markets.

"(4) Unscrupulous market practices and market participants have pervaded the 'penny stock' market with an overwhelming amount of fraud and abuse.

"(5) Although the Securities and Exchange Commission, State securities regulators, and securities self-regulators have made efforts to curb these abusive and harmful practices, the penny stock market still

lacks an adequate and sufficient regulatory structure, particularly in comparison to the structure for overseeing trading in National Market System securities.

"(6) Investors in the penny stock market suffer from a serious lack of adequate information concerning price and volume of penny stock transactions, the nature of this market, and the specific securities in which they are investing.

"(7) Current practices do not adequately regulate the role of 'promoters' and 'consultants' in the penny stock market, and many professionals who have been banned from the securities markets have ended up in promoter and consultant roles, contributing substantially to fraudulent and abusive schemes.

"(8) The present regulatory environment has permitted the ascendancy of the use of particular market practices, such as 'reverse mergers' with shell corporations and 'blank check' offerings, which are used to facilitate manipulation schemes and harm investors.

"(9) In light of the substantial and continuing problems in the penny stock markets, additional legislative measures are necessary and appropriate."

REVISION OF SANCTION AUTHORITY WITH RESPECT TO PENNY STOCKS; RECOMMENDATIONS TO CONGRESS

Pub. L. 101–429, title V, §504(b), Oct. 15, 1990, 104 Stat. 953, provided that: "Within 6 months after the date of enactment of this Act [Oct. 15, 1990], the Securities and Exchange Commission shall submit to each House of the Congress such recommendations as the Commission considers appropriate with respect to further revision of section 15(b)(6) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(6)). In preparing such recommendations, the Commission shall consider the desirability and effect of expanding the applicability of such section to any promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance of or trading in, or inducing or attempting to induce the purchase or sale of, any security (and not just penny stock)."

[1] So in original.

[2] So in original. The word "or" probably should not appear.

[3] See References in Text note below.

[4] So in original. Probably should be preceded by "a".

[5] So in original. There are two subsecs. designated (j).

[6] Another subsec. (k) is set out after the first subsec. (l).

[7] Another subsec. (l) is set out after the second subsec. (k).

[8] Another subsec. (k) is set out after the second subsec. (j).

[9] Another subsec. (l) is set out after the first subsec. (k).

[10] So in original. Probably should be followed by "the".

§78*o*–1. Brokers deemed to be registered

All brokers and dealers for whom registration was in effect on May 27, 1936, in accordance with rules and regulations of the Commission prescribed pursuant to section 78o of this title shall be deemed to be registered pursuant to said section.

(May 27, 1936, ch. 462, §10, 49 Stat. 1380.)

CODIFICATION

Section was not enacted as a part of the Securities Exchange Act of 1934 which comprises this chapter.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§78*o*–2. Liabilities arising prior to amendment unaffected

Nothing in this Act shall be deemed to extinguish any liability which may have arisen prior to the effective date of this Act by reason of any violation of section 78o of this title or of any rule or regulation thereunder.

(May 27, 1936, ch. 462, §11, 49 Stat. 1380.)

REFERENCES IN TEXT

This Act, referred to in text, is act May 27, 1936, ch. 462, 49 Stat. 1375, popularly known as the Unlisted Securities Trading Act, which enacted sections 78l–1, 78o–1, 78o–2, and 78hh–1 of this title, and amended sections 78l, 78o, 78q, 78r, 78t, 78u, 78w, and 78ff of this title.

Effective date of this Act, referred to in text, is July 1, 1934. See section 78hh–1 of this title.

CODIFICATION

Section was not enacted as a part of the Securities Exchange Act of 1934 which comprises this chapter.

§78*o*–3. Registered securities associations

(a) Registration; application

An association of brokers and dealers may be registered as a national securities association pursuant to subsection (b) of this section, or as an affiliated securities association pursuant to subsection (d) of this section, under the terms and conditions hereinafter provided in this section and in accordance with the provisions of section 78s(a) of this title, by filing with the Commission an application for registration in such form as the Commission, by rule, may prescribe containing the rules of the association and such other information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(b) Determinations by Commission requisite to registration of applicant as national securities association

An association of brokers and dealers shall not be registered as a national securities association unless the Commission determines that—

(1) By reason of the number and geographical distribution of its members and the scope of their transactions, such association will be able to carry out the purposes of this section.

(2) Such association is so organized and has the capacity to be able to carry out the purposes of this chapter and to comply, and (subject to any rule or order of the Commission pursuant to section 78q(d) or 78s(g)(2) of this title) to enforce compliance by its members and persons associated with its members, with the provisions of this chapter, the rules and regulations thereunder, the rules of the Municipal Securities Rulemaking Board, and the rules of the association.

(3) Subject to the provisions of subsection (g) of this section, the rules of the association provide that any registered broker or dealer may become a member of such association and any person may become associated with a member thereof.

(4) The rules of the association assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the association, broker, or dealer.

(5) The rules of the association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which

the association operates or controls.

(6) The rules of the association are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, to fix minimum profits, to impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members, or to regulate by virtue of any authority conferred by this chapter matters not related to the purposes of this chapter or the administration of the association.

(7) The rules of the association provide that (subject to any rule or order of the Commission pursuant to section 78q(d) or 78s(g)(2) of this title) its members and persons associated with its members shall be appropriately disciplined for violation of any provision of this chapter, the rules or regulations thereunder, the rules of the Municipal Securities Rulemaking Board, or the rules of the association, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

(8) The rules of the association are in accordance with the provisions of subsection (h) of this section, and, in general, provide a fair procedure for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the association of any person with respect to access to services offered by the association or a member thereof.

(9) The rules of the association do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.

(10) The requirements of subsection (c) of this section, insofar as these may be applicable, are satisfied.

(11) The rules of the association include provisions governing the form and content of quotations relating to securities sold otherwise than on a national securities exchange which may be distributed or published by any member or person associated with a member, and the persons to whom such quotations may be supplied. Such rules relating to quotations shall be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.

(12) The rules of the association to promote just and equitable principles of trade, as required by paragraph (6), include rules to prevent members of the association from participating in any limited partnership rollup transaction (as such term is defined in paragraphs (4) and (5) of section 78n(h) of this title) unless such transaction was conducted in accordance with procedures designed to protect the rights of limited partners, including—

(A) the right of dissenting limited partners to one of the following:

(i) an appraisal and compensation;

(ii) retention of a security under substantially the same terms and conditions as the original issue;

(iii) approval of the limited partnership rollup transaction by not less than 75 percent of the outstanding securities of each of the participating limited partnerships;

(iv) the use of a committee that is independent, as determined in accordance with rules prescribed by the association, of the general partner or sponsor, that has been approved by a majority of the outstanding securities of each of the participating partnerships, and that has such authority as is necessary to protect the interest of limited partners, including the authority to hire independent advisors, to negotiate with the general partner or sponsor on behalf of the limited partners, and to make a recommendation to the limited partners with respect to the proposed transaction; or

(v) other comparable rights that are prescribed by rule by the association and that are

designed to protect dissenting limited partners;

(B) the right not to have their voting power unfairly reduced or abridged;

(C) the right not to bear an unfair portion of the costs of a proposed limited partnership rollup transaction that is rejected; and

(D) restrictions on the conversion of contingent interests or fees into non-contingent interests or fees and restrictions on the receipt of a non-contingent equity interest in exchange for fees for services which have not yet been provided.

As used in this paragraph, the term "dissenting limited partner" means a person who, on the date on which soliciting material is mailed to investors, is a holder of a beneficial interest in a limited partnership that is the subject of a limited partnership rollup transaction, and who casts a vote against the transaction and complies with procedures established by the association, except that for purposes of an exchange or tender offer, such person shall file an objection in writing under the rules of the association during the period in which the offer is outstanding.

(13) The rules of the association prohibit the authorization for quotation on an automated interdealer quotation system sponsored by the association of any security designated by the Commission as a national market system security resulting from a limited partnership rollup transaction (as such term is defined in paragraphs (4) and (5) of section 78n(h) of this title), unless such transaction was conducted in accordance with procedures designed to protect the rights of limited partners, including—

(A) the right of dissenting limited partners to one of the following:

(i) an appraisal and compensation;

(ii) retention of a security under substantially the same terms and conditions as the original issue;

(iii) approval of the limited partnership rollup transaction by not less than 75 percent of the outstanding securities of each of the participating limited partnerships;

(iv) the use of a committee that is independent, as determined in accordance with rules prescribed by the association, of the general partner or sponsor, that has been approved by a majority of the outstanding securities of each of the participating partnerships, and that has such authority as is necessary to protect the interest of limited partners, including the authority to hire independent advisors, to negotiate with the general partner or sponsor on behalf of the limited partners, and to make a recommendation to the limited partners with respect to the proposed transaction; or

(v) other comparable rights that are prescribed by rule by the association and that are designed to protect dissenting limited partners;

(B) the right not to have their voting power unfairly reduced or abridged;

(C) the right not to bear an unfair portion of the costs of a proposed limited partnership rollup transaction that is rejected; and

(D) restrictions on the conversion of contingent interests or fees into non-contingent interests or fees and restrictions on the receipt of a non-contingent equity interest in exchange for fees for services which have not yet been provided.

As used in this paragraph, the term "dissenting limited partner" means a person who, on the date on which soliciting material is mailed to investors, is a holder of a beneficial interest in a limited partnership that is the subject of a limited partnership rollup transaction, and who casts a vote against the transaction and complies with procedures established by the association, except that for purposes of an exchange or tender offer, such person shall file an objection in writing under the rules of the association during the period during which the offer is outstanding.

(14) The rules of the association include provisions governing the sales, or offers of sales, of securities on the premises of any military installation to any member of the Armed Forces or a dependent thereof, which rules require—

(A) the broker or dealer performing brokerage services to clearly and conspicuously disclose to potential investors—

(i) that the securities offered are not being offered or provided by the broker or dealer on behalf of the Federal Government, and that its offer is not sanctioned, recommended, or encouraged by the Federal Government; and

(ii) the identity of the registered broker-dealer offering the securities;

(B) such broker or dealer to perform an appropriate suitability determination, including consideration of costs and knowledge about securities, prior to making a recommendation of a security to a member of the Armed Forces or a dependent thereof; and

(C) that no person receive any referral fee or incentive compensation in connection with a sale or offer of sale of securities, unless such person is an associated person of a registered broker or dealer and is qualified pursuant to the rules of a self-regulatory organization.

(15) The rules of the association provide that the association shall—

(A) request guidance from the Municipal Securities Rulemaking Board in interpretation of the rules of the Municipal Securities Rulemaking Board; and

(B) provide information to the Municipal Securities Rulemaking Board about the enforcement actions and examinations of the association under section 78o–4(b)(2)(E) of this title, so that the Municipal Securities Rulemaking Board may—

(i) assist in such enforcement actions and examinations; and

(ii) evaluate the ongoing effectiveness of the rules of the Board.

(c) National association rules; provision for registration of affiliated securities association

The Commission may permit or require the rules of an association applying for registration pursuant to subsection (b) of this section, to provide for the admission of an association registered as an affiliated securities association pursuant to subsection (d) of this section, to participation in said applicant association as an affiliate thereof, under terms permitting such powers and responsibilities to such affiliate, and under such other appropriate terms and conditions, as may be provided by the rules of said applicant association, if such rules appear to the Commission to be necessary or appropriate in the public interest or for the protection of investors and to carry out the purposes of this section. The duties and powers of the Commission with respect to any national securities association or any affiliated securities association shall in no way be limited by reason of any such affiliation.

(d) Registration as affiliated association; prerequisites; association rules

An applicant association shall not be registered as an affiliated securities association unless it appears to the Commission that—

(1) such association, notwithstanding that it does not satisfy the requirements set forth in paragraph (1) of subsection (b) of this section, will, forthwith upon the registration thereof, be admitted to affiliation with an association registered as a national securities association pursuant to subsection (b) of this section, in the manner and under the terms and conditions provided by the rules of said national securities association in accordance with subsection (c) of this section; and

(2) such association and its rules satisfy the requirements set forth in paragraphs (2) to (10), inclusive, and paragraph (12),[1] of subsection (b) of this section; except that in the case of any such association any restrictions upon membership therein of the type authorized by paragraph (3) of subsection (b) of this section shall not be less stringent than in the case of the national securities association with which such association is to be affiliated.

(e) Dealings with nonmember professionals

(1) The rules of a registered securities association may provide that no member thereof shall deal with any nonmember professional (as defined in paragraph (2) of this subsection) except at the same prices, for the same commissions or fees, and on the same terms and conditions as are by such member accorded to the general public.

(2) For the purposes of this subsection, the term "nonmember professional" shall include (A) with respect to transactions in securities other than municipal securities, any registered broker or dealer who is not a member of any registered securities association, except such a broker or dealer who deals exclusively in commercial paper, bankers' acceptances, and commercial bills, and (B) with respect to transactions in municipal securities, any municipal securities dealer (other than a bank or division or department of a bank) who is not a member of any registered securities association and any municipal securities broker who is not a member of any such association.

(3) Nothing in this subsection shall be so construed or applied as to prevent (A) any member of a registered securities association from granting to any other member of any registered securities association any dealer's discount, allowance, commission, or special terms, in connection with the purchase or sale of securities, or (B) any member of a registered securities association or any municipal securities dealer which is a bank or a division or department of a bank from granting to any member of any registered securities association or any such municipal securities dealer any dealer's discount, allowance, commission, or special terms in connection with the purchase or sale of municipal securities: *Provided, however*, That the granting of any such discount, allowance, commission, or special terms in connection with the purchase or sale of municipal securities shall be subject to rules of the Municipal Securities Rulemaking Board adopted pursuant to section 78o–4(b)(2)(K) of this title.

(f) Transactions in municipal securities

Nothing in subsection (b)(6) or (b)(11) of this section shall be construed to permit a registered securities association to make rules concerning any transaction by a registered broker or dealer in a municipal security.

(g) Denial of membership

(1) A registered securities association shall deny membership to any person who is not a registered broker or dealer.

(2) A registered securities association may, and in cases in which the Commission, by order, directs as necessary or appropriate in the public interest or for the protection of investors shall, deny membership to any registered broker or dealer, and bar from becoming associated with a member any person, who is subject to a statutory disqualification. A registered securities association shall file notice with the Commission not less than thirty days prior to admitting any registered broker or dealer to membership or permitting any person to become associated with a member, if the association knew, or in the exercise of reasonable care should have known, that such broker or dealer or person was subject to a statutory disqualification. The notice shall be in such form and contain such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(3)(A) A registered securities association may deny membership to, or condition the membership of, a registered broker or dealer if (i) such broker or dealer does not meet such standards of financial responsibility or operational capability or such broker or dealer or any natural person associated with such broker or dealer does not meet such standards of training, experience, and competence as are prescribed by the rules of the association or (ii) such broker or dealer or person associated with such broker or dealer has engaged and there is a reasonable likelihood he will again engage in acts or practices inconsistent with just and equitable principles of trade. A registered securities association may examine and verify the qualifications of an applicant to become a member and the natural persons associated with such an applicant in accordance with procedures established by the rules of the association.

(B) A registered securities association may bar a natural person from becoming associated with a member or condition the association of a natural person with a member if such natural person (i) does not meet such standards of training, experience, and competence as are prescribed by the rules of the association or (ii) has engaged and there is a reasonable likelihood he will again engage in acts or practices inconsistent with just and equitable principles of trade. A registered securities association may examine and verify the qualifications of an applicant to become a person associated with a member in accordance with procedures established by the rules of the association and require

a natural person associated with a member, or any class of such natural persons, to be registered with the association in accordance with procedures so established.

(C) A registered securities association may bar any person from becoming associated with a member if such person does not agree (i) to supply the association with such information with respect to its relationship and dealings with the member as may be specified in the rules of the association and (ii) to permit examination of its books and records to verify the accuracy of any information so supplied.

(D) Nothing in subparagraph (A), (B), or (C) of this paragraph shall be construed to permit a registered securities association to deny membership to or condition the membership of, or bar any person from becoming associated with or condition the association of any person with, a broker or dealer that engages exclusively in transactions in municipal securities.

(4) A registered securities association may deny membership to a registered broker or dealer not engaged in a type of business in which the rules of the association require members to be engaged: *Provided, however*, That no registered securities association may deny membership to a registered broker or dealer by reason of the amount of such type of business done by such broker or dealer or the other types of business in which he is engaged.

(h) Discipline of registered securities association members and persons associated with members; summary proceedings

(1) In any proceeding by a registered securities association to determine whether a member or person associated with a member should be disciplined (other than a summary proceeding pursuant to paragraph (3) of this subsection) the association shall bring specific charges, notify such member or person of, and give him an opportunity to defend against, such charges, and keep a record. A determination by the association to impose a disciplinary sanction shall be supported by a statement setting forth—

(A) any act or practice in which such member or person associated with a member has been found to have engaged, or which such member or person has been found to have omitted;

(B) the specific provision of this chapter, the rules or regulations thereunder, the rules of the Municipal Securities Rulemaking Board, or the rules of the association which any such act or practice, or omission to act, is deemed to violate; and

(C) the sanction imposed and the reason therefor.

(2) In any proceeding by a registered securities association to determine whether a person shall be denied membership, barred from becoming associated with a member, or prohibited or limited with respect to access to services offered by the association or a member thereof (other than a summary proceeding pursuant to paragraph (3) of this subsection), the association shall notify such person of and give him an opportunity to be heard upon, the specific grounds for denial, bar, or prohibition or limitation under consideration and keep a record. A determination by the association to deny membership, bar a person from becoming associated with a member, or prohibit or limit a person with respect to access to services offered by the association or a member thereof shall be supported by a statement setting forth the specific grounds on which the denial, bar, or prohibition or limitation is based.

(3) A registered securities association may summarily (A) suspend a member or person associated with a member who has been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a member of any self-regulatory organization, (B) suspend a member who is in such financial or operating difficulty that the association determines and so notifies the Commission that the member cannot be permitted to continue to do business as a member with safety to investors, creditors, other members, or the association, or (C) limit or prohibit any person with respect to access to services offered by the association if subparagraph (A) or (B) of this paragraph is applicable to such person or, in the case of a person who is not a member, if the association determines that such person does not meet the qualification requirements or other prerequisites for such access and such person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the association. Any person aggrieved by any such summary action shall be promptly afforded an opportunity for a hearing by the association in

accordance with the provisions of paragraph (1) or (2) of this subsection. The Commission, by order, may stay any such summary action on its own motion or upon application by any person aggrieved thereby, if the Commission determines summarily or after notice and opportunity for hearing (which hearing may consist solely of the submission of affidavits or presentation of oral arguments) that such stay is consistent with the public interest and the protection of investors.

(i) Obligation to maintain registration, disciplinary, and other data

(1) Maintenance of system to respond to inquiries

A registered securities association shall—

(A) establish and maintain a system for collecting and retaining registration information;

(B) establish and maintain a toll-free telephone listing, and a readily accessible electronic or other process, to receive and promptly respond to inquiries regarding—

(i) registration information on its members and their associated persons; and

(ii) registration information on the members and their associated persons of any registered national securities exchange that uses the system described in subparagraph (A) for the registration of its members and their associated persons; and

(C) adopt rules governing the process for making inquiries and the type, scope, and presentation of information to be provided in response to such inquiries in consultation with any registered national securities exchange providing information pursuant to subparagraph (B)(ii).

(2) Recovery of costs

A registered securities association may charge persons making inquiries described in paragraph (1)(B), other than individual investors, reasonable fees for responses to such inquiries.

(3) Process for disputed information

Each registered securities association shall adopt rules establishing an administrative process for disputing the accuracy of information provided in response to inquiries under this subsection in consultation with any registered national securities exchange providing information pursuant to paragraph (1)(B)(ii).

(4) Limitation on liability

A registered securities association, or an exchange reporting information to such an association, shall not have any liability to any person for any actions taken or omitted in good faith under this subsection.

(5) Definition

For purposes of this subsection, the term "registration information" means the information reported in connection with the registration or licensing of brokers and dealers and their associated persons, including disciplinary actions, regulatory, judicial, and arbitration proceedings, and other information required by law, or exchange or association rule, and the source and status of such information.

(j) Registration for sales of private securities offerings

A registered securities association shall create a limited qualification category for any associated person of a member who effects sales as part of a primary offering of securities not involving a public offering, pursuant to section 77c(b), 77d(2),[1] or 77d(6) [1] of this title and the rules and regulations thereunder, and shall deem qualified in such limited qualification category, without testing, any bank employee who, in the six month period preceding November 12, 1999, engaged in effecting such sales.

(k) Limited purpose national securities association

(1) Regulation of members with respect to security futures products

A futures association registered under section 21 of title 7 shall be a registered national securities association for the limited purpose of regulating the activities of members who are

registered as brokers or dealers in security futures products pursuant to section 78o(b)(11) of this title.

(2) Requirements for registration

Such a securities association shall—

(A) be so organized and have the capacity to carry out the purposes of the securities laws applicable to security futures products and to comply, and (subject to any rule or order of the Commission pursuant to section 78s(g)(2) of this title) to enforce compliance by its members and persons associated with its members, with the provisions of the securities laws applicable to security futures products, the rules and regulations thereunder, and its rules;

(B) have rules that—

(i) are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, including rules governing sales practices and the advertising of security futures products reasonably comparable to those of other national securities associations registered pursuant to subsection (a) of this section that are applicable to security futures products; and

(ii) are not designed to regulate by virtue of any authority conferred by this chapter matters not related to the purposes of this chapter or the administration of the association;

(C) have rules that provide that (subject to any rule or order of the Commission pursuant to section 78s(g)(2) of this title) its members and persons associated with its members shall be appropriately disciplined for violation of any provision of the securities laws applicable to security futures products, the rules or regulations thereunder, or the rules of the association, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction; and

(D) have rules that ensure that members and natural persons associated with members meet such standards of training, experience, and competence necessary to effect transactions in security futures products and are tested for their knowledge of securities and security futures products.

(3) Exemption from rule change submission

Such a securities association shall be exempt from submitting proposed rule changes pursuant to section 78s(b) of this title, except that—

(A) the association shall file proposed rule changes related to higher margin levels, fraud or manipulation, recordkeeping, reporting, listing standards, or decimal pricing for security futures products, sales practices for, advertising of, or standards of training, experience, competence, or other qualifications for security futures products for persons who effect transactions in security futures products, or rules effectuating the association's obligation to enforce the securities laws pursuant to section 78s(b)(7) of this title;

(B) the association shall file pursuant to sections 78s(b)(1) and 78s(b)(2) of this title proposed rule changes related to margin, except for changes resulting in higher margin levels; and

(C) the association shall file pursuant to section 78s(b)(1) of this title proposed rule changes that have been abrogated by the Commission pursuant to section 78s(b)(7)(C) of this title.

(4) Other exemptions

Such a securities association shall be exempt from and shall not be required to enforce compliance by its members, and its members shall not, solely with respect to their transactions effected in security futures products, be required to comply, with the following provisions of this chapter and the rules thereunder:

(A) Section 78h of this title.

(B) Subsections (b)(1), (b)(3), (b)(4), (b)(5), (b)(8), (b)(10), (b)(11), (b)(12), (b)(13), (c), (d), (e), (f), (g), (h), and (i) of this section.

(C) Subsections (d), (f), and (k) [1] of section 78q of this title.

(D) Subsections (a), (f), and (h) of section 78s of this title.

(l) Rules to avoid duplicative regulation of dual registrants

Consistent with this chapter, each national securities association registered pursuant to subsection (a) of this section shall issue such rules as are necessary to avoid duplicative or conflicting rules applicable to any broker or dealer registered with the Commission pursuant to section 78o(b) of this title (except paragraph (11) thereof), that is also registered with the Commodity Futures Trading Commission pursuant to section 6f(a) of title 7 (except paragraph (2) thereof), with respect to the application of—

(1) rules of such national securities association of the type specified in section 78o(c)(3)(B) of this title involving security futures products; and

(2) similar rules of national securities associations registered pursuant to subsection (k) of this section and national securities exchanges registered pursuant to section 78f(g) of this title involving security futures products.

(m) Procedures and rules for security future products

A national securities association registered pursuant to subsection (a) of this section shall, not later than 8 months after December 21, 2000, implement the procedures specified in section 78f(h)(5)(A) of this title and adopt the rules specified in subparagraphs (B) and (C) of section 78f(h)(5) of this title.

(June 6, 1934, ch. 404, title I, §15A, as added June 25, 1938, ch. 677, §1, 52 Stat. 1070; amended Pub. L. 88–467, §7, Aug. 20, 1964, 78 Stat. 574; Pub. L. 94–29, §12, June 4, 1975, 89 Stat. 127; Pub. L. 99–571, title I, §102(g), Oct. 28, 1986, 100 Stat. 3218; Pub. L. 101–429, title V, §509, Oct. 15, 1990, 104 Stat. 957; Pub. L. 103–202, title I, §106(b)(1), title III, §303(a), (c), Dec. 17, 1993, 107 Stat. 2350, 2364, 2366; Pub. L. 106–102, title II, §203, Nov. 12, 1999, 113 Stat. 1391; Pub. L. 106–554, §1(a)(5) [title II, §§203(c), 206(j), (k)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–422, 2763A–433; Pub. L. 109–290, §§5, 6, Sept. 29, 2006, 120 Stat. 1319, 1320; Pub. L. 111–203, title IX, §975(f), July 21, 2010, 124 Stat. 1923.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b)(2), (6), (7), (9), (h)(1)(B), (k)(2)(B)(ii), (4), and (l), was in the original "this title". See References in Text note set out under section 78a of this title.

Paragraph (12), of subsection (b) of this section, referred to in subsec. (d)(2), was omitted in the general amendment of subsec. (b) by Pub. L. 94–29, see par. (11) of subsec. (b). A new par. (12) was added by Pub. L. 103–302, §303(a).

Sections 77d(2) and 77d(6) of this title, referred to in subsec. (j), were redesignated sections 77d(a)(2) and 77d(a)(6), respectively, of this title by Pub. L. 112–106, title II, §201(b)(1), (c)(1), Apr. 5, 2012, 126 Stat. 314.

Subsection (k) of section 78q of this title, referred to in subsec. (k)(4)(C), was redesignated subsec. (j) by Pub. L. 111–203, title VI, §617(a)(2), July 21, 2010, 124 Stat. 1616.

AMENDMENTS

2010—Subsec. (b)(15). Pub. L. 111–203 added par. (15).

2006—Subsec. (b)(14). Pub. L. 109–290, §5, added par. (14).

Subsec. (i). Pub. L. 109–290, §6, inserted heading and amended text of subsec. (i) generally. Prior to amendment, text read as follows: "A registered securities association shall, within one year from October 15, 1990, (1) establish and maintain a toll-free telephone listing to receive inquiries regarding disciplinary actions involving its members and their associated persons, and (2) promptly respond to such inquiries in writing. Such association may charge persons, other than individual investors, reasonable fees for written responses to such inquiries. Such an association shall not have any liability to any person for any actions taken or omitted in good faith under this paragraph."

2000—Subsec. (k). Pub. L. 106–554, §1(a)(5) [title II, §203(c)], added subsec. (k).

Subsec. (l). Pub. L. 106–554, §1(a)(5) [title II, §206(j)], added subsec. (l).

Subsec. (m). Pub. L. 106–554, §1(a)(5) [title II, §206(k)(1)], added subsec. (m).

1999—Subsec. (j). Pub. L. 106–102 added subsec. (j).

1993—Subsec. (b)(12). Pub. L. 103–202, §303(a), added par. (12).

Subsec. (b)(13). Pub. L. 103–202, §303(c), added par. (13).

Subsec. (f). Pub. L. 103–202, §106(b)(1)(A), redesignated par. (3) as entire subsec. (f) and struck out pars. (1) and (2) which read as follows:

"(1) Except as provided in paragraph (2) of this subsection, nothing in this section shall be construed to apply with respect to any transaction by a registered broker or dealer in any exempted security.

"(2) A registered securities association may adopt and implement rules applicable to members of such association (A) to enforce compliance by registered brokers and dealers with applicable provisions of this chapter and the rules and regulations thereunder, (B) to provide that its members and persons associated with its members shall be appropriately disciplined, in accordance with subsections (b)(7), (b)(8), and (h) of this section, for violation of applicable provisions of this chapter and the rules and regulations thereunder, (C) to provide for reasonable inspection and examination of the books and records of registered brokers and dealers, (D) to provide for the matters described in paragraphs (b)(3), (b)(4), and (b)(5) of this section, (E) to implement the provisions of subsection (g) of this section, and (F) to prohibit fraudulent, misleading, deceptive, and false advertising."

Subsec. (g)(3)(D). Pub. L. 103–202, §106(b)(1)(B)(i), substituted "transactions in municipal securities" for "transactions in exempted securities".

Subsec. (g)(4), (5). Pub. L. 103–202, §106(b)(1)(B)(ii), (iii), redesignated par. (5) as (4) and struck out former par. (4) which allowed a registered securities association to deny membership to, condition the membership of, or to otherwise bar association with, the association, under circumstances where a government securities broker or dealer or other person violated financial responsibility rules adopted under section 78o–5(b)(1)(A) of this title, or where it appeared likely that such person or entity had or would engage in conduct which would subject such person or entity to sanctions under section 78o–5(c) of this title.

1990—Subsec. (i). Pub. L. 101–429 added subsec. (i).

1986—Subsec. (f). Pub. L. 99–571, §102(g)(1), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: "Nothing in this section shall be construed to apply with respect to any transaction by a broker or dealer in any exempted security."

Subsec. (g)(3)(D). Pub. L. 99–571, §102(g)(2)(A), added subpar. (D).

Subsec. (g)(4), (5). Pub. L. 99–571, §102(g)(2)(B), (C), added par. (4) and redesignated former par. (4) as (5).

1975—Subsec. (a). Pub. L. 94–29, §12(2), struck out "with the Commission" after "registered", inserted reference to section 78s(a) of this title, substituted provisions covering an application for registration in the form prescribed by Commission rule containing the rules of the association and such other information and documents as the Commission prescribes as necessary or appropriate in the public interest or for the protection of investors for provisions covering a statement in the form prescribed by the Commission setting forth specified information and accompanied by specified documents, and struck out provision that registration not be construed as a waiver of constitutional rights or as a waiver of the right to contest the validity of Commission rules or regulations.

Subsec. (b). Pub. L. 94–29, §12(2), amended subsec. (b) generally, to conform its provisions concerning the registration and regulation of national and affiliated securities associations to those covering the registration and regulation of national securities exchanges contained in section 78f of this title and inserted provisions necessary to accommodate the creation of the Municipal Securities Rulemaking Board and to implement its purposes.

Subsec. (e). Pub. L. 94–29, §12(3), redesignated subsec. (i) as (e) and in subsec. (e) as so redesignated substituted "nonmember professional" for "nonmember broker or dealer" in par. (1), substituted "term 'nonmember professional' shall include (A) with respect to transactions in securities other than municipal securities, any registered broker or dealer who is not a member of any registered securities association, except such a broker or dealer who deals exclusively in commercial paper, bankers' acceptances, and commercial bills" for "term 'nonmember broker or dealer' shall include any broker or dealer who makes use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security otherwise than on a national securities exchange, who is not a member of any registered securities association, except a broker or dealer who deals exclusively in commercial paper, bankers' acceptances, or commercial bills" and added cl. (B) in par. (2), and, in par. (3), designated existing provisions as cl. (A) and added cl. (B). Former subsec. (e), covering the grant and denial of registration and the revocation of affiliated association registration, was struck out. See section 78s of this title.

Subsec. (f). Pub. L. 94–29, §12(3), redesignated subsec. (m) as (f). Former subsec. (f), covering withdrawal from registration, was struck out. See section 78s of this title.

Subsec. (g). Pub. L. 94–29, §12(3), (4), added subsec. (g). Former subsec. (g), covering review by the Commission of adverse actions against association members and stays of such actions, was struck out. See section 78s of this title.

Subsec. (h). Pub. L. 94–29, §12(3), (4), added subsec. (h). Former subsec. (h), covering the Commission's action upon findings, was struck out. See section 78s of this title.

Subsec. (i). Pub. L. 94–29, §12(3), redesignated subsec. (i) as (e) and amended subsec. (e) as so redesignated.

Subsecs. (j) to (l). Pub. L. 94–29, §12(3), struck out subsecs. (j) to (l) which covered the filing of changes or additions to association rules and current information, the abrogation and alteration of association rules and supplements to association rules, the suspension of an association or its members, the revocation of registration, the expulsion of members, and the removal of officers or directors. See section 78s of this title.

Subsec. (m). Pub. L. 94–29, §12(3), redesignated subsec. (m) as (f).

Subsec. (n). Pub. L. 94–29, §12(3), struck out subsec. (n) which directed that provisions of this section prevail in the event of any conflict between this section and any other law of the United States in force on June 25, 1938.

1964—Subsec. (b)(1), (2). Pub. L. 88–467, §7(a)(1), substituted a period for the semicolon at end of pars. (1) and (2).

Subsec. (b)(3). Pub. L. 88–467, §7(a)(1), (2), substituted a period for the semicolon at end of par. (3), struck out "of" before "any means", substituted "paragraph (4) or (5) of this subsection, or a rule of the association permitted under this paragraph. The rules" for "paragraph (4) of this subsection: *Provided*, That the rules", and inserted provision authorizing a registered securities association to adopt rules under which it might exclude from membership persons who had been suspended or expelled from a national securities exchange or who were barred or suspended from being associated with all brokers or dealers who are members of such an exchange for violation of exchange rules.

Subsec. (b)(4). Pub. L. 88–467, §7(a)(1), (3), substituted a period for the semicolon at end of par. (4), deleted from text preceding cl. (A) the language "or (2) any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), or any person directly or indirectly controlling or controlled by such broker or dealer, whether prior or subsequent to becoming such", inserted in cl. (A) "or has been and is barred or suspended from being associated with all brokers or dealers which are members of such exchange", inserted in cl. (B) provision for suspension for period not exceeding twelve months or barring or suspending the broker or dealer from being associated with a broker or dealer, inserted at the beginning of cl. (C) "whether prior or subsequent to becoming a broker or dealer," (derived from former cl. (1) of this paragraph) and added to cl. (C) provision conferring jurisdiction upon the Commission, an exchange, or a registered securities association to determine whether an individual is the cause of disciplinary action taken by them against a broker or a dealer, and added cl. (D).

Subsec. (b)(5). Pub. L. 88–467, §7(a)(4), added par. (5). Former par. (5) redesignated (6).

Subsec. (b)(6) to (8). Pub. L. 88–467, §7(a)(1), (4), substituted periods for semicolons at end of paragraphs, and redesignated former pars. (5) to (7) as (6) to (8), respectively. Former pars. (6) to (8) redesignated (7) to (9), respectively.

Subsec. (b)(9). Pub. L. 88–467, §7(a)(1), (4), (5), substituted a period for the semicolon at the end, redesignated former par. (8) as (9), and inserted "and persons associated with its members" and "or being suspended or barred from being associated with all members,", respectively. Former par. (9) redesignated (10).

Subsec. (b)(10). Pub. L. 88–467, §7(a)(4), (6), redesignated former par. (9) as (10), and inserted in paragraph preceding cl. (A) "and persons associated with members", "or the barring of any person from being associated with a member", "or other persons", and "or person", substituted a period for a comma at end of cls. (A) and (B) and a period for ", and" at end of cl. (C), inserted in cl. (A) "or other person" in two places and in concluding sentence "or whether any person shall be barred from being associated with a member", "or person", "or bar" in two places, and substituted a period for "; and", respectively. Former par. (10) redesignated (11).

Subsec. (b)(11). Pub. L. 88–467, §7(a)(4), redesignated former par. (10) as (11).

Subsec. (b)(12). Pub. L. 88–467, §7(a)(7), added par. (12).

Pub. L. 88–467, §7(a)(7), inserted effective date provisions for application of subsec. (b) prior to its amendment and since its amendment with July 1, 1964 as the guiding date.

Subsec. (d)(2). Pub. L. 88–467, §7(b), substituted "(10)" for "(9)" and inserted "and paragraph (12)," after ", inclusive,".

Subsec. (g). Pub. L. 88–467, §7(c), provided that disciplinary action taken by a registered securities association against a person associated with a member will be reviewable by the Commission, shortened the period for review by an aggrieved person from sixty days or within such longer period as the Commission may determine to thirty days or within such longer period as the Commission may determine, authorized the Commission, after notice and opportunity for hearing on the question of stay to order no stay of action of a registered securities association pending the Commission's decision on review, and authorized the Commission to limit the hearing on the question of stay to affidavits and oral arguments.

Subsec. (h). Pub. L. 88–467, §7(d), made the procedures and the Commission's authority in reviewing disciplinary action by a registered securities association against members and in reviewing association action in denying membership also applicable to Commission review of disciplinary action against persons associated with members and to the barring by an association of any person from being associated with a member.

Subsec. (k)(2). Pub. L. 88–467, §7(e), inserted ", or with such modifications of such alteration or supplement as it deems necessary" after "in the manner theretofore requested", redesignated cls. (1) to (4) as (A) to (D), respectively, and inserted in cl. (A) "or the barring from being associated with a member" and "or persons associated with members, or the qualifications required for members or natural persons associated with members or any class thereof".

Subsec. (l). Pub. L. 88–467, §7(f), substituted a period for a semicolon at end of par. (1) and inserted in par. (2) preceding cl. (A) ", or to suspend for a period not exceeding twelve months or to bar any person from being associated with a member thereof,".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective Oct. 1, 2010, see section 975(i) of Pub. L. 111–203, set out as a note under section 78o of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–102 effective at the end of the 18-month period beginning on Nov. 12, 1999, see section 209 of Pub. L. 106–102, set out as a note under section 1828 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 303(a), (c) of Pub. L. 103–202 effective 12 months after Dec. 17, 1993, with provisions for rulemaking authority and review of filings prior to effective date, see section 304(a) of Pub. L. 103–202, set out as a note under section 78f of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–429 effective Oct. 15, 1990, with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(1), (2) of Pub. L. 101–429, set out in a note under section 77g of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–571 effective 270 days after Oct. 28, 1986, see section 401 of Pub. L. 99–571, set out as an Effective Date note under section 78o–5 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective 180 days after June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–467 effective Aug. 20, 1964, see section 13 of Pub. L. 88–467, set out as a note under section 78c of this title.

CONSTRUCTION OF 1993 AMENDMENT

Amendment by section 106(b)(1) of Pub. L. 103–202 not to be construed to govern initial issuance of any public debt obligation or to grant any authority to (or extend any authority of) the Securities and Exchange Commission, any appropriate regulatory agency, or a self-regulatory organization to prescribe any procedure, term, or condition of such initial issuance, to promulgate any rule or regulation governing such initial issuance, or to otherwise regulate in any manner such initial issuance, see section 111 of Pub. L. 103–202, set out as a note under section 78o–5 of this title.

Amendment by section 303(a), (c) of Pub. L. 103–202 not to limit authority of Securities and Exchange Commission, a registered securities association or a national securities exchange under any provision of this chapter, or preclude the Commission or such association or exchange from imposing a remedy or procedure required to be imposed under such amendment, see section 304(b) of Pub. L. 103–202, set out in an Effective Date of 1993 Amendment note under section 78f of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set

out under section 78d of this title.

[1] *See References in Text note below.*

§78*o*–4. Municipal securities

(a) Registration of municipal securities dealers

(1)(A) It shall be unlawful for any municipal securities dealer (other than one registered as a broker or dealer under section 78o of this title) to make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security unless such municipal securities dealer is registered in accordance with this subsection.

(B) It shall be unlawful for a municipal advisor to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person, unless the municipal advisor is registered in accordance with this subsection.

(2) A municipal securities dealer or municipal advisor may be registered by filing with the Commission an application for registration in such form and containing such information and documents concerning such municipal securities dealer or municipal advisor and any persons associated with such municipal securities dealer or municipal advisor as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Within forty-five days of the date of the filing of such application (or within such longer period as to which the applicant consents), the Commission shall—

(A) by order grant registration, or

(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within one hundred twenty days of the date of the filing of the application for registration. At the conclusion of such proceedings the Commission, by order, shall grant or deny such registration. The Commission may extend the time for the conclusion of such proceedings for up to ninety days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The Commission shall grant the registration of a municipal securities dealer or municipal advisor if the Commission finds that the requirements of this section are satisfied. The Commission shall deny such registration if it does not make such a finding or if it finds that if the applicant were so registered, its registration would be subject to suspension or revocation under subsection (c) of this section.

(3) Any provision of this chapter (other than section 78e of this title or paragraph (1) of this subsection) which prohibits any act, practice, or course of business if the mails or any means or instrumentality of interstate commerce is used in connection therewith shall also prohibit any such act, practice, or course of business by any registered municipal securities dealer or municipal advisor or any person acting on behalf of such municipal securities dealer or municipal advisor, irrespective of any use of the mails or any means or instrumentality of interstate commerce in connection therewith.

(4) The Commission, by rule or order, upon its own motion or upon application, may conditionally or unconditionally exempt any broker, dealer, municipal securities dealer, or municipal advisor, or class of brokers, dealers, municipal securities dealers, or municipal advisors from any provision of this section or the rules or regulations thereunder, if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of this section.

(5) No municipal advisor shall make use of the mails or any means or instrumentality of interstate commerce to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products, the issuance of municipal securities, or to undertake a solicitation of a

municipal entity or obligated person, in connection with which such municipal advisor engages in any fraudulent, deceptive, or manipulative act or practice.

(b) Municipal Securities Rulemaking Board; rules and regulations

(1) The Municipal Securities Rulemaking Board shall be composed of 15 members, or such other number of members as specified by rules of the Board pursuant to paragraph (2)(B),,[1] which shall perform the duties set forth in this section. The members of the Board shall serve as members for a term of 3 years or for such other terms as specified by rules of the Board pursuant to paragraph (2)(B), and shall consist of (A) 8 individuals who are independent of any municipal securities broker, municipal securities dealer, or municipal advisor, at least 1 of whom shall be representative of institutional or retail investors in municipal securities, at least 1 of whom shall be representative of municipal entities, and at least 1 of whom shall be a member of the public with knowledge of or experience in the municipal industry (which members are hereinafter referred to as "public representatives"); and (B) 7 individuals who are associated with a broker, dealer, municipal securities dealer, or municipal advisor, including at least 1 individual who is associated with and representative of brokers, dealers, or municipal securities dealers that are not banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as "broker-dealer representatives"), at least 1 individual who is associated with and representative of municipal securities dealers which are banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as "bank representatives"), and at least 1 individual who is associated with a municipal advisor (which members are hereinafter referred to as "advisor representatives" and, together with the broker-dealer representatives and the bank representatives, are referred to as "regulated representatives"). Each member of the board shall be knowledgeable of matters related to the municipal securities markets. Prior to the expiration of the terms of office of the members of the Board, an election shall be held under rules adopted by the Board (pursuant to subsection (b)(2)(B) of this section) of the members to succeed such members.

(2) The Board shall propose and adopt rules to effect the purposes of this chapter with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors. The rules of the Board, as a minimum, shall:

(A) provide that no municipal securities broker or municipal securities dealer shall effect any transaction in, or induce or attempt to induce the purchase or sale of, any municipal security, and no broker, dealer, municipal securities dealer, or municipal advisor shall provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, unless such municipal securities broker or municipal securities dealer meets such standards of operational capability and such municipal securities broker or municipal securities dealer and every natural person associated with such municipal securities broker or municipal securities dealer meet such standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors and municipal entities or obligated persons. In connection with the definition and application of such standards the Board may—

(i) appropriately classify municipal securities brokers, municipal securities dealers, and municipal advisors (taking into account relevant matters, including types of business done, nature of securities other than municipal securities sold, and character of business organization), and persons associated with municipal securities brokers, municipal securities dealers, and municipal advisors;

(ii) specify that all or any portion of such standards shall be applicable to any such class; and

(iii) require persons in any such class to pass tests administered in accordance with subsection (c)(7) of this section.

(B) establish fair procedures for the nomination and election of members of the Board and assure fair representation in such nominations and elections of public representatives, broker dealer representatives, bank representatives, and advisor representatives. Such rules—

(i) shall provide that the number of public representatives of the Board shall at all times exceed the total number of regulated representatives and that the membership shall at all times be as evenly divided in number as possible between public representatives and regulated representatives;

(ii) shall specify the length or lengths of terms members shall serve;

(iii) may increase the number of members which shall constitute the whole Board, provided that such number is an odd number; and

(iv) shall establish requirements regarding the independence of public representatives.

(C) be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest; and not be designed to permit unfair discrimination among customers, municipal entities, obligated persons, municipal securities brokers, municipal securities dealers, or municipal advisors, to fix minimum profits, to impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by municipal securities brokers, municipal securities dealers, or municipal advisors, to regulate by virtue of any authority conferred by this chapter matters not related to the purposes of this chapter or the administration of the Board, or to impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.

(D) if the Board deems appropriate, provide for the arbitration of claims, disputes, and controversies relating to transactions in municipal securities and advice concerning municipal financial products: *Provided, however,* that no person other than a municipal securities broker, municipal securities dealer, municipal advisor, or person associated with such a municipal securities broker, municipal securities dealer, or municipal advisor may be compelled to submit to such arbitration except at his instance and in accordance with section 78cc of this title.

(E) provide for the periodic examination in accordance with subsection (c)(7) of this section of municipal securities brokers, municipal securities dealers, and municipal advisors to determine compliance with applicable provisions of this chapter, the rules and regulations thereunder, and the rules of the Board. Such rules shall specify the minimum scope and frequency of such examinations and shall be designed to avoid unnecessary regulatory duplication or undue regulatory burdens for any such municipal securities broker, municipal securities dealer, or municipal advisor.

(F) include provisions governing the form and content of quotations relating to municipal securities which may be distributed or published by any municipal securities broker, municipal securities dealer, or person associated with such a municipal securities broker or municipal securities dealer, and the persons to whom such quotations may be supplied. Such rules relating to quotations shall be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.

(G) prescribe records to be made and kept by municipal securities brokers, municipal securities dealers, and municipal advisors and the periods for which such records shall be preserved.

(H) define the term "separately identifiable department or division", as that term is used in section 78c(a)(30) of this title, in accordance with specified and appropriate standards to assure that a bank is not deemed to be engaged in the business of buying and selling municipal securities through a separately identifiable department or division unless such department or division is organized and administered so as to permit independent examination and enforcement of applicable provisions of this chapter, the rules and regulations thereunder, and the rules of the

Board. A separately identifiable department or division of a bank may be engaged in activities other than those relating to municipal securities.

(I) provide for the operation and administration of the Board, including the selection of a Chairman from among the members of the Board, the compensation of the members of the Board, and the appointment and compensation of such employees, attorneys, and consultants as may be necessary or appropriate to carry out the Board's functions under this section.

(J) provide that each municipal securities broker, municipal securities dealer, and municipal advisor shall pay to the Board such reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the Board. Such rules shall specify the amount of such fees and charges, which may include charges for failure to submit to the Board, or to any information system operated by the Board, within the prescribed timeframes, any items of information or documents required to be submitted under any rule issued by the Board.

(K) establish the terms and conditions under which any broker, dealer, or municipal securities dealer may sell, or prohibit any broker, dealer, or municipal securities dealer from selling, any part of a new issue of municipal securities to a related account of a broker, dealer, or municipal securities dealer during the underwriting period.

(L) with respect to municipal advisors—

(i) prescribe means reasonably designed to prevent acts, practices, and courses of business as are not consistent with a municipal advisor's fiduciary duty to its clients;

(ii) provide continuing education requirements for municipal advisors;

(iii) provide professional standards; and

(iv) not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.

(3) The Board, in conjunction with or on behalf of any Federal financial regulator or self-regulatory organization, may—

(A) establish information systems; and

(B) assess such reasonable fees and charges for the submission of information to, or the receipt of information from, such systems from any persons which systems may be developed for the purposes of serving as a repository of information from municipal market participants or otherwise in furtherance of the purposes of the Board, a Federal financial regulator, or a self-regulatory organization, except that the Board—

(i) may not charge a fee to municipal entities or obligated persons to submit documents or other information to the Board or charge a fee to any person to obtain, directly from the Internet site of the Board, documents or information submitted by municipal entities, obligated persons, brokers, dealers, municipal securities dealers, or municipal advisors, including documents submitted under the rules of the Board or the Commission; and

(ii) shall not be prohibited from charging commercially reasonable fees for automated subscription-based feeds or similar services, or for charging for other data or document-based services customized upon request of any person, made available to commercial enterprises, municipal securities market professionals, or the general public, whether delivered through the Internet or any other means, that contain all or part of the documents or information, subject to approval of the fees by the Commission under section 78s(b) of this title.

(4) The Board may provide guidance and assistance in the enforcement of, and examination for, compliance with the rules of the Board to the Commission, a registered securities association under section 78o–3 of this title, or any other appropriate regulatory agency, as applicable.

(5) The Board, the Commission, and a registered securities association under section 78o–3 of this title, or the designees of the Board, the Commission, or such association, shall meet not less frequently than 2 times a year—

(A) to describe the work of the Board, the Commission, and the registered securities association

involving the regulation of municipal securities; and

(B) to share information about—

(i) the interpretation of the Board, the Commission, and the registered securities association of Board rules; and

(ii) examination and enforcement of compliance with Board rules.

(7) [2] Nothing in this section shall be construed to impair or limit the power of the Commission under this chapter.

(c) Discipline of municipal securities dealers; censure; suspension or revocation of registration; other sanctions; investigations

(1) No broker, dealer, or municipal securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security, and no broker, dealer, municipal securities dealer, or municipal advisor shall make use of the mails or any means or instrumentality of interstate commerce to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products, the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person, in contravention of any rule of the Board. A municipal advisor and any person associated with such municipal advisor shall be deemed to have a fiduciary duty to any municipal entity for whom such municipal advisor acts as a municipal advisor, and no municipal advisor may engage in any act, practice, or course of business which is not consistent with a municipal advisor's fiduciary duty or that is in contravention of any rule of the Board.

(2) The Commission, by order, shall censure, place limitations on the activities, functions, or operations, suspend for a period not exceeding twelve months, or revoke the registration of any municipal securities dealer or municipal advisor, if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, denial, suspension, or revocation, is in the public interest and that such municipal securities dealer or municipal advisor has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (H), or (G) of paragraph (4) of section 78o(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within ten years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4).

(3) Pending final determination whether any registration under this section shall be revoked, the Commission, by order, may suspend such registration, if such suspension appears to the Commission, after notice and opportunity for hearing, to be necessary or appropriate in the public interest or for the protection of investors or municipal entities or obligated person.[3] Any registered municipal securities dealer or municipal advisor may, upon such terms and conditions as the Commission may deem necessary in the public interest or for the protection of investors or municipal entities or obligated person,[3] withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any registered municipal securities dealer or municipal advisor is no longer in existence or has ceased to do business as a municipal securities dealer or municipal advisor, the Commission, by order, shall cancel the registration of such municipal securities dealer or municipal advisor.

(4) The Commission, by order, shall censure or place limitations on the activities or functions of any person associated, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated with a municipal securities dealer, or suspend for a period not exceeding 12 months or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (H), or (G) of paragraph (4) of section 78o(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the

commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4). It shall be unlawful for any person as to whom an order entered pursuant to this paragraph or paragraph (5) of this subsection suspending or barring him from being associated with a municipal securities dealer is in effect willfully to become, or to be, associated with a municipal securities dealer without the consent of the Commission, and it shall be unlawful for any municipal securities dealer to permit such a person to become, or remain, a person associated with him without the consent of the Commission, if such municipal securities dealer knew, or, in the exercise of reasonable care should have known, of such order.

(5) With respect to any municipal securities dealer for which the Commission is not the appropriate regulatory agency, the appropriate regulatory agency for such municipal securities dealer may sanction any such municipal securities dealer in the manner and for the reasons specified in paragraph (2) of this subsection and any person associated with such municipal securities dealer in the manner and for the reasons specified in paragraph (4) of this subsection. In addition, such appropriate regulatory agency may, in accordance with section 1818 of title 12, enforce compliance by such municipal securities dealer or any person associated with such municipal securities dealer with the provisions of this section, section 78q of this title, the rules of the Board, and the rules of the Commission pertaining to municipal securities dealers, persons associated with municipal securities dealers, and transactions in municipal securities. For purposes of the preceding sentence, any violation of any such provision shall constitute adequate basis for the issuance of any order under section 1818(b) or 1818(c) of title 12, and the customers of any such municipal securities dealer shall be deemed to be "depositors" as that term is used in section 1818(c) of title 12. Nothing in this paragraph shall be construed to affect in any way the powers of such appropriate regulatory agency to proceed against such municipal securities dealer under any other provision of law.

(6)(A) The Commission, prior to the entry of an order of investigation, or commencement of any proceedings, against any municipal securities dealer, or person associated with any municipal securities dealer, for which the Commission is not the appropriate regulatory agency, for violation of any provision of this section, section 78o(c)(1) or 78o(c)(2) of this title, any rule or regulation under any such section, or any rule of the Board, shall (i) give notice to the appropriate regulatory agency for such municipal securities dealer of the identity of such municipal securities dealer or person associated with such municipal securities dealer, the nature of and basis for such proposed action, and whether the Commission is seeking a monetary penalty against such municipal securities dealer or such associated person pursuant to section 78u–2 of this title; and (ii) consult with such appropriate regulatory agency concerning the effect of such proposed action on sound banking practices and the feasibility and desirability of coordinating such action with any proceeding or proposed proceeding by such appropriate regulatory agency against such municipal securities dealer or associated person.

(B) The appropriate regulatory agency for a municipal securities dealer (if other than the Commission), prior to the entry of an order of investigation, or commencement of any proceedings, against such municipal securities dealer or person associated with such municipal securities dealer, for violation of any provision of this section, the rules of the Board, or the rules or regulations of the Commission pertaining to municipal securities dealers, persons associated with municipal securities dealers, or transactions in municipal securities shall (i) give notice to the Commission of the identity of such municipal securities dealer or person associated with such municipal securities dealer and the nature of and basis for such proposed action and (ii) consult with the Commission concerning the effect of such proposed action on the protection of investors or municipal entities or obligated person [3] and the feasibility and desirability of coordinating such action with any proceeding or proposed proceeding by the Commission against such municipal securities dealer or associated person.

(C) Nothing in this paragraph shall be construed to impair or limit (other than by the requirement of prior consultation) the power of the Commission or the appropriate regulatory agency for a municipal securities dealer to initiate any action of a class described in this paragraph or to affect in any way the power of the Commission or such appropriate regulatory agency to initiate any other action pursuant to this chapter or any other provision of law.

(7)(A) Tests required pursuant to subsection (b)(2)(A)(iii) of this section shall be administered by or on behalf of and periodic examinations pursuant to subsection (b)(2)(E) of this section shall be conducted by—

(i) a registered securities association, in the case of municipal securities brokers and municipal securities dealers who are members of such association;

(ii) the appropriate regulatory agency for any municipal securities broker or municipal securities dealer, in the case of all other municipal securities brokers and municipal securities dealers; and

(iii) the Commission, or its designee, in the case of municipal advisors.

(B) A registered securities association shall make a report of any examination conducted pursuant to subsection (b)(2)(E) of this section and promptly furnish the Commission a copy thereof and any data supplied to it in connection with such examination. Subject to such limitations as the Commission, by rule, determines to be necessary or appropriate in the public interest or for the protection of investors or municipal entities or obligated person,[3] the Commission shall, on request, make available to the Board a copy of any report of an examination of a municipal securities broker or municipal securities dealer made by or furnished to the Commission pursuant to this paragraph or section 78q(c)(3) of this title.

(8) The Commission is authorized, by order, if in its opinion such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise, in furtherance of the purposes of this chapter, to remove from office or censure any person who is, or at the time of the alleged violation or abuse was, a member or employee of the Board, who, the Commission finds, on the record after notice and opportunity for hearing, has willfully (A) violated any provision of this chapter, the rules and regulations thereunder, or the rules of the Board or (B) abused his authority.

(9)(A) Fines collected by the Commission for violations of the rules of the Board shall be equally divided between the Commission and the Board.

(B) Fines collected by a registered securities association under section 78o–3(b)(7) [4] of this title with respect to violations of the rules of the Board shall be accounted for by such registered securities association separately from other fines collected under section 78o–3(b)(7) [4] of this title and shall be allocated between such registered securities association and the Board, and such allocation shall require the registered securities association to pay to the Board 1/3 of all fines collected by the registered securities association reasonably allocable to violations of the rules of the Board, or such other portion of such fines as may be directed by the Commission upon agreement between the registered securities association and the Board.

(d) Issuance of municipal securities

(1) Neither the Commission nor the Board is authorized under this chapter, by rule or regulation, to require any issuer of municipal securities, directly or indirectly through a purchaser or prospective purchaser of securities from the issuer, to file with the Commission or the Board prior to the sale of such securities by the issuer any application, report, or document in connection with the issuance, sale, or distribution of such securities.

(2) The Board is not authorized under this chapter to require any issuer of municipal securities, directly or indirectly through a municipal securities broker, municipal securities dealer, municipal advisor, or otherwise, to furnish to the Board or to a purchaser or a prospective purchaser of such securities any application, report, document, or information with respect to such issuer: *Provided, however*, That the Board may require municipal securities brokers and municipal securities dealers or municipal advisors to furnish to the Board or purchasers or prospective purchasers of municipal securities applications, reports, documents, and information with respect to the issuer thereof which is generally available from a source other than such issuer. Nothing in this paragraph shall be construed to impair or limit the power of the Commission under any provision of this chapter.

(e) Definitions

For purposes of this section—

(1) the term "Board" means the Municipal Securities Rulemaking Board established under

subsection (b)(1);

(2) the term "guaranteed investment contract" includes any investment that has specified withdrawal or reinvestment provisions and a specifically negotiated or bid interest rate, and also includes any agreement to supply investments on 2 or more future dates, such as a forward supply contract;

(3) the term "investment strategies" includes plans or programs for the investment of the proceeds of municipal securities that are not municipal derivatives, guaranteed investment contracts, and the recommendation of and brokerage of municipal escrow investments;

(4) the term "municipal advisor"—

(A) means a person (who is not a municipal entity or an employee of a municipal entity) that—

(i) provides advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues; or

(ii) undertakes a solicitation of a municipal entity;

(B) includes financial advisors, guaranteed investment contract brokers, third-party marketers, placement agents, solicitors, finders, and swap advisors, if such persons are described in any of clauses (i) through (iii) [5] of subparagraph (A); and

(C) does not include a broker, dealer, or municipal securities dealer serving as an underwriter (as defined in section 77b(a)(11) of this title), any investment adviser registered under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.], or persons associated with such investment advisers who are providing investment advice, any commodity trading advisor registered under the Commodity Exchange Act [7 U.S.C. 1 et seq.] or persons associated with a commodity trading advisor who are providing advice related to swaps, attorneys offering legal advice or providing services that are of a traditional legal nature, or engineers providing engineering advice;

(5) the term "municipal financial product" means municipal derivatives, guaranteed investment contracts, and investment strategies;

(6) the term "rules of the Board" means the rules proposed and adopted by the Board under subsection (b)(2);

(7) the term "person associated with a municipal advisor" or "associated person of an advisor" means—

(A) any partner, officer, director, or branch manager of such municipal advisor (or any person occupying a similar status or performing similar functions);

(B) any other employee of such municipal advisor who is engaged in the management, direction, supervision, or performance of any activities relating to the provision of advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities; and

(C) any person directly or indirectly controlling, controlled by, or under common control with such municipal advisor;

(8) the term "municipal entity" means any State, political subdivision of a State, or municipal corporate instrumentality of a State, including—

(A) any agency, authority, or instrumentality of the State, political subdivision, or municipal corporate instrumentality;

(B) any plan, program, or pool of assets sponsored or established by the State, political subdivision, or municipal corporate instrumentality or any agency, authority, or instrumentality thereof; and

(C) any other issuer of municipal securities;

(9) the term "solicitation of a municipal entity or obligated person" means a direct or indirect communication with a municipal entity or obligated person made by a person, for direct or indirect compensation, on behalf of a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser (as defined in section 202 of the Investment Advisers Act of 1940 [15 U.S.C. 80b–2]) that does not control, is not controlled by, or is not under common control with the person undertaking such solicitation for the purpose of obtaining or retaining an engagement by a municipal entity or obligated person of a broker, dealer, municipal securities dealer, or municipal advisor for or in connection with municipal financial products, the issuance of municipal securities, or of an investment adviser to provide investment advisory services to or on behalf of a municipal entity; and

(10) the term "obligated person" means any person, including an issuer of municipal securities, who is either generally or through an enterprise, fund, or account of such person, committed by contract or other arrangement to support the payment of all or part of the obligations on the municipal securities to be sold in an offering of municipal securities.

(June 6, 1934, ch. 404, title I, §15B, as added Pub. L. 94–29, §13, June 4, 1975, 89 Stat. 131; amended Pub. L. 98–38, §4, June 6, 1983, 97 Stat. 207; Pub. L. 100–181, title III, §§318–320, Dec. 4, 1987, 101 Stat. 1256, 1257; Pub. L. 101–429, title II, §205, Oct. 15, 1990, 104 Stat. 941; Pub. L. 101–550, title II, §203(c)(1), Nov. 15, 1990, 104 Stat. 2718; Pub. L. 105–353, title III, §301(b)(9), Nov. 3, 1998, 112 Stat. 3236; Pub. L. 107–204, title VI, §604(c)(1)(B), July 30, 2002, 116 Stat. 796; Pub. L. 111–203, title IX, §§925(a)(2), 929F(a), 975(a)–(e), July 21, 2010, 124 Stat. 1850, 1853, 1915–1921.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(3), (b)(2), (7), (c)(6)(C), (8), and (d), was in the original "this title". See References in Text note set out under section 78a of this title.

Section 78o–3(b)(7) of this title, referred to in subsec. (c)(9)(B), was in the original "section 15A(7)", and was translated as meaning section 15A(b)(7) of act June 6, 1934, to reflect the probable intent of Congress.

The Investment Advisers Act of 1940, referred to in subsec. (e)(4)(C), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, which is classified generally to subchapter II (§80b–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80b–20 of this title and Tables.

The Commodity Exchange Act, referred to in subsec. (e)(4)(C), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111–203, §975(a)(1), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(2), (3). Pub. L. 111–203, §975(a)(2), (3), inserted "or municipal advisor" after "municipal securities dealer" wherever appearing.

Subsec. (a)(4). Pub. L. 111–203, §975(a)(4), substituted "dealer, municipal securities dealer, or municipal advisor, or class of brokers, dealers, municipal securities dealers, or municipal advisors" for "dealer, or municipal securities dealer or class of brokers, dealers, or municipal securities dealers".

Subsec. (a)(5). Pub. L. 111–203, §975(a)(5), added par. (5).

Subsec. (b)(1). Pub. L. 111–203, §975(b)(1)(C), which directed amendment of third sentence by striking out "initial", was executed in fourth sentence by striking out "initial" after "office of the" and after "such", to reflect the probable intent of Congress.

Pub. L. 111–203, §975(b)(1)(B), added second and third sentences and struck out former second sentence which read as follows: "The initial members of the Board shall serve as members for a term of two years, and shall consist of (A) five individuals who are not associated with any broker, dealer, or municipal securities dealer (other than by reason of being under common control with, or indirectly controlling, any broker or dealer which is not a municipal securities broker or municipal securities dealer), at least one of whom shall be representative of investors in municipal securities, and at least one of whom shall be representative of issuers of municipal securities (which members are hereinafter referred to as 'public representatives'); (B) five individuals who are associated with and representative of municipal securities brokers and municipal securities dealers which are not banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as 'broker-dealer representatives'); and (C) five individuals who are associated with

and representative of municipal securities dealers which are banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as 'bank representatives')."

Pub. L. 111–203, §975(b)(1)(A), in first sentence, substituted "The Municipal Securities Rulemaking Board shall be composed of 15 members, or such other number of members as specified by rules of the Board pursuant to paragraph (2)(B)," for "Not later than one hundred twenty days after June 4, 1975, the Commission shall establish a Municipal Securities Rulemaking Board (hereinafter in this section referred to as the 'Board'), to be composed initially of fifteen members appointed by the Commission".

Subsec. (b)(2). Pub. L. 111–203, §975(b)(2)(A), in introductory provisions, inserted "and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors" before period at end of first sentence and struck out "(Such rules are hereinafter collectively referred to in this chapter as 'rules of the Board'.)" before "The rules".

Subsec. (b)(2)(A). Pub. L. 111–203, §975(b)(2)(B), in introductory provisions, inserted ", and no broker, dealer, municipal securities dealer, or municipal advisor shall provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities," after "sale of, any municipal security" and "and municipal entities or obligated persons" after "protection of investors", in cl. (i), substituted "municipal securities brokers, municipal securities dealers, and municipal advisors" for "municipal securities brokers and municipal securities dealers" in two places, in cl. (ii), inserted "and" at end, in cl. (iii), substituted period for "; and" at end, and struck out cl. (iv) which read as follows: "provide that persons in any such class other than municipal securities brokers and municipal securities dealers and partners, officers, and supervisory employees of municipal securities brokers or municipal securities dealers, may be qualified solely on the basis of compliance with such standards of training and such other qualifications as the Board finds appropriate."

Subsec. (b)(2)(B). Pub. L. 111–203, §975(b)(2)(C), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "establish fair procedures for the nomination and election of members of the Board and assure fair representation in such nominations and elections of municipal securities brokers and municipal securities dealers. Such rules shall provide that the membership of the Board shall at all times be equally divided among public representatives, broker-dealer representatives, and bank representatives, and that the public representatives shall be subject to approval by the Commission to assure that no one of them is associated with any broker, dealer, or municipal securities dealer (other than by reason of being under common control with, or indirectly controlling, any broker or dealer which is not a municipal securities broker or municipal securities dealer) and that at least one is representative of investors in municipal securities and at least one is representative of issuers of municipal securities. Such rules shall also specify the term members shall serve and may increase the number of members which shall constitute the whole Board provided that such number is an odd number."

Subsec. (b)(2)(C). Pub. L. 111–203, §975(b)(2)(D), inserted "and municipal financial products" after "municipal securities" the first two places appearing and ", municipal entities, obligated persons," after "to protect investors" and substituted "among customers, municipal entities, obligated persons, municipal securities brokers, municipal securities dealers, or municipal advisors," for "between customers, issuers, municipal securities brokers, or municipal securities dealers," and "brokers, municipal securities dealers, or municipal advisors, to regulate" for "brokers or municipal securities dealers, to regulate".

Subsec. (b)(2)(D). Pub. L. 111–203, §975(b)(2)(E), inserted "and advice concerning municipal financial products" after "transactions in municipal securities" and "municipal advisor," before "or person associated" and substituted "that no" for "That no" and "a municipal securities broker, municipal securities dealer, or municipal advisor may be compelled" for "a municipal securities broker or municipal securities dealer may be compelled".

Subsec. (b)(2)(E). Pub. L. 111–203, §975(b)(2)(F), substituted "municipal securities brokers, municipal securities dealers, and municipal advisors" for "municipal securities brokers and municipal securities dealers" and "municipal securities broker, municipal securities dealer, or municipal advisor" for "municipal securities broker or municipal securities dealer".

Subsec. (b)(2)(G). Pub. L. 111–203, §975(b)(2)(G), substituted "municipal securities brokers, municipal securities dealers, and municipal advisors" for "municipal securities brokers and municipal securities dealers".

Subsec. (b)(2)(J). Pub. L. 111–203, §975(b)(2)(H), substituted "each municipal securities broker, municipal securities dealer, and municipal advisor" for "each municipal securities broker and each municipal securities dealer" and inserted ", which may include charges for failure to submit to the Board, or to any information system operated by the Board, within the prescribed timeframes, any items of information or documents required to be submitted under any rule issued by the Board" after "such fees and charges".

Subsec. (b)(2)(K). Pub. L. 111–203, §975(b)(2)(I), substituted "a related account of a broker, dealer, or municipal securities dealer" for "a municipal securities investment portfolio" and substituted "any broker, dealer, or municipal securities dealer" for "any municipal securities dealer" in two places.

Subsec. (b)(2)(L). Pub. L. 111–203, §975(b)(2)(J), added subpar. (L).

Subsec. (b)(3) to (5), (7). Pub. L. 111–203, §975(b)(3), (4), added pars. (3) to (5) and redesignated former par. (3) as (7).

Subsec. (c)(1). Pub. L. 111–203, §975(c)(1), (2), inserted ", and no broker, dealer, municipal securities dealer, or municipal advisor shall make use of the mails or any means or instrumentality of interstate commerce to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products, the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person," after "any municipal security" and inserted at end "A municipal advisor and any person associated with such municipal advisor shall be deemed to have a fiduciary duty to any municipal entity for whom such municipal advisor acts as a municipal advisor, and no municipal advisor may engage in any act, practice, or course of business which is not consistent with a municipal advisor's fiduciary duty or that is in contravention of any rule of the Board."

Subsec. (c)(2). Pub. L. 111–203, §975(c)(3), inserted "or municipal advisor" after "municipal securities dealer" in two places.

Subsec. (c)(3). Pub. L. 111–203, §975(c)(4), inserted "or municipal entities or obligated person" after "protection of investors" in two places and "or municipal advisor" after "municipal securities dealer" wherever appearing.

Subsec. (c)(4). Pub. L. 111–203, §975(c)(5), which directed amendment of par. (4) by inserting "or municipal advisor" after "municipal securities dealer or obligated person" each place that term appears, could not be executed because such term does not appear.

Pub. L. 111–203, §925(a)(2), substituted "12 months or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization," for "twelve months or bar any such person from being associated with a municipal securities dealer,".

Subsec. (c)(6)(B). Pub. L. 111–203, §975(c)(6), inserted "or municipal entities or obligated person" after "protection of investors".

Subsec. (c)(7)(A)(iii). Pub. L. 111–203, §975(c)(7)(A), added cl. (iii).

Subsec. (c)(7)(B). Pub. L. 111–203, §975(c)(7)(B), inserted "or municipal entities or obligated person" after "protection of investors".

Subsec. (c)(8). Pub. L. 111–203, §929F(a), substituted "any person who is, or at the time of the alleged violation or abuse was, a member or employee" for "any member or employee".

Subsec. (c)(9). Pub. L. 111–203, §975(c)(8), added par. (9).

Subsec. (d)(2). Pub. L. 111–203, §975(d)(2), which directed amendment of par. (2) by inserting "or municipal advisors" before "to furnish", was executed by making the insertion before "to furnish" the second place appearing, to reflect the probable intent of Congress.

Pub. L. 111–203, §975(d)(1), substituted "through a municipal securities broker, municipal securities dealer, municipal advisor, or otherwise" for "through a municipal securities broker or municipal securities dealer or otherwise".

Subsec. (e). Pub. L. 111–203, §975(e), added subsec. (e).

2002—Subsec. (c)(2), (4). Pub. L. 107–204 substituted ", or is subject to an order or finding," for "or omission" and "(H), or (G)" for "or (G)".

1998—Subsec. (c)(4). Pub. L. 105–353 substituted "convicted of any offense" for "convicted by any offense" in first sentence.

1990—Subsec. (c)(2), (4). Pub. L. 101–550 substituted "(A), (D), (E), or (G)" for "(A), (D), or (E)".

Subsec. (c)(6)(A). Pub. L. 101–429 substituted ", the nature" for "and the nature" and "proposed action, and whether the Commission is seeking a monetary penalty against such municipal securities dealer or such associated person pursuant to section 78u–2 of this title; and" for "proposed action and".

1987—Subsec. (b)(2)(C). Pub. L. 100–181, §318, substituted "municipal securities dealers, to regulate" for "municipal security dealers, to regulate" "purposes of this chapter" for "purposes of this chapter or the securities", and "burden on competition" for "burden or competition".

Subsec. (c)(4). Pub. L. 100–181, §319, substituted new first sentence for former first sentence which read as follows: "The Commission, by order, shall censure any person associated, or seeking to become associated with, a municipal securities dealer or suspend for a period not exceeding twelve months or bar any such person from being associated with a municipal securities dealer, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, suspension, or bar is in the public interest and that such

person has committed or omitted any act or omission enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 78o(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within ten years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4)."

Subsec. (c)(6)(A). Pub. L. 100–181, §320, substituted "Board" for "board".

1983—Subsec. (b)(1)(A). Pub. L. 98–38, §4(a), inserted "(other than by reason of being under common control with, or indirectly controlling, any broker or dealer which is not a municipal securities broker or municipal securities dealer)" after "securities dealer".

Subsec. (b)(2)(B). Pub. L. 98–38, §4(b), inserted "(other than by reason of being under common control with, or indirectly controlling, any broker or dealer which is not a municipal securities broker or municipal securities dealer)" after "broker, dealer, or municipal securities dealer".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 925(a)(2) and 929F(a) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Amendment by section 975(a)–(e) of Pub. L. 111–203 effective Oct. 1, 2010, see section 975(i) of Pub. L. 111–203, set out as a note under section 78o of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–429 effective Oct. 15, 1990, with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(1), (2) of Pub. L. 101–429, set out in a note under section 77g of this title.

EFFECTIVE DATE

Section effective June 4, 1975, except for subsec. (a) which is effective 180 days after June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

[1] So in original.

[2] So in original. Probably should be "(6)".

[3] So in original. Person probably should be plural.

[4] See References in Text note below.

[5] So in original. Subpar. (A) does not contain a cl. (iii).

§78*o*–4a. Commission Office of Municipal Securities

(a) In general

There shall be in the Commission an Office of Municipal Securities, which shall—

(1) administer the rules of the Commission with respect to the practices of municipal securities brokers and dealers, municipal securities advisors, municipal securities investors, and municipal securities issuers; and

(2) coordinate with the Municipal Securities Rulemaking Board for rulemaking and enforcement actions as required by law.

(b) Director of the Office

The head of the Office of Municipal Securities shall be the Director, who shall report to the Chairman.

(c) Staffing

(1) In general

The Office of Municipal Securities shall be staffed sufficiently to carry out the requirements of

this section.

(2) Requirement

The staff of the Office of Municipal Securities shall include individuals with knowledge of and expertise in municipal finance.

(Pub. L. 111–203, title IX, §979, July 21, 2010, 124 Stat. 1926.)

CODIFICATION

Section was enacted as part of the Investor Protection and Securities Reform Act of 2010 and also as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and not as part of the Securities Exchange Act of 1934 which comprises this chapter.

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of Title 12, Banks and Banking.

DEFINITIONS

For definitions of terms used in this section, see section 5301 of Title 12, Banks and Banking.

§78*o*–5. Government securities brokers and dealers

(a) Registration requirements; notice to regulatory agencies; manner of registration; exemption from registration requirements

(1)(A) It shall be unlawful for any government securities broker or government securities dealer (other than a registered broker or dealer or a financial institution) to make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any government security unless such government securities broker or government securities dealer is registered in accordance with paragraph (2) of this subsection.

(B)(i) It shall be unlawful for any government securities broker or government securities dealer that is a registered broker or dealer or a financial institution to make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any government security unless such government securities broker or government securities dealer has filed with the appropriate regulatory agency written notice that it is a government securities broker or government securities dealer. When such a government securities broker or government securities dealer ceases to act as such it shall file with the appropriate regulatory agency a written notice that it is no longer acting as a government securities broker or government securities dealer.

(ii) Such notices shall be in such form and contain such information concerning a government securities broker or government securities dealer that is a financial institution and any persons associated with such government securities broker or government securities dealer as the Board of Governors of the Federal Reserve System shall, by rule, after consultation with each appropriate regulatory agency (including the Commission), prescribe as necessary or appropriate in the public interest or for the protection of investors. Such notices shall be in such form and contain such information concerning a government securities broker or government securities dealer that is a registered broker or dealer and any persons associated with such government securities broker or government securities dealer as the Commission shall, by rule, prescribe as necessary or appropriate in the public interest or for the protection of investors.

(iii) Each appropriate regulatory agency (other than the Commission) shall make available to the Commission the notices which have been filed with it under this subparagraph, and the Commission shall maintain and make available to the public such notices and the notices it receives under this subparagraph.

(2) A government securities broker or a government securities dealer subject to the registration requirement of paragraph (1)(A) of this subsection may be registered by filing with the Commission an application for registration in such form and containing such information and documents

concerning such government securities broker or government securities dealer and any persons associated with such government securities broker or government securities dealer as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Within 45 days of the date of filing of such application (or within such longer period as to which the applicant consents), the Commission shall—

(A) by order grant registration, or

(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within 120 days of the date of the filing of the application for registration. At the conclusion of such proceedings, the Commission, by order, shall grant or deny such registration. The Commission may extend the time for the conclusion of such proceedings for up to 90 days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The Commission shall grant the registration of a government securities broker or a government securities dealer if the Commission finds that the requirements of this section are satisfied. The order granting registration shall not be effective until such government securities broker or government securities dealer has become a member of a national securities exchange registered under section 78f of this title, or a securities association registered under section 78o–3 of this title, unless the Commission has exempted such government securities broker or government securities dealer, by rule or order, from such membership. The Commission shall deny such registration if it does not make such a finding or if it finds that if the applicant were so registered, its registration would be subject to suspension or revocation under subsection (c) of this section.

(3) Any provision of this chapter (other than section 78e of this title or paragraph (1) of this subsection) which prohibits any act, practice, or course of business if the mails or any means or instrumentality of interstate commerce is used in connection therewith shall also prohibit any such act, practice, or course of business by any government securities broker or government securities dealer registered or having filed notice under paragraph (1) of this subsection or any person acting on behalf of such government securities broker or government securities dealer, irrespective of any use of the mails or any means or instrumentality of interstate commerce in connection therewith.

(4) No government securities broker or government securities dealer that is required to register under paragraph (1)(A) and that is not a member of the Securities Investor Protection Corporation shall effect any transaction in any security in contravention of such rules as the Commission shall prescribe pursuant to this subsection to assure that its customers receive complete, accurate, and timely disclosure of the inapplicability of Securities Investor Protection Corporation coverage to their accounts.

(5) The Secretary of the Treasury (hereinafter in this section referred to as the "Secretary"), by rule or order, upon the Secretary's own motion or upon application, may conditionally or unconditionally exempt any government securities broker or government securities dealer, or class of government securities brokers or government securities dealers, from any provision of subsection (a), (b), or (d) of this section, other than subsection (d)(3) of this section, or the rules thereunder, if the Secretary finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of this chapter.

(b) Rules with respect to transactions in government securities

(1) The Secretary shall propose and adopt rules to effect the purposes of this chapter with respect to transactions in government securities effected by government securities brokers and government securities dealers as follows:

(A) Such rules shall provide safeguards with respect to the financial responsibility and related practices of government securities brokers and government securities dealers including, but not limited to, capital adequacy standards, the acceptance of custody and use of customers' securities, the carrying and use of customers' deposits or credit balances, and the transfer and control of government securities subject to repurchase agreements and in similar transactions.

(B) Such rules shall require every government securities broker and government securities

dealer to make reports to and furnish copies of records to the appropriate regulatory agency, and to file with the appropriate regulatory agency, annually or more frequently, a balance sheet and income statement certified by an independent public accountant, prepared on a calendar or fiscal year basis, and such other financial statements (which shall, as the Secretary specifies, be certified) and information concerning its financial condition as required by such rules.

(C) Such rules shall require records to be made and kept by government securities brokers and government securities dealers and shall specify the periods for which such records shall be preserved.

(2) RISK ASSESSMENT FOR HOLDING COMPANY SYSTEMS.—

(A) OBLIGATIONS TO OBTAIN, MAINTAIN, AND REPORT INFORMATION.—Every person who is registered as a government securities broker or government securities dealer under this section shall obtain such information and make and keep such records as the Secretary by rule prescribes concerning the registered person's policies, procedures, or systems for monitoring and controlling financial and operational risks to it resulting from the activities of any of its associated persons, other than a natural person. Such records shall describe, in the aggregate, each of the financial and securities activities conducted by, and customary sources of capital and funding of, those of its associated persons whose business activities are reasonably likely to have a material impact on the financial or operational condition of such registered person, including its capital, its liquidity, or its ability to conduct or finance its operations. The Secretary, by rule, may require summary reports of such information to be filed with the registered person's appropriate regulatory agency no more frequently than quarterly.

(B) AUTHORITY TO REQUIRE ADDITIONAL INFORMATION.—If, as a result of adverse market conditions or based on reports provided pursuant to subparagraph (A) of this paragraph or other available information, the appropriate regulatory agency reasonably concludes that it has concerns regarding the financial or operational condition of any government securities broker or government securities dealer registered under this section, such agency may require the registered person to make reports concerning the financial and securities activities of any of such person's associated persons, other than a natural person, whose business activities are reasonably likely to have a material impact on the financial or operational condition of such registered person. The appropriate regulatory agency, in requiring reports pursuant to this subparagraph, shall specify the information required, the period for which it is required, the time and date on which the information must be furnished, and whether the information is to be furnished directly to the appropriate regulatory agency or to a self-regulatory organization with primary responsibility for examining the registered person's financial and operational condition.

(C) SPECIAL PROVISIONS WITH RESPECT TO ASSOCIATED PERSONS SUBJECT TO FEDERAL BANKING AGENCY REGULATION.—

(i) COOPERATION IN IMPLEMENTATION.—In developing and implementing reporting requirements pursuant to subparagraph (A) of this paragraph with respect to associated persons subject to examination by or reporting requirements of a Federal banking agency, the Secretary shall consult with and consider the views of each such Federal banking agency. If a Federal banking agency comments in writing on a proposed rule of the Secretary under this paragraph that has been published for comment, the Secretary shall respond in writing to such written comment before adopting the proposed rule. The Secretary shall, at the request of a Federal banking agency, publish such comment and response in the Federal Register at the time of publishing the adopted rule.

(ii) USE OF BANKING AGENCY REPORTS.—A registered government securities broker or government securities dealer shall be in compliance with any recordkeeping or reporting requirement adopted pursuant to subparagraph (A) of this paragraph concerning an associated person that is subject to examination by or reporting requirements of a Federal banking agency if such government securities broker or government securities dealer utilizes for such recordkeeping or reporting requirement copies of reports filed by the associated person with the Federal banking agency pursuant to section 161 of title 12, subchapter VIII of chapter 3 of title

12, section 1817(a) of title 12, section 1467a(b) of title 12, or section 1847 of title 12. The Secretary may, however, by rule adopted pursuant to subparagraph (A), require any registered government securities broker or government securities dealer filing such reports with the appropriate regulatory agency to obtain, maintain, or report supplemental information if the Secretary makes an explicit finding, based on information provided by the appropriate regulatory agency, that such supplemental information is necessary to inform the appropriate regulatory agency regarding potential risks to such government securities broker or government securities dealer. Prior to requiring any such supplemental information, the Secretary shall first request the Federal banking agency to expand its reporting requirements to include such information.

(iii) PROCEDURE FOR REQUIRING ADDITIONAL INFORMATION.—Prior to making a request pursuant to subparagraph (B) of this paragraph for information with respect to an associated person that is subject to examination by or reporting requirements of a Federal banking agency, the appropriate regulatory agency shall—

(I) notify such banking agency of the information required with respect to such associated person; and

(II) consult with such agency to determine whether the information required is available from such agency and for other purposes, unless the appropriate regulatory agency determines that any delay resulting from such consultation would be inconsistent with ensuring the financial and operational condition of the government securities broker or government securities dealer or the stability or integrity of the securities markets.

(iv) EXCLUSION FOR EXAMINATION REPORTS.—Nothing in this subparagraph shall be construed to permit the Secretary or an appropriate regulatory agency to require any registered government securities broker or government securities dealer to obtain, maintain, or furnish any examination report of any Federal banking agency or any supervisory recommendations or analysis contained therein.

(v) CONFIDENTIALITY OF INFORMATION PROVIDED.—No information provided to or obtained by an appropriate regulatory agency from any Federal banking agency pursuant to a request under clause (iii) of this subparagraph regarding any associated person which is subject to examination by or reporting requirements of a Federal banking agency may be disclosed to any other person (other than a self-regulatory organization), without the prior written approval of the Federal banking agency. Nothing in this clause shall authorize the Secretary or any appropriate regulatory agency to withhold information from Congress, or prevent the Secretary or any appropriate regulatory agency from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission.

(vi) NOTICE TO BANKING AGENCIES CONCERNING FINANCIAL AND OPERATIONAL CONDITION CONCERNS.—The Secretary or appropriate regulatory agency shall notify the Federal banking agency of any concerns of the Secretary or the appropriate regulatory agency regarding significant financial or operational risks resulting from the activities of any government securities broker or government securities dealer to any associated person thereof which is subject to examination by or reporting requirements of the Federal banking agency.

(vii) DEFINITION.—For purposes of this subparagraph, the term "Federal banking agency" shall have the same meaning as the term "appropriate Federal banking agency" in section 1813(q) of title 12.

(D) EXEMPTIONS.—The Secretary by rule or order may exempt any person or class of persons, under such terms and conditions and for such periods as the Secretary shall provide in such rule or order, from the provisions of this paragraph, and the rules thereunder. In granting such exemptions, the Secretary shall consider, among other factors—

(i) whether information of the type required under this paragraph is available from a supervisory agency (as defined in section 3401(6) [1] of title 12), a State insurance commission or similar State agency, the Commodity Futures Trading Commission, or a similar foreign regulator;

(ii) the primary business of any associated person;

(iii) the nature and extent of domestic or foreign regulation of the associated person's activities;

(iv) the nature and extent of the registered person's securities transactions; and

(v) with respect to the registered person and its associated persons, on a consolidated basis, the amount and proportion of assets devoted to, and revenues derived from, activities in the United States securities markets.

(E) CONFORMITY WITH REQUIREMENTS UNDER SECTION 78q(h).—In exercising authority pursuant to subparagraph (A) of this paragraph concerning information with respect to associated persons of government securities brokers and government securities dealers who are also associated persons of registered brokers or dealers reporting to the Commission pursuant to section 78q(h) of this title, the requirements relating to such associated persons shall conform, to the greatest extent practicable, to the requirements under section 78q(h) of this title.

(F) AUTHORITY TO LIMIT DISCLOSURE OF INFORMATION.—Notwithstanding any other provision of law, the Secretary and any appropriate regulatory agency shall not be compelled to disclose any information required to be reported under this paragraph, or any information supplied to the Secretary or any appropriate regulatory agency by any domestic or foreign regulatory agency that relates to the financial or operational condition of any associated person of a registered government securities broker or a government securities dealer. Nothing in this paragraph shall authorize the Secretary or any appropriate regulatory agency to withhold information from Congress, or prevent the Secretary or any appropriate regulatory agency from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.

(3)(A) With respect to any financial institution that has filed notice as a government securities broker or government securities dealer or that is required to file notice under subsection (a)(1)(B) of this section, the appropriate regulatory agency for such government securities broker or government securities dealer may issue such rules and regulations with respect to transactions in government securities as may be necessary to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade. If the Secretary of the Treasury determines, and notifies the appropriate regulatory agency, that such rule or regulation, if implemented, would, or as applied does (i) adversely affect the liquidity or efficiency of the market for government securities; or (ii) impose any burden on competition not necessary or appropriate in furtherance of the purposes of this section, the appropriate regulatory agency shall, prior to adopting the proposed rule or regulation, find that such rule or regulation is necessary and appropriate in furtherance of the purposes of this section notwithstanding the Secretary's determination.

(B) The appropriate regulatory agency shall consult with and consider the views of the Secretary prior to approving or amending a rule or regulation under this paragraph, except where the appropriate regulatory agency determines that an emergency exists requiring expeditious and summary action and publishes its reasons therefor. If the Secretary comments in writing to the appropriate regulatory agency on a proposed rule or regulation that has been published for comment, the appropriate regulatory agency shall respond in writing to such written comment before approving the proposed rule or regulation.

(C) In promulgating rules under this section, the appropriate regulatory agency shall consider the sufficiency and appropriateness of then existing laws and rules applicable to government securities

brokers, government securities dealers, and persons associated with government securities brokers and government securities dealers.

(4) Rules promulgated and orders issued under this section shall—

(A) be designed to prevent fraudulent and manipulative acts and practices and to protect the integrity, liquidity, and efficiency of the market for government securities, investors, and the public interest; and

(B) not be designed to permit unfair discrimination between customers, issuers, government securities brokers, or government securities dealers, or to impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.

(5) In promulgating rules and issuing orders under this section, the Secretary—

(A) may appropriately classify government securities brokers and government securities dealers (taking into account relevant matters, including types of business done, nature of securities other than government securities purchased or sold, and character of business organization) and persons associated with government securities brokers and government securities dealers;

(B) may determine, to the extent consistent with paragraph (2) of this subsection and with the public interest, the protection of investors, and the purposes of this chapter, not to apply, in whole or in part, certain rules under this section, or to apply greater, lesser, or different standards, to certain classes of government securities brokers, government securities dealers, or persons associated with government securities brokers or government securities dealers;

(C) shall consider the sufficiency and appropriateness of then existing laws and rules applicable to government securities brokers, government securities dealers, and persons associated with government securities brokers and government securities dealers; and

(D) shall consult with and consider the views of the Commission and the Board of Governors of the Federal Reserve System, except where the Secretary determines that an emergency exists requiring expeditious or summary action and publishes its reasons for such determination.

(6) If the Commission or the Board of Governors of the Federal Reserve System comments in writing on a proposed rule of the Secretary that has been published for comment, the Secretary shall respond in writing to such written comment before approving the proposed rule.

(7) No government securities broker or government securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any government security in contravention of any rule under this section.

(c) Sanctions for violations

(1) With respect to any government securities broker or government securities dealer registered or required to register under subsection (a)(1)(A) of this section—

(A) The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding 12 months, or revoke the registration of such government securities broker or government securities dealer, if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest and that such government securities broker or government securities dealer, or any person associated with such government securities broker or government securities dealer (whether prior or subsequent to becoming so associated), has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (H), or (G) of paragraph (4) of section 78o(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4).

(B) Pending final determination whether registration of any government securities broker or government securities dealer shall be revoked, the Commission, by order, may suspend such registration, if such suspension appears to the Commission, after notice and opportunity for hearing, to be necessary or appropriate in the public interest or for the protection of investors. Any

registered government securities broker or registered government securities dealer may, upon such terms and conditions as the Commission may deem necessary in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any registered government securities broker or registered government securities dealer is no longer in existence or has ceased to do business as a government securities broker or government securities dealer, the Commission, by order, shall cancel the registration of such government securities broker or government securities dealer.

(C) The Commission, by order, shall censure or place limitations on the activities or functions of any person who is, or at the time of the alleged misconduct was, associated or seeking to become associated with a government securities broker or government securities dealer registered or required to register under subsection (a)(1)(A) of this section or suspend for a period not exceeding 12 months or bar any such person from being associated with such a government securities broker or government securities dealer, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (H), or (G) of paragraph (4) of section 78o(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4).

(2)(A) With respect to any government securities broker or government securities dealer which is not registered or required to register under subsection (a)(1)(A) of this section, the appropriate regulatory agency for such government securities broker or government securities dealer may, in the manner and for the reasons specified in paragraph (1)(A) of this subsection, censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding 12 months, or bar from acting as a government securities broker or government securities dealer any such government securities broker or government securities dealer, and may sanction any person associated, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated with such government securities broker or government securities dealer in the manner and for the reasons specified in paragraph (1)(C) of this subsection.

(B) In addition, where applicable, such appropriate regulatory agency may, in accordance with section 1818 of title 12, section 1464 of title 12, or section 1730 [2] of title 12, enforce compliance by such government securities broker or government securities dealer or any person associated, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated with such government securities broker or government securities dealer with the provisions of this section and the rules thereunder.

(C) For purposes of subparagraph (B) of this paragraph, any violation of any such provision shall constitute adequate basis for the issuance of any order under section 1818(b) or (c) of title 12, section 1464(d)(2) or (d)(3) [2] of title 12, or section 1730(e) or (f) [2] of title 12, and the customers of any such government securities broker or government securities dealer shall be deemed, respectively, "depositors" as that term is used in section 1818(c) of title 12, "savings account holders" as that term is used in section 1464(d)(3) [2] of title 12, or "insured members" as that term is used in section 1730(f) [2] of title 12.

(D) Nothing in this paragraph shall be construed to affect in any way the powers of such appropriate regulatory agency to proceed against such government securities broker or government securities dealer under any other provision of law.

(E) Each appropriate regulatory agency (other than the Commission) shall promptly notify the Commission after it has imposed any sanction under this paragraph on a government securities broker or government securities dealer, or a person associated with a government securities broker or government securities dealer, and the Commission shall maintain, and make available to the public, a record of such sanctions and any sanctions imposed by it under this subsection.

(3) It shall be unlawful for any person as to whom an order entered pursuant to paragraph (1) or (2) of this subsection suspending or barring him from being associated with a government securities broker or government securities dealer is in effect willfully to become, or to be, associated with a government securities broker or government securities dealer without the consent of the appropriate regulatory agency, and it shall be unlawful for any government securities broker or government securities dealer to permit such a person to become, or remain, a person associated with it without the consent of the appropriate regulatory agency, if such government securities broker or government securities dealer knew, or, in the exercise of reasonable care should have known, of such order.

(d) Records of brokers and dealers subject to examination

(1) All records of a government securities broker or government securities dealer are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the appropriate regulatory agency for such government securities broker or government securities dealer as such appropriate regulatory agency deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter.

(2) Information received by an appropriate regulatory agency, the Secretary, or the Commission from or with respect to any government securities broker, government securities dealer, any person associated with a government securities broker or government securities dealer, or any other person subject to this section or rules promulgated thereunder, may be made available by the Secretary or the recipient agency to the Commission, the Secretary, the Department of Justice, the Commodity Futures Trading Commission, any appropriate regulatory agency, any self-regulatory organization, or any Federal Reserve Bank.

(3) GOVERNMENT SECURITIES TRADE RECONSTRUCTION.—

(A) FURNISHING RECORDS.—Every government securities broker and government securities dealer shall furnish to the Commission on request such records of government securities transactions, including records of the date and time of execution of trades, as the Commission may require to reconstruct trading in the course of a particular inquiry or investigation being conducted by the Commission for enforcement or surveillance purposes. In requiring information pursuant to this paragraph, the Commission shall specify the information required, the period for which it is required, the time and date on which the information must be furnished, and whether the information is to be furnished directly to the Commission, to the Federal Reserve Bank of New York, or to an appropriate regulatory agency or self-regulatory organization with responsibility for examining the government securities broker or government securities dealer. The Commission may require that such information be furnished in machine readable form notwithstanding any limitation in subparagraph (B). In utilizing its authority to require information in machine readable form, the Commission shall minimize the burden such requirement may place on small government securities brokers and dealers.

(B) LIMITATION; CONSTRUCTION.—The Commission shall not utilize its authority under this paragraph to develop regular reporting requirements, except that the Commission may require information to be furnished under this paragraph as frequently as necessary for particular inquiries or investigations for enforcement or surveillance purposes. This paragraph shall not be construed as requiring, or as authorizing the Commission to require, any government securities broker or government securities dealer to obtain or maintain any information for purposes of this paragraph which is not otherwise maintained by such broker or dealer in accordance with any other provision of law or usual and customary business practice. The Commission shall, where feasible, avoid requiring any information to be furnished under this paragraph that the Commission may obtain from the Federal Reserve Bank of New York.

(C) PROCEDURES FOR REQUIRING INFORMATION.—At the time the Commission requests any information pursuant to subparagraph (A) with respect to any government securities broker or government securities dealer for which the Commission is not the appropriate regulatory agency, the Commission shall notify the appropriate regulatory agency for such government securities broker or government securities dealer and, upon request, furnish to the appropriate regulatory agency any information supplied to the Commission.

(D) CONSULTATION.—Within 90 days after December 17, 1993, and annually thereafter, or upon the request of any other appropriate regulatory agency, the Commission shall consult with the other appropriate regulatory agencies to determine the availability of records that may be required to be furnished under this paragraph and, for those records available directly from the other appropriate regulatory agencies, to develop a procedure for furnishing such records expeditiously upon the Commission's request.

(E) EXCLUSION FOR EXAMINATION REPORTS.—Nothing in this paragraph shall be construed so as to permit the Commission to require any government securities broker or government securities dealer to obtain, maintain, or furnish any examination report of any appropriate regulatory agency other than the Commission or any supervisory recommendations or analysis contained in any such examination report.

(F) AUTHORITY TO LIMIT DISCLOSURE OF INFORMATION.—Notwithstanding any other provision of law, the Commission and the appropriate regulatory agencies shall not be compelled to disclose any information required or obtained under this paragraph. Nothing in this paragraph shall authorize the Commission or any appropriate regulatory agency to withhold information from Congress, or prevent the Commission or any appropriate regulatory agency from complying with a request for information from any other Federal department or agency requesting information for purposes within the scope of its jurisdiction, or from complying with an order of a court of the United States in an action brought by the United States, the Commission, or the appropriate regulatory agency. For purposes of section 552 of title 5, this subparagraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.

(e) Membership in national securities exchange; exemptions

(1) It shall be unlawful for any government securities broker or government securities dealer registered or required to register with the Commission under subsection (a)(1)(A) of this section to effect any transaction in, or induce or attempt to induce the purchase or sale of, any government security, unless such government securities broker or government securities dealer is a member of a national securities exchange registered under section 78f of this title or a securities association registered under section 78o–3 of this title.

(2) The Commission, after consultation with the Secretary, by rule or order, as it deems consistent with the public interest and the protection of investors, may conditionally or unconditionally exempt from paragraph (1) of this subsection any government securities broker or government securities dealer or class of government securities brokers or government securities dealers specified in such rule or order.

(f) Large position reporting

(1) Reporting requirements

The Secretary may adopt rules to require specified persons holding, maintaining, or controlling large positions in to-be-issued or recently issued Treasury securities to file such reports regarding such positions as the Secretary determines to be necessary and appropriate for the purpose of monitoring the impact in the Treasury securities market of concentrations of positions in Treasury securities and for the purpose of otherwise assisting the Commission in the enforcement of this chapter, taking into account any impact of such rules on the efficiency and liquidity of the Treasury securities market and the cost to taxpayers of funding the Federal debt. Unless otherwise specified by the Secretary, reports required under this subsection shall be filed with the Federal Reserve Bank of New York, acting as agent for the Secretary. Such reports shall, on a timely basis, be provided directly to the Commission by the person with whom they are filed.

(2) Recordkeeping requirements

Rules under this subsection may require persons holding, maintaining, or controlling large positions in Treasury securities to make and keep for prescribed periods such records as the Secretary determines are necessary or appropriate to ensure that such persons can comply with reporting requirements under this subsection.

(3) Aggregation rules

Rules under this subsection—

(A) may prescribe the manner in which positions and accounts shall be aggregated for the purpose of this subsection, including aggregation on the basis of common ownership or control; and

(B) may define which persons (individually or as a group) hold, maintain, or control large positions.

(4) Definitional authority; determination of reporting threshold

(A) In prescribing rules under this subsection, the Secretary may, consistent with the purpose of this subsection, define terms used in this subsection that are not otherwise defined in section 78c of this title.

(B) Rules under this subsection shall specify—

(i) the minimum size of positions subject to reporting under this subsection, which shall be no less than the size that provides the potential for manipulation or control of the supply or price, or the cost of financing arrangements, of an issue or the portion thereof that is available for trading;

(ii) the types of positions (which may include financing arrangements) to be reported;

(iii) the securities to be covered; and

(iv) the form and manner in which reports shall be transmitted, which may include transmission in machine readable form.

(5) Exemptions

Consistent with the public interest and the protection of investors, the Secretary by rule or order may exempt in whole or in part, conditionally or unconditionally, any person or class of persons, or any transaction or class of transactions, from the requirements of this subsection.

(6) Limitation on disclosure of information

Notwithstanding any other provision of law, the Secretary and the Commission shall not be compelled to disclose any information required to be kept or reported under this subsection. Nothing in this subsection shall authorize the Secretary or the Commission to withhold information from Congress, or prevent the Secretary or the Commission from complying with a request for information from any other Federal department or agency requesting information for purposes within the scope of its jurisdiction, or from complying with an order of a court of the United States in an action brought by the United States, the Secretary, or the Commission. For purposes of section 552 of title 5, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.

(g) Effect on other laws; authority of Commission

(1) Nothing in this section except paragraph (2) of this subsection shall be construed to impair or limit the authority under any other provision of law of the Commission, the Secretary of the Treasury, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Secretary of Housing and Urban Development, and the Government National Mortgage Association.

(2) Notwithstanding any other provision of this chapter, the Commission shall not have any authority to make investigations of, require the filing of a statement by, or take any other action under this chapter against a government securities broker or government securities dealer, or any person associated with a government securities broker or government securities dealer, for any violation or threatened violation of the provisions of this section, other than subsection (d)(3) of this section [3] or the rules or regulations thereunder, unless the Commission is the appropriate regulatory agency for such government securities broker or government securities dealer. Nothing in the preceding sentence shall be construed to limit the authority of the Commission with respect to violations or threatened violations of any provision of this chapter other than this section (except subsection (d)(3) of this section), the rules or regulations under any such other provision, or investigations pursuant to section 78u(a)(2) of this title to assist a foreign securities authority.

(h) Emergency authority

The Secretary may, by order, take any action with respect to a matter or action subject to regulation by the Secretary under this section, or the rules of the Secretary under this section, involving a government security or a market therein (or significant portion or segment of that market), that the Commission may take under section 78l(k)(2) of this title with respect to transactions in securities (other than exempted securities) or a market therein (or significant portion or segment of that market).

(June 6, 1934, ch. 404, title I, §15C, as added Pub. L. 99–571, title I, §101, Oct. 28, 1986, 100 Stat. 3208; amended Pub. L. 100–181, title VIII, §801(a), Dec. 4, 1987, 101 Stat. 1265; Pub. L. 101–73, title VII, §744(u)(3), Aug. 9, 1989, 103 Stat. 441; Pub. L. 101–432, §4(b), Oct. 16, 1990, 104 Stat. 970; Pub. L. 101–550, title II, §203(c), Nov. 15, 1990, 104 Stat. 2718; Pub. L. 103–202, title I, §§102–104, 106(a), 108, 109(b)(1), (c), Dec. 17, 1993, 107 Stat. 2345, 2346, 2349, 2351–2353; Pub. L. 105–353, title III, §301(b)(10), Nov. 3, 1998, 112 Stat. 3236; Pub. L. 107–204, title VI, §604(c)(1)(B), July 30, 2002, 116 Stat. 796; Pub. L. 108–458, title VII, §7803(d), Dec. 17, 2004, 118 Stat. 3863; Pub. L. 111–203, title III, §376(3), title IX, §§929F(b), 985(b)(6), July 21, 2010, 124 Stat. 1569, 1854, 1934.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(3), (5), (b)(1), (2)(B), (4)(B), (d)(1), (f)(1), and (g)(2), was in the original "this title". See References in Text note set out under section 78a of this title.

Subchapter VIII of chapter 3 of title 12, referred to in subsec. (b)(2)(C)(ii), was in the original "section 9 of the Federal Reserve Act", meaning section 9 of act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, which is classified generally to subchapter VIII (§321 et seq.) of chapter 3 of Title 12, Banks and Banking.

Section 3401(6) of title 12, referred to in subsec. (b)(2)(D)(i), was redesignated section 3401(7) of title 12 by Pub. L. 101–73, title IX, §941(1), Aug. 9, 1989, 103 Stat. 496.

Section 1730 of title 12, referred to in subsec. (c)(2)(B), (C), was repealed by Pub. L. 101–73, title IV, §407, Aug. 9, 1989, 103 Stat. 363.

Section 1464(d)(2) and (d)(3) of title 12, referred to in subsec. (c)(2)(C), was amended generally by Pub. L. 101–73, title III, §301, Aug. 9, 1989, 103 Stat. 282, and, as so amended, no longer relates to issuance of orders nor contains the term "savings account holders".

AMENDMENTS

2010—Subsec. (a)(2). Pub. L. 111–203, §985(b)(6)(C), inserted after first sentence in concluding provisions: "The order granting registration shall not be effective until such government securities broker or government securities dealer has become a member of a national securities exchange registered under section 78f of this title, or a securities association registered under section 78o–3 of this title, unless the Commission has exempted such government securities broker or government securities dealer, by rule or order, from such membership."

Pub. L. 111–203, §985(b)(6)(A), (B), redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively, realigned margins, and, in subpar. (B), struck out "The order granting registration shall not be effective until such government securities broker or government securities dealer has become a member of a national securities exchange registered under section 78f of this title, or a securities association registered under section 78o–3 of this title, unless the Commission has exempted such government securities broker or government securities dealer, by rule or order, from such membership." after "grant or deny such registration."

Subsec. (c)(1)(C). Pub. L. 111–203, §929F(b)(1), substituted "any person who is, or at the time of the alleged misconduct was, associated or seeking to become associated" for "any person associated, or seeking to become associated,".

Subsec. (c)(2)(A), (B). Pub. L. 111–203, §929F(b)(2)(A), (B), inserted ", seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated" after "any person associated".

Subsec. (g)(1). Pub. L. 111–203, §376(3), struck out "the Director of the Office of Thrift Supervision, the Federal Savings and Loan Insurance Corporation," after "the Federal Deposit Insurance Corporation,".

2004—Subsec. (h). Pub. L. 108–458 added subsec. (h).

2002—Subsec. (c)(1)(A), (C). Pub. L. 107–204 substituted ", or is subject to an order or finding," for "or omission" and "(H), or (G)" for "or (G)".

1998—Subsec. (f)(5). Pub. L. 105–353 substituted "class of persons" for "class or persons".

1993—Subsec. (a)(2)(ii). Pub. L. 103–202, §109(b)(1), inserted "The order granting registration shall not be effective until such government securities broker or government securities dealer has become a member of a national securities exchange registered under section 78f of this title, or a securities association registered under section 78o–3 of this title, unless the Commission has exempted such government securities broker or government securities dealer, by rule or order, from such membership." before "The Commission may extend".

Subsec. (a)(4). Pub. L. 103–202, §108(2), added par. (4). Former par. (4) redesignated (5).

Pub. L. 103–202, §103(b)(1), inserted ", other than subsection (d)(3) of this section," after "subsection (a), (b), or (d) of this section".

Subsec. (a)(5). Pub. L. 103–202, §108(1), redesignated par. (4) as (5).

Subsec. (b)(3) to (7). Pub. L. 103–202, §106(a), added par. (3) and redesignated former pars. (3) to (6) as (4) to (7), respectively.

Subsec. (d)(2). Pub. L. 103–202, §109(c), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "Information received by any appropriate regulatory agency or the Secretary from or with respect to any government securities broker or government securities dealer or with respect to any person associated therewith may be made available by the Secretary or the recipient agency to the Commission, the Secretary, any appropriate regulatory agency, and any self-regulatory organization."

Subsec. (d)(3). Pub. L. 103–202, §103(a), added par. (3).

Subsec. (f). Pub. L. 103–202, §104(2), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (f)(2). Pub. L. 103–202, §103(b)(2), inserted ", other than subsection (d)(3) of this section" after "threatened violation of the provisions of this section" and "(except subsection (d)(3) of this section)" after "other than this section".

Subsec. (g). Pub. L. 103–202, §104(1), redesignated subsec. (f) as (g).

Pub. L. 103–202, §102, struck out subsec. (g) which read as follows:

"(1) The authority of the Secretary to issue orders and to propose and adopt rules under this section shall terminate on October 1, 1991.

"(2) All orders and rules—

"(A) which have been issued or adopted by the Secretary, and

"(B) which are in effect on the date specified in paragraph (1),

shall continue in effect according to their terms."

1990—Subsec. (b)(2) to (6). Pub. L. 101–432 added par. (2) and redesignated former pars. (2) to (5) as (3) to (6), respectively.

Subsec. (c)(1)(A), (C). Pub. L. 101–550, §203(c)(1), substituted "(A), (D), (E), or (G)" for "(A), (D), or (E)".

Subsec. (f)(2). Pub. L. 101–550, §203(c)(2), substituted "the rules or regulations under any such other provision, or investigations pursuant to section 78u(a)(2) of this title to assist a foreign securities authority" for "or the rules or regulations under any such other provision".

1989—Subsec. (f)(1). Pub. L. 101–73 substituted "Director of the Office of Thrift Supervision" for "Federal Home Loan Bank Board".

1987—Subsec. (a)(1)(B)(i). Pub. L. 100–181 substituted "When such" for "When".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 929F(b) and 985(b)(6) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Amendment by section 376(3) of Pub. L. 111–203 effective on the transfer date, see section 351 of Pub. L. 111–203, set out as a note under section 906 of Title 2, The Congress.

EFFECTIVE DATE

Pub. L. 99–571, title IV, §§401–403, Oct. 28, 1986, 100 Stat. 3224, 3225, provided that:

"SEC. 401. GENERAL EFFECTIVE DATES.

"Except as provided in section 402, this Act [enacting section 78o–5 of this title and section 9110 of Title 31, Money and Finance, amending sections 78c, 78o, 78o–3, 78q, 78w, 78y, 80a–9, and 80b–3 of this title and section 3121 of Title 31, and enacting provisions set out as notes under sections 78a and 78o–5 of this title] and the amendments made by this Act shall take effect 270 days after the date of enactment of this Act [Oct. 28, 1986].

"SEC. 402. EFFECTIVE DATE AND REQUIREMENTS FOR REGULATIONS.

"Notwithstanding section 401, the Secretary of the Treasury and each appropriate regulatory agency shall, within 120 days after the date of enactment of this Act [Oct. 28, 1986], publish for notice and public comment such regulations as are initially required to implement this Act, which regulations shall become effective as temporary regulations 210 days after the date of enactment of this Act and as final regulations not later than 270 days after the date of enactment of this Act.

"SEC. 403. REGISTRATION DATE.

"No person may continue to act as a government securities broker or government securities dealer after 270 days after the date of enactment of this Act [Oct. 28, 1986] unless such person has been registered or has provided notice to the Commission or the appropriate regulatory agency as required by the amendment made by section 101 of this Act [enacting section 78o–5 of this title]."

TRANSITIONAL AND SAVINGS PROVISIONS

Pub. L. 99–571, title III, §301, Oct. 28, 1986, 100 Stat. 3224, provided that:

"(a) EFFECT ON PENDING ADMINISTRATIVE PROCEEDINGS.—The provisions of this Act [see Effective Date note above] shall not affect any proceedings pending on the effective date of this Act [see Effective Date note above].

"(b) EFFECT ON PENDING JUDICIAL PROCEEDINGS.—The provisions of this Act shall not affect suits commenced prior to the effective date of this Act, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if this Act had not been enacted.

"(c) DISCRETION OF THE FEDERAL RESERVE BANK OF NEW YORK.—Nothing in this Act shall be construed to limit or impair the discretion or authority of the Federal Reserve Bank of New York to require reports or establish terms and conditions in connection with the Bank's relationship with any government securities broker or government securities dealer, including a primary dealer.

"(d) JURISDICTION OF THE COMMODITY FUTURES TRADING COMMISSION.—Nothing in this Act affects the jurisdiction of the Commodity Futures Trading Commission as set forth in the Commodity Exchange Act [7 U.S.C. 1 et seq.] over trading of commodity futures contracts and options on such contracts involving government securities."

CONSTRUCTION OF 1993 AMENDMENT

Pub. L. 103–202, title I, §111, Dec. 17, 1993, 107 Stat. 2353, provided that:

"(a) IN GENERAL.—No provision of, or amendment made by, this title [amending this section and sections 78c, 78o, 78o–3, 78s, and 78w of this title and enacting provisions set out as notes below] may be construed—

"(1) to govern the initial issuance of any public debt obligation, or

"(2) to grant any authority to (or extend any authority of) the Securities and Exchange Commission, any appropriate regulatory agency, or a self-regulatory organization—

"(A) to prescribe any procedure, term, or condition of such initial issuance,

"(B) to promulgate any rule or regulation governing such initial issuance, or

"(C) to otherwise regulate in any manner such initial issuance.

"(b) EXCEPTION.—Subsection (a) of this section shall not apply to the amendment made by section 110 of this Act [amending section 78o of this title].

"(c) PUBLIC DEBT OBLIGATION.—For purposes of this section, the term 'public debt obligation' means an obligation subject to the public debt limit established in section 3101 of title 31, United States Code."

TRANSFER OF FUNCTIONS

Federal Savings and Loan Insurance Corporation abolished and functions transferred, see sections 401 to 406 of Pub. L. 101–73, set out as a note under section 1437 of Title 12, Banks and Banking.

CONGRESSIONAL FINDINGS

Pub. L. 103–202, title I, §101, Dec. 17, 1993, 107 Stat. 2344, provided that: "The Congress finds that—

"(1) the liquid and efficient operation of the government securities market is essential to facilitate government borrowing at the lowest possible cost to taxpayers;

"(2) the fair and honest treatment of investors will strengthen the integrity and liquidity of the government securities market;

"(3) rules promulgated by the Secretary of the Treasury pursuant to the Government Securities Act of 1986 [see Short Title of 1986 Amendment note set out under section 78a of this title] have worked well to protect investors from unregulated dealers and maintain the efficiency of the government securities market; and

"(4) extending the authority of the Secretary and providing new authority will ensure the continued strength of the government securities market."

Pub. L. 99–571, §1(b), Oct. 28, 1986, 100 Stat. 3208, provided that: "The Congress finds that transactions in government securities are affected with a public interest which makes it necessary—

"(1) to provide for the integrity, stability, and efficiency of such transactions and of matters and practices related thereto;

"(2) to impose adequate regulation of government securities brokers and government securities dealers generally; and

"(3) to require appropriate financial responsibility, recordkeeping, reporting, and related regulatory requirements;

in order to protect investors and to insure the maintenance of fair, honest, and liquid markets in such securities."

STUDY OF REGULATORY SYSTEM FOR GOVERNMENT SECURITIES

Pub. L. 103–202, title I, §112, Dec. 17, 1993, 107 Stat. 2354, provided that:

"(a) JOINT STUDY.—The Secretary of the Treasury, the Securities and Exchange Commission, and the Board of Governors of the Federal Reserve System shall—

"(1) with respect to any rules promulgated or amended after October 1, 1991, pursuant to section 15C of the Securities Exchange Act of 1934 [15 U.S.C. 78o–5] or any amendment made by this title [amending this section and sections 78c, 78o, 78o–3, 78s, and 78w of this title], and any national securities association rule changes applicable principally to government securities transactions approved after October 1, 1991—

"(A) evaluate the effectiveness of such rules in carrying out the purposes of such Act [15 U.S.C. 78a et seq.]; and

"(B) evaluate the impact of any such rules on the efficiency and liquidity of the government securities market and the cost of funding the Federal debt;

"(2) evaluate the effectiveness of surveillance and enforcement with respect to government securities, and the impact on such surveillance and enforcement of the availability of automated, time- sequenced records of essential information pertaining to trades in such securities; and

"(3) submit to the Congress, not later than March 31, 1998, any recommendations they may consider appropriate concerning—

"(A) the regulation of government securities brokers and government securities dealers;

"(B) the dissemination of information concerning quotations for and transactions in government securities;

"(C) the prevention of sales practice abuses in connection with transactions in government securities; and

"(D) such other matters as they consider appropriate.

"(b) TREASURY STUDY.—The Secretary of the Treasury, in consultation with the Securities and Exchange Commission, shall—

"(1) conduct a study of—

"(A) the identity and nature of the business of government securities brokers and government securities dealers that are registered with the Securities and Exchange Commission under section 15C of the Securities Exchange Act of 1934 [15 U.S.C. 78o–5]; and

"(B) the continuing need for, and regulatory and financial consequences of, a separate regulatory system for such government securities brokers and government securities dealers; and

"(2) submit to the Congress, not later than 18 months after the date of enactment of this Act [Dec. 17, 1993], the Secretary's recommendations for change, if any, or such other recommendations as the Secretary considers appropriate."

STUDIES AND RECOMMENDATIONS WITH RESPECT TO EXTENSION OF TREASURY AUTHORITY

Pub. L. 99–571, title I, §103, Oct. 28, 1986, 100 Stat. 3221, directed Secretary of the Treasury, together with Securities and Exchange Commission and Board of Governors of the Federal Reserve System, to evaluate the effectiveness of the rules promulgated pursuant to 15 U.S.C. 78o–5 in effecting the purposes of this chapter, and shall submit to Congress, not later than Oct. 1, 1990, their recommendation with respect to the extension of the Secretary's authority under 15 U.S.C. 78o–5 and such other recommendations as they considered appropriate; and directed Comptroller General to conduct a study of the regulation of government securities brokers and government securities dealers pursuant to 15 U.S.C. 78o–5 and the effectiveness of the

amendments made by this Act in protecting investors and in effecting the purposes described in 15 U.S.C. 78o–5(b)(2), and submit to Congress, not later than Mar. 31, 1990, his recommendations with respect to the extension of the Secretary's authority under 15 U.S.C. 78o–5 and such other recommendations as he considered appropriate.

[1] *See References in Text note below.*

[2] *See References in Text note below.*

[3] *So in original. Probably should be followed by a comma.*

§78*o*–6. Securities analysts and research reports

(a) Analyst protections

The Commission, or upon the authorization and direction of the Commission, a registered securities association or national securities exchange, shall have adopted, not later than 1 year after July 30, 2002, rules reasonably designed to address conflicts of interest that can arise when securities analysts recommend equity securities in research reports and public appearances, in order to improve the objectivity of research and provide investors with more useful and reliable information, including rules designed—

(1) to foster greater public confidence in securities research, and to protect the objectivity and independence of securities analysts, by—

(A) restricting the prepublication clearance or approval of research reports by persons employed by the broker or dealer who are engaged in investment banking activities, or persons not directly responsible for investment research, other than legal or compliance staff;

(B) limiting the supervision and compensatory evaluation of securities analysts to officials employed by the broker or dealer who are not engaged in investment banking activities; and

(C) requiring that a broker or dealer and persons employed by a broker or dealer who are involved with investment banking activities may not, directly or indirectly, retaliate against or threaten to retaliate against any securities analyst employed by that broker or dealer or its affiliates as a result of an adverse, negative, or otherwise unfavorable research report that may adversely affect the present or prospective investment banking relationship of the broker or dealer with the issuer that is the subject of the research report, except that such rules may not limit the authority of a broker or dealer to discipline a securities analyst for causes other than such research report in accordance with the policies and procedures of the firm;

(2) to define periods during which brokers or dealers who have participated, or are to participate, in a public offering of securities as underwriters or dealers should not publish or otherwise distribute research reports relating to such securities or to the issuer of such securities;

(3) to establish structural and institutional safeguards within registered brokers or dealers to assure that securities analysts are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in investment banking activities might potentially bias their judgment or supervision; and

(4) to address such other issues as the Commission, or such association or exchange, determines appropriate.

(b) Disclosure

The Commission, or upon the authorization and direction of the Commission, a registered securities association or national securities exchange, shall have adopted, not later than 1 year after July 30, 2002, rules reasonably designed to require each securities analyst to disclose in public appearances, and each registered broker or dealer to disclose in each research report, as applicable, conflicts of interest that are known or should have been known by the securities analyst or the broker or dealer, to exist at the time of the appearance or the date of distribution of the report, including—

(1) the extent to which the securities analyst has debt or equity investments in the issuer that is the subject of the appearance or research report;

(2) whether any compensation has been received by the registered broker or dealer, or any affiliate thereof, including the securities analyst, from the issuer that is the subject of the appearance or research report, subject to such exemptions as the Commission may determine appropriate and necessary to prevent disclosure by virtue of this paragraph of material non-public information regarding specific potential future investment banking transactions of such issuer, as is appropriate in the public interest and consistent with the protection of investors;

(3) whether an issuer, the securities of which are recommended in the appearance or research report, currently is, or during the 1-year period preceding the date of the appearance or date of distribution of the report has been, a client of the registered broker or dealer, and if so, stating the types of services provided to the issuer;

(4) whether the securities analyst received compensation with respect to a research report, based upon (among any other factors) the investment banking revenues (either generally or specifically earned from the issuer being analyzed) of the registered broker or dealer; and

(5) such other disclosures of conflicts of interest that are material to investors, research analysts, or the broker or dealer as the Commission, or such association or exchange, determines appropriate.

(c) Limitation

Notwithstanding subsection (a) or any other provision of law, neither the Commission nor any national securities association registered under section 78o–3 of this title may adopt or maintain any rule or regulation in connection with an initial public offering of the common equity of an emerging growth company—

(1) restricting, based on functional role, which associated persons of a broker, dealer, or member of a national securities association, may arrange for communications between a securities analyst and a potential investor; or

(2) restricting a securities analyst from participating in any communications with the management of an emerging growth company that is also attended by any other associated person of a broker, dealer, or member of a national securities association whose functional role is other than as a securities analyst.

(d) Definitions

In this section—

(1) the term "securities analyst" means any associated person of a registered broker or dealer that is principally responsible for, and any associated person who reports directly or indirectly to a securities analyst in connection with, the preparation of the substance of a research report, whether or not any such person has the job title of "securities analyst"; and

(2) the term "research report" means a written or electronic communication that includes an analysis of equity securities of individual companies or industries, and that provides information reasonably sufficient upon which to base an investment decision.

(June 6, 1934, ch. 404, title I, §15D, as added Pub. L. 107–204, title V, §501(a), July 30, 2002, 116 Stat. 791; amended Pub. L. 112–106, title I, §105(b), Apr. 5, 2012, 126 Stat. 311.)

AMENDMENTS

2012—Subsecs. (c), (d). Pub. L. 112–106 added subsec. (c) and redesignated former subsec. (c) as (d).

POST OFFERING COMMUNICATIONS

Pub. L. 112–106, title I, §105(d), Apr. 5, 2012, 126 Stat. 311, provided that: "Neither the [Securities and Exchange] Commission nor any national securities association registered under section 15A of the Securities Exchange Act of 1934 [15 U.S.C. 78o–3] may adopt or maintain any rule or regulation prohibiting any broker, dealer, or member of a national securities association from publishing or distributing any research report or making a public appearance, with respect to the securities of an emerging growth company, either—

"(1) within any prescribed period of time following the initial public offering date of the emerging growth company; or

"(2) within any prescribed period of time prior to the expiration date of any agreement between the broker, dealer, or member of a national securities association and the emerging growth company or its shareholders that restricts or prohibits the sale of securities held by the emerging growth company or its shareholders after the initial public offering date."

COMMISSION AUTHORITY

Pub. L. 107–204, title V, §501(c), July 30, 2002, 116 Stat. 793, provided that: "The Commission may promulgate and amend its regulations, or direct a registered securities association or national securities exchange to promulgate and amend its rules, to carry out section 15D of the Securities Exchange Act of 1934 [15 U.S.C. 78o–6], as added by this section, as is necessary for the protection of investors and in the public interest."

§78*o*–7. Registration of nationally recognized statistical rating organizations

(a) Registration procedures

(1) Application for registration

(A) In general

A credit rating agency that elects to be treated as a nationally recognized statistical rating organization for purposes of this chapter (in this section referred to as the "applicant"), shall furnish to the Commission an application for registration, in such form as the Commission shall require, by rule or regulation issued in accordance with subsection (n), and containing the information described in subparagraph (B).

(B) Required information

An application for registration under this section shall contain information regarding—

(i) credit ratings performance measurement statistics over short-term, mid-term, and long-term periods (as applicable) of the applicant;

(ii) the procedures and methodologies that the applicant uses in determining credit ratings;

(iii) policies or procedures adopted and implemented by the applicant to prevent the misuse, in violation of this chapter (or the rules and regulations hereunder), of material, nonpublic information;

(iv) the organizational structure of the applicant;

(v) whether or not the applicant has in effect a code of ethics, and if not, the reasons therefor;

(vi) any conflict of interest relating to the issuance of credit ratings by the applicant;

(vii) the categories described in any of clauses (i) through (v) of section 78c(a)(62)(B) of this title with respect to which the applicant intends to apply for registration under this section;

(viii) on a confidential basis, a list of the 20 largest issuers and subscribers that use the credit rating services of the applicant, by amount of net revenues received therefrom in the fiscal year immediately preceding the date of submission of the application;

(ix) on a confidential basis, as to each applicable category of obligor described in any of clauses (i) through (v) of section 78c(a)(62)(B) of this title, written certifications described in subparagraph (C), except as provided in subparagraph (D); and

(x) any other information and documents concerning the applicant and any person associated with such applicant as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(C) Written certifications

Written certifications required by subparagraph (B)(ix)—

(i) shall be provided from not fewer than 10 qualified institutional buyers, none of which is affiliated with the applicant;

(ii) may address more than one category of obligors described in any of clauses (i) through

(v) of section 78c(a)(62)(B) of this title;

(iii) shall include not fewer than 2 certifications for each such category of obligor; and

(iv) shall state that the qualified institutional buyer—

(I) meets the definition of a qualified institutional buyer under section 78c(a)(64) of this title; and

(II) has used the credit ratings of the applicant for at least the 3 years immediately preceding the date of the certification in the subject category or categories of obligors.

(D) Exemption from certification requirement

A written certification under subparagraph (B)(ix) is not required with respect to any credit rating agency which has received, or been the subject of, a no-action letter from the staff of the Commission prior to August 2, 2006, stating that such staff would not recommend enforcement action against any broker or dealer that considers credit ratings issued by such credit rating agency to be ratings from a nationally recognized statistical rating organization.

(E) Limitation on liability of qualified institutional buyers

No qualified institutional buyer shall be liable in any private right of action for any opinion or statement expressed in a certification made pursuant to subparagraph (B)(ix).

(2) Review of application

(A) Initial determination

Not later than 90 days after the date on which the application for registration is furnished to the Commission under paragraph (1) (or within such longer period as to which the applicant consents) the Commission shall—

(i) by order, grant such registration for ratings in the subject category or categories of obligors, as described in clauses (i) through (v) of section 78c(a)(62)(B) of this title; or

(ii) institute proceedings to determine whether registration should be denied.

(B) Conduct of proceedings

(i) Content

Proceedings referred to in subparagraph (A)(ii) shall—

(I) include notice of the grounds for denial under consideration and an opportunity for hearing; and

(II) be concluded not later than 120 days after the date on which the application for registration is furnished to the Commission under paragraph (1).

(ii) Determination

At the conclusion of such proceedings, the Commission, by order, shall grant or deny such application for registration.

(iii) Extension authorized

The Commission may extend the time for conclusion of such proceedings for not longer than 90 days, if it finds good cause for such extension and publishes its reasons for so finding, or for such longer period as to which the applicant consents.

(C) Grounds for decision

The Commission shall grant registration under this subsection—

(i) if the Commission finds that the requirements of this section are satisfied; and

(ii) unless the Commission finds (in which case the Commission shall deny such registration) that—

(I) the applicant does not have adequate financial and managerial resources to consistently produce credit ratings with integrity and to materially comply with the procedures and methodologies disclosed under paragraph (1)(B) and with subsections (g), (h), (i), and (j); or

(II) if the applicant were so registered, its registration would be subject to suspension or

revocation under subsection (d).

(3) Public availability of information

Subject to section 78x of this title, the Commission shall, by rule, require a nationally recognized statistical rating organization, upon the granting of registration under this section, to make the information and documents submitted to the Commission in its completed application for registration, or in any amendment submitted under paragraph (1) or (2) of subsection (b), publicly available on its website, or through another comparable, readily accessible means, except as provided in clauses (viii) and (ix) of paragraph (1)(B).

(b) Update of registration

(1) Update

Each nationally recognized statistical rating organization shall promptly amend its application for registration under this section if any information or document provided therein becomes materially inaccurate, except that a nationally recognized statistical rating organization is not required to amend—

(A) the information required to be filed under subsection (a)(1)(B)(i) by filing information under this paragraph, but shall amend such information in the annual submission of the organization under paragraph (2) of this subsection; or

(B) the certifications required to be provided under subsection (a)(1)(B)(ix) by filing information under this paragraph.

(2) Certification

Not later than 90 days after the end of each calendar year, each nationally recognized statistical rating organization shall file with the Commission an amendment to its registration, in such form as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors—

(A) certifying that the information and documents in the application for registration of such nationally recognized statistical rating organization (other than the certifications required under subsection (a)(1)(B)(ix)) continue to be accurate; and

(B) listing any material change that occurred to such information or documents during the previous calendar year.

(c) Accountability for ratings procedures

(1) Authority

The Commission shall have exclusive authority to enforce the provisions of this section in accordance with this chapter with respect to any nationally recognized statistical rating organization, if such nationally recognized statistical rating organization issues credit ratings in material contravention of those procedures relating to such nationally recognized statistical rating organization, including procedures relating to the prevention of misuse of nonpublic information and conflicts of interest, that such nationally recognized statistical rating organization—

(A) includes in its application for registration under subsection (a)(1)(B)(ii); or

(B) makes and disseminates in reports pursuant to section 78q(a) of this title or the rules and regulations thereunder.

(2) Limitation

The rules and regulations that the Commission may prescribe pursuant to this chapter, as they apply to nationally recognized statistical rating organizations, shall be narrowly tailored to meet the requirements of this chapter applicable to nationally recognized statistical rating organizations. Notwithstanding any other provision of this section, or any other provision of law, neither the Commission nor any State (or political subdivision thereof) may regulate the substance of credit ratings or the procedures and methodologies by which any nationally recognized statistical rating

organization determines credit ratings. Nothing in this paragraph may be construed to afford a defense against any action or proceeding brought by the Commission to enforce the antifraud provisions of the securities laws.

(3) Internal controls over processes for determining credit ratings

(A) In general

Each nationally recognized statistical rating organization shall establish, maintain, enforce, and document an effective internal control structure governing the implementation of and adherence to policies, procedures, and methodologies for determining credit ratings, taking into consideration such factors as the Commission may prescribe, by rule.

(B) Attestation requirement

The Commission shall prescribe rules requiring each nationally recognized statistical rating organization to submit to the Commission an annual internal controls report, which shall contain—

(i) a description of the responsibility of the management of the nationally recognized statistical rating organization in establishing and maintaining an effective internal control structure under subparagraph (A);

(ii) an assessment of the effectiveness of the internal control structure of the nationally recognized statistical rating organization; and

(iii) the attestation of the chief executive officer, or equivalent individual, of the nationally recognized statistical rating organization.

(d) Censure, denial, or suspension of registration; notice and hearing

(1) In general

The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding 12 months, or revoke the registration of any nationally recognized statistical rating organization, or with respect to any person who is associated with, who is seeking to become associated with, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a nationally recognized statistical rating organization, the Commission, by order, shall censure, place limitations on the activities or functions of such person, suspend for a period not exceeding 1 year, or bar such person from being associated with a nationally recognized statistical rating organization, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, bar or revocation is necessary for the protection of investors and in the public interest and that such nationally recognized statistical rating organization, or any person associated with such an organization, whether prior to or subsequent to becoming so associated—

(A) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (H), or (G) of section 78o(b)(4) of this title, has been convicted of any offense specified in section 78o(b)(4)(B) of this title, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of section 78o(b)(4) of this title, during the 10-year period preceding the date of commencement of the proceedings under this subsection, or at any time thereafter;

(B) has been convicted during the 10-year period preceding the date on which an application for registration is filed with the Commission under this section, or at any time thereafter, of—

(i) any crime that is punishable by imprisonment for 1 or more years, and that is not described in section 78o(b)(4)(B) of this title; or

(ii) a substantially equivalent crime by a foreign court of competent jurisdiction;

(C) is subject to any order of the Commission barring or suspending the right of the person to be associated with a nationally recognized statistical rating organization;

(D) fails to file the certifications required under subsection (b)(2);

(E) fails to maintain adequate financial and managerial resources to consistently produce

credit ratings with integrity; [1]

(F) has failed reasonably to supervise, with a view to preventing a violation of the securities laws, an individual who commits such a violation, if the individual is subject to the supervision of that person.

(2) Suspension or revocation for particular class of securities

(A) In general

The Commission may temporarily suspend or permanently revoke the registration of a nationally recognized statistical rating organization with respect to a particular class or subclass of securities, if the Commission finds, on the record after notice and opportunity for hearing, that the nationally recognized statistical rating organization does not have adequate financial and managerial resources to consistently produce credit ratings with integrity.

(B) Considerations

In making any determination under subparagraph (A), the Commission shall consider—

(i) whether the nationally recognized statistical rating organization has failed over a sustained period of time, as determined by the Commission, to produce ratings that are accurate for that class or subclass of securities; and

(ii) such other factors as the Commission may determine.

(e) Termination of registration

(1) Voluntary withdrawal

A nationally recognized statistical rating organization may, upon such terms and conditions as the Commission may establish as necessary in the public interest or for the protection of investors, withdraw from registration by furnishing a written notice of withdrawal to the Commission.

(2) Commission authority

In addition to any other authority of the Commission under this chapter, if the Commission finds that a nationally recognized statistical rating organization is no longer in existence or has ceased to do business as a credit rating agency, the Commission, by order, shall cancel the registration under this section of such nationally recognized statistical rating organization.

(f) Representations

(1) Ban on representations of sponsorship by United States or agency thereof

It shall be unlawful for any nationally recognized statistical rating organization to represent or imply in any manner whatsoever that such nationally recognized statistical rating organization has been designated, sponsored, recommended, or approved, or that the abilities or qualifications thereof have in any respect been passed upon, by the United States or any agency, officer, or employee thereof.

(2) Ban on representation as NRSRO of unregistered credit rating agencies

It shall be unlawful for any credit rating agency that is not registered under this section as a nationally recognized statistical rating organization to state that such credit rating agency is a nationally recognized statistical rating organization registered under this chapter.

(3) Statement of registration under Securities Exchange Act of 1934 provisions

No provision of paragraph (1) shall be construed to prohibit a statement that a nationally recognized statistical rating organization is a nationally recognized statistical rating organization under this chapter, if such statement is true in fact and if the effect of such registration is not misrepresented.

(g) Prevention of misuse of nonpublic information

(1) Organization policies and procedures

Each nationally recognized statistical rating organization shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of the

business of such nationally recognized statistical rating organization, to prevent the misuse in violation of this chapter, or the rules or regulations hereunder, of material, nonpublic information by such nationally recognized statistical rating organization or any person associated with such nationally recognized statistical rating organization.

(2) Commission authority

The Commission shall issue final rules in accordance with subsection (n) to require specific policies or procedures that are reasonably designed to prevent misuse in violation of this chapter (or the rules or regulations hereunder) of material, nonpublic information.

(h) Management of conflicts of interest

(1) Organization policies and procedures

Each nationally recognized statistical rating organization shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of the business of such nationally recognized statistical rating organization and affiliated persons and affiliated companies thereof, to address and manage any conflicts of interest that can arise from such business.

(2) Commission authority

The Commission shall issue final rules in accordance with subsection (n) to prohibit, or require the management and disclosure of, any conflicts of interest relating to the issuance of credit ratings by a nationally recognized statistical rating organization, including, without limitation, conflicts of interest relating to—

(A) the manner in which a nationally recognized statistical rating organization is compensated by the obligor, or any affiliate of the obligor, for issuing credit ratings or providing related services;

(B) the provision of consulting, advisory, or other services by a nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, to the obligor, or any affiliate of the obligor;

(C) business relationships, ownership interests, or any other financial or personal interests between a nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, and the obligor, or any affiliate of the obligor;

(D) any affiliation of a nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, with any person that underwrites the securities or money market instruments that are the subject of a credit rating; and

(E) any other potential conflict of interest, as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

(3) Separation of ratings from sales and marketing

(A) Rules required

The Commission shall issue rules to prevent the sales and marketing considerations of a nationally recognized statistical rating organization from influencing the production of ratings by the nationally recognized statistical rating organization.

(B) Contents of rules

The rules issued under subparagraph (A) shall provide for—

(i) exceptions for small nationally recognized statistical rating organizations with respect to which the Commission determines that the separation of the production of ratings and sales and marketing activities is not appropriate; and

(ii) suspension or revocation of the registration of a nationally recognized statistical rating organization, if the Commission finds, on the record, after notice and opportunity for a hearing, that—

(I) the nationally recognized statistical rating organization has committed a violation of a rule issued under this subsection; and

(II) the violation of a rule issued under this subsection affected a rating.

(4) Look-back requirement

(A) Review by the nationally recognized statistical rating organization

Each nationally recognized statistical rating organization shall establish, maintain, and enforce policies and procedures reasonably designed to ensure that, in any case in which an employee of a person subject to a credit rating of the nationally recognized statistical rating organization or the issuer, underwriter, or sponsor of a security or money market instrument subject to a credit rating of the nationally recognized statistical rating organization was employed by the nationally recognized statistical rating organization and participated in any capacity in determining credit ratings for the person or the securities or money market instruments during the 1-year period preceding the date an action was taken with respect to the credit rating, the nationally recognized statistical rating organization shall—

(i) conduct a review to determine whether any conflicts of interest of the employee influenced the credit rating; and

(ii) take action to revise the rating if appropriate, in accordance with such rules as the Commission shall prescribe.

(B) Review by Commission

(i) In general

The Commission shall conduct periodic reviews of the policies described in subparagraph (A) and the implementation of the policies at each nationally recognized statistical rating organization to ensure they are reasonably designed and implemented to most effectively eliminate conflicts of interest.

(ii) Timing of reviews

The Commission shall review the code of ethics and conflict of interest policy of each nationally recognized statistical rating organization—

(I) not less frequently than annually; and

(II) whenever such policies are materially modified or amended.

(5) Report to Commission on certain employment transitions

(A) Report required

Each nationally recognized statistical rating organization shall report to the Commission any case such organization knows or can reasonably be expected to know where a person associated with such organization within the previous 5 years obtains employment with any obligor, issuer, underwriter, or sponsor of a security or money market instrument for which the organization issued a credit rating during the 12-month period prior to such employment, if such employee—

(i) was a senior officer of such organization;

(ii) participated in any capacity in determining credit ratings for such obligor, issuer, underwriter, or sponsor; or

(iii) supervised an employee described in clause (ii).

(B) Public disclosure

Upon receiving such a report, the Commission shall make such information publicly available.

(i) Prohibited conduct

(1) Prohibited acts and practices

The Commission shall issue final rules in accordance with subsection (n) to prohibit any act or practice relating to the issuance of credit ratings by a nationally recognized statistical rating organization that the Commission determines to be unfair, coercive, or abusive, including any act

or practice relating to—

(A) conditioning or threatening to condition the issuance of a credit rating on the purchase by the obligor or an affiliate thereof of other services or products, including pre-credit rating assessment products, of the nationally recognized statistical rating organization or any person associated with such nationally recognized statistical rating organization;

(B) lowering or threatening to lower a credit rating on, or refusing to rate, securities or money market instruments issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction, unless a portion of the assets within such pool or part of such transaction, as applicable, also is rated by the nationally recognized statistical rating organization; or

(C) modifying or threatening to modify a credit rating or otherwise departing from its adopted systematic procedures and methodologies in determining credit ratings, based on whether the obligor, or an affiliate of the obligor, purchases or will purchase the credit rating or any other service or product of the nationally recognized statistical rating organization or any person associated with such organization.

(2) Rule of construction

Nothing in paragraph (1), or in any rules or regulations adopted thereunder, may be construed to modify, impair, or supersede the operation of any of the antitrust laws (as defined in section 12 of this title, except that such term includes section 45 of this title, to the extent that such section 45 applies to unfair methods of competition).

(j) Designation of compliance officer

(1) In general

Each nationally recognized statistical rating organization shall designate an individual responsible for administering the policies and procedures that are required to be established pursuant to subsections (g) and (h), and for ensuring compliance with the securities laws and the rules and regulations thereunder, including those promulgated by the Commission pursuant to this section.

(2) Limitations

(A) In general

Except as provided in subparagraph (B), an individual designated under paragraph (1) may not, while serving in the designated capacity—

(i) perform credit ratings;

(ii) participate in the development of ratings methodologies or models;

(iii) perform marketing or sales functions; or

(iv) participate in establishing compensation levels, other than for employees working for that individual.

(B) Exception

The Commission may exempt a small nationally recognized statistical rating organization from the limitations under this paragraph, if the Commission finds that compliance with such limitations would impose an unreasonable burden on the nationally recognized statistical rating organization.

(3) Other duties

Each individual designated under paragraph (1) shall establish procedures for the receipt, retention, and treatment of—

(A) complaints regarding credit ratings, models, methodologies, and compliance with the securities laws and the policies and procedures developed under this section; and

(B) confidential, anonymous complaints by employees or users of credit ratings.

(4) Compensation

The compensation of each compliance officer appointed under paragraph (1) shall not be linked to the financial performance of the nationally recognized statistical rating organization and shall

be arranged so as to ensure the independence of the officer's judgment.

(5) Annual reports required

(A) Annual reports required

Each individual designated under paragraph (1) shall submit to the nationally recognized statistical rating organization an annual report on the compliance of the nationally recognized statistical rating organization with the securities laws and the policies and procedures of the nationally recognized statistical rating organization that includes—

(i) a description of any material changes to the code of ethics and conflict of interest policies of the nationally recognized statistical rating organization; and

(ii) a certification that the report is accurate and complete.

(B) Submission of reports to the Commission

Each nationally recognized statistical rating organization shall file the reports required under subparagraph (A) together with the financial report that is required to be submitted to the Commission under this section.

(k) Statements of financial condition

Each nationally recognized statistical rating organization shall, on a confidential basis, file with the Commission, at intervals determined by the Commission, such financial statements, certified (if required by the rules or regulations of the Commission) by an independent public accountant, and information concerning its financial condition, as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(l) Sole method of registration

(1) In general

On and after the effective date of this section, a credit rating agency may only be registered as a nationally recognized statistical rating organization for any purpose in accordance with this section.

(2) Prohibition on reliance on no-action relief

On and after the effective date of this section—

(A) an entity that, before that date, received advice, approval, or a no-action letter from the Commission or staff thereof to be treated as a nationally recognized statistical rating organization pursuant to the Commission rule at section 240.15c3–1 of title 17, Code of Federal Regulations, may represent itself or act as a nationally recognized statistical rating organization only—

(i) during Commission consideration of the application, if such entity has filed an application for registration under this section; and

(ii) on and after the date of approval of its application for registration under this section; and

(B) the advice, approval, or no-action letter described in subparagraph (A) shall be void.

(3) Notice to other agencies

Not later than 30 days after September 29, 2006, the Commission shall give notice of the actions undertaken pursuant to this section to each Federal agency which employs in its rules and regulations the term "nationally recognized statistical rating organization" (as that term is used under Commission rule 15c3–1 (17 C.F.R. 240.15c3–1), as in effect on September 29, 2006).

(m) Accountability

(1) In general

The enforcement and penalty provisions of this chapter shall apply to statements made by a credit rating agency in the same manner and to the same extent as such provisions apply to statements made by a registered public accounting firm or a securities analyst under the securities

laws, and such statements shall not be deemed forward-looking statements for the purposes of section 78u–5 of this title.

(2) Rulemaking

The Commission shall issue such rules as may be necessary to carry out this subsection.

(n) Regulations

(1) New provisions

Such rules and regulations as are required by this section or are otherwise necessary to carry out this section, including the application form required under subsection (a)—

(A) shall be issued by the Commission in final form, not later than 270 days after September 29, 2006; and

(B) shall become effective not later than 270 days after September 29, 2006.

(2) Review of existing regulations

Not later than 270 days after September 29, 2006, the Commission shall—

(A) review its existing rules and regulations which employ the term "nationally recognized statistical rating organization" or "NRSRO"; and

(B) amend or revise such rules and regulations in accordance with the purposes of this section, as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(o) NRSROs subject to Commission authority

(1) In general

No provision of the laws of any State or political subdivision thereof requiring the registration, licensing, or qualification as a credit rating agency or a nationally recognized statistical rating organization shall apply to any nationally recognized statistical rating organization or person employed by or working under the control of a nationally recognized statistical rating organization.

(2) Limitation

Nothing in this subsection prohibits the securities commission (or any agency or office performing like functions) of any State from investigating and bringing an enforcement action with respect to fraud or deceit against any nationally recognized statistical rating organization or person associated with a nationally recognized statistical rating organization.

(p) Regulation of nationally recognized statistical rating organizations

(1) Establishment of Office of Credit Ratings

(A) Office established

The Commission shall establish within the Commission an Office of Credit Ratings (referred to in this subsection as the "Office") to administer the rules of the Commission—

(i) with respect to the practices of nationally recognized statistical rating organizations in determining ratings, for the protection of users of credit ratings and in the public interest;

(ii) to promote accuracy in credit ratings issued by nationally recognized statistical rating organizations; and

(iii) to ensure that such ratings are not unduly influenced by conflicts of interest.

(B) Director of the Office

The head of the Office shall be the Director, who shall report to the Chairman.

(2) Staffing

The Office established under this subsection shall be staffed sufficiently to carry out fully the requirements of this section. The staff shall include persons with knowledge of and expertise in corporate, municipal, and structured debt finance.

(3) Commission examinations

(A) Annual examinations required

The Office shall conduct an examination of each nationally recognized statistical rating organization at least annually.

(B) Conduct of examinations

Each examination under subparagraph (A) shall include a review of—

(i) whether the nationally recognized statistical rating organization conducts business in accordance with the policies, procedures, and rating methodologies of the nationally recognized statistical rating organization;

(ii) the management of conflicts of interest by the nationally recognized statistical rating organization;

(iii) implementation of ethics policies by the nationally recognized statistical rating organization;

(iv) the internal supervisory controls of the nationally recognized statistical rating organization;

(v) the governance of the nationally recognized statistical rating organization;

(vi) the activities of the individual designated by the nationally recognized statistical rating organization under subsection (j)(1);

(vii) the processing of complaints by the nationally recognized statistical rating organization; and

(viii) the policies of the nationally recognized statistical rating organization governing the post-employment activities of former staff of the nationally recognized statistical rating organization.

(C) Inspection reports

The Commission shall make available to the public, in an easily understandable format, an annual report summarizing—

(i) the essential findings of all examinations conducted under subparagraph (A), as deemed appropriate by the Commission;

(ii) the responses by the nationally recognized statistical rating organizations to any material regulatory deficiencies identified by the Commission under clause (i); and

(iii) whether the nationally recognized statistical rating organizations have appropriately addressed the recommendations of the Commission contained in previous reports under this subparagraph.

(4) Rulemaking authority

The Commission shall—

(A) establish, by rule, fines, and other penalties applicable to any nationally recognized statistical rating organization that violates the requirements of this section and the rules thereunder; and

(B) issue such rules as may be necessary to carry out this section.

(q) Transparency of ratings performance

(1) Rulemaking required

The Commission shall, by rule, require that each nationally recognized statistical rating organization publicly disclose information on the initial credit ratings determined by the nationally recognized statistical rating organization for each type of obligor, security, and money market instrument, and any subsequent changes to such credit ratings, for the purpose of allowing users of credit ratings to evaluate the accuracy of ratings and compare the performance of ratings by different nationally recognized statistical rating organizations.

(2) Content

The rules of the Commission under this subsection shall require, at a minimum, disclosures

that—

(A) are comparable among nationally recognized statistical rating organizations, to allow users of credit ratings to compare the performance of credit ratings across nationally recognized statistical rating organizations;

(B) are clear and informative for investors having a wide range of sophistication who use or might use credit ratings;

(C) include performance information over a range of years and for a variety of types of credit ratings, including for credit ratings withdrawn by the nationally recognized statistical rating organization;

(D) are published and made freely available by the nationally recognized statistical rating organization, on an easily accessible portion of its website, and in writing, when requested;

(E) are appropriate to the business model of a nationally recognized statistical rating organization; and

(F) each nationally recognized statistical rating organization include an attestation with any credit rating it issues affirming that no part of the rating was influenced by any other business activities, that the rating was based solely on the merits of the instruments being rated, and that such rating was an independent evaluation of the risks and merits of the instrument.

(r) Credit ratings methodologies

The Commission shall prescribe rules, for the protection of investors and in the public interest, with respect to the procedures and methodologies, including qualitative and quantitative data and models, used by nationally recognized statistical rating organizations that require each nationally recognized statistical rating organization—

(1) to ensure that credit ratings are determined using procedures and methodologies, including qualitative and quantitative data and models, that are—

(A) approved by the board of the nationally recognized statistical rating organization, a body performing a function similar to that of a board; and

(B) in accordance with the policies and procedures of the nationally recognized statistical rating organization for the development and modification of credit rating procedures and methodologies;

(2) to ensure that when material changes to credit rating procedures and methodologies (including changes to qualitative and quantitative data and models) are made, that—

(A) the changes are applied consistently to all credit ratings to which the changed procedures and methodologies apply;

(B) to the extent that changes are made to credit rating surveillance procedures and methodologies, the changes are applied to then-current credit ratings by the nationally recognized statistical rating organization within a reasonable time period determined by the Commission, by rule; and

(C) the nationally recognized statistical rating organization publicly discloses the reason for the change; and

(3) to notify users of credit ratings—

(A) of the version of a procedure or methodology, including the qualitative methodology or quantitative inputs, used with respect to a particular credit rating;

(B) when a material change is made to a procedure or methodology, including to a qualitative model or quantitative inputs;

(C) when a significant error is identified in a procedure or methodology, including a qualitative or quantitative model, that may result in credit rating actions; and

(D) of the likelihood of a material change described in subparagraph (B) resulting in a change in current credit ratings.

(s) Transparency of credit rating methodologies and information reviewed

(1) Form for disclosures

The Commission shall require, by rule, each nationally recognized statistical rating organization to prescribe a form to accompany the publication of each credit rating that discloses—

(A) information relating to—

(i) the assumptions underlying the credit rating procedures and methodologies;

(ii) the data that was relied on to determine the credit rating; and

(iii) if applicable, how the nationally recognized statistical rating organization used servicer or remittance reports, and with what frequency, to conduct surveillance of the credit rating; and

(B) information that can be used by investors and other users of credit ratings to better understand credit ratings in each class of credit rating issued by the nationally recognized statistical rating organization.

(2) Format

The form developed under paragraph (1) shall—

(A) be easy to use and helpful for users of credit ratings to understand the information contained in the report;

(B) require the nationally recognized statistical rating organization to provide the content described in paragraph (3)(B) in a manner that is directly comparable across types of securities; and

(C) be made readily available to users of credit ratings, in electronic or paper form, as the Commission may, by rule, determine.

(3) Content of form

(A) Qualitative content

Each nationally recognized statistical rating organization shall disclose on the form developed under paragraph (1)—

(i) the credit ratings produced by the nationally recognized statistical rating organization;

(ii) the main assumptions and principles used in constructing procedures and methodologies, including qualitative methodologies and quantitative inputs and assumptions about the correlation of defaults across underlying assets used in rating structured products;

(iii) the potential limitations of the credit ratings, and the types of risks excluded from the credit ratings that the nationally recognized statistical rating organization does not comment on, including liquidity, market, and other risks;

(iv) information on the uncertainty of the credit rating, including—

(I) information on the reliability, accuracy, and quality of the data relied on in determining the credit rating; and

(II) a statement relating to the extent to which data essential to the determination of the credit rating were reliable or limited, including—

(aa) any limits on the scope of historical data; and

(bb) any limits in accessibility to certain documents or other types of information that would have better informed the credit rating;

(v) whether and to what extent third party due diligence services have been used by the nationally recognized statistical rating organization, a description of the information that such third party reviewed in conducting due diligence services, and a description of the findings or conclusions of such third party;

(vi) a description of the data about any obligor, issuer, security, or money market instrument that were relied upon for the purpose of determining the credit rating;

(vii) a statement containing an overall assessment of the quality of information available and considered in producing a rating for an obligor, security, or money market instrument, in relation to the quality of information available to the nationally recognized statistical rating organization in rating similar issuances;

(viii) information relating to conflicts of interest of the nationally recognized statistical

rating organization; and

(ix) such additional information as the Commission may require.

(B) Quantitative content

Each nationally recognized statistical rating organization shall disclose on the form developed under this subsection—

(i) an explanation or measure of the potential volatility of the credit rating, including—

(I) any factors that might lead to a change in the credit ratings; and

(II) the magnitude of the change that a user can expect under different market conditions;

(ii) information on the content of the rating, including—

(I) the historical performance of the rating; and

(II) the expected probability of default and the expected loss in the event of default;

(iii) information on the sensitivity of the rating to assumptions made by the nationally recognized statistical rating organization, including—

(I) 5 assumptions made in the ratings process that, without accounting for any other factor, would have the greatest impact on a rating if the assumptions were proven false or inaccurate; and

(II) an analysis, using specific examples, of how each of the 5 assumptions identified under subclause (I) impacts a rating; [2]

(iv) such additional information as may be required by the Commission.

(4) Due diligence services for asset-backed securities

(A) Findings

The issuer or underwriter of any asset-backed security shall make publicly available the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter.

(B) Certification required

In any case in which third-party due diligence services are employed by a nationally recognized statistical rating organization, an issuer, or an underwriter, the person providing the due diligence services shall provide to any nationally recognized statistical rating organization that produces a rating to which such services relate, written certification, as provided in subparagraph (C).

(C) Format and content

The Commission shall establish the appropriate format and content for the written certifications required under subparagraph (B), to ensure that providers of due diligence services have conducted a thorough review of data, documentation, and other relevant information necessary for a nationally recognized statistical rating organization to provide an accurate rating.

(D) Disclosure of certification

The Commission shall adopt rules requiring a nationally recognized statistical rating organization, at the time at which the nationally recognized statistical rating organization produces a rating, to disclose the certification described in subparagraph (B) to the public in a manner that allows the public to determine the adequacy and level of due diligence services provided by a third party.

(t) Corporate governance, organization, and management of conflicts of interest

(1) Board of directors

Each nationally recognized statistical rating organization shall have a board of directors.

(2) Independent directors

(A) In general

At least ½ of the board of directors, but not fewer than 2 of the members thereof, shall be independent of the nationally recognized statistical rating agency. A portion of the independent directors shall include users of ratings from a nationally recognized statistical rating organization.

(B) Independence determination

In order to be considered independent for purposes of this subsection, a member of the board of directors of a nationally recognized statistical rating organization—

(i) may not, other than in his or her capacity as a member of the board of directors or any committee thereof—

(I) accept any consulting, advisory, or other compensatory fee from the nationally recognized statistical rating organization; or

(II) be a person associated with the nationally recognized statistical rating organization or with any affiliated company thereof; and

(ii) shall be disqualified from any deliberation involving a specific rating in which the independent board member has a financial interest in the outcome of the rating.

(C) Compensation and term

The compensation of the independent members of the board of directors of a nationally recognized statistical rating organization shall not be linked to the business performance of the nationally recognized statistical rating organization, and shall be arranged so as to ensure the independence of their judgment. The term of office of the independent directors shall be for a pre-agreed fixed period, not to exceed 5 years, and shall not be renewable.

(3) Duties of board of directors

In addition to the overall responsibilities of the board of directors, the board shall oversee—

(A) the establishment, maintenance, and enforcement of policies and procedures for determining credit ratings;

(B) the establishment, maintenance, and enforcement of policies and procedures to address, manage, and disclose any conflicts of interest;

(C) the effectiveness of the internal control system with respect to policies and procedures for determining credit ratings; and

(D) the compensation and promotion policies and practices of the nationally recognized statistical rating organization.

(4) Treatment of NRSRO subsidiaries

If a nationally recognized statistical rating organization is a subsidiary of a parent entity, the board of the directors of the parent entity may satisfy the requirements of this subsection by assigning to a committee of such board of directors the duties under paragraph (3), if—

(A) at least ½ of the members of the committee (including the chairperson of the committee) are independent, as defined in this section; and

(B) at least 1 member of the committee is a user of ratings from a nationally recognized statistical rating organization.

(5) Exception authority

If the Commission finds that compliance with the provisions of this subsection present an unreasonable burden on a small nationally recognized statistical rating organization, the Commission may permit the nationally recognized statistical rating organization to delegate such responsibilities to a committee that includes at least one individual who is a user of ratings of a nationally recognized statistical rating organization.

(u) Duty to report tips alleging material violations of law

(1) Duty to report

Each nationally recognized statistical rating organization shall refer to the appropriate law enforcement or regulatory authorities any information that the nationally recognized statistical rating organization receives from a third party and finds credible that alleges that an issuer of securities rated by the nationally recognized statistical rating organization has committed or is committing a material violation of law that has not been adjudicated by a Federal or State court.

(2) Rule of construction

Nothing in paragraph (1) may be construed to require a nationally recognized statistical rating organization to verify the accuracy of the information described in paragraph (1).

(v) Information from sources other than the issuer

In producing a credit rating, a nationally recognized statistical rating organization shall consider information about an issuer that the nationally recognized statistical rating organization has, or receives from a source other than the issuer or underwriter, that the nationally recognized statistical rating organization finds credible and potentially significant to a rating decision.

(June 6, 1934, ch. 404, title I, §15E, as added Pub. L. 109–291, §4(a), Sept. 29, 2006, 120 Stat. 1329; amended Pub. L. 111–203, title IX, §§932(a), 933(a), 934, 935, July 21, 2010, 124 Stat. 1872, 1883, 1884.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1)(A), (B)(iii), (c), (e)(2), (f)(2), (3), (g), and (m)(1), was in the original "this title". See References in Text note set out under section 78a of this title.

The Securities Exchange Act of 1934, referred to in subsec. (f)(3), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to this chapter (§78a et seq.). For complete classification of this Act to the Code, see section 78a of this title and Tables.

AMENDMENTS

2010—Subsec. (b)(1)(A). Pub. L. 111–203, §932(a)(1)(A), substituted "filed" for "furnished" and "filing" for "furnishing".

Subsec. (b)(1)(B). Pub. L. 111–203, §932(a)(1)(B), substituted "filing" for "furnishing".

Subsec. (b)(2). Pub. L. 111–203, §932(a)(1)(C), substituted "file with" for "furnish to" in introductory provisions.

Subsec. (c)(2). Pub. L. 111–203, §932(a)(2)(A), inserted "any other provision of this section, or" after "Notwithstanding" and inserted at end "Nothing in this paragraph may be construed to afford a defense against any action or proceeding brought by the Commission to enforce the antifraud provisions of the securities laws."

Subsec. (c)(3). Pub. L. 111–203, §932(a)(2)(B), added par. (3).

Subsec. (d). Pub. L. 111–203, §932(a)(3), designated existing provisions as par. (1), inserted heading, inserted ", or with respect to any person who is associated with, who is seeking to become associated with, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a nationally recognized statistical rating organization, the Commission, by order, shall censure, place limitations on the activities or functions of such person, suspend for a period not exceeding 1 year, or bar such person from being associated with a nationally recognized statistical rating organization," before "if the Commission finds" and "bar" before "or revocation is necessary", redesignated former pars. (1) to (5) as subpars. (A) to (E), respectively, of par. (1) and former subpars. (A) and (B) of par. (2) as cls. (i) and (ii), respectively, of subpar. (B), in subpar. (B), substituted "filed with" for "furnished to" in introductory provisions, in subpar. (D), substituted "file" for "furnish", and added subpar. (F) and par. (2).

Subsec. (h)(3) to (5). Pub. L. 111–203, §932(a)(4), added pars. (3) to (5).

Subsec. (j). Pub. L. 111–203, §932(a)(5), designated existing provisions as par. (1), inserted heading, and added pars. (2) to (5).

Subsec. (k). Pub. L. 111–203, §932(a)(6), substituted "file with" for "furnish to".

Subsec. (l)(2)(A)(i). Pub. L. 111–203, §932(a)(7), substituted "filed" for "furnished".

Subsec. (m). Pub. L. 111–203, §933(a), amended subsec. (m) generally. Prior to amendment, subsec. (m) provided that registration did not constitute a waiver of rights, privileges, or defenses and that this section could not be construed as creating any private right of action.

Subsecs. (p) to (t). Pub. L. 111–203, §932(a)(8), added subsecs. (p) to (t) and struck out former subsec. (p)

which related to applicability date of this section.

Subsec. (u). Pub. L. 111–203, §934, added subsec. (u).

Subsec. (v). Pub. L. 111–203, §935, added subsec. (v).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

REGULATIONS

Pub. L. 111–203, title IX, §937, July 21, 2010, 124 Stat. 1885, provided that: "Unless otherwise specifically provided in this subtitle [subtitle C (§§931–939H) of title IX of Pub. L. 111–203, enacting sections 78o–8 and 78o–9 of this title, amending this section and sections 78c, 78u–4, and 80a–6 of this title, sections 24a, 1817, 1831e, and 4519 of Title 12, Banks and Banking, and section 286hh of Title 22, Foreign Relations and Intercourse, and enacting provisions set out as notes under this section, sections 78m and 78o–9 of this title, and section 24a of Title 12], the [Securities and Exchange] Commission shall issue final regulations, as required by this subtitle and the amendments made by this subtitle, not later than 1 year after the date of enactment of this Act [July 21, 2010]."

QUALIFICATION STANDARDS FOR CREDIT RATING ANALYSTS

Pub. L. 111–203, title IX, §936, July 21, 2010, 124 Stat. 1884, provided that: "Not later than 1 year after the date of enactment of this Act [July 21, 2010], the Commission shall issue rules that are reasonably designed to ensure that any person employed by a nationally recognized statistical rating organization to perform credit ratings—

"(1) meets standards of training, experience, and competence necessary to produce accurate ratings for the categories of issuers whose securities the person rates; and

"(2) is tested for knowledge of the credit rating process."

[For definitions of terms used in section 936 of Pub. L. 111–203, set out above, see section 5301 of Title 12, Banks and Banking.]

REVIEW OF RELIANCE ON RATINGS

Pub. L. 111–203, title IX, §939A, July 21, 2010, 124 Stat. 1887, provided that:

"(a) AGENCY REVIEW.—Not later than 1 year after the date of the enactment of this subtitle [July 21, 2010], each Federal agency shall, to the extent applicable, review—

"(1) any regulation issued by such agency that requires the use of an assessment of the credit-worthiness of a security or money market instrument; and

"(2) any references to or requirements in such regulations regarding credit ratings.

"(b) MODIFICATIONS REQUIRED.—Each such agency shall modify any such regulations identified by the review conducted under subsection (a) to remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of credit-worthiness as each respective agency shall determine as appropriate for such regulations. In making such determination, such agencies shall seek to establish, to the extent feasible, uniform standards of credit-worthiness for use by each such agency, taking into account the entities regulated by each such agency and the purposes for which such entities would rely on such standards of credit-worthiness.

"(c) REPORT.—Upon conclusion of the review required under subsection (a), each Federal agency shall transmit a report to Congress containing a description of any modification of any regulation such agency made pursuant to subsection (b)."

[For definition of "security" as used in section 939A of Pub. L. 111–203, set out above, see section 5301 of Title 12, Banks and Banking.]

REPRESENTATIONS AND WARRANTIES IN ASSET-BACKED OFFERINGS

Pub. L. 111–203, title IX, §943, July 21, 2010, 124 Stat. 1897, provided that: "Not later than 180 days after the date of enactment of this Act [July 21, 2010], the Securities and Exchange Commission shall prescribe regulations on the use of representations and warranties in the market for asset-backed securities (as that term is defined in section 3(a)(77) [now 3(a)(79)] of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(79)], as added by this subtitle) that—

"(1) require each national [sic] recognized statistical rating organization to include in any report accompanying a credit rating a description of—

"(A) the representations, warranties, and enforcement mechanisms available to investors; and

"(B) how they differ from the representations, warranties, and enforcement mechanisms in issuances of similar securities; and

"(2) require any securitizer (as that term is defined in section 15G(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78o–11(a)], as added by this subtitle) to disclose fulfilled and unfulfilled repurchase requests across all trusts aggregated by the securitizer, so that investors may identify asset originators with clear underwriting deficiencies."

[For definitions of terms used in section 943 of Pub. L. 111–203, set out above, see section 5301 of Title 12, Banks and Banking.]

FINDINGS

Pub. L. 111–203, title IX, §931, July 21, 2010, 124 Stat. 1872, provided that: "Congress finds the following:

"(1) Because of the systemic importance of credit ratings and the reliance placed on credit ratings by individual and institutional investors and financial regulators, the activities and performances of credit rating agencies, including nationally recognized statistical rating organizations, are matters of national public interest, as credit rating agencies are central to capital formation, investor confidence, and the efficient performance of the United States economy.

"(2) Credit rating agencies, including nationally recognized statistical rating organizations, play a critical 'gatekeeper' role in the debt market that is functionally similar to that of securities analysts, who evaluate the quality of securities in the equity market, and auditors, who review the financial statements of firms. Such role justifies a similar level of public oversight and accountability.

"(3) Because credit rating agencies perform evaluative and analytical services on behalf of clients, much as other financial 'gatekeepers' do, the activities of credit rating agencies are fundamentally commercial in character and should be subject to the same standards of liability and oversight as apply to auditors, securities analysts, and investment bankers.

"(4) In certain activities, particularly in advising arrangers of structured financial products on potential ratings of such products, credit rating agencies face conflicts of interest that need to be carefully monitored and that therefore should be addressed explicitly in legislation in order to give clearer authority to the Securities and Exchange Commission.

"(5) In the recent financial crisis, the ratings on structured financial products have proven to be inaccurate. This inaccuracy contributed significantly to the mismanagement of risks by financial institutions and investors, which in turn adversely impacted the health of the economy in the United States and around the world. Such inaccuracy necessitates increased accountability on the part of credit rating agencies."

[For definitions of terms used in section 931 of Pub. L. 111–203, set out above, see section 5301 of Title 12, Banks and Banking.]

Pub. L. 109–291, §2, Sept. 29, 2006, 120 Stat. 1327, provided that: "Upon the basis of facts disclosed by the record and report of the Securities and Exchange Commission made pursuant to section 702 of the Sarbanes-Oxley Act of 2002 [Pub. L. 107–204] (116 Stat. 797), hearings before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives during the 108th and 109th Congresses, comment letters to the concept releases and proposed rules of the Commission, and facts otherwise disclosed and ascertained, Congress finds that credit rating agencies are of national importance, in that, among other things—

"(1) their ratings, publications, writings, analyses, and reports are furnished and distributed, and their contracts, subscription agreements, and other arrangements with clients are negotiated and performed, by the use of the mails and other means and instrumentalities of interstate commerce;

"(2) their ratings, publications, writings, analyses, and reports customarily relate to the purchase and sale of securities traded on securities exchanges and in interstate over-the-counter markets, securities issued by companies engaged in business in interstate commerce, and securities issued by national banks and member banks of the Federal Reserve System;

"(3) the foregoing transactions occur in such volume as substantially to affect interstate commerce, the securities markets, the national banking system, and the national economy;

"(4) the oversight of such credit rating agencies serves the compelling interest of investor protection;

"(5) the 2 largest credit rating agencies serve the vast majority of the market, and additional competition is in the public interest; and

"(6) the Commission has indicated that it needs statutory authority to oversee the credit rating industry."

SECURITIES AND EXCHANGE COMMISSION ANNUAL REPORT

Pub. L. 109–291, §6, Sept. 29, 2006, 120 Stat. 1338, provided that: "The Commission shall submit an

annual report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that, with respect to the year to which the report relates—

"(1) identifies applicants for registration under section 15E of the Securities Exchange Act of 1934 [15 U.S.C. 78o–7], as added by this Act;

"(2) specifies the number of and actions taken on such applications; and

"(3) specifies the views of the Commission on the state of competition, transparency, and conflicts of interest among nationally recognized statistical rating organizations."

DEFINITIONS

Pub. L. 109–291, §3(b), Sept. 29, 2006, 120 Stat. 1328, provided that: "As used in this Act [see Short Title of 2006 Amendment note set out under section 78a of this title]—

"(1) the term 'Commission' means the Securities and Exchange Commission; and

"(2) the term 'nationally recognized statistical rating organization' has the same meaning as in section 3(a)(62) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(62)], as added by this Act."

[1] *So in original. The word "or" probably should appear.*

[2] *So in original. The word "and" probably should appear.*

§78*o*–8. Universal ratings symbols

(a) Rulemaking

The Commission shall require, by rule, each nationally recognized statistical rating organization to establish, maintain, and enforce written policies and procedures that—

(1) assess the probability that an issuer of a security or money market instrument will default, fail to make timely payments, or otherwise not make payments to investors in accordance with the terms of the security or money market instrument;

(2) clearly define and disclose the meaning of any symbol used by the nationally recognized statistical rating organization to denote a credit rating; and

(3) apply any symbol described in paragraph (2) in a manner that is consistent for all types of securities and money market instruments for which the symbol is used.

(b) Rule of construction

Nothing in this section shall prohibit a nationally recognized statistical rating organization from using distinct sets of symbols to denote credit ratings for different types of securities or money market instruments.

(Pub. L. 111–203, title IX, §938, July 21, 2010, 124 Stat. 1885.)

CODIFICATION

Section was enacted as part of the Investor Protection and Securities Reform Act of 2010 and also as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and not as part of the Securities Exchange Act of 1934 which comprises this chapter.

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of Title 12, Banks and Banking.

DEFINITIONS

For definitions of terms used in this section, see section 5301 of Title 12, Banks and Banking.

§78*o*–9. Study and rulemaking on assigned credit ratings

(a) Definition

In this section, the term "structured finance product" means an asset-backed security, as defined in

section 3(a)(77) [1] of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(79)], as added by section 941,[1] and any structured product based on an asset-backed security, as determined by the Commission, by rule.

(b) Study

The Commission shall carry out a study of—

(1) the credit rating process for structured finance products and the conflicts of interest associated with the issuer-pay and the subscriber-pay models;

(2) the feasibility of establishing a system in which a public or private utility or a self-regulatory organization assigns nationally recognized statistical rating organizations to determine the credit ratings of structured finance products, including—

(A) an assessment of potential mechanisms for determining fees for the nationally recognized statistical rating organizations;

(B) appropriate methods for paying fees to the nationally recognized statistical rating organizations;

(C) the extent to which the creation of such a system would be viewed as the creation of moral hazard by the Federal Government; and

(D) any constitutional or other issues concerning the establishment of such a system;

(3) the range of metrics that could be used to determine the accuracy of credit ratings; and

(4) alternative means for compensating nationally recognized statistical rating organizations that would create incentives for accurate credit ratings.

(c) Report and recommendation

Not later than 24 months after July 21, 2010, the Commission shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report that contains—

(1) the findings of the study required under subsection (b); and

(2) any recommendations for regulatory or statutory changes that the Commission determines should be made to implement the findings of the study required under subsection (b).

(d) Rulemaking

(1) Rulemaking

After submission of the report under subsection (c), the Commission shall, by rule, as the Commission determines is necessary or appropriate in the public interest or for the protection of investors, establish a system for the assignment of nationally recognized statistical rating organizations to determine the initial credit ratings of structured finance products, in a manner that prevents the issuer, sponsor, or underwriter of the structured finance product from selecting the nationally recognized statistical rating organization that will determine the initial credit ratings and monitor such credit ratings. In issuing any rule under this paragraph, the Commission shall give thorough consideration to the provisions of section 15E(w) of the Securities Exchange Act of 1934, as that provision would have been added by section 939D of H.R. 4173 (111th Congress), as passed by the Senate on May 20, 2010, and shall implement the system described in such section 939D unless the Commission determines that an alternative system would better serve the public interest and the protection of investors.

(2) Rule of construction

Nothing in this subsection may be construed to limit or suspend any other rulemaking authority of the Commission.

(Pub. L. 111–203, title IX, §939F, July 21, 2010, 124 Stat. 1889.)

REFERENCES IN TEXT

Section 3(a)(77) of the Securities Exchange Act of 1934, referred to in subsec. (a), was redesignated section 3(a)(79) of that Act by Pub. L. 112–106, title I, §101(b)(1), Apr. 5, 2012, 126 Stat. 307, and is classified to

section 78c(a)(79) of this title.

Section 941, referred to in subsec. (a), means section 941 of Pub. L. 111–203.

Section 15E of the Securities Exchange Act of 1934, referred to in subsec. (d)(1), is classified to section 78o–7 of this title.

H.R. 4173, referred to in subsec. (d)(1), became Pub. L. 111–203. As enacted, section 939D of Pub. L. 111–203 did not add a subsec. (w) to section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 78o–7) but enacted provisions set out as a note below. For the provisions of section 15E(w) of the Securities Exchange Act of 1934, as that provision would have been added by section 939D of H.R. 4173 (111th Congress), as passed by the Senate on May 20, 2010, see 156 Cong. Rec. 80 at pp. S4338, S4339 (daily ed. May 25, 2010).

CODIFICATION

Section was enacted as part of the Investor Protection and Securities Reform Act of 2010 and also as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and not as part of the Securities Exchange Act of 1934 which comprises this chapter.

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of Title 12, Banks and Banking.

GOVERNMENT ACCOUNTABILITY OFFICE STUDY ON ALTERNATIVE BUSINESS MODELS

Pub. L. 111–203, title IX, §939D, July 21, 2010, 124 Stat. 1888, provided that:

"(a) STUDY.—The Comptroller General of the United States shall conduct a study on alternative means for compensating nationally recognized statistical rating organizations in order to create incentives for nationally recognized statistical rating organizations to provide more accurate credit ratings, including any statutory changes that would be required to facilitate the use of an alternative means of compensation.

"(b) REPORT.—Not later than 18 months after the date of enactment of this Act [July 21, 2010], the Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the results of the study conducted under subsection (a), including recommendations, if any, for providing incentives to credit rating agencies to improve the credit rating process."

[For definition of "nationally recognized statistical rating organization" as used in section 939D of Pub. L. 111–203, set out above, see section 5301 of Title 12, Banks and Banking.]

DEFINITIONS

For definitions of terms used in this section, see section 5301 of Title 12, Banks and Banking.

[1] *See References in Text note below.*

§78*o*–10. Registration and regulation of security-based swap dealers and major security-based swap participants

(a) Registration

(1) Security-based swap dealers

It shall be unlawful for any person to act as a security-based swap dealer unless the person is registered as a security-based swap dealer with the Commission.

(2) Major security-based swap participants

It shall be unlawful for any person to act as a major security-based swap participant unless the person is registered as a major security-based swap participant with the Commission.

(b) Requirements

(1) In general

A person shall register as a security-based swap dealer or major security-based swap participant by filing a registration application with the Commission.

(2) Contents

(A) In general

The application shall be made in such form and manner as prescribed by the Commission, and shall contain such information, as the Commission considers necessary concerning the business in which the applicant is or will be engaged.

(B) Continual reporting

A person that is registered as a security-based swap dealer or major security-based swap participant shall continue to submit to the Commission reports that contain such information pertaining to the business of the person as the Commission may require.

(3) Expiration

Each registration under this section shall expire at such time as the Commission may prescribe by rule or regulation.

(4) Rules

Except as provided in subsections (d) and (e), the Commission may prescribe rules applicable to security-based swap dealers and major security-based swap participants, including rules that limit the activities of non-bank security-based swap dealers and major security-based swap participants.

(5) Transition

Not later than 1 year after July 21, 2010, the Commission shall issue rules under this section to provide for the registration of security-based swap dealers and major security-based swap participants.

(6) Statutory disqualification

Except to the extent otherwise specifically provided by rule, regulation, or order of the Commission, it shall be unlawful for a security-based swap dealer or a major security-based swap participant to permit any person associated with a security-based swap dealer or a major security-based swap participant who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of the security-based swap dealer or major security-based swap participant, if the security-based swap dealer or major security-based swap participant knew, or in the exercise of reasonable care should have known, of the statutory disqualification.

(c) Dual registration

(1) Security-based swap dealer

Any person that is required to be registered as a security-based swap dealer under this section shall register with the Commission, regardless of whether the person also is registered with the Commodity Futures Trading Commission as a swap dealer.

(2) Major security-based swap participant

Any person that is required to be registered as a major security-based swap participant under this section shall register with the Commission, regardless of whether the person also is registered with the Commodity Futures Trading Commission as a major swap participant.

(d) Rulemaking

(1) In general

The Commission shall adopt rules for persons that are registered as security-based swap dealers or major security-based swap participants under this section.

(2) Exception for prudential requirements

(A) In general

The Commission may not prescribe rules imposing prudential requirements on security-based swap dealers or major security-based swap participants for which there is a prudential regulator.

(B) Applicability

Subparagraph (A) does not limit the authority of the Commission to prescribe rules as directed under this section.

(e) Capital and margin requirements

(1) In general

(A) Security-based swap dealers and major security-based swap participants that are banks

Each registered security-based swap dealer and major security-based swap participant for which there is not a prudential regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the prudential regulator shall by rule or regulation prescribe under paragraph (2)(A).

(B) Security-based swap dealers and major security-based swap participants that are not banks

Each registered security-based swap dealer and major security-based swap participant for which there is not a prudential regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Commission shall by rule or regulation prescribe under paragraph (2)(B).

(2) Rules

(A) Security-based swap dealers and major security-based swap participants that are banks

The prudential regulators, in consultation with the Commission and the Commodity Futures Trading Commission, shall adopt rules for security-based swap dealers and major security-based swap participants, with respect to their activities as a swap dealer or major swap participant, for which there is a prudential regulator imposing—

(i) capital requirements; and

(ii) both initial and variation margin requirements on all security-based swaps that are not cleared by a registered clearing agency.

(B) Security-based swap dealers and major security-based swap participants that are not banks

The Commission shall adopt rules for security-based swap dealers and major security-based swap participants, with respect to their activities as a swap dealer or major swap participant, for which there is not a prudential regulator imposing—

(i) capital requirements; and

(ii) both initial and variation margin requirements on all swaps that are not cleared by a registered clearing agency.

(C) Capital

In setting capital requirements for a person that is designated as a security-based swap dealer or a major security-based swap participant for a single type or single class or category of security-based swap or activities, the prudential regulator and the Commission shall take into account the risks associated with other types of security-based swaps or classes of security-based swaps or categories of security-based swaps engaged in and the other activities conducted by that person that are not otherwise subject to regulation applicable to that person by virtue of the status of the person.

(3) Standards for capital and margin

(A) In general

To offset the greater risk to the security-based swap dealer or major security-based swap participant and the financial system arising from the use of security-based swaps that are not cleared, the requirements imposed under paragraph (2) shall—

(i) help ensure the safety and soundness of the security-based swap dealer or major security-based swap participant; and

(ii) be appropriate for the risk associated with the non-cleared security-based swaps held as a security-based swap dealer or major security-based swap participant.

(B) Rule of construction

(i) In general

Nothing in this section shall limit, or be construed to limit, the authority—

(I) of the Commission to set financial responsibility rules for a broker or dealer registered pursuant to section 78o(b) of this title (except for section 78o(b)(11) thereof) in accordance with section 78o(c)(3) of this title; or

(II) of the Commodity Futures Trading Commission to set financial responsibility rules for a futures commission merchant or introducing broker registered pursuant to section 4f(a) of the Commodity Exchange Act [7 U.S.C. 6f(a)] (except for section 4f(a)(3) [7 U.S.C. 6f(a)(3)] thereof) in accordance with section 4f(b) of the Commodity Exchange Act [7 U.S.C. 6f(b)].

(ii) Futures commission merchants and other dealers

A futures commission merchant, introducing broker, broker, or dealer shall maintain sufficient capital to comply with the stricter of any applicable capital requirements to which such futures commission merchant, introducing broker, broker, or dealer is subject to under this chapter or the Commodity Exchange Act [7 U.S.C. 1 et seq.].

(C) Margin requirements

In prescribing margin requirements under this subsection, the prudential regulator with respect to security-based swap dealers and major security-based swap participants that are depository institutions, and the Commission with respect to security-based swap dealers and major security-based swap participants that are not depository institutions shall permit the use of noncash collateral, as the regulator or the Commission determines to be consistent with—

(i) preserving the financial integrity of markets trading security-based swaps; and

(ii) preserving the stability of the United States financial system.

(D) Comparability of capital and margin requirements

(i) In general

The prudential regulators, the Commission, and the Securities and Exchange Commission shall periodically (but not less frequently than annually) consult on minimum capital requirements and minimum initial and variation margin requirements.

(ii) Comparability

The entities described in clause (i) shall, to the maximum extent practicable, establish and maintain comparable minimum capital requirements and minimum initial and variation margin requirements, including the use of noncash collateral, for—

(I) security-based swap dealers; and

(II) major security-based swap participants.

(f) Reporting and recordkeeping

(1) In general

Each registered security-based swap dealer and major security-based swap participant—

(A) shall make such reports as are required by the Commission, by rule or regulation, regarding the transactions and positions and financial condition of the registered security-based swap dealer or major security-based swap participant;

(B)(i) for which there is a prudential regulator, shall keep books and records of all activities related to the business as a security-based swap dealer or major security-based swap participant in such form and manner and for such period as may be prescribed by the Commission by rule

or regulation; and

(ii) for which there is no prudential regulator, shall keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; and

(C) shall keep books and records described in subparagraph (B) open to inspection and examination by any representative of the Commission.

(2) Rules

The Commission shall adopt rules governing reporting and recordkeeping for security-based swap dealers and major security-based swap participants.

(g) Daily trading records

(1) In general

Each registered security-based swap dealer and major security-based swap participant shall maintain daily trading records of the security-based swaps of the registered security-based swap dealer and major security-based swap participant and all related records (including related cash or forward transactions) and recorded communications, including electronic mail, instant messages, and recordings of telephone calls, for such period as may be required by the Commission by rule or regulation.

(2) Information requirements

The daily trading records shall include such information as the Commission shall require by rule or regulation.

(3) Counterparty records

Each registered security-based swap dealer and major security-based swap participant shall maintain daily trading records for each counterparty in a manner and form that is identifiable with each security-based swap transaction.

(4) Audit trail

Each registered security-based swap dealer and major security-based swap participant shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.

(5) Rules

The Commission shall adopt rules governing daily trading records for security-based swap dealers and major security-based swap participants.

(h) Business conduct standards

(1) In general

Each registered security-based swap dealer and major security-based swap participant shall conform with such business conduct standards as prescribed in paragraph (3) and as may be prescribed by the Commission by rule or regulation that relate to—

(A) fraud, manipulation, and other abusive practices involving security-based swaps (including security-based swaps that are offered but not entered into);

(B) diligent supervision of the business of the registered security-based swap dealer and major security-based swap participant;

(C) adherence to all applicable position limits; and

(D) such other matters as the Commission determines to be appropriate.

(2) Responsibilities with respect to special entities

(A) Advising special entities

A security-based swap dealer or major security-based swap participant that acts as an advisor to [1] special entity regarding a security-based swap shall comply with the requirements of paragraph (4) with respect to such special entity.

(B) Entering of security-based swaps with respect to special entities

A security-based swap dealer that enters into or offers to enter into [1] security-based swap with a special entity shall comply with the requirements of paragraph (5) with respect to such special entity.

(C) Special entity defined

For purposes of this subsection, the term "special entity" means—

(i) a Federal agency;

(ii) a State, State agency, city, county, municipality, or other political subdivision of a State or;

(iii) any employee benefit plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002);

(iv) any governmental plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002); or

(v) any endowment, including an endowment that is an organization described in section 501(c)(3) of title 26.

(3) Business conduct requirements

Business conduct requirements adopted by the Commission shall—

(A) establish a duty for a security-based swap dealer or major security-based swap participant to verify that any counterparty meets the eligibility standards for an eligible contract participant;

(B) require disclosure by the security-based swap dealer or major security-based swap participant to any counterparty to the transaction (other than a security-based swap dealer, major security-based swap participant, security-based swap dealer, or major security-based swap participant) of—

(i) information about the material risks and characteristics of the security-based swap;

(ii) any material incentives or conflicts of interest that the security-based swap dealer or major security-based swap participant may have in connection with the security-based swap; and

(iii)(I) for cleared security-based swaps, upon the request of the counterparty, receipt of the daily mark of the transaction from the appropriate derivatives clearing organization; and

(II) for uncleared security-based swaps, receipt of the daily mark of the transaction from the security-based swap dealer or the major security-based swap participant;

(C) establish a duty for a security-based swap dealer or major security-based swap participant to communicate in a fair and balanced manner based on principles of fair dealing and good faith; and

(D) establish such other standards and requirements as the Commission may determine are appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter.

(4) Special requirements for security-based swap dealers acting as advisors

(A) In general

It shall be unlawful for a security-based swap dealer or major security-based swap participant—

(i) to employ any device, scheme, or artifice to defraud any special entity or prospective customer who is a special entity;

(ii) to engage in any transaction, practice, or course of business that operates as a fraud or deceit on any special entity or prospective customer who is a special entity; or

(iii) to engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative.

(B) Duty

Any security-based swap dealer that acts as an advisor to a special entity shall have a duty to act in the best interests of the special entity.

(C) Reasonable efforts

Any security-based swap dealer that acts as an advisor to a special entity shall make reasonable efforts to obtain such information as is necessary to make a reasonable determination that any security-based swap recommended by the security-based swap dealer is in the best interests of the special entity, including information relating to—

(i) the financial status of the special entity;

(ii) the tax status of the special entity;

(iii) the investment or financing objectives of the special entity; and

(iv) any other information that the Commission may prescribe by rule or regulation.

(5) Special requirements for security-based swap dealers as counterparties to special entities

(A) In general

Any security-based swap dealer or major security-based swap participant that offers to or enters into a security-based swap with a special entity shall—

(i) comply with any duty established by the Commission for a security-based swap dealer or major security-based swap participant, with respect to a counterparty that is an eligible contract participant within the meaning of subclause (I) or (II) of clause (vii) of section 1a(18) of the Commodity Exchange Act [7 U.S.C. 1a(18)], that requires the security-based swap dealer or major security-based swap participant to have a reasonable basis to believe that the counterparty that is a special entity has an independent representative that—

(I) has sufficient knowledge to evaluate the transaction and risks;

(II) is not subject to a statutory disqualification;

(III) is independent of the security-based swap dealer or major security-based swap participant;

(IV) undertakes a duty to act in the best interests of the counterparty it represents;

(V) makes appropriate disclosures;

(VI) will provide written representations to the special entity regarding fair pricing and the appropriateness of the transaction; and

(VII) in the case of employee benefit plans subject to the Employee Retirement Income Security act [2] of 1974 [29 U.S.C. 1001 et seq.], is a fiduciary as defined in section 3 of that Act (29 U.S.C. 1002); and

(ii) before the initiation of the transaction, disclose to the special entity in writing the capacity in which the security-based swap dealer is acting.

(B) Commission authority

The Commission may establish such other standards and requirements under this paragraph as the Commission may determine are appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter.

(6) Rules

The Commission shall prescribe rules under this subsection governing business conduct standards for security-based swap dealers and major security-based swap participants.

(7) Applicability

This subsection shall not apply with respect to a transaction that is—

(A) initiated by a special entity on an exchange or security-based swaps execution facility; and

(B) the security-based swap dealer or major security-based swap participant does not know the identity of the counterparty to the transaction.

(i) Documentation standards

(1) In general

Each registered security-based swap dealer and major security-based swap participant shall

conform with such standards as may be prescribed by the Commission, by rule or regulation, that relate to timely and accurate confirmation, processing, netting, documentation, and valuation of all security-based swaps.

(2) Rules

The Commission shall adopt rules governing documentation standards for security-based swap dealers and major security-based swap participants.

(j) Duties

Each registered security-based swap dealer and major security-based swap participant shall, at all times, comply with the following requirements:

(1) Monitoring of trading

The security-based swap dealer or major security-based swap participant shall monitor its trading in security-based swaps to prevent violations of applicable position limits.

(2) Risk management procedures

The security-based swap dealer or major security-based swap participant shall establish robust and professional risk management systems adequate for managing the day-to-day business of the security-based swap dealer or major security-based swap participant.

(3) Disclosure of general information

The security-based swap dealer or major security-based swap participant shall disclose to the Commission and to the prudential regulator for the security-based swap dealer or major security-based swap participant, as applicable, information concerning—

(A) terms and conditions of its security-based swaps;

(B) security-based swap trading operations, mechanisms, and practices;

(C) financial integrity protections relating to security-based swaps; and

(D) other information relevant to its trading in security-based swaps.

(4) Ability to obtain information

The security-based swap dealer or major security-based swap participant shall—

(A) establish and enforce internal systems and procedures to obtain any necessary information to perform any of the functions described in this section; and

(B) provide the information to the Commission and to the prudential regulator for the security-based swap dealer or major security-based swap participant, as applicable, on request.

(5) Conflicts of interest

The security-based swap dealer and major security-based swap participant shall implement conflict-of-interest systems and procedures that—

(A) establish structural and institutional safeguards to ensure that the activities of any person within the firm relating to research or analysis of the price or market for any security-based swap or acting in a role of providing clearing activities or making determinations as to accepting clearing customers are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of persons whose involvement in pricing, trading, or clearing activities might potentially bias their judgment or supervision and contravene the core principles of open access and the business conduct standards described in this chapter; and

(B) address such other issues as the Commission determines to be appropriate.

(6) Antitrust considerations

Unless necessary or appropriate to achieve the purposes of this chapter, the security-based swap dealer or major security-based swap participant shall not—

(A) adopt any process or take any action that results in any unreasonable restraint of trade; or

(B) impose any material anticompetitive burden on trading or clearing.

(7) Rules

The Commission shall prescribe rules under this subsection governing duties of security-based

swap dealers and major security-based swap participants.

(k) Designation of chief compliance officer

(1) In general

Each security-based swap dealer and major security-based swap participant shall designate an individual to serve as a chief compliance officer.

(2) Duties

The chief compliance officer shall—

(A) report directly to the board or to the senior officer of the security-based swap dealer or major security-based swap participant;

(B) review the compliance of the security-based swap dealer or major security-based swap participant with respect to the security-based swap dealer and major security-based swap participant requirements described in this section;

(C) in consultation with the board of directors, a body performing a function similar to the board, or the senior officer of the organization, resolve any conflicts of interest that may arise;

(D) be responsible for administering each policy and procedure that is required to be established pursuant to this section;

(E) ensure compliance with this chapter (including regulations) relating to security-based swaps, including each rule prescribed by the Commission under this section;

(F) establish procedures for the remediation of noncompliance issues identified by the chief compliance officer through any—

(i) compliance office review;

(ii) look-back;

(iii) internal or external audit finding;

(iv) self-reported error; or

(v) validated complaint; and

(G) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

(3) Annual reports

(A) In general

In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

(i) the compliance of the security-based swap dealer or major swap participant with respect to this chapter (including regulations); and

(ii) each policy and procedure of the security-based swap dealer or major security-based swap participant of the chief compliance officer (including the code of ethics and conflict of interest policies).

(B) Requirements

A compliance report under subparagraph (A) shall—

(i) accompany each appropriate financial report of the security-based swap dealer or major security-based swap participant that is required to be furnished to the Commission pursuant to this section; and

(ii) include a certification that, under penalty of law, the compliance report is accurate and complete.

(l) Enforcement and administrative proceeding authority

(1) Primary enforcement authority

(A) Securities and Exchange Commission

Except as provided in subparagraph (B), (C), or (D), the Commission shall have primary authority to enforce subtitle B, and the amendments made by subtitle B of the Wall Street

Transparency and Accountability Act of 2010, with respect to any person.

(B) Prudential regulators

The prudential regulators shall have exclusive authority to enforce the provisions of subsection (e) and other prudential requirements of this chapter (including risk management standards), with respect to security-based swap dealers or major security-based swap participants for which they are the prudential regulator.

(C) Referral

(i) Violations of nonprudential requirements

If the appropriate Federal banking agency for security-based swap dealers or major security-based swap participants that are depository institutions has cause to believe that such security-based swap dealer or major security-based swap participant may have engaged in conduct that constitutes a violation of the nonprudential requirements of this section or rules adopted by the Commission thereunder, the agency may recommend in writing to the Commission that the Commission initiate an enforcement proceeding as authorized under this chapter. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

(ii) Violations of prudential requirements

If the Commission has cause to believe that a securities-based swap dealer or major securities-based swap participant that has a prudential regulator may have engaged in conduct that constitute [3] a violation of the prudential requirements of subsection (e) or rules adopted thereunder, the Commission may recommend in writing to the prudential regulator that the prudential regulator initiate an enforcement proceeding as authorized under this chapter. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

(D) Backstop enforcement authority

(i) Initiation of enforcement proceeding by prudential regulator

If the Commission does not initiate an enforcement proceeding before the end of the 90-day period beginning on the date on which the Commission receives a written report under subsection [4] (C)(i), the prudential regulator may initiate an enforcement proceeding.

(ii) Initiation of enforcement proceeding by Commission

If the prudential regulator does not initiate an enforcement proceeding before the end of the 90-day period beginning on the date on which the prudential regulator receives a written report under subsection [4] (C)(ii), the Commission may initiate an enforcement proceeding.

(2) Censure, denial, suspension; notice and hearing

The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, or revoke the registration of any security-based swap dealer or major security-based swap participant that has registered with the Commission pursuant to subsection (b) if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, or revocation is in the public interest and that such security-based swap dealer or major security-based swap participant, or any person associated with such security-based swap dealer or major security-based swap participant effecting or involved in effecting transactions in security-based swaps on behalf of such security-based swap dealer or major security-based swap participant, whether prior or subsequent to becoming so associated—

(A) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 78o(b) of this title;

(B) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this subsection;

(C) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such

paragraph (4);

(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of such paragraph (4); or

(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation, enumerated in subparagraph (G) of such paragraph (4).

(3) Associated persons

With respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a security-based swap dealer or major security-based swap participant for the purpose of effecting or being involved in effecting security-based swaps on behalf of such security-based swap dealer or major security-based swap participant, the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar such person from being associated with a security-based swap dealer or major security-based swap participant, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—

(A) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 78o(b) of this title;

(B) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this subsection;

(C) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4);

(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of such paragraph (4); or

(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation, enumerated in subparagraph (G) of such paragraph (4).

(4) Unlawful conduct

It shall be unlawful—

(A) for any person as to whom an order under paragraph (3) is in effect, without the consent of the Commission, willfully to become, or to be, associated with a security-based swap dealer or major security-based swap participant in contravention of such order; or

(B) for any security-based swap dealer or major security-based swap participant to permit such a person, without the consent of the Commission, to become or remain a person associated with the security-based swap dealer or major security-based swap participant in contravention of such order, if such security-based swap dealer or major security-based swap participant knew, or in the exercise of reasonable care should have known, of such order.

(June 6, 1934, ch. 404, title I, §15F, as added Pub. L. 111–203, title VII, §764(a), July 21, 2010, 124 Stat. 1784.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (e)(3)(B)(ii), (j)(5)(A), (6), (k)(2)(E), (3)(A)(i), and (l)(1)(B), (C), was in the original "this title", and this chapter, referred to in subsec. (h)(3)(D), (5)(B), was in the original "this Act". See References in Text note set out under section 78a of this title.

The Commodity Exchange Act, referred to in subsec. (e)(3)(B)(ii), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (h)(5)(A)(i)(VII), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, which is classified principally to chapter 18 (§1001 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

Subtitle B of the Wall Street Transparency and Accountability Act of 2010, referred to in subsec. (l)(1)(A),

is subtitle B (§§761–774) of title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1754, which enacted this section and subchapter II (§8341 et seq.) of chapter 109 and sections 78c–3 to 78c–5, 78j–2, and 78m–1 of this title, amended sections 77b, 77b–1, 77e, 77q, 78c, 78c–1, 78f, 78i, 78j, 78m, 78o, 78p, 78q–1, 78t, 78u–1, 78u–2, 78bb, 78dd, 78mm, 80a–2, and 80b–2 of this title, enacted provisions set out as a note under section 77b of this title, and amended provisions set out as a note under section 78c of this title. For complete classification of subtitle B to the Code, see Tables.

EFFECTIVE DATE

Section effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761–774) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 77b of this title.

[1] *So in original. Probably should be followed by "a".*

[2] *So in original. Probably should be capitalized.*

[3] *So in original. Probably should be "constitutes".*

[4] *So in original. Probably should be "subparagraph".*

§78*o*–11. Credit risk retention

(a) Definitions

In this section—

(1) the term "Federal banking agencies" means the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation;

(2) the term "insured depository institution" has the same meaning as in section 1813(c) of title 12;

(3) the term "securitizer" means—

(A) an issuer of an asset-backed security; or

(B) a person who organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuer; and

(4) the term "originator" means a person who—

(A) through the extension of credit or otherwise, creates a financial asset that collateralizes an asset-backed security; and

(B) sells an asset directly or indirectly to a securitizer.

(b) Regulations required

(1) In general

Not later than 270 days after July 21, 2010, the Federal banking agencies and the Commission shall jointly prescribe regulations to require any securitizer to retain an economic interest in a portion of the credit risk for any asset that the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party.

(2) Residential mortgages

Not later than 270 days after July 21, 2010, the Federal banking agencies, the Commission, the Secretary of Housing and Urban Development, and the Federal Housing Finance Agency, shall jointly prescribe regulations to require any securitizer to retain an economic interest in a portion of the credit risk for any residential mortgage asset that the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party.

(c) Standards for regulations

(1) Standards

The regulations prescribed under subsection (b) shall—

(A) prohibit a securitizer from directly or indirectly hedging or otherwise transferring the credit risk that the securitizer is required to retain with respect to an asset;

(B) require a securitizer to retain—

(i) not less than 5 percent of the credit risk for any asset—

(I) that is not a qualified residential mortgage that is transferred, sold, or conveyed through the issuance of an asset-backed security by the securitizer; or

(II) that is a qualified residential mortgage that is transferred, sold, or conveyed through the issuance of an asset-backed security by the securitizer, if 1 or more of the assets that collateralize the asset-backed security are not qualified residential mortgages; or

(ii) less than 5 percent of the credit risk for an asset that is not a qualified residential mortgage that is transferred, sold, or conveyed through the issuance of an asset-backed security by the securitizer, if the originator of the asset meets the underwriting standards prescribed under paragraph (2)(B);

(C) specify—

(i) the permissible forms of risk retention for purposes of this section;

(ii) the minimum duration of the risk retention required under this section; and

(iii) that a securitizer is not required to retain any part of the credit risk for an asset that is transferred, sold or conveyed through the issuance of an asset-backed security by the securitizer, if all of the assets that collateralize the asset-backed security are qualified residential mortgages;

(D) apply, regardless of whether the securitizer is an insured depository institution;

(E) with respect to a commercial mortgage, specify the permissible types, forms, and amounts of risk retention that would meet the requirements of subparagraph (B), which in the determination of the Federal banking agencies and the Commission may include—

(i) retention of a specified amount or percentage of the total credit risk of the asset;

(ii) retention of the first-loss position by a third-party purchaser that specifically negotiates for the purchase of such first loss position, holds adequate financial resources to back losses, provides due diligence on all individual assets in the pool before the issuance of the asset-backed securities, and meets the same standards for risk retention as the Federal banking agencies and the Commission require of the securitizer;

(iii) a determination by the Federal banking agencies and the Commission that the underwriting standards and controls for the asset are adequate; and

(iv) provision of adequate representations and warranties and related enforcement mechanisms; and [1]

(F) establish appropriate standards for retention of an economic interest with respect to collateralized debt obligations, securities collateralized by collateralized debt obligations, and similar instruments collateralized by other asset-backed securities; and

(G) provide for—

(i) a total or partial exemption of any securitization, as may be appropriate in the public interest and for the protection of investors;

(ii) a total or partial exemption for the securitization of an asset issued or guaranteed by the United States, or an agency of the United States, as the Federal banking agencies and the Commission jointly determine appropriate in the public interest and for the protection of investors, except that, for purposes of this clause, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation are not agencies of the United States;

(iii) a total or partial exemption for any asset-backed security that is a security issued or guaranteed by any State of the United States, or by any political subdivision of a State or territory, or by any public instrumentality of a State or territory that is exempt from the registration requirements of the Securities Act of 1933 [15 U.S.C. 77a et seq.] by reason of section 3(a)(2) of that Act (15 U.S.C. 77c(a)(2)), or a security defined as a qualified scholarship funding bond in section 150(d)(2) of title 26, as may be appropriate in the public interest and for the protection of investors; and

(iv) the allocation of risk retention obligations between a securitizer and an originator in the case of a securitizer that purchases assets from an originator, as the Federal banking agencies and the Commission jointly determine appropriate.

(2) Asset classes

(A) Asset classes

The regulations prescribed under subsection (b) shall establish asset classes with separate rules for securitizers of different classes of assets, including residential mortgages, commercial mortgages, commercial loans, auto loans, and any other class of assets that the Federal banking agencies and the Commission deem appropriate.

(B) Contents

For each asset class established under subparagraph (A), the regulations prescribed under subsection (b) shall include underwriting standards established by the Federal banking agencies that specify the terms, conditions, and characteristics of a loan within the asset class that indicate a low credit risk with respect to the loan.

(d) Originators

In determining how to allocate risk retention obligations between a securitizer and an originator under subsection (c)(1)(E)(iv), the Federal banking agencies and the Commission shall—

(1) reduce the percentage of risk retention obligations required of the securitizer by the percentage of risk retention obligations required of the originator; and

(2) consider—

(A) whether the assets sold to the securitizer have terms, conditions, and characteristics that reflect low credit risk;

(B) whether the form or volume of transactions in securitization markets creates incentives for imprudent origination of the type of loan or asset to be sold to the securitizer; and

(C) the potential impact of the risk retention obligations on the access of consumers and businesses to credit on reasonable terms, which may not include the transfer of credit risk to a third party.

(e) Exemptions, exceptions, and adjustments

(1) In general

The Federal banking agencies and the Commission may jointly adopt or issue exemptions, exceptions, or adjustments to the rules issued under this section, including exemptions, exceptions, or adjustments for classes of institutions or assets relating to the risk retention requirement and the prohibition on hedging under subsection (c)(1).

(2) Applicable standards

Any exemption, exception, or adjustment adopted or issued by the Federal banking agencies and the Commission under this paragraph shall—

(A) help ensure high quality underwriting standards for the securitizers and originators of assets that are securitized or available for securitization; and

(B) encourage appropriate risk management practices by the securitizers and originators of assets, improve the access of consumers and businesses to credit on reasonable terms, or otherwise be in the public interest and for the protection of investors.

(3) Certain institutions and programs exempt

(A) Farm credit system institutions

Notwithstanding any other provision of this section, the requirements of this section shall not apply to any loan or other financial asset made, insured, guaranteed, or purchased by any institution that is subject to the supervision of the Farm Credit Administration, including the Federal Agricultural Mortgage Corporation.

(B) Other Federal programs

This section shall not apply to any residential, multifamily, or health care facility mortgage loan asset, or securitization based directly or indirectly on such an asset, which is insured or guaranteed by the United States or an agency of the United States. For purposes of this subsection, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal home loan banks shall not be considered an agency of the United States.

(4) Exemption for qualified residential mortgages

(A) In general

The Federal banking agencies, the Commission, the Secretary of Housing and Urban Development, and the Director of the Federal Housing Finance Agency shall jointly issue regulations to exempt qualified residential mortgages from the risk retention requirements of this subsection.

(B) Qualified residential mortgage

The Federal banking agencies, the Commission, the Secretary of Housing and Urban Development, and the Director of the Federal Housing Finance Agency shall jointly define the term "qualified residential mortgage" for purposes of this subsection, taking into consideration underwriting and product features that historical loan performance data indicate result in a lower risk of default, such as—

(i) documentation and verification of the financial resources relied upon to qualify the mortgagor;

(ii) standards with respect to—

(I) the residual income of the mortgagor after all monthly obligations;

(II) the ratio of the housing payments of the mortgagor to the monthly income of the mortgagor;

(III) the ratio of total monthly installment payments of the mortgagor to the income of the mortgagor;

(iii) mitigating the potential for payment shock on adjustable rate mortgages through product features and underwriting standards;

(iv) mortgage guarantee insurance or other types of insurance or credit enhancement obtained at the time of origination, to the extent such insurance or credit enhancement reduces the risk of default; and

(v) prohibiting or restricting the use of balloon payments, negative amortization, prepayment penalties, interest-only payments, and other features that have been demonstrated to exhibit a higher risk of borrower default.

(C) Limitation on definition

The Federal banking agencies, the Commission, the Secretary of Housing and Urban Development, and the Director of the Federal Housing Finance Agency in defining the term "qualified residential mortgage", as required by subparagraph (B), shall define that term to be no broader than the definition "qualified mortgage" as the term is defined under section 129C(c)(2) of the Truth in Lending Act, as amended by the Consumer Financial Protection Act of 2010,[2] and regulations adopted thereunder.

(5) Condition for qualified residential mortgage exemption

The regulations issued under paragraph (4) shall provide that an asset-backed security that is collateralized by tranches of other asset-backed securities shall not be exempt from the risk retention requirements of this subsection.

(6) Certification

The Commission shall require an issuer to certify, for each issuance of an asset-backed security collateralized exclusively by qualified residential mortgages, that the issuer has evaluated the effectiveness of the internal supervisory controls of the issuer with respect to the process for ensuring that all assets that collateralize the asset-backed security are qualified residential mortgages.

(f) Enforcement

The regulations issued under this section shall be enforced by—

(1) the appropriate Federal banking agency, with respect to any securitizer that is an insured depository institution; and

(2) the Commission, with respect to any securitizer that is not an insured depository institution.

(g) Authority of Commission

The authority of the Commission under this section shall be in addition to the authority of the Commission to otherwise enforce the securities laws.

(h) Authority to coordinate on rulemaking

The Chairperson of the Financial Stability Oversight Council shall coordinate all joint rulemaking required under this section.

(i) Effective date of regulations

The regulations issued under this section shall become effective—

(1) with respect to securitizers and originators of asset-backed securities backed by residential mortgages, 1 year after the date on which final rules under this section are published in the Federal Register; and

(2) with respect to securitizers and originators of all other classes of asset-backed securities, 2 years after the date on which final rules under this section are published in the Federal Register.

(June 6, 1934, ch. 404, title I, §15G, as added Pub. L. 111–203, title IX, §941(b), July 21, 2010, 124 Stat. 1891.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (c)(1)(G)(iii), is title I of act May 27, 1933, ch. 38, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

Section 129C(c)(2) of the Truth in Lending Act, as amended by the Consumer Financial Protection Act of 2010, referred to in subsec. (e)(4)(C), probably means section 129C(b)(2) of Pub. L. 90–321, as amended by title X of Pub. L. 111–203, which defines "qualified mortgage" and is classified to section 1639c(b)(2) of this title.

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of Title 12, Banks and Banking.

[1] So in original. The word "and" probably should not appear.

[2] See References in Text note below.

§78p. Directors, officers, and principal stockholders

(a) Disclosures required

(1) Directors, officers, and principal stockholders required to file

Every person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security (other than an exempted security) which is registered pursuant to section 78l of this title, or who is a director or an officer of the issuer of such security, shall file the statements required by this subsection with the Commission.

(2) Time of filing

The statements required by this subsection shall be filed—

(A) at the time of the registration of such security on a national securities exchange or by the effective date of a registration statement filed pursuant to section 78l(g) of this title;

(B) within 10 days after he or she becomes such beneficial owner, director, or officer, or within such shorter time as the Commission may establish by rule;

(C) if there has been a change in such ownership, or if such person shall have purchased or sold a security-based swap agreement involving such equity security, before the end of the second business day following the day on which the subject transaction has been executed, or at such other time as the Commission shall establish, by rule, in any case in which the Commission determines that such 2-day period is not feasible.

(3) Contents of statements

A statement filed—

(A) under subparagraph (A) or (B) of paragraph (2) shall contain a statement of the amount of all equity securities of such issuer of which the filing person is the beneficial owner; and

(B) under subparagraph (C) of such paragraph shall indicate ownership by the filing person at the date of filing, any such changes in such ownership, and such purchases and sales of the security-based swap agreements or security-based swaps as have occurred since the most recent such filing under such subparagraph.

(4) Electronic filing and availability

Beginning not later than 1 year after July 30, 2002—

(A) a statement filed under subparagraph (C) of paragraph (2) shall be filed electronically;

(B) the Commission shall provide each such statement on a publicly accessible Internet site not later than the end of the business day following that filing; and

(C) the issuer (if the issuer maintains a corporate website) shall provide that statement on that corporate website, not later than the end of the business day following that filing.

(b) Profits from purchase and sale of security within six months

For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his relationship to the issuer, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such issuer (other than an exempted security) or a security-based swap agreement involving any such equity security within any period of less than six months, unless such security or security-based swap agreement was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the issuer, irrespective of any intention on the part of such beneficial owner, director, or officer in entering into such transaction of holding the security or security-based swap agreement purchased or of not repurchasing the security or security-based swap agreement sold for a period exceeding six months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the issuer, or by the owner of any security of the issuer in the name and in behalf of the issuer if the issuer shall fail or refuse to bring such suit within sixty days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than two years after the date such profit was realized. This subsection shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security or security-based swap agreement or a security-based swap involved, or any transaction or transactions which the Commission by rules and regulations may exempt as not comprehended within the purpose of this subsection.

(c) Conditions for sale of security by beneficial owner, director, or officer

It shall be unlawful for any such beneficial owner, director, or officer, directly or indirectly, to sell any equity security of such issuer (other than an exempted security), if the person selling the security or his principal (1) does not own the security sold, or (2) if owning the security, does not deliver it against such sale within twenty days thereafter, or does not within five days after such sale deposit it in the mails or other usual channels of transportation; but no person shall be deemed to have violated this subsection if he proves that notwithstanding the exercise of good faith he was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense.

(d) Securities held in investment account, transactions in ordinary course of business, and establishment of primary or secondary market

The provisions of subsection (b) of this section shall not apply to any purchase and sale, or sale and purchase, and the provisions of subsection (c) of this section shall not apply to any sale, of an equity security not then or theretofore held by him in an investment account, by a dealer in the ordinary course of his business and incident to the establishment or maintenance by him of a primary or secondary market (otherwise than on a national securities exchange or an exchange exempted from registration under section 78e of this title) for such security. The Commission may, by such rules and regulations as it deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

(e) Application of section to foreign or domestic arbitrage transactions

The provisions of this section shall not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules and regulations as the Commission may adopt in order to carry out the purposes of this section.

(f) Treatment of transactions in security futures products

The provisions of this section shall apply to ownership of and transactions in security futures products.

(g) Limitation on Commission authority

The authority of the Commission under this section with respect to security-based swap agreements shall be subject to the restrictions and limitations of section 78c–1(b) of this title.

(June 6, 1934, ch. 404, title I, §16, 48 Stat. 896; Pub. L. 88–467, §8, Aug. 20, 1964, 78 Stat. 579; Pub. L. 106–554, §1(a)(5) [title II, §208(b)(3), title III, §303(g), (h)], Dec. 21, 2000, 114 Stat. 2763, 2763A–435, 2763A–455, 2763A–456; Pub. L. 107–204, title IV, §403(a), July 30, 2002, 116 Stat. 788; Pub. L. 111–203, title VII, §762(d)(5), title IX, §929R(b), July 21, 2010, 124 Stat. 1761, 1867.)

AMENDMENT OF SECTION

Unless otherwise provided, amendment by subtitle B (§§761–774) of title VII of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see 2010 Amendment notes and Effective Date of 2010 Amendment note below.

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111–203, §929R(b)(1), struck out "(and, if such security is registered on a national securities exchange, also with the exchange)" after "Commission".

Subsec. (a)(2)(B). Pub. L. 111–203, §929R(b)(2), inserted ", or within such shorter time as the Commission may establish by rule" after "officer".

Subsec. (a)(2)(C). Pub. L. 111–203, §762(d)(5)(A), struck out "(as defined in section 206(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note))" after "security-based swap agreement".

Subsec. (a)(3)(B). Pub. L. 111–203, §762(d)(5)(B), which directed amendment of subpar. (B) by inserting "or security-based swaps" after "security-based swap agreement", was executed by making the insertion after

"security-based swap agreements", to reflect the probable intent of Congress.

Subsec. (b). Pub. L. 111–203, §762(d)(5)(D), which directed amendment of subsec. (b) by substituting "or a security-based swap" for "(as defined in section 206B of the Gramm-Leach Bliley Act)" in third sentence, was executed by making the substitution for "(as defined in section 206B of the Gramm-Leach-Bliley Act)" in third sentence, to reflect the probable intent of Congress.

Pub. L. 111–203, §762(d)(5)(C), struck out "(as defined in section 206B of the Gramm-Leach-Bliley Act)" after "security-based swap agreement" in first sentence.

Subsec. (g). Pub. L. 111–203, §762(d)(5)(E), struck out "(as defined in section 206B of the Gramm-Leach-Bliley Act)" after "security-based swap agreements".

2002—Pub. L. 107–204 reenacted section catchline without change, added heading and text of subsec. (a), and struck out former subsec. (a) which read as follows: "Every person who is directly or indirectly the beneficial owner of more than 10 per centum of any class of any equity security (other than an exempted security) which is registered pursuant to section 78l of this title, or who is a director or an officer of the issuer of such security, shall file, at the time of the registration of such security on a national securities exchange or by the effective date of a registration statement filed pursuant to section 78l(g) of this title, or within ten days after he becomes such beneficial owner, director, or officer, a statement with the Commission (and, if such security is registered on a national securities exchange, also with the exchange) of the amount of all equity securities of such issuer of which he is the beneficial owner, and within ten days after the close of each calendar month thereafter, if there has been a change in such ownership or if such person shall have purchased or sold a security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) involving such equity security during such month, shall file with the Commission (and if such security is registered on a national securities exchange, shall also file with the exchange), a statement indicating his ownership at the close of the calendar month and such changes in his ownership and such purchases and sales of such security-based swap agreements as have occurred during such calendar month."

2000—Subsecs. (a), (b). Pub. L. 106–554, §1(a)(5) [title III, §303(g)], amended subsecs. (a) and (b) generally, revising provisions to extend application to security-based swap agreements.

Subsec. (f). Pub. L. 106–554, §1(a)(5) [title II, §208(b)(3)], added subsec. (f).

Subsec. (g). Pub. L. 106–554, §1(a)(5) [title III, §303(h)], added subsec. (g).

1964—Subsec. (a). Pub. L. 88–467, §8(a), substituted "registered pursuant to section 78l of this title" for "registered on a national securities exchange", "Commission (and, if such security is registered on a national securities exchange, also with the exchange)" for "exchange (and a duplicate original thereof with the Commission)", "a change" for "any change", and "Commission (and if such security is registered on a national securities exchange, shall also file with the exchange) a statement" for "exchange a statement (and a duplicate original thereof with the Commission)", and inserted "on a national securities exchange or by the effective date of a registration statement filed pursuant to section 78l(g) of this title" after "registration of such security".

Subsecs. (d), (e). Pub. L. 88–467, §8(b), added subsec. (d) and redesignated former subsec. (d) as (e).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 929R(b) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Amendment by section 762(d)(5) of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761–774) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111–203, set out as a note under section 77b of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–204, title IV, §403(b), July 30, 2002, 116 Stat. 789, provided that: "The amendment made by this section [amending this section] shall be effective 30 days after the date of the enactment of this Act [July 30, 2002]."

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–467 effective Aug. 20, 1964, see section 13 of Pub. L. 88–467, set out as a note under section 78c of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set

out under section 78d of this title.

§78q. Records and reports

(a) Rules and regulations

(1) Every national securities exchange, member thereof, broker or dealer who transacts a business in securities through the medium of any such member, registered securities association, registered broker or dealer, registered municipal securities dealer municipal advisor,,[1] registered securities information processor, registered transfer agent, nationally recognized statistical rating organization, and registered clearing agency and the Municipal Securities Rulemaking Board shall make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter. Any report that a nationally recognized statistical rating organization is required by Commission rules under this paragraph to make and disseminate to the Commission shall be deemed furnished to the Commission.

(2) Every registered clearing agency shall also make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports, as the appropriate regulatory agency for such clearing agency, by rule, prescribes as necessary or appropriate for the safeguarding of securities and funds in the custody or control of such clearing agency or for which it is responsible.

(3) Every registered transfer agent shall also make and keep for prescribed periods such records, furnish such copies thereof, and make such reports as the appropriate regulatory agency for such transfer agent, by rule, prescribes as necessary or appropriate in furtherance of the purposes of section 78q–1 of this title.

(b) Records subject to examination

(1) Procedures for cooperation with other agencies

All records of persons described in subsection (a) of this section are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission and the appropriate regulatory agency for such persons as the Commission or the appropriate regulatory agency for such persons deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter: *Provided, however*, That the Commission shall, prior to conducting any such examination of a—

(A) registered clearing agency, registered transfer agent, or registered municipal securities dealer for which it is not the appropriate regulatory agency, give notice to the appropriate regulatory agency for such clearing agency, transfer agent, or municipal securities dealer of such proposed examination and consult with such appropriate regulatory agency concerning the feasibility and desirability of coordinating such examination with examinations conducted by such appropriate regulatory agency with a view to avoiding unnecessary regulatory duplication or undue regulatory burdens for such clearing agency, transfer agent, or municipal securities dealer; or

(B) broker or dealer registered pursuant to section 78o(b)(11) of this title, exchange registered pursuant to section 78f(g) of this title, or national securities association registered pursuant to section 78o–3(k) of this title, give notice to the Commodity Futures Trading Commission of such proposed examination and consults [2] with the Commodity Futures Trading Commission concerning the feasibility and desirability of coordinating such examination with examinations conducted by the Commodity Futures Trading Commission in order to avoid unnecessary regulatory duplication or undue regulatory burdens for such broker or dealer or exchange.

(2) Furnishing data and reports to CFTC

The Commission shall notify the Commodity Futures Trading Commission of any examination

conducted of any broker or dealer registered pursuant to section 78o(b)(11) of this title, exchange registered pursuant to section 78f(g) of this title, or national securities association registered pursuant to section 78o–3(k) of this title and, upon request, furnish to the Commission any examination report and data supplied to, or prepared by, the Commission in connection with such examination.

(3) Use of CFTC reports

Prior to conducting an examination under paragraph (1), the Commission shall use the reports of examinations, if the information available therein is sufficient for the purposes of the examination, of—

(A) any broker or dealer registered pursuant to section 78o(b)(11) of this title;

(B) exchange [3] registered pursuant to section 78f(g) of this title; or

(C) national [4] securities association registered pursuant to section 78o–3(k) of this title;

that is made by the Commodity Futures Trading Commission, a national securities association registered pursuant to section 78o–3(k) of this title, or an exchange registered pursuant to section 78f(g) of this title.

(4) Rules of construction

(A) Notwithstanding any other provision of this subsection, the records of a broker or dealer registered pursuant to section 78o(b)(11) of this title, an exchange registered pursuant to section 78f(g) of this title, or a national securities association registered pursuant to section 78o–3(k) of this title described in this subparagraph shall not be subject to routine periodic examinations by the Commission.

(B) Any recordkeeping rules adopted under this subsection for a broker or dealer registered pursuant to section 78o(b)(11) of this title, an exchange registered pursuant to section 78f(g) of this title, or a national securities association registered pursuant to section 78o–3(k) of this title shall be limited to records with respect to persons, accounts, agreements, contracts, and transactions involving security futures products.

(C) Nothing in the proviso in paragraph (1) shall be construed to impair or limit (other than by the requirement of prior consultation) the power of the Commission under this subsection to examine any clearing agency, transfer agent, or municipal securities dealer or to affect in any way the power of the Commission under any other provision of this chapter or otherwise to inspect, examine, or investigate any such clearing agency, transfer agent, or municipal securities dealer.

(c) Copies of reports filed with other regulatory agencies

(1) Every clearing agency, transfer agent, and municipal securities dealer for which the Commission is not the appropriate regulatory agency shall (A) file with the appropriate regulatory agency for such clearing agency, transfer agent, or municipal securities dealer a copy of any application, notice, proposal, report, or document filed with the Commission by reason of its being a clearing agency, transfer agent, or municipal securities dealer and (B) file with the Commission a copy of any application, notice, proposal, report, or document filed with such appropriate regulatory agency by reason of its being a clearing agency, transfer agent, or municipal securities dealer. The Municipal Securities Rulemaking Board shall file with each agency enumerated in section 78c(a)(34)(A) of this title copies of every proposed rule change filed with the Commission pursuant to section 78s(b) of this title.

(2) The appropriate regulatory agency for a clearing agency, transfer agent, or municipal securities dealer for which the Commission is not the appropriate regulatory agency shall file with the Commission notice of the commencement of any proceeding and a copy of any order entered by such appropriate regulatory agency against any clearing agency, transfer agent, municipal securities dealer, or person associated with a transfer agent or municipal securities dealer, and the Commission shall file with such appropriate regulatory agency, if any, notice of the commencement of any

proceeding and a copy of any order entered by the Commission against the clearing agency, transfer agent, or municipal securities dealer, or against any person associated with a transfer agent or municipal securities dealer for which the agency is the appropriate regulatory agency.

(3) The Commission and the appropriate regulatory agency for a clearing agency, transfer agent, or municipal securities dealer for which the Commission is not the appropriate regulatory agency shall each notify the other and make a report of any examination conducted by it of such clearing agency, transfer agent, or municipal securities dealer, and, upon request, furnish to the other a copy of such report and any data supplied to it in connection with such examination.

(4) The Commission or the appropriate regulatory agency may specify that documents required to be filed pursuant to this subsection with the Commission or such agency, respectively, may be retained by the originating clearing agency, transfer agent, or municipal securities dealer, or filed with another appropriate regulatory agency. The Commission or the appropriate regulatory agency (as the case may be) making such a specification shall continue to have access to the document on request.

(d) Self-regulatory organizations

(1) The Commission, by rule or order, as it deems necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among self-regulatory organizations, or to remove impediments to and foster the development of a national market system and national system for the clearance and settlement of securities transactions, may—

(A) with respect to any person who is a member of or participant in more than one self-regulatory organization, relieve any such self-regulatory organization of any responsibility under this chapter (i) to receive regulatory reports from such person, (ii) to examine such person for compliance, or to enforce compliance by such person, with specified provisions of this chapter, the rules and regulations thereunder, and its own rules, or (iii) to carry out other specified regulatory functions with respect to such person, and

(B) allocate among self-regulatory organizations the authority to adopt rules with respect to matters as to which, in the absence of such allocation, such self-regulatory organizations share authority under this chapter.

In making any such rule or entering any such order, the Commission shall take into consideration the regulatory capabilities and procedures of the self-regulatory organizations, availability of staff, convenience of location, unnecessary regulatory duplication, and such other factors as the Commission may consider germane to the protection of investors, cooperation and coordination among self-regulatory organizations, and the development of a national market system and a national system for the clearance and settlement of securities transactions. The Commission, by rule or order, as it deems necessary or appropriate in the public interest and for the protection of investors, may require any self-regulatory organization relieved of any responsibility pursuant to this paragraph, and any person with respect to whom such responsibility relates, to take such steps as are specified in any such rule or order to notify customers of, and persons doing business with, such person of the limited nature of such self-regulatory organization's responsibility for such person's acts, practices, and course of business.

(2) A self-regulatory organization shall furnish copies of any report of examination of any person who is a member of or a participant in such self-regulatory organization to any other self-regulatory organization of which such person is a member or in which such person is a participant upon the request of such person, such other self-regulatory organization, or the Commission.

(e) Balance sheet and income statement; other financial statements and information

(1)(A) Every registered broker or dealer shall annually file with the Commission a balance sheet and income statement certified by a [5] independent public accounting firm, or by a registered public accounting firm if the firm is required to be registered under the Sarbanes-Oxley Act of 2002,,[1] prepared on a calendar or fiscal year basis, and such other financial statements (which shall, as the

Commission specifies, be certified) and information concerning its financial condition as the Commission, by rule may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(B) Every registered broker and dealer shall annually send to its customers its certified balance sheet and such other financial statements and information concerning its financial condition as the Commission, by rule, may prescribe pursuant to subsection (a) of this section.

(C) The Commission, by rule or order, may conditionally or unconditionally exempt any registered broker or dealer, or class of such brokers or dealers, from any provision of this paragraph if the Commission determines that such exemption is consistent with the public interest and the protection of investors.

(2) The Commission, by rule, as it deems necessary or appropriate in the public interest or for the protection of investors, may prescribe the form and content of financial statements filed pursuant to this chapter and the accounting principles and accounting standards used in their preparation.

(f) Missing, lost, counterfeit, and stolen securities

(1) Every national securities exchange, member thereof, registered securities association, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, registered transfer agent, registered clearing agency, participant therein, member of the Federal Reserve System, and bank whose deposits are insured by the Federal Deposit Insurance Corporation shall—

(A) report to the Commission or other person designated by the Commission and, in the case of securities issued pursuant to chapter 31 of title 31, to the Secretary of the Treasury such information about securities that are missing, lost, counterfeit, stolen, or cancelled, in such form and within such time as the Commission, by rule, determines is necessary or appropriate in the public interest or for the protection of investors; such information shall be available on request for a reasonable fee, to any such exchange, member, association, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, transfer agent, clearing agency, participant, member of the Federal Reserve System, or insured bank, and such other persons as the Commission, by rule, designates; and

(B) make such inquiry with respect to information reported pursuant to this subsection as the Commission, by rule, prescribes as necessary or appropriate in the public interest or for the protection of investors, to determine whether securities in their custody or control, for which they are responsible, or in which they are effecting, clearing, or settling a transaction have been reported as missing, lost, counterfeit, stolen, cancelled, or reported in such other manner as the Commission, by rule, may prescribe.

(2) Every member of a national securities exchange, broker, dealer, registered transfer agent, registered clearing agency, registered securities information processor, national securities exchange, and national securities association shall require that each of its partners, directors, officers, and employees be fingerprinted and shall submit such fingerprints, or cause the same to be submitted, to the Attorney General of the United States for identification and appropriate processing. The Commission, by rule, may exempt from the provisions of this paragraph upon specified terms, conditions, and periods, any class of partners, directors, officers, or employees of any such member, broker, dealer, transfer agent, clearing agency, securities information processor, national securities exchange, or national securities association, if the Commission finds that such action is not inconsistent with the public interest or the protection of investors. Notwithstanding any other provision of law, in providing identification and processing functions, the Attorney General shall provide the Commission and self-regulatory organizations designated by the Commission with access to all criminal history record information.

(3)(A) In order to carry out the authority under paragraph (1) above, the Commission or its designee may enter into agreement with the Attorney General to use the facilities of the National Crime Information Center ("NCIC") to receive, store, and disseminate information in regard to missing, lost, counterfeit, or stolen securities and to permit direct inquiry access to NCIC's file on such securities for the financial community.

(B) In order to carry out the authority under paragraph (1) of this subsection, the Commission or its designee and the Secretary of the Treasury shall enter into an agreement whereby the Commission or its designee will receive, store, and disseminate information in the possession, and which comes into the possession, of the Department of the Treasury in regard to missing, lost, counterfeit, or stolen securities.

(4) In regard to paragraphs (1), (2), and (3), above insofar as such paragraphs apply to any bank or member of the Federal Reserve System, the Commission may delegate its authority to:

(A) the Comptroller of the Currency as to national banks;

(B) the Federal Reserve Board in regard to any member of the Federal Reserve System which is not a national bank; and

(C) the Federal Deposit Insurance Corporation for any State bank which is insured by the Federal Deposit Insurance Corporation but which is not a member of the Federal Reserve System.

(5) The Commission shall encourage the insurance industry to require their insured to report expeditiously instances of missing, lost, counterfeit, or stolen securities to the Commission or to such other person as the Commission may, by rule, designate to receive such information.

(g) Persons extending credit

Any broker, dealer, or other person extending credit who is subject to the rules and regulations prescribed by the Board of Governors of the Federal Reserve System pursuant to this chapter shall make such reports to the Board as it may require as necessary or appropriate to enable it to perform the functions conferred upon it by this chapter. If any such broker, dealer, or other person shall fail to make any such report or fail to furnish full information therein, or, if in the judgment of the Board it is otherwise necessary, such broker, dealer, or other person shall permit such inspections to be made by the Board with respect to the business operations of such broker, dealer, or other person as the Board may deem necessary to enable it to obtain the required information.

(h) Risk assessment for holding company systems

(1) Obligations to obtain, maintain, and report information

Every person who is (A) a registered broker or dealer, or (B) a registered municipal securities dealer for which the Commission is the appropriate regulatory agency, shall obtain such information and make and keep such records as the Commission by rule prescribes concerning the registered person's policies, procedures, or systems for monitoring and controlling financial and operational risks to it resulting from the activities of any of its associated persons, other than a natural person. Such records shall describe, in the aggregate, each of the financial and securities activities conducted by, and the customary sources of capital and funding of, those of its associated persons whose business activities are reasonably likely to have a material impact on the financial or operational condition of such registered person, including its net capital, its liquidity, or its ability to conduct or finance its operations. The Commission, by rule, may require summary reports of such information to be filed with the Commission no more frequently than quarterly.

(2) Authority to require additional information

If, as a result of adverse market conditions or based on reports provided to the Commission pursuant to paragraph (1) of this subsection or other available information, the Commission reasonably concludes that it has concerns regarding the financial or operational condition of (A) any registered broker or dealer, or (B) any registered municipal securities dealer, government securities broker, or government securities dealer for which the Commission is the appropriate regulatory agency, the Commission may require the registered person to make reports concerning the financial and securities activities of any of such person's associated persons, other than a natural person, whose business activities are reasonably likely to have a material impact on the financial or operational condition of such registered person. The Commission, in requiring reports pursuant to this paragraph, shall specify the information required, the period for which it is

required, the time and date on which the information must be furnished, and whether the information is to be furnished directly to the Commission or to a self-regulatory organization with primary responsibility for examining the registered person's financial and operational condition.

(3) Special provisions with respect to associated persons subject to Federal banking agency regulation

(A) Cooperation in implementation

In developing and implementing reporting requirements pursuant to paragraph (1) of this subsection with respect to associated persons subject to examination by or reporting requirements of a Federal banking agency, the Commission shall consult with and consider the views of each such Federal banking agency. If a Federal banking agency comments in writing on a proposed rule of the Commission under this subsection that has been published for comment, the Commission shall respond in writing to such written comment before adopting the proposed rule. The Commission shall, at the request of the Federal banking agency, publish such comment and response in the Federal Register at the time of publishing the adopted rule.

(B) Use of banking agency reports

A registered broker, dealer, or municipal securities dealer shall be in compliance with any recordkeeping or reporting requirement adopted pursuant to paragraph (1) of this subsection concerning an associated person that is subject to examination by or reporting requirements of a Federal banking agency if such broker, dealer, or municipal securities dealer utilizes for such recordkeeping or reporting requirement copies of reports filed by the associated person with the Federal banking agency pursuant to section 161 of title 12, subchapter VIII of chapter 3 of title 12, section 1817(a) of title 12, section 1467a(b) of title 12, or section 1847 of title 12. The Commission may, however, by rule adopted pursuant to paragraph (1), require any broker, dealer, or municipal securities dealer filing such reports with the Commission to obtain, maintain, or report supplemental information if the Commission makes an explicit finding that such supplemental information is necessary to inform the Commission regarding potential risks to such broker, dealer, or municipal securities dealer. Prior to requiring any such supplemental information, the Commission shall first request the Federal banking agency to expand its reporting requirements to include such information.

(C) Procedure for requiring additional information

Prior to making a request pursuant to paragraph (2) of this subsection for information with respect to an associated person that is subject to examination by or reporting requirements of a Federal banking agency, the Commission shall—

(i) notify such agency of the information required with respect to such associated person; and

(ii) consult with such agency to determine whether the information required is available from such agency and for other purposes, unless the Commission determines that any delay resulting from such consultation would be inconsistent with ensuring the financial and operational condition of the broker, dealer, municipal securities dealer, government securities broker, or government securities dealer or the stability or integrity of the securities markets.

(D) Exclusion for examination reports

Nothing in this subsection shall be construed to permit the Commission to require any registered broker or dealer, or any registered municipal securities dealer, government securities broker, or government securities dealer for which the Commission is the appropriate regulatory agency, to obtain, maintain, or furnish any examination report of any Federal banking agency or any supervisory recommendations or analysis contained therein.

(E) Confidentiality of information provided

No information provided to or obtained by the Commission from any Federal banking agency pursuant to a request by the Commission under subparagraph (C) of this paragraph regarding any associated person which is subject to examination by or reporting requirements of a Federal

banking agency may be disclosed to any other person (other than a self-regulatory organization), without the prior written approval of the Federal banking agency. Nothing in this subsection shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission.

(F) Notice to banking agencies concerning financial and operational condition concerns

The Commission shall notify the Federal banking agency of any concerns of the Commission regarding significant financial or operational risks resulting from the activities of any registered broker or dealer, or any registered municipal securities dealer, government securities broker, or government securities dealer for which the Commission is the appropriate regulatory agency, to any associated person thereof which is subject to examination by or reporting requirements of the Federal banking agency.

(G) "Federal banking agency" defined

For purposes of this paragraph, the term "Federal banking agency" shall have the same meaning as the term "appropriate Federal bank agency" in section 1813(q) of title 12.

(4) Exemptions

The Commission by rule or order may exempt any person or class of persons, under such terms and conditions and for such periods as the Commission shall provide in such rule or order, from the provisions of this subsection, and the rules thereunder. In granting such exemptions, the Commission shall consider, among other factors—

(A) whether information of the type required under this subsection is available from a supervisory agency (as defined in section 3401(6) [6] of title 12), a State insurance commission or similar State agency, the Commodity Futures Trading Commission, or a similar foreign regulator;

(B) the primary business of any associated person;

(C) the nature and extent of domestic or foreign regulation of the associated person's activities;

(D) the nature and extent of the registered person's securities activities; and

(E) with respect to the registered person and its associated persons, on a consolidated basis, the amount and proportion of assets devoted to, and revenues derived from, activities in the United States securities markets.

(5) Authority to limit disclosure of information

Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information required to be reported under this subsection, or any information supplied to the Commission by any domestic or foreign regulatory agency that relates to the financial or operational condition of any associated person of a registered broker, dealer, government securities broker, government securities dealer, or municipal securities dealer. Nothing in this subsection shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552. In prescribing regulations to carry out the requirements of this subsection, the Commission shall designate information described in or obtained pursuant to subparagraph (B) or (C) of paragraph (3) of this subsection as confidential information for purposes of section 78x(b)(2) of this title.

(i) Authority to limit disclosure of information

Notwithstanding any other provision of law, the Commission shall not be compelled to disclose

any information required to be reported under subsection (h) or (i) [6] of this section or any information supplied to the Commission by any domestic or foreign regulatory agency that relates to the financial or operational condition of any associated person of a broker or dealer, investment bank holding company, or any affiliate of an investment bank holding company. Nothing in this subsection shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency or any self-regulatory organization requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552. In prescribing regulations to carry out the requirements of this subsection, the Commission shall designate information described in or obtained pursuant to subparagraphs (A), (B), and (C) of subsection (i)(5) [6] of this section as confidential information for purposes of section 78x(b)(2) of this title.

(j) Coordination of examining authorities

(1) Elimination of duplication

The Commission and the examining authorities, through cooperation and coordination of examination and oversight activities, shall eliminate any unnecessary and burdensome duplication in the examination process.

(2) Coordination of examinations

The Commission and the examining authorities shall share such information, including reports of examinations, customer complaint information, and other nonpublic regulatory information, as appropriate to foster a coordinated approach to regulatory oversight of brokers and dealers that are subject to examination by more than one examining authority.

(3) Examinations for cause

At any time, any examining authority may conduct an examination for cause of any broker or dealer subject to its jurisdiction.

(4) Confidentiality

(A) In general

Section 78x of this title shall apply to the sharing of information in accordance with this subsection. The Commission shall take appropriate action under section 78x(c) of this title to ensure that such information is not inappropriately disclosed.

(B) Appropriate disclosure not prohibited

Nothing in this paragraph authorizes the Commission or any examining authority to withhold information from the Congress, or prevent the Commission or any examining authority from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission.

(5) "Examining authority" defined

For purposes of this subsection, the term "examining authority" means a self-regulatory organization registered with the Commission under this chapter (other than a registered clearing agency) with the authority to examine, inspect, and otherwise oversee the activities of a registered broker or dealer.

(June 6, 1934, ch. 404, title I, §17, 48 Stat. 897; May 27, 1936, ch. 462, §4, 49 Stat. 1379; June 25, 1938, ch. 677, §5, 52 Stat. 1076; Pub. L. 94–29, §14, June 4, 1975, 89 Stat. 137; Pub. L. 99–571, title I, §102(h), (i), Oct. 28, 1986, 100 Stat. 3219; Pub. L. 100–181, title III, §321, title VIII, §801(b), Dec. 4, 1987, 101 Stat. 1257, 1265; Pub. L. 101–432, §4(a), Oct. 16, 1990, 104 Stat. 966; Pub. L. 104–290, title I, §108, Oct. 11, 1996, 110 Stat. 3425; Pub. L. 105–353, title III, §301(b)(5), Nov. 3,

1998, 112 Stat. 3236; Pub. L. 106–102, title II, §231(a), Nov. 12, 1999, 113 Stat. 1402; Pub. L. 106–554, §1(a)(5) [title II, §204], Dec. 21, 2000, 114 Stat. 2763, 2763A–424; Pub. L. 107–204, title II, §205(c)(2), July 30, 2002, 116 Stat. 774; Pub. L. 108–386, §8(f)(5), (6), Oct. 30, 2004, 118 Stat. 2232; Pub. L. 109–291, §5, Sept. 29, 2006, 120 Stat. 1338; Pub. L. 111–203, title VI, §617(a), title IX, §§929D, 929S, 975(h), 982(e)(2), 985(b)(7), July 21, 2010, 124 Stat. 1616, 1853, 1867, 1923, 1929, 1934.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1), (b), (d)(1)(A), (B), (e)(2), (g), and (j)(5), was in the original "this title". See References in Text note set out under section 78a of this title.

The Sarbanes-Oxley Act of 2002, referred to in subsec. (e)(1)(A), is Pub. L. 107–204, July 30, 2002, 116 Stat. 745. For complete classification of this Act to the Code, see Short Title note set out under section 7201 of this title and Tables.

Subchapter VIII of chapter 3 of title 12, referred to in subsec. (h)(3)(B), was in the original "section 9 of the Federal Reserve Act", meaning section 9 of act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, which is classified generally to subchapter VIII (§321 et seq.) of chapter 3 of Title 12, Banks and Banking.

Section 3401(6) of title 12, referred to in subsec. (h)(4)(A), was redesignated section 3401(7) of title 12 by Pub. L. 101–73, title IX, §941(1), Aug. 9, 1989, 103 Stat. 496.

Subsection (i) of this section, referred to in subsec. (i), was repealed, and subsec. (j) was redesignated (i), by Pub. L. 111–203, §617(a). See 2010 Amendment note below.

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111–203, §975(h), inserted "municipal advisor," after "municipal securities dealer".

Subsec. (b)(1)(B). Pub. L. 111–203, §985(b)(7), substituted "give notice to" for "gives notice to".

Subsec. (e)(1)(A). Pub. L. 111–203, §982(e)(2), substituted "independent public accounting firm, or by a registered public accounting firm if the firm is required to be registered under the Sarbanes-Oxley Act of 2002," for "registered public accounting firm".

Subsec. (f)(1)(A). Pub. L. 111–203, §929D(1), substituted "securities that are missing, lost, counterfeit, stolen, or cancelled" for "missing, lost, counterfeit, or stolen securities".

Subsec. (f)(1)(B). Pub. L. 111–203, §929D(2), substituted "stolen, cancelled, or reported in such other manner as the Commission, by rule, may prescribe" for "or stolen".

Subsec. (f)(2). Pub. L. 111–203, §929S, in first sentence, substituted "registered clearing agency, registered securities information processor, national securities exchange, and national securities association" for "and registered clearing agency," and, in second sentence, substituted "clearing agency, securities information processor, national securities exchange, or national securities association," for "or clearing agency,".

Subsecs. (i) to (k). Pub. L. 111–203, §617(a), redesignated subsecs. (j) and (k) as (i) and (j), respectively, and struck out former subsec. (i) which related to supervision of investment bank holding companies and recordkeeping and reporting requirements.

2006—Subsec. (a)(1). Pub. L. 109–291 inserted "nationally recognized statistical rating organization," after "registered transfer agent," and inserted at end "Any report that a nationally recognized statistical rating organization is required by Commission rules under this paragraph to make and disseminate to the Commission shall be deemed furnished to the Commission."

2004—Subsec. (f)(4)(A). Pub. L. 108–386, §8(f)(5), struck out "and banks operating under the Code of Law for the District of Columbia" before semicolon.

Subsec. (f)(4)(B). Pub. L. 108–386, §8(f)(6), struck out "or a bank operating under the Code of Law for the District of Columbia" before semicolon.

2002—Subsecs. (e)(1)(A), (i)(3)(A)(ii). Pub. L. 107–204 substituted "a registered public accounting firm" for "an independent public accountant".

2000—Subsec. (b). Pub. L. 106–554, §1(a)(5) [title II, §204(5)], which directed amendment of subsec. (b) by adding at the end pars. (2) to (4)(B), was executed by making the addition after par. (1), to reflect the probable intent of Congress.

Pub. L. 106–554, §1(a)(5) [title II, §204(1) to (4), (6)], inserted subsec. heading, inserted par. (1) designation and heading before "All", substituted "prior to conducting any such examination of a—" for "prior to conducting any such examination of a", inserted subpar. (A) designation before "registered clearing", added subpar. (B), designated last sentence as par. (4)(C) and substituted "Nothing in the proviso in paragraph (1)" for "Nothing in the proviso to the preceding sentence".

1999—Subsecs. (i) to (k). Pub. L. 106–102 added subsecs. (i) and (j) and redesignated former subsec. (i) as

(k).

1998—Subsec. (g). Pub. L. 105–353 substituted "Board of Governors of the Federal Reserve System" for "Federal Reserve Board" in first sentence.

1996—Subsec. (i). Pub. L. 104–290 added subsec. (i).

1990—Subsec. (h). Pub. L. 101–432 added subsec. (h).

1987—Subsec. (c)(2). Pub. L. 100–181, §321(1), substituted new par. (2) for former par. (2) which read as follows: "The appropriate regulatory agency for a clearing agency, transfer agent, or municipal securities dealer for which the Commission is not the appropriate regulatory agency shall file with the Commission notice of the commencement of any proceeding and a copy of any order entered by such appropriate regulatory agency against such clearing agency, transfer agent, or municipal securities dealer, and the Commission shall file with such appropriate regulatory agency notice of the commencement of any proceeding and a copy of any order entered by the Commission against such clearing agency, transfer agent, or municipal securities dealer."

Subsec. (f)(1)(A). Pub. L. 100–181, §801(b), substituted "securities issued pursuant to chapter 31 of title 31" for "government securities".

Subsec. (f)(2). Pub. L. 100–181, §321(2), inserted at end "Notwithstanding any other provision of law, in providing identification and processing functions, the Attorney General shall provide the Commission and self-regulatory organizations designated by the Commission with access to all criminal history record information."

Subsec. (f)(3)(A). Pub. L. 100–181, §321(3), substituted "paragraph (1)" for "paragraphs (1) and (2)".

1986—Subsec. (c)(4). Pub. L. 99–571, §102(h), added par. (4).

Subsec. (f)(1). Pub. L. 99–571, §102(i)(1), inserted "government securities broker, government securities dealer," in introductory provisions and in subpar. (A).

Subsec. (f)(1)(A). Pub. L. 99–571, §102(i)(2), inserted "and, in the case of government securities, to the Secretary of the Treasury".

Subsec. (f)(3). Pub. L. 99–571, §102(i)(3), designated existing provisions as subpar. (A) and added subpar. (B).

1975—Subsec. (a). Pub. L. 94–29 designated existing provisions as par. (1), expanded the coverage to require registered municipal securities dealers, the Municipal Securities Rulemaking Board, registered securities information processors, and registered clearing agencies to make and keep such records, to furnish copies thereof, and to make such reports as the Commission may prescribe and clarified the Commission's authority to require the dissemination of reports submitted pursuant to the rules of the Commission, and added pars. (2) and (3).

Subsecs. (b) to (g). Pub. L. 94–29 added subsecs. (b) to (f) and redesignated former subsec. (b) as (g).

1938—Subsec. (a). Act June 25, 1938, inserted "every registered securities association".

1936—Subsec. (a). Act May 27, 1936, substituted "every broker or dealer registered pursuant to section 78o of this title" for "every broker or dealer making or creating a market for both the purchase and sale of securities through the use of the mails or of any means or instrumentality of interstate commerce".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 929D, 929S, 982(e)(2), and 985(b)(7) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Pub. L. 111–203, title VI, §617(b), July 21, 2010, 124 Stat. 1616, provided that: "The amendments made by this section [amending this section] shall take effect on the transfer date."

[For definition of "transfer date" as used in section 617(b) of Pub. L. 111–203, set out above, see section 5301 of Title 12, Banks and Banking.]

Amendment by section 975(h) of Pub. L. 111–203 effective Oct. 1, 2010, see section 975(i) of Pub. L. 111–203, set out as a note under section 78o of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–386 effective Oct. 30, 2004, and, except as otherwise provided, applicable with respect to fiscal year 2005 and each succeeding fiscal year, see sections 8(i) and 9 of Pub. L. 108–386, set out as notes under section 321 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–571 effective 270 days after Oct. 28, 1986, see section 401 of Pub. L. 99–571, set out as an Effective Date note under section 78o–5 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

[1] *So in original.*

[2] *So in original. Probably should be "consult".*

[3] *So in original. Probably should be preceded by "an".*

[4] *So in original. Probably should be preceded by "a".*

[5] *So in original. Probably should be "an".*

[6] *See References in Text note below.*

§78q–1. National system for clearance and settlement of securities transactions

(a) Congressional findings; facilitating establishment of system

(1) The Congress finds that—

(A) The prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and funds related thereto, are necessary for the protection of investors and persons facilitating transactions by and acting on behalf of investors.

(B) Inefficient procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors.

(C) New data processing and communications techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement.

(D) The linking of all clearance and settlement facilities and the development of uniform standards and procedures for clearance and settlement will reduce unnecessary costs and increase the protection of investors and persons facilitating transactions by and acting on behalf of investors.

(2)(A) The Commission is directed, therefore, having due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and maintenance of fair competition among brokers and dealers, clearing agencies, and transfer agents, to use its authority under this chapter—

(i) to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities (other than exempt securities); and

(ii) to facilitate the establishment of linked or coordinated facilities for clearance and settlement of transactions in securities, securities options, contracts of sale for future delivery and options thereon, and commodity options;

in accordance with the findings and to carry out the objectives set forth in paragraph (1) of this subsection.

(B) The Commission shall use its authority under this chapter to assure equal regulation under this chapter of registered clearing agencies and registered transfer agents. In carrying out its

responsibilities set forth in subparagraph (A)(ii) of this paragraph, the Commission shall coordinate with the Commodity Futures Trading Commission and consult with the Board of Governors of the Federal Reserve System.

(b) Registration of clearing agencies; application; determinations by Commission requisite to registration of applicant as clearing agency; denial of participation; discipline; summary proceedings; exemption; facilities for handling derivatives

(1) Except as otherwise provided in this section, it shall be unlawful for any clearing agency, unless registered in accordance with this subsection, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a clearing agency with respect to any security (other than an exempted security). The Commission, by rule or order, upon its own motion or upon application, may conditionally or unconditionally exempt any clearing agency or security or any class of clearing agencies or securities from any provisions of this section or the rules or regulations thereunder, if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of this section, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds. A clearing agency or transfer agent shall not perform the functions of both a clearing agency and a transfer agent unless such clearing agency or transfer agent is registered in accordance with this subsection and subsection (c) of this section.

(2) A clearing agency may be registered under the terms and conditions hereinafter provided in this subsection and in accordance with the provisions of section 78s(a) of this title, by filing with the Commission an application for registration in such form as the Commission, by rule, may prescribe containing the rules of the clearing agency and such other information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the prompt and accurate clearance and settlement of securities transactions.

(3) A clearing agency shall not be registered unless the Commission determines that—

(A) Such clearing agency is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible, to safeguard securities and funds in its custody or control or for which it is responsible, to comply with the provisions of this chapter and the rules and regulations thereunder, to enforce (subject to any rule or order of the Commission pursuant to section 78q(d) or 78s(g)(2) of this title) compliance by its participants with the rules of the clearing agency, and to carry out the purposes of this section.

(B) Subject to the provisions of paragraph (4) of this subsection, the rules of the clearing agency provide that any (i) registered broker or dealer, (ii) other registered clearing agency, (iii) registered investment company, (iv) bank, (v) insurance company, or (vi) other person or class of persons as the Commission, by rule, may from time to time designate as appropriate to the development of a national system for the prompt and accurate clearance and settlement of securities transactions may become a participant in such clearing agency.

(C) The rules of the clearing agency assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs. (The Commission may determine that the representation of participants is fair if they are afforded a reasonable opportunity to acquire voting stock of the clearing agency, directly or indirectly, in reasonable proportion to their use of such clearing agency.)

(D) The rules of the clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.

(E) The rules of the clearing agency do not impose any schedule of prices, or fix rates or other fees, for services rendered by its participants.

(F) The rules of the clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and

accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency, or to regulate by virtue of any authority conferred by this chapter matters not related to the purposes of this section or the administration of the clearing agency.

(G) The rules of the clearing agency provide that (subject to any rule or order of the Commission pursuant to section 78q(d) or 78s(g)(2) of this title) its participants shall be appropriately disciplined for violation of any provision of the rules of the clearing agency by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, or any other fitting sanction.

(H) The rules of the clearing agency are in accordance with the provisions of paragraph (5) of this subsection, and, in general, provide a fair procedure with respect to the disciplining of participants, the denial of participation to any person seeking participation therein, and the prohibition or limitation by the clearing agency of any person with respect to access to services offered by the clearing agency.

(I) The rules of the clearing agency do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.

(4)(A) A registered clearing agency may, and in cases in which the Commission, by order, directs as appropriate in the public interest shall, deny participation to any person subject to a statutory disqualification. A registered clearing agency shall file notice with the Commission not less than thirty days prior to admitting any person to participation, if the clearing agency knew, or in the exercise of reasonable care should have known, that such person was subject to a statutory disqualification. The notice shall be in such form and contain such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(B) A registered clearing agency may deny participation to, or condition the participation of, any person if such person does not meet such standards of financial responsibility, operational capability, experience, and competence as are prescribed by the rules of the clearing agency. A registered clearing agency may examine and verify the qualifications of an applicant to be a participant in accordance with procedures established by the rules of the clearing agency.

(5)(A) In any proceeding by a registered clearing agency to determine whether a participant should be disciplined (other than a summary proceeding pursuant to subparagraph (C) of this paragraph), the clearing agency shall bring specific charges, notify such participant of, and give him an opportunity to defend against such charges, and keep a record. A determination by the clearing agency to impose a disciplinary sanction shall be supported by a statement setting forth—

(i) any act or practice in which such participant has been found to have engaged, or which such participant has been found to have omitted;

(ii) the specific provisions of the rules of the clearing agency which any such act or practice, or omission to act, is deemed to violate; and

(iii) the sanction imposed and the reasons therefor.

(B) In any proceeding by a registered clearing agency to determine whether a person shall be denied participation or prohibited or limited with respect to access to services offered by the clearing agency, the clearing agency shall notify such person of, and give him an opportunity to be heard upon, the specific grounds for denial or prohibition or limitation under consideration and keep a record. A determination by the clearing agency to deny participation or prohibit or limit a person with respect to access to services offered by the clearing agency shall be supported by a statement setting forth the specific grounds on which the denial or prohibition or limitation is based.

(C) A registered clearing agency may summarily suspend and close the accounts of a participant who (i) has been and is expelled or suspended from any self-regulatory organization, (ii) is in default of any delivery of funds or securities to the clearing agency, or (iii) is in such financial or operating difficulty that the clearing agency determines and so notifies the appropriate regulatory agency for

such participant that such suspension and closing of accounts are necessary for the protection of the clearing agency, its participants, creditors, or investors. A participant so summarily suspended shall be promptly afforded an opportunity for a hearing by the clearing agency in accordance with the provisions of subparagraph (A) of this paragraph. The appropriate regulatory agency for such participant, by order, may stay any such summary suspension on its own motion or upon application by any person aggrieved thereby, if such appropriate regulatory agency determines summarily or after notice and opportunity for hearing (which hearing may consist solely of the submission of affidavits or presentation of oral arguments) that such stay is consistent with the public interest and protection of investors.

(6) No registered clearing agency shall prohibit or limit access by any person to services offered by any participant therein.

(7)(A) A clearing agency that is regulated directly or indirectly by the Commodity Futures Trading Commission through its association with a designated contract market for security futures products that is a national securities exchange registered pursuant to section 78f(g) of this title, and that would be required to register pursuant to paragraph (1) of this subsection only because it performs the functions of a clearing agency with respect to security futures products effected pursuant to the rules of the designated contract market with which such agency is associated, is exempted from the provisions of this section and the rules and regulations thereunder, except that if such a clearing agency performs the functions of a clearing agency with respect to a security futures product that is not cash settled, it must have arrangements in place with a registered clearing agency to effect the payment and delivery of the securities underlying the security futures product.

(B) Any clearing agency that performs the functions of a clearing agency with respect to security futures products must coordinate with and develop fair and reasonable links with any and all other clearing agencies that perform the functions of a clearing agency with respect to security futures products, in order to permit, as of the compliance date (as defined in section 78f(h)(6)(C) [1] of this title), security futures products to be purchased on one market and offset on another market that trades such products.

(8) A registered clearing agency shall be permitted to provide facilities for the clearance and settlement of any derivative agreements, contracts, or transactions that are excluded from the Commodity Exchange Act [7 U.S.C. 1 et seq.], subject to the requirements of this section and to such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter.

(c) Registration of transfer agents

(1) Except as otherwise provided in this section, it shall be unlawful for any transfer agent, unless registered in accordance with this section, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the function of a transfer agent with respect to any security registered under section 78l of this title or which would be required to be registered except for the exemption from registration provided by subsection (g)(2)(B) or (g)(2)(G) of that section. The appropriate regulatory agency, by rule or order, upon its own motion or upon application, may conditionally or unconditionally exempt any person or security or class of persons or securities from any provision of this section or any rule or regulation prescribed under this section, if the appropriate regulatory agency finds (A) that such exemption is in the public interest and consistent with the protection of investors and the purposes of this section, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds, and (B) the Commission does not object to such exemption.

(2) A transfer agent may be registered by filing with the appropriate regulatory agency for such transfer agent an application for registration in such form and containing such information and documents concerning such transfer agent and any persons associated with the transfer agent as such appropriate regulatory agency may prescribe as necessary or appropriate in furtherance of the purposes of this section. Except as hereinafter provided, such registration shall become effective 45 days after receipt of such application by such appropriate regulatory agency or within such shorter period of time as such appropriate regulatory agency may determine.

(3) The appropriate regulatory agency for a transfer agent, by order, shall deny registration to, censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding 12 months, or revoke the registration of such transfer agent, if such appropriate regulatory agency finds, on the record after notice and opportunity for hearing, that such denial, censure, placing of limitations, suspension, or revocation is in the public interest and that such transfer agent, whether prior or subsequent to becoming such, or any person associated with such transfer agent, whether prior or subsequent to becoming so associated—

(A) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (H), or (G) of paragraph (4) of section 78o(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within ten years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4); or

(B) is subject to an order entered pursuant to subparagraph (C) of paragraph (4) of this subsection barring or suspending the right of such person to be associated with a transfer agent.

(4)(A) Pending final determination whether any registration by a transfer agent under this subsection shall be denied, the appropriate regulatory agency for such transfer agent, by order, may postpone the effective date of such registration for a period not to exceed fifteen days, but if, after notice and opportunity for hearing (which may consist solely of affidavits and oral arguments), it shall appear to such appropriate regulatory agency to be necessary or appropriate in the public interest or for the protection of investors to postpone the effective date of such registration until final determination, such appropriate regulatory agency shall so order. Pending final determination whether any registration under this subsection shall be revoked, such appropriate regulatory agency, by order, may suspend such registration, if such suspension appears to such appropriate regulatory agency, after notice and opportunity for hearing, to be necessary or appropriate in the public interest or for the protection of investors.

(B) A registered transfer agent may, upon such terms and conditions as the appropriate regulatory agency for such transfer agent deems necessary or appropriate in the public interest, for the protection of investors, or in furtherance of the purposes of this section, withdraw from registration by filing a written notice of withdrawal with such appropriate regulatory agency. If such appropriate regulatory agency finds that any transfer agent for which it is the appropriate regulatory agency, is no longer in existence or has ceased to do business as a transfer agent, such appropriate regulatory agency, by order, shall cancel or deny the registration.

(C) The appropriate regulatory agency for a transfer agent, by order, shall censure or place limitations on the activities or functions of any person associated, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated with the transfer agent, or suspend for a period not exceeding 12 months or bar any such person from being associated with any transfer agent, broker, dealer, investment adviser, municipal securities dealer, municipal advisor, or nationally recognized statistical rating organization, if the appropriate regulatory agency finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (H), or (G) or [2] paragraph (4) of section 78o(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within ten years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4). It shall be unlawful for any person as to whom such an order suspending or barring him from being associated with a transfer agent is in effect willfully to become, or to be, associated with a transfer agent without the consent of the appropriate regulatory agency that entered the order and the appropriate regulatory agency for that transfer agent. It shall be unlawful for any transfer agent to permit such a person to become, or remain, a person associated with it without the consent of such appropriate regulatory agencies, if the transfer agent knew, or in the exercise of reasonable care should have known, of such order. The Commission may establish, by rule, procedures by which a transfer agent reasonably can determine whether a person associated or seeking to become associated

with it is subject to any such order, and may require, by rule, that any transfer agent comply with such procedures.

(d) Activities of clearing agencies and transfer agents; enforcement by appropriate regulatory agencies

(1) No registered clearing agency or registered transfer agent shall, directly or indirectly, engage in any activity as clearing agency or transfer agent in contravention of such rules and regulations (A) as the Commission may prescribe as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter, or (B) as the appropriate regulatory agency for such clearing agency or transfer agent may prescribe as necessary or appropriate for the safeguarding of securities and funds.

(2) With respect to any clearing agency or transfer agent for which the Commission is not the appropriate regulatory agency, the appropriate regulatory agency for such clearing agency or transfer agent may, in accordance with section 1818 of title 12, enforce compliance by such clearing agency or transfer agent with the provisions of this section, sections 78q and 78s of this title, and the rules and regulations thereunder. For purposes of the preceding sentence, any violation of any such provision shall constitute adequate basis for the issuance of an order under section 1818(b) or 1818(c) of title 12, and the participants in any such clearing agency and the persons doing business with any such transfer agent shall be deemed to be "depositors" as that term is used in section 1818(c) of title 12.

(3)(A) With respect to any clearing agency or transfer agent for which the Commission is not the appropriate regulatory agency, the Commission and the appropriate regulatory agency for such clearing agency or transfer agent shall consult and cooperate with each other, and, as may be appropriate, with State banking authorities having supervision over such clearing agency or transfer agent toward the end that, to the maximum extent practicable, their respective regulatory responsibilities may be fulfilled and the rules and regulations applicable to such clearing agency or transfer agent may be in accord with both sound banking practices and a national system for the prompt and accurate clearance and settlement of securities transactions. In accordance with this objective—

(i) the Commission and such appropriate regulatory agency shall, at least fifteen days prior to the issuance for public comment of any proposed rule or regulation or adoption of any rule or regulation concerning such clearing agency or transfer agent, consult and request the views of the other; and

(ii) such appropriate regulatory agency shall assume primary responsibility to examine and enforce compliance by such clearing agency or transfer agent with the provisions of this section and sections 78q and 78s of this title.

(B) Nothing in the preceding subparagraph or elsewhere in this chapter shall be construed to impair or limit (other than by the requirement of notification) the Commission's authority to make rules under any provision of this chapter or to enforce compliance pursuant to any provision of this chapter by any clearing agency, transfer agent, or person associated with a transfer agent with the provisions of this chapter and the rules and regulations thereunder.

(4) Nothing in this section shall be construed to impair the authority of any State banking authority or other State or Federal regulatory authority having jurisdiction over a person registered as a clearing agency, transfer agent, or person associated with a transfer agent, to make and enforce rules governing such person which are not inconsistent with this chapter and the rules and regulations thereunder.

(5) A registered transfer agent may not, directly or indirectly, engage in any activity in connection with the guarantee of a signature of an endorser of a security, including the acceptance or rejection of such guarantee, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest, for the protection of investors, to facilitate the equitable treatment of financial institutions which issue such guarantees, or otherwise in furtherance of the purposes of this chapter.

(e) Physical movement of securities certificates

The Commission shall use its authority under this chapter to end the physical movement of securities certificates in connection with the settlement among brokers and dealers of transactions in securities consummated by means of the mails or any means or instrumentalities of interstate commerce.

(f) Rules concerning transfer of securities and rights and obligations of involved or affected parties

(1) Notwithstanding any provision of State law, except as provided in paragraph (3), if the Commission makes each of the findings described in paragraph (2)(A), the Commission may adopt rules concerning—

(A) the transfer of certificated or uncertificated securities (other than government securities issued pursuant to chapter 31 of title 31 or securities otherwise processed within a book-entry system operated by the Federal Reserve banks pursuant to a Federal book-entry regulation) or limited interests (including security interests) therein; and

(B) rights and obligations of purchasers, sellers, owners, lenders, borrowers, and financial intermediaries (including brokers, dealers, banks, and clearing agencies) involved in or affected by such transfers, and the rights of third parties whose interests in such securities devolve from such transfers.

(2)(A) The findings described in this paragraph are findings by the Commission that—

(i) such rule is necessary or appropriate for the protection of investors or in the public interest and is reasonably designed to promote the prompt, accurate, and safe clearance and settlement of securities transactions;

(ii) in the absence of a uniform rule, the safe and efficient operation of the national system for clearance and settlement of securities transactions will be, or is, substantially impeded; and

(iii) to the extent such rule will impair or diminish, directly or indirectly, rights of persons specified in paragraph (1)(B) under State law concerning transfers of securities (or limited interests therein), the benefits of such rule outweigh such impairment or diminution of rights.

(B) In making the findings described in subparagraph (A), the Commission shall give consideration to the recommendations of the Advisory Committee established under paragraph (4), and it shall consult with and consider the views of the Secretary of the Treasury and the Board of Governors of the Federal Reserve System. If the Secretary of the Treasury objects, in writing, to any proposed rule of the Commission on the basis of the Secretary's view on the issues described in clauses (i), (ii), and (iii) of subparagraph (A), the Commission shall consider all feasible alternatives to the proposed rule, and it shall not adopt any such rule unless the Commission makes an explicit finding that the rule is the most practicable method for achieving safe and efficient operation of the national clearance and settlement system.

(3) Any State may, prior to the expiration of 2 years after the Commission adopts a rule under this subsection, enact a statute that specifically refers to this subsection and the specific rule thereunder and establishes, prospectively from the date of enactment of the State statute, a provision that differs from that applicable under the Commission's rule.

(4)(A) Within 90 days after October 16, 1990, the Commission shall (and at such times thereafter as the Commission may determine, the Commission may), after consultation with the Secretary of the Treasury and the Board of Governors of the Federal Reserve System, establish an advisory committee under the Federal Advisory Committee Act (5 U.S.C. App.). The Advisory Committee shall be directed to consider and report to the Commission on such matters as the Commission, after consultation with the Secretary of the Treasury and the Board of Governors of the Federal Reserve System, determines, including the areas, if any, in which State commercial laws and related Federal laws concerning the transfer of certificated or uncertificated securities, limited interests (including security interests) in such securities, or the creation or perfection of security interests in such securities do not provide the necessary certainty, uniformity, and clarity for purchasers, sellers,

owners, lenders, borrowers, and financial intermediaries concerning their respective rights and obligations.

(B) The Advisory Committee shall consist of 15 members, of which—

(i) 11 shall be designated by the Commission in accordance with the Federal Advisory Committee Act; and

(ii) 2 each shall be designated by the Board of Governors of the Federal Reserve System and the Secretary of the Treasury.

(C) The Advisory Committee shall conduct its activities in accordance with the Federal Advisory Committee Act. Within 6 months of its designation, or such longer time as the Commission may designate, the Advisory Committee shall issue a report to the Commission, and shall cause copies of that report to be delivered to the Secretary of the Treasury and the Chairman of the Board of Governors of the Federal Reserve System.

(g) [3] Due diligence for the delivery of dividends, interest, and other valuable property rights

(1) Revision of rules required

The Commission shall revise its regulations in section 240.17Ad–17 of title 17, Code of Federal Regulations, as in effect on December 8, 1997, to extend the application of such section to brokers and dealers and to provide for the following:

(A) A requirement that the paying agent provide a single written notification to each missing security holder that the missing security holder has been sent a check that has not yet been negotiated. The written notification may be sent along with a check or other mailing subsequently sent to the missing security holder but must be provided no later than 7 months after the sending of the not yet negotiated check.

(B) An exclusion for paying agents from the notification requirements when the value of the not yet negotiated check is less than $25.

(C) A provision clarifying that the requirements described in subparagraph (A) shall have no effect on State escheatment laws.

(D) For purposes of such revised regulations—

(i) a security holder shall be considered a "missing security holder" if a check is sent to the security holder and the check is not negotiated before the earlier of the paying agent sending the next regularly scheduled check or the elapsing of 6 months after the sending of the not yet negotiated check; and

(ii) the term "paying agent" includes any issuer, transfer agent, broker, dealer, investment adviser, indenture trustee, custodian, or any other person that accepts payments from the issuer of a security and distributes the payments to the holders of the security.

(2) Rulemaking

The Commission shall adopt such rules, regulations, and orders necessary to implement this subsection no later than 1 year after July 21, 2010. In proposing such rules, the Commission shall seek to minimize disruptions to current systems used by or on behalf of paying agents to process payment to account holders and avoid requiring multiple paying agents to send written notification to a missing security holder regarding the same not yet negotiated check.

(g) [3] Registration requirement

It shall be unlawful for a clearing agency, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a clearing agency with respect to a security-based swap.

(h) Voluntary registration

A person that clears agreements, contracts, or transactions that are not required to be cleared under this chapter may register with the Commission as a clearing agency.

(i) Standards for clearing agencies clearing security-based swap transactions

To be registered and to maintain registration as a clearing agency that clears security-based swap transactions, a clearing agency shall comply with such standards as the Commission may establish by rule. In establishing any such standards, and in the exercise of its oversight of such a clearing agency pursuant to this chapter, the Commission may conform such standards or oversight to reflect evolving United States and international standards. Except where the Commission determines otherwise by rule or regulation, a clearing agency shall have reasonable discretion in establishing the manner in which it complies with any such standards.

(j) Rules

The Commission shall adopt rules governing persons that are registered as clearing agencies for security-based swaps under this chapter.

(k) Exemptions

The Commission may exempt, conditionally or unconditionally, a clearing agency from registration under this section for the clearing of security-based swaps if the Commission determines that the clearing agency is subject to comparable, comprehensive supervision and regulation by the Commodity Futures Trading Commission or the appropriate government authorities in the home country of the agency. Such conditions may include, but are not limited to, requiring that the clearing agency be available for inspection by the Commission and make available all information requested by the Commission.

(l) Existing depository institutions and derivative clearing organizations

(1) In general

A depository institution or derivative clearing organization registered with the Commodity Futures Trading Commission under the Commodity Exchange Act [7 U.S.C. 1 et seq.] that is required to be registered as a clearing agency under this section is deemed to be registered under this section solely for the purpose of clearing security-based swaps to the extent that, before July 21, 2010—

(A) the depository institution cleared swaps as a multilateral clearing organization; or

(B) the derivative clearing organization cleared swaps pursuant to an exemption from registration as a clearing agency.

(2) Conversion of depository institutions

A depository institution to which this subsection applies may, by the vote of the shareholders owning not less than 51 percent of the voting interests of the depository institution, be converted into a State corporation, partnership, limited liability company, or similar legal form pursuant to a plan of conversion, if the conversion is not in contravention of applicable State law.

(3) Sharing of information

The Commodity Futures Trading Commission shall make available to the Commission, upon request, all information determined to be relevant by the Commodity Futures Trading Commission regarding a derivatives clearing organization deemed to be registered with the Commission under paragraph (1).

(m) Modification of core principles

The Commission may conform the core principles established in this section to reflect evolving United States and international standards.

(June 6, 1934, ch. 404, title I, §17A, as added Pub. L. 94–29, §15, June 4, 1975, 89 Stat. 141; amended Pub. L. 100–181, title III, §322, Dec. 4, 1987, 101 Stat. 1257; Pub. L. 101–429, title II, §206, Oct. 15, 1990, 104 Stat. 941; Pub. L. 101–432, §5, Oct. 16, 1990, 104 Stat. 973; Pub. L. 101–550, title II, §203(c)(1), Nov. 15, 1990, 104 Stat. 2718; Pub. L. 106–554, §1(a)(5) [title II, §§206(d), 207], Dec. 21, 2000, 114 Stat. 2763, 2763A–431, 2763A–434; Pub. L. 107–204, title VI, §604(c)(1)(C), July 30, 2002, 116 Stat. 796; Pub. L. 111–203, title VII, §763(b), title IX, §§925(a)(3), 929W, July 21, 2010, 124 Stat. 1768, 1851, 1869.)

AMENDMENT OF SECTION

Unless otherwise provided, amendment by subtitle B (§§761–774) of title VII of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see 2010 Amendment notes and Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(2), (b)(3)(A), (F), (I), (8), (d)(1), (3)(B), (4), (5), (e), and (h) to (j), was in the original "this title". See References in Text note set out under section 78a of this title.

The Commodity Exchange Act, referred to in subsecs. (b)(8) and (l)(1), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

The Federal Advisory Committee Act, referred to in subsec. (f)(4), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2010—Subsec. (c)(4)(C). Pub. L. 111–203, §925(a)(3), substituted "12 months or bar any such person from being associated with any transfer agent, broker, dealer, investment adviser, municipal securities dealer, municipal advisor, or nationally recognized statistical rating organization," for "twelve months or bar any such person from being associated with the transfer agent,".

Subsec. (g). Pub. L. 111–203, §929W, added subsec. (g) relating to due diligence for the delivery of dividends, interest, and other valuable property rights.

Pub. L. 111–203, §763(b), added subsec. (g) relating to registration requirement.

Subsecs. (h) to (m). Pub. L. 111–203, §763(b), added subsecs. (h) to (m).

2002—Subsec. (c)(3)(A), (4)(C). Pub. L. 107–204 inserted ", or is subject to an order or finding," before "enumerated" and substituted "(H), or (G)" for "or (G)".

2000—Subsec. (b)(3)(A). Pub. L. 106–554, §1(a)(5) [title II, §207(1)], inserted "and derivative agreements, contracts, and transactions" after "prompt and accurate clearance and settlement of securities transactions".

Subsec. (b)(3)(F). Pub. L. 106–554, §1(a)(5) [title II, §207(2)], inserted "and, to the extent applicable, derivative agreements, contracts, and transactions" after "designed to promote the prompt and accurate clearance and settlement of securities transactions".

Subsec. (b)(7). Pub. L. 106–554, §1(a)(5) [title II, §206(d)], added par. (7).

Subsec. (b)(8). Pub. L. 106–554, §1(a)(5) [title II, §207(3)], added par. (8).

1990—Subsec. (a)(2). Pub. L. 101–432, §5(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "The Commission is directed, therefore, having due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and maintenance of fair competition among brokers and dealers, clearing agencies, and transfer agents, to use its authority under this chapter to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities (other than exempted securities) in accordance with the findings and to carry out the objectives set forth in paragraph (1) of this subsection. The Commission shall use its authority under this chapter to assure equal regulation under this chapter of registered clearing agencies and registered transfer agents."

Subsec. (c)(3)(A), (4)(C). Pub. L. 101–550 substituted "(A), (D), (E), or (G)" for "(A), (D), or (E)".

Subsec. (d)(5). Pub. L. 101–429 added par. (5).

Subsec. (f). Pub. L. 101–432, §5(b), added subsec. (f).

1987—Subsec. (c)(2). Pub. L. 100–181, §322(1), (2), inserted "and any persons associated with the transfer agent" in first sentence and substituted "45" for "thirty" in second sentence.

Subsec. (c)(3), (4). Pub. L. 100–181, §322(3)–(5), added par. (3), struck out former par. (3)(A) which read as follows: "The appropriate regulatory agency for a transfer agent, by order, shall deny registration to, censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding twelve months, or revoke the registration of such transfer agent, if such appropriate regulatory agency finds, on the record after notice and opportunity for hearing, that such denial, censure, placing of limitations, suspension, or revocation is in the public interest and that such transfer agent has willfully violated or is unable to comply with any provision of this section or section 78q of this title or the rules or regulations thereunder.", redesignated subpars. (B) and (C) of former par. (3) as subpars. (A) and (B), respectively, of new par. (4), and added subpar. (C) to such par. (4).

Subsec. (d)(3)(B). Pub. L. 100–181, §322(6), substituted "clearing agency, transfer agent, or person associated with a transfer agent" for "clearing agency or transfer agent".

Subsec. (d)(4). Pub. L. 100–181, §322(7), substituted ", transfer agent, or person associated with a transfer agent," for "or transfer agent".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 925(a)(3) and 929W of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Amendment by section 763(b) of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761–774) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111–203, set out as a note under section 77b of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–429 effective Oct. 15, 1990, with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(1), (2) of Pub. L. 101–429, set out in a note under section 77g of this title.

EFFECTIVE DATE

Section effective June 4, 1975, except for subsecs. (b) and (c) which are effective 180 days after June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

CLEARANCE AND SETTLEMENT OF TRANSACTIONS; REPORT TO CONGRESS

Section 8(b) of Pub. L. 101–432 directed Securities and Exchange Commission, in consultation with Commodity Futures Trading Commission, Board of Governors of the Federal Reserve System, and other relevant regulatory authorities, to examine progress toward establishing linked or coordinated facilities for clearance and settlement of transactions in securities, securities options, contracts of sale for future delivery and options thereon, and commodity options, and to submit to Congress, not later than 2 years from Oct. 16, 1990, a report detailing and evaluating such progress.

[1] So in original. Probably should be "section 78f(h)(7)(C)".

[2] So in original. Probably should be "of".

[3] So in original. Two subsecs. (g) have been enacted.

§78q–2. Automated quotation systems for penny stocks

(a) Findings

The Congress finds that—

(1) the market for penny stocks suffers from a lack of reliable and accurate quotation and last sale information available to investors and regulators;

(2) it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to improve significantly the information available to brokers, dealers, investors, and regulators with respect to quotations for and transactions in penny stocks; and

(3) a fully implemented automated quotation system for penny stocks would meet the information needs of investors and market participants and would add visibility and regulatory and surveillance data to that market.

(b) Mandate to facilitate establishment of automated quotation systems

(1) In general

The Commission shall facilitate the widespread dissemination of reliable and accurate last sale and quotation information with respect to penny stocks in accordance with the findings set forth in subsection (a) of this section, with a view toward establishing, at the earliest feasible time, one or more automated quotation systems that will collect and disseminate information regarding all penny stocks.

(2) Characteristics of systems

Each such automated quotation system shall—

(A) be operated by a registered securities association or a national securities exchange in accordance with such rules as the Commission and these entities shall prescribe;

(B) collect and disseminate quotation and transaction information;

(C) except as provided in subsection (c) of this section, provide bid and ask quotations of participating brokers or dealers, or comparably accurate and reliable pricing information, which shall constitute firm bids or offers for at least such minimum numbers of shares or minimum dollar amounts as the Commission and the registered securities association or national securities exchange shall require; and

(D) provide for the reporting of the volume of penny stock transactions, including last sale reporting, when the volume reaches appropriate levels that the Commission shall specify by rule or order.

(c) Exemptive authority

The Commission may, by rule or order, grant such exemptions, in whole or in part, conditionally or unconditionally, to any penny stock or class of penny stocks from the requirements of subsection (b) of this section as the Commission determines to be consistent with the public interest, the protection of investors, and the maintenance of fair and orderly markets.

(d) Commission reporting requirements

The Commission shall, in each of the first 5 annual reports (under section 78w(b)(1) of this title) submitted more than 12 months after October 15, 1990, include a description of the status of the penny stock automated quotation system or systems required by subsection (b) of this section. Such description shall include—

(1) a review of the development, implementation, and progress of the project, including achievement of significant milestones and current project schedule; and

(2) a review of the activities of registered securities associations and national securities exchanges in the development of the system.

(June 6, 1934, ch. 404, title I, §17B, as added Pub. L. 101–429, title V, §506, Oct. 15, 1990, 104 Stat. 955.)

REFERENCES IN TEXT

Section 78w(b)(1) of this title, referred to in subsec. (d), was omitted from the Code. For further details related to reports referred to in subsec. (d), see Codification note set out under section 78w of this title.

EFFECTIVE DATE

Section effective Oct. 15, 1990, with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(1), (2) of Pub. L. 101–429, set out in an Effective Date of 1990 Amendment note under section 77g of this title.

§78r. Liability for misleading statements

(a) Persons liable; persons entitled to recover; defense of good faith; suit at law or in equity; costs, etc.

Any person who shall make or cause to be made any statement in any application, report, or document filed pursuant to this chapter or any rule or regulation thereunder or any undertaking contained in a registration statement as provided in subsection (d) of section 78o of this title, which statement was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, shall be liable to any person (not knowing that such statement was false or misleading) who, in reliance upon such statement, shall have purchased or sold a security at a price which was affected by such statement, for damages caused by such reliance, unless the person sued shall prove that he acted in good faith and had no knowledge that such statement was false or misleading. A person seeking to enforce such liability may sue at law or in

equity in any court of competent jurisdiction. In any such suit the court may, in its discretion, require an undertaking for the payment of the costs of such suit, and assess reasonable costs, including reasonable attorneys' fees, against either party litigant.

(b) Contribution

Every person who becomes liable to make payment under this section may recover contribution as in cases of contract from any person who, if joined in the original suit, would have been liable to make the same payment.

(c) Period of limitations

No action shall be maintained to enforce any liability created under this section unless brought within one year after the discovery of the facts constituting the cause of action and within three years after such cause of action accrued.

(June 6, 1934, ch. 404, title I, §18, 48 Stat. 897; May 27, 1936, ch. 462, §5, 49 Stat. 1379.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this title". See References in Text note set out under section 78a of this title.

AMENDMENTS

1936—Subsec. (a). Act May 27, 1936, inserted "or any undertaking contained in a registration statement as provided in subsection (d) of section 78o of this title".

§78s. Registration, responsibilities, and oversight of self-regulatory organizations

(a) Registration procedures; notice of filing; other regulatory agencies

(1) The Commission shall, upon the filing of an application for registration as a national securities exchange, registered securities association, or registered clearing agency, pursuant to section 78f, 78o–3, or 78q–1 of this title, respectively, publish notice of such filing and afford interested persons an opportunity to submit written data, views, and arguments concerning such application. Within ninety days of the date of publication of such notice (or within such longer period as to which the applicant consents), the Commission shall—

(A) by order grant such registration, or

(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within one hundred eighty days of the date of a publication of notice of the filing of the application for registration. At the conclusion of such proceedings the Commission, by order, shall grant or deny such registration. The Commission may extend the time for conclusion of such proceedings for up to ninety days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The Commission shall grant such registration if it finds that the requirements of this chapter and the rules and regulations thereunder with respect to the applicant are satisfied. The Commission shall deny such registration if it does not make such finding.

(2) With respect to an application for registration filed by a clearing agency for which the Commission is not the appropriate regulatory agency—

(A) The Commission shall not grant registration prior to the sixtieth day after the date of publication of notice of the filing of such application unless the appropriate regulatory agency for such clearing agency has notified the Commission of such appropriate regulatory agency's determination that such clearing agency is so organized and has the capacity to be able to safeguard securities and funds in its custody or control or for which it is responsible and that the rules of such clearing agency are designed to assure the safeguarding of such securities and funds.

(B) The Commission shall institute proceedings in accordance with paragraph (1)(B) of this subsection to determine whether registration should be denied if the appropriate regulatory agency

for such clearing agency notifies the Commission within sixty days of the date of publication of notice of the filing of such application of such appropriate regulatory agency's (i) determination that such clearing agency may not be so organized or have the capacity to be able to safeguard securities or funds in its custody or control or for which it is responsible or that the rules of such clearing agency may not be designed to assure the safeguarding of such securities and funds and (ii) reasons for such determination.

(C) The Commission shall deny registration if the appropriate regulatory agency for such clearing agency notifies the Commission prior to the conclusion of proceedings instituted in accordance with paragraph (1)(B) of this subsection of such appropriate regulatory agency's (i) determination that such clearing agency is not so organized or does not have the capacity to be able to safeguard securities or funds in its custody or control or for which it is responsible or that the rules of such clearing agency are not designed to assure the safeguarding of such securities or funds and (ii) reasons for such determination.

(3) A self-regulatory organization may, upon such terms and conditions as the Commission, by rule, deems necessary or appropriate in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any self-regulatory organization is no longer in existence or has ceased to do business in the capacity specified in its application for registration, the Commission, by order, shall cancel its registration. Upon the withdrawal of a national securities association from registration or the cancellation, suspension, or revocation of the registration of a national securities association, the registration of any association affiliated therewith shall automatically terminate.

(b) Proposed rule changes; notice; proceedings

(1) Each self-regulatory organization shall file with the Commission, in accordance with such rules as the Commission may prescribe, copies of any proposed rule or any proposed change in, addition to, or deletion from the rules of such self-regulatory organization (hereinafter in this subsection collectively referred to as a "proposed rule change") accompanied by a concise general statement of the basis and purpose of such proposed rule change. The Commission shall, as soon as practicable after the date of the filing of any proposed rule change, publish notice thereof together with the terms of substance of the proposed rule change or a description of the subjects and issues involved. The Commission shall give interested persons an opportunity to submit written data, views, and arguments concerning such proposed rule change. No proposed rule change shall take effect unless approved by the Commission or otherwise permitted in accordance with the provisions of this subsection.

(2) APPROVAL PROCESS.—

(A) APPROVAL PROCESS ESTABLISHED.—

(i) IN GENERAL.—Except as provided in clause (ii), not later than 45 days after the date of publication of a proposed rule change under paragraph (1), the Commission shall—

(I) by order, approve or disapprove the proposed rule change; or

(II) institute proceedings under subparagraph (B) to determine whether the proposed rule change should be disapproved.

(ii) EXTENSION OF TIME PERIOD.—The Commission may extend the period established under clause (i) by not more than an additional 45 days, if—

(I) the Commission determines that a longer period is appropriate and publishes the reasons for such determination; or

(II) the self-regulatory organization that filed the proposed rule change consents to the longer period.

(B) PROCEEDINGS.—

(i) NOTICE AND HEARING.—If the Commission does not approve or disapprove a proposed rule change under subparagraph (A), the Commission shall provide to the self-regulatory organization that filed the proposed rule change—

(I) notice of the grounds for disapproval under consideration; and

(II) opportunity for hearing, to be concluded not later than 180 days after the date of publication of notice of the filing of the proposed rule change.

(ii) ORDER OF APPROVAL OR DISAPPROVAL.—

(I) IN GENERAL.—Except as provided in subclause (II), not later than 180 days after the date of publication under paragraph (1), the Commission shall issue an order approving or disapproving the proposed rule change.

(II) EXTENSION OF TIME PERIOD.—The Commission may extend the period for issuance under clause (I) by not more than 60 days, if—

(aa) the Commission determines that a longer period is appropriate and publishes the reasons for such determination; or

(bb) the self-regulatory organization that filed the proposed rule change consents to the longer period.

(C) STANDARDS FOR APPROVAL AND DISAPPROVAL.—

(i) APPROVAL.—The Commission shall approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of this chapter and the rules and regulations issued under this chapter that are applicable to such organization.

(ii) DISAPPROVAL.—The Commission shall disapprove a proposed rule change of a self-regulatory organization if it does not make a finding described in clause (i).

(iii) TIME FOR APPROVAL.—The Commission may not approve a proposed rule change earlier than 30 days after the date of publication under paragraph (1), unless the Commission finds good cause for so doing and publishes the reason for the finding.

(D) RESULT OF FAILURE TO INSTITUTE OR CONCLUDE PROCEEDINGS.—A proposed rule change shall be deemed to have been approved by the Commission, if—

(i) the Commission does not approve or disapprove the proposed rule change or begin proceedings under subparagraph (B) within the period described in subparagraph (A); or

(ii) the Commission does not issue an order approving or disapproving the proposed rule change under subparagraph (B) within the period described in subparagraph (B)(ii).

(E) PUBLICATION DATE BASED ON FEDERAL REGISTER PUBLISHING.—For purposes of this paragraph, if, after filing a proposed rule change with the Commission pursuant to paragraph (1), a self-regulatory organization publishes a notice of the filing of such proposed rule change, together with the substantive terms of such proposed rule change, on a publicly accessible website, the Commission shall thereafter send the notice to the Federal Register for publication thereof under paragraph (1) within 15 days of the date on which such website publication is made. If the Commission fails to send the notice for publication thereof within such 15 day period, then the date of publication shall be deemed to be the date on which such website publication was made.

(F) RULEMAKING.—

(i) IN GENERAL.—Not later than 180 days after July 21, 2010, after consultation with other regulatory agencies, the Commission shall promulgate rules setting forth the procedural requirements of the proceedings required under this paragraph.

(ii) NOTICE AND COMMENT NOT REQUIRED.—The rules promulgated by the Commission under clause (i) are not required to include republication of proposed rule changes or solicitation of public comment.

(3)(A) Notwithstanding the provisions of paragraph (2) of this subsection, a proposed rule change shall take effect upon filing with the Commission if designated by the self-regulatory organization as (i) constituting a stated policy, practice, or interpretation with respect to the meaning, administration,

or enforcement of an existing rule of the self-regulatory organization, (ii) establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, or (iii) concerned solely with the administration of the self-regulatory organization or other matters which the Commission, by rule, consistent with the public interest and the purposes of this subsection, may specify as without the provisions of such paragraph (2).

(B) Notwithstanding any other provision of this subsection, a proposed rule change may be put into effect summarily if it appears to the Commission that such action is necessary for the protection of investors, the maintenance of fair and orderly markets, or the safeguarding of securities or funds. Any proposed rule change so put into effect shall be filed promptly thereafter in accordance with the provisions of paragraph (1) of this subsection.

(C) Any proposed rule change of a self-regulatory organization which has taken effect pursuant to subparagraph (A) or (B) of this paragraph may be enforced by such organization to the extent it is not inconsistent with the provisions of this chapter, the rules and regulations thereunder, and applicable Federal and State law. At any time within the 60-day period beginning on the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1), the Commission summarily may temporarily suspend the change in the rules of the self-regulatory organization made thereby, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter. If the Commission takes such action, the Commission shall institute proceedings under paragraph (2)(B) to determine whether the proposed rule should be approved or disapproved. Commission action pursuant to this subparagraph shall not affect the validity or force of the rule change during the period it was in effect and shall not be reviewable under section 78y of this title nor deemed to be "final agency action" for purposes of section 704 of title 5.

(4) With respect to a proposed rule change filed by a registered clearing agency for which the Commission is not the appropriate regulatory agency—

(A) The Commission shall not approve any such proposed rule change prior to the thirtieth day after the date of publication of notice of the filing whereof unless the appropriate regulatory agency for such clearing agency has notified the Commission of such appropriate regulatory agency's determination that the proposed rule change is consistent with the safeguarding of securities and funds in the custody or control of such clearing agency or for which it is responsible.

(B) The Commission shall institute proceedings in accordance with paragraph (2)(B) of this subsection to determine whether any such proposed rule change should be disapproved, if the appropriate regulatory agency for such clearing agency notifies the Commission within thirty days of the date of publication of notice of the filing of the proposed rule change of such appropriate regulatory agency's (i) determination that the proposed rule change may be inconsistent with the safeguarding of securities or funds in the custody or control of such clearing agency or for which it is responsible and (ii) reasons for such determination.

(C) The Commission shall disapprove any such proposed rule change if the appropriate regulatory agency for such clearing agency notifies the Commission prior to the conclusion of proceedings instituted in accordance with paragraph (2)(B) of this subsection of such appropriate regulatory agency's (i) determination that the proposed rule change is inconsistent with the safeguarding of securities or funds in the custody or control of such clearing agency or for which it is responsible and (ii) reasons for such determination.

(D)(i) The Commission shall order the temporary suspension of any change in the rules of a clearing agency made by a proposed rule change that has taken effect under paragraph (3), if the appropriate regulatory agency for the clearing agency notifies the Commission not later than 30 days after the date on which the proposed rule change was filed of—

(I) the determination by the appropriate regulatory agency that the rules of such clearing agency, as so changed, may be inconsistent with the safeguarding of securities or funds in the custody or control of such clearing agency or for which it is responsible; and

(II) the reasons for the determination described in subclause (I).

(ii) If the Commission takes action under clause (i), the Commission shall institute proceedings under paragraph (2)(B) to determine if the proposed rule change should be approved or disapproved.

(5) The Commission shall consult with and consider the views of the Secretary of the Treasury prior to approving a proposed rule filed by a registered securities association that primarily concerns conduct related to transactions in government securities, except where the Commission determines that an emergency exists requiring expeditious or summary action and publishes its reasons therefor. If the Secretary of the Treasury comments in writing to the Commission on a proposed rule that has been published for comment, the Commission shall respond in writing to such written comment before approving the proposed rule. If the Secretary of the Treasury determines, and notifies the Commission, that such rule, if implemented, would, or as applied does (i) adversely affect the liquidity or efficiency of the market for government securities; or (ii) impose any burden on competition not necessary or appropriate in furtherance of the purposes of this section, the Commission shall, prior to adopting the proposed rule, find that such rule is necessary and appropriate in furtherance of the purposes of this section notwithstanding the Secretary's determination.

(6) In approving rules described in paragraph (5), the Commission shall consider the sufficiency and appropriateness of then existing laws and rules applicable to government securities brokers, government securities dealers, and persons associated with government securities brokers and government securities dealers.

(7) SECURITY FUTURES PRODUCT RULE CHANGES.—

(A) FILING REQUIRED.—A self-regulatory organization that is an exchange registered with the Commission pursuant to section 78f(g) of this title or that is a national securities association registered pursuant to section 78o–3(k) of this title shall file with the Commission, in accordance with such rules as the Commission may prescribe, copies of any proposed rule change or any proposed change in, addition to, or deletion from the rules of such self-regulatory organization (hereinafter in this paragraph collectively referred to as a "proposed rule change") that relates to higher margin levels, fraud or manipulation, recordkeeping, reporting, listing standards, or decimal pricing for security futures products, sales practices for security futures products for persons who effect transactions in security futures products, or rules effectuating such self-regulatory organization's obligation to enforce the securities laws. Such proposed rule change shall be accompanied by a concise general statement of the basis and purpose of such proposed rule change. The Commission shall, upon the filing of any proposed rule change, promptly publish notice thereof together with the terms of substance of the proposed rule change or a description of the subjects and issues involved. The Commission shall give interested persons an opportunity to submit data, views, and arguments concerning such proposed rule change.

(B) FILING WITH CFTC.—A proposed rule change filed with the Commission pursuant to subparagraph (A) shall be filed concurrently with the Commodity Futures Trading Commission. Such proposed rule change may take effect upon filing of a written certification with the Commodity Futures Trading Commission under section 7a–2(c) of title 7, upon a determination by the Commodity Futures Trading Commission that review of the proposed rule change is not necessary, or upon approval of the proposed rule change by the Commodity Futures Trading Commission.

(C) ABROGATION OF RULE CHANGES.—Any proposed rule change of a self-regulatory organization that has taken effect pursuant to subparagraph (B) may be enforced by such self-regulatory organization to the extent such rule is not inconsistent with the provisions of this chapter, the rules and regulations thereunder, and applicable Federal law. At any time within 60 days of the date of the filing of a written certification with the Commodity Futures Trading Commission under section 7a–2(c) of title 7, the date the Commodity Futures Trading Commission determines that review of such proposed rule change is not necessary, or the date the Commodity Futures Trading Commission approves such proposed rule change, the Commission,

after consultation with the Commodity Futures Trading Commission, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of paragraph (1), if it appears to the Commission that such proposed rule change unduly burdens competition or efficiency, conflicts with the securities laws, or is inconsistent with the public interest and the protection of investors. Commission action pursuant to the preceding sentence shall not affect the validity or force of the rule change during the period it was in effect and shall not be reviewable under section 78y of this title nor deemed to be a final agency action for purposes of section 704 of title 5.

(D) REVIEW OF RESUBMITTED ABROGATED RULES.—

(i) PROCEEDINGS.—Within 35 days of the date of publication of notice of the filing of a proposed rule change that is abrogated in accordance with subparagraph (C) and refiled in accordance with paragraph (1), or within such longer period as the Commission may designate up to 90 days after such date if the Commission finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall—

(I) by order approve such proposed rule change; or

(II) after consultation with the Commodity Futures Trading Commission, institute proceedings to determine whether the proposed rule change should be disapproved. Proceedings under subclause (II) shall include notice of the grounds for disapproval under consideration and opportunity for hearing and be concluded within 180 days after the date of publication of notice of the filing of the proposed rule change. At the conclusion of such proceedings, the Commission, by order, shall approve or disapprove such proposed rule change. The Commission may extend the time for conclusion of such proceedings for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the self-regulatory organization consents.

(ii) GROUNDS FOR APPROVAL.—The Commission shall approve a proposed rule change of a self-regulatory organization under this subparagraph if the Commission finds that such proposed rule change does not unduly burden competition or efficiency, does not conflict with the securities laws, and is not inconsistent with the public interest or the protection of investors. The Commission shall disapprove such a proposed rule change of a self-regulatory organization if it does not make such finding. The Commission shall not approve any proposed rule change prior to the 30th day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding.

(8) DECIMAL PRICING.—Not later than 9 months after the date on which trading in any security futures product commences under this chapter, all self-regulatory organizations listing or trading security futures products shall file proposed rule changes necessary to implement decimal pricing of security futures products. The Commission may not require such rules to contain equal minimum increments in such decimal pricing.

(9) CONSULTATION WITH CFTC.—

(A) CONSULTATION REQUIRED.—The Commission shall consult with and consider the views of the Commodity Futures Trading Commission prior to approving or disapproving a proposed rule change filed by a national securities association registered pursuant to section 78o–3(a) of this title or a national securities exchange subject to the provisions of subsection (a) of this section that primarily concerns conduct related to transactions in security futures products, except where the Commission determines that an emergency exists requiring expeditious or summary action and publishes its reasons therefor.

(B) RESPONSES TO CFTC COMMENTS AND FINDINGS.—If the Commodity Futures Trading Commission comments in writing to the Commission on a proposed rule that has been published for comment, the Commission shall respond in writing to such written comment before approving or disapproving the proposed rule. If the Commodity Futures Trading Commission determines, and notifies the Commission, that such rule, if implemented or as applied, would—

(i) adversely affect the liquidity or efficiency of the market for security futures products; or

(ii) impose any burden on competition not necessary or appropriate in furtherance of the purposes of this section,

the Commission shall, prior to approving or disapproving the proposed rule, find that such rule is necessary and appropriate in furtherance of the purposes of this section notwithstanding the Commodity Futures Trading Commission's determination.

(10) [1] RULE OF CONSTRUCTION RELATING TO FILING DATE OF PROPOSED RULE CHANGES.—

(A) IN GENERAL.—For purposes of this subsection, the date of filing of a proposed rule change shall be deemed to be the date on which the Commission receives the proposed rule change.

(B) EXCEPTION.—A proposed rule change has not been received by the Commission for purposes of subparagraph (A) if, not later than 7 business days after the date of receipt by the Commission, the Commission notifies the self-regulatory organization that such proposed rule change does not comply with the rules of the Commission relating to the required form of a proposed rule change, except that if the Commission determines that the proposed rule change is unusually lengthy and is complex or raises novel regulatory issues, the Commission shall inform the self-regulatory organization of such determination not later than 7 business days after the date of receipt by the Commission and, for the purposes of subparagraph (A), a proposed rule change has not been received by the Commission, if, not later than 21 days after the date of receipt by the Commission, the Commission notifies the self-regulatory organization that such proposed rule change does not comply with the rules of the Commission relating to the required form of a proposed rule change.

(10) [1] Notwithstanding paragraph (2), the time period within which the Commission is required by order to approve a proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved is stayed pending a determination by the Commission upon the request of the Commodity Futures Trading Commission or its Chairman that the Commission issue a determination as to whether a product that is the subject of such proposed rule change is a security pursuant to section 8306 of this title.

(c) Amendment by Commission of rules of self-regulatory organizations

The Commission, by rule, may abrogate, add to, and delete from (hereinafter in this subsection collectively referred to as "amend") the rules of a self-regulatory organization (other than a registered clearing agency) as the Commission deems necessary or appropriate to insure the fair administration of the self-regulatory organization, to conform its rules to requirements of this chapter and the rules and regulations thereunder applicable to such organization, or otherwise in furtherance of the purposes of this chapter, in the following manner:

(1) The Commission shall notify the self-regulatory organization and publish notice of the proposed rulemaking in the Federal Register. The notice shall include the text of the proposed amendment to the rules of the self-regulatory organization and a statement of the Commission's reasons, including any pertinent facts, for commencing such proposed rulemaking.

(2) The Commission shall give interested persons an opportunity for the oral presentation of data, views, and arguments, in addition to an opportunity to make written submissions. A transcript shall be kept of any oral presentation.

(3) A rule adopted pursuant to this subsection shall incorporate the text of the amendment to the rules of the self-regulatory organization and a statement of the Commission's basis for and purpose in so amending such rules. This statement shall include an identification of any facts on which the Commission considers its determination so to amend the rules of the self-regulatory agency to be based, including the reasons for the Commission's conclusions as to any of such facts which were disputed in the rulemaking.

(4)(A) Except as provided in paragraphs (1) through (3) of this subsection, rulemaking under

this subsection shall be in accordance with the procedures specified in section 553 of title 5 for rulemaking not on the record.

(B) Nothing in this subsection shall be construed to impair or limit the Commission's power to make, or to modify or alter the procedures the Commission may follow in making, rules and regulations pursuant to any other authority under this chapter.

(C) Any amendment to the rules of a self-regulatory organization made by the Commission pursuant to this subsection shall be considered for all purposes of this chapter to be part of the rules of such self-regulatory organization and shall not be considered to be a rule of the Commission.

(5) With respect to rules described in subsection (b)(5) of this section, the Commission shall consult with and consider the views of the Secretary of the Treasury before abrogating, adding to, and deleting from such rules, except where the Commission determines that an emergency exists requiring expeditious or summary action and publishes its reasons therefor.

(d) Notice of disciplinary action taken by self-regulatory organization against a member or participant; review of action by appropriate regulatory agency; procedure

(1) If any self-regulatory organization imposes any final disciplinary sanction on any member thereof or participant therein, denies membership or participation to any applicant, or prohibits or limits any person in respect to access to services offered by such organization or member thereof or if any self-regulatory organization (other than a registered clearing agency) imposes any final disciplinary sanction on any person associated with a member or bars any person from becoming associated with a member, the self-regulatory organization shall promptly file notice thereof with the appropriate regulatory agency for the self-regulatory organization and (if other than the appropriate regulatory agency for the self-regulatory organization) the appropriate regulatory agency for such member, participant, applicant, or other person. The notice shall be in such form and contain such information as the appropriate regulatory agency for the self-regulatory organization, by rule, may prescribe as necessary or appropriate in furtherance of the purposes of this chapter.

(2) Any action with respect to which a self-regulatory organization is required by paragraph (1) of this subsection to file notice shall be subject to review by the appropriate regulatory agency for such member, participant, applicant, or other person, on its own motion, or upon application by any person aggrieved thereby filed within thirty days after the date such notice was filed with such appropriate regulatory agency and received by such aggrieved person, or within such longer period as such appropriate regulatory agency may determine. Application to such appropriate regulatory agency for review, or the institution of review by such appropriate regulatory agency on its own motion, shall not operate as a stay of such action unless such appropriate regulatory agency otherwise orders, summarily or after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of the submission of affidavits or presentation of oral arguments). Each appropriate regulatory agency shall establish for appropriate cases an expedited procedure for consideration and determination of the question of a stay.

(3) The provisions of this subsection shall apply to an exchange registered pursuant to section 78f(g) of this title or a national securities association registered pursuant to section 78o–3(k) of this title only to the extent that such exchange or association imposes any final disciplinary sanction for—

(A) a violation of the Federal securities laws or the rules and regulations thereunder; or

(B) a violation of a rule of such exchange or association, as to which a proposed change would be required to be filed under this section, except that, to the extent that the exchange or association rule violation relates to any account, agreement, contract, or transaction, this subsection shall apply only to the extent such violation involves a security futures product.

(e) Disposition of review; cancellation, reduction, or remission of sanction

(1) In any proceeding to review a final disciplinary sanction imposed by a self-regulatory organization on a member thereof or participant therein or a person associated with such a member,

after notice and opportunity for hearing (which hearing may consist solely of consideration of the record before the self-regulatory organization and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the sanction)—

(A) if the appropriate regulatory agency for such member, participant, or person associated with a member finds that such member, participant, or person associated with a member has engaged in such acts or practices, or has omitted such acts, as the self-regulatory organization has found him to have engaged in or omitted, that such acts or practices, or omissions to act, are in violation of such provisions of this chapter, the rules or regulations thereunder, the rules of the self-regulatory organization, or, in the case of a registered securities association, the rules of the Municipal Securities Rulemaking Board as have been specified in the determination of the self-regulatory organization, and that such provisions are, and were applied in a manner, consistent with the purposes of this chapter, such appropriate regulatory agency, by order, shall so declare and, as appropriate, affirm the sanction imposed by the self-regulatory organization, modify the sanction in accordance with paragraph (2) of this subsection, or remand to the self-regulatory organization for further proceedings; or

(B) if such appropriate regulatory agency does not make any such finding it shall, by order, set aside the sanction imposed by the self-regulatory organization and, if appropriate, remand to the self-regulatory organization for further proceedings.

(2) If the appropriate regulatory agency for a member, participant, or person associated with a member, having due regard for the public interest and the protection of investors, finds after a proceeding in accordance with paragraph (1) of this subsection that a sanction imposed by a self-regulatory organization upon such member, participant, or person associated with a member imposes any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter or is excessive or oppressive, the appropriate regulatory agency may cancel, reduce, or require the remission of such sanction.

(f) Dismissal of review proceeding

In any proceeding to review the denial of membership or participation in a self-regulatory organization to any applicant, the barring of any person from becoming associated with a member of a self-regulatory organization, or the prohibition or limitation by a self-regulatory organization of any person with respect to access to services offered by the self-regulatory organization or any member thereof, if the appropriate regulatory agency for such applicant or person, after notice and opportunity for hearing (which hearing may consist solely of consideration of the record before the self-regulatory organization and opportunity for the presentation of supporting reasons to dismiss the proceeding or set aside the action of the self-regulatory organization) finds that the specific grounds on which such denial, bar, or prohibition or limitation is based exist in fact, that such denial, bar, or prohibition or limitation is in accordance with the rules of the self-regulatory organization, and that such rules are, and were applied in a manner, consistent with the purposes of this chapter, such appropriate regulatory agency, by order, shall dismiss the proceeding. If such appropriate regulatory agency does not make any such finding or if it finds that such denial, bar, or prohibition or limitation imposes any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter, such appropriate regulatory agency, by order, shall set aside the action of the self-regulatory organization and require it to admit such applicant to membership or participation, permit such person to become associated with a member, or grant such person access to services offered by the self-regulatory organization or member thereof.

(g) Compliance with rules and regulations

(1) Every self-regulatory organization shall comply with the provisions of this chapter, the rules and regulations thereunder, and its own rules, and (subject to the provisions of section 78q(d) of this title, paragraph (2) of this subsection, and the rules thereunder) absent reasonable justification or excuse enforce compliance—

(A) in the case of a national securities exchange, with such provisions by its members and persons associated with its members;

(B) in the case of a registered securities association, with such provisions and the provisions of the rules of the Municipal Securities Rulemaking Board by its members and persons associated with its members; and

(C) in the case of a registered clearing agency, with its own rules by its participants.

(2) The Commission, by rule, consistent with the public interest, the protection of investors, and the other purposes of this chapter, may relieve any self-regulatory organization of any responsibility under this chapter to enforce compliance with any specified provision of this chapter or the rules or regulations thereunder by any member of such organization or person associated with such a member, or any class of such members or persons associated with a member.

(h) Suspension or revocation of self-regulatory organization's registration; censure; other sanctions

(1) The appropriate regulatory agency for a self-regulatory organization is authorized, by order, if in its opinion such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter, to suspend for a period not exceeding twelve months or revoke the registration of such self-regulatory organization, or to censure or impose limitations upon the activities, functions, and operations of such self-regulatory organization, if such appropriate regulatory agency finds, on the record after notice and opportunity for hearing, that such self-regulatory organization has violated or is unable to comply with any provision of this chapter, the rules or regulations thereunder, or its own rules or without reasonable justification or excuse has failed to enforce compliance—

(A) in the case of a national securities exchange, with any such provision by a member thereof or a person associated with a member thereof;

(B) in the case of a registered securities association, with any such provision or any provision of the rules of the Municipal Securities Rulemaking Board by a member thereof or a person associated with a member thereof; or

(C) in the case of a registered clearing agency, with any provision of its own rules by a participant therein.

(2) The appropriate regulatory agency for a self-regulatory organization is authorized, by order, if in its opinion such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter, to suspend for a period not exceeding twelve months or expel from such self-regulatory organization any member thereof or participant therein, if such member or participant is subject to an order of the Commission pursuant to section 78o(b)(4) of this title or if such appropriate regulatory agency finds, on the record after notice and opportunity for hearing, that such member or participant has willfully violated or has effected any transaction for any other person who, such member or participant had reason to believe, was violating with respect to such transaction—

(A) in the case of a national securities exchange, any provision of the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.], the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.], this chapter, or the rules or regulations under any of such statutes;

(B) in the case of a registered securities association, any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, this chapter, the rules or regulations under any of such statutes, or the rules of the Municipal Securities Rulemaking Board; or

(C) in the case of a registered clearing agency, any provision of the rules of the clearing agency.

(3) The appropriate regulatory agency for a national securities exchange or registered securities association is authorized, by order, if in its opinion such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter, to suspend for a period not exceeding twelve months or to bar any person from being associated with a member of such national securities exchange or registered securities association, if

such person is subject to an order of the Commission pursuant to section 78o(b)(6) of this title or if such appropriate regulatory agency finds, on the record after notice and opportunity for hearing, that such person has willfully violated or has effected any transaction for any other person who, such person associated with a member had reason to believe, was violating with respect to such transaction—

(A) in the case of a national securities exchange, any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, this chapter, or the rules or regulations under any of such statutes; or

(B) in the case of a registered securities association, any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, this chapter, the rules or regulations under any of the statutes, or the rules of the Municipal Securities Rulemaking Board.

(4) The appropriate regulatory agency for a self-regulatory organization is authorized, by order, if in its opinion such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter, to remove from office or censure any person who is, or at the time of the alleged misconduct was, an officer or director of such self-regulatory organization, if such appropriate regulatory agency finds, on the record after notice and opportunity for hearing, that such person has willfully violated any provision of this chapter, the rules or regulations thereunder, or the rules of such self-regulatory organization, willfully abused his authority, or without reasonable justification or excuse has failed to enforce compliance—

(A) in the case of a national securities exchange, with any such provision by any member or person associated with a member;

(B) in the case of a registered securities association, with any such provision or any provision of the rules of the Municipal Securities Rulemaking Board by any member or person associated with a member; or

(C) in the case of a registered clearing agency, with any provision of the rules of the clearing agency by any participant.

(i) Appointment of trustee

If a proceeding under subsection (h)(1) of this section results in the suspension or revocation of the registration of a clearing agency, the appropriate regulatory agency for such clearing agency may, upon notice to such clearing agency, apply to any court of competent jurisdiction specified in section 78u(d) or 78aa of this title for the appointment of a trustee. In the event of such an application, the court may, to the extent it deems necessary or appropriate, take exclusive jurisdiction of such clearing agency and the records and assets thereof, wherever located; and the court shall appoint the appropriate regulatory agency for such clearing agency or a person designated by such appropriate regulatory agency as trustee with power to take possession and continue to operate or terminate the operations of such clearing agency in an orderly manner for the protection of participants and investors, subject to such terms and conditions as the court may prescribe.

(June 6, 1934, ch. 404, title I, §19, 48 Stat. 898; Pub. L. 87–196, Sept. 5, 1961, 75 Stat. 465; Pub. L. 87–561, July 27, 1962, 76 Stat. 247; Pub. L. 90–438, July 29, 1968, 82 Stat. 453; Pub. L. 91–94, Oct. 20, 1969, 83 Stat. 141; Pub. L. 91–410, Sept. 25, 1970, 84 Stat. 862; Pub. L. 94–29, §16, June 4, 1975, 89 Stat. 146; Pub. L. 103–202, title I, §106(c), Dec. 17, 1993, 107 Stat. 2350; Pub. L. 105–353, title III, §301(b)(11), Nov. 3, 1998, 112 Stat. 3236; Pub. L. 106–554, §1(a)(5) [title II, §202(b), (c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–418, 2763A–421; Pub. L. 111–203, title VII, §717(c), title IX, §§916, 929F(e), July 21, 2010, 124 Stat. 1652, 1833, 1854.)

AMENDMENT OF SECTION

Unless otherwise provided, amendment by subtitle A (§§711–754) of title VII of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A

requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see 2010 Amendment notes and Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1), (b)(2)(C)(i), (3)(C), (7)(C), (8), (c), (d)(1), (e)(1)(A), (2), (f), (g), and (h), was in the original "this title". See References in Text note set out under section 78a of this title.

The Securities Act of 1933, referred to in subsec. (h), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, as amended, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Investment Advisers Act of 1940, referred to in subsec. (h), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, as amended, which is classified generally to subchapter II (§80b–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80b–20 of this title and Tables.

The Investment Company Act of 1940, referred to in subsec. (h), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a–51 of this title and Tables.

AMENDMENTS

2010—Subsec. (b)(1). Pub. L. 111–203, §916(b)(2), substituted "as soon as practicable after the date of the filing" for "upon the filing".

Subsec. (b)(2). Pub. L. 111–203, §916(a), added par. (2) and struck out former par. (2) which related to approval of rule change or institution of proceedings regarding disapproval of such change within thirty-five days of publication of notice or within such longer period as the Commission may designate up to ninety days of such date.

Subsec. (b)(3)(A). Pub. L. 111–203, §916(c)(1), substituted "shall take effect" for "may take effect" and inserted "on any person, whether or not the person is a member of the self-regulatory organization" after "charge imposed by the self-regulatory organization".

Subsec. (b)(3)(C). Pub. L. 111–203, §916(c)(2), substituted second sentence for former second sentence which read as follows: "At any time within sixty days of the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) of this subsection, the Commission summarily may abrogate the change in the rules of the self-regulatory organization made thereby and require that the proposed rule change be refiled in accordance with the provisions of paragraph (1) of this subsection and reviewed in accordance with the provisions of paragraph (2) of this subsection, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter.", added third sentence, and substituted "this subparagraph" for "the preceding sentence" in last sentence.

Subsec. (b)(4)(D). Pub. L. 111–203, §916(d), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: "The Commission shall abrogate any change in the rules of such a clearing agency made by a proposed rule change which has taken effect pursuant to paragraph (3) of this subsection, require that the proposed rule change be refiled in accordance with the provisions of paragraph (1) of this subsection, and reviewed in accordance with the provisions of paragraph (2) of this subsection, if the appropriate regulatory agency for such clearing agency notifies the Commission within thirty days of the date of filing of such proposed rule change of such appropriate regulatory agency's (i) determination that the rules of such clearing agency as so changed may be inconsistent with the safeguarding of securities or funds in the custody or control of such clearing agency or for which it is responsible and (ii) reasons for such determination."

Subsec. (b)(10). Pub. L. 111–203, §916(b)(1), added par. (10) relating to rule of construction relating to filing date of proposed rule changes.

Pub. L. 111–203, §717(c), added par. (10) relating to stay pending determination whether product is a security pursuant to section 8306 of this title.

Subsec. (h)(4). Pub. L. 111–203, §929F(e), in introductory provisions, substituted "any person who is, or at the time of the alleged misconduct was, an officer or director" for "any officer or director" and "such person" for "such officer or director".

2000—Subsec. (b)(7). Pub. L. 106–554, §1(a)(5) [title II, §202(b)(1)], added par. (7).

Subsec. (b)(8). Pub. L. 106–554, §1(a)(5) [title II, §202(b)(2)], added par. (8).

Subsec. (b)(9). Pub. L. 106–554, §1(a)(5) [title II, §202(b)(3)], added par. (9).

Subsec. (d)(3). Pub. L. 106–554, §1(a)(5) [title II, §202(c)], added par. (3).

1998—Subsec. (c)(5). Pub. L. 105–353 realigned margins.

1993—Subsec. (b)(5), (6). Pub. L. 103–202, §106(c)(1), added pars. (5) and (6).

Subsec. (c)(5). Pub. L. 103–202, §106(c)(2), added par. (5).

1975—Pub. L. 94–29 amended section generally, substituting provisions covering the registration, responsibilities, and oversight of self-regulatory organizations by the Commission for provisions covering only the Commission's powers with respect to exchanges and securities, with a view to consolidating and expanding the Commission's oversight powers with respect to self-regulatory organizations, their members, participants, and officers, and with a view to giving the Commission identical powers over all self-regulatory organizations, including registered clearing agencies, and substantially strengthening the Commission's ability to assure that these organizations carry out their statutory responsibilities.

1970—Subsec. (e)(1). Pub. L. 91–410 substituted "December 31, 1970" for "September 1, 1970".

1969—Subsec. (e). Pub. L. 91–94 substituted "September 1, 1970" for "September 1, 1969" in par. (1), and "$945,000" for "$875,000" in par. (4).

1968—Subsec. (e). Pub. L. 90–438 added subsec. (e).

1962—Subsec. (d). Pub. L. 87–561 substituted "April 3, 1963" for "January 3, 1963" and "$950,000" for "$750,000".

1961—Subsec. (d). Pub. L. 87–196 added subsec. (d).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 916 and 929F(e) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Amendment by section 717(c) of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of Title 7, Agriculture.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, except for amendment of subsec. (g) by Pub. L. 94–29 which is effective 180 days after June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

CONSTRUCTION OF 1993 AMENDMENT

Amendment by Pub. L. 103–202 not to be construed to govern initial issuance of any public debt obligation or to grant any authority to (or extend any authority of) the Securities and Exchange Commission, any appropriate regulatory agency, or a self-regulatory organization to prescribe any procedure, term, or condition of such initial issuance, to promulgate any rule or regulation governing such initial issuance, or to otherwise regulate in any manner such initial issuance, see section 111 of Pub. L. 103–202, set out as a note under section 78o–5 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

REVIEW OF REGULATORY STRUCTURES AND PROCEDURES WITH RESPECT TO PENNY STOCKS; REPORT

Pub. L. 101–429, title V, §510, Oct. 15, 1990, 104 Stat. 957, directed Comptroller General, in consultation with Securities and Exchange Commission, to conduct a review of rules, procedures, facilities, and oversight and enforcement activities of self-regulatory organizations under Securities Exchange Act of 1934, with respect to penny stocks (within the meaning of 15 U.S.C. 78c(a)(51)), and, within one year after Oct. 15, 1990, to submit a report on the review including a statement of findings and such recommendations as the Comptroller General considered appropriate with respect to legislative or administrative changes.

[1] *So in original. Two pars. (10) have been enacted.*

§78t. Liability of controlling persons and persons who aid and abet violations

(a) Joint and several liability; good faith defense

Every person who, directly or indirectly, controls any person liable under any provision of this chapter or of any rule or regulation thereunder shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable (including to the Commission in any action brought under paragraph (1) or (3) of section 78u(d) of this title), unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action.

(b) Unlawful activity through or by means of any other person

It shall be unlawful for any person, directly or indirectly, to do any act or thing which it would be unlawful for such person to do under the provisions of this chapter or any rule or regulation thereunder through or by means of any other person.

(c) Hindering, delaying, or obstructing the making or filing of any document, report, or information

It shall be unlawful for any director or officer of, or any owner of any securities issued by, any issuer required to file any document, report, or information under this chapter or any rule or regulation thereunder without just cause to hinder, delay, or obstruct the making or filing of any such document, report, or information.

(d) Liability for trading in securities while in possession of material nonpublic information

Wherever communicating, or purchasing or selling a security while in possession of, material nonpublic information would violate, or result in liability to any purchaser or seller of the security under any provisions of this chapter, or any rule or regulation thereunder, such conduct in connection with a purchase or sale of a put, call, straddle, option, privilege or security-based swap agreement with respect to such security or with respect to a group or index of securities including such security, shall also violate and result in comparable liability to any purchaser or seller of that security under such provision, rule, or regulation.

(e) Prosecution of persons who aid and abet violations

For purposes of any action brought by the Commission under paragraph (1) or (3) of section 78u(d) of this title, any person that knowingly or recklessly provides substantial assistance to another person in violation of a provision of this chapter, or of any rule or regulation issued under this chapter, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided.

(f) Limitation on Commission authority

The authority of the Commission under this section with respect to security-based swap agreements shall be subject to the restrictions and limitations of section 78c–1(b) of this title.

(June 6, 1934, ch. 404, title I, §20, 48 Stat. 899; May 27, 1936, ch. 462, §6, 49 Stat. 1379; Pub. L. 88–467, §9, Aug. 20, 1964, 78 Stat. 579; Pub. L. 98–376, §5, Aug. 10, 1984, 98 Stat. 1265; Pub. L. 104–67, title I, §104, Dec. 22, 1995, 109 Stat. 757; Pub. L. 105–353, title III, §301(b)(12), Nov. 3, 1998, 112 Stat. 3236; Pub. L. 106–554, §1(a)(5) [title II, §205(a)(3), title III, §303(i), (j)], Dec. 21, 2000, 114 Stat. 2763, 2763A–426, 2763A–456; Pub. L. 111–203, title VII, §762(d)(6), title IX, §§929O, 929P(c), July 21, 2010, 124 Stat. 1761, 1862, 1865.)

AMENDMENT OF SECTION

Unless otherwise provided, amendment by subtitle B (§§761–774) of title VII of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see 2010 Amendment notes and Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title". See References in Text note set out under section 78a of this title.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, §929P(c), inserted "(including to the Commission in any action brought under paragraph (1) or (3) of section 78u(d) of this title)" after "controlled person is liable".

Subsec. (d). Pub. L. 111–203, §762(d)(6)(A), struck out "(as defined in section 206B of the Gramm-Leach-Bliley Act)" after "security-based swap agreement".

Subsec. (e). Pub. L. 111–203, §929O, inserted "or recklessly" after "knowingly".

Subsec. (f). Pub. L. 111–203, §762(d)(6)(B), struck out "(as defined in section 206B of the Gramm-Leach-Bliley Act)" after "security-based swap agreements".

2000—Subsec. (d). Pub. L. 106–554, §1(a)(5) [title III, §303(i)], amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "Wherever communicating, or purchasing or selling a security while in possession of, material nonpublic information would violate, or result in liability to any purchaser or seller of the security under any provision of this chapter, or any rule or regulation thereunder, such conduct in connection with a purchase or sale of a put, call, straddle, option,, privilege, or security futures product with respect to such security or with respect to a group or index of securities including such security, shall also violate and result in comparable liability to any purchaser or seller of that security under such provision, rule, or regulation."

Pub. L. 106–554, §1(a)(5) [title II, §205(a)(3)], substituted ", privilege, or security futures product" for "or privilege".

Subsec. (f). Pub. L. 106–554, §1(a)(5) [title III, §303(j)], added subsec. (f).

1998—Subsecs. (e), (f). Pub. L. 105–353 redesignated subsec. (f) as (e).

1995—Pub. L. 104–67, §104(1), substituted "liability of controlling persons and persons who aid and abet violations" for "Liabilities of controlling persons" in section catchline.

Subsec. (f). Pub. L. 104–67, §104(2), added subsec. (f).

1984—Subsec. (d). Pub. L. 98–376 added subsec. (d).

1964—Subsec. (c). Pub. L. 88–467 extended application of provisions of subsec. (c) by substituting the prohibition against any officer or director of, or an owner of securities issued by, a company from hindering, delaying, or obstructing the preparation or filing of any report, document, or information required to be filed under this chapter for existing provisions applicable only to filings by companies with securities registered on a national securities exchange or subject to the provisions of section 78o(d) of this title.

1936—Subsec. (c). Act May 27, 1936, inserted "or any undertaking contained in a registration statement as provided in subsection (d) of section 78o of this title".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 929O and 929P(c) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Amendment by section 762(d)(6) of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761–774) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111–203, set out as a note under section 77b of this title.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–67 not to affect or apply to any private action arising under this chapter or title I of the Securities Act of 1933 (15 U.S.C. 77a et seq.), commenced before and pending on Dec. 22, 1995, see section 108 of Pub. L. 104–67, set out as a note under section 77l of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–376 effective Aug. 10, 1984, see section 7 of Pub. L. 98–376, set out as a note under section 78c of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–467 effective Aug. 20, 1964, see section 13 of Pub. L. 88–467, set out as a note under section 78c of this title.

CONSTRUCTION OF 1995 AMENDMENT

Nothing in amendment by Pub. L. 104–67 to be deemed to create or ratify any implied right of action, or to prevent Commission, by rule or regulation, from restricting or otherwise regulating private actions under this chapter, see section 203 of Pub. L. 104–67, set out as a Construction note under section 78j–1 of this title.

§78t–1. Liability to contemporaneous traders for insider trading

(a) Private rights of action based on contemporaneous trading

Any person who violates any provision of this chapter or the rules or regulations thereunder by purchasing or selling a security while in possession of material, nonpublic information shall be liable in an action in any court of competent jurisdiction to any person who, contemporaneously with the purchase or sale of securities that is the subject of such violation, has purchased (where such violation is based on a sale of securities) or sold (where such violation is based on a purchase of securities) securities of the same class.

(b) Limitations on liability

(1) Contemporaneous trading actions limited to profit gained or loss avoided

The total amount of damages imposed under subsection (a) of this section shall not exceed the profit gained or loss avoided in the transaction or transactions that are the subject of the violation.

(2) Offsetting disgorgements against liability

The total amount of damages imposed against any person under subsection (a) of this section shall be diminished by the amounts, if any, that such person may be required to disgorge, pursuant to a court order obtained at the instance of the Commission, in a proceeding brought under section 78u(d) of this title relating to the same transaction or transactions.

(3) Controlling person liability

No person shall be liable under this section solely by reason of employing another person who is liable under this section, but the liability of a controlling person under this section shall be subject to section 78t(a) of this title.

(4) Statute of limitations

No action may be brought under this section more than 5 years after the date of the last transaction that is the subject of the violation.

(c) Joint and several liability for communicating

Any person who violates any provision of this chapter or the rules or regulations thereunder by communicating material, nonpublic information shall be jointly and severally liable under subsection (a) of this section with, and to the same extent as, any person or persons liable under subsection (a) of this section to whom the communication was directed.

(d) Authority not to restrict other express or implied rights of action

Nothing in this section shall be construed to limit or condition the right of any person to bring an action to enforce a requirement of this chapter or the availability of any cause of action implied from a provision of this chapter.

(e) Provisions not to affect public prosecutions

This section shall not be construed to bar or limit in any manner any action by the Commission or the Attorney General under any other provision of this chapter, nor shall it bar or limit in any manner any action to recover penalties, or to seek any other order regarding penalties.

(June 6, 1934, ch. 404, title I, §20A, as added Pub. L. 100–704, §5, Nov. 19, 1988, 102 Stat. 4680.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (c), (d), and (e), was in the original "this title". See References in Text note set out under section 78a of this title.

EFFECTIVE DATE

Section not applicable to actions occurring before Nov. 19, 1988, see section 9 of Pub. L. 100–704 set out as an Effective Date of 1988 Amendment note under section 78o of this title.

§78u. Investigations and actions

(a) Authority and discretion of Commission to investigate violations

(1) The Commission may, in its discretion, make such investigations as it deems necessary to determine whether any person has violated, is violating, or is about to violate any provision of this chapter, the rules or regulations thereunder, the rules of a national securities exchange or registered securities association of which such person is a member or a person associated, or, as to any act or practice, or omission to act, while associated with a member, formerly associated with a member, the rules of a registered clearing agency in which such person is a participant, or, as to any act or practice, or omission to act, while a participant, was a participant, the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm, a person associated with such a firm, or, as to any act, practice, or omission to act, while associated with such firm, a person formerly associated with such a firm, or the rules of the Municipal Securities Rulemaking Board, and may require or permit any person to file with it a statement in writing, under oath or otherwise as the Commission shall determine, as to all the facts and circumstances concerning the matter to be investigated. The Commission is authorized in its discretion, to publish information concerning any such violations, and to investigate any facts, conditions, practices, or matters which it may deem necessary or proper to aid in the enforcement of such provisions, in the prescribing of rules and regulations under this chapter, or in securing information to serve as a basis for recommending further legislation concerning the matters to which this chapter relates.

(2) On request from a foreign securities authority, the Commission may provide assistance in accordance with this paragraph if the requesting authority states that the requesting authority is conducting an investigation which it deems necessary to determine whether any person has violated, is violating, or is about to violate any laws or rules relating to securities matters that the requesting authority administers or enforces. The Commission may, in its discretion, conduct such investigation as the Commission deems necessary to collect information and evidence pertinent to the request for assistance. Such assistance may be provided without regard to whether the facts stated in the request would also constitute a violation of the laws of the United States. In deciding whether to provide such assistance, the Commission shall consider whether (A) the requesting authority has agreed to provide reciprocal assistance in securities matters to the Commission; and (B) compliance with the request would prejudice the public interest of the United States.

(b) Attendance of witnesses; production of records

For the purpose of any such investigation, or any other proceeding under this chapter, any member of the Commission or any officer designated by it is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records which the Commission deems relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States or any State at any designated place of hearing.

(c) Judicial enforcement of investigative power of Commission; refusal to obey subpena; criminal sanctions

In case of contumacy by, or refusal to obey a subpena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. And such court may issue an order requiring such person to appear before the Commission or member or officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found. Any person who shall, without just cause, fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence,

memoranda, and other records, if in his power so to do, in obedience to the subpena of the Commission, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year, or both.

(d) Injunction proceedings; authority of court to prohibit persons from serving as officers and directors; money penalties in civil actions

(1) Whenever it shall appear to the Commission that any person is engaged or is about to engage in acts or practices constituting a violation of any provision of this chapter, the rules or regulations thereunder, the rules of a national securities exchange or registered securities association of which such person is a member or a person associated with a member, the rules of a registered clearing agency in which such person is a participant, the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm or a person associated with such a firm, or the rules of the Municipal Securities Rulemaking Board, it may in its discretion bring an action in the proper district court of the United States, the United States District Court for the District of Columbia, or the United States courts of any territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices as may constitute a violation of any provision of this chapter or the rules or regulations thereunder to the Attorney General, who may, in his discretion, institute the necessary criminal proceedings under this chapter.

(2) AUTHORITY OF COURT TO PROHIBIT PERSONS FROM SERVING AS OFFICERS AND DIRECTORS.—In any proceeding under paragraph (1) of this subsection, the court may prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who violated section 78j(b) of this title or the rules or regulations thereunder from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 78l of this title or that is required to file reports pursuant to section 78o(d) of this title if the person's conduct demonstrates unfitness to serve as an officer or director of any such issuer.

(3) MONEY PENALTIES IN CIVIL ACTIONS.—

(A) AUTHORITY OF COMMISSION.—Whenever it shall appear to the Commission that any person has violated any provision of this chapter, the rules or regulations thereunder, or a cease-and-desist order entered by the Commission pursuant to section 78u–3 of this title, other than by committing a violation subject to a penalty pursuant to section 78u–1 of this title, the Commission may bring an action in a United States district court to seek, and the court shall have jurisdiction to impose, upon a proper showing, a civil penalty to be paid by the person who committed such violation.

(B) AMOUNT OF PENALTY.—

(i) FIRST TIER.—The amount of the penalty shall be determined by the court in light of the facts and circumstances. For each violation, the amount of the penalty shall not exceed the greater of (I) $5,000 for a natural person or $50,000 for any other person, or (II) the gross amount of pecuniary gain to such defendant as a result of the violation.

(ii) SECOND TIER.—Notwithstanding clause (i), the amount of penalty for each such violation shall not exceed the greater of (I) $50,000 for a natural person or $250,000 for any other person, or (II) the gross amount of pecuniary gain to such defendant as a result of the violation, if the violation described in subparagraph (A) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

(iii) THIRD TIER.—Notwithstanding clauses (i) and (ii), the amount of penalty for each such violation shall not exceed the greater of (I) $100,000 for a natural person or $500,000 for any other person, or (II) the gross amount of pecuniary gain to such defendant as a result of the violation, if—

(aa) the violation described in subparagraph (A) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

(bb) such violation directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.

(C) PROCEDURES FOR COLLECTION.—

(i) PAYMENT OF PENALTY TO TREASURY.—A penalty imposed under this section shall be payable into the Treasury of the United States, except as otherwise provided in section 7246 of this title and section 78u–6 of this title.

(ii) COLLECTION OF PENALTIES.—If a person upon whom such a penalty is imposed shall fail to pay such penalty within the time prescribed in the court's order, the Commission may refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court.

(iii) REMEDY NOT EXCLUSIVE.—The actions authorized by this paragraph may be brought in addition to any other action that the Commission or the Attorney General is entitled to bring.

(iv) JURISDICTION AND VENUE.—For purposes of section 78aa of this title, actions under this paragraph shall be actions to enforce a liability or a duty created by this chapter.

(D) SPECIAL PROVISIONS RELATING TO A VIOLATION OF A CEASE-AND-DESIST ORDER.—In an action to enforce a cease-and-desist order entered by the Commission pursuant to section 78u–3 of this title, each separate violation of such order shall be a separate offense, except that in the case of a violation through a continuing failure to comply with the order, each day of the failure to comply shall be deemed a separate offense.

(4) PROHIBITION OF ATTORNEYS' FEES PAID FROM COMMISSION DISGORGEMENT FUNDS.—Except as otherwise ordered by the court upon motion by the Commission, or, in the case of an administrative action, as otherwise ordered by the Commission, funds disgorged as the result of an action brought by the Commission in Federal court, or as a result of any Commission administrative action, shall not be distributed as payment for attorneys' fees or expenses incurred by private parties seeking distribution of the disgorged funds.

(5) EQUITABLE RELIEF.—In any action or proceeding brought or instituted by the Commission under any provision of the securities laws, the Commission may seek, and any Federal court may grant, any equitable relief that may be appropriate or necessary for the benefit of investors.

(6) AUTHORITY OF A COURT TO PROHIBIT PERSONS FROM PARTICIPATING IN AN OFFERING OF PENNY STOCK.—

(A) IN GENERAL.—In any proceeding under paragraph (1) against any person participating in, or, at the time of the alleged misconduct who was participating in, an offering of penny stock, the court may prohibit that person from participating in an offering of penny stock, conditionally or unconditionally, and permanently or for such period of time as the court shall determine.

(B) DEFINITION.—For purposes of this paragraph, the term "person participating in an offering of penny stock" includes any person engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of, any penny stock. The Commission may, by rule or regulation, define such term to include other activities, and may, by rule, regulation, or order, exempt any person or class of persons, in whole or in part, conditionally or unconditionally, from inclusion in such term.

(e) Mandamus

Upon application of the Commission the district courts of the United States and the United States courts of any territory or other place subject to the jurisdiction of the United States shall have jurisdiction to issue writs of mandamus, injunctions, and orders commanding (1) any person to comply with the provisions of this chapter, the rules, regulations, and orders thereunder, the rules of a national securities exchange or registered securities association of which such person is a member or person associated with a member, the rules of a registered clearing agency in which such person is a participant, the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm or a person associated with such a firm, the rules of the Municipal Securities Rulemaking Board, or any undertaking contained in a registration statement as provided in subsection (d) of section 78o of this title, (2) any national securities exchange or registered securities association to enforce compliance by its members and persons associated with

its members with the provisions of this chapter, the rules, regulations, and orders thereunder, and the rules of such exchange or association, or (3) any registered clearing agency to enforce compliance by its participants with the provisions of the rules of such clearing agency.

(f) Rules of self-regulatory organizations or Board

Notwithstanding any other provision of this chapter, the Commission shall not bring any action pursuant to subsection (d) or (e) of this section against any person for violation of, or to command compliance with, the rules of a self-regulatory organization or the Public Company Accounting Oversight Board unless it appears to the Commission that (1) such self-regulatory organization or the Public Company Accounting Oversight Board is unable or unwilling to take appropriate action against such person in the public interest and for the protection of investors, or (2) such action is otherwise necessary or appropriate in the public interest or for the protection of investors.

(g) Consolidation of actions; consent of Commission

Notwithstanding the provisions of section 1407(a) of title 28, or any other provision of law, no action for equitable relief instituted by the Commission pursuant to the securities laws shall be consolidated or coordinated with other actions not brought by the Commission, even though such other actions may involve common questions of fact, unless such consolidation is consented to by the Commission.

(h) Access to records

(1) The Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.] shall apply with respect to the Commission, except as otherwise provided in this subsection.

(2) Notwithstanding section 1105 or 1107 of the Right to Financial Privacy Act of 1978 [12 U.S.C. 3405 or 3407], the Commission may have access to and obtain copies of, or the information contained in financial records of a customer from a financial institution without prior notice to the customer upon an ex parte showing to an appropriate United States district court that the Commission seeks such financial records pursuant to a subpena issued in conformity with the requirements of section 19(b) [1] of the Securities Act of 1933, section 21(b) of the Securities Exchange Act of 1934 [15 U.S.C. 78u(b)], section 42(b) of the Investment Company Act of 1940 [15 U.S.C. 80a–41(b)], or section 209(b) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–9(b)], and that the Commission has reason to believe that—

(A) delay in obtaining access to such financial records, or the required notice, will result in—
(i) flight from prosecution;
(ii) destruction of or tampering with evidence;
(iii) transfer of assets or records outside the territorial limits of the United States;
(iv) improper conversion of investor assets; or
(v) impeding the ability of the Commission to identify or trace the source or disposition of funds involved in any securities transaction;

(B) such financial records are necessary to identify or trace the record or beneficial ownership interest in any security;

(C) the acts, practices or course of conduct under investigation involve—
(i) the dissemination of materially false or misleading information concerning any security, issuer, or market, or the failure to make disclosures required under the securities laws, which remain uncorrected; or
(ii) a financial loss to investors or other persons protected under the securities laws which remains substantially uncompensated; or

(D) the acts, practices or course of conduct under investigation—
(i) involve significant financial speculation in securities; or
(ii) endanger the stability of any financial or investment intermediary.

(3) Any application under paragraph (2) for a delay in notice shall be made with reasonable

specificity.

(4)(A) Upon a showing described in paragraph (2), the presiding judge or magistrate judge shall enter an ex parte order granting the requested delay for a period not to exceed ninety days and an order prohibiting the financial institution involved from disclosing that records have been obtained or that a request for records has been made.

(B) Extensions of the period of delay of notice provided in subparagraph (A) of up to ninety days each may be granted by the court upon application, but only in accordance with this subsection or section 1109(a), (b)(1), or (b)(2) of the Right to Financial Privacy Act of 1978 [12 U.S.C. 3409(a), (b)(1), or (b)(2)].

(C) Upon expiration of the period of delay of notification ordered under subparagraph (A) or (B), the customer shall be served with or mailed a copy of the subpena insofar as it applies to the customer together with the following notice which shall describe with reasonable specificity the nature of the investigation for which the Commission sought the financial records:

"Records or information concerning your transactions which are held by the financial institution named in the attached subpena were supplied to the Securities and Exchange Commission on (date). Notification was withheld pursuant to a determination by the (title of court so ordering) under section 21(h) of the Securities Exchange Act of 1934 that (state reason). The purpose of the investigation or official proceeding was (state purpose)."

(5) Upon application by the Commission, all proceedings pursuant to paragraphs (2) and (4) shall be held in camera and the records thereof sealed until expiration of the period of delay or such other date as the presiding judge or magistrate judge may permit.

(6) The Commission shall compile an annual tabulation of the occasions on which the Commission used each separate subparagraph or clause of paragraph (2) of this subsection or the provisions of the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.] to obtain access to financial records of a customer and include it in its annual report to the Congress. Section 1121(b) [1] of the Right to Financial Privacy Act of 1978 shall not apply with respect to the Commission.

(7)(A) Following the expiration of the period of delay of notification ordered by the court pursuant to paragraph (4) of this subsection, the customer may, upon motion, reopen the proceeding in the district court which issued the order. If the presiding judge or magistrate judge finds that the movant is the customer to whom the records obtained by the Commission pertain, and that the Commission has obtained financial records or information contained therein in violation of this subsection, other than paragraph (1), it may order that the customer be granted civil penalties against the Commission in an amount equal to the sum of—

(i) $100 without regard to the volume of records involved;

(ii) any out-of-pocket damages sustained by the customer as a direct result of the disclosure; and

(iii) if the violation is found to have been willful, intentional, and without good faith, such punitive damages as the court may allow, together with the costs of the action and reasonable attorney's fees as determined by the court.

(B) Upon a finding that the Commission has obtained financial records or information contained therein in violation of this subsection, other than paragraph (1), the court, in its discretion, may also or in the alternative issue injunctive relief to require the Commission to comply with this subsection with respect to any subpena which the Commission issues in the future for financial records of such customer for purposes of the same investigation.

(C) Whenever the court determines that the Commission has failed to comply with this subsection, other than paragraph (1), and the court finds that the circumstances raise questions of whether an officer or employee of the Commission acted in a willful and intentional manner and without good faith with respect to the violation, the Office of Personnel Management shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the agent or employee who was primarily responsible for the violation. After investigating and considering the evidence submitted, the Office of Personnel Management shall submit its findings and recommendations to

the Commission and shall send copies of the findings and recommendations to the officer or employee or his representative. The Commission shall take the corrective action that the Office of Personnel Management recommends.

(8) The relief described in paragraphs (7) and (10) shall be the only remedies or sanctions available to a customer for a violation of this subsection, other than paragraph (1), and nothing herein or in the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.] shall be deemed to prohibit the use in any investigation or proceeding of financial records, or the information contained therein, obtained by a subpena issued by the Commission. In the case of an unsuccessful action under paragraph (7), the court shall award the costs of the action and attorney's fees to the Commission if the presiding judge or magistrate judge finds that the customer's claims were made in bad faith.

(9)(A) The Commission may transfer financial records or the information contained therein to any government authority if the Commission proceeds as a transferring agency in accordance with section 1112 of the Right to Financial Privacy Act of 1978 [12 U.S.C. 3412], except that the customer notice required under section 1112(b) or (c) of such Act [12 U.S.C. 3412(b) or (c)] may be delayed upon a showing by the Commission, in accordance with the procedure set forth in paragraphs (4) and (5), that one or more of subparagraphs (A) through (D) of paragraph (2) apply.

(B) The Commission may, without notice to the customer pursuant to section 1112 or the Right to Financial Privacy Act of 1978 [12 U.S.C. 3412], transfer financial records or the information contained therein to a State securities agency or to the Department of Justice. Financial records or information transferred by the Commission to the Department of Justice or to a State securities agency pursuant to the provisions of this subparagraph may be disclosed or used only in an administrative, civil, or criminal action or investigation by the Department of Justice or the State securities agency which arises out of or relates to the acts, practices, or courses of conduct investigated by the Commission, except that if the Department of Justice or the State securities agency determines that the information should be disclosed or used for any other purpose, it may do so if it notifies the customer, except as otherwise provided in the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.], within 30 days of its determination, or complies with the requirements of section 1109 of such Act [12 U.S.C. 3409] regarding delay of notice.

(10) Any government authority violating paragraph (9) shall be subject to the procedures and penalties applicable to the Commission under paragraph (7)(A) with respect to a violation by the Commission in obtaining financial records.

(11) Notwithstanding the provisions of this subsection, the Commission may obtain financial records from a financial institution or transfer such records in accordance with provisions of the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.].

(12) Nothing in this subsection shall enlarge or restrict any rights of a financial institution to challenge requests for records made by the Commission under existing law. Nothing in this subsection shall entitle a customer to assert any rights of a financial institution.

(13) Unless the context otherwise requires, all terms defined in the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.] which are common to this subsection shall have the same meaning as in such Act.

(i) Information to CFTC

The Commission shall provide the Commodity Futures Trading Commission with notice of the commencement of any proceeding and a copy of any order entered by the Commission against any broker or dealer registered pursuant to section 78o(b)(11) of this title, any exchange registered pursuant to section 78f(g) of this title, or any national securities association registered pursuant to section 78o–3(k) of this title.

(June 6, 1934, ch. 404, title I, §21, 48 Stat. 899; May 27, 1936, ch. 462, §7, 49 Stat. 1379; Pub. L. 91–452, title II, §212, Oct. 15, 1970, 84 Stat. 929; Pub. L. 94–29, §17, June 4, 1975, 89 Stat. 154; Pub. L. 96–433, §§3, 4, Oct. 10, 1980, 94 Stat. 1855, 1858; Pub. L. 98–376, §2, Aug. 10, 1984, 98 Stat. 1264; Pub. L. 100–181, title III, §323, Dec. 4, 1987, 101 Stat. 1259; Pub. L. 100–704, §§3(a)(1), 6(b), Nov. 19, 1988, 102 Stat. 4677, 4681; Pub. L. 101–429, title II, §201, Oct. 15, 1990,

104 Stat. 935; Pub. L. 101–650, title III, §321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 104–67, title I, §103(b)(2), Dec. 22, 1995, 109 Stat. 756; Pub. L. 106–554, §1(a)(5) [title II, §205(a)(5)], Dec. 21, 2000, 114 Stat. 2763, 2763A–426; Pub. L. 107–204, §3(b)(2), title III, §§305(a)(1), (b), 308(d)(1), title VI, §603(a), July 30, 2002, 116 Stat. 749, 778, 779, 785, 794; Pub. L. 111–203, title IX, §§923(b)(1), 929F(c), (d), (g)(2), 986(a)(3), July 21, 2010, 124 Stat. 1849, 1854, 1855, 1935.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1), (b), (d), (e), and (f), was in the original "this title". See References in Text note set out under section 78a of this title.

The Right to Financial Privacy Act of 1978, referred to in subsec. (h)(1), (6), (8), (9)(B), (11), and (13), is title XI of Pub. L. 95–630, Nov. 10, 1978, 92 Stat. 3697, which is classified generally to chapter 35 (§3401 et seq.) of Title 12, Banks and Banking. Section 1121(b) of the Act, which was classified to section 3421(b) of Title 12, was repealed by Pub. L. 104–66, title III, §3001(d), Dec. 21, 1995, 109 Stat. 734. For complete classification of this Act to the Code, see Short Title note set out under section 3401 of Title 12 and Tables.

Section 19(b) of the Securities Act of 1933, referred to in subsec. (h)(2), was redesignated section 19(c) by Pub. L. 107–204, title I, §108(a)(1), July 30, 2002, 116 Stat. 768, and is classified to section 77s(c) of this title.

Section 21(h) of the Securities Exchange Act of 1934, referred to in the paragraph within quotation marks following subsec. (h)(4)(C), is classified to subsection (h) of this section.

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111–203, §929F(g)(2), in first sentence, substituted ", a person associated with such a firm, or, as to any act, practice, or omission to act, while associated with such firm, a person formerly associated with such a firm" for "or a person associated with such a firm".

Pub. L. 111–203, §929F(c), (d), in first sentence, inserted ", or, as to any act or practice, or omission to act, while associated with a member, formerly associated" after "member or a person associated" and "or, as to any act or practice, or omission to act, while a participant, was a participant," after "in which such person is a participant,".

Subsec. (d)(3)(C)(i). Pub. L. 111–203, §923(b)(1), inserted "and section 78u–6 of this title" after "section 7246 of this title".

Subsec. (h)(2). Pub. L. 111–203, §986(a)(3), struck out "section 18(c) of the Public Utility Holding Company Act of 1935," after "section 21(b) of the Securities Exchange Act of 1934,".

2002—Subsec. (a)(1). Pub. L. 107–204, §3(b)(2)(A), inserted "the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm or a person associated with such a firm," after "is a participant,".

Subsec. (d)(1). Pub. L. 107–204, §3(b)(2)(B), inserted "the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm or a person associated with such a firm," after "is a participant,".

Subsec. (d)(2). Pub. L. 107–204, §305(a)(1), substituted "unfitness" for "substantial unfitness".

Subsec. (d)(3)(C)(i). Pub. L. 107–204, §308(d)(1), inserted ", except as otherwise provided in section 7246 of this title" before period at end.

Subsec. (d)(5). Pub. L. 107–204, §305(b), added par. (5).

Subsec. (d)(6). Pub. L. 107–204, §603(a), added par. (6).

Subsec. (e). Pub. L. 107–204, §3(b)(2)(C), inserted "the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm or a person associated with such a firm," after "is a participant,".

Subsec. (f). Pub. L. 107–204, §3(b)(2)(D), inserted "or the Public Company Accounting Oversight Board" after "self-regulatory organization" in two places.

2000—Subsec. (i). Pub. L. 106–554 added subsec. (i).

1995—Subsec. (d)(4). Pub. L. 104–67 added par. (4).

1990—Subsec. (d). Pub. L. 101–429 designated existing provision as par. (1) and added pars. (2) and (3).

1988—Subsec. (a). Pub. L. 100–704, §6(b), designated existing provisions as par. (1) and added par. (2).

Subsec. (d). Pub. L. 100–704, §3(a)(1), redesignated par. (1) as entire subsec. (d) and struck out par. (2) which provided civil penalties for purchasing or selling securities while in possession of material nonpublic information.

1987—Subsec. (d). Pub. L. 100–181, §323(1), substituted "Whenever" for "Wherever".

Subsec. (e). Pub. L. 100–181, §323(2), struck out ", the United States District Court for the District of Columbia," after "the district courts of the United States".

Subsec. (g). Pub. L. 100–181, §323(3), struck out "The term 'securities laws' as used herein and in subsection (h) of this section includes the Securities Act of 1933 (15 U.S.C. 77a et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.), the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.), the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.), and the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.)." See 15 U.S.C. 78c(a)(47).

1984—Subsec. (d). Pub. L. 98–376 designated existing provisions as par. (1) and added par. (2).

1980—Subsec. (g). Pub. L. 96–433, §4, inserted "and in subsection (h) of this section."

Subsec. (h). Pub. L. 96–433, §3, added subsec. (h).

1975—Subsec. (a). Pub. L. 94–29, §17(1), expanded the Commission's power to conduct investigations to include violations of the rules of a national securities exchange, registered securities association, registered clearing agency, or the Municipal Securities Rulemaking Board.

Subsec. (d). Pub. L. 94–29, §17(2), redesignated subsec. (e) as (d) and amended it generally, substituting "has engaged, is engaged, or is about to engage" for "is engaged or about to engage", "any provision" for "the provisions", "the rules or regulations" for "or of any rule or regulation", and "such a showing" for "a proper showing", and inserting "the rules of a national securities exchange or registered securities association of which such persons is a member or a person associated with a member, the rules of a registered clearing agency in which such person is a participant, or the rules of the Municipal Securities Rulemaking Board," in first sentence and inserting "as may constitute a violation of any provision of this chapter or the rules or regulations thereunder" in second sentence. Former subsec. (d) was repealed by Pub. L. 91–452. See 1970 Amendment note below.

Subsec. (e). Pub. L. 94–29, §17(2), redesignated subsec. (f) as (e) and amended it generally, substituting "mandamus, injunctions, and orders commanding (1) any person to comply with the provisions of this chapter, the rules, regulations, and orders thereunder, the rules of a national securities exchange or registered securities association of which such person is a member or person associated with a member, the rules of a registered clearing agency in which such person is a participant, the rules of the Municipal Securities Rulemaking Board, or any undertaking contained in a registration statement as provided in subsection (d) of section 78o of this title" for "mandamus commanding any person to comply with the provisions of this chapter or any order of the Commission made in pursuance thereof or with any undertaking contained in a registration statement as provided in subsection (d) of section 78o of this title" and adding cls. (2) and (3). Former subsec. (e) redesignated (d).

Subsecs. (f), (g). Pub. L. 94–29, §17(3), added subsecs. (f) and (g). Former subsec. (f) redesignated (e).

1970—Subsec. (d). Pub. L. 91–452 struck out subsec. (d) which related to immunity from prosecution of any individual compelled to testify or produce evidence, documentary or otherwise, after claiming his privilege against self-incrimination.

1936—Subsec. (f). Act May 27, 1936, inserted "or with any undertaking contained in a registration statement as provided in subsection (d) of section 78o of this title".

CHANGE OF NAME

Words "magistrate judge" substituted for "magistrate" wherever appearing in subsec. (h)(4)(A), (5), (7)(A), (8) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–67 not to affect or apply to any private action arising under this chapter or title I of the Securities Act of 1933 (15 U.S.C. 77a et seq.), commenced before and pending on Dec. 22, 1995, see section 108 of Pub. L. 104–67, set out as a note under section 77l of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–429 effective Oct. 15, 1990, with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(1), (2) of Pub. L. 101–429, set out in a note under section 77g of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 3(a)(1) of Pub. L. 100–704 not applicable to actions occurring before Nov. 19, 1988, see section 9 of Pub. L. 100–704 set out as a note under section 78o of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–376 effective Aug. 10, 1984, see section 7 of Pub. L. 98–376, set out as a note under section 78c of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–433, §5, Oct. 10, 1980, 94 Stat. 1858, provided that:

"(a) The amendments made by section 1 of this Act [amending section 78fff–3 of this title] shall take effect on the date of enactment of this Act [Oct. 10, 1980].

"(b) The amendments made by sections 2, 3, and 4 of this Act [amending this section and section 3422 of Title 12, Banks and Banking] shall take effect on November 10, 1980. Nothing in this Act [amending this section and section 78fff–3 of this title and section 3422 of Title 12] or in the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.] shall apply to any Securities and Exchange Commission subpena issued prior to such date."

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–452 effective on sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91–452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

SAVINGS PROVISION

Amendment by Pub. L. 91–452 not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91–452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

CONSTRUCTION OF 1995 AMENDMENT

Nothing in amendment by Pub. L. 104–67 to be deemed to create or ratify any implied right of action, or to prevent Commission, by rule or regulation, from restricting or otherwise regulating private actions under this chapter, see section 203 of Pub. L. 104–67, set out as a Construction note under section 78j–1 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

PROMOTION OF RECIPROCAL SUBPOENA ENFORCEMENT

Pub. L. 105–353, title I, §102, Nov. 3, 1998, 112 Stat. 3233, provided that:

"(a) COMMISSION ACTION.—The Securities and Exchange Commission, in consultation with State securities commissions (or any agencies or offices performing like functions), shall seek to encourage the adoption of State laws providing for reciprocal enforcement by State securities commissions of subpoenas issued by another State securities commission seeking to compel persons to attend, testify in, or produce documents or records in connection with an action or investigation by a State securities commission of an alleged violation of State securities laws.

"(b) REPORT.—Not later than 24 months after the date of enactment of this Act [Nov. 3, 1998], the Securities and Exchange Commission (hereafter in this section referred to as the 'Commission') shall submit a report to the Congress—

"(1) identifying the States that have adopted laws described in subsection (a);

"(2) describing the actions undertaken by the Commission and State securities commissions to promote the adoption of such laws; and

"(3) identifying any further actions that the Commission recommends for such purposes."

[1] *See References in Text note below.*

§78u–1. Civil penalties for insider trading

(a) Authority to impose civil penalties

(1) Judicial actions by Commission authorized

Whenever it shall appear to the Commission that any person has violated any provision of this chapter or the rules or regulations thereunder by purchasing or selling a security or security-based swap agreement while in possession of material, nonpublic information in, or has violated any such provision by communicating such information in connection with, a transaction on or through the facilities of a national securities exchange or from or through a broker or dealer, and which is not part of a public offering by an issuer of securities other than standardized options or security futures products, the Commission—

(A) may bring an action in a United States district court to seek, and the court shall have jurisdiction to impose, a civil penalty to be paid by the person who committed such violation; and

(B) may, subject to subsection (b)(1) of this section, bring an action in a United States district court to seek, and the court shall have jurisdiction to impose, a civil penalty to be paid by a person who, at the time of the violation, directly or indirectly controlled the person who committed such violation.

(2) Amount of penalty for person who committed violation

The amount of the penalty which may be imposed on the person who committed such violation shall be determined by the court in light of the facts and circumstances, but shall not exceed three times the profit gained or loss avoided as a result of such unlawful purchase, sale, or communication.

(3) Amount of penalty for controlling person

The amount of the penalty which may be imposed on any person who, at the time of the violation, directly or indirectly controlled the person who committed such violation, shall be determined by the court in light of the facts and circumstances, but shall not exceed the greater of $1,000,000, or three times the amount of the profit gained or loss avoided as a result of such controlled person's violation. If such controlled person's violation was a violation by communication, the profit gained or loss avoided as a result of the violation shall, for purposes of this paragraph only, be deemed to be limited to the profit gained or loss avoided by the person or persons to whom the controlled person directed such communication.

(b) Limitations on liability

(1) Liability of controlling persons

No controlling person shall be subject to a penalty under subsection (a)(1)(B) of this section unless the Commission establishes that—

(A) such controlling person knew or recklessly disregarded the fact that such controlled person was likely to engage in the act or acts constituting the violation and failed to take appropriate steps to prevent such act or acts before they occurred; or

(B) such controlling person knowingly or recklessly failed to establish, maintain, or enforce any policy or procedure required under section 78o(f) [1] of this title or section 80b–4a of this title and such failure substantially contributed to or permitted the occurrence of the act or acts constituting the violation.

(2) Additional restrictions on liability

No person shall be subject to a penalty under subsection (a) of this section solely by reason of employing another person who is subject to a penalty under such subsection, unless such employing person is liable as a controlling person under paragraph (1) of this subsection. Section 78t(a) of this title shall not apply to actions under subsection (a) of this section.

(c) Authority of Commission

The Commission, by such rules, regulations, and orders as it considers necessary or appropriate in the public interest or for the protection of investors, may exempt, in whole or in part, either unconditionally or upon specific terms and conditions, any person or transaction or class of persons or transactions from this section.

(d) Procedures for collection

(1) Payment of penalty to Treasury

A penalty imposed under this section shall be payable into the Treasury of the United States, except as otherwise provided in section 7246 of this title and section 78u–6 of this title.

(2) Collection of penalties

If a person upon whom such a penalty is imposed shall fail to pay such penalty within the time prescribed in the court's order, the Commission may refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court.

(3) Remedy not exclusive

The actions authorized by this section may be brought in addition to any other actions that the Commission or the Attorney General are entitled to bring.

(4) Jurisdiction and venue

For purposes of section 78aa of this title, actions under this section shall be actions to enforce a liability or a duty created by this chapter.

(5) Statute of limitations

No action may be brought under this section more than 5 years after the date of the purchase or sale. This section shall not be construed to bar or limit in any manner any action by the Commission or the Attorney General under any other provision of this chapter, nor shall it bar or limit in any manner any action to recover penalties, or to seek any other order regarding penalties, imposed in an action commenced within 5 years of such transaction.

(e) Definition

For purposes of this section, "profit gained" or "loss avoided" is the difference between the purchase or sale price of the security and the value of that security as measured by the trading price of the security a reasonable period after public dissemination of the nonpublic information.

(f) Limitation on Commission authority

The authority of the Commission under this section with respect to security-based swap agreements shall be subject to the restrictions and limitations of section 78c–1(b) of this title.

(g) Duty of Members and employees of Congress

(1) In general

Subject to the rule of construction under section 10 of the STOCK Act and solely for purposes of the insider trading prohibitions arising under this chapter, including section 78j(b) of this title and Rule 10b–5 thereunder, each Member of Congress or employee of Congress owes a duty arising from a relationship of trust and confidence to the Congress, the United States Government, and the citizens of the United States with respect to material, nonpublic information derived from such person's position as a Member of Congress or employee of Congress or gained from the performance of such person's official responsibilities.

(2) Definitions

In this subsection—

(A) the term "Member of Congress" means a member of the Senate or House of Representatives, a Delegate to the House of Representatives, and the Resident Commissioner from Puerto Rico; and

(B) the term "employee of Congress" means—

(i) any individual (other than a Member of Congress), whose compensation is disbursed by the Secretary of the Senate or the Chief Administrative Officer of the House of Representatives; and

(ii) any other officer or employee of the legislative branch (as defined in section 109(11) of the Ethics in Government Act of 1978 (5 U.S.C. App. 109(11))).

(3) Rule of construction

Nothing in this subsection shall be construed to impair or limit the construction of the existing antifraud provisions of the securities laws or the authority of the Commission under those provisions.

(h) Duty of other Federal officials

(1) In general

Subject to the rule of construction under section 10 of the STOCK Act and solely for purposes of the insider trading prohibitions arising under this chapter, including section 78j(b) of this title, and Rule 10b–5 thereunder, each executive branch employee, each judicial officer, and each judicial employee owes a duty arising from a relationship of trust and confidence to the United States Government and the citizens of the United States with respect to material, nonpublic information derived from such person's position as an executive branch employee, judicial officer, or judicial employee or gained from the performance of such person's official responsibilities.

(2) Definitions

In this subsection—

(A) the term "executive branch employee"—

(i) has the meaning given the term "employee" under section 2105 of title 5;

(ii) includes—

(I) the President;

(II) the Vice President; and

(III) an employee of the United States Postal Service or the Postal Regulatory Commission;

(B) the term "judicial employee" has the meaning given that term in section 109(8) of the Ethics in Government Act of 1978 (5 U.S.C. App. 109(8)); and

(C) the term "judicial officer" has the meaning given that term under section 109(10) of the Ethics in Government Act of 1978 (5 U.S.C. App. 109(10)).

(3) Rule of construction

Nothing in this subsection shall be construed to impair or limit the construction of the existing antifraud provisions of the securities laws or the authority of the Commission under those provisions.

(i) Participation in initial public offerings

An individual described in section 101(f) of the Ethics in Government Act of 1978 may not purchase securities that are the subject of an initial public offering (within the meaning given such term in section 78l(f)(1)(G)(i) of this title) in any manner other than is available to members of the public generally.

(June 6, 1934, ch. 404, title I, §21A, as added Pub. L. 100–704, §3(a)(2), Nov. 19, 1988, 102 Stat. 4677; amended Pub. L. 101–429, title II, §202(b), Oct. 15, 1990, 104 Stat. 938; Pub. L. 106–554, §1(a)(5) [title II, §205(a)(4), title III, §303(k), (l)], Dec. 21, 2000, 114 Stat. 2763, 2763A–426, 2763A–456, 2763A–457; Pub. L. 107–204, title III, §308(d)(2), July 30, 2002, 116 Stat. 785; Pub. L. 111–203, title VII, §762(d)(7), title IX, §923(b)(2), July 21, 2010, 124 Stat. 1761, 1850; Pub. L. 112–105, §§4(b)(2), 9(b)(2)(B), 12, Apr. 4, 2012, 126 Stat. 292, 297, 300.)

AMENDMENT OF SECTION

Unless otherwise provided, amendment by subtitle B (§§761–774) of title VII of Pub. L. 111–203

effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see 2010 Amendment notes and Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (d)(4), (5), was in the original "this title", and this chapter, referred to in subsecs. (g)(1) and (h)(1), was in the original "this Act". See References in Text note set out under section 78a of this title.

Subsec. (f) of section 78o of this title, referred to in subsec. (b)(1)(B), was redesignated (g) by Pub. L. 111–203, title IX, §929X(c)(1), July 21, 2010, 124 Stat. 1870.

Section 10 of the STOCK Act, referred to in subsecs. (g)(1) and (h)(1), is section 10 of Pub. L. 112–105, which is set out as a note under section 101 of the Ethics in Government Act of 1978, Pub. L. 95–521, set out in the Appendix to Title 5, Government Organization and Employees.

Section 109 of the Ethics in Government Act of 1978, referred to in subsecs. (g)(2)(B)(ii) and (h)(2)(B), (C), is section 109 of Pub. L. 95–521, which is set out in the Appendix to Title 5, Government Organization and Employees.

Section 101(f) of the Ethics in Government Act of 1978, referred to in subsec. (i), is section 101(f) of Pub. L. 95–521, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2012—Subsec. (g). Pub. L. 112–105, §4(b)(2), added subsec. (g).

Subsec. (h). Pub. L. 112–105, §9(b)(2)(B), added subsec. (h).

Subsec. (i). Pub. L. 112–105, §12, added subsec (i).

2010—Subsec. (a)(1). Pub. L. 111–203, §762(d)(7)(A), struck out "(as defined in section 206B of the Gramm-Leach-Bliley Act)" after "security-based swap agreement" in introductory provisions.

Subsec. (d)(1). Pub. L. 111–203, §923(b)(2)(A), struck out "(subject to subsection (e) of this section)" after "shall" and inserted "and section 78u–6 of this title" after "section 7246 of this title".

Subsec. (e). Pub. L. 111–203, §923(b)(2)(B), (C), redesignated subsec. (f) as (e) and struck out former subsec. (e). Prior to amendment, text of subsec. (e) read as follows: "Notwithstanding the provisions of subsection (d)(1) of this section, there shall be paid from amounts imposed as a penalty under this section and recovered by the Commission or the Attorney General, such sums, not to exceed 10 percent of such amounts, as the Commission deems appropriate, to the person or persons who provide information leading to the imposition of such penalty. Any determinations under this subsection, including whether, to whom, or in what amount to make payments, shall be in the sole discretion of the Commission, except that no such payment shall be made to any member, officer, or employee of any appropriate regulatory agency, the Department of Justice, or a self-regulatory organization. Any such determination shall be final and not subject to judicial review."

Subsec. (f). Pub. L. 111–203, §923(b)(2)(C), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

Pub. L. 111–203, §762(d)(7)(B), which directed amendment of subsec. (g) by striking out "(as defined in section 206B of the Gramm-Leach-Bliley Act)", was executed by making the strike out after "security-based swap agreements" in subsec. (f), to reflect the probable intent of Congress and the redesignation of subsec. (g) as (f) by Pub. L. 111–203, §923(b)(2)(C). See above and Effective Date of 2010 Amendment note below.

Subsec. (g). Pub. L. 111–203, §923(b)(2)(C), redesignated subsec. (g) as (f).

2002—Subsec. (d)(1). Pub. L. 107–204 inserted ", except as otherwise provided in section 7246 of this title" before period at end.

2000—Subsec. (a)(1). Pub. L. 106–554, §1(a)(5) [title III, §303(k)], inserted "or security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act)" after "purchasing or selling a security" in introductory provisions.

Pub. L. 106–554, §1(a)(5) [title II, §205(a)(4)], substituted "standardized options or security futures products, the Commission—" for "standardized options, the Commission—" in introductory provisions.

Subsec. (g). Pub. L. 106–554, §1(a)(5) [title III, §303(l)], added subsec. (g).

1990—Pub. L. 101–429 inserted "for insider trading" in section catchline.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 923(b)(2) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of

Title 12, Banks and Banking.

Amendment by section 762(d)(7) of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761–774) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111–203, set out as a note under section 77b of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–429 effective Oct. 15, 1990, with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(1), (2) of Pub. L. 101–429, set out in a note under section 77g of this title.

EFFECTIVE DATE

Section not applicable to actions occurring before Nov. 19, 1988, see section 9 of Pub. L. 100–704 set out as an Effective Date of 1988 Amendment note under section 78o of this title.

AFFIRMATION OF DUTY OF GOVERNMENT OFFICERS AND EMPLOYEES

Pub. L. 112–105, §4(b)(1), Apr. 4, 2012, 126 Stat. 292, provided that: "The purpose of the amendment made by this subsection [amending this section] is to affirm a duty arising from a relationship of trust and confidence owed by each Member of Congress and each employee of Congress."

Pub. L. 112–105, §9(b)(2)(A), Apr. 4, 2012, 126 Stat. 297, provided that: "The purpose of the amendment made by this paragraph [amending this section] is to affirm a duty arising from a relationship of trust and confidence owed by each executive branch employee, judicial officer, and judicial employee."

CONGRESSIONAL FINDINGS

Pub. L. 100–704, §2, Nov. 19, 1988, 102 Stat. 4677, provided that: "The Congress finds that—

"(1) the rules and regulations of the Securities and Exchange Commission under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] governing trading while in possession of material, nonpublic information are, as required by such Act, necessary and appropriate in the public interest and for the protection of investors;

"(2) the Commission has, within the limits of accepted administrative and judicial construction of such rules and regulations, enforced such rules and regulations vigorously, effectively, and fairly; and

"(3) nonetheless, additional methods are appropriate to deter and prosecute violations of such rules and regulations."

COMMISSION RECOMMENDATIONS FOR ADDITIONAL CIVIL PENALTY AUTHORITY REQUIRED

Pub. L. 100–704, §3(c), Nov. 19, 1988, 102 Stat. 4680, provided that: "The Securities and Exchange Commission shall, within 60 days after the date of enactment of this Act [Nov. 19, 1988], submit to each House of the Congress any recommendations the Commission considers appropriate with respect to the extension of the Commission's authority to seek civil penalties or impose administrative fines for violations other than those described in section 21A of the Securities Exchange Act of 1934 [15 U.S.C. 78u–1] (as added by this section)."

[1] *See References in Text note below.*

§78u–2. Civil remedies in administrative proceedings

(a) Commission authority to assess money penalties

(1) In general

In any proceeding instituted pursuant to sections 78o(b)(4), 78o(b)(6), 78o–6, 78o–4, 78o–5, 78o–7, or 78q–1 of this title against any person, the Commission or the appropriate regulatory agency may impose a civil penalty if it finds, on the record after notice and opportunity for hearing, that such penalty is in the public interest and that such person—

(A) has willfully violated any provision of the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.], the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.], or this chapter, or the rules or regulations thereunder, or the

rules of the Municipal Securities Rulemaking Board;

(B) has willfully aided, abetted, counseled, commanded, induced, or procured such a violation by any other person;

(C) has willfully made or caused to be made in any application for registration or report required to be filed with the Commission or with any other appropriate regulatory agency under this chapter, or in any proceeding before the Commission with respect to registration, any statement which was, at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which is required to be stated therein; or

(D) has failed reasonably to supervise, within the meaning of section 78o(b)(4)(E) of this title, with a view to preventing violations of the provisions of such statutes, rules and regulations, another person who commits such a violation, if such other person is subject to his supervision; [1]

(2) Cease-and-desist proceedings

In any proceeding instituted under section 78u–3 of this title against any person, the Commission may impose a civil penalty, if the Commission finds, on the record after notice and opportunity for hearing, that such person—

(A) is violating or has violated any provision of this chapter, or any rule or regulation issued under this chapter; or

(B) is or was a cause of the violation of any provision of this chapter, or any rule or regulation issued under this chapter.

(b) Maximum amount of penalty

(1) First tier

The maximum amount of penalty for each act or omission described in subsection (a) of this section shall be $5,000 for a natural person or $50,000 for any other person.

(2) Second tier

Notwithstanding paragraph (1), the maximum amount of penalty for each such act or omission shall be $50,000 for a natural person or $250,000 for any other person if the act or omission described in subsection (a) of this section involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

(3) Third tier

Notwithstanding paragraphs (1) and (2), the maximum amount of penalty for each such act or omission shall be $100,000 for a natural person or $500,000 for any other person if—

(A) the act or omission described in subsection (a) of this section involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

(B) such act or omission directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission.

(c) Determination of public interest

In considering under this section whether a penalty is in the public interest, the Commission or the appropriate regulatory agency may consider—

(1) whether the act or omission for which such penalty is assessed involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement;

(2) the harm to other persons resulting either directly or indirectly from such act or omission;

(3) the extent to which any person was unjustly enriched, taking into account any restitution made to persons injured by such behavior;

(4) whether such person previously has been found by the Commission, another appropriate regulatory agency, or a self-regulatory organization to have violated the Federal securities laws, State securities laws, or the rules of a self-regulatory organization, has been enjoined by a court of competent jurisdiction from violations of such laws or rules, or has been convicted by a court of

competent jurisdiction of violations of such laws or of any felony or misdemeanor described in section 78o(b)(4)(B) of this title;

(5) the need to deter such person and other persons from committing such acts or omissions; and

(6) such other matters as justice may require.

(d) Evidence concerning ability to pay

In any proceeding in which the Commission or the appropriate regulatory agency may impose a penalty under this section, a respondent may present evidence of the respondent's ability to pay such penalty. The Commission or the appropriate regulatory agency may, in its discretion, consider such evidence in determining whether such penalty is in the public interest. Such evidence may relate to the extent of such person's ability to continue in business and the collectability of a penalty, taking into account any other claims of the United States or third parties upon such person's assets and the amount of such person's assets.

(e) Authority to enter order requiring accounting and disgorgement

In any proceeding in which the Commission or the appropriate regulatory agency may impose a penalty under this section, the Commission or the appropriate regulatory agency may enter an order requiring accounting and disgorgement, including reasonable interest. The Commission is authorized to adopt rules, regulations, and orders concerning payments to investors, rates of interest, periods of accrual, and such other matters as it deems appropriate to implement this subsection.

(f) Security-based swaps

(1) Clearing agency

Any clearing agency that knowingly or recklessly evades or participates in or facilitates an evasion of the requirements of section 78c–3 of this title shall be liable for a civil money penalty in twice the amount otherwise available for a violation of section 78c–3 of this title.

(2) Security-based swap dealer or major security-based swap participant

Any security-based swap dealer or major security-based swap participant that knowingly or recklessly evades or participates in or facilitates an evasion of the requirements of section 78c–3 of this title shall be liable for a civil money penalty in twice the amount otherwise available for a violation of section 78c–3 of this title.

(June 6, 1934, ch. 404, title I, §21B, as added Pub. L. 101–429, title II, §202(a), Oct. 15, 1990, 104 Stat. 937; amended Pub. L. 107–204, title V, §501(b), July 30, 2002, 116 Stat. 793; Pub. L. 109–291, §4(b)(1)(B), Sept. 29, 2006, 120 Stat. 1337; Pub. L. 111–203, title VII, §773, title IX, §929P(a)(2), July 21, 2010, 124 Stat. 1802, 1863.)

AMENDMENT OF SECTION

Unless otherwise provided, amendment by subtitle B (§§761–774) of title VII of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see 2010 Amendment notes and Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (a)(1)(A), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Investment Company Act of 1940, referred to in subsec. (a)(1)(A), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a–51 of this title and Tables.

The Investment Advisers Act of 1940, referred to in subsec. (a)(1)(A), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, which is classified generally to subchapter II (§80b–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80b–20 of this title and Tables.

This chapter, referred to in subsec. (a)(1)(A), (C), (2), was in the original "this title". See References in Text

note set out under section 78a of this title.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, §929P(a)(2), designated existing provisions as par. (1) and inserted heading, inserted "that such penalty is in the public interest and" before "that such person—" in introductory provisions, redesignated former pars. (1) to (4) as subpars. (A) to (D), respectively, of par. (1) and realigned margins, struck out concluding provisions which read "and that such penalty is in the public interest.", and added par. (2).

Subsec. (f). Pub. L. 111–203, §773, added subsec. (f).

2006—Subsec. (a). Pub. L. 109–291 inserted "78o–7," after "78o–5," in introductory provisions.

2002—Subsec. (a). Pub. L. 107–204 inserted "78o–6," before "78o–4," in introductory provisions.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 929P(a)(2) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Amendment by section 773 of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761–774) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111–203, set out as a note under section 77b of this title.

EFFECTIVE DATE

Section effective Oct. 15, 1990, with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(1), (2) of Pub. L. 101–429, set out in an Effective Date of 1990 Amendment note under section 77g of this title.

[1] *So in original. The semicolon probably should be a period.*

§78u–3. Cease-and-desist proceedings

(a) Authority of Commission

If the Commission finds, after notice and opportunity for hearing, that any person is violating, has violated, or is about to violate any provision of this chapter, or any rule or regulation thereunder, the Commission may publish its findings and enter an order requiring such person, and any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation of the same provision, rule, or regulation. Such order may, in addition to requiring a person to cease and desist from committing or causing a violation, require such person to comply, or to take steps to effect compliance, with such provision, rule, or regulation, upon such terms and conditions and within such time as the Commission may specify in such order. Any such order may, as the Commission deems appropriate, require future compliance or steps to effect future compliance, either permanently or for such period of time as the Commission may specify, with such provision, rule, or regulation with respect to any security, any issuer, or any other person.

(b) Hearing

The notice instituting proceedings pursuant to subsection (a) of this section shall fix a hearing date not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the Commission with the consent of any respondent so served.

(c) Temporary order

(1) In general

Whenever the Commission determines that the alleged violation or threatened violation specified in the notice instituting proceedings pursuant to subsection (a) of this section, or the continuation thereof, is likely to result in significant dissipation or conversion of assets, significant

harm to investors, or substantial harm to the public interest, including, but not limited to, losses to the Securities Investor Protection Corporation, prior to the completion of the proceedings, the Commission may enter a temporary order requiring the respondent to cease and desist from the violation or threatened violation and to take such action to prevent the violation or threatened violation and to prevent dissipation or conversion of assets, significant harm to investors, or substantial harm to the public interest as the Commission deems appropriate pending completion of such proceedings. Such an order shall be entered only after notice and opportunity for a hearing, unless the Commission determines that notice and hearing prior to entry would be impracticable or contrary to the public interest. A temporary order shall become effective upon service upon the respondent and, unless set aside, limited, or suspended by the Commission or a court of competent jurisdiction, shall remain effective and enforceable pending the completion of the proceedings.

(2) Applicability

Paragraph (1) shall apply only to a respondent that acts, or, at the time of the alleged misconduct acted, as a broker, dealer, investment adviser, investment company, municipal securities dealer, government securities broker, government securities dealer, registered public accounting firm (as defined in section 7201 of this title), or transfer agent, or is, or was at the time of the alleged misconduct, an associated person of, or a person seeking to become associated with, any of the foregoing.

(3) Temporary freeze

(A) In general

(i) Issuance of temporary order

Whenever, during the course of a lawful investigation involving possible violations of the Federal securities laws by an issuer of publicly traded securities or any of its directors, officers, partners, controlling persons, agents, or employees, it shall appear to the Commission that it is likely that the issuer will make extraordinary payments (whether compensation or otherwise) to any of the foregoing persons, the Commission may petition a Federal district court for a temporary order requiring the issuer to escrow, subject to court supervision, those payments in an interest-bearing account for 45 days.

(ii) Standard

A temporary order shall be entered under clause (i), only after notice and opportunity for a hearing, unless the court determines that notice and hearing prior to entry of the order would be impracticable or contrary to the public interest.

(iii) Effective period

A temporary order issued under clause (i) shall—

(I) become effective immediately;

(II) be served upon the parties subject to it; and

(III) unless set aside, limited or suspended by a court of competent jurisdiction, shall remain effective and enforceable for 45 days.

(iv) Extensions authorized

The effective period of an order under this subparagraph may be extended by the court upon good cause shown for not longer than 45 additional days, provided that the combined period of the order shall not exceed 90 days.

(B) Process on determination of violations

(i) Violations charged

If the issuer or other person described in subparagraph (A) is charged with any violation of the Federal securities laws before the expiration of the effective period of a temporary order under subparagraph (A) (including any applicable extension period), the order shall remain in

effect, subject to court approval, until the conclusion of any legal proceedings related thereto, and the affected issuer or other person, shall have the right to petition the court for review of the order.

(ii) Violations not charged

If the issuer or other person described in subparagraph (A) is not charged with any violation of the Federal securities laws before the expiration of the effective period of a temporary order under subparagraph (A) (including any applicable extension period), the escrow shall terminate at the expiration of the 45-day effective period (or the expiration of any extension period, as applicable), and the disputed payments (with accrued interest) shall be returned to the issuer or other affected person.

(d) Review of temporary orders

(1) Commission review

At any time after the respondent has been served with a temporary cease-and-desist order pursuant to subsection (c) of this section, the respondent may apply to the Commission to have the order set aside, limited, or suspended. If the respondent has been served with a temporary cease-and-desist order entered without a prior Commission hearing, the respondent may, within 10 days after the date on which the order was served, request a hearing on such application and the Commission shall hold a hearing and render a decision on such application at the earliest possible time.

(2) Judicial review

Within—

(A) 10 days after the date the respondent was served with a temporary cease-and-desist order entered with a prior Commission hearing, or

(B) 10 days after the Commission renders a decision on an application and hearing under paragraph (1), with respect to any temporary cease-and-desist order entered without a prior Commission hearing,

the respondent may apply to the United States district court for the district in which the respondent resides or has its principal place of business, or for the District of Columbia, for an order setting aside, limiting, or suspending the effectiveness or enforcement of the order, and the court shall have jurisdiction to enter such an order. A respondent served with a temporary cease-and-desist order entered without a prior Commission hearing may not apply to the court except after hearing and decision by the Commission on the respondent's application under paragraph (1) of this subsection.

(3) No automatic stay of temporary order

The commencement of proceedings under paragraph (2) of this subsection shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(4) Exclusive review

Section 78y of this title shall not apply to a temporary order entered pursuant to this section.

(e) Authority to enter order requiring accounting and disgorgement

In any cease-and-desist proceeding under subsection (a) of this section, the Commission may enter an order requiring accounting and disgorgement, including reasonable interest. The Commission is authorized to adopt rules, regulations, and orders concerning payments to investors, rates of interest, periods of accrual, and such other matters as it deems appropriate to implement this subsection.

(f) Authority of the Commission to prohibit persons from serving as officers or directors

In any cease-and-desist proceeding under subsection (a) of this section, the Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 78j(b) of this title or the rules or regulations thereunder, from acting as an officer or director of any issuer that has a class of securities registered

pursuant to section 78l of this title, or that is required to file reports pursuant to section 78o(d) of this title, if the conduct of that person demonstrates unfitness to serve as an officer or director of any such issuer.

(June 6, 1934, ch. 404, title I, §21C, as added Pub. L. 101–429, title II, §203, Oct. 15, 1990, 104 Stat. 939; amended Pub. L. 107–204, §3(b)(3), title XI, §§1103, 1105(a), July 30, 2002, 116 Stat. 749, 807, 809; Pub. L. 111–203, title IX, §985(b)(8), July 21, 2010, 124 Stat. 1934.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this title". See References in Text note set out under section 78a of this title.

Section 7201 of this title, referred to in subsec. (c)(2), was in the original "section 2 of the Sarbanes-Oxley Act of 2002", Pub. L. 107–204, which enacted section 7201 of this title and amended section 78c of this title.

AMENDMENTS

2010—Subsec. (c)(2). Pub. L. 111–203 substituted "Paragraph (1)" for "paragraph (1) subsection".

2002—Subsec. (c)(2). Pub. L. 107–204, §1103(b), substituted "paragraph (1)" for "This".

Pub. L. 107–204, §3(b)(3), inserted "registered public accounting firm (as defined in section 7201 of this title)," after "government securities dealer,".

Subsec. (c)(3). Pub. L. 107–204, §1103(a), added par. (3).

Subsec. (f). Pub. L. 107–204, §1105(a), added subsec. (f).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE

Section effective Oct. 15, 1990, with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(1), (2) of Pub. L. 101–429, set out in an Effective Date of 1990 Amendment note under section 77g of this title.

§78u–4. Private securities litigation

(a) Private class actions

(1) In general

The provisions of this subsection shall apply in each private action arising under this chapter that is brought as a plaintiff class action pursuant to the Federal Rules of Civil Procedure.

(2) Certification filed with complaint

(A) In general

Each plaintiff seeking to serve as a representative party on behalf of a class shall provide a sworn certification, which shall be personally signed by such plaintiff and filed with the complaint, that—

(i) states that the plaintiff has reviewed the complaint and authorized its filing;

(ii) states that the plaintiff did not purchase the security that is the subject of the complaint at the direction of plaintiff's counsel or in order to participate in any private action arising under this chapter;

(iii) states that the plaintiff is willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary;

(iv) sets forth all of the transactions of the plaintiff in the security that is the subject of the complaint during the class period specified in the complaint;

(v) identifies any other action under this chapter, filed during the 3-year period preceding the date on which the certification is signed by the plaintiff, in which the plaintiff has sought to serve as a representative party on behalf of a class; and

(vi) states that the plaintiff will not accept any payment for serving as a representative party on behalf of a class beyond the plaintiff's pro rata share of any recovery, except as ordered or approved by the court in accordance with paragraph (4).

(B) Nonwaiver of attorney-client privilege

The certification filed pursuant to subparagraph (A) shall not be construed to be a waiver of the attorney-client privilege.

(3) Appointment of lead plaintiff

(A) Early notice to class members

(i) In general

Not later than 20 days after the date on which the complaint is filed, the plaintiff or plaintiffs shall cause to be published, in a widely circulated national business-oriented publication or wire service, a notice advising members of the purported plaintiff class—

(I) of the pendency of the action, the claims asserted therein, and the purported class period; and

(II) that, not later than 60 days after the date on which the notice is published, any member of the purported class may move the court to serve as lead plaintiff of the purported class.

(ii) Multiple actions

If more than one action on behalf of a class asserting substantially the same claim or claims arising under this chapter is filed, only the plaintiff or plaintiffs in the first filed action shall be required to cause notice to be published in accordance with clause (i).

(iii) Additional notices may be required under Federal rules

Notice required under clause (i) shall be in addition to any notice required pursuant to the Federal Rules of Civil Procedure.

(B) Appointment of lead plaintiff

(i) In general

Not later than 90 days after the date on which a notice is published under subparagraph (A)(i), the court shall consider any motion made by a purported class member in response to the notice, including any motion by a class member who is not individually named as a plaintiff in the complaint or complaints, and shall appoint as lead plaintiff the member or members of the purported plaintiff class that the court determines to be most capable of adequately representing the interests of class members (hereafter in this paragraph referred to as the "most adequate plaintiff") in accordance with this subparagraph.

(ii) Consolidated actions

If more than one action on behalf of a class asserting substantially the same claim or claims arising under this chapter has been filed, and any party has sought to consolidate those actions for pretrial purposes or for trial, the court shall not make the determination required by clause (i) until after the decision on the motion to consolidate is rendered. As soon as practicable after such decision is rendered, the court shall appoint the most adequate plaintiff as lead plaintiff for the consolidated actions in accordance with this paragraph.

(iii) Rebuttable presumption

(I) In general

Subject to subclause (II), for purposes of clause (i), the court shall adopt a presumption that the most adequate plaintiff in any private action arising under this chapter is the person or group of persons that—

(aa) has either filed the complaint or made a motion in response to a notice under subparagraph (A)(i);

(bb) in the determination of the court, has the largest financial interest in the relief sought by the class; and

(cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

(II) Rebuttal evidence

The presumption described in subclause (I) may be rebutted only upon proof by a member of the purported plaintiff class that the presumptively most adequate plaintiff—

(aa) will not fairly and adequately protect the interests of the class; or

(bb) is subject to unique defenses that render such plaintiff incapable of adequately representing the class.

(iv) Discovery

For purposes of this subparagraph, discovery relating to whether a member or members of the purported plaintiff class is the most adequate plaintiff may be conducted by a plaintiff only if the plaintiff first demonstrates a reasonable basis for a finding that the presumptively most adequate plaintiff is incapable of adequately representing the class.

(v) Selection of lead counsel

The most adequate plaintiff shall, subject to the approval of the court, select and retain counsel to represent the class.

(vi) Restrictions on professional plaintiffs

Except as the court may otherwise permit, consistent with the purposes of this section, a person may be a lead plaintiff, or an officer, director, or fiduciary of a lead plaintiff, in no more than 5 securities class actions brought as plaintiff class actions pursuant to the Federal Rules of Civil Procedure during any 3-year period.

(4) Recovery by plaintiffs

The share of any final judgment or of any settlement that is awarded to a representative party serving on behalf of a class shall be equal, on a per share basis, to the portion of the final judgment or settlement awarded to all other members of the class. Nothing in this paragraph shall be construed to limit the award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class to any representative party serving on behalf of a class.

(5) Restrictions on settlements under seal

The terms and provisions of any settlement agreement of a class action shall not be filed under seal, except that on motion of any party to the settlement, the court may order filing under seal for those portions of a settlement agreement as to which good cause is shown for such filing under seal. For purposes of this paragraph, good cause shall exist only if publication of a term or provision of a settlement agreement would cause direct and substantial harm to any party.

(6) Restrictions on payment of attorneys' fees and expenses

Total attorneys' fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a reasonable percentage of the amount of any damages and prejudgment interest actually paid to the class.

(7) Disclosure of settlement terms to class members

Any proposed or final settlement agreement that is published or otherwise disseminated to the class shall include each of the following statements, along with a cover page summarizing the information contained in such statements:

(A) Statement of plaintiff recovery

The amount of the settlement proposed to be distributed to the parties to the action, determined in the aggregate and on an average per share basis.

(B) Statement of potential outcome of case

(i) Agreement on amount of damages

If the settling parties agree on the average amount of damages per share that would be recoverable if the plaintiff prevailed on each claim alleged under this chapter, a statement concerning the average amount of such potential damages per share.

(ii) Disagreement on amount of damages

If the parties do not agree on the average amount of damages per share that would be recoverable if the plaintiff prevailed on each claim alleged under this chapter, a statement from each settling party concerning the issue or issues on which the parties disagree.

(iii) Inadmissibility for certain purposes

A statement made in accordance with clause (i) or (ii) concerning the amount of damages shall not be admissible in any Federal or State judicial action or administrative proceeding, other than an action or proceeding arising out of such statement.

(C) Statement of attorneys' fees or costs sought

If any of the settling parties or their counsel intend to apply to the court for an award of attorneys' fees or costs from any fund established as part of the settlement, a statement indicating which parties or counsel intend to make such an application, the amount of fees and costs that will be sought (including the amount of such fees and costs determined on an average per share basis), and a brief explanation supporting the fees and costs sought. Such information shall be clearly summarized on the cover page of any notice to a party of any proposed or final settlement agreement.

(D) Identification of lawyers' representatives

The name, telephone number, and address of one or more representatives of counsel for the plaintiff class who will be reasonably available to answer questions from class members concerning any matter contained in any notice of settlement published or otherwise disseminated to the class.

(E) Reasons for settlement

A brief statement explaining the reasons why the parties are proposing the settlement.

(F) Other information

Such other information as may be required by the court.

(8) Security for payment of costs in class actions

In any private action arising under this chapter that is certified as a class action pursuant to the Federal Rules of Civil Procedure, the court may require an undertaking from the attorneys for the plaintiff class, the plaintiff class, or both, or from the attorneys for the defendant, the defendant, or both, in such proportions and at such times as the court determines are just and equitable, for the payment of fees and expenses that may be awarded under this subsection.

(9) Attorney conflict of interest

If a plaintiff class is represented by an attorney who directly owns or otherwise has a beneficial interest in the securities that are the subject of the litigation, the court shall make a determination of whether such ownership or other interest constitutes a conflict of interest sufficient to disqualify the attorney from representing the plaintiff class.

(b) Requirements for securities fraud actions

(1) Misleading statements and omissions

In any private action arising under this chapter in which the plaintiff alleges that the defendant—

(A) made an untrue statement of a material fact; or

(B) omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances in which they were made, not misleading;

the complaint shall specify each statement alleged to have been misleading, the reason or reasons why the statement is misleading, and, if an allegation regarding the statement or omission is made on information and belief, the complaint shall state with particularity all facts on which that belief is formed.

(2) Required state of mind

(A) In general

Except as provided in subparagraph (B), in any private action arising under this chapter in which the plaintiff may recover money damages only on proof that the defendant acted with a particular state of mind, the complaint shall, with respect to each act or omission alleged to violate this chapter, state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind.

(B) Exception

In the case of an action for money damages brought against a credit rating agency or a controlling person under this chapter, it shall be sufficient, for purposes of pleading any required state of mind in relation to such action, that the complaint state with particularity facts giving rise to a strong inference that the credit rating agency knowingly or recklessly failed—

(i) to conduct a reasonable investigation of the rated security with respect to the factual elements relied upon by its own methodology for evaluating credit risk; or

(ii) to obtain reasonable verification of such factual elements (which verification may be based on a sampling technique that does not amount to an audit) from other sources that the credit rating agency considered to be competent and that were independent of the issuer and underwriter.

(3) Motion to dismiss; stay of discovery

(A) Dismissal for failure to meet pleading requirements

In any private action arising under this chapter, the court shall, on the motion of any defendant, dismiss the complaint if the requirements of paragraphs (1) and (2) are not met.

(B) Stay of discovery

In any private action arising under this chapter, all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss, unless the court finds upon the motion of any party that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party.

(C) Preservation of evidence

(i) In general

During the pendency of any stay of discovery pursuant to this paragraph, unless otherwise ordered by the court, any party to the action with actual notice of the allegations contained in the complaint shall treat all documents, data compilations (including electronically recorded or stored data), and tangible objects that are in the custody or control of such person and that are relevant to the allegations, as if they were the subject of a continuing request for production of documents from an opposing party under the Federal Rules of Civil Procedure.

(ii) Sanction for willful violation

A party aggrieved by the willful failure of an opposing party to comply with clause (i) may apply to the court for an order awarding appropriate sanctions.

(D) Circumvention of stay of discovery

Upon a proper showing, a court may stay discovery proceedings in any private action in a State court, as necessary in aid of its jurisdiction, or to protect or effectuate its judgments, in an action subject to a stay of discovery pursuant to this paragraph.

(4) Loss causation

In any private action arising under this chapter, the plaintiff shall have the burden of proving that the act or omission of the defendant alleged to violate this chapter caused the loss for which the plaintiff seeks to recover damages.

(c) Sanctions for abusive litigation

(1) Mandatory review by court

In any private action arising under this chapter, upon final adjudication of the action, the court shall include in the record specific findings regarding compliance by each party and each attorney representing any party with each requirement of Rule 11(b) of the Federal Rules of Civil Procedure as to any complaint, responsive pleading, or dispositive motion.

(2) Mandatory sanctions

If the court makes a finding under paragraph (1) that a party or attorney violated any requirement of Rule 11(b) of the Federal Rules of Civil Procedure as to any complaint, responsive pleading, or dispositive motion, the court shall impose sanctions on such party or attorney in accordance with Rule 11 of the Federal Rules of Civil Procedure. Prior to making a finding that any party or attorney has violated Rule 11 of the Federal Rules of Civil Procedure, the court shall give such party or attorney notice and an opportunity to respond.

(3) Presumption in favor of attorneys' fees and costs

(A) In general

Subject to subparagraphs (B) and (C), for purposes of paragraph (2), the court shall adopt a presumption that the appropriate sanction—

(i) for failure of any responsive pleading or dispositive motion to comply with any requirement of Rule 11(b) of the Federal Rules of Civil Procedure is an award to the opposing party of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation; and

(ii) for substantial failure of any complaint to comply with any requirement of Rule 11(b) of the Federal Rules of Civil Procedure is an award to the opposing party of the reasonable attorneys' fees and other expenses incurred in the action.

(B) Rebuttal evidence

The presumption described in subparagraph (A) may be rebutted only upon proof by the party or attorney against whom sanctions are to be imposed that—

(i) the award of attorneys' fees and other expenses will impose an unreasonable burden on that party or attorney and would be unjust, and the failure to make such an award would not impose a greater burden on the party in whose favor sanctions are to be imposed; or

(ii) the violation of Rule 11(b) of the Federal Rules of Civil Procedure was de minimis.

(C) Sanctions

If the party or attorney against whom sanctions are to be imposed meets its burden under subparagraph (B), the court shall award the sanctions that the court deems appropriate pursuant to Rule 11 of the Federal Rules of Civil Procedure.

(d) Defendant's right to written interrogatories

In any private action arising under this chapter in which the plaintiff may recover money damages, the court shall, when requested by a defendant, submit to the jury a written interrogatory on the issue of each such defendant's state of mind at the time the alleged violation occurred.

(e) Limitation on damages

(1) In general

Except as provided in paragraph (2), in any private action arising under this chapter in which the plaintiff seeks to establish damages by reference to the market price of a security, the award of damages to the plaintiff shall not exceed the difference between the purchase or sale price paid or

received, as appropriate, by the plaintiff for the subject security and the mean trading price of that security during the 90-day period beginning on the date on which the information correcting the misstatement or omission that is the basis for the action is disseminated to the market.

(2) Exception

In any private action arising under this chapter in which the plaintiff seeks to establish damages by reference to the market price of a security, if the plaintiff sells or repurchases the subject security prior to the expiration of the 90-day period described in paragraph (1), the plaintiff's damages shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the security and the mean trading price of the security during the period beginning immediately after dissemination of information correcting the misstatement or omission and ending on the date on which the plaintiff sells or repurchases the security.

(3) "Mean trading price" defined

For purposes of this subsection, the "mean trading price" of a security shall be an average of the daily trading price of that security, determined as of the close of the market each day during the 90-day period referred to in paragraph (1).

(f) Proportionate liability

(1) Applicability

Nothing in this subsection shall be construed to create, affect, or in any manner modify, the standard for liability associated with any action arising under the securities laws.

(2) Liability for damages

(A) Joint and several liability

Any covered person against whom a final judgment is entered in a private action shall be liable for damages jointly and severally only if the trier of fact specifically determines that such covered person knowingly committed a violation of the securities laws.

(B) Proportionate liability

(i) In general

Except as provided in subparagraph (A), a covered person against whom a final judgment is entered in a private action shall be liable solely for the portion of the judgment that corresponds to the percentage of responsibility of that covered person, as determined under paragraph (3).

(ii) Recovery by and costs of covered person

In any case in which a contractual relationship permits, a covered person that prevails in any private action may recover the attorney's fees and costs of that covered person in connection with the action.

(3) Determination of responsibility

(A) In general

In any private action, the court shall instruct the jury to answer special interrogatories, or if there is no jury, shall make findings, with respect to each covered person and each of the other persons claimed by any of the parties to have caused or contributed to the loss incurred by the plaintiff, including persons who have entered into settlements with the plaintiff or plaintiffs, concerning—

(i) whether such person violated the securities laws;

(ii) the percentage of responsibility of such person, measured as a percentage of the total fault of all persons who caused or contributed to the loss incurred by the plaintiff; and

(iii) whether such person knowingly committed a violation of the securities laws.

(B) Contents of special interrogatories or findings

The responses to interrogatories, or findings, as appropriate, under subparagraph (A) shall

specify the total amount of damages that the plaintiff is entitled to recover and the percentage of responsibility of each covered person found to have caused or contributed to the loss incurred by the plaintiff or plaintiffs.

(C) Factors for consideration

In determining the percentage of responsibility under this paragraph, the trier of fact shall consider—

(i) the nature of the conduct of each covered person found to have caused or contributed to the loss incurred by the plaintiff or plaintiffs; and

(ii) the nature and extent of the causal relationship between the conduct of each such person and the damages incurred by the plaintiff or plaintiffs.

(4) Uncollectible share

(A) In general

Notwithstanding paragraph (2)(B), upon [1] motion made not later than 6 months after a final judgment is entered in any private action, the court determines that all or part of the share of the judgment of the covered person is not collectible against that covered person, and is also not collectible against a covered person described in paragraph (2)(A), each covered person described in paragraph (2)(B) shall be liable for the uncollectible share as follows:

(i) Percentage of net worth

Each covered person shall be jointly and severally liable for the uncollectible share if the plaintiff establishes that—

(I) the plaintiff is an individual whose recoverable damages under the final judgment are equal to more than 10 percent of the net worth of the plaintiff; and

(II) the net worth of the plaintiff is equal to less than $200,000.

(ii) Other plaintiffs

With respect to any plaintiff not described in subclauses (I) and (II) of clause (i), each covered person shall be liable for the uncollectible share in proportion to the percentage of responsibility of that covered person, except that the total liability of a covered person under this clause may not exceed 50 percent of the proportionate share of that covered person, as determined under paragraph (3)(B).

(iii) Net worth

For purposes of this subparagraph, net worth shall be determined as of the date immediately preceding the date of the purchase or sale (as applicable) by the plaintiff of the security that is the subject of the action, and shall be equal to the fair market value of assets, minus liabilities, including the net value of the investments of the plaintiff in real and personal property (including personal residences).

(B) Overall limit

In no case shall the total payments required pursuant to subparagraph (A) exceed the amount of the uncollectible share.

(C) Covered persons subject to contribution

A covered person against whom judgment is not collectible shall be subject to contribution and to any continuing liability to the plaintiff on the judgment.

(5) Right of contribution

To the extent that a covered person is required to make an additional payment pursuant to paragraph (4), that covered person may recover contribution—

(A) from the covered person originally liable to make the payment;

(B) from any covered person liable jointly and severally pursuant to paragraph (2)(A);

(C) from any covered person held proportionately liable pursuant to this paragraph who is liable to make the same payment and has paid less than his or her proportionate share of that

payment; or

(D) from any other person responsible for the conduct giving rise to the payment that would have been liable to make the same payment.

(6) Nondisclosure to jury

The standard for allocation of damages under paragraphs (2) and (3) and the procedure for reallocation of uncollectible shares under paragraph (4) shall not be disclosed to members of the jury.

(7) Settlement discharge

(A) In general

A covered person who settles any private action at any time before final verdict or judgment shall be discharged from all claims for contribution brought by other persons. Upon entry of the settlement by the court, the court shall enter a bar order constituting the final discharge of all obligations to the plaintiff of the settling covered person arising out of the action. The order shall bar all future claims for contribution arising out of the action—

(i) by any person against the settling covered person; and

(ii) by the settling covered person against any person, other than a person whose liability has been extinguished by the settlement of the settling covered person.

(B) Reduction

If a covered person enters into a settlement with the plaintiff prior to final verdict or judgment, the verdict or judgment shall be reduced by the greater of—

(i) an amount that corresponds to the percentage of responsibility of that covered person; or

(ii) the amount paid to the plaintiff by that covered person.

(8) Contribution

A covered person who becomes jointly and severally liable for damages in any private action may recover contribution from any other person who, if joined in the original action, would have been liable for the same damages. A claim for contribution shall be determined based on the percentage of responsibility of the claimant and of each person against whom a claim for contribution is made.

(9) Statute of limitations for contribution

In any private action determining liability, an action for contribution shall be brought not later than 6 months after the entry of a final, nonappealable judgment in the action, except that an action for contribution brought by a covered person who was required to make an additional payment pursuant to paragraph (4) may be brought not later than 6 months after the date on which such payment was made.

(10) Definitions

For purposes of this subsection—

(A) a covered person "knowingly commits a violation of the securities laws"—

(i) with respect to an action that is based on an untrue statement of material fact or omission of a material fact necessary to make the statement not misleading, if—

(I) that covered person makes an untrue statement of a material fact, with actual knowledge that the representation is false, or omits to state a fact necessary in order to make the statement made not misleading, with actual knowledge that, as a result of the omission, one of the material representations of the covered person is false; and

(II) persons are likely to reasonably rely on that misrepresentation or omission; and

(ii) with respect to an action that is based on any conduct that is not described in clause (i), if that covered person engages in that conduct with actual knowledge of the facts and circumstances that make the conduct of that covered person a violation of the securities laws;

(B) reckless conduct by a covered person shall not be construed to constitute a knowing commission of a violation of the securities laws by that covered person;

(C) the term "covered person" means—

(i) a defendant in any private action arising under this chapter; or

(ii) a defendant in any private action arising under section 77k of this title, who is an outside director of the issuer of the securities that are the subject of the action; and

(D) the term "outside director" shall have the meaning given such term by rule or regulation of the Commission.

(June 6, 1934, ch. 404, title I, §21D, as added and amended Pub. L. 104–67, title I, §101(b), title II, §201(a), Dec. 22, 1995, 109 Stat. 743, 758; Pub. L. 105–353, title I, §101(b)(2), title III, §301(b)(13), Nov. 3, 1998, 112 Stat. 3233, 3236; Pub. L. 111–203, title IX, §933(b), July 21, 2010, 124 Stat. 1883.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title". See References in Text note set out under section 78a of this title.

The Federal Rules of Civil Procedure, referred to in subsecs. (a)(1), (3)(A)(iii), (B)(iii)(I)(cc), (vi), (8), (b)(3)(C)(i), and (c), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

2010—Subsec. (b)(2). Pub. L. 111–203 designated existing provisions as subpar. (A), inserted heading, substituted "Except as provided in subparagraph (B), in any" for "In any", and added subpar. (B).

1998—Subsec. (b)(3)(D). Pub. L. 105–353, §101(b)(2), added subpar. (D).

Subsecs. (f), (g). Pub. L. 105–353, §301(b)(13)(B), redesignated subsec. (g) as (f).

Subsec. (g)(2)(B)(i). Pub. L. 105–353, §301(b)(13)(A), substituted "subparagraph (A)" for "paragraph (1)".

1995—Subsec. (g). Pub. L. 104–67, §201(a), added subsec. (g).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(b)(2) of Pub. L. 105–353 not to affect or apply to any action commenced before and pending on Nov. 3, 1998, see section 101(c) of Pub. L. 105–353, set out as a note under section 77p of this title.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–67 not to affect or apply to any private action arising under securities laws commenced before and pending on Dec. 22, 1995, see section 202 of Pub. L. 104–67, set out as a note under section 77k of this title.

EFFECTIVE DATE

This section not to affect or apply to any private action arising under this chapter or title I of the Securities Act of 1933 (15 U.S.C. 77a et seq.), commenced before and pending on Dec. 22, 1995, see section 108 of Pub. L. 104–67, set out as an Effective Date of 1995 Amendment note under section 77l of this title.

CONSTRUCTION

Nothing in section to be deemed to create or ratify any implied right of action, or to prevent Commission, by rule or regulation, from restricting or otherwise regulating private actions under this chapter, see section 203 of Pub. L. 104–67, set out as a note under section 78j–1 of this title.

[1] *So in original. Probably should be preceded by "if,".*

§78u–5. Application of safe harbor for forward-looking statements

(a) Applicability

This section shall apply only to a forward-looking statement made by—

(1) an issuer that, at the time that the statement is made, is subject to the reporting requirements of section 78m(a) of this title or section 78o(d) of this title;

(2) a person acting on behalf of such issuer;

(3) an outside reviewer retained by such issuer making a statement on behalf of such issuer; or

(4) an underwriter, with respect to information provided by such issuer or information derived from information provided by such issuer.

(b) Exclusions

Except to the extent otherwise specifically provided by rule, regulation, or order of the Commission, this section shall not apply to a forward-looking statement—

(1) that is made with respect to the business or operations of the issuer, if the issuer—

(A) during the 3-year period preceding the date on which the statement was first made—

(i) was convicted of any felony or misdemeanor described in clauses (i) through (iv) of section 78o(b)(4)(B) of this title; or

(ii) has been made the subject of a judicial or administrative decree or order arising out of a governmental action that—

(I) prohibits future violations of the antifraud provisions of the securities laws;

(II) requires that the issuer cease and desist from violating the antifraud provisions of the securities laws; or

(III) determines that the issuer violated the antifraud provisions of the securities laws;

(B) makes the forward-looking statement in connection with an offering of securities by a blank check company;

(C) issues penny stock;

(D) makes the forward-looking statement in connection with a rollup transaction; or

(E) makes the forward-looking statement in connection with a going private transaction; or

(2) that is—

(A) included in a financial statement prepared in accordance with generally accepted accounting principles;

(B) contained in a registration statement of, or otherwise issued by, an investment company;

(C) made in connection with a tender offer;

(D) made in connection with an initial public offering;

(E) made in connection with an offering by, or relating to the operations of, a partnership, limited liability company, or a direct participation investment program; or

(F) made in a disclosure of beneficial ownership in a report required to be filed with the Commission pursuant to section 78m(d) of this title.

(c) Safe harbor

(1) In general

Except as provided in subsection (b) of this section, in any private action arising under this chapter that is based on an untrue statement of a material fact or omission of a material fact necessary to make the statement not misleading, a person referred to in subsection (a) of this section shall not be liable with respect to any forward-looking statement, whether written or oral, if and to the extent that—

(A) the forward-looking statement is—

(i) identified as a forward-looking statement, and is accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the forward-looking statement; or

(ii) immaterial; or

(B) the plaintiff fails to prove that the forward-looking statement—

(i) if made by a natural person, was made with actual knowledge by that person that the statement was false or misleading; or

(ii) if made by a business entity; [1] was—

(I) made by or with the approval of an executive officer of that entity; and

(II) made or approved by such officer with actual knowledge by that officer that the statement was false or misleading.

(2) Oral forward-looking statements

In the case of an oral forward-looking statement made by an issuer that is subject to the reporting requirements of section 78m(a) of this title or section 78o(d) of this title, or by a person acting on behalf of such issuer, the requirement set forth in paragraph (1)(A) shall be deemed to be satisfied—

(A) if the oral forward-looking statement is accompanied by a cautionary statement—

(i) that the particular oral statement is a forward-looking statement; and

(ii) that the actual results might differ materially from those projected in the forward-looking statement; and

(B) if—

(i) the oral forward-looking statement is accompanied by an oral statement that additional information concerning factors that could cause actual results to materially differ from those in the forward-looking statement is contained in a readily available written document, or portion thereof;

(ii) the accompanying oral statement referred to in clause (i) identifies the document, or portion thereof, that contains the additional information about those factors relating to the forward-looking statement; and

(iii) the information contained in that written document is a cautionary statement that satisfies the standard established in paragraph (1)(A).

(3) Availability

Any document filed with the Commission or generally disseminated shall be deemed to be readily available for purposes of paragraph (2).

(4) Effect on other safe harbors

The exemption provided for in paragraph (1) shall be in addition to any exemption that the Commission may establish by rule or regulation under subsection (g) of this section.

(d) Duty to update

Nothing in this section shall impose upon any person a duty to update a forward-looking statement.

(e) Dispositive motion

On any motion to dismiss based upon subsection (c)(1) of this section, the court shall consider any statement cited in the complaint and any cautionary statement accompanying the forward-looking statement, which are not subject to material dispute, cited by the defendant.

(f) Stay pending decision on motion

In any private action arising under this chapter, the court shall stay discovery (other than discovery that is specifically directed to the applicability of the exemption provided for in this section) during the pendency of any motion by a defendant for summary judgment that is based on the grounds that—

(1) the statement or omission upon which the complaint is based is a forward-looking statement within the meaning of this section; and

(2) the exemption provided for in this section precludes a claim for relief.

(g) Exemption authority

In addition to the exemptions provided for in this section, the Commission may, by rule or regulation, provide exemptions from or under any provision of this chapter, including with respect to liability that is based on a statement or that is based on projections or other forward-looking information, if and to the extent that any such exemption is consistent with the public interest and the protection of investors, as determined by the Commission.

(h) Effect on other authority of Commission

Nothing in this section limits, either expressly or by implication, the authority of the Commission to exercise similar authority or to adopt similar rules and regulations with respect to forward-looking statements under any other statute under which the Commission exercises rulemaking authority.

(i) Definitions

For purposes of this section, the following definitions shall apply:

(1) Forward-looking statement

The term "forward-looking statement" means—

(A) a statement containing a projection of revenues, income (including income loss), earnings (including earnings loss) per share, capital expenditures, dividends, capital structure, or other financial items;

(B) a statement of the plans and objectives of management for future operations, including plans or objectives relating to the products or services of the issuer;

(C) a statement of future economic performance, including any such statement contained in a discussion and analysis of financial condition by the management or in the results of operations included pursuant to the rules and regulations of the Commission;

(D) any statement of the assumptions underlying or relating to any statement described in subparagraph (A), (B), or (C);

(E) any report issued by an outside reviewer retained by an issuer, to the extent that the report assesses a forward-looking statement made by the issuer; or

(F) a statement containing a projection or estimate of such other items as may be specified by rule or regulation of the Commission.

(2) Investment company

The term "investment company" has the same meaning as in section 80a–3(a) of this title.

(3) Going private transaction

The term "going private transaction" has the meaning given that term under the rules or regulations of the Commission issued pursuant to section 78m(e) of this title.

(4) Person acting on behalf of an issuer

The term "person acting on behalf of an issuer" means any officer, director, or employee of such issuer.

(5) Other terms

The terms "blank check company", "rollup transaction", "partnership", "limited liability company", "executive officer of an entity" and "direct participation investment program", have the meanings given those terms by rule or regulation of the Commission.

(June 6, 1934, ch. 404, title I, §21E, as added Pub. L. 104–67, title I, §102(b), Dec. 22, 1995, 109 Stat. 753.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (c)(1), (f), and (g), was in the original "this title". See References in Text note set out under section 78a of this title.

EFFECTIVE DATE

This section not to affect or apply to any private action arising under this chapter or title I of the Securities Act of 1933 (15 U.S.C. 77a et seq.), commenced before and pending on Dec. 22, 1995, see section 108 of Pub. L. 104–67, set out as an Effective Date of 1995 Amendment note under section 77l of this title.

CONSTRUCTION

Nothing in section to be deemed to create or ratify any implied right of action, or to prevent Commission, by rule or regulation, from restricting or otherwise regulating private actions under this chapter, see section 203 of Pub. L. 104–67, set out as a note under section 78j–1 of this title.

[1] *So in original. The semicolon probably should be a comma.*

§78u–6. Securities whistleblower incentives and protection

(a) Definitions

In this section the following definitions shall apply:

(1) Covered judicial or administrative action

The term "covered judicial or administrative action" means any judicial or administrative action brought by the Commission under the securities laws that results in monetary sanctions exceeding $1,000,000.

(2) Fund

The term "Fund" means the Securities and Exchange Commission Investor Protection Fund.

(3) Original information

The term "original information" means information that—

(A) is derived from the independent knowledge or analysis of a whistleblower;

(B) is not known to the Commission from any other source, unless the whistleblower is the original source of the information; and

(C) is not exclusively derived from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media, unless the whistleblower is a source of the information.

(4) Monetary sanctions

The term "monetary sanctions", when used with respect to any judicial or administrative action, means—

(A) any monies, including penalties, disgorgement, and interest, ordered to be paid; and

(B) any monies deposited into a disgorgement fund or other fund pursuant to section 308(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(b)), as a result of such action or any settlement of such action.

(5) Related action

The term "related action", when used with respect to any judicial or administrative action brought by the Commission under the securities laws, means any judicial or administrative action brought by an entity described in subclauses (I) through (IV) of subsection (h)(2)(D)(i) that is based upon the original information provided by a whistleblower pursuant to subsection (a) that led to the successful enforcement of the Commission action.

(6) Whistleblower

The term "whistleblower" means any individual who provides, or 2 or more individuals acting jointly who provide, information relating to a violation of the securities laws to the Commission, in a manner established, by rule or regulation, by the Commission.

(b) Awards

(1) In general

In any covered judicial or administrative action, or related action, the Commission, under regulations prescribed by the Commission and subject to subsection (c), shall pay an award or awards to 1 or more whistleblowers who voluntarily provided original information to the

Commission that led to the successful enforcement of the covered judicial or administrative action, or related action, in an aggregate amount equal to—

(A) not less than 10 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions; and

(B) not more than 30 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions.

(2) Payment of awards

Any amount paid under paragraph (1) shall be paid from the Fund.

(c) Determination of amount of award; denial of award

(1) Determination of amount of award

(A) Discretion

The determination of the amount of an award made under subsection (b) shall be in the discretion of the Commission.

(B) Criteria

In determining the amount of an award made under subsection (b), the Commission—

(i) shall take into consideration—

(I) the significance of the information provided by the whistleblower to the success of the covered judicial or administrative action;

(II) the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in a covered judicial or administrative action;

(III) the programmatic interest of the Commission in deterring violations of the securities laws by making awards to whistleblowers who provide information that lead to the successful enforcement of such laws; and

(IV) such additional relevant factors as the Commission may establish by rule or regulation; and

(ii) shall not take into consideration the balance of the Fund.

(2) Denial of award

No award under subsection (b) shall be made—

(A) to any whistleblower who is, or was at the time the whistleblower acquired the original information submitted to the Commission, a member, officer, or employee of—

(i) an appropriate regulatory agency;

(ii) the Department of Justice;

(iii) a self-regulatory organization;

(iv) the Public Company Accounting Oversight Board; or

(v) a law enforcement organization;

(B) to any whistleblower who is convicted of a criminal violation related to the judicial or administrative action for which the whistleblower otherwise could receive an award under this section;

(C) to any whistleblower who gains the information through the performance of an audit of financial statements required under the securities laws and for whom such submission would be contrary to the requirements of section 78j–1 of this title; or

(D) to any whistleblower who fails to submit information to the Commission in such form as the Commission may, by rule, require.

(d) Representation

(1) Permitted representation

Any whistleblower who makes a claim for an award under subsection (b) may be represented by counsel.

(2) Required representation

(A) In general

Any whistleblower who anonymously makes a claim for an award under subsection (b) shall be represented by counsel if the whistleblower anonymously submits the information upon which the claim is based.

(B) Disclosure of identity

Prior to the payment of an award, a whistleblower shall disclose the identity of the whistleblower and provide such other information as the Commission may require, directly or through counsel for the whistleblower.

(e) No contract necessary

No contract with the Commission is necessary for any whistleblower to receive an award under subsection (b), unless otherwise required by the Commission by rule or regulation.

(f) Appeals

Any determination made under this section, including whether, to whom, or in what amount to make awards, shall be in the discretion of the Commission. Any such determination, except the determination of the amount of an award if the award was made in accordance with subsection (b), may be appealed to the appropriate court of appeals of the United States not more than 30 days after the determination is issued by the Commission. The court shall review the determination made by the Commission in accordance with section 706 of title 5.

(g) Investor Protection Fund

(1) Fund established

There is established in the Treasury of the United States a fund to be known as the "Securities and Exchange Commission Investor Protection Fund".

(2) Use of Fund

The Fund shall be available to the Commission, without further appropriation or fiscal year limitation, for—

(A) paying awards to whistleblowers as provided in subsection (b); and

(B) funding the activities of the Inspector General of the Commission under section 78d(i) of this title.

(3) Deposits and credits

(A) In general

There shall be deposited into or credited to the Fund an amount equal to—

(i) any monetary sanction collected by the Commission in any judicial or administrative action brought by the Commission under the securities laws that is not added to a disgorgement fund or other fund under section 308 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246) or otherwise distributed to victims of a violation of the securities laws, or the rules and regulations thereunder, underlying such action, unless the balance of the Fund at the time the monetary sanction is collected exceeds $300,000,000;

(ii) any monetary sanction added to a disgorgement fund or other fund under section 308 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246) that is not distributed to the victims for whom the Fund was established, unless the balance of the disgorgement fund at the time the determination is made not to distribute the monetary sanction to such victims exceeds $200,000,000; and

(iii) all income from investments made under paragraph (4).

(B) Additional amounts

If the amounts deposited into or credited to the Fund under subparagraph (A) are not sufficient to satisfy an award made under subsection (b), there shall be deposited into or credited to the Fund an amount equal to the unsatisfied portion of the award from any monetary

sanction collected by the Commission in the covered judicial or administrative action on which the award is based.

(4) Investments

(A) Amounts in Fund may be invested

The Commission may request the Secretary of the Treasury to invest the portion of the Fund that is not, in the discretion of the Commission, required to meet the current needs of the Fund.

(B) Eligible investments

Investments shall be made by the Secretary of the Treasury in obligations of the United States or obligations that are guaranteed as to principal and interest by the United States, with maturities suitable to the needs of the Fund as determined by the Commission on the record.

(C) Interest and proceeds credited

The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to the Fund.

(5) Reports to Congress

Not later than October 30 of each fiscal year beginning after July 21, 2010, the Commission shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives a report on—

(A) the whistleblower award program, established under this section, including—

(i) a description of the number of awards granted; and

(ii) the types of cases in which awards were granted during the preceding fiscal year;

(B) the balance of the Fund at the beginning of the preceding fiscal year;

(C) the amounts deposited into or credited to the Fund during the preceding fiscal year;

(D) the amount of earnings on investments made under paragraph (4) during the preceding fiscal year;

(E) the amount paid from the Fund during the preceding fiscal year to whistleblowers pursuant to subsection (b);

(F) the balance of the Fund at the end of the preceding fiscal year; and

(G) a complete set of audited financial statements, including—

(i) a balance sheet;

(ii) income statement; and

(iii) cash flow analysis.

(h) Protection of whistleblowers

(1) Prohibition against retaliation

(A) In general

No employer may discharge, demote, suspend, threaten, harass, directly or indirectly, or in any other manner discriminate against, a whistleblower in the terms and conditions of employment because of any lawful act done by the whistleblower—

(i) in providing information to the Commission in accordance with this section;

(ii) in initiating, testifying in, or assisting in any investigation or judicial or administrative action of the Commission based upon or related to such information; or

(iii) in making disclosures that are required or protected under the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.), this chapter, including section 78j–1(m) of this title, section 1513(e) of title 18, and any other law, rule, or regulation subject to the jurisdiction of the Commission.

(B) Enforcement

(i) Cause of action

An individual who alleges discharge or other discrimination in violation of subparagraph

(A) may bring an action under this subsection in the appropriate district court of the United States for the relief provided in subparagraph (C).

(ii) Subpoenas

A subpoena requiring the attendance of a witness at a trial or hearing conducted under this section may be served at any place in the United States.

(iii) Statute of limitations

(I) In general

An action under this subsection may not be brought—

(aa) more than 6 years after the date on which the violation of subparagraph (A) occurred; or

(bb) more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the employee alleging a violation of subparagraph (A).

(II) Required action within 10 years

Notwithstanding subclause (I), an action under this subsection may not in any circumstance be brought more than 10 years after the date on which the violation occurs.

(C) Relief

Relief for an individual prevailing in an action brought under subparagraph (B) shall include—

(i) reinstatement with the same seniority status that the individual would have had, but for the discrimination;

(ii) 2 times the amount of back pay otherwise owed to the individual, with interest; and

(iii) compensation for litigation costs, expert witness fees, and reasonable attorneys' fees.

(2) Confidentiality

(A) In general

Except as provided in subparagraphs (B) and (C), the Commission and any officer or employee of the Commission shall not disclose any information, including information provided by a whistleblower to the Commission, which could reasonably be expected to reveal the identity of a whistleblower, except in accordance with the provisions of section 552a of title 5, unless and until required to be disclosed to a defendant or respondent in connection with a public proceeding instituted by the Commission or any entity described in subparagraph (C). For purposes of section 552 of title 5, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section.

(B) Exempted statute

For purposes of section 552 of title 5, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.

(C) Rule of construction

Nothing in this section is intended to limit, or shall be construed to limit, the ability of the Attorney General to present such evidence to a grand jury or to share such evidence with potential witnesses or defendants in the course of an ongoing criminal investigation.

(D) Availability to government agencies

(i) In general

Without the loss of its status as confidential in the hands of the Commission, all information referred to in subparagraph (A) may, in the discretion of the Commission, when determined by the Commission to be necessary to accomplish the purposes of this chapter and to protect investors, be made available to—

(I) the Attorney General of the United States;

(II) an appropriate regulatory authority;
(III) a self-regulatory organization;
(IV) a State attorney general in connection with any criminal investigation;
(V) any appropriate State regulatory authority;
(VI) the Public Company Accounting Oversight Board;
(VII) a foreign securities authority; and
(VIII) a foreign law enforcement authority.

(ii) Confidentiality

(I) In general

Each of the entities described in subclauses (I) through (VI) of clause (i) shall maintain such information as confidential in accordance with the requirements established under subparagraph (A).

(II) Foreign authorities

Each of the entities described in subclauses (VII) and (VIII) of clause (i) shall maintain such information in accordance with such assurances of confidentiality as the Commission determines appropriate.

(3) Rights retained

Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any whistleblower under any Federal or State law, or under any collective bargaining agreement.

(i) Provision of false information

A whistleblower shall not be entitled to an award under this section if the whistleblower—

(1) knowingly and willfully makes any false, fictitious, or fraudulent statement or representation; or

(2) uses any false writing or document knowing the writing or document contains any false, fictitious, or fraudulent statement or entry.

(j) Rulemaking authority

The Commission shall have the authority to issue such rules and regulations as may be necessary or appropriate to implement the provisions of this section consistent with the purposes of this section.

(June 6, 1934, ch. 404, title I, §21F, as added Pub. L. 111–203, title IX, §922(a), July 21, 2010, 124 Stat. 1841.)

REFERENCES IN TEXT

The Sarbanes-Oxley Act of 2002, referred to in subsec. (h)(1)(A)(iii), is Pub. L. 107–204, July 30, 2002, 116 Stat. 745. For complete classification of this Act to the Code, see Short Title note set out under section 7201 of this title and Tables.

This chapter, referred to in subsec. (h)(1)(A)(iii), was in the original "the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.)". This chapter, referred to in subsec. (h)(2)(D)(i), was in the original "this Act". See References in Text note set out under section 78a of this title.

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of Title 12, Banks and Banking.

§78u–7. Implementation and transition provisions for whistleblower protection

(a) Implementing rules

The Commission shall issue final regulations implementing the provisions of section 78u–6 of this title, as added by this subtitle, not later than 270 days after July 21, 2010.

(b) Original information

Information provided to the Commission in writing by a whistleblower shall not lose the status of original information (as defined in section 78u–6(a)(3) of this title, as added by this subtitle) solely because the whistleblower provided the information prior to the effective date of the regulations, if the information is provided by the whistleblower after July 21, 2010.

(c) Awards

A whistleblower may receive an award pursuant to section 78u–6 of this title, as added by this subtitle, regardless of whether any violation of a provision of the securities laws, or a rule or regulation thereunder, underlying the judicial or administrative action upon which the award is based, occurred prior to July 21, 2010.

(d) Administration and enforcement

The Securities and Exchange Commission shall establish a separate office within the Commission to administer and enforce the provisions of section 78u–6 of this title (as add [1] by section 922(a)).[2] Such office shall report annually to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on its activities, whistleblower complaints, and the response of the Commission to such complaints.

(Pub. L. 111–203, title IX, §924, July 21, 2010, 124 Stat. 1850.)

REFERENCES IN TEXT

This subtitle, referred to in subsecs. (a) to (c), means subtitle B (§§921–929Z) of title IX of Pub. L. 111–203.

Section 922(a), referred to in subsec. (d), means section 922(a) of Pub. L. 111–203.

CODIFICATION

Section was enacted as part of the Investor Protection and Securities Reform Act of 2010, and also as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and not as part of the Securities Exchange Act of 1934 which comprises this chapter.

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of Title 12, Banks and Banking.

DEFINITIONS

For definitions of "Commission" and "securities laws" as used in this section, see section 5301 of Title 12, Banks and Banking.

[1] So in original. Probably should be "added".

[2] See References in Text note below.

§78v. Hearings by Commission

Hearings may be public and may be held before the Commission, any member or members thereof, or any officer or officers of the Commission designated by it, and appropriate records thereof shall be kept.

(June 6, 1934, ch. 404, title I, §22, 48 Stat. 901.)

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§78w. Rules, regulations, and orders; annual reports

(a) Power to make rules and regulations; considerations; public disclosure

(1) The Commission, the Board of Governors of the Federal Reserve System, and the other agencies enumerated in section 78c(a)(34) of this title shall each have power to make such rules and regulations as may be necessary or appropriate to implement the provisions of this chapter for which they are responsible or for the execution of the functions vested in them by this chapter, and may for such purposes classify persons, securities, transactions, statements, applications, reports, and other matters within their respective jurisdictions, and prescribe greater, lesser, or different requirements for different classes thereof. No provision of this chapter imposing any liability shall apply to any act done or omitted in good faith in conformity with a rule, regulation, or order of the Commission, the Board of Governors of the Federal Reserve System, other agency enumerated in section 78c(a)(34) of this title, or any self-regulatory organization, notwithstanding that such rule, regulation, or order may thereafter be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

(2) The Commission and the Secretary of the Treasury, in making rules and regulations pursuant to any provisions of this chapter, shall consider among other matters the impact any such rule or regulation would have on competition. The Commission and the Secretary of the Treasury shall not adopt any such rule or regulation which would impose a burden on competition not necessary or appropriate in furtherance of the purposes of this chapter. The Commission and the Secretary of the Treasury shall include in the statement of basis and purpose incorporated in any rule or regulation adopted under this chapter, the reasons for the Commission's or the Secretary's determination that any burden on competition imposed by such rule or regulation is necessary or appropriate in furtherance of the purposes of this chapter.

(3) The Commission and the Secretary, in making rules and regulations pursuant to any provision of this chapter, considering any application for registration in accordance with section 78s(a) of this title, or reviewing any proposed rule change of a self-regulatory organization in accordance with section 78s(b) of this title, shall keep in a public file and make available for copying all written statements filed with the Commission and the Secretary and all written communications between the Commission or the Secretary and any person relating to the proposed rule, regulation, application, or proposed rule change: *Provided, however*, That the Commission and the Secretary shall not be required to keep in a public file or make available for copying any such statement or communication which it may withhold from the public in accordance with the provisions of section 552 of title 5.

(b) Annual report to Congress

(1) The Commission, the Board of Governors of the Federal Reserve System, and the other agencies enumerated in section 78c(a)(34) of this title shall each make an annual report to the Congress on its work for the preceding year, and shall include in each such report whatever information, data, and recommendations for further legislation it considers advisable with regard to matters within its respective jurisdiction under this chapter.

(2) The appropriate regulatory agency for a self-regulatory organization shall include in its annual report to the Congress for each fiscal year, a summary of its oversight activities under this chapter with respect to such self-regulatory organization, including a description of any examination conducted as part of such activities of any such organization, any material recommendation presented as part of such activities to such organization for changes in its organization or rules, and any action by such organization in response to any such recommendation.

(3) The appropriate regulatory agency for any class of municipal securities dealers shall include in its annual report to the Congress for each fiscal year a summary of its regulatory activities pursuant to this chapter with respect to such municipal securities dealers, including the nature of and reason for any sanction imposed pursuant to this chapter against any such municipal securities dealer.

(4) The Commission shall also include in its annual report to the Congress for each fiscal year—

(A) a summary of the Commission's oversight activities with respect to self-regulatory organizations for which it is not the appropriate regulatory agency, including a description of any

examination of any such organization, any material recommendation presented to any such organization for changes in its organization or rules, and any action by any such organization in response to any such recommendations;

(B) a statement and analysis of the expenses and operations of each self-regulatory organization in connection with the performance of its responsibilities under this chapter, for which purpose data pertaining to such expenses and operations shall be made available by such organization to the Commission at its request;

(C) the steps the Commission has taken and the progress it has made toward ending the physical movement of the securities certificate in connection with the settlement of securities transactions, and its recommendations, if any, for legislation to eliminate the securities certificate;

(D) the number of requests for exemptions from provisions of this chapter received, the number granted, and the basis upon which any such exemption was granted;

(E) a summary of the Commission's regulatory activities with respect to municipal securities dealers for which it is not the appropriate regulatory agency, including the nature of, and reason for, any sanction imposed in proceedings against such municipal securities dealers;

(F) a statement of the time elapsed between the filing of reports pursuant to section 78m(f) of this title and the public availability of the information contained therein, the costs involved in the Commission's processing of such reports and tabulating such information, the manner in which the Commission uses such information, and the steps the Commission has taken and the progress it has made toward requiring such reports to be filed and such information to be made available to the public in machine language;

(G)information concerning (i) the effects its rules and regulations are having on the viability of small brokers and dealers; (ii) its attempts to reduce any unnecessary reporting burden on such brokers and dealers; and (iii) its efforts to help to assure the continued participation of small brokers and dealers in the United States securities markets;

(H) a statement detailing its administration of the Freedom of Information Act, section 552 of title 5, including a copy of the report filed pursuant to subsection (d) of such section; and

(I) the steps that have been taken and the progress that has been made in promoting the timely public dissemination and availability for analytical purposes (on a fair, reasonable, and nondiscriminatory basis) of information concerning government securities transactions and quotations, and its recommendations, if any, for legislation to assure timely dissemination of (i) information on transactions in regularly traded government securities sufficient to permit the determination of the prevailing market price for such securities, and (ii) reports of the highest published bids and lowest published offers for government securities (including the size at which persons are willing to trade with respect to such bids and offers).

(c) Procedure for adjudication

The Commission, by rule, shall prescribe the procedure applicable to every case pursuant to this chapter of adjudication (as defined in section 551 of title 5) not required to be determined on the record after notice and opportunity for hearing. Such rules shall, as a minimum, provide that prompt notice shall be given of any adverse action or final disposition and that such notice and the entry of any order shall be accompanied by a statement of written reasons.

(d) Cease-and-desist procedures

Within 1 year after October 15, 1990, the Commission shall establish regulations providing for the expeditious conduct of hearings and rendering of decisions under section 78u–3 of this title, section 77h–1 of this title, section 80a–9(f) of this title, and section 80b–3(k) of this title.

(June 6, 1934, ch. 404, title I, §23, 48 Stat. 901; Aug. 23, 1935, ch. 614, §203(a), 49 Stat. 704; May 27, 1936, ch. 462, §8, 49 Stat. 1379; Pub. L. 88–467, §10, Aug. 20, 1964, 78 Stat. 580; Pub. L. 94–29, §18, June 4, 1975, 89 Stat. 155; Pub. L. 99–571, title I, §102(j), Oct. 28, 1986, 100 Stat. 3220; Pub. L. 100–181, title III, §§324, 325, Dec. 4, 1987, 101 Stat. 1259; Pub. L. 101–429, title II, §204, Oct. 15, 1990, 104 Stat. 940; Pub. L. 103–202, title I, §107, Dec. 17, 1993, 107 Stat. 2351; Pub. L. 109–351, title IV, §401(a)(3), Oct. 13, 2006, 120 Stat. 1973; Pub. L. 111–203, title III, §376(4), July 21, 2010, 124 Stat. 1569.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) to (c), was in the original "this title". See References in Text note set out under section 78a of this title.

AMENDMENTS

2010—Subsec. (b)(1). Pub. L. 111–203 struck out ", other than the Office of Thrift Supervision," before "shall each make".

2006—Subsec. (b)(1). Pub. L. 109–351 inserted "other than the Office of Thrift Supervision," before "shall each".

1993—Subsec. (b)(4)(C) to (K). Pub. L. 103–202, §107, redesignated subpars. (E) to (G) and (I) to (K) as (C) to (E) and (F) to (H), respectively, added a new subpar. (I), and struck out former subpars. (C), (D), and (H). Prior to amendment, subpars. (C), (D), and (H) read as follows:

"(C) beginning in 1975 and ending in 1980, information, data, and recommendations with respect to the development of a national system for the prompt and accurate clearance and settlement of securities transactions, including a summary of the regulatory activities, operational capabilities, financial resources, and plans of self-regulatory organizations and registered transfer agents with respect thereto;

"(D) beginning in 1975 and ending in 1980, a description of the steps taken, and an evaluation of the progress made, toward the establishment of a national market system, and recommendations for further legislation it considers advisable with respect to such system;

"(H) beginning in 1975 and ending in 1980, a description of the effect the absence of any schedule or fixed rates of commissions, allowances, discounts, or other fees to be charged by members for effecting transactions on a national securities exchange is having on the maintenance of fair and orderly markets and the development of a national market system for securities;".

1990—Subsec. (d). Pub. L. 101–429 added subsec. (d).

1987—Subsec. (a)(1). Pub. L. 100–181, §324(1), inserted "or" before "any self-regulatory organization" in last sentence.

Subsec. (a)(3). Pub. L. 100–181, §324(2), inserted "shall" after "section 78s(b) of this title,".

Subsec. (b)(4)(F). Pub. L. 100–181, §325, substituted "the" for "The".

1986—Subsec. (a)(2). Pub. L. 99–571, §102(j)(1), (2), inserted "and the Secretary of the Treasury" in three places and "or the Secretary's" in one place.

Subsec. (a)(3). Pub. L. 99–571, §102(j)(3), (4), inserted "and the Secretary" in three places and "or the Secretary" in one place.

1975—Subsec. (a). Pub. L. 94–29 designated existing provisions as par. (1), inserted references to other agencies enumerated in section 78c(a)(34) of this title, regulations appropriate to implement the provisions of this chapter for which the agencies are responsible, the classification of persons, transactions, statements, applications, and reports, the prescribing of greater, lesser, or different requirements for different classifications, and the non-liability of self-regulatory organization, and added pars. (2) and (3).

Subsec. (b). Pub. L. 94–29 designated existing provisions as par. (1), substituted "The Commission, the Board of Governors of the Federal Reserve System, and the other agencies enumerated in section 78c(a)(34) of this title, shall each make an annual report to the Congress on its work for the preceding year, and shall include in each such report whatever information, data, and recommendations for further legislation it considers advisable with regard to matters within its respective jurisdiction under this chapter" for "The Commission and the Board of Governors of the Federal Reserve System, respectively, shall include in their annual reports to Congress such information, data, and recommendation for further legislation as they may deem advisable with regard to matters within their respective jurisdictions under this chapter. The Commission shall include in its annual reports to the Congress for the fiscal years ended on June 30 of 1965, 1966, and 1967 information, data, and recommendations specifically related to the operation of the amendments to this chapter made by the Securities Acts Amendments of 1964", and added pars. (2) to (4).

Subsec. (c). Pub. L. 94–29 added subsec. (c).

1964—Subsec. (b). Pub. L. 88–467 required the Commission in its annual reports to Congress for fiscal years ending June 30, 1965, 1966, and 1967, to furnish information, data, and recommendations specifically related to the operations of the amendments to the Securities Exchange Act of 1934 made by the Securities Act Amendments of 1964.

1936—Subsec. (a). Act May 27, 1936, inserted second sentence.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, substituted "Board of Governors of the Federal Reserve System" for "Federal Reserve Board".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the transfer date, see section 351 of Pub. L. 111–203, set out as a note under section 906 of Title 2, The Congress.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–429 effective Oct. 15, 1990, with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(1), (2) of Pub. L. 101–429, set out in a note under section 77g of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–571 effective 270 days after Oct. 28, 1986, see section 401 of Pub. L. 99–571, set out as an Effective Date note under section 78o–5 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–467 effective Aug. 20, 1964, see section 13 of Pub. L. 88–467, set out as a note under section 78c of this title.

CONSTRUCTION OF 1993 AMENDMENT

Amendment by Pub. L. 103–202 not to be construed to govern initial issuance of any public debt obligation or to grant any authority to (or extend any authority of) the Securities and Exchange Commission, any appropriate regulatory agency, or a self-regulatory organization to prescribe any procedure, term, or condition of such initial issuance, to promulgate any rule or regulation governing such initial issuance, or to otherwise regulate in any manner such initial issuance, see section 111 of Pub. L. 103–202, set out as a note under section 78o–5 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which the 2nd item on page 143, the 18th item on page 167, the 7th item on page 172, and 18th item on page 190 identify a reporting provision which, as subsequently amended, is contained in subsec. (b) of this section), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§78x. Public availability of information

(a) "Records" defined

For purposes of section 552 of title 5 the term "records" includes all applications, statements, reports, contracts, correspondence, notices, and other documents filed with or otherwise obtained by the Commission pursuant to this chapter or otherwise.

(b) Disclosure or personal use

It shall be unlawful for any member, officer, or employee of the Commission to disclose to any person other than a member, officer, or employee of the Commission, or to use for personal benefit, any information contained in any application, statement, report, contract, correspondence, notice, or other document filed with or otherwise obtained by the Commission (1) in contravention of the rules and regulations of the Commission under section 552 of title 5, or (2) in circumstances where the Commission has determined pursuant to such rules to accord confidential treatment to such information.

(c) Confidential disclosures

The Commission may, in its discretion and upon a showing that such information is needed, provide all "records" (as defined in subsection (a) of this section) and other information in its possession to such persons, both domestic and foreign, as the Commission by rule deems appropriate if the person receiving such records or information provides such assurances of confidentiality as the Commission deems appropriate.

(d) Records obtained from foreign securities authorities

Except as provided in subsection (g) of this section, the Commission shall not be compelled to disclose records obtained from a foreign securities authority if (1) the foreign securities authority has in good faith determined and represented to the Commission that public disclosure of such records would violate the laws applicable to that foreign securities authority, and (2) the Commission obtains such records pursuant to (A) such procedure as the Commission may authorize for use in connection with the administration or enforcement of the securities laws, or (B) a memorandum of understanding. For purposes of section 552 of title 5, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552.

(e) Freedom of Information Act

For purposes of section 552(b)(8) of title 5 (commonly referred to as the Freedom of Information Act)—

(1) the Commission is an agency responsible for the regulation or supervision of financial institutions; and

(2) any entity for which the Commission is responsible for regulating, supervising, or examining under this chapter is a financial institution.

(f) Sharing privileged information with other authorities

(1) Privileged information provided by the Commission

The Commission shall not be deemed to have waived any privilege applicable to any information by transferring that information to or permitting that information to be used by—

(A) any agency (as defined in section 6 of title 18);
(B) the Public Company Accounting Oversight Board;
(C) any self-regulatory organization;
(D) any foreign securities authority;
(E) any foreign law enforcement authority; or
(F) any State securities or law enforcement authority.

(2) Nondisclosure of privileged information provided to the Commission

The Commission shall not be compelled to disclose privileged information obtained from any foreign securities authority, or foreign law enforcement authority, if the authority has in good faith determined and represented to the Commission that the information is privileged.

(3) Nonwaiver of privileged information provided to the Commission

(A) In general

Federal agencies, State securities and law enforcement authorities, self-regulatory organizations, and the Public Company Accounting Oversight Board shall not be deemed to have waived any privilege applicable to any information by transferring that information to or permitting that information to be used by the Commission.

(B) Exception

The provisions of subparagraph (A) shall not apply to a self-regulatory organization or the Public Company Accounting Oversight Board with respect to information used by the Commission in an action against such organization.

(4) Definitions

For purposes of this subsection—

(A) the term "privilege" includes any work-product privilege, attorney-client privilege, governmental privilege, or other privilege recognized under Federal, State, or foreign law;

(B) the term "foreign law enforcement authority" means any foreign authority that is empowered under foreign law to detect, investigate or prosecute potential violations of law; and

(C) the term "State securities or law enforcement authority" means the authority of any State or territory that is empowered under State or territory law to detect, investigate, or prosecute potential violations of law.

(g) Savings provision

Nothing in this section shall—

(1) alter the Commission's responsibilities under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.), as limited by section 78u(h) of this title, with respect to transfers of records covered by such statutes, or

(2) authorize the Commission to withhold information from the Congress or prevent the Commission from complying with an order of a court of the United States in an action commenced by the United States or the Commission.

(June 6, 1934, ch. 404, title I, §24, 48 Stat. 901; Aug. 23, 1935, ch. 614, §203(a), 49 Stat. 704; Pub. L. 94–29, §19, June 4, 1975, 89 Stat. 158; Pub. L. 101–550, title II, §202(a), Nov. 15, 1990, 104 Stat. 2715; Pub. L. 111–203, title IX, §§929I(a), 929K, July 21, 2010, 124 Stat. 1857, 1860; Pub. L. 111–257, §1(a), Oct. 5, 2010, 124 Stat. 2646.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (e)(2), was in the original "this title". See References in Text note set out under section 78a of this title.

The Right to Financial Privacy Act, referred to in subsec. (g)(1), probably means the Right to Financial Privacy Act of 1978, title XI of Pub. L. 95–630, Nov. 10, 1978, 92 Stat. 3697, which is classified generally to chapter 35 (§3401 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 3401 of Title 12 and Tables.

AMENDMENTS

2010—Subsec. (d). Pub. L. 111–203, §929K(1), substituted "subsection (g)" for "subsection (f)".

Pub. L. 111–203, §929I(a)(1), substituted "subsection (f)" for "subsection (e)".

Subsec. (e). Pub. L. 111–257 added subsec. (e) and struck out former subsec. (e). Prior to amendment, text read as follows:

"(1) IN GENERAL.—Except as provided in subsection (g), the Commission shall not be compelled to disclose records or information obtained pursuant to section 78q(b) of this title, or records or information based upon or derived from such records or information, if such records or information have been obtained by the Commission for use in furtherance of the purposes of this chapter, including surveillance, risk assessments, or other regulatory and oversight activities.

"(2) TREATMENT OF INFORMATION.—For purposes of section 552 of title 5, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552. Collection of information pursuant to section 78q of this title shall be an administrative action involving an agency against specific individuals or agencies pursuant to section 3518(c)(1) of title 44."

Pub. L. 111–203, §929K(2), substituted "subsection (g)" for "subsection (f)" in par. (1).

Pub. L. 111–203, §929I(a)(3), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 111–203, §929K(4), added subsec. (f). Former subsec. (f) redesignated (g).

Pub. L. 111–203, §929I(a)(2), redesignated subsec. (e) as (f).

Subsec. (g). Pub. L. 111–203, §929K(3), redesignated subsec. (f) as (g).

1990—Subsec. (b). Pub. L. 101–550, §202(a)(1), struck out at end "Nothing in this subsection shall authorize the Commission to withhold information from the Congress."

Subsecs. (c) to (e). Pub. L. 101–550, §202(a)(2), added subsecs. (c) to (e).

1975—Subsec. (a). Pub. L. 94–29 substituted "For purposes of section 552 of title 5, the term 'records' includes all applications, statements, reports, contracts, correspondence, notices, and other documents filed with or otherwise obtained by the Commission pursuant to this chapter or otherwise" for "Nothing in this chapter shall be construed to require, or to authorize the Commission to require, the revealing of trade secrets or processes in any application, report, or document filed with the Commission under this chapter".

Subsecs. (b), (c). Pub. L. 94–29 redesignated subsec. (c) as (b) and substituted "application, statement,

report, contract, correspondence, notice, or other document filed with or otherwise obtained by the Commission (1) in contravention of the rules and regulations of the Commission under section 552 of title 5, or (2) in circumstances where the Commission has determined pursuant to such rules to accord confidential treatment for such information. Nothing in this subsection shall authorize the Commission to withhold information from Congress" for "application, report, or document filed with the Commission which is not made available to the public pursuant to subsection (b) of this section: Provided, That the Commission may make available to the Board of Governors of the Federal Reserve System any information requested by the Board for the purpose of enabling it to perform its duties under this chapter". Former subsec. (b), providing for written objection to public disclosure of information, was struck out.

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, substituted "Board of Governors of the Federal Reserve System" for "Federal Reserve Board".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§78y. Court review of orders and rules

(a) Final Commission orders; persons aggrieved; petition; record; findings; affirmance, modification, enforcement, or setting aside of orders; remand to adduce additional evidence

(1) A person aggrieved by a final order of the Commission entered pursuant to this chapter may obtain review of the order in the United States Court of Appeals for the circuit in which he resides or has his principal place of business, or for the District of Columbia Circuit, by filing in such court, within sixty days after the entry of the order, a written petition requesting that the order be modified or set aside in whole or in part.

(2) A copy of the petition shall be transmitted forthwith by the clerk of the court to a member of the Commission or an officer designated by the Commission for that purpose. Thereupon the Commission shall file in the court the record on which the order complained of is entered, as provided in section 2112 of title 28 and the Federal Rules of Appellate Procedure.

(3) On the filing of the petition, the court has jurisdiction, which becomes exclusive on the filing of the record, to affirm or modify and enforce or to set aside the order in whole or in part.

(4) The findings of the Commission as to the facts, if supported by substantial evidence, are conclusive.

(5) If either party applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there was reasonable ground for failure to adduce it before the Commission, the court may remand the case to the Commission for further proceedings, in whatever manner and on whatever conditions the court considers appropriate. If the case is remanded to the Commission, it shall file in the court a supplemental record containing any new evidence, any further or modified findings, and any new order.

(b) Commission rules; persons adversely affected; petition; record; affirmance, enforcement, or setting aside of rules; findings; transfer of proceedings

(1) A person adversely affected by a rule of the Commission promulgated pursuant to section 78f, 78i(h)(2), 78k, 78k–1, 78o(c)(5) or (6), 78o–3, 78q, 78q–1, or 78s of this title may obtain review of

this rule in the United States Court of Appeals for the circuit in which he resides or has his principal place of business or for the District of Columbia Circuit, by filing in such court, within sixty days after the promulgation of the rule, a written petition requesting that the rule be set aside.

(2) A copy of the petition shall be transmitted forthwith by the clerk of the court to a member of the Commission or an officer designated for that purpose. Thereupon, the Commission shall file in the court the rule under review and any documents referred to therein, the Commission's notice of proposed rulemaking and any documents referred to therein, all written submissions and the transcript of any oral presentations in the rulemaking, factual information not included in the foregoing that was considered by the Commission in the promulgation of the rule or proffered by the Commission as pertinent to the rule, the report of any advisory committee received or considered by the Commission in the rulemaking, and any other materials prescribed by the court.

(3) On the filing of the petition, the court has jurisdiction, which becomes exclusive on the filing of the materials set forth in paragraph (2) of this subsection, to affirm and enforce or to set aside the rule.

(4) The findings of the Commission as to the facts identified by the Commission as the basis, in whole or in part, of the rule, if supported by substantial evidence, are conclusive. The court shall affirm and enforce the rule unless the Commission's action in promulgating the rule is found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or without observance of procedure required by law.

(5) If proceedings have been instituted under this subsection in two or more courts of appeals with respect to the same rule, the Commission shall file the materials set forth in paragraph (2) of this subsection in that court in which a proceeding was first instituted. The other courts shall thereupon transfer all such proceedings to the court in which the materials have been filed. For the convenience of the parties in the interest of justice that court may thereafter transfer all the proceedings to any other court of appeals.

(c) Objections not urged before Commission; stay of orders and rules; transfer of enforcement or review proceedings

(1) No objection to an order or rule of the Commission, for which review is sought under this section, may be considered by the court unless it was urged before the Commission or there was reasonable ground for failure to do so.

(2) The filing of a petition under this section does not operate as a stay of the Commission's order or rule. Until the court's jurisdiction becomes exclusive, the Commission may stay its order or rule pending judicial review if it finds that justice so requires. After the filing of a petition under this section, the court, on whatever conditions may be required and to the extent necessary to prevent irreparable injury, may issue all necessary and appropriate process to stay the order or rule or to preserve status or rights pending its review; but (notwithstanding section 705 of title 5) no such process may be issued by the court before the filing of the record or the materials set forth in subsection (b)(2) of this section unless: (A) the Commission has denied a stay or failed to grant requested relief, (B) a reasonable period has expired since the filing of an application for a stay without a decision by the Commission, or (C) there was reasonable ground for failure to apply to the Commission.

(3) When the same order or rule is the subject of one or more petitions for review filed under this section and an action for enforcement filed in a district court of the United States under section 78u(d) or (e) of this title, that court in which the petition or the action is first filed has jurisdiction with respect to the order or rule to the exclusion of any other court, and thereupon all such proceedings shall be transferred to that court; but, for the convenience of the parties in the interest of justice, that court may thereafter transfer all the proceedings to any other court of appeals or district court of the United States, whether or not a petition for review or an action for enforcement was originally filed in the transferee court. The scope of review by a district court under section 78u(d) or (e) of this title is in all cases the same as by a court of appeals under this section.

(d) Other appropriate regulatory agencies

(1) For purposes of the preceding subsections of this section, the term "Commission" includes the agencies enumerated in section 78c(a)(34) of this title insofar as such agencies are acting pursuant to this chapter and the Secretary of the Treasury insofar as he is acting pursuant to section 78o–5 of this title.

(2) For purposes of subsection (a)(4) of this section and section 706 of title 5, an order of the Commission pursuant to section 78s(a) of this title denying registration to a clearing agency for which the Commission is not the appropriate regulatory agency or pursuant to section 78s(b) of this title disapproving a proposed rule change by such a clearing agency shall be deemed to be an order of the appropriate regulatory agency for such clearing agency insofar as such order was entered by reason of a determination by such appropriate regulatory agency pursuant to section 78s(a)(2)(C) or 78s(b)(4)(C) of this title that such registration or proposed rule change would be inconsistent with the safeguarding of securities or funds.

(June 6, 1934, ch. 404, title I, §25, 48 Stat. 901; June 7, 1934, ch. 426, 48 Stat. 926; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Pub. L. 85–791, §10, Aug. 28, 1958, 72 Stat. 945; Pub. L. 94–29, §20, June 4, 1975, 89 Stat. 158; Pub. L. 99–571, title I, §102(k), Oct. 28, 1986, 100 Stat. 3220; Pub. L. 101–432, §6(b), Oct. 16, 1990, 104 Stat. 975.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1) and (d)(1), was in the original "this title". See References in Text note set out under section 78a of this title.

The Federal Rules of Appellate Procedure, referred to in subsec. (a)(2), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1990—Subsec. (b)(1). Pub. L. 101–432 inserted "78i(h)(2)," after "section 78f,".

1986—Subsec. (d)(1). Pub. L. 99–571 inserted "and the Secretary of the Treasury insofar as he is acting pursuant to section 78o–5 of this title".

1975—Subsec. (a). Pub. L. 94–29 revised existing provisions into five numbered paragraphs.

Subsec. (b). Pub. L. 94–29 substituted provisions permitting persons adversely affected by any rule promulgated by the Commission pursuant to sections 78f, 78k, 78k–1, 78o(c)(5) or (6), 78o–3, 78q, 78q–1, or 78s of this title to obtain direct review in an appropriate Court of Appeals for provisions that commencement of proceedings under subsec. (a) shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

Subsecs. (c), (d). Pub. L. 94–29 added subsecs. (c) and (d).

1958—Subsec. (a). Pub. L. 85–791, in second sentence, substituted "transmitted by the clerk of the court to" for "served upon", struck out "certify and" before "file in the court", struck out "a transcript of" after "file in the court", and inserted "as provided in section 2112 of title 28", and, in third sentence, substituted "petition" for "transcript", and "jurisdiction, which upon the filing of the record shall be exclusive" for "exclusive jurisdiction".

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals".

Act June 7, 1934, substituted "United States Court of Appeals for the District of Columbia" for "Court of Appeals for District of Columbia".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–571 effective 270 days after Oct. 28, 1986, see section 401 of Pub. L. 99–571, set out as an Effective Date note under section 78o–5 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set

out under section 78d of this title.

§78z. Unlawful representations

No action or failure to act by the Commission or the Board of Governors of the Federal Reserve System, in the administration of this chapter shall be construed to mean that the particular authority has in any way passed upon the merits of, or given approval to, any security or any transaction or transactions therein, nor shall such action or failure to act with regard to any statement or report filed with or examined by such authority pursuant to this chapter or rules and regulations thereunder, be deemed a finding by such authority that such statement or report is true and accurate on its face or that it is not false or misleading. It shall be unlawful to make, or cause to be made, to any prospective purchaser or seller of a security any representation that any such action or failure to act by any such authority is to be so construed or has such effect.

(June 6, 1934, ch. 404, title I, §26, 48 Stat. 902; Pub. L. 105–353, title III, §301(b)(5), Nov. 3, 1998, 112 Stat. 3236.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title". See References in Text note set out under section 78a of this title.

AMENDMENTS

1998—Pub. L. 105–353 substituted "Board of Governors of the Federal Reserve System" for "Federal Reserve Board".

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§78aa. Jurisdiction of offenses and suits

(a) In general

The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have exclusive jurisdiction of violations of this chapter or the rules and regulations thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by this chapter or the rules and regulations thereunder. Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by this chapter or rules and regulations thereunder, or to enjoin any violation of such chapter or rules and regulations, may be brought in any such district or in the district wherein the defendant is found or is an inhabitant or transacts business, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found. In any action or proceeding instituted by the Commission under this chapter in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure shall not apply to a subpoena issued under the preceding sentence. Judgments and decrees so rendered shall be subject to review as provided in sections 1254, 1291, 1292, and 1294 of title 28. No costs shall be assessed for or against the Commission in any proceeding under this chapter brought by or against it in the Supreme Court or such other courts.

(b) Extraterritorial jurisdiction

The district courts of the United States and the United States courts of any Territory shall have jurisdiction of an action or proceeding brought or instituted by the Commission or the United States

alleging a violation of the antifraud provisions of this chapter involving—

(1) conduct within the United States that constitutes significant steps in furtherance of the violation, even if the securities transaction occurs outside the United States and involves only foreign investors; or

(2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.

(June 6, 1934, ch. 404, title I, §27, 48 Stat. 902; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, §32(b), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Pub. L. 100–181, title III, §326, Dec. 4, 1987, 101 Stat. 1259; Pub. L. 111–203, title IX, §§929E(b), 929P(b)(2), July 21, 2010, 124 Stat. 1853, 1865.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title". See References in Text note set out under section 78a of this title.

The Federal Rules of Civil Procedure, referred to in subsec. (a), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

CODIFICATION

As originally enacted section contained references to the Supreme Court of the District of Columbia. Act June 25, 1936, substituted "the district court of the United States for the District of Columbia" for "the Supreme Court of the District of Columbia", and act June 25, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "district court of the United States for the District of Columbia". Pub. L. 100–181 struck out reference to the United States District Court for the District of Columbia. Previously, such words had been editorially eliminated as superfluous in view of section 132(a) of Title 28, Judiciary and Judicial Procedure, which provides that "There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district", and section 88 of Title 28 which provides that "the District of Columbia constitutes one judicial district".

AMENDMENTS

2010—Pub. L. 111–203, §929P(b)(2), designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

Pub. L. 111–203, §929E(b), inserted "In any action or proceeding instituted by the Commission under this chapter in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure shall not apply to a subpoena issued under the preceding sentence." after "defendant may be found."

1987—Pub. L. 100–181 struck out ", the United States District Court for the District of Columbia," after "district courts of the United States" and substituted "sections 1254, 1291, 1292, and 1294 of title 28" for "sections 128 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 225 and 347)". See Codification note above.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§78aa–1. Special provision relating to statute of limitations on private causes of action

(a) Effect on pending causes of action

The limitation period for any private civil action implied under section 78j(b) of this title that was commenced on or before June 19, 1991, shall be the limitation period provided by the laws applicable in the jurisdiction, including principles of retroactivity, as such laws existed on June 19, 1991.

(b) Effect on dismissed causes of action

Any private civil action implied under section 78j(b) of this title that was commenced on or before June 19, 1991—

(1) which was dismissed as time barred subsequent to June 19, 1991, and

(2) which would have been timely filed under the limitation period provided by the laws applicable in the jurisdiction, including principles of retroactivity, as such laws existed on June 19, 1991,

shall be reinstated on motion by the plaintiff not later than 60 days after December 19, 1991.

(June 6, 1934, ch. 404, title I, §27A, as added Pub. L. 102–242, title IV, §476, Dec. 19, 1991, 105 Stat. 2387.)

CONSTITUTIONALITY

For information regarding constitutionality of certain provisions of section 27A of act June 6, 1934, as added by section 476 of Pub. L. 102–242, see Congressional Research Service, The Constitution of the United States of America: Analysis and Interpretation, Appendix 1, Acts of Congress Held Unconstitutional in Whole or in Part by the Supreme Court of the United States.

§78bb. Effect on existing law

(a) Limitation on judgments

(1) In general

No person permitted to maintain a suit for damages under the provisions of this chapter shall recover, through satisfaction of judgment in 1 or more actions, a total amount in excess of the actual damages to that person on account of the act complained of. Except as otherwise specifically provided in this chapter, nothing in this chapter shall affect the jurisdiction of the securities commission (or any agency or officer performing like functions) of any State over any security or any person insofar as it does not conflict with the provisions of this chapter or the rules and regulations under this chapter.

(2) Rule of construction

Except as provided in subsection (f), the rights and remedies provided by this chapter shall be in addition to any and all other rights and remedies that may exist at law or in equity.

(3) State bucket shop laws

No State law which prohibits or regulates the making or promoting of wagering or gaming contracts, or the operation of "bucket shops" or other similar or related activities, shall invalidate—

(A) any put, call, straddle, option, privilege, or other security subject to this chapter (except any security that has a pari-mutuel payout or otherwise is determined by the Commission, acting by rule, regulation, or order, to be appropriately subject to such laws), or apply to any activity which is incidental or related to the offer, purchase, sale, exercise, settlement, or closeout of any such security;

(B) any security-based swap between eligible contract participants; or

(C) any security-based swap effected on a national securities exchange registered pursuant to section 78f(b) of this title.

(4) Other State provisions

No provision of State law regarding the offer, sale, or distribution of securities shall apply to

any transaction in a security-based swap or a security futures product, except that this paragraph may not be construed as limiting any State antifraud law of general applicability. A security-based swap may not be regulated as an insurance contract under any provision of State law.

(b) Modification of disciplinary procedures

Nothing in this chapter shall be construed to modify existing law with regard to the binding effect (1) on any member of or participant in any self-regulatory organization of any action taken by the authorities of such organization to settle disputes between its members or participants, (2) on any municipal securities dealer or municipal securities broker of any action taken pursuant to a procedure established by the Municipal Securities Rulemaking Board to settle disputes between municipal securities dealers and municipal securities brokers, or (3) of any action described in paragraph (1) or (2) on any person who has agreed to be bound thereby.

(c) Continuing validity of disciplinary sanctions

The stay, setting aside, or modification pursuant to section 78s(e) of this title of any disciplinary sanction imposed by a self-regulatory organization on a member thereof, person associated with a member, or participant therein, shall not affect the validity or force of any action taken as a result of such sanction by the self-regulatory organization prior to such stay, setting aside, or modification: *Provided*, That such action is not inconsistent with the provisions of this chapter or the rules or regulations thereunder. The rights of any person acting in good faith which arise out of any such action shall not be affected in any way by such stay, setting aside, or modification.

(d) Physical location of facilities of registered clearing agencies or registered transfer agents not to subject changes in beneficial or record ownership of securities to State or local taxes

No State or political subdivision thereof shall impose any tax on any change in beneficial or record ownership of securities effected through the facilities of a registered clearing agency or registered transfer agent or any nominee thereof or custodian therefor or upon the delivery or transfer of securities to or through or receipt from such agency or agent or any nominee thereof or custodian therefor, unless such change in beneficial or record ownership or such transfer or delivery or receipt would otherwise be taxable by such State or political subdivision if the facilities of such registered clearing agency, registered transfer agent, or any nominee thereof or custodian therefor were not physically located in the taxing State or political subdivision. No State or political subdivision thereof shall impose any tax on securities which are deposited in or retained by a registered clearing agency, registered transfer agent, or any nominee thereof or custodian therefor, unless such securities would otherwise be taxable by such State or political subdivision if the facilities of such registered clearing agency, registered transfer agent, or any nominee thereof or custodian therefor were not physically located in the taxing State or political subdivision.

(e) Exchange, broker, and dealer commissions; brokerage and research services

(1) No person using the mails, or any means or instrumentality of interstate commerce, in the exercise of investment discretion with respect to an account shall be deemed to have acted unlawfully or to have breached a fiduciary duty under State or Federal law unless expressly provided to the contrary by a law enacted by the Congress or any State subsequent to June 4, 1975, solely by reason of his having caused the account to pay a member of an exchange, broker, or dealer an amount of commission for effecting a securities transaction in excess of the amount of commission another member of an exchange, broker, or dealer would have charged for effecting that transaction, if such person determined in good faith that such amount of commission was reasonable in relation to the value of the brokerage and research services provided by such member, broker, or dealer, viewed in terms of either that particular transaction or his overall responsibilities with respect to the accounts as to which he exercises investment discretion. This subsection is exclusive and plenary insofar as conduct is covered by the foregoing, unless otherwise expressly provided by contract: *Provided, however*, That nothing in this subsection shall be construed to impair or limit the power of the Commission under any other provision of this chapter or otherwise.

(2) A person exercising investment discretion with respect to an account shall make such disclosure of his policies and practices with respect to commissions that will be paid for effecting

securities transactions, at such times and in such manner, as the appropriate regulatory agency, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(3) For purposes of this subsection a person provides brokerage and research services insofar as he—

(A) furnishes advice, either directly or through publications or writings, as to the value of securities, the advisability of investing in, purchasing, or selling securities, and the availability of securities or purchasers or sellers of securities;

(B) furnishes analyses and reports concerning issuers, industries, securities, economic factors and trends, portfolio strategy, and the performance of accounts; or

(C) effects securities transactions and performs functions incidental thereto (such as clearance, settlement, and custody) or required in connection therewith by rules of the Commission or a self-regulatory organization of which such person is a member or person associated with a member or in which such person is a participant.

(4) The provisions of this subsection shall not apply with regard to securities that are security futures products.

(f) Limitations on remedies

(1) Class action limitations

No covered class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private party alleging—

(A) a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security; or

(B) that the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security.

(2) Removal of covered class actions

Any covered class action brought in any State court involving a covered security, as set forth in paragraph (1), shall be removable to the Federal district court for the district in which the action is pending, and shall be subject to paragraph (1).

(3) Preservation of certain actions

(A) Actions under State law of State of incorporation

(i) Actions preserved

Notwithstanding paragraph (1) or (2), a covered class action described in clause (ii) of this subparagraph that is based upon the statutory or common law of the State in which the issuer is incorporated (in the case of a corporation) or organized (in the case of any other entity) may be maintained in a State or Federal court by a private party.

(ii) Permissible actions

A covered class action is described in this clause if it involves—

(I) the purchase or sale of securities by the issuer or an affiliate of the issuer exclusively from or to holders of equity securities of the issuer; or

(II) any recommendation, position, or other communication with respect to the sale of securities of an issuer that—

(aa) is made by or on behalf of the issuer or an affiliate of the issuer to holders of equity securities of the issuer; and

(bb) concerns decisions of such equity holders with respect to voting their securities, acting in response to a tender or exchange offer, or exercising dissenters' or appraisal rights.

(B) State actions

(i) In general

Notwithstanding any other provision of this subsection, nothing in this subsection may be construed to preclude a State or political subdivision thereof or a State pension plan from bringing an action involving a covered security on its own behalf, or as a member of a class comprised solely of other States, political subdivisions, or State pension plans that are named plaintiffs, and that have authorized participation, in such action.

(ii) State pension plan defined

For purposes of this subparagraph, the term "State pension plan" means a pension plan established and maintained for its employees by the government of a State or political subdivision thereof, or by any agency or instrumentality thereof.

(C) Actions under contractual agreements between issuers and indenture trustees

Notwithstanding paragraph (1) or (2), a covered class action that seeks to enforce a contractual agreement between an issuer and an indenture trustee may be maintained in a State or Federal court by a party to the agreement or a successor to such party.

(D) Remand of removed actions

In an action that has been removed from a State court pursuant to paragraph (2), if the Federal court determines that the action may be maintained in State court pursuant to this subsection, the Federal court shall remand such action to such State court.

(4) Preservation of State jurisdiction

The securities commission (or any agency or office performing like functions) of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions.

(5) Definitions

For purposes of this subsection, the following definitions shall apply:

(A) Affiliate of the issuer

The term "affiliate of the issuer" means a person that directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with, the issuer.

(B) Covered class action

The term "covered class action" means—

(i) any single lawsuit in which—

(I) damages are sought on behalf of more than 50 persons or prospective class members, and questions of law or fact common to those persons or members of the prospective class, without reference to issues of individualized reliance on an alleged misstatement or omission, predominate over any questions affecting only individual persons or members; or

(II) one or more named parties seek to recover damages on a representative basis on behalf of themselves and other unnamed parties similarly situated, and questions of law or fact common to those persons or members of the prospective class predominate over any questions affecting only individual persons or members; or

(ii) any group of lawsuits filed in or pending in the same court and involving common questions of law or fact, in which—

(I) damages are sought on behalf of more than 50 persons; and

(II) the lawsuits are joined, consolidated, or otherwise proceed as a single action for any purpose.

(C) Exception for derivative actions

Notwithstanding subparagraph (B), the term "covered class action" does not include an exclusively derivative action brought by one or more shareholders on behalf of a corporation.

(D) Counting of certain class members

For purposes of this paragraph, a corporation, investment company, pension plan,

partnership, or other entity, shall be treated as one person or prospective class member, but only if the entity is not established for the purpose of participating in the action.

(E) Covered security

The term "covered security" means a security that satisfies the standards for a covered security specified in paragraph (1) or (2) of section 18(b) of the Securities Act of 1933 [15 U.S.C. 77r(b)], at the time during which it is alleged that the misrepresentation, omission, or manipulative or deceptive conduct occurred, except that such term shall not include any debt security that is exempt from registration under the Securities Act of 1933 [15 U.S.C. 77a et seq.] pursuant to rules issued by the Commission under section 4(2) [1] of that Act [15 U.S.C. 77d(a)(2)].

(F) Rule of construction

Nothing in this paragraph shall be construed to affect the discretion of a State court in determining whether actions filed in such court should be joined, consolidated, or otherwise allowed to proceed as a single action.

(June 6, 1934, ch. 404, title I, §28, 48 Stat. 903; Pub. L. 94–29, §21, June 4, 1975, 89 Stat. 160; Pub. L. 97–303, §4, Oct. 13, 1982, 96 Stat. 1409; Pub. L. 100–181, title III, §§327–329, Dec. 4, 1987, 101 Stat. 1259; Pub. L. 104–290, title I, §103(b), Oct. 11, 1996, 110 Stat. 3422; Pub. L. 105–353, title I, §101(b)(1), Nov. 3, 1998, 112 Stat. 3230; Pub. L. 106–554, §1(a)(5) [title II, §§203(a)(2), 210], Dec. 21, 2000, 114 Stat. 2763, 2763A–422, 2763A–436; Pub. L. 111–203, title VII, §767, July 21, 2010, 124 Stat. 1799.)

AMENDMENT OF SECTION

Unless otherwise provided, amendment by subtitle B (§§761–774) of title VII of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see 2010 Amendment notes and Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) to (c) and (e), was in the original "this title". See References in Text note set out under section 78a of this title.

The Securities Act of 1933, referred to in subsec. (f)(5)(E), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. Section 4(2) of the Act was redesignated section 4(a)(2) by Pub. L. 112–106, title II, §201(b)(1), (c)(1), Apr. 5, 2012, 126 Stat. 314, and is classified to section 77d(a)(2) of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203 amended subsec. (a) generally. Prior to amendment, subsec. (a) related to rights and remedies provided by this chapter and applicability of certain State securities laws.

2000—Subsec. (a). Pub. L. 106–554, §1(a)(5) [title II, §210], inserted "subject to this chapter" after "privilege, or other security", substituted "any such security" for "any such instrument, if such instrument is traded pursuant to rules and regulations of a self-regulatory organization that are filed with the Commission pursuant to section 78s(b) of this title", and inserted at end "No provision of State law regarding the offer, sale, or distribution of securities shall apply to any transaction in a security futures product, except that this sentence shall not be construed as limiting any State antifraud law of general applicability."

Subsec. (e)(4). Pub. L. 106–554, §1(a)(5) [title II, §203(a)(2)], added par. (4).

1998—Subsec. (a). Pub. L. 105–353, §101(b)(1)(A), substituted "Except as provided in subsection (f) of this section, the rights and remedies" for "The rights and remedies".

Subsec. (f). Pub. L. 105–353, §101(b)(1)(B), added subsec. (f).

1996—Subsec. (a). Pub. L. 104–290 substituted "Except as otherwise specifically provided in this chapter, nothing" for "Nothing".

1987—Subsec. (c). Pub. L. 100–181, §327, substituted "on" for "or" after "self-regulatory organization".

Subsec. (d). Pub. L. 100–181, §328, substituted "change in beneficial" for "change is beneficial".

Subsec. (e)(1). Pub. L. 100–181, §329, substituted "subsequent to the date of enactment of the Securities Acts Amendments of 1975" for "subsequent to the date of enactment of the Securities Acts Amendments in 1975", which for purposes of codification was translated as "subsequent to June 4, 1975," thus requiring no change in text.

1982—Subsec. (a). Pub. L. 97–303 inserted provision that no State law which prohibits or regulates the making or promoting of wagering or gaming contracts, or the operation of "bucket shops" or other similar or related activities, shall invalidate any put, call, straddle, option, privilege, or other security, or apply to any activity which is incidental or related to the offer, purchase, sale, exercise, settlement, or closeout of any such instrument, if such instrument is traded pursuant to rules and regulations of a self-regulatory organization that are filed with the Commission pursuant to section 78s(b) of this title.

1975—Subsec. (b). Pub. L. 94–29, §21(1), struck out provisions that nothing in this chapter be construed to modify existing law with regard to the binding effect on any member of an exchange of any disciplinary action taken by the authorities of an exchange and made the remaining provisions applicable to all members of and participants in all self-regulatory organizations as well as municipal securities professionals.

Subsecs. (c) to (e). Pub. L. 94–29, §21(2), added subsecs. (c) to (e).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761–774) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111–203, set out as a note under section 77b of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–353 not to affect or apply to any action commenced before and pending on Nov. 3, 1998, see section 101(c) of Pub. L. 105–353, set out as a note under section 77p of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

[1] *See References in Text note below.*

§78cc. Validity of contracts

(a) Waiver provisions

Any condition, stipulation, or provision binding any person to waive compliance with any provision of this chapter or of any rule or regulation thereunder, or of any rule of a self-regulatory organization, shall be void.

(b) Contract provisions in violation of chapter

Every contract made in violation of any provision of this chapter or of any rule or regulation thereunder, and every contract (including any contract for listing a security on an exchange) heretofore or hereafter made, the performance of which involves the violation of, or the continuance of any relationship or practice in violation of, any provision of this chapter or any rule or regulation thereunder, shall be void (1) as regards the rights of any person who, in violation of any such provision, rule, or regulation, shall have made or engaged in the performance of any such contract, and (2) as regards the rights of any person who, not being a party to such contract, shall have acquired any right thereunder with actual knowledge of the facts by reason of which the making or performance of such contract was in violation of any such provision, rule, or regulation: *Provided*, (A) That no contract shall be void by reason of this subsection because of any violation of any rule or regulation prescribed pursuant to paragraph (3) of subsection (c) of section 78o of this title, and (B)

that no contract shall be deemed to be void by reason of this subsection in any action maintained in reliance upon this subsection, by any person to or for whom any broker or dealer sells, or from or for whom any broker or dealer purchases, a security in violation of any rule or regulation prescribed pursuant to paragraph (1) or (2) of subsection (c) of section 78o of this title, unless such action is brought within one year after the discovery that such sale or purchase involves such violation and within three years after such violation. The Commission may, in a rule or regulation prescribed pursuant to such paragraph (2) of such section 78o(c) of this title, designate such rule or regulation, or portion thereof, as a rule or regulation, or portion thereof, a contract in violation of which shall not be void by reason of this subsection.

(c) Validity of loans, extensions of credit, and creation of liens; actual knowledge of violation

Nothing in this chapter shall be construed (1) to affect the validity of any loan or extension of credit (or any extension or renewal thereof) made or of any lien created prior or subsequent to the enactment of this chapter, unless at the time of the making of such loan or extension of credit (or extension or renewal thereof) or the creating of such lien, the person making such loan or extension of credit (or extension or renewal thereof) or acquiring such lien shall have actual knowledge of facts by reason of which the making of such loan or extension of credit (or extension or renewal thereof) or the acquisition of such lien is a violation of the provisions of this chapter or any rule or regulation thereunder, or (2) to afford a defense to the collection of any debt or obligation or the enforcement of any lien by any person who shall have acquired such debt, obligation, or lien in good faith for value and without actual knowledge of the violation of any provision of this chapter or any rule or regulation thereunder affecting the legality of such debt, obligation, or lien.

(June 6, 1934, ch. 404, title I, §29, 48 Stat. 903; June 25, 1938, ch. 677, §3, 52 Stat. 1076; Pub. L. 101–429, title V, §507, Oct. 15, 1990, 104 Stat. 956; Pub. L. 111–203, title IX, §§927, 929T, July 21, 2010, 124 Stat. 1852, 1867.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title". See References in Text note set out under section 78a of this title.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, §§927, 929T, amended subsec. (a) identically, substituting "a self-regulatory organization," for "an exchange required thereby".

1990—Subsec. (b). Pub. L. 101–429 substituted in cl. (A) "paragraph (3)" for "paragraph (2) or (3)" and in cl. (B) "paragraph (1) or (2)" for "paragraph (1)", and inserted at end "The Commission may, in a rule or regulation prescribed pursuant to such paragraph (2) of such section 78o(c) of this title, designate such rule or regulation, or portion thereof, as a rule or regulation, or portion thereof, a contract in violation of which shall not be void by reason of this subsection."

1938—Subsec. (b). Act June 25, 1938, inserted proviso.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–429 effective Oct. 15, 1990, with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(1), (2) of Pub. L. 101–429, set out in a note under section 77g of this title.

§78dd. Foreign securities exchanges

(a) Unlawful transactions on foreign securities exchanges

It shall be unlawful for any broker or dealer, directly or indirectly, to make use of the mails or of any means or instrumentality of interstate commerce for the purpose of effecting on an exchange not

within or subject to the jurisdiction of the United States, any transaction in any security the issuer of which is a resident of, or is organized under the laws of, or has its principal place of business in, a place within or subject to the jurisdiction of the United States, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors or to prevent the evasion of this chapter.

(b) Business without the jurisdiction of the United States

The provisions of this chapter or of any rule or regulation thereunder shall not apply to any person insofar as he transacts a business in securities without the jurisdiction of the United States, unless he transacts such business in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate to prevent the evasion of this chapter.

(c) Rule of construction

No provision of this chapter that was added by the Wall Street Transparency and Accountability Act of 2010, or any rule or regulation thereunder, shall apply to any person insofar as such person transacts a business in security-based swaps without the jurisdiction of the United States, unless such person transacts such business in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate to prevent the evasion of any provision of this chapter that was added by the Wall Street Transparency and Accountability Act of 2010. This subsection shall not be construed to limit the jurisdiction of the Commission under any provision of this chapter, as in effect prior to July 21, 2010.

(June 6, 1934, ch. 404, title I, §30, 48 Stat. 904; Pub. L. 111–203, title VII, §772(b), July 21, 2010, 124 Stat. 1802.)

AMENDMENT OF SECTION

Unless otherwise provided, amendment by subtitle B (§§761–774) of title VII of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see 2010 Amendment notes and Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title". See References in Text note set out under section 78a of this title.

The Wall Street Transparency and Accountability Act of 2010, referred to in subsec. (c), is title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1641, which enacted chapter 109 (§8301 et seq.) of this title and enacted and amended numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of this title and Tables.

AMENDMENTS

2010—Subsec. (c). Pub. L. 111–203 added subsec. (c).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761–774) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111–203, set out as a note under section 77b of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§78dd–1. Prohibited foreign trade practices by issuers

(a) Prohibition

It shall be unlawful for any issuer which has a class of securities registered pursuant to section 78l of this title or which is required to file reports under section 78o(d) of this title, or for any officer, director, employee, or agent of such issuer or any stockholder thereof acting on behalf of such issuer, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—

(1) any foreign official for purposes of—

(A)(i) influencing any act or decision of such foreign official in his official capacity, (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or (iii) securing any improper advantage; or

(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person;

(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of—

(A)(i) influencing any act or decision of such party, official, or candidate in its or his official capacity, (ii) inducing such party, official, or candidate to do or omit to do an act in violation of the lawful duty of such party, official, or candidate, or (iii) securing any improper advantage; or

(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person; or

(3) any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of—

(A)(i) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, (ii) inducing such foreign official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate, or (iii) securing any improper advantage; or

(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person.

(b) Exception for routine governmental action

Subsections (a) and (g) of this section shall not apply to any facilitating or expediting payment to a foreign official, political party, or party official the purpose of which is to expedite or to secure the performance of a routine governmental action by a foreign official, political party, or party official.

(c) Affirmative defenses

It shall be an affirmative defense to actions under subsection (a) or (g) of this section that—

(1) the payment, gift, offer, or promise of anything of value that was made, was lawful under the written laws and regulations of the foreign official's, political party's, party official's, or candidate's country; or

(2) the payment, gift, offer, or promise of anything of value that was made, was a reasonable and bona fide expenditure, such as travel and lodging expenses, incurred by or on behalf of a foreign official, party, party official, or candidate and was directly related to—

(A) the promotion, demonstration, or explanation of products or services; or
(B) the execution or performance of a contract with a foreign government or agency thereof.

(d) Guidelines by Attorney General

Not later than one year after August 23, 1988, the Attorney General, after consultation with the Commission, the Secretary of Commerce, the United States Trade Representative, the Secretary of State, and the Secretary of the Treasury, and after obtaining the views of all interested persons through public notice and comment procedures, shall determine to what extent compliance with this section would be enhanced and the business community would be assisted by further clarification of the preceding provisions of this section and may, based on such determination and to the extent necessary and appropriate, issue—

(1) guidelines describing specific types of conduct, associated with common types of export sales arrangements and business contracts, which for purposes of the Department of Justice's present enforcement policy, the Attorney General determines would be in conformance with the preceding provisions of this section; and

(2) general precautionary procedures which issuers may use on a voluntary basis to conform their conduct to the Department of Justice's present enforcement policy regarding the preceding provisions of this section.

The Attorney General shall issue the guidelines and procedures referred to in the preceding sentence in accordance with the provisions of subchapter II of chapter 5 of title 5 and those guidelines and procedures shall be subject to the provisions of chapter 7 of that title.

(e) Opinions of Attorney General

(1) The Attorney General, after consultation with appropriate departments and agencies of the United States and after obtaining the views of all interested persons through public notice and comment procedures, shall establish a procedure to provide responses to specific inquiries by issuers concerning conformance of their conduct with the Department of Justice's present enforcement policy regarding the preceding provisions of this section. The Attorney General shall, within 30 days after receiving such a request, issue an opinion in response to that request. The opinion shall state whether or not certain specified prospective conduct would, for purposes of the Department of Justice's present enforcement policy, violate the preceding provisions of this section. Additional requests for opinions may be filed with the Attorney General regarding other specified prospective conduct that is beyond the scope of conduct specified in previous requests. In any action brought under the applicable provisions of this section, there shall be a rebuttable presumption that conduct, which is specified in a request by an issuer and for which the Attorney General has issued an opinion that such conduct is in conformity with the Department of Justice's present enforcement policy, is in compliance with the preceding provisions of this section. Such a presumption may be rebutted by a preponderance of the evidence. In considering the presumption for purposes of this paragraph, a court shall weigh all relevant factors, including but not limited to whether the information submitted to the Attorney General was accurate and complete and whether it was within the scope of the conduct specified in any request received by the Attorney General. The Attorney General shall establish the procedure required by this paragraph in accordance with the provisions of subchapter II of chapter 5 of title 5 and that procedure shall be subject to the provisions of chapter 7 of that title.

(2) Any document or other material which is provided to, received by, or prepared in the Department of Justice or any other department or agency of the United States in connection with a request by an issuer under the procedure established under paragraph (1), shall be exempt from disclosure under section 552 of title 5 and shall not, except with the consent of the issuer, be made publicly available, regardless of whether the Attorney General responds to such a request or the issuer withdraws such request before receiving a response.

(3) Any issuer who has made a request to the Attorney General under paragraph (1) may withdraw such request prior to the time the Attorney General issues an opinion in response to such request. Any request so withdrawn shall have no force or effect.

(4) The Attorney General shall, to the maximum extent practicable, provide timely guidance

concerning the Department of Justice's present enforcement policy with respect to the preceding provisions of this section to potential exporters and small businesses that are unable to obtain specialized counsel on issues pertaining to such provisions. Such guidance shall be limited to responses to requests under paragraph (1) concerning conformity of specified prospective conduct with the Department of Justice's present enforcement policy regarding the preceding provisions of this section and general explanations of compliance responsibilities and of potential liabilities under the preceding provisions of this section.

(f) Definitions

For purposes of this section:

(1)(A) The term "foreign official" means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public international organization.

(B) For purposes of subparagraph (A), the term "public international organization" means—

(i) an organization that is designated by Executive order pursuant to section 288 of title 22; or

(ii) any other international organization that is designated by the President by Executive order for the purposes of this section, effective as of the date of publication of such order in the Federal Register.

(2)(A) A person's state of mind is "knowing" with respect to conduct, a circumstance, or a result if—

(i) such person is aware that such person is engaging in such conduct, that such circumstance exists, or that such result is substantially certain to occur; or

(ii) such person has a firm belief that such circumstance exists or that such result is substantially certain to occur.

(B) When knowledge of the existence of a particular circumstance is required for an offense, such knowledge is established if a person is aware of a high probability of the existence of such circumstance, unless the person actually believes that such circumstance does not exist.

(3)(A) The term "routine governmental action" means only an action which is ordinarily and commonly performed by a foreign official in—

(i) obtaining permits, licenses, or other official documents to qualify a person to do business in a foreign country;

(ii) processing governmental papers, such as visas and work orders;

(iii) providing police protection, mail pick-up and delivery, or scheduling inspections associated with contract performance or inspections related to transit of goods across country;

(iv) providing phone service, power and water supply, loading and unloading cargo, or protecting perishable products or commodities from deterioration; or

(v) actions of a similar nature.

(B) The term "routine governmental action" does not include any decision by a foreign official whether, or on what terms, to award new business to or to continue business with a particular party, or any action taken by a foreign official involved in the decisionmaking process to encourage a decision to award new business to or continue business with a particular party.

(g) Alternative jurisdiction

(1) It shall also be unlawful for any issuer organized under the laws of the United States, or a State, territory, possession, or commonwealth of the United States or a political subdivision thereof and which has a class of securities registered pursuant to section 78l of this title or which is required to file reports under section 78o(d) of this title, or for any United States person that is an officer, director, employee, or agent of such issuer or a stockholder thereof acting on behalf of such issuer, to corruptly do any act outside the United States in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the

giving of anything of value to any of the persons or entities set forth in paragraphs (1), (2), and (3) of subsection (a) of this section for the purposes set forth therein, irrespective of whether such issuer or such officer, director, employee, agent, or stockholder makes use of the mails or any means or instrumentality of interstate commerce in furtherance of such offer, gift, payment, promise, or authorization.

(2) As used in this subsection, the term "United States person" means a national of the United States (as defined in section 1101 of title 8) or any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship organized under the laws of the United States or any State, territory, possession, or commonwealth of the United States, or any political subdivision thereof.

(June 6, 1934, ch. 404, title I, §30A, as added Pub. L. 95–213, title I, §103(a), Dec. 19, 1977, 91 Stat. 1495; amended Pub. L. 100–418, title V, §5003(a), Aug. 23, 1988, 102 Stat. 1415; Pub. L. 105–366, §2(a)–(c), Nov. 10, 1998, 112 Stat. 3302, 3303.)

AMENDMENTS

1998—Subsec. (a)(1)(A). Pub. L. 105–366, §2(a)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows:

"(A)(i) influencing any act or decision of such foreign official in his official capacity, or (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or".

Subsec. (a)(2)(A). Pub. L. 105–366, §2(a)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows:

"(A)(i) influencing any act or decision of such party, official, or candidate in its or his official capacity, or (ii) inducing such party, official, or candidate to do or omit to do an act in violation of the lawful duty of such party, official, or candidate,".

Subsec. (a)(3)(A). Pub. L. 105–366, §2(a)(3), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows:

"(A)(i) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, or (ii) inducing such foreign official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate, or".

Subsec. (b). Pub. L. 105–366, §2(c)(2), substituted "Subsections (a) and (g)" for "Subsection (a)".

Subsec. (c). Pub. L. 105–366, §2(c)(3), substituted "subsection (a) or (g)" for "subsection (a)".

Subsec. (f)(1). Pub. L. 105–366, §2(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "The term 'foreign official' means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality."

Subsec. (g). Pub. L. 105–366, §2(c)(1), added subsec. (g).

1988—Pub. L. 100–418 substituted "Prohibited foreign trade" for "Foreign corrupt" in section catchline and amended text generally, revising and restating provisions of subsec. (a) relating to prohibitions, adding subsecs. (b) to (e), and redesignating provisions of subsec. (b) relating to definitions as subsec. (f) and amending those provisions generally.

TREATMENT OF INTERNATIONAL ORGANIZATIONS PROVIDING COMMERCIAL COMMUNICATIONS SERVICES

Pub. L. 105–366, §5, Nov. 10, 1998, 112 Stat. 3309, provided that:

"(a) DEFINITION.—For purposes of this section:

"(1) INTERNATIONAL ORGANIZATION PROVIDING COMMERCIAL COMMUNICATIONS SERVICES.—The term 'international organization providing commercial communications services' means—

"(A) the International Telecommunications Satellite Organization established pursuant to the Agreement Relating to the International Telecommunications Satellite Organization; and

"(B) the International Mobile Satellite Organization established pursuant to the Convention on the International Maritime Satellite Organization.

"(2) PRO-COMPETITIVE PRIVATIZATION.—The term 'pro-competitive privatization' means a privatization that the President determines to be consistent with the United States policy of obtaining full and open competition to such organizations (or their successors), and nondiscriminatory market access, in the provision of satellite services.

"(b) TREATMENT AS PUBLIC INTERNATIONAL ORGANIZATIONS.—

"(1) TREATMENT.—An international organization providing commercial communications services shall be treated as a public international organization for purposes of section 30A of the Securities Exchange Act of 1934 (15 U.S.C. 78dd–1) and sections 104 and 104A of the Foreign Corrupt Practices Act of 1977 (15 U.S.C. 78dd–2 [and 78dd–3]) until such time as the President certifies to the Committee on Commerce [now Committee on Energy and Commerce] of the House of Representatives and the Committees on Banking, Housing and Urban Affairs and Commerce, Science, and Transportation that such international organization providing commercial communications services has achieved a pro-competitive privatization.

"(2) LIMITATION ON EFFECT OF TREATMENT.—The requirement for a certification under paragraph (1), and any certification made under such paragraph, shall not be construed to affect the administration by the Federal Communications Commission of the Communications Act of 1934 [47 U.S.C. 151 et seq.] in authorizing the provision of services to, from, or within the United States over space segment of the international satellite organizations, or the privatized affiliates or successors thereof.

"(c) EXTENSION OF LEGAL PROCESS.—

"(1) IN GENERAL.—Except as required by international agreements to which the United States is a party, an international organization providing commercial communications services, its officials and employees, and its records shall not be accorded immunity from suit or legal process for any act or omission taken in connection with such organization's capacity as a provider, directly or indirectly, of commercial telecommunications services to, from, or within the United States.

"(2) NO EFFECT ON PERSONAL LIABILITY.—Paragraph (1) shall not affect any immunity from personal liability of any individual who is an official or employee of an international organization providing commercial communications services.

"(3) EFFECTIVE DATE.—This subsection shall take effect on May 1, 1999.

"(d) ELIMINATION OR LIMITATION OF EXCEPTIONS.—

"(1) ACTION REQUIRED.—The President shall, in a manner that is consistent with requirements in international agreements to which the United States is a party, expeditiously take all appropriate actions necessary to eliminate or to reduce substantially all privileges and immunities that are accorded to an international organization described in subparagraph (A) or (B) of subsection (a)(1), its officials, its employees, or its records, and that are not eliminated pursuant to subsection (c).

"(2) DESIGNATION OF AGREEMENTS.—The President shall designate which agreements constitute international agreements to which the United States is a party for purposes of this section.

"(e) PRESERVATION OF LAW ENFORCEMENT AND INTELLIGENCE FUNCTIONS.—Nothing in subsection (c) or (d) of this section shall affect any immunity from suit or legal process of an international organization providing commercial communications services, or the privatized affiliates or successors thereof, for acts or omissions—

"(1) under chapter 119, 121, 206, or 601 of title 18, United States Code, the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), section 514 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 884), or Rule 104, 501, or 608 of the Federal Rules of Evidence [28 U.S.C. App.];

"(2) under similar State laws providing protection to service providers cooperating with law enforcement agencies pursuant to State electronic surveillance or evidence laws, rules, regulations, or procedures; or

"(3) pursuant to a court order.

"(f) RULES OF CONSTRUCTION.—

"(1) NEGOTIATIONS.—Nothing in this section shall affect the President's existing constitutional authority regarding the time, scope, and objectives of international negotiations.

"(2) PRIVATIZATION.—Nothing in this section shall be construed as legislative authorization for the privatization of INTELSAT or Inmarsat, nor to increase the President's authority with respect to negotiations concerning such privatization."

[Memorandum of President of the United States, Nov. 16, 1998, 63 F.R. 65997, delegated to Secretary of State functions and authorities vested in the President by section 5(d)(2) of Pub. L. 105–366, set out above.]

ENFORCEMENT AND MONITORING

Pub. L. 105–366, §6, Nov. 10, 1998, 112 Stat. 3311, provided that:

"(a) REPORTS REQUIRED.—Not later than July 1 of 1999 and each of the 5 succeeding years, the Secretary of Commerce shall submit to the House of Representatives and the Senate a report that contains the following information with respect to implementation of the Convention:

"(1) RATIFICATION.—A list of the countries that have ratified the Convention, the dates of ratification by such countries, and the entry into force for each such country.

"(2) DOMESTIC LEGISLATION.—A description of domestic laws enacted by each party to the Convention that implement commitments under the Convention, and assessment of the compatibility of such laws with the Convention.

"(3) ENFORCEMENT.—As assessment of the measures taken by each party to the Convention during the previous year to fulfill its obligations under the Convention and achieve its object and purpose including—

"(A) an assessment of the enforcement of the domestic laws described in paragraph (2);

"(B) an assessment of the efforts by each such party to promote public awareness of such domestic laws and the achievement of such object and purpose; and

"(C) an assessment of the effectiveness, transparency, and viability of the monitoring process for the Convention, including its inclusion of input from the private sector and nongovernmental organizations.

"(4) LAWS PROHIBITING TAX DEDUCTION OF BRIBES.—An explanation of the domestic laws enacted by each party to the Convention that would prohibit the deduction of bribes in the computation of domestic taxes.

"(5) NEW SIGNATORIES.—A description of efforts to expand international participation in the Convention by adding new signatories to the Convention and by assuring that all countries which are or become members of the Organization for Economic Cooperation and Development are also parties to the Convention.

"(6) SUBSEQUENT EFFORTS.—An assessment of the status of efforts to strengthen the Convention by extending the prohibitions contained in the Convention to cover bribes to political parties, party officials, and candidates for political office.

"(7) ADVANTAGES.—Advantages, in terms of immunities, market access, or otherwise, in the countries or regions served by the organizations described in section 5(a) [set out as a note above], the reason for such advantages, and an assessment of progress toward fulfilling the policy described in that section.

"(8) BRIBERY AND TRANSPARENCY.—An assessment of anti-bribery programs and transparency with respect to each of the international organizations covered by this Act [enacting section 78dd–3 of this title, amending this section and sections 78dd–2 and 78ff of this title, and enacting provisions set out as notes under this section].

"(9) PRIVATE SECTOR REVIEW.—A description of the steps taken to ensure full involvement of United States private sector participants and representatives of nongovernmental organizations in the monitoring and implementation of the Convention.

"(10) ADDITIONAL INFORMATION.—In consultation with the private sector participants and representatives of nongovernmental organizations described in paragraph (9), a list of additional means for enlarging the scope of the Convention and otherwise increasing its effectiveness. Such additional means shall include, but not be limited to, improved recordkeeping provisions and the desirability of expanding the applicability of the Convention to additional individuals and organizations and the impact on United States business of section 30A of the Securities Exchange Act of 1934 [15 U.S.C. 78dd–1] and sections 104 and 104A of the Foreign Corrupt Practices Act of 1977 [15 U.S.C. 78dd–2, 78dd–3].

"(b) DEFINITION.—For purposes of this section, the term 'Convention' means the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions adopted on November 21, 1997, and signed on December 17, 1997, by the United States and 32 other nations."

INTERNATIONAL AGREEMENTS CONCERNING ACTS PROHIBITED WITH RESPECT TO ISSUERS AND DOMESTIC CONCERNS; REPORT TO CONGRESS

Pub. L. 100–418, title V, §5003(d), Aug. 23, 1988, 102 Stat. 1424, provided that:

"(1) NEGOTIATIONS.—It is the sense of the Congress that the President should pursue the negotiation of an international agreement, among the members of the Organization of Economic Cooperation and Development, to govern persons from those countries concerning acts prohibited with respect to issuers and domestic concerns by the amendments made by this section [amending sections 78dd–1, 78dd–2, and 78ff of this title]. Such international agreement should include a process by which problems and conflicts associated with such acts could be resolved.

"(2) REPORT TO CONGRESS.—(A) Within 1 year after the date of the enactment of this Act [Aug. 23, 1988], the President shall submit to the Congress a report on—

"(i) the progress of the negotiations referred to in paragraph (1),[;]

"(ii) those steps which the executive branch and the Congress should consider taking in the event that these negotiations do not successfully eliminate any competitive disadvantage of United States businesses that results when persons from other countries commit the acts described in paragraph (1); and

"(iii) possible actions that could be taken to promote cooperation by other countries in international efforts to prevent bribery of foreign officials, candidates, or parties in third countries.

"(B) The President shall include in the report submitted under subparagraph (A)—

"(i) any legislative recommendations necessary to give the President the authority to take appropriate action to carry out clauses (ii) and (iii) of subparagraph (A);

"(ii) an analysis of the potential effect on the interests of the United States, including United States national security, when persons from other countries commit the acts described in paragraph (1); and

"(iii) an assessment of the current and future role of private initiatives in curtailing such acts."

[For delegation of functions of the President under section 5003(d)(1) of Pub. L. 100–418 to the Secretary of State, see section 3–101 of Ex. Ord. No. 12661, Dec. 27, 1988, 54 F.R. 779, set out as a note under section 2901 of Title 19, Customs Duties.]

EX. ORD. NO. 13259. DESIGNATION OF PUBLIC INTERNATIONAL ORGANIZATIONS FOR PURPOSES OF THE SECURITIES EXCHANGE ACT OF 1934 AND THE FOREIGN CORRUPT PRACTICES ACT OF 1977

Ex. Ord. No. 13259, Mar. 19, 2002, 67 F.R. 13239, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 30A(f)(1)(B)(ii) of the Securities Exchange Act of 1934 (15 U.S.C. 78dd–1(f)(1)(B)(ii)) and sections 104(h)(2)(B)(ii) and 104A(f)(2)(B)(ii) of the Foreign Corrupt Practices Act of 1977 (15 U.S.C. 78dd–2(h)(2)(B)(ii), 78dd–3(f)(2)(B)(ii)), I hereby designate as "public international organizations" for the purposes of application of section 30A of the Securities Exchange Act of 1934 and sections 104 and 104A of the Foreign Corrupt Practices Act of 1977:

(a) The European Union, including: the European Communities (the European Community, the European Coal & Steel Community, and the European Atomic Energy Community); institutions of the European Union, such as the European Commission, the Council of the European Union, the European Parliament, the European Court of Justice, the European Court of Auditors, the Economic and Social Committee, the Committee of the Regions, the European Central Bank, and the European Investment Bank; and any departments, agencies, and instrumentalities thereof; and

(b) The European Police Office (Europol), including any departments, agencies, and instrumentalities thereof.

Designation in this Executive Order is intended solely to further the purposes of the statutes mentioned above and is not determinative of whether an entity is a public international organization for the purpose of other statutes or regulations.

GEORGE W. BUSH.

§78dd–2. Prohibited foreign trade practices by domestic concerns

(a) Prohibition

It shall be unlawful for any domestic concern, other than an issuer which is subject to section 78dd–1 of this title, or for any officer, director, employee, or agent of such domestic concern or any stockholder thereof acting on behalf of such domestic concern, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—

(1) any foreign official for purposes of—

(A)(i) influencing any act or decision of such foreign official in his official capacity, (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or (iii) securing any improper advantage; or

(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person;

(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of—

(A)(i) influencing any act or decision of such party, official, or candidate in its or his official capacity, (ii) inducing such party, official, or candidate to do or omit to do an act in violation of the lawful duty of such party, official, or candidate, or (iii) securing any improper advantage; or

(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person; or

(3) any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of—

(A)(i) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, (ii) inducing such foreign official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate, or (iii) securing any improper advantage; or

(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person.

(b) Exception for routine governmental action

Subsections (a) and (i) of this section shall not apply to any facilitating or expediting payment to a foreign official, political party, or party official the purpose of which is to expedite or to secure the performance of a routine governmental action by a foreign official, political party, or party official.

(c) Affirmative defenses

It shall be an affirmative defense to actions under subsection (a) or (i) of this section that—

(1) the payment, gift, offer, or promise of anything of value that was made, was lawful under the written laws and regulations of the foreign official's, political party's, party official's, or candidate's country; or

(2) the payment, gift, offer, or promise of anything of value that was made, was a reasonable and bona fide expenditure, such as travel and lodging expenses, incurred by or on behalf of a foreign official, party, party official, or candidate and was directly related to—

(A) the promotion, demonstration, or explanation of products or services; or

(B) the execution or performance of a contract with a foreign government or agency thereof.

(d) Injunctive relief

(1) When it appears to the Attorney General that any domestic concern to which this section applies, or officer, director, employee, agent, or stockholder thereof, is engaged, or about to engage, in any act or practice constituting a violation of subsection (a) or (i) of this section, the Attorney General may, in his discretion, bring a civil action in an appropriate district court of the United States to enjoin such act or practice, and upon a proper showing, a permanent injunction or a temporary restraining order shall be granted without bond.

(2) For the purpose of any civil investigation which, in the opinion of the Attorney General, is necessary and proper to enforce this section, the Attorney General or his designee are empowered to administer oaths and affirmations, subpoena witnesses, take evidence, and require the production of any books, papers, or other documents which the Attorney General deems relevant or material to

such investigation. The attendance of witnesses and the production of documentary evidence may be required from any place in the United States, or any territory, possession, or commonwealth of the United States, at any designated place of hearing.

(3) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, or other documents. Any such court may issue an order requiring such person to appear before the Attorney General or his designee, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district in which such person resides or may be found. The Attorney General may make such rules relating to civil investigations as may be necessary or appropriate to implement the provisions of this subsection.

(e) Guidelines by Attorney General

Not later than 6 months after August 23, 1988, the Attorney General, after consultation with the Securities and Exchange Commission, the Secretary of Commerce, the United States Trade Representative, the Secretary of State, and the Secretary of the Treasury, and after obtaining the views of all interested persons through public notice and comment procedures, shall determine to what extent compliance with this section would be enhanced and the business community would be assisted by further clarification of the preceding provisions of this section and may, based on such determination and to the extent necessary and appropriate, issue—

(1) guidelines describing specific types of conduct, associated with common types of export sales arrangements and business contracts, which for purposes of the Department of Justice's present enforcement policy, the Attorney General determines would be in conformance with the preceding provisions of this section; and

(2) general precautionary procedures which domestic concerns may use on a voluntary basis to conform their conduct to the Department of Justice's present enforcement policy regarding the preceding provisions of this section.

The Attorney General shall issue the guidelines and procedures referred to in the preceding sentence in accordance with the provisions of subchapter II of chapter 5 of title 5 and those guidelines and procedures shall be subject to the provisions of chapter 7 of that title.

(f) Opinions of Attorney General

(1) The Attorney General, after consultation with appropriate departments and agencies of the United States and after obtaining the views of all interested persons through public notice and comment procedures, shall establish a procedure to provide responses to specific inquiries by domestic concerns concerning conformance of their conduct with the Department of Justice's present enforcement policy regarding the preceding provisions of this section. The Attorney General shall, within 30 days after receiving such a request, issue an opinion in response to that request. The opinion shall state whether or not certain specified prospective conduct would, for purposes of the Department of Justice's present enforcement policy, violate the preceding provisions of this section. Additional requests for opinions may be filed with the Attorney General regarding other specified prospective conduct that is beyond the scope of conduct specified in previous requests. In any action brought under the applicable provisions of this section, there shall be a rebuttable presumption that conduct, which is specified in a request by a domestic concern and for which the Attorney General has issued an opinion that such conduct is in conformity with the Department of Justice's present enforcement policy, is in compliance with the preceding provisions of this section. Such a presumption may be rebutted by a preponderance of the evidence. In considering the presumption for purposes of this paragraph, a court shall weigh all relevant factors, including but not limited to whether the information submitted to the Attorney General was accurate and complete and whether it was within the scope of the conduct specified in any request received by the Attorney General. The

Attorney General shall establish the procedure required by this paragraph in accordance with the provisions of subchapter II of chapter 5 of title 5 and that procedure shall be subject to the provisions of chapter 7 of that title.

(2) Any document or other material which is provided to, received by, or prepared in the Department of Justice or any other department or agency of the United States in connection with a request by a domestic concern under the procedure established under paragraph (1), shall be exempt from disclosure under section 552 of title 5 and shall not, except with the consent of the domestic concern, be made publicly available, regardless of whether the Attorney General responds to such a request or the domestic concern withdraws such request before receiving a response.

(3) Any domestic concern who has made a request to the Attorney General under paragraph (1) may withdraw such request prior to the time the Attorney General issues an opinion in response to such request. Any request so withdrawn shall have no force or effect.

(4) The Attorney General shall, to the maximum extent practicable, provide timely guidance concerning the Department of Justice's present enforcement policy with respect to the preceding provisions of this section to potential exporters and small businesses that are unable to obtain specialized counsel on issues pertaining to such provisions. Such guidance shall be limited to responses to requests under paragraph (1) concerning conformity of specified prospective conduct with the Department of Justice's present enforcement policy regarding the preceding provisions of this section and general explanations of compliance responsibilities and of potential liabilities under the preceding provisions of this section.

(g) Penalties

(1)(A) Any domestic concern that is not a natural person and that violates subsection (a) or (i) of this section shall be fined not more than $2,000,000.

(B) Any domestic concern that is not a natural person and that violates subsection (a) or (i) of this section shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Attorney General.

(2)(A) Any natural person that is an officer, director, employee, or agent of a domestic concern, or stockholder acting on behalf of such domestic concern, who willfully violates subsection (a) or (i) of this section shall be fined not more than $100,000 or imprisoned not more than 5 years, or both.

(B) Any natural person that is an officer, director, employee, or agent of a domestic concern, or stockholder acting on behalf of such domestic concern, who violates subsection (a) or (i) of this section shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Attorney General.

(3) Whenever a fine is imposed under paragraph (2) upon any officer, director, employee, agent, or stockholder of a domestic concern, such fine may not be paid, directly or indirectly, by such domestic concern.

(h) Definitions

For purposes of this section:

(1) The term "domestic concern" means—

(A) any individual who is a citizen, national, or resident of the United States; and

(B) any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship which has its principal place of business in the United States, or which is organized under the laws of a State of the United States or a territory, possession, or commonwealth of the United States.

(2)(A) The term "foreign official" means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public international organization.

(B) For purposes of subparagraph (A), the term "public international organization" means—

(i) an organization that is designated by Executive order pursuant to section 288 of title 22; or

(ii) any other international organization that is designated by the President by Executive order

for the purposes of this section, effective as of the date of publication of such order in the Federal Register.

(3)(A) A person's state of mind is "knowing" with respect to conduct, a circumstance, or a result if—

(i) such person is aware that such person is engaging in such conduct, that such circumstance exists, or that such result is substantially certain to occur; or

(ii) such person has a firm belief that such circumstance exists or that such result is substantially certain to occur.

(B) When knowledge of the existence of a particular circumstance is required for an offense, such knowledge is established if a person is aware of a high probability of the existence of such circumstance, unless the person actually believes that such circumstance does not exist.

(4)(A) The term "routine governmental action" means only an action which is ordinarily and commonly performed by a foreign official in—

(i) obtaining permits, licenses, or other official documents to qualify a person to do business in a foreign country;

(ii) processing governmental papers, such as visas and work orders;

(iii) providing police protection, mail pick-up and delivery, or scheduling inspections associated with contract performance or inspections related to transit of goods across country;

(iv) providing phone service, power and water supply, loading and unloading cargo, or protecting perishable products or commodities from deterioration; or

(v) actions of a similar nature.

(B) The term "routine governmental action" does not include any decision by a foreign official whether, or on what terms, to award new business to or to continue business with a particular party, or any action taken by a foreign official involved in the decision-making process to encourage a decision to award new business to or continue business with a particular party.

(5) The term "interstate commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State or between any State and any place or ship outside thereof, and such term includes the intrastate use of—

(A) a telephone or other interstate means of communication, or

(B) any other interstate instrumentality.

(i) Alternative jurisdiction

(1) It shall also be unlawful for any United States person to corruptly do any act outside the United States in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to any of the persons or entities set forth in paragraphs (1), (2), and (3) of subsection (a) of this section, for the purposes set forth therein, irrespective of whether such United States person makes use of the mails or any means or instrumentality of interstate commerce in furtherance of such offer, gift, payment, promise, or authorization.

(2) As used in this subsection, the term "United States person" means a national of the United States (as defined in section 1101 of title 8) or any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship organized under the laws of the United States or any State, territory, possession, or commonwealth of the United States, or any political subdivision thereof.

(Pub. L. 95–213, title I, §104, Dec. 19, 1977, 91 Stat. 1496; Pub. L. 100–418, title V, §5003(c), Aug. 23, 1988, 102 Stat. 1419; Pub. L. 103–322, title XXXIII, §330005, Sept. 13, 1994, 108 Stat. 2142; Pub. L. 105–366, §3, Nov. 10, 1998, 112 Stat. 3304.)

CODIFICATION

Section was enacted as part of Pub. L. 95–213, the Foreign Corrupt Practices Act of 1977, and not as part of act June 6, 1934, ch. 404, 48 Stat. 881, the Securities Exchange Act of 1934, which comprises this chapter.

AMENDMENTS

1998—Subsec. (a)(1)(A). Pub. L. 105–366, §3(a)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows:

"(A)(i) influencing any act or decision of such foreign official in his official capacity, or (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or".

Subsec. (a)(2)(A). Pub. L. 105–366, §3(a)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows:

"(A)(i) influencing any act or decision of such party, official, or candidate in its or his official capacity, or (ii) inducing such party, official, or candidate to do or omit to do an act in violation of the lawful duty of such party, official, or candidate,".

Subsec. (a)(3)(A). Pub. L. 105–366, §3(a)(3), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows:

"(A)(i) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, or (ii) inducing such foreign official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate, or".

Subsec. (b). Pub. L. 105–366, §3(d)(2), substituted "Subsections (a) and (i)" for "Subsection (a)".

Subsec. (c). Pub. L. 105–366, §3(d)(3), substituted "subsection (a) or (i)" for "subsection (a)" in introductory provisions.

Subsec. (d)(1). Pub. L. 105–366, §3(d)(4), substituted "subsection (a) or (i)" for "subsection (a)".

Subsec. (g)(1). Pub. L. 105–366, §3(b)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows:

"(1)(A) Any domestic concern that violates subsection (a) of this section shall be fined not more than $2,000,000.

"(B) Any domestic concern that violates subsection (a) of this section shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Attorney General."

Subsec. (g)(2). Pub. L. 105–366, §3(b)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows:

"(2)(A) Any officer or director of a domestic concern, or stockholder acting on behalf of such domestic concern, who willfully violates subsection (a) of this section shall be fined not more than $100,000, or imprisoned not more than 5 years, or both.

"(B) Any employee or agent of a domestic concern who is a United States citizen, national, or resident or is otherwise subject to the jurisdiction of the United States (other than an officer, director, or stockholder acting on behalf of such domestic concern), and who willfully violates subsection (a) of this section, shall be fined not more than $100,000, or imprisoned not more than 5 years, or both.

"(C) Any officer, director, employee, or agent of a domestic concern, or stockholder acting on behalf of such domestic concern, who violates subsection (a) of this section shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Attorney General."

Subsec. (h)(2). Pub. L. 105–366, §3(c), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "The term 'foreign official' means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality."

Subsec. (h)(4)(A). Pub. L. 105–366, §3(e), substituted "The" for "For purposes of paragraph (1), the" in introductory provisions.

Subsec. (i). Pub. L. 105–366, §3(d)(1), added subsec. (i).

1994—Subsec. (a)(3). Pub. L. 103–322 substituted "domestic concern" for "issuer" in closing provisions.

1988—Pub. L. 100–418 substituted "Prohibited foreign trade" for "Foreign corrupt" in section catchline and amended text generally, revising and restating as subsecs. (a) to (h) provisions of former subsecs. (a) to (d).

§78dd–3. Prohibited foreign trade practices by persons other than issuers or domestic concerns

(a) Prohibition

It shall be unlawful for any person other than an issuer that is subject to section 78dd–1 of this title or a domestic concern (as defined in section 78dd–2 of this title), or for any officer, director, employee, or agent of such person or any stockholder thereof acting on behalf of such person, while

in the territory of the United States, corruptly to make use of the mails or any means or instrumentality of interstate commerce or to do any other act in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—

(1) any foreign official for purposes of—

(A)(i) influencing any act or decision of such foreign official in his official capacity, (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or (iii) securing any improper advantage; or

(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such person in obtaining or retaining business for or with, or directing business to, any person;

(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of—

(A)(i) influencing any act or decision of such party, official, or candidate in its or his official capacity, (ii) inducing such party, official, or candidate to do or omit to do an act in violation of the lawful duty of such party, official, or candidate, or (iii) securing any improper advantage; or

(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such person in obtaining or retaining business for or with, or directing business to, any person; or

(3) any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of—

(A)(i) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, (ii) inducing such foreign official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate, or (iii) securing any improper advantage; or

(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such person in obtaining or retaining business for or with, or directing business to, any person.

(b) Exception for routine governmental action

Subsection (a) of this section shall not apply to any facilitating or expediting payment to a foreign official, political party, or party official the purpose of which is to expedite or to secure the performance of a routine governmental action by a foreign official, political party, or party official.

(c) Affirmative defenses

It shall be an affirmative defense to actions under subsection (a) of this section that—

(1) the payment, gift, offer, or promise of anything of value that was made, was lawful under the written laws and regulations of the foreign official's, political party's, party official's, or candidate's country; or

(2) the payment, gift, offer, or promise of anything of value that was made, was a reasonable and bona fide expenditure, such as travel and lodging expenses, incurred by or on behalf of a foreign official, party, party official, or candidate and was directly related to—

(A) the promotion, demonstration, or explanation of products or services; or

(B) the execution or performance of a contract with a foreign government or agency thereof.

(d) Injunctive relief

(1) When it appears to the Attorney General that any person to which this section applies, or officer, director, employee, agent, or stockholder thereof, is engaged, or about to engage, in any act or practice constituting a violation of subsection (a) of this section, the Attorney General may, in his discretion, bring a civil action in an appropriate district court of the United States to enjoin such act or practice, and upon a proper showing, a permanent injunction or a temporary restraining order shall be granted without bond.

(2) For the purpose of any civil investigation which, in the opinion of the Attorney General, is necessary and proper to enforce this section, the Attorney General or his designee are empowered to administer oaths and affirmations, subpoena witnesses, take evidence, and require the production of any books, papers, or other documents which the Attorney General deems relevant or material to such investigation. The attendance of witnesses and the production of documentary evidence may be required from any place in the United States, or any territory, possession, or commonwealth of the United States, at any designated place of hearing.

(3) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, or other documents. Any such court may issue an order requiring such person to appear before the Attorney General or his designee, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(4) All process in any such case may be served in the judicial district in which such person resides or may be found. The Attorney General may make such rules relating to civil investigations as may be necessary or appropriate to implement the provisions of this subsection.

(e) Penalties

(1)(A) Any juridical person that violates subsection (a) of this section shall be fined not more than $2,000,000.

(B) Any juridical person that violates subsection (a) of this section shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Attorney General.

(2)(A) Any natural person who willfully violates subsection (a) of this section shall be fined not more than $100,000 or imprisoned not more than 5 years, or both.

(B) Any natural person who violates subsection (a) of this section shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Attorney General.

(3) Whenever a fine is imposed under paragraph (2) upon any officer, director, employee, agent, or stockholder of a person, such fine may not be paid, directly or indirectly, by such person.

(f) Definitions

For purposes of this section:

(1) The term "person", when referring to an offender, means any natural person other than a national of the United States (as defined in section 1101 of title 8 [1] or any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship organized under the law of a foreign nation or a political subdivision thereof.

(2)(A) The term "foreign official" means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public international organization.

(B) For purposes of subparagraph (A), the term "public international organization" means—

(i) an organization that is designated by Executive order pursuant to section 288 of title 22; or

(ii) any other international organization that is designated by the President by Executive order for the purposes of this section, effective as of the date of publication of such order in the Federal Register.

(3)(A) A person's state of mind is knowing, with respect to conduct, a circumstance or a result if—

(i) such person is aware that such person is engaging in such conduct, that such circumstance exists, or that such result is substantially certain to occur; or

(ii) such person has a firm belief that such circumstance exists or that such result is substantially certain to occur.

(B) When knowledge of the existence of a particular circumstance is required for an offense, such knowledge is established if a person is aware of a high probability of the existence of such circumstance, unless the person actually believes that such circumstance does not exist.

(4)(A) The term "routine governmental action" means only an action which is ordinarily and commonly performed by a foreign official in—

(i) obtaining permits, licenses, or other official documents to qualify a person to do business in a foreign country;

(ii) processing governmental papers, such as visas and work orders;

(iii) providing police protection, mail pick-up and delivery, or scheduling inspections associated with contract performance or inspections related to transit of goods across country;

(iv) providing phone service, power and water supply, loading and unloading cargo, or protecting perishable products or commodities from deterioration; or

(v) actions of a similar nature.

(B) The term "routine governmental action" does not include any decision by a foreign official whether, or on what terms, to award new business to or to continue business with a particular party, or any action taken by a foreign official involved in the decision-making process to encourage a decision to award new business to or continue business with a particular party.

(5) The term "interstate commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State or between any State and any place or ship outside thereof, and such term includes the intrastate use of—

(A) a telephone or other interstate means of communication, or

(B) any other interstate instrumentality.

(Pub. L. 95–213, title I, §104A, as added Pub. L. 105–366, §4, Nov. 10, 1998, 112 Stat. 3306.)

CODIFICATION

Section was enacted as part of Pub. L. 95–213, the Foreign Corrupt Practices Act of 1977, and not as part of act June 6, 1934, ch. 404, 48 Stat. 881, the Securities Exchange Act of 1934, which comprises this chapter.

[1] *So in original. A closing parenthesis probably should appear.*

§78ee. Transaction fees

(a) Recovery of costs of annual appropriation

The Commission shall, in accordance with this section, collect transaction fees and assessments that are designed to recover the costs to the Government of the annual appropriation to the Commission by Congress.

(b) Exchange-traded securities

Subject to subsection (j) of this section, each national securities exchange shall pay to the Commission a fee at a rate equal to $15 per $1,000,000 of the aggregate dollar amount of sales of securities (other than bonds, debentures, other evidences of indebtedness, security futures products, and options on securities indexes (excluding a narrow-based security index)) transacted on such national securities exchange.

(c) Off-exchange trades of exchange registered and last-sale-reported securities

Subject to subsection (j) of this section, each national securities association shall pay to the Commission a fee at a rate equal to $15 per $1,000,000 of the aggregate dollar amount of sales transacted by or through any member of such association otherwise than on a national securities exchange of securities (other than bonds, debentures, other evidences of indebtedness, security futures products, and options on securities indexes (excluding a narrow-based security index)) registered on a national securities exchange or subject to prompt last sale reporting pursuant to the rules of the Commission or a registered national securities association.

(d) Assessments on security futures transactions

Each national securities exchange and national securities association shall pay to the Commission an assessment equal to $0.009 for each round turn transaction (treated as including one purchase and one sale of a contract of sale for future delivery) on a security future traded on such national securities exchange or by or through any member of such association otherwise than on a national securities exchange, except that for fiscal year 2007 and each succeeding fiscal year such assessment shall be equal to $0.0042 for each such transaction.

(e) Dates for payments

The fees and assessments required by subsections (b), (c), and (d) of this section shall be paid—

(1) on or before March 15, with respect to transactions and sales occurring during the period beginning on the preceding September 1 and ending at the close of the preceding December 31; and

(2) on or before September 25, with respect to transactions and sales occurring during the period beginning on the preceding January 1 and ending at the close of the preceding August 31.

(f) Exemptions

The Commission, by rule, may exempt any sale of securities or any class of sales of securities from any fee or assessment imposed by this section, if the Commission finds that such exemption is consistent with the public interest, the equal regulation of markets and brokers and dealers, and the development of a national market system.

(g) Publication

The Commission shall publish in the Federal Register notices of the fee and assessment rates applicable under this section for each fiscal year not later than 30 days after the date on which an Act making a regular appropriation to the Commission for such fiscal year is enacted, together with any estimates or projections on which such fees are based.

(h) Pro rata application

The rates per $1,000,000 required by this section shall be applied pro rata to amounts and balances of less than $1,000,000.

(i) Deposit of fees

(1) Offsetting collections

Fees collected pursuant to subsections (b), (c), and (d) of this section for any fiscal year—

(A) shall be deposited and credited as offsetting collections to the account providing appropriations to the Commission; and

(B) except as provided in subsection (k) of this section, shall not be collected for any fiscal year except to the extent provided in advance in appropriation Acts.

(2) General revenues prohibited

No fees collected pursuant to subsections (b), (c), and (d) of this section for fiscal year 2002 or any succeeding fiscal year shall be deposited and credited as general revenue of the Treasury.

(j) Adjustments to fee rates

(1) Annual adjustment

Subject to subsections (i)(1)(B) and (k), for each fiscal year, the Commission shall by order adjust each of the rates applicable under subsections (b) and (c) for such fiscal year to a uniform

adjusted rate that, when applied to the baseline estimate of the aggregate dollar amount of sales for such fiscal year, is reasonably likely to produce aggregate fee collections under this section (including assessments collected under subsection (d) of this section) that are equal to the regular appropriation to the Commission by Congress for such fiscal year.

(2) Mid-year adjustment

Subject to subsections (i)(1)(B) and (k), for each fiscal year, the Commission shall determine, by March 1 of such fiscal year, whether, based on the actual aggregate dollar volume of sales during the first 5 months of such fiscal year, the baseline estimate of the aggregate dollar volume of sales used under paragraph (1) for such fiscal year is reasonably likely to be 10 percent (or more) greater or less than the actual aggregate dollar volume of sales for such fiscal year. If the Commission so determines, the Commission shall by order, no later than March 1, adjust each of the rates applicable under subsections (b) and (c) for such fiscal year to a uniform adjusted rate that, when applied to the revised estimate of the aggregate dollar amount of sales for the remainder of such fiscal year, is reasonably likely to produce aggregate fee collections under this section (including fees collected during such five-month period and assessments collected under subsection (d) of this section) that are equal to the regular appropriation to the Commission by Congress for such fiscal year. In making such revised estimate, the Commission shall, after consultation with the Congressional Budget Office and the Office of Management and Budget, use the same methodology required by subsection (l).

(3) Review

In exercising its authority under this subsection, the Commission shall not be required to comply with the provisions of section 553 of title 5. An adjusted rate prescribed under paragraph (1) or (2) and published under subsection (g) shall not be subject to judicial review.

(4) Effective date

(A) Annual adjustment

Subject to subsections (i)(1)(B) and (k), an adjusted rate prescribed under paragraph (1) shall take effect on the later of—

(i) the first day of the fiscal year to which such rate applies; or

(ii) 60 days after the date on which an Act making a regular appropriation to the Commission for such fiscal year is enacted.

(B) Mid-year adjustment

An adjusted rate prescribed under paragraph (2) shall take effect on April 1 of the fiscal year to which such rate applies.

(k) Lapse of appropriation

If on the first day of a fiscal year a regular appropriation to the Commission has not been enacted, the Commission shall continue to collect (as offsetting collections) the fees and assessments under subsections (b), (c), and (d) of this section at the rate in effect during the preceding fiscal year, until 60 days after the date such a regular appropriation is enacted.

(l) Baseline estimate of the aggregate dollar amount of sales

The baseline estimate of the aggregate dollar amount of sales for any fiscal year is the baseline estimate of the aggregate dollar amount of sales of securities (other than bonds, debentures, other evidences of indebtedness, security futures products, and options on securities indexes (excluding a narrow-based security index)) to be transacted on each national securities exchange and by or through any member of each national securities association (otherwise than on a national securities exchange) during such fiscal year as determined by the Commission, after consultation with the Congressional Budget Office and the Office of Management and Budget, using the methodology required for making projections pursuant to section 907 of title 2.

(m) Transmittal of Commission budget requests

(1) Budget required

For fiscal year 2012, and each fiscal year thereafter, the Commission shall prepare and submit a budget to the President. Whenever the Commission submits a budget estimate or request to the President or the Office of Management and Budget, the Commission shall concurrently transmit copies of the estimate or request to the Committee on Appropriations of the Senate, the Committee on Appropriations of the House of Representatives, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives.

(2) Submission to Congress

The President shall submit each budget submitted under paragraph (1) to Congress, in unaltered form, together with the annual budget for the Administration submitted by the President.

(3) Contents

The Commission shall include in each budget submitted under paragraph (1)—

(A) an itemization of the amount of funds necessary to carry out the functions of the Commission.

(B) an amount to be designated as contingency funding to be used by the Commission to address unanticipated needs; and

(C) a designation of any activities of the Commission for which multi-year budget authority would be suitable.

(June 6, 1934, ch. 404, title I, §31, 48 Stat. 904; Mar. 17, 1944, ch. 101, 58 Stat. 117; Pub. L. 94–29, §22, June 4, 1975, 89 Stat. 162; Pub. L. 104–290, title IV, §405(a), Oct. 11, 1996, 110 Stat. 3442; Pub. L. 105–353, title III, §301(b)(14), Nov. 3, 1998, 112 Stat. 3236; Pub. L. 106–554, §1(a)(5) [title II, §206(f)], Dec. 21, 2000, 114 Stat. 2763, 2763A–432; Pub. L. 107–123, §§2, 3, Jan. 16, 2002, 115 Stat. 2390; Pub. L. 111–203, title IX, §991(a)(1), (d)(1), July 21, 2010, 124 Stat. 1950, 1954.)

ADJUSTMENT OF FEE AMOUNT

For adjustment of certain fee amounts specified in this section, that is not reflected in text, see Annual Adjustment of Transaction Fee Rate note below.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, §991(a)(1)(A), added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: "The Commission shall, in accordance with this section, collect transaction fees and assessments that are designed to recover the costs to the Government of the supervision and regulation of securities markets and securities professionals, and costs related to such supervision and regulation, including enforcement activities, policy and rulemaking activities, administration, legal services, and international regulatory activities."

Subsec. (e)(2). Pub. L. 111–203, §991(a)(1)(B), substituted "September 25" for "September 30".

Subsec. (g). Pub. L. 111–203, §991(a)(1)(C), substituted "30 days after the date on which an Act making a regular appropriation to the Commission for such fiscal year is enacted" for "April 30 of the fiscal year preceding the fiscal year to which such rate applies".

Subsec. (j). Pub. L. 111–203, §991(a)(1)(D), added subsec. (j) and struck out former subsec. (j) which related to recapture of projection windfalls for further rate reductions.

Subsec. (k). Pub. L. 111–203, §991(a)(1)(E), substituted "60 days" for "30 days".

Subsec. (l). Pub. L. 111–203, §991(a)(1)(F), substituted "Baseline estimate of the aggregate dollar amount of sales" for "Definitions" in heading and struck out introductory provisions "For purposes of this section:", par. (2) designation and heading "Baseline estimate of the aggregate dollar amount of sales", and par. (1) which provided table of target offsetting collection amounts for fiscal years 2002 through 2011.

Subsec. (m). Pub. L. 111–203, §991(d)(1), added subsec. (m).

2002—Subsec. (b). Pub. L. 107–123, §3(a)(1), substituted "Subject to subsection (j) of this section, each" for "Every" and struck out at end "Fees collected pursuant to this subsection shall be deposited and collected as general revenue of the Treasury."

Pub. L. 107–123, §2(1)–(3), substituted "$15 per $1,000,000" for "1/300 of one percent" and "security futures products, and options on securities indexes (excluding a narrow-based security index)" for "and security futures products" and struck out ", except that for fiscal year 2007 or any succeeding fiscal year such

rate shall be equal to 1/800 of one percent of such aggregate dollar amount of sales" before period at end of first sentence.

Subsec. (c). Pub. L. 107–123, §3(a)(3), redesignated subsec. (d) as (c), substituted "Off-exchange trades of exchange registered and last-sale-reported securities" for "Off-exchange trades of last-sale-reported securities" in subsec. heading, struck out par. (1) heading, substituted "Subject to subsection (j) of this section, each national securities" for "Each national securities", inserted "registered on a national securities exchange or" after "narrow-based security index))", struck out ", excluding any sales for which a fee is paid under subsection (c) of this section" after "national securities association", and struck out pars. (2) and (3), which related to deposit of fees and lapse of appropriations.

Pub. L. 107–123, §3(a)(2), struck out heading and text of former subsec. (c). Text read as follows: "Each national securities association shall pay to the Commission a fee at a rate equal to 1/300 of one percent of the aggregate dollar amount of sales transacted by or through any member of such association otherwise than on a national securities exchange of securities registered on such an exchange (other than bonds, debentures, other evidences of indebtedness, and security futures products), except that for fiscal year 2007 or any succeeding fiscal year such rate shall be equal to 1/800 of one percent of such aggregate dollar amount of sales. Fees collected pursuant to this subsection shall be deposited and collected as general revenue of the Treasury."

Pub. L. 107–123, §2(1),(2), (4), which directed that subsec. (d) be amended by substituting "$15 per $1,000,000" for "1/300 of one percent" and "security futures products, and options on securities indexes (excluding a narrow-based security index)" for "and security futures products", and striking out ", except that for fiscal year 2007, or any succeeding fiscal year, such rate shall be equal to 1/800 of one percent of such aggregate dollar amount of sale" before period at end of par. (1), was executed by making the amendment in subsec. (c), to reflect the probable intent of Congress and the amendment by Pub. L. 107–123, §3(a)(3), which redesignated subsec. (d) as (c). See above.

Subsec. (d). Pub. L. 107–123, §3(a)(4), (6), redesignated subsec. (e) as (d) and substituted "except that for fiscal year 2007 and each succeeding fiscal year such assessment shall be equal to $0.0042 for each such transaction" for "except that for fiscal year 2007 or any succeeding fiscal year such assessment shall be equal to $0.0075 for each such transaction. Assessments collected pursuant to this subsection shall be deposited and collected as general revenue of the Treasury". Former subsec. (d) redesignated (c).

Pub. L. 107–123, §2(5), which directed that subsec. (e) be amended by substituting "$0.009" for "$0.02", was executed by making the amendment in subsec. (d), to reflect the probable intent of Congress and the amendment by Pub. L. 107–123, §3(a)(4), (6) which redesignated subsec. (e) as (d). See above.

Subsec. (e). Pub. L. 107–123, §3(a)(5), (6), redesignated subsec. (f) as (e) and substituted "Dates for payments" for "Dates for payment of fees" in heading and "The fees and assessments required" for "The fees required" in introductory provisions. Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 107–123, §3(a)(6), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 107–123, §3(a)(6), (b)(2), redesignated subsec. (h) as (g) and inserted before period at end "not later than April 30 of the fiscal year preceding the fiscal year to which such rate applies, together with any estimates or projections on which such fees are based". Former subsec. (g) redesignated (f).

Subsec. (h). Pub. L. 107–123, §3(a)(6), redesignated subsec. (i), as enacted by Pub. L. 107–123, §2(6), as (h). See below. Former subsec. (h) redesignated (g).

Subsec. (i). Pub. L. 107–123, §3(a)(7), added subsec. (i).

Pub. L. 107–123, §2(6), added subsec. (i).

Subsecs. (j) to (l). Pub. L. 107–123, §3(b)(1), added subsecs. (j) to (l).

2000—Subsec. (a). Pub. L. 106–554, §1(a)(5) [title II, §206(f)(1)], inserted "and assessments" after "fees".

Subsecs. (b), (c), (d)(1). Pub. L. 106–554, §1(a)(5) [title II, §206(f)(2)], substituted "other evidences of indebtedness, and security futures products" for "and other evidences of indebtedness".

Subsec. (e). Pub. L. 106–554, §1(a)(5) [title II, §206(f)(6)], added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 106–554, §1(a)(5) [title II, §206(f)(5)], redesignated subsec. (e) as (f). Former subsec. (f) redesignated (g).

Pub. L. 106–554, §1(a)(5) [title II, §206(f)(3)], inserted "or assessment" after "fee".

Subsec. (g). Pub. L. 106–554, §1(a)(5) [title II, §206(f)(5)], redesignated subsec. (f) as (g). Former subsec. (g) redesignated (h).

Pub. L. 106–554, §1(a)(5) [title II, §206(f)(4)], inserted "and assessment" after "fee".

Subsec. (h). Pub. L. 106–554, §1(a)(5) [title II, §206(f)(5)], redesignated subsec. (g) as (h).

1998—Subsec. (a). Pub. L. 105–353 substituted "this section" for "this subsection".

1996—Pub. L. 104–290 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: "Every national securities exchange shall pay to the Commission on or

before March 15 of each calendar year a fee in an amount equal to one three-hundredths of 1 per centum of the aggregate dollar amount of the sales of securities (other than bonds, debentures, and other evidences of indebtedness) transacted on such national securities exchange during each preceding calendar year to which this section applies. Every registered broker and dealer shall pay to the Commission on or before March 15 of each calendar year a fee in an amount equal to one three-hundredths of 1 per centum of the aggregate dollar amount of the sales of securities registered on a national securities exchange (other than bonds, debentures, and other evidences of indebtedness) transacted by such broker or dealer otherwise than on such an exchange during each preceding calendar year: *Provided, however*, That no payment shall be required for any calendar year in which such payment would be less than one hundred dollars. The Commission, by rule, may exempt any sale of securities or any class of sales of securities from any fee imposed by this section, if the Commission finds that such exemption is consistent with the public interest, the equal regulation of markets and brokers and dealers, and the development of a national market system."

1975—Pub. L. 94–29 amended section generally, extending provisions requiring the payment of fees to include transactions in listed securities which occur in the over-the-counter market.

1944—Act Mar. 17, 1944, amended section generally, inserting provisions exempting from the payment of the fee securities designated for exemption by the Secretary of the Treasury.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 991(d)(1) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Pub. L. 111–203, title IX, §991(a)(2), July 21, 2010, 124 Stat. 1951, provided that: "The amendments made by this subsection [amending this section] shall take effect on the later of—

"(A) October 1, 2011; or

"(B) the date of enactment of an Act making a regular appropriation to the [Securities and Exchange] Commission for fiscal year 2012 [Div. C of Pub. L. 112–74, approved Dec. 23, 2011]."

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–123, §11, Jan. 16, 2002, 115 Stat. 2401, provided that:

"(a) IN GENERAL.—Except as provided in subsections (b) and (c), the amendments made by this Act [see Short Title of 2002 Amendment note set out under section 78a of this title] shall take effect on October 1, 2001.

"(b) IMMEDIATE TRANSACTION FEE REDUCTIONS.—The amendments made by section 2 [amending this section] shall take effect on the later of—

"(1) the first day of fiscal year 2002; or

"(2) thirty days after the date on which a regular appropriation to the Commission for such fiscal year is enacted.

"(c) ADDITIONAL EXCEPTIONS.—The authorities provided by section 6(b)(9) of the Securities Act of 1933 [15 U.S.C. 77f(b)(9)] and sections 13(e)(9), 14(g)(9), and 31(k) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(e)(9), 78n(g)(9), and 78ee(k)], as so designated by this Act, shall not apply until October 1, 2002."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–290, title IV, §405(b), Oct. 11, 1996, 110 Stat. 3443, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply with respect to transactions in securities that occur on or after October 1, 1997.

"(2) OFF-EXCHANGE TRADES OF LAST SALE REPORTED TRANSACTIONS.—The amendment made by subsection (a) [amending this section] shall apply with respect to transactions described in section 31(d)(1) of the Securities Exchange Act of 1934 [subsec. (d)(1) of this section] (as amended by subsection (a) of this section) that occur on or after September 1, 1997."

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective Jan. 1, 1976, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set

out under section 78d of this title.

BUDGET OF THE PRESIDENT

Pub. L. 111–203, title IX, §991(d)(2), July 21, 2010, 124 Stat. 1954, provided that: "For fiscal year 2012, and each fiscal year thereafter, the annual budget for the Administration submitted by the President to Congress shall reflect the amendments made by this section [amending this section and sections 77f, 78d, 78m, 78n, and 78kk of this title]."

STUDY OF THE EFFECT OF FEE REDUCTIONS

Pub. L. 107–123, §9, Jan. 16, 2002, 115 Stat. 2400, provided that:

"(a) STUDY.—The Office of Economic Analysis of the Securities and Exchange Commission (hereinafter referred to as the 'Office') shall conduct a study of the extent to which the benefits of reductions in fees effected as a result of this Act [see Short Title of 2002 Amendment note set out under section 78a of this title] are passed on to investors.

"(b) FACTORS FOR CONSIDERATION.—In conducting the study under subsection (a), the Office shall—

"(1) consider the various elements of the securities industry directly and indirectly benefiting from the fee reductions, including purchasers and sellers of securities, members of national securities exchanges, issuers, broker-dealers, underwriters, participants in investment companies, retirement programs, and others;

"(2) consider the impact on different types of investors, such as individual equity holders, individual investment company shareholders, businesses, and other types of investors;

"(3) include in the interpretation of the term 'investor' shareholders of entities subject to the fee reductions; and

"(4) consider the economic benefits to investors flowing from the fee reductions to include such factors as market efficiency, expansion of investment opportunities, and enhanced liquidity and capital formation.

"(c) REPORT TO CONGRESS.—Not later than 2 years after the date of the enactment of this Act [Jan. 16, 2002], the Securities and Exchange Commission shall submit to the Congress the report prepared by the Office on the findings of the study conducted under subsection (a)."

FEES FROM NATIONAL SECURITIES ASSOCIATIONS FOR MEMBER TRANSACTIONS OTHER THAN ON NATIONAL SECURITIES EXCHANGES

Pub. L. 104–208, div. A, title I, §101(a) [title V], Sept. 30, 1996, 110 Stat. 3009, 3009–61, provided in part: "That effective January 1, 1997, every national securities association shall pay to the Commission a fee at a rate of one-three-hundredth of one percentum of the aggregate dollar amount of sales transacted by or through any member of such association otherwise than on a national securities exchange (other than bonds, debentures, and other evidences of indebtedness) subject to prompt last sale reporting pursuant to the rules of the Commission or a registered national securities association, excluding any sales for which a fee is paid under section 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78ee), and such increase shall be deposited as an offsetting collection to this appropriation, to remain available until expended, to recover the costs to the Government of the supervision and regulation of securities markets and securities professionals: *Provided further*, That the fee due from every national securities association shall be paid on or before September 30, 1997, with respect to transactions and sales occurring during the period beginning on January 1, 1997, and ending at the close of August 31, 1997".

ANNUAL ADJUSTMENT OF TRANSACTION FEE RATE

By order dated Jan. 20, 2012, the Securities and Exchange Commission adjusted the fee rates applicable under subsecs. (b) and (c) of this section to $18 per million dollars, effective Feb. 21, 2012, see 77 F.R. 3818.

§78ff. Penalties

(a) Willful violations; false and misleading statements

Any person who willfully violates any provision of this chapter (other than section 78dd–1 of this title), or any rule or regulation thereunder the violation of which is made unlawful or the observance of which is required under the terms of this chapter, or any person who willfully and knowingly makes, or causes to be made, any statement in any application, report, or document required to be filed under this chapter or any rule or regulation thereunder or any undertaking contained in a

registration statement as provided in subsection (d) of section 78o of this title, or by any self-regulatory organization in connection with an application for membership or participation therein or to become associated with a member thereof which statement was false or misleading with respect to any material fact, shall upon conviction be fined not more than $5,000,000, or imprisoned not more than 20 years, or both, except that when such person is a person other than a natural person, a fine not exceeding $25,000,000 may be imposed; but no person shall be subject to imprisonment under this section for the violation of any rule or regulation if he proves that he had no knowledge of such rule or regulation.

(b) Failure to file information, documents, or reports

Any issuer which fails to file information, documents, or reports required to be filed under subsection (d) of section 78o of this title or any rule or regulation thereunder shall forfeit to the United States the sum of $100 for each and every day such failure to file shall continue. Such forfeiture, which shall be in lieu of any criminal penalty for such failure to file which might be deemed to arise under subsection (a) of this section, shall be payable into the Treasury of the United States and shall be recoverable in a civil suit in the name of the United States.

(c) Violations by issuers, officers, directors, stockholders, employees, or agents of issuers

(1)(A) Any issuer that violates subsection (a) or (g) of section 78dd–1 of this title shall be fined not more than $2,000,000.

(B) Any issuer that violates subsection (a) or (g) of section 78dd–1 of this title shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Commission.

(2)(A) Any officer, director, employee, or agent of an issuer, or stockholder acting on behalf of such issuer, who willfully violates subsection (a) or (g) of section 78dd–1 of this title shall be fined not more than $100,000, or imprisoned not more than 5 years, or both.

(B) Any officer, director, employee, or agent of an issuer, or stockholder acting on behalf of such issuer, who violates subsection (a) or (g) of section 78dd–1 of this title shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Commission.

(3) Whenever a fine is imposed under paragraph (2) upon any officer, director, employee, agent, or stockholder of an issuer, such fine may not be paid, directly or indirectly, by such issuer.

(June 6, 1934, ch. 404, title I, §32, 48 Stat. 904; May 27, 1936, ch. 462, §9, 49 Stat. 1380; June 25, 1938, ch. 677, §4, 52 Stat. 1076; Pub. L. 88–467, §11, Aug. 20, 1964, 78 Stat. 580; Pub. L. 94–29, §§23, 27(b), June 4, 1975, 89 Stat. 162, 163; Pub. L. 95–213, title I, §103(b), Dec. 19, 1977, 91 Stat. 1496; Pub. L. 98–376, §3, Aug. 10, 1984, 98 Stat. 1265; Pub. L. 100–418, title V, §5003(b), Aug. 23, 1988, 102 Stat. 1419; Pub. L. 100–704, §4, Nov. 19, 1988, 102 Stat. 4680; Pub. L. 105–366, §2(d), Nov. 10, 1998, 112 Stat. 3303; Pub. L. 107–204, title XI, §1106, July 30, 2002, 116 Stat. 810.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this title". See References in Text note set out under section 78a of this title.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–204 substituted "$5,000,000, or imprisoned not more than 20 years" for "$1,000,000, or imprisoned not more than 10 years" and "$25,000,000" for "$2,500,000".

1998—Subsec. (c)(1). Pub. L. 105–366, §2(d)(1), (2), substituted "subsection (a) or (g) of section 78dd–1" for "section 78dd–1(a)" in subpars. (A) and (B).

Subsec. (c)(2). Pub. L. 105–366, §2(d)(3), amended par. (2) generally. Prior to amendment, par. (2) read as follows:

"(2)(A) Any officer or director of an issuer, or stockholder acting on behalf of such issuer, who willfully violates section 78dd–1(a) of this title shall be fined not more than $100,000, or imprisoned not more than 5 years, or both.

"(B) Any employee or agent of an issuer who is a United States citizen, national, or resident or is otherwise subject to the jurisdiction of the United States (other than an officer, director, or stockholder acting on behalf of such issuer), and who willfully violates section 78dd–1(a) of this title, shall be fined not more than $100,000, or imprisoned not more than 5 years, or both.

"(C) Any officer, director, employee, or agent of an issuer, or stockholder acting on behalf of such issuer,

who violates section 78dd–1(a) of this title shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Commission."

1988—Subsec. (a). Pub. L. 100–704 substituted "$1,000,000" for "$100,000", "10 years" for "five years", "is a person other than a natural person" for "is an exchange", and "$2,500,000" for "$500,000".

Subsec. (c). Pub. L. 100–418 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

"(1) Any issuer which violates section 78dd–1(a) of this title shall, upon conviction, be fined not more than $1,000,000.

"(2) Any officer or director of an issuer, or any stockholder acting on behalf of such issuer, who willfully violates section 78dd–1(a) of this title shall, upon conviction, be fined not more than $10,000, or imprisoned not more than five years, or both.

"(3) Whenever an issuer is found to have violated section 78dd–1(a) of this title, any employee or agent of such issuer who is a United States citizen, national, or resident or is otherwise subject to the jurisdiction of the United States (other than an officer, director, or stockholder of such issuer), and who willfully carried out the act or practice constituting such violation shall, upon conviction, be fined not more than $10,000, or imprisoned not more than five years, or both.

"(4) Whenever a fine is imposed under paragraph (2) or (3) of this subsection upon any officer, director, stockholder, employee, or agent of an issuer, such fine shall not be paid, directly or indirectly, by such issuer."

1984—Subsec. (a). Pub. L. 98–376 substituted "$100,000" for "$10,000".

1977—Subsec. (a). Pub. L. 95–213, §103(b)(1), inserted "(other than section 78dd–1 of this title)" after "Any person who willfully violates any provision of this chapter".

Subsec. (c). Pub. L. 95–213, §103(b)(2), added subsec. (c).

1975—Subsec. (a). Pub. L. 94–29, §§23(1), 27(b), inserted "or by any self-regulatory organization in connection with an application for membership or participation therein or to become associated with a member thereof," and substituted "or imprisoned not more than five years" for "or imprisoned not more than two years".

Subsec. (c). Pub. L. 94–29, §23(2), struck out subsec. (c) which rendered this section inapplicable to violations of any rule or regulation prescribed pursuant to paragraph (3) of subsection (c) of section 78o of this title.

1964—Subsec. (b). Pub. L. 88–467 substituted "required to be filed under" for "pursuant to an undertaking contained in a registration statement as provided in" and inserted "or any rule or regulation thereunder" after "section 78o of this title."

1938—Subsec. (c). Act June 25, 1938, added subsec. (c).

1936—Subsec. (a). Act May 27, 1936, inserted "or any undertaking contained in a registration statement as provided in subsection (d) of section 78o of this title".

Subsec. (b). Act May 27, 1936, added subsec. (b).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–704 not applicable to actions occurring before Nov. 19, 1988, see section 9 of Pub. L. 100–704, set out as a note under section 78o of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–376 effective Aug. 10, 1984, see section 7 of Pub. L. 98–376, set out as a note under section 78c of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–467 effective Aug. 20, 1964, see section 13 of Pub. L. 88–467, set out as a note under section 78c of this title.

§78gg. Separability

If any provision of this chapter, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the chapter and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be

affected thereby.

(June 6, 1934, ch. 404, title I, §33, 48 Stat. 905.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act". See References in Text note set out under section 78a of this title.

§78hh. Effective date

This chapter shall become effective on July 1, 1934, except that sections 78f and 78l(b to e) of this title shall become effective on September 1, 1934; and sections 78e, 78g, 78h, 78i(a)(6), 78j, 78k, 78l(a), 78m, 78n, 78o, 78p, 78q, 78r, 78s, and 78dd of this title shall become effective on October 1, 1934.

(June 6, 1934, ch. 404, title I, §34, 48 Stat. 905.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "This Act". See References in Text note set out under section 78a of this title.

§78hh–1. Effective date of certain sections

This Act shall become effective on May 27, 1936; except that clause (2) of subsection (f) of section 78l of this title, and subsections (a) and (d) of section 78o of this title, shall become effective ninety days after May 27, 1936, and that clause (3) of subsection (f) of section 78l of this title shall become effective six months after May 27, 1936.

(May 27, 1936, ch. 462, §12, 49 Stat. 1380.)

REFERENCES IN TEXT

This Act, referred to in text, is act May 27, 1936, ch. 462, 49 Stat. 1375, popularly known as the Unlisted Securities Trading Act, which enacted sections 78l–1, 78o–1, 78o–2, and 78hh–1 of this title, and amended sections 78l, 78o, 78q, 78r, 78t, 78u, 78w, and 78ff of this title.

CODIFICATION

Section was not enacted as a part of the Securities Exchange Act of 1934 which comprises this chapter.

§78ii. Omitted

CODIFICATION

Section, act June 6, 1934, ch. 404, title II, §210, 48 Stat. 908, transferred the powers, duties and functions of the Federal Trade Commission under subchapter I of chapter 2A of this title to the Securities and Exchange Commission. Pending proceedings before the Federal Trade Commission were continued before the Securities and Exchange Commission.

§78jj. Repealed. Pub. L. 100–181, title III, §330, Dec. 4, 1987, 101 Stat. 1259

Section, act June 6, 1934, ch. 404, title II, §211, 48 Stat. 909, provided for a study and report by Securities and Exchange Commission of reorganization proceedings. Study as basis for Trust Indenture Act of 1939, see section 77bbb of this title.

§78kk. Authorization of appropriations

In addition to any other funds authorized to be appropriated to the Commission, there are

authorized to be appropriated to carry out the functions, powers, and duties of the Commission—

(1) for fiscal year 2011, $1,300,000,000;

(2) for fiscal year 2012, $1,500,000,000;

(3) for fiscal year 2013, $1,750,000,000;

(4) for fiscal year 2014, $2,000,000,000; and

(5) for fiscal year 2015, $2,250,000,000.

(June 6, 1934, ch. 404, title I, §35, as added Pub. L. 94–29, §24, June 4, 1975, 89 Stat. 162; amended Pub. L. 95–20, Apr. 13, 1977, 91 Stat. 47; Pub. L. 95–211, Dec. 19, 1977, 91 Stat. 1492; Pub. L. 95–425, §1, Oct. 6, 1978, 92 Stat. 962; Pub. L. 96–477, title IV, §401, Oct. 21, 1980, 94 Stat. 2291; Pub. L. 100–181, title I, §101, Dec. 4, 1987, 101 Stat. 1249; Pub. L. 100–704, §8, Nov. 19, 1988, 102 Stat. 4683; Pub. L. 101–550, title I, §102, Nov. 15, 1990, 104 Stat. 2713; Pub. L. 104–290, title IV, §403, Oct. 11, 1996, 110 Stat. 3441; Pub. L. 105–353, title II, §201, Nov. 3, 1998, 112 Stat. 3233; Pub. L. 107–204, title VI, §601, July 30, 2002, 116 Stat. 793; Pub. L. 111–203, title IX, §991(c), July 21, 2010, 124 Stat. 1953.)

CODIFICATION

Pub. L. 94–29, which directed amendment of the Securities Exchange Act of 1934 by adding this section at the end, is reflected in the source credit above as adding this section to title I of the Securities Exchange Act of 1934, to reflect the probable intent of Congress.

AMENDMENTS

2010—Pub. L. 111–203 amended section generally. Prior to amendment, section related to appropriation for fiscal year 2003 and specified amounts to fund certain additional compensation, for mitigation activities after the Sept. 11, 2001, attacks, and to add additional oversight personnel and improve investigative and disciplinary efforts.

2002—Pub. L. 107–204 amended section generally, updating fiscal year from 1999 to 2003, striking out subsec. designations, and substituting provisions relating to funding of additional compensation, terrorist-related information technology, security enhancements, and recovery and mitigation activities, and an additional 200 qualified professionals to provide enhanced oversight for provisions relating to miscellaneous expenses such as meetings and official functions.

1998—Pub. L. 105–353 amended section generally. Prior to amendment, text read as follows: "There are authorized to be appropriated to carry out the functions, powers, and duties of the Commission $300,000,000 for fiscal year 1997, in addition to any other funds authorized to be appropriated to the Commission."

1996—Pub. L. 104–290 amended section generally. Prior to amendment, text read as follows: "There are authorized to be appropriated to carry out the functions, powers, and duties of the Commission—

"(1) $178,023,000 for the fiscal year ending September 30, 1990; and

"(2) $212,609,000 for the fiscal year ending September 30, 1991."

1990—Pub. L. 101–550 amended section generally, substituting present provisions for former provisions which provided for fiscal years 1988 and 1989: in subsec. (a), for authorization of appropriations for the Commission; in subsec. (b), for amounts for the EDGAR system; and in subsec. (c), for amounts for reception and representation expenses and for membership in the International Organization of Securities Commissions.

1988—Subsec. (c). Pub. L. 100–704 added subsec. (c).

1987—Pub. L. 100–181 amended section generally. Prior to amendment, text read as follows: "There are authorized to be appropriated to carry out the functions, powers, and duties of the Commission not to exceed $51,000,000 for the fiscal year ending June 30, 1976, $56,500,000 for the fiscal year ending September 30, 1977, $63,750,000 for the fiscal year ending September 30, 1978, $69,000,000 for the fiscal year ending September 30, 1979, $79,000,000 for the fiscal year ending September 30, 1980, $85,500,000 for the fiscal year ending September 30, 1981, $96,640,000 for the fiscal year ending September 30, 1982, and $106,610,000 for the fiscal year ending September 30, 1983. For fiscal years succeeding fiscal year 1983, there may be appropriated such sums as the Congress may hereafter authorize by law."

1980—Pub. L. 96–477 authorized appropriations of $85,500,000 for fiscal year ending Sept. 30, 1981, $96,640,000 for fiscal year ending Sept. 30, 1982, and $106,610,000 for fiscal year ending Sept. 30, 1983, and provided that for fiscal years succeeding 1983, there may be appropriated such sums as Congress may authorize by law.

1978—Pub. L. 95–425 inserted provision authorizing appropriations of not to exceed $69,000,000, and $79,000,000 for fiscal years ending Sept. 30, 1979 and 1980, respectively, and substituted "fiscal year 1980" for "fiscal year 1978".

1977—Pub. L. 95–211 authorized appropriations of not to exceed $63,750,000 for fiscal year ending Sept. 30, 1978, and substituted "For the fiscal years succeeding fiscal year 1978" for "For fiscal years succeeding the 1977 fiscal year" in provisions relating to appropriations for succeeding fiscal years.

Pub. L. 95–20 substituted "$56,500,000" for "$55,000,000".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–704 not applicable to actions occurring before Nov. 19, 1988, see section 9 of Pub. L. 100–704 set out as a note under section 78o of this title.

EFFECTIVE DATE

Section effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

§78*ll*. Requirements for the EDGAR system

The Commission, by rule or regulation—

(1) shall provide that any information in the EDGAR system that is required to be disseminated by the contractor—

(A) may be sold or disseminated by the contractor only pursuant to a uniform schedule of fees prescribed by the Commission;

(B) may be obtained by a purchaser by direct interconnection with the EDGAR system;

(C) shall be equally available on equal terms to all persons; and

(D) may be used, resold, or redisseminated by any person who has lawfully obtained such information without restriction and without payment of additional fees or royalties; and

(2) shall require that persons, or classes of persons, required to make filings with the Commission submit such filings in a form and manner suitable for entry into the EDGAR system and shall specify the date that such requirement is effective with respect to that person or class; except that the Commission may exempt persons or classes of persons, or filings or classes of filings, from such rules or regulations in order to prevent hardships or to avoid imposing unreasonable burdens or as otherwise may be necessary or appropriate.

(June 6, 1934, ch. 404, title I, §35A, as added Pub. L. 100–181, title I, §102, Dec. 4, 1987, 101 Stat. 1249; amended Pub. L. 105–353, title II, §202, Nov. 3, 1998, 112 Stat. 3234.)

CODIFICATION

Pub. L. 100–181, which directed amendment of the Securities Exchange Act of 1934 by adding this section after section 35 of the Act, is reflected in the source credit above as adding this section to title I of the Securities Exchange Act of 1934, to reflect the probable intent of Congress. See Codification note set out under section 78kk of this title.

AMENDMENTS

1998—Subsecs. (a) to (c). Pub. L. 105–353, §202(1), struck out subsecs. (a) to (c) which: in subsec. (a) required certifications and reports as prerequisite to obligation or expenditure of funds for establishment or operation of EDGAR system, and provided that former section 78kk(b) amounts were to be exclusive source of funds for systems procurement and operation; in subsec. (b) required report on status of EDGAR development, implementation, and progress to certain Congressional committees at six-month intervals; and in subsec. (c) required certification to Congressional committees of total costs, cost/benefit analysis, assurances of compliance, capabilities of system, competence of personnel, and review of test group filings prior to entering into contract for EDGAR system.

Subsec. (d). Pub. L. 105–353, §202(2), struck out "(d)" before "The Commission" in introductory provisions, in par. (2) substituted period for "; and" at end, and struck out par. (3) which read as follows: "shall

require all persons who make any filing with the Commission, in addition to complying with such other rules concerning the form and manner of filing as the Commission may prescribe, to submit such filings in written or printed form—

"(A) for a period of at least one year after the effective date specified for such person or class under paragraph (2); or

"(B) for a shorter period if the Commission determines that the EDGAR system (i) is reliable, (ii) provides a suitable alternative to such written and printed filings, and (iii) assures that the provision of information through the EDGAR system is as effective and efficient for filers, users, and disseminators as provision of such information in written or printed form."

Subsec. (e). Pub. L. 105–353, §202(1), struck out subsec. (e) which read as follows: "For the purposes of carrying out its responsibilities under subsection (d)(3) of this section, the Commission shall consult with representatives of persons filing, disseminating, and using information contained in filings with the Commission."

§78mm. General exemptive authority

(a) Authority

(1) In general

Except as provided in subsection (b) of this section, but notwithstanding any other provision of this chapter, the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this chapter or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

(2) Procedures

The Commission shall, by rule or regulation, determine the procedures under which an exemptive order under this section shall be granted and may, in its sole discretion, decline to entertain any application for an order of exemption under this section.

(b) Limitation

The Commission may not, under this section, exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from section 78o–5 of this title or the rules or regulations issued thereunder or (for purposes of section 78o–5 of this title and the rules and regulations issued thereunder) from any definition in paragraph (42), (43), (44), or (45) of section 78c(a) of this title.

(c) Derivatives

Unless the Commission is expressly authorized by any provision described in this subsection to grant exemptions, the Commission shall not grant exemptions, with respect to amendments made by subtitle B of the Wall Street Transparency and Accountability Act of 2010, with respect to paragraphs (65), (66), (68), (69), (70), (71), (72), (73), (74), (75), (76), and (79) of section 78c(a) of this title, and sections 78j–2(a), 78j–2(b), 78j–2(c), 78m–1, 78o–10, 78q–1(g), 78q–1(h), 78q–1(i), 78q–1(j), 78q–1(k), and 78q–1(l) of this title; provided that the Commission shall have exemptive authority under this chapter with respect to security-based swaps as to the same matters that the Commodity Futures Trading Commission has under the Wall Street Transparency and Accountability Act of 2010 with respect to swaps, including under section 6(c) of title 7.

(June 6, 1934, ch. 404, title I, §36, as added Pub. L. 104–290, title I, §105(b), Oct. 11, 1996, 110 Stat. 3424; amended Pub. L. 111–203, title VII, §772(a), July 21, 2010, 124 Stat. 1801.)

AMENDMENT OF SECTION

Unless otherwise provided, amendment by subtitle B (§§761–774) of title VII of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B requires a rulemaking, not less than 60 days after publication of the final rule or regulation

implementing such provision of subtitle B, see 2010 Amendment notes and Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1) and (c), was in the original "this title". See References in Text note set out under section 78a of this title.

The Wall Street Transparency and Accountability Act of 2010, referred to in subsec. (c), is title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1641, which enacted chapter 109 (§8301 et seq.) of this title and enacted and amended numerous other sections and notes in the Code. Subtitle B of the Act enacted subchapter II (§8341 et seq.) of chapter 109 and sections 78c–3 to 78c–5, 78j–2, 78m–1, and 78o–10 of this title, amended sections 77b, 77b–1, 77e, 77q, 78c, 78c–1, 78f, 78i, 78j, 78m, 78o, 78p, 78q–1, 78t, 78u–1, 78u–2, 78bb, 78dd, 78mm, 80a–2, and 80b–2 of this title, enacted provisions set out as a note under section 77b of this title, and amended provisions set out as a note under section 78c of this title. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of this title and Tables.

AMENDMENTS

2010—Subsec. (c). Pub. L. 111–203 added subsec. (c).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761–774) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111–203, set out as a note under section 77b of this title.

§78nn. Tennessee Valley Authority

(a) In general

Commencing with the issuance by the Tennessee Valley Authority of an annual report on Commission Form 10–K (or any successor thereto) for fiscal year 2006 and thereafter, the Tennessee Valley Authority shall file with the Commission, in accordance with such rules and regulations as the Commission has prescribed or may prescribe, such periodic, current, and supplementary information, documents, and reports as would be required pursuant to section 78m of this title if the Tennessee Valley Authority were an issuer of a security registered pursuant to section 78l of this title. Notwithstanding the preceding sentence, the Tennessee Valley Authority shall not be required to register any securities under this chapter, and shall not be deemed to have registered any securities under this chapter.

(b) Limited treatment as issuer

Commencing with the issuance by the Tennessee Valley Authority of an annual report on Commission Form 10–K (or any successor thereto) for fiscal year 2006 and thereafter, the Tennessee Valley Authority shall be deemed to be an issuer for purposes of section 78j–1 of this title, other than for subsection (m)(1) or (m)(3) of section 78j–1 of this title. The Tennessee Valley Authority shall not be required by this subsection to comply with the rules issued by any national securities exchange or national securities association in response to rules issued by the Commission pursuant to section 78j–1(m)(1) of this title.

(c) No effect on TVA authority

Nothing in this section shall be construed to diminish, impair, or otherwise affect the authority of the Board of Directors of the Tennessee Valley Authority to carry out its statutory functions under the Tennessee Valley Authority Act of 1933 [16 U.S.C. 831 et seq.].

(June 6, 1934, ch. 404, title I, §37, as added Pub. L. 108–447, div. H, title V, §520(2), Dec. 8, 2004, 118 Stat. 3267.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this title". See References in Text note set out under section 78a of this title and Codification note below.

The Tennessee Valley Authority Act of 1933, referred to in subsec. (c), is act May 18, 1933, ch. 32, 48 Stat. 58, as amended, which is classified generally to chapter 12A (§831 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see section 831 of Title 16 and Tables.

CODIFICATION

Pub. L. 108–447, which directed amendment of the Securities Exchange Act of 1934 by adding this section at the end, is reflected in the source credit above as adding this section to title I of the Securities Exchange Act of 1934, to reflect the probable intent of Congress.

§78*oo*. Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Home Loan Banks

(a) Federal National Mortgage Association and Federal Home Loan Mortgage Corporation

No class of equity securities of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation shall be treated as an exempted security for purposes of section 78l, 78m, 78n, or 78p of this title.

(b) Federal Home Loan Banks

(1) Registration

Each Federal Home Loan Bank shall register a class of its common stock under section 78l(g) of this title, not later than 120 days after July 30, 2008, and shall thereafter maintain such registration and be treated for purposes of this chapter as an "issuer", the securities of which are required to be registered under section 78l of this title, regardless of the number of members holding such stock at any given time.

(2) Standards relating to audit committees

Each Federal Home Loan Bank shall comply with the rules issued by the Commission under section 78j–1(m) of this title.

(c) Definitions

For purposes of this section, the following definitions shall apply:

(1) Federal Home Loan Bank; member

The terms "Federal Home Loan Bank" and "member", have the same meanings as in section 1422 of title 12.

(2) Federal National Mortgage Association

The term "Federal National Mortgage Association" means the corporation created by the Federal National Mortgage Association Charter Act [12 U.S.C. 1716 et seq.].

(3) Federal Home Loan Mortgage Corporation

The term "Federal Home Loan Mortgage Corporation" means the corporation created by the Federal Home Loan Mortgage Corporation Act [12 U.S.C. 1451 et seq.].

(June 6, 1934, ch. 404, title I, §38, as added Pub. L. 110–289, div. A, title I, §1112, July 30, 2008, 122 Stat. 2677.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(1), was in the original "this title". See References in Text note set out under section 78a of this title and Codification note below.

The Federal National Mortgage Association Charter Act, referred to in subsec. (c)(2), is title III of act June 27, 1934, ch. 847, 48 Stat. 1252, which is classified generally to subchapter III (§1716 et seq.) of chapter 13 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 1716 of Title 12 and Tables.

The Federal Home Loan Mortgage Corporation Act, referred to in subsec. (c)(3), is title III of Pub. L. 91–351, July 24, 1970, 84 Stat. 451, which is classified generally to chapter 11A (§1451 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title and Statement of

Purpose note set out under section 1451 of Title 12 and Tables.

CODIFICATION

Pub. L. 110–289, which directed amendment of the Securities Exchange Act of 1934 by adding this section at the end, is reflected in the source credit above as adding this section to title I of the Securities Exchange Act of 1934, to reflect the probable intent of Congress.

§78pp. Investor Advisory Committee

(a) Establishment and purpose

(1) Establishment

There is established within the Commission the Investor Advisory Committee (referred to in this section as the "Committee").

(2) Purpose

The Committee shall—

(A) advise and consult with the Commission on—

(i) regulatory priorities of the Commission;

(ii) issues relating to the regulation of securities products, trading strategies, and fee structures, and the effectiveness of disclosure;

(iii) initiatives to protect investor interest; and

(iv) initiatives to promote investor confidence and the integrity of the securities marketplace; and

(B) submit to the Commission such findings and recommendations as the Committee determines are appropriate, including recommendations for proposed legislative changes.

(b) Membership

(1) In general

The members of the Committee shall be—

(A) the Investor Advocate;

(B) a representative of State securities commissions;

(C) a representative of the interests of senior citizens; and

(D) not fewer than 10, and not more than 20, members appointed by the Commission, from among individuals who—

(i) represent the interests of individual equity and debt investors, including investors in mutual funds;

(ii) represent the interests of institutional investors, including the interests of pension funds and registered investment companies;

(iii) are knowledgeable about investment issues and decisions; and

(iv) have reputations of integrity.

(2) Term

Each member of the Committee appointed under paragraph (1)(B) shall serve for a term of 4 years.

(3) Members not Commission employees

Members appointed under paragraph (1)(B) shall not be deemed to be employees or agents of the Commission solely because of membership on the Committee.

(c) Chairman; vice chairman; secretary; assistant secretary

(1) In general

The members of the Committee shall elect, from among the members of the Committee—

(A) a chairman, who may not be employed by an issuer;

(B) a vice chairman, who may not be employed by an issuer;
(C) a secretary; and
(D) an assistant secretary.

(2) Term

Each member elected under paragraph (1) shall serve for a term of 3 years in the capacity for which the member was elected under paragraph (1).

(d) Meetings

(1) Frequency of meetings

The Committee shall meet—

(A) not less frequently than twice annually, at the call of the chairman of the Committee; and
(B) from time to time, at the call of the Commission.

(2) Notice

The chairman of the Committee shall give the members of the Committee written notice of each meeting, not later than 2 weeks before the date of the meeting.

(e) Compensation and travel expenses

Each member of the Committee who is not a full-time employee of the United States shall—

(1) be entitled to receive compensation at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level V of the Executive Schedule under section 5316 of title 5 for each day during which the member is engaged in the actual performance of the duties of the Committee; and

(2) while away from the home or regular place of business of the member in the performance of services for the Committee, be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) [1] of title 5.

(f) Staff

The Commission shall make available to the Committee such staff as the chairman of the Committee determines are necessary to carry out this section.

(g) Review by Commission

The Commission shall—

(1) review the findings and recommendations of the Committee; and

(2) each time the Committee submits a finding or recommendation to the Commission, promptly issue a public statement—

(A) assessing the finding or recommendation of the Committee; and
(B) disclosing the action, if any, the Commission intends to take with respect to the finding or recommendation.

(h) Committee findings

Nothing in this section shall require the Commission to agree to or act upon any finding or recommendation of the Committee.

(i) Federal Advisory Committee Act

The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply with respect to the Committee and its activities.

(j) Authorization of appropriations

There is authorized to be appropriated to the Commission such sums as are necessary to carry out this section.

(June 6, 1934, ch. 404, title I, §39, as added Pub. L. 111–203, title IX, §911, July 21, 2010, 124 Stat. 1822.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (i), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of Title 12, Banks and Banking.

[1] *So in original. Section 5703 of Title 5 does not contain a subsec. (b).*

CHAPTER 2B–1—SECURITIES INVESTOR PROTECTION

Sec.

78aaa. Short title.
78bbb. Application of Securities Exchange Act of 1934.
78ccc. Securities Investor Protection Corporation.
78ddd. SIPC Fund.
78eee. Protection of customers.
78fff. General provisions of a liquidation proceeding.
78fff–1. Powers and duties of a trustee.
78fff–2. Special provisions of a liquidation proceeding.
78fff–3. SIPC advances.
78fff–4. Direct payment procedure.
78ggg. SEC functions.
78hhh. Examining authority functions.
78iii. Functions of self-regulatory organizations.
78jjj. Prohibited acts.
78kkk. Miscellaneous provisions.
78*lll*. Definitions.

§78aaa. Short title

This chapter may be cited as the "Securities Investor Protection Act of 1970".

(Pub. L. 91–598, §1(a), Dec. 30, 1970, 84 Stat. 1636.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "This Act", meaning Pub. L. 91–598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95–283, §1, May 21, 1978, 92 Stat. 249, provided that: "This Act [enacting sections 78fff–1 to 78fff–4 of this title, amending sections 77c, 78c, 78k, and 78ccc to 78lll of this title and enacting provisions set out as a note under section 78k of this title] may be cited as the 'Securities Investor Protection Act Amendments of 1978'."

§78bbb. Application of Securities Exchange Act of 1934

Except as otherwise provided in this chapter, the provisions of the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] (hereinafter referred to as the "1934 Act") apply as if this chapter constituted an amendment to, and was included as a section of, such Act.

(Pub. L. 91–598, §2, Dec. 30, 1970, 84 Stat. 1637.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 91–598, Dec. 30, 1970, 84

Stat. 1636. For complete classification of this Act to the Code, see Tables.

The Securities Exchange Act of 1934, referred to in text, is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

§78ccc. Securities Investor Protection Corporation

(a) Creation and membership

(1) Creation

There is hereby established a body corporate to be known as the "Securities Investor Protection Corporation" (hereafter in this chapter referred to as "SIPC"). SIPC shall be a nonprofit corporation and shall have succession until dissolved by Act of the Congress. SIPC shall—

(A) not be an agency or establishment of the United States Government; and

(B) except as otherwise provided in this chapter, be subject to, and have all the powers conferred upon a nonprofit corporation by, the District of Columbia Nonprofit Corporation Act.

(2) Membership

(A) Members of SIPC

SIPC shall be a membership corporation the members of which shall be all persons registered as brokers or dealers under section 78o(b) of this title, other than—

(i) persons whose principal business, in the determination of SIPC, taking into account business of affiliated entities, is conducted outside the United States and its territories and possessions;

(ii) persons whose business as a broker or dealer consists exclusively of (I) the distribution of shares of registered open end investment companies or unit investment trusts, (II) the sale of variable annuities, (III) the business of insurance, or (IV) the business of rendering investment advisory services to one or more registered investment companies or insurance company separate accounts; and

(iii) persons who are registered as a broker or dealer pursuant to section 78o(b)(11)(A) of this title.

(B) Commission review

SIPC shall file with the Commission a copy of any determination made pursuant to subparagraph (A)(i). Within thirty days after the date of such filing, or within such longer period as the Commission may designate of not more than ninety days after such date if it finds such longer period to be appropriate and publishes its reasons for so finding, the Commission shall, consistent with the public interest and the purposes of this chapter, affirm, reverse, or amend any such determination of SIPC.

(C) Additional members

SIPC shall provide by rule that persons excluded from membership in SIPC under subparagraph (A)(i) may become members of SIPC under such conditions and upon such terms as SIPC shall require by rule, taking into account such matters as the availability of assets and the ability to conduct a liquidation if necessary.

(D) Disclosure

Any broker or dealer excluded from membership in SIPC under subparagraph (A)(i) shall, as required by the Commission by rule, make disclosures of its exclusion and other relevant information to the customers of such broker or dealer who are living in the United States or its territories and possessions.

(b) Powers

In addition to the powers granted to SIPC elsewhere in this chapter, SIPC shall have the power—

(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel,

in any State, Federal, or other court;

(2) to adopt, alter, and use a corporate seal, which shall be judicially noticed;

(3) to adopt, amend, and repeal, by its Board of Directors, such bylaws as may be necessary or appropriate to carry out the purposes of this chapter, including bylaws relating to—

(A) the conduct of its business; and

(B) the indemnity of its directors, officers, and employees (including any such person acting as trustee or otherwise in connection with a liquidation proceeding) for liabilities and expenses actually and reasonably incurred by any such person in connection with the defense or settlement of an action or suit if such person acted in good faith and in a manner reasonably believed to be consistent with the purposes of this chapter.

(4) to adopt, amend, and repeal, by its Board of Directors, such rules as may be necessary or appropriate to carry out the purposes of this chapter, including rules relating to—

(A) the definition of terms used in this chapter, other than those terms for which a definition is provided in section 78lll of this title;

(B) the procedures for the liquidation of members and direct payment procedures, including the transfer of customer accounts, the distribution of customer property, and the advance and payment of SIPC funds; and

(C) the exercise of all other rights and powers granted to it by this chapter;

(5) to conduct its business (including the carrying on of operations and the maintenance of offices) and to exercise all other rights and powers granted to it by this chapter in any State or other jurisdiction without regard to any qualification, licensing, or other statute in such State or other jurisdiction;

(6) to lease, purchase, accept gifts or donations of or otherwise acquire, to own, hold, improve, use, or otherwise deal in or with, and to sell, convey, mortgage, pledge, lease, exchange or otherwise dispose of, any property, real, personal or mixed, or any interest therein, wherever situated;

(7) subject to the provisions of subsection (c) of this section, to elect or appoint such officers, attorneys, employees, and agents as may be required, to determine their qualifications, to define their duties, to fix their salaries, require bonds for them and fix the penalty thereof;

(8) to enter into contracts, to execute instruments, to incur liabilities, and to do any and all other acts and things as may be necessary or incidental to the conduct of its business and the exercise of all other rights and powers granted to SIPC by this chapter; and

(9) by bylaw, to establish its fiscal year.

(c) Board of Directors

(1) Functions

SIPC shall have a Board of Directors which, subject to the provisions of this chapter, shall determine the policies which shall govern the operations of SIPC.

(2) Number and appointment

The Board of Directors shall consist of seven persons as follows:

(A) One director shall be appointed by the Secretary of the Treasury from among the officers and employees of the Department of the Treasury.

(B) One director shall be appointed by the Federal Reserve Board from among the officers and employees of the Federal Reserve Board.

(C) Five directors shall be appointed by the President, by and with the advice and consent of the Senate, as follows—

(i) three such directors shall be selected from among persons who are associated with, and representative of different aspects of, the securities industry, not all of whom shall be from the same geographical area of the United States, and

(ii) two such directors shall be selected from the general public from among persons who are not associated with a broker or dealer or associated with a member of a national securities

exchange, within the meaning of section 78c(a)(18) or section 78c(a)(21), respectively, of this title, or similarly associated with any self-regulatory organization or other securities industry group, and who have not had any such association during the two years preceding appointment.

(3) Chairman and Vice Chairman

The President shall designate a Chairman and Vice Chairman from among those directors appointed under paragraph (2)(C)(ii) of this subsection.

(4) Terms

(A) Except as provided in subparagraphs (B) and (C), each director shall be appointed for a term of three years.

(B) Of the directors first appointed under paragraph (2)—

(i) two shall hold office for a term expiring on December 31, 1971,

(ii) two shall hold office for a term expiring on December 31, 1972, and

(iii) three shall hold office for a term expiring on December 31, 1973,

as designated by the President at the time they take office. Such designation shall be made in a manner which will assure that no two persons appointed under the authority of the same clause of paragraph (2)(C) shall have terms which expire simultaneously.

(C) A vacancy in the Board shall be filled in the same manner as the original appointment was made. Any director appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A director may serve after the expiration of his term until his successor has taken office.

(5) Compensation

All matters relating to compensation of directors shall be as provided in the bylaws of SIPC.

(d) Meetings of Board

The Board of Directors shall meet at the call of its Chairman, or as otherwise provided by the bylaws of SIPC.

(e) Bylaws and rules

(1) Proposed bylaw changes

The Board of Directors of SIPC shall file with the Commission a copy of any proposed bylaw or any proposed amendment to or repeal of any bylaw of SIPC (hereinafter in this paragraph collectively referred to as a "proposed bylaw change"), accompanied by a concise general statement of the basis and purpose of such proposed bylaw change. Each such proposed bylaw change shall take effect thirty days after the date of the filing of a copy thereof with the Commission, or upon such later date as SIPC may designate or such earlier date as the Commission may determine, unless—

(A) the Commission, by notice to SIPC setting forth the reasons therefor, disapproves such proposed bylaw change as being contrary to the public interest or contrary to the purposes of this chapter; or

(B) the Commission finds that such proposed bylaw change involves a matter of such significant public interest that public comment should be obtained, in which case it may, after notifying SIPC in writing of such finding, require that the procedures set forth in paragraph (2) be followed with respect to such proposed bylaw change, in the same manner as if such proposed bylaw change were a proposed rule change within the meaning of such paragraph.

(2) Proposed rule changes

(A) Filing of proposed rule changes

The Board of Directors of SIPC shall file with the Commission, in accordance with such rules as the Commission may prescribe, a copy of any proposed rule or any proposed amendment to or repeal of any rule of SIPC (hereinafter in this subsection collectively referred

to as a "proposed rule change"), accompanied by a concise general statement of the basis and purpose of such proposed rule change. The Commission shall, upon the filing of any proposed rule change, publish notice thereof, together with the terms of substance of such proposed rule change or a description of the subjects and issues involved. The Commission shall give interested persons an opportunity to submit written data, views, and arguments with respect to such proposed rule change. No proposed rule change shall take effect unless approved by the Commission or otherwise permitted in accordance with the provisions of this paragraph.

(B) Action by the Commission

Within thirty-five days after the date of publication of notice of the filing of a proposed rule change, or within such longer period as the Commission may designate of not more than ninety days after such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which SIPC consents, the Commission shall—

(i) by order approve such proposed rule change; or

(ii) institute proceedings to determine whether such proposed rule change should be disapproved.

(C) Proceedings

Proceedings instituted with respect to a proposed rule change pursuant to subparagraph (B)(ii) shall include notice of the grounds for disapproval under consideration and opportunity for hearing, and shall be concluded within one hundred eighty days after the date of publication of notice of the filing of such proposed rule change. At the conclusion of such proceedings, the Commission shall, by order, approve or disapprove such proposed rule change. The Commission may extend the time for conclusion of such proceedings for not more than sixty days if it finds good cause for such extension and publishes its reasons for so finding, or for such longer period as to which SIPC consents.

(D) Grounds for approval or disapproval

The Commission shall approve a proposed rule change if it finds that such proposed rule change is in the public interest and is consistent with the purposes of this chapter, and any proposed rule change so approved shall be given force and effect as if promulgated by the Commission. The Commission shall disapprove a proposed rule change if it does not make the finding referred to in the preceding sentence. The Commission shall not approve any proposed rule change prior to thirty days after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding.

(E) Exception

Notwithstanding any other provision of this paragraph, a proposed rule change may take effect—

(i) upon the date of filing with the Commission, if such proposed rule change is designated by SIPC as relating solely to matters which the Commission, consistent with the public interest and the purposes of this subsection, determines by rule do not require the procedures set forth in this paragraph; or

(ii) upon such date as the Commission shall for good cause determine. Any proposed rule change which takes effect under this clause shall be filed promptly thereafter and reviewed in accordance with the provisions of subparagraph (A).

At any time within sixty days after the date of filing of any rule change which has taken effect pursuant to this subparagraph, the Commission may summarily abrogate such rule change and require that it be refiled and reviewed in accordance with the provisions of this paragraph, if the Commission finds that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter. Any action of the Commission pursuant to the preceding sentence shall not affect the validity or force of a rule change during the period it was in effect and shall not be reviewable under section 78y of this title or deemed to be final agency action for purposes of section 704 of title 5.

(3) Action required by Commission

The Commission may, by such rules as it determines to be necessary or appropriate in the public interest or to carry out the purposes of this chapter, require SIPC to adopt, amend, or repeal any SIPC bylaw or rule, whenever adopted.

(Pub. L. 91–598, §3, Dec. 30, 1970, 84 Stat. 1637; Pub. L. 95–283, §§2–5, May 21, 1978, 92 Stat. 249–251; Pub. L. 106–554, §1(a)(5) [title II, §203(d)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–424.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) to (c) and (e), was in the original "this Act", meaning Pub. L. 91–598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

The District of Columbia Nonprofit Corporation Act, referred to in subsec. (a)(1)(B), is Pub. L. 87–569, Aug. 6, 1962, 76 Stat. 265, as amended, which is not classified to the Code.

AMENDMENTS

2000—Subsec. (a)(2)(A)(iii). Pub. L. 106–554 added cl. (iii).

1978—Subsec. (a). Pub. L. 95–283, §2(a), substituted "Creation and membership" for "Creation" in heading, redesignated introductory text and cls. (1) and (3) as par. (1), and added par. 2 which incorporated provisions formerly contained in cl. (2) as par. (2)(A).

Subsec. (b). Pub. L. 95–283, §3, in par. (1) substituted "State, Federal, or other court" for "court, State, or Federal", in par. (3) substituted provisions relating to adoption, etc., of bylaws by the Board of Directors, for provisions relating to adoption, etc., of bylaws and rules by the Board of Directors, added par. (4), and redesignated former pars. (4) to (8) as (5) to (9), respectively.

Subsec. (c)(2)(C)(ii). Pub. L. 95–283, §4(a), substituted "a broker or dealer or associated with a member of a national securities exchange, within the meaning of section 78c(a)(18) or section 78c(a)(21), respectively, of this title, or similarly associated with any self-regulatory organization or other securities industry group," for "any broker or dealer, within the meaning of paragraph (18) of section 78c(a) of this title, or similarly associated with a national securities exchange or other securities industry group".

Subsec. (c)(5). Pub. L. 95–283, §4(b), substituted "Compensation" for "Compensation, etc." in heading, and in text struck out provisions relating to determinations of dollar volume of trading on exchanges.

Subsec. (e). Pub. L. 95–283, §5, inserted "and rules" after "Bylaws" in heading, and in text substituted provisions relating to procedures applicable to proposed changes in the bylaws and rules of SIPC and required action by the Commission with respect to any SIPC bylaw or rule, for provisions relating to procedures applicable to adoption of initial bylaws and rules of SIPC and any alteration, supplement, repeal, or addition, effective date of any such bylaw or rule, and required action by the Commission with respect to any SIPC bylaw or rule.

Subsec. (f). Pub. L. 95–283, §2(b), struck out subsec. (f) which set forth qualifications for other members of SIPC.

§78ddd. SIPC Fund

(a) In general

(1) Establishment of fund

SIPC shall establish a "SIPC Fund" (hereinafter in this chapter referred to as the "fund"). All amounts received by SIPC (other than amounts paid directly to any lender pursuant to any pledge securing a borrowing by SIPC) shall be deposited in the fund, and all expenditures made by SIPC shall be made out of the fund.

(2) Balance of the fund

Except as otherwise provided in this section, the balance of the fund at any time shall consist of the aggregate at such time of the following items:

(A) Cash on hand or on deposit.

(B) Amounts invested in United States Government or agency securities.

(C) Such confirmed lines of credit as SIPC may from time to time maintain, other than those maintained pursuant to paragraph (4).

(3) Confirmed lines of credit

For purposes of this section, the amount of confirmed lines of credit as of any time is the aggregate amount which SIPC at such time has the right to borrow from banks and other financial institutions under confirmed lines of credit or other written agreements which provide that moneys so borrowed are to be repayable by SIPC not less than one year from the time of such borrowings (including, for purposes of determining when such moneys are repayable, all rights of extension, refunding, or renewal at the election of SIPC).

(4) Other lines

SIPC may maintain such other confirmed lines of credit as it considers necessary or appropriate, and such other confirmed lines of credit shall not be included in the balance of the fund, but amounts received from such lines of credit may be disbursed by SIPC under this chapter as though such amounts were part of the fund.

(b) Initial required balance for fund

Within one hundred and twenty days from December 30, 1970, the balance of the fund shall aggregate not less than $75,000,000, less any amounts expended from the fund within that period.

(c) Assessments

(1) Initial assessments

Each member of SIPC shall pay to SIPC, or the collection agent for SIPC specified in section 78iii(a) of this title, on or before the one hundred and twentieth day following December 30, 1970, an assessment equal to one-eighth of 1 per centum of the gross revenues from the securities business of such member during the calendar year 1969, or if the Commission shall determine that, for purposes of assessment pursuant to this paragraph, a lesser percentage of gross revenues from the securities business is appropriate for any class or classes of members (taking into account relevant factors, including but not limited to types of business done and nature of securities sold), such lesser percentages as the Commission, by rule or regulation, shall establish for such class or classes, but in no event less than one sixteenth of 1 per centum for any such class. In no event shall any assessment upon a member pursuant to this paragraph be less than $150.

(2) General assessment authority

SIPC shall, by bylaw, impose upon its members such assessments as, after consultation with self-regulatory organizations, SIPC may deem necessary and appropriate to establish and maintain the fund and to repay any borrowings by SIPC. Any assessments so made shall be in conformity with contractual obligations made by SIPC in connection with any borrowing incurred by SIPC. Subject to paragraph (3) and subsection (d)(1)(A) of this section, any such assessment upon the members, or any one or more classes thereof, may, in whole or in part, be based upon or measured by (A) the amount of their gross revenues from the securities business, or (B) all or any of the following factors: the amount or composition of their gross revenues from the securities business, the number or dollar volume of transactions effected by them, the number of customer accounts maintained by them or the amounts of cash and securities in such accounts, their net capital, the nature of their activities (whether in the securities business or otherwise) and the consequent risks, or other relevant factors.

(3) Limitations

Notwithstanding any other provision of this chapter—

(A) no assessment shall be made upon a member otherwise than pursuant to paragraph (1) or (2) of this subsection,

(B) an assessment may be made under paragraph (2) of this subsection at a rate in excess of one-half of one per centum during any twelve-month period if SIPC determines, in accordance with a bylaw, that such rate of assessment during such period will not have a material adverse effect on the financial condition of its members or their customers, except that no assessments shall be made pursuant to such paragraph upon a member which require payments during any

such period which exceed in the aggregate one per centum of such member's gross revenues from the securities business for such period, and

(C) no assessment shall include any charge based upon the member's activities (i) in the distribution of shares of registered open end investment companies or unit investment trusts, (ii) in the sale of variable annuities, (iii) in the business of insurance, or (iv) in the business of rendering investment advisory services to one or more registered investment companies or insurance company separate accounts.

(d) Requirements respecting assessments and lines of credit

(1) Assessments

(A) ½ of 1 percent assessment

Subject to subsection (c)(3) of this section, SIPC shall impose upon each of its members an assessment at a rate of not less than one-half of 1 per centum per annum of the gross revenues from the securities business of such member—

(i) until the balance of the fund aggregates not less than $150,000,000 (or such other amount as the Commission may determine in the public interest),

(ii) during any period when there is outstanding borrowing by SIPC pursuant to subsection (f) or subsection (g) of this section, and

(iii) whenever the balance of the fund (exclusive of confirmed lines of credit) is below $100,000,000 (or such other amount as the Commission may determine in the public interest).

(B) ¼ of 1 percent assessment

During any period during which—

(i) the balance of the fund (exclusive of confirmed lines of credit) aggregates less than $150,000,000 (or such other amount as the Commission has determined under paragraph (2)(B)), or

(ii) SIPC is required under paragraph (2)(B) to phase out of the fund all confirmed lines of credit,

SIPC shall endeavor to make assessments in such a manner that the aggregate assessments payable by its members during such period shall not be less than one-fourth of 1 per centum per annum of the aggregate gross revenues from the securities business for such members during such period.

(C) Minimum assessment

The minimum assessment imposed upon each member of SIPC shall be $25 per annum through the year ending December 31, 1979, and thereafter shall be the amount from time to time set by SIPC bylaw, but in no event shall the minimum assessment be greater than 0.02 percent of the gross revenues from the securities business of such member of SIPC.

(2) Lines of credit

(A) $50,000,000 limit after 1973

After December 31, 1973, confirmed lines of credit shall not constitute more than $50,000,000 of the balance of the fund.

(B) Phaseout requirement

When the balance of the fund aggregates $150,000,000 (or such other amount as the Commission may determine in the public interest) SIPC shall phase out of the fund all confirmed lines of credit.

(e) Prior trusts; overpayments and underpayments

(1) Prior trusts

There may be contributed and transferred at any time to SIPC any funds held by any trust

established by a self-regulatory organization prior to January 1, 1970, and the amounts so contributed and transferred shall be applied, as may be determined by SIPC with approval of the Commission, as a reduction in the amounts payable pursuant to assessments made or to be made by SIPC upon members of such self-regulatory organization pursuant to subsection (c)(2) of this section. No such reduction shall be made at any time when there is outstanding any borrowing by SIPC pursuant to subsection (g) of this section or any borrowings under confirmed lines of credit.

(2) Overpayments

To the extent that any payment by a member exceeds the maximum rate permitted by subsection (c) of this section, the excess shall be recoverable only against future payments by such member, except as otherwise provided by SIPC bylaw.

(3) Underpayments

If a member fails to pay when due all or any part of an assessment made upon such member, the unpaid portion thereof shall bear interest at such rate as may be determined by SIPC bylaw and, in addition to such interest, SIPC may impose such penalty charge as may be determined by SIPC bylaw. Any such penalty charge imposed upon a SIPC member shall not exceed 25 per centum of any unpaid portion of the assessment. SIPC may waive such penalty charge in whole or in part in circumstances where it considers such waiver appropriate.

(f) Borrowing authority

SIPC shall have the power to borrow moneys and to evidence such borrowed moneys by the issuance of bonds, notes, or other evidences of indebtedness, all upon such terms and conditions as the Board of Directors may determine in the case of a borrowing other than pursuant to subsection (g) of this section, or as may be prescribed by the Commission in the case of a borrowing pursuant to subsection (g) of this section. The interest payable on a borrowing pursuant to subsection (g) of this section shall be equal to the interest payable on the related notes or other obligations issued by the Commission to the Secretary of the Treasury. To secure the payment of the principal of, and interest and premium, if any, on, all bonds, notes, or other evidences of indebtedness so issued, SIPC may make agreements with respect to the amount of future assessments to be made upon members and may pledge all or any part of the assets of SIPC and of the assessments made or to be made upon members. Any such pledge of future assessments shall (subject to any prior pledge) be valid and binding from the time that it is made, and the assessments so pledged and thereafter received by SIPC, or any collection agent for SIPC, shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid and binding against all parties having claims of any kind against SIPC or such collection agent whether pursuant to this chapter, in tort, contract or otherwise, irrespective of whether such parties have notice thereof. During any period when a borrowing by SIPC pursuant to subsection (g) of this section is outstanding, no pledge of any assessment upon a member to secure any bonds, notes, or other evidences of indebtedness issued other than pursuant to subsection (g) of this section shall be effective as to the excess of the payments under the assessment on such member during any twelve-month period over one-fourth of 1 per centum of such member's gross revenues from the securities business for such period. Neither the instrument by which a pledge is authorized or created, nor any statement or other document relative thereto, need be filed or recorded in any State or other jurisdiction. The Commission may by rule or regulation provide for the filing of any instrument by which a pledge or borrowing is authorized or created, but the failure to make or any defect in any such filing shall not affect the validity of such pledge or borrowing.

(g) SEC loans to SIPC

In the event that the fund is or may reasonably appear to be insufficient for the purposes of this chapter, the Commission is authorized to make loans to SIPC. At the time of application for, and as a condition to, any such loan, SIPC shall file with the Commission a statement with respect to the anticipated use of the proceeds of the loan. If the Commission determines that such loan is necessary for the protection of customers of brokers or dealers and the maintenance of confidence in the United States securities markets and the SIPC has submitted a plan which provides as reasonable an

assurance of prompt repayment as may be feasible under the circumstances, then the Commission shall so certify to the Secretary of the Treasury, and issue notes or other obligations to the Secretary of the Treasury pursuant to subsection (h) of this section. If the Commission determines that the amount or time for payment of the assessments pursuant to such plan would not satisfactorily provide for the repayment of such loan, it may, by rules and regulations, impose upon the purchasers of equity securities in transactions on national securities exchanges and in the over-the-counter markets a transaction fee in such amount as at any time or from time to time it may determine to be appropriate, but not exceeding one-fiftieth of 1 per centum of the purchase price of the securities. No such fee shall be imposed on a transaction (as defined by rules or regulations of the Commission) of less than $5,000. For the purposes of the next preceding sentence, (1) the fee shall be based upon the total dollar amount of each purchase; (2) the fee shall not apply to any purchase on a national securities exchange or in an over-the-counter market by or for the account of a broker or dealer registered under section 78o(b) of this title unless such purchase is for an investment account of such broker or dealer (and for this purpose any transfer from a trading account to an investment account shall be deemed a purchase at fair market value); and (3) the Commission may, by rule, exempt any transaction in the over-the-counter markets or on any national securities exchange where necessary to provide for the assessment of fees on purchasers in transactions in such markets and exchanges on a comparable basis. Such fee shall be collected by the broker or dealer effecting the transaction for or with the purchaser, or by such other person as provided by the Commission by rule, and shall be paid to SIPC in the same manner as assessments imposed pursuant to subsection (c) of this section but without regard to the limits on such assessments, or in such other manner as the Commission may by rule provide.

(h) SEC notes issued to Treasury

To enable the Commission to make loans under subsection (g) of this section, the Commission is authorized to issue to the Secretary of the Treasury notes or other obligations in an aggregate amount of not to exceed $2,500,000,000, in such forms and denominations, bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury may reduce the interest rate if he determines such reduction to be in the national interest. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under that chapter are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

(i) Consolidated group

Except as otherwise provided by SIPC bylaw, gross revenues from the securities business of a member of SIPC shall be computed on a consolidated basis for such member and all its subsidiaries (other than the foreign subsidiaries of such member), and the operations of a member of SIPC shall include those of any business to which such member has succeeded.

(Pub. L. 91–598, §4, Dec. 30, 1970, 84 Stat. 1639; Pub. L. 95–283, §6, May 21, 1978, 92 Stat. 253; Pub. L. 111–203, title IX, §§929C, 929V(a), July 21, 2010, 124 Stat. 1852, 1868.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1), (4), (c)(3), (g), and (i)(1), was in the original "this Act", meaning Pub. L. 91–598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

CODIFICATION

In subsec. (h), "chapter 31 of title 31" and "that chapter" substituted for "the Second Liberty Bond Act, as

amended" and "that Act, as amended,", respectively, on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

2010—Subsec. (d)(1)(C). Pub. L. 111–203, §929V(a), substituted "0.02 percent of the gross revenues from the securities business of such member of SIPC" for "$150 per annum".

Subsec. (h). Pub. L. 111–203, §929C, substituted "$2,500,000,000" for "$1,000,000,000" in first sentence.

1978—Subsec. (a). Pub. L. 95–283, §6(a), in par. (2) substituted "Except as otherwise provided in this section, the" for "The", in par. (2)(C) inserted provisions for inapplicability to other lines of credit, and added par. (4).

Subsec. (c). Pub. L. 95–283, §6(b), in par. (2) struck out "or rule" after "bylaw", and in par. (3) struck out reference to section 78ccc(f) of this title in introductory text and "or rule" after "bylaw" in subpar. (B).

Subsec. (d)(1)(C). Pub. L. 95–283, §6(c), added subpar. (C).

Subsec. (e). Pub. L. 95–283, §6(d), in par. (2) substituted "be recoverable only against future payments by such member, except as otherwise provided by SIPC bylaw" for "not be recoverable except against future payments by such member in accordance with a bylaw or rule of SIPC", and in par. (3) substituted provisions authorizing interest and penalty charges to be imposed by SIPC bylaw and amount of penalty charge, for provisions authorizing interest to be imposed by SIPC bylaw or rule.

Subsec. (f). Pub. L. 95–283, §6(e), struck out "examining authority as" before "collection agent for SIPC, shall immediately be subject".

Subsec. (g). Pub. L. 95–283, §6(f), redesignated cls. (A) to (C) as (1) to (3), respectively, and, as so redesignated, in cl. (2) struck out applicability to a member of a national securities exchange and in cl. (3) substituted provisions relating to exemptions by rule of transactions in the over-the-counter market or on any national securities exchange, for provisions relating to exemptions by rules and regulations of transactions in the over-the-counter market, and inserted provisions authorizing the collection of fees by such other persons as designated by the Commission by rule for such purpose, and provisions relating to limits on manner of payment of fees.

Subsec. (i). Pub. L. 95–283, §6(g), substituted "Consolidated group" for " 'Gross revenues' defined" in heading, redesignated par. (2) as entire section and, as so redesignated, substituted provisions relating to computations by a member, for provisions relating to computations by a broker or dealer. Pars. (1) and (3), which generally defined term "gross revenues" and authorized the SIPC to define all other terms used in this subsec., respectively, were struck out.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

§78eee. Protection of customers

(a) Determination of need of protection

(1) Notice to SIPC

If the Commission or any self-regulatory organization is aware of facts which lead it to believe that any broker or dealer subject to its regulation is in or is approaching financial difficulty, it shall immediately notify SIPC, and, if such notification is by a self-regulatory organization, the Commission.

(2) Action by self-regulatory organization

If a self-regulatory organization has given notice to SIPC pursuant to subsection (a)(1) of this section with respect to a broker or dealer, and such broker or dealer undertakes to liquidate or reduce its business either pursuant to the direction of a self-regulatory organization or voluntarily, such self-regulatory organization may render such assistance or oversight to such broker or dealer as it considers appropriate to protect the interests of customers of such broker or dealer. The assistance or oversight by a self-regulatory organization shall not be deemed the assumption or

adoption by such self-regulatory organization of any obligation or liability to customers, other creditors, shareholders, or partners of the broker or dealer, and shall not prevent or act as a bar to any action by SIPC.

(3) Action by SIPC

(A) In general

SIPC may, upon notice to a member of SIPC, file an application for a protective decree with any court of competent jurisdiction specified in section 78u(e) or 78aa of this title, except that no such application shall be filed with respect to a member, the only customers of which are persons whose claims could not be satisfied by SIPC advances pursuant to section 78fff–3 of this title, if SIPC determines that—

(A) [1] the member (including any person who was a member within one hundred eighty days prior to such determination) has failed or is in danger of failing to meet its obligations to customers; and

(B) [2] one or more of the conditions specified in subsection (b)(1) of this section exist with respect to such member.

(B) Consent required

No member of SIPC that has a customer may enter into an insolvency, receivership, or bankruptcy proceeding, under Federal or State law, without the specific consent of SIPC, except as provided in title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act [12 U.S.C. 5381 et seq.].

(4) Effect of other pending actions

An application with respect to a member of SIPC filed with a court under paragraph (3)—

(A) may, with the consent of the Commission, be combined with any action brought by the Commission, including an action by the Commission for a temporary receiver pending an appointment of a trustee under subsection (b)(3) of this section; and

(B) may be filed notwithstanding the pendency in the same or any other court of any bankruptcy, mortgage foreclosure, or equity receivership proceeding or any proceeding to reorganize, conserve, or liquidate such member or its property, or any proceeding to enforce a lien against property of such member.

(b) Court action

(1) Issuance of protective decree

Upon receipt of an application by SIPC under subsection (a)(3) of this section, the court shall forthwith issue a protective decree if the debtor consents thereto, if the debtor fails to contest such application, or if the court finds that such debtor—

(A) is insolvent within the meaning of section 101 of title 11, or is unable to meet its obligations as they mature;

(B) is the subject of a proceeding pending in any court or before any agency of the United States or any State in which a receiver, trustee, or liquidator for such debtor has been appointed;

(C) is not in compliance with applicable requirements under the 1934 Act [15 U.S.C. 78a et seq.] or rules of the Commission or any self-regulatory organization with respect to financial responsibility or hypothecation of customers' securities; or

(D) is unable to make such computations as may be necessary to establish compliance with such financial responsibility or hypothecation rules.

Unless the debtor consents to the issuance of a protective decree, the application shall be heard three business days after the date on which it is filed, or at such other time as the court shall determine, taking into consideration the urgency which the circumstances require.

(2) Jurisdiction and powers of court

(A) Exclusive jurisdiction

Upon the filing of an application with a court for a protective decree with respect to a debtor, such court—

(i) shall have exclusive jurisdiction of such debtor and its property wherever located (including property located outside the territorial limits of such court and property held by any other person as security for a debt or subject to a lien);

(ii) shall have exclusive jurisdiction of any suit against the trustee with respect to a liquidation proceeding; and

(iii) except as inconsistent with the provisions of this chapter, shall have the jurisdiction, powers, and duties conferred upon a court of the United States having jurisdiction over cases under title 11, together with such other jurisdiction, powers, and duties as are prescribed by this chapter.

(B) Stay of pending actions

Pending the issuance of a protective decree under paragraph (1), the court with which an application has been filed—

(i) shall stay any pending bankruptcy, mortgage foreclosure, equity receivership, or other proceeding to reorganize, conserve, or liquidate the debtor or its property and any other suit against any receiver, conservator, or trustee of the debtor or its property, and shall continue such stay upon appointment of a trustee pursuant to paragraph (3);

(ii) may stay any proceeding to enforce a lien against property of the debtor or any other suit against the debtor, including a suit by stockholders of the debtor which interferes with prosecution by the trustee of claims against former directors, officers, or employees of the debtor, and may continue such stay upon appointment of a trustee pursuant to paragraph (3);

(iii) may stay enforcement of, and upon appointment of a trustee pursuant to paragraph (3), may continue the stay for such period of time as may be appropriate, but shall not abrogate any right of setoff, except to the extent such right may be affected under section 553 of title 11, and shall not abrogate the right to enforce a valid, nonpreferential lien or pledge against the property of the debtor; and

(iv) may appoint a temporary receiver.

(C) Exception from stay

(i) Notwithstanding section 362 of title 11, neither the filing of an application under subsection (a)(3) of this section nor any order or decree obtained by SIPC from the court shall operate as a stay of any contractual rights of a creditor to liquidate, terminate, or accelerate a securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, or master netting agreement, as those terms are defined in sections 101, 741, and 761 of title 11, to offset or net termination values, payment amounts, or other transfer obligations arising under or in connection with one or more of such contracts or agreements, or to foreclose on any cash collateral pledged by the debtor, whether or not with respect to one or more of such contracts or agreements.

(ii) Notwithstanding clause (i), such application, order, or decree may operate as a stay of the foreclosure on, or disposition of, securities collateral pledged by the debtor, whether or not with respect to one or more of such contracts or agreements, securities sold by the debtor under a repurchase agreement, or securities lent under a securities lending agreement.

(iii) As used in this subparagraph, the term "contractual right" includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act [7 U.S.C. 1 et seq.]), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act), or in a resolution of the governing board thereof, and a right, whether or not in writing, arising under common law, under law merchant, or by reason of normal business practice.

(3) Appointment of trustee and attorney

If the court issues a protective decree under paragraph (1), such court shall forthwith appoint, as trustee for the liquidation of the business of the debtor and as attorney for the trustee, such persons as SIPC, in its sole discretion, specifies. The persons appointed as trustee and as attorney for the trustee may be associated with the same firm. SIPC may, in its sole discretion, specify itself or one of its employees as trustee in any case in which SIPC has determined that the liabilities of the debtor to unsecured general creditors and to subordinated lenders appear to aggregate less than $750,000 and that there appear to be fewer than five hundred customers of such debtor. No person may be appointed to serve as trustee or attorney for the trustee if such person is not disinterested within the meaning of paragraph (6), except that for any specified purpose other than to represent a trustee in conducting a liquidation proceeding, the trustee may, with the approval of SIPC and the court, employ an attorney who is not disinterested. A trustee appointed under this paragraph shall qualify by filing a bond in the manner prescribed by section 322 of title 11, except that neither SIPC nor any employee of SIPC shall be required to file a bond when appointed as trustee.

(4) Removal to bankruptcy court

Upon the issuance of a protective decree and appointment of a trustee, or a trustee and counsel, under this section, the court shall forthwith order the removal of the entire liquidation proceeding to the court of the United States in the same judicial district having jurisdiction over cases under title 11. The latter court shall thereupon have all of the jurisdiction, powers, and duties conferred by this chapter upon the court to which application for the issuance of the protective decree was made.

(5) Compensation for services and reimbursement of expenses

(A) Allowances in general

The court shall grant reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred (hereinafter in this paragraph referred to as "allowances") by a trustee, and by the attorney for such a trustee, in connection with a liquidation proceeding. No allowances (other than reimbursement for proper costs and expenses incurred) shall be granted to SIPC or any employee of SIPC for serving as trustee. Allowances may be granted on an interim basis during the course of the liquidation proceeding at such times and in such amounts as the court considers appropriate.

(B) Application for allowances

Any person seeking allowances shall file with the court an application which complies in form and content with the provisions of title 11 governing applications for allowances under such title. A copy of such application shall be served upon SIPC when filed. The court shall fix a time for a hearing on such application, and notice of such hearing shall be given to the applicant, the trustee, the debtor, the creditors, SIPC, and such other persons as the court may designate, except that notice need not be given to customers whose claims have been or will be satisfied in full or to creditors who cannot reasonably be expected to receive any distribution during the course of the liquidation proceeding.

(C) Recommendations of SIPC and awarding of allowances

Whenever an application for allowances is filed pursuant to subparagraph (B), SIPC shall file its recommendation with respect to such allowances with the court prior to the hearing on such application and shall, if it so requests, be allowed a reasonable time after such hearing within which to file a further recommendation. In any case in which such allowances are to be paid by SIPC without reasonable expectation of recoupment thereof as provided in this chapter and there is no difference between the amounts requested and the amounts recommended by SIPC, the court shall award the amounts recommended by SIPC. In determining the amount of allowances in all other cases, the court shall give due consideration to the nature, extent, and value of the services rendered, and shall place considerable reliance on the recommendation of SIPC.

(D) Applicable restrictions

The restrictions on sharing of compensation set forth in section 504 of title 11 shall apply to allowances.

(E) Charge against estate

Allowances granted by the court, including interim allowances, shall be charged against the general estate of the debtor as a cost and expense of administration. If the general estate is insufficient to pay allowances in whole or in part, SIPC shall advance such funds as are necessary for such payment.

(6) Disinterestedness

(A) Standards

For purposes of paragraph (3), a person shall not be deemed disinterested if—

(i) such person is a creditor (including a customer), stockholder, or partner of the debtor;

(ii) such person is or was an underwriter of any of the outstanding securities of the debtor or within five years prior to the filing date was the underwriter of any securities of the debtor;

(iii) such person is, or was within two years prior to the filing date, a director, partner, officer, or employee of the debtor or such an underwriter, or an attorney for the debtor or such an underwriter; or

(iv) it appears that such person has, by reason of any other direct or indirect relationship to, connection with, or interest in the debtor or such an underwriter, or for any other reason, an interest materially adverse to the interests of any class of creditors (including customers) or stockholders,

except that SIPC shall in all cases be deemed disinterested, and an employee of SIPC shall be deemed disinterested if such employee would, except for his association with SIPC, meet the standards set forth in this subparagraph.

(B) Hearing

The court shall fix a time for a hearing on disinterestedness, to be held promptly after the appointment of a trustee. Notice of such hearing shall be mailed at least ten days prior thereto to each person who, from the books and records of the debtor, appears to have been a customer of the debtor with an open account within the past twelve months, to the address of such person as it appears from the books and records of the debtor, and to the creditors and stockholders of the debtor, to SIPC, and to such other persons as the court may designate. The court may, in its discretion, also require that notice be given by publication in such newspaper or newspapers of general circulation as it may designate. At such hearing, at any adjournment thereof, or upon application, the court shall hear objections to the retention in office of a trustee or attorney for a trustee on the grounds that such person is not disinterested.

(c) SEC participation in proceedings

The Commission may, on its own motion, file notice of its appearance in any proceeding under this chapter and may thereafter participate as a party.

(d) SIPC participation

SIPC shall be deemed to be a party in interest as to all matters arising in a liquidation proceeding, with the right to be heard on all such matters, and shall be deemed to have intervened with respect to all such matters with the same force and effect as if a petition for such purpose had been allowed by the court.

(Pub. L. 91–598, §5, Dec. 30, 1970, 84 Stat. 1644; Pub. L. 95–283, §7, May 21, 1978, 92 Stat. 254; Pub. L. 95–598, title III, §308(a)–(f), Nov. 6, 1978, 92 Stat. 2674; Pub. L. 109–8, title IX, §911, Apr. 20, 2005, 119 Stat. 185; Pub. L. 109–390, §5(c), Dec. 12, 2006, 120 Stat. 2698; Pub. L. 111–203, title IX, §929H(b), July 21, 2010, 124 Stat. 1857.)

REFERENCES IN TEXT

The Dodd-Frank Wall Street Reform and Consumer Protection Act, referred to in subsec. (a)(3)(B), is Pub.

L. 111–203, July 21, 2010, 124 Stat. 1376. Title II of the Act is classified principally to subchapter II (§5381 et seq.) of chapter 53 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 12 and Tables.

The 1934 Act, referred to in subsec. (b)(1)(C), means act June 6, 1934, ch. 404, 48 Stat. 881, known as the Securities Exchange Act of 1934, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

This chapter, referred to in subsecs. (b)(2)(A)(iii), (5)(C), and (c), was in the original "this Act", meaning Pub. L. 91–598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

The Commodity Exchange Act, referred to in subsec. (b)(2)(C)(iii), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

The Federal Deposit Insurance Corporation Improvement Act of 1991, referred to in subsec. (b)(2)(C)(iii), is Pub. L. 102–242, Dec. 19, 1991, 105 Stat. 2236. For complete classification of this Act to the Code, see Short Title of 1991 Amendment note set out under section 1811 of Title 12, Banks and Banking, and Tables.

AMENDMENTS

2010—Subsec. (a)(3). Pub. L. 111–203 designated existing provisions as subpar. (A) relating to general rule, inserted heading, substituted "SIPC may, upon notice to a member of SIPC, file an application for a protective decree with any court of competent jurisdiction specified in section 78u(e) or 78aa of this title, except that no such application shall be filed with respect to a member, the only customers of which are persons whose claims could not be satisfied by SIPC advances pursuant to section 78fff–3 of this title, if SIPC determines that—" for "If SIPC determines that—", in subpar. (A) relating to failure to meet obligations, substituted "the member" for "any member of SIPC", in subpar. (B) relating to conditions, substituted period for comma at end, added subpar. (B) relating to consent requirement, and struck out concluding provisions which read as follows: "SIPC may, upon notice to such member, file an application for a protective decree with any court of competent jurisdiction specified in section 78u(e) or 78aa of this title, except that no such application shall be filed with respect to a member the only customers of which are persons whose claims could not be satisfied by SIPC advances pursuant to section 78fff–3 of this title."

2006—Subsec. (b)(2)(C)(iii). Pub. L. 109–390 inserted "a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991)," after "rule or bylaw of" and substituted "a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act)," for "or a securities clearing agency, a right set forth in a bylaw of a clearing organization or contract market".

2005—Subsec. (b)(2)(C). Pub. L. 109–8 added subpar. (C).

1978—Subsec. (a). Pub. L. 95–283, §7(a), added par. (2), redesignated former par. (2) as (3) and, as so redesignated, revised format of provisions by setting out cls. (A) and (B) and inserted provisions relating to any person who was a member within 180 days prior to such determination and provisions relating to claims filed under section 78fff–3 of this title, and redesignated former par. (3) as (4) and, as so redesignated, substituted "with respect to a member of SIPC filed with a court under paragraph (3)" for "under paragraph (2)" in introductory text and inserted "may," before "with the" in cl. (A).

Subsec. (b)(1)(A). Pub. L. 95–598, §308(a)(1), substituted "section 101 of title 11" for "the Bankruptcy Act".

Subsec. (b)(1)(B) to (E). Pub. L. 95–598, §308(a)(2), (3), redesignated subpars. (C) to (E) as subpars. (B) to (D), respectively. Former subpar. (B), which provided for issuance of protective decree where court found that debtor had committed act of bankruptcy within meaning of Bankruptcy Act, was struck out.

Subsec. (b)(2)(A)(iii). Pub. L. 95–598, §308(b), substituted "the United States having jurisdiction over cases under title 11" for "bankruptcy by the Bankruptcy Act".

Subsec. (b)(2)(B)(iii). Pub. L. 95–598, §308(c), substituted "any right of setoff, except to the extent such right may be affected under section 553 of title 11, and shall not abrogate" for "the right of setoff provided in section 68 of the Bankruptcy Act".

Subsec. (b)(3). Pub. L. 95–598, §308(d), substituted "section 322 of title 11" for "the applicable provisions of the Bankruptcy Act".

Subsec. (b)(4). Pub. L. 95–598, §308(e), substituted provisions relating to removal of proceeding to Bankruptcy Court for provisions relating to reference of proceeding to referee in bankruptcy.

Subsec. (b)(5)(B). Pub. L. 95–598, §308(f)(1), (2), (5), redesignated subpar. (C) as (B) and substituted "title 11 governing applications for allowances under such title" for "the Bankruptcy Act governing applications for

allowances under such Act". Former subpar. (B), which covered allowances to a referee in bankruptcy or special master, was struck out.

Subsec. (b)(5)(C). Pub. L. 95–598, §308(f)(2), (3), (5), redesignated subpar. (D) as (C) and substituted "subparagraph (B)" for "subparagraph (C)". Former subpar. (C) redesignated (B).

Subsec. (b)(5)(D). Pub. L. 95–598, §308(f)(2), (4), (5), redesignated subpar. (E) as (D) and substituted "Section 504 of title 11" for "the Bankruptcy Act". Former subpar. (D) redesignated (C).

Subsec. (b)(5)(E), (F). Pub. L. 95–598, §308(f)(5), redesignated subpar. (F) as (E). Former subpar. (E) redesignated (D).

Subsec. (b). Pub. L. 95–283, §7(b), in par. (1) inserted "protective" after "of" in heading and substituted provisions relating to issuance of protective decrees, for provisions relating to specific findings necessary for issuance of a decree and uncontested, etc., applications, in par. (2) substituted "Jurisdiction and powers of court" for "Exclusive jurisdiction over debtor" in heading and substituted provisions setting forth jurisdiction and powers of court with respect to exclusivity of such jurisdiction, for provisions relating to exclusive jurisdiction over the debtor, in par. (3) inserted "and attorney" after "trustee" in heading and substituted provisions relating to appointment of trustee and attorney, for provisions relating to appointment of trustee, in par. (4) substituted "Reference to referee in bankruptcy" for "Debtor and filing date defined" in heading and substituted provisions relating to reference to referee in bankruptcy, for provisions defining terms "debtor" and "filing date", and added pars. (5) and (6).

Subsec. (d). Pub. L. 95–283, §7(c), added subsec. (d).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–390 not applicable to any cases commenced under Title 11, Bankruptcy, or to appointments made under any Federal or State law, before Dec. 12, 2006, see section 7 of Pub. L. 109–390, set out as a note under section 101 of Title 11.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of Title 11.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

[1] So in original. Probably should be "(i)".

[2] So in original. Probably should be "(ii)".

§78fff. General provisions of a liquidation proceeding

(a) Purposes

The purposes of a liquidation proceeding under this chapter shall be—

(1) as promptly as possible after the appointment of a trustee in such liquidation proceeding, and in accordance with the provisions of this chapter—

(A) to deliver customer name securities to or on behalf of the customers of the debtor entitled thereto as provided in section 78fff–2(c)(2) of this title; and

(B) to distribute customer property and (in advance thereof or concurrently therewith) otherwise satisfy net equity claims of customers to the extent provided in this section;

(2) to sell or transfer offices and other productive units of the business of the debtor;

(3) to enforce rights of subrogation as provided in this chapter; and

(4) to liquidate the business of the debtor.

(b) Application of title 11

To the extent consistent with the provisions of this chapter, a liquidation proceeding shall be conducted in accordance with, and as though it were being conducted under chapters 1, 3, and 5 and subchapters I and II of chapter 7 of title 11. For the purposes of applying such title in carrying out this section, a reference in such title to the date of the filing of the petition shall be deemed to be a reference to the filing date under this chapter.

(c) Determination of customer status

In a liquidation proceeding under this chapter, whenever a person has acted with respect to cash or securities with the debtor after the filing date and in a manner which would have given him the status of a customer with respect to such cash or securities had the action occurred prior to the filing date, and the trustee is satisfied that such action was taken by the customer in good faith and prior to the appointment of the trustee, the date on which such action was taken shall be deemed to be the filing date for purposes of determining the net equity of such customer with respect to such cash or securities.

(d) Apportionment

In a liquidation proceeding under this chapter, any cash or securities remaining after the liquidation of a lien or pledge made by a debtor shall be apportioned between his general estate and customer property in the proportion in which the general property of the debtor and the cash and securities of the customers of such debtor contributed to such lien or pledge. Securities apportioned to the general estate under this subsection shall be subject to the provisions of section 78lll(5)(A) of this title.

(e) Costs and expenses of administration

All costs and expenses of administration of the estate of the debtor and of the liquidation proceeding shall be borne by the general estate of the debtor to the extent it is sufficient therefor, and the priorities of distribution from the general estate shall be as provided in section 726 of title 11. Costs and expenses of administration shall include payments pursuant to section 78fff–2(e) of this title and section 78fff–3(c)(1) of this title (to the extent such payments recovered securities which were apportioned to the general estate pursuant to subsection (d) of this section) and costs and expenses of SIPC employees utilized by the trustee pursuant to section 78fff–1(a)(2) of this title. All funds advanced by SIPC to a trustee for such costs and expenses of administration shall be recouped from the general estate under section 507(a)(2) of title 11.

(Pub. L. 91–598, §6, Dec. 30, 1970, 84 Stat. 1646; Pub. L. 95–283, §8, May 21, 1978, 92 Stat. 259; Pub. L. 95–598, title III, §308(g), (h), Nov. 6, 1978, 92 Stat. 2675; Pub. L. 109–8, title XV, §1502(b), Apr. 20, 2005, 119 Stat. 217.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1), (3), (b), (c), and (d), was in the original "this Act", meaning Pub. L. 91–598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2005—Subsec. (e). Pub. L. 109–8 substituted "507(a)(2)" for "507(a)(1)".

1978—Pub. L. 95–283 substituted "General provisions of a liquidation proceeding" for "Liquidation proceedings" in section catchline.

Subsec. (a). Pub. L. 95–283 in heading substituted "Purposes" for "General purposes of liquidation proceeding", in introductory text substituted provisions relating to purposes of liquidation proceedings under this chapter, for provisions relating to purposes of any proceeding in which a trustee has been appointed under section 78eee(b)(3) of this title, in par. (1) substituted provisions requiring execution of authorities to deliver customer name securities and distribute customer property in accordance with this chapter, for provisions requiring execution of authorities to return specifically identifiable property and distribute the single and separate fund in accordance with this section, and in par. (2) substituted provisions authorizing sale, etc., of productive units of the debtor, for provisions authorizing operation of the business of the debtor.

Subsec. (b). Pub. L. 95–598, §308(g), in heading substituted "title 11" for "Bankruptcy Act" and in text "under chapters 1, 3, and 5 and subchapters I and II of chapter 7 of title 11. For the purposes of applying such title in carrying out this section, a reference in such title to the date of the filing of the petition shall be deemed to be a reference to the filing date under this chapter." for "under, the Bankruptcy Act. For purposes of applying the Bankruptcy Act to this chapter, any reference in the Bankruptcy Act to the date of commencement of proceedings under the Bankruptcy Act shall be deemed to be a reference to the filing date under this chapter."

Pub. L. 95–283 in heading substituted "Application of Bankruptcy Act" for "Powers and Duties of Trustee", and in text substituted provisions relating to applicability of Bankruptcy Act to liquidation proceedings, for provisions relating to the powers and duties of trustees. See section 78fff–1 of this title.

Subsec. (c). Pub. L. 95–283 in heading substituted "Determination of customer status" for "Application of Bankruptcy Act", and in text substituted provisions relating to determination of status of a customer with respect to cash or securities, for provisions setting forth general and special provisions of the Bankruptcy Act applicable to liquidation proceedings, and defining terms for purposes of such applicability and the provisions of this section. See subsec. (b) of this section and section 78fff–2(c) of this title.

Subsec. (d). Pub. L. 95–283 in heading substituted "Apportionment" for "Completion of open contractual commitments", and in text substituted provisions relating to apportionment of cash or securities remaining after the liquidation of a lien or pledge made by a debtor, for provisions relating to completion by the trustee of open contractual commitments, which were made in the ordinary course of the debtor's business and which were outstanding on the filing date. See section 78fff–2(e) of this title.

Subsec. (e). Pub. L. 95–598, §308(h), substituted in first sentence "section 726 of title 11" for "the Bankruptcy Act" and in last sentence "under section 507(a)(1) of title 11" for "as a first priority under the Bankruptcy Act".

Pub. L. 95–283 in heading substituted "Costs and expense of administration" for "Notice", and in text substituted provisions relating to costs and expenses of administration of the estate of the debtor and of the liquidation proceeding, for provisions relating to notice requirements for the trustee subsequent to appointment as trustee. See section 78fff–2(a)(l) of this title.

Subsec. (f). Pub. L. 95–283 struck out subsec. (f) requiring advances by the SIPC to the trustee for customers' claims and completion of open contractual commitments, and authorizing discretionary advances to the trustee for compensation of personnel deemed necessary for the liquidation proceeding. See section 78fff–3 of this title.

Subsec. (g). Pub. L. 95–283 struck out subsec. (g) setting forth provisions relating to payments to customers by the trustee, and provisions respecting the quantum of proof of claim required for such payment. See section 78fff–2(a)(2) and (b) of this title.

Subsec. (h). Pub. L. 95–283 struck out subsec. (h) relating to nonapplicability of provisions to proof of claim by associates and others connected in some way with the debtor. See section 78fff–2(a)(2) of this title.

Subsec. (i). Pub. L. 95–283 struck out subsec. (i) setting forth provisions relating to reports by the trustee to the court. See section 78fff–1(c) of this title.

Subsec. (j). Pub. L. 95–283 struck out subsec. (j) which related to nonapplicability of provisions to rights of persons to establish by formal proof such claims as they may have to payment or delivery of specific securities. See section 78fff–2(a)(4) of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of Title 11.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§78fff–1. Powers and duties of a trustee

(a) Trustee powers

A trustee shall be vested with the same powers and title with respect to the debtor and the property of the debtor, including the same rights to avoid preferences, as a trustee in a case under title 11. In addition, a trustee may, with the approval of SIPC but without any need for court approval—

(1) hire and fix the compensation of all personnel (including officers and employees of the debtor and of its examining authority) and other persons (including accountants) that are deemed by the trustee necessary for all or any purposes of the liquidation proceeding;

(2) utilize SIPC employees for all or any purposes of a liquidation proceeding; and

(3) margin and maintain customer accounts of the debtor for the purposes of section 78fff–2(f) of this title.

(b) Trustee duties

To the extent consistent with the provisions of this chapter or as otherwise ordered by the court, a trustee shall be subject to the same duties as a trustee in a case under chapter 7 of title 11, including, if the debtor is a commodity broker, as defined under section 101 of such title, the duties specified in subchapter IV of such chapter 7, except that a trustee may, but shall have no duty to, reduce to money any securities constituting customer property or in the general estate of the debtor. In addition, the trustee shall—

(1) deliver securities to or on behalf of customers to the maximum extent practicable in satisfaction of customer claims for securities of the same class and series of an issuer; and

(2) subject to the prior approval of SIPC but without any need for court approval, pay or guarantee all or any part of the indebtedness of the debtor to a bank, lender, or other person if the trustee determines that the aggregate market value of securities to be made available to the trustee upon the payment or guarantee of such indebtedness does not appear to be less than the total amount of such payment or guarantee.

(c) Reports by trustee to court

The trustee shall make to the court and to SIPC such written reports as may be required of a trustee in a case under chapter 7 of title 11, and shall include in such reports information with respect to the progress made in distributing cash and securities to customers. Such reports shall be in such form and detail as the Commission determines by rule to present fairly the results of the liquidation proceeding as of the date of or for the period covered by such reports, having due regard for the requirements of section 78q of this title and the rules prescribed under such section and the magnitude of items and transactions involved in connection with the operations of a broker or dealer.

(d) Investigations

The trustee shall—

(1) as soon as practicable, investigate the acts, conduct, property, liabilities, and financial condition of the debtor, the operation of its business, and any other matter, to the extent relevant to the liquidation proceeding, and report thereon to the court;

(2) examine, by deposition or otherwise, the directors and officers of the debtor and any other witnesses concerning any of the matters referred to in paragraph (1);

(3) report to the court any facts ascertained by the trustee with respect to fraud, misconduct, mismanagement, and irregularities, and to any causes of action available to the estate; and

(4) as soon as practicable, prepare and submit, to SIPC and such other persons as the court designates and in such form and manner as the court directs, a statement of his investigation of matters referred to in paragraph (1).

(Pub. L. 91–598, §7, as added Pub. L. 95–283, §9, May 21, 1978, 92 Stat. 260; amended Pub. L. 95–598, title III, §308(i)–(k), Nov. 6, 1978, 92 Stat. 2675.)

PRIOR PROVISIONS

A prior section 7 of Pub. L. 91–598 was renumbered section 11 and is classified to section 78ggg of this title.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–598, §308(i), substituted "trustee in a case under title 11" for "trustee in bankruptcy under the Bankruptcy Act has with respect to a bankrupt and the property of a bankrupt".

Subsec. (b). Pub. L. 95–598, §308(j), substituted "trustee in a case under chapter 7 of title 11, including, if the debtor is a commodity broker, as defined under section 101 of such title, the duties specified in subchapter

IV of such chapter 7," for "trustee in bankruptcy".

Subsec. (c). Pub. L. 95–598, §308(k), substituted "required of a trustee in a case under chapter 7 of title 11" for "required by the Bankruptcy Act".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§78fff–2. Special provisions of a liquidation proceeding

(a) Notice and claims

(1) Notice of proceedings

Promptly after the appointment of the trustee, such trustee shall cause notice of the commencement of proceedings under this section to be published in one or more newspapers of general circulation in the form and manner determined by the court, and at the same time shall cause a copy of such notice to be mailed to each person who, from the books and records of the debtor, appears to have been a customer of the debtor with an open account within the past twelve months, to the address of such person as it appears from the books and records of the debtor. Notice to creditors other than customers shall be given in the manner prescribed by title 11, except that such notice shall be given by the trustee.

(2) Statement of claim

A customer shall file with the trustee a written statement of claim but need not file a formal proof of claim, except that no obligation of the debtor to any person associated with the debtor within the meaning of section 78c(a)(18) of this title or section 78c(a)(21) of this title, any beneficial owner of 5 per centum or more of the voting stock of the debtor, or any member of the immediate family of any such person or owner may be satisfied without formal proof of claim.

(3) Time limitations

No claim of a customer or other creditor of the debtor which is received by the trustee after the expiration of the six-month period beginning on the date of publication of notice under paragraph (1) shall be allowed, except that the court may, upon application within such period and for cause shown, grant a reasonable, fixed extension of time for the filing of a claim by the United States, by a State or political subdivision thereof, or by an infant or incompetent person without a guardian. Any claim of a customer for net equity which is received by the trustee after the expiration of such period of time as may be fixed by the court (not exceeding sixty days after the date of publication of notice under paragraph (1)) need not be paid or satisfied in whole or in part out of customer property, and, to the extent such claim is satisfied from moneys advanced by SIPC, it shall be satisfied in cash or securities (or both) as the trustee determines is most economical to the estate.

(4) Effect on claims

Except as otherwise provided in this section, and without limiting the powers and duties of the trustee to discharge obligations promptly as specified in this section, nothing in this section shall limit the right of any person, including any subrogee, to establish by formal proof or otherwise as the court may provide such claims as such person may have against the debtor, including claims for the payment of money and the delivery of specific securities, without resort to moneys advanced by SIPC to the trustee.

(b) Payments to customers

After receipt of a written statement of claim pursuant to subsection (a)(2), of this section, the trustee shall promptly discharge, in accordance with the provisions of this section, all obligations of the debtor to a customer relating to, or net equity claims based upon, securities or cash, by the delivery of securities or the making of payments to or for the account of such customer (subject to the provisions of subsection (d) of this section and section 78fff–3(a) of this title) insofar as such

obligations are ascertainable from the books and records of the debtor or are otherwise established to the satisfaction of the trustee. For purposes of distributing securities to customers, all securities shall be valued as of the close of business on the filing date. For purposes of this subsection, the court shall, among other things—

(1) with respect to net equity claims, authorize the trustee to satisfy claims out of moneys made available to the trustee by SIPC notwithstanding the fact that there has not been any showing or determination that there are sufficient funds of the debtor available to satisfy such claims; and

(2) with respect to claims relating to, or net equities based upon, securities of a class and series of an issuer which are ascertainable from the books and records of the debtor or are otherwise established to the satisfaction of the trustee, authorize the trustee to deliver securities of such class and series if and to the extent available to satisfy such claims in whole or in part, with partial deliveries to be made pro rata to the greatest extent considered practicable by the trustee.

Any payment or delivery of property pursuant to this subsection may be conditioned upon the trustee requiring claimants to execute, in a form to be determined by the trustee, appropriate receipts, supporting affidavits, releases, and assignments, but shall be without prejudice to any right of a claimant to file formal proof of claim within the period specified in subsection (a)(3) of this section for any balance of securities or cash to which such claimant considers himself entitled.

(c) Customer related property

(1) Allocation of customer property

The trustee shall allocate customer property of the debtor as follows:

(A) first, to SIPC in repayment of advances made by SIPC pursuant to section 78fff–3(c)(1) of this title, to the extent such advances recovered securities which were apportioned to customer property pursuant to section 78fff(d) of this title;

(B) second, to customers of such debtor, who shall share ratably in such customer property on the basis and to the extent of their respective net equities;

(C) third, to SIPC as subrogee for the claims of customers;

(D) fourth, to SIPC in repayment of advances made by SIPC pursuant to section 78fff–3(c)(2) of this title.

Any customer property remaining after allocation in accordance with this paragraph shall become part of the general estate of the debtor. To the extent customer property and SIPC advances pursuant to section 78fff–3(a) of this title are not sufficient to pay or otherwise satisfy in full the net equity claims of customers, such customers shall be entitled, to the extent only of their respective unsatisfied net equities, to participate in the general estate as unsecured creditors. For purposes of allocating customer property under this paragraph, securities to be delivered in payment of net equity claims for securities of the same class and series of an issuer shall be valued as of the close of business on the filing date.

(2) Delivery of customer name securities

The trustee shall deliver customer name securities to or on behalf of a customer of the debtor entitled thereto if the customer is not indebted to the debtor. If the customer is so indebted, such customer may, with the approval of the trustee, reclaim customer name securities upon payment to the trustee, within such period of time as the trustee determines, of all indebtedness of such customer to the debtor.

(3) Recovery of transfers

Whenever customer property is not sufficient to pay in full the claims set forth in subparagraphs (A) through (D) of paragraph (1), the trustee may recover any property transferred by the debtor which, except for such transfer, would have been customer property if and to the extent that such transfer is voidable or void under the provisions of title 11. Such recovered property shall be treated as customer property. For purposes of such recovery, the property so transferred shall be deemed to have been the property of the debtor and, if such transfer was made to a customer or for

his benefit, such customer shall be deemed to have been a creditor, the laws of any State to the contrary notwithstanding.

(d) Purchase of securities

The trustee shall, to the extent that securities can be purchased in a fair and orderly market, purchase securities as necessary for the delivery of securities to customers in satisfaction of their claims for net equities based on securities under section 78fff–1(b)(1) of this title and for the transfer of customer accounts under subsection (f) of this section, in order to restore the accounts of such customers as of the filing date. To the extent consistent with subsection (c) of this section, customer property and moneys advanced by SIPC may be used by the trustee to pay for securities so purchased. Moneys advanced by SIPC for each account of a separate customer may not be used to purchase securities to the extent that the aggregate value of such securities on the filing date exceeded the amount permitted to be advanced by SIPC under the provisions of section 78fff–3(a) of this title.

(e) Closeouts

(1) In general

Any contract of the debtor for the purchase or sale of securities in the ordinary course of its business with other brokers or dealers which is wholly executory on the filing date shall not be completed by the trustee, except to the extent permitted by SIPC rule. Upon the adoption by SIPC of rules with respect to the closeout of such a contract but prior to the adoption of rules with respect to the completion of such a contract, the other broker or dealer shall close out such contract, without unnecessary delay, in the best available market and pursuant to such SIPC rules. Until such time as SIPC adopts rules with respect to the completion or closeout of such a contract, such a contract shall be closed out in accordance with Commission Rule S6(d)–1 as in effect on May 21, 1978, or any comparable rule of the Commission subsequently adopted, to the extent not inconsistent with the provisions of this subsection.

(2) Net profit or loss

A broker or dealer shall net all profits and losses on all contracts closed out under this subsection and—

(A) if such broker or dealer shows a net profit on such contracts, he shall pay such net profit to the trustee; and

(B) if such broker or dealer sustains a net loss on such contracts, he shall be entitled to file a claim against the debtor with the trustee in the amount of such net loss.

To the extent that a net loss sustained by a broker or dealer arises from contracts pursuant to which such broker or dealer was acting for its own customer, such broker or dealer shall be entitled to receive funds advanced by SIPC to the trustee in the amount of such loss, except that such broker or dealer may not receive more than $40,000 for each separate customer with respect to whom it sustained a loss. With respect to a net loss which is not payable under the preceding sentence from funds advanced by SIPC, the broker or dealer shall be entitled to participate in the general estate as an unsecured creditor.

(3) Registered clearing agencies

Neither a registered clearing agency which by its rules has an established procedure for the closeout of open contracts between an insolvent broker or dealer and its participants, nor its participants to the extent such participants' claims are or may be processed within the registered clearing agency, shall be entitled to receive SIPC funds in payment of any losses on such contracts, except as SIPC may otherwise provide by rule. If such registered clearing agency or its participants sustain a net loss on the closeout of such contracts with the debtor, they shall have the right to participate in the general estate as unsecured creditors to the extent of such loss. Any funds or other property owed to the debtor, after the closeout of such contracts, shall be promptly paid to the trustee. Rules adopted by SIPC under this paragraph shall provide that in no case may a

registered clearing agency or its participants, to the extent such participants' claims are or may be processed within the registered clearing agency, be entitled to receive funds advanced by SIPC in an amount greater, in the aggregate, than could be received by the participants if such participants proceeded individually under paragraph (1) and (2).

(4) "Customer" defined

For purposes of this subsection, the term "customer" does not include any person who—

(A) is a broker or dealer;

(B) had a claim for cash or securities which by contract, agreement, or understanding, or by operation of law, was part of the capital of the claiming broker or dealer or was subordinated to the claims of any or all creditors of such broker or dealer; or

(C) had a relationship of the kind specified in section 78fff–3(a)(5) of this title with the debtor.

A claiming broker or dealer shall be deemed to have been acting on behalf of its customer if it acted as agent for such customer or if it held such customer's order which was to be executed as a part of its contract with the debtor.

(f) Transfer of customer accounts

In order to facilitate the prompt satisfaction of customer claims and the orderly liquidation of the debtor, the trustee may, pursuant to terms satisfactory to him and subject to the prior approval of SIPC, sell or otherwise transfer to another member of SIPC, without consent of any customer, all or any part of the account of a customer of the debtor. In connection with any such sale or transfer to another member of SIPC and subject to the prior approval of SIPC, the trustee may—

(1) waive or modify the need to file a written statement of claim pursuant to subsection (a)(2) of this section; and

(2) enter into such agreements as the trustee considers appropriate under the circumstances to indemnify any such member of SIPC against shortages of cash or securities in the customer accounts sold or transferred.

The funds of SIPC may be made available to guarantee or secure any indemnification under paragraph (2). The prior approval of SIPC to such indemnification shall be conditioned, among such other standards as SIPC may determine, upon a determination by SIPC that the probable cost of any such indemnification can reasonably be expected not to exceed the cost to SIPC of proceeding under section 78fff–3(a) of this title and section 78fff–3(b) of this title.

(Pub. L. 91–598, §8, as added Pub. L. 95–283, §9, May 21, 1978, 92 Stat. 261; amended Pub. L. 95–598, title III, §308(l), (m), Nov. 6, 1978, 92 Stat. 2675.)

PRIOR PROVISIONS

A prior section 8 of Pub. L. 91–598 was renumbered section 12 and is classified to section 78hhh of this title.

AMENDMENTS

1978—Subsecs. (a)(1), (c)(3). Pub. L. 95–598 substituted "title 11" for "the Bankruptcy Act".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§78fff–3. SIPC advances

(a) Advances for customers' claims

In order to provide for prompt payment and satisfaction of net equity claims of customers of the debtor, SIPC shall advance to the trustee such moneys, not to exceed $500,000 for each customer, as

may be required to pay or otherwise satisfy claims for the amount by which the net equity of each customer exceeds his ratable share of customer property, except that—

(1) if all or any portion of the net equity claim of a customer in excess of his ratable share of customer property is a claim for cash, as distinct from a claim for securities or options on commodity futures contracts, the amount advanced to satisfy such claim for cash shall not exceed the standard maximum cash advance amount for each such customer, as determined in accordance with subsection (d);

(2) a customer who holds accounts with the debtor in separate capacities shall be deemed to be a different customer in each capacity;

(3) if all or any portion of the net equity claim of a customer in excess of his ratable share of customer property is satisfied by the delivery of securities purchased by the trustee pursuant to section 78fff–2(d) of this title, the securities so purchased shall be valued as of the filing date for purposes of applying the dollar limitations of this subsection;

(4) no advance shall be made by SIPC to the trustee to pay or otherwise satisfy, directly or indirectly, any net equity claim of a customer who is a general partner, officer, or director of the debtor, a beneficial owner of five per centum or more of any class of equity security of the debtor (other than a nonconvertible stock having fixed preferential dividend and liquidation rights), a limited partner with a participation of five per centum or more in the net assets or net profits of the debtor, or a person who, directly or indirectly and through agreement or otherwise, exercised or had the power to exercise a controlling influence over the management or policies of the debtor; and

(5) no advance shall be made by SIPC to the trustee to pay or otherwise satisfy any net equity claim of any customer who is a broker or dealer or bank, other than to the extent that it shall be established to the satisfaction of the trustee, from the books and records of the debtor or from the books and records of a broker or dealer or bank, or otherwise, that the net equity claim of such broker or dealer or bank against the debtor arose out of transactions for customers of such broker or dealer or bank (which customers are not themselves a broker or dealer or bank or a person described in paragraph (4)), in which event each such customer of such broker or dealer or bank shall be deemed a separate customer of the debtor.

To the extent moneys are advanced by SIPC to the trustee to pay or otherwise satisfy the claims of customers, in addition to all other rights it may have at law or in equity, SIPC shall be subrogated to the claims of such customers with the rights and priorities provided in this chapter, except that SIPC as subrogee may assert no claim against customer property until after the allocation thereof to customers as provided in section 78fff–2(c) of this title.

(b) Other advances

SIPC shall advance to the trustee—

(1) such moneys as may be required to carry out section 78fff–2(e) of this title; and

(2) to the extent the general estate of the debtor is not sufficient to pay any and all costs and expenses of administration of the estate of the debtor and of the liquidation proceeding, the amount of such costs and expenses.

(c) Discretionary advances

SIPC may advance to the trustee such moneys as may be required to—

(1) pay or guarantee indebtedness of the debtor to a bank, lender, or other person under section 78fff–1(b)(2) of this title;

(2) guarantee or secure any indemnity under section 78fff–2(f) of this title; and

(3) purchase securities under section 78fff–2(d) of this title.

(d) Standard maximum cash advance amount defined

For purposes of this section, the term "standard maximum cash advance amount" means $250,000, as such amount may be adjusted after December 31, 2010, as provided under subsection (e).

(e) Inflation adjustment

(1) In general

Not later than January 1, 2011, and every 5 years thereafter, and subject to the approval of the Commission as provided under section 78ccc(e)(2) of this title, the Board of Directors of SIPC shall determine whether an inflation adjustment to the standard maximum cash advance amount is appropriate. If the Board of Directors of SIPC determines such an adjustment is appropriate, then the standard maximum cash advance amount shall be an amount equal to—

(A) $250,000 multiplied by—

(B) the ratio of the annual value of the Personal Consumption Expenditures Chain-Type Price Index (or any successor index thereto), published by the Department of Commerce, for the calendar year preceding the year in which such determination is made, to the published annual value of such index for the calendar year preceding 2010.

The index values used in calculations under this paragraph shall be, as of the date of the calculation, the values most recently published by the Department of Commerce.

(2) Rounding

If the standard maximum cash advance amount determined under paragraph (1) for any period is not a multiple of $10,000, the amount so determined shall be rounded down to the nearest $10,000.

(3) Publication and report to the Congress

Not later than April 5 of any calendar year in which a determination is required to be made under paragraph (1)—

(A) the Commission shall publish in the Federal Register the standard maximum cash advance amount; and

(B) the Board of Directors of SIPC shall submit a report to the Congress stating the standard maximum cash advance amount.

(4) Implementation period

Any adjustment to the standard maximum cash advance amount shall take effect on January 1 of the year immediately succeeding the calendar year in which such adjustment is made.

(5) Inflation adjustment considerations

In making any determination under paragraph (1) to increase the standard maximum cash advance amount, the Board of Directors of SIPC shall consider—

(A) the overall state of the fund and the economic conditions affecting members of SIPC;

(B) the potential problems affecting members of SIPC; and

(C) such other factors as the Board of Directors of SIPC may determine appropriate.

(Pub. L. 91–598, §9, as added Pub. L. 95–283, §9, May 21, 1978, 92 Stat. 265; amended Pub. L. 96–433, §1, Oct. 10, 1980, 94 Stat. 1855; Pub. L. 111–203, title IX, §§929H(a), 983(a), July 21, 2010, 124 Stat. 1856, 1931.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 91–598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

PRIOR PROVISIONS

A prior section 9 of Pub. L. 91–598 was renumbered section 13 and is classified to section 78iii of this title.

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111–203, §983(a), inserted "or options on commodity futures contracts" after "claim for securities".

Pub. L. 111–203, §929H(a)(1), substituted "the standard maximum cash advance amount for each such customer, as determined in accordance with subsection (d)" for "$100,000 for each such customer".

Subsecs. (d), (e). Pub. L. 111–203, §929H(a)(2), added subsecs. (d) and (e).

1980—Subsec. (a). Pub. L. 96–433, §1(1), substituted in opening par. "$500,000" for "$100,000".

Subsec. (a)(1). Pub. L. 96–433, §1(2), substituted "$100,000" for "$40,000".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–433 effective Oct. 10, 1980, see section 5(a) of Pub. L. 96–433, set out as a note under section 78u of this title.

§78fff–4. Direct payment procedure

(a) Determination regarding direct payments

If SIPC determines that—

(1) any member of SIPC (including a person who was a member within one hundred eighty days prior to such determination) has failed or is in danger of failing to meet its obligations to customers;

(2) one or more of the conditions specified in section 78eee(b)(1) of this title exist with respect to such member;

(3) the claim of each customer of the member is within the limits of protection provided in section 78fff–3(a) of this title;

(4) the claims of all customers of the member aggregate less than $250,000;

(5) the cost to SIPC of satisfying customer claims under this section will be less than the cost under a liquidation proceeding; and

(6) such member's registration as a broker-dealer under section 78o(b) of this title has been terminated, or such member has consented to the use of the direct payment procedure set forth in this section,

SIPC may, in its discretion, use the direct payment procedure set forth in this section in lieu of instituting a liquidation proceeding with respect to such member.

(b) Notice

Promptly after a determination under subsection (a) of this section that the direct payment procedure is to be used with respect to a member, SIPC shall cause notice of such direct payment procedure to be published in one or more newspapers of general circulation in a form and manner determined by SIPC, and at the same time shall cause to be mailed a copy of such notice to each person who appears, from the books and records of such member, to have been a customer of the member with an open account within the past twelve months, to the address of such person as it appears from the books and records of such member. Such notice shall state that SIPC will satisfy customer claims directly, without a liquidation proceeding, and shall set forth the form and manner in which claims may be presented. A direct payment procedure shall be deemed to commence on the date of first publication under this subsection and no claim by a customer shall be paid or otherwise satisfied by SIPC unless received within the six-month period beginning on such date, except that SIPC shall, upon application within such period, and for cause shown, grant a reasonable, fixed extension of time for the filing of a claim by the United States, by a State or political subdivision thereof, or by an infant or incompetent person without a guardian.

(c) Payments to customers

SIPC shall promptly satisfy all obligations of the member to each of its customers relating to, or net equity claims based upon, securities or cash by the delivery of securities or the effecting of payments to such customer (subject to the provisions of section 78fff–2(d) of this title and section 78fff–3(a) of this title insofar as such obligations are ascertainable from the books and records of the member or are otherwise established to the satisfaction of SIPC. For purposes of distributing

securities to customers, all securities shall be valued as of the close of business on the date of publication under subsection (b) of this section. Any payment or delivery of securities pursuant to this section may be conditioned upon the execution and delivery, in a form to be determined by SIPC, of appropriate receipts, supporting affidavits, releases, and assignments. To the extent moneys of SIPC are used to satisfy the claims of customers, in addition to all other rights it may have at law or in equity, SIPC shall be subrogated to the claims of such customers against the member.

(d) Effect on claims

Except as otherwise provided in this section, nothing in this section shall limit the right of any person, including any subrogee, to establish by formal proof or otherwise such claims as such person may have against the member, including claims for the payment of money and the delivery of specific securities, without resort to moneys of SIPC.

(e) Jurisdiction of Bankruptcy Courts

After SIPC has published notice of the institution of a direct payment procedure under this section, any person aggrieved by any determination of SIPC with respect to his claim under subsection (c) of this section may, within six months following mailing by SIPC of its determination with respect to such claim, seek a final adjudication of such claim. The courts of the United States having jurisdiction over cases under title 11 shall have original and exclusive jurisdiction of any civil action for the adjudication of such claim, without regard to the citizenship of the parties or the amount in controversy. Any such action shall be brought in the judicial district where the head office of the debtor is located. Any determination of the rights of a customer under subsection (c) of this section shall not prejudice any other right or remedy of the customer against the member.

(f) Discontinuance of direct payment procedures

If, at any time after the institution of a direct payment procedure with respect to a member, SIPC determines, in its discretion, that continuation of such direct payment procedure is not appropriate, SIPC may cease such direct payment procedure and, upon so doing, may seek a protective decree pursuant to section 78eee of this title. To the extent payments of cash, distributions of securities, or determinations with respect to the validity of a customer's claim are made under this section, such payments, distributions, and determinations shall be recognized and given full effect in the event of any subsequent liquidation proceeding. Any action brought under subsection (e) of this section and pending at the time of the appointment of a trustee under section 78eee(b)(3) of this title shall be permanently stayed by the court at the time of such appointment, and the court shall enter an order directing the transfer or removal to it of such suit. Upon such removal or transfer the complaint in such action shall constitute the plaintiff's claim in the liquidation proceeding, if appropriate, and shall be deemed received by the trustee on the date of his appointment regardless of the date of actual transfer or removal of such action.

(g) References

For purposes of this section, any reference to the trustee in sections 78fff–1(b)(1), 78fff–2(d), 78fff–2(f), 78fff–3(a), 78lll(5) and 78lll(12) of this title shall be deemed a reference to SIPC, and any reference to the date of publication of notice under section 78fff–2(a) of this title shall be deemed a reference to the publication of notice under this section.

(Pub. L. 91–598, §10, as added Pub. L. 95–283, §9, May 21, 1978, 92 Stat. 266; amended Pub. L. 95–598, title III, §308(n), Nov. 6, 1978, 92 Stat. 2675.)

PRIOR PROVISIONS

A prior section 10 of Pub. L. 91–598 was renumbered section 14 and is classified to section 78jjj of this title.

AMENDMENTS

1978—Subsec. (e). Pub. L. 95–598 substituted in heading "Bankruptcy Courts" for "District Courts" and in text "courts of the United States having jurisdiction over cases under title 11" for "district courts of the United States" and struck out ", without regard to the citizenship of the parties or the amount in controversy" after "adjudication of such claim".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§78ggg. SEC functions

(a) Administrative procedure

Determinations of the Commission, for purposes of making rules pursuant to section 78ccc(e)(3) and section 78iii(f) of this title shall be after appropriate notice and opportunity for a hearing, and for submission of views of interested persons in accordance with the rulemaking procedures specified in section 553 of title 5, but the holding of a hearing shall not prevent adoption of any such rule or regulation upon expiration of the notice period specified in subsection (d) of such section and shall not be required to be on a record within the meaning of subchapter II of chapter 5 of such title.

(b) Enforcement of actions

In the event of the refusal of SIPC to commit its funds or otherwise to act for the protection of customers of any member of SIPC, the Commission may apply to the district court of the United States in which the principal office of SIPC is located for an order requiring SIPC to discharge its obligations under this chapter and for such other relief as the court may deem appropriate to carry out the purposes of this chapter.

(c) Examinations and reports

(1) Examination of SIPC, etc.

The Commission may make such examinations and inspections of SIPC and require SIPC to furnish it with such reports and records or copies thereof as the Commission may consider necessary or appropriate in the public interest or to effectuate the purposes of this chapter.

(2) Reports from SIPC

As soon as practicable after the close of each fiscal year, SIPC shall submit to the Commission a written report relative to the conduct of its business, and the exercise of the other rights and powers granted by this chapter, during such fiscal year. Such report shall include financial statements setting forth the financial position of SIPC at the end of such fiscal year and the results of its operations (including the source and application of its funds) for such fiscal year. The financial statements so included shall be examined by an independent public accountant or firm of independent public accountants, selected by SIPC and satisfactory to the Commission, and shall be accompanied by the report thereon of such accountant or firm. The Commission shall transmit such report to the President and the Congress with such comment thereon as the Commission may deem appropriate.

(Pub. L. 91–598, §11, formerly §7, Dec. 30, 1970, 84 Stat. 1652, 1653; renumbered §11 and amended Pub. L. 95–283, §§9, 10, May 21, 1978, 92 Stat. 260, 268.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b) and (c), was in the original "this Act", meaning Pub. L. 91–598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section is comprised of section 11 of Pub. L. 91–598. Subsec. (d) of section 11 of Pub. L. 91–598 amended section 78o of this title.

PRIOR PROVISIONS

A prior section 11 of Pub. L. 91–598 was renumbered section 15 and is classified to section 78kkk of this title.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–283 substituted "pursuant to section 78ccc(e)(3) and section 78iii(f) of this title" for "or regulations pursuant to section 78ccc(e) and 78iii(f) of this title".

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (c)(2) of this section relating to submittal of annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 191 of House Document No. 103–7.

§78hhh. Examining authority functions

Each member of SIPC shall file with such member's examining authority, or collection agent if a collection agent has been designated pursuant to section 78iii(a) of this title, such information (including reports of, and information with respect to, the gross revenues from the securities business of such member, including the composition thereof, transactions in securities effected by such member, and other information with respect to such member's activities, whether in the securities business or otherwise, including customer accounts maintained, net capital employed, and activities conducted) as SIPC may determine to be necessary or appropriate for the purpose of making assessments under section 78ddd of this title. The examining authority or collection agent shall file with SIPC all or such part of such information (and such compilations and analyses thereof) as SIPC, by bylaw or rule, shall prescribe. No application, report, or document filed pursuant to this section shall be deemed to be filed pursuant to section 78r of this title.

(Pub. L. 91–598, §12, formerly §8, Dec. 30, 1970, 84 Stat. 1653; renumbered §12 and amended Pub. L. 95–283, §§9, 11, May 21, 1978, 92 Stat. 260, 268.)

PRIOR PROVISIONS

A prior section 12 of Pub. L. 91–598 was renumbered section 16 and is classified to section 78lll of this title.

AMENDMENTS

1978—Pub. L. 95–283 inserted provisions relating to applicability to a collection agent.

§78iii. Functions of self-regulatory organizations

(a) Collection agent

Each self-regulatory organization shall act as collection agent for SIPC to collect the assessments payable by all members of SIPC for whom such self-regulatory organization is the examining authority, unless SIPC designates a self-regulatory organization other than the examining authority to act as collection agent for any member of SIPC who is a member of or participant in more than one self-regulatory organization. If the only self-regulatory organization of which a member of SIPC is a member or in which it is a participant is a registered clearing agency that is not the examining authority for the member, SIPC may, nevertheless, designate such registered clearing agency as collection agent for the member or may require that payments be made directly to SIPC. The collection agent shall be obligated to remit to SIPC assessments made under section 78ddd of this title only to the extent that payments of such assessment are received by such collection agent. Members of SIPC who are not members of or participants in a self-regulatory organization shall make payments directly to SIPC.

(b) Immunity

No self-regulatory organization shall have any liability to any person for any action taken or omitted in good faith pursuant to section 78eee(a)(1) and section 78eee(a)(2) of this title.

(c) Inspections

The self-regulatory organization of which a member of SIPC is a member or in which it is a participant shall inspect or examine such member for compliance with applicable financial

responsibility rules, except that—

(1) if the self-regulatory organization is a registered clearing agency, the Commission may designate itself as responsible for the examination of such member for compliance with applicable financial responsibility rules; and

(2) if a member of SIPC is a member of or participant in more than one self-regulatory organization, the Commission, pursuant to section 78q(d) of this title, shall designate one of such self-regulatory organizations or itself as responsible for the examination of such member for compliance with applicable financial responsibility rules.

(d) Reports

There shall be filed with SIPC by the self-regulatory organizations such reports of inspections or examinations of the members of SIPC (or copies thereof) as may be designated by SIPC by bylaw or rule.

(e) Consultation

SIPC shall consult and cooperate with the self-regulatory organizations toward the end:

(1) that there may be developed and carried into effect procedures reasonably designed to detect approaching financial difficulty upon the part of any member of SIPC;

(2) that, as nearly as may be practicable, examinations to ascertain whether members of SIPC are in compliance with applicable financial responsibility rules will be conducted by the self-regulatory organizations under appropriate standards (both as to method and scope) and reports of such examinations will, where appropriate, be standard in form; and

(3) that, as frequently as may be practicable under the circumstances, each member of SIPC will file financial information with, and be examined by, the self-regulatory organization which is the examining authority for such member.

(f) Financial condition of members

The Commission may, by such rules as it determines necessary or appropriate in the public interest and to carry out the purposes of this chapter, require any self-regulatory organization to furnish SIPC with reports and records (or copies thereof) relating to the financial condition of members of or participants in such self-regulatory organization.

(Pub. L. 91–598, §13, formerly §9, Dec. 30, 1970, 84 Stat. 1654; amended Pub. L. 94–29, §26, June 4, 1975, 89 Stat. 163; renumbered §13 and amended Pub. L. 95–283, §§9, 12, May 21, 1978, 92 Stat. 260, 269.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (f), was in the original "this Act", meaning Pub. L. 91–598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–283, §12(a), in heading substituted "Collection" for "Collecting", and in text inserted provisions relating to designation of a self-regulatory organization other than the examining authority to act as collection agent and provisions relating to designation of a registered clearing agency as collection agent, and substituted provisions relating to remittances by the collection agent to SIPC, for provisions relating to remittances by an examining authority to SIPC.

Subsec. (b). Pub. L. 95–283, §12(b), inserted reference to section 78eee(a)(2) of this title.

Subsec. (c). Pub. L. 95–283, §12(c), revised existing format and provisions into introductory text and cl. (2) and, as so revised, in introductory text inserted provisions respecting participation by a member of SIPC in a self-regulatory organization and in cl. (2) inserted provisions respecting such participation and authorization for the Commission to designate itself as responsible for the statutory examination, and added cl. (1).

Subsec. (f). Pub. L. 95–283, §12(d), substituted provisions authorizing the Commission to set out rules requiring self-regulatory organizations to furnish SIPC with reports and records of members or participants in such self-regulatory organizations, for provisions authorizing the Commission to set out rules, and regulations requiring self-regulatory organizations to adopt rules, practices, and procedures respecting inspections and examinations of members and examiners, to furnish SIPC and the Commission with reports and records of members, and to inspect or examine members.

1975—Subsec. (c). Pub. L. 94–29 directed the Commission to designate the self-regulatory organization to be responsible for enforcing applicable rules with respect to any firm which is a member of more than one self-regulatory organization.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

§78jjj. Prohibited acts

(a) Failure to pay assessment, etc.

If a member of SIPC shall fail to file any report or information required pursuant to this chapter, or shall fail to pay when due all or any part of an assessment made upon such member pursuant to this chapter, and such failure shall not have been cured, by the filing of such report or information or by the making of such payment, together with interest and penalty thereon, within five days after receipt by such member of written notice of such failure given by or on behalf of SIPC, it shall be unlawful for such member, unless specifically authorized by the Commission, to engage in business as a broker or dealer. If such member denies that it owes all or any part of the amount specified in such notice, it may after payment of the full amount so specified commence an action against SIPC in the appropriate United States district court to recover the amount it denies owing.

(b) Engaging in business after appointment of trustee or initiation of direct payment procedure

It shall be unlawful for any broker or dealer for whom a trustee has been appointed pursuant to this chapter or for whom a direct payment procedure has been initiated to engage thereafter in business as a broker or dealer, unless the Commission otherwise determines in the public interest. The Commission may by order bar or suspend for any period, any officer, director, general partner, owner of 10 per centum or more of the voting securities, or controlling person of any broker or dealer for whom a trustee has been appointed pursuant to this chapter or for whom a direct payment procedure has been initiated from being or becoming associated with a broker or dealer, if after appropriate notice and opportunity for hearing, the Commission shall determine such bar or suspension to be in the public interest.

(c) Concealment of assets; false statements or claims

(1) Specific prohibited acts

Any person who, directly or indirectly, in connection with or in contemplation of any liquidation proceeding or direct payment procedure—

(A) employs any device, scheme, or artifice to defraud;

(B) engages in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person; or

(C) fraudulently or with intent to defeat this chapter—

(i) conceals or transfers any property belonging to the estate of a debtor;

(ii) makes a false statement or account;

(iii) presents or uses any false claim for proof against the estate of a debtor;

(iv) receives any material amount of property from a debtor;

(v) gives, offers, receives, transfers, or obtains any money or property, remuneration, compensation, reward, advantage, other consideration, or promise thereof, for acting or forebearing to act;

(vi) conceals, destroys, mutilates, falsifies, makes a false entry in, or otherwise falsifies any document affecting or relating to the property or affairs of a debtor; or

(vii) withholds, from any person entitled to its possession, any document affecting or relating to the property or affairs of a debtor,

shall be fined not more than $250,000 or imprisoned for not more than five years, or both.

(2) Fraudulent conversion

Any person who, directly or indirectly steals, embezzles, or fraudulently, or with intent to defeat this chapter, abstracts or converts to his own use or to the use of another any of the moneys, securities, or other assets of SIPC, or otherwise defrauds or attempts to defraud SIPC or a trustee by any means, shall be fined not more than $250,000 or imprisoned not more than five years, or both.

(d) Misrepresentation of SIPC membership or protection

(1) In general

Any person who falsely represents by any means (including, without limitation, through the Internet or any other medium of mass communication), with actual knowledge of the falsity of the representation and with an intent to deceive or cause injury to another, that such person, or another person, is a member of SIPC or that any person or account is protected or is eligible for protection under this chapter or by SIPC, shall be liable for any damages caused thereby and shall be fined not more than $250,000 or imprisoned for not more than 5 years.

(2) Injunctions

Any court having jurisdiction of a civil action arising under this chapter may grant temporary injunctions and final injunctions on such terms as the court deems reasonable to prevent or restrain any violation of paragraph (1). Any such injunction may be served anywhere in the United States on the person enjoined, shall be operative throughout the United States, and shall be enforceable, by proceedings in contempt or otherwise, by any United States court having jurisdiction over that person. The clerk of the court granting the injunction shall, when requested by any other court in which enforcement of the injunction is sought, transmit promptly to the other court a certified copy of all papers in the case on file in such clerk's office.

(Pub. L. 91–598, §14, formerly §10, Dec. 30, 1970, 84 Stat. 1655; renumbered §14 and amended Pub. L. 95–283, §§9, 13, May 21, 1978, 92 Stat. 260, 269; Pub. L. 111–203, title IX, §929V(b), (c), July 21, 2010, 124 Stat. 1868.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 91–598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2010—Subsec. (c)(1). Pub. L. 111–203, §929V(b)(1), substituted "$250,000" for "$50,000" in concluding provisions.

Subsec. (c)(2). Pub. L. 111–203, §929V(b)(2), substituted "$250,000" for "$50,000".

Subsec. (d). Pub. L. 111–203, §929V(c), added subsec. (d).

1978—Subsec. (a). Pub. L. 95–283, §13(a), inserted "and penalty" after "interest", and substituted "it" for "he" wherever appearing.

Subsec. (b). Pub. L. 95–283, §13(b), in heading inserted "or initiation of direct payment procedure" after "trustee", and in text inserted references to initiation of direct payment procedure in two places.

Subsec. (c). Pub. L. 95–283, §13(c), in heading substituted "Concealment of assets; false statements or claims" for "Embezzlement, etc., of assets of SIPC", added par. (1), and designated existing provisions as par. (2) and, as so designated, inserted references to direct or indirect acts, and provisions covering defrauding or attempts to defraud SIPC or a trustee, and substituted provisions covering activities constituting fraudulent, or with intent to defeat this chapter, abstracts or conversions, for provisions covering activities constituting unlawfully abstracting or unlawfully and willfully converting moneys, etc.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

§78kkk. Miscellaneous provisions

(a) Public inspection of reports

Any notice, report, or other document filed with SIPC pursuant to this chapter shall be available for public inspection unless SIPC or the Commission shall determine that disclosure thereof is not in the public interest. Nothing herein shall act to deny documents or information to the Congress of the United States or the committees of either House having jurisdiction over financial institutions, securities regulation, or related matters under the rules of each body. Nor shall the Commission be denied any document or information which the Commission, in its judgment, needs.

(b) Liability of members of SIPC

Except for such assessments as may be made upon such member pursuant to the provisions of section 78ddd of this title, no member of SIPC shall have any liability under this chapter as a member of SIPC for, or in connection with, any act or omission of any other broker or dealer whether in connection with the conduct of the business or affairs of such broker or dealer or otherwise and, without limiting the generality of the foregoing, no member shall have any liability for or in respect of any indebtedness or other liability of SIPC.

(c) Liability of SIPC and Directors, officers, or employees

Neither SIPC nor any of its Directors, officers, or employees shall have any liability to any person for any action taken or omitted in good faith under or in connection with any matter contemplated by this chapter.

(d) Advertising

SIPC shall by bylaw prescribe the manner in which a member of SIPC may display any sign or signs (or include in any advertisement a statement) relating to the protection to customers and their accounts, or any other protections, afforded under this chapter. No member may display any such sign, or include in an advertisement any such statement, except in accordance with such bylaws. SIPC may also by bylaw prescribe such minimal requirements as it considers necessary and appropriate to require a member of SIPC to provide public notice of its membership in SIPC.

(e) SIPC exempt from taxation

SIPC, its property, its franchise, capital, reserves, surplus, and its income, shall be exempt from all taxation now or hereafter imposed by the United States or by any State or local taxing authority, except that any real property and any tangible personal property (other than cash and securities) of SIPC shall be subject to State and local taxation to the same extent according to its value as other real and tangible personal property is taxed. Assessments made upon a member of SIPC shall constitute ordinary and necessary expenses in carrying on the business of such member for the purpose of section 162(a) of title 26. The contribution and transfer to SIPC of funds or securities held by any trust established by a national securities exchange prior to January 1, 1970, for the purpose of providing assistance to customers of members of such exchange, shall not result in any taxable gain to such trust or give rise to any taxable income to any member of SIPC under any provision of title 26, nor shall such contribution or transfer, or any reduction in assessments made pursuant to this chapter, in any way affect the status, as ordinary and necessary expenses under section 162(a) of title 26, of any contributions made to such trust by such exchange at any time prior to such transfer. Upon dissolution of SIPC, none of its net assets shall inure to the benefit of any of its members.

(f) Section 78t(a) of this title not to apply

The provisions of subsection (a) of section 78t of this title shall not apply to any liability under or in connection with this chapter.

(g) SEC study of unsafe or unsound practices

Not later than twelve months after December 30, 1970, the Commission shall compile a list of unsafe or unsound practices by members of SIPC in conducting their business and report to the

Congress (1) the steps being taken under the authority of existing law to eliminate those practices and (2) recommendations concerning additional legislation which may be needed to eliminate those unsafe or unsound practices.

(Pub. L. 91–598, §15, formerly §11, Dec. 30, 1970, 84 Stat. 1655; renumbered §15 and amended Pub. L. 95–283, §§9, 14, May 21, 1978, 92 Stat. 260, 270; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) to (f), was in the original "this Act", meaning Pub. L. 91–598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1986—Subsec. (e). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954" wherever appearing, which for purposes of codification was translated as "title 26" thus requiring no change in text.

1978—Subsec. (b). Pub. L. 95–283, §14(c), redesignated subsec. (c) as (b). Former subsec. (b), relating to application of securities investor protection provisions to foreign members, was struck out.

Subsec. (c). Pub. L. 95–283, §14(a), (c), redesignated subsec. (d) as (c) and inserted ", officers, or employees" after "Directors" in heading and text. Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 95–283, §14(b), (c), redesignated subsec. (e) as (d), inserted provisions authorizing SIPC to prescribe necessary and proper minimal requirements for providing public notice of membership by a member of SIPC in SIPC, and struck out provisions authorizing rules by SIPC to implement advertising requirements. Former subsec. (d) redesignated (c).

Subsecs. (e) to (h). Pub. L. 95–283, §14(c), redesignated subsecs. (e) to (h) as (d) to (g), respectively.

§78*lll*. Definitions

For purposes of this chapter, including the application of the Bankruptcy Act to a liquidation proceeding:

(1) Commission

The term "Commission" means the Securities and Exchange Commission.

(2) Customer

(A) In general

The term "customer" of a debtor means any person (including any person with whom the debtor deals as principal or agent) who has a claim on account of securities received, acquired, or held by the debtor in the ordinary course of its business as a broker or dealer from or for the securities accounts of such person for safekeeping, with a view to sale, to cover consummated sales, pursuant to purchases, as collateral, security, or for purposes of effecting transfer.

(B) Included persons

The term "customer" includes—

(i) any person who has deposited cash with the debtor for the purpose of purchasing securities;

(ii) any person who has a claim against the debtor for cash, securities, futures contracts, or options on futures contracts received, acquired, or held in a portfolio margining account carried as a securities account pursuant to a portfolio margining program approved by the Commission; and

(iii) any person who has a claim against the debtor arising out of sales or conversions of such securities.

(C) Excluded persons

The term "customer" does not include any person, to the extent that—

(i) the claim of such person arises out of transactions with a foreign subsidiary of a

member of SIPC; or

(ii) such person has a claim for cash or securities which by contract, agreement, or understanding, or by operation of law, is part of the capital of the debtor, or is subordinated to the claims of any or all creditors of the debtor, notwithstanding that some ground exists for declaring such contract, agreement, or understanding void or voidable in a suit between the claimant and the debtor.

(3) Customer name securities

The term "customer name securities" means securities which were held for the account of a customer on the filing date by or on behalf of the debtor and which on the filing date were registered in the name of the customer, or were in the process of being so registered pursuant to instructions from the debtor, but does not include securities registered in the name of the customer which, by endorsement or otherwise, were in negotiable form.

(4) Customer property

The term "customer property" means cash and securities (except customer name securities delivered to the customer) at any time received, acquired, or held by or for the account of a debtor from or for the securities accounts of a customer, and the proceeds of any such property transferred by the debtor, including property unlawfully converted. The term "customer property" includes—

(A) securities held as property of the debtor to the extent that the inability of the debtor to meet its obligations to customers for their net equity claims based on securities of the same class and series of an issuer is attributable to the debtor's noncompliance with the requirements of section 78o(c)(3) of this title and the rules prescribed under such section;

(B) resources provided through the use or realization of customers' debit cash balances and other customer-related debit items as defined by the Commission by rule;

(C) any cash or securities apportioned to customer property pursuant to section 78fff(d) of this title;

(D) in the case of a portfolio margining account of a customer that is carried as a securities account pursuant to a portfolio margining program approved by the Commission, a futures contract or an option on a futures contract received, acquired, or held by or for the account of a debtor from or for such portfolio margining account, and the proceeds thereof; and

(E) any other property of the debtor which, upon compliance with applicable laws, rules, and regulations, would have been set aside or held for the benefit of customers, unless the trustee determines that including such property within the meaning of such term would not significantly increase customer property.

(5) Debtor

The term "debtor" means a member of SIPC with respect to whom an application for a protective decree has been filed under section 78eee(a)(3) of this title or a direct payment procedure has been instituted under section 78fff–4(b) of this title.

(6) Examining authority

The term "examining authority" means, with respect to any member of SIPC (A) the self-regulatory organization which inspects or examines such member of SIPC, or (B) the Commission if such member of SIPC is not a member of or participant in any self-regulatory organization or if the Commission has designated itself examining authority for such member pursuant to section 78iii(c) of this title.

(7) Filing date

The term "filing date" means the date on which an application for a protective decree is filed under section 78eee(a)(3) of this title, except that—

(A) if a petition under title 11 concerning the debtor was filed before such date, the term "filing date" means the date on which such petition was filed;

(B) if the debtor is the subject of a proceeding pending in any court or before any agency of

the United States or any State in which a receiver, trustee, or liquidator for such debtor has been appointed and such proceeding was commenced before the date on which such application was filed, the term "filing date" means the date on which such proceeding was commenced; or

(C) if the debtor is the subject of a direct payment procedure or was the subject of a direct payment procedure discontinued by SIPC pursuant to section 78fff–4(f) of this title, the term "filing date" means the date on which notice of such direct payment procedure was published under section 78fff–4(b) of this title.

(8) Foreign subsidiary

The term "foreign subsidiary" means any subsidiary of a member of SIPC which has its principal place of business in a foreign country or which is organized under the laws of a foreign country.

(9) Gross revenues from the securities business

The term "gross revenues from the securities business" means the sum of (but without duplication)—

(A) commissions earned in connection with transactions in securities effected for customers as agent (net of commissions paid to other brokers and dealers in connection with such transactions) and markups with respect to purchases or sales of securities as principal;

(B) charges for executing or clearing transactions in securities for other brokers and dealers;

(C) the net realized gain, if any, from principal transactions in securities in trading accounts;

(D) the net profit, if any, from the management of or participation in the underwriting or distribution of securities;

(E) interest earned on customers' securities accounts;

(F) fees for investment advisory services (except when rendered to one or more registered investment companies or insurance company separate accounts) or account supervision with respect to securities;

(G) fees for the solicitation of proxies with respect to, or tenders or exchanges of, securities;

(H) income from service charges or other surcharges with respect to securities;

(I) except as otherwise provided by rule of the Commission, dividends and interest received on securities in investment accounts of the broker or dealer;

(J) fees in connection with put, call, and other option transactions in securities;

(K) commissions earned from transactions in (i) certificates of deposit, and (ii) Treasury bills, bankers acceptances, or commercial paper which have a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof, the maturity of which is likewise limited, except that SIPC shall by bylaw include in the aggregate of gross revenues only an appropriate percentage of such commissions based on SIPC's loss experience with respect to such instruments over at least the preceding five years; and

(L) fees and other income from such other categories of the securities business as SIPC shall provide by bylaw.

Such term includes revenues earned by a broker or dealer in connection with a transaction in the portfolio margining account of a customer carried as securities accounts pursuant to a portfolio margining program approved by the Commission. Such term does not include revenues received by a broker or dealer in connection with the distribution of shares of a registered open end investment company or unit investment trust or revenues derived by a broker or dealer from the sale of variable annuities or from the conduct of the business of insurance.

(10) Liquidation proceeding

The term "liquidation proceeding" means any proceeding for the liquidation of a debtor under this chapter in which a trustee has been appointed under section 78eee(b)(3) of this title.

(11) Net equity

The term "net equity" means the dollar amount of the account or accounts of a customer, to be determined by—

(A) calculating the sum which would have been owed by the debtor to such customer if the debtor had liquidated, by sale or purchase on the filing date—

(i) all securities positions of such customer (other than customer name securities reclaimed by such customer); and

(ii) all positions in futures contracts and options on futures contracts held in a portfolio margining account carried as a securities account pursuant to a portfolio margining program approved by the Commission, including all property collateralizing such positions, to the extent that such property is not otherwise included herein; minus

(B) any indebtedness of such customer to the debtor on the filing date; plus

(C) any payment by such customer of such indebtedness to the debtor which is made with the approval of the trustee and within such period as the trustee may determine (but in no event more than sixty days after the publication of notice under section 78fff–2(a) of this title).

A claim for a commodity futures contract received, acquired, or held in a portfolio margining account pursuant to a portfolio margining program approved by the Commission or a claim for a security futures contract, shall be deemed to be a claim with respect to such contract as of the filing date, and such claim shall be treated as a claim for cash. In determining net equity under this paragraph, accounts held by a customer in separate capacities shall be deemed to be accounts of separate customers.

(12) Persons registered as brokers or dealers

The term "persons registered as brokers or dealers" includes any person who is a member of a national securities exchange other than a government securities broker or government securities dealer registered under section 78o–5(a)(1)(A) of this title.

(13) Protective decree

The term "protective decree" means a decree, issued by a court upon application of SIPC under section 78eee(a)(3) of this title, that the customers of a member of SIPC are in need of the protection provided under this chapter.

(14) Security

The term "Security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, any collateral trust certificate, preorganization certificate or subscription, transferable share, voting trust certificate, certificate of deposit, certificate of deposit for a security, or any security future as that term is defined in section 78c(a)(55)(A) of this title, any investment contract or certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or mineral royalty or lease (if such investment contract or interest is the subject of a registration statement with the Commission pursuant to the provisions of the Securities Act of 1933 [15 U.S.C. 77a et seq.]), any put, call, straddle, option, or privilege on any security, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase or sell any of the foregoing, and any other instrument commonly known as a security. Except as specifically provided above, the term "security" does not include any currency, or any commodity or related contract or futures contract, or any warrant or right to subscribe to or purchase or sell any of the foregoing.

(Pub. L. 91–598, §16, formerly §12, Dec. 30, 1970, 84 Stat. 1656; renumbered §16 and amended Pub. L. 95–283, §§9, 15, May 21, 1978, 92 Stat. 260, 271; Pub. L. 95–598, title III, §308(o), Nov. 6, 1978, 92 Stat. 2676; Pub. L. 97–303, §7, Oct. 13, 1982, 96 Stat. 1410; Pub. L. 100–181, title VIII, §802, Dec. 4, 1987, 101 Stat. 1265; Pub. L. 106–554, §1(a)(5) [title II, §203(d)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–424; Pub. L. 111–203, title IX, §983(b), July 21, 2010, 124 Stat. 1931.)

REFERENCES IN TEXT

This chapter, referred to in provision preceding par. (1), and in pars. (10) and (13), was in the original "this

Act", meaning Pub. L. 91–598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

The Bankruptcy Act, referred to in provision preceding par. (1), is act July 1, 1898, ch. 541, 30 Stat. 544, which was classified generally to former Title 11, Bankruptcy. The Act was repealed effective Oct. 1, 1979, by Pub. L. 95–598, §§401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11.

The Securities Act of 1933, referred to in par. (14), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

AMENDMENTS

2010—Par. (2). Pub. L. 111–203, §983(b)(1), added par. (2) and struck out former par. (2) which defined "customer".

Par. (4)(D), (E). Pub. L. 111–203, §983(b)(2), added subpar. (D) and redesignated former subpar. (D) as (E).

Par. (9). Pub. L. 111–203, §983(b)(3), in concluding provisions, inserted "includes revenues earned by a broker or dealer in connection with a transaction in the portfolio margining account of a customer carried as securities accounts pursuant to a portfolio margining program approved by the Commission. Such term" before "does not include".

Par. (11). Pub. L. 111–203, §983(b)(4)(B), in concluding provisions, substituted "A claim for a commodity futures contract received, acquired, or held in a portfolio margining account pursuant to a portfolio margining program approved by the Commission or a claim for a security futures contract, shall be deemed to be a claim with respect to such contract as of the filing date, and such claim shall be treated as a claim for cash. In determining" for "In determining".

Par. (11)(A). Pub. L. 111–203, §983(b)(4)(A), substituted "by sale or purchase on the filing date—" for "by sale or purchase on the filing date, all securities positions of such customer (other than customer name securities reclaimed by such customer); minus" and added cls. (i) and (ii).

2000—Par. (14). Pub. L. 106–554 inserted "or any security future as that term is defined in section 78c(a)(55)(A) of this title," after "certificate of deposit for a security,".

1987—Par. (12). Pub. L. 100–181 inserted "other than a government securities broker or government securities dealer registered under section 78o–5(a)(1)(A) of this title".

1982—Par. (14). Pub. L. 97–303 inserted "any put, call, straddle, option, or privilege on any security, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency," after "the Securities Act of 1933 [15 U.S.C.A. §77a et seq.])," and substituted "Except as specifically provided above, the term 'security' does not include" for "The term 'security' does not include".

1978—Par. (1). Pub. L. 95–598, §308(o)(1), (3), struck out par. (1) definition of "Bankruptcy Act" and redesignated par. (2) as (1).

Pars. (2) to (6). Pub. L. 95–598, §309(o)(3), redesignated pars. (3) to (7) as (2) to (6), respectively. Former par. (2) redesignated (1).

Par. (7). Pub. L. 95–598, §308(o)(2), (3), redesignated par. (8) as (7) and substituted in subpar. (A) "if a petition under title 11 concerning the debtor was filed before such date" for "if a petition was filed before such date by or against the debtor under the Bankruptcy Act, or under chapter X or XI of such Act, as now in effect or as amended from time to time". Former par. (7) redesignated (6).

Pars. (8) to (15). Pub. L. 95–598, §308(o)(3), redesignated pars. (9) to (15) as (8) to (14), respectively. Former par. (8) redesignated (7).

Pub. L. 95–283 in introductory text inserted requirement for applicability of terms to a liquidation proceeding involving the Bankruptcy Act, in par. (1) heading substituted "Bankruptcy Act" for "Self-regulatory organization", and in text substituted provisions defining such terms, in par. (2) heading substituted "Commission" for "Financial responsibility rules", and in text substituted provisions defining such terms, in par. (3) heading substituted "Customer" for "Examining authority", and in text substituted provisions defining such terms, and added pars. (4) to (15).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of section by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

CHAPTER 2C—PUBLIC UTILITY HOLDING COMPANIES

§§79 to 79z–6. Repealed. Pub. L. 109–58, title XII, §1263, Aug. 8, 2005, 119 Stat. 974

Section 79, acts Aug. 26, 1935, ch. 687, title I, §36, formerly §33, 49 Stat. 838; renumbered §35, Pub. L. 102–486, title VII, §711, Oct. 24, 1992, 106 Stat. 2905; renumbered §36, Pub. L. 104–104, title I, §103, Feb. 8, 1996, 110 Stat. 81, provided that this chapter could be cited as the "Public Utility Holding Company Act of 1935".

Section 79a, act Aug. 26, 1935, ch. 687, title I, §1, 49 Stat. 803, related to necessity for control of holding companies and set forth policy of chapter.

Section 79b, act Aug. 26, 1935, ch. 687, title I, §2, 49 Stat. 804, defined terms.

Section 79c, act Aug. 26, 1935, ch. 687, title I, §3, 49 Stat. 810, related to exemption of holding companies from provisions of chapter.

Section 79d, act Aug. 26, 1935, ch. 687, title I, §4, 49 Stat. 812, related to transactions by unregistered holding companies.

Section 79e, act Aug. 26, 1935, ch. 687, title I, §5, 49 Stat. 812, related to registration of holding companies.

Section 79f, act Aug. 26, 1935, ch. 687, title I, §6, 49 Stat. 814, related to unlawful transactions by registered companies.

Section 79g, act Aug. 26, 1935, ch. 687, title I, §7, 49 Stat. 815, related to declarations by registered companies in respect to security transactions.

Section 79h, acts Aug. 26, 1935, ch. 687, title I, §8, 49 Stat. 817; Pub. L. 100–181, title IV, §401, Dec. 4, 1987, 101 Stat. 1259, related to acquisition of interest in electric and gas companies serving the same territory.

Section 79i, act Aug. 26, 1935, ch. 687, title I, §9, 49 Stat. 817, prohibited acquisition of securities and utility assets and other interests prior to approval.

Section 79j, act Aug. 26, 1935, ch. 687, title I, §10, 49 Stat. 818, related to approval of acquisition of securities and utility assets and other interests.

Section 79k, acts Aug. 26, 1935, ch. 687, title I, §11, 49 Stat. 820; Pub. L. 95–598, title III, §309, Nov. 6, 1978, 92 Stat. 2676, related to simplification of holding company systems.

Section 79l, act Aug. 26, 1935, ch. 687, title I, §12, 49 Stat. 823, related to intercompany and other transactions relating to registered companies.

Section 79m, act Aug. 26, 1935, ch. 687, title I, §13, 49 Stat. 825, related to service, sales, and construction contracts.

Section 79n, act Aug. 26, 1935, ch. 687, title I, §14, 49 Stat. 827, related to periodic and other reports.

Section 79o, act Aug. 26, 1935, ch. 687, title I, §15, 49 Stat. 828, related to keeping of accounts and records.

Section 79p, act Aug. 26, 1935, ch. 687, title I, §16, 49 Stat. 829, related to penalty for misleading statements and rights and remedies in addition to those under other laws.

Section 79q, act Aug. 26, 1935, ch. 687, title I, §17, 49 Stat. 830, related to officers and directors of registered holding companies.

Section 79r, acts Aug. 26, 1935, ch. 687, title I, §18, 49 Stat. 831; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, §32(b), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Pub. L. 91–452, title II, §214, Oct. 15, 1970, 84 Stat. 929; Pub. L. 100–181, title IV, §402, Dec. 4, 1987, 101 Stat. 1259, related to investigations, injunctions, and enforcement of law.

Section 79s, act Aug. 26, 1935, ch. 687, title I, §19, 49 Stat. 832, related to hearings before Securities and Exchange Commission.

Section 79t, act Aug. 26, 1935, ch. 687, title I, §20, 49 Stat. 833, related to rules, regulations, and orders to carry out provisions of chapter.

Section 79u, act Aug. 26, 1935, ch. 687, title I, §21, 49 Stat. 834, related to effect of chapter on other laws.

Section 79v, act Aug. 26, 1935, ch. 687, title I, §22, 49 Stat. 834, related to public disclosure of information filed with Securities and Exchange Commission.

Section 79w, act Aug. 26, 1935, ch. 687, title I, §23, 49 Stat. 834, related to annual report to Congress by Securities and Exchange Commission.

Section 79x, acts Aug. 26, 1935, ch. 687, title I, §24, 49 Stat. 834; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Pub. L. 85–791, §15, Aug. 28, 1958, 72 Stat. 946; Pub. L. 100–181, title IV, §403, Dec. 4, 1987, 101 Stat. 1259, related to judicial review of orders.

Section 79y, acts Aug. 26, 1935, ch. 687, title I, §25, 49 Stat. 835; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, §32(b), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Pub. L. 100–181, title IV, §404, Dec. 4, 1987, 101 Stat. 1260, related to court jurisdiction of violations of chapter.

Section 79z, act Aug. 26, 1935, ch. 687, title I, §26, 49 Stat. 835, related to validity of contracts.

Section 79z–1, act Aug. 26, 1935, ch. 687, title I, §27, 49 Stat. 836, related to liability of controlling persons for unlawful acts or prevention of compliance.

Section 79z–2, act Aug. 26, 1935, ch. 687, title I, §28, 49 Stat. 836, related to representation of guaranty or recommendation by United States.

Section 79z–3, acts Aug. 26, 1935, ch. 687, title I, §29, 49 Stat. 836; Pub. L. 94–29, §27(c), June 4, 1975, 89 Stat. 163, related to penalties for violations of provisions, false statements, or destruction of records.

Section 79z–4, acts Aug. 26, 1935, ch. 687, title I, §30, 49 Stat. 837; Pub. L. 100–181, title IV, §405, Dec. 4, 1987, 101 Stat. 1260, related to studies and investigations of public utility companies.

Section 79z–5, acts Aug. 26, 1935, ch. 687, title I, §31, 49 Stat. 837; Oct. 28, 1949, ch. 782, title XI, §1106(a), 63 Stat. 972; Pub. L. 101–550, title I, §104(a), Nov. 15, 1990, 104 Stat. 2713, related to hiring and leasing authority of Securities and Exchange Commission.

Section 79z–5a, act Aug. 26, 1935, ch. 687, title I, §32, as added Pub. L. 102–486, title VII, §711, Oct. 24, 1992, 106 Stat. 2905, related to exempt wholesale generators of electrical energy.

Section 79z–5b, act Aug. 26, 1935, ch. 687, title I, §33, as added Pub. L. 102–486, title VII, §715, Oct. 24, 1992, 106 Stat. 2912, related to treatment of foreign utilities.

Section 79z–5c, act Aug. 26, 1935, ch. 687, title I, §34, as added Pub. L. 104–104, title I, §103, Feb. 8, 1996, 110 Stat. 81, related to exempt telecommunications companies.

Section 79z–6, acts Aug. 26, 1935, ch. 687, title I, §35, formerly §32, 49 Stat. 837; renumbered §34, Pub. L. 102–486, title VII, §711, Oct. 24, 1992, 106 Stat. 2905; renumbered §35, Pub. L. 104–104, title I, §103, Feb. 8, 1996, 110 Stat. 81, set forth separability clause.

EFFECTIVE DATE OF REPEAL

Repeal effective 6 months after Aug. 8, 2005, with provisions relating to effect of compliance with certain regulations approved and made effective prior to such date, see section 1274 of Pub. L. 109–58, set out as an Effective Date note under section 16451 of Title 42, The Public Health and Welfare.

CHAPTER 2D—INVESTMENT COMPANIES AND ADVISERS

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SUBCHAPTER I—INVESTMENT COMPANIES

§80a–1. Findings and declaration of policy

(a) Findings

Upon the basis of facts disclosed by the record and reports of the Securities and Exchange Commission made pursuant to section 79z–4 [1] of this title, and facts otherwise disclosed and ascertained, it is found that investment companies are affected with a national public interest in that, among other things—

(1) the securities issued by such companies, which constitute a substantial part of all securities publicly offered, are distributed, purchased, paid for, exchanged, transferred, redeemed, and repurchased by use of the mails and means and instrumentalities of interstate commerce, and in the case of the numerous companies which issue redeemable securities this process of distribution and redemption is continuous;

(2) the principal activities of such companies—investing, reinvesting, and trading in securities—are conducted by use of the mails and means and instrumentalities of interstate commerce, including the facilities of national securities exchanges, and constitute a substantial part of all transactions effected in the securities markets of the Nation;

(3) such companies customarily invest and trade in securities issued by, and may dominate and control or otherwise affect the policies and management of, companies engaged in business in interstate commerce;

(4) such companies are media for the investment in the national economy of a substantial part of the national savings and may have a vital effect upon the flow of such savings into the capital markets; and

(5) the activities of such companies, extending over many States, their use of the instrumentalities of interstate commerce and the wide geographic distribution of their security

holders, make difficult, if not impossible, effective State regulation of such companies in the interest of investors.

(b) Policy

Upon the basis of facts disclosed by the record and reports of the Securities and Exchange Commission made pursuant to section 79z–4 [1] of this title, and facts otherwise disclosed and ascertained, it is declared that the national public interest and the interest of investors are adversely affected—

(1) when investors purchase, pay for, exchange, receive dividends upon, vote, refrain from voting, sell, or surrender securities issued by investment companies without adequate, accurate, and explicit information, fairly presented, concerning the character of such securities and the circumstances, policies, and financial responsibility of such companies and their management;

(2) when investment companies are organized, operated, managed, or their portfolio securities are selected, in the interest of directors, officers, investment advisers, depositors, or other affiliated persons thereof, in the interest of underwriters, brokers, or dealers, in the interest of special classes of their security holders, or in the interest of other investment companies or persons engaged in other lines of business, rather than in the interest of all classes of such companies' security holders;

(3) when investment companies issue securities containing inequitable or discriminatory provisions, or fail to protect the preferences and privileges of the holders of their outstanding securities;

(4) when the control of investment companies is unduly concentrated through pyramiding or inequitable methods of control, or is inequitably distributed, or when investment companies are managed by irresponsible persons;

(5) when investment companies, in keeping their accounts, in maintaining reserves, and in computing their earnings and the asset value of their outstanding securities, employ unsound or misleading methods, or are not subjected to adequate independent scrutiny;

(6) when investment companies are reorganized, become inactive, or change the character of their business, or when the control or management thereof is transferred, without the consent of their security holders;

(7) when investment companies by excessive borrowing and the issuance of excessive amounts of senior securities increase unduly the speculative character of their junior securities; or

(8) when investment companies operate without adequate assets or reserves.

It is declared that the policy and purposes of this subchapter, in accordance with which the provisions of this subchapter shall be interpreted, are to mitigate and, so far as is feasible, to eliminate the conditions enumerated in this section which adversely affect the national public interest and the interest of investors.

(Aug. 22, 1940, ch. 686, title I, §1, 54 Stat. 789.)

REFERENCES IN TEXT

Section 79z–4 of this title, referred to in text, was repealed by Pub. L. 109–58, title XII, §1263, Aug. 8, 2005, 119 Stat. 974.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

[1] *See References in Text note below.*

§80a–2. Definitions; applicability; rulemaking considerations

(a) Definitions

When used in this subchapter, unless the context otherwise requires—

(1) "Advisory board" means a board, whether elected or appointed, which is distinct from the board of directors or board of trustees, of an investment company, and which is composed solely of persons who do not serve such company in any other capacity, whether or not the functions of such board are such as to render its members "directors" within the definition of that term, which board has advisory functions as to investments but has no power to determine that any security or other investment shall be purchased or sold by such company.

(2) "Affiliated company" means a company which is an affiliated person.

(3) "Affiliated person" of another person means (A) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (C) any person directly or indirectly controlling, controlled by, or under common control with, such other person; (D) any officer, director, partner, copartner, or employee of such other person; (E) if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof; and (F) if such other person is an unincorporated investment company not having a board of directors, the depositor thereof.

(4) "Assignment" includes any direct or indirect transfer or hypothecation of a contract or chose in action by the assignor, or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but does not include an assignment of partnership interests incidental to the death or withdrawal of a minority of the members of the partnership having only a minority interest in the partnership business or to the admission to the partnership of one or more members who, after such admission, shall be only a minority of the members and shall have only a minority interest in the business.

(5) "Bank" means (A) a depository institution (as defined in section 1813 of title 12) or a branch or agency of a foreign bank (as such terms are defined in section 3101 of title 12), (B) a member bank of the Federal Reserve System, (C) any other banking institution or trust company, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this subchapter, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph.

(6) The term "broker" has the same meaning as given in section 3 of the Securities Exchange Act of 1934 [15 U.S.C. 78c], except that such term does not include any person solely by reason of the fact that such person is an underwriter for one or more investment companies.

(7) "Commission" means the Securities and Exchange Commission.

(8) "Company" means a corporation, a partnership, an association, a joint-stock company, a trust, a fund, or any organized group of persons whether incorporated or not; or any receiver, trustee in a case under title 11 or similar official or any liquidating agent for any of the foregoing, in his capacity as such.

(9) "Control" means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company.

Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 per centum of the voting securities of a company shall be presumed to control such company. Any person who does not so own more than 25 per centum of the voting securities of any company shall be presumed not to control such company. A natural person shall be presumed not to be a controlled person within the meaning of this subchapter. Any such presumption may be rebutted by evidence, but except as hereinafter provided, shall continue until a determination to the contrary made by the Commission by order either on its own motion or on application by an interested person. If an application filed hereunder is not granted or denied by

the Commission within sixty days after filing thereof, the determination sought by the application shall be deemed to have been temporarily granted pending final determination of the Commission thereon. The Commission, upon its own motion or upon application, may by order revoke or modify any order issued under this paragraph whenever it shall find that the determination embraced in such original order is no longer consistent with the facts.

(10) "Convicted" includes a verdict, judgment, or plea of guilty, or a finding of guilt on a plea of nolo contendere, if such verdict, judgment, plea, or finding has not been reversed, set aside, or withdrawn, whether or not sentence has been imposed.

(11) The term "dealer" has the same meaning as given in the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], but does not include an insurance company or investment company.

(12) "Director" means any director of a corporation or any person performing similar functions with respect to any organization, whether incorporated or unincorporated, including any natural person who is a member of a board of trustees of a management company created as a common-law trust.

(13) "Employees' securities company" means any investment company or similar issuer all of the outstanding securities of which (other than short-term paper) are beneficially owned (A) by the employees or persons on retainer of a single employer or of two or more employers each of which is an affiliated company of the other, (B) by former employees of such employer or employers, (C) by members of the immediate family of such employees, persons on retainer, or former employees, (D) by any two or more of the foregoing classes of persons, or (E) by such employer or employers together with any one or more of the foregoing classes of persons.

(14) "Exchange" means any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange.

(15) "Face-amount certificate" means any certificate, investment contract, or other security which represents an obligation on the part of its issuer to pay a stated or determinable sum or sums at a fixed or determinable date or dates more than twenty-four months after the date of issuance, in consideration of the payment of periodic installments of a stated or determinable amount (which security shall be known as a face-amount certificate of the "installment type"); or any security which represents a similar obligation on the part of a face-amount certificate company, the consideration for which is the payment of a single lump sum (which security shall be known as a "fully paid" face-amount certificate).

(16) "Government security" means any security issued or guaranteed as to principal or interest by the United States, or by a person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States; or any certificate of deposit for any of the foregoing.

(17) "Insurance company" means a company which is organized as an insurance company, whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and which is subject to supervision by the insurance commissioner or a similar official or agency of a State; or any receiver or similar official or any liquidating agent for such a company, in his capacity as such.

(18) "Interstate commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State, or between any State and any place or ship outside thereof.

(19) "Interested person" of another person means—

(A) when used with respect to an investment company—

(i) any affiliated person of such company,

(ii) any member of the immediate family of any natural person who is an affiliated person of such company,

(iii) any interested person of any investment adviser of or principal underwriter for such

company,

(iv) any person or partner or employee of any person who at any time since the beginning of the last two completed fiscal years of such company has acted as legal counsel for such company,

(v) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for—

(I) the investment company;

(II) any other investment company having the same investment adviser as such investment company or holding itself out to investors as a related company for purposes of investment or investor services; or

(III) any account over which the investment company's investment adviser has brokerage placement discretion,

(vi) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has loaned money or other property to—

(I) the investment company;

(II) any other investment company having the same investment adviser as such investment company or holding itself out to investors as a related company for purposes of investment or investor services; or

(III) any account for which the investment company's investment adviser has borrowing authority, and

(vii) any natural person whom the Commission by order shall have determined to be an interested person by reason of having had, at any time since the beginning of the last two completed fiscal years of such company, a material business or professional relationship with such company or with the principal executive officer of such company or with any other investment company having the same investment adviser or principal underwriter or with the principal executive officer of such other investment company:

Provided, That no person shall be deemed to be an interested person of an investment company solely by reason of (aa) his being a member of its board of directors or advisory board or an owner of its securities, or (bb) his membership in the immediate family of any person specified in clause (aa) of this proviso; and

(B) when used with respect to an investment adviser of or principal underwriter for any investment company—

(i) any affiliated person of such investment adviser or principal underwriter,

(ii) any member of the immediate family of any natural person who is an affiliated person of such investment adviser or principal underwriter,

(iii) any person who knowingly has any direct or indirect beneficial interest in, or who is designated as trustee, executor, or guardian of any legal interest in, any security issued either by such investment adviser of principal underwriter or by a controlling person or such investment adviser or principal underwriter,

(iv) any person or partner or employee of any person who at any time since the beginning of the last two completed fiscal years of such investment company has acted as legal counsel for such investment adviser or principal underwriter,

(v) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for—

(I) any investment company for which the investment adviser or principal underwriter serves as such;

(II) any investment company holding itself out to investors, for purposes of investment or investor services, as a company related to any investment company for which the investment adviser or principal underwriter serves as such; or

(III) any account over which the investment adviser has brokerage placement discretion,

(vi) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has loaned money or other property to—

(I) any investment company for which the investment adviser or principal underwriter serves as such;

(II) any investment company holding itself out to investors, for purposes of investment or investor services, as a company related to any investment company for which the investment adviser or principal underwriter serves as such; or

(III) any account for which the investment adviser has borrowing authority, and

(vii) any natural person whom the Commission by order shall have determined to be an interested person by reason of having had at any time since the beginning of the last two completed fiscal years of such investment company a material business or professional relationship with such investment adviser or principal underwriter or with the principal executive officer or any controlling person of such investment adviser or principal underwriter.

For the purposes of this paragraph (19), "member of the immediate family" means any parent, spouse of a parent, child, spouse of a child, spouse, brother, or sister, and includes step and adoptive relationships. The Commission may modify or revoke any order issued under clause (vii) of subparagraph (A) or (B) of this paragraph whenever it finds that such order is no longer consistent with the facts. No order issued pursuant to clause (vii) of subparagraph (A) or (B) of this paragraph shall become effective until at least sixty days after the entry thereof, and no such order shall affect the status of any person for the purposes of this subchapter or for any other purpose for any period prior to the effective date of such order.

(20) "Investment adviser" of an investment company means (A) any person (other than a bona fide officer, director, trustee, member of an advisory board, or employee of such company, as such) who pursuant to contract with such company regularly furnishes advice to such company with respect to the desirability of investing in, purchasing or selling securities or other property, or is empowered to determine what securities or other property shall be purchased or sold by such company, and (B) any other person who pursuant to contract with a person described in clause (A) of this paragraph regularly performs substantially all of the duties undertaken by such person described in said clause (A); but does not include (i) a person whose advice is furnished solely through uniform publications distributed to subscribers thereto, (ii) a person who furnishes only statistical and other factual information, advice regarding economic factors and trends, or advice as to occasional transactions in specific securities, but without generally furnishing advice or making recommendations regarding the purchase or sale of securities, (iii) a company furnishing such services at cost to one or more investment companies, insurance companies, or other financial institutions, (iv) any person the character and amount of whose compensation for such services must be approved by a court, or (v) such other persons as the Commission may by rules and regulations or order determine not to be within the intent of this definition.

(21) "Investment banker" means any person engaged in the business of underwriting securities issued by other persons, but does not include an investment company, any person who acts as an underwriter in isolated transactions but not as a part of a regular business, or any person solely by reason of the fact that such person is an underwriter for one or more investment companies.

(22) "Issuer" means every person who issues or proposes to issue any security, or has outstanding any security which it has issued.

(23) "Lend" includes a purchase coupled with an agreement by the vendor to repurchase; "borrow" includes a sale coupled with a similar agreement.

(24) "Majority-owned subsidiary" of a person means a company 50 per centum or more of the outstanding voting securities of which are owned by such person, or by a company which, within the meaning of this paragraph, is a majority-owned subsidiary of such person.

(25) "Means or instrumentality of interstate commerce" includes any facility of a national securities exchange.

(26) "National securities exchange" means an exchange registered under section 6 of the Securities Exchange Act of 1934 [15 U.S.C. 78f].

(27) "Periodic payment plan certificate" means (A) any certificate, investment contract, or other security providing for a series of periodic payments by the holder, and representing an undivided interest in certain specified securities or in a unit or fund of securities purchased wholly or partly with the proceeds of such payments, and (B) any security the issuer of which is also issuing securities of the character described in clause (A) of this paragraph and the holder of which has substantially the same rights and privileges as those which holders of securities of the character described in said clause (A) have upon completing the periodic payments for which such securities provide.

(28) "Person" means a natural person or a company.

(29) "Principal underwriter" of or for any investment company other than a closed-end company, or of any security issued by such a company, means any underwriter who as principal purchases from such company, or pursuant to contract has the right (whether absolute or conditional) from time to time to purchase from such company, any such security for distribution, or who as agent for such company sells or has the right to sell any such security to a dealer or to the public or both, but does not include a dealer who purchases from such company through a principal underwriter acting as agent for such company. "Principal underwriter" of or for a closed-end company or any issuer which is not an investment company, or of any security issued by such a company or issuer, means any underwriter who, in connection with a primary distribution of securities, (A) is in privity of contract with the issuer or an affiliated person of the issuer; (B) acting alone or in concert with one or more other persons, initiates or directs the formation of an underwriting syndicate; or (C) is allowed a rate of gross commission, spread, or other profit greater than the rate allowed another underwriter participating in the distribution.

(30) "Promoter" of a company or a proposed company means a person who, acting alone or in concert with other persons, is initiating or directing, or has within one year initiated or directed, the organization of such company.

(31) "Prospectus", as used in section 80a–22 of this title, means a written prospectus intended to meet the requirements of section 10(a) of the Securities Act of 1933 [15 U.S.C. 77j(a)] and currently in use. As used elsewhere, "prospectus" means a prospectus as defined in the Securities Act of 1933 [15 U.S.C. 77a et seq.].

(32) "Redeemable security" means any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer or to a person designated by the issuer, is entitled (whether absolutely or only out of surplus) to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

(33) "Reorganization" means (A) a reorganization under the supervision of a court of competent jurisdiction; (B) a merger or consolidation; (C) a sale of 75 per centum or more in value of the assets of a company; (D) a restatement of the capital of a company, or an exchange of securities issued by a company for any of its own outstanding securities; (E) a voluntary dissolution or liquidation of a company; (F) a recapitalization or other procedure or transaction which has for its purpose the alteration, modification, or elimination of any of the rights, preferences, or privileges of any class of securities issued by a company, as provided in its charter or other instrument creating or defining such rights, preferences, and privileges; (G) an exchange of securities issued by a company for outstanding securities issued by another company or companies, preliminary to

and for the purpose of effecting or consummating any of the foregoing; or (H) any exchange of securities by a company which is not an investment company for securities issued by a registered investment company.

(34) "Sale", "sell", "offer to sell", or "offer for sale" includes every contract of sale or disposition of, attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value.

(35) "Sales load" means the difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested or held for investment by the issuer (or in the case of a unit investment trust, by the depositor or trustee), less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities. In the case of a periodic payment plan certificate, "sales load" includes the sales load on any investment company securities in which the payments made on such certificate are invested, as well as the sales load on the certificate itself.

(36) "Security" means any note, stock, treasury stock, security future, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

(37) "Separate account" means an account established and maintained by an insurance company pursuant to the laws of any State or territory of the United States, or of Canada or any province thereof, under which income, gains and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.

(38) "Short-term paper" means any note, draft, bill of exchange, or banker's acceptance payable on demand or having a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof payable on demand or having a maturity likewise limited; and such other classes of securities, of a commercial rather than an investment character, as the Commission may designate by rules and regulations.

(39) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States.

(40) "Underwriter" means any person who has purchased from an issuer with a view to, or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributor's or seller's commission. As used in this paragraph the term "issuer" shall include, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer. When the distribution of the securities in respect of which any person is an underwriter is completed such person shall cease to be an underwriter in respect of such securities or the issuer thereof.

(41) "Value", with respect to assets of registered investment companies, except as provided in subsection (b) of section 80a–28 of this title, means—

(A) as used in sections 80a–3, 80a–5, and 80a–12 of this title, (i) with respect to securities owned at the end of the last preceding fiscal quarter for which market quotations are readily

available, the market value at the end of such quarter; (ii) with respect to other securities and assets owned at the end of the last preceding fiscal quarter, fair value at the end of such quarter, as determined in good faith by the board of directors; and (iii) with respect to securities and other assets acquired after the end of the last preceding fiscal quarter, the cost thereof; and

(B) as used elsewhere in this subchapter, (i) with respect to securities for which market quotations are readily available, the market value of such securities; and (ii) with respect to other securities and assets, fair value as determined in good faith by the board of directors;

in each case as of such time or times as determined pursuant to this subchapter, and the rules and regulations issued by the Commission hereunder. Notwithstanding the fact that market quotations for securities issued by controlled companies are available, the board of directors may in good faith determine the value of such securities: *Provided*, That the value so determined is not in excess of the higher of market value or asset value of such securities in the case of majority-owned subsidiaries, and is not in excess of market value in the case of other controlled companies.

For purposes of the valuation of those assets of a registered diversified company which are not subject to the limitations provided for in section 80a–5(b)(1) of this title, the Commission may, by rules and regulations or orders, permit any security to be carried at cost, if it shall determine that such procedure is consistent with the general intent and purposes of this subchapter. For purposes of sections 80a–5 and 80a–12 of this title in lieu of values determined as provided in clause (A) above, the Commission shall by rules and regulations permit valuation of securities at cost or other basis in cases where it may be more convenient for such company to make its computations on such basis by reason of the necessity or desirability of complying with the provisions of any United States revenue laws or rules and regulations issued thereunder, or the laws or the rules and regulations issued thereunder of any State in which the securities of such company may be qualified for sale.

The foregoing definition shall not derogate from the authority of the Commission with respect to the reports, information, and documents to be filed with the Commission by any registered company, or with respect to the accounting policies and principles to be followed by any such company, as provided in sections 80a–8, 80a–29, and 80a–30 of this title.

(42) "Voting security" means any security presently entitling the owner or holder thereof to vote for the election of directors of a company. A specified percentage of the outstanding voting securities of a company means such amount of its outstanding voting securities as entitles the holder or holders thereof to cast said specified percentage of the aggregate votes which the holders of all the outstanding voting securities of such company are entitled to cast. The vote of a majority of the outstanding voting securities of a company means the vote, at the annual or a special meeting of the security holders of such company duly called, (A) of 67 per centum or more of the voting securities present at such meeting, if the holders of more than 50 per centum of the outstanding voting securities of such company are present or represented by proxy; or (B) of more than 50 per centum of the outstanding voting securities of such company, whichever is the less.

(43) "Wholly-owned subsidiary" of a person means a company 95 per centum or more of the outstanding voting securities of which are owned by such person, or by a company which, within the meaning of this paragraph, is a wholly-owned subsidiary of such person.

(44) "Securities Act of 1933" [15 U.S.C. 77a et seq.], "Securities Exchange Act of 1934" [15 U.S.C. 78a et seq.], and "Trust Indenture Act of 1939" [15 U.S.C. 77aaa et seq.] mean those acts, respectively, as heretofore or hereafter amended.

(45) "Savings and loan association" means a savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, which is supervised and examined by State or Federal authority having supervision over any such institution, and a receiver, conservator, or other liquidating agent of any such institution.

(46) "Eligible portfolio company" means any issuer which—

(A) is organized under the laws of, and has its principal place of business in, any State or States;

(B) is neither an investment company as defined in section 80a–3 of this title (other than a

small business investment company which is licensed by the Small Business Administration to operate under the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.] and which is a wholly-owned subsidiary of the business development company) nor a company which would be an investment company except for the exclusion from the definition of investment company in section 80a–3(c) of this title; and

(C) satisfies one of the following:

(i) it does not have any class of securities with respect to which a member of a national securities exchange, broker, or dealer may extend or maintain credit to or for a customer pursuant to rules or regulations adopted by the Board of Governors of the Federal Reserve System under section 7 of the Securities Exchange Act of 1934 [15 U.S.C. 78g];

(ii) it is controlled by a business development company, either alone or as part of a group acting together, and such business development company in fact exercises a controlling influence over the management or policies of such eligible portfolio company and, as a result of such control, has an affiliated person who is a director of such eligible portfolio company;

(iii) it has total assets of not more than $4,000,000, and capital and surplus (shareholders' equity less retained earnings) of not less than $2,000,000, except that the Commission may adjust such amounts by rule, regulation, or order to reflect changes in 1 or more generally accepted indices or other indicators for small businesses; or

(iv) it meets such other criteria as the Commission may, by rule, establish as consistent with the public interest, the protection of investors, and the purposes fairly intended by the policy and provisions of this subchapter.

(47) "Making available significant managerial assistance" by a business development company means—

(A) any arrangement whereby a business development company, through its directors, officers, employees, or general partners, offers to provide, and, if accepted, does so provide, significant guidance and counsel concerning the management, operations, or business objectives and policies of a portfolio company;

(B) the exercise by a business development company of a controlling influence over the management or policies of a portfolio company by the business development company acting individually or as part of a group acting together which controls such portfolio company; or

(C) with respect to a small business investment company licensed by the Small Business Administration to operate under the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.], the making of loans to a portfolio company.

For purposes of subparagraph (A), the requirement that a business development company make available significant managerial assistance shall be deemed to be satisfied with respect to any particular portfolio company where the business development company purchases securities of such portfolio company in conjunction with one or more other persons acting together, and at least one of the persons in the group makes available significant managerial assistance to such portfolio company, except that such requirement will not be deemed to be satisfied if the business development company, in all cases, makes available significant managerial assistance solely in the manner described in this sentence.

(48) "Business development company" means any closed-end company which—

(A) is organized under the laws of, and has its principal place of business in, any State or States;

(B) is operated for the purpose of making investments in securities described in paragraphs (1) through (3) of section 80a–54(a) of this title, and makes available significant managerial assistance with respect to the issuers of such securities, provided that a business development company must make available significant managerial assistance only with respect to the companies which are treated by such business development company as satisfying the 70 per centum of the value of its total assets condition of section 80a–54 of this title; and provided further that a business development company need not make available significant managerial

assistance with respect to any company described in paragraph (46)(C)(iii), or with respect to any other company that meets such criteria as the Commission may by rule, regulation, or order permit, as consistent with the public interest, the protection of investors, and the purposes of this subchapter; and

(C) has elected pursuant to section 80a–53(a) of this title to be subject to the provisions of sections 80a–54 through 80a–64 of this title.

(49) "Foreign securities authority" means any foreign government or any governmental body or regulatory organization empowered by a foreign government to administer or enforce its laws as they relate to securities matters.

(50) "Foreign financial regulatory authority" means any (A) foreign securities authority, (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade or foreign equivalent, or other financial activities, or (C) membership organization a function of which is to regulate the participation of its members in activities listed above.

(51)(A) "Qualified purchaser" means—

(i) any natural person (including any person who holds a joint, community property, or other similar shared ownership interest in an issuer that is excepted under section 80a–3(c)(7) of this title with that person's qualified purchaser spouse) who owns not less than $5,000,000 in investments, as defined by the Commission;

(ii) any company that owns not less than $5,000,000 in investments and that is owned directly or indirectly by or for 2 or more natural persons who are related as siblings or spouse (including former spouses), or direct lineal descendants by birth or adoption, spouses of such persons, the estates of such persons, or foundations, charitable organizations, or trusts established by or for the benefit of such persons;

(iii) any trust that is not covered by clause (ii) and that was not formed for the specific purpose of acquiring the securities offered, as to which the trustee or other person authorized to make decisions with respect to the trust, and each settlor or other person who has contributed assets to the trust, is a person described in clause (i), (ii), or (iv); or

(iv) any person, acting for its own account or the accounts of other qualified purchasers, who in the aggregate owns and invests on a discretionary basis, not less than $25,000,000 in investments.

(B) The Commission may adopt such rules and regulations applicable to the persons and trusts specified in clauses (i) through (iv) of subparagraph (A) as it determines are necessary or appropriate in the public interest or for the protection of investors.

(C) The term "qualified purchaser" does not include a company that, but for the exceptions provided for in paragraph (1) or (7) of section 80a–3(c) of this title, would be an investment company (hereafter in this paragraph referred to as an "excepted investment company"), unless all beneficial owners of its outstanding securities (other than short-term paper), determined in accordance with section 80a–3(c)(1)(A) of this title, that acquired such securities on or before April 30, 1996 (hereafter in this paragraph referred to as "pre-amendment beneficial owners"), and all pre-amendment beneficial owners of the outstanding securities (other than short-term paper) of any excepted investment company that, directly or indirectly, owns any outstanding securities of such excepted investment company, have consented to its treatment as a qualified purchaser. Unanimous consent of all trustees, directors, or general partners of a company or trust referred to in clause (ii) or (iii) of subparagraph (A) shall constitute consent for purposes of this subparagraph.

(52) The terms "security future" and "narrow-based security index" have the same meanings as provided in section 3(a)(55) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(55)].

(53) The term "credit rating agency" has the same meaning as in section 3 of the Securities

Exchange Act of 1934 [15 U.S.C. 78c].

(54) The terms "commodity pool", "commodity pool operator", "commodity trading advisor", "major swap participant", "swap", "swap dealer", and "swap execution facility" have the same meanings as in section 1a of title 7.

(b) Applicability to government

No provision in this subchapter shall apply to, or be deemed to include, the United States, a State, or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned directly or indirectly by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto.

(c) Consideration of promotion of efficiency, competition, and capital formation

Whenever pursuant to this subchapter the Commission is engaged in rulemaking and is required to consider or determine whether an action is consistent with the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

(Aug. 22, 1940, ch. 686, title I, §2, 54 Stat. 790; Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352; Aug. 10, 1954, ch. 667, title IV, §401, 68 Stat. 688; Pub. L. 86–70, §12(d), June 25, 1959, 73 Stat. 143; Pub. L. 86–624, §7(c), July 12, 1960, 74 Stat. 412; Pub. L. 91–547, §2(a), Dec. 14, 1970, 84 Stat. 1413; Pub. L. 95–598, title III, §310(a), Nov. 6, 1978, 92 Stat. 2676; Pub. L. 96–477, title I, §101, Oct. 21, 1980, 94 Stat. 2275; Pub. L. 97–303, §5, Oct. 13, 1982, 96 Stat. 1409; Pub. L. 100–181, title VI, §§601–603, Dec. 4, 1987, 101 Stat. 1260; Pub. L. 101–550, title II, §206(a), Nov. 15, 1990, 104 Stat. 2720; Pub. L. 104–290, title I, §106(c), title II, §209(b), title V, §§503, 504, Oct. 11, 1996, 110 Stat. 3425, 3434, 3445; Pub. L. 105–353, title III, §301(c)(1), Nov. 3, 1998, 112 Stat. 3236; Pub. L. 106–102, title II, §§213(a), (b), 215, 216, 223, Nov. 12, 1999, 113 Stat. 1397, 1399, 1401; Pub. L. 106–554, §1(a)(5) [title II, §209(a)(1), (3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–435, 2763A–436; Pub. L. 109–291, §4(b)(2)(A), Sept. 29, 2006, 120 Stat. 1337; Pub. L. 111–203, title VII, §769, title IX, §§985(d)(1), 986(c)(1), July 21, 2010, 124 Stat. 1801, 1934, 1936.)

AMENDMENT OF SECTION

Unless otherwise provided, amendment by subtitle B (§§761–774) of title VII of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see 2010 Amendment notes and Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsec. (a)(11), (44), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

The Securities Act of 1933, referred to in subsec. (a)(31), (44), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Trust Indenture Act of 1939, referred to in subsec. (a)(44), is title III of act May 27, 1933, ch. 38, as added Aug. 3, 1939, ch. 411, 53 Stat. 1149, which is classified generally to subchapter III (§77aaa et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77aaa of this title and Tables.

The Small Business Investment Act of 1958, referred to in subsec. (a)(46)(B), (47)(C), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, which is classified principally to chapter 14B (§661 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

CODIFICATION

Words "Philippine Islands" deleted from definition of term "State" under authority of Proc. No. 2695, which granted independence to the Philippine Islands. Proc. No. 2695 was issued pursuant to section 1394 of

Title 22, Foreign Relations and Intercourse, and is set out as a note under that section.

AMENDMENTS

2010—Subsec. (a)(19). Pub. L. 111–203, §985(d)(1)(A), substituted "clause (vii)" for "clause (vi)" in two places in concluding provisions.

Subsec. (a)(19)(A)(vi)(III), (B)(vi)(III). Pub. L. 111–203, §985(d)(1)(B), inserted "and" at end.

Subsec. (a)(44). Pub. L. 111–203, §986(c)(1), struck out " 'Public Utility Holding Company Act of 1935'," after " 'Securities Exchange Act of 1934',".

Subsec. (a)(54). Pub. L. 111–203, §769, added par. (54).

2006—Subsec. (a)(53). Pub. L. 109–291 added par. (53).

2000—Subsec. (a)(36). Pub. L. 106–554, §1(a)(5) [title II, §209(a)(1)], inserted "security future," after "treasury stock,".

Subsec. (a)(52). Pub. L. 106–554, §1(a)(5) [title II, §209(a)(3)], added par. (52).

1999—Subsec. (a)(5)(A). Pub. L. 106–102, §223, substituted "a depository institution (as defined in section 1813 of title 12) or a branch or agency of a foreign bank (as such terms are defined in section 3101 of title 12)" for "a banking institution organized under the laws of the United States".

Subsec. (a)(6). Pub. L. 106–102, §215, amended par. (6) generally. Prior to amendment, par. (6) read as follows: " 'Broker' means any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank or any person solely by reason of the fact that such person is an underwriter for one or more investment companies."

Subsec. (a)(11). Pub. L. 106–102, §216, amended par. (11) generally. Prior to amendment, par. (11) read as follows: " 'Dealer' means any person regularly engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, insurance company, or investment company, or any person insofar as he is engaged in investing, reinvesting, or trading in securities, or in owning or holding securities, for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business."

Subsec. (a)(19)(A)(v). Pub. L. 106–102, §213(a)(1), added cl. (v) and struck out former cl. (v) which read as follows: "any broker or dealer registered under the Securities Exchange Act of 1934 or any affiliated person of such a broker or dealer, and".

Subsec. (a)(19)(A)(vi), (vii). Pub. L. 106–102, §213(a)(2), (3), added cl. (vi) and redesignated former cl. (vi) as (vii).

Subsec. (a)(19)(B)(v). Pub. L. 106–102, §213(b)(1), added cl. (v) and struck out former cl. (v) which read as follows: "any broker or dealer registered under the Securities Exchange Act of 1934 or any affiliated person of such a broker or dealer, and".

Subsec. (a)(19)(B)(vi), (vii). Pub. L. 106–102, §213(b)(2), (3), added cl. (vi) and redesignated former cl. (vi) as (vii).

1998—Subsec. (a)(8). Pub. L. 105–353 made a technical amendment to reference in original act which appears in text as reference to title 11.

1996—Subsec. (a)(46)(C)(iii), (iv). Pub. L. 104–290, §503, added cl. (iii) and redesignated former cl. (iii) as (iv).

Subsec. (a)(48)(B). Pub. L. 104–290, §504, inserted at end "provided further that a business development company need not make available significant managerial assistance with respect to any company described in paragraph (46)(C)(iii), or with respect to any other company that meets such criteria as the Commission may by rule, regulation, or order permit, as consistent with the public interest, the protection of investors, and the purposes of this subchapter; and".

Subsec. (a)(51). Pub. L. 104–290, §209(b), added par. (51).

Subsec. (c). Pub. L. 104–290, §106(c), added subsec. (c).

1990—Subsec. (a)(49), (50). Pub. L. 101–550 added pars. (49) and (50).

1987—Subsec. (a)(19). Pub. L. 100–181, §601, inserted "completed" before "fiscal years" wherever appearing in subpars. (A)(iv), (vi) and (B)(iv), (vi).

Subsec. (a)(39). Pub. L. 100–181, §602, struck out reference to Canal Zone.

Subsec. (a)(48)(B). Pub. L. 100–181, §603, substituted "paragraphs (1) through (3) of section 80a–54(a) of this title" for "sections 80a–54(a)(1) through (3) of this title".

1982—Subsec. (a)(36). Pub. L. 97–303 inserted "any put, call, straddle, option, or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency," after "mineral rights,".

1980—Subsec. (a)(46) to (48). Pub. L. 96–477 added pars. (46) to (48).

1978—Subsec. (a)(8). Pub. L. 95–598 substituted "a case under title 11" for "bankruptcy".

1970—Subsec. (a)(5). Pub. L. 91–547, §2(a)(1), substituted "under the authority of the Comptroller of the Currency" for "under section 248(k) of title 12,".

Subsec. (a)(19). Pub. L. 91–547, §2(a)(3), added par. (19). Former par. (19) redesignated (20).

Subsecs. (a)(20) to (36). Pub. L. 91–547, §2(a)(2), redesignated former pars. (19) to (35) as (20) to (36), respectively.

Subsec. (a)(37). Pub. L. 91–547, §2(a)(4), added par. (37). Former par. (37) redesignated (39).

Subsecs. (a)(38) to (44). Pub. L. 91–547, §2(a)(2), redesignated former pars. (36) to (42) as (38) to (44).

Subsec. (a)(45). Pub. L. 91–547, §2(a)(5), added par. (45).

1960—Subsec. (a)(37). Pub. L. 86–624 struck out reference to Hawaii.

1959—Subsec. (a)(37). Pub. L. 86–70 struck out reference to Alaska.

1954—Subsec. (a)(30). Act Aug. 10, 1954, substituted "section 10(a) of the Securities Act of 1933" for "section 5(b) of the Securities Act of 1933".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 985(d)(1) and 986(c)(1) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Amendment by section 769 of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761–774) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111–203, set out as a note under section 77b of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–102 effective 18 months after Nov. 12, 1999, see section 225 of Pub. L. 106–102, set out as a note under section 77c of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–290, title II, §209(e), Oct. 11, 1996, 110 Stat. 3436, provided that: "The amendments made by this section [amending this section and section 80a–3 of this title] shall take effect on the earlier of—

"(1) 180 days after the date of enactment of this Act [Oct. 11, 1996]; or

"(2) the date on which the rulemaking required under subsection (d)(2) [set out below] is completed."

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–547 effective Dec. 14, 1970, see section 30 of Pub. L. 91–547, set out as a note under section 80a–52 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note set out under section 77b of this title.

REGULATIONS

Pub. L. 104–290, title II, §209(d)(2), Oct. 11, 1996, 110 Stat. 3435, provided that: "Not later than 180 days after the date of enactment of this Act [Oct. 11, 1996], the Commission shall prescribe rules defining the term, or otherwise identifying, 'investments' for purposes of section 2(a)(51) of the Investment Company Act of 1940 [15 U.S.C. 80a–2(a)(51)], as added by this Act."

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–3. Definition of investment company

(a) Definitions

(1) When used in this subchapter, "investment company" means any issuer which—

(A) is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities;

(B) is engaged or proposes to engage in the business of issuing face-amount certificates of the installment type, or has been engaged in such business and has any such certificate outstanding; or

(C) is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.

(2) As used in this section, "investment securities" includes all securities except (A) Government securities, (B) securities issued by employees' securities companies, and (C) securities issued by majority-owned subsidiaries of the owner which (i) are not investment companies, and (ii) are not relying on the exception from the definition of investment company in paragraph (1) or (7) of subsection (c) of this section.

(b) Exemption from provisions

Notwithstanding paragraph (1)(C) of subsection (a) of this section, none of the following persons is an investment company within the meaning of this subchapter:

(1) Any issuer primarily engaged, directly or through a wholly-owned subsidiary or subsidiaries, in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities.

(2) Any issuer which the Commission, upon application by such issuer, finds and by order declares to be primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities either directly or (A) through majority-owned subsidiaries or (B) through controlled companies conducting similar types of businesses. The filing of an application under this paragraph in good faith by an issuer other than a registered investment company shall exempt the applicant for a period of sixty days from all provisions of this subchapter applicable to investment companies as such. For cause shown, the Commission by order may extend such period of exemption for an additional period or periods. Whenever the Commission, upon its own motion or upon application, finds that the circumstances which gave rise to the issuance of an order granting an application under this paragraph no longer exist, the Commission shall by order revoke such order.

(3) Any issuer all the outstanding securities of which (other than short-term paper and directors' qualifying shares) are directly or indirectly owned by a company excepted from the definition of investment company by paragraph (1) or (2) of this subsection.

(c) Further exemptions

Notwithstanding subsection (a) of this section, none of the following persons is an investment company within the meaning of this subchapter:

(1) Any issuer whose outstanding securities (other than short-term paper) are beneficially owned by not more than one hundred persons and which is not making and does not presently propose to make a public offering of its securities. Such issuer shall be deemed to be an investment company for purposes of the limitations set forth in subparagraphs (A)(i) and (B)(i) of section 80a–12(d)(1) of this title governing the purchase or other acquisition by such issuer of any security issued by any registered investment company and the sale of any security issued by any registered open-end investment company to any such issuer. For purposes of this paragraph:

(A) Beneficial ownership by a company shall be deemed to be beneficial ownership by one person, except that, if the company owns 10 per centum or more of the outstanding voting securities of the issuer, and is or, but for the exception provided for in this paragraph or paragraph (7), would be an investment company, the beneficial ownership shall be deemed to be that of the holders of such company's outstanding securities (other than short-term paper).

(B) Beneficial ownership by any person who acquires securities or interests in securities of an

issuer described in the first sentence of this paragraph shall be deemed to be beneficial ownership by the person from whom such transfer was made, pursuant to such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this subchapter, where the transfer was caused by legal separation, divorce, death, or other involuntary event.

(2)(A) Any person primarily engaged in the business of underwriting and distributing securities issued by other persons, selling securities to customers, acting as broker, and acting as market intermediary, or any one or more of such activities, whose gross income normally is derived principally from such business and related activities.

(B) For purposes of this paragraph—

(i) the term "market intermediary" means any person that regularly holds itself out as being willing contemporaneously to engage in, and that is regularly engaged in, the business of entering into transactions on both sides of the market for a financial contract or one or more such financial contracts; and

(ii) the term "financial contract" means any arrangement that—

(I) takes the form of an individually negotiated contract, agreement, or option to buy, sell, lend, swap, or repurchase, or other similar individually negotiated transaction commonly entered into by participants in the financial markets;

(II) is in respect of securities, commodities, currencies, interest or other rates, other measures of value, or any other financial or economic interest similar in purpose or function to any of the foregoing; and

(III) is entered into in response to a request from a counter party for a quotation, or is otherwise entered into and structured to accommodate the objectives of the counter party to such arrangement.

(3) Any bank or insurance company; any savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, or any receiver, conservator, liquidator, liquidating agent, or similar official or person thereof or therefor; or any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as a trustee, executor, administrator, or guardian, if—

(A) such fund is employed by the bank solely as an aid to the administration of trusts, estates, or other accounts created and maintained for a fiduciary purpose;

(B) except in connection with the ordinary advertising of the bank's fiduciary services, interests in such fund are not—

(i) advertised; or

(ii) offered for sale to the general public; and

(C) fees and expenses charged by such fund are not in contravention of fiduciary principles established under applicable Federal or State law.

(4) Any person substantially all of whose business is confined to making small loans, industrial banking, or similar businesses.

(5) Any person who is not engaged in the business of issuing redeemable securities, face-amount certificates of the installment type or periodic payment plan certificates, and who is primarily engaged in one or more of the following businesses: (A) Purchasing or otherwise acquiring notes, drafts, acceptances, open accounts receivable, and other obligations representing part or all of the sales price of merchandise, insurance, and services; (B) making loans to manufacturers, wholesalers, and retailers of, and to prospective purchasers of, specified merchandise, insurance, and services; and (C) purchasing or otherwise acquiring mortgages and other liens on and interests in real estate.

(6) Any company primarily engaged, directly or through majority-owned subsidiaries, in one or more of the businesses described in paragraphs (3), (4), and (5) of this subsection, or in one or more of such businesses (from which not less than 25 per centum of such company's gross income during its last fiscal year was derived) together with an additional business or businesses other than investing, reinvesting, owning, holding, or trading in securities.

(7)(A) Any issuer, the outstanding securities of which are owned exclusively by persons who, at the time of acquisition of such securities, are qualified purchasers, and which is not making and does not at that time propose to make a public offering of such securities. Securities that are owned by persons who received the securities from a qualified purchaser as a gift or bequest, or in a case in which the transfer was caused by legal separation, divorce, death, or other involuntary event, shall be deemed to be owned by a qualified purchaser, subject to such rules, regulations, and orders as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(B) Notwithstanding subparagraph (A), an issuer is within the exception provided by this paragraph if—

(i) in addition to qualified purchasers, outstanding securities of that issuer are beneficially owned by not more than 100 persons who are not qualified purchasers, if—

(I) such persons acquired any portion of the securities of such issuer on or before September 1, 1996; and

(II) at the time at which such persons initially acquired the securities of such issuer, the issuer was excepted by paragraph (1); and

(ii) prior to availing itself of the exception provided by this paragraph—

(I) such issuer has disclosed to each beneficial owner, as determined under paragraph (1), that future investors will be limited to qualified purchasers, and that ownership in such issuer is no longer limited to not more than 100 persons; and

(II) concurrently with or after such disclosure, such issuer has provided each beneficial owner, as determined under paragraph (1), with a reasonable opportunity to redeem any part or all of their interests in the issuer, notwithstanding any agreement to the contrary between the issuer and such persons, for that person's proportionate share of the issuer's net assets.

(C) Each person that elects to redeem under subparagraph (B)(ii)(II) shall receive an amount in cash equal to that person's proportionate share of the issuer's net assets, unless the issuer elects to provide such person with the option of receiving, and such person agrees to receive, all or a portion of such person's share in assets of the issuer. If the issuer elects to provide such persons with such an opportunity, disclosure concerning such opportunity shall be made in the disclosure required by subparagraph (B)(ii)(I).

(D) An issuer that is excepted under this paragraph shall nonetheless be deemed to be an investment company for purposes of the limitations set forth in subparagraphs (A)(i) and (B)(i) of section 80a–12(d)(1) of this title relating to the purchase or other acquisition by such issuer of any security issued by any registered investment company and the sale of any security issued by any registered open-end investment company to any such issuer.

(E) For purposes of determining compliance with this paragraph and paragraph (1), an issuer that is otherwise excepted under this paragraph and an issuer that is otherwise excepted under paragraph (1) shall not be treated by the Commission as being a single issuer for purposes of determining whether the outstanding securities of the issuer excepted under paragraph (1) are beneficially owned by not more than 100 persons or whether the outstanding securities of the issuer excepted under this paragraph are owned by persons that are not qualified purchasers. Nothing in this subparagraph shall be construed to establish that a person is a bona fide qualified purchaser for purposes of this paragraph or a bona fide beneficial owner for purposes of paragraph (1).

(8) [Repealed] Pub. L. 111–203, title IX, §986(c)(2), July 21, 2010, 124 Stat. 1936.

(9) Any person substantially all of whose business consists of owning or holding oil, gas, or

other mineral royalties or leases, or fractional interests therein, or certificates of interest or participation in or investment contracts relative to such royalties, leases, or fractional interests.

(10)(A) Any company organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes—

(i) no part of the net earnings of which inures to the benefit of any private shareholder or individual; or

(ii) which is or maintains a fund described in subparagraph (B).

(B) For the purposes of subparagraph (A)(ii), a fund is described in this subparagraph if such fund is a pooled income fund, collective trust fund, collective investment fund, or similar fund maintained by a charitable organization exclusively for the collective investment and reinvestment of one or more of the following:

(i) assets of the general endowment fund or other funds of one or more charitable organizations;

(ii) assets of a pooled income fund;

(iii) assets contributed to a charitable organization in exchange for the issuance of charitable gift annuities;

(iv) assets of a charitable remainder trust or of any other trust, the remainder interests of which are irrevocably dedicated to any charitable organization;

(v) assets of a charitable lead trust;

(vi) assets of a trust, the remainder interests of which are revocably dedicated to or for the benefit of 1 or more charitable organizations, if the ability to revoke the dedication is limited to circumstances involving—

(I) an adverse change in the financial circumstances of a settlor or an income beneficiary of the trust;

(II) a change in the identity of the charitable organization or organizations having the remainder interest, provided that the new beneficiary is also a charitable organization; or

(III) both the changes described in subclauses (I) and (II);

(vii) assets of a trust not described in clauses (i) through (v), the remainder interests of which are revocably dedicated to a charitable organization, subject to subparagraph (C); or

(viii) such assets as the Commission may prescribe by rule, regulation, or order in accordance with section 80a–6(c) of this title.

(C) A fund that contains assets described in clause (vii) of subparagraph (B) shall be excluded from the definition of an investment company for a period of 3 years after December 8, 1995, but only if—

(i) such assets were contributed before the date which is 60 days after December 8, 1995; and

(ii) such assets are commingled in the fund with assets described in one or more of clauses (i) through (vi) and (viii) of subparagraph (B).

(D) For purposes of this paragraph—

(i) a trust or fund is "maintained" by a charitable organization if the organization serves as a trustee or administrator of the trust or fund or has the power to remove the trustees or administrators of the trust or fund and to designate new trustees or administrators;

(ii) the term "pooled income fund" has the same meaning as in section 642(c)(5) of title 26;

(iii) the term "charitable organization" means an organization described in paragraphs (1) through (5) of section 170(c) or section 501(c)(3) of title 26;

(iv) the term "charitable lead trust" means a trust described in section 170(f)(2)(B), 2055(e)(2)(B), or 2522(c)(2)(B) of title 26;

(v) the term "charitable remainder trust" means a charitable remainder annuity trust or a charitable remainder unitrust, as those terms are defined in section 664(d) of title 26; and

(vi) the term "charitable gift annuity" means an annuity issued by a charitable organization

that is described in section 501(m)(5) of title 26.

(11) Any employee's stock bonus, pension, or profit-sharing trust which meets the requirements for qualification under section 401 of title 26; or any governmental plan described in section 77c(a)(2)(C) of this title; or any collective trust fund maintained by a bank consisting solely of assets of one or more of such trusts, government plans, or church plans, companies or accounts that are excluded from the definition of an investment company under paragraph (14) of this subsection; or any separate account the assets of which are derived solely from (A) contributions under pension or profit-sharing plans which meet the requirements of section 401 of title 26 or the requirements for deduction of the employer's contribution under section 404(a)(2) of title 26, (B) contributions under governmental plans in connection with which interests, participations, or securities are exempted from the registration provisions of section 77e of this title by section 77c(a)(2)(C) of this title, and (C) advances made by an insurance company in connection with the operation of such separate account.

(12) Any voting trust the assets of which consist exclusively of securities of a single issuer which is not an investment company.

(13) Any security holders' protective committee or similar issuer having outstanding and issuing no securities other than certificates of deposit and short-term paper.

(14) Any church plan described in section 414(e) of title 26, if, under any such plan, no part of the assets may be used for, or diverted to, purposes other than the exclusive benefit of plan participants or beneficiaries, or any company or account that is—

(A) established by a person that is eligible to establish and maintain such a plan under section 414(e) of title 26; and

(B) substantially all of the activities of which consist of—

(i) managing or holding assets contributed to such church plans or other assets which are permitted to be commingled with the assets of church plans under title 26; or

(ii) administering or providing benefits pursuant to church plans.

(Aug. 22, 1940, ch. 686, title I, §3, 54 Stat. 797; Oct. 21, 1942, ch. 619, title I, §162(e), 56 Stat. 867; Pub. L. 89–485, §13(i), July 1, 1966, 80 Stat. 243; Pub. L. 91–547, §3(a), (b), Dec. 14, 1970, 84 Stat. 1414; Pub. L. 94–210, title III, §308(c), Feb. 5, 1976, 90 Stat. 57; Pub. L. 96–477, title I, §102, title VII, §703, Oct. 21, 1980, 94 Stat. 2276, 2295; Pub. L. 100–181, title VI, §§604–606, Dec. 4, 1987, 101 Stat. 1260; Pub. L. 104–62, §2(a), Dec. 8, 1995, 109 Stat. 682; Pub. L. 104–290, title II, §209(a), (c), title V, §508(a), Oct. 11, 1996, 110 Stat. 3432, 3435, 3447; Pub. L. 105–353, title III, §301(c)(2), Nov. 3, 1998, 112 Stat. 3236; Pub. L. 106–102, title II, §221(c), Nov. 12, 1999, 113 Stat. 1401; Pub. L. 108–359, §1(a), Oct. 25, 2004, 118 Stat. 1666; Pub. L. 111–203, title IX, §986(c)(2), July 21, 2010, 124 Stat. 1936.)

AMENDMENTS

2010—Subsec. (c)(8). Pub. L. 111–203 substituted "[Repealed]" for text of par. (8) which read as follows: "Any company subject to regulation under the Public Utility Holding Company Act of 1935."

2004—Subsec. (c)(11). Pub. L. 108–359, which directed the substitution of "one or more of such trusts, government plans, or church plans, companies or accounts that are excluded from the definition of an investment company under paragraph (14) of this subsection" for "such trusts or government plans, or both", was executed by making the substitution for "such trusts or governmental plans, or both", to reflect the probable intent of Congress.

1999—Subsec. (c)(3). Pub. L. 106–102 inserted ", if—" and subpars. (A) to (C) before period at end.

1998—Subsec. (b). Pub. L. 105–353 substituted "paragraph (1)(C)" for "paragraph (3)" in introductory provisions.

1996—Subsec. (a). Pub. L. 104–290, §209(c)(1)–(5), designated existing introductory provisions as par. (1), redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, and designated existing concluding provisions as par. (2).

Subsec. (a)(2)(C). Pub. L. 104–290, §209(c)(6), substituted "which (i) are" for "which are" and added cl. (ii).

Subsec. (c)(1). Pub. L. 104–290, §209(a)(1), inserted after first sentence "Such issuer shall be deemed to be an investment company for purposes of the limitations set forth in subparagraphs (A)(i) and (B)(i) of section

80a–12(d)(1) of this title governing the purchase or other acquisition by such issuer of any security issued by any registered investment company and the sale of any security issued by any registered open-end investment company to any such issuer."

Subsec. (c)(1)(A). Pub. L. 104–290, §209(a)(2), inserted "and is or, but for the exception provided for in this paragraph or paragraph (7), would be an investment company," after "voting securities of the issuer," and struck out "unless, as of the date of the most recent acquisition by such company of securities of that issuer, the value of all securities owned by such company of all issuers which are or would, but for the exception set forth in this subparagraph, be excluded from the definition of investment company solely by this paragraph, does not exceed 10 per centum of the value of the company's total assets. Such issuer nonetheless is deemed to be an investment company for purposes of section 80a–12(d)(1) of this title" after "(other than short-term paper)".

Subsec. (c)(2). Pub. L. 104–290, §209(a)(3), designated existing provisions as subpar. (A), substituted "acting as broker, and acting as market intermediary," for "and acting as broker,", and added subpar. (B).

Subsec. (c)(7). Pub. L. 104–290, §209(a)(4), added par. (7) and struck out former par. (7) "Reserved."

Subsec. (c)(14). Pub. L. 104–290, §508(a), added par. (14).

1995—Subsec. (c)(10). Pub. L. 104–62 amended par. (10) generally. Prior to amendment, par. (10) read as follows: "Any company organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual."

1987—Subsec. (c)(3). Pub. L. 100–181, §604, inserted "or" after "therefor;" and struck out "; or any common trust fund or similar fund, established before June 22, 1936, by a corporation which is supervised or examined by State or Federal authority having supervision over banks, if a majority of the units of beneficial interest in such fund, other than units owned by charitable or educational institutions, are held under instruments providing for payment of income to one or more persons and of principal to another or others" after "guardian".

Subsec. (c)(7). Pub. L. 100–181, §605, substituted "Reserved." for "Any company (A) which is subject to regulation under section 314 of title 49, except that this exception shall not apply to a company which the Commission finds and by order declares to be primarily engaged, directly or indirectly, in the business of investing, reinvesting, owning, holding, or trading in securities, or (B) whose entire outstanding stock is owned or controlled by a company excepted under clause (A) hereof, if the assets of the controlled company consist substantially of securities issued by companies which are subject to regulation under section 314 of title 49."

Subsec. (c)(11). Pub. L. 100–181, §606(1), substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954" wherever appearing, which for purposes of codification was translated as "title 26" thus requiring no change in text.

Pub. L. 100–181, §606(2), (3), substituted "; or any governmental plan" for "or which holds only assets of governmental plans" and "trusts or governmental plans, or both" for "trusts".

1980—Subsec. (c)(1). Pub. L. 96–477, §102, designated existing provisions as subpar. (A), provided that beneficial ownership was to be deemed to be that of the holders of ten per cent of company's outstanding securities, other than short term paper, unless, as of the date of the most recent acquisition by such company of securities of that issuer, the value of all securities owned by such company of all issuers which were or would, but for the exception set forth in subpar. (A), be excluded from the definition of investment company solely by par. (1), did not exceed ten per cent of the value of the company's total assets, that such issuer nonetheless was deemed to be an investment company for purposes of section 80a–12(d)(1) of this title, and added subpar. (B).

Subsec. (c)(11). Pub. L. 96–477, §703, excluded from consideration as an investment company for purposes of this subchapter any employee's stock bonus, pension, or profit-sharing trust which holds only assets of governmental plans described in section 77c(a)(2)(C) of this title, redesignated former cl. (B) as (C), and added cl. (B).

1976—Subsec. (c)(7). Pub. L. 94–210 designated existing provisions as cls. (A) and (B) and, as so designated, in cl. (A) provided for applicability to section 314 of title 49 and inserted exception to exception, in cl. (B) inserted provisions relating to companies regulated under section 314 of title 49 and made changes in phraseology to conform cl. to cl. (A), and struck out proviso relating to assets of controlled company.

1970—Subsec. (b)(2). Pub. L. 91–547, §3(a), inserted "in good faith" after "paragraph" in second sentence.

Subsec. (c). Pub. L. 91–547, §3(b)(1), struck out reference to subsec. (b) in introductory text.

Subsec. (c)(4). Pub. L. 91–547, §3(b)(2), redesignated par. (5) as (4). See 1966 Amendment note with respect to repeal of former par. (4).

Subsec. (c)(5). Pub. L. 91–547, §3(b)(2), (3), redesignated par. (6) as (5) and inserted "redeemable securities," before "face-amount certificates". Former par. (5) redesignated (4).

Subsec. (c)(6). Pub. L. 91–547, §3(b)(2), redesignated par. (7) as (6), inserted reference to par. (4), and struck out reference to par. (6). Former par. (6) redesignated (5).

Subsec. (c)(7). Pub. L. 91–547, §3(b)(2), redesignated par. (9) as (7). Former par. (7) redesignated (6).

Subsec. (c)(8). Pub. L. 91–547, §3(b)(2), (4), redesignated par. (10) as (8), substituted "subject to regulation" for "with a registration in effect as a holding company", and struck out former par. (8) provision excluding as an investment company any company 90 per centum or more of the value of whose investment securities are represented by securities of a single issuer included within a class of persons enumerated in pars. (5), (6), or (7) of this subsection.

Subsecs. (c)(9), (10). Pub. L. 91–547, §3(b)(2), redesignated pars. (11) and (12) as (9) and (10), respectively. Former pars. (9) and (10) redesignated (7) and (8).

Subsec. (c)(11). Pub. L. 91–547, §3(b)(2), (5), redesignated par. (13) as (11), substituted "requirements for qualification under section 401 of title 26 [I.R.C. 1954]" for "conditions of section 165 of title 26, as amended [I.R. 1939]", and inserted provisions for exclusion as an investment company any collective trust fund maintained by a bank consisting solely of assets of such trusts or any separate account the assets of which are derived from certain sources. Former par. (11) redesignated (9).

Subsecs. (c)(12) to (15). Pub. L. 91–547, §3(b)(2), redesignated pars. (14) and (15) as (12) and (13), respectively. Former pars. (12) and (13) redesignated (10) and (11).

1966—Subsec. (c)(4). Pub. L. 89–485 repealed provisions which exempt holding company affiliates granted a general voting permit by the Board of Governors of the Federal Reserve System before 1940 and any such affiliates with a later voting permit concerning which determinations were made of being primarily engaged, directly or indirectly, in the business of holding the stock of, and managing or controlling, banks, banking associations, savings banks, or trust companies.

1942—Subsec. (c)(13). Act Oct. 31, 1942, inserted "as amended".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–102 effective 18 months after Nov. 12, 1999, see section 225 of Pub. L. 106–102, set out as a note under section 77c of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 209 of Pub. L. 104–290 effective on earlier of 180 days after Oct. 11, 1996, or date on which required rulemaking is completed, see section 209(e) of Pub. L. 104–290 set out as a note under section 80a–2 of this title.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–62 applicable as defense to any claim in administrative and judicial actions pending on or commenced after Dec. 8, 1995, that any person, security, interest, or participation of type described in Pub. L. 104–62 is subject to the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, or any State statute or regulation preempted as provided in section 80a–3a of this title, except as specifically provided in such statutes, see section 7 of Pub. L. 104–62, set out as a note under section 77c of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–210, title III, §308(d)(2), (3), Feb. 5, 1976, 90 Stat. 57, as amended by Pub. L. 94–555, title II, §220(c), Oct. 19, 1976, 90 Stat. 2629, provided that:

"(2) The amendment made by subsection (b) of this section [amending section 78m of this title] shall not apply to any report by any person with respect to a fiscal year of such person which began before the date of enactment of this Act [Feb. 5, 1976].

"(3) The amendment made by subsection (c) of this section [amending this section] shall take effect on the 60th day after the date of enactment of this Act [Feb. 5, 1976]".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–547 effective Dec. 14, 1970, see section 30 of Pub. L. 91–547, set out as a note under section 80a–52 of this title.

EFFECTIVE DATE OF 1942 AMENDMENT

Act Oct. 21, 1942, ch. 619, title I, §162(d), 56 Stat. 866 (Revenue Act of 1942), as amended by act Dec. 17, 1943, ch. 346, §3, 57 Stat. 602, provided: "TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE.—The amendments made by this section [to this section and sections 22, 23, and 165 of Title 26, I.R.C. 1939] shall be applicable as to both the employer and employees only with respect to taxable years of the employer beginning after December 31, 1941, except that—

"(1) In the case of a stock bonus, pension, profit-sharing, or annuity plan in effect on or before September 1, 1942,

"(A) such a plan shall not become subject to the requirements of section 165(a)(3), (4), (5), and (6) [of Title 26, I.R.C. 1939] until the beginning of the first taxable year beginning after December 31, 1942.

"(B) such a plan shall be considered as satisfying the requirements of section 165(a), (3), (4), and (5) and (6) [of Title 26, I.R.C. 1939] for the period beginning with the beginning of the first taxable year following December 31, 1942, and ending December 31, 1944, if the provisions thereof satisfy such requirements by December 31, 1944, and if by that time such provisions are made effective for all purposes as of a date not later than January 1, 1944.

"(C) if the contribution of an employer to such a plan in the employer's taxable year beginning in 1942 exceeds the maximum amount deductible for such year under section 23(p)(1), as amended by this section, the amount deductible in such year shall be not less than the sum of—

"(i) the amount paid in such taxable year prior to September 1, 1942, and deductible under section 23(a) or 23(p) prior to amendment by this section, and

"(ii) with respect to the amount paid in such taxable year on or after September 1, 1942, that proportion of the amount deductible for the taxable year under section 23(p)(1), as amended by this section, which the number of months after August 31, 1942, in the taxable year bears to twelve.

"(2) In the case of a stock bonus, pension, profit sharing or annuity plan put into effect after September 1, 1942, such a plan shall be considered as satisfying the requirements of section 165(a)(3), (4), (5), and (6) [of Title 26, I.R.C. 1939] for the period beginning with the date such plan is put into effect and ending December 31, 1944, if the provisions thereof satisfy such requirements by December 31, 1944, and if by that time such provisions are made effective for all purposes as of a date not later than the effective date of such plan or January 1, 1944, whichever is the later."

REGULATIONS

Pub. L. 104–290, title II, §209(d)(1), Oct. 11, 1996, 110 Stat. 3435, provided that: "Not later than 1 year after the date of enactment of this Act [Oct. 11, 1996], the Commission shall prescribe rules to implement the requirements of section 3(c)(1)(B) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(1)(B)), as amended by this section."

Pub. L. 104–290, title II, §209(d)(3), Oct. 11, 1996, 110 Stat. 3436, provided that: "Not later than 1 year after the date of enactment of this Act [Oct. 11, 1996], the Commission shall prescribe rules pursuant to its authority under section 6 of the Investment Company Act of 1940 [15 U.S.C. 80a–6] to permit the ownership of securities by knowledgeable employees of the issuer of the securities or an affiliated person without loss of the exception of the issuer under paragraph (1) or (7) of section 3(c) of that Act [15 U.S.C. 80a–3(c)] from treatment as an investment company under that Act [15 U.S.C. 80a–1 et seq.]."

Pub. L. 104–290, title II, §209(d)(4), Oct. 11, 1996, 110 Stat. 3436, provided that: "Not later than 180 days after the date of enactment of this Act [Oct. 11, 1996], the Commission shall prescribe rules defining the term 'beneficial owner' for purposes of section 3(c)(7)(B) of the Investment Company Act of 1940 [15 U.S.C. 80a–3(c)(7)(B)], as amended by this Act."

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

PROTECTION OF CHURCH EMPLOYEE BENEFIT PLANS UNDER STATE LAW

Pub. L. 104–290, title V, §508(f), Oct. 11, 1996, 110 Stat. 3448, provided that:

"(1) REGISTRATION REQUIREMENTS.—Any security issued by or any interest or participation in any church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940 [15 U.S.C. 80a–3(c)(14)], as added by subsection (a) of this section, and any offer, sale, or purchase thereof, shall be exempt from any law of a State that requires registration or qualification of securities.

"(2) TREATMENT OF CHURCH PLANS.—No church plan described in section 414(e) of the Internal Revenue Code of 1986 [26 U.S.C. 414(e)], no person or entity eligible to establish and maintain such a plan

under the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.], no company or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940 [15 U.S.C. 80a–3(c)(14)], as added by subsection (a) of this section, and no trustee, director, officer, or employee of or volunteer for any such plan, person, entity, company, or account shall be required to qualify, register, or be subject to regulation as an investment company or as a broker, dealer, investment adviser, or agent under the laws of any State solely because such plan, person, entity, company, or account buys, holds, sells, or trades in securities for its own account or in its capacity as a trustee or administrator of or otherwise on behalf of, or for the account of, or provides investment advice to, for, or on behalf of, any such plan, person, or entity or any company or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940, as added by subsection (a) of this section."

§80a–3a. Protection of philanthropy under State law

(a) Registration requirements

A security issued by or any interest or participation in any pooled income fund, collective trust fund, collective investment fund, or similar fund that is excluded from the definition of an investment company under section 80a–3(c)(10)(B) of this title, and the offer or sale thereof, shall be exempt from any statute or regulation of a State that requires registration or qualification of securities.

(b) Treatment of charitable organizations

No charitable organization, or any trustee, director, officer, employee, or volunteer of a charitable organization acting within the scope of such person's employment or duties, shall be required to register as, or be subject to regulation as, a dealer, broker, agent, or investment adviser under the securities laws of any State because such organization or person buys, holds, sells, or trades in securities for its own account in its capacity as trustee or administrator of, or otherwise on behalf of or for the account of one or more of the following:

(1) a charitable organization;

(2) a fund that is excluded from the definition of an investment company under section 80a–3(c)(10)(B) of this title; or

(3) a trust or other donative instrument described in section 80a–3(c)(10)(B) of this title, or the settlors (or potential settlors) or beneficiaries of any such trusts or other instruments.

(c) State action

Notwithstanding subsections (a) and (b) of this section, during the 3-year period beginning on December 8, 1995, a State may enact a statute that specifically refers to this section and provides prospectively that this section shall not preempt the laws of that State referred to in this section.

(d) Definitions

For purposes of this section—

(1) the term "charitable organization" means an organization described in paragraphs (1) through (5) of section 170(c) or section 501(c)(3) of title 26;

(2) the term "security" has the same meaning as in section 78c of this title; and

(3) the term "State" means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(Pub. L. 104–62, §6, Dec. 8, 1995, 109 Stat. 685.)

CODIFICATION

Section was enacted as part of the Philanthropy Protection Act of 1995, and not as part of the Investment Company Act of 1940 which comprises this subchapter.

EFFECTIVE DATE

Section applicable as defense to any claim in administrative and judicial actions pending on or commenced after Dec. 8, 1995, that any person, security, interest, or participation of type described in Pub. L. 104–62 is

subject to the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, or any State statute or regulation preempted as provided in this section, except as specifically provided in such statutes, see section 7 of Pub. L. 104–62, set out as an Effective Date of 1995 Amendment note under section 77c of this title.

§80a–4. Classification of investment companies

For the purposes of this subchapter, investment companies are divided into three principal classes, defined as follows:

(1) "Face-amount certificate company" means an investment company which is engaged or proposes to engage in the business of issuing face-amount certificates of the installment type, or which has been engaged in such business and has any such certificate outstanding.

(2) "Unit investment trust" means an investment company which (A) is organized under a trust indenture, contract of custodianship or agency, or similar instrument, (B) does not have a board of directors, and (C) issues only redeemable securities, each of which represents an undivided interest in a unit of specified securities; but does not include a voting trust.

(3) "Management company" means any investment company other than a face-amount certificate company or a unit investment trust.

(Aug. 22, 1940, ch. 686, title I, §4, 54 Stat. 799.)

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–5. Subclassification of management companies

(a) Open-end and closed-end companies

For the purposes of this subchapter, management companies are divided into open-end and closed-end companies, defined as follows:

(1) "Open-end company" means a management company which is offering for sale or has outstanding any redeemable security of which it is the issuer.

(2) "Closed-end company" means any management company other than an open-end company.

(b) Diversified and non-diversified companies

Management companies are further divided into diversified companies and non-diversified companies, defined as follows:

(1) "Diversified company" means a management company which meets the following requirements: At least 75 per centum of the value of its total assets is represented by cash and cash items (including receivables), Government securities, securities of other investment companies, and other securities for the purposes of this calculation limited in respect of any one issuer to an amount not greater in value than 5 per centum of the value of the total assets of such management company and to not more than 10 per centum of the outstanding voting securities of such issuer.

(2) "Non-diversified company" means any management company other than a diversified company.

(c) Loss of status as diversified company

A registered diversified company which at the time of its qualification as such meets the requirements of paragraph (1) of subsection (b) of this section shall not lose its status as a diversified company because of any subsequent discrepancy between the value of its various investments and the requirements of said paragraph, so long as any such discrepancy existing immediately after its acquisition of any security or other property is neither wholly nor partly the result of such acquisition.

(Aug. 22, 1940, ch. 686, title I, §5, 54 Stat. 800; Pub. L. 100–181, title VI, §607, Dec. 4, 1987, 101 Stat. 1261.)

AMENDMENTS

1987—Subsec. (a)(2). Pub. L. 100–181 substituted "Closed-end" for "Close-end".

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–6. Exemptions

(a) Exemption of specified investment companies

The following investment companies are exempt from the provisions of this subchapter:

(1) Any company organized or otherwise created under the laws of and having its principal office and place of business in Puerto Rico, the Virgin Islands, or any other possession of the United States; but such exemption shall terminate if any security of which such company is the issuer is offered for sale or sold after the effective date of this subchapter, by such company or an underwriter therefor, to a resident of any State other than the State in which such company is organized.

(2) Any company which since the effective date of this subchapter or within five years prior to such date has been reorganized under the supervision of a court of competent jurisdiction, if (A) such company was not an investment company at the commencement of such reorganization proceedings, (B) at the conclusion of such proceedings all outstanding securities of such company were owned by creditors of such company or by persons to whom such securities were issued on account of creditors' claims, and (C) more than 50 per centum of the voting securities of such company, and securities representing more than 50 per centum of the net asset value of such company, are currently owned beneficially by not more than twenty-five persons; but such exemption shall terminate if any security of which such company is the issuer is offered for sale or sold to the public after the conclusion of such proceedings by the issuer or by or through any underwriter. For the purposes of this paragraph, any new company organized as part of the reorganization shall be deemed the same company as its predecessor; and beneficial ownership shall be determined in the manner provided in section 80a–3(c)(1) of this title.

(3) Any issuer as to which there is outstanding a writing filed with the Commission by the Federal Savings and Loan Insurance Corporation stating that exemption of such issuer from the provisions of this subchapter is consistent with the public interest and the protection of investors and is necessary or appropriate by reason of the fact that such issuer holds or proposes to acquire any assets or any product of any assets which have been segregated (A) from assets of any company which at the filing of such writing is an insured institution within the meaning of section 1724(a) [1] of title 12, or (B) as a part of or in connection with any plan for or condition to the insurance of accounts of any company by said corporation or the conversion of any company into a Federal savings and loan association. Any such writing shall expire when canceled by a writing similarly filed or at the expiration of two years after the date of its filing, whichever first occurs; but said corporation may, nevertheless, before, at, or after the expiration of any such writing file another writing or writings with respect to such issuer.

(4) Any company which prior to March 15, 1940, was and now is a wholly-owned subsidiary of a registered face-amount certificate company and was prior to said date and now is organized and operating under the insurance laws of any State and subject to supervision and examination by the insurance commissioner thereof, and which prior to March 15, 1940, was and now is engaged, subject to such laws, in business substantially all of which consists of issuing and selling only to residents of such State and investing the proceeds from, securities providing for or representing participations or interests in intangible assets consisting of mortgages or other liens on real estate

or notes or bonds secured thereby or in a fund or deposit of mortgages or other liens on real estate or notes or bonds secured thereby or having outstanding such securities so issued and sold.

(5)(A) Any company that is not engaged in the business of issuing redeemable securities, the operations of which are subject to regulation by the State in which the company is organized under a statute governing entities that provide financial or managerial assistance to enterprises doing business, or proposing to do business, in that State if—

(i) the organizational documents of the company state that the activities of the company are limited to the promotion of economic, business, or industrial development in the State through the provision of financial or managerial assistance to enterprises doing business, or proposing to do business, in that State, and such other activities that are incidental or necessary to carry out that purpose;

(ii) immediately following each sale of the securities of the company by the company or any underwriter for the company, not less than 80 percent of the securities of the company being offered in such sale, on a class-by-class basis, are held by persons who reside or who have a substantial business presence in that State;

(iii) the securities of the company are sold, or proposed to be sold, by the company or by any underwriter for the company, solely to accredited investors, as that term is defined in section 77b(a)(15) of this title, or to such other persons that the Commission, as necessary or appropriate in the public interest and consistent with the protection of investors, may permit by rule, regulation, or order; and

(iv) the company does not purchase any security issued by an investment company or by any company that would be an investment company except for the exclusions from the definition of the term "investment company" under paragraph (1) or (7) of section 80a–3(c) of this title, other than—

(I) any debt security that meets such standards of credit-worthiness as the Commission shall adopt; or

(II) any security issued by a registered open-end investment company that is required by its investment policies to invest not less than 65 percent of its total assets in securities described in subclause (I) or securities that are determined by such registered open-end investment company to be comparable in quality to securities described in subclause (I).

(B) Notwithstanding the exemption provided by this paragraph, section 80a–9 of this title (and, to the extent necessary to enforce section 80a–9 of this title, sections 80a–37 through 80a–50 of this title) shall apply to a company described in this paragraph as if the company were an investment company registered under this subchapter.

(C) Any company proposing to rely on the exemption provided by this paragraph shall file with the Commission a notification stating that the company intends to do so, in such form and manner as the Commission may prescribe by rule.

(D) Any company meeting the requirements of this paragraph may rely on the exemption provided by this paragraph upon filing with the Commission the notification required by subparagraph (C), until such time as the Commission determines by order that such reliance is not in the public interest or is not consistent with the protection of investors.

(E) The exemption provided by this paragraph may be subject to such additional terms and conditions as the Commission may by rule, regulation, or order determine are necessary or appropriate in the public interest or for the protection of investors.

(b) Exemption of employees' security company upon application; matters considered

Upon application by any employees' security company, the Commission shall by order exempt such company from the provisions of this subchapter and of the rules and regulations hereunder, if and to the extent that such exemption is consistent with the protection of investors. In determining the provisions to which such an order of exemption shall apply, the Commission shall give due weight, among other things, to the form of organization and the capital structure of such company, the persons by whom its voting securities, evidences of indebtedness, and other securities are owned and controlled, the prices at which securities issued by such company are sold and the sales load

thereon, the disposition of the proceeds of such sales, the character of the securities in which such proceeds are invested, and any relationship between such company and the issuer of any such security.

(c) Exemption of persons, securities or any class or classes of persons as necessary and appropriate in public interest

The Commission, by rules and regulations upon its own motion, or by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this subchapter or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this subchapter.

(d) Exemption of closed-end investment companies

The Commission, by rules and regulations or order, shall exempt a closed-end investment company from any or all provisions of this subchapter, but subject to such terms and conditions as may be necessary or appropriate in the public interest or for the protection of investors, if—

(1) the aggregate sums received by such company from the sale of all its outstanding securities, plus the aggregate offering price of all securities of which such company is the issuer and which it proposes to offer for sale, do not exceed $10,000,000, or such other amount as the Commission may set by rule, regulation, or order;

(2) no security of which such company is the issuer has been or is proposed to be sold by such company or any underwriter therefor, in connection with a public offering, to any person who is not a resident of the State under the laws of which such company is organized or otherwise created; and

(3) such exemption is not contrary to the public interest or inconsistent with the protection of investors.

(e) Application of certain specified provisions of subchapter to otherwise exempt companies

If, in connection with any rule, regulation, or order under this section exempting any investment company from any provision of section 80a–7 of this title, the Commission deems it necessary or appropriate in the public interest or for the protection of investors that certain specified provisions of this subchapter pertaining to registered investment companies shall be applicable in respect of such company, the provisions so specified shall apply to such company, and to other persons in their transactions and relations with such company, as though such company were a registered investment company.

(f) Exemption of closed-end company treated as business development company

Any closed-end company which—

(1) elects to be treated as a business development company pursuant to section 80a–53 of this title; or

(2) would be excluded from the definition of an investment company by section 80a–3(c)(1) of this title, except that it presently proposes to make a public offering of its securities as a business development company, and has notified the Commission, in a form and manner which the Commission may, by rule, prescribe, that it intends in good faith to file, within 90 days, a notification of election to become subject to the provisions of sections 80a–54 through 80a–64 of this title,

shall be exempt from sections 80a–1 through 80a–52 of this title, except to the extent provided in sections 80a–58 through 80a–64 of this title.

(Aug. 22, 1940, ch. 686, title I, §6, 54 Stat. 800; Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352; Pub. L. 86–70, §12(e), June 25, 1959, 73 Stat. 143; Pub. L. 86–624, §7(c), July 12, 1960, 74 Stat. 412; Pub. L. 95–598, title III, §310(b), Nov. 6, 1978, 92 Stat. 2676; Pub. L. 96–477, title I,

§103, Oct. 21, 1980, 94 Stat. 2277; Pub. L. 100–181, title VI, §608, Dec. 4, 1987, 101 Stat. 1261; Pub. L. 104–290, title V, §§501, 502, Oct. 11, 1996, 110 Stat. 3444, 3445; Pub. L. 111–203, title IX, §939(c), July 21, 2010, 124 Stat. 1886.)

REFERENCES IN TEXT

For the effective date of this subchapter, referred to in subsec. (a)(2), see section 80a–52 of this title.

Section 1724 of title 12, referred to in subsec. (a)(3), was repealed by Pub. L. 101–73, title IV, §407, Aug. 9, 1989, 103 Stat. 363.

CODIFICATION

Words "Philippine Islands" deleted from subsec. (a)(1) after "Puerto Rico" under the authority of Proc. No. 2695, granting independence to the Philippine Islands, which was issued pursuant to section 1394 of Title 22, Foreign Relations and Intercourse, and is set out as a note under that section.

AMENDMENTS

2010—Subsec. (a)(5)(A)(iv)(I). Pub. L. 111–203 substituted "meets such standards of credit-worthiness as the Commission shall adopt" for "is rated investment grade by not less than 1 nationally recognized statistical rating organization".

1996—Subsec. (a)(5). Pub. L. 104–290, §501, added par. (5).

Subsec. (d)(1). Pub. L. 104–290, §502, substituted "$10,000,000, or such other amount as the Commission may set by rule, regulation, or order" for "$100,000".

1987—Subsec. (a)(1). Pub. L. 100–181, §608(1), struck out reference to Canal Zone.

Subsec. (a)(2) to (5). Pub. L. 100–181, §608(2), redesignated former pars. (3) to (5) as (2) to (4), and struck out former par. (2) which read as follows: "Any company for which, in a proceeding in any court of the United States or of a State, a receiver, trustee in a case under title 11, or similar officer had been appointed or elected prior to the effective date of this subchapter, and every such officer so appointed or elected prior to the effective date of this subchapter; but such exemption shall continue only so long as (A) the conduct of such company's business remains subject to the supervision of such court or officer thereof, and (B) such company does not sell exclusively for cash any security of which it is the issuer, except short-term paper and ordinary receiver's or trustee's certificates."

1980—Subsec. (f). Pub. L. 96–477 added subsec. (f).

1978—Subsec. (a)(2). Pub. L. 95–598 substituted "a case under title 11" for "bankruptcy".

1960—Subsec. (a)(1). Pub. L. 86–624 struck out reference to Hawaii.

1959—Subsec. (a)(1). Pub. L. 86–70 struck out reference to Alaska.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 2 years after July 21, 2010, see section 939(g) of Pub. L. 111–203, set out as a note under section 24a of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

TRANSFER OF FUNCTIONS

Federal Savings and Loan Insurance Corporation abolished and functions transferred, see sections 401 to 406 of Pub. L. 101–73, set out as a note under section 1437 of Title 12, Banks and Banking.

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

INVESTMENT COMPANY PROVISIONS INAPPLICABLE TO CERTAIN LIFE INSURANCE BENEFITS ISSUED PRIOR TO MARCH 23, 1959

Subchapter inapplicable to certain life insurance benefits issued prior to Mar. 23, 1959, under certain conditions, see section 29 of Pub. L. 91–547, Dec. 14, 1970, 84 Stat. 1436, set out as a note under section 77c of this title.

[1] *See References in Text note below.*

§80a–7. Transactions by unregistered investment companies

(a) Prohibition of transactions in interstate commerce by companies

No investment company organized or otherwise created under the laws of the United States or of a State and having a board of directors, unless registered under section 80a–8 of this title, shall directly or indirectly—

(1) offer for sale, sell, or deliver after sale, by the use of the mails or any means or instrumentality of interstate commerce, any security or any interest in a security, whether the issuer of such security is such investment company or another person; or offer for sale, sell, or deliver after sale any such security or interest, having reason to believe that such security or interest will be made the subject of a public offering by use of the mails or any means or instrumentality of interstate commerce;

(2) purchase, redeem, retire, or otherwise acquire or attempt to acquire, by use of the mails or any means or instrumentality of interstate commerce, any security or any interest in a security, whether the issuer of such security is such investment company or another person;

(3) control any investment company which does any of the acts enumerated in paragraphs (1) and (2) of this subsection;

(4) engage in any business in interstate commerce; or

(5) control any company which is engaged in any business in interstate commerce.

The provisions of this subsection shall not apply to transactions of an investment company which are merely incidental to its dissolution.

(b) Prohibition of transactions in interstate commerce by depositors or trustees of companies

No depositor or trustee of or underwriter for any investment company, organized or otherwise created under the laws of the United States or of a State and not having a board of directors, unless such company is registered under section 80a–8 of this title or exempt under section 80a–6 of this title, shall directly or indirectly—

(1) offer for sale, sell, or deliver after sale, by use of the mails or any means or instrumentality of interstate commerce, any security or any interest in a security of which such company is the issuer; or offer for sale, sell, or deliver after sale any such security or interest, having reason to believe that such security or interest will be made the subject of a public offering by use of the mails or any means or instrumentality of interstate commerce;

(2) purchase, redeem, or otherwise acquire or attempt to acquire, by use of the mails or any means or instrumentality of interstate commerce, any security or any interest in a security of which such company is the issuer; or

(3) sell or purchase for the account of such company, by use of the mails or any means or instrumentality of interstate commerce, any security or interest in a security, by whomever issued.

The provisions of this subsection shall not apply to transactions which are merely incidental to the dissolution of an investment company.

(c) Prohibition of transactions in interstate commerce by promoters of proposed investment companies

No promoter of a proposed investment company, and no underwriter for such a promoter, shall make use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to offer for sale, sell, or deliver after sale, in connection with a public offering, any preorganization certificate or subscription for such a company.

(d) Prohibition of transactions in interstate commerce by companies not organized under laws of the United States or a State; exceptions

No investment company, unless organized or otherwise created under the laws of the United States or of a State, and no depositor or trustee of or underwriter for such a company not so organized or created, shall make use of the mails or any means or instrumentality of interstate commerce, directly

or indirectly, to offer for sale, sell, or deliver after sale, in connection with a public offering, any security of which such company is the issuer. Notwithstanding the provisions of this subsection and of section 80a–8(a) of this title, the Commission is authorized, upon application by an investment company organized or otherwise created under the laws of a foreign country, to issue a conditional or unconditional order permitting such company to register under this subchapter, and to make a public offering of its securities by use of the mails and means or instrumentalities of interstate commerce, if the Commission finds that, by reason of special circumstances or arrangements, it is both legally and practically feasible effectively to enforce the provisions of this subchapter against such company and that the issuance of such order is otherwise consistent with the public interest and the protection of investors.

(e) Disclosure by exempt charitable organizations

Each fund that is excluded from the definition of an investment company under section 80a–3(c)(10)(B) of this title shall provide, to each donor to such fund, at the time of the donation or within 90 days after December 8, 1995, whichever is later, written information describing the material terms of the operation of such fund.

(Aug. 22, 1940, ch. 686, title I, §7, 54 Stat. 802; Pub. L. 104–62, §2(b), Dec. 8, 1995, 109 Stat. 683.)

AMENDMENTS

1995—Subsec. (e). Pub. L. 104–62 added subsec. (e).

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–62 applicable as defense to any claim in administrative and judicial actions pending on or commenced after Dec. 8, 1995, that any person, security, interest, or participation of type described in Pub. L. 104–62 is subject to the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, or any State statute or regulation preempted as provided in section 80a–3a of this title, except as specifically provided in such statutes, see section 7 of Pub. L. 104–62, set out as a note under section 77c of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–8. Registration of investment companies

(a) Notification of registration; effective date of registration

Any investment company organized or otherwise created under the laws of the United States or of a State may register for the purposes of this subchapter by filing with the Commission a notification of registration, in such form as the Commission shall by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors. An investment company shall be deemed to be registered upon receipt by the Commission of such notification of registration.

(b) Registration statement; contents

Every registered investment company shall file with the Commission, within such reasonable time after registration as the Commission shall fix by rules and regulations, an original and such copies of a registration statement, in such form and containing such of the following information and documents as the Commission shall by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors:

(1) a recital of the policy of the registrant in respect of each of the following types of activities, such recital consisting in each case of a statement whether the registrant reserves freedom of action to engage in activities of such type, and if such freedom of action is reserved, a statement briefly indicating, insofar as is practicable, the extent to which the registrant intends to engage therein: (A) the classification and subclassifications, as defined in sections 80a–4 and 80a–5 of this title, within which the registrant proposes to operate; (B) borrowing money; (C) the issuance

of senior securities; (D) engaging in the business of underwriting securities issued by other persons; (E) concentrating investments in a particular industry or group of industries; (F) the purchase and sale of real estate and commodities, or either of them; (G) making loans to other persons; and (H) portfolio turn-over (including a statement showing the aggregate dollar amount of purchases and sales of portfolio securities, other than Government securities, in each of the last three full fiscal years preceding the filing of such registration statement);

(2) a recital of all investment policies of the registrant, not enumerated in paragraph (1), which are changeable only if authorized by shareholder vote;

(3) a recital of all policies of the registrant, not enumerated in paragraphs (1) and (2), in respect of matters which the registrant deems matters of fundamental policy;

(4) the name and address of each affiliated person of the registrant; the name and principal address of every company, other than the registrant, of which each such person is an officer, director, or partner; a brief statement of the business experience for the preceding five years of each officer and director of the registrant; and

(5) the information and documents which would be required to be filed in order to register under the Securities Act of 1933 [15 U.S.C. 77a et seq.] and the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], all securities (other than short-term paper) which the registrant has outstanding or proposes to issue.

(c) Alternative information

The Commission shall make provision, by permissive rules and regulations or order, for the filing of the following, or so much of the following as the Commission may designate, in lieu of the information and documents required pursuant to subsection (b) of this section:

(1) copies of the most recent registration statement filed by the registrant under the Securities Act of 1933 [15 U.S.C. 77a et seq.] and currently effective under such Act, or if the registrant has not filed such a statement, copies of a registration statement filed by the registrant under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] and currently effective under such Act;

(2) copies of any reports filed by the registrant pursuant to section 78m or 78o(d) of this title; and

(3) a report containing reasonably current information regarding the matters included in copies filed pursuant to paragraphs (1) and (2) of this subsection, and such further information regarding matters not included in such copies as the Commission is authorized to require under subsection (b) of this section.

(d) Registration of unit investment trusts

If the registrant is a unit investment trust substantially all of the assets of which are securities issued by another registered investment company, the Commission is authorized to prescribe for the registrant, by rules and regulations or order, a registration statement which eliminates inappropriate duplication of information contained in the registration statement filed under this section by such other investment company.

(e) Failure to file registration statement or omissions of material fact

If it appears to the Commission that a registered investment company has failed to file the registration statement required by this section or a report required pursuant to section 80a–29 (a) or (b) of this title, or has filed such a registration statement or report but omitted therefrom material facts required to be stated therein, or has filed such a registration statement or report in violation of section 80a–33(b) of this title, the Commission shall notify such company by registered mail or by certified mail of the failure to file such registration statement or report, or of the respects in which such registration statement or report appears to be materially incomplete or misleading, as the case may be, and shall fix a date (in no event earlier than thirty days after the mailing of such notice) prior to which such company may file such registration statement or report or correct the same. If such registration statement or report is not filed or corrected within the time so fixed by the Commission or any extension thereof, the Commission, after appropriate notice and opportunity for hearing, and upon such conditions and with such exemptions as it deems appropriate for the protection of

investors, may by order suspend the registration of such company until such statement or report is filed or corrected, or may by order revoke such registration, if the evidence establishes—

(1) that such company has failed to file a registration statement required by this section or a report required pursuant to section 80a–29(a) or (b) of this title, or has filed such a registration statement or report but omitted therefrom material facts required to be stated therein, or has filed such a registration statement or report in violation of section 80a–33(b) of this title; and

(2) that such suspension or revocation is in the public interest.

(f) Cessation of existence as investment company

Whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order and upon the taking effect of such order the registration of such company shall cease to be in effect. If necessary for the protection of investors, an order under this subsection may be made upon appropriate conditions. The Commission's denial of any application under this subsection shall be by order.

(Aug. 22, 1940, ch. 686, title I, §8, 54 Stat. 803; Pub. L. 86–507, §1(14), June 11, 1960, 74 Stat. 201; Pub. L. 91–547, §3(c), Dec. 14, 1970, 84 Stat. 1415.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsecs. (b)(5) and (c)(1), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, as amended, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Securities Exchange Act of 1934, referred to in subsecs. (b)(5) and (c)(1), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified generally to 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

Words "such Act", referred to in subsec. (c)(1), mean the Securities Act of 1933 and the Securities Exchange Act of 1934, respectively.

AMENDMENTS

1970—Subsec. (b)(2). Pub. L. 91–547, §3(c)(1), substituted "all investment policies of the registrant" and "which are changeable only if authorized by shareholder vote" for "the policy of the registrant in respect of matters" and "which the registrant deems matters of fundamental policy and elects to treat as such", respectively. Former provisions are covered in par. (3).

Subsec. (b)(3) to (5). Pub. L. 91–547, §3(c)(2), (3), added par. (3) and redesignated former pars. (3) and (4) as (4) and (5), respectively.

1960—Subsec. (e). Pub. L. 86–507 inserted "or by certified mail" after "registered mail".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–547 effective Dec. 14, 1970, see section 30 of Pub. L. 91–547, set out as a note under section 80a–52 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–9. Ineligibility of certain affiliated persons and underwriters

(a) Persons deemed ineligible for service with investment companies, etc.; investment adviser

It shall be unlawful for any of the following persons to serve or act in the capacity of employee, officer, director, member of an advisory board, investment adviser, or depositor of any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face-amount certificate company:

(1) any person who within 10 years has been convicted of any felony or misdemeanor involving the purchase or sale of any security or arising out of such person's conduct as an underwriter,

broker, dealer, investment adviser, municipal securities dealer, government securities broker, government securities dealer, bank, transfer agent, credit rating agency, or entity or person required to be registered under the Commodity Exchange Act [7 U.S.C. 1 et seq.], or as an affiliated person, salesman, or employee of any investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act;

(2) any person who, by reason of any misconduct, is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an underwriter, broker, dealer, investment adviser, municipal securities dealer, government securities broker, government securities dealer, bank, transfer agent, credit rating agency, or entity or person required to be registered under the Commodity Exchange Act [7 U.S.C. 1 et seq.], or as an affiliated person, salesman, or employee of any investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security; or

(3) a company any affiliated person of which is ineligible, by reason of paragraph (1) or (2) of this subsection, to serve or act in the foregoing capacities.

For the purposes of paragraphs (1) to (3) of this subsection, the term "investment adviser" shall include an investment adviser as defined in subchapter II of this chapter.

(b) Certain persons serving investment companies; administrative action of Commission

The Commission may, after notice and opportunity for hearing, by order prohibit, conditionally or unconditionally, either permanently or for such period of time as it in its discretion shall deem appropriate in the public interest, any person from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter, if such person—

(1) has willfully made or caused to be made in any registration statement, application or report filed with the Commission under this subchapter any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any such registration statement, application, or report any material fact which was required to be stated therein;

(2) has willfully violated any provision of the Securities Act of 1933 [15 U.S.C. 77a et seq.], or of the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], or of subchapter II of this chapter, or of this subchapter, or of the Commodity Exchange Act [7 U.S.C. 1 et seq.], or of any rule or regulation under any of such statutes;

(3) has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of the Securities Act of 1933 [15 U.S.C. 77a et seq.], or of the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], or of subchapter II of this chapter, or of this subchapter, or of the Commodity Exchange Act [7 U.S.C. 1 et seq.], or of any rule or regulation under any of such statutes;

(4) has been found by a foreign financial regulatory authority to have—

(A) made or caused to be made in any application for registration or report required to be filed with a foreign securities authority, or in any proceeding before a foreign securities authority with respect to registration, any statement that was at the time and in light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any application or report to a foreign securities authority any material fact that is required to be stated therein;

(B) violated any foreign statute or regulation regarding transactions in securities or contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market or any board of trade; or

(C) aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any foreign statute or regulation regarding transactions in securities or contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market or

any board of trade;

(5) within 10 years has been convicted by a foreign court of competent jurisdiction of a crime, however denominated by the laws of the relevant foreign government, that is substantially equivalent to an offense set forth in paragraph (1) of subsection (a) of this section; or

(6) by reason of any misconduct, is temporarily or permanently enjoined by any foreign court of competent jurisdiction from acting in any of the capacities, set forth in paragraph (2) of subsection (a) of this section, or a substantially equivalent foreign capacity, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security.

(c) Application of ineligible person for exemption

Any person who is ineligible, by reason of subsection (a) of this section, to serve or act in the capacities enumerated in such subsection, may file with the Commission an application for an exemption from the provisions of such subsection. The Commission shall by order grant such application, either unconditionally or on an appropriate temporary or other conditional basis, if it is established that the prohibitions of such subsection (a) as applied to such person, are unduly or disproportionately severe or that the conduct of such person has been such as not to make it against the public interest or protection of investors to grant such application.

(d) Money penalties in administrative proceedings

(1) Authority of Commission

(A) In general

In any proceeding instituted pursuant to subsection (b) of this section against any person, the Commission may impose a civil penalty if it finds, on the record after notice and opportunity for hearing, that such penalty is in the public interest, and that such person—

(i) has willfully violated any provision of the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], subchapter II of this chapter, or this subchapter, or the rules or regulations thereunder;

(ii) has willfully aided, abetted, counseled, commanded, induced, or procured such a violation by any other person; or

(iii) has willfully made or caused to be made in any registration statement, application, or report required to be filed with the Commission under this subchapter, any statement which was, at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such registration statement, application, or report any material fact which was required to be stated therein; [1]

(B) Cease-and-desist proceedings

In any proceeding instituted pursuant to subsection (f) against any person, the Commission may impose a civil penalty if the Commission finds, on the record, after notice and opportunity for hearing, that such person—

(i) is violating or has violated any provision of this subchapter, or any rule or regulation issued under this subchapter; or

(ii) is or was a cause of the violation of any provision of this subchapter, or any rule or regulation issued under this subchapter.

(2) Maximum amount of penalty

(A) First tier

The maximum amount of penalty for each act or omission described in paragraph (1) shall be $5,000 for a natural person or $50,000 for any other person.

(B) Second tier

Notwithstanding subparagraph (A), the maximum amount of penalty for each such act or omission shall be $50,000 for a natural person or $250,000 for any other person if the act or

omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

(C) Third tier

Notwithstanding subparagraphs (A) and (B), the maximum amount of penalty for each such act or omission shall be $100,000 for a natural person or $500,000 for any other person if—

(i) the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

(ii) such act or omission directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission.

(3) Determination of public interest

In considering under this section whether a penalty is in the public interest, the Commission may consider—

(A) whether the act or omission for which such penalty is assessed involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement;

(B) the harm to other persons resulting either directly or indirectly from such act or omission;

(C) the extent to which any person was unjustly enriched, taking into account any restitution made to persons injured by such behavior;

(D) whether such person previously has been found by the Commission, another appropriate regulatory agency, or a self-regulatory organization to have violated the Federal securities laws, State securities laws, or the rules of a self-regulatory organization, has been enjoined by a court of competent jurisdiction from violations of such laws or rules, or has been convicted by a court of competent jurisdiction of violations of such laws or of any felony or misdemeanor described in section 80b–3(e)(2) of this title;

(E) the need to deter such person and other persons from committing such acts or omissions; and

(F) such other matters as justice may require.

(4) Evidence concerning ability to pay

In any proceeding in which the Commission may impose a penalty under this section, a respondent may present evidence of the respondent's ability to pay such penalty. The Commission may, in its discretion, consider such evidence in determining whether such penalty is in the public interest. Such evidence may relate to the extent of such person's ability to continue in business and the collectability of a penalty, taking into account any other claims of the United States or third parties upon such person's assets and the amount of such person's assets.

(e) Authority to enter order requiring accounting and disgorgement

In any proceeding in which the Commission may impose a penalty under this section, the Commission may enter an order requiring accounting and disgorgement, including reasonable interest. The Commission is authorized to adopt rules, regulations, and orders concerning payments to investors, rates of interest, periods of accrual, and such other matters as it deems appropriate to implement this subsection.

(f) Cease-and-desist proceedings

(1) Authority of Commission

If the Commission finds, after notice and opportunity for hearing, that any person is violating, has violated, or is about to violate any provision of this subchapter, or any rule or regulation thereunder, the Commission may publish its findings and enter an order requiring such person, and any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation of the same provision, rule, or regulation. Such order may, in addition to requiring a person to cease and desist from committing or causing a violation, require such person to comply, or to take steps to effect compliance, with

such provision, rule, or regulation, upon such terms and conditions and within such time as the Commission may specify in such order. Any such order may, as the Commission deems appropriate, require future compliance or steps to effect future compliance, either permanently or for such period of time as the Commission may specify, with such provision, rule, or regulation with respect to any security, any issuer, or any other person.

(2) Hearing

The notice instituting proceedings pursuant to paragraph (1) shall fix a hearing date not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the Commission with the consent of any respondent so served.

(3) Temporary order

(A) In general

Whenever the Commission determines that the alleged violation or threatened violation specified in the notice instituting proceedings pursuant to paragraph (1), or the continuation thereof, is likely to result in significant dissipation or conversion of assets, significant harm to investors, or substantial harm to the public interest, including, but not limited to, losses to the Securities Investor Protection Corporation, prior to the completion of the proceeding, the Commission may enter a temporary order requiring the respondent to cease and desist from the violation or threatened violation and to take such action to prevent the violation or threatened violation and to prevent dissipation or conversion of assets, significant harm to investors, or substantial harm to the public interest as the Commission deems appropriate pending completion of such proceedings. Such an order shall be entered only after notice and opportunity for a hearing, unless the Commission, notwithstanding section 80a–39(a) of this title, determines that notice and hearing prior to entry would be impracticable or contrary to the public interest. A temporary order shall become effective upon service upon the respondent and, unless set aside, limited, or suspended by the Commission or a court of competent jurisdiction, shall remain effective and enforceable pending the completion of the proceedings.

(B) Applicability

This paragraph shall apply only to a respondent that acts, or, at the time of the alleged misconduct acted, as a broker, dealer, investment adviser, investment company, municipal securities dealer, government securities broker, government securities dealer, or transfer agent, or is, or was at the time of the alleged misconduct, an associated person of, or a person seeking to become associated with, any of the foregoing.

(4) Review of temporary orders

(A) Commission review

At any time after the respondent has been served with a temporary cease-and-desist order pursuant to paragraph (3), the respondent may apply to the Commission to have the order set aside, limited, or suspended. If the respondent has been served with a temporary cease-and-desist order entered without a prior Commission hearing, the respondent may, within 10 days after the date on which the order was served, request a hearing on such application and the Commission shall hold a hearing and render a decision on such application at the earliest possible time.

(B) Judicial review

Within—

(i) 10 days after the date the respondent was served with a temporary cease-and-desist order entered with a prior Commission hearing, or

(ii) 10 days after the Commission renders a decision on an application and hearing under subparagraph (A), with respect to any temporary cease-and-desist order entered without a prior Commission hearing,

the respondent may apply to the United States district court for the district in which the respondent resides or has its principal place of business, or for the District of Columbia, for an order setting aside, limiting, or suspending the effectiveness or enforcement of the order, and the court shall have jurisdiction to enter such an order. A respondent served with a temporary cease-and-desist order entered without a prior Commission hearing may not apply to the court except after hearing and decision by the Commission on the respondent's application under subparagraph (A) of this paragraph.

(C) No automatic stay of temporary order

The commencement of proceedings under subparagraph (B) of this paragraph shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(D) Exclusive review

Section 80a–42 of this title shall not apply to a temporary order entered pursuant to this section.

(5) Authority to enter order requiring accounting and disgorgement

In any cease-and-desist proceeding under subsection (f)(1) of this section, the Commission may enter an order requiring accounting and disgorgement, including reasonable interest. The Commission is authorized to adopt rules, regulations, and orders concerning payments to investors, rates of interest, periods of accrual, and such other matters as it deems appropriate to implement this subsection.

(g) Corporate or other trustees performing functions of investment advisers

For the purposes of this section, the term "investment adviser" includes a corporate or other trustee performing the functions of an investment adviser.

(Aug. 22, 1940, ch. 686, title I, §9, 54 Stat. 805; Pub. L. 91–547, §4, Dec. 14, 1970, 84 Stat. 1415; Pub. L. 94–29, §28(6), June 4, 1975, 89 Stat. 166; Pub. L. 99–571, title I, §102(l), Oct. 28, 1986, 100 Stat. 3220; Pub. L. 100–181, title VI, §609, Dec. 4, 1987, 101 Stat. 1261; Pub. L. 101–429, title III, §301, Oct. 15, 1990, 104 Stat. 941; Pub. L. 101–550, title II, §205(a), Nov. 15, 1990, 104 Stat. 2718; Pub. L. 106–102, title II, §222, Nov. 12, 1999, 113 Stat. 1401; Pub. L. 109–291, §4(b)(2)(B), Sept. 29, 2006, 120 Stat. 1337; Pub. L. 111–203, title IX, §§929P(a)(3), 985(d)(2), July 21, 2010, 124 Stat. 1863, 1934.)

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in subsecs. (a)(1), (2) and (b)(2), (3), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

The Securities Act of 1933, referred to in subsecs. (b)(2), (3) and (d)(1)(A)(i), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Securities Exchange Act of 1934, referred to in subsecs. (b)(2), (3) and (d)(1)(A)(i), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified generally to 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

AMENDMENTS

2010—Subsec. (b)(4)(B). Pub. L. 111–203, §985(d)(2), inserted "or" at end.

Subsec. (d)(1). Pub. L. 111–203, §929P(a)(3), designated existing provisions as subpar. (A) and inserted heading, inserted "that such penalty is in the public interest, and" after "opportunity for hearing," in introductory provisions, redesignated former subpars. (A) to (C) as cls. (i) to (iii), respectively, and realigned margins, struck out concluding provisions which read "and that such penalty is in the public interest.", and added subpar. (B).

2006—Subsec. (a). Pub. L. 109–291 inserted "credit rating agency," after "transfer agent," in pars. (1) and (2).

1999—Subsec. (a)(1), (2). Pub. L. 106–102 substituted "securities dealer, bank, transfer agent," for "securities dealer, transfer agent,".

1990—Subsec. (b)(4) to (6). Pub. L. 101–550 added pars. (4) to (6).

Subsecs. (d) to (f). Pub. L. 101–429, §301(1), (2), added subsecs. (d) to (f) and redesignated former subsec. (d) as (g).

Subsec. (g). Pub. L. 101–429, §301(3), which directed the striking out of "subsections (a) through (c) of" after "the purposes of", was executed by striking out "subsection (a) through (c) of" as the probable intent of Congress.

Pub. L. 101–429, §301(1), redesignated subsec. (d) as (g).

1987—Subsec. (a)(1), (2). Pub. L. 100–181 amended pars. (1) and (2) generally. Prior to amendment, pars. (1) and (2) read as follows:

"(1) any person who within 10 years has been convicted of any felony or misdemeanor involving the purchase or sale of any security or arising out of such person's conduct as an underwriter, broker, dealer, investment adviser, municipal securities dealer, government securities broker, government securities dealer, or entity or person required to be registered under the Commodity Exchange Act, or as an affiliated person, salesman, or employee of any investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act;

"(2) any person who, by reason of any misconduct, is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an underwriter, broker, dealer, investment adviser, municipal securities dealer, government securities broker, government securities dealer, or entity or person required to be registered under the Commodity Exchange Act, or as an affiliated person, salesman, or employee of any investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security; or".

1986—Subsec. (a)(1), (2). Pub. L. 99–571, §102(l)(1), inserted pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

"(1) any person who within ten years has been convicted of any felony or misdemeanor involving the purchase or sale of any security or arising out of such person's conduct as an underwriter, broker, dealer, or investment adviser, or as an affiliated person, salesman, or employee of any investment company, bank, or insurance company;

"(2) any person who, by reason of any misconduct, is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an underwriter, broker, dealer, or investment adviser, or as an affiliated person, salesman, or employee of any investment company, bank, or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security; or".

Subsec. (b)(2), (3). Pub. L. 99–571, §102(l)(2), (3), inserted reference to Commodity Exchange Act.

1975—Subsec. (d). Pub. L. 94–29 added subsec. (d).

1970—Subsec. (a). Pub. L. 91–547, §4(a), inserted "employee," before "officer" in introductory text.

Subsecs. (b), (c). Pub. L. 91–547, §4(b), added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–102 effective 18 months after Nov. 12, 1999, see section 225 of Pub. L. 106–102, set out as a note under section 77c of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–429 effective Oct. 15, 1990, with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(1), (2) of Pub. L. 101–429, set out in a note under section 77g of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–571 effective 270 days after Oct. 28, 1986, see section 401 of Pub. L. 99–571, set out as an Effective Date note under section 78o–5 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–547 effective Dec. 14, 1970, see section 30 of Pub. L. 91–547, set out as a note under section 80a–52 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

[1] *So in original. The semicolon probably should be a period.*

§80a–10. Affiliations or interest of directors, officers, and employees

(a) Interested persons of company who may serve on board of directors

No registered investment company shall have a board of directors more than 60 per centum of the members of which are persons who are interested persons of such registered company.

(b) Employment and use of directors, officers, etc., as regular broker, principal underwriter, or investment banker

No registered investment company shall—

(1) employ as regular broker any director, officer, or employee of such registered company, or any person of which any such director, officer, or employee is an affiliated person, unless a majority of the board of directors of such registered company shall be persons who are not such brokers or affiliated persons of any of such brokers;

(2) use as a principal underwriter of securities issued by it any director, officer, or employee of such registered company or any person of which any such director, officer, or employee is an interested person, unless a majority of the board of directors of such registered company shall be persons who are not such principal underwriters or interested persons of any of such principal underwriters; or

(3) have as director, officer, or employee any investment banker, or any affiliated person of an investment banker, unless a majority of the board of directors of such registered company shall be persons who are not investment bankers or affiliated persons of any investment banker. For the purposes of this paragraph, a person shall not be deemed an affiliated person of an investment banker solely by reason of the fact that he is an affiliated person of a company of the character described in section 80a–12(d)(3)(A) and (B) of this title.

(c) Officers, directors, or employees of one bank or bank holding company as majority of board of directors of company; exceptions

No registered investment company shall have a majority of its board of directors consisting of persons who are officers, directors, or employees of any one bank (together with its affiliates and subsidiaries) or any one bank holding company (together with its affiliates and subsidiaries) (as such terms are defined in section 1841 of title 12) or any one savings and loan holding company, together with its affiliates and subsidiaries (as such terms are defined in section 1467a of title 12),,[1] except that, if on March 15, 1940, any registered investment company had a majority of its directors consisting of persons who are directors, officers, or employees of any one bank, such company may continue to have the same percentage of its board of directors consisting of persons who are directors, officers, or employees of such bank.

(d) Exception to limitation of number of interested persons who may serve on board of directors

Notwithstanding subsections (a) and (b)(2) of this section, a registered investment company may have a board of directors all the members of which, except one, are interested persons of the investment adviser of such company, or are officers or employees of such company, if—

(1) such investment company is an open-end company;

(2) such investment adviser is registered under subchapter II of this chapter and is engaged principally in the business of rendering investment supervisory services as defined in subchapter II;

(3) no sales load is charged on securities issued by such investment company;

(4) any premium over net asset value charged by such company upon the issuance of any such security, plus any discount from net asset value charged on redemption thereof, shall not in the aggregate exceed 2 per centum;

(5) no sales or promotion expenses are incurred by such registered company; but expenses incurred in complying with laws regulating the issue or sale of securities shall not be deemed sales or promotion expenses;

(6) such investment adviser is the only investment adviser to such investment company, and such investment adviser does not receive a management fee exceeding 1 per centum per annum of the value of such company's net assets averaged over the year or taken as of a definite date or dates within the year;

(7) all executive salaries and executive expenses and office rent of such investment company are paid by such investment adviser; and

(8) such investment company has only one class of securities outstanding, each unit of which has equal voting rights with every other unit.

(e) Death, disqualification, or resignation of directors as suspension of limitation provisions

If by reason of the death, disqualification, or bona fide resignation of any director or directors, the requirements of the foregoing provisions of this section or of section 80a–15(f)(1) of this title in respect of directors shall not be met by a registered investment company, the operation of such provision shall be suspended as to such registered company—

(1) for a period of thirty days if the vacancy or vacancies may be filled by action of the board of directors;

(2) for a period of sixty days if a vote of stockholders is required to fill the vacancy or vacancies; or

(3) for such longer period as the Commission may prescribe, by rules and regulations upon its own motion or by order upon application, as not inconsistent with the protection of investors.

(f) Officer, director, etc., of company acting as principal underwriter of security acquired by company

No registered investment company shall knowingly purchase or otherwise acquire, during the existence of any underwriting or selling syndicate, any security (except a security of which such company is the issuer) a principal underwriter of which is an officer, director, member of an advisory board, investment adviser, or employee of such registered company, or is a person (other than a company of the character described in section 80a–12(d)(3)(A) and (B) of this title) of which any such officer, director, member of an advisory board, investment adviser, or employee is an affiliated person, unless in acquiring such security such registered company is itself acting as a principal underwriter for the issuer. The Commission, by rules and regulations upon its own motion or by order upon application, may conditionally or unconditionally exempt any transaction or classes of transactions from any of the provisions of this subsection, if and to the extent that such exemption is consistent with the protection of investors.

(g) Advisory boards; restrictions on membership

In the case of a registered investment company which has an advisory board, such board, as a distinct entity, shall be subject to the same restrictions as to its membership as are imposed upon a board of directors by this section.

(h) Application of section to unincorporated registered management companies

In the case of a registered management company which is an unincorporated company not having a board of directors, the provisions of this section shall apply as follows:

(1) the provisions of subsection (a) of this section, as modified by subsection (e) of this section,

shall apply to the board of directors of the depositor of such company;

(2) the provisions of subsections (b) and (c) of this section, as modified by subsection (e) of this section, shall apply to the board of directors of the depositor and of every investment adviser of such company; and

(3) the provisions of subsection (f) of this section shall apply to purchases and other acquisitions for the account of such company of securities a principal underwriter of which is the depositor or an investment adviser of such company, or an affiliated person of such depositor or investment adviser.

(Aug. 22, 1940, ch. 686, title I, §10, 54 Stat. 806; Pub. L. 91–547, §5, Dec. 14, 1970, 84 Stat. 1416; Pub. L. 94–29, §28(5), June 4, 1975, 89 Stat. 165; Pub. L. 106–102, title II, §213(c), Nov. 12, 1999, 113 Stat. 1398; Pub. L. 109–351, title IV, §401(c), Oct. 13, 2006, 120 Stat. 1973.)

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–351 inserted "or any one savings and loan holding company, together with its affiliates and subsidiaries (as such terms are defined in section 1467a of title 12)," after "1841 of title 12)".

1999—Subsec. (c). Pub. L. 106–102 substituted "bank (together with its affiliates and subsidiaries) or any one bank holding company (together with its affiliates and subsidiaries) (as such terms are defined in section 1841 of title 12), except" for "bank, except".

1975—Subsec. (e). Pub. L. 94–29 inserted reference to provisions of section 80a–15(f)(1) of this title.

1970—Subsec. (a). Pub. L. 91–547, §5(a), struck out introductory text "After one year from the effective date of this subchapter" and substituted "interested persons of such registered company" for "investment advisers of, affiliated persons of an investment adviser of, or officers or employees of, such registered company".

Subsec. (b). Pub. L. 91–547, §5(b)(1), struck out introductory text "After one year from the effective date of this subchapter," and substituted "No" for "no".

Subsec. (b)(2). Pub. L. 91–547, §5(b)(2), substituted "interested" for "affiliated" in two places.

Subsec. (c). Pub. L. 91–547, §5(c), struck out introductory text "After the effective date of this subchapter", substituted "No", ", except that", "had a majority", and "such company" for "no", ": *Provided*, That", "shall have had a majority", and "such company", respectively, and inserted reference to employees where first appearing.

Subsec. (d). Pub. L. 91–547, §5(d), reenacted provisions except for substitution of "interested persons" for "affiliated persons" in introductory text, deletion of "such investment adviser" before "is engaged" in item (2), and substitution of "class of securities" for "class of stock" and "unit" for "share" in two places in item (8).

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–102 effective 18 months after Nov. 12, 1999, see section 225 of Pub. L. 106–102, set out as a note under section 77c of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–547, see section 30 (introductory text and pars. (1) and (2)) of Pub. L. 91–547, set out as a note under section 80a–52 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

[1] *So in original.*

§80a–11. Offers to exchange securities

(a) Approval by Commission for exchanges of securities on basis other than relative net asset

value

It shall be unlawful for any registered open-end company or any principal underwriter for such a company to make or cause to be made an offer to the holder of a security of such company or of any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission or are in accordance with such rules and regulations as the Commission may have prescribed in respect of such offers which are in effect at the time such offer is made. For the purposes of this section, (A) an offer by a principal underwriter means an offer communicated to holders of securities of a class or series but does not include an offer made by such principal underwriter to an individual investor in the course of a retail business conducted by such principal underwriter, and (B) the net asset value means the net asset value which is in effect for the purpose of determining the price at which the securities, or class or series of securities involved, are offered for sale to the public either (1) at the time of the receipt by the offeror of the acceptance of the offer or (2) at such later times as is specified in the offer.

(b) Application of section to offers pursuant to plan of reorganization

The provisions of this section shall not apply to any offer made pursuant to any plan of reorganization, which is submitted to and requires the approval of the holders of at least a majority of the outstanding shares of the class or series to which the security owned by the offeree belongs.

(c) Application of section to specific exchange offers

The provisions of subsection (a) of this section shall be applicable, irrespective of the basis of exchange, (1) to any offer of exchange of any security of a registered open-end company for a security of a registered unit investment trust or registered face-amount certificate company; and (2) to any type of offer of exchange of the securities of registered unit investment trusts or registered face-amount certificate companies for the securities of any other investment company.

(Aug. 22, 1940, ch. 686, title I, §11, 54 Stat. 808; Pub. L. 91–547, §6, Dec. 14, 1970, 84 Stat. 1417.)

AMENDMENTS

1970—Subsec. (b). Pub. L. 91–547 struck out item (1) designation of existing provisions and item (2) provision for nonapplication of this section to any offer made pursuant to the right of conversion, at the option of the holder, from one class or series into another class or series of securities issued by the same company upon such terms as are specified in the charter, certificate of incorporation, articles of association, by-laws, or trust indenture subject to which the securities to be converted were issued or are to be issued.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–547 effective Dec. 14, 1970, see section 30 of Pub. L. 91–547, set out as a note under section 80a–52 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–12. Functions and activities of investment companies

(a) Purchase of securities on margin; joint trading accounts; short sales of securities; exceptions

It shall be unlawful for any registered investment company, in contravention of such rules and regulations or orders as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors—

(1) to purchase any security on margin, except such short-term credits as are necessary for the clearance of transactions;

(2) to participate on a joint or a joint and several basis in any trading account in securities, except in connection with an underwriting in which such registered company is a participant; or

(3) to effect a short sale of any security, except in connection with an underwriting in which such registered company is a participant.

(b) Distribution by investment company of securities of which it is issuer

It shall be unlawful for any registered open-end company (other than a company complying with the provisions of section 80a–10(d) of this title) to act as a distributor of securities of which it is the issuer, except through an underwriter, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(c) Limitations on commitments as underwriter

It shall be unlawful for any registered diversified company to make any commitment as underwriter, if immediately thereafter the amount of its outstanding underwriting commitments, plus the value of its investments in securities of issuers (other than investment companies) of which it owns more than 10 per centum of the outstanding voting securities, exceeds 25 per centum of the value of its total assets.

(d) Limitations on acquisition by investment companies of securities of other specific businesses

(1)(A) It shall be unlawful for any registered investment company (the "acquiring company") and any company or companies controlled by such acquiring company to purchase or otherwise acquire any security issued by any other investment company (the "acquired company"), and for any investment company (the "acquiring company") and any company or companies controlled by such acquiring company to purchase or otherwise acquire any security issued by any registered investment company (the "acquired company"), if the acquiring company and any company or companies controlled by it immediately after such purchase or acquisition own in the aggregate—

(i) more than 3 per centum of the total outstanding voting stock of the acquired company;

(ii) securities issued by the acquired company having an aggregate value in excess of 5 per centum of the value of the total assets of the acquiring company; or

(iii) securities issued by the acquired company and all other investment companies (other than treasury stock of the acquiring company) having an aggregate value in excess of 10 per centum of the value of the total assets of the acquiring company.

(B) It shall be unlawful for any registered open-end investment company (the "acquired company"), any principal underwriter therefor, or any broker or dealer registered under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], knowingly to sell or otherwise dispose of any security issued by the acquired company to any other investment company (the "acquiring company") or any company or companies controlled by the acquiring company, if immediately after such sale or disposition—

(i) more than 3 per centum of the total outstanding voting stock of the acquired company is owned by the acquiring company and any company or companies controlled by it; or

(ii) more than 10 per centum of the total outstanding voting stock of the acquired company is owned by the acquiring company and other investment companies and companies controlled by them.

(C) It shall be unlawful for any investment company (the "acquiring company") and any company or companies controlled by the acquiring company to purchase or otherwise acquire any security issued by a registered closed-end investment company, if immediately after such purchase or acquisition the acquiring company, other investment companies having the same investment adviser, and companies controlled by such investment companies, own more than 10 per centum of the total outstanding voting stock of such closed-end company.

(D) The provisions of this paragraph shall not apply to a security received as a dividend or as a

result of an offer of exchange approved pursuant to section 80a–11 of this title or of a plan of reorganization of any company (other than a plan devised for the purpose of evading the foregoing provisions).

(E) The provisions of this paragraph shall not apply to a security (or securities) purchased or acquired by an investment company if—

(i) the depositor of, or principal underwriter for, such investment company is a broker or dealer registered under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], or a person controlled by such a broker or dealer;

(ii) such security is the only investment security held by such investment company (or such securities are the only investment securities held by such investment company, if such investment company is a registered unit investment trust that issues two or more classes or series of securities, each of which provides for the accumulation of shares of a different investment company); and

(iii) the purchase or acquisition is made pursuant to an arrangement with the issuer of, or principal underwriter for the issuer of, the security whereby such investment company is obligated—

(aa) either to seek instructions from its security holders with regard to the voting of all proxies with respect to such security and to vote such proxies only in accordance with such instructions, or to vote the shares held by it in the same proportion as the vote of all other holders of such security, and

(bb) in the event that such investment company is not a registered investment company, to refrain substituting such security unless the Commission shall have approved such substitution in the manner provided in section 80a–26 of this title.

(F) The provisions of this paragraph shall not apply to securities purchased or otherwise acquired by a registered investment company if—

(i) immediately after such purchase or acquisition not more than 3 per centum of the total outstanding stock of such issuer is owned by such registered investment company and all affiliated persons of such registered investment company; and

(ii) such registered investment company has not offered or sold after January 1, 1971, and is not proposing to offer or sell any security issued by it through a principal underwriter or otherwise at a public offering price which includes a sales load of more than 1½ per centum.

No issuer of any security purchased or acquired by a registered investment company pursuant to this subparagraph shall be obligated to redeem such security in an amount exceeding 1 per centum of such issuer's total outstanding securities during any period of less than thirty days. Such investment company shall exercise voting rights by proxy or otherwise with respect to any security purchased or acquired pursuant to this subparagraph in the manner prescribed by subparagraph (E) of this subsection.

(G)(i) This paragraph does not apply to securities of a registered open-end investment company or a registered unit investment trust (hereafter in this subparagraph referred to as the "acquired company") purchased or otherwise acquired by a registered open-end investment company or a registered unit investment trust (hereafter in this subparagraph referred to as the "acquiring company") if—

(I) the acquired company and the acquiring company are part of the same group of investment companies;

(II) the securities of the acquired company, securities of other registered open-end investment companies and registered unit investment trusts that are part of the same group of investment companies, Government securities, and short-term paper are the only investments held by the acquiring company;

(III) with respect to—

(aa) securities of the acquired company, the acquiring company does not pay and is not assessed any charges or fees for distribution-related activities, unless the acquiring company does not charge a sales load or other fees or charges for distribution-related activities; or

(bb) securities of the acquiring company, any sales loads and other distribution-related fees charged, when aggregated with any sales load and distribution-related fees paid by the acquiring company with respect to securities of the acquired company, are not excessive under rules adopted pursuant to section 80a–22(b) of this title or section 80a–22(c) of this title by a securities association registered under section 15A of the Securities Exchange Act of 1934 [15 U.S.C. 78o–3], or the Commission;

(IV) the acquired company has a policy that prohibits it from acquiring any securities of registered open-end investment companies or registered unit investment trusts in reliance on this subparagraph or subparagraph (F); and

(V) such acquisition is not in contravention of such rules and regulations as the Commission may from time to time prescribe with respect to acquisitions in accordance with this subparagraph, as necessary and appropriate for the protection of investors.

(ii) For purposes of this subparagraph, the term "group of investment companies" means any 2 or more registered investment companies that hold themselves out to investors as related companies for purposes of investment and investor services.

(H) For the purposes of this paragraph, the value of an investment company's total assets shall be computed as of the time of a purchase or acquisition or as closely thereto as is reasonably possible.

(I) In any action brought to enforce the provisions of this paragraph, the Commission may join as a party the issuer of any security purchased or otherwise acquired in violation of this paragraph, and the court may issue any order with respect to such issuer as may be necessary or appropriate for the enforcement of the provisions of this paragraph.

(J) The Commission, by rule or regulation, upon its own motion or by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provision of this paragraph, if and to the extent that such exemption is consistent with the public interest and the protection of investors.

(2) It shall be unlawful for any registered investment company and any company or companies controlled by such registered investment company to purchase or otherwise acquire any security (except a security received as a dividend or as a result of a plan of reorganization of any company, other than a plan devised for the purpose of evading the provisions of this paragraph) issued by any insurance company of which such registered investment company and any company or companies controlled by such registered company do not, at the time of such purchase or acquisition, own in the aggregate at least 25 per centum of the total outstanding voting stock, if such registered company and any company or companies controlled by it own in the aggregate, or as a result of such purchase or acquisition will own in the aggregate, more than 10 per centum of the total outstanding voting stock of such insurance company.

(3) It shall be unlawful for any registered investment company and any company or companies controlled by such registered investment company to purchase or otherwise acquire any security issued by or any other interest in the business of any person who is a broker, a dealer, is engaged in the business of underwriting, or is either an investment adviser of an investment company or an investment adviser registered under subchapter II of this chapter, unless (A) such person is a corporation all the outstanding securities of which (other than short-term paper, securities representing bank loans, and directors' qualifying shares) are, or after such acquisition will be, owned by one or more registered investment companies; and (B) such person is primarily engaged in the business of underwriting and distributing securities issued by other persons, selling securities to customers, or any one or more of such or related activities, and the gross income of such person normally is derived principally from such business or related activities.

(e) Acquisition of securities issued by corporations in business of underwriting, furnishing capital to industry, etc.

Notwithstanding any provisions of this subchapter, any registered investment company may hereafter purchase or otherwise acquire any security issued by any one corporation engaged or proposing to engage in the business of underwriting, furnishing capital to industry, financing

promotional enterprises, purchasing securities of issuers for which no ready market is in existence, and reorganizing companies or similar activities; provided—

(1) That the securities issued by such corporation (other than short-term paper and securities representing bank loans) shall consist solely of one class of common stock and shall have been originally issued or sold for investment to registered investment companies only;

(2) That the aggregate cost of the securities of such corporation purchased by such registered investment company does not exceed 5 per centum of the value of the total assets of such registered company at the time of any purchase or acquisition of such securities; and

(3) That the aggregate paid-in capital and surplus of such corporation does not exceed $100,000,000.

For the purpose of paragraph (1) of section 80a–5(b) of this title any investment in any such corporation shall be deemed to be an investment in an investment company.

(f) Organization and ownership by one registered face-amount certificate company of all or part of capital stock of not more than two other face-amount certificate companies; limitations

Notwithstanding any provisions of this chapter, any registered face-amount certificate company may organize not more than two face-amount certificate companies and acquire and own all or any part of the capital stock thereof only if such stock is acquired and held for investment: *Provided*, That the aggregate cost to such registered company of all such stock so acquired shall not exceed six times the amount of the minimum capital stock requirement provided in subdivision (1) of subsection (a) of section 80a–28 of this title for a face-amount company organized on or after March 15, 1940: *And provided further*, That the aggregate cost to such registered company of all such capital stock issued by face-amount certificate companies organized or otherwise created under laws other than the laws of the United States or any State thereof shall not exceed twice the amount of the minimum capital stock requirement provided in subdivision (1) of subsection (a) of said section 80a–28 for a company organized on or after March 15, 1940. Nothing contained in this subsection shall be deemed to prevent the sale of any such stock to any other person if the original purchase was made by such registered face-amount certificate company in good faith for investment and not for resale.

(g) Exceptions to limitation on ownership by investment company of securities of insurance company

Notwithstanding the provisions of this section any registered investment company and any company or companies controlled by such registered company may purchase or otherwise acquire from another investment company or any company or companies controlled by such registered company more than 10 per centum of the total outstanding voting stock of any insurance company owned by any such company or companies, or may acquire the securities of any insurance company if the Commission by order determines that such acquisition is in the public interest because the financial condition of such insurance company will be improved as a result of such acquisition or any plan contemplated as a result thereof. This section shall not be deemed to prohibit the promotion of a new insurance company or the acquisition of the securities of any newly created insurance company by a registered investment company, alone or with other persons. Nothing contained in this section shall in any way affect or derogate from the powers of any insurance commissioner or similar official or agency of the United States or any State, or to affect the right under State law of any insurance company to acquire securities of any other insurance company or insurance companies.

(Aug. 22, 1940, ch. 686, title I, §12, 54 Stat. 808; Pub. L. 91–547, §7, Dec. 14, 1970, 84 Stat. 1417; Pub. L. 100–181, title VI, §610, Dec. 4, 1987, 101 Stat. 1261; Pub. L. 104–290, title II, §202, Oct. 11, 1996, 110 Stat. 3426; Pub. L. 105–353, title III, §301(c)(3), Nov. 3, 1998, 112 Stat. 3236; Pub. L. 111–203, title IX, §985(d)(3), July 21, 2010, 124 Stat. 1934.)

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsec. (d)(1)(B), (E)(i), is act June 6, 1934, ch. 404,

48 Stat. 881, as amended, which is classified generally to 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

AMENDMENTS

2010—Subsec. (d)(1)(J). Pub. L. 111–203 substituted "any provision of this paragraph" for "any provision of this subsection".

1998—Subsec. (d)(1)(G)(i)(III)(bb). Pub. L. 105–353 substituted "the acquired company" for "the acquired fund".

1996—Subsec. (d)(1)(D), (E). Pub. L. 104–290, §202(3), substituted "this paragraph" for "this paragraph (1)".

Subsec. (d)(1)(E)(iii). Pub. L. 104–290, §202(1)(A), struck out "in the event such investment company is not a registered investment company," after "(iii)".

Subsec. (d)(1)(E)(iii)(bb). Pub. L. 104–290, §202(1)(B), inserted "in the event that such investment company is not a registered investment company," after "(bb)".

Subsec. (d)(1)(F). Pub. L. 104–290, §202(3), substituted "this paragraph" for "this paragraph (1)".

Subsec. (d)(1)(G). Pub. L. 104–290, §202(2), (4), added subpar. (G). Former subpar. (G) redesignated (H).

Subsec. (d)(1)(H). Pub. L. 104–290, §202(3), substituted "this paragraph" for "this paragraph (1)".

Pub. L. 104–290, §202(2), redesignated subpar. (G) as (H). Former subpar. (H) redesignated (I).

Subsec. (d)(1)(I). Pub. L. 104–290, §202(3), substituted "this paragraph" for "this paragraph (1)" wherever appearing.

Pub. L. 104–290, §202(2), redesignated subpar. (H) as (I).

Subsec. (d)(1)(J). Pub. L. 104–290, §202(5), added subpar. (J).

1987—Subsec. (d)(1)(A)(iii). Pub. L. 100–181, §610(1), substituted "treasury" for "Treasury".

Subsec. (d)(1)(G). Pub. L. 100–181, §610(2), substituted "is reasonably possible" for "it reasonably possible".

Subsec. (f). Pub. L. 100–181, §610(3), substituted "thereof only" for "only thereof".

1970—Subsec. (d)(1). Pub. L. 91–547 substituted provisions designated as subpars. (A) to (C) and (E) to (H) for former introductory provisions reading "It shall be unlawful for any registered investment company and any company or companies controlled by such registered investment company to purchase or otherwise acquire after August 22, 1940, any security issued by or any other interest in the business of—" and subpar. (1) reading "any other investment company of which such registered investment company and company or companies controlled by such registered company shall not at the time of such purchase or acquisition own in the aggregate at least 25 per centum of the total outstanding voting stock, if such registered investment company and any company or companies controlled by it own in the aggregate or as a result of such purchase or acquisition will own in the aggregate more than 5 per centum of the total outstanding voting stock of such other investment company if the policy of such other investment company is the concentration of investments in a particular industry or group of industries, or more than 3 per centum of the total outstanding voting stock of such other investment company if the policy of such other investment company is not the concentration of investments in a particular industry or group of industries, except and cl. (B) exception reading "a security purchased with the proceeds of payments on periodic payment plan certificates, pursuant to the terms of the trust indenture under which such certificates are issued", cl. (A) of such subpar. (1) being incorporated in subpar. (D) of this par. (1).

Subsec. (d)(2). Pub. L. 91–547 incorporated existing introductory text and subpar. (2) provisions in provisions redesignated as par. (2) and struck out "after August 22, 1940," after "purchase or otherwise acquire".

Subsec. (d)(3). Pub. L. 91–547 incorporated existing introductory text and subpar. (3) provisions in provisions redesignated as par. (3) and struck out "after August 22, 1940," after "purchase or otherwise acquire".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–547 effective Dec. 14, 1970, see section 30 of Pub. L. 91–547, set out as a note under section 80a–52 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–13. Changes in investment policy

(a) Prohibited actions for registered investment companies

No registered investment company shall, unless authorized by the vote of a majority of its outstanding voting securities—

(1) change its subclassification as defined in section 80a–5(a)(1) and (2) of this title or its subclassification from a diversified to a nondiversified company;

(2) borrow money, issue senior securities, underwrite securities issued by other persons, purchase or sell real estate or commodities or make loans to other persons, except in each case in accordance with the recitals of policy contained in its registration statement in respect thereto;

(3) deviate from its policy in respect of concentration of investments in any particular industry or group of industries as recited in its registration statement, deviate from any investment policy which is changeable only if authorized by shareholder vote, or deviate from any policy recited in its registration statement pursuant to section 80a–8(b)(3) of this title; or

(4) change the nature of its business so as to cease to be an investment company.

(b) Majority equivalent for common-law trusts

In the case of a common-law trust of the character described in section 80a–16(c) of this title, either written approval by holders of a majority of the outstanding shares of beneficial interest or the vote of a majority of such outstanding shares cast in person or by proxy at a meeting called for the purpose shall for the purposes of subsection (a) of this section be deemed the equivalent of the vote of a majority of the outstanding voting securities, and the provisions of paragraph (42) of section 80a–2(a) of this title as to a majority shall be applicable to the vote cast at such a meeting.

(c) Limitation on actions

(1) In general

Notwithstanding any other provision of Federal or State law, no person may bring any civil, criminal, or administrative action against any registered investment company, or any employee, officer, director, or investment adviser thereof, based solely upon the investment company divesting from, or avoiding investing in, securities issued by persons that the investment company determines, using credible information available to the public—

(A) conduct or have direct investments in business operations in Sudan described in section 3(d) of the Sudan Accountability and Divestment Act of 2007 (50 U.S.C. 1701 note); or

(B) engage in investment activities in Iran described in section 8532(c) of title 22.

(2) Applicability

(A) Rule of construction

Nothing in paragraph (1) shall be construed to create, imply, diminish, change, or affect in any way whether or not a private right of action exists under subsection (a) or any other provision of this chapter.

(B) Disclosures

Paragraph (1) shall not apply to a registered investment company, or any employee, officer, director, or investment adviser thereof, unless the investment company makes disclosures in accordance with regulations prescribed by the Commission.

(3) Person defined

For purposes of this subsection the term "person" includes the Federal Government and any State or political subdivision of a State.

(Aug. 22, 1940, ch. 686, title I, §13, 54 Stat. 811; Pub. L. 91–547, §§2(b), 3(d), Dec. 14, 1970, 84 Stat. 1414, 1415; Pub. L. 94–29, §28(4), June 4, 1975, 89 Stat. 165; Pub. L. 110–174, §4(a), Dec. 31, 2007, 121 Stat. 2519; Pub. L. 111–195, title II, §§203(a), 205(b)(1), July 1, 2010, 124 Stat. 1343, 1345.)

AMENDMENT OF SECTION

For termination of subsection (c)(1)(B) of this section, see section 8551(a) of Title 22, Foreign Relations and Intercourse.

For termination of amendment by section 12 of Pub. L. 110–174, see Termination Date of 2007 Amendment note below.

REFERENCES IN TEXT

Section 3(d) of the Sudan Accountability and Divestment Act of 2007, referred to in subsec. (c)(1)(A), is section 3(d) of Pub. L. 110–174, which is set out in a note under section 1701 of Title 50, War and National Defense.

AMENDMENTS

2010—Subsec. (c)(1). Pub. L. 111–195, §203(a), amended par. (1) generally. Prior to amendment, text read as follows: "Notwithstanding any other provision of Federal or State law, no person may bring any civil, criminal, or administrative action against any registered investment company, or any employee, officer, director, or investment adviser thereof, based solely upon the investment company divesting from, or avoiding investing in, securities issued by persons that the investment company determines, using credible information that is available to the public, conduct or have direct investments in business operations in Sudan described in section 3(d) of the Sudan Accountability and Divestment Act of 2007."

Subsec. (c)(2)(A). Pub. L. 111–195, §205(b)(1), amended subpar. (A) generally. Prior to amendment, text read as follows: "Paragraph (1) does not prevent a person from bringing an action based on a breach of a fiduciary duty owed to that person with respect to a divestment or non-investment decision, other than as described in paragraph (1)."

2007—Subsec. (c). Pub. L. 110–174, §§4(a), 12, temporarily added subsec. (c). See Termination Date of 2007 Amendment note below.

1975—Subsec. (b). Pub. L. 94–29 substituted "section 80a–16(c) of this title" for "subsection (b) of section 80a–16 of this title".

1970—Subsec. (a)(3). Pub. L. 91–547, §3(d), prohibited deviation from any investment policy which is changeable only if authorized by shareholder vote, substituted "section 8(b)(3)" for "section 8(b)(2)", and in the latter deviation provision struck out "fundamental" before "policy".

Subsec. (b). Pub. L. 91–547, §2(b), substituted reference to "paragraph (42)" for "paragraph (40)".

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–195, title II, §205(b)(2), July 1, 2010, 124 Stat. 1345, provided that: "The amendment made by paragraph (1) [amending this section] shall apply as if included in the Sudan Accountability and Divestment Act of 2007 (Public Law 110–174; 50 U.S.C. 1701 note)."

TERMINATION DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–174 to terminate 30 days after the date on which the President has certified to Congress that the Government of Sudan has honored certain commitments, see section 12 of Pub. L. 110–174, set out in a note under section 1701 of Title 50, War and National Defense.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–547 effective Dec. 14, 1970, see section 30 of Pub. L. 91–547, set out as a note under section 80a–52 of this title.

SEC REGULATIONS

Pub. L. 111–195, title II, §203(b), July 1, 2010, 124 Stat. 1344, provided that: "Not later than 120 days after the date of the enactment of this Act [July 1, 2010], the Securities and Exchange Commission shall issue any revisions the Commission determines to be necessary to the regulations requiring disclosure by each registered

investment company that divests itself of securities in accordance with section 13(c) of the Investment Company Act of 1940 [15 U.S.C. 80a–13(c)] to include divestments of securities in accordance with paragraph (1)(B) of such section, as added by subsection (a) of this section."

§80a–14. Size of investment companies

(a) Public offerings

No registered investment company organized after August 22, 1940, and no principal underwriter for such a company, shall make a public offering of securities of which such company is the issuer, unless—

(1) such company has a net worth of at least $100,000;

(2) such company has previously made a public offering of its securities, and at the time of such offering had a net worth of at least $100,000; or

(3) provision is made in connection with and as a condition of the registration of such securities under the Securities Act of 1933 [15 U.S.C. 77a et seq.] which in the opinion of the Commission adequately insures (A) that after the effective date of such registration statement such company will not issue any security or receive any proceeds of any subscription for any security until firm agreements have been made with such company by not more than twenty-five responsible persons to purchase from it securities to be issued by it for an aggregate net amount which plus the then net worth of the company, if any, will equal at least $100,000; (B) that said aggregate net amount will be paid in to such company before any subscriptions for such securities will be accepted from any persons in excess of twenty-five; (C) that arrangements will be made whereby any proceeds so paid in, as well as any sales load, will be refunded to any subscriber on demand without any deduction, in the event that the net proceeds so received by the company do not result in the company having a net worth of at least $100,000 within ninety days after such registration statement becomes effective.

At any time after the occurrence of the event specified in clause (C) of paragraph (3) of this subsection the Commission may issue a stop order suspending the effectiveness of the registration statement of such securities under the Securities Act of 1933 [15 U.S.C. 77a et seq.] and may suspend or revoke the registration of such company under this subchapter.

(b) Study on effects of size

The Commission is authorized, at such times as it deems that any substantial further increase in size of investment companies creates any problem involving the protection of investors or the public interest, to make a study and investigation of the effects of size on the investment policy of investment companies and on security markets, on concentration of control of wealth and industry, and on companies in which investment companies are interested, and from time to time to report the results of its studies and investigations and its recommendations to the Congress.

(Aug. 22, 1940, ch. 686, title I, §14, 54 Stat. 811.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (a), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, as amended, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–15. Contracts of advisers and underwriters

(a) Written contract to serve or act as investment adviser; contents

It shall be unlawful for any person to serve or act as investment adviser of a registered investment company, except pursuant to a written contract, which contract, whether with such registered company or with an investment adviser of such registered company, has been approved by the vote of a majority of the outstanding voting securities of such registered company, and—

(1) precisely describes all compensation to be paid thereunder;

(2) shall continue in effect for a period more than two years from the date of its execution, only so long as such continuance is specifically approved at least annually by the board of directors or by vote of a majority of the outstanding voting securities of such company;

(3) provides, in substance, that it may be terminated at any time, without the payment of any penalty, by the board of directors of such registered company or by vote of a majority of the outstanding voting securities of such company on not more than sixty days' written notice to the investment adviser; and

(4) provides, in substance, for its automatic termination in the event of its assignment.

(b) Written contract with company for sale by principal underwriter of security of which company is issuer; contents

It shall be unlawful for any principal underwriter for a registered open-end company to offer for sale, sell, or deliver after sale any security of which such company is the issuer, except pursuant to a written contract with such company, which contract—

(1) shall continue in effect for a period more than two years from the date of its execution, only so long as such continuance is specifically approved at least annually by the board of directors or by vote of a majority of the outstanding voting securities of such company; and

(2) provides, in substance, for its automatic termination in the event of its assignment.

(c) Approval of contract to undertake service as investment adviser or principal underwriter by majority of noninterested directors

In addition to the requirements of subsections (a) and (b) of this section, it shall be unlawful for any registered investment company having a board of directors to enter into, renew, or perform any contract or agreement, written or oral, whereby a person undertakes regularly to serve or act as investment adviser of or principal underwriter for such company, unless the terms of such contract or agreement and any renewal thereof have been approved by the vote of a majority of directors, who are not parties to such contract or agreement or interested persons of any such party, cast in person at a meeting called for the purpose of voting on such approval. It shall be the duty of the directors of a registered investment company to request and evaluate, and the duty of an investment adviser to such company to furnish, such information as may reasonably be necessary to evaluate the terms of any contract whereby a person undertakes regularly to serve or act as investment adviser of such company. It shall be unlawful for the directors of a registered investment company, in connection with their evaluation of the terms of any contract whereby a person undertakes regularly to serve or act as investment adviser of such company, to take into account the purchase price or other consideration any person may have paid in connection with a transaction of the type referred to in paragraph (1), (3), or (4) of subsection (f) of this section.

(d) Equivalent of vote of majority of outstanding voting securities in case of common-law trust

In the case of a common-law trust of the character described in section 80a–16(c) of this title, either written approval by holders of a majority of the outstanding shares of beneficial interest or the vote of a majority of such outstanding shares cast in person or by proxy at a meeting called for the purpose shall for the purposes of this section be deemed the equivalent of the vote of a majority of the outstanding voting securities, and the provisions of paragraph (42) of section 80a–2(a) of this title as to a majority shall be applicable to the vote cast at such a meeting.

(e) Exemption of advisory boards or members from provisions of this section

Nothing contained in this section shall be deemed to require or contemplate any action by an advisory board of any registered company or by any of the members of such a board.

(f) Receipt of benefits by investment adviser from sale of securities or other interest in such investment adviser resulting in assignment of investment advisory contract

(1) An investment adviser, or a corporate trustee performing the functions of an investment adviser, of a registered investment company or an affiliated person of such investment adviser or corporate trustee may receive any amount or benefit in connection with a sale of securities of, or a sale of any other interest in, such investment adviser or corporate trustee which results in an assignment of an investment advisory contract with such company or the change in control of or identity of such corporate trustee, if—

(A) for a period of three years after the time of such action, at least 75 per centum of the members of the board of directors of such registered company or such corporate trustee (or successor thereto, by reorganization or otherwise) are not (i) interested persons of the investment adviser of such company or such corporate trustee, or (ii) interested persons of the predecessor investment adviser or such corporate trustee; and

(B) there is not imposed an unfair burden on such company as a result of such transaction or any express or implied terms, conditions, or understandings applicable thereto.

(2)(A) For the purpose of paragraph (1)(A) of this subsection, interested persons of a corporate trustee shall be determined in accordance with section 80a–2(a)(19)(B) of this title: *Provided*, That no person shall be deemed to be an interested person of a corporate trustee solely by reason of (i) his being a member of its board of directors or advisory board or (ii) his membership in the immediate family of any person specified in clause (i) of this subparagraph.

(B) For the purpose of paragraph (1)(B) of this subsection, an unfair burden on a registered investment company includes any arrangement, during the two-year period after the date on which any such transaction occurs, whereby the investment adviser or corporate trustee or predecessor or successor investment advisers or corporate trustee or any interested person of any such adviser or any such corporate trustee receives or is entitled to receive any compensation directly or indirectly (i) from any person in connection with the purchase or sale of securities or other property to, from, or on behalf of such company, other than bona fide ordinary compensation as principal underwriter for such company, or (ii) from such company or its security holders for other than bona fide investment advisory or other services.

(3) If—

(A) an assignment of an investment advisory contract with a registered investment company results in a successor investment adviser to such company, or if there is a change in control of or identity of a corporate trustee of a registered investment company, and such adviser or trustee is then an investment adviser or corporate trustee with respect to other assets substantially greater in amount than the amount of assets of such company, or

(B) as a result of a merger of, or a sale of substantially all the assets by, a registered investment company with or to another registered investment company with assets substantially greater in amount, a transaction occurs which would be subject to paragraph (1)(A) of this subsection,

such discrepancy in size of assets shall be considered by the Commission in determining whether or to what extent an application under section 80a–6(c) of this title for exemption from the provisions of paragraph (1)(A) of this subsection should be granted.

(4) Paragraph (1)(A) of this subsection shall not apply to a transaction in which a controlling block of outstanding voting securities of an investment adviser to a registered investment company or of a corporate trustee performing the functions of an investment adviser to a registered investment company is—

(A) distributed to the public and in which there is, in fact, no change in the identity of the persons who control such investment adviser or corporate trustee, or

(B) transferred to the investment adviser or the corporate trustee, or an affiliated person or persons of such investment adviser or corporate trustee, or is transferred from the investment adviser or corporate trustee to an affiliated person or persons of the investment adviser or corporate trustee: *Provided*, That (i) each transferee (other than such adviser or trustee) is a natural

person and (ii) the transferees (other than such adviser or trustee) owned in the aggregate more than 25 per centum of such voting securities for a period of at least six months prior to such transfer.

(Aug. 22, 1940, ch. 686, title I, §15, 54 Stat. 812; Pub. L. 91–547, §8, Dec. 14, 1970, 84 Stat. 1419; Pub. L. 94–29, §28(1), (2), (4), June 4, 1975, 89 Stat. 164, 165; Pub. L. 100–181, title VI, §611, Dec. 4, 1987, 101 Stat. 1261.)

AMENDMENTS

1987—Subsec. (d). Pub. L. 100–181, §611(1), substituted "paragraph (42)" for "paragraph (40)".

Subsec. (f)(3)(B). Pub. L. 100–181, §611(2), substituted a comma for the period at end.

1975—Subsec. (c). Pub. L. 94–29, §28(2), inserted provisions making it unlawful for the directors of a registered investment company, in connection with their evaluation of the terms of any contract whereby a person undertakes regularly to serve or act as investment adviser of such company, to take into account the purchase price or other consideration any person may have paid in connection with a transaction of the type referred to in paragraph (1), (3), or (4) of subsec. (f).

Subsec. (d). Pub. L. 94–29, §28(4), substituted "section 80a–16(c) of this title" for "subsection (b) of section 80a–16 of this title".

Subsec. (f). Pub. L. 94–29, §28(1), added subsec. (f).

1970—Subsec. (a). Pub. L. 91–547, §8(a), struck out introductory phrase "After one year from the effective date of this subchapter" and "unless in effect prior to March 15, 1940," before "has been approved", and "by the investment adviser" after "assignment" in item (4), and substituted "It" for "it".

Subsec. (b). Pub. L. 91–547, §8(b), struck out introductory phrase "After one year from the effective date of this subchapter," and concluding phrase ", unless in effect prior to March 15, 1940" after "which contract" before item (1), struck out "by such underwriter" after "assignment" in item (2), and substituted "It" for "it".

Subsec. (c). Pub. L. 91–547, §8(c), made it the duty of the directors of a registered investment company to request and evaluate, and the duty of an investment adviser to such company to furnish, such information as may reasonably be necessary to evaluate the terms of any contract whereby a person undertakes regularly to serve or act as investment adviser of such company, substituted "interested persons" for "affiliated persons", and struck out "except a written agreement which was in effect prior to March 15, 1940," after "written or oral,", item (1) designation following "have been approved" and item "or (2) by the vote of a majority of the outstanding voting securities of such company" after "any such party,", and inserted "the vote" in phrase "by the vote of a majority", and provision respecting voting "cast in person at a meeting called for the purpose of voting on such approval".

Subsecs. (d) to (f). Pub. L. 91–547, §8(d), redesignated subsecs. (e) and (f) as (d) and (e), respectively, and struck out former subsec. (d) which prohibited any person after March 15, 1945, from acting as investment adviser to, or principal underwriter for, any registered investment company pursuant to a written contract in effect prior to March 15, 1940, unless such contract was renewed prior to March 15, 1945, in such form as to make it comply with subsecs. (a) or (b).

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–547 effective on expiration of one year after Dec. 14, 1970, see section 30(1) of Pub. L. 91–547, set out as a note under section 80a–52 of this title.

§80a–16. Board of directors

(a) Election of directors

No person shall serve as a director of a registered investment company unless elected to that office by the holders of the outstanding voting securities of such company, at an annual or a special meeting duly called for that purpose; except that vacancies occurring between such meetings may be filled in any otherwise legal manner if immediately after filling any such vacancy at least two-thirds of the directors then holding office shall have been elected to such office by the holders of the outstanding voting securities of the company at such an annual or special meeting. In the event that

at any time less than a majority of the directors of such company holding office at that time were so elected by the holders of the outstanding voting securities, the board of directors or proper officer of such company shall forthwith cause to be held as promptly as possible and in any event within sixty days a meeting of such holders for the purpose of electing directors to fill any existing vacancies in the board of directors unless the Commission shall by order extend such period. The foregoing provisions of this subsection shall not apply to members of an advisory board.

Nothing herein shall, however, preclude a registered investment company from dividing its directors into classes if its charter, certificate of incorporation, articles of association, by-laws, trust indenture, or other instrument or the law under which it is organized, so provides and prescribes the tenure of office of the several classes: *Provided*, That no class shall be elected for a shorter period than one year or for a longer period than five years and the term of office of at least one class shall expire each year.

(b) Term vacancies

Any vacancy on the board of directors of a registered investment company which occurs in connection with compliance with section 80a–15(f)(1)(A) of this title and which must be filled by a person who is not an interested person of either party to a transaction subject to section 80a–15(f)(1)(A) of this title shall be filled only by a person (1) who has been selected and proposed for election by a majority of the directors of such company who are not such interested persons, and (2) who has been elected by the holders of the outstanding voting securities of such company, except that in the case of the death, disqualification, or bona fide resignation of a director selected and elected pursuant to clauses (1) and (2) of this subsection (b), the vacancy created thereby may be filled as provided in subsection (a) of this section.

(c) Trustees of common-law trusts

The foregoing provisions of this section shall not apply to a common-law trust existing on August 22, 1940, under an indenture of trust which does not provide for the election of trustees by the shareholders. No natural person shall serve as trustee of such a trust, which is registered as an investment company, after the holders of record of not less than two-thirds of the outstanding shares of beneficial interests in such trust have declared that he be removed from that office either by declaration in writing filed with the custodian of the securities of the trust or by votes cast in person or by proxy at a meeting called for the purpose. Solicitation of such a declaration shall be deemed a solicitation of a proxy within the meaning of section 80a–20(a) of this title.

The trustees of such a trust shall promptly call a meeting of shareholders for the purpose of voting upon the question of removal of any such trustee or trustees when requested in writing so to do by the record holders of not less than 10 per centum of the outstanding shares.

Whenever ten or more shareholders of record who have been such for at least six months preceding the date of application, and who hold in the aggregate either shares having a net asset value of at least $25,000 or at least 1 per centum of the outstanding shares, whichever is less, shall apply to the trustees in writing, stating that they wish to communicate with other shareholders with a view to obtaining signatures to a request for a meeting pursuant to this subsection and accompanied by a form of communication and request which they wish to transmit, the trustees shall within five business days after receipt of such application either—

(1) afford to such applicants access to a list of the names and addresses of all shareholders as recorded on the books of the trust; or

(2) inform such applicants as to the approximate number of shareholders of record, and the approximate cost of mailing to them the proposed communication and form of request.

If the trustees elect to follow the course specified in paragraph (2) of this subsection the trustees, upon the written request of such applicants, accompanied by a tender of the material to be mailed and of the reasonable expenses of mailing, shall, with reasonable promptness, mail such material to all shareholders of record at their addresses as recorded on the books, unless within five business days after such tender the trustees shall mail to such applicants and file with the Commission, together with a copy of the material to be mailed, a written statement signed by at least a majority of

the trustees to the effect that in their opinion either such material contains untrue statements of fact or omits to state facts necessary to make the statements contained therein not misleading, or would be in violation of applicable law, and specifying the basis of such opinion.

After opportunity for hearing upon the objections specified in the written statement so filed, the Commission may, and if demanded by the trustees or by such applicants shall, enter an order either sustaining one or more of such objections or refusing to sustain any of them. If the Commission shall enter an order refusing to sustain any of such objections, or if, after the entry of an order sustaining one or more of such objections, the Commission shall find, after notice and opportunity for hearing, that all objections so sustained have been met, and shall enter an order so declaring, the trustees shall mail copies of such material to all shareholders with reasonable promptness after the entry of such order and the renewal of such tender.

(Aug. 22, 1940, ch. 686, title I, §16, 54 Stat. 813; Pub. L. 94–29, §28(3), June 4, 1975, 89 Stat. 165.)

AMENDMENTS

1975—Subsecs. (b), (c). Pub. L. 94–29 added subsec. (b), redesignated former subsec. (b) as (c), and substituted "The foregoing provisions of this section" for "The provisions of subsection (a) of this section" in first sentence.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–17. Transactions of certain affiliated persons and underwriters

(a) Prohibited transactions

It shall be unlawful for any affiliated person or promoter of or principal underwriter for a registered investment company (other than a company of the character described in section 80a–12(d)(3)(A) and (B) of this title), or any affiliated person of such a person, promoter, or principal underwriter, acting as principal—

(1) knowingly to sell any security or other property to such registered company or to any company controlled by such registered company, unless such sale involves solely (A) securities of which the buyer is the issuer, (B) securities of which the seller is the issuer and which are part of a general offering to the holders of a class of its securities, or (C) securities deposited with the trustee of a unit investment trust or periodic payment plan by the depositor thereof;

(2) knowingly to purchase from such registered company, or from any company controlled by such registered company, any security or other property (except securities of which the seller is the issuer);

(3) to borrow money or other property from such registered company or from any company controlled by such registered company (unless the borrower is controlled by the lender) except as permitted in section 80a–21(b) of this title; or

(4) to loan money or other property to such registered company, or to any company controlled by such registered company, in contravention of such rules, regulations, or orders as the Commission may, after consultation with and taking into consideration the views of the Federal banking agencies (as defined in section 1813 of title 12), prescribe or issue consistent with the protection of investors.

(b) Application for exemption of proposed transaction from certain restrictions

Notwithstanding subsection (a) of this section, any person may file with the Commission an application for an order exempting a proposed transaction of the applicant from one or more

provisions of said subsection. The Commission shall grant such application and issue such order of exemption if evidence establishes that—

(1) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned;

(2) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under this subchapter; and

(3) the proposed transaction is consistent with the general purposes of this subchapter.

(c) Sale or purchase of merchandise from any company or furnishing of services incident to lessor-lessee relationship

Notwithstanding subsection (a) of this section, a person may, in the ordinary course of business, sell to or purchase from any company merchandise or may enter into a lessor-lessee relationship with any person and furnish the services incident thereto.

(d) Joint or joint and several participation with company in transactions

It shall be unlawful for any affiliated person of or principal underwriter for a registered investment company (other than a company of the character described in section 80a–12(d)(3) (A) and (B) of this title), or any affiliated person of such a person or principal underwriter, acting as principal to effect any transaction in which such registered company, or a company controlled by such registered company, is a joint or a joint and several participant with such person, principal underwriter, or affiliated person, in contravention of such rules and regulations as the Commission may prescribe for the purpose of limiting or preventing participation by such registered or controlled company on a basis different from or less advantageous than that of such other participant. Nothing contained in this subsection shall be deemed to preclude any affiliated person from acting as manager of any underwriting syndicate or other group in which such registered or controlled company is a participant and receiving compensation therefor.

(e) Acceptance of compensation, commissions, fees, etc.

It shall be unlawful for any affiliated person of a registered investment company, or any affiliated person of such person—

(1) acting as agent, to accept from any source any compensation (other than a regular salary or wages from such registered company) for the purchase or sale of any property to or for such registered company or any controlled company thereof, except in the course of such person's business as an underwriter or broker; or

(2) acting as broker, in connection with the sale of securities to or by such registered company or any controlled company thereof, to receive from any source a commission, fee, or other remuneration for effecting such transaction which exceeds (A) the usual and customary broker's commission if the sale is effected on a securities exchange, or (B) 2 per centum of the sales price if the sale is effected in connection with a secondary distribution of such securities, or (C) 1 per centum of the purchase or sale price of such securities if the sale is otherwise effected unless the Commission shall, by rules and regulations or order in the public interest and consistent with the protection of investors, permit a larger commission.

(f) Custody of securities

(1) Every registered management company shall place and maintain its securities and similar investments in the custody of (A) a bank or banks having the qualifications prescribed in paragraph (1) of section 80a–26(a) of this title for the trustees of unit investment trusts; or (B) a company which is a member of a national securities exchange as defined in the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], subject to such rules and regulations as the Commission may from time to time prescribe for the protection of investors; or (C) such registered company, but only in accordance with such rules and regulations or orders as the Commission may from time to time prescribe for the protection of investors.

(2) Subject to such rules, regulations, and orders as the Commission may adopt as necessary or appropriate for the protection of investors, a registered management company or any such custodian, with the consent of the registered management company for which it acts as custodian, may deposit

all or any part of the securities owned by such registered management company in a system for the central handling of securities established by a national securities exchange or national securities association registered with the Commission under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], or such other person as may be permitted by the Commission, pursuant to which system all securities of any particular class or series of any issuer deposited within the system are treated as fungible and may be transferred or pledged by bookkeeping entry without physical delivery of such securities.

(3) Rules, regulations, and orders of the Commission under this subsection, among other things, may make appropriate provision with respect to such matters as the earmarking, segregation, and hypothecation of such securities and investments, and may provide for or require periodic or other inspections by any or all of the following: Independent public accountants, employees and agents of the Commission, and such other persons as the Commission may designate.

(4) No member of a national securities exchange which trades in securities for its own account may act as custodian except in accordance with rules and regulations prescribed by the Commission for the protection of investors.

(5) If a registered company maintains its securities and similar investments in the custody of a qualified bank or banks, the cash proceeds from the sale of such securities and similar investments and other cash assets of the company shall likewise be kept in the custody of such a bank or banks, or in accordance with such rules and regulations or orders as the Commission may from time to time prescribe for the protection of investors, except that such a registered company may maintain a checking account in a bank or banks having the qualifications prescribed in paragraph (1) of section 80a–26(a) of this title for the trustees of unit investment trusts with the balance of such account or the aggregate balances of such accounts at no time in excess of the amount of the fidelity bond, maintained pursuant to subsection (g) of this section covering the officers or employees authorized to draw on such account or accounts.

(6) The Commission may, after consultation with and taking into consideration the views of the Federal banking agencies (as defined in section 1813 of title 12), adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the conditions under which a bank, or an affiliated person of a bank, either of which is an affiliated person, promoter, organizer, or sponsor of, or principal underwriter for, a registered management company, may serve as custodian of that registered management company.

(g) Bonding of officers and employees having access to securities or funds

The Commission is authorized to require by rules and regulations or orders for the protection of investors that any officer or employee of a registered management investment company who may singly, or jointly with others, have access to securities or funds of any registered company, either directly or through authority to draw upon such funds or to direct generally the disposition of such securities (unless the officer or employee has such access solely through his position as an officer or employee of a bank) be bonded by a reputable fidelity insurance company against larceny and embezzlement in such reasonable minimum amounts as the Commission may prescribe.

(h) Provisions in charter, by-laws, etc., protecting against liability for willful misfeasance, etc.

After one year from the effective date of this subchapter, neither the charter, certificate of incorporation, articles of association, indenture of trust, nor the by-laws of any registered investment company, nor any other instrument pursuant to which such a company is organized or administered, shall contain any provision which protects or purports to protect any director or officer of such company against any liability to the company or to its security holders to which he would otherwise be subject by reason of willful misfeasance, bad faith, gross negligence or reckless disregard of the duties involved in the conduct of his office.

(i) Provisions in contracts protecting against willful misfeasance, etc.

After one year from the effective date of this subchapter no contract or agreement under which any person undertakes to act as investment adviser of, or principal underwriter for, a registered investment company shall contain any provision which protects or purports to protect such person

against any liability to such company or its security holders to which he would otherwise be subject by reason of willful misfeasance, bad faith, or gross negligence, in the performance of his duties, or by reason of his reckless disregard of his obligations and duties under such contract or agreement.

(j) Rules and regulations prohibiting fraudulent, deceptive or manipulative courses of conduct

It shall be unlawful for any affiliated person of or principal underwriter for a registered investment company or any affiliated person of an investment adviser of or principal underwriter for a registered investment company, to engage in any act, practice, or course of business in connection with the purchase or sale, directly or indirectly, by such person of any security held or to be acquired by such registered investment company in contravention of such rules and regulations as the Commission may adopt to define, and prescribe means reasonably necessary to prevent, such acts, practices, or courses of business as are fraudulent, deceptive or manipulative. Such rules and regulations may include requirements for the adoption of codes of ethics by registered investment companies and investment advisers of, and principal underwriters for, such investment companies establishing such standards as are reasonably necessary to prevent such acts, practices, or courses of business.

(Aug. 22, 1940, ch. 686, title I, §17, 54 Stat. 815; Pub. L. 91–547, §9, Dec. 14, 1970, 84 Stat. 1420; Pub. L. 100–181, title VI, §612, Dec. 4, 1987, 101 Stat. 1261; Pub. L. 106–102, title II, §§211(a), 212, Nov. 12, 1999, 113 Stat. 1396; Pub. L. 111–203, title IX, §985(d)(4), July 21, 2010, 124 Stat. 1934.)

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsec. (f)(1)(B), (2), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

For the effective date of this subchapter, referred to in subsecs. (h) and (i), see section 80a–52 of this title.

AMENDMENTS

2010—Subsec. (f)(4). Pub. L. 111–203, §985(d)(4)(A), substituted "No member of a national securities exchange" for "No such member".

Subsec. (f)(6). Pub. L. 111–203, §985(d)(4)(B), substituted "company, may serve" for "company may serve".

1999—Subsec. (a)(4). Pub. L. 106–102, §212, added par. (4).

Subsec. (f). Pub. L. 106–102, §211(a), inserted heading, designated first sentence as par. (1) and cls. (1) to (3) as (A) to (C), respectively, designated second through fifth sentences as pars. (2) to (5), respectively, and realigned margins, and added par. (6).

1987—Subsec. (h). Pub. L. 100–181 struck out second sentence which read as follows: "In the event that any such instrument does not at the effective date of this chapter comply with the requirements of this subsection and is not amended to comply therewith prior to the expiration of said one year, such company may nevertheless continue to be a registered investment company and shall not be deemed to violate this subsection if prior to said expiration date each such director or officer shall have filed with the Commission a waiver in writing of any protective provision of the instrument to the extent that it does not comply with this subsection, and each such person subsequently elected or appointed shall before assuming office file a similar waiver."

Subsec. (i). Pub. L. 100–181 struck out second sentence which read as follows: "In the event that any such contract or agreement does not at the effective date of this chapter comply with the requirements of this subsection and is not amended to comply therewith prior to the expiration of said one year, this subsection shall not be deemed to have been violated if prior to said expiration date each such investment adviser or principal underwriter shall have filed with the Commission a waiver in writing of any protective provision of the contract or agreement to the extent that it does not comply with this subsection."

1970—Subsec. (f). Pub. L. 91–547, §9(a), provided in cl. (1) for a registered investment company which is a collective fund maintained by a bank authority to keep its securities and similar investments in the custody of the sponsoring bank, authorized a registered management company or its custodian (with the consent of the management company), subject to the rulemaking power of the Commission, to deposit the securities of the management company in a central certificate depository established by a national securities exchange or a registered national securities association, and provided that if an investment company employs a bank as a custodian for securities and similar investments, then all of its cash assets, shall likewise be held by a bank, subject to direction as to expenditure and disposition by proper company officials, and provided for

maintenance of a checking account or accounts in one or more banks in amounts not to exceed the amount of the fidelity bond covering persons authorized to draw on the accounts.

Subsec. (g). Pub. L. 91–547, §9(b), substituted "officer or employee" for "officer and employee" and inserted "(unless the officer or employee has such access solely through his position as an officer or employee of a bank)" before "be bonded".

Subsec. (j). Pub. L. 91–547, §9(c), added subsec. (j).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–102 effective 18 months after Nov. 12, 1999, see section 225 of Pub. L. 106–102, set out as a note under section 77c of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–547 effective Dec. 14, 1970, except that amendment by section 9(a) of Pub. L. 91–547 effective on expiration of one year after Dec. 14, 1970, see section 30 (introductory text and par. (1)) of Pub. L. 91–547, set out as a note under section 80a–52 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–18. Capital structure of investment companies

(a) Qualifications on issuance of senior securities

It shall be unlawful for any registered closed-end company to issue any class of senior security, or to sell any such security of which it is the issuer, unless—

(1) if such class of senior security represents an indebtedness—

(A) immediately after such issuance or sale, it will have an asset coverage of at least 300 per centum;

(B) provision is made to prohibit the declaration of any dividend (except a dividend payable in stock of the issuer), or the declaration of any other distribution, upon any class of the capital stock of such investment company, or the purchase of any such capital stock, unless, in every such case, such class of senior securities has at the time of the declaration of any such dividend or distribution or at the time of any such purchase an asset coverage of at least 300 per centum after deducting the amount of such dividend, distribution, or purchase price, as the case may be, except that dividends may be declared upon any preferred stock if such senior security representing indebtedness has an asset coverage of at least 200 per centum at the time of declaration thereof after deducting the amount of such dividend; and

(C) provision is made either—

(i) that, if on the last business day of each of twelve consecutive calendar months such class of senior securities shall have an asset coverage of less than 100 per centum, the holders of such securities voting as a class shall be entitled to elect at least a majority of the members of the board of directors of such registered company, such voting right to continue until such class of senior security shall have an asset coverage of 110 per centum or more on the last business day of each of three consecutive calendar months, or

(ii) that, if on the last business day of each of twenty-four consecutive calendar months such class of senior securities shall have an asset coverage of less than 100 per centum, an event of default shall be deemed to have occurred;

(2) if such class of senior security is a stock—

(A) immediately after such issuance or sale it will have an asset coverage of at least 200 per centum;

(B) provision is made to prohibit the declaration of any dividend (except a dividend payable in common stock of the issuer), or the declaration of any other distribution, upon the common stock of such investment company, or the purchase of any such common stock, unless in every such case such class of senior security has at the time of the declaration of any such dividend or distribution or at the time of any such purchase an asset coverage of at least 200 per centum after deducting the amount of such dividend, distribution or purchase price, as the case may be;

(C) provision is made to entitle the holders of such senior securities, voting as a class, to elect at least two directors at all times, and, subject to the prior rights, if any, of the holders of any other class of senior securities outstanding, to elect a majority of the directors if at any time dividends on such class of securities shall be unpaid in an amount equal to two full years' dividends on such securities, and to continue to be so represented until all dividends in arrears shall have been paid or otherwise provided for;

(D) provision is made requiring approval by the vote of a majority of such securities, voting as a class, of any plan of reorganization adversely affecting such securities or of any action requiring a vote of security holders as in section 80a–13(a) of this title provided; and

(E) such class of stock shall have complete priority over any other class as to distribution of assets and payment of dividends, which dividends shall be cumulative.

(b) Asset coverage in respect of senior securities

The asset coverage in respect of a senior security provided for in subsection (a) of this section may be determined on the basis of values calculated as of a time within forty-eight hours (not including Sundays or holidays) next preceding the time of such determination. The time of issue or sale shall, in the case of an offering of such securities to existing stockholders of the issuer, be deemed to be the first date on which such offering is made, and in all other cases shall be deemed to be the time as of which a firm commitment to issue or sell and to take or purchase such securities shall be made.

(c) Prohibitions relating to issuance of senior securities

Notwithstanding the provisions of subsection (a) of this section it shall be unlawful for any registered closed-end investment company to issue or sell any senior security representing indebtedness if immediately thereafter such company will have outstanding more than one class of senior security representing indebtedness, or to issue or sell any senior security which is a stock if immediately thereafter such company will have outstanding more than one class of senior security which is a stock, except that (1) any such class of indebtedness or stock may be issued in one or more series: *Provided*, That no such series shall have a preference or priority over any other series upon the distribution of the assets of such registered closed-end company or in respect of the payment of interest or dividends, and (2) promissory notes or other evidences of indebtedness issued in consideration of any loan, extension, or renewal thereof, made by a bank or other person and privately arranged, and not intended to be publicly distributed, shall not be deemed to be a separate class of senior securities representing indebtedness within the meaning of this subsection.

(d) Warrants and rights to subscription

It shall be unlawful for any registered management company to issue any warrant or right to subscribe to or purchase a security of which such company is the issuer, except in the form of warrants or rights to subscribe expiring not later than one hundred and twenty days after their issuance and issued exclusively and ratably to a class or classes of such company's security holders; except that any warrant may be issued in exchange for outstanding warrants in connection with a plan of reorganization.

(e) Application of section to specific senior securities

The provisions of this section shall not apply to any senior securities issued or sold by any registered closed-end company—

(1) for the purpose of refunding through payment, purchase, redemption, retirement, or exchange, any senior security of such registered investment company except that no senior

security representing indebtedness shall be so issued or sold for the purpose of refunding any senior security which is a stock; or

(2) pursuant to any plan of reorganization (other than for refunding as referred to in paragraph (1) of this subsection), provided—

(A) that such senior securities are issued or sold for the purpose of substituting or exchanging such senior securities for outstanding senior securities, and if such senior securities represent indebtedness they are issued or sold for the purpose of substituting or exchanging such senior securities for outstanding senior securities representing indebtedness, of any registered investment company which is a party to such plan of reorganization; or

(B) that the total amount of such senior securities so issued or sold pursuant to such plan does not exceed the total amount of senior securities of all the companies which are parties to such plan, and the total amount of senior securities representing indebtedness so issued or sold pursuant to such plan does not exceed the total amount of senior securities representing indebtedness of all such companies, or, alternatively, the total amount of such senior securities so issued or sold pursuant to such plan does not have the effect of increasing the ratio of senior securities representing indebtedness to the securities representing stock or the ratio of senior securities representing stock to securities junior thereto when compared with such ratios as they existed before such reorganization.

(f) Senior securities securing loans from bank; securities not included in "senior security"

(1) It shall be unlawful for any registered open-end company to issue any class of senior security or to sell any senior security of which it is the issuer, except that any such registered company shall be permitted to borrow from any bank: *Provided*, That immediately after any such borrowing there is an asset coverage of at least 300 per centum for all borrowings of such registered company: *And provided further*, That in the event that such asset coverage shall at any time fall below 300 per centum such registered company shall, within three days thereafter (not including Sundays and holidays) or such longer period as the Commission may prescribe by rules and regulations, reduce the amount of its borrowings to an extent that the asset coverage of such borrowings shall be at least 300 per centum.

(2) "Senior security" shall not, in the case of a registered open-end company, include a class or classes or a number of series of preferred or special stock each of which is preferred over all other classes or series in respect of assets specifically allocated to that class or series: *Provided*, That (A) such company has outstanding no class or series of stock which is not so preferred over all other classes or series, or (B) the only other outstanding class of the issuer's stock consists of a common stock upon which no dividend (other than a liquidating dividend) is permitted to be paid and which in the aggregate represents not more than one-half of 1 per centum of the issuer's outstanding voting securities. For the purpose of insuring fair and equitable treatment of the holders of the outstanding voting securities of each class or series of stock of such company, the Commission may by rule, regulation, or order direct that any matter required to be submitted to the holders of the outstanding voting securities of such company shall not be deemed to have been effectively acted upon unless approved by the holders of such percentage (not exceeding a majority) of the outstanding voting securities of each class or series of stock affected by such matter as shall be prescribed in such rule, regulation, or order.

(g) "Senior security" defined

Unless otherwise provided: "Senior security" means any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness, and any stock of a class having priority over any other class as to distribution of assets or payment of dividends; and "senior security representing indebtedness" means any senior security other than stock.

The term "senior security", when used in subparagraphs (B) and (C) of paragraph (1) of subsection (a) of this section, shall not include any promissory note or other evidence of indebtedness issued in consideration of any loan, extension, or renewal thereof, made by a bank or other person and privately arranged, and not intended to be publicly distributed; nor shall such term, when used in this section, include any such promissory note or other evidence of indebtedness in any case where such

a loan is for temporary purposes only and in an amount not exceeding 5 per centum of the value of the total assets of the issuer at the time when the loan is made. A loan shall be presumed to be for temporary purposes if it is repaid within sixty days and is not extended or renewed; otherwise it shall be presumed not to be for temporary purposes. Any such presumption may be rebutted by evidence.

(h) "Asset coverage" defined

"Asset coverage" of a class of senior security representing an indebtedness of an issuer means the ratio which the value of the total assets of such issuer, less all liabilities and indebtedness not represented by senior securities, bears to the aggregate amount of senior securities representing indebtedness of such issuer. "Asset coverage" of a class of senior security of an issuer which is a stock means the ratio which the value of the total assets of such issuer, less all liabilities and indebtedness not represented by senior securities, bears to the aggregate amount of senior securities representing indebtedness of such issuer plus the aggregate of the involuntary liquidation preference of such class of senior security which is a stock. The involuntary liquidation preference of a class of senior security which is a stock shall be deemed to mean the amount to which such class of senior security would be entitled on involuntary liquidation of the issuer in preference to a security junior to it.

(i) Future issuance of stock as voting stock; exceptions

Except as provided in subsection (a) of this section, or as otherwise required by law, every share of stock hereafter issued by a registered management company (except a common-law trust of the character described in section 80a–16(c) of this title) shall be a voting stock and have equal voting rights with every other outstanding voting stock: *Provided*, That this subsection shall not apply to shares issued pursuant to the terms of any warrant or subscription right outstanding on March 15, 1940, or any firm contract entered into before March 15, 1940, to purchase such securities from such company nor to shares issued in accordance with any rules, regulations, or orders which the Commission may make permitting such issue.

(j) Securities issued by registered face-amount certificate company

Notwithstanding any provision of this subchapter, it shall be unlawful, after August 22, 1940, for any registered face-amount certificate company—

(1) to issue, except in accordance with such rules, regulations, or orders as the Commission may prescribe in the public interest or as necessary or appropriate for the protection of investors, any security other than (A) a face-amount certificate; (B) a common stock having a par value and being without preference as to dividends or distributions and having at least equal voting rights with any outstanding security of such company; or (C) short-term payment or promissory notes or other indebtedness issued in consideration of any loan, extension, or renewal thereof, made by a bank or other person and privately arranged and not intended to be publicly offered;

(2) if such company has outstanding any security, other than such face-amount certificates, common stock, promissory notes, or other evidence of indebtedness, to make any distribution or declare or pay any dividend on any capital security in contravention of such rules and regulations or orders as the Commission may prescribe in the public interest or as necessary or appropriate for the protection of investors or to insure the financial integrity of such company, to prevent the impairment of the company's ability to meet its obligations upon its face-amount certificates; or

(3) to issue any of its securities except for cash or securities including securities of which such company is the issuer.

(k) Application of section to companies operating under Small Business Investment Act provisions

The provisions of subparagraphs (A) and (B) of paragraph (1) of subsection (a) of this section shall not apply to investment companies operating under the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.], and the provisions of paragraph (2) of said subsection shall not apply to such companies so long as such class of senior security shall be held or guaranteed by the Small Business Administration.

(Aug. 22, 1940, ch. 686, title I, §18, 54 Stat. 817; Pub. L. 85–699, title III, §307(c), Aug. 21, 1958,

72 Stat. 694; Pub. L. 91–547, §10, Dec. 14, 1970, 84 Stat. 1421; Pub. L. 85–699, title III, §317, formerly §319, Aug. 21, 1958, as added Pub. L. 92–595, §2(g), Oct. 27, 1972, 86 Stat. 1316, renumbered §317, Pub. L. 104–208, div. D, title II, §208(h)(1)(E), Sept. 30, 1996, 110 Stat. 3009–747; Pub. L. 94–29, §28(4), June 4, 1975, 89 Stat. 165; Pub. L. 100–181, title VI, §613, Dec. 4, 1987, 101 Stat. 1261; Pub. L. 105–353, title III, §301(c)(4), Nov. 3, 1998, 112 Stat. 3236.)

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in subsec. (k), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, as amended, which is classified principally to chapter 14B (§661 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

AMENDMENTS

1998—Subsec. (e)(2). Pub. L. 105–353 substituted "paragraph (1) of this subsection" for "subsection (e)(2) of this section" in introductory provisions.

1987—Subsec. (e). Pub. L. 100–181 redesignated pars. (2) and (3) as (1) and (2), respectively, and struck out former par. (1) which read as follows: "pursuant to any firm contract to purchase or sell entered into prior to March 15, 1940;".

1975—Subsec. (i). Pub. L. 94–29 substituted "section 80a–16(c) of this title" for "section 80a–16(b) of this title".

1972—Subsec. (k). Section 319 of Pub. L. 85–699, as added by Pub. L. 92–595, inserted provision that subsec. (a)(2) shall not apply to companies operating under the Small Business Investment Act of 1958, so long as such class of senior security shall be held or guaranteed by the Small Business Administration.

1970—Subsec. (f)(2). Pub. L. 91–547 substituted "That (A)" and "or (B) the" for "(A) That" and "or (B) that the" and inserted provision for purpose of insuring fair and equitable treatment of the holders of the outstanding voting securities of each class or series of stock of such company, that the Commission may by rule, regulation, or order direct that any matter required to be submitted to the holders of the outstanding voting securities of such company shall not be deemed to have been effectively acted upon unless approved by the holders of such percentage (not exceeding a majority) of the outstanding voting securities of each class or series of stock affected by such matter as shall be prescribed in such rule, regulation, or order.

1958—Subsec. (k). Pub. L. 85–699 added subsec. (k).

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–547 effective Dec. 14, 1970, see section 30 of Pub. L. 91–547, set out as a note under section 80a–52 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–19. Payments or distributions

(a) Dividends; restriction; exception

It shall be unlawful for any registered investment company to pay any dividend, or to make any distribution in the nature of a dividend payment, wholly or partly from any source other than—

(1) such company's accumulated undistributed net income, determined in accordance with good accounting practice and not including profits or losses realized upon the sale of securities or other properties; or

(2) such company's net income so determined for the current or preceding fiscal year;

unless such payment is accompanied by a written statement which adequately discloses the source or sources of such payment. The Commission may prescribe the form of such statement by rules and

regulations in the public interest and for the protection of investors.

(b) Long-term capital gains; limitation

It shall be unlawful in contravention of such rules, regulations, or orders as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors for any registered investment company to distribute long-term capital gains, as defined in title 26, more often than once every twelve months.

(Aug. 22, 1940, ch. 686, title I, §19, 54 Stat. 821; Pub. L. 91–547, §11, Dec. 14, 1970, 84 Stat. 1422; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095.)

AMENDMENTS

1986—Subsec. (b). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

1970—Pub. L. 91–547 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–547 effective on expiration of one year after Dec. 14, 1970, see section 30(1) of Pub. L. 91–547, set out as a note under section 80a–52 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–20. Proxies; voting trusts; circular ownership

(a) Prohibition on use of means of interstate commerce for solicitation of proxies

It shall be unlawful for any person, by use of the mails or any means or instrumentality of interstate commerce or otherwise, to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any security of which a registered investment company is the issuer in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(b) Prohibition on use of means of interstate commerce for sale of voting-trust certificates

It shall be unlawful for any registered investment company or affiliated person thereof, any issuer of a voting-trust certificate relating to any security of a registered investment company, or any underwriter of such a certificate, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to offer for sale, sell, or deliver after sale, in connection with a public offering, any such voting-trust certificate.

(c) Prohibition on purchase of securities knowingly resulting in cross-ownership or circular ownership

No registered investment company shall purchase any voting security if, to the knowledge of such registered company, cross-ownership or circular ownership exists, or after such acquisition will exist, between such registered company and the issuer of such security. Cross-ownership shall be deemed to exist between two companies when each of such companies beneficially owns more than 3 per centum of the outstanding voting securities of the other company. Circular ownership shall be deemed to exist between two companies if such companies are included within a group of three or more companies, each of which—

(1) beneficially owns more than 3 per centum of the outstanding voting securities of one or more other companies of the group; and

(2) has more than 3 per centum of its own outstanding voting securities beneficially owned by another company, or by each of two or more other companies, of the group.

(d) Duty to eliminate existing cross-ownership or circular ownership

If cross-ownership or circular ownership between a registered investment company and any other company or companies comes into existence upon the purchase by a registered investment company of the securities of another company, it shall be the duty of such registered company, within one year after it first knows of the existence of such cross-ownership or circular ownership, to eliminate the same.

(Aug. 22, 1940, ch. 686, title I, §20, 54 Stat. 822; Pub. L. 100–181, title VI, §614, Dec. 4, 1987, 101 Stat. 1262.)

AMENDMENTS

1987—Subsec. (b). Pub. L. 100–181, §614(1), struck out at end "The prohibitions of this subsection shall not apply to a class of voting-trust certificates, if any certificate of such class was made the subject of a public offering by the issuer or by or through an underwriter prior to March 15, 1940."

Subsec. (d). Pub. L. 100–181, §614(2), (3), struck out first sentence "If on the effective date of this subchapter cross-ownership or circular ownership exists between a registered investment company and any other company or companies, it shall be the duty of such registered company, within five years after such effective date, to eliminate such cross-ownership or circular ownership." and "at any time after the effective date of this subchapter" after "If" in second sentence.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–21. Loans by management companies

It shall be unlawful for any registered management company to lend money or property to any person, directly or indirectly, if—

(a) the investment policies of such registered company, as recited in its registration statement and reports filed under this subchapter, do not permit such a loan; or

(b) such person controls or is under common control with such registered company; except that the provisions of this paragraph shall not apply to any loan from a registered company to a company which owns all of the outstanding securities of such registered company, except directors' qualifying shares.

(Aug. 22, 1940, ch. 686, title I, §21, 54 Stat. 822; Pub. L. 100–181, title VI, §615, Dec. 4, 1987, 101 Stat. 1262.)

AMENDMENTS

1987—Subsec. (b). Pub. L. 100–181 struck out "to the extension or renewal of any such loan made prior to March 15, 1940, or" after "shall not apply".

§80a–22. Distribution, redemption, and repurchase of securities; regulations by securities associations

(a) Rules relating to minimum and maximum prices for purchase and sale of securities from investment company; time for resale and redemption

A securities association registered under section 78o–3 of this title may prescribe, by rules adopted and in effect in accordance with said section and subject to all provisions of said section applicable to the rules of such an association—

(1) a method or methods for computing the minimum price at which a member thereof may purchase from any investment company any redeemable security issued by such company and the maximum price at which a member may sell to such company any redeemable security issued by

it or which he may receive for such security upon redemption, so that the price in each case will bear such relation to the current net asset value of such security computed as of such time as the rules may prescribe; and

(2) a minimum period of time which must elapse after the sale or issue of such security before any resale to such company by a member or its redemption upon surrender by a member;

in each case for the purpose of eliminating or reducing so far as reasonably practicable any dilution of the value of other outstanding securities of such company or any other result of such purchase, redemption, or sale which is unfair to holders of such other outstanding securities; and said rules may prohibit the members of the association from purchasing, selling, or surrendering for redemption any such redeemable securities in contravention of said rules.

(b) Rules relating to purchase of securities by members from issuer investment company

(1) Such a securities association may also, by rules adopted and in effect in accordance with section 78o–3 of this title, and notwithstanding the provisions of subsection (b)(6) thereof but subject to all other provisions of said section applicable to the rules of such an association, prohibit its members from purchasing, in connection with a primary distribution of redeemable securities of which any registered investment company is the issuer, any such security from the issuer or from any principal underwriter except at a price equal to the price at which such security is then offered to the public less a commission, discount, or spread which is computed in conformity with a method or methods, and within such limitations as to the relation thereof to said public offering price, as such rules may prescribe in order that the price at which such security is offered or sold to the public shall not include an excessive sales load but shall allow for reasonable compensation for sales personnel, broker-dealers, and underwriters, and for reasonable sales loads to investors. The Commission shall on application or otherwise, if it appears that smaller companies are subject to relatively higher operating costs, make due allowance therefor by granting any such company or class of companies appropriate qualified exemptions from the provisions of this section.

(2) At any time after the expiration of eighteen months from December 14, 1970 (or, if earlier, after a securities association has adopted for purposes of paragraph (1) any rule respecting excessive sales loads), the Commission may alter or supplement the rules of any securities association as may be necessary to effectuate the purposes of this subsection in the manner provided by section 78s(c) of this title.

(3) If any provision of this subsection is in conflict with any provision of any law of the United States in effect on December 14, 1970, the provisions of this subsection shall prevail.

(c) Conflicting rules of Commission and associations

The Commission may make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company, whether or not members of any securities association, to the same extent, covering the same subject matter, and for the accomplishment of the same ends as are prescribed in subsection (a) of this section in respect of the rules which may be made by a registered securities association governing its members. Any rules and regulations so made by the Commission, to the extent that they may be inconsistent with the rules of any such association, shall so long as they remain in force supersede the rules of the association and be binding upon its members as well as all other underwriters and dealers to whom they may be applicable.

(d) Sale of securities except to or through principal underwriter; price of securities

No registered investment company shall sell any redeemable security issued by it to any person except either to or through a principal underwriter for distribution or at a current public offering price described in the prospectus, and, if such class of security is being currently offered to the public by or through an underwriter, no principal underwriter of such security and no dealer shall sell any such security to any person except a dealer, a principal underwriter, or the issuer, except at a current public offering price described in the prospectus. Nothing in this subsection shall prevent a sale made (i) pursuant to an offer of exchange permitted by section 80a–11 of this title including any

offer made pursuant to section 80a–11(b) of this title; (ii) pursuant to an offer made solely to all registered holders of the securities, or of a particular class or series of securities issued by the company proportionate to their holdings or proportionate to any cash distribution made to them by the company (subject to appropriate qualifications designed solely to avoid issuance of fractional securities); or (iii) in accordance with rules and regulations of the Commission made pursuant to subsection (b) of section 80a–12 of this title.

(e) Suspension of right of redemption or postponement of date of payment

No registered investment company shall suspend the right of redemption, or postpone the date of payment or satisfaction upon redemption of any redeemable security in accordance with its terms for more than seven days after the tender of such security to the company or its agent designated for that purpose for redemption, except—

(1) for any period (A) during which the New York Stock Exchange is closed other than customary week-end and holiday closings or (B) during which trading on the New York Stock Exchange is restricted;

(2) for any period during which an emergency exists as a result of which (A) disposal by the company of securities owned by it is not reasonably practicable or (B) it is not reasonably practicable for such company fairly to determine the value of its net assets; or

(3) for such other periods as the Commission may by order permit for the protection of security holders of the company.

The Commission shall by rules and regulations determine the conditions under which (i) trading shall be deemed to be restricted and (ii) an emergency shall be deemed to exist within the meaning of this subsection.

(f) Restrictions on transferability or negotiability of securities

No registered open-end company shall restrict the transferability or negotiability of any security of which it is the issuer except in conformity with the statements with respect thereto contained in its registration statement nor in contravention of such rules and regulations as the Commission may prescribe in the interests of the holders of all of the outstanding securities of such investment company.

(g) Issuance of securities for services or property other than cash

No registered open-end company shall issue any of its securities (1) for services; or (2) for property other than cash or securities (including securities of which such registered company is the issuer), except as a dividend or distribution to its security holders or in connection with a reorganization.

(Aug. 22, 1940, ch. 686, title I, §22, 54 Stat. 823; Pub. L. 91–547, §12, Dec. 14, 1970, 84 Stat. 1422; Pub. L. 100–181, title VI, §616, Dec. 4, 1987, 101 Stat. 1262.)

AMENDMENTS

1987—Subsec. (b). Pub. L. 100–181, §616(1), substituted "subsection (b)(6)" for "subsection (b)(8)" in par. (1).

Pub. L. 100–181, §616(2), (3), redesignated par. (3) as (2) and substituted "section 78s(c)" for "section 78o–3(k)(2)", redesignated par. (4) as (3), and struck out former par. (2) which read as follows: "At any time after the expiration of eighteen months from December 14, 1970, or after a securities association has adopted rules as contemplated by this subsection, the Commission may make such rules and regulations pursuant to section 78o(b)(10) of this title as are appropriate to effectuate the purpose of this subsection with respect to sales of shares of a registered investment company by broker-dealers subject to regulation under section 78o(b)(8) of this title: *Provided*, That the underwriter of such shares may file with the Commission at any time a notice of election to comply with the rules prescribed pursuant to this subsection by a national securities association specified in such notice, and thereafter the sales load shall not exceed that prescribed by such rules of such association, and the rules of the Commission as hereinabove authorized shall thereafter be inapplicable to such sales."

Subsec. (e). Pub. L. 100–181, §616(4), (5), in introductory provisions, substituted "redemption, or postpone" for "redemption or postpone" and "redemption, except" for "redemption except", and, in closing

provisions, struck out "Any company which, as of March 15, 1940, was required by provision of its charter, certificate of incorporation, articles of association, or trust indenture, or of a bylaw or regulation duly adopted thereunder, to postpone the date of payment or satisfaction upon redemption of redeemable securities issued by it, shall be exempt from the requirements of this subsection; but such exemption shall terminate upon the expiration of one year from the effective date of this subchapter, or upon the repeal or amendment of such provision, or upon the sale by such company after March 15, 1940, of any security (other than short-term paper) of which it is the issuer, whichever first occurs."

1970—Subsec. (b). Pub. L. 91–547, §12(a), designated existing provisions as par. (1), inserted "notwithstanding the provisions of subsection (b)(8) thereof but", and "other" in phrase "all other provisions", substituted exclusion of "excessive sales load" for "unconscionable or grossly excessive sales load", provided for allowance for reasonable compensation for sales personnel, broker-dealers, and underwriters, and for reasonable sales loads to investors, and for grant by Commission of appropriate qualified exemptions from provisions of this section where on application or otherwise it appears that smaller companies are subject to relatively higher operating costs, and added pars. (2) to (4).

Subsec. (c). Pub. L. 91–547, §12(b), provided for application of rules and regulations to registered investment companies, struck out introductory phrase "After one year from the effective date of this chapter", "registered" before "securities association" where first appearing, and substituted "prescribed in subsection (a) of this section" for "prescribed in subsections (a) and (b) of this section" and ". Any rules and regulations" for "; and any rules and regulations".

Subsec. (d). Pub. L. 91–547, §12(c), substituted "public offering price described in the prospectus. Nothing in this subsection" for "public offering price described in the prospectus: *Provided, however*, That nothing in this subsection" and struck out "clause (1) or (2) of" before "section 80a–11(b) of this title".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–547 effective Dec. 14, 1970, see section 30 of Pub. L. 91–547, set out as a note under section 80a–52 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–23. Closed-end companies

(a) Issuance of securities

No registered closed-end company shall issue any of its securities (1) for services; or (2) for property other than cash or securities (including securities of which such registered company is the issuer), except as a dividend or distribution to its security holders or in connection with a reorganization.

(b) Sale of common stock at price below current net asset value

No registered closed-end company shall sell any common stock of which it is the issuer at a price below the current net asset value of such stock, exclusive of any distributing commission or discount (which net asset value shall be determined as of a time within forty-eight hours, excluding Sundays and holidays, next preceding the time of such determination), except (1) in connection with an offering to the holders of one or more classes of its capital stock; (2) with the consent of a majority of its common stockholders; (3) upon conversion of a convertible security in accordance with its terms; (4) upon the exercise of any warrant outstanding on August 22, 1940, or issued in accordance with the provisions of section 80a–18(d) of this title; or (5) under such other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors.

(c) Purchase of securities of which it is issuer; exceptions

No registered closed-end company shall purchase any securities of any class of which it is the issuer except—

(1) on a securities exchange or such other open market as the Commission may designate by rules and regulations or orders: *Provided*, That if such securities are stock, such registered

company shall, within the preceding six months, have informed stockholders of its intention to purchase stock of such class by letter or report addressed to stockholders of such class; or

(2) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or

(3) under such other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors in order to insure that such purchases are made in a manner or on a basis which does not unfairly discriminate against any holders of the class or classes of securities to be purchased.

(Aug. 22, 1940, ch. 686, title I, §23, 54 Stat. 825.)

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–24. Registration of securities under Securities Act of 1933

(a) Registration statement; contents

In registering under the Securities Act of 1933 [15 U.S.C. 77a et seq.], any security of which it is the issuer, a registered investment company, in lieu of furnishing a registration statement containing the information and documents specified in schedule A of said Act [15 U.S.C. 77aa], may file a registration statement containing the following information and documents:

(1) such copies of the registration statement filed by such company under this subchapter, and of such reports filed by such company pursuant to section 80a–29 of this title or such copies of portions of such registration statement and reports, as the Commission shall designate by rules and regulations; and

(2) such additional information and documents (including a prospectus) as the Commission shall prescribe by rules and regulations as necessary or appropriate in the public interest or for the protection of investors.

(b) Filing of three copies of advertisement, pamphlet, etc. in connection with public offering; time of filing

It shall be unlawful for any of the following companies, or for any underwriter for such a company, in connection with a public offering of any security of which such company is the issuer, to make use of the mails or any means or instrumentalities of interstate commerce, to transmit any advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors unless three copies of the full text thereof have been filed with the Commission or are filed with the Commission within ten days thereafter:

(1) any registered open-end company;

(2) any registered unit investment trust; or

(3) any registered face-amount certificate company.

(c) Additional requirement for prospectuses relating to periodic payment plan certificates or face-amount certificate

In addition to the powers relative to prospectuses granted the Commission by section 10 of the Securities Act of 1933 [15 U.S.C. 77j], the Commission is authorized to require, by rules and regulations or order, that the information contained in any prospectus relating to any periodic payment plan certificate or face-amount certificate registered under the Securities Act of 1933 [15 U.S.C. 77a et seq.], on or after the effective date of this subchapter be presented in such form and order of items, and such prospectus contain such summaries of any portion of such information, as are necessary or appropriate in the public interest or for the protection of investors.

(d) Application of other provisions to securities of investment companies, face-amount certificate companies, and open-end companies or unit investment trust

The exemption provided by paragraph (8) of section 3(a) of the Securities Act of 1933 [15 U.S.C. 77c(a)(8)] shall not apply to any security of which an investment company is the issuer. The exemption provided by paragraph (11) of said section 3(a) [15 U.S.C. 77c(a)(11)] shall not apply to any security of which a registered investment company is the issuer. The exemption provided by section 4(3) [1] of the Securities Act of 1933 [15 U.S.C. 77d(a)(3)] shall not apply to any transaction in a security issued by a face-amount certificate company or in a redeemable security issued by an open-end management company or unit investment trust if any other security of the same class is currently being offered or sold by the issuer or by or through an underwriter in a distribution which is not exempted from section 5 of said Act [15 U.S.C. 77e], except to such extent and subject to such terms and conditions as the Commission, having due regard for the public interest and the protection of investors, may prescribe by rules or regulations with respect to any class of persons, securities, or transactions.

(e) Amendment of registration statements relating to securities issued by face-amount certificate companies, open-end management companies or unit investment trusts

For the purposes of section 11 of the Securities Act of 1933, as amended [15 U.S.C. 77k] the effective date of the latest amendment filed shall be deemed the effective date of the registration statement with respect to securities sold after such amendment shall have become effective. For the purposes of section 13 of the Securities Act of 1933, as amended [15 U.S.C. 77m], no such security shall be deemed to have been bona fide offered to the public prior to the effective date of the latest amendment filed pursuant to this subsection. Except to the extent the Commission otherwise provides by rules or regulations as appropriate in the public interest or for the protection of investors, no prospectus relating to a security issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust which varies for the purposes of subsection (a)(3) of section 10 of the Securities Act of 1933 [15 U.S.C. 77j(a)(3)] from the latest prospectus filed as a part of the registration statement shall be deemed to meet the requirements of said section 10 [15 U.S.C. 77j] unless filed as part of an amendment to the registration statement under said Act [15 U.S.C. 77a et seq.] and such amendment has become effective.

(f) Registration of indefinite amount of securities

(1) Registration of securities

Upon the effective date of its registration statement, as provided by section 8 of the Securities Act of 1933 [15 U.S.C. 77h], a face-amount certificate company, open-end management company, or unit investment trust, shall be deemed to have registered an indefinite amount of securities.

(2) Payment of registration fees

Not later than 90 days after the end of the fiscal year of a company or trust referred to in paragraph (1), the company or trust, as applicable, shall pay a registration fee to the Commission, calculated in the manner specified in section 6(b) of the Securities Act of 1933 [15 U.S.C. 77f(b)], based on the aggregate sales price for which its securities (including, for purposes of this paragraph, all securities issued pursuant to a dividend reinvestment plan) were sold pursuant to a registration of an indefinite amount of securities under this subsection during the previous fiscal year of the company or trust, reduced by—

(A) the aggregate redemption or repurchase price of the securities of the company or trust during that year; and

(B) the aggregate redemption or repurchase price of the securities of the company or trust during any prior fiscal year ending not more than 1 year before October 11, 1996, that were not used previously by the company or trust to reduce fees payable under this section.

(3) Interest due on late payment

A company or trust paying the fee required by this subsection or any portion thereof more than 90 days after the end of the fiscal year of the company or trust shall pay to the Commission interest on unpaid amounts, at the average investment rate for Treasury tax and loan accounts

published by the Secretary of the Treasury pursuant to section 3717(a) of title 31. The payment of interest pursuant to this paragraph shall not preclude the Commission from bringing an action to enforce the requirements of paragraph (2).

(4) Rulemaking authority

The Commission may adopt rules and regulations to implement this subsection.

(g) Additional prospectuses

In addition to any prospectus permitted or required by section 10(a) of the Securities Act of 1933 [15 U.S.C. 77j(a)], the Commission shall permit, by rules or regulations deemed necessary or appropriate in the public interest or for the protection of investors, the use of a prospectus for purposes of section 5(b)(1) of that Act [15 U.S.C. 77e(b)(1)] with respect to securities issued by a registered investment company. Such a prospectus, which may include information the substance of which is not included in the prospectus specified in section 10(a) of the Securities Act of 1933, shall be deemed to be permitted by section 10(b) of that Act [15 U.S.C. 77j(b)].

(Aug. 22, 1940, ch. 686, title I, §24, 54 Stat. 825; Aug. 10, 1954, ch. 667, title IV, §§402, 403, 68 Stat. 689; Pub. L. 91–547, §13, Dec. 14, 1970, 84 Stat. 1423; Pub. L. 100–181, title VI, §617, Dec. 4, 1987, 101 Stat. 1262; Pub. L. 104–290, title II, §§203(a), (b), 204, Oct. 11, 1996, 110 Stat. 3427, 3428.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsecs. (a), (c), and (e), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, as amended, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

For the effective date of this subchapter, referred to in subsec. (c), see section 80a–52 of this title.

Section 4(3) of the Securities Act of 1933, referred to in subsec. (d), was redesignated section 4(a)(3) of that Act by Pub. L. 112–106, title II, §201(b)(1), (c)(1), Apr. 5, 2012, 126 Stat. 314, and is classified to section 77d(a)(3) of this title.

AMENDMENTS

1996—Subsec. (e). Pub. L. 104–290, §203(a), substituted "For" for "(3) For", struck out "pursuant to this subsection or otherwise" before "shall be deemed the effective date of the registration statement", and struck out pars. (1) and (2) which read as follows:

"(1) A registration statement under the Securities Act of 1933 relating to a security issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust may be amended after its effective date so as to increase the securities specified therein as proposed to be offered. At the time of filing such amendment there shall be paid to the Commission a fee, calculated in the manner specified in section 6(b) of said Act, with respect to the additional securities therein proposed to be offered.

"(2) The filing of such an amendment to a registration statement under the Securities Act of 1933 shall not be deemed to have taken place unless it is accompanied by a United States postal money order or a certified bank check or cash for the amount of the fee required under paragraph (1) of this subsection."

Subsec. (f). Pub. L. 104–290, §203(b), inserted heading and amended text generally. Prior to amendment, text read as follows: "In the case of securities issued by a face-amount certificate company or redeemable securities issued by an open-end management company or unit investment trust, which are sold in an amount in excess of the number of securities included in an effective registration statement of any such company, such company may, in accordance with such rules and regulations as the Commission shall adopt as it deems necessary or appropriate in the public interest or for the protection of investors, elect to have the registration of such securities deemed effective as of the time of their sale, upon payment to the Commission, within six months after any such sale, of a registration fee of three times the amount of the fee which would have otherwise been applicable to such securities. Upon any such election and payment, the registration statement of such company shall be considered to have been in effect with respect to such shares. The Commission may also adopt rules and regulations as it deems necessary or appropriate in the public interest or for the protection of investors to permit the registration of an indefinite number of the securities issued by a face-amount certificate company or redeemable securities issued by an open-end management company or unit investment trust."

Subsec. (g). Pub. L. 104–290, §204, added subsec. (g).

1987—Subsec. (d). Pub. L. 100–181 struck out ", except a security sold or disposed of by the issuer or bona fide offered to the public prior to the effective date of this subchapter and with respect to a security so sold, disposed of, or offered, shall not apply to any new offering thereof on or after the effective date of this subchapter" at end of second sentence.

1970—Subsec. (d). Pub. L. 91–547, §13(a), substituted "section 4(3) of the Securities Act of 1933" for "the third clause of section 4(1) of the Securities Act of 1933" and struck out the comma before "if any".

Subsec. (f). Pub. L. 91–547, §13(b), added subsec. (f).

1954—Subsec. (d). Act Aug. 10, 1954, §402, inserted provision making dealer's exemption contained in third clause of section 77d(1) of this title inapplicable to transactions in the securities of investment companies that are offered to the public on a continuous basis, subject to certain exceptions.

Subsec. (e). Act Aug. 10, 1954, §403, added subsec. (e).

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–290, title II, §203(c), Oct. 11, 1996, 110 Stat. 3428, provided that: "The amendments made by this section [amending this section] shall become effective on the earlier of—

"(1) 1 year after the date of enactment of this Act [Oct. 11, 1996]; or

"(2) the effective date of final rules or regulations issued in accordance with section 24(f) of the Investment Company Act of 1940 [subsec. (f) of this section], as amended by this section."

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–547 effective Dec. 14, 1970, see section 30 of Pub. L. 91–547, set out as a note under section 80a–52 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective sixty days after Aug. 10, 1954, see note under section 77b of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

[1] *See References in Text note below.*

§80a–25. Reorganization plans; reports by Commission

(a) Filing of reorganization plan and other information with Commission

Any person who, by use of the mails or any means or instrumentality of interstate commerce or otherwise, solicits or permits the use of his name to solicit any proxy, consent, authorization, power of attorney, ratification, deposit, or dissent in respect of any plan of reorganization of any registered investment company shall file with, or mail to, the Commission for its information, within twenty-four hours after the commencement of any such solicitation, a copy of such plan and any deposit agreement relating thereto and of any proxy, consent, authorization, power of attorney, ratification, instrument of deposit, or instrument of dissent in respect thereto, if or to the extent that such documents shall not already have been filed with the Commission.

(b) Advisory report by Commission at request of shareholders

The Commission is authorized, if so requested, prior to any solicitation of security holders with respect to any plan of reorganization, by any registered investment company which is, or any of the securities of which are, the subject of or is a participant in any such plan, or if so requested by the holders of 25 per centum of any class of its outstanding securities, to render an advisory report in respect of the fairness of any such plan and its effect upon any class or classes of security holders. In such event any registered investment company, in respect of which the Commission shall have rendered any such advisory report, shall mail promptly a copy of such advisory report to all its security holders affected by any such plan: *Provided,* That such advisory report shall have been

received by it at least forty-eight hours (not including Sundays and holidays) before final action is taken in relation to such plan at any meeting of security holders called to act in relation thereto, or any adjournment of any such meeting, or if no meeting be called, then prior to the final date of acceptance of such plan by security holders. In respect of securities not registered as to ownership, in lieu of mailing a copy of such advisory report, such registered company shall publish promptly a statement of the existence of such advisory report in a newspaper of general circulation in its principal place of business and shall make available copies of such advisory report upon request. Notwithstanding the provision of this section the Commission shall not render such advisory report although so requested by any such investment company or such security holders if the fairness or feasibility of said plan is in issue in any proceeding pending in any court of competent jurisdiction unless such plan is submitted to the Commission for that purpose by such court.

(c) Enjoinder of plan of reorganization

Any district court of the United States in the State of incorporation of a registered investment company, or any such court for the district in which such company maintains its principal place of business, is authorized to enjoin the consummation of any plan of reorganization of such registered investment company upon proceedings instituted by the Commission (which is authorized so to proceed upon behalf of security holders of such registered company, or any class thereof), if such court shall determine that any such plan is not fair and equitable to all security holders.

(d) Application of section to reorganizations under title 11

Nothing contained in this section shall in any way affect or derogate from the powers of the courts of the United States and the Commission with reference to reorganizations contained in title 11.

(Aug. 22, 1940, ch. 686, title I, §25, 54 Stat. 826; Pub. L. 91–547, §14, Dec. 14, 1970, 84 Stat. 1424; Pub. L. 95–598, title III, §310(c), Nov. 6, 1978, 92 Stat. 2676.)

AMENDMENTS

1978—Subsec. (d). Pub. L. 95–598 substituted "title 11" for "the Bankruptcy Act of 1898, as amended".

1970—Subsec. (c). Pub. L. 91–547 substituted "that any such plan is not fair and equitable to all security holders" for "any such plan to be grossly unfair or to constitute gross misconduct or gross abuse of trust on the part of the officers, directors, or investment advisers of such registered company or other sponsors of such plan".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–547 effective Dec. 14, 1970, see section 30 of Pub. L. 91–547, set out as a note under section 80a–52 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–26. Unit investment trusts

(a) Custody and sale of securities

No principal underwriter for or depositor of a registered unit investment trust shall sell, except by surrender to the trustee for redemption, any security of which such trust is the issuer (other than short-term paper), unless the trust indenture, agreement of custodianship, or other instrument pursuant to which such security is issued—

(1) designates one or more trustees or custodians, each of which is a bank, and provides that each such trustee or custodian shall have at all times an aggregate capital, surplus, and undivided

profits of a specified minimum amount, which shall not be less than $500,000 (but may also provide, if such trustee or custodian publishes reports of condition at least annually, pursuant to law or to the requirements of its supervising or examining authority, that for the purposes of this paragraph the aggregate capital, surplus, and undivided profits of such trustee or custodian shall be deemed to be its aggregate capital, surplus, and undivided profits as set forth in its most recent report of condition so published);

(2) provides, in substance, (A) that during the life of the trust the trustee or custodian, if not otherwise remunerated, may charge against and collect from the income of the trust, and from the corpus thereof if no income is available, such fees for its services and such reimbursement for its expenses as are provided for in such instrument; (B) that no such charge or collection shall be made except for services theretofore performed or expenses theretofore incurred; (C) that no payment to the depositor of or a principal underwriter for such trust, or to any affiliated person or agent of such depositor or underwriter, shall be allowed the trustee or custodian as an expense (except that provision may be made for the payment to any such person of a fee, not exceeding such reasonable amount as the Commission may prescribe as compensation for performing bookkeeping and other administrative services, of a character normally performed by the trustee or custodian itself); and (D) that the trustee or custodian shall have possession of all securities and other property in which the funds of the trust are invested, all funds held for such investment, all equalization, redemption, and other special funds of the trust, and all income upon, accretions to, and proceeds of such property and funds, and shall segregate and hold the same in trust (subject only to the charges and collections allowed under clauses (A), (B), and (C) of this paragraph) until distribution thereof to the security holders of the trust;

(3) provides, in substance, that the trustee or custodian shall not resign until either (A) the trust has been completely liquidated and the proceeds of the liquidation distributed to the security holders of the trust, or (B) a successor trustee or custodian, having the qualifications prescribed in paragraph (1) of this subsection, has been designated and has accepted such trusteeship or custodianship; and

(4) provides, in substance, (A) that a record will be kept by the depositor or an agent of the depositor of the name and address of, and the shares issued by the trust and held by, every holder of any security issued pursuant to such instrument, insofar as such information is known to the depositor or agent; and (B) that whenever a security is deposited with the trustee in substitution for any security in which such security holder has an undivided interest, the depositor or the agent of the depositor will, within five days after such substitution, either deliver or mail to such security holder a notice of substitution, including an identification of the securities eliminated and the securities substituted, and a specification of the shares of such security holder affected by the substitution.

(b) Bank or affiliated person of bank as trustee or custodian

The Commission may, after consultation with and taking into consideration the views of the Federal banking agencies (as defined in section 1813 of title 12), adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the conditions under which a bank, or an affiliated person of a bank, either of which is an affiliated person of a principal underwriter for, or depositor of, a registered unit investment trust, may serve as trustee or custodian under subsection (a)(1) of this section.

(c) Substitution of securities

It shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution. The Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this subchapter.

(d) Binding contract or agreement embodying applicable provisions deemed to qualify non-complying instrument by which securities were issued

In the event that a trust indenture, agreement of custodianship, or other instrument pursuant to which securities of a registered unit investment trust are issued does not comply with the requirements of subsection (a) of this section, such instrument will be deemed to meet such requirements if a written contract or agreement binding on the parties and embodying such requirements has been executed by the depositor on the one part and the trustee or custodian on the other part, and three copies of such contract or agreement have been filed with the Commission.

(e) Liquidation of unit investment trust

Whenever the Commission has reason to believe that a unit investment trust is inactive and that its liquidation is in the interest of the security holders of such trust, the Commission may file a complaint seeking the liquidation of such trust in the district court of the United States in any district wherein any trustee of such trust resides or has its principal place of business. A copy of such complaint shall be served on every trustee of such trust, and notice of the proceeding shall be given such other interested persons in such manner and at such times as the court may direct. If the court determines that such liquidation is in the interest of the security holders of such trust, the court shall order such liquidation and, after payment of necessary expenses, the distribution of the proceeds to the security holders of the trust in such manner and on such terms as may to the court appear equitable.

(f) Exemption

(1) In general

Subsection (a) of this section does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account.

(2) Limitation on sales

It shall be unlawful for any registered separate account funding variable insurance contracts, or for the sponsoring insurance company of such account, to sell any such contract—

(A) unless the fees and charges deducted under the contract, in the aggregate, are reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the insurance company, and, beginning on the earlier of August 1, 1997, or the earliest effective date of any registration statement or amendment thereto for such contract following October 11, 1996, the insurance company so represents in the registration statement for the contract; and

(B) unless the insurance company—

(i) complies with all other applicable provisions of this section, as if it were a trustee or custodian of the registered separate account;

(ii) files with the insurance regulatory authority of the State which is the domiciliary State of the insurance company, an annual statement of its financial condition, which most recent statement indicates that the insurance company has a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of not less than $1,000,000, or such other amount as the Commission may from time to time prescribe by rule, as necessary or appropriate in the public interest or for the protection of investors; and

(iii) together with its registered separate accounts, is supervised and examined periodically by the insurance authority of such State.

(3) Fees and charges

For purposes of paragraph (2), the fees and charges deducted under the contract shall include all fees and charges imposed for any purpose and in any manner.

(4) Regulatory authority

The Commission may issue such rules and regulations to carry out paragraph (2)(A) as it determines are necessary or appropriate in the public interest or for the protection of investors.

(Aug. 22, 1940, ch. 686, title I, §26, 54 Stat. 827; Pub. L. 91–547, §15, Dec. 14, 1970, 84 Stat. 1424; Pub. L. 100–181, title VI, §§618, 619, Dec. 4, 1987, 101 Stat. 1262; Pub. L. 104–290, title II,

§205(a), Oct. 11, 1996, 110 Stat. 3429; Pub. L. 106–102, title II, §211(b), Nov. 12, 1999, 113 Stat. 1396.)

AMENDMENTS

1999—Subsecs. (b) to (f). Pub. L. 106–102 added subsec. (b) and redesignated former subsecs. (b) to (e) as (c) to (f), respectively.

1996—Subsec. (e). Pub. L. 104–290 added subsec. (e).

1987—Subsec. (b). Pub. L. 100–181, §618, substituted "intended" for "intend".

Subsec. (c). Pub. L. 100–181, §619, substituted "contract or agreement" for "contract of agreement".

1970—Subsecs. (b) to (d). Pub. L. 91–547 added subsec. (b), redesignated former subsec. (b) as (c), struck out "at the effective date of this subchapter" before "comply", substituted "contract of agreement" for "contract or agreement", and redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–102 effective 18 months after Nov. 12, 1999, see section 225 of Pub. L. 106–102, set out as a note under section 77c of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–547 effective Dec. 14, 1970, see section 30 of Pub. L. 91–547, set out as a note under section 80a–52 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–27. Periodic payment plans

(a) Sale of certificates; restrictions

It shall be unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate, if—

(1) the sales load on such certificate exceeds 9 per centum of the total payments to be made thereon;

(2) more than one-half of any of the first twelve monthly payments thereon, or their equivalent, is deducted for sales load;

(3) the amount of sales load deducted from any one of such first payments exceeds proportionately the amount deducted from any other such payment, or the amount deducted from any subsequent payment exceeds proportionately the amount deducted from any other subsequent payment;

(4) the first payment on such certificate is less than $20, or any subsequent payment is less than $10;

(5) if such registered company is a management company, the proceeds of such certificate or the securities in which such proceeds are invested are subject to management fees (other than fees for administrative services of the character described in clause (C), paragraph (2), of section 80a–26(a) of this title) exceeding such reasonable amount as the Commission may prescribe, whether such fees are payable to such company or to investment advisers thereof; or

(6) if such registered company is a unit investment trust the assets of which are securities issued by a management company, the depositor of or principal underwriter for such trust, or any affiliated person of such depositor or underwriter, is to receive from such management company or any affiliated person thereof any fee or payment on account of payments on such certificate exceeding such reasonable amount as the Commission may prescribe.

(b) Exemptions

If it appears to the Commission, upon application or otherwise, that smaller companies are subjected to relatively higher operating costs and that in order to make due allowance therefor it is

necessary or appropriate in the public interest and consistent with the protection of investors that a provision or provisions of paragraph (1), (2), or (3) of subsection (a) of this section relative to sales load be relaxed in the case of certain registered investment companies issuing periodic payment plan certificates, or certain specified classes of such companies, the Commission is authorized by rules and regulations or order to grant any such company or class of companies appropriate qualified exemptions from the provisions of said paragraphs.

(c) Sale of certificates; requirements

It shall be unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate, unless—

(1) such certificate is a redeemable security; and

(2) the proceeds of all payments on such certificate (except such amounts as are deducted for sales load) are deposited with a trustee or custodian having the qualifications prescribed in paragraph (1) of section 80a–26(a) of this title for the trustees of unit investment trusts, and are held by such trustee or custodian under an indenture or agreement containing, in substance, the provisions required by paragraphs (2) and (3) of section 80a–26(a) of this title for the trust indentures of unit investment trusts.

(d) Surrender of certificates; regulations

Notwithstanding subsection (a) of this section, it shall be unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate unless the certificate provide that the holder thereof may surrender the certificate at any time within the first eighteen months after the issuance of the certificate and receive in payment thereof, in cash, the sum of (1) the value of his account, and (2) an amount, from such underwriter or depositor, equal to that part of the excess paid for sales loading which is over 15 per centum of the gross payments made by the certificate holder. The Commission may make rules and regulations applicable to such underwriters and depositors specifying such reserve requirements as it deems necessary or appropriate in order for such underwriters and depositors to carry out the obligations to refund sales charges required by this subsection.

(e) Refund privileges; notice; rules

With respect to any periodic payment plan certificate sold subject to the provisions of subsection (d) of this section, the registered investment company issuing such periodic payment plan certificate, or any depositor of or underwriter for such company, shall in writing (1) inform each certificate holder who has missed three payments or more, within thirty days following the expiration of fifteen months after the issuance of the certificate, or, if any such holder has missed one payment or more after such period of fifteen months but prior to the expiration of eighteen months after the issuance of the certificate, at any time prior to the expiration of such eighteen-month period, of his right to surrender his certificate as specified in subsection (d) of this section, and (2) inform the certificate holder of (A) the value of the holder's account as of the time the written notice was given to such holder, and (B) the amount to which he is entitled as specified in subsection (d) of this section. The Commission may make rules specifying the method, form, and contents of the notice required by this subsection.

(f) Charges, statement; rules; surrender of certificates; regulations

With respect to any periodic payment plan (other than a plan under which the amount of sales load deducted from any payment thereon does not exceed 9 per centum of such payment), the custodian bank for such plan shall mail to each certificate holder, within sixty days after the issuance of the certificate, a statement of charges to be deducted from the projected payments on the certificate and a notice of his right of withdrawal as specified in this section. The Commission may make rules specifying the method, form, and contents of the notice required by this subsection. The certificate holder may within forty-five days of the mailing of the notice specified in this subsection surrender his certificate and receive in payment thereof, in cash, the sum of (1) the value of his account, and (2) an amount, from the underwriter or depositor, equal to the difference between the gross payments

made and the net amount invested. The Commission may make rules and regulations applicable to underwriters and depositors of companies issuing any such certificate specifying such reserve requirements as it deems necessary or appropriate in order for such underwriters and depositors to carry out the obligations to refund sales charges required by this subsection.

(g) Governing provisions; election

Notwithstanding the provisions of subsections (a) and (d) of this section, a registered investment company issuing periodic payment plan certificates may elect, by written notice to the Commission, to be governed by the provisions of subsection (h) of this section rather than the provisions of subsections (a) and (d) of this section.

(h) Sale of certificates; restrictions

Upon making the election specified in subsection (g) of this section, it shall be unlawful for any such electing registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate, if—

(1) the sales load on such certificate exceeds 9 per centum of the total payments to be made thereon;

(2) more than 20 per centum of any payment thereon is deducted for sales load, or an average of more than 16 per centum is deducted for sales load from the first forty-eight monthly payments thereon, or their equivalent;

(3) the amount of sales load deducted from any one of the first twelve monthly payments, the thirteenth through twenty-fourth monthly payments, the twenty-fifth through thirty-sixth monthly payments, or the thirty-seventh through forty-eighth monthly payments, or their equivalents, respectively, exceeds proportionately the amount deducted from any other such payment, or the amount deducted from any subsequent payment exceeds proportionately the amount deducted from any other subsequent payment;

(4) the deduction for sales load on the excess of the payment or payments in any month over the minimum monthly payment, or its equivalent, to be made on the certificate exceeds the sales load applicable to payments subsequent to the first forty-eight monthly payments or their equivalent;

(5) the first payment on such certificate is less than $20, or any subsequent payment is less than $10;

(6) if such registered company is a management company, the proceeds of such certificate or the securities in which such proceeds are invested are subject to management fees (other than fees for administrative services of the character described in clause (C) of paragraph (2) of section 80a–26(a) of this title) exceeding such reasonable amount as the Commission may prescribe, whether such fees are payable to such company or to investment advisers thereof; or

(7) if such registered company is a unit investment trust the assets of which are securities issued by a management company, the depositor of or principal underwriter for such trust, or any affiliated person of such depositor or underwriter, is to receive from such management company or any affiliated person thereof any fee or payment on account of payments on such certificate exceeding such reasonable amount as the Commission may prescribe.

(i) Applicability to registered separate account funding variable insurance contracts

(1) This section does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2).

(2) It shall be unlawful for any registered separate account funding variable insurance contracts, or for the sponsoring insurance company of such account, to sell any such contract unless—

(A) such contract is a redeemable security; and

(B) the insurance company complies with section 80a–26(f) of this title and any rules or regulations issued by the Commission under section 80a–26(f) of this title.

(j) Termination of sales

(1) Termination

Effective 30 days after September 29, 2006, it shall be unlawful, subject to subsection (i)—

(A) for any registered investment company to issue any periodic payment plan certificate; or

(B) for such company, or any depositor of or underwriter for any such company, or any other person, to sell such a certificate.

(2) No invalidation of existing certificates

Paragraph (1) shall not be construed to alter, invalidate, or otherwise affect any rights or obligations, including rights of redemption, under any periodic payment plan certificate issued and sold before 30 days after September 29, 2006.

(Aug. 22, 1940, ch. 686, title I, §27, 54 Stat. 829; Pub. L. 91–547, §16, Dec. 14, 1970, 84 Stat. 1424; Pub. L. 92–165, Nov. 23, 1971, 85 Stat. 487; Pub. L. 104–290, title II, §205(b), Oct. 11, 1996, 110 Stat. 3429; Pub. L. 109–290, §4(a), (b), Sept. 29, 2006, 120 Stat. 1318, 1319.)

AMENDMENTS

2006—Subsec. (i)(2)(B). Pub. L. 109–290, §4(b), substituted "section 80a–26(f)" for "section 80a–26(e)" in two places.

Subsec. (j). Pub. L. 109–290, §4(a), added subsec. (j).

1996—Subsec. (i). Pub. L. 104–290 added subsec. (i).

1971—Subsec. (f). Pub. L. 92–165 inserted "(other than a plan under which the amount of sales load deducted from any payment thereon does not exceed 9 per centum of such payment)".

1970—Subsecs. (d) to (h). Pub. L. 91–547 added subsecs. (d) to (h).

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–547 effective on expiration of six months after Dec. 14, 1970, see section 30(3) of Pub. L. 91–547, set out as a note under section 80a–52 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–28. Face-amount certificate companies

(a) Issuance or sale of certificates

It shall be unlawful for any registered face-amount certificate company to issue or sell any face-amount certificate, or to collect or accept any payment on any such certificate issued by such company on or after the effective date of this subchapter, unless—

(1) such company, if organized before March 15, 1940, was actively and continuously engaged in selling face-amount certificates on and before that date, and has outstanding capital stock worth upon a fair valuation of assets not less than $50,000; or if organized on or after March 15, 1940, has capital stock in an amount not less than $250,000 which has been bona fide subscribed and paid for in cash; and

(2) such company maintains at all times minimum certificate reserves on all its outstanding face-amount certificates in an aggregate amount calculated and adjusted as follows:

(A) the reserves for each certificate of the installment type shall be based on assumed annual, semi-annual, quarterly, or monthly reserve payments according to the manner in which gross payments for any certificate year are made by the holder, which reserve payments shall be sufficient in amount, as and when accumulated at a rate not to exceed 3½ per centum per annum compounded annually, to provide the minimum maturity or face amount of the certificate when due. Such reserve payments may be graduated according to certificate years so that the reserve payment or payments for the first certificate year shall amount to at least 50 per centum of the required gross annual payment for such year and the reserve payment or payments for each of the second to fifth certificate years inclusive shall amount to at least 93 per centum of each such year's required gross annual payment and for the sixth and each subsequent certificate year the

reserve payment or payments shall amount to at least 96 per centum of each such year's required gross annual payment: *Provided*, That such aggregate reserve payments shall amount to at least 93 per centum of the aggregate gross annual payments required to be made by the holder to obtain the maturity of the certificate. The company may at its option take as loading from the gross payment or payments for a certificate year, as and when made by the certificate holder, an amount or amounts equal in the aggregate for such year to not more than the excess, if any, of the gross payment or payments required to be made by the holder for such year, over and above the percentage of the gross annual payment required herein for such year for reserve purposes. Such loading may be taken by the company prior to or after the setting up of the reserve payment or payments for such year and the reserve payment or payments for such year may be graduated and adjusted to correspond with the amount of the gross payment or payments made by the certificate holder for such year less the loading so taken;

(B) if the foregoing minimum percentages of the gross annual payments required under the provisions of such certificate should produce reserve payments larger than are necessary at 3½ per centum per annum compounded annually to provide the minimum maturity or face amount of the certificate when due, the reserve shall be based upon reserve payments accumulated as provided under preceding subparagraph (A) of this paragraph except that in lieu of the 3½ per centum rate specified therein, such rate shall be lowered to the minimum rate, expressed in multiples of one-eighth of 1 per centum, which will accumulate such reserve payments to the maturity value when due;

(C) if the actual annual gross payment to be made by the certificate holder on any certificate issued prior to or after the effective date of this chapter is less than the amount of any assumed reserve payment or payments for a certificate year, such company shall maintain as a part of such minimum certificate reserves a deficiency reserve equal to the total present value of future deficiencies in the gross payments, calculated at a rate not to exceed 3½ per centum per annum compounded annually;

(D) for each certificate of the installment type the amount of the reserve shall at any time be at least equal to (1) the then amount of the reserve payments set up under subparagraphs (A) or (B) of this paragraph; (2) the accumulations on such reserve payments as computed under subparagraphs (A) or (B) of this paragraph; (3) the amount of any deficiency reserve required under subparagraph (C) of this paragraph; and (4) such amount as shall have been credited to the account of each certificate holder in the form of any credit, or any dividend, or any interest in addition to the minimum maturity amount specified in such certificate, plus any accumulations on any amount or amounts so credited, at a rate not exceeding 3½ per centum per annum compounded annually;

(E) for each certificate which is fully paid, including any fully paid obligations resulting from or effected upon the maturity of the previously issued certificate, and for each paid-up certificate issued as provided in subsection (f) of this section prior to maturity, the amount of the reserve shall at any time be at least equal to (1) such amount as and when accumulated at a rate not to exceed 3½ per centum per annum compounded annually, will provide the amount or amounts payable when due and (2) such amount as shall have been credited to the account of each such certificate holder in the form of any credit, or any dividend, or any interest in addition to the minimum maturity amount specified in the certificate, plus any accumulations on any amount or amounts so credited, at a rate not exceeding 3½ per centum per annum compounded annually;

(F) for each certificate of the installment type under which gross payments have been made by or credited to the holder thereof covering a payment period or periods or any part thereof beyond the then current payment period as defined by the terms of such certificate, and for which period or periods no reserve has been set up under subparagraph (A) or (B) of this paragraph, an advance payment reserve shall be set up and maintained in the amount of the present value of any such unapplied advance gross payments, computed at a rate not to exceed 3½ per centum per annum compounded annually;

(G) such appropriate contingency reserves for death and disability benefits and for

reinstatement rights on any such certificate providing for such benefits or rights as the Commission shall prescribe by rule, regulation, or order based upon the experience of face-amount companies in relation to such contingencies.

At no time shall the aggregate certificate reserves herein required by subparagraphs (A) to (F) of this paragraph, be less than the aggregate surrender values and other amounts to which all certificate holders may be then entitled.

For the purpose of this subsection, no certificate of the installment type shall be deemed to be outstanding if before a surrender value has been attained the holder thereof has been in continuous default in making his payments thereon for a period of one year.

(b) Asset requirements prior to sale of certificates

It shall be unlawful for any registered face-amount certificate company to issue or sell any face-amount certificate, or to collect or accept any payment on any such certificate issued by such company on or after the effective date of this subchapter, unless such company has, in cash or qualified investments, assets having a value not less than the aggregate amount of the capital stock requirement and certificate reserves as computed under the provisions of subsection (a) of this section. As used in this subsection, "qualified investments" means investments of a kind which life-insurance companies are permitted to invest in or hold under the provisions of the Code of the District of Columbia as heretofore or hereafter amended, and such other investments as the Commission shall by rule, regulation, or order authorize as qualified investments. Such investments shall be valued in accordance with the provisions of said Code where such provisions are applicable. Investments to which such provisions do not apply shall be valued in accordance with such rules, regulations, or orders as the Commission shall prescribe for the protection of investors.

(c) Certificate reserve requirements

The Commission shall by rule, regulation, or order, in the public interest or for the protection of investors, require a registered face-amount certificate company to deposit and maintain, upon such terms and conditions as the Commission shall prescribe and as are appropriate for the protection of investors, with one or more institutions having the qualifications required by paragraph (1) of section 80a–26(a) of this title for a trustee of a unit investment trust, all or any part of the investments maintained by such company as certificate reserve requirements under the provisions of subsection (b) of this section: *Provided, however*, That where qualified investments are maintained on deposit by such company in respect of its liabilities under certificates issued to or held by residents of any State as required by the statute of such State or by any order, regulation, or requirement of such State or any official or agency thereof, the amount so on deposit, but not to exceed the amount of reserves required by subsection (a) of this section for the certificates so issued or held, shall be deducted from the amount of qualified investments that may be required to be deposited hereunder.

Assets which are qualified investments under subsection (b) of this section and which are deposited under or as permitted by this subsection, may be used and shall be considered as a part of the assets required to be maintained under the provisions of said subsection (b).

(d) Provisions required in certificate

It shall be unlawful for any registered face-amount certificate company to issue or sell any face-amount certificate, or to collect or accept any payment on any such certificate issued by such company on or after the effective date of this subchapter, unless such certificate contains a provision or provisions to the effect—

(1) that, in respect of any certificate of the installment type, during the first certificate year the holder of the certificate, upon surrender thereof, shall be entitled to a value payable in cash not less than the reserve payments as specified in subparagraph (A) or (B) of paragraph (2) of subsection (a) of this section and at the end of such certificate year, a value payable in cash at least equal to 50 per centum of the amount of the gross annual payment required thereby for such year;

(2) that, in respect of any certificate of the installment type, at any time after the expiration of the first certificate year and prior to maturity, the holder of the certificate, upon surrender thereof,

shall be entitled to a value payable in cash not less than the then amount of the reserve for such certificate required by numbered items (1) and (2) of subparagraph (D) of paragraph (2) of subsection (a) of this section, less a surrender charge that shall not exceed 2 per centum of the face or maturity amount of the certificate, or 15 per centum of the amount of such reserve, whichever is the lesser, but in no event shall such value be less than 50 per centum of the amount of such reserve. The amount of the surrender value for the end of each certificate year shall be set out in the certificate;

(3) that, in respect of any certificate of the installment type, the holder of the certificate, upon surrender thereof for cash or upon receipt of a paid-up certificate as provided in subsection (f) of this section, shall be entitled to a value payable in cash equal to the then amount of any advance payment reserve under such certificate required by subparagraph (F) of paragraph (2) of subsection (a) of this section in addition to any other amounts due the holder hereunder;

(4) that at any time prior to maturity, in respect of any certificate which is fully paid, the holder of the certificate, upon surrender thereof, shall be entitled to a value payable in cash not less than the then amount of the reserve for such certificate required by item (1) of subparagraph (E) of paragraph (2) of subsection (a) of this section, less a surrender charge that shall not exceed 2 per centum of the face or maturity amount of the certificate, or 15 per centum of the amount of such reserve, whichever is the lesser: *Provided, however,* That such surrender charge shall not apply as to any obligations of a fully paid type resulting from the maturity of a previously issued certificate. The amount of the surrender value for the end of each certificate year shall be set out in the certificate;

(5) that in respect of any certificate, the holder of the certificate, upon maturity, upon surrender thereof for cash or upon receipt of a paid-up certificate as provided in subsection (f) of this section, shall be entitled to a value payable in cash equal to the then amount of the reserve, if any, for such certificate required by item (4) of subparagraph (D) of paragraph (2) of subsection (a) of this section or item (2) of subparagraph (E) of paragraph (2) of said subsection (a) in addition to any other amounts due the holder hereunder.

The term "certificate year" as used in this section in respect of any certificate of the installment type means a period or periods for which one year's payment or payments as provided by the certificate have been made thereon by the holder and the certificate maintained in force by such payments for the time for which the same have been made, and in respect of any certificate which is fully paid or paid-up means any year ending on the anniversary of the date of issuance of the certificate.

Any certificate may provide for loans or advances by the company to the certificate holder on the security of such certificate upon terms prescribed therein but at an interest rate not exceeding 6 per centum per annum. The amount of the required reserves, deposits, and the surrender values thereof available to the holder may be adjusted to take into account any unpaid balance on such loans or advances and interest thereon, for the purposes of this subsection and subsections (b) and (c) of this section.

Any certificate may provide that the company at its option may, prior to the maturity thereof, defer any payment or payments to the certificate holder to which he may be entitled under this subsection, for a period of not more than thirty days: *Provided,* That in the event such option is exercised by the company, interest shall accrue on any payment or payments due to the holder, for the period of such deferment at a rate equal to that used in accumulating the reserves for such certificate: *And provided further,* That the Commission may, by rules and regulations or orders in the public interest or for the protection of investors, make provision for any other deferment upon such terms and conditions as it shall prescribe.

(e) Liability of holder to legal action for unpaid amount of certificate

It shall be unlawful for any registered face-amount certificate company to issue or sell any face-amount certificate, or to collect or accept any payment on any such certificate issued by such company on or after the effective date of this subchapter, which certificate makes the holder liable to any legal action or proceeding for any unpaid amount on such certificate.

(f) Optional right to paid up certificate in lieu of cash surrender value

It shall be unlawful for any registered face-amount certificate company to issue or sell any face-amount certificate, or to collect or accept any payment on any such certificate issued by such company on or after the effective date of this subchapter, (1) unless such face-amount certificate contains a provision or provisions to the effect that the holder shall have an optional right to receive a paid-up certificate in lieu of the then attained cash surrender value provided therein and in the amount of such value plus accumulations thereon at a rate to be specified in the paid-up certificate equal to that used in computing the reserve on the original certificate under subparagraph (A) or (B) of paragraph (2) of subsection (a) of this section, such paid-up certificate to become due and payable at the end of a period equal to the balance of the term of such original certificate before maturity; and during the period prior to maturity such paid-up certificate shall have a cash value upon surrender thereof equal to the then amount of the reserve therefor; and (2) unless such face-amount certificate contains a further provision or provisions to the effect that if the holder be in continuous default in his payments on such certificate for a period of six months without having exercised his option to receive a paid-up certificate, as herein provided, the company at the expiration of such six months shall pay the surrender value in cash if such value is less than $100 or if such value is $100 or more shall issue such paid-up certificate to such holder and such payment or issuance, plus the payment of all other amounts to which he may be then entitled under the original certificate, shall operate to cancel his original certificate: *Provided*, That in lieu of the issuance of a new paid-up certificate the original certificate may be converted into a paid-up certificate with the same effect; and (3) unless, where such certificate provides, in the event of default, for the deferment of payments thereon by the holder or of the due dates of such payments or of the maturity date of the certificate, it shall also provide in effect for the right of reinstatement by the holder of the certificate after default and for an option in the holder, at the time of reinstatement, to make up the payment or payments for the default period next preceding such reinstatement with interest thereon not exceeding 6 per centum per annum, with the same effect as if no such default in making such payments had occurred.

The term "default" as used in this subsection shall, without restricting its usual meaning, include a failure to make a payment or payments as and when provided by the certificate.

(g) Application of section to company issuing certificates only to holders of previously issued certificates

The foregoing provisions of this section shall not apply to a face-amount certificate company which on or before the effective date of this chapter has discontinued the offering of face-amount certificates to the public and issues face-amount certificates only to the holders of certificates previously issued pursuant to an obligation expressed or implied in such certificates.

(h) Declaration or payment of dividends

It shall be unlawful for any registered face-amount certificate company which does not maintain the minimum certificate reserve on all its outstanding face-amount certificates issued prior to the effective date of this chapter, in an aggregate amount calculated and adjusted as provided in this section to declare or pay any dividends on the shares of such company for or during any calendar year which shall exceed one-third of the net earnings for the next preceding calendar year or which shall exceed 10 per centum of the aggregate net earnings for the next preceding five calendar years, whichever is the lesser amount, or any dividend which shall have been forbidden by the Commission pursuant to the provision of the next sentence of this paragraph. At least thirty days before such company shall declare, pay, or distribute any dividend, it shall give the Commission written notice of its intention to declare, pay, or distribute the same; and if at any time it shall appear to the Commission that the declaration, payment or distribution of any dividend for or during any calendar year might impair the financial integrity of such company or its ability to meet its liabilities under its outstanding face-amount certificates, it may by order forbid the declaration, distribution, or payment of any such dividend.

(i) Application of section to certificates issued prior to effective date of section

The foregoing provisions of this section shall apply to all face-amount certificates issued prior to

the effective date of this subsection; to the collection or acceptance of any payment on such certificates; to the issuance of face-amount certificates to the holders of such certificates pursuant to an obligation expressed or implied in such certificates; to the provisions of such certificates; to the minimum certificate reserves and deposits maintained with respect thereto; and to the assets that the issuer of such certificate was and is required to have with respect to such certificates. With respect to all face-amount certificates issued after the effective date of this subsection, the provisions of this section shall apply except as hereinafter provided.

(1) Notwithstanding subparagraph (A) of paragraph (2) of subsection (a) of this section, the reserves for each certificate of the installment type shall be based on assumed annual, semiannual, quarterly, or monthly reserve payments according to the manner in which gross payments for any certificate year are made by the holder, which reserve payments shall be sufficient in amount, as and when accumulated at a rate not to exceed 3½ per centum per annum compounded annually, to provide the minimum maturity or face amount of the certificate when due. Such reserve payments may be graduated according to certificate years so that the reserve payment or payments for the first three certificate years shall amount to at least 80 per centum of the required gross annual payment for such years; the reserve payment or payments for the fourth certificate year shall amount to at least 90 per centum of such year's required gross annual payment; the reserve payment or payments for the fifth certificate year shall amount to at least 93 per centum of such year's gross annual payment; and for the sixth and each subsequent certificate year the reserve payment or payments shall amount to at least 96 per centum of each such year's required gross annual payment: *Provided*, That such aggregate reserve payments shall amount to at least 93 per centum of the aggregate gross annual payments required to be made by the holder to obtain the maturity of the certificate. The company may at its option take as loading from the gross payment or payments for a certificate year, as and when made by the certificate holder, an amount or amounts equal in the aggregate for such year to not more than the excess, if any, of the gross payment or payments required to be made by the holder for such year, over and above the percentage of the gross annual payment required herein for such year for reserve purposes. Such loading may be taken by the company prior to or after the setting up of the reserve payment or payments for such year and the reserve payment or payments for such year may be graduated and adjusted to correspond with the amount of the gross payment or payments made by the certificate holder for such year less the loading so taken.

(2) Notwithstanding paragraphs (1) and (2) of subsection (d) of this section, (A) in respect of any certificate of the installment type, during the first certificate year, the holder of the certificate, upon surrender thereof, shall be entitled to a value payable in cash not less than 80 per centum of the amount of the gross payments made on the certificate; and (B) in respect of any certificate of the installment type, at any time after the expiration of the first certificate year and prior to maturity, the holder of the certificate, upon surrender thereof, shall be entitled to a value payable in cash not less than the then amount of the reserve for such certificate required by clauses (1) and (2) of subparagraph (D) of paragraph (2) of subsection (a) of this section, less a surrender charge that shall not exceed 2 per centum of the face or maturity amount of the certificate, or 15 per centum of the amount of such reserve, whichever is the lesser, but in no event shall such value be less than 80 per centum of the gross payments made on the certificate. The amount of the surrender value for the end of each certificate year shall be set out in the certificate.

(Aug. 22, 1940, ch. 686, title I, §28, 54 Stat. 829; Pub. L. 91–547, §17, Dec. 14, 1970, 84 Stat. 1426; Pub. L. 100–181, title VI, §§620, 621, Dec. 4, 1987, 101 Stat. 1262.)

REFERENCES IN TEXT

For the effective date of this subchapter, referred to in subsecs. (a), (b), (d), (e), and (f), see section 80a–52 of this title.

For the effective date of this chapter, referred to in subsecs. (a)(2)(C), (g), and (h), see sections 80a–52 and 80b–21 of this title.

For the effective date of this subsection, referred to in subsec. (i), as the day upon expiration of 6 months after Dec. 14, 1970, see section 30(3) of Pub. L. 91–547, set out as a note under section 80a–52 of this title.

AMENDMENTS

1987—Subsec. (a)(2)(B). Pub. L. 100–181, §620, substituted "paragraph" for "subsection".
Subsec. (d)(2). Pub. L. 100–181, §621, inserted "of" before "subsection (a)".
1970—Subsec. (i). Pub. L. 91–547 added subsec. (i).

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–547 effective on expiration of six months after Dec. 14, 1970, see section 30(3) of Pub. L. 91–547, set out as a note under section 80a–2 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–29. Reports and financial statements of investment companies and affiliated persons

(a) Annual report by company

Every registered investment company shall file annually with the Commission such information, documents, and reports as investment companies having securities registered on a national securities exchange are required to file annually pursuant to section 13(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(a)] and the rules and regulations issued thereunder.

(b) Semi-annual or quarterly filing of information; copies of periodic or interim reports sent to security holders

Every registered investment company shall file with the Commission—

(1) such information, documents, and reports (other than financial statements), as the Commission may require to keep reasonably current the information and documents contained in the registration statement of such company filed under this subchapter; and

(2) copies of every periodic or interim report or similar communication containing financial statements and transmitted to any class of such company's security holders, such copies to be filed not later than ten days after such transmission.

Any information or documents contained in a report or other communication to security holders filed pursuant to paragraph (2) of this subsection may be incorporated by reference in any report subsequently or concurrently filed pursuant to paragraph (1) of this subsection.

(c) Minimizing reporting burdens

(1) The Commission shall take such action as it deems necessary or appropriate, consistent with the public interest and the protection of investors, to avoid unnecessary reporting by, and minimize the compliance burdens on, registered investment companies and their affiliated persons in exercising its authority—

(A) under subsection (f) of this section; and

(B) under subsection (b)(1) of this section, if the Commission requires the filing of information, documents, and reports under that subsection on a basis more frequently than semiannually.

(2) Action taken by the Commission under paragraph (1) shall include considering, and requesting public comment on—

(A) feasible alternatives that minimize the reporting burdens on registered investment companies; and

(B) the utility of such information, documents, and reports to the Commission in relation to the costs to registered investment companies and their affiliated persons of providing such information, documents, and reports.

(d) Reports under this section in lieu of reports under other provisions of law

The Commission shall issue rules and regulations permitting the filing with the Commission, and

with any national securities exchange concerned, of copies of periodic reports, or of extracts therefrom, filed by any registered investment company pursuant to subsections (a) and (b) of this section, in lieu of any reports and documents required of such company under section 13 or 15(d) of the Securities Exchange Act of 1934 [15 U.S.C. 78m or 78o(d)].

(e) Semiannual reports to stockholders

Every registered investment company shall transmit to its stockholders, at least semiannually, reports containing such of the following information and financial statements or their equivalent, as of a reasonably current date, as the Commission may prescribe by rules and regulations for the protection of investors, which reports shall not be misleading in any material respect in the light of the reports required to be filed pursuant to subsections (a) and (b) of this section:

(1) a balance sheet accompanied by a statement of the aggregate value of investments on the date of such balance sheet;

(2) a list showing the amounts and values of securities owned on the date of such balance sheet;

(3) a statement of income, for the period covered by the report, which shall be itemized at least with respect to each category of income and expense representing more than 5 per centum of total income or expense;

(4) a statement of surplus, which shall be itemized at least with respect to each charge or credit to the surplus account which represents more than 5 per centum of the total charges or credits during the period covered by the report;

(5) a statement of the aggregate remuneration paid by the company during the period covered by the report (A) to all directors and to all members of any advisory board for regular compensation; (B) to each director and to each member of an advisory board for special compensation; (C) to all officers; and (D) to each person of whom any officer or director of the company is an affiliated person; and

(6) a statement of the aggregate dollar amounts of purchases and sales of investment securities, other than Government securities, made during the period covered by the report:

Provided, That if in the judgment of the Commission any item required under this subsection is inapplicable or inappropriate to any specified type or types of investment company, the Commission may by rules and regulations permit in lieu thereof the inclusion of such item of a comparable character as it may deem applicable or appropriate to such type or types of investment company.

(f) Additional information

The Commission may, by rule, require that semiannual reports containing the information set forth in subsection (e) of this section include such other information as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

(g) Certificate of independent public accountants

Financial statements contained in annual reports required pursuant to subsections (a) and (e) of this section, if required by the rules and regulations of the Commission, shall be accompanied by a certificate of independent public accountants. The certificate of such independent public accountants shall be based upon an audit not less in scope or procedures followed than that which independent public accountants would ordinarily make for the purpose of presenting comprehensive and dependable financial statements, and shall contain such information as the Commission may prescribe, by rules and regulations in the public interest or for the protection of investors, as to the nature and scope of the audit and the findings and opinion of the accountants. Each such report shall state that such independent public accountants have verified securities owned, either by actual examination, or by receipt of a certificate from the custodian, as the Commission may prescribe by rules and regulations.

(h) Duties and liabilities of affiliated persons

Every person who is directly or indirectly the beneficial owner of more than 10 per centum of any class of outstanding securities (other than short-term paper) of which a registered closed-end company is the issuer or who is an officer, director, member of an advisory board, investment

adviser, or affiliated person of an investment adviser of such a company shall in respect of his transactions in any securities of such company (other than short-term paper) be subject to the same duties and liabilities as those imposed by section 16 of the Securities Exchange Act of 1934 [15 U.S.C. 78p] upon certain beneficial owners, directors, and officers in respect of their transactions in certain equity securities.

(i) Disclosure to church plan participants

A person that maintains a church plan that is excluded from the definition of an investment company solely by reason of section 80a–3(c)(14) of this title shall provide disclosure to plan participants, in writing, and not less frequently than annually, and for new participants joining such a plan after May 31, 1996, as soon as is practicable after joining such plan, that—

(1) the plan, or any company or account maintained to manage or hold plan assets and interests in such plan, company, or account, are not subject to registration, regulation, or reporting under this subchapter, the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], or State securities laws; and

(2) plan participants and beneficiaries therefore will not be afforded the protections of those provisions.

(j) Notice to Commission

The Commission may issue rules and regulations to require any person that maintains a church plan that is excluded from the definition of an investment company solely by reason of section 80a–3(c)(14) of this title to file a notice with the Commission containing such information and in such form as the Commission may prescribe as necessary or appropriate in the public interest or consistent with the protection of investors.

(Aug. 22, 1940, ch. 686, title I, §30, 54 Stat. 836; Pub. L. 104–290, title II, §206, title V, §508(g), Oct. 11, 1996, 110 Stat. 3430, 3449; Pub. L. 105–353, title III, §301(c)(5), Nov. 3, 1998, 112 Stat. 3237.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (i)(1), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, as amended, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (i)(1), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

AMENDMENTS

1998—Subsec. (b)(1). Pub. L. 105–353, §301(c)(5)(A), inserted "and" after semicolon at end.

Subsec. (e). Pub. L. 105–353, §301(c)(5)(B), substituted "semiannually" for "semi-annually" in introductory provisions.

Subsecs. (g) to (j). Pub. L. 105–353, §301(c)(5)(C), redesignated subsecs. (g) and (h), relating to disclosure to church plan participants and notice to Commission, respectively, as (i) and (j), respectively.

1996—Subsec. (b)(1). Pub. L. 104–290, §206(1), added par. (1) and struck out former par. (1) which read as follows: "such information and documents (other than financial statements) as the Commission may require, on a semi-annual or quarterly basis, to keep reasonably current the information and documents contained in the registration statement of such company filed under this subchapter; and".

Subsecs. (c) to (e). Pub. L. 104–290, §206(2), (3), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively. Former subsec. (e) redesignated (g).

Subsec. (f). Pub. L. 104–290, §206(2), (4), added subsec. (f). Former subsec. (f) redesignated (h).

Subsec. (g). Pub. L. 104–290, §508(g), added subsec. (g), relating to disclosure to church plan participants.

Pub. L. 104–290, §206(2), (5), redesignated subsec. (e), relating to certificate of independent public accountants, as (g), and substituted "pursuant to subsections (a) and (e) of this section" for "pursuant to subsections (a) and (d) of this section".

Subsec. (h). Pub. L. 104–290, §508(g), added subsec. (h), relating to notice to Commission.

Pub. L. 104–290, §206(2), redesignated subsec. (f), relating to duties and liabilities of affiliated persons, as (h).

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–30. Accounts and records

(a) Maintenance of records

(1) In general

Each registered investment company, and each underwriter, broker, dealer, or investment adviser that is a majority-owned subsidiary of such a company, shall maintain and preserve such records (as defined in section 78c(a)(37) of this title) for such period or periods as the Commission, by rules and regulations, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Each investment adviser that is not a majority-owned subsidiary of, and each depositor of any registered investment company, and each principal underwriter for any registered investment company other than a closed-end company, shall maintain and preserve for such period or periods as the Commission shall prescribe by rules and regulations, such records as are necessary or appropriate to record such person's transactions with such registered company. Each person having custody or use of the securities, deposits, or credits of a registered investment company shall maintain and preserve all records that relate to the custody or use by such person of the securities, deposits, or credits of the registered investment company for such period or periods as the Commission, by rule or regulation, may prescribe, as necessary or appropriate in the public interest or for the protection of investors.

(2) Minimizing compliance burden

In exercising its authority under this subsection, the Commission shall take such steps as it deems necessary or appropriate, consistent with the public interest and for the protection of investors, to avoid unnecessary recordkeeping by, and minimize the compliance burden on, persons required to maintain records under this subsection (hereafter in this section referred to as "subject persons"). Such steps shall include considering, and requesting public comment on—

(A) feasible alternatives that minimize the recordkeeping burdens on subject persons;

(B) the necessity of such records in view of the public benefits derived from the independent scrutiny of such records through Commission examination;

(C) the costs associated with maintaining the information that would be required to be reflected in such records; and

(D) the effects that a proposed recordkeeping requirement would have on internal compliance policies and procedures.

(b) Examinations of records

(1) In general

All records required to be maintained and preserved in accordance with subsection (a) of this section shall be subject at any time and from time to time to such reasonable periodic, special, and other examinations by the Commission, or any member or representative thereof, as the Commission may prescribe.

(2) Availability

For purposes of examinations referred to in paragraph (1), any subject person shall make available to the Commission or its representatives any copies or extracts from such records as may be prepared without undue effort, expense, or delay as the Commission or its representatives may reasonably request.

(3) Commission action

The Commission shall exercise its authority under this subsection with due regard for the

benefits of internal compliance policies and procedures and the effective implementation and operation thereof.

(4) Records of persons with custody or use

(A) In general

Records of persons having custody or use of the securities, deposits, or credits of a registered investment company that relate to such custody or use, are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations and other information and document requests by representatives of the Commission, as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

(B) Certain persons subject to other regulation

Any person that is subject to regulation and examination by a Federal financial institution regulatory agency (as such term is defined under section 212(c)(2) of title 18) may satisfy any examination request, information request, or document request described under subparagraph (A), by providing to the Commission a detailed listing, in writing, of the securities, deposits, or credits of the registered investment company within the custody or use of such person.

(c) Regulatory authority

The Commission may, in the public interest or for the protection of investors, issue rules and regulations providing for a reasonable degree of uniformity in the accounting policies and principles to be followed by registered investment companies in maintaining their accounting records and in preparing financial statements required pursuant to this subchapter.

(d) Exemption authority

The Commission, upon application made by any registered investment company, may by order exempt a specific transaction or transactions from the provisions of any rule or regulation made pursuant to subsection (e) of this section, if the Commission finds that such rule or regulation should not reasonably be applied to such transaction.

(Aug. 22, 1940, ch. 686, title I, §31, 54 Stat. 838; Pub. L. 104–290, title II, §207, Oct. 11, 1996, 110 Stat. 3430; Pub. L. 105–353, title III, §301(c)(6), Nov. 3, 1998, 112 Stat. 3237; Pub. L. 111–203, title IX, §§929I(b), 929Q(a), July 21, 2010, 124 Stat. 1858, 1865; Pub. L. 111–257, §1(b), Oct. 5, 2010, 124 Stat. 2646.)

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111–203, §929Q(a)(1), inserted at end "Each person having custody or use of the securities, deposits, or credits of a registered investment company shall maintain and preserve all records that relate to the custody or use by such person of the securities, deposits, or credits of the registered investment company for such period or periods as the Commission, by rule or regulation, may prescribe, as necessary or appropriate in the public interest or for the protection of investors."

Subsec. (b)(4). Pub. L. 111–203, §929Q(a)(2), added par. (4).

Subsec. (c). Pub. L. 111–257 redesignated subsec. (d) as (c) and struck out former subsec. (c). Prior to amendment, text of subsec. (c) read as follows: "Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any records or information provided to the Commission under this section, or records or information based upon or derived from such records or information, if such records or information have been obtained by the Commission for use in furtherance of the purposes of this subchapter, including surveillance, risk assessments, or other regulatory and oversight activities. Nothing in this subsection authorizes the Commission to withhold information from the Congress or prevent the Commission from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of jurisdiction of that department or agency, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, this section shall be considered a statute described in subsection (b)(3)(B) of such section 552. Collection of information pursuant to this section shall be an administrative action involving an agency against specific individuals or agencies pursuant to section 3518(c)(1) of title 44."

Pub. L. 111–203, §929I(b)(1), added subsec. (c) and struck out former subsec. (c). Prior to amendment, text read as follows: "Notwithstanding any other provision of law, the Commission shall not be compelled to

disclose any internal compliance or audit records, or information contained therein, provided to the Commission under this section. Nothing in this subsection shall authorize the Commission to withhold information from the Congress or prevent the Commission from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of the jurisdiction of that department or agency, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, this section shall be considered a statute described in subsection (b)(3)(B) of such section 552."

Subsec. (d). Pub. L. 111–257, §1(b)(2), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Pub. L. 111–203, §929I(b)(2), (3), redesignated subsec. (e) as (d) and struck out former subsec. (d) which defined "internal compliance policies and procedures" and "internal compliance and audit record" for purposes of this section.

Subsec. (e). Pub. L. 111–257, §1(b)(2), redesignated subsec. (e) as (d).

Pub. L. 111–203, §929I(b)(3), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 111–203, §929I(b)(3), redesignated subsec. (f) as (e).

1998—Subsec. (f). Pub. L. 105–353 substituted "subsection (e)" for "subsection (c)".

1996—Subsecs. (a), (b). Pub. L. 104–290, §207(1), added subsecs. (a) and (b) and struck out former subsecs. (a) and (b) which read as follows:

"(a) Every registered investment company, and every underwriter, broker, dealer, or investment adviser which is a majority-owned subsidiary of such a company, shall maintain and preserve for such period or periods as the Commission may prescribe by rules and regulations, such accounts, books, and other documents as constitute the record forming the basis for financial statements required to be filed pursuant to section 80a–29 of this title, and of the auditor's certificates relating thereto. Every investment adviser not a majority-owned subsidiary of, and every depositor of any registered investment company, and every principal underwriter for any registered investment company other than a closed-end company, shall maintain and preserve for such period or periods as the Commission shall prescribe by rules and regulations, such accounts, books, and other documents as are necessary or appropriate to record such person's transactions with such registered company.

"(b) All accounts, books, and other records, required to be maintained and preserved by any person pursuant to subsection (a) of this section, shall be subject at any time and from time to time to such reasonable periodic, special, and other examinations by the Commission, or any member or representative thereof, as the Commission may prescribe. Any such person shall furnish to the Commission, within such reasonable time as the Commission may prescribe, copies of or extracts from such records which may be prepared without undue effort, expense, or delay, as the Commission may by order require."

Subsecs. (c), (d). Pub. L. 104–290, §207(3), added subsecs. (c) and (d). Former subsecs. (c) and (d) redesignated (e) and (f), respectively.

Subsec. (e). Pub. L. 104–290, §207(2), (4), redesignated subsec. (c) as (e) and inserted heading.

Subsec. (f). Pub. L. 104–290, §207(2), (5), redesignated subsec. (d) as (f) and inserted heading.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–31. Accountants and auditors

(a) Selection of accountant

It shall be unlawful for any registered management company or registered face-amount certificate company to file with the Commission any financial statement signed or certified by an independent public accountant, unless—

(1) such accountant shall have been selected at a meeting held within thirty days before or after the beginning of the fiscal year or before the annual meeting of stockholders in that year by the vote, cast in person, of a majority of those members of the board of directors who are not

interested persons of such registered company;

(2) such selection shall have been submitted for ratification or rejection at the next succeeding annual meeting of stockholders if such meeting be held, except that any vacancy occurring between annual meetings, due to the death or resignation of the accountant, may be filled by the vote of a majority of those members of the board of directors who are not interested persons of such registered company, cast in person at a meeting called for the purpose of voting on such action;

(3) the employment of such accountant shall have been conditioned upon the right of the company by vote of a majority of the outstanding voting securities at any meeting called for the purpose to terminate such employment forthwith without any penalty; and

(4) such certificate or report of such accountant shall be addressed both to the board of directors of such registered company and to the security holders thereof.

If the selection of an accountant has been rejected pursuant to paragraph (2) or his employment terminated pursuant to paragraph (3), the vacancy so occurring may be filled by a vote of a majority of the outstanding voting securities, either at the meeting at which the rejection or termination occurred or, if not so filled, at a subsequent meeting which shall be called for the purpose. In the case of a common-law trust of the character described in section 80a–16(c) of this title, no ratification of the employment of such accountant shall be required but such employment may be terminated and such accountant removed by action of the holders of record of a majority of the outstanding shares of beneficial interest in such trust in the same manner as is provided in section 80a–16(c) of this title in respect of the removal of a trustee, and all the provisions therein contained as to the calling of a meeting shall be applicable. In the event of such termination and removal, the vacancy so occurring may be filled by action of the holders of record of a majority of the shares of beneficial interest either at the meeting, if any, at which such termination and removal occurs, or by instruments in writing filed with the custodian, or if not so filed within a reasonable time then at a subsequent meeting which shall be called by the trustees for the purpose. The provisions of paragraph (42) of section 80a–2(a) of this title as to a majority shall be applicable to the vote cast at any meeting of the shareholders of such a trust held pursuant to this subsection.

(b) Selection of controller or other principal accounting officer

No registered management company or registered face-amount certificate company shall file with the Commission any financial statement in the preparation of which the controller or other principal accounting officer or employee of such company participated, unless such controller, officer or employee was selected, either by vote of the holders of such company's voting securities at the last annual meeting of such security holders, or by the board of directors of such company.

(c) Reports of accountants and auditors

The Commission is authorized, by rules and regulations or order in the public interest or for the protection of investors, to require accountants and auditors to keep reports, work sheets, and other documents and papers relating to registered investment companies for such period or periods as the Commission may prescribe, and to make the same available for inspection by the Commission or any member or representative thereof.

(Aug. 22, 1940, ch. 686, title I, §32, 54 Stat. 838; Pub. L. 91–547, §18, Dec. 14, 1970, 84 Stat. 1427; Pub. L. 94–29, §28(4), June 4, 1975, 89 Stat. 165.)

AMENDMENTS

1975—Subsec. (a). Pub. L. 94–29 substituted "section 80a–16(c) of this title" for "section 80a–16(b) of this title".

1970—Subsec. (a). Pub. L. 91–547 struck out introductory text "After one year from the effective date of this subchapter," and substituted "It" for "it"; inserted "the vote, cast in person, of" before "a majority" and substituted "interested persons of" for "investment advisers of, or affiliated persons of an investment adviser of, or officers or employees of," in par. (1); inserted "the vote of a majority of those members of" before "the board of directors" and "who are not interested persons of such registered company, cast in person at a meeting called for the purpose of voting on such action" after "the board of directors" in par. (2); substituted

period for colon in par. (4); and in text after par. (4), substituted "if not so filled," for "if not so filled then" and "if not so filed" for "if not so filled", and substituted reference to par. (42) for par. (40) of section 80a–2(a) of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–547 effective on expiration of one year after Dec. 14, 1970, see section 30(1) of Pub. L. 91–547, set out as a note under section 80a–52 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–32. Filing of documents with Commission in civil actions

Every registered investment company which is a party and every affiliated person of such company who is a party defendant to any action or claim by a registered investment company or a security holder thereof in a derivative or representative capacity against an officer, director, investment adviser, trustee, or depositor of such company, shall file with the Commission, unless already so filed, (1) a copy of all pleadings, verdicts, or judgments filed with the court or served in connection with such action or claim, (2) a copy of any proposed settlement, compromise, or discontinuance of such action, and (3) a copy of such motions, transcripts, or other documents filed in or issued by the court or served in connection with such action or claim as may be requested in writing by the Commission. If any document referred to in clause (1) or (2)—

(A) is delivered to such company or party defendant, such document shall be filed with the Commission not later than ten days after the receipt thereof; or

(B) is filed in such court or delivered by such company or party defendant, such documents shall be filed with the Commission not later than five days after such filing or delivery.

(Aug. 22, 1940, ch. 686, title I, §33, 54 Stat. 839; Pub. L. 91–547, §19, Dec. 14, 1970, 84 Stat. 1428.)

AMENDMENTS

1970—Pub. L. 91–547 inserted provision for party acting in representative capacity and substituted provisions for prompt filing with the Commission of copies of all pleadings, verdicts, judgments, settlements, compromises, or discontinuances served or filed in suits by a registered investment company or a security holder thereof against an officer, director, investment adviser, trustee, or depositor of such company and of copies of motions, transcripts, or other documents if the Commission requests them for prior requirement that registered companies and their affiliated persons who are defendants in derivative suits involving an alleged breach of official duty transmit to the Commission copies of the pleadings and the record in such actions after a settlement or compromise of the action has been approved by a court of competent jurisdiction or a verdict or final judgment on the merits has been rendered, Commission use of information, and nondisclosure of identity of persons.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–547 effective Dec. 14, 1970, see section 30 of Pub. L. 91–547, set out as a note under section 80a–52 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–33. Destruction and falsification of reports and records

(a) Willful destruction

It shall be unlawful for any person, except as permitted by rule, regulation, or order of the Commission, willfully to destroy, mutilate, or alter any account, book, or other document the preservation of which has been required pursuant to section 80a–30(a) or 80a–31(c) of this title.

(b) Untrue statements or omissions

It shall be unlawful for any person to make any untrue statement of a material fact in any registration statement, application, report, account, record, or other document filed or transmitted pursuant to this subchapter or the keeping of which is required pursuant to section 80a–30 (a) of this title. It shall be unlawful for any person so filing, transmitting, or keeping any such document to omit to state therein any fact necessary in order to prevent the statements made therein, in the light of the circumstances under which they were made, from being materially misleading. For the purposes of this subsection, any part of any such document which is signed or certified by an accountant or auditor in his capacity as such shall be deemed to be made, filed, transmitted, or kept by such accountant or auditor, as well as by the person filing, transmitting, or keeping the complete document.

(Aug. 22, 1940, ch. 686, title I, §34, 54 Stat. 840.)

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–34. Unlawful representations and names

(a) Misrepresentation of guarantees

(1) In general

It shall be unlawful for any person, issuing or selling any security of which a registered investment company is the issuer, to represent or imply in any manner whatsoever that such security or company—

(A) has been guaranteed, sponsored, recommended, or approved by the United States, or any agency, instrumentality or officer of the United States;

(B) has been insured by the Federal Deposit Insurance Corporation; or

(C) is guaranteed by or is otherwise an obligation of any bank or insured depository institution.

(2) Disclosures

Any person issuing or selling the securities of a registered investment company that is advised by, or sold through, a bank shall prominently disclose that an investment in the company is not insured by the Federal Deposit Insurance Corporation or any other government agency. The Commission may, after consultation with and taking into consideration the views of the Federal banking agencies (as defined in section 1813 of title 12), adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the manner in which the disclosure under this paragraph shall be provided.

(3) Definitions

The terms "insured depository institution" and "appropriate Federal banking agency" have the same meanings as given in section 1813 of title 12.

(b) Unlawful representation of sponsorship by United States or agency thereof

It shall be unlawful for any person registered under any section of this subchapter, to represent or imply in any manner whatsoever that such person has been sponsored, recommended, or approved,

or that his abilities or qualifications have in any respect been passed upon by the United States or any agency or officer thereof.

(c) Statement of registration under securities provisions

No provision of subsection (a) or (b) of this section shall be construed to prohibit a statement that a person or security is registered under this chapter, the Securities Act of 1933 [15 U.S.C. 77a et seq.], or the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], if such statement is true in fact and if the effect of such registration is not misrepresented.

(d) Deceptive or misleading names

It shall be unlawful for any registered investment company to adopt as a part of the name or title of such company, or of any securities of which it is the issuer, any word or words that the Commission finds are materially deceptive or misleading. The Commission is authorized, by rule, regulation, or order, to define such names or titles as are materially deceptive or misleading.

(Aug. 22, 1940, ch. 686, title I, §35, 54 Stat. 840; Pub. L. 104–290, title II, §208, Oct. 11, 1996, 110 Stat. 3432; Pub. L. 106–102, title II, §214, Nov. 12, 1999, 113 Stat. 1398.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (c), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (c), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

AMENDMENTS

1999—Subsec. (a). Pub. L. 106–102 inserted heading and amended text of subsec. (a) generally. Prior to amendment, text read as follows: "It shall be unlawful for any person, in issuing or selling any security of which a registered investment company is the issuer, to represent or imply in any manner whatsoever that such security or company has been guaranteed, sponsored, recommended, or approved by the United States or any agency or officer thereof."

1996—Subsec. (d). Pub. L. 104–290 inserted heading and amended text generally. Prior to amendment, text read as follows: "It shall be unlawful for any registered investment company hereafter to adopt as a part of the name or title of such company, or of any security of which it is the issuer, any word or words which the Commission finds and by order declares to be deceptive or misleading. The Commission is authorized to bring an action in the proper district court of the United States or United States court of any Territory or other place subject to the jurisdiction of the United States alleging that the name or title of any registered investment company, or of any security which it has issued, is materially deceptive or misleading. If the court finds that the Commission's allegations in this respect, taking into consideration the history of the investment company and the length of time which it may have used any such name or title, are established, the court shall enjoin such investment company from continuing to use any such name or title."

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–102 effective 18 months after Nov. 12, 1999, see section 225 of Pub. L. 106–102, set out as a note under section 77c of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–35. Breach of fiduciary duty

(a) Civil actions by Commission; jurisdiction; allegations; injunctive or other relief

The Commission is authorized to bring an action in the proper district court of the United States, or in the United States court of any territory or other place subject to the jurisdiction of the United

States, alleging that a person who is, or at the time of the alleged misconduct was, serving or acting in one or more of the following capacities has engaged within five years of the commencement of the action or is about to engage in any act or practice constituting a breach of fiduciary duty involving personal misconduct in respect of any registered investment company for which such person so serves or acts, or at the time of the alleged misconduct, so served or acted—

(1) as officer, director, member of any advisory board, investment adviser, or depositor; or

(2) as principal underwriter, if such registered company is an open-end company, unit investment trust, or face-amount certificate company.

If such allegations are established, the court may enjoin such persons from acting in any or all such capacities either permanently or temporarily and award such injunctive or other relief against such person as may be reasonable and appropriate in the circumstances, having due regard to the protection of investors and to the effectuation of the policies declared in section 80a–1(b) of this title.

(b) Compensation or payments as basis of fiduciary duty; civil actions by Commission or security holder; burden of proof; judicial consideration of director or shareholder approval; persons liable; extent of liability; exempted transactions; jurisdiction; finding restriction

For the purposes of this subsection, the investment adviser of a registered investment company shall be deemed to have a fiduciary duty with respect to the receipt of compensation for services, or of payments of a material nature, paid by such registered investment company or by the security holders thereof, to such investment adviser or any affiliated person of such investment adviser. An action may be brought under this subsection by the Commission, or by a security holder of such registered investment company on behalf of such company, against such investment adviser, or any affiliated person of such investment adviser, or any other person enumerated in subsection (a) of this section who has a fiduciary duty concerning such compensation or payments, for breach of fiduciary duty in respect of such compensation or payments paid by such registered investment company or by the security holders thereof to such investment adviser or person. With respect to any such action the following provisions shall apply:

(1) It shall not be necessary to allege or prove that any defendant engaged in personal misconduct, and the plaintiff shall have the burden of proving a breach of fiduciary duty.

(2) In any such action approval by the board of directors of such investment company of such compensation or payments, or of contracts or other arrangements providing for such compensation or payments, and ratification or approval of such compensation or payments, or of contracts or other arrangements providing for such compensation or payments, by the shareholders of such investment company, shall be given such consideration by the court as is deemed appropriate under all the circumstances.

(3) No such action shall be brought or maintained against any person other than the recipient of such compensation or payments, and no damages or other relief shall be granted against any person other than the recipient of such compensation or payments. No award of damages shall be recoverable for any period prior to one year before the action was instituted. Any award of damages against such recipient shall be limited to the actual damages resulting from the breach of fiduciary duty and shall in no event exceed the amount of compensation or payment received from such investment company, or the security holders thereof, by such recipient.

(4) This subsection shall not apply to compensation or payments made in connection with transactions subject to section 80a–17 of this title, or rules, regulations, or orders thereunder, or to sales loads for the acquisition of any security issued by a registered investment company.

(5) Any action pursuant to this subsection may be brought only in an appropriate district court of the United States.

(6) No finding by a court with respect to a breach of fiduciary duty under this subsection shall be made a basis (A) for a finding of a violation of this subchapter for the purposes of sections 80a–9 and 80a–48 of this title, section 78o of this title, or section 80b–3 of this title, or (B) for an injunction to prohibit any person from serving in any of the capacities enumerated in subsection (a) of this section.

(c) Corporate or other trustees performing functions of investment advisers

For the purposes of subsections (a) and (b) of this section, the term "investment adviser" includes a corporate or other trustee performing the functions of an investment adviser.

(Aug. 22, 1940, ch. 686, title I, §36, 54 Stat. 841; Pub. L. 91–547, §20, Dec. 14, 1970, 84 Stat. 1428; Pub. L. 94–29, §28(7), June 4, 1975, 89 Stat. 166; Pub. L. 100–181, title VI, §622, Dec. 4, 1987, 101 Stat. 1262; Pub. L. 111–203, title IX, §929F(f), July 21, 2010, 124 Stat. 1854.)

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, in introductory provisions, substituted "a person who is, or at the time of the alleged misconduct was, serving or acting" for "a person serving or acting" and "for which such person so serves or acts, or at the time of the alleged misconduct, so served or acted" for "for which such person so serves or acts".

1987—Subsec. (b)(4). Pub. L. 100–181, §622(1), substituted "loads" for "loans".

Subsecs. (c), (d). Pub. L. 100–181, §622(2), (3), redesignated as subsec. (c) provisions which were added and designated as subsec. (d) by Pub. L. 94–29, and substituted "subsections (a) and (b)" for "subsections (a) through (c)".

1975—Subsec. (d). Pub. L. 94–29 added subsec. (d).

1970—Subsec. (a). Pub. L. 91–547 designated existing provisions as subsec. (a) and substituted in first sentence "has engaged within five years of the commencement of the action or is about to engage in any act or practice constituting a breach of fiduciary duty involving personal misconduct" for "has been guilty, after August 22, 1940, and within five years of the commencement of the action, of gross misconduct or gross abuse of trust" and second sentence reading "If such allegations are established, the court may enjoin such persons from acting in any or all such capacities either permanently or temporarily and award such injunctive or other relief against such person as may be reasonable and appropriate in the circumstances, having due regard to the protection of investors and to the effectuation of the policies declared in section 80a–1(b) of this title" for prior provision reading "If the Commission's allegations of such gross misconduct or gross abuse of trust are established, the court shall enjoin such person from acting in such capacity or capacities either permanently or for such period of time as it in its discretion shall deem appropriate."

Subsec. (b). Pub. L. 91–547 added subsec. (b).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–547 effective Dec. 14, 1970, except that subsec. (b) of this section effective on expiration of eighteen months after Dec. 14, 1970, see section 30 (introductory text and par. (4)) of Pub. L. 91–547, set out as a note under section 80a–52 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–36. Larceny and embezzlement

Whoever steals, unlawfully abstracts, unlawfully and willfully converts to his own use or to the use of another, or embezzles any of the moneys, funds, securities, credits, property, or assets of any registered investment company shall be deemed guilty of a crime, and upon conviction thereof shall be subject to the penalties provided in section 80a–48 of this title. A judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution under this section for the same act or acts.

(Aug. 22, 1940, ch. 686, title I, §37, 54 Stat. 841.)

§80a–37. Rules, regulations, and orders

(a) Powers of Commission

The Commission shall have authority from time to time to make, issue, amend, and rescind such rules and regulations and such orders as are necessary or appropriate to the exercise of the powers conferred upon the Commission elsewhere in this subchapter, including rules and regulations defining accounting, technical, and trade terms used in this subchapter, and prescribing the form or forms in which information required in registration statements, applications, and reports to the Commission shall be set forth. For the purposes of its rules or regulations the Commission may classify persons, securities, and other matters within its jurisdiction and prescribe different requirements for different classes of persons, securities, or matters.

(b) Filing of information and documents

The Commission, by such rules and regulations or order as it deems necessary or appropriate in the public interest or for the protection of investors, may authorize the filing of any information or documents required to be filed with the Commission under this subchapter, subchapter II of this chapter, the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], or the Trust Indenture Act of 1939 [15 U.S.C. 77aaa et seq.], by incorporating by reference any information or documents theretofore or concurrently filed with the Commission under this subchapter or any of such Acts.

(c) Good faith conformance with rules, regulations, and orders

No provision of this subchapter imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or order of the Commission, notwithstanding that such rule, regulation, or order may, after such act or omission, by amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(Aug. 22, 1940, ch. 686, title I, §38, 54 Stat. 841; Pub. L. 111–203, title IX, §986(c)(3), July 21, 2010, 124 Stat. 1936.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (b), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (b), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

The Trust Indenture Act of 1939, referred to in subsec. (b), is title III of act May 27, 1933, ch. 38, as added Aug. 3, 1939, ch. 411, 53 Stat. 1149, which is classified generally to subchapter III (§77aaa et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77aaa of this title and Tables.

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–203 struck out "the Public Utility Holding Company Act of 1935," after "the Securities Exchange Act of 1934,".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–38. Procedure for issuance of rules and regulations

Subject to the provisions of chapter 15 of title 44 and regulations prescribed under the authority thereof, the rules and regulations of the Commission under this subchapter, and amendments thereof, shall be effective upon publication in the manner which the Commission shall prescribe, or upon such later date as may be provided in such rules and regulations.

(Aug. 22, 1940, ch. 686, title I, §39, 54 Stat. 842.)

CODIFICATION

"Chapter 15 of title 44" substituted in text for "the Federal Register Act" on authority of Pub. L. 90–620, §2(b), Oct. 22, 1968, 82 Stat. 1305, the first section of which enacted Title 44, Public Printing and Documents.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–39. Procedure for issuance of orders

(a) Notice and hearing

Orders of the Commission under this subchapter shall be issued only after appropriate notice and opportunity for hearing. Notice to the parties to a proceeding before the Commission shall be given by personal service upon each party or by registered mail or certified mail or confirmed telegraphic notice to the party's last known business address. Notice to interested persons, if any, other than parties may be given in the same manner or by publication in the Federal Register.

(b) Application verified under oath admissible as evidence

The Commission may provide, by appropriate rules or regulations, that an application verified under oath may be admissible in evidence in a proceeding before the Commission and that the record in such a proceeding may consist, in whole or in part, of such application.

(c) Parties

In any proceeding before the Commission, the Commission, in accordance with such rules and regulations as it may prescribe, shall admit as a party any interested State or State agency, and may admit as a party any representative of interested security holders, or any other person whose participation in the proceeding may be in the public interest or for the protection of investors.

(Aug. 22, 1940, ch. 686, title I, §40, 54 Stat. 842; Pub. L. 86–507, §1(15), June 11, 1960, 74 Stat. 201.)

AMENDMENTS

1960—Subsec. (a). Pub. L. 86–507 inserted "or certified mail" after "registered mail".

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–40. Hearings by Commission

Hearings may be public and may be held before the Commission, any member or members thereof, or any officer or officers of the Commission designated by it, and appropriate records thereof shall be kept.

(Aug. 22, 1940, ch. 686, title I, §41, 54 Stat. 842.)

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–41. Enforcement of subchapter

(a) Investigation

The Commission may make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this subchapter or of any rule, regulation, or order hereunder, or to determine whether any action in any court or any proceeding before the Commission shall be instituted under this subchapter against a particular person or persons, or with respect to a particular transaction or transactions. The Commission shall permit any person to file with it a statement in writing, under oath or otherwise as the Commission shall determine, as to all the facts and circumstances concerning the matter to be investigated.

(b) Administration of oaths and affirmations, subpena of witnesses, etc.

For the purpose of any investigation or any other proceeding under this subchapter, any member of the Commission, or any officer thereof designated by it, is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records which are relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in any State or in any Territory or other place subject to the jurisdiction of the United States at any designated place of hearing.

(c) Jurisdiction of courts of United States

In case of contumacy by, or refusal to obey a subpena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, contracts, agreements, and other records. And such court may issue an order requiring such person to appear before the Commission or member or officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found. Any person who without just cause shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in his or its power so to do, in obedience to the subpena of the Commission, shall be guilty of a misdemeanor, and upon conviction shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year, or both.

(d) Action for injunction

Whenever it shall appear to the Commission that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this subchapter, or of any rule, regulation, or order hereunder, it may in its discretion bring an action in the proper district court of the United States, or the proper United States court of any Territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices and to enforce compliance with this subchapter or any rule, regulation, or order hereunder. Upon a showing that such person has engaged or is about to engage in any such act or practice, a permanent or temporary injunction or decree or restraining order shall be granted without bond. In any proceeding under this subsection to enforce compliance with section 80a–7 of this title, the court as a court of equity may, to the extent it deems necessary or appropriate, take exclusive jurisdiction and possession of the investment company or companies involved and the books, records, and assets thereof, wherever located; and the court shall

have jurisdiction to appoint a trustee, who with the approval of the court shall have power to dispose of any or all of such assets, subject to such terms and conditions as the court may prescribe. The Commission may transmit such evidence as may be available concerning any violation of the provisions of this subchapter or of any rule, regulation, or order thereunder, to the Attorney General, who, in his discretion, may institute the appropriate criminal proceedings under this subchapter.

(e) Money penalties in civil actions

(1) Authority of Commission

Whenever it shall appear to the Commission that any person has violated any provision of this subchapter, the rules or regulations thereunder, or a cease-and-desist order entered by the Commission pursuant to section 80a–9(f) of this title, the Commission may bring an action in a United States district court to seek, and the court shall have jurisdiction to impose, upon a proper showing, a civil penalty to be paid by the person who committed such violation.

(2) Amount of penalty

(A) First tier

The amount of the penalty shall be determined by the court in light of the facts and circumstances. For each violation, the amount of the penalty shall not exceed the greater of (i) $5,000 for a natural person or $50,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation.

(B) Second tier

Notwithstanding subparagraph (A), the amount of penalty for each such violation shall not exceed the greater of (i) $50,000 for a natural person or $250,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation, if the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

(C) Third tier

Notwithstanding subparagraphs (A) and (B), the amount of penalty for each such violation shall not exceed the greater of (i) $100,000 for a natural person or $500,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation, if—

(I) the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

(II) such violation directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.

(3) Procedures for collection

(A) Payment of penalty to Treasury

A penalty imposed under this section shall be payable into the Treasury of the United States, except as otherwise provided in section 7246 of this title and section 78u–6 of this title.

(B) Collection of penalties

If a person upon whom such a penalty is imposed shall fail to pay such penalty within the time prescribed in the court's order, the Commission may refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court.

(C) Remedy not exclusive

The actions authorized by this subsection may be brought in addition to any other action that the Commission or the Attorney General is entitled to bring.

(D) Jurisdiction and venue

For purposes of section 80a–43 of this title, actions under this paragraph shall be actions to enforce a liability or a duty created by this subchapter.

(4) Special provisions relating to a violation of a cease-and-desist order

In an action to enforce a cease-and-desist order entered by the Commission pursuant to section 80a–9(f) of this title, each separate violation of such order shall be a separate offense, except that in the case of a violation through a continuing failure to comply with the order, each day of the failure to comply shall be deemed a separate offense.

(Aug. 22, 1940, ch. 686, title I, §42, 54 Stat. 842; Pub. L. 91–452, title II, §215, Oct. 15, 1970, 84 Stat. 929; Pub. L. 100–181, title VI, §623, Dec. 4, 1987, 101 Stat. 1262; Pub. L. 101–429, title III, §302, Oct. 15, 1990, 104 Stat. 945; Pub. L. 107–204, title III, §308(d)(4), July 30, 2002, 116 Stat. 785; Pub. L. 111–203, title IX, §923(a)(2), July 21, 2010, 124 Stat. 1849.)

AMENDMENTS

2010—Subsec. (e)(3)(A). Pub. L. 111–203 inserted "and section 78u–6 of this title" after "section 7246 of this title".

2002—Subsec. (e)(3)(A). Pub. L. 107–204 inserted ", except as otherwise provided in section 7246 of this title" before period at end.

1990—Subsec. (e). Pub. L. 101–429 added subsec. (e).

1987—Subsecs. (d), (e). Pub. L. 100–181 redesignated subsec. (e) as (d).

1970—Subsec. (d). Pub. L. 91–452 struck out subsec. (d) which related to immunity from prosecution of any individual compelled to testify or produce evidence, documentary or otherwise, after claiming his privilege against self-incrimination.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–429 effective Oct. 15, 1990, with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(1), (2) of Pub. L. 101–429, set out in a note under section 77g of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–452 effective on sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91–452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

SAVINGS PROVISION

Amendment by Pub. L. 91–452 not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91–452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–42. Court review of orders

(a) Any person or party aggrieved by an order issued by the Commission under this subchapter may obtain a review of such order in the United States court of appeals within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall be forthwith transmitted by the clerk of the court to any member of the Commission or any officer thereof designated by the Commission for that purpose, and thereupon

the Commission shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record shall be exclusive, to affirm, modify, or set aside such order, in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission or unless there were reasonable grounds for failure so to do. The findings of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court affirming, modifying, or setting aside, in whole or in part, any such order of the Commission shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(b) The commencement of proceedings under subsection (a) of this section to review an order of the Commission issued under section 80a–8(e) of this title shall operate as a stay of the Commission's order unless the court otherwise orders. The commencement of proceedings under subsection (a) of this section to review an order of the Commission issued under any provision of this subchapter other than section 80a–8(e) of this title shall not operate as a stay of the Commission's order unless the court specifically so orders.

(Aug. 22, 1940, ch. 686, title I, §43, 54 Stat. 844; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Pub. L. 85–791, §25, Aug. 28, 1958, 72 Stat. 949; Pub. L. 91–547, §21, Dec. 14, 1970, 84 Stat. 1430.)

AMENDMENTS

1970—Pub. L. 91–547 substituted reference to "section 1254" for "sections 346 and 347" of title 28.

1958—Subsec. (a). Pub. L. 85–791, in second sentence, substituted "transmitted by the clerk of the court to any member of the Commission or" for "served upon any member of the Commission or upon", substituted "file in the court" for "certify and file in the court a transcript of", and inserted "as provided in section 2112 of title 28" and, in third sentence, substituted "petition" for "transcript", and "jurisdiction, which upon the filing of the record shall be exclusive" for "exclusive jurisdiction".

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–547 effective Dec. 14, 1970, see section 30 of Pub. L. 91–547, set out as a note under section 80a–52 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–43. Jurisdiction of offenses and suits

The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this subchapter or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin

any violation of, this subchapter or the rules, regulations, or orders thereunder. Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. A criminal proceeding based upon a violation of section 80a–33 of this title, or upon a failure to file a report or other document required to be filed under this subchapter, may be brought in the district wherein the defendant is an inhabitant or maintains his principal office or place of business. Any suit or action to enforce any liability or duty created by, or to enjoin any violation of, this subchapter or rules, regulations, or orders thereunder, may be brought in any such district or in the district wherein the defendant is an inhabitant or transacts business, and process in such cases may be served in any district of which the defendant is an inhabitant or transacts business or wherever the defendant may be found. In any action or proceeding instituted by the Commission under this subchapter in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure shall not apply to a subpoena issued under the preceding sentence. Judgments and decrees so rendered shall be subject to review as provided in sections 1254, 1291, 1292, and 1294 of title 28. No costs shall be assessed for or against the Commission in any proceeding under this subchapter brought by or against the Commission in any court. The Commission may intervene as a party in any action or suit to enforce any liability or duty created by, or to enjoin any noncompliance with, section 80a–35(b) of this title at any stage of such action or suit prior to final judgment therein.

(Aug. 22, 1940, ch. 686, title I, §44, 54 Stat. 844; Pub. L. 91–547, §22, Dec. 14, 1970, 84 Stat. 1430; Pub. L. 111–203, title IX, §929E(c), July 21, 2010, 124 Stat. 1853.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

2010—Pub. L. 111–203 inserted "In any action or proceeding instituted by the Commission under this subchapter in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure shall not apply to a subpoena issued under the preceding sentence." after "defendant may be found."

1970—Pub. L. 91–547 substituted reference to "sections 1254, 1291, 1292, and 1294 of title 28" for "sections 225 and 347 of title 28 and section 7, as amended, of the Act entitled 'An Act to establish a court of appeals for the District of Columbia, approved February 9, 1893' " and provided for Commission intervention as a party in any action or suit to enforce any liability or duty created by, or to enjoin any noncompliance with, section 80a–35(b) of this title at any stage of such action or suit prior to final judgment therein, respectively.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–547 effective Dec. 14, 1970, see section 30 of Pub. L. 91–547, set out as a note under section 80a–52 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–44. Disclosure of information filed with Commission; copies

(a) The information contained in any registration statement, application, report, or other document

filed with the Commission pursuant to any provision of this subchapter or of any rule or regulation thereunder (as distinguished from any information or document transmitted to the Commission) shall be made available to the public, unless and except insofar as the Commission, by rules and regulations upon its own motion, or by order upon application, finds that public disclosure is neither necessary nor appropriate in the public interest or for the protection of investors. Except as provided in section 78x(c) of this title, it shall be unlawful for any member, officer, or employee of the Commission to use for personal benefit, or to disclose to any person other than an official or employee of the United States or of a State, for official use, or for any such official or employee to use for personal benefit, any information contained in any document so filed or transmitted, if such information is not available to the public.

(b) Photostatic or other copies of information contained in documents filed with the Commission under this subchapter and made available to the public shall be furnished any person at such reasonable charge and under such reasonable limitations as the Commission shall prescribe.

(Aug. 22, 1940, ch. 686, title I, §45, 54 Stat. 845; Pub. L. 101–550, title II, §202(b)(1), Nov. 15, 1990, 104 Stat. 2715.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–550 substituted "Except as provided in section 78x(c) of this title, it shall be unlawful" for "It shall be unlawful".

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–45. Reports by Commission; hiring and leasing authority

(a) Omitted

(b) Hiring and leasing authority

The provisions of section 78d(b) of this title shall be applicable with respect to the power of the Commission—

(1) to appoint and fix the compensation of such employees as may be necessary for carrying out its functions under this subchapter, and

(2) to lease and allocate such real property as may be necessary for carrying out its functions under this subchapter.

(Aug. 22, 1940, ch. 686, title I, §46, 54 Stat. 845; Oct. 28, 1949, ch. 782, title XI, §1106(a), 63 Stat. 972; Pub. L. 101–550, title I, §104(c), Nov. 15, 1990, 104 Stat. 2714.)

CODIFICATION

Subsection (a), which required the Securities and Exchange Commission to submit an annual report to Congress on the work of the Commission, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 191 of House Document No. 103–7.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–550 amended subsec. (b) generally. Prior to amendment, subsec. (b) related to appointment and compensation of employees.

1949—Subsec. (b). Act Oct. 28, 1949, substituted "Classification Act of 1949" for "Classification Act of 1923".

REPEALS

Act Oct. 28, 1949, ch. 782, set out in the credit of this section, was repealed (subject to a savings clause) by Pub. L. 89–554, Sept. 6, 1966, §8, 80 Stat. 632, 655.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–46. Validity of contracts

(a) Waiver of compliance as void

Any condition, stipulation, or provision binding any person to waive compliance with any provision of this subchapter or with any rule, regulation, or order thereunder shall be void.

(b) Equitable results; rescission; severance

(1) A contract that is made, or whose performance involves, a violation of this subchapter, or of any rule, regulation, or order thereunder, is unenforceable by either party (or by a nonparty to the contract who acquired a right under the contract with knowledge of the facts by reason of which the making or performance violated or would violate any provision of this subchapter or of any rule, regulation, or order thereunder) unless a court finds that under the circumstances enforcement would produce a more equitable result than nonenforcement and would not be inconsistent with the purposes of this subchapter.

(2) To the extent that a contract described in paragraph (1) has been performed, a court may not deny rescission at the instance of any party unless such court finds that under the circumstances the denial of rescission would produce a more equitable result than its grant and would not be inconsistent with the purposes of this subchapter.

(3) This subsection shall not apply (A) to the lawful portion of a contract to the extent that it may be severed from the unlawful portion of the contract, or (B) to preclude recovery against any person for unjust enrichment.

(Aug. 22, 1940, ch. 686, title I, §47, 54 Stat. 845; Pub. L. 96–477, title I, §104, Oct. 21, 1980, 94 Stat. 2277.)

AMENDMENTS

1980—Subsec. (b). Pub. L. 96–477 provided that a contract whose terms violated this subchapter or any rule, regulation, or order thereunder would be unenforceable by either party or by a nonparty to the contract who acquired a right under such contract with knowledge of the facts by reason of which the making or performance of the contract would violate this subchapter, struck out provisions declaring such contracts void as regards the rights of the violators or nonparties to the contract with actual knowledge of its illegality, authorized the court to enforce such contracts where the court found that under the circumstances enforcement would produce a more equitable result than nonenforcement and such enforcement would not be inconsistent with the purposes of this subchapter, authorized the same two-part test to save from rescission any portions of such contracts which had been performed, and provided that subsec. (b) was not to apply to a lawful portion of a contract to the extent it could be severed from an unlawful portion of such contract, or to preclude recovery against any person for unjust enrichment.

§80a–47. Liability of controlling persons; preventing compliance with subchapter

(a) Procurement

It shall be unlawful for any person, directly or indirectly, to cause to be done any act or thing through or by means of any other person which it would be unlawful for such person to do under the provisions of this subchapter or any rule, regulation, or order thereunder.

(b) Substantially assisting a violation

For purposes of any action brought by the Commission under subsection (d) or (e) of section 80a–41 of this title, any person that knowingly or recklessly provides substantial assistance to

another person in violation of a provision of this subchapter, or of any rule or regulation issued under this subchapter, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided.

(c) Obstructing compliance

It shall be unlawful for any person without just cause to hinder, delay, or obstruct the making, filing, or keeping of any information, document, report, record, or account required to be made, filed, or kept under any provision of this subchapter or any rule, regulation, or order thereunder.

(Aug. 22, 1940, ch. 686, title I, §48, 54 Stat. 846; Pub. L. 111–203, title IX, §929M(b), July 21, 2010, 124 Stat. 1861.)

AMENDMENTS

2010—Subsecs. (b), (c). Pub. L. 111–203 added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

§80a–48. Penalties

Any person who willfully violates any provision of this subchapter or of any rule, regulation, or order hereunder, or any person who willfully in any registration statement, application, report, account, record, or other document filed or transmitted pursuant to this subchapter or the keeping of which is required pursuant to section 80a–30(a) of this title makes any untrue statement of a material fact or omits to state any material fact necessary in order to prevent the statements made therein from being materially misleading in the light of the circumstances under which they were made, shall upon conviction be fined not more than $10,000 or imprisoned not more than five years, or both; but no person shall be convicted under this section for the violation of any rule, regulation, or order if he proves that he had no actual knowledge of such rule, regulation, or order.

(Aug. 22, 1940, ch. 686, title I, §49, 54 Stat. 846; Pub. L. 94–29, §27(e), June 4, 1975, 89 Stat. 163.)

AMENDMENTS

1975—Pub. L. 94–29 substituted "or imprisoned not more than five years" for "or imprisoned not more than two years".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

§80a–49. Construction with other laws

Except where specific provision is made to the contrary, nothing in this subchapter shall affect (1) the jurisdiction of the Commission under the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], the Trust Indenture Act of 1939 [15 U.S.C. 77aaa et seq.], or subchapter II of this chapter, over any person, security, or transaction, or (2) the rights, obligations, duties, or liabilities of any person under such Acts; nor shall anything in this subchapter affect the jurisdiction of any other commission, board, agency, or officer of the United States or of any State or political subdivision of any State, over any person, security, or transaction, insofar as such jurisdiction does not conflict with any provision of this subchapter or of any rule, regulation, or order hereunder.

(Aug. 22, 1940, ch. 686, title I, §50, 54 Stat. 846; Pub. L. 111–203, title IX, §986(c)(4), July 21, 2010, 124 Stat. 1936.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in text, is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Securities Exchange Act of 1934, referred to in text, is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

The Trust Indenture Act of 1939, referred to in text, is title III of act May 27, 1933, ch. 38, as added Aug. 3, 1939, ch. 411, 53 Stat. 1149, which is classified generally to subchapter III (§77aaa et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77aaa of this title and Tables.

AMENDMENTS

2010—Pub. L. 111–203 struck out "the Public Utility Holding Company Act of 1935," after "the Securities Exchange Act of 1934,".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–50. Separability

If any provision of this subchapter or any provision incorporated in this subchapter by reference, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this subchapter and the application of any such provision to person or circumstances other than those as to which it is held invalid shall not be affected thereby.

(Aug. 22, 1940, ch. 686, title I, §51, 54 Stat. 846.)

§80a–51. Short title

This subchapter may be cited as the "Investment Company Act of 1940".

(Aug. 22, 1940, ch. 686, title I, §52, 54 Stat. 847.)

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–290, title II, §201, Oct. 11, 1996, 110 Stat. 3426, provided that: "This title [amending sections 80a–2, 80a–3, 80a–12, 80a–24, 80a–26, 80a–27, 80a–29, 80a–30, 80a–34, and 80b–5 of this title and enacting provisions set out as notes under sections 80a–2, 80a–3, and 80a–24 of this title] may be cited as the 'Investment Company Act Amendments of 1996'."

SHORT TITLE OF 1995 AMENDMENT

Pub. L. 104–62, §1(a), Dec. 8, 1995, 109 Stat. 682, provided that: "This Act [enacting section 80a–3a of this title, amending sections 77c, 78c, 78l, 80a–3, 80a–7, and 80b–3 of this title, and enacting provisions set out as a note under section 77c of this title] may be cited as the 'Philanthropy Protection Act of 1995'."

SHORT TITLE OF 1980 AMENDMENT

Pub. L. 96–477, §1, Oct. 21, 1980, 94 Stat. 2275, provided that: "That this Act [enacting sections 80a–53 to 80a–64 and 80c to 80c–3 of this title, amending sections 77b, 77c, 77d, 77s, 77ddd, 78c, 78kk, 80a–2, 80a–3, 80a–6, 80a–46, 80b–2, 80b–3, and 80b–5 of this title, and enacting provisions set out as notes under sections 77a and 80c of this title] may be cited as the 'Small Business Investment Incentive Act of 1980'."

SHORT TITLE OF 1970 AMENDMENT

Pub. L. 91–547, §1, Dec. 14, 1970, 84 Stat. 1413, provided: "That this Act [enacting section 80b–6a of this title, amending sections 77b, 77c, 78c, 78l, 80a–2, 80a–3, 80a–8 to 80a–13, 80a–15, 80a–17 to 80a–19, 80a–22, 80a–24 to 80a–28, 80a–31, 80a–32, 80a–35, 80a–42, 80a–43, 80b–2, 80b–3, and 80b–5 of this title, and enacting provisions set out as notes under sections 77c and 80a–2 of this title] may be cited as the 'Investment Company amendments Act of 1970'."

§80a–52. Effective date

The effective date of the provisions of this subchapter, so far as the same relate to face-amount certificates or to face-amount certificate companies, is January 1, 1941. The effective date of provisions hereof, insofar as the same do not apply to face-amount certificates or face-amount certificate companies is November 1, 1940. Except as herein otherwise provided, every provision of this subchapter shall take effect on November 1, 1940.

(Aug. 22, 1940, ch. 686, title I, §53, 54 Stat. 847; Pub. L. 100–181, title VI, §624, Dec. 4, 1987, 101 Stat. 1262.)

AMENDMENTS

1987—Pub. L. 100–181 struck out at end of first sentence ": *Provided, however*, That any such face-amount certificate company may register prior to said date, as provided by section 80a–8 of this title, and such registration shall not operate to change or affect said effective date as to any such company or any face-amount certificates issued by it".

EFFECTIVE DATE OF 1970 AMENDMENT

Pub. L. 91–547, §30, Dec. 14, 1970, 84 Stat. 1436, provided that: "This Act [see Short Title note set out under section 80a–51 of this title] shall take effect on the date of its enactment [Dec. 14, 1970], except that—

"(1) sections (5)(a), (b), and (c); 8; 9(a); 11; 18; 24(a); and 25 (amending sections 10(a), (b), and (c) [section 80a–10(a), (b), and (c)]; 15 [section 80a–15]; 17(f) [section 80a–17(f)]; 19 [section 80a–19]; and 32(a) of the Investment Company Act of 1940 [section 80a–31(a)]; and sections 203(b) and 205 of the Investment Advisers Act of 1940 [sections 80b–3(b) and 80b–5 of this title], respectively) shall take effect upon the expiration of one year after the date of enactment of this Act [Dec. 14, 1970];

"(2) that part of section 5(d) which substitutes 'interested persons' for 'affiliated persons' in section 10(d) of the Investment Company Act of 1940 [section 80a–10(d) of this title] shall take effect upon the expiration of one year after the date of enactment of this Act [Dec. 14, 1970];

"(3) sections 16 and 17 (amending section 27 and 28 of the Investment Company Act of 1940 [sections 80a–27 and 80a–28 of this title]) shall take effect upon the expiration of six months after the date of enactment of this Act [Dec. 14, 1970]; and

"(4) that part of section 20 which adds a subsection (b) to section 36 of the Investment Company Act of 1940 [section 80a–35 of this title] shall take effect upon the expiration of eighteen months after the date of enactment of this Act [Dec. 14, 1970]."

§80a–53. Election to be regulated as business development company

(a) Eligibility

Any company defined in section 80a–2(a)(48)(A) and (B) of this title may elect to be subject to the provisions of sections 80a–54 through 80a–64 of this title by filing with the Commission a notification of election, if such company—

(1) has a class of its equity securities registered under section 78l of this title; or

(2) has filed a registration statement pursuant to section 78l of this title for a class of its equity securities.

(b) Form and manner of notification; effect

The Commission may, by rule, prescribe the form and manner in which notification of election under this section shall be given. A business development company shall be deemed to be subject to sections 80a–54 through 80a–64 of this title upon receipt by the Commission of such notification of election.

(c) Revocation or withdrawal of election

Whenever the Commission finds, on its own motion or upon application, that a business development company which has filed a notification of election pursuant to subsection (a) of this section has ceased to engage in business, the Commission shall so declare by order revoking such company's election. Any business development company may voluntarily withdraw its election under subsection (a) of this section by filing a notice of withdrawal of election with the Commission, in a form and manner which the Commission may, by rule, prescribe. Such withdrawal shall be effective immediately upon receipt by the Commission.

(Aug. 22, 1940, ch. 686, title I, §54, as added Pub. L. 96–477, title I, §105, Oct. 21, 1980, 94 Stat. 2278; amended Pub. L. 100–181, title VI, §625, Dec. 4, 1987, 101 Stat. 1262.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–181 substituted "defined in section" for "defined in sections".

§80a–54. Acquisition of assets by business development companies

(a) Permissible assets; percentage

It shall be unlawful for a business development company to acquire any assets (other than those described in paragraphs (1) through (7) of this subsection) unless, at the time the acquisition is made, assets described in paragraphs (1) through (6) below represent at least 70 per centum of the value of its total assets (other than assets described in paragraph (7) below):

(1) securities purchased, in transactions not involving any public offering or in such other transactions as the Commission may, by rule, prescribe if it finds that enforcement of this subchapter and of the Securities Act of 1933 [15 U.S.C. 77a et seq.] with respect to such transactions is not necessary in the public interest or for the protection of investors by reason of the small amount, or the limited nature of the public offering, involved in such transactions—

(A) from the issuer of such securities, which issuer is an eligible portfolio company, from any person who is, or who within the preceding thirteen months has been, an affiliated person of such eligible portfolio company, or from any other person, subject to such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors; or

(B) from the issuer of such securities, which issuer is described in section 80a–2(a)(46)(A) and (B) of this title but is not an eligible portfolio company because it has issued a class of securities with respect to which a member of a national securities exchange, broker, or dealer may extend or maintain credit to or for a customer pursuant to rules or regulations adopted by the Board of Governors of the Federal Reserve System under section 78g of this title, or from any person who is an officer or employee of such issuer, if—

(i) at the time of the purchase, the business development company owns at least 50 per centum of—

(I) the greatest number of equity securities of such issuer and securities convertible into or exchangeable for such securities; and

(II) the greatest amount of debt securities of such issuer,

held by such business development company at any point in time during the period when such issuer was an eligible portfolio company, except that options, warrants, and similar securities which have by their terms expired and debt securities which have been converted, or repaid or prepaid in the ordinary course of business or incident to a public offering of securities of such issuer, shall not be considered to have been held by such business development company for purposes of this requirement; and

(ii) the business development company is one of the 20 largest holders of record of such issuer's outstanding voting securities;

(2) securities of any eligible portfolio company with respect to which the business development company satisfies the requirements of section 80a–2(a)(46)(C)(ii) of this title;

(3) securities purchased in transactions not involving any public offering from an issuer described in sections 80a–2(a)(46)(A) and (B) of this title or from a person who is, or who within the preceding thirteen months has been, an affiliated person of such issuer, or from any person in transactions incident thereto, if such securities were—

(A) issued by an issuer that is, or was immediately prior to the purchase of its securities by the business development company, in bankruptcy proceedings, subject to reorganization under the supervision of a court of competent jurisdiction, or subject to a plan or arrangement resulting from such bankruptcy proceedings or reorganization;

(B) issued by an issuer pursuant to or in consummation of such a plan or arrangement; or

(C) issued by an issuer that, immediately prior to the purchase of such issuer's securities by the business development company, was not in bankruptcy proceedings but was unable to meet its obligations as they came due without material assistance other than conventional lending or financing arrangements;

(4) securities of eligible portfolio companies purchased from any person in transactions not involving any public offering, if there is no ready market for such securities and if immediately prior to such purchase the business development company owns at least 60 per centum of the outstanding equity securities of such issuer (giving effect to all securities presently convertible into or exchangeable for equity securities of such issuer as if such securities were so converted or exchanged);

(5) securities received in exchange for or distributed on or with respect to securities described in paragraphs (1) through (4) of this subsection, or pursuant to the exercise of options, warrants, or rights relating to securities described in such paragraphs;

(6) cash, cash items, Government securities, or high quality debt securities maturing in one year or less from the time of investment in such high quality debt securities; and

(7) office furniture and equipment, interests in real estate and leasehold improvements and facilities maintained to conduct the business operations of the business development company, deferred organization and operating expenses, and other noninvestment assets necessary and appropriate to its operations as a business development company, including notes of indebtedness of directors, officers, employees, and general partners held by a business development company as payment for securities of such company issued in connection with an executive compensation plan described in section 80a–56(j) of this title.

(b) Valuation of assets

For purposes of this section, the value of a business development company's assets shall be determined as of the date of the most recent financial statements filed by such company with the Commission pursuant to section 78m of this title, and shall be determined no less frequently than annually.

(Aug. 22, 1940, ch. 686, title I, §55, as added Pub. L. 96–477, title I, §105, Oct. 21, 1980, 94 Stat. 2278; amended Pub. L. 100–181, title VI, §626, Dec. 4, 1987, 101 Stat. 1263; Pub. L. 104–290, title V, §505, Oct. 11, 1996, 110 Stat. 3446.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (a)(1), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, as amended, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

AMENDMENTS

1996—Subsec. (a)(1)(A). Pub. L. 104–290 substituted "from any person" for "or from any person" and inserted before semicolon ", or from any other person, subject to such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors".

1987—Subsec. (a)(1)(B). Pub. L. 100–181 substituted "described in section" for "described in sections".

§80a–55. Qualifications of directors

(a) Non-interested persons

A majority of a business development company's directors or general partners shall be persons who are not interested persons of such company.

(b) Vacancies; suspension of provisions

If, by reason of the death, disqualification, or bona fide resignation of any director or general partner, a business development company does not meet the requirements of subsection (a) of this section, or the requirements of section 80a–15(f)(1) of this title with respect to directors, the operation of such provisions shall be suspended for a period of 90 days or for such longer period as the Commission may prescribe, upon its own motion or by order upon application, as not inconsistent with the protection of investors.

(Aug. 22, 1940, ch. 686, title I, §56, as added Pub. L. 96–477, title I §105, Oct. 21, 1980, 94 Stat. 2280.)

§80a–56. Transactions with certain affiliates

(a) Transactions involving controlling or closely affiliated persons

It shall be unlawful for any person who is related to a business development company in a manner described in subsection (b) of this section, acting as principal—

(1) knowingly to sell any security or other property to such business development company or to any company controlled by such business development company, unless such sale involves solely (A) securities of which the buyer is the issuer, or (B) securities of which the seller is the issuer and which are part of a general offering to the holders of a class of its securities;

(2) knowingly to purchase from such business development company or from any company controlled by such business development company, any security or other property (except securities of which the seller is the issuer);

(3) knowingly to borrow money or other property from such business development company or from any company controlled by such business development company (unless the borrower is controlled by the lender), except as permitted in section 80a–21(b) or section 80a–61 of this title; or

(4) knowingly to effect any transaction in which such business development company or a company controlled by such business development company is a joint or a joint and several participant with such person in contravention of such rules and regulations as the Commission may prescribe for the purpose of limiting or preventing participation by such business development company or controlled company on a basis less advantageous than that of such person, except that nothing contained in this paragraph shall be deemed to preclude any person from acting as manager of any underwriting syndicate or other group in which such business development company or controlled company is a participant and receiving compensation therefor.

(b) Controlling or closely affiliated persons

The provisions of subsection (a) of this section shall apply to the following persons:

(1) Any director, officer, employee, or member of an advisory board of a business development company or any person (other than the business development company itself) who is, within the meaning of section 80a–2(a)(3)(C) of this title, an affiliated person of any such person specified in this paragraph.

(2) Any investment adviser or promoter of, general partner in, principal underwriter for, or person directly or indirectly either controlling, controlled by, or under common control with, a business development company (except the business development company itself and any person who, if it were not directly or indirectly controlled by the business development company, would

not be directly or indirectly under the control of a person who controls the business development company), or any person who is, within the meaning of section 80a–2(a)(3)(C) or (D) of this title, an affiliated person of any such person specified in this paragraph.

(c) Exemption orders

Notwithstanding paragraphs (1), (2), and (3) of subsection (a) of this section, any person may file with the Commission an application for an order exempting a proposed transaction of the applicant from one or more provisions of such paragraphs. The Commission shall grant such application and issue such order of exemption if evidence establishes that—

(1) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching of the business development company or its shareholders or partners on the part of any person concerned;

(2) the proposed transaction is consistent with the policy of the business development company as recited in the filings made by such company with the Commission under the Securities Act of 1933 [15 U.S.C. 77a et seq.], its registration statement and reports filed under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], and its reports to shareholders or partners; and

(3) the proposed transaction is consistent with the general purposes of this subchapter.

(d) Transactions involving noncontrolling shareholders or affiliated persons

It shall be unlawful for any person who is related to a business development company in the manner described in subsection (e) of this section and who is not subject to the prohibitions of subsection (a) of this section, acting as principal—

(1) knowingly to sell any security or other property to such business development company or to any company controlled by such business development company, unless such sale involves solely (A) securities of which the buyer is the issuer, or (B) securities of which the seller is the issuer and which are part of a general offering to the holders of a class of its securities;

(2) knowingly to purchase from such business development company or from any company controlled by such business development company, any security or other property (except securities of which the seller is the issuer);

(3) knowingly to borrow money or other property from such business development company or from any company controlled by such business development company (unless the borrower is controlled by the lender), except as permitted in section 80a–21(b) of this title; or

(4) knowingly to effect any transaction in which such business development company or a company controlled by such business development company is a joint or a joint and several participant with such affiliated person in contravention of such rules and regulations as the Commission may prescribe for the purpose of limiting or preventing participation by such business development company or controlled company on a basis less advantageous than that of such affiliated person, except that nothing contained in this paragraph shall be deemed to preclude any person from acting as manager of any underwriting syndicate or other group in which such business development company or controlled company is a participant and receiving compensation therefor.

(e) Noncontrolling shareholders or affiliated persons; executive officer

The provisions of subsection (d) of this section shall apply to the following persons:

(1) Any person (A) who is, within the meaning of section 80a–2(a)(3)(A) of this title, an affiliated person of a business development company, (B) who is an executive officer or a director of, or general partner in, any such affiliated person, or (C) who directly or indirectly either controls, is controlled by, or is under common control with, such affiliated person.

(2) Any person who is an affiliated person of a director, officer, employee, investment adviser, member of an advisory board or promoter of, principal underwriter for, general partner in, or an affiliated person of any person directly or indirectly either controlling or under common control with a business development company (except the business development company itself and any

person who, if it were not directly or indirectly controlled by the business development company, would not be directly or indirectly under the control of a person who controls the business development company).

For purposes of this subsection, the term "executive officer" means the president, secretary, treasurer, any vice president in charge of a principal business function, and any other person who performs similar policymaking functions.

(f) Approval of proposed transactions

Notwithstanding subsection (d) of this section, a person described in subsection (e) of this section may engage in a proposed transaction described in subsection (d) of this section if such proposed transaction is approved by the required majority (as defined in subsection (o) of this section) of the directors of or general partners in the business development company on the basis that—

(1) the terms thereof, including the consideration to be paid or received, are reasonable and fair to the shareholders or partners of the business development company and do not involve overreaching of such company or its shareholders or partners on the part of any person concerned;

(2) the proposed transaction is consistent with the interests of the shareholders or partners of the business development company and is consistent with the policy of such company as recited in filings made by such company with the Commission under the Securities Act of 1933 [15 U.S.C. 77a et seq.], its registration statement and reports filed under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], and its reports to shareholders or partners; and

(3) the directors or general partners record in their minutes and preserve in their records, for such periods as if such records were required to be maintained pursuant to section 80a–30(a) of this title, a description of such transaction, their findings, the information or materials upon which their findings were based, and the basis therefor.

(g) Transactions in the ordinary course of business

Notwithstanding subsection (a) or (d) of this section, a person may, in the ordinary course of business, sell to or purchase from any company merchandise or may enter into a lessor-lessee relationship with any person and furnish the services incident thereto.

(h) Inquiry procedures

The directors of or general partners in any business development company shall adopt, and periodically review and update as appropriate, procedures reasonably designed to ensure that reasonable inquiry is made, prior to the consummation of any transaction in which such business development company or a company controlled by such business development company proposes to participate, with respect to the possible involvement in the transaction of persons described in subsections (b) and (e) of this section.

(i) Rules and regulations of Commission

Until the adoption by the Commission of rules or regulations under subsections (a) and (d) of this section, the rules and regulations of the Commission under subsections (a) and (d) of section 80a–17 of this title applicable to registered closed-end investment companies shall be deemed to apply to transactions subject to subsections (a) and (d) of this section. Any rules or regulations adopted by the Commission to implement this section shall be no more restrictive than the rules or regulations adopted by the Commission under subsections (a) and (d) of section 80a–17 of this title that are applicable to all registered closed-end investment companies.

(j) Warrants, options, and rights to purchase voting securities; loans to facilitate executive compensation plans

Notwithstanding subsections (a) and (d) of this section, any director, officer, or employee of, or general partner in, a business development company may—

(1) acquire warrants, options, and rights to purchase voting securities of such business development company, and securities issued upon the exercise or conversion thereof, pursuant to an executive compensation plan offered by such company which meets the requirements of section

80a–60(a)(3)(B) of this title; and

(2) borrow money from such business development company for the purpose of purchasing securities issued by such company pursuant to an executive compensation plan, if each such loan—

(A) has a term of not more than ten years;

(B) becomes due within a reasonable time, not to exceed sixty days, after the termination of such person's employment or service;

(C) bears interest at no less than the prevailing rate applicable to 90-day United States Treasury bills at the time the loan is made;

(D) at all times is fully collateralized (such collateral may include any securities issued by such business development company); and

(E)(i) in the case of a loan to any officer or employee of such business development company (including any officer or employee who is also a director of such company), is approved by the required majority (as defined in subsection (o) of this section) of the directors of or general partners in such company on the basis that the loan is in the best interests of such company and its shareholders or partners; or

(ii) in the case of a loan to any director of such business development company who is not also an officer or employee of such company, or to any general partner in such company, is approved by order of the Commission, upon application, on the basis that the terms of the loan are fair and reasonable and do not involve overreaching of such company or its shareholders or partners.

(k) Restriction on brokerage commissions

It shall be unlawful for any person described in subsection (l) of this section—

(1) acting as agent, to accept from any source any compensation (other than a regular salary or wages from the business development company) for the purchase or sale of any property to or for such business development company or any controlled company thereof, except in the course of such person's business as an underwriter or broker; or

(2) acting as broker, in connection with the sale of securities to or by the business development company or any controlled company thereof, to receive from any source a commission, fee, or other remuneration for effecting such transaction which exceeds—

(A) the usual and customary broker's commission if the sale is effected on a securities exchange;

(B) 2 per centum of the sales price if the sale is effected in connection with a secondary distribution of such securities; or

(C) 1 per centum of the purchase or sale price of such securities if the sale is otherwise effected,

unless the Commission, by rules and regulations or order in the public interest and consistent with the protection of investors, permits a larger commission.

(l) Persons subject to brokerage commission restrictions

The provisions of subsection (k) of this section shall apply to the following persons:

(1) Any affiliated person of a business development company.

(2)(A) Any person who is, within the meaning of section 80a–2(a)(3)(B), (C), or (D) of this title, an affiliated person or any director, officer, employee, or member of an advisory board of the business development company.

(B) Any person who is, within the meaning of section 82a–2(a)(3)(A), (B), (C), or (D) of this title, an affiliated person of any investment adviser of, general partner in, or person directly or indirectly either controlling, controlled by, or under common control with, the business development company.

(C) Any person who is, within the meaning of section 80a–2(a)(3)(C) of this title, an affiliated person of any person who is an affiliated person of the business development company within the meaning of section 80a–2(a)(3)(A) of this title.

(m) Receipt of fee or salary from transaction participant

For purposes of subsections (a) and (d) of this section, a person who is a director, officer, or employee of a party to a transaction and who receives his usual and ordinary fee or salary for usual and customary services as a director, officer, or employee from such party shall not be deemed to have a financial interest or to participate in the transaction solely by reason of his receipt of such fee or salary.

(n) Profit-sharing plans

(1) Notwithstanding subsection (a)(4) of this section, a business development company may establish and maintain a profit-sharing plan for its directors, officers, employees, and general partners and such directors, officers, employees, and general partners may participate in such profit-sharing plan, if—

(A)(i) in the case of a profit-sharing plan for officers and employees of the business development company (including any officer or employee who is also a director of such company), such profit-sharing plan is approved by the required majority (as defined in subsection (o) of this section) of the directors of or general partners in such company on the basis that such plan is reasonable and fair to the shareholders or partners of such company, does not involve overreaching of such company or its shareholders or partners on the part of any person concerned, and is consistent with the interests of the shareholders or partners of such company; or

(ii) in the case of a profit-sharing plan which includes one or more directors of the business development company who are not also officers or employees of such company, or one or more general partners in such company, such profit-sharing plan is approved by order of the Commission, upon application, on the basis that such plan is reasonable and fair to the shareholders or partners of such company, does not involve overreaching of such company or its shareholders or partners on the part of any person concerned, and is consistent with the interests of the shareholders or partners of such company; and

(B) the aggregate amount of benefits which would be paid or accrued under such plan shall not exceed 20 per centum of the business development company's net income after taxes in any fiscal year.

(2) This subsection may not be used where the business development company has outstanding any stock option, warrant, or right issued as part of an executive compensation plan, including a plan pursuant to section 80a–60(a)(3)(B) of this title, or has an investment adviser registered or required to be registered under subchapter II of this chapter.

(o) Required majority for approval of proposed transactions

The term "required majority", when used with respect to the approval of a proposed transaction, plan, or arrangement, means both a majority of a business development company's directors or general partners who have no financial interest in such transaction, plan, or arrangement and a majority of such directors or general partners who are not interested persons of such company.

(Aug. 22, 1940, ch. 686, title I, §57, as added Pub. L. 96–477, title I, §105, Oct. 21, 1980, 94 Stat. 2280; amended Pub. L. 100–181, title VI, §627, Dec. 4, 1987, 101 Stat. 1263.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsecs. (c)(2) and (f)(2), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, as amended, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Securities Exchange Act of 1934, referred to in subsecs. (c)(2) and (f)(2), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

AMENDMENTS

1987—Subsec. (i). Pub. L. 100–181 substituted "subsections (a) and (d) of section 80a–17 of this title" for "sections 80a–17(a) and (d) of this title" in two places.

§80a–57. Changes in investment policy

No business development company shall, unless authorized by the vote of a majority of its outstanding voting securities or partnership interests, change the nature of its business so as to cease to be, or to withdraw its election as, a business development company.

(Aug. 22, 1940, ch. 686, title I, §58, as added Pub. L. 96–477, title I, §105, Oct. 21, 1980, 94 Stat. 2285.)

§80a–58. Incorporation of subchapter provisions

Notwithstanding the exemption set forth in section 80–6(f) of this title, sections 80a–1, 80a–2, 80a–3, 80a–4, 80a–5, 80a–6, 80a–9, 80a–10(f), 80a–15(a), (c), and (f), 80a–16(b), 80a–17(f) through (j), 80a–19(a), 80a–20(b), 80a–31(a) and (c), 80a–32 through 80a–46, and 80a–48 through 80a–52 of this title shall apply to a business development company to the same extent as if it were a registered closed-end investment company.

(Aug. 22, 1940, ch. 686, title I, §59, as added Pub. L. 96–477, title I, §105, Oct. 21, 1980, 94 Stat. 2285.)

§80a–59. Functions and activities of business development companies

Notwithstanding the exemption set forth in section 80a–6(f) of this title, section 80a–12 of this title shall apply to a business development company to the same extent as if it were a registered closed-end investment company, except that the Commission shall not prescribe any rule, regulation, or order pursuant to section 80a–12(a)(1) of this title governing the circumstances in which a business development company may borrow from a bank in order to purchase any security.

(Aug. 22, 1940, ch. 686, title I, §60, as added Pub. L. 96–477, title I, §105, Oct. 21, 1980, 94 Stat. 2285.)

§80a–60. Capital structure

(a) Exceptions for business development company

Notwithstanding the exemption set forth in section 80a–6(f) of this title, section 80a–18 of this title shall apply to a business development company to the same extent as if it were a registered closed-end investment company, except as follows:

(1) The asset coverage requirements of section 80a–18(a)(1)(A) and (B) of this title applicable to business development companies shall be 200 per centum.

(2) Notwithstanding section 80a–18(c) of this title, a business development company may issue more than one class of senior security representing indebtedness.

(3) Notwithstanding section 80a–18(d) of this title—

(A) a business development company may issue warrants, options, or rights to subscribe or convert to voting securities of such company, accompanied by securities, if—

(i) such warrants, options, or rights expire by their terms within ten years;

(ii) such warrants, options, or rights are not separately transferable unless no class of such warrants, options, or rights and the securities accompanying them has been publicly distributed;

(iii) the exercise or conversion price is not less than the current market value at the date of issuance, or if no such market value exists, the current net asset value of such voting securities; and

(iv) the proposal to issue such securities is authorized by the shareholders or partners of such business development company, and such issuance is approved by the required majority

(as defined in section 80a–56(o) of this title) of the directors of or general partners in such company on the basis that such issuance is in the best interests of such company and its shareholders or partners;

(B) a business development company may issue, to its directors, officers, employees, and general partners, warrants, options, and rights to purchase voting securities of such company pursuant to an executive compensation plan, if—

(i)(I) in the case of warrants, options, or rights issued to any officer or employee of such business development company (including any officer or employee who is also a director of such company), such securities satisfy the conditions in clauses (i), (iii), and (iv) of subparagraph (A); or (II) in the case of warrants, options, or rights issued to any director of such business development company who is not also an officer or employee of such company, or to any general partner in such company, the proposal to issue such securities satisfies the conditions in clauses (i) and (iii) of subparagraph (A), is authorized by the shareholders or partners of such company, and is approved by order of the Commission, upon application, on the basis that the terms of the proposal are fair and reasonable and do not involve overreaching of such company or its shareholders or partners;

(ii) such securities are not transferable except for disposition by gift, will, or intestacy;

(iii) no investment adviser of such business development company receives any compensation described in section 80b–5(a)(1) of this title, except to the extent permitted by paragraph (1) or (2) of section 80b–5(b) of this title; and

(iv) such business development company does not have a profit-sharing plan described in section 80a–56(n) of this title; and

(C) a business development company may issue warrants, options, or rights to subscribe to, convert to, or purchase voting securities not accompanied by securities, if—

(i) such warrants, options, or rights satisfy the conditions in clauses (i) and (iii) of subparagraph (A); and

(ii) the proposal to issue such warrants, options, or rights is authorized by the shareholders or partners of such business development company, and such issuance is approved by the required majority (as defined in section 80a–56(o) of this title) of the directors of or general partners in such company on the basis that such issuance is in the best interests of the company and its shareholders or partners.

Notwithstanding this paragraph, the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance shall not exceed 25 per centum of the outstanding voting securities of the business development company, except that if the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights issued to such company's directors, officers, employees, and general partners pursuant to any executive compensation plan meeting the requirements of subparagraph (B) of this paragraph would exceed 15 per centum of the outstanding voting securities of such company, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance shall not exceed 20 per centum of the outstanding voting securities of such company.

(4) For purposes of measuring the asset coverage requirements of section 80a–18(a) of this title, a senior security created by the guarantee by a business development company of indebtedness issued by another company shall be the amount of the maximum potential liability less the fair market value of the net unencumbered assets (plus the indebtedness which has been guaranteed) available in the borrowing company whose debts have been guaranteed, except that a guarantee issued by a business development company of indebtedness issued by a company which is a wholly-owned subsidiary of the business development company and is licensed as a small business investment company under the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.] shall not be deemed to be a senior security of such business development company for

purposes of section 80a–18(a) of this title if the amount of the indebtedness at the time of its issuance by the borrowing company is itself taken fully into account as a liability by such business development company, as if it were issued by such business development company, in determining whether such business development company, at that time, satisfies the asset coverage requirements of section 80a–18(a) of this title.

(b) Compliance

A business development company shall comply with the provisions of this section at the time it becomes subject to sections 80a–54 through 80a–64 of this title, as if it were issuing a security of each class which it has outstanding at such time.

(Aug. 22, 1940, ch. 686, title I, §61, as added Pub. L. 96–477, title I, §105, Oct. 21, 1980, 94 Stat. 2286; amended Pub. L. 104–290, title V, §506, Oct. 11, 1996, 110 Stat. 3446; Pub. L. 111–203, title IX, §985(d)(5), July 21, 2010, 124 Stat. 1934.)

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in subsec. (a)(4), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689), as amended, which is classified principally to chapter 14B (§661 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

AMENDMENTS

2010—Subsec. (a)(3)(B)(iii). Pub. L. 111–203 substituted "section 80b–5(a)(1) of this title" for "paragraph (1) of section 80b–5 of this title" and "paragraph (1) or (2) of section 80b–5(b) of this title" for "clause (A) or (B) of that section".

1996—Subsec. (a)(2). Pub. L. 104–290, §506(1), substituted a period for "if such business development company does not have outstanding any publicly held indebtedness, and all such securities of each class are—

"(A) privately held or guaranteed by the Small Business Administration, or banks, insurance companies, or other institutional investors; and

"(B) not intended to be publicly distributed."

Subsec. (a)(3)(A). Pub. L. 104–290, §506(2)(A), (B), inserted "accompanied by securities," after "of such company," and struck out "senior securities representing indebtedness accompanied by" before "warrants, options, or rights".

Subsec. (a)(3)(A)(ii). Pub. L. 104–290, §506(2)(C), struck out "senior" before "securities".

Subsec. (a)(3)(C). Pub. L. 104–290, §506(3), added subpar. (C).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

§80a–61. Loans

Notwithstanding the exemption set forth in section 80a–6(f) of this title, section 80a–21 of this title shall apply to a business development company to the same extent as if it were a registered closed-end investment company, except that nothing in that section shall be deemed to prohibit—

(1) any loan to a director, officer, or employee of, or general partner in, a business development company for the purpose of purchasing securities of such company as part of an executive compensation plan, if such loan meets the requirements of section 80a–56(j) of this title; or

(2) any loan to a company controlled by a business development company, which companies could be deemed to be under common control solely because a third person controls such business development company.

(Aug. 22, 1940, ch. 686, title I, §62, as added Pub. L. 96–477, title I, §105, Oct. 21, 1980, 94 Stat. 2287.)

§80a–62. Distribution and repurchase of securities

Notwithstanding the exemption set forth in section 80a–6(f) of this title, section 80a–23 of this title shall apply to a business development company to the same extent as if it were a registered closed-end investment company, except as follows:

(1) The prohibitions of section 80a–23(a)(2) of this title shall not apply to any company which (A) is a wholly-owned subsidiary of, or directly or indirectly controlled by, a business development company, and (B) immediately after the issuance of any of its securities for property other than cash or securities, will not be an investment company within the meaning of section 80a–3(a) of this title.

(2) Notwithstanding the provisions of section 80a–23(b) of this title, a business development company may sell any common stock of which it is the issuer at a price below the current net asset value of such stock, and may sell warrants, options, or rights to acquire any such common stock at a price below the current net asset value of such stock, if—

(A) the holders of a majority of such business development company's outstanding voting securities, and the holders of a majority of such company's outstanding voting securities that are not affiliated persons of such company, approved such company's policy and practice of making such sales of securities at the last annual meeting of shareholders or partners within one year immediately prior to any such sale, except that the shareholder approval requirements of this subparagraph shall not apply to the initial public offering by a business development company of its securities;

(B) a required majority (as defined in section 80a–56(o) of this title) of the directors of or general partners in such business development company have determined that any such sale would be in the best interests of such company and its shareholders or partners; and

(C) a required majority (as defined in section 80a–56(o) of this title) of the directors of or general partners in such business development company, in consultation with the underwriter or underwriters of the offering if it is to be underwritten, have determined in good faith, and as of a time immediately prior to the first solicitation by or on behalf of such company of firm commitments to purchase such securities or immediately prior to the issuance of such securities, that the price at which such securities are to be sold is not less than a price which closely approximates the market value of those securities, less any distributing commission or discount.

(3) A business development company may sell any common stock of which it is the issuer at a price below the current net asset value of such stock upon the exercise of any warrant, option, or right issued in accordance with section 80a–60(a)(3) of this title.

(Aug. 22, 1940, ch. 686, title I, §63, as added Pub. L. 96–477, title I, §105, Oct. 21, 1980, 94 Stat. 2288.)

§80a–63. Accounts and records

(a) Exception for business development company

Notwithstanding the exemption set forth in section 80a–6(f) of this title, section 80a–30 of this title shall apply to a business development company to the same extent as if it were a registered closed-end investment company, except that the reference to the financial statements required to be filed pursuant to section 80a–29 of this title shall be construed to refer to the financial statements required to be filed by such business development company pursuant to section 78m of this title.

(b) Risk factors statement; availability

(1) In addition to the requirements of subsection (a) of this section, a business development company shall file with the Commission and supply annually to its shareholders a written statement, in such form and manner as the Commission may, by rule, prescribe, describing the risk factors

involved in an investment in the securities of a business development company due to the nature of such company's investment portfolio and capital structure, and shall supply copies of such statement to any registered broker or dealer upon request.

(2) If the Commission finds it is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this subchapter, the Commission may also require, by rule, any person who, acting as principal or agent, sells a security of a business development company to inform the purchaser of such securities, at or before the time of sale, of the existence of the risk statement prepared by such business development company pursuant to this subsection, and make such risk statement available on request. The Commission, in making such rules and regulations, shall consider, among other matters, whether any such rule or regulation would impose any unreasonable burdens on such brokers or dealers or unreasonably impair the maintenance of fair and orderly markets.

(Aug. 22, 1940, ch. 686, title I, §64, as added Pub. L. 96–477, title I §105, Oct. 21, 1980, 94 Stat. 2289; amended Pub. L. 104–290, title V, §507, Oct. 11, 1996, 110 Stat. 3446.)

AMENDMENTS

1996—Subsec. (b)(1). Pub. L. 104–290 inserted "and capital structure" after "portfolio".

§80a–64. Preventing compliance with subchapter; liability of controlling persons

Notwithstanding the exemption set forth in section 80a–6(f) of this title, section 80a–47 of this title shall apply to a business development company to the same extent as if it were a registered closed-end investment company, except that the provisions of section 80a–47(a) of this title shall not be construed to require any company which is not an investment company within the meaning of section 80a–3(a) of this title to comply with the provisions of this subchapter which are applicable to a business development company solely because such company is a wholly-owned subsidiary of, or directly or indirectly controlled by, a business development company.

(Aug. 22, 1940, ch. 686, title I, §65, as added Pub. L. 96–477, title I, §105, Oct. 21, 1980, 94 Stat. 2289.)

SUBCHAPTER II—INVESTMENT ADVISERS

§80b–1. Findings

Upon the basis of facts disclosed by the record and report of the Securities and Exchange Commission made pursuant to section 79z–4 [1] of this title, and facts otherwise disclosed and ascertained, it is found that investment advisers are of national concern, in that, among other things—

(1) their advice, counsel, publications, writings, analyses, and reports are furnished and distributed, and their contracts, subscription agreements, and other arrangements with clients are negotiated and performed, by the use of the mails and means and instrumentalities of interstate commerce;

(2) their advice, counsel, publications, writings, analyses, and reports customarily relate to the purchase and sale of securities traded on national securities exchanges and in interstate over-the-counter markets, securities issued by companies engaged in business in interstate commerce, and securities issued by national banks and member banks of the Federal Reserve System; and

(3) the foregoing transactions occur in such volume as substantially to affect interstate commerce, national securities exchanges, and other securities markets, the national banking system and the national economy.

(Aug. 22, 1940, ch. 686, title II, §201, 54 Stat. 847.)

REFERENCES IN TEXT

Section 79z–4 of this title, referred to in text, was repealed by Pub. L. 109–58, title XII, §1263, Aug. 8, 2005, 119 Stat. 974.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

[1] *See References in Text note below.*

§80b–2. Definitions

(a) In general

When used in this subchapter, unless the context otherwise requires, the following definitions shall apply:

(1) "Assignment" includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but if the investment adviser is a partnership, no assignment of an investment advisory contract shall be deemed to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after such admission, shall be only a minority of the members and shall have only a minority interest in the business.

(2) "Bank" means (A) a banking institution organized under the laws of the United States or a Federal savings association, as defined in section 1462(5) of title 12, (B) a member bank of the Federal Reserve System, (C) any other banking institution, savings association, as defined in section 1462(4) of title 12, or trust company, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by State or Federal authority having supervision over banks or savings associations, and which is not operated for the purpose of evading the provisions of this subchapter, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph.

(3) The term "broker" has the same meaning as given in section 3 of the Securities Exchange Act of 1934 [15 U.S.C. 78c].

(4) "Commission" means the Securities and Exchange Commission.

(5) "Company" means a corporation, a partnership, an association, a joint-stock company, a trust, or any organized group of persons, whether incorporated or not; or any receiver, trustee in a case under title 11, or similar official, or any liquidating agent for any of the foregoing, in his capacity as such.

(6) "Convicted" includes a verdict, judgment, or plea of guilty, or a finding of guilt on a plea of nolo contendere, if such verdict, judgment, plea, or finding has not been reversed, set aside, or withdrawn, whether or not sentence has been imposed.

(7) The term "dealer" has the same meaning as given in section 3 of the Securities Exchange Act of 1934 [15 U.S.C. 78c], but does not include an insurance company or investment company.

(8) "Director" means any director of a corporation or any person performing similar functions with respect to any organization, whether incorporated or unincorporated.

(9) "Exchange" means any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for

bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange.

(10) "Interstate commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State, or between any State and any place or ship outside thereof.

(11) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities; but does not include (A) a bank, or any bank holding company as defined in the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.] which is not an investment company, except that the term "investment adviser" includes any bank or bank holding company to the extent that such bank or bank holding company serves or acts as an investment adviser to a registered investment company, but if, in the case of a bank, such services or actions are performed through a separately identifiable department or division, the department or division, and not the bank itself, shall be deemed to be the investment adviser; (B) any lawyer, accountant, engineer, or teacher whose performance of such services is solely incidental to the practice of his profession; (C) any broker or dealer whose performance of such services is solely incidental to the conduct of his business as a broker or dealer and who receives no special compensation therefor; (D) the publisher of any bona fide newspaper, news magazine or business or financial publication of general and regular circulation; (E) any person whose advice, analyses or reports relate to no securities other than securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States, or securities issued or guaranteed by corporations in which the United States has a direct or indirect interest which shall have been designated by the Secretary of the Treasury, pursuant to section 3(a)(12) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(12)], as exempted securities for the purposes of that Act [15 U.S.C. 78a et seq.]; (F) any nationally recognized statistical rating organization, as that term is defined in section 3(a)(62) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(62)], unless such organization engages in issuing recommendations as to purchasing, selling, or holding securities or in managing assets, consisting in whole or in part of securities, on behalf of others;; [1] (G) any family office, as defined by rule, regulation, or order of the Commission, in accordance with the purposes of this subchapter; or (H) such other persons not within the intent of this paragraph, as the Commission may designate by rules and regulations or order.

(12) "Investment company", affiliated person, and "insurance company" have the same meanings as in the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.]. "Control" means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company.

(13) "Investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client.

(14) "Means or instrumentality of interstate commerce" includes any facility of a national securities exchange.

(15) "National securities exchange" means an exchange registered under section 6 of the Securities Exchange Act of 1934 [15 U.S.C. 78f].

(16) "Person" means a natural person or a company.

(17) The term "person associated with an investment adviser" means any partner, officer, or director of such investment adviser (or any person performing similar functions), or any person directly or indirectly controlling or controlled by such investment adviser, including any employee of such investment adviser, except that for the purposes of section 80b–3 of this title (other than subsection (f) thereof), persons associated with an investment adviser whose functions are clerical or ministerial shall not be included in the meaning of such term. The Commission may by rules and regulations classify, for the purposes of any portion of portions of this subchapter, persons, including employees controlled by an investment adviser.

(18) "Security" means any note, stock, treasury stock, security future, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guaranty of, or warrant or right to subscribe to or purchase any of the foregoing.

(19) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States.

(20) "Underwriter" means any person who has purchased from an issuer with a view to, or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributor's or seller's commission. As used in this paragraph the term "issuer" shall include in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer.

(21) "Securities Act of 1933" [15 U.S.C. 77a et seq.], "Securities Exchange Act of 1934" [15 U.S.C. 78a et seq.], and "Trust Indenture Act of 1939" [15 U.S.C. 77aaa et seq.], mean those Acts, respectively, as heretofore or hereafter amended.

(22) "Business development company" means any company which is a business development company as defined in section 80a–2(a)(48) of this title and which complies with section 80a–54 of this title, except that—

(A) the 70 per centum of the value of the total assets condition referred to in sections 80a–2(a)(48) and 80a–54 of this title shall be 60 per centum for purposes of determining compliance therewith;

(B) such company need not be a closed-end company and need not elect to be subject to the provisions of sections 80a–54 through 80a–64 of this title; and

(C) the securities which may be purchased pursuant to section 80a–54(a) of this title may be purchased from any person.

For purposes of this paragraph, all terms in sections 80a–2(a)(48) and 80a–54 of this title shall have the same meaning set forth in subchapter I of this chapter as if such company were a registered closed-end investment company, except that the value of the assets of a business development company which is not subject to the provisions of sections 80a–54 through 80a–64 of this title shall be determined as of the date of the most recent financial statements which it furnished to all holders of its securities, and shall be determined no less frequently than annually.

(23) "Foreign securities authority" means any foreign government, or any governmental body or regulatory organization empowered by a foreign government to administer or enforce its laws as they relate to securities matters.

(24) "Foreign financial regulatory authority" means any (A) foreign securities authority, (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade or foreign equivalent, or other financial activities, or (C) membership organization a function of which is to regulate the participation of its members in activities listed above.

(25) "Supervised person" means any partner, officer, director (or other person occupying a similar status or performing similar functions), or employee of an investment adviser, or other

person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser.

(26) The term "separately identifiable department or division" of a bank means a unit—

(A) that is under the direct supervision of an officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's investment adviser activities for one or more investment companies, including the supervision of all bank employees engaged in the performance of such activities; and

(B) for which all of the records relating to its investment adviser activities are separately maintained in or extractable from such unit's own facilities or the facilities of the bank, and such records are so maintained or otherwise accessible as to permit independent examination and enforcement by the Commission of this subchapter or the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.] and rules and regulations promulgated under this subchapter or the Investment Company Act of 1940.

(27) The terms "security future" and "narrow-based security index" have the same meanings as provided in section 3(a)(55) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(55)].

(28) The term "credit rating agency" has the same meaning as in section 3 of the Securities Exchange Act of 1934 [15 U.S.C. 78c].

(29) [2] The term "private fund" means an issuer that would be an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3), but for section 3(c)(1) or 3(c)(7) of that Act.

(30) The term "foreign private adviser" means any investment adviser who—

(A) has no place of business in the United States;

(B) has, in total, fewer than 15 clients and investors in the United States in private funds advised by the investment adviser;

(C) has aggregate assets under management attributable to clients in the United States and investors in the United States in private funds advised by the investment adviser of less than $25,000,000, or such higher amount as the Commission may, by rule, deem appropriate in accordance with the purposes of this subchapter; and

(D) neither—

(i) holds itself out generally to the public in the United States as an investment adviser; nor

(ii) acts as—

(I) an investment adviser to any investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.]; or

(II) a company that has elected to be a business development company pursuant to section 54 of the Investment Company Act of 1940 (15 U.S.C. 80a–53), and has not withdrawn its election.

(29) [3] The terms "commodity pool", "commodity pool operator", "commodity trading advisor", "major swap participant", "swap", "swap dealer", and "swap execution facility" have the same meanings as in section 1a of title 7.

(b) Applicability to Federal or State government, agency, or instrumentality, or to officers, agents, or employees thereof

No provision in this subchapter shall apply to, or be deemed to include, the United States, a State, or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned directly or indirectly by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto.

(c) Consideration of promotion of efficiency, competition, and capital formation

Whenever pursuant to this subchapter the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will

promote efficiency, competition, and capital formation.

(Aug. 22, 1940, ch. 686, title II, §202, 54 Stat. 847; Pub. L. 86–70, §12(c), June 25, 1959, 73 Stat. 143; Pub. L. 86–624, §7(d), July 12, 1960, 74 Stat. 412; Pub. L. 86–750, §1, Sept. 13, 1960, 74 Stat. 885; Pub. L. 89–485, §13(j), July 1, 1966, 80 Stat. 243; Pub. L. 91–547, §23, Dec. 14, 1970, 84 Stat. 1430; Pub. L. 95–598, title III, §311, Nov. 6, 1978, 92 Stat. 2676; Pub. L. 96–477, title II, §201, Oct. 21, 1980, 94 Stat. 2289; Pub. L. 97–303, §6, Oct. 13, 1982, 96 Stat. 1410; Pub. L. 100–181, title VII, §701, Dec. 4, 1987, 101 Stat. 1263; Pub. L. 101–550, title II, §206(b), Nov. 15, 1990, 104 Stat. 2720; Pub. L. 104–290, title III, §303(c), Oct. 11, 1996, 110 Stat. 3438; Pub. L. 106–102, title II, §§217–219, 224, Nov. 12, 1999, 113 Stat. 1399, 1400, 1402; Pub. L. 106–554, §1(a)(5) [title II, §209(a)(2), (4)], Dec. 21, 2000, 114 Stat. 2763, 2763A–435, 2763A–436; Pub. L. 109–291, §4(b)(3)(A), (B), Sept. 29, 2006, 120 Stat. 1337; Pub. L. 109–351, title IV, §401(b)(1), Oct. 13, 2006, 120 Stat. 1973; Pub. L. 111–203, title IV, §§402(a), 409(a), title VII, §770, title IX, §986(d), July 21, 2010, 124 Stat. 1570, 1575, 1801, 1936.)

AMENDMENT OF SECTION

Unless otherwise provided, amendment by subtitle B (§§761–774) of title VII of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see 2010 Amendment notes and Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

The Bank Holding Company Act of 1956, referred to in subsec. (a)(11)(A), is act May 9, 1956, ch. 240, 70 Stat. 133, which is classified principally to chapter 17 (§1841 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of Title 12 and Tables.

The Investment Company Act of 1940, referred to in subsec. (a)(12), (26)(B), (30)(D)(ii)(I), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§80a–1 et seq.) of this chapter. For complete classification of this Act to the Code, see section 80a–51 of this title and Tables.

The Securities Act of 1933, referred to in subsec. (a)(21), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (a)(21), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

The Trust Indenture Act of 1939, referred to in subsec. (a)(21), is title III of act May 27, 1933, ch. 38, as added Aug. 3, 1939, ch. 411, 53 Stat. 1149, which is classified generally to subchapter III (§77aaa et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77aaa of this title and Tables.

This subchapter, referred to in subsec. (a)(26)(B), was in the original "this Act" and was translated as reading "this title", meaning title II of act Aug. 22, 1940, ch. 686, known as the Investment Advisers Act of 1940, to reflect the probable intent of Congress.

AMENDMENTS

2010—Subsec. (a)(11)(G), (H). Pub. L. 111–203, §409(a), added subpar. (G) and redesignated former subpar. (G) as (H).

Subsec. (a)(21). Pub. L. 111–203, §986(d), struck out " 'Public Utility Holding Company Act of 1935'," after " 'Securities Exchange Act of 1934',".

Subsec. (a)(29). Pub. L. 111–203, §770, added par. (29) relating to certain terms having the same meanings as in section 1a of title 7.

Pub. L. 111–203, §402(a), added par. (29) defining the term "private fund".

Subsec. (a)(30). Pub. L. 111–203, §402(a), added par. (30).

2006—Subsec. (a)(2)(A). Pub. L. 109–351, §401(b)(1)(A), inserted "or a Federal savings association, as defined in section 1462(5) of title 12" after "a banking institution organized under the laws of the United States".

Subsec. (a)(2)(C). Pub. L. 109–351, §401(b)(1)(B), inserted ", savings association, as defined in section 1462(4) of title 12," after "other banking institution" and "or savings associations" after "having supervision

over banks".

Subsec. (a)(11)(F), (G). Pub. L. 109–291, §4(b)(3)(B), added subpar. (F) and redesignated former subpar. (F) as (G).

Subsec. (a)(28). Pub. L. 109–291, §4(b)(3)(A), added par. (28).

2000—Subsec. (a)(18). Pub. L. 106–554, §1(a)(5) [title II, §209(a)(2)], inserted "security future," after "treasury stock,".

Subsec. (a)(27). Pub. L. 106–554, §1(a)(5) [title II, §209(a)(4)], added par. (27).

1999—Subsec. (a)(3). Pub. L. 106–102, §218, amended par. (3) generally. Prior to amendment, par. (3) read as follows: " 'Broker' means any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank."

Subsec. (a)(7). Pub. L. 106–102, §219, amended par. (7) generally. Prior to amendment, par. (7) read as follows: " 'Dealer' means any person regularly engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, insurance company, or investment company, or any person insofar as he is engaged in investing, reinvesting or trading in securities, or in owning or holding securities, for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business."

Subsec. (a)(11)(A). Pub. L. 106–102, §217(a), substituted "investment company, except that the term 'investment adviser' includes any bank or bank holding company to the extent that such bank or bank holding company serves or acts as an investment adviser to a registered investment company, but if, in the case of a bank, such services or actions are performed through a separately identifiable department or division, the department or division, and not the bank itself, shall be deemed to be the investment adviser" for "investment company".

Subsec. (a)(26). Pub. L. 106–102, §217(b), added par. (26).

Subsec. (c). Pub. L. 106–102, §224, added subsec. (c).

1996—Subsec. (a). Pub. L. 104–290, §303(c)(1), substituted "requires, the following definitions shall apply:" for "requires—" in introductory provisions.

Subsec. (a)(25). Pub. L. 104–290, §303(c)(2), added par. (25).

1990—Subsec. (a)(23), (24). Pub. L. 101–550 added pars. (23) and (24).

1987—Subsec. (a)(19). Pub. L. 100–181 struck out reference to Canal Zone.

1982—Subsec. (a)(18). Pub. L. 97–303 inserted "any put, call, straddle, option, or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency," after "mineral rights,".

1980—Subsec. (a)(22). Pub. L. 96–477 added par. (22).

1978—Subsec. (a)(5). Pub. L. 95–598 substituted "a case under title 11" for "bankruptcy".

1970—Subsec. (a)(2). Pub. L. 91–547, §23(1), substituted "under the authority of the Comptroller of the Currency" for "under section 248(k) of Title 12".

Subsec. (a)(17) to (21). Pub. L. 91–547, §23(2), added par. (17) and redesignated former pars. (17) to (20) as (18) to (21), respectively.

1966—Subsec. (a)(11)(A). Pub. L. 89–485 substituted "bank holding company as defined in the Bank Holding Company Act of 1956" for "holding company affiliate, as defined in the Banking Act of 1933".

1960—Subsec. (a)(12). Pub. L. 86–750, §1(a), substituted definition of "control" as "the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company" for its prior definition which was the same as in the Investment Company Act of 1940.

Subsec. (a)(18). Pub. L. 86–750, §1(b), struck out reference to Philippine Islands, which change was previously executed in the codification of this section pursuant to Proc. No. 2695 that granted independence to the Philippine Islands.

Pub. L. 86–624 struck out reference to Hawaii.

1959—Subsec. (a)(18). Pub. L. 86–70 struck out reference to Alaska.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 986(d) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Pub. L. 111–203, title IV, §419, July 21, 2010, 124 Stat. 1580, provided that: "Except as otherwise provided in this title [enacting sections 80b–18b and 80b–18c of this title, amending this section and sections 80b–3, 80b–3a, 80b–4, 80b–5, 80b–10, and 80b–11 of this title, and enacting provisions set out as notes under this

section and sections 77b and 80b–20 of this title], this title and the amendments made by this title shall become effective 1 year after the date of enactment of this Act [July 21, 2010], except that any investment adviser may, at the discretion of the investment adviser, register with the Commission under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.] during that 1-year period, subject to the rules of the Commission."

[For definitions of "investment adviser" and "Commission" as used in section 419 of Pub. L. 111–203, set out above, see section 402(b) of Pub. L. 111–203, set out below, and section 5301 of Title 12, Banks and Banking, respectively.]

Amendment by section 770 of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761–774) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111–203, set out as a note under section 77b of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–102 effective 18 months after Nov. 12, 1999, see section 225 of Pub. L. 106–102, set out as a note under section 77c of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 308(a) of title III of Pub. L. 104–290, as amended by Pub. L. 105–8, §1, Mar. 31, 1997, 111 Stat. 15, provided that: "This title [enacting section 80b–3a of this title, amending this section, sections 80b–3 and 80b–18a of this title, and section 1002 of Title 29, Labor, and enacting provisions set out as notes under sections 80b–3a, 80b–10, and 80b–20 of this title and section 1002 of Title 29] and the amendments made by this title shall take effect 270 days after the date of enactment of this Act [Oct. 11, 1996]."

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–547 effective Dec. 14, 1970, see section 30 of Pub. L. 91–547, set out as a note under section 80a–52 of this title.

REGULATIONS; CONSTRUCTION

Pub. L. 111–203, title IV, §409(b), (c), July 21, 2010, 124 Stat. 1575, provided that:

"(b) RULEMAKING.—The rules, regulations, or orders issued by the Commission pursuant to section 202(a)(11)(G) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–2(a)(11)(G)], as added by this section, regarding the definition of the term 'family office' shall provide for an exemption that—

"(1) is consistent with the previous exemptive policy of the Commission, as reflected in exemptive orders for family offices in effect on the date of enactment of this Act [July 21, 2010], and the grandfathering provisions in paragraph (3);

"(2) recognizes the range of organizational, management, and employment structures and arrangements employed by family offices; and

"(3) does not exclude any person who was not registered or required to be registered under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.] on January 1, 2010 from the definition of the term 'family office', solely because such person provides investment advice to, and was engaged before January 1, 2010 in providing investment advice to—

"(A) natural persons who, at the time of their applicable investment, are officers, directors, or employees of the family office who—

"(i) have invested with the family office before January 1, 2010; and

"(ii) are accredited investors, as defined in Regulation D of the Commission (or any successor thereto) under the Securities Act of 1933 [15 U.S.C. 77a et seq.], or, as the Commission may prescribe by rule, the successors-in-interest thereto;

"(B) any company owned exclusively and controlled by members of the family of the family office, or as the Commission may prescribe by rule;

"(C) any investment adviser registered under the Investment Adviser[s] Act of 1940 [15 U.S.C. 80b–1 et seq.] that provides investment advice to the family office and who identifies investment opportunities to the family office, and invests in such transactions on substantially the same terms as the family office invests, but does not invest in other funds advised by the family office, and whose assets as to which the family office directly or indirectly provides investment advice represent, in the aggregate,

not more than 5 percent of the value of the total assets as to which the family office provides investment advice.

"(c) ANTIFRAUD AUTHORITY.—A family office that would not be a family office, but for subsection (b)(3), shall be deemed to be an investment adviser for the purposes of paragraphs (1), (2) and (4) of section 206 of the Investment Advisers Act of 1940 [15 U.S.C. 80b–6]."

[For definitions of "Commission" and "investment adviser" as used in section 409(b), (c) of Pub. L. 111–203, set out above, see section 5301 of Title 12, Banks and Banking, and section 402(b) of Pub. L. 111–203, set out below, respectively.]

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

DEFINITIONS

Pub. L. 111–203, title IV, §402(b), July 21, 2010, 124 Stat. 1570, provided that: "As used in this title [enacting sections 80b–18b and 80b–18c of this title, amending this section and sections 80b–3, 80b–3a, 80b–4, 80b–5, 80b–10, and 80b–11 of this title, and enacting provisions set out as notes under this section and sections 77b and 80b–20 of this title], the terms 'investment adviser' and 'private fund' have the same meanings as in section 202 of the Investment Advisers Act of 1940 [15 U.S.C. 80b–2], as amended by this title."

[1] So in original.

[2] So in original. Another par. (29) is set out after par. (30).

[3] So in original. Another par. (29) is set out preceding par. (30).

§80b–3. Registration of investment advisers

(a) Necessity of registration

Except as provided in subsection (b) of this section and section 80b–3a of this title, it shall be unlawful for any investment adviser, unless registered under this section, to make use of the mails or any means or instrumentality of interstate commerce in connection with his or its business as an investment adviser.

(b) Investment advisers who need not be registered

The provisions of subsection (a) of this section shall not apply to—

(1) any investment adviser, other than an investment adviser who acts as an investment adviser to any private fund, all of whose clients are residents of the State within which such investment adviser maintains his or its principal office and place of business, and who does not furnish advice or issue analyses or reports with respect to securities listed or admitted to unlisted trading privileges on any national securities exchange;

(2) any investment adviser whose only clients are insurance companies;

(3) any investment adviser that is a foreign private adviser;

(4) any investment adviser that is a charitable organization, as defined in section 3(c)(10)(D) of the Investment Company Act of 1940 [15 U.S.C. 80a–3(c)(10)(D)], or is a trustee, director, officer, employee, or volunteer of such a charitable organization acting within the scope of such person's employment or duties with such organization, whose advice, analyses, or reports are provided only to one or more of the following:

(A) any such charitable organization;

(B) a fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940 [15 U.S.C. 80a–3(c)(10)(B)]; or

(C) a trust or other donative instrument described in section 3(c)(10)(B) of the Investment Company Act of 1940 [15 U.S.C. 80a–3(c)(10)(B)], or the trustees, administrators, settlors (or

potential settlors), or beneficiaries of any such trust or other instrument;

(5) any plan described in section 414(e) of title 26, any person or entity eligible to establish and maintain such a plan under title 26, or any trustee, director, officer, or employee of or volunteer for any such plan or person, if such person or entity, acting in such capacity, provides investment advice exclusively to, or with respect to, any plan, person, or entity or any company, account, or fund that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940 [15 U.S.C. 80a–3(c)(14)];

(6)(A) any investment adviser that is registered with the Commodity Futures Trading Commission as a commodity trading advisor whose business does not consist primarily of acting as an investment adviser, as defined in section 80b–2(a)(11) of this title, and that does not act as an investment adviser to—

(i) an investment company registered under subchapter I of this chapter; or

(ii) a company which has elected to be a business development company pursuant to section 80a–53 of this title and has not withdrawn its election; or

(B) any investment adviser that is registered with the Commodity Futures Trading Commission as a commodity trading advisor and advises a private fund, provided that, if after July 21, 2010, the business of the advisor should become predominately the provision of securities-related advice, then such adviser shall register with the Commission.[1]

(7) any investment adviser, other than any entity that has elected to be regulated or is regulated as a business development company pursuant to section 54 of the Investment Company Act of 1940 [15 U.S.C. 80a–53], who solely advises—

(A) small business investment companies that are licensees under the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.];

(B) entities that have received from the Small Business Administration notice to proceed to qualify for a license as a small business investment company under the Small Business Investment Act of 1958, which notice or license has not been revoked; or

(C) applicants that are affiliated with 1 or more licensed small business investment companies described in subparagraph (A) and that have applied for another license under the Small Business Investment Act of 1958, which application remains pending.

(c) Procedure for registration; filing of application; effective date of registration; amendment of registration

(1) An investment adviser, or any person who presently contemplates becoming an investment adviser, may be registered by filing with the Commission an application for registration in such form and containing such of the following information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors:

(A) the name and form of organization under which the investment adviser engages or intends to engage in business; the name of the State or other sovereign power under which such investment adviser is organized; the location of his or its principal office, principal place of business, and branch offices, if any; the names and addresses of his or its partners, officers, directors, and persons performing similar functions or, if such an investment adviser be an individual, of such individual; and the number of his or its employees;

(B) the education, the business affiliations for the past ten years, and the present business affiliations of such investment adviser and of his or its partners, officers, directors, and persons performing similar functions and of any controlling person thereof;

(C) the nature of the business of such investment adviser, including the manner of giving advice and rendering analyses or reports;

(D) a balance sheet certified by an independent public accountant and other financial statements (which shall, as the Commission specifies, be certified);

(E) the nature and scope of the authority of such investment adviser with respect to clients' funds and accounts;

(F) the basis or bases upon which such investment adviser is compensated;

(G) whether such investment adviser, or any person associated with such investment adviser, is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of such investment adviser under the provisions of subsection (e) of this section; and

(H) a statement as to whether the principal business of such investment adviser consists or is to consist of acting as investment adviser and a statement as to whether a substantial part of the business of such investment adviser, consists or is to consist of rendering investment supervisory services.

(2) Within forty-five days of the date of the filing of such application (or within such longer period as to which the applicant consents) the Commission shall—

(A) by order grant such registration; or

(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within one hundred twenty days of the date of the filing of the application for registration. At the conclusion of such proceedings the Commission, by order, shall grant or deny such registration. The Commission may extend the time for conclusion of such proceedings for up to ninety days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The Commission shall grant such registration if the Commission finds that the requirements of this section are satisfied and that the applicant is not prohibited from registering as an investment adviser under section 80b–3a of this title. The Commission shall deny such registration if it does not make such a finding or if it finds that if the applicant were so registered, its registration would be subject to suspension or revocation under subsection (e) of this section.

(d) Other acts prohibited by subchapter

Any provision of this subchapter (other than subsection (a) of this section) which prohibits any act, practice, or course of business if the mails or any means or instrumentality of interstate commerce are used in connection therewith shall also prohibit any such act, practice, or course of business by any investment adviser registered pursuant to this section or any person acting on behalf of such an investment adviser, irrespective of any use of the mails or any means or instrumentality of interstate commerce in connection therewith.

(e) Censure, denial, or suspension of registration; notice and hearing

The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding twelve months, or revoke the registration of any investment adviser if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest and that such investment adviser, or any person associated with such investment adviser, whether prior to or subsequent to becoming so associated—

(1) has willfully made or caused to be made in any application for registration or report required to be filed with the Commission under this subchapter, or in any proceeding before the Commission with respect to registration, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which is required to be stated therein.

(2) has been convicted within ten years preceding the filing of any application for registration or at any time thereafter of any felony or misdemeanor or of a substantially equivalent crime by a foreign court of competent jurisdiction which the Commission finds—

(A) involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, any substantially equivalent activity however denominated by the laws of the relevant foreign government, or conspiracy to commit any such offense;

(B) arises out of the conduct of the business of a broker, dealer, municipal securities dealer, investment adviser, bank, insurance company, government securities broker, government securities dealer, fiduciary, transfer agent, credit rating agency, foreign person performing a function substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act [7 U.S.C. 1 et seq.] or any substantially equivalent statute or regulation;

(C) involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities or substantially equivalent activity however denominated by the laws of the relevant foreign government; or

(D) involves the violation of section 152, 1341, 1342, or 1343 or chapter 25 or 47 of title 18, or a violation of [2] substantially equivalent foreign statute.

(3) has been convicted during the 10-year period preceding the date of filing of any application for registration, or at any time thereafter, of—

(A) any crime that is punishable by imprisonment for 1 or more years, and that is not described in paragraph (2); or

(B) a substantially equivalent crime by a foreign court of competent jurisdiction.

(4) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction, including any foreign court of competent jurisdiction, from acting as an investment adviser, underwriter, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, transfer agent, credit rating agency, foreign person performing a function substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act [7 U.S.C. 1 et seq.] or any substantially equivalent statute or regulation, or as an affiliated person or employee of any investment company, bank, insurance company, foreign entity substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent statute or regulation, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security.

(5) has willfully violated any provision of the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.], this subchapter, the Commodity Exchange Act [7 U.S.C. 1 et seq.], or the rules or regulations under any such statutes or any rule of the Municipal Securities Rulemaking Board, or is unable to comply with any such provision.

(6) has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any provision of the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.], this subchapter, the Commodity Exchange Act [7 U.S.C. 1 et seq.], the rules or regulations under any of such statutes, or the rules of the Municipal Securities Rulemaking Board, or has failed reasonably to supervise, with a view to preventing violations of the provisions of such statutes, rules and regulations, another person who commits such a violation, if such other person is subject to his supervision. For the purposes of this paragraph no person shall be deemed to have failed reasonably to supervise any person, if—

(A) there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person, and

(B) such person has reasonably discharged the duties and obligations incumbent upon him by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with.

(7) is subject to any order of the Commission barring or suspending the right of the person to be associated with an investment adviser;

(8) has been found by a foreign financial regulatory authority to have—

(A) made or caused to be made in any application for registration or report required to be filed with a foreign securities authority, or in any proceeding before a foreign securities authority with respect to registration, any statement that was at the time and in light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any application or report to a foreign securities authority any material fact that is required to be stated therein;

(B) violated any foreign statute or regulation regarding transactions in securities or contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market or any board of trade; or

(C) aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any foreign statute or regulation regarding transactions in securities or contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market or any board of trade, or has been found, by the foreign finanical [3] regulatory authority, to have failed reasonably to supervise, with a view to preventing violations of statutory provisions, and rules and regulations promulgated thereunder, another person who commits such a violation, if such other person is subject to his supervision; or

(9) is subject to any final order of a State securities commission (or any agency or officer performing like functions), State authority that supervises or examines banks, savings associations, or credit unions, State insurance commission (or any agency or office performing like functions), an appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), or the National Credit Union Administration, that—

(A) bars such person from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities; or

(B) constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.

(f) Bar or suspension from association with investment adviser; notice and hearing

The Commission, by order, shall censure or place limitations on the activities of any person associated, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated with an investment adviser, or suspend for a period not exceeding 12 months or bar any such person from being associated with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed or omitted any act or omission enumerated in paragraph (1), (5), (6), (8), or (9) of subsection (e) of this section or has been convicted of any offense specified in paragraph (2) or (3) of subsection (e) of this section within ten years of the commencement of the proceedings under this subsection, or is enjoined from any action, conduct, or practice specified in paragraph (4) of subsection (e) of this section. It shall be unlawful for any person as to whom such an order suspending or barring him from being associated with an investment adviser is in effect willfully to become, or to be, associated with an investment adviser without the consent of the Commission, and it shall be unlawful for any investment adviser to permit such a person to become, or remain, a person associated with him without the consent of the Commission, if such investment adviser knew, or in the exercise of reasonable care, should have known, of such order.

(g) Registration of successor to business of investment adviser

Any successor to the business of an investment adviser registered under this section shall be deemed likewise registered hereunder, if within thirty days from its succession to such business it shall file an application for registration under this section, unless and until the Commission, pursuant to subsection (c) or subsection (e) of this section, shall deny registration to or revoke or suspend the registration of such successor.

(h) Withdrawal of registration

Any person registered under this section may, upon such terms and conditions as the Commission finds necessary in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any person registered under this section, or who has pending an application for registration filed under this section, is no longer in existence, is not engaged in business as an investment adviser, or is prohibited from registering as an investment adviser under section 80b–3a of this title, the Commission shall by order cancel the registration of such person.

(i) Money penalties in administrative proceedings

(1) Authority of Commission

(A) In general

In any proceeding instituted pursuant to subsection (e) or (f) of this section against any person, the Commission may impose a civil penalty if it finds, on the record after notice and opportunity for hearing, that such penalty is in the public interest and that such person—

(i) has willfully violated any provision of the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], subchapter I of this chapter, or this subchapter, or the rules or regulations thereunder;

(ii) has willfully aided, abetted, counseled, commanded, induced, or procured such a violation by any other person;

(iii) has willfully made or caused to be made in any application for registration or report required to be filed with the Commission under this subchapter, or in any proceeding before the Commission with respect to registration, any statement which was, at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which was required to be stated therein; or

(iv) has failed reasonably to supervise, within the meaning of subsection (e)(6) of this section, with a view to preventing violations of the provisions of this subchapter and the rules and regulations thereunder, another person who commits such a violation, if such other person is subject to his supervision; [4]

(B) Cease-and-desist proceedings

In any proceeding instituted pursuant to subsection (k) against any person, the Commission may impose a civil penalty if the Commission finds, on the record, after notice and opportunity for hearing, that such person—

(i) is violating or has violated any provision of this subchapter, or any rule or regulation issued under this subchapter; or

(ii) is or was a cause of the violation of any provision of this subchapter, or any rule or regulation issued under this subchapter.

(2) Maximum amount of penalty

(A) First tier

The maximum amount of penalty for each act or omission described in paragraph (1) shall be $5,000 for a natural person or $50,000 for any other person.

(B) Second tier

Notwithstanding subparagraph (A), the maximum amount of penalty for each such act or omission shall be $50,000 for a natural person or $250,000 for any other person if the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

(C) Third tier

Notwithstanding subparagraphs (A) and (B), the maximum amount of penalty for each such act or omission shall be $100,000 for a natural person or $500,000 for any other person if—

(i) the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

(ii) such act or omission directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission.

(3) Determination of public interest

In considering under this section whether a penalty is in the public interest, the Commission may consider—

(A) whether the act or omission for which such penalty is assessed involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement;

(B) the harm to other persons resulting either directly or indirectly from such act or omission;

(C) the extent to which any person was unjustly enriched, taking into account any restitution made to persons injured by such behavior;

(D) whether such person previously has been found by the Commission, another appropriate regulatory agency, or a self-regulatory organization to have violated the Federal securities laws, State securities laws, or the rules of a self-regulatory organization, has been enjoined by a court of competent jurisdiction from violations of such laws or rules, or has been convicted by a court of competent jurisdiction of violations of such laws or of any felony or misdemeanor described in subsection (e)(2) of this section;

(E) the need to deter such person and other persons from committing such acts or omissions; and

(F) such other matters as justice may require.

(4) Evidence concerning ability to pay

In any proceeding in which the Commission may impose a penalty under this section, a respondent may present evidence of the respondent's ability to pay such penalty. The Commission may, in its discretion, consider such evidence in determining whether such penalty is in the public interest. Such evidence may relate to the extent of such person's ability to continue in business and the collectability of a penalty, taking into account any other claims of the United States or third parties upon such person's assets and the amount of such person's assets.

(j) Authority to enter order requiring accounting and disgorgement

In any proceeding in which the Commission may impose a penalty under this section, the Commission may enter an order requiring accounting and disgorgement, including reasonable interest. The Commission is authorized to adopt rules, regulations, and orders concerning payments to investors, rates of interest, periods of accrual, and such other matters as it deems appropriate to implement this subsection.

(k) Cease-and-desist proceedings

(1) Authority of Commission

If the Commission finds, after notice and opportunity for hearing, that any person is violating, has violated, or is about to violate any provision of this subchapter, or any rule or regulation thereunder, the Commission may publish its findings and enter an order requiring such person, and any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation of the same provision, rule, or regulation. Such order may, in addition to requiring a person to cease and desist from committing or causing a violation, require such person to comply, or to take steps to effect compliance, with such provision, rule, or regulation, upon such terms and conditions and within such time as the Commission may specify in such order. Any such order may, as the Commission deems appropriate, require future compliance or steps to effect future compliance, either permanently or for such period of time as the Commission may specify, with such provision, rule, or regulation with respect to any security, any issuer, or any other person.

(2) Hearing

The notice instituting proceedings pursuant to paragraph (1) shall fix a hearing date not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the Commission with the consent of any respondent so served.

(3) Temporary order

(A) In general

Whenever the Commission determines that the alleged violation or threatened violation specified in the notice instituting proceedings pursuant to paragraph (1), or the continuation thereof, is likely to result in significant dissipation or conversion of assets, significant harm to investors, or substantial harm to the public interest, including, but not limited to, losses to the Securities Investor Protection Corporation, prior to the completion of the proceedings, the Commission may enter a temporary order requiring the respondent to cease and desist from the violation or threatened violation and to take such action to prevent the violation or threatened violation and to prevent dissipation or conversion of assets, significant harm to investors, or substantial harm to the public interest as the Commission deems appropriate pending completion of such proceedings. Such an order shall be entered only after notice and opportunity for a hearing, unless the Commission, notwithstanding section 80b–11(c) of this title, determines that notice and hearing prior to entry would be impracticable or contrary to the public interest. A temporary order shall become effective upon service upon the respondent and, unless set aside, limited, or suspended by the Commission or a court of competent jurisdiction, shall remain effective and enforceable pending the completion of the proceedings.

(B) Applicability

This paragraph shall apply only to a respondent that acts, or, at the time of the alleged misconduct acted, as a broker, dealer, investment adviser, investment company, municipal securities dealer, government securities broker, government securities dealer, or transfer agent, or is, or was at the time of the alleged misconduct, an associated person of, or a person seeking to become associated with, any of the foregoing.

(4) Review of temporary orders

(A) Commission review

At any time after the respondent has been served with a temporary cease-and-desist order pursuant to paragraph (3), the respondent may apply to the Commission to have the order set aside, limited, or suspended. If the respondent has been served with a temporary cease-and-desist order entered without a prior Commission hearing, the respondent may, within 10 days after the date on which the order was served, request a hearing on such application and the Commission shall hold a hearing and render a decision on such application at the earliest possible time.

(B) Judicial review

Within—

(i) 10 days after the date the respondent was served with a temporary cease-and-desist order entered with a prior Commission hearing, or

(ii) 10 days after the Commission renders a decision on an application and hearing under subparagraph (A), with respect to any temporary cease-and-desist order entered without a prior Commission hearing,

the respondent may apply to the United States district court for the district in which the respondent resides or has its principal office or place of business, or for the District of Columbia, for an order setting aside, limiting, or suspending the effectiveness or enforcement of the order, and the court shall have jurisdiction to enter such an order. A respondent served with

a temporary cease-and-desist order entered without a prior Commission hearing may not apply to the court except after hearing and decision by the Commission on the respondent's application under subparagraph (A) of this paragraph.

(C) No automatic stay of temporary order

The commencement of proceedings under subparagraph (B) of this paragraph shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(D) Exclusive review

Section 80b–13 of this title shall not apply to a temporary order entered pursuant to this section.

(5) Authority to enter order requiring accounting and disgorgement

In any cease-and-desist proceeding under paragraph (1), the Commission may enter an order requiring accounting and disgorgement, including reasonable interest. The Commission is authorized to adopt rules, regulations, and orders concerning payments to investors, rates of interest, periods of accrual, and such other matters as it deems appropriate to implement this subsection.

(l) Exemption of venture capital fund advisers

No investment adviser that acts as an investment adviser solely to 1 or more venture capital funds shall be subject to the registration requirements of this subchapter with respect to the provision of investment advice relating to a venture capital fund. Not later than 1 year after July 21, 2010, the Commission shall issue final rules to define the term "venture capital fund" for purposes of this subsection. The Commission shall require such advisers to maintain such records and provide to the Commission such annual or other reports as the Commission determines necessary or appropriate in the public interest or for the protection of investors.

(m) Exemption of and reporting by certain private fund advisers

(1) In general

The Commission shall provide an exemption from the registration requirements under this section to any investment adviser of private funds, if each of [5] such investment adviser acts solely as an adviser to private funds and has assets under management in the United States of less than $150,000,000.

(2) Reporting

The Commission shall require investment advisers exempted by reason of this subsection to maintain such records and provide to the Commission such annual or other reports as the Commission determines necessary or appropriate in the public interest or for the protection of investors.

(n) Registration and examination of mid-sized private fund advisers

In prescribing regulations to carry out the requirements of this section with respect to investment advisers acting as investment advisers to mid-sized private funds, the Commission shall take into account the size, governance, and investment strategy of such funds to determine whether they pose systemic risk, and shall provide for registration and examination procedures with respect to the investment advisers of such funds which reflect the level of systemic risk posed by such funds.

(Aug. 22, 1940, ch. 686, title II, §203, 54 Stat. 850; Pub. L. 86–750, §§2–5, Sept. 13, 1960, 74 Stat. 885, 886; Pub. L. 91–547, §24, Dec. 14, 1970, 84 Stat. 1430; Pub. L. 94–29, §29(1)–(4), June 4, 1975, 89 Stat. 166–169; Pub. L. 96–477, title II, §202, Oct. 21, 1980, 94 Stat. 2290; Pub. L. 99–571, title I, §102(m), Oct. 28, 1986, 100 Stat. 3220; Pub. L. 100–181, title VII, §702, Dec. 4, 1987, 101 Stat. 1263; Pub. L. 101–429, title IV, §401, Oct. 15, 1990, 104 Stat. 946; Pub. L. 101–550, title II, §205(b), (c), Nov. 15, 1990, 104 Stat. 2719, 2720; Pub. L. 104–62, §5, Dec. 8, 1995, 109 Stat. 685; Pub. L. 104–290, title III, §§303(b), (d), 305, title V, §508(d), Oct. 11, 1996, 110 Stat. 3438, 3439, 3448; Pub. L. 105–353, title III, §301(d)(1), Nov. 3, 1998, 112 Stat. 3237; Pub. L. 106–554, §1(a)(5)

[title II, §209(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–436; Pub. L. 107–204, title VI, §604(b), (c)(2), July 30, 2002, 116 Stat. 796; Pub. L. 109–291, §4(b)(3)(C), Sept. 29, 2006, 120 Stat. 1337; Pub. L. 111–203, title IV, §§403, 407, 408, title IX, §§925(b), 929P(a)(4), 985(e)(1), July 21, 2010, 124 Stat. 1571, 1574, 1575, 1851, 1864, 1935.)

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in subsec. (b)(7), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, which is classified principally to chapter 14B (§661 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

The Commodity Exchange Act, referred to in subsec. (e)(2)(B), (4)–(6), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

The Securities Act of 1933, referred to in subsecs. (e)(5), (6) and (i)(1)(A)(i), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Securities Exchange Act of 1934, referred to in subsecs. (e)(5), (6) and (i)(1)(A)(i), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

The Investment Company Act of 1940, referred to in subsec. (e)(5), (6), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§80a–1 et seq.) of this chapter. For complete classification of this Act to the Code, see section 80a–51 of this title and Tables.

AMENDMENTS

2010—Subsec. (b)(1). Pub. L. 111–203, §403(1), inserted ", other than an investment adviser who acts as an investment adviser to any private fund," after "any investment adviser".

Subsec. (b)(3). Pub. L. 111–203, §403(2), added par. (3) and struck out former par. (3) which read as follows: "any investment adviser who during the course of the preceding twelve months has had fewer than fifteen clients and who neither holds himself out generally to the public as an investment adviser nor acts as an investment adviser to any investment company registered under subchapter I of this chapter, or a company which has elected to be a business development company pursuant to section 80a–53 of this title and has not withdrawn its election. For purposes of determining the number of clients of an investment adviser under this paragraph, no shareholder, partner, or beneficial owner of a business development company, as defined in this subchapter, shall be deemed to be a client of such investment adviser unless such person is a client of such investment adviser separate and apart from his status as a shareholder, partner, or beneficial owner;".

Subsec. (b)(5). Pub. L. 111–203, §403(3), struck out "or" at end.

Subsec. (b)(6). Pub. L. 111–203, §403(4), designated existing provisions as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, and added subpar. (B).

Subsec. (b)(7). Pub. L. 111–203, §403(5), added par. (7).

Subsec. (c)(1)(A). Pub. L. 111–203, §985(e)(1)(A), substituted "principal office, principal place of business, and" for "principal business office and".

Subsec. (f). Pub. L. 111–203, §925(b), substituted "12 months or bar any such person from being associated with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization," for "twelve months or bar any such person from being associated with an investment adviser,".

Subsec. (i)(1). Pub. L. 111–203, §929P(a)(4), designated existing provisions as subpar. (A) and inserted heading, inserted "that such penalty is in the public interest and" before "that such person—" in introductory provisions, redesignated former subpars. (A) to (D) as cls. (i) to (iv), respectively, and realigned margins, struck out concluding provisions which read "and that such penalty is in the public interest.", and added subpar. (B).

Subsec. (k)(4)(B). Pub. L. 111–203, §985(e)(1)(B), substituted "principal office or place of business" for "principal place of business" in concluding provisions.

Subsec. (l). Pub. L. 111–203, §407, added subsec. (l).

Subsecs. (m), (n). Pub. L. 111–203, §408, added subsecs. (m) and (n).

2006—Subsec. (e)(2)(B), (4). Pub. L. 109–291 inserted "credit rating agency," after "transfer agent,".

2002—Subsec. (e)(7). Pub. L. 107–204, §604(b)(1), added par. (7) and struck out former par. (7) which read as follows: "is subject to an order of the Commission entered pursuant to subsection (f) of this section barring or suspending the right of such person to be associated with an investment adviser which order is in effect with respect to such person."

Subsec. (e)(9). Pub. L. 107–204, §604(b)(2), (3), added par. (9).

Subsec. (f). Pub. L. 107–204, §604(c)(2), substituted "(8), or (9)" for "or (8)" and inserted "or (3)" after "paragraph (2)".

2000—Subsec. (b)(6). Pub. L. 106–554 added par. (6).

1998—Subsec. (e)(8)(B). Pub. L. 105–353 inserted "or" after semicolon at end.

1996—Subsec. (a). Pub. L. 104–290, §303(d), which directed substitution of "subsection (b) of this section and section 80b–3a of this title" for "subsection (b) of this section", was executed by making the substitution for "subsection (b)" to reflect the probable intent of Congress.

Subsec. (b)(5). Pub. L. 104–290, §508(d), added par. (5).

Subsec. (c)(2). Pub. L. 104–290, §303(b)(1), inserted "and that the applicant is not prohibited from registering as an investment adviser under section 80b–3a of this title" after "satisfied" in closing provisions.

Subsec. (e)(3) to (5). Pub. L. 104–290, §305(a), added par. (3) and redesignated former pars. (3) and (4) as (4) and (5), respectively. Former par. (5) redesignated (6).

Subsec. (e)(6). Pub. L. 104–290, §305(b)(1), substituted "this paragraph" for "this paragraph (5)".

Pub. L. 104–290, §305(a)(1), redesignated par. (5) as (6). Former par. (6) redesignated (7).

Subsec. (e)(7), (8). Pub. L. 104–290, §305(a)(1), redesignated pars. (6) and (7) as (7) and (8), respectively.

Subsec. (f). Pub. L. 104–290, §305(b)(2), substituted "paragraph (1), (5), (6), or (8) of subsection (e) of this section" for "paragraph (1), (4), (5), or (7) of subsection (e) of this section" and "paragraph (4)" for "paragraph (3)" and substituted "subsection (e)" for "said subsection (e)" in two places.

Subsec. (h). Pub. L. 104–290, §303(b)(2), substituted "existence," for "existence or" and inserted "or is prohibited from registering as an investment adviser under section 80b–3a of this title," after "investment adviser,".

Subsec. (i)(1)(D). Pub. L. 104–290, §305(b)(3), substituted "subsection (e)(6) of this section" for "subsection (e)(5) of this section".

1995—Subsec. (b)(4). Pub. L. 104–62 added par. (4).

1990—Subsec. (e)(2). Pub. L. 101–550, §205(b)(1), inserted "or of a substantially equivalent crime by a foreign court of competent jurisdiction" after "misdemeanor".

Subsec. (e)(2)(A). Pub. L. 101–550, §205(b)(2), inserted "any substantially equivalent activity however denominated by the laws of the relevant foreign government," after "burglary,".

Subsec. (e)(2)(B). Pub. L. 101–550, §205(b)(3), inserted "foreign person performing a function substantially equivalent to any of the above," after "transfer agent," and "or any substantially equivalent statute or regulation" after "Commodity Exchange Act".

Subsec. (e)(2)(C). Pub. L. 101–550, §205(b)(4), inserted "or substantially equivalent activity however denominated by the laws of the relevant foreign government" after "securities".

Subsec. (e)(2)(D). Pub. L. 101–550, §205(b)(5), inserted ", or a violation of substantially equivalent foreign statute" after "title 18".

Subsec. (e)(3). Pub. L. 101–550, §205(b)(3), (6), inserted "foreign person performing a function substantially equivalent to any of the above," after "transfer agent,", "or any substantially equivalent statute or regulation" after "Commodity Exchange Act" wherever appearing, ", including any foreign court of competent jurisdiction", and "foreign entity substantially equivalent to any of the above," after "insurance company,".

Subsec. (e)(5). Pub. L. 101–550, §205(b)(7), inserted "the Commodity Exchange Act" after "this subchapter,".

Subsec. (e)(7). Pub. L. 101–550, §205(b)(8), added par. (7).

Subsec. (f). Pub. L. 101–550, §205(c), substituted "paragraph (1), (4), (5), or (7)" for "paragraph (1), (4), or (5)".

Subsecs. (i) to (k). Pub. L. 101–429 added subsecs. (i) to (k).

1987—Subsec. (e)(2)(B). Pub. L. 100–181, §702(1), inserted "transfer agent," after "fiduciary,".

Subsec. (e)(3). Pub. L. 100–181, §702(2), inserted "transfer agent," after "government securities dealer,".

Subsec. (f). Pub. L. 100–181, §702(3), inserted ", seeking to become associated, or, at the time of the alleged misconduct, associated" before "or seeking to become associated".

Subsec. (g). Pub. L. 100–181, §702(4), substituted "subsection (c) or subsection (e)" for "subsection (d)".

1986—Subsec. (e)(2)(B). Pub. L. 99–571, §102(m)(1), substituted "government securities broker, government securities dealer, fiduciary, or entity or person required to be registered under the Commodity Exchange Act" for "or fiduciary".

Subsec. (e)(3). Pub. L. 99–571, §102(m)(2), inserted par. (3) and struck out former par. (3) which read as follows: "is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, or municipal securities dealer, or as an affiliated person or employee of any investment company, bank, or insurance company, or from

engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security."

Subsec. (e)(4). Pub. L. 99–571, §102(m)(3), inserted reference to Commodity Exchange Act.

1980—Subsec. (b)(3). Pub. L. 96–477 required investment advisers to business development companies to register under this section and provided that for purposes of determining the number of clients of an investment adviser under par. (3), no shareholders, partners, or beneficial owners of business development companies were to be deemed to be clients of an investment adviser unless such person qualified as a client apart from his status in connection with the business development company.

1975—Subsec. (c). Pub. L. 94–29, §29(1), inserted provision authorizing the Commission to require a balance sheet certified by an independent public accountant and other financial statements which, as the Commission specifies, may be certified, and substituted provisions directing the Commission either to grant the registration within forty-five days or institute proceedings to determine whether registration should be denied, directing the Commission to grant registration if it finds that the requirements of this section are satisfied, and requiring the Commission to deny registration if it does not make such a finding or finds that if the applicant were registered its registration would be subject to suspension or revocation for provisions directing that registration be effective thirty days after receipt of the application by the Commission except as otherwise provided and making allowances for amendment of the application.

Subsec. (e). Pub. L. 94–29, §29(2), added the placing of limitations on the activities of investment advisers to the enumeration of sanctions available to the Commission as set out in the provisions preceding par. (1), inserted references in par. (2)(A) to the taking of a false oath, the making of a false report, bribery, perjury, burglary, and conspiracy to commit such offenses, expanded par. (2)(B) to include municipal securities dealers, banks, insurance companies, and fiduciaries, inserted references in par. (2)(C) to larceny, theft, robbery, extortion, forgery, counterfeiting, and fraudulent concealment, inserted references in par. (2)(D) to section 152 and chapters 25 and 47 of title 18, and inserted reference to the rules of the Municipal Securities Rulemaking Board in pars. (4) and (5).

Subsec. (f). Pub. L. 94–29, §29(3), added the placing of limitations on the activities of persons associated or seeking to become associated with an investment adviser to the enumeration of sanctions available to the Commission.

Subsecs. (g), (h). Pub. L. 94–29, §29(4), redesignated subsecs. (h) and (i) as (g) and (h), respectively. Former subsec. (g), covering the postponement of the effective day of registration by the commencement of a proceeding to deny registration, was struck out.

1970—Subsec. (b). Pub. L. 91–547, §24(a), struck out "investment companies and" before "insurance companies" in par. (2) and struck out "does not hold" after "clients and who" and inserted "neither hold" and "nor acts as an investment adviser to any investment company registered under subchapter I of this chapter" in par. (3).

Subsec. (c)(1)(F). Pub. L. 91–547, §24(b), substituted "any person associated with such investment adviser" for "any partner, officer, director thereof, or any person performing similar functions, or any person directly or indirectly controlling or controlled by such investment adviser" and reference to subsec. "(e)" for "(d)".

Subsecs. (d), (e). Pub. L. 91–547, §24(c), (d), added subsec. (d), redesignated former subsec. (d) as (e), and in amending its provisions, inserted reference to "censure" in two places and substituted "such investment adviser or any person associated with such investment adviser" for "(1) such investment adviser, whether prior or subsequent to becoming such, or (2) any partner, officer, or director thereof, or any person performing similar functions, or (3) any person directly or indirectly controlling or controlled by such investment adviser, whether prior or subsequent to becoming such," in introductory text preceding par. (1), formerly cl. (A), redesignated as pars. (1) to (5) former cls. (A) to (E), redesignated as items (A) to (D) of par. (2) former items (i) to (iv), striking out ", as heretofore or hereafter amended" after "Title 18", substituted in par. (3) "an affiliated person" for "as an affiliated person", in par. (4) included reference to subchapter I of this chapter and struck out "as any of such statutes heretofore have been or hereafter may be amended" after "this subchapter", in par. (5) included reference to subchapter I of this chapter, struck out "as any of such statutes heretofore have been or hereafter may be amended" after "this subchapter", inserted provision respecting disciplining an investment adviser for failure reasonably to supervise, with a view to preventing violations of statutes, rules, and regulations, another person who commits such a violation if such other person is subject to his supervision, including subpars. (A) and (B) respecting failure to supervise a person, and inserted par. (6). Former subsec. (e) redesignated (g).

Subsec. (f). Pub. L. 91–547, §24(e), inserted subsec. (f). Former subsec. (f) redesignated (h).

Subsec. (g). Pub. L. 91–547, §24(c), redesignated former subsec. (e) as (g). Former subsec. (g) redesignated (i).

Subsecs. (h), (i). Pub. L. 91–547, §24(e), redesignated former subsecs. (f) and (g) as (h) and (i),

respectively.

1960—Subsec. (c)(1)(F). Pub. L. 86–750, §2, substituted "or any person performing similar functions, or any person directly or indirectly controlling or controlled by such investment adviser, is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of such investment adviser under the provisions of subsection (d)" for "person performing similar function or controlling person thereof (i) within ten years of the filing of such application has been convicted of any felony or misdemeanor of the character described in paragraph (1) of subsection (d) of this section, or (ii) is permanently or temporarily enjoined by an order, judgment or decree of the character described in paragraph (2) of said subsection (d) and in each case the facts relating to such conviction or injunction".

Subsec. (c)(2). Pub. L. 86–750, §3(a), substituted "a statement as to whether the principal business of such investment adviser consists or is to consist of acting as investment adviser and a statement as to whether a substantial part of the business of such investment adviser consists or is to consist of rendering investment supervisory services" for "a statement as to whether such investment adviser is engaged or is to engage primarily in the business of rendering investment supervisory services".

Subsec. (d). Pub. L. 86–750, §3(b), among other changes, limited the period of suspension to twelve months, included people controlled by the adviser, provided that the ten year period within which convictions are counted be measured from the filing of the application or after specified felonies or misdemeanors, increased the number of offenses by including willful, false or misleading statements as to any material fact, or omissions thereof, in any application for registration or report filed with the Commission, embezzlement, fraudulent conversion, and misappropriation of funds or securities, violations of sections 1341, 1342 or 1343 of title 18, willful violations of, or aiding, abetting, counseling, commanding, inducing or procuring the violation of the Securities Act of 1933, or of the Securities Exchange Act of 1934, or of this title, and any amendment or rule or regulation thereunder.

Subsec. (e). Pub. L. 86–750, §4, substituted provisions postponing the effective date of registration for ninety days at commencement of a proceeding to deny registration, or until final determination whether such registration should be denied, whichever was first, and authorizing the Commission after notice and opportunity for hearing, to postpone said effective date beyond the ninety-day period or final determination, provided that upon request of any interested party, made more than ninety days after such postponement, the Commission shall consider the postponement's continuation, for provisions prohibiting postponement of the effective date of registration upon a proceeding to deny registration, unless the Commission found it in the public interest to do so, and which limited said postponement to three months.

Subsec. (g). Pub. L. 86–750, §5, substituted "existence" for "business".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 925(b), 929P(a)(4), and 985(e)(1) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Amendment by sections 403, 407, and 408 of Pub. L. 111–203 effective 1 year after July 21, 2010, except that any investment adviser may, at the discretion of the investment adviser, register with the Commission under the Investment Advisers Act of 1940 during that 1-year period, subject to the rules of the Commission, and except as otherwise provided, see section 419 of Pub. L. 111–203, set out as a note under section 80b–2 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by sections 303(b), (d) and 305 of Pub. L. 104–290 effective 270 days after Oct. 11, 1996, see section 308(a) of Pub. L. 104–290, as amended, set out as a note under section 80b–2 of this title.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–62 applicable as defense to any claim in administrative and judicial actions pending on or commenced after Dec. 8, 1995, that any person, security, interest, or participation of type described in Pub. L. 104–62 is subject to the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, or any State statute or regulation preempted as provided in section 80a–3a of this title, except as specifically provided in such statutes, see section 7 of Pub. L. 104–62, set out as a note under section 77c of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–429 effective Oct. 15, 1990, with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(1), (2) of Pub. L. 101–429, set out in a note under section 77g of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–571 effective 270 days after Oct. 28, 1986, see section 401 of Pub. L. 99–571, set out as an Effective Date note under section 78o–5 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–547 effective Dec. 14, 1970, except that amendment by section 24(a) of Pub. L. 91–547 effective on expiration of one year after Dec. 14, 1970, see section 30 (introductory text and par. (1)) of Pub. L. 91–547, set out as a note under section 80a–52 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

[1] So in original. The period probably should be "; or".

[2] So in original. Probably should be "of a".

[3] So in original. Probably should be "financial".

[4] So in original. The semicolon probably should be a period.

[5] So in original. The word "of" probably should not appear.

§80b–3a. State and Federal responsibilities

(a) Advisers subject to State authorities

(1) In general

No investment adviser that is regulated or required to be regulated as an investment adviser in the State in which it maintains its principal office and place of business shall register under section 80b–3 of this title, unless the investment adviser—

(A) has assets under management of not less than $25,000,000, or such higher amount as the Commission may, by rule, deem appropriate in accordance with the purposes of this subchapter; or

(B) is an adviser to an investment company registered under subchapter I of this chapter.

(2) Treatment of mid-sized investment advisers

(A) In general

No investment adviser described in subparagraph (B) shall register under section 80b–3 of this title, unless the investment adviser is an adviser to an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.], or a company which has elected to be a business development company pursuant to section 54 of the Investment Company Act of 1940 [15 U.S.C. 80a–53], and has not withdrawn the election, except that, if by effect of this paragraph an investment adviser would be required to register with 15 or more States, then the adviser may register under section 80b–3 of this title.

(B) Covered persons

An investment adviser described in this subparagraph is an investment adviser that—

(i) is required to be registered as an investment adviser with the securities commissioner

(or any agency or office performing like functions) of the State in which it maintains its principal office and place of business and, if registered, would be subject to examination as an investment adviser by any such commissioner, agency, or office; and

(ii) has assets under management between—

(I) the amount specified under subparagraph (A) of paragraph (1), as such amount may have been adjusted by the Commission pursuant to that subparagraph; and

(II) $100,000,000, or such higher amount as the Commission may, by rule, deem appropriate in accordance with the purposes of this subchapter.

(3) "Assets under management" defined

For purposes of this subsection, the term "assets under management" means the securities portfolios with respect to which an investment adviser provides continuous and regular supervisory or management services.

(b) Advisers subject to Commission authority

(1) In general

No law of any State or political subdivision thereof requiring the registration, licensing, or qualification as an investment adviser or supervised person of an investment adviser shall apply to any person—

(A) that is registered under section 80b–3 of this title as an investment adviser, or that is a supervised person of such person, except that a State may license, register, or otherwise qualify any investment adviser representative who has a place of business located within that State; or

(B) that is not registered under section 80b–3 of this title because that person is excepted from the definition of an investment adviser under section 80b–2(a)(11) of this title.

(2) Limitation

Nothing in this subsection shall prohibit the securities commission (or any agency or office performing like functions) of any State from investigating and bringing enforcement actions with respect to fraud or deceit against an investment adviser or person associated with an investment adviser.

(c) Exemptions

Notwithstanding subsection (a) of this section, the Commission, by rule or regulation upon its own motion, or by order upon application, may permit the registration with the Commission of any person or class of persons to which the application of subsection (a) of this section would be unfair, a burden on interstate commerce, or otherwise inconsistent with the purposes of this section.

(d) State assistance

Upon request of the securities commissioner (or any agency or officer performing like functions) of any State, the Commission may provide such training, technical assistance, or other reasonable assistance in connection with the regulation of investment advisers by the State.

(Aug. 22, 1940, ch. 686, title II, §203A, as added Pub. L. 104–290, title III, §303(a), Oct. 11, 1996, 110 Stat. 3437; amended Pub. L. 109–290, §7(b)(1), Sept. 29, 2006, 120 Stat. 1321; Pub. L. 111–203, title IV, §410, July 21, 2010, 124 Stat. 1576.)

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (a)(2)(A), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§80a–1 et seq.) of this chapter. For complete classification of this Act to the Code, see section 80a–51 of this title and Tables.

AMENDMENTS

2010—Subsec. (a)(2), (3). Pub. L. 111–203 added par. (2) and redesignated former par. (2) as (3).

2006—Subsecs. (d), (e). Pub. L. 109–290 redesignated subsec. (e) as (d) and struck out heading and text of former subsec. (d). Text read as follows: "The Commission may, by rule, require an investment adviser—

"(1) to file with the Commission any fee, application, report, or notice required by this subchapter or by the rules issued under this subchapter through any entity designated by the Commission for that purpose;

and

"(2) to pay the reasonable costs associated with such filing."

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 year after July 21, 2010, except that any investment adviser may, at the discretion of the investment adviser, register with the Commission under the Investment Advisers Act of 1940 during that 1-year period, subject to the rules of the Commission, and except as otherwise provided, see section 419 of Pub. L. 111–203, set out as a note under section 80b–2 of this title.

EFFECTIVE DATE

Section effective 270 days after Oct. 11, 1996, see section 308(a) of Pub. L. 104–290, as amended, set out as an Effective Date of 1996 Amendment note under section 80b–2 of this title.

CONTINUED STATE AUTHORITY

Pub. L. 104–290, title III, §307, Oct. 11, 1996, 110 Stat. 3440, provided that:

"(a) PRESERVATION OF FILING REQUIREMENTS.—Nothing in this title [see Short Title of 1996 Amendment note set out under section 80b–20 of this title] or any amendment made by this title prohibits the securities commission (or any agency or office performing like functions) of any State from requiring the filing of any documents filed with the Commission pursuant to the securities laws solely for notice purposes, together with a consent to service of process and any required fee.

"(b) PRESERVATION OF FEES.—Until otherwise provided by law, rule, regulation, or order, or other administrative action of any State, or any political subdivision thereof, adopted after the date of enactment of this Act [Oct. 11, 1996], filing, registration, or licensing fees shall, notwithstanding the amendments made by this title, continue to be paid in amounts determined pursuant to the law, rule, regulation, or order, or other administrative action as in effect on the day before such date of enactment.

"(c) AVAILABILITY OF PREEMPTION CONTINGENT ON PAYMENT OF FEES.—

"(1) IN GENERAL.—During the period beginning on the date of enactment of this Act [Oct. 11, 1996] and ending 3 years after that date of enactment, the securities commission (or any agency or office performing like functions) of any State may require registration of any investment adviser that fails or refuses to pay the fees required by subsection (b) in or to such State, notwithstanding the limitations on the laws, rules, regulations, or orders, or other administrative actions of any State, or any political subdivision thereof, contained in subsection (a), if the laws of such State require registration of investment advisers.

"(2) DELAYS.—For purposes of this subsection, delays in payment of fees or underpayments of fees that are promptly remedied in accordance with the applicable laws, rules, regulations, or orders, or other administrative actions of the relevant State shall not constitute a failure or refusal to pay fees."

§80b–4. Reports by investment advisers

(a) In general

Every investment adviser who makes use of the mails or of any means or instrumentality of interstate commerce in connection with his or its business as an investment adviser (other than one specifically exempted from registration pursuant to section 80b–3(b) of this title), shall make and keep for prescribed periods such records (as defined in section 78c(a)(37) of this title), furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. All records (as so defined) of such investment advisers are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

(b) Records and reports of private funds

(1) In general

The Commission may require any investment adviser registered under this subchapter—

(A) to maintain such records of, and file with the Commission such reports regarding, private funds advised by the investment adviser, as necessary and appropriate in the public interest and for the protection of investors, or for the assessment of systemic risk by the Financial Stability Oversight Council (in this subsection referred to as the "Council"); and

(B) to provide or make available to the Council those reports or records or the information contained therein.

(2) Treatment of records

The records and reports of any private fund to which an investment adviser registered under this subchapter provides investment advice shall be deemed to be the records and reports of the investment adviser.

(3) Required information

The records and reports required to be maintained by an investment adviser and subject to inspection by the Commission under this subsection shall include, for each private fund advised by the investment adviser, a description of—

(A) the amount of assets under management and use of leverage, including off-balance-sheet leverage;

(B) counterparty credit risk exposure;

(C) trading and investment positions;

(D) valuation policies and practices of the fund;

(E) types of assets held;

(F) side arrangements or side letters, whereby certain investors in a fund obtain more favorable rights or entitlements than other investors;

(G) trading practices; and

(H) such other information as the Commission, in consultation with the Council, determines is necessary and appropriate in the public interest and for the protection of investors or for the assessment of systemic risk, which may include the establishment of different reporting requirements for different classes of fund advisers, based on the type or size of private fund being advised.

(4) Maintenance of records

An investment adviser registered under this subchapter shall maintain such records of private funds advised by the investment adviser for such period or periods as the Commission, by rule, may prescribe as necessary and appropriate in the public interest and for the protection of investors, or for the assessment of systemic risk.

(5) Filing of records

The Commission shall issue rules requiring each investment adviser to a private fund to file reports containing such information as the Commission deems necessary and appropriate in the public interest and for the protection of investors or for the assessment of systemic risk.

(6) Examination of records

(A) Periodic and special examinations

The Commission—

(i) shall conduct periodic inspections of the records of private funds maintained by an investment adviser registered under this subchapter in accordance with a schedule established by the Commission; and

(ii) may conduct at any time and from time to time such additional, special, and other examinations as the Commission may prescribe as necessary and appropriate in the public interest and for the protection of investors, or for the assessment of systemic risk.

(B) Availability of records

An investment adviser registered under this subchapter shall make available to the Commission any copies or extracts from such records as may be prepared without undue effort, expense, or delay, as the Commission or its representatives may reasonably request.

(7) Information sharing

(A) In general

The Commission shall make available to the Council copies of all reports, documents, records, and information filed with or provided to the Commission by an investment adviser under this subsection as the Council may consider necessary for the purpose of assessing the systemic risk posed by a private fund.

(B) Confidentiality

The Council shall maintain the confidentiality of information received under this paragraph in all such reports, documents, records, and information, in a manner consistent with the level of confidentiality established for the Commission pursuant to paragraph (8). The Council shall be exempt from section 552 of title 5 with respect to any information in any report, document, record, or information made available, to the Council under this subsection.".[1]

(8) Commission confidentiality of reports

Notwithstanding any other provision of law, the Commission may not be compelled to disclose any report or information contained therein required to be filed with the Commission under this subsection, except that nothing in this subsection authorizes the Commission—

(A) to withhold information from Congress, upon an agreement of confidentiality; or

(B) prevent [2] the Commission from complying with—

(i) a request for information from any other Federal department or agency or any self-regulatory organization requesting the report or information for purposes within the scope of its jurisdiction; or

(ii) an order of a court of the United States in an action brought by the United States or the Commission.

(9) Other recipients confidentiality

Any department, agency, or self-regulatory organization that receives reports or information from the Commission under this subsection shall maintain the confidentiality of such reports, documents, records, and information in a manner consistent with the level of confidentiality established for the Commission under paragraph (8).

(10) Public information exception

(A) In general

The Commission, the Council, and any other department, agency, or self-regulatory organization that receives information, reports, documents, records, or information from the Commission under this subsection, shall be exempt from the provisions of section 552 of title 5 with respect to any such report, document, record, or information. Any proprietary information of an investment adviser ascertained by the Commission from any report required to be filed with the Commission pursuant to this subsection shall be subject to the same limitations on public disclosure as any facts ascertained during an examination, as provided by section 80b–10(b) of this title.

(B) Proprietary information

For purposes of this paragraph, proprietary information includes sensitive, non-public information regarding—

(i) the investment or trading strategies of the investment adviser;

(ii) analytical or research methodologies;

(iii) trading data;

(iv) computer hardware or software containing intellectual property; and

(v) any additional information that the Commission determines to be proprietary.

(11) Annual report to Congress

The Commission shall report annually to Congress on how the Commission has used the data collected pursuant to this subsection to monitor the markets for the protection of investors and the integrity of the markets.

(c) Filing depositories

The Commission may, by rule, require an investment adviser—

(1) to file with the Commission any fee, application, report, or notice required to be filed by this subchapter or the rules issued under this subchapter through any entity designated by the Commission for that purpose; and

(2) to pay the reasonable costs associated with such filing and the establishment and maintenance of the systems required by subsection (c).

(d) Access to disciplinary and other information

(1) Maintenance of system to respond to inquiries

(A) In general

The Commission shall require the entity designated by the Commission under subsection (b)(1) to establish and maintain a toll-free telephone listing, or a readily accessible electronic or other process, to receive and promptly respond to inquiries regarding registration information (including disciplinary actions, regulatory, judicial, and arbitration proceedings, and other information required by law or rule to be reported) involving investment advisers and persons associated with investment advisers.

(B) Applicability

This subsection shall apply to any investment adviser (and the persons associated with that adviser), whether the investment adviser is registered with the Commission under section 80b–3 of this title or regulated solely by a State, as described in section 80b–3a of this title.

(2) Recovery of costs

An entity designated by the Commission under subsection (b)(1) may charge persons making inquiries, other than individual investors, reasonable fees for responses to inquiries described in paragraph (1).

(3) Limitation on liability

An entity designated by the Commission under subsection (b)(1) shall not have any liability to any person for any actions taken or omitted in good faith under this subsection.

(d) [3] Records of persons with custody or use

(1) In general

Records of persons having custody or use of the securities, deposits, or credits of a client, that relate to such custody or use, are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations and other information and document requests by representatives of the Commission, as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

(2) Certain persons subject to other regulation

Any person that is subject to regulation and examination by a Federal financial institution regulatory agency (as such term is defined under section 212(c)(2) of title 18) may satisfy any examination request, information request, or document request described under paragraph (1), by providing the Commission with a detailed listing, in writing, of the securities, deposits, or credits of the client within the custody or use of such person.

(Aug. 22, 1940, ch. 686, title II, §204, 54 Stat. 852; Pub. L. 86–750, §6, Sept. 13, 1960, 74 Stat. 886; Pub. L. 94–29, §29(5), June 4, 1975, 89 Stat. 169; Pub. L. 109–290, §7(a), Sept. 29, 2006, 120 Stat. 1321; Pub. L. 111–203, title IV, §404, title IX, §929Q(b), July 21, 2010, 124 Stat. 1571, 1866.)

AMENDMENTS

2010—Subsecs. (b), (c). Pub. L. 111–203, §404, added subsec. (b) and redesignated former subsec. (b) as (c). Former subsec. (c) redesignated (d) relating to access to disciplinary and other information.

Subsec. (d). Pub. L. 111–203, §929Q(b), added subsec. (d) relating to records of persons with custody or

use.

Pub. L. 111–203, §404(1), redesignated subsec. (c) as (d) relating to access to disciplinary and other information.

2006—Pub. L. 109–290 designated existing provisions as subsec. (a), inserted heading, and added subsecs. (b) and (c).

1975—Pub. L. 94–29 substituted "make and keep for prescribed periods such records (as defined in section 78c(a)(37) of this title), furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. All records (as so defined) of such investment advisers are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission as the Commission deems necessary or appropriate in the public interest or for the protection of investors" for "make, keep, and preserve for such periods, such accounts, correspondence, memorandums, papers, books, and other records, and make such reports, as the Commission by its rules and regulations may prescribe as necessary or appropriate in the public interest or for the protection of investors. Such accounts, correspondence, memorandums, papers, books, and other records shall be subject at any time or from time to time to such reasonable periodic, special, or other examinations by examiners or other representatives of the Commission as the Commission may deem necessary or appropriate in the public interest or for the protection of investors".

1960—Pub. L. 86–750 substituted provisions requiring investment advisers who make business use of the mails or any instrument of interstate commerce, unless exempted from registration by section 80b–3(b) of this title, to keep and preserve accounts, correspondence, memorandums, papers, books, and records, and make such reports as the Commission requires by its rules and regulations, and that these accounts, correspondence, memorandums, papers, books and records shall be subject to examination by representatives of the Commission, for provisions requiring investment advisers registered under section 80b–3 of this title to file annual and special reports in such form as the Commission prescribed by its rules and regulations to keep current the information contained in the registration application.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 929Q(b) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Amendment by section 404 of Pub. L. 111–203 effective 1 year after July 21, 2010, except that any investment adviser may, at the discretion of the investment adviser, register with the Commission under the Investment Advisers Act of 1940 during that 1-year period, subject to the rules of the Commission, and except as otherwise provided, see section 419 of Pub. L. 111–203, set out as a note under section 80b–2 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

[1] So in original. The quotation marks and period probably should not appear.

[2] So in original. Probably should be preceded by "to".

[3] So in original. Probably should be "(e)".

§80b–4a. Prevention of misuse of nonpublic information

Every investment adviser subject to section 80b–4 of this title shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such investment adviser's business, to prevent the misuse in violation of this chapter or the Securities

Exchange Act of 1934 [15 U.S.C. 78a et seq.], or the rules or regulations thereunder, of material, nonpublic information by such investment adviser or any person associated with such investment adviser. The Commission, as it deems necessary or appropriate in the public interest or for the protection of investors, shall adopt rules or regulations to require specific policies or procedures reasonably designed to prevent misuse in violation of this chapter or the Securities Exchange Act of 1934 (or the rules or regulations thereunder) of material, nonpublic information.

(Aug. 22, 1940, ch. 686, title II, §204A, as added Pub. L. 100–704, §3(b)(2), Nov. 19, 1988, 102 Stat. 4680.)

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in text, is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

EFFECTIVE DATE

Section not applicable to actions occurring before Nov. 19, 1988, see section 9 of Pub. L. 100–704 set out as an Effective Date of 1988 Amendment note under section 78o of this title.

§80b–5. Investment advisory contracts

(a) Compensation, assignment, and partnership-membership provisions

No investment adviser registered or required to be registered with the Commission shall enter into, extend, or renew any investment advisory contract, or in any way perform any investment advisory contract entered into, extended, or renewed on or after November 1, 1940, if such contract—

(1) provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(2) fails to provide, in substance, that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract; or

(3) fails to provide, in substance, that the investment adviser, if a partnership, will notify the other party to the contract of any change in the membership of such partnership within a reasonable time after such change.

(b) Compensation prohibition inapplicable to certain compensation computations

Paragraph (1) of subsection (a) of this section shall not—

(1) be construed to prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates, or taken as of a definite date;

(2) apply to an investment advisory contract with—

(A) an investment company registered under subchapter I of this chapter, or

(B) any other person (except a trust, governmental plan, collective trust fund, or separate account referred to in section 80a–3(c)(11) of this title), provided that the contract relates to the investment of assets in excess of $1 million,

if the contract provides for compensation based on the asset value of the company or fund under management averaged over a specified period and increasing and decreasing proportionately with the investment performance of the company or fund over a specified period in relation to the investment record of an appropriate index of securities prices or such other measure of investment performance as the Commission by rule, regulation, or order may specify;

(3) apply with respect to any investment advisory contract between an investment adviser and a business development company, as defined in this subchapter, if (A) the compensation provided for in such contract does not exceed 20 per centum of the realized capital gains upon the funds of the business development company over a specified period or as of definite dates, computed net of all realized capital losses and unrealized capital depreciation, and the condition of section 80a–60(a)(3)(B)(iii) of this title is satisfied, and (B) the business development company does not

have outstanding any option, warrant, or right issued pursuant to section 80a–60(a)(3)(B) of this title and does not have a profit-sharing plan described in section 80a–56(n) of this title;

(4) apply to an investment advisory contract with a company excepted from the definition of an investment company under section 80a–3(c)(7) of this title; or

(5) apply to an investment advisory contract with a person who is not a resident of the United States.

(c) Measurement of changes in compensation

For purposes of paragraph (2) of subsection (b) of this section, the point from which increases and decreases in compensation are measured shall be the fee which is paid or earned when the investment performance of such company or fund is equivalent to that of the index or other measure of performance, and an index of securities prices shall be deemed appropriate unless the Commission by order shall determine otherwise.

(d) "Investment advisory contract" defined

As used in paragraphs (2) and (3) of subsection (a) of this section, "investment advisory contract" means any contract or agreement whereby a person agrees to act as investment adviser to or to manage any investment or trading account of another person other than an investment company registered under subchapter I of this chapter.

(e) Exempt persons and transactions

The Commission, by rule or regulation, upon its own motion, or by order upon application, may conditionally or unconditionally exempt any person or transaction, or any class or classes of persons or transactions, from subsection (a)(1) of this section, if and to the extent that the exemption relates to an investment advisory contract with any person that the Commission determines does not need the protections of subsection (a)(1) of this section, on the basis of such factors as financial sophistication, net worth, knowledge of and experience in financial matters, amount of assets under management, relationship with a registered investment adviser, and such other factors as the Commission determines are consistent with this section. With respect to any factor used in any rule or regulation by the Commission in making a determination under this subsection, if the Commission uses a dollar amount test in connection with such factor, such as a net asset threshold, the Commission shall, by order, not later than 1 year after July 21, 2010, and every 5 years thereafter, adjust for the effects of inflation on such test. Any such adjustment that is not a multiple of $100,000 shall be rounded to the nearest multiple of $100,000.

(f) Authority to restrict mandatory pre-dispute arbitration

The Commission, by rule, may prohibit, or impose conditions or limitations on the use of, agreements that require customers or clients of any investment adviser to arbitrate any future dispute between them arising under the Federal securities laws, the rules and regulations thereunder, or the rules of a self-regulatory organization if it finds that such prohibition, imposition of conditions, or limitations are in the public interest and for the protection of investors.

(Aug. 22, 1940, ch. 686, title II, §205, 54 Stat. 852; Pub. L. 86–750, §7, Sept. 13, 1960, 74 Stat. 887; Pub. L. 91–547, §25, Dec. 14, 1970, 84 Stat. 1432; Pub. L. 96–477, title II, §203, Oct. 21, 1980, 94 Stat. 2290; Pub. L. 100–181, title VII, §703, Dec. 4, 1987, 101 Stat. 1263; Pub. L. 104–290, title II, §210, Oct. 11, 1996, 110 Stat. 3436; Pub. L. 111–203, title IV, §418, title IX, §§921(b), 928, July 21, 2010, 124 Stat. 1579, 1841, 1852.)

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, §928, in introductory provisions, substituted "registered or required to be registered with the Commission" for ", unless exempt from registration pursuant to section 80b–3(b) of this title," and struck out "make use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to" after "shall" and "to" after "in any way".

Subsec. (e). Pub. L. 111–203, §418, inserted at end "With respect to any factor used in any rule or regulation by the Commission in making a determination under this subsection, if the Commission uses a dollar amount test in connection with such factor, such as a net asset threshold, the Commission shall, by order, not later than 1 year after July 21, 2010, and every 5 years thereafter, adjust for the effects of inflation

on such test. Any such adjustment that is not a multiple of $100,000 shall be rounded to the nearest multiple of $100,000."

Subsec. (f). Pub. L. 111–203, §921(b), added subsec. (f).

1996—Subsec. (b)(4), (5). Pub. L. 104–290, §210(1), added pars. (4) and (5).

Subsec. (e). Pub. L. 104–290, §210(2), added subsec. (e).

1987—Pub. L. 100–181 completely revised and expanded provisions on investment advisory contracts, changing structure of section from a single unlettered paragraph to one consisting of four subsections lettered (a) to (d).

1980—Pub. L. 96–477 provided that par. (1) of this section was not to apply with respect to any investment advisory contract between an investment adviser and a business development company so long as the compensation provided for in such contract did not exceed 20 per cent of the realized capital gains upon the funds of the business development company and such business development company did not have outstanding any option, warrant, or right issued pursuant to section 80a–60(a)(3)(B) of this title and did not have a profit-sharing plan.

1970—Pub. L. 91–547 substituted reference to section "80b–3(b)" for "80b–3" of this title in first sentence, redesignated as second sentence former third sentence, designating existing provisions as cl. (A) and adding cl. (B) and items (i) and (ii) and provision respecting compensation based on asset value of company or fund under management averaged over a specified period in relation to investment record of an index of securities or such other measure of investment performance specified by Commission rules, regulations, or orders, inserted third sentence provision respecting point from which compensation is to be measured, substituted in fourth, formerly third, sentence "paragraphs (2) and (3) of this section" for "this section" and in definition of "investment advisory contract" the words "account of another person other than an investment company registered under subchapter I of this chapter" for "account for a person other than an investment company".

1960—Pub. L. 86–750 substituted "unless exempt from registration pursuant to" for "registered under".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 921(b) and 928 of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Amendment by section 418 of Pub. L. 111–203 effective 1 year after July 21, 2010, except that any investment adviser may, at the discretion of the investment adviser, register with the Commission under the Investment Advisers Act of 1940 during that 1-year period, subject to the rules of the Commission, and except as otherwise provided, see section 419 of Pub. L. 111–203, set out as a note under section 80b–2 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–547 effective on expiration of one year after Dec. 14, 1970, see section 30(1) of Pub. L. 91–547, set out as a note under section 80a–52 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80b–6. Prohibited transactions by investment advisers

It shall be unlawful for any investment adviser by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly—

(1) to employ any device, scheme, or artifice to defraud any client or prospective client;

(2) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client;

(3) acting as principal for his own account, knowingly to sell any security to or purchase any security from a client, or acting as broker for a person other than such client, knowingly to effect any sale or purchase of any security for the account of such client, without disclosing to such client in writing before the completion of such transaction the capacity in which he is acting and obtaining the consent of the client to such transaction. The prohibitions of this paragraph shall not apply to any transaction with a customer of a broker or dealer if such broker or dealer is not acting as an investment adviser in relation to such transaction; or

(4) to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative. The Commission shall, for the purposes of this paragraph (4) by rules and regulations define, and prescribe means reasonably designed to prevent, such acts, practices, and courses of business as are fraudulent, deceptive, or manipulative.

(Aug. 22, 1940, ch. 686, title II, §206, 54 Stat. 852; Pub. L. 86–750, §§8, 9, Sept. 13, 1960, 74 Stat. 887; Pub. L. 111–203, title IX, §985(e)(2), July 21, 2010, 124 Stat. 1935.)

AMENDMENTS

2010—Par. (3). Pub. L. 111–203 inserted "or" at end.

1960—Pub. L. 86–750, §8, struck out "registered under section 80b–3 of this title" from introductory text. Par. (4). Pub. L. 86–750, §9, added par. (4).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

§80b–6a. Exemptions

The Commission, by rules and regulations, upon its own motion, or by order upon application, may conditionally or unconditionally exempt any person or transaction, or any class or classes of persons, or transactions, from any provision or provisions of this subchapter or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this subchapter.

(Aug. 22, 1940, ch. 686, title II, §206A, as added Pub. L. 91–547, §26, Dec. 14, 1970, 84 Stat. 1433.)

EFFECTIVE DATE

Section effective Dec. 14, 1970, see section 30 of Pub. L. 91–547, set out as a note under section 80a–2 of this title.

§80b–7. Material misstatements

It shall be unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission under section 80b–3 or 80b–4 of this title, or willfully to omit to state in any such application or report any material fact which is required to be stated therein.

(Aug. 22, 1940, ch. 686, title II, §207, 54 Stat. 853.)

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80b–8. General prohibitions

(a) Representations of sponsorship by United States or agency thereof

It shall be unlawful for any person registered under section 80b–3 of this title to represent or imply in any manner whatsoever that such person has been sponsored, recommended, or approved, or that his abilities or qualifications have in any respect been passed upon by the United States or any agency or any officer thereof.

(b) Statement of registration under Securities Exchange Act of 1934 provisions

No provision of subsection (a) of this section shall be construed to prohibit a statement that a person is registered under this subchapter or under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], if such statement is true in fact and if the effect of such registration is not misrepresented.

(c) Use of name "investment counsel" as descriptive of business

It shall be unlawful for any person registered under section 80b–3 of this title to represent that he is an investment counsel or to use the name "investment counsel" as descriptive of his business unless (1) his or its principal business consists of acting as investment adviser, and (2) a substantial part of his or its business consists of rendering investment supervisory services.

(d) Use of indirect means to do prohibited act

It shall be unlawful for any person indirectly, or through or by any other person, to do any act or thing which it would be unlawful for such person to do directly under the provisions of this subchapter or any rule or regulation thereunder.

(Aug. 22, 1940, ch. 686, title II, §208, 54 Stat. 853; Pub. L. 86–750, §§10, 11, Sept. 13, 1960, 74 Stat. 887.)

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsec. (b), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

AMENDMENTS

1960—Pub. L. 86–750, §10, substituted "General prohibitions" for "Unlawful representations" in section catchline.

Subsec. (c). Pub. L. 86–750, §11(a), authorized representation as an investment counsel if person's principal business consisted of acting as investment adviser, and a substantial part of the business was rendering investment supervisory services, and struck out the requirements that the person be primarily engaged in rendering investment supervisory services, or that his registration application state that the person is, or is about to become engaged primarily in rendering investment advisory services.

Subsec. (d). Pub. L. 86–750, §11(b), added subsec. (d).

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80b–9. Enforcement of subchapter

(a) Investigation

Whenever it shall appear to the Commission, either upon complaint or otherwise, that the provisions of this subchapter or of any rule or regulation prescribed under the authority thereof, have been or are about to be violated by any person, it may in its discretion require, and in any event shall permit, such person to file with it a statement in writing, under oath or otherwise, as to all the facts and circumstances relevant to such violation, and may otherwise investigate all such facts and circumstances.

(b) Administration of oaths and affirmations, subpena of witnesses, etc.

For the purposes of any investigation or any proceeding under this subchapter, any member of the Commission or any officer thereof designated by it is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records which are

relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in any State or in any Territory or other place subject to the jurisdiction of the United States at any designated place of hearing.

(c) Jurisdiction of courts of United States

In case of contumacy by, or refusal to obey a subpena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, contracts, agreements, and other records. And such court may issue an order requiring such person to appear before the Commission or member or officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found. Any person who without just cause shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in his or its power so to do, in obedience to the subpena of the Commission, shall be guilty of a misdemeanor, and upon conviction shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year, or both.

(d) Action for injunction

Whenever it shall appear to the Commission that any person has engaged, is engaged, or is about to engage in any act or practice constituting a violation of any provision of this subchapter, or of any rule, regulation, or order hereunder, or that any person has aided, abetted, counseled, commanded, induced, or procured, is aiding, abetting, counseling, commanding, inducing, or procuring, or is about to aid, abet, counsel, command, induce, or procure such a violation, it may in its discretion bring an action in the proper district court of the United States, or the proper United States court of any Territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices and to enforce compliance with this subchapter or any rule, regulation, or order hereunder. Upon a showing that such person has engaged, is engaged, or is about to engage in any such act or practice, or in aiding, abetting, counseling, commanding, inducing, or procuring any such act or practice, a permanent or temporary injunction or decree or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning any violation of the provisions of this subchapter, or of any rule, regulation, or order thereunder, to the Attorney General, who, in his discretion, may institute the appropriate criminal proceedings under this subchapter.

(e) Money penalties in civil actions

(1) Authority of Commission

Whenever it shall appear to the Commission that any person has violated any provision of this subchapter, the rules or regulations thereunder, or a cease-and-desist order entered by the Commission pursuant to section 80b–3(k) of this title, the Commission may bring an action in a United States district court to seek, and the court shall have jurisdiction to impose, upon a proper showing, a civil penalty to be paid by the person who committed such violation.

(2) Amount of penalty

(A) First tier

The amount of the penalty shall be determined by the court in light of the facts and circumstances. For each violation, the amount of the penalty shall not exceed the greater of (i) $5,000 for a natural person or $50,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation.

(B) Second tier

Notwithstanding subparagraph (A), the amount of penalty for each such violation shall not exceed the greater of (i) $50,000 for a natural person or $250,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation, if the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

(C) Third tier

Notwithstanding subparagraphs (A) and (B), the amount of penalty for each such violation shall not exceed the greater of (i) $100,000 for a natural person or $500,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation, if—

(I) the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

(II) such violation directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.

(3) Procedures for collection

(A) Payment of penalty to Treasury

A penalty imposed under this section shall be payable into the Treasury of the United States, except as otherwise provided in section 7246 of this title and section 78u–6 of this title.

(B) Collection of penalties

If a person upon whom such a penalty is imposed shall fail to pay such penalty within the time prescribed in the court's order, the Commission may refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court.

(C) Remedy not exclusive

The actions authorized by this subsection may be brought in addition to any other action that the Commission or the Attorney General is entitled to bring.

(D) Jurisdiction and venue

For purposes of section 80b–14 of this title, actions under this paragraph shall be actions to enforce a liability or a duty created by this subchapter.

(4) Special provisions relating to violation of cease-and-desist order

In an action to enforce a cease-and-desist order entered by the Commission pursuant to section 80b–3(k) of this title, each separate violation of such order shall be a separate offense, except that in the case of a violation through a continuing failure to comply with the order, each day of the failure to comply shall be deemed a separate offense.

(f) Aiding and abetting

For purposes of any action brought by the Commission under subsection (e), any person that knowingly or recklessly has aided, abetted, counseled, commanded, induced, or procured a violation of any provision of this subchapter, or of any rule, regulation, or order hereunder, shall be deemed to be in violation of such provision, rule, regulation, or order to the same extent as the person that committed such violation.

(Aug. 22, 1940, ch. 686, title II, §209, 54 Stat. 853; Pub. L. 86–750, §12, Sept. 13, 1960, 74 Stat. 887; Pub. L. 91–452, title II, §216, Oct. 15, 1970, 84 Stat. 929; Pub. L. 100–181, title VII, §704, Dec. 4, 1987, 101 Stat. 1264; Pub. L. 101–429, title IV, §402, Oct. 15, 1990, 104 Stat. 949; Pub. L. 107–204, title III, §308(d)(5), July 30, 2002, 116 Stat. 785; Pub. L. 111–203, title IX, §§923(a)(3), 929N, July 21, 2010, 124 Stat. 1849, 1862.)

AMENDMENTS

2010—Subsec. (e)(3)(A). Pub. L. 111–203, §923(a)(3), inserted "and section 78u–6 of this title" after "section 7246 of this title".

Subsec. (f). Pub. L. 111–203, §929N, added subsec. (f).

2002—Subsec. (e)(3)(A). Pub. L. 107–204 inserted ", except as otherwise provided in section 7246 of this title" before period at end.

1990—Subsec. (e). Pub. L. 101–429 added subsec. (e).

1987—Subsecs. (d), (e). Pub. L. 100–181 redesignated subsec. (e) as (d).

1970—Subsec. (d). Pub. L. 91–452 struck out subsec. (d) which related to immunity from prosecution of any individual compelled to testify or produce evidence, documentary or otherwise, after claiming his privilege against self-incrimination.

1960—Subsec. (e). Pub. L. 86–750 inserted ", is engaged," after "has engaged" wherever appearing, and inserted provisions relating to aiders and abettors.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–429 effective Oct. 15, 1990, with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(1), (2) of Pub. L. 101–429, set out in a note under section 77g of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–452 effective on sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91–452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

SAVINGS PROVISION

Amendment by Pub. L. 91–452 not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91–452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80b–10. Disclosure of information by Commission

(a) Information available to public

The information contained in any registration application or report or amendment thereto filed with the Commission pursuant to any provision of this subchapter shall be made available to the public, unless and except insofar as the Commission, by rules and regulations upon its own motion, or by order upon application, finds that public disclosure is neither necessary nor appropriate in the public interest or for the protection of investors. Photostatic or other copies of information contained in documents filed with the Commission under this subchapter and made available to the public shall be furnished to any person at such reasonable charge and under such reasonable limitations as the Commission shall prescribe.

(b) Disclosure of fact of examination or investigation; exceptions

Subject to the provisions of subsections (c) and (d) of section 80b–9 of this title and section 78x(c) of this title, the Commission, or any member, officer, or employee thereof, shall not make public the fact that any examination or investigation under this subchapter is being conducted, or the results of or any facts ascertained during any such examination or investigation; and no member, officer, or employee of the Commission shall disclose to any person other than a member, officer, or employee of the Commission any information obtained as a result of any such examination or investigation except with the approval of the Commission. The provisions of this subsection shall not apply—

(1) in the case of any hearing which is public under the provisions of section 80b–12 of this title; or

(2) in the case of a resolution or request from either House of Congress.

(c) Disclosure by investment adviser of identity of clients

No provision of this subchapter shall be construed to require, or to authorize the Commission to require any investment adviser engaged in rendering investment supervisory services to disclose the identity, investments, or affairs of any client of such investment adviser, except insofar as such disclosure may be necessary or appropriate in a particular proceeding or investigation having as its object the enforcement of a provision or provisions of this subchapter or for purposes of assessment of potential systemic risk.

(Aug. 22, 1940, ch. 686, title II, §210, 54 Stat. 854; Pub. L. 86–750, §13, Sept. 13, 1960, 74 Stat. 887; Pub. L. 101–550, title II, §202(b)(2), Nov. 15, 1990, 104 Stat. 2715; Pub. L. 111–203, title IV, §405, title IX, §929I(c), July 21, 2010, 124 Stat. 1574, 1858; Pub. L. 111–257, §1(c), Oct. 5, 2010, 124 Stat. 2646.)

AMENDMENTS

2010—Subsec. (c). Pub. L. 111–203, §405, inserted "or for purposes of assessment of potential systemic risk" before period at end.

Subsec. (d). Pub. L. 111–257 struck out subsec. (d). Text read as follows: "Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any records or information provided to the Commission under section 80b–4 of this title, or records or information based upon or derived from such records or information, if such records or information have been obtained by the Commission for use in furtherance of the purposes of this subchapter, including surveillance, risk assessments, or other regulatory and oversight activities. Nothing in this subsection authorizes the Commission to withhold information from the Congress or prevent the Commission from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of jurisdiction of that department or agency, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552. Collection of information pursuant to section 80b–4 of this title shall be an administrative action involving an agency against specific individuals or agencies pursuant to section 3518(c)(1) of title 44."

Pub. L. 111–203, §929I(c), added subsec. (d).

1990—Subsec. (b). Pub. L. 101–550 substituted "subsections (c) and (d) of section 80b–9 of this title and section 78x(c) of this title" for "subsections (c) and (e) of section 80b–9 of this title".

1960—Subsec. (b). Pub. L. 86–750 inserted ", or any member, officer, or employee thereof," after "the Commission", and inserted proscription against disclosing information to any person not a member, officer, or employee of the Commission.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 929I(c) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Amendment by section 405 of Pub. L. 111–203 effective 1 year after July 21, 2010, except that any investment adviser may, at the discretion of the investment adviser, register with the Commission under the Investment Advisers Act of 1940 during that 1-year period, subject to the rules of the Commission, and except as otherwise provided, see section 419 of Pub. L. 111–203, set out as a note under section 80b–2 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

STUDY ON IMPROVED INVESTOR ACCESS TO INFORMATION ON INVESTMENT ADVISERS AND BROKER-DEALERS

Pub. L. 111–203, title IX, §919B, July 21, 2010, 124 Stat. 1838, provided that:

"(a) STUDY.—

"(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act [July 21, 2010],

the Commission shall complete a study, including recommendations, of ways to improve the access of investors to registration information (including disciplinary actions, regulatory, judicial, and arbitration proceedings, and other information) about registered and previously registered investment advisers, associated persons of investment advisers, brokers and dealers and their associated persons on the existing Central Registration Depository and Investment Adviser Registration Depository systems, as well as identify additional information that should be made publicly available.

"(2) CONTENTS.—The study required by subsection (a) shall include an analysis of the advantages and disadvantages of further centralizing access to the information contained in the 2 systems, including—

"(A) identification of those data pertinent to investors; and

"(B) the identification of the method and format for displaying and publishing such data to enhance accessibility by and utility to investors.

"(b) IMPLEMENTATION.—Not later than 18 months after the date of completion of the study required by subsection (a), the Commission shall implement any recommendations of the study."

[For definitions of terms used in section 919B of Pub. L. 111–203, set out above, see section 5301 of Title 12, Banks and Banking.]

INVESTOR ACCESS TO INFORMATION

Pub. L. 104–290, title III, §306, Oct. 11, 1996, 110 Stat. 3439, required the Securities and Exchange Commission to provide for investor access to information concerning disciplinary actions involving investment advisers, prior to repeal by Pub. L. 109–290, §7(b)(2), Sept. 29, 2006, 120 Stat. 1321.

§80b–10a. Consultation

(a) Examination results and other information

(1) The appropriate Federal banking agency shall provide the Commission upon request the results of any examination, reports, records, or other information to which such agency may have access—

(A) with respect to the investment advisory activities of any—

(i) bank holding company or savings and loan holding company;

(ii) bank; or

(iii) separately identifiable department or division of a bank,

that is registered under section 80b–3 of this title; and

(B) in the case of a bank holding company or savings and loan holding company or bank that has a subsidiary or a separately identifiable department or division registered under that section, with respect to the investment advisory activities of such bank or bank holding company or savings and loan holding company.

(2) The Commission shall provide to the appropriate Federal banking agency upon request the results of any examination, reports, records, or other information with respect to the investment advisory activities of any bank holding company or savings and loan holding company, bank, or separately identifiable department or division of a bank, which is registered under section 80b–3 of this title.

(3) Notwithstanding any other provision of law, the Commission and the appropriate Federal banking agencies shall not be compelled to disclose any information provided under paragraph (1) or (2). Nothing in this paragraph shall authorize the Commission or such agencies to withhold information from Congress, or prevent the Commission or such agencies from complying with a request for information from any other Federal department or agency or any self-regulatory organization requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States, the Commission, or such agencies. For purposes of section 552 of title 5, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.

(b) Effect on other authority

Nothing in this section shall limit in any respect the authority of the appropriate Federal banking agency with respect to such bank holding company or savings and loan holding company (or

affiliates or subsidiaries thereof), bank, or subsidiary, department, or division or a bank under any other provision of law.

(c) Definition

For purposes of this section, the term "appropriate Federal banking agency" shall have the same meaning as given in section 1813 of title 12.

(Aug. 22, 1940, ch. 686, title II, §210A, as added Pub. L. 106–102, title II, §220, Nov. 12, 1999, 113 Stat. 1400; Pub. L. 109–351, title IV, §401(b)(2), Oct. 13, 2006, 120 Stat. 1973.)

AMENDMENTS

2006—Subsecs. (a), (b). Pub. L. 109–351 substituted "bank holding company or savings and loan holding company" for "bank holding company" wherever appearing.

EFFECTIVE DATE

Section effective 18 months after Nov. 12, 1999, see section 225 of Pub. L. 106–102, set out as an Effective Date of 1999 Amendment note under section 77c of this title.

§80b–11. Rules, regulations, and orders of Commission

(a) Power of Commission

The Commission shall have authority from time to time to make, issue, amend, and rescind such rules and regulations and such orders as are necessary or appropriate to the exercise of the functions and powers conferred upon the Commission elsewhere in this subchapter, including rules and regulations defining technical, trade, and other terms used in this subchapter, except that the Commission may not define the term "client" for purposes of paragraphs (1) and (2) of section 80b–6 of this title to include an investor in a private fund managed by an investment adviser, if such private fund has entered into an advisory contract with such adviser. For the purposes of its rules or regulations the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters.

(b) Effective date of regulations

Subject to the provisions of chapter 15 of title 44 and regulations prescribed under the authority thereof, the rules and regulations of the Commission under this subchapter, and amendments thereof, shall be effective upon publication in the manner which the Commission shall prescribe, or upon such later date as may be provided in such rules and regulations.

(c) Orders of Commission after notice and hearing; type of notice

Orders of the Commission under this subchapter shall be issued only after appropriate notice and opportunity for hearing. Notice to the parties to a proceeding before the Commission shall be given by personal service upon each party or by registered mail or certified mail or confirmed telegraphic notice to the party's last known business address. Notice to interested persons, if any, other than parties may be given in the same manner or by publication in the Federal Register.

(d) Good faith compliance with rules and regulations

No provision of this subchapter imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or order of the Commission, notwithstanding that such rule, regulation, or order may, after such act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(e) Disclosure rules on private funds

The Commission and the Commodity Futures Trading Commission shall, after consultation with the Council but not later than 12 months after July 21, 2010, jointly promulgate rules to establish the form and content of the reports required to be filed with the Commission under subsection [1] 80b–4(b) of this title and with the Commodity Futures Trading Commission by investment advisers that are registered both under this subchapter and the Commodity Exchange Act [7 U.S.C. 1 et seq.].

(g) [2] Standard of conduct

(1) In general

The Commission may promulgate rules to provide that the standard of conduct for all brokers, dealers, and investment advisers, when providing personalized investment advice about securities to retail customers (and such other customers as the Commission may by rule provide), shall be to act in the best interest of the customer without regard to the financial or other interest of the broker, dealer, or investment adviser providing the advice. In accordance with such rules, any material conflicts of interest shall be disclosed and may be consented to by the customer. Such rules shall provide that such standard of conduct shall be no less stringent than the standard applicable to investment advisers under section 80b–6(1) and (2) of this title when providing personalized investment advice about securities, except the Commission shall not ascribe a meaning to the term "customer" that would include an investor in a private fund managed by an investment adviser, where such private fund has entered into an advisory contract with such adviser. The receipt of compensation based on commission or fees shall not, in and of itself, be considered a violation of such standard applied to a broker, dealer, or investment adviser.

(2) Retail customer defined

For purposes of this subsection, the term "retail customer" means a natural person, or the legal representative of such natural person, who—

(A) receives personalized investment advice about securities from a broker, dealer, or investment adviser; and

(B) uses such advice primarily for personal, family, or household purposes.

(h) Other matters

The Commission shall—

(1) facilitate the provision of simple and clear disclosures to investors regarding the terms of their relationships with brokers, dealers, and investment advisers, including any material conflicts of interest; and

(2) examine and, where appropriate, promulgate rules prohibiting or restricting certain sales practices, conflicts of interest, and compensation schemes for brokers, dealers, and investment advisers that the Commission deems contrary to the public interest and the protection of investors.

(i) Harmonization of enforcement

The enforcement authority of the Commission with respect to violations of the standard of conduct applicable to an investment adviser shall include—

(1) the enforcement authority of the Commission with respect to such violations provided under this subchapter; and

(2) the enforcement authority of the Commission with respect to violations of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], including the authority to impose sanctions for such violations, and

the Commission shall seek to prosecute and sanction violators of the standard of conduct applicable to an investment adviser under this subchapter to same extent as the Commission prosecutes and sanctions violators of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.].

(Aug. 22, 1940, ch. 686, title II, §211, 54 Stat. 855; Pub. L. 86–507, §1(16), June 11, 1960, 74 Stat. 201; Pub. L. 86–750, §14, Sept. 13, 1960, 74 Stat. 888; Pub. L. 100–181, title VII, §705, Dec. 4, 1987, 101 Stat. 1264; Pub. L. 111–203, title IV, §406, title IX, §913(g)(2), (h)(2), July 21, 2010, 124 Stat. 1574, 1828, 1829.)

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in subsec. (e), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which

is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (i), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, §406(1), inserted ", including rules and regulations defining technical, trade, and other terms used in this subchapter, except that the Commission may not define the term 'client' for purposes of paragraphs (1) and (2) of section 80b–6 of this title to include an investor in a private fund managed by an investment adviser, if such private fund has entered into an advisory contract with such adviser" after "elsewhere in this subchapter".

Subsec. (e). Pub. L. 111–203, §406(2), which directed addition of subsec. (e) at end of section, was executed by adding subsec. (e) after subsec. (d) to reflect the probable intent of Congress. See Effective Date of 2010 Amendment notes below.

Subsecs. (g), (h). Pub. L. 111–203, §913(g)(2), added subsecs. (g) and (h).

Subsec. (i). Pub. L. 111–203, §913(h)(2), added subsec. (i).

1987—Subsec. (b). Pub. L. 100–181 substituted "chapter 15 of title 44" for "the Federal Register Act".

1960—Subsec. (a). Pub. L. 86–750 inserted "functions and".

Subsec. (c). Pub. L. 86–507 inserted "or certified mail" after "registered mail".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 913(g)(2), (h)(2) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Amendment by section 406 of Pub. L. 111–203 effective 1 year after July 21, 2010, except that any investment adviser may, at the discretion of the investment adviser, register with the Commission under the Investment Advisers Act of 1940 during that 1-year period, subject to the rules of the Commission, and except as otherwise provided, see section 419 of Pub. L. 111–203, set out as a note under section 80b–2 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

STUDY ON ENHANCING INVESTMENT ADVISER EXAMINATIONS

Pub. L. 111–203, title IX, §914, July 21, 2010, 124 Stat. 1830, provided that:

"(a) STUDY REQUIRED.—

"(1) IN GENERAL.—The Commission shall review and analyze the need for enhanced examination and enforcement resources for investment advisers.

"(2) AREAS OF CONSIDERATION.—The study required by this subsection shall examine—

"(A) the number and frequency of examinations of investment advisers by the Commission over the 5 years preceding the date of the enactment of this subtitle [July 21, 2010];

"(B) the extent to which having Congress authorize the Commission to designate one or more self-regulatory organizations to augment the Commission's efforts in overseeing investment advisers would improve the frequency of examinations of investment advisers; and

"(C) current and potential approaches to examining the investment advisory activities of dually registered broker-dealers and investment advisers or affiliated broker-dealers and investment advisers.

"(b) REPORT REQUIRED.—The Commission shall report its findings to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, not later than 180 days after the date of enactment of this subtitle [July 21, 2010], and shall use such findings to revise its rules and regulations, as necessary. The report shall include a discussion of regulatory or legislative steps that are recommended or that may be necessary to address concerns identified in the study."

[For definitions of terms used in section 914 of Pub. L. 111–203, set out above, see section 5301 of Title 12, Banks and Banking.]

[1] *So in original. Probably should be "section".*

[2] *So in original. No subsec. (f) has been enacted.*

§80b–12. Hearings

Hearings may be public and may be held before the Commission, any member or members thereof, or any officer or officers of the Commission designated by it, and appropriate records thereof shall be kept.

(Aug. 22, 1940, ch. 686, title II, §212, 54 Stat. 855.)

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80b–13. Court review of orders

(a) Petition; jurisdiction; findings of Commission; additional evidence; finality

Any person or party aggrieved by an order issued by the Commission under this subchapter may obtain a review of such order in the United States court of appeals within any circuit wherein such person resides or has his principal office or place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall be forthwith transmitted by the clerk of the court to any member of the Commission, or any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record shall be exclusive, to affirm, modify, or set aside such order, in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission or unless there were reasonable grounds for failure so to do. The findings of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court affirming, modifying, or setting aside, in whole or in part, any such order of the Commission shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(b) Stay of Commission's order

The commencement of proceedings under subsection (a) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(Aug. 22, 1940, ch. 686, title II, §213, 54 Stat. 855; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Pub. L. 85–791, §26, Aug. 28, 1958, 72 Stat. 949; Pub. L. 100–181, title VII, §706, Dec. 4, 1987, 101 Stat. 1264; Pub. L. 111–203, title IX, §985(e)(3), July 21, 2010, 124 Stat. 1935.)

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203 substituted "principal office or place of business" for "principal place of business".

1987—Subsec. (a). Pub. L. 100–181 substituted "section 1254 of title 28" for "sections 239 and 240 of the Judicial Code, as amended".

1958—Subsec. (a). Pub. L. 85–791, in second sentence, substituted "transmitted by the clerk of the court to any member of the Commission, or" for "served upon any member of the Commission, or upon", substituted "file in the court" for "certify and file in the court a transcript of", and inserted "as provided in section 2112 of title 28", and which, in third sentence, substituted "petition" for "transcript", and "jurisdiction, which upon the filing of the record shall be exclusive" for "exclusive jurisdiction".

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80b–14. Jurisdiction of offenses and suits

(a) In general

The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this subchapter or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of this subchapter or the rules, regulations, or orders thereunder. Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by, or to enjoin any violation of this subchapter or rules, regulations, or orders thereunder, may be brought in any such district or in the district wherein the defendant is an inhabitant or transacts business, and process in such cases may be served in any district of which the defendant is an inhabitant or transacts business or wherever the defendant may be found. In any action or proceeding instituted by the Commission under this subchapter in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure shall not apply to a subpoena issued under the preceding sentence. Judgments and decrees so rendered shall be subject to review as provided in sections 1254, 1291, 1292, and 1294 of title 28. No costs shall be assessed for or against the Commission in any proceeding under this subchapter brought by or against the Commission in any court.

(b) Extraterritorial jurisdiction

The district courts of the United States and the United States courts of any Territory shall have jurisdiction of an action or proceeding brought or instituted by the Commission or the United States alleging a violation of section 80b–6 of this title involving—

(1) conduct within the United States that constitutes significant steps in furtherance of the violation, even if the violation is committed by a foreign adviser and involves only foreign investors; or

(2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.

(Aug. 22, 1940, ch. 686, title II, §214, 54 Stat. 856; Pub. L. 100–181, title VII, §707, Dec. 4, 1987, 101 Stat. 1264; Pub. L. 101–429, title IV, §403, Oct. 15, 1990, 104 Stat. 951; Pub. L. 111–203, title IX, §§929E(d), 929P(b)(3), July 21, 2010, 124 Stat. 1853, 1865.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (a), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

2010—Pub. L. 111–203, §929P(b)(3), designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

Pub. L. 111–203, §929E(d), inserted "In any action or proceeding instituted by the Commission under this subchapter in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure shall not apply to a subpoena issued under the preceding sentence." after "defendant may be found."

1990—Pub. L. 101–429 inserted "and actions at law brought to enforce any liability or duty created by, or" after "all suits in equity" and "to enforce any liability or duty created by, or" after "Any suit or action".

1987—Pub. L. 100–181 substituted "sections 1254, 1291, 1292, and 1294 of title 28" for "sections 128 and 240 of the Judicial Code, as amended, and section 7, as amended, of the Act entitled 'An Act to establish a court of appeals for the District of Columbia', approved February 9, 1893".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–429 effective Oct. 15, 1990, with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(1), (2) of Pub. L. 101–429, set out in a note under section 77g of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80b–15. Validity of contracts

(a) Waiver of compliance as void

Any condition, stipulation, or provision binding any person to waive compliance with any provision of this subchapter or with any rule, regulation, or order thereunder shall be void.

(b) Rights affected by invalidity

Every contract made in violation of any provision of this subchapter and every contract heretofore or hereafter made, the performance of which involves the violation of, or the continuance of any relationship or practice in violation of any provision of this subchapter, or any rule, regulation, or order thereunder, shall be void (1) as regards the rights of any person who, in violation of any such provision, rule, regulation, or order, shall have made or engaged in the performance of any such contract, and (2) as regards the rights of any person who, not being a party to such contract, shall have acquired any right thereunder with actual knowledge of the facts by reason of which the making or performance of such contract was in violation of any such provision.

(Aug. 22, 1940, ch. 686, title II, §215, 54 Stat. 856.)

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of

such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80b–16. Omitted

CODIFICATION

Section, act Aug. 22, 1940, ch. 686, title II, §216, 54 Stat. 857, which required the Securities and Exchange Commission to submit an annual report to Congress on the work of the Commission, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 191 of House Document No. 103–7.

§80b–17. Penalties

Any person who willfully violates any provision of this subchapter, or any rule, regulation, or order promulgated by the Commission under authority thereof, shall, upon conviction, be fined not more than $10,000, imprisoned for not more than five years, or both.

(Aug. 22, 1940, ch. 686, title II, §217, 54 Stat. 857; Pub. L. 86–750, §15, Sept. 13, 1960, 74 Stat. 888; Pub. L. 94–29, §27(f), June 4, 1975, 89 Stat. 163.)

AMENDMENTS

1975—Pub. L. 94–29 substituted "imprisoned for not more than five years" for "imprisoned for not more than two years".

1960—Pub. L. 86–750 inserted ", or any rule, regulation or order promulgated by the Commission under authority thereof,".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

§80b–18. Hiring and leasing authority of Commission

The provisions of section 78d(b) of this title shall be applicable with respect to the power of the Commission—

(1) to appoint and fix the compensation of such other employees as may be necessary for carrying out its functions under this subchapter, and

(2) to lease and allocate such real property as may be necessary for carrying out its functions under this subchapter.

(Aug. 22, 1940, ch. 686, title II, §218, 54 Stat. 857; Oct. 28, 1949, ch. 782, title XI, §1106(a), 63 Stat. 972; Pub. L. 101–550, title I, §104(d), Nov. 15, 1990, 104 Stat. 2714.)

AMENDMENTS

1990—Pub. L. 101–550 amended section generally. Prior to amendment, section related to appointment and compensation of employees.

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

REPEALS

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

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80b–18a. State regulation of investment advisers

(a) Jurisdiction of State regulators

Nothing in this subchapter shall affect the jurisdiction of the securities commissioner (or any agency or officer performing like functions) of any State over any security or any person insofar as it does not conflict with the provisions of this subchapter or the rules and regulations thereunder.

(b) Dual compliance purposes

No State may enforce any law or regulation that would require an investment adviser to maintain any books or records in addition to those required under the laws of the State in which it maintains its principal office and place of business, if the investment adviser—

(1) is registered or licensed as such in the State in which it maintains its principal office and place of business; and

(2) is in compliance with the applicable books and records requirements of the State in which it maintains its principal office and place of business.

(c) Limitation on capital and bond requirements

No State may enforce any law or regulation that would require an investment adviser to maintain a higher minimum net capital or to post any bond in addition to any that is required under the laws of the State in which it maintains its principal office and place of business, if the investment adviser—

(1) is registered or licensed as such in the State in which it maintains its principal office and place of business; and

(2) is in compliance with the applicable net capital or bonding requirements of the State in which it maintains its principal office and place of business.

(d) National de minimis standard

No law of any State or political subdivision thereof requiring the registration, licensing, or qualification as an investment adviser shall require an investment adviser to register with the securities commissioner of the State (or any agency or officer performing like functions) or to comply with such law (other than any provision thereof prohibiting fraudulent conduct) if the investment adviser—

(1) does not have a place of business located within the State; and

(2) during the preceding 12-month period, has had fewer than 6 clients who are residents of that State.

(Aug. 22, 1940, ch. 686, title II, §222, as added Pub. L. 86–750, §16, Sept. 13, 1960, 74 Stat. 888; amended Pub. L. 104–290, title III, §304, Oct. 11, 1996, 110 Stat. 3438; Pub. L. 105–353, title III, §301(d)(2), Nov. 3, 1998, 112 Stat. 3237; Pub. L. 111–203, title IX, §985(e)(4), July 21, 2010, 124 Stat. 1935.)

AMENDMENTS

2010—Subsecs. (b), (c). Pub. L. 111–203 substituted "principal office and place of business" for "principal place of business" wherever appearing.

1998—Subsec. (b)(2). Pub. L. 105–353 substituted "principal" for "principle".

1996—Pub. L. 104–290 substituted "regulation" for "control" in section catchline and amended text generally, designating existing provisions as subsec. (a), inserting heading, and adding subsecs. (b) to (d).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–290 effective 270 days after Oct. 11, 1996, see section 308(a) of Pub. L. 104–290, as amended, set out as a note under section 80b–2 of this title.

§80b–18b. Custody of client accounts

An investment adviser registered under this subchapter shall take such steps to safeguard client assets over which such adviser has custody, including, without limitation, verification of such assets by an independent public accountant, as the Commission may, by rule, prescribe.

(Aug. 22, 1940, ch. 686, title II, §223, as added Pub. L. 111–203, title IV, §411, July 21, 2010, 124 Stat. 1577.)

EFFECTIVE DATE

Section effective 1 year after July 21, 2010, except that any investment adviser may, at the discretion of the investment adviser, register with the Commission under the Investment Advisers Act of 1940 during that 1-year period, subject to the rules of the Commission, and except as otherwise provided, see section 419 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 80b–2 of this title.

§80b–18c. Rule of construction relating to the Commodities Exchange Act

Nothing in this subchapter shall relieve any person of any obligation or duty, or affect the availability of any right or remedy available to the Commodity Futures Trading Commission or any private party, arising under the Commodity Exchange Act (7 U.S.C. 1 et seq.) governing commodity pools, commodity pool operators, or commodity trading advisors.

(Aug. 22, 1940, ch. 686, title II, §224, as added Pub. L. 111–203, title IV, §414, July 21, 2010, 124 Stat. 1578.)

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in text, is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

EFFECTIVE DATE

Section effective 1 year after July 21, 2010, except that any investment adviser may, at the discretion of the investment adviser, register with the Commission under the Investment Advisers Act of 1940 during that 1-year period, subject to the rules of the Commission, and except as otherwise provided, see section 419 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 80b–2 of this title.

§80b–19. Separability

If any provision of this subchapter or the application of such provision to any person or circumstances shall be held invalid, the remainder of the subchapter and the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

(Aug. 22, 1940, ch. 686, title II, §219, 54 Stat. 857.)

§80b–20. Short title

This subchapter may be cited as the "Investment Advisers Act of 1940".

(Aug. 22, 1940, ch. 686, title II, §220, 54 Stat. 857.)

SHORT TITLE OF 2010 AMENDMENT

Pub. L. 111–203, title IV, §401, July 21, 2010, 124 Stat. 1570, provided that: "This title [enacting sections 80b–18b and 80b–18c of this title, amending sections 80b–2, 80b–3, 80b–3a, 80b–4, 80b–5, 80b–10, and 80b–11 of this title, and enacting provisions set out as notes under sections 77b and 80b–2 of this title] may be cited as the 'Private Fund Investment Advisers Registration Act of 2010'."

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–290, title III, §301, Oct. 11, 1996, 110 Stat. 3436, provided that: "This title [enacting section 80b–3a of this title, amending sections 80b–2, 80b–3, and 80b–18a of this title and section 1002 of Title 29, Labor, and enacting provisions set out as notes under sections 80b–2, 80b–3a, and 80b–10 of this title and section 1002 of Title 29] may be cited as the 'Investment Advisers Supervision Coordination Act'."

§80b–21. Effective date

This subchapter shall become effective on November 1, 1940.

(Aug. 22, 1940, ch. 686, title II, §221, 54 Stat. 857.)

CHAPTER 2E—OMNIBUS SMALL BUSINESS CAPITAL FORMATION

Sec.

80c. Liaison between Securities Exchange Commission and Small Business Administration.
80c–1. Annual government-business forum on capital formation.
80c–2. Authorization of appropriations.
80c–3. Reduction of costs of small securities issues.

§80c. Liaison between Securities Exchange Commission and Small Business Administration

(a) Studies on needs, problems, and costs of businesses; availability

The Securities and Exchange Commission shall gather, analyze, and make available to the public, information with respect to the capital formation needs, and the problems and costs involved with new, small, medium-sized, and independent businesses.

(b) Availability of studies to Small Business Administration

The Commission shall make the results of such studies available to the Small Business Administration and otherwise have regular communication and liaison with such Administration in these matters.

(Pub. L. 96–477, title V, §502, Oct. 21, 1980, 94 Stat. 2292.)

EFFECTIVE DATE

Pub. L. 96–477, title V, §507, Oct. 21, 1980, 94 Stat. 2294, provided that: "Except as otherwise specified, the amendments made by this title [enacting this chapter and amending section 77s of this title] shall become effective January 1 of the year following the date of enactment of this Act [Oct. 21, 1980]."

SHORT TITLE

Pub. L. 96–477, title V, §501, Oct. 21, 1980, 94 Stat. 2291, provided that: "This title [enacting this chapter and amending section 77s of this title] may be cited as the 'Omnibus Small Business Capital Formation Act of 1980'."

§80c–1. Annual government-business forum on capital formation

(a) Responsibility of Securities Exchange Commission

Pursuant to the consultation called for in section 80c of this title, the Securities and Exchange Commission shall conduct an annual Government-business forum to review the current status of problems and programs relating to small business capital formation.

(b) Participation in forum planning

The Commission shall invite other Federal agencies, such as the Department of the Treasury, the Board of Governors of the Federal Reserve System, the Small Business Administration,

organizations representing State securities commissioners, and leading small business and professional organizations concerned with capital formation, to participate in the planning for such forums.

(c) Preparation of statements and reports

The Commission may request any of the Federal departments, agencies, or organizations such as those specified in subsection (b) of this section, or other groups or individuals, to prepare statements and reports to be delivered at such forums. Such departments and agencies shall cooperate in this effort.

(d) Transmittal of proceedings and findings

A summary of the proceedings of such forums and any findings or recommendations thereof shall be prepared and transmitted to the participants, appropriate committees of the Congress, and others who may be interested in the subject matter.

(Pub. L. 96–477, title V, §503, Oct. 21, 1980, 94 Stat. 2292.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which a report required under subsection (d) of this section is listed on page 190), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

§80c–2. Authorization of appropriations

For fiscal year 1982, and for each of the three succeeding fiscal years, there are hereby authorized to be appropriated such amounts as may be necessary and appropriate to carry out the provisions and purposes of this chapter. Any sums so appropriated shall remain available until expended.

(Pub. L. 96–477, title V, §504, Oct. 21, 1980, 94 Stat. 2292.)

§80c–3. Reduction of costs of small securities issues

(a) The Securities and Exchange Commission shall use its best efforts to identify and reduce the costs of raising capital in connection with the issuance of securities by firms whose aggregate outstanding securities and other indebtedness have a market value of $25,000,000 or less, through such means as studies, giving appropriate publicity to improved technology developments in fields such as printing, communications, and filing, and giving special attention to the effect of existing and proposed regulatory changes upon the small companies wishing to raise capital and independent broker-dealers which are in a key position with respect to the costs of underwriting and making markets in the securities of smaller companies.

(b) The Commission shall report on these efforts at the annual Government-business forum required by section 80c–1 of this title.

(Pub. L. 96–477, title V, §506, Oct. 21, 1980, 94 Stat. 2293.)

CHAPTER 3—TRADE-MARKS

§§81 to 134. Repealed. July 5, 1946, ch. 540, §46(a), 60 Stat. 444

DISTRIBUTION TABLE

Former Sections	*New Sections*
81	1051, 1054, 1126(b).
82	1051, 1061.
83	1126.
84	1125(c), (d).
85	1052.
86	1062, 1063.
87	1063, 1066 to 1068.
88	1070.
89	1071.
90	1060.
91	1057(a), (c).
92	1058, 1059, 1126(f).
93	1064, 1068, 1070.
94	1113.
95	1113.
96	1057(b), 1114, 1115, 1117.
97	1121.
98	1122.
99	1116, 1117.
100	1116, 1118.
101	1115.
102	1071, 1119.
103	1051 note.
104	1120.
105	1123.
106	1124.
107	1111.
108	1127.
109	1051 note.
121	1051 note, 1091, 1126.
122	1092.
123	1125.
124	1114, 1117.
125	1111.
126	1094, 1126(f).
127	1057(e).
128	1113.
131	1112.
132	1051 note.
133	1057(f).
134	not now covered.

Sections were repealed effective one year from July 5, 1946, insofar as inconsistent with present trade-mark provisions contained in chapter 22, §1051 et seq. of this title. For effect of repeal on existing registrations and pending proceedings see notes under section 1051 of this title.

Sections 98 and 127 were rerepealed by act June 25, 1948, ch. 646, §39, 62 Stat. 992, eff. Sept. 1, 1948.

DERIVATION

Sections were derived from the following acts:

Feb. 20, 1905, ch. 592, §§1 to 23, 25–30, 33 Stat. 724 to 731.
May 4, 1906, ch. 2081, §§1 to 3, 34 Stat. 168, 169.
Mar. 2, 1907, ch. 2573, §§1, 2, 34 Stat. 1251, 1252.
Feb. 18, 1909, ch. 144, 35 Stat. 627, 628.
Feb. 18, 1911, ch. 113, 36 Stat. 918.
Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167.
Aug. 24, 1912, ch. 370, §5, 37 Stat. 498.
Jan. 8, 1913, ch. 7, 37 Stat. 649.
Mar. 19, 1920, ch. 104, §§1 to 9, 41 Stat. 533 to 535.
June 7, 1924, ch. 341, 43 Stat. 647.
Mar. 4, 1925, ch. 535, §§1, 3, 43 Stat. 1268, 1269.
Mar. 2, 1929, ch. 488, §2(b), 45 Stat. 1476.
Apr. 11, 1930, ch. 132, §4, 46 Stat. 155.
June 7, 1934, ch. 426, 48 Stat. 926.
June 20, 1936, ch. 617, 49 Stat. 1539.
June 25, 1936, ch. 804, 49 Stat. 1921.
June 10, 1938, ch. 332, §§1 to 3, 5, 52 Stat. 638, 639.

CHAPTER 4—CHINA TRADE

Sec.

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161. Alteration, amendment, or repeal.
162. Creation of China corporations restricted.

§141. Short title

This chapter may be cited as the "China Trade Act, 1922."

(Sept. 19, 1922, ch. 346, §1, 42 Stat. 849.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning act Sept. 19, 1922, ch. 346, 42 Stat. 849. The Act (except sections 21 to 27) is classified to this chapter. Sections 21 to 27 of the Act amended title

II of the Revenue Act of 1921, which was repealed by section 1100 of the Revenue Act of 1924 (43 Stat. 352).

§142. Definitions

When used in this chapter, unless the context otherwise indicates—

(a) The term "person" includes individual, partnership, corporation, and association;

(b) The term "China" means (1) China including Manchuria, Tibet, Mongolia, and any territory leased by China to any foreign government, (2) the Crown Colony of Hong Kong, and (3) the Province of Macao;

(c) The terms "China Trade Act corporation" and "corporation" mean a corporation chartered under the provisions of this chapter;

(d) The term "Federal district court" means any Federal district court, and the United States District Court for the District of Columbia;

(e) The term "Secretary" means the Secretary of Commerce; and

(f) The term "registrar" means the China Trade Act registrar appointed under section 143 of this title.

(Sept. 19, 1922, ch. 346, §2, 42 Stat. 849; June 25, 1936, ch. 804, 49 Stat. 1921; Treaty Jan. 11, 1943, 57 Stat. 767; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107.)

CODIFICATION

Words "the United States Court for China" deleted from definition of "Federal district court" under the authority of Treaty between the United States and the Republic of China, 57 Stat. 767, which was signed in Washington, Jan. 11, 1943, ratified by the United States Senate on Feb. 11, 1943, ratified by the President on May 4, 1943, and ratified by the Republic of China on Feb. 4, 1943, by which the United States relinquished all extraterritorial jurisdiction and rights in China.

Congress by private act Dec. 22, 1944, ch. 691, 58 Stat. 1086, provided for the relief of certain former employees of the United States Court for China for the period of July 1, 1942 to May 20, 1943, on which date the Court ceased to exist.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "district court of the United States for the District of Columbia".

Act June 25, 1936, substituted "district court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia".

§143. Registrar; designation; station; supervision by Secretary of Commerce

The Secretary of Commerce may authorize such Foreign Service officer as Secretary of State shall make available to perform duties of China Trade Act Registrar under his direction. The official station of the registrar shall be in China at a place to be designated by the Secretary. All functions vested in the registrar by this chapter shall be administered by him under the supervision of the Secretary; except that upon appeal to the Secretary in such manner as he shall by regulation prescribe, any action of the registrar may be affirmed, modified, or set aside by the Secretary as he deems advisable.

(Sept. 19, 1922, ch. 346, §3, 42 Stat. 850; 1939 Reorg. Plan No. II, §1(d), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1431.)

TRANSFER OF FUNCTIONS

Secretary of Commerce may authorize such Foreign Service officer as Secretary of State shall make available to perform duties of China Trade Act Registrar under direction of Secretary of Commerce to conform to 1939 Reorg. Plan No. II, set out in the Appendix to Title 5, Government Organization and Employees.

Responsibilities of Secretary of Commerce with regard to China Trade Act Registrar are exercised by

Deputy Assistant Secretary for International Commerce in Domestic and International Business Administration of the Department of Commerce, with the power of redelegation.

§144. China trade corporations

(a) Incorporation

Three or more individuals (hereinafter in this chapter referred to as "incorporators"), a majority of whom are citizens of the United States, may, as hereinafter in this chapter provided, form a District of Columbia corporation for the purpose of engaging in business within China.

(b) Articles of incorporation

The incorporators may adopt articles of incorporation which shall be filed with the Secretary at his office in the District of Columbia and may thereupon make application to the Secretary for a certificate of incorporation in such manner and form as shall be by regulation prescribed. The articles of incorporation shall state—

(1) The name of the proposed China Trade Act corporation, which shall end with the legend, "Federal Inc. U.S.A.", and which shall not, in the opinion of the Secretary, be likely in any manner to mislead the public;

(2) The location of its principal office, which shall be in the District of Columbia;

(3) The particular business in which the corporation is to engage;

(4) The amount of the authorized capital stock, the designation of each class of stock, the terms upon which it is to be issued, and the number and par value of the shares of each class of stock;

(5) The duration of the corporation, which may be perpetual or for a limited period;

(6) The names and addresses of at least three individuals (a majority of whom, at the time of designation and during their term of office, shall be citizens of the United States), to be designated by the incorporators, who shall serve as temporary directors; and

(7) The fact that an amount equal to 25 per centum of the amount of the authorized capital stock has been in good faith subscribed to.

(c) Prohibited transactions

A China Trade Act corporation shall not engage in the business of discounting bills, notes, or other evidences of debt, of receiving deposits, of buying and selling bills of exchange, or of issuing bills, notes, or other evidences of debt, for circulation as money; nor engage in any other form of banking business; nor engage in any form of insurance business; nor engage in, nor be formed to engage in, the business of owning or operating any vessel, unless the controlling interest in such corporation is owned by citizens of the United States, within the meaning of section 50501 of title 46.

(d) Capital stock requirements

No certificate of incorporation shall be delivered to a China Trade Act corporation and no incorporation shall be complete until at least 25 per centum of its authorized capital stock has been paid in cash, or, in accordance with the provisions of section 148 of this title, in real or personal property which has been placed in the custody of the directors, and such corporation has filed a statement to this effect under oath with the registrar within six months after the issuance of its certificate of incorporation, except that the registrar may grant additional time for the filing of such statement upon application made prior to the expiration of such six months. If any such corporation transacts business in violation of this subdivision of this section or fails to file such statement within six months, or within such time as the registrar prescribes upon such application, the registrar shall institute proceedings under section 154 of this title for the revocation of the certificate.

(Sept. 19, 1922, ch. 346, §4, 42 Stat. 850; Feb. 26, 1925, ch. 345, §§1–5, 43 Stat. 995; June 25, 1938, ch. 696, §1, 52 Stat. 1195.)

CODIFICATION

In subsec. (c), "section 50501 of title 46" substituted for "section 2 of the Shipping Act, 1916, as amended"

on authority of Pub. L. 109–304, §18(c), Oct. 6, 2006, 120 Stat. 1709, section 8(b) of which enacted parts A and B of subtitle V of Title 46, Shipping.

AMENDMENTS

1938—Subsec. (b)(5). Act June 25, 1938, amended par. (5) generally.
1925—Act Feb. 26, 1925 amended subsecs. (a), (b)(6), (7), and (c), and added subsec. (d).

EFFECTIVE DATE OF 1938 AMENDMENT

Act June 25, 1938, provided that the amendment shall apply to all China Trade Act corporations created after the date of enactment of the act.

§144a. Incorporation fee for perpetual existence

Any China Trade Act corporation existing on June 25, 1938, may make its existence perpetual only upon application to the Secretary of Commerce to amend its charter in that respect and upon payment of a fee equivalent to the incorporation fee. Upon receipt of such application and the payment of such prescribed fee, the Secretary shall approve such application and the charter of the corporation shall be amended accordingly.

(June 25, 1938, ch. 696, §2, 52 Stat. 1196.)

CODIFICATION

Section was not enacted as part of the China Trade Act, 1922, which comprises this chapter.

§145. Certificate of incorporation

The Secretary shall, upon the filing of such application, issue a certificate of incorporation certifying that the provisions of this chapter have been complied with and declaring that the incorporators are a body corporate, if (a) an incorporation fee of $100 has been paid him; (b) he finds that the articles of incorporation and statements therein conform to the requirements of, and that the incorporation is authorized by, this chapter; and (c) he finds that such corporation will aid in developing markets in China for goods produced in the United States. A copy of the articles of incorporation shall be made a part of the certificate of incorporation and printed in full thereon. Any failure, previous to the issuance of the certificate of incorporation, by the incorporators or in respect to the application for the certificate of incorporation, to conform to any requirement of law which is a condition precedent to such issuance, may not subsequent thereto be held to invalidate the certificate of incorporation or alter the legal status of any act of a China Trade Act corporation, except in proceedings instituted by the registrar for the revocation of the certificate of incorporation.

(Sept. 19, 1922, ch. 346, §5, 42 Stat. 850.)

§146. General powers of corporation

In addition to the powers granted elsewhere in this chapter, a China Trade Act corporation—

(a) Shall have the right of succession during the existence of the corporation;

(b) Shall have a corporate seal and may, with the approval of the Secretary, alter it;

(c) May sue and be sued;

(d) Shall have the right to transact the business authorized by its articles of incorporation and such further business as is properly connected therewith or necessary and incidental thereto;

(e) May make contracts and incur liabilities;

(f) May acquire and hold real or personal property, necessary to effect the purpose for which it is formed, and dispose of such property when no longer needed for such purposes;

(g) May borrow money and issue its notes, coupon or registered bonds, or other evidences of debt, and secure their payment by a mortgage of its property; and

(h) May establish such branch offices at such places in China as it deems advisable.

(Sept. 19, 1922, ch. 346, §6, 42 Stat. 851; Feb. 26, 1925, ch. 345, §6, 43 Stat. 996.)

AMENDMENTS

1925—Par. (b). Act Feb. 26, 1925, substituted "Shall" for "May".

TREATY

Par. (h) of this section has been affected by the 1943 Treaty between United States of America and the Republic of China, 57 Stat. 767, in which the United States relinquished all extraterritorial jurisdiction and rights in China. See Codification note set out under section 142 of this title.

§146a. Jurisdiction of suits by or against China Trade Act corporation

The Federal district courts shall have exclusive original jurisdiction of all suits to which a China Trade Act corporation, or a stockholder, director, or officer thereof in his capacity as such, is a party. Suit against the corporation may be brought in the United States District Court for the District of Columbia or in the Federal district court for any district in which the corporation has an agent and is engaged in doing business.

(Sept. 19, 1922, ch. 346, §20(a), formerly §20, 42 Stat. 855; renumbered §20(a), Feb. 26, 1925, ch. 345, §10, 43 Stat. 996; June 25, 1936, ch. 804, 49 Stat. 1921; Treaty of Jan. 11, 1943, 57 Stat. 767; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107.)

CODIFICATION

Section comprises subsec. (a) of section 20 of act Sept. 19, 1922, as amended by act Feb. 26, 1925. Subsec. (b) of section 20 is classified to section 160 of this title.

In the first sentence, the words "(except as provided by the Act entitled 'An Act creating a United States Court for China and prescribing the jurisdiction thereof,' approved June 30, 1906, as amended)" have been omitted because that Act (formerly classified to sections 191 to 197, 199, 200, and 202 of Title 22, Foreign Relations and Intercourse) was repealed by act June 25, 1948, ch. 646, §39, 62 Stat. 992, eff. Sept. 1, 1948.

The provision in the second sentence that suits against the China Trade Act corporation might also be brought in the United States Court for China was omitted as that court is no longer in operation. By the treaty of Jan. 11, 1943, between the United States and China, the United States relinquished extraterritorial rights in China. See Codification note set out under section 142 of this title.

Section was formerly classified to section 53 of Title 28 prior to the general revision and enactment of Title 28, Judiciary and Judicial Procedure, by act June 25, 1948, ch. 646, §1, 62 Stat. 869.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "district court of the United States for the District of Columbia".

Act June 25, 1936, changed name of "Supreme Court of the District of Columbia" to "district court of the United States for the District of Columbia".

§147. Stock; issuance at par value

Each share of the original or any subsequent issue of stock of a China Trade Act corporation shall be issued at not less than par value, and shall be paid for in cash, or in accordance with the provisions of section 148 of this title, in real or personal property which has been placed in the custody of the directors. No such share shall be issued until the amount of the par value thereof has been paid the corporation; and when issued, each share shall be held to be full paid and nonassessable; except that if any share is, in violation of this section, issued without the amount of the par value thereof having been paid to the corporation, the holder of such share shall be liable in suits by creditors for the difference between the amount paid for such share and the par value thereof.

(Sept. 19, 1922, ch. 346, §7, 42 Stat. 851; Feb. 26, 1925, ch. 345, §7, 43 Stat. 996.)

AMENDMENTS

1925—Act Feb. 26, 1925, substituted "not less than par value" for "par value only".

§148. Payment of stock in real or personal property

No share of stock of a China Trade Act corporation shall, for the purposes of section 147 of this title or of subdivision (d) of section 144 of this title, be held paid in real or personal property unless (1) a certificate describing the property and stating the value at which it is to be received has been filed by the corporation with the Secretary or the registrar in such manner as shall be by regulation prescribed, and a fee to be fixed by the Secretary or the registrar, respectively, to cover the cost of any necessary investigation has been paid, and (2) the Secretary or the registrar, as the case may be, finds and has certified to the corporation that such value is not more than the fair market value of the property.

(Sept. 19, 1922, ch. 346, §8, 42 Stat. 851.)

REFERENCES IN TEXT

Subdivision (d) of section 144 of this title, referred to in text, was in the original "paragraph (7) of subdivision (b) of section 4", which is classified to section 144(b)(7) of this title. Part of the provisions of par. (7) were transferred to subd. (d) of section 144 by act Feb. 26, 1925, ch. 345, §§3, 5, 43 Stat. 995.

§149. Bylaws

The bylaws may provide—

(a) The time, place, manner of calling, giving notice, and conduct of, and determination of a quorum for, the meetings, annual or special, of the stockholders or directors;

(b) The number, qualifications, and manner of choosing and fixing the tenure of office and compensation of all directors; but the number of such directors shall be not less than three, and a majority of the directors, and the president and the treasurer, or each officer holding a corresponding office, shall, during their tenure of office, be citizens of the United States resident in China.

(c) The manner of calling for and collecting payments upon shares of stock, the penalties and forfeitures for nonpayment, the preparation of certificates of the shares, the manner of recording their sale or transfer, and the manner of their representation at stockholders' meetings.

(Sept. 19, 1922, ch. 346, §9, 42 Stat. 852; Feb. 26, 1925, ch. 345, §8, 43 Stat. 996.)

AMENDMENTS

1925—Par. (b). Act Feb. 26, 1925, amended par. (b) generally.

§150. Stockholders' meetings

(a) Time of first meeting; quorum

Within six months after the issuance of the certificate of incorporation of a China Trade Act corporation there shall be held a stockholders' meeting either at the principal office or a branch office of the corporation. Such meeting shall be called by a majority of the directors named in the articles of incorporation and each stockholder shall be given at least ninety days' notice of the meeting either in person or by mail. The holders of two-thirds of the voting shares, represented in person or by proxy, shall constitute a quorum at such meetings authorized to transact business. At this meeting or an adjourned meeting thereof a code of bylaws for the corporation shall be adopted by a majority of the voting shares represented at the meeting.

(b) Questions for determination only by stockholders

The following questions shall be determined only by the stockholders at a stockholders' meeting:

(1) Adoption of the bylaws;

(2) Amendments to the articles of incorporation or bylaws;

(3) Authorization of the sale of the entire business of the corporation or of an independent branch of such business;

(4) Authorization of the voluntary dissolution of the corporation; and

(5) Authorization of application for the extension of the period of duration of the corporation.

(c) Authorization of amendments to articles of incorporation

The adoption of any such amendment or authorization shall require the approval of at least two-thirds of the voting shares. No amendment to the articles of incorporation or authorization for dissolution or extension shall take effect until (1) the corporation files a certificate with the Secretary stating the action taken, in such manner and form as shall be by regulation prescribed, and (2) such amendment or authorization is found and certified by the Secretary to conform to the requirements of this chapter.

(d) Filing of bylaws and amendments and minutes of stockholders' meetings with registrar

A certified copy of the bylaws and amendments thereof and of the minutes of all stockholders' meetings of the corporation shall be filed with the registrar.

(Sept. 19, 1922, ch. 346, §10, 42 Stat. 852; Feb. 26, 1925, ch. 345, §9, 43 Stat. 996.)

AMENDMENTS

1925—Subsec. (a). Act Feb. 26, 1925, inserted ", represented in person or by proxy," in third sentence.

§151. Directors

The directors designated in the articles of incorporation shall, until their successors take office, direct the exercise of all powers of a China Trade Act corporation except such as are conferred upon the stockholders by law or by the articles of incorporation or bylaws of the corporation. Thereafter the directors elected in accordance with the bylaws of the corporation shall direct the exercise of all powers of the corporation except such as are so conferred upon the stockholders. In the exercise of such powers the directors may appoint and remove and fix the compensation of such officers and employees of the corporation as they deem advisable.

(Sept. 19, 1922, ch. 346, §11, 42 Stat. 852.)

§152. Reports; records for public inspection

(a) For the purposes of this chapter the fiscal year of a China Trade Act corporation shall correspond to the calendar year. The corporation shall make and file with the registrar, in such manner and form and at such time as shall be by regulation prescribed, a report of its business for each such fiscal year and of its financial condition at the close of the year. The corporation shall furnish a true copy of the report to each of its stockholders.

(b) The registrar shall file with the Secretary copies of all reports, certificates, and certified copies received or issued by the registrar under the provisions of this chapter. The Secretary shall file with the registrar copies of all applications for a certificate of incorporation, and certificates received or issued by the Secretary under the provisions of this chapter. All such papers shall be kept on record in the offices of the registrar and the Secretary, and shall be available for public inspection under such regulations as may be prescribed.

(Sept. 19, 1922, ch. 346, §12, 42 Stat. 853.)

§153. Dividends

Dividends declared by a China Trade Act corporation shall be derived wholly from the surplus profits of its business.

(Sept. 19, 1922, ch. 346, §13, 42 Stat. 853.)

§154. Investigations by registrar; revocation of certificate of incorporation

The registrar may, in order to ascertain if the affairs of a China Trade Act corporation are conducted contrary to any provision of this chapter, or any other law, or any treaty of the United States, or the articles of incorporation or bylaws of the corporation, investigate the affairs of the corporation. The registrar, whenever he is satisfied that the affairs of any China Trade Act corporation are or have been so conducted, may institute in the United States Court for China proceedings for the revocation of the certificate of incorporation of the corporation. The court may revoke such certificate if it finds the affairs of such corporation have been so conducted. Pending final decision in the revocation proceedings the court may at any time, upon application of the registrar or upon its own motion, make such orders in respect to the conduct of the affairs of the corporation as it deems advisable.

(Sept. 19, 1922, ch. 346, §14, 42 Stat. 853.)

REFERENCES IN TEXT

United States Court for China, referred to in text, has been abolished. See Codification note set out under section 142 of this title.

§155. Authority of registrar in obtaining evidence

(a) Subpena for attendance of witness and production of records, etc.

For the efficient administration of the functions vested in the registrar by this chapter, he may require, by subpoena issued by him or under his direction, (1) the attendance of any witness and the production of any book, paper, document, or other evidence from any place in China at any designated place of hearing in China, or, if the witness is actually resident or temporarily sojourning outside of China, at any designated place of hearing within fifty miles of the actual residence or place of sojourn of such witness, and (2) the taking of a deposition before any designated person having power to administer oaths. In the case of a deposition, the testimony shall be reduced to writing by the person taking the deposition or under his direction, and shall then be subscribed by the deponent. The registrar, or any officer, employee, or agent of the United States authorized in writing by him, may administer oaths and examine any witness. Any witness summoned or whose deposition is taken under this section shall be paid the same fees and mileage as are paid witnesses in the courts of the United States.

(b) Aid of Federal district court

In the case of failure to comply with any subpoena or in the case of the contumacy of any witness before the registrar or any individual so authorized by him, the registrar or such individual may invoke the aid of any Federal district court. Such court may thereupon order the witness to comply with the requirements of such subpoena and to give evidence touching the matter in question. Any failure to obey such order may be punished by such court as a contempt thereof.

(c) Repealed. Pub. L. 91–452, title II, §217, Oct. 15, 1970, 84 Stat. 929

(d) Access of registrar or his employee to books and records

For the efficient administration of the functions vested in the registrar by this chapter, he, or any officer, employee, or agent of the United States authorized in writing by him, shall at all reasonable times, for the purpose of examination, have access to and the right to copy any book, account, record, paper, or correspondence relating to the business or affairs of a China Trade Act corporation. Any person who upon demand refuses the registrar, or any duly authorized officer, employee, or agent, such access or opportunity to copy, or hinders, obstructs, or resists him in the exercise of such right, shall be liable to a penalty of not more than $5,000 for each such offense. Such penalty shall be recoverable in a civil suit brought in the name of the United States.

(Sept. 19, 1922, ch. 346, §15, 42 Stat. 853; Pub. L. 91–452, title II, §217, Oct. 15, 1970, 84 Stat. 929.)

AMENDMENTS

1970—Subsec. (c). Pub. L. 91–452 struck out subsec. (c) which granted immunity from prosecution for any natural person testifying in obedience to a subpoena.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–452 effective on sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91–452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

SAVINGS PROVISION

Amendment by Pub. L. 91–452 not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91–452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

§156. Dissolution of corporation; trustees

In case of the voluntary dissolution of a China Trade Act corporation or revocation of its certificate of incorporation, the directors of the corporation shall be trustees for the creditors and stockholders of the corporation; except that upon application to the United States Court for China by any interested party, or upon the motion of any court of competent jurisdiction in any proceeding pending before it, the court may in its discretion appoint as the trustees such persons, other than the directors, as it may determine. The trustees are invested with the powers, and shall do all acts, necessary to wind up the affairs of the corporation and divide among the stockholders according to their respective interests the property of the corporation remaining after all obligations against it have been settled. For the purposes of this section the trustees may sue and be sued in the name of the corporation and shall be jointly and severally liable to the stockholders and creditors of the corporation to the extent of the property coming into their hands as trustees.

(Sept. 19, 1922, ch. 346, §16, 42 Stat. 854.)

REFERENCES IN TEXT

United States Court for China, referred to in text, has been abolished. See Codification note set out under section 142 of this title.

§157. Regulations and fees; disposition of fees and penalties

(a) The Secretary is authorized to make such regulations as may be necessary to carry into effect the functions vested in him or in the registrar by this chapter.

(b) The Secretary is authorized to prescribe and fix the amount of such fees (other than the incorporation fee) to be paid him or the registrar for services rendered by the Secretary or the registrar to any person in the administration of the provisions of this chapter. All fees and penalties paid under this chapter shall be covered into the Treasury of the United States as miscellaneous receipts.

(Sept. 19, 1922, ch. 346, §17, 42 Stat. 854.)

§158. False or fraudulent statements prohibited; penalties

No stockholder, director, officer, employee, or agent of a China Trade Act corporation shall make, issue, or publish any statement, written or oral, or advertisement in any form, as to the value or as to the facts affecting the value of stocks, bonds, or other evidences of debt, or as to the financial

condition or transactions, or facts affecting such condition or transactions, of such corporation if it has issued or is to issue stocks, bonds, or other evidences of debt, whenever he knows or has reason to believe that any material representation in such statement or advertisement is false. No stockholder, director, officer, employee, or agent of a China Trade Act corporation shall, if all the authorized capital stock thereof has not been paid in, make, issue, or publish any written statement or advertisement, in any form, stating the amount of the authorized capital stock without also stating as the amount actually paid in, a sum not greater than the amount paid in. Any person violating any provisions of this section shall, upon conviction thereof, be fined not more than $5,000 or imprisoned not more than ten years, or both.

(Sept. 19, 1922, ch. 346, §18, 42 Stat. 855.)

§159. Unauthorized use of legend; penalty

No individual, partnership, or association, or corporation not incorporated under this chapter or under a law of the United States, shall engage in business within China under a name in connection with which the legend "Federal Inc. U.S.A." is used. Any person violating this section shall, upon conviction thereof, be fined not more than $1,000 for each violation.

(Sept. 19, 1922, ch. 346, §19, 42 Stat. 855.)

§160. Maintenance of agent for service

Every China Trade Act corporation shall maintain in the District of Columbia a person as its accredited agent, upon whom legal process may be served, in any suit to be brought in the United States District Court for the District of Columbia, and who is authorized to enter an appearance in its behalf. In the event of the death or inability to serve, or the resignation or removal, of such person, such corporation shall, within such time as the Secretary by regulation prescribes, appoint a successor. Such corporation shall file with the Secretary a certified copy of each power of attorney appointing a person under this section, and a certified copy of the written consent of each person so appointed.

(Sept. 19, 1922, ch. 346, §20(b), as added Feb. 26, 1925, ch. 345, §10, 43 Stat. 996; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107.)

CODIFICATION

Section comprises subsec. (b) of section 20 of act Sept. 19, 1922, as added by act Feb. 26, 1925. Subsec. (a) of section 20 is classified to section 146a of this title.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "district court of the United States for the District of Columbia."

Act June 25, 1936, changed name of "Supreme Court of the District of Columbia" to "district court of the United States for the District of Columbia".

§161. Alteration, amendment, or repeal

The Congress of the United States reserves the right to alter, amend, or repeal any provision of this chapter.

(Sept. 19, 1922, ch. 346, §28, 42 Stat. 856.)

§162. Creation of China corporations restricted

No corporation for the purpose of engaging in business within China shall be created under any law of the United States other than this chapter.

(Sept. 19, 1922, ch. 346, §29, as added Feb. 26, 1925, ch. 345, §13, 43 Stat. 997.)

CHAPTER 5—STATISTICAL AND COMMERCIAL INFORMATION

Sec.
171. Repealed.
172. Transfer of duties of Department of Labor; special investigations.
173, 174. Repealed.
175. Additional duties of Bureau.
176. Collection of commercial statistics.
176a. Confidential nature of information furnished Bureau.
176b, 177. Repealed.
178. Collection of statistics of foreign and interstate commerce and transportation.
179 to 181. Repealed.
182. Statistics of manufactures.
183. Report of statistics.
184 to 187. Repealed.
188. Publication of commercial information.
189, 189a. Repealed.
190. Discussions in commercial reports of partisan questions.
191. Terms of measure, weight, and money in commercial reports.
192 to 195. Repealed or Omitted.
196. Payments for rent of offices in foreign countries.
197 to 198. Repealed.

§171. Repealed. Pub. L. 90–620, §3, Oct. 22, 1968, 82 Stat. 1308

Section, acts Aug. 23, 1912, ch. 350, §1, 37 Stat. 407; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736, directed that, as of July 12, 1912, the Bureau of Manufactures and the Bureau of Statistics, both of the Department of Commerce, be consolidated into one bureau to be known as the Bureau of Foreign and Domestic Commerce, and that the duties required by law to be performed by the Bureau of Manufactures and the Bureau of Statistics be transferred to and performed by the Bureau of Foreign and Domestic Commerce. Pursuant to the powers transferred to and vested in the Secretary of Commerce under Reorg. Plan No. 5 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees, which transferred the functions of officers of the Department of Commerce and the functions of all agencies and employees of such Department, with a few exceptions, to the Secretary of Commerce, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, the Secretary, through internal reorganizations, has reassigned the functions of the Bureau of Foreign and Domestic Commerce to other offices of the Department.

§172. Transfer of duties of Department of Labor; special investigations

The duties of the Department of Labor, or Bureau of Labor, "to ascertain, at as early a date as possible, and whenever industrial changes shall make it essential, the cost of producing articles at the time dutiable in the United States, in leading countries where such articles are produced, by fully specified units of production, and under a classification showing the different elements of cost, or approximate cost, of such articles of production, including the wages paid in such industries per day, week, month, or year, or by the piece; and hours employed per day; and the profits of manufacturers and producers of such articles; and the comparative cost of living, and the kind of living; what articles are controlled by trusts or other combinations of capital, business operations, or labor, and what effect said trusts, or other combinations of capital, business operations, or labor have on

production and prices", are, as of August 23, 1912, transferred to and shall be discharged by the Bureau of Foreign and Domestic Commerce, and it shall be also the duty of said Bureau of Foreign and Domestic Commerce to make such special investigation and report on particular subjects when required to do so by the President or either House of Congress.

(Aug. 23, 1912, ch. 350, §1, 37 Stat. 407.)

REFERENCES IN TEXT

The quoted language of this section was originally enacted by act June 13, 1888, ch. 389, §7, 25 Stat. 183, which charged the duties to the Commissioner of Labor.

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of Commerce and functions of all agencies and employees of such Department, with a few exceptions, transferred to Secretary of Commerce, with power vested in him to authorize their performance or performance of any of his functions by any such officers, agencies, and employees, by Reorg. Plan No. 5 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees. Through internal reorganizations, functions of Bureau of Foreign and Domestic Commerce have been reassigned to other offices of Department of Commerce.

§§173, 174. Repealed. Pub. L. 87–826, §3, Oct. 15, 1962, 76 Stat. 953

Section 173, R.S. §336; acts Feb. 14, 1903, ch. 552, §10, 32 Stat. 829; Aug. 23, 1912, ch. 350, §1, 37, Stat. 407; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736; Jan. 25, 1919, ch. 10, 40 Stat. 1055; Mar. 1, 1919, ch. 86, 40 Stat. 1256, required annual reports on statistics of commerce and navigation. See section 301 et seq. of Title 13, Census.

Section 174, R.S. §337; acts Feb. 14, 1903, ch. 552, §10, 32 Stat. 829; Aug. 23, 1912, ch. 350, §1, 37 Stat. 407; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736; Mar. 1, 1919, ch. 86, 40 Stat. 1256; Aug. 31, 1961, Pub. L. 87–191, §2, 75 Stat. 419, prescribed regulations required to be observed by collectors of customs. See section 301 et seq. of Title 13, Census.

EFFECTIVE DATE OF REPEAL

Repeal effective 180 days after Oct. 15, 1962, except that the last sentence of par. Fifth of section 174 of this title shall be repealed Oct. 15, 1962, see section 4 of Pub. L. 87–826, set out as a note under section 301 of Title 13, Census.

SAVINGS PROVISION

Section 3 of Pub. L. 87–826 provided in part that any rights or liabilities existing under sections 173, 174, 177, 179, 181, 184 to 187, and 193 of this title, sections 92 and 95 of former Title 46, Shipping, and section 1486 of Title 48, Territories and Insular Possessions, and any proceedings instituted under or growing out of, any of such sections or parts thereof, shall not be affected by the repeal of such sections.

§175. Additional duties of Bureau

It shall be the province and duty of the Bureau of Foreign and Domestic Commerce, under the direction of the Secretary of Commerce, to foster, promote, and develop the various manufacturing industries of the United States, and markets for the same at home and abroad, domestic and foreign, by gathering, compiling, publishing, and supplying all available and useful information concerning such industries and such markets, and by such other methods and means as may be prescribed by the Secretary of Commerce or provided by law.

(Feb. 14, 1903, ch. 552, §5, 32 Stat. 827; Apr. 5, 1906, ch. 1366, §3, 34 Stat. 100; Aug. 23, 1912, ch. 350, §1, 37 Stat. 407; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736; Aug. 13, 1946, ch. 957, title XI, §1131(23), 60 Stat. 1037.)

AMENDMENTS

1946—Act Aug. 13, 1946, repealed last sentence relating to duties of consular officers with respect to the

Bureau.

CHANGE OF NAME

Act Mar. 4, 1913, substituted the "Secretary of Commerce" for "Secretary of Commerce and Labor".

EFFECTIVE DATE OF 1946 AMENDMENT

Amendment by act Aug. 13, 1946, effective three months from Aug. 13, 1946, see section 1141 of that act.

TRANSFER OF FUNCTIONS

For transfer of functions of Bureau of Foreign and Domestic Commerce, see note set out under section 172 of this title.

Act Aug. 23, 1912, transferred certain duties of Department or Bureau of Labor to Bureau of Foreign and Domestic Commerce.

Act Apr. 5, 1906, abolished the grade of commercial agent and commercial agent's function of helping to gather foreign trade information, reference to which formerly appeared in the last sentence of this section. Such last sentence was subsequently repealed by Act Aug. 13, 1946.

§176. Collection of commercial statistics

A purpose of the Bureau of Foreign and Domestic Commerce is the collection, arrangement, and classification of such statistical information as may be procured, showing, or tending to show, each year the condition of the manufactures, domestic trade, currency, and banks of the several States and Territories.

(R.S. §335; Feb. 27, 1877, ch. 69, §1, 19 Stat. 241; Aug. 23, 1912, ch. 350, §1, 37 Stat. 407.)

CODIFICATION

R.S. §335 derived from Res. June 15, 1844, No. 16, 5 Stat. 719.

AMENDMENTS

1877—Act Feb. 27, 1877, struck out "agriculture" before "manufactures".

TRANSFER OF FUNCTIONS

For transfer of functions of Bureau of Foreign and Domestic Commerce, see note set out under section 172 of this title.

Act Aug. 23, 1912, transferred certain duties of Department or Bureau of Labor to Bureau of Foreign and Domestic Commerce.

§176a. Confidential nature of information furnished Bureau

Any statistical information furnished in confidence to the Bureau of Foreign and Domestic Commerce by individuals, corporations, and firms shall be held to be confidential, and shall be used only for the statistical purposes for which it is supplied. Except as provided in the Confidential Information Protection and Statistical Efficiency Act of 2002, the Director of the Bureau of Foreign and Domestic Commerce shall not permit anyone other than the sworn employees of the Bureau to examine such individual reports, nor shall he permit any statistics of domestic commerce to be published in such manner as to reveal the identity of the individual, corporation, or firm furnishing such data.

(Jan. 27, 1938, ch. 11, §1, 52 Stat. 8; Pub. L. 107–347, title V, §526(a), Dec. 17, 2002, 116 Stat. 2969.)

REFERENCES IN TEXT

The Confidential Information Protection and Statistical Efficiency Act of 2002, referred to in text, is title V of Pub. L. 107–347, Dec. 17, 2002, 116 Stat. 2962, which enacted section 402 of Title 13, Census, amended this section, and enacted provisions set out as a note under section 3501 of Title 44, Public Printing and Documents.

AMENDMENTS

2002—Pub. L. 107–347 substituted "Except as provided in the Confidential Information Protection and Statistical Efficiency Act of 2002, the" for "The".

TRANSFER OF FUNCTIONS

For transfer of functions of Bureau of Foreign and Domestic Commerce, see note set out under section 172 of this title.

§176b. Repealed. June 25, 1948, ch. 645, §21, 62 Stat. 862

Section, act June 27, 1938, ch. 11, §2, 52 Stat. 8, related to disclosure by employee of information. See section 1905 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF REPEAL

Section 20 of act June 25, 1948, provided that the repeal of this section shall be effective Sept. 1, 1948.

§177. Repealed. Pub. L. 87–826, §3, Oct. 15, 1962, 76 Stat. 953

Section, acts July 16, 1892, ch. 196, §1, 27 Stat. 197; Mar. 3, 1893, ch. 211, §1, 27 Stat. 689; Feb. 14, 1903, ch. 552, §10, 32 Stat. 829; Aug. 23, 1912, ch. 350, §1, 37 Stat. 407; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736, related to returns of exports to foreign countries leaving the United States by rail. See section 301 et seq. of Title 13, Census.

EFFECTIVE DATE OF REPEAL

Repeal effective 180 days after Oct. 15, 1962, see section 4 of Pub. L. 87–826, set out as a note under section 301 of Title 13, Census.

SAVINGS PROVISION

See section 3 of Pub. L. 87–826, set out as a note under sections 173 and 174 of this title.

§178. Collection of statistics of foreign and interstate commerce and transportation

It shall be the duty of the officer in charge of the Bureau of Foreign and Domestic Commerce to gather and collate statistics and facts relating to commerce with foreign nations and among the several States, the railroad systems of this and other countries, the construction and operation of railroads, the actual cost of such construction and operation of railroads, the actual cost of transporting freight and passengers on railroads, and on canals, rivers, and other navigable waters of the United States, the charges imposed for such transportation of freight and passengers, and the tonnage transported.

(Mar. 3, 1875, ch. 129, §1, 18 Stat. 352; Feb. 14, 1903, ch. 552, §10, 32 Stat. 829; Aug. 23, 1912, ch. 350, §1, 37 Stat. 407; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736; May 29, 1928, ch. 901, §1(105), 45 Stat. 994.)

AMENDMENTS

1928—Act May 29, 1928, discontinued the report of Bureau of Foreign and Domestic Commerce to Congress on commercial relations of the United States.

TRANSFER OF FUNCTIONS

For transfer of functions of Bureau of Foreign and Domestic Commerce, see note set out under section 172 of this title.

Act Aug. 23, 1912, transferred certain duties of Department or Bureau of Labor to Bureau of Foreign and Domestic Commerce.

Act Feb. 14, 1903, transferred Bureau of Statistics from Treasury Department to Department of Commerce and Labor.

§179. Repealed. Pub. L. 87–826, §3, Oct. 15, 1962, 76 Stat. 953

Section, R.S. §339; acts Mar. 3, 1875, ch. 129, §1, 18 Stat. 352; Feb. 14, 1903, ch. 552, §10, 32 Stat. 829; Aug. 23, 1912, ch. 350, §1, 37 Stat. 407; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736; Mar. 1, 1919, ch. 86, 40 Stat. 1256, required quarterly reports of exports and imports. See section 301 et seq. of Title 13, Census.

EFFECTIVE DATE OF REPEAL

Repeal effective 180 days after Oct. 15, 1962, see section 4 of Pub. L. 87–826, set out as a note under section 301 of Title 13, Census.

SAVINGS PROVISION

See section 3 of Pub. L. 87–826, set out as a note under sections 173 and 174 of this title.

§180. Repealed. Feb. 28, 1933, ch. 131, §1, 47 Stat. 1349

Section, R.S. §340, related to statements of vessels registered.

§181. Repealed. Pub. L. 87–826, §3, Oct. 15, 1962, 76 Stat. 953

Section, R.S. §341; acts Aug. 23, 1912, ch. 350, §1, 37 Stat. 407; Mar. 1, 1919, ch. 86, 40 Stat. 1256, required preparation of an annual statement of merchandise. See section 301 et seq. of Title 13, Census.

EFFECTIVE DATE OF REPEAL

Repeal effective 180 days after Oct. 15, 1962, see section 4 of Pub. L. 87–826, set out as a note under section 301 of Title 13, Census.

SAVINGS PROVISION

See section 3 of Pub. L. 87–826, set out as a note under sections 173 and 174 of this title.

§182. Statistics of manufactures

The Director of the Bureau of Foreign and Domestic Commerce shall collect, digest, and arrange, for the use of Congress, the statistics of the manufactures of the United States, their localities, sources of raw material, markets, exchanges with the producing regions of the country, transportation of products, wages, and such other conditions as are found to affect their prosperity.

(R.S. §342; Aug. 23, 1912, ch. 350, §1, 37 Stat. 407; Mar. 1, 1919, ch. 86, 40 Stat. 1256.)

CODIFICATION

R.S. §342 derived from act July 28, 1866, ch. 298, §13, 14 Stat. 330.

CHANGE OF NAME

Act Mar. 1, 1919, substituted "Director" for "Chief".

TRANSFER OF FUNCTIONS

For transfer of functions of Bureau of Foreign and Domestic Commerce, see note set out under section 172 of this title.

Act Aug. 23, 1912, transferred certain duties of Department or Bureau of Labor to Bureau of Foreign and Domestic Commerce.

§183. Report of statistics

The Secretary of Commerce shall make a report to Congress on the first Monday of January in each year, containing the results of the information collected during the preceding year, by the Bureau of Foreign and Domestic Commerce, upon the condition of the manufactures, domestic trade,

currency, and banks of the several States and Territories.

(R.S. §259; Feb. 27, 1877, ch. 69, §1, 19 Stat. 241; Feb. 14, 1903, ch. 552, §9, 32 Stat. 829; Aug. 23, 1912, ch. 350, §1, 37 Stat. 407; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736.)

CODIFICATION

R.S. §259 derived from acts Sept. 24, 1789, ch. 20, §35, 1 Stat. 92; June 25, 1868, ch. 71, §5, 15 Stat. 75; June 22, 1870, ch. 150, §5, 16 Stat. 162.

AMENDMENTS

1877—Act Feb. 27, 1877, struck out "agriculture" before "manufactures".

CHANGE OF NAME

Act Mar. 4, 1913, substituted "Secretary of Commerce" for "Secretary of Commerce and Labor".

TRANSFER OF FUNCTIONS

For transfer of functions of Bureau of Foreign and Domestic Commerce, see note set out under section 172 of this title.

Act Aug. 23, 1912, transferred certain duties of Department or Bureau of Labor to Bureau of Foreign and Domestic Commerce.

Act Feb. 14, 1903, transferred Bureau of Statistics from Treasury Department to Department of Commerce and Labor.

§§184 to 187. Repealed. Pub. L. 87–826, §3, Oct. 15, 1962, 76 Stat. 953

Section 184, R.S. §263; acts Feb. 14, 1903, ch. 552, §10, 32 Stat. 829; Aug. 23, 1912, ch. 350, §1, 37 Stat. 407; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736; Mar. 1, 1919, ch. 86, 40 Stat. 1256, required printing of an annual report on commerce on navigation. See section 301 et seq. of Title 13, Census.

Section 185, R.S. §251 (part); acts Feb. 14, 1903, ch. 552, §10, 32 Stat. 829; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736, required Secretary of Commerce to prescribe forms of annual statements to be submitted to Congress showing the actual state of commerce and navigation between the United States and foreign countries, or coastwise between the collection districts of the United States. See section 301 et seq. of Title 13.

Section 186, R.S. §338, required annual report of statistics of commerce and navigation to state kinds, quantities, and value of merchandise entered and cleared coastwise into and from collection districts of the United States. See section 301 et seq. of Title 13.

Section 187, R.S. §§265, 3812; acts Jan. 12, 1895, ch. 23, §17, 28 Stat. 603; Feb. 14, 1903, ch. 552, §10, 32 Stat. 829; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736, related to printing of statement of exports and imports. See section 301 et seq. of Title 13.

EFFECTIVE DATE OF REPEAL

Repeal effective 180 days after Oct. 15, 1962, see section 4 of Pub. L. 87–826, set out as a note under section 301 of Title 13, Census.

SAVINGS PROVISION

See section 3 of Pub. L. 87–826, set out as a note under sections 173 and 174 of this title.

§188. Publication of commercial information

The Secretary of Commerce shall publish official notifications, from time to time, of such commercial information communicated to him by diplomatic and consular officers, as he may deem important to the public interests, in such newspapers, not to exceed three in number, as he may select.

(R.S. §211; Feb. 14, 1903, ch. 552, §10, 32 Stat. 829; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736.)

CODIFICATION

R.S. §211 derived from act Aug. 18, 1856, ch. 127, §2, 11 Stat. 60.

CHANGE OF NAME

Act Mar. 4, 1913, substituted "Secretary of Commerce" for "Secretary of Commerce and Labor".

TRANSFER OF FUNCTIONS

Act Feb. 14, 1903, transferred Bureau of Statistics from Treasury Department to Department of Commerce and Labor.

§§189, 189a. Repealed. Pub. L. 91–412, §3(b), (c), Sept. 25, 1970, 84 Stat. 864

Section 189, act May 15, 1936, ch. 405, §1, 49 Stat. 1335, which authorized Secretary of Commerce to charge for lists of foreign buyers, special statistical services, special commodity news bulletins, and World Trade Directory reports and to deposit collections therefore in the Treasury as miscellaneous receipts, is now covered by sections 1525 and 1526 of this title. Similar provisions were contained in the following acts:

Mar. 22, 1935, ch. 39, 49 Stat. 89.
Apr. 7, 1934, ch. 104, 48 Stat. 550.
Mar. 1, 1933, ch. 144, 47 Stat. 1392.
July 1, 1932, ch. 361, 47 Stat. 501.
June 30, 1932, ch. 314, pt. II, title III, §310, 47 Stat. 410.
Feb. 23, 1931, ch. 280, 46 Stat. 1333.
Apr. 18, 1930, ch. 184, 46 Stat. 197.
Jan. 25, 1929, ch. 102, 45 Stat. 1118.
Feb. 15, 1928, ch. 57, 45 Stat. 87.
Feb. 24, 1927, ch. 189, 44 Stat. 1203.
Apr. 29, 1926, ch. 195, 44 Stat. 353.
Mar. 3, 1881, ch. 130, 21 Stat. 391.
June 16, 1880, ch. 235, 21 Stat. 271.

Section 189a, act May 27, 1935, ch. 148, §1, 49 Stat. 292, which authorized Department of Commerce to make special statistical studies (foreign trade, domestic trade, and other economic matters), to prepare from its records special statistical compilations, and to furnish transcripts (studies, tables, and other records), upon payment of actual cost by requesting person, firm, or corporations, is now covered by section 1525 of this title.

§190. Discussions in commercial reports of partisan questions

No part of the consular and other commercial reports of the Department of Commerce, including circular letters to chambers of commerce, discussing partisan political, religious, or moral questions shall be published.

(Feb. 25, 1885, ch. 150, 23 Stat. 324; Feb. 14, 1903, ch. 552, §10, 32 Stat. 829; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736.)

CHANGE OF NAME

Act Mar. 4, 1913, substituted "Department of Commerce" for "Department of Commerce and Labor".

TRANSFER OF FUNCTIONS

Act Feb. 14, 1903, transferred Bureau of Statistics from Treasury Department to Department of Commerce and Labor.

§191. Terms of measure, weight, and money in commercial reports

All terms of measure, weight, and money in the diplomatic, consular, and other commercial reports prepared, printed, published, and distributed by the Department of Commerce shall be reduced to and expressed in terms of measure, weight, and coin of the United States, as well as in the foreign terms.

(Feb. 9, 1903, ch. 530, 32 Stat. 813; Feb. 14, 1903, ch. 552, §10, 32 Stat. 829; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736.)

CHANGE OF NAME

Act Mar. 4, 1913, substituted "Department of Commerce" for "Department of Commerce and Labor".

TRANSFER OF FUNCTIONS

Act Feb. 14, 1903, transferred Bureau of Statistics from Treasury Department to Department of Commerce and Labor.

§§192, 192a. Repealed. Pub. L. 91–412, §3(a), (b), Sept. 25, 1970, 84 Stat. 864

Section 192, acts Mar. 1, 1919, ch. 86, §1, 40 Stat. 1256; May 27, 1935, ch. 148, §2, 49 Stat. 293, which provided for deposit of moneys received for special statistical studies, compilations, and transcripts in a special account for payment of ordinary expenses incidental to the work and services of nongovernmental individuals and had originally provided for covering into the Treasury as miscellaneous receipts moneys received in payment of photographic and other mechanical reproduction of special statistical compilations from the records, is now covered by section 1526 of this title.

Section 192a, acts May 27, 1935, ch. 148, §3, 49 Stat. 293; Aug. 7, 1946, ch. 770, §1(4), 60 Stat. 866, required Secretary of Commerce to prescribe rules and regulations governing special statistical studies.

§193. Repealed. Pub. L. 87–826, §3, Oct. 15, 1962, 76 Stat. 953

Section, act Jan. 5, 1923, ch. 23, §2, 42 Stat. 1110, related to statements and reports for collectors of customs and Treasury Department. See section 301 et seq. of Title 13, Census.

EFFECTIVE DATE OF REPEAL

Repeal effective 180 days after Oct. 15, 1962, see section 4 of Pub. L. 87–826, set out as a note under section 301 of Title 13, Census.

SAVINGS PROVISION

See section 3 of Pub. L. 87–826, set out as a note under sections 173 and 174 of this title.

§§194, 195. Omitted

CODIFICATION

Section 194, act Jan. 5, 1923, ch. 23, §1, 42 Stat. 1109, which transferred to the Department of Commerce from the Department of the Treasury the control and expense of operation of the office known as the Bureau of Customs Statistics under the jurisdiction of the Department of the Treasury, on Jan. 5, 1923, located in the customhouse, City of New York, State of New York, including all officers, clerks, and other employees of that bureau, official records, papers, mechanical and office equipment, furniture, and supplies in use on that date and which authorized the Secretary of Commerce to consolidate the Bureau of Customs Statistics with the Division of Statistics of the Bureau of Foreign and Domestic Commerce into one office, located in either Washington or New York, or partly in either place, in the discretion of the Secretary of Commerce, with the statistical bureau authorized to be located in New York under the jurisdiction and control of the Department of Commerce to continue to occupy the premises in the New York customhouse which were on Jan. 5, 1923, occupied by the Bureau of Customs Statistics, and with additional space as needed to be assigned in the same building for its use by the Secretary of the Treasury upon request of the Secretary of Commerce, has been omitted as executed. Pursuant to the authority vested in the Secretary of Commerce by Reorg. Plan No. 5 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees, the Secretary has reassigned the functions of the Division of Statistics of the Bureau of Foreign and Domestic Commerce to other offices of the Department of Commerce.

Section 195, acts Apr. 18, 1930, ch. 184, 46 Stat. 198; Feb. 23, 1931, ch. 280, 46 Stat. 1334, which provided for the payment of transportation expenses of employees, is covered by section 5701 et seq. of Title 5, Government Organization and Employees.

§196. Payments for rent of offices in foreign countries

Section 3324(a) and (b) of title 31 shall not apply to advance payments for rent of offices in foreign countries by the Bureau of Foreign and Domestic Commerce.

(Mar. 4, 1925, ch. 556, §1, 43 Stat. 1327.)

CODIFICATION

"Section 3324(a) and (b) of title 31" substituted in text for "section 3648 of the Revised Statutes" on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

Section was formerly classified to section 531 of Title 31 prior to the general revision and enactment of Title 31, Money and Finance, by Pub. L. 97–258, §1, Sept. 13, 1982, 96 Stat. 877.

Section is from the Second Deficiency Act for the fiscal year 1925.

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of Commerce and functions of all agencies and employees of such Department, with a few exceptions, transferred to Secretary of Commerce, with power vested in him to authorize their performance or performance of any of his functions by any of such officers, agencies, and employees, by Reorg. Plan No. 5 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees. Through internal reorganization, functions of former Bureau of Foreign and Domestic Commerce, referred to in text, have been reassigned to other offices of Department of Commerce.

§§197 to 197d. Repealed. Aug. 13, 1946, ch. 957, title XI, §1131(54), 60 Stat. 1039

Section 197, act Mar. 3, 1927, ch. 365, §1, 44 Stat. 1394, related to establishment of Foreign Commerce Service.

Section 197a, act Mar. 3, 1927, ch. 365, §2, 44 Stat. 1394, related to duties of officers.

Section 197b, acts Mar. 3, 1927, ch. 365, §3, 44 Stat. 1394; Apr. 12, 1930, ch. 142, 46 Stat. 163, related to appointment of officers, assignments for duty, and allowances.

Section 197c, act Mar. 3, 1927, ch. 365, §4, 44 Stat. 1395, related to employment of clerks and assistants.

Section 197d, act Mar. 3, 1927, ch. 365, §5, 44 Stat. 1396, related to status of officer while serving abroad.

EFFECTIVE DATE OF REPEAL

Repeal effective three months from Aug. 13, 1946, see section 1141 of act Aug. 13, 1946.

§197e. Repealed. Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 647

Section, act Mar. 3, 1927, ch. 365, §6, 44 Stat. 1396, provided for travel and subsistence allowance to officers, employees, etc., of Bureau of Foreign and Domestic Commerce on duty abroad or away from duty post.

§197f. Repealed. Aug. 13, 1946, ch. 957, title XI, §1131(54), 60 Stat. 1039

Section, act Mar. 3, 1927, ch. 365, §7, 44 Stat. 1396, related to availability of appropriation during fiscal year ending June 30, 1926, and thereafter for the Department of Commerce for commercial attachés in Europe, South or Central America and elsewhere.

EFFECTIVE DATE OF REPEAL

Repeal effective three months from Aug. 13, 1946, see section 1141 of act Aug. 13, 1946.

§198. Repealed. Oct. 10, 1940, ch. 851, §4, 54 Stat. 1111

Section, acts Jan. 25, 1929, ch. 102, title III, 45 Stat. 1119; Apr. 18, 1930, ch. 184, title III, 46 Stat. 198; Feb. 23, 1931, ch. 280, title III, 46 Stat. 1334; July 1, 1932, ch. 361, title III, 47 Stat. 502; Mar. 1, 1933, ch. 144, title III, 47 Stat. 1393; Apr. 7, 1934, ch. 104, title III, 48 Stat. 551; Mar. 22, 1935, ch. 39, §1, 49 Stat. 90; May 15, 1936, ch. 405, §1, 49 Stat. 1336; June 16, 1937, ch. 359, title III, §1, 50 Stat. 287; Apr. 27, 1938, ch.

180, title III, §1, 52 Stat. 273; June 29, 1939, ch. 248, title III, 53 Stat. 909, related to purchases of supplies and equipment on the open market.

CHAPTER 6—WEIGHTS AND MEASURES AND STANDARD TIME

SUBCHAPTER I—WEIGHTS, MEASURES, AND STANDARDS GENERALLY

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SUBCHAPTER I—WEIGHTS, MEASURES, AND STANDARDS GENERALLY

§201. Sets of standard weights and measures for agricultural colleges

The Secretary of Commerce is directed to cause a complete set of all the weights and measures adopted as standards to be delivered to the governor of each State in the Union for the use of agricultural colleges in the States, respectively, which have received a grant of lands from the United States, and also one set of the same for the use of the Smithsonian Institution: *Provided*, That the cost of each set shall not exceed $200.

(Mar. 3, 1881, No. 26, 21 Stat. 521; Feb. 14, 1903, ch. 552, §§4, 10, 32 Stat. 826, 829; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736.)

CHANGE OF NAME

Act Mar. 4, 1913, created Department of Labor, and renamed Department of Commerce and Labor as Department of Commerce.

TRANSFER OF FUNCTIONS

Act Feb. 14, 1903, transferred National Bureau of Standards from Treasury Department to Department of Commerce and Labor.

APPROPRIATION

A sum sufficient to carry out the provisions of this section was appropriated out of any money in the Treasury not otherwise appropriated by act Mar. 3, 1881.

DISTRIBUTION TO STATES

The Secretary of the Treasury was directed to cause a complete set of all the weights and measures adopted as standards to be delivered to the governor of each state for the use of the states by Res. June 14, 1836, No. 7, 5 Stat. 133, which provision was not incorporated into the Revised Statutes.

§202. Repairs to standards

Such necessary repairs and adjustments shall be made to the standards furnished to the several States and Territories as may be requested by the governors thereof, and also to standard weights and measures that have been or may be supplied to United States customhouses and other offices of the United States under Act of Congress, when requested by the Secretary of Commerce.

(July 11, 1890, ch. 667, §1, 26 Stat. 242; Feb. 14, 1903, ch. 552, §§4, 10, 32 Stat. 826, 829; Mar. 4,

1913, ch. 141, §1, 37 Stat. 736.)

CHANGE OF NAME

Act Mar. 4, 1913, created Department of Labor and renamed Department of Commerce and Labor as Department of Commerce.

TRANSFER OF FUNCTIONS

Act Feb. 14, 1903, transferred National Bureau of Standards from Treasury Department to Department of Commerce and Labor.

§203. Replacing lost standard weights and measures; cost

The Secretary of Commerce is authorized and directed to furnish precise copies of standard weights and measures, bearing the seal of the National Institute of Standards and Technology and accompanied by a suitable certificate, to any State, Territory, or institution heretofore furnished with the same, upon application in writing by the governor in the case of a State or Territory, or by the official head in the case of an institution, setting forth that the copies of standards applied for are to replace similar ones heretofore furnished, in accordance with law, which have been lost or destroyed: *Provided*, That the applicant shall, before the said standards are delivered, first deposit with the Secretary of Commerce the amount of money necessary to defray all expenses incurred by the National Institute of Standards and Technology in furnishing the same, which amount shall be covered into the Treasury of the United States to the credit of miscellaneous receipts as soon as the weights or measures are delivered for transportation into the hands of such persons as are designated by the officers ordering the same.

(Aug. 18, 1894, ch. 301, §1, 28 Stat. 383; Mar. 3, 1901, ch. 872, §1, 31 Stat. 1449; Feb. 14, 1903, ch. 552, §10, 32 Stat. 829; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736; Pub. L. 100–418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433.)

AMENDMENTS

1988—Pub. L. 100–418 substituted "National Institute of Standards and Technology" for "Bureau of Standards" in two places.

CHANGE OF NAME

Act Mar. 4, 1913, created Department of Labor and renamed Department of Commerce and Labor as Department of Commerce.

Act Mar. 3, 1901, provided that Office of Standard Weights and Measures should thereafter be known as National Bureau of Standards.

TRANSFER OF FUNCTIONS

Act Feb. 14, 1903, transferred National Bureau of Standards from Treasury Department to Department of Commerce and Labor.

§204. Metric system authorized

It shall be lawful throughout the United States of America to employ the weights and measures of the metric system; and no contract or dealing, or pleading in any court, shall be deemed invalid or liable to objection because the weights or measures expressed or referred to therein are weights or measures of the metric system.

(R.S. §3569.)

CODIFICATION

R.S. §3569 derived from act July 28, 1866, ch. 301, §1, 14 Stat. 339.

STUDY OF METRIC SYSTEM BY THE SECRETARY OF COMMERCE

Pub. L. 90–472, Aug. 9, 1968, 82 Stat. 693, authorized the Secretary of Commerce to conduct a program of

investigation, research, and survey to determine the impact of increasing worldwide use of the metric system on the United States; to appraise the desirability and practicability of increasing the use of metric weights and measures in the United States; to study the feasibility of retaining and promoting by international use of dimensional and other engineering standards based on the customary measurement units of the United States; and to evaluate the costs and benefits of alternative courses of action which might be feasible for the United States. The Secretary was directed to submit to the Congress such interim reports as he deemed desirable, and within three years after Aug. 9, 1968, a full and complete report of the findings made under the study, together with such recommendations as he considered to be appropriate and in the best interests of the United States. By its own terms, the Act expired thirty days after the submission of the final report.

§205. Metric system defined

The metric system of measurement shall be defined as the International System of Units as established in 1960, and subsequently maintained, by the General Conference of Weights and Measures, and as interpreted or modified for the United States by the Secretary of Commerce.

(R.S. §3570; Pub. L. 110–69, title III, §3013(c)(1), Aug. 9, 2007, 121 Stat. 598.)

CODIFICATION

R.S. §3570 derived from act July 28, 1866, ch. 301, §2, 14 Stat. 339, 340.

AMENDMENTS

2007—Pub. L. 110–69 amended section generally. Prior to amendment, section read as follows: "The tables in the schedule annexed shall be recognized in the construction of contracts and in all legal proceedings as establishing, in terms of the weights and measures on June 22, 1874, in use in the United States, the equivalents of the weights and measures expressed therein in terms of the metric system; and the tables may lawfully be used for computing, determining, and expressing in customary weights and measures the weights and measures of the metric system."

SUBCHAPTER II—METRIC CONVERSION

§205a. Congressional statement of findings

The Congress finds as follows:

(1) The United States was an original signatory party to the 1875 Treaty of the Meter (20 Stat. 709), which established the General Conference of Weights and Measures, the International Committee of Weights and Measures and the International Bureau of Weights and Measures.

(2) Although the use of metric measurement standards in the United States has been authorized by law since 1866 (Act of July 28, 1866; 14 Stat. 339), this Nation today is the only industrially developed nation which has not established a national policy of committing itself and taking steps to facilitate conversion to the metric system.

(3) World trade is increasingly geared towards the metric system of measurement.

(4) Industry in the United States is often at a competitive disadvantage when dealing in international markets because of its nonstandard measurement system, and is sometimes excluded when it is unable to deliver goods which are measured in metric terms.

(5) The inherent simplicity of the metric system of measurement and standardization of weights and measures has led to major cost savings in certain industries which have converted to that system.

(6) The Federal Government has a responsibility to develop procedures and techniques to assist industry, especially small business, as it voluntarily converts to the metric system of measurement.

(7) The metric system of measurement can provide substantial advantages to the Federal Government in its own operations.

(Pub. L. 94–168, §2, Dec. 23, 1975, 89 Stat. 1007; Pub. L. 100–418, title V, §5164(a), Aug. 23,

1988, 102 Stat. 1451.)

REFERENCES IN TEXT

Act of July 28, 1866; 14 Stat. 339, referred to in par. (2), is predecessor of R.S. §3569 authorizing use of the metric system, which is classified to section 204 of this title.

AMENDMENTS

1988—Pars. (3) to (7). Pub. L. 100–418 added pars. (3) to (7).

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–289, §1, Oct. 11, 1996, 110 Stat. 3411, provided that: "This Act [enacting section 205l of this title, amending sections 205c and 205l of this title, and enacting provisions set out as notes under this section and section 205c of this title] may be cited as the 'Savings in Construction Act of 1996'."

SHORT TITLE

Pub. L. 94–168, §1, Dec. 23, 1975, 89 Stat. 1007, provided: "That this Act [enacting this subchapter] may be cited as the 'Metric Conversion Act of 1975'."

CONGRESSIONAL STATEMENT OF FINDINGS; METRIC CONVERSION IN FEDERAL CONSTRUCTION PROJECTS

Pub. L. 104–289, §2, Oct. 11, 1996, 110 Stat. 3411, provided that: "The Congress finds the following:

"(1) The Metric Conversion Act of 1975 [15 U.S.C. 205a et seq.] was enacted in order to set forth the policy of the United States to convert to the metric system. Section 3 of that Act [15 U.S.C. 205b] requires that each Federal agency use the metric system of measurements in its procurement, grants, and other business-related activities, unless that use is likely to cause significant cost or loss of markets to United States firms, such as when foreign competitors are producing competing products in non-metric units.

"(2) In accordance with that Act and Executive Order 12770, of July 25, 1991 [set out below], Federal agencies increasingly construct new Federal buildings in round metric dimensions. As a result, companies that wish to bid on Federal construction projects increasingly are asked to supply materials or products in round metric dimensions.

"(3) While the Metric Conversion Act of 1975 currently provides an exemption to metric usage when impractical or when such usage will cause economic inefficiencies, amendments are warranted to ensure that the use of specific metric components in metric construction projects do not increase the cost of Federal buildings to the taxpayers."

EX. ORD. NO. 12770. METRIC USAGE IN FEDERAL GOVERNMENT PROGRAMS

Ex. Ord. No. 12770, July 25, 1991, 56 F.R. 35801, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Metric Conversion Act of 1975, Public Law 94–168 (15 U.S.C. 205a *et seq*.) ("the Metric Conversion Act"), as amended by section 5164 of the Omnibus Trade and Competitiveness Act of 1988, Public Law 100–418 ("the Trade and Competitiveness Act"), and in order to implement the congressional designation of the metric system of measurement as the preferred system of weights and measures for United States trade and commerce, it is hereby ordered as follows:

SECTION 1. *Coordination by the Department of Commerce*. (a) The Secretary of Commerce ("Secretary") is designated to direct and coordinate efforts by Federal departments and agencies to implement Government metric usage in accordance with section 3 of the Metric Conversion Act (15 U.S.C. 205b), as amended by section 5164(b) of the Trade and Competitiveness Act.

(b) In furtherance of his duties under this order, the Secretary is authorized:

(1) to charter an Interagency Council on Metric Policy ("ICMP"), which will assist the Secretary in coordinating Federal Government-wide implementation of this order. Conflicts and questions regarding implementation of this order shall be resolved by the ICMP. The Secretary may establish such subcommittees and subchairs within this Council as may be necessary to carry out the purposes of this order.[;]

(2) to form such advisory committees representing other interests, including State and local governments and the business community, as may be necessary to achieve the maximum beneficial effects of this order; and

(3) to issue guidelines, to promulgate rules and regulations, and to take such actions as may be necessary to carry out the purposes of this order. Regulations promulgated by the Secretary shall function as policy guidelines for other agencies and departments.

(c) The Secretary shall report to the President annually regarding the progress made in implementing this order. The report shall include:

(1) an assessment of progress made by individual Federal agencies towards implementing the purposes underlying this order;

(2) an assessment of the effect that this order has had on achieving the national goal of establishing the metric system as the preferred system of weights and measures for United States trade and commerce; and

(3) on October 1, 1992, any recommendations which the Secretary may have for additional measures, including proposed legislation, needed to achieve the full economic benefits of metric usage.

SEC. 2. *Department and Agency Responsibilities*. All executive branch departments and agencies of the United States Government are directed to take all appropriate measures within their authority to carry out the provisions of this order. Consistent with this mission, the head of each executive department and agency shall:

(a) use, to the extent economically feasible by September 30, 1992, or by such other date or dates established by the department or agency in consultation with the Secretary of Commerce, the metric system of measurement in Federal Government procurements, grants, and other business-related activities. Other business-related activities include all use of measurement units in agency programs and functions related to trade, industry, and commerce.

(1) Metric usage shall not be required to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms.

(2) Heads of departments and agencies shall establish an effective process for a policy-level and program-level review of proposed exceptions to metric usage. Appropriate information about exceptions granted shall be included in the agency annual report along with recommendations for actions to enable future metric usage.

(b) seek out ways to increase understanding of the metric system of measurement through educational information and guidance and in Government publications. The transition to use of metric units in Government publications should be made as publications are revised on normal schedules or new publications are developed, or as metric publications are required in support of metric usage pursuant to paragraph (a) of this section.

(c) seek the appropriate aid, assistance, and cooperation of other affected parties, including other Federal, State, and local agencies and the private sector, in implementing this order. Appropriate use shall be made of governmental, trade, professional, and private sector metric coordinating groups to secure the maximum benefits of this order through proper communication among affected sectors.

(d) formulate metric transition plans for the department or agency which shall incorporate the requirements of the Metric Conversion Act and this order, and which shall be approved by the department or agency head and be in effect by November 30, 1991. Copies of approved plans shall be forwarded to the Secretary of Commerce. Such metric transition plans shall specify, among other things:

(1) the total scope of the metric transition task for that department or agency, including firm dates for all metric accomplishment milestones for the current and subsequent fiscal year;

(2) plans of the department or agency for specific initiatives to enhance cooperation with industry, especially small business, as it voluntarily converts to the metric system, and with all affected parties in undertaking the requirements of paragraph (a) of this section; and

(3) specific steps and associated schedules through which the department or agency will seek to increase understanding of the metric system through educational information and guidance, and in department or agency publications.

(e) designate a senior-level official as the Metric Executive for the department or agency to assist the head of each executive department or agency in implementing this order. The responsibilities of the Metric Executive shall include, but not be limited to:

(1) acting as the department's or agency's policy-level representative to the ICMP and as a liaison with other government agencies and private sector groups:

(2) management oversight of department or agency outreach and response to inquiries and questions from affected parties during the transition to metric system usage; and

(3) management oversight of preparation of the department's or agency's metric transition plans and progress reports, including the Annual Metric Report required by 15 U.S.C. 205j and OMB Circular A–11.

(4) preparation by June 30, 1992, of an assessment of agency progress and problems, together with recommendations for steps to assure successful implementation of the Metric Conversion Act. The assessment and recommendations shall be approved by the head of the department or agency and provided to the Secretary by June 30, 1992, for inclusion in the Secretary's October 1, 1992, report on implementation of this order.

SEC. 3. *Application of Resources*. The head of each executive department and agency shall be responsible for implementing and applying the necessary resources to accomplish the goals set forth in the Metric Conversion Act and this order.

SEC. 4. *Judicial Review*. This order is intended only to improve the internal management of the executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any other person.

GEORGE BUSH.

§205b. Declaration of policy

It is therefore the declared policy of the United States—

(1) to designate the metric system of measurement as the preferred system of weights and measures for United States trade and commerce;

(2) to require that each Federal agency, by a date certain and to the extent economically feasible by the end of the fiscal year 1992, use the metric system of measurement in its procurements, grants, and other business-related activities, except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms, such as when foreign competitors are producing competing products in non-metric units;

(3) to seek out ways to increase understanding of the metric system of measurement through educational information and guidance and in Government publications; and

(4) to permit the continued use of traditional systems of weights and measures in non-business activities.

(Pub. L. 94–168, §3, Dec. 23, 1975, 89 Stat. 1007; Pub. L. 100–418, title V, §5164(b), Aug. 23, 1988, 102 Stat. 1452.)

AMENDMENTS

1988—Pub. L. 100–418 amended section generally. Prior to amendment, section read as follows: "It is therefore declared that the policy of the United States shall be to coordinate and plan the increasing use of the metric system in the United States and to establish a United States Metric Board to coordinate the voluntary conversion to the metric system."

IMPLEMENTATION OF METRIC USAGE IN FEDERAL GOVERNMENT

Secretary of Commerce designated to direct and coordinate implementation of Government metric usage, see section 1 of Ex. Ord. No. 12770, July 25, 1991, 56 F.R. 35801, set out as a note under section 205a of this title.

§205c. Definitions

As used in this subchapter, the term—

(1) "Board" means the United States Metric Board, established under section 205d of this title;

(2) "engineering standard" means a standard which prescribes (A) a concise set of conditions and requirements that must be satisfied by a material, product, process, procedure, convention, or test method; and (B) the physical, functional, performance and/or conformance characteristics thereof;

(3) "international standard or recommendation" means an engineering standard or recommendation which is (A) formulated and promulgated by an international organization and (B) recommended for adoption by individual nations as a national standard;

(4) "metric system of measurement" means the International System of Units as established by the General Conference of Weights and Measures in 1960 and as interpreted or modified for the United States by the Secretary of Commerce;

(5) "full and open competition" has the same meaning as defined in section 107 of title 41;

(6) "total installed price" means the price of purchasing a product or material, trimming or otherwise altering some or all of that product or material, if necessary to fit with other building components, and then installing that product or material into a Federal facility;

(7) "hard-metric" means measurement, design, and manufacture using the metric system of measurement, but does not include measurement, design, and manufacture using English system

measurement units which are subsequently reexpressed in the metric system of measurement;

(8) "cost or pricing data or price analysis" has the meaning given such terms in section 3501(a) of title 41; and

(9) "Federal facility" means any public building (as defined under section 3301(a) of title 40 [1] and shall include any Federal building or construction project—

(A) on lands in the public domain;

(B) on lands used in connection with Federal programs for agriculture research, recreation, and conservation programs;

(C) on or used in connection with river, harbor, flood control, reclamation, or power projects;

(D) on or used in connection with housing and residential projects;

(E) on military installations (including any fort, camp, post, naval training station, airfield, proving ground, military supply depot, military school, or any similar facility of the Department of Defense);

(F) on installations of the Department of Veteran [2] Affairs used for hospital or domiciliary purposes; or

(G) on lands used in connection with Federal prisons,

but does not include (i) any Federal building or construction project the exclusion of which the President deems to be justified in the public interest, or (ii) any construction project or building owned or controlled by a State government, local government, Indian tribe, or any private entity.

(Pub. L. 94–168, §4, Dec. 23, 1975, 89 Stat. 1007; Pub. L. 104–289, §3, Oct. 11, 1996, 110 Stat. 3411.)

CODIFICATION

In par. (5), "section 107 of title 41" substituted for "section 403(6) of title 41, United States Code" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In par. (8), "section 3501(a) of title 41" substituted for "section 304A of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254b)" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In par. (9), "section 3301(a) of title 40" substituted for "section 13 of the Public Buildings Act of 1959 (40 U.S.C. 612)" on authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1996—Pars. (5) to (9). Pub. L. 104–289 added pars. (5) to (9).

EFFECTIVE DATE OF 1996 AMENDMENT; SAVINGS PROVISION

Pub. L. 104–289, §6, Oct. 11, 1996, 110 Stat. 3415, provided that:

"(a) EFFECTIVE DATE.—This Act [See Short Title of 1996 Amendment note set out under section 205a of this title] and the amendments made by this Act shall take effect 90 days after the date of enactment of this Act [Oct. 11, 1996].

"(b) SAVINGS PROVISIONS.—This Act shall not apply to contracts awarded and solicitations issued on or before the effective date of this Act, unless the head of a Federal agency makes a written determination in his or her sole discretion that it would be in the public interest to apply one or more provisions of this Act or its amendments to these existing contracts or solicitations."

[1] So in original. Probably should be followed by a closing parenthesis.

[2] So in original. Probably should be "Veterans".

§205d. United States Metric Board

(a) Establishment

There is established, in accordance with this section, an independent instrumentality to be known as a United States Metric Board.

(b) Membership; Chairman; appointment of members; term of office; vacancies

The Board shall consist of 17 individuals, as follows:

(1) the Chairman, a qualified individual who shall be appointed by the President, by and with the advice and consent of the Senate;

(2) sixteen members who shall be appointed by the President, by and with the advice and consent of the Senate, on the following basis—

(A) one to be selected from lists of qualified individuals recommended by engineers and organizations representative of engineering interests;

(B) one to be selected from lists of qualified individuals recommended by scientists, the scientific and technical community, and organizations representative of scientists and technicians;

(C) one to be selected from a list of qualified individuals recommended by the National Association of Manufacturers or its successor;

(D) one to be selected from lists of qualified individuals recommended by the United States Chamber of Commerce, or its successor, retailers, and other commercial organizations;

(E) two to be selected from lists of qualified individuals recommended by the American Federation of Labor and Congress of Industrial Organizations or its successor, who are representative of workers directly affected by metric conversion, and by other organizations representing labor;

(F) one to be selected from a list of qualified individuals recommended by the National Governors Conference, the National Council of State Legislatures, and organizations representative of State and local government;

(G) two to be selected from lists of qualified individuals recommended by organizations representative of small business;

(H) one to be selected from lists of qualified individuals representative of the construction industry;

(I) one to be selected from a list of qualified individuals recommended by the National Conference on Weights and Measures and standards making organizations;

(J) one to be selected from lists of qualified individuals recommended by educators, the educational community, and organizations representative of educational interests; and

(K) four at-large members to represent consumers and other interests deemed suitable by the President and who shall be qualified individuals.

As used in this subsection, each "list" shall include the names of at least three individuals for each applicable vacancy. The terms of office of the members of the Board first taking office shall expire as designated by the President at the time of nomination; five at the end of the 2d year; five at the end of the 4th year; and six at the end of the 6th year. The term of office of the Chairman of such Board shall be 6 years. Members, including the Chairman, may be appointed to an additional term of 6 years, in the same manner as the original appointment. Successors to members of such Board shall be appointed in the same manner as the original members and shall have terms of office expiring 6 years from the date of expiration of the terms for which their predecessors were appointed. Any individual appointed to fill a vacancy occurring prior to the expiration of any term of office shall be appointed for the remainder of that term. Beginning 45 days after the date of incorporation of the Board, six members of such Board shall constitute a quorum for the transaction of any function of the Board.

(c) Compulsory powers

Unless otherwise provided by the Congress, the Board shall have no compulsory powers.

(d) Termination

The Board shall cease to exist when the Congress, by law, determines that its mission has been

accomplished.

(Pub. L. 94–168, §5, Dec. 23, 1975, 89 Stat. 1007.)

§205e. Functions and powers of Board

It shall be the function of the Board to devise and carry out a broad program of planning, coordination, and public education, consistent with other national policy and interests, with the aim of implementing the policy set forth in this subchapter. In carrying out this program, the Board shall—

(1) consult with and take into account the interests, views, and conversion costs of United States commerce and industry, including small business; science; engineering; labor; education; consumers; government agencies at the Federal, State, and local level; nationally recognized standards developing and coordinating organizations; metric conversion planning and coordinating groups; and such other individuals or groups as are considered appropriate by the Board to the carrying out of the purposes of this subchapter. The Board shall take into account activities underway in the private and public sectors, so as not to duplicate unnecessarily such activities;

(2) provide for appropriate procedures whereby various groups, under the auspices of the Board, may formulate, and recommend or suggest, to the Board specific programs for coordinating conversion in each industry and segment thereof and specific dimensions and configurations in the metric system and in other measurements for general use. Such programs, dimensions, and configurations shall be consistent with (A) the needs, interests, and capabilities of manufacturers (large and small), suppliers, labor, consumers, educators, and other interested groups, and (B) the national interest;

(3) publicize, in an appropriate manner, proposed programs and provide an opportunity for interested groups or individuals to submit comments on such programs. At the request of interested parties, the Board, in its discretion, may hold hearings with regard to such programs. Such comments and hearings may be considered by the Board;

(4) encourage activities of standardization organizations to develop or revise, as rapidly as practicable, engineering standards on a metric measurement basis, and to take advantage of opportunities to promote (A) rationalization or simplification of relationships, (B) improvements of design, (C) reduction of size variations, (D) increases in economy, and (E) where feasible, the efficient use of energy and the conservation of natural resources;

(5) encourage the retention, in new metric language standards, of those United States engineering designs, practices, and conventions that are internationally accepted or that embody superior technology;

(6) consult and cooperate with foreign governments, and intergovernmental organizations, in collaboration with the Department of State, and, through appropriate member bodies, with private international organizations, which are or become concerned with the encouragement and coordination of increased use of metric measurement units or engineering standards based on such units, or both. Such consultation shall include efforts, where appropriate, to gain international recognition for metric standards proposed by the United States, and, during the United States conversion, to encourage retention of equivalent customary units, usually by way of dual dimensions, in international standards or recommendations;

(7) assist the public through information and education programs, to become familiar with the meaning and applicability of metric terms and measures in daily life. Such programs shall include—

(A) public information programs conducted by the Board, through the use of newspapers, magazines, radio, television, and other media, and through talks before appropriate citizens' groups, and trade and public organizations;

(B) counseling and consultation by the Secretary of Education; the Secretary of Labor; the Administrator of the Small Business Administration; and the Director of the National Science Foundation, with educational associations, State and local educational agencies, labor education

committees, apprentice training committees, and other interested groups, in order to assure (i) that the metric system of measurement is included in the curriculum of the Nation's educational institutions, and (ii) that teachers and other appropriate personnel are properly trained to teach the metric system of measurement;

(C) consultation by the Secretary of Commerce with the National Conference of Weights and Measures in order to assure that State and local weights and measures officials are (i) appropriately involved in metric conversion activities and (ii) assisted in their efforts to bring about timely amendments to weights and measures laws; and

(D) such other public information activities, by any Federal agency in support of this subchapter, as relate to the mission of such agency;

(8) collect, analyze, and publish information about the extent of usage of metric measurements; evaluate the costs and benefits of metric usage; and make efforts to minimize any adverse effects resulting from increasing metric usage;

(9) conduct research, including appropriate surveys; publish the results of such research; and recommend to the Congress and to the President such action as may be appropriate to deal with any unresolved problems, issues, and questions associated with metric conversion, or usage, such problems, issues, and questions may include, but are not limited to, the impact on workers (such as costs of tools and training) and on different occupations and industries, possible increased costs to consumers, the impact on society and the economy, effects on small business, the impact on the international trade position of the United States, the appropriateness of and methods for using procurement by the Federal Government as a means to effect conversion to the metric system, the proper conversion or transition period in particular sectors of society, and consequences for national defense;

(10) submit annually to the Congress and to the President a report on its activities. Each such report shall include a status report on the conversion process as well as projections for the conversion process. Such report may include recommendations covering any legislation or executive action needed to implement the the [1] programs of conversion accepted by the Board. The Board may also submit such other reports and recommendations as it deems necessary; and

(11) submit to the Congress and to the President, not later than 1 year after the date of enactment of the Act making appropriations for carrying out this subchapter, a report on the need to provide an effective structural mechanism for converting customary units to metric units in statutes, regulations, and other laws at all levels of government, on a coordinated and timely basis, in response to voluntary conversion programs adopted and implemented by various sectors of society under the auspices and with the approval of the Board. If the Board determines that such a need exists, such report shall include recommendations as to appropriate and effective means for establishing and implementing such a mechanism.

(Pub. L. 94–168, §6, Dec. 23, 1975, 89 Stat. 1008; Pub. L. 96–88, title III, §301, title V, §507, Oct. 17, 1979, 93 Stat. 677, 692.)

TRANSFER OF FUNCTIONS

"Secretary of Education" substituted for "Secretary of Health, Education, and Welfare" in par. (7)(B) pursuant to sections 301 and 507 of Pub. L. 96–88, which are classified to sections 3441 and 3507 of Title 20, Education.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in par. (10) of this section relating to annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 194 of House Document No. 103–7.

[1] *So in original.*

§205f. Duties of Board

In carrying out its duties under this subchapter, the Board may—

(1) establish an Executive Committee, and such other committees as it deems desirable;

(2) establish such committees and advisory panels as it deems necessary to work with the various sectors of the Nation's economy and with Federal and State governmental agencies in the development and implementation of detailed conversion plans for those sectors. The Board may reimburse, to the extent authorized by law, the members of such committees;

(3) conduct hearings at such times and places as it deems appropriate;

(4) enter into contracts, in accordance with chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41, with Federal or State agencies, private firms, institutions, and individuals for the conduct of research or surveys, the preparation of reports, and other activities necessary to the discharge of its duties;

(5) delegate to the Executive Director such authority as it deems advisable; and

(6) perform such other acts as may be necessary to carry out the duties prescribed by this subchapter.

(Pub. L. 94–168, §7, Dec. 23, 1975, 89 Stat. 1011.)

CODIFICATION

In par. (4), "chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41" substituted for "the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.)" on authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, which Act enacted Title 40, Public Buildings, Property, and Works, and Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

§205g. Gifts, donations and bequests to Board

(a) Authorization; deposit into Treasury and disbursement

The Board may accept, hold, administer, and utilize gifts, donations, and bequests of property, both real and personal, and personal services, for the purpose of aiding or facilitating the work of the Board. Gifts and bequests of money, and the proceeds from the sale of any other property received as gifts or requests, shall be deposited in the Treasury in a separate fund and shall be disbursed upon order of the Board.

(b) Federal income, estate, and gift taxation of property

For purpose of Federal income, estate, and gift taxation, property accepted under subsection (a) of this section shall be considered as a gift or bequest to or for the use of the United States.

(c) Investment of moneys; disbursement of accrued income

Upon the request of the Board, the Secretary of the Treasury may invest and reinvest, in securities of the United States, any moneys contained in the fund authorized in subsection (a) of this section. Income accruing from such securities, and from any other property accepted to the credit of such fund, shall be dispersed upon the order of the Board.

(d) Reversion to Treasury of unexpended funds

Funds not expended by the Board as of the date when it ceases to exist, in accordance with section 205d(d) of this title, shall revert to the Treasury of the United States as of such date.

(Pub. L. 94–168, §8, Dec. 23, 1975, 89 Stat. 1011.)

§205h. Compensation of Board members; travel expenses

Members of the Board who are not in the regular full-time employ of the United States shall, while attending meetings or conferences of the Board or while otherwise engaged in the business of the Board, be entitled to receive compensation at a rate not to exceed the daily rate currently being

paid grade 18 of the General Schedule (under section 5332 of title 5), including traveltime. While so serving, on the business of the Board away from their homes or regular places of business, members of the Board may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, for persons employed intermittently in the Government service. Payments under this section shall not render members of the Board employees or officials of the United States for any purpose. Members of the Board who are in the employ of the United States shall be entitled to travel expenses when traveling on the business of the Board.

(Pub. L. 94–168, §9, Dec. 23, 1975, 89 Stat. 1011.)

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§205i. Personnel

(a) Executive Director; appointment; tenure; duties

The Board shall appoint a qualified individual to serve as the Executive Director of the Board at the pleasure of the Board. The Executive Director, subject to the direction of the Board, shall be responsible to the Board and shall carry out the metric conversion program, pursuant to the provisions of this subchapter and the policies established by the Board.

(b) Executive Director; salary

The Executive Director of the Board shall serve full time and be subject to the provisions of chapter 51 and subchapter III of chapter 53 of title 5. The annual salary of the Executive Director shall not exceed level III of the Executive Schedule under section 5314 of such title.

(c) Staff personnel; appointment and compensation

The Board may appoint and fix the compensation of such staff personnel as may be necessary to carry out the provisions of this subchapter in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5.

(d) Experts and consultants; employment and compensation; annual review of contracts

The Board may (1) employ experts and consultants or organizations thereof, as authorized by section 3109 of title 5; (2) compensate individuals so employed at rates not in excess of the rate currently being paid grade 18 of the General Schedule under section 5332 of such title, including traveltime; and (3) may allow such individuals, while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of such title 5 for persons in the Government service employed intermittently: *Provided, however*, That contracts for such temporary employment may be renewed annually.

(Pub. L. 94–168, §10, Dec. 23, 1975, 89 Stat. 1012.)

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§205j. Financial and administrative services; source and reimbursement

Financial and administrative services, including those related to budgeting, accounting, financial reporting, personnel, and procurement, and such other staff services as may be needed by the Board, may be obtained by the Board from the Secretary of Commerce or other appropriate sources in the

Federal Government. Payment for such services shall be made by the Board, in advance or by reimbursement, from funds of the Board in such amounts as may be agreed upon by the Chairman of the Board and by the source of the services being rendered.

(Pub. L. 94–168, §11, Dec. 23, 1975, 89 Stat. 1012.)

§205j–1. Repealed. Pub. L. 104–66, title III, §3001(e), Dec. 21, 1995, 109 Stat. 734

Section, Pub. L. 94–168, §12, as added Pub. L. 100–418, title V, §5164(c), Aug. 23, 1988, 102 Stat. 1452, related to agency guidelines to carry out metric conversion policy.

A prior section 12 of Pub. L. 94–168 was renumbered section 13 and is classified to section 205k of this title.

§205k. Authorization of appropriations; availability

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this subchapter. Appropriations to carry out the provisions of this subchapter may remain available for obligation and expenditure for such period or periods as may be specified in the Acts making such appropriations.

(Pub. L. 94–168, §13, formerly §12, Dec. 23, 1975, 89 Stat. 1012, renumbered §13, Pub. L. 100–418, title V, §5164(c), Aug. 23, 1988, 102 Stat. 1452.)

§205*l*. Implementation in acquisition of construction services and materials for Federal facilities

(a) In general

Construction services and materials for Federal facilities shall be procured in accordance with the policies and procedures set forth in chapter 137 of title 10, section 2377 of title 10, division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41, and section 205b(2) of this title. Determination of a design method shall be based upon preliminary market research as required under section 2377(c) of title 10 and section 3307(d) of title 41. If the requirements of this subchapter conflict with the provisions of section 2377 of title 10 or section 3307(b) to (d) of title 41, then the provisions of [1] 2377 or 3307(b) to (d) shall take precedence.

(b) Concrete masonry units

In carrying out the policy set forth in section 205b of this title (with particular emphasis on the policy set forth in paragraph (2) of that section) a Federal agency may require that specifications for the acquisition of structures or systems of concrete masonry be expressed under the metric system of measurement, but may not incorporate specifications, that can only be satisfied by hard-metric versions of concrete masonry units, in a solicitation for design or construction of a Federal facility within the United States or its territories, or a portion of said Federal facility, unless the head of the agency determines in writing that—

(1) hard-metric specifications are necessary in a contract for the repair or replacement of parts of Federal facilities in existence or under construction upon the effective date of the Savings in Construction Act of 1996; or

(2) the following 2 criteria are met:

(A) the application requires hard-metric concrete masonry units to coordinate dimensionally into 100 millimeter building modules; and

(B) the total installed price of hard-metric concrete masonry units is estimated to be equal to or less than the total installed price of using non-hard-metric concrete masonry units. Total installed price estimates shall be based, to the extent available, on cost or pricing data or price analysis, using actual hard-metric and non-hard-metric offers received for comparable existing

projects. The head of the agency shall include in the writing required in this subsection an explanation of the factors used to develop the price estimates.

(c) Recessed lighting fixtures

In carrying out the policy set forth in section 205b of this title (with particular emphasis on the policy set forth in paragraph (2) of that section) a Federal agency may require that specifications for the acquisition of structures or systems of recessed lighting fixtures be expressed under the metric system of measurement, but may not incorporate specifications, that can only be satisfied by hard-metric versions of recessed lighting fixtures, in a solicitation for design or construction of a Federal facility within the United States or its territories unless the head of the agency determines in writing that—

(1) the predominant voluntary industry consensus standards include the use of hard-metric for the items specified; or

(2) hard-metric specifications are necessary in a contract for the repair or replacement of parts of Federal facilities in existence or under construction upon the effective date of the Savings in Construction Act of 1996; or

(3) the following 2 criteria are met:

(A) the application requires hard-metric recessed lighting fixtures to coordinate dimensionally into 100 millimeter building modules; and

(B) the total installed price of hard-metric recessed lighting fixtures is estimated to be equal to or less than the total installed price of using non-hard-metric recessed lighting fixtures. Total installed price estimates shall be based, to the extent available, on cost or pricing data or price analysis, using actual hard-metric and non-hard-metric offers received for comparable existing projects. The head of the agency shall include in the writing required in this subsection an explanation of the factors used to develop the price estimates.

(d) Limitation

The provisions of subsections (b) and (c) of this section shall not apply to Federal contracts to acquire construction products for the construction of facilities outside of the United States and its territories.

(e) Repealed. Pub. L. 108–423, §6, Nov. 30, 2004, 118 Stat. 2402

(f) Agency ombudsman

(1) The head of each executive agency that awards construction contracts within the United States and its territories shall designate a senior agency official to serve as a construction metrication ombudsman who shall be responsible for reviewing and responding to complaints from prospective bidders, subcontractors, suppliers, or their designated representatives related to—

(A) guidance or regulations issued by the agency on the use of the metric system of measurement in contracts for the construction of Federal buildings; and

(B) the use of the metric system of measurement for services and materials required for incorporation in individual projects to construct Federal buildings.

The construction metrication ombudsman shall be independent of the contracting officer for construction contracts.

(2) The ombudsman shall be responsible for ensuring that the agency is not implementing the metric system of measurement in a manner that is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms in violation of the policy stated in section 205b(2) of this title, or is otherwise inconsistent with guidance issued by the Secretary of Commerce in consultation with the Interagency Council on Metric Policy while ensuring that the goals of this subchapter are observed.

(3) The ombudsman shall respond to each complaint in writing within 60 days and make a recommendation to the head of the executive agency for an appropriate resolution thereto. In such a recommendation, the ombudsman shall consider—

(A) whether the agency is adequately applying the policies and procedures in this section;

(B) whether the availability of hard-metric products and services from United States firms is sufficient to ensure full and open competition; and

(C) the total installed price to the Federal Government.

(4) After the head of the agency has rendered a decision regarding a recommendation of the ombudsman, the ombudsman shall be responsible for communicating the decision to all appropriate policy, design, planning, procurement, and notifying personnel in the agency. The ombudsman shall conduct appropriate monitoring as required to ensure the decision is implemented, and may submit further recommendations, as needed. The head of the agency's decision on the ombudsman's recommendations, and any supporting documentation, shall be provided to affected parties and made available to the public in a timely manner.

(5) Nothing in this section shall be construed to supersede the bid protest process established under subchapter V of chapter 35 of title 31.

(Pub. L. 94–168, §14, as added and amended Pub. L. 104–289, §§4(a), 5, Oct. 11, 1996, 110 Stat. 3412, 3414; Pub. L. 108–423, §6, Nov. 30, 2004, 118 Stat. 2402.)

REFERENCES IN TEXT

The effective date of the Savings in Construction Act of 1996, referred to in subsecs. (b)(1) and (c)(2), is 90 days after Oct. 11, 1996. See Effective Date of 1996 Amendment; Savings Provision note set out under section 205c of this title.

CODIFICATION

In subsec. (a), "division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41" substituted for "title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)", "section 3307(d) of title 41" substituted for "section 314B(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 264b(c))", "section 3307(b) to (d) of title 41" substituted for "section 314B of the Federal Property and Administrative Services Act of 1949", and "or 3307(b) to (d)" substituted for "or 314B" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

AMENDMENTS

2004—Subsec. (e). Pub. L. 108–423 struck out heading and text of subsec. (e). Text read as follows: "The provisions contained in subsections (b) and (c) of this section shall expire 10 years from the effective date of the Savings in Construction Act of 1996."

1996—Pub. L. 104–289, §5, added subsec. (f).

EFFECTIVE DATE; SAVINGS PROVISION

Section effective 90 days after Oct. 11, 1996, and inapplicable to contracts awarded and solicitations issued on or before that date, unless head of Federal agency makes written determination that it would be in public interest to apply one or more provisions of Pub. L. 104–289 to these existing contracts or solicitations, see section 6(b) of Pub. L. 104–289, set out as an Effective Date of 1996 Amendment; Savings Provision note under section 205c of this title.

[1] *So in original. Probably should be followed by "section".*

SUBCHAPTER III—STANDARD GAUGE FOR IRON AND STEEL

§206. Standard gauge for sheet and plate iron and steel

For the purpose of securing uniformity the following is established as the only standard gauge for sheet and plate iron and steel in the United States of America, namely:

Number of gauge	Approximate thickness in fractions of an inch	Approximate thickness in decimal parts of an inch	Approximate thickness in millimeters	Weight per square foot in ounces avoirdupois	Weight per square foot in pounds avoirdupois	Weight per square foot in kilograms	Weight per square meter in kilograms	Weight per square meter in pounds avoirdupois
0000000	1/2	.5	12.7	320	20.00	9.072	97.65	215.28
000000	15/32	.46875	11.90625	300	18.75	8.505	91.55	201.82
00000	7/16	.4375	11.1125	280	17.50	7.983	85.44	188.37
0000	13/32	.40625	10.31875	260	16.25	7.371	79.33	174.91
000	3/8	.375	9.525	240	15	6.804	73.24	161.46
00	11/32	.34375	8.73125	220	13.75	6.237	67.13	148.00
0	5/16	.3125	7.9375	200	12.50	5.67	61.03	134.55
1	9/32	.28125	7.14375	180	11.25	5.103	54.93	121.09
2	17/64	.265625	6.746875	170	10.625	4.819	51.88	114.37
3	1/4	.25	6.35	160	10	4.536	48.82	107.64
4	15/64	.234375	5.953125	150	9.375	4.252	45.77	100.91
5	7/32	.21875	5.55625	140	8.75	3.969	42.72	94.18
6	13/64	.203125	5.159375	130	8.125	3.685	39.67	87.45
7	3/16	.1875	4.7625	120	7.5	3.402	36.62	80.72
8	11/64	.171875	4.365625	110	6.875	3.118	33.57	74.00
9	5/32	.15625	3.96875	100	6.25	2.835	30.52	67.27
10	9/64	.140625	3.571875	90	5.625	2.552	27.46	60.55
11	1/8	.125	3.175	80	5	2.268	24.41	53.82
12	7/64	.109375	2.778125	70	4.375	1.984	21.36	47.09
13	3/32	.09375	2.38125	60	3.75	1.701	18.31	40.36
14	5/64	.078125	1.984375	50	3.125	1.417	15.26	33.64
15	9/128	.0703125	1.7859375	45	2.8125	1.276	13.73	30.27
16	1/16	.0625	1.5875	40	2.5	1.134	12.21	26.91
17	9/160	.05625	1.42875	36	2.25	1.021	10.99	24.22
18	1/20	.05	1.27	32	2	.9072	9.765	21.53
19	7/160	.04375	1.11125	28	1.75	.7938	8.544	18.84
20	3/80	.0375	.9525	24	1.50	.6804	7.324	16.15
21	11/320	.034375	.873125	22	1.375	.6237	6.713	14.80
22	1/32	.03125	.793750	20	1.25	.567	6.103	13.46
23	9/320	.028125	.714375	18	1.125	.5103	5.493	12.11
24	1/40	.025	.635	16	1	.4536	4.882	10.76
25	7/320	.021875	.555625	14	.875	.3969	4.272	9.42
26	3/160	.01875	.47625	12	.75	.3402	3.662	8.07
27	11/640	.0171875	.4365625	11	.6875	.3119	3.357	7.40
28	1/64	.015625	.396875	10	.625	.2835	3.052	6.73
29	9/640	.0140625	.3571875	9	.5625	.2551	2.746	6.05
30	1/80	.0125	.3175	8	.5	.2268	2.441	5.38
31	7/640	.0109375	.2778125	7	.4375	.1984	2.136	4.71
32	13/1280	.01015625	.25796875	6½	.40625	.1843	1.983	4.37
33	3/320	.009375	.238125	6	.375	.1701	1.831	4.04
34	11/1280	.00859375	.21828125	5½	.34375	.1559	1.678	3.70
35	5/640	.0078125	.1984375	5	.3125	.1417	1.526	3.36
36	9/1280	.00703125	.17859375	4½	.28125	.1276	1.373	3.03

37	17/2560	.006640625	.168671875	4¼	.265625	.1205	1.297	2.87
38	1/160	.00625	.15875	4	.25	.1134	1.221	2.69

The same and no other shall be used in determining duties and taxes levied by the United States of America on sheet and plate iron and steel. But this subchapter shall not be construed to increase duties upon any articles which may be imported.

(Mar. 3, 1893, ch. 221, §1, 27 Stat. 746.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original "this act", meaning act Mar. 3, 1893, ch. 221, 27 Stat. 746, which is classified to sections 206 to 208 of this title.

§207. Preparation of standards by Secretary of Commerce

The Secretary of Commerce is authorized and required to prepare suitable standards in accordance with section 206 of this title.

(Mar. 3, 1893, ch. 221, §2, 27 Stat. 746; Feb. 14, 1903, ch. 552, §10, 32 Stat. 829; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736.)

CHANGE OF NAME

Act Mar. 4, 1913, created Department of Labor, and renamed Department of Commerce and Labor as Department of Commerce.

TRANSFER OF FUNCTIONS

Act Feb. 14, 1903, transferred National Bureau of Standards from Treasury Department to Department of Commerce and Labor.

§208. Variations

In the practical use and application of the standard gauge esablished [1] in section 206 of this title a variation of 2½ percent, either way may be allowed.

(Mar. 3, 1893, ch. 221, §3, 27 Stat. 746.)

[1] So in original. Probably should be "established".

SUBCHAPTER IV—SCREW THREADS

§§208a to 212. Repealed. Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 644, 646

Sections, acts July 18, 1918, ch. 156, §§1–5, 40 Stat. 912, 913; Mar. 3, 1919, ch. 96, 40 Stat. 1291; Apr. 16, 1926, ch. 148, 44 Stat. 297, created Commission for the Standardization of Screw Threads and provided for composition of Commission, its duties, and pay.

SUBCHAPTER V—STANDARDS OF ELECTRICITY

§§221, 222. Repealed. July 21, 1950, ch. 484, §13, 64 Stat. 370

Sections, act July 12, 1894, ch. 131, §§1, 2, 28 Stat. 101, 102, related to units of electrical measure.

§§223, 224. Repealed. Pub. L. 110–69, title III, §3013(c)(2), Aug. 9, 2007, 121 Stat. 598

Section 223, acts July 21, 1950, ch. 484, §§1–11, 64 Stat. 369; Pub. L. 88–165, Nov. 4, 1963, 77 Stat. 299, related to units of electrical measure.

Section 224, act July 21, 1950, ch. 484, §12, 64 Stat. 370, related to establishment of values of primary electric and photometric units in absolute measure and legal values for those units.

SUBCHAPTER VI—STANDARD BARRELS

§231. Standard barrel for apples; steel barrels

The standard barrel for apples shall be of the following dimensions when measured without distention of its parts: Length of stave, twenty-eight and one-half inches; diameter of head, seventeen and one-eighth inches; distance between heads, twenty-six inches; circumference of bulge, sixty-four inches outside measurement, representing as nearly as possible seven thousand and fifty-six cubic inches: *Provided*, That steel barrels containing the interior dimensions provided for in this section shall be construed as a compliance therewith.

(Aug. 3, 1912, ch. 273, §1, 37 Stat. 250.)

§232. Barrels below standard; marking

All barrels packed with apples shall be deemed to be below standard if the barrel bears any statement, design, or device indicating that the barrel is a standard barrel of apples, as defined in section 231 of this title, and the capacity of the barrel is less than the capacity prescribed by said section, unless the barrel shall be plainly marked on end and side with words or figures showing the fractional relation which the actual capacity of the barrel bears to the capacity prescribed by said section. The marking required by this section shall be in block letters of size not less than seventy-two point (one-inch) gothic.

(Aug. 3, 1912, ch. 273, §4, 37 Stat. 251.)

§233. Penalty for violations

Any person, firm, or corporation, or association who shall knowingly pack or cause to be packed apples in barrels, or who shall knowingly sell or offer for sale such barrels in violation of the provisions of this Act shall be liable to a penalty of $1 and costs for each such barrel so sold or offered for sale, to be recovered at the suit of the United States in any court of the United States having jurisdiction.

(Aug. 3, 1912, ch. 273, §6, 37 Stat. 251.)

REFERENCES IN TEXT

This Act, referred to in text, is act Aug. 3, 1912, ch. 273, §§1–6, 37 Stat. 250, 251, which is classified to sections 231 to 233 of this title and to sections 20 to 23 of Title 21, Food and Drugs.

CODIFICATION

This section is also set out as section 23 of Title 21, Food and Drugs.

§234. Standard barrel for fruits or other dry commodity

The standard barrel for fruits, vegetables, and other dry commodities other than cranberries shall be of the following dimensions when measured without distention of its parts: Length of stave, twenty-eight and one-half inches; diameter of heads, seventeen and one-eighth inches; distance between heads, twenty-six inches; circumference of bulge, sixty-four inches, outside measurement; and the thickness of staves not greater than four-tenths of an inch: *Provided*, That any barrel of a different form having a capacity of seven thousand and fifty-six cubic inches shall be a standard barrel. The standard barrel for cranberries shall be of the following dimensions when measured without distention of its parts: Length of staves, twenty-eight and one-half inches; diameter of head, sixteen and one-fourth inches; distance between heads, twenty-five and one-fourth inches; circumference of bulge, fifty-eight and one-half inches, outside measurement; and the thickness of staves not greater than four-tenths of an inch.

(Mar. 4, 1915, ch. 158, §1, 38 Stat. 1186.)

§235. Sale or shipment of barrel of less capacity than standard; punishment

It shall be unlawful to sell, offer, or expose for sale in any State, Territory, or the District of Columbia, or to ship from any State, Territory, or the District of Columbia to any other State, Territory, or the District of Columbia or to a foreign country, a barrel containing fruits or vegetables or any other dry commodity of less capacity than the standard barrels defined in section 234 of this title, known as the third, half, and three-quarters barrel, and any person guilty of a willful violation of any of the provisions of sections 234 to 236 of this title shall be deemed guilty of a misdemeanor and be liable to a fine not to exceed $500, or imprisonment not to exceed six months, in the court of the United States having jurisdiction: *Provided, however*, That no barrel shall be deemed below standard within the meaning of said sections when shipped to any foreign country and constructed according to the specifications or directions of the foreign purchaser if not constructed in conflict with the laws of the foreign country to which the same is intended to be shipped.

(Mar. 4, 1915, ch. 158, §2, 38 Stat. 1186.)

§236. Variations from standard permitted; prosecutions; law not applicable to certain barrels

Reasonable variations shall be permitted and tolerance shall be established by rules and regulations made by the Director of the National Institute of Standards and Technology and approved by the Secretary of Commerce. Prosecutions for offenses under this section or sections 234 or 235 of this title may be begun upon complaint of local sealers of weights and measures or other officers of the several States and Territories appointed to enforce the laws of the said States or Territories, respectively, relating to weights and measures: *Provided, however*, That nothing in this section or sections 234 and 235 of this title shall apply to barrels used in packing or shipping commodities sold exclusively by weight or numerical count.

(Mar. 4, 1915, ch. 158, §3, 38 Stat. 1187; Pub. L. 100–418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433.)

AMENDMENTS

1988—Pub. L. 100–418 substituted "National Institute of Standards and Technology" for "Bureau of Standards".

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of Commerce and functions of all agencies and employees of such Department, with a few exceptions, transferred to Secretary of Commerce, with power vested in him to

authorize their performance or performance of any of his functions by any of such officers, agencies, and employees, by Reorg. Plan No. 5 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

§237. Standard barrels for lime

There is established a large and a small barrel of lime, the large barrel to consist of two hundred and eighty pounds and the small barrel to consist of one hundred and eighty pounds, net weight.

(Aug. 23, 1916, ch. 396, §1, 39 Stat. 530.)

§238. Penalty for selling in barrels not marked

It shall be unlawful for any person to sell or offer for sale lime imported in barrels from a foreign country, or to sell or offer for sale lime in barrels for shipment from any State or Territory or the District of Columbia, to any other State or Territory or the District of Columbia, unless there shall be stenciled or otherwise clearly marked on one or both heads of the small barrel the figures "180 lbs. net" and of the large barrel the figures "280 lbs. net" before the importation or shipment, and on either barrel in addition the name of the manufacturer of the lime and where manufactured, and, if imported, the name of the country from which it is imported.

(Aug. 23, 1916, ch. 396, §2, 39 Stat. 530.)

§239. Sale in containers of less capacity than barrel

When lime is sold in interstate or foreign commerce in containers of less capacity than the standard small barrel, it shall be sold in fractional parts of said standard small barrel, and the net weight of lime contained in such container shall by stencil or otherwise be clearly marked thereon, together with the name of the manufacturer thereof, and the name of the brand, if any, under which it is sold, and, if imported, the name of the country from which it is imported.

(Aug. 23, 1916, ch. 396, §3, 39 Stat. 530.)

§240. Rules and regulations

Rules and regulations for the enforcement of sections 237 to 242 of this title, not inconsistent with the provisions of said sections, shall be made by the Director of the National Institute of Standards and Technology and approved by the Secretary of Commerce, and such rules and regulations shall include reasonable variations or tolerances which may be allowed.

(Aug. 23, 1916, ch. 396, §4, 39 Stat. 531; Pub. L. 100–418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433.)

AMENDMENTS

1988—Pub. L. 100–418 substituted "National Institute of Standards and Technology" for "Bureau of Standards".

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of Commerce and functions of all agencies and employees of such Department, with a few exceptions, transferred to Secretary of Commerce, with power vested in him to authorize their performance or performance of any of his functions by any of such officers, agencies, and employees, by Reorg. Plan No. 5 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

§241. Penalty for selling lime in unmarked barrels and containers

It shall be unlawful to pack, sell, or offer for sale for shipment from any State or Territory or the District of Columbia to any other State or Territory or the District of Columbia, any barrels or other containers of lime which are not marked as provided in sections 238 and 239 of this title, or to sell, charge for, or purport to deliver from any State or Territory or the District of Columbia to any other State or Territory or the District of Columbia, as a large or small barrel or a fractional part of said small barrel of lime, any less weight of lime than is established by the provisions of sections 237 to 242 of this title and any person guilty of a violation of the provisions of said sections shall be deemed guilty of a misdemeanor and be liable to a fine not exceeding $100.

(Aug. 23, 1916, ch. 396, §5, 39 Stat. 531.)

§242. Duty of United States attorney to enforce law

It shall be the duty of each United States attorney, to whom satisfactory evidence of any violation of sections 237 to 242 of this title is presented, to cause appropriate proceedings to be commenced and prosecuted in the United States court having jurisdiction of such offense.

(Aug. 23, 1916, ch. 396, §6, 39 Stat. 531; June 25, 1948, ch. 646, §1, 62 Stat. 909.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States attorney" for "district attorney". See section 541 of Title 28, Judiciary and Judicial Procedure.

SUBCHAPTER VII—STANDARD BASKETS AND CONTAINERS

§§251 to 256. Repealed. Pub. L. 90–628, §1(a), Oct. 22, 1968, 82 Stat. 1320

Section 251, acts Aug. 31, 1916, ch. 426, §1, 39 Stat. 673; June 11, 1934, ch. 447, §1, 48 Stat. 930, set standards for Climax baskets for grapes and other fruits and vegetables and for mushrooms.

Section 252, act Aug. 31, 1916, ch. 426, §2, 39 Stat. 673, set standards for standard basket or container for small fruits and vegetables.

Section 253, acts Aug. 31, 1916, ch. 426, §3, 39 Stat. 674; June 11, 1934, c. 447, §2, 48 Stat. 930, set penalties for failure to conform to standards.

Section 254, act Aug. 31, 1916, ch. 426, §4, 39 Stat. 674, provided for examinations and tests by Department of Agriculture and for promulgation of rules and regulations covering allowable tolerances and variations.

Section 255, acts Aug. 31, 1916, ch. 426, §5, 39 Stat. 674; June 25, 1948, ch. 646, §1, 62 Stat. 909, made United States attorney responsible for commencing actions to enforce penalties.

Section 256, act Aug. 31, 1916, ch. 426, §6, 39 Stat. 674, covered guaranty given by manufacturers or sellers of baskets as to correctness of such containers.

EFFECTIVE DATE OF REPEAL

Pub. L. 90–628, §3, Oct. 22, 1968, 82 Stat. 1320, provided that: "This Act [repealing sections 251 to 257i of this title and amending section 1459 of this title] shall become effective 60 days after enactment [Oct. 22, 1968]."

SUBCHAPTER VIII—STANDARD HAMPERS, ROUND STAVE BASKETS, AND SPLINT BASKETS FOR FRUITS AND VEGETABLES

§§257 to 257i. Repealed. Pub. L. 90–628, §1(b), Oct. 22, 1968, 82 Stat. 1320

Section 257, acts May 21, 1928, ch. 664, §1, 45 Stat. 685; June 28, 1954, ch. 406, §1, 68 Stat. 301; Aug. 30, 1964, Pub. L. 88–516, §1, 78 Stat. 697, set dimensions for standard hampers and round stave baskets.

Section 257a, acts May 21, 1928, ch. 664, §2, 45 Stat. 685; Aug. 30, 1964, Pub. L. 88–516, §2, 78 Stat. 697, set dimensions for standard splint baskets.

Section 257b, act May 21, 1928, ch. 664, §3, 45 Stat. 686, provided for promulgation of regulations allowing reasonable variations in hampers and baskets.

Section 257c, act May 21, 1928, ch. 664, §4, 45 Stat. 686, required approval by Secretary of Agriculture of manufacturer's dimension specifications for hampers and baskets.

Section 257d, acts May 21, 1928, ch. 664, §5, 45 Stat. 686; Aug. 30, 1964, Pub. L. 88–516, §3, 78 Stat. 697, set out penalties for violations and covered guaranty given by manufacturers and sellers of hampers and baskets as to their correctness.

Section 257e, act May 21, 1928, ch. 664, §6, 45 Stat. 686, provided for seizure of illegal hampers and baskets, and procedure covering their condemnation.

Section 257f, act May 21, 1928, ch. 664, §7, 45 Stat. 687, allowed manufacture of hampers and baskets for foreign sale in conformity with foreign specifications.

Section 257g, acts May 21, 1928, ch. 664, §8, 45 Stat. 687; June 25, 1948, ch. 646, §1, 62 Stat. 909, placed upon the United States Attorney the duty to prosecute for violations of sections 257 to 257i of this title.

Section 257h, act May 21, 1928, ch. 664, §9, 45 Stat. 687, provided for promulgation of regulations covering examinations and tests by Secretary of Agriculture.

Section 257i, act May 21, 1968, ch. 664, §10, 45 Stat. 687, authorized Secretary of Agriculture to cooperate with other agencies in carrying out sections 257 to 257i of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective 60 days after Oct. 22, 1968, see section 3 of Pub. L. 90–628, set out as a note under section 251 of this title.

SUBCHAPTER IX—STANDARD TIME

§260. Congressional declaration of policy; adoption and observance of uniform standard of time; authority of Secretary of Transportation

It is the policy of the United States to promote the adoption and observance of uniform time within the standard time zones prescribed by sections 261 to 264 of this title, as modified by section 265 of this title. To this end the Secretary of Transportation is authorized and directed to foster and promote widespread and uniform adoption and observance of the same standard of time within and throughout each such standard time zone.

(Pub. L. 89–387, §2, Apr. 13, 1966, 80 Stat. 107; Pub. L. 97–449, §2(c), Jan. 12, 1983, 96 Stat. 2439.)

AMENDMENTS

1983—Pub. L. 97–449 substituted "Secretary of Transportation" for "Interstate Commerce Commission".

EFFECTIVE DATE

Pub. L. 89–387, §6, Apr. 13, 1966, 80 Stat. 108, provided that: "This Act [enacting this section and sections 260a, 266, and 267 of this title and amending sections 261 to 263 of this title] shall take effect on April 1, 1967; except that if any State, the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States, or any political subdivision thereof, observes daylight saving time in the year 1966, such time shall advance the standard time otherwise applicable in such place by one hour and shall commence at 2 o'clock antemeridian on the last Sunday in April of the year 1966 and shall end at 2 o'clock antemeridian on the last Sunday in October of the year 1966."

SHORT TITLE

Pub. L. 89–387, §1, Apr. 13, 1966, 80 Stat. 107, provided: "That this Act [enacting this section and sections

260a, 266, and 267 of this title and amending sections 261 to 263 of this title] may be cited as the 'Uniform Time Act of 1966'."

§260a. Advancement of time or changeover dates

(a) Duration of period; State exemption

During the period commencing at 2 o'clock antemeridian on the second Sunday of March of each year and ending at 2 o'clock antemeridian on the first Sunday of November of each year, the standard time of each zone established by sections 261 to 264 of this title, as modified by section 265 of this title, shall be advanced one hour and such time as so advanced shall for the purposes of such sections 261 to 264, as so modified, be the standard time of such zone during such period; however, (1) any State that lies entirely within one time zone may by law exempt itself from the provisions of this subsection providing for the advancement of time, but only if that law provides that the entire State (including all political subdivisions thereof) shall observe the standard time otherwise applicable during that period, and (2) any State with parts thereof in more than one time zone may by law exempt either the entire State as provided in (1) or may exempt the entire area of the State lying within any time zone.

(b) State laws superseded

It is hereby declared that it is the express intent of Congress by this section to supersede any and all laws of the States or political subdivisions thereof insofar as they may now or hereafter provide for advances in time or changeover dates different from those specified in this section.

(c) Violations; enforcement

For any violation of the provisions of this section the Secretary of Transportation or his duly authorized agent may apply to the district court of the United States for the district in which such violation occurs for the enforcement of this section; and such court shall have jurisdiction to enforce obedience thereto by writ of injunction or by other process, mandatory or otherwise, restraining against further violations of this section and enjoining obedience thereto.

(Pub. L. 89–387, §3, Apr. 13, 1966, 80 Stat. 107; Pub. L. 92–267, Mar. 30, 1972, 86 Stat. 116; Pub. L. 97–449, §2(c), Jan. 12, 1983, 96 Stat. 2439; Pub. L. 99–359, §2(b), July 8, 1986, 100 Stat. 764; Pub. L. 109–58, title I, §110(a), Aug. 8, 2005, 119 Stat. 615.)

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–58 substituted "second Sunday of March" for "first Sunday of April" and "first Sunday of November" for "last Sunday of October".

1986—Subsec. (a). Pub. L. 99–359 substituted "first Sunday of April" for "last Sunday of April".

1983—Subsec. (c). Pub. L. 97–449 substituted "Secretary of Transportation or his" for "Interstate Commerce Commission or its".

1972—Subsec. (a). Pub. L. 92–267 authorized any State with parts thereof lying in more than one time zone to exempt by law that part of such State lying within any time zone from provisions of this subsection providing for advancement of time.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title I, §110(b), Aug. 8, 2005, 119 Stat. 615, provided that: "Subsection (a) [amending this section] shall take effect 1 year after the date of enactment of this Act [Aug. 8, 2005] or March 1, 2007, whichever is later."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–359, §2(e), July 8, 1986, 100 Stat. 765, provided that: "This section [amending this section and enacting provisions set out as notes below] shall take effect 60 days after the date of enactment of this Act [July 8, 1986], except that if such effective date occurs in any calendar year after March 1, this section shall take effect on the first day of the following calendar year."

STUDY AND REPORT ON ENERGY CONSUMPTION; REVERSION

Pub. L. 109–58, title I, §110(c), (d), Aug. 8, 2005, 119 Stat. 615, provided that:

"(c) REPORT TO CONGRESS.—Not later than 9 months after the effective date stated in subsection (b) [set out above], the Secretary [of Energy] shall report to Congress on the impact of this section [amending this section] on energy consumption in the United States.

"(d) RIGHT TO REVERT.—Congress retains the right to revert the Daylight Saving Time back to the 2005 time schedules once the Department [of Energy] study is complete."

CONGRESSIONAL FINDINGS; EXPANSION OF DAYLIGHT SAVING TIME

Pub. L. 99–359, §2(a), July 8, 1986, 100 Stat. 764, provided that: "The Congress finds—

"(1) that various studies of governmental and nongovernmental agencies indicate that daylight saving time over an expanded period would produce a significant energy savings in electrical power consumption;

"(2) that daylight saving time may yield energy savings in other areas besides electrical power consumption;

"(3) that daylight saving time over an expanded period could serve as an incentive for further energy conservation by individuals, companies, and the various governmental entities at all levels of government, and that such energy conservation efforts could lead to greatly expanded energy savings; and

"(4) that the use of daylight saving time over an expanded period could have other beneficial effects on the public interest, including the reduction of crime, improved traffic safety, more daylight outdoor playtime for the children and youth of our Nation, greater utilization of parks and recreation areas, expanded economic opportunity through extension of daylight hours to peak shopping hours and through extension of domestic office hours to periods of greater overlap with the European Economic Community."

EFFECTIVENESS OF STATE EXEMPTION IN EFFECT ON JULY 8, 1986

Pub. L. 99–359, §2(c), July 8, 1986, 100 Stat. 764, provided that: "Any law in effect on the date of the enactment of this Act [July 8, 1986]—

"(1) adopted pursuant to section 3(a)(2) of the Uniform Time Act of 1966 [15 U.S.C. 260a(a)(2)] by a State with parts thereof in more than one time zone, or

"(2) adopted pursuant to section 3(a)(1) of such Act by a State that lies entirely within one time zone, shall be held and considered to remain in effect as the exercise by that State of the exemption permitted by such Act [see 15 U.S.C. 260a(a)] unless that State, by law, provides that such exemption shall not apply."

ADJUSTMENT BY GENERAL RULES OR INTERIM ACTION WITH RESPECT TO HOURS OF OPERATION OF DAYTIME STANDARD AMPLITUDE MODULATION BROADCAST STATIONS

Pub. L. 99–359, §2(d), July 8, 1986, 100 Stat. 764, provided that:

"(1) Notwithstanding any other law or any regulation issued under any such law, the Federal Communications Commission shall, consistent with any existing treaty or other agreement, make such adjustment by general rules, or by interim action pending such general rules, with respect to hours of operation of daytime standard amplitude modulation broadcast stations, as may be consistent with the public interest, including the public's interest in receiving interference-free service.

"(2) Such general rules, or interim action, may include variances with respect to operating power and other technical operating characteristics.

"(3) Subsequent to the adoption of such general rules, they may be varied with respect to particular stations and areas because of the exigencies in each case."

EMERGENCY DAYLIGHT SAVING TIME ENERGY CONSERVATION

Pub. L. 93–182, Dec. 15, 1973, 87 Stat. 707, as amended by Pub. L. 93–434, Oct. 5, 1974, 88 Stat. 1209, enacted the Emergency Daylight Saving Time Energy Conservation Act of 1973, which extended daylight saving time. The act was effective at 2 a.m. on the fourth Sunday which occurred after Dec. 15, 1973 and terminated at 2 a.m. on the last Sunday of April 1975.

EX. ORD. NO. 11751. EXEMPTIONS FROM DAYLIGHT SAVING TIME AND REALIGNMENTS OF TIME ZONE LIMITS

Ex. Ord. No. 11751, Dec. 15, 1973, 38 F.R. 34725, provided:

By virtue of the authority vested in me by section 3(b) of the Emergency Daylight Savings Time Energy Conservation Act of 1973 (Public Law 93–182) (hereinafter "the Act") [formerly set out above], section 301 of title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

SECTION 1. The Secretary of Transportation (hereinafter "the Secretary") is hereby designated and empowered to exercise the authority vested in me by section 3(b) of the Act [formerly set out above] to grant an exemption from section 3(a) of the Act (which establishes daylight saving time as standard time), or a

realignment of a time zone limit, pursuant to a proclamation of a Governor of a State finding that the exemption or realignment is necessary to avoid undue hardship or to conserve fuel in the State or a part thereof.

SEC. 2. In deciding to grant or deny an exemption or realignment, the Secretary shall consider, among other things, the policy of the United States, as expressed in sections 2 and 4 of the Uniform Time Act of 1966 (80 Stat. 107, 108; 15 U.S.C. 260, 261), to promote the adoption and observance of uniform time within the standard time zones of the United States and the convenience of commerce, as well as possible energy savings, undue hardship to large segments of the population, and the possible impact on the success of and cooperation with the national energy conservation program.

SEC. 3. In carrying out his responsibilities under this order, the Secretary shall, as he deems necessary, consult with the Department of Health, Education, and Welfare, the Federal Energy Office (or any agency which hereafter may succeed to its functions), and any other interested agency and he may call upon those agencies for information and advice. Each interested department or agency shall assist the Secretary, as necessary, to carry out the provisions of this order.

RICHARD NIXON.

§261. Zones for standard time; interstate or foreign commerce

(a) In general

For the purpose of establishing the standard time of the United States, the territory of the United States shall be divided into nine zones in the manner provided in this section. Except as provided in section 260a(a) of this title, the standard time of the first zone shall be Coordinated Universal Time retarded by 4 hours; that of the second zone retarded by 5 hours; that of the third zone retarded by 6 hours; that of the fourth zone retarded by 7 hours; that of the fifth zone retarded [1] 8 hours; that of the sixth zone retarded by 9 hours; that of the seventh zone retarded by 10 hours; that of the eighth zone retarded by 11 hours; and that of the ninth zone shall be Coordinated Universal Time advanced by 10 hours. The limits of each zone shall be defined by an order of the Secretary of Transportation, having regard for the convenience of commerce and the existing junction points and division points of common carriers engaged in interstate or foreign commerce, and any such order may be modified from time to time. As used in sections 261 to 264 of this title, the term "interstate or foreign commerce" means commerce between a State, the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States and any place outside thereof.

(b) Coordinated Universal Time defined

In this section, the term "Coordinated Universal Time" means the time scale maintained through the General Conference of Weights and Measures and interpreted or modified for the United States by the Secretary of Commerce in coordination with the Secretary of the Navy.

(Mar. 19, 1918, ch. 24, §1, 40 Stat. 450; Pub. L. 89–387, §4(a), Apr. 13, 1966, 80 Stat. 108; Pub. L. 97–449, §2(c), Jan. 12, 1983, 96 Stat. 2439; Pub. L. 106–564, §1(a), Dec. 23, 2000, 114 Stat. 2811; Pub. L. 110–69, title III, §3013(c)(3), Aug. 9, 2007, 121 Stat. 598.)

AMENDMENTS

2007—Pub. L. 110–69 designated existing provisions as subsec. (a), inserted heading, substituted second sentence for former second sentence which read as follows: "Except as provided in section 260a(a) of this title, the standard time of the first zone shall be based on the mean solar time of the sixtieth degree of longitude west from Greenwich; that of the second zone on the seventy-fifth degree; that of the third zone on the ninetieth degree; that of the fourth zone on the one hundred and fifth degree; that of the fifth zone on the one hundred and twentieth degree; that of the sixth zone on the one hundred and thirty-fifth degree; that of the seventh zone on the one hundred and fiftieth degree; that of the eighth zone on the one hundred and sixty-fifth degree; and that of the ninth zone on the one hundred and fiftieth meridian of longitude east from Greenwich..", and added subsec. (b).

2000—Pub. L. 106–564, in first sentence, substituted "nine zones" for "eight zones" and, in second sentence, substituted "; that of the eighth" for "; and that of the eighth" and inserted before period at end "; and that of the ninth zone on the one hundred and fiftieth meridian of longitude east from Greenwich."

1983—Pub. L. 97–449 substituted "Secretary of Transportation" for "Interstate Commerce Commission".

1966—Pub. L. 89–387 increased the number of time zones from five for the territory of continental United States to eight for the territory of the United States, inserted the "exception phrase", substituted "solar" for "astronomical" time, established the first zone on basis of the 60th degree of longitude west from Greenwich, redesignated as the second through the fifth zones based on the 75th, 90th, 105th, and 120th degrees former zones one through four based on such degrees, established the sixth zone based on the 135th degree, redesignated as the seventh zone based on the 150th degree former fifth zone based on such degree, and established the eighth zone based on the 165th degree, substituted "interstate or foreign commerce" for "commerce between the several States and and with foreign nations" and defined "interstate or foreign commerce".

SHORT TITLE

Act Mar. 19, 1918, ch. 24, 40 Stat. 450, as amended, which is classified to sections 261 to 264 of this title, is popularly known as the "Calder Act".

REPEALS

Section 5 of act Mar. 19, 1918, repealed all conflicting acts and parts of acts.

DISTRICT OF COLUMBIA

Act Mar. 31, 1949, ch. 43, 63 Stat. 29, authorized the Board of Commissioners [now the Council of the District of Columbia] to establish daylight-saving time in the District of Columbia.

RETURN TO STANDARD TIME

Act Sept. 25, 1945, ch. 388, 59 Stat. 537, provided, that, notwithstanding the provisions of act Jan. 20, 1942, ch. 7, 56 Stat. 9, which provided for war time, the standard time for each zone as provided for in sections 261 to 264 of this title should again become effective as of Sept. 30, 1945, at 2:00 A.M.

[1] *So in original. Probably should be followed by "by".*

§262. Duty to observe standard time of zones

Within the respective zones created under the authority of sections 261 to 264 of this title the standard time of the zone shall insofar as practicable (as determined by the Secretary of Transportation) govern the movement of all common carriers engaged in interstate or foreign commerce. In all statutes, orders, rules, and regulations relating to the time of performance of any act by any officer or department of the United States, whether in the legislative, executive, or judicial branches of the Government, or relating to the time within which any rights shall accrue or determine, or within which any act shall or shall not be performed by any person subject to the jurisdiction of the United States, it shall be understood and intended that the time shall insofar as practicable (as determined by the Secretary of Transportation) be the United States standard time of the zone within which the act is to be performed.

(Mar. 19, 1918, ch. 24, §2, 40 Stat. 451; Pub. L. 89–387, §4(b), Apr. 13, 1966, 80 Stat. 108; Pub. L. 97–449, §2(c), Jan. 12, 1983, 96 Stat. 2439.)

AMENDMENTS

1983—Pub. L. 97–449 substituted "Secretary of Transportation" for "Interstate Commerce Commission".

1966—Pub. L. 89–387 inserted "insofar as practicable (as determined by the Interstate Commerce Commission)" in two places and substituted "engaged in interstate or foreign commerce" for "engaged in commerce between the several States or between a State and any one of the Territories of the United States, or between a State or the Territory of Alaska and any one of the insular possessions of the United States or any foreign country".

§263. Designation of zone standard times

The standard time of the first zone shall be known and designated as Atlantic standard time; that

of the second zone shall be known and designated as eastern standard time; that of the third zone shall be known and designated as central standard time; that of the fourth zone shall be known and designated as mountain standard time; that of the fifth zone shall be known and designated as Pacific standard time; that of the sixth zone shall be known and designated as Alaska standard time; that of the seventh zone shall be known and designated as Hawaii-Aleutian standard time; that of the eighth zone shall be known and designated as Samoa standard time; and that of the ninth zone shall be known as Chamorro standard time.

(Mar. 19, 1918, ch. 24, §4, 40 Stat. 451; Pub. L. 89–387, §4(c), Apr. 13, 1966, 80 Stat. 108; Pub. L. 98–181, title II, §2003(a), Nov. 30, 1983, 97 Stat. 1297; Pub. L. 106–564, §1(b), Dec. 23, 2000, 114 Stat. 2811.)

AMENDMENTS

2000—Pub. L. 106–564 struck out "and" before "that of the eighth" and inserted before period at end "; and that of the ninth zone shall be known as Chamorro standard time".

1983—Pub. L. 98–181 substituted "Alaska" for "Yukon", "Hawaii-Aleutian" for "Alaska-Hawaii", and "Samoa" for "Bering".

1966—Pub. L. 89–387 added Atlantic standard time as first zone designation; redesignated as eastern standard time, central standard time, mountain standard time and Pacific standard time for second through fifth zones former designation of United States standard eastern time, United States standard central time, United States standard mountain time and United States standard Pacific time for former zones one through four; added Yukon standard time as sixth zone designation; redesignated as Alaska-Hawaii standard time for seventh zone former designation of United States standard Alaska time for fifth zone; and added Bering standard time as eighth zone designation.

CONFORMING CHANGES IN TIME ZONE DESIGNATIONS

Pub. L. 98–181, title II, §2003(b), Nov. 30, 1983, 97 Stat. 1297, provided that:

"(1) Any reference to Yukon standard time in any law, regulation, map, document, record, or other paper of the United States shall be held and considered to be a reference to Alaska standard time.

"(2) Any reference to Alaska-Hawaii standard time in any law, regulation, map, document, record, or other paper of the United States shall be held and considered to be a reference to Hawaii-Aleutian standard time.

"(3) Any reference to Bering standard time in any law, regulation, map, document, record, or other paper of the United States shall be held and considered to be a reference to Samoa standard time."

§264. Part of Idaho in fourth zone

In the division of territory, and in the definition of the limits of each zone, as provided in sections 261 to 264 of this title, so much of the State of Idaho as lies south of the Salmon River, traversing the State from east to west near forty-five degrees thirty minutes latitude, shall be embraced in the fourth zone: *Provided*, That common carriers within such portion of the State of Idaho may conduct their operations on Pacific time.

(Mar. 19, 1918, ch. 24, §3, as added Mar. 3, 1923, ch. 216, 42 Stat. 1434; amended June 24, 1948, ch. 631, §1, 62 Stat. 646; Pub. L. 110–69, title III, §3013(c)(4), Aug. 9, 2007, 121 Stat. 599.)

PRIOR PROVISIONS

The original section 3 of act Mar. 19, 1918, providing for daylight-savings, was repealed by act Aug. 20, 1919, ch. 51, 41 Stat. 280.

AMENDMENTS

2007—Pub. L. 110–69 substituted "fourth zone" for "third zone".

1948—Act June 24, 1948, inserted proviso relating to common carriers.

EFFECTIVE DATE OF 1948 AMENDMENT

Act June 24, 1948, ch. 631, §2, 62 Stat. 646, provided that: "This Act [amending this section] shall take effect at 2 o'clock antemeridian of the second Monday following the date of its enactment."

§265. Transfer of certain territory to standard central-time zone

The Panhandle and Plains sections of Texas and Oklahoma are transferred to and placed within the United States standard central-time zone.

The Secretary of Transportation is authorized and directed to issue an order placing the western boundary line of the United States standard central-time zone insofar as the same affect Texas and Oklahoma as follows:

Beginning at a point where such western boundary time zone line crosses the State boundary line between Kansas and Oklahoma; thence westerly along said State boundary line to the northwest corner of the State of Oklahoma; thence in a southerly direction along the west State boundary line of Oklahoma and the west State boundary line of Texas to the southeastern corner of the State of New Mexico; thence in a westerly direction along the State boundary line between the States of Texas and New Mexico to the Rio Grande River; thence down the Rio Grande River as the boundary line between the United States and Mexico: *Provided*, That the Chicago, Rock Island and Gulf Railway Company and the Chicago, Rock Island and Pacific Railway Company may use Tucumcari, New Mexico, as the point at which they change from central to mountain time and vice versa; the Colorado Southern and Fort Worth and Denver City Railway Companies may use Sixela, New Mexico, as such changing point; the Atchison, Topeka and Santa Fe Railway Company and other branches of the Santa Fe system may use Clovis, New Mexico, as such changing point, and those railways running into or through El Paso may use El Paso as such point: *Provided further*, That this section shall not, except as herein provided, interfere with the adjustment of time zones as established by the Secretary of Transportation.

(Mar. 4, 1921, ch. 173, §1, 41 Stat. 1446; Pub. L. 97–449, §2(c), Jan. 12, 1983, 96 Stat. 2439.)

AMENDMENTS

1983—Pub. L. 97–449 substituted "Secretary of Transportation" for "Interstate Commerce Commission".

REPEALS

Section 2 of act Mar. 4, 1921, repealed all conflicting laws and parts of laws.

TRANSFER OF EL PASO AND HUDSPETH COUNTIES, TEXAS, TO MOUNTAIN STANDARD TIME ZONE

Pub. L. 91–228, Apr. 10, 1970, 84 Stat. 119, provided: "That, notwithstanding the first section of the Act of March 4, 1921 (15 U.S.C. 265), the Secretary of Transportation may, upon the written request of the County Commissioners Court of El Paso County, Texas, change the boundary line between the central standard time zone and the mountain standard time zone, so as to place El Paso County in the mountain standard time zone, in the manner prescribed in section 1 of the Act of March 19, 1918, as amended (15 U.S.C. 261), and section 5 of the Act of April 13, 1966 (15 U.S.C. 266). In the same manner, the Secretary of Transportation may also place Hudspeth County, Texas, in the mountain standard time zone, if the Hudspeth County Commissioners Court so requests in writing and if El Paso County is to be placed in that time zone."

§266. Applicability of administrative procedure provisions

Subchapter II of chapter 5, and chapter 7, of title 5 shall apply to all proceedings under this Act, sections 261 to 264 of this title, and section 265 of this title.

(Pub. L. 89–387, §5, Apr. 13, 1966, 80 Stat. 108.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 89–387, Apr. 13, 1966, 80 Stat. 107, as amended, known as the "Uniform Time Act of 1966". For complete classification of this Act to the Code, see Short Title note set out under section 260 of this title and Tables.

CODIFICATION

"Subchapter II of chapter 5, and chapter 7, of title 5" substituted in text for "The Administrative Procedure Act (5 U.S.C. 1001–1011)" on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

§267. "State" defined

As used in this Act, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, or any possession of the United States.

(Pub. L. 89–387, §7, Apr. 13, 1966, 80 Stat. 109; Pub. L. 106–564, §1(c), Dec. 23, 2000, 114 Stat. 2811.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 89–387, Apr. 13, 1966, 80 Stat. 107, known as the "Uniform Time Act of 1966". For complete classification of this Act to the Code, see Short Title note set out under section 260 of this title and Tables.

AMENDMENTS

2000—Pub. L. 106–564 inserted "Guam, the Commonwealth of the Northern Mariana Islands," after "Puerto Rico,".

CHAPTER 7—NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

Sec.

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§271. Findings and purposes

(a) The Congress finds and declares the following:

(1) The future well-being of the United States economy depends on a strong manufacturing base and requires continual improvements in manufacturing technology, quality control, and techniques for ensuring product reliability and cost-effectiveness.

(2) Precise measurements, calibrations, and standards help United States industry and manufacturing concerns compete strongly in world markets.

(3) Improvements in manufacturing and product technology depend on fundamental scientific and engineering research to develop (A) the precise and accurate measurement methods and measurement standards needed to improve quality and reliability, and (B) new technological processes by which such improved methods may be used in practice to improve manufacturing and to assist industry to transfer important laboratory discoveries into commercial products.

(4) Scientific progress, public safety, and product compatibility and standardization also depend on the development of precise measurement methods, standards, and related basic technologies.

(5) The National Bureau of Standards since its establishment has served as the Federal focal point in developing basic measurement standards and related technologies, has taken a lead role in stimulating cooperative work among private industrial organizations in efforts to surmount technological hurdles, and otherwise has been responsible for assisting in the improvement of industrial technology.

(6) The Federal Government should maintain a national science, engineering, and technology laboratory which provides measurement methods, standards, and associated technologies and which aids United States companies in using new technologies to improve products and manufacturing processes.

(7) Such national laboratory also should serve industry, trade associations, State technology programs, labor organizations, professional societies, and educational institutions by disseminating information on new basic technologies including automated manufacturing processes.

(b) It is the purpose of this chapter—

(1) to rename the National Bureau of Standards as the National Institute of Standards and Technology and to modernize and restructure that agency to augment its unique ability to enhance the competitiveness of American industry while maintaining its traditional function as lead national laboratory for providing the measurements, calibrations, and quality assurance techniques which underpin United States commerce, technological progress, improved product reliability and manufacturing processes, and public safety;

(2) to assist private sector initiatives to capitalize on advanced technology;

(3) to advance, through cooperative efforts among industries, universities, and government laboratories, promising research and development projects, which can be optimized by the private sector for commercial and industrial applications; and

(4) to promote shared risks, accelerated development, and pooling of skills which will be necessary to strengthen America's manufacturing industries.

(Mar. 3, 1901, ch. 872, §1, 31 Stat. 1449; Pub. L. 100–418, title V, §5111, Aug. 23, 1988, 102 Stat. 1427.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this Act" meaning act Mar. 3, 1901, ch. 872, 31 Stat. 1449, as amended, known as the National Institute of Standards and Technology Act, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note below and Tables.

AMENDMENTS

1988—Pub. L. 100–418 amended section generally. Prior to amendment, section read as follows: "The Office of Standard Weights and Measures shall be known as the National Bureau of Standards."

CHANGE OF NAME; NATIONAL BUREAU OF STANDARDS REDESIGNATED NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

Section 5115(c) of Pub. L. 100–418 provided that: "References in any other Federal law to the National Bureau of Standards shall be deemed to refer to the National Institute of Standards and Technology."

Act Mar. 4, 1913, ch. 141, §1, 37 Stat. 736, created the Department of Labor and renamed the Department of Commerce and Labor as the Department of Commerce.

SHORT TITLE OF 2011 AMENDMENT

Pub. L. 111–358, title VII, §701, Jan. 4, 2011, 124 Stat. 4041, provided that: "This title [amending section 278k of this title and enacting provisions set out as a note under section 278k of this title] may be cited as the 'NIST Grants for Energy Efficiency, New Job Opportunities, and Business Solutions Act of 2010' or the 'NIST GREEN JOBS Act of 2010'."

SHORT TITLE OF 2010 AMENDMENT

Pub. L. 111–240, title IV, §4221, Sept. 27, 2010, 124 Stat. 2596, provided that: "This part [part I (§§4221–4228) of subtitle B of title IV of Pub. L. 111–240, amending section 278k of this title and enacting provisions set out as a note under section 278n of this title] may be cited as the 'Export Promotion Act of 2010'."

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–309, §1, Oct. 30, 1998, 112 Stat. 2935, provided that: "This Act [enacting sections 278g–2a, 278p, and 1511e of this title, amending sections 278k, 3704, and 3711a of this title, enacting provisions set out as notes under sections 272 and 3711 of this title, and amending provisions set out as a note under this section] may be cited as the 'Technology Administration Act of 1998'."

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–245, title II, §201(a), Feb. 14, 1992, 106 Stat. 15, provided that: "This title [amending sections 272 and 278n of this title and enacting provisions set out as notes under section 278n of this title] may be cited as the 'Emerging Technologies and Advanced Technology Program Amendments Act of 1991'."

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–418, title V, §5101, Aug. 23, 1988, 102 Stat. 1426, provided that: "This part [part I (§§5101–5164) of subtitle B of title V of Pub. L. 100–418, enacting sections 205j–1, 278i to 278o, 282a, 1532, 1533, 3704a, and 4632 of this title, amending this section, sections 205a, 205b, 205k, 272 to 275, 278, 278b, 278d, 278e, 278g to 278g–4, 3703, 3706, 3708, 3710, 3710c, and 3713 of this title, and section 5315 of Title 5, Government Organization and Employees, repealing sections 280 to 282 of this title, enacting provisions set out as notes under this section, sections 272, 272, 278l, and 278n of this title, and section 1803 of Title 30, Mineral Lands and Mining, and amending provisions set out as a note under this section] may be cited as the 'Technology Competitiveness Act'."

SHORT TITLE

Act Mar. 3, 1901, ch. 872, §34, formerly §23, as added Jan. 8, 1988, Pub. L. 100–235, §3(3), 101 Stat. 1728; renumbered §31 and amended Pub. L. 100–418, title V, §§5114(1), 5115(a)(2), Aug. 23, 1988, 102 Stat. 1432, 1433; renumbered §32, Pub. L. 105–309, §4(a), Oct. 30, 1998, 112 Stat. 2935; renumbered §34, Pub. L. 110–69, title III, §3007(1), Aug. 9, 2007, 121 Stat. 590, provided that: "This Act [enacting this chapter] may be cited as the National Institute of Standards and Technology Act."

SAVINGS PROVISION

Act Mar. 3, 1901, ch. 872, §29, as added Aug. 23, 1988, Pub. L. 100–418, title V, §5161, 102 Stat. 1449, provided that: "All rules and regulations, determinations, standards, contracts, certifications, authorizations, delegations, results and findings of investigations, or other actions duly issued, made, or taken by or pursuant to this Act [enacting this chapter], or under the authority of any other statutes which resulted in the assignment of functions or activities to the Secretary, the Department, the Director, or the Institute, as are in effect immediately before the date of enactment of this section [Aug. 23, 1988], and not suspended by the Secretary, the Director, the Institute or the courts, shall continue in full force and effect after the date of enactment of this section until modified or rescinded."

§272. Establishment, functions, and activities

(a) Establishment of National Institute of Standards and Technology

There is established within the Department of Commerce a science, engineering, technology, and measurement laboratory to be known as the National Institute of Standards and Technology (hereafter in this chapter referred to as the "Institute").

(b) Functions of Secretary and Institute

The Secretary of Commerce (hereafter in this chapter referred to as the "Secretary") acting through the Director of the Institute (hereafter in this chapter referred to as the "Director") is authorized to take all actions necessary and appropriate to accomplish the purposes of this chapter, including the following functions of the Institute—

(1) to assist industry in the development of technology and procedures needed to improve quality, to modernize manufacturing processes, to ensure product reliability, manufacturability, functionality, and cost-effectiveness, and to facilitate the more rapid commercialization, especially by small- and medium-sized companies throughout the United States, of products based on new scientific discoveries in fields such as automation, electronics, advanced materials, biotechnology, and optical technologies;

(2) to develop, maintain, and retain custody of the national standards of measurement, and provide the means and methods for making measurements consistent with those standards;

(3) to compare standards used in scientific investigations, engineering, manufacturing, commerce, industry, and educational institutions with the standards adopted or recognized by the Federal Government and to coordinate the use by Federal agencies of private sector standards, emphasizing where possible the use of standards developed by private, consensus organizations;

(4) to enter into contracts, including cooperative research and development arrangements, and grants and cooperative agreements, in furtherance of the purposes of this chapter;

(5) to provide United States industry, Government, and educational institutions with a national clearinghouse of current information, techniques, and advice for the achievement of higher quality and productivity based on current domestic and international scientific and technical development;

(6) to assist industry in the development of measurements, measurement methods, and basic measurement technology;

(7) to determine, compile, evaluate, and disseminate physical constants and the properties and performance of conventional and advanced materials when they are important to science, engineering, manufacturing, education, commerce, and industry and are not available with sufficient accuracy elsewhere;

(8) to develop a fundamental basis and methods for testing materials, mechanisms, structures, equipment, and systems, including those used by the Federal Government;

(9) to assure the compatibility of United States national measurement standards with those of

other nations;

(10) to cooperate with other departments and agencies of the Federal Government, with industry, with State and local governments, with the governments of other nations and international organizations, and with private organizations in establishing standard practices, codes, specifications, and voluntary consensus standards;

(11) to advise government and industry on scientific and technical problems;

(12) to invent, develop, and (when appropriate) promote transfer to the private sector of measurement devices to serve special national needs; and

(13) to coordinate Federal, State, and local technical standards activities and conformity assessment activities, with private sector technical standards activities and conformity assessment activities, with the goal of eliminating unnecessary duplication and complexity in the development and promulgation of conformity assessment requirements and measures.

(c) Implementation activities

In carrying out the functions specified in subsection (b) of this section, the Secretary, acting through the Director [1] may, among other things—

(1) construct physical standards;

(2) test, calibrate, and certify standards and standard measuring apparatus;

(3) study and improve instruments, measurement methods, and industrial process control and quality assurance techniques;

(4) cooperate with the States in securing uniformity in weights and measures laws and methods of inspection;

(5) cooperate with foreign scientific and technical institutions to understand technological developments in other countries better;

(6) prepare, certify, and sell standard reference materials for use in ensuring the accuracy of chemical analyses and measurements of physical and other properties of materials;

(7) in furtherance of the purposes of this chapter, accept research associates, cash donations, and donated equipment from industry, and also engage with industry in research to develop new basic and generic technologies for traditional and new products and for improved production and manufacturing;

(8) study and develop fundamental scientific understanding and improved measurement, analysis, synthesis, processing, and fabrication methods for chemical substances and compounds, ferrous and nonferrous metals, and all traditional and advanced materials, including processes of degradation;

(9) investigate ionizing and nonionizing radiation and radioactive substances, their uses, and ways to protect people, structures, and equipment from their harmful effects;

(10) determine the atomic and molecular structure of matter, through analysis of spectra and other methods, to provide a basis for predicting chemical and physical structures and reactions and for designing new materials and chemical substances, including biologically active macromolecules;

(11) perform research on electromagnetic waves, including optical waves, and on properties and performance of electrical, electronic, and electromagnetic devices and systems and their essential materials, develop and maintain related standards, and disseminate standard signals through broadcast and other means;

(12) develop and test standard interfaces, communication protocols, and data structures for computer and related telecommunications systems;

(13) study computer systems (as that term is defined in section 278g–3(d) [2] of this title) and their use to control machinery and processes;

(14) perform research to develop standards and test methods to advance the effective use of computers and related systems and to protect the information stored, processed, and transmitted by such systems and to provide advice in support of policies affecting Federal computer and related telecommunications systems;

(15) determine properties of building materials and structural elements, and encourage their

standardization and most effective use, including investigation of fire-resisting properties of building materials and conditions under which they may be most efficiently used, and the standardization of types of appliances for fire prevention;

(16) undertake such research in engineering, pure and applied mathematics, statistics, computer science, materials science, and the physical sciences as may be necessary to carry out and support the functions specified in this section;

(17) compile, evaluate, publish, and otherwise disseminate general, specific and technical data resulting from the performance of the functions specified in this section or from other sources when such data are important to science, engineering, or industry, or to the general public, and are not available elsewhere;

(18) collect, create, analyze, and maintain specimens of scientific value;

(19) operate national user facilities;

(20) evaluate promising inventions and other novel technical concepts submitted by inventors and small companies and work with other Federal agencies, States, and localities to provide appropriate technical assistance and support for those inventions which are found in the evaluation process to have commercial promise;

(21) demonstrate the results of the Institute's activities by exhibits or other methods of technology transfer, including the use of scientific or technical personnel of the Institute for part-time or intermittent teaching and training activities at educational institutions of higher learning as part of and incidental to their official duties; and

(22) undertake such other activities similar to those specified in this subsection as the Director determines appropriate.

(d) Management costs

In carrying out the extramural funding programs of the Institute, including the programs established under sections 278k, 278l, and 278n of this title, the Secretary may retain reasonable amounts of any funds appropriated pursuant to authorizations for these programs in order to pay for the Institute's management of these programs.

(Mar. 3, 1901, ch. 872, §2, 31 Stat. 1449; July 22, 1950, ch. 486, §1, 64 Stat. 371; Pub. L. 92–317, §3(b), June 22, 1972, 86 Stat. 235; Pub. L. 100–235, §3(1), Jan. 8, 1988, 101 Stat. 1724; Pub. L. 100–418, title V, §5112(a), Aug. 23, 1988, 102 Stat. 1428; Pub. L. 102–245, title II, §201(e), Feb. 14, 1992, 106 Stat. 19; Pub. L. 104–113, §12(a), (b), Mar. 7, 1996, 110 Stat. 782; Pub. L. 110–69, title III, §§3002(c)(2)(A), 3013(b), Aug. 9, 2007, 121 Stat. 586, 598.)

REFERENCES IN TEXT

Section 278g–3 of this title, referred to in subsec. (c)(13), was amended, and no longer defines the term "computer systems".

AMENDMENTS

2007—Subsec. (b). Pub. L. 110–69, §3002(c)(2)(A)(i), struck out "and, if appropriate, through other officials," before "is authorized" in introductory provisions.

Subsec. (b)(4). Pub. L. 110–69, §3013(b), inserted "and grants and cooperative agreements," after "arrangements,".

Subsec. (c). Pub. L. 110–69, §3002(c)(2)(A)(ii), struck out "and, if appropriate, through other appropriate officials," before "may," in introductory provisions.

1996—Subsec. (b)(2). Pub. L. 104–113, §12(a)(1), struck out ", including comparing standards used in scientific investigations, engineering, manufacturing, commerce, industry, and educational institutions with the standards adopted or recognized by the Federal Government" after "consistent with those standards".

Subsec. (b)(3) to (12). Pub. L. 104–113, §12(a)(2), (3), added par. (3) and redesignated former pars. (3) to (11) as (4) to (12), respectively.

Subsec. (b)(13). Pub. L. 104–113, §12(b)(3), added par. (13).

1992—Subsec. (d). Pub. L. 102–245 added subsec. (d).

1988—Pub. L. 100–418 amended section generally, substituting provisions relating to establishment, functions and activities of the National Institute of Standards and Technology and the Secretary of Commerce

for provisions which authorized Secretary to undertake certain enumerated functions and activities related to the National Bureau of Standards and for which need might arise in operations of Government agencies, scientific institutions, and industrial enterprises.

Par. (20). Pub. L. 100–235 added par. (20).

1972—Par. (19). Pub. L. 92–317 inserted provisions authorizing use of National Bureau of Standards personnel for teaching and training activities without additional compensation.

1950—Act July 22, 1950, provided basic authority for performance of certain functions and activities of Department of Commerce.

ENHANCEMENT OF SCIENCE AND MATHEMATICS PROGRAMS

Pub. L. 105–309, §6, Oct. 30, 1998, 112 Stat. 2936, provided that:

"(a) DEFINITIONS.—In this section—

"(1) EDUCATIONALLY USEFUL FEDERAL EQUIPMENT.—The term 'educationally useful Federal equipment' means computers and related peripheral tools and research equipment that is appropriate for use in schools.

"(2) SCHOOL.—The term 'school' means a public or private educational institution that serves any of the grades of kindergarten through grade 12.

"(b) SENSE OF THE CONGRESS.—

"(1) IN GENERAL.—It is the sense of the Congress that the Director of the National Institute of Standards and Technology should, to the greatest extent practicable and in a manner consistent with applicable Federal law (including Executive Order No. 12999 [40 U.S.C. 549 note]), donate educationally useful Federal equipment to schools in order to enhance the science and mathematics programs of those schools.

"(2) REPORTS.—

"(A) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act [Oct. 30, 1998], and annually thereafter, the Director of the National Institute of Standards and Technology shall prepare and submit to the President a report. The President shall submit the report to Congress at the same time as the President submits a budget request to Congress under section 1105(a) of title 31, United States Code.

"(B) CONTENTS OF REPORT.—The report prepared by the Director under this paragraph shall describe any donations of educationally useful Federal equipment to schools made during the period covered by the report."

TRANSMITTAL OF PLAN FOR STANDARDS CONFORMITY TO CONGRESS

Pub. L. 104–113, §12(c), Mar. 7, 1996, 110 Stat. 783, provided that: "The National Institute of Standards and Technology shall, within 90 days after the date of enactment of this Act [Mar. 7, 1996], transmit to the Congress a plan for implementing the amendments made by this section [amending this section and enacting provisions set out as a note below]."

UTILIZATION OF CONSENSUS TECHNICAL STANDARDS BY FEDERAL AGENCIES

Pub. L. 104–113, §12(d), Mar. 7, 1996, 110 Stat. 783, as amended by Pub. L. 107–107, div. A, title XI, §1115, Dec. 28, 2001, 115 Stat. 1241, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (3) of this subsection, all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.

"(2) CONSULTATION; PARTICIPATION.—In carrying out paragraph (1) of this subsection, Federal agencies and departments shall consult with voluntary, private sector, consensus standards bodies and shall, when such participation is in the public interest and is compatible with agency and departmental missions, authorities, priorities, and budget resources, participate with such bodies in the development of technical standards.

"(3) EXCEPTION.—If compliance with paragraph (1) of this subsection is inconsistent with applicable law or otherwise impractical, a Federal agency or department may elect to use technical standards that are not developed or adopted by voluntary consensus standards bodies if the head of each such agency or department transmits to the Office of Management and Budget an explanation of the reasons for using such standards. Each year, beginning with fiscal year 1997, the Office of Management and Budget shall transmit to Congress and its committees a report summarizing all explanations received in the preceding year under this paragraph.

"(4) EXPENSES OF GOVERNMENT PERSONNEL.—Section 5946 of title 5, United States Code, shall not apply with respect to any activity of an employee of a Federal agency or department that is determined by

the head of that agency or department as being an activity undertaken in carrying out this subsection.

"(5) DEFINITION OF TECHNICAL STANDARDS.—As used in this subsection, the term 'technical standards' means performance-based or design-specific technical specifications and related management systems practices."

INTERNATIONAL STANDARDS

Pub. L. 100–519, title I, §112, Oct. 24, 1988, 102 Stat. 2592, provided that:

"(a) PROGRAM.—The Secretary, acting through the Director of the National Institute of Standards and Technology and other appropriate officials, shall seek funding for and establish, within 6 months after the date of the enactment of this Act [Oct. 24, 1988], a program to assist other countries in the development of their domestic standards which are compatible with standards in general use in the United States. After the program is established, it shall be funded through voluntary contributions from the private sector to fully reimburse the United States for expenses incurred during fiscal years 1989 and 1990. The program shall begin on a pilot basis focusing on one or two countries or groups of countries which are major United States trading partners and have expressed interest in such program. The Secretary shall ensure that contributions which are earmarked by country are spent to assist the development of standards by that country or group of countries.

"(b) LONG-TERM PLAN.—No later than June 30, 1989, the Secretary shall submit to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a long-term plan for assistance under this section for each nation or group of nations which annually has imports of at least $1,000,000,000 from the United States (or has the potential for being a major importer from the United States) and which desires such assistance. The plan shall include a description of the resources needed to provide such assistance, the appropriate and likely sources of such funds, and the appropriate relationship between the program established under this section and private sector standards organizations. Special consideration is to be given to the feasibility of establishing a data base and other methods for making standards information developed in cooperation with one country available to other countries."

INITIAL ORGANIZATION PLAN FOR INSTITUTE

Pub. L. 100–418, title V, §5112(d), Aug. 23, 1988, 102 Stat. 1431, provided that:

"(1) At least 60 days before its effective date and within 120 days after the date of the enactment of this Act [Aug. 23, 1988], an initial organization plan for the National Institute of Standards and Technology (hereafter in this part [see Short Title of 1988 Amendment note set out under section 271 of this title] referred to as the 'Institute') shall be submitted by the Director of the Institute (hereafter in this part referred to as the 'Director') after consultation with the Visiting Committee on Advanced Technology, to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate. Such plan shall—

"(A) establish the major operating units of the Institute;

"(B) assign each of the activities listed in section 2(c) of the Act of March 3, 1901 [15 U.S.C. 272(c)], and all other functions and activities of the Institute, to at least one of the major operating units established under subparagraph (A);

"(C) provide details of a 2-year program for the Institute, including the Advanced Technology Program;

"(D) provide details regarding how the Institute will expand and fund the Inventions program in accordance with section 27 of the Act of March 3, 1901 [former 15 U.S.C. 278m]; and

"(E) make no changes in the Center for Building Technology or the Center for Fire Research.

"(2) The Director may revise the organization plan. Any revision of the organization plan submitted under paragraph (1) shall be submitted to the appropriate committees of the House of Representatives and the Senate at least 60 days before the effective date of such revision.

"(3) Until the effective date of the organization plan, the major operating units of the Institute shall be the major operating units of the National Bureau of Standards that were in existence on the date of the enactment of this Act [Aug. 23, 1988] and the Advanced Technology Program."

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY; SMALL BUSINESS PLAN

Pub. L. 100–418, title V, §5163(b), Aug. 23, 1988, 102 Stat. 1450, provided that: "The Director of the National Institute of Standards and Technology shall prepare a plan detailing the manner in which the Institute will make small businesses more aware of the Institute's activities and research, and the manner in which the Institute will seek to increase the application by small businesses of the Institute's research, particularly in

manufacturing. The plan shall be submitted to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives not later than 120 days after the date of the enactment of this Act [Aug. 23, 1988]."

CONSTRUCTION OF RADIO LABORATORY BUILDING

Act Oct. 25, 1949, ch. 703, 63 Stat. 886, provided for the construction and equipment of a suitable radio laboratory building, together with necessary utilities and appurtenances thereto, under a limit of cost of $4,475,000, for the National Bureau of Standards.

CONSTRUCTION OF A GUIDED-MISSILE RESEARCH LABORATORY

Act Oct. 25, 1949, ch. 728, 63 Stat. 905, provided for the construction and equipment of a research laboratory building, suitable for use as a guided-missile laboratory, together with necessary utilities and appurtenances thereto, under a limit of cost of $1,900,000, for the National Bureau of Standards.

[1] So in original. Probably should be followed by a comma.

[2] See References in Text note below.

§272a. Technology services

In addition to such other technology services and technology extension activities which may be mandated or authorized by law, and in order to help improve the use of technology by small and medium-sized industrial firms within the United States, the Director of the National Institute of Standards and Technology, as appropriate, shall—

(1) work directly with States, local governments, and other appropriate organizations to provide for extended distribution of Standard Reference Materials, Standard Reference Data, calibrations, and related technical services and to help transfer other expertise and technology to the States and to small businesses and other businesses within the States;

(2) evaluate those inventions from small businesses or individuals which have a significant potential for improving competitiveness;

(3) provide support for workshops on technical and entrepreneurial topics and share information developed through the Malcolm Baldrige Quality Award Program; and

(4) work with other Federal agencies to provide technical and related assistance to the States and businesses within the States.

(Pub. L. 100–519, title I, §109, Oct. 24, 1988, 102 Stat. 2591.)

CODIFICATION

Section was enacted as part of the National Institute of Standards and Technology Authorization Act for Fiscal Year 1989, and not as part of the National Institute of Standards and Technology Act which comprises this chapter.

§272b. Annual budget submission

The National Institute of Standards and Technology shall annually submit to the Congress, at the time of the release of the President's budget, a three year budget estimate for the Institute, including funding estimates for each major account and new initiative.

(Pub. L. 100–519, title I, §111, Oct. 24, 1988, 102 Stat. 2592.)

CODIFICATION

Section was enacted as part of the National Institute of Standards and Technology Authorization Act for Fiscal Year 1989, and not as part of the National Institute of Standards and Technology Act which comprises this chapter.

§273. Functions; for whom exercised

The Institute is authorized to exercise its functions for the Government of the United States and for international organizations of which the United States is a member; for governments of friendly countries; for any State or municipal government within the United States; or for any scientific society, educational institution, firm, corporation, or individual within the United States or friendly countries engaged in manufacturing or other pursuits requiring the use of standards or standard measuring instruments: *Provided*, That the exercise of these functions for international organizations, governments of friendly countries and scientific societies, educational institutions, firms, corporations, or individuals therein shall be in coordination with other agencies of the United States Government, in particular the Department of State in respect to foreign entities. All requests for the services of the Institute shall be made in accordance with the rules and regulations herein established.

(Mar. 3, 1901, ch. 872, §3, 31 Stat. 1449; Pub. L. 92–317, §3(c), June 22, 1972, 86 Stat. 235; Pub. L. 100–418, title V, §5115(a)(1), Aug. 23, 1988, 102 Stat. 1433.)

REFERENCES IN TEXT

"Herein", referred to in last sentence of this section, refers to act Mar. 3, 1901, ch. 872, which is classified generally to this chapter.

AMENDMENTS

1988—Pub. L. 100–418 substituted "Institute" for "Bureau" and for "bureau".

1972—Pub. L. 92–317 authorized the Bureau to extend its services to international organizations of which the United States is a member, and for governments of friendly countries in coordination with the Department of State.

§273a. Under Secretary of Commerce for Standards and Technology

(a) Establishment

There shall be in the Department of Commerce an Under Secretary of Commerce for Standards and Technology (in this section referred to as the "Under Secretary").

(b) Appointment

The Under Secretary shall be appointed by the President by and with the advice and consent of the Senate.

(c) Compensation

The Under Secretary shall be compensated at the rate in effect for level III of the Executive Schedule under section 5314 of title 5.

(d) Duties

The Under Secretary shall serve as the Director of the Institute and shall perform such duties as required of the Director by the Secretary under this chapter or by law.

(e) Applicability

The individual serving as the Director of the Institute on January 4, 2011, shall also serve as the Under Secretary until such time as a successor is appointed under subsection (b).

(Mar. 3, 1901, ch. 872, §4, as added Pub. L. 111–358, title IV, §403(a), Jan. 4, 2011, 124 Stat. 4000.)

PRIOR PROVISIONS

A prior section 4 of act Mar. 3, 1901, ch. 872, 31 Stat. 1449, which was not classified to the Code, was repealed.

§274. Director; powers and duties; report; compensation

The Director shall report directly to the Secretary and shall have the general supervision of the Institute, its equipment, and the exercise of its functions. The Director shall make an annual report to the Secretary of Commerce. The Director may issue, when necessary, bulletins for public distribution, containing such information as may be of value to the public or facilitate the exercise of the functions of the Institute.

(Mar. 3, 1901, ch. 872, §5, 31 Stat. 1449; Pub. L. 99–73, §6(a), July 29, 1985, 99 Stat. 172; Pub. L. 100–418, title V, §5112(c)(1), Aug. 23, 1988, 102 Stat. 1431; Pub. L. 110–69, title III, §3002(c)(2)(B), Aug. 9, 2007, 121 Stat. 586; Pub. L. 111–358, title IV, §403(b)(2), Jan. 4, 2011, 124 Stat. 4000.)

AMENDMENTS

2011—Pub. L. 111–358 struck out at beginning "The Director shall be appointed by the President, by and with the advice and consent of the Senate." and struck out at end "The Director shall be compensated at the rate in effect for level IV of the Executive Schedule under section 5315 of title 5. Until such time as the Director assumes office under this section, the most recent Director of the National Bureau of Standards shall serve as Director."

2007—Pub. L. 110–69 substituted "The Director shall report directly to the Secretary and shall have the general" for "The Director shall have the general".

1988—Pub. L. 100–418 amended section generally, substituting provisions relating to appointment, powers and duties, and compensation of, and reports by, Director of the Institute for similar provisions relating to Director of the Bureau of Standards, striking out requirement that the annual report include an abstract of the work done during the year and a financial statement, and inserting provision that until such time as the Director assumes office under this section, the most recent Director of the National Bureau of Standards shall serve as Director.

1985—Pub. L. 99–73 substituted "The Director" for "He" at beginning of second, third, and fourth sentences, and inserted provisions relating to compensation for the Director.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–73 effective Oct. 1, 1985, see section 6(c) of Pub. L. 99–73, set out as a note under section 5315 of Title 5, Government Organization and Employees.

§275. Appointment of officers and employees

The officers and employees of the Institute, except the director, shall be appointed by the Secretary of Commerce at such time as their respective services may become necessary.

(Mar. 3, 1901, ch. 872, §6, 31 Stat. 1450; Feb. 14, 1903, ch. 552, §10, 32 Stat. 829; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736; Pub. L. 100–418, title V, §5115(a)(1), Aug. 23, 1988, 102 Stat. 1433.)

AMENDMENTS

1988—Pub. L. 100–418 substituted "Institute" for "bureau".

CHANGE OF NAME

Act Mar. 4, 1913, substituted "Secretary of Commerce" for "Secretary of Commerce and Labor".

TRANSFER OF FUNCTIONS

Act Feb. 14, 1903, transferred power and authority of Secretary of the Treasury over Bureau of Standards to Secretary of Commerce and Labor.

PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES

Pub. L. 110–69, title III, §3009, Aug. 9, 2007, 121 Stat. 592, permitted the Director of the National Institute of Standards and Technology, until Sept. 30, 2010, to procure the temporary or intermittent services of no more than 200 experts or consultants per year to assist with urgent or short-term research projects and required the Comptroller General to submit to Congress, no later than 2 years after Aug. 9, 2007, a report on possible additional safeguards needed should the authority under this section be made permanent.

DEMONSTRATION PROJECT RELATING TO PERSONNEL MANAGEMENT

Pub. L. 99–574, §10, Oct. 28, 1986, 100 Stat. 3238, as amended by Pub. L. 100–418, title V, §5115(c),

Aug. 23, 1988, 102 Stat. 1433, directed the Office of Personnel Management and the National Institute of Standards and Technology to jointly design an alternative personnel management system demonstration project to be commenced not later than Jan. 1, 1988, and to be conducted by the Director of the Institute in accordance with section 4703 of Title 5, Government Organization and Employees, with the Director of the Office of Personnel Management to provide that the project be evaluated annually by a contractor, and a report of the contractor's findings submitted to the Office, and, along with any comments of the Office and the Institute, submitted to the Congress, and a final report to be submitted to the Congress by the Comptroller General not later than 4 years after the date on which the project commences, such report to include any recommendations for legislation or other action considered appropriate by the Comptroller General.

[Pub. L. 104–113, §10, Mar. 7, 1996, 110 Stat. 779, provided that: "The personnel management demonstration project established under section 10 of the National Bureau of Standards Authorization Act for Fiscal Year 1987 [Pub. L. 99–574] (15 U.S.C. 275 note) is extended indefinitely."]

§275a. Service charges

The Secretary shall charge for services performed under the authority of section 273 of this title, except in cases where he determines that the interest of the Government would be best served by waiving the charge. Such charges may be based upon fixed prices or costs. The appropriation or fund bearing the cost of the services may be reimbursed, or the Secretary may require advance payment subject to such adjustment on completion of the work as may be agreed upon.

(Mar. 3, 1901, ch. 872, §7, as added Aug. 3, 1956, ch. 906, §1, 70 Stat. 959.)

CODIFICATION

Provisions relating to fees were formerly contained in section 276 of this title.

§275b. Charges for activities performed for other agencies

The Secretary of Commerce shall charge for any service performed by the Institute, at the request of another Government agency, in compliance with any statute, enacted before, on, or after October 6, 1982, which names the Secretary or the Institute as a consultant to another Government agency, or calls upon the Secretary or the Institute to support or perform any activity for or on behalf of another Government agency, or to cooperate with any Government agency in the performance by that agency of any activity, regardless of whether the statute specifically requires reimbursement to the Secretary or the Institute by such other Government agency for such service, unless funds are specifically appropriated to the Secretary or the Institute to perform such service. The Secretary may, however, waive any charge where the service rendered by the Institute is such that the Institute will incur only nominal costs in performing it. Costs shall be determined in accordance with section 278b(e) of this title.

(Pub. L. 97–286, §8, Oct. 6, 1982, 96 Stat. 1223; Pub. L. 100–418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433.)

CODIFICATION

Section was not enacted as part of the National Institute of Standards and Technology Act which comprises this chapter.

AMENDMENTS

1988—Pub. L. 100–418 substituted "Institute" for "Bureau" wherever appearing.

§275c. Cost recovery authority

Fees for calibration services, standard reference materials, and other comparable services provided by the National Institute of Standards and Technology shall be at least sufficient to meet the requirements set forth in the amendments made by subsection (a),[1] and any funds recovered in

excess of such requirements shall be returned to the Treasury of the United States.

(Pub. L. 99–73, §5(b), July 29, 1985, 99 Stat. 172; Pub. L. 100–418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433.)

REFERENCES IN TEXT

The amendments made by subsection (a), referred to in text, mean the amendments made by subsec. (a) of section 5 of Pub. L. 99–73, which amended section 278b(f) of this title.

CODIFICATION

Section was not enacted as part of the National Institute and Technology Act which comprises this chapter.

AMENDMENTS

1988—Pub. L. 100–418 substituted "National Institute of Standards and Technology" for "National Bureau of Standards".

EFFECTIVE DATE

Pub. L. 99–73, §5(c), July 29, 1985, 99 Stat. 172, provided that: "The amendments made by subsection (a) [amending section 278b of this title] (and the provisions of subsection (b) [enacting this section]) shall be effective October 1, 1984."

[1] *See References in Text note below.*

§276. Ownership of facilities

In the absence of specific agreement to the contrary, additional facilities, including equipment, purchased pursuant to the performance of services authorized by section 273 of this title shall become the property of the Department of Commerce.

(Mar. 3, 1901, ch. 872, §8, 31 Stat. 1450; June 30, 1932, ch. 314, pt. II, title III, §312, 47 Stat. 410; Aug. 3, 1956, ch. 906, §1, 70 Stat. 959.)

AMENDMENTS

1956—Act Aug. 3, 1956, substituted provisions relating to ownership of additional facilities by the Department of Commerce (formerly contained in section 278b of this title) for those relating to fees, see section 275a of this title.

1932—Act June 30, 1932, inserted provision for payment of moneys into the Treasury, among other changes.

EFFECTIVE DATE OF 1932 AMENDMENT

Amendment by act June 30, 1932, effective July 1, 1932, see section 314 of that act.

§277. Regulations

The Secretary of Commerce shall, from time to time, make regulations regarding the payment of fees, the limits of tolerance to be attained in standards submitted for verification, the sealing of standards, the disbursement and receipt of moneys, and such other matters as he may deem necessary for carrying this chapter into effect.

(Mar. 3, 1901, ch. 872, §9, 31 Stat. 1450; Feb. 14, 1903, ch. 552, §10, 32 Stat. 829; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736.)

CHANGE OF NAME

Act Mar. 4, 1913, substituted "Secretary of Commerce" for "Secretary of Commerce and Labor".

TRANSFER OF FUNCTIONS

Act Feb. 14, 1903, transferred power and authority of Secretary of the Treasury over Bureau of Standards to Secretary of Commerce and Labor.

§278. Visiting Committee on Advanced Technology

(a) Establishment; appointment; membership and composition; review and recommendations

There is established within the Institute a Visiting Committee on Advanced Technology (hereafter in this chapter referred to as the "Committee"). The Committee shall consist of 15 members appointed by the Director, at least 10 of whom shall be from United States industry. The Director shall appoint as original members of the Committee any final members of the National Bureau of Standards Visiting Committee who wish to serve in such capacity. In addition to any powers and functions otherwise granted to it by this chapter, the Committee shall review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress.

(b) Qualifications; recommendations for appointment

The persons appointed as members of the Committee—

(1) shall be eminent in fields such as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations;

(2) shall be selected solely on the basis of established records of distinguished service;

(3) shall not be employees of the Federal Government; and

(4) shall be so selected as to provide representation of a cross-section of the traditional and emerging United States industries.

The Director is requested, in making appointments of persons as members of the Committee, to give due consideration to any recommendations which may be submitted to the Director by the National Academies, professional societies, business associations, labor associations, and other appropriate organizations.

(c) Terms of office; eligibility

(1) The term of office of each member of the Committee, other than the original members, shall be 3 years; except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. Any person who has completed two consecutive full terms of service on the Committee shall thereafter be ineligible for appointment during the one-year period following the expiration of the second such term.

(2) The original members of the Committee shall be elected to three classes of three members each; one class shall have a term of one year, one a term of two years, and the other a term of three years.

(d) Meetings; quorum; notice

The Committee shall meet at least twice each year at the call of the Chairman or whenever one-third of the members so request in writing. A majority of the members of the Committee not having a conflict of interest in the matter being considered by the Committee shall constitute a quorum. Each member shall be given appropriate notice, whenever possible, not less than 15 days prior to any meeting, of the call of such meeting.

(e) Appointment by Committee of executive and other committees

The Committee shall have an executive committee, and may delegate to it or to the Secretary such of the powers and functions granted to the Committee by this chapter as it deems appropriate. The Committee is authorized to appoint from among its members such other committees as it deems necessary, and to assign to committees so appointed such survey and advisory functions as the Committee deems appropriate to assist it in exercising its powers and functions under this chapter.

(f) Chairman; Vice Chairman

The election of the Chairman and Vice Chairman of the Committee shall take place at each annual

meeting occurring in an even-numbered year. The Vice Chairman shall perform the duties of the Chairman in his absence. In case a vacancy occurs in the chairmanship or vice chairmanship, the Committee shall elect a member to fill such vacancy.

(g) Professional and clerical staff

The Committee may, with the concurrence of a majority of its members, permit the appointment of a staff consisting of not more than four professional staff members and such clerical staff members as may be necessary. Such staff shall be appointed by the Director, after consultation with the Chairman of the Committee, and assigned at the direction of the Committee. The professional members of such staff may be appointed without regard to the provisions of title 5 governing appointments in the competitive service and the provisions of chapter 51 of title 5 relating to classification, and compensated at a rate not exceeding the appropriate rate provided for individuals in grade GS–18 of the General Schedule under section 5332 of title 5, as may be necessary to provide for the performance of such duties as may be prescribed by the Committee in connection with the exercise of its powers and functions under this chapter.

(h) Annual and other reports to Secretary and Congress

(1) The Committee shall render an annual report to the Secretary for submission to the Congress not later than 30 days after the submittal to Congress of the President's annual budget request in each year. Such report shall deal essentially, though not necessarily exclusively, with policy issues or matters which affect the Institute, including the Program established under section 278n [1] of this title, or with which the Committee in its official role as the private sector policy advisor of the Institute is concerned. Each such report shall identify areas of research and research techniques of the Institute of potential importance to the long-term competitiveness of United States industry, in which the Institute possesses special competence, which could be used to assist United States enterprises and United States industrial joint research and development ventures. Such report also shall comment on the programmatic planning document and updates thereto submitted to Congress by the Director under subsections (c) and (d) of section 278i of this title.

(2) The Committee shall render to the Secretary and the Congress such additional reports on specific policy matters as it deems appropriate.

(Mar. 3, 1901, ch. 872, §10, 31 Stat. 1450; Pub. L. 100–418, title V, §§5115(a)(1), 5131(b), Aug. 23, 1988, 102 Stat. 1433, 1441; Pub. L. 104–113, §8(1), Mar. 7, 1996, 110 Stat. 779; Pub. L. 110–69, title III, §§3005, 3006, Aug. 9, 2007, 121 Stat. 590.)

REFERENCES IN TEXT

Section 278n of this title, referred to in subsec. (h)(1), was repealed and a new section 278n enacted by Pub. L. 110–69, title III, §3012(a), (b), Aug. 9, 2007, 121 Stat. 593, and, as so enacted, section 278n no longer relates to the Advanced Technology Program, to which the term "Program" referred in this chapter.

AMENDMENTS

2007—Subsec. (d). Pub. L. 110–69, §3006, substituted "twice each year" for "quarterly".

Subsec. (h)(1). Pub. L. 110–69, §3005, substituted "not later than 30 days after the submittal to Congress of the President's annual budget request in each year" for "on or before January 31 in each year" and inserted at end "Such report also shall comment on the programmatic planning document and updates thereto submitted to Congress by the Director under subsections (c) and (d) of section 278i of this title."

1996—Subsec. (a). Pub. L. 104–113 substituted "15 members" for "nine members" and "at least 10" for "at least five".

1988—Pub. L. 100–418, §5131(b), amended section generally, substituting provisions of subsecs. (a) to (h) relating to Visiting Committee on Advanced Technology for provisions of former single undesignated paragraph which related to a visiting committee which was to visit bureau at least once a year and report to Secretary of Commerce upon efficiency of its scientific work and condition of its equipment.

Pub. L. 100–418, §5115(a)(1), substituted "Institute" for "bureau".

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government

Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

[1] *See References in Text note below.*

§278a. Repealed. Pub. L. 88–611, §4(a)(1), Oct. 2, 1964, 78 Stat. 991

Section, act Mar. 3, 1901, ch. 872, §11, as added July 22, 1950, ch. 486, §2, 64 Stat. 373; amended Aug. 3, 1956, ch. 906, §2, 70 Stat. 959; Sept. 2, 1958, Pub. L. 85–890, §2, 72 Stat. 1712, provided for acceptance of gifts and bequests. See sections 1522 and 1523 of this title.

§278b. Working Capital Fund

(a) Utilization

The Institute is authorized to utilize in the performance of its functions the Working Capital Fund established by the Act of June 29, 1950 (64 Stat. 275).

(b) Availability of Fund

The working capital of the fund shall be available for obligation and payment for any activities authorized by this chapter, and for any activities for which provision is made in the appropriations which reimburse the fund.

(c) Reimbursements

In the performance of authorized activities, the Working Capital Fund shall be available and may be reimbursed for expenses of hire of automobile, hire of consultants, and travel to meetings, to the extent that such expenses are authorized for the appropriations of the Department of Commerce.

(d) Credits

The fund may be credited with advances and reimbursements, including receipts from non-Federal sources, for services performed under the authority of section 273 of this title.

(e) "Cost" defined

As used in this chapter, the term "cost" shall be construed to include directly related expenses and appropriate charges for indirect and administrative expenses.

(f) Distribution of earnings; restoration of prior impairment

The amount of any earned net income resulting from the operation of the fund at the close of each fiscal year shall be paid into the general fund of the Treasury: *Provided*, That such earned net income may be applied to restore any prior impairment of the fund, and to ensure the availability of working capital necessary to replace equipment and inventories.

(Mar. 3, 1901, ch. 872, §12, as added Aug. 3, 1956, ch. 906, §2, 70 Stat. 959; amended Pub. L. 95–322, §2(a), July 21, 1978, 92 Stat. 395; Pub. L. 99–73, §5(a), July 29, 1985, 99 Stat. 172; Pub. L. 100–418, title V, §5115(a)(1), Aug. 23, 1988, 102 Stat. 1433.)

REFERENCES IN TEXT

Act of June 29, 1950 (64 Stat. 275), referred to in subsec. (a), was the Deficiency Appropriation Act, 1950. Provisions thereof relating to Working Capital Fund are not classified to the Code.

PRIOR PROVISIONS

A prior section 12 of act Mar. 3, 1901, ch. 872, as added by act July 22, 1950, ch. 486, §2, 64 Stat. 373, related to equipment purchased by Department of Commerce to carry out investigations, prior to repeal by act Aug. 3, 1956.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–418 substituted "Institute" for "National Bureau of Standards".

1985—Subsec. (f). Pub. L. 99–73 struck out "first" after "may be applied", and inserted provisions relating to working capital for replacement of equipment and inventories.

1978—Subsec. (a). Pub. L. 95–322 struck out ", and additional amounts as from time to time may be required for the purposes of said fund are authorized to be appropriated" after "(64 Stat. 275)".

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–73 effective Oct. 1, 1984, see section 5(c) of Pub. L. 99–73, set out as an Effective Date note under section 275c of this title.

§278c. Acquisition of land for field sites

To the extent that funds are specifically appropriated therefor, the Secretary of Commerce is authorized to acquire land for such field sites as are necessary for the proper and efficient conduct of the activities authorized herein.

(Mar. 3, 1901, ch. 872, §13, as added Pub. L. 85–890, §1, Sept. 2, 1958, 72 Stat. 1711.)

REFERENCES IN TEXT

"Herein", referred to in text, refers to act Mar. 3, 1901, ch. 872, which is classified generally to this chapter.

PRIOR PROVISIONS

A prior section 13 of act Mar. 3, 1901, ch. 872, as added July 22, 1950, ch. 486, §2, 64 Stat. 373, related to acceptance of gifts and bequests, prior to repeal by act Aug. 3, 1956. See sections 1522 and 1523 of this title.

§278d. Construction and improvement of buildings and facilities

(a) In general

Within the limits of funds which are appropriated for the Institute, the Secretary of Commerce is authorized to undertake such construction of buildings and other facilities and to make such improvements to existing buildings, grounds, and other facilities occupied or used by the Institute as are necessary for the proper and efficient conduct of the activities authorized herein.

(b) Retention of fees

The Director is authorized to retain all building use and depreciation surcharge fees collected pursuant to OMB Circular A–25. Such fees shall be collected and credited to the Construction of Research Facilities Appropriation Account for use in maintenance and repair of the Institute's existing facilities.

(Mar. 3, 1901, ch. 872, §14, as added Pub. L. 85–890, §1, Sept. 2, 1958, 72 Stat. 1711; amended Pub. L. 92–317, §3(d), June 22, 1972, 86 Stat. 235; Pub. L. 96–461, §8, Oct. 15, 1980, 94 Stat. 2051; Pub. L. 100–418, title V, §5115(a)(1), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 102–245, title I, §104(f), Feb. 14, 1992, 106 Stat. 11; Pub. L. 110–69, title III, §3014, Aug. 9, 2007, 121 Stat. 599.)

REFERENCES IN TEXT

"Herein", referred to in subsec. (a), refers to act Mar. 3, 1901, ch. 872, which is classified generally to this chapter.

AMENDMENTS

2007—Pub. L. 110–69 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1992—Pub. L. 102–245 substituted "herein." for "herein: *Provided*, That no improvement shall be made nor shall any building be constructed under this authority at a cost in excess of $250,000 unless specific provision is made therefor in the appropriation concerned."

1988—Pub. L. 100–418 substituted "Institute" for "National Bureau of Standards" wherever appearing.

1980—Pub. L. 96–461 substituted "$250,000" for $75,000".

1972—Pub. L. 92–317 substituted "$75,000" for "$40,000".

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–461 effective Oct. 1, 1980, see section 11 of Pub. L. 96–461, set out as an Effective Date note under section 278g of this title.

FACILITIES FOR COLD NEUTRON RESEARCH

Pub. L. 101–162, title I, §104, Nov. 21, 1989, 103 Stat. 994, provided that: "Hereafter, the National Institute of Standards and Technology is authorized to accept contributions of funds, to remain available until expended, from any public or private source to construct a facility for cold neutron research on materials, notwithstanding the limitations contained in 15 U.S.C. 278d."

§278e. Functions and activities

In the performance of the functions of the Institute the Secretary of Commerce is authorized to undertake the following activities: (a) The purchase, repair, and cleaning of uniforms for guards; (b) the care, maintenance, protection, repair, and alteration of Institute buildings and other plant facilities, equipment, and property; (c) the rental of field sites and laboratory, office, and warehouse space; (d) the purchase of reprints from technical journals or other periodicals and the payment of page charges for the publication of research papers and reports in such journals; (e) the furnishing of food and shelter without repayment therefor to employees of the Government at Arctic and Antarctic stations; (f) for the conduct of observations on radio propagation phenomena in the Arctic or Antarctic regions, the appointment of employees at base rates established by the Secretary of Commerce which shall not exceed such maximum rates as may be specified from time to time in the appropriation concerned, and without regard to the civil service and classification laws and sections 5542 to 5546 of title 5; (g) the erection on leased property of specialized facilities and working and living quarters when the Secretary of Commerce determines that this will best serve the interests of the Government; and (h) the provision of transportation services for employees of the Institute between the facilities of the Institute and nearby public transportation, notwithstanding section 1344 of title 31.

(Mar. 3, 1901, ch. 872, §15, as added Pub. L. 85–890, §1, Sept. 2, 1958, 72 Stat. 1711; amended Pub. L. 92–317, §3(e), June 22, 1972, 86 Stat. 235; Pub. L. 100–418, title V, §5115(a)(1), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 104–113, §8(2), Mar. 7, 1996, 110 Stat. 779.)

CODIFICATION

"Sections 5542 to 5546 of title 5" substituted in text for "titles II and III of the Federal Employees Pay Act of 1945" on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1996—Pub. L. 104–113 struck out "and" before "(g)" and inserted before period at end "; and (h) the provision of transportation services for employees of the Institute between the facilities of the Institute and nearby public transportation, notwithstanding section 1344 of title 31".

1988—Pub. L. 100–418 substituted "functions of the Institute" for "functions of the National Bureau of Standards" and "Institute buildings" for "Bureau buildings".

1972—Pub. L. 92–317 substituted, in cl. (b), "the care, maintenance, protection, repair, and alteration of Bureau buildings and other plant facilities, equipment, and property" for "the repair and alteration of buildings and other plant facilities".

§278f. Fire Research Center

(a) Establishment; programs of research; functions of Secretary; dissemination of information

There is hereby established within the Department of Commerce a Fire Research Center which shall have the mission of performing and supporting research on all aspects of fire with the aim of providing scientific and technical knowledge applicable to the prevention and control of fires. The content and priorities of the research program shall be determined in consultation with the

Administrator of the United States Fire Administration. In implementing this section, the Secretary is authorized to conduct, directly or through contracts or grants, a fire research program, including—

(1) basic and applied fire research for the purpose of arriving at an understanding of the fundamental processes underlying all aspects of fire. Such research shall include scientific investigations of—

(A) the physics and chemistry of combustion processes;

(B) the dynamics of flame ignition, flame spread, and flame extinguishment;

(C) the composition of combustion products developed by various sources and under various environmental conditions;

(D) the early stages of fires in buildings and other structures, structural subsystems and structural components in all other types of fires, including, but not limited to, forest fires, brush fires, fires underground, oil blowout fires, and waterborne fires, with the aim of improving early detection capability;

(E) the behavior of fires involving all types of buildings and other structures and their contents (including mobile homes and highrise buildings, construction materials, floor and wall coverings, coatings, furnishings, and other combustible materials), and all other types of fires, including forest fires, brush fires, fires underground, oil blowout fires, and waterborne fires;

(F) the unique fire hazards arising from the transportation and use, in industrial and professional practices, of combustible gases, fluids, and materials;

(G) design concepts for providing increased fire safety consistent with habitability, comfort, and human impact in buildings and other structures;

(H) such other aspects of the fire process as may be deemed useful in pursuing the objectives of the fire research program; and

(I) methods, procedures, and equipment for arson prevention, detection, and investigation;

(2) research into the biological, physiological, and psychological factors affecting human victims of fire, and the performance of individual members of fire services, including—

(A) the biological and physiological effects of toxic substances encountered in fires;

(B) the trauma, cardiac conditions, and other hazards resulting from exposure to fire;

(C) the development of simple and reliable tests for determining the cause of death from fires;

(D) improved methods of providing first aid to victims of fires;

(E) psychological and motivational characteristics of persons who engage in arson, and the prediction and cure of such behavior;

(F) the conditions of stress encountered by firefighters, the effects of such stress, and the alleviation and reduction of such conditions; and

(G) such other biological, psychological, and physiological effects of fire as have significance for purposes of control or prevention of fires; and

(3) operation tests, demonstration projects, and fire investigations in support of the activities set forth in this section.

The Secretary shall insure that the results and advances arising from the work of the research program are disseminated broadly. He shall encourage the incorporation, to the extent applicable and practicable, of such results and advances in building codes, fire codes, and other relevant codes, test methods, fire service operations and training, and standards. The Secretary is authorized to encourage and assist in the development and adoption of uniform codes, test methods, and standards aimed at reducing fire losses and costs of fire protection.

(b) Authorization of appropriations

For purposes of this section, there are authorized to be appropriated an amount not to exceed $5,650,000 for the fiscal year ending September 30, 1980, which amount includes—

(1) $525,000 for programs which are recommended in the report submitted to the Congress by

the Administrator of the United States Fire Administration pursuant to section 2220(b)(1) [1] of this title; and

(2) $119,000 for adjustments required by law in salaries, pay, retirement, and employee benefits.

(Mar. 3, 1901, ch. 872, §16, as added Pub. L. 93–498, §18, Oct. 29, 1974, 88 Stat. 1545; amended Pub. L. 94–411, §1(b), Sept. 13, 1976, 90 Stat. 1254; Pub. L. 95–422, §§1(b), 2(b), 3(b), Oct. 5, 1978, 92 Stat. 932, 933; Pub. L. 96–121, §3, Nov. 16, 1979, 93 Stat. 863.)

REFERENCES IN TEXT

Section 2220(b)(1) of this title, referred to in subsec. (b)(1), was repealed by Pub. L. 106–503, title I, §110(a)(1)(D), Nov. 13, 2000, 114 Stat. 2302.

PRIOR PROVISIONS

A prior section 16 of act Mar. 3, 1901, as added by act Mar. 1, 1968, Pub. L. 90–259, title I, §102, 82 Stat. 35, related to fire research and safety programs, prior to repeal by act Oct. 29, 1974.

AMENDMENTS

1979—Subsec. (b). Pub. L. 96–121 substituted provisions authorizing to be appropriated an amount not to exceed $5,650,000 for the fiscal year ending Sept. 30, 1980, for provisions authorizing appropriations not to exceed $1,275,000 for the transitional fiscal quarter of July 1, 1976, through Sept. 30, 1976, not to exceed $5,500,000 for the fiscal year ending Sept. 30, 1977, not to exceed $6,000,000 for the fiscal year ending Sept. 30, 1978, and not to exceed $5,600,000 for the fiscal year ending Sept. 30, 1979, and added pars. (1) and (2).

1978—Subsec. (a). Pub. L. 95–422, §§2(b), 3(b), in provisions preceding par. (1) substituted "United States Fire Administration" for "National Fire Prevention and Control Administration" and added par. (1)(I).

Subsec. (b). Pub. L. 95–422, §1(b), inserted provision authorizing appropriation of not to exceed $5,600,000 for the fiscal year ending Sept. 30, 1979.

1976—Subsec. (b). Pub. L. 94–411 substituted provisions authorizing to be appropriated not to exceed $1,275,000 for the transitional fiscal quarter of July 1, 1976, through Sept. 30, 1976, not to exceed $5,500,000 for the fiscal year ending Sept. 30, 1977, and not to exceed $6,000,000 for the fiscal year ending Sept. 30, 1978, for provisions authorizing to be appropriated not to exceed $3,500,000 for the fiscal year ending June 30, 1975, and not to exceed $4,000,000 for the fiscal year ending June 30, 1976.

TERMINATION OF ADVISORY COUNCILS

Advisory councils in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

COMBINATION OF FIRE RESEARCH AND BUILDING TECHNOLOGY PROGRAMS

Pub. L. 102–245, title I, §104(g), Feb. 14, 1992, 106 Stat. 11, provided that: "The fire research and building technology programs of the Institute may be combined for administrative purposes only, and separate budget accounts for fire research and building technology shall be maintained. No later than December 31, 1992, the Secretary, acting through the Director of the Institute, shall report to Congress on the results of the combination, on efforts to preserve the integrity of the fire research and building technology programs, on the long-range basic and applied research plans of the two programs, on procedures for receiving advice on fire and earthquake research priorities from constituencies concerned with public safety, and on the relation between the combined program at the Institute and the United States Fire Administration."

NATIONAL COMMISSION ON FIRE PREVENTION AND CONTROL

Pub. L. 90–259, §§101, 103, 104, and 201–207, established the National Commission on Fire Prevention and Control, directed the commission to study and investigate measures to reduce the destructive effects of fire throughout the country, and provided that the commission cease to exist thirty days after the submission of its report which was to be made no later than two years after the commission had been organized.

EXECUTIVE ORDER NO. 11654

Ex. Ord. No. 11654, Mar. 13, 1972, 37 F.R. 5361, which established in the Department of Commerce the

Federal Fire Council and provided for its membership, functions, etc., was revoked by Ex. Ord. No. 12379, §19, Aug. 17, 1982, 47 F.R. 36100, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

[1] *See References in Text note below.*

§278g. International activities

(a) Financial assistance to foreign nationals

The Secretary is authorized, notwithstanding any other provision of law, to expend such sums, within the limit of appropriated funds, as the Secretary may deem desirable, through the grant of fellowships or any other form of financial assistance, to defray the expenses of foreign nationals not in service to the Government of the United States while they are performing scientific or engineering work at the Institute or participating in the exchange of scientific or technical information at the Institute.

(b) Foreign assistance and compensation to Institute employees

The Congress consents to the acceptance by employees of the Institute of fellowships, lectureships, or other positions for the performance of scientific or engineering activities or for the exchange of scientific or technical information, offered by a foreign government, and to the acceptance and retention by an employee of the Institute of any form of financial or other assistance provided by a foreign government as compensation for or as a means of defraying expenses associated with the performance of scientific or engineering activities or the exchange of scientific or technical information, in any case where the acceptance of such fellowship, lectureship, or position or the acceptance and retention of such assistance is determined by the Secretary to be appropriate and consistent with the interests of the United States. For the purposes of this subsection, the definitions appearing in section 7342(a) of title 5 apply. Civil actions may be brought and penalties assessed against any employee who knowingly accepts and retains assistance from a foreign government not consented to by this subsection in the same manner as is prescribed by section 7342(h) of title 5.

(c) Prohibition on use of appropriations inapplicable

Provisions of law prohibiting the use of any part of any appropriation for the payment of compensation to any employee or officer of the Government of the United States who is not a citizen of the United States shall not apply to the payment of compensation to scientific or engineering personnel of the Institute.

(d) Recruitment and employment of resident aliens

For any scientific and engineering disciplines for which there is a shortage of suitably qualified and available United States citizens and nationals, the Secretary is authorized to recruit and employ in scientific and engineering fields at the Institute foreign nationals who have been lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] and who intend to become United States citizens. Employment of a person under this paragraph shall not be subject to the provisions of title 5 governing employment in the competitive service, or to any prohibition in any other Act against the employment of aliens, or against the payment of compensation to them.

(Mar. 3, 1901, ch. 872, §17, as added Pub. L. 96–461, §9, Oct. 15, 1980, 94 Stat. 2051; amended Pub. L. 100–418, title V, §5115(a)(1), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 102–245, title I, §104(h)(2), Feb. 14, 1992, 106 Stat. 11.)

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsec. (d), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to chapter 12 (§1101 et seq.) of Title 8, Aliens and Nationality. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and

Tables.

PRIOR PROVISIONS

A prior section 278g, act Mar. 3, 1901, ch. 872, §17, as added Mar. 1, 1968, Pub. L. 90–259, title I, §102, 82 Stat. 35, related to grants to States, local governments, other non-Federal public agencies, and non-profit institutions, reimbursement of Federal agencies, delegation of powers, advance of public moneys, cooperation of Federal agencies, and issuance of rules and regulations, prior to repeal by Pub. L. 93–498, §18, Oct. 29, 1974, 88 Stat. 1545.

AMENDMENTS

1992—Subsec. (d). Pub. L. 102–245 added subsec. (d).

1988—Pub. L. 100–418 substituted "Institute" for "National Bureau of Standards" wherever appearing.

EFFECTIVE DATE

Pub. L. 96–461, §11, Oct. 15, 1980, 94 Stat. 2052, provided that: "The effective date of sections 8 and 9 of this Act [enacting this section, amending section 278d of this title, and enacting provisions set out below] shall be October 1, 1980."

CONGRESSIONAL DECLARATION OF PURPOSE

Pub. L. 96–461, §9, Oct. 15, 1980, 94 Stat. 2051, as amended by Pub. L. 100–418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433, provided in part that this section was enacted "[i]n order to develop and strengthen the expertise of the National Institute of Standards and Technology in science and engineering, to enhance the Secretary's ability to maintain the Institute's programs at the forefront of worldwide developments in science and engineering, and to cooperate in international scientific activities".

§278g–1. Research fellowships and other financial assistance to students at institutes of higher education

(a) In general

The Director is authorized to expend funds appropriated for activities of the Institute in any fiscal year, as the Director may deem desirable, for awards of research fellowships and other forms of financial assistance to students at institutions of higher learning within the United States who show promise as present or future contributors to the mission of the Institute, and to United States citizens for research and technical activities on Institute programs. The selection of persons to receive such fellowships and assistance shall be made on the basis of ability and of the relevance of the proposed work to the mission and programs of the Institute.

(b) Manufacturing fellowship program

(1) Establishment

To promote the development of a robust research community working at the leading edge of manufacturing sciences, the Director shall establish a program to award—

(A) postdoctoral research fellowships at the Institute for research activities related to manufacturing sciences; and

(B) senior research fellowships to established researchers in industry or at institutions of higher education who wish to pursue studies related to the manufacturing sciences at the Institute.

(2) Applications

To be eligible for an award under this subsection, an individual shall submit an application to the Director at such time, in such manner, and containing such information as the Director may require.

(3) Stipend levels

Under this subsection, the Director shall provide stipends for postdoctoral research fellowships at a level consistent with the National Institute of Standards and Technology Postdoctoral Research Fellowship Program, and senior research fellowships at levels consistent with support

for a faculty member in a sabbatical position.

(c) Underrepresented minorities

In evaluating applications for fellowships under this section, the Director shall give consideration to the goal of promoting the participation of underrepresented minorities in research areas supported by the Institute.

(Mar. 3, 1901, ch. 872, §18, as added Pub. L. 99–574, §6(a), Oct. 28, 1986, 100 Stat. 3237; amended Pub. L. 100–418, title V, §5115(a)(1), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 102–245, title I, §104(h)(1), Feb. 14, 1992, 106 Stat. 11; Pub. L. 110–69, title III, §§3008, 3013(a), Aug. 9, 2007, 121 Stat. 591, 598; Pub. L. 111–358, title IV, §§406(a), §407(b), Jan. 4, 2011, 124 Stat. 4003, 4004.)

PRIOR PROVISIONS

A prior section 18 of act Mar. 3, 1901, ch. 872, was renumbered section 32 and is classified to section 278q of this title.

AMENDMENTS

2011—Subsec. (a). Pub. L. 111–358, §407(b), struck out "up to 1.5 percent of the" after "expend".

Subsec. (c). Pub. L. 111–358, §406(a), added subsec. (c).

2007—Pub. L. 110–69 designated existing provisions as subsec. (a), inserted heading, substituted "up to 1.5 percent of the" for "up to 1 per centum of the", and added subsec. (b).

1992—Pub. L. 102–245 inserted before period at end of first sentence ", and to United States citizens for research and technical activities on Institute programs".

1988—Pub. L. 100–418 substituted "Institute" for "National Bureau of Standards" the first place appearing, and for "Bureau" wherever subsequently appearing.

EFFECTIVE DATE

Pub. L. 99–574, §6(b), Oct. 28, 1986, 100 Stat. 3237, provided that: "The amendments made by subsection (a) [enacting this section] shall be effective October 1, 1986."

§278g–2. Post-doctoral fellowship program

The Institute shall establish and conduct a post-doctoral fellowship program, subject to the availability of appropriations, which shall be organized and carried out in substantially the same manner as the National Academy of Sciences/National Research Council Post-Doctoral Research Associate Program that was in effect prior to 1986, and which shall include not less than twenty nor more than 120 new fellows per fiscal year. In evaluating applications for fellowships under this section, the Director shall give consideration to the goal of promoting the participation of underrepresented minorities in research areas supported by the Institute.

(Mar. 3, 1901, ch. 872, §19, as added Pub. L. 99–574, §8(a), Oct. 28, 1986, 100 Stat. 3238; amended Pub. L. 100–418, title V, §5115(a)(1), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 104–113, §8(3), Mar. 7, 1996, 110 Stat. 779; Pub. L. 110–69, title III, §3015, Aug. 9, 2007, 121 Stat. 599; Pub. L. 111–358, title IV, §§406(b), 407(a), Jan. 4, 2011, 124 Stat. 4004.)

PRIOR PROVISIONS

A prior section 19 of act Mar. 3, 1901, ch. 872, was renumbered section 32 and is classified to section 278q of this title.

AMENDMENTS

2011—Pub. L. 111–358, §407(a), struck out ", in conjunction with the National Academy of Sciences," after "The Institute".

Pub. L. 111–358, §406(b), inserted at end "In evaluating applications for fellowships under this section, the Director shall give consideration to the goal of promoting the participation of underrepresented minorities in research areas supported by the Institute."

2007—Pub. L. 110–69 substituted "nor more than 120 new fellows" for "nor more than 60 new fellows".

1996—Pub. L. 104–113 inserted ", subject to the availability of appropriations," after "post-doctoral fellowship program" and substituted "nor more than 60" for "nor more than forty".

1988—Pub. L. 100–418 substituted "Institute" for "National Bureau of Standards".

EFFECTIVE DATE

Pub. L. 99–574, §8(b), Oct. 28, 1986, 100 Stat. 3238, provided that: "The amendments made by subsection (a) [enacting this section] shall be effective October 1, 1987."

§278g–2a. Teacher science and technology enhancement Institute program

(a) Establishment

The Director shall establish within the Institute a teacher science and technology enhancement program to provide for professional development of mathematics and science teachers of elementary, middle, and secondary schools (as those terms are defined by the Director), including providing for the improvement of those teachers with respect to the understanding of science and the impacts of science on commerce.

(b) Areas of focus

In carrying out the program under this section, the Director shall focus on the areas of—

(1) scientific measurements;
(2) tests and standards development;
(3) industrial competitiveness and quality;
(4) manufacturing;
(5) technology transfer; and
(6) any other area of expertise of the Institute that the Director determines to be appropriate.

(c) Procedures and selection criteria

The Director shall develop and issue procedures and selection criteria for participants in the program. The Director shall give special consideration to an application from a teacher from a high-need school, as defined in section 1021 of title 20.

(d) Scheduling

The program under this section shall be conducted on an annual basis during the summer months, during the period of time when a majority of elementary, middle, and secondary schools have not commenced a school year.

(e) Means of accomplishing goals

The program shall provide for teachers' participation in activities at the laboratory facilities of the Institute, or shall utilize other means of accomplishing the goals of the program as determined by the Director, which may include the Internet, video conferencing and recording, and workshops and conferences.

(Mar. 3, 1901, ch. 872, §19A, as added Pub. L. 105–309, §7, Oct. 30, 1998, 112 Stat. 2937; amended Pub. L. 111–358, title IV, §406(c), Jan. 4, 2011, 124 Stat. 4004.)

AMENDMENTS

2011—Subsec. (c). Pub. L. 111–358 inserted at end "The Director shall give special consideration to an application from a teacher from a high-need school, as defined in section 1021 of title 20."

§278g–3. Computer standards program

(a) In general

The Institute shall—

(1) have the mission of developing standards, guidelines, and associated methods and techniques for information systems;

(2) develop standards and guidelines, including minimum requirements, for information systems used or operated by an agency or by a contractor of an agency or other organization on

behalf of an agency, other than national security systems (as defined in section 3532(b)(2) of title 44);

(3) develop standards and guidelines, including minimum requirements, for providing adequate information security for all agency operations and assets, but such standards and guidelines shall not apply to national security systems; and

(4) carry out the responsibilities described in paragraph (3) through the Computer Security Division.

(b) Minimum requirements for standards and guidelines

The standards and guidelines required by subsection (a) of this section shall include, at a minimum—

(1)(A) standards to be used by all agencies to categorize all information and information systems collected or maintained by or on behalf of each agency based on the objectives of providing appropriate levels of information security according to a range of risk levels;

(B) guidelines recommending the types of information and information systems to be included in each such category; and

(C) minimum information security requirements for information and information systems in each such category;

(2) a definition of and guidelines concerning detection and handling of information security incidents; and

(3) guidelines developed in coordination with the National Security Agency for identifying an information system as a national security system consistent with applicable requirements for national security systems, issued in accordance with law and as directed by the President.

(c) Development of standards and guidelines

In developing standards and guidelines required by subsections (a) and (b) of this section, the Institute shall—

(1) consult with other agencies and offices (including, but not limited to, the Director of the Office of Management and Budget, the Departments of Defense and Energy, the National Security Agency, the Government Accountability Office, and the Secretary of Homeland Security) to assure—

(A) use of appropriate information security policies, procedures, and techniques, in order to improve information security and avoid unnecessary and costly duplication of effort; and

(B) that such standards and guidelines are complementary with standards and guidelines employed for the protection of national security systems and information contained in such systems;

(2) provide the public with an opportunity to comment on proposed standards and guidelines;

(3) submit to the Director of the Office of Management and Budget for promulgation under section 11331 of title 40—

(A) standards, as required under subsection (b)(1)(A) of this section, no later than 12 months after November 25, 2002; and

(B) minimum information security requirements for each category, as required under subsection (b)(1)(C) of this section, no later than 36 months after November 25, 2002;

(4) issue guidelines as required under subsection (b)(1)(B) of this section, no later than 18 months after November 25, 2002;

(5) ensure that such standards and guidelines do not require specific technological solutions or products, including any specific hardware or software security solutions;

(6) ensure that such standards and guidelines provide for sufficient flexibility to permit alternative solutions to provide equivalent levels of protection for identified information security risks; and

(7) use flexible, performance-based standards and guidelines that, to the greatest extent possible, permit the use of off-the-shelf commercially developed information security products.

(d) Information security functions

The Institute shall—

(1) submit standards developed pursuant to subsection (a) of this section, along with recommendations as to the extent to which these should be made compulsory and binding, to the Director of the Office of Management and Budget for promulgation under section 11331 of title 40;

(2) provide assistance to agencies regarding—

(A) compliance with the standards and guidelines developed under subsection (a) of this section;

(B) detecting and handling information security incidents; and

(C) information security policies, procedures, and practices;

(3) conduct research, as needed, to determine the nature and extent of information security vulnerabilities and techniques for providing cost-effective information security;

(4) develop and periodically revise performance indicators and measures for agency information security policies and practices;

(5) evaluate private sector information security policies and practices and commercially available information technologies to assess potential application by agencies to strengthen information security;

(6) evaluate security policies and practices developed for national security systems to assess potential application by agencies to strengthen information security;

(7) periodically assess the effectiveness of standards and guidelines developed under this section and undertake revisions as appropriate;

(8) solicit and consider the recommendations of the Information Security and Privacy Advisory Board, established by section 278g–4 of this title, regarding standards and guidelines developed under subsection (a) of this section and submit such recommendations to the Director of the Office of Management and Budget with such standards submitted to the Director; and

(9) prepare an annual public report on activities undertaken in the previous year, and planned for the coming year, to carry out responsibilities under this section.

(e) Definitions

As used in this section—

(1) the term "agency" has the same meaning as provided in section 3502(1) of title 44;

(2) the term "information security" has the same meaning as provided in section 3532(1) of such title;

(3) the term "information system" has the same meaning as provided in section 3502(8) of such title;

(4) the term "information technology" has the same meaning as provided in section 11101 of title 40; and

(5) the term "national security system" has the same meaning as provided in section 3532(b)(2) of such title.[1]

(Mar. 3, 1901, ch. 872, §20, as added Pub. L. 100–235, §3(2), Jan. 8, 1988, 101 Stat. 1724; amended Pub. L. 100–418, title V, §5115(a)(1), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 104–106, div. E, title LVI, §5607(a), Feb. 10, 1996, 110 Stat. 701; Pub. L. 105–85, div. A, title X, §1073(h)(1), Nov. 18, 1997, 111 Stat. 1906; Pub. L. 107–296, title X, §1003, Nov. 25, 2002, 116 Stat. 2269; Pub. L. 107–305, §§8(b), 9, 10, Nov. 27, 2002, 116 Stat. 2378, 2379; Pub. L. 107–347, title III, §303, Dec. 17, 2002, 116 Stat. 2957; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814.)

REFERENCES IN TEXT

Section 3532(b)(2) of such title, referred to in subsec. (e)(5), probably means section 3532(b)(2) of title 44.

CODIFICATION

November 25, 2002, referred to in subsec. (c)(3) and (4), was in the original "the date of the enactment of this section" in subsec. (c)(3) and "the date of the enactment of this Act" in subsec. (c)(4), which were

translated as meaning the date of enactment of Pub. L. 107–296, which enacted the text of this section, to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 20 of act Mar. 3, 1901, ch. 872, was renumbered section 32 and is classified to section 278q of this title.

AMENDMENTS

2004—Subsec. (c)(1). Pub. L. 108–271 substituted "Government Accountability Office" for "General Accounting Office".

2002—Pub. L. 107–347 added text of section and struck out former text which read as follows:

"(a) The Institute shall—

"(1) have the mission of developing standards, guidelines, and associated methods and techniques for computer systems;

"(2) except as described in paragraph (3) of this subsection (relating to security standards), develop uniform standards and guidelines for Federal computer systems, except those systems excluded by section 2315 of title 10 or section 3502(9) of title 44;

"(3) have responsibility within the Federal Government for developing technical, management, physical, and administrative standards and guidelines for the cost-effective security and privacy of sensitive information in Federal computer systems except—

"(A) those systems excluded by section 2315 of title 10 or section 3502(9) of title 44; and

"(B) those systems which are protected at all times by procedures established for information which has been specifically authorized under criteria established by an Executive order or an Act of Congress to be kept secret in the interest of national defense or foreign policy,

the primary purpose of which standards and guidelines shall be to control loss and unauthorized modification or disclosure of sensitive information in such systems and to prevent computer-related fraud and misuse;

"(4) submit standards and guidelines developed pursuant to paragraphs (2) and (3) of this subsection, along with recommendations as to the extent to which these should be made compulsory and binding, to the Secretary of Commerce for promulgation under section 1441 of title 40;

"(5) develop guidelines for use by operators of Federal computer systems that contain sensitive information in training their employees in security awareness and accepted security practice, as required by section 5 of the Computer Security Act of 1987; and

"(6) develop validation procedures for, and evaluate the effectiveness of, standards and guidelines developed pursuant to paragraphs (1), (2), and (3) of this subsection through research and liaison with other government and private agencies.

"(b) In fulfilling subsection (a) of this section, the Institute is authorized—

"(1) to assist the private sector, upon request, in using and applying the results of the programs and activities under this section;

"(2) as requested, to provide to operators of Federal computer systems technical assistance in implementing the standards and guidelines promulgated pursuant to section 1441 of title 40;

"(3) to assist, as appropriate, the Office of Personnel Management in developing regulations pertaining to training, as required by section 5 of the Computer Security Act of 1987;

"(4) to perform research and to conduct studies, as needed, to determine the nature and extent of the vulnerabilities of, and to devise techniques for the cost-effective security and privacy of sensitive information in Federal computer systems; and

"(5) to coordinate closely with other agencies and offices (including, but not limited to, the Departments of Defense and Energy, the National Security Agency, the General Accounting Office, the Office of Technology Assessment, and the Office of Management and Budget)—

"(A) to assure maximum use of all existing and planned programs, materials, studies, and reports relating to computer systems security and privacy, in order to avoid unnecessary and costly duplication of effort; and

"(B) to assure, to the maximum extent feasible, that standards developed pursuant to subsection (a)(3) and (5) of this section are consistent and compatible with standards and procedures developed for the protection of information in Federal computer systems which is authorized under criteria established by Executive order or an Act of Congress to be kept secret in the interest of national defense or foreign policy.

"(c) For the purposes of—

"(1) developing standards and guidelines for the protection of sensitive information in Federal

computer systems under subsections (a)(1) and (a)(3) of this section, and

"(2) performing research and conducting studies under subsection (b)(5) of this section,

the Institute shall draw upon computer system technical security guidelines developed by the National Security Agency to the extent that the Institute determines that such guidelines are consistent with the requirements for protecting sensitive information in Federal computer systems.

"(d) As used in this section—

"(1) the term 'computer system'—

"(A) means any equipment or interconnected system or subsystems of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception, of data or information; and

"(B) includes—

"(i) computers and computer networks;

"(ii) ancillary equipment;

"(iii) software, firmware, and similar procedures;

"(iv) services, including support services; and

"(v) related resources;

"(2) the term 'Federal computer system' means a computer system operated by a Federal agency or by a contractor of a Federal agency or other organization that processes information (using a computer system) on behalf of the Federal Government to accomplish a Federal function;

"(3) the term 'operator of a Federal computer system' means a Federal agency, contractor of a Federal agency, or other organization that processes information using a computer system on behalf of the Federal Government to accomplish a Federal function;

"(4) the term 'sensitive information' means any information, the loss, misuse, or unauthorized access to or modification of which could adversely affect the national interest or the conduct of Federal programs, or the privacy to which individuals are entitled under section 552a of title 5 (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive order or an Act of Congress to be kept secret in the interest of national defense or foreign policy; and

"(5) the term 'Federal agency' has the meaning given such term by section 472(b) of title 40.

"(e) INTRAMURAL SECURITY RESEARCH.—As part of the research activities conducted in accordance with subsection (b)(4) of this section, the Institute shall—

"(1) conduct a research program to address emerging technologies associated with assembling a networked computer system from components while ensuring it maintains desired security properties;

"(2) carry out research associated with improving the security of real-time computing and communications systems for use in process control; and

"(3) carry out multidisciplinary, long-term, high-risk research on ways to improve the security of computer systems.

"(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary $1,060,000 for fiscal year 2003 and $1,090,000 for fiscal year 2004 to enable the Computer System Security and Privacy Advisory Board, established by section 278g–4 of this title, to identify emerging issues, including research needs, related to computer security, privacy, and cryptography and, as appropriate, to convene public meetings on those subjects, receive presentations, and publish reports, digests, and summaries for public distribution on those subjects."

Pub. L. 107–296 added text of section and struck out former text, as added by Pub. L. 107–347, which read:

"(a) IN GENERAL.—The Institute shall—

"(1) have the mission of developing standards, guidelines, and associated methods and techniques for information systems;

"(2) develop standards and guidelines, including minimum requirements, for information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency, other than national security systems (as defined in section 3542(b)(2) of title 44); and

"(3) develop standards and guidelines, including minimum requirements, for providing adequate information security for all agency operations and assets, but such standards and guidelines shall not apply to national security systems.

"(b) MINIMUM REQUIREMENTS FOR STANDARDS AND GUIDELINES.—The standards and guidelines required by subsection (a) of this section shall include, at a minimum—

"(1)(A) standards to be used by all agencies to categorize all information and information systems collected or maintained by or on behalf of each agency based on the objectives of providing appropriate levels of information security according to a range of risk levels;

"(B) guidelines recommending the types of information and information systems to be included in

each such category; and

"(C) minimum information security requirements for information and information systems in each such category;

"(2) a definition of and guidelines concerning detection and handling of information security incidents; and

"(3) guidelines developed in conjunction with the Department of Defense, including the National Security Agency, for identifying an information system as a national security system consistent with applicable requirements for national security systems, issued in accordance with law and as directed by the President.

"(c) DEVELOPMENT OF STANDARDS AND GUIDELINES.—In developing standards and guidelines required by subsections (a) and (b) of this section, the Institute shall—

"(1) consult with other agencies and offices and the private sector (including the Director of the Office of Management and Budget, the Departments of Defense and Energy, the National Security Agency, the General Accounting Office, and the Secretary of Homeland Security) to assure—

"(A) use of appropriate information security policies, procedures, and techniques, in order to improve information security and avoid unnecessary and costly duplication of effort; and

"(B) that such standards and guidelines are complementary with standards and guidelines employed for the protection of national security systems and information contained in such systems;

"(2) provide the public with an opportunity to comment on proposed standards and guidelines;

"(3) submit to the Secretary of Commerce for promulgation under section 11331 of title 40—

"(A) standards, as required under subsection (b)(1)(A) of this section, no later than 12 months after December 17, 2002; and

"(B) minimum information security requirements for each category, as required under subsection (b)(1)(C) of this section, no later than 36 months after December 17, 2002;

"(4) issue guidelines as required under subsection (b)(1)(B) of this section, no later than 18 months after December 17, 2002;

"(5) to the maximum extent practicable, ensure that such standards and guidelines do not require the use or procurement of specific products, including any specific hardware or software;

"(6) to the maximum extent practicable, ensure that such standards and guidelines provide for sufficient flexibility to permit alternative solutions to provide equivalent levels of protection for identified information security risks; and

"(7) to the maximum extent practicable, use flexible, performance-based standards and guidelines that permit the use of off-the-shelf commercially developed information security products.

"(d) INFORMATION SECURITY FUNCTIONS.—The Institute shall—

"(1) submit standards developed pursuant to subsection (a) of this section, along with recommendations as to the extent to which these should be made compulsory and binding, to the Secretary of Commerce for promulgation under section 11331 of title 40;

"(2) provide technical assistance to agencies, upon request, regarding—

"(A) compliance with the standards and guidelines developed under subsection (a) of this section;

"(B) detecting and handling information security incidents; and

"(C) information security policies, procedures, and practices;

"(3) conduct research, as needed, to determine the nature and extent of information security vulnerabilities and techniques for providing cost-effective information security;

"(4) develop and periodically revise performance indicators and measures for agency information security policies and practices;

"(5) evaluate private sector information security policies and practices and commercially available information technologies to assess potential application by agencies to strengthen information security;

"(6) assist the private sector, upon request, in using and applying the results of activities under this section;

"(7) evaluate security policies and practices developed for national security systems to assess potential application by agencies to strengthen information security;

"(8) periodically assess the effectiveness of standards and guidelines developed under this section and undertake revisions as appropriate;

"(9) solicit and consider the recommendations of the Information Security and Privacy Advisory Board, established by section 278g–4 of this title, regarding standards and guidelines developed under subsection (a) of this section and submit such recommendations to the Secretary of Commerce with such standards submitted to the Secretary; and

"(10) prepare an annual public report on activities undertaken in the previous year, and planned for the

coming year, to carry out responsibilities under this section.

"(e) DEFINITIONS.—As used in this section—

"(1) the term 'agency' has the same meaning as provided in section 3502(1) of title 44;

"(2) the term 'information security' has the same meaning as provided in section 3542(b)(1) of such title;

"(3) the term 'information system' has the same meaning as provided in section 3502(8) of such title;

"(4) the term 'information technology' has the same meaning as provided in section 11101 of title 40; and

"(5) the term 'national security system' has the same meaning as provided in section 3542(b)(2) of title 44.

"(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Commerce $20,000,000 for each of fiscal years 2003, 2004, 2005, 2006, and 2007 to enable the National Institute of Standards and Technology to carry out the provisions of this section."

Subsec. (d)(1)(B)(i). Pub. L. 107–305, §8(b), substituted "computers and computer networks" for "computers".

Subsecs. (e), (f). Pub. L. 107–305, §§9, 10, added subsecs. (e) and (f).

1997—Subsecs. (a)(4), (b)(2). Pub. L. 105–85 made technical amendment to reference in original act which appears in text as reference to section 1441 of title 40.

1996—Subsec. (a)(2), (3)(A). Pub. L. 104–106, §5607(a)(1)(A), substituted "section 3502(9) of title 44" for "section 3502(2) of title 44".

Subsec. (a)(4). Pub. L. 104–106, §5607(a)(1)(B), substituted "section 1441 of title 40" for "section 759(d) of title 40".

Subsec. (b)(2). Pub. L. 104–106, §5607(a)(2)(A), (C), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: "to make recommendations, as appropriate, to the Administrator of General Services on policies and regulations proposed pursuant to section 1441 of title 40;".

Subsec. (b)(3). Pub. L. 104–106, §5607(a)(2)(C), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Pub. L. 104–106, §5607(a)(2)(B), substituted "section 1441 of title 40" for "section 759(d) of title 40".

Subsec. (b)(4) to (6). Pub. L. 104–106, §5607(a)(2)(C), redesignated pars. (4) to (6) as (3) to (5), respectively.

Subsec. (d)(1)(B)(v). Pub. L. 104–106, §5607(a)(3)(A), struck out "as defined by regulations issued by the Administrator for General Services pursuant to section 759 of title 40" after "related resources".

Subsec. (d)(2). Pub. L. 104–106, §5607(a)(3)(B), substituted "system' " for "system'—", struck out "(A)" before "means", substituted "function;" for "function; and", and struck out subpar. (B) which read as follows: "includes automatic data processing equipment as that term is defined in section 759(a)(2) of title 40;".

1988—Pub. L. 100–418 substituted "Institute" for "National Bureau of Standards" in introductory provisions of subsecs. (a) and (b) and wherever appearing in closing provisions of subsec. (c).

EFFECTIVE DATE OF 2002 AMENDMENTS

Amendment by Pub. L. 107–347 effective Dec. 17, 2002, see section 402(b) of Pub. L. 107–347, set out as an Effective Date note under section 3541 of Title 44, Public Printing and Documents.

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective 180 days after Feb. 10, 1996, see section 5701 of Pub. L. 104–106, Feb. 10, 1996, 110 Stat. 702.

[1] *See References in Text note below.*

§278g–4. Information Security and Privacy Advisory Board

(a) Establishment and composition

There is hereby established a [1] Information Security and Privacy Advisory Board within the Department of Commerce. The Secretary of Commerce shall appoint the chairman of the Board. The Board shall be composed of twelve additional members appointed by the Secretary of Commerce as

follows:

(1) four members from outside the Federal Government who are eminent in the information technology industry, at least one of whom is representative of small or medium sized companies in such industries;

(2) four members from outside the Federal Government who are eminent in the fields of information technology, or related disciplines, but who are not employed by or representative of a producer of information technology; and

(3) four members from the Federal Government who have information system management experience, including experience in information security and privacy, at least one of whom shall be from the National Security Agency.

(b) Duties

The duties of the Board shall be—

(1) to identify emerging managerial, technical, administrative, and physical safeguard issues relative to information security and privacy;

(2) to advise the Institute and the Director of the Office of Management and Budget on information security and privacy issues pertaining to Federal Government information systems, including through review of proposed standards and guidelines developed under section 278g–3 of this title; and

(3) to report annually its findings to the Secretary of Commerce, the Director of the Office of Management and Budget, the Director of the National Security Agency, and the appropriate committees of the Congress.

(c) Term of office

The term of office of each member of the Board shall be four years, except that—

(1) of the initial members, three shall be appointed for terms of one year, three shall be appointed for terms of two years, three shall be appointed for terms of three years, and three shall be appointed for terms of four years; and

(2) any member appointed to fill a vacancy in the Board shall serve for the remainder of the term for which his predecessor was appointed.

(d) Quorum

The Board shall not act in the absence of a quorum, which shall consist of seven members.

(e) Allowance for travel expenses

Members of the Board, other than full-time employees of the Federal Government, while attending meetings of such committees or while otherwise performing duties at the request of the Board Chairman while away from their homes or a regular place of business, may be allowed travel expenses in accordance with subchapter I of chapter 57 of title 5.

(f) Meetings

The Board shall hold meetings at such locations and at such time and place as determined by a majority of the Board.

(g) Staff services and utilization of Federal personnel

To provide the staff services necessary to assist the Board in carrying out its functions, the Board may utilize personnel from the Institute or any other agency of the Federal Government with the consent of the head of the agency.

(h) Definitions

As used in this section, the terms "information system" and "information technology" have the meanings given in section 278g–3 of this title.

(Mar. 3, 1901, ch. 872, §21, as added Pub. L. 100–235, §3(2), Jan. 8, 1988, 101 Stat. 1727; amended Pub. L. 100–418, title V, §5115(a)(1), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 107–296, title X, §1004, Nov. 25, 2002, 116 Stat. 2271; Pub. L. 107–347, title III, §304, Dec. 17, 2002, 116 Stat. 2959.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–296, §1004(1), and Pub. L. 107–347, §304(1), amended subsec. (a) identically, substituting "Information Security and Privacy Advisory Board" for "Computer System Security and Privacy Advisory Board" in introductory provisions.

Subsec. (a)(1). Pub. L. 107–296, §1004(2), and Pub. L. 107–347, §304(2), amended par. (1) identically, substituting "information technology" for "computer or telecommunications".

Subsec. (a)(2). Pub. L. 107–296, §1004(3), and Pub. L. 107–347, §304(3), amended par. (2) identically, substituting "information technology" for "computer or telecommunications technology" and for "computer or telecommunications equipment".

Subsec. (a)(3). Pub. L. 107–296, §1004(4), and Pub. L. 107–347, §304(4), amended par. (3) identically, substituting "information system" for "computer systems" and "information security" for "computer systems security".

Subsec. (b)(1). Pub. L. 107–296, §1004(5), and Pub. L. 107–347, §304(5), amended par. (1) identically, substituting "information security" for "computer systems security".

Subsec. (b)(2). Pub. L. 107–347, §304(6), added par. (2) and struck out former par. (2) which read as follows: "to advise the Institute and the Secretary of Commerce on security and privacy issues pertaining to Federal computer systems; and".

Pub. L. 107–296, §1004(6), added par. (2) and struck out former par. (2), as added by Pub. L. 107–347, which read as follows: "to advise the Institute, the Secretary of Commerce, and the Director of the Office of Management and Budget on information security and privacy issues pertaining to Federal Government information systems, including through review of proposed standards and guidelines developed under section 278g–3 of this title; and".

Subsec. (b)(3). Pub. L. 107–296, §1004(7), and Pub. L. 107–347, §304(7), amended par. (3) identically, inserting "annually" after "report".

Subsecs. (f), (g). Pub. L. 107–296, §1004(8), (9), and Pub. L. 107–347, §304(8), (9), amended section identically, adding subsec. (f) and redesignating former subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 107–296, §1004(10), and Pub. L. 107–347, §304(10), amended section identically, adding subsec. (h) and striking out former subsec. (h) which read as follows: "As used in this section, the terms 'computer system' and 'Federal computer system' have the meanings given in section 278g–3 of this title."

Pub. L. 107–296, §1004(9), and Pub. L. 107–347, §304(9), amended section identically, redesignating subsec. (g) as (h).

1988—Subsec. (b)(2). Pub. L. 100–418, which directed that this chapter be amended by substituting "Institute" for "National Bureau of Standards", "Bureau", or "bureau", wherever appearing, was executed to par. (2) by substituting "Institute" for "Bureau of Standards", to reflect the probable intent of Congress.

Subsec. (f). Pub. L. 100–418 substituted "Institute" for "National Bureau of Standards".

EFFECTIVE DATE OF 2002 AMENDMENTS

Amendment by Pub. L. 107–347 effective Dec. 17, 2002, see section 402(b) of Pub. L. 107–347, set out as an Effective Date note under section 3541 of Title 44, Public Printing and Documents.

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

TERMINATION OF ADVISORY BOARDS

Advisory boards in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

[1] *So in original. Probably should be "an".*

§278g–5. Enterprise integration initiative

(a) Establishment

The Director shall establish an initiative for advancing enterprise integration within the United States. In carrying out this section, the Director shall involve, as appropriate, the various units of the National Institute of Standards and Technology, including the National Institute of Standards and Technology laboratories (including the Building and Fire Research Laboratory), the Manufacturing Extension Partnership program [1] established under sections 278k and 278l of this title, and the Malcolm Baldrige National Quality Program. This initiative shall build upon ongoing efforts of the National Institute of Standards and Technology and of the private sector, shall involve consortia that include government and industry, and shall address the enterprise integration needs of each United States major manufacturing industry at the earliest possible date.

(b) Assessment

For each major manufacturing industry, the Director may work with industry, trade associations, professional societies, and others as appropriate, to identify enterprise integration standardization and implementation activities underway in the United States and abroad that affect that industry and to assess the current state of enterprise integration within that industry. The Director may assist in the development of roadmaps to permit supply chains within the industry to operate as an integrated electronic enterprise. The roadmaps shall be based on voluntary consensus standards.

(c) Authorized activities

In order to carry out this Act, the Director may work with industry, trade associations, professional societies, and others as appropriate—

(1) to raise awareness in the United States, including awareness by businesses that are majority owned by women, minorities, or both, of enterprise integration activities in the United States and abroad, including by the convening of conferences;

(2) on the development of enterprise integration roadmaps;

(3) to support the development, testing, promulgation, integration, adoption, and upgrading of standards related to enterprise integration including application protocols; and

(4) to provide technical assistance and, if necessary, financial support to small- and medium-sized businesses that set up pilot projects in enterprise integration.

(d) Manufacturing Extension Program

The Director shall ensure that the Manufacturing Extension Program is prepared to advise small- and medium-sized businesses on how to acquire the expertise, equipment, and training necessary to participate fully in supply chains using enterprise integration.

(Pub. L. 107–277, §3, Nov. 5, 2002, 116 Stat. 1936; Pub. L. 113–188, title II, §201(b), Nov. 26, 2014, 128 Stat. 2018.)

REFERENCES IN TEXT

This Act, referred to in subsec. (c), is Pub. L. 107–277, Nov. 5, 2002, 116 Stat. 1936, which enacted this section and provisions set out as a note under this section. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Enterprise Integration Act of 2002, and not as part of the National Institute of Standards and Technology Act which comprises this chapter.

AMENDMENTS

2014—Subsecs. (c) to (e). Pub. L. 113–188 redesignated subsecs. (d) and (e) as (c) and (d), respectively, and struck out former subsec. (c) which required annual reports on the National Institute of Standards and Technology's activities under subsec. (b).

CHANGE OF NAME

The Manufacturing Extension Partnership Program, referred to in subsec. (a), redesignated the Hollings Manufacturing Partnership Program by provision of title II of div. B of Pub. L. 108–447, formerly set out as a note under section 278k of this title. Program now known as the Hollings Manufacturing Extension Partnership, see section 278k(i) of this title.

ENTERPRISE INTEGRATION

Pub. L. 107–277, Nov. 5, 2002, 116 Stat. 1936, provided that:

"SECTION. 1. SHORT TITLE.

"This Act [enacting this section and this note] may be cited as the 'Enterprise Integration Act of 2002'.

"SEC. 2. FINDINGS.

"The Congress makes the following findings:

"(1) Over 90 percent of United States companies engaged in manufacturing are small- and medium-sized businesses.

"(2) Most of these manufacturers produce goods for assemblage into products of large companies.

"(3) The emergence of the World Wide Web and the promulgation of international standards for product data exchange greatly accelerated the movement toward electronically integrated supply chains during the last half of the 1990's.

"(4) European and Asian countries are investing heavily in electronic enterprise standards development, and in preparing their smaller manufacturers to do business in the new environment. European efforts are well advanced in the aerospace, automotive, and shipbuilding industries and are beginning in other industries including home building, furniture manufacturing, textiles, and apparel. This investment could give overseas companies a major competitive advantage.

"(5) The National Institute of Standards and Technology, because of the electronic commerce expertise in its laboratories and quality program, its long history of working cooperatively with manufacturers, and the nationwide reach of its manufacturing extension program, is in a unique position to help United States large and smaller manufacturers alike in their responses to this challenge.

"(6) It is, therefore, in the national interest for the National Institute of Standards and Technology to accelerate its efforts in helping industry develop standards and enterprise integration processes that are necessary to increase efficiency and lower costs.

"SEC. 3. ENTERPRISE INTEGRATION INITIATIVE.

[Enacted this section.]

"SEC. 4. DEFINITIONS.

"For purposes of this Act—

"(1) the term 'automotive' means land-based engine-powered vehicles including automobiles, trucks, busses, trains, defense vehicles, farm equipment, and motorcycles;

"(2) the term 'Director' means the Director of the National Institute of Standards and Technology;

"(3) the term 'enterprise integration' means the electronic linkage of manufacturers, assemblers, suppliers, and customers to enable the electronic exchange of product, manufacturing, and other business data among all partners in a product supply chain, and such term includes related application protocols and other related standards;

"(4) the term 'major manufacturing industry' includes the aerospace, automotive, electronics, shipbuilding, construction, home building, furniture, textile, and apparel industries and such other industries as the Director designates; and

"(5) the term 'roadmap' means an assessment of manufacturing interoperability requirements developed by an industry describing that industry's goals related to enterprise integration, the knowledge and standards including application protocols necessary to achieve those goals, and the necessary steps, timetable, and assignment of responsibilities for acquiring the knowledge and developing the standards and protocols.

"SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to the Director to carry out functions under this Act—

"(1) $2,000,000 for fiscal year 2002;

"(2) $10,000,000 for fiscal year 2003;

"(3) $15,000,000 for fiscal year 2004; and

"(4) $20,000,000 for fiscal year 2005."

[1] *See Change of Name note below.*

§278h. Research program on security of computer systems

(a) Establishment

The Director shall establish a program of assistance to institutions of higher education that enter into partnerships with for-profit entities to support research to improve the security of computer systems. The partnerships may also include government laboratories and nonprofit research institutions. The program shall—

(1) include multidisciplinary, long-term research;

(2) include research directed toward addressing needs identified through the activities of the Computer System Security [1] and Privacy Advisory Board under section 278g–3(f) [2] of this title; and

(3) promote the development of a robust research community working at the leading edge of knowledge in subject areas relevant to the security of computer systems by providing support for graduate students, post-doctoral researchers, and senior researchers.

(b) Fellowships

(1) Post-doctoral research fellowships

The Director is authorized to establish a program to award post-doctoral research fellowships to individuals who are citizens, nationals, or lawfully admitted permanent resident aliens of the United States and are seeking research positions at institutions, including the Institute, engaged in research activities related to the security of computer systems, including the research areas described in section 7403(a)(1) of this title.

(2) Senior research fellowships

The Director is authorized to establish a program to award senior research fellowships to individuals seeking research positions at institutions, including the Institute, engaged in research activities related to the security of computer systems, including the research areas described in section 7403(a)(1) of this title. Senior research fellowships shall be made available for established researchers at institutions of higher education who seek to change research fields and pursue studies related to the security of computer systems.

(3) Eligibility

(A) In general

To be eligible for an award under this subsection, an individual shall submit an application to the Director at such time, in such manner, and containing such information as the Director may require.

(B) Stipends

Under this subsection, the Director is authorized to provide stipends for post-doctoral research fellowships at the level of the Institute's Post Doctoral Research Fellowship Program and senior research fellowships at levels consistent with support for a faculty member in a sabbatical position.

(c) Awards; applications

(1) In general

The Director is authorized to award grants or cooperative agreements to institutions of higher education to carry out the program established under subsection (a) of this section. No funds made available under this section shall be made available directly to any for-profit partners.

(2) Eligibility

To be eligible for an award under this section, an institution of higher education shall submit an application to the Director at such time, in such manner, and containing such information as the Director may require. The application shall include, at a minimum, a description of—

(A) the number of graduate students anticipated to participate in the research project and the level of support to be provided to each;

(B) the number of post-doctoral research positions included under the research project and

the level of support to be provided to each;

(C) the number of individuals, if any, intending to change research fields and pursue studies related to the security of computer systems to be included under the research project and the level of support to be provided to each; and

(D) how the for-profit entities, nonprofit research institutions, and any other partners will participate in developing and carrying out the research and education agenda of the partnership.

(d) Program operation

(1) Management

The program established under subsection (a) of this section shall be managed by individuals who shall have both expertise in research related to the security of computer systems and knowledge of the vulnerabilities of existing computer systems. The Director shall designate such individuals as program managers.

(2) Managers may be employees

Program managers designated under paragraph (1) may be new or existing employees of the Institute or individuals on assignment at the Institute under the Intergovernmental Personnel Act of 1970 [42 U.S.C. 4701 et seq.], except that individuals on assignment at the Institute under the Intergovernmental Personnel Act of 1970 shall not directly manage such employees.

(3) Manager responsibility

Program managers designated under paragraph (1) shall be responsible for—

(A) establishing and publicizing the broad research goals for the program;

(B) soliciting applications for specific research projects to address the goals developed under subparagraph (A);

(C) selecting research projects for support under the program from among applications submitted to the Institute, following consideration of—

(i) the novelty and scientific and technical merit of the proposed projects;

(ii) the demonstrated capabilities of the individual or individuals submitting the applications to successfully carry out the proposed research;

(iii) the impact the proposed projects will have on increasing the number of computer security researchers;

(iv) the nature of the participation by for-profit entities and the extent to which the proposed projects address the concerns of industry; and

(v) other criteria determined by the Director, based on information specified for inclusion in applications under subsection (c) of this section; and

(D) monitoring the progress of research projects supported under the program.

(4) Reports

The Director shall report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science annually on the use and responsibility of individuals on assignment at the Institute under the Intergovernmental Personnel Act of 1970 [42 U.S.C. 4701 et seq.] who are performing duties under subsection (d) of this section.

(e) Review of program

(1) Periodic review

The Director shall periodically review the portfolio of research awards monitored by each program manager designated in accordance with subsection (d) of this section. In conducting those reviews, the Director shall seek the advice of the Computer System Security [1] and Privacy Advisory Board, established under section 278g–4 of this title, on the appropriateness of the research goals and on the quality and utility of research projects managed by program managers in accordance with subsection (d) of this section.

(2) Comprehensive 5-year review

The Director shall also contract with the National Research Council for a comprehensive review of the program established under subsection (a) of this section during the 5th year of the program. Such review shall include an assessment of the scientific quality of the research conducted, the relevance of the research results obtained to the goals of the program established under subsection (d)(3)(A) of this section, and the progress of the program in promoting the development of a substantial academic research community working at the leading edge of knowledge in the field. The Director shall submit to Congress a report on the results of the review under this paragraph no later than 6 years after the initiation of the program.

(f) Definitions

In this section:

(1) Computer system

The term "computer system" has the meaning given that term in section 278g–3(d)(1) [2] of this title.

(2) Institution of higher education

The term "institution of higher education" has the meaning given that term in section 1001(a) of title 20.

(Mar. 3, 1901, ch. 872, §22, as added Pub. L. 107–305, §8(a)(2), Nov. 27, 2002, 116 Stat. 2375.)

REFERENCES IN TEXT

Section 278g–3 of this title, referred to in subsecs. (a)(2) and (f)(1), was amended generally by Pub. L. 107–296, title X, §1003, Nov. 25, 2002, 116 Stat. 2269, and, as so amended, no longer contains a subsec. (d) defining "computer system" or a subsec. (f).

The Intergovernmental Personnel Act of 1970, referred to in subsec. (d)(2), (4), is Pub. L. 91–648, Jan. 5, 1971, 84 Stat. 1909, as amended, which enacted sections 3371 to 3376 of Title 5, Government Organization and Employees, and chapter 62 (§4701 et seq.) of Title 42, The Public Health and Welfare, amended section 1304 of Title 5 and section 246 of Title 42, repealed sections 1881 to 1888 of Title 7, Agriculture, and section 869b of Title 20, Education, and enacted provisions set out as notes under section 3371 of Title 5. For complete classification of this Act to the Code, see Short Title note set out under section 4701 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 22 of act Mar. 3, 1901, ch. 872, was renumbered section 32 and is classified to section 278q of this title.

CHANGE OF NAME

Committee on Science of House of Representatives changed to Committee on Science and Technology of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

[1] So in original. Probably should be "Information Security".

[2] See References in Text note below.

§278i. Reports to Congress

(a) Information to Congress on Institute activities

The Director shall keep the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives fully and currently informed with regard to all of the activities of the Institute.

(b) Justification for changes in policies and fees

The Director shall justify in writing all changes in policies regarding fees for standard reference materials and calibration services occurring after June 30, 1987, including a description of the anticipated impact of any proposed changes on demand for and anticipated revenues from the materials and services. Changes in policy and fees shall not be effective unless and until the Director has submitted the proposed schedule and justification to the Congress and 30 days on which both Houses of Congress are in session have elapsed since such submission, except that the requirement of this sentence shall not apply with respect to adjustments which are based solely on changes in the costs of raw materials or of producing and delivering standard reference materials or calibration services.

(c) Three-Year programmatic planning document

Concurrent with the submission to Congress of the President's annual budget request in the first year after August 9, 2007, the Director shall submit to Congress a 3-year programmatic planning document for the Institute, including programs under the Scientific and Technical Research and Services, Industrial Technology Services, and Construction of Research Facilities functions.

(d) Annual update on three-year programmatic planning document

Concurrent with the submission to the Congress of the President's annual budget request in each year after August 9, 2007, the Director shall submit to Congress an update to the 3-year programmatic planning document submitted under subsection (c), revised to cover the first 3 fiscal years after the date of that update.

(Mar. 3, 1901, ch. 872, §23, as added Pub. L. 100–418, title V, §5114(2), Aug. 23, 1988, 102 Stat. 1432; amended Pub. L. 110–69, title III, §3004, Aug. 9, 2007, 121 Stat. 590.)

AMENDMENTS

2007—Subsecs. (c), (d). Pub. L. 110–69 added subsecs. (c) and (d).

CHANGE OF NAME

Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Science of House of Representatives changed to Committee on Science and Technology of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

§278j. Studies by National Research Council

The Director may periodically contract with the National Research Council for advice and studies to assist the Institute to serve United States industry and science. The subjects of such advice and studies may include—

(1) the competitive position of the United States in key areas of manufacturing and emerging technologies and research activities which would enhance that competitiveness;

(2) potential activities of the Institute, in cooperation with industry and the States, to assist in the transfer and dissemination of new technologies for manufacturing and quality assurance; and

(3) identification and assessment of likely barriers to widespread use of advanced manufacturing technology by the United States workforce, including training and other initiatives which could lead to a higher percentage of manufacturing jobs of United States companies being located within the borders of our country.

(Mar. 3, 1901, ch. 872, §24, as added Pub. L. 100–418, title V, §5114(2), Aug. 23, 1988, 102 Stat. 1432.)

§278k. Regional centers for the transfer of manufacturing technology

(a) Creation and support of Centers; affiliations; merit review in determining awards; objectives

The Secretary, through the Director and, if appropriate, through other officials, shall provide assistance for the creation and support of regional centers for the transfer of manufacturing technology (hereafter in this chapter referred to as the "Centers"). Such centers [1] shall be affiliated with any United States-based nonprofit institution or organization, or group thereof, that applies for and is awarded financial assistance under this section in accordance with the description published by the Secretary in the Federal Register under subsection (c)(2) of this section. Individual awards shall be decided on the basis of merit review. The objective of the Centers is to enhance productivity and technological performance in United States manufacturing through—

(1) the transfer of manufacturing technology and techniques developed at the Institute to Centers and, through them, to manufacturing companies throughout the United States;

(2) the participation of individuals from industry, universities, State governments, other Federal agencies, and, when appropriate, the Institute in cooperative technology transfer activities;

(3) efforts to make new manufacturing technology and processes usable by United States-based small- and medium-sized companies;

(4) the active dissemination of scientific, engineering, technical, and management information about manufacturing to industrial firms, including small- and medium-sized manufacturing companies;

(5) the utilization, when appropriate, of the expertise and capability that exists in Federal laboratories other than the Institute; and

(6) providing to community colleges information about the job skills needed in small- and medium-sized manufacturing businesses in the regions they serve.

(b) Activities of Centers

The activities of the Centers shall include—

(1) the establishment of automated manufacturing systems and other advanced production technologies, based on research by the Institute, for the purpose of demonstrations and technology transfer;

(2) the active transfer and dissemination of research findings and Center expertise to a wide range of companies and enterprises, particularly small- and medium-sized manufacturers; and

(3) loans, on a selective, short-term basis, of items of advanced manufacturing equipment to small manufacturing firms with less than 100 employees.

(c) Duration and amount of support; program descriptions; applications; merit review; evaluations of assistance; applicability of patent law; report; modification of requirements

(1) The Secretary may provide financial support to any Center created under subsection (a) of this section for a period not to exceed six years. The Secretary may not provide to a Center more than 50 percent of the capital and annual operating and maintenance funds required to create and maintain such Center.

(2) The Secretary shall publish in the Federal Register, within 90 days after August 23, 1988, a draft description of a program for establishing Centers, including—

(A) a description of the program;

(B) procedures to be followed by applicants;

(C) criteria for determining qualified applicants;

(D) criteria, including those listed under paragraph (4), for choosing recipients of financial assistance under this section from among the qualified applicants; and

(E) maximum support levels expected to be available to Centers under the program in the fourth through sixth years of assistance under this section.

The Secretary shall publish a final description under this paragraph after the expiration of a 30-day comment period.

(3)(A) Any nonprofit institution, or group thereof, or consortia of nonprofit institutions, including entities existing on August 23, 1988, may submit to the Secretary an application for financial support

under this subsection, in accordance with the procedures established by the Secretary and published in the Federal Register under paragraph (2).

(B) In order to receive assistance under this section, an applicant for financial assistance under subparagraph (A) shall provide adequate assurances that non-Federal assets obtained from the applicant and the applicant's partnering organizations will be used as a funding source to meet not less than 50 percent of the costs incurred for the first 3 years and an increasing share for each of the last 3 years. For purposes of the preceding sentence, the costs incurred means the costs incurred in connection with the activities undertaken to improve the management, productivity, and technological performance of small- and medium-sized manufacturing companies.

(C) In meeting the 50 percent requirement, it is anticipated that a Center will enter into agreements with other entities such as private industry, universities, and State governments to accomplish programmatic objectives and access new and existing resources that will further the impact of the Federal investment made on behalf of small- and medium-sized manufacturing companies. All non-Federal costs,[2] contributed by such entities and determined by a Center as programmatically reasonable and allocable under MEP program procedures are includable as a portion of the Center's contribution.

(D) Each applicant under subparagraph (A) shall also submit a proposal for the allocation of the legal rights associated with any invention which may result from the proposed Center's activities.

(4) The Secretary shall subject each such application to merit review. In making a decision whether to approve such application and provide financial support under this subsection, the Secretary shall consider at a minimum (A) the merits of the application, particularly those portions of the application regarding technology transfer, training and education, and adaptation of manufacturing technologies to the needs of particular industrial sectors, (B) the quality of service to be provided, (C) geographical diversity and extent of service area, and (D) the percentage of funding and amount of in-kind commitment from other sources.

(5) Each Center which receives financial assistance under this section shall be evaluated during its third year of operation by an evaluation panel appointed by the Secretary. Each such evaluation panel shall be composed of private experts, none of whom shall be connected with the involved Center, and Federal officials. An official of the Institute shall chair the panel. Each evaluation panel shall measure the involved Center's performance against the objectives specified in this section. The Secretary shall not provide funding for the fourth through the sixth years of such Center's operation unless the evaluation is positive. If the evaluation is positive, the Secretary may provide continued funding through the sixth year at declining levels. A Center that has not received a positive evaluation by the evaluation panel shall be notified by the panel of the deficiencies in its performance and shall be placed on probation for one year, after which time the panel shall reevaluate the Center. If the Center has not addressed the deficiencies identified by the panel, or shown a significant improvement in its performance, the Director shall conduct a new competition to select an operator for the Center or may close the Center. After the sixth year, a Center may receive additional financial support under this section if it has received a positive evaluation through an independent review, under procedures established by the Institute. Such an independent review shall be required at least every two years after the sixth year of operation. Funding received for a fiscal year under this section after the sixth year of operation shall not exceed one third of the capital and annual operating and maintenance costs of the Center under the program.

(6) The provisions of chapter 18 of title 35 shall (to the extent not inconsistent with this section) apply to the promotion of technology from research by Centers under this section except for contracts for such specific technology extension or transfer services as may be specified by statute or by the Director.

(7) Not later than 90 days after January 4, 2011, the Comptroller General shall submit to Congress a report on the cost share requirements under the program. The report shall—

(A) discuss various cost share structures, including the cost share structure in place prior to such date, and the effect of such cost share structures on individual Centers and the overall program; and

(B) include recommendations for how best to structure the cost share requirement to provide for

the long-term sustainability of the program.

(8) If consistent with the recommendations in the report transmitted to Congress under paragraph (7), the Secretary shall alter the cost structure requirements specified under paragraph (3)(B) and (5) provided that the modification does not increase the cost share structure in place before January 4, 2011, or allow the Secretary to provide a Center more than 50 percent of the costs incurred by that Center.

(d) Acceptance of funds

(1) In general

In addition to such sums as may be appropriated to the Secretary and Director to operate the Centers program, the Secretary and Director also may accept funds from other Federal departments and agencies and under section 272(c)(7) of this title from the private sector for the purpose of strengthening United States manufacturing.

(2) Allocation of funds

(A) Funds accepted from other Federal departments or agencies

The Director shall determine whether funds accepted from other Federal departments or agencies shall be counted in the calculation of the Federal share of capital and annual operating and maintenance costs under subsection (c).

(B) Funds accepted from the private sector

Funds accepted from the private sector under section 272(c)(7) of this title, if allocated to a Center, shall not be considered in the calculation of the Federal share under subsection (c) of this section.

(e) MEP Advisory Board

(1) Establishment

There is established within the Institute a Manufacturing Extension Partnership Advisory Board (in this subsection referred to as the "MEP Advisory Board").

(2) Membership

(A) In general

The MEP Advisory Board shall consist of 10 members broadly representative of stakeholders, to be appointed by the Director. At least 2 members shall be employed by or on an advisory board for the Centers, and at least 5 other members shall be from United States small businesses in the manufacturing sector. No member shall be an employee of the Federal Government.

(B) Term

Except as provided in subparagraph (C) or (D), the term of office of each member of the MEP Advisory Board shall be 3 years.

(C) Classes

The original members of the MEP Advisory Board shall be appointed to 3 classes. One class of 3 members shall have an initial term of 1 year, one class of 3 members shall have an initial term of 2 years, and one class of 4 members shall have an initial term of 3 years.

(D) Vacancies

Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

(E) Serving consecutive terms

Any person who has completed two consecutive full terms of service on the MEP Advisory Board shall thereafter be ineligible for appointment during the one-year period following the

expiration of the second such term.

(3) Meetings

The MEP Advisory Board shall meet not less than 2 times annually, and provide to the Director—

(A) advice on Manufacturing Extension Partnership programs, plans, and policies;

(B) assessments of the soundness of Manufacturing Extension Partnership plans and strategies; and

(C) assessments of current performance against Manufacturing Extension Partnership program plans.

(4) Federal Advisory Committee Act applicability

(A) In general

In discharging its duties under this subsection, the MEP Advisory Board shall function solely in an advisory capacity, in accordance with the Federal Advisory Committee Act.

(B) Exception

Section 14 of the Federal Advisory Committee Act shall not apply to the MEP Advisory Board.

(5) Report

The MEP Advisory Board shall transmit an annual report to the Secretary for transmittal to Congress within 30 days after the submission to Congress of the President's annual budget request in each year. Such report shall address the status of the program established pursuant to this section and comment on the relevant sections of the programmatic planning document and updates thereto transmitted to Congress by the Director under subsections (c) and (d) of section 278i of this title.

(f) Competitive grant program

(1) Establishment

The Director shall establish, within the Centers program under this section and section 278l of this title, a program of competitive awards among participants described in paragraph (2) for the purposes described in paragraph (3).

(2) Participants

Participants receiving awards under this subsection shall be the Centers, or a consortium of such Centers.

(3) Purpose

The purpose of the program under this subsection is to add capabilities to the MEP program, including the development of projects to solve new or emerging manufacturing problems as determined by the Director, in consultation with the Director of the Hollings MEP program, the Manufacturing Extension Partnership Advisory Board, and small and medium-sized manufacturers. One or more themes for the competition may be identified, which may vary from year to year, depending on the needs of manufacturers and the success of previous competitions. Centers may be reimbursed for costs incurred under the program. These themes—

(A) shall be related to projects designed to increase the viability both of traditional manufacturing sectors and other sectors, such as construction, that increasingly rely on manufacturing through the use of manufactured components and manufacturing techniques, including supply chain integration and quality management;

(B) shall be related to projects related to the transfer of technology based on the technological needs of manufacturers and available technologies from institutions of higher education, laboratories, and other technology producing entities; and

(C) may extend beyond these traditional areas to include projects related to construction industry modernization.

(4) Applications

Applications for awards under this subsection shall be submitted in such manner, at such time, and containing such information as the Director shall require, in consultation with the Manufacturing Extension Partnership Advisory Board.

(5) Selection

(A) In general

Awards under this section shall be peer reviewed and competitively awarded. The Director shall endeavor to select at least one proposal in each of the 9 statistical divisions of the United States (as designated by the Bureau of the Census). The Director shall select proposals to receive awards that will—

(i) create jobs or train newly hired employees;

(ii) promote technology transfer and commercialization of environmentally focused materials, products, and processes;

(iii) increase energy efficiency; and

(iv) improve the competitiveness of industries in the region in which the Center or Centers are located.

(B) Additional selection criteria

The Director may select proposals to receive awards that will—

(i) encourage greater cooperation and foster partnerships in the region with similar Federal, State, and locally funded programs to encourage energy efficiency and building technology; and

(ii) collect data and analyze the increasing connection between manufactured products and manufacturing techniques, the future of construction practices, and the emerging application of products from the green energy industries.

(6) Program contribution

Recipients of awards under this subsection shall not be required to provide a matching contribution.

(7) [3] Global marketplace projects

In making awards under this subsection, the Director, in consultation with the Manufacturing Extension Partnership Advisory Board and the Secretary of Commerce, may—

(A) take into consideration whether an application has significant potential for enhancing the competitiveness of small and medium-sized United States manufacturers in the global marketplace; and

(B) give a preference to applications for such projects to the extent the Director deems appropriate, taking into account the broader purposes of this subsection.

(7) [3] Duration

Awards under this section shall last no longer than 3 years.

(8) Eligible participants

In addition to manufacturing firms eligible to participate in the Centers program, awards under this subsection may be used by the Centers to assist small- or medium-sized construction firms. Centers may be reimbursed under the program for working with such eligible participants.

(9) Authorization of appropriations

In addition to any amounts otherwise authorized or appropriated to carry out this section, there are authorized to be appropriated to the Secretary of Commerce $7,000,000 for each of the fiscal years 2011 through 2013 to carry out this subsection.

(g) Innovative services initiative

(1) Establishment

The Director shall establish, within the Centers program under this section, an innovative services initiative to assist small- and medium-sized manufacturers in—

(A) reducing their energy usage, greenhouse gas emissions, and environmental waste to improve profitability;

(B) accelerating the domestic commercialization of new product technologies, including components for renewable energy and energy efficiency systems; and

(C) identification of and diversification to new markets, including support for transitioning to the production of components for renewable energy and energy efficiency systems.

(2) Market demand

The Director may not undertake any activity to accelerate the domestic commercialization of a new product technology under this subsection unless an analysis of market demand for the new product technology has been conducted.

(h) Reports

(1) In general

In submitting the 3-year programmatic planning document and annual updates under section 278i of this title, the Director shall include an assessment of the Director's governance of the program established under this section.

(2) Criteria

In conducting the assessment, the Director shall use the criteria established pursuant to the Malcolm Baldrige National Quality Award under section 3711a(d)(1)(C) of this title.

(i) Designation

(1) Hollings Manufacturing Extension Partnership

The program under this section shall be known as the "Hollings Manufacturing Extension Partnership".

(2) Hollings Manufacturing Extension Centers

The Regional Centers for the Transfer of Manufacturing Technology created and supported under subsection (a) shall be known as the "Hollings Manufacturing Extension Centers" (in this chapter referred to as the "Centers").

(j) Community college defined

In this section, the term "community college" means an institution of higher education (as defined under section 1001(a) of title 20) at which the highest degree that is predominately awarded to students is an associate's degree.

(k) Evaluation of obstacles unique to small manufacturers

The Director shall—

(1) evaluate obstacles that are unique to small manufacturers that prevent such manufacturers from effectively competing in the global market;

(2) implement a comprehensive plan to train the Centers to address such obstacles; and

(3) facilitate improved communication between the Centers to assist such manufacturers in implementing appropriate, targeted solutions to such obstacles.

(Mar. 3, 1901, ch. 872, §25, as added Pub. L. 100–418, title V, §5121(a), Aug. 23, 1988, 102 Stat. 1433; amended Pub. L. 102–245, title I, §105(e), Feb. 14, 1992, 106 Stat. 12; Pub. L. 105–309, §2, Oct. 30, 1998, 112 Stat. 2935; Pub. L. 110–69, title III, §3003, Aug. 9, 2007, 121 Stat. 587; Pub. L. 111–240, title IV, §4226(a), Sept. 27, 2010, 124 Stat. 2598; Pub. L. 111–358, title IV, §404(a)–(f)(1), (3), (h), (i), title VII, §703, Jan. 4, 2011, 124 Stat. 4001–4003, 4042.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (e)(4), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2011—Subsec. (a). Pub. L. 111–358, §404(f)(3)(A), substituted "regional centers for the transfer of manufacturing technology" for "Regional Centers for the Transfer of Manufacturing Technology" in introductory provisions.

Subsec. (a)(6). Pub. L. 111–358, §404(a), added par. (6).

Subsec. (c)(7), (8). Pub. L. 111–358, §404(d), added pars. (7) and (8).

Subsec. (e)(4). Pub. L. 111–358, §404(e), amended par. (4) generally. Prior to amendment, text read as follows: "In discharging its duties under this subsection, the MEP Advisory Board shall function solely in an advisory capacity, in accordance with the Federal Advisory Committee Act."

Subsec. (f)(3). Pub. L. 111–358, §703(a), substituted "to add capabilities to the MEP program, including the development of" for "to develop" and "Centers may be reimbursed for costs incurred under the program. These themes—" for "These themes shall be related to projects associated with manufacturing extension activities, including supply chain integration and quality management, and including the transfer of technology based on the technological needs of manufacturers and available technologies from institutions of higher education, laboratories, and other technology producing entities, or extend beyond these traditional areas." and added subpars. (A) to (C).

Pub. L. 111–358, §404(i), substituted "Director of the Hollings MEP program," for "Director of the Centers program,".

Subsec. (f)(5). Pub. L. 111–358, §703(b), amended par. (5) generally. Prior to amendment, text read as follows: "Awards under this subsection shall be peer reviewed and competitively awarded. The Director shall select proposals to receive awards—

"(A) that utilize innovative or collaborative approaches to solving the problem described in the competition;

"(B) that will improve the competitiveness of industries in the region in which the Center or Centers are located; and

"(C) that will contribute to the long-term economic stability of that region."

Subsec. (f)(7). Pub. L. 111–358, §703(c), added par. (7) relating to duration.

Subsec. (f)(8), (9). Pub. L. 111–358, §703(c), added pars. (8) and (9).

Subsec. (g). Pub. L. 111–358, §404(b), added subsec. (g).

Subsec. (h). Pub. L. 111–358, §404(c), added subsec. (h).

Subsec. (i). Pub. L. 111–358, §404(f)(1), added subsec. (i).

Subsec. (j). Pub. L. 111–358, §404(f)(3)(B), added subsec. (j).

Subsec. (k). Pub. L. 111–358, §404(h), added subsec. (k).

2010—Subsec. (f)(7). Pub. L. 111–240 added par. (7) relating to global marketplace projects.

2007—Subsec. (c)(3). Pub. L. 110–69, §3003(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "Any nonprofit institution, or group thereof, or consortia of nonprofit institutions, including entities existing on August 23, 1988, may submit to the Secretary an application for financial support under this subsection, in accordance with the procedures established by the Secretary and published in the Federal Register under paragraph (2). In order to receive assistance under this section, an applicant shall provide adequate assurances that it will contribute 50 percent or more of the proposed Center's capital and annual operating and maintenance costs for the first three years and an increasing share for each of the last three years. Each applicant shall also submit a proposal for the allocation of the legal rights associated with any invention which may result from the proposed Center's activities."

Subsec. (c)(5). Pub. L. 110–69, §3003(b), inserted "A Center that has not received a positive evaluation by the evaluation panel shall be notified by the panel of the deficiencies in its performance and shall be placed on probation for one year, after which time the panel shall reevaluate the Center. If the Center has not addressed the deficiencies identified by the panel, or shown a significant improvement in its performance, the Director shall conduct a new competition to select an operator for the Center or may close the Center." after "at declining levels."

Subsec. (d). Pub. L. 110–69, §3003(c), added subsec. (d) and struck out former subsec. (d). Text of former subsec. (d) read as follows: "In addition to such sums as may be authorized and appropriated to the Secretary and Director to operate the Centers program, the Secretary and Director also may accept funds from other Federal departments and agencies for the purpose of providing Federal funds to support Centers. Any Center which is supported with funds which originally came from other Federal departments and agencies shall be selected and operated according to the provisions of this section."

Subsec. (e). Pub. L. 110–69, §3003(d), added subsec. (e).

Subsec. (f). Pub. L. 110–69, §3003(e), added subsec. (f).

1998—Subsec. (c)(5). Pub. L. 105–309 substituted ". After the sixth year, a Center may receive additional

financial support under this section if it has received a positive evaluation through an independent review, under procedures established by the Institute. Such an independent review shall be required at least every two years after the sixth year of operation. Funding received for a fiscal year under this section after the sixth year of operation shall not exceed one third of the capital and annual operating and maintenance costs of the Center under the program." for ", which are designed to ensure that the Center no longer needs financial support from the Institute by the seventh year. In no event shall funding for a Center be provided by the Department of Commerce after the sixth year of the operation of a Center."

1992—Subsec. (c)(6). Pub. L. 102–245, §105(e)(1), inserted before period at end "except for contracts for such specific technology extension or transfer services as may be specified by statute or by the Director".

Subsec. (d). Pub. L. 102–245, §105(e)(2), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "There are authorized to be appropriated for the purposes of carrying out this section, a combined total of not to exceed $40,000,000 for fiscal years 1989 and 1990. Such sums shall remain available until expended."

CHANGE OF NAME

Pub. L. 108–447, div. B, title II, Dec. 8, 2004, 118 Stat. 2879, which in part renamed the Manufacturing Extension Partnership Program authorized under this section as the Hollings Manufacturing Partnership Program and which named the centers established and receiving funding under subsec. (a) of this section the Hollings Manufacturing Extension Centers, was repealed by Pub. L. 111–358, title IV, §404(f)(2), Jan. 4, 2011, 124 Stat. 4002.

FINDINGS

Pub. L. 111–358, title VII, §702, Jan. 4, 2011, 124 Stat. 4041, provided that: "Congress finds the following:

"(1) Over its 20-year existence, the Hollings Manufacturing Extension Partnership has proven its value to manufacturers as demonstrated by the resulting impact on jobs and the economies of all 50 States and the Nation as a whole.

"(2) The Hollings Manufacturing Extension Partnership has helped thousands of companies reinvest in themselves through process improvement and business growth initiatives leading to more sales, new markets, and the adoption of technology to deliver new products and services.

"(3) Manufacturing is an increasingly important part of the construction sector as the industry moves to the use of more components and factory built sub-assemblies.

"(4) Construction practices must become more efficient and precise if the United States is to construct and renovate its building stock to reduce related carbon emissions to levels that are consistent with combating global warming.

"(5) Many companies involved in construction are small, without access to innovative manufacturing techniques, and could benefit from the type of training and business analysis activities that the Hollings Manufacturing Extension Partnership routinely provides to the Nation's manufacturers and their supply chains.

"(6) Broadening the competitiveness grant program under section 25(f) of the National Institute of Standards and Technology Act (15 U.S.C. 278k(f)) could help develop and diffuse knowledge necessary to capture a large portion of the estimated $100 billion or more in energy savings if buildings in the United States met the level and quality of energy efficiency now found in buildings in certain other countries.

"(7) It is therefore in the national interest to expand the capabilities of the Hollings Manufacturing Extension Partnership to be supportive of the construction and green energy industries."

AGREEMENTS AND CONTRIBUTIONS FOR COLLECTIVE RESEARCH AND DEVELOPMENT INITIATIVES

Pub. L. 108–7, div. B, title II, Feb. 20, 2003, 117 Stat. 73, provided in part: "That hereafter the Secretary of Commerce is authorized to enter into agreements with one or more nonprofit organizations for the purpose of carrying out collective research and development initiatives pertaining to 15 U.S.C. 278k paragraph (a), and is authorized to seek and accept contributions from public and private sources to support these efforts as necessary."

Similar provisions were contained in the following prior appropriation act:

Pub. L. 107–77, title II, Nov. 28, 2001, 115 Stat. 774.

ADDITIONAL RENEWAL OF FEDERAL FINANCIAL ASSISTANCE FOR CENTERS

Pub. L. 105–277, div. A, §101(b) [title II], Oct. 21, 1998, 112 Stat. 2681–50, 2681–83, which provided that Federal financial assistance awarded by the Secretary of Commerce to a Regional Center for the Transfer of Manufacturing Technology could continue beyond six years and could be renewed for additional periods, not

to exceed one year, at a rate not to exceed one-third of the Center's total annual costs or the level of funding in the sixth year, whichever was less, subject before any such renewal to a positive evaluation of the Center and to a finding by the Secretary of Commerce that continuation of Federal funding to the Center was in the best interest of the Regional Centers for the Transfer of Manufacturing Technology Program, was from the Departments of Commerce Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999, and was not repeated in subsequent appropriations Acts. Similar provisions were contained in the following prior appropriation acts:

Pub. L. 105–119, title II, Nov. 26, 1997, 111 Stat. 2476.

Pub. L. 104–208, div. A, title I, §101(a) [title II], Sept. 30, 1996, 110 Stat. 3009, 3009–36.

Pub. L. 103–317, title II, Aug. 26, 1994, 108 Stat. 1741.

PUBLICATION IN FEDERAL REGISTER

Pub. L. 100–519, title I, §102(d), Oct. 24, 1988, 102 Stat. 2590, provided that: "The requirement of section 25(c)(2) of the Act of March 3, 1901, [15 U.S.C. 278k(c)(2)], shall be considered to have been met by the publication made by the National Bureau of Standards on July 18, 1988 (53 Fed. Reg. 27060)."

[1] So in original. Probably should be capitalized.

[2] So in original. The comma probably should not appear.

[3] So in original. Two pars. (7) have been enacted.

§278*l*. Assistance to State technology programs

(a) In addition to the Centers program created under section 278k of this title, the Secretary, through the Director and, if appropriate, through other officials, shall provide technical assistance to State technology programs throughout the United States, in order to help those programs help businesses, particularly small- and medium-sized businesses, to enhance their competitiveness through the application of science and technology.

(b) Such assistance from the Institute to State technology programs shall include, but not be limited to—

(1) technical information and advice from Institute personnel;

(2) workshops and seminars for State officials interested in transferring Federal technology to businesses; and

(3) entering into cooperative agreements when authorized to do so under this chapter or any other Act.

(Mar. 3, 1901, ch. 872, §26, as added Pub. L. 100–418, title V, §5121(a), Aug. 23, 1988, 102 Stat. 1435.)

TECHNOLOGY EXTENSION SERVICES

Pub. L. 100–418, title V, §5121(b), (c), Aug. 23, 1988, 102 Stat. 1436, 1437, as amended by Pub. L. 102–245, title I, §105(d), Feb. 14, 1992, 106 Stat. 12, provided that:

"(b) TECHNOLOGY EXTENSION SERVICES.—(1) The Secretary shall conduct a nationwide study of current State technology extension services. The study shall include—

"(A) a thorough description of each State program, including its duration, its annual budget, and the number and types of businesses it has aided;

"(B) a description of any anticipated expansion of each State program and its associated costs;

"(C) an evaluation of the success of the services in transferring technology, modernizing manufacturing processes, and improving the productivity and profitability of businesses;

"(D) an assessment of the degree to which State services make use of Federal programs, including the Small Business Innovative Research program and the programs of the Federal Laboratory Consortium, the National Technical Information Service, the National Science Foundation, the Office of Productivity, Technology, and Innovation, and the Small Business Administration;

"(E) a survey of what additional Federal information and technical assistance the services could utilize; and

"(F) an assessment of how the services could be more effective agents for the transfer of Federal scientific and technical information, including the results and application of Federal and federally funded research.

The Secretary shall submit to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, at the time of submission of the organization plan for the Institute under section 5112(d)(1) [of Pub. L. 100–418, set out as a note under section 272 of this title], the results of the study and an initial implementation plan for the programs under section 26 of the Act of March 3, 1901 [15 U.S.C. 278l], and under this section [enacting sections 278k to 278m of this title]. The implementation plan shall include methods of providing technical assistance to States and criteria for awarding financial assistance under this section. The Secretary may make use of contractors and experts for any or all of the studies and findings called for in this section.

"(2)(A) The Institute shall enter into cooperative agreements with State technology extension services to—

"(i) demonstrate methods by which the States can, in cooperation with Federal agencies, increase the use of Federal technology by businesses within their States to improve industrial competitiveness; or

"(ii) help businesses in their States take advantage of the services and information offered by the Regional Centers for the Transfer of Manufacturing Technology created under section 25 of the Act of March 3, 1901 [15 U.S.C. 278k].

"(B) Any State, for itself or for a consortium of States, may submit to the Secretary an application for a cooperative agreement under this subsection, in accordance with procedures established by the Secretary. To qualify for a cooperative agreement under this subsection, a State shall provide adequate assurances that it will increase its spending on technology extension services by an amount at least equal to the amount of Federal assistance.

"(C) In evaluating each application, the Secretary shall consider—

"(i) the number and types of additional businesses that will be assisted under the cooperative agreement;

"(ii) the extent to which the State extension service will demonstrate new methods to increase the use of Federal technology;

"(iii) geographic diversity; and

"(iv) the ability of the State to maintain the extension service after the cooperative agreement has expired.

"(D) States which are party to cooperative agreements under this subsection may provide services directly or may arrange for the provision of any or all of such services by institutions of higher education or other non-profit institutions or organizations.

"(3) In carrying out section 26 of the Act of March 3, 1901 [15 U.S.C. 278l], and this subsection, the Secretary shall coordinate the activities with the Federal Laboratory Consortium; the National Technical Information Service; the National Science Foundation; the Office of Productivity, Technology, and Innovation; the Small Business Administration; and other appropriate Federal agencies.

"(4) There are authorized to be appropriated for the purposes of this subsection $2,000,000 for each of the fiscal years 1989, 1990, and 1991.

"(c) FEDERAL TECHNOLOGY TRANSFER ACT OF 1986.—Nothing in sections [sic] 25 or 26 of the Act of March 3, 1901 [15 U.S.C. 278k, 278l], or in subsection (b) of this section shall be construed as limiting the authorities contained in the Federal Technology Transfer Act of 1986 (Public Law 99–502) [see Short Title of 1986 Amendments note set out under section 3701 of this title]."

§278m. Repealed. Pub. L. 110–69, title III, §3013(d), Aug. 9, 2007, 121 Stat. 599

Section, act Mar. 3, 1901, ch. 872, §27, as added Pub. L. 100–418, title V, §5121(d), Aug. 23, 1988, 102 Stat. 1437, related to the establishment of a program for the evaluation of non-energy inventions.

§278n. Technology Innovation Program

(a) Establishment

There is established within the Institute a program linked to the purpose and functions of the Institute, to be known as the "Technology Innovation Program" for the purpose of assisting United

States businesses and institutions of higher education or other organizations, such as national laboratories and nonprofit research institutions, to support, promote, and accelerate innovation in the United States through high-risk, high-reward research in areas of critical national need.

(b) External funding

(1) In general

The Director shall award competitive, merit-reviewed grants, cooperative agreements, or contracts to—

(A) eligible companies that are small-sized businesses or medium-sized businesses; or

(B) joint ventures.

(2) Single company awards

No award given to a single company shall exceed $3,000,000 over 3 years.

(3) Joint venture awards

No award given to a joint venture shall exceed $9,000,000 over 5 years.

(4) Federal cost share

The Federal share of a project funded by an award under the program shall not be more than 50 percent of total project costs.

(5) Prohibitions

Federal funds awarded under this program may be used only for direct costs and not for indirect costs, profits, or management fees of a contractor. Any business that is not a small-sized or medium-sized business may not receive any funding under this program.

(c) Award criteria

The Director shall only provide assistance under this section to an entity—

(1) whose proposal has scientific and technical merit and may result in intellectual property vesting in a United States entity that can commercialize the technology in a timely manner;

(2) whose application establishes that the proposed technology has strong potential to address critical national needs through transforming the Nation's capacity to deal with major societal challenges that are not currently being addressed, and generate substantial benefits to the Nation that extend significantly beyond the direct return to the applicant;

(3) whose application establishes that the research has strong potential for advancing the state-of-the-art and contributing significantly to the United States science and technology knowledge base;

(4) whose proposal explains why Technology Innovation Program support is necessary, including evidence that the research will not be conducted within a reasonable time period in the absence of financial assistance under this section;

(5) whose application demonstrates that reasonable efforts have been made to secure funding from alternative funding sources and no other alternative funding sources are reasonably available to support the proposal; and

(6) whose application explains the novelty of the technology and demonstrates that other entities have not already developed, commercialized, marketed, distributed, or sold similar technologies.

(d) Competitions

The Director shall solicit proposals at least annually to address areas of critical national need for high-risk, high-reward projects.

(e) Intellectual property rights ownership

(1) In general

Title to any intellectual property developed by a joint venture from assistance provided under this section may vest in any participant in the joint venture, as agreed by the members of the joint venture, notwithstanding section 202(a) and (b) of title 35. The United States may reserve a

nonexclusive, nontransferable, irrevocable paid-up license, to have practice for or on behalf of the United States in connection with any such intellectual property, but shall not in the exercise of such license publicly disclose proprietary information related to the license. Title to any such intellectual property shall not be transferred or passed, except to a participant in the joint venture, until the expiration of the first patent obtained in connection with such intellectual property.

(2) Licensing

Nothing in this subsection shall be construed to prohibit the licensing to any company of intellectual property rights arising from assistance provided under this section.

(3) Definition

For purposes of this subsection, the term "intellectual property" means an invention patentable under title 35, or any patent on such an invention, or any work for which copyright protection is available under title 17.

(f) Program operation

Not later than 9 months after August 9, 2007, the Director shall promulgate regulations—

(1) establishing criteria for the selection of recipients of assistance under this section;

(2) establishing procedures regarding financial reporting and auditing to ensure that awards are used for the purposes specified in this section, are in accordance with sound accounting practices, and are not funding existing or planned research programs that would be conducted within a reasonable time period in the absence of financial assistance under this section; and

(3) providing for appropriate dissemination of Technology Innovation Program research results.

(g) Continuation of ATP grants

The Director shall, through the Technology Innovation Program, continue to provide support originally awarded under the Advanced Technology Program, in accordance with the terms of the original award and consistent with the goals of the Technology Innovation Program.

(h) Coordination with other State and Federal technology programs

In carrying out this section, the Director shall, as appropriate, coordinate with other senior State and Federal officials to ensure cooperation and coordination in State and Federal technology programs and to avoid unnecessary duplication of efforts.

(i) Acceptance of funds from other Federal agencies

In addition to amounts appropriated to carry out this section, the Secretary and the Director may accept funds from other Federal agencies to support awards under the Technology Innovation Program. Any award under this section which is supported with funds from other Federal agencies shall be selected and carried out according to the provisions of this section. Funds accepted from other Federal agencies shall be included as part of the Federal cost share of any project funded under this section.

(j) TIP Advisory Board

(1) Establishment

There is established within the Institute a TIP Advisory Board.

(2) Membership

(A) In general

The TIP Advisory Board shall consist of 10 members appointed by the Director, at least 7 of whom shall be from United States industry, chosen to reflect the wide diversity of technical disciplines and industrial sectors represented in Technology Innovation Program projects. No member shall be an employee of the Federal Government.

(B) Term

Except as provided in subparagraph (C) or (D), the term of office of each member of the TIP Advisory Board shall be 3 years.

(C) Classes

The original members of the TIP Advisory Board shall be appointed to 3 classes. One class of 3 members shall have an initial term of 1 year, one class of 3 members shall have an initial term of 2 years, and one class of 4 members shall have an initial term of 3 years.

(D) Vacancies

Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

(E) Serving consecutive terms

Any person who has completed 2 consecutive full terms of service on the TIP Advisory Board shall thereafter be ineligible for appointment during the 1-year period following the expiration of the second such term.

(3) Purpose

The TIP Advisory Board shall meet not less than 2 times annually, and provide the Director—

(A) advice on programs, plans, and policies of the Technology Innovation Program;

(B) reviews of the Technology Innovation Program's efforts to accelerate the research and development of challenging, high-risk, high-reward technologies in areas of critical national need;

(C) reports on the general health of the program and its effectiveness in achieving its legislatively mandated mission; and

(D) guidance on investment areas that are appropriate for Technology Innovation Program funding; [1]

(4) Advisory capacity

In discharging its duties under this subsection, the TIP Advisory Board shall function solely in an advisory capacity, in accordance with the Federal Advisory Committee Act.

(k) Definitions

In this section—

(1) the term "eligible company" means a small-sized or medium-sized business that is incorporated in the United States and does a majority of its business in the United States, and that either—

(A) is majority owned by citizens of the United States; or

(B) is owned by a parent company incorporated in another country and the Director finds that—

(i) the company's participation in the Technology Innovation Program would be in the economic interest of the United States, as evidenced by—

(I) investments in the United States in research and manufacturing;

(II) significant contributions to employment in the United States; and

(III) agreement with respect to any technology arising from assistance provided under this section to promote the manufacture within the United States of products resulting from that technology; and

(ii) the company is incorporated in a country which—

(I) affords to United States-owned companies opportunities, comparable to those afforded to any other company, to participate in any joint venture similar to those receiving funding under this section;

(II) affords to United States-owned companies local investment opportunities comparable to those afforded any other company; and

(III) affords adequate and effective protection for intellectual property rights of United States-owned companies;

(2) the term "high-risk, high-reward research" means research that—

(A) has the potential for yielding transformational results with far-ranging or wide-ranging implications;

(B) addresses critical national needs within the National Institute of Standards and Technology's areas of technical competence; and

(C) is too novel or spans too diverse a range of disciplines to fare well in the traditional peer-review process;

(3) the term "institution of higher education" has the meaning given that term in section 1001 of title 20;

(4) the term "joint venture" means a joint venture that—

(A) includes either—

(i) at least 2 separately owned for-profit companies that are both substantially involved in the project and both of which are contributing to the cost-sharing required under this section, with the lead entity of the joint venture being one of those companies that is a small-sized or medium-sized business; or

(ii) at least 1 small-sized or medium-sized business and 1 institution of higher education or other organization, such as a national laboratory or nonprofit research institute, that are both substantially involved in the project and both of which are contributing to the cost-sharing required under this section, with the lead entity of the joint venture being either that small-sized or medium-sized business or that institution of higher education; and

(B) may include additional for-profit companies, institutions of higher education, and other organizations, such as national laboratories and nonprofit research institutes, that may or may not contribute non-Federal funds to the project; and

(5) the term "TIP Advisory Board" means the advisory board established under subsection (j).

(Mar. 3, 1901, ch. 872, §28, as added Pub. L. 110–69, title III, §3012(b), Aug. 9, 2007, 121 Stat. 593; amended Pub. L. 113–188, title II, §201(d), (e), Nov. 26, 2014, 128 Stat. 2018.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (j)(4), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 278n, act Mar. 3, 1901, ch. 872, §28, as added Pub. L. 100–418, title V, §5131(a), Aug. 23, 1988, 102 Stat. 1439; amended Pub. L. 102–245, title II, §201(c), Feb. 14, 1992, 106 Stat. 16, related to the Advanced Technology Program, prior to repeal by Pub. L. 110–69, title III, §3012(a), Aug. 9, 2007, 121 Stat. 593.

AMENDMENTS

2014—Subsecs. (g) to (j). Pub. L. 113–188, §201(d)(1), (2), redesignated subsecs. (h) to (k) as (g) to (j), respectively, and struck out former subsec. (g) which required annual reports describing the Technology Innovation Program's activities.

Subsec. (j)(5). Pub. L. 113–188, §201(e), struck out par. (5) which related to annual Technology Innovation Program status reports transmitted by the TIP Advisory Board.

Subsec. (k). Pub. L. 113–188, §201(d)(2), redesignated subsec. (l) as (k). Former subsec. (k) redesignated (j).

Subsec. (k)(5). Pub. L. 113–188, §201(d)(3), substituted "under subsection (j)" for "under subsection (k)".

Subsec. (l). Pub. L. 113–188, §201(d)(2), redesignated subsec. (l) as (k).

TECHNOLOGY INNOVATION PROGRAM

Pub. L. 111–240, title IV, §4226(b), Sept. 27, 2010, 124 Stat. 2598, provided that: "In awarding grants, cooperative agreements, or contracts under section 28 of the National Institute of Standards and Technology Act (15 U.S.C. 278n), in addition to the award criteria set forth in subsection (c) of that section, the Director of the National Institute of Standards and Technology may take into consideration whether an application has significant potential for enhancing the competitiveness of small- and medium-sized businesses in the United

States in the global marketplace. The Director shall consult with the Technology Innovation Program Advisory Board and the Secretary of Commerce in implementing this subsection."

TRANSITION

Pub. L. 110–69, title III, §3012(c), Aug. 9, 2007, 121 Stat. 598, provided that: "Notwithstanding the repeal made by subsection (a) [repealing former section 278n of this title], the Director shall carry out section 28 of the National Institute of Standards and Technology Act (15 U.S.C. 278n) as such section was in effect on the day before the date of the enactment of this Act [Aug. 9, 2007], with respect to applications for grants under such section submitted before such date, until the earlier of—

"(1) the date that the Director promulgates the regulations required under section 28(f) of the National Institute of Standards and Technology Act [15 U.S.C. 278n(f)], as added by subsection (b) [Final regulations implementing the Technology Innovation Program issued June 25, 2008. See 73 F.R. 35913.]; or

"(2) December 31, 2007."

NATIONAL ACADEMIES OF SCIENCES AND ENGINEERING STUDY OF GOVERNMENT-INDUSTRY COOPERATION IN CIVILIAN TECHNOLOGY

Pub. L. 100–418, title V, §5131(c), Aug. 23, 1988, 102 Stat. 1443, directed the Secretary of Commerce, within 90 days after Aug. 23, 1988, to enter into contracts with the National Academies of Sciences and Engineering to review the various types of cooperative arrangements between the private sector and the Federal Government and required a report based on the review to be submitted to the Secretary, the President, and Congress within 18 months after the contracts were signed.

[1] *So in original. The semicolon probably should be a period.*

§278n–1. Emergency communication and tracking technologies research initiative

(a) Establishment

The Director shall establish a research initiative to support the development of emergency communication and tracking technologies for use in locating trapped individuals in confined spaces, such as underground mines, and other shielded environments, such as high-rise buildings or collapsed structures, where conventional radio communication is limited.

(b) Activities

In order to carry out this section, the Director shall work with the private sector and appropriate Federal agencies to—

(1) perform a needs assessment to identify and evaluate the measurement, technical standards, and conformity assessment needs required to improve the operation and reliability of such emergency communication and tracking technologies;

(2) support the development of technical standards and conformance architecture to improve the operation and reliability of such emergency communication and tracking technologies; and

(3) incorporate and build upon existing reports and studies on improving emergency communications.

(c) Report

Not later than 18 months after January 4, 2011, the Director shall submit to Congress and make publicly available a report describing the assessment performed under subsection (b)(1) and making recommendations about research priorities to address gaps in the measurement, technical standards, and conformity assessment needs identified by the assessment.

(Pub. L. 111–358, title IV, §405, Jan. 4, 2011, 124 Stat. 4003.)

CODIFICATION

Section was enacted as part of the America COMPETES Reauthorization Act of 2010, also known as the America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science

Reauthorization Act of 2010, and as part of the National Institute of Standards and Technology Authorization Act of 2010, and not as part of the National Institute of Standards and Technology Act which comprises this chapter.

DEFINITIONS

Pub. L. 111–358, title IV, §409, Jan. 4, 2011, 124 Stat. 4004, provided that: "In this title [enacting this section and sections 273a and 278n–2 of this title, amending sections 274, 278g–1, 278g–2, 278g–2a, and 278k of this title and sections 5314 and 5315 of Title 5, Government Organization and Employees, and repealing section 1533 of this title and provisions set out as a note under section 278k of this title]:

"(1) DIRECTOR.—The term 'Director' means the Director of the National Institute of Standards and Technology.

"(2) FEDERAL AGENCY.—The term 'Federal agency' has the meaning given such term in section 4 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3703).

"(3) HIGH PERFORMANCE GREEN BUILDING.—The term 'high performance green building' has the meaning given that term by section 401(13) of the Energy Independence and Security Act of 2009 [probably should be "2007"] (42 U.S.C. 17061(13))."

§278n–2. Green manufacturing and construction

The Director shall carry out a green manufacturing and construction initiative—

(1) to develop accurate sustainability metrics and practices for use in manufacturing;

(2) to advance the development of standards, including high performance green building standards, and the creation of an information infrastructure to communicate sustainability information about suppliers; and

(3) to move buildings toward becoming high performance green buildings, including improving energy performance, service life, and indoor air quality of new and retrofitted buildings through validated measurement data.

(Pub. L. 111–358, title IV, §408, Jan. 4, 2011, 124 Stat. 4004.)

CODIFICATION

Section was enacted as part of the America COMPETES Reauthorization Act of 2010, also known as the America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science Reauthorization Act of 2010, and as part of the National Institute of Standards and Technology Authorization Act of 2010, and not as part of the National Institute of Standards and Technology Act which comprises this chapter.

DEFINITIONS

For definitions of "Director" and "high performance green building" as used in this section, see section 409 of Pub. L. 111–358, set out as a note under section 278n–1 of this title.

§278*o*. User fees

The Institute shall not implement a policy of charging fees with respect to the use of Institute research facilities by research associates in the absence of express statutory authority to charge such fees.

(Mar. 3, 1901, ch. 872, §30, as added Pub. L. 100–418, title V, §5161, Aug. 23, 1988, 102 Stat. 1450.)

§278p. Notice to Congress

(a) Notice of reprogramming

If any funds authorized for carrying out this chapter are subject to a reprogramming action that requires notice to be provided to the Appropriations Committees of the House of Representatives and the Senate, notice of such action shall concurrently be provided to the Committee on Science of the

House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(b) Notice of reorganization

(1) Requirement

The Secretary shall provide notice to the Committees on Science and Appropriations of the House of Representatives, and the Committees on Commerce, Science, and Transportation and Appropriations of the Senate, not later than 15 days before any major reorganization of any program, project, or activity of the Institute.

(2) "Major reorganization" defined

For purposes of this subsection, the term "major reorganization" means any reorganization of the Institute that involves the reassignment of more than 25 percent of the employees of the Institute.

(Mar. 3, 1901, ch. 872, §31, as added Pub. L. 105–309, §4(b), Oct. 30, 1998, 112 Stat. 2935.)

CHANGE OF NAME

Committee on Science of House of Representatives changed to Committee on Science and Technology of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

§278q. Appropriations; availability

Appropriations to carry out the provisions of this chapter may remain available for obligation and expenditure for such period or periods as may be specified in the Acts making such appropriations.

(Mar. 3, 1901, ch. 872, §32, formerly §18, as added Pub. L. 92–317, §3(a), June 22, 1972, 86 Stat. 235; amended Pub. L. 95–322, §2(b), July 21, 1978, 92 Stat. 395; Pub. L. 96–461, §10, Oct. 15, 1980, 94 Stat. 2052; renumbered §19, Pub. L. 99–574, §6(a), Oct. 28, 1986, 100 Stat. 3237; renumbered §20, Pub. L. 99–574, §8(a), Oct. 28, 1986, 100 Stat. 3238; renumbered §22, Pub. L. 100–235, §3(2), Jan. 8, 1988, 101 Stat. 1724; renumbered §32, Pub. L. 107–305, §8(a)(1), Nov. 27, 2002, 116 Stat. 2375.)

CODIFICATION

Section was formerly classified to section 278h of this title prior to renumbering by Pub. L. 107–305.

Another section 32 of act Mar. 3, 1901, ch. 872, was renumbered section 34 and is set out as a Short Title note under section 271 of this title.

AMENDMENTS

1980—Pub. L. 96–461 substituted "Appropriations" for "(a) Appropriations" and struck out subsec. (b) which authorized appropriations to carry out provisions of this chapter, including the Working Capital Fund referred to in section 278b(a) of this title, but excluding section 278f of this title, of such sums as may be necessary for each of the fiscal years 1979 and 1980.

1978—Pub. L. 95–322 designated existing provisions as subsec. (a) and added subsec. (b).

§278r. Collaborative manufacturing research pilot grants

(a) Authority

(1) Establishment

The Director shall establish a pilot program of awards to partnerships among participants described in paragraph (2) for the purposes described in paragraph (3). Awards shall be made on a peer-reviewed, competitive basis.

(2) Participants

Such partnerships shall include at least—

(A) 1 manufacturing industry partner; and

(B) 1 nonindustry partner.

(3) Purpose

The purpose of the program under this section is to foster cost-shared collaborations among firms, educational institutions, research institutions, State agencies, and nonprofit organizations to encourage the development of innovative, multidisciplinary manufacturing technologies. Partnerships receiving awards under this section shall conduct applied research to develop new manufacturing processes, techniques, or materials that would contribute to improved performance, productivity, and competitiveness of United States manufacturing, and build lasting alliances among collaborators.

(b) Program contribution

Awards under this section shall provide for not more than one-third of the costs of a partnership. Not more than an additional one-third of such costs may be obtained directly or indirectly from other Federal sources.

(c) Applications

Applications for awards under this section shall be submitted in such manner, at such time, and containing such information as the Director shall require. Such applications shall describe at a minimum—

(1) how each partner will participate in developing and carrying out the research agenda of the partnership;

(2) the research that the grant would fund; and

(3) how the research to be funded with the award would contribute to improved performance, productivity, and competitiveness of the United States manufacturing industry.

(d) Selection criteria

In selecting applications for awards under this section, the Director shall consider at a minimum—

(1) the degree to which projects will have a broad impact on manufacturing;

(2) the novelty and scientific and technical merit of the proposed projects; and

(3) the demonstrated capabilities of the applicants to successfully carry out the proposed research.

(e) Distribution

In selecting applications under this section the Director shall ensure, to the extent practicable, a distribution of overall awards among a variety of manufacturing industry sectors and a range of firm sizes.

(f) Duration

In carrying out this section, the Director shall run a single pilot competition to solicit and make awards. Each award shall be for a 3-year period.

(Mar. 3, 1901, ch. 872, §33, as added Pub. L. 110–69, title III, §3007(2), Aug. 9, 2007, 121 Stat. 591.)

§279. Absence of Director

In the case of the absence of the Director of the National Institute of Standards and Technology the Secretary of Commerce may designate some officer of said Institute to perform the duties of the director during his absence.

(Mar. 4, 1911, ch. 237, §1, 36 Stat. 1231; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736; Pub. L. 100–418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433.)

CODIFICATION

Section was not enacted as part of the National Institute of Standards and Technology Act which comprises this chapter.

AMENDMENTS

1988—Pub. L. 100–418 substituted "National Institute of Standards and Technology" for "Bureau of Standards" and "Institute" for "bureau".

CHANGE OF NAME

Act Mar. 4, 1913, substituted "Secretary of Commerce" for "Secretary of Commerce and Labor".

§§280, 281. Repealed. Pub. L. 100–418, title V, §5113, Aug. 23, 1988, 102 Stat. 1432

Section 280, acts July 16, 1914, ch. 141, §1, 38 Stat. 502; 1978 Reorg. Plan No. 2, §102, 43 F.R. 36037, 92 Stat. 3783, related to promotion of apprentices in National Bureau of Standards.

Section 281, acts Mar. 4, 1913, ch. 150, §1, 37 Stat. 945; 1967 Reorg. Plan No. 3, §401, eff. Aug. 11, 1967, 32 F.R. 11669, 81 Stat. 948; Dec. 24, 1973, Pub. L. 93–198, title IV, §421, title VII, §711, 87 Stat. 789, 818, related to testing of building and other structural materials for District of Columbia.

§281a. Structural failures

The National Institute of Standards and Technology, on its own initiative but only after consultation with local authorities, may initiate and conduct investigations to determine the causes of structural failures in structures which are used or occupied by the general public. No part of any report resulting from such investigation, or from an investigation under the National Construction Safety Team Act [15 U.S.C. 7301 et seq.], shall be admitted as evidence or used in any suit or action for damages arising out of any matter mentioned in such report.

(Pub. L. 99–73, §7, July 29, 1985, 99 Stat. 173; Pub. L. 100–418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 107–231, §13, Oct. 1, 2002, 116 Stat. 1476.)

REFERENCES IN TEXT

The National Construction Safety Team Act, referred to in text, is Pub. L. 107–231, Oct. 1, 2002, 116 Stat. 1471, as amended, which is classified generally to chapter 99 [§7301 et seq.] of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7301 of this title and Tables.

CODIFICATION

Section was not enacted as part of the National Institute of Standards and Technology Act which comprises this chapter.

AMENDMENTS

2002—Pub. L. 107–231 inserted ", or from an investigation under the National Construction Safety Team Act," after "from such investigation".

1988—Pub. L. 100–418 substituted "National Institute of Standards and Technology" for "National Bureau of Standards".

§282. Repealed. Pub. L. 100–418, title V, §5113, Aug. 23, 1988, 102 Stat. 1432

Section, act May 14, 1930, ch. 275, §1, 46 Stat. 327, related to establishment and purpose of a national hydraulic laboratory and studies of Federal and State projects related thereto.

§282a. Assessment of emerging technologies requiring research in metrology

The Board of Assessment of the National Institute of Standards and Technology shall include, as

part of its annual review, an assessment of emerging technologies which are expected to require research in metrology to keep the Institute abreast of its mission, including process and quality control, engineering databases, advanced materials, electronics and fiber optics, bioprocess engineering, and advanced computing concepts. Such review shall include estimates of the cost of the required effort, required staffing levels, appropriate interaction with industry, including technology transfer, and the period over which the research will be required.

(Pub. L. 100–418, title V, §5163(a), Aug. 23, 1988, 102 Stat. 1450.)

CODIFICATION

Section is comprised of section 5163(a) of Pub. L. 100–418. Section 5163(b)–(d) of Pub. L. 100–418 enacted provisions set out as a note under section 272 of this title, amended section 3710 of this title, and enacted section 1533 of this title, respectively.

Section was not enacted as part of the National Institute of Standards and Technology Act which comprises this chapter.

PRIOR PROVISIONS

A prior section 282a, Pub. L. 99–574, §7, Oct. 28, 1986, 100 Stat. 3237, consisted of provisions substantially identical to this section.

§283. Repealed. Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 655, 656

Section, acts July 20, 1949, ch. 354, title III, §301, 63 Stat. 468; Sept. 6, 1950, ch. 896, ch. III, title III, §301, 64 Stat. 628, related to appointment of personnel observing radio propagation phenomena in Arctic Region.

§284. Omitted

CODIFICATION

Section, acts Oct. 22, 1951, ch. 533, title III, §301, 65 Stat. 593; Sept. 6, 1950, ch. 896, ch. III, title III, §301, 64 Stat. 628; July 20, 1949, ch. 354, title III, §301, 63 Stat. 468, which related to transfer of materials, etc., to Bureau of ionosphere observation by Departments of the Army, Navy, and Air Force, was from the Department of Commerce Appropriation Act, 1952, and has not been repeated in subsequent appropriation acts.

§§285, 286. Repealed. Pub. L. 85–890, §3, Sept. 2, 1958, 72 Stat. 1712

Section 285, act July 21, 1950, ch. 485, §1, 64 Stat. 370, related to functions and activities of National Bureau of Standards for which funds should be available. See section 278e of this title.

Section 286, act July 21, 1950, ch. 485, §2, 64 Stat. 371, related to construction and improvement of buildings and facilities. See section 278d of this title.

CHAPTER 7A—STANDARD REFERENCE DATA PROGRAM

Sec.

290. Congressional declaration of policy.

290a. Definitions.

290b. Collection, compilation, critical evaluation, publication and dissemination of standard reference data.

290c. Standards, criteria, and procedures for preparation and publication of standard reference data; publication in Federal Register.

290d. Sale of standard reference data; cost recovery; proceeds subject to National Institute of Standards and Technology.

290e. United States copyright and renewal rights.
290f. Authorization of appropriations.

§290. Congressional declaration of policy

The Congress hereby finds and declares that reliable standardized scientific and technical reference data are of vital importance to the progress of the Nation's science and technology. It is therefore the policy of the Congress to make critically evaluated reference data readily available to scientists, engineers, and the general public. It is the purpose of this chapter to strengthen and enhance this policy.

(Pub. L. 90–396, §1, July 11, 1968, 82 Stat. 339.)

SHORT TITLE

Pub. L. 90–396, §8, July 11, 1968, 82 Stat. 340, provided that: "This Act [enacting this chapter] may be cited as the 'Standard Reference Data Act'."

§290a. Definitions

For the purposes of this chapter—

(a) The term "standard reference data" means quantitative information, related to a measurable physical or chemical property of a substance or system of substances of known composition and structure, which is critically evaluated as to its reliability under section 290b of this title.

(b) The term "Secretary" means the Secretary of Commerce.

(Pub. L. 90–396, §2, July 11, 1968, 82 Stat. 340.)

§290b. Collection, compilation, critical evaluation, publication and dissemination of standard reference data

The Secretary is authorized and directed to provide or arrange for the collection, compilation, critical evaluation, publication, and dissemination of standard reference data. In carrying out this program, the Secretary shall, to the maximum extent practicable, utilize the reference data services and facilities of other agencies and instrumentalities of the Federal Government and of State and local governments, persons, firms, institutions, and associations, with their consent and in such a manner as to avoid duplication of those services and facilities. All agencies and instrumentalities of the Federal Government are encouraged to exercise their duties and functions in such manner as will assist in carrying out the purpose of this chapter. This section shall be deemed complementary to existing authority, and nothing herein is intended to repeal, supersede, or diminish existing authority or responsibility of any agency or instrumentality of the Federal Government.

(Pub. L. 90–396, §3, July 11, 1968, 82 Stat. 340.)

§290c. Standards, criteria, and procedures for preparation and publication of standard reference data; publication in Federal Register

To provide for more effective integration and coordination of standard reference data activities, the Secretary, in consultation with other interested Federal agencies, shall prescribe and publish in the Federal Register such standards, criteria, and procedures for the preparation and publication of standard reference data as may be necessary to carry out the provisions of this chapter.

(Pub. L. 90–396, §4, July 11, 1968, 82 Stat. 340.)

§290d. Sale of standard reference data; cost recovery; proceeds subject to National Institute of Standards and Technology

Standard reference data conforming to standards established by the Secretary may be made available and sold by the Secretary or by a person or agency designated by him. To the extent practicable and appropriate, the prices established for such data may reflect the cost of collection, compilation, evaluation, publication, and dissemination of the data, including administrative expenses; and the amounts received shall be subject to the Act of March 3, 1901, as amended [15 U.S.C. 271 et seq.].

(Pub. L. 90–396, §5, July 11, 1968, 82 Stat. 340.)

REFERENCES IN TEXT

Act of March 3, 1901, as amended, referred to in text, means act Mar. 3, 1901, ch. 872, 31 Stat. 1449, as amended, which is classified generally to chapter 7 (§271 et seq.) of this title. For complete classification of this Act to the Code, see Tables.

§290e. United States copyright and renewal rights

(a) Notwithstanding the limitations under section 105 of title 17, the Secretary may secure copyright and renewal thereof on behalf of the United States as author or proprietor in all or any part of any standard reference data which he prepares or makes available under this chapter, and may authorize the reproduction and publication thereof by others.

(b) The publication or republication by the Government under this chapter, either separately or in a public document, of any material in which copyright is subsisting shall not be taken to cause any abridgment or annulment of the copyright or to authorize any use or appropriation of such material without the consent of the copyright proprietor.

(Pub. L. 90–396, §6, July 11, 1968, 82 Stat. 340; Pub. L. 94–553, §105(f), Oct. 19, 1976, 90 Stat. 2599; Pub. L. 107–273, div. C, title III, §13211(b), Nov. 2, 2002, 116 Stat. 1910.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–273, §13211(b)(2), substituted "Notwithstanding the limitations under section 105 of title 17," for "Notwithstanding the limitations contained in section 105 of title 17,".

Pub. L. 107–273, §13211(b)(1), made technical amendment to directory language of Pub. L. 94–553. See 1976 Amendment note below.

1976—Subsec. (a). Pub. L. 94–553, as amended by Pub. L. 107–273, §13211(b)(1), substituted "section 105 of title 17" for "section 8 of title 17".

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–553 effective Jan. 1, 1978, see section 102 of Pub. L. 94–553, set out as an Effective Date note preceding section 101 of Title 17, Copyrights.

§290f. Authorization of appropriations

There are authorized to be appropriated to carry out this chapter, $1.86 million for the fiscal year ending June 30, 1969. Notwithstanding the provisions of any other law, no appropriations for any fiscal year may be made for the purpose of this chapter after fiscal year 1969 unless previously authorized by legislation hereafter enacted by the Congress.

(Pub. L. 90–396, §7, July 11, 1968, 82 Stat. 340.)

CHAPTER 8—FALSELY STAMPED GOLD OR SILVER OR GOODS MANUFACTURED THEREFROM

Sec.

291. Stamping with words "United States assay", etc., unlawful.
292. Forfeiture.
293. Penalty for infraction.
294. Importation or transportation of falsely marked gold or silver ware prohibited.
295. Standard of fineness of gold articles; deviation.
296. Standard of fineness of silver articles; deviation.
297. Stamping plated articles.
298. Violations of law.
299. Definitions.
300. Application of State laws.

§291. Stamping with words "United States assay", etc., unlawful

It shall be unlawful for any person, partnership, association, or corporation engaged in commerce among the several States, Territories, District of Columbia, and possessions of the United States, or with any foreign country, to stamp any gold, silver, or goods manufactured therefrom, and which are intended and used in such commerce, with the words "United States assay", or with any words, phrases, or devices calculated to convey the impression that the United States Government has certified to the fineness or quality of such gold or silver, or of the gold or silver contained in any of the goods manufactured therefrom. Each and every such stamp shall constitute a separate offense.

(Feb. 21, 1905, ch. 720, §1, 33 Stat. 732.)

§292. Forfeiture

Any gold, silver, or goods manufactured therefrom after February 21, 1905, bearing any of the stamps, words, phrases, or devices prohibited to be used under section 291 of this title, and being in the course of transportation from one State to another, or to or from a Territory, the District of Columbia, or possessions of the United States, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

(Feb. 21, 1905, ch. 720, §3, 33 Stat. 732.)

§293. Penalty for infraction

Every person, partnership, association, or corporation violating the provisions of sections 291 to 293 of this title, and every officer, director, or managing agent of such partnership, association, or corporation having knowledge of such violation and directly participating in such violation or consenting thereto, shall be deemed guilty of a misdemeanor, and, upon conviction, be punished with a fine of not more than $5,000 or imprisonment for not more than one year, or both, at the discretion of the court.

(Feb. 21, 1905, ch. 720, §2, 33 Stat. 732.)

§294. Importation or transportation of falsely marked gold or silver ware prohibited

It shall be unlawful for any person, firm, corporation, or association, being a manufacturer of or wholesale or retail dealer in gold or silver jewelry or gold ware, silver goods or silverware, or for any officer, manager, director, or agent of such firm, corporation, or association to import or export or cause to be imported into or exported from the United States for the purpose of selling or disposing of the same, or to deposit or cause to be deposited in the United States mails for transmission

thereby, or to deliver or cause to be delivered to any common carrier for transportation from one State, Territory, or possession of the United States, or the District of Columbia, to any other State, Territory, or possession of the United States, or to said District, in interstate commerce, or to transport or cause to be transported from one State, Territory, or possession of the United States, or from the District of Columbia, to any other State, Territory, or possession of the United States, or to said District, in interstate commerce, any article of merchandise manufactured after June 13, 1907, and made in whole or in part of gold or silver, or any alloy of either of said metals, and having stamped, branded, engraved, or printed thereon, or upon any tag, card, or label attached thereto, or upon any box, package, cover, or wrapper in which said article is incased or inclosed, any mark or word indicating or designed or intended to indicate that the gold or silver or alloy of either of said metals in such article is of a greater degree of fineness than the actual fineness or quality of such gold, silver, or alloy, according to the standards and subject to the qualifications set forth in sections 295 and 296 of this title.

(June 13, 1906, ch. 3289, §1, 34 Stat. 260.)

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94–450, §1, Oct. 1, 1976, 90 Stat. 1501, provided: "That this Act [amending section 295 of this title and enacting provisions set out as a note under section 295 of this title] may be cited as the 'Gold Labeling Act of 1976'."

SHORT TITLE

Act June 13, 1906, ch. 3289, which enacted this section and sections 295 to 300 of this title, is popularly known as the "Jewelers' Liability Act (Gold and Silver Articles)" and also as the "National Gold and Silver Stamping Act of 1906".

§295. Standard of fineness of gold articles; deviation

In the case of articles of merchandise made in whole or in part of gold or of any of its alloys so imported into or exported from the United States, or so deposited in the United States mails for transmission, or so delivered for transportation to any common carrier, or so transported or caused to be transported as specified in section 294 of this title, the actual fineness of such gold or alloy shall not be less by more than three one-thousandth parts than the fineness indicated by the mark stamped, branded, engraved, or printed upon any part of such article, or upon any tag, card, or label attached thereto, or upon any box, package, cover, or wrapper in which such article is incased or inclosed: *Provided*, That in any test for the ascertainment of the fineness of any article mentioned in this section, according to the foregoing standards, the part of the article taken for the test, analysis, or assay shall be such part or portion as does not contain or have attached thereto any solder or alloy of inferior fineness used for brazing or uniting the parts of said article: *Provided further*, That, in addition to the foregoing tests and standards, the actual fineness of the entire quantity of gold or of its alloys contained in an article mentioned in this section, including all solder and alloy of inferior fineness used for brazing or uniting the parts of such article (all such gold, alloys, and solder being assayed as one piece), shall not be less by more than three one-thousandth parts, in the case of a watchcase or flatware, or than seven one-thousandth parts, in the case of any other such article, than the fineness indicated by the mark stamped, branded, engraved, or imprinted upon such article, or upon any tag, card, or label attached thereto, or upon any box, package, cover, or wrapper in which such article is incased or inclosed, it being intended that the standards of fineness and the tests or methods for ascertaining the same provided in this section for articles mentioned therein shall be concurrent and not alternative.

(June 13, 1906, ch. 3289, §2, 34 Stat. 260; Pub. L. 94–450, §2, Oct. 1, 1976, 90 Stat. 1501.)

AMENDMENTS

1976—Pub. L. 94–450 substituted "three one-thousandth parts" for "one-half of one carat", "in an article mentioned in this section" for "in such article", "than three one-thousandth parts, in the case of a watchcase or flatware, or than seven one-thousandth parts, in the case of any other such article," for "than one carat", struck

out "in the case of any article mentioned in this section" which followed "*Provided, further*, That", and exception which permitted the actual fineness of gold or its alloys used for watchcases and flatware to be not less by more than three one-thousandth parts the fineness indicated by stamp or label.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–450, §3, Oct. 1, 1976, 90 Stat. 1501, provided that: "The amendments made by section 2 of this Act [amending this section] shall take effect five years after the date of enactment of this Act [Oct. 1, 1976] and shall not apply with respect to any article of merchandise which is sold by any manufacturer or importer before the effective date of such amendments."

§296. Standard of fineness of silver articles; deviation

In the case of articles of merchandise made in whole or in part of silver or any of its alloys so imported into or exported from the United States, or so deposited in the United States mails for transmission, or so delivered for transportation to any common carrier, or so transported or caused to be transported as specified in section 294 of this title, the actual fineness of the silver or alloy thereof of which such article is wholly or partly composed shall not be less by more than four one-thousandth parts than the actual fineness indicated by any mark (other than the word "sterling" or the word "coin") stamped, branded, engraved, or printed upon any part of such article, or upon any tag, card, or label attached thereto, or upon any box, package, cover, or wrapper in which such article is incased or inclosed; and that no such article or tag, card, or label attached thereto, or box, package, cover, or wrapper in which such article is incased or inclosed shall be marked, stamped, branded, engraved, or printed with the word "sterling" or "sterling silver" or any colorable imitation thereof, unless such article or parts thereof purporting to be silver contains nine hundred and twenty-five one-thousandth parts pure silver; and that no such article, tag, card, label, box, package, cover, or wrapper shall be marked, stamped, branded, engraved, or printed with the words "coin" or "coin silver" or colorable imitation thereof unless such article or parts thereof purporting to be silver contains nine hundred one-thousandth parts pure silver: *Provided*, That in the case of all such articles whose fineness is indicated by the word "sterling" or the word "coin" there shall be allowed a divergence in the fineness of four one-thousandth parts from the foregoing standards: *Provided*, That in any test for the ascertainment of the fineness of any such article mentioned in this section according to the foregoing standards the part of the article taken for the test, analysis, or assay shall be such part or portion as does not contain or have attached thereto any solder or alloy of inferior fineness used for brazing or uniting the parts of such article: *Provided further*, That in the case of any article mentioned in this section, in addition to the foregoing tests and standards, the actual fineness of the entire quantity of silver or of its alloys contained in such article, including all solder and alloy of inferior fineness used for brazing or uniting the parts of such article (all such silver, alloys, and solder being assayed as one piece), shall not be less by more than ten one-thousandth parts than the fineness indicated by the mark stamped, branded, engraved, or imprinted upon such article, or upon any tag, card, or label attached thereto, or upon any box, package, cover, or wrapper in which such article is incased or inclosed, it being intended that the standards of fineness and the tests or methods for ascertaining the same provided in this section for articles mentioned therein shall be concurrent and not alternative.

(June 13, 1906, ch. 3289, §3, 34 Stat. 261.)

§297. Stamping plated articles

(a) Words "sterling" or "coin" forbidden

In the case of articles of merchandise made in whole or in part of an inferior metal, having deposited or plated thereon or brazed or otherwise affixed thereto a plating, covering, or sheet composed of gold or silver, or of an alloy of either of said metals, and known in the market as rolled gold plate, gold plate, gold filled, silver plate, or gold or silver electroplate, or by any similar

designation, so imported into or exported from the United States, or so deposited in the United States mails for transmission, or so delivered to any common carrier, or so transported or caused to be transported as specified in section 294 of this title, no such article, nor any tag, card, or label attached thereto, nor any box, package, cover, or wrapper in which such article is encased or inclosed, shall be stamped, branded, engraved, or imprinted with any word or mark usually employed to indicate the fineness of gold, unless such word or mark be accompanied by other words, plainly indicating that such article or part thereof is made of rolled gold plate, gold plate, or gold electroplate, or is gold filled, as the case may be, and no such article, nor any tag, card, or label attached thereto, nor any box, package, cover, or wrapper in which such article is incased or inclosed, shall be stamped, branded, engraved, or imprinted with the word "sterling" or the word "coin", either alone or in conjunction with other words or marks.

(b) Identifying trademark

Whenever any person, firm, corporation, or association, being a manufacturer or dealer subject to section 294 of this title—

(1) applies or causes to be applied to any article of merchandise intended for sale or customarily sold as a complete product to consumers in any State, by stamping, branding, engraving, or otherwise, any quality mark or stamp indicating or purporting to indicate that such article is made in whole or in part of gold or silver or of an alloy of either such metal; or

(2) imports into any State any such article of merchandise bearing any such quality mark or stamp which indicates or purports to indicate that such article is made in whole or in part of gold or silver or of an alloy of either such metal,

such person, firm, corporation, or association, before depositing any such article manufactured or imported after six months after the effective date of this Act in the United States mails, or causing such article to be so deposited, for transmission thereby, or delivering such article or causing such article to be delivered to any common carrier for transportation from one State to any other State, or transporting such article or causing such article to be transported from one State to any other State, shall—

(A) Apply or cause to be applied to that article a trademark of such persons, which has been duly registered or applied for registration under the laws of the United States within thirty days after an article bearing the trademark is placed in commerce or imported into the United States, or the name of such person; and

(B) if such article of merchandise is composed of two or more parts which are complete in themselves but which are not identical in quality, and any one of such parts bears such a quality mark or stamp, apply or cause to be applied to each other part of that article of merchandise a quality mark or stamp of like pattern and size disclosing the quality of that other part.

Each identifying trademark or name applied to any article of merchandise in compliance with clause (A) of this subsection shall be applied to that article by the same means as that used in applying the quality mark or stamp appearing thereon, in type or lettering at least as large as that used in such quality mark or stamp, and in a position as close as possible to that quality mark or stamp. For the purposes of this subsection, the term "State" includes the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the District of Columbia.

(June 13, 1906, ch. 3289, §4, 34 Stat. 261; Pub. L. 87–354, §1, Oct. 4, 1961, 75 Stat. 775; Pub. L. 91–366, §1(e), July 31, 1970, 84 Stat. 691.)

REFERENCES IN TEXT

The effective date of this Act, referred to in subsec. (b), as the first day of the third month beginning after Oct. 4, 1961, see Effective Date of 1961 Amendment note set out under this section.

AMENDMENTS

1970—Subsec. (b). Pub. L. 91–366 struck out reference to the trademark of a firm, corporation or association in cl. (A).

1961—Pub. L. 87–354 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1970 AMENDMENT

Pub. L. 91–366, §4, July 31, 1970, 84 Stat. 691, provided that: "This Act [amending this section and sections 298 and 299 of this title and enacting provisions set out below] shall take effect three months after enactment [July 31, 1970]."

EFFECTIVE DATE OF 1961 AMENDMENT

Pub. L. 87–354, §2, Oct. 4, 1961, 75 Stat. 776, provided that: "The amendments made by this Act [amending this section] shall take effect on the first day of the third month beginning after the date of enactment of this Act [Oct. 4, 1961]."

SEPARABILITY

Pub. L. 91–366, §2, July 31, 1970, 84 Stat. 691, provided that: "If any provision of this Act [see Effective Date of 1970 Amendment note above] or any amendment made thereby, or the application thereof to any person, as that term is herein defined, is held invalid, the remainder of the Act or amendment and the application of the remaining provisions of the Act or amendment to any person shall not be affected thereby."

CONSTRUCTION OF 1970 AMENDMENT

Pub. L. 91–366, §3, July 31, 1970, 84 Stat. 691, provided that: "The provisions of this Act [see Effective Date of 1970 Amendment note above] and amendments made thereby shall be held to be in addition to, and not in substitution for or limitation of, the provisions of any other Act of the United States."

§298. Violations of law

(a) Criminal prosecutions; penalties; jurisdiction

Each and every person, firm, corporation, or association, being a manufacturer of or a wholesale or retail dealer in gold or silver jewelry, gold ware, silver goods, or silverware, who or which shall knowingly violate any of the provisions of sections 294 to 300 of this title, and every officer, manager, director, or managing agent of any such corporation or association having knowledge of such violation and directly participating in such violation or consenting thereto, shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of the United States having jurisdiction of crimes within the district in which such violation was committed or through which has been conducted the transportation of the article in respect to which such violation has been committed, shall be punished by a fine of not more than $500 or imprisonment for not more than three months, or both, at the discretion of the court. Whenever the offense is begun in one jurisdiction and completed in another it may be dealt with, inquired of, tried, determined, and punished in either jurisdiction in the same manner as if the offense had been actually and wholly committed therein.

(b) Suits by competitors, customers, or subsequent purchasers for injunctive relief; damages and costs

Any competitor, customer, or competitor of a customer of any person in violation of section 294, 295, 296, or 297 of this title, or any subsequent purchaser of an article of merchandise which has been the subject of a violation of section 294, 295, 296, or 297 of this title, shall be entitled to injunctive relief restraining further violation of sections 294 to 300 of this title and may sue therefor in any district court of the United States in the district in which the defendant resides or has an agent, without respect to the amount in controversy, and shall recover damages and the cost of suit, including a reasonable attorney's fee.

(c) Suits by jewelry trade associations for injunctive relief; damages and costs

Any duly organized and existing jewelry trade association shall be entitled to injunctive relief restraining any person in violation of section 294, 295, 296, or 297 of this title from further violation of sections 294 to 300 of this title and may sue therefor as the real party in interest in any district court of the United States in the district in which the defendant resides or has an agent, without respect to the amount in controversy, and if successful shall recover the cost of suit, including a

reasonable attorney's fee. If the court determines that the action has been brought frivolously, for purposes of harassment, or in implementation of any scheme in restraint of trade, it may award punitive damages to the defendant.

(d) Award of costs to defendant

Any defendant against whom a civil action is brought under the provisions of sections 294 to 300 of this title shall be entitled to recover the cost of defending the suit, including a reasonable attorney's fee, in the event such action is terminated without a finding by the court that such defendant is or has been in violation of sections 294 to 300 of this title.

(e) Jurisdiction of civil actions

The district courts shall have exclusive original jurisdiction of any civil action arising under the provisions of sections 294 to 300 of this title.

(June 13, 1906, ch. 3289, §5, 34 Stat. 262; Pub. L. 91–366, §1(a), (b), July 31, 1970, 84 Stat. 690.)

AMENDMENTS

1970—Pub. L. 91–366 designated existing provisions as subsec. (a) and added subsecs. (b) to (e).

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–366 effective three months after July 31, 1970, see section 4 of Pub. L. 91–366, set out as a note under section 297 of this title.

SEPARABILITY

For separability provision of Pub. L. 91–366, see section 2 of Pub. L. 91–366, set out as a note under section 297 of this title.

CONSTRUCTION OF 1970 AMENDMENT

Amendment by Pub. L. 91–366 to be held to be in addition to and not in substitution for or limitation of the provisions of any other Act of the United States, see section 3 of Pub. L. 91–366, set out as a note under section 297 of this title.

§299. Definitions

(a) The expression "article of merchandise" as used in sections 294 to 300 of this title shall signify any goods, wares, works of art, commodity, or other thing which may be lawfully kept or offered for sale.

(b) The term "person" means an individual, partnership, corporation, or any other form of business enterprise, capable of being in violation of sections 294 to 300 of this title.

(c) The term "jewelry trade association" means an organization, consisting primarily of persons actively engaged in the jewelry or a related business, the purposes and activities of which are primarily directed to the improvement of business conditions in the jewelry or related businesses.

(June 13, 1906, ch. 3289, §6, 34 Stat. 262; Pub. L. 91–366, §1(c), (d), July 31, 1970, 84 Stat. 690.)

AMENDMENTS

1970—Pub. L. 91–366 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1970 AMENDMENTS

Amendment by Pub. L. 91–366 effective three months after July 31, 1970, see section 4 of Pub. L. 91–366, set out as a note under section 297 of this title.

SEPARABILITY

For separability provision of Pub. L. 91–366, see section 2 of Pub. L. 91–366, set out as a note under section 297 of this title.

CONSTRUCTION OF 1970 AMENDMENT

Amendment by Pub. L. 91–366 to be held to be in addition to and not in substitution for or limitation of the provisions of any other Act of the United States, see section 3 of Pub. L. 91–366, set out as a note under

section 297 of this title.

§300. Application of State laws

All articles of merchandise to which sections 294 to 300 of this title apply which shall have been transported into any State, Territory, District, or possession of the United States, and shall remain therein for use, sale, or storage, shall, upon arrival in such State, Territory, District, or possession, be subject to the operation of all the laws of such State, Territory, District, or possession of the United States to the same extent and in the same manner as though such articles of merchandise had been produced in such State, Territory, District, or possession, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise.

(June 13, 1906, ch. 3289, §7, 34 Stat. 262.)

CHAPTER 9—NATIONAL WEATHER SERVICE

Sec.

311. Omitted.
312. Employees.
313. Duties of Secretary of Commerce.
313a. Establishment of meteorological observation stations in the Arctic region.
313b. Institute for Aviation Weather Prediction.
313c. Authorized activities of the National Oceanic and Atmospheric Administration.
313d. NIDIS program.
314. Omitted.
315. Changes or assignment to duty.
316. Omitted.
317. Appropriations and estimates.
318. Weather signals on mail cars.
319 to 321. Omitted or Repealed.
322. Odd jobs for part-time employees.
323, 324. Repealed or Omitted.
325. Authority for certain functions and activities.
326. Maintenance of printing office in Washington, D.C.
327. Employees for conduct of meteorological investigations in Arctic region; appointment and compensation; extra compensation to other Government employees for taking observations.
328. Transfer from other Government Departments of surplus equipment and supplies for Arctic stations.
329. Omitted.

§311. Omitted

CODIFICATION

Section, act Oct. 1, 1890, ch. 1266, §1, 26 Stat. 653, as amended, relating to the establishment of a Weather Bureau in the Department of Commerce, was omitted because the Weather Bureau was consolidated with the Coast and Geodetic Survey to form a new agency in the Department to be known as the Environmental Science Services Administration, and the office of Chief of the Weather Bureau was abolished, by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out as a note below. The Reorg. Plan also transferred to the Secretary of Commerce all functions of the Bureau and the Chief of the Bureau.

Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out as a note under section 1511 of this title, abolished the Environmental Science Services Administration, including the offices of Administrator and Deputy Administrator, and established the National Oceanic and Atmospheric

Administration within the Department of Commerce. By Department Organization Order 25–5A, republished 39 F.R. 27486, July 29, 1974, the Secretary of Commerce delegated to the National Oceanic and Atmospheric Administration a number of functions vested in him, including his functions under this chapter of the Code. By order of the Acting Associate Administrator, 35 F.R. 19249, Dec. 19, 1970, the following organizational names appearing in chapter IX of subtitle B of Title 15, Code of Federal Regulations, relating to the Administration, were changed: Environmental Science Services Administration to National Oceanic and Atmospheric Administration (ESSA to NOAA); Coast and Geodetic Survey to National Ocean Survey, and Weather Bureau to National Weather Service.

Prior to Oct. 1, 1890, the functions of the Weather Bureau were exercised by the Signal Corps of the Army. Act October 1, 1890, created the present Bureau in the Department of Agriculture. By Reorg. Plan No. IV of 1940, §8, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1236, the Bureau and its functions were transferred to the Department of Commerce, "*Provided*, That the Department of Agriculture may continue to make snow surveys and to conduct research concerning: (a) relationships between weather and crops, (b) long-range weather forecasting, and (c) relationships between weather and soil erosion."

SHORT TITLE OF 2014 AMENDMENT

Pub. L. 113–86, §1, Mar. 6, 2014, 128 Stat. 1015, provided that: "This Act [amending section 313d of this title and amending provisions set out as a note under section 313d of this title] may be cited as the 'National Integrated Drought Information System Reauthorization Act of 2014'."

SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109–430, §1, Dec. 20, 2006, 120 Stat. 2918, provided that: "This Act [enacting section 313d of this title and provisions set out as notes under section 313d of this title] may be cited as the 'National Integrated Drought Information System Act of 2006'."

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107–253, §1, Oct. 29, 2002, 116 Stat. 1731, provided that: "This Act [enacting section 313c of this title and provisions set out as notes under section 313c of this title] may be cited as the 'Inland Flood Forecasting and Warning System Act of 2002'."

WEATHER MODIFICATION PROGRAM

Act Aug. 13, 1953, ch. 426, 67 Stat. 559, as amended by act July 9, 1956, ch. 522, 70 Stat. 509, related to research and experimentation in the field of weather modification and created the Advisory Committee on Weather Control. Pub. L. 85–170, ch. II, §201, Aug. 28, 1957, 71 Stat. 427, provided in part that the Advisory Committee on Weather Control shall complete its report and terminate its activities by Dec. 31, 1957.

REORGANIZATION PLAN NO. 2 OF 1965

EFF. JULY 13, 1965, 30 F.R. 8819, 79 STAT. 1318, AS AMENDED PUB. L. 90–83, §10(C), SEPT. 11, 1967, 81 STAT. 224

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, May 13, 1965, pursuant to the provisions of the Reorganization Act of 1949, 63 Stat. 203, as amended [see 5 U.S.C. 901 et seq.].

ENVIRONMENTAL SCIENCE SERVICES ADMINISTRATION, DEPARTMENT OF COMMERCE

SECTION 1. TRANSFER OF FUNCTIONS

All functions vested by law in the Weather Bureau, the Chief of the Weather Bureau, the Coast and Geodetic Survey, the Director of the Coast and Geodetic Survey, and any officer, employee, or organizational entity of that Bureau or Survey, and not heretofore transferred to the Secretary of Commerce, hereinafter referred to as the Secretary, are hereby transferred to the Secretary.

SEC. 2. ABOLITIONS

(a) The offices of Director of the Coast and Geodetic Survey, Deputy Director of the Coast and Geodetic Survey, and Chief of the Weather Bureau are hereby abolished. The Secretary shall make such provisions as he shall deem to be necessary respecting the winding up of any outstanding affairs of the officers whose offices are abolished by the provisions of this section.

(b) The abolitions effected by the provision of subsection (a) of this section shall exclude the abolition of

rights to which the present incumbents of the abolished offices would be entitled under law upon the termination of their appointments.

SEC. 3. ENVIRONMENTAL SCIENCE SERVICES ADMINISTRATION

(a) The Coast and Geodetic Survey and the Weather Bureau are hereby consolidated to form a new agency in the Department of Commerce which shall be known as the Environmental Science Services Administration, hereinafter referred to as the Administration.

(b) The Secretary shall from time to time establish such constituent organizational entities of the Administration, with such names, as he shall determine.

SEC. 4. OFFICERS OF THE ADMINISTRATION

(a) There shall be at the head of the Administration the Administrator of the Environmental Science Services Administration, hereinafter referred to as the Administrator. The Administrator shall be appointed by the President by and with the advice and consent of the Senate. He shall perform such functions as the Secretary may from time to time direct.

(b)(1) There shall be in the Administration a Deputy Administrator of the Environmental Science Services Administration, hereinafter referred to as the Deputy Administrator, who shall be appointed by the President by and with the advice and consent of the Senate, shall perform such functions as the Secretary may from time to time direct, and, unless he is compensated in pursuance of the provisions of paragraph (2), below, shall receive compensation in accordance with the Classification Act of 1949, as amended [chapter 51 and subchapter III of chapter 53 of Title 5].

(2) The office of Deputy Administrator may be filled at the discretion of the President by appointment (by and with the advice and consent of the Senate) from the active list of commissioned officers of the Administration in which case the appointment shall create a vacancy on the active list and while holding the office of Deputy Administrator the officer shall have rank, pay and allowances not exceeding those of a Vice Admiral.

(c) The Deputy Administrator or such other official of the Department of Commerce as the Secretary shall from time to time designate shall act as Administrator during the absence or disability of the Administrator or in the event of a vacancy in the office of Administrator.

(d) At any one time, one principal constituent organizational entity of the Administration may, if the Secretary so elects, be headed by a commissioned officer of the Administration, who shall be designated by the Secretary. Such designation of an officer shall create a vacancy on the active list and while serving under this paragraph the officer shall have rank, pay and allowances not exceeding those of a Rear Admiral (upper half).

(e) Any commissioned officer of the Administration who has served as Deputy Administrator or has served in a rank above that of Captain as the head of a principal constituent organizational entity of the Administration, and is retired while so serving or is retired after the completion of such service while serving in a lower rank or grade, shall be retired with the rank, pay and allowances authorized by law for the highest grade and rank held by him; but any such officer, upon termination of his appointment in a rank above that of Captain shall, unless appointed or assigned to some other position for which a higher rank or grade is provided, revert to the grade and number he would have occupied had he not served in a rank above that of Captain and such officer shall be an extra number in that grade. [As amended Pub. L. 90–83 §10(c), Sept. 11, 1967, 81 Stat. 224.]

SEC. 5. AUTHORITY OF THE SECRETARY

Nothing in this reorganization plan shall divest the Secretary of any function vested in him by law or by Reorganization Plan No. 5 of 1950 (64 Stat. 1263) or in any manner derogate from any authority of the Secretary thereunder.

SEC. 6. PERSONNEL, PROPERTY, RECORDS AND FUNDS

(a) The personnel (including commissioned officers) employed in the Coast and Geodetic Survey, the personnel employed in the Weather Bureau, and the property and records held or used by the Weather Bureau or the Coast and Geodetic Survey shall be deemed to be transferred to the Administration.

(b) Unexpended balances of appropriations, allocations, and other funds available or to be made available in connection with functions now administered by the Weather Bureau or by the Coast and Geodetic Survey shall be available to the Administration hereunder in connection with those functions.

(c) Such further measures and dispositions as the Director of the Bureau of the Budget shall deem to be necessary in order to effectuate the foregoing provisions of this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

SEC. 7. INTERIM OFFICERS

(a) The President may authorize any person who immediately prior to the effective date of this reorganization plan held a position in the executive branch of the Government to act as Administrator until the office of Administrator is for the first time filled pursuant to the provision of this reorganization plan or by recess appointment, as the case may be.

(b) The President may similarly authorize any such person to act as Deputy Administrator.

(c) The President may authorize any person who serves in an acting capacity under the foregoing provisions of this section to receive the compensation attached to the office in respect to which he so serves. Such compensation, if authorized, shall be in lieu of, but not in addition to, other compensation from the United States to which such person may be entitled.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 2 of 1965, prepared in accordance with the provisions of the Reorganization Act of 1949, as amended, and providing for the reorganization of two major agencies of the Department of Commerce: The Weather Bureau and the Coast and Geodetic Survey.

The reorganization plan consolidates the Coast and Geodetic Survey and the Weather Bureau to form a new agency in the Department of Commerce to be known as the Environmental Science Services Administration. It is the intention of the Secretary of Commerce to transfer the Central Radio Propagation Laboratory of the National Bureau of Standards to the Administration when the reorganization plan takes effect. The new Administration will then provide a single national focus for our efforts to describe, understand, and predict the state of the oceans, the state of the lower and upper atmosphere, and the size and shape of the earth.

Establishment of the Administration will mark a significant step forward in the continual search by the Federal Government for better ways to meet the needs of the Nation for environmental science services. The organizational improvements made possible by the reorganization plan will enhance our ability to develop an adequate warning system for the severe hazards of nature—for hurricanes, tornadoes, floods, earthquakes, and seismic sea waves, which have proved so disastrous to the Nation in recent years. These improvements will permit us to provide better environmental information to vital segments of the Nation's economy—to agriculture, transportation, communications, and industry, which continually require information about the physical environment. They will mean better services to other Federal departments and agencies—to those that are concerned with the national defense, the exploration of outer space, the management of our mineral and water resources, the protection of the public health against environmental pollution, and the preservation of our wilderness and recreation areas.

The new Administration will bring together a number of allied scientific disciplines that are concerned with the physical environment. This integration will better enable us to look at man's physical environment as a scientific whole and to seek to understand the interactions among air, sea, and earth and between the upper and lower atmosphere. It will facilitate the development of programs dealing with the physical environment and will permit better management of these programs. It will enhance our capability to identify and solve important long-range scientific and technological problems associated with the physical environment. The new Administration will, in consequence, promote a fresh sense of scientific dedication, discovery, and challenge, which are essential if we are to attract scientists and engineers of creativity and talent to Federal employment in this field.

The reorganization plan provides for an Administrator at the head of the Administration, and for a Deputy Administrator, each of whom will be appointed by the President by and with the advice and consent of the Senate. As authorized by the civil service and other laws and regulations, subordinate officers of the Administration will be appointed by the Secretary of Commerce or be assigned by him from among a corps of commissioned officers. The Administration will perform such functions as the Secretary of Commerce may delegate or otherwise assign to it and will be under his direction and control.

Commissioned officers of the Coast and Geodetic Survey will become commissioned officers of the Administration and may serve at the discretion of the Secretary of Commerce throughout the Administration. The reorganization plan authorizes the President at his discretion to fill the Office of Deputy Administrator by appointment, by and with the advice and consent of the Senate, from the active list of commissioned officers of the Administration.

The reorganization plan transmitted herewith abolishes—and thus excludes from the consolidation mentioned above—the offices of (1) Chief of the Weather Bureau, provided for in the act of October 1, 1890 (15 U.S.C. 312); (2) Director of the Coast and Geodetic Survey, provided for in the acts of June 4, 1920, and February 16, 1929, as amended (33 U.S.C. 852, 852a); and (3) Deputy Director of the Coast and Geodetic Survey, provided for in the act of January 19, 1942, as amended (33 U.S.C. 852b).

After investigation, I have found and hereby declare that each reorganization included in Reorganization Plan No. 2 of 1965 is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949, as amended. I have also found and hereby declare that by reason of the reorganizations made by the reorganization plan, it is necessary to include in the plan provisions for the appointment and compensation of the officers of the Administration set forth in section 4 of the reorganization plan. The rate of compensation fixed for each of these officers is that which I have found to prevail in respect of comparable officers in the executive branch of the Government.

In addition to permitting more effective management within the Department of Commerce, the new organization will ultimately produce economies. These economies will be of two types. The first, and probably the most significant, is the savings and avoidance of costs which will result from the sharing of complex and expensive facilities such as satellites, computers, communication systems, aircraft, and ships. These economies will increase in significance as developments in science and technology bring into being still more advanced equipment. Second, integration of the existing headquarters and field organizations will permit more efficient utilization of existing administrative staffs and thereby produce future economies. It is, however, impracticable to specify or itemize at this time the reductions of expenditures which it is probable will be brought about by the taking effect of the reorganizations included in the reorganization plan.

I recommend that the Congress allow the accompanying reorganization plan to become effective.

LYNDON B. JOHNSON.

THE WHITE HOUSE, May 13, 1965.

§312. Employees

The National Weather Service shall consist of such civilian employees as Congress may annually provide for and as may be necessary to properly perform the duties devolving on said Service by law.

(Oct. 1, 1890, ch. 1266, §4, 26 Stat. 653; July 8, 1898, No. 57, 30 Stat. 752; 1965 Reorg. Plan No. 2, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090.)

REPEALS

Joint Res. July 8, 1898, provided: "That the laws authorizing the detail and assignment of the officers of the Army to duty in the Weather Bureau be, and are hereby, repealed."

TRANSFER OF FUNCTIONS

Office of Chief of Weather Bureau abolished and Weather Bureau consolidated with Coast and Geodetic Survey to form new agency in Department of Commerce known as Environmental Science Services Administration by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out as a note under section 311 of this title. The Reorg. Plan also transferred to Secretary of Commerce functions of Bureau and Chief of Bureau. Subsequently, Environmental Science Services Administration abolished and National Oceanic and Atmospheric Administration established. By Department Organization Order 25–5A, Secretary delegated to NOAA his functions under this chapter of the Code. By order of Acting Associate Administrator of NOAA, organizational name of Weather Bureau changed to National Weather Service. For further details, see Codification note set out under section 311 of this title.

§313. Duties of Secretary of Commerce

The Secretary of Commerce shall have charge of the forecasting of weather, the issue of storm warnings, the display of weather and flood signals for the benefit of agriculture, commerce, and navigation, the gauging and reporting of rivers, the maintenance and operation of seacoast telegraph lines and the collection and transmission of marine intelligence for the benefit of commerce and navigation, the reporting of temperature and rain-fall conditions for the cotton interests, the display of frost and cold-wave signals, the distribution of meteorological information in the interests of

agriculture and commerce, and the taking of such meteorological observations as may be necessary to establish and record the climatic conditions of the United States, or as are essential for the proper execution of the foregoing duties.

(Oct. 1, 1890, ch. 1266, §3, 26 Stat. 653; May 20, 1926, ch. 344, §5 (e), 44 Stat. 571; June 23, 1938, ch. 601, title XI, §1107(k), 52 Stat. 1029; 1940 Reorg. Plan No. IV, §8, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1236; 1965 Reorg. Plan No. 2, §§1, 2, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318.)

AMENDMENTS

1938—Act June 23, 1938, repealed second paragraph relating to duties as to air navigation.

1926—Act May 20, 1926, inserted second paragraph relating to duties as to air navigation.

REPEALS

Pub. L. 85–726, title XIV, §1401(b), Aug. 23, 1958, 72 Stat. 806, repealed act June 23, 1938, ch. 601, title XI, §1107(k), 52 Stat. 1029, cited to the credit of this section.

TRANSFER OF FUNCTIONS

Office of Chief of Weather Bureau abolished and functions transferred to Secretary of Commerce by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318. Reorg. Plan No. IV of 1940 transferred Weather Bureau from Department of Agriculture to Department of Commerce. For further details, see notes set out under section 311 of this title.

USE OF FUNDS FOR HURRICANE RECONNAISSANCE PROGRAM

Pub. L. 108–199, div. B, title II, §203, Jan. 23, 2004, 118 Stat. 72, provided in part that: "Hereafter, none of the funds made available by this or any other Act for the National Oceanic and Atmospheric Administration may be used to support the hurricane reconnaissance aircraft and activities that are under the control of the United States Air Force or the United States Air Force Reserve."

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 108–7, div. B, title II, §203, Feb. 20, 2003, 117 Stat. 77.

Pub. L. 107–77, title II, §203, Nov. 28, 2001, 115 Stat. 778.

Pub. L. 106–553, §1(a)(2) [title II, §203], Dec. 21, 2000, 114 Stat. 2762, 2762A–78.

Pub. L. 106–113, div. B, §1000(a)(1) [title II, §203], Nov. 29, 1999, 113 Stat. 1535, 1501A–31.

Pub. L. 105–277, div. A, §101(b) [title II, §203], Oct. 21, 1998, 112 Stat. 2681–50, 2681–86.

Pub. L. 105–119, title II, §203, Nov. 26, 1997, 111 Stat. 2479.

Pub. L. 104–208, div. A, title I, §101(a) [title II, §203], Sept. 30, 1996, 110 Stat. 3009, 3009–39.

Pub. L. 104–134, title I, §101[(a)] [title II, §203], Apr. 26, 1996, 110 Stat. 1321, 1321–30; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327.

Pub. L. 103–317, title II, §203, Aug. 26, 1994, 108 Stat. 1749.

Pub. L. 103–121, title II, §203, Oct. 27, 1993, 107 Stat. 1176.

Pub. L. 102–395, title II, §203, Oct. 6, 1992, 106 Stat. 1855.

Pub. L. 102–140, title II, §203, Oct. 28, 1991, 105 Stat. 806.

Pub. L. 101–515, title I, §103, Nov. 5, 1990, 104 Stat. 2107.

HURRICANE RECONNAISSANCE PROGRAM

Pub. L. 102–567, title I, §107, Oct. 29, 1992, 106 Stat. 4275, provided that:

"(a) ESTABLISHMENT OF PROGRAM.—(1) The Secretary of Defense and the Secretary of Commerce shall establish a 5-year joint program for collecting operational and reconnaissance data, conducting research, and analyzing data on tropical cyclones to assist the forecast and warning program and increase the understanding of the causes and behavior of tropical cyclones.

"(2) The Secretary of Commerce shall establish the Tropical Cyclone Research Advisory Committee, an advisory committee of tropical cyclone research scientists, to make recommendations for tropical cyclone research activities and reconnaissance procedures.

"(b) RESPONSIBILITIES.—(1) The Secretary of Defense shall have the responsibility for maintaining, flying, and funding tropical cyclone reconnaissance aircraft to accomplish the program established under this section and to transfer the data to the Secretary of Commerce. Program responsibility may not be transferred to any other Federal department or agency, including the Coast Guard, without the agreement and approval of the Secretary of Defense, the Secretary of Commerce, and the head of any other Federal agency or department to which the responsibility is transferred.

"(2) The Secretary of Commerce shall have the responsibility to provide funding for data gathering and

research by remote sensing, ground sensing, research aircraft, and other technologies necessary to accomplish the program established under this section.

"(c) MANAGEMENT PLANS.—(1) The Secretary of Defense and the Secretary of Commerce shall jointly develop and, within 120 days after the date of enactment of this Act [Oct. 29, 1992], submit to the Congress a management plan for the program established under this section, which shall include organizational structure, goals, major tasks, and funding profiles for the 5-year duration of the program.

"(2) The Secretary of Defense and the Secretary of Commerce, in consultation with the Tropical Cyclone Research Advisory Committee established by section 107(a)(2), shall jointly develop and, within 4 years after the date of enactment of this Act, submit to the Congress a management plan providing for continued tropical cyclone surveillance and reconnaissance which will adequately protect the citizens of the coastal areas of the United States.

"(3) The management plans and programs required by this section shall in every sense provide for at least the same degree and quality of protection (such as early warning capability and accuracy of fixing a storm's location) as currently exists with a combination of satellite technology and manned reconnaissance flights. Additionally, such plans and programs shall in no way allow any reduction in the level, quality, timeliness, sustainability, or area served (including the State of Hawaii) of both the existing principal and back-up tropical cyclone reconnaissance and tracking systems."

UNITED STATES WEATHER RESEARCH PROGRAM

Pub. L. 102–567, title I, §108, Oct. 29, 1992, 106 Stat. 4276, provided that:

"(a) ESTABLISHMENT.—The Secretary of Commerce, in cooperation with the Federal Coordinating Council for Science, Engineering, and Technology through the Committee on Earth and Environmental Sciences, shall establish a United States Weather Research Program to—

"(1) increase benefits to the Nation from the substantial investment in modernizing the public weather warning and forecast system in the United States;

"(2) improve local and regional weather forecasts and warnings;

"(3) address critical weather-related scientific issues; and

"(4) coordinate governmental, university, and private-sector efforts.

"(b) IMPLEMENTATION PLAN.—Not later than 90 days after the date of enactment of this Act [Oct. 29, 1992], the Secretary of Commerce, in cooperation with the Committee on Earth and Environmental Sciences, shall prepare and submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives a plan for implementation of the United States Weather Research Program which shall—

"(1) establish, for the 10-year period beginning in the year the plan is submitted, the goals and priorities for Federal weather research which most effectively advance the scientific understanding of weather processes and provide information to improve weather warning and forecast systems in the United States;

"(2) describe specific activities, including research activities, data collection and data analysis requirements, predictive modeling, participation in international research efforts, demonstration of potential operational forecast applications, and education and training required to achieve such goals and priorities; and

"(3) set forth the role of each Federal agency and department to be involved in the United States Weather Research Program, identifying and addressing, as appropriate, relevant programs and activities of the Federal agencies and departments that would contribute to such Program."

WEATHER SERVICE MODERNIZATION

Pub. L. 102–567, title VII, Oct. 29, 1992, 106 Stat. 4303, provided that:

"SEC. 701. SHORT TITLE.

"This title may be cited as the 'Weather Service Modernization Act'.

"SEC. 702. DEFINITIONS.

"For the purposes of this title, the term—

"(1) 'automate' means to replace employees with automated weather service equipment;

"(2) 'change operations at a field office' means transfer service responsibility, commission weather observation systems, decommission a National Weather Service radar, change staffing levels significantly, or move a field office to a new location inside the local commuting and service area;

"(3) 'Committee' means the Modernization Transition Committee established by section 707;

"(4) 'degradation of service' means any decrease in or failure to maintain the quality and type of

weather services provided by the National Weather Service to the public in a service area, including but not limited to a reduction in existing weather radar coverage at an elevation of 10,000 feet;

"(5) 'field office' means any National Weather Service Office or National Weather Service Forecast Office;

"(6) 'Plan' means the National Implementation Plan required under section 703;

"(7) 'relocate' means to transfer from one location to another location that is outside the local commuting or service area;

"(8) 'Secretary' means the Secretary of Commerce;

"(9) 'service area' means the geographical area for which a field office provides services or conducts observations, including but not limited to local forecasts, severe weather warnings, aviation support, radar coverage, and ground weather observations; and

"(10) 'Strategic Plan' means the 10-year strategic plan for the comprehensive modernization of the National Weather Service, required under section 407 of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1989 (15 U.S.C. 313 note).

"SEC. 703. NATIONAL IMPLEMENTATION PLAN.

"(a) NATIONAL IMPLEMENTATION PLAN.—As part of the budget justification documents submitted to Congress in support of the annual budget request for the Department of Commerce, the Secretary shall include a National Implementation Plan for modernization of the National Weather Service for each fiscal year following fiscal year 1993 until such modernization is complete. The Plan shall set forth the actions, during the 2-year period beginning with the fiscal year for which the budget request is made, that will be necessary to accomplish the objectives described in the Strategic Plan, and shall include—

"(1) detailed requirements for new technologies, facilities, staffing levels and positions, and funding, in accordance with the overall schedule for modernization;

"(2) notification of any proposed action to change operations at a field office and the intended date of such operational change;

"(3) identification of any field office that the Secretary intends to certify under section 706, including the intended date of such certification;

"(4) special measures to test, evaluate, and demonstrate key elements of the modernized National Weather Service operations prior to national implementation, including a multistation operational demonstration which tests the performance of the modernization in an integrated manner for a sustained period;

"(5) detailed plans and funding requirements for meteorological research to be accomplishment [sic] under this title to assure that new techniques in forecasting will be developed to utilize the new technologies being implemented in the modernization; and

"(6) training and education programs to ensure that employees gain the necessary expertise to utilize the new technologies and to minimize employee displacement as a consequence of modernization.

"(b) TRANSMITTAL TO COMMITTEE.—The Secretary shall transmit a copy of each annual Plan to the Committee.

"(c) CONSULTATION.—In developing the Plan, the Secretary shall consult, as appropriate, with the Committee and public entities responsible for providing or utilizing weather services.

"SEC. 704. MODERNIZATION CRITERIA.

"(a) NATIONAL RESEARCH COUNCIL REVIEW.—The Secretary shall contract with the National Research Council for a review of the scientific and technical modernization criteria by which the Secretary proposes to certify action to close, consolidate, automate, or relocate a field office under section 706. In conducting such review, the National Research Council shall prepare and submit to the Secretary, no later than 9 months after the date of enactment of this Act [Oct. 29, 1992], a report which—

"(1) assesses requirements and procedures for commissioning new weather observation systems, decommissioning an outdated National Weather Service radar, and evaluating staffing needs for field offices in an affected service area;

"(2) assesses the statistical and analytical measures that should be made for a service area to form an adequate basis for determining that there will be no degradation of service; and

"(3) includes such other recommendations as the National Research Council determines are appropriate to ensure public safety.

"(b) CRITERIA.—No later than 12 months after the date of enactment of this Act [Oct. 29, 1992], the Secretary, in consultation with the National Research Council and the Committee and after notice and opportunity for public comment, shall publish in the Federal Register modernization criteria (including all requirements and procedures), based on the report required under this section, for—

"(1) commissioning new weather observation systems, decommissioning an outdated National Weather Service radar, and evaluating staffing needs for field offices in an affected service area; and

"(2) certifying action to close, consolidate, automate, or relocate a field office under section 706.

"SEC. 705. CHANGES IN FIELD OFFICE OPERATIONS.

"(a) NOTIFICATION.—The Secretary shall not change operations at a field office pursuant to implementation of the Strategic Plan unless the Secretary has provided the notification required by section 703.

"(b) WEATHER RADAR DECOMMISSIONING.—The Secretary shall not remove or permanently decommission any National Weather Service radar until the Secretary has prepared radar commissioning and decommissioning reports documenting that such action would be consistent with the modernization criteria established under section 704(b)(1). The commissioning report shall document that the radar system performs reliably, satisfactory maintenance support is in place, sufficient staff with adequate training are present to operate the system, technical coordination with weather service users has been completed, and the radar being commissioned satisfactorily supports field office operations. The decommissioning report shall document that the replacement radar has been commissioned, technical coordination with service users has been completed, and the radar being decommissioned is no longer needed to support field office operations.

"(c) SURFACE OBSERVING SYSTEM COMMISSIONING.—The Secretary may not commission an automated surface observing system located at an airport unless it is determined, in consultation with the Secretary of Transportation, that the weather services provided after commissioning will continue to be in full compliance with applicable flight aviation rules promulgated by the Federal Aviation Administration.

"SEC. 706. RESTRUCTURING FIELD OFFICES.

"SEC. 706. (a) PROHIBITION.—The Secretary shall not close, before January 1, 1996, any field office pursuant to implementation of the Strategic Plan.

"(b) CERTIFICATION.—The Secretary shall not close, consolidate, automate, or relocate any field office, unless the Secretary has certified that such action will not result in any degradation of service. Such certification shall include—

"(1) a description of local weather characteristics and weather-related concerns which affect the weather services provided within the service area;

"(2) a detailed comparison of the services provided within the service area and the services to be provided after such action;

"(3) a description of any recent or expected modernization of National Weather Service operations which will enhance services in the service area;

"(4) an identification of any area within any State which would not receive coverage (at an elevation of 10,000 feet) by the next generation weather radar network;

"(5) evidence, based upon operational demonstration of modernized National Weather Service operations, which was considered in reaching the conclusion that no degradation in service will result from such action; and

"(6) any report of the Committee submitted under section 707(c) that evaluates the proposed certification.

"(c) PUBLIC REVIEW.—Each certification decision shall be preceded by—

"(1) publication in the Federal Register of a proposed certification; and

"(2) a 60-day period after such publication during which the public may provide comments to the Secretary on the proposed certification.

"(d) FINAL DECISION.—If after consideration of the public comment received under subsection (c) the Secretary, in consultation with the Committee, decides to close, consolidate, automate, or relocate any such field office, the Secretary shall publish a final certification in the Federal Register and submit the certification to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives.

"(e) SPECIAL CIRCUMSTANCES.—The Secretary may not close or relocate any field office—

"(1) which is located at an airport, unless the Secretary, in consultation with the Secretary of Transportation and the Committee, first conducts an air safety appraisal, determines that such action will not result in degradation of service that affects aircraft safety, and includes such determination in the certification required under subsection (b); or

"(2) which is the only office in a State, unless the Secretary first evaluates the effect on weather services provided to in-State users, such as State agencies, civil defense officials, and local public safety offices, and includes in the certification required under subsection (b) the Secretary's determination that a comparable level of weather services provided to such in-State users will remain.

"(f) LIAISON OFFICER.—The Secretary may not close, consolidate, automate, or relocate a field office until arrangements have been made to maintain for a period of at least 2 years at least one person in the service area to act as a liaison officer who—

"(1) provides timely information regarding the activities of the National Weather Service which may affect service to the community, including modernization and restructuring; and

"(2) works with area weather service users, including persons associated with general aviation, civil defense, emergency preparedness, and the news media, with respect to the provision of timely weather warnings and forecasts.

"SEC. 707. MODERNIZATION TRANSITION COMMITTEE.

"(a) ESTABLISHMENT.—There is established a committee of 12 members to be known as the Modernization Transition Committee.

"(b) MEMBERSHIP AND TERMS.—(1) The Committee shall consist of—

"(A) five members representing agencies and departments of the United States which are responsible for providing or using weather services, including but not limited to the National Weather Service, the Department of Defense, the Federal Aviation Administration, and the Federal Emergency Management Agency; and

"(B) seven members to be appointed by the Secretary from civil defense and public safety organizations, news media, any labor organization certified by the Federal Labor Relations Authority as an exclusive representative of weather service employees, meteorological experts, and private sector users of weather information such as pilots and farmers.

"(2) The terms of office of a member of the Committee shall be 3 years; except that, of the original membership, four shall serve a 5-year term, four shall serve a 4-year term, and four shall serve a 3-year term. No individual may serve for more than one additional 3-year term.

"(3) The Secretary shall designate a chairman of the Committee from among its members.

"(c) DUTIES.—(1) The Committee may review any proposed certification under section 706 for which the Secretary has provided a notice of intent to certify in the Plan, and should review such a proposed certification if there is a significant possibility of degradation of service within the affected service area. Upon the request of the Committee, the Secretary shall make available to the Committee the supporting documents developed by the Secretary in connection with the proposed certification. The Committee may prepare and submit to the Secretary, prior to publication of the proposed certification, a report which evaluates the proposed certification on the basis of the modernization criteria and with respect to the requirement that there be no degradation of service.

"(2) The Committee shall advise the Congress and the Secretary on—

"(A) the implementation of the Strategic Plan, annual development of the Plan, and establishment and implementation of modernization criteria; and

"(B) matters of public safety and the provision of weather services which relate to the comprehensive modernization of the National Weather Service.

"(d) PAY AND TRAVEL EXPENSES.—Members of the Committee who are not employees of the United States shall each be paid at a rate equal to the daily equivalent of the rate for GS–18 of the General Schedule under section 5332 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the actual performance of duties vested in the Committee. Members shall receive travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code.

"(e) STAFF.—The Secretary shall make available to the Committee such staff, information, and assistance as it may reasonably require to carry out its activities.

"(f) TERMINATION.—The Committee shall terminate on December 31, 1999.

"SEC. 708. WEATHER SERVICE REPORT.

"(a) REPORT.—The Secretary shall prepare a report on the proposed modernization of the National Weather Service and transmit the report, not later than 6 months after the date of enactment of this Act [Oct. 29, 1992], to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives.

"(b) CONTENTS.—(1) The report required by subsection (a) shall identify the size of the geographic area of responsibility of each proposed Weather Forecast Office and shall include an explanation of the number and type of personnel required at each Weather Forecast Office. For each proposed Weather Forecast Office covering a geographic area greater than two times the average geographic area of responsibility of Weather Forecast Offices nationwide, the report shall detail the reasons for assigning those Weather Forecast Offices a geographic area which differs significantly from the national average.

"(2) The report shall list the number of next generation weather radars that will be associated with each Weather Forecast Office nationwide under the proposed modernization plan. If some Weather Forecast Offices will be associated with more than one such radar, the report shall explain the deviation from the National Weather Service's stated policy of associating one such radar with one Weather Forecast Office, and shall analyze and compare any differences in the expected efficiency of those Weather Forecast Offices with Weather Forecast Offices that will be associated with only one such radar.

"(c) CONSULTATION.—In preparing portions of the report that address Weather Forecast Offices located in areas of the Nation that are uniquely dependent on general aviation as a means of transportation, the Secretary shall consult with local aviation groups. In the case of Alaska, such local groups shall include the Alaska Aviation Safety Foundation, the Alaska Airmen's Association, and the regional representatives of the Aircraft Owners and Pilots Association.

"SEC. 709. REPEALS.

"[Amended section 407 of Pub. L. 100–685, set out below, and repealed section 408 of Pub. L. 100–685, formerly set out below.]"

[References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.]

PURCHASE OF ATMOSPHERIC WIND DATA

Pub. L. 101–595, title III, §320, Nov. 16, 1990, 104 Stat. 2989, provided that: "The National Oceanic and Atmospheric Administration is authorized to enter into a contract for the future purchase of atmospheric wind data. Any and all obligations of the Government under such contract shall be contingent upon the following terms:

"(1) the data to be purchased must meet technical criteria specified in the contract and must be satisfactory to the National Oceanic and Atmospheric Administration; and

"(2) the availability of appropriated funds."

NATIONAL WEATHER SERVICE 10-YEAR STRATEGIC PLAN

Pub. L. 100–685, title IV, §407, Nov. 17, 1988, 102 Stat. 4098, as amended by Pub. L. 102–567, title VII, §709(1), Oct. 29, 1992, 106 Stat. 4309, directed Secretary of Commerce to prepare and submit to Congress, not later than 90 days after Nov. 17, 1988, a 10-year strategic plan for comprehensive modernization of National Weather Service, setting forth basic service improvement objectives of modernization as well as critical new technological components and associated operational changes necessary to fulfill objectives of weather and flood warning service improvements.

DEGRADATION-OF-WEATHER-SERVICES STANDARD FOR PROVIDING SERVICES

Pub. L. 100–685, title IV, §408, Nov. 17, 1988, 102 Stat. 4099, prohibited Secretary of Commerce from closing, consolidating, automating, or relocating, any Weather Service Office or Weather Service Forecast Office pursuant to the implementation of the strategic plan required by section 407 of Pub. L. 100–685 [formerly set out above] unless the Secretary certified to Committee on Commerce, Science, and Transportation of the Senate and Committee on Science, Space, and Technology of the House of Representatives that such action would not result in any degradation of weather services provided to the affected area, prior to repeal by Pub. L. 102–567, title VII, §709(2), Oct. 29, 1992, 106 Stat. 4309.

WEATHER AND CLIMATE INFORMATION IN AGRICULTURE

Pub. L. 99–198, title XVII, §1762, Dec. 23, 1985, 99 Stat. 1651, provided that:

"(a) Congress finds that—

"(1) agricultural and silvicultural operations are vulnerable to damage from atmospheric conditions that accurate and timely reporting of weather information can help prevent;

"(2) the maintenance of current weather and climate analysis and information dissemination systems, and Federal, State, and private efforts to improve these systems, is essential if agriculture and silviculture are to mitigate damage from atmospheric conditions;

"(3) agricultural and silvicultural weather services at the Federal level should be maintained with joint planning between the National Oceanic and Atmospheric Administration and the Department of Agriculture; and

"(4) efforts should be made, involving user groups, weather and climate information providers, and Federal and State governments, to expand the use of weather and climate information in agriculture and

silviculture.

"(b) It, therefore, is declared to be the policy of Congress that it is in the public interest to maintain an active Federal involvement in providing agricultural and silvicultural weather and climate information and that efforts should be made, among users of this information and among private providers of this information, to improve use of this information."

NATIONAL WEATHER SERVICE; CONGRESSIONAL APPROVAL REQUISITE TO SALE, LEASE, TRANSFER, OR DISMANTLING OF AGENCY

Pub. L. 98–8, title I, §104, Mar. 24, 1983, 97 Stat. 34, provided that:

"Since the Administration has proposed to sell the weather (METSAT) and land (LANDSAT) satellite systems;

"Since there are concerns about possible commercialization of the National Weather Service;

"Since our country should provide weather service information for the protection of life and property;

"Since our Nation's economy—its agriculture, aviation, ocean shipping and construction—is heavily affected by weather and our ability to forecast and disseminate vital information about its behavior: Now, therefore,

"It is the sense of the Congress that a reliable and comprehensive national weather information system responsive to the needs of national security; agriculture, transportation and other affected sectors; and individual citizens must be maintained through a strong central National Weather Service that can work closely with the private sector, other Federal and State government agencies, and the weather services of other nations.

"Further, the Nation's civil operational remote sensing satellites (METSAT and LANDSAT) shall remain under the National Oceanic and Atmospheric Administration. No effort shall be made to dismantle, transfer, lease or sell any portion of these systems without prior congressional approval."

STUDY OF THUNDERSTORMS AND ATMOSPHERIC DISTURBANCES; REPORTS; EXPENDITURES; COOPERATION OF OTHER DEPARTMENTS

Act June 16, 1948, ch. 483, 62 Stat. 470, as amended Oct. 19, 1980, Pub. L. 96–470, title I, §103(b), 94 Stat. 2237, provided: "That the Chief of the Weather Bureau is authorized and directed to study fully and thoroughly the internal structure of thunderstorms, hurricanes, cyclones, and other severe atmospheric disturbances, particularly the degree of turbulence within such storms and the development, maintenance, and magnitude of updrafts and downdrafts with a view to establishing methods by which the characteristics of particular thunderstorms may be forecast and methods by which the characteristics of such storms may be determined on visual observation from outside of the immediate thunderstorm area. Such study shall be concluded at the earliest practicable date and a final report submitted to Congress.

"SEC. 2. The Chief of the Weather Bureau is empowered to make such expenditures at the seat of government and elsewhere as may be necessary to carry out the purposes of this Act and as from time to time may be appropriated for by Congress, including expenditures for the development and purchase of special meteorological instruments and other equipment (including motor vehicles and aircraft), without regard to the provisions of section 3709 of the Revised Statutes [now 41 U.S.C. 6101]. There is hereby authorized to be appropriated such sums as are necessary for the purpose of carrying out the provisions of this Act.

"SEC. 3. Any executive department or independent establishment is hereby authorized to cooperate with the Chief of the Weather Bureau in carrying out the purposes of this Act, and for such purposes may lend or transfer to the Chief of the Weather Bureau any officer or employee of such department or establishment and any property, equipment, lands, or buildings under its control."

§313a. Establishment of meteorological observation stations in the Arctic region

In order to improve the weather forecasting service of the United States and to promote safety and efficiency in civil air navigation to the highest possible degree, the Secretary of Commerce shall, in addition to his other functions and duties, take such action as may be necessary in the development of an international basic meteorological reporting network in the Arctic region of the Western Hemisphere, including the establishment, operation, and maintenance of such reporting stations in cooperation with the State Department and other United States governmental departments and agencies, with the meteorological services of foreign countries and with persons engaged in air commerce.

(Feb. 12, 1946, ch. 4, §1, 60 Stat. 4; 1965 Reorg. Plan No. 2, §§1, 2, eff. July 13, 1965, 30 F.R. 8819,

79 Stat. 1318.)

TRANSFER OF FUNCTIONS

Office of Chief of Weather Bureau abolished and functions transferred to Secretary of Commerce by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318. For further details, see notes set out under section 311 of this title.

APPROPRIATIONS

Section 2 of act Feb. 12, 1946, authorized appropriation of necessary funds to carry out provisions of this section.

§313b. Institute for Aviation Weather Prediction

The Administrator of the National Oceanic and Atmospheric Administration shall establish an Institute for Aviation Weather Prediction. The Institute shall provide forecasts, weather warnings, and other weather services to the United States aviation community. The Institute shall expand upon the activities of the aviation unit currently at the National Severe Storms Forecast Center in Kansas City, Missouri, and shall be established in the Kansas City [1] Missouri [1] area. The Administrator of the National Oceanic and Atmospheric Administration shall provide a full and fair opportunity for employees at the National Severe Storms Center to assume comparable duties and responsibilities within the Institute.

(Pub. L. 102–588, title II, §222, Nov. 4, 1992, 106 Stat. 5119.)

SIMILAR PROVISIONS

Similar provisions were contained in Pub. L. 102–567, title I, §112, Oct. 29, 1992, 106 Stat. 4278.

[1] So in original. Probably should be followed by a comma.

§313c. Authorized activities of the National Oceanic and Atmospheric Administration

The National Oceanic and Atmospheric Administration, through the United States Weather Research Program, shall—

(1) improve the capability to accurately forecast inland flooding (including inland flooding influenced by coastal and ocean storms) through research and modeling;

(2) develop, test, and deploy a new flood warning index that will give the public and emergency management officials fuller, clearer, and more accurate information about the risks and dangers posed by expected floods;

(3) train emergency management officials, National Weather Service personnel, meteorologists, and others as appropriate regarding improved forecasting techniques for inland flooding, risk management techniques, and use of the inland flood warning index developed under paragraph (2);

(4) conduct outreach and education activities for local meteorologists and the public regarding the dangers and risks associated with inland flooding and the use and understanding of the inland flood warning index developed under paragraph (2); and

(5) assess, through research and analysis of previous trends, among other activities—

(A) the long-term trends in frequency and severity of inland flooding; and

(B) how shifts in climate, development, and erosion patterns might make certain regions vulnerable to more continual or escalating flood damage in the future.

(Pub. L. 107–253, §2, Oct. 29, 2002, 116 Stat. 1731.)

AUTHORIZATION OF APPROPRIATIONS

Pub. L. 107–253, §3, Oct. 29, 2002, 116 Stat. 1731, provided that: "There are authorized to be appropriated

to the National Oceanic and Atmospheric Administration for carrying out this Act [see Short Title of 2002 Amendment note set out under section 311 of this title] $1,250,000 for each of the fiscal years 2003 through 2005, of which $100,000 for each fiscal year shall be available for competitive merit-reviewed grants to institutions of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)) to carry out the activities described in section 2(5) [15 U.S.C. 313c(5)], and $1,150,000 for each of the fiscal years 2006 and 2007. Of the amounts authorized under this section, $250,000 for each fiscal year shall be available for competitive merit-reviewed grants to institutions of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)) to develop models that can improve the ability to forecast the coastal and estuary-inland flooding that is influenced by tropical cyclones. The models should incorporate the interaction of such factors as storm surges, soil saturation, and other relevant phenomena."

REPORT

Pub. L. 107–253, §4, Oct. 29, 2002, 116 Stat. 1732, required the National Oceanic and Atmospheric Administration to provide Congress with annual reports through fiscal year 2007 on its activities under Pub. L. 107–253 (see Short Title note set out under section 311 of this title) and the success and acceptance of the inland flood warning index developed under par. (2) of this section and also to report by Jan. 1, 2006, on the likely long-term trends in inland flooding for use in outreach activities conducted under par. (4) of this section.

§313d. NIDIS program

(a) In general

The Under Secretary, through the National Weather Service and other appropriate weather and climate programs in the National Oceanic and Atmospheric Administration, shall establish a National Integrated Drought Information System to better inform and provide for more timely decisionmaking to reduce drought related impacts and costs.

(b) System functions

The National Integrated Drought Information System shall—

(1) provide an effective drought early warning system that—

(A) collects and integrates information on the key indicators of drought and drought impacts in order to make usable, reliable, and timely forecasts of drought, including assessments of the severity of drought conditions and impacts; and

(B) provides such information, forecasts, and assessments on both national and regional levels;

(2) communicate drought forecasts, drought conditions, and drought impacts on an ongoing basis to public and private entities engaged in drought planning and preparedness, including—

(A) decisionmakers at the Federal, regional, State, tribal, and local levels of government;

(B) the private sector; and

(C) the public;

(3) provide timely data, information, and products that reflect local, regional, and State differences in drought conditions;

(4) coordinate, and integrate as practicable, Federal research and monitoring in support of a drought early warning system;

(5) build upon existing forecasting and assessment programs and partnerships, including through the designation of one or more cooperative institutes to assist with National Integrated Drought Information System functions; and

(6) continue ongoing research and monitoring activities related to drought, including research activities relating to length, severity, and impacts of drought and the role of extreme weather events and climate variability in drought.

(c) Consultation

The Under Secretary shall consult with relevant Federal, regional, State, tribal, and local

government agencies, research institutions, and the private sector in the development of the National Integrated Drought Information System.

(d) Cooperation from other Federal agencies

Each Federal agency shall cooperate as appropriate with the Under Secretary in carrying out this section.

(e) Report

(1) In general

Not later than 18 months after March 6, 2014, the Under Secretary shall transmit to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report that contains—

(A) an analysis of the implementation of the National Integrated Drought Information System program, including how the information, forecasts, and assessments are utilized in drought policy planning and response activities;

(B) specific plans for continued development of such program, including future milestones; and

(C) an identification of research, monitoring, and forecasting needs to enhance the predictive capability of drought early warnings that include—

(i) the length and severity of droughts;

(ii) the contribution of weather events to reducing the severity or ending drought conditions; and

(iii) regionally specific drought impacts.

(2) Consultation

In developing the report under paragraph (1), the Under Secretary shall consult with relevant Federal, regional, State, tribal, and local government agencies, research institutions, and the private sector.

(Pub. L. 109–430, §3, Dec. 20, 2006, 120 Stat. 2918; Pub. L. 113–86, §2, Mar. 6, 2014, 128 Stat. 1015.)

REFERENCES IN TEXT

This section, referred to in subsec. (d), was in the original "this Act", meaning Pub. L. 109–430, Dec. 20, 2006, 120 Stat. 2918, which enacted this section and provisions set out as notes under this section and section 311 of this title. For complete classification of this Act to the Code, see Short Title of 2006 Amendment note set out under section 311 of this title and Tables.

AMENDMENTS

2014—Subsec. (a). Pub. L. 113–86, §2(1), inserted "to better inform and provide for more timely decisionmaking to reduce drought related impacts and costs" before period at end.

Subsec. (b). Pub. L. 113–86, §2(2), added subsec. (b) and struck out former subsec. (b) which set out required functions of the National Integrated Drought Information System.

Subsec. (e). Pub. L. 113–86, §2(3), added subsec. (e).

AUTHORIZATION OF APPROPRIATIONS

Pub. L. 109–430, §4, Dec. 20, 2006, 120 Stat. 2919, as amended by Pub. L. 113–86, §3, Mar. 6, 2014, 128 Stat. 1016, provided that: "There are authorized to be appropriated to carry out this Act [see Short Title of 2006 Amendment note set out under section 311 of this title] $13,500,000 for each of fiscal years 2014 through 2018."

DEFINITIONS

Pub. L. 109–430, §2, Dec. 20, 2006, 120 Stat. 2918, provided that: "In this Act [see Short Title of 2006 Amendment note set out under section 311 of this title]:

"(1) DROUGHT.—The term 'drought' means a deficiency in precipitation—

"(A) that leads to a deficiency in surface or subsurface water supplies (including rivers, streams, wetlands, ground water, soil moisture, reservoir supplies, lake levels, and snow pack); and

"(B) that causes or may cause—

"(i) substantial economic or social impacts; or

"(ii) substantial physical damage or injury to individuals, property, or the environment.

"(2) UNDER SECRETARY.—The term 'Under Secretary' means the Under Secretary of Commerce for Oceans and Atmosphere."

§314. Omitted

CODIFICATION

Section, act Aug. 8, 1894, ch. 238, 28 Stat. 273, related to making promotions in service without prejudice to those transferred from Signal Service of War Department.

§315. Changes or assignment to duty

The Secretary of Commerce is authorized to make such changes or assignment to duty in the personnel or detailed force of the National Weather Service for limiting or reducing expenses as he may deem necessary.

(Mar. 2, 1895, ch. 169, 28 Stat. 737; 1940 Reorg. Plan No. IV, §8, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1236; 1965 Reorg. Plan No. 2, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090.)

TRANSFER OF FUNCTIONS

Weather Bureau consolidated with Coast and Geodetic Survey to form new agency in Department of Commerce known as Environmental Science Services Administration by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out as a note under section 311 of this title. Functions of Bureau and Chief of Bureau transferred to Secretary of Commerce by Reorg. Plan. Subsequently, Environmental Science Services Administration abolished and National Oceanic and Atmospheric Administration established. By Department Organization Order 25–5A, Secretary delegated to NOAA his functions under this chapter of the Code. By order of Acting Associate Administrator of NOAA, organizational name of Weather Bureau changed to National Weather Service. For further details, see Codification note set out under section 311 of this title.

§316. Omitted

CODIFICATION

Section, act Mar. 4, 1913, ch. 145, §1 [part], 37 Stat. 830, related to travel expenses, and has been superseded by section 5701 et seq. of Title 5, Government Organization and Employees.

§317. Appropriations and estimates

The appropriations for the support of the National Weather Service shall be made with those of the other bureaus of the Department of Commerce, and it shall be the duty of the Secretary of Commerce to prepare future estimates for the National Weather Service which shall be specially developed and extended in the interests of agriculture.

(Oct. 1, 1890, ch. 1266, §9, 26 Stat. 653; 1940 Reorg. Plan No. IV, §8, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1236; 1965 Reorg. Plan No. 2, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090.)

CODIFICATION

Section is based on section 9 (less 1st 35 words) of act Oct. 1890. Remainder of such section 9 was classified to section 215 of former title 10, and was repealed by act Aug. 10, 1956, ch. 1041, 68A Stat. 648.

TRANSFER OF FUNCTIONS

Weather Bureau consolidated with Coast and Geodetic Survey to form new agency in Department of Commerce known as Environmental Science Services Administration by Reorg. Plan No. 2, of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out as a note under section 311 of this title. Functions of Bureau and Chief of Bureau transferred to Secretary of Commerce by Reorg. Plan. Subsequently, Environmental Science Services Administration abolished and National Oceanic and Atmospheric Administration established. By Department Organization Order 25–5A, Secretary delegated to NOAA his functions under this chapter of the Code. By order of Acting Associate Administrator of NOAA, organizational name of Weather Bureau changed to National Weather Service. For further details, see Codification note set out under section 311 of this title.

Reorg. Plan No. IV of 1940 transferred Weather Bureau from Department of Agriculture to Department of Commerce.

§318. Weather signals on mail cars

The Secretary of Commerce, in cooperation with the United States Postal Service, may arrange a plan by which there shall be displayed on all cars and other conveyances used for transporting United States mail suitable flags or other signals to indicate weather forecasts, cold-wave warnings, frost warnings, and so forth, to be furnished by the Secretary.

(Apr. 25, 1896, ch. 140, 29 Stat. 108; 1940 Reorg. Plan No. IV, §8, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1236; 1965 Reorg. Plan No. 2, §§1, 2, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318; Pub. L. 91–375, §4(a), Aug. 12, 1970, 84 Stat. 773.)

TRANSFER OF FUNCTIONS

"United States Postal Service" substituted in text for "Postmaster General" pursuant to Pub. L. 91–375, §4(a), Aug. 12, 1970, 84 Stat. 773, set out as a note under section 201 of Title 39, Postal Service, which abolished the office of Postmaster General of the Post Office Department and transferred its functions to the United States Postal Service.

Office of Chief of Weather Bureau abolished and functions transferred to Secretary of Commerce by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318. Reorg. Plan No. IV of 1940 transferred Weather Bureau from Department of Agriculture to Department of Commerce. For further details, see notes set out under section 311 of this title.

§319. Omitted

CODIFICATION

Section, act June 3, 1948, ch. 400, title III, 62 Stat. 328, was from the Department of Commerce Appropriation Act, 1949, and was not repeated in subsequent appropriations acts. Similar provisions were contained in prior appropriations acts back to 1925. Section related to printing by Weather Bureau. See section 326 of this title.

§320. Repealed. Oct. 31, 1951, ch. 654, §1(34), 65 Stat. 702

Section, act Mar. 4, 1907, ch. 2907, 34 Stat. 1258, related to sale of maps or publications.

§321. Repealed. Oct. 25, 1951, ch. 562, §1(15), 65 Stat. 638

Section, act May 25, 1900, ch. 555, 31 Stat. 204, relating to destruction of old telegrams. See section 3301 et seq. of Title 44, Public Printing and Documents.

§322. Odd jobs for part-time employees

National Weather Service part-time employees, appointed by designation or otherwise under

regulations of the Director of the Office of Personnel Management for observational work, may perform odd jobs in the installation, repair, improvement, alteration, cleaning, or removal of Government property and receive compensation therefor under regulations to be prescribed by the Secretary of Commerce.

(July 1, 1943, ch. 182, title III, 57 Stat. 300; 1965 Reorg. Plan No. 2, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090; 1978 Reorg. Plan No. 2, §102, 43 F.R. 36037, 92 Stat. 3783.)

TRANSFER OF FUNCTIONS

"Director of the Office of Personnel Management" substituted in text for "Civil Service Commission" pursuant to Reorg. Plan No. 2 of 1978, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in Civil Service Commission to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

Weather Bureau consolidated with Coast and Geodetic Survey to form new agency in Department of Commerce known as Environmental Science Services Administration by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out as a note under section 311 of this title. Functions of Bureau and Chief of Bureau transferred to Secretary of Commerce by Reorg. Plan. Subsequently, Environmental Science Services Administration abolished and National Oceanic and Atmospheric Administration established. By Department Organization Order 25–5A, Secretary delegated to NOAA his functions under this chapter of the Code. By order of Acting Associate Administrator of NOAA, organizational name of Weather Bureau changed to National Weather Service. For further details, see Codification note set out under section 311 of this title.

SIMILAR PROVISIONS

Section is from the Departments of State, Justice, and Commerce Appropriation Act, 1944. Similar provisions were contained in the following appropriation acts:

July 2, 1942, ch. 472, title III, 56 Stat. 500.
June 28, 1941, ch. 258, title II, 55 Stat. 289.
June 25, 1940, ch. 421, 54 Stat. 539.
June 30, 1939, ch. 253, title I, 53 Stat. 947.
June 16, 1938, ch. 464, title I, 52 Stat. 718.
June 29, 1937, ch. 404, 50 Stat. 403.

§323. Repealed. July 25, 1947, ch. 327, §1, 61 Stat. 449

Section, act Oct. 29, 1942, ch. 632, 56 Stat. 1012, related to scholarships for meteorological students in weather forecasting during World War II.

§324. Omitted

CODIFICATION

Section, act June 3, 1948, ch. 400, title III, 62 Stat. 328, which related to extra compensation for certain employees in Alaska and other territorial possessions, was from the Department of Commerce Appropriation Act, 1949, and was not repeated in subsequent appropriations acts. See section 327 of this title.

SIMILAR PROVISIONS

Similar provisions were contained in the following appropriation acts:

July 9, 1947, ch. 211, title III, 61 Stat. 301.
July 5, 1946, ch. 541, title III, 60 Stat. 475.
May 21, 1945, ch. 129, title III, 59 Stat. 195.
June 28, 1944, ch. 294, title III, 58 Stat. 424.
July 1, 1943, ch. 182, title III, 57 Stat. 301.

§325. Authority for certain functions and activities

Appropriations now or hereafter provided for the National Weather Service shall be available for (a) furnishing food and shelter, without repayment therefor, to employees of the Government assigned to Arctic stations; (b) equipment and maintenance of meteorological offices and stations, and maintenance and operation of meteorological facilities outside the United States by contract or otherwise; (c) repairing, altering, and improving of buildings occupied by the National Weather Service, and care and preservation of grounds, including the construction of necessary outbuildings and sidewalks on public streets abutting National Weather Service grounds; (d) arranging for communication services at rates to be fixed by the Secretary of Commerce by agreement with the companies performing the services when determined to be advantageous to the Government; and (e) purchasing tabulating cards and continuous form tabulating paper.

(June 2, 1948, ch. 373, §1, 62 Stat. 286; 1965 Reorg. Plan No. 2, 1970 eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090.)

TRANSFER OF FUNCTIONS

Weather Bureau consolidated with Coast and Geodetic Survey to form new agency in Department of Commerce known as Environmental Science Services Administration by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out as a note under section 311 of this title. Functions of Bureau and Chief of Bureau transferred to Secretary of Commerce by Reorg. Plan. Subsequently, Environmental Science Services Administration abolished and National Oceanic and Atmospheric Administration established. By Department Organization Order 25–5A, Secretary delegated to NOAA his functions under this chapter of the Code. By order of Acting Associate Administrator of NOAA, organizational name of Weather Bureau changed to National Weather Service. For further details, see Codification note set out under section 311 of this title.

COOPERATIVE WEATHER OBSERVER PROGRAM

Pub. L. 102–567, title I, §101(c), Oct. 29, 1992, 106 Stat. 4270, provided that: "The Secretary of Commerce may use funds otherwise available for conducting weather observations to strengthen the Cooperative Weather Observer Program and encourage public participation in the program. The Secretary may—

"(1) provide distinctive insignia or paraphernalia to Cooperative Weather Observers; and

"(2) make awards of nominal value to recognize continued participation in the program by observers or to recognize outstanding achievements by such observers or groups of observers without regard to any law restricting expenditures for such purposes to Federal employees."

§326. Maintenance of printing office in Washington, D.C.

When so specified in appropriation Acts, the National Weather Service is authorized to maintain a printing office in the city of Washington for the printing of weather maps, bulletins, circulars, forms, and other publications: *Provided*, That no printing shall be done by the National Weather Service which could be done at the Government Printing Office without impairing the service of said Service.

(June 2, 1948, ch. 373, §2, 62 Stat. 286; 1965 Reorg. Plan No. 2, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090.)

TRANSFER OF FUNCTIONS

Weather Bureau consolidated with Coast and Geodetic Survey to form new agency in Department of Commerce known as Environmental Science Services Administration by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out as a note under section 311 of this title. Functions of Bureau and Chief of Bureau transferred to Secretary of Commerce by Reorg. Plan. Subsequently, Environmental Science Services Administration abolished and National Oceanic and Atmospheric Administration established. By Department Organization Order 25–5A, Secretary delegated to NOAA his functions under this chapter of the Code. By order of Acting Associate Administrator of NOAA, organizational name of Weather Bureau changed to National Weather Service. For further details, see Codification note set out under section 311 of this title.

§327. Employees for conduct of meteorological investigations in Arctic region; appointment and compensation; extra compensation to other Government employees for taking observations

The Secretary of Commerce is authorized to (a) appoint employees for the conduct of meteorological investigations in the Arctic region without regard to the civil service laws and fix their compensation without regard to chapter 51 and subchapter III of chapter 53 of title 5, and sections 5542, 5543, 5545, and 5546 of title 5, at base rates not to exceed the maximum scheduled rate for GS–12, and (b) grant extra compensation to employees of other Government agencies for taking and transmitting meteorological observations without regard to section 5533 of title 5.

(June 2, 1948, ch. 373, §3, 62 Stat. 286; Pub. L. 86–397, §2, Mar. 28, 1960, 74 Stat. 11; Pub. L. 88–448, title IV, §401(m), Aug. 19, 1964, 78 Stat. 491.)

CODIFICATION

In this section, "chapter 51 and subchapter III of chapter 53 of title 5", "sections 5542, 5543, 5545, and 5546 of title 5", and "section 5533 of title 5" substituted for "the Classification Act of 1949, as amended (5 U.S.C. 1071 and the following)", "titles II and III of the Federal Employees Pay Act of 1945, as amended (5 U.S.C. 911 and the following)", and "section 301 of the Dual Compensation Act", respectively, on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1964—Pub. L. 88–448 inserted "without regard to section 5533 of title 5".

1960—Pub. L. 86–397 substituted "Secretary of Commerce" for "Weather Bureau", authorized the Secretary to fix the compensation of the employees, and limited the base rates to not more than the maximum scheduled rate for GS–12.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–448 effective on first day of first month which begins later than ninetieth day following Aug. 19, 1964, see section 403 of Pub. L. 88–448.

§328. Transfer from other Government Departments of surplus equipment and supplies for Arctic stations

Subject to approval of the President, and without charge to the National Weather Service, the Secretary of the Army, the Secretary of the Air Force, and the Secretary of the Navy are authorized to transfer to the National Weather Service equipment and supplies which are surplus to the needs of their respective Departments and necessary for the establishment, maintenance, and operation of Arctic weather stations.

(June 2, 1948, ch. 373, §4, 62 Stat. 286; 1965 Reorg. Plan No. 2, 1970 eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090.)

TRANSFER OF FUNCTIONS

Functions vested by law (including reorganization plan) in Bureau of the Budget or Director of Bureau of the Budget transferred to President by section 101 of Reorg. Plan No. 2, of 1970, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085, set out in the Appendix to Title 5, Government Organization and Employees. Section 102 of 1970 Reorg. Plan No. 2, redesignated Bureau of the Budget as Office of Management and Budget.

Weather Bureau consolidated with Coast and Geodetic Survey to form new agency in Department of Commerce known as Environmental Science Services Administration by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out as a note under section 311 of this title. Functions of Bureau and Chief of Bureau transferred to Secretary of Commerce by Reorg. Plan. Subsequently, Environmental Science Services Administration abolished and National Oceanic and Atmospheric Administration established. By Department Organization Order 25–5A, Secretary delegated to NOAA his functions under this chapter of the

Code. By order of Acting Associate Administrator of NOAA, organizational name of Weather Bureau changed to National Weather Service. For further details, see Codification note set out under section 311 of this title.

§329. Omitted

CODIFICATION

Section, Pub. L. 85–469, title I, §101, June 25, 1958, 72 Stat. 234; Pub. L. 86–88, title I, §101, July 13, 1959, 73 Stat. 207, which prescribed the maximum base rate of pay for employees conducting meteorological investigations in the Arctic region, was from an appropriation act and was omitted in view of section 327 of this title which authorizes the Secretary of Commerce to establish the rates of compensation for such personnel. Provisions of this section were repeated in Pub. L. 86–451, title I, §101, May 13, 1960, 74 Stat. 99.

CHAPTER 9A—WEATHER MODIFICATION ACTIVITIES OR ATTEMPTS; REPORTING REQUIREMENT

Sec.

330. Definitions.
330a. Report requirement; form; information; time of submission.
330b. Duties of Secretary.
330c. Authority of Secretary.
330d. Violation; penalty.
330e. Authorization of appropriations.

§330. Definitions

As used in this chapter—

(1) The term "Secretary" means the Secretary of Commerce.

(2) The term "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, any State or local government or any agency thereof, or any other organization, whether commercial or nonprofit, who is performing weather modification activities, except where acting solely as an employee, agent, or independent contractor of the Federal Government.

(3) The term "weather modification" means any activity performed with the intention of producing artificial changes in the composition, behavior, or dynamics of the atmosphere.

(4) The term "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or insular possession of the United States.

(Pub. L. 92–205, §1, Dec. 18, 1971, 85 Stat. 735.)

SHORT TITLE

Pub. L. 92–205, which is classified to this chapter, is popularly known as the "Weather Modification Reporting Act of 1972".

NATIONAL WEATHER MODIFICATION POLICY ACT OF 1976

Pub. L. 94–490, §§1–6(a), Oct. 13, 1976, 90 Stat. 2359–2361, provided:

"[SECTION 1]. That this Act may be cited as the National Weather Modification Policy Act of 1976.

"SEC. 2. DECLARATION OF POLICY.

"(a) FINDINGS.—The Congress finds and declares the following:

"(1) Weather-related disasters and hazards, including drought, hurricanes, tornadoes, hail, lightning, fog, floods, and frost, result in substantial human suffering and loss of life, billions of dollars of annual economic losses to owners of crops and other property, and substantial financial loss to the United States Treasury;

"(2) Weather modification technology has significant potential for preventing, diverting, moderating,

or ameliorating the adverse effects of such disasters and hazards and enhancing crop production and the availability of water;

"(3) The interstate nature of climatic and related phenomena, the severe economic hardships experienced as the result of occasional drought and other adverse meteorological conditions, and the existing role and responsibilities of the Federal Government with respect to disaster relief, require appropriate Federal action to prevent or alleviate such disasters and hazards; and

"(4) Weather modification programs may have long-range and unexpected effects on existing climatic patterns which are not confined by national boundaries.

"(b) PURPOSE.—It is therefore declared to be the purpose of the Congress in this Act to develop a comprehensive and coordinated national weather modification policy and a national program of weather modification research and development—

"(1) to determine the means by which deliberate weather modification can be used at the present time to decrease the adverse impact of weather on agriculture, economic growth, and the general public welfare, and to determine the potential for weather modification;

"(2) to conduct research into those scientific areas considered most likely to lead to practical techniques for drought prevention or alleviation and other forms of deliberate weather modification;

"(3) to develop practical methods and devices for weather modification;

"(4) to make weather modification research findings available to interested parties;

"(5) to assess the economic, social, environmental, and legal impact of an operational weather modification program;

"(6) to develop both national and international mechanisms designed to minimize conflicts which may arise with respect to the peaceful uses of weather modification; and

"(7) to integrate the results of existing experience and studies in weather modification activities into model codes and agreements for regulation of domestic and international weather modification activities.

"SEC. 3. DEFINITIONS.

"As used in this Act:

"(1) The term 'Secretary' means the Secretary of Commerce.

"(2) The term 'State' means any State of the United States, the District of Columbia, or any Commonwealth, territory, or possession of the United States.

"(3) The term 'weather modification' means any activity performed with the intention and expectation of producing changes in precipitation, wind, fog, lightning, and other atmospheric phenomena.

"SEC. 4. STUDY.

"The Secretary shall conduct a comprehensive investigation and study of the state of scientific knowledge concerning weather modification, the present state of development of weather modification technology, the problems impeding effective implementation of weather modification technology, and other related matters. Such study shall include—

"(1) a review and analysis of the present and past research efforts to establish practical weather modification technology, particularly as it relates to reducing loss of life and crop and property destruction;

"(2) a review and analysis of research needs in weather modification to establish areas in which more research could be expected to yield the greatest return in terms of practical weather modification technology;

"(3) a review and analysis of existing studies to establish the probable economic importance to the United States in terms of agricultural production, energy, and related economic factors if the present weather modification technology were to be effectively implemented;

"(4) an assessment of the legal, social, and ecological implications of expanded and effective research and operational weather modification projects;

"(5) formulation of one or more options for a model regulatory code for domestic weather modification activities, such code to be based on a review and analysis of experience and studies in this area, and to be adaptable to State and national needs;

"(6) recommendations concerning legislation desirable at all levels of government to implement a national weather modification policy and program;

"(7) a review of the international importance and implications of weather modification activities by the United States;

"(8) a review and analysis of present and past funding for weather modification from all sources to determine the sources and adequacy of funding in the light of the needs of the Nation;

"(9) a review and analysis of the purpose, policy, methods, and funding of the Federal departments and agencies involved in weather modification and of the existing interagency coordination of weather modification research efforts;

"(10) a review and analysis of the necessity and feasibility of negotiating an international agreement concerning the peaceful uses of weather modification; and

"(11) formulation of one or more options for a model international agreement concerning the peaceful uses of weather modification and the regulation of national weather modification activities; and a review and analysis of the necessity and feasibility of negotiating such an agreement.

"SEC. 5. REPORT.

"(a) IN GENERAL.—The Secretary shall prepare and submit to the President and the Congress, within 1 year after the date of enactment of this Act [Oct. 13, 1976], a final report on the findings, conclusions, and recommendations of the study conducted pursuant to section 4. Such report shall include:

"(1) a summary of the findings made with respect to each of the areas of investigation specified in section 4;

"(2) other findings which are pertinent to the determination and implementation of a national policy on weather modifications;

"(3) a recommended national policy on weather modification and a recommended national weather modification research and development program which is consistent with, and likely to contribute to, achieving the objectives of such policy;

"(4) recommendations for levels of Federal funding sufficient to support adequately a national weather modification research and development program;

"(5) recommendations for any changes in the organization and involvement of Federal departments and agencies in weather modification which may be needed to implement effectively the recommended national policy on weather modification and the recommended research and development program; and

"(6) recommendations for any regulatory and other legislation which may be required to implement such policy and program or for any international agreement which may be appropriate concerning the peaceful uses of weather modification, including recommendations concerning the dissemination, refinement, and possible implementation of the model domestic code and international agreement developed under the specifications of section 4.

Each department, agency, and other instrumentality of the Federal Government is authorized and directed to furnish the Secretary any information which the Secretary deems necessary to carry out his functions under this Act.

"(b) OPERATION AND CONSULTATION.—The Secretary shall solicit and consider the views of State agencies, private firms, institutions of higher learning, and other interested persons and governmental entities in the conduct of the study required by section 4, and in the preparation of the report required by subsection (a).

"SEC. 6. AUTHORIZATION FOR APPROPRIATIONS.

"(a) There is authorized to be appropriated to the Secretary for the purposes of carrying out the provisions of this Act not to exceed $1,000,000."

§330a. Report requirement; form; information; time of submission

No person may engage, or attempt to engage, in any weather modification activity in the United States unless he submits to the Secretary such reports with respect thereto, in such form and containing such information, as the Secretary may by rule prescribe. The Secretary may require that such reports be submitted to him before, during, and after any such activity or attempt.

(Pub. L. 92–205, §2, Dec. 18, 1971, 85 Stat. 736.)

§330b. Duties of Secretary

(a) Records, maintenance; summaries, publication

The Secretary shall maintain a record of weather modification activities, including attempts, which take place in the United States and shall publish summaries thereof from time to time as he determines.

(b) Public availability of reports, documents, and other information

All reports, documents, and other information received by the Secretary under the provisions of this chapter shall be made available to the public to the fullest practicable extent.

(c) Disclosure of confidential information; prohibition; exceptions

In carrying out the provisions of this section, the Secretary shall not disclose any information referred to in section 1905 of title 18 and is otherwise unavailable to the public, except that such information shall be disclosed—

(1) to other Federal Government departments, agencies, and officials for official use upon request;

(2) in any judicial proceeding under court order formulated to preserve the confidentiality of such information without impairing the proceeding; and

(3) to the public if necessary to protect their health and safety.

(Pub. L. 92–205, §3, Dec. 18, 1971, 85 Stat. 736.)

§330c. Authority of Secretary

(a) Information; reports and records; inspection; availability of data from any Federal agency as limitation of authority

The Secretary may obtain from any person whose activities relate to weather modification by rule, subpena, or otherwise such information in the form of testimony, books, records, or other writings, may require the keeping and furnishing of such reports and records, and may make such inspection of the books, records, and other writings and premises and property of any person as may be deemed necessary or appropriate by him to carry out the provisions of this chapter, but this authority shall not be exercised to obtain any information with respect to which adequate and authoritative data are available from any Federal agency.

(b) Noncompliance; application of Attorney General; jurisdiction; orders; contempts

In case of contumacy by, or refusal to obey a subpena served upon any person pursuant to this section, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the Attorney General, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, or both; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(Pub. L. 92–205, §4, Dec. 18, 1971, 85 Stat. 736.)

§330d. Violation; penalty

Any person who knowingly and willfully violates section 330a of this title, or any rule issued thereunder, shall upon conviction thereof be fined not more than $10,000.

(Pub. L. 92–205, §5, Dec. 18, 1971, 85 Stat. 736.)

§330e. Authorization of appropriations

There are authorized to be appropriated $150,000 for the fiscal year ending June 30, 1972, $200,000 each for the fiscal years 1973 through 1980, $100,000 for the fiscal year ending September 30, 1981, $100,000 for the fiscal year ending September 30, 1986, $100,000 for the fiscal year ending September 30, 1987, $100,000 for the fiscal year ending September 30, 1988, to carry out the provisions of this chapter.

(Pub. L. 92–205, §6, Dec. 18, 1971, 85 Stat. 736; Pub. L. 93–436, Oct. 5, 1974, 88 Stat. 1212; Pub. L. 94–490, §6(b), Oct. 13, 1976, 90 Stat. 2362; Pub. L. 96–547, §2, Dec. 18, 1980, 94 Stat. 3217; Pub. L. 99–272, title VI, §6081, Apr. 7, 1986, 100 Stat. 135.)

AMENDMENTS

1986—Pub. L. 99–272 authorized appropriation of $100,000 for fiscal years ending September 30, 1986,

1987, and 1988.

1980—Pub. L. 96–547 amended Pub. L. 96–547, thereby inserting provisions setting forth authorization of appropriations for fiscal year ending Sept. 30, 1981.

1976—Pub. L. 94–490 authorized appropriation of $200,000 for each of fiscal years 1978, 1979, and 1980.

1974—Pub. L. 93–436 extended authorization of appropriation of $200,000 for each of fiscal years ending June 30, 1975, 1976, and 1977.

CHAPTER 10—WAR FINANCE CORPORATION

§§331 to 374. Omitted

CODIFICATION

Sections referred to War Finance Corporation. They were derived from acts Apr. 5, 1918, ch. 45, §§1–19, 24–28, 300, 302–304, 40 Stat. 506–512, 514, 515; Mar. 3, 1919, ch. 100, §10, 40 Stat. 1314; Jan. 4, 1921, ch. 9, 41 Stat. 1084; Aug. 24, 1921, ch. 80, §§1–3, 5–7, 42 Stat. 181–184; June 10, 1922, ch. 215, §§2, 3, 42 Stat. 634; Mar. 4, 1923, ch. 252, title V, §§502, 503, 42 Stat. 1481; Feb. 20, 1924, ch. 37, §§1–4, 43 Stat. 14, 15; Apr. 4, 1928, ch. 315, 45 Stat. 405; May 29, 1928, ch. 901, §1(116), 45 Stat. 995; Mar. 1, 1929, ch. 444, 45 Stat. 1442; Aug. 23, 1935, ch. 614, §203(a), 49 Stat. 704.

War Finance Corporation was abolished and Secretary of Treasury was directed to complete and wind up its affairs and dispose of its assets in accordance with act Mar. 1, 1929, ch. 444, 45 Stat. 1442, not later than Dec. 31, 1939. All its functions, property, and obligations not previously transferred by statute to Secretary of Treasury were transferred to Department of Treasury by Reorg. Plan No. II, of 1939, §2(c), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1432, set out in the Appendix to Title 5, Government Organization and Employees. See also sections 401 to 404 of Reorg. Plan No. II of 1939 for provisions relating to transfer of functions, records, property, personnel, and funds.

In a letter addressed to the Speaker of the House of Representatives and dated October 26, 1942, the Acting Secretary of the Treasury transmitted the final report of the affairs of the War Finance Corporation covering the period of its existence from April 5, 1918 through June 30, 1939.

REPEALS

Sections 1, 2, 5 to 19, 200 to 206, 300 and 302 to 306 of act Apr. 5, 1918, ch. 45, 40 Stat. 506 to 512, 514, 515, formerly classified to sections 331 to 347 and 361 to 365 of this title, were repealed by Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 643.

Sections 3 and 4 of act Apr. 5, 1918, ch. 45, 40 Stat. 507, which authorized the appointment of Government employees to membership on the Board of Directors of the War Finance Corporation and provided for their compensation, previously omitted from this Code, were repealed by Pub. L. 88–448, title IV, §402(a)(16), Aug. 19, 1964, 78 Stat. 493.

Sections 9 and 10 of act Mar. 3, 1919, ch. 100, 40 Stat. 1313, 1314, formerly classified to section 343 of this title, were repealed by Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 644.

Act Jan. 4, 1921, ch. 9, 41 Stat. 1084, formerly classified to section 373 of this title, was repealed by Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 644.

Act Aug. 24, 1921, ch. 80, 42 Stat. 181, formerly classified to sections 331, 340, 341, 343, 348 to 352 and 364 of this title, was repealed by Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 645.

Act June 10, 1922, ch. 215, 42 Stat. 634, formerly classified to sections 340 and 343 of this title, was repealed by Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 645.

Sections 501 to 503 of act Mar. 4, 1923, ch. 252, 42 Stat. 1480, 1481, formerly classified to sections 340 and 343 of this title, were repealed by Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 645.

Act Feb. 20, 1924, ch. 37, 43 Stat. 14, formerly classified to sections 343, 371 and 372 of this title, was repealed by Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 645.

Act Apr. 4, 1928, ch. 315, 45 Stat. 405, formerly classified to section 331 of this title, was repealed by Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 647.

Act May 29, 1928, ch. 901, §1(116), 45 Stat. 995, formerly classified to section 347 of this title, was repealed by Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 647.

Act Mar. 1, 1929, ch. 444, 45 Stat. 1442, formerly classified to section 374 of this title, was repealed by

Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 647.

CHAPTER 10A—COLLECTION OF STATE CIGARETTE TAXES

Sec.
375. Definitions.
376. Reports to State tobacco tax administrator.
376a. Delivery sales.
377. Penalties.
378. Enforcement.

§375. Definitions

As used in this chapter, the following definitions apply:

(1) Attorney general

The term "attorney general", with respect to a State, means the attorney general or other chief law enforcement officer of the State.

(2) Cigarette

(A) In general

The term "cigarette"—

(i) has the meaning given that term in section 2341 of title 18; and

(ii) includes roll-your-own tobacco (as defined in section 5702 of title 26).

(B) Exception

The term "cigarette" does not include a cigar (as defined in section 5702 of title 26).

(3) Common carrier

The term "common carrier" means any person (other than a local messenger service or the United States Postal Service) that holds itself out to the general public as a provider for hire of the transportation by water, land, or air of merchandise (regardless of whether the person actually operates the vessel, vehicle, or aircraft by which the transportation is provided) between a port or place and a port or place in the United States.

(4) Consumer

The term "consumer"—

(A) means any person that purchases cigarettes or smokeless tobacco; and

(B) does not include any person lawfully operating as a manufacturer, distributor, wholesaler, or retailer of cigarettes or smokeless tobacco.

(5) Delivery sale

The term "delivery sale" means any sale of cigarettes or smokeless tobacco to a consumer if—

(A) the consumer submits the order for the sale by means of a telephone or other method of voice transmission, the mails, or the Internet or other online service, or the seller is otherwise not in the physical presence of the buyer when the request for purchase or order is made; or

(B) the cigarettes or smokeless tobacco are delivered to the buyer by common carrier, private delivery service, or other method of remote delivery, or the seller is not in the physical presence of the buyer when the buyer obtains possession of the cigarettes or smokeless tobacco.

(6) Delivery seller

The term "delivery seller" means a person who makes a delivery sale.

(7) Indian country

The term "Indian country"—

(A) has the meaning given that term in section 1151 of title 18, except that within the State of Alaska that term applies only to the Metlakatla Indian Community, Annette Island Reserve; and

(B) includes any other land held by the United States in trust or restricted status for one or more Indian tribes.

(8) Indian tribe

The term "Indian tribe", "tribe", or "tribal" refers to an Indian tribe as defined in section 450b(e) of title 25 or as listed pursuant to section 479a–1 of title 25.

(9) Interstate commerce

(A) In general

The term "interstate commerce" means commerce between a State and any place outside the State, commerce between a State and any Indian country in the State, or commerce between points in the same State but through any place outside the State or through any Indian country.

(B) Into a State, place, or locality

A sale, shipment, or transfer of cigarettes or smokeless tobacco that is made in interstate commerce, as defined in this paragraph, shall be deemed to have been made into the State, place, or locality in which such cigarettes or smokeless tobacco are delivered.

(10) Person

The term "person" means an individual, corporation, company, association, firm, partnership, society, State government, local government, Indian tribal government, governmental organization of such a government, or joint stock company.

(11) State

The term "State" means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(12) Smokeless tobacco

The term "smokeless tobacco" means any finely cut, ground, powdered, or leaf tobacco, or other product containing tobacco, that is intended to be placed in the oral or nasal cavity or otherwise consumed without being combusted.

(13) Tobacco tax administrator

The term "tobacco tax administrator" means the State, local, or tribal official duly authorized to collect the tobacco tax or administer the tax law of a State, locality, or tribe, respectively.

(14) Use

The term "use" includes the consumption, storage, handling, or disposal of cigarettes or smokeless tobacco.

(Oct. 19, 1949, ch. 699, §1, as added Pub. L. 111–154, §2(a), Mar. 31, 2010, 124 Stat. 1088.)

PRIOR PROVISIONS

A prior section 375, act Oct. 19, 1949, ch. 699, §1, 63 Stat. 884; Aug. 9, 1955, ch. 695, §1, 69 Stat. 627, set out definitions for this chapter, prior to repeal by Pub. L. 111–154, §2(a), Mar. 31, 2010, 124 Stat. 1088.

EFFECTIVE DATE

Pub. L. 111–154, §6, Mar. 31, 2010, 124 Stat. 1110, provided that:

"(a) IN GENERAL.—Except as provided in subsection (b), this Act [see Short Title of 2010 Amendment note below] shall take effect on the date that is 90 days after the date of enactment of this Act [Mar. 31, 2010].

"(b) BATFE AUTHORITY.—The amendments made by section 4 [amending section 2343 of Title 18, Crimes and Criminal Procedure] shall take effect on the date of enactment of this Act."

SHORT TITLE OF 2010 AMENDMENT

Pub. L. 111–154, §1(a), Mar. 31, 2010, 124 Stat. 1087, provided that: "This Act [enacting this section, sections 376a, 377, and 378 of this title, and section 1716E of Title 18, Crimes and Criminal Procedure, amending section 376 of this title and section 2343 of Title 18, repealing former sections 375, 377, and 378 of

this title, and enacting provisions set out as notes under this section] may be cited as the 'Prevent All Cigarette Trafficking Act of 2009' or 'PACT Act'."

SHORT TITLE

Act Oct. 19, 1949, ch. 699, 63 Stat. 884, which is classified generally to this chapter, is popularly known as the Jenkins Act.

SEVERABILITY

Pub. L. 111–154, §7, Mar. 31, 2010, 124 Stat. 1111, provided that: "If any provision of this Act [see Short Title of 2010 Amendment note above], or any amendment made by this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act and the application of the Act to any other person or circumstance shall not be affected thereby."

FINDINGS AND PURPOSE

Pub. L. 111–154, §1(b), (c), Mar. 31, 2010, 124 Stat. 1087, 1088, provided that:

"(b) FINDINGS.—Congress finds that—

"(1) the sale of illegal cigarettes and smokeless tobacco products significantly reduces Federal, State, and local government revenues, with Internet sales alone accounting for billions of dollars of lost Federal, State, and local tobacco tax revenue each year;

"(2) Hezbollah, Hamas, al Qaeda, and other terrorist organizations have profited from trafficking in illegal cigarettes or counterfeit cigarette tax stamps;

"(3) terrorist involvement in illicit cigarette trafficking will continue to grow because of the large profits such organizations can earn;

"(4) the sale of illegal cigarettes and smokeless tobacco over the Internet, and through mail, fax, or phone orders, makes it cheaper and easier for children to obtain tobacco products;

"(5) the majority of Internet and other remote sales of cigarettes and smokeless tobacco are being made without adequate precautions to protect against sales to children, without the payment of applicable taxes, and without complying with the nominal registration and reporting requirements in existing Federal law;

"(6) unfair competition from illegal sales of cigarettes and smokeless tobacco is taking billions of dollars of sales away from law-abiding retailers throughout the United States;

"(7) with rising State and local tobacco tax rates, the incentives for the illegal sale of cigarettes and smokeless tobacco have increased;

"(8) the number of active tobacco investigations being conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives rose to 452 in 2005;

"(9) the number of Internet vendors in the United States and in foreign countries that sell cigarettes and smokeless tobacco to buyers in the United States increased from only about 40 in 2000 to more than 500 in 2005; and

"(10) the intrastate sale of illegal cigarettes and smokeless tobacco over the Internet has a substantial effect on interstate commerce.

"(c) PURPOSES.—It is the purpose of this Act [see Short Title of 2010 Amendment note above] to—

"(1) require Internet and other remote sellers of cigarettes and smokeless tobacco to comply with the same laws that apply to law-abiding tobacco retailers;

"(2) create strong disincentives to illegal smuggling of tobacco products;

"(3) provide government enforcement officials with more effective enforcement tools to combat tobacco smuggling;

"(4) make it more difficult for cigarette and smokeless tobacco traffickers to engage in and profit from their illegal activities;

"(5) increase collections of Federal, State, and local excise taxes on cigarettes and smokeless tobacco; and

"(6) prevent and reduce youth access to inexpensive cigarettes and smokeless tobacco through illegal Internet or contraband sales."

EXCLUSIONS REGARDING INDIAN TRIBES AND TRIBAL MATTERS

Pub. L. 111–154, §5, Mar. 31, 2010, 124 Stat. 1109, provided that:

"(a) IN GENERAL.—Nothing in this Act [see Short Title of 2010 Amendment note above] or the amendments made by this Act shall be construed to amend, modify, or otherwise affect—

"(1) any agreements, compacts, or other intergovernmental arrangements between any State or local government and any government of an Indian tribe (as that term is defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)) relating to the collection of taxes on

cigarettes or smokeless tobacco sold in Indian country;

"(2) any State laws that authorize or otherwise pertain to any such intergovernmental arrangements or create special rules or procedures for the collection of State, local, or tribal taxes on cigarettes or smokeless tobacco sold in Indian country;

"(3) any limitations under Federal or State law, including Federal common law and treaties, on State, local, and tribal tax and regulatory authority with respect to the sale, use, or distribution of cigarettes and smokeless tobacco by or to Indian tribes, tribal members, tribal enterprises, or in Indian country;

"(4) any Federal law, including Federal common law and treaties, regarding State jurisdiction, or lack thereof, over any tribe, tribal members, tribal enterprises, tribal reservations, or other lands held by the United States in trust for one or more Indian tribes; or

"(5) any State or local government authority to bring enforcement actions against persons located in Indian country.

"(b) COORDINATION OF LAW ENFORCEMENT.—Nothing in this Act or the amendments made by this Act shall be construed to inhibit or otherwise affect any coordinated law enforcement effort by 1 or more States or other jurisdictions, including Indian tribes, through interstate compact or otherwise, that—

"(1) provides for the administration of tobacco product laws or laws pertaining to interstate sales or other sales of tobacco products;

"(2) provides for the seizure of tobacco products or other property related to a violation of such laws; or

"(3) establishes cooperative programs for the administration of such laws.

"(c) TREATMENT OF STATE AND LOCAL GOVERNMENTS.—Nothing in this Act or the amendments made by this Act shall be construed to authorize, deputize, or commission States or local governments as instrumentalities of the United States.

"(d) ENFORCEMENT WITHIN INDIAN COUNTRY.—Nothing in this Act or the amendments made by this Act shall prohibit, limit, or restrict enforcement by the Attorney General of the United States of this Act or an amendment made by this Act within Indian country.

"(e) AMBIGUITY.—Any ambiguity between the language of this section or its application and any other provision of this Act shall be resolved in favor of this section.

"(f) DEFINITIONS.—In this section—

"(1) the term 'Indian country' has the meaning given that term in section 1 of the Jenkins Act [Act of October 19, 1949, 15 U.S.C. 375], as amended by this Act; and

"(2) the term 'tribal enterprise' means any business enterprise, regardless of whether incorporated or unincorporated under Federal or tribal law, of an Indian tribe or group of Indian tribes."

§376. Reports to State tobacco tax administrator

(a) Contents

Any person who sells, transfers, or ships for profit cigarettes or smokeless tobacco in interstate commerce, whereby such cigarettes or smokeless tobacco are shipped into a State, locality, or Indian country of an Indian tribe taxing the sale or use of cigarettes or smokeless tobacco, or who advertises or offers cigarettes or smokeless tobacco for such a sale, transfer, or shipment, shall—

(1) first file with the Attorney General of the United States and with the tobacco tax administrators of the State and place into which such shipment is made or in which such advertisement or offer is disseminated a statement setting forth his name and trade name (if any), and the address of his principal place of business and of any other place of business, as well as telephone numbers for each place of business, a principal electronic mail address, any website addresses, and the name, address, and telephone number of an agent in the State authorized to accept service on behalf of the person;

(2) not later than the 10th day of each calendar month, file with the tobacco tax administrator of the State into which such shipment is made, a memorandum or a copy of the invoice covering each and every shipment of cigarettes or smokeless tobacco made during the previous calendar month into such State; the memorandum or invoice in each case to include the name and address of the person to whom the shipment was made, the brand, the quantity thereof, and the name,

address, and phone number of the person delivering the shipment to the recipient on behalf of the delivery seller, with all invoice or memoranda information relating to specific customers to be organized by city or town and by zip code; and

(3) with respect to each memorandum or invoice filed with a State under paragraph (2), also file copies of the memorandum or invoice with the tobacco tax administrators and chief law enforcement officers of the local governments and Indian tribes operating within the borders of the State that apply their own local or tribal taxes on cigarettes or smokeless tobacco.

(b) Presumptive evidence

The fact that any person ships or delivers for shipment any cigarettes or smokeless tobacco shall, if such shipment is into a State in which such person has filed a statement with the tobacco tax administrator under subsection (a)(1) of this section, be presumptive evidence that such cigarettes or smokeless tobacco were sold, or transferred for profit, by such person.

(c) Use of information

A tobacco tax administrator or chief law enforcement officer who receives a memorandum or invoice under paragraph (2) or (3) of subsection (a) shall use the memorandum or invoice solely for the purposes of the enforcement of this chapter and the collection of any taxes owed on related sales of cigarettes and smokeless tobacco, and shall keep confidential any personal information in the memorandum or invoice except as required for such purposes.

(Oct. 19, 1949, ch. 699, §2, 63 Stat. 884; Aug. 15, 1953, ch. 512, title II, §201(a), 67 Stat. 617; Aug. 9, 1955, ch. 695, §1, 69 Stat. 627; Pub. L. 111–154, §2(b), Mar. 31, 2010, 124 Stat. 1090.)

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–154, §2(b)(1), (2)(A), inserted heading and, in introductory provisions, substituted "cigarettes or smokeless tobacco" for "cigarettes" wherever appearing, ", transfers, or ships" for "or transfers", and ", transfer, or shipment" for "or transfer and shipment", inserted ", locality, or Indian country of an Indian tribe" after "a State", and struck out "to other than a distributor licensed by or located in such State," after "use of cigarettes or smokeless tobacco,".

Subsec. (a)(1). Pub. L. 111–154, §2(b)(2)(B), substituted "with the Attorney General of the United States and with the tobacco tax administrators of the State and place" for "with the tobacco tax administrator of the State" and ", as well as telephone numbers for each place of business, a principal electronic mail address, any website addresses, and the name, address, and telephone number of an agent in the State authorized to accept service on behalf of the person;" for "; and".

Subsec. (a)(2). Pub. L. 111–154, §2(b)(1), (2)(C), substituted "cigarettes or smokeless tobacco" for "cigarettes" and "the quantity thereof, and the name, address, and phone number of the person delivering the shipment to the recipient on behalf of the delivery seller, with all invoice or memoranda information relating to specific customers to be organized by city or town and by zip code; and" for "and the quantity thereof."

Subsec. (a)(3). Pub. L. 111–154, §2(b)(2)(D), added par. (3).

Subsec. (b). Pub. L. 111–154, §2(b)(1), (3), inserted heading, substituted "cigarettes or smokeless tobacco" for "cigarettes" in two places and "evidence that" for "evidence (1) that", and struck out ", and (2) that such sale or transfer was to other than a distributor licensed by or located in such State" after "by such person".

Subsec. (c). Pub. L. 111–154, §2(b)(4), added subsec. (c).

1955—Act Aug. 9, 1955, designated existing provisions as subsec. (a), inserted provisions requiring filing of a statement of name, trade name, address, and places of business by persons who sell or transfer for profit cigarettes in interstate commerce or by persons who advertise or offer cigarettes for such sale or transfer, and added subsec. (b).

1953—Act Aug. 15, 1953, required that the memorandum or copy of invoice be filed with, rather than forwarded to, the tobacco tax administrator.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–154 effective on the date that is 90 days after March 31, 2010, see section 6 of Pub. L. 111–154, set out as a note under section 375 of this title.

EFFECTIVE DATE OF 1955 AMENDMENT

Act Aug. 9, 1955, ch. 695, §2, 69 Stat. 628, provided that:

"(a) Except as provided in subsection (b), the amendments made by this Act [amending this section and

former sections 375, 377, and 378 of this title] shall take effect thirty days after the date of its enactment [Aug. 9, 1955].

"(b) The provisions of section 2(a) of the Act of October 19, 1949, as amended by this Act [15 U.S.C. 376(a)], insofar as it requires the filing of memoranda or copies of invoices with the appropriate tax administrator for shipments of cigarettes into the District of Columbia, Alaska, Hawaii, and the Commonwealth of Puerto Rico, shall apply in respect of memoranda or copies of invoices covering shipments made during calendar months beginning after the month in which this Act is enacted [August 1955]."

EFFECTIVE DATE OF 1953 AMENDMENT

Act Aug. 15, 1953, ch. 512, title II, §201(b), 67 Stat. 617, provided that: "The amendment made by subsection (a) [amending this section] shall apply only in respect of memoranda or copies of invoices covering shipments made during the calendar month in which this Act is enacted [August 1953] and subsequent calendar months."

§376a. Delivery sales

(a) In general

With respect to delivery sales into a specific State and place, each delivery seller shall comply with—

(1) the shipping requirements set forth in subsection (b);

(2) the recordkeeping requirements set forth in subsection (c);

(3) all State, local, tribal, and other laws generally applicable to sales of cigarettes or smokeless tobacco as if the delivery sales occurred entirely within the specific State and place, including laws imposing—

(A) excise taxes;

(B) licensing and tax-stamping requirements;

(C) restrictions on sales to minors; and

(D) other payment obligations or legal requirements relating to the sale, distribution, or delivery of cigarettes or smokeless tobacco; and

(4) the tax collection requirements set forth in subsection (d).

(b) Shipping and packaging

(1) Required statement

For any shipping package containing cigarettes or smokeless tobacco, the delivery seller shall include on the bill of lading, if any, and on the outside of the shipping package, on the same surface as the delivery address, a clear and conspicuous statement providing as follows: "CIGARETTES/SMOKELESS TOBACCO: FEDERAL LAW REQUIRES THE PAYMENT OF ALL APPLICABLE EXCISE TAXES, AND COMPLIANCE WITH APPLICABLE LICENSING AND TAX-STAMPING OBLIGATIONS".

(2) Failure to label

Any shipping package described in paragraph (1) that is not labeled in accordance with that paragraph shall be treated as nondeliverable matter by a common carrier or other delivery service, if the common carrier or other delivery service knows or should know the package contains cigarettes or smokeless tobacco. If a common carrier or other delivery service believes a package is being submitted for delivery in violation of paragraph (1), it may require the person submitting the package for delivery to establish that it is not being sent in violation of paragraph (1) before accepting the package for delivery. Nothing in this paragraph shall require the common carrier or other delivery service to open any package to determine its contents.

(3) Weight restriction

A delivery seller shall not sell, offer for sale, deliver, or cause to be delivered in any single sale or single delivery any cigarettes or smokeless tobacco weighing more than 10 pounds.

(4) Age verification

(A) In general

A delivery seller who mails or ships tobacco products—

(i) shall not sell, deliver, or cause to be delivered any tobacco products to a person under the minimum age required for the legal sale or purchase of tobacco products, as determined by the applicable law at the place of delivery;

(ii) shall use a method of mailing or shipping that requires—

(I) the purchaser placing the delivery sale order, or an adult who is at least the minimum age required for the legal sale or purchase of tobacco products, as determined by the applicable law at the place of delivery, to sign to accept delivery of the shipping container at the delivery address; and

(II) the person who signs to accept delivery of the shipping container to provide proof, in the form of a valid, government-issued identification bearing a photograph of the individual, that the person is at least the minimum age required for the legal sale or purchase of tobacco products, as determined by the applicable law at the place of delivery; and

(iii) shall not accept a delivery sale order from a person without—

(I) obtaining the full name, birth date, and residential address of that person; and

(II) verifying the information provided in subclause (I), through the use of a commercially available database or aggregate of databases, consisting primarily of data from government sources, that are regularly used by government and businesses for the purpose of age and identity verification and authentication, to ensure that the purchaser is at least the minimum age required for the legal sale or purchase of tobacco products, as determined by the applicable law at the place of delivery.

(B) Limitation

No database being used for age and identity verification under subparagraph (A)(iii) shall be in the possession or under the control of the delivery seller, or be subject to any changes or supplementation by the delivery seller.

(c) Records

(1) In general

Each delivery seller shall keep a record of any delivery sale, including all of the information described in section 376(a)(2) of this title, organized by the State, and within the State, by the city or town and by zip code, into which the delivery sale is so made.

(2) Record retention

Records of a delivery sale shall be kept as described in paragraph (1) until the end of the 4th full calendar year that begins after the date of the delivery sale.

(3) Access for officials

Records kept under paragraph (1) shall be made available to tobacco tax administrators of the States, to local governments and Indian tribes that apply local or tribal taxes on cigarettes or smokeless tobacco, to the attorneys general of the States, to the chief law enforcement officers of the local governments and Indian tribes, and to the Attorney General of the United States in order to ensure the compliance of persons making delivery sales with the requirements of this chapter.

(d) Delivery

(1) In general

Except as provided in paragraph (2), no delivery seller may sell or deliver to any consumer, or tender to any common carrier or other delivery service, any cigarettes or smokeless tobacco pursuant to a delivery sale unless, in advance of the sale, delivery, or tender—

(A) any cigarette or smokeless tobacco excise tax that is imposed by the State in which the

cigarettes or smokeless tobacco are to be delivered has been paid to the State;

(B) any cigarette or smokeless tobacco excise tax that is imposed by the local government of the place in which the cigarettes or smokeless tobacco are to be delivered has been paid to the local government; and

(C) any required stamps or other indicia that the excise tax has been paid are properly affixed or applied to the cigarettes or smokeless tobacco.

(2) Exception

Paragraph (1) does not apply to a delivery sale of smokeless tobacco if the law of the State or local government of the place where the smokeless tobacco is to be delivered requires or otherwise provides that delivery sellers collect the excise tax from the consumer and remit the excise tax to the State or local government, and the delivery seller complies with the requirement.

(e) List of unregistered or noncompliant delivery sellers

(1) In general

(A) Initial list

Not later than 90 days after this subsection goes into effect under the Prevent All Cigarette Trafficking Act of 2009, the Attorney General of the United States shall compile a list of delivery sellers of cigarettes or smokeless tobacco that have not registered with the Attorney General of the United States pursuant to section 376(a) of this title, or that are otherwise not in compliance with this chapter, and—

(i) distribute the list to—

(I) the attorney general and tax administrator of every State;

(II) common carriers and other persons that deliver small packages to consumers in interstate commerce, including the United States Postal Service; and

(III) any other person that the Attorney General of the United States determines can promote the effective enforcement of this chapter; and

(ii) publicize and make the list available to any other person engaged in the business of interstate deliveries or who delivers cigarettes or smokeless tobacco in or into any State.

(B) List contents

To the extent known, the Attorney General of the United States shall include, for each delivery seller on the list described in subparagraph (A)—

(i) all names the delivery seller uses or has used in the transaction of its business or on packages delivered to customers;

(ii) all addresses from which the delivery seller does or has done business, or ships or has shipped cigarettes or smokeless tobacco;

(iii) the website addresses, primary e-mail address, and phone number of the delivery seller; and

(iv) any other information that the Attorney General of the United States determines would facilitate compliance with this subsection by recipients of the list.

(C) Updating

The Attorney General of the United States shall update and distribute the list described in subparagraph (A) at least once every 4 months, and may distribute the list and any updates by regular mail, electronic mail, or any other reasonable means, or by providing recipients with access to the list through a nonpublic website that the Attorney General of the United States regularly updates.

(D) State, local, or tribal additions

The Attorney General of the United States shall include in the list described in subparagraph (A) any noncomplying delivery sellers identified by any State, local, or tribal government under paragraph (6), and shall distribute the list to the attorney general or chief law enforcement

official and the tax administrator of any government submitting any such information, and to any common carriers or other persons who deliver small packages to consumers identified by any government pursuant to paragraph (6).

(E) Accuracy and completeness of list of noncomplying delivery sellers

In preparing and revising the list described in subparagraph (A), the Attorney General of the United States shall—

(i) use reasonable procedures to ensure maximum possible accuracy and completeness of the records and information relied on for the purpose of determining that a delivery seller is not in compliance with this chapter;

(ii) not later than 14 days before including a delivery seller on the list, make a reasonable attempt to send notice to the delivery seller by letter, electronic mail, or other means that the delivery seller is being placed on the list, which shall cite the relevant provisions of this chapter and the specific reasons for which the delivery seller is being placed on the list;

(iii) provide an opportunity to the delivery seller to challenge placement on the list;

(iv) investigate each challenge described in clause (iii) by contacting the relevant Federal, State, tribal, and local law enforcement officials, and provide the specific findings and results of the investigation to the delivery seller not later than 30 days after the date on which the challenge is made; and

(v) if the Attorney General of the United States determines that the basis for including a delivery seller on the list is inaccurate, based on incomplete information, or cannot be verified, promptly remove the delivery seller from the list as appropriate and notify each appropriate Federal, State, tribal, and local authority of the determination.

(F) Confidentiality

The list described in subparagraph (A) shall be confidential, and any person receiving the list shall maintain the confidentiality of the list and may deliver the list, for enforcement purposes, to any government official or to any common carrier or other person that delivers tobacco products or small packages to consumers. Nothing in this section shall prohibit a common carrier, the United States Postal Service, or any other person receiving the list from discussing with a listed delivery seller the inclusion of the delivery seller on the list and the resulting effects on any services requested by the listed delivery seller.

(2) Prohibition on delivery

(A) In general

Commencing on the date that is 60 days after the date of the initial distribution or availability of the list described in paragraph (1)(A), no person who receives the list under paragraph (1), and no person who delivers cigarettes or smokeless tobacco to consumers, shall knowingly complete, cause to be completed, or complete its portion of a delivery of any package for any person whose name and address are on the list, unless—

(i) the person making the delivery knows or believes in good faith that the item does not include cigarettes or smokeless tobacco;

(ii) the delivery is made to a person lawfully engaged in the business of manufacturing, distributing, or selling cigarettes or smokeless tobacco; or

(iii) the package being delivered weighs more than 100 pounds and the person making the delivery does not know or have reasonable cause to believe that the package contains cigarettes or smokeless tobacco.

(B) Implementation of updates

Commencing on the date that is 30 days after the date of the distribution or availability of any updates or corrections to the list described in paragraph (1)(A), all recipients and all common carriers or other persons that deliver cigarettes or smokeless tobacco to consumers shall be subject to subparagraph (A) in regard to the corrections or updates.

(3) Exemptions

(A) In general

Subsection (b)(2) and any requirements or restrictions placed directly on common carriers under this subsection, including subparagraphs (A) and (B) of paragraph (2), shall not apply to a common carrier that—

(i) is subject to a settlement agreement described in subparagraph (B); or

(ii) if a settlement agreement described in subparagraph (B) to which the common carrier is a party is terminated or otherwise becomes inactive, is administering and enforcing policies and practices throughout the United States that are at least as stringent as the agreement.

(B) Settlement agreement

A settlement agreement described in this subparagraph—

(i) is a settlement agreement relating to tobacco product deliveries to consumers; and

(ii) includes—

(I) the Assurance of Discontinuance entered into by the Attorney General of New York and DHL Holdings USA, Inc. and DHL Express (USA), Inc. on or about July 1, 2005, the Assurance of Discontinuance entered into by the Attorney General of New York and United Parcel Service, Inc. on or about October 21, 2005, and the Assurance of Compliance entered into by the Attorney General of New York and Federal Express Corporation and FedEx Ground Package Systems, Inc. on or about February 3, 2006, if each of those agreements is honored throughout the United States to block illegal deliveries of cigarettes or smokeless tobacco to consumers; and

(II) any other active agreement between a common carrier and a State that operates throughout the United States to ensure that no deliveries of cigarettes or smokeless tobacco shall be made to consumers or illegally operating Internet or mail-order sellers and that any such deliveries to consumers shall not be made to minors or without payment to the States and localities where the consumers are located of all taxes on the tobacco products.

(4) Shipments from persons on list

(A) In general

If a common carrier or other delivery service delays or interrupts the delivery of a package in the possession of the common carrier or delivery service because the common carrier or delivery service determines or has reason to believe that the person ordering the delivery is on a list described in paragraph (1)(A) and that clauses (i), (ii), and (iii) of paragraph (2)(A) do not apply—

(i) the person ordering the delivery shall be obligated to pay—

(I) the common carrier or other delivery service as if the delivery of the package had been timely completed; and

(II) if the package is not deliverable, any reasonable additional fee or charge levied by the common carrier or other delivery service to cover any extra costs and inconvenience and to serve as a disincentive against such noncomplying delivery orders; and

(ii) if the package is determined not to be deliverable, the common carrier or other delivery service shall offer to provide the package and its contents to a Federal, State, or local law enforcement agency.

(B) Records

A common carrier or other delivery service shall maintain, for a period of 5 years, any records kept in the ordinary course of business relating to any delivery interrupted under this paragraph and provide that information, upon request, to the Attorney General of the United States or to the attorney general or chief law enforcement official or tax administrator of any State, local, or tribal government.

(C) Confidentiality

Any person receiving records under subparagraph (B) shall—

(i) use the records solely for the purposes of the enforcement of this chapter and the collection of any taxes owed on related sales of cigarettes and smokeless tobacco; and

(ii) keep confidential any personal information in the records not otherwise required for such purposes.

(5) Preemption

(A) In general

No State, local, or tribal government, nor any political authority of 2 or more State, local, or tribal governments, may enact or enforce any law or regulation relating to delivery sales that restricts deliveries of cigarettes or smokeless tobacco to consumers by common carriers or other delivery services on behalf of delivery sellers by—

(i) requiring that the common carrier or other delivery service verify the age or identity of the consumer accepting the delivery by requiring the person who signs to accept delivery of the shipping container to provide proof, in the form of a valid, government-issued identification bearing a photograph of the individual, that the person is at least the minimum age required for the legal sale or purchase of tobacco products, as determined by either State or local law at the place of delivery;

(ii) requiring that the common carrier or other delivery service obtain a signature from the consumer accepting the delivery;

(iii) requiring that the common carrier or other delivery service verify that all applicable taxes have been paid;

(iv) requiring that packages delivered by the common carrier or other delivery service contain any particular labels, notice, or markings; or

(v) prohibiting common carriers or other delivery services from making deliveries on the basis of whether the delivery seller is or is not identified on any list of delivery sellers maintained and distributed by any entity other than the Federal Government.

(B) Relationship to other laws

Except as provided in subparagraph (C), nothing in this paragraph shall be construed to nullify, expand, restrict, or otherwise amend or modify—

(i) section 14501(c)(1) or 41713(b)(4) of title 49;

(ii) any other restrictions in Federal law on the ability of State, local, or tribal governments to regulate common carriers; or

(iii) any provision of State, local, or tribal law regulating common carriers that is described in section 14501(c)(2) or 41713(b)(4)(B) of title 49.

(C) State laws prohibiting delivery sales

(i) In general

Except as provided in clause (ii), nothing in the Prevent All Cigarette Trafficking Act of 2009, the amendments made by that Act, or in any other Federal statute shall be construed to preempt, supersede, or otherwise limit or restrict State laws prohibiting the delivery sale, or the shipment or delivery pursuant to a delivery sale, of cigarettes or other tobacco products to individual consumers or personal residences.

(ii) Exemptions

No State may enforce against a common carrier a law prohibiting the delivery of cigarettes or other tobacco products to individual consumers or personal residences without proof that the common carrier is not exempt under paragraph (3) of this subsection.

(6) State, local, and tribal additions

(A) In general

Any State, local, or tribal government shall provide the Attorney General of the United States with—

(i) all known names, addresses, website addresses, and other primary contact information

of any delivery seller that—

(I) offers for sale or makes sales of cigarettes or smokeless tobacco in or into the State, locality, or tribal land; and

(II) has failed to register with or make reports to the respective tax administrator as required by this chapter, or that has been found in a legal proceeding to have otherwise failed to comply with this chapter; and

(ii) a list of common carriers and other persons who make deliveries of cigarettes or smokeless tobacco in or into the State, locality, or tribal land.

(B) Updates

Any government providing a list to the Attorney General of the United States under subparagraph (A) shall also provide updates and corrections every 4 months until such time as the government notifies the Attorney General of the United States in writing that the government no longer desires to submit information to supplement the list described in paragraph (1)(A).

(C) Removal after withdrawal

Upon receiving written notice that a government no longer desires to submit information under subparagraph (A), the Attorney General of the United States shall remove from the list described in paragraph (1)(A) any persons that are on the list solely because of the prior submissions of the government of the list of the government of noncomplying delivery sellers of cigarettes or smokeless tobacco or a subsequent update or correction by the government.

(7) Deadline to incorporate additions

The Attorney General of the United States shall—

(A) include any delivery seller identified and submitted by a State, local, or tribal government under paragraph (6) in any list or update that is distributed or made available under paragraph (1) on or after the date that is 30 days after the date on which the information is received by the Attorney General of the United States; and

(B) distribute any list or update described in subparagraph (A) to any common carrier or other person who makes deliveries of cigarettes or smokeless tobacco that has been identified and submitted by a government pursuant to paragraph (6).

(8) Notice to delivery sellers

Not later than 14 days before including any delivery seller on the initial list described in paragraph (1)(A), or on an update to the list for the first time, the Attorney General of the United States shall make a reasonable attempt to send notice to the delivery seller by letter, electronic mail, or other means that the delivery seller is being placed on the list or update, with that notice citing the relevant provisions of this chapter.

(9) Limitations

(A) In general

Any common carrier or other person making a delivery subject to this subsection shall not be required or otherwise obligated to—

(i) determine whether any list distributed or made available under paragraph (1) is complete, accurate, or up-to-date;

(ii) determine whether a person ordering a delivery is in compliance with this chapter; or

(iii) open or inspect, pursuant to this chapter, any package being delivered to determine its contents.

(B) Alternate names

Any common carrier or other person making a delivery subject to this subsection—

(i) shall not be required to make any inquiries or otherwise determine whether a person ordering a delivery is a delivery seller on the list described in paragraph (1)(A) who is using a

different name or address in order to evade the related delivery restrictions; and

(ii) shall not knowingly deliver any packages to consumers for any delivery seller on the list described in paragraph (1)(A) who the common carrier or other delivery service knows is a delivery seller who is on the list and is using a different name or address to evade the delivery restrictions of paragraph (2).

(C) Penalties

Any common carrier or person in the business of delivering packages on behalf of other persons shall not be subject to any penalty under section 14101(a) of title 49 or any other provision of law for—

(i) not making any specific delivery, or any deliveries at all, on behalf of any person on the list described in paragraph (1)(A);

(ii) refusing, as a matter of regular practice and procedure, to make any deliveries, or any deliveries in certain States, of any cigarettes or smokeless tobacco for any person or for any person not in the business of manufacturing, distributing, or selling cigarettes or smokeless tobacco; or

(iii) delaying or not making a delivery for any person because of reasonable efforts to comply with this chapter.

(D) Other limits

Section 376 of this title and subsections (a), (b), (c), and (d) of this section shall not be interpreted to impose any responsibilities, requirements, or liability on common carriers.

(f) Presumption

For purposes of this chapter, a delivery sale shall be deemed to have occurred in the State and place where the buyer obtains personal possession of the cigarettes or smokeless tobacco, and a delivery pursuant to a delivery sale is deemed to have been initiated or ordered by the delivery seller.

(Oct. 19, 1949, ch. 699, §2A, as added Pub. L. 111–154, §2(c), Mar. 31, 2010, 124 Stat. 1091.)

REFERENCES IN TEXT

The Prevent All Cigarette Trafficking Act of 2009, referred to in subsec. (e)(1)(A), (5)(C)(i), is Pub. L. 111–154, Mar. 31, 2010, 124 Stat. 1087, also known as the PACT Act. For complete classification of this Act to the Code, see Short Title of 2010 Amendment note set out under section 375 of this title and Tables.

For the date subsection (e) of this section goes into effect, referred to in subsec. (e)(1)(A), see Effective Date note below.

EFFECTIVE DATE

Section effective on the date that is 90 days after March 31, 2010, see section 6 of Pub. L. 111–154, set out as an Effective Date of 2010 Amendment note under section 375 of this title.

§377. Penalties

(a) Criminal penalties

(1) In general

Except as provided in paragraph (2), whoever knowingly violates this chapter shall be imprisoned for not more than 3 years, fined under title 18, or both.

(2) Exceptions

(A) Governments

Paragraph (1) shall not apply to a State, local, or tribal government.

(B) Delivery violations

A common carrier or independent delivery service, or employee of a common carrier or independent delivery service, shall be subject to criminal penalties under paragraph (1) for a

violation of section 376a(e) of this title only if the violation is committed knowingly—

(i) as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value; or

(ii) for the purpose of assisting a delivery seller to violate, or otherwise evading compliance with, section 376a of this title.

(b) Civil penalties

(1) In general

Except as provided in paragraph (3), whoever violates this chapter shall be subject to a civil penalty in an amount not to exceed—

(A) in the case of a delivery seller, the greater of—

(i) $5,000 in the case of the first violation, or $10,000 for any other violation; or

(ii) for any violation, 2 percent of the gross sales of cigarettes or smokeless tobacco of the delivery seller during the 1-year period ending on the date of the violation.

(B) in the case of a common carrier or other delivery service, $2,500 in the case of a first violation, or $5,000 for any violation within 1 year of a prior violation.

(2) Relation to other penalties

A civil penalty imposed under paragraph (1) for a violation of this chapter shall be imposed in addition to any criminal penalty under subsection (a) and any other damages, equitable relief, or injunctive relief awarded by the court, including the payment of any unpaid taxes to the appropriate Federal, State, local, or tribal governments.

(3) Exceptions

(A) Delivery violations

An employee of a common carrier or independent delivery service shall be subject to civil penalties under paragraph (1) for a violation of section 376a(e) of this title only if the violation is committed intentionally—

(i) as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value; or

(ii) for the purpose of assisting a delivery seller to violate, or otherwise evading compliance with, section 376a of this title.

(B) Other limitations

No common carrier or independent delivery service shall be subject to civil penalties under paragraph (1) for a violation of section 376a(e) of this title if—

(i) the common carrier or independent delivery service has implemented and enforces effective policies and practices for complying with that section; or

(ii) the violation consists of an employee of the common carrier or independent delivery service who physically receives and processes orders, picks up packages, processes packages, or makes deliveries, taking actions that are outside the scope of employment of the employee, or that violate the implemented and enforced policies of the common carrier or independent delivery service described in clause (i).

(Oct. 19, 1949, ch. 699, §3, as added Pub. L. 111–154, §2(d), Mar. 31, 2010, 124 Stat. 1100.)

PRIOR PROVISIONS

A prior section 377, act Oct. 19, 1949, ch. 699, §3, 63 Stat. 885; Aug. 9, 1955, ch. 695, §1, 69 Stat. 628, which related to penalties for violations of any provision of this chapter, was repealed, effective on the date that is 90 days after March 31, 2010, by Pub. L. 111–154, §§2(d), 6, Mar. 31, 2010, 124 Stat. 1100, 1110.

EFFECTIVE DATE

Section effective on the date that is 90 days after March 31, 2010, see section 6 of Pub. L. 111–154, set out as an Effective Date of 2010 Amendment note under section 375 of this title.

§378. Enforcement

(a) In general

The United States district courts shall have jurisdiction to prevent and restrain violations of this chapter and to provide other appropriate injunctive or equitable relief, including money damages, for the violations.

(b) Authority of the Attorney General

The Attorney General of the United States shall administer and enforce this chapter.

(c) State, local, and tribal enforcement

(1) In general

(A) Standing

A State, through its attorney general, or a local government or Indian tribe that levies a tax subject to section 376a(a)(3) of this title, through its chief law enforcement officer, may bring an action in a United States district court to prevent and restrain violations of this chapter by any person or to obtain any other appropriate relief from any person for violations of this chapter, including civil penalties, money damages, and injunctive or other equitable relief.

(B) Sovereign immunity

Nothing in this chapter shall be deemed to abrogate or constitute a waiver of any sovereign immunity of a State or local government or Indian tribe against any unconsented lawsuit under this chapter, or otherwise to restrict, expand, or modify any sovereign immunity of a State or local government or Indian tribe.

(2) Provision of information

A State, through its attorney general, or a local government or Indian tribe that levies a tax subject to section 376a(a)(3) of this title, through its chief law enforcement officer, may provide evidence of a violation of this chapter by any person not subject to State, local, or tribal government enforcement actions for violations of this chapter to the Attorney General of the United States or a United States attorney, who shall take appropriate actions to enforce this chapter.

(3) Use of penalties collected

(A) In general

There is established a separate account in the Treasury known as the "PACT Anti-Trafficking Fund". Notwithstanding any other provision of law and subject to subparagraph (B), an amount equal to 50 percent of any criminal and civil penalties collected by the Federal Government in enforcing this chapter shall be transferred into the PACT Anti-Trafficking Fund and shall be available to the Attorney General of the United States for purposes of enforcing this chapter and other laws relating to contraband tobacco products.

(B) Allocation of funds

Of the amount available to the Attorney General of the United States under subparagraph (A), not less than 50 percent shall be made available only to the agencies and offices within the Department of Justice that were responsible for the enforcement actions in which the penalties concerned were imposed or for any underlying investigations.

(4) Nonexclusivity of remedy

(A) In general

The remedies available under this section and section 377 of this title are in addition to any other remedies available under Federal, State, local, tribal, or other law.

(B) State court proceedings

Nothing in this chapter shall be construed to expand, restrict, or otherwise modify any right of an authorized State official to proceed in State court, or take other enforcement actions, on the basis of an alleged violation of State or other law.

(C) Tribal court proceedings

Nothing in this chapter shall be construed to expand, restrict, or otherwise modify any right of an authorized Indian tribal government official to proceed in tribal court, or take other enforcement actions, on the basis of an alleged violation of tribal law.

(D) Local government enforcement

Nothing in this chapter shall be construed to expand, restrict, or otherwise modify any right of an authorized local government official to proceed in State court, or take other enforcement actions, on the basis of an alleged violation of local or other law.

(d) Persons dealing in tobacco products

Any person who holds a permit under section 5712 of title 26 (regarding permitting of manufacturers and importers of tobacco products and export warehouse proprietors) may bring an action in an appropriate United States district court to prevent and restrain violations of this chapter by any person other than a State, local, or tribal government.

(e) Notice

(1) Persons dealing in tobacco products

Any person who commences a civil action under subsection (d) shall inform the Attorney General of the United States of the action.

(2) State, local, and tribal actions

It is the sense of Congress that the attorney general of any State, or chief law enforcement officer of any locality or tribe, that commences a civil action under this section should inform the Attorney General of the United States of the action.

(f) Public notice

(1) In general

The Attorney General of the United States shall make available to the public, by posting information on the Internet and by other appropriate means, information regarding all enforcement actions brought by the United States, or reported to the Attorney General of the United States, under this section, including information regarding the resolution of the enforcement actions and how the Attorney General of the United States has responded to referrals of evidence of violations pursuant to subsection (c)(2).

(2) Reports to Congress

Not later than 1 year after March 31, 2010, and every year thereafter until the date that is 5 years after March 31, 2010, the Attorney General of the United States shall submit to Congress a report containing the information described in paragraph (1).

(Oct. 19, 1949, ch. 699, §4, as added Pub. L. 111–154, §2(e), Mar. 31, 2010, 124 Stat. 1101.)

PRIOR PROVISIONS

A prior section 378, act Oct. 19, 1949, ch. 699, §4, as added Aug. 9, 1955, ch. 695, §1, 69 Stat. 628, which provided U.S. district courts with jurisdiction to prevent and restrain violations of this chapter, was repealed, effective on the date that is 90 days after March 31, 2010, by Pub. L. 111–154, §§2(e), 6, Mar. 31, 2010, 124 Stat. 1101, 1110.

EFFECTIVE DATE

Section effective on the date that is 90 days after March 31, 2010, see section 6 of Pub. L. 111–154, set out as an Effective Date of 2010 Amendment note under section 375 of this title.

CHAPTER 10B—STATE TAXATION OF INCOME FROM INTERSTATE COMMERCE

SUBCHAPTER I—NET INCOME TAXES

Sec.
381. Imposition of net income tax.
382. Assessment of net income taxes.
383. "Net income tax" defined.
384. Separability.

SUBCHAPTER II—DISCRIMINATORY TAXES

391. Tax on or with respect to generation or transmission of electricity.

SUBCHAPTER I—NET INCOME TAXES

§381. Imposition of net income tax

(a) Minimum standards

No State, or political subdivision thereof, shall have power to impose, for any taxable year ending after September 14, 1959, a net income tax on the income derived within such State by any person from interstate commerce if the only business activities within such State by or on behalf of such person during such taxable year are either, or both, of the following:

(1) the solicitation of orders by such person, or his representative, in such State for sales of tangible personal property, which orders are sent outside the State for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside the State; and

(2) the solicitation of orders by such person, or his representative, in such State in the name of or for the benefit of a prospective customer of such person, if orders by such customer to such person to enable such customer to fill orders resulting from such solicitation are orders described in paragraph (1).

(b) Domestic corporations; persons domiciled in or residents of a State

The provisions of subsection (a) of this section shall not apply to the imposition of a net income tax by any State, or political subdivision thereof, with respect to—

(1) any corporation which is incorporated under the laws of such State; or

(2) any individual who, under the laws of such State, is domiciled in, or a resident of, such State.

(c) Sales or solicitation of orders for sales by independent contractors

For purposes of subsection (a) of this section, a person shall not be considered to have engaged in business activities within a State during any taxable year merely by reason of sales in such State, or the solicitation of orders for sales in such State, of tangible personal property on behalf of such person by one or more independent contractors, or by reason of the maintenance, of an office in such State by one or more independent contractors whose activities on behalf of such person in such State consist solely of making sales, or soliciting orders for sales, or tangible personal property.

(d) Definitions

For purposes of this section—

(1) the term "independent contractor" means a commission agent, broker, or other independent contractor who is engaged in selling, or soliciting orders for the sale of, tangible personal property for more than one principal and who holds himself out as such in the regular course of his business activities; and

(2) the term "representative" does not include an independent contractor.

(Pub. L. 86–272, title I, §101, Sept. 14, 1959, 73 Stat. 555.)

STUDY AND REPORT BY CONGRESSIONAL COMMITTEES OF STATE TAXATION FROM INTERSTATE COMMERCE

Title II of Pub. L. 86–272, as amended by Pub. L. 87–17, Apr. 7, 1961, 75 Stat. 41; Pub. L. 87–435, Apr. 21, 1962, 76 Stat. 55; Pub. L. 88–42, June 21, 1963, 77 Stat. 67; Pub. L. 88–286, Mar. 18, 1964, 78 Stat. 166, and repealed by Pub. L. 94–455, title XXI, §2121(a), Oct. 4, 1976, 90 Stat. 1914, provided for a study by the Committee on the Judiciary of the House of Representatives and the Committee on Finance of the United States Senate, acting separately or jointly, or any duly authorized subcommittee thereof, of all matters pertaining to the taxation of interstate commerce by the States, territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, or any political or taxing subdivision of the foregoing, and for a report together with their proposals for legislation on or before June 30, 1965.

§382. Assessment of net income taxes

(a) Limitations

No State, or political subdivision thereof, shall have power to assess, after September 14, 1959, any net income tax which was imposed by such State or political subdivision, as the case may be, for any taxable year ending on or before such date, on the income derived within such State by any person from interstate commerce, if the imposition of such tax for a taxable year ending after such date is prohibited by section 381 of this title.

(b) Collections

The provisions of subsection (a) of this section shall not be construed—

(1) to invalidate the collection, on or before September 14, 1959, of any net income tax imposed for a taxable year ending on or before such date, or

(2) to prohibit the collection, after September 14, 1959, of any net income tax which was assessed on or before such date for a taxable year ending on or before such date.

(Pub. L. 86–272, title I, §102, Sept. 14, 1959, 73 Stat. 556.)

§383. "Net income tax" defined

For purposes of this chapter, the term "net income tax" means any tax imposed on, or measured by, net income.

(Pub. L. 86–272, title I, §103, Sept. 14, 1959, 73 Stat. 556.)

§384. Separability

If any provision of this chapter or the application of such provision to any person or circumstance is held invalid, the remainder of this chapter or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

(Pub. L. 86–272, title I, §104, Sept. 14, 1959, 73 Stat. 556.)

SUBCHAPTER II—DISCRIMINATORY TAXES

§391. Tax on or with respect to generation or transmission of electricity

No State, or political subdivision thereof, may impose or assess a tax on or with respect to the generation or transmission of electricity which discriminates against out-of-State manufacturers,

producers, wholesalers, retailers, or consumers of that electricity. For purposes of this section a tax is discriminatory if it results, either directly or indirectly, in a greater tax burden on electricity which is generated and transmitted in interstate commerce than on electricity which is generated and transmitted in intrastate commerce.

(Pub. L. 86–272, title II, §201, as added Pub. L. 94–455, title XXI, §2121(a), Oct. 4, 1976, 90 Stat. 1914.)

EFFECTIVE DATE

Pub. L. 94–455, title XXI, §2121(b), Oct. 4, 1976, 90 Stat. 1914, provided that: "The amendment made by subsection (a) [enacting this section] shall take effect beginning June 30, 1974."

CHAPTER 11—CAUSTIC POISONS

§§401 to 411. Repealed. Pub. L. 86–613, §19, formerly §18, July 12, 1960, 74 Stat. 381; renumbered Pub. L. 91–113, §4(a), Nov. 6, 1969, 83 Stat. 189

Sections 401 to 411, act Mar. 4, 1927, ch. 489, §§1–10, 12, 44 Stat. 1406–1410, prohibited misbranded shipments of dangerous caustic or corrosive substances in interstate or foreign commerce. See chapter 30 [§1261 et seq.] of this title.

EFFECTIVE DATE OF REPEAL; SAVINGS PROVISION

Pub. L. 86–613, §19, formerly §18, July 12, 1960, 74 Stat. 381, renumbered and amended by Pub. L. 91–113, §4(a), (b)(2), Nov. 6, 1969, 83 Stat. 189, 190; Pub. L. 110–314, title II, §204(b)(4)(B), Aug. 14, 2008, 122 Stat. 3041, provided that: "The Federal Caustic Poison Act [sections 401 to 411 of this title] (44 Stat. 1406) is repealed effective at the close of the sixth calendar month after the month of enactment of this Act [July 12, 1960], except that the Federal Caustic Poison Act shall remain in full force and effect with respect to any 'dangerous caustic or corrosive substance' (as defined by that Act) which is an article subject to the Federal Food, Drug, and Cosmetic Act [chapter 9 of title 21] and which is, by virtue of paragraph 2 of section 2(f) of this Act [section 1261(f)(2) of this title], excluded from the term 'hazardous substance' as defined in this Act [chapter 30 of this title]: *Provided*, That, if the Commission, pursuant to section 17(b) of this Act [set out as a note under section 1261 of this title], prescribes an additional period or periods during which violations of this Act [chapter 30 of this title] shall not be enforceable and if such additional period or periods are applicable to violations of this Act [chapter 30 of this title] involving one or more substances defined as 'dangerous caustic or corrosive substances' by the Federal Caustic Poison Act, that Act shall, with respect to such substance or substances, remain in full force and effect during such additional period or periods; *Provided further*, That, with respect to violations, liabilities incurred or appeals taken prior to the close of said sixth month or, if applicable, prior to the expiration of the additional period or periods referred to in the preceding proviso, all provisions of the Federal Caustic Poison Act shall be deemed to remain in full force for the purpose of sustaining any proper suit, action, or other proceeding with respect to any such violations, liabilities, and appeals."

CHAPTER 12—DISCRIMINATION AGAINST FARMERS' COOPERATIVE ASSOCIATIONS BY BOARDS OF TRADE

Sec.

431. Definitions.

432. Boards of trade dealing in agricultural products; exclusion of representatives of cooperative associations prohibited.

433. Remedies of cooperative association excluded from representation.

§431. Definitions

When used in this chapter (a) the term "agricultural products", means agricultural, horticultural, viticultural, and dairy products, food products of livestock, the products of poultry and bee raising, the edible products of forestry, and any and all products raised or produced on farms and processed or manufactured products thereof, transported or intended to be transported in interstate and/or foreign commerce.

(b) The words "board of trade" shall be held to include and mean any exchange or association, whether incorporated or unincorporated, of persons who shall be engaged in the business of buying or selling agricultural products or receiving the same for sale on consignment, except markets designated as contract markets under the Commodity Exchange Act [7 U.S.C. 1 et seq.].

(c) The words "interstate commerce" shall be construed to mean commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof, or within any Territory or possession, or the District of Columbia.

(d) For the purposes of this chapter (but not in any wise limiting the foregoing definition of interstate commerce) a transaction in respect to any article shall be considered to be in interstate commerce if such article is part of that current of commerce usual in dealing in agricultural products whereby they are sent from one State with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where purchase or sale is either for shipment to another State or for manufacture within the State and the shipment outside the State of the products resulting from such manufacture. Articles normally in such current of commerce shall not be considered out of such commerce through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this chapter. For the purpose of this paragraph the word "State" includes Territory, the District of Columbia, possession of the United States, and foreign nation.

(e) The word "person" shall be construed to import the plural or singular, and shall include individuals, associations, partnerships, corporations, and trusts.

(f) The act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust, within the scope of his employment or office, shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person.

(Mar. 4, 1927, ch. 508, §1, 44 Stat. 1423; June 15, 1936, ch. 545, §1, 49 Stat. 1491.)

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in subsec. (b), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

AMENDMENTS

1936—Subsec. (b). Act June 15, 1936, substituted "Commodity Exchange Act" for "Grain Futures Act".

§432. Boards of trade dealing in agricultural products; exclusion of representatives of cooperative associations prohibited

No board of trade whose members are engaged in the business of buying or selling agricultural products or receiving the same for sale on consignment in interstate commerce shall exclude from membership in, and all privileges on, such board of trade, any duly authorized representative of any lawfully formed and conducted cooperative association, corporate or otherwise, composed substantially of producers of agricultural products, or any such representative of any organization acting for a group of such associations, if such association or organization has adequate financial responsibility and complies or agrees to comply with such terms and conditions as are or may be imposed lawfully on other members of such board: *Provided*, That no rule of a board of trade shall

forbid or be construed to forbid the return on a patronage basis by such cooperative association or organization to its bona fide members of moneys collected in excess of the expense of conducting the business of such association.

(Mar. 4, 1927, ch. 508, §2, 44 Stat. 1424.)

§433. Remedies of cooperative association excluded from representation

Any such cooperative association or any such organization whose duly authorized representative is excluded from such membership and privileges by any board of trade referred to in section 432 of this title may sue in the United States District Court in whose jurisdiction such board of trade is operated or maintained for a mandatory injunction compelling such board of trade to admit such duly authorized representative to such membership and privileges and for any damages sustained, and such court shall have jurisdiction to issue such an injunction and to award such incidental damages as it may deem appropriate.

(Mar. 4, 1927, ch. 508, §3, 44 Stat. 1424.)

CHAPTER 13—TEXTILE FOUNDATION

Sec.

501. Creation of body corporate; directors; principal office; agencies.
502. Board of directors of Textile Foundation.
503. Purpose of Foundation.
504. Powers of Foundation.
505. Report to Congress.
506. Amendment and repeal of chapter.

§501. Creation of body corporate; directors; principal office; agencies

The Secretary of Commerce, the Secretary of Agriculture, and three directors first appointed as provided in section 502 of this title and their successors, are created a body corporate of the District of Columbia by the name of the "Textile Foundation" (in this chapter referred to as the corporation). The incorporation shall be held effected upon the date of the first meeting of the board of directors. The corporation shall maintain its principal office in the District of Columbia and may establish such agencies or branch offices at such places as it deems advisable.

(June 10, 1930, ch. 440, §1, 46 Stat. 539.)

§502. Board of directors of Textile Foundation

(a) Composition

The board of directors of the corporation (in this chapter referred to as the board) shall be constituted as follows:

(1) The Secretary of Commerce;

(2) The Secretary of Agriculture; and

(3) Three individuals, familiar with the textile industry or its allied branches, including that of production of raw materials, and their successors, to be appointed by the President, one for a term of two years, one for a term of three years, and one for a term of four years, from the date the incorporation is effected.

(b) Term of successor; vacancies

Each successor shall be appointed for a term of four years from the date of the expiration of the

term of the member whom he succeeds, except that any successor appointed to fill a vacancy occurring prior to the expiration of the term shall be appointed only for the unexpired term of the member whom he succeeds. A vacancy in the office of a director shall not impair the power of the remaining directors to execute the functions of the board. A majority of the directors shall constitute a quorum for the transaction of the business of the board.

(c) Compensation; reimbursement for expenses

The members of the board shall serve without compensation for their services as such members, but they shall be reimbursed from the corporation for actual expenses incurred by them while in the performance of the functions vested in the board by this chapter.

(d) Prohibitions against holding two or more offices inapplicable

Any officer or employee of the United States, or of any corporation acting as a governmental agent of the United States, may, in addition to his present office, hold the office of director of the Textile Foundation without regard to any provision of law prohibiting the holding of more than one office.

(e) Election of chairman

The board at its first meeting and at each annual meeting thereafter shall elect a chairman.

(f) Board to direct corporation

The board shall direct the exercise of all the powers of the corporation.

(June 10, 1930, ch. 440, §2, 46 Stat. 539.)

§503. Purpose of Foundation

(a) Scientific and economic research

The purposes of the corporation shall be to administer and expend its funds and other property for scientific and economic research for the benefit and development of the textile industry, its allied branches, and including that of production of raw materials.

(b) Payment by Textile Alliance, Incorporated

The Textile Alliance, Incorporated, is authorized to pay to the corporation the amounts payable in accordance with the arrangement between the Textile Alliance, Incorporated, and the Department of State, in lieu of paying such amounts into the United States Treasury; except that any amounts payable in accordance with such arrangement, and paid into the United States Treasury before June 10, 1930, are authorized to be appropriated to the credit of the corporation. Upon the receipt by the corporation of such amounts the liability of the Textile Alliance, Incorporated, under such arrangement shall be extinguished.

(June 10, 1930, ch. 440, §3, 46 Stat. 539.)

§504. Powers of Foundation

The corporation—

(a) Shall have perpetual succession;

(b) May sue and be sued;

(c) May adopt a corporate seal and alter it at pleasure;

(d) May adopt and alter bylaws;

(e) May appoint officers and agents;

(f) May acquire by purchase, devise, bequest, gift, or otherwise, and hold, encumber, convey, or otherwise dispose of, such real and personal property as may be necessary or appropriate for its corporate purposes;

(g) May invest and reinvest the principal and interest of its funds; and

(h) Generally, may do any and all lawful acts necessary or appropriate to carry out the purposes for which the corporation is created.

(June 10, 1930, ch. 440, §4, 46 Stat. 540.)

§505. Report to Congress

The corporation shall, on or before the 1st day of December in each year, transmit to Congress and to the President a report of its proceedings and activities for the preceding calendar year, including a detailed statement of its receipts and expenditures. Such reports shall not be printed as public documents.

(June 10, 1930, ch. 440, §5, 46 Stat. 540.)

§506. Amendment and repeal of chapter

The right to alter, amend, or repeal this chapter is expressly reserved.

(June 10, 1930, ch. 440, §6, 46 Stat. 540.)

CHAPTER 13A—FISHING INDUSTRY

Sec.

521. Fishing industry; associations authorized; "aquatic products" defined; marketing agencies; requirements.

522. Monopolies or restraints of trade; service of complaint by Secretary of Commerce; hearing; order to cease and desist; jurisdiction of district court.

§521. Fishing industry; associations authorized; "aquatic products" defined; marketing agencies; requirements

Persons engaged in the fishery industry, as fishermen, catching, collecting, or cultivating aquatic products, or as planters of aquatic products on public or private beds, may act together in associations, corporate or otherwise, with or without capital stock, in collectively catching, producing, preparing for market, processing, handling, and marketing in interstate and foreign commerce, such products of said persons so engaged.

The term "aquatic products" includes all commercial products of aquatic life in both fresh and salt water, as carried on in the several States, the District of Columbia, the several Territories of the United States, the insular possessions, or other places under the jurisdiction of the United States.

Such associations may have marketing agencies in common, and such associations and their members may make the necessary contracts and agreements to effect such purposes: *Provided, however*, That such associations are operated for the mutual benefit of the members thereof, and conform to one or both of the following requirements:

First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein; or

Second. That the association does not pay dividends on stock or membership capital in excess of 8 per centum per annum.

and in any case to the following:

Third. That the association shall not deal in the products of nonmembers to an amount greater in value than such as are handled by it for members.

(June 25, 1934, ch. 742, §1, 48 Stat. 1213.)

§522. Monopolies or restraints of trade; service of complaint by Secretary of Commerce; hearing; order to cease and desist; jurisdiction of district court

If the Secretary of Commerce shall have reason to believe that any such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any aquatic product is unduly enhanced by reason thereof, he shall serve upon such association a complaint stating his charge in that respect, to which complaint shall be attached, or contained therein, a notice of hearing, specifying a day and place not less than thirty days after the service thereof, requiring the association to show cause why an order should not be made directing it to cease and desist from monopolization or restraint of trade. An association so complained of may at the time and place so fixed show cause why such order should not be entered. The evidence given on such a hearing shall be taken under such rules and regulations as the Secretary of Commerce may prescribe, reduced to writing, and made a part of the record therein. If upon such hearing the Secretary of Commerce shall be of the opinion that such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any aquatic product is unduly enhanced thereby, he shall issue and cause to be served upon the association an order reciting the facts found by him, directing such association to cease and desist from monopolization or restraint of trade. On the request of such association or if such association fails or neglects for thirty days to obey such order, the Secretary of Commerce shall file in the district court in the judicial district in which such association has its principal place of business a certified copy of the order and of all the records in the proceedings, together with a petition asking that the order be enforced, and shall give notice to the Attorney General and to said association of such filing. Such district court shall thereupon have jurisdiction to enter a decree affirming, modifying, or setting aside said order, or enter such other decree as the court may deem equitable, and may make rules as to pleadings and proceedings to be had in considering such order. The place of trial may, for cause or by consent of parties, be changed as in other causes.

The facts found by the Secretary of Commerce and recited or set forth in said order shall be prima facie evidence of such facts, but either party may adduce additional evidence. The Department of Justice shall have charge of the enforcement of such order. After the order is so filed in such district court and while pending for review therein, the court may issue a temporary writ of injunction forbidding such association from violating such order or any part thereof. The court shall, upon conclusion of its hearing, enforce its decree by a permanent injunction or other appropriate remedy. Service of such complaint and of all notices may be made upon such association by service upon any officer, or agent thereof, engaged in carrying on its business, or on any attorney authorized to appear in such proceeding for such association and such service shall be binding upon such association, the officers and members thereof.

(June 25, 1934, ch. 742, §2, 48 Stat. 1214; 1939 Reorg. Plan No. II, §4(e), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1431; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090.)

TRANSFER OF FUNCTIONS

"Secretary of Commerce" substituted in text for "Secretary of the Interior" in view of: creation of National Oceanic and Atmospheric Administration in Department of Commerce and Office of Administrator of such Administration; abolition of Bureau of Commercial Fisheries in Department of the Interior and Office of Director of such Bureau; transfers of functions, including functions formerly vested by law in Secretary of the Interior or Department of the Interior which were administered through Bureau of Commercial Fisheries or were primarily related to such Bureau, exclusive of certain enumerated functions with respect to Great Lakes fishery research, Missouri River Reservoir research, Gulf Breeze Biological Laboratory, and Trans-Alaska pipeline investigations; and transfer of marine sport fish program of Bureau of Sport Fisheries and Wildlife by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out in the Appendix to Title 5, Government Organization and Employees.

Functions of Secretary of Commerce under this section transferred to Secretary of the Interior by Reorg. Plan No. II of 1939, set out in the Appendix to Title 5, Government Organization and Employees, which transferred Bureau of Fisheries from Department of Commerce to Department of the Interior.

CHAPTER 14—RECONSTRUCTION FINANCE CORPORATION

Sec.

601 to 619. Repealed, Omitted, or Transferred.

ABOLITION OF RECONSTRUCTION FINANCE CORPORATION

Reconstruction Finance Corporation was abolished and remaining functions transferred to Housing and Home Finance Agency, Administrator of General Services, Administrator of Small Business Administration, and Secretary of Commerce, such transfer including assets and liabilities, administrative property, personnel, funds, and records, pursuant to 1957 Reorg. Plan No. 1, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647, set out in Appendix II of title 5, Government Organization and Employees. The Plan provided for retirement of capital stock and payment of all unused funds into the Treasury as miscellaneous receipts and required a final report by Secretary of Treasury not later than June 30, 1959. Powers of the Corporation relating to loans and advances were terminated at close of business on sixtieth day after July 30, 1953, through amendment of former section 604(f) of this title by act July 30, 1953, ch. 282, title I, §102(b), 67 Stat. 230. Consequential liquidation of assets, winding up of affairs, and dissolution of the Corporation and cancellation and retirement of its capital stock were required under former section 608 of this title. Former section 609 of this title required such liquidation, winding up of affairs, and dissolution by Secretary of Treasury where such action had been initiated but not completed by close of business on June 30, 1954.

REORGANIZATION PLAN NO. 1 OF 1957

EFF. JUNE 30, 1957, 22 F.R. 4633, 71 STAT. 647

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, April 29, 1957, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949, as amended [see 5 U.S.C. 901 et seq.].

ABOLITION OF THE RECONSTRUCTION FINANCE CORPORATION

SECTION 1. DEFINITIONS

As used in this reorganization plan:

(a) The term "Corporation" means the Reconstruction Finance Corporation.

(b) The term "remaining functions" means (1) all functions of the Corporation, (2) except as otherwise provided in subsections (b) and (c) of section 6 of this reorganization plan, all functions of the Secretary of the Treasury under section 10 of the Reconstruction Finance Corporation Act, as amended (15 U.S.C. 609), and (3) all functions of the Secretary of the Treasury under sections 102 and 106(b) of the Reconstruction Finance Corporation Liquidation Act (67 Stat. 230, 231), as amended [section 603 and section 609 note of this title].

(c) The term "transferees" means the Housing and Home Finance Administrator, the Administrator of General Services, the Administrator of the Small Business Administration, and the Secretary of the Treasury.

SEC. 2. TRANSFER OF FUNCTIONS

(a) There are hereby transferred to the Housing and Home Finance Administrator the remaining functions with respect to or arising out of (1) the securities and obligations of, loans made to, and contracts or other agreements with, States, municipalities, political subdivisions thereof, public agencies, boards, commissions or other public bodies, and (2) loans, securities and obligations acquired in connection with programs of financial assistance for drainage and irrigation projects.

(b) There are hereby transferred to the Administrator of General Services the remaining functions with respect to or arising out of (1) the affairs of the Smaller War Plants Corporation which were transferred to the Corporation pursuant to Executive Order No. 9665 of December 27, 1945 (11 F.R. 3) and section 207 of Public Law 132—80th Congress 61 Stat. 209), (2) the national defense, war and reconversion activities with respect to which notes of the Corporation were cancelled pursuant to the provisions of Title II of Public Law 860—80th Congress (62 Stat. 1187), and (3) activities of the RFC Price Adjustment Board and the functions transferred to the Corporation by Executive Order No. 9841 of April 23, 1947 (12 F.R. 2645).

(c) Except as otherwise provided in sections 2(d)(1) and 2(d)(2) of this reorganization plan (relating to financial assistance to railroads, etc., and to Schedule A hereto annexed), there are hereby transferred to the Administrator of the Small Business Administration the remaining functions with respect to or arising out of programs of financial assistance to business enterprises and to victims of floods or other disasters.

(d) There are hereby transferred to the Secretary of the Treasury all functions of the Corporation not

otherwise transferred by the provisions of this reorganization plan, including, but not limited to, all functions of the Corporation with respect to or arising out of (1) programs of financial assistance to railroad companies, financial institutions, and insurance companies, (2) the obligations and loans listed in Schedule A hereto annexed, and (3) the War Damage Corporation.

(e) The foregoing transfers include the transfer to each transferee, for use in executing his respective functions thereunder, of the powers, authority, rights, and immunities now vested in or available or applicable to the Corporation for carrying out the functions transferred to the transferee under this reorganization plan.

SEC. 3. TRANSFER OF ASSETS AND LIABILITIES

The loans, obligations, securities, capital stock, and other assets pertaining to the functions transferred by section 2 of this reorganization plan (including accrued interest thereon, and property acquired in connection therewith) and the liabilities, contracts, bonds, mortgages, notes and other instruments relating thereto are hereby transferred from the Corporation to the respective transferees: *Provided, however*, That all assets, liabilities, and commitments relating to the functions, transferred by section 2 (a) of this reorganization plan are hereby transferred to the Revolving Fund (Liquidating Programs) established by the Independent Offices Appropriation Act, 1955 (68 Stat. 295) [12 U.S.C. 1701g–5].

SEC. 4. ADMINISTRATIVE PROPERTY, PERSONNEL, FUNDS AND RECORDS

In addition to the transfers made by the provisions of section 3 of this reorganization plan, there shall be transferred to the Housing and Home Finance Agency, General Services Administration, Small Business Administration, and Treasury Department so much as the Director of the Bureau of the Budget shall determine to be appropriate by reason of transfers made by sections 2 and 3 of this reorganization plan of the administrative property, personnel, records, liabilities and commitments of the Corporation or of the Office of Production and Defense Lending in the Department of the Treasury and of the authorizations, allocations, and funds available or to be made available with respect to the transferred functions (including, but in no way limiting the generality of the foregoing, the authority to issue notes or other obligations to the Secretary of the Treasury, which may be purchased by the Secretary, under section 7 of the Reconstruction Finance Corporation Act, as amended (15 U.S.C. 606), and the duty of making payments on such notes or obligations issued by or transferred to the respective transferee hereunder). In allocating the administrative expense funds applicable to the functions transferred by the provisions of this reorganization plan and said Director shall allocate and transfer to the General Services Administration as a payment on behalf of the Housing and Home Finance Agency, General Services Administration, Small Business Administration and Treasury Department such sum for rent of building space for the carrying out of the transferred functions during the fiscal year ending June 30, 1958, as the said Director shall determine. Such further measures and disposition as the Director of the Bureau of the Budget shall determine to be necessary in order to effectuate the transfers provided for in this section shall be carried out in such manner and by such agencies as the Director shall direct.

SEC. 5. DELEGATION OF AUTHORITY

Each transferee may from time to time make such provisions as he shall deem appropriate authorizing the performance by any officer, employee, agency, or administrative unit under his jurisdiction of any function transferred to him by the provisions of this reorganization plan.

SEC. 6. ABOLITION OF THE CORPORATION

(a) The Corporation is hereby abolished.

(b) The Secretary of the Treasury shall retire the capital stock of the Corporation and, subject to the provisions of section 4 hereof, shall pay into the Treasury, as miscellaneous receipts, all unused funds of the Corporation.

(c) Not later than June 30, 1959, the Secretary of the Treasury shall transmit a report to the Congress, which report (1) shall cover the affairs of the Corporation up to the time of the taking effect of the provisions of this reorganization plan, and (2) shall correspond to the final report required by section 10 of the Reconstruction Finance Corporation Act, as amended (15 U.S.C. 609). The function of making the final report provided for in the said section 10 is hereby abolished.

SEC. 7. EFFECTIVE DATE

The provisions of this reorganization plan shall take effect at the time determined under the provisions of section 6(a) of the Reorganization Act of 1949, as amended [see 5 U.S.C. 906(a)] or at the close of June 30, 1957, whichever is later.

SCHEDULE A

This schedule annexed to Reorganization Plan No. 1 of 1957 lists by name and address of the obligor or borrower the obligations and loans referred to in clause (2) of section 2(d) of such reorganization plan:

Name of obligor or borrower	*Address*
Alaska Plywood Corp	Juneau, Alaska.
Alford Refrigerated Warehouse	Dallas, Tex.
Braun Bros. Packing Co	Troy, Ohio.
Chromcraft Corp	St. Louis, Mo.
Civic Hotel Corp	Odessa, Tex.
Deep Water Terminals, Inc	Brooklyn, N.Y.
Detroit Steel Corp	Detroit, Mich.
Hal Roach Studios, Inc	Culver City, Calif.
Hayward Woolen Co	Whitinsville, Mass.
The Horle Arms Co	Deep River, Conn.
Jack Tar of Arkansas, Inc	Hot Springs, Ark.
Landers Packing Co	Denver, Colo.
Langley Corp	San Diego, Calif.
Lawton Community Hotel	Lawton, Okla.
Lone Star Steel Co	Dallas, Tex.
Louisville Builders Supply Co	Louisville, Ky.
Lustron Corp	Columbus, Ohio.
Mayfair Extension, Inc	Washington, D.C.
New Haven Clock & Watch Co	New Haven, Conn.
Oregon Fibre Products, Inc	Pilot Rock, Oreg.
The Prudence Co., Inc	New York, N.Y.
Seidelhuber Steel Rolling Mills	Seattle, Wash.
South Water Building Corp	Rockford, Ill.
South Water Machinery Corp	Do.
Texas Consolidated Oils	Dallas, Tex.
Texas Frozen Foods Corp	Harlingen, Tex.
Waltham Watch Co	Waltham, Mass.
Wheland Co	Chattanooga, Tenn.

SHORT TITLE OF ACT JULY 30, 1953, CH. 282, TITLE I

Congress, in enacting the amendments to sections 603(a) and 604(f) of this title; the provisions set out as notes under sections 603 and 609 of this title; the provisions set out as section 459 of former Title 40, Public Buildings, Property, and Works; and the provisions set out as notes under sections 98 and 544 of Title 50, War and National Defense, section 1929 and sections 2094 and 2261 of Appendix to title 50, provided by section 101 of such act that they should be popularly known as the "Reconstruction Finance Corporation Liquidation Act".

CONTINUATION OF PENDING PROCEEDINGS

Act July 30, 1953, ch. 282, title I, §105, 67 Stat. 231, as amended by act June 29, 1954, ch. 410, §2(c), 68 Stat. 320, provided that: "No suit, action, or other proceeding lawfully commenced by or against the Reconstruction Finance Corporation shall abate by reason of the dissolution of the Corporation; but the court may, on motion or supplemental petition filed at any time within twelve months after the date of such dissolution and showing a necessity for a survival of such suit, action, or other proceeding to obtain a

settlement of the questions involved, allow the same to be maintained by or against the officer or agency of the Government performing the functions with respect to which any such suit, action, or other proceeding was commenced."

EXTENSION OR RENEWAL OF LOANS

Pub. L. 85–536, §4, July 18, 1958, 72 Stat. 396, provided that: "The Secretary of the Treasury is hereby authorized to further extend the maturity of or renew any loan transferred to the Secretary of the Treasury pursuant to Reorganization Plan Numbered 1 of 1957 [set out as a note above], for additional periods not to exceed ten years, if such extension or renewal will aid in the orderly liquidation of such loan."

§§601 to 616. Repealed or Omitted

CODIFICATION

Section 601, acts Jan. 22, 1932, ch. 8, §1, 47 Stat. 5; June 30, 1947, ch. 166, title I, §1, 61 Stat. 202; May 25, 1948, ch. 334, §1, 62 Stat. 261; 1951 Reorg. Plan No. 1, §§1, 5, 9, eff. May 1, 1951, 16 F.R. 3690, 65 Stat. 773, 774, created the Reconstruction Finance Corporation, which was abolished by section 6 of Reorg. Plan. No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

Sections 601a, 601b, acts Jan. 20, 1934, ch. 3, §1, 48 Stat. 318; Jan. 31, 1935, ch. 2, §1, 49 Stat. 1, which extended the life of the Corporation until Feb. 1, 1935, and Feb. 1, 1937, respectively, were repealed by act of June 30, 1947, ch. 166, title II, §206(i), (m), 61 Stat. 208.

Section 602, acts Jan. 22, 1932, ch. 8, §2, formerly §3, 47 Stat. 5; July 21, 1932, ch. 520, §205(b), 47 Stat. 714; July 22, 1932, ch. 522, §6(f), 47 Stat. 728; June 25, 1940, ch. 427, §2, 54 Stat. 572; renumbered and amended June 30, 1947, ch. 166, title I, §1, title II, §206(a), 61 Stat. 202, 208; May 25, 1948, ch. 334, §2, 62 Stat. 262; Oct. 15, 1949, ch. 695, §§4, 5(a), 63 Stat. 880, related to the appointment, qualifications and tenure of directors of the Reconstruction Finance Corporation. It was repealed by Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 648, 654, 655.

Section 603, acts Jan. 22, 1932, ch. 8, §3, formerly §4, 47 Stat. 5; July 21, 1932, ch. 520, §208(a), 47 Stat. 714; Feb. 24, 1938, ch. 32, §4, 52 Stat. 80; renumbered and amended June 30, 1947, ch. 166, title I, §1, title II, §206(a), 61 Stat. 202, 208; May 25, 1948, ch. 334, §3, 62 Stat. 262; July 30, 1953, ch. 282, title I, §102(a), 67 Stat. 230; June 29, 1954, ch. 410, §2(b), 68 Stat. 320, provided for the powers of the Reconstruction Finance Corporation, including appointment and pay of employees. It was repealed by Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 648, 654, 655.

Section 603a, act Jan. 31, 1935, ch. 2, §1, 49 Stat. 1, related to salaries of officers and employees. It was repealed by act of June 30, 1947, ch. 166, title II, §206(m), 61 Stat. 208.

Section 603b, act June 30, 1949, ch. 286, title III, §301, 63 Stat. 375, provided for distribution of administrative expenses to the accounts of the Corporation in accordance with generally recognized accounting practices, which Corporation was abolished by section 6 of Reorg. Plan. No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

Section 603c, acts June 30, 1949, ch. 286, title III, §301, 63 Stat. 375; June 30, 1949, ch. 288, title I, §105, 63 Stat. 381, proscribed the use of funds of the Corporation for surplus property or for benefit of other agencies, which Corporation was abolished by section 6 of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

Section 604, acts Jan. 22, 1932, ch. 8, §4, formerly §5, 47 Stat. 6; June 19, 1934, ch. 653, §6(b), 48 Stat. 1109; June 25, 1940, ch. 427, §6(b), 54 Stat. 574; Aug. 7, 1946, ch. 811, §1(a), 60 Stat. 901; renumbered and amended June 30, 1947, ch. 166, title I, §1, 61 Stat. 203; May 25, 1948, ch. 334, §4, 62 Stat. 263; June 29, 1948, ch. 723, 62 Stat. 1101; July 1, 1948, ch. 784, §§3, 4, 62 Stat. 1209; July 19, 1949, ch. 351, §2, 63 Stat. 446; Oct. 25, 1949, ch. 729, §4, 63 Stat. 906; April 20, 1950, ch. 94, title V, §506, 64 Stat. 81; Oct. 24, 1951, ch. 555, §101, 65 Stat. 616; Reorg. Plan No. 1 of 1951, §§1, 5, 9, eff. May 1, 1951, 16 F.R. 3690, 65 Stat. 773, 774; July 30, 1953, ch. 282, title I, §102(b), 67 Stat. 230, related to loans and advances by the Corporation. It was repealed by Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 648, 654.

Section 604a, act Jan. 20, 1934, ch. 3, §2, 48 Stat. 319, related to time limitation in disbursement of funds committed by the Corporation. It was repealed by act of June 30, 1947, ch. 166, title II, §206(i), 61 Stat. 208.

Section 604b, act Jan. 31, 1935, ch. 2, §2, 49 Stat. 2, related to limitation on disbursement of funds under commitment. It was repealed by act of June 30, 1947, ch. 166, title II, §206(m), 61 Stat. 208, as amended May 27, 1948, ch. 334, §6, 62 Stat. 265.

Section 605, acts Jan. 22, 1932, ch. 8, §5, formerly §6, 47 Stat. 8; May 20, 1933, ch. 35, §2, 48 Stat. 73;

June 19, 1934, ch. 653, §2, 48 Stat. 1107; June 25, 1940, ch. 427, §3(a), 54 Stat. 573; Sept. 18, 1940, ch. 722, title III, §331(a), (b), 54 Stat. 955; renumbered and amended June 30, 1947, ch. 166, title I, §1, title II, §206(a), (e), 61 Stat. 202, 208, authorized and directed the Federal Reserve banks to act as custodians and fiscal agents for the Corporation, which Corporation was abolished by section 6 of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

Section 605a, act July 21, 1932, ch. 520, §1, 47 Stat. 709, related to loans to States and municipalities for unemployment relief purposes. It was repealed by act of June 30, 1947, ch. 166, title II, §206(a), 61 Stat. 208.

Section 605b, acts July 21, 1932, ch. 520, §201, 47 Stat. 711; Mar. 23, 1933, ch. 5, 48 Stat. 20; Ex. Ord. No. 6084, May 27, 1933; May 29, 1933, ch. 42, title I, 48 Stat. 99; June 10, 1933, ch. 55, §§5–9, 48 Stat. 120, 121; June 16, 1933, ch. 98, §80, 48 Stat. 273; June 16, 1933, ch. 100, §5, 48 Stat. 283, authorized loans to States, municipalities, etc., for self-liquidating projects. Subsecs. (a) to (d) and (f) to (j) were repealed by act June 30, 1947, ch. 166, title II, §206(a), (e), 61 Stat. 208.

Subsec. (e) related to the creation of regional agricultural credit corporations by the Reconstruction Finance Corporation, the functions of which Corporation were transferred by act June 30, 1947, ch. 166, title II, §206, 61 Stat. 208 (12 U.S.C. 1148) to the Farm Credit Administration and which Corporation was abolished by section 6 of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

Section 605c, act July 21, 1932, ch. 520, §206, 47 Stat. 714, authorized loans to borrowers organized under laws of Alaska, District of Columbia, Hawaii and Puerto Rico. It was repealed by act of June 30, 1947, ch. 166, title II, §206(a), 61 Stat. 208.

Section 605d, act July 21, 1932, ch. 520, §207, 47 Stat. 715, prohibited loans to financial institutions whose officers or directors are also directors of Reconstruction Finance Corporation. It was repealed by act of June 30, 1947, ch. 166, title II, §206(a), 61 Stat. 208.

Section 605e, acts June 10, 1933, ch. 55, §1, 48 Stat. 119; Jan. 31, 1935, ch. 2, §8, 49 Stat. 4, related to purchase of preferred stock of insurance companies. It was repealed by act of June 30, 1947, ch. 166, title II, §206(e), 61 Stat. 208.

Sections 605f, 605g, acts June 10, 1933, ch. 55, §§2, 3, 48 Stat. 120; June 19, 1934, ch. 653, §12(a), 48 Stat. 1111, which related to loans or purchases of capital notes of insurance companies, and the financial showing necessary for the purchase of stock or making of loans, were repealed by act of June 30, 1947, ch. 166, title II, §206(e), 61 Stat. 208.

Section 605h, act June 10, 1933, ch. 55, §4, 48 Stat. 120, prohibited the making of loans to applicants whose officers or employees were receiving unreasonable compensation. It was repealed by act of June 30, 1947, ch. 166, title II, §206(e), 61 Stat. 208.

Sections 605i, acts June 10, 1933, ch. 55, §11, 48 Stat. 121; June 19, 1934, ch. 653, §12(b), 48 Stat. 1112, defined insurance company and State.

Section 605j, act June 10, 1933, ch. 55, §14, 48 Stat. 122, reserved right to amend or repeal former sections 605e to 605i of this title and provided for separability of their provisions. It was repealed by act of June 30, 1947, ch. 166, title II, §206(e), 61 Stat. 208.

Section 605k, acts Apr. 13, 1934, ch. 121, 48 Stat. 589; July 26, 1935, ch. 421, 49 Stat. 505; Apr. 17, 1936, ch. 234, §1, 49 Stat. 1232, authorized the Reconstruction Finance Corporation to make loans for repair of damage caused by floods and other catastrophes, which Corporation was abolished by section 6 of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 646. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

Section 605k–1, acts Feb. 11, 1937, ch. 10, 50 Stat. 19; May 28, 1937, ch. 275, 50 Stat. 211; Mar. 3, 1938, ch. 40, 52 Stat. 84; Mar. 4, 1939, ch. 4, 53 Stat. 510; June 10, 1941, ch. 190, §1, 55 Stat. 248, related to the creation and powers of the Disaster Loan Corporation and was rendered obsolete by Joint Res. June 30, 1945, ch. 215, §1, 59 Stat. 310, which dissolved the Corporation and transferred all powers, functions, duties, liabilities, etc., to the Reconstruction Finance Corporation. Section 2 of Joint Res. June 30, 1945, saved all pending court or other proceedings and provided that the Court could, upon motion filed within one year after July 1, 1945, substitute the Reconstruction Finance Corporation for the Disaster Loan Corporation. Section 3 of Joint Res. June 30, 1945, provided that it should become effective July 1, 1945. It was repealed by act of June 30, 1947, ch. 166, title II, §206(r), 61 Stat. 209.

Section 605l, act Jan. 31, 1935, ch. 2, §11, 49 Stat. 5, related to substitution of bonds or other evidence of indebtedness held by the Corporation. It was repealed by act of June 30, 1947, ch. 166, title II, §206(m), 61 Stat. 208.

Section 605m, acts Jan. 31, 1935, ch. 2, §3, 49 Stat. 2; June 25, 1940, ch. 427, §3(b), 54 Stat. 573; Sept. 18, 1940, ch. 722, title III, §331(c), 54 Stat. 956, related to maturity of loans made by the Corporation generally

and to railroads in particular. It was repealed by act of June 30, 1947, ch. 166, title II, §206(m), 61 Stat. 208, as amended May 25, 1948, ch. 334, §6, 62 Stat. 265.

Section 606, acts Jan. 22, 1932, ch. 8, §7, 47 Stat. 8; June 30, 1947, ch. 166, title I, §1, 61 Stat. 202, authorized the Reconstruction Finance Corporation to issue notes, bonds, etc., which Corporation was abolished by section 6 of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647. A prior section 606, act Jan. 22, 1932, ch. 8, §5a, 47 Stat. 8, was omitted in the general revision of act Jan. 22, 1932, by act June 30, 1947, ch. 166. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

Section 606a, act Jan. 22, 1932, ch. 8, §5e, as added June 16, 1934, ch. 546, §3, 48 Stat. 971; Jan. 31, 1935, ch. 2, §6, 49 Stat. 3, which related to loans on or purchase of assets of closed financial institutions, was omitted by act June 30, 1947, ch. 166, title I, §1, 61 Stat. 202, which generally amended the Reconstruction Finance Corporation Act, act Jan. 22, 1932, ch. 8, 47 Stat. 5.

Section 606b, act Jan. 22, 1932, ch. 8, §5d, as added June 19, 1934, ch. 653, §5, 48 Stat. 1108; amended Jan. 31, 1935, ch. 2, §10, 49 Stat. 4; Apr. 13, 1938, ch. 140, 52 Stat. 212; June 25, 1940, ch. 427, §§5, 6(c), 54 Stat. 573, 574; Sept. 26, 1940, ch. 734, §1, 54 Stat. 961; June 10, 1941, ch. 190, §4, 55 Stat. 249; June 11, 1942, ch. 404, §9, 56 Stat. 355, which provided for loans to States, municipalities, public agencies, and business enterprises, was omitted by act June 30, 1947, ch. 166, title I, §1, 61 Stat. 202, which generally amended the Reconstruction Finance Corporation Act, act Jan. 22, 1932, ch. 8, 47 Stat. 5. Act June 30, 1947, ch. 166, title II, §206(x), (z), 61 Stat. 209, repealed acts Mar. 27, 1942, ch. 198, §1, 56 Stat. 174; Aug. 7, 1946, ch. 811, §1, 60 Stat. 901 formerly cited to section 606b of this title.

Section 606b–1, act Jan. 22, 1932, ch. 8, §5f, as added Mar. 27, 1942, ch. 198, §2, 56 Stat. 175, related to transfer of real estate to Corporation by Government agencies. It was repealed by act of June 30, 1947, ch. 166, title II, §206(x), 61 Stat. 209.

Section 606b–2, act Jan. 22, 1932, ch. 8, §5g, as added Mar. 27, 1942, ch. 198, §2, 56 Stat. 175, related to funds for War Damage Corporation. It was repealed by act of June 30, 1947, ch. 166, title II, §206(x), 61 Stat. 209.

Section 606b–3, act Jan. 22, 1932, ch. 8, §5h, as added May 11, 1942, ch. 301, 56 Stat. 275, was omitted by act June 30, 1947, ch. 166, title I, §1, 61 Stat. 202, which generally amended the Reconstruction Finance Corporation Act, act Jan. 22, 1932, ch. 8, 47 Stat. 5.

Section 606b–4, act Aug. 7, 1946, ch. 811, §2, 60 Stat. 902, related to purchase of servicemen's guaranteed or insured readjustment loans. It was repealed by act of June 30, 1947, ch. 166, title II, §206(z), 61 Stat. 209.

Section 606b–5, act Aug. 7, 1946, ch. 811, §3, 60 Stat. 902, authorized extension of credit by Reconstruction Finance Corporation to Republic of the Philippines, which Corporation was abolished by section 6 of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

Section 606c, act June 19, 1934, ch. 653, §13, 48 Stat. 1112, related to loans for organizing farmers' mineral rights pools. It was repealed by act of June 30, 1947, ch. 166, title II, §206(k), 61 Stat. 208.

Section 606d, acts June 19, 1934, ch. 653, §14, 48 Stat. 1112; Jan. 31, 1935, ch. 2, §12, 49 Stat. 5; Sept. 16, 1940, ch. 721, 54 Stat. 897, related to loans to aid mining, milling and smelting industry. It was repealed by act of June 30, 1947, ch. 166, title II, §206(k), 61 Stat. 208.

Section 606e, act June 19, 1934, ch. 653, §15, 48 Stat. 1112, related to loans to aid fishing industry. It was repealed by act of June 30, 1947, ch. 166, title II, §206(k), 61 Stat. 208.

Section 606f, act June 19, 1934, ch. 653, §16, 48 Stat. 1113, related to loans for payment of teachers' salaries due prior to June 1, 1934. It was repealed by act of June 30, 1947, ch. 166, title II, §206(k), 61 Stat. 208.

Section 606g, act Jan. 22, 1932, ch. 8, §5b, as added June 19, 1934, ch. 653, §8, 48 Stat. 1109, was omitted by act June 30, 1947, ch. 166, title I, §1, 61 Stat. 202, which generally amended the Reconstruction Finance Corporation Act, act Jan. 22, 1932, ch. 8, 47 Stat. 5.

Section 606h, act June 19, 1934, ch. 653, §10, 48 Stat. 1110, related to adjustment of maturities of obligations of borrowers. It was repealed by act of June 30, 1947, ch. 166, title II, §206(k), 61 Stat. 208.

Section 606i, act Jan. 22, 1932, ch. 8, §5c, as added Jan. 31, 1935, ch. 2, §5, 49 Stat. 3, was omitted by act June 30, 1947, ch. 166, title I, §1, 61 Stat. 202, which generally amended the Reconstruction Finance Corporation Act, act Jan. 22, 1932, ch. 8, 47 Stat. 5.

Section 606j, act Aug. 24, 1935, ch. 646, §1, 49 Stat. 796, related to loans to public school districts and authorities. It was repealed by act of June 30, 1947, ch. 166, title II, §206(n), (u), 61 Stat. 208, 209.

Section 606k, act Aug. 24, 1935, ch. 646, §2, 49 Stat. 798, related to limitation of loans authorized by former section 606j of this title. It was repealed by act of June 30, 1947, ch. 166, title II, §206(n), (u), 61 Stat. 208, 209.

Section 606l, act Sept. 5, 1940, ch. 715, §12, 54 Stat. 871, related to financing acquisition of right-of-way

for Federal aid roads. It was repealed by act of June 30, 1947, ch. 166, title II, §206(n), (u), 61 Stat. 208, 209.

Section 607, acts Jan. 22, 1932, ch. 8, §8, 47 Stat. 8; July 21, 1932, ch. 520, §204, 47 Stat. 714; Ex. Ord. No. 6084, Mar. 27, 1933; Aug. 23, 1935, ch. 614, §203(a), 49 Stat. 704; June 30, 1947, ch. 166, title I, §1, title II, §206(a), 61 Stat. 202, 208; May 25, 1948, ch. 334, §5, 62 Stat. 265, exempted the Reconstruction Finance Corporation from all federal and local taxation except on real property, which Corporation was abolished by section 6 of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

Section 607a, act Jan. 31, 1935, ch. 2, §13, 49 Stat. 5, related to use of receipts from sale of securities. It was repealed by act of June 30, 1947, ch. 166, title II, §206(m), 61 Stat. 208.

Section 608, acts Jan. 22, 1932, ch. 8, §9, 47 Stat. 9; July 21, 1932, ch. 520, §204, 47 Stat. 714; Mar. 4, 1939, ch. 4, 53 Stat. 510; June 30, 1947, ch. 166, title I, §1, title II, §206(a), 61 Stat. 202, 208; 1951 Reorg. Plan No. 1, §§1, 5, 9, eff. May 1, 1951, 16 F.R. 3690, 65 Stat 773, 774, provided for the possible premature liquidation of the Reconstruction Finance Corporation, which Corporation was abolished by section 6 of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

Section 609, acts Jan. 22, 1932, ch. 8, §10, 47 Stat. 9; July 21, 1932, ch. 520, §209, 47 Stat. 715; June 10, 1941, ch. 190, §3, 55 Stat. 248; June 30, 1947, ch. 166, title I, §1, title II, §206(a), 61 Stat. 202, 208; 1951 Reorg. Plan No. 1, §§1, 5, 9, eff. May 1, 1951, 16 F.R. 3690, 65 Stat. 773, 774; June 29, 1954, ch. 410, §2(a), 68 Stat. 320, transferred from the Administrator to the Secretary of the Treasury the duty of completing the liquidation of the Reconstruction Finance Corporation after June 30, 1954, which Corporation was abolished by section 6 of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

Section 609a, act July 21, 1932, ch. 520, §205(a), 47 Stat. 714, increased the amount of obligations the Corporation could have outstanding, to six and three-fifths times its capital stock. It was repealed by act of June 30, 1947, ch. 166, title II, §206(a), 61 Stat. 208.

Section 609a–1, act June 22, 1946, ch. 445, §1, 60 Stat. 294, was from the Department of Agriculture Appropriation Act, 1947, and increased by $50,000,000 the amount of obligations the Corporation could issue or have outstanding.

Section 609b, act June 16, 1933, ch. 90, title III, §302, 48 Stat. 210, decreased by $400,000,000 the amount of obligations the Corporation could have outstanding. It was repealed by act of June 30, 1947, ch. 166, title II, §206(c), 61 Stat. 208.

Section 609b–1, formerly 609bb, act Jan. 20, 1934, ch. 3, §3, 48 Stat. 319, increased by $850,000,000 the amount of obligations the Corporation could have outstanding. It was repealed by act of June 30, 1947, ch. 166, title II, §206(g), 61 Stat. 208.

Section 609c, act May 12, 1933, ch. 25, title II, §38, 48 Stat. 50, increased by $300,000,000 the amount of obligations the Corporation could have outstanding, to provide funds for agricultural credits. It was repealed by act of June 30, 1947, ch. 166, title II, §206(c), 61 Stat. 208.

Section 609c–1, act May 12, 1933, ch. 30, §2(b), 48 Stat. 56, increased by $500,000,000 the Corporation's authority to issue notes, debentures, etc.

Section 609d, act June 19, 1934, ch. 648, title II, §1, 48 Stat. 1056; Reorg. Plan No. 1 of 1939, §§301, 305, eff. July 1, 1939, 4 F.R. 2729, 2730, 53 Stat. 1426, 1428, increased by $250,000,000 the amount of obligations the Corporation could have outstanding, to purchase securities from the Public Works Administration. It was repealed by act of June 30, 1947, ch. 166, title II, §206(j), 61 Stat. 208.

Section 609e, act June 29, 1937, 11 p.m., ch. 401, §202, 50 Stat. 357; Reorg. Plan No. I of 1939, §§301, 305, eff. July 1, 1939, 4 F.R. 2729, 2730, 53 Stat. 1426, 1428, increased to $400,000,000 the amount the Corporation could invest in securities purchased from the Public Works Administration. It was repealed by act of June 30, 1947, ch. 166, title II, §206(j), 61 Stat. 208.

Section 609f, act Feb. 24, 1938, ch. 32, §2, 52 Stat. 80, reduced the amount of outstanding obligations authorized under former section 611a of this title, by the amount of notes authorized to be cancelled pursuant to section. Section was not enacted as a part of the Reconstruction Finance Corporation Act which comprises this chapter.

Section 609g, act June 25, 1940, ch. 421, §1, 54 Stat. 565, authorized an additional $50,000,000.

Section 609h, act June 25, 1940, ch. 421, §1, 54 Stat. 567, authorized an additional $100,000,000.

Section 609i, act June 26, 1940, ch. 432, §2(c), 54 Stat. 614, authorized Corporation to advance to Secretary of Agriculture upon his request an amount not to exceed $125,000,000.

Section 609j, act Jan. 22, 1932, ch. 8, §5d, as added June 19, 1934, ch. 653, §5, 48 Stat. 1108; amended Sept. 26, 1940, ch. 734, §2, 54 Stat. 962, authorized an additional $1,500,000,000, and was omitted by act June 30, 1947, ch. 166, title I, §1, 61 Stat. 202, which generally amended the Reconstruction Finance

Corporation Act, act Jan. 22, 1932, ch. 8, 47 Stat. 5.

Section 609k, act June 27, 1934, ch. 847, title VI, §602, as added Mar. 28, 1941, ch. 31, 55 Stat. 55, authorized an additional amount of $10,000,000 to be used for the Defense Housing Insurance Fund. It was repealed by act of June 30, 1947, ch. 166, title II, §206(l), 61 Stat. 208.

Sections 609l, 609m, and 609n, act July 1, 1941, ch. 267, §1, 55 Stat. 439, 440, 442, authorized an additional $270,000,000.

Section 609o, act June 10, 1941, ch. 190, §5, 55 Stat. 250, authorized an additional $1,500,000,000. It was repealed by act of June 30, 1947, ch. 166, title II, §206(v), 61 Stat. 209.

Section 609p, act Oct. 23, 1941, ch. 454, 55 Stat. 744, authorized an additional $1,500,000,000. It was repealed by act of June 30, 1947, ch. 166, title II, §206(w), 61 Stat. 209.

Section 609q, act Mar. 27, 1942, ch. 198, §3, 56 Stat. 176, authorized an additional $2,500,000,000. It was repealed by act of June 30, 1947, ch. 166, title II, §206(x), 61 Stat. 209.

Section 609r, act June 5, 1942, ch. 352, 56 Stat. 326, authorized an additional $5,000,000,000. It was repealed by act of June 30, 1947, ch. 166, title II, §206(y), 61 Stat. 209.

Sections 609s to 609u, act July 22, 1942, ch. 516, 56 Stat. 695, 697, 698, authorized an additional $140,000,000.

Section 609v, acts July 12, 1943, ch. 215, 57 Stat. 426; June 28, 1944, ch. 296, 58 Stat. 456; May 5, 1945, ch. 109, 59 Stat. 160, authorized an indefinite amount to carry out certain provisions of section.

Section 609w, acts July 12, 1943, ch. 215, 57 Stat. 428; June 28, 1944, ch. 296, 58 Stat. 457, authorized an additional $15,000,000.

Section 609x, act June 28, 1944, ch. 296, 58 Stat. 458, authorized an additional $25,000,000.

Section 609y, act May 5, 1945, ch. 109, 59 Stat. 162, authorized an additional $50,000,000.

Section 609z, act June 22, 1946, ch. 445, 60 Stat. 293, authorized an additional $70,000,000.

Section 610, acts Jan. 22, 1932, ch. 8, §11, 47 Stat. 10; June 30, 1947, ch. 166, title I, §1, 61 Stat. 202, relating to penalties for false statements, etc., is now covered by sections 493, 657, 709, 1006, 1014, and 1904 of Title 18, Crimes and Criminal Procedure. It was repealed by act of May 24, 1949, ch. 139, §142, 63 Stat. 109, and Sept. 6, 1966, Pub. L. 89–554, §8(a), 80 Stat. 654.

Section 611, acts Jan. 22, 1932, ch. 8, §12, 47 Stat. 10; June 30, 1947, ch. 166, title I, §1, 61 Stat. 202, authorized the Reconstruction Finance Corporation to exercise functions, powers, etc., of certain dissolved corporations, which Corporation was abolished by section 6 of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

Section 611a, act Feb. 24, 1938, ch. 32, §1, 52 Stat. 79, provided for the cancellation of notes of the Reconstruction Finance Corporation by the Secretary of the Treasury, which Corporation was abolished by section 6 of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

Section 611a–1, act Jan. 31, 1942, ch. 30, 56 Stat. 40, related to the disposition by the Secretary of the Treasury of county, municipal, and other securities transferred from the Reconstruction Finance Corporation, which Corporation was abolished by section 6 of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

Section 611b, act Feb. 24, 1938, ch. 32, §3, 52 Stat. 80, related to the transfer of repayments or recoveries to the general fund of the Treasury.

Section 612, act Jan. 22, 1932, ch. 8, §12, 47 Stat. 10, authorized the Corporation to be a depositary of public moneys, and was not covered in act June 30, 1947, ch. 166, title I, §1, 61 Stat. 202, which generally amended the Reconstruction Finance Corporation Act, act Jan. 22, 1932, ch. 8, 47 Stat. 5.

Section 613, act Jan. 22, 1932, ch. 8, §13, 47 Stat. 10, provided for the liquidation of the Corporation by the directors, and was covered by section 9 of act Jan. 22, 1932, as amended by act June 30, 1947, ch. 166, title I, §1, 61 Stat. 202, and set out as section 608 of this title.

Sections 613a, 613b, acts Jan. 20, 1934, ch. 3, §1, 48 Stat. 318; Jan. 31, 1935, ch. 2, §1, 49 Stat. 1 which, extended the time for liquidation of the Corporation pursuant to former section 613 of this title, were repealed by act of June 30, 1947, ch. 166, title II, §206(i), (m), 61 Stat. 208.

Section 613c, acts Jan. 26, 1937, ch. 6, §1, 50 Stat. 5; Mar. 4, 1939, ch. 4, 53 Stat. 510; June 25, 1940, ch. 427, §6(a), 54 Stat. 574, further extended the time for liquidation of the Corporation and provided for suspension of lending authority by districts. Act Aug. 7, 1946, ch. 811, §1, 60 Stat. 901, which also amended act Jan. 26, 1937, was repealed by act June 30, 1947, ch. 166, title II, §206(q), (z), 61 Stat. 209.

Section 614, acts Jan. 22, 1932, ch. 8, §14, 47 Stat. 10; June 25, 1940, ch. 427, §6(b), 54 Stat. 574, relating to completion of liquidation of the Corporation by Secretary of Treasury, was omitted by act June 30, 1947,

ch. 166, title I, §1, 61 Stat. 202, which generally amended the Reconstruction Finance Corporation Act, act Jan. 22, 1932, ch. 8, 47 Stat. 5. Act Aug. 7, 1946, ch. 811, §1, 60 Stat. 901, which also amended section 14 of act Jan. 22, 1932, was repealed by section 206(z) of act June 30, 1947.

Section 615, act Jan. 22, 1932, ch. 8, §15, 47 Stat. 11, relating to reports to Congress, was omitted by act June 30, 1947, ch. 166, title I, §1, 61 Stat. 202, which generally amended the Reconstruction Finance Corporation Act, act Jan. 22, 1932, ch. 8, 47 Stat. 5.

Section 616, act Jan. 22, 1932, ch. 8, §16, 47 Stat. 11, related to false statements, forgery, embezzlement, and use of words "Reconstruction Finance Corporation", and is now covered by sections 433, 493, 657, 709, 1006, 1014, and 1904 of Title 18, Crimes and Criminal Procedure.

§616a. Transferred

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Section 616a, acts Mar. 26, 1934, ch. 90, 48 Stat. 500; June 29, 1936, ch. 858, title II, §204, 49 Stat. 1987, which related to the shipment of exports financed by the Government in United States vessels, was transferred to section 1241–1 of Title 46, Appendix, Shipping, and was subsequently repealed and restated as section 55304 of Title 46, Shipping, by Pub. L. 109–304, §§8(c), 19, Oct. 6, 2006, 120 Stat. 1586, 1710.

§§617 to 619. Repealed or Omitted

Section 617, act Jan. 22, 1932, ch. 8, §17, 47 Stat. 12, was omitted by act June 30, 1947, ch. 166, title I, §1, 61 Stat. 202, which generally amended the Reconstruction Finance Corporation Act, act Jan. 22, 1932, ch. 8, 47 Stat. 5.

Section 618, act June 30, 1947, ch. 166, title II, §208, 61 Stat. 209, related to purchase and sale of surplus property, and was repealed by act of May 25, 1948, ch. 334, §7, 62 Stat. 265.

Section 619, act July 29, 1947, ch. 346, title II, §201, 61 Stat. 515, related to limitations on use of funds of the Corporation, which Corporation was abolished by section 6 of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 FR 4633, 71 Stat. 647. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

CHAPTER 14A—AID TO SMALL BUSINESS

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§631. Declaration of policy

(a) Aid, counsel, assistance, etc., to small business concerns

The essence of the American economic system of private enterprise is free competition. Only through full and free competition can free markets, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be assured. The preservation and expansion of such competition is basic not only to the economic well-being but to the security of this Nation. Such security and well-being cannot be realized unless the actual and potential capacity of small business is encouraged and developed. It is the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small-business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government (including but not limited to contracts or subcontracts for maintenance, repair, and construction) be placed with small-business enterprises, to insure that a fair proportion of the total sales of Government property be made to such enterprises, and to maintain and strengthen the overall economy of the Nation.

(b) Assistance to compete in international markets

(1) It is the declared policy of the Congress that the Federal Government, through the Administrator of the Small Business Administration, acting through the Associate Administrator for International Trade, and in cooperation with the Department of Commerce and other relevant State and Federal agencies, should aid and assist small businesses, as defined under this chapter, to increase their ability to compete in international markets by—

(A) enhancing their ability to export;

(B) facilitating technology transfers;

(C) enhancing their ability to compete effectively and efficiently against imports;

(D) increasing the access of small businesses to long-term capital for the purchase of new plant and equipment used in the production of goods and services involved in international trade;

(E) disseminating information concerning State, Federal, and private programs and initiatives to enhance the ability of small businesses to compete in international markets; and

(F) ensuring that the interests of small businesses are adequately represented in bilateral and multilateral trade negotiations.

(2) The Congress recognizes that the Department of Commerce is the principal Federal agency for trade development and export promotion and that the Department of Commerce and the Small Business Administration work together to advance joint interests. It is the purpose of this chapter to enhance, not alter, their respective roles.

(c) Aid for agriculturally related industries; financial assistance

It is the declared policy of the Congress that the Government, through the Small Business Administration, should aid and assist small business concerns which are engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries; and the financial assistance programs authorized by this chapter are also to be used to assist such concerns.

(d) Use of assistance programs to establish, preserve, and strengthen small business concerns

(1) The assistance programs authorized by sections 636(i) and 636(j) of this title are to be utilized to assist in the establishment, preservation, and strengthening of small business concerns and improve the managerial skills employed in such enterprises, with special attention to small business concerns (1) located in urban or rural areas with high proportions of unemployed or low-income individuals; or (2) owned by low-income individuals; and to mobilize for these objectives private as well as public managerial skills and resources.

(2)(A) With respect to the programs authorized by section 636(j) of this title, the Congress finds—

(i) that ownership and control of productive capital is concentrated in the economy of the United States and certain groups, therefore, own and control little productive capital;

(ii) that certain groups in the United States own and control little productive capital because they have limited opportunities for small business ownership;

(iii) that the broadening of small business ownership among groups that presently own and control little productive capital is essential to provide for the well-being of this Nation by promoting their increased participation in the free enterprise system of the United States;

(iv) that such development of business ownership among groups that presently own and control little productive capital will be greatly facilitated through the creation of a small business ownership development program, which shall provide services, including, but not limited to, financial, management, and technical assistance.[1]

(v) that the power to let Federal contracts pursuant to section 637(a) of this title can be an effective procurement assistance tool for development of business ownership among groups that own and control little productive capital; and

(vi) that the procurement authority under section 637(a) of this title shall be used only as a tool for developing business ownership among groups that own and control little productive capital.

(B) It is therefore the purpose of the programs authorized by section 636(j) of this title to—

(i) foster business ownership and development by individuals in groups that own and control little productive capital; and

(ii) promote the competitive viability of such firms in the marketplace by creating a small business and capital ownership development program to provide such available financial, technical, and management assistance as may be necessary.

(e) Assistance to victims of floods, etc., and those displaced as result of federally aided construction programs

Further, it is the declared policy of the Congress that the Government should aid and assist victims of floods and other catastrophes, and small-business concerns which are displaced as a result of federally aided construction programs.

(f) Findings; purpose

(1) with [2] respect to the Administration's business development programs the Congress finds—

(A) that the opportunity for full participation in our free enterprise system by socially and economically disadvantaged persons is essential if we are to obtain social and economic equality for such persons and improve the functioning of our national economy;

(B) that many such persons are socially disadvantaged because of their identification as members of certain groups that have suffered the effects of discriminatory practices or similar invidious circumstances over which they have no control;

(C) that such groups include, but are not limited to, Black Americans, Hispanic Americans,

Native Americans, Indian tribes, Asian Pacific Americans, Native Hawaiian Organizations, and other minorities;

(D) that it is in the national interest to expeditiously ameliorate the conditions of socially and economically disadvantaged groups;

(E) that such conditions can be improved by providing the maximum practicable opportunity for the development of small business concerns owned by members of socially and economically disadvantaged groups;

(F) that such development can be materially advanced through the procurement by the United States of articles, equipment, supplies, services, materials, and construction work from such concerns; and

(G) that such procurements also benefit the United States by encouraging the expansion of suppliers for such procurements, thereby encouraging competition among such suppliers and promoting economy in such procurements.

(2) It is therefore the purpose of section 637(a) of this title to—

(A) promote the business development of small business concerns owned and controlled by socially and economically disadvantaged individuals so that such concerns can compete on an equal basis in the American economy;

(B) promote the competitive viability of such concerns in the marketplace by providing such available contract, financial, technical, and mangement [3] assistance as may be necessary; and

(C) clarify and expand the program for the procurement by the United States of articles, supplies, services, materials, and construction work from small business concerns owned by socially and economically disadvantaged individuals.

(g) Assistance to disaster victims under disaster loan program

In administering the disaster loan program authorized by section 636 of this title, to the maximum extent possible, the Administration shall provide assistance and counseling to disaster victims in filing applications, providing information relevant to loan processing, and in loan closing and prompt disbursement of loan proceeds and shall give the disaster program a high priority in allocating funds for administrative expenses.

(h) Assistance to women owned business

(1) With respect to the programs and activities authorized by this chapter, the Congress finds that—

(A) women owned business has become a major contributor to the American economy by providing goods and services, revenues, and jobs;

(B) over the past two decades there have been substantial gains in the social and economic status of women as they have sought economic equality and independence;

(C) despite such progress, women, as a group, are subjected to discrimination in entrepreneurial endeavors due to their gender;

(D) such discrimination takes many overt and subtle forms adversely impacting the ability to raise or secure capital, to acquire managerial talents, and to capture market opportunities;

(E) it is in the national interest to expeditiously remove discriminatory barriers to the creation and development of small business concerns owned and controlled by women;

(F) the removal of such barriers is essential to provide a fair opportunity for full participation in the free enterprise system by women and to further increase the economic vitality of the Nation;

(G) increased numbers of small business concerns owned and controlled by women will directly benefit the United States Government by expanding the potential number of suppliers of goods and services to the Government; and

(H) programs and activities designed to assist small business concerns owned and controlled by women must be implemented in such a way as to remove such discriminatory barriers while not adversely affecting the rights of socially and economically disadvantaged individuals.

(2) It is, therefore, the purpose of those programs and activities conducted under the authority of

this chapter that assist women entrepreneurs to—

(A) vigorously promote the legitimate interests of small business concerns owned and controlled by women;

(B) remove, insofar as possible, the discriminatory barriers that are encountered by women in accessing capital and other factors of production; and

(C) require that the Government engage in a systematic and sustained effort to identify, define and analyze those discriminatory barriers facing women and that such effort directly involve the participation of women business owners in the public/private sector partnership.

(i) Prohibition on use of funds for individuals not lawfully within United States

None of the funds made available pursuant to this chapter may be used to provide any direct benefit or assistance to any individual in the United States if the Administrator or the official to which the funds are made available receives notification that the individual is not lawfully within the United States.

(j) Contract bundling

In complying with the statement of congressional policy expressed in subsection (a) of this section, relating to fostering the participation of small business concerns in the contracting opportunities of the Government, each Federal agency, to the maximum extent practicable, shall—

(1) comply with congressional intent to foster the participation of small business concerns as prime contractors, subcontractors, and suppliers;

(2) structure its contracting requirements to facilitate competition by and among small business concerns, taking all reasonable steps to eliminate obstacles to their participation; and

(3) avoid unnecessary and unjustified bundling of contract requirements that precludes small business participation in procurements as prime contractors.

(Pub. L. 85–536, §2[2], July 18, 1958, 72 Stat. 384; Pub. L. 87–70, title III, §305(b), June 30, 1961, 75 Stat. 167; Pub. L. 87–305, §6, Sept. 26, 1961, 75 Stat. 667; Pub. L. 93–386, §2(a)(1), Aug. 23, 1974, 88 Stat. 742; Pub. L. 94–305, title I, §112(a), June 4, 1976, 90 Stat. 667; Pub. L. 95–507, title II, §§201, 203, Oct. 24, 1978, 92 Stat. 1760, 1763; Pub. L. 96–302, title I, §118(a), July 2, 1980, 94 Stat. 840; Pub. L. 99–272, title XVIII, §18015(a), Apr. 7, 1986, 100 Stat. 370; Pub. L. 100–418, title VIII, §8002, Aug. 23, 1988, 102 Stat. 1553; Pub. L. 100–533, title I, §101, Oct. 25, 1988, 102 Stat. 2689; Pub. L. 100–590, title I, §118, Nov. 3, 1988, 102 Stat. 2999; Pub. L. 100–656, title II, §§204, 207(b), Nov. 15, 1988, 102 Stat. 3859, 3861; Pub. L. 101–37, §6(c), June 15, 1989, 103 Stat. 72; Pub. L. 103–403, title VI, §609, Oct. 22, 1994, 108 Stat. 4204; Pub. L. 105–135, title IV, §411, Dec. 2, 1997, 111 Stat. 2617; Pub. L. 111–240, title I, §1203(d), Sept. 27, 2010, 124 Stat. 2522.)

CODIFICATION

This chapter was originally enacted as title II of act July 30, 1953, ch. 282, 67 Stat. 232, and designated as the "Small Business Act of 1953". Title II of act July 30, 1953, was amended by acts June 30, 1955, ch. 251, §4, 69 Stat. 225; Aug. 9, 1955, ch. 628, 69 Stat. 547; Feb. 2, 1956, ch. 29, §§1, 2, 70 Stat. 10; Pub. L. 85–4, Feb. 11, 1957, 71 Stat. 4; Pub. L. 85–120, §§1, 2, Aug. 3, 1957, 71 Stat. 341; Pub. L. 85–335, Feb. 22, 1958, 72 Stat. 27. Section 1 of Pub. L. 85–536 withdrew title II of act July 30, 1953, as part of that act, and made title II a separate act to be known as the "Small Business Act". The Small Business Act, as amended by Pub. L. 85–536, is classified to this chapter.

AMENDMENTS

2010—Subsec. (b)(1). Pub. L. 111–240, in introductory provisions, inserted "the Administrator of" before "the Small Business Administration" and "through the Associate Administrator for International Trade, and" before "in cooperation with".

1997—Subsec. (j). Pub. L. 105–135 added subsec. (j).

1994—Subsec. (i). Pub. L. 103–403 added subsec. (i).

1989—Subsec. (f). Pub. L. 101–37 made technical correction to directory language of Pub. L. 100–656, §207(b), which did not result in any change in text, see 1988 Amendment note below.

1988—Subsecs. (b), (c). Pub. L. 100–418 added subsec. (b) and redesignated former subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 100–418 redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (d)(2)(A)(v). Pub. L. 100–656, §204(b), which directed amendment of subsec. (c)(2)(A)(v) by striking out "sole source" after "power to let" was executed to subsec. (d)(2)(A)(v) to reflect the probable intent of Congress and the intervening redesignation of subsec. (c) as (d) by Pub. L. 100–418.

Subsec. (d)(2)(B). Pub. L. 100–656, §204(a)(1), which directed general amendment of subsec. (c)(2)(B), was executed to subsec. (d)(2)(B) to reflect the probable intent of Congress and the intervening redesignation of subsec. (c) as (d) by Pub. L. 100–418. Prior to amendment, subpar. (B) read as follows: "It is, therefore, the purpose of the programs authorized by section 636(j) of this title to—

"(i) foster business ownership by individuals in groups that own and control little productive capital; and

"(ii) promote the competitive viability of such firms by creating a small business and capital ownership development program to provide such available financial, technical, and management assistance as may be necessary."

Subsecs. (e), (f). Pub. L. 100–418 redesignated subsecs. (d) and (e) as (e) and (f), respectively.

Subsec. (f)(1)(C). Pub. L. 100–656, §207(b), as amended by Pub. L. 101–37, which directed amendment of subsec. (e)(1)(C) by inserting "Native Hawaiian Organizations," was executed to subsec. (f)(1)(C) to reflect the probable intent of Congress and the intervening redesignation of subsec. (e) as (f) by Pub. L. 100–418.

Subsec. (f)(2). Pub. L. 100–656, §204(a)(2), which directed general amendment of subsec. (e)(2), was executed to subsec. (f)(2) to reflect the probable intent of Congress and the intervening redesignation of subsec. (e) as (f) by Pub. L. 100–418. Prior to amendment, par. (2) read as follows: "It is, therefore, the purpose of section 637(a) of this title to—

"(A) foster business ownership by individuals who are both socially and economically disadvantaged;

"(B) promote the competitive viability of such firms by providing such available contract, financial, technical, and management assistance as may be necessary; and

"(C) clarify and expand the program for the procurement by the United States of articles, equipment, supplies, services, materials, and construction work from small business concerns owned by socially and economically disadvantaged individuals."

Subsec. (g). Pub. L. 100–590, §118, added subsec. (g).

Subsec. (h). Pub. L. 100–533 added subsec. (h).

1986—Subsec. (e)(1)(C). Pub. L. 99–272 inserted "Indian tribes,".

1980—Subsec. (e)(1)(C). Pub. L. 96–302 included among the disadvantaged minorities Asian Pacific Americans.

1978—Subsec. (c). Pub. L. 95–507, §203, designated existing provisions as par. (1) and added par. (2).

Subsec. (e). Pub. L. 95–507, §201, added subsec. (e).

1976—Subsecs. (b) to (d). Pub. L. 94–305 added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

1974—Subsecs. (b), (c). Pub. L. 93–386 added subsec. (b) and redesignated former subsec. (b) as (c).

1961—Subsec. (a). Pub. L. 87–305 inserted "or subcontracts" after "contracts" in two places.

Subsec. (b). Pub. L. 87–70 included small-business concerns which are displaced as a result of federally aided construction programs.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–135, §3, Dec. 2, 1997, 111 Stat. 2593, provided that: "This Act [see Short Title of 1997 Amendment note below] and the amendments made by this Act shall take effect on October 1, 1997."

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–37, §32, June 15, 1989, 103 Stat. 77, provided that: "The amendments made by this Act [see Short Title of 1989 Amendment note below] shall apply as if included in the Business Opportunity Development Reform Act of 1988 [Pub. L. 100–656]."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–656, title VIII, §803, Nov. 15, 1988, 102 Stat. 3899, as amended by Pub. L. 101–37, §31, June 15, 1989, 103 Stat. 76, provided that:

"(a) IN GENERAL.—Except as otherwise provided, the following provisions (and the amendments made by such provisions) shall take effect on the date of the enactment of this Act [Nov. 15, 1988]:

"(1) Sections 1 and 2 [enacting provisions set out as notes under this section and section 636 of this title].

"(2) Section 101 [enacting provisions set out as a note under section 636 of this title].

"(3) Sections 202, 203, 204, 206, and 207 [amending this section and sections 636 and 637 of this title].

"(4) Sections 301(a) and 303(d), (e), and (f) [amending sections 636 and 637 of this title and enacting provisions set out as a note under section 637 of this title].

"(5) Sections 405, 406, 408, and 410 [amending sections 636, 639, and 645 of this title and enacting provisions set out as a note under section 636 of this title].

"(6) Sections 504 and 505 [amending section 636 of this title and enacting provisions set out as notes under section 636 of this title].

"(7) Sections 601 and 603 [amending section 644 of this title].

"(8) Titles VII and VIII [amending section 632 of this title and section 541 of former Title 40, Public Buildings, Property, and Works, enacting provisions set out as notes under sections 632, 636, and 644 of this title, and amending provisions set out as a note under section 644 of this title].

"(9) Sections 7(j)(13)(G) and 7(j)(13)(I) of the Small Business Act [section 636(j)(13)(G), (I) of this title] (as added by section 301(b)).

"(b) SPECIAL RULES.—(1) Except as otherwise provided, the following sections (and the amendments made by such sections) shall take effect on August 15, 1989:

"(A) Sections 201, 205, and 208 [amending sections 636 and 637 of this title].

"(B) Sections 301(b), 301(c), 303(a), 303(c), 303(g), 303(h), and 304 [amending sections 636 and 637 of this title and enacting provisions set out as a note under section 637 of this title].

"(C) Sections 401, 402, 403, 404, and 409 [amending sections 633 and 637 of this title and enacting provisions set out as a note under section 633 of this title].

"(D) Section 602 [enacting provisions set out as a note under section 637 of this title].

"(2) Section 302 [amending section 636 of this title] shall take effect on June 1, 1989.

"(3) Section 407 [amending section 637 of this title] shall take effect with respect to contracts entered into on or after June 1, 1989.

"(4) The following sections (and the amendments made by such sections) shall take effect on October 1, 1989:

"(A) Section 209 [amending section 637 of this title].

"(B) Section 303(b) [amending section 637 of this title].

"(C) Sections 501, 502, and 503 [amending sections 637 and 644 of this title].

"(D) Section 7(j)(13)(E) of the Small Business Act [section 636(j)(13)(E) of this title] (as added by section 301(b) of this Act)."

Pub. L. 100–590, title I, §137, Nov. 3, 1988, 102 Stat. 3007, provided that: "This title [enacting sections 687m and 697c of this title, amending this section and sections 631b, 632, 633, 634, 636, 637, 638, 644, 648, 681, 687, and 695 to 697b of this title, repealing section 694 of this title, enacting provisions set out as notes under this section and sections 636, 637, 639, 644, 694, and 697 of this title, and amending provisions set out as notes under this section and section 637 of this title] shall be effective on the date of enactment [Nov. 3, 1988], except that sections 118 through 122 [amending this section and sections 632 and 636 of this title] shall be effective for all loan applications resulting from disaster declarations made on or after August 1, 1988, or from disaster declarations whose filing periods were open on October 1, 1988. Any new credit authority provided for in this Act [see Short Title of 1988 Amendment note below] is to be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts."

Pub. L. 100–418, title VIII, §8014, Aug. 23, 1988, 102 Stat. 1563, provided that: "This title [amending this section and sections 636, 648, 649, and 696 of this title, enacting provisions set out as notes under this section, and amending provisions set out as notes under this section and section 638 of this title] shall become effective on the date of its enactment [Aug. 23, 1988]."

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–35, title XIX, §1918, Aug. 13, 1981, 95 Stat. 781, provided that: "Sections 1908, 1909, and 1913 of this title [amending sections 633, 636, and 696 of this title] shall be effective October 1, 1981, and section 1910 of this title [amending section 636 of this title] shall be effective as provided therein [Oct. 1, 1985]. All other provisions of this title [amending sections 632, 633, 636, and 639 of this title, repealing section 636a of this title, enacting provisions set out as notes under this section and section 636 of this title, and amending provisions set out as notes under this section] shall be effective immediately [Aug. 13, 1981] but shall not affect any financing made, obligated, or committed under the Small Business Act [this chapter] or the Small Business Investment Act of 1958 [chapter 14B of this title] prior to the effective date hereof."

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–302, title V, §507, July 2, 1980, 94 Stat. 854, provided that: "This Act [enacting sections 631a, 631b, 648, and 697 of this title, amending this section, sections 632, 633, 634, 634d, 636, 637, 644, 647, 694–2, 694b, and 694c of this title, section 5315 of Title 5, Government Organization and Employees, and

sections 1961 and 1964 of Title 7, Agriculture, enacting provisions set out as notes under this section and sections 636, 637, and 648 of this title, and amending provisions set out as a note under this section] shall take effect October 1, 1980."

SHORT TITLE OF 2011 AMENDMENT

Pub. L. 112–81, div. E, title L, §5001, Dec. 31, 2011, 125 Stat. 1822, provided that: "This division [enacting sections 638a and 638b of this title, amending sections 632 and 638 of this title, enacting provisions set out as notes under sections 638 and 638b of this title, and amending provisions set out as a note under section 638 of this title] may be cited as the 'SBIR/STTR Reauthorization Act of 2011'."

Pub. L. 112–17, §1, June 1, 2011, 125 Stat. 221, provided that: "This Act [amending section 638 of this title] may be cited as the 'Small Business Additional Temporary Extension Act of 2011'."

SHORT TITLE OF 2010 AMENDMENT

Pub. L. 111–240, §1, Sept. 27, 2010, 124 Stat. 2504, provided that: "This Act [enacting sections 634g, 648b, and 657q of this title, chapter 54 and section 4713a of Title 12, Banks and Banking, and section 1320a–7m of Title 42, The Public Health and Welfare, amending this section, sections 278k, 632 to 634, 634c, 636, 637, 644, 648, 649, 656, 657a, 689d, 695, and 696 of this title, section 604 of Title 5, Government Organization and Employees, section 2382 of Title 10, Armed Forces, and sections 38 to 40, 55, 72, 162, 168, 179, 195, 280F, 402A, 460, 861, 862, 864, 1202, 1374, 1400L, 1400N, 6041, 6330, 6707A, 6721, and 6722 of Title 26, Internal Revenue Code, repealing former section 634g of this title, enacting provisions set out as notes under this section, sections 271, 278n, 632, 636, 637, 644, 649, 649b, and 696 of this title, sections 4741 and 5701 of Title 12, sections 1, 38 to 40, 72, 162, 168, 179, 195, 280F, 402A, 460, 861, 1202, 1374, 6041, 6330, 6655, 6662A, 6707A, and 6721 of Title 26, and sections 428 and 433 of Title 41, Public Contracts, amending provisions set out as notes under this section, and repealing provisions set out as notes under section 644 of this title] may be cited as the 'Small Business Jobs Act of 2010'."

Pub. L. 111–240, title I, §1101, Sept. 27, 2010, 124 Stat. 2507, provided that: "This subtitle [subtitle A (§§1101–1136) of title I of Pub. L. 111–240, enacting section 4713a of Title 12, Banks and Banking, amending sections 632, 634, 636, 689d, 695, and 696 of this title, and enacting provisions set out as notes under sections 632, 636, and 696 of this title] may be cited as the 'Small Business Job Creation and Access to Capital Act of 2010'."

Pub. L. 111–240, title I, §1201, Sept. 27, 2010, 124 Stat. 2520, provided that: "This subtitle [subtitle B (§§1201–1209) of title I of Pub. L. 111–240, amending this section and sections 632, 633, 636, 648, and 649 of this title and enacting provisions set out as notes under sections 636, 649, and 649b of this title] may be cited as the 'Small Business Export Enhancement and International Trade Act of 2010'."

SHORT TITLE OF 2008 AMENDMENT

Pub. L. 110–234, title XII, §12051, May 22, 2008, 122 Stat. 1406, and Pub. L. 110–246, §4(a), title XII, §12051, June 18, 2008, 122 Stat. 1664, 2168, provided that: "This subtitle [subtitle B (§§12051–12091) of title XII of Pub. L. 110–246, enacting sections 636e to 636k and 657i to 657o of this title, amending sections 632, 633, and 636 of this title, enacting provisions set out as notes under section 636 of this title, and amending provisions set out as a note under this section] may be cited as the 'Small Business Disaster Response and Loan Improvements Act of 2008'."

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

Pub. L. 110–186, §1, Feb. 14, 2008, 122 Stat. 623, provided that: "This Act [amending sections 632, 636, 648, 657b, and 657c of this title, enacting provisions set out as notes under sections 636 and 637 of this title, and amending provisions set out as a note under section 657b of this title] may be cited as the 'Military Reservist and Veteran Small Business Reauthorization and Opportunity Act of 2008'."

SHORT TITLE OF 2007 AMENDMENT

Pub. L. 110–28, title VIII, §8301, May 25, 2007, 121 Stat. 204, provided that: "This subtitle [subtitle C (§§8301–8306) of title VIII of Pub. L. 110–28, amending section 656 of this title and section 10a of Title 41, Public Contracts, enacting provisions set out as notes under section 656 of this title and section 9858 of Title 42, The Public Health and Welfare, and amending provisions set out as a note under section 601 of Title 5, Government Organization and Employees] may be cited as the 'Small Business and Work Opportunity Act of 2007'."

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–447, div. K, §1(a), Dec. 8, 2004, 118 Stat. 3441, provided that: "This division [enacting

sections 631c and 657g of this title, amending sections 632 to 634, 636, 637, 648, 650, 654, 657a to 657c, 683, 687, 694b, and 695 to 697 of this title, enacting provisions set out as notes under sections 632, 633, 636, and 637 of this title, amending provisions set out as notes under this section and section 657b of this title, and repealing provisions set out as a note under section 694b of this title] may be cited as the 'Small Business Reauthorization and Manufacturing Assistance Act of 2004'."

SHORT TITLE OF 2001 AMENDMENT

Pub. L. 107–50, §1, Oct. 15, 2001, 115 Stat. 263, provided that: "This Act [amending sections 638 and 657d of this title and enacting provisions set out as a note under section 638 of this title] may be cited as the 'Small Business Technology Transfer Program Reauthorization Act of 2001'."

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(9) [§1(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–667, provided that: "This Act [H.R. 5667, as enacted by section 1(a)(9) of Pub. L. 106–554, see Tables for classification] may be cited as the 'Small Business Reauthorization Act of 2000'."

Pub. L. 106–554, §1(a)(9) [title I, §101], Dec. 21, 2000, 114 Stat. 2763, 2763A–668, provided that: "This title [enacting sections 657d and 657e of this title, amending section 638 of this title, enacting provisions set out as notes under sections 638 and 657d of this title, and amending provisions set out as notes under this section and section 638 of this title] may be cited as the 'Small Business Innovation Research Program Reauthorization Act of 2000'."

Pub. L. 106–554, §1(a)(9) [title II, §201], Dec. 21, 2000, 114 Stat. 2763, 2763A–681, provided that: "This title [amending sections 634, 636, and 696 of this title] may be cited as the 'Small Business Loan Improvement Act of 2000'."

Pub. L. 106–554, §1(a)(9) [title V, §501], Dec. 21, 2000, 114 Stat. 2763, 2763A–691, provided that: "This title [amending sections 637, 648, 654, and 657a of this title and amending provisions set out as notes under this section and sections 637 and 644 of this title] may be cited as the 'Small Business Programs Reauthorization Act of 2000'."

Pub. L. 106–554, §1(a)(9) [title VI, subtitle A, §601], Dec. 21, 2000, 114 Stat. 2763, 2763A–697, provided that: "This subtitle [amending section 632 of this title] may be cited as the 'HUBZones in Native America Act of 2000'."

SHORT TITLE OF 1999 AMENDMENT

Pub. L. 106–165, §1, Dec. 9, 1999, 113 Stat. 1795, provided that: "This Act [amending section 656 of this title and enacting provisions set out as notes under section 656 of this title] may be cited as the 'Women's Business Centers Sustainability Act of 1999'."

Pub. L. 106–50, §1, Aug. 17, 1999, 113 Stat. 233, provided that: "This Act [enacting sections 657b and 657c of this title, amending sections 631b, 632, 633, 634b, 636, 637, 644, and 695 of this title, enacting provisions set out as notes under sections 633, 636, 637, 657b, and 657c of this title, and amending provisions set out as a note under this section] may be cited as the 'Veterans Entrepreneurship and Small Business Development Act of 1999'."

Pub. L. 106–22, §1, Apr. 27, 1999, 113 Stat. 36, provided that: "This Act [amending section 636 of this title] may be cited as the 'Microloan Program Technical Corrections Act of 1999'."

Pub. L. 106–17, §1, Apr. 6, 1999, 113 Stat. 27, provided that: "This Act [amending section 656 of this title and enacting provisions set out as a note under section 656 of this title] may be cited as the 'Women's Business Center Amendments Act of 1999'."

Pub. L. 106–8, §1, Apr. 2, 1999, 113 Stat. 13, provided that: "This Act [amending section 636 of this title, enacting provisions set out as notes under section 636 of this title, and repealing provisions set out as a note under section 636 of this title] may be cited as the 'Small Business Year 2000 Readiness Act'."

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–277, div. C, title IX, §901, Oct. 21, 1998, 112 Stat. 2681–707, provided that: "This title [enacting section 654 of this title, amending section 648 of this title, and enacting provisions set out as notes under section 654 of this title] may be cited as the 'Drug-Free Workplace Act of 1998'."

SHORT TITLE OF 1997 AMENDMENT

Pub. L. 105–135, §1(a), Dec. 2, 1997, 111 Stat. 2592, provided that: "This Act [enacting sections 657a and 7109 of this title and former section 7109 of this title, amending this section, sections 631b, 632, 636, 637, 638, 644, 645, 648, 656, 662, 681 to 683, 687b, 687m, 694b, 696, 697, 697e, 7103, 7104, 7106, 7107, and 7110 of this title, section 2323 of Title 10, Armed Forces, section 1441a of Title 12, Banks and Banking,

sections 3718, 6701, and 7505 of Title 31, Money and Finance, sections 405 and 417a of Title 41, Public Contracts, section 13556 of Title 42, The Public Health and Welfare, and sections 47107 and 47113 of Title 49, Transportation, enacting provisions set out as notes under this section, sections 632 to 634, 636, 637, 638, 656, 657a, and 697e of this title, and section 405 of Title 41, and amending provisions set out as notes under this section and sections 637, 644, 694b, and 697e of this title] may be cited as the 'Small Business Reauthorization Act of 1997'."

Pub. L. 105–135, title VI, §601, Dec. 2, 1997, 111 Stat. 2627, provided that: "This title [enacting section 657a of this title, amending sections 631b, 632, 637, 644, 645, and 694b of this title, section 2323 of Title 10, Armed Forces, section 1441a of Title 12, Banks and Banking, sections 3718, 6701, and 7505 of Title 31, Money and Finance, sections 405 and 417a of Title 41, Public Contracts, section 13556 of Title 42, The Public Health and Welfare, and sections 47107 and 47113 of Title 49, Transportation, enacting provisions set out as notes under this section and sections 632 and 657a of this title, and amending provisions set out as notes under this section] may be cited as the 'HUBZone Act of 1997'."

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–208, div. D, §1(a), Sept. 30, 1996, 110 Stat. 3009–724, provided that: "This division [amending sections 80a–18, 632 to 634, 636, 638, 648, 662, 681 to 683, 687, 687b, 687d, 687k to 687m, 694b, 696, 697, 697b, and 697f of this title and section 1431 of Title 12, Banks and Banking, repealing sections 687i and 687j of this title, enacting provisions set out as notes under this section and sections 632 to 634, 636, 681, 683, 694b, and 695 of this title, amending provisions set out as notes under this section and section 644 of this title, and repealing provisions set out as a note under section 634 of this title] may be cited as the 'Small Business Programs Improvement Act of 1996'."

SHORT TITLE OF 1995 AMENDMENT

Pub. L. 104–36, §1, Oct. 12, 1995, 109 Stat. 295, provided that: "This Act [amending sections 634, 636, and 697 of this title, enacting provisions set out as a note under section 634 of this title, and amending provisions set out as a note under section 694b of this title] may be cited as the 'Small Business Lending Enhancement Act of 1995'."

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–403, §1(a), Oct. 22, 1994, 108 Stat. 4175, provided that: "This Act [enacting chapter 97 of this title and sections 697d to 697f of this title, amending this section and sections 632 to 634, 634d, 636 to 638, 644, 648, 652, 656, 683, 687, and 697 of this title, repealing section 697e of this title, enacting provisions set out as notes under this section and sections 634b, 636, 637, 644, 661, and 697d to 697f of this title, amending provisions set out as notes under this section and sections 633, 636, 637, and 694b of this title, and repealing provisions set out as a note under section 697 of this title] may be cited as the 'Small Business Administration Reauthorization and Amendments Act of 1994'."

SHORT TITLE OF 1993 AMENDMENT

Pub. L. 103–81, §1(a), Aug. 13, 1993, 107 Stat. 780, provided that: "This Act [amending sections 634, 636, 648, 652, and 7107 of this title, enacting provisions set out as notes under sections 634 and 636 of this title, amending provisions set out as notes under this section and section 648 of this title, and repealing provisions set out as notes under sections 634 and 636 of this title] may be cited as the 'Small Business Guaranteed Credit Enhancement Act of 1993'."

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–564, §1(a), Oct. 28, 1992, 106 Stat. 4249, provided that: "This Act [amending sections 634, 636, 637, and 638 of this title and section 4124 of Title 18, Crimes and Criminal Procedure, enacting provisions set out as notes under this section and section 638 of this title, amending provisions set out as notes under sections 644 and 648 of this title, and repealing provisions set out as a note under section 638 of this title] may be cited as the 'Small Business Research and Development Enhancement Act of 1992'."

Pub. L. 102–564, title I, §101, Oct. 28, 1992, 106 Stat. 4249, provided that: "This title [amending section 638 of this title and enacting provisions set out as notes under section 638 of this title] may be cited as the 'Small Business Innovation Research Program Reauthorization Act of 1992'."

Pub. L. 102–564, title II, §201, Oct. 28, 1992, 106 Stat. 4256, provided that: "This title [amending section 638 of this title and enacting provisions set out as notes under section 638 of this title] may be cited as the 'Small Business Technology Transfer Act of 1992'."

Pub. L. 102–366, §1(a), Sept. 4, 1992, 106 Stat. 986, provided that: "This Act [amending sections 632, 636, 637, 644, 648, 661, 662, 682, 683, 685, 686, 687, 687b, and 687l of this title, enacting provisions set out as

notes under this section and sections 632, 634, 636, 644, 648, 661, 681, 687b, and 694b of this title, and amending provisions set out as notes under this section and sections 633, 636, and 644 of this title] may be cited as the 'Small Business Credit and Business Opportunity Enhancement Act of 1992'."

Pub. L. 102–366, title I, §101, Sept. 4, 1992, 106 Stat. 987, provided that: "This subtitle [subtitle A (§§101–104) of title I of Pub. L. 102–366, amending section 636 of this title and enacting and amending provisions set out as notes under this section] may be cited as the 'Small Business Credit Crunch Relief Act of 1992'."

Pub. L. 102–366, title I, §111, Sept. 4, 1992, 106 Stat. 989, provided that: "This subtitle [subtitle B (§§111–115) of title I of Pub. L. 102–366, amending section 636 of this title, enacting provisions set out as notes under section 636 of this title, and amending provisions set out as a note under this section] may be cited as the 'Microlending Expansion Act of 1992'."

SHORT TITLE OF 1991 AMENDMENT

Pub. L. 102–191, §1, Dec. 5, 1991, 105 Stat. 1589, provided that: "This Act [enacting section 656 of this title, amending sections 636, 637, and 7103 of this title, enacting provisions set out as a note under section 637 of this title] may be cited as the 'Women's Business Development Act of 1991'."

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–574, §1, Nov. 15, 1990, 104 Stat. 2814, provided that: "This Act [enacting sections 653 and 654 of this title, amending sections 633, 636, 637, 639, 644, 648, 683, 695, and 696 of this title, enacting provisions set out as notes under this section and sections 633, 637, 648, 648a, 653, and 683 of this title and section 601 of Title 5, Government Organization and Employees, amending provisions set out as notes under this section and sections 633, 636, 637, 644, and 694b of this title and section 502 of Title 44, Public Printing and Documents, and repealing provisions set out as a note under section 648 of this title] may be cited as the 'Small Business Administration Reauthorization and Amendments Act of 1990'."

Pub. L. 101–574, title III, §301, Nov. 15, 1990, 104 Stat. 2827, provided that: "This title [enacting sections 653 and 654 of this title, amending sections 631b, 636, and 648 of this title, and enacting provisions set out as notes under section 653 of this title and section 601 of Title 5, Government Organization and Employees] may be cited as the 'Rural Small Business Enhancement Act of 1990'."

SHORT TITLE OF 1989 AMENDMENT

Pub. L. 101–37, §1, June 15, 1989, 103 Stat. 70, provided that: "This Act [amending this section and sections 633, 636, 637, 639, and 644 of this title, enacting provisions set out as a note under this section, and amending provisions set out as notes under this section and sections 633, 636, 637, and 644 of this title] may be cited as the 'Business Opportunity Development Reform Act Technical Corrections Act'."

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–656, §1(a), Nov. 15, 1988, 102 Stat. 3853, provided that: "This Act [amending this section, sections 632, 633, 636, 637, 639, 644, and 645 of this title, and section 541 of former Title 40, Public Buildings, Property, and Works, enacting provisions set out as notes under this section and sections 632, 633, 636, and 637 of this title, and amending provisions set out as a note under section 644 of this title] may be cited as the 'Business Opportunity Development Reform Act of 1988'."

Pub. L. 100–590, §1(a), Nov. 3, 1988, 102 Stat. 2989, provided that: "This Act [enacting sections 687m and 697c of this title, amending this section and sections 631b, 632, 633, 634, 636, 637, 638, 644, 648, 681, 687b, and 694b to 697b of this title, repealing section 694 of this title, enacting provisions set out as notes under this section and sections 636, 637, 639, 644, 661, 694, 694b, and 697 of this title, and amending provisions set out as notes under this section and sections 633 and 637 of this title] may be cited as the 'Small Business Administration Reauthorization and Amendment Act of 1988'."

Pub. L. 100–533, §1, Oct. 25, 1988, 102 Stat. 2689, provided in part that Pub. L. 100–533 "[enacting chapter 97 of this title and section 417a of Title 41, Public Contracts, amending this section and sections 631b, 636, 637, and 1691b of this title, and enacting provisions set out as notes under this section, sections 636 and 637 of this title, and section 131 of Title 13, Census] may be cited as the 'Women's Business Ownership Act of 1988'."

Pub. L. 100–418, title VIII, §8001, Aug. 23, 1988, 102 Stat. 1553, provided that: "This title [amending this section and sections 636, 648, 649, and 696 of this title, enacting provisions set out as notes under this section, and amending provisions set out as notes under this section and section 638 of this title] may be cited as the 'Small Business International Trade and Competitiveness Act'."

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98–395, §1, Aug. 21, 1984, 98 Stat. 1366, provided that: "This Act [amending sections 636 and 648 of this title and provisions set out as notes under this section and section 648 of this title] may be cited as the 'Small Business Development Center Improvement Act of 1984'."

Pub. L. 98–362, §1, July 16, 1984, 98 Stat. 431, provided that: "This Act [amending sections 632, 633, and 637 of this title and enacting provisions set out as notes under sections 633 and 637 of this title] may be cited as the 'Small Business Computer Security and Education Act of 1984'."

Pub. L. 98–352, §1, July 10, 1984, 98 Stat. 329, provided that: "This Act [amending sections 633, 634, and 639 of this title and enacting provisions set out as notes under section 634 of this title] may be cited as the 'Small Business Secondary Market Improvements Act of 1984'."

SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97–219, §1, July 22, 1982, 96 Stat. 217, provided that: "This Act [amending section 638 of this title and enacting provisions set out as notes under section 638 of this title] may be cited as the 'Small Business Innovation Development Act of 1982'."

SHORT TITLE OF 1981 AMENDMENT

Pub. L. 97–35, title XIX, §1901, Aug. 13, 1981, 95 Stat. 767, provided that: "This title [amending sections 632, 633, 636, 639, and 696 of this title, repealing section 636a of this title, enacting provisions set out as notes under sections 632 and 636 of this title, and amending provisions set out as notes under this section] may be cited as the 'Small Business Budget Reconciliation and Loan Consolidation/Improvement Act of 1981'."

SHORT TITLE OF 1980 AMENDMENT

Pub. L. 96–481, title I, §110, Oct. 21, 1980, 94 Stat. 2323, provided that: "This part [part B (§§110–113) of title I of Pub. L. 96–481 enacting section 649 of this title, amending section 636 of this title and enacting provisions set out as notes under section 649 of this title] may be cited as the 'Small Business Export Expansion Act of 1980'."

Pub. L. 96–302, title II, §201, July 2, 1980, 94 Stat. 843, provided that: "This title [enacting section 648, amending section 636, and enacting provisions set out as a note under section 648 of this title] may be cited as the 'Small Business Development Center Act of 1980'."

Pub. L. 96–302, title III, §301, July 2, 1980, 94 Stat. 848, provided that: "This title [enacting sections 631a and 631b of this title] may be cited as the 'Small Business Economic Policy Act of 1980'."

Pub. L. 96–302, title V, §501, July 2, 1980, 94 Stat. 850, provided that: "This title [amending sections 632 and 636 of this title and enacting provisions set out as notes under sections 631 and 636 of this title] may be cited as the 'Small Business Employee Ownership Act of 1980'."

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95–315, §1, July 4, 1978, 92 Stat. 377, provided: "That this Act [amending sections 633, 636, and 639 of this title and provisions set out as notes under this section] may be cited as the 'Small Business Energy Loan Act'."

SHORT TITLE OF 1974 AMENDMENT

Pub. L. 93–386, §1, Aug. 23, 1974, 88 Stat. 742, provided: "That this Act [enacting section 694c of this title, amending this section, sections 633, 634, 636, 639, 647, 694, and 694b of this title, and sections 2855, 2942, 2949, and 2982 of Title 42, The Public Health and Welfare, repealing sections 2901, 2902, 2905, 2906, 2906a, 2906b, 2906c, and 2907 of Title 42, and enacting provisions set out as notes under sections 633 and 694 of this title] may be cited as the 'Small Business Amendments of 1974'."

SHORT TITLE OF 1967 AMENDMENT

Pub. L. 90–104, title I, §101, Oct. 11, 1967, 81 Stat. 268, provided that: "This title [amending sections 633, 636, and 637 of this title and section 2902 of Title 42, The Public Health and Welfare] may be cited as the 'Small Business Act Amendments of 1967'."

SHORT TITLE OF 1961 AMENDMENT

Pub. L. 87–305, §1, Sept. 26, 1961, 75 Stat. 666, provided: "That this Act [amending this section, sections 633, 634, 636, 637, and 639 of this title, and section 2158 of Appendix to Title 50, War and National Defense] may be cited as the 'Small Business Act Amendments of 1961'."

SHORT TITLE

Pub. L. 85–536, §2[1], July 18, 1958, 72 Stat. 384, provided that this chapter should be known as the

"Small Business Act".

REPEAL OF INCONSISTENT LAWS

Pub. L. 85–536, §2[47], formerly §2[21], July 18, 1958, 72 Stat. 396, renumbered §2[30] by Pub. L. 96–302, title II, §202, July 2, 1980, 94 Stat. 843; renumbered §2[31] by Pub. L. 104–121, title II, §222(1), Mar. 29, 1996, 110 Stat. 860; renumbered §2[32] by Pub. L. 105–135, title VI, §602(b)(1)(A), Dec. 2, 1997, 111 Stat. 2629; renumbered §2[34] by Pub. L. 106–50, title II, §201(b)(1), Aug. 17, 1999, 113 Stat. 235; renumbered §2[36] by Pub. L. 106–554, §1(a)(9) [title I, §111(b)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–674; renumbered §2[37] by Pub. L. 108–183, title III, §308, Dec. 16, 2003, 117 Stat. 2662; renumbered §2[44] by Pub. L. 110–234, title XII, §12062(1), May 22, 2008, 122 Stat. 1407; Pub. L. 110–246, §4(a), title XII, §12062(1), June 18, 2008, 122 Stat. 1664, 2169; renumbered §2[45] by Pub. L. 111–240, title I, §1313(a)(1), Sept. 27, 2010, 124 Stat. 2538; renumbered §2[47] by Pub. L. 112–239, div. A, title XVI, §1641(1), Jan. 2, 2013, 126 Stat. 2076, provided that: "All laws and parts of laws inconsistent with this Act [this chapter] are hereby repealed to the extent of such inconsistency."

REGULATIONS

Pub. L. 105–135, title IV, §417, Dec. 2, 1997, 111 Stat. 2620, provided that:

"(a) PROPOSED REGULATIONS.—Proposed amendments to the Federal Acquisition Regulation or proposed Small Business Administration regulations under this subtitle [subtitle B (§§411–417) of title IV of Pub. L. 105–135, amending this section and sections 632, 637 and 644 of this title and enacting provisions set out as notes under section 637 of this title and section 405 of Title 41, Public Contracts] and the amendments made by this subtitle shall be published not later than 120 days after the date of enactment of this Act [Dec. 2, 1997] for the purpose of obtaining public comment pursuant to section 22 of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 418b) [now 41 U.S.C. 1707], or chapter 5 of title 5, United States Code, as appropriate. The public shall be afforded not less than 60 days to submit comments.

"(b) FINAL REGULATIONS.—Final regulations shall be published not later than 270 days after the date of enactment of this Act. The effective date for such final regulations shall be not less than 30 days after the date of publication."

Pub. L. 100–590, title I, §136, Nov. 3, 1988, 102 Stat. 3007, provided that: "Notwithstanding any law, rule or regulation, the Small Business Administration shall promulgate final regulations to be effective on publication to carry out the provisions of this title [see Effective Date of 1988 Amendments note above] within six months after the date of enactment [Nov. 3, 1988]."

Pub. L. 100–418, title VIII, §8013, Aug. 23, 1988, 102 Stat. 1563, provided that: "Notwithstanding any law, rule, or regulation, the Small Business Administration shall promulgate final regulations to carry out the provisions of this title [see Short Title of 1988 Amendments note above] within six months after the date of enactment of this title [Aug. 23, 1988]."

SEPARABILITY

Pub. L. 85–536, §2[19], July 18, 1958, 72 Stat. 396, provided that: "If any provision of this Act [this chapter], or the application thereof to any person or circumstances, is held invalid, the remainder of this Act [this chapter], and the application of such provision to other persons or circumstances, shall not be affected thereby."

AUTHORIZATION OF APPROPRIATIONS

Pub. L. 85–536, §2[20], July 18, 1958, 72 Stat. 396, as amended by Pub. L. 87–341, §11(h)(2), Oct. 3, 1961, 75 Stat. 757; Pub. L. 95–89, title I, §102, Aug. 4, 1977, 91 Stat. 553; Pub. L. 95–315, §§5, 7, July 4, 1978, 92 Stat. 379; Pub. L. 96–302, title I, §§101, 110, July 2, 1980, 94 Stat. 833, 837; Pub. L. 97–35, title XIX, §§1905, 1906, Aug. 13, 1981, 95 Stat. 772–777; Pub. L. 98–270, title III, §§302, 305, Apr. 18, 1984, 98 Stat. 160, 161; Pub. L. 98–395, §3, Aug. 21, 1984, 98 Stat. 1367; Pub. L. 99–272, title XVIII, §§18001, 18002, 18012, Apr. 7, 1986, 100 Stat. 361, 363, 369; Pub. L. 100–72, §1, July 11, 1987, 101 Stat. 477; Pub. L. 100–418, title VIII, §§8004, 8006(a), Aug. 23, 1988, 102 Stat. 1556, 1557; Pub. L. 100–590, title I, §§101, 135(1), (2), Nov. 3, 1988, 102 Stat. 2990, 3007; Pub. L. 101–574, title I, §§101, 102, Nov. 15, 1990, 104 Stat. 2815, 2817; Pub. L. 102–83, §5(c)(2), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–366, title I, §§102, 115(a), title IV, §§405, 414, Sept. 4, 1992, 106 Stat. 987, 993, 1014, 1018; Pub. L. 103–81, §2, Aug. 13, 1993, 107 Stat. 780; Pub. L. 103–282, §1, July 22, 1994, 108 Stat. 1422; Pub. L. 103–403, title I, §101, Oct. 22, 1994, 108 Stat. 4176; Pub. L. 104–208, div. D, title II, §208(i)(2), Sept. 30, 1996, 110 Stat. 3009–747; Pub. L. 105–135, title I, §101, title II, §211, title VI, §607, Dec. 2, 1997, 111 Stat. 2594, 2600, 2635; Pub. L. 106–9, §2(b), Apr. 5, 1999, 113 Stat. 17; Pub. L. 106–24, §1(b), Apr. 27, 1999, 113 Stat. 39; Pub. L. 106–554, §1(a)(8) [§1(c)], §1(a)(9) [title V, §502, title VIII, §804(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–664,

2763A–691, 2763A–703; Pub. L. 107–20, title II, §2203(a), July 24, 2001, 115 Stat. 170; Pub. L. 108–217, §3, Apr. 5, 2004, 118 Stat. 591; Pub. L. 108–447, div. K, title I, §121, Dec. 8, 2004, 118 Stat. 3446, provided that:

"(a)(1) For fiscal year 2000 and each fiscal year thereafter, there are authorized to be appropriated such sums as may be necessary and appropriate, to remain available until expended, and to be available solely—

"(A) to carry out the Small Business Development Center Program under section 21 [section 648 of this title], but not to exceed the annual funding level, as specified in section 21(a);

"(B) to pay the expenses of the National Small Business Development Center Advisory Board, as provided in section 21(i);

"(C) to pay the expenses of the information sharing system, as provided in section 21(c)(8);

"(D) to pay the expenses of the association referred to in section 21(a)(3)(A) for conducting the accreditation program, as provided in section 21(k)(2);

"(E) to pay the expenses of the Administration, including salaries of examiners, for conducting examinations as part of the accreditation program conducted by the association referred to in section 21(a)(3)(A); and

"(F) to pay for small business development center grants as mandated or directed by Congress.

"(2) Notwithstanding any other provision of law, the Administration shall enter into commitments for direct loans and to guarantee loans, debentures, payment of rentals, or other amounts due under qualified contracts and other types of financial assistance and enter into commitments to purchase debentures and preferred securities and to guarantee sureties against loss pursuant to programs under this Act [this chapter] and the Small Business Investment Act of 1958 [chapter 14B of this title], in the full amounts provided by law subject only to (A) the availability of qualified applications, and (B) limitations contained in appropriations Acts. Nothing in this paragraph authorizes the Administration to reduce or limit its authority to enter into such commitments. Subject to approval in appropriations Acts, amounts authorized for preferred securities, debentures or participating securities under title III of the Small Business Investment Act of 1958 [subchapter III of chapter 14B of this title] may be obligated in one fiscal year and disbursed or guaranteed in any 1 or more of the 4 subsequent fiscal years.

"(3) There are authorized to be transferred from the disaster loan revolving fund such sums as may be necessary and appropriate for administrative expenses of the Administration.

"(4) Except as may be otherwise specifically provided by law, the amount of deferred participation loans authorized in this section—

"(A) shall mean the net amount of the loan principal guaranteed by the Small Business Administration (and does not include any amount which is not guaranteed); and

"(B) shall be available for a national program, except that the Administration may use not more than an amount equal to 10 percent of the amount authorized each year for any special or pilot program directed to identified sectors of the small business community or to specific geographic regions of the United States.

"(b) There are authorized to be appropriated to the Administration for fiscal year 1991 such sums as may be necessary to carry out the provisions of this Act [this chapter] and the Small Business Investment Act of 1958 [chapter 14B of this title]. There also are hereby authorized to be appropriated such sums as may be necessary and appropriate for the carrying out of the provisions and purposes, including administrative expenses, of sections 7(b)(1) and 7(b)(2) of this Act [section 636(b)(1), (2) of this title]; and there are authorized to be transferred from the disaster loan revolving fund such sums as may be necessary and appropriate for such administrative expenses.

"(c) DISASTER MITIGATION PILOT PROGRAM.—The following program levels are authorized for loans under section 7(b)(1)(C) [section 636(b)(1)(C) of this title]:

"(1) $15,000,000 for fiscal year 2005.

"(2) $15,000,000 for fiscal year 2006.

"(d) FISCAL YEAR 2005.—

"(1) PROGRAM LEVELS.—The following program levels are authorized for fiscal year 2005:

"(A) For the programs authorized by this Act [this chapter], the Administration is authorized to make—

"(i) $75,000,000 in technical assistance grants, as provided in section 7(m) [section 636(m) of this title]; and

"(ii) $105,000,000 in direct loans, as provided in 7(m).

"(B) For the programs authorized by this Act, the Administration is authorized to make $23,050,000,000 in deferred participation loans and other financings. Of such sum, the Administration is authorized to make—

"(i) $16,500,000,000 in general business loans, as provided in section 7(a) [section 636(a) of

this title];

"(ii) $6,000,000,000 in certified development company financings, as provided in section 7(a)(13) and as provided in section 504 of the Small Business Investment Act of 1958 [section 697a of this title];

"(iii) $500,000,000 in loans, as provided in section 7(a)(21); and

"(iv) $50,000,000 in loans, as provided in section 7(m).

"(C) For the programs authorized by title III of the Small Business Investment Act of 1958 [subchapter III of chapter 14B of this title], the Administration is authorized to make—

"(i) $4,250,000,000 in purchases of participating securities; and

"(ii) $3,250,000,000 in guarantees of debentures.

"(D) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958 [part B of subchapter IV–A of chapter 14B of this title], the Administration is authorized to enter into guarantees not to exceed $6,000,000,000, of which not more than 50 percent may be in bonds approved pursuant to section 411(a)(3) of that Act [section 694b(a)(3) of this title].

"(E) The Administration is authorized to make grants or enter into cooperative agreements for a total amount of $7,000,000 for the Service Corps of Retired Executives program authorized by section 8(b)(1) [section 637(b)(1) of this title].

"(2) ADDITIONAL AUTHORIZATIONS.—

"(A) There are authorized to be appropriated to the Administration for fiscal year 2005 such sums as may be necessary to carry out the provisions of this Act not elsewhere provided for, including administrative expenses and necessary loan capital for disaster loans pursuant to section 7(b) [section 636(b) of this title], and to carry out the Small Business Investment Act of 1958 [chapter 14B of this title], including salaries and expenses of the Administration.

"(B) Notwithstanding any other provision of this paragraph, for fiscal year 2005—

"(i) no funds are authorized to be used as loan capital for the loan program authorized by section 7(a)(21) except by transfer from another Federal department or agency to the Administration, unless the program level authorized for general business loans under paragraph (1)(B)(i) is fully funded; and

"(ii) the Administration may not approve loans on its own behalf or on behalf of any other Federal department or agency, by contract or otherwise, under terms and conditions other than those specifically authorized under this Act or the Small Business Investment Act of 1958, except that it may approve loans under section 7(a)(21) of this Act in gross amounts of not more than $2,000,000.

"(e) FISCAL YEAR 2006.—

"(1) PROGRAM LEVELS.—The following program levels are authorized for fiscal year 2006:

"(A) For the programs authorized by this Act [this chapter], the Administration is authorized to make—

"(i) $80,000,000 in technical assistance grants, as provided in section 7(m) [section 636(m) of this title]; and

"(ii) $110,000,000 in direct loans, as provided in 7(m).

"(B) For the programs authorized by this Act, the Administration is authorized to make $25,050,000,000 in deferred participation loans and other financings. Of such sum, the Administration is authorized to make—

"(i) $17,000,000,000 in general business loans, as provided in section 7(a) [section 636(a) of this title];

"(ii) $7,500,000,000 in certified development company financings, as provided in section 7(a)(13) and as provided in section 504 of the Small Business Investment Act of 1958 [section 697a of this title];

"(iii) $500,000,000 in loans, as provided in section 7(a)(21); and

"(iv) $50,000,000 in loans, as provided in section 7(m).

"(C) For the programs authorized by title III of the Small Business Investment Act of 1958 [subchapter III of chapter 14B of this title], the Administration is authorized to make—

"(i) $4,500,000,000 in purchases of participating securities; and

"(ii) $3,500,000,000 in guarantees of debentures.

"(D) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958 [part B of subchapter IV–A of chapter 14B of this title], the Administration is authorized to enter into guarantees not to exceed $6,000,000,000, of which not more than 50 percent may be in bonds approved pursuant to section 411(a)(3) of that Act [section 694b(a)(3) of this title].

"(E) The Administration is authorized to make grants or enter into cooperative agreements for a

total amount of $7,000,000 for the Service Corps of Retired Executives program authorized by section 8(b)(1) [section 637(b)(1) of this title].

"(2) ADDITIONAL AUTHORIZATIONS.—

"(A) There are authorized to be appropriated to the Administration for fiscal year 2006 such sums as may be necessary to carry out the provisions of this Act not elsewhere provided for, including administrative expenses and necessary loan capital for disaster loans pursuant to section 7(b) [section 636(b) of this title], and to carry out the Small Business Investment Act of 1958 [chapter 14B of this title], including salaries and expenses of the Administration.

"(B) Notwithstanding any other provision of this paragraph, for fiscal year 2006—

"(i) no funds are authorized to be used as loan capital for the loan program authorized by section 7(a)(21) except by transfer from another Federal department or agency to the Administration, unless the program level authorized for general business loans under paragraph (1)(B)(i) is fully funded; and

"(ii) the Administration may not approve loans on its own behalf or on behalf of any other Federal department or agency, by contract or otherwise, under terms and conditions other than those specifically authorized under this Act or the Small Business Investment Act of 1958, except that it may approve loans under section 7(a)(21) of this Act in gross amounts of not more than $2,000,000.

"[(f) to (i) Repealed. Pub. L. 108–447, div. K, title I, §121(2), Dec. 8, 2004, 118 Stat. 3446.]

"(j) FISCAL YEAR 2004 PURCHASE AND GUARANTEE AUTHORITY UNDER TITLE III OF SMALL BUSINESS INVESTMENT ACT OF 1958.—For fiscal year 2004, for the programs authorized by title III of the Small Business Investment Act of 1958 (15 U.S.C. 681 et seq.), the Administration is authorized to make—

"(1) $4,000,000,000 in purchases of participating securities; and

"(2) $3,000,000,000 in guarantees of debentures."

SMALL BUSINESS ACT CONTRACTING REQUIREMENTS TRAINING

Pub. L. 112–239, div. A, title XVI, §1622(a), (b), Jan. 2, 2013, 126 Stat. 2069, provided that:

"(a) ESTABLISHMENT.—Not later than 1 year after the date of enactment of this part [Jan. 2, 2013], the Defense Acquisition University and the Federal Acquisition Institute shall each provide a course on contracting requirements under the Small Business Act [15 U.S.C. 631 et seq.], including the requirements for small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

"(b) COURSE REQUIRED.—To have a Federal Acquisition Certification in Contracting (or any successor certification) or the equivalent Department of Defense certification an individual shall be required to complete the course established under subsection (a)."

AGENCY ACHIEVEMENT OF SMALL BUSINESS GOALS

Pub. L. 112–239, div. A, title XVI, §1633(b), (c), Jan. 2, 2013, 126 Stat. 2076, provided that:

"(b) RESPONSIBILITY FOR ACHIEVING SMALL BUSINESS GOALS.—The head of an agency shall take steps to ensure that members of the senior executive service, as defined under section 3396(a) of title 5, United States Code, responsible for acquisition, other senior officials responsible for acquisition, and other members of the senior executive service, as appropriate, assume responsibility for of [sic] the agency's success in achieving small business contracting goals and percentages by—

"(1) promoting a climate or environment that is responsive to small business concerns;

"(2) communicating the importance of achieving the agency's small business contracting goals; and

"(3) encouraging small business awareness, outreach, and support.

"(c) DEFINITIONS.—In this section [enacting this note and provisions set out as a note under section 3396 of Title 5, Government Organization and Employees] the term 'responsible for acquisition', with respect to a member of the senior executive service or other senior official, means such a member or official who acquires services or supplies, directs agency organizations to acquire services or supplies, oversees acquisition officials, including program managers, contracting officers, and other acquisition workforce personnel responsible for formulating and approving acquisition strategies and plans."

LOAN APPLICATION PROCESSING

Pub. L. 106–554, §1(a)(9) [title VIII, §801], Dec. 21, 2000, 114 Stat. 2763, 2763A–702, required the Administrator of the Small Business Administration to conduct a loan application processing study and to transmit the results to Congress not later than 1 year after Dec. 21, 2000.

SERVICE DISABLED VETERANS

Pub. L. 105–135, title VII, §§701–704, 707, 709, Dec. 2, 1997, 111 Stat. 2636–2638, provided that:

"SEC. 701. PURPOSES.

"The purposes of this title [amending sections 631b, 636, and 637 of this title and enacting this note] are—

"(1) to foster enhanced entrepreneurship among eligible veterans by providing increased opportunities;

"(2) to vigorously promote the legitimate interests of small business concerns owned and controlled by eligible veterans; and

"(3) to ensure that those concerns receive fair consideration in purchases made by the Federal Government.

"SEC. 702. DEFINITIONS.

"In this title:

"(1) ELIGIBLE VETERAN.—The term 'eligible veteran' means a disabled veteran (as defined in section 4211(3) of title 38, United States Code).

"(2) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY ELIGIBLE VETERANS .—The term 'small business concern owned and controlled by eligible veterans' means a small business concern (as defined in section 3 of the Small Business Act [15 U.S.C. 632])—

"(A) that is at least 51 percent owned by 1 or more eligible veterans, or in the case of a publicly owned business, at least 51 percent of the stock of which is owned by 1 or more eligible veterans; and

"(B) whose management and daily business operations are controlled by eligible veterans.

"SEC. 703. REPORT BY SMALL BUSINESS ADMINISTRATION.

"(a) STUDY AND REPORT.—

"(1) IN GENERAL.—Not later than 9 months after the date of enactment of this Act [Dec. 2, 1997], the Administrator shall conduct a comprehensive study and submit to the Committees a final report containing findings and recommendations of the Administrator on—

"(A) the needs of small business concerns owned and controlled by eligible veterans;

"(B) the availability and utilization of Administration programs by small business concerns owned and controlled by eligible veterans;

"(C) the percentage, and dollar value, of Federal contracts awarded to small business concerns owned and controlled by eligible veterans in the preceding 5 fiscal years; and

"(D) methods to improve Administration and other agency programs to serve the needs of small business concerns owned and controlled by eligible veterans.

"(2) CONTENTS.—The report under paragraph (1) shall include recommendations to Congress concerning the need for legislation and recommendations to the Office of Management and Budget, relevant offices within the Administration, and the Department of Veterans Affairs.

"(b) CONDUCT OF STUDY.—In carrying out subsection (a), the Administrator—

"(1) may conduct surveys of small business concerns owned and controlled by eligible veterans and service disabled veterans, including those who have sought financial assistance or other services from the Administration;

"(2) shall consult with the appropriate committees of Congress, relevant groups and organizations in the nonprofit sector, and Federal or State government agencies; and

"(3) shall have access to any information within other Federal agencies that pertains to such veterans and their small businesses, unless such access is specifically prohibited by law.

"SEC. 704. INFORMATION COLLECTION.

"After the date of issuance of the report required by section 703(a), the Secretary of Veterans Affairs shall, in consultation with the Assistant Secretary for Veterans' Employment and Training and the Administrator, engage in efforts each fiscal year to identify small business concerns owned and controlled by eligible veterans in the United States. The Secretary shall inform each small business concern identified under this section that information on Federal procurement is available from the Administrator.

"SEC. 707. ENTREPRENEURIAL TRAINING, COUNSELING, AND MANAGEMENT ASSISTANCE.

"The Administrator shall take such actions as may be necessary to ensure that small business concerns owned and controlled by eligible veterans have access to programs established under the Small Business Act [15 U.S.C. 631 et seq.] that provide entrepreneurial training, business development assistance, counseling, and management assistance to small business concerns, including, among others, the Small Business Development Center program and the Service Corps of Retired Executives (SCORE) program.

"SEC. 709. OUTREACH FOR ELIGIBLE VETERANS.

"The Administrator, the Secretary of Veterans Affairs, and the Assistant Secretary of Labor for Veterans' Employment and Training, shall develop and implement a program of comprehensive outreach to assist eligible veterans, which program shall include business training and management assistance, employment and relocation counseling, and dissemination of information on veterans' benefits and veterans' entitlements."

TRANSITION REIMBURSEMENT

Pub. L. 103–403, title IV, §414, Oct. 22, 1994, 108 Stat. 4197, authorized payment, for a 90-day period of time, of reasonable amounts of funds to pay salaries and expenses of members and staff of the National Women's Business Council appointed on or before Oct. 22, 1994.

BUY AMERICAN PREFERENCE IN PROVISION OF FINANCIAL ASSISTANCE

Pub. L. 102–366, title I, §103, Sept. 4, 1992, 106 Stat. 988, provided that: "In providing financial assistance with amounts appropriated pursuant to the amendments made by this Act [see Short Title of 1992 Amendment note above], the Administrator of the Small Business Administration shall, when practicable, accord preference to small business concerns which use or purchase equipment and supplies produced in the United States. The Administrator shall also encourage small business concerns receiving such assistance to purchase such equipment and supplies."

FEASIBILITY STUDY OF BUSINESS COOPERATION NETWORK

Pub. L. 101–574, title II, §233, Nov. 15, 1990, 104 Stat. 2825, directed Administrator of the Small Business Administration to conduct a study of feasibility of establishing a business cooperation system similar to Business Cooperation Network developed by the European Economic Community, specified the purpose of the study, and directed Administrator, not later than one year after Nov. 15, 1990, to transmit to Congress a report containing the results of the study together with recommendations for such legislative and administrative actions as the Administrator considered appropriate.

DEVELOPMENT OF WOMEN'S BUSINESS ENTERPRISE

Pub. L. 100–533, title IV, §§401–407, Oct. 25, 1988, 102 Stat. 2694, as amended, formerly set out as a note under this section, was transferred to chapter 97 (§7101 et seq.) of this title.

DISADVANTAGED SMALL BUSINESSES

Pub. L. 100–533, title V, §504, Oct. 25, 1988, 102 Stat. 2698, provided that: "Nothing contained in this Act [see Short Title of 1988 Amendment note above] is intended to reduce or limit any programs, benefit, or activity that is authorized by law to assist small business concerns owned and controlled by socially and economically disadvantaged individuals as defined pursuant to section 8(d)(3) of the Small Business Act (15 U.S.C. 637(d)(3))."

GLOBALIZATION OF PRODUCTION; REPORT TO CONGRESS

Pub. L. 100–418, title VIII, §8009, Aug. 23, 1988, 102 Stat. 1561, directed Administrator of Small Business Administration, within one year after Aug. 23, 1988, to submit a written report to Committees on Small Business of House of Representatives and Senate, prepared by Administration in conjunction with Bureau of Census and in cooperation with other relevant agencies, that would analyze to extent possible the effect of increased outsourcing and other shifts in production arrangements on small firms, particularly manufacturing firms, within United States subcontractor tier and to extent that such data is not available determine methods by which such data might be collected; assess the impact of specific economic policies, including, but not limited to, procurement, tax and trade policies, in facilitating outsourcing and other international production arrangements; and make recommendations as to changes in Government policy that would improve competitive position of smaller United States subcontractors, including recommendations as to incentives which could be provided to larger corporations to maximize their use of United States subcontractors and assist these subcontractors in changing production and marketing strategies and in obtaining new business in domestic and foreign markets.

NATIONAL SEMINARS ON SMALL BUSINESS EXPORTS

Pub. L. 102–366, title II, §224, Sept. 4, 1992, 106 Stat. 1000, directed Small Business Administration to conduct a National Seminar on Small Business Exports in Buffalo, New York, in connection with the World University Games Buffalo '93 during July, 1993, in order to develop recommendations designed to stimulate exports from small companies, with such Seminar to build upon the information collected by Administration

through previously conducted regional small business trade conferences and prior conference in State of Washington and to specifically consider utility of, and make recommendations regarding, subsequent International Conference on Small Business and Trade.

Pub. L. 100–418, title VIII, §8011, Aug. 23, 1988, 102 Stat. 1562, directed Small Business Administration to conduct a National Seminar on Small Business Exports within one year after Aug. 23, 1988, in order to develop recommendations designed to stimulate exports from small companies.

APPOINTMENT OF ADMINISTRATOR OF SMALL BUSINESS ADMINISTRATION TO TRADE POLICY COMMITTEE; SPECIAL TRADE ASSISTANT FOR SMALL BUSINESS IN OFFICE OF UNITED STATES TRADE REPRESENTATIVE

Pub. L. 100–418, title VIII, §8012, Aug. 23, 1988, 102 Stat. 1563, provided that:

"It is the sense of the Congress that the interests of the small business community have not been adequately represented in trade policy formulation and in trade negotiations. Therefore, it is the sense of the Congress that the Administrator of the Small Business Administration should be appointed as a member of the Trade Policy Committee and that the United States Trade Representative should consult with the Small Business Administration and its Office of Advocacy in trade policy formulation and in trade negotiations.

"Further, it is the sense of the Congress that the United States Trade Representative would better serve the needs of the small business community with full-time staff assistance with responsibilities for small business trade issues.

"Further, it is the sense of the Congress that the United States Trade Representative should appoint a special trade assistant for small business."

WHITE HOUSE CONFERENCE ON SMALL BUSINESS

Pub. L. 101–409, Oct. 5, 1990, 104 Stat. 885, as amended by Pub. L. 103–81, §10, Aug. 13, 1993, 107 Stat. 783, directed President to conduct National White House Conference on Small Business not earlier than May 1, 1995, and not later than Sept. 30, 1995, to increase public awareness of essential contribution of small business, to identify obstacles to small business, to examine status of women and minorities as small business owners, and to develop specific recommendations for action to maintain and encourage economic viability of small business, further provided for creation of White House Conference on Small Business Commission to oversee preparation for Conference, further provided for selection of Conference participants as well as planning and administration of Conference, further provided for final report to be submitted not later than four months after convening of Conference as well as annual follow-up reports by Small Business Administration for three years after submission of final report, and further provided for authorization of appropriations.

Pub. L. 98–276, May 8, 1984, 98 Stat. 169, directed President to call and conduct a National White House Conference on Small Business not later than Sept. 1, 1986, with Conference to submit a final report to President and Congress not more than six months from date on which Conference convened, and with that final report to include finding and recommendations of Conference as well as proposals for any legislative action necessary to implement Conference's recommendations; and required Small Business Administration to report to Congress annually during the 3-year period following submission of final report on status and implementation of findings and recommendations of Conference.

ASIAN PACIFIC AMERICANS AS DISADVANTAGED MINORITY IN 1978

Pub. L. 96–302, title I, §118(c)(1), July 2, 1980, 94 Stat. 840, provided that 1980 Amendment of subsec. (e)(1)(C) by Pub. L. 96–302, §118(a), which included Asian Pacific Americans among the disadvantaged minorities, shall apply as if included in the 1978 Amendment made by Pub. L. 95–507, §201, enacting subsec. (e) of this section.

ASSISTANCE TO AUTOMOBILE DEALERS; CONGRESSIONAL FINDINGS; INVESTIGATION BY ADMINISTRATOR; REPORT TO CONGRESS

Pub. L. 96–185, §17, Jan. 7, 1980, 93 Stat. 1335, directed Administrator of Small Business Administration to investigate financial problems faced by small automobile dealers and determine what assistance through loans and loan guarantees may be needed to alleviate such problems and to report results of such investigation to Senate and House of Representatives not later than sixty days after Jan. 7, 1980.

EXECUTIVE ORDER NO. 11458

Ex. Ord. No. 11458, Mar. 5, 1969, 34 F.R. 4937, which related to a national program for minority business enterprise, was superseded by Ex. Ord. No. 11625, Oct. 13, 1971, 36 F.R. 19967, set out below.

EX. ORD. NO. 11625. NATIONAL PROGRAM FOR MINORITY BUSINESS ENTERPRISE

Ex. Ord. No. 11625, Oct. 13, 1971, 36 F.R. 19967, as amended by Ex. Ord. No. 12007, Aug. 22, 1977, 42 F.R. 42839, provided:

The opportunity for full participation in our free enterprise system by socially and economically disadvantaged persons is essential if we are to obtain social and economic justice for such persons and improve the functioning of our national economy.

The Office of Minority Business Enterprise, established in 1969, greatly facilitated the strengthening and expansion of our minority enterprise program. In order to take full advantage of resources and opportunities in the minority enterprise field, we now must build on this foundation. One important way of improving our efforts is by clarifying the authority of the Secretary of Commerce (a) to implement Federal policy in support of the minority business enterprise program; (b) provide additional technical and management assistance to disadvantaged business; (c) to assist in demonstration projects; and (d) to coordinate the participation of all Federal departments and agencies in an increased minority enterprise effort.

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, it is ordered as follows:

SECTION 1. *Functions of the Secretary of Commerce*. (a) The Secretary of Commerce (hereinafter referred to as "the Secretary") shall—

(1) Coordinate as consistent with law the plans, programs, and operations of the Federal Government which affect or may contribute to the establishment, preservation, and strengthening of minority business enterprise.

(2) Promote the mobilization of activities and resources of State and local governments, businesses and trade associations, universities, foundations, professional organizations, and volunteer and other groups towards the growth of minority business enterprises, and facilitate the coordination of the efforts of these groups with those of Federal departments and agencies.

(3) Establish a center for the development, collection, summarization, and dissemination of information that will be helpful to persons and organizations throughout the Nation in undertaking or promoting the establishment and successful operation of minority business enterprise.

(4) Within constraints of law and appropriations therefor, and according to his discretion, provide financial assistance to public and private organizations so that they may render technical and management assistance to minority business enterprises, and defray all or part of the costs of pilot or demonstration projects conducted by public or private agencies or organizations which are designed to overcome the special problems of minority business enterprises or otherwise to further the purposes of this order.

(b) The Secretary, as he deems necessary or appropriate to enable him to better fulfill the responsibilities vested in him by subsection (a), may—

(1) With the participation of other Federal departments and agencies as appropriate, develop comprehensive plans and specific program goals for the minority enterprise program; establish regular performance monitoring and reporting systems to assure that goals are being achieved; and evaluate the impact of Federal support in achieving the objectives established by this order.

(2) Require a coordinated review of all proposed Federal training and technical assistance activities in direct support of the minority enterprise program to assure consistency with program goals and to avoid duplication.

(3) Convene, for purposes of coordination, meetings of the heads of such departments and agencies, or their designees, whose programs and activities may affect or contribute to the purposes of this order.

(4) Convene business leaders, educators, and other representatives of the private sector who are engaged in assisting the development of minority business enterprise or who could contribute to its development, for the purpose of proposing, evaluating and coordinating governmental and private activities in furtherance of the objectives of this order.

(5) Confer with and advise officials of State and local governments.

(6) Provide the managerial and organizational framework through which joint or collaborative undertakings with Federal departments or agencies or private organizations can be planned and implemented.

(7) Recommend appropriate legislative or executive actions.

SEC. 2. [Revoked by Ex. Ord. No. 12007, Aug. 22, 1977, 42 F.R. 42839.]

SEC. 3. *Responsibilities of Other Federal Departments and Agencies*. (a) The head of each Federal department and agency, or a representative designated by him, when and in the manner so requested by the Secretary, shall furnish information, assistance, and reports to, and shall otherwise cooperate with, the Secretary in the performance of his functions hereunder.

(b) The head of each Federal department or agency shall, when so requested by the Secretary, designate his Under Secretary or such other similar official to have primary and continuing responsibility for the participation and cooperation of that department or agency in matters concerning minority business enterprise.

(c) The officials designated under the preceding paragraph, when so requested, shall review and report to the Secretary upon the policies and programs of the minority business enterprise program, and shall keep the

Secretary informed of all proposed budgets, plans and programs of his department or agency affecting minority business enterprise.

(d) The head of each Federal department or agency, or a representative designated by him, shall, to the extent provided under regulations issued by the Secretary after consultation with the official designated in paragraph (b) above, report to the Secretary on any activity that falls within the scope of the minority business enterprise program as defined herein and in those regulations.

(e) Each Federal department or agency shall, within constraints of law and appropriations therefor, continue all current efforts to foster and promote minority business enterprises and to support the program herein set forth, and shall cooperate with the Secretary of Commerce in increasing the total Federal effort.

SEC. 4. *Reports*. The Secretary shall, not later than 120 days after the close of each fiscal year, submit to the President a full report of his activities hereunder during the previous fiscal year. Further, the Secretary shall, from time to time, submit to the President his recommendations for legislation or other action as he deems desirable to promote the purposes of this order. Each Federal department or agency shall report to the Secretary as hereinabove provided on a timely basis so that the Secretary may consider such reports for his report and recommendations to the President. Each Federal department or agency shall develop and implement systematic data collection processes which will provide to the Office of Minority Business Enterprise Information Center current data helpful in evaluating and promoting the efforts herein described.

SEC. 5. *Policies and Standards*. The Secretary may establish such policies, standards, definitions, criteria, and procedures to govern the implementation, interpretation, and application of this order, and generally perform such functions and take such steps as he may deem to be necessary or appropriate to achieve the purposes and carry out the provisions hereof.

SEC. 6. *Definitions*. For purposes of this order, the following definitions shall apply:

(a) "Minority business enterprise" means a business enterprise that is owned or controlled by one or more socially or economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background or other similar cause. Such persons include, but are not limited to, Negroes, Puerto Ricans, Spanish-speaking Americans, American Indians, Eskimos, and Aleuts.

(b) "State" means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands.

SEC. 7. *Construction*. Nothing in this order shall be construed as subjecting any function vested in, or assigned pursuant to law to, any Federal department or agency or head thereof to the authority of any other agent or office exclusively, or as abrogating or restricting any such function in any manner.

SEC. 8. *Prior Executive Order*. Executive Order No. 11458 of March 5, 1969, is hereby superseded.

ADVISORY COUNCIL FOR MINORITY ENTERPRISE

For provisions relating to termination of, see Ex. Ord. No. 12007, Aug. 22, 1977, 42 F.R. 42839, formerly set out as a note under section 14 of the Federal Advisory Committee Act, set out in the Appendix to Title 5, Government Organization and Employees.

Term of the Advisory Council for Minority Enterprise extended until Dec. 31, 1978, see Ex. Ord. No. 11948, Dec. 20, 1976, 41 F.R. 55705, formerly set out as a note under section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, Title 5, Appendix, Government Organization and Employees.

EXECUTIVE ORDER NO. 12061

Ex. Ord. No. 12061, May 18, 1978, 43 F.R. 21865, as amended by Ex. Ord. No. 12091, Nov. 1, 1978, 43 F.R. 51373, which related to the Small Business Conference Commission, was revoked by Ex. Ord. No. 12258, Dec. 31, 1980, 46 F.R. 1251, formerly set out as a note under section 14 of the Appendix to Title 5, Government Organization and Employees.

EXECUTIVE ORDER NO. 12269

Ex. Ord. No. 12269, Jan. 15, 1981, 46 F.R. 4673, which established a seven member President's Committee on Small Business Policy to advise the President on appropriate responses to the recommendations of the White House Conference on Small Business, designated the Administrator of the Small Business Administration to perform the functions of the President under Federal advisory committee provisions, and terminated the Committee on Dec. 31, 1982, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

EX. ORD. NO. 12432. MINORITY BUSINESS ENTERPRISE DEVELOPMENT

Ex. Ord. No. 12432, July 14, 1983, 48 F.R. 32551, provided:

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including Section 205(a) of the Federal Property and Administrative Services Act of 1949 (40

U.S.C. 486(a)) [now 40 U.S.C. 121(a)], in order to provide guidance and oversight for programs for the development of minority business enterprise pursuant to my statement of December 17, 1982 concerning Minority Business Development; and to implement the commitment of the Federal government to the goal of encouraging greater economic opportunity for minority entrepreneurs, it is hereby ordered as follows:

SECTION 1. *Minority Business Development Plans*. (a) Minority business enterprise development plans shall be developed by each Federal agency having substantial procurement or grantmaking authority. Such agencies shall submit these plans to the Cabinet Council on Commerce and Trade on an annual basis.

(b) These annual plans shall establish minority enterprise development objectives for the participating agencies and methods for encouraging both prime contractors and grantees to utilize minority business enterprises. The plans shall, to the extent possible, build upon the programs administered by the Minority Business Development Agency and the Small Business Administration, including the goals established pursuant to Public Law 95–507 [see Tables for classification].

(c) The Secretary of Commerce and the Administrator of the Small Business Administration, in consultation with the Cabinet Council on Commerce and Trade, shall establish uniform guidelines for all Federal agencies to be utilized in establishing the minority business programs set forth in Section 2 of this Order.

(d) The participating agencies shall furnish an annual report regarding the implementation of their programs in such form as the Cabinet Council on Commerce and Trade may request, and at such time as the Secretary of Commerce shall designate.

(e) The Secretary of Commerce shall provide an annual report to the President, through the Cabinet Council on Commerce and Trade, on activities under this Order and agency implementation of minority business development programs.

SEC. 2. *Minority Business Development Responsibilities of Federal Agencies*. (a) To the extent permitted by law and consistent with its primary mission, each Federal agency which is required to develop a minority business development plan under Section 1 of this Order shall, to accomplish the objectives set forth in its plan, establish programs concerning provision of direct assistance, procurement assistance, and management and technical assistance to minority business enterprises.

(b) Each Federal agency shall, to the extent permitted by law and consistent with its primary mission, establish minority business development programs, consistent with Section 211 of Public Law 95–507 [amending 15 U.S.C. 637(d)] to develop and implement incentive techniques to encourage greater minority business subcontracting by Federal prime contractors.

(c) Each Federal agency shall encourage recipients of Federal grants and cooperative agreements to achieve a reasonable minority business participation in contracts let as a result of its grants and agreements. In cases where State and local governments are the recipients, such encouragement shall be consistent with principles of federalism.

(d) Each Federal agency shall provide the Cabinet Council on Commerce and Trade such information as it shall request from time to time concerning the agency's progress in implementing these programs.

RONALD REAGAN.

EX. ORD. NO. 12523. NATIONAL WHITE HOUSE CONFERENCE ON SMALL BUSINESS

Ex. Ord. No. 12523, June 27, 1985, 50 F.R. 26963, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to implement the White House Conference on Small Business Authorization Act (Public Law 98–276) [set out above] it is hereby ordered as follows:

Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act [5 U.S.C. App.] applicable to the White House Conference on Small Business Authorization Act, except that of reporting annually to the Congress, shall be performed by the Administrator of the Small Business Administration in accordance with the guidelines and procedures established by the Administrator of General Services.

RONALD REAGAN.

EX. ORD. NO. 12928. PROMOTING PROCUREMENT WITH SMALL BUSINESSES OWNED AND CONTROLLED BY SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS, HISTORICALLY BLACK COLLEGES AND UNIVERSITIES, AND MINORITY INSTITUTIONS

Ex. Ord. No. 12928, Sept. 16, 1994, 59 F.R. 48377, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, in order to enforce rigorously the letter and spirit of public laws that promote increased participation in

Federal procurement by Small Businesses Owned and Controlled by Socially and Economically Disadvantaged Individuals (SDBs) as described in section 8 of the Small Business Act (15 U.S.C. 637), Historically Black Colleges and Universities (HBCUs) as described in 34 C.F.R. 608.2, and Minority Institutions (MIs) as referred to in sections 1046(3) and 316(b)(1) of the Higher Education Act of 1965, as amended (20 U.S.C. 1135d-5(3) and 1059c(b)(1), respectively), it is hereby ordered as follows:

SECTION 1. *Policy Statement*. It is the policy of the United States Government that all department and agency heads and all Federal employees involved in the procurement of any and all goods and services shall assist SDBs, HBCUs, and MIs, as applicable, to develop viable, self-sustaining businesses capable of competing on an equal basis in the mainstream of the American economy. To that end, all Federal personnel shall commit to the letter and spirit of all laws promoting the participation of SDBs, HBCUs, and MIs in Federal procurement. The laws promote:

(a) the award of contracts to SDBs, HBCUs, and MIs through the Small Business Administration Section 8(a) [15 U.S.C. 637(a)] Program, the Department of Defense Small and Disadvantaged Business Program, other agency programs, and through other specific statutory authority or appropriate means;

(b) the establishment of particular goals for SDBs, HBCUs, or MIs on an agency-by-agency basis and the requirement that prime contractors and other recipients of Federal funds attain similar goals in their procurement; and

(c) the establishment of other mechanisms that ensure that SDBs, HBCUs, and MIs have a fair opportunity to participate in Federal procurement.

SEC. 2. *Attainment of Goals*. All departments and agencies are required by law to establish participation goals of not less than 5 percent (15 U.S.C. 644(g)) or a greater percentage where otherwise required by law, as further provided in the Office of Federal Procurement Policy Letter No. 91–1 of March 11, 1991. Although the Federal Government has made substantial strides toward meeting established SDB, HBCU, and MI participation goals, certain departments and agencies have from time to time failed to aggressively pursue such goals. Department and agency heads are henceforth directed to execute, implement, and otherwise aggressively strive to fulfill the statutorily-mandated procurement participation goals. In addition, all departments and agencies are encouraged to set reasonable participation goals that exceed statutory requirements, to the extent permitted by law.

SEC. 3. *Subcontracting Plans*. The Small Business Act, (15 U.S.C. 637(d)) and other related laws require certain prime contractors to maximize the use of SDBs in subcontracting plans and strive to achieve stated goals through prime contractors' subcontracting practices. Department and agency heads are directed to aggressively enforce these prime contractors' obligations to maximize awards of subcontracts to eligible SDBs.

SEC. 4. *Office of Small and Disadvantaged Business Utilization ("OSDBU").*

(a) Section 15(k) of the Small Business Act (15 U.S.C. 644(k)) establishes in each Federal department and agency an OSDBU and requires that the Director of the OSDBU "be responsible only to, and report directly to, the head of such agency or to the deputy of such head" (15 U.S.C. 644(k)(3)). To the extent not prohibited by law, each department and agency shall ensure that the aforementioned direct reporting requirements are henceforth vigorously enforced.

(b) Because of the importance of the OSDBU function, each department and agency shall also, to the extent not prohibited by law, comply with the Office of Federal Procurement Policy Letter No. 79–1 of March 7, 1979, which provides implementation guidance on section 15k [15(k)] and the organizational placement and functions of the OSDBU.

SEC. 5. *Anti-fraud Enforcement*. All department and agency heads shall ensure that in enforcing the laws and requirements mentioned in this order, Federal benefits or contracts intended for SDBs, HBCUs, and MIs are not awarded to entities that are not legitimate SDBs, HBCUs, and MIs. Department and agency anti-fraud enforcement, however, shall not diminish agency vigor in achieving the aforementioned participation goals, which exist to promote the development of legitimate SDBs, HBCUs, and MIs. Nothing herein is intended to change self-certification requirements.

SEC. 6. *Periodic Reports to the President*. The Administrator of the Small Business Administration and the Administrator of the Office of Federal Procurement Policy shall report to the President periodically on the progress of all departments and agencies in complying with the laws and requirements mentioned in this order.

SEC. 7. *Independent Agencies*. Independent agencies are requested to comply with the provisions of this order.

SEC. 8. This order shall be effective immediately.

WILLIAM J. CLINTON.

EX. ORD. NO. 13169. ASSISTANCE TO SMALL BUSINESS EXPORTERS AND DISLOCATED WORKERS

Ex. Ord. No. 13169, Oct. 6, 2000, 65 F.R. 60581, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Small Business Act, 15 U.S.C. 631 *et seq*., the Workforce Investment Act, 29 U.S.C. 2801 *et seq* ., and the Trade Act of 1974, 19 U.S.C. 2271 *et seq*. [19 U.S.C. 2101 et seq.], and in order to assist small businesses, including businesses headed by underserved populations, in participating in the export of products, and to expedite the delivery of adjustment assistance to dislocated workers, it is hereby ordered as follows:

SECTION 1. *Policy*. By its accession to the World Trade Organization, the People's Republic of China will be required to open its markets to a wide range of products and services provided by Americans. In addition, the United States has recently enacted a new law to facilitate trade with the countries of Sub-Saharan Africa and the Caribbean Basin. Federal agencies should take steps to assist small businesses, including businesses headed by underserved populations, in capitalizing on these new opportunities. The agencies should also take steps to assist workers who lose their jobs as a result of competition from imports in their efforts to secure adjustment assistance benefits for which they are eligible.

SEC. 2. *Interagency Task Force on Small Business Exports*. (a) The Secretaries of Commerce and Labor, the Administrator of the Small Business Administration, the United States Trade Representative, and the Chairman of the Export-Import Bank shall, within 60 days from the date of this order, establish an interagency task force through the Trade Promotion Coordinating Committee (TPCC). The task force shall facilitate exports by United States small businesses, including businesses headed by underserved populations, particularly with respect to the People's Republic of China and the countries of Sub-Saharan Africa and the Caribbean Basin. The TPCC shall submit an annual report to the President on the functions carried out by this task force during the preceding year. As part of its work, the task force shall assess the extent to which the establishment of permanent normal trade relations with the People's Republic of China, and the United States enactment of the African Growth and Opportunity Act, 19 U.S.C.A. 3701 *et seq*., and the United States-Caribbean Basin Trade Partnership Act, 19 U.S.C.A. 2701 note, may contribute to the creation of export opportunities for small businesses including businesses headed by underserved populations.

(b) For the purposes of this order, "businesses headed by underserved populations" means businesses headed by women or minorities, and/or located in rural communities.

SEC. 3. *Expedited Response to Worker Dislocation*. (a) The Secretary of Labor shall expedite the Federal response to worker dislocation through the Workforce Investment Act and the Trade Adjustment Assistance program by proactively seeking information, from a variety of sources, on actual or prospective layoffs, including the media and community and labor union members, and by sharing such information with appropriate state workforce officials. In addition, the Department of Labor (Labor) shall undertake a number of proactive steps to support public outreach activities aimed at workers, employers, the media, local officials, the community, and labor organizations and their members to improve awareness of the adjustment assistance available through Labor programs, including, but not limited to:

(1) developing a set of methods to inform employers of the services available through Labor workforce programs, which will explain the requirements of the Worker Adjustment and Retraining Notification Act, 29 U.S.C. 2101 *et seq*., and provide information on worker adjustment programs, including the Trade Adjustment Assistance and the basic dislocated worker programs, emphasizing the importance of early intervention to minimize the affects of work layoffs;

(2) improving websites and other modes of communication to provide basic information on dislocated worker and Trade Adjustment Assistance program contacts at the State and local level;

(3) developing a National Toll-Free Help Line to provide universal, accurate, and easy access to information about public workforce services to workers and employers;

(4) providing on-site technical assistance, in partnership with other Federal agencies, when there are layoffs or closures with multi-State impact, or when there are dislocations with significant community impact (such as areas that have been affected by numerous layoffs of apparel and textile workers);

(5) informing States directly when a secondary worker impact has been affirmed by Labor; and

(6) to the extent permitted by law, and subject to the availability of appropriations, providing funding or an outreach campaign for secondary workers (i.e., individuals indirectly affected by increased imports from other countries).

(b) The Secretary of Labor, in consultation with the Secretary of Commerce and the United States Trade Representative, shall report annually on the employment effects of the establishment of permanent normal trade relations with the People's Republic of China.

SEC. 4. *Judicial Review*. This order does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its officers, its employees, or any other person.

EX. ORD. NO. 13360. PROVIDING OPPORTUNITIES FOR SERVICE-DISABLED VETERAN BUSINESSES TO INCREASE THEIR FEDERAL CONTRACTING AND SUBCONTRACTING

Ex. Ord. No. 13360, Oct. 20, 2004, 69 F.R. 62549, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to strengthen opportunities in Federal contracting for service-disabled veteran businesses, it is hereby ordered as follows:

SECTION 1. *Policy*. America honors the extraordinary service rendered to the United States by veterans with disabilities incurred or aggravated in the line of duty during active service with the armed forces. Heads of agencies shall provide the opportunity for service-disabled veteran businesses to significantly increase the Federal contracting and subcontracting of such businesses. To achieve that objective, agencies shall more effectively implement section 15(g) of the Small Business Act (15 U.S.C. 644(g)), which provides that the President must establish a goal of not less than 3 percent for participation by service-disabled veteran businesses in Federal contracting, and section 36 of that Act (15 U.S.C. 657f), which gives agency contracting officers the authority to reserve certain procurements for service-disabled veteran businesses.

SEC. 2. *Duties of Agency Heads*. To implement the policy set forth in section 1, heads of agencies shall:

(a) develop a strategy to implement the policy set forth in section 1;

(b) make the agency's strategy publicly available and report annually to the Administrator of the Small Business Administration on implementation of the agency's strategy;

(c) designate a senior-level official who shall be responsible for developing and implementing the agency's strategy;

(d) include development and implementation of the agency's strategy and achievements in furtherance of the strategy as significant elements in any performance plans of the agency's designated agency senior-level official, chief acquisition officer, and director of small and disadvantaged business utilization; and

(e) include in the agency's strategy plans for:

(i) reserving agency contracts exclusively for service-disabled veteran businesses;

(ii) encouraging and facilitating participation by service-disabled veteran businesses in competitions for award of agency contracts;

(iii) encouraging agency contractors to subcontract with service-disabled veteran businesses and actively monitoring and evaluating agency contractors' efforts to do so;

(iv) training agency personnel on applicable law and policies relating to participation of service-disabled veteran businesses in Federal contracting; and

(v) disseminating information to service-disabled veteran businesses that would assist these businesses in participating in awards of agency contracts.

SEC. 3. *Additional Duties of Administrator of the Small Business Administration*. The Administrator of the Small Business Administration shall:

(a) designate an appropriate entity within the Small Business Administration that shall, in coordination with the Veterans Affairs' Center for Veterans Enterprise (CVE), provide to service-disabled veteran businesses information and assistance concerning participation in Federal contracting;

(b) advise and assist heads of agencies in their implementation of section 2 of this order; and

(c) make available to service-disabled veteran businesses training in Federal contracting law, procedures, and practices that would assist such businesses in participating in Federal contracting.

SEC. 4. *Additional Duties of Administrator of General Services*. The Administrator of General Services shall:

(a) establish a Government-wide Acquisition Contract reserved for participation by service-disabled veteran businesses; and

(b) assist service-disabled veteran businesses to be included in Federal Supply Schedules.

SEC. 5. *Additional Duties of the Secretary of Defense*. The Secretary of Defense shall direct the Defense Acquisition University (DAU) to develop training on contracting with service-disabled veteran businesses and make this training available on line through the DAU continuous learning program.

SEC. 6. *Additional Duties of the Secretary of Veterans Affairs*. The Secretary of Veterans Affairs shall assist agencies by making available services of the CVE and assist in verifying the accuracy of contractor registration databases with regard to service-disabled veteran businesses.

SEC. 7. *Additional Duties of the Secretary of Labor and Secretary of Veterans Affairs*. The Secretary of Labor and Secretary of Veterans Affairs shall, respectively, direct the Transition Assistance Program and the Disability Transition Assistance Program to educate separating service members as to the benefits available to service-disabled veteran businesses and as to potential entrepreneurial opportunities.

SEC. 8. *Definitions*. As used in this order:

(a) the term "agency" means an "executive agency" as that term is defined in section 105 of title 5, United States Code, excluding an executive agency that has fewer than 500 employees, the Government Accountability Office, or a Government corporation;

(b) the term "service-disabled" means, with respect to disability, that the disability was incurred or aggravated in the line of duty in the active service in the United States Armed Forces;

(c) the term "service-disabled veteran" means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16);

(d) the term "service-disabled veteran business" means a small business concern owned and controlled by service-disabled veterans, as defined in section 3(q) of the Small Business Act (15 U.S.C. 632(q)); and

(e) the term "small business concern" has the meaning specified in section 3(a) of the Small Business Act (15 U.S.C. 632(a)) and the definitions and standards issued under that section.

SEC. 9. *General Provisions*. (a) Heads of agencies shall carry out duties assigned by sections 3, 4, 5, 6, and 7 of this order to the extent consistent with applicable law and subject to the availability of appropriations.

(b) To the extent permitted by law, an agency shall disclose personally identifying information on service-disabled veterans to other agencies who require such information in order to discharge their responsibilities under this order.

(c) An agency that consists of a multi-member commission shall implement this order to the extent it determines appropriate to the accomplishment of the agency's mission.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities or entities, its officers, employees or agents, or any other person.

GEORGE W. BUSH.

ESTABLISHING AN INTERAGENCY TASK FORCE ON FEDERAL CONTRACTING OPPORTUNITIES FOR SMALL BUSINESSES

Memorandum of President of the United States, Apr. 26, 2010, 75 F.R. 22499, provided:

Memorandum for the Heads of Executive Departments and Agencies

The Federal Government is the world's largest purchaser of goods and services, with purchases totaling over $500 billion per year. The American Recovery and Reinvestment Act of 2009 (Recovery Act) and other national investments are providing new opportunities for small businesses to compete for Federal contracts, and it is critical that these investments tap into the talents and skills of a broad cross-section of American business and industry. Small businesses must be able to participate in the Nation's economic recovery, including businesses owned by women, minorities, socially and economically disadvantaged individuals, and service-disabled veterans of our Armed Forces. These businesses should be able to compete and participate effectively in Federal contracts.

The Congress has established a number of statutory goals designed to help small businesses compete for Federal contracts. In addition to the goal of awarding at least 23 percent of all Federal prime contracting dollars to small businesses, the Congress also established Government-wide contracting goals for participation by small businesses that are located in Historically Underutilized Business Zones (at least 3 percent) or that are owned by women (at least 5 percent), socially and economically disadvantaged individuals (at least 5 percent), and service-disabled veterans (at least 3 percent). These aspirational goals help ensure that all Americans share in the jobs and opportunities created by Federal procurement.

In recent years, the Federal Government has not consistently reached its small business contracting goals. Although we have made some progress—particularly with respect to Recovery Act contracts—more work can and should be done. I am committed to ensuring that small businesses, including firms owned by women, minorities, socially and economically disadvantaged individuals, and service-disabled veterans, have fair access to Federal Government contracting. Indeed, where small businesses have the capacity to do more, we should strive to exceed the statutory goals. While Chief Acquisition Officers and Senior Procurement Executives have many priorities, small business contracting should always be a high priority in the procurement process.

Obtaining tangible results will require an honest and accurate accounting of our progress so that we can have transparency and accountability through Federal small business procurement data. Additionally, we must expand outreach strategies to alert small firms to Federal contracting opportunities.

In order to coordinate executive departments' and agencies' efforts towards ensuring that all small businesses have a fair chance to participate in Federal contracting opportunities, it is hereby ordered as follows:

SECTION 1. *Establishment*. There is established an Interagency Task Force on Federal Contracting

Opportunities for Small Businesses (Task Force). The Secretary of Commerce (Secretary), the Director of the Office of Management and Budget (Director), and the Administrator of the Small Business Administration (Administrator) shall serve as Co-Chairs of the Task Force and shall direct its work.

SEC. 2. *Membership*. In addition to the Secretary, the Director, and the Administrator, the Task Force shall consist of the following members:

(i) the Secretary of the Treasury;

(ii) the Secretary of Defense;

(iii) the Attorney General;

(iv) the Secretary of Labor;

(v) the Secretary of Housing and Urban Development;

(vi) the Secretary of Transportation;

(vii) the Secretary of Veterans Affairs;

(viii) the Secretary of Homeland Security;

(ix) the Administrator of General Services;

(x) the Administrator of the National Aeronautics and Space Administration;

(xi) the Director of the Minority Business Development Agency;

(xii) the Director of the Office of Science and Technology Policy;

(xiii) the Director of the Domestic Policy Council;

(xiv) the Director of the National Economic Council;

(xv) the Chair of the Council of Economic Advisers; and

(xvi) the heads of such other executive departments, agencies, and offices as the President may, from time to time, designate.

A member of the Task Force may designate, to perform the Task Force functions of the member, one or more senior officials who are part of the member's department, agency, or office, and who are full-time officers or employees of the Federal Government.

SEC. 3. *Functions*. The Task Force shall provide to the President, not later than 120 days after the date of this memorandum, proposals and recommendations for:

(i) using innovative strategies, such as teaming, to increase opportunities for small business contractors and utilizing and expanding mentorship programs, such as the mentor-protégé program;

(ii) removing barriers to participation by small businesses in the Federal marketplace by unbundling large projects, improving training of Federal acquisition officials with respect to strategies for increasing small business contracting opportunities, and utilizing new technologies to enhance the effectiveness and efficiency of Federal program managers, acquisition officials, and the Directors of Offices of Small Business Programs and Offices of Small and Disadvantaged Business Utilization, their managers, and procurement center representatives in identifying and providing access to these opportunities;

(iii) expanding outreach strategies to match small businesses, including firms located in Historically Underutilized Business Zones and firms owned and controlled by women, minorities, socially and economically disadvantaged individuals, and service-disabled veterans of our Armed Forces, with contracting and subcontracting opportunities; and

(iv) establishing policies, including revision or clarification of existing legislation, regulations, or policies, that are necessary or appropriate to effectuate the objectives of this memorandum.

SEC. 4. *Using Technology to Improve Transparency and Accountability*. Within 90 days of the date of this memorandum, the Assistant to the President and Chief Technology Officer and the Federal Chief Information Officer, in coordination with the Task Force, shall develop a website that illustrates the participation of small businesses, including those owned by women, minorities, socially and economically disadvantaged individuals, and service-disabled veterans of our Armed Forces, in Federal contracting. To foster greater accountability and transparency in, and allow oversight of, the Federal Government's progress, this website shall be designed to encourage improved collection, verification, and availability of Federal procurement data and provide accurate data on the Federal Government's progress in ensuring that all small businesses have a fair chance to participate in Federal contracting opportunities.

SEC. 5. *Outreach*. In developing its recommendations, the Task Force shall conduct outreach with representatives of small businesses and small business associations.

SEC. 6. *General Provisions*. (a) This memorandum shall be implemented consistent with applicable law and subject to the availability of any necessary appropriations.

(b) This memorandum does not create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(c) The heads of executive departments and agencies shall assist and provide information to the Task Force,

consistent with applicable law, as may be necessary to carry out the functions of the Task Force. Each executive department and agency shall bear its own expenses of participating in the Task Force.

(d) The Director is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

DEFINITIONS

Pub. L. 105–135, §2, Dec. 2, 1997, 111 Stat. 2593, provided that: "In this Act [see Short Title of 1997 Amendment note above]—

"(1) the term 'Administration' means the Small Business Administration;

"(2) the term 'Administrator' means the Administrator of the Small Business Administration;

"(3) the term 'Committees' means the Committees on Small Business of the House of Representatives and the Senate [Committee on Small Business of Senate now Committee on Small Business and Entrepreneurship of Senate]; and

"(4) the term 'small business concern' has the meaning given the term in section 3 of the Small Business Act (15 U.S.C. 632)."

Pub. L. 104–208, div. D, §2, Sept. 30, 1996, 110 Stat. 3009–725, provided that: "For purposes of this Act [probably should be "division", see Short Title of 1996 Amendment note above], the term 'Administrator' means the Administrator of the Small Business Administration."

[1] So in original. The period probably should be a semicolon.

[2] So in original. Probably should be capitalized.

[3] So in original. Probably should be "management".

§631a. Congressional declaration of small business economic policy

(a) Foster small business

For the purpose of preserving and promoting a competitive free enterprise economic system, Congress hereby declares that it is the continuing policy and responsibility of the Federal Government to use all practical means and to take such actions as are necessary, consistent with its needs and obligations and other essential considerations of national policy, to implement and coordinate all Federal department, agency, and instrumentality policies, programs, and activities in order to: foster the economic interests of small businesses; insure a competitive economic climate conducive to the development, growth and expansion of small businesses; establish incentives to assure that adequate capital and other resources at competitive prices are available to small businesses; reduce the concentration of economic resources and expand competition; and provide an opportunity for entrepreneurship, inventiveness, and the creation and growth of small businesses.

(b) Capital availability to small business

Congress further declares that the Federal Government is committed to a policy of utilizing all reasonable means, consistent with the overall economic policy goals of the Nation and the preservation of the competitive free enterprise system of the Nation, to establish private sector incentives that will help assure that adequate capital at competitive prices is available to small businesses. To fulfill this policy, departments, agencies, and instrumentalities of the Federal Government shall use all reasonable means to coordinate, create, and sustain policies and programs which promote investment in small businesses, including those investments which expand employment opportunities and which foster the effective and efficient use of human and natural resources in the economy of the Nation.

(Pub. L. 96–302, title III, §302, July 2, 1980, 94 Stat. 848.)

CODIFICATION

Section was enacted as part of the Small Business Economic Policy Act of 1980, and not as part of the Small Business Act which comprises this chapter.

EFFECTIVE DATE

Section effective Oct. 1, 1980, see section 507 of Pub. L. 96–302, set out as an Effective Date of 1980 Amendment note under section 631 of this title.

SHORT TITLE

For short title of title III of Pub. L. 96–302, as the Small Business Economic Policy Act of 1980, see Short Title of 1980 Amendments note set out under section 631 of this title.

§631b. Reports to Congress; state of small business

(a) Report on Small Business and Competition

The President shall transmit to the Congress not later than January 20 of each year a Report on Small Business and Competition which shall—

(1) examine the current role of small business in the economy on an industry-by-industry basis;

(2) present current and historical data on production, employment, investment, population, job creation and retention, annual business failures, annual business startups, and other economic variables for small business in the economy as a whole and for small business in each sector of the economy, with, to the extent practicable, specific statistics divided as to urban, suburban, and rural areas;

(3) identify economic trends which will or may affect the small business sector and the state of competition;

(4) examine the effects on small business and competition of policies, programs, and activities, including, but not limited to the Internal Revenue Code [26 U.S.C. 1 et seq.], the Employee Retirement Income Security Act [29 U.S.C. 1001 et seq.], the Securities Act of 1933 [15 U.S.C. 77a et seq.], and the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], and regulations promulgated thereunder; identify problems generated by such policies, programs, and activities; and recommend legislative and administrative solutions to such problems; and

(5) recommend a program for carrying out the policy declared in section 631a of this title, together with such recommendations for legislation as he may deem necessary or desirable.

(b) Appendix to report

The President also shall transmit simultaneously as an appendix to such annual report, a report, by agency and department, on the total dollar value of all Federal contracts exceeding $10,000 in amount and the dollar amount (including the subcontracts thereunder in excess of $10,000) awarded to small, minority-owned, female-owned, and veteran-owned businesses.

(c) Supplementary reports

The President may transmit from time to time to the Congress reports supplementary to the Report on Small Business and Competition, each of which shall include such supplementary or revised recommendations as he may deem necessary or desirable to achieve the policy declared in section 631a of this title.

(d) Referral to Congressional committees

The Report on Small Business and Competition and all supplementary reports transmitted under subsections (b) and (c) of this section shall, when transmitted to Congress, be referred to the Senate Select Committee on Small Business and the Committee on Small Business of the House of Representatives.

(e) Small business concerns owned by disadvantaged individuals and by women [1]

The information and data required to be reported pursuant to subsection (a) of this section shall separately detail those portions of such information and data that are relevant to—

(1) small business concerns owned and controlled by socially and economically disadvantaged individuals, by gender, as defined pursuant to section 637(d) of this title;

(2) small business concerns owned and controlled by women; and

(3) [2] qualified HUBZone small business concern (as defined in section 632(p) of this title).

(3) [2] small business concerns owned and controlled by veterans, as defined in section 632(q) of this title, and small business concerns owned and controlled by service-disabled veterans, as defined in such section 632(q) of this title.

(Pub. L. 96–302, title III, §303, July 2, 1980, 94 Stat. 848; Pub. L. 100–533, title V, §503, Oct. 25, 1988, 102 Stat. 2697; Pub. L. 100–590, title I, §124, Nov. 3, 1988, 102 Stat. 3000; Pub. L. 101–574, title III, §305, Nov. 15, 1990, 104 Stat. 2829; Pub. L. 105–135, title VI, §604(c), title VII, §705, Dec. 2, 1997, 111 Stat. 2633, 2637; Pub. L. 106–50, title VI, §602, Aug. 17, 1999, 113 Stat. 248.)

REFERENCES IN TEXT

The Internal Revenue Code, referred to in subsec. (a)(4), is classified to Title 26, Internal Revenue Code.

The Employee Retirement Income Security Act, referred to in subsec. (a)(4), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended, which is classified principally to chapter 18 (§1001 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The Securities Act of 1933, referred to in subsec. (a)(4), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, as amended, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (a)(4), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

CODIFICATION

Section was enacted as part of the Small Business Economic Policy Act of 1980, and not as part of the Small Business Act which comprises this chapter.

AMENDMENTS

1999—Subsec. (e)(1). Pub. L. 106–50, §602(1), which directed amendment of par. (1) by striking "and" after the semicolon, could not be executed because the word "and" did not appear after the semicolon.

Subsec. (e)(2). Pub. L. 106–50, §602(2), which directed amendment of par. (2) by substituting "; and" for the period, could not be executed because par. (2) did not contain a period.

Subsec. (e)(3). Pub. L. 106–50, §602(3), added par. (3) relating to small business concerns owned and controlled by veterans.

1997—Subsec. (b). Pub. L. 105–135, §705, substituted ", female-owned, and veteran-owned businesses" for "and female-owned businesses".

Subsec. (e)(3). Pub. L. 105–135, §604(c), added par. (3).

1990—Subsec. (a)(2). Pub. L. 101–574 added par. (2) and struck out former par. (2) which read as follows: "present current and historical data on production, employment, investment, and other economic variables for small business in the economy as a whole and for small business in each sector of the economy;".

1988—Subsec. (e). Pub. L. 100–533 and Pub. L. 100–590 added subsecs. (e) which were identical, except that the subsec. (e) added by Pub. L. 100–533, which is set out as text of this section, contained the phrase ", by gender," in par. (1).

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001. Previously, Select Committee on Small Business of Senate became Committee on Small Business of Senate. See Senate Resolution No. 101, Ninety-Seventh Congress, Mar. 25, 1981.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1980, see section 507 of Pub. L. 96–302, set out as an Effective Date of 1980 Amendment note under section 631 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of reporting provisions in subsecs. (a) and (b) of this section, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and pages 17 and 34 of House Document No. 103–7.

[1] *See 1988 Amendment note below.*

[2] *So in original. Two pars. (3) have been enacted.*

§631c. Small Business Manufacturing Task Force

(a) Establishment

The Administrator of the Small Business Administration (referred to in this subtitle [1] as the "Administrator") shall establish a Small Business Manufacturing Task Force (referred to in this section as the "Task Force") to address the concerns of small manufacturers.

(b) Chair

The Administrator shall assign a member of the Task Force to serve as chair of the Task Force.

(c) Duties

The Task Force shall—

(1) evaluate and identify whether programs and services are sufficient to serve the needs of small manufacturers;

(2) actively promote the programs and services of the Small Business Administration that serve small manufacturers; and

(3) identify and study the unique conditions facing small manufacturers and develop and propose policy initiatives to support and assist small manufacturers.

(d) Meetings

(1) Frequency

The Task Force shall meet not less than 4 times per year, and more frequently if necessary to perform its duties.

(2) Quorum

A majority of the members of the Task Force shall constitute a quorum to approve recommendations or reports.

(e) Personnel matters

(1) Compensation of members

Each member of the Task Force shall serve without compensation in addition to that received for services rendered as an officer or employee of the United States.

(2) Detail of SBA employees

Any employee of the Small Business Administration may be detailed to the Task Force without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(f) Report

Not later than 1 year after December 8, 2004, and annually thereafter, the Task Force shall submit a report containing the findings and recommendations of the task force to—

(1) the President;

(2) the Committee on Small Business and Entrepreneurship of the Senate; and

(3) the Committee on Small Business of the House of Representatives.

(Pub. L. 108–447, div. K, title I, §147, Dec. 8, 2004, 118 Stat. 3455.)

REFERENCES IN TEXT

This subtitle, referred to in subsec. (a), is subtitle D (§§141–147) of title I of div. K of Pub. L. 108–447, Dec. 8, 2004, 118 Stat. 3453, which enacted this section, amended sections 637, 648, 657b, and 657c of this title, enacted provisions set out as note under section 637 of this title, and amended provisions set out as a note under section 657b of this title. For complete classification of subtitle D to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Small Business Reauthorization and Manufacturing Assistance Act of 2004, and also as part of the Consolidated Appropriations Act, 2005, and not as part of the Small Business Act which comprises this chapter.

[1] *See References in Text note below.*

§632. Definitions

(a) Small business concerns

(1) In general

For the purposes of this chapter, a small-business concern, including but not limited to enterprises that are engaged in the business of production of food and fiber, ranching and raising of livestock, agriculture, and all other farming and agricultural related industries, shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation: *Provided*, That notwithstanding any other provision of law, an agricultural enterprise shall be deemed to be a small business concern if it (including its affiliates) has annual receipts not in excess of $750,000.

(2) Establishment of size standards

(A) In general

In addition to the criteria specified in paragraph (1), the Administrator may specify detailed definitions or standards by which a business concern may be determined to be a small business concern for the purposes of this chapter or any other Act.

(B) Additional criteria

The standards described in paragraph (1) may utilize number of employees, dollar volume of business, net worth, net income, a combination thereof, or other appropriate factors.

(C) Requirements

Unless specifically authorized by statute, no Federal department or agency may prescribe a size standard for categorizing a business concern as a small business concern, unless such proposed size standard—

(i) is proposed after an opportunity for public notice and comment;

(ii) provides for determining—

(I) the size of a manufacturing concern as measured by the manufacturing concern's average employment based upon employment during each of the manufacturing concern's pay periods for the preceding 12 months;

(II) the size of a business concern providing services on the basis of the annual average gross receipts of the business concern over a period of not less than 3 years;

(III) the size of other business concerns on the basis of data over a period of not less than 3 years; or

(IV) other appropriate factors; and

(iii) is approved by the Administrator.

(3) Variation by industry and consideration of other factors

When establishing or approving any size standard pursuant to paragraph (2), the Administrator

shall ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries and consider other factors deemed to be relevant by the Administrator.

(4) Exclusion of certain security expenses from consideration for purpose of small business size standards

(A) Determination required

Not later than 30 days after January 6, 2006, the Administrator shall review the application of size standards established pursuant to paragraph (2) to small business concerns that are performing contracts in qualified areas and determine whether it would be fair and appropriate to exclude from consideration in the average annual gross receipts of such small business concerns any payments made to such small business concerns by Federal agencies to reimburse such small business concerns for the cost of subcontracts entered for the sole purpose of providing security services in a qualified area.

(B) Action required

Not later than 60 days after January 6, 2006, the Administrator shall either—

(i) initiate an adjustment to the size standards, as described in subparagraph (A), if the Administrator determines that such an adjustment would be fair and appropriate; or

(ii) provide a report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives explaining in detail the basis for the determination by the Administrator that such an adjustment would not be fair and appropriate.

(C) Qualified areas

In this paragraph, the term "qualified area" means—

(i) Iraq,

(ii) Afghanistan, and

(iii) any foreign country which included a combat zone, as that term is defined in section 112(c)(2) of title 26, at the time of performance of the relevant Federal contract or subcontract.

(5) Alternative size standard

(A) In general

The Administrator shall establish an alternative size standard for applicants for business loans under section 636(a) of this title and applicants for development company loans under title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.), that uses maximum tangible net worth and average net income as an alternative to the use of industry standards.

(B) Interim rule

Until the date on which the alternative size standard established under subparagraph (A) is in effect, an applicant for a business loan under section 636(a) of this title or an applicant for a development company loan under title V of the Small Business Investment Act of 1958 may be eligible for such a loan if—

(i) the maximum tangible net worth of the applicant is not more than $15,000,000; and

(ii) the average net income after Federal income taxes (excluding any carry-over losses) of the applicant for the 2 full fiscal years before the date of the application is not more than $5,000,000.

(6) Proposed rulemaking

In conducting rulemaking to revise, modify or establish size standards pursuant to this section, the Administrator shall consider, and address, and make publicly available as part of the notice of proposed rulemaking and notice of final rule each of the following:

(A) a detailed description of the industry for which the new size standard is proposed;

(B) an analysis of the competitive environment for that industry;

(C) the approach the Administrator used to develop the proposed standard including the source of all data used to develop the proposed rule making; and

(D) the anticipated effect of the proposed rulemaking on the industry, including the number of concerns not currently considered small that would be considered small under the proposed rule making and the number of concerns currently considered small that would be deemed other than small under the proposed rulemaking.

(7) Common size standards

In carrying out this subsection, the Administrator may establish or approve a single size standard for a grouping of 4-digit North American Industry Classification System codes only if the Administrator makes publicly available, not later than the date on which such size standard is established or approved, a justification demonstrating that such size standard is appropriate for each individual industry classification included in the grouping.

(8) Number of size standards

The Administrator shall not limit the number of size standards established pursuant to paragraph (2), and shall assign the appropriate size standard to each North American Industry Classification System Code.

(b) "Agency" defined

For purposes of this chapter, any reference to an agency or department of the United States, and the term "Federal agency", shall have the meaning given the term "agency" by section 551(1) of title 5, but does not include the United States Postal Service or the Government Accountability Office.

(c) Qualified employee trust; eligibility for loan guarantee; "qualified employee trust" defined; regulations for treatment of trust as qualified employee trust

(1) For purposes of this chapter, a qualified employee trust shall be eligible for any loan guarantee under section 636(a) of this title with respect to a small business concern on the same basis as if such trust were the same legal entity as such concern.

(2) For purposes of this chapter, the term "qualified employee trust" means, with respect to a small business concern, a trust—

(A) which forms part of an employee stock ownership plan (as defined in section 4975(e)(7) of title 26)—

(i) which is maintained by such concern, and

(ii) which provides that each participant in the plan is entitled to direct the plan as to the manner in which voting rights under qualifying employer securities (as defined in section 4975(e)(8) of title 26) which are allocated to the account of such participant are to be exercised with respect to a corporate matter which (by law or charter) must be decided by a majority vote of outstanding common shares voted; and

(B) in the case of any loan guarantee under section 636(a) of this title, the trustee of which enters into an agreement with the Administrator which is binding on the trust and on such small business concern and which provides that—

(i) the loan guaranteed under section 636(a) of this title shall be used solely for the purchase of qualifying employer securities of such concern,

(ii) all funds acquired by the concern in such purchase shall be used by such concern solely for the purposes for which such loan was guaranteed,

(iii) such concern will provide such funds as may be necessary for the timely repayment of such loan, and the property of such concern shall be available as security for repayment of such loan, and

(iv) all qualifying employer securities acquired by such trust in such purchase shall be allocated to the accounts of participants in such plan who are entitled to share in such allocation, and each participant has a nonforfeitable right, not later than the date such loan is repaid, to all such qualifying employer securities which are so allocated to the participant's account.

(3) Under regulations which may be prescribed by the Administrator, a trust may be treated as a qualified employee trust with respect to a small business concern if—

(A) the trust is maintained by an employee organization which represents at least 51 percent of the employees of such concern, and

(B) such concern maintains a plan—

(i) which is an employee benefit plan which is designed to invest primarily in qualifying employer securities (as defined in section 4975(e)(8) of title 26),

(ii) which provides that each participant in the plan is entitled to direct the plan as to the manner in which voting rights under qualifying employer securities which are allocated to the account of such participant are to be exercised with respect to a corporate matter which (by law or charter) must be decided by a majority vote of the outstanding common shares voted,

(iii) which provides that each participant who is entitled to distribution from the plan has a right, in the case of qualifying employer securities which are not readily tradeable on an established market, to require that the concern repurchase such securities under a fair valuation formula, and

(iv) which meets such other requirements (similar to requirements applicable to employee stock ownership plans as defined in section 4975(e)(7) of title 26) as the Administrator may prescribe, and

(C) in the case of a loan guarantee under section 636(a) of this title, such organization enters into an agreement with the Administration which is described in paragraph (2)(B).

(d) "Qualified Indian tribe" defined

For purposes of section 636 of this title, the term "qualified Indian tribe" means an Indian tribe as defined in section 450b(e) of title 25, which owns and controls 100 per centum of a small business concern.

(e) "Public or private organization for the handicapped" defined

For purposes of section 636 of this title, the term "public or private organization for the handicapped" means one—

(1) which is organized under the laws of the United States or of any State, operated in the interest of handicapped individuals, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individuals;

(2) which complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and

(3) which, in the production of commodities and in the provision of services during any fiscal year in which it received financial assistance under this subsection, employs handicapped individuals for not less than 75 per centum of the man-hours required for the production or provision of the commodities or services.

(f) "Handicapped individual" defined

For purposes of section 636 of this title, the term "handicapped individual" means an individual—

(1) who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable; or

(2) who is a service-disabled veteran.

(g) "Energy measures" defined

For purposes of section 636 of this title, the term "energy measures" includes—

(1) solar thermal energy equipment which is either of the active type based upon mechanically forced energy transfer or of the passive type based on convective, conductive, or radiant energy transfer or some combination of these types;

(2) photovoltaic cells and related equipment;

(3) a product or service the primary purpose of which is conservation of energy through devices or techniques which increase the energy efficiency of existing equipment, methods of operation, or

systems which use fossil fuels, and which is on the Energy Conservation Measures list of the Secretary of Energy or which the Administrator determines to be consistent with the intent of this subsection;

(4) equipment the primary purpose of which is production of energy from wood, biological waste, grain, or other biomass source of energy;

(5) equipment the primary purpose of which is industrial cogeneration of energy, district heating, or production of energy from industrial waste;

(6) hydroelectric power equipment;

(7) wind energy conversion equipment; and

(8) engineering, architectural, consulting, or other professional services which are necessary or appropriate to aid citizens in using any of the measures described in paragraph (1) through (7).

(h) "Credit elsewhere" defined

For purposes of this chapter the term "credit elsewhere" means the availability of credit from non-Federal sources on reasonable terms and conditions taking into consideration the prevailing rates and terms in the community in or near where the concern transacts business, or the homeowner resides, for similar purposes and periods of time.

(i) "Homeowners" defined

For purposes of section 636 of this title, the term "homeowners" includes owners and lessees of residential property and also includes personal property.

(j) "Small agricultural cooperative" defined

For the purposes of this chapter, the term "small agricultural cooperative" means an association (corporate or otherwise) acting pursuant to the provisions of the Agricultural Marketing Act (12 U.S.C. 1141j), whose size does not exceed the size standard established by the Administration for other similar agricultural small business concerns. In determining such size, the Administration shall regard the association as a business concern and shall not include the income or employees of any member shareholder of such cooperative.

(k) "Disaster" defined

(1) For the purposes of this chapter, the term "disaster" means a sudden event which causes severe damage including, but not limited to, floods, hurricanes, tornadoes, earthquakes, fires, explosions, volcanoes, windstorms, landslides or mudslides, tidal waves, commercial fishery failures or fishery resource disasters (as determined by the Secretary of Commerce under section 4107(b) of title 16), ocean conditions resulting in the closure of customary fishing waters, riots, civil disorders or other catastrophes, except it does not include economic dislocations.

(2) For purposes of section 636(b)(2) of this title, the term "disaster" includes—

(A) drought;

(B) below average water levels in the Great Lakes, or on any body of water in the United States that supports commerce by small business concerns; and

(C) ice storms and blizzards.

(l) "Computer crime" defined

For purposes of this chapter—

(1) [1] the term "computer crime" means—

(A) any crime committed against a small business concern by means of the use of a computer; and

(B) any crime involving the illegal use of, or tampering with, a computer owned or utilized by a small business concern.

(m) "Simplified acquisition threshold" defined

For purposes of this chapter, the term "simplified acquisition threshold" has the meaning given such term in section 134 of title 41.

(n) "Small business concern owned and controlled by women" defined

For the purposes of this chapter, a small business concern is a small business concern owned and controlled by women if—

(1) at least 51 percent of small business concern is owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) the management and daily business operations of the business are controlled by one or more women.

(o) Definitions of bundling of contract requirements and related terms

In this chapter:

(1) Bundled contract

The term "bundled contract" means a contract that is entered into to meet requirements that are consolidated in a bundling of contract requirements.

(2) Bundling of contract requirements

The term "bundling of contract requirements" means consolidating 2 or more procurement requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to a small-business concern due to—

(A) the diversity, size, or specialized nature of the elements of the performance specified;

(B) the aggregate dollar value of the anticipated award;

(C) the geographical dispersion of the contract performance sites; or

(D) any combination of the factors described in subparagraphs (A), (B), and (C).

(3) Separate smaller contract

The term "separate smaller contract", with respect to a bundling of contract requirements, means a contract that has been performed by 1 or more small business concerns or was suitable for award to 1 or more small business concerns.

(p) Definitions relating to HUBZones

In this chapter:

(1) Historically underutilized business zone

The term "historically underutilized business zone" means any area located within 1 or more—

(A) qualified census tracts;

(B) qualified nonmetropolitan counties;

(C) lands within the external boundaries of an Indian reservation;

(D) redesignated areas; or

(E) base closure areas.

(2) HUBZone

The term "HUBZone" means a historically underutilized business zone.

(3) HUBZone small business concern

The term "HUBZone small business concern" means—

(A) a small business concern that is at least 51 percent owned and controlled by United States citizens;

(B) a small business concern that is—

(i) an Alaska Native Corporation owned and controlled by Natives (as determined pursuant to section 1626(e)(1) of title 43); or

(ii) a direct or indirect subsidiary corporation, joint venture, or partnership of an Alaska Native Corporation qualifying pursuant to section 1626(e)(1) of title 43, if that subsidiary, joint venture, or partnership is owned and controlled by Natives (as determined pursuant to section 1626(e)(2) of title 43);

(C) a small business concern—

(i) that is wholly owned by one or more Indian tribal governments, or by a corporation that is wholly owned by one or more Indian tribal governments; or

(ii) that is owned in part by one or more Indian tribal governments, or by a corporation that is wholly owned by one or more Indian tribal governments, if all other owners are either United States citizens or small business concerns;

(D) a small business concern that is—

(i) wholly owned by a community development corporation that has received financial assistance under part 1 of subchapter A of the Community Economic Development Act of 1981 (42 U.S.C. 9805 et seq.); or

(ii) owned in part by one or more community development corporations, if all other owners are either United States citizens or small business concerns; or

(E) a small business concern that is—

(i) a small agricultural cooperative organized or incorporated in the United States;

(ii) wholly owned by 1 or more small agricultural cooperatives organized or incorporated in the United States; or

(iii) owned in part by 1 or more small agricultural cooperatives organized or incorporated in the United States, if all owners are small business concerns or United States citizens.

(4) Qualified areas

(A) Qualified census tract

The term "qualified census tract" has the meaning given that term in section 42(d)(5)(C)(ii) [2] of title 26.

(B) Qualified nonmetropolitan county

The term "qualified nonmetropolitan county" means any county—

(i) that was not located in a metropolitan statistical area (as defined in section 143(k)(2)(B) of title 26) at the time of the most recent census taken for purposes of selecting qualified census tracts under section 42(d)(5)(C)(ii) [2] of title 26; and

(ii) in which—

(I) the median household income is less than 80 percent of the nonmetropolitan State median household income, based on the most recent data available from the Bureau of the Census of the Department of Commerce;

(II) the unemployment rate is not less than 140 percent of the average unemployment rate for the United States or for the State in which such county is located, whichever is less, based on the most recent data available from the Secretary of Labor; or

(III) there is located a difficult development area, as designated by the Secretary of Housing and Urban Development in accordance with section 42(d)(5)(C)(iii) [2] of title 26, within Alaska, Hawaii, or any territory or possession of the United States outside the 48 contiguous States.

(C) Redesignated area

The term "redesignated area" means any census tract that ceases to be qualified under subparagraph (A) and any nonmetropolitan county that ceases to be qualified under subparagraph (B), except that a census tract or a nonmetropolitan county may be a "redesignated area" only until the later of—

(i) the date on which the Census Bureau publicly releases the first results from the 2010 decennial census; or

(ii) 3 years after the date on which the census tract or nonmetropolitan county ceased to be so qualified.

(D) Base closure area

The term "base closure area" means lands within the external boundaries of a military

installation that were closed through a privatization process under the authority of—

(i) the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of division B of Public Law 101–510; 10 U.S.C. 2687 note);

(ii) title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note);

(iii) section 2687 of title 10; or

(iv) any other provision of law authorizing or directing the Secretary of Defense or the Secretary of a military department to dispose of real property at the military installation for purposes relating to base closures of redevelopment, while retaining the authority to enter into a leaseback of all or a portion of the property for military use.

(5) Qualified HUBZone small business concern

(A) In general

A HUBZone small business concern is "qualified", if—

(i) the small business concern has certified in writing to the Administrator (or the Administrator otherwise determines, based on information submitted to the Administrator by the small business concern, or based on certification procedures, which shall be established by the Administration by regulation) that—

(I) it is a HUBZone small business concern—

(aa) pursuant to subparagraph (A), (B), (C), (D), or (E) of paragraph (3), and that its principal office is located in a HUBZone and not fewer than 35 percent of its employees reside in a HUBZone; or

(bb) pursuant to paragraph (3)(C), and not fewer than 35 percent of its employees engaged in performing a contract awarded to the small business concern on the basis of a preference provided under section 657a(b) of this title reside within any Indian reservation governed by one or more of the tribal government owners, or reside within any HUBZone adjoining any such Indian reservation;

(II) the small business concern will attempt to maintain the applicable employment percentage under subclause (I) during the performance of any contract awarded to the small business concern on the basis of a preference provided under section 657a(b) of this title; and

(III) with respect to any subcontract entered into by the small business concern pursuant to a contract awarded to the small business concern under section 657a of this title, the small business concern will ensure that the requirements of section 657s of this title are satisfied; and

(ii) no certification made or information provided by the small business concern under clause (i) has been, in accordance with the procedures established under section 657a(c)(1) of this title—

(I) successfully challenged by an interested party; or

(II) otherwise determined by the Administrator to be materially false.

(B) List of qualified small business concerns

The Administrator shall establish and maintain a list of qualified HUBZone small business concerns, which list shall, to the extent practicable—

(i) once the Administrator has made the certification required by subparagraph (A)(i) regarding a qualified HUBZone small business concern and has determined that subparagraph (A)(ii) does not apply to that concern, include the name, address, and type of business with respect to each such small business concern;

(ii) be updated by the Administrator not less than annually; and

(iii) be provided upon request to any Federal agency or other entity.

(6) Native American small business concerns

(A) Alaska Native Corporation

The term "Alaska Native Corporation" has the same meaning as the term "Native Corporation" in section 1602 of title 43.

(B) Alaska Native Village

The term "Alaska Native Village" has the same meaning as the term "Native village" in section 1602 of title 43.

(C) Indian reservation

The term "Indian reservation"—

(i) has the same meaning as the term "Indian country" in section 1151 of title 18, except that such term does not include—

(I) any lands that are located within a State in which a tribe did not exercise governmental jurisdiction on December 21, 2000, unless that tribe is recognized after December 21, 2000, by either an Act of Congress or pursuant to regulations of the Secretary of the Interior for the administrative recognition that an Indian group exists as an Indian tribe (part 83 of title 25, Code of Federal Regulations); and

(II) lands taken into trust or acquired by an Indian tribe after December 21, 2000, if such lands are not located within the external boundaries of an Indian reservation or former reservation or are not contiguous to the lands held in trust or restricted status on December 21, 2000; and

(ii) in the State of Oklahoma, means lands that—

(I) are within the jurisdictional areas of an Oklahoma Indian tribe (as determined by the Secretary of the Interior); and

(II) are recognized by the Secretary of the Interior as eligible for trust land status under part 151 of title 25, Code of Federal Regulations (as in effect on December 21, 2000).

(7) Agricultural commodity

The term "agricultural commodity" has the same meaning as in section 5602 of title 7.

(q) Definitions relating to veterans

In this chapter, the following definitions apply:

(1) Service-disabled veteran

The term "service-disabled veteran" means a veteran with a disability that is service-connected (as defined in section 101(16) of title 38).

(2) Small business concern owned and controlled by service-disabled veterans

The term "small business concern owned and controlled by service-disabled veterans" means a small business concern—

(A) not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(B) the management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(3) Small business concern owned and controlled by veterans

The term "small business concern owned and controlled by veterans" means a small business concern—

(A) not less than 51 percent of which is owned by one or more veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(B) the management and daily business operations of which are controlled by one or more veterans.

(4) Veteran

The term "veteran" has the meaning given the term in section 101(2) of title 38.

(5) Relief from time limitations

(A) In general

Any time limitation on any qualification, certification, or period of participation imposed under this chapter on any program that is available to small business concerns shall be extended for a small business concern that—

(i) is owned and controlled by—

(I) a veteran who was called or ordered to active duty under a provision of law specified in section 101(a)(13)(B) of title 10 on or after September 11, 2001; or

(II) a service-disabled veteran who became such a veteran due to an injury or illness incurred or aggravated in the active military, naval, or air service during a period of active duty pursuant to a call or order to active duty under a provision of law referred to in subclause (I) on or after September 11, 2001; and

(ii) was subject to the time limitation during such period of active duty.

(B) Duration

Upon submission of proper documentation to the Administrator, the extension of a time limitation under subparagraph (A) shall be equal to the period of time that such veteran who owned or controlled such a concern was on active duty as described in that subparagraph.

(C) Exception for programs subject to Federal Credit Reform Act of 1990

The provisions of subparagraphs (A) and (B) shall not apply to any programs subject to the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

(r) Definitions relating to small business lending companies

As used in section 650 of this title:

(1) Small business lending company

The term "small business lending company" means a business concern that is authorized by the Administrator to make loans pursuant to section 636(a) of this title and whose lending activities are not subject to regulation by any Federal or State regulatory agency.

(2) Non-Federally regulated SBA lender

The term "non-Federally regulated SBA lender" means a business concern if—

(A) such concern is authorized by the Administrator to make loans under section 636 of this title;

(B) such concern is subject to regulation by a State; and

(C) the lending activities of such concern are not regulated by any Federal banking authority.

(s) Major disaster

In this chapter, the term "major disaster" has the meaning given that term in section 5122 of title 42.

(t) Small business development center

In this chapter, the term "small business development center" means a small business development center described in section 648 of this title.

(u) Region of the Administration

In this chapter, the term "region of the Administration" means the geographic area served by a regional office of the Administration established under section 633(a) of this title.

(v) Multiple award contract

In this chapter, the term "multiple award contract" means—

(1) a multiple award task order contract or delivery order contract that is entered into under the

authority of sections 4101, 4103, 4105, and 4106 of title 41; and

(2) any other indefinite delivery, indefinite quantity contract that is entered into by the head of a Federal agency with 2 or more sources pursuant to the same solicitation.

(w) Presumption

(1) In general

In every contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant which is set aside, reserved, or otherwise classified as intended for award to small business concerns, there shall be a presumption of loss to the United States based on the total amount expended on the contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant whenever it is established that a business concern other than a small business concern willfully sought and received the award by misrepresentation.

(2) Deemed certifications

The following actions shall be deemed affirmative, willful, and intentional certifications of small business size and status:

(A) Submission of a bid or proposal for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement reserved, set aside, or otherwise classified as intended for award to small business concerns.

(B) Submission of a bid or proposal for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement which in any way encourages a Federal agency to classify the bid or proposal, if awarded, as an award to a small business concern.

(C) Registration on any Federal electronic database for the purpose of being considered for award of a Federal grant, contract, subcontract, cooperative agreement, or cooperative research agreement, as a small business concern.

(3) Certification by signature of responsible official

(A) In general

Each solicitation, bid, or application for a Federal contract, subcontract, or grant shall contain a certification concerning the small business size and status of a business concern seeking the Federal contract, subcontract, or grant.

(B) Content of certifications

A certification that a business concern qualifies as a small business concern of the exact size and status claimed by the business concern for purposes of bidding on a Federal contract or subcontract, or applying for a Federal grant, shall contain the signature of an authorized official on the same page on which the certification is contained.

(4) Regulations

The Administrator shall promulgate regulations to provide adequate protections to individuals and business concerns from liability under this subsection in cases of unintentional errors, technical malfunctions, and other similar situations.

(x) Annual certification

(1) In general

Each business certified as a small business concern under this chapter shall annually certify its small business size and, if appropriate, its small business status, by means of a confirming entry on the Online Representations and Certifications Application database of the Administration, or any successor thereto.

(2) Regulations

Not later than 1 year after September 27, 2010, the Administrator, in consultation with the Inspector General and the Chief Counsel for Advocacy of the Administration, shall promulgate regulations to ensure that—

(A) no business concern continues to be certified as a small business concern on the Online Representations and Certifications Application database of the Administration, or any successor thereto, without fulfilling the requirements for annual certification under this subsection; and

(B) the requirements of this subsection are implemented in a manner presenting the least possible regulatory burden on small business concerns.

(y) Policy on prosecutions of small business size and status fraud

Not later than 1 year after September 27, 2010, the Administrator, in consultation with the Attorney General, shall issue a Government-wide policy on prosecution of small business size and status fraud, which shall direct Federal agencies to appropriately publicize the policy.

(z) Aquaculture business disaster assistance

Subject to section 647(a) of this title and notwithstanding section 647(b)(1) of this title, the Administrator may provide disaster assistance under section 636(b)(2) of this title to aquaculture enterprises that are small businesses.

(aa) Venture capital operating company

In this chapter, the term "venture capital operating company" means an entity described in clause (i), (v), or (vi) of section 121.103(b)(5) of title 13, Code of Federal Regulations (or any successor thereto).

(bb) Hedge fund

In this chapter, the term "hedge fund" has the meaning given that term in section 1851(h)(2) of title 12.

(cc) Private equity firm

In this chapter, the term "private equity firm" has the meaning given the term "private equity fund" in section 1851(h)(2) of title 12.

(dd) Definitions pertaining to subcontracting

In this chapter:

(1) Subcontract

The term "subcontract" means a legally binding agreement between a contractor that is already under contract to another party to perform work, and a third party, hereinafter referred to as the subcontractor, for the subcontractor to perform a part, or all, of the work that the contractor has undertaken.

(2) First tier subcontractor

The term "first tier subcontractor" means a subcontractor who has a subcontract directly with the prime contractor.

(3) At any tier

The term "at any tier" means any subcontractor other than a subcontractor who is a first tier subcontractor.

(Pub. L. 85–536, §2[3], July 18, 1958, 72 Stat. 384; Pub. L. 94–305, title I, §112(b), June 4, 1976, 90 Stat. 667; Pub. L. 95–507, title II, §224(b), Oct. 24, 1978, 92 Stat. 1772; Pub. L. 96–302, title V, §504, July 2, 1980, 94 Stat. 851; Pub. L. 96–481, title I, §108, Oct. 21, 1980, 94 Stat. 2323; Pub. L. 97–35, title XIX, §1903, Aug. 13, 1981, 95 Stat. 771; Pub. L. 98–270, title III, §310, Apr. 18, 1984, 98 Stat. 161; Pub. L. 98–362, §6, July 16, 1984, 98 Stat. 434; Pub. L. 98–473, title I, §111A(b), Oct. 12, 1984, 98 Stat. 1966; Pub. L. 99–272, title XVIII, §18016, Apr. 7, 1986, 100 Stat. 371; Pub. L. 99–500, §101(c) [title X, §921(f)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–149, and Pub. L. 99–591, §101(c) [title X, §921(f)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–149; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99–661, div. A, title IX, formerly title IV, §921(f), Nov. 14, 1986, 100 Stat. 3929, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–26, §10(b)(2), Apr. 21, 1987, 101 Stat. 288; Pub. L. 100–456, div. A, title VIII, §845, Sept. 29, 1988, 102 Stat. 2027; Pub. L. 100–590, title I, §119(b), Nov. 3, 1988, 102 Stat. 2999; Pub. L. 100–656, title

VII, §732, Nov. 15, 1988, 102 Stat. 3897; Pub. L. 101–510, div. A, title VIII, §806(e)(1), Nov. 5, 1990, 104 Stat. 1592; Pub. L. 102–366, title II, §222(a), Sept. 4, 1992, 106 Stat. 999; Pub. L. 103–355, title IV, §4404(a), title VII, §7106(d), Oct. 13, 1994, 108 Stat. 3349, 3376; Pub. L. 103–403, title III, §301, Oct. 22, 1994, 108 Stat. 4187; Pub. L. 104–208, div. D, title I, §104(b)(1), Sept. 30, 1996, 110 Stat. 3009–730; Pub. L. 105–135, title IV, §412, title VI, §602(a), Dec. 2, 1997, 111 Stat. 2617, 2627; Pub. L. 106–50, title I, §103(a), title IV, §401(a), Aug. 17, 1999, 113 Stat. 234, 243; Pub. L. 106–554, §1(a)(9) [title VI, §§602–604, 611, 612(b)–615(a), title VIII, §806(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–697 to 2763A–701, 2763A–706; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814; Pub. L. 108–447, div. K, title I, §§151, 152(a)(1), (3)–(c)(1), 162, Dec. 8, 2004, 118 Stat. 3456, 3457, 3465; Pub. L. 109–59, title X, §10203, Aug. 10, 2005, 119 Stat. 1933; Pub. L. 109–163, div. A, title VIII, §§844, 845(a)(1), Jan. 6, 2006, 119 Stat. 3389, 3390; Pub. L. 110–186, title II, §205, Feb. 14, 2008, 122 Stat. 629; Pub. L. 110–234, title XII, §§12063(c)(1), 12071, May 22, 2008, 122 Stat. 1408, 1411; Pub. L. 110–246, §4(a), title XII, §§12063(c)(1), 12071, June 18, 2008, 122 Stat. 1664, 2170, 2173; Pub. L. 111–240, title I, §§1116, 1202(b)(1), 1311, 1341, 1342, 1343(b), 1501, Sept. 27, 2010, 124 Stat. 2509, 2521, 2536, 2543–2545, 2550; Pub. L. 112–81, div. E, title LI, §5107(b), Dec. 31, 2011, 125 Stat. 1829; Pub. L. 112–239, div. A, title XVI, §§1661, 1696(b)(1), Jan. 2, 2013, 126 Stat. 2083, 2090; Pub. L. 113–66, div. A, title XVI, §1614(b), Dec. 26, 2013, 127 Stat. 949.)

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in subsec. (a)(5), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689. Title V of the Act is classified generally to subchapter V (§695 et seq.) of chapter 14B of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

The Agricultural Marketing Act (12 U.S.C. 1141j), referred to in subsec. (j), is act June 15, 1929, ch. 24, 46 Stat. 11, which is classified generally to chapter 7A (§1141 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1141j(e) of Title 12 and Tables.

The Community Economic Development Act of 1981, referred to in subsec. (p)(3)(D)(i), is subchapter A (§§611–633) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 489. Part 1 of subchapter A of the Act is classified generally to part A (§9805 et seq.) of subchapter I of chapter 105 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of Title 42 and Tables.

Subpar. (C) of section 42(d)(5) of title 26, referred to in subsec. (p)(4)(A), (B)(i), (ii)(III), was redesignated (B) by Pub. L. 110–289, div. C, title I, §3003(g)(3), July 30, 2008, 122 Stat. 2882.

The Federal Credit Reform Act of 1990, referred to in subsec. (q)(5)(C), is title V of Pub. L. 93–344, as added by Pub. L. 101–508, title XIII, §13201(a), Nov. 5, 1990, 104 Stat. 1388–609, which is classified generally to subchapter III (§661 et seq.) of chapter 17A of Title 2, The Congress. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 2 and Tables.

CODIFICATION

"Section 450b(e) of title 25", referred to in subsec. (d), was in the original "section 4(a) of the Indian Self-Determination and Education Assistance Act" which is classified to section 450b(a) of Title 25, Indians, but has been editorially translated as section 450b(e) of Title 25 as the probable intent of Congress, in that the definition of "Indian Tribes" is set out in subsec. (e) of section 450b of Title 25.

In subsec. (m), "section 134 of title 41" substituted for "section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (v)(1), "sections 4101, 4103, 4105, and 4106 of title 41" substituted for "sections 303H through 303K of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253h through 253k)" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

PRIOR PROVISIONS

Prior similar provisions were contained in section 203 of act July 30, 1953, ch. 282, title II, 67 Stat. 233,

which was previously classified to this section. See Codification note set out under section 631 of this title.

AMENDMENTS

2013—Pub. L. 112–239, §1661(1), inserted section catchline.

Subsec. (a). Pub. L. 112–239, §1661(2)(A), inserted heading.

Subsec. (a)(1), (3). Pub. L. 112–239, §1661(2)(B), (C), inserted heading.

Subsec. (a)(5). Pub. L. 112–239, §1661(2)(D), realigned margins.

Subsec. (a)(6) to (8). Pub. L. 112–239, §1661(2)(E), added pars. (6) to (8).

Subsec. (p)(5)(A)(i)(III). Pub. L. 112–239, §1696(b)(1)(A), added subcl. (III) and struck out former subcl. (III) which read as follows: "with respect to any subcontract entered into by the small business concern pursuant to a contract awarded to the small business concern under section 657a of this title, the small business concern will ensure that—

"(aa) in the case of a contract for services (except construction), not less than 50 percent of the cost of contract performance incurred for personnel will be expended for its employees or for employees of other HUBZone small business concerns;

"(bb) in the case of a contract for procurement of supplies (other than procurement from a regular dealer in such supplies), not less than 50 percent of the cost of manufacturing the supplies (not including the cost of materials) will be incurred in connection with the performance of the contract in a HUBZone by 1 or more HUBZone small business concerns; and

"(cc) in the case of a contract for the procurement by the Secretary of Agriculture of agricultural commodities, none of the commodity being procured will be obtained by the prime contractor through a subcontract for the purchase of the commodity in substantially the final form in which it is to be supplied to the Government; and".

Subsec. (p)(5)(B) to (D). Pub. L. 112–239, §1696(b)(1)(B), (C), redesignated subpar. (D) as (B) and struck out former subpars. (B) and (C) which read as follows:

"(B) Change in percentages

"The Administrator may utilize a percentage other than the percentage specified in item (aa) or (bb) of subparagraph (A)(i)(III), if the Administrator determines that such action is necessary to reflect conventional industry practices among small business concerns that are below the numerical size standard for businesses in that industry category.

"(C) Construction and other contracts

"The Administrator shall promulgate final regulations imposing requirements that are similar to those specified in items (aa) and (bb) of subparagraph (A)(i)(III) on contracts for general and specialty construction, and on contracts for any other industry category that would not otherwise be subject to those requirements. The percentage applicable to any such requirement shall be determined in accordance with subparagraph (B)."

Subsec. (dd). Pub. L. 113–66 added subsec. (dd).

2011—Subsecs. (aa) to (cc). Pub. L. 112–81 added subsecs. (aa) to (cc).

2010—Subsec. (a)(5). Pub. L. 111–240, §1116, added par. (5).

Subsecs. (t), (u). Pub. L. 111–240, §1202(b)(1), added subsecs. (t) and (u).

Subsec. (v). Pub. L. 111–240, §1311, added subsec. (v).

Subsec. (w). Pub. L. 111–240, §1341, added subsec. (w).

Subsec. (x). Pub. L. 111–240, §1342, added subsec. (x).

Subsec. (y). Pub. L. 111–240, §1343(b), added subsec. (y).

Subsec. (z). Pub. L. 111–240, §1501, added subsec. (z).

2008—Subsec. (k)(2)(C). Pub. L. 110–246, §12071, added subpar. (C).

Subsec. (q)(5). Pub. L. 110–186 added par. (5).

Subsec. (s). Pub. L. 110–246, §12063(c)(1), added subsec. (s).

2006—Subsec. (a)(4). Pub. L. 109–163, §844, added par. (4).

Subsec. (k). Pub. L. 109–163, §845(a)(1), designated existing provisions as par. (1) and added par. (2).

2005—Subsec. (p)(4)(B)(ii)(III). Pub. L. 109–59 added subcl. (III).

2004—Subsec. (b). Pub. L. 108–271 substituted "Government Accountability Office" for "General Accounting Office".

Subsec. (j). Pub. L. 108–447, §151(b), struck out "of section 636(b)(2)" after "For the purposes".

Subsec. (p)(1)(E). Pub. L. 108–447, §152(a)(1), added subpar. (E).

Subsec. (p)(3)(A). Pub. L. 108–447, §151(a)(1)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "a small business concern that is owned and controlled by one or more persons, each of whom is a United States citizen;".

Subsec. (p)(3)(E). Pub. L. 108–447, §151(a)(1)(B)–(D), added subpar. (E).

Subsec. (p)(4)(B)(ii)(II). Pub. L. 108–447, §152(b), amended subcl. (II) generally. Prior to amendment, subcl. (II) read as follows: "the unemployment rate is not less than 140 percent of the Statewide average unemployment rate for the State in which the county is located, based on the most recent data available from the Secretary of Labor."

Subsec. (p)(4)(C). Pub. L. 108–447, §152(c)(1), substituted "only until the later of—

"(i) the date on which the Census Bureau publicly releases the first results from the 2010 decennial census; or

"(ii) 3 years after"

for "only for the 3-year period following".

Subsec. (p)(4)(D). Pub. L. 108–447, §152(a)(3), added subpar. (D).

Subsec. (p)(5)(A)(i)(I)(aa). Pub. L. 108–447, §151(a)(2), substituted "(C), (D), or (E)" for "or (D)".

Subsec. (r). Pub. L. 108–447, §162, added subsec. (r).

2000—Subsec. (a)(1). Pub. L. 106–554, §1(a)(9) [title VIII, §806(b)], substituted "$750,000" for "$500,000".

Subsec. (p)(1)(D). Pub. L. 106–554, §1(a)(9) [title VI, §613(1)], added subpar. (D).

Subsec. (p)(3). Pub. L. 106–554, §1(a)(9) [title VI, §602], amended heading and text of par. (3) generally, substituting present provisions for provisions which had defined "HUBZone small business concern" as a small business concern that is owned and controlled by 1 or more persons, each of whom is a United States citizen, and the principal office of which is located in a HUBZone.

Subsec. (p)(3)(D). Pub. L. 106–554, §1(a)(9) [title VI, §614(1)], added subpar. (D).

Subsec. (p)(4)(A). Pub. L. 106–554, §1(a)(9) [title VI, §611(a)], substituted "section 42(d)(5)(C)(ii)" for "section 42(d)(5)(C)(ii)(I)".

Subsec. (p)(4)(B). Pub. L. 106–554, §1(a)(9) [title VI, §611(b)], added subpar. (B) and struck out heading and text of former subpar. (B). Text read as follows: "The term 'qualified nonmetropolitan county' means any county—

"(i) that, based on the most recent data available from the Bureau of the Census of the Department of Commerce—

"(I) is not located in a metropolitan statistical area (as defined in section 143(k)(2)(B) of title 26); and

"(II) in which the median household income is less than 80 percent of the nonmetropolitan State median household income; or

"(ii) that, based on the most recent data available from the Secretary of Labor, has an unemployment rate that is not less than 140 percent of the statewide average unemployment rate for the State in which the county is located."

Subsec. (p)(4)(C). Pub. L. 106–554, §1(a)(9) [title VI, §613(2)], added subpar. (C).

Subsec. (p)(5)(A)(i)(I). Pub. L. 106–554, §1(a)(9) [title VI, §603(a)], added subcl. (I) and struck out former subcl. (I) which read as follows: "it is a HUBZone small business concern;".

Subsec. (p)(5)(A)(i)(I)(aa). Pub. L. 106–554, §1(a)(9) [title VI, §614(2)], substituted "subparagraph (A), (B), or (D)" for "subparagraph (A) or (B)".

Subsec. (p)(5)(A)(i)(II). Pub. L. 106–554, §1(a)(9) [title VI, §603(a)], added subcl. (II) and struck out former subcl. (II) which read as follows: "not less than 35 percent of the employees of the small business concern reside in a HUBZone, and the small business concern will attempt to maintain this employment percentage during the performance of any contract awarded to the small business concern on the basis of a preference provided under section 657a(b) of this title; and".

Subsec. (p)(5)(A)(i)(III)(cc). Pub. L. 106–554, §1(a)(9) [title VI, §612(b)(1)], added item (cc).

Subsec. (p)(5)(C). Pub. L. 106–554, §1(a)(9) [title VI, §615(a)], which directed amendment of subpar. (C) by substituting "items (aa) and (bb) of subparagraph (A)(i)(III)" for "subclause (IV) and (V) of subparagraph (A)(i)", was executed by making the substitution for "subclauses (IV) and (V) of subparagraph (A)(i)", to reflect the probable intent of Congress.

Subsec. (p)(5)(D)(i). Pub. L. 106–554, §1(a)(9) [title VI, §603(b)], inserted "once the Administrator has made the certification required by subparagraph (A)(i) regarding a qualified HUBZone small business concern and has determined that subparagraph (A)(ii) does not apply to that concern," before "include".

Subsec. (p)(6). Pub. L. 106–554, §1(a)(9) [title VI, §604], added par. (6).

Subsec. (p)(7). Pub. L. 106–554, §1(a)(9) [title VI, §612(b)(2)], added par. (7).

1999—Subsec. (f). Pub. L. 106–50, §401(a), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: "For purposes of section 636 of this title, the term 'handicapped individual' means a person who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent

nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable."

Subsec. (q). Pub. L. 106–50, §103(a), added subsec. (q).

1997—Subsec. (o). Pub. L. 105–135, §412, added subsec. (o).

Subsec. (p). Pub. L. 105–135, §602(a), added subsec. (p).

1996—Subsec. (k). Pub. L. 104–208 inserted "commercial fishery failures or fishery resource disasters (as determined by the Secretary of Commerce under section 4107(b) of title 16)," after "tidal waves,".

1994—Subsec. (a)(2). Pub. L. 103–403 amended par. (2) generally. Prior to amendment, par. (2) read as follows: "In addition to the criteria specified in paragraph (1), the Administrator may specify detailed definitions or standards (by number of employees or dollar volume of business) by which a business concern is to be recognized as a small business concern for the purposes of this chapter or any other Act. Unless specifically authorized by statute, the Secretary of a department or the head of a Federal agency may not prescribe for the use of such department or agency a size standard for categorizing a business concern as a small business concern, unless such proposed size standard—

"(A) is being proposed after an opportunity for public notice and comment;

"(B) provides for determining, over a period of not less than 3 years—

"(i) the size of a manufacturing concern on the basis of the number of its employees during that period; and

"(ii) the size of a concern providing services on basis of the average gross receipts of the concern during that period; and

"(C) is approved by the Administrator."

Subsec. (m). Pub. L. 103–355, §4404(a), substituted " 'simplified acquisition threshold' " for " 'small purchase threshold' ".

Subsec. (n). Pub. L. 103–355, §7106(d), added subsec. (n).

1992—Subsec. (a). Pub. L. 102–366 added pars. (2) and (3) and struck out at end of par. (1) "In addition to the foregoing criteria the Administrator, in making a detailed definition, may use these criteria, among others: Number of employees and dollar volume of business: *Provided*, That the Administration shall not promulgate, amend, or rescind any rule [or] regulation with respect to size standards prior to March 31, 1981. Where the number of employees is used as one of the criteria in making such definition for any of the purposes of this chapter, the maximum number of employees which a small-business concern may have under the definition shall vary from industry to industry to the extent necessary to reflect differing characteristics of such industries and to take proper account of other relevant factors."

1990—Subsec. (m). Pub. L. 101–510 added subsec. (m).

1988—Subsec. (a). Pub. L. 100–656 struck out pars. (2) to (5) which established a program for review of size standards for eligibility of business concerns in certain industry categories for a procurement restricted to small business concerns under section 637(a) or 644(a) of this title and provided for adjustment of those standards and periodic review of the program.

Pub. L. 100–456 inserted provisions in par. (4)(C) respecting applicability of regulations to contracts entered into on or after Oct. 1, 1988.

Subsecs. (j) to (l). Pub. L. 100–590 added subsec. (k) and redesignated subsec. (j), defining "computer crime", as (l).

1987—Subsec. (a)(3). Pub. L. 100–26, §10(b)(2)(A), substituted "dollar value of the contracts to be awarded in that industry category" for "value of contracts to be awarded under such sections".

Subsec. (a)(4)(A)(i). Pub. L. 100–26, §10(b)(2)(B), substituted "paragraph (3)" for "paragraph (3)(A)".

Subsec. (a)(5). Pub. L. 100–26, §10(b)(2)(C), substituted "shall be made not later than 180 days after the end of each such" for "made with the expiration of 180 days after each".

1986—Subsec. (a). Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 amended subsec. (a) identically designating existing provision as par. (1) and adding pars. (2) to (5).

Pub. L. 99–272 inserted proviso that notwithstanding any other provision of law, an agricultural enterprise shall be deemed to be a small business concern if it, including its affiliates, has annual receipts not in excess of $500,000.

Subsec. (c)(2)(A), (3)(B)(i), (iv). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

1984—Subsec. (j). Pub. L. 98–473 in subsec. (j) added by Pub. L. 98–270 substituted "as a business concern and shall not include the income or employees of any member shareholder of such cooperative" for "as an entity and shall not include the income or employees of any member shareholder of such cooperative: *Provided*, That such an association shall not be deemed to be a small agricultural cooperative unless each

member of the board of directors of the association, or each member of the governing body of the association if it is not incorporated, also individually qualifies as a small business concern".

Pub. L. 98–362 added subsec. (j) defining "computer crime".

Pub. L. 98–270 added subsec. (j) defining "small agricultural cooperative".

1981—Subsecs. (d) to (i). Pub. L. 97–35 added subsecs. (d) to (i).

1980—Subsec. (a). Pub. L. 96–481, in the additional criteria inserted proviso that the Administration shall not promulgate, amend, or rescind any rule or regulation with respect to size standards prior to March 31, 1981.

Subsec. (c). Pub. L. 96–302 added subsec. (c).

1978—Pub. L. 95–507 designated existing provisions as subsec. (a) and added subsec. (b).

1976—Pub. L. 94–305 inserted reference to enterprises that are engaged in business of production of food and fiber, ranching and raising of livestock, aquaculture, and all other farming and agricultural related industries.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–208, div. D, title I, §104(b)(2), Sept. 30, 1996, 110 Stat. 3009–731, provided that: "The amendment made by paragraph (1) [amending this section] shall be effective with respect to any disaster occurring on or after March 1, 1994."

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–26, §12(c), Apr. 21, 1987, 101 Stat. 289, provided that: "The amendments made by sections 5 [amending section 2365 of Title 10, Armed Forces, and amending provisions set out as notes under sections 1621, 2326, and 2437 of Title 10] and 10 [amending this section, sections 637 and 644 of this title, and provisions set out as a note under this section] shall apply as if included in each instance of the Defense Acquisition Improvement Act (as specified in section 2) [title X of section 101(c) of Pub. L. 99–500 and Pub. L. 99–591, and title IX of div. A of Pub. L. 99–661] when each was enacted [Oct. 18, 1986, Oct. 30, 1986, and Nov. 14, 1986, respectively]."

EFFECTIVE DATE OF 1986 AMENDMENT; INITIAL REVIEW OF STANDARDS

Section 101(c) [title X, §921(g), (h)] of Pub. L. 99–500 and Pub. L. 99–591, and section 921(g), (h) of title IX, formerly title IV, of Pub. L. 99–661; renumbered title IX and amended by Pub. L. 100–26, §§3(5), 10(a)(2), Apr. 21, 1987, 101 Stat. 273, 288; Pub. L. 100–180, div. A, title VIII, §809(d), Dec. 4, 1987, 101 Stat. 1130, provided that:

"(g) EFFECTIVE DATES.—Except as otherwise provided in subsection (h), the amendments made by this section [amending this section and sections 637 and 644 of this title and enacting provisions set out as notes below] shall take effect on October 1, 1987.

"(h) INITIAL REVIEW OF SIZE STANDARDS.—(1) Paragraph (2) of section 3(a) of the Small Business Act (as added by subsection (f)) [15 U.S.C. 632(a)(2)] shall take effect on the date of the enactment of this Act [Oct. 18, 1986].

"(2) The first review conducted by the Administrator under such paragraph shall review the periods beginning on October 1, 1983, and ending on September 30, 1986, and shall be completed not later than 180 days after the date of the enactment of this Act.

"(3) If the Administrator of the Small Business Administration determines, on the basis of the review referred to in paragraph (2), that contracts awarded under the set-aside programs under sections 8(a) and 15(a) of the Small Business Act [15 U.S.C. 637(a), 644(a)] in any industry category subject to that review exceed 30 percent of the dollar value of the total contract awards for that industry category, as determined in accordance

with the last sentence of section 15(a)(3) of such Act, the Administrator shall propose adjustments to the size standards for such industry category establishing eligibility for a set-aside program to a size that will likely reduce the number of contracts which may be set aside to approximately 30 percent of the dollar value of the contracts to be awarded in that industry category. The Administrator shall publish proposed regulations, including any revised size standards, in the Federal Register by November 30, 1987, or the date of enactment of the National Defense Authorization Act for Fiscal Years 1988 and 1989 [Pub. L. 100–180, Dec. 4, 1987], whichever is later. The proposed regulations shall provide not less than 60 days for public comment. The Administrator shall issue final regulations not later than May 31, 1988.

EFFECTIVE DATE OF 1984 AMENDMENTS

Pub. L. 98–270, title III, §312, Apr. 18, 1984, 98 Stat. 161, provided that: "The amendments made by sections 310 and 311 of this title [amending this section and section 636 of this title] shall apply to loans granted on the basis of any disaster with respect to which a declaration has been issued after September 1, 1982, under section 7(b)(2) (A), (B), or (C) of the Small Business Act [15 U.S.C. 636(b)(2)(A), (B), (C)] or with respect to which a certification has been made after such date under section 7(b)(2)(D) of such Act."

Pub. L. 98–270, title III, §313, Apr. 18, 1984, 98 Stat. 162, provided that: "This title [amending this section and sections 633, 636, and 647 of this title, enacting provisions set out as notes under sections 632 and 636 of this title, and amending provisions set out as a note under section 631 of this title] shall take effect October 1, 1983."

Amendment by Pub. L. 98–362 effective Oct. 1, 1984, see section 7(a) of Pub. L. 98–362, set out as an Effective and Termination Dates of 1984 Amendments note under section 633 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, but shall not affect any financing made, obligated, or committed under this chapter or chapter 14B of this title prior to Aug. 13, 1981, see section 1918 of Pub. L. 97–35, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–302 effective Oct. 1, 1980, see section 507 of Pub. L. 96–302, set out as a note under section 631 of this title.

REGULATIONS

Pub. L. 112–239, div. A, title XVI, §1696(c), Jan. 2, 2013, 126 Stat. 2091, provided that: "Not later than 180 days after the date of enactment of this part [Jan. 2, 2013], the Administrator of the Small Business Administration shall issue guidance with respect to the changes made to the Small Business Act [15 U.S.C. 631 et seq.] by the amendments in this subtitle [subtitle C (§§1621–1699a) of title XVI of div. A of Pub. L. 112–239, see Tables for classification], with opportunities for notice and comment."

Pub. L. 109–163, div. A, title VIII, §845(d), Jan. 6, 2006, 119 Stat. 3391, provided that: "Not later than 45 days after the date of enactment of this Act [Jan. 6, 2006], the Administrator of the Small Business Administration shall promulgate final rules to carry out this section [amending this section and section 636 of this title] and the amendments made by this section."

Pub. L. 105–135, title VI, §605, Dec. 2, 1997, 111 Stat. 2635, provided that:

"(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act [Dec. 2, 1997], the Administrator shall publish in the Federal Register such final regulations as may be necessary to carry out this title [see Short Title of 1997 Amendment note set out under section 631 of this title] and the amendments made by this title.

"(b) FEDERAL ACQUISITION REGULATION.—Not later than 180 days after the date on which final regulations are published under subsection (a), the Federal Acquisition Regulatory Council shall amend the Federal Acquisition Regulation in order to ensure consistency between the Federal Acquisition Regulation, this title and the amendments made by this title, and the final regulations published under subsection (a)."

Pub. L. 102–366, title II, §222(b), Sept. 4, 1992, 106 Stat. 999, provided that:

"(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act [Sept. 4, 1992], the Administrator of the Small Business Administration shall issue proposed regulations to implement the amendments made by subsection (a) [amending this section]. Final regulations shall be issued not later than 270 days after such date of enactment.

"(2) LISTING OF ADDITIONAL SIZE STANDARDS.—The regulations required by paragraph (1) shall include a listing of all small business size standards prescribed by statute or by individual Federal departments and agencies, identifying the programs or purposes to which such size standards apply."

IMPLEMENTATION

Pub. L. 113–66, div. A, title XVI, §1614(c), Dec. 26, 2013, 127 Stat. 949, provided that:

"(1) REQUIREMENT FOR PLAN.—Not later than 180 days after the date of the enactment of this Act [Dec. 26, 2013], the Administrator of the Small Business Administration, the Secretary of Defense, and the Administrator of General Services shall submit to the Committee on Small Business and the Committee on Armed Services of the House of Representatives and the Committee on Small Business and Entrepreneurship and the Committee on Armed Services of the Senate a plan to implement this section [amending this section and section 637 of this title] and the amendments made by this section. The plan shall contain assurances that the appropriate tracking mechanisms are in place to enable transparency of subcontracting activities at all tiers.

"(2) COMPLETION OF PLAN ACTIONS.—Not later than one year after the date of the enactment of this Act, the Administrator of the Small Business Administration, the Secretary of Defense, and the Administrator of General Services shall complete the actions required by the plan.

"(3) REGULATIONS.—No later than 18 months after the date of the enactment of this Act, the Administrator of the Small Business Administration shall promulgate any regulations necessary, and the Federal Acquisition Regulation shall be revised, to implement this section and the amendments made by this section.

"(4) APPLICABILITY.—Any regulations promulgated pursuant to paragraph (3) shall apply to contracts entered into after the last day of the fiscal year in which the regulations are promulgated."

SMALL BUSINESS COMPLIANCE GUIDE

Pub. L. 112–239, div. A, title XVI, §1681(c), Jan. 2, 2013, 126 Stat. 2086, provided that: "Not later than 270 days after the date of enactment of this part [Jan. 2, 2013], the Administrator of the Small Business Administration shall issue (pursuant to section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121; 5 U.S.C. 601 note]) a compliance guide to assist business concerns in accurately determining their status as a small business concern."

PROHIBITION ON USING TARP FUNDS OR TAX INCREASES

Pub. L. 111–240, title I, §1136, Sept. 27, 2010, 124 Stat. 2520, provided that:

"(a) IN GENERAL.—Except as provided in subsection (b), nothing in section 1111 [amending section 636 of this title and enacting provisions set out as a note under section 636 of this title], 1112 [amending section 696 of this title], 1113 [amending section 636 of this title], 1114 [124 Stat. 2508], 1115 [amending section 689d of this title], 1116 [amending this section], 1117 [amending section 634 of this title], 1118 [124 Stat. 2509], 1122 [amending section 696 of this title and enacting provisions set out as a note under section 696 of this title], or 1131 [amending section 636 of this title and enacting provisions set out as notes under section 636 of this title], or an amendment made by such sections, shall be construed to limit the ability of Congress to appropriate funds.

"(b) TARP FUNDS AND TAX INCREASES.—

"(1) IN GENERAL.—Any covered amounts may not be used to carry out section 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1122, or 1131, or an amendment made by such sections.

"(2) DEFINITION.—In this subsection, the term 'covered amounts' means—

"(A) the amounts made available to the Secretary of the Treasury under title I of the Emergency Economic Stabilization Act of 2008 S.C. [sic] 5201 et seq.) [12 U.S.C. 5211 et seq.] to purchase (under section 101 [12 U.S.C. 5211]) or guarantee (under section 102 [12 U.S.C. 5212]) assets under that Act [12 U.S.C. 5201 et seq.]; and

"(B) any revenue increase attributable to any amendment to the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.] made during the period beginning on the date of enactment of this Act [Sept. 27, 2010] and ending on December 31, 2010."

UPDATED SIZE STANDARDS

Pub. L. 111–240, title I, §1344, Sept. 27, 2010, 124 Stat. 2545, provided that:

"(a) ROLLING REVIEW.—

"(1) IN GENERAL.—The Administrator shall—

"(A) during the 18-month period beginning on the date of enactment of this Act [Sept. 27, 2010], and during every 18-month period thereafter, conduct a detailed review of not less than 1/3 of the size standards for small business concerns established under section 3(a)(2) of the Small Business Act (15 U.S.C. 632(a)(2)), which shall include holding not less than 2 public forums located in different geographic regions of the United States;

"(B) after completing each review under subparagraph (A) make appropriate adjustments to the

size standards established under section 3(a)(2) of the Small Business Act to reflect market conditions;

"(C) make publicly available—

"(i) information regarding the factors evaluated as part of each review conducted under subparagraph (A); and

"(ii) information regarding the criteria used for any revised size standards promulgated under subparagraph (B); and

"(D) not later than 30 days after the date on which the Administrator completes each review under subparagraph (A), submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives and make publicly available a report regarding the review, including why the Administrator—

"(i) used the factors and criteria described in subparagraph (C); and

"(ii) adjusted or did not adjust each size standard that was reviewed under the review.

"(2) COMPLETE REVIEW OF SIZE STANDARDS.—The Administrator shall ensure that each size standard for small business concerns established under section 3(a)(2) of the Small Business Act (15 U.S.C. 632(a)(2)) is reviewed under paragraph (1) not less frequently than once every 5 years.

"(b) RULES.—Not later than 1 year after the date of enactment of this Act [Sept. 27, 2010], the Administrator shall promulgate rules for conducting the reviews required under subsection (a)."

[For definitions of "Administrator" and "small business concern" as used in section 1344 of Pub. L. 111–240, set out above, see section 1001 of Pub. L. 111–240, set out under this section.]

HUBZONE STATUS TIME LINE AND COMMENCEMENT

Pub. L. 112–239, div. A, title XVI, §1698, Jan. 2, 2013, 126 Stat. 2091, provided that:

"(a) DEFINITION.—In this section, the term 'covered base closure area' means a base closure area that, on or before the date of enactment of this Act [Jan. 2, 2013], was treated as a HUBZone for purposes of the Small Business Act (15 U.S.C. 631 et seq.) pursuant to section 152(a)(2) of the Small Business Reauthorization and Manufacturing Assistance Act of 2004 [Pub. L. 108–447] (15 U.S.C. 632 note).

"(b) TREATMENT AS HUBZONE.—

"(1) IN GENERAL.—Subject to paragraph (2), a covered base closure area shall be treated as a HUBZone for purposes of the Small Business Act (15 U.S.C. 631 et seq.) during the 5-year period beginning on the date of enactment of this Act.

"(2) LIMITATION.—The total period of time that a covered base closure area is treated as a HUBZone for purposes of the Small Business Act (15 U.S.C. 631 et seq.) pursuant to this section and section 152(a)(2) of the Small Business Reauthorization and Manufacturing Assistance Act of 2004 (15 U.S.C. 632 note) may not exceed 5 years."

Pub. L. 108–447, div. K, title I, §152(a)(2), Dec. 8, 2004, 118 Stat. 3457, provided that: "A base closure area that has undergone final closure shall be treated as a HUBZone for purposes of the Small Business Act [15 U.S.C. 631 et seq.] for a period of 5 years."

CONTINUED EFFECTIVENESS OF NUMERICAL SIZE STANDARDS IN EFFECT ON SEPTEMBER 30, 1988

The last sentence of section 732 of Pub. L. 100–656 which provided that any numerical size standard that pertained to any of the designated industry groups, and that was in effect on Sept. 30, 1988, was to remain in effect for the duration of the Program, was repealed by Pub. L. 103–160, div. A, title VIII, §850(1), Nov. 30, 1993, 107 Stat. 1726.

REPORT ON EFFECT OF 1986 AMENDMENTS

Section 101(c) [title X, §921(i)] of Pub. L. 99–500 and Pub. L. 99–591, and section 921(i) of title IX, formerly title IV, of Pub. L. 99–661; renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273, directed Administrator of the Small Business Administration, not later than July 15, 1987, to submit to Congress a report on the amendments to sections 632, 637, and 644 of this title made by this section which was to include Administrator's views on the advisability and feasibility of implementing such amendments, Administrator's findings and determinations under the review of size standards for businesses that qualify as small businesses carried out pursuant to 15 U.S.C. 632(a)(2)(B), a determination of whether or not the amendments to section 632 of this title would further the interests of the set-aside program, and recommendations for furthering certain interests in a more efficient or effective manner than provided in such amendments.

DEFINITIONS

Pub. L. 111–240, title I, §1001, Sept. 27, 2010, 124 Stat. 2507, provided that: "In this title [enacting

sections 634g, 648b, and 657q of this title and section 4713a of Title 12, Banks and Banking, amending this section, sections 631, 633, 634, 634c, 636, 637, 644, 648, 649, 656, 657a, 689d, 695, and 696 of this title, section 604 of Title 5, Government Organization and Employees, and section 2382 of Title 10, Armed Forces, repealing former section 634g of this title, enacting provisions set out as notes under this section and sections 631, 636, 637, 644, 649, 649b, and 696 of this title, and sections 428 and 433 of Title 41, Public Contracts, amending provisions set out as notes under section 631 of this title, and repealing provisions set out as notes under section 644 of this title]—

"(1) the terms 'Administration' and 'Administrator' mean the Small Business Administration and the Administrator thereof, respectively; and

"(2) the term 'small business concern' has the meaning given that term under section 3 of the Small Business Act (15 U.S.C. 632)."

[1] *So in original. No par. (2) has been enacted.*

[2] *See References in Text note below.*

§633. Small Business Administration

(a) Creation; principal, branch, and regional offices

In order to carry out the policies of this chapter there is created an agency under the name "Small Business Administration" (herein referred to as the Administration), which Administration shall be under the general direction and supervision of the President and shall not be affiliated with or be within any other agency or department of the Federal Government. The principal office of the Administration shall be located in the District of Columbia. The Administration may establish such branch and regional offices in other places in the United States as may be determined by the Administrator of the Administration. As used in this chapter, the term "United States" includes the several States, the Territories and possessions of the United States, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia.

(b) Appointment of Administrator, Deputy Administrator, and Associate Administrators; duties of Administrator: preparation of data base and publication of economic indices and annual report; risk management database; computer security and education program

(1) The management of the Administration shall be vested in an Administrator who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate, and who shall be a person of outstanding qualifications known to be familiar and sympathetic with small-business needs and problems. The Administrator shall not engage in any other business, vocation, or employment than that of serving as Administrator. In carrying out the programs administered by the Small Business Administration including its lending and guaranteeing functions, the Administrator shall not discriminate on the basis of sex or marital status against any person or small business concern applying for or receiving assistance from the Small Business Administration, and the Small Business Administration shall give special consideration to veterans of the Armed Forces of the United States and their survivors or dependents. The President also may appoint a Deputy Administrator, by and with the advice and consent of the Senate. The Administrator is authorized to appoint Associate Administrators (including the Associate Administrator specified in section 671 of this title) to assist in the execution of the functions vested in the Administration. One such Associate Administrator shall be the Associate Administrator for Veterans Business Development, who shall administer the Office of Veterans Business Development established under section 657b of this title. One of the Associate Administrators shall be designated at the time of his appointment as the Associate Administrator for Minority Small Business and Capital Ownership Development who shall be an employee in the competitive service or in the Senior Executive Service and a career appointee and shall be responsible to the Administrator for the formulation and execution of the policies and programs under sections 636(j) and 637(a) of this title which provide assistance to minority small business concerns. The Deputy Administrator shall be Acting

Administrator of the Administration during the absence or disability of the Administrator or in the event of a vacancy in the office of the Administrator. One such Associate Administrator shall be the Associate Administrator for International Trade, who shall be the head of the Office of International Trade established under section 649 of this title.

(2) The Administrator also shall be responsible for—

(A) establishing and maintaining an external small business economic data base for the purpose of providing the Congress and the Administration information on the economic condition and the expansion or contraction of the small business sector. To that end, the Administrator shall publish on a regular basis national small business economic indices and, to the extent feasible, regional small business economic indices, which shall include, but need not be limited to, data on—

(i) employment, layoffs, and new hires;

(ii) number of business establishments and the types of such establishments such as sole proprietorships, corporations, and partnerships;

(iii) number of business formations and failures;

(iv) sales and new orders;

(v) back orders;

(vi) investment in plant and equipment;

(vii) changes in inventory and rate of inventory turnover;

(viii) sources and amounts of capital investment, including debt, equity, and internally generated funds;

(ix) debt to equity ratios;

(x) exports;

(xi) number and dollar amount of mergers and acquisitions by size of acquiring and acquired firm; and

(xii) concentration ratios; and

(B) publishing annually a report giving a comparative analysis and interpretation of the historical trends of the small business sector as reflected by the data acquired pursuant to subparagraph (A) of this subsection.

(3) RISK MANAGEMENT DATABASE.—

(A) ESTABLISHMENT.—The Administration shall establish, within the management system for the loan programs authorized by subsections (a) and (b) of section 636 of this title and title V of the Small Business Investment Act of 1958 [15 U.S.C. 695 et seq.], a management information system that will generate a database capable of providing timely and accurate information in order to identify loan underwriting, collections, recovery, and liquidation problems.

(B) INFORMATION TO BE MAINTAINED.—In addition to such other information as the Administration considers appropriate, the database established under subparagraph (A) shall, with respect to each loan program described in subparagraph (A), include information relating to—

(i) the identity of the institution making the guaranteed loan or issuing the debenture;

(ii) the identity of the borrower;

(iii) the total dollar amount of the loan or debenture;

(iv) the total dollar amount of government exposure in each loan;

(v) the district of the Administration in which the borrower has its principal office;

(vi) the principal line of business of the borrower, as identified by Standard Industrial Classification Code (or any successor to that system);

(vii) the delinquency rate for each program (including number of instances and days overdue);

(viii) the number and amount of repurchases, losses, and recoveries in each program;

(ix) the number of deferrals or forbearances in each program (including days and number of instances);

(x) comparisons on the basis of loan program, lender, district and region of the Administration, for all the data elements maintained; and

(xi) underwriting characteristics of each loan that has entered into default, including term, amount and type of collateral, loan-to-value and other actual and projected ratios, line of business, credit history, and type of loan.

(C) DEADLINE FOR OPERATIONAL CAPABILITY.—The database established under subparagraph (A) shall—

(i) be operational not later than June 30, 1997; and

(ii) capture data beginning on the first day of the second quarter of fiscal year 1997 beginning after such date and thereafter.

(4)(A) The Administrator shall establish a small business computer security and education program to—

(i) provide small business concerns information regarding—

(I) utilization and management of computer technology;

(II) computer crimes committed against small business concerns; and

(III) security for computers owned or utilized by small business concerns;

(ii) provide for periodic forums for small business concerns to improve their knowledge of the matters described in clause (i); and

(iii) provide training opportunities to educate small business users on computer security techniques.

(B) The Administrator, after consultation with the Director of the Institute of Computer Sciences and Technology within the Department of Commerce, shall develop information and materials to carry out the activities described in subparagraph (A) of this paragraph.

(c) Revolving funds; disaster loan fund; business loan and investment fund; payments into funds; appropriations; reports to Congress; business-type budgets; borrowing authority: terms and conditions of notes, interest rate, public debt transactions; payments into miscellaneous receipts; authorization of appropriations for losses and interest subsidies

(1) There are established in the Treasury the following revolving funds: (A) a disaster loan fund which shall be available for financing functions performed under sections 634(e), 636(b)(1), 636(b)(2), 636(b)(3), 636(b)(4), 636(d)(2), and 636(m) of this title; and (B) a business loan and investment fund which shall be available for financing functions performed under sections 634(g), 636(a) and 637(a) of this title, and titles III, IV and V of the Small Business Investment Act of 1958 [15 U.S.C. 681 et seq., 692 et seq., 695 et seq.].

(2) All repayments of loans and debentures, payments of interest and other receipts arising out of transactions heretofore or hereafter entered into by the Administration (A) pursuant to sections 634(e), 636(b)(1), 636(b)(2), 636(b)(3), 636(b)(4), 636(b)(5), 636(b)(6), 636(b)(7), 636(b)(8), 636(d)(2), and 636(g) of this title, shall be paid into a disaster loan fund; and (B) pursuant to sections 634(g), 636(a), 636(h), 636(i), 636(l),[1] 636(m), and 637(a) of this title, and titles III, IV and V of the Small Business Investment Act of 1958 [15 U.S.C. 681 et seq., 692 et seq., 695 et seq.], shall be paid into the business loan and investment fund.

(3) Unexpended balances of appropriations made to the fund pursuant to this subsection, as in effect immediately prior to the effective date of this paragraph, shall be allocated, together with related assets and liabilities, to the funds established by paragraph (1) in such amounts as the Administrator shall determine.

(4) The Administration shall submit to the Committees on Appropriations, Senate Select Committee on Small Business, and the Committee on Small Business of the House of Representatives, as soon as possible after the beginning of each calendar quarter, a full and complete report on the status of each of the funds established by paragraph (1). Business-type budgets for each of the funds established by paragraph (1) shall be prepared, transmitted to the Committees on Appropriations, the Senate Select Committee on Small Business, and the Committee on Small

Business of the House of Representatives, and considered, and enacted in the manner prescribed by law (sections 9103 and 9104 of title 31) for wholly owned Government corporations.

(5)(A) The Administration is authorized to make and issue notes to the Secretary of the Treasury for the purpose of obtaining funds necessary for discharging obligations under the revolving funds created by paragraph (1) and for authorized expenditures out of the funds. Such notes shall be in such form and denominations and have such maturities and be subject to such terms and conditions as may be prescribed by the Administration with the approval of the Secretary of the Treasury. Such notes shall bear interest at a rate fixed by the Secretary of the Treasury, taking into consideration the current average market yield of outstanding marketable obligations of the United States having maturities comparable to the notes issued by the Administration under this paragraph. The Secretary of the Treasury is authorized and directed to purchase any notes of the Administration issued hereunder, and, for that purpose, the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which such securities may be issued under such chapter are extended to include the purchase of notes issued by the Administration. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes shall be treated as public debt transactions of the United States. All borrowing authority contained herein shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts.

(B)(i) Moneys in the funds established in paragraph (1) not needed for current operations may be paid into miscellaneous receipts of the Treasury.

(ii) Following the close of each fiscal year, the Administration shall pay into the miscellaneous receipts of the United States Treasury the actual interest that the Administration collects during that fiscal year on all financings made under this chapter.

(C) Except on those loan disbursements on which interest is paid under paragraph (5)(B)(ii), the Administration shall pay into miscellaneous receipts of the Treasury, following the close of each fiscal year, interest received by the Administration on financing functions performed under this chapter and titles III and V of the Small Business Investment Act of 1958 [15 U.S.C. 681 et seq., 695 et seq.] providing the capital used to perform such functions originated from appropriated funds. Such payments shall be treated by the Department of the Treasury as interest income, not as retirement of indebtedness.

(D) There are authorized to be appropriated, in any fiscal year, such sums as may be necessary for losses and interest subsidies incurred by the funds established by paragraph (1), but not previously reimbursed.

(d) Creation and composition of Loan Policy Board; establishment of policies

There is created the Loan Policy Board of the Small Business Administration, which shall consist of the following members, all ex officio: The Administrator, as Chairman, the Secretary of the Treasury, and the Secretary of Commerce. Either of the said Secretaries may designate an officer of his Department, who has been appointed by the President by and with the advice and consent of the Senate, to act in his stead as a member of the Loan Policy Board with respect to any matter or matters. The Loan Policy Board shall establish general policies (particularly with reference to the public interest involved in the granting and denial of applications for financial assistance by the Administration and with reference to the coordination of the functions of the Administration with other activities and policies of the Government), which shall govern the granting and denial of applications for financial assistance by the Administration.

(e) Prohibition on provision of assistance

Notwithstanding any other provision of law, the Administration is prohibited from providing any financial or other assistance to any business concern or other person engaged in the production or distribution of any product or service that has been determined to be obscene by a court of competent jurisdiction.

(f) Certification of compliance with child support obligations

(1) In general

For financial assistance approved after the promulgation of final regulations to implement this section, each recipient of financial assistance under this chapter, including a recipient of a direct loan or a loan guarantee, shall certify that the recipient is not more than 60 days delinquent under the terms of any—

(A) administrative order;

(B) court order; or

(C) repayment agreement entered into between the recipient and the custodial parent or State agency providing child support enforcement services,

that requires the recipient to pay child support, as such term is defined in section 662(b) [1] of title 42.

(2) Enforcement

Not later than 6 months after October 22, 1994, the Administration shall promulgate such regulations as may be necessary to enforce compliance with the requirements of this subsection.

(Pub. L. 85–536, §2[4], July 18, 1958, 72 Stat. 384; Pub. L. 85–699, title II, §202, formerly §202(a), Aug. 21, 1958, 72 Stat. 690, renumbered Pub. L. 87–341, §11(h)(1), Oct. 3, 1961, 75 Stat. 757; amended Pub. L. 86–367, §1, Sept. 22, 1959, 73 Stat. 647; Pub. L. 87–70, title III, §305(c), June 30, 1961, 75 Stat. 167; Pub. L. 87–198, Sept. 5, 1961, 75 Stat. 468; Pub. L. 87–305, §3, Sept. 26, 1961, 75 Stat. 666; Pub. L. 87–341, §§11(h)(3), (4), 12, Oct. 3, 1961, 75 Stat. 757; Pub. L. 87–550, §1(a), July 25, 1962, 76 Stat. 220; Pub. L. 89–59, §§1(c), 2, June 30, 1965, 79 Stat. 207; Pub. L. 89–78, July 21, 1965, 79 Stat. 243; Pub. L. 89–117, title III, §316(d), Aug. 10, 1965, 79 Stat. 484; Pub. L. 89–334, Nov. 8, 1965, 79 Stat. 1294; Pub. L. 89–409, §§1, 2, May 2, 1966, 80 Stat. 132; Pub. L. 89–779, §8(a), (b), Nov. 6, 1966, 80 Stat. 1364; Pub. L. 90–104, title I, §102, Oct. 11, 1967, 81 Stat. 268; Pub. L. 90–448, title XVII, §1721, Aug. 1, 1968, 82 Stat. 610; Pub. L. 91–173, title V, §504(c), Dec. 30, 1969, 83 Stat. 802; Pub. L. 91–558, title I, §101, Dec. 17, 1970, 84 Stat. 1468; Pub. L. 91–596, §28(c), Dec. 29, 1970, 84 Stat. 1618; Pub. L. 91–597, §25(c), Dec. 29, 1970, 84 Stat. 1634; Pub. L. 92–16, May 18, 1971, 85 Stat. 39; Pub. L. 92–320, §1, June 27, 1972, 86 Stat. 382; Pub. L. 92–385, §2(b), Aug. 16, 1972, 86 Stat. 556; Pub. L. 92–500, §8(b), Oct. 18, 1972, 86 Stat. 899; Pub. L. 92–595, §3(a), Oct. 27, 1972, 86 Stat. 1316; Pub. L. 93–237, §§1, 3(b), 8, Jan. 2, 1974, 87 Stat. 1023–1025; Pub. L. 93–386, §§2(a)(2), (3), 7, Aug. 23, 1974, 88 Stat. 742, 748; Pub. L. 94–273, §2(5), Apr. 21, 1976, 90 Stat. 375; Pub. L. 95–14, §§1–3, Mar. 24, 1977, 91 Stat. 25; Pub. L. 95–89, title I, §101(a)–(c), title II, §§201, 202, title III, §304, title IV, §401, Aug. 4, 1977, 91 Stat. 553, 557, 559; Pub. L. 95–315, §4, July 4, 1978, 92 Stat. 379; Pub. L. 95–507, title II, §206, Oct. 24, 1978, 92 Stat. 1766; Pub. L. 96–302, title I, §121, title IV, §401, July 2, 1980, 94 Stat. 842, 849; Pub. L. 96–481, title I, §103, Oct. 21, 1980, 94 Stat. 2321; Pub. L. 97–35, title XIX, §§1908, 1913(b), 1915, Aug. 13, 1981, 95 Stat. 778, 780; Pub. L. 98–270, title III, §306, Apr. 18, 1984, 98 Stat. 161; Pub. L. 98–352, §5, July 10, 1984, 98 Stat. 331; Pub. L. 98–362, §§3, 4, July 16, 1984, 98 Stat. 431, 433; Pub. L. 100–590, title I, §111(a), Nov. 3, 1988, 102 Stat. 2995; Pub. L. 100–656, title IV, §401(a), Nov. 15, 1988, 102 Stat. 3873; Pub. L. 101–37, §11(a), June 15, 1989, 103 Stat. 73; Pub. L. 101–515, title V, §1(a), Nov. 5, 1990, 104 Stat. 2140; Pub. L. 101–574, title II, §221(a), Nov. 15, 1990, 104 Stat. 2823; Pub. L. 102–140, title VI, §609(k), Oct. 28, 1991, 105 Stat. 831; Pub. L. 103–403, title VI, §§601, 611, 612, Oct. 22, 1994, 108 Stat. 4201, 4204; Pub. L. 104–208, div. D, title I, §102, Sept. 30, 1996, 110 Stat. 3009–725; Pub. L. 106–50, title II, §201(a), Aug. 17, 1999, 113 Stat. 235; Pub. L. 108–447, div. K, title I, §132(a), (c), Dec. 8, 2004, 118 Stat. 3452, 3453; Pub. L. 110–234, title XII, §12068(b)(1), May 22, 2008, 122 Stat. 1410; Pub. L. 110–246, §4(a), title XII, §12068(b)(1), June 18, 2008, 122 Stat. 1664, 2172; Pub. L. 111–240, title I, §§1202(b)(2), 1203(b), Sept. 27, 2010, 124 Stat. 2521.)

REFERENCES IN TEXT

The effective date of this paragraph, referred to in subsec. (c)(3), is July 1, 1966, pursuant to Pub. L. 89–409, §2.

The Small Business Investment Act of 1958, referred to in subsecs. (b)(3)(A) and (c)(1), (2), (5)(C), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, as amended. Titles III, IV, and V of the Act are classified generally to

subchapters III (§681 et seq.), IV (§692 et seq.), and V (§695 et seq.) of chapter 14B of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

Section 636(l) of this title, referred to in subsec. (c)(2)(B), was amended generally to read "[RESERVED]." by Pub. L. 104–208, div. D, title I, §107(d), Sept. 30, 1996, 110 Stat. 3009–732. Subsequently, Pub. L. 111–240, title I, §1131(a), Sept. 27, 2010, 124 Stat. 2512, struck out that subsec. (l) and added a new subsec. (l).

Section 662 of title 42, referred to in subsec. (f)(1), was repealed by Pub. L. 104–193, title III, §362(b)(1), Aug. 22, 1996, 110 Stat. 2246.

CODIFICATION

In subsec. (c)(4), (5)(A), "(sections 9103 and 9104 of title 31)" substituted for "(sections 102, 103, and 104 of the Government Corporation Control Act (31 U.S.C. 847–849))", and "chapter 31 of title 31" and "such chapter" substituted for "the Second Liberty Bond Act, as amended" and "such Act, as amended,", respectively, on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

PRIOR PROVISIONS

Prior similar provisions were contained in section 204 of act July 30, 1953, ch. 282, title II, 67 Stat. 233, as amended by acts Aug. 9, 1955, ch. 628, §3, 69 Stat. 547; Feb. 2, 1956, ch. 29, §1, 70 Stat. 10; July 31, 1956, ch. 804, title I, §§106(a), 107(b), 70 Stat. 737; Pub. L. 85–4, Feb. 11, 1957, 71 Stat. 4; Pub. L. 85–120, §1, Aug. 3, 1957, 71 Stat. 341, which was previously classified to this section. See Codification note set out under section 631 of this title.

AMENDMENTS

2010—Subsec. (b)(1). Pub. L. 111–240, §1203(b), substituted "Associate Administrators" for "five Associate Administrators" in fifth sentence and inserted at end "One such Associate Administrator shall be the Associate Administrator for International Trade, who shall be the head of the Office of International Trade established under section 649 of this title."

Subsec. (b)(3)(B)(x). Pub. L. 111–240, §1202(b)(2), substituted "district and region of the Administration" for "Administration district and region".

2008—Subsec. (c)(1), (2). Pub. L. 110–246, §12068(b)(1), in pars. (1) and (2) substituted "636(d)(2)" for "636(c)(2)" and in par. (2) struck out "636(e)," after "636(a),".

2004—Subsecs. (g), (h). Pub. L. 108–447, §132(a), (c), temporarily added subsecs. (g) and (h), which related to gifts and co-sponsorship of events, respectively. See Termination Date of 2004 Amendment note below.

1999—Subsec. (b)(1). Pub. L. 106–50 substituted "five Associate Administrators" for "four Associate Administrators" in fifth sentence and inserted after fifth sentence "One such Associate Administrator shall be the Associate Administrator for Veterans Business Development, who shall administer the Office of Veterans Business Development established under section 657b of this title."

1996—Subsec. (b)(3). Pub. L. 104–208 added par. (3).

1994—Subsec. (c)(5)(B)(ii). Pub. L. 103–403, §601, amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "The Administration shall pay into miscellaneous receipts of the Treasury, following the close of each fiscal year, interest on the average of loan disbursements outstanding throughout the year providing such disbursements are made from amounts appropriated for the disaster loan fund after October 1, 1980 or are made from repayments of principal of loans made from funds appropriated to the disaster loan fund, or from amounts appropriated to the business loan and investment fund on or after October 1, 1981 or are made from repayments of principal of loans made from funds appropriated to the business loan and investment fund and received on or after October 1, 1981. This interest shall be calculated solely on the amount of loan disbursements net of losses at the rate provided under paragraph (5)(A)."

Subsec. (e). Pub. L. 103–403, §611, added subsec. (e).

Subsec. (f). Pub. L. 103–403, §612, added subsec. (f).

1991—Subsec. (c)(1)(A), (2)(B). Pub. L. 102–140 inserted reference to section 636(m).

1990—Subsec. (b)(1). Pub. L. 101–515 and Pub. L. 101–574 amended par. (1) identically, substituting "The President also may appoint a Deputy Administrator, by and with the advice and consent of the Senate. The Administrator is authorized to appoint" for "The Administrator is authorized to appoint a Deputy Administrator and".

1989—Subsec. (b)(1). Pub. L. 101–37 made technical correction to directory language of Pub. L. 100–656, §401(a), see 1988 Amendment note below.

1988—Subsec. (b)(1). Pub. L. 100–656, §401(a), as amended by Pub. L. 101–37, inserted "who shall be an employee in the competitive service or in the Senior Executive Service and a career appointee" after "Capital Ownership Development".

Subsec. (c)(1)(B), (2)(B). Pub. L. 100–590, §111(a), substituted "III, IV" for "III".

1984—Subsec. (b)(3). Pub. L. 98–362, §§3, 7(b), added par. (3) and provided for future repeal of par. (3). See Effective and Termination Dates of 1984 Amendment note below.

Subsec. (b)(4). Pub. L. 98–362, §4, added par. (4).

Subsec. (c)(1)(A). Pub. L. 98–270 inserted reference to section 636(b)(4).

Subsec. (c)(1)(B), (2)(B). Pub. L. 98–352 inserted reference to section 634(g).

1981—Subsec. (c)(1)(A). Pub. L. 97–35, §1913(b), substituted "636(c)(2) of this title" for "636(b)(4), 636(b)(5), 636(b)(6), 636(b)(7), 636(b)(8), 636(c)(2), and 636(g) of this title".

Subsec. (c)(1)(B). Pub. L. 97–35, §1908, struck out reference to sections 636(e), 636(h), 636(i), and 636(l).

Subsec. (c)(5)(B)(ii). Pub. L. 97–35, §1915, substituted "for the disaster loan fund after October 1, 1980 or are made from repayments of principal of loans made from funds appropriated to the disaster loan fund, or from amounts appropriated to the business loan and investment fund on or after October 1, 1981 or are made from repayments of principal of loans made from funds appropriated to the business loan and investment fund and received on or after October 1, 1981" for "after October 1, 1980 or are made from repayments of principal of loans made from appropriated funds".

1980—Subsec. (b). Pub. L. 96–302, §401, designated existing provisions as par. (1) and added par. (2).

Subsec. (b)(1). Pub. L. 96–481, which provided for "striking all after the phrase 'Capital Ownership Development' through the period" and inserting new text in lieu thereof was executed by striking all after "Capital Ownership Development" through period at end of sentence and not at end of paragraph which resulted in substituting provisions that the Associate Administrator for Minority Small Business and Capital Ownership Development shall be responsible to the Administrator for the formulation and execution of the policies and programs under sections 636(j) and 637(a) of this title for provisions, that such Administrator shall be responsible for the formulation of policy relating to the Administration's programs which provide assistance to minority small business concerns and in the review of the Administration's execution of such programs in light of such policy.

Subsec. (c)(5). Pub. L. 96–302, §121, inserted provisions other than subpar. (B)(ii) and incorporated partly in subpar. (A) and in subpar. (B)(ii) prior par. (5) provisions requiring Administration payment of interest on outstanding cash disbursements at close of each fiscal year into the miscellaneous receipts of the Treasury from par. (1) funds at rates that consider current average yields on outstanding interest-bearing marketable Federal debt obligations of comparable maturities as calculated for the September preceding the fiscal year.

1978—Subsec. (b). Pub. L. 95–507 substituted "Associate Administrator for Minority Small Business and Capital Ownership Development" for "Associate Administrator for Minority Small Business".

Subsec. (c)(1)(B), (2)(B). Pub. L. 95–315 inserted reference to section 636(l).

1977—Subsec. (c)(1). Pub. L. 95–89, §§101(a), 304, 401(1), struck out end text from cls. (A) and (B) reading ", including administrative expenses in connection with such functions"; inserted in cl. (A) reference to section 634(e); and inserted in cl. (A) and struck out from cl. (B) reference to section 636(b)(3).

Subsec. (c)(2). Pub. L. 95–89, §§201, 304, 401(2), inserted in cl. (A) reference to section 636(g); inserted in cl. (A) reference to section 634(e); and inserted in cl. (A) and struck out from cl. (B) reference to section 636(b)(3).

Subsec. (c)(3). Pub. L. 95–89, §101(b), struck out last sentence authorization of appropriations of capital for the funds in amounts necessary to carry out the functions of the Administration to remain available until expended.

Subsec. (c)(4). Pub. L. 95–89, §§101(c), 202, repealed provisions of par. (4) which limited the total amount of loans, guarantees, and other obligations, to be outstanding at any one time: under sections 636(a), (b)(3), (e), (h), (i) and 637(a) of this title to $7,400,000,000; under title III of the Small Business Investment Act of 1958 to $887,500,000; under title V of the Small Business Investment Act of 1958 to $525,000,000; and under section 636(i) of this title to $525,000,000; redesignated par. (5) as (4) and substituted reference to submission of reports to the Senate Select Committee on Small Business and the Committee on Small Business of the House of Representatives for the prior reference the Committees on Banking and Currency of the Senate and House of Representatives; substituted reference to transmission of business-type budgets to the Committees on Appropriations, the Senate Select Committee on Small Business, and the Committee on Small Business of the House of Representatives for prior reference to such transmission to the Congress; and deleted the second sentence providing that if at the close of the preceding calendar quarter the aggregate amount outstanding or

committed by the Administration in carrying out its functions under the sections or titles referred to in former par. (4) exceeded 75 per centum of the total amount authorized to be outstanding under such sections or titles, the Administration's report shall include its recommendations for such additional authority as it deems appropriate.

Pub. L. 95–14 substituted "$7,400,000,000" for "$6,000,000,000", "$525,000,000" for "$450,000,000", and "$887,500,000" for "$725,000,000".

Subsec. (c)(5), (6). Pub. L. 95–89, §202, redesignated pars. (5) and (6) as (4) and (5), respectively.

1976—Subsec. (c)(6). Pub. L. 94–273 substituted "September" for "June".

1974—Subsec. (b). Pub. L. 93–386, §7, in fourth sentence increased from three to four the number of Associate Administrators authorized to be appointed and inserted fifth sentence authorizing one of the Associate Administrators at the time of appointment to be designated as Associate Administrator for Minority Small Business. As enacted section 7 of Pub. L. 93–386 amended the third sentence and inserted a fourth sentence to subsec. (b), however the amendment was executed to fourth sentence and the new sentence was inserted as a fifth sentence editorially since this would appear to be the probable intent of Congress.

Pub. L. 93–237, §8, inserted provisions that the Administrator shall not discriminate on the basis of sex or marital status against any person or small business concern applying for or receiving assistance from the Administration and that the Administration shall give special consideration to veterans of the Armed Forces of the United States and their survivors or dependents in carrying out the programs administered by the Administration.

Subsec. (c)(1). Pub. L. 93–386, §2(a)(2), inserted references to sections 636(b)(8) and 636(i) and struck out reference to title IV of the Economic Opportunity Act of 1964.

Pub. L. 93–237, §3(b), substituted "636(h)" for "636(g)" in cl. (B).

Subsec. (c)(2). Pub. L. 93–386, §2(a)(2), inserted references to sections 636(b)(8) and 636(i) of this title and struck out reference to title IV of the Economic Opportunity Act of 1964.

Pub. L. 93–237, §3(b), substituted "636(h)" for "636(g)" in cl. (B).

Subsec. (c)(4). Pub. L. 93–386, §2(a)(3), in cl. (A) substituted "636(i), and 637(a) of this title, shall not exceed $6,000,000,000" for "and 637(a) of this title, and title IV of the Economic Opportunity Act of 1964, shall not exceed $4,875,000,000", in cl. (B) substituted "$725,000,000" for "$556,250,000", and in cl. (D) substituted "section 636(i) of this title, shall not exceed $450,000,000" for "title IV of the Economic Opportunity Act of 1964 shall not exceed $381,250,000".

Pub. L. 93–237, §§1, 3(b), substituted "$4,875,000,000" for "$4,300,000,000" and "636(h)" for "636(g)" in cl. (A), "$556,250,000" for "$500,000,000" in cl. (B), "$525,000,000" for "$500,000,000" in cl. (C) and "$381,250,000" for "$350,000,000" in cl. (D).

1972—Subsec. (c)(1). Pub. L. 92–595 inserted reference to section 636(g).

Pub. L. 92–500 made disaster loan fund available for financing functions performed under section 636(g) of this title.

Pub. L. 92–385, §2(b)(1), inserted reference to section 636(b)(7).

Subsec. (c)(2). Pub. L. 92–595 inserted reference to section 636(g).

Pub. L. 92–385, §2(b)(2), inserted reference to sections 636(b)(5), 636(b)(6), 636(b)(7).

Subsec. (c)(4). Pub. L. 92–595 inserted reference to section 636(g).

Pub. L. 92–320 substituted "$4,300,000,000", "$500,000,000", and "$350,000,000" for "$3,100,000,000", "$450,000,000" and "$300,000,000", respectively.

1971—Subsec. (c)(4)(A). Pub. L. 92–16 substituted "$3,100,000,000" for "$2,200,000,000".

1970—Subsec. (c)(1). Pub. L. 91–597 made disaster loan fund available for financing requirements imposed by section 636(b)(5) of this title relating to additions and alterations pursuant to the Egg Products Inspection Act, etc. See, also, 1969 Amendment note hereunder.

Pub. L. 91–596 made disaster loan fund available for financing functions under section 636(b)(6) of this title.

Subsec. (c)(4). Pub. L. 91–558 substituted "$2,200,000,000" for "$1,900,000,000" in cl. (A), "$500,000,000" for "$300,000,000" in cl. (C), and "$300,000,000" for "$200,000,000" in cl. (D).

1969—Subsec. (c)(1). Pub. L. 91–173 made disaster loan fund available for financing functions under section 636(b)(5) of this title, relating to loans to coal mine operators.

1968—Subsec. (a). Pub. L. 90–448 inserted "the Trust Territory of the Pacific Islands,".

1967—Subsec. (c)(4). Pub. L. 90–104, §102(1)–(4), substituted $1,900,000,000 for $1,400,000,000 in cl. (A), $450,000,000 for $400,000,000 in cl. (B), $300,000,000 for $200,000,000 in cl. (C), and $200,000,000 for $100,000,000 in cl. (D).

1966—Subsec. (b). Pub. L. 89–779 substituted "a Deputy Administrator and three Associate Administrators (including the Associate Administrator specified in section 671 of this title)" for "three Deputy

Administrators" as the officers to be appointed by the Administrator to assist in the execution of the functions vested in the Administration, and inserted provision that the Deputy Administrator shall be acting Administrator of the Administration during the absence or disability of the Administrator or in the event of a vacancy in the office of the Administrator.

Subsec. (c). Pub. L. 89–409, §1, increased by $125 million the appropriation authorization for the single SBA fund from $1,841 million to $1,966 million and the authorization for outstanding loans and commitments for regular business loans, disaster loans, and prime contract authority from $1,375 million to $1,500 million.

Pub. L. 89–409, §2, provided for a disaster loan fund and business loan and investment fund in place of one prior SBA fund, incorporated existing provisions in par. (2), provided for allocation of unexpended balances of appropriations for prior single fund and for an appropriation authorization in par. (3), removed disaster loans from any limitation, provided limitations in par. (4) of $1,400 million for regular business loans, displaced business disaster loans, trade adjustment loans, prime contract authority, and loans under title IV of the Economic Opportunity Act of 1964, $400 million for small business investment companies, $200 million for loans to State and local development companies, $100 million for loans under title IV of the Economic Opportunity Act of 1964, incorporated existing reporting provisions in par. (4), including additional requirement of inclusion of recommendations whenever 75 percent of any ceiling in outstanding obligations is exceeded, required establishment of business-type loans, and incorporated existing provisions in par. (6).

1965—Subsec. (c). Pub. L. 89–334 substituted "$1,841,000,000" for "$1,721,000,000".

Pub. L. 89–117 substituted "$1,721,000,000" for "$1,716,000,000" and inserted proviso that the limitation imposed by fifth sentence concerning the maximum aggregate permitted to be outstanding from the fund for functions under the Small Business Investment Act of 1958 be inapplicable to functions under title IV thereof.

Pub. L. 89–78 increased from $341,000,000 to $461,000,000 the limit on the aggregate permissible amount outstanding from the fund at any time for the exercise of the functions of the Administration under the Small Business Investment Act of 1958.

Pub. L. 89–59 inserted references to section 636(c)(2) in first sentence and in fourth sentence, where first appearing and in cl. (2) thereof, and increased the authorized appropriations to the revolving fund from $1,666,000,000 to $1,716,000,000 and the aggregate amount outstanding at any one time for regular business loans, disaster loans, and prime contract authority from $1,325,000,000 to $1,375,000,000.

1962—Subsec. (c). Pub. L. 87–550 increased the authorized appropriations to the revolving fund from $1,200,000,000 to $1,666,000,000, and the aggregate amount outstanding for purposes of sections 636(a), 636(b), and 637(a) of this title from $875,000,000 to $1,325,000,000, and for functions under the Small Business Investment Act of 1958 from $325,000,000 to $341,000,000 directed that appropriations to the revolving fund shall remain available until expended, required all repayments of loans and debentures, payments of interest, and other receipts arising out of transactions financed from the fund to be paid into the fund, and a report to Congressional committees whenever the aggregate amount outstanding for the purposes of sections 636(a) and 637(a) of this title exceeds $1,222,000,000, or for the purpose of section 636(b) of this title exceeds $103,000,000, changed the method of computing interest paid into miscellaneous receipts by substituting provisions requiring payment, following the close of each fiscal year, of interest on the outstanding cash disbursements from the fund, at rates determined by the Secretary of the Treasury, taking into consideration the current average yields on outstanding interest-bearing marketable public debt obligations of the United States of comparable maturities as calculated for the month of June preceding such fiscal year, for provisions which required payment of interest, at the close of each fiscal year, on the net amount of cash disbursements from advances at a rate determined by the Secretary of the Treasury, taking into consideration the current average rate on outstanding interest-bearing marketable public debt obligations of the United States of comparable maturities, and eliminated provisions which authorized advances from the revolving fund when requested by the Administration.

1961—Subsec. (c). Pub. L. 87–341, among other changes, substituted "$1,200,000,000" for "$1,125,000,000" wherever appearing, and "$325,000,000" for "$250,000,000".

Pub. L. 87–305 substituted "$1,125,000,000" for "$1,020,000,000" wherever appearing, and "$725,000,000" for "$595,000,000".

Pub. L. 87–198 substituted "$1,020,000,000" for "$1,000,000,000" wherever appearing, and "$595,000,000" for "$575,000,000".

Pub. L. 87–70 substituted "$1,000,000,000" for "$975,000,000" wherever appearing, and "$150,000,000" for "$125,000,000".

1959—Subsec. (c). Pub. L. 86–367 substituted "$975,000,000" for "$900,000,000" wherever appearing, and "$575,000,000" for "$500,000,000".

1958—Subsec. (c). Pub. L. 85–699 substituted "$900,000,000" for "$650,000,000" wherever appearing, and inserted provisions authorizing the revolving fund to be used in the exercise of the functions of the

Administration under the Small Business Investment Act of 1958, and providing that not more than an aggregate of $250,000,000 shall be outstanding at any one time for the exercise of the functions under the Small Business Investment Act of 1958.

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001. Previously, Select Committee on Small Business of Senate became Committee on Small Business of Senate. See Senate Resolution No. 101, Ninety-Seventh Congress, Mar. 25, 1981.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

TERMINATION DATE OF 2004 AMENDMENT

Pub. L. 108–447, div. K, title I, §132(c), Dec. 8, 2004, 118 Stat. 3453, provided that: "The amendments made by this section [amending this section and section 637 of this title] are repealed on October 1, 2006."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–208, div. D, §3, Sept. 30, 1996, 110 Stat. 3009–725, provided that: "Except as otherwise expressly provided, this Act [probably should be "division", see Short Title of 1996 Amendment note set out under section 631 of this title] and the amendments made by this Act shall take effect on October 1, 1996."

EFFECTIVE DATE OF 1990 AMENDMENTS

Pub. L. 101–574, title II, §221(b), Nov. 15, 1990, 104 Stat. 2823, provided that: "The amendments made by subsection (a) [amending this section] shall apply to any vacancy in the position of Deputy Administrator of the Small Business Administration after the date of the enactment of this Act [Nov. 15, 1990]."

Pub. L. 101–515, §1(b), Nov. 5, 1990, 104 Stat. 2140, provided that: "The provisions of subsection (a) of this section [amending this section] shall apply to any vacancy in the position of Deputy Administrator of the Small Business Administration after the effective date of this Act [Nov. 5, 1990]."

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–37 applicable as if included in Pub. L. 100–656, see section 32 of Pub. L. 101–37, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–656 effective Aug. 15, 1989, see section 803(b)(1)(C) of Pub. L. 100–656, as amended, set out as a note under section 631 of this title.

EFFECTIVE AND TERMINATION DATES OF 1984 AMENDMENTS

Pub. L. 98–362, §7, July 16, 1984, 98 Stat. 434, as amended by Pub. L. 100–590, title I, §131(a), Nov. 3, 1988, 102 Stat. 3004; Pub. L. 101–515, title V, §11, Nov. 5, 1990, 104 Stat. 2145; Pub. L. 101–574, title II, §212, Nov. 15, 1990, 104 Stat. 2821; Pub. L. 102–140, title VI, §609(g), Oct. 28, 1991, 105 Stat. 826; Pub. L. 102–366, title II, §225, Sept. 4, 1992, 106 Stat. 1001; Pub. L. 103–403, title IV, §401(b), Oct. 22, 1994, 108 Stat. 4190, provided that:

"(a) This Act [amending this section and sections 632 and 637 of this title and enacting provisions set out as notes under this section and sections 631 and 637 of this title] shall take effect on October 1, 1984.

"(b) The amendments made to section 4(b)(3) of the Small Business Act [15 U.S.C. 633(b)(3)] by section 3 of this Act are repealed on October 1, 1988. The amendments made to section 8(b)(1)(A) of the Small Business Act [15 U.S.C. 637(b)(1)(A)] by section 5(a)(2) of this Act are repealed on October 1, 1994. Nothing in this section shall preclude the Administrator from continuing such committee under the authority of section 8(b)(3) of the Small Business Act and the Federal Advisory Committee Act [5 U.S.C. App.]."

[Section 401(b) of Pub. L. 103–403, which directed that section 7(b) of Pub. L. 98–362, set out above, be amended in the second sentence by striking out "and the amendments made to section 8(b)(1)(A) of the Small Business Act by section 5(a)(2) of this Act are" and inserting "is", could not be executed, because the language sought to be struck out begins with "The amendments" and not "and the amendments", and because the amendment would result in an incomplete sentence.]

Amendment by Pub. L. 98–270 effective Oct. 1, 1983, see section 313 of Pub. L. 98–270, set out as an Effective Date of 1984 Amendments note under section 632 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by sections 1908 and 1913(b) of Pub. L. 97–35 effective Oct. 1, 1981, and amendment by section 1915 of Pub. L. 97–35 effective Aug. 13, 1981, but not to affect any financing made, obligated, or committed under this chapter or chapter 14B of this title prior to Aug. 13, 1981, see section 1918 of Pub. L. 97–35, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–302 effective Oct. 1, 1980, see section 507 of Pub. L. 96–302, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95–89, title I, §106, Aug. 4, 1977, 91 Stat. 557, provided that: "This title [amending this section, sections 636, 694, 694–2, and 694c of this title, and provisions set out as a note under section 631 of this title] shall become effective on October 1, 1977."

EFFECTIVE DATE OF 1970 AMENDMENTS

For effective date of amendment by Pub. L. 91–597, see section 29 of Pub. L. 91–597, set out as a note under section 1031 of Title 21, Food and Drugs.

Amendment by Pub. L. 91–596 effective 120 days after Dec. 29, 1970, see section 34 of Pub. L. 91–596, set out as a note under section 651 of Title 29, Labor.

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–409, §2, May 2, 1966, 80 Stat. 132, provided that the amendment made by that section is effective July 1, 1966.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

TRANSFER OF FUNCTIONS

Functions, powers, and duties of Office of Audits and Investigations in Small Business Administration transferred to Office of Inspector General in Small Business Administration, as established by Pub. L. 95–452, §2, Oct. 12, 1978, 92 Stat. 1101, set out in the Appendix to Title 5, Government Organization and Employees. See section 9(a)(1)(T) of Pub. L. 95–452 set out in the Appendix to Title 5.

Loan Policy Board, provided for in subsec. (d) of this section, abolished and functions, including functions of chairman and other officers, transferred to Administrator of Small Business Administration by sections 11(b) and 13(a) of Reorg. Plan No. 4 of 1965, eff. July 27, 1965, 30 F.R. 9353, 79 Stat. 1321, set out in the Appendix to Title 5.

ADMINISTRATOR'S ORDER

Pub. L. 106–50, title VII, §701, Aug. 17, 1999, 113 Stat. 249, provided that: "The Administrator of the Small Business Administration shall strengthen and reissue the Administrator's order regarding the third sentence of section 4(b)(1) of the Small Business Act (15 U.S.C. 633(b)(1)), relating to nondiscrimination and special considerations for veterans, and take all necessary steps to ensure that its provisions are fully and vigorously implemented."

COMPLETION OF PLANNING FOR LOAN MONITORING SYSTEM

Pub. L. 105–135, title II, §233, Dec. 2, 1997, 111 Stat. 2607, provided that:

"(a) IN GENERAL.—The Administrator shall perform and complete the planning needed to serve as the basis for funding the development and implementation of the computerized loan monitoring system, including—

"(1) fully defining the system requirement using on-line, automated capabilities to the extent feasible;

"(2) identifying all data inputs and outputs necessary for timely report generation;

"(3) benchmark loan monitoring business processes and systems against comparable industry processes and, if appropriate, simplify or redefine work processes based on these benchmarks;

"(4) determine data quality standards and control systems for ensuring information accuracy;

"(5) identify an acquisition strategy and work increments to completion;

"(6) analyze the benefits and costs of alternatives and use to demonstrate the advantage of the final project;

"(7) ensure that the proposed information system is consistent with the agency's information architecture; and

"(8) estimate the cost to system completion, identifying the essential cost element.

"(b) REPORT.—

"(1) IN GENERAL.—On the date that is 6 months after the date of enactment of this Act [Dec. 2, 1997], the Administrator shall submit a report on the progress of the Administrator in carrying out subsection (a) to—

"(A) the Committees; and

"(B) the Comptroller General of the United States.

"(2) EVALUATION.—Not later than 28 days after receipt of the report under paragraph (1)(B), the Comptroller General of the United States shall—

"(A) prepare a written evaluation of the report for compliance with subsection (a); and

"(B) submit the evaluation to the Committees.

"(3) LIMITATION.—None of the funds provided for the purchase of the loan monitoring system may be obligated or expended until 45 days after the date on which the Committees and the Comptroller General of the United States receive the report under paragraph (1)."

ASSOCIATE ADMINISTRATOR FOR MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT

Pub. L. 100–656, title IV, §401(b), Nov. 15, 1988, 102 Stat. 3873, as amended by Pub. L. 101–37, §11(b), June 15, 1989, 103 Stat. 73, provided that: "The position of Associate Administrator for Minority Small Business and Capital Ownership Development referred to in paragraph (1) of section 4(b) of the Small Business Act [15 U.S.C. 633(b)(1)] shall be a career reserved position."

AVAILABILITY OF FUNDS

Pub. L. 100–71, title I, July 11, 1987, 101 Stat. 396, provided in part that: "hereafter, notwithstanding any law, rule or regulation, moneys in any fund established by the Small Business Act [15 U.S.C. 631 et seq.] which are not needed for current operations shall remain in such funds and shall be available solely to carry out the provisions and purposes of programs operated from such funds pursuant to law as provided in appropriations Acts."

FINDING AND PURPOSE OF 1984 AMENDMENT

Pub. L. 98–362, §2, July 16, 1984, 98 Stat. 431, provided that:

"(a) The Congress hereby finds that—

"(1) there is increased dependency on, and proliferation of, information technology (including computers, data networks, and other communication devices) in the small business community;

"(2) such technology has permitted an increase in criminal activity against small business;

"(3) small businesses in particular frequently lack the education and awareness of computer security techniques and technologies which would enable them to protect their computer systems from unauthorized access and the manipulation or destruction of their computer hardware, software, and stored data;

"(4) profitmaking organizations have substantial expertise in computer technology, communications, and management assistance that is not otherwise available; and

"(5) the use of this expertise in the Small Business Administration's training delivery system would improve substantially the quantity and quality of the agency's management assistance programs.

"(b) The purposes of this Act [amending this section and sections 632 and 637 of this title and enacting provisions set out as notes under this section and sections 631 and 637 of this title] are—

"(1) to improve the management by small businesses of their information technology,

"(2) to educate and encourage small businesses to protect such technology from intentional or unintentional manipulation or destruction; and

"(3) to permit cooperation with profitmaking organizations in providing management assistance to small business."

AUDIT BY GENERAL ACCOUNTING OFFICE OF SMALL BUSINESS ADMINISTRATION; REPORT TO CONGRESS

Pub. L. 93–386, §13, Aug. 23, 1974, 88 Stat. 750, directed General Accounting Office to conduct a full-scale audit of Small Business Administration, including all field offices and to submit audit to House and Senate not later than six months from Aug. 23, 1974.

NONAVAILABILITY OF UNOBLIGATED FUNDS AFTER JUNE 30, 1974

Pub. L. 93–237, §1, Jan. 2, 1974, 87 Stat. 1023, provided in part that any additional amounts authorized by Pub. L. 93–237 [amending this section, sections 636 and 639 of this title, section 1961 of Title 7, Agriculture, and section 3142–1 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under this section, section 636 of this title, and sections 1961 and 1969 of Title 7] which were not obligated by June 30, 1974, were no longer to be available after that date.

ADDITIONAL CAPITAL FOR REVOLVING FUND

The following acts appropriated additional capital:

1965—$76,000,000—Pub. L. 89–309, ch. IX, Oct. 31, 1965, 79 Stat. 1151.

$84,000,000—Pub. L. 89–309, ch. IX, Oct. 31, 1965, 79 Stat. 1151 [effective only upon enactment into law of authorizing legislation].

$150,000,000—Pub. L. 89–164, title V, Sept. 2, 1965, 79 Stat. 641.

$100,000,000—Pub. L. 89–16, title I, ch. IX, Apr. 30, 1965, 79 Stat. 92.

1964—$45,000,000—Pub. L. 88–635, ch. IX, Oct. 7, 1964, 78 Stat. 1032.

1963—$90,000,000—Pub. L. 88–245, title V, Dec. 30, 1963, 77 Stat. 798.

1962—$300,000,000—Pub. L. 87–843, title V, Oct. 18, 1962, 76 Stat. 1102.

$40,000,000—Pub. L. 87–545, title I, July 25, 1962, 76 Stat. 213.

1961—$160,000,000—Pub. L. 87–332, Sept. 30, 1961, 75 Stat. 742.

$20,000,000—Pub. L. 87–125, title IV, Aug. 3, 1961, 75 Stat. 281.

1960—$50,000,000—Pub. L. 86–451, title III, May 13, 1960, 74 Stat. 102.

1959—$150,000,000—Pub. L. 86–88, title III, July 13, 1959, 73 Stat. 209.

1958—$200,000,000—Pub. L. 85–766, ch. II, Aug. 27, 1958, 72 Stat. 867.

$20,000,000—Pub. L. 85–457, June 13, 1958, 72 Stat. 186.

1957—$100,000,000—Pub. L. 85–170, ch. II, Aug. 28, 1957, 71 Stat. 428.

$45,000,000—Pub. L. 85–19, ch. I, Apr. 20, 1957, 71 Stat. 16.

1956—$50,000,000—Act June 20, 1956, ch. 415, title III, 70 Stat. 325.

BUSINESS LOAN AND INVESTMENT FUND; INCREASE IN FINANCING FUNCTIONS; MONTHLY REPORTS TO CONGRESS

Pub. L. 91–151, title III, Dec. 23, 1969, 83 Stat. 378, provided that: "The Small Business Administration shall promptly increase the level of its financing functions utilizing the business loan and investment fund established under section 4(c)(1)(B) of the Small Business Act (15 U.S.C. 633(c)(1)(B)) [subsec. (c)(1)(B) of this section] by $70,000,000 above the level prevailing at the time of enactment of this Act [Dec. 23, 1969]. The Small Business Administration shall submit to Congress a monthly report of its implementation of this section."

TRANSFER OF FUNDS FOR TRADE ADJUSTMENT LOANS

Pub. L. 89–409, §3(b), May 2, 1966, 80 Stat. 133, provided in part that any unexpended balances of appropriations heretofore appropriated for the purposes of such section [former section 637a of this title] were transferred to the business loan and investment fund established by section 4(c)(1) of the Small Business Act [subsec. (c)(1) of this section].

Such transfer of funds as effective July 1, 1966, see section 3(c) of Pub. L. 89–409, set out as Effective Date of 1966 Amendment note under section 636 of this title.

[1] *See References in Text note below.*

§633a. Detailed justification for proposed changes in budget requests

Beginning in fiscal year 2013 and each fiscal year thereafter, the budget request for the Small Business Administration shall provide a detailed justification of any proposed changes from the enacted level by individual appropriation. The detailed justification shall include at a minimum a description of each credit and non-credit program including amount of funding and costs by appropriation account and fiscal year. For activities funded in multiple appropriations, the budget justification shall specify the amount included in each enacted appropriation, the amount proposed in the budget year and a justification for any proposed changes.

(Pub. L. 112–74, div. C, title V, §532, Dec. 23, 2011, 125 Stat. 923.)

CODIFICATION

Section was enacted as part of the Financial Services and General Government Appropriations Act, 2012, and also as part of the Consolidated Appropriations Act, 2012, and not as part of the Small Business Act which comprises this chapter.

§634. General powers

(a) Seal; appointment and compensation of personnel; use of other services and facilities

The Administration shall have power to adopt, alter, and use a seal, which shall be judicially noticed. The Administrator is authorized, subject to the civil service and classification laws, to select, employ, appoint, and fix the compensation of such officers, employees, attorneys, and agents as shall be necessary to carry out the provisions of this chapter; to define their authority and duties; and to pay the costs of qualification of certain of them as notaries public. The Administration, with the consent of any board, commission, independent establishment, or executive department of the Government, may avail itself on a reimbursable or nonreimbursable basis of the use of information, services, facilities (including any field service thereof), officers, and employees thereof, in carrying out the provisions of this chapter.

(b) Powers of Administrator

In the performance of, and with respect to, the functions, powers, and duties vested in him by this chapter the Administrator may—

(1) sue and be sued in any court of record of a State having general jurisdiction, or in any United States district court, and jurisdiction is conferred upon such district court to determine such controversies without regard to the amount in controversy; but no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the Administrator or his property;

(2) under regulations prescribed by him, assign or sell at public or private sale, or otherwise dispose of for cash or credit, in his discretion and upon such terms and conditions and for such consideration as the Administrator shall determine to be reasonable, any evidence of debt, contract, claim, personal property, or security assigned to or held by him in connection with the payment of loans granted under this chapter, and to collect or compromise all obligations assigned to or held by him and all legal or equitable rights accruing to him in connection with the payment of such loans until such time as such obligations may be referred to the Attorney General for suit or collection;

(3) deal with, complete, renovate, improve, modernize, insure, or rent, or sell for cash or credit upon such terms and conditions and for such consideration as the Administrator shall determine to be reasonable, any real property conveyed to or otherwise acquired by him in connection with the payment of loans granted under this chapter;

(4) pursue to final collection, by way of compromise or otherwise, all claims against third parties assigned to the Administrator in connection with loans made by him. This shall include authority to obtain deficiency judgments or otherwise in the case of mortgages assigned to the Administrator. Section 6101 of title 41 shall not be construed to apply to any contract of hazard insurance or to any purchase or contract for services or supplies on account of property obtained by the Administrator as a result of loans made under this chapter if the premium therefor or the amount thereof does not exceed $1,000. The power to convey and to execute in the name of the Administrator deeds of conveyance, deeds of release, assignments and satisfactions of mortgages, and any other written instrument relating to real property or any interest therein acquired by the Administrator pursuant to the provisions of this chapter may be exercised by the Administrator or by any officer or agent appointed by him without the execution of any express delegation of power or power of attorney. Nothing in this section shall be construed to prevent the Administrator from delegating such power by order or by power of attorney, in his discretion, to any officer or agent he may appoint;

(5) acquire, in any lawful manner, any property (real, personal, or mixed, tangible or

intangible), whenever deemed necessary or appropriate to the conduct of the activities authorized in sections 636(a) and 636(b) of this title;

(6) make such rules and regulations as he deems necessary to carry out the authority vested in him by or pursuant to this chapter;

(7) in addition to any powers, functions, privileges and immunities otherwise vested in him, take any and all actions (including the procurement of the services of attorneys by contract in any office where an attorney or attorneys are not or cannot be economically employed full time to render such services) when he determines such actions are necessary or desirable in making, servicing, compromising, modifying, liquidating, or otherwise dealing with or realizing on loans made under the provisions of this chapter: *Provided*, That with respect to deferred participation loans, the Administrator may, in the discretion of and pursuant to regulations promulgated by the Administrator, authorize participating lending institutions to take actions relating to loan servicing on behalf of the Administrator, including determining eligibility and creditworthiness and loan monitoring, collection, and liquidation;

(8) pay the transportation expenses and per diem in lieu of subsistence expenses, in accordance with subchapter I of chapter 57 of title 5, for travel of any person employed by the Administration to render temporary services not in excess of six months in connection with any disaster referred to in section 636(b) of this title from place of appointment to, and while at, the disaster area and any other temporary posts of duty and return upon completion of the assignment: *Provided*, That the Administrator may extend the six-month limitation for an additional six months if the Administrator determines the extension is necessary to continue efficient disaster loan making activities;

(9) accept the services and facilities of Federal, State, and local agencies and groups, both public and private, and utilize such gratuitous services and facilities as may, from time to time, be necessary, to further the objectives of section 636(b) of this title;

(10) upon purchase by the Administration of any deferred participation entered into under section 636 of this title, continue to charge a rate of interest not to exceed that initially charged by the participating institution on the amount so purchased for the remaining term of the indebtedness;

(11) make such investigations as he deems necessary to determine whether a recipient of or participant in any assistance under this chapter or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter, or of any rule or regulation under this chapter, or of any order issued under this chapter. The Administration shall permit any person to file with it a statement in writing, under oath or otherwise as the Administration shall determine, as to all the facts and circumstances concerning the matter to be investigated. For the purpose of any investigation, the Administration is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, and documents which are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States. In case of contumacy by, or refusal to obey a subpena issued to, any person, including a recipient or participant, the Administration may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, and documents; and such court may issue an order requiring such person to appear before the Administration, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found;

(12) impose, retain, and use only those fees which are specifically authorized by law or which are in effect on September 30, 1994, and in the amounts and at the rates in effect on such date, except that the Administrator may, subject to approval in appropriations Acts, impose, retain, and utilize, additional fees—

(A) not to exceed $100 for each loan servicing action (other than a loan assumption) requested after disbursement of the loan, including any substitution of collateral, release or substitution of a guarantor, reamortization, or similar action;

(B) not to exceed $300 for loan assumptions;

(C) not to exceed 1 percent of the amount of requested financings under title III of the Small Business Investment Act of 1958 [15 U.S.C. 681 et seq.] for which the applicant requests a commitment from the Administration for funding during the following year; and

(D) to recover the direct, incremental cost involved in the production and dissemination of compilations of information produced by the Administration under the authority of this chapter and the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.];

(13) collect, retain and utilize, subject to approval in appropriations Acts, any amounts collected by fiscal transfer agents and not used by such agent as payment of the cost of loan pooling or debenture servicing operations, except that amounts collected under this paragraph and paragraph (12) shall be utilized solely to facilitate the administration of the program that generated the excess amounts; and

(14) require any lender authorized to make loans under section 636 of this title to pay examination and review fees, which shall be deposited in the account for salaries and expenses of the Administration, and shall be available for the costs of examinations, reviews, and other lender oversight activities.

(c) Procurement of experts and consultants; compensation and expenses

To such extent as he finds necessary to carry out the provisions of this chapter, the Administrator is authorized to procure the temporary (not in excess of one year) or intermittent services of experts or consultants or organizations thereof, including stenographic reporting services, by contract or appointment, and in such cases such services shall be without regard to the civil-service and classification laws and, except in the case of stenographic reporting services by organizations, without regard to section 6101 of title 41. Any individual so employed may be compensated at a rate not in excess of the daily equivalent of the highest rate payable under section 5332 of title 5, including travel time, and, while such individual is away from his or her home or regular place of business, he or she may be allowed travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5.

(d) Safety deposit box rentals

Section 3324(a) and (b) of title 31 shall not apply to prepayments of rentals made by the Administration on safety deposit boxes used by the Administration for the safeguarding of instruments held as security for loans or for the safeguarding of other documents.

(e) Undertaking or suspension of payment obligation; period; extension of maturity; repayment agreement; "required payments" defined

(1) Subject to the requirements and conditions contained in this subsection, upon application by a small business concern which is the recipient of a loan made under this chapter, the Administration may undertake the small business concern's obligation to make the required payments under such loan or may suspend such obligation if the loan was a direct loan made by the Administration. While such payments are being made by the Administration pursuant to the undertaking of such obligation or while such obligation is suspended, no such payment with respect to the loan may be required from the small business concern.

(2) The Administration may undertake or suspend for a period of not to exceed 5 years any small business concern's obligation under this subsection only if—

(A) without such undertaking or suspension of the obligation, the small business concern would, in the sole discretion of the Administration, become insolvent or remain insolvent;

(B) with the undertaking or suspension of the obligation, the small business concern would, in the sole discretion of the Administration, become or remain a viable small business entity; and

(C) the small business concern executes an agreement in writing satisfactory to the

Administration as provided by paragraph (4).

(3) Notwithstanding the provisions of sections 636(a)(4)(C) and 636(i)(1) of this title, the Administration may extend the maturity of any loan on which the Administration undertakes or suspends the obligation pursuant to this subsection for a corresponding period of time.

(4)(A) Prior to the undertaking or suspension by the Administration of any small business concern's obligation under this subsection, the Administration, consistent with the purposes sought to be achieved herein, shall require the small business concern to agree in writing to repay to it the aggregate amount of the payments which were required under the loan during the period for which such obligation was undertaken or suspended, either—

(i) by periodic payments not less in amount or less frequently falling due than those which were due under the loan during such period, or

(ii) pursuant to a repayment schedule agreed upon by the Administration and the small business concern, or

(iii) by a combination of the payments described in clause (i) and clause (ii).

(B) In addition to requiring the small business concern to execute the agreement described in subparagraph (A), the Administration shall, prior to the undertaking or suspension of the obligation, take such action, and require the small business concern to take such action as the Administration deems appropriate in the circumstances, including the provision of such security as the Administration deems necessary or appropriate to insure that the rights and interests of the lender (Small Business Administration or participant) will be safeguarded adequately during and after the period in which such obligation is so undertaken or suspended.

(5) The term "required payments" with respect to any loan means payments of principal and interest under the loan.

(f) Sale of guaranteed portion of loans by lender or subsequent holder; limitations; secondary market

(1) The guaranteed portion of any loan made pursuant to this chapter may be sold by the lender, and by any subsequent holder, consistent with regulations on such sales as the Administration shall establish, subject to the following limitations:

(A) prior to the Administration's approval of the sale, or upon any subsequent resale, of any loan guaranteed by the Administration, if the lender certifies that such loan has been properly closed and that the lender has substantially complied with the provisions of the guarantee agreement and the regulations of the Administration, the Administration shall review and approve only materials not previously approved;

(B) all fees due the Administration on a guaranteed loan shall have been paid in full prior to any sale; and

(C) each loan, except each loan made under section 636(a)(14) of this title, shall have been fully disbursed to the borrower prior to any sale.

(2) After a loan is sold in the secondary market, the lender shall remain obligated under its guarantee agreement with the Administration, and shall continue to service the loan in a manner consistent with the terms and conditions of such agreement.

(3) The Administration shall develop such procedures as are necessary for the facilitation, administration, and promotion of secondary market operations, and for assessing the increase of small business access to capital at reasonable rates and terms as a result of secondary market operations. Beginning on March 31, 1997, the sale of the unguaranteed portion of any loan made under section 636(a) of this title shall not be permitted until a final regulation that applies uniformly to both depository institutions and other lenders is promulgated by the Administration setting forth the terms and conditions under which such sales can be permitted, including maintenance of appropriate reserve requirements and other safeguards to protect the safety and soundness of the program.

(4) Nothing in this subsection or subsection (g) of this section shall be interpreted to impede or

extinguish the right of the borrower or the successor in interest to such borrower to prepay (in whole or in part) any loan made pursuant to section 636(a) of this title, the guaranteed portion of which may be included in such trust or pool, or to impede or extinguish the rights of any party pursuant to section 636(a)(6)(C) of this title or subsection (e) of this section.

(g) Trust certificates; guarantee of timely payments of principal and interest; full faith and credit of United States; collection of fees; subrogation; division of loan guarantees

(1) The Administration is authorized to issue trust certificates representing ownership of all or a fractional part of the guaranteed portion of one or more loans which have been guaranteed by the Administration under this chapter, or under section 696 of this title: *Provided*, That such trust certificates shall be based on and backed by a trust or pool approved by the Administration and composed solely of the entire guaranteed portion of such loans.

(2) The Administration is authorized, upon such terms and conditions as are deemed appropriate, to guarantee the timely payment of the principal of and interest on trust certificates issued by the Administration or its agent for purposes of this subsection. Such guarantee shall be limited to the extent of principal and interest on the guaranteed portions of loans which compose the trust or pool. In the event that a loan in such trust or pool is prepaid, either voluntarily or in the event of default, the guarantee of timely payment of principal and interest on the trust certificates shall be reduced in proportion to the amount of principal and interest such prepaid loan represents in the trust or pool. Interest on prepaid or defaulted loans shall accrue and be guaranteed by the Administration only through the date of payment on the guarantee. During the term of the trust certificate, it may be called for redemption due to prepayment or default of all loans constituting the pool.

(3) The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee of such trust certificates issued by the Administration or its agent pursuant to this subsection.

(4)(A) The Administration may collect a fee for any loan guarantee sold into the secondary market under subsection (f) of this section in an amount equal to not more than 50 percent of the portion of the sale price that exceeds 110 percent of the outstanding principal amount of the portion of the loan guaranteed by the Administration. Any such fee imposed by the Administration shall be collected by the Administration or by the agent which carries out on behalf of the Administration the central registration functions required by subsection (h) of this section and shall be paid to the Administration and used solely to reduce the subsidy on loans guaranteed under section 636(a) of this title: *Provided*, That such fee shall not be charged to the borrower whose loan is guaranteed: and, *Provided further*, That nothing herein shall preclude any agent of the Administration from collecting a fee approved by the Administration for the functions described in subsection (h)(2) [1] of this section.

(B) The Administration is authorized to impose and collect, either directly or through a fiscal and transfer agent, a reasonable penalty on late payments of the fee authorized under subparagraph (A) in an amount not to exceed 5 percent of such fee per month plus interest.

(C) The Administration may contract with an agent to carry out, on behalf of the Administration, the assessment and collection of the annual fee established under section 636(a)(23) of this title. The agent may receive, as compensation for services, any interest earned on the fee while in the control of the agent before the time at which the agent is contractually required to remit the fee to the Administration.

(5)(A) In the event the Administration pays a claim under a guarantee issued under this subsection, it shall be subrogated fully to the rights satisfied by such payment.

(B) No State or local law, and no Federal law, shall preclude or limit the exercise by the Administration of its ownership rights in the portions of loans constituting the trust or pool against which the trust certificates are issued.

(6) If the amount of the guaranteed portion of any loan under section 636(a) of this title is more than $500,000, the Administrator shall, upon request of a pool assembler, divide the loan guarantee into increments of $500,000 and 1 increment of any remaining amount less than $500,000, in order to permit the maximum amount of any loan in a pool to be not more than $500,000. Only 1

increment of any loan guarantee divided under this paragraph may be included in the same pool. Increments of loan guarantees to different borrowers that are divided under this paragraph may be included in the same pool.

(h) Central registration of loans and trust certificates; contracts with agent; disclosures by sellers of guaranteed portions of loans; regulation of brokers and dealers; electronic registration

(1) Upon the adoption of final rules and regulations, the Administration shall—

(A) provide for a central registration of all loans and trust certificates sold pursuant to subsections (f) and (g) of this section;

(B) contract with an agent to carry out on behalf of the Administration the central registration functions of this section and the issuance of trust certificates to facilitate pooling. Such agent shall provide a fidelity bond or insurance in such amounts as the Administration determines to be necessary to fully protect the interest of the Government;

(C) prior to any sale, require the seller to disclose to a purchaser of the guaranteed portion of a loan guaranteed under this chapter and to the purchaser of a trust certificate issued pursuant to subsection (g) of this section, information on the terms, conditions, and yield of such instrument. As used in this paragraph, if the instrument being sold is a loan, the term "seller" does not include (A) an entity which made the loan or (B) any individual or entity which sells three or fewer guaranteed loans per year; and

(D) have the authority to regulate brokers and dealers in guaranteed loans and trust certificates sold pursuant to subsections (f) and (g) of this section.

(2) The agent described in paragraph (1)(B) may be compensated through any of the fees assessed under this section and any interest earned on any funds collected by the agent while such funds are in the control of the agent and before the time at which the agent is contractually required to transfer such funds to the Administration or to the holders of the trust certificates, as appropriate.

(3) Nothing in this subsection shall prohibit the utilization of a book-entry or other electronic form of registration for trust certificates. The Administration may, with the consent of the Secretary of the Treasury, use the book-entry system of the Federal Reserve System.

(Pub. L. 85–536, §2[5], July 18, 1958, 72 Stat. 385; Pub. L. 87–305, §4, Sept. 26, 1961, 75 Stat. 666; Pub. L. 87–367, title I, §103(3), Oct. 4, 1961, 75 Stat. 787; Pub. L. 92–310, title II, §224(a), June 6, 1972, 86 Stat. 206; Pub. L. 93–386, §§3(1), 10, Aug. 23, 1974, 88 Stat. 745, 749; Pub. L. 94–305, title II, §208, June 4, 1976, 90 Stat. 671; Pub. L. 95–89, title III, §303, Aug. 4, 1977, 91 Stat. 558; Pub. L. 95–510, §103, Oct. 24, 1978, 92 Stat. 1781; Pub. L. 96–302, title I, §114, July 2, 1980, 94 Stat. 838; Pub. L. 98–352, §2, July 10, 1984, 98 Stat. 329; Pub. L. 100–590, title I, §113, Nov. 3, 1988, 102 Stat. 2997; Pub. L. 102–140, title VI, §609(a), Oct. 28, 1991, 105 Stat. 825; Pub. L. 102–564, title III, §307(d), Oct. 28, 1992, 106 Stat. 4264; Pub. L. 103–81, §3(a), Aug. 13, 1993, 107 Stat. 780; Pub. L. 103–282, §2, July 22, 1994, 108 Stat. 1422; Pub. L. 103–403, title VI, §602, Oct. 22, 1994, 108 Stat. 4202; Pub. L. 104–36, §4(b), Oct. 12, 1995, 109 Stat. 297; Pub. L. 104–208, div. D, title I, §103(e), title II, §§205(a), 208(i)(1), Sept. 30, 1996, 110 Stat. 3009–727, 3009–738, 3009–747; Pub. L. 106–554, §1(a)(9) [title II, §209], Dec. 21, 2000, 114 Stat. 2763, 2763A–683; Pub. L. 108–306, §3, Sept. 24, 2004, 118 Stat. 1131; Pub. L. 108–447, div. K, title I, §131, Dec. 8, 2004, 118 Stat. 3452; Pub. L. 111–240, title I, §1117, Sept. 27, 2010, 124 Stat. 2509.)

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in subsec. (b)(12)(C), (D), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, which is classified principally to chapter 14B (§661 et seq.) of this title. Title III of the Act is classified generally to subchapter III (§681 et seq.) of chapter 14B of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

Subsection (h)(2) of this section, referred to in subsec. (g)(4)(A), was redesignated subsec. (h)(1)(B) by Pub. L. 104–208, div. D, title II, §205(a)(1), (2), Sept. 30, 1996, 110 Stat. 3009–738.

CODIFICATION

In subsec. (b)(4), "Section 6101 of title 41" substituted for "Section 3709 of the Revised Statutes, as

amended (41 U.S.C., sec. 5)" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (b)(8), "subchapter I of chapter 57 of title 5" substituted for "the Travel Expense Act of 1949" on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

In subsec. (c), "section 6101 of title 41" substituted for "section 3709 of the Revised Statutes, as amended (41 U.S.C., sec. 5)" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (d), "Section 3324(a) and (b) of title 31" substituted for "Section 3648 of the Revised Statutes (31 U.S.C. 529)" on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

PRIOR PROVISIONS

Prior similar provisions were contained in section 205 of act July 30, 1953, ch. 282, title II, 67 Stat. 234, as amended by act Aug. 9, 1955, ch. 628, §4, 69 Stat. 547, which was classified to this section. See Codification note set out under section 631 of this title.

AMENDMENTS

2010—Subsec. (g)(6). Pub. L. 111–240 added par. (6).

2004—Subsec. (b)(14). Pub. L. 108–447 added par. (14).

Subsec. (g)(4)(C). Pub. L. 108–306, §3(1), added subpar. (C).

Subsec. (h)(2), (3). Pub. L. 108–306, §3(2), added par. (2) and redesignated former par. (2) as (3).

2000—Subsec. (f)(1)(C). Pub. L. 106–554 amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "each loan shall have been fully disbursed to the borrower prior to any sale."

1996—Subsec. (b)(7). Pub. L. 104–208, §208(i)(1), substituted ": *Provided*, That with respect to deferred participation loans, the Administrator may, in the discretion of and pursuant to regulations promulgated by the Administrator, authorize participating lending institutions to take actions relating to loan servicing on behalf of the Administrator, including determining eligibility and creditworthiness and loan monitoring, collection, and liquidation" for ": *Provided*, That nothing herein shall be construed as authorizing the Administrator to contract or otherwise delegate his responsibility for loan servicing to other than Administration personnel, but with respect to deferred participation loans he may authorize participating lending institutions, in his discretion pursuant to regulations promulgated by him, to take such actions on his behalf, including, but not limited to the determination of eligibility and creditworthiness, and loan monitoring, collection and liquidation".

Subsec. (f)(3). Pub. L. 104–208, §103(e), inserted at end "Beginning on March 31, 1997, the sale of the unguaranteed portion of any loan made under section 636(a) of this title shall not be permitted until a final regulation that applies uniformly to both depository institutions and other lenders is promulgated by the Administration setting forth the terms and conditions under which such sales can be permitted, including maintenance of appropriate reserve requirements and other safeguards to protect the safety and soundness of the program."

Subsec. (h). Pub. L. 104–208, §205(a), designated existing provisions as par. (1), redesignated former pars. (1) to (4) as subpars. (A) to (D), respectively, of par. (1), in subpar. (A) substituted "(A) provide for a central registration of all loans and trust certificates sold pursuant to subsections (f) and (g) of this section;" for "(A) provide for a central registration of all loans and trust certificates sold pursuant to subsections (f) and (g) of this section. Such central registration shall include, with respect to each sale, an identification of each lender who has sold the loan; the interest rate paid by the borrower to the lender; the lender's servicing fee; whether the loan is for a fixed rate or variable rate; an identification of each purchaser of the loan or trust certificate; the price paid by the purchaser for the loan or trust certificate; the interest rate paid on the loan or trust certificate; the fees of an agent for carrying out the functions described in paragraph (2) below; and such other information as the Administration deems appropriate;", and added par. (2).

1995—Subsec. (g)(4)(A). Pub. L. 104–36 substituted first sentence for former first sentence which read as follows: "The Administration may collect the following fees for loan guarantees sold into the secondary market pursuant to the provisions of subsection (f) of this section: an amount equal to (A) not more than 4/10 of one percent per year of the outstanding principal amount of the portion of such loan guaranteed by the Administration, and (B) not more than 50 percent of the portion of the sale price which is in excess of 110 percent of the outstanding principal amount of the portion of such loan guaranteed by the Administration.", and substituted "such fee" for "such fees" in two places in second sentence.

1994—Subsec. (b)(8). Pub. L. 103–282 inserted ": *Provided*, That the Administrator may extend the

six-month limitation for an additional six months if the Administrator determines the extension is necessary to continue efficient disaster loan making activities" before semicolon at end.

Subsec. (b)(12), (13). Pub. L. 103–403 added pars. (12) and (13).

1993—Subsec. (g)(4). Pub. L. 103–81 added par. (4) and struck out former par. (4) which read as follows: "The Administration shall not collect any fee for any guarantee under this subsection: *Provided*, That nothing herein shall preclude any agent of the Administration from collecting a fee approved by the Administration for the functions described in subsection (h)(2) of this section."

1992—Subsec. (f)(4). Pub. L. 102–564 substituted "section 636(a)(6)(C) of this title or subsection (e) of this section" for "subsection (e) of this section or section 636(a)(6) or 636(a)(8) of this title".

1991—Subsec. (g)(1). Pub. L. 102–140 substituted "or under section 696 of this title" for "except separate trust certificates shall be issued for loans approved under section 636(a)(13) of this title".

1988—Subsec. (g)(1). Pub. L. 100–590 substituted "except separate trust certificates shall be issued for loans approved" for "except those".

1984—Subsecs. (f) to (h). Pub. L. 98–352 added subsecs. (f) to (h).

1980—Subsec. (b)(7). Pub. L. 96–302 prohibited an interpretation that authorized the Administrator to contract or otherwise delegate his responsibility for loan servicing to other than Administration personnel, but sanctioned, with respect to deferred participation loans, authority for participating lending institutions to take action on behalf of the Administrator determining eligibility and creditworthiness, loan monitoring, collection, and liquidation, etc.

1978—Subsec. (c). Pub. L. 95–510 substituted "Any individual so employed may be compensated at a rate not in excess of the daily equivalent of the highest rate payable under section 5332 of Title 5, including travel time, and, while such individual is away from his or her home or regular place of business, he or she may be allowed travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of Title 5" for "Any individual so employed may be compensated at a rate not in excess of $50 per diem, and, while such individual is away from his home or regular place of business, he may be allowed transportation and not to exceed $15 per diem in lieu of subsistence and other expenses".

1977—Subsec. (e). Pub. L. 95–89 added subsec. (e).

1976—Subsec. (e). Pub. L. 94–305 struck out subsec. (e) which provided for the appointment, by the Administrator, of the Chief Counsel for Advocacy who would serve as a focal point for complaints and suggestions, counsel small businessmen, develop proposals for change, represent interest of small businesses before federal agencies and enlist the cooperation of public and private agencies. See sections 634a to 634g of this title.

1974—Subsec. (b)(10), (11). Pub. L. 93–386, §3(1), added pars. (10) and (11).

Subsec. (e). Pub. L. 93–386, §10, added subsec. (e).

1972—Subsec. (a). Pub. L. 92–310 struck out provisions which authorized the Administrator to provide bonds for officers, employees, attorneys, and agents.

1961—Subsec. (a). Pub. L. 87–367 struck out authorization for fifteen additional positions in grades 16, 17, and 18 of the General Schedule of the Classification Act of 1949.

Subsec. (d). Pub. L. 87–305 added subsec. (d).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by sections 103 and 205 of Pub. L. 104–208 effective Oct. 1, 1996, see section 3 of Pub. L. 104–208, set out as a note under section 633 of this title.

Pub. L. 104–208, div. D, title II, §208(j), Sept. 30, 1996, 110 Stat. 3009–747, provided that: "This section [amending this section, sections 80a–18, 662, 681 to 683, 687, 687b, 687d, 687k to 687m, and 697f of this title, and section 1431 of Title 12, Banks and Banking, repealing sections 687i and 687j of this title, enacting provisions set out as notes under sections 681 and 683 of this title, and amending provisions set out as a note under section 631 of this title] and the amendments made by this section shall become effective on the date of enactment of this Act [Sept. 30, 1996]."

EFFECTIVE DATE OF 1995 AMENDMENT

Pub. L. 104–36, §8, Oct. 12, 1995, 109 Stat. 297, provided that:

"(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this Act [see Short Title of 1995 Amendment note set out under section 631 of this title] do not apply with respect to any loan made or guaranteed under the Small Business Act [15 U.S.C. 631 et seq.] or the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.] before the date of enactment of this Act [Oct. 12, 1995].

"(b) EXCEPTIONS.—The amendments made by this Act apply to a loan made or guaranteed under the Small Business Act or the Small Business Investment Act of 1958 before the date of enactment of this Act

[Oct. 12, 1995], if the loan is refinanced, extended, restructured, or renewed on or after the date of enactment of this Act."

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–81, §3(b), Aug. 13, 1993, 107 Stat. 781, provided that: "Any new fees imposed by the Administration pursuant to the authority conferred by subsection (a) [amending this section] shall be applicable only to loans initially sold in the secondary market pursuant to the provisions of section 5(f) of the Small Business Act [subsec. (f) of this section] after August 31, 1993."

Pub. L. 103–81, §7, Aug. 13, 1993, 107 Stat. 782, which provided that sections 3 and 5 of Pub. L. 103–81, amending this section and section 636 of this title and enacting provisions set out as notes under this section and section 636 of this title, were repealed on Sept. 30, 1996, was repealed by Pub. L. 104–208, div. D, title I, §109(a), Sept. 30, 1996, 110 Stat. 3009–733, effective Sept. 29, 1996.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–302 effective Oct. 1, 1980, see section 507 of Pub. L. 96–302, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–510, §105, Oct. 24, 1978, 92 Stat. 1782, provided that: "This Act [amending this section and sections 636 and 637 of this title and repealing sections 5031, 5032, and 5083 of Title 42, The Public Health and Welfare] shall be effective October 1, 1979."

REGULATIONS

Pub. L. 98–352, §3, July 10, 1984, 98 Stat. 331, provided that:

"(a) Within ninety days after the date of enactment of this Act [July 10, 1984], the Small Business Administration shall develop and promulgate final rules and regulations to implement the central registration provisions provided for in section 5(h)(1) of the Small Business Act [15 U.S.C. 634(h)(1)], and shall contract with an agent for an initial period of not to exceed two years to carry out the functions provided for in section 5(h)(2) of such Act.

"(b) Within nine months after the date of enactment of this Act [July 10, 1984], the Small Business Administration shall consult with representatives of appropriate Federal and State agencies and officials, the securities industry, financial institutions and lenders, and small business persons, and shall develop and promulgate final rules and regulations to implement this Act [amending sections 633, 634, and 639 of this title and enacting provisions set out as notes under sections 631 and 634 of this title] other than as provided for in subsection (a).

"(c) The Small Business Administration shall not implement any of the provisions under section 5(g) of the Small Business Act, as amended [15 U.S.C. 634(g)], until final rules and regulations become effective."

ASSET SALES

Pub. L. 105–135, title V, §505, Dec. 2, 1997, 111 Stat. 2624, provided that: "In connection with the Administration's implementation of a program to sell to the private sector loans and other assets held by the Administration, the Administration shall provide to the Committees a copy of the draft and final plans describing the sale and the anticipated benefits resulting from such sale."

PREFERRED LENDER STANDARD REVIEW PROGRAM

Pub. L. 104–208, div. D, title I, §103(h), Sept. 30, 1996, 110 Stat. 3009–728, provided that: "Not later than 90 days after the date of enactment of this Act [Sept. 30, 1996], the Administrator shall commence a standard review program for the Preferred Lender Program established by section 5(b)(7) of the Small Business Act (15 U.S.C. 634(b)(7)), which shall include annual or more frequent assessments of the participation of the lender in the program, including defaults, loans, and recoveries of loans made by that lender under the authority of this section. The Administrator shall require such standard review for each new entrant to the Preferred Lender Program."

STUDY AND REPORT REGARDING 1993 AMENDMENTS TO IMPOSE SECONDARY MARKET FEES AND TO REDUCE LOAN GUARANTEE PERCENTAGES

Pub. L. 103–81, §6, Aug. 13, 1993, 107 Stat. 782, provided that: "The Administration shall study, monitor and evaluate the impact of the amendments made by sections 3 and 5 of this Act [amending this section and section 636 of this title] on the ability of small business concerns and small business concerns owned and controlled by minorities and women, to obtain financing and the impact of such sections on the effectiveness,

viability and growth of the secondary market authorized by section 5(f) of the Small Business Act [subsec. (f) of this section]. Not later than 16 months after the date of enactment [Aug. 13, 1993], and annually thereafter, the Administration shall submit to the Committees on Small Business of the Senate and the House of Representatives [Committee on Small Business of Senate now Committee on Small Business and Entrepreneurship of Senate] a report containing the Administration's findings and recommendations on such impact, specifically including changes in the interest rates on financings provided to small business concerns and small business concerns owned and controlled by minorities and women, through the use of the secondary market. The Administration shall segregate such findings and recommendations in the study according to the ethnic and gender components in these categories. Solely for the purposes of the study authorized herein, the term 'small business concerns owned and controlled by minorities', includes businesses owned and controlled by individuals belonging to one of the designated groups listed in section 8(d)(3)(C) of the Small Business Act [15 U.S.C. 637(d)(3)(C)]."

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

VIABILITY OF SECONDARY MARKETS

Pub. L. 102–366, title II, §226, Sept. 4, 1992, 106 Stat. 1001, provided that: "The Administrator of the Small Business Administration is authorized and directed to take such actions in the awarding of contracts as is deemed necessary to assure the continued long-term viability of the secondary markets in loans, debentures or other securities guaranteed by the Administration."

SMALL BUSINESS LOAN SECONDARY MARKET STUDY

Pub. L. 102–366, title III, §311, Sept. 4, 1992, 106 Stat. 1005, directed Secretary of the Treasury, Director of Congressional Budget Office, and Chairman of Securities and Exchange Commission, in consultation with Administrator of Small Business Administration, to conduct a study of potential benefits of, and legal, regulatory, and market-based barriers to, developing a secondary market for loans to small businesses, specified considerations to be included in the study, and required that, not later than 1 year after Sept. 4, 1992, a report be submitted to Congress on results of the study, including recommendations for legislation to facilitate development of a secondary market for loans to small businesses.

APPROPRIATIONS NOT AUTHORIZED

Pub. L. 98–352, §6, July 10, 1984, 98 Stat. 332, provided that: "This Act [amending this section and sections 633 and 639 of this title and enacting provisions set out as notes under this section and section 631 of this title] does not authorize the appropriation of any funds."

SMALL BUSINESS PROTECTION

Pub. L. 90–104, title III, §§301–303, Oct. 11, 1967, 81 Stat. 272, authorized Administrator of Small Business Administration to conduct a special study of impact on small business concerns of robbery, burglary, shoplifting, vandalism, and other criminal activities, and report to President and to Congress results of study, including such recommendations he deemed appropriate for administrative and legislative action, within one year after Oct. 11, 1967.

[1] *See References in Text note below.*

§634a. Office of Advocacy within Small Business Administration; Chief Counsel for Advocacy

There is established within the Small Business Administration an Office of Advocacy. The management of the Office shall be vested in a Chief Counsel for Advocacy who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate.

(Pub. L. 94–305, title II, §201, June 4, 1976, 90 Stat. 668.)

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

§634b. Primary functions of Office of Advocacy

The primary functions of the Office of Advocacy shall be to—

(1) examine the role of small business in the American economy and the contribution which small business can make in improving competition, encouraging economic and social mobility for all citizens, restraining inflation, spurring production, expanding employment opportunities, increasing productivity, promoting exports, stimulating innovation and entrepreneurship, and providing an avenue through which new and untested products and services can be brought to the marketplace;

(2) assess the effectiveness of existing Federal subsidy and assistance programs for small business and the desirability of reducing the emphasis on such existing programs and increasing the emphasis on general assistance programs designed to benefit all small businesses;

(3) measure the direct costs and other effects of government regulation on small businesses; and make legislative and nonlegislative proposals for eliminating excessive or unnecessary regulations of small businesses;

(4) determine the impact of the tax structure on small businesses and make legislative and other proposals for altering the tax structure to enable all small businesses to realize their potential for contributing to the improvement of the Nation's economic well-being;

(5) study the ability of financial markets and institutions to meet small business credit needs and determine the impact of government demands for credit on small businesses;

(6) determine financial resource availability and to recommend methods for delivery of financial assistance to minority enterprises, including methods for securing equity capital, for generating markets for goods and services, for providing effective business education, more effective management and technical assistance, and training, and for assistance in complying with Federal, State, and local law;

(7) evaluate the efforts of Federal agencies, business and industry to assist minority enterprises;

(8) make such other recommendations as may be appropriate to assist the development and strengthening of minority and other small business enterprises;

(9) recommend specific measures for creating an environment in which all businesses will have the opportunity to complete [1] effectively and expand to their full potential, and to ascertain the common reasons, if any, for small business successes and failures;

(10) determine the desirability of developing a set of rational, objective criteria to be used to define small business, and to develop such criteria, if appropriate;

(11) advise, cooperate with, and consult with, the Chairman of the Administrative Conference of the United States with respect to section 504(e) of title 5; and

(12) evaluate the efforts of each department and agency of the United States, and of private industry, to assist small business concerns owned and controlled by veterans, as defined in section 632(q) of this title, and small business concerns owned and controlled by serviced-disabled [2] veterans, as defined in such section 632(q) of this title, and to provide statistical information on the utilization of such programs by such small business concerns, and to make appropriate recommendations to the Administrator of the Small Business Administration and to the Congress in order to promote the establishment and growth of those small business concerns.

(Pub. L. 94–305, title II, §202, June 4, 1976, 90 Stat. 668; Pub. L. 96–481, title II, §203(b), Oct. 21, 1980, 94 Stat. 2327; Pub. L. 106–50, title VII, §702, Aug. 17, 1999, 113 Stat. 250.)

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

AMENDMENTS

1999—Par. (12). Pub. L. 106–50 added par. (12).

1980—Par. (11). Pub. L. 96–481 added par. (11).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–481 effective Oct. 1, 1981, and applicable to adversary adjudication as defined in section 504(b)(1)(C) of Title 5, Government Organization and Employees, and to civil actions and adversary adjudications described in section 2412 of Title 28, Judiciary and Judicial Procedure, which are pending on, or commenced on or after Oct. 1, 1981, see section 208 of Pub. L. 96–481, set out as an Effective Date note under section 504 of Title 5, Government Organization and Employees.

TERMINATION OF ADMINISTRATIVE CONFERENCE OF UNITED STATES

For termination of Administrative Conference of United States, see provision of title IV of Pub. L. 104–52, set out as a note preceding section 591 of Title 5, Government Organization and Employees.

ADVOCACY STUDY OF PAPERWORK AND TAX IMPACT

Pub. L. 103–403, title VI, §613, Oct. 22, 1994, 108 Stat. 4205, directed Chief Counsel for Advocacy of the Small Business Administration to conduct a study of the impact of all Federal regulatory, paperwork, and tax requirements upon small business, and report its findings to Congress not later than 1 year after Oct. 22, 1994.

[1] So in original. Probably should be "compete".

[2] So in original.

§634c. Additional duties of Office of Advocacy

The Office of Advocacy shall also perform the following duties on a continuing basis:

(1) serve as a focal point for the receipt of complaints, criticisms, and suggestions concerning the policies and activities of the Administration and any other Federal agency which affects small businesses;

(2) counsel small businesses on how to resolve questions and problems concerning the relationship of the small business to the Federal Government;

(3) develop proposals for changes in the policies and activities of any agency of the Federal Government which will better fulfill the purposes of this chapter and communicate such proposals to the appropriate Federal agencies;

(4) represent the views and interests of small businesses before other Federal agencies whose policies and activities may affect small business;

(5) enlist the cooperation and assistance of public and private agencies, businesses, and other organizations in disseminating information about the programs and services provided by the Federal Government which are of benefit to small businesses, and information on how small businesses can participate in or make use of such programs and services; and

(6) carry out the responsibilities of the Office of Advocacy under chapter 6 of title 5.

(Pub. L. 94–305, title II, §203, June 4, 1976, 90 Stat. 669; Pub. L. 111–240, title I, §1602(a), Sept. 27, 2010, 124 Stat. 2551.)

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

AMENDMENTS

2010—Par. (6). Pub. L. 111–240 added par. (6).

§634d. Staff and powers of Office of Advocacy

In carrying out the provisions of sections 634a to 634g of this title, the Chief Counsel for Advocacy may—

(1) employ and fix the compensation of such additional staff personnel as is deemed necessary, without regard to the provisions of title 5, governing appointments in the competitive service, and without regard to chapter 51, and subchapter III of chapter 53 of such title relating to classification

and General Schedule pay rates but at rates not in excess of the lowest rate for GS–15 of the General Schedule: *Provided, however*, That not more than 14 staff personnel at any one time may be employed and compensated at a rate not in excess of GS–15, step 10, of the General Schedule;

(2) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5;

(3) consult with experts and authorities in the fields of small business investment, venture capital, investment and commercial banking and other comparable financial institutions involved in the financing of business, and with individuals with regulatory, legal, economic, or financial expertise, including members of the academic community, and individuals who generally represent the public interest;

(4) utilize the services of the National Advisory Council established pursuant to the provisions of section 637(b)(13) of this title and in accordance with the provisions of such statute, also appoint such other advisory boards or committees as is reasonably appropriate and necessary to carry out the provisions of sections 634a to 634g of this title; and

(5) hold hearings and sit and act at such times and places as he may deem advisable.

(Pub. L. 94–305, title II, §204, June 4, 1976, 90 Stat. 669; Pub. L. 96–302, title IV, §402, July 2, 1980, 94 Stat. 850; Pub. L. 103–403, title VI, §§605(b), 610, Oct. 22, 1994, 108 Stat. 4203, 4204.)

REFERENCES IN TEXT

The General Schedule, referred to in par. (1), is set out under section 5332 of Title 5.

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

AMENDMENTS

1994—Pub. L. 103–403, §§605(b), 610(1), in introductory provisions substituted "provisions of sections 634a to 634g of this title, the Chief" for "provisions of section 634b of this title, after consultation with and subject to the approval of the Administrator, the Chief".

Par. (1). Pub. L. 103–403, §610(2), substituted "14" for "ten" before "staff personnel".

1980—Par. (1). Pub. L. 96–302 authorized employment at any one time of ten staff personnel at rate of compensation not in excess of GS–15, step 10, of the General Schedule.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–302 effective Oct. 1, 1980, see section 507 of Pub. L. 96–302, set out as a note under section 631 of this title.

§634e. Assistance of Government agencies

Each department, agency, and instrumentality of the Federal Government is authorized and directed to furnish to the Chief Counsel for Advocacy such reports and other information as he deems necessary to carry out his functions under sections 634a to 634g of this title.

(Pub. L. 94–305, title II, §205, June 4, 1976, 90 Stat. 670.)

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

§634f. Reports

The Chief Counsel may from time to time prepare and publish such reports as he deems appropriate. Not later than one year after June 4, 1976, he shall transmit to the Congress, the President and the Administration, a full report containing his findings and specific recommendations with respect to each of the functions referred to in section 634b of this title, including specific legislative proposals and recommendations for administration or other action. Not later than 6 months after June 4, 1976, he shall prepare and transmit a preliminary report on his activities. The

reports shall not be submitted to the Office of Management and Budget or to any other Federal agency or executive department for any purpose prior to transmittal to the Congress and the President.

(Pub. L. 94–305, title II, §206, June 4, 1976, 90 Stat. 670.)

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

§634g. Budgetary line item and authorization of appropriations

(a) Appropriation requests

Each budget of the United States Government submitted by the President under section 1105 of title 31 shall include a separate statement of the amount of appropriations requested for the Office of Advocacy of the Small Business Administration, which shall be designated in a separate account in the General Fund of the Treasury.

(b) Administrative operations

The Administrator of the Small Business Administration shall provide the Office of Advocacy with appropriate and adequate office space at central and field office locations, together with such equipment, operating budget, and communications facilities and services as may be necessary, and shall provide necessary maintenance services for such offices and the equipment and facilities located in such offices.

(c) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out sections 634a to 634g of this title. Any amount appropriated under this subsection shall remain available, without fiscal year limitation, until expended.

(Pub. L. 94–305, title II, §207, as added Pub. L. 111–240, title I, §1602(b), Sept. 27, 2010, 124 Stat. 2551.)

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

PRIOR PROVISIONS

A prior section 634g, Pub. L. 94–305, title II, §207, June 4, 1976, 90 Stat. 671, related to authorization of appropriations, prior to repeal by Pub. L. 111–240, title I, §1602(b), Sept. 27, 2010, 124 Stat. 2551.

§635. Deposit of moneys; depositaries, custodians, and fiscal agents; contributions to employees' compensation funds

(a) All moneys of the Administration not otherwise employed may be deposited with the Treasury of the United States subject to check by authority of the Administration. The Federal Reserve banks are authorized and directed to act as depositaries, custodians, and fiscal agents for the Administration in the general performance of its powers conferred by this chapter. Any banks insured by the Federal Deposit Insurance Corporation, when designated by the Secretary of the Treasury, shall act as custodians and financial agents for the Administration. Each Federal Reserve bank, when designated by the Administrator as fiscal agent for the Administration, shall be entitled to be reimbursed for all expenses incurred as such fiscal agent.

(b) The Administrator shall contribute to the employees' compensation fund, on the basis of annual billings as determined by the Secretary of Labor, for the benefit payments made from such fund on account of employees engaged in carrying out functions financed by the revolving fund established

by section 633(c) of this title. The annual billings shall also include a statement of the fair portion of the cost of the administration of such fund, which shall be paid by the Administrator into the Treasury as miscellaneous receipts.

(Pub. L. 85–536, §2[6], July 18, 1958, 72 Stat. 387.)

PRIOR PROVISIONS

Prior similar provisions were contained in section 206 of act July 30, 1953, ch. 282, title II, 67 Stat. 235, which was previously classified to this section. See Codification note set out under section 631 of this title.

§636. Additional powers

(a) Loans to small business concerns; allowable purposes; qualified business; restrictions and limitations

The Administration is empowered to the extent and in such amounts as provided in advance in appropriation Acts to make loans for plant acquisition, construction, conversion, or expansion, including the acquisition of land, material, supplies, equipment, and working capital, and to make loans to any qualified small business concern, including those owned by qualified Indian tribes, for purposes of this chapter. Such financings may be made either directly or in cooperation with banks or other financial institutions through agreements to participate on an immediate or deferred (guaranteed) basis. These powers shall be subject, however, to the following restrictions, limitations, and provisions:

(1) IN GENERAL.—

(A) CREDIT ELSEWHERE.—No financial assistance shall be extended pursuant to this subsection if the applicant can obtain credit elsewhere. No immediate participation may be purchased unless it is shown that a deferred participation is not available; and no direct financing may be made unless it is shown that a participation is not available.

(B) BACKGROUND CHECKS.—Prior to the approval of any loan made pursuant to this subsection, or section 503 of the Small Business Investment Act of 1958 [15 U.S.C. 697], the Administrator may verify the applicant's criminal background, or lack thereof, through the best available means, including, if possible, use of the National Crime Information Center computer system at the Federal Bureau of Investigation.

(2) LEVEL OF PARTICIPATION IN GUARANTEED LOANS.—

(A) IN GENERAL.—Except as provided in subparagraphs (B), (D), and (E), in an agreement to participate in a loan on a deferred basis under this subsection (including a loan made under the Preferred Lenders Program), such participation by the Administration shall be equal to—

(i) 75 percent of the balance of the financing outstanding at the time of disbursement of the loan, if such balance exceeds $150,000; or

(ii) 85 percent of the balance of the financing outstanding at the time of disbursement of the loan, if such balance is less than or equal to $150,000.

(B) REDUCED PARTICIPATION UPON REQUEST.—

(i) IN GENERAL.—The guarantee percentage specified by subparagraph (A) for any loan under this subsection may be reduced upon the request of the participating lender.

(ii) PROHIBITION.—The Administration shall not use the guarantee percentage requested by a participating lender under clause (i) as a criterion for establishing priorities in approving loan guarantee requests under this subsection.

(C) INTEREST RATE UNDER PREFERRED LENDERS PROGRAM.—

(i) IN GENERAL.—The maximum interest rate for a loan guaranteed under the Preferred Lenders Program shall not exceed the maximum interest rate, as determined by the Administration, applicable to other loans guaranteed under this subsection.

(ii) EXPORT-IMPORT BANK LENDERS.—Any lender that is participating in the

Delegated Authority Lender Program of the Export-Import Bank of the United States (or any successor to the Program) shall be eligible to participate in the Preferred Lenders Program.

(iii) PREFERRED LENDERS PROGRAM DEFINED.—For purposes of this subparagraph, the term "Preferred Lenders Program" means any program established by the Administrator, as authorized under the proviso in section 634(b)(7) of this title, under which a written agreement between the lender and the Administration delegates to the lender—

(I) complete authority to make and close loans with a guarantee from the Administration without obtaining the prior specific approval of the Administration; and

(II) complete authority to service and liquidate such loans without obtaining the prior specific approval of the Administration for routine servicing and liquidation activities, but shall not take any actions creating an actual or apparent conflict of interest.

(D) PARTICIPATION UNDER EXPORT WORKING CAPITAL PROGRAM.—In an agreement to participate in a loan on a deferred basis under the Export Working Capital Program established pursuant to paragraph (14)(A), such participation by the Administration shall be 90 percent.

(E) PARTICIPATION IN INTERNATIONAL TRADE LOAN.—In an agreement to participate in a loan on a deferred basis under paragraph (16), the participation by the Administration may not exceed 90 percent.

(3) No loan shall be made under this subsection—

(A) if the total amount outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund established by this chapter would exceed $3,750,000 (or if the gross loan amount would exceed $5,000,000), except as provided in subparagraph (B);

(B) if the total amount outstanding and committed (on a deferred basis) solely for the purposes provided in paragraph (16) to the borrower from the business loan and investment fund established by this chapter would exceed $4,500,000 (or if the gross loan amount would exceed $5,000,000), of which not more than $4,000,000 may be used for working capital, supplies, or financings under paragraph (14) for export purposes; and

(C) if effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate basis if the amount would exceed $350,000.

(4) INTEREST RATES AND PREPAYMENT CHARGES.—

(A) INTEREST RATES.—Notwithstanding the provisions of the constitution of any State or the laws of any State limiting the rate or amount of interest which may be charged, taken, received, or reserved, the maximum legal rate of interest on any financing made on a deferred basis pursuant to this subsection shall not exceed a rate prescribed by the Administration, and the rate of interest for the Administration's share of any direct or immediate participation loan shall not exceed the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans and adjusted to the nearest one-eighth of 1 per centum, and an additional amount as determined by the Administration, but not to exceed 1 per centum per annum: *Provided*, That for those loans to assist any public or private organization for the handicapped or to assist any handicapped individual as provided in paragraph (10) of this subsection, the interest rate shall be 3 per centum per annum.

(B) PAYMENT OF ACCRUED INTEREST.—

(i) IN GENERAL.—Any bank or other lending institution making a claim for payment on the guaranteed portion of a loan made under this subsection shall be paid the accrued interest due on the loan from the earliest date of default to the date of payment of the claim at a rate not to exceed the rate of interest on the loan on the date of default, minus one percent.

(ii) LOANS SOLD ON SECONDARY MARKET.—If a loan described in clause (i) is sold on the secondary market, the amount of interest paid to a bank or other lending

institution described in that clause from the earliest date of default to the date of payment of the claim shall be no more than the agreed upon rate, minus one percent.

(iii) APPLICABILITY.—Clauses (i) and (ii) shall not apply to loans made on or after October 1, 2000.

(C) PREPAYMENT CHARGES

(i) IN GENERAL.—A borrower who prepays any loan guaranteed under this subsection shall remit to the Administration a subsidy recoupment fee calculated in accordance with clause (ii) if—

(I) the loan is for a term of not less than 15 years;

(II) the prepayment is voluntary;

(III) the amount of prepayment in any calendar year is more than 25 percent of the outstanding balance of the loan; and

(IV) the prepayment is made within the first 3 years after disbursement of the loan proceeds.

(ii) SUBSIDY RECOUPMENT FEE.—The subsidy recoupment fee charged under clause (i) shall be—

(I) 5 percent of the amount of prepayment, if the borrower prepays during the first year after disbursement;

(II) 3 percent of the amount of prepayment, if the borrower prepays during the second year after disbursement; and

(III) 1 percent of the amount of prepayment, if the borrower prepays during the third year after disbursement.

(5) No such loans including renewals and extensions thereof may be made for a period or periods exceeding twenty-five years, except that such portion of a loan made for the purpose of acquiring real property or constructing, converting, or expanding facilities may have a maturity of twenty-five years plus such additional period as is estimated may be required to complete such construction, conversion, or expansion.

(6) All loans made under this subsection shall be of such sound value or so secured as reasonably to assure repayment: *Provided, however*, That—

(A) for loans to assist any public or private organization or to assist any handicapped individual as provided in paragraph (10) of this subsection any reasonable doubt shall be resolved in favor of the applicant;

(B) recognizing that greater risk may be associated with loans for energy measures as provided in paragraph (12) of this subsection, factors in determining "sound value" shall include, but not be limited to, quality of the product or service; technical qualifications of the applicant or his employees; sales projections; and the financial status of the business concern: *Provided further*, That such status need not be as sound as that required for general loans under this subsection; and [1]

(C) Repealed. Pub. L. 97–35, title XIX, §1910, Aug. 13, 1981, 95 Stat. 778.

On that portion of the loan used to refinance existing indebtedness held by a bank or other lending institution, the Administration shall limit the amount of deferred participation to 80 per centum of the amount of the loan at the time of disbursement: *Provided further*, That any authority conferred by this subparagraph on the Administration shall be exercised solely by the Administration and shall not be delegated to other than Administration personnel.

(7) The Administration may defer payments on the principal of such loans for a grace period and use such other methods as it deems necessary and appropriate to assure the successful establishment and operation of such concern.

(8) The Administration may make loans under this subsection to small business concerns owned and controlled by disabled veterans (as defined in section 4211(3) of title 38).

(9) The Administration may provide loans under this subsection to finance residential or commercial construction or rehabilitation for sale: *Provided, however*, That such loans shall not be used primarily for the acquisition of land.

(10) The Administration may provide guaranteed loans under this subsection to assist any public or private organization for the handicapped or to assist any handicapped individual, including service-disabled veterans, in establishing, acquiring, or operating a small business concern.

(11) The Administration may provide loans under this subsection to any small business concern, or to any qualified person seeking to establish such a concern when it determines that such loan will further the policies established in section 631(c) [2] of this title, with particular emphasis on the preservation or establishment of small business concerns located in urban or rural areas with high proportions of unemployed or low-income individuals or owned by low-income individuals.

(12)(A) The Administration may provide loans under this subsection to assist any small business concern, including start up, to enable such concern to design architecturally or engineer, manufacture, distribute, market, install, or service energy measures: *Provided, however*, That such loan proceeds shall not be used primarily for research and development.

(b) [3] The Administration may provide deferred participation loans under this subsection to finance the planning, design, or installation of pollution control facilities for the purposes set forth in section 404 of the Small Business Investment Act of 1958 [15 U.S.C. 694–1]. Notwithstanding the limitation expressed in paragraph (3) of this subsection, a loan made under this paragraph may not result in a total amount outstanding and committed to a borrower from the business loan and investment fund of more than $1,000,000.

(13) The Administration may provide financings under this subsection to State and local development companies for the purposes of, and subject to the restrictions in, title V of the Small Business Investment Act of 1958 [15 U.S.C. 695 et seq.].

(14) EXPORT WORKING CAPITAL PROGRAM.—

(A) IN GENERAL.—The Administrator may provide extensions of credit, standby letters of credit, revolving lines of credit for export purposes, and other financing to enable small business concerns, including small business export trading companies and small business export management companies, to develop foreign markets. A bank or participating lending institution may establish the rate of interest on such financings as may be legal and reasonable.

(B) TERMS.—

(i) LOAN AMOUNT.—The Administrator may not guarantee a loan under this paragraph of more than $5,000,000.

(ii) FEES.—

(I) IN GENERAL.—For a loan under this paragraph, the Administrator shall collect the fee assessed under paragraph (23) not more frequently than once each year.

(II) UNTAPPED CREDIT.—The Administrator may not assess a fee on capital that is not accessed by the small business concern.

(C) CONSIDERATIONS.—When considering loan or guarantee applications, the Administration shall give weight to export-related benefits, including opening new markets for United States goods and services abroad and encouraging the involvement of small businesses, including agricultural concerns, in the export market.

(D) MARKETING.—The Administrator shall aggressively market its export financing program to small businesses.

(15)(A) The Administration may guarantee loans under this subsection to qualified employee trusts with respect to a small business concern for the purpose of purchasing stock of the concern under a plan approved by the Administrator which, when carried out, results in the qualified employee trust owning at least 51 per centum of the stock of the concern.

(B) The plan requiring the Administrator's approval under subparagraph (A) shall be submitted to the Administration by the trustee of such trust with its application for the guarantee. Such plan

shall include an agreement with the Administrator which is binding on such trust and on the small business concern and which provides that—

(i) not later than the date the loan guaranteed under subparagraph (A) is repaid (or as soon thereafter as is consistent with the requirements of section 401(a) of title 26), at least 51 per centum of the total stock of such concern shall be allocated to the accounts of at least 51 per centum of the employees of such concern who are entitled to share in such allocation,

(ii) there will be periodic reviews of the role in the management of such concern of employees to whose accounts stock is allocated, and

(iii) there will be adequate management to assure management expertise and continuity.

(C) In determining whether to guarantee any loan under this paragraph, the individual business experience or personal assets of employee-owners shall not be used as criteria, except inasmuch as certain employee-owners may assume managerial responsibilities, in which case business experience may be considered.

(D) For purposes of this paragraph, a corporation which is controlled by any other person shall be treated as a small business concern if such corporation would, after the plan described in subparagraph (B) is carried out, be treated as a small business concern.

(E) The Administration shall compile a separate list of applications for assistance under this paragraph, indicating which applications were accepted and which were denied, and shall report periodically to the Congress on the status of employee-owned firms assisted by the Administration.

(16) INTERNATIONAL TRADE.—

(A) IN GENERAL.—If the Administrator determines that a loan guaranteed under this subsection will allow an eligible small business concern that is engaged in or adversely affected by international trade to improve its competitive position, the Administrator may make such loan to assist such concern—

(i) in the financing of the acquisition, construction, renovation, modernization, improvement, or expansion of productive facilities or equipment to be used in the United States in the production of goods and services involved in international trade;

(ii) in the refinancing of existing indebtedness that is not structured with reasonable terms and conditions, including any debt that qualifies for refinancing under any other provision of this subsection; or

(iii) by providing working capital.

(B) SECURITY.—

(i) IN GENERAL.—Except as provided in clause (ii), each loan made under this paragraph shall be secured by a first lien position or first mortgage on the property or equipment financed by the loan or on other assets of the small business concern.

(ii) EXCEPTION.—A loan under this paragraph may be secured by a second lien position on the property or equipment financed by the loan or on other assets of the small business concern, if the Administrator determines the lien provides adequate assurance of the payment of the loan.

(C) ENGAGED IN INTERNATIONAL TRADE.—For purposes of this paragraph, a small business concern is engaged in international trade if, as determined by the Administrator, the small business concern is in a position to expand existing export markets or develop new export markets.

(D) ADVERSELY AFFECTED BY INTERNATIONAL TRADE.—For purposes of this paragraph, a small business concern is adversely affected by international trade if, as determined by the Administrator, the small business concern—

(i) is confronting increased competition with foreign firms in the relevant market; and

(ii) is injured by such competition.

(E) FINDINGS BY CERTAIN FEDERAL AGENCIES.—For purposes of subparagraph (D)(ii) the Administrator shall accept any finding of injury by the International Trade Commission or any finding of injury by the Secretary of Commerce pursuant to chapter 3 of title II of the Trade Act of 1974 [19 U.S.C. 2341 et seq.].

(F) LIST OF EXPORT FINANCE LENDERS.—

(i) PUBLICATION OF LIST REQUIRED.—The Administrator shall publish an annual list of the banks and participating lending institutions that, during the 1-year period ending on the date of publication of the list, have made loans guaranteed by the Administration under—

(I) this paragraph;

(II) paragraph (14); or

(III) paragraph (34).

(ii) AVAILABILITY OF LIST.—The Administrator shall—

(I) post the list published under clause (i) on the website of the Administration; and

(II) make the list published under clause (i) available, upon request, at each district office of the Administration.

(17) The Administration shall authorize lending institutions and other entities in addition to banks to make loans authorized under this subsection.

(18) GUARANTEE FEES.—

(A) IN GENERAL.—With respect to each loan guaranteed under this subsection (other than a loan that is repayable in 1 year or less), the Administration shall collect a guarantee fee, which shall be payable by the participating lender, and may be charged to the borrower, as follows:

(i) A guarantee fee not to exceed 2 percent of the deferred participation share of a total loan amount that is not more than $150,000.

(ii) A guarantee fee not to exceed 3 percent of the deferred participation share of a total loan amount that is more than $150,000, but not more than $700,000.

(iii) A guarantee fee not to exceed 3.5 percent of the deferred participation share of a total loan amount that is more than $700,000.

(iv) In addition to the fee under clause (iii), a guarantee fee equal to 0.25 percent of any portion of the deferred participation share that is more than $1,000,000.

(B) RETENTION OF CERTAIN FEES.—Lenders participating in the programs established under this subsection may retain not more than 25 percent of a fee collected under subparagraph (A)(i).

(19)(A) In addition to the Preferred Lenders Program authorized by the proviso in section 634(b)(7) of this title, the Administration is authorized to establish a Certified Lenders Program for lenders who establish their knowledge of Administration laws and regulations concerning the guaranteed loan program and their proficiency in program requirements. The designation of a lender as a certified lender shall be suspended or revoked at any time that the Administration determines that the lender is not adhering to its rules and regulations or that the loss experience of the lender is excessive as compared to other lenders, but such suspension or revocation shall not affect any outstanding guarantee.

(B) In order to encourage all lending institutions and other entities making loans authorized under this subsection to provide loans of $50,000 or less in guarantees to eligible small business loan applicants, the Administration shall develop and allow participating lenders to solely utilize a uniform and simplified loan form for such loans.

(C) AUTHORITY TO LIQUIDATE LOANS.—

(i) IN GENERAL.—The Administrator may permit lenders participating in the Certified Lenders Program to liquidate loans made with a guarantee from the Administration pursuant to a liquidation plan approved by the Administrator.

(ii) AUTOMATIC APPROVAL.—If the Administrator does not approve or deny a request

for approval of a liquidation plan within 10 business days of the date on which the request is made (or with respect to any routine liquidation activity under such a plan, within 5 business days) such request shall be deemed to be approved.

(20)(A) The Administration is empowered to make loans either directly or in cooperation with banks or other financial institutions through agreements to participate on an immediate or deferred (guaranteed) basis to small business concerns eligible for assistance under subsection (j)(10) of this section and section 637(a) of this title. Such assistance may be provided only if the Administration determines that—

(i) the type and amount of such assistance requested by such concern is not otherwise available on reasonable terms from other sources;

(ii) with such assistance such concern has a reasonable prospect for operating soundly and profitably within a reasonable period of time;

(iii) the proceeds of such assistance will be used within a reasonable time for plant construction, conversion, or expansion, including the acquisition of equipment, facilities, machinery, supplies, or material or to supply such concern with working capital to be used in the manufacture of articles, equipment, supplies, or material for defense or civilian production or as may be necessary to insure a well-balanced national economy; and

(iv) such assistance is of such sound value as reasonably to assure that the terms under which it is provided will not be breached by the small business concern.

(B)(i) No loan shall be made under this paragraph if the total amount outstanding and committed (by participation or otherwise) to the borrower would exceed $750,000.

(ii) Subject to the provisions of clause (i), in agreements to participate in loans on a deferred (guaranteed) basis, participation by the Administration shall be not less than 85 per centum of the balance of the financing outstanding at the time of disbursement.

(iii) The rate of interest on financings made on a deferred (guaranteed) basis shall be legal and reasonable.

(iv) Financings made pursuant to this paragraph shall be subject to the following limitations:

(I) No immediate participation may be purchased unless it is shown that a deferred participation is not available.

(II) No direct financing may be made unless it is shown that a participation is unavailable.

(C) A direct loan or the Administration's share of an immediate participation loan made pursuant to this paragraph shall be any secured debt instrument—

(i) that is subordinated by its terms to all other borrowings of the issuer;

(ii) the rate of interest on which shall not exceed the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loan and adjusted to the nearest one-eighth of 1 per centum;

(iii) the term of which is not more than twenty-five years; and

(iv) the principal on which is amortized at such rate as may be deemed appropriate by the Administration, and the interest on which is payable not less often than annually.

(21)(A) The Administration may make loans on a guaranteed basis under the authority of this subsection—

(i) to a small business concern that has been (or can reasonably be expected to be) detrimentally affected by—

(I) the closure (or substantial reduction) of a Department of Defense installation; or

(II) the termination (or substantial reduction) of a Department of Defense program on which such small business was a prime contractor or subcontractor (or supplier) at any tier; or

(ii) to a qualified individual or a veteran seeking to establish (or acquire) and operate a small

business concern.

(B) Recognizing that greater risk may be associated with a loan to a small business concern described in subparagraph (A)(i), any reasonable doubts concerning the firm's proposed business plan for transition to nondefense-related markets shall be resolved in favor of the loan applicant when making any determination regarding the sound value of the proposed loan in accordance with paragraph (6).

(C) Loans pursuant to this paragraph shall be authorized in such amounts as provided in advance in appropriation Acts for the purposes of loans under this paragraph.

(D) For purposes of this paragraph a qualified individual is—

(i) a member of the Armed Forces of the United States, honorably discharged from active duty involuntarily or pursuant to a program providing bonuses or other inducements to encourage voluntary separation or early retirement;

(ii) a civilian employee of the Department of Defense involuntarily separated from Federal service or retired pursuant to a program offering inducements to encourage early retirement; or

(iii) an employee of a prime contractor, subcontractor, or supplier at any tier of a Department of Defense program whose employment is involuntarily terminated (or voluntarily terminated pursuant to a program offering inducements to encourage voluntary separation or early retirement) due to the termination (or substantial reduction) of a Department of Defense program.

(E) JOB CREATION AND COMMUNITY BENEFIT.—In providing assistance under this paragraph, the Administration shall develop procedures to ensure, to the maximum extent practicable, that such assistance is used for projects that—

(i) have the greatest potential for—

(I) creating new jobs for individuals whose employment is involuntarily terminated due to reductions in Federal defense expenditures; or

(II) preventing the loss of jobs by employees of small business concerns described in subparagraph (A)(i); and

(ii) have substantial potential for stimulating new economic activity in communities most affected by reductions in Federal defense expenditures.

(22) The Administration is authorized to permit participating lenders to impose and collect a reasonable penalty fee on late payments of loans guaranteed under this subsection in an amount not to exceed 5 percent of the monthly loan payment per month plus interest.

(23) YEARLY FEE.—

(A) IN GENERAL.—With respect to each loan approved under this subsection, the Administration shall assess, collect, and retain a fee, not to exceed 0.55 percent per year of the outstanding balance of the deferred participation share of the loan, in an amount established once annually by the Administration in the Administration's annual budget request to Congress, as necessary to reduce to zero the cost to the Administration of making guarantees under this subsection. As used in this paragraph, the term "cost" has the meaning given that term in section 661a of title 2.

(B) PAYER.—The yearly fee assessed under subparagraph (A) shall be payable by the participating lender and shall not be charged to the borrower.

(C) LOWERING OF BORROWER FEES.—If the Administration determines that fees paid by lenders and by small business borrowers for guarantees under this subsection may be reduced, consistent with reducing to zero the cost to the Administration of making such guarantees—

(i) the Administration shall first consider reducing fees paid by small business borrowers under clauses (i) through (iii) of paragraph (18)(A), to the maximum extent possible; and

(ii) fees paid by small business borrowers shall not be increased above the levels in effect

on December 8, 2004.

(24) NOTIFICATION REQUIREMENT.—The Administration shall notify the Committees on Small Business of the Senate and the House of Representatives not later than 15 days before making any significant policy or administrative change affecting the operation of the loan program under this subsection.

(25) LIMITATION ON CONDUCTING PILOT PROJECTS.—

(A) IN GENERAL.—Not more than 10 percent of the total number of loans guaranteed in any fiscal year under this subsection may be awarded as part of a pilot program which is commenced by the Administrator on or after October 1, 1996.

(B) "PILOT PROGRAM" DEFINED.—In this paragraph, the term 'pilot program' means any lending program initiative, project, innovation, or other activity not specifically authorized by law.

(C) LOW DOCUMENTATION LOAN PROGRAM.—The Administrator may carry out the low documentation loan program for loans of $100,000 or less only through lenders with significant experience in making small business loans. Not later than 90 days after September 30, 1996, the Administrator shall promulgate regulations defining the experience necessary for participation as a lender in the low documentation loan program.

(26) CALCULATION OF SUBSIDY RATE.—All fees, interest, and profits received and retained by the Administration under this subsection shall be included in the calculations made by the Director of the Office of Management and Budget to offset the cost (as that term is defined in section 661a of title 2) to the Administration of purchasing and guaranteeing loans under this chapter.

(27) Repealed. Pub. L. 106–8, §3(c), Apr. 2, 1999, 113 Stat. 16.

(28) LEASING.—In addition to such other lease arrangements as may be authorized by the Administration, a borrower may permanently lease to one or more tenants not more than 20 percent of any property constructed with the proceeds of a loan guaranteed under this subsection, if the borrower permanently occupies and uses not less than 60 percent of the total business space in the property.

(29) REAL ESTATE APPRAISALS.—With respect to a loan under this subsection that is secured by commercial real property, an appraisal of such property by a State licensed or certified appraiser—

(A) shall be required by the Administration in connection with any such loan for more than $250,000; or

(B) may be required by the Administration or the lender in connection with any such loan for $250,000 or less, if such appraisal is necessary for appropriate evaluation of creditworthiness.

(30) OWNERSHIP REQUIREMENTS.—Ownership requirements to determine the eligibility of a small business concern that applies for assistance under any credit program under this chapter shall be determined without regard to any ownership interest of a spouse arising solely from the application of the community property laws of a State for purposes of determining marital interests.

(31) EXPRESS LOANS.—

(A) DEFINITIONS.—As used in this paragraph:

(i) The term "express lender" means any lender authorized by the Administration to participate in the Express Loan Program.

(ii) The term "express loan" means any loan made pursuant to this paragraph in which a lender utilizes to the maximum extent practicable its own loan analyses, procedures, and documentation.

(iii) The term "Express Loan Program" means the program for express loans established by the Administration under paragraph (25)(B), as in existence on April 5, 2004, with a guaranty rate of not more than 50 percent.

(B) RESTRICTION TO EXPRESS LENDER.—The authority to make an express loan shall be limited to those lenders deemed qualified to make such loans by the Administration. Designation as an express lender for purposes of making an express loan shall not prohibit such lender from taking any other action authorized by the Administration for that lender pursuant to this subsection.

(C) GRANDFATHERING OF EXISTING LENDERS.—Any express lender shall retain such designation unless the Administration determines that the express lender has violated the law or regulations promulgated by the Administration or modifies the requirements to be an express lender and the lender no longer satisfies those requirements.

(D) MAXIMUM LOAN AMOUNT.—The maximum loan amount under the Express Loan Program is $350,000.

(E) OPTION TO PARTICIPATE.—Except as otherwise provided in this paragraph, the Administration shall take no regulatory, policy, or administrative action, without regard to whether such action requires notification pursuant to paragraph (24), that has the effect of requiring a lender to make an express loan pursuant to subparagraph (D).

(F) EXPRESS LOANS FOR RENEWABLE ENERGY AND ENERGY EFFICIENCY.—

(i) DEFINITIONS.—In this subparagraph—

(I) the term "biomass"—

(aa) means any organic material that is available on a renewable or recurring basis, including—

(AA) agricultural crops;
(BB) trees grown for energy production;
(CC) wood waste and wood residues;
(DD) plants (including aquatic plants and grasses);
(EE) residues;
(FF) fibers;
(GG) animal wastes and other waste materials; and
(HH) fats, oils, and greases (including recycled fats, oils, and greases); and

(bb) does not include—

(AA) paper that is commonly recycled; or
(BB) unsegregated solid waste;

(II) the term "energy efficiency project" means the installation or upgrading of equipment that results in a significant reduction in energy usage; and

(III) the term "renewable energy system" means a system of energy derived from—

(aa) a wind, solar, biomass (including biodiesel), or geothermal source; or

(bb) hydrogen derived from biomass or water using an energy source described in item (aa).

(ii) LOANS.—The Administrator may make a loan under the Express Loan Program for the purpose of—

(I) purchasing a renewable energy system; or

(II) carrying out an energy efficiency project for a small business concern.

(32) LOANS FOR ENERGY EFFICIENT TECHNOLOGIES.—

(A) DEFINITIONS.—In this paragraph—

(i) the term "cost" has the meaning given that term in section 661a of title 2;

(ii) the term "covered energy efficiency loan" means a loan—

(I) made under this subsection; and

(II) the proceeds of which are used to purchase energy efficient designs, equipment, or fixtures, or to reduce the energy consumption of the borrower by 10 percent or more; and

(iii) the term "pilot program" means the pilot program established under subparagraph (B)
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(B) ESTABLISHMENT.—The Administrator shall establish and carry out a pilot program under which the Administrator shall reduce the fees for covered energy efficiency loans.

(C) DURATION.—The pilot program shall terminate at the end of the second full fiscal year after the date that the Administrator establishes the pilot program.

(D) MAXIMUM PARTICIPATION.—A covered energy efficiency loan shall include the maximum participation levels by the Administrator permitted for loans made under this subsection.

(E) FEES.—

(i) IN GENERAL.—The fee on a covered energy efficiency loan shall be equal to 50 percent of the fee otherwise applicable to that loan under paragraph (18).

(ii) WAIVER.—The Administrator may waive clause (i) for a fiscal year if—

(I) for the fiscal year before that fiscal year, the annual rate of default of covered energy efficiency loans exceeds that of loans made under this subsection that are not covered energy efficiency loans;

(II) the cost to the Administration of making loans under this subsection is greater than zero and such cost is directly attributable to the cost of making covered energy efficiency loans; and

(III) no additional sources of revenue authority are available to reduce the cost of making loans under this subsection to zero.

(iii) EFFECT OF WAIVER.—If the Administrator waives the reduction of fees under clause (ii), the Administrator—

(I) shall not assess or collect fees in an amount greater than necessary to ensure that the cost of the program under this subsection is not greater than zero; and

(II) shall reinstate the fee reductions under clause (i) when the conditions in clause (ii) no longer apply.

(iv) NO INCREASE OF FEES.—The Administrator shall not increase the fees under paragraph (18) on loans made under this subsection that are not covered energy efficiency loans as a direct result of the pilot program.

(F) GAO REPORT.—

(i) IN GENERAL.—Not later than 1 year after the date that the pilot program terminates, the Comptroller General of the United States shall submit to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a report on the pilot program.

(ii) CONTENTS.—The report submitted under clause (i) shall include—

(I) the number of covered energy efficiency loans for which fees were reduced under the pilot program;

(II) a description of the energy efficiency savings with the pilot program;

(III) a description of the impact of the pilot program on the program under this subsection;

(IV) an evaluation of the efficacy and potential fraud and abuse of the pilot program; and

(V) recommendations for improving the pilot program.

(33) INCREASED VETERAN PARTICIPATION PROGRAM.—

(A) DEFINITIONS.—In this paragraph—

(i) the term "cost" has the meaning given that term in section 661a of title 2;

(ii) the term "pilot program" means the pilot program established under subparagraph (B); and

(iii) the term "veteran participation loan" means a loan made under this subsection to a small business concern owned and controlled by veterans of the Armed Forces or members of the reserve components of the Armed Forces.

(B) ESTABLISHMENT.—The Administrator shall establish and carry out a pilot program under which the Administrator shall reduce the fees for veteran participation loans.

(C) DURATION.—The pilot program shall terminate at the end of the second full fiscal year after the date that the Administrator establishes the pilot program.

(D) MAXIMUM PARTICIPATION.—A veteran participation loan shall include the maximum participation levels by the Administrator permitted for loans made under this subsection.

(E) FEES.—

(i) IN GENERAL.—The fee on a veteran participation loan shall be equal to 50 percent of the fee otherwise applicable to that loan under paragraph (18).

(ii) WAIVER.—The Administrator may waive clause (i) for a fiscal year if—

(I) for the fiscal year before that fiscal year, the annual estimated rate of default of veteran participation loans exceeds that of loans made under this subsection that are not veteran participation loans;

(II) the cost to the Administration of making loans under this subsection is greater than zero and such cost is directly attributable to the cost of making veteran participation loans; and

(III) no additional sources of revenue authority are available to reduce the cost of making loans under this subsection to zero.

(iii) EFFECT OF WAIVER.—If the Administrator waives the reduction of fees under clause (ii), the Administrator—

(I) shall not assess or collect fees in an amount greater than necessary to ensure that the cost of the program under this subsection is not greater than zero; and

(II) shall reinstate the fee reductions under clause (i) when the conditions in clause (ii) no longer apply.

(iv) NO INCREASE OF FEES.—The Administrator shall not increase the fees under paragraph (18) on loans made under this subsection that are not veteran participation loans as a direct result of the pilot program.

(F) GAO REPORT.—

(i) IN GENERAL.—Not later than 1 year after the date that the pilot program terminates, the Comptroller General of the United States shall submit to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a report on the pilot program.

(ii) CONTENTS.—The report submitted under clause (i) shall include—

(I) the number of veteran participation loans for which fees were reduced under the pilot program;

(II) a description of the impact of the pilot program on the program under this subsection;

(III) an evaluation of the efficacy and potential fraud and abuse of the pilot program; and

(IV) recommendations for improving the pilot program.

(34) EXPORT EXPRESS PROGRAM.—

(A) DEFINITIONS.—In this paragraph—

(i) the term "export development activity" includes—

(I) obtaining a standby letter of credit when required as a bid bond, performance bond, or advance payment guarantee;

(II) participation in a trade show that takes place outside the United States;

(III) translation of product brochures or catalogues for use in markets outside the United States;

(IV) obtaining a general line of credit for export purposes;

(V) performing a service contract from buyers located outside the United States;

(VI) obtaining transaction-specific financing associated with completing export orders;

(VII) purchasing real estate or equipment to be used in the production of goods or services for export;

(VIII) providing term loans or other financing to enable a small business concern, including an export trading company and an export management company, to develop a market outside the United States; and

(IX) acquiring, constructing, renovating, modernizing, improving, or expanding a production facility or equipment to be used in the United States in the production of goods or services for export; and

(ii) the term "express loan" means a loan in which a lender uses to the maximum extent practicable the loan analyses, procedures, and documentation of the lender to provide expedited processing of the loan application.

(B) AUTHORITY.—The Administrator may guarantee the timely payment of an express loan to a small business concern made for an export development activity.

(C) LEVEL OF PARTICIPATION.—

(i) MAXIMUM AMOUNT.—The maximum amount of an express loan guaranteed under this paragraph shall be $500,000.

(ii) PERCENTAGE.—For an express loan guaranteed under this paragraph, the Administrator shall guarantee—

(I) 90 percent of a loan that is not more than $350,000; and

(II) 75 percent of a loan that is more than $350,000 and not more than $500,000.

(b) Disaster loans; authorization, scope, terms and conditions, etc.

Except as to agricultural enterprises as defined in section 647(b)(1) of this title, the Administration also is empowered to the extent and in such amounts as provided in advance in appropriation Acts—

(1)(A) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis) as the Administration may determine to be necessary or appropriate to repair, rehabilitate or replace property, real or personal, damaged or destroyed by or as a result of natural or other disasters: *Provided*, That such damage or destruction is not compensated for by insurance or otherwise: *And provided further*, That the Administration may increase the amount of the loan by up to an additional 20 per centum of the aggregate costs of such damage or destruction (whether or not compensated for by insurance or otherwise) if it determines such increase to be necessary or appropriate in order to protect the damaged or destroyed property from possible future disasters by taking mitigating measures, including, but not limited to, construction of retaining walls and sea walls, grading and contouring land, relocating utilities and modifying structures;

(B) to refinance any mortgage or other lien against a totally destroyed or substantially damaged home or business concern: *Provided*, That no loan or guarantee shall be extended unless the Administration finds that (i) the applicant is not able to obtain credit elsewhere; (ii) such property is to be repaired, rehabilitated, or replaced; (iii) the amount refinanced shall not exceed the amount of physical loss sustained; and (iv) such amounts shall be reduced to the extent such mortgage or lien is satisfied by insurance or otherwise; and

(C) during fiscal years 2000 through 2004, to establish a predisaster mitigation program to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis), as the Administrator

may determine to be necessary or appropriate, to enable small businesses to use mitigation techniques in support of a formal mitigation program established by the Federal Emergency Management Agency, except that no loan or guarantee may be extended to a small business under this subparagraph unless the Administration finds that the small business is otherwise unable to obtain credit for the purposes described in this subparagraph;

(2) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis) as the Administration may determine to be necessary or appropriate to any small business concern, private nonprofit organization, or small agricultural cooperative located in an area affected by a disaster,[5] (including drought), with respect to both farm-related and nonfarm-related small business concerns, if the Administration determines that the concern, the organization, or the cooperative has suffered a substantial economic injury as a result of such disaster and if such disaster constitutes—

(A) a major disaster, as determined by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.); or

(B) a natural disaster, as determined by the Secretary of Agriculture pursuant to section 1961 of title 7, in which case, assistance under this paragraph may be provided to farm-related and nonfarm-related small business concerns, subject to the other applicable requirements of this paragraph; or

(C) a disaster, as determined by the Administrator of the Small Business Administration; or

(D) if no disaster declaration has been issued pursuant to subparagraph (A), (B), or (C), the Governor of a State in which a disaster has occurred may certify to the Small Business Administration that small business concerns, private nonprofit organizations, or small agricultural cooperatives (1) have suffered economic injury as a result of such disaster, and (2) are in need of financial assistance which is not available on reasonable terms in the disaster stricken area. Not later than 30 days after the date of receipt of such certification by a Governor of a State, the Administration shall respond in writing to that Governor on its determination and the reasons therefore,[6] and may then make such loans as would have been available under this paragraph if a disaster declaration had been issued.

Provided, That no loan or guarantee shall be extended pursuant to this paragraph (2) unless the Administration finds that the applicant is not able to obtain credit elsewhere.

(3)(A) In this paragraph—

(i) the term "essential employee" means an individual who is employed by a small business concern and whose managerial or technical expertise is critical to the successful day-to-day operations of that small business concern;

(ii) the term "period of military conflict" has the meaning given the term in subsection (n)(1) of this section; and

(iii) the term "substantial economic injury" means an economic harm to a business concern that results in the inability of the business concern—

(I) to meet its obligations as they mature;

(II) to pay its ordinary and necessary operating expenses; or

(III) to market, produce, or provide a product or service ordinarily marketed, produced, or provided by the business concern.

(B) The Administration may make such disaster loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) to assist a small business concern that has suffered or that is likely to suffer substantial economic injury as the result of an essential employee of such small business concern being ordered to active military duty during a period of military conflict.

(C) A small business concern described in subparagraph (B) shall be eligible to apply for assistance under this paragraph during the period beginning on the date on which the essential employee is ordered to active duty and ending on the date that is 1 year after the date on which

such essential employee is discharged or released from active duty. The Administrator may, when appropriate (as determined by the Administrator), extend the ending date specified in the preceding sentence by not more than 1 year.

(D) Any loan or guarantee extended pursuant to this paragraph shall be made at the same interest rate as economic injury loans under paragraph (2).

(E) No loan may be made under this paragraph, either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis, if the total amount outstanding and committed to the borrower under this subsection would exceed $1,500,000, unless such applicant constitutes, or have [7] become due to changed economic circumstances, a major source of employment in its surrounding area, as determined by the Administration, in which case the Administration, in its discretion, may waive the $1,500,000 limitation.

(F) For purposes of assistance under this paragraph, no declaration of a disaster area shall be required.

(G)(i) Notwithstanding any other provision of law, the Administrator may make a loan under this paragraph of not more than $50,000 without collateral.

(ii) The Administrator may defer payment of principal and interest on a loan described in clause (i) during the longer of—

(I) the 1-year period beginning on the date of the initial disbursement of the loan; and

(II) the period during which the relevant essential employee is on active duty.

(H) The Administrator shall give priority to any application for a loan under this paragraph and shall process and make a determination regarding such applications prior to processing or making a determination on other loan applications under this subsection, on a rolling basis.

(4) COORDINATION WITH FEMA.—

(A) IN GENERAL.—Notwithstanding any other provision of law, for any disaster declared under this subsection or major disaster (including any major disaster relating to which the Administrator declares eligibility for additional disaster assistance under paragraph (9)), the Administrator, in consultation with the Administrator of the Federal Emergency Management Agency, shall ensure, to the maximum extent practicable, that all application periods for disaster relief under this chapter correspond with application deadlines established under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), or as extended by the President.

(B) DEADLINES.—Notwithstanding any other provision of law, not later than 10 days before the closing date of an application period for a major disaster (including any major disaster relating to which the Administrator declares eligibility for additional disaster assistance under paragraph (9)), the Administrator, in consultation with the Administrator of the Federal Emergency Management Agency, shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report that includes—

(i) the deadline for submitting applications for assistance under this chapter relating to that major disaster;

(ii) information regarding the number of loan applications and disbursements processed by the Administrator relating to that major disaster for each day during the period beginning on the date on which that major disaster was declared and ending on the date of that report; and

(iii) an estimate of the number of potential applicants that have not submitted an application relating to that major disaster.

(5) PUBLIC AWARENESS OF DISASTERS.—If a disaster is declared under this subsection or the Administrator declares eligibility for additional disaster assistance under paragraph (9), the Administrator shall make every effort to communicate through radio, television, print, and web-based outlets, all relevant information needed by disaster loan applicants, including—

(A) the date of such declaration;

(B) cities and towns within the area of such declaration;

(C) loan application deadlines related to such disaster;

(D) all relevant contact information for victim services available through the Administration (including links to small business development center websites);

(E) links to relevant Federal and State disaster assistance websites, including links to websites providing information regarding assistance available from the Federal Emergency Management Agency;

(F) information on eligibility criteria for Administration loan programs, including where such applications can be found; and

(G) application materials that clearly state the function of the Administration as the Federal source of disaster loans for homeowners and renters.

(6) AUTHORITY FOR QUALIFIED PRIVATE CONTRACTORS.—

(A) DISASTER LOAN PROCESSING.—The Administrator may enter into an agreement with a qualified private contractor, as determined by the Administrator, to process loans under this subsection in the event of a major disaster (including any major disaster relating to which the Administrator declares eligibility for additional disaster assistance under paragraph (9)), under which the Administrator shall pay the contractor a fee for each loan processed.

(B) LOAN LOSS VERIFICATION SERVICES.—The Administrator may enter into an agreement with a qualified lender or loss verification professional, as determined by the Administrator, to verify losses for loans under this subsection in the event of a major disaster (including any major disaster relating to which the Administrator declares eligibility for additional disaster assistance under paragraph (9)), under which the Administrator shall pay the lender or verification professional a fee for each loan for which such lender or verification professional verifies losses.

(7) DISASTER ASSISTANCE EMPLOYEES.—

(A) IN GENERAL.—In carrying out this section, the Administrator may, where practicable, ensure that the number of full-time equivalent employees—

(i) in the Office of the Disaster Assistance is not fewer than 800; and

(ii) in the Disaster Cadre of the Administration is not fewer than 1,000.

(B) REPORT.—In carrying out this subsection, if the number of full-time employees for either the Office of Disaster Assistance or the Disaster Cadre of the Administration is below the level described in subparagraph (A) for that office, not later than 21 days after the date on which that staffing level decreased below the level described in subparagraph (A), the Administrator shall submit to the Committee on Appropriations and the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Appropriations and Committee on Small Business of the House of Representatives, a report—

(i) detailing staffing levels on that date;

(ii) requesting, if practicable and determined appropriate by the Administrator, additional funds for additional employees; and

(iii) containing such additional information, as determined appropriate by the Administrator.

(8) INCREASED LOAN CAPS.—

(A) AGGREGATE LOAN AMOUNTS.—Except as provided in subparagraph (B), and notwithstanding any other provision of law, the aggregate loan amount outstanding and committed to a borrower under this subsection may not exceed $2,000,000.

(B) WAIVER AUTHORITY.—The Administrator may, at the discretion of the Administrator, increase the aggregate loan amount under subparagraph (A) for loans relating to a disaster to a level established by the Administrator, based on appropriate economic indicators for the region in which that disaster occurred.

(9) DECLARATION OF ELIGIBILITY FOR ADDITIONAL DISASTER ASSISTANCE.—

(A) IN GENERAL.—If the President declares a major disaster, the Administrator may declare eligibility for additional disaster assistance in accordance with this paragraph.

(B) THRESHOLD.—A major disaster for which the Administrator declares eligibility for additional disaster assistance under this paragraph shall—

(i) have resulted in extraordinary levels of casualties or damage or disruption severely affecting the population (including mass evacuations), infrastructure, environment, economy, national morale, or government functions in an area;

(ii) be comparable to the description of a catastrophic incident in the National Response Plan of the Administration, or any successor thereto, unless there is no successor to such plan, in which case this clause shall have no force or effect; and

(iii) be of such size and scope that—

(I) the disaster assistance programs under the other paragraphs under this subsection are incapable of providing adequate and timely assistance to individuals or business concerns located within the disaster area; or

(II) a significant number of business concerns outside the disaster area have suffered disaster-related substantial economic injury as a result of the incident.

(C) ADDITIONAL ECONOMIC INJURY DISASTER LOAN ASSISTANCE.—

(i) IN GENERAL.—If the Administrator declares eligibility for additional disaster assistance under this paragraph, the Administrator may make such loans under this subparagraph (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administrator determines appropriate to eligible small business concerns located anywhere in the United States.

(ii) PROCESSING TIME.—

(I) IN GENERAL.—If the Administrator determines that the average processing time for applications for disaster loans under this subparagraph relating to a specific major disaster is more than 15 days, the Administrator shall give priority to the processing of such applications submitted by eligible small business concerns located inside the disaster area, until the Administrator determines that the average processing time for such applications is not more than 15 days.

(II) SUSPENSION OF APPLICATIONS FROM OUTSIDE DISASTER AREA.—If the Administrator determines that the average processing time for applications for disaster loans under this subparagraph relating to a specific major disaster is more than 30 days, the Administrator shall suspend the processing of such applications submitted by eligible small business concerns located outside the disaster area, until the Administrator determines that the average processing time for such applications is not more than 15 days.

(iii) LOAN TERMS.—A loan under this subparagraph shall be made on the same terms as a loan under paragraph (2).

(D) DEFINITIONS.—In this paragraph—

(i) the term "disaster area" means the area for which the applicable major disaster was declared;

(ii) the term "disaster-related substantial economic injury" means economic harm to a business concern that results in the inability of the business concern to—

(I) meet its obligations as it matures;

(II) meet its ordinary and necessary operating expenses; or

(III) market, produce, or provide a product or service ordinarily marketed, produced, or provided by the business concern because the business concern relies on materials from the disaster area or sells or markets in the disaster area; and

(iii) the term "eligible small business concern" means a small business concern—

(I) that has suffered disaster-related substantial economic injury as a result of the applicable major disaster; and

(II)(aa) for which not less than 25 percent of the market share of that small business concern is from business transacted in the disaster area;

(bb) for which not less than 25 percent of an input into a production process of that small business concern is from the disaster area; or

(cc) that relies on a provider located in the disaster area for a service that is not readily available elsewhere.

No loan under this subsection, including renewals and extensions thereof, may be made for a period or periods exceeding thirty years: *Provided*, That the Administrator may consent to a suspension in the payment of principal and interest charges on, and to an extension in the maturity of, the Federal share of any loan under this subsection for a period not to exceed five years, if (A) the borrower under such loan is a homeowner or a small business concern, (B) the loan was made to enable (i) such homeowner to repair or replace his home, or (ii) such concern to repair or replace plant or equipment which was damaged or destroyed as the result of a disaster meeting the requirements of clause (A) or (B) of paragraph (2) of this subsection, and (C) the Administrator determines such action is necessary to avoid severe financial hardship: *Provided further*, That the provisions of paragraph (1) of subsection (d) of this section shall not be applicable to any such loan having a maturity in excess of twenty years. Notwithstanding any other provision of law, and except as provided in subsection (d), the interest rate on the Administration's share of any loan made under subsection (b) shall not exceed the average annual interest rate on all interest-bearing obligations of the United States then forming a part of the public debt as computed at the end of the fiscal year next preceding the date of the loan and adjusted to the nearest one-eighth of 1 per centum plus one-quarter of 1 per centum: *Provided, however*, That the interest rate for loans made under paragraphs (1) and (2) hereof shall not exceed the rate of interest which is in effect at the time of the occurrence of the disaster. In agreements to participate in loans on a deferred basis under this subsection, such participation by the Administration shall not be in excess of 90 per centum of the balance of the loan outstanding at the time of disbursement. Notwithstanding any other provision of law, the interest rate on the Administration's share of any loan made pursuant to paragraph (1) of this subsection to repair or replace a primary residence and/or replace or repair damaged or destroyed personal property, less the amount of compensation by insurance or otherwise, with respect to a disaster occurring on or after July 1, 1976, and prior to October 1, 1978, shall be: 1 per centum on the amount of such loan not exceeding $10,000, and 3 per centum on the amount of such loan over $10,000 but not exceeding $40,000. The interest rate on the Administration's share of the first $250,000 of all other loans made pursuant to paragraph (1) of this subsection, with respect to a disaster occurring on or after July 1, 1976, and prior to October 1, 1978, shall be 3 per centum. All repayments of principal on the Administration's share of any loan made under the above provisions shall first be applied to reduce the principal sum of such loan which bears interest at the lower rates provided in this paragraph. The principal amount of any loan made pursuant to paragraph (1) in connection with a disaster which occurs on or after April 1, 1977, but prior to January 1, 1978, may be increased by such amount, but not more than $2,000, as the Administration determines to be reasonable in light of the amount and nature of loss, damage, or injury sustained in order to finance the installation of insulation in the property which was lost, damaged, or injured, if the uninsured, damaged portion of the property is 10 per centum or more of the market value of the property at the time of the disaster. Not later than June 1, 1978, the Administration shall prepare and transmit to the Select Committee on Small Business of the Senate, the Committee on Small Business of the House of Representatives, and the Committees of the Senate and House of Representatives having jurisdiction over measures relating to energy conservation, a report on its activities under this paragraph, including therein an evaluation of the

effect of such activities on encouraging the installation of insulation in property which is repaired or replaced after a disaster which is subject to this paragraph, and its recommendations with respect to the continuation, modification, or termination of such activities.

In the administration of the disaster loan program under paragraphs (1) and (2) of this subsection, in the case of property loss or damage or injury resulting from a major disaster as determined by the President or a disaster as determined by the Administrator which occurs on or after January 1, 1971, and prior to July 1, 1973, the Small Business Administration, to the extent such loss or damage or injury is not compensated for by insurance or otherwise—

(A) may make any loan for repair, rehabilitation, or replacement of property damaged or destroyed without regard to whether the required financial assistance is otherwise available from private sources;

(B) may, in the case of the total destruction or substantial property damage of a home or business concern, refinance any mortgage or other liens outstanding against the destroyed or damaged property if such property is to be repaired, rehabilitated, or replaced, except that (1) in the case of a business concern, the amount refinanced shall not exceed the amount of the physical loss sustained, and (2) in the case of a home, the amount of each monthly payment of principal and interest on the loan after refinancing under this clause shall not be less than the amount of each such payment made prior to such refinancing;

(C) may, in the case of a loan made under clause (A) or a mortgage or other lien refinanced under clause (B) in connection with the destruction of, or substantial damage to, property owned and used as a residence by an individual who by reason of retirement, disability, or other similar circumstances relies for support on survivor, disability, or retirement benefits under a pension, insurance, or other programs, consent to the suspension of the payments of the principal of that loan, mortgage, or lien during the lifetime of that individual and his spouse for so long as the Administration determines that making such payments would constitute a substantial hardship;

(D) shall notwithstanding the provisions of any other law and upon presentation by the applicant of proof of loss or damage or injury and a bona fide estimate of cost of repair, rehabilitation, or replacement, cancel the principal of any loan made to cover a loss or damage or injury resulting from such disaster, except that—

(i) with respect to a loan made in connection with a disaster occurring on or after January 1, 1971 but prior to January 1, 1972, the total amount so canceled shall not exceed $2,500, and the interest on the balance of the loan shall be at a rate of 3 per centum per annum; and

(ii) with respect to a loan made in connection with a disaster occurring on or after January 1, 1972 but prior to July 1, 1973, the total amount so canceled shall not exceed $5,000 and the interest on the balance of the loan shall be at a rate of 1 percentum per annum.

(E) [8] A State grant made on or prior to July 1, 1979, shall not be considered compensation for the purpose of applying the provisions of section 312(a) of the Disaster Relief and Emergency Assistance Act [42 U.S.C. 5155(a)] to a disaster loan under paragraph (1) (2) [9] of this subsection.

With respect to any loan referred to in clause (D) which is outstanding on August 16, 1972, the Administrator shall—

(i) make such change in the interest rate on the balance of such loan as is required under that clause effective as of August 16, 1972; and

(ii) in applying the limitation set forth in that clause with respect to the total amount of such loan which may be canceled, consider as part of the amount so canceled any part of such loan which was previously canceled pursuant to section 231 of the Disaster Relief Act of 1970 [15 U.S.C. 636a].

Whoever wrongfully misapplies the proceeds of a loan obtained under this subsection shall be civilly liable to the Administrator in an amount equal to one-and-one half times the original principal amount of the loan.

(c) Private disaster loans

(1) Definitions

In this subsection—

(A) the term "disaster area" means any area for which the President declared a major disaster relating to which the Administrator declares eligibility for additional disaster assistance under subsection (b)(9), during the period of that major disaster declaration;

(B) the term "eligible individual" means an individual who is eligible for disaster assistance under subsection (b)(1) relating to a major disaster relating to which the Administrator declares eligibility for additional disaster assistance under subsection (b)(9);

(C) the term "eligible small business concern" means a business concern that is—

(i) a small business concern, as defined under this chapter; or

(ii) a small business concern, as defined in section 103 of the Small Business Investment Act of 1958 [15 U.S.C. 662];

(D) the term "preferred lender" means a lender participating in the Preferred Lender Program;

(E) the term "Preferred Lender Program" has the meaning given that term in subsection (a)(2)(C)(ii); and

(F) the term "qualified private lender" means any privately-owned bank or other lending institution that—

(i) is not a preferred lender; and

(ii) the Administrator determines meets the criteria established under paragraph (10).

(2) Program required

The Administrator shall carry out a program, to be known as the Private Disaster Assistance program, under which the Administration may guarantee timely payment of principal and interest, as scheduled, on any loan made to an eligible small business concern located in a disaster area and to an eligible individual.

(3) Use of loans

A loan guaranteed by the Administrator under this subsection may be used for any purpose authorized under subsection (b).

(4) Online applications

(A) Establishment

The Administrator may establish, directly or through an agreement with another entity, an online application process for loans guaranteed under this subsection.

(B) Other Federal assistance

The Administrator may coordinate with the head of any other appropriate Federal agency so that any application submitted through an online application process established under this paragraph may be considered for any other Federal assistance program for disaster relief.

(C) Consultation

In establishing an online application process under this paragraph, the Administrator shall consult with appropriate persons from the public and private sectors, including private lenders.

(5) Maximum amounts

(A) Guarantee percentage

The Administrator may guarantee not more than 85 percent of a loan under this subsection.

(B) Loan amount

The maximum amount of a loan guaranteed under this subsection shall be $2,000,000.

(6) Terms and conditions

A loan guaranteed under this subsection shall be made under the same terms and conditions as a

loan under subsection (b).

(7) Lenders

(A) In general

A loan guaranteed under this subsection made to—

(i) a qualified individual may be made by a preferred lender; and

(ii) a qualified small business concern may be made by a qualified private lender or by a preferred lender that also makes loans to qualified individuals.

(B) Compliance

If the Administrator determines that a preferred lender knowingly failed to comply with the underwriting standards for loans guaranteed under this subsection or violated the terms of the standard operating procedure agreement between that preferred lender and the Administration, the Administrator shall do 1 or more of the following:

(i) Exclude the preferred lender from participating in the program under this subsection.

(ii) Exclude the preferred lender from participating in the Preferred Lender Program for a period of not more than 5 years.

(8) Fees

(A) In general

The Administrator may not collect a guarantee fee under this subsection.

(B) Origination fee

The Administrator may pay a qualified private lender or preferred lender an origination fee for a loan guaranteed under this subsection in an amount agreed upon in advance between the qualified private lender or preferred lender and the Administrator.

(9) Documentation

A qualified private lender or preferred lender may use its own loan documentation for a loan guaranteed by the Administrator under this subsection, to the extent authorized by the Administrator. The ability of a lender to use its own loan documentation for a loan guaranteed under this subsection shall not be considered part of the criteria for becoming a qualified private lender under the regulations promulgated under paragraph (10).

(10) Implementation regulations

(A) In general

Not later than 1 year after the date of enactment of the Small Business Disaster Response and Loan Improvements Act of 2008, the Administrator shall issue final regulations establishing permanent criteria for qualified private lenders.

(B) Report to Congress

Not later than 6 months after the date of enactment of the Small Business Disaster Response and Loan Improvements Act of 2008, the Administrator shall submit a report on the progress of the regulations required by subparagraph (A) to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives.

(11) Authorization of appropriations

(A) In general

Amounts necessary to carry out this subsection shall be made available from amounts appropriated to the Administration to carry out subsection (b).

(B) Authority to reduce interest rates and other terms and conditions

Funds appropriated to the Administration to carry out this subsection,[5] may be used by the Administrator to meet the loan terms and conditions specified in paragraph (6).

(12) Purchase of loans

The Administrator may enter into an agreement with a qualified private lender or preferred lender to purchase any loan guaranteed under this subsection.

(d) Extension or renewal of loans; purchase of participations; assumption of obligations; disaster loans; interest rates; loan amounts

(1) The Administration may further extend the maturity of or renew any loan made pursuant to this section, or any loan transferred to the Administration pursuant to Reorganization Plan Numbered 2 of 1954, or Reorganization Plan Numbered 1 of 1957, for additional periods not to exceed ten years beyond the period stated therein, if such extension or renewal will aid in the orderly liquidation of such loan.

(2) During any period in which principal and interest charges are suspended on the Federal share of any loan, as provided in subsection (b) of this section, the Administrator shall, upon the request of any person, firm, or corporation having a participation in such loan, purchase such participation, or assume the obligation of the borrower, for the balance of such period, to make principal and interest payments on the non-Federal share of such loan: *Provided*, That no such payments shall be made by the Administrator in behalf of any borrower unless (i) the Administrator determines that such action is necessary in order to avoid a default, and (ii) the borrower agrees to make payments to the Administration in an aggregate amount equal to the amount paid in its behalf by the Administrator, in such manner and at such times (during or after the term of the loan) as the Administrator shall determine having due regard to the purposes sought to be achieved by this paragraph.

(3) With respect to a disaster occurring on or after October 1, 1978, and prior [10] August 13, 1981, on the Administration's share of loans made pursuant to paragraph (1) of subsection (b) of this section—

(A) if the loan proceeds are to repair or replace a primary residence and/or repair or replace damaged or destroyed personal property, the interest rate shall be 3 percent on the first $55,000 of such loan;

(B) if the loan proceeds are to repair or replace property damaged or destroyed and if the applicant is a business concern which is unable to obtain sufficient credit elsewhere, the interest rate shall be as determined by the Administration, but not in excess of 5 percent per annum; and

(C) if the loan proceeds are to repair or replace property damaged or destroyed and if the applicant is a business concern which is able to obtain sufficient credit elsewhere, the interest rate shall not exceed the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans and adjusted to the nearest one-eighth of 1 percent, and an additional amount as determined by the Administration, but not to exceed 1 percent: *Provided*, That three years after such loan is fully disbursed and every two years thereafter for the term of the loan, if the Administration determines that the borrower is able to obtain a loan from non-Federal sources at reasonable rates and terms for loans of similar purposes and periods of time, the borrower shall, upon request by the Administration, apply for and accept such a loan in sufficient amount to repay the Administration: *Provided further*, That no loan under subsection (b)(1) of this section shall be made, either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis, if the total amount outstanding and committed to the borrower under such subsection would exceed $500,000 for each disaster, unless an applicant constitutes a major source of employment in an area suffering a disaster, in which case the Administration, in its discretion, may waive the $500,000 limitation.

(4) Notwithstanding the provisions of any other law, the interest rate on the Federal share of any loan made under subsection (b) of this section shall be—

(A) in the case of a homeowner unable to secure credit elsewhere, the rate prescribed by the Administration but not more than one-half the rate determined by the Secretary of the Treasury

taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans plus an additional charge of not to exceed 1 per centum per annum as determined by the Administrator, and adjusted to the nearest one-eighth of 1 per centum but not to exceed 8 per centum per annum;

(B) in the case of a homeowner able to secure credit elsewhere, the rate prescribed by the Administration but not more than the rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans plus an additional charge of not to exceed 1 per centum per annum as determined by the Administrator, and adjusted to the nearest one-eighth of 1 per centum;

(C) in the case of a business concern unable to obtain credit elsewhere, not to exceed 8 per centum per annum;

(D) in the case of a business concern able to obtain credit elsewhere, the rate prescribed by the Administration but not in excess of the rate prevailing in private market for similar loans and not more than the rate prescribed by the Administration as the maximum interest rate for deferred participation (guaranteed) loans under subsection (a) of this section. Loans under this subparagraph shall be limited to a maximum term of three years.

(5) Notwithstanding the provisions of any other law, the interest rate on the Federal share of any loan made under subsection (b)(1) and (b)(2) of this section on account of a disaster commencing on or after October 1, 1982, shall be—

(A) in the case of a homeowner unable to secure credit elsewhere, the rate prescribed by the Administration but not more than one-half the rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loan plus an additional charge of not to exceed 1 per centum per annum as determined by the Administrator, and adjusted to the nearest one-eighth of 1 per centum, but not to exceed 4 per centum per annum;

(B) in the case of a homeowner able to secure credit elsewhere, the rate prescribed by the Administration but not more than the rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans plus an additional charge of not to exceed 1 per centum per annum as determined by the Administrator, and adjusted to the nearest one-eighth of 1 per centum, but not to exceed 8 per centum per annum;

(C) in the case of a business, private nonprofit organization, or other concern, including agricultural cooperatives, unable to obtain credit elsewhere, not to exceed 4 per centum per annum;

(D) in the case of a business concern able to obtain credit elsewhere, the rate prescribed by the Administration but not in excess of the lowest of (i) the rate prevailing in the private market for similar loans, (ii) the rate prescribed by the Administration as the maximum interest rate for deferred participation (guaranteed) loans under subsection (a) of this section, or (iii) 8 per centum per annum. Loans under this subparagraph shall be limited to a maximum term of 7 years.

(6) Notwithstanding the provisions of any other law, such loans, subject to the reductions required by subparagraphs (A) and (B) of subsection (b)(1) of this section, shall be in amounts equal to 100 per centum of loss. The interest rates for loans made under subsection (b)(1) and (2) of this section, as determined pursuant to paragraph (5), shall be the rate of interest which is in effect on the date of the disaster commenced: *Provided*, That no loan under subsection (b)(1) and (2) of this section shall be made, either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis, if

the total amount outstanding and committed to the borrower under subsection (b) of this section would exceed $500,000 for each disaster unless an applicant constitutes a major source of employment in an area suffering a disaster, in which case the Administration, in its discretion, may waive the $500,000 limitation: *Provided further*, That the Administration, subject to the reductions required by subparagraphs (A) and (B) of subsection (b)(1) of this section, shall not reduce the amount of eligibility for any homeowner on account of loss of real estate to less than $100,000 for each disaster nor for any homeowner or lessee on account of loss of personal property to less than $20,000 for each disaster, such sums being in addition to any eligible refinancing: *Provided further*, That the Administration shall not require collateral for loans of $14,000 or less (or such higher amount as the Administrator determines appropriate in the event of a major disaster) which are made under paragraph (1) of subsection (b) of this section. Employees of concerns sharing a common business premises shall be aggregated in determining "major source of employment" status for nonprofit applicants owning such premises.

With respect to any loan which is outstanding on April 18, 1984, and which was made on account of a disaster commencing on or after October 1, 1982, the Administrator shall make such change in the interest rate on the balance of such loan as is required herein effective as of April 18, 1984.

(7) The Administration shall not withhold disaster assistance pursuant to this paragraph to nurseries who are victims of drought disasters. As used in subsection (b)(2) of this section the term "an area affected by a disaster" includes any county, or county contiguous thereto, determined to be a disaster by the President, the Secretary of Agriculture or the Administrator of the Small Business Administration.

(e) Funds for small business development centers under section 648 of this title

The Administration shall not fund any Small Business Development Center or any variation thereof, except as authorized in section 648 of this title.

(f) Additional requirements for subsection (b) loans

(1) [11] Increased deferment authorized

(A) In general

In making loans under subsection (b), the Administrator may provide, to the person receiving the loan, an option to defer repayment on the loan.

(B) Period

The period of a deferment under subparagraph (A) may not exceed 4 years.

(g) Net earnings clauses prohibited for subsection (b) loans

In making loans under subsection (b), the Administrator shall not require the borrower to pay any non-amortized amount for the first five years after repayment begins.

(h) Loans to handicapped persons and organizations for handicapped

(1) The Administration also is empowered, where other financial assistance is not available on reasonable terms, to make such loans (either directly or in cooperation with Banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate—

(A) to assist any public or private organization—

(i) which is organized under the laws of the United States or of any State, operated in the interest of handicapped individuals, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual;

(ii) which complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and

(iii) which, in the production of commodities and in the provision of services during any fiscal year in which it receives financial assistance under this subsection, employs handicapped individuals for not less than 75 per centum of the man-hours required for the production or

provision of the commodities or services; or

(B) to assist any handicapped individual in establishing, acquiring, or operating a small business concern.

(2) The Administration's share of any loan made under this subsection shall not exceed $350,000, nor may any such loan be made if the total amount outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund established by section 633(c)(1)(B) of this title would exceed $350,000. In agreements to participate in loans on a deferred basis under this subsection, the Administration's participation may total 100 per centum of the balance of the loan at the time of disbursement. The Administration's share of any loan made under this subsection shall bear interest at the rate of 3 per centum per annum. The maximum term of any such loan, including extensions and renewals thereof, may not exceed fifteen years. All loans made under this subsection shall be of such sound value or so secured as reasonably to assure repayment: *Provided, however,* That any reasonable doubt shall be resolved in favor of the applicant.

(3) For purposes of this subsection, the term "handicapped individual" means a person who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable.

(i) Loans to small business concerns located in urban or rural areas with high proportions of unemployed or low-income individuals, or owned by low-income individuals

(1) The Administration also is empowered to make, participate (on an immediate basis) in, or guarantee loans, repayable in not more than fifteen years, to any small business concern, or to any qualified person seeking to establish such a concern, when it determines that such loans will further the policies established in section 631(b) [2] of this title, with particular emphasis on the preservation or establishment of small business concerns located in urban or rural areas with high proportions of unemployed or low-income individuals, or owned by low-income individuals: *Provided, however,* That no such loans shall be made, participated in, or guaranteed if the total of such Federal assistance to a single borrower outstanding at any one time would exceed $100,000. The Administration may defer payments on the principal of such loans for a grace period and use such other methods as it deems necessary and appropriate to assure the successful establishment and operation of such concern. The Administration may, in its discretion, as a condition of such financial assistance, require that the borrower take steps to improve his management skills by participating in a management training program approved by the Administration: *Provided, however,* That any management training program so approved must be of sufficient scope and duration to provide reasonable opportunity for the individuals served to develop entrepreneurial and managerial self-sufficiency.

(2) The Administration shall encourage, as far as possible, the participation of the private business community in the program of assistance to such concerns, and shall seek to stimulate new private lending activities to such concerns through the use of the loan guarantees, participations in loans, and pooling arrangements authorized by this subsection.

(3) To insure an equitable distribution between urban and rural areas for loans between $3,500 and $100,000 made under this subsection, the Administration is authorized to use the agencies and agreements and delegations developed under title III of the Economic Opportunity Act of 1964, as amended [42 U.S.C. 2841 et seq.], as it shall determine necessary.

(4) The Administration shall provide for the continuing evaluation of programs under this subsection, including full information on the location, income characteristics, and types of businesses and individuals assisted, and on new private lending activity stimulated, and the results of such evaluation together with recommendations shall be included in the report required by section 639(a) of this title.

(5) Loans made pursuant to this subsection (including immediate participation in and guarantees of such loans) shall have such terms and conditions as the Administration shall determine, subject to

the following limitations—

(A) there is reasonable assurance of repayment of the loan;

(B) the financial assistance is not otherwise available on reasonable terms from private sources or other Federal, State, or local programs;

(C) the amount of the loan, together with other funds available, is adequate to assure completion of the project or achievement of the purposes for which the loan is made;

(D) the loan bears interest at a rate not less than (i) a rate determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding Treasury obligations of comparable maturity, plus (ii) such additional charge, if any, toward covering other costs of the program as the Administration may determine to be consistent with its purposes: *Provided, however*, That the rate of interest charged on loans made in redevelopment areas designated under the Public Works and Economic Development Act of 1965 [42 U.S.C. 3121 et seq.] shall not exceed the rate currently applicable to new loans made under section 201 of that Act [42 U.S.C. 3141]; and

(E) fees not in excess of amounts necessary to cover administrative expenses and probable losses may be required on loan guarantees.

(6) The Administration shall take such steps as may be necessary to insure that, in any fiscal year, at least 50 per centum of the amounts loaned or guaranteed pursuant to this subsection are allotted to small business concerns located in urban areas identified by the Administration as having high concentrations of unemployed or low-income individuals or to small business concerns owned by low-income individuals. The Administration shall define the meaning of low income as it applies to owners of small business concerns eligible to be assisted under this subsection.

(7) No financial assistance shall be extended pursuant to this subsection where the Administration determines that the assistance will be used in relocating establishments from one area to another if such relocation would result in an increase in unemployment in the area of original location.

(j) Financial assistance for projects providing technical or management assistance; areas of high concentration of unemployment or low-income; preferences; manner and method of payment; accessible services; program evaluations; establishment of development program; coordination of policies

(1) The Administration shall provide financial assistance to public or private organizations to pay all or part of the cost of projects designed to provide technical or management assistance to individuals or enterprises eligible for assistance under subsection (i) of this section, paragraph (10) of this subsection; and section 637(a) of this title, with special attention to small businesses located in areas of high concentration of unemployed or low-income individuals, to small businesses eligible to receive contracts pursuant to section 637(a) of this title.

(2) Financial assistance under this subsection may be provided for projects, including, but not limited to—

(A) planning and research, including feasibility studies and market research;

(B) the identification and development of new business opportunities;

(C) the furnishing of centralized services with regard to public services and Federal Government programs including programs authorized under subsection (i) of this section; paragraph (10) of this subsection, and section 637(a) of this title;

(D) the establishment and strengthening of business service agencies, including trade associations and cooperatives; and

(E) the furnishing of business counseling, management training, and legal and other related services, with special emphasis on the development of management training programs using the resources of the business community, including the development of management training opportunities in existing business, and with emphasis in all cases upon providing management training of sufficient scope and duration to develop entrepreneurial and managerial self-sufficiency on the part of the individuals served.

(3) The Administration shall encourage the placement of subcontracts by businesses with small

business concerns located in areas of high concentration of unemployed or low-income individuals, with small businesses owned by low-income individuals, and with small businesses eligible to receive contracts pursuant to section 637(a) of this title. The Administration may provide incentives and assistance to such businesses that will aid in the training and upgrading of potential subcontractors or other small business concerns eligible for assistance under subsections (i) and (j) of this section, and section 637(a) of this title.

(4) The Administration shall give preference to projects which promote the ownership, participation in ownership, or management of small businesses owned by low-income individuals and small businesses eligible to receive contracts pursuant to section 637(a) of this title.

(5) The financial assistance authorized for projects under this subsection includes assistance advanced by grant, agreement, or contract.

(6) The Administration is authorized to make payments under grants and contracts entered into under this subsection in lump sum or installments, and in advance or by way of reimbursement, and in the case of grants, with necessary adjustments on account of overpayments or underpayments.

(7) To the extent feasible, services under this subsection shall be provided in a location which is easily accessible to the individuals and small business concerns served.

(8) Repealed. Pub. L. 101–574, title II, §242(2), Nov. 15, 1990, 104 Stat. 2827.

(9) The Administration shall take such steps as may be necessary and appropriate, in coordination and cooperation with the heads of other Federal departments and agencies, to insure that contracts, subcontracts, and deposits made by the Federal Government or with programs aided with Federal funds are placed in such way as to further the purposes of subsections (i) and (j) of this section and section 637(a) of this title.

(10) There is established within the Administration a small business and capital ownership development program (hereinafter referred to as the "Program") which shall provide assistance exclusively for small business concerns eligible to receive contracts pursuant to section 637(a) of this title. The program, and all other services and activities authorized under this subsection and section 637(a) of this title, shall be managed by the Associate Administrator for Minority Small Business and Capital Ownership Development under the supervision of, and responsible to, the Administrator.

(A) The Program shall—

(i) assist small business concerns participating in the Program (either through public or private organizations) to develop and maintain comprehensive business plans which set forth the Program Participant's specific business targets, objectives, and goals developed and maintained in conformity with subparagraph (D).[12]

(ii) provide for such other nonfinancial services as deemed necessary for the establishment, preservation, and growth of small business concerns participating in the Program, including but not limited to (I) loan packaging, (II) financial counseling, (III) accounting and bookkeeping assistance, (IV) marketing assistance, and (V) management assistance;

(iii) assist small business concerns participating in the Program to obtain equity and debt financing;

(iv) establish regular performance monitoring and reporting systems for small business concerns participating in the Program to assure compliance with their business plans;

(v) analyze and report the causes of success and failure of small business concerns participating in the Program; and

(vi) provide assistance necessary to help small business concerns participating in the Program to procure surety bonds, with such assistance including, but not limited to, (I) the preparation of application forms required to receive a surety bond, (II) special management and technical assistance designed to meet the specific needs of small business concerns participating in the Program and which have received or are applying to receive a surety bond, and (III) preparation of all forms necessary to receive a surety bond guarantee from the Administration pursuant to title IV, part B of the Small Business Investment Act of 1958 [15 U.S.C. 694a et seq.].

(B) Small business concerns eligible to receive contracts pursuant to section 637(a) of this title shall participate in the Program.

(C)(i) A small business concern participating in any program or activity conducted under the authority of this paragraph or eligible for the award of contracts pursuant to section 637(a) of this title on September 1, 1988, shall be permitted continued participation and eligibility in such program or activity for a period of time which is the greater of—

(I) 9 years less the number of years since the award of its first contract pursuant to section 637(a) of this title; or

(II) its original fixed program participation term (plus any extension thereof) assigned prior to November 15, 1988, plus eighteen months.

(ii) Nothing contained in this subparagraph shall be deemed to prevent the Administration from instituting a termination or graduation pursuant to subparagraph (F) or (H) for issues unrelated to the expiration of any time period limitation.

(D)(i) Promptly after certification under paragraph (11) a Program Participant shall submit a business plan (hereinafter referred to as the "plan") as described in clause (ii) of this subparagraph for review by the Business Opportunity Specialist assigned to assist such Program Participant. The Business Opportunity Specialist shall have a Level I Federal Acquisition Certification in Contracting (or any successor certification) or the equivalent Department of Defense certification, except that a Business Opportunity Specialist serving at the time of the date of enactment of the National Defense Authorization Act for Fiscal Year 2013 may continue to serve as a Business Opportunity Specialist for a period of 5 years beginning on that date of enactment without such a certification. The plan may be a revision of a preliminary business plan submitted by the Program Participant or required by the Administration as a part of the application for certification under this section and shall be designed to result in the Program Participant eliminating the conditions or circumstances upon which the Administration determined eligibility pursuant to section 637(a)(6) of this title. Such plan, and subsequent modifications submitted under clause (iii) of this subparagraph, shall be approved by the business opportunity specialist prior to the Program Participant being eligible for award of a contract pursuant to section 637(a) of this title.

(ii) The plans submitted under this subparagraph shall include the following:

(I) An analysis of market potential, competitive environment, and other business analyses estimating the Program Participant's prospects for profitable operations during the term of program participation and after graduation.

(II) An analysis of the Program Participant's strengths and weaknesses with particular attention to correcting any financial, managerial, technical, or personnel conditions which are likely to impede the small business concern from receiving contracts other than those awarded under section 637(a) of this title.

(III) Specific targets, objectives, and goals, for the business development of the Program Participant during the next and succeeding years utilizing the results of the analyses conducted pursuant to subclauses (I) and (II).

(IV) A transition management plan outlining specific steps to assure profitable business operations after graduation (to be incorporated into the Program Participant's plan during the first year of the transitional stage of Program participation).

(V) Estimates of contract awards pursuant to section 637(a) of this title and from other sources, which the Program Participant will require to meet the specific targets, objectives, and goals for the years covered by its plan. The estimates established shall be consistent with the provisions of subparagraph (I) and section 637(a) of this title.

(iii) Each Program Participant shall annually review its currently approved plan with its Business Opportunity Specialist and modify such plan as may be appropriate. Any modified plan shall be submitted to the Administration for approval. The currently approved plan shall be considered valid until such time as a modified plan is approved by the Business Opportunity Specialist. Annual reviews pertaining to years in the transitional stage of program participation

shall require, as appropriate, a written verification that such Program Participant has complied with the requirements of subparagraph (I) relating to attaining business activity from sources other than contracts awarded pursuant to section 637(a) of this title.

(iv) Each Program Participant shall annually forecast its needs for contract awards under section 637(a) of this title for the next program year and the succeeding program year during the review of its business plan, conducted pursuant to clause (iii). Such forecast shall be known as the section 8(a) [15 U.S.C. 637(a)] contract support level and shall be included in the Program Participant's business plan. Such forecast shall include—

(I) the aggregate dollar value of contract support to be sought on a noncompetitive basis under section 637(a) of this title, reflecting compliance with the requirements of subparagraph (I) relating to attaining business activity from sources other than contracts awarded pursuant to section 637(a) of this title,

(II) the types of contract opportunities being sought, identified by Standard Industrial Classification (SIC) Code or otherwise,

(III) an estimate of the dollar value of contract support to be sought on a competitive basis, and

(IV) such other information as may be requested by the Business Opportunity Specialist to provide effective business development assistance to the Program Participant.

(E) A small business concern participating in the program conducted under the authority of this paragraph and eligible for the award of contracts pursuant to section 637(a) of this title shall be denied all such assistance if such concern—

(i) voluntarily elects not to continue participation;

(ii) completes the period of Program participation as prescribed by paragraph (15);

(iii) is terminated pursuant to a termination proceeding conducted in accordance with section 637(a)(9) of this title; or

(iv) is graduated pursuant to a graduation proceeding conducted in accordance with section 637(a)(9) of this title.

(F) For purposes of this section and section 637(a) of this title, the term "terminated" and the term "termination" means the total denial or suspension of assistance under this paragraph or under section 637(a) of this title prior to the graduation of the participating small business concern or prior to the expiration of the maximum program participation term. An action for termination shall be based upon good cause, including—

(i) the failure by such concern to maintain its eligibility for Program participation;

(ii) the failure of the concern to engage in business practices that will promote its competitiveness within a reasonable period of time as evidenced by, among other indicators, a pattern of unjustified delinquent performance or terminations for default with respect to contracts awarded under the authority of section 637(a) of this title;

(iii) a demonstrated pattern of failing to make required submissions or responses to the Administration in a timely manner;

(iv) the willful violation of any rule or regulation of the Administration pertaining to material issues;

(v) the debarment of the concern or its disadvantaged owners by any agency pursuant to subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation); or

(vi) the conviction of the disadvantaged owner or an officer of the concern for any offense indicating a lack of business integrity including any conviction for embezzlement, theft, forgery, bribery, falsification or violation of section 645 of this title. For purposes of this clause, no termination action shall be taken with respect to a disadvantaged owner solely because of the conviction of an officer of the concern (who is other than a disadvantaged owner) unless such owner conspired with, abetted, or otherwise knowingly acquiesced in the activity or omission that was the basis of such officer's conviction.

(G) The Director of the Division may initiate a termination proceeding by recommending such action to the Associate Administrator for Minority Small Business and Capital Ownership Development. Whenever the Associate Administrator, or a designee of such officer, determines such termination is appropriate, within 15 days after making such a determination the Program Participant shall be provided a written notice of intent to terminate, specifying the reasons for such action. No Program Participant shall be terminated from the Program pursuant to subparagraph (F) without first being afforded an opportunity for a hearing in accordance with section 637(a)(9) of this title.

(H) For the purposes of this subsection and section 637(a) of this title the term "graduated" or "graduation" means that the Program Participant is recognized as successfully completing the program by substantially achieving the targets, objectives, and goals contained in the concern's business plan thereby demonstrating its ability to compete in the marketplace without assistance under this section or section 637(a) of this title.

(I)(i) During the developmental stage of its participation in the Program, a Program Participant shall take all reasonable efforts within its control to attain the targets contained in its business plan for contracts awarded other than pursuant to section 637(a) of this title (hereinafter referred to as "business activity targets."). Such efforts shall be made a part of the business plan and shall be sufficient in scope and duration to satisfy the Administration that the Program Participant will engage a reasonable marketing strategy that will maximize its potential to achieve its business activity targets.

(ii) During the transitional stage of the Program a Program Participant shall be subject to regulations regarding business activity targets that are promulgated by the Administration pursuant to clause (iii);

(iii) The regulations referred to in clause (ii) shall:

(I) establish business activity targets applicable to Program Participants during the fifth year and each succeeding year of Program Participation; such targets, for such period of time, shall reflect a reasonably consistent increase in contracts awarded other than pursuant to section 637(a) of this title, expressed as a percentage of total sales; when promulgating business activity targets the Administration may establish modified targets for Program Participants that have participated in the Program for a period of longer than four years on June 1, 1989;

(II) require a Program Participant to attain its business activity targets;

(III) provide that, before the receipt of any contract to be awarded pursuant to section 637(a) of this title, the Program Participant (if it is in the transitional stage) must certify that it has complied with the regulations promulgated pursuant to subclause (II), or that it is in compliance with such remedial measures as may have been ordered pursuant to regulations issued under subclause (V);

(IV) require the Administration to review each Program Participant's performance regarding attainment of business activity targets during periodic reviews of such Participant's business plan; and

(V) authorize the Administration to take appropriate remedial measures with respect to a Program Participant that has failed to attain a required business activity target for the purpose of reducing such Participant's dependence on contracts awarded pursuant to section 637(a) of this title; such remedial actions may include, but are not limited to assisting the Program Participant to expand the dollar volume of its competitive business activity or limiting the dollar volume of contracts awarded to the Program Participant pursuant to section 637(a) of this title; except for actions that would constitute a termination, remedial measures taken pursuant to this subclause shall not be reviewable pursuant to section 637(a)(9) of this title.

(J)(i) The Administration shall conduct an evaluation of a Program Participant's eligibility for continued participation in the Program whenever it receives specific and credible information alleging that such Program Participant no longer meets the requirements for Program eligibility. Upon making a finding that a Program Participant is no longer eligible, the Administration shall initiate a termination proceeding in accordance with subparagraph (F). A Program Participant's

eligibility for award of any contract under the authority of section 637(a) of this title may be suspended pursuant to subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation).

(ii)(I) Except as authorized by subclauses (II) or (III), no award shall be made pursuant to section 637(a) of this title to a concern other than a small business concern.

(II) In determining the size of a small business concern owned by a socially and economically disadvantaged Indian tribe (or a wholly owned business entity of such tribe), each firm's size shall be independently determined without regard to its affiliation with the tribe, any entity of the tribal government, or any other business enterprise owned by the tribe, unless the Administrator determines that one or more such tribally owned business concerns have obtained, or are likely to obtain, a substantial unfair competitive advantage within an industry category.

(III) Any joint venture established under the authority of section 602(b) of Public Law 100–656, the "Business Opportunity Development Reform Act of 1988", shall be eligible for award of a contract pursuant to section 637(a) of this title.

(11)(A) The Associate Administrator for Minority Small Business and Capital Ownership Development shall be responsible for coordinating and formulating policies relating to Federal assistance to small business concerns eligible for assistance under subsection (i) of this section and small business concerns eligible to receive contracts pursuant to section 637(a) of this title.

(B)(i) Except as provided in clause (iii), no individual who was determined pursuant to section 637(a) of this title to be socially and economically disadvantaged before August 15, 1989, shall be permitted to assert such disadvantage with respect to any other concern making application for certification after August 15, 1989.

(ii) Except as provided in clause (iii), any individual upon whom eligibility is based pursuant to section 637(a)(4) of this title shall be permitted to assert such eligibility for only one small business concern.

(iii) A socially and economically disadvantaged Indian tribe may own more than one small business concern eligible for assistance pursuant to paragraph (10) and section 637(a) of this title if—

(I) the Indian tribe does not own another firm in the same industry which has been determined to be eligible to receive contracts under this program, and

(II) the individuals responsible for the management and daily operations of the concern do not manage more than two Program Participants.

(C) No concern, previously eligible for the award of contracts pursuant to section 637(a) of this title, shall be subsequently recertified for program participation if its prior participation in the program was concluded for any of the reasons described in paragraph (10)(E).

(D) A concern eligible for the award of contracts pursuant to this subsection shall remain eligible for such contracts if there is a transfer of ownership and control (as defined pursuant to section 637(a)(4) of this title) to individuals who are determined to be socially and economically disadvantaged pursuant to section 637(a) of this title. In the event of such a transfer, the concern, if not terminated or graduated, shall be eligible for a period of continued participation in the program not to exceed the time limitations prescribed in paragraph (15).

(E) There is established a Division of Program Certification and Eligibility (hereinafter referred to in this paragraph as the "Division") that shall be made part of the Office of Minority Small Business and Capital Ownership Development. The Division shall be headed by a Director who shall report directly to the Associate Administrator for Minority Small Business and Capital Ownership Development. The Division shall establish field offices within such regional offices of the Administration as may be necessary to perform efficiently its functions and responsibilities.

(F) Subject to the provisions of section 637(a)(9) of this title, the functions and responsibility of the Division are to—

(i) receive, review and evaluate applications for certification pursuant to paragraphs (4), (5), (6) and (7) of section 637(a) of this title;

(ii) advise each program applicant within 15 days after the receipt of an application as to whether such application is complete and suitable for evaluation and, if not, what matters must be rectified;

(iii) render recommendations on such applications to the Associate Administrator for Minority Small Business and Capital Ownership Development;

(iv) review and evaluate financial statements and other submissions from concerns participating in the program established by paragraph (10) to ascertain continued eligibility to receive subcontracts pursuant to section 637(a) of this title;

(v) make a request for the initiation of termination or graduation proceedings, as appropriate, to the Associate Administrator for Minority Small Business and Capital Ownership Development;

(vi) make recommendations to the Associate Administrator for Minority Small Business and Capital Ownership Development concerning protests from applicants that have been denied program admission;

(vii) decide protests regarding the status of a concern as a disadvantaged concern for purposes of any program or activity conducted under the authority of subsection (d) of section 637 of this title, or any other provision of Federal law that references such subsection for a definition of program eligibility; and

(viii) implement such policy directives as may be issued by the Associate Administrator for Minority Small Business and Capital Ownership Development pursuant to subparagraph (I) regarding, among other things, the geographic distribution of concerns to be admitted to the program and the industrial make-up of such concerns.

(G) An applicant shall not be denied admission into the program established by paragraph (10) due solely to a determination by the Division that specific contract opportunities are unavailable to assist in the development of such concern unless—

(i) the Government has not previously procured and is unlikely to procure the types of products or services offered by the concern; or

(ii) the purchases of such products or services by the Federal Government will not be in quantities sufficient to support the developmental needs of the applicant and other Program Participants providing the same or similar items or services.

(H) Not later than 90 days after receipt of a completed application for Program certification, the Associate Administrator for Minority Small Business and Capital Ownership Development shall certify a small business concern as a Program Participant or shall deny such application.

(I) Thirty days before the conclusion of each fiscal year, the Director of the Division shall review all concerns that have been admitted into the Program during the preceding 12-month period. The review shall ascertain the number of entrants, their geographic distribution and industrial classification. The Director shall also estimate the expected growth of the Program during the next fiscal year and the number of additional Business Opportunity Specialists, if any, that will be needed to meet the anticipated demand for the Program. The findings and conclusions of the Director shall be reported to the Associate Administrator for Minority Small Business and Capital Ownership Development by September 30 of each year. Based on such report and such additional data as may be relevant, the Associate Administrator shall, by October 31 of each year, issue policy and program directives applicable to such fiscal year that—

(i) establish priorities for the solicitation of program applications from underrepresented regions and industry categories;

(ii) assign staffing levels and allocate other program resources as necessary to meet program needs; and

(iii) establish priorities in the processing and admission of new Program Participants as may be necessary to achieve an equitable geographic distribution of concerns and a distribution of concerns across all industry categories in proportions needed to increase significantly contract awards to small business concerns owned and controlled by socially and economically disadvantaged individuals. When considering such increase the Administration shall give due

consideration to those industrial categories where Federal purchases have been substantial but where the participation rate of such concerns has been limited.

(12)(A) The Administration shall segment the Capital Ownership Development Program into two stages: a developmental stage; and a transitional stage.

(B) The developmental stage of program participation shall be designed to assist the concern in its effort to overcome its economic disadvantage by providing such assistance as may be necessary and appropriate to access its markets and to strengthen its financial and managerial skills.

(C) The transitional stage of program participation shall be designed to overcome, insofar as practicable, the remaining elements of economic disadvantage and to prepare such concern for graduation from the program.

(13) A Program Participant, if otherwise eligible, shall be qualified to receive the following assistance during the stages of program participation specified in paragraph 12: [13]

(A) Contract support pursuant to section 637(a) of this title.

(B) Financial assistance pursuant to subsection (a)(20) of this section.

(C) A maximum of two exemptions from the requirements of section 35(a) [2] of title 41, which exemptions shall apply only to contracts awarded pursuant to section 637(a) of this title and shall only be used to allow for contingent agreements by a small business concern to acquire the machinery, equipment, facilities, or labor needed to perform such contracts. No exemption shall be made pursuant to this subparagraph if the contract to which it pertains has an anticipated value in excess of $10,000,000. This subparagraph shall cease to be effective on October 1, 1992.

(D) A maximum of five exemptions from the requirements of sections 3131 and 3133 of title 40, which exemptions shall apply only to contracts awarded pursuant to section 637(a) of this title, except that, such exemptions may be granted under this subparagraph only if—

(i) the Administration finds that such concern is unable to obtain the requisite bond or bonds from a surety and that no surety is willing to issue a bond subject to the guarantee provision of title IV of the Small Business Investment Act of 1958 (15 U.S.C. 692 et seq.);

(ii) the Administration and the agency providing the contracting opportunity have provided for the protection of persons furnishing materials or labor to the Program Participant by arranging for the direct disbursement of funds due to such persons by the procuring agency or through any bank the deposits of which are insured by the Federal Deposit Insurance Corporation; and

(iii) the contract to which it pertains does not exceed $3,000,000 in amount. This subparagraph shall cease to be effective on October 1, 1994.

(E) Financial assistance whereby the Administration may purchase in whole or in part, and on behalf of such concerns, skills training or upgrading for employees or potential employees of such concerns. Such assistance may be made without regard to section 647(a) of this title. Assistance may be made by direct payment to the training provider or by reimbursing the Program Participant or the Participant's employee, if such reimbursement is found to be reasonable and appropriate. For purposes of this subparagraph the term "training provider" shall mean an institution of higher education, a community or vocational college, or an institution eligible to provide skills training or upgrading under title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.]. The Administration shall, in consultation with the Secretary of Labor, promulgate rules and regulations to implement this subparagraph that establish acceptable training and upgrading performance standards and provide for such monitoring or audit requirements as may be necessary to ensure the integrity of the training effort. No financial assistance shall be granted under the subparagraph unless the Administrator determines that—

(i) such concern has documented that it has first explored the use of existing cost-free or cost-subsidized training programs offered by public and private sector agencies working with programs of employment and training and economic development;

(ii) no more than five employees or potential employees of such concern are recipients of any benefits under this subparagraph at any one time;

(iii) no more than $2,500 shall be made available for any one employee or potential employee;

(iv) the length of training or upgrading financed by this subparagraph shall be no less than one month nor more than six months;

(v) such concern has given adequate assurance it will employ the trainee or upgraded employee for at least six months after the training or upgrading financed by this subparagraph has been completed and each trainee or upgraded employee has provided a similar assurance to remain within the employ of such concern for such period; if such concern, trainee, or upgraded employee breaches this agreement, the Administration shall be entitled to and shall make diligent efforts to obtain from the violating party the repayment of all funds expended on behalf of the violating party, such repayment shall be made to the Administration together with such interest and costs of collection as may be reasonable; the violating party shall be barred from receiving any further assistance under this subparagraph;

(vi) the training to be financed may take place either at such concern's facilities or at those of the training provider; and

(vii) such concern will maintain such records as the Administration deems appropriate to ensure that the provisions of this paragraph and any other applicable law have not been violated.

(F) The transfer of technology or surplus property owned by the United States to such a concern. Activities designed to effect such transfer shall be developed in cooperation with the heads of Federal agencies and shall include the transfer by grant, license, or sale of such technology or property to such a concern. Such property may be transferred to Program Participants on a priority basis. Technology or property transferred under this subparagraph shall be used by the concern during the normal conduct of its business operation and shall not be sold or transferred to any other party (other than the Government) during such concern's term of participation in the Program and for one year thereafter.

(G) Training assistance whereby the Administration shall conduct training sessions to assist individuals and enterprises eligible to receive contracts under section 637(a) of this title in the development of business principles and strategies to enhance their ability to successfully compete for contracts in the marketplace.

(H) Joint ventures, leader-follower arrangements, and teaming agreements between the Program Participant and other Program Participants and other business concerns with respect to contracting opportunities for the research, development, full-scale engineering or production of major systems. Such activities shall be undertaken on the basis of programs developed by the agency responsible for the procurement of the major system, with the assistance of the Administration.

(I) Transitional management business planning training and technical assistance.

(J) Program Participants in the developmental stage of Program participation shall be eligible for the assistance provided by subparagraphs (A), (B), (C), (D), (E), (F), and (G).

(14) Program Participants in the transitional stage of Program participation shall be eligible for the assistance provided by subparagraphs (A), (B), (F), (G), (H), and (I) of paragraph (13).

(15) Subject to the provisions of paragraph (10)(C), a small business concern may receive developmental assistance under the Program and contracts under section 637(a) of this title for a total period of not longer than nine years, measured from the date of its certification under the authority of such section, of which—

(A) no more than four years may be spent in the developmental stage of Program Participation; and

(B) no more than five years may be spent in the transitional stage of Program Participation.

(16)(A) The Administrator shall develop and implement a process for the systematic collection of data on the operations of the Program established pursuant to paragraph (10).

(B) Not later than April 30 of each year, the Administrator shall submit a report to the Congress on the Program that shall include the following:

(i) The average personal net worth of individuals who own and control concerns that were initially certified for participation in the Program during the immediately preceding fiscal year. The Administrator shall also indicate the dollar distribution of net worths, at $50,000 increments, of all such individuals found to be socially and economically disadvantaged. For the first report required pursuant to this paragraph the Administrator shall also provide the data specified in the preceding sentence for all eligible individuals in the Program as of November 15, 1988.

(ii) A description and estimate of the benefits and costs that have accrued to the economy and the Government in the immediately preceding fiscal year due to the operations of those business concerns that were performing contracts awarded pursuant to section 637(a) of this title.

(iii) A compilation and evaluation of those business concerns that have exited the Program during the immediately preceding three fiscal years. Such compilation and evaluation shall detail the number of concerns actively engaged in business operations, those that have ceased or substantially curtailed such operations, including the reasons for such actions, and those concerns that have been acquired by other firms or organizations owned and controlled by other than socially and economically disadvantaged individuals. For those businesses that have continued operations after they exited from the Program, the Administrator shall also separately detail the benefits and costs that have accrued to the economy during the immediately preceding fiscal year due to the operations of such concerns.

(iv) A listing of all participants in the Program during the preceding fiscal year identifying, by State and by Region, for each firm: the name of the concern, the race or ethnicity, and gender of the disadvantaged owners, the dollar value of all contracts received in the preceding year, the dollar amount of advance payments received by each concern pursuant to contracts awarded under section 637(a) of this title, and a description including (if appropriate) an estimate of the dollar value of all benefits received pursuant to paragraphs (13) and (14) and subsection (a)(20) of this section during such year.

(v) The total dollar value of contracts and options awarded during the preceding fiscal year pursuant to section 637(a) of this title and such amount expressed as a percentage of total sales of (I) all firms participating in the Program during such year; and (II) of firms in each of the nine years of program participation.

(vi) A description of such additional resources or program authorities as may be required to provide the types of services needed over the next two-year period to service the expected portfolio of firms certified pursuant to section 637(a) of this title.

(vii) The total dollar value of contracts and options awarded pursuant to section 637(a) of this title, at such dollar increments as the Administrator deems appropriate, for each four digit standard industrial classification code under which such contracts and options were classified.

(C) The first report required by subparagraph (B) shall pertain to fiscal year 1990.

(k) Functions relating to loans and financial assistance for projects providing technical or management assistance to individuals or enterprises eligible for assistance as small business concerns located in urban or rural areas with high proportions of unemployed or low-income individuals, or owned by low-income individuals

In carrying out its functions under subsections (i) and (j) of this section and section 637(a) of this title, the Administration is authorized—

(1) to utilize, with their consent, the services and facilities of Federal agencies without reimbursement, and, with the consent of any State or political subdivision of a State, accept and utilize the services and facilities of such State or subdivision without reimbursement;

(2) to accept, in the name of the Administration, and employ or dispose of in furtherance of the purposes of this chapter, any money or property, real, personal, or mixed, tangible, or intangible, received by gift, devise, bequest, or otherwise;

(3) to accept voluntary and uncompensated services, notwithstanding the provisions of section 1342 of title 31; and

(4) to employ experts and consultants or organizations thereof as authorized by section 3109 of title 5, except that no individual may be employed under the authority of this subsection for more

than one hundred days in any fiscal year; to compensate individuals so employed at rates not in excess of the daily equivalent of the highest rate payable under section 5332 of title 5, including traveltime; and to allow them, while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5 for persons in the Government service employed intermittently, while so employed: *Provided, however*, That contracts for such employment may be renewed annually.

(l) Small business intermediary lending pilot program

(1) Definitions

In this subsection—

(A) the term "eligible intermediary"—

(i) means a private, nonprofit entity that—

(I) seeks or has been awarded a loan from the Administrator to make loans to small business concerns under this subsection; and

(II) has not less than 1 year of experience making loans to startup, newly established, or growing small business concerns; and

(ii) includes—

(I) a private, nonprofit community development corporation;

(II) a consortium of private, nonprofit organizations or nonprofit community development corporations; and

(III) an agency of or nonprofit entity established by a Native American Tribal Government; and

(B) the term "Program" means the small business intermediary lending pilot program established under paragraph (2).

(2) Establishment

There is established a 3-year small business intermediary lending pilot program, under which the Administrator may make direct loans to eligible intermediaries, for the purpose of making loans to startup, newly established, and growing small business concerns.

(3) Purposes

The purposes of the Program are—

(A) to assist small business concerns in areas suffering from a lack of credit due to poor economic conditions or changes in the financial market; and

(B) to establish a loan program under which the Administrator may provide loans to eligible intermediaries to enable the eligible intermediaries to provide loans to startup, newly established, and growing small business concerns for working capital, real estate, or the acquisition of materials, supplies, or equipment.

(4) Loans to eligible intermediaries

(A) Application

Each eligible intermediary desiring a loan under this subsection shall submit an application to the Administrator that describes—

(i) the type of small business concerns to be assisted;

(ii) the size and range of loans to be made;

(iii) the interest rate and terms of loans to be made;

(iv) the geographic area to be served and the economic, poverty, and unemployment characteristics of the area;

(v) the status of small business concerns in the area to be served and an analysis of the availability of credit; and

(vi) the qualifications of the applicant to carry out this subsection.

(B) Loan limits

No loan may be made to an eligible intermediary under this subsection if the total amount outstanding and committed to the eligible intermediary by the Administrator would, as a result of such loan, exceed $1,000,000 during the participation of the eligible intermediary in the Program.

(C) Loan duration

Loans made by the Administrator under this subsection shall be for a term of 20 years.

(D) Applicable interest rates

Loans made by the Administrator to an eligible intermediary under the Program shall bear an annual interest rate equal to 1.00 percent.

(E) Fees; collateral

The Administrator may not charge any fees or require collateral with respect to any loan made to an eligible intermediary under this subsection.

(F) Delayed payments

The Administrator shall not require the repayment of principal or interest on a loan made to an eligible intermediary under the Program during the 2-year period beginning on the date of the initial disbursement of funds under that loan.

(G) Maximum participants and amounts

During each of fiscal years 2011, 2012, and 2013, the Administrator may make loans under the Program—

(i) to not more than 20 eligible intermediaries; and

(ii) in a total amount of not more than $20,000,000.

(5) Loans to small business concerns

(A) In general

The Administrator, through an eligible intermediary, shall make loans to startup, newly established, and growing small business concerns for working capital, real estate, and the acquisition of materials, supplies, furniture, fixtures, and equipment.

(B) Maximum loan

An eligible intermediary may not make a loan under this subsection of more than $200,000 to any 1 small business concern.

(C) Applicable interest rates

A loan made by an eligible intermediary to a small business concern under this subsection, may have a fixed or a variable interest rate, and shall bear an interest rate specified by the eligible intermediary in the application of the eligible intermediary for a loan under this subsection.

(D) Review restrictions

The Administrator may not review individual loans made by an eligible intermediary to a small business concern before approval of the loan by the eligible intermediary.

(6) Termination

The authority of the Administrator to make loans under the Program shall terminate 3 years after September 27, 2010.

(m) Microloan Program

(1)(A) Purposes

The purposes of the Microloan Program are—

(i) to assist women, low-income, veteran (within the meaning of such term under section 632(q) of this title), and minority entrepreneurs and business owners and other such individuals possessing the capability to operate successful business concerns;

(ii) to assist small business concerns in those areas suffering from a lack of credit due to economic downturns;

(iii) to establish a microloan program to be administered by the Small Business Administration—

(I) to make loans to eligible intermediaries to enable such intermediaries to provide small-scale loans, particularly loans in amounts averaging not more than $10,000, to startup, newly established, or growing small business concerns for working capital or the acquisition of materials, supplies, or equipment;

(II) to make grants to eligible intermediaries that, together with non-Federal matching funds, will enable such intermediaries to provide intensive marketing, management, and technical assistance to microloan borrowers;

(III) to make grants to eligible nonprofit entities that, together with non-Federal matching funds, will enable such entities to provide intensive marketing, management, and technical assistance to assist low-income entrepreneurs and other low-income individuals obtain private sector financing for their businesses, with or without loan guarantees; and

(IV) to report to the Committees on Small Business of the Senate and the House of Representatives on the effectiveness of the microloan program and the advisability and feasibility of implementing such a program nationwide; and

(iv) to establish a welfare-to-work microloan initiative, which shall be administered by the Administration, in order to test the feasibility of supplementing the technical assistance grants provided under clauses (ii) and (iii) of subparagraph (B) to individuals who are receiving assistance under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), or under any comparable State funded means tested program of assistance for low-income individuals, in order to adequately assist those individuals in—

(I) establishing small businesses; and

(II) eliminating their dependence on that assistance.

(B) Establishment

There is established a microloan program, under which the Administration may—

(i) make direct loans to eligible intermediaries, as provided under paragraph (3), for the purpose of making short-term, fixed interest rate microloans to startup, newly established, and growing small business concerns under paragraph (6);

(ii) in conjunction with such loans and subject to the requirements of paragraph (4), make grants to such intermediaries for the purpose of providing intensive marketing, management, and technical assistance to small business concerns that are borrowers under this subsection; and

(iii) subject to the requirements of paragraph (5), make grants to nonprofit entities for the purpose of providing marketing, management, and technical assistance to low-income individuals seeking to start or enlarge their own businesses, if such assistance includes working with the grant recipient to secure loans in amounts not to exceed $50,000 from private sector lending institutions, with or without a loan guarantee from the nonprofit entity.

(2) Eligibility for participation

An intermediary shall be eligible to receive loans and grants under subparagraphs (B)(i) and (B)(ii) of paragraph (1) if it—

(A) meets the definition in paragraph (10); [2] and

(B) has at least 1 year of experience making microloans to startup, newly established, or growing small business concerns and providing, as an integral part of its microloan program, intensive marketing, management, and technical assistance to its borrowers.

(3) Loans to intermediaries

(A) Intermediary applications

(i) In general

As part of its application for a loan, each intermediary shall submit a description to the Administration of—

(I) the type of businesses to be assisted;

(II) the size and range of loans to be made;

(III) the geographic area to be served and its economic, poverty, and unemployment characteristics;

(IV) the status of small business concerns in the area to be served and an analysis of their credit and technical assistance needs;

(V) any marketing, management, and technical assistance to be provided in connection with a loan made under this subsection;

(VI) the local economic credit markets, including the costs associated with obtaining credit locally;

(VII) the qualifications of the applicant to carry out the purpose of this subsection; and

(VIII) any plan to involve other technical assistance providers (such as counselors from the Service Corps of Retired Executives or small business development centers) or private sector lenders in assisting selected business concerns.

(ii) Selection of intermediaries

In selecting intermediaries to participate in the program established under this subsection, the Administration shall give priority to those applicants that provide loans in amounts averaging not more than $10,000.

(B) Intermediary contribution

As a condition of any loan made to an intermediary under subparagraph (B)(i) of paragraph (1), the Administrator shall require the intermediary to contribute not less than 15 percent of the loan amount in cash from non-Federal sources.

(C) Loan limits

Notwithstanding subsection (a)(3) of this section, no loan shall be made under this subsection if the total amount outstanding and committed to one intermediary (excluding outstanding grants) from the business loan and investment fund established by this chapter would, as a result of such loan, exceed $750,000 in the first year of such intermediary's participation in the program, and $5,000,000 in the remaining years of the intermediary's participation in the program.

(D)(i) In general

The Administrator shall, by regulation, require each intermediary to establish a loan loss reserve fund, and to maintain such reserve fund until all obligations owed to the Administration under this subsection are repaid.

(ii) Level of loan loss reserve fund

(I) In general

Subject to subclause (III), the Administrator shall require the loan loss reserve fund of an intermediary to be maintained at a level equal to 15 percent of the outstanding balance of the notes receivable owed to the intermediary.

(II) Review of loan loss reserve

After the initial 5 years of an intermediary's participation in the program authorized by this subsection, the Administrator shall, at the request of the intermediary, conduct a review of the annual loss rate of the intermediary. Any intermediary in operation under this subsection prior to October 1, 1994, that requests a reduction in its loan loss reserve shall be reviewed based on the most recent 5-year period preceding the request.

(III) Reduction of loan loss reserve

Subject to the requirements of clause IV,[14] the Administrator may reduce the annual loan

loss reserve requirement of an intermediary to reflect the actual average loan loss rate for the intermediary during the preceding 5-year period, except that in no case shall the loan loss reserve be reduced to less than 10 percent of the outstanding balance of the notes receivable owed to the intermediary.

(IV) Requirements

The Administrator may reduce the annual loan loss reserve requirement of an intermediary only if the intermediary demonstrates to the satisfaction of the Administrator that—

(aa) the average annual loss rate for the intermediary during the preceding 5-year period is less than 15 percent; and

(bb) that [15] no other factors exist that may impair the ability of the intermediary to repay all obligations owed to the Administration under this subsection.

(E) Unavailability of comparable credit

An intermediary may make a loan under this subsection of more than $20,000 to a small business concern only if such small business concern demonstrates that it is unable to obtain credit elsewhere at comparable interest rates and that it has good prospects for success. In no case shall an intermediary make a loan under this subsection of more than $50,000, or have outstanding or committed to any 1 borrower more than $50,000.

(F) Loan duration; interest rates

(i) Loan duration

Loans made by the Administration under this subsection shall be for a term of 10 years.

(ii) Applicable interest rates

Except as provided in clause (iii), loans made by the Administration under this subsection to an intermediary shall bear an interest rate equal to 1.25 percentage points below the rate determined by the Secretary of the Treasury for obligations of the United States with a period of maturity of 5 years, adjusted to the nearest one-eighth of 1 percent.

(iii) Rates applicable to certain small loans

Loans made by the Administration to an intermediary that makes loans to small business concerns and entrepreneurs averaging not more than $7,500, shall bear an interest rate that is 2 percentage points below the rate determined by the Secretary of the Treasury for obligations of the United States with a period of maturity of 5 years, adjusted to the nearest one-eighth of 1 percent.

(iv) Rates applicable to multiple sites or offices

The interest rate prescribed in clause (ii) or (iii) shall apply to each separate loan-making site or office of 1 intermediary only if such site or office meets the requirements of that clause.

(v) Rate basis

The applicable rate of interest under this paragraph shall—

(I) be applied retroactively for the first year of an intermediary's participation in the program, based upon the actual lending practices of the intermediary as determined by the Administration prior to the end of such year; and

(II) be based in the second and subsequent years of an intermediary's participation in the program, upon the actual lending practices of the intermediary during the term of the intermediary's participation in the program.

(vii) [16] Covered intermediaries

The interest rates prescribed in this subparagraph shall apply to all loans made to intermediaries under this subsection on or after October 28, 1991.

(G) Delayed payments

The Administration shall not require repayment of interest or principal of a loan made to an intermediary under this subsection during the first year of the loan.

(H) Fees; collateral

Except as provided in subparagraphs (B) and (D), the Administration shall not charge any fees or require collateral other than an assignment of the notes receivable of the microloans with respect to any loan made to an intermediary under this subsection.

(4) Marketing, management and technical assistance grants to intermediaries

Grants made in accordance with subparagraph (B)(ii) of paragraph (1) shall be subject to the following requirements:

(A) Grant amounts

Except as otherwise provided in subparagraph (C) and subject to subparagraph (B), each intermediary that receives a loan under subparagraph (B)(i) of paragraph (1) shall be eligible to receive a grant to provide marketing, management, and technical assistance to small business concerns that are borrowers under this subsection. Except as provided in subparagraph (C), each intermediary meeting the requirements of subparagraph (B) may receive a grant of not more than 25 percent of the total outstanding balance of loans made to it under this subsection.

(B) Contribution

As a condition of a grant made under subparagraph (A), the Administrator shall require the intermediary to contribute an amount equal to 25 percent of the amount of the grant, obtained solely from non-Federal sources. In addition to cash or other direct funding, the contribution may include indirect costs or in-kind contributions paid for under non-Federal programs.

(C) Additional technical assistance grants for making certain loans

(i) In general

Each intermediary that has a portfolio of loans made under this subsection that averages not more than $10,000 during the period of the intermediary's participation in the program shall be eligible to receive a grant equal to 5 percent of the total outstanding balance of loans made to the intermediary under this subsection, in addition to grants made under subparagraph (A).

(ii) Purposes

A grant awarded under clause (i) may be used to provide marketing, management, and technical assistance to small business concerns that are borrowers under this subsection.

(iii) Contribution exception

The contribution requirements in subparagraph (B) do not apply to grants made under this subparagraph.

(D) Eligibility for multiple sites or offices

The eligibility for a grant described in subparagraph (A),[5] or (C) shall be determined separately for each loan-making site or office of 1 intermediary.

(E) Assistance to certain small business concerns

(i) In general

Each intermediary may expend an amount not to exceed 25 percent of the grant funds received under paragraph (1)(B)(ii) to provide information and technical assistance to small business concerns that are prospective borrowers under this subsection.

(ii) Technical assistance

An intermediary may expend not more than 25 percent of the funds received under paragraph (1)(B)(ii) to enter into third party contracts for the provision of technical assistance.

(F) Supplemental grant

(i) In general

The Administration may accept any funds transferred to the Administration from other departments or agencies of the Federal Government to make grants in accordance with this subparagraph and section 202(b) of the Small Business Reauthorization Act of 1997 to participating intermediaries and technical assistance providers under paragraph (5), for use in accordance with clause (iii) to provide additional technical assistance and related services to recipients of assistance under a State program described in paragraph (1)(A)(iv) at the time they initially apply for assistance under this subparagraph.

(ii) Eligible recipients; grant amounts

In making grants under this subparagraph, the Administration may select, from among participating intermediaries and technical assistance providers described in clause (i), not more than 20 grantees in fiscal year 1998, not more than 25 grantees in fiscal year 1999, and not more than 30 grantees in fiscal year 2000, each of whom may receive a grant under this subparagraph in an amount not to exceed $200,000 per year.

(iii) Use of grant amounts

Grants under this subparagraph—

(I) are in addition to other grants provided under this subsection and shall not require the contribution of matching amounts as a condition of eligibility; and

(II) may be used by a grantee—

(aa) to pay or reimburse a portion of child care and transportation costs of recipients of assistance described in clause (i), to the extent such costs are not otherwise paid by State block grants under the Child Care Development Block Grant Act of 1990 [42 U.S.C. 9857 et seq.] or under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.); and

(bb) for marketing, management, and technical assistance to recipients of assistance described in clause (i).

(iv) Memorandum of Understanding

Prior to accepting any transfer of funds under clause (i) from a department or agency of the Federal Government, the Administration shall enter into a Memorandum of Understanding with the department or agency, which shall—

(I) specify the terms and conditions of the grants under this subparagraph; and

(II) provide for appropriate monitoring of expenditures by each grantee under this subparagraph and each recipient of assistance described in clause (i) who receives assistance from a grantee under this subparagraph, in order to ensure compliance with this subparagraph by those grantees and recipients of assistance.

(5) Private sector borrowing technical assistance grants

Grants made in accordance with subparagraph (B)(iii) of paragraph (1) shall be subject to the following requirements:

(A) Grant amounts

Subject to the requirements of subparagraph (B), the Administration may make not more than 55 grants annually, each in amounts not to exceed $200,000 for the purposes specified in subparagraph (B)(iii) of paragraph (1).

(B) Contribution

As a condition of any grant made under subparagraph (A), the Administration shall require the grant recipient to contribute an amount equal to 20 percent of the amount of the grant, obtained solely from non-Federal sources. In addition to cash or other direct funding, the contribution may include indirect costs or in-kind contributions paid for under non-Federal programs.

(6) Loans to small business concerns from eligible intermediaries

(A) In general

An eligible intermediary shall make short-term, fixed rate loans to startup, newly established, and growing small business concerns from the funds made available to it under subparagraph (B)(i) of paragraph (1) for working capital and the acquisition of materials, supplies, furniture, fixtures, and equipment.

(B) Portfolio requirement

To the extent practicable, each intermediary that operates a microloan program under this subsection shall maintain a microloan portfolio with an average loan size of not more than $15,000.

(C) Interest limit

Notwithstanding any provision of the laws of any State or the constitution of any State pertaining to the rate or amount of interest that may be charged, taken, received, or reserved on a loan, the maximum rate of interest to be charged on a microloan funded under this subsection shall not exceed the rate of interest applicable to a loan made to an intermediary by the Administration—

(i) in the case of a loan of more than $7,500 made by the intermediary to a small business concern or entrepreneur by more than 7.75 percentage points; and

(ii) in the case of a loan of not more than $7,500 made by the intermediary to a small business concern or entrepreneur by more than 8.5 percentage points.

(D) Review restriction

The Administration shall not review individual microloans made by intermediaries prior to approval.

(E) Establishment of child care or transportation businesses

In addition to other eligible small businesses concerns, borrowers under any program under this subsection may include individuals who will use the loan proceeds to establish for-profit or nonprofit child care establishments or businesses providing for-profit transportation services.

(7) Program funding for microloans

(A) Number of participants

Under the program authorized by this subsection, the Administration may fund, on a competitive basis, not more than 300 intermediaries.

(B) Allocation

(i) Minimum allocation

Subject to the availability of appropriations, of the total amount of new loan funds made available for award under this subsection in each fiscal year, the Administration shall make available for award in each State (including the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa) an amount equal to the sum of—

(I) the lesser of—

(aa) $800,000; or

(bb) 1/55 of the total amount of new loan funds made available for award under this subsection for that fiscal year; and

(II) any additional amount, as determined by the Administration.

(ii) Redistribution

If, at the beginning of the third quarter of a fiscal year, the Administration determines that any portion of the amount made available to carry out this subsection is unlikely to be made available under clause (i) during that fiscal year, the Administration may make that portion

available for award in any one or more States (including the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa) without regard to clause (i).

(8) Equitable distribution of intermediaries

In approving microloan program applicants and providing funding to intermediaries under this subsection, the Administration shall select and provide funding to such intermediaries as will ensure appropriate availability of loans for small businesses in all industries located throughout each State, particularly those located in urban and in rural areas.

(9) Grants for management, marketing, technical assistance, and related services

(A) In general

The Administration may procure technical assistance for intermediaries participating in the Microloan Program to ensure that such intermediaries have the knowledge, skills, and understanding of microlending practices necessary to operate successful microloan programs.

(B) Assistance amount

The Administration shall transfer 7 percent of its annual appropriation for loans and loan guarantees under this subsection to the Administration's Salaries and Expense Account for the specific purpose of providing 1 or more technical assistance grants to experienced microlending organizations and national and regional nonprofit organizations that have demonstrated experience in providing training support for microenterprise development and financing.[17] to achieve the purpose set forth in subparagraph (A).

(C) Welfare-to-work microloan initiative

Of amounts made available to carry out the welfare-to-work microloan initiative under paragraph (1)(A)(iv) in any fiscal year, the Administration may use not more than 5 percent to provide technical assistance, either directly or through contractors, to welfare-to-work microloan initiative grantees, to ensure that, as grantees, they have the knowledge, skills, and understanding of microlending and welfare-to-work transition, and other related issues, to operate a successful welfare-to-work microloan initiative.

(10) Report to Congress

On November 1, 1995, the Administration shall submit to the Committees on Small Business of the Senate and the House of Representatives a report, including the Administration's evaluation of the effectiveness of the first 3½ years of the microloan program and the following:

(A) the numbers and locations of the intermediaries funded to conduct microloan programs;

(B) the amounts of each loan and each grant to intermediaries;

(C) a description of the matching contributions of each intermediary;

(D) the numbers and amounts of microloans made by the intermediaries to small business concern borrowers;

(E) the repayment history of each intermediary;

(F) a description of the loan portfolio of each intermediary including the extent to which it provides microloans to small business concerns in rural areas; and

(G) any recommendations for legislative changes that would improve program operations.

(11) Definitions

For purposes of this subsection—

(A) the term "intermediary" means—

(i) a private, nonprofit entity;

(ii) a private, nonprofit community development corporation;

(iii) a consortium of private, nonprofit organizations or nonprofit community development corporations;

(iv) a quasi-governmental economic development entity (such as a planning and development district), other than a State, county, municipal government, or any agency

thereof, if—

(I) no application is received from an eligible nonprofit organization; or

(II) the Administration determines that the needs of a region or geographic area are not adequately served by an existing, eligible nonprofit organization that has submitted an application; or

(v) an agency of or nonprofit entity established by a Native American Tribal Government,

that seeks to borrow or has borrowed funds from the Administration to make microloans to small business concerns under this subsection;

(B) the term "microloan" means a short-term, fixed rate loan of not more than $50,000, made by an intermediary to a startup, newly established, or growing small business concern;

(C) the term "rural area" means any political subdivision or unincorporated area—

(i) in a nonmetropolitan county (as defined by the Secretary of Agriculture) or its equivalent thereof; or

(ii) in a metropolitan county or its equivalent that has a resident population of less than 20,000 if the Small Business Administration has determined such political subdivision or area to be rural.

(12) Deferred participation loan pilot

In lieu of making direct loans to intermediaries as authorized in paragraph (1)(B), during fiscal years 1998 through 2000, the Administration may, on a pilot program basis, participate on a deferred basis of not less than 90 percent and not more than 100 percent on loans made to intermediaries by a for-profit or nonprofit entity or by alliances of such entities, subject to the following conditions:

(A) Number of loans

In carrying out this paragraph, the Administration shall not participate in providing financing on a deferred basis to more than 10 intermediaries in urban areas or more than 10 intermediaries in rural areas.

(B) Term of loans

The term of each loan shall be 10 years. During the first year of the loan, the intermediary shall not be required to repay any interest or principal. During the second through fifth years of the loan, the intermediary shall be required to pay interest only. During the sixth through tenth years of the loan, the intermediary shall be required to make interest payments and fully amortize the principal.

(C) Interest rate

The interest rate on each loan shall be the rate specified by paragraph (3)(F) for direct loans.

(13) Evaluation of welfare-to-work microloan initiative

On January 31, 1999, and annually thereafter, the Administration shall submit to the Committees on Small Business of the House of Representatives and the Senate a report on any monies distributed pursuant to paragraph (4)(F).

(n) Repayment deferred for active duty reservists

(1) Definitions

In this subsection:

(A) Eligible reservist

The term "eligible reservist" means a member of a reserve component of the Armed Forces ordered to active duty during a period of military conflict.

(B) Essential employee

The term "essential employee" means an individual who is employed by a small business

concern and whose managerial or technical expertise is critical to the successful day-to-day operations of that small business concern.

(C) Period of military conflict

The term "period of military conflict" means—

(i) a period of war declared by the Congress;

(ii) a period of national emergency declared by the Congress or by the President; or

(iii) a period of a contingency operation, as defined in section 101(a) of title 10.

(D) Qualified borrower

The term "qualified borrower" means—

(i) an individual who is an eligible reservist and who received a direct loan under subsection (a) or (b) of this section before being ordered to active duty; or

(ii) a small business concern that received a direct loan under subsection (a) or (b) of this section before an eligible reservist, who is an essential employee, was ordered to active duty.

(2) Deferral of direct loans

(A) In general

The Administration shall, upon written request, defer repayment of principal and interest due on a direct loan made under subsection (a) or (b) of this section, if such loan was incurred by a qualified borrower.

(B) Period of deferral

The period of deferral for repayment under this paragraph shall begin on the date on which the eligible reservist is ordered to active duty and shall terminate on the date that is 180 days after the date such eligible reservist is discharged or released from active duty.

(C) Interest rate reduction during deferral

Notwithstanding any other provision of law, during the period of deferral described in subparagraph (B), the Administration may, in its discretion, reduce the interest rate on any loan qualifying for a deferral under this paragraph.

(3) Deferral of loan guarantees and other financings

The Administration shall—

(A) encourage intermediaries participating in the program under subsection (m) of this section to defer repayment of a loan made with proceeds made available under that subsection, if such loan was incurred by a small business concern that is eligible to apply for assistance under subsection (b)(3) of this section; and

(B) not later than 30 days after August 17, 1999, establish guidelines to—

(i) encourage lenders and other intermediaries to defer repayment of, or provide other relief relating to, loan guarantees under subsection (a) of this section and financings under section 697a of this title that were incurred by small business concerns that are eligible to apply for assistance under subsection (b)(3) of this section, and loan guarantees provided under subsection (m) of this section if the intermediary provides relief to a small business concern under this paragraph; and

(ii) implement a program to provide for the deferral of repayment or other relief to any intermediary providing relief to a small business borrower under this paragraph.

(Pub. L. 85–536, §2[7], July 18, 1958, 72 Stat. 387; Pub. L. 85–699, title VI, §602(c), Aug. 21, 1958, 72 Stat. 698; Pub. L. 86–367, §2, Sept. 22, 1959, 73 Stat. 647; Pub. L. 87–70, title III, §305[a], June 30, 1961, 75 Stat. 167; Pub. L. 87–305, §9, Sept. 26, 1961, 75 Stat. 668; Pub. L. 88–264, §1, Feb. 5, 1964, 78 Stat. 7; Pub. L. 88–560, title III, §319, Sept. 2, 1964, 78 Stat. 794; Pub. L. 89–59, §1(a), (b), June 30, 1965, 79 Stat. 206; Pub. L. 89–409, §3(a), May 2, 1966, 80 Stat. 133; Pub. L. 89–769, §7(b), Nov. 6, 1966, 80 Stat. 1319; Pub. L. 90–104, title I, §§103, 104, Oct. 11, 1967, 81 Stat. 268; Pub. L. 90–448, title XI, §1106(a), Aug. 1, 1968, 82 Stat. 567; Pub. L. 90–495, §31, Aug. 23, 1968, 82 Stat. 835; Pub. L. 91–173, title V, §504(a), (b), Dec. 30, 1969, 83 Stat. 802; Pub. L. 91–596,

§28(a), (b), Dec. 29, 1970, 84 Stat. 1618; Pub. L. 91–597, §25(a), (b), Dec. 29, 1970, 84 Stat. 1633, 1634; Pub. L. 92–385, §§1(a), 2(a), Aug. 16, 1972, 86 Stat. 554, 555; Pub. L. 92–500, §8(a), Oct. 18, 1972, 86 Stat. 898; Pub. L. 92–595, §3(b), Oct. 27, 1972, 86 Stat. 1316; Pub. L. 93–237, §§2(a), (b), 3(a), 5, 6, Jan. 2, 1974, 87 Stat. 1023, 1024; Pub. L. 93–386, §§2(a)(4), 3(2), 8, 9, 12, Aug. 23, 1974, 88 Stat. 742, 746, 748, 749; Pub. L. 94–305, title I, §§108(b), 109, 111, 112(c), (d), 114, June 4, 1976, 90 Stat. 666, 667; Pub. L. 95–89, title I, §101(d), (e), title III, §§301, 302, title IV, §§402–405, Aug. 4, 1977, 91 Stat. 553, 558–560; Pub. L. 95–315, §§2, 3, July 4, 1978, 92 Stat. 377, 378; Pub. L. 95–507, title II, §§204, 205, 231, Oct. 24, 1978, 92 Stat. 1764, 1766, 1772; Pub. L. 95–510, §104, Oct. 24, 1978, 92 Stat. 1782; Pub. L. 96–38, title I, §101(a), (b), July 25, 1979, 93 Stat. 118; Pub. L. 96–302, title I, §§119(a), (b), 122–124, title II, §203, title V, §505, July 2, 1980, 94 Stat. 840, 841, 843, 848, 852; Pub. L. 96–481, title I, §§104, 106(a), 107, 112, Oct. 21, 1980, 94 Stat. 2322, 2323; Pub. L. 97–35, title XIX, §§1902, 1910–1912, 1913(a), (c), 1914, Aug. 13, 1981, 95 Stat. 767, 778–780; Pub. L. 98–270, title III, §§301, 304, 308, 309, 311, Apr. 18, 1984, 98 Stat. 159–161; Pub. L. 98–395, §5, Aug. 21, 1984, 98 Stat. 1368; Pub. L. 99–272, title XVIII, §§18006(a)(1), (2), 18007, 18013, Apr. 7, 1986, 100 Stat. 366, 370; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–418, title VIII, §§8005, 8007(a), Aug. 23, 1988, 102 Stat. 1557, 1559; Pub. L. 100–533, title III, §302(a), Oct. 25, 1988, 102 Stat. 2693; Pub. L. 100–590, title I, §§102(a), 103, 111(c), 119(a), 120–122, Nov. 3, 1988, 102 Stat. 2992, 2995, 2999, 3000; Pub. L. 100–656, title II, §§201(a), 202, 203, 205, 206, 208, title III, §§301–303(a), title IV, §408, title V, §505(h), Nov. 15, 1988, 102 Stat. 3856, 3858, 3859, 3861, 3862, 3865–3868, 3877, 3887; Pub. L. 100–707, title I, §109(f), Nov. 23, 1988, 102 Stat. 4708; Pub. L. 101–37, §§4–6(a), 7(a), 8–10(b), June 15, 1989, 103 Stat. 70–73; Pub. L. 101–162, title V, (1), (2), Nov. 21, 1989, 103 Stat. 1024, 1025; Pub. L. 101–574, title II, §§202, 204(a), 206, 242, 245, title III, §307, Nov. 15, 1990, 104 Stat. 2818–2820, 2827, 2830; Pub. L. 102–140, title VI, §609(b), (h), Oct. 28, 1991, 105 Stat. 825, 827; Pub. L. 102–191, §4, Dec. 5, 1991, 105 Stat. 1591; Pub. L. 102–366, title I, §§104, 113(a), title II, §211, Sept. 4, 1992, 106 Stat. 988, 989, 997; Pub. L. 102–564, title III, §307(b), (c), Oct. 28, 1992, 106 Stat. 4263, 4264; Pub. L. 103–81, §§4, 5(a), 8, Aug. 13, 1993, 107 Stat. 781, 782; Pub. L. 103–403, title II, §§201, 202, 204–208(b), 209–211, title VI, §§603–605(a), Oct. 22, 1994, 108 Stat. 4180–4183, 4202, 4203; Pub. L. 104–36, §§2–4(a), 5, Oct. 12, 1995, 109 Stat. 295–297; Pub. L. 104–208, div. D, title I, §§103(a)–(d), (f), 105, 107, 111, Sept. 30, 1996, 110 Stat. 3009–726, 3009–727, 3009–731 to 3009–733; Pub. L. 105–135, title II, §§201, 202(a), 231, title VII, §706, Dec. 2, 1997, 111 Stat. 2597, 2598, 2606, 2637; Pub. L. 105–277, div. A, §101(f) [title VIII, §405(d)(10), (f)(9)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–420, 2681–430; Pub. L. 106–8, §3(a), (c), Apr. 2, 1999, 113 Stat. 13, 16; Pub. L. 106–22, §§2, 3, Apr. 27, 1999, 113 Stat. 36, 37; Pub. L. 106–24, §1(a), Apr. 27, 1999, 113 Stat. 39; Pub. L. 106–50, title IV, §§401(b), 402(a), (b), 403, 404, Aug. 17, 1999, 113 Stat. 244–246; Pub. L. 106–554, §1(a)(9) [title II, §§202–208(a), 210, title VIII, §802(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–681 to 2763A–684, 2763A–702; Pub. L. 107–100, §6(a), Dec. 21, 2001, 115 Stat. 970; Pub. L. 108–447, div. K, title I, §§101(a), 102, 103(a), 107(a), (b), Dec. 8, 2004, 118 Stat. 3442–3446; Pub. L. 109–163, div. A, title VIII, §845(a)(2), (c), Jan. 6, 2006, 119 Stat. 3390, 3391; Pub. L. 110–140, title XII, §§1201, 1202, Dec. 19, 2007, 121 Stat. 1764, 1765; Pub. L. 110–186, title II, §§201(a), 203, 204, 208, Feb. 14, 2008, 122 Stat. 627, 629, 631; Pub. L. 110–234, title XII, §§12061, 12063(a), (c)(2), 12065, 12066(a), 12068(a), (b)(2), 12070, 12074(a), 12077–12078(b)(1), (c), 12081–12083(a), May 22, 2008, 122 Stat. 1406, 1407, 1409–1411, 1414–1418; Pub. L. 110–246, §4(a), title XII, §§12061, 12063(a), (c)(2), 12065, 12066(a), 12068(a), (b)(2), 12070, 12074(a), 12077–12078(b)(1), (c), 12081–12083(a), June 18, 2008, 122 Stat. 1664, 2168, 2169, 2171–2173, 2176–2180; Pub. L. 111–240, title I, §§1111, 1113, 1131(a), 1133, 1135, 1206(a)–(g), 1401(a), (c)(1), Sept. 27, 2010, 124 Stat. 2507, 2508, 2512, 2514, 2520, 2530–2532, 2547, 2549; Pub. L. 112–74, div. C, title V, §531, Dec. 23, 2011, 125 Stat. 922; Pub. L. 112–239, div. A, title XVI, §1622(c), Jan. 2, 2013, 126 Stat. 2069; Pub. L. 113–128, title V, §512(cc), July 22, 2014, 128 Stat. 1717.)

AMENDMENT OF SUBSECTION (J)(13)(E)

Pub. L. 113–128, title V, §§506, 512(cc), July 22, 2014, 128 Stat. 1703, 1717, provided that, effective on the first day of the first full program year after July 22, 2014 [probably July 1, 2015],

subsection (j)(13)(E) of this section is amended by striking "an institution eligible to provide skills training or upgrading under title I of the Workforce Investment Act of 1998" and inserting "an institution eligible to provide skills training or upgrading under title I of the Workforce Innovation and Opportunity Act". See 2014 Amendment note below.

REFERENCES IN TEXT

Subsections (b) and (c) of section 631 of this title, referred to in subsecs. (a)(11) and (i)(1), were redesignated subsections (c) and (d), respectively, and a new subsection (b) was added by Pub. L. 100–418, title VIII, §8002, Aug. 23, 1988, 102 Stat. 1553.

The Small Business Investment Act of 1958, referred to in subsecs. (a)(13) and (j)(10)(A)(vi), (13)(D)(i), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689. Title IV, part B of title IV, and title V of the Act are classified generally to subchapter IV–A (§692 et seq.), part B (§694a et seq.) of subchapter IV–A, and subchapter V (§695 et seq.), respectively, of chapter 14B of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

The Trade Act of 1974, referred to in subsec. (a)(16)(E), is Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978. Chapter 3 of title II of the Act is classified generally to part 3 (§2341 et seq.) of subchapter II of chapter 12 of Title 19, Customs Duties. For complete classification of this Act to the Code, see section 2101 of Title 19 and Tables.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (b), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, formerly known as the Disaster Relief and Emergency Assistance Act, which is classified principally to chapter 68 (§5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

Section 231 of the Disaster Relief Act of 1970 [15 U.S.C. 636a], referred to in penultimate par. of subsec. (b), was repealed by Pub. L. 97–35, title XIX, §1917, Aug. 13, 1981, 95 Stat. 781.

The date of enactment of the Small Business Disaster Response and Loan Improvements Act of 2008, referred to in subsec. (c)(10), is the date of enactment of subtitle B (§§12051–12091) of title XII of Pub. L. 110–246, which was approved June 18, 2008.

Reorganization Plan Numbered 2 of 1954, referred to in subsec. (d)(1), is set out in the Appendix to Title 5, Government Organization and Employees.

Reorganization Plan Numbered 1 of 1957, referred to in subsec. (d)(1), is set out in the Appendix to Title 5.

The Economic Opportunity Act of 1964, referred to in subsec. (i)(3), is Pub. L. 88–452, Aug. 20, 1964, 78 Stat. 508. Title III of the Act was classified generally to subchapter III (§2841 et seq.) of chapter 34 of Title 42, The Public Health and Welfare, prior to its repeal by Pub. L. 97–35, title VI, §683(a), Aug. 13, 1981, 95 Stat. 519. For complete classification of this Act to the Code, see Tables.

The Public Works and Economic Development Act of 1965, referred to in subsec. (i)(5)(D), is Pub. L. 89–136, Aug. 26, 1965, 79 Stat. 552, which is classified generally to chapter 38 (§3121 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 3121 of Title 42 and Tables.

The date of enactment of the National Defense Authorization Act for Fiscal Year 2013, referred to in subsec. (j)(10)(D)(i), is the date of enactment of Pub. L. 112–239, which was approved Jan. 2, 2013.

Section 602(b) of Public Law 100–656, the "Business Opportunity Development Reform Act of 1988", referred to in subsec. (j)(10)(J)(ii)(III), is set out as a note under section 637 of this title.

Section 35(a) of title 41, referred to in subsec. (j)(13)(C), was struck out and former section 35(b) of title 41 redesignated section 35(a) by Pub. L. 103–355, title VII, §7201(1), Oct. 13, 1994, 108 Stat. 3378. Section 35 of title 41 was subsequently repealed and restated as sections 6501(1) and 6502 of Title 41, Public Contracts, by Pub. L. 111–350, §§3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855. For disposition of sections of former Title 41, see Disposition Table preceding section 101 of Title 41.

The Workforce Investment Act of 1998, referred to in subsec. (j)(13)(E), is Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936. Title I of the Act is classified principally to chapter 30 (§2801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

The Social Security Act, referred to in subsec. (m)(1)(A)(iv), (4)(F)(iii)(II)(aa), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Part A of title IV of the Act is classified generally to part A (§601 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Paragraph (10), referred to in subsec. (m)(2)(A), was redesignated paragraph (11) by Pub. L. 102–366, title I, §113(a)(8), Sept. 4, 1992, 106 Stat. 992.

Section 202(b) of the Small Business Reauthorization Act of 1997, referred to in subsec. (m)(4)(F)(i), is section 202(b) of Pub. L. 105–135, which is set out as a note below.

The Child Care and Development Block Grant Act of 1990, referred to in subsec. (m)(4)(F)(iii)(II)(aa), is subchapter C (§658A et seq.) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, as added by Pub. L. 101–508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388–236, which is classified generally to subchapter II–B (§9857 et seq.) of chapter 105 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 9857(a) of Title 42 and Tables.

CODIFICATION

September 30, 1996, referred to in subsec. (a)(25)(C), was in the original "the date of enactment of this subsection" which was translated as meaning the date of enactment of Pub. L. 104–208, which enacted par. (25) of subsec. (a), to reflect the probable intent of Congress.

In subsec. (d)(3), "August 13, 1981" substituted for "the effective date of this Act", such words having been inserted in place of "to October 1, 1983" by section 1914 of Pub. L. 97–35. "This Act" probably meant the Small Business Budget Reconciliation and Loan Consolidation/Improvement Act of 1981 (title XIX of Pub. L. 97–35) rather than the Small Business Act (Pub. L. 85–536). See Effective Date of 1981 Amendment note set out under section 631 of this title.

In subsec. (j)(11)(B)(i), as enacted by the amendments made by Pub. L. 101–37, "August 15, 1989" substituted for "the effective date of this subparagraph" and "such effective date". Section 32 of Pub. L. 101–37 provided that the amendments made by Pub. L. 101–37 shall apply as if included in Pub. L. 100–656. Section 803(b)(1)(A) of Pub. L. 100–656 provided that the amendment made by section 201(a) thereof to subsec. (j)(11) shall take effect on June 1, 1989. Section 31 of Pub. L. 101–37 amended section 803(b) of Pub. L. 100–656 to make such amendments effective on August 15, 1989, in place of June 1, 1989. See 1988 and 1989 Effective Date of Amendment notes below.

"Sections 3131 and 3133 of title 40" substituted in subsec. (j)(13)(D) for "the Act entitled 'An Act requiring contracts for the construction, alteration and repair of any public building or public work of the United States to be accompanied by a performance bond protecting the United States and by an additional bond for the protection of persons furnishing material and labor for the construction, alteration, or repair of said public buildings or public works', approved August 24, 1935 (49 Stat. 793)" on authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

In subsec. (k)(3), "section 1342 of title 31" substituted for "section 3679(b) of the Revised Statutes (31 U.S.C. 665(b))" on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

Section 3109 of title 5, referred to in subsec. (k)(4), substituted for "section 15 of the Administrative Expenses Act of 1946 (5 U.S.C. 55a)" on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

Section 5703 of title 5, referred to in subsec. (k)(4), substituted for "section 5 of such Act (5 U.S.C. 73b–2)" on authority of section 7(b) of Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5.

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

PRIOR PROVISIONS

Provisions similar to those comprising subsec. (e) of this section were contained in section 2(a) and (b) of Pub. L. 87–550, July 25, 1962, 76 Stat. 221 (formerly classified to section 637a(a) and (b) of this title) prior to repeal thereof by section 3(b) of Pub. L. 89–409.

Prior similar provisions were contained in section 207 of act July 30, 1953, ch. 282, title II, 67 Stat. 235, as amended by acts Aug. 9, 1955, ch. 628, §§2, 5, 69 Stat. 547; Feb. 2, 1956, ch. 29, §§2, 3, 70 Stat. 10; Pub. L. 85–335, Feb. 22, 1958, 72 Stat. 27, which was previously classified to this section. See Codification note set out under section 631 of this title.

AMENDMENTS

2014—Subsec. (j)(13)(E). Pub. L. 113–128 substituted "an institution eligible to provide skills training or upgrading under title I of the Workforce Innovation and Opportunity Act" for "an institution eligible to provide skills training or upgrading under title I of the Workforce Investment Act of 1998".

2013—Subsec. (j)(10)(D)(i). Pub. L. 112–239 inserted "The Business Opportunity Specialist shall have a Level I Federal Acquisition Certification in Contracting (or any successor certification) or the equivalent Department of Defense certification, except that a Business Opportunity Specialist serving at the time of the date of enactment of the National Defense Authorization Act for Fiscal Year 2013 may continue to serve as a

Business Opportunity Specialist for a period of 5 years beginning on that date of enactment without such a certification." after "to assist such Program Participant."

2011—Subsec. (d)(5)(D). Pub. L. 112–74 substituted "7 years" for "three years".

2010—Subsec. (a)(2)(A). Pub. L. 111–240, §1206(a)(2)(A), substituted "subparagraphs (B), (D), and (E)" for "subparagraph (B)" in introductory provisions.

Subsec. (a)(2)(A)(i). Pub. L. 111–240, §1111(b)(1)(A), substituted "75 percent" for "90 percent".

Pub. L. 111–240, §1111(a)(1)(A), substituted "90 percent" for "75 percent".

Subsec. (a)(2)(A)(ii). Pub. L. 111–240, §1111(b)(1)(B), substituted "85 percent" for "90 percent".

Pub. L. 111–240, §1111(a)(1)(B), substituted "90 percent" for "85 percent".

Subsec. (a)(2)(C)(ii), (iii). Pub. L. 111–240, §1206(e), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (a)(2)(D). Pub. L. 111–240, §1206(d)(1), substituted "be" for "not exceed".

Pub. L. 111–240, §1206(a)(2)(B), substituted "In" for "Notwithstanding subparagraph (A), in".

Subsec. (a)(2)(E). Pub. L. 111–240, §1206(a)(2)(C), added subpar. (E).

Subsec. (a)(3)(A). Pub. L. 111–240, §1111(b)(2), substituted "$3,750,000" for "$4,500,000".

Pub. L. 111–240, §1111(a)(2), substituted "$4,500,000 (or if the gross loan amount would exceed $5,000,000" for "$1,500,000 (or if the gross loan amount would exceed $2,000,000".

Subsec. (a)(3)(B). Pub. L. 111–240, §1206(a)(1), substituted "$4,500,000 (or if the gross loan amount would exceed $5,000,000), of which not more than $4,000,000" for "$1,750,000, of which not more than $1,250,000".

Subsec. (a)(14). Pub. L. 111–240, §1206(d)(2), inserted par. (14) and subpar. (A) headings, substituted "The Administrator" for "The Administration" in subpar. (A), added subpar. (B), redesignated former subpars. (B) and (C) as (C) and (D), respectively, and inserted headings, and substituted "The Administrator" for "The Administration" in subpar. (D) as redesignated.

Subsec. (a)(16)(A). Pub. L. 111–240, §1206(b)(1), struck out "in" before dash at end of introductory provisions.

Subsec. (a)(16)(A)(i). Pub. L. 111–240, §1206(b)(2), inserted "in" after cl. (i) designation and struck out "or" at end.

Subsec. (a)(16)(A)(ii). Pub. L. 111–240, §1206(b)(3), inserted "in" after cl. (ii) designation and substituted ", including any debt that qualifies for refinancing under any other provision of this subsection; or" for period at end.

Subsec. (a)(16)(A)(iii). Pub. L. 111–240, §1206(b)(4), added cl. (iii).

Subsec. (a)(16)(B). Pub. L. 111–240, §1206(c), designated existing provisions as cl. (i), inserted cl. (i) heading, substituted "Except as provided in clause (ii), each loan" for "Each loan", and added cl. (ii).

Subsec. (a)(16)(F). Pub. L. 111–240, §1206(g), added subpar. (F).

Subsec. (a)(31)(D). Pub. L. 111–240, §1135(b), substituted "$350,000" for "$1,000,000".

Pub. L. 111–240, §1135(a), substituted "$1,000,000" for "$350,000".

Subsec. (a)(32), (33). Pub. L. 111–240, §1133(a)(1), redesignated par. (32), relating to increased veteran participation program, as (33).

Subsec. (a)(34). Pub. L. 111–240, §1133(b), redesignated par. (35) as (34) and struck out former par. (34) which related to floor plan financing program.

Pub. L. 111–240, §1133(a)(2), added par. (34).

Subsec. (a)(35). Pub. L. 111–240, §1206(f), added par. (35).

Pub. L. 111–240, §1133(b)(2), redesignated par. (35) as (34).

Subsec. (l). Pub. L. 111–240, §1131(a), added subsec. (l) and struck out former subsec. (l) which read "[RESERVED]".

Subsec. (m)(1)(B)(iii). Pub. L. 111–240, §1113(1), substituted "$50,000" for "$35,000".

Subsec. (m)(3)(B). Pub. L. 111–240, §1401(c)(1)(A), struck out cl. (i) designation and heading, substituted "As" for "Subject to clause (ii), as", and struck out cl. (ii) relating to waiver of non-Federal share.

Pub. L. 111–240, §1401(a)(1), designated existing provisions as cl. (i) and inserted cl. (i) heading, substituted "Subject to clause (ii), as a condition" for "As a condition" and "the Administrator" for "the Administration", and added cl. (ii).

Subsec. (m)(3)(C). Pub. L. 111–240, §1113(2)(A), substituted "$5,000,000" for "$3,500,000".

Subsec. (m)(3)(E). Pub. L. 111–240, §1113(2)(B), substituted "$50,000" for "$35,000" in two places.

Subsec. (m)(4)(B). Pub. L. 111–240, §1401(c)(1)(B), struck out cl. (i) designation and heading, substituted "As" for "Subject to clause (ii), as", and struck out cl. (ii) relating to waiver of non-Federal share.

Pub. L. 111–240, §1401(a)(2), designated existing provisions as cl. (i), inserted cl. (i) heading, substituted "Subject to clause (ii), as a condition of a grant made under subparagraph (A), the Administrator shall require" for "As a condition of any grant made under subparagraph (A), the Administration shall require", and added

cl. (ii).

Subsec. (m)(11)(B). Pub. L. 111–240, §1113(3), substituted "$50,000" for "$35,000".

2008—Subsec. (a)(32). Pub. L. 110–186, §208, added par. (32) relating to increased veteran participation program.

Subsec. (b). Pub. L. 110–246, §12078(c)(2), in concluding provisions substituted "paragraphs (1) and (2)" for "paragraphs (1), (2), and (4)" and "paragraph (1) (2)" for "paragraph (1), (2), or (4)".

Pub. L. 110–246, §12078(c)(1), substituted "the Administration" for "the, Administration" in introductory provisions.

Pub. L. 110–246, §12068(b)(2)(B), which directed amendment of "the undesignated matter following paragraph (3)" by substituting "Notwithstanding any other provision of law, and except as provided in subsection (d), the interest rate on the Administration's share of any loan made under subsection (b)" for "Notwithstanding the provisions of any other law the interest rate on the Administration's share of any loan made under subsection (b) except as provided in subsection (c)," was executed by making the substitution for "Notwithstanding the provisions of any other law, the interest rate on the Administration's share of any loan made under subsection (b), except as provided in subsection (c)," in concluding provisions after par. (6), to reflect the probable intent of Congress and the addition of pars. (4) to (6) by Pub. L. 110–246, §§12063(a), 12066(a). See below.

Pub. L. 110–246, §12068(b)(2)(A), which directed amendment of "the undesignated matter following paragraph (3)" by substituting "That the provisions of paragraph (1) of subsection (d)" for "That the provisions of paragraph (1) of subsection (c)", was executed by making the substitution in concluding provisions after par. (6), to reflect the probable intent of Congress and the addition of pars. (4) to (6) by Pub. L. 110–246, §§12063(a), 12066(a). See below.

Subsec. (b)(1)(A). Pub. L. 110–246, §12078(b)(1), inserted "of the aggregate costs of such damage or destruction (whether or not compensated for by insurance or otherwise)" after "20 per centum".

Subsec. (b)(2). Pub. L. 110–246, §12061(a)(1), in introductory provisions inserted ", private nonprofit organization," after "small business concern" and ", the organization," after "the concern".

Subsec. (b)(2)(A). Pub. L. 110–246, §12063(c)(2), substituted "Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.)" for "Disaster Relief and Emergency Assistance Act".

Subsec. (b)(2)(D). Pub. L. 110–246, §12061(a)(2), inserted ", private nonprofit organizations," after "small business concerns".

Subsec. (b)(3)(C). Pub. L. 110–186, §201(a), substituted "1 year" for "90 days" and inserted at end "The Administrator may, when appropriate (as determined by the Administrator), extend the ending date specified in the preceding sentence by not more than 1 year."

Subsec. (b)(3)(E). Pub. L. 110–246, §12077, inserted ", or have become due to changed economic circumstances," after "constitutes".

Subsec. (b)(3)(G), (H). Pub. L. 110–186, §§203, 204, added subpars. (G) and (H).

Subsec. (b)(4), (5). Pub. L. 110–246, §12063(a), added pars. (4) and (5).

Subsec. (b)(6). Pub. L. 110–246, §12066(a), added par. (6).

Subsec. (b)(7). Pub. L. 110–246, §12074(a), added par. (7).

Subsec. (b)(8). Pub. L. 110–246, §12078(a), added par. (8).

Subsec. (b)(9). Pub. L. 110–246, §12081, added par. (9).

Subsec. (b)(9)(C), (D). Pub. L. 110–246, §12082, added subpars. (C) and (D).

Subsec. (c). Pub. L. 110–246, §12083(a), added subsec. (c).

Pub. L. 110–246, §12068(a)(1), redesignated subsec. (c) as (d).

Subsec. (c)(5)(C). Pub. L. 110–246, §12061(b), inserted ", private nonprofit organization," after "business".

Subsec. (c)(6). Pub. L. 110–246, §12065, substituted "$14,000 or less (or such higher amount as the Administrator determines appropriate in the event of a major disaster)" for "$10,000 or less".

Subsecs. (d) to (f). Pub. L. 110–246, §12068(a), redesignated subsecs. (c) and (d) as (d) and (e), respectively, and added subsec. (f).

Subsec. (g). Pub. L. 110–246, §12070, added subsec. (g).

2007—Subsec. (a)(31)(F). Pub. L. 110–140, §1201, added subpar. (F).

Subsec. (a)(32). Pub. L. 110–140, §1202, added par. (32).

2006—Subsec. (b)(2). Pub. L. 109–163, §845(a)(2)(A), in introductory provisions, inserted "(including drought), with respect to both farm-related and nonfarm-related small business concerns," before "if the Administration".

Subsec. (b)(2)(B). Pub. L. 109–163, §845(a)(2)(B), substituted "section 1961 of title 7, in which case, assistance under this paragraph may be provided to farm-related and nonfarm-related small business concerns, subject to the other applicable requirements of this paragraph" for "the Consolidated Farmers Home

Administration Act of 1961 (7 U.S.C. 1961)".

Subsec. (b)(2)(D). Pub. L. 109–163, §845(c), substituted "Not later than 30 days after the date of receipt of such certification by a Governor of a State, the Administration shall respond in writing to that Governor on its determination and the reasons therefore, and may" for "Upon receipt of such certification, the Administration may".

2004—Subsec. (a)(3)(A). Pub. L. 108–447, §103(a), substituted "$1,500,000" for "$1,000,000".

Subsec. (a)(3)(B). Pub. L. 108–447, §107(b), substituted "$1,750,000" for "$1,250,000" and "$1,250,000" for "$750,000".

Subsec. (a)(16). Pub. L. 108–447, §107(a), inserted heading and amended par. (16) generally. Prior to amendment, par. (16) provided that the Administration could guarantee loans to assist any eligible small business concern in an industry engaged in or adversely affected by international trade in the financing of the acquisition, construction, renovation, modernization, improvement or expansion of productive facilities or equipment to be used in the United States in the production of goods and services involved in international trade.

Subsec. (a)(18)(A). Pub. L. 108–447, §102(a), amended heading and text of subpar. (A) generally. Prior to amendment, text read as follows: "With respect to each loan guaranteed under this subsection (other than a loan that is repayable in 1 year or less), the Administration shall collect a guarantee fee, which shall be payable by the participating lender, and may be charged to the borrower, as follows:

"(i) A guarantee fee equal to 2 percent of the deferred participation share of a total loan amount that is not more than $150,000.

"(ii) A guarantee fee equal to 3 percent of the deferred participation share of a total loan amount that is more than $150,000, but not more than $700,000.

"(iii) A guarantee fee equal to 3.5 percent of the deferred participation share of a total loan amount that is more than $700,000."

Subsec. (a)(18)(C). Pub. L. 108–447, §102(b), struck out heading and text of subpar. (C). Text read as follows: "With respect to loans approved during the 2-year period beginning on October 1, 2002, the guarantee fee under subparagraph (A) shall be as follows:

"(i) A guarantee fee equal to 1 percent of the deferred participation share of a total loan amount that is not more than $150,000.

"(ii) A guarantee fee equal to 2.5 percent of the deferred participation share of a total loan amount that is more than $150,000, but not more than $700,000.

"(iii) A guarantee fee equal to 3.5 percent of the deferred participation share of a total loan amount that is more than $700,000."

Subsec. (a)(23). Pub. L. 108–447, §102(c)(1), substituted "Yearly" for "Annual" in heading.

Subsec. (a)(23)(A). Pub. L. 108–447, §102(c)(2), added subpar. (A) and struck out heading and text of former subpar. (A). Text read as follows: "With respect to each loan guaranteed under this subsection, the Administration shall, in accordance with such terms and procedures as the Administration shall establish by regulation, assess and collect an annual fee in an amount equal to 0.5 percent of the outstanding balance of the deferred participation share of the loan. With respect to loans approved during the 2-year period beginning on October 1, 2002, the annual fee assessed and collected under the preceding sentence shall be in an amount equal to 0.25 percent of the outstanding balance of the deferred participation share of the loan."

Subsec. (a)(23)(B). Pub. L. 108–447, §102(c)(3), substituted "yearly" for "annual".

Subsec. (a)(23)(C). Pub. L. 108–447, §102(c)(4), added subpar. (C).

Subsec. (a)(31). Pub. L. 108–447, §101(a), added par. (31).

2001—Subsec. (a)(18)(C). Pub. L. 107–100, §6(a)(1), added subpar. (C).

Subsec. (a)(23)(A). Pub. L. 107–100, §6(a)(2), inserted at end "With respect to loans approved during the 2-year period beginning on October 1, 2002, the annual fee assessed and collected under the preceding sentence shall be in an amount equal to 0.25 percent of the outstanding balance of the deferred participation share of the loan."

2000—Subsec. (a)(2)(A)(i). Pub. L. 106–554, §1(a)(9) [title II, §202(1)], substituted "$150,000" for "$100,000".

Subsec. (a)(2)(A)(ii). Pub. L. 106–554, §1(a)(9) [title II, §202(2)], substituted "85 percent" for "80 percent" and "$150,000" for "$100,000".

Subsec. (a)(3)(A). Pub. L. 106–554, §1(a)(9) [title II, §203], substituted "$1,000,000 (or if the gross loan amount would exceed $2,000,000)," for "$750,000,".

Subsec. (a)(4). Pub. L. 106–554, §1(a)(9) [title II, §205(1)], inserted heading and struck out former heading "Interest rates and fees.—".

Subsec. (a)(4)(B)(iii). Pub. L. 106–554, §1(a)(9) [title II, §204], added cl. (iii).

Subsec. (a)(4)(C). Pub. L. 106–554, §1(a)(9) [title II, §205(2)], added subpar. (C).

Subsec. (a)(18). Pub. L. 106–554, §1(a)(9) [title II, §206], amended heading and text of par. (18) generally, substituting present provisions for provisions which had authorized guarantee fee in an amount equal to sum of 3 percent of amount of deferred participation share of loan that was less than or equal to $250,000, if deferred participation share of loan exceeded $250,000, plus 3.5 percent of difference between $500,000 or total deferred participation share of loan, whichever was less, and $250,000, plus, if deferred participation share of loan exceeded $500,000, 3.875 percent of difference between total deferred participation share of loan and $500,000, and set forth provisions relating to exception for certain loans.

Subsec. (a)(28). Pub. L. 106–554, §1(a)(9) [title II, §207], added par. (28).

Subsec. (a)(29). Pub. L. 106–554, §1(a)(9) [title II, §208(a)], added par. (29).

Subsec. (a)(30). Pub. L. 106–554, §1(a)(9) [title VIII, §802(a)], added par. (30).

Subsec. (m)(1)(A)(iii)(I). Pub. L. 106–554, §1(a)(9) [title II, §210(a)(2)], substituted "$10,000" for "$7,500".

Subsec. (m)(1)(B)(iii). Pub. L. 106–554, §1(a)(9) [title II, §210(a)(1)], substituted "$35,000" for "$25,000".

Subsec. (m)(3)(A)(ii). Pub. L. 106–554, §1(a)(9) [title II, §210(a)(2)], substituted "$10,000" for "$7,500".

Subsec. (m)(3)(E). Pub. L. 106–554, §1(a)(9) [title II, §210(a)(1), (3)], substituted "$20,000" for "$15,000" and "$35,000" for "$25,000" in two places.

Subsec. (m)(4)(C)(i). Pub. L. 106–554, §1(a)(9) [title II, §210(a)(2)], which directed the amendment of subsec. (m)(4)(C)(i)(II) by substituting "$10,000" for "$7,500", was executed by making the substitution in subsec. (m)(4)(C)(i) to reflect the probable intent of Congress and the termination of the temporary amendment by Pub. L. 103–403, §208(a)(2), (c). See 1994 Amendment note and Effective and Termination Dates of 1994 Amendment note below.

Subsec. (m)(5)(A). Pub. L. 106–554, §1(a)(9) [title II, §210(a)(4)], substituted "55 grants" for "25 grants" and "$200,000" for "$125,000".

Subsec. (m)(6)(B). Pub. L. 106–554, §1(a)(9) [title II, §210(a)(5)], substituted "$15,000" for "$10,000".

Subsec. (m)(7)(A). Pub. L. 106–554, §1(a)(9) [title II, §210(a)(6)], added subpar. (A) and struck out heading and text of former subpar. (A). Text read as follows: "During the program authorized by this subsection, the Administration may fund, on a competitive basis, not more than 200 microloan programs."

Subsec. (m)(11)(B). Pub. L. 106–554, §1(a)(9) [title II, §210(b)], substituted "$35,000" for "$25,000".

1999—Subsec. (a)(10). Pub. L. 106–50, §401(b), inserted "guaranteed" after "provide" and ", including service-disabled veterans," after "handicapped individual".

Subsec. (a)(21)(A)(ii). Pub. L. 106–50, §404, inserted "or a veteran" after "qualified individual".

Subsec. (a)(27). Pub. L. 106–8, §3(a), (c), temporarily added par. (27) relating to Year 2000 computer problem program. See Effective and Termination Dates of 1999 Amendments note below.

Subsec. (b)(1)(C). Pub. L. 106–24, §1(a), added subpar. (C).

Subsec. (b)(3). Pub. L. 106–50, §402(b), added par. (3).

Subsec. (m)(1)(A)(i). Pub. L. 106–50, §403, inserted "veteran (within the meaning of such term under section 632(q) of this title)," after "low-income,".

Subsec. (m)(3)(D). Pub. L. 106–22, §3, struck out subpar. (D) heading and amended text generally. Prior to amendment, text read as follows: "The Administration shall, by regulation, require each intermediary to establish a loan loss reserve fund, and to maintain such reserve fund until all obligations owed to the Administration under this subsection are repaid. The Administration shall require the loan loss reserve fund to be maintained—

"(i) during the initial 5 years of the intermediary's participation in the program under this subsection, at a level equal to not more than 15 percent of the outstanding balance of the notes receivable owed to the intermediary; and

"(ii) in each year of participation thereafter, at a level equal to not more than the greater of—

"(I) 2 times an amount reflecting the total losses of the intermediary as a result of participation in the program under this subsection, as determined by the Administrator on a case-by-case basis; or

"(II) 10 percent of the outstanding balance of the notes receivable owed to the intermediary."

Subsec. (m)(7)(B). Pub. L. 106–22, §2(1), added subpar. (B) and struck out heading and text of former subpar. (B). Text read as follows: "During any fiscal year, a State shall not receive new loan funds from the Administration that exceed 125 percent of the State's pro rata share of the microloan program authorization during such fiscal year, such share to be based on the population of the State, as compared to the total population of the United States. If, however, at the beginning of the fourth quarter of a fiscal year the Administration determines that a portion of appropriated microloan funds are unlikely to be awarded during that year, the Administration may make additional funds available to a State in excess of 125 percent of the pro rata share of that State."

Subsec. (m)(8). Pub. L. 106–22, §2(2), inserted "and providing funding to intermediaries" after "program applicants" and "and provide funding to" after "shall select".

Subsec. (n). Pub. L. 106–50, §402(a), added subsec. (n).

1998—Subsec. (j)(13)(E). Pub. L. 105–277, §101(f) [title VIII, §405(f)(9)], struck out "the Job Training Partnership Act or" before "title I of the Workforce" in introductory provisions.

Pub. L. 105–277, §101(f) [title VIII, §405(d)(10)], substituted "the Job Training Partnership Act or title I of the Workforce Investment Act of 1998" for "the Job Training Partnership Act (29 U.S.C. 1501 et seq.)".

1997—Subsec. (a). Pub. L. 105–135, §231(1), inserted heading.

Subsec. (a)(1). Pub. L. 105–135, §231(2), inserted heading, designated existing provisions as subpar. (A) and inserted heading, and added subpar. (B).

Subsec. (a)(8). Pub. L. 105–135, §706, added par. (8).

Subsec. (m). Pub. L. 105–135, §201(c), struck out "Demonstration" and "demonstration" wherever appearing in heading and text.

Subsec. (m)(1)(A)(iv). Pub. L. 105–135, §202(a)(1), added cl. (iv).

Subsec. (m)(3)(C). Pub. L. 105–135, §201(a), substituted "$3,500,000" for "$2,500,000".

Subsec. (m)(3)(D)(i), (ii). Pub. L. 105–135, §201(b), added cls. (i) and (ii) and struck out former cls. (i) and (ii) which read as follows:

"(i) in the first year of the intermediary's participation in the demonstration program, at a level equal to not more than 15 percent of the outstanding balance of the notes receivable owed to the intermediary; and

"(ii) in each year of participation thereafter, at a level reflecting the intermediary's total losses as a result of participation in the demonstration program, as determined by the Administration on a case-by-case basis, but in no case shall the required level exceed 15 percent of the outstanding balance of the notes receivable owed to the intermediary under the program."

Subsec. (m)(4)(E). Pub. L. 105–135, §201(d)(1), designated existing provisions as cl. (i), inserted heading, substituted "25 percent" for "15 percent", and added cl. (ii).

Subsec. (m)(4)(F). Pub. L. 105–135, §202(a)(2), added subpar. (F).

Subsec. (m)(5)(A). Pub. L. 105–135, §201(d)(2), struck out "in each of the 5 years of the demonstration program established under this subsection," after "requirements of subparagraph (B)," and substituted "annually" for "for terms of up to 5 years".

Subsec. (m)(6)(E). Pub. L. 105–135, §202(a)(3), added subpar. (E).

Subsec. (m)(9). Pub. L. 105–135, §202(a)(4)(A), substituted "Grants for management, marketing, technical assistance, and related services" for "Technical assistance for intermediaries" in heading.

Subsec. (m)(9)(C). Pub. L. 105–135, §202(a)(4)(B), added subpar. (C).

Subsec. (m)(12). Pub. L. 105–135, §201(c)(4), substituted "1998 through 2000" for "1995 through 1997".

Subsec. (m)(13). Pub. L. 105–135, §202(a)(5), added par. (13).

1996—Subsec. (a)(2)(C)(ii)(II). Pub. L. 104–208, §103(a), amended subcl. (II) generally. Prior to amendment, subcl. (II) read as follows: "authority to service and liquidate such loans."

Subsec. (a)(2)(D). Pub. L. 104–208, §111, added subpar. (D).

Subsec. (a)(4). Pub. L. 104–208, §103(f), inserted par. (4) heading, designated existing text as subpar. (A) and inserted heading, and added subpar. (B).

Subsec. (a)(19)(C). Pub. L. 104–208, §103(b), added subpar. (C).

Subsec. (a)(25). Pub. L. 104–208, §103(c), added par. (25).

Subsec. (a)(26). Pub. L. 104–208, §103(d), added par. (26).

Subsec. (d). Pub. L. 104–208, §107(a), struck out "(1)" before "The Administration" and struck out par. (2) which read as follows: "The Administration is authorized to hold seminars throughout the Nation to make potential applicants aware of the opportunities available under this subsection and related government energy programs, and to make grants to qualified organizations to provide training seminars for small business concerns regarding practical and easily implemented methods for design, manufacture, installation, and servicing of equipment and for providing services listed in paragraph (1) of this subsection, except that recipients of loans made pursuant to this subsection shall not subsequently be eligible for such grants."

Subsec. (e). Pub. L. 104–208, §107(b), amended subsec. (e) generally, substituting "(e) [RESERVED]" for prior provisions of subsec. (e) which read as follows: "The Administration also is empowered to make loans (either directly or in cooperation with banks or other lenders through agreements to participate on an immediate or deferred basis) to assist any firm to adjust to changed economic conditions resulting from increased competition from imported articles, but only if (1) an adjustment proposal of such firm has been certified by the Secretary of Commerce pursuant to the Trade Expansion Act of 1962, (2) the Secretary has referred such proposal to the Administration under that Act and the loan would provide part or all of the financial assistance necessary to carry out such proposal, and (3) the Secretary's certification is in force at the

time the Administration makes the loan. With respect to loans made under this subsection the Administration shall apply the provisions of sections 314, 315, 316, 318, 319, and 320 of the Trade Expansion Act of 1962 as though such loans had been made under section 314 of that Act."

Subsec. (f). Pub. L. 104–208, §107(c), amended subsec. (f) generally, substituting "(f) [RESERVED]" for prior provisions of subsec. (f) which read as follows: "In the administration of the disaster loan program under subsection (b)(1) of this section, in the case of property loss or damage as a result of a disaster which is a 'major disaster' as defined in section 102(2) of the Disaster Relief and Emergency Assistance Act, the Small Business Administration, to the extent such loss or damage is not compensated for by insurance or otherwise, may lend to a privately owned college or university without regard to whether the required financial assistance is otherwise available from private sources, and may waive interest payments and defer principal payments on such a loan for the first three years of the term of the loan."

Subsec. (l). Pub. L. 104–208, §107(c), amended subsec. (l) generally, substituting "(l) [RESERVED]" for prior provisions of subsec. (l) which consisted of 9 pars. authorizing loans to small business concerns for solar energy and energy conservation measures.

Subsec. (m)(7)(B). Pub. L. 104–208, §105, inserted at end "If, however, at the beginning of the fourth quarter of a fiscal year the Administration determines that a portion of appropriated microloan funds are unlikely to be awarded during that year, the Administration may make additional funds available to a State in excess of 125 percent of the pro rata share of that State."

1995—Subsec. (a)(2). Pub. L. 104–36, §2, amended par. (2) generally. Prior to amendment, par. (2) related to percentage levels in loan participation agreements.

Subsec. (a)(18). Pub. L. 104–36, §3(a), amended par. (18) generally. Prior to amendment, par. (18) read as follows: "The Administration shall collect a guarantee fee equal to two percent of the amount of the deferred participation share of any loan under this subsection other than a loan repayable in one year or less. The fee shall be payable by the participating lending institution and may be charged to the borrower."

Subsec. (a)(19)(B). Pub. L. 104–36, §3(b)(1), substituted "shall develop" for "shall (i) develop" and struck out at end ", and (ii) allow such lenders to retain one-half of the fee collected pursuant to subsection (a)(18) of this section on such loans. A participating lender may not retain any fee pursuant to this paragraph if the amount committed and outstanding to the applicant would exceed $50,000 unless the amount in excess of $50,000 is an amount not approved under the provisions of this paragraph".

Subsec. (a)(19)(C). Pub. L. 104–36, §3(b)(2), struck out subpar. (C) which read as follows: "In order to encourage lending institutions and other entities making loans authorized under this subsection to provide loans to small business loan applicants located in rural areas, such lenders shall be permitted to retain one-half of the fee collected pursuant to paragraph (18) on loans of less than $75,000. A participating lender may not retain any fee pursuant to this subparagraph if the amount committed and outstanding to the applicant would exceed $75,000 unless the amount in excess of $75,000 is an amount not approved under the provisions of this subparagraph. This subparagraph shall cease to be effective on October 1, 1995."

Subsec. (a)(23). Pub. L. 104–36, §4(a), added par. (23).

Subsec. (a)(24). Pub. L. 104–36, §5, added par. (24).

1994—Subsec. (a)(2)(B)(iv). Pub. L. 103–403, §211, amended cl. (iv) generally. Prior to amendment, cl. (iv) read as follows: "not less than 85 percent of the financing outstanding at the time of disbursement if such financing is a loan under paragraph (16)."

Subsec. (a)(3)(B). Pub. L. 103–403, §210, amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "if the total amount outstanding and committed (on a deferred basis) solely for the purposes provided in paragraph (16) to the borrower from the business loan and investment fund established by this chapter would exceed $1,000,000, such amount to be in addition to any financing solely for working capital, supplies, or revolving lines of credit for export purposes up to a maximum of $250,000; and".

Subsec. (a)(14)(A). Pub. L. 103–403, §209, amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "The Administration under this subsection may provide extensions and revolving lines of credit for export purposes and financing to enable small business concerns, including small business export trading companies and small business export management companies, to develop foreign markets. No such extension or revolving line of credit may be made for a period or periods exceeding 3 years. A bank or participating lending institution may establish the rate of interest on extensions and revolving lines of credit as may be legal and reasonable."

Subsec. (a)(21)(A). Pub. L. 103–403, §605(a), inserted "on a guaranteed basis" before "under the authority".

Subsec. (a)(21)(E). Pub. L. 103–403, §603, added subpar. (E).

Subsec. (m)(3)(C). Pub. L. 103–403, §206, substituted "$2,500,000" for "$1,250,000".

Subsec. (m)(4)(B). Pub. L. 103–403, §208(a)(1), (c), temporarily inserted "except for a grant made to an intermediary that provides not less than 50 percent of its loans to small business concerns located in or owned

by one or more residents of an economically distressed area," after "under subparagraph (A),". See Effective and Termination Dates of 1994 Amendment note below.

Subsec. (m)(4)(C)(i). Pub. L. 103–403, §208(a)(2), (c), temporarily added cl. (i) which read as follows: "In addition to grants made under subparagraph (A), each intermediary shall be eligible to receive a grant equal to 5 percent of the total outstanding balance of loans made to the intermediary under this subsection if—

"(I) the intermediary provides not less than 25 percent of its loans to small business concerns located in or owned by one or more residents of an economically distressed area; or

"(II) the intermediary has a portfolio of loans made under this subsection that averages not more than $7,500 during the period of the intermediary's participation in the program."

See Effective and Termination Dates of 1994 Amendment note below.

Subsec. (m)(4)(E). Pub. L. 103–403, §207, added subpar. (E).

Subsec. (m)(7). Pub. L. 103–403, §204, amended par. (7) generally, substituting present provisions for former provisions relating to program funding, which provided for: in subpar. (A), first year programs; in subpar. (B), expanded programs; and in subpar. (C), State limitations.

Subsec. (m)(8). Pub. L. 103–403, §205, amended heading and text of par. (8) generally. Prior to amendment, text read as follows: "In funding microloan programs, the Administration shall ensure that at least one-half of the programs funded under this subsection will provide microloans to small business concerns located in rural areas."

Subsec. (m)(9)(B). Pub. L. 103–403, §604, inserted "and loan guarantees" after "for loans" and "and national and regional nonprofit organizations that have demonstrated experience in providing training support for microenterprise development and financing." after "experienced microlending organizations".

Subsec. (m)(11)(A)(v). Pub. L. 103–403, §202, added cl. (v).

Subsec. (m)(11)(D). Pub. L. 103–403, §208(b), (c), temporarily added subpar. (D) which read as follows: "the term 'economically distressed area', as used in paragraph (4), means a county or equivalent division of local government of a State in which the small business concern is located, in which, according to the most recent data available from the Bureau of the Census, Department of Commerce, not less than 40 percent of residents have an annual income that is at or below the poverty level.". See Effective and Termination Dates of 1994 Amendment note below.

Subsec. (m)(12). Pub. L. 103–403, §201, added par. (12).

1993—Subsec. (a)(2). Pub. L. 103–81, §5(a)(2)–(4), in concluding provisions, substituted "less than the above specified percentums" for "less than 85 percent under subparagraph (B)" and "not less than 70 percent, unless a lesser percent is required by clause (B)(ii) or upon the" for "not less than 80 percent, except upon" and inserted after third sentence "The maximum interest rate for a loan guaranteed under the Preferred Lenders Program shall not exceed the maximum interest rate, as determined by the Administration, which is made applicable to other loan guarantees under subsection (a) of this section."

Subsec. (a)(2)(B). Pub. L. 103–81, §5(a)(1), struck out "and" at end of cl. (i), added cls. (ii) and (iii), and redesignated former cl. (ii) as (iv).

Subsec. (a)(22). Pub. L. 103–81, §4, added par. (22).

Subsec. (m)(1)(B)(iii). Pub. L. 103–81, §8(1), substituted "$25,000" for "$15,000".

Subsec. (m)(5)(A). Pub. L. 103–81, §8(2), substituted "25 grants for terms of up to 5 years" for "6 grants".

Subsec. (m)(9)(B). Pub. L. 103–81, §8(3), substituted "7 percent" for "3 percent".

1992—Subsec. (a)(4). Pub. L. 102–366, §104, substituted "Notwithstanding the provisions of the constitution of any State or the laws of any State limiting the rate or amount of interest which may be charged, taken, received, or reserved, the maximum legal rate of interest on any financing made on a deferred basis pursuant to this subsection" for "The rate of interest on financings made on a deferred basis shall be legal and reasonable but".

Subsec. (a)(21). Pub. L. 102–366, §211, added par. (21).

Subsec. (m)(1)(A)(i). Pub. L. 102–366, §113(a)(1)(A), amended cl. (i) generally, substituting "and business owners and other such individuals" for ", business owners, and other individuals".

Subsec. (m)(1)(A)(iii)(I). Pub. L. 102–366, §113(a)(1)(B), inserted ", particularly loans in amounts averaging not more than $7,500," after "small-scale loans".

Subsec. (m)(3)(A). Pub. L. 102–366, §113(a)(2), designated existing provisions as cl. (i) and inserted heading, redesignated cls. (i) to (viii) as subcls. (I) to (VIII), respectively, substituted "economic, poverty, and unemployment" for "economic and unemployment" in subcl. (III), amended subcl. (VIII) generally, and added cl. (ii). Prior to amendment, subcl. (VIII) read as follows: "any plan to involve private sector lenders in assisting selected small business concerns."

Subsec. (m)(3)(F). Pub. L. 102–366, §113(a)(3), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: "Loans made by the Administration under this subsection shall be for a term of 10

years and at an interest rate equal to the rate determined by the Secretary of the Treasury for obligations of the United States with a period of maturity of 5 years, adjusted to the nearest one-eighth of 1 percent."

Subsec. (m)(4)(A). Pub. L. 102–366, §113(a)(4)(B), added subpar. (A) and struck out former subpar. (A) which read as follows: "Except as otherwise provided in subparagraph (C) and subject to the requirements of subparagraph (B), each intermediary that receives a loan under subparagraph (B)(i) of paragraph (1) shall be eligible to receive a grant to provide marketing, management, and technical assistance to small business concerns that are borrowers under this subsection. In the first and second years of an intermediary's program participation, each intermediary meeting the requirement of subparagraph (B) may receive a grant of not more than 20 percent of the total outstanding balance of loans made to it under this subsection. In the third and subsequent years of an intermediary's program participation, each intermediary meeting the requirements of subparagraph (B) may receive a grant of not more than 10 percent of the total outstanding balance of loans made to it under this subsection."

Pub. L. 102–366, §113(a)(4)(A), substituted "Except as otherwise provided in subparagraph (C) and subject to" for "Subject to".

Subsec. (m)(4)(B). Pub. L. 102–366, §113(a)(4)(C), substituted "25 percent" for "one-half".

Subsec. (m)(4)(C), (D). Pub. L. 102–366, §113(a)(4)(D), added subpars. (C) and (D).

Subsec. (m)(5)(A). Pub. L. 102–366, §113(a)(5), substituted "6 grants" for "2 grants".

Subsec. (m)(6)(C). Pub. L. 102–366, §113(a)(6), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "Notwithstanding any provision of the laws of any State or the constitution of any State pertaining to the rate or amount of interest that may be charged, taken, received or reserved on a loan, the maximum rate of interest to be charged on a microloan funded under this subsection shall be not more than 4 percentage points above the prime lending rate, as identified by the Administration and published in the Federal Register on a quarterly basis."

Subsec. (m)(7)(A). Pub. L. 102–564, §307(b)(1), inserted at end: "If, at the end of fiscal year 1992, the Administration has funded less than 50 microloan programs under this subparagraph, the Administration may, in fiscal year 1993, fund a number of additional microloan programs equal to the difference between 50 and the number of microloan programs actually funded in fiscal year 1992."

Pub. L. 102–366, §113(a)(7)(A), substituted "60 microloan programs" for "35 microloan programs".

Subsec. (m)(7)(B). Pub. L. 102–564, §307(b)(2), substituted "In addition to any microloan programs authorized to be funded in fiscal year 1993 in accordance with subparagraph (A), in the second" for "In the second".

Pub. L. 102–366, §113(a)(7)(B), substituted "50 additional" for "25 additional".

Subsec. (m)(7)(C)(i). Pub. L. 102–366, §113(a)(7)(C), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "be awarded more than 2 microloan programs in any year of the demonstration program;".

Subsec. (m)(7)(C)(ii), (iii). Pub. L. 102–366, §113(a)(7)(D), (E), substituted "$1,500,000" for "$1,000,000" in cl. (ii) and "$2,500,000" for "$1,500,000" in cl. (iii).

Subsec. (m)(9), (10). Pub. L. 102–366, §113(a)(8), (9), added par. (9) and redesignated former par. (9) as (10). Former par. (10) redesignated (11).

Subsec. (m)(11). Pub. L. 102–564, §307(c), inserted "private," before "nonprofit" in subpar. (A)(ii).

Pub. L. 102–366, §113(a)(8), (10), redesignated par. (10) as (11) and amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "the term 'intermediary' means a private, nonprofit entity or a nonprofit community development corporation that seeks to borrow or has borrowed funds from the Small Business Administration to make microloans to small business concerns under this subsection;".

1991—Subsec. (a)(18). Pub. L. 102–140, §609(b), struck out "or a loan under paragraph (13)" after "one year or less".

Subsec. (a)(19)(B). Pub. L. 102–191 struck out "during fiscal years 1989, 1990, and 1991," after "small business loan applicants,".

Subsec. (m). Pub. L. 102–140, §609(h), added subsec. (m).

1990—Subsec. (a)(14)(A). Pub. L. 101–574, §202, struck out "pre-export" before "financing" and substituted "3 years" for "18 months".

Subsec. (a)(16)(A). Pub. L. 101–574, §245, struck out at end "The lender shall agree to sell the loan in the secondary market as authorized in sections 634(f) and 634(g) of this title within 180 days of the date of disbursement."

Subsec. (a)(19)(C). Pub. L. 101–574, §307, added subpar. (C).

Subsec. (j)(3)(A). Pub. L. 101–574, §242(1), struck out subpar. (A), which was previously struck out by Pub. L. 100–656, §505(h). See 1988 Amendment note below.

Subsec. (j)(3)(B). Pub. L. 101–574, §242(1), struck out subpar. (B) which read as follows: "The General Accounting Office shall evaluate the activities taken by the Administration to achieve the purpose of this

paragraph and evaluate the success of these activities in achieving the purposes of this paragraph. The General Accounting Office shall report to the Congress by January 1, 1981, and at any time thereafter at the discretion of the Comptroller General, on the findings of this evaluation and shall make recommendations on actions needed to improve the Administration's performance pursuant to this paragraph."

Subsec. (j)(8). Pub. L. 101–574, §242(2), struck out par. (8) which read as follows: "The General Accounting Office shall provide for an independent and continuing evaluation of programs under subsections (i) and (j) of this section and section 637(a) of this title, including full information on, and analysis of, the character and impact of managerial assistance provided, the location, income characteristics, and extent to which private resources and skills have been involved in these programs. Such evaluation together with any recommendations deemed advisable by the Comptroller General shall be reported to the Congress by January 1, 1981, and at any time thereafter at the discretion of the Comptroller General."

Subsec. (j)(10)(J)(ii). Pub. L. 101–574, §204(a), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "Except as provided under section 602 of the Business Opportunity Development Reform Act of 1988, no award shall be made pursuant to section 637(a) of this title to other than a small business concern."

Subsec. (j)(13)(D)(iii). Pub. L. 101–574, §206, substituted "October 1, 1994" for "October 1, 1992".

1989—Subsec. (a)(2). Pub. L. 101–162, title V, (1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "In agreements to participate in loans on a deferred basis under this subsection, such participation by the Administration, except as provided in paragraph (6), shall be:

"(A) not less than 90 per centum of the balance of the financing outstanding at the time of disbursement if such financing does not exceed $155,000; and

"(B) subject to the limitation in paragraph (3)—

"(i) not less than 70 per centum nor more than 85 per centum of the financing outstanding at the time of disbursement if such financing exceeds $155,000 but is less than $714,285,

"(ii) less than 70 per centum of the financing outstanding at the time of disbursement if such financing exceeds $714,285;

"(iii) not less than 85 per centum of the financing outstanding at the time of disbursement if such financing is a loan under paragraph (16) and is less than $1,176,470; and

"(iv) less than 85 per centum of the financing outstanding at the time of disbursement if such financing is a loan under paragraph (16) and exceeds $1,176,470;

Provided, That the Administration shall not use the per centum of guarantee requested as a criterion to establish priorities in approving guarantee requests nor shall the Administration reduce the per centum guaranteed to less than 85 per centum pursuant to subparagraph (B) other than by a determination made on each application: *Provided, further*, That the Administration may reduce its participation below the per centums stated in this paragraph if the lender requests the reduction under the preferred lenders program or any successor thereto, but any such reduction shall not exceed five points. As used in this sentence the term 'preferred lenders program' means a program under which, pursuant to a written agreement between the lender and the Administration, the lender has been delegated (1) complete authority to make and close loans with a guarantee from the Administration without obtaining the prior specific approval of the Administration, and (2) authority to service and liquidate such loans."

Subsec. (a)(19). Pub. L. 101–162, title V, (2), amended par. (19) generally. Prior to amendment, par. (19) read as follows: "During fiscal years 1989, 1990, and 1991, in addition to the preferred lenders program authorized by the proviso in section 634(b)(7) of this title, the Administration is authorized to establish a certified loan program for lenders who establish their knowledge of Administration laws and regulations concerning the loan guarantees program and their proficiency in program requirements. In order to encourage certified lenders and preferred lenders to provide loans of $50,000 or less in guarantees to eligible small business loan applicants, the Administration (A) shall develop and shall allow participating lenders in the certified loan program and in the preferred loan program to solely utilize a uniform and simplified loan form for such loans and (B) shall allow such lenders to retain one-half of the fee collected pursuant to subsection (a)(16) of this section on such loans: *Provided*, That a participating lender may not retain any fee pursuant to this paragraph if the amount committed and outstanding to the applicant would exceed $50,000 unless such excess amount was not approved under the provisions of this paragraph. The designation of a lender as a certified lender shall be suspended or revoked at any time that the Administration determines that the lender is not adhering to its rules and regulations or if the Administration determines that the loss experience of the lender is excessive as compared to other lenders: *Provided further*, That any suspension or revocation of the designation shall not affect any outstanding guarantee: And, *provided further*, That the Administration may not reduce the per centum of guarantee as a criterion of eligibility for participation in this program, except as otherwise provided by law."

Subsec. (a)(20)(C)(iv). Pub. L. 101–37, §9, inserted "is" before "amortized".

Subsec. (j)(10)(A)(i). Pub. L. 101–37, §5(a), substituted "which set forth" for "which sets forth".

Subsec. (j)(10)(D)(i). Pub. L. 101–37, §5(b)(1), substituted "Business Opportunity Specialist" for "business opportunity specialist".

Subsec. (j)(10)(D)(ii)(II). Pub. L. 101–37, §5(b)(2), substituted "the small business concern" for "small business concerns".

Subsec. (j)(10)(D)(iii). Pub. L. 101–37, §5(b)(3), inserted "relating to attaining business activity from sources other than contracts awarded pursuant to section 637(a) of this title" after "subparagraph (I)".

Subsec. (j)(10)(D)(iv). Pub. L. 101–37, §5(b)(4), substituted "contract awards" for "contact awards".

Subsec. (j)(10)(D)(iv)(I). Pub. L. 101–37, §5(b)(5), inserted "relating to attaining business activity from sources other than contracts awarded pursuant to section 637(a) of this title" after "subparagraph (I)".

Subsec. (j)(10)(E)(ii). Pub. L. 101–37, §7(a)(1), substituted "completes the period of Program participation as prescribed by paragraph (15)" for "participates in the Program for a period in excess of the time limits prescribed by paragraph (15)".

Subsec. (j)(10)(F). Pub. L. 101–37, §7(a)(2), struck out subpar. (F) appearing first, which read as follows: "For the purposes of this subsection and section 637(a) of this title, the terms 'terminated' or 'termination' shall mean the total denial".

Pub. L. 101–37, §7(a)(3), in subpar. (F) appearing second, inserted first sentence and struck out former first sentence which read as follows: "For the purposes of this chapter, this subsection and section 637(a) of this title, the terms 'terminated' or 'termination' shall mean the total denial or suspension of assistance provided pursuant to this paragraph or section 637(a) of this title prior to the graduation of the participating small business concern pursuant to subparagraph (H) or the expiration of the maximum program participation in terms prescribed by paragraph (15)."

Subsec. (j)(10)(I). Pub. L. 101–37, §10(b), designated as subpar. (I) the undesignated subpar. which followed subpar. (H).

Pub. L. 101–37, §10(a), made technical correction to directory language of Pub. L. 100–656, §303(a), see 1988 Amendment note below.

Subsec. (j)(10)(J)(i). Pub. L. 101–37, §6(a), substituted "suspended" for "suspended or terminated".

Subsec. (j)(11)(B). Pub. L. 101–37, §4(1), added subpar. (B) and struck out former subpar. (B) which read as follows: "Except as provided in section 602(d) of the Business Opportunity Development Reform Act of 1988, any individual upon whom eligibility is based pursuant to section 637(a)(4) of this title, shall be permitted to assert such eligibility for only one small business concern. Notwithstanding the provisions of the preceding sentence, no individual who was determined pursuant to section 637(a) of this title to be socially and economically disadvantaged before June 1, 1989, shall be permitted to assert such disadvantage with respect to any other concern making application for certification after June 1, 1989."

Subsec. (j)(11)(E). Pub. L. 101–37, §4(2), (3), substituted "Office of Minority Small Business" for "Office of the Associate Administrator for Minority Small Business" and "the Associate Administrator for Minority Small Business and Capital Ownership Development" for "such Associate Administrator".

Subsec. (j)(11)(F)(v). Pub. L. 101–37, §4(4), substituted "to the Associate Administrator" for "with the Associate Administrator".

Subsec. (j)(11)(F)(vi). Pub. L. 101–37, §4(5), added cl. (vi) and struck out former cl. (vi) which read as follows: "decide protests from applicants that have been denied program admission;".

Subsec. (j)(11)(F)(viii). Pub. L. 101–37, §4(6), substituted "subparagraph (I)" for "subparagraph (H)".

Subsec. (j)(11)(G)(ii). Pub. L. 101–37, §4(7), substituted "Participants" for "participants".

Subsec. (j)(11)(H), (I). Pub. L. 101–37, §4(9), added subpar. (H) and redesignated former subpar. (H) as (I).

Subsec. (j)(12)(A). Pub. L. 101–37, §8(a)(1), substituted "developmental" for "development".

Subsec. (j)(12)(B). Pub. L. 101–37, §8(a)(2), inserted "in its effort" after "to assist the concern".

Subsec. (j)(13)(E). Pub. L. 101–37, §8(b), inserted second sentence and struck out former second sentence which read as follows: "Such financial assistance may be made without regard to section 647(a) of this title, shall be made by way of reimbursement to the training provider, and shall have such adjustments as may be necessary to provide for overpayments or underpayments."

1988—Subsec. (a)(2). Pub. L. 100–590, §103, inserted ", but any such reduction shall not exceed five points" after "any successor thereto" in second proviso.

Subsec. (a)(2)(B)(iii), (iv). Pub. L. 100–418, §8007(a)(1), added cls. (iii) and (iv).

Subsec. (a)(3). Pub. L. 100–418, §8007(a)(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "No loan under this subsection shall be made if the total amount outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund established by this

chapter would exceed $500,000: *Provided*, That no such loan made or effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate basis shall exceed $350,000."

Subsec. (a)(12). Pub. L. 100–590, §111(c), designated existing provisions as subpar. (A) and added subpar. (b)[(B)].

Subsec. (a)(14). Pub. L. 100–418, §8005, amended par. (14) generally. Prior to amendment, par. (14) read as follows: "The Administration under this subsection may provide extensions and revolving lines of credit for export purposes to enable small business concerns to develop foreign markets and for preexport financing: *Provided, however*, That no such extension or revolving line of credit may be made for a period or periods exceeding eighteen months. A bank or participating lending institution may establish the rate of interest on extensions and revolving lines of credit as may be legal and reasonable."

Subsec. (a)(16) to (18). Pub. L. 100–418, §8007(a)(3), (4), added pars. (16) and (17) and redesignated former par. (16) as (18).

Subsec. (a)(19). Pub. L. 100–533 and Pub. L. 100–590, §102(a), made identical amendments adding par. (19).

Subsec. (a)(20). Pub. L. 100–656, §302, added par. (20).

Subsec. (b)(1)(A). Pub. L. 100–590, §§119(a), 121, substituted "natural or other disasters" for "floods, riots or civil disorders, or other catastrophes" and inserted proviso that Administration may increase loan up to additional 20 per centum to protect damaged or destroyed property from possible future disasters.

Subsec. (b)(2)(A). Pub. L. 100–707, §109(f)(1), substituted "the Disaster Relief and Emergency Assistance Act" for "the Act entitled 'An Act to authorize Federal assistance to States and local governments in major disasters, and for other purposes', approved September 30, 1950, as amended (42 U.S.C. 1855–1855g)".

Subsec. (b)(E). Pub. L. 100–707, §109(f)(2), substituted "section 312(a) of the Disaster Relief and Emergency Assistance Act" for "subsection (b) of section 315 of Public Law 93–288 (42 U.S.C. 5155)".

Subsec. (c)(5)(C). Pub. L. 100–590, §120(b), substituted "business or other concern, including agricultural cooperatives," for "business concern".

Subsec. (c)(6). Pub. L. 100–590, §122, substituted "refinancing: *Provided further*, That the Administration shall not require collateral for loans of $10,000 or less which are made under paragraph (1) of subsection (b) of this section". for "refinancing".

Subsec. (c)(7). Pub. L. 100–590, §120(a), added par. (7).

Subsec. (f). Pub. L. 100–707, §109(f)(3), substituted "section 102(2) of the Disaster Relief and Emergency Assistance Act" for "section 2(a) of the Act of September 30, 1950 (42 U.S.C. 1855a(a))".

Subsec. (j)(3)(A). Pub. L. 100–656, §505(h), struck out subpar. (A) which read as follows: "An advisory committee composed of five high-level officers from five United States businesses and five representatives of minority small businesses shall be created to facilitate the achievement of the purposes of this paragraph. The members of the advisory committee shall be appointed by the President. The chairman of the advisory committee, who shall be designated by the President shall report annually to the President and to the Congress on the activities of the advisory committee."

Subsec. (j)(10)(A)(i). Pub. L. 100–656, §205(a), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "assist small business concerns participating in the Program to develop comprehensive business plans with specific business targets, objectives, and goals for correcting the impairment of such concern's ability to compete, as determined for such concern pursuant to section 637(a)(6) of this title, within a fixed period of time as mutually agreed upon by the applicant and the Administrator prior to acceptance in such program: *Provided*, That not less than one year prior to the expiration of such period, and upon the request of such concern, the Administration shall review such period and may extend such period as necessary and appropriate: *Provided further*, That no determination made under this paragraph shall be considered a denial of total participation for the purposes of section 637(a)(9) of this title;".

Subsec. (j)(10)(C). Pub. L. 100–656, §205(b)(1), (2), redesignated subpar. (D) as (C) and struck out former subpar. (C) which read as follows: "No small business concern shall receive a contract pursuant to section 637(a) of this title unless—

"(i) the business plan required pursuant to paragraph (10)(A)(i) is approved by the Administration; and

"(ii) the program is able to provide such concern with, but not limited to, such management, technical and financial services as may be necessary to achieve the targets, objectives, and goals of such business."

Subsec. (j)(10)(D). Pub. L. 100–656, §205(b)(2), (3), added subpar. (D). Former subpar. (D) redesignated (C).

Pub. L. 100–656, §203, added subpar. (D).

Subsec. (j)(10)(E) to (H). Pub. L. 100–656, §208, added subpars. (E) to (H).

Subsec. (j)(10)[(I)]. Pub. L. 100–656, §303(a), as amended by Pub. L. 101–37, §10(a), added new subpar.

without subpar. designation, but which probably was intended to be subpar. (I). See 1989 Amendment note above.

Subsec. (j)(10)(J). Pub. L. 100–656, §206, added subpar. (J).

Subsec. (j)(11). Pub. L. 100–656, §201(a), designated existing provisions as subpar. (A) and added subpars. (B) to (H).

Subsec. (j)(12). Pub. L. 100–656, §301(a), added par. (12).

Subsec. (j)(13). Pub. L. 100–656, §301(b), added par. (13).

Subsec. (j)(14). Pub. L. 100–656, §301(c), added par. (14).

Subsec. (j)(15). Pub. L. 100–656, §202, added par. (15).

Subsec. (j)(16). Pub. L. 100–656, §408, added par. (16).

1986—Subsec. (a)(2). Pub. L. 99–272, §18013, in subpar. (A) substituted "$155,000" for "$100,000", in subpar. (B)(i) substituted "$155,000" for "$100,000" and "85" for "90", in proviso following subpar. (B) substituted "85" for "90", and inserted a second proviso relating to reduction by the Administration of its participation below the per centum stated in this paragraph and defining "preferred lenders program".

Subsec. (a)(15)(B)(i). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

Subsec. (a)(16). Pub. L. 99–272, §18007, added par. (16).

Subsec. (b). Pub. L. 99–272, §18006(a)(1), in provision preceding par. (1) substituted "Except as to agricultural enterprises as defined in section 647(b)(1) of this title, the," for "The", struck out par. (3) which authorized loans, each one not to exceed $500,000, to any small business concern to effect continuation of, additions to, alterations in, or reestablishment in the same or a new location of its plant, facilities, or methods or operation caused by direct action of the Federal Government or as a consequence of Federal Government action provided that the applicant was unable to obtain credit elsewhere, and struck out par. (4) which authorized disaster loans, each one not to exceed $100,000, to any small business concern located in an area of economic dislocation that was the result of the drastic fluctuation in the value of the currency of a country contiguous to the United States and adjustments in the regulation of its monetary system if such concern was unable to obtain credit elsewhere.

Subsec. (c)(4). Pub. L. 99–272, §18006(a)(2), struck out provision following subpar. (D) which provided that loans, subject to reductions under subpars. (A) and (B) of par. (1), be in amounts equal to 100 percent of loss if the applicant was a homeowner and 85 percent if the applicant was a business or otherwise, the interest rate for loans under pars. (1) and (2) be the rate of interest in effect on the date the disaster commenced, and the Administrator, in his discretion, waive the $500,000 limitation on the total amount outstanding and committed to the borrower under this subsection if the applicant constituted a major source of employment in an area suffering a disaster.

1984—Subsec. (b)(2). Pub. L. 98–270, §311(1), (3), substituted in provisions preceding subpar. (A) "small business concern or small agricultural cooperative" for "small business concern" and "the concern or the cooperative" for "the concern".

Subsec. (b)(2)(D). Pub. L. 98–270, §311(2), substituted "small business concerns or small agricultural cooperatives" for "small business concerns".

Subsec. (b)(3). Pub. L. 98–270, §308, inserted "continuation of," after "in effecting" and inserted provision directing that, for purposes of this paragraph, the impact of the 1983 Payment-in-Kind Land Diversion program, or any successor Payment-in-Kind program with a similar impact on the small business community, be deemed to be a consequence of Federal Government action.

Subsec. (b)(4). Pub. L. 98–270, §304(2), added par. (4).

Subsec. (c). Pub. L. 98–270, §301, added undesignated par. following par. (6).

Subsec. (c)(5). Pub. L. 98–270, §301, added par. (5).

Subsec. (c)(6). Pub. L. 98–270, §301, added par. (6).

Pub. L. 98–270, §309, inserted provision directing that employees of concerns sharing common business premises be aggregated in determining "major source of employment" status for nonprofit applicants owning such premises.

Subsec. (d)(1). Pub. L. 98–395 substituted provisions stating that the Administration shall not fund any Small Business Development Center except as authorized for former provisions which prohibited such funding only after October 1, 1980.

1981—Subsec. (a). Pub. L. 97–35, §1902, substituted provisions empowering the Administration to the extent and in such amounts as provided in advance in appropriation acts, for plant acquisition, construction, conversion, or expansion, including the acquisition of land, material, supplies, equipment, and working capital, and to make loans to qualified small business concerns including those owned by qualified Indian tribes, for purposes of this chapter, and that financing may be made either directly or in cooperation with

banks or other financial institutions through agreements to participate on an immediate or deferred basis for provisions empowering the Administration to make loans to enable small business concerns and such concerns wholly owned by Indian tribes to finance plant construction, conversion, or expansion, including the acquisition of land, or to finance residential or commercial construction or rehabilitation, for sale, with a proviso that such loans shall not be used primarily for the acquisition of land, or to finance the acquisition of equipment, facilities, machinery, supplies, or materials, or to supply such concerns with working capital to be used in the manufacture of articles, equipment, supplies, or materials for war, defense, or civilian production or as may be necessary to insure a well-balanced national economy, and that such loans may be made or effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis.

Subsec. (a)(6)(C). Pub. L. 97–35, §1910, repealed subpar. (C) which read as follows: "the Administration shall not decline to participate in a loan on a deferred basis under this subsection solely because such loan will be used to refinance all or any part of the existing indebtedness of a small business concern, unless the Administration determines that—

"(i) the holder of such existing indebtedness is in a position likely to sustain a loss if such refinancing is not provided, and

"(ii) if the Administration provides such refinancing through an agreement to participate on a deferred basis, it will be in a position likely to sustain part or all of any loss which would have otherwise been sustained by the holder of the original indebtedness: *Provided further*, That the Administration may decline to approve such refinancing if it determines that the loan will not benefit the small business concern."

Subsec. (a)(8). Pub. L. 97–35, §1910, repealed par. (8) which read as follows: "(8)(A) Any loan made under the authority of this subsection by the Administration in cooperation with a bank or other lending institution through an agreement to participate on a deferred basis, may, upon the concurrence of the Administration, borrower and such bank or institution, have the term of such loan extended or such loan refinanced with an extension of its term: *Provided*, That the aggregate term of such extended or refinanced loan does not exceed the term permitted pursuant to paragraph (5): *And provided further*, That such extended loans, or refinancings shall be repaid in equal installments of principal and interest.

"(B) An additional service fee not exceeding 1 per centum of the outstanding amount of the principal may be paid by the borrower to the lender in consideration for such lender extending the term or refinancing of such borrower's indebtedness if such extension or refinancing results in the term of such indebtedness exceeding ten years.

"(C) The authority provided in this paragraph shall not be construed to otherwise limit the authority of the Administration to set terms and conditions of the loan."

Subsec. (b)(1). Pub. L. 97–35, §1911, revised provisions to specifically authorize loans only to repair, rehabilitate, or replace property, real or personal, damaged or destroyed, and is not compensated for by insurance or otherwise, and to refinance any mortgage or other lien against a totally destroyed or substantially damaged home or business concern upon finding that the applicant is not able to obtain credit elsewhere, that such property is to be repaired, rehabilitated, or replaced, that the amount refinanced shall not exceed the loss, and that the amount shall be reduced to the extent such mortgage or lien is satisfied by insurance or otherwise.

Subsec. (b)(2). Pub. L. 97–35, §1911, revised provisions to continue to authorize loans to business concerns which the Administration determines to have suffered substantial economic injury as a result of a physical disaster as declared under certain pertinent triggering legislation.

Subsec. (b)(3) to (9). Pub. L. 97–35, §1913(a), designated existing provisions of par. (5) as (3) with minor changes, and struck out pars. (3), (4), and (6) to (9) relating to non-physical disaster loans.

Subsec. (c)(3). Pub. L. 97–35, §1914, substituted "effective date of this Act" for "to October 1, 1983".

Subsec. (c)(4). Pub. L. 97–35, §1912, added par. (4).

Subsec. (g). Pub. L. 97–35, §1913(c), repealed subsec. (g) which related to loans to small business concerns for water pollution control facilities.

1980—Subsec. (a). Pub. L. 96–481, §112, inserted provisions preceding par. (1) empowering the Administration to the extent and in such amounts as are provided in appropriation acts to make or effect either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis extensions and revolving lines of credit for export purposes to enable small business concerns to develop foreign markets and for preexport financing, with proviso limiting the extension of credit or revolving line of credit to a period of eighteen months.

Subsec. (a)(8). Pub. L. 96–302, §505, added par. (8).

Subsec. (b). Pub. L. 96–302, §124, which directed that cl. (E), respecting duplication of disaster benefits, be added at end of subsec. (b), was executed by inserting cl. (E) following cl. (D) in next to last par. of subsec. (b) as the probable intent of Congress.

Subsec. (b)(4). Pub. L. 96–302, §123, substituted "other causes" for "undetermined causes" and made the small business concern ineligible for loan assistance when the concern intentionally adulterates its product in attempting to establish eligibility under the loan assistance program.

Subsec. (b)(8). Pub. L. 96–302, §122, authorized loans to assist small business concern affected by a shortage of coal or other energy-producing resource caused by a strike, boycott, or embargo, unless the strike, boycott, or embargo is directly against the small business concern.

Subsec. (c)(3). Pub. L. 96–302, §119(a), (b), added subpar. (C) and extended disaster loans to disasters occurring prior to Oct. 1, 1983, instead of Oct. 1, 1982.

Subsec. (d)(1). Pub. L. 96–302, §203, substituted provisions respecting: funding of small business development centers under section 648 of this title on and after Oct. 1, 1980; operation of such centers funded prior to Oct. 1, 1979; and prescribing $300,000 limitation for fiscal year 1980, for such centers funded in fiscal year 1979, for provisions respecting grants for studies research, and counseling concerning the managing, financing, and operation of small-business enterprises; study and research recommendation; and conditions, now covered in section 648(a) of this title.

Subsec. (j)(10). Pub. L. 96–481, §104, in opening paragraph substituted provision that the program and all other services and activities authorized under this subsection and section 637(a) of this title shall be managed by the Associate Administrator for Minority Small Business and Capital Ownership Development under the Supervision of, and responsible to the Administrator, for provision that the management of the program shall be vested in the Associate Administrator for Minority Small Business and Capital Ownership Development who shall also manage all other services and activities authorized under this subsection and section 637(a) of this title.

Subsec. (j)(10)(A)(i). Pub. L. 96–481, §106(a), substituted "targets, objectives, and goals for correcting the impairment of such concern's ability to compete, as determined for such concern pursuant to section 637(a)(6) of this title, within a fixed period of time as mutually agreed upon by the applicant and the Administrator prior to acceptance in such program: *Provided*, That not less than one year prior to the expiration of such period, and upon the request of such concern, the Administration shall review such period and may extend such period as necessary and appropriate; *Provided further*, That no determination made under this paragraph shall be considered a denial of participation for the purposes of section 637(a)(9) of this title" for "targets, objectives and goals".

Subsec. (j)(10)(C). Pub. L. 96–481, §107, in the conditions required to receive a contract by a small business concern, substituted provisions that the business plan be approved by the Administration and that the program be able to provide the concern with management, technical and financial services necessary to achieve the targets, objectives and goals of such business, for provision that the program be able to provide the concern with management, technical and financial services as may be necessary to promote the competitive viability of the concern within a reasonable period of time.

1979—Subsec. (b) following par. (9). Pub. L. 96–38 inserted ", except as provided in subsection (c) of this section," after "the interest rate on the Administration's share of any loan made under this subsection" in first unnumbered paragraph.

Subsec. (c)(3). Pub. L. 96–38 added par. (3).

1978—Subsec. (a). Pub. L. 95–507, §231, inserted provision including small-business concerns totally owned and controlled by Indian tribes within the scope of this section.

Subsec. (d). Pub. L. 95–315, §3, designated existing provisions as par. (1) and added par. (2).

Subsec. (j). Pub. L. 95–507, §204, included individuals and enterprises eligible for assistance under par. (10) of this subsection and section 637(a) of this title among those eligible for assistance under this section, provided for the establishment of the small business and capital ownership development program, and provided for the coordination of certain Federal policies under this section by the Associate Administrator for Minority Small Business and Capital Ownership Development.

Subsec. (k). Pub. L. 95–507, §205, inserted reference to section 637(a).

Subsec. (k)(4). Pub. L. 95–510 substituted "the daily equivalent of the highest rate payable under section 5332 of title 5" for "$100 per diem".

Subsec. (l). Pub. L. 95–315, §2, added subsec. (l).

1977—Subsec. (a). Pub. L. 95–89, §301, authorized loans to finance residential or commercial construction or rehabilitation for sale, subject to restriction that such loans be not used primarily for the acquisition of land.

Subsec. (a)(8). Pub. L. 95–89, §101(d), repealed par. (8) which required the Administrator to make direct loans under subsec. (a) in an aggregate amount of not less than $400,000,000 during fiscal year ending June 30, 1975.

Subsec. (b). Pub. L. 95–89, §405, inserted following par. (9) provisions respecting interest rate on loans to repair or replace primary residence and/or replace or repair damaged or destroyed personal property, including

installation of insulation in connection with any disaster occurring on or after April 1, 1977, and transmission of a report to congressional committees respecting the activities under the provisions and the encouragement of such insulation installations.

Subsec. (b)(2)(C) to (E). Pub. L. 95–89, §403, added subpars. (C) to (E).

Subsec. (b)(3). Pub. L. 95–89, §402, substituted "program or project constructed by or with funds provided in whole or in part by the Federal Government or by a program or project by a State or local government or public service entity, providing such government or public service entity has the authority to exercise the right of eminent domain on such program or project" for "federally aided urban renewal program or a highway project or any other construction constructed by or with funds provided in whole or in part by the Federal Government".

Subsec. (b)(5). Pub. L. 95–89, §302, inserted "heretofore or hereafter enacted" after "any Federal law".

Subsec. (b)(9). Pub. L. 95–89, §404, added par. (9).

Subsec. (g)(4). Pub. L. 95–89, §101(e), repealed par. (4) which authorized appropriation of not to exceed $800,000,000 to the disaster fund solely for purpose of carrying out subsec. (g) loans to small business concerns for water pollution control facilities.

1976—Subsec. (a)(1). Pub. L. 94–305, §112(c), inserted reference to non-Federal sources.

Subsec. (a)(4)(A). Pub. L. 94–305, §111, substituted "$500,000: *Provided,* That no such loan made or effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate basis shall exceed $350,000" for "$350,000".

Subsec. (a)(4)(C). Pub. L. 94–305, §108(b), substituted provision relating to a twenty year maturity period for any portion of loan made for the purpose of acquiring real property or constructing facilities for provision relating to a ten year maturity for portion of loan made for purpose of constructing facilities.

Subsec. (b). Pub. L. 94–305, §114, in provisions following par. (8), substituted provisions requiring interest rate on Administration's share of any loan made under this subsection not to exceed the average annual interest rate on all interest-bearing obligations of the United States then forming a part of the public debt for provisions requiring interest rate on Administration's share of any loan made under this subsection not to exceed 3 per centum per annum except for loans made under pars. (3), (5), (6), (7), or (8) in which the interest will not exceed either 2¾ per centum per annum or the average annual interest rate of all interest-bearing obligations of the United States then forming a part of the public debt.

Subsec. (b)(4). Pub. L. 94–305, §112(d), struck out proviso that loans under subsec. (b)(4) of this section include loans to persons who are engaged in business of raising livestock, and who suffer substantial injury as a result of animal disease.

Subsec. (i)(1), (3). Pub. L. 94–305, §109, substituted "$100,000" for "$50,000".

1974—Subsec. (a)(4)(B). Pub. L. 93–386, §8, substituted provisions for determining the rate of interest for the Administration's share of any loan for provisions setting forth the rate of interest for the Administration's share of any loan as not more than 5½ per centum per annum.

Subsec. (a)(5)(B). Pub. L. 93–386, §8, substituted provisions for determining the rate of interest for the Administration's share of any loan for provisions setting forth the rate of interest for the Administration's share of any loan as not less than 3 nor more than 5 per centum per annum.

Subsec. (a)(8). Pub. L. 93–386, §12, added par. (8).

Subsec. (b)(4). Pub. L. 93–237, §5, inserted proviso that loans under this paragraph include loans to persons who are engaged in the business of raising livestock and who suffer substantial economic injury as a result of animal disease.

Subsec. (b)(5) to (7). Pub. L. 93–237, §§2(a), (b), 6, consolidated into a single par. (5) the authority of the Small Business Administration contained in former par. (5) to make loans to small business concerns to meet the requirements of the Federal Coal Mine Health and Safety Act of 1969, the Egg Products Inspection Act, the Wholesome Poultry Products Act, and the Wholesome Meat Act, and former par. (6) to make loans to small business concerns to meet the requirements of the Occupational Safety and Health Act of 1970, expanded such authority to finance structural, operational, or other changes required in order to meet standards imposed by Federal laws, or by State laws enacted in conformity with Federal laws, redesignated former par. (7) as par. (6), and added par. (7).

Subsec. (b)(8). Pub. L. 93–386, §9(a), added par. (8).

Subsec. (b). Pub. L. 93–386, §9(b), substituted "paragraph (3), (5), (6), (7), or (8)" for "paragraph (3), (5), (6), or (7)" in first par. following the numbered pars.

Subsecs. (g), (h). Pub. L. 93–237, §3(a), redesignated subsec. (g), relating to loans to handicapped persons and organizations for handicapped, as (h).

Subsec. (h)(2). Pub. L. 93–386, §3(2), inserted "The Administration's share of" before "any loan".

Subsecs. (i) to (k). Pub. L. 93–386, §2(a)(4), added subsecs. (i) to (k).

1972—Subsec. (b). Pub. L. 92–385 added par. (7), and in text following the numbered paragraphs, inserted provisions relating to the administration of the disaster loan program in relation to disasters occurring between January 1, 1971, and July 1, 1973.

Subsec. (g). Pub. L. 92–595 added subsec. (g) relating to loans to handicapped persons and organizations for handicapped.

Pub. L. 92–500 added subsec. (g) relating to loans to small business concerns for water pollution control facilities.

1970—Subsec. (b). Pub. L. 91–597 added par. (5) relating to loans for additions or alterations required under the Egg Products Inspection Act, etc., and inserted reference to such par. (5).

Pub. L. 91–596 added par. (6) and inserted reference to par. (6) after reference to par. (5).

1969—Subsec. (b). Pub. L. 91–173 added par. (5), and inserted reference to par. (5) after reference to par. (3).

1968—Subsec. (b)(1). Pub. L. 90–448 empowered the Administration to make loans because of riots or civil disorders.

Subsec. (b)(3). Pub. L. 90–495 added continuing in business at its existing location, purchasing a business, and establishing a new business to the list of purposes for which loans may be made, and extended the causes of substantial economic injury of the concern involved to include its location in, adjacent to, or near a federally aided urban renewal program, highway project, or other construction project using federal funds.

1967—Subsec. (a)(4). Pub. L. 90–104, §103, extended maturity date for construction loans from ten to fifteen years.

Subsec. (f). Pub. L. 90–104, §104, redesignated subsec. (e), added by Pub. L. 89–769, as (f).

1966—Subsec. (e). Pub. L. 89–409 added subsec. (e).

Pub. L. 89–769 added subsec. (e) which provided for assistance to privately owned higher education in major disaster areas and repayment.

1965—Subsec. (b). Pub. L. 89–59, §1(a), increased the maturity of disaster loans from twenty to thirty years, and authorized suspension of principal and interest payments and extension of date of maturity for five year period.

Subsec. (c). Pub. L. 89–59, §1(b), designated existing provisions as par. (1) and added par. (2).

1964—Subsecs. (b)(2), (4). Pub. L. 88–264 extended provisions of par. (2) to any small business affected by disasters other than drought or excessive rainfall and added par. (4) for disaster loans to any such business suffering economic injuries through natural or undetermined causes.

Subsec. (b)(3). Pub. L. 88–560 provided that the purposes of a loan under this paragraph may include the purchase or construction of other premises whether or not the borrower owned the premises from which it was displaced.

1961—Subsec. (b). Pub. L. 87–70 added par. (3), and inserted provisions limiting the interest rate in the case of loans made pursuant to par. (3) to not more than the higher of (A) 2¾ per centum per annum, or (B) the average annual interest rate on all interest-bearing obligations forming a part of the public debt as computed at the end of the fiscal year next preceding the date of the loan and adjusted to the nearest one-eighth of 1 per centum, plus one-quarter of 1 per centum per annum.

Subsec. (d). Pub. L. 87–305 empowered the Administration to make grants to any corporation formed by two or more eligible entities described in the text, authorized it to recommend to grant applicants particular studies or research, eliminated the limitation of one grant to a State, and conditioned grants to the procurement of additional amounts from sources other than the Administration.

1959—Subsec. (d). Pub. L. 86–367 struck out provision for making the grants from the fund established in the Treasury by section 602(b) of the Small Business Investment Act of 1958.

1958—Subsec. (d). Pub. L. 85–699 added subsec. (d).

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001. Previously, Select Committee on Small Business of Senate became Committee on Small Business of Senate. See Senate Resolution No. 101, Ninety-Seventh Congress, Mar. 25, 1981.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113—128 effective on the first day of the first full program year after July 22, 2014 [probably July 1, 2015], see section 506 of Pub. L. 113—128, set out as an Effective Date note under section 3101 of Title 29, Labor.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–240, title I, §1111(b), Sept. 27, 2010, 124 Stat. 2508, provided that the amendment made by section 1111(b) is effective Jan. 1, 2011.

Pub. L. 111–240, title I, §1133(b), Sept. 27, 2010, 124 Stat. 2515, provided that the amendment made by section 1133(b) is effective Sept. 30, 2013.

Pub. L. 111–240, title I, §1135(b), Sept. 27, 2010, 124 Stat. 2520, provided that the amendment made by section 1135(b) is effective 1 year after Sept. 27, 2010.

Pub. L. 111–240, title I, §1206(h), Sept. 27, 2010, 124 Stat. 2532, provided that: "The amendments made by subsections (a) through (f) [amending this section] shall apply with respect to any loan made after the date of enactment of this Act [Sept. 27, 2010]."

Pub. L. 111–240, title I, §1401(c), Sept. 27, 2010, 124 Stat. 2549, provided that the amendment made by section 1401(c)(1) is effective Oct. 1, 2012.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110–234, title XII, §12078(b)(2), May 22, 2008, 122 Stat. 1415, and Pub. L. 110–246, §4(a), title XII, §12078(b)(2), June 18, 2008, 122 Stat. 1664, 2177, provided that: "The amendment made by paragraph (1) [amending this section] shall apply with respect to a loan or guarantee made after the date of enactment of this Act [June 18, 2008]."

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

Pub. L. 110–234, title XII, §12083(b), May 22, 2008, 122 Stat. 1420, and Pub. L. 110–246, §4(a), title XII, §12083(b), June 18, 2008, 122 Stat. 1664, 2182, provided that: "The amendments made by this section [amending this section] shall apply to any major disaster declared on or after the date of enactment of this Act [June 18, 2008]."

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–447, div. K, title I, §101(b), Dec. 8, 2004, 118 Stat. 3443, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the date of enactment of this Act [Dec. 8, 2004]."

Pub. L. 108–447, div. K, title I, §103(b), Dec. 8, 2004, 118 Stat. 3444, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the date of enactment of this Act [Dec. 8, 2004]."

Pub. L. 108–447, div. K, title I, §107(c), Dec. 8, 2004, 118 Stat. 3446, provided that: "The amendments made by this section [amending this section] shall take effect on the date of enactment of this Act [Dec. 8, 2004]."

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–100 effective Oct. 1, 2002, see section 6(e) of Pub. L. 107–100, set out in an Effective Date of 2001 Amendment; Use of Funds note under section 697 of this title.

EFFECTIVE AND TERMINATION DATES OF 1999 AMENDMENTS

Pub. L. 106–50, title IV, §402(e), Aug. 17, 1999, 113 Stat. 246, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall take effect on the date of the enactment of this section [Aug. 17, 1999].

"(2) DISASTER LOANS.—The amendments made by subsection (b) [amending this section] shall apply to economic injury suffered or likely to be suffered as the result of a period of military conflict occurring or ending on or after March 24, 1999."

Pub. L. 106–8, §3(c), Apr. 2, 1999, 113 Stat. 16, provided that effective Dec. 31, 2000, this section (amending this section and enacting provisions set out as a note under this section) and the amendments made by this section are repealed.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(f) [title VIII, §405(d)(10)] of Pub. L. 105–277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, §405(f)(9)] of Pub. L. 105–277 effective July 1, 2000, see section 101(f) [title VIII, §405(g)(1), (2)(B)] of Pub. L. 105–277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective on Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Oct. 1, 1996, see section 3 of Pub. L. 104–208, set out as a note under section 633 of this title.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–36 inapplicable to loans made or guaranteed under Small Business Act or Small Business Investment Act of 1958 before Oct. 12, 1995, unless such loans are refinanced, extended, restructured, or renewed on or after Oct. 12, 1995, see section 8 of Pub. L. 104–36, set out as a note under section 634 of this title.

EFFECTIVE AND TERMINATION DATES OF 1994 AMENDMENT

Pub. L. 103–403, title II, §208(c), Oct. 22, 1994, 108 Stat. 4182, provided that: "The amendments made by this section [amending this section] shall remain in effect during the period beginning on the date of enactment of this Act [Oct. 22, 1994] and ending on October 1, 1997."

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–81, §5(b), Aug. 13, 1993, 107 Stat. 782, provided that: "Notwithstanding any other provision of law, the amendments made by subsection (a) [amending this section] shall be effective September 1, 1993, but shall not be applicable to loan guarantee applications received by the Administration prior to August 21, 1993. In order to determine the percent of the loan to be guaranteed pursuant to the amendments made by subsection (a), the Administration shall aggregate the outstanding guaranteed principal of multiple loan guarantees issued on behalf of the same borrower."

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–366, title I, §113(b), Sept. 4, 1992, 106 Stat. 993, provided that: "The amendments made by paragraphs (4) and (5) of subsection (a) [amending this section] shall become effective on October 1, 1992."

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–37 applicable as if included in Pub. L. 100–656, see section 32 of Pub. L. 101–37, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendments by sections 202, 203, 206, 301(a), 408, and 505(h) of Pub. L. 100–656 and subsec. (j)(13)(G) and (I) of this section as added by section 301(b) of Pub. L. 100–656, effective Nov. 15, 1988, see section 803(a) of Pub. L. 100–656, set out as a note under section 631 of this title.

Amendments by sections 201(a), 205, 208, 301(b), (c), and 303(a) of Pub. L. 100–656 effective Aug. 15, 1989, see section 803(b)(1)(A), (B) of Pub. L. 100–656, as amended, set out as a note under section 631 of this title.

Amendment by section 302 of Pub. L. 100–656 effective June 1, 1989, see section 803(b)(2) of Pub. L. 100–656, as amended, set out as a note under section 631 of this title.

Subsection (j)(13)(E) of this section as added by section 301(b) of Pub. L. 100–656 effective Oct. 1, 1989, see section 803(b)(4)(D) of Pub. L. 100–656, as amended, set out as a note under section 631 of this title.

Amendments by sections 119(a) and 120 to 122 of Pub. L. 100–590 effective for all loan applications resulting from disaster declarations made on or after Aug. 1, 1988, or from disaster declarations whose filing periods were open on Oct. 1, 1988, see section 137 of Pub. L. 100–590, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–270 effective Oct. 1, 1983, see section 313 of Pub. L. 98–270, set out as a note under section 632 of this title.

Pub. L. 98–270, title III, §307, Apr. 18, 1984, 98 Stat. 161, provided that: "The amendments made by sections 304 and 305 of this title [amending this section and provisions set out as a note under section 631 of this title] shall apply to economic dislocations certified by any State Governor to the Small Business Administration after the date of enactment of this Act [Apr. 18, 1984] providing such dislocation commenced since January 1, 1982."

Amendment by section 311 of Pub. L. 98–270 applicable to loans granted on the basis of any disaster with respect to which a declaration has been issued after Sept. 1, 1982, under subsec. (b)(2)(A), (B), or (C) of this section or with respect to which a certification has been made after such date under subsec. (b)(2)(D) of this section, see section 312 of Pub. L. 98–270, set out as a note under section 632 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–35, title XIX, §1910, Aug. 13, 1981, 95 Stat. 778, provided that the repeal of subsec. (a)(6)(C), (8) of this section is effective Oct. 1, 1985.

Amendment by section 1913 of Pub. L. 97–35 effective Oct. 1, 1981, amendments by sections 1902, 1911, 1912, and 1914 of Pub. L. 97–35 effective Aug. 13, 1981, but shall not affect any financing made, obligated, or committed under this chapter or chapter 14B of this title prior to Aug. 13, 1981, see section 1918 of Pub. L. 97–35, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–302 effective Oct. 1, 1980, see section 507 of Pub. L. 96–302, set out as a note under section 631 of this title.

Pub. L. 96–302, title I, §119(d), July 2, 1980, 94 Stat. 841, provided that: "The amendments made by this section to sections 7(c)(3)(C) [subsection (c)(3) of this section] and 18 [section 647 of this title] of the Small Business Act shall not apply to any disaster which commenced on or before the effective date of this Act."

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–510 effective Oct. 1, 1979, see section 105 of Pub. L. 95–510, set out as a note under section 634 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by section 101(d), (e) of Pub. L. 95–89 effective Oct. 1, 1977, see section 106 of Pub. L. 95–89, set out as a note under section 633 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Pub. L. 92–385, §1(b), Aug. 16, 1972, 86 Stat. 555, provided that: "The last paragraph of the amendment made by subsection (a) [amending this section] shall apply only with respect to loans made on or after the date of enactment of this Act [Aug. 16, 1972]."

EFFECTIVE DATE OF 1970 AMENDMENTS

For effective date of amendment by Pub. L. 91–597 see section 29 of Pub. L. 91–597, set out as a note under section 1031 of Title 21, Food and Drugs.

Amendment by Pub. L. 91–596 effective 120 days after Dec. 29, 1970, see section 34 of Pub. L. 91–596, set out as a note under section 651 of Title 29, Labor.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–495 effective Aug. 23, 1968, see section 37 of Pub. L. 90–495, set out as a note under section 101 of Title 23, Highways.

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–409, §3(c), May 2, 1966, 80 Stat. 133, provided that: "This section [amending this section, repealing section 637a of this title, and enacting provisions set out as a note under section 633 of this title] shall take effect on July 1, 1966."

REGULATIONS

Pub. L. 111–240, title I, §1131(b), Sept. 27, 2010, 124 Stat. 2514, provided that: "Not later than 180 days after the date of enactment of this Act [Sept. 27, 2010], the Administrator [of the Small Business Administration] shall issue regulations to carry out section 7(l) of the Small Business Act [15 U.S.C. 636(l)], as amended by subsection (a)."

Pub. L. 106–50, title IV, §402(d), Aug. 17, 1999, 113 Stat. 246, provided that: "Not later than 30 days after the date of the enactment of this section [Aug. 17, 1999], the Administrator of the Small Business

Administration shall issue such guidelines as the Administrator determines to be necessary to carry out this section [amending this section and enacting provisions set out as notes under this section] and the amendments made by this section."

Pub. L. 106–8, §3(b), Apr. 2, 1999, 113 Stat. 15, which provided that not later than 30 days after Apr. 2, 1999, Administrator of the Small Business Administration was to issue guidelines to carry out the program under former subsec. (a)(27) of this section, was repealed by Pub. L. 106–8, §3(c), Apr. 2, 1999, 113 Stat. 16, effective Dec. 31, 2000.

Section 114 of Pub. L. 102–366 provided that: "Not later than 45 days after the date of enactment of this Act [Sept. 4, 1992], the Small Business Administration shall promulgate interim final regulations to implement the amendments made by this subtitle [subtitle B (§§111–115) of title I of Pub. L. 102–366, amending this section, enacting provisions set out as notes below, and amending provisions set out as a note under section 631 of this title]."

Pub. L. 102–140, title VI, §609(i), Oct. 28, 1991, 105 Stat. 831, provided that: "Not later than 90 days after the date of the enactment of this Act [Oct. 28, 1991], the Small Business Administration shall promulgate interim final regulations to implement the microloan demonstration program."

Pub. L. 100–656, title VIII, §801, Nov. 15, 1988, 102 Stat. 3898, as amended by Pub. L. 101–37, §30, June 15, 1989, 103 Stat. 76, provided that: "The Small Business Administration shall—

"(1) within 60 days after the date of enactment of this Act [Nov. 15, 1988] conduct meetings of present and potential participants in the program established by section 7(j)(10) of the Small Business Act [15 U.S.C. 636(j)(10)], as amended by this Act, to ascertain and consider public comment on the nature and extent of regulations needed to implement this Act [see Short Title of 1988 Amendment note set out under section 631 of this title];

"(2) within one hundred and twenty days after the date of enactment of this Act, publish in the Federal Register proposed rules and regulations implementing this Act; and

"(3) within 270 days after the date of enactment of this Act, publish in the Federal Register final rules and regulations implementing this Act."

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which reports required under subsections (a)(15)(E) and (j)(16)(B) of this section are listed on page 191), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

AVAILABILITY OF FUNDS

Pub. L. 111–240, title I, §1131(c), Sept. 27, 2010, 124 Stat. 2514, provided that: "Any amounts provided to the Administrator [of the Small Business Administration] for the purposes of carrying out section 7(l) of the Small Business Act [15 U.S.C. 636(l)], as amended by subsection (a), shall remain available until expended."

MARKETING AND OUTREACH

Pub. L. 110–234, title XII, §12063(b), May 22, 2008, 122 Stat. 1408, and Pub. L. 110–246, §4(a), title XII, §12063(b), June 18, 2008, 122 Stat. 1664, 2170, provided that: "Not later than 90 days after the date of enactment of this Act [June 18, 2008], the Administrator shall create a marketing and outreach plan that—

"(1) encourages a proactive approach to the disaster relief efforts of the Administration;

"(2) makes clear the services provided by the Administration, including contact information, application information, and timelines for submitting applications, the review of applications, and the disbursement of funds;

"(3) describes the different disaster loan programs of the Administration, including how they are made available and the eligibility requirements for each loan program;

"(4) provides for regional marketing, focusing on disasters occurring in each region before the date of enactment of this Act [June 18, 2008], and likely scenarios for disasters in each such region; and

"(5) ensures that the marketing plan is made available at small business development centers and on the website of the Administration."

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

["Administration" and "Administrator", referred to in Pub. L. 110–246, §12063(b), set out above, as meaning the Small Business Administration and the Administrator thereof, see section 636e of this title.]

DEFINITION OF TERMS USED IN PUB. L. 110–186

Pub. L. 110–186, §3, Feb. 14, 2008, 122 Stat. 623, provided that: "In this Act [see Short Title of 2008 Amendment note set out under section 631 of this title]—

"(1) the term 'activated' means receiving an order placing a Reservist on active duty;

"(2) the term 'active duty' has the meaning given that term in section 101 of title 10, United States Code;

"(3) the terms 'Administration' and 'Administrator' mean the Small Business Administration and the Administrator thereof, respectively;

"(4) the term 'Reservist' means a member of a reserve component of the Armed Forces, as described in section 10101 of title 10, United States Code;

"(5) the term 'Service Corps of Retired Executives' means the Service Corps of Retired Executives authorized by section 8(b)(1) of the Small Business Act (15 U.S.C. 637(b)(1));

"(6) the terms 'service-disabled veteran' and 'small business concern' have the meaning as in section 3 of the Small Business Act (15 U.S.C. 632);

"(7) the term 'small business development center' means a small business development center described in section 21 of the Small Business Act (15 U.S.C. 648); and

"(8) the term 'women's business center' means a women's business center described in section 29 of the Small Business Act (15 U.S.C. 656)."

ESTABLISHMENT OF PRE-CONSIDERATION PROCESS AND OUTREACH AND TECHNICAL ASSISTANCE PROGRAM

Pub. L. 110–186, title II, §201(b), (c), Feb. 14, 2008, 122 Stat. 627, 628, provided that:

"(b) PRE-CONSIDERATION PROCESS.—

"(1) DEFINITION.—In this subsection, the term 'eligible Reservist' means a Reservist who—

"(A) has not been ordered to active duty;

"(B) expects to be ordered to active duty during a period of military conflict; and

"(C) can reasonably demonstrate that the small business concern for which that Reservist is a key employee will suffer economic injury in the absence of that Reservist.

"(2) ESTABLISHMENT.—Not later than 6 months after the date of enactment of this Act [Feb. 14, 2008], the Administrator shall establish a pre-consideration process, under which the Administrator—

"(A) may collect all relevant materials necessary for processing a loan to a small business concern under section 7(b)(3) of the Small Business Act (15 U.S.C. 636(b)(3)) before an eligible Reservist employed by that small business concern is activated; and

"(B) shall distribute funds for any loan approved under subparagraph (A) if that eligible Reservist is activated.

"(c) OUTREACH AND TECHNICAL ASSISTANCE PROGRAM.—

"(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act [Feb. 14, 2008], the Administrator, in consultation with the Secretary of Veterans Affairs and the Secretary of Defense, may develop a comprehensive outreach and technical assistance program (in this subsection referred to as the 'program') to—

"(A) market the loans available under section 7(b)(3) of the Small Business Act (15 U.S.C. 636(b)(3)) to Reservists, and family members of Reservists, that are on active duty and that are not on active duty; and

"(B) provide technical assistance to a small business concern applying for a loan under that section.

"(2) COMPONENTS.—The program shall—

"(A) incorporate appropriate websites maintained by the Administration, the Department of Veterans Affairs, and the Department of Defense; and

"(B) require that information on the program is made available to small business concerns directly through—

"(i) the district offices and resource partners of the Administration, including small business development centers, women's business centers, and the Service Corps of Retired Executives; and

"(ii) other Federal agencies, including the Department of Veterans Affairs and the Department of Defense.

"(3) REPORT.—

"(A) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, and every 6 months thereafter until the date that is 30 months after such date of enactment, the Administrator shall submit to Congress a report on the status of the program.

"(B) CONTENTS.—Each report submitted under subparagraph (A) shall include—

"(i) for the 6-month period ending on the date of that report—

"(I) the number of loans approved under section 7(b)(3) of the Small Business Act (15 U.S.C. 636(b)(3));

"(II) the number of loans disbursed under that section; and

"(III) the total amount disbursed under that section; and

"(ii) recommendations, if any, to make the program more effective in serving small business concerns that employ Reservists."

RESERVIST LOANS

Pub. L. 110–186, title II, §202, Feb. 14, 2008, 122 Stat. 629, provided that:

"(a) IN GENERAL.—The Administrator and the Secretary of Defense shall develop a joint website and printed materials providing information regarding any program for small business concerns that is available to veterans or Reservists.

"(b) MARKETING.—The Administrator is authorized—

"(1) to advertise and promote the program under section 7(b)(3) of the Small Business Act [15 U.S.C. 636(b)(3)] jointly with the Secretary of Defense and veterans' service organizations; and

"(2) to advertise and promote participation by lenders in such program jointly with trade associations for banks or other lending institutions."

TEMPORARY EXTENSION AND EXPANSION OF LOAN PROGRAMS

Pub. L. 108–217, §§4–8, Apr. 5, 2004, 118 Stat. 591–594, provided for the temporary extension and expansion of certain loan programs under 15 U.S.C. 636(a) beginning on Apr. 5, 2004, and ending on Sept. 30, 2004.

BUDGETARY TREATMENT OF LOANS AND FINANCINGS

Pub. L. 107–100, §6(c), Dec. 21, 2001, 115 Stat. 971, provided for special budgetary treatment of certain loans and financings by the Small Business Administration under 15 U.S.C. 636(a) during the 2-year period beginning on Oct. 1, 2002.

ENHANCED PUBLICITY DURING OPERATION ALLIED FORCE

Pub. L. 106–50, title IV, §402(c), Aug. 17, 1999, 113 Stat. 246, provided for enhanced publicity of the availability of assistance during Operation Allied Force and for 120 days thereafter.

EVALUATION OF PREDISASTER MITIGATION PILOT PROGRAM

Pub. L. 106–24, §1(c), Apr. 27, 1999, 113 Stat. 39, provided that, on Jan. 31, 2003, the Administrator of the Small Business Administration was to submit to the Committees on Small Business of the House of Representatives and the Senate a report on the effectiveness of the pilot program authorized by subsec. (b)(1)(C) of this section.

CONGRESSIONAL FINDINGS REGARDING SMALL BUSINESS YEAR 2000 READINESS

Pub. L. 106–8, §2, Apr. 2, 1999, 113 Stat. 13, provided that: "Congress finds that—

"(1) the failure of many computer programs to recognize the Year 2000 may have extreme negative financial consequences in the Year 2000, and in subsequent years for both large and small businesses;

"(2) small businesses are well behind larger businesses in implementing corrective changes to their automated systems;

"(3) many small businesses do not have access to capital to fix mission critical automated systems, which could result in severe financial distress or failure for small businesses; and

"(4) the failure of a large number of small businesses due to the Year 2000 computer problem would have a highly detrimental effect on the economy in the Year 2000 and in subsequent years."

TRANSFER OF FUNDS

Pub. L. 105–135, title II, §202(b), Dec. 2, 1997, 111 Stat. 2600, provided that:

"(1) IN GENERAL.—No funds are authorized to be appropriated or otherwise provided to carry out the grant program under section 7(m)(4)(F) of the Small Business Act (15 U.S.C. 636(m)(4)(F)) (as added by this section), except by transfer from another department or agency of the Federal Government to the Administration in accordance with this subsection.

"(2) LIMITATION ON AMOUNTS.—The total amount transferred to the Administration from other departments and agencies of the Federal Government to carry out the grant program under section 7(m)(4)(F) of the Small Business Act (15 U.S.C. 636(m)(4)(F)) (as added by this section) shall not exceed—

"(A) $3,000,000 for fiscal year 1998;

"(B) $4,000,000 for fiscal year 1999; and

"(C) $5,000,000 for fiscal year 2000."

DEFENSE LOAN AND TECHNICAL ASSISTANCE PROGRAM

Pub. L. 105–135, title V, §507, Dec. 2, 1997, 111 Stat. 2625, provided that:

"(a) DELTA PROGRAM AUTHORIZED.—

"(1) IN GENERAL.—The Administrator may administer the Defense Loan and Technical Assistance program in accordance with the authority and requirements of this section.

"(2) EXPIRATION OF AUTHORITY.—The authority of the Administrator to carry out the DELTA program under paragraph (1) shall terminate when the funds referred to in subsection (g)(1) have been expended.

"(3) DELTA PROGRAM DEFINED.—In this section, the terms 'Defense Loan and Technical Assistance program' and 'DELTA program' mean the Defense Loan and Technical Assistance program that has been established by a memorandum of understanding entered into by the Administrator and the Secretary of Defense on June 26, 1995.

"(b) ASSISTANCE.—

"(1) AUTHORITY.—Under the DELTA program, the Administrator may assist small business concerns that are economically dependent on defense expenditures to acquire dual-use capabilities.

"(2) FORMS OF ASSISTANCE.—Forms of assistance authorized under paragraph (1) are as follows:

"(A) LOAN GUARANTEES.—Loan guarantees under the terms and conditions specified under this section and other applicable law.

"(B) NONFINANCIAL ASSISTANCE.—Other forms of assistance that are not financial.

"(c) ADMINISTRATION OF PROGRAM.—In the administration of the DELTA program under this section, the Administrator shall—

"(1) process applications for DELTA program loan guarantees;

"(2) guarantee repayment of the resulting loans in accordance with this section; and

"(3) take such other actions as are necessary to administer the program.

"(d) SELECTION AND ELIGIBILITY REQUIREMENTS FOR DELTA LOAN GUARANTEES.—

"(1) IN GENERAL.—The selection criteria and eligibility requirements set forth in this subsection shall be applied in the selection of small business concerns to receive loan guarantees under the DELTA program.

"(2) SELECTION CRITERIA.—The criteria used for the selection of a small business concern to receive a loan guarantee under this section are as follows:

"(A) The selection criteria established under the memorandum of understanding referred to in subsection (a)(3).

"(B) The extent to which the loans to be guaranteed would support the retention of defense workers whose employment would otherwise be permanently or temporarily terminated as a result of reductions in expenditures by the United States for defense, the termination or cancellation of a defense contract, the failure to proceed with an approved major weapon system, the merger or consolidation of the operations of a defense contractor, or the closure or realignment of a military installation.

"(C) The extent to which the loans to be guaranteed would stimulate job creation and new economic activities in communities most adversely affected by reductions in expenditures by the United States for defense, the termination or cancellation of a defense contract, the failure to proceed with an approved major weapon system, the merger or consolidation of the operations of a defense contractor, or the closure or realignment of a military installation.

"(D) The extent to which the loans to be guaranteed would be used to acquire (or permit the use of other funds to acquire) capital equipment to modernize or expand the facilities of the borrower to enable the borrower to remain in the national technology and industrial base available to the Department of Defense.

"(3) ELIGIBILITY REQUIREMENTS.—To be eligible for a loan guarantee under the DELTA program, a borrower must demonstrate to the satisfaction of the Administrator that, during any 1 of the 5 preceding operating years of the borrower, not less than 25 percent of the value of the borrower's sales were derived from—

"(A) contracts with the Department of Defense or the defense-related activities of the Department of Energy; or

"(B) subcontracts in support of defense-related prime contracts.

"(e) MAXIMUM AMOUNT OF LOAN PRINCIPAL.—With respect to each borrower, the maximum amount of loan principal for which the Administrator may provide a guarantee under this section during a fiscal year may not exceed $1,250,000.

"(f) LOAN GUARANTY RATE.—The maximum allowable guarantee percentage for loans guaranteed under this section may not exceed 80 percent.

"(g) FUNDING.—

"(1) IN GENERAL.—The funds that have been made available for loan guarantees under the DELTA program and have been transferred from the Department of Defense to the Small Business Administration before the date of the enactment of this Act [Dec. 2, 1997] shall be used for carrying out the DELTA program under this section.

"(2) CONTINUED AVAILABILITY OF EXISTING FUNDS.—The funds made available under the second proviso under the heading 'RESEARCH, DEVELOPMENT, TEST AND EVALUATION, DEFENSE-WIDE' in Public Law 103–335 (108 Stat. 2613) shall be available until expended—

"(A) to cover the costs (as defined in section 502(5) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5))) of loan guarantees issued under this section; and

"(B) to cover the reasonable costs of the administration of the loan guarantees."

TRADE ASSISTANCE PROGRAM FOR SMALL BUSINESS CONCERNS ADVERSELY AFFECTED BY NAFTA

Section 509 of Pub. L. 105–135 provided that: "The Administrator shall coordinate Federal assistance in order to provide counseling to small business concerns adversely affected by the North American Free Trade Agreement."

PRIVATE SECTOR LOAN SERVICING DEMONSTRATION PROGRAM

Pub. L. 104–208, div. D, title I, §104(a), Sept. 30, 1996, 110 Stat. 3009–729, provided that:

"(1) IN GENERAL.—

"(A) DEMONSTRATION PROGRAM REQUIRED.—Notwithstanding any other provision of law, the Administration shall conduct a demonstration program, within the parameters described in paragraph (2), to evaluate the comparative costs and benefits of having the Administration's portfolio of disaster loans serviced under contract rather than directly by employees of the Administration. All costs of the demonstration program shall be paid from amounts made available for the Salaries and Expenses Account of the Administration.

"(B) INITIATION DATE.—Not later than 90 days after the date of enactment of this Act [Sept. 30, 1996], the Administration shall issue a request for proposals for the program parameters described in paragraph (2).

"(2) DEMONSTRATION PROGRAM PARAMETERS.—

"(A) LOAN SAMPLE.—The sample of loans for the demonstration program shall be randomly drawn from the Administration's portfolio of loans made pursuant to section 7(b) of the Small Business Act [15 U.S.C. 636(b)] and shall include a representative group of not less than 30 percent of all loans for residential properties, including 30 percent of all loans made during the demonstration program after the date of enactment of this Act, which loans shall be selected by the Administration on the basis of geographic distribution and such other factors as the Administration determines to be appropriate.

"(B) CONTRACT AND OPTIONS.—The Administration shall solicit and competitively award one or more contracts to service the loans included in the sample of loans described in subparagraph (A) for a term of not less than one year, with 3 one-year contract renewal options, each of which shall be exercised by the Administration unless the Administration terminates the contractor or contractors for good cause.

"(3) TERM OF DEMONSTRATION PROGRAM.—The demonstration program shall commence not later than October 1, 1997.

"(4) REPORTS.—

"(A) INTERIM REPORTS.—Not later than 120 days before the expiration of the initial 4-year contract performance period, the Administrator shall submit to the Committees on Small Business of the House of Representatives and the Senate [Committee on Small Business of Senate now Committee on

Small Business and Entrepreneurship of Senate] an interim report on the conduct of the demonstration program. The contractor shall be afforded a reasonable opportunity to attach comments to each such report.

"(B) FINAL REPORT.—Not later than 120 days after the termination of the demonstration program, the Administrator shall submit to the Committees on Small Business of the House of Representatives and the Senate [Committee on Small Business of Senate now Committee on Small Business and Entrepreneurship of Senate] a final report on the performance of the demonstration program, together with the recommendations of the Administrator for continuation, termination, or modification of the demonstration program."

INCREASE OF AMOUNTS FOR DISASTER LOANS

Pub. L. 103–75, Aug. 12, 1993, 107 Stat. 740, provided in part: "That notwithstanding any other provision of law, the $500,000 limitation on the amounts outstanding and committed to a borrower provided in paragraph 7(c)(6) [now 7(d)(6)] of the Small Business Act [15 U.S.C. 636(d)(6)] shall be increased to $1,500,000 for disasters commencing on or after April 1, 1993."

CONGRESSIONAL FINDINGS OF MICROLENDING EXPANSION ACT OF 1992

Pub. L. 102–366, title I, §112, Sept. 4, 1992, 106 Stat. 989, provided that: "The Congress finds that—

"(1) nationwide, there are many individuals who possess skills that, with certain short-term assistance, could enable them to become successfully self-employed;

"(2) many talented and skilled individuals who are employed in low-wage occupations could, with sufficient opportunity, start their own small business concerns, which could provide them with an improved standard of living;

"(3) most such individuals have little or no savings, a nonexistent or poor credit history, and no access to credit or capital with which to start a business venture;

"(4) women, minorities, and individuals residing in areas of high unemployment and high levels of poverty have particular difficulty obtaining access to credit or capital;

"(5) providing such individuals with small-scale, short-term financial assistance in the form of microloans, together with intensive marketing, management, and technical assistance, could enable them to start or maintain small businesses, to become self-sufficient, and to raise their standard of living;

"(6) banking institutions are reluctant to provide such assistance because of the administrative costs associated with processing and servicing the loans and because they lack experience in providing the type of marketing, management, and technical assistance needed by such borrowers;

"(7) many organizations that have had successful experiences in providing microloans and marketing, management, and technical assistance to such borrowers exist throughout the Nation; and

"(8) loans from the Federal Government to intermediaries for the purpose of relending to start-up, newly established and growing small business concerns are an important catalyst to attract private sector participation in microlending."

DISADVANTAGED SMALL BUSINESS STATUS DECISIONS

Pub. L. 102–366, title II, §221, Sept. 4, 1992, 106 Stat. 999, provided that:

"(a) PUBLICATION OF DECISIONS.—A decision issued pursuant to section 7(j)(11)(F)(vii) of the Small Business Act (15 U.S.C. 636(j)(11)(F)(vii)) shall—

"(1) be made available to the protestor, the protested party, the contracting officer (if not the protestor), and all other parties to the proceeding, and published in full text; and

"(2) include findings of fact and conclusions of law, with specific reasons supporting such findings or conclusions, upon each material issue of fact and law of decisional significance regarding the disposition of the protest.

"(b) PRECEDENTIAL VALUE OF PRIOR DECISIONS.—A decision issued under section 7(j)(11)(F)(vii) of the Small Business Act that is issued prior to the date of enactment of this Act [Sept. 4, 1992] shall not have value as precedent in deciding any subsequent protest until such time as the decision is published in full text."

REAUTHORIZATION OF BOND WAIVER TEST PROGRAM

Pub. L. 102–190, div. A, title VIII, §813(a)–(e), Dec. 5, 1991, 105 Stat. 1424, authorized the Secretary of Defense to grant surety bond exemptions to certain participants in the Minority Small Business and Capital Ownership Development Program who were awarded construction contracts by the Department of Defense before Oct. 1, 1994.

EMERGENCY DIRECT LOANS FOR SMALL BUSINESS CONCERNS LOCATED IN

COMMUNITIES ADVERSELY AFFECTED BY TROOP DEPLOYMENTS DURING PERSIAN GULF CONFLICT

Pub. L. 102–190, div. A, title X, §1087, Dec. 5, 1991, 105 Stat. 1483, authorized emergency direct loans to small business concerns located in counties in which at least 5 small business concerns suffered severe economic injury resulting from deployment, after July 31, 1990, of troops in connection with Persian Gulf conflict, provided that loan amounts could not exceed $50,000 to any small business concern, and provided for source of loan funds, applications for loans, definitions, regulations to implement loan program, and expiration of loan authority at end of 270-day period beginning on date on which loan applications were first accepted.

TERMINATION OF MICROLOAN DEMONSTRATION PROGRAM

Pub. L. 102–140, title VI, §609(j), Oct. 28, 1991, 105 Stat. 831, as amended by Pub. L. 103–403, title II, §203, Oct. 22, 1994, 108 Stat. 4181, provided that: "The demonstration program established by subsection (h) [amending this section] shall terminate on October 1, 1997."

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

TEST PROGRAM FOR USE OF BOND WAIVER AUTHORITY TO ASSIST CERTAIN SMALL DISADVANTAGED BUSINESS CONCERNS

Pub. L. 101–189, div. A, title VIII, §833, Nov. 29, 1989, 103 Stat. 1509, which directed Secretary of Defense and Small Business Administration to establish a program for fiscal years 1990 and 1991 to test use of authority provided by subsec. (j)(13)(D) of this section, and that under the test program, the Secretary of Defense was to make every reasonable effort during each such fiscal year to award not less than 30 contracts for construction projects (including repair and alteration of existing facilities) to participants in Minority Small Business and Capital Ownership Development Program of Small Business Administration granted surety bond exemptions under such authority, was repealed by Pub. L. 102–190, div. A, title VIII, §813(f), Dec. 5, 1991, 105 Stat. 1424.

DEFINITION OF TERMS USED IN PUB. L. 100–656

Pub. L. 100–656, §2, Nov. 15, 1988, 102 Stat. 3854, as amended by Pub. L. 101–37, §3, June 15, 1989, 103 Stat. 70, provided that: "For the purposes of this Act [see Short Title of 1988 Amendment note set out under section 631 of this title]—

"(1) the term 'Administration' means the Small Business Administration;

"(2) the term 'Administrator' means the Administrator of the Small Business Administration, unless otherwise indicated;

"(3) the term 'Business Opportunity Specialist' means the Administration employee responsible for providing business development assistance to Program Participants pursuant to sections 7(j) and 8(a) of the Small Business Act (15 U.S.C. 636(j), 637(a));

"(4) the term 'disadvantaged owners' means those individuals upon whom eligibility is based for participation in the Program and the award of subcontracts pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a));

"(5) the term 'minority owned businesses' means business concerns that are at least 51 percent owned and controlled by one or more individuals who belong to those groups described or identified pursuant to section 2(e)(1)(C) of the Small Business Act (15 U.S.C. 631(e)(1)(C));

"(6) the term 'Program' means the Minority Small Business and Capital Ownership Development Program established by section 7(j)(10) of the Small Business Act (15 U.S.C. 636(j)(10)), unless otherwise indicated;

"(7) the term 'Program Participant' means a small business concern participating in the Program; and

"(8) the term 'Program Participation Term' means the fixed period of time assigned to a Program Participant pursuant to section 7(j)(10)(A)(i) of the Small Business Act (15 U.S.C. 636(j)(10)(A)(i)) prior to the date of enactment of this Act [Nov. 15, 1988]."

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSES OF PUB. L. 100–656

Pub. L. 100–656, title I, §101, Nov. 15, 1988, 102 Stat. 3855, provided that:

"(a) FINDINGS.—The Congress finds that—

"(1) the Capital Ownership Development Program administered by the Small Business Administration and the award of contracts pursuant to section 8(a) of the Small Business Act [15 U.S.C. 637(a)] remain a primary tool for improving opportunities for small business concerns owned and controlled by socially and economically disadvantaged individuals in the Federal procurement process and bringing such concerns into the nation's economic mainstream;

"(2) although some progress has resulted from the Program, it has generally failed to meet its objectives, which remain as valid now as when the Program was initiated;

"(3) too few concerns that have exited the Program have been prepared to compete successfully in the open marketplace on competitive procurements, and many concerns have developed an unhealthy dependency on sole-source contracts by the time they are required to leave the Program;

"(4) the application and certification process for admitting new participants to the Program is inordinately lengthy and burdensome;

"(5) the Administration has often not efficiently and equitably administered and managed the Program in a manner that provided clear lines of responsibility for implementing and monitoring many of the administrative duties under the Program;

"(6) the Administration and some program participants have given insufficient attention and support to the business development goals of the Program and instead have focused almost entirely on the size of contract awards or the number of firms certified to participate in the Program;

"(7) many Federal procuring agencies have failed to identify and offer the necessary amount of contract support in order to allow for diversification and growth of disadvantaged businesses participating in the Program;

"(8) contract support as well as business development expenses have been misused both by the Administration and Program participants and have not been equitably distributed pursuant to objective criteria;

"(9) the widespread perception of undue political influence in the operation and administration of the Program has significantly contributed to the Program's poor image and has deterred utilization of the Program by socially and economically disadvantaged concerns and by Federal procuring agencies; and

"(10) it is imperative that increased competition and other substantial reforms be accomplished in the Program in order to promote the Congressionally mandated business development objectives and purposes.

"(b) PURPOSES.—The purposes of this Act [see Short Title of 1988 Amendment note set out under section 631 of this title] therefore are to—

"(1) affirm that the Capital Ownership Development Program and the section 8(a) [15 U.S.C. 637(a)] authority shall be used exclusively for business development purposes to help small businesses owned and controlled by the socially and economically disadvantaged to compete on an equal basis in the mainstream of the American economy;

"(2) affirm that the measure of success of the Capital Ownership Development Program, and the section 8(a) authority, shall be the number of competitive firms that exit the Program without being unreasonably reliant on section 8(a) contracts and that are able to compete on an equal basis in the mainstream of the American economy;

"(3) ensure that program benefits accrue to individuals who are both socially and economically disadvantaged;

"(4) increase the number of small businesses owned and controlled by such individuals from which the United States may purchase products and services (including construction work); and

"(5) ensure integrity, competence, and efficiency in the administration of business development services and the Federal contracting opportunities made available to eligible small businesses."

EMPLOYEE TRAINING AND EVALUATION

Pub. L. 100–656, title IV, §410, Nov. 15, 1988, 102 Stat. 3879, as amended by Pub. L. 101–37, §18, June 15, 1989, 103 Stat. 74, provided that:

"(a) TRAINING REQUIREMENTS FOR BUSINESS OPPORTUNITY SPECIALISTS.—(1) In each Small Business Administration field office responsible for assisting one or more Program Participants there shall be a position designated as a Business Opportunity Specialist. To the maximum extent practicable the Administration shall assure that an adequate number of Business Opportunity Specialists are assigned to each district office to carry out the responsibilities of sections 7(j) and 8(a) of the Small Business Act (15 U.S.C. 636(j), 637(a)) and to assist Program Participants.

"(2) The Administration shall take such actions as may be appropriate to ensure that any person employed as a Business Opportunity Specialist receives adequate periodic training to assure such employee is capable of assisting Program Participants to fully utilize the Program and to meet the requirements of the Small Business

Act [15 U.S.C. 631 et seq.], as amended by this Act.

"(b) PILOT PROGRAM.—(1) Within 180 days after the effective date of this subsection [Nov. 15, 1988] the Administrator shall designate three regions of the Administration to conduct a pilot program pursuant to the provisions of this subsection. The designated regions shall contain approximately 30 per centum of the total number of Program Participants as of the time of designation.

"(2) A Business Opportunity Specialist employed in a Region designated pursuant to paragraph (1), in addition to other assigned duties and responsibilities, shall—

"(A) conduct contract negotiations on behalf of the Administration for contracts awarded pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) when performance will be rendered by one or more firms in such Specialist's assigned portfolio;

"(B) facilitate and otherwise assist such firms in negotiating for the receipt of contracts to be let pursuant to such section.

"(3) The Administration shall take such actions as may be appropriate to train and qualify such Specialists to perform the negotiations required pursuant to paragraph (2).

"(4) To the extent practicable, the Administrator shall ensure that the performance appraisal system applicable to a Business Opportunity Specialist employed in a region designated pursuant to paragraph (1) affords substantial recognition to how well such Specialist's assigned portfolio of concerns participating in the program established by section 7(j)(10) of the Small Business Act (15 U.S.C. 636(j)(10)) are achieving competitiveness and furthering the business development purposes of the program.

"(5) The Administration shall establish personnel positions for Business Opportunity Specialists employed in the regions designated pursuant to paragraph (1) that are classified at a grade level of the General Schedule that are sufficient, in the opinion of the Administrator, to attract and retain highly qualified personnel.

"(c) REPORT AND PILOT PROGRAM TERMINATION.—(1) Within 120 days after the termination of the pilot program conducted pursuant to subsection (b), the Administration shall issue a report to the Committees on Small Business of the Senate and of the House of Representatives [Committee on Small Business of Senate now Committee on Small Business and Entrepreneurship of Senate] on the effectiveness of the pilot. Such report shall contain such recommendations for administrative or legislative change as may be appropriate.

"(2) The pilot program conducted pursuant to subsection (b) shall be terminated three years after the date on which the Committees on Small Business of the Senate and of the House of Representatives [Committee on Small Business of Senate now Committee on Small Business and Entrepreneurship of Senate] receive written notification from the Administrator that the pilot is in full operation in each of the three designated pilot regions."

GENERAL ACCOUNTING OFFICE REPORT

Pub. L. 100–656, title V, §504, Nov. 15, 1988, 102 Stat. 3882, directed Comptroller General of the United States to conduct a review of operation of Minority Small Business and Capital Ownership Development Program authorized by subsec. (j)(10) of this section and contract assistance provided pursuant to section 637(a)(15) of this title commencing within 180 days of Nov. 15, 1988, and concluding Sept. 30, 1991, such review to report on implementation of provisions of Pub. L. 100–656 by Small Business Administration and various executive departments and agencies providing contracting opportunities to the Program, and directed Comptroller General to prepare a report summarizing findings of review, make such recommendations as may be appropriate, and transmit report to Committees on Small Business of the Senate and House of Representatives by Feb. 1, 1992.

COMMISSION ON MINORITY BUSINESS DEVELOPMENT

Pub. L. 100–656, title V, §505(a)–(g), Nov. 15, 1988, 102 Stat. 3883, as amended by Pub. L. 101–37, §20, June 15, 1989, 103 Stat. 74; Pub. L. 101–574, title II, §211, Nov. 15, 1990, 104 Stat. 2821; Pub. L. 102–366, title II, §231(a), Sept. 4, 1992, 106 Stat. 1001; Pub. L. 103–160, div. A, title IX, §904(f), Nov. 30, 1993, 107 Stat. 1729, established the Commission on Minority Business Development, set out its duties, powers, membership, administration, and personnel, and provided that it cease to exist within 90 days after the date that it transmitted its final report to Congress and to the President or Sept. 30, 1992, whichever was later.

LIMITATIONS ON SPENDING AUTHORITY

Pub. L. 100–656, title VIII, §802(f), Nov. 15, 1988, 102 Stat. 3899, provided that:

"(1) Any new credit authority or authority to enter into contracts provided for in this Act [see Short Title of 1988 Amendment note set out under section 631 of this title] is to be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

"(2) No funds are authorized to be appropriated in subsequent appropriation Acts to the Administration for

the purpose of making grants of financial assistance under the so called 'Business Development Expense' program to any firm participating in the programs authorized by section 7(j)(10) or section 8(a) of the Small Business Act (15 U.S.C. 636(j)(10) and 637(a))."

CERTIFIED LOAN PROGRAM; EXPANDED PARTICIPATION; REPORTS TO CONGRESS

Pub. L. 100–590, title I, §102(b), Nov. 3, 1988, 102 Stat. 2992, provided that: "The Administration shall take appropriate steps to expand participation in the certified loan program and shall report to the Small Business Committees of the Senate and the House of Representatives on the amount of loans approved and the amount of losses sustained under the provisions of section 7(a)(19) of the Small Business Act [15 U.S.C. 636(a)(19)]. An interim report shall be submitted not later than one year after date of enactment of this Act [Nov. 3, 1988] and a final report shall be submitted not later than 18 months after the date of enactment."

Similar provisions were contained in Pub. L. 100–533, title III, §302(b), Oct. 25, 1988, 102 Stat. 2693.

PIPELINE LOANS OR PREVIOUS DISASTERS

Pub. L. 99–272, title XVIII, §18006(b), Apr. 7, 1986, 100 Stat. 366, as amended by Pub. L. 99–349, title I, July 2, 1986, 100 Stat. 718, provided that: "Notwithstanding the amendments made by this section [amending sections 636 and 647 of this title], sections 18002 [amending provisions set out as a note under section 631 of this title] and 18016 [amending section 632 of this title], or any other provision of law, the Small Business Administration shall continue to accept, process, and approve loan applications under paragraphs (1) through (4) of subsection [section] 7(b) of the Small Business Act [15 U.S.C. 636(b)(1) to (4)] and shall obligate and disburse loan funds on account of disasters which occurred prior to October 1, 1985, and with respect to which a disaster declaration application was submitted prior to October 1, 1985, even if any such application is filed after the date of the enactment of this Act [Apr. 7, 1986]."

DETERMINATION OF NATURAL DISASTER BY SECRETARY OF AGRICULTURE TO BE DEEMED DISASTER DECLARATION BY ADMINISTRATOR OF SMALL BUSINESS ADMINISTRATION; DISASTERS COMMENCING BETWEEN JANUARY 1, 1983, AND SEPTEMBER 30, 1983

Pub. L. 98–166, title I, §101, Nov. 28, 1983, 97 Stat. 1079, provided that for disasters commencing between Jan. 1, 1983, through Sept. 30, 1983, determination of a natural disaster by the Secretary of Agriculture pursuant to 7 U.S.C. 1961 would be deemed a disaster declaration by the Administrator of the Small Business Administration for purposes of determining eligibility for assistance under 15 U.S.C. 636(b)(1) for agricultural enterprises as defined in 15 U.S.C. 647(b).

REPORTS TO CONGRESS; DEFAULT RATE OF LOANS

Pub. L. 97–35, title XIX, §1907 Aug. 13, 1981, 95 Stat. 777, required the Small Business Administration to submit to Congress, not later than Feb. 28, 1984, and 1985, reports containing specific information on the aggregate number, dollar value, and default rate of all loans with respect to 15 U.S.C. 636(a)(5), (6)(C), (8)(A).

BUSINESS PLANS; SUBMITTAL BY CONCERNS ELIGIBLE TO RECEIVE CONTRACTS

Pub. L. 96–481, title I, §106(b), Oct. 21, 1980, 94 Stat. 2322, provided that: "Notwithstanding the provisions of subsection (a) of this section [amending subsec. (j)(10)(A)(i) of this section], for concerns eligible to receive contracts pursuant to section 8(a) of the Small Business Act [section 637(a) of this title] on the effective date of the amendment made by this section [Oct. 21, 1980], each such concern shall submit to the Small Business Administration within two months after the promulgation of final regulations issued within one hundred and twenty days after the enactment of this Act [Oct. 21, 1981] the business plan required under section 7(j)(10)(A)(i) of the Small Business Act, as amended by subsection (a) of this section [subsec. (j)(10)(A)(i) of this section]: *Provided however*, That the period of time required under section 7(j)(10)(A)(i) of the Small Business Act, as amended by subsection (a) of this section, shall be fixed as mutually agreed upon by the program participant and the Small Business Administration prior to the awarding or extending of contracts to such concern pursuant to section 8(a) of the Small Business Act after June 1, 1981, but the period shall be fixed in no case later than eighteen months after the effective date of this Act: *Provided further*, That no determination made under this paragraph shall be considered a denial of total participation for the purposes of section 8(a)(9) of the Small Business Act."

SMALL BUSINESS EMPLOYEE OWNERSHIP; CONGRESSIONAL FINDINGS AND PURPOSES

Pub. L. 96–302, title V, §§502, 503, July 2, 1980, 94 Stat. 850, 851, provided that:

"SEC. 502. The Congress hereby finds and declares that—

"(1) employee ownership of firms provides a means for preserving jobs and business activity;

"(2) employee ownership of firms provides a means for keeping a small business small when it might otherwise be sold to a conglomerate or other large enterprise;

"(3) employee ownership of firms provides a means for creating a new small business from the sale of a subsidiary of a large enterprise;

"(4) unemployment insurance programs, welfare payments, and job creation programs are less desirable and more costly for both the Government and program beneficiaries than loan guarantee programs to maintain employment in firms that would otherwise be closed, liquidated, or relocated; and

"(5) by guaranteeing loans to qualified employee trusts and similar employee organizations, the Small Business Administration can provide feasible and desirable methods for the transfer of all or part of the ownership of a small business concern to its employees.

"SEC. 503. (a) The purposes of this title [enacting sections 632(c) and 636(a)(8) of this title and provisions set out as notes under sections 631 and 636 of this title] are—

"(1) to provide that a qualified employee trust shall be eligible for loan guarantees under section 7(a) of the Small Business Act [subsec. (a) of this section] with respect to a small business concern, regardless of the percentage of stock of the concern held by the trust, and

"(2) to provide in section 505 of this Act [enacting subsec. (a)(8) of this section] authority to address the specific case in which the Small Business Administration guarantees loans under section 7(a) of the Small Business Act [subsec. (a) of this section] for purposes of providing funds to a qualified employee trust (and other employee organizations which are treated as qualified employee trusts) for the purchase, by at least 51 percent of the employees, of at least 51 percent of the stock of business which is operated for profit and which is—

"(A) a small business concern, or

"(B) a corporation which is controlled by another person if, after the plan for the purchase of such corporation is carried out, such corporation would be a small business concern.

"(b) Nothing in this title shall be construed to prohibit the Small Business Administration from making loan guarantees under section 7(a) of the Small Business Act [subsec. (a) of this section] to qualified employee trusts which own less than 51 percent of the stock of a continuing business."

DISASTER RELIEF AUTHORITY; STUDY AND REPORT ON CONSOLIDATION

Pub. L. 94–305, title I, §101, June 4, 1976, 90 Stat. 663, required the President to comprehensively review all Federal disaster loan authorities and to report to Congress by Dec. 1, 1976, with recommendations and legislative proposals for the most effective and efficient delivery of disaster relief, including possible consolidation of authorities.

DISASTER LOANS; SPECIAL PROVISIONS FOR APPLICATIONS RECEIVED ON OR BEFORE MARCH 19, 1981; ASSISTANCE TO HARDSHIP APPLICANTS

Pub. L. 97–35, title XIX, §1916, Aug. 13, 1981, 95 Stat. 780, provided for special provisions for applications for disaster loans under 15 U.S.C. 1636(b)(1), (2), or (4) received on or before Mar. 19, 1981, with assistance to hardship applicants.

DISASTER LOANS; INTEREST RATE; CANCELLATION OF LOANS

Pub. L. 93–24, §9, Apr. 20, 1973, 87 Stat. 25, provided that: "Notwithstanding the provisions of any other law, any loan made by the Small Business Administration in connection with any disaster occurring on or after the date of enactment of this Act [Apr. 20, 1973] under sections 7(b)(1), (2), or (4) of the Small Business Act (15 U.S.C. 636(b)(1), (2), or (4)) [subsec. (b)(1), (2), or (4) of this section] shall bear interest at the rate determined under section 324 of the Consolidated Farm and Rural Development Act, as amended by section 4 of this Act [section 1964 of Title 7, Agriculture]. No portion of any such loan shall be subject to cancellation under the provisions of any law."

INTEREST RATES ON LOANS TO MEET REGULATORY STANDARDS

Pub. L. 93–237, §2(d), Jan. 2, 1974, 87 Stat. 1024, provided that: "In no case shall the interest rate charged for loans to meet regulatory standards be lower than loans made in connection with physical disasters."

ELECTION OF BENEFITS

Pub. L. 92–385, §1(c), Aug. 16, 1972, 86 Stat. 555, provided that: "Any person who (1) suffers any loss or damage as a result of a major disaster as determined by the President which occurred prior to the date of

enactment of this Act [August 16, 1972], (2) is eligible for assistance under the amendment made by subsection (a), and (3) is otherwise eligible for benefits greater than those provided by the amendment made by subsection (a), may elect to receive such greater benefits."

FUND FOR MANAGEMENT COUNSELING

Pub. L. 85–699, title VI, §602(a), (b), Aug. 21, 1958, 72 Stat. 698, provided that:

"(a) Within sixty days after the enactment of this Act [Aug. 21, 1958], each Federal Reserve bank shall pay to the United States the aggregate amount which the Secretary of the Treasury has heretofore paid to such bank under the provisions of section 13b of the Federal Reserve Act [12 U.S.C. 352a]; and such payment shall constitute a full discharge of any obligation or liability of the Federal Reserve bank to the United States or to the Secretary of the Treasury arising out of subsection (e) of said section 13b [12 U.S.C. 352a(e)] or out of any agreement thereunder.

"(b) The amounts repaid to the United States pursuant to subsection (a) of this section shall be covered into a special fund in the Treasury which shall be available for grants under section 7(d) of the Small Business Act [subsec. (d) of this section]. Any remaining balance of funds set aside in the Treasury for payments under section 13b of the Federal Reserve Act [12 U.S.C. 352a] shall be covered into the Treasury as miscellaneous receipts."

LOANS FOR MODIFICATIONS OF MINING FACILITIES AND EQUIPMENT

Pub. L. 91–173, title V, §504(d), Dec. 30, 1969, 83 Stat. 802, authorized loans under 15 U.S.C. 636(b)(5) for modifications of mining facilities and equipment pursuant to former section 202 of the Public Works and Economic Development Act of 1965 (former 42 U.S.C. 3142), which was repealed by Pub. L. 105–393, title I, §102(a), Nov. 13, 1998, 112 Stat. 3602.

EXECUTIVE ORDER NO. 12190

Ex. Ord. No. 12190, Feb. 1, 1980, 45 F.R. 7773, established the Advisory Committee on Small and Minority Business Ownership to assist in monitoring and encouraging the placement of subcontracts by the private sector with eligible small businesses, to study and propose incentives and assistance needed by the private sector to help in the training, development, and upgrading of such businesses, to make periodic reports and recommendations to the President, and to report annually to the President and to the Congress on the activities of the Committee and provided for termination of the Committee on Dec. 31, 1980.

EXTENSION OF TERM OF ADVISORY COMMITTEE ON SMALL AND MINORITY BUSINESS OWNERSHIP

Term of the Advisory Committee on Small and Minority Business Ownership extended until Dec. 31, 1982, by Ex. Ord. No. 12258, Dec. 31, 1980, 46 F.R. 1251, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

Term of the Advisory Committee on Small and Minority Business Ownership extended until Sept. 30, 1984, by Ex. Ord. No. 12399, Dec. 31, 1982, 48 F.R. 379, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the Advisory Committee on Small and Minority Business Ownership extended until Sept. 30, 1985, by Ex. Ord. No. 12489, Sept. 28, 1984, 49 F.R. 38927, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the Advisory Committee on Small and Minority Business Ownership extended until Sept. 30, 1987, by Ex. Ord. No. 12534, Sept. 30, 1985, 50 F.R. 40319, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the Advisory Committee on Small and Minority Business Ownership extended until Sept. 30, 1989, by Ex. Ord. No. 12610, Sept. 30, 1987, 52 F.R. 36901, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the Advisory Committee on Small and Minority Business Ownership extended until Sept. 30, 1991, by Ex. Ord. No. 12692, Sept. 29, 1989, 54 F.R. 40627, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, which extension was revoked by amendment of Ex. Ord. No. 12692, by Ex. Ord. No. 12704, Feb. 26, 1990, 55 F.R. 6969.

[1] *So in original. The "; and" probably should be a period.*

[2] *See References in Text note below.*

[3] *So in original. Probably should be "(B)".*

[4] *So in original.*

[5] *So in original. The comma probably should not appear.*

[6] *So in original. Probably should be "therefor,".*

[7] *So in original. Probably should be "has".*

[8] *See 1980 Amendment note below.*

[9] *So in original. Probably should be "or (2)".*

[10] *So in original. Probably should be "prior to".*

[11] *So in original. No par. (2) has been enacted.*

[12] *So in original. The period probably should be a semicolon.*

[13] *So in original. Probably should be paragraph "(12):".*

[14] *So in original. Probably should be "subclause (IV),".*

[15] *So in original. The word "that" probably should not appear.*

[16] *So in original. Probably should be "(vi)".*

[17] *So in original. The period probably should not appear.*

§636a. Repealed. Pub. L. 97–35, title XIX, §1917, Aug. 13, 1981, 95 Stat. 781

Section, Pub. L. 91–606, title II, §231, Dec. 31, 1970, 84 Stat. 1752; Pub. L. 92–385, §6, Aug. 16, 1972, 86 Stat. 559, related to small business disaster loans.

EFFECTIVE DATE OF REPEAL

Repeal effective Aug. 13, 1981, but not to affect any financing made, obligated, or committed under this chapter or chapter 14B of this title prior to Aug. 13, 1981, see section 1918 of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 631 of this title.

§636b. Disaster loan interest rates

Any loan made under section 636a [1] of this title and section 4452 [1] of title 42 shall not exceed the current cost of repairing or replacing the disaster injury, loss, or damage in conformity with current codes and specifications. Any loan made under sections 636a [1] and 636d of this title, and sections 3538 and 4452 [1] of title 42 shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of ten to twelve years reduced by not to exceed 2 per centum per annum. In no event shall any loan made under this section bear interest at a rate in excess of 6 per centum per annum.

(Pub. L. 91–606, title II, §234, Dec. 31, 1970, 84 Stat. 1754.)

REFERENCES IN TEXT

Section 636a of this title, referred to in text, was repealed by Pub. L. 97–35, title XIX, §1917, Aug. 13, 1981, 95 Stat. 781.

Section 4452 of title 42, referred to in text, was repealed by Pub. L. 93–24, §7, Apr. 20, 1973, 87 Stat. 25.

CODIFICATION

Section was enacted as part of the Disaster Relief Act of 1970, and not as part of the Small Business Act which comprises this chapter. Section was formerly classified to section 4453 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE

Section effective Dec. 31, 1970, see section 304 of Pub. L. 91–606, set out as an Effective Date of 1970 Amendment note under section 165 of Title 26, Internal Revenue Code.

[1] *See References in Text note below.*

§636c. Age of applicant for disaster loans

In the administration of any Federal disaster loan program under the authority of section 636a [1] of this title, section 4452 [1] of title 42, or section 233 of Public Law 91–606, the age of any adult loan applicant shall not be considered in determining whether such loan should be made or the amount of such loan.

(Pub. L. 91–606, title II, §235, Dec. 31, 1970, 84 Stat. 1754.)

REFERENCES IN TEXT

Section 636a of this title, referred to in text, was repealed by Pub. L. 97–35, title XIX, §1917, Aug. 13, 1981, 95 Stat. 781.

Section 4452 of title 42, referred to in text, was repealed by Pub. L. 93–24, §7, Apr. 20, 1973, 87 Stat. 25.

Section 233 of Public Law 91–606, referred to in text, amended section 1820(a)(2), (f) [now 3720(a)(2), (f)] of Title 38, Veterans' Benefits.

CODIFICATION

Section was enacted as part of the Disaster Relief Act of 1970, and not as part of the Small Business Act which comprises this chapter. Section was formerly classified to section 4454 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE

Section effective Dec. 31, 1970, see section 304 of Pub. L. 91–606, set out as an Effective Date of 1970 Amendment note under section 165 of Title 26, Internal Revenue Code.

[1] *See References in Text note below.*

§636d. Disaster aid to major sources of employment

(a) Loans to disaster areas

The Small Business Administration in the case of a nonagricultural enterprise, and the Farmers Home Administration in the case of an agricultural enterprise, are authorized to provide any industrial, commercial, agricultural, or other enterprise, which has constituted a major source of employment in an area suffering a major disaster and which is no longer in substantial operation as a result of such disaster, a loan in such amount as may be necessary to enable such enterprise to resume operations in order to assist in restoring the economic viability of the disaster area. Loans authorized by this section shall be made without regard to limitations on the size of loans which may otherwise be imposed by any other provision of law or regulations promulgated pursuant thereto.

(b) Interest; deferred payments

Assistance under this section shall be in addition to any other Federal disaster assistance, except that such other assistance may be adjusted or modified to the extent deemed appropriate by the Director under the authority of section 4418 [1] of title 42. Any loan made under this section shall be subject to the interest requirements of section 636b of this title, but the President, if he deems it necessary, may defer payments of principal and interest for a period not to exceed three years after the date of the loan. Any such deferred payments shall bear interest at the rate determined under section 636b of this title.

(Pub. L. 91–606, title II, §237, Dec. 31, 1970, 84 Stat. 1754.)

REFERENCES IN TEXT

Section 4418 of title 42, referred to in subsec. (b), was repealed by Pub. L. 93–288, title VI, §603, May 22, 1974, 88 Stat. 164. Provisions similar to former section 4418 of Title 42, The Public Health and Welfare, are contained in section 5155 of Title 42.

CODIFICATION

Section was enacted as part of the Disaster Relief Act of 1970, and not as part of the Small Business Act which comprises this chapter. Section was formerly classified to section 4456 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE

Section effective Aug. 1, 1969, see section 304 of Pub. L. 91–606, set out as an Effective Date of 1970 Amendment note under section 165 of Title 26, Internal Revenue Code.

[1] *See References in Text note below.*

§636e. Definitions

In this subtitle— [1]

(1) the terms "Administration" and "Administrator" mean the Small Business Administration and the Administrator thereof, respectively;

(2) the term "disaster area" means an area affected by a natural or other disaster, as determined for purposes of paragraph (1) or (2) of section 636(b) of this title, during the period of such declaration;

(3) the term "disaster loan program of the Administration" means assistance under section 636(b) of this title, as amended by this Act;

(4) the term "disaster update period" means the period beginning on the date on which the President declares a major disaster (including any major disaster relating to which the Administrator declares eligibility for additional disaster assistance under paragraph (9) of section 636(b) of this title, as added by this Act) and ending on the date on which such declaration terminates;

(5) the term "major disaster" has the meaning given that term in section 5122 of title 42;

(6) the term "small business concern" has the meaning given that term under section 632 of this title; and

(7) the term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any territory or possession of the United States.

(Pub. L. 110–234, title XII, §12052, May 22, 2008, 122 Stat. 1406; Pub. L. 110–246, §4(a), title XII, §12052, June 18, 2008, 122 Stat. 1664, 2168.)

REFERENCES IN TEXT

This subtitle, referred to in text, is subtitle B (§§12051–12091) of title XII of Pub. L. 110–246, which enacted this section and sections 636f to 636k and 657i to 657o of this title, amended sections 632, 633, and

636 of this title, enacted provisions set out as notes under sections 631 and 636 of this title, and amended provisions set out as a note under section 631 of this title. For complete classification of subtitle B to the Code, see Short Title of 2008 Amendment note under section 631 of this title and Tables.

Section 636(b) of this title, as amended by this Act, referred to in par. (3), is section 636(b) of this title, as amended by Pub. L. 110–246.

Paragraph (9) of section 636(b) of this title, as added by this Act, referred to in par. (4), is section 636(b)(9) of this title, as added by Pub. L. 110–246.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

Section was enacted as part of the Food, Conservation, and Energy Act of 2008, and also as part of the Small Business Disaster Response and Loan Improvements Act of 2008, and not as part of the Small Business Act which comprises this chapter.

EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.

[1] *See References in Text note below.*

§636f. Coordination of efforts between the Administrator and the Internal Revenue Service to expedite loan processing

The Administrator and the Commissioner of Internal Revenue shall, to the maximum extent practicable, ensure that all relevant and allowable tax records for loan approval are shared with loan processors in an expedited manner, upon request by the Administrator.

(Pub. L. 110–234, title XII, §12066(b), May 22, 2008, 122 Stat. 1410; Pub. L. 110–246, §4(a), title XII, §12066(b), June 18, 2008, 122 Stat. 1664, 2172.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

Section was enacted as part of the Food, Conservation, and Energy Act of 2008, and also as part of the Small Business Disaster Response and Loan Improvements Act of 2008, and not as part of the Small Business Act which comprises this chapter.

EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.

§636g. Development and implementation of major disaster response plan

(a) In general

Not later than 3 months after the date of enactment of this Act, the Administrator shall—

(1) by rule, amend the 2006 Atlantic hurricane season disaster response plan of the Administration (in this section referred to as the "disaster response plan") to apply to major disasters; and

(2) submit a report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives detailing the amendments to the disaster response plan.

(b) Contents

The report required under subsection (a)(2) shall include—

(1) any updates or modifications made to the disaster response plan since the report regarding the disaster response plan submitted to Congress on July 14, 2006;

(2) a description of how the Administrator plans to use and integrate District Office personnel of the Administration in the response to a major disaster, including information on the use of personnel for loan processing and loan disbursement;

(3) a description of the disaster scalability model of the Administration and on what basis or function the plan is scaled;

(4) a description of how the agency-wide Disaster Oversight Council is structured, which offices comprise its membership, and whether the Associate Deputy Administrator for Entrepreneurial Development of the Administration is a member;

(5) a description of how the Administrator plans to coordinate the disaster efforts of the Administration with State and local government officials, including recommendations on how to better incorporate State initiatives or programs, such as State-administered bridge loan programs, into the disaster response of the Administration;

(6) recommendations, if any, on how the Administration can better coordinate its disaster response operations with the operations of other Federal, State, and local entities;

(7) any surge plan for the disaster loan program of the Administration in effect on or after August 29, 2005 (including surge plans for loss verification, loan processing, mailroom, customer service or call center operations, and a continuity of operations plan);

(8) the number of full-time equivalent employees and job descriptions for the planning and disaster response staff of the Administration;

(9) the in-service and preservice training procedures for disaster response staff of the Administration;

(10) information on the logistical support plans of the Administration (including equipment and staffing needs, and detailed information on how such plans will be scalable depending on the size and scope of the major disaster [1];

(11) a description of the findings and recommendations of the Administrator, if any, based on a review of the response of the Administration to Hurricane Katrina of 2005, Hurricane Rita of 2005, and Hurricane Wilma of 2005; and

(12) a plan for how the Administrator, in consultation with the Administrator of the Federal Emergency Management Agency, will coordinate the provision of accommodations and necessary resources for disaster assistance personnel to effectively perform their responsibilities in the aftermath of a major disaster.

(c) Biennial disaster simulation exercise

(1) Exercise required

The Administrator shall conduct a disaster simulation exercise at least once every 2 fiscal years. The exercise shall include the participation of, at a minimum, not less than 50 percent of the individuals in the disaster reserve corps and shall test, at maximum capacity, all of the information technology and telecommunications systems of the Administration that are vital to the activities of the Administration during such a disaster.

(2) Report

The Administrator shall include a report on the disaster simulation exercises conducted under paragraph (1) each time the Administration submits a report required under section 657o of this title, as added by this Act.

(Pub. L. 110–234, title XII, §12072, May 22, 2008, 122 Stat. 1411; Pub. L. 110–246, §4(a), title XII, §12072, June 18, 2008, 122 Stat. 1664, 2173.)

REFERENCES IN TEXT

The date of enactment of this Act, referred to in subsec. (a), is the date of enactment of Pub. L. 110–246, which was approved June 18, 2008.

Section 657o of this title, as added by this Act, referred to in subsec. (c)(2), is section 657o of this title, as

added by Pub. L. 110–246.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

Section was enacted as part of the Food, Conservation, and Energy Act of 2008, and also as part of the Small Business Disaster Response and Loan Improvements Act of 2008, and not as part of the Small Business Act which comprises this chapter.

EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.

[1] *So in original. Probably should be followed by a closing parenthesis.*

§636h. Disaster planning responsibilities

(a) Assignment of Small Business Administration disaster planning responsibilities

The disaster planning function of the Administration shall be assigned to an individual appointed by the Administrator who—

(1) is not an employee of the Office of Disaster Assistance of the Administration;

(2) has proven management ability;

(3) has substantial knowledge in the field of disaster readiness and emergency response; and

(4) has demonstrated significant experience in the area of disaster planning.

(b) Responsibilities

The individual assigned the disaster planning function of the Administration shall report directly and solely to the Administrator and shall be responsible for—

(1) creating, maintaining, and implementing the comprehensive disaster response plan of the Administration described in section 636g of this title;

(2) ensuring there are in-service and pre-service training procedures for the disaster response staff of the Administration;

(3) coordinating and directing the training exercises of the Administration relating to disasters, including disaster simulation exercises and disaster exercises coordinated with other government departments and agencies; and

(4) other responsibilities relevant to disaster planning and readiness, as determined by the Administrator.

(c) Coordination

In carrying out the responsibilities described in subsection (b), the individual assigned the disaster planning function of the Administration shall coordinate with—

(1) the Office of Disaster Assistance of the Administration;

(2) the Administrator of the Federal Emergency Management Agency; and

(3) other Federal, State, and local disaster planning offices, as necessary.

(d) Resources

The Administrator shall ensure that the individual assigned the disaster planning function of the Administration has adequate resources to carry out the duties under this section.

(e) Report

Not later than 30 days after the date of enactment of this Act, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report containing—

(1) a description of the actions of the Administrator to assign an individual the disaster planning

function of the Administration;

(2) information detailing the background and expertise of the individual assigned; and

(3) information on the status of the implementation of the responsibilities described in subsection (b).

(Pub. L. 110–234, title XII, §12073, May 22, 2008, 122 Stat. 1413; Pub. L. 110–246, §4(a), title XII, §12073, June 18, 2008, 122 Stat. 1664, 2175.)

REFERENCES IN TEXT

The date of enactment of this Act, referred to in subsec. (e), is the date of enactment of Pub. L. 110–246, which was approved June 18, 2008.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

Section was enacted as part of the Food, Conservation, and Energy Act of 2008, and also as part of the Small Business Disaster Response and Loan Improvements Act of 2008, and not as part of the Small Business Act which comprises this chapter.

EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.

§636i. Small business bonding threshold

(a) In general

Except as provided in subsection (b), and notwithstanding any other provision of law, for any procurement related to a major disaster, the Administrator may, upon such terms and conditions as the Administrator may prescribe, guarantee and enter into commitments to guarantee any surety against loss resulting from a breach of the terms of a bid bond, payment bond, performance bond, or bonds ancillary thereto, by a principal on any total work order or contract amount at the time of bond execution that does not exceed $5,000,000.

(b) Increase of amount

Upon request of the head of any Federal agency other than the Administration involved in reconstruction efforts in response to a major disaster, the Administrator may guarantee and enter into a commitment to guarantee any security against loss under subsection (a) on any total work order or contract amount at the time of bond execution that does not exceed $10,000,000.

(c) Limitation on use of other funds

The Administrator may carry out this section only with amounts appropriated in advance specifically to carry out this section.

(Pub. L. 110–234, title XII, §12079, May 22, 2008, 122 Stat. 1416; Pub. L. 110–246, §4(a), title XII, §12079, June 18, 2008, 122 Stat. 1664, 2178.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

Section was enacted as part of the Food, Conservation, and Energy Act of 2008, and also as part of the Small Business Disaster Response and Loan Improvements Act of 2008, and not as part of the Small Business Act which comprises this chapter.

EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.

§636j. Expedited disaster assistance loan program

(a) Definition

In this section, the term "program" means the expedited disaster assistance business loan program established under subsection (b).

(b) Creation of program

The Administrator shall take such administrative action as is necessary to establish and implement an expedited disaster assistance business loan program under which the Administration may, on an expedited basis, guarantee timely payment of principal and interest, as scheduled on any loan made to an eligible small business concern under paragraph (9) of section 636(b) of this title, as added by this Act.

(c) Consultation required

In establishing the program, the Administrator shall consult with—

(1) appropriate personnel of the Administration (including District Office personnel of the Administration);

(2) appropriate technical assistance providers (including small business development centers);

(3) appropriate lenders and credit unions;

(4) the Committee on Small Business and Entrepreneurship of the Senate; and

(5) the Committee on Small Business of the House of Representatives.

(d) Rules

(1) In general

Not later than 1 year after the date of enactment of this Act, the Administrator shall issue rules in final form establishing and implementing the program in accordance with this section. Such rules shall apply as provided for in this section, beginning 90 days after their issuance in final form.

(2) Contents

The rules promulgated under paragraph (1) shall—

(A) identify whether appropriate uses of funds under the program may include—

(i) paying employees;

(ii) paying bills and other financial obligations;

(iii) making repairs;

(iv) purchasing inventory;

(v) restarting or operating a small business concern in the community in which it was conducting operations prior to the applicable major disaster, or to a neighboring area, county, or parish in the disaster area; or

(vi) covering additional costs until the small business concern is able to obtain funding through insurance claims, Federal assistance programs, or other sources; and

(B) set the terms and conditions of any loan made under the program, subject to paragraph (3).

(3) Terms and conditions

A loan guaranteed by the Administration under this section—

(A) shall be for not more than $150,000;

(B) shall be a short-term loan, not to exceed 180 days, except that the Administrator may extend such term as the Administrator determines necessary or appropriate on a case-by-case basis;

(C) shall have an interest rate not to exceed 300 basis points above the interest rate established by the Board of Governors of the Federal Reserve System that 1 bank charges

another for reserves that are lent on an overnight basis on the date the loan is made;

(D) shall have no prepayment penalty;

(E) may only be made to a borrower that meets the requirements for a loan under section 636(b) of this title, as amended by this Act;

(F) may be refinanced as part of any subsequent disaster assistance provided under section 636(b) of this title, as amended by this Act;

(G) may receive expedited loss verification and loan processing, if the applicant is—

(i) a major source of employment in the disaster area (which shall be determined in the same manner as under section 636(b)(3)(B) [1] of this title); or

(ii) vital to recovery efforts in the region (including providing debris removal services, manufactured housing, or building materials); and

(H) shall be subject to such additional terms as the Administrator determines necessary or appropriate.

(e) Report to Congress

Not later than 5 months after the date of enactment of this Act, the Administrator shall report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives on the progress of the Administrator in establishing the program.

(f) Authorization

There are authorized to be appropriated to the Administrator such sums as are necessary to carry out this section.

(Pub. L. 110–234, title XII, §12085, May 22, 2008, 122 Stat. 1421; Pub. L. 110–246, §4(a), title XII, §12085, June 18, 2008, 122 Stat. 1664, 2183.)

REFERENCES IN TEXT

Paragraph (9) of section 636(b) of this title, as added by this Act, referred to in subsec. (b), is section 636(b)(9) of this title, as added by Pub. L. 110–246.

Section 636(b) of this title, as amended by this Act, referred to in subsec. (d)(3)(E), (F), is section 636(b) of this title, as amended by Pub. L. 110–246.

The date of enactment of this Act, referred to in subsecs. (d)(1) and (e), is the date of enactment of Pub. L. 110–246, which was approved June 18, 2008.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

Section was enacted as part of the Food, Conservation, and Energy Act of 2008, and also as part of the Small Business Disaster Response and Loan Improvements Act of 2008, and not as part of the Small Business Act which comprises this chapter.

EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.

[1] So in original. Probably should be "636(b)(3)(E)".

§636k. Reports on disaster assistance

(a) Monthly accounting report to Congress

(1) Reporting requirements

Not later than the fifth business day of each month during the applicable period for a major

disaster, the Administrator shall submit to the Committee on Small Business and Entrepreneurship and the Committee on Appropriations of the Senate and to the Committee on Small Business and the Committee on Appropriations of the House of Representatives a report on the operation of the disaster loan program authorized under section 636 of this title for that major disaster during the preceding month.

(2) Contents

Each report submitted under paragraph (1) shall include—

(A) the daily average lending volume, in number of loans and dollars, and the percent by which each category has increased or decreased since the previous report under paragraph (1);

(B) the weekly average lending volume, in number of loans and dollars, and the percent by which each category has increased or decreased since the previous report under paragraph (1);

(C) the amount of funding spent over the month for loans, both in appropriations and program level, and the percent by which each category has increased or decreased since the previous report under paragraph (1);

(D) the amount of funding available for loans, both in appropriations and program level, and the percent by which each category has increased or decreased since the previous report under paragraph (1), noting the source of any additional funding;

(E) an estimate of how long the available funding for such loans will last, based on the spending rate;

(F) the amount of funding spent over the month for staff, along with the number of staff, and the percent by which each category has increased or decreased since the previous report under paragraph (1);

(G) the amount of funding spent over the month for administrative costs, and the percent by which such spending has increased or decreased since the previous report under paragraph (1);

(H) the amount of funding available for salaries and expenses combined, and the percent by which such funding has increased or decreased since the previous report under paragraph (1), noting the source of any additional funding; and

(I) an estimate of how long the available funding for salaries and expenses will last, based on the spending rate.

(b) Weekly disaster updates to Congress for presidentially declared disasters

(1) In general

Each week during a disaster update period, the Administration shall submit to the Committee on Small Business and Entrepreneurship of the Senate and to the Committee on Small Business of the House of Representatives a report on the operation of the disaster loan program of the Administration for the area in which the President declared a major disaster.

(2) Contents

Each report submitted under paragraph (1) shall include—

(A) the number of Administration staff performing loan processing, field inspection, and other duties for the declared disaster, and the allocations of such staff in the disaster field offices, disaster recovery centers, workshops, and other Administration offices nationwide;

(B) the daily number of applications received from applicants in the relevant area, as well as a breakdown of such figures by State;

(C) the daily number of applications pending application entry from applicants in the relevant area, as well as a breakdown of such figures by State;

(D) the daily number of applications withdrawn by applicants in the relevant area, as well as a breakdown of such figures by State;

(E) the daily number of applications summarily declined by the Administration from applicants in the relevant area, as well as a breakdown of such figures by State;

(F) the daily number of applications declined by the Administration from applicants in the relevant area, as well as a breakdown of such figures by State;

(G) the daily number of applications in process from applicants in the relevant area, as well

as a breakdown of such figures by State;

(H) the daily number of applications approved by the Administration from applicants in the relevant area, as well as a breakdown of such figures by State;

(I) the daily dollar amount of applications approved by the Administration from applicants in the relevant area, as well as a breakdown of such figures by State;

(J) the daily amount of loans dispersed, both partially and fully, by the Administration to applicants in the relevant area, as well as a breakdown of such figures by State;

(K) the daily dollar amount of loans disbursed, both partially and fully, from the relevant area, as well as a breakdown of such figures by State;

(L) the number of applications approved, including dollar amount approved, as well as applications partially and fully disbursed, including dollar amounts, since the last report under paragraph (1); and

(M) the declaration date, physical damage closing date, economic injury closing date, and number of counties included in the declaration of a major disaster.

(c) Periods when additional disaster assistance is made available

(1) In general

During any period for which the Administrator declares eligibility for additional disaster assistance under paragraph (9) of section 636(b) of this title, as amended by this Act, the Administrator shall, on a monthly basis, submit to the Committee on Small Business and Entrepreneurship of the Senate and to the Committee on Small Business of the House of Representatives a report on the disaster assistance operations of the Administration with respect to the applicable major disaster.

(2) Contents

Each report submitted under paragraph (1) shall specify—

(A) the number of applications for disaster assistance distributed;

(B) the number of applications for disaster assistance received;

(C) the average time for the Administration to approve or disapprove an application for disaster assistance;

(D) the amount of disaster loans approved;

(E) the average time for initial disbursement of disaster loan proceeds; and

(F) the amount of disaster loan proceeds disbursed.

(d) Notice of the need for supplemental funds

On the same date that the Administrator notifies any committee of the Senate or the House of Representatives that supplemental funding is necessary for the disaster loan program of the Administration in any fiscal year, the Administrator shall notify in writing the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives regarding the need for supplemental funds for that loan program.

(e) Report on contracting

(1) In general

Not later than 6 months after the date on which the President declares a major disaster, and every 6 months thereafter until the date that is 18 months after the date on which the major disaster was declared, the Administrator shall submit a report to the Committee on Small Business and Entrepreneurship of the Senate and to the Committee on Small Business of the House of Representatives regarding Federal contracts awarded as a result of that major disaster.

(2) Contents

Each report submitted under paragraph (1) shall include—

(A) the total number of contracts awarded as a result of that major disaster;

(B) the total number of contracts awarded to small business concerns as a result of that major disaster;

(C) the total number of contracts awarded to women and minority-owned businesses as a result of that major disaster; and

(D) the total number of contracts awarded to local businesses as a result of that major disaster.

(f) Report on loan approval rate

(1) In general

Not later than 6 months after the date of enactment of this Act, the Administrator shall submit a report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives detailing how the Administration can improve the processing of applications under the disaster loan program of the Administration.

(2) Contents

The report submitted under paragraph (1) shall include—

(A) recommendations, if any, regarding—

(i) staffing levels during a major disaster;

(ii) how to improve the process for processing, approving, and disbursing loans under the disaster loan program of the Administration, to ensure that the maximum assistance is provided to victims in a timely manner;

(iii) the viability of using alternative methods for assessing the ability of an applicant to repay a loan, including the credit score of the applicant on the day before the date on which the disaster for which the applicant is seeking assistance was declared;

(iv) methods, if any, for the Administration to expedite loss verification and loan processing of disaster loans during a major disaster for businesses affected by, and located in the area for which the President declared, the major disaster that are a major source of employment in the area or are vital to recovery efforts in the region (including providing debris removal services, manufactured housing, or building materials);

(v) legislative changes, if any, needed to implement findings from the Accelerated Disaster Response Initiative of the Administration; and

(vi) a description of how the Administration plans to integrate and coordinate the response to a major disaster with the technical assistance programs of the Administration; and

(B) the plans of the Administrator for implementing any recommendation made under subparagraph (A).

(Pub. L. 110–234, title XII, §12091, May 22, 2008, 122 Stat. 1423; Pub. L. 110–246, §4(a), title XII, §12091, June 18, 2008, 122 Stat. 1664, 2185.)

REFERENCES IN TEXT

Section 636(b) of this title, as amended by this Act, referred to in subsec. (c)(1), is section 636(b) of this title, as amended by Pub. L. 110–246.

The date of enactment of this Act, referred to in subsec. (f)(1), is the date of enactment of Pub. L. 110–246, which was approved June 18, 2008.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

Section is comprised of section 12091 of Pub. L. 110–246. Subsec. (g) of section 12091 of Pub. L. 110–246 enacted section 657o of this title.

Section was enacted as part of the Food, Conservation, and Energy Act of 2008, and also as part of the Small Business Disaster Response and Loan Improvements Act of 2008, and not as part of the Small Business Act which comprises this chapter.

EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.

§637. Additional powers

(a) Procurement contracts; subcontracts to disadvantaged small business concerns; performance bonds; contract negotiations; definitions; eligibility; determinations; publication; recruitment; construction subcontracts; annual estimates; Indian tribes

(1) It shall be the duty of the Administration and it is hereby empowered, whenever it determines such action is necessary or appropriate—

(A) to enter into contracts with the United States Government and any department, agency, or officer thereof having procurement powers obligating the Administration to furnish articles, equipment, supplies, services, or materials to the Government or to perform construction work for the Government. In any case in which the Administration certifies to any officer of the Government having procurement powers that the Administration is competent and responsible to perform any specific Government procurement contract to be let by any such officer, such officer shall be authorized in his discretion to let such procurement contract to the Administration upon such terms and conditions as may be agreed upon between the Administration and the procurement officer. Whenever the Administration and such procurement officer fail to agree, the matter shall be submitted for determination to the Secretary or the head of the appropriate department or agency by the Administrator. Not later than 5 days from the date the Administration is notified of a procurement officer's adverse decision, the Administration may notify the contracting officer of the intent to appeal such adverse decision, and within 15 days of such date the Administrator shall file a written request for a reconsideration of the adverse decision with the Secretary of the department or agency head. For the purposes of this subparagraph, a procurement officer's adverse decision includes a decision not to make available for award pursuant to this subsection a particular procurement requirement or the failure to agree on the terms and conditions of a contract to be awarded noncompetitively under the authority of this subsection. Upon receipt of the notice of intent to appeal, the Secretary of the department or the agency head shall suspend further action regarding the procurement until a written decision on the Administrator's request for reconsideration has been issued by such Secretary or agency head, unless such officer makes a written determination that urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for a reconsideration of the adverse decision. If the Administrator's request for reconsideration is denied, the Secretary of the department or agency head shall specify the reasons why the selected firm was determined to be incapable to perform the procurement requirement, and the findings supporting such determination, which shall be made a part of the contract file for the requirement. A contract may not be awarded under this subsection if the award of the contract would result in a cost to the awarding agency which exceeds a fair market price;

(B) to arrange for the performance of such procurement contracts by negotiating or otherwise letting subcontracts to socially and economically disadvantaged small business concerns for construction work, services, or the manufacture, supply, assembly of such articles, equipment, supplies, materials, or parts thereof, or servicing or processing in connection therewith, or such management services as may be necessary to enable the Administration to perform such contracts;

(C) to make an award to a small business concern owned and controlled by socially and economically disadvantaged individuals which has completed its period of Program Participation as prescribed by section 636(j)(15) of this title, if—

(i) the contract will be awarded as a result of an offer (including price) submitted in response to a published solicitation relating to a competition conducted pursuant to subparagraph (D); and

(ii) the prospective contract awardee was a Program Participant eligible for award of the contract on the date specified for receipt of offers contained in the contract solicitation; and

(D)(i) A contract opportunity offered for award pursuant to this subsection shall be awarded on

the basis of competition restricted to eligible Program Participants if—

(I) there is a reasonable expectation that at least two eligible Program Participants will submit offers and that award can be made at a fair market price, and

(II) the anticipated award price of the contract (including options) will exceed $5,000,000 in the case of a contract opportunity assigned a standard industrial classification code for manufacturing and $3,000,000 (including options) in the case of all other contract opportunities.

(ii) The Associate Administrator for Minority Small Business and Capital Ownership Development, on a nondelegable basis, is authorized to approve a request from an agency to award a contract opportunity under this subsection on the basis of a competition restricted to eligible Program Participants even if the anticipated award price is not expected to exceed the dollar amounts specified in clause (i)(II). Such approvals shall be granted only on a limited basis.

(2) Notwithstanding subsections (a), (b), and (e) of section 3131 of title 40, no small business concern shall be required to provide any amount of any bond as a condition of receiving any subcontract under this subsection if the Administrator determines that such amount is inappropriate for such concern in performing such contract: *Provided*, That the Administrator shall exercise the authority granted by the paragraph only if—

(A) the Administration takes such measures as it deems appropriate for the protection of persons furnishing materials and labor to a small business receiving any benefit pursuant to this paragraph;

(B) the Administration assists, insofar as practicable, a small business receiving the benefits of this paragraph to develop, within a reasonable period of time, such financial and other capability as may be needed to obtain such bonds as the Administration may subsequently require for the successful completion of any program conducted under the authority of this subsection;

(C) the Administration finds that such small business is unable to obtain the requisite bond or bonds from a surety and that no surety is willing to issue bond or bonds subject to the guarantee provisions of Title IV of the Small Business Investment Act of 1958 [15 U.S.C. 692 et seq.]; and

(D) the small business is determined to be a start-up concern and such concern has not been participating in any program conducted under the authority of this subsection for a period exceeding one year.

The authority to waive bonds provided in this paragraph (2) may not be exercised after September 30, 1988.

(3)(A) Any Program Participant selected by the Administration to perform a contract to be let noncompetitively pursuant to this subsection shall, when practicable, participate in any negotiation of the terms and conditions of such contract.

(B)(i) For purposes of paragraph (1) a "fair market price" shall be determined by the agency offering the procurement requirement to the Administration, in accordance with clauses (ii) and (iii).

(ii) The estimate of a current fair market price for a new procurement requirement, or a requirement that does not have a satisfactory procurement history, shall be derived from a price or cost analysis. Such analysis may take into account prevailing market conditions, commercial prices for similar products or services, or data obtained from any other agency. Such analysis shall consider such cost or pricing data as may be timely submitted by the Administration.

(iii) The estimate of a current fair market price for a procurement requirement that has a satisfactory procurement history shall be based on recent award prices adjusted to insure comparability. Such adjustments shall take into account differences in quantities, performance times, plans, specifications, transportation costs, packaging and packing costs, labor and materials costs, overhead costs, and any other additional costs which may be deemed appropriate.

(C) An agency offering a procurement requirement for potential award pursuant to this subsection shall, upon the request of the Administration, promptly submit to the Administration a written statement detailing the method used by the agency to estimate the current fair market price for such contract, identifying the information, studies, analyses, and other data used by such agency. The

agency's estimate of the current fair market price (and any supporting data furnished to the Administration) shall not be disclosed to any potential offeror (other than the Administration).

(D) A small business concern selected by the Administration to perform or negotiate a contract to be let pursuant to this subsection may request the Administration to protest the agency's estimate of the fair market price for such contract pursuant to paragraph (1)(A).

(4)(A) For purposes of this section, the term "socially and economically disadvantaged small business concern" means any small business concern which meets the requirements of subparagraph (B) and—

(i) which is at least 51 per centum unconditionally owned by—

(I) one or more socially and economically disadvantaged individuals,

(II) an economically disadvantaged Indian tribe (or a wholly owned business entity of such tribe), or

(III) an economically disadvantaged Native Hawaiian organization, or

(ii) in the case of any publicly owned business, at least 51 per centum of the stock of which is unconditionally owned by—

(I) one or more socially and economically disadvantaged individuals,

(II) an economically disadvantaged Indian tribe (or a wholly owned business entity of such tribe), or

(III) an economically disadvantaged Native Hawaiian organization.

(B) A small business concern meets the requirements of this subparagraph if the management and daily business operations of such small business concern are controlled by one or more—

(i) socially and economically disadvantaged individuals described in subparagraph (A)(i)(I) or subparagraph (A)(ii)(I),

(ii) members of an economically disadvantaged Indian tribe described in subparagraph (A)(i)(II) or subparagraph (A)(ii)(II), or

(iii) Native Hawaiian organizations described in subparagraph (A)(i)(III) or subparagraph (A)(ii)(III).

(C) Each Program Participant shall certify, on an annual basis, that it meets the requirements of this paragraph regarding ownership and control.

(5) Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.

(6)(A) Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. In determining the degree of diminished credit and capital opportunities the Administration shall consider, but not be limited to, the assets and net worth of such socially disadvantaged individual. In determining the economic disadvantage of an Indian tribe, the Administration shall consider, where available, information such as the following: the per capita income of members of the tribe excluding judgment awards, the percentage of the local Indian population below the poverty level, and the tribe's access to capital markets.

(B) Each Program Participant shall annually submit to the Administration—

(i) a personal financial statement for each disadvantaged owner;

(ii) a record of all payments made by the Program Participant to each of its disadvantaged owners or to any person or entity affiliated with such owners; and

(iii) such other information as the Administration may deem necessary to make the determinations required by this paragraph.

(C)(i) Whenever, on the basis of information provided by a Program Participant pursuant to subparagraph (B) or otherwise, the Administration has reason to believe that the standards to

establish economic disadvantage pursuant to subparagraph (A) have not been met, the Administration shall conduct a review to determine whether such Program Participant and its disadvantaged owners continue to be impaired in their ability to compete in the free enterprise system due to diminished capital and credit opportunities when compared to other concerns in the same business area, which are not socially disadvantaged.

(ii) If the Administration determines, pursuant to such review, that a Program Participant and its disadvantaged owners are no longer economically disadvantaged for the purpose of receiving assistance under this subsection, the Program Participant shall be graduated pursuant to section 636(j)(10)(G) of this title subject to the right to a hearing as provided for under paragraph (9).

(D)(i) Whenever, on the basis of information provided by a Program Participant pursuant to subparagraph (B) or otherwise, the Administration has reason to believe that the amount of funds or other assets withdrawn from a Program Participant for the personal benefit of its disadvantaged owners or any person or entity affiliated with such owners may have been unduly excessive, the Administration shall conduct a review to determine whether such withdrawal of funds or other assets was detrimental to the achievement of the targets, objectives, and goals contained in such Program Participant's business plan.

(ii) If the Administration determines, pursuant to such review, that funds or other assets have been withdrawn to the detriment of the Program Participant's business, the Administration shall—

(I) initiate a proceeding to terminate the Program Participant pursuant to section 636(j)(10)(F) of this title, subject to the right to a hearing under paragraph (9); or

(II) require an appropriate reinvestment of funds or other assets and such other steps as the Administration may deem necessary to ensure the protection of the concern.

(E) Whenever the Administration computes personal net worth for any purpose under this paragraph, it shall exclude from such computation—

(i) the value of investments that disadvantaged owners have in their concerns, except that such value shall be taken into account under this paragraph when comparing such concerns to other concerns in the same business area that are owned by other than socially disadvantaged persons;

(ii) the equity that disadvantaged owners have in their primary personal residences, except that any portion of such equity that is attributable to unduly excessive withdrawals from a Program Participant or a concern applying for program participation shall be taken into account.

(7)(A) No small business concern shall be deemed eligible for any assistance pursuant to this subsection unless the Administration determines that with contract, financial, technical, and management support the small business concern will be able to perform contracts which may be awarded to such concern under paragraph (1)(C) and has reasonable prospects for success in competing in the private sector.

(B) Limitations established by the Administration in its regulations and procedures restricting the award of contracts pursuant to this subsection to a limited number of standard industrial classification codes in an approved business plan shall not be applied in a manner that inhibits the logical business progression by a participating small business concern into areas of industrial endeavor where such concern has the potential for success.

(8) All determinations made pursuant to paragraph (5) with respect to whether a group has been subjected to prejudice or bias shall be made by the Administrator after consultation with the Associate Administrator for Minority Small Business and Capital Ownership Development. All other determinations made pursuant to paragraphs (4), (5), (6), and (7) shall be made by the Associate Administrator for Minority Small Business and Capital Ownership Development under the supervision of, and responsible to, the Administrator.

(9)(A) Subject to the provisions of subparagraph (E), the Administration, prior to taking any action described in subparagraph (B), shall provide the small business concern that is the subject of such action, an opportunity for a hearing on the record, in accordance with chapter 5 of title 5.

(B) The actions referred to in subparagraph (A) are—

(i) denial of program admission based upon a negative determination pursuant to paragraph (4),

(5), or (6);

(ii) a termination pursuant to section 636(j)(10)(F) of this title;

(iii) a graduation pursuant to section 636(j)(10)(G) of this title; and

(iv) the denial of a request to issue a waiver pursuant to paragraph (21)(B).

(C) The Administration's proposed action, in any proceeding conducted under the authority of this paragraph, shall be sustained unless it is found to be arbitrary, capricious, or contrary to law.

(D) A decision rendered pursuant to this paragraph shall be the final decision of the Administration and shall be binding upon the Administration and those within its employ.

(E) The adjudicator selected to preside over a proceeding conducted under the authority of this paragraph shall decline to accept jurisdiction over any matter that—

(i) does not, on its face, allege facts that, if proven to be true, would warrant reversal or modification of the Administration's position;

(ii) is untimely filed;

(iii) is not filed in accordance with the rules of procedure governing such proceedings; or

(iv) has been decided by or is the subject of an adjudication before a court of competent jurisdiction over such matters.

(F) Proceedings conducted pursuant to the authority of this paragraph shall be completed and a decision rendered, insofar as practicable, within ninety days after a petition for a hearing is filed with the adjudicating office.

(10) The Administration shall develop and implement an outreach program to inform and recruit small business concerns to apply for eligibility for assistance under this subsection. Such program shall make a sustained and substantial effort to solicit applications for certification from small business concerns located in areas of concentrated unemployment or underemployment or within labor surplus areas and within States having relatively few Program Participants and from small disadvantaged business concerns in industry categories that have not substantially participated in the award of contracts let under the authority of this subsection.

(11) To the maximum extent practicable, construction subcontracts awarded by the Administration pursuant to this subsection shall be awarded within the county or State where the work is to be performed.

(12)(A) The Administration shall require each concern eligible to receive subcontracts pursuant to this subsection to annually prepare and submit to the Administration a capability statement. Such statement shall briefly describe such concern's various contract performance capabilities and shall contain the name and telephone number of the Business Opportunity Specialist assigned such concern. The Administration shall separate such statements by those primarily dependent upon local contract support and those primarily requiring a national marketing effort. Statements primarily dependent upon local contract support shall be disseminated to appropriate buying activities in the marketing area of the concern. The remaining statements shall be disseminated to the Directors of Small and Disadvantaged Business Utilization for the appropriate agencies who shall further distribute such statements to buying activities with such agencies that may purchase the types of items or services described on the capability statements.

(B) Contracting activities receiving capability statements shall, within 60 days after receipt, contact the relevant Business Opportunity Specialist to indicate the number, type, and approximate dollar value of contract opportunities that such activities may be awarding over the succeeding 12-month period and which may be appropriate to consider for award to those concerns for which it has received capability statements.

(C) Each executive agency reporting to the Federal Procurement Data System contract actions with an aggregate value in excess of $50,000,000 in fiscal year 1988, or in any succeeding fiscal year, shall prepare a forecast of expected contract opportunities or classes of contract opportunities for the next and succeeding fiscal years that small business concerns, including those owned and

controlled by socially and economically disadvantaged individuals, are capable of performing. Such forecast shall be periodically revised during such year. To the extent such information is available, the agency forecasts shall specify:

(i) The approximate number of individual contract opportunities (and the number of opportunities within a class).

(ii) The approximate dollar value, or range of dollar values, for each contract opportunity or class of contract opportunities.

(iii) The anticipated time (by fiscal year quarter) for the issuance of a procurement request.

(iv) The activity responsible for the award and administration of the contract.

(D) The head of each executive agency subject to the provisions of subparagraph (C) shall within 10 days of completion furnish such forecasts to—

(i) the Director of the Office of Small and Disadvantaged Business Utilization established pursuant to section 644(k) of this title for such agency; and

(ii) the Administrator.

(E) The information reported pursuant to subparagraph (D) may be limited to classes of items and services for which there are substantial annual purchases.

(F) Such forecasts shall be available to small business concerns.

(13) For purposes of this subsection, the term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation (within the meaning of the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.]) which—

(A) is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or

(B) is recognized as such by the State in which such tribe, band, nation, group, or community resides.

(14) LIMITATIONS ON SUBCONTRACTING.—A concern may not be awarded a contract under this subsection as a small business concern unless the concern agrees to satisfy the requirements of section 657s of this title.

(15) For purposes of this subsection, the term "Native Hawaiian Organization" means any community service organization serving Native Hawaiians in the State of Hawaii which—

(A) is a nonprofit corporation that has filed articles of incorporation with the director (or the designee thereof) of the Hawaii Department of Commerce and Consumer Affairs, or any successor agency,

(B) is controlled by Native Hawaiians, and

(C) whose business activities will principally benefit such Native Hawaiians.

(16)(A) The Administration shall award sole source contracts under this section to any small business concern recommended by the procuring agency offering the contract opportunity if—

(i) the Program Participant is determined to be a responsible contractor with respect to performance of such contract opportunity;

(ii) the award of such contract would be consistent with the Program Participant's business plan; and

(iii) the award of the contract would not result in the Program Participant exceeding the requirements established by section 636(j)(10)(I) of this title.

(B) To the maximum extent practicable, the Administration shall promote the equitable geographic distribution of sole source contracts awarded pursuant to this subsection.

(17)(A) An otherwise responsible business concern that is in compliance with the requirements of subparagraph (B) shall not be denied the opportunity to submit and have considered its offer for any procurement contract for the supply of a product to be let pursuant to this subsection or subsection

(a) of section 644 of this title solely because such concern is other than the actual manufacturer or processor of the product to be supplied under the contract.

(B) To be in compliance with the requirements referred to in subparagraph (A), such a business concern shall—

(i) be primarily engaged in the wholesale or retail trade;

(ii) be a small business concern under the numerical size standard for the Standard Industrial Classification Code assigned to the contract solicitation on which the offer is being made;

(iii) be a regular dealer, as defined pursuant to section 35(a) [1] of title 41 (popularly referred to as the Walsh-Healey Public Contracts Act), in the product to be offered the Government or be specifically exempted from such section by section 636(j)(13)(C) of this title; and

(iv) represent that it will supply the product of a domestic small business manufacturer or processor, unless a waiver of such requirement is granted—

(I) by the Administrator, after reviewing a determination by the contracting officer that no small business manufacturer or processor can reasonably be expected to offer a product meeting the specifications (including period for performance) required of an offeror by the solicitation; or

(II) by the Administrator for a product (or class of products), after determining that no small business manufacturer or processor is available to participate in the Federal procurement market.

(18)(A) No person within the employ of the Administration shall, during the term of such employment and for a period of two years after such employment has been terminated, engage in any activity or transaction specified in subparagraph (B) with respect to any Program Participant during such person's term of employment, if such person participated personally (either directly or indirectly) in decision-making responsibilities relating to such Program Participant or with respect to the administration of any assistance provided to Program Participants generally under this subsection, section 636(j)(10) of this title, or section 636(a)(20) of this title.

(B) The activities and transactions prohibited by subparagraph (A) include—

(i) the buying, selling, or receiving (except by inheritance) of any legal or beneficial ownership of stock or any other ownership interest or the right to acquire any such interest;

(ii) the entering into or execution of any written or oral agreement (whether or not legally enforceable) to purchase or otherwise obtain any right or interest described in clause (i); or

(iii) the receipt of any other benefit or right that may be an incident of ownership.

(C)(i) The employees designated in clause (ii) shall annually submit a written certification to the Administration regarding compliance with the requirements of this paragraph.

(ii) The employees referred to in clause (i) are—

(I) regional administrators;

(II) district directors;

(III) the Associate Administrator for Minority Small Business and Capital Ownership Development;

(IV) employees whose principal duties relate to the award of contracts or the provision of other assistance pursuant to this subsection or section 636(j)(10) of this title; and

(V) such other employees as the Administrator may deem appropriate.

(iii) Any present or former employee of the Administration who violates this paragraph shall be subject to a civil penalty, assessed by the Attorney General, that shall not exceed 300 per centum of the maximum amount of gain such employee realized or could have realized as a result of engaging in those activities and transactions prescribed [2] by subparagraph (B).

(iv) In addition to any other remedy or sanction provided for under law or regulation, any person who falsely certifies pursuant to clause (i) shall be subject to a civil penalty under the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–3812).

(19)(A) Any employee of the Administration who has authority to take, direct others to take,

recommend, or approve any action with respect to any program or activity conducted pursuant to this subsection or section 636(j) of this title, shall not, with respect to any such action, exercise or threaten to exercise such authority on the basis of the political activity or affiliation of any party. Employees of the Administration shall expeditiously report to the Inspector General of the Administration any such action for which such employee's participation has been solicitated [3] or directed.

(B) Any employee who willfully and knowingly violates subparagraph (A) shall be subject to disciplinary action which may consist of separation from service, reduction in grade, suspension, or reprimand.

(C) Subparagraph (A) shall not apply to any action taken as a penalty or other enforcement of a violation of any law, rule, or regulation prohibiting or restricting political activity.

(D) The prohibitions of subparagraph (A), and remedial measures provided for under subparagraphs (B) and (C) with regard to such prohibitions, shall be in addition to, and not in lieu of, any other prohibitions, measures or liabilities that may arise under any other provision of law.

(20)(A) Small business concerns participating in the Program under section 636(j)(10) of this title and eligible to receive contracts pursuant to this section shall semiannually report to their assigned Business Opportunity Specialist the following:

(i) A listing of any agents, representatives, attorneys, accountants, consultants, and other parties (other than employees) receiving compensation to assist in obtaining a Federal contract for such Program Participant.

(ii) The amount of compensation received by any person listed under clause (i) during the relevant reporting period and a description of the activities performed in return for such compensation.

(B) The Business Opportunity Specialist shall promptly review and forward such report to the Associate Administrator for Minority Small Business and Capital Ownership Development. Any report that raises a suspicion of improper activity shall be reported immediately to the Inspector General of the Administration.

(C) The failure to submit a report pursuant to the requirements of this subsection and applicable regulations shall be considered "good cause" for the initiation of a termination proceeding pursuant to section 636(j)(10)(F) of this title.

(21)(A) Subject to the provisions of subparagraph (B), a contract (including options) awarded pursuant to this subsection shall be performed by the concern that initially received such contract. Notwithstanding the provisions of the preceding sentence, if the owner or owners upon whom eligibility was based relinquish ownership or control of such concern, or enter into any agreement to relinquish such ownership or control, such contract or option shall be terminated for the convenience of the Government, except that no repurchase costs or other damages may be assessed against such concerns due solely to the provisions of this subparagraph.

(B) The Administrator may, on a nondelegable basis, waive the requirements of subparagraph (A) only if one of the following conditions exist:

(i) When it is necessary for the owners of the concern to surrender partial control of such concern on a temporary basis in order to obtain equity financing.

(ii) The head of the contracting agency for which the contract is being performed certifies that termination of the contract would severely impair attainment of the agency's program objectives or missions;

(iii) Ownership and control of the concern that is performing the contract will pass to another small business concern that is a program participant, but only if the acquiring firm would otherwise be eligible to receive the award directly pursuant to subsection (a) of this section;

(iv) The individuals upon whom eligibility was based are no longer able to exercise control of the concern due to incapacity or death; or

(v) When, in order to raise equity capital, it is necessary for the disadvantaged owners of the concern to relinquish ownership of a majority of the voting stock of such concern, but only if—

(I) such concern has exited the Capital Ownership Development Program;

(II) the disadvantaged owners will maintain ownership of the largest single outstanding block of voting stock (including stock held by affiliated parties); and

(III) the disadvantaged owners will maintain control of daily business operations.

(C) The Administrator may waive the requirements of subparagraph (A) if—

(i) in the case of subparagraph (B) (i), (ii) and (iv), he is requested to do so prior to the actual relinquishment of ownership or control; and

(ii) in the case of subparagraph (B)(iii), he is requested to do so as soon as possible after the incapacity or death occurs.

(D) Concerns performing contracts awarded pursuant to this subsection shall be required to notify the Administration immediately upon entering an agreement (either oral or in writing) to transfer all or part of its stock or other ownership interest to any other party.

(E) Notwithstanding any other provision of law, for the purposes of determining ownership and control of a concern under this section, any potential ownership interests held by investment companies licensed under the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.] shall be treated in the same manner as interests held by the individuals upon whom eligibility is based.

(b) Procurement and property disposal powers; determination of small-business concerns

It shall also be the duty of the Administration and it is empowered, whenever it determines such action is necessary—

(1)(A) to provide—

(i) technical, managerial, and informational aids to small business concerns—

(I) by advising and counseling on matters in connection with Government procurement and policies, principles, and practices of good management;

(II) by cooperating and advising with—

(aa) voluntary business, professional, educational, and other nonprofit organizations, associations, and institutions (except that the Administration shall take such actions as it determines necessary to ensure that such cooperation does not constitute or imply an endorsement by the Administration of the organization or its products or services, and shall ensure that it receives appropriate recognition in all printed materials); and

(bb) other Federal and State agencies;

(III) by maintaining a clearinghouse for information on managing, financing, and operating small business enterprises; and

(IV) by disseminating such information, including through recognition events, and by other activities that the Administration determines to be appropriate; and

(ii) through cooperation with a profit-making concern (referred to in this paragraph as a "cosponsor"), training, information, and education to small business concerns, except that the Administration shall—

(I) take such actions as it determines to be appropriate to ensure that—

(aa) the Administration receives appropriate recognition and publicity;

(bb) the cooperation does not constitute or imply an endorsement by the Administration of any product or service of the cosponsor;

(cc) unnecessary promotion of the products or services of the cosponsor is avoided; and

(dd) utilization of any one cosponsor in a marketing area is minimized; and

(II) develop an agreement, executed on behalf of the Administration by an employee of the Administration in Washington, the District of Columbia, that provides, at a minimum, that—

(aa) any printed material to announce the cosponsorship or to be distributed at the cosponsored activity, shall be approved in advance by the Administration;

(bb) the terms and conditions of the cooperation shall be specified;

(cc) only minimal charges may be imposed on any small business concern to cover the

direct costs of providing the assistance;

(dd) the Administration may provide to the cosponsorship mailing labels, but not lists of names and addresses of small business concerns compiled by the Administration;

(ee) all printed materials containing the names of both the Administration and the cosponsor shall include a prominent disclaimer that the cooperation does not constitute or imply an endorsement by the Administration of any product or service of the cosponsor; and

(ff) the Administration shall ensure that it receives appropriate recognition in all cosponsorship printed materials.

(B) To establish, conduct, and publicize, and to recruit, select, and train volunteers for (and to enter into contracts, grants, or cooperative agreements therefor), volunteer programs, including a Service Corps of Retired Executives (SCORE) and an Active Corps of Executive (ACE) for the purposes of subparagraph (A). To facilitate the implementation of such volunteer programs the Administration shall maintain at its headquarters and pay the salaries, benefits, and expenses of a volunteer and professional staff to manage and oversee the program. Any such payments made pursuant to this subparagraph shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts. Notwithstanding any other provision of law, SCORE may solicit cash and in-kind contributions from the private sector to be used to carry out its functions under this chapter, and may use payments made by the Administration pursuant to this subparagraph for such solicitation and the management of the contributions received.

(C) To allow any individual or group of persons participating with it in furtherance of the purposes of subparagraphs (A) and (B) to use the Administration's office facilities and related material and services as the Administration deems appropriate, including clerical and stenographic services:

(i) such volunteers, while carrying out activities under this paragraph shall be deemed Federal employees for the purposes of the Federal tort claims provisions in title 28; and for the purposes of subchapter I of chapter 81 of title 5 (relative to compensation to Federal employees for work injuries) shall be deemed civil employees of the United States within the meaning of the term "employee" as defined in section 8101 of title 5, and the provisions of that subchapter shall apply except that in computing compensation benefits for disability or death, the monthly pay of a volunteer shall be deemed that received under the entrance salary for a grade GS–11 employee;

(ii) the Administrator is authorized to reimburse such volunteers for all necessary out-of-pocket expenses incident to their provision of services under this chapter, or in connection with attendance at meetings sponsored by the Administration, or for the cost of malpractice insurance, as the Administrator shall determine, in accordance with regulations which he or she shall prescribe, and, while they are carrying out such activities away from their homes or regular places of business, for travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5 for individuals serving without pay; and

(iii) such volunteers shall in no way provide services to a client of such Administration with a delinquent loan outstanding, except upon a specific request signed by such client for assistance in connection with such matter.

(D) Notwithstanding any other provision of law, no payment for supportive services or reimbursement of out-of-pocket expenses made to persons serving pursuant to this paragraph shall be subject to any tax or charge or be treated as wages or compensation for the purposes of unemployment, disability, retirement, public assistance, or similar benefit payments, or minimum wage laws.

(E) In carrying out its functions under subparagraph (A), to make grants (including contracts and cooperative agreements) to any public or private institution of higher education for the

establishment and operation of a small business institute, which shall be used to provide business counseling and assistance to small business concerns through the activities of students enrolled at the institution, which students shall be entitled to receive educational credits for their activities.

(F) Notwithstanding any other provision of law and pursuant to regulations which the Administrator shall prescribe, counsel may be employed and counsel fees, court costs, bail, and other expenses incidental to the defense of volunteers may be paid in judicial or administrative proceedings arising directly out of the performance of activities pursuant to this paragraph, to which volunteers have been made parties.

(G) In carrying out its functions under this chapter and to carry out the activities authorized by title IV of the Women's Business Ownership Act of 1988 [15 U.S.C. 7101 et seq.], the Administration is authorized to accept, in the name of the Administration, and employ or dispose of in furtherance of the purposes of this chapter, any money or property, real, personal, or mixed, tangible, or intangible, received by gift, devise, bequest, or otherwise; and, further, to accept gratuitous services and facilities.

(2) to make a complete inventory of all productive facilities of small-business concerns or to arrange for such inventory to be made by any other governmental agency which has the facilities. In making any such inventory, the appropriate agencies in the several States may be requested to furnish an inventory of the productive facilities of small-business concerns in each respective State if such an inventory is available or in prospect;

(3) to coordinate and to ascertain the means by which the productive capacity of small-business concerns can be most effectively utilized;

(4) to consult and cooperate with officers of the Government having procurement or property disposal powers, in order to utilize the potential productive capacity of plants operated by small-business concerns;

(5) to obtain information as to methods and practices which Government prime contractors utilize in letting subcontracts and to take action to encourage the letting of subcontracts by prime contractors to small-business concerns at prices and on conditions and terms which are fair and equitable;

(6) to determine within any industry the concerns, firms, persons, corporations, partnerships, cooperatives, or other business enterprises which are to be designated "small-business concerns" for the purpose of effectuating the provisions of this chapter. To carry out this purpose the Administrator, when requested to do so, shall issue in response to each such request an appropriate certificate certifying an individual concern as a "small-business concern" in accordance with the criteria expressed in this chapter. Any such certificate shall be subject to revocation when the concern covered thereby ceases to be a "small-business concern". Offices of the Government having procurement or lending powers, or engaging in the disposal of Federal property or allocating materials or supplies, or promulgating regulations affecting the distribution of materials or supplies, shall accept as conclusive the Administration's determination as to which enterprises are to be designated "small-business concerns", as authorized and directed under this paragraph;

(7)(A) To certify to Government procurement officers, and officers engaged in the sale and disposal of Federal property, with respect to all elements of responsibility, including, but not limited to, capability, competency, capacity, credit, integrity, perseverance, and tenacity, of any small business concern or group of such concerns to receive and perform a specific Government contract. A Government procurement officer or an officer engaged in the sale and disposal of Federal property may not, for any reason specified in the preceding sentence preclude any small business concern or group of such concerns from being awarded such contract without referring the matter for a final disposition to the Administration.

(B) If a Government procurement officer finds that an otherwise qualified small business concern may be ineligible due to the provisions of section 35(a) [4] of title 41, he shall notify the Administration in writing of such finding. The Administration shall review such finding and shall either dismiss it and certify the small business concern to be an eligible Government contractor for

a specific Government contract or if it concurs in the finding, forward the matter to the Secretary of Labor for final disposition, in which case the Administration may certify the small business concern only if the Secretary of Labor finds the small business concern not to be in violation.

(C) In any case in which a small business concern or group of such concerns has been certified by the Administration pursuant to (A) or (B) to be a responsible or eligible Government contractor as to a specific Government contract, the officers of the Government having procurement or property disposal powers are directed to accept such certification as conclusive, and shall let such Government contract to such concern or group of concerns without requiring it to meet any other requirement of responsibility or eligibility. Notwithstanding the first sentence of this subparagraph, the Administration may not establish an exemption from referral or notification or refuse to accept a referral or notification from a Government procurement officer made pursuant to subparagraph (A) or (B) of this paragraph, but nothing in this paragraph shall require the processing of an application for certification if the small business concern to which the referral pertains declines to have the application processed.

(8) to obtain from any Federal department, establishment, or agency engaged in procurement or in the financing of procurement or production such reports concerning the letting of contracts and subcontracts and the making of loans to business concerns as it may deem pertinent in carrying out its functions under this chapter;

(9) to obtain from any Federal department, establishment, or agency engaged in the disposal of Federal property such reports concerning the solicitation of bids, time of sale, or otherwise as it may deem pertinent in carrying out its functions under this chapter;

(10) to obtain from suppliers of materials information pertaining to the method of filling orders and the bases for allocating their supply, whenever it appears that any small business is unable to obtain materials from its normal sources;

(11) to make studies and recommendations to the appropriate Federal agencies to insure that a fair proportion of the total purchases and contracts for property and services for the Government be placed with small-business enterprises, to insure that a fair proportion of Government contracts for research and development be placed with small-business concerns, to insure that a fair proportion of the total sales of Government property be made to small-business concerns, and to insure a fair and equitable share of materials, supplies, and equipment to small-business concerns;

(12) to consult and cooperate with all Government agencies for the purpose of insuring that small-business concerns shall receive fair and reasonable treatment from such agencies;

(13) to establish such advisory boards and committees as may be necessary to achieve the purposes of this chapter and of the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.]; to call meetings of such boards and committees from time to time; to pay the transportation expenses and a per diem allowance in accordance with section 5703 of title 5 to the members of such boards and committees for travel and subsistence expenses incurred at the request of the Administration in connection with travel to points more than fifty miles distant from the homes of such members in attending the meeting of such boards and committees; and to rent temporarily, within the District of Columbia or elsewhere, such hotel or other accommodations as are needed to facilitate the conduct of such meetings;

(14) to provide at the earliest practicable time such information and assistance as may be appropriate, including information concerning eligibility for loans under section 636(b)(3) of this title, to local public agencies (as defined in section 110(h) of the Housing Act of 1949 [42 U.S.C. 1460(h)]) and to small-business concerns to be displaced by federally aided urban renewal projects in order to assist such small-business concerns in reestablishing their operations;

(15) to disseminate, without regard to the provisions of section 3204 of title 39 data and information, in such form as it shall deem appropriate, to public agencies, private organizations, and the general public;

(16) to make studies of matters materially affecting the competitive strength of small business, and of the effect on small business of Federal laws, programs, and regulations, and to make recommendations to the appropriate Federal agency or agencies for the adjustment of such programs and regulations to the needs of small business; and

(17) to make grants to, and enter into contracts and cooperative agreements with, educational institutions, private businesses, veterans' nonprofit community-based organizations, and Federal, State, and local departments and agencies for the establishment and implementation of outreach programs for disabled veterans (as defined in section 4211(3) of title 38), veterans, and members of a reserve component of the Armed Forces.

(c) [Reserved]

(d) Performance of contracts by small business concerns; inclusion of required contract clause; subcontracting plans; contract eligibility; incentives; breach of contract; review; report to Congress

(1) It is the policy of the United States that small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women, shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

(2) The clause stated in paragraph (3) shall be included in all contracts let by any Federal agency except any contract which—

(A) does not exceed the simplified acquisition threshold;

(B) including all subcontracts under such contracts will be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; or

(C) is for services which are personal in nature.

(3) The clause required by paragraph (2) shall be as follows:

"(A) It is the policy of the United States that small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

"(B) The contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with the efficient performance of this contract. The contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the contractor's compliance with this clause.

"(C) As used in this contract, the term 'small business concern' shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term 'small business concern owned and controlled by socially and

economically disadvantaged individuals' shall mean a small business concern—

"(i) which is at least 51 per centum owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

"(ii) whose management and daily business operations are controlled by one or more of such individuals.

"The contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to section 8(a) of the Small Business Act.

"(D) The term 'small business concern owned and controlled by women' shall mean a small business concern—

"(i) which is at least 51 per centum owned by one or more women; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more women; and

"(ii) whose management and daily business operations are controlled by one or more women.

"(E) The term 'small business concern owned and controlled by veterans' shall mean a small business concern—

"(i) which is at least 51 per centum owned by one or more eligible veterans; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more veterans; and

"(ii) whose management and daily business operations are controlled by such veterans. The contractor shall treat as veterans all individuals who are veterans within the meaning of the term under section 3(q) of the Small Business Act.

"(F) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as either a small business concern, small business concern owned and controlled by veterans, small business concern owned and controlled by service-disabled veterans, a small business concern owned and controlled by socially and economically disadvantaged individuals, or a small business concern owned and controlled by women.

"(G) In this contract, the term 'qualified HUBZone small business concern' has the meaning given that term in section 3(p) of the Small Business Act."

(4)(A) Each solicitation of an offer for a contract to be let by a Federal agency which is to be awarded pursuant to the negotiated method of procurement and which may exceed $1,000,000, in the case of a contract for the construction of any public facility, or $500,000, in the case of all other contracts, shall contain a clause notifying potential offering companies of the provisions of this subsection relating to contracts awarded pursuant to the negotiated method of procurement.

(B) Before the award of any contract to be let, or any amendment or modification to any contract let, by any Federal agency which—

(i) is to be awarded, or was let, pursuant to the negotiated method of procurement,

(ii) is required to include the clause stated in paragraph (3),

(iii) may exceed $1,000,000 in the case of a contract for the construction of any public facility, or $500,000 in the case of all other contracts, and

(iv) which offers subcontracting possibilities,

the apparent successful offeror shall negotiate with the procurement authority a subcontracting plan which incorporates the information prescribed in paragraph (6). The subcontracting plan shall be included in and made a material part of the contract.

(C) If, within the time limit prescribed in regulations of the Federal agency concerned, the

apparent successful offeror fails to negotiate the subcontracting plan required by this paragraph, such offeror shall become ineligible to be awarded the contract. Prior compliance of the offeror with other such subcontracting plans shall be considered by the Federal agency in determining the responsibility of that offeror for the award of the contract.

(D) No contract shall be awarded to any offeror unless the procurement authority determines that the plan to be negotiated by the offeror pursuant to this paragraph provides the maximum practicable opportunity for small business concerns, qualified HUBZone small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women to participate in the performance of the contract.

(E) Notwithstanding any other provision of law, every Federal agency, in order to encourage subcontracting opportunities for small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, and small business concerns owned and controlled by the socially and economically disadvantaged individuals as defined in paragraph (3) of this subsection and for small business concerns owned and controlled by women, is hereby authorized to provide such incentives as such Federal agency may deem appropriate in order to encourage such subcontracting opportunities as may be commensurate with the efficient and economical performance of the contract: *Provided*, That, this subparagraph shall apply only to contracts let pursuant to the negotiated method of procurement.

(F)(i) Each contract subject to the requirements of this paragraph or paragraph (5) shall contain a clause for the payment of liquidated damages upon a finding that a prime contractor has failed to make a good faith effort to comply with the requirements imposed on such contractor by this subsection.

(ii) The contractor shall be afforded an opportunity to demonstrate a good faith effort regarding compliance prior to the contracting officer's final decision regarding the imposition of damages and the amount thereof. The final decision of a contracting officer regarding the contractor's obligation to pay such damages, or the amounts thereof, shall be subject to chapter 71 of title 41.

(iii) Each agency shall ensure that the goals offered by the apparent successful bidder or offeror are attainable in relation to—

(I) the subcontracting opportunities available to the contractor, commensurate with the efficient and economical performance of the contract;

(II) the pool of eligible subcontractors available to fulfill the subcontracting opportunities; and

(III) the actual performance of such contractor in fulfilling the subcontracting goals specified in prior plans.

(G) The following factors shall be designated by the Federal agency as significant factors for purposes of evaluating offers for a bundled contract where the head of the agency determines that the contract offers a significant opportunity for subcontracting:

(i) A factor that is based on the rate provided under the subcontracting plan for small business participation in the performance of the contract.

(ii) For the evaluation of past performance of an offeror, a factor that is based on the extent to which the offeror attained applicable goals for small business participation in the performance of contracts.

(5)(A) Each solicitation of a bid for any contract to be let, or any amendment or modification to any contract let, by any Federal agency which—

(i) is to be awarded pursuant to the formal advertising method of procurement,

(ii) is required to contain the clause stated in paragraph (3) of this subsection,

(iii) may exceed $1,000,000 in the case of a contract for the construction of any public facility, or $500,000, in the case of all other contracts, and

(iv) offers subcontracting possibilities,

shall contain a clause requiring any bidder who is selected to be awarded a contract to submit to the Federal agency concerned a subcontracting plan which incorporates the information prescribed in paragraph (6).

(B) If, within the time limit prescribed in regulations of the Federal agency concerned, the bidder selected to be awarded the contract fails to submit the subcontracting plan required by this paragraph, such bidder shall become ineligible to be awarded the contract. Prior compliance of the bidder with other such subcontracting plans shall be considered by the Federal agency in determining the responsibility of such bidder for the award of the contract. The subcontracting plan of the bidder awarded the contract shall be included in and made a material part of the contract.

(6) Each subcontracting plan required under paragraph (4) or (5) shall include—

(A) percentage goals for the utilization as subcontractors of small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women;

(B) the name of an individual within the employ of the offeror or bidder who will administer the subcontracting program of the offeror or bidder and a description of the duties of such individual;

(C) a description of the efforts the offeror or bidder will take to assure that small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women will have an equitable opportunity to compete for subcontracts;

(D) assurances that the offeror or bidder will include the clause required by paragraph (2) of this subsection in all subcontracts which offer further subcontracting opportunities, and that the offeror or bidder will require all subcontractors (except small business concerns) who receive subcontracts in excess of $1,000,000 in the case of a contract for the construction of any public facility, or in excess of $500,000 in the case of all other contracts, to adopt a plan similar to the plan required under paragraph (4) or (5), and assurances at a minimum that the offeror or bidder, and all subcontractors required to maintain subcontracting plans pursuant to this paragraph, will—

(i) review and approve subcontracting plans submitted by their subcontractors;

(ii) monitor subcontractor compliance with their approved subcontracting plans;

(iii) ensure that subcontracting reports are submitted by their subcontractors when required;

(iv) acknowledge receipt of their subcontractors' reports;

(v) compare the performance of their subcontractors to subcontracting plans and goals; and

(vi) discuss performance with subcontractors when necessary to ensure their subcontractors make a good faith effort to comply with their subcontracting plans;

(E) assurances that the offeror or bidder will submit such periodic reports and cooperate in any studies or surveys as may be required by the Federal agency or the Administration in order to determine the extent of compliance by the offeror or bidder with the subcontracting plan;

(F) a recitation of the types of records the successful offeror or bidder will maintain to demonstrate procedures which have been adopted to comply with the requirements and goals set forth in this plan, including the establishment of source lists of small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women; and efforts to identify and award subcontracts to such small business concerns;

(G) a recitation of the types of records the successful offeror or bidder will maintain to demonstrate procedures which have been adopted to ensure subcontractors at all tiers comply with the requirements and goals set forth in the plan established in accordance with subparagraph (D)

of this paragraph, including—

(i) the establishment of source lists of small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women; and

(ii) efforts to identify and award subcontracts to such small business concerns; and

(H) a representation that the offeror or bidder will—

(i) make a good faith effort to acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from the small business concerns used in preparing and submitting to the contracting agency the bid or proposal, in the same amount and quality used in preparing and submitting the bid or proposal; and

(ii) provide to the contracting officer a written explanation if the offeror or bidder fails to acquire articles, equipment, supplies, services, or materials or obtain the performance of construction work as described in clause (i).

(7) The head of the contracting agency shall ensure that—

(A) the agency collects and reports data on the extent to which contractors of the agency meet the goals and objectives set forth in subcontracting plans submitted pursuant to this subsection; and

(B) the agency periodically reviews data collected and reported pursuant to subparagraph (A) for the purpose of ensuring that such contractors comply in good faith with the requirements of this subsection and subcontracting plans submitted by the contractors pursuant to this subsection.

(8) The provisions of paragraphs (4), (5), and (6) shall not apply to offerors or bidders who are small business concerns.

(9) The failure of any contractor or subcontractor to comply in good faith with—

(A) the clause contained in paragraph (3) of this subsection, or

(B) any plan required of such contractor pursuant to the authority of this subsection to be included in its contract or subcontract,

shall be a material breach of such contract or subcontract and may be considered in any past performance evaluation of the contractor.

(10) Nothing contained in this subsection shall be construed to supersede the requirements of Defense Manpower Policy Number 4A (32A CFR Chap. 1) or any successor policy.

(11) In the case of contracts within the provisions of paragraphs (4), (5), and (6), the Administration is authorized to—

(A) assist Federal agencies and businesses in complying with their responsibilities under the provisions of this subsection, including the formulation of subcontracting plans pursuant to paragraph (4);

(B) review any solicitation for any contract to be let pursuant to paragraphs (4) and (5) to determine the maximum practicable opportunity for small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women to participate as subcontractors in the performance of any contract resulting from any solicitation, and to submit its findings, which shall be advisory in nature, to the appropriate Federal agency; and

(C) evaluate compliance with subcontracting plans as a supplement to evaluations performed by the contracting agency, either on a contract-by-contract basis or, in the case of contractors having multiple contracts, on an aggregate basis.

(12) For purposes of determining the attainment of a subcontract utilization goal under any subcontracting plan entered into with any executive agency pursuant to this subsection, a mentor firm providing development assistance to a protege firm under the pilot Mentor-Protege Program established pursuant to section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 10 U.S.C. 2301 note [2302 note]) shall be granted credit for such assistance in accordance with subsection (g) of such section.

(13) PAYMENT OF SUBCONTRACTORS.—

(A) DEFINITION.—In this paragraph, the term "covered contract" means a contract relating to which a prime contractor is required to develop a subcontracting plan under paragraph (4) or (5).

(B) NOTICE.—

(i) IN GENERAL.—A prime contractor for a covered contract shall notify in writing the contracting officer for the covered contract if the prime contractor pays a reduced price to a subcontractor for goods and services upon completion of the responsibilities of the subcontractor or the payment to a subcontractor is more than 90 days past due for goods or services provided for the covered contract for which the Federal agency has paid the prime contractor.

(ii) CONTENTS.—A prime contractor shall include the reason for the reduction in a payment to or failure to pay a subcontractor in any notice made under clause (i).

(C) PERFORMANCE.—A contracting officer for a covered contract shall consider the unjustified failure by a prime contractor to make a full or timely payment to a subcontractor in evaluating the performance of the prime contractor.

(D) CONTROL OF FUNDS.—If the contracting officer for a covered contract determines that a prime contractor has a history of unjustified, untimely payments to contractors, the contracting officer shall record the identity of the contractor in accordance with the regulations promulgated under subparagraph (E).

(E) Regulations.—Not later than 1 year after September 27, 2010, the Federal Acquisition Regulatory Council established under section 1302(a) of title 41 shall amend the Federal Acquisition Regulation issued under section 1303(a) of title 41 to—

(i) describe the circumstances under which a contractor may be determined to have a history of unjustified, untimely payments to subcontractors;

(ii) establish a process for contracting officers to record the identity of a contractor described in clause (i); and

(iii) require the identity of a contractor described in clause (i) to be incorporated in, and made publicly available through, the Federal Awardee Performance and Integrity Information System, or any successor thereto.

(14) An offeror for a covered contract that intends to identify a small business concern as a potential subcontractor in a bid or proposal for the contract, or in a plan submitted pursuant to this subsection in connection with the contract, shall notify the small business concern prior to making such identification.

(15) The Administrator shall establish a reporting mechanism that allows a subcontractor or potential subcontractor to report fraudulent activity or bad faith by a contractor with respect to a subcontracting plan submitted pursuant to this subsection.

(16) CREDIT FOR CERTAIN SUBCONTRACTORS.—

(A) For purposes of determining whether or not a prime contractor has attained the percentage goals specified in paragraph (6)—

(i) if the subcontracting goals pertain only to a single contract with the executive agency, the prime contractor shall receive credit for small business concerns performing as first tier subcontractors or subcontractors at any tier pursuant to the subcontracting plans required under paragraph (6)(D) in an amount equal to the dollar value of work awarded to such small business concerns; and

(ii) if the subcontracting goals pertain to more than one contract with one or more executive

agencies, or to one contract with more than one executive agency, the prime contractor may only count first tier subcontractors that are small business concerns.

(B) Nothing in this paragraph shall abrogate the responsibility of a prime contractor to make a good-faith effort to achieve the first tier small business subcontracting goals negotiated under paragraph (6)(A), or the requirement for subcontractors with further opportunities for subcontracting to make a good-faith effort to achieve the goals established under paragraph (6)(D).

(e) Covered executive agency activities; procurement notice; publication; time limitations

(1) Except as provided in subsection (g) of this section—

(A) an executive agency intending to—

(i) solicit bids or proposals for a contract for property or services for a price expected to exceed $25,000; or

(ii) place an order, expected to exceed $25,000, under a basic agreement, basic ordering agreement, or similar arrangement,

shall publish a notice described in subsection (f) of this section;

(B) an executive agency intending to solicit bids or proposals for a contract for property or services shall post, for a period of not less than ten days, in a public place at the contracting office issuing the solicitation a notice of solicitation described in subsection (f) of this section—

(i) in the case of an executive agency other than the Department of Defense, if the contract is for a price expected to exceed $10,000, but not to exceed $25,000; and

(ii) in the case of the Department of Defense, if the contract is for a price expected to exceed $5,000, but not to exceed $25,000;

(C) an executive agency awarding a contract for property or services for a price exceeding $100,000, or placing an order referred to in clause (A)(ii) exceeding $100,000, shall furnish for publication by the Secretary of Commerce a notice announcing the award or order if there is likely to be any subcontract under such contract or order.

(2)(A) A notice of solicitation required to be published under paragraph (1) may be published—

(i) by electronic means that meet the accessibility requirements under section 1708(d) of title 41; or

(ii) by the Secretary of Commerce in the Commerce Business Daily.

(B) The Secretary of Commerce shall promptly publish in the Commerce Business Daily each notice or announcement received under this subsection for publication by that means.

(3) Whenever an executive agency is required by paragraph (1)(A) to publish a notice of solicitation, such executive agency may not—

(A) issue the solicitation earlier than 15 days after the date on which the notice is published; or

(B) in the case of a contract or order estimated to be greater than the simplified acquisition threshold, establish a deadline for the submission of all bids or proposals in response to the notice required by paragraph (1)(A) that—

(i) in the case of an order under a basic agreement, basic ordering agreement, or similar arrangement, is earlier than the date 30 days after the date the notice required by paragraph (1)(A)(ii) is published;

(ii) in the case of a solicitation for research and development, is earlier than the date 45 days after the date the notice required by paragraph (1)(A)(i) is published; or

(iii) in any other case, is earlier than the date 30 days after the date the solicitation is issued.

(f) Contents of notice

Each notice of solicitation required by subparagraph (A) or (B) of subsection (e)(1) of this section shall include—

(1) an accurate description of the property or services to be contracted for, which description (A) shall not be unnecessarily restrictive of competition, and (B) shall include, as appropriate, the agency nomenclature, National Stock Number or other part number, and a brief description of the item's form, fit, or function, physical dimensions, predominant material of manufacture, or similar information that will assist a prospective contractor to make an informed business judgment as to whether a copy of the solicitation should be requested;

(2) provisions that—

(A) state whether the technical data required to respond to the solicitation will not be furnished as part of such solicitation, and identify the source in the Government, if any, from which the technical data may be obtained; and

(B) state whether an offeror, its product, or service must meet a qualification requirement in order to be eligible for award, and, if so, identify the office from which a qualification requirement may be obtained;

(3) the name, business address, and telephone number of the contracting officer;

(4) a statement that all responsible sources may submit a bid, proposal, or quotation (as appropriate) which shall be considered by the agency;

(5) in the case of a procurement using procedures other than competitive procedures, a statement of the reason justifying the use of such procedures and the identity of the intended source; and

(6) in the case of a contract in an amount estimated to be greater than $25,000 but not greater than the simplified acquisition threshold—

(A) a description of the procedures to be used in awarding the contract; and

(B) a statement specifying the periods for prospective offerors and the contracting officer to take the necessary preaward and award actions.

(g) Exempted, etc., activities of executive agency

(1) A notice is not required under subsection (e)(1) of this section if—

(A) the proposed procurement is for an amount not greater than the simplified acquisition threshold and is to be conducted by—

(i) using widespread electronic public notice of the solicitation in a form that allows convenient and universal user access through a single, Government-wide point of entry; and

(ii) permitting the public to respond to the solicitation electronically.

(B) the notice would disclose the executive agency's needs and the disclosure of such needs would compromise the national security;

(C) the proposed procurement would result from acceptance of—

(i) any unsolicited proposal that demonstrates a unique and innovative research concept and the publication of any notice of such unsolicited research proposal would disclose the originality of thought or innovativeness of the proposal or would disclose proprietary information associated with the proposal; or

(ii) a proposal submitted under section 638 of this title;

(D) the procurement is made against an order placed under a requirements contract;

(E) the procurement is made for perishable subsistence supplies;

(F) the procurement is for utility services, other than telecommunication services, and only one source is available; or

(G) the procurement is for the services of an expert for use in any litigation or dispute (including preparation for any foreseeable litigation or dispute) that involves or could involve the Federal Government in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, or in any part of an alternative dispute resolution process, whether or not the expert is expected to testify.

(2) The requirements of subsection (a)(1)(A) of this section do not apply to any procurement under

conditions described in paragraph (2), (3), (4), (5), or (7) of section 3304(a) of title 41 or paragraph (2), (3), (4), (5), or (7) of section 2304(c) of title 10.

(3) The requirements of subsection (a)(1)(A) of this section shall not apply in the case of any procurement for which the head of the executive agency makes a determination in writing, after consultation with the Administrator for Federal Procurement Policy and the Administrator of the Small Business Administration, that it is not appropriate or reasonable to publish a notice before issuing a solicitation.

(h) Award of contracts; procedures other than competitive ones; exceptions

(1) An executive agency may not award a contract using procedures other than competitive procedures unless—

(A) except as provided in paragraph (2), a written justification for the use of such procedures has been approved—

(i) in the case of a contract for an amount exceeding $100,000 (but equal to or less than $1,000,000), by the advocate for competition for the procuring activity (without further delegation);

(ii) in the case of a contract for an amount exceeding $1,000,000 (but equal to or less than $10,000,000), by the head of the procuring activity or a delegate who, if a member of the Armed Forces, is a general or flag officer, or, if a civilian, is serving in a position in grade GS–16 or above under the General Schedule (or in a comparable or higher position under another schedule); or

(iii) in the case of a contract for an amount exceeding $10,000,000, by the senior procurement executive of the agency designated pursuant to section 414(3) of title 41 [5] (without further delegation); and

(B) all other requirements applicable to the use of such procedures under division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41 or chapter 137 of title 10, as appropriate, have been satisfied.

(2) The same exceptions as are provided in paragraphs (3) and (4) of section 3304(e) of title 41 or section 2304(f)(2) of title 10 shall apply with respect to the requirements of paragraph (1)(A) of this subsection in the same manner as such exceptions apply to the requirements of section 3304(e)(1) of title 41 or section 2304(f)(1) of title 10, as appropriate.

(i) Availability; complete solicitation package; fees

An executive agency shall make available to any business concern, or the authorized representative of such concern, the complete solicitation package for any on-going procurement announced pursuant to a notice under subsection (e) of this section. An executive agency may require the payment of a fee, not exceeding the actual cost of duplication, for a copy of such package.

(j) "Executive agency" defined

For purposes of this section, the term "executive agency" has the meaning provided such term in section 133 of title 41.

(k) Notices of subcontracting opportunities

(1) In general

Notices of subcontracting opportunities may be submitted for publication on the appropriate Federal Web site (as determined by the Administrator) by—

(A) a business concern awarded a contract by an executive agency subject to subsection (e)(1)(C) of this section; and

(B) a business concern that is a subcontractor or supplier (at any tier) to such contractor having a subcontracting opportunity in excess of $10,000.

(2) Content of notice

The notice of a subcontracting opportunity shall include—

(A) a description of the business opportunity that is comparable to the description specified in paragraphs (1), (2), (3), and (4) of subsection (f) of this section; and

(B) the due date for receipt of offers.

(l) Management assistance for small businesses affected by military operations

The Administration shall utilize, as appropriate, its entrepreneurial development and management assistance programs, including programs involving State or private sector partners, to provide business counseling and training to any small business concern adversely affected by the deployment of units of the Armed Forces of the United States in support of a period of military conflict (as defined in section 636(n)(1) of this title).

(m) Procurement program for women-owned small business concerns

(1) Definitions

In this subsection, the following definitions apply:

(A) Contracting officer

The term "contracting officer" has the meaning given such term in section 2101(1) of title 41.

(B) Small business concern owned and controlled by women

The term "small business concern owned and controlled by women" has the meaning given such term in section 632(n) of this title, except that ownership shall be determined without regard to any community property law.

(2) Authority to restrict competition

In accordance with this subsection, a contracting officer may restrict competition for any contract for the procurement of goods or services by the Federal Government to small business concerns owned and controlled by women, if—

(A) each of the concerns is not less than 51 percent owned by one or more women who are economically disadvantaged (and such ownership is determined without regard to any community property law);

(B) the contracting officer has a reasonable expectation that two or more small business concerns owned and controlled by women will submit offers for the contract;

(C) the contract is for the procurement of goods or services with respect to an industry identified by the Administrator pursuant to paragraph (3);

(D) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price; and

(E) each of the concerns—

(i) is certified by a Federal agency, a State government, or a national certifying entity approved by the Administrator, as a small business concern owned and controlled by women; or

(ii) certifies to the contracting officer that it is a small business concern owned and controlled by women and provides adequate documentation, in accordance with standards established by the Administration, to support such certification.

(3) Waiver

With respect to a small business concern owned and controlled by women, the Administrator may waive subparagraph (2)(A) if the Administrator determines that the concern is in an industry in which small business concerns owned and controlled by women are substantially underrepresented.

(4) Identification of industries

The Administrator shall conduct a study to identify industries in which small business concerns owned and controlled by women are underrepresented with respect to Federal procurement contracting.

(5) Enforcement; penalties

(A) Verification of eligibility

In carrying out this subsection, the Administrator shall establish procedures relating to—

(i) the filing, investigation, and disposition by the Administration of any challenge to the eligibility of a small business concern to receive assistance under this subsection (including a challenge, filed by an interested party, relating to the veracity of a certification made or information provided to the Administration by a small business concern under paragraph (2)(F)); and

(ii) verification by the Administrator of the accuracy of any certification made or information provided to the Administration by a small business concern under paragraph (2)(F).

(B) Examinations

The procedures established under subparagraph (A) may provide for program examinations (including random program examinations) by the Administrator of any small business concern making a certification or providing information to the Administrator under paragraph (2)(F).

(C) Penalties

In addition to the penalties described in section 645(d) of this title, any small business concern that is determined by the Administrator to have misrepresented the status of that concern as a small business concern owned and controlled by women for purposes of this subsection, shall be subject to—

(i) section 1001 of title 18; and

(ii) sections 3729 through 3733 of title 31.

(6) Provision of data

Upon the request of the Administrator, the head of any Federal department or agency shall promptly provide to the Administrator such information as the Administrator determines to be necessary to carry out this subsection.

(n) Business grants and cooperative agreements

(1) In general

In accordance with this subsection, the Administrator may make grants to and enter into cooperative agreements with any coalition of private entities, public entities, or any combination of private and public entities—

(A) to expand business-to-business relationships between large and small businesses; and

(B) to provide businesses, directly or indirectly, with online information and a database of companies that are interested in mentor-protege programs or community-based, statewide, or local business development programs.

(2) Matching requirement

Subject to subparagraph (B), the Administrator may make a grant to a coalition under paragraph (1) only if the coalition provides for activities described in paragraph (1)(A) or (1)(B) an amount, either in kind or in cash, equal to the grant amount.

(3) Authorization of appropriations

There is authorized to be appropriated to carry out this subsection $6,600,000, to remain available until expended, for each of fiscal years 2001 through 2006.

(Pub. L. 85–536, §2[8], July 18, 1958, 72 Stat. 389; Pub. L. 87–305, §§7, 8, Sept. 26, 1961, 75 Stat. 667, 668; Pub. L. 88–560, title III, §305(c), Sept. 2, 1964, 78 Stat. 786; Pub. L. 89–754, title X, §1017, Nov. 3, 1966, 80 Stat. 1295; Pub. L. 90–104, title I, §§105–107, Oct. 11, 1967, 81 Stat. 268, 269; Pub. L. 91–375, §6(g), Aug. 12, 1970, 84 Stat. 776; Pub. L. 95–89, title V, §501, Aug. 4, 1977, 91 Stat. 561; Pub. L. 95–507, title II, §§202(a), 211, Oct. 24, 1978, 92 Stat. 1761, 1767; Pub. L. 95–510, §101, Oct. 24, 1978, 92 Stat. 1780; Pub. L. 96–302, title I, §118(b), July 2, 1980, 94 Stat.

840; Pub. L. 96–481, title I, §§101, 105, Oct. 21, 1980, 94 Stat. 2321, 2322; Pub. L. 98–47, §§1(a), 2, 3, July 13, 1983, 97 Stat. 243; Pub. L. 98–72, §1(a), Aug. 11, 1983, 97 Stat. 403; Pub. L. 98–362, §5(a), July 16, 1984, 98 Stat. 433; Pub. L. 98–577, title IV, §§401, 402, 404(a), Oct. 30, 1984, 98 Stat. 3079, 3082; Pub. L. 99–272, title XVIII, §18015(b)–(d), Apr. 7, 1986, 100 Stat. 370, 371; Pub. L. 99–500, §101(c) [title X, §§921(b)(2), (c)(1), 922(a), (d)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–147, 1783–151, 1783–152, and Pub. L. 99–591, §101(c) [title X, §§921(b)(2), (c)(1), 922(a), (d)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–147, 3341–151, 3341–152; Pub. L. 99–567, §§1(a), 2, 3, Oct. 27, 1986, 100 Stat. 3188; Pub. L. 99–661, div. A, title IX, formerly title IV, §§921(b)(2), (c)(1), 922(a), (d)(1), Nov. 14, 1986, 100 Stat. 3927, 3930, 3932, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–26, §10(b)(3), Apr. 21, 1987, 101 Stat. 288; Pub. L. 100–533, title II, §§201, 202, Oct. 25, 1988, 102 Stat. 2690, 2692; Pub. L. 100–590, title I, §§127(a), (b), 131(b), Nov. 3, 1988, 102 Stat. 3001, 3003, 3004; Pub. L. 100–656, title II, §§201(b), 207(a), (c), 209, title III, §§303(b)–(e), (g), (h), 304(a), title IV, §§402–404, 407, 409, title V, §501, Nov. 15, 1988, 102 Stat. 3858, 3861, 3863, 3869, 3870, 3872–3874, 3876, 3878, 3880; Pub. L. 101–37, §§6(b), (d), 7(b), 10(c), (e), 12–14, 16, 17, June 15, 1989, 103 Stat. 72–74; Pub. L. 101–162, title V, (3), Nov. 21, 1989, 103 Stat. 1025; Pub. L. 101–510, div. A, title VIII, §806(e)(2), Nov. 5, 1990, 104 Stat. 1593; Pub. L. 101–574, title II, §§204(b), 207, 210, 244, Nov. 15, 1990, 104 Stat. 2819–2821, 2827; Pub. L. 102–190, div. A, title VIII, §814(c), Dec. 5, 1991, 105 Stat. 1425; Pub. L. 102–191, §3, Dec. 5, 1991, 105 Stat. 1591; Pub. L. 102–366, title II, §232(a), Sept. 4, 1992, 106 Stat. 1001; Pub. L. 102–564, title III, §§303(a), 304, Oct. 28, 1992, 106 Stat. 4262; Pub. L. 103–355, title I, §1055(b)(2), title IV, §§4202(d), 4404(b), title VII, §7106(b), Oct. 13, 1994, 108 Stat. 3265, 3345, 3349, 3375; Pub. L. 103–403, title IV, §§401(a)(1), 407, 415, Oct. 22, 1994, 108 Stat. 4190, 4192, 4198; Pub. L. 104–106, div. D, title XLIII, §4321(c)(1), (2), Feb. 10, 1996, 110 Stat. 674; Pub. L. 105–85, div. A, title VIII, §850(e)(1), Nov. 18, 1997, 111 Stat. 1848; Pub. L. 105–135, title IV, §§415, 416(a), (c), title VI, §603(a), title VII, §708, Dec. 2, 1997, 111 Stat. 2619, 2620, 2631, 2637; Pub. L. 106–50, title III, §303(a), title V, §501, Aug. 17, 1999, 113 Stat. 243, 247; Pub. L. 106–398, §1 [[div. A], title VIII, §810(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–209; Pub. L. 106–554, §1(a)(8) [§2], §1(a)(9) [title V, §504(a), title VI, §615(b), title VIII, §§803, 807, 809, 811], Dec. 21, 2000, 114 Stat. 2763, 2763A–666, 2763A–695, 2763A–701, 2763A–702, 2763A–706, 2763A–708; Pub. L. 108–447, div. K, title I, §§132(b), (c), 141(a), 144, Dec. 8, 2004, 118 Stat. 3453, 3455; Pub. L. 111–240, title I, §§1322, 1334, Sept. 27, 2010, 124 Stat. 2540, 2542; Pub. L. 112–239, div. A, title XVI, §§1653(a), 1654, 1696(b)(2), 1697(a), Jan. 2, 2013, 126 Stat. 2081, 2083, 2091; Pub. L. 113–66, div. A, title XVI, §1614(a), Dec. 26, 2013, 127 Stat. 948.)

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in subsecs. (a)(2)(C), (21)(D), and (b)(13), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, which is classified principally to chapter 14B (§661 et seq.) of this title. Title IV of the Small Business Investment Act of 1958 is classified generally to subchapter IV–A (§692 et seq.) of chapter 14B of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

The Alaska Native Claims Settlement Act, referred to in subsec. (a)(13), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

Section 35(a) of title 41, referred to in subsecs. (a)(17)(B)(iii) and (b)(7)(B), was struck out and former section 35(b) of Title 41, Public Contracts, redesignated section 35(a) by Pub. L. 103–355, title VII, §7201(1), Oct. 13, 1994, 108 Stat. 3378. Section 35 of title 41 was subsequently repealed and restated as sections 6501(1) and 6502 of Title 41, Public Contracts, by Pub. L. 111–350, §§3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855. Section 6510 of Title 41 now provides for determination of "regular dealer" by Secretary of Labor. For disposition of sections of former Title 41, see Disposition Table preceding section 101 of Title 41.

The Program Fraud Civil Remedies Act of 1986, referred to in subsec. (a)(18)(C)(iv), is subtitle B of title VI of Pub. L. 99–509, Oct. 21, 1986, 100 Stat. 1934, which is classified generally to chapter 38 (§3801 et seq.) of Title 31, Money and Finance. For complete classification of this Act to the Code, see Short Title note set out under section 3801 of Title 31 and Tables.

The Women's Business Ownership Act of 1988, referred to in subsec. (b)(1)(G), is Pub. L. 100–533, Oct.

25, 1988, 102 Stat. 2689. Title IV of the Act is classified generally to chapter 97 (§7101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title of 1988 Amendments note set out under section 631 of this title and Tables.

Section 110 of the Housing Act of 1949 [42 U.S.C. 1460], referred to in subsec. (b)(14), was omitted from the Code pursuant to section 5316 of Title 42, The Public Health and Welfare, which terminated authority to make grants or loans under title I of that Act [42 U.S.C. 1450 et seq.] after Jan. 1, 1975.

Sections 3 and 8 of the Small Business Act, referred to in subsec. (d)(3)(C), (E)(ii), (G), are classified to sections 632 and 637, respectively, of this title.

The General Schedule, referred to in subsec. (h)(1)(A)(ii), is set out under section 5332 of Title 5.

Section 414 of title 41, referred to in subsec. (h)(1)(A)(iii), was amended generally by Pub. L. 108–136, div. A, title XIV, §1421(a)(1), Nov. 24, 2003, 117 Stat. 1666, and, as so amended, the substance of par. (3) was restated in subsec. (c)(1) of section 414. Section 414(c) of title 41 was subsequently repealed and restated as section 1702(c) of Title 41, Public Contracts, by Pub. L. 111–350, §§3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855. For disposition of sections of former Title 41, see Disposition Table preceding section 101 of Title 41.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

In subsec. (a)(2), "subsections (a), (b), and (e) of section 3131 of title 40" substituted for "subsections (a) and (c) of the first section of the Act entitled 'An Act requiring contracts for the construction, alteration, and repair of any public building or public work of the United States to be accompanied by a performance bond protecting the United States and by additional bond for the protection of persons furnishing material and labor for the construction, alteration, or repair of said public buildings or public work,' approved August 24, 1935 (49 Stat. 793)" on authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

In subsec. (d)(4)(F)(ii), "chapter 71 of title 41" substituted for "the Contract Disputes Act of 1978 (41 U.S.C. 601–613)" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (d)(13)(E), "section 1302(a) of title 41" substituted for "section 25(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(a))" and "section 1303(a) of title 41" substituted for "section 25 of such Act" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (e)(2)(A)(i), "section 1708(d) of title 41" substituted for "section 18(a)(7) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(a)(7))" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (g)(2), "paragraph (2), (3), (4), (5), or (7) of section 3304(a) of title 41" substituted for "paragraph (2), (3), (4), (5), or (7) of section 303(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c))" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (h)(1)(B), "division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41" substituted for "title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (h)(2), "paragraphs (3) and (4) of section 3304(e) of title 41" substituted for "section 303(f)(2) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(f)(2))" and "section 3304(e)(1) of title 41 or section 2304(f)(1) of title 10" substituted for "section 303(f)(1) of such Act or section 2304(f)(1) of such title" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (j), "section 133 of title 41" substituted for "section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1))" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (m)(1)(A), "section 2101(1) of title 41" substituted for "section 27(f)(5) of the Office of Federal Procurement Policy Act (41 U.S.C. 423(f)(5))" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

PRIOR PROVISIONS

Prior similar provisions were contained in sections 207(b)(2), (b)(4), 208, 210, 212 and 216 of act July 30, 1953, ch. 282, title II, 67 Stat. 235–239, as amended by acts Aug. 9, 1955, ch. 628, §§2, 5, 7, 69 Stat. 547, 550; Feb. 2, 1956, ch. 29, §§2, 3, 70 Stat. 10, which were previously classified to this section and sections 636, 639, 641, and 645 of this title. See Codification note set out under section 631 of this title.

AMENDMENTS

2013—Subsec. (a)(14). Pub. L. 112–239, §1696(b)(2), added par. (14) and struck out former par. (14) which read as follows:

"(A) A concern may not be awarded a contract under this subsection as a small business concern unless the concern agrees that—

"(i) in the case of a contract for services (except construction), at least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern; and

"(ii) in the case of a contract for procurement of supplies (other than procurement from a regular dealer in such supplies), the concern will perform work for at least 50 percent of the cost of manufacturing the supplies (not including the cost of materials).

"(B) The Administrator may change the percentage under clause (i) or (ii) of subparagraph (A) if the Administrator determines that such change is necessary to reflect conventional industry practices among business concerns that are below the numerical size standard for businesses in that industry category. A percentage established under the preceding sentence may not differ from a percentage established under section 644(o) of this title.

"(C) The Administration shall establish, through public rulemaking, requirements similar to those specified in subparagraph (A) to be applicable to contracts for general and specialty construction and to contracts for any other industry category not otherwise subject to the requirements of such subparagraph. The percentage applicable to any such requirement shall be determined in accordance with subparagraph (B), except that such a percentage may not differ from a percentage established under section 644(o) of this title for the same industry category."

Subsec. (d)(6)(D). Pub. L. 113–66, §1614(a)(1), substituted ", and assurances at a minimum that the offeror or bidder, and all subcontractors required to maintain subcontracting plans pursuant to this paragraph, will—" for semicolon at end and added cls. (i) to (vi).

Subsec. (d)(6)(G), (H). Pub. L. 113–66, §1614(a)(2), (3), added subpar. (G) and redesignated former subpar. (G) as (H).

Subsec. (d)(7), (8). Pub. L. 112–239, §1653(a)(1), (2), added par. (7) and redesignated former par. (7) as (8). Former par. (8) redesignated (9).

Subsec. (d)(9). Pub. L. 112–239, §1653(a)(3), substituted "shall be a material breach of such contract or subcontract and may be considered in any past performance evaluation of the contractor" for "shall be a material breach of such contract or subcontract" in concluding provisions.

Pub. L. 112–239, §1653(a)(1), redesignated par. (8) as (9). Former par. (9) redesignated (10).

Subsec. (d)(10). Pub. L. 112–239, §1653(a)(1), redesignated par. (9) as (10). Former par. (10) redesignated (11).

Subsec. (d)(11). Pub. L. 112–239, §1653(a)(1), redesignated par. (10) as (11). Former par. (11) redesignated (12).

Subsec. (d)(11)(C). Pub. L. 112–239, §1653(a)(4), substituted "as a supplement to evaluations performed by the contracting agency, either on a contract-by-contract basis or, in the case of contractors" for ", either on a contract-by-contract basis, or in the case contractors".

Subsec. (d)(12), (13). Pub. L. 112–239, §1653(a)(1), redesignated pars. (11) and (12) as (12) and (13), respectively.

Subsec. (d)(14), (15). Pub. L. 112–239, §1653(a)(5), added pars. (14) and (15).

Subsec. (d)(16). Pub. L. 113–66, §1614(a)(4), added par. (16).

Subsec. (k)(1). Pub. L. 112–239, §1654, substituted "on the appropriate Federal Web site (as determined by the Administrator)" for "in the Commerce Business Daily".

Subsec. (m)(2)(D) to (F). Pub. L. 112–239, §1697(a), redesignated subpars. (E) and (F) as (D) and (E), respectively, and struck out former subpar. (D) which read as follows: "the anticipated award price of the contract (including options) does not exceed—

"(i) $5,000,000, in the case of a contract assigned an industrial classification code for manufacturing; or

"(ii) $3,000,000, in the case of all other contracts;".

2010—Subsec. (d)(6)(G). Pub. L. 111–240, §1322, added subpar. (G).

Subsec. (d)(12). Pub. L. 111–240, §1334, added par. (12).

2004—Subsec. (b)(1)(A). Pub. L. 108–447, §132(b), (c), temporarily struck out cl. (ii), substituted "to provide technical, managerial, and informational aids to small business concerns—" for "to provide—

"(i) technical, managerial, and informational aids to small business concerns—",

redesignated subcls. (I) to (IV) of former cl. (i) as cls. (i) to (iv), respectively, substituted a period for "; and"

at end of cl. (iv), and redesignated items (aa) and (bb) of former subcl. (II) as subcls. (I) and (II), respectively.

Subsec. (b)(1)(B). Pub. L. 108–447, §141(a), substituted "purposes of subparagraph (A). To facilitate" for "purposes of subparagraph (A); and to facilitate", "shall maintain at its headquarters and pay the salaries, benefits, and expenses of a volunteer and professional staff to manage and oversee the program. Any" for "may maintain at its headquarters and pay the expenses of a team of volunteers subject to such conditions and limitations as the Administration deems appropriate: *Provided*, That any", and "and the management of the contributions received." for period at end.

Subsec. (b)(17). Pub. L. 108–447, §144, inserted before period at end ", veterans, and members of a reserve component of the Armed Forces".

2000—Subsec. (a)(15)(A). Pub. L. 106–554, §1(a)(9) [title VIII, §807], amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "is a not-for-profit organization chartered by the State of Hawaii,".

Subsec. (b)(1)(A). Pub. L. 106–554, §1(a)(9) [title V, §504(a)], amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "to provide technical and managerial aids to small-business concerns, by advising and counseling on matters in connection with Government procurement and property disposal and on policies, principles, and practices of good management, including but not limited to cost accounting, methods of financing, business insurance, accident control, wage incentives, computer security, and methods engineering, by cooperating and advising with voluntary business, professional, educational, and other nonprofit organizations, associations, and institutions and with other Federal and State agencies, by maintaining a clearinghouse for information concerning the managing, financing, and operation of small-business enterprises, including information on the benefits and risks of franchising, by disseminating such information, and by such other activities as are deemed appropriate by the Administration; and In the case of cosponsored activities which include the participation of a Federal, State, or local public official or agency, the Administration shall take such actions as it deems necessary to ensure that the cooperation does not constitute or imply an endorsement by the Administration of or give undue recognition to the public official or agency, and the Administration shall ensure that it receives appropriate recognition in all cosponsored printed materials, whether the participant is a profit making concern or a governmental agency or public official."

Subsec. (b)(1)(B). Pub. L. 106–554, §1(a)(9) [title VIII, §809], inserted at end "Notwithstanding any other provision of law, SCORE may solicit cash and in-kind contributions from the private sector to be used to carry out its functions under this chapter, and may use payments made by the Administration pursuant to this subparagraph for such solicitation."

Subsec. (d)(1). Pub. L. 106–554, §1(a)(9) [title VIII, §803(1)], inserted "small business concerns owned and controlled by veterans," after "small business concerns," the first place appearing in the first and second sentences.

Subsec. (d)(3)(A). Pub. L. 106–554, §1(a)(9) [title VIII, §803(2)(A)], inserted "small business concerns owned and controlled by service-disabled veterans," after "small business concerns owned and controlled by veterans," in two places.

Subsec. (d)(3)(F). Pub. L. 106–554, §1(a)(9) [title VIII, §803(2)(B)], inserted "small business concern owned and controlled by service-disabled veterans," after "small business concern owned and controlled by veterans,".

Subsec. (d)(4)(D). Pub. L. 106–554, §1(a)(9) [title VIII, §803(3)], inserted "small business concerns owned and controlled by service-disabled veterans," after "small business concerns owned and controlled by veterans,".

Pub. L. 106–554, §1(a)(9) [title VI, §615(b)], inserted "qualified HUBZone small business concerns," after "small business concerns,".

Subsec. (d)(4)(E), (6)(A), (C), (F), (10)(B). Pub. L. 106–554, §1(a)(9) [title VIII, §803(3)], inserted "small business concerns owned and controlled by service-disabled veterans," after "small business concerns owned and controlled by veterans,".

Subsec. (e)(1)(A). Pub. L. 106–398, §1 [[div. A], title VIII, §810(c)(1)], substituted "publish" for "furnish for publication by the Secretary of Commerce" in concluding provisions.

Subsec. (e)(2). Pub. L. 106–398, §1 [[div. A], title VIII, §810(c)(2)], added par. (2) and struck out former par. (2) which read as follows: "The Secretary of Commerce shall publish promptly in the Commerce Business Daily each notice required by paragraph (1)."

Subsec. (e)(3). Pub. L. 106–398, §1 [[div. A], title VIII, §810(c)(3)], substituted "publish a notice of solicitation" for "furnish a notice to the Secretary of Commerce" in introductory provisions and struck out "by the Secretary of Commerce" after "notice is published" in subpar. (A).

Subsec. (m). Pub. L. 106–554, §1(a)(9) [title VIII, §811], added subsec. (m).

Subsec. (n). Pub. L. 106–554, §1(a)(8) [§2], added subsec. (n).

1999—Subsec. (d)(1). Pub. L. 106–50, §501(a), inserted "small business concerns owned and controlled by service-disabled veterans," after "small business concerns," in two places.

Subsec. (d)(3)(A). Pub. L. 106–50, §501(b)(1), inserted "small business concerns owned and controlled by veterans," after "small business concerns," in two places.

Subsec. (d)(3)(E). Pub. L. 106–50, §501(b)(2), added subpar. (E). Former subpar. (E) redesignated (F).

Subsec. (d)(3)(F). Pub. L. 106–50, §501(b)(2), (3), redesignated subpar. (E) as (F) and inserted "small business concern owned and controlled by veterans," after "small business concern,". Former subpar. (F) redesignated (G).

Subsec. (d)(3)(G). Pub. L. 106–50, §501(b)(2), redesignated subpar. (F) as (G).

Subsec. (d)(4)(D), (E), (6)(A), (C), (F), (10)(B). Pub. L. 106–50, §501(c), inserted "small business concerns owned and controlled by veterans," after "small business concerns," the first place appearing.

Subsec. (l). Pub. L. 106–50, §303(a), added subsec. (l).

1997—Subsec. (b)(16). Pub. L. 105–135, §708(3), struck out the par. (16) added by Pub. L. 100–590, §127(b). See 1988 Amendment note below.

Subsec. (b)(17). Pub. L. 105–135, §708, added par. (17).

Subsec. (d)(1). Pub. L. 105–135, §603(a)(1)(B), inserted "qualified HUBZone small business concerns," after "small business concerns," in second sentence.

Pub. L. 105–135, §603(a)(1)(A), which directed substitution of ", qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals" for ",, small business concerns owned and controlled by socially and economically disadvantaged individuals" in first sentence, was executed by making the substitution for ", small business concerns owned and controlled by socially and economically disadvantaged individuals" to reflect the probable intent of Congress and the amendment by Pub. L. 104–106, §4321(c)(1)(A). See 1996 Amendment note below.

Subsec. (d)(3)(A). Pub. L. 105–135, §603(a)(2)(A), inserted "qualified HUBZone small business concerns," after "small business concerns," in two places.

Subsec. (d)(3)(F). Pub. L. 105–135, §603(a)(2)(B), added subpar. (F).

Subsec. (d)(4)(E). Pub. L. 105–135, §603(a)(3), substituted "small business concerns, qualified HUBZone small business concerns, and" for "small business concerns and" after "opportunities for".

Subsec. (d)(4)(G). Pub. L. 105–135, §415, added subpar. (G).

Subsec. (d)(6). Pub. L. 105–135, §603(a)(4), inserted "qualified HUBZone small business concerns," after "small business concerns," wherever appearing.

Subsec. (d)(10)(B). Pub. L. 105–135, §603(a)(5), inserted "qualified HUBZone small business concerns," after "small business concerns,".

Subsec. (e)(1)(C). Pub. L. 105–135, §416(c), substituted "$100,000" for "$25,000" in two places.

Subsec. (g)(1). Pub. L. 105–85 added subpar. (A), redesignated subpars. (C) to (H) as (B) to (G), respectively, and struck out former subpars. (A) and (B) which read as follows:

"(A) the proposed procurement is for an amount not greater than the simplified acquisition threshold and is to be made through a system with interim FACNET capability certified pursuant to section 426a(a)(1) of title 41 or with full FACNET capability certified pursuant to section 426a(a)(2) of title 41;

"(B)(i) the proposed procurement is for an amount not greater than $250,000 and is to be made through a system with full FACNET capability certified pursuant to section 426a(a)(2) of title 41; and

"(ii) a certification has been made pursuant to section 426a(b) title 41 that Government-wide FACNET capability has been implemented;".

Subsec. (k). Pub. L. 105–135, §416(a), added subsec. (k).

1996—Subsec. (d)(1). Pub. L. 104–106, §4321(c)(1)(A), substituted "that small business concerns," for "that small business concerns,,".

Subsec. (d)(6)(C). Pub. L. 104–106, §4321(c)(1)(B), substituted ", small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women" for "and small business concerns owned and controlled by the socially and economically disadvantaged individuals".

Subsec. (f)(5). Pub. L. 104–106, §4321(c)(2), inserted "and" at end.

1994—Subsec. (b)(1)(A). Pub. L. 103–403, §407, inserted "including information on the benefits and risks of franchising," after "small-business enterprises," in first sentence.

Pub. L. 103–403, §401(a)(1), repealed amendments made by Pub. L. 98–362, §5(a), effective Sept. 30, 2003. Amendment by Pub. L. 98–362, §5(a)(2), previously repealed effective Oct. 1, 1994, by section 7(b) of Pub. L. 98–362, as amended. See Effective and Termination Dates of 1984 Amendments notes below.

Subsec. (b)(1)(G). Pub. L. 103–403, §415, substituted "this chapter and to carry out the activities authorized

by title IV of the Women's Business Ownership Act of 1988" for "this paragraph".

Subsec. (d)(1). Pub. L. 103–355, §7106(b)(1), substituted ", small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women" for "and small business concerns owned and controlled by socially and economically disadvantaged individuals" in two places.

Subsec. (d)(2)(A). Pub. L. 103–355, §4404(b), substituted "simplified acquisition threshold" for "small purchase threshold".

Subsec. (d)(3)(A). Pub. L. 103–355, §7106(b)(1), substituted ", small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women" for "and small business concerns owned and controlled by socially and economically disadvantaged individuals" in two places.

Subsec. (d)(3)(D), (E). Pub. L. 103–355, §7106(b)(2), (3), added subpars. (D) and (E) and struck out former subpar. (D) which read as follows: " 'Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.' "

Subsec. (d)(4)(D). Pub. L. 103–355, §7106(b)(1), substituted ", small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women" for "and small business concerns owned and controlled by socially and economically disadvantaged individuals".

Subsec. (d)(4)(E). Pub. L. 103–355, §7106(b)(4), inserted "and for small business concerns owned and controlled by women" after "(3) of this subsection".

Subsec. (d)(6)(A). Pub. L. 103–355, §7106(b)(1), substituted ", small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women" for "and small business concerns owned and controlled by socially and economically disadvantaged individuals".

Subsec. (d)(6)(C). Pub. L. 103–355, §7106(b)(1), which directed that subpar. (C) be amended by substituting ", small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women" for "and small business concerns owned and controlled by socially and economically disadvantaged individuals", could not be executed because the words "and small business concerns owned and controlled by socially and economically disadvantaged individuals" did not appear in subpar. (C).

Subsec. (d)(6)(F), (10)(B). Pub. L. 103–355, §7106(b)(1), substituted ", small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women" for "and small business concerns owned and controlled by socially and economically disadvantaged individuals".

Subsec. (e)(1). Pub. L. 103–355, §4202(d)(1)(A), substituted "$25,000" for "the small purchase threshold" wherever appearing.

Subsec. (e)(3)(B). Pub. L. 103–355, §4202(d)(1)(B), inserted "in the case of a contract or order estimated to be greater than the simplified acquisition threshold," after "(B)".

Subsec. (f)(6). Pub. L. 103–355, §4202(d)(2), added par. (6).

Subsec. (g)(1)(A) to (E). Pub. L. 103–355, §4202(d)(3)(A), (B), added subpars. (A) and (B) and redesignated former subpars. (A) to (C) as (C) to (E), respectively. Former subpars. (D) and (E) redesignated (F) and (G), respectively.

Subsec. (g)(1)(F). Pub. L. 103–355, §4202(d)(3)(A), redesignated subpar. (D) as (F). Former subpar. (F) redesignated (H).

Pub. L. 103–355, §1055(b)(2), added subpar. (F).

Subsec. (g)(1)(G), (H). Pub. L. 103–355, §4202(d)(3)(A), redesignated subpars. (E) and (F) as (G) and (H), respectively.

1992—Subsec. (a). Pub. L. 102–366, §232(a)(1)–(5), substituted semicolon for period at end of par. (1)(B), "; and" for period at end of par. (1)(C), "to subparagraph (A)" for "to (A)" in par. (6)(C)(i), "636(j)(10)(G)" for "636(j)(10)(H)" in par. (6)(C)(ii), and "to subparagraph (D)" for "to (D)" in par. (12)(E).

Subsec. (b)(1)(E) to (G). Pub. L. 102–564, §304, added subpar. (E) and redesignated former subpars. (E) and (F) as (F) and (G), respectively.

Subsec. (c). Pub. L. 102–366, §232(a)(7), designated subsec. (c) as reserved. Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 102–366, §232(a)(6), (8), redesignated subsec. (c) as (d) and substituted "imposition" for "impositon" in par. (4)(F)(ii). Former subsec. (d) redesignated (e).

Subsec. (d)(11), (12). Pub. L. 102–564, §303(a), redesignated par. (12) as (11) and struck out former par.

(11) which read as follows: "At the conclusion of each fiscal year, the Administration shall submit to the Senate Select Committee on Small Business and the Committee on Small Business of the House of Representatives a report on subcontracting plans found acceptable by any Federal agency which the Administration determines do not contain maximum practicable opportunities for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to participate in the performance of contracts described in this subsection."

Subsecs. (e) to (g). Pub. L. 102–366, §232(a)(6), redesignated subsecs. (d) to (f) as (e) to (g), respectively. Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 102–366, §232(a)(6), (9), redesignated subsec. (g) as (h) and substituted "Administrative" for "Administration" in par. (2). Former subsec. (h) redesignated (i).

Subsecs. (i), (j). Pub. L. 102–366, §232(a)(6), redesignated subsecs. (h) and (i) as (i) and (j), respectively.

1991—Subsec. (c). Pub. L. 102–191 redesignated subsec. (d) as (c) and struck out former subsec. (c) which related to management and technical assistance for small businesses owned by women. See section 656 of this title.

Subsec. (d). Pub. L. 102–191 redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (d)(12). Pub. L. 102–190 added par. (12).

Subsecs. (e) to (j). Pub. L. 102–191, which directed the redesignation of subsecs. (e) to (j) as (d) to (k), was executed by redesignating subsecs. (e) to (j) as (d) to (i), respectively, to reflect the probable intent of Congress.

1990—Subsec. (a)(1). Pub. L. 101–574, §207(2), struck out after subpar. (C) "No contract may be entered into under subparagraph (B) after September 30, 1988."

Subsec. (a)(1)(B). Pub. L. 101–574, §207(1), (3), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: "to enter into contracts with such agency as shall be designated by the President, to furnish articles, equipment, supplies, services, or materials, or to perform construction work for such agency. In any case in which the Administration certifies to any officer of such agency having procurement powers that the Administration is competent and responsible to perform any specific procurement contract to be let by any such officer, such officer shall let such procurement contract to the Administration upon such terms and conditions as may be agreed upon between the Administration and the procurement officer. If the Administration and such procurement officer fail to agree on such terms and conditions, either the Administration or such officer shall promptly notify, in writing, the head of such agency. The head of such agency shall have five days (exclusive of Saturdays, Sundays, and legal holidays) to establish the terms and conditions upon which such procurement contract may be let to the Administration, and shall communicate in writing to the Administration the terms and conditions so established. Within five days (exclusive of Saturdays, Sundays, and legal holidays) after the receipt of such written communication, the Administration shall decide whether to perform such procurement contract or withdraw its prior certification that the Administration is competent and responsible to perform such contract; and".

Subsec. (a)(1)(C). Pub. L. 101–574, §207(4), added subpar. (C). Former subpar. (C) redesignated (B).

Subsec. (a)(4)(A)(i)(II), (ii)(II). Pub. L. 101–574, §204(b), inserted "(or a wholly owned business entity of such tribe)" after "tribe".

Subsec. (a)(17)(B)(iv). Pub. L. 101–574, §210, amended cl. (iv) generally. Prior to amendment, cl. (iv) read as follows: "represent that it will supply the product of a domestic small business manufacturer or processor, except that, the Administrator may waive the application of the clause, as it pertains to the furnishing of a product manufactured or processed by a small business, for any class of products for which there are no small business manufacturers or processors in the Federal market."

Subsec. (d)(2)(A). Pub. L. 101–510, §806(e)(2)(A), substituted "the small purchase threshold" for "$10,000".

Subsec. (e)(1)(A). Pub. L. 101–510, §806(e)(2)(B), inserted "or" at end of subcl. (i), substituted a comma for "; or" at end of subcl. (ii), substituted "the small purchase threshold" for "$25,000" in subcls. (i) and (ii), and struck out subcl. (iii) which read as follows: "solicit bids or proposals for a contract for property or services for a price expected to exceed $10,000, if there is not a reasonable expectation that at least two offers will be received from responsive and responsible offerors,".

Subsec. (e)(1)(B), (C). Pub. L. 101–510, §806(e)(2)(B)(i), substituted "the small purchase threshold" for "$25,000" wherever appearing.

Subsec. (g)(1). Pub. L. 101–574, §244, substituted "subsection (e)(1)" for "subsection (a)(1)".

1989—Subsec. (a)(1)(D)(i). Pub. L. 101–37, §10(c), substituted "Program Participants" for "program participants".

Subsec. (a)(4)(A)(i). Pub. L. 101–37, §6(d)(1), inserted "unconditionally" after "per centum".

Subsec. (a)(4)(A)(ii). Pub. L. 101–37, §6(d)(2), inserted "unconditionally" after "which is".

Subsec. (a)(6)(C). Pub. L. 101–37, §7(b), which directed substitution of "636(j)(10)(G)" for "636(j)(10)(H)" in cl. (iii), could not be executed because there was no cl. (iii). See 1992 Amendment note above.

Subsec. (a)(9). Pub. L. 101–37, §17, substituted "Administration" for "Administrator" in subpar. (A), "section 636(j)(10)(G) of this title" for "section 636(j)(10)(H) of this title" in subpar. (B)(iii), and "Administration's" for "Administrator's" in subpar. (C).

Subsec. (a)(15). Pub. L. 101–37, §6(b), substituted "Organization" for "organizations".

Subsec. (a)(17)(B)(ii) to (iv). Pub. L. 101–37, §10(e), added cl. (ii) and redesignated former cls. (ii) and (iii) as (iii) and (iv), respectively.

Subsec. (a)(18)(A). Pub. L. 101–37, §12, struck out "certified" before "during such person's term".

Subsec. (a)(19)(B). Pub. L. 101–37, §13, struck out ", imposed by the Administrator," after "disciplinary action".

Subsec. (a)(20)(A). Pub. L. 101–37, §14, substituted "Business Opportunity Specialist" for "business opportunity specialist".

Subsec. (a)(21). Pub. L. 101–37, §16, in subpar. (B) struck out discretionary authority of the Administrator and preconditions respecting request prior to relinquishment of ownership or control in introductory provisions, added subpar. (C), and redesignated former subpars. (C) and (D) as (D) and (E), respectively.

Subsec. (b)(1)(A). Pub. L. 101–162 amended last sentence generally, substituting "the Administration shall ensure that it receives appropriate recognition in all cosponsored printed materials, whether the participant is a profit making concern or a governmental agency or public official" for "that the Administration is given primary recognition in all cosponsored printed materials, whether the participant is a profit-making concern or a governmental agency or official".

1988—Subsec. (a)(1)(A). Pub. L. 100–656, §303(d), inserted provisions authorizing Administration appeal from procurement officer's adverse decisions and providing for decision by the Secretary or agency head on the appeal.

Subsec. (a)(1)(D). Pub. L. 100–656, §303(b), added subpar. (D).

Subsec. (a)(3). Pub. L. 100–656, §303(e), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "Any small business concern selected by the Administration to perform any Federal Government procurement contract to be let pursuant to this subsection shall, when practicable, participate in any negotiation of the terms and conditions of such contract."

Subsec. (a)(4). Pub. L. 100–656, §207(c), amended par. (4) generally, in subpar. (A)(i) adding subcl. (III), in subpar. (A)(ii) adding subcl. (III), and in subpar. (B) adding cl. (iii).

Subsec. (a)(4)(C). Pub. L. 100–656, §209(b), added subpar. (C).

Subsec. (a)(6). Pub. L. 100–656, §209(a), designated existing provisions as subpar. (A) and added subpars. (B) to (E).

Subsec. (a)(7). Pub. L. 100–656, §303(g), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(9). Pub. L. 100–656, §409, amended par. (9) generally. Prior to amendment, par. (9) read as follows: "Within ninety days after the effective date of this paragraph, the Administration shall publish in the Federal Register rules setting forth those conditions or circumstances pursuant to which a firm previously deemed eligible by the Administration may be denied assistance under the provisions of this subsection: *Provided*, That no such firm shall be denied total participation in any program conducted under the authority of this subsection without first being afforded a hearing on the record in accordance with chapter 5 of title 5."

Subsec. (a)(10). Pub. L. 100–656, §201(b), inserted sentence at end requiring such program to make a sustained and substantial effort to solicit applications for certification from small business concerns located in areas of concentrated unemployment or underemployment.

Subsec. (a)(12). Pub. L. 100–656, §501, amended par. (12) generally. Prior to amendment, par. (12) read as follows: "To the maximum extent practicable the Associate Administrator for Minority Small Business and Capital Ownership Development shall submit, no less frequently than annually, a yearly estimate of the dollar amounts and types of contracts required for the efficient use of any program conducted under the authority of this subsection, to each agency which may participate in such program."

Subsec. (a)(15). Pub. L. 100–656, §207(a), added par. (15).

Subsec. (a)(16). Pub. L. 100–656, §303(c), added par. (16).

Subsec. (a)(17). Pub. L. 100–656, §303(h), added par. (17).

Subsec. (a)(18). Pub. L. 100–656, §402, added par. (18).

Subsec. (a)(19). Pub. L. 100–656, §403, added par. (19).

Subsec. (a)(20). Pub. L. 100–656, §404, added par. (20).

Subsec. (a)(21). Pub. L. 100–656, §407, added par. (21).

Subsec. (b)(1)(A). Pub. L. 100–590, §131(b), inserted "that any Administration program participating in

such cosponsored activities receives appropriate recognition and publicity, and" in provisions preceding cl. (i), inserted ", executed on behalf of the agency by an employee of the agency in Washington, District of Columbia, and who shall also approve, in advance, any printed materials to be distributed at the conference," in cl. (1), and inserted provisions at end which authorized Administration, in case of cosponsored activities, to ensure that cooperation does not constitute endorsement or give undue recognition to public official or agency, and that Administration is given primary recognition in all cosponsored printed materials.

Subsec. (b)(16). Pub. L. 100–533, §202, and Pub. L. 100–590, §127(b), made identical amendments adding par. (16).

Subsec. (c). Pub. L. 100–590, §127(a), amended subsec. (c) generally, inserting provisions substantially identical to provisions contained in prior general amendment by Pub. L. 100–533, §201.

Pub. L. 100–533, §201, amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "The Administration shall from time to time make studies of matters materially affecting the competitive strength of small business, and of the effect on small business of Federal laws, programs, and regulations, and shall make recommendations to the appropriate Federal agency or agencies for the adjustment of such programs and regulations to the needs of small business."

Subsec. (d)(4)(F). Pub. L. 100–656, §304(a), added subpar. (F).

1987—Subsec. (a)(14)(B), (C). Pub. L. 100–26, §10(b)(3), substituted "section 644(o)" for "section 644(n)".

1986—Subsec. (a)(1). Pub. L. 99–567, §2, substituted provision that no contract may be entered into under subpar. (B) after Sept. 30, 1988, for provision that no such contract could be entered into prior to Oct. 1, 1983, nor after Sept. 30, 1985, in closing provisions.

Subsec. (a)(1)(A). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§921(b)(2)], Pub. L. 99–661, §921(b)(2), amended subpar. (A) identically, inserting provision that a contract not be awarded if the award would result in a cost to the awarding agency which exceeds a fair market price.

Subsec. (a)(1)(B). Pub. L. 99–567, §1(a), struck out "(other than the Department of Defense or any component thereof)" after "contracts with such agency".

Subsec. (a)(2). Pub. L. 99–567, §3, substituted provision that the authority to waive bonds as provided in par. (2) may not be exercised after Sept. 30, 1988, for provision that such authority could not be exercised prior to Oct. 1, 1983, nor after Sept. 30, 1985, in closing provisions.

Subsec. (a)(4). Pub. L. 99–272, §18015(b), in amending par. (4) generally, included economically disadvantaged Indian tribe within definition of "socially and economically disadvantaged small business concern".

Subsec. (a)(6). Pub. L. 99–272, §18015(c), inserted provision enumerating factors to be considered by the Administration in determining the economic disadvantage of an Indian tribe.

Subsec. (a)(13). Pub. L. 99–272, §18015(d), added par. (13).

Subsec. (a)(14). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§921(c)(1)], Pub. L. 99–661, §921(c)(1), amended subsec. (a) identically, adding par. (14).

Subsec. (e)(1). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§921(a)], Pub. L. 99–661, §921(a), amended par. (1) identically, in subpar. (A) substituting "$25,000" for "$10,000" in cls. (i) and (ii), adding cl. (iii), and in provision following cl. (iii) substituting "subsection (f) of this section" for "subsection (b) of this section", adding subpar. (B), and redesignating former subpar. (B) as (C).

Subsec. (f). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§922(d)], Pub. L. 99–661, §922(d), amended subsec. (f) identically, substituting "subparagraph (A) or (B) of subsection (e)(1) of this section" for "subsection (e)(1)(A) of this section" in provisions preceding par. (1).

1984—Subsec. (b)(1)(A). Pub. L. 98–362, §5(a)(2), which inserted provisions at end of subpar. (A) relating to providing of assistance through cooperation of cosponsors, and provisions respecting activities of the Administration related to furnishing of assistance by cosponsors, was repealed effective Oct. 1, 1994, by Pub. L. 98–362, §7(b), as amended, and effective Sept. 30, 2003, by Pub. L. 103–403, §401(a), as amended. See Effective and Termination Dates of 1984 Amendments notes below.

Pub. L. 98–362, §5(a)(1), which inserted "computer security," after "wage incentives,", was repealed effective Sept. 30, 2003, by Pub. L. 103–403, §401(a), as amended. See Effective and Termination Dates of 1984 Amendments note below.

Subsec. (b)(7)(C). Pub. L. 98–577, §401, inserted "Notwithstanding the first sentence of this subparagraph, the Administration may not establish an exemption from referral or notification or refuse to accept a referral or notification from a Government procurement officer made pursuant to subparagraph (A) or (B) of this paragraph, but nothing in this paragraph shall require the processing of an application for certification if the small business concern to which the referral pertains declines to have the application processed."

Subsec. (d)(1). Pub. L. 98–577, §402(a), inserted ", including contracts and subcontracts for subsystems,

assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals".

Subsec. (d)(3)(A). Pub. L. 98–577, §402(b), inserted ", including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals".

Subsecs. (e) to (j). Pub. L. 98–577, §404(a), added subsecs. (e) to (j) and struck out former subsec. (e) which related to notice and publication of procurement actions, exceptions, departmental procedures, contents of notice, sole source contracts and unsolicited proposals.

1983—Subsec. (a)(1). Pub. L. 98–47, §2, substituted provision that no contract may be entered into under subpar. (B) prior to Oct. 1, 1983, nor after Sept. 30, 1985, for provision that such contracts may not be entered into after Sept. 30, 1981.

Subsec. (a)(1)(B). Pub. L. 98–47, §1(a), substituted "(other than the Department of Defense or any component thereof) as shall be designated by the President" for ", as shall be designated by the President within 60 days after the effective date of this paragraph".

Subsec. (a)(2). Pub. L. 98–47, §3, substituted provision that the authority to waive bonds as provided in par. (2) may not be exercised prior to Oct. 1, 1983, nor after Sept. 30, 1985, for provision that par. (2) shall not apply after Sept. 30, 1981.

Subsec. (e). Pub. L. 98–72 amended subsec. (e) generally, designating existing provisions as par. (1) and in par. (1) as so designated substituting: "It shall be the duty of the Secretary of Commerce, and the Secretary is hereby empowered, to obtain notice of all proposed competitive and noncompetitive civilian and defense procurement actions of $10,000 and above from any Federal department, establishment or agency (hereinafter in this subsection referred to as 'department') engaged in procurement of property, supplies, and services in the United States; and to publicize such notices in the daily publication Commerce Business Daily, immediately after the necessity for the procurement is established: *Provided*, That nothing in this paragraph shall require publication of such notices with respect to those procurements in which it is determined on a case-by-case basis that (A) the procurement for security reasons is of a classified nature; (B) the Federal department's need for the property, supplies, or services is of such unusual and compelling urgency that the Government would be seriously injured if the time periods provided for in paragraph (2) were complied with; (C) a foreign government reimburses the Federal department for the cost of the procurement of the property, supplies, or services for such government and only one source is available, or the terms of an international agreement or treaty between the United States and a foreign government authorize or require that all such procurement shall be from sources specified within such international agreement or treaty; (D) the procurement is made from another Government department or agency, or a mandatory source of supply; (E) the procurement is for utility services and only one source is available; (F) the procurement is made against an order placed under a requirement or similar contract, including orders for perishable subsistence supplies; (G) the procurement results from acceptance of a proposal pursuant to the Small Business Innovation Development Act of 1982 or an unsolicited proposal that demonstrates a unique or innovative research concept and publication of such unsolicited proposal would improperly disclose the originality of thought or innovativeness of the proposed research; or (H) it is determined in writing by the head of the Federal department, with the concurrence of the Administrator, that advance notice is not appropriate or reasonable" for "It shall be the duty of the Secretary of Commerce, and he is empowered, to obtain notice of all proposed defense procurement actions of $10,000 and above, and all civilian procurement actions of $5,000 and above, from any Federal department, establishment, or agency engaged in procurement of supplies and services in the United States; and to publicize such notices in the daily publication 'United States Department of Commerce Synopsis of the United States Government Proposed Procurements, Sales, and Contract Awards', immediately after the necessity for the procurement is established; except that nothing herein shall require publication of such notices with respect to those procurements (1) which for security reasons are of a classified nature, or (2) which involve perishable subsistence supplies, or (3) which are for utility services and the procuring agency in accordance with applicable law has predetermined the utility concern to whom the award will be made, or (4) which are of such unusual and compelling emergency that the Government would be seriously injured if bids or offers were permitted to be made more than 15 days after the issuance of the invitation for bids or solicitation for proposals, or (5) which are made by an order placed under an existing contract, or (6) which are made from another Government department or agency, or a mandatory source of supply, or (7) which are for personal or professional services, or (8) which are for services from educational institutions, or (9) in which only foreign

sources are to be solicited, or (10) for which it is determined in writing by the procuring agency, with the concurrence of the Administrator, that advance publicity is not appropriate or reasonable", and adding pars. (2) to (6).

1980—Subsec. (a)(1), (2). Pub. L. 96–481, §101, substituted "September 30, 1981" for "September 30, 1980".

Subsec. (a)(8). Pub. L. 96–481, §105, substituted provisions that all determinations may pursuant to par. (5) with respect to whether a group has been subjected to prejudice or bias shall be made by the Administrator after consultation with the Associate Administrator for Minority Small Business and Capital Ownership Development and that all other determinations made pursuant to (4), (5), (6), and (7) shall be made by the Associate Administrator for Minority Small Business and Capital Ownership Development under the supervision of, and responsible to the Administrator, for provision that all determinations made pursuant to pars. (4), (5), (6) and (7), shall be made by the Associate Administrator for Minority Small Business and Capital Ownership Development.

Subsec. (d)(3)(C). Pub. L. 96–302 included in the presumption of being disadvantaged individuals Asian Pacific Americans.

1978—Subsec. (a). Pub. L. 95–507, §202(a), redesignated pars. (1) and (2) as (1)(A) and (C) and as redesignated inserted provision giving the Administration sole discretion in choosing procurement requirements from agencies or departments for use in the program, provided that the terms and conditions of the proposed contract are to be negotiated, made provision for the submission of stalemated matters for resolution, and added pars. (1)(B) and (2) to (12).

Subsec. (b)(1). Pub. L. 95–510 substituted in subpar. (B) provisions relating to the establishment and implementation of volunteer programs for provisions relating to the use of office facilities etc., and the payment of transportation expenses and per diem allowances and added subpars. (C) to (F).

Subsec. (d). Pub. L. 95–507, §211, substituted provisions relating to the performance of contracts by small business concerns, requiring, among other things, the inclusion of a specific contract clause in most Federal prime contracts, requiring as a condition of the solicitation of any offer of a Federal contract in excess of $500,000, the submission of a summary contract plan, and relating to incentives for small business subcontracting, contract eligibility, breach of contract or subcontract, administrative review of contract solicitation and subcontract planning, and relating to submission to congressional committees of a report on subcontracting plans for provisions relating generally to the small business subcontract program and regulations issued thereunder.

1977—Subsec. (b)(7). Pub. L. 95–89, in revising par. (7), incorporated existing introductory text in provisions designated subpar. (A) and substituted "with respect to all elements of responsibility, including, but not limited to, capability, competency, capacity, credit, integrity, perseverance, and tenacity, of any small business concern or group of such concerns to receive and perform a specific Government contract" for "with respect to the competency, as to capacity and credit, of any small-business concern or group of such concerns to perform a specific Government contract"; added subpar. (B); and incorporated existing end text in provisions designated subpar. (C), substituting therein "certified by the Administration pursuant to (A) or (B) to be a responsible or eligible Government contractor as to a specific Government contract" for "certified by or under the authority of the Administration to be a competent Government contractor with respect to capacity and credit as to a specific Government contract" and "shall let" and "other requirement of responsibility or eligibility" for "are authorized to let" and "other requirement with respect to capacity and credit".

1970—Subsec. (b)(15). Pub. L. 91–375 substituted "section 3204 of title 39" for "section 4154 of title 39".

1967—Subsec. (b)(1)(B). Pub. L. 90–104, §105, designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (b)(13). Pub. L. 90–104, §106, substituted "advisory boards and committees" for "small business advisory boards and committees truly representative of small business", included achievement of purposes of the Small Business Investment Act of 1958, and required the Administrator to call board and committee meetings, pay transportation expenses and per diem allowances, and rent temporarily necessary accommodations to facilitate conduct of meetings.

Subsec. (b)(15). Pub. L. 90–104, §107, added par. (15).

1966—Subsec. (b)(1). Pub. L. 89–754 designated existing provisions as subpar. (A) and added subpar. (B).

1964—Subsec. (b)(14). Pub. L. 88–560 added par. (14).

1961—Subsec. (d). Pub. L. 87–305, §7, added subsec. (d).

Subsec. (e). Pub. L. 87–305, §8, added subsec. (e).

TERMINATION DATE OF 2004 AMENDMENT

Amendment by section 132(b) of Pub. L. 108–447 repealed Oct. 1, 2006, see section 132(c) of Pub. L. 108–447, set out as a note under section 633 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, §1 [[div. A], title VIII, §810(e)], Oct. 30, 2000, 114 Stat. 1654, 1654A–210, provided that: "The amendments made by this section [amending this section and sections 416 and 426 of Title 41, Public Contracts] shall take effect on October 1, 2000. The amendments made by subsections (a), (b), and (c) [amending this section and section 416 of Title 41] shall apply with respect to solicitations issued on or after that date."

EFFECTIVE DATE OF 1997 AMENDMENTS

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

Amendment by Pub. L. 105–85 effective 180 days after Nov. 18, 1997, see section 850(g) of Pub. L. 105–85, set out as a note under section 2302c of Title 10, Armed Forces.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 2302 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–37 applicable as if included in Pub. L. 100–656, see section 32 of Pub. L. 101–37, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 207(a), (c) and 303(d), (e) of Pub. L. 100–656 effective Nov. 15, 1988, see section 803(a) of Pub. L. 100–656, set out as a note under section 631 of this title.

Amendment by sections 201(b), 303(c), (g), (h), 304(a), 402–404, and 409 of Pub. L. 100–656 effective Aug. 15, 1989, see section 803(b)(1)(A)–(C) of Pub. L. 100–656, as amended, set out as a note under section 631 of this title.

Amendment by section 407 of Pub. L. 100–656 effective with respect to contracts entered into on or after June 1, 1989, see section 803(b)(3) of Pub. L. 100–656, as amended, set out as a note under section 631 of this title.

Amendment by sections 209 and 303(b) of Pub. L. 100–656 effective Oct. 1, 1989, see section 803(b)(4)(A), (B) of Pub. L. 100–656, as amended, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 10(b)(3) of Pub. L. 100–26 applicable as if included in each instance of the Defense Acquisition Improvement Act (as specified in section 2 of Pub. L. 100–26) [title X of section 101(c) of Pub. L. 99–500 and Pub. L. 99–591, and title IX of div. A of Pub. L. 99–661] when each was enacted [Oct. 18, 1986, Oct. 30, 1986, and Nov. 14, 1986, respectively], see section 12(c) of Pub. L. 100–26, set out as a note under section 632 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 101(c) [title X, §921(b)(2), (c)(1)] of Pub. L. 99–500 and Pub. L. 99–591, and section 921(b)(2), (c)(1) of Pub. L. 99–661 effective Oct. 1, 1987, see section 101(c) of Pub. L. 99–500 and Pub. L. 99–591, and section 921(g) of Pub. L. 99–661, set out as a note under section 632 of this title.

EFFECTIVE AND TERMINATION DATES OF 1984 AMENDMENTS

Pub. L. 103–403, title IV, §401(a), Oct. 22, 1994, 108 Stat. 4190, as amended by Pub. L. 105–135, title V, §504, Dec. 2, 1997, 111 Stat. 2624; Pub. L. 106–554, §1(a)(9) [title V, §504(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–696, provided that:

"(1) REPEAL.—The amendments made by section 5(a) of Small Business Computer Security and Education Act of 1984 [Pub. L. 98–362, amending this section] (15 U.S.C. 633 note) are hereby repealed.

"(2) EFFECTIVE DATE.—Paragraph (1) shall take effect on September 30, 2003."

[Repeal by section 401(a) of Pub. L. 103–403, set out as a note above, effective Sept. 30, 1997, was not executed to reflect the probable intent of Congress and subsequent amendment by Pub. L. 105–135, changing the effective date to Sept. 30, 2000. Similarly, repeal effective Sept. 30, 2000, was not executed because of

subsequent amendment by Pub. L. 106–554, changing the effective date to Sept. 30, 2003.]

Amendment by section 5(a)(1), (2) of Pub. L. 98–362 effective Oct. 1, 1984, and amendment by section 5(a)(2) of Pub. L. 98–362 repealed Oct. 1, 1994, see section 7 of Pub. L. 98–362, as amended, set out as a note under section 633 of this title.

Pub. L. 98–577, title IV, §404(b), Oct. 30, 1984, 98 Stat. 3084, provided that: "The amendment made by subsection (a) [amending this section] shall take effect with respect to any solicitation for bids or proposals issued after March 31, 1985."

EFFECTIVE DATE OF 1983 AMENDMENTS

Pub. L. 98–72, §1(b)(1), (2), Aug. 11, 1983, 97 Stat. 403, provided that:

"(1) Except as to the amendments made to section 8(e)(4) of the Small Business Act as added by section (a) of this Act [subsec. (e)(4) of this section], the amendments made by this Act [amending this section] shall apply to procurement actions initiated ninety days after the date of enactment of this Act [Aug. 11, 1983].

"(2) The amendments made to section 8(e)(4) of the Small Business Act as added by section (a) of this Act shall apply to procurement actions initiated on or after October 1, 1983."

Pub. L. 98–47, §1(b), July 13, 1983, 97 Stat. 243, provided that: "The designation of an agency pursuant to the amendment made by subsection (a) [amending this section] shall be made not later than sixty days after the date of enactment of this Act [July 13, 1983]."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–302 effective Oct. 1, 1980, see section 507 of Pub. L. 96–302, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–510 effective Oct. 1, 1979, see section 105 of Pub. L. 95–510, set out as a note under section 634 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–375, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

REGULATIONS

Pub. L. 108–447, div. K, title I, §141(b), Dec. 8, 2004, 118 Stat. 3454, provided that: "The Administration shall, not later than 180 days after the date of enactment of this Act [Dec. 8, 2004], promulgate regulations to carry out the amendments made by subsection (a) [amending this section]."

Pub. L. 106–50, §303(c), Aug. 17, 1999, 113 Stat. 243, provided that: "Not later than 30 days after the date of the enactment of this section [Aug. 17, 1999], the Administrator of the Small Business Administration shall issue such guidelines as the Administrator determines to be necessary to carry out this section [amending this section and enacting provisions set out as a note under this section] and the amendment made by this section."

TRANSFER OF FUNCTIONS

Transfer to Director of ACTION [now Corporation for National and Community Service] of functions of Small Business Administration under subsec. (b) of this section insofar as they relate to individuals or groups of persons cooperating with it in the furtherance of purposes of this section, except that such individuals or groups of persons, in providing technical and managerial aids to small concerns, remain subject to direction of Small Business Administration. See section 601 of Pub. L. 93–113, 87 Stat. 416, formerly set out as a note under section 5041 of Title 42, The Public Health and Welfare, which superseded section 2(a)(3) of Reorg. Plan No. 1 of 1971, eff. July 1, 1971, 36 F.R. 11181, 85 Stat. 819, set out in the Appendix to Title 5, Government Organization and Employees.

SUBCONTRACTING MISREPRESENTATIONS

Pub. L. 111–240, title I, §1321, Sept. 27, 2010, 124 Stat. 2540, provided that: "Not later than 1 year after the date of enactment of this Act [Sept. 27, 2010], the Administrator, in consultation with the Administrator for Federal Procurement Policy, shall promulgate regulations relating to, and the Federal Acquisition Regulatory Council established under section 25(a) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 421(a)) [now 41 U.S.C. 1302(a)] shall amend the Federal Acquisition Regulation issued under section 25 of such Act [see 41 U.S.C. 1303(a)] to establish a policy on, subcontracting compliance relating to small business concerns, including assignment of compliance responsibilities between contracting offices, small business offices, and program offices and periodic oversight and review activities."

[For definitions of "Administrator" and "small business concern" as used in section 1321 of Pub. L. 111–240, set out above, see section 1001 of Pub. L. 111–240, set out as a note under section 632 of this title.]

SMALL BUSINESS CONTRACTING PARITY

Pub. L. 111–240, title I, §1347(a), (b), Sept. 27, 2010, 124 Stat. 2546, 2547, provided that:

"(a) DEFINITIONS.—In this section—

"(1) the terms 'Administration' and 'Administrator' mean the Small Business Administration and the Administrator thereof, respectively; and

"(2) the terms 'HUBZone small business concern', 'small business concern', 'small business concern owned and controlled by service-disabled veterans', and 'small business concern owned and controlled by women' have the same meanings as in section 3 of the Small Business Act (15 U.S.C. 632).

"(b) CONTRACTING IMPROVEMENTS.—

"(1) CONTRACTING OPPORTUNITIES.—[Amended section 657a of this title.]

"(2) CONTRACTING GOALS.—[Amended section 644 of this title.]

"(3) MENTOR-PROTEGE PROGRAMS.—The Administrator may establish mentor-protege programs for small business concerns owned and controlled by service-disabled veterans, small business concerns owned and controlled by women, and HUBZone small business concerns modeled on the mentor-protege program of the Administration for small business concerns participating in programs under section 8(a) of the Small Business Act (15 U.S.C. 637(a))."

INCREASING NUMBER OF OUTREACH CENTERS

Pub. L. 110–186, title I, §105, Feb. 14, 2008, 122 Stat. 626, provided that:

"(a) IN GENERAL.—The Administrator [of the Small Business Administration] shall use the authority in section 8(b)(17) of the Small Business Act (15 U.S.C. 637(b)(17)) to ensure that the number of Veterans Business Outreach Centers throughout the United States increases—

"(1) subject to subsection (b), by at least 2, for each of fiscal years 2008 and 2009; and

"(2) by the number that the Administrator considers appropriate, based on need, for each fiscal year thereafter.

"(b) LIMITATION.—Subsection (a)(1) shall apply in a fiscal year if, for that fiscal year, the amount made available for the Office of Veterans Business Development is more than the amount made available for the Office of Veterans Business Development for fiscal year 2007."

ENHANCED PUBLICITY DURING OPERATION ALLIED FORCE

Pub. L. 106–50, §303(b), Aug. 17, 1999, 113 Stat. 243, provided that: "For the duration of Operation Allied Force and for 120 days thereafter, the Administration shall enhance its publicity of the availability of assistance provided pursuant to the amendment made by this section [amending this section], including information regarding the appropriate local office at which affected small businesses may seek such assistance."

FEDERAL ACQUISITION REGULATION

Pub. L. 105–135, title IV, §416(b), Dec. 2, 1997, 111 Stat. 2620, provided that: "The Federal Acquisition Regulation shall be amended to provide uniform implementation of the amendments made by this section [amending this section]."

IMPLEMENTATION OF AMENDMENT BY PUB. L. 105–85

Pub. L. 105–85, div. A, title VIII, §850(e)(3), Nov. 18, 1997, 111 Stat. 1849, provided that: "The amendments made by paragraphs (1) and (2) [amending this section and section 416 of Title 41, Public Contracts] shall be implemented in a manner consistent with any applicable international agreements."

MOBILE RESOURCE CENTER PILOT PROGRAM

Pub. L. 103–403, title IV, §406, Oct. 22, 1994, 108 Stat. 4192, provided that the Administrator of the Small Business Administration could establish and carry out in each of fiscal years 1995, 1996, and 1997 a mobile resource pilot program and, if it was carried out, required the Administrator to transmit to Congress by Dec. 31, 1996, a report containing the results of such program, together with recommendations for appropriate legislative and administrative action.

PROJECTS FUNDED PURSUANT TO FORMER PROVISIONS

Pub. L. 102–191, §3, Dec. 5, 1991, 105 Stat. 1591, provided in part that: "Projects funded pursuant to the provisions of former subsection (c) [15 U.S.C. 637(c)] shall be deemed to be funded under and shall be treated

as if funded under section 28 of the Small Business Act [15 U.S.C. 656], as added by section 2."

TWO-YEAR RULE FOR ELIGIBILITY IN MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT PROGRAM

Pub. L. 101–574, title II, §203, Nov. 15, 1990, 104 Stat. 2818, provided that:

"(a) IN GENERAL.—The Small Business Administration may prescribe a minimum period of time during which a prospective Program Participant must be in operation in order to meet the eligibility requirements of section 8(a)(7)(A) of the Small Business Act (15 U.S.C. 637(a)(7)(A)), only if the Administration provides a waiver of such minimum period as set forth in subsection (b).

"(b) WAIVER OF MINIMUM PERIOD OF OPERATION.—(1) The Administration shall provide that any requirement it establishes regarding the period of time a prospective Program Participant must be in operation may be waived and, a prospective Program Participant, who otherwise meets the requirements of section 8(a)(7)(A) of the Small Business Act [15 U.S.C. 637(a)(7)(A)], shall be considered to have demonstrated reasonable prospects for success, if—

"(A) the individual or individuals upon whom eligibility is to be based have substantial and demonstrated business management experience;

"(B) the prospective Program Participant has demonstrated technical expertise to carry out its business plan with a substantial likelihood for success;

"(C) the prospective Program Participant has adequate capital to carry out its business plan;

"(D) the prospective Program Participant has a record of successful performance on contracts from governmental and nongovernmental sources in the primary industry category in which the prospective Program Participant is seeking Program certification; and

"(E) the prospective Program Participant has, or can demonstrate its ability to timely obtain, the personnel, facilities, equipment, and any other requirements needed to perform such contracts.

"(2) The authority to make the determination that a prospective Program Participant has demonstrated its potential for success by meeting the criteria specified in paragraph (1) of this subsection shall be made by the Administrator of the Small Business Administration, or a designee of such officer."

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

CREDIT FOR INDIAN CONTRACTING IN MEETING CERTAIN MINORITY SUBCONTRACTING GOALS

For provisions that credit toward meeting a subcontracting goal specified in a Department of Defense contract in implementing subsec. (d) of this section may be given for work performed on Indian land or by certain Indian joint ventures, see section 2323a of Title 10, Armed Forces.

TEST PROGRAM FOR NEGOTIATION OF COMPREHENSIVE SMALL BUSINESS SUBCONTRACTING PLANS

Pub. L. 101–574, title IV, §402, Nov. 15, 1990, 104 Stat. 2832, provided that: "To facilitate participation in the test program for the negotiation of comprehensive small business subcontracting plans pursuant to section 834 of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101–189; 103 Stat. 1510) [set out below], subsection (d) of such section is hereby suspended for the period of the test program as specified in subsection (e) of such section."

Pub. L. 101–189, div. A, title VIII, §834, Nov. 29, 1989, 103 Stat. 1509, as amended by Pub. L. 102–484, div. A, title VIII, §805, Oct. 23, 1992, 106 Stat. 2447; Pub. L. 103–355, title VII, §7103, Oct. 13, 1994, 108 Stat. 3368; Pub. L. 104–106, div. A, title VIII, §811, Feb. 10, 1996, 110 Stat. 394; Pub. L. 105–85, div. A, title VIII, §822, Nov. 18, 1997, 111 Stat. 1840; Pub. L. 106–65, div. A, title VIII, §817, Oct. 5, 1999, 113 Stat. 712; Pub. L. 106–398, §1 [[div. A], title X, §1087(g)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–293; Pub. L. 108–375, div. A, title VIII, §843, Oct. 28, 2004, 118 Stat. 2019; Pub. L. 111–383, div. A, title VIII, §863(i), Jan. 7, 2011, 124 Stat. 4295; Pub. L. 112–81, div. A, title VIII, §866, Dec. 31, 2011, 125 Stat. 1526; Pub. L. 112–239, div. A, title X, §1076(a)(16), Jan. 2, 2013, 126 Stat. 1948, provided that:

"(a) TEST PROGRAM.—(1) The Secretary of Defense shall establish a test program under which contracting activities in the military departments and the Defense Agencies are authorized to undertake one or more demonstration projects to determine whether the negotiation and administration of comprehensive subcontracting plans will reduce administrative burdens on contractors while enhancing opportunities

provided under Department of Defense contracts for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals. In selecting the contracting activities to undertake demonstration projects, the Secretary shall take such action as is necessary to ensure that a broad range of the supplies and services acquired by the Department of Defense are included in the test program.

"(2) In developing the test program, the Secretary of Defense shall—

"(A) consult with the Administrator of the Small Business Administration; and

"(B) provide an opportunity for public comment on the test program.

"(b) COMPREHENSIVE SMALL BUSINESS SUBCONTRACTING PLAN.—(1) In a demonstration project under the test program, the Secretary of a military department or head of a Defense Agency shall negotiate, monitor, and enforce compliance with a comprehensive subcontracting plan with a Department of Defense contractor described in paragraph (3).

"(2) The comprehensive subcontracting plan of a contractor—

"(A) shall apply to the entire business organization of the contractor or to one or more of the contractor's divisions or operating elements, as specified in the subcontracting plan; and

"(B) shall cover each Department of Defense contract that is entered into by the contractor and each subcontract that is entered into by the contractor as the subcontractor under a Department of Defense contract.

"(3) A Department of Defense contractor referred to in paragraph (1) is, with respect to a comprehensive subcontracting plan negotiated in any fiscal year, a business concern that, during the immediately preceding fiscal year, furnished the Department of Defense with supplies or services (including professional services, research and development services, and construction services) pursuant to at least three Department of Defense contracts having an aggregate value of at least $5,000,000.

"(c) WAIVER OF CERTAIN SMALL BUSINESS ACT SUBCONTRACTING PLAN REQUIREMENTS .—A Department of Defense contractor is not required to negotiate or submit a subcontracting plan under paragraph (4) or (5) of section 8(d) of the Small Business Act (15 U.S.C. 637(d)) with respect to a Department of Defense contract if—

"(1) the contractor has negotiated a comprehensive subcontracting plan under the test program that includes the matters specified in section 8(d)(6) of the Small Business Act (15 U.S.C. 637(d)(6));

"(2) such matters have been determined acceptable by the Secretary of the military department or head of a Defense Agency negotiating such comprehensive subcontracting plan; and

"(3) the comprehensive subcontracting plan applies to the contract.

"(d) FAILURE TO MAKE A GOOD FAITH EFFORT TO COMPLY WITH A COMPANY-WIDE SUBCONTRACTING PLAN.—A contractor that has negotiated a comprehensive subcontracting plan under the test program shall be subject to section 8(d)(4)(F) of the Small Business Act (15 U.S.C. 637(d)(4)(F)) regarding the assessment of liquidated damages for failure to make a good faith effort to comply with its company-wide plan and the goals specified in that plan.

"(e) TEST PROGRAM PERIOD.—The test program authorized by subsection (a) shall begin on October 1, 1990, unless Congress adopts a resolution disapproving the test program. The test program shall terminate on December 31, 2014.

"(f) REPORT.—(1) Not later than March 1, 1994, and March 1, 2012, the Secretary of Defense shall submit a report on the results of the test program to the Committees on Armed Services and on Small Business of the Senate and the House of Representatives [Committee on Small Business of Senate now Committee on Small Business and Entrepreneurship of Senate].

"(2) Before submitting such report to the committees referred to in paragraph (1), the Secretary shall transmit the proposed report to the Administrator of the Small Business Administration. The report submitted to the committees shall include any comments and recommendations relating to the report that are transmitted to the Secretary by the Administrator before the date specified in such paragraph.

"(g) DEFINITIONS.—As used in this section:

"(1) The term 'small business concern' shall have the same meaning as is provided in section 8(d)(3)(C) of the Small Business Act (15 U.S.C. 637(d)(3)(C)), and includes a small business concern owned and controlled by socially and economically disadvantaged individuals.

"(2) The term 'small business concern owned and controlled by socially and economically disadvantaged individuals' shall have the same meaning as is provided in section 8(d)(3)(C) of the Small Business Act (15 U.S.C. 637(d)(3)(C))."

CONTRACT OPTIONS AND MODIFICATIONS

Pub. L. 100–656, title III, §303(f), Nov. 15, 1988, 102 Stat. 3871, as amended by Pub. L. 101–37, §10(d),

June 15, 1989, 103 Stat. 73, provided that:

"(1) The Small Business Administration shall make substantial and sustained efforts to achieve a maximum ten-day period as the average processing time for approving options and modifications to contracts awarded pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) and submitted to such Administration for approval.

"(2) Within sixty days after the date of enactment of this Act [Nov. 15, 1988], the Small Business Administration, and the appropriate Federal agency, shall make substantial and sustained efforts to negotiate contract modifications for fair market price for any and all unpriced options contained in active contracts previously awarded pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) with the contractor that was initially awarded such contract.

"(3) During the period of time described in paragraph (2), such agencies shall refrain from procuring such requirements from alternative sources except that, no delay may be incurred pursuant to this paragraph that would cause substantial harm to a public interest.

"(4) The Small Business Administration shall take appropriate actions, including publication in the Federal Register, to advise small business concerns and Federal agencies of the requirements of this subsection.

"(5) The Administration shall, to the maximum extent practicable, minimize delay, eliminate excess regulation, and require only such paperwork as may be necessary to effect the orderly and efficient management of the Program established by section 7(j)(10) of the Small Business Act (15 U.S.C. 636(j)(10)) and the award of contracts pursuant to section 8(a) of such Act (15 U.S.C. 637(a))."

LIQUIDATED DAMAGES CLAUSES

Pub. L. 100–656, title III, §304(b), Nov. 15, 1988, 102 Stat. 3873, provided that: "The contract clause required by section 8(d)(4)(F) of the Small Business Act [15 U.S.C. 637(d)(4)(F)] (as added by subsection (a)) shall be made part of the Federal Acquisition Regulation and promulgated pursuant to section 22 of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 418b) [now 41 U.S.C. 1707]."

[Section 304(b) of Pub. L. 100–656 effective Aug. 15, 1989, see section 803(b)(1)(B) of Pub. L. 100–656, as amended, set out as an Effective Date of 1988 Amendment note under section 631 of this title.]

NATIVE AMERICAN ORGANIZATIONS EXEMPTIONS

Pub. L. 109–289, div. A, title VIII, §8018, Sept. 29, 2006, 120 Stat. 1277, provided in part: "That, during the current fiscal year and hereafter, businesses certified as 8(a) by the Small Business Administration pursuant to section 8(a)(15) of Public Law 85–536 [15 U.S.C. 637(a)(15)], as amended, shall have the same status as other program participants under section 602 of Public Law 100–656, 102 Stat. 3825 (Business Opportunity Development Reform Act of 1988) [set out as a note below] for purposes of contracting with agencies of the Department of Defense."

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 109–148, div. A, title VIII, §8020, Dec. 30, 2005, 119 Stat. 2702.

Pub. L. 108–287, title VIII, §8021, Aug. 5, 2004, 118 Stat 975.

Pub. L. 108–87, title VIII, §8021, Sept. 30, 2003, 117 Stat 1076.

Pub. L. 100–656, title VI, §602, Nov. 15, 1988, 102 Stat. 3887, as amended by Pub. L. 101–37, §22, June 15, 1989, 103 Stat. 75; Pub. L. 101–515, title V, §2, Nov. 5, 1990, 104 Stat. 2140; Pub. L. 101–574, title II, §205, Nov. 15, 1990, 104 Stat. 2819; Pub. L. 103–403, title VI, §608, Oct. 22, 1994, 108 Stat. 4204, provided that:

"(a) COMPETITIVE THRESHOLDS.—Section 8(a)(1)(D) of the Small Business Act [15 U.S.C. 637(a)(1)(D)], as added by section 303 of this Act, shall not apply to Program Participants that are owned and controlled by economically disadvantaged Indian tribes, as defined pursuant to paragraphs (4) and (13) of section 8(a) of the Small Business Act (15 U.S.C. 637(a)(4) and (13)).

"(b) JOINT VENTURES.—The Administration is authorized to award a contract pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) to a joint venture notwithstanding the size status of such joint venture if—

"(1) a party to the joint venture is a Program Participant that is owned and controlled by an economically disadvantaged Indian tribe (as defined pursuant to paragraphs (4) and (13) of section 8(a) of the Small Business Act (15 U.S.C. 637(a)(4) and (13)); and

"(2) such Program Participant:

"(A) owns 51 per centum or more of such joint venture;

"(B) is located on the reservation or former reservation of such tribe as determined by the Secretary of the Interior of such tribe;

"(C) performs most of its activities on such reservation, or such former reservation; and

"(D) employs members of such tribe for at least 50 per centum of its total workforce.

"(c) LIMITATIONS.—A Program Participant, as a party to a joint venture shall receive no more than 5 contracts due solely to the provisions of subsection (b).

"(d) SUNSET.—Subsection (b) shall cease to be effective after September 30, 1997."

[Section 602 of Pub. L. 100–656 effective Aug. 15, 1989, see section 803(b)(1)(D) of Pub. L. 100–656, as amended, set out as an Effective Date of 1988 Amendment note under section 631 of this title.]

GAO EVALUATION OF SERVICE CORPS OF RETIRED EXECUTIVES; REPORT

Pub. L. 100–590, title I, §107, Nov. 3, 1988, 102 Stat. 2993, directed Comptroller General, not later than Dec. 1, 1989, to transmit a report to Small Business Committees of Senate and House of Representatives on functions being performed by volunteers in Service Corps of Retired Executives and Active Corps of Executives, including his evaluation of programs and including conclusions and recommendations concerning efficiency and cost effectiveness of such volunteers.

AUTHORIZATION OF APPROPRIATIONS FOR WOMEN-OWNED SMALL BUSINESS DEMONSTRATION PROJECTS

Pub. L. 100–590, title I, §127(c), Nov. 3, 1988, 102 Stat. 3003, provided that: "There is authorized to be appropriated $10,000,000 to carry out the demonstration projects required pursuant to subsection (a) [amending this section]. The initial projects authorized to be financed by this section [amending this section and enacting provisions set out as notes under this section] shall be funded by January 31, 1989. Notwithstanding any other provision of law, the Small Business Administration may use such expedited acquisition methods as it deems appropriate to achieve the purposes of this subsection, except that it shall insure that all eligible sources are provided a reasonable opportunity to submit proposals."

Similar provisions were contained in Pub. L. 100–533, title II, §203, Oct. 25, 1988, 102 Stat. 2692.

SPENDING AUTHORITY FOR CONTRACTS AUTHORIZED FOR WOMEN-OWNED SMALL BUSINESS DEMONSTRATION PROJECTS

Pub. L. 100–590, title I, §127(e), Nov. 3, 1988, 102 Stat. 3003, provided that: "New spending authority or authority to enter into contracts as authorized in this section [amending this section and enacting provisions set out as notes under this section] shall be effective only to such extent and in such amounts as are provided in advance in appropriation Acts."

RURAL AREA BUSINESS DEVELOPMENT PLANS

Pub. L. 100–590, title I, §129, Nov. 3, 1988, 102 Stat. 3004, provided that: "Within six months of the effective date of this Act [see Effective Date of 1988 Amendment note set out under section 631 of this title], the Administrator shall identify each Federal agency having substantial procurement or grantmaking authority and shall notify each agency so identified. Within six months of notification, each agency shall develop rural area business enterprise development plans. Such plans shall establish rural area enterprise development objectives for the agency and methods for encouraging prime contractors, subcontractors and grant recipients to use small business concerns located in rural areas as subcontractors, suppliers, and otherwise. Such plans shall, to the extent the agency deems appropriate and feasible, include incentive techniques as encouragement."

BACKGROUND CHECK POLICY; FINGERPRINTING

Pub. L. 100–590, title I, §132, Nov. 3, 1988, 102 Stat. 3005, provided that: "The Small Business Administration shall not require fingerprints to be obtained for background check purposes from any participant in any Administration program who is serving on a voluntary basis and without compensation unless the Administration has reasonable grounds to believe that the participant's record or background is such as to make the participant ineligible to participate in the relevant program."

TIME FOR DESIGNATION OF AGENCY

Pub. L. 99–567, §1(b), Oct. 27, 1986, 100 Stat. 3188, provided that: "The designation of an agency pursuant to the amendment made by subsection (a) [amending this section] shall be made not later than sixty days after the date of enactment of this Act [Oct. 27, 1986]."

REPORT TO CONGRESS RESPECTING ASSISTANCE FURNISHED BY PROFITMAKING CONCERNS TO SMALL BUSINESS CONCERNS; CONTENTS

Pub. L. 98–362, §5(b), July 16, 1984, 98 Stat. 434, directed Small Business Administration, not later than Dec. 1, 1987, to report to Committees on Small Business of Senate and House of Representatives on impact of assistance provided in cooperation with profitmaking concerns pursuant to amendment made by section

5(a)(2) of the Small Business Computer Security and Education Act of 1984 [amending this section], including information on benefits provided to small business concerns assisted by Administration's cooperation with profitmaking concerns and any negative impact upon small businesses resulting from such cooperation with profitmaking concerns.

TENNESSEE VALLEY AUTHORITY; PROCUREMENT PROCEDURES UNDER 1983 AND 1984 AMENDMENTS APPLICABLE ONLY TO PROCUREMENTS PAID FROM APPROPRIATED FUNDS

Pub. L. 98–577, title IV, §404(c), Oct. 30, 1984, 98 Stat. 3084, provided that: "The provisions of the amendment made by subsection (a) of this section [enacting subsecs. (e) to (j) of this section and striking out former subsec. (e) of this section] shall apply to the Tennessee Valley Authority only with respect to procurements to be paid from appropriated funds."

Pub. L. 98–72, §1(b)(3), Aug. 11, 1983, 97 Stat. 405, provided that: "The provisions of this Act [amending this section] shall apply to the Tennessee Valley Authority only with respect to procurements to be paid from appropriated funds."

ASIAN PACIFIC AMERICANS AS DISADVANTAGED MINORITY IN 1978

Pub. L. 96–302, title I, §118(c)(2), July 2, 1980, 94 Stat. 840, provided that the amendment of subsec. (d)(3)(C) by Pub. L. 96–302, including Asian Pacific Americans among the disadvantaged minorities, shall apply as if included in the amendment made by section 211 of Pub. L. 95–507, to subsec. (d) of this section.

BUSINESS PLANS; SUBMITTAL BY CONCERNS ELIGIBLE TO RECEIVE CONTRACTS

Concerns eligible to receive contracts pursuant to subsec. (a) of this section required to submit business plans required under section 636(j)(10)(A)(i) of this title within certain time limits, provided that no determination made under this paragraph shall be considered a denial of total participation for the purposes of subsec. (a)(9) of this section, see section 106(b) of Pub. L. 96–481 set out as a note under section 636 of this title.

REPORTS TO CONGRESS; GENERAL ACCOUNTING OFFICE REPORT ON BUSINESS DEVELOPMENT; QUARTERLY REPORTS BY SMALL BUSINESS ADMINISTRATION TO CONGRESSIONAL COMMITTEES

Pub. L. 95–507, title II, §202(b), Oct. 24, 1978, 92 Stat. 1763, as amended by Pub. L. 96–481, title I, §102, Oct. 21, 1980, 94 Stat. 2321, provided not later than Jan. 31, 1981, the General Accounting Office submit to Congress a report which, with respect to provisions of subsec. (a)(1)(B) and (2) of this section, evaluated the implementation of such provisions and whether such implementation furthered the purposes under section 631(e) of this title, and required the Small Business Administration and the agency designated pursuant to subsec. (a)(1)(B) of this section to submit separate quarterly reports to specific congressional committees, which reports were to contain a review and evaluation of all activities conducted pursuant to subsec. (a)(1)(B) during the previous three-month period, with the first such report submitted commencing on Jan. 2, 1981, for the preceding three-month period, and to continue quarterly through, and include, the quarter ending Sept. 30, 1981.

TERMINATION OF ADVISORY BOARDS AND COMMITTEES

Advisory boards and committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a board or committee established by the President or an officer of the Federal Government, such board or committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board or committee established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

DEFINITION

Pub. L. 100–590, title I, §127(d), Nov. 3, 1988, 102 Stat. 3003, provided that: "For the purposes of this section [amending this section and enacting provisions set out as notes under this section], the term 'small business concern owned and controlled by women' means any small business concern—

"(1) that is at least 51 per centum owned by one or more women; and

"(2) whose management and daily business operations are controlled by one or more of such women."

Similar provisions were contained in Pub. L. 100–533, title II, §204, Oct. 25, 1988, 102 Stat. 2692.

[1] *See References in Text note below.*

[2] *So in original. Probably should be "proscribed".*

[3] *So in original. Probably should be "solicited".*

[4] *See References in Text note below.*

[5] *See References in Text note below.*

§637a. Repealed. Pub. L. 89–409, §3(b), May 2, 1966, 80 Stat. 133

Section, Pub. L. 87–550, §2, July 25, 1962, 76 Stat. 221, authorized the Administration to make loans to assist in adjusting to competition from imports, described such authority as additional to that under the Small Business Act, provided for application of the Trade Expansion Act of 1962, authorized appropriations, and provided for an effective date. See section 636(e) of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective on July 1, 1966, see section 3(c) of Pub. L. 89–409, set out as a note under section 636 of this title.

§637b. Availability of information

(a) Requests for information

For any contract to be let by any Federal agency, such agency shall provide to any small business concern upon its request—

(1) a copy of bid sets and specifications with respect to such contract;

(2) the name and telephone number of an employee of such agency to answer questions with respect to such contract; and

(3) adequate citations to each major Federal law or agency rule with which such business concern must comply in performing such contract.

(b) Exempt contracts

Subsection (a) of this section shall not apply to any contract or subcontract under such contract which—

(1) will be performed entirely outside any State, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; or

(2) is for services which are personal in nature.

(Pub. L. 95–507, title II, §223, Oct. 24, 1978, 92 Stat. 1772.)

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

§637c. Definitions

For purposes of this Act—

(1) the term "Administrator" means the Administrator of the Small Business Administration;

(2) the term "Federal agency" has the meaning given the term "agency" by section 551(1) of title 5, but does not include the United States Postal Service or the Government Accountability Office; and

(3) the term "Government procurement contract" means any contract for the procurement of any goods or services by any Federal agency.

(Pub. L. 95–507, title II, §224(a), Oct. 24, 1978, 92 Stat. 1772; Pub. L. 108–271, §8(b), July 7, 2004,

118 Stat. 814.)

REFERENCES IN TEXT

This Act, referred to in text, means Pub. L. 95–507, Oct. 24, 1978, 92 Stat. 1757. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

AMENDMENTS

2004—Par. (2). Pub. L. 108–271 substituted "Government Accountability Office" for "General Accounting Office".

§637d. Subcontracting plan reports

(1) Reporting requirements

Not later than 1 year after January 2, 2013, the Administrator of the Small Business Administration shall take such actions as are necessary to ensure that the electronic subcontracting reporting system established by the Administration to carry out the requirement of section 637(d)(6)(E) of this title is modified to ensure that it can identify entities that fail to submit required reports.

(2) Annual report

Not later than March 31 of each year, the Administrator of the Small Business Administration shall provide the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a report, based on data available through existing systems, that sets forth, by agency (and to the extent practicable, by type of goal or plan), the following information:

(A) the percentage of entities required to submit reports pursuant to section 637(d)(6) of this title that filed such reports and that failed to file such reports during the prior fiscal year;

(B) the percentage of entities filing such reports that met, exceeded, or failed to meet goals set forth in their subcontracting plans during the prior fiscal year; and

(C) the aggregate value by which such entities exceeded, or failed to meet, their subcontracting goals during the prior fiscal year.

(Pub. L. 112–239, div. A, title XVI, §1653(b), Jan. 2, 2013, 126 Stat. 2082.)

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 2013, and not as part of the Small Business Act which comprises this chapter.

§638. Research and development

(a) Declaration of policy

Research and development are major factors in the growth and progress of industry and the national economy. The expense of carrying on research and development programs is beyond the means of many small-business concerns, and such concerns are handicapped in obtaining the benefits of research and development programs conducted at Government expense. These small-business concerns are thereby placed at a competitive disadvantage. This weakens the competitive free enterprise system and prevents the orderly development of the national economy. It is the policy of the Congress that assistance be given to small-business concerns to enable them to undertake and to obtain the benefits of research and development in order to maintain and strengthen the competitive free enterprise system and the national economy.

(b) Assistance to small-business concerns

It shall be the duty of the Administration, and it is empowered—

(1) to assist small-business concerns to obtain Government contracts for research and development;

(2) to assist small-business concerns to obtain the benefits of research and development performed under Government contracts or at Government expense;

(3) to provide technical assistance to small-business concerns to accomplish the purposes of this section; and [1]

(4) to develop and maintain a source file and an information program to assure each qualified and interested small business concern the opportunity to participate in Federal agency small business innovation research programs and small business technology transfer programs;

(5) to coordinate with participating agencies a schedule for release of SBIR and STTR solicitations, and to prepare a master release schedule so as to maximize small businesses' opportunities to respond to solicitations;

(6) to independently survey and monitor the operation of SBIR and STTR programs within participating Federal agencies;

(7) to report not less than annually to the Committee on Small Business of the Senate, and to the Committee on Science and the Committee on Small Business of the House of Representatives, on the SBIR and STTR programs of the Federal agencies and the Administration's information and monitoring efforts related to the SBIR and STTR programs, including—

(A) the data on output and outcomes collected pursuant to subsections (g)(8) and (o)(9);

(B) the number of proposals received from, and the number and total amount of awards to, HUBZone small business concerns and firms with venture capital, hedge fund, or private equity firm investment (including those majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms) under each of the SBIR and STTR programs;

(C) a description of the extent to which each Federal agency is increasing outreach and awards to firms owned and controlled by women or by socially or economically disadvantaged individuals under each of the SBIR and STTR programs;

(D) general information about the implementation of, and compliance with the allocation of funds required under, subsection (dd) for firms owned in majority part by venture capital operating companies, hedge funds, or private equity firms and participating in the SBIR program;

(E) a detailed description of appeals of Phase III awards and notices of noncompliance with the SBIR Policy Directive and the STTR Policy Directive filed by the Administrator with Federal agencies;

(F) an accounting of funds, initiatives, and outcomes under the Commercialization Readiness Program; and

(G) a description of the extent to which Federal agencies are providing in a timely manner information needed to maintain the database described in subsection (k) of this section;

(8) to provide for and fully implement the tenets of Executive Order No. 13329 (Encouraging Innovation in Manufacturing); and

(9) to coordinate the implementation of electronic databases at each of the Federal agencies participating in the SBIR program or the STTR program, including the technical ability of the participating agencies to electronically share data.

(c) Consultation and cooperation with Government agencies; studies and recommendations

The Administration is authorized to consult and cooperate with all Government agencies and to make studies and recommendations to such agencies, and such agencies are authorized and directed to cooperate with the Administration in order to carry out and to accomplish the purposes of this section.

(d) Joint programs; approval of agreements; withdrawal of approval; publication in Federal Register

(1) The Administrator is authorized to consult with representatives of small-business concerns

with a view to assisting and encouraging such firms to undertake joint programs for research and development carried out through such corporate or other mechanism as may be most appropriate for the purpose. Such joint programs may, among other things, include the following purposes:

(A) to construct, acquire, or establish laboratories and other facilities for the conduct of research;

(B) to undertake and utilize applied research;

(C) to collect research information related to a particular industry and disseminate it to participating members;

(D) to conduct applied research on a protected, proprietary, and contractual basis with member or nonmember firms, Government agencies, and others;

(E) to prosecute applications for patents and render patent services for participating members; and

(F) to negotiate and grant licenses under patents held under the joint program, and to establish corporations designed to exploit particular patents obtained by it.

(2) The Administrator may, after consultation with the Attorney General and the Chairman of the Federal Trade Commission, and with the prior written approval of the Attorney General, approve any agreement between small-business firms providing for a joint program of research and development, if the Administrator finds that the joint program proposed will maintain and strengthen the free enterprise system and the economy of the Nation. The Administrator or the Attorney General may at any time withdraw his approval of the agreement and the joint program of research and development covered thereby, if he finds that the agreement or the joint program carried on under it is no longer in the best interests of the competitive free enterprise system and the economy of the Nation. A copy of the statement of any such finding and approval intended to be within the coverage of this subsection, and a copy of any modification or withdrawal of approval, shall be published in the Federal Register. The authority conferred by this subsection on the Administrator shall not be delegated by him.

(3) No act or omission to act pursuant to and within the scope of any joint program for research and development, under an agreement approved by the Administrator under this subsection, shall be construed to be within the prohibitions of the antitrust laws or the Federal Trade Commission Act [15 U.S.C. 41 et seq.]. Upon publication in the Federal Register of the notice of withdrawal of his approval of the agreement granted under this subsection, either by the Administrator or by the Attorney General, the provisions of this subsection shall not apply to any subsequent act or omission to act by reason of such agreement or approval.

(e) Definitions

For the purpose of this section—

(1) the term "extramural budget" means the sum of the total obligations minus amounts obligated for such activities by employees of the agency in or through Government-owned, Government-operated facilities, except that for the Department of Energy it shall not include amounts obligated for atomic energy defense programs solely for weapons activities or for naval reactor programs, and except that for the Agency for International Development it shall not include amounts obligated solely for general institutional support of international research centers or for grants to foreign countries;

(2) the term "Federal agency" means an executive agency as defined in section 105 of title 5 or a military department as defined in section 102 of such title, except that it does not include any agency within the Intelligence Community (as the term is defined in section 3.4(f) of Executive Order 12333 or its successor orders);

(3) the term "funding agreement" means any contract, grant, or cooperative agreement entered into between any Federal agency and any small business for the performance of experimental, developmental, or research work funded in whole or in part by the Federal Government;

(4) the term "Small Business Innovation Research Program" or "SBIR" means a program under which a portion of a Federal agency's research or research and development effort is reserved for award to small business concerns through a uniform process having—

(A) a first phase for determining, insofar as possible, the scientific and technical merit and

feasibility of ideas that appear to have commercial potential, as described in subparagraph (B), submitted pursuant to SBIR program solicitations;

(B) a second phase, which shall not include any invitation, pre-screening, or pre-selection process for eligibility for Phase II, that will further develop proposals which meet particular program needs, in which awards shall be made based on the scientific and technical merit and feasibility of the proposals, as evidenced by the first phase, considering, among other things, the proposal's commercial potential, as evidenced by—

(i) the small business concern's record of successfully commercializing SBIR or other research;

(ii) the existence of second phase funding commitments from private sector or non-SBIR funding sources;

(iii) the existence of third phase, follow-on commitments for the subject of the research; and

(iv) the presence of other indicators of the commercial potential of the idea; and

(C) where appropriate, a third phase for work that derives from, extends, or completes efforts made under prior funding agreements under the SBIR program—

(i) in which commercial applications of SBIR-funded research or research and development are funded by non-Federal sources of capital or, for products or services intended for use by the Federal Government, by follow-on non-SBIR Federal funding awards; or

(ii) for which awards from non-SBIR Federal funding sources are used for the continuation of research or research and development that has been competitively selected using peer review or merit-based selection procedures;

(5) the term "research" or "research and development" means any activity which is (A) a systematic, intensive study directed toward greater knowledge or understanding of the subject studied; (B) a systematic study directed specifically toward applying new knowledge to meet a recognized need; or (C) a systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements;

(6) the term "Small Business Technology Transfer Program" or "STTR" means a program under which a portion of a Federal agency's extramural research or research and development effort is reserved for award to small business concerns for cooperative research and development through a uniform process having—

(A) a first phase, to determine, to the extent possible, the scientific, technical, and commercial merit and feasibility of ideas submitted pursuant to STTR program solicitations;

(B) a second phase, which shall not include any invitation, pre-screening, or pre-selection process for eligibility for Phase II, that will further develop proposals that meet particular program needs, in which awards shall be made based on the scientific, technical, and commercial merit and feasibility of the idea, as evidenced by the first phase and by other relevant information; and

(C) where appropriate, a third phase for work that derives from, extends, or completes efforts made under prior funding agreements under the STTR program—

(i) in which commercial applications of STTR-funded research or research and development are funded by non-Federal sources of capital or, for products or services intended for use by the Federal Government, by follow-on non-STTR Federal funding awards; and

(ii) for which awards from non-STTR Federal funding sources are used for the continuation of research or research and development that has been competitively selected using peer review or scientific review criteria;

(7) the term "cooperative research and development" means research or research and

development conducted jointly by a small business concern and a research institution in which not less than 40 percent of the work is performed by the small business concern, and not less than 30 percent of the work is performed by the research institution;

(8) the term "research institution" means a nonprofit institution, as defined in section 3703(5) [2] of this title, and includes federally funded research and development centers, as identified by the National Scientific Foundation in accordance with the governmentwide Federal Acquisition Regulation issued in accordance with section 1303(a)(1) of title 41 (or any successor regulation thereto);

(9) the term "commercial applications" shall not be construed to exclude testing and evaluation of products, services, or technologies for use in technical or weapons systems, and further, awards for testing and evaluation of products, services, or technologies for use in technical or weapons systems may be made in either Phase II or Phase III of the Small Business Innovation Research Program and of the Small Business Technology Transfer Program, as defined in this subsection;

(10) the term "commercialization" means—

(A) the process of developing products, processes, technologies, or services; and

(B) the production and delivery (whether by the originating party or by others) of products, processes, technologies, or services for sale to or use by the Federal Government or commercial markets;

(11) the term "Phase I" means—

(A) with respect to the SBIR program, the first phase described in paragraph (4)(A); and

(B) with respect to the STTR program, the first phase described in paragraph (6)(A);

(12) the term "Phase II" means—

(A) with respect to the SBIR program, the second phase described in paragraph (4)(B); and

(B) with respect to the STTR program, the second phase described in paragraph (6)(B); and

(13) the term "Phase III" means—

(A) with respect to the SBIR program, the third phase described in paragraph (4)(C); and

(B) with respect to the STTR program, the third phase described in paragraph (6)(C).

(f) Federal agency expenditures for SBIR program

(1) Required expenditure amounts

Except as provided in paragraph (2)(B), each Federal agency which has an extramural budget for research or research and development in excess of $100,000,000 for fiscal year 1992, or any fiscal year thereafter, shall expend with small business concerns—

(A) not less than 1.5 percent of such budget in each of fiscal years 1993 and 1994;

(B) not less than 2.0 percent of such budget in each of fiscal years 1995 and 1996;

(C) not less than 2.5 percent of such budget in each of fiscal years 1997 through 2011;

(D) not less than 2.6 percent of such budget in fiscal year 2012;

(E) not less than 2.7 percent of such budget in fiscal year 2013;

(F) not less than 2.8 percent of such budget in fiscal year 2014;

(G) not less than 2.9 percent of such budget in fiscal year 2015;

(H) not less than 3.0 percent of such budget in fiscal year 2016; and

(I) not less than 3.2 percent of such budget in fiscal year 2017 and each fiscal year thereafter,

specifically in connection with SBIR programs which meet the requirements of this section, policy directives, and regulations issued under this section.

(2) Limitations

A Federal agency shall not make available for the purpose of meeting the requirements of paragraph (1) an amount of its extramural budget for basic research which exceeds the percentages specified in paragraph (1).

(3) Exclusion of certain funding agreements

Funding agreements with small business concerns for research or research and development which result from competitive or single source selections other than an SBIR program shall not be considered to meet any portion of the percentage requirements of paragraph (1).

(4) Rule of construction

Nothing in this subsection may be construed to prohibit a Federal agency from expending with small business concerns an amount of the extramural budget for research or research and development of the agency that exceeds the amount required under paragraph (1).

(g) Administration of small business innovation research programs by Federal agencies required to establish such programs

Each Federal agency required by subsection (f) of this section to establish a small business innovation research program shall, in accordance with this chapter and regulations issued hereunder—

(1) unilaterally determine categories of projects to be in its SBIR program;

(2) issue small business innovation research solicitations in accordance with a schedule determined cooperatively with the Small Business Administration;

(3) unilaterally determine research topics within the agency's SBIR solicitations, giving special consideration to broad research topics and to topics that further 1 or more critical technologies, as identified by—

(A) the National Critical Technologies Panel (or its successor) in the 1991 report required under section 6683 [2] of title 42, and in subsequent reports issued under that authority; or

(B) the Secretary of Defense, in the 1992 report issued in accordance with section 2522 [2] of title 10, and in subsequent reports issued under that authority;

(4)(A) unilaterally receive and evaluate proposals resulting from SBIR proposals; and

(B) make a final decision on each proposal submitted under the SBIR program—

(i) not later than 1 year after the date on which the applicable solicitation closes, if with respect to the National Institutes of Health or the National Science Foundation, or 90 days after the date on which the applicable solicitation closes, if with respect to any other participating agency; or

(ii) if the Administrator authorizes an extension with respect to a solicitation, not later than 90 days after the date that would otherwise be applicable to the agency under clause (i);

(5) subject to subsection (l) of this section, unilaterally select awardees for its SBIR funding agreements and inform each awardee under such an agreement, to the extent possible, of the expenses of the awardee that will be allowable under the funding agreement;

(6) administer its own SBIR funding agreements (or delegate such administration to another agency);

(7) make payments to recipients of SBIR funding agreements on the basis of progress toward or completion of the funding agreement requirements and, in all cases, make payment to recipients under such agreements in full, subject to audit, on or before the last day of the 12-month period beginning on the date of completion of such requirements;

(8) collect annually, and maintain in a common format in accordance with the simplified reporting requirements under subsection (v), such information from awardees as is necessary to assess the SBIR program, including information necessary to maintain the database described in subsection (k), including—

(A) whether an awardee—

(i) has venture capital, hedge fund, or private equity firm investment or is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms and, if so—

(I) the amount of venture capital, hedge fund, or private equity firm investment that the

awardee has received as of the date of the award; and

(II) the amount of additional capital that the awardee has invested in the SBIR technology;

(ii) has an investor that—

(I) is an individual who is not a citizen of the United States or a lawful permanent resident of the United States and, if so, the name of any such individual; or

(II) is a person that is not an individual and is not organized under the laws of a State or the United States and, if so, the name of any such person;

(iii) is owned by a woman or has a woman as a principal investigator; [3]

(iv) is owned by a socially or economically disadvantaged individual or has a socially or economically disadvantaged individual as a principal investigator; [3]

(v) is a faculty member or a student of an institution of higher education, as that term is defined in section 1001 of title 20; or

(vi) is located in a State described in subsection (u)(3);

(B) a justification statement from the agency, if an awardee receives an award in an amount that is more than the award guidelines under this section; and

(C) data with respect to the Federal and State Technology Partnership Program (FAST Program);

(9) make an annual report on the SBIR program to the Small Business Administration and the Office of Science and Technology Policy;

(10) include, as part of its annual performance plan as required by subsections (a) and (b) of section 1115 of title 31, a section on its SBIR program, and shall submit such section to the Committee on Small Business of the Senate, and the Committee on Science and the Committee on Small Business of the House of Representatives;

(11) provide for and fully implement the tenets of Executive Order No. 13329 (Encouraging Innovation in Manufacturing); and

(12) provide timely notice to the Administrator of any case or controversy before any Federal judicial or administrative tribunal concerning the SBIR program of the Federal agency.

(h) Establishment of goals for funding agreements for research or research and development to small business concerns by agencies having budgets for research and development

In addition to the requirements of subsection (f) of this section, each Federal agency which has a budget for research or research and development in excess of $20,000,000 for any fiscal year beginning with fiscal year 1983 or subsequent fiscal year shall establish goals specifically for funding agreements for research or research and development to small business concerns, and no goal established under this subsection shall be less than the percentage of the agency's research or research and development budget expended under funding agreements with small business concerns in the immediately preceding fiscal year.

(i) Annual reporting

(1) In general

Each Federal agency required by this section to have an SBIR program or to establish goals shall report annually to the Small Business Administration the number of awards (including awards under subsection (y)) pursuant to grants, contracts, or cooperative agreements over $10,000 in amount and the dollar value of all such awards, identifying SBIR awards and comparing the number and amount of such awards with awards to other than small business concerns.

(2) Calculation of extramural budget

(A) Methodology

Not later than 4 months after the date of the enactment of each appropriations Act for a Federal agency required by this section to have an SBIR program, the Federal agency shall submit to the Administrator a report, which shall include a description of the methodology used for calculating the amount of the extramural budget of that Federal agency.

(B) Administrator's analysis

The Administrator shall include an analysis of the methodology received from each Federal agency referred to in subparagraph (A) in the report required by subsection (b)(7) of this section.

(j) Small Business Administration policy directives for the general conduct of small business innovation research programs

(1) Policy directives

The Small Business Administration, after consultation with the Administrator of the Office of Federal Procurement Policy, the Director of the Office of Science and Technology Policy, and the Intergovernmental Affairs Division of the Office of Management and Budget, shall, within one hundred and twenty days of July 22, 1982, issue policy directives for the general conduct of the SBIR programs within the Federal Government, including providing for—

(A) simplified, standardized, and timely SBIR solicitations;

(B) a simplified, standardized funding process which provides for (i) the timely receipt and review of proposals; (ii) outside peer review for at least Phase II proposals, if appropriate; (iii) protection of proprietary information provided in proposals; (iv) selection of awardees; (v) retention of rights in data generated in the performance of the contract by the small business concern; (vi) transfer of title to property provided by the agency to the small business concern if such a transfer would be more cost effective than recovery of the property by the agency; (vii) cost sharing; and (viii) cost principles and payment schedules;

(C) exemptions from the regulations under paragraph (2) [4] if national security or intelligence functions clearly would be jeopardized;

(D) minimizing regulatory burden associated with participation in the SBIR program for the small business concern which will stimulate the cost-effective conduct of Federal research and development and the likelihood of commercialization of the results of research and development conducted under the SBIR program;

(E) simplified, standardized, and timely annual report on the SBIR program to the Small Business Administration and the Office of Science and Technology Policy;

(F) standardized and orderly withdrawal from program participation by an agency having a SBIR program; at the discretion of the Administration, such directives may require a phased withdrawal over a period of time sufficient in duration to minimize any adverse impact on small business concerns; and

(G) the voluntary participation in a SBIR program by a Federal agency not required to establish such a program pursuant to subsection (f) of this section.

(2) Modifications

Not later than 90 days after October 28, 1992, the Administrator shall modify the policy directives issued pursuant to this subsection to provide for—

(A) retention by a small business concern of the rights to data generated by the concern in the performance of an SBIR award for a period of not less than 4 years;

(B) continued use by a small business concern participating in Phase III of the SBIR program, as a directed bailment, of any property transferred by a Federal agency to the small business concern in Phase II of an SBIR program for a period of not less than 2 years, beginning on the initial date of the concern's participation in Phase III of such program;

(C) procedures to ensure, to the extent practicable, that an agency which intends to pursue research, development, or production of a technology developed by a small business concern under an SBIR program enters into follow-on, non-SBIR funding agreements with the small

business concern for such research, development, or production;

(D) an increase to $150,000 in the amount of funds which an agency may award in Phase I of an SBIR program, and to $1,000,000 in Phase II of an SBIR program, and an adjustment of such amounts every year for inflation;

(E) a process for notifying the participating SBIR agencies and potential SBIR participants of the 1991, 1992, and the current critical technologies, as identified—

(i) by the National Critical Technologies Panel (or its successor), in accordance with section 6683 [2] of title 42; or

(ii) by the Secretary of Defense, in accordance with section 2522 [2] of title 10;

(F) enhanced outreach efforts to increase the participation of socially and economically disadvantaged small business concerns, as defined in section 637(a)(4) of this title, and the participation of small businesses that are 51 percent owned and controlled by women in technological innovation and in SBIR programs, including Phase III of such programs, and the collection of data to document such participation;

(G) technical and programmatic guidance to encourage agencies to develop gap-funding programs to address the delay between an award for Phase I of an SBIR program and the application for and extension of an award for Phase II of such program;

(H) procedures to ensure that a small business concern that submits a proposal for a funding agreement for Phase I of an SBIR program and that has received more than 15 Phase II SBIR awards during the preceding 5 fiscal years is able to demonstrate the extent to which it was able to secure Phase III funding to develop concepts resulting from previous Phase II SBIR awards; and

(I) procedures to ensure that agencies participating in the SBIR program retain the information submitted under subparagraph (H) at least until the Government Accountability Office submits the report required under section 105 of the Small Business Research and Development Enhancement Act of 1992.

(3) Additional modifications

Not later than 120 days after December 21, 2000, the Administrator shall modify the policy directives issued pursuant to this subsection—

(A) to clarify that the rights provided for under paragraph (2)(A) apply to all Federal funding awards under this section, including Phase I, Phase II, and Phase III;

(B) to provide for the requirement of a succinct commercialization plan with each application for a Phase II award that is moving toward commercialization;

(C) to require agencies to report to the Administration, not less frequently than annually, all instances in which an agency pursued research, development, or production of a technology developed by a small business concern using an award made under the SBIR program of that agency, and determined that it was not practicable to enter into a follow-on non-SBIR program funding agreement with the small business concern, which report shall include, at a minimum—

(i) the reasons why the follow-on funding agreement with the small business concern was not practicable;

(ii) the identity of the entity with which the agency contracted to perform the research, development, or production; and

(iii) a description of the type of funding agreement under which the research, development, or production was obtained; and

(D) to implement subsection (v) of this section, including establishing standardized procedures for the provision of information pursuant to subsection (k)(3) of this section.

(k) Database

(1) Public database

Not later than 180 days after December 21, 2000, the Administrator shall develop, maintain, and

make available to the public a searchable, up-to-date, electronic database that includes—

(A) the name, size, location, and an identifying number assigned by the Administrator, of each small business concern that has received a Phase I or Phase II SBIR or STTR award from a Federal agency;

(B) a description of each Phase I or Phase II SBIR or STTR award received by that small business concern, including—

(i) an abstract of the project funded by the award, excluding any proprietary information so identified by the small business concern;

(ii) the Federal agency making the award; and

(iii) the date and amount of the award;

(C) an identification of any business concern or subsidiary established for the commercial application of a product or service for which an SBIR or STTR award is made;

(D) information regarding mentors and Mentoring Networks, as required by section 657e(d) of this title;

(E) with respect to assistance under the STTR program only—

(i) whether the small business concern or the research institution initiated their collaboration on each assisted STTR project;

(ii) whether the small business concern or the research institution originated any technology relating to the assisted STTR project;

(iii) the length of time it took to negotiate any licensing agreement between the small business concern and the research institution under each assisted STTR project; and

(iv) how the proceeds from commercialization, marketing, or sale of technology resulting from each assisted STTR project were allocated (by percentage) between the small business concern and the research institution; and

(F) for each small business concern that has received a Phase I or Phase II SBIR or STTR award from a Federal agency, whether the small business concern—

(i) has venture capital, hedge fund, or private equity firm investment and, if so, whether the small business concern is registered as majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms as required under subsection (dd)(3);

(ii) is owned by a woman or has a woman as a principal investigator; [3]

(iii) is owned by a socially or economically disadvantaged individual or has a socially or economically disadvantaged individual as a principal investigator; [3]

(iv) is owned by a faculty member or a student of an institution of higher education, as that term is defined in section 1001 of title 20; or

(v) received assistance under the Federal and State Technology Partnership Program (FAST Program).

(2) Government database

Not later than 90 days after December 31, 2011, the Administrator, in consultation with Federal agencies required to have an SBIR program pursuant to subsection (f)(1) of this section or an STTR program pursuant to subsection (n)(1) of this section, shall develop and maintain a database to be used exclusively for SBIR and STTR program evaluation that—

(A) contains for each small business concern that applies for, submits a proposal for, or receives an award under Phase I or Phase II of the SBIR program or the STTR program—

(i) the name, size, and location of, and the identifying number assigned by the Administration to, the small business concern;

(ii) an abstract of the applicable project;

(iii) the specific aims of the project;

(iv) the number of employees of the small business concern;

(v) the names and titles of the key individuals that will carry out the project, the position each key individual holds in the small business concern, and contact information for each key

individual;

(vi) the percentage of effort each individual described in clause (v) will contribute to the project;

(vii) whether the small business concern is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms; and

(viii) the Federal agency to which the application is made and contact information for the person or office within the Federal agency that is responsible for reviewing applications and making awards under the SBIR program or the STTR program;

(B) contains for each Phase II award made by a Federal agency—

(i) information collected in accordance with paragraph (3) on revenue from the sale of new products or services resulting from the research conducted under the award;

(ii) information collected in accordance with paragraph (3) on additional investment from any source, other than Phase I or Phase II SBIR or STTR awards, to further the research and development conducted under the award; and

(iii) any other information received in connection with the award that the Administrator, in conjunction with the SBIR and STTR program managers of Federal agencies, considers relevant and appropriate;

(C) includes any narrative information that a small business concern receiving a Phase II award voluntarily submits to further describe the outputs and outcomes of its awards;

(D) includes, for each awardee—

(i) the name, size, and location of, and any identifying number assigned by the Administrator to, the awardee;

(ii) whether the awardee has venture capital, hedge fund, or private equity firm investment and, if so—

(I) the amount of venture capital, hedge fund, or private equity firm investment as of the date of the award;

(II) the percentage of ownership of the awardee held by a venture capital operating company, hedge fund, or private equity firm, including whether the awardee is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms; and

(III) the amount of additional capital that the awardee has invested in the SBIR or STTR technology, which information shall be collected on an annual basis;

(iii) the names and locations of any affiliates of the awardee;

(iv) the number of employees of the awardee;

(v) the number of employees of the affiliates of the awardee; and

(vi) the names of, and the percentage of ownership of the awardee held by—

(I) any individual who is not a citizen of the United States or a lawful permanent resident of the United States; or

(II) any person that is not an individual and is not organized under the laws of a State or the United States;

(E) includes any other data collected by or available to any Federal agency that such agency considers may be useful for SBIR or STTR program evaluation;

(F) is available for use solely for program evaluation purposes by the Federal Government or, in accordance with policy directives issued by the Administration, by other authorized persons who are subject to a use and nondisclosure agreement with the Federal Government covering the use of the database; and

(G) includes a timely and accurate list of any individual or small business concern that has participated in the SBIR program or STTR program that has been—

(i) convicted of a fraud-related crime involving funding received under the SBIR program

or STTR program; or

(ii) found civilly liable for a fraud-related violation involving funding received under the SBIR program or STTR program.

(3) Updating information for database

(A) In general

A small business concern applying for a Phase II award under this section shall be required to update information in the database established under this subsection for any prior Phase II award received by that small business concern. In complying with this paragraph, a small business concern may apportion sales or additional investment information relating to more than one Phase II award among those awards, if it notes the apportionment for each award.

(B) Annual updates upon termination

A small business concern receiving a Phase II award under this section shall—

(i) update information in the database concerning that award at the termination of the award period; and

(ii) be requested to voluntarily update such information annually thereafter for a period of 5 years.

(C) Government database

Not later than 60 days after the date established by a Federal agency for submitting applications or proposals for a Phase I or Phase II award under the SBIR program or STTR program, the head of the Federal agency shall submit to the Administrator the data required under paragraph (2) with respect to each small business concern that applies or submits a proposal for the Phase I or Phase II award.

(4) Protection of information

Information provided under paragraph (2) shall be considered privileged and confidential and not subject to disclosure pursuant to section 552 of title 5.

(5) Rule of construction

Inclusion of information in the database under this subsection shall not be considered to be publication for purposes of subsection (a) or (b) of section 102 of title 35.

(l) Reporting of awards made from single proposal, to multiple award winners, or to critical technology topics

(1) Single proposal

If a Federal agency required to establish an SBIR program under subsection (f) of this section makes an award with respect to an SBIR solicitation topic or subtopic for which the agency received only 1 proposal, the agency shall provide written justification for making the award in its next quarterly report to the Administration and in the agency's next annual report required under subsection (g)(8) of this section.

(2) Multiple awards

An agency referred to in paragraph (1) shall include in its next annual report required under subsection (g)(8) of this section an accounting of the awards the agency has made for Phase I of an SBIR program during the reporting period to entities that have received more than 15 awards for Phase II of an SBIR program during the preceding 5 fiscal years.

(3) Critical technology awards

An agency referred to in paragraph (1) shall include in its next annual report required under subsection (g)(8) of this section, an accounting of the number of awards it has made to critical technology topics, as defined in subsection (g)(3) of this section, including an identification of the specific critical technologies topics, and the percentage by number and dollar amount of the agency's total SBIR awards to such critical technology topics.

(m) Termination

The authorization to carry out the Small Business Innovation Research Program established under this section shall terminate on September 30, 2017.

(n) Required expenditures for STTR by Federal agencies

(1) Required expenditure amounts

(A) In general

With respect to each fiscal year through fiscal year 2017, each Federal agency that has an extramural budget for research, or research and development, in excess of $1,000,000,000 for that fiscal year, shall expend with small business concerns not less than the percentage of that extramural budget specified in subparagraph (B), specifically in connection with STTR programs that meet the requirements of this section and any policy directives and regulations issued under this section.

(B) Expenditure amounts

The percentage of the extramural budget required to be expended by an agency in accordance with subparagraph (A) shall be—

(i) 0.15 percent for each fiscal year through fiscal year 2003;
(ii) 0.3 percent for each of fiscal years 2004 through 2011;
(iii) 0.35 percent for each of fiscal years 2012 and 2013;
(iv) 0.40 percent for each of fiscal years 2014 and 2015; and
(v) 0.45 percent for fiscal year 2016 and each fiscal year thereafter.

(2) Limitations

A Federal agency shall not—

(A) use any of its STTR budget established pursuant to paragraph (1) for the purpose of funding administrative costs of the program, including costs associated with salaries and expenses, or, in the case of a small business concern or a research institution, costs associated with salaries, expenses, and administrative overhead (other than those direct or indirect costs allowable under guidelines of the Office of Management and Budget and the governmentwide Federal Acquisition Regulation issued in accordance with section 1303(a)(1) of title 41); or

(B) make available for the purpose of meeting the requirements of paragraph (1) an amount of its extramural budget for basic research which exceeds the percentage specified in paragraph (1).

(3) Exclusion of certain funding agreements

Funding agreements with small business concerns for research or research and development which result from competitive or single source selections other than an STTR program shall not be considered to meet any portion of the percentage requirements of paragraph (1).

(o) Federal agency STTR authority

Each Federal agency required to establish an STTR program in accordance with subsection (n) of this section and regulations issued under this chapter, shall—

(1) unilaterally determine categories of projects to be included in its STTR program;

(2) issue STTR solicitations in accordance with a schedule determined cooperatively with the Administration;

(3) unilaterally determine research topics within the agency's STTR solicitations, giving special consideration to broad research topics and to topics that further 1 or more critical technologies, as identified—

(A) by the National Critical Technologies Panel (or its successor) in reports required under section 6683 [2] of title 42; or

(B) by the Secretary of Defense, in accordance with section 2522 [2] of title 10;

(4)(A) unilaterally receive and evaluate proposals resulting from STTR solicitations; and

(B) make a final decision on each proposal submitted under the STTR program—

(i) not later than 1 year after the date on which the applicable solicitation closes, if with respect to the National Institutes of Health or the National Science Foundation, or 90 days after the date on which the applicable solicitation closes, if with respect to any other participating agency; or

(ii) if the Administrator authorizes an extension for a solicitation, not later than 90 days after the date that would be applicable to the agency under clause (i);

(5) unilaterally select awardees for its STTR funding agreements and inform each awardee under such an agreement, to the extent possible, of the expenses of the awardee that will be allowable under the funding agreement;

(6) administer its own STTR funding agreements (or delegate such administration to another agency);

(7) make payments to recipients of STTR funding agreements on the basis of progress toward or completion of the funding agreement requirements and, in all cases, make payment to recipients under such agreements in full, subject to audit, on or before the last day of the 12-month period beginning on the date of the completion of such requirements;

(8) include, as part of its annual performance plan as required by subsections (a) and (b) of section 1115 of title 31, a section on its STTR program, and shall submit such section to the Committee on Small Business of the Senate, and the Committee on Science and the Committee on Small Business of the House of Representatives;

(9) collect annually, and maintain in a common format in accordance with the simplified reporting requirements under subsection (v), such information from applicants and awardees as is necessary to assess the STTR program outputs and outcomes, including information necessary to maintain the database described in subsection (k), including—

(A) whether an applicant or awardee—

(i) has venture capital, hedge fund, or private equity firm investment or is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms and, if so—

(I) the amount of venture capital, hedge fund, or private equity firm investment that the applicant or awardee has received as of the date of the application or award, as applicable; and

(II) the amount of additional capital that the applicant or awardee has invested in the STTR technology;

(ii) has an investor that—

(I) is an individual who is not a citizen of the United States or a lawful permanent resident of the United States and, if so, the name of any such individual; or

(II) is a person that is not an individual and is not organized under the laws of a State or the United States and, if so, the name of any such person;

(iii) is owned by a woman or has a woman as a principal investigator; [3]

(iv) is owned by a socially or economically disadvantaged individual or has a socially or economically disadvantaged individual as a principal investigator; [3]

(v) is a faculty member or a student of an institution of higher education, as that term is defined in section 1001 of title 20; or

(vi) is located in a State in which the total value of contracts awarded to small business concerns under all STTR programs is less than the total value of contracts awarded to small business concerns in a majority of other States, as determined by the Administrator in biennial fiscal years, beginning with fiscal year 2008, based on the most recent statistics compiled by the Administrator;

(B) if an awardee receives an award in an amount that is more than the award guidelines

under this section, a statement from the agency that justifies the award amount; and

(C) data with respect to the Federal and State Technology Partnership Program (FAST Program);

(10) submit an annual report on the STTR program to the Administration and the Office of Science and Technology Policy;

(11) adopt the agreement developed by the Administrator under subsection (w) of this section as the agency's model agreement for allocating between small business concerns and research institutions intellectual property rights and rights, if any, to carry out follow-on research, development, or commercialization;

(12) develop, in consultation with the Office of Federal Procurement Policy and the Office of Government Ethics, procedures to ensure that federally funded research and development centers (as defined in subsection (e)(8) of this section) that participate in STTR agreements—

(A) are free from organizational conflicts of interests relative to the STTR program;

(B) do not use privileged information gained through work performed for an STTR agency or private access to STTR agency personnel in the development of an STTR proposal; and

(C) use outside peer review, as appropriate;

(13) not later than July 31, 1993, develop procedures for assessing the commercial merit and feasibility of STTR proposals, as evidenced by—

(A) the small business concern's record of successfully commercializing STTR or other research;

(B) the existence of Phase II funding commitments from private sector or non-STTR funding sources;

(C) the existence of Phase III follow-on commitments for the subject of the research; and

(D) the presence of other indicators of the commercial potential of the idea;

(14) implement an outreach program to research institutions and small business concerns for the purpose of enhancing its STTR program, in conjunction with any such outreach done for purposes of the SBIR program;

(15) provide for and fully implement the tenets of Executive Order No. 13329 (Encouraging Innovation in Manufacturing); and

(16) provide timely notice to the Administrator of any case or controversy before any Federal judicial or administrative tribunal concerning the STTR program of the Federal agency.

(p) STTR policy directive

(1) Issuance

The Administrator shall issue a policy directive for the general conduct of the STTR programs within the Federal Government. Such policy directive shall be issued after consultation with—

(A) the heads of each of the Federal agencies required by subsection (n) of this section to establish an STTR program;

(B) the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office; and

(C) the Director of the Office of Federal Procurement Policy.

(2) Contents

The policy directive required by paragraph (1) shall provide for—

(A) simplified, standardized, and timely STTR solicitations;

(B) a simplified, standardized funding process that provides for—

(i) the timely receipt and review of proposals;

(ii) outside peer review, if appropriate;

(iii) protection of proprietary information provided in proposals;

(iv) selection of awardees;

(v) retention by a small business concern of the rights to data generated by the concern in

the performance of an STTR award for a period of not less than 4 years;

(vi) continued use by a small business concern, as a directed bailment, of any property transferred by a Federal agency to the small business concern in Phase II of the STTR program for a period of not less than 2 years, beginning on the initial date of the concern's participation in Phase III of such program;

(vii) cost sharing;

(viii) cost principles and payment schedules; and

(ix) 1-year awards for Phase I of an STTR program, generally not to exceed $150,000, and 2-year awards for Phase II of an STTR program, generally not to exceed $1,000,000, (each of which the Administrator shall adjust for inflation annually) greater or lesser amounts to be awarded at the discretion of the awarding agency, and shorter or longer periods of time to be approved at the discretion of the awarding agency where appropriate for a particular project;

(C) minimizing regulatory burdens associated with participation in STTR programs;

(D) guidelines for a model agreement, to be used by all agencies, for allocating between small business concerns and research institutions intellectual property rights and rights, if any, to carry out follow-on research, development, or commercialization;

(E) procedures to ensure that—

(i) a recipient of an STTR award is a small business concern, as defined in section 632 of this title and the regulations promulgated thereunder; and

(ii) such small business concern exercises management and control of the performance of the STTR funding agreement pursuant to a business plan providing for the commercialization of the technology that is the subject matter of the award; and

(F) procedures to ensure, to the extent practicable, that an agency which intends to pursue research, development, or production of a technology developed by a small business concern under an STTR program enters into follow-on, non-STTR funding agreements with the small business concern for such research, development, or production.

(3) Modifications

Not later than 120 days after October 15, 2001, the Administrator shall modify the policy directive issued pursuant to this subsection to clarify that the rights provided for under paragraph (2)(B)(v) apply to all Federal funding awards under this section, including Phase I, Phase II, and Phase III.

(q) Discretionary technical assistance

(1) In general

Each Federal agency required by this section to conduct an SBIR program or STTR program may enter into an agreement with a vendor selected under paragraph (2) to provide small business concerns engaged in SBIR or STTR projects with technical assistance services, such as access to a network of scientists and engineers engaged in a wide range of technologies, or access to technical and business literature available through on-line data bases, for the purpose of assisting such concerns in—

(A) making better technical decisions concerning such projects;

(B) solving technical problems which arise during the conduct of such projects;

(C) minimizing technical risks associated with such projects; and

(D) developing and commercializing new commercial products and processes resulting from such projects.

(2) Vendor selection

Each agency may select a vendor to assist small business concerns to meet the goals listed in paragraph (1) for a term not to exceed 5 years. Such selection shall be competitive and shall utilize merit-based criteria.

(3) Additional technical assistance

(A) Phase I

A Federal agency described in paragraph (1) may—

(i) provide to the recipient of a Phase I SBIR or STTR award, through a vendor selected under paragraph (2), the services described in paragraph (1), in an amount equal to not more than $5,000 per year; or

(ii) authorize the recipient of a Phase I SBIR or STTR award to purchase the services described in paragraph (1), in an amount equal to not more than $5,000 per year, which shall be in addition to the amount of the recipient's award.

(B) Phase II

A Federal agency described in paragraph (1) may—

(i) provide to the recipient of a Phase II SBIR or STTR award, through a vendor selected under paragraph (2), the services described in paragraph (1), in an amount equal to not more than $5,000 per year; or

(ii) authorize the recipient of a Phase II SBIR or STTR award to purchase the services described in paragraph (1), in an amount equal to not more than $5,000 per year, which shall be in addition to the amount of the recipient's award.

(C) Flexibility

In carrying out subparagraphs (A) and (B), each Federal agency shall provide the allowable amounts to a recipient that meets the eligibility requirements under the applicable subparagraph, if the recipient requests to seek technical assistance from an individual or entity other than the vendor selected under paragraph (2) by the Federal agency.

(D) Limitation

A Federal agency may not—

(i) use the amounts authorized under subparagraph (A) or (B) unless the vendor selected under paragraph (2) provides the technical assistance to the recipient; or

(ii) enter a contract with a vendor under paragraph (2) under which the amount provided for technical assistance is based on total number of Phase I or Phase II awards.

(r) Phase III agreements

(1) In general

In the case of a small business concern that is awarded a funding agreement for Phase II of an SBIR or STTR program, a Federal agency may enter into a Phase III agreement with that business concern for additional work to be performed during or after the Phase II period. The Phase II funding agreement with the small business concern may, at the discretion of the agency awarding the agreement, set out the procedures applicable to Phase III agreements with that agency or any other agency.

(2) Definition

In this subsection, the term "Phase III agreement" means a follow-on, non-SBIR or non-STTR funded contract as described in paragraph (4)(C) or paragraph (6)(C) of subsection (e) of this section.

(3) Intellectual property rights

Each funding agreement under an SBIR or STTR program shall include provisions setting forth the respective rights of the United States and the small business concern with respect to intellectual property rights and with respect to any right to carry out follow-on research.

(4) Phase III awards

To the greatest extent practicable, Federal agencies and Federal prime contractors shall issue Phase III awards relating to technology, including sole source awards, to the SBIR and STTR award recipients that developed the technology.

(s) Competitive selection procedures for SBIR and STTR programs

All funds awarded, appropriated, or otherwise made available in accordance with subsection (f) or (n) must be awarded pursuant to competitive and merit-based selection procedures.

(t) Inclusion in strategic plans

Program information relating to the SBIR and STTR programs shall be included by each Federal agency in any update or revision required of the Federal agency under section 306(b) of title 5.

(u) Coordination of technology development programs

(1) Definition of technology development program

In this subsection, the term "technology development program" means—

(A) the Experimental Program to Stimulate Competitive Research of the National Science Foundation, as established under section 1862g of title 42;

(B) the Defense Experimental Program to Stimulate Competitive Research of the Department of Defense;

(C) the Experimental Program to Stimulate Competitive Research of the Department of Energy;

(D) the Experimental Program to Stimulate Competitive Research of the Environmental Protection Agency;

(E) the Experimental Program to Stimulate Competitive Research of the National Aeronautics and Space Administration;

(F) the Institutional Development Award Program of the National Institutes of Health; and

(G) the National Research Initiative Competitive Grants Program of the Department of Agriculture.

(2) Coordination requirements

Each Federal agency that is subject to subsection (f) of this section and that has established a technology development program may, in each fiscal year, review for funding under that technology development program—

(A) any proposal to provide outreach and assistance to one or more small business concerns interested in participating in the SBIR program, including any proposal to make a grant or loan to a company to pay a portion or all of the cost of developing an SBIR proposal, from an entity, organization, or individual located in—

(i) a State that is eligible to participate in that program; or

(ii) a State described in paragraph (3); or

(B) any proposal for Phase I of the SBIR program, if the proposal, though meritorious, is not funded through the SBIR program for that fiscal year due to funding restraints, from a small business concern located in—

(i) a State that is eligible to participate in a technology development program; or

(ii) a State described in paragraph (3).

(3) Additionally eligible State

A State referred to in subparagraph (A)(ii) or (B)(ii) of paragraph (2) is a State in which the total value of contracts awarded to small business concerns under all SBIR programs is less than the total value of contracts awarded to small business concerns in a majority of other States, as determined by the Administrator in biennial fiscal years, beginning with fiscal year 2000, based on the most recent statistics compiled by the Administrator.

(v) Reducing paperwork and compliance burden

(1) Standardization of reporting requirements

The Administrator shall work with the Federal agencies required by this section to have an SBIR or STTR program to standardize reporting requirements for the collection of data from SBIR or STTR applicants and awardees, including data for inclusion in the database under subsection (k) of this section, taking into consideration the unique needs of each agency, and to

the extent possible, permitting the updating of previously reported information by electronic means. Such requirements shall be designed to minimize the burden on small businesses.

(2) Simplification of application and award process

Not later than 1 year after December 31, 2011, and after a period of public comment, the Administrator shall issue regulations or guidelines, taking into consideration the unique needs of each Federal agency, to ensure that each Federal agency required to carry out an SBIR program or STTR program simplifies and standardizes the program proposal, selection, contracting, compliance, and audit procedures for the SBIR program or STTR program of the Federal agency (including procedures relating to overhead rates for applicants and documentation requirements) to reduce the paperwork and regulatory compliance burden on small business concerns applying to and participating in the SBIR program or STTR program.

(w) STTR model agreement for intellectual property rights

(1) In general

The Administrator shall promulgate regulations establishing a single model agreement for use in the STTR program that allocates between small business concerns and research institutions intellectual property rights and rights, if any, to carry out follow-on research, development, or commercialization.

(2) Opportunity for comment

In promulgating regulations under paragraph (1), the Administrator shall provide to affected agencies, small business concerns, research institutions, and other interested parties the opportunity to submit written comments.

(x) Research and development focus

(1) Revision and update of criteria and procedures of identification

In carrying out subsection (g) of this section, the Secretary of Defense shall, not less often than once every 4 years, revise and update the criteria and procedures utilized to identify areas of the research and development efforts of the Department of Defense which are suitable for the provision of funds under the Small Business Innovation Research Program and the Small Business Technology Transfer Program.

(2) Utilization of plans

The criteria and procedures described in paragraph (1) shall be developed through the use of the most current versions of the following plans:

(A) The Joint Warfighting Science and Technology Plan required under section 270 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 10 U.S.C. 2501 note).

(B) The Defense Technology Area Plan of the Department of Defense.

(C) The Basic Research Plan of the Department of Defense.

(3) Input in identification of areas of effort

The criteria and procedures described in paragraph (1) shall include input in the identification of areas of research and development efforts described in that paragraph from Department of Defense program managers (PMs) and program executive officers (PEOs).

(y) Commercialization Readiness Program

(1) In general

The Secretary of Defense and the Secretary of each military department is authorized to create and administer a "Commercialization Readiness Program" to accelerate the transition of technologies, products, and services developed under the Small Business Innovation Research Program or Small Business Technology Transfer Program to Phase III, including the acquisition process. The authority to create and administer a Commercialization Readiness Program under this subsection may not be construed to eliminate or replace any other SBIR program or STTR

program that enhances the insertion or transition of SBIR or STTR technologies, including any such program in effect on January 6, 2006.

(2) Identification of research programs for accelerated transition to acquisition process

In carrying out the Commercialization Readiness Program, the Secretary of Defense and the Secretary of each military department shall identify research programs of the Small Business Innovation Research Program or Small Business Technology Transfer Program that have the potential for rapid transitioning to Phase III and into the acquisition process.

(3) Limitation

No research program may be identified under paragraph (2) unless the Secretary of the military department concerned certifies in writing that the successful transition of the program to Phase III and into the acquisition process is expected to meet high priority military requirements of such military department.

(4) Funding

For payment of expenses incurred to administer the Commercialization Readiness Program under this subsection, the Secretary of Defense and each Secretary of a military department is authorized to use not more than an amount equal to 1 percent of the funds available to the Department of Defense or the military department pursuant to the Small Business Innovation Research Program. Such funds shall not be used to make Phase III awards.

(5) Insertion incentives

For any contract with a value of not less than $100,000,000, the Secretary of Defense is authorized to—

(A) establish goals for the transition of Phase III technologies in subcontracting plans; and

(B) require a prime contractor on such a contract to report the number and dollar amount of contracts entered into by that prime contractor for Phase III SBIR or STTR projects.

(6) Goal for SBIR and STTR technology insertion

The Secretary of Defense shall—

(A) set a goal to increase the number of Phase II SBIR contracts and the number of Phase II STTR contracts awarded by the Secretary that lead to technology transition into programs of record or fielded systems;

(B) use incentives in effect on December 31, 2011, or create new incentives, to encourage agency program managers and prime contractors to meet the goal under subparagraph (A); and

(C) submit to the Administrator for inclusion in the annual report under subsection (b)(7)—

(i) the number and percentage of Phase II SBIR and STTR contracts awarded by the Secretary that led to technology transition into programs of record or fielded systems;

(ii) information on the status of each project that received funding through the Commercialization Readiness Program and efforts to transition those projects into programs of record or fielded systems; and

(iii) a description of each incentive that has been used by the Secretary under subparagraph (B) and the effectiveness of that incentive with respect to meeting the goal under subparagraph (A).

(z) Encouraging innovation in energy efficiency

(1) Federal agency energy-related priority

In carrying out its duties under this section relating to SBIR and STTR solicitations by Federal departments and agencies, the Administrator shall—

(A) ensure that such departments and agencies give high priority to small business concerns that participate in or conduct energy efficiency or renewable energy system research and development projects; and

(B) include in the annual report to Congress under subsection (b)(7) a determination of whether the priority described in subparagraph (A) is being carried out.

(2) Consultation required

The Administrator shall consult with the heads of other Federal departments and agencies in determining whether priority has been given to small business concerns that participate in or conduct energy efficiency or renewable energy system research and development projects, as required by this subsection.

(3) Guidelines

The Administrator shall, as soon as is practicable after December 19, 2007, issue guidelines and directives to assist Federal agencies in meeting the requirements of this subsection.

(4) Definitions

In this subsection—

(A) the term "biomass"—

(i) means any organic material that is available on a renewable or recurring basis, including—

(I) agricultural crops;
(II) trees grown for energy production;
(III) wood waste and wood residues;
(IV) plants (including aquatic plants and grasses);
(V) residues;
(VI) fibers;
(VII) animal wastes and other waste materials; and
(VIII) fats, oils, and greases (including recycled fats, oils, and greases); and

(ii) does not include—

(I) paper that is commonly recycled; or
(II) unsegregated solid waste;

(B) the term "energy efficiency project" means the installation or upgrading of equipment that results in a significant reduction in energy usage; and

(C) the term "renewable energy system" means a system of energy derived from—

(i) a wind, solar, biomass (including biodiesel), or geothermal source; or
(ii) hydrogen derived from biomass or water using an energy source described in clause (i).

(aa) Limitation on size of awards

(1) Limitation

No Federal agency may issue an award under the SBIR program or the STTR program if the size of the award exceeds the award guidelines established under this section by more than 50 percent.

(2) Maintenance of information

Participating agencies shall maintain information on awards exceeding the guidelines established under this section, including—

(A) the amount of each award;
(B) a justification for exceeding the guidelines for each award;
(C) the identity and location of each award recipient; and
(D) whether an award recipient has received any venture capital, hedge fund, or private equity firm investment and, if so, whether the recipient is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms.

(3) Reports

The Administrator shall include the information described in paragraph (2) in the annual report of the Administrator to Congress.

(4) Waiver for specific topic

Upon the receipt of an application from a Federal agency, the Administrator may grant a waiver from the requirement under paragraph (1) with respect to a specific topic (but not for the agency as a whole) for a fiscal year if the Administrator determines, based on the information contained in the application from the agency, that—

(A) the requirement under paragraph (1) will interfere with the ability of the agency to fulfill its research mission through the SBIR program or the STTR program; and

(B) the agency will minimize, to the maximum extent possible, the number of awards that do not satisfy the requirement under paragraph (1) to preserve the nature and intent of the SBIR program and the STTR program.

(5) Rule of construction

Nothing in this subsection shall be construed to prevent a Federal agency from supplementing an award under the SBIR program or the STTR program using funds of the Federal agency that are not part of the SBIR program or the STTR program of the Federal agency.

(bb) Subsequent Phase II awards

(1) Agency flexibility

A small business concern that received a Phase I award from a Federal agency under this section shall be eligible to receive a subsequent Phase II award from another Federal agency, if the head of each relevant Federal agency or the relevant component of the Federal agency makes a written determination that the topics of the relevant awards are the same and both agencies report the awards to the Administrator for inclusion in the public database under subsection (k).

(2) SBIR and STTR program flexibility

A small business concern that received a Phase I award under this section under the SBIR program or the STTR program may receive a subsequent Phase II award in either the SBIR program or the STTR program and the participating agency or agencies shall report the awards to the Administrator for inclusion in the public database under subsection (k).

(3) Preventing duplicative awards

The head of a Federal agency shall verify that any activity to be performed with respect to a project with a Phase I or Phase II SBIR or STTR award has not been funded under the SBIR program or STTR program of another Federal agency.

(cc) Phase flexibility

During fiscal years 2012 through 2017, the National Institutes of Health, the Department of Defense, and the Department of Education may each provide to a small business concern an award under Phase II of the SBIR program with respect to a project, without regard to whether the small business concern was provided an award under Phase I of an SBIR program with respect to such project, if the head of the applicable agency determines that the small business concern has completed the determinations described in subsection (e)(4)(A) with respect to such project despite not having been provided a Phase I award.

(dd) Participation of small business concerns majority-owned by venture capital operating companies, hedge funds, or private equity firms in the SBIR program

(1) Authority

Upon providing a written determination described in paragraph (2) to the Administrator, the Committee on Small Business and Entrepreneurship of the Senate, and the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives, not later than 30 days before the date on which any such award is made—

(A) the Director of the National Institutes of Health, the Secretary of Energy, and the Director of the National Science Foundation may award not more than 25 percent of the funds allocated for the SBIR program of the applicable Federal agency to small business concerns that are

owned in majority part by multiple venture capital operating companies, hedge funds, or private equity firms through competitive, merit-based procedures that are open to all eligible small business concerns; and

(B) the head of a Federal agency other than a Federal agency described in subparagraph (A) that participates in the SBIR program may award not more than 15 percent of the funds allocated for the SBIR program of the Federal agency to small business concerns that are owned in majority part by multiple venture capital operating companies, hedge funds, or private equity firms through competitive, merit-based procedures that are open to all eligible small business concerns.

(2) Determination

A written determination described in this paragraph is a written determination by the head of a Federal agency that explains how the use of the authority under paragraph (1) will—

(A) induce additional venture capital, hedge fund, or private equity firm funding of small business innovations;

(B) substantially contribute to the mission of the Federal agency;

(C) demonstrate a need for public research; and

(D) otherwise fulfill the capital needs of small business concerns for additional financing for SBIR projects.

(3) Registration

A small business concern that is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms and qualified for participation in the program authorized under paragraph (1) shall—

(A) register with the Administrator on the date that the small business concern submits an application for an award under the SBIR program; and

(B) indicate in any SBIR proposal that the small business concern is registered under subparagraph (A) as majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms.

(4) Compliance

(A) In general

The head of a Federal agency that makes an award under this subsection during a fiscal year shall collect and submit to the Administrator data relating to the number and dollar amount of Phase I awards, Phase II awards, and any other category of awards by the Federal agency under the SBIR program during that fiscal year.

(B) Annual reporting

The Administrator shall include as part of each annual report by the Administration under subsection (b)(7) any data submitted under subparagraph (A) and a discussion of the compliance of each Federal agency that makes an award under this subsection during the fiscal year with the maximum percentages under paragraph (1).

(5) Enforcement

If a Federal agency awards more than the percent of the funds allocated for the SBIR program of the Federal agency authorized under paragraph (1) for a purpose described in paragraph (1), the head of the Federal agency shall transfer an amount equal to the amount awarded in excess of the amount authorized under paragraph (1) to the funds for general SBIR programs from the non-SBIR and non-STTR research and development funds of the Federal agency not later than 180 days after the date on which the Federal agency made the award that caused the total awarded under paragraph (1) to be more than the amount authorized under paragraph (1) for a purpose described in paragraph (1).

(6) Final decisions on applications under the SBIR program

(A) Definition

In this paragraph, the term "covered small business concern" means a small business concern that—

(i) was not majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms on the date on which the small business concern submitted an application in response to a solicitation under the SBIR programs; and

(ii) on the date of the award under the SBIR program is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms.

(B) In general

If a Federal agency does not make an award under a solicitation under the SBIR program before the date that is 9 months after the date on which the period for submitting applications under the solicitation ends—

(i) a covered small business concern is eligible to receive the award, without regard to whether the covered small business concern meets the requirements for receiving an award under the SBIR program for a small business concern that is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms, if the covered small business concern meets all other requirements for such an award; and

(ii) the head of the Federal agency shall transfer an amount equal to any amount awarded to a covered small business concern under the solicitation to the funds for general SBIR programs from the non-SBIR and non-STTR research and development funds of the Federal agency, not later than 90 days after the date on which the Federal agency makes the award.

(7) Evaluation criteria

A Federal agency may not use investment of venture capital or investment from hedge funds or private equity firms as a criterion for the award of contracts under the SBIR program or STTR program.

(ee) Collaborating with Federal laboratories and research and development centers

(1) Authorization

Subject to the limitations under this section, the head of each participating Federal agency may make SBIR and STTR awards to any eligible small business concern that—

(A) intends to enter into an agreement with a Federal laboratory or federally funded research and development center for portions of the activities to be performed under that award; or

(B) has entered into a cooperative research and development agreement (as defined in section 3710a(d) of this title) with a Federal laboratory.

(2) Prohibition

No Federal agency shall—

(A) condition an SBIR or STTR award upon entering into agreement with any Federal laboratory or any federally funded laboratory or research and development center for any portion of the activities to be performed under that award;

(B) approve an agreement between a small business concern receiving an SBIR or STTR award and a Federal laboratory or federally funded laboratory or research and development center, if the small business concern performs a lesser portion of the activities to be performed under that award than required by this section and by the SBIR Policy Directive and the STTR Policy Directive of the Administrator; or

(C) approve an agreement that violates any provision, including any data rights protections provision, of this section or the SBIR and the STTR Policy Directives.

(3) Implementation

Not later than 180 days after December 31, 2011, the Administrator shall modify the SBIR Policy Directive and the STTR Policy Directive issued under this section to ensure that small business concerns—

(A) have the flexibility to use the resources of the Federal laboratories or federally funded research and development centers; and

(B) are not mandated to enter into agreement with any Federal laboratory or any federally funded laboratory or research and development center as a condition of an award.

(4) Advance payment

If a small business concern receiving an award under this section enters into an agreement with a Federal laboratory or federally funded research and development center for portions of the activities to be performed under that award, the Federal laboratory or federally funded research and development center may not require advance payment from the small business concern in an amount greater than the amount necessary to pay for 30 days of such activities.

(ff) Additional SBIR and STTR awards

(1) Express authority for awarding a sequential Phase II award

A small business concern that receives a Phase II SBIR award or a Phase II STTR award for a project remains eligible to receive 1 additional Phase II SBIR award or Phase II STTR award for continued work on that project.

(2) Preventing duplicative awards

The head of a Federal agency shall verify that any activity to be performed with respect to a project with a Phase I or Phase II SBIR or STTR award has not been funded under the SBIR program or STTR program of another Federal agency.

(gg) Pilot program

(1) Authorization

The head of each covered Federal agency may allocate not more than 10 percent of the funds allocated to the SBIR program and the STTR program of the covered Federal agency—

(A) for awards for technology development, testing, evaluation, and commercialization assistance for SBIR and STTR Phase II technologies; or

(B) to support the progress of research, research and development, and commercialization conducted under the SBIR or STTR programs to Phase III.

(2) Application by Federal agency

(A) In general

A covered Federal agency may not establish a pilot program unless the covered Federal agency makes a written application to the Administrator, not later than 90 days before the first day of the fiscal year in which the pilot program is to be established, that describes a compelling reason that additional investment in SBIR or STTR technologies is necessary, including unusually high regulatory, systems integration, or other costs relating to development or manufacturing of identifiable, highly promising small business technologies or a class of such technologies expected to substantially advance the mission of the agency.

(B) Determination

The Administrator shall—

(i) make a determination regarding an application submitted under subparagraph (A) not later than 30 days before the first day of the fiscal year for which the application is submitted;

(ii) publish the determination in the Federal Register; and

(iii) make a copy of the determination and any related materials available to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives.

(3) Maximum amount of award

The head of a covered Federal agency may not make an award under a pilot program in excess of 3 times the dollar amounts generally established for Phase II awards under subsection (j)(2)(D) or (p)(2)(B)(ix).

(4) Registration

Any applicant that receives an award under a pilot program shall register with the Administrator in a registry that is available to the public.

(5) Award criteria or consideration

When making an award under this section, the head of a covered Federal agency shall give consideration to whether the technology to be supported by the award is likely to be manufactured in the United States.

(6) Report

The head of each covered Federal agency shall include in the annual report of the covered Federal agency to the Administrator an analysis of the various activities considered for inclusion in the pilot program of the covered Federal agency and a statement of the reasons why each activity considered was included or not included, as the case may be.

(7) Termination

The authority to establish a pilot program under this section expires at the end of fiscal year 2017.

(8) Definitions

In this subsection—

(A) the term "covered Federal agency"—

(i) means a Federal agency participating in the SBIR program or the STTR program; and

(ii) does not include the Department of Defense; and

(B) the term "pilot program" means each program established under paragraph (1).

(hh) Timing of release of funding

Federal agencies participating in the SBIR program or STTR program shall, to the extent possible, attempt to shorten the amount of time between the provision of notice of an award under the SBIR program or STTR program and the subsequent release of funding with respect to the award.

(ii) Reporting on timing

Federal agencies participating in the SBIR program or STTR program shall provide to the Administrator, for the annual report on the SBIR and STTR program under subsection (b)(7), the average amount of time the agency takes to make a final decision on proposals submitted under such programs, the average amount of time the agency takes to release funding with respect to an award under such programs, and the goals established to reduce such amounts.

(jj) Phase 0 Proof of Concept Partnership pilot program

(1) In general

The Director of the National Institutes of Health may use $5,000,000 of the funds allocated under subsection (n)(1) for a Proof of Concept Partnership pilot program to accelerate the creation of small businesses and the commercialization of research innovations from qualifying institutions. To implement this program, the Director shall award, through a competitive, merit-based process, grants to qualifying institutions. These grants shall only be used to administer Proof of Concept Partnership awards in conformity with this subsection.

(2) Definitions

In this subsection—

(A) the term "Director" means the Director of the National Institutes of Health;

(B) the term "pilot program" refers to the Proof of Concept Partnership pilot program; and

(C) the terms "qualifying institution" and "institution" mean a university or other research institution that participates in the National Institutes of Health's STTR program.

(3) Proof of Concept Partnerships

(A) In general

A Proof of Concept Partnership shall be set up by a qualifying institution to award grants to individual researchers. These grants should provide researchers with the initial investment and the resources to support the proof of concept work and commercialization mentoring needed to translate promising research projects and technologies into a viable company. This work may include technical validations, market research, clarifying intellectual property rights position and strategy, and investigating commercial or business opportunities.

(B) Award guidelines

The administrator of a Proof of Concept Partnership program shall award grants in accordance with the following guidelines:

(i) The Proof of Concept Partnership shall use a market-focused project management oversight process, including—

(I) a rigorous, diverse review board comprised of local experts in translational and proof of concept research, including industry, start-up, venture capital, technical, financial, and business experts and university technology transfer officials;

(II) technology validation milestones focused on market feasibility;

(III) simple reporting effective at redirecting projects; and

(IV) the willingness to reallocate funding from failing projects to those with more potential.

(ii) Not more than $100,000 shall be awarded towards an individual proposal.

(C) Educational resources and guidance

The administrator of a Proof of Concept Partnership program shall make educational resources and guidance available to researchers attempting to commercialize their innovations.

(4) Awards

(A) Size of award

The Director may make awards to a qualifying institution for up to $1,000,000 per year for up to 3 years.

(B) Award criteria

In determining which qualifying institutions receive pilot program grants, the Director shall consider, in addition to any other criteria the Director determines necessary, the extent to which qualifying institutions—

(i) have an established and proven technology transfer or commercialization office and have a plan for engaging that office in the program's implementation;

(ii) have demonstrated a commitment to local and regional economic development;

(iii) are located in diverse geographies and are of diverse sizes;

(iv) can assemble project management boards comprised of industry, start-up, venture capital, technical, financial, and business experts;

(v) have an intellectual property rights strategy or office; and

(vi) demonstrate a plan for sustainability beyond the duration of the funding award.

(5) Limitations

The funds for the pilot program shall not be used—

(A) for basic research, but to evaluate the commercial potential of existing discoveries, including—

(i) proof of concept research or prototype development; and

(ii) activities that contribute to determining a project's commercialization path, to include technical validations, market research, clarifying intellectual property rights, and investigating commercial and business opportunities; or

(B) to fund the acquisition of research equipment or supplies unrelated to commercialization activities.

(6) Evaluative report

The Director shall submit to the Committee on Science, Space, and Technology and the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate an evaluative report regarding the activities of the pilot program. The report shall include—

(A) a detailed description of the institutional and proposal selection process;

(B) an accounting of the funds used in the pilot program;

(C) a detailed description of the pilot program, including incentives and activities undertaken by review board experts;

(D) a detailed compilation of results achieved by the pilot program, including the number of small business concerns included and the number of business packages developed, and the number of projects that progressed into subsequent STTR phases; and

(E) an analysis of the program's effectiveness with supporting data.

(7) Sunset

The pilot program under this subsection shall terminate at the end of fiscal year 2017.

(kk) Phase III reporting

The annual SBIR or STTR report to Congress by the Administration under subsection (b)(7) shall include, for each Phase III award—

(1) the name of the agency or component of the agency or the non-Federal source of capital making the Phase III award;

(2) the name of the small business concern or individual receiving the Phase III award; and

(3) the dollar amount of the Phase III award.

(ll) Consent to release contact information to organizations

(1) Enabling concern to give consent

Each Federal agency required by this section to conduct an SBIR program or an STTR program shall enable a small business concern that is an SBIR applicant or an STTR applicant to indicate to the Federal agency whether the Federal agency has the consent of the concern to—

(A) identify the concern to appropriate local and State-level economic development organizations as an SBIR applicant or an STTR applicant; and

(B) release the contact information of the concern to such organizations.

(2) Rules

The Administrator shall establish rules to implement this subsection. The rules shall include a requirement that a Federal agency include in the SBIR and STTR application a provision through which the applicant can indicate consent for purposes of paragraph (1).

(mm) Assistance for administrative, oversight, and contract processing costs

(1) In general

Subject to paragraph (3), for the 3 fiscal years beginning after December 31, 2011, the Administrator shall allow each Federal agency required to conduct an SBIR program to use not more than 3 percent of the funds allocated to the SBIR program of the Federal agency for—

(A) the administration of the SBIR program or the STTR program of the Federal agency;

(B) the provision of outreach and technical assistance relating to the SBIR program or STTR program of the Federal agency, including technical assistance site visits, personnel interviews, and national conferences;

(C) the implementation of commercialization and outreach initiatives that were not in effect on December 31, 2011;

(D) carrying out the program under subsection (y);

(E) activities relating to oversight and congressional reporting, including waste, fraud, and abuse prevention activities;

(F) targeted reviews of recipients of awards under the SBIR program or STTR program of the

Federal agency that the head of the Federal agency determines are at high risk for fraud, waste, or abuse to ensure compliance with requirements of the SBIR program or STTR program, respectively;

(G) the implementation of oversight and quality control measures, including verification of reports and invoices and cost reviews;

(H) carrying out subsection (dd);

(I) contract processing costs relating to the SBIR program or STTR program of the Federal agency; and

(J) funding for additional personnel and assistance with application reviews.

(2) Outreach and technical assistance

(A) In general

Except as provided in subparagraph (B), a Federal agency participating in the program under this subsection shall use a portion of the funds authorized for uses under paragraph (1) to carry out the policy directive required under subsection (j)(2)(F) and to increase the participation of States with respect to which a low level of SBIR awards have historically been awarded.

(B) Waiver

A Federal agency may request the Administrator to waive the requirement contained in subparagraph (A). Such request shall include an explanation of why the waiver is necessary. The Administrator may grant the waiver based on a determination that the agency has demonstrated a sufficient need for the waiver, that the outreach objectives of the agency are being met, and that there is increased participation by States with respect to which a low level of SBIR awards have historically been awarded.

(3) Performance criteria

A Federal agency may not use funds as authorized under paragraph (1) until after the effective date of performance criteria, which the Administrator shall establish, to measure any benefits of using funds as authorized under paragraph (1) and to assess continuation of the authority under paragraph (1).

(4) Rules

Not later than 180 days after December 31, 2011, the Administrator shall issue rules to carry out this subsection.

(5) Coordination with IG

Each Federal agency shall coordinate the activities funded under subparagraph (E), (F), or (G) of paragraph (1) with their respective Inspectors General, when appropriate, and each Federal agency that allocates more than $50,000,000 to the SBIR program of the Federal agency for a fiscal year may share such funding with its Inspector General when the Inspector General performs such activities.

(6) Reporting

The Administrator shall collect data and provide to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business, the Committee on Science, Space, and Technology, and the Committee on Appropriations of the House of Representatives a report on the use of funds under this subsection, including funds used to achieve the objectives of paragraph (2)(A) and any use of the waiver authority under paragraph (2)(B).

(nn) Annual report on SBIR and STTR program goals

(1) Development of metrics

The head of each Federal agency required to participate in the SBIR program or the STTR program shall develop metrics to evaluate the effectiveness and the benefit to the people of the United States of the SBIR program and the STTR program of the Federal agency that—

(A) are science-based and statistically driven;

(B) reflect the mission of the Federal agency; and
(C) include factors relating to the economic impact of the programs.

(2) Evaluation

The head of each Federal agency described in paragraph (1) shall conduct an annual evaluation using the metrics developed under paragraph (1) of—

(A) the SBIR program and the STTR program of the Federal agency; and
(B) the benefits to the people of the United States of the SBIR program and the STTR program of the Federal agency.

(3) Report

(A) In general

The head of each Federal agency described in paragraph (1) shall submit to the appropriate committees of Congress and the Administrator an annual report describing in detail the results of an evaluation conducted under paragraph (2).

(B) Public availability of report

The head of each Federal agency described in paragraph (1) shall make each report submitted under subparagraph (A) available to the public online.

(C) Definition

In this paragraph, the term "appropriate committees of Congress" means—
(i) the Committee on Small Business and Entrepreneurship of the Senate; and
(ii) the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives.

(oo) Competitive selection procedures for SBIR and STTR programs

All funds awarded, appropriated, or otherwise made available in accordance with subsection (f) or (n) must be awarded pursuant to competitive and merit-based selection procedures.

(pp) Limitation on pilot programs

(1) Existing pilot programs

The Administrator may only carry out a covered pilot program that is in operation on December 31, 2011, during the 3-year period beginning on such date.

(2) New pilot programs

The Administrator may only carry out a covered pilot program established after December 31, 2011—

(A) during the 3-year period beginning on the date on which such program is established; and
(B) if such program does not continue and is not based on, in any manner, a previously established covered pilot program.

(3) Covered pilot program defined

In this subsection, the term "covered pilot program" means any initiative, project, innovation, or other activity—

(A) established by the Administrator;
(B) relating to an SBIR or STTR program; and
(C) not specifically authorized by law.

(qq) Minimum standards for participation

(1) Progress to Phase II success

(A) Establishment of system and minimum commercialization rate

Not later than 1 year after December 31, 2011, the head of each Federal agency participating in the SBIR or STTR program shall—

(i) establish a system to measure, where appropriate, the success of small business

concerns with respect to the receipt of Phase II SBIR or STTR awards for projects that have received Phase I SBIR or STTR awards;

(ii) establish a minimum performance standard for small business concerns with respect to the receipt of Phase II SBIR or STTR awards for projects that have received Phase I SBIR or STTR awards; and

(iii) begin evaluating, each fiscal year, whether each small business concern that received a Phase I SBIR or STTR award from the agency meets the minimum performance standard established under clause (ii).

(B) Consequence of failure to meet minimum commercialization rate

If the head of a Federal agency determines that a small business concern that received a Phase I SBIR or STTR award from the agency is not meeting the minimum performance standard established under subparagraph (A)(ii), such concern may not participate in Phase I (or Phase II if under the authority of subsection (cc)) of the SBIR or STTR program of that agency during the 1-year period beginning on the date on which such determination is made.

(2) Progress to Phase III success

(A) Establishment of system and minimum commercialization rate

Not later than 2 years after December 31, 2011, the head of each Federal agency participating in the SBIR or STTR program shall—

(i) establish a system to measure, where appropriate, the success of small business concerns with respect to the receipt of Phase III SBIR or STTR awards for projects that have received Phase I SBIR or STTR awards;

(ii) establish a minimum performance standard for small business concerns with respect to the receipt of Phase III SBIR or STTR awards for projects that have received Phase I SBIR or STTR awards; and

(iii) begin evaluating, each fiscal year, whether each small business concern that received a Phase I SBIR or STTR award from the agency meets the minimum performance standard established under clause (ii).

(B) Consequence of failure to meet minimum commercialization rate

If the head of a Federal agency determines that a small business concern that received a Phase I SBIR or STTR award from the agency is not meeting the minimum performance standard established under subparagraph (A)(ii), such concern may not participate in Phase I (or Phase II if under the authority of subsection (cc)) of the SBIR or STTR program of that agency during the 1-year period beginning on the date on which such determination is made.

(3) Administration oversight

(A) Approval and publication of systems and minimum performance standards

Each system and minimum performance standard established under paragraph (1) or paragraph (2) shall be submitted by the head of the applicable Federal agency to the Administrator and shall be subject to the approval of the Administrator. In making a determination with respect to approval, the Administrator shall ensure that the minimum performance standard exceeds a de minimis level. The Administrator shall publish on the Internet Web site of the Administration the systems and minimum performance standards approved.

(B) Submission of evaluation results by agency

The head of each covered Federal agency shall submit to the Administrator the results of each evaluation conducted under paragraph (1) or paragraph (2).

(4) Requirement of notice and comment

Each system and minimum performance standard established under paragraph (1) or paragraph (2) and each approval provided by the Administrator under paragraph (3)(A), at least 60 days before becoming effective, shall be preceded by the provision of notice of and an opportunity for

public comment on such system, standard, or approval.

(rr) Publication of certain information

In order to increase the number of small businesses receiving awards under the SBIR or STTR programs of participating agencies, and to simplify the application process for such awards, the Administrator shall establish and maintain a public Internet Web site on which the Administrator shall publish such information relating to notice of and application for awards under the SBIR program and STTR program of each participating Federal agency as the Administrator determines appropriate.

(ss) Report on enhancement of manufacturing activities

Not later than October 1, 2013, and annually thereafter, the head of each Federal agency that makes more than $50,000,000 in awards under the SBIR and STTR programs of the agency combined shall submit to the Administrator, for inclusion in the annual report required under subsection (b)(7), information that includes—

(1) a description of efforts undertaken by the head of the Federal agency to enhance United States manufacturing activities;

(2) a comprehensive description of the actions undertaken each year by the head of the Federal agency in carrying out the SBIR or STTR program of the agency in support of Executive Order 13329 (69 Fed. Reg. 9181; relating to encouraging innovation in manufacturing);

(3) an assessment of the effectiveness of the actions described in paragraph (2) at enhancing the research and development of United States manufacturing technologies and processes;

(4) a description of efforts by vendors selected to provide discretionary technical assistance under subsection (q)(1) to help SBIR and STTR concerns manufacture in the United States; and

(5) recommendations that the program managers of the SBIR or STTR program of the agency consider appropriate for additional actions to increase the effectiveness of enhancing manufacturing activities.

(Pub. L. 85–536, §2[9], July 18, 1958, 72 Stat. 391; Pub. L. 97–219, §§3–5, July 22, 1982, 96 Stat. 217, 218, 221; Pub. L. 99–443, §§1, 2, Oct. 6, 1986, 100 Stat. 1120; Pub. L. 100–590, title I, §108, Nov. 3, 1988, 102 Stat. 2994; Pub. L. 102–484, div. D, title XLII, §4237(d), Oct. 23, 1992, 106 Stat. 2692; Pub. L. 102–564, title I, §§103, 104, title II, §202(a)–(c), title III, §§301(a), 305, Oct. 28, 1992, 106 Stat. 4250, 4254, 4256, 4257, 4261, 4262; Pub. L. 103–403, title VI, §607, Oct. 22, 1994, 108 Stat. 4204; Pub. L. 104–208, div. D, title I, §110, Sept. 30, 1996, 110 Stat. 3009–733; Pub. L. 105–135, title V, §501, Dec. 2, 1997, 111 Stat. 2620; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4732(b)(5)], Nov. 29, 1999, 113 Stat. 1536, 1501A–583; Pub. L. 106–554, §1(a)(9) [title I, §§103–107, 109, 110, 111(c), 113, 114(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–669, 2763A–673, 2763A–679, 2763A–681; Pub. L. 107–50, §§2, 3(a), 4–7, Oct. 15, 2001, 115 Stat. 263–265; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814; Pub. L. 109–163, div. A, title II, §252, Jan. 6, 2006, 119 Stat. 3177; Pub. L. 110–140, title XII, §1203(e), Dec. 19, 2007, 121 Stat. 1771; Pub. L. 111–84, div. A, title VIII, §§847(a), (b), 848, Oct. 28, 2009, 123 Stat. 2420, 2421; Pub. L. 111–383, div. A, title X, §1075(l), Jan. 7, 2011, 124 Stat. 4378; Pub. L. 112–17, §§3, 4, June 1, 2011, 125 Stat. 221, 222; Pub. L. 112–81, div. A, title X, §1067(a), div. E, title LI, §§5101–5107(a), 5108–5111, 5121–5123, 5125–5127, 5131–5135, 5138, 5140, 5141(a), (b)(1), (3), 5144, 5161, 5162, 5164–5167, Dec. 31, 2011, 125 Stat. 1589, 1824–1827, 1832–1836, 1838–1842, 1844–1847, 1851–1854, 1857–1861; Pub. L. 112–239, div. A, title X, §1076(a)(20)(A), title XVI, §1615(a), (b), Jan. 2, 2013, 126 Stat. 1949, 2066.)

AMENDMENT OF SECTION

Pub. L. 112–81, div. E, title LI, §5141(b)(3), Dec. 31, 2011, 125 Stat. 1854, as amended by Pub. L. 112–239, div. A, title XVI, §1615(b), Jan. 2, 2013, 126 Stat. 2066, provided that, effective on the first day of the fourth full fiscal year following Dec. 31, 2011, this section is amended as follows:

(1) in subsection (f)(2), by striking "shall not make available for the purpose" and inserting the following: "shall not—

"(A) use any of its SBIR budget established pursuant to paragraph (1) for the purpose of

funding administrative costs of the program, including costs associated with salaries and expenses; or

"(B) make available for the purpose"; and

(2) in subsection (y), by amending paragraph (4) to read as follows:

"(4) Funding

"(A) In general

"The Secretary of Defense and each Secretary of a military department may use not more than an amount equal to 1 percent of the funds available to the Department of Defense or the military department pursuant to the Small Business Innovation Research Program for payment of expenses incurred to administer the Commercialization Readiness Program under this subsection.

"(B) Limitations

"The funds described in subparagraph (A)—

"(i) shall not be subject to the limitations on the use of funds in subsection (f)(2); and

"(ii) shall not be used to make Phase III awards."

REFERENCES IN TEXT

Executive Order 13329, referred to in subsecs. (b)(8), (g)(11), (o)(15), and (ss)(2), is set out as a note under this section.

The Federal Trade Commission Act, referred to in subsec. (d)(3), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

Executive Order 12333, referred to in subsec. (e)(2), is set out as a note under section 3001 of Title 50, War and National Defense.

Section 3703(5) of this title, referred to in subsec. (e)(8), was redesignated section 3703(3) by Pub. L. 110–69, title III, §3002(c)(3), Aug. 9, 2007, 121 Stat. 586.

Section 6683 of title 42, referred to in subsecs. (g)(3)(A), (j)(2)(E)(i), and (o)(3)(A), was omitted from the Code.

Section 2522 of title 10, referred to in subsecs. (g)(3)(B), (j)(2)(E)(ii), and (o)(3)(B), which related to annual defense critical technology plan, was repealed, and section 2518 (relating to Defense Advanced Manufacturing Technology Partnerships) was redesignated as section 2522, by Pub. L. 102–484, div. D, title XLII, §§4202(a), 4232(a), Oct. 23, 1992, 106 Stat. 2659, 2687, and subsequently repealed.

Section 105 of the Small Business Research and Development Enhancement Act of 1992, referred to in subsec. (j)(2)(I), is section 105 of Pub. L. 102–564, which is set out below.

CODIFICATION

In subsec. (e)(8), "section 1303(a)(1) of title 41" substituted for "section 35(c)(1) of the Office of Federal Procurement Policy Act", which probably should have been a reference to "section 25(c)(1) of the Office of Federal Procurement Policy Act" because that Act does not contain a section 35 and section 25(c) of that Act relates to issuance of the Federal Acquisition Regulation, on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (n)(2)(A), "section 1303(a)(1) of title 41" substituted for "section 25(c)(1) of the Office of Federal Procurement Policy Act" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

Section 209 of act July 30, 1953, ch. 282, title II, 67 Stat. 237, was previously classified to this section. See section 645 of this title and Codification note set out under section 631 of this title.

AMENDMENTS

2013—Subsec. (b)(7). Pub. L. 112–239, §1076(a)(20)(A), repealed Pub. L. 112–81, §1067(a)(1). See 2011 Amendment note below.

Subsec. (y)(4). Pub. L. 112–239, §1615(b), made technical amendment to directory language of Pub. L. 112–81, §5141(b)(3)(B). See 2011 Amendment note below.

Pub. L. 112–239, §1615(a)(2), added par. (4). Former par. (4) redesignated (5).

Subsec. (y)(5). Pub. L. 112–239, §1615(a)(1), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Pub. L. 112–239, §1076(a)(20)(A), repealed Pub. L. 112–81, §1067(a)(2). See 2011 Amendment note below.

Subsec. (y)(6). Pub. L. 112–239, §1615(a)(1), redesignated par. (5) as (6).

2011—Subsec. (b)(7). Pub. L. 112–81, §5131(1)(B), substituted "(g)(8) and (o)(9);" for "(g)(10), (o)(9), and (o)(15) of this section, the number of proposals received from, and the number and total amount of awards to, HUBZone small business concerns under each of the SBIR and STTR programs, and a description" in subpar. (A), added subpars. (B) to (F), and inserted "(G) a description" before "of the extent to which Federal agencies".

Pub. L. 112–81, §5131(1)(A), substituted "STTR programs, including—" for "STTR programs, including", and inserted subpar. (A) designation before "the data on output".

Pub. L. 112–81, §1067(a)(1), which inserted "and including an accounting of funds, initiatives, and outcomes under the Commercialization Pilot Program" after "and (o)(15) of this section,", was repealed by Pub. L. 112–239, §1076(a)(20)(A).

Subsec. (b)(9). Pub. L. 112–81, §5131(1)(C), (2), (3), added par. (9).

Subsec. (e)(4)(B). Pub. L. 112–81, §5105(1), substituted "which shall not include any invitation, pre-screening, or pre-selection process for eligibility for Phase II, that will further" for "to further".

Subsec. (e)(4)(C). Pub. L. 112–81, §5125(a)(1), inserted "for work that derives from, extends, or completes efforts made under prior funding agreements under the SBIR program" after "phase" in introductory provisions.

Subsec. (e)(4)(C)(ii). Pub. L. 112–81, §5125(b)(1)(A), substituted "merit-based selection procedures" for "scientific review criteria".

Subsec. (e)(6)(B). Pub. L. 112–81, §5105(2), substituted "which shall not include any invitation, pre-screening, or pre-selection process for eligibility for Phase II, that will further develop proposals that" for "to further develop proposed ideas to".

Subsec. (e)(6)(C). Pub. L. 112–81, §5125(a)(2), inserted "for work that derives from, extends, or completes efforts made under prior funding agreements under the STTR program" after "phase" in introductory provisions.

Subsec. (e)(9). Pub. L. 112–81, §5125(b)(1)(B), substituted "Phase II or Phase III" for "the second or the third phase".

Subsec. (e)(10). Pub. L. 112–81, §5125(a)(3)–(5), added par. (10).

Subsec. (e)(11) to (13). Pub. L. 112–81, §5125(b)(1)(C), added pars. (11) to (13).

Subsec. (f)(1). Pub. L. 112–81, §5102(a)(1), substituted "Except as provided in paragraph (2)(B), each" for "Each" in introductory provisions, added subpars. (C) to (I), and struck out former subpar. (C) which read as follows: "not less than 2.5 percent of such budget in each fiscal year thereafter,".

Subsec. (f)(2). Pub. L. 112–81, §5141(b)(1)(A), substituted "shall not make available for the purpose" for "shall not—

"(A) use any of its SBIR budget established pursuant to paragraph (1) for the purpose of funding administrative costs of the program, including costs associated with salaries and expenses; or

"(B) make available for the purpose".

Subsec. (f)(4). Pub. L. 112–81, §5102(a)(2), added par. (4).

Subsec. (g)(4). Pub. L. 112–81, §5126(a)(1), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (g)(8) to (10). Pub. L. 112–81, §5132, added par. (8), redesignated former pars. (8) and (9) as (9) and (10), respectively, and struck out former par. (10) which read as follows: "collect, and maintain in a common format in accordance with subsection (v) of this section, such information from awardees as is necessary to assess the SBIR program, including information necessary to maintain the database described in subsection (k) of this section;".

Subsec. (g)(12). Pub. L. 112–81, §5110(a), added par. (12).

Subsec. (i)(1). Pub. L. 112–81, §5122(b), inserted "(including awards under subsection (y))" after "the number of awards".

Subsec. (j)(1)(B). Pub. L. 112–81, §5125(b)(2)(A), substituted "Phase II" for "phase two".

Subsec. (j)(2)(B). Pub. L. 112–81, §5125(b)(2)(B)(i), substituted "Phase III" for "the third phase" in two places and "Phase II" for "the second phase".

Subsec. (j)(2)(D). Pub. L. 112–81, §5125(b)(2)(B)(ii), substituted "Phase I" for "the first phase" and "'Phase II" for "the second phase".

Pub. L. 112–81, §5103(c)(1), substituted "every year for inflation" for "once every 5 years to reflect economic adjustments and programmatic considerations".

Pub. L. 112–81, §5103(a), substituted "$150,000" for "$100,000" and "$1,000,000" for "$750,000".

Subsec. (j)(2)(F). Pub. L. 112–81, §5125(b)(2)(B)(iii), substituted "Phase III" for "the third phase".

Subsec. (j)(2)(G). Pub. L. 112–81, §5125(b)(2)(B)(iv), substituted "Phase I" for "the first phase" and "Phase

II" for "the second phase".

Subsec. (j)(2)(H). Pub. L. 112–81, §5125(b)(2)(B)(v), substituted "Phase I" for "the first phase", "Phase II" for "second phase" in two places, and "Phase III" for "third phase".

Subsec. (j)(3)(A). Pub. L. 112–81, §5125(b)(2)(C)(i), substituted "Phase I" for "the first phase (as described in subsection (e)(4)(A) of this section)", "Phase II" for "(as described in subsection (e)(4)(B) of this section)", and "Phase III" for "the third phase (as described in subsection (e)(4)(C) of this section)".

Subsec. (j)(3)(B). Pub. L. 112–81, §5125(b)(2)(C)(ii), substituted "Phase II" for "second phase".

Subsec. (k). Pub. L. 112–81, §5125(b)(3), substituted "Phase I" for "first phase" and "Phase II" for "second phase" wherever appearing.

Subsec. (k)(1)(F). Pub. L. 112–81, §5134, added subpar. (F).

Subsec. (k)(2). Pub. L. 112–81, §5135(1), in introductory provisions, substituted "Not later than 90 days after December 31, 2011" for "Not later than 180 days after December 21, 2000", added subpars. (A), (D), and (G), redesignated former subpars. (A), (B), (D), and (E) as (B), (C), (E), and (F), respectively, and struck out former subpar. (C) which read as follows: "includes for each applicant for a Phase I or Phase II award that does not receive such an award—

"(i) the name, size, and location, and an identifying number assigned by the Administration;

"(ii) an abstract of the project; and

"(iii) the Federal agency to which the application was made;".

Subsec. (k)(3)(C). Pub. L. 112–81, §5135(2), added subpar. (C).

Subsec. (l)(2). Pub. L. 112–81, §5125(b)(4), substituted "Phase I" for "the first phase" and "Phase II" for "the second phase".

Subsec. (m). Pub. L. 112–81, §5101(a), substituted "2017" for "2011".

Pub. L. 112–17, §3(a), struck out par. (1) designation and heading, substituted "The authorization" for "Except as provided in paragraph (2), the authorization" and "2011" for "2008", and struck out par. (2). Text of par. (2) read as follows: "The Secretary of Defense and the Secretary of each military department are authorized to carry out the Small Business Innovation Research Program of the Department of Defense until September 30, 2010".

Subsec. (m)(2). Pub. L. 111–383 substituted "are authorized" for "is authorized".

Subsec. (n)(1)(A). Pub. L. 112–81, §5101(b), substituted "2017" for "2011".

Pub. L. 112–17, §3(b), struck out cl. (i) designation and heading, substituted "With respect" for "Except as provided in clause (ii), with respect" and "2011" for "2009", and struck out cl. (ii). Text of cl. (ii) read as follows: "The Secretary of Defense and the Secretary of each military department shall carry out clause (i) with respect to each fiscal year through fiscal year 2010."

Subsec. (n)(1)(B)(ii) to (v). Pub. L. 112–81, §5102(b), added cls. (ii) to (v) and struck out former cl. (ii) which read as follows: "0.3 percent for fiscal year 2004 and each fiscal year thereafter."

Subsec. (o)(4). Pub. L. 112–81, §5126(a)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (o)(9). Pub. L. 112–81, §5133, added par. (9) and struck out former par. (9) which read as follows: "collect such data from awardees as is necessary to assess STTR program outputs and outcomes;".

Subsec. (o)(13)(B). Pub. L. 112–81, §5125(b)(5)(A), substituted "Phase II" for "second phase".

Subsec. (o)(13)(C). Pub. L. 112–81, §5125(b)(5)(B), substituted "Phase III" for "third phase".

Subsec. (o)(15), (16). Pub. L. 112–81, §5110(b), added par. (16), redesignated former par. (16) as (15) and struck out former par. (15) which read as follows: "collect, and maintain in a common format in accordance with subsection (v) of this section, such information from awardees as is necessary to assess the STTR program, including information necessary to maintain the database described in subsection (k) of this section; and".

Subsec. (p)(2)(B)(vi). Pub. L. 112–81, §5125(b)(6)(A)(i), substituted "Phase II" for "the second phase" and "Phase III" for "the third phase".

Subsec. (p)(2)(B)(ix). Pub. L. 112–81, §5125(b)(6)(A)(ii), substituted "Phase I" for "the first phase" and "Phase II" for "the second phase".

Pub. L. 112–81, §5103(c)(2), inserted "(each of which the Administrator shall adjust for inflation annually)" after "$1,000,000,".

Pub. L. 112–81, §5103(b), substituted "$150,000" for "$100,000" and "$1,000,000" for "$750,000".

Subsec. (p)(3). Pub. L. 112–81, §5125(b)(6)(B), substituted "Phase I" for "the first phase (as described in subsection (e)(6)(A) of this section)", "Phase II" for "the second phase (as described in subsection (e)(6)(B) of this section)", and "Phase III" for "the third phase (as described in subsection (e)(6)(C) of this section)".

Subsec. (q)(1). Pub. L. 112–81, §5121(1), inserted "or STTR program" after "SBIR program" and substituted "SBIR or STTR projects" for "SBIR projects" in introductory provisions.

Subsec. (q)(2). Pub. L. 112–81, §5121(2), substituted "5 years" for "3 years".

Subsec. (q)(3). Pub. L. 112–81, §5121(3), added subpars. (A) to (D) and struck out former subpars. (A) and (B) which read as follows:

"(A) First phase

"Each agency referred to in paragraph (1) may provide services described in paragraph (1) to first phase SBIR award recipients in an amount equal to not more than $4,000, which shall be in addition to the amount of the recipient's award.

"(B) Second phase

"Each agency referred to in paragraph (1) may authorize any second phase SBIR award recipient to purchase, with funds available from their SBIR awards, services described in paragraph (1), in an amount equal to not more than $4,000 per year."

Subsec. (r). Pub. L. 112–81, §5125(b)(7)(A), substituted "Phase III" for "Third phase" in heading.

Subsec. (r)(1). Pub. L. 112–81, §5125(b)(7)(B), substituted, in first sentence, "for Phase II" for "for the second phase", "Phase III" for "third phase", and "Phase II period" for "second phase period", and, in second sentence, "Phase II" for "second phase" and "Phase III" for "third phase".

Subsec. (r)(2). Pub. L. 112–81, §5125(b)(7)(C), substituted "Phase III" for "third phase".

Subsec. (r)(4). Pub. L. 112–81, §5108, added par. (4).

Subsec. (s). Pub. L. 112–17, §4, added subsec. (s).

Subsec. (u)(2)(B). Pub. L. 112–81, §5125(b)(8), substituted "Phase I" for "the first phase" in introductory provisions.

Subsec. (v). Pub. L. 112–81, §5144, substituted "Reducing paperwork and compliance burden" for "Simplified reporting requirements" in heading, designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsec. (y). Pub. L. 112–81, §5122(a)(1), (2), substituted "Readiness" for "Pilot" wherever appearing in heading and text.

Subsec. (y)(1). Pub. L. 112–81, §5122(a)(3), inserted "or Small Business Technology Transfer Program" after "Small Business Innovation Research Program" and inserted at end "The authority to create and administer a Commercialization Readiness Program under this subsection may not be construed to eliminate or replace any other SBIR program or STTR program that enhances the insertion or transition of SBIR or STTR technologies, including any such program in effect on January 6, 2006."

Subsec. (y)(2). Pub. L. 112–81, §5122(a)(4), inserted "or Small Business Technology Transfer Program" after "Small Business Innovation Research Program".

Subsec. (y)(4). Pub. L. 112–81, §5141(b)(3)(B), as amended by Pub. L. 112–239, §1615(b), amended par. (4) generally. Prior to amendment, text read as follows: "For payment of expenses incurred to administer the Commercialization Readiness Program under this subsection, the Secretary of Defense and each Secretary of a military department is authorized to use not more than an amount equal to 1 percent of the funds available to the Department of Defense or the military department pursuant to the Small Business Innovation Research Program. Such funds shall not be used to make Phase III awards."

Pub. L. 112–81, §5141(b)(1)(B), redesignated par. (5) as (4) and struck out former par. (4), which related to funding of expenses incurred to administer the Commercialization Readiness Program.

Subsec. (y)(5). Pub. L. 112–81, §5141(b)(1)(B)(ii), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Pub. L. 112–81, §5122(a)(7), added par. (5).

Pub. L. 112–81, §5122(a)(5), struck out par. (5) which required the Secretary of Defense to submit an annual evaluative report regarding activities under the Commercialization Pilot Program.

Pub. L. 112–81, §1067(a)(2), which struck out par. (5), requiring the Secretary of Defense to submit an annual evaluative report regarding activities under the Commercialization Pilot Program, was repealed by Pub. L. 112–239, §1076(a)(20)(A).

Subsec. (y)(6). Pub. L. 112–81, §5141(b)(1)(B)(ii), redesignated par. (6) as (5).

Pub. L. 112–81, §5122(a)(6), (7), added par. (6) and struck out former par. (6), which provided that pilot program would terminate at the end of fiscal year 2011.

Pub. L. 112–17, §3(c), substituted "2011" for "2010".

Subsec. (aa). Pub. L. 112–81, §5103(d), added subsec. (aa).

Subsec. (bb). Pub. L. 112–81, §5104, added subsec. (bb).

Subsec. (cc). Pub. L. 112–81, §5106, added subsec. (cc).

Subsec. (dd). Pub. L. 112–81, §5107(a), added subsec. (dd).

Subsec. (ee). Pub. L. 112–81, §5109, added subsec. (ee).

Subsec. (ff). Pub. L. 112–81, §5111, added subsec. (ff).

Subsec. (gg). Pub. L. 112–81, §5123, added subsec. (gg).
Subsecs. (hh), (ii). Pub. L. 112–81, §5126(b), added subsecs. (hh) and (ii).
Subsec. (jj). Pub. L. 112–81, §5127, added subsec. (jj).
Subsec. (kk). Pub. L. 112–81, §5138, added subsec. (kk).
Subsec. (ll). Pub. L. 112–81, §5140, added subsec. (ll).
Subsec. (mm). Pub. L. 112–81, §5141(a), added subsec. (mm).
Subsec. (nn). Pub. L. 112–81, §5161, added subsec. (nn).
Subsec. (oo). Pub. L. 112–81, §5162, added subsec. (oo).
Subsec. (pp). Pub. L. 112–81, §5164, added subsec. (pp).
Subsec. (qq). Pub. L. 112–81, §5165, added subsec. (qq).
Subsec. (rr). Pub. L. 112–81, §5166, added subsec. (rr).
Subsec. (ss). Pub. L. 112–81, §5167, added subsec. (ss).

2009—Subsec. (m). Pub. L. 111–84, §847(a), designated existing provisions as par. (1), inserted par. (1) heading, substituted "Except as provided in paragraph (2), the authorization" for "The authorization", and added par. (2).

Subsec. (n)(1)(A). Pub. L. 111–84, §847(b), designated existing provisions as cl. (i), inserted cl. (i) heading, substituted "Except as provided in clause (ii), with respect" for "With respect", and added cl. (ii).

Subsec. (y)(6). Pub. L. 111–84, §848, substituted "2010" for "2009".

2007—Subsec. (z). Pub. L. 110–140 added subsec. (z).

2006—Subsec. (b)(8). Pub. L. 109–163, §252(b)(1), added par. (8).

Subsec. (e)(9). Pub. L. 109–163, §252(c), added par. (9).

Subsec. (g)(11). Pub. L. 109–163, §252(b)(2), added par. (11).

Subsec. (o)(16). Pub. L. 109–163, §252(b)(3), added par. (16).

Subsecs. (x), (y). Pub. L. 109–163, §252(a), added subsecs. (x) and (y).

2004—Subsec. (j)(2)(I). Pub. L. 108–271 substituted "Government Accountability Office" for "General Accounting Office".

2001—Subsec. (b)(4). Pub. L. 107–50, §2(b), struck out "pilot" before "programs;".

Subsec. (b)(7). Pub. L. 107–50, §6(d), substituted ", (o)(9), and (o)(15) of this section, the number of proposals received from, and the number and total amount of awards to, HUBZone small business concerns under each of the SBIR and STTR programs," for "and (o)(9) of this section,".

Subsec. (e)(6). Pub. L. 107–50, §2(b), struck out "pilot" before "program" in introductory provisions.

Subsec. (k)(1). Pub. L. 107–50, §6(b)(1), inserted "or STTR" after "SBIR" in subpars. (A) to (C) and added subpar. (E).

Subsec. (k)(2). Pub. L. 107–50, §6(b)(2)(A), (B), in introductory provisions, inserted "or an STTR program pursuant to subsection (n)(1) of this section" after "(f)(1) of this section" and substituted "exclusively for SBIR and STTR" for "solely for SBIR".

Subsec. (k)(2)(A)(iii). Pub. L. 107–50, §6(b)(2)(C), inserted "and STTR" after "SBIR".

Subsec. (k)(2)(D). Pub. L. 107–50, §6(b)(2)(D), inserted "or STTR" after "SBIR".

Subsec. (n)(1). Pub. L. 107–50, §2(a), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: "With respect to fiscal years 1998, 1999, 2000, and 2001, each Federal agency that has an extramural budget for research, or research and development, in excess of $1,000,000,000 for that fiscal year, is authorized to expend with small business concerns not less than 0.15 percent of that extramural budget specifically in connection with STTR programs that meet the requirements of this section and any policy directives and regulations issued under this section."

Subsec. (o)(11). Pub. L. 107–50, §7(b), substituted "adopt the agreement developed by the Administrator under subsection (w) of this section as the agency's model agreement" for "develop a model agreement not later than July 31, 1993, to be approved by the Administration,".

Subsec. (o)(14). Pub. L. 107–50, §4, added par. (14).

Subsec. (o)(15). Pub. L. 107–50, §6(a), added par. (15).

Subsec. (p)(2)(B)(ix). Pub. L. 107–50, §3, substituted "$750,000" for "$500,000" and inserted ", and shorter or longer periods of time to be approved at the discretion of the awarding agency where appropriate for a particular project" before the semicolon at the end.

Subsec. (p)(3). Pub. L. 107–50, §5, added par. (3).

Subsec. (v). Pub. L. 107–50, §6(c), inserted "or STTR" after "SBIR" in two places.

Subsec. (w). Pub. L. 107–50, §7(a), added subsec. (w).

2000—Subsec. (b)(7). Pub. L. 106–554, §1(a)(9) [title I, §107(b)], inserted before period at end ", including the data on output and outcomes collected pursuant to subsections (g)(10) and (o)(9) of this section, and a description of the extent to which Federal agencies are providing in a timely manner information needed to

maintain the database described in subsection (k) of this section".

Pub. L. 106–554, §1(a)(9) [title I, §104], substituted ", and to the Committee on Science and the Committee on Small Business of the House of Representatives," for "and the Committee on Small Business of the House of Representatives".

Subsec. (e)(4)(C)(i). Pub. L. 106–554, §1(a)(9) [title I, §105], substituted "; or" for "; and" at end.

Subsec. (g)(9). Pub. L. 106–554, §1(a)(9) [title I, §106], added par. (9).

Subsec. (g)(10). Pub. L. 106–554, §1(a)(9) [title I, §107(a)], added par. (10).

Subsec. (i). Pub. L. 106–554, §1(a)(9) [title I, §109], inserted subsec. heading, designated existing provisions as par. (1), inserted par. heading, and added par. (2).

Subsec. (j)(3). Pub. L. 106–554, §1(a)(9) [title I, §110], added par. (3).

Subsec. (k). Pub. L. 106–554, §1(a)(9) [title I, §107(c)], amended subsec. (k) generally, substituting present provisions for provisions which read "(k) [Reserved]".

Subsec. (m). Pub. L. 106–554, §1(a)(9) [title I, §103], amended heading and text generally. Prior to amendment, text read as follows: "The authorization to carry out the Small Business Innovation Research Program under this section shall terminate on October 1, 2000."

Subsec. (s)(2). Pub. L. 106–554, §1(a)(9) [title I, §114(b)], substituted "for each of the fiscal years 2000 through 2005," for "for fiscal year 1998, 1999, 2000, or 2001".

Subsec. (u). Pub. L. 106–554, §1(a)(9) [title I, §111(c)], added subsec. (u).

Subsec. (v). Pub. L. 106–554, §1(a)(9) [title I, §113], added subsec. (v).

1999—Subsec. (p)(1)(B). Pub. L. 106–113 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "the Commissioner of Patents and Trademarks; and".

1997—Subsec. (e)(4)(A). Pub. L. 105–135, §501(b)(1)(B), substituted "subparagraph (B)" for "subparagraph (B)(ii)".

Subsec. (n)(1). Pub. L. 105–135, §501(a), added par. (1) and struck out heading and text of former par. (1). Text read as follows: "Each Federal agency which has an extramural budget for research or research and development in excess of $1,000,000,000 in fiscal year 1994, 1995, or 1996, is authorized to expend with small business concerns—

"(A) not less than 0.05 percent of such budget in fiscal year 1994;

"(B) not less than 0.1 percent of such budget in fiscal year 1995; and

"(C) not less than 0.15 percent of such budget in fiscal years 1996 and 1997,

specifically in connection with STTR programs which meet the requirements of this section, policy directives, and regulations issued under this section."

Subsec. (o)(8) to (13). Pub. L. 105–135, §501(b)(1)(A), added pars. (8) and (9) and redesignated former pars. (8) to (11) as (10) to (13), respectively.

Subsec. (s). Pub. L. 105–135, §501(b)(2), struck out subsec. (s), which related to outreach, including provisions defining eligible State and relating to program authority, amount of assistance, and use of assistance.

Pub. L. 105–135, §501(b)(1)(C), added subsec. (s).

Subsec. (t). Pub. L. 105–135, §501(b)(1)(C), added subsec. (t).

1996—Subsec. (n)(1)(C). Pub. L. 104–208 substituted "fiscal years 1996 and 1997" for "fiscal year 1996".

1994—Subsec. (q)(2). Pub. L. 103–403 amended heading and text of par. (2) generally. Prior to amendment, text read as follows: "Annually, each agency may select a vendor for purposes of this subsection using competitive, merit-based criteria, to assist small business concerns to meet the goals listed in paragraph (1)."

1992—Subsec. (b)(4). Pub. L. 102–564, §202(a)(1), inserted before semicolon at end "and small business technology transfer pilot programs".

Subsec. (b)(5) to (7). Pub. L. 102–564, §202(a)(2), inserted "and STTR" after "SBIR" wherever appearing.

Subsec. (e)(1). Pub. L. 102–564, §103(c), substituted "for the Department of Energy it shall not include amounts obligated for atomic energy defense programs solely for weapons activities or for naval reactor programs" for "for the Department of Defense it shall not include amounts obligated solely for operational systems development".

Pub. L. 102–484, §4237(d)(1), (2)(A), (h)(2), temporarily amended par. (1) by striking out "except that for the Department of Defense it shall not include amounts obligated solely for operational systems development, and" after "Government-operated facilities," and substituting ", and except that for the Department of Energy it shall not include amounts obligated for atomic energy defense programs for weapons and weapons-related activities or for naval reactor programs;" for semicolon at end. See section 4237(h)(2) of Pub. L. 102–484 set out in a Small Business Innovation Research Program in Department of Defense note below.

Subsec. (e)(4)(A). Pub. L. 102–564, §103(a)(1), inserted "that appear to have commercial potential, as

described in subparagraph (B)(ii)," after "ideas".

Subsec. (e)(4)(B). Pub. L. 102–564, §103(a)(2), added subpar. (B) and struck out former subpar. (B) which read as follows: "a second phase to further develop the proposed ideas to meet the particular program needs, the awarding of which shall take into consideration the scientific and technical merit and feasibility evidenced by the first phase and, where two or more proposals are evaluated as being of approximately equal scientific and technical merit and feasibility, special consideration shall be given to those proposals that have demonstrated third phase, non-Federal capital commitments; and".

Subsec. (e)(4)(C). Pub. L. 102–564, §103(a)(2), added subpar. (C) and struck out former subpar. (C) which read as follows: "where appropriate, a third phase in which non-Federal capital pursues commercial applications of the research or research and development and which may also involve follow-on non-SBIR funded production contracts with a Federal agency for products or processes intended for use by the United States Government; and".

Subsec. (e)(6) to (8). Pub. L. 102–564, §202(b), added pars. (6) to (8).

Subsec. (f). Pub. L. 102–564, §103(b), amended subsec. (f) generally. Prior to amendment, subsec. (f) consisted of pars. (1) and (2) relating to Federal agency extramural budget expenditures for fiscal years 1982 and thereafter for small business concerns in connection with small business innovation research programs meeting the requirements of the Small Business Innovation Development Act of 1982.

Subsec. (f)(2). Pub. L. 102–484, §4237(d)(2)(B), (h)(2), temporarily struck out par. (2) which read "Amounts appropriated for atomic energy defense programs of the Department of Energy shall for the purposes of paragraph (1) be excluded from the amount of the research or research and development budget of that Department." See section 4237(h)(2) of Pub. L. 102–484 set out in a Small Business Innovation Research Program in Department of Defense note below.

Subsec. (g)(3), (4). Pub. L. 102–564, §103(d), added par. (3) and redesignated former par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (g)(5). Pub. L. 102–564, §103(d)(1), (h)(2), (i), redesignated par. (4) as (5) and inserted "subject to subsection (l) of this section," before "unilaterally" and "and inform each awardee under such an agreement, to the extent possible, of the expenses of the awardee that will be allowable under the funding agreement" before semicolon at end. Former par. (5) redesignated (6).

Subsec. (g)(6). Pub. L. 102–564, §103(d)(1), redesignated par. (5) as (6). Former par. (6) redesignated (7).

Subsec. (g)(7). Pub. L. 102–564, §103(d)(1), (e), redesignated par. (6) as (7) and inserted before semicolon at end "and, in all cases, make payment to recipients under such agreements in full, subject to audit, on or before the last day of the 12-month period beginning on the date of completion of such requirements". Former par. (7) redesignated (8).

Subsec. (g)(8). Pub. L. 102–564, §103(d)(1), redesignated par. (7) as (8).

Subsec. (j). Pub. L. 102–564, §103(f), designated existing provisions as par. (1) and inserted heading, redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), former subpars. (A) to (H) of former par. (2) as cls. (i) to (viii), respectively, of subpar. (B) of par. (1), and former pars. (3) to (7) as subpars. (C) to (G), respectively, of par. (1), and added par. (2).

Subsec. (k). Pub. L. 102–564, §103(g), amended subsec. (k) generally, substituting "(k) [Reserved]" for prior provisions of subsec. (k) which read as follows: "The Director of the Office of Science and Technology Policy, in consultation with the Federal Coordinating Council for Science, Engineering and Research, shall, in addition to such other responsibilities imposed upon him by the Small Business Innovation Development Act of 1982—

> "(1) independently survey and monitor all phases of the implementation and operation of SBIR programs within agencies required to establish an SBIR program, including compliance with the expenditures of funds according to the requirements of subsection (f) of this section; and
>
> "(2) report not less than annually, and at such other times as the Director may deem appropriate, to the Committees on Small Business of the Senate and the House of Representatives on all phases of the implementation and operation of SBIR programs within agencies required to establish an SBIR program, together with such recommendations as the Director may deem appropriate."

Subsec. (l). Pub. L. 102–564, §103(h)(1), added subsec. (l).

Subsec. (m). Pub. L. 102–564, §104(b), added subsec. (m).

Subsecs. (n) to (p). Pub. L. 102–564, §202(c), added subsecs. (n) to (p).

Subsec. (q). Pub. L. 102–564, §301(a), added subsec. (q).

Subsec. (r). Pub. L. 102–564, §305, added subsec. (r).

1988—Subsec. (j)(6), (7). Pub. L. 100–590 added pars. (6) and (7).

1986—Subsec. (e)(1). Pub. L. 99–443, §1, inserted provision that for the Department of Defense, the extramural budget shall not include amounts obligated solely for operational systems development.

1982—Subsec. (b)(4) to (7). Pub. L. 97–219, §3, added pars. (4) to (7).
Subsecs. (e) to (k). Pub. L. 97–219, §4, added subsecs. (e) to (k).

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

Committee on Science of House of Representatives changed to Committee on Science and Technology of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–239, div. A, title X, §1076(a), Jan. 2, 2013, 126 Stat. 1947, provided that the amendment made by section 1076(a)(20)(A) is effective Dec. 31, 2011, and as if included in Pub. L. 112–81 as enacted.

Pub. L. 112–239, div. A, title XVI, §1615(c), Jan. 2, 2013, 126 Stat. 2067, provided that: "The amendments made by this section [amending this section] shall take effect as of January 1, 2012."

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112–81, div. E, title LI, §5141(b)(3), Dec. 31, 2011, 125 Stat. 1854, provided in part that the amendments made by section 5141(b)(3) of Pub. L. 112–81 (amending this section) were effective on the first day of the fourth full fiscal year following Dec. 31, 2011.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–84, div. A, title VIII, §847(c), Oct. 28, 2009, 123 Stat. 2421, provided that: "The amendments made by this section [amending this section] shall take effect as of July 30, 2009."

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–50, §3(b), Oct. 15, 2001, 115 Stat. 263, provided that: "The amendments made by subsection (a) [amending this section] shall be effective beginning in fiscal year 2004."

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

EFFECTIVE AND TERMINATION DATES OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

Pub. L. 105–135, title V, §501(b)(2), Dec. 2, 1997, 111 Stat. 2622, as amended by Pub. L. 106–554, §1(a)(9) [title I, §114(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–681, provided that: "Effective October 1, 2005, section 9(s) of the Small Business Act [15 U.S.C. 638(s)] (as added by paragraph (1) of this subsection) is repealed."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Oct. 1, 1996, see section 3 of Pub. L. 104–208, set out as a note under section 633 of this title.

EFFECTIVE AND TERMINATION DATES OF 1992 AMENDMENT

For effective and termination dates of amendment by Pub. L. 102–484, see section 4237(g) and (h) of Pub. L. 102–484, set out in a Small Business Innovation Research Program in Department of Defense note below.

TERMINATION DATE OF 1982 AMENDMENT

Pub. L. 97–219, §5, July 22, 1982, 96 Stat. 221, as amended by Pub. L. 99–443, §2, Oct. 6, 1986, 100 Stat. 1120; Pub. L. 102–484, div. D, title XLII, §4237(a), Oct. 23, 1992, 106 Stat. 2691, which provided that effective Oct. 1, 1993, subsecs. (b)(4) through (7) and (e) through (k) of this section were to be repealed, was repealed by Pub. L. 102–564, title I, §104(a), Oct. 28, 1992, 106 Stat. 4254.

FIRMS THAT ARE MAJORITY-OWNED BY MULTIPLE VENTURE CAPITAL OPERATING COMPANIES, HEDGE FUNDS, OR PRIVATE EQUITY FIRMS ENTITLED TO PARTIAL PARTICIPATION IN SBIR PROGRAM; RULES FOR DETERMINING AFFILIATION

Pub. L. 112–81, div. E, title LI, §5107(c), (d), Dec. 31, 2011, 125 Stat. 1829, 1832, provided that:

"(c) RULEMAKING TO ENSURE THAT FIRMS THAT ARE MAJORITY-OWNED BY MULTIPLE VENTURE CAPITAL OPERATING COMPANIES, HEDGE FUNDS, OR PRIVATE EQUITY FIRMS ARE ABLE TO PARTICIPATE IN A PORTION OF THE SBIR PROGRAM.—

"(1) STATEMENT OF CONGRESSIONAL INTENT.—It is the stated intent of Congress that the Administrator should promulgate regulations to carry out the authority under section 9(dd) of the Small Business Act [15 U.S.C. 638(dd)], as added by this section, that—

"(A) permit small business concerns that are majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms to participate in the SBIR program in accordance with section 9(dd) of the Small Business Act;

"(B) provide specific guidance for small business concerns that are majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms with regard to eligibility, participation, and affiliation rules; and

"(C) preserve and maintain the integrity of the SBIR program as a program for small business concerns in the United States by prohibiting large businesses or large entities or foreign-owned businesses or foreign-owned entities from participation in the program established under section 9 of the Small Business Act [15 U.S.C. 638].

"(2) RULEMAKING REQUIRED.—

"(A) PROPOSED REGULATIONS.—Not later than 120 days after the date of enactment of this Act [Dec. 31, 2011], the Administrator shall issue proposed regulations to amend section 121.103 (relating to determinations of affiliation applicable to the SBIR program) and section 121.702 (relating to ownership and control standards and size standards applicable to the SBIR program) of title 13, Code of Federal Regulations, for firms that are majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms and participating in the SBIR program solely under the authority under section 9(dd) of the Small Business Act [15 U.S.C. 638(dd)], as added by this section.

"(B) FINAL REGULATIONS.—Not later than 1 year after the date of enactment of this Act, and after providing notice of and opportunity for comment on the proposed regulations issued under subparagraph (A), the Administrator shall issue final or interim final regulations under this subsection.

"(3) CONTENTS.—

"(A) IN GENERAL.—The regulations issued under this subsection shall permit the participation of applicants majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms in the SBIR program in accordance with section 9(dd) of the Small Business Act [15 U.S.C. 638(dd)], as added by this section, unless the Administrator determines—

"(i) in accordance with the size standards established under subparagraph (B), that the applicant is—

"(I) a large business or large entity; or

"(II) majority-owned or controlled by a large business or large entity; or

"(ii) in accordance with the criteria established under subparagraph (C), that the applicant—

"(I) is a foreign-owned business or a foreign entity or is not a citizen of the United States or alien lawfully admitted for permanent residence; or

"(II) is majority-owned or controlled by a foreign-owned business, foreign entity, or person who is not a citizen of the United States or alien lawfully admitted for permanent residence.

"(B) SIZE STANDARDS.—Under the authority to establish size standards under paragraphs (2) and (3) of section 3(a) of the Small Business Act (15 U.S.C. 632(a)), the Administrator shall, in accordance with paragraph (1) of this subsection, establish size standards for applicants seeking to participate in the SBIR program solely under the authority under section 9(dd) of the Small Business Act [15 U.S.C. 638(dd)], as added by this section.

"(C) CRITERIA FOR DETERMINING FOREIGN OWNERSHIP.—The Administrator shall establish criteria for determining whether an applicant meets the requirements under subparagraph (A)(ii), and, in establishing the criteria, shall consider whether the criteria should include—

"(i) whether the applicant is at least 51 percent owned or controlled by citizens of the United States or domestic venture capital operating companies, hedge funds, or private equity firms;

"(ii) whether the applicant is domiciled in the United States; and

"(iii) whether the applicant is a direct or indirect subsidiary of a foreign-owned firm, including whether the criteria should include that an applicant is a direct or indirect subsidiary of a

foreign-owned entity if—

"(I) any venture capital operating company, hedge fund, or private equity firm that owns more than 20 percent of the applicant is a direct or indirect subsidiary of a foreign-owned entity; or

"(II) in the aggregate, entities that are direct or indirect subsidiaries of foreign-owned entities own more than 49 percent of the applicant.

"(D) CRITERIA FOR DETERMINING AFFILIATION.—The Administrator shall establish criteria, in accordance with paragraph (1), for determining whether an applicant is affiliated with a venture capital operating company, hedge fund, private equity firm, or any other business that the venture capital operating company, hedge fund, or private equity firm has financed and, in establishing the criteria, shall specify that—

"(i) if a venture capital operating company, hedge fund, or private equity firm that is determined to be affiliated with an applicant is a minority investor in the applicant, the portfolio companies of the venture capital operating company, hedge fund, or private equity firm shall not be determined to be affiliated with the applicant, unless—

"(I) the venture capital operating company, hedge fund, or private equity firm owns a majority of the portfolio company; or

"(II) the venture capital operating company, hedge fund, or private equity firm holds a majority of the seats on the board of directors of the portfolio company;

"(ii) subject to clause (i), the Administrator retains the authority to determine whether a venture capital operating company, hedge fund, or private equity firm is affiliated with an applicant, including establishing other criteria;

"(iii) the Administrator may not determine that a portfolio company of a venture capital operating company, hedge fund, or private equity firm is affiliated with an applicant based solely on 1 or more shared investors; and

"(iv) subject to clauses (i), (ii), and (iii), the Administrator retains the authority to determine whether a portfolio company of a venture capital operating company, hedge fund, or private equity firm is affiliated with an applicant based on factors independent of whether there is a shared investor, such as whether there are contractual obligations between the portfolio company and the applicant.

"(4) ENFORCEMENT.—If the Administrator does not issue final or interim final regulations under this subsection on or before the date that is 1 year after the date of enactment of this Act [Dec. 31, 2011], the Administrator may not carry out or establish any pilot program until the date on which the Administrator issues the final or interim final regulations under this subsection.

"(5) DEFINITION.—In this subsection, the terms 'venture capital operating company', 'hedge fund', and 'private equity firm' have the same meaning as in section 3 of the Small Business Act (15 U.S.C. 632), as amended by this section.

"(d) ASSISTANCE FOR DETERMINING AFFILIATES.—

"(1) CLEAR EXPLANATION REQUIRED.—Not later than 30 days after the date of enactment of this Act [Dec. 31, 2011], the Administrator shall post on the Web site of the Administration (with a direct link displayed on the homepage of the Web site of the Administration or the SBIR and STTR Web sites of the Administration)—

"(A) a clear explanation of the SBIR and STTR affiliation rules under part 121 of title 13, Code of Federal Regulations; and

"(B) contact information for officers or employees of the Administration who—

"(i) upon request, shall review an issue relating to the rules described in subparagraph (A); and

"(ii) shall respond to a request under clause (i) not later than 20 business days after the date on which the request is received.

"(2) INCLUSION OF AFFILIATION RULES FOR CERTAIN SMALL BUSINESS CONCERNS .—On and after the date on which the final regulations under subsection (c) are issued, the Administrator shall post on the Web site of the Administration information relating to the regulations, in accordance with paragraph (1)."

[For definitions used in section 5107(c), (d) of Pub. L. 112–81, set out above, see section 5002 of Pub. L. 112–81, set out as a note under section 638b of this title.]

ACCURACY IN FUNDING BASE CALCULATIONS

Pub. L. 112–81, div. E, title LI, §5136, Dec. 31, 2011, 125 Stat. 1849, provided that:

"(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act [Dec. 31, 2011], and every year thereafter until the date that is 5 years after the date of enactment of this Act, the Comptroller

General of the United States shall—

"(1) conduct a fiscal and management audit of the SBIR program and the STTR program for the applicable period to—

"(A) determine whether Federal agencies comply with the expenditure amount requirements under subsections (f)(1) and (n)(1) of section 9 of the Small Business Act (15 U.S.C. 638), as amended by this title;

"(B) assess the extent of compliance with the requirements of section 9(i)(2) of the Small Business Act (15 U.S.C. 638(i)(2)) by Federal agencies participating in the SBIR program or the STTR program and the Administration;

"(C) assess whether it would be more consistent and effective to base the amount of the allocations under the SBIR program and the STTR program on a percentage of the research and development budget of a Federal agency, rather than the extramural budget of the Federal agency; and

"(D) determine the portion of the extramural research or research and development budget of a Federal agency that each Federal agency spends for administrative purposes relating to the SBIR program or STTR program, and for what specific purposes it is used, including the portion, if any, of such budget the Federal agency spends for salaries and expenses, travel to visit applicants, outreach events, marketing, and technical assistance; and

"(2) submit a report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives regarding the audit conducted under paragraph (1), including the assessments required under subparagraph (B) and the determinations made under subparagraph (D) of paragraph (1).

"(b) DEFINITION OF APPLICABLE PERIOD.—In this section, the term 'applicable period' means—

"(1) for the first report submitted under this section, the period beginning on October 1, 2005, and ending on September 30 of the last full fiscal year before the date of enactment of this Act [Dec. 31, 2011] for which information is available; and

"(2) for the second and each subsequent report submitted under this section, the period—

"(A) beginning on October 1 of the first fiscal year after the end of the most recent full fiscal year relating to which a report under this section was submitted; and

"(B) ending on September 30 of the last full fiscal year before the date of the report."

[For definitions used in section 5136 of Pub. L. 112–81, set out above, see section 5002 of Pub. L. 112–81, set out as a note under section 638b of this title.]

TRANSITIONAL RULE

Pub. L. 112–81, div. E, title LI, §5141(b)(2), Dec. 31, 2011, 125 Stat. 1853, provided that: "Notwithstanding the amendments made by paragraph (1) [amending this section], subsections (f)(2) and (y)(4) of section 9 of the Small Business Act (15 U.S.C. 638), as in effect on the day before the date of enactment of this Act [Dec. 31, 2011], shall continue to apply to each Federal agency until the effective date of the performance criteria established by the [Small Business] Administrator under subsection (mm)(3) of section 9 of the Small Business Act [15 U.S.C. 638(mm)(3)], as added by subsection (a)."

CONFORMING AMENDMENTS TO THE SBIR AND THE STTR POLICY DIRECTIVES

Pub. L. 112–81, div. E, title LI, §5151, Dec. 31, 2011, 125 Stat. 1857, provided that:

"(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act [Dec. 31, 2011], the Administrator shall promulgate amendments to the SBIR Policy Directive and the STTR Policy Directive to conform such directives to this title [enacting sections 638a and 638b of this title, amending this section and section 632 of this title, and enacting and amending provisions set out as notes under this section] and the amendments made by this title.

"(b) PUBLISHING SBIR POLICY DIRECTIVE AND THE STTR POLICY DIRECTIVE IN THE FEDERAL REGISTER.—Not later than 180 days after the date of enactment of this Act, the Administrator shall publish the amended SBIR Policy Directive and the amended STTR Policy Directive in the Federal Register."

[For definitions used in section 5151 of Pub. L. 112–81, set out above, see section 5002 of Pub. L. 112–81, set out as a note under section 638b of this title.]

COORDINATION OF THE SBIR PROGRAM AND THE EXPERIMENTAL PROGRAM TO STIMULATE COMPETITIVE RESEARCH

Pub. L. 112–81, div. E, title LI, §5168, Dec. 31, 2011, 125 Stat. 1862, provided that:

"(a) COORDINATION REQUIRED.—The head of a Federal agency that participates in the SBIR program and the Experimental Program to Stimulate Competitive Research or the Institutional Development Award

Program shall coordinate, to the extent possible, the initiatives of the agency with respect to such programs.

"(b) COORDINATION REPORT.—Not later than 1 year after the date of enactment of this Act [Dec. 31, 2011], the head of each Federal agency that participates in the SBIR program and the Experimental Program to Stimulate Competitive Research or the Institutional Development Award Program shall submit to the Administrator, the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives, and the Committee on Small Business and Entrepreneurship of the Senate a report describing the actions taken during the preceding 1-year period to increase coordination between such programs to maximize existing resources.

"(c) PARTICIPATION REPORT.—Not later than 3 years after the date of enactment of this Act [Dec. 31, 2011], the head of each Federal agency that participates in the SBIR program and the Experimental Program to Stimulate Competitive Research or the Institutional Development Award Program shall submit to the Administrator, the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives, and the Committee on Small Business and Entrepreneurship of the Senate a report analyzing whether actions taken to increase the coordination of such programs have been successful in attracting entrepreneurs into the SBIR program and increasing the participation of States with respect to which a low level of SBIR awards have historically been awarded."

[For definitions used in section 5168 of Pub. L. 112–81, set out above, see section 5002 of Pub. L. 112–81, set out as a note under section 638b of this title.]

CONTINUATION OF SBIR PROGRAM BEYOND TERMINATION DATE

Pub. L. 106–554, §1(a)(4) [div. B, title I, §149], Dec. 21, 2000, 114 Stat. 2763, 2763A–251, provided that: "The Small Business Innovation Research program, otherwise expiring at the end of fiscal year 2000, is authorized to continue in effect during fiscal year 2001."

CONGRESSIONAL FINDINGS: SMALL BUSINESS INNOVATION RESEARCH PROGRAM REAUTHORIZATION ACT OF 2000

Pub. L. 106–554, §1(a)(9) [title I, §102], Dec. 21, 2000, 114 Stat. 2763, 2763A–668, provided that: "Congress finds that—

"(1) the small business innovation research program established under the Small Business Innovation Development Act of 1982 [see Short Title of 1982 Amendment note set out under section 631 of this title], and reauthorized by the Small Business Research and Development Enhancement Act of 1992 [see Short Title of 1992 Amendments note set out under section 631 of this title] (in this title [see Short Title of 2000 Amendment note set out under section 631 of this title] referred to as the 'SBIR program') is highly successful in involving small businesses in federally funded research and development;

"(2) the SBIR program made the cost-effective and unique research and development capabilities possessed by the small businesses of the Nation available to Federal agencies and departments;

"(3) the innovative goods and services developed by small businesses that participated in the SBIR program have produced innovations of critical importance in a wide variety of high-technology fields, including biology, medicine, education, and defense;

"(4) the SBIR program is a catalyst in the promotion of research and development, the commercialization of innovative technology, the development of new products and services, and the continued excellence of this Nation's high-technology industries; and

"(5) the continuation of the SBIR program will provide expanded opportunities for one of the Nation's vital resources, its small businesses, will foster invention, research, and technology, will create jobs, and will increase this Nation's competitiveness in international markets."

NATIONAL RESEARCH COUNCIL REPORTS

Pub. L. 106–554, §1(a)(9) [title I, §108], Dec. 21, 2000, 114 Stat. 2763, 2763A–671, as amended by Pub. L. 112–81, div. E, title LI, §5137, Dec. 31, 2011, 125 Stat. 1850, provided that:

"(a) STUDY AND RECOMMENDATIONS.—The head of each agency with a budget of more than $50,000,000 for its SBIR program for fiscal year 1999, in consultation with the Small Business Administration, shall, not later than 6 months after the date of the enactment of this Act [Dec. 21, 2000], cooperatively enter into an agreement with the National Academy of Sciences for the National Research Council to—

"(1) conduct a comprehensive study of how the SBIR program has stimulated technological innovation and used small businesses to meet Federal research and development needs, including—

"(A) a review of the value to the Federal research agencies of the research projects being conducted under the SBIR program, and of the quality of research being conducted by small businesses participating under the program, including a comparison of the value of projects conducted under the

SBIR program to those funded by other Federal research and development expenditures;

"(B) to the extent practicable, an evaluation of the economic benefits achieved by the SBIR program, including the economic rate of return, and a comparison of the economic benefits, including the economic rate of return, achieved by the SBIR program with the economic benefits, including the economic rate of return, of other Federal research and development expenditures;

"(C) an evaluation of the noneconomic benefits achieved by the SBIR program over the life of the program;

"(D) a comparison of the allocation for fiscal year 2000 of Federal research and development funds to small businesses with such allocation for fiscal year 1983, and an analysis of the factors that have contributed to such allocation; and

"(E) an analysis of whether Federal agencies, in fulfilling their procurement needs, are making sufficient effort to use small businesses that have completed a second phase award under the SBIR program; and

"(2) make recommendations with respect to—

"(A) measures of outcomes for strategic plans submitted under section 306 of title 5, United States Code, and performance plans submitted under section 1115 of title 31, United States Code, of each Federal agency participating in the SBIR program;

"(B) whether companies who can demonstrate project feasibility, but who have not received a first phase award, should be eligible for second phase awards, and the potential impact of such awards on the competitive selection process of the program;

"(C) whether the Federal Government should be permitted to recoup some or all of its expenses if a controlling interest in a company receiving an SBIR award is sold to a foreign company or to a company that is not a small business concern;

"(D) how to increase the use by the Federal Government in its programs and procurements of technology-oriented small businesses; and

"(E) improvements to the SBIR program, if any are considered appropriate.

"(b) PARTICIPATION BY SMALL BUSINESS.—

"(1) IN GENERAL.—In a manner consistent with law and with National Research Council study guidelines and procedures, knowledgeable individuals from the small business community with experience in the SBIR program shall be included—

"(A) in any panel established by the National Research Council for the purpose of performing the study conducted under this section; and

"(B) among those who are asked by the National Research Council to peer review the study.

"(2) CONSULTATION.—To ensure that the concerns of small business are appropriately considered under this subsection, the National Research Council shall consult with and consider the views of the Office of Technology and the Office of Advocacy of the Small Business Administration and other interested parties, including entities, organizations, and individuals actively engaged in enhancing or developing the technological capabilities of small business concerns.

"(c) PROGRESS REPORTS.—The National Research Council shall provide semiannual progress reports on the study conducted under this section to the Committee on Science [now Committee on Science, Space, and Technology] and the Committee on Small Business of the House of Representatives, and to the Committee on Small Business [now Committee on Small Business and Entrepreneurship] of the Senate.

"(d) REPORT.—The National Research Council shall transmit to the heads of agencies entering into an agreement under this section and to the Committee on Science [now Committee on Science, Space, and Technology] and the Committee on Small Business of the House of Representatives, and to the Committee on Small Business [now Committee on Small Business and Entrepreneurship] of the Senate—

"(1) not later than 3 years after the date of the enactment of this Act [Dec. 21, 2000], a report including the results of the study conducted under subsection (a)(1) and recommendations made under subsection (a)(2); and

"(2) not later than 6 years after that date of the enactment, an update of such report.

"(e) EXTENSIONS AND ENHANCEMENTS OF AUTHORITY.—

"(1) IN GENERAL.—Not later than 6 months after the date of enactment of the SBIR/STTR Reauthorization Act of 2011 [div. E of Pub. L. 112–81, approved Dec. 31, 2011], the head of each agency described in subsection (a), in consultation with the Small Business Administration, shall cooperatively enter into an agreement with the National Academy of Sciences for the National Research Council to, not later than 4 years after the date of enactment of the SBIR/STTR Reauthorization Act of 2011, and every 4 years thereafter—

"(A) continue the most recent study under this section relating to the issues described in

subparagraphs (A), (B), (C), and (E) of subsection (a)(1);

"(B) conduct a comprehensive study of how the STTR program has stimulated technological innovation and technology transfer, including—

"(i) a review of the collaborations created between small businesses and research institutions, including an evaluation of the effectiveness of the program in stimulating new collaborations and any obstacles that may prevent or inhibit the creation of such collaborations;

"(ii) an evaluation of the effectiveness of the program at transferring technology and capabilities developed through Federal funding;

"(iii) to the extent practicable, an evaluation of the economic benefits achieved by the STTR program, including the economic rate of return;

"(iv) an analysis of how Federal agencies are using small businesses that have completed Phase II under the STTR program to fulfill their procurement needs;

"(v) an analysis of whether additional funds could be employed effectively by the STTR program; and

"(vi) an assessment of the systems and minimum performance standards relating to commercialization success established under section 9(qq) of the Small Business Act [15 U.S.C. 638(qq)];

"(C) make recommendations with respect to the issues described in subparagraphs (A), (D), and (E) of subsection (a)(2) and subparagraph (B) of this paragraph; and

"(D) estimate, to the extent practicable, the number of jobs created by the SBIR program or STTR program of the agency.

"(2) CONSULTATION.—An agreement under paragraph (1) shall require the National Research Council to ensure that there is participation by and consultation with the small business community, the Administration, and other interested parties as described in subsection (b).

"(3) REPORTING.—An agreement under paragraph (1) shall require that not later than 4 years after the date of enactment of the SBIR/STTR Reauthorization Act of 2011 [div. E of Pub. L. 112–81, approved Dec. 31, 2011], and every 4 years thereafter, the National Research Council shall submit to the head of the agency entering into the agreement, the Committee on Small Business and Entrepreneurship of the Senate, and the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives, a report regarding the study conducted under paragraph (1) and containing the recommendations described in paragraph (1)."

CONGRESSIONAL FINDINGS AND PURPOSES: SMALL BUSINESS RESEARCH AND DEVELOPMENT ENHANCEMENT ACT OF 1992

Pub. L. 102–564, title I, §102, Oct. 28, 1992, 106 Stat. 4249, provided that:

"(a) FINDINGS.—The Congress finds that—

"(1) the small business innovation research program established under the Small Business Innovation Development Act of 1982 [see Short Title of 1982 Amendment note set out under section 631 of this title] (hereafter in this Act [see Short Title of 1992 Amendments note set out under section 631 of this title] referred to as the 'SBIR' program) has been a successful method of involving small business concerns in Federal research and development;

"(2) the small business innovation research program has been an effective catalyst for the development of technological innovations by small business concerns;

"(3) small business innovation research program participants have provided high quality research and development in a cost-effective manner;

"(4) the innovative products and services developed by small business concerns participating in the small business innovation research program have been important to the national defense, as well as to the missions of the other participating Federal agencies;

"(5) the small business innovation research program has effectively stimulated the commercialization of technology developed through Federal research and development, benefiting both the public and private sectors of the Nation;

"(6) by encouraging the development and commercialization of technological innovations, the small business innovation research program has created jobs, expanded business opportunities for small firms, stimulated the development of new products and services, and improved the competitiveness of the Nation's high technology industries;

"(7) the small business innovation research program has also helped to increase exports from small business concerns;

"(8) despite the general success of the small business innovation research program, the proportion of

Federal research and development funds received by small business concerns has not increased over the life of the program, but has remained at 3 percent; and

"(9) although the participating Federal agencies have successfully implemented most aspects of the small business innovation research program, additional outreach efforts are necessary to stimulate increased participation of socially and economically disadvantaged small business concerns.

"(b) PURPOSES.—The purposes of this title [see Short Title of 1992 Amendments note set out under section 631 of this title] are—

"(1) to expand and improve the small business innovation research program;

"(2) to emphasize the program's goal of increasing private sector commercialization of technology developed through Federal research and development;

"(3) to increase small business participation in Federal research and development; and

"(4) to improve the Federal Government's dissemination of information concerning the small business innovation research program, particularly with regard to program participation by women-owned small business concerns and by socially and economically disadvantaged small business concerns."

RECOMMENDATIONS OF SECRETARY OF DEFENSE

Pub. L. 102–564, title I, §106, Oct. 28, 1992, 106 Stat. 4256, required the Secretary of Defense, by Mar. 31, 1996, to submit a recommendation to Congress addressing whether there was a demonstrable reduction in the quality of research performed under the Small Business Innovation Research Program since the beginning of fiscal year 1993, such that increasing the percentage in fiscal years after 1996 under former 15 U.S.C. 638(f)(1)(C) would adversely affect the performance of the research programs of the Department of Defense.

TIMING OF ISSUANCE OF POLICY DIRECTIVE

Pub. L. 102–564, title II, §202(d), Oct. 28, 1992, 106 Stat. 4260, provided that: "The policy directive required by section 9(p) of the Small Business Act [15 U.S.C. 638(p)] (as added by subsection (c) of this section) shall be published—

"(1) in proposed form (with an opportunity for public comment of not less than 30 days), not later than April 30, 1993; and

"(2) in final form, not later than July 31, 1993."

SENSE OF CONGRESS CONCERNING AMERICAN-MADE EQUIPMENT AND PRODUCTS

Pub. L. 102–564, title III, §306, Oct. 28, 1992, 106 Stat. 4263, provided that:

"(a) PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS.—It is the sense of the Congress that an entity that is awarded a funding agreement under the SBIR program of a Federal agency under section 9 of the Small Business Act [15 U.S.C. 638] should, when purchasing any equipment or a product with funds provided through the funding agreement, purchase only American-made equipment and products, to the extent possible in keeping with the overall purposes of that program.

"(b) NOTICE TO SBIR AWARDEES.—Each Federal agency that awards funding agreements under the SBIR program shall provide to each recipient of such an award a notice describing the sense of the Congress, as set forth in subsection (a)."

SMALL BUSINESS INNOVATION RESEARCH PROGRAM IN DEPARTMENT OF DEFENSE

Pub. L. 102–484, div. D, title XLII, §4237, Oct. 23, 1992, 106 Stat. 2691, provided that:

"(a) EXTENSION OF PROGRAM.—[Amended section 5 of Pub. L. 97–219, formerly set out as a note above.]

"(b) LIMITATION ON PROGRAM AWARDS.—Amounts paid to a small business concern by the Department of Defense under the Small Business Innovation Research Program for a project—

"(1) in phase I under the program may not exceed $100,000; and

"(2) in phase II under the program may not exceed $750,000.

"(c) COMMERCIAL APPLICATIONS STRATEGY.—Not later than 270 days after the date of the enactment of this Act [Oct. 23, 1992], the Secretary of Defense, in consultation with the Administrator of the Small Business Administration, shall develop and issue a strategy for effectuating the transition of successful projects under the Small Business Innovation Research Program from phase II under the program into phase III under the program.

"(d) REPEAL OF EXCLUSION OF CERTAIN ACTIVITIES.—[Amended this section.]

"(e) PERCENTAGE OF REQUIRED EXPENDITURES FOR SBIR CONTRACTS.—(1) The Small Business Innovation Research Program shall apply to the Department of Defense (including the military

departments) as if the percentage specified in section 9(f)(1) of the Small Business Act (15 U.S.C. 638(f)(1)) with respect to fiscal years after fiscal year 1982 were determined in accordance with the table set forth in paragraph (2) (rather than 1.25 percent).

"(2)(A) The percentage under section 9(f)(1) of the Small Business Act (15 U.S.C. 638(f)(1)) for any fiscal year for the Department of Defense and each military department shall be determined in accordance with the following table:

"For fiscal year:	The percentage is:
1993	1.25
1994	1.5
1995	1.75
1996	2.0
1997	2.25
1998 and thereafter	2.5.

"(B) If the determination of the Secretary of Defense under subparagraph (C) is a negative determination (as set forth in that paragraph), then the percentage under section 9(f)(1) of the Small Business Act (15 U.S.C. 638(f)(1)) for the Department of Defense and each military department for fiscal years after fiscal year 1996 shall remain at the level applicable for fiscal year 1996 (notwithstanding the percentages specified in subparagraph (A) for fiscal years after fiscal year 1996).

"(C) Not later than June 30, 1996, the Secretary of Defense during fiscal year 1996 shall determine whether there has been a demonstrable reduction in the quality of research performed under funding agreements awarded by the Department of Defense under the SBIR program since the beginning of fiscal year 1993 such that increasing the percentage under subparagraph (A) for fiscal years after fiscal year 1996 with respect to the department would adversely affect the performance of the department's research programs. If the determination of the Secretary is that there has been such a demonstrable reduction in the quality of research such that increasing the percentage under subparagraph (B) for fiscal years after fiscal year 1996 with respect to the department would adversely affect the performance of the department's research programs, the Secretary shall be considered for purposes of subparagraph (B) to have made a negative determination. The determination of the Secretary concerned under this paragraph shall be made after considering the assessment of the Comptroller General with respect to that department in the report transmitted under subparagraph (D).

"(D) Not later than March 30, 1996, the Comptroller General shall transmit to the Congress and the Secretary of Defense a report setting forth the Comptroller General's assessment, with respect to the Department of Defense of whether there has been a demonstrable reduction in the quality of research performed under funding agreements awarded by the department under the SBIR program since the beginning of fiscal year 1993 such that increasing the percentage under subparagraph (A) for fiscal years after fiscal year 1996 with respect to the department would adversely affect the performance of the department's research programs.

"(E) The results of each determination under subparagraph (C) shall be transmitted to the Congress not later than June 30, 1996.

"(f) DEFINITIONS.—In this section:

"(1) The term 'Small Business Innovation Research Program' means the program established under the following provisions of section 9 of the Small Business Act (15 U.S.C. 638):

"(A) Paragraphs (4) through (7) of subsection (b).

"(B) Subsections (e) through (k).

"(2) The term 'phase I', with respect to the Small Business Innovation Research Program, means the first phase described in subsection (e)(4)(A) of section 9 of the Small Business Act.

"(3) The term 'phase II', with respect to the Small Business Innovation Research Program, means the second phase described in subsection (e)(4)(B) of such section.

"(4) The term 'phase III', with respect to the Small Business Innovation Research Program, means the third phase described in subsection (e)(4)(C) of such section.

"(g) EFFECTIVE DATE.—Subject to subsection (h), this section, and the amendments made by this section, shall take effect on October 1, 1992, and shall apply with respect to fiscal years after fiscal year 1992.

"(h) EFFECTIVENESS OF SECTION CONDITIONAL ON FAILURE TO ENACT OTHER

LEGISLATION.—(1) In the event of the enactment of H.R. 4400 or S. 2941 [S. 2941 was enacted into law as Pub. L. 102–564 on Oct. 28, 1992], 102d Congress, on or before the date of the enactment of this Act [Oct. 23, 1992], then this section and the amendments made by this section shall not take effect.

"(2)(A) In the event of the enactment of H.R. 4400 or S. 2941, 102d Congress, after the date of the enactment of this Act, then, effective immediately before the enactment of H.R. 4400 or S. 2941, 102d Congress—

"(i) this section shall cease to be effective; and

"(ii) the provisions of a small business law that are amended by this section shall be effective and read as such provisions of that law were in effect immediately before the enactment of this Act, except that to the extent that any amendment is made to such a provision of a small business law by any other provision of law referred to in subparagraph (B), such provision of a small business law shall be effective and shall read as amended by that other provision of law.

"(B) For the purposes of subparagraph (A)(ii), a provision of law referred to in this subparagraph is the following:

"(i) A provision of this Act other than a provision of this section.

"(ii) A provision of any other Act if the provision takes effect during the period beginning on the date of the enactment of this Act and ending immediately before the enactment of H.R. 4400 or S. 2941, 102d Congress.

"(C) In this paragraph, the term 'small business law' means—

"(i) the Small Business Act (15 U.S.C. 631 et seq.); and

"(ii) the Small Business Innovation Development Act of 1982 [Pub. L. 97–219] (15 U.S.C. 638 note)."

USE OF DEPARTMENT OF AGRICULTURE EXTRAMURAL BUDGET FUNDS IN SMALL BUSINESS INNOVATION RESEARCH PROGRAM

Pub. L. 99–500, §101(a) [title VI, §630], Oct. 18, 1986, 100 Stat. 1783, 1783–30, and Pub. L. 99–591, §101(a) [title VI, §630], Oct. 30, 1986, 100 Stat. 3341, 3341–30, provided that: "All funds appropriated for this fiscal year and all funds appropriated hereafter by this or any other Act that are determined to be part of the 'extramural budget' of the Department of Agriculture for any fiscal year for purposes of meeting the requirements of section 9 of the Small Business Act (15 U.S.C. 638), as amended by the Small Business Innovation Development Act of 1982, Public Law 97–219, shall be available for contracts, grants or cooperative agreements with small business concerns for any purpose in furtherance of the small business innovation research program. Such funds may be transferred for such purpose from one appropriation to another or to a single account."

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE: SMALL BUSINESS INNOVATION DEVELOPMENT ACT OF 1982

Pub. L. 97–219, §2, July 22, 1982, 96 Stat. 217, provided that:

"(a) The Congress finds that—

"(1) technological innovation creates jobs, increases productivity, competition, and economic growth, and is a valuable counterforce to inflation and the United States balance-of-payments deficit;

"(2) while small business is the principal source of significant innovations in the Nation, the vast majority of federally funded research and development is conducted by large businesses, universities, and Government laboratories; and

"(3) small businesses are among the most cost-effective performers of research and development and are particularly capable of developing research and development results into new products.

"(b) Therefore, the purposes of the Act [amending this section] are—

"(1) to stimulate technological innovation;

"(2) to use small business to meet Federal research and development needs;

"(3) to foster and encourage participation by minority and disadvantaged persons in technological innovation; and

"(4) to increase private sector commercialization innovations derived from Federal research and development."

REPORTS OF COMPTROLLER GENERAL

Pub. L. 102–564, title I, §105, Oct. 28, 1992, 106 Stat. 4254, required the Comptroller General to submit to Congress an interim report, by Mar. 31, 1995, concerning the quality of research performed under Small Business Innovation Research Program funding agreements entered into during fiscal year 1993 and thereafter and a final report, no later than 5 years after Oct. 28, 1992, concerning various aspects of the Small Business Innovation Research Program.

Pub. L. 102–564, title II, §202(e), Oct. 28, 1992, 106 Stat. 4260, required the Comptroller General to submit a report to Congress and the head of each agency required to make expenditures under the Small Business Technology Transfer Program setting forth the Comptroller General's assessment of various aspects of the program and with the agencies' compliance with procedural requirements.

Pub. L. 97–219, §6, July 22, 1982, 96 Stat. 221, as amended by Pub. L. 99–443, §3, Oct. 6, 1986, 100 Stat. 1120; Pub. L. 100–418, title VIII, §8008, Aug. 23, 1988, 102 Stat. 1561; Pub. L. 100–647, title IX, §9003, Nov. 10, 1988, 102 Stat. 3808, required the Comptroller General, by Dec. 31, 1988, to transmit a report to appropriate Congressional committees evaluating the effectiveness of the initial phases of the Small Business Innovation Research Program, by Dec. 31, 1991, to transmit to such committees an update of the earlier report, and by July 1, 1989, to transmit to such committees recommendations as to the advisability of certain amendments to the Small Business Innovation Research Program.

EX. ORD. NO. 13329. ENCOURAGING INNOVATION IN MANUFACTURING

Ex. Ord. No. 13329, Feb. 24, 2004, 69 F.R. 9181, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Small Business Act, as amended (15 U.S.C. 631 *et seq*.), and to help ensure that Federal agencies properly and effectively assist the private sector in its manufacturing innovation efforts, it is hereby ordered as follows:

SECTION 1. *Policy*. Continued technological innovation is critical to a strong manufacturing sector in the United States economy. The Federal Government has an important role, including through the Small Business Innovation Research (SBIR) and the Small Business Technology Transfer (STTR) programs, in helping to advance innovation, including innovation in manufacturing, through small businesses.

SEC. 2. *Duties of Department and Agency Heads*. The head of each executive branch department or agency with one or more SBIR programs or one or more STTR programs shall:

(a) to the extent permitted by law and in a manner consistent with the mission of that department or agency, give high priority within such programs to manufacturing-related research and development to advance the policy set forth in section 1 of this order; and

(b) submit reports annually to the Administrator of the Small Business Administration and the Director of the Office of Science and Technology Policy concerning the efforts of such department or agency to implement subsection 2(a) of this order.

SEC. 3. *Duties of Administrator of the Small Business Administration*. The Administrator of the Small Business Administration:

(a) shall establish, after consultation with the Director of the Office of Science and Technology Policy, formats and schedules for submission of reports by the heads of departments and agencies under subsection 2(b) of this order; and

(b) is authorized to issue to departments and agencies guidelines and directives (in addition to the formats and schedules under subsection 3(a)) as the Administrator determines from time to time are necessary to implement subsection 2(a) of this order, after such guidelines and directives are submitted to the President, through the Director of the Office of Science and Technology Policy, for approval and are approved by the President.

SEC. 4. *Definitions*. As used in this order:

(a) "Small Business Innovation Research (SBIR) program" means a program to which section 9(e)(4) of the Small Business Act (15 U.S.C. 638(e)(4)) refers;

(b) "Small Business Technology Transfer (STTR) program" means a program to which section 9(e)(6) of the Small Business Act (15 U.S.C. 638(e)(6)) refers;

(c) "research and development" means an activity set forth in section 9(e)(5) of the Small Business Act (15 U.S.C. 638(e)(5)); and

(d) "manufacturing-related" means relating to: (i) manufacturing processes, equipment and systems; or (ii) manufacturing workforce skills and protection.

SEC. 5. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect the authority of the Director of the Office of Management and Budget with respect to budget, administrative, or legislative proposals.

(b) Nothing in this order shall be construed to require disclosure of information the disclosure of which is prohibited by law or by Executive Order, including [former] Executive Order 12958 of April 17, 1995, as amended.

(c) This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any

other person.

GEORGE W. BUSH.

[1] *So in original. The word "and" probably should not appear.*

[2] *See References in Text note below.*

[3] *So in original. Probably should be "investor;".*

[4] *So in original. Probably should be "subparagraph (B)".*

§638a. GAO study with respect to venture capital operating company, hedge fund, and private equity firm involvement

Not later than 3 years after December 31, 2011, and every 3 years thereafter, the Comptroller General of the United States shall—

(1) conduct a study of the impact of requirements relating to venture capital operating company, hedge fund, and private equity firm involvement under section 638 of this title; and

(2) submit to Congress a report regarding the study conducted under paragraph (1).

(Pub. L. 112–81, div. E, title LI, §5142, Dec. 31, 2011, 125 Stat. 1854.)

CODIFICATION

Section was enacted as part of the SBIR/STTR Reauthorization Act of 2011, and also as part of the National Defense Authorization Act for Fiscal Year 2012, and not as part of the Small Business Act which comprises this chapter.

§638b. Reducing vulnerability of SBIR and STTR programs to fraud, waste, and abuse

(a) Fraud, waste, and abuse prevention

(1) Amendments required for fraud, waste, and abuse prevention

Not later than 90 days after December 31, 2011, the Administrator shall amend the SBIR Policy Directive and the STTR Policy Directive to include measures to prevent fraud, waste, and abuse in the SBIR program and the STTR program.

(2) Content of amendments

The amendments required under paragraph (1) shall include—

(A) definitions or descriptions of fraud, waste, and abuse;

(B) guidelines for the monitoring and oversight of applicants to and recipients of awards under the SBIR program or the STTR program;

(C) a requirement that each Federal agency that participates in the SBIR program or STTR program include information concerning the method established by the Inspector General of the Federal agency to report fraud, waste, and abuse (including any telephone hotline or Web-based platform)—

(i) on the Web site of the Federal agency; and

(ii) in any solicitation or notice of funding opportunity issued by the Federal agency for the SBIR program or the STTR program; and

(D) a requirement that each applicant for and small business concern that receives funding under the SBIR program or the STTR program shall certify whether the applicant or small business concern is in compliance with the laws relating to the SBIR program and the STTR

program and the conduct guidelines established under the SBIR Policy Directive and the STTR Policy Directive.

(3) Consultation

The Administrator shall develop, in consultation with the Council of Inspectors General on Integrity and Efficiency, the procedures and requirements for the certification set forth under paragraph (2)(D) after providing notice of and an opportunity for public comment on such procedures and requirements.

(4) Certification

The certification developed under paragraph (3) may—

(A) cover the lifecycle of an award to require certifications at the application, funding, reporting, and closeout phases of every SBIR and STTR award;

(B) require the small business concern to certify compliance with the "principal investigator [1] primary employment" requirement, the "small business concern" definition requirement, and the "performance of work" requirements as set forth in the Directive applicable to the award;

(C) require the small business concern to disclose whether it has applied for, plans to apply for, or received an SBIR or STTR award for identical or essentially equivalent work (as defined under the SBIR Policy Directive and the STTR Policy Directive), and require the concern to certify that the award that it is applying for or obtaining funding for is not identical or essentially equivalent to work it has performed, or will perform, in connection with any other SBIR or STTR award that the concern has applied for or received from any other agency except as fully disclosed to all funding agencies; and

(D) require that the small business concern certify that it will or did perform the work on the award at its facilities with its employees, unless otherwise indicated.

(5) Inspectors General

The Inspector General of each Federal agency that participates in the SBIR program or STTR program shall cooperate to prevent fraud, waste, and abuse in the SBIR program and the STTR program by—

(A) establishing fraud detection indicators;

(B) reviewing regulations and operating procedures of the Federal agency;

(C) coordinating information sharing between Federal agencies, to the extent otherwise permitted under Federal law; and

(D) improving the education and training of and outreach to—

(i) administrators of the SBIR program and the STTR program of the Federal agency;

(ii) applicants to the SBIR program or the STTR program; and

(iii) recipients of awards under the SBIR program or the STTR program.

(b) Study and report

Not later than 1 year after December 31, 2011, to establish a baseline of changes made to the program to fight fraud, waste, and abuse, and every 4 years thereafter to evaluate the effectiveness of the agency strategies, the Comptroller General of the United States shall—

(1) conduct a study that evaluates—

(A) the implementation by each Federal agency that participates in the SBIR program or the STTR program of the amendments to the SBIR Policy Directive and the STTR Policy Directive made pursuant to subsection (a);

(B) the effectiveness of the management information system of each Federal agency that participates in the SBIR program or STTR program in identifying duplicative SBIR and STTR projects;

(C) the effectiveness of the risk management strategies of each Federal agency that participates in the SBIR program or STTR program in identifying areas of the SBIR program or the STTR program that are at high risk for fraud;

(D) technological tools that may be used to detect patterns of behavior that may indicate fraud by applicants to the SBIR program or the STTR program;

(E) the success of each Federal agency that participates in the SBIR program or STTR program in reducing fraud, waste, and abuse in the SBIR program or the STTR program of the Federal agency;

(F) the extent to which the Inspector General of each Federal agency that participates in the SBIR and STTR program effectively conducts investigations, audits, inspections, and outreach relating to the SBIR and STTR programs of the Federal agency; and

(G) the effectiveness of the Government and public databases described in section 638(k) of this title in reducing vulnerabilities of the SBIR program and the STTR program to fraud, waste, and abuse, particularly with respect to Federal agencies funding duplicative proposals and business concerns falsifying information in proposals; and

(2) submit to the Committee on Small Business and Entrepreneurship of the Senate, the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives, and the head of each Federal agency that participates in the SBIR program or STTR program a report on the results of the study conducted under paragraph (1).

(c) Inspector General reports

Not later than October 1 of each year, the Inspector General of each Federal agency that participates in the SBIR program or STTR program shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives a report describing—

(1) the number of cases referred to the Inspector General in the preceding year that related to fraud, waste, or abuse with respect to the SBIR program or STTR program;

(2) the actions taken in each case described in paragraph (1) if fraud, waste, or abuse was determined to have occurred;

(3) if no action was taken in a case described in paragraph (1) and fraud, waste, or abuse was determined to have occurred, the justification for action not being taken; and

(4) an accounting of the funds used to address fraud, waste, and abuse, including a description of personnel and resources funded and funds that were recovered or saved.

(Pub. L. 112–81, div. E, title LI, §5143, Dec. 31, 2011, 125 Stat. 1854.)

CODIFICATION

Section was enacted as part of the SBIR/STTR Reauthorization Act of 2011, and also as part of the National Defense Authorization Act for Fiscal Year 2012, and not as part of the Small Business Act which comprises this chapter.

DEFINITIONS

Pub. L. 112–81, div. E, title L, §5002, Dec. 31, 2011, 125 Stat. 1823, provided that: "In this division [enacting this section and section 638a of this title, amending sections 632 and 638 of this title, enacting provisions set out as notes under this section and sections 631 and 638 of this title, and amending provisions set out as a note under section 638 of this title]—

"(1) the terms 'Administration' and 'Administrator' mean the Small Business Administration and the Administrator thereof, respectively;

"(2) the terms 'extramural budget', 'Federal agency', 'Small Business Innovation Research Program', 'SBIR', 'Small Business Technology Transfer Program', and 'STTR' have the meanings given such terms in section 9 of the Small Business Act (15 U.S.C. 638); and

"(3) the term 'small business concern' has the meaning given that term under section 3 of the Small Business Act (15 U.S.C. 632)."

[1] *So in original. Probably should be "investor".*

§639. Reporting requirements and agency cooperation

(a) Annual reports to President and Congressional officers and committees

The Administration shall, as soon as practicable each fiscal year make a comprehensive annual report to the President, the President of the Senate, the Senate Select Committee on Small Business, and the Speaker of the House of Representatives. Such report shall include a description of the state of small business in the Nation and the several States, and a description of the operations of the Administration under this chapter, including, but not limited to, the general lending, disaster relief, Government regulation relief, procurement and property disposal, research and development, technical assistance, dissemination of data and information, and other functions under the jurisdiction of the Administration during the previous fiscal year. Such report shall contain recommendations for strengthening or improving such programs, or, when necessary or desirable to implement more effectively congressional policies and proposals, for establishing new or alternative programs. In addition, such report shall include the names of the business concerns to whom contracts are let and for whom financing is arranged by the Administration, together with the amounts involved. With respect to minority small business concerns, the report shall include the proportion of loans and other assistance under this chapter provided to such concerns, the goals of the Administration for the next fiscal year with respect to such concerns, and recommendations for improving assistance to minority small business concerns under this chapter.

(b) Report of expenditures in conduct of activities; contents; information to Congressional committees

The Administration shall make a report to the President, the President of the Senate, and the Speaker of the House of Representatives, to the Senate Select Committee on Small Business and to the Committee on Small Business of the House of Representatives, as soon as practicable each fiscal year, showing as accurately as possible for each such period the amount of funds appropriated to it that it has expended in the conduct of each of its principal activities such as lending, procurement, contracting, and providing technical and managerial aids. Such report shall contain the number and amount of loans, the number of applications, the total amount applied for, and the number and amount of defaults for each type of equipment or service for which loans are authorized by this this [1] chapter. Such report shall provide such information separately on each type of loan made under paragraphs (10) through (15) of section 636(a) of this title and separately for all other loan programs. In addition, the information on loans shall be supplied on a monthly basis to the Committee on Small Business of the Senate and the Committee on Small Business of the House of Representatives.

(c) Repealed. Pub. L. 104–66, title I, §1091(f), Dec. 21, 1995, 109 Stat. 722

(d) Annual report of Department of Defense

For the purpose of aiding in carrying out the national policy to insure that a fair proportion of the total purchases and contracts for property and services for the Government be placed with small-business enterprises, and to maintain and strengthen the overall economy of the Nation, the Department of Defense shall make an annual report to the Committees on Small Business of the Senate and the House of Representatives, showing the amount of funds appropriated to the Department of Defense which have been expended, obligated, or contracted to be spent with small business concerns and the amount of such funds expended, obligated, or contracted to be spent with firms other than small business in the same fields of operation; and such reports shall show separately the funds expended, obligated, or contracted to be spent for basic and applied scientific research and development.

(e) Retention of records

(1) [2] The Administration and the Inspector General of the Administration shall retain all correspondence, records of inquiries, memoranda, reports, books, and records, including memoranda as to all investigations conducted by or for the Administration, for a period of at least one year from the date of each thereof, and shall at all times keep the same available for inspection and examination by the Senate Select Committee on Small Business and the Committee on Small Business of the House of Representatives, or their duly authorized representatives.

(2) The Committee on Small Business of either the Senate or the House of Representatives may request that the Office of the Inspector General of the Administration conduct an investigation of any

program or activity conducted under the authority of section 636(j) or 637(a) of this title. Not later than thirty days after the receipt of such a request, the Inspector General shall inform the committee, in writing, of the disposition of the request by such office.

(f) Consultation and cooperation with Government departments and agencies

To the extent deemed necessary by the Administrator to protect and preserve small-business interests, the Administration shall consult and cooperate with other departments and agencies of the Federal Government in the formulation by the Administration of policies affecting small-business concerns. When requested by the Administrator, each department and agency of the Federal Government shall consult and cooperate with the Administration in the formulation by such department or agency of policies affecting small-business concerns, in order to insure that small-business interests will be recognized, protected, and preserved. This subsection shall not require any department or agency to consult or cooperate with the Administration in any case where the head of such department or agency determines that such consultation or cooperation would unduly delay action which must be taken by such department or agency to protect the national interest in an emergency.

(g) Annual report of employee conduct complaints received or acted upon and investigations undertaken by Administration

The Administration shall transmit, not later than December 31 of each year, to the Senate Select Committee on Small Business and Committee on Small Business of the House of Representatives a sealed report with respect to—

(1) complaints alleging illegal conduct by employees of the Administration which were received or acted upon by the Administration during the preceding fiscal year; and

(2) investigations undertaken by the Administration, including external and internal audits and security and investigation reports.

(h) Report to Congress on secondary market operations

The Administration shall transmit, not later than March 31 of each year, to the Committees on Small Business of the Senate and House of Representatives a report on the secondary market operations during the preceding calendar year. This report shall include, but not be limited to, (1) the number and the total dollar amount of loans sold into the secondary market and the distribution of such loans by size of loan, size of lender, geographic location of lender, interest rate, maturity, lender servicing fees, whether the rate is fixed or variable, and premium paid; (2) the number and dollar amount of loans resold in the secondary market with a distribution by size of loan, interest rate, and premiums; (3) the number and total dollar amount of pools formed; (4) the number and total dollar amount of loans in each pool; (5) the dollar amount, interest rate, and terms on each loan in each pool and whether the rate is fixed or variable; (6) the number, face value, interest rate, and terms of the trust certificates issued for each pool; (7) to the maximum extent possible, the use by the lender of the proceeds of sales of loans in the secondary market for additional lending to small business concerns; and (8) an analysis of the information reported in (1) through (7) to assess small businesses' access to capital at reasonable rates and terms as a result of secondary market operations.

(Pub. L. 85–536, §2[10], July 18, 1958, 72 Stat. 393; Pub. L. 87–305, §5(a), Sept. 26, 1961, 75 Stat. 666; Pub. L. 89–348, §1(3), Nov. 8, 1965, 79 Stat. 1310; Pub. L. 93–237, §7, Jan. 2, 1974, 87 Stat. 1025; Pub. L. 93–386, §4, Aug. 23, 1974, 88 Stat. 746; Pub. L. 93–608, §3(4), (5), Jan. 2, 1975, 88 Stat. 1972; Pub. L. 95–89, title II, §§203–208, 211, Aug. 4, 1977, 91 Stat. 557, 558; Pub. L. 95–315, §6, July 4, 1978, 92 Stat. 379; Pub. L. 97–35, title XIX, §1904, Aug. 13, 1981, 95 Stat. 772; Pub. L. 98–352, §4, July 10, 1984, 98 Stat. 331; Pub. L. 100–656, title IV, §406, Nov. 15, 1988, 102 Stat. 3876; Pub. L. 101–37, §15, June 15, 1989, 103 Stat. 73; Pub. L. 101–574, title II, §241, Nov. 15, 1990, 104 Stat. 2826; Pub. L. 104–66, title I, §1091(f), Dec. 21, 1995, 109 Stat. 722.)

PRIOR PROVISIONS

Prior similar provisions were contained in sections 211 and 215 of act July 30, 1953, ch. 282, title II, 67 Stat. 237, 238, as amended by act Aug. 9, 1955, ch. 628, §§6, 10, 11, 69 Stat. 550, 551, which were previously classified to sections 640 and 644 of this title. The provisions of section 210 of act July 30, 1953, formerly

classified to this section, were transferred to section 2 [8] of Pub. L. 85–536, and are classified to section 637(b)(2) of this title. See Codification note set out under section 631 of this title.

AMENDMENTS

1995—Subsec. (c). Pub. L. 104–66 struck out subsec. (c) which related to surveys, and their corresponding reports and recommendations, for the determination of factors tending to injure small businesses.

1990—Subsec. (d). Pub. L. 101–574 substituted "the Department of Defense shall make an annual report to the Committees on Small Business of the Senate and the House of Representatives" for "the Department of Defense shall make a monthly report to the President, the President of the Senate, the Senate Select Committee on Small Business, and the Speaker of the House of Representatives not less than 45 ["forty-five" in original text] days after the close of the month", "small business concerns" for "small-business concerns", and "such reports" for "such monthly reports".

1989—Subsec. (e)(2). Pub. L. 101–37 substituted ", of the disposition of the request" for "of the disposition of the matter".

1988—Subsec. (e). Pub. L. 100–656 inserted "and the Inspector General of the Administration" after "Administration", which was executed by making the insertion after the first reference to "Administration", and added par. (2).

1984—Subsec. (h). Pub. L. 98–352 added subsec. (h).

1981—Subsec. (b). Pub. L. 97–35 substituted "this chapter. Such report shall provide such information separately on each type of loan made under paragraphs (10) through (15) of section 636(a) of this title and separately for all other loan programs. In addition, the information on loans shall be supplied on a monthly basis to the Committee on Small Business of the Senate and the Committee on Small Business of the House of Representatives" for "this subsection, and on the projected and actual energy savings and numbers of jobs created by firms through loans made under section 636(l) of this title. The Department of Energy shall assist the Administration in obtaining information and compiling this report".

1978—Subsec. (b). Pub. L. 95–315 inserted provisions requiring the report to contain number and amount of loans, applications for loans, etc.

1977—Subsec. (a). Pub. L. 95–89, §§203, 211, included the Senate Select Committee on Small Business as an additional recipient of the annual report and provided for the contents of the report as it relates to minority small business concerns.

Subsec. (b). Pub. L. 95–89, §204, substituted "Committee on Small Business of the House of Representatives" for "House Select Committee to Conduct a Study and Investigation of the Problems of Small Business".

Subsec. (c)(2). Pub. L. 95–89, §205, included the Senate Select Committee on Small Business as an additional recipient of the required reports.

Subsec. (d). Pub. L. 95–89, §206, included the Senate Select Committee on Small Business as an additional recipient of the required reports.

Subsec. (e). Pub. L. 95–89, §207, substituted "Committee on Small Business of the House of Representatives" for "House Select Committee To Conduct a Study and Investigation of the Problems of Small Business".

Subsec. (g). Pub. L. 95–89, §208, substituted "Senate Select Committee on Small Business and Committee on Small Business of the House of Representatives" for "Committee on Banking, Housing and Urban Affairs of the Senate and the Committee on Banking and Currency of the House of Representatives".

1975—Subsec. (a). Pub. L. 93–608, §3(4), substituted "fiscal" for "calendar" in two places and struck out provisions requiring report to contain information on the progress of the Administration in liquidating the assets and winding up the affairs of the Reconstruction Finance Corporation and other information deemed appropriate by the Administration.

Subsec. (b). Pub. L. 93–608, §3(5), substituted "as soon as practicable each fiscal year" for "on December 31 of each year".

1974—Subsec. (a). Pub. L. 93–237 substituted provisions requiring the Administration to make comprehensive annual reports to the President and Congressional Officers as soon as practicable describing the state of the small business in the Nation and the States, the operations of the Administration, and recommendations for legislation, for provisions requiring the Administration to make reports on Dec. 31 of each year to the President and Congressional Officers.

Subsec. (g). Pub. L. 93–386 added subsec. (g).

1965–Subsec. (a). Pub. L. 89–348 repealed provision of subsec. (a) which required as part of the annual report to the President and to Congress by the Small Business Administration, a report on the progress in liquidating the assets and winding up the affairs of the Reconstruction Finance Corporation.

1961—Subsec. (a). Pub. L. 87–305, §5(a)(1), changed the reporting requirements from semiannual to annual basis and required the inclusion of information on the progress of the Administration in liquidating the assets and winding up the affairs of the Reconstruction Finance Corporation, such requirement to be in lieu of progress reports on a quarterly basis.

Subsec. (b). Pub. L. 87–305, §5(a)(2), struck out "June 30 and" before "December 31".

Subsec. (c). Pub. L. 87–305, §5(a)(3), designated existing provisions of first and second sentences as pars. (1) and (2), substituted "direct" for "request" and "promote undue concentration of economic power, or otherwise injure small business" for "injure small business, or otherwise promote undue concentration of economic power in the course of the administration of this chapter" and inserted "of any activity of the Government which may affect small business," after "surveys" in par. (1) and required reports to be made not less than once every year in par. (2).

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001. Previously, Select Committee on Small Business of Senate became Committee on Small Business of Senate. See Senate Resolution No. 101, Ninety-Seventh Congress, Mar. 25, 1981.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–37 applicable as if included in Pub. L. 100–656, see section 32 of Pub. L. 101–37, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, but shall not affect any financing made, obligated, or committed under this chapter or chapter 14B of this title prior to Aug. 13, 1981, see section 1918 of Pub. L. 97–35, set out as a note under section 631 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsecs. (a), (b), and (d) of this section relating to submitting annual reports to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and pages 64 and 191 of House Document No. 103–7.

SMALL BUSINESS ADMINISTRATION PROGRAM DATA AND EVALUATION; REPORT; IMPLEMENTATION

Pub. L. 100–590, title I, §109, Nov. 3, 1988, 102 Stat. 2994, provided that: "The Small Business Administration shall develop a comprehensive system to systematically acquire data on the number of small businesses which participate in Administration programs, the nature and extent of their participation, the type of business, the results of such participation, and such other information as the Administration deems appropriate. It shall also include the number and dollar amount of guaranteed loans by lender, and the interest rate thereon, and the number and dollar amount of sales in the secondary market both by lender and by purchaser. The data shall be compiled and maintained to permit a statistically valid analysis and computation and evaluation of costs and benefits. The Administration shall submit a report to the Small Business Committees of the Senate and the House of Representatives not later than March 31, 1989, such report to include its conclusions and recommendations and estimate of the costs involved in implementing such a program and shall implement the system for all program assistance made available on or after October 1, 1989."

EX. ORD. NO. 11518. INCREASED REPRESENTATION OF INTERESTS OF SMALL BUSINESS CONCERNS BEFORE GOVERNMENT DEPARTMENTS AND AGENCIES

Ex. Ord. No. 11518, Mar. 20, 1970, 35 F.R. 4939, provided:

WHEREAS the policy of the Government of the United States is to insure the continuance of a strong and healthy free enterprise system; and

WHEREAS the existence of a strong and healthy free enterprise system is directly related to the well being and competitive strength of small business concerns and their opportunities for free entry into business, growth, and expansion; and

WHEREAS the departments and agencies of the United States Government exercise, through their regulatory and other programs and practices, a significant influence on the well being and competitive strength of business concerns, particularly minority-owned business concerns, and their opportunities for free entry into business, growth and expansion; and

WHEREAS members of minority groups traditionally have aspired to own their own businesses and thereby to participate in our free enterprise system; and

WHEREAS members of certain minority groups through no fault of their own have been denied the full opportunity to achieve these aspirations; and

WHEREAS the policy of the Executive Branch of the United States Government continues to be, as was described by President Dwight D. Eisenhower, "to strive to eliminate obstacles to the growth of small business"; and

WHEREAS the Small Business Act (72 Stat. 384, 15 U.S.C. 631) declares the Congressional policy that the United States Government should aid, counsel, assist and protect, insofar as is possible, the interests of small business concerns; and

WHEREAS the Small Business Administration is the agency within the Executive Branch of the United States Government especially responsible for and with an established program of advocacy in matters relating to small business; and

WHEREAS section 8(b)(12) of the Small Business Act (72 Stat. 391, 15 U.S.C. 637(b)(12)) empowers the Small Business Administration to consult and cooperate with all Government agencies for the purpose of insuring that small business concerns receive fair and reasonable treatment from such agencies, and section 10(f) of that Act (72 Stat. 393, 15 U.S.C. 639(f)) requires each department and agency of the Federal Government, when requested by the Administrator of the Small Business Administration, to consult and cooperate with the Administration in the formulation by such department or agency of policies affecting small business concerns, in order to insure that small business interests will be recognized, protected, and preserved:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States and in furtherance of the purpose and policy of the Small Business Act, it is ordered as follows:

SECTION 1. The Small Business Administration, as the spokesman for and advocate of the small business community, shall advise and counsel small business concerns in their dealings with the departments and agencies of the United States Government to the end that the views of small business concerns will be fully heard, their rights fully protected, and their valid interests fully advanced.

SEC. 2. Departments and agencies of the Executive Branch of the United States Government shall call upon the Small Business Administration for advice, guidance, and assistance when considering matters which reasonably can be construed as materially affecting the well being or competitive strength of small business concerns or their opportunities for free entry into business, growth, or expansion. In taking action on such matters, these departments and agencies shall act in a manner calculated to advance the valid interests of small business concerns.

SEC. 3. The Small Business Administration, whenever it determines that the valid interests of small business concerns so warrant, shall take such action as may be appropriate to insure the timely presentation to departments and agencies of the United States Government of matters materially affecting the well being or competitive strength of small business concerns or their opportunities for free entry into business, growth, or expansion. To this end, the Small Business Administration may participate in investigations, hearings, or other proceedings pending before such departments or agencies and submit evidence, briefs, and arguments in accordance with, and to the extent permitted by, the department's or agency's rules of practice and procedure.

SEC. 4. In performing the responsibilities and duties placed on it by this order, the Small Business Administration shall particularly consider the needs and interests of minority-owned small business concerns and of members of minority groups seeking entry into the business community.

SEC. 5. Nothing in this order shall be construed to authorize the Small Business Administration to act as an attorney for an individual concern in any investigation, hearing, or other proceeding pending before any department or agency of the United States Government. Nothing in this order shall be construed to subject any department or agency to the authority of any other department or agency, to affect the present authority of any department or agency to participate in the proceedings of another department or agency, or to affect the authority of the Attorney General under 28 U.S.C. 519.

SEC. 6. The term "small business concern" as used in this order shall have the same meaning as in the Small Business Act.

RICHARD NIXON.

[1] *So in original.*

[2] *Paragraph designation "(1)" supplied editorially.*

§639a. Review of loan program; submission of estimated needs for additional authorization

It is the sense of the Congress that the regular business loan program of the Small Business Administration should be reviewed by the Congress at least once every two years. It is further the sense of the Congress that the Small Business Administration should submit its estimated needs for additional authorization for such program to the Congress at least one year in advance of the date on which such authorization is to be provided, in order to assure an orderly and recurring review of such program and to avoid emergency appeals for additional authorization. Compliance by the Small Business Administration with the foregoing policy will enable the Congress on and after July 25, 1962, to provide additional authorization for such program on a two-year basis.

(Pub. L. 87–550, §1(b), July 25, 1962, 76 Stat. 221.)

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

§640. Voluntary agreements among small-business concerns

(a) Consultation with President

The President is authorized to consult with representatives of small-business concerns with a view to encouraging the making by such persons with the approval of the President of voluntary agreements and programs to further the objectives of this chapter.

(b) Exemption from certain laws; findings and requests; filing and publication

No act or omission to act pursuant to this chapter which occurs while this chapter is in effect, if requested by the President pursuant to a voluntary agreement or program approved under subsection (a) of this section and found by the President to be in the public interest as contributing to the national defense, shall be construed to be within the prohibitions of the antitrust laws or the Federal Trade Commission Act [15 U.S.C. 41 et seq.] of the United States. A copy of each such request intended to be within the coverage of this section, and any modification or withdrawal thereof, shall be furnished to the Attorney General and the Chairman of the Federal Trade Commission when made, and it shall be published in the Federal Register unless publication thereof would, in the opinion of the President, endanger the national security.

(c) Delegation of authority; consultation; approval of requests

The authority granted in subsection (b) of this section shall be delegated only (1) to an official who shall for the purpose of such delegation be required to be appointed by the President by and with the advice and consent of the Senate, (2) upon the condition that such official consult with the Attorney General and the Chairman of the Federal Trade Commission not less than ten days before making any request or finding thereunder, and (3) upon the condition that such official obtain the approval of the Attorney General to any request thereunder before making the request.

(d) Inapplicability of section when request or finding withdrawn

Upon withdrawal of any request or finding hereunder, or upon withdrawal by the Attorney General of his approval of the voluntary agreement or program on which the request or finding is based, the provisions of this section shall not apply to any subsequent act, or omission to act, by reason of such finding or request.

(Pub. L. 85–536, §2[11], July 18, 1958, 72 Stat. 394.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (b), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

PRIOR PROVISIONS

Prior similar provisions were contained in section 217 of act July 30, 1953, ch. 282, title II, 67 Stat. 239, which was previously classified to section 646 of this title. The provisions of section 211 of act July 30, 1953, formerly classified to this section, were transferred to section 2[10] of Pub. L. 85–536, and are classified to section 639(d), (f) of this title. See Codification note set out under section 631 of this title.

EX. ORD. NO. 10493. DELEGATION OF FUNCTIONS

Ex. Ord. No. 10493, Oct. 14, 1953, 18 F.R. 6583, provided:

SECTION 1. The functions conferred upon the President by section 217 of the Small Business Act of 1953 [covered by this section] are hereby delegated to the Administrator of the Small Business Administration and shall be carried out as provided in the said section 217.

SEC. 2. There is hereby delegated to the Administrator of the Small Business Administration so much of the functions conferred upon the President by section 708 of the Defense Production Act of 1950, as amended [section 2158 of Title 50, Appendix, War and National Defense], as necessary to effect changes in the composition of, or to take other action respecting voluntary agreements and programs relating to, small-business production pools approved prior to July 31, 1953, pursuant to the said section 708 [section 2158 of Title 50, Appendix]: *Provided*, That this section shall not be construed as limiting the authority of the Director of the Office of Defense Mobilization under Executive Order No. 10480 of August 14, 1953 (18 F.R. 4939) [formerly set out as a note under section 2153 of Title 50, Appendix]. The functions delegated to the Administrator by this section shall be carried out as provided in section 708 of the Defense Production Act of 1950, as amended [section 2158 of Title 50, Appendix].

SEC. 3. Without prejudice to any action taken thereunder, Executive Order No. 10370 of July 7, 1952 (17 F.R. 6141), is hereby revoked.

DWIGHT D. EISENHOWER.

§641. Transfer to Administration of other functions, powers, and duties

The President may transfer to the Administration any functions, powers, and duties of any department or agency which relate primarily to small-business problems. In connection with any such transfer, the President may provide for appropriate transfers of records, property, necessary personnel, and unexpended balances of appropriations and other funds available to the department or agency from which the transfer is made.

(Pub. L. 85–536, §2[12], July 18, 1958, 72 Stat. 394.)

PRIOR PROVISIONS

Prior similar provisions were contained in section 218 of act July 30, 1953, ch. 282, title II, 67 Stat. 239, as amended by act Aug. 9, 1955, ch. 628, §12, 69 Stat. 551, which was previously classified to section 647 of this title. The provisions of section 212 of act July 30, 1953, formerly classified to this section, were transferred to section 2[8] of Pub. L. 85–536, and are classified to section 637(b) of this title. See Codification note set out under section 631 of this title.

EXECUTIVE ORDER NO. 10504

Ex. Ord. No. 10504, Dec. 1, 1953, 18 F.R. 7667, which provided for the transfer of functions of the Small Defense Plants Administration to the Small Business Administrator, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

EXECUTIVE ORDER NO. 11871

Ex. Ord. No. 11871, July 18, 1975, 40 F.R. 30915, which transferred the functions of ACTION Agency relating to the Service Corps of Retired Executives and Active Corps of Executives to the Small Business Administration, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

§642. Requirements for loans

No loan shall be made or equipment, facilities, or services furnished by the Administration under this chapter to any business enterprise unless the owners, partners, or officers of such business enterprise (1) certify to the Administration the names of any attorneys, agents, or other persons engaged by or on behalf of such business enterprise for the purpose of expediting applications made

to the Administration for assistance of any sort, and the fees paid or to be paid to any such persons; (2) execute an agreement binding any such business enterprise for a period of two years after any assistance is rendered by the Administration to such business enterprise, to refrain from employing, tendering any office or employment to, or retaining for professional services, any person who, on the date such assistance or any part thereof was rendered, or within one year prior thereto, shall have served as an officer, attorney, agent, or employee of the Administration occupying a position or engaging in activities which the Administration shall have determined involve discretion with respect to the granting of assistance under this chapter; and (3) furnish the names of lending institutions to which such business enterprise has applied for loans together with dates, amounts, terms, and proof of refusal.

(Pub. L. 85–536, §2[13], July 18, 1958, 72 Stat. 394.)

PRIOR PROVISIONS

Prior similar provisions were contained in section 219 of act July 30, 1953, ch. 282, title II, 67 Stat. 239, which was previously classified to section 648 of this title. The provisions of section 213 of act July 30, 1953, formerly classified to this section, were transferred to section 2[8] of Pub. L. 85–536, and are classified to section 637(b)(6), (7) of this title. See Codification note set out under section 631 of this title.

§643. Fair charge for use of Government-owned property

To the fullest extent the Administration deems practicable, it shall make a fair charge for the use of Government-owned property and make and let contracts on a basis that will result in a recovery of the direct costs incurred by the Administration.

(Pub. L. 85–536, §2[14], July 18, 1958, 72 Stat. 395.)

PRIOR PROVISIONS

Prior similar provisions were contained in section 220 of act July 30, 1953, ch. 282, title II, 67 Stat. 240, which was previously classified to section 649 of this title. The provisions of section 214 of act July 30, 1953, formerly classified to this section, were transferred to section 2[15] of Pub. L. 85–536, and are classified to section 644 of this title. See Codification note set out under section 631 of this title.

§644. Awards or contracts

(a) Determination

To effectuate the purposes of this chapter, small-business concerns within the meaning of this chapter shall receive any award or contract or any part thereof, and be awarded any contract for the sale of Government property, as to which it is determined by the Administration and the contracting procurement or disposal agency (1) to be in the interest of maintaining or mobilizing the Nation's full productive capacity, (2) to be in the interest of war or national defense programs, (3) to be in the interest of assuring that a fair proportion of the total purchases and contracts for property and services for the Government in each industry category are placed with small-business concerns, or (4) to be in the interest of assuring that a fair proportion of the total sales of Government property be made to small-business concerns; but nothing contained in this chapter shall be construed to change any preferences or priorities established by law with respect to the sale of electrical power or other property by the Government or any agency thereof. These determinations may be made for individual awards or contracts or for classes of awards or contracts. If a proposed procurement includes in its statement of work goods or services currently being performed by a small business, and if the proposed procurement is in a quantity or estimated dollar value the magnitude of which renders small business prime contract participation unlikely, or if a proposed procurement for construction seeks to package or consolidate discrete construction projects, or the solicitation involves an unnecessary or unjustified bundling of contract requirements, as determined by the Administration, the Procurement Activity shall provide a copy of the proposed procurement to the Procurement Activity's Small Business Procurement Center Representative at least 30 days prior to

the solicitation's issuance along with a statement explaining (1) why the proposed acquisition cannot be divided into reasonably small lots (not less than economic production runs) to permit offers on quantities less than the total requirement, (2) why delivery schedules cannot be established on a realistic basis that will encourage small business participation to the extent consistent with the actual requirements of the Government, (3) why the proposed acquisition cannot be offered so as to make small business participation likely, (4) why construction cannot be procured as separate discrete projects, or (5) why the agency has determined that the bundled contract (as defined in section 632(o) of this title) is necessary and justified. The thirty-day notification process shall occur concurrently with other processing steps required prior to issuance of the solicitation. Within 15 days after receipt of the proposed procurement and accompanying statement, if the Procurement Center Representative believes that the procurement as proposed will render small business prime contract participation unlikely, the Representative shall recommend to the Procurement Activity alternative procurement methods which would increase small business prime contracting opportunities. Whenever the Administration and the contracting procurement agency fail to agree, the matter shall be submitted for determination to the Secretary or the head of the appropriate department or agency by the Administrator. For purposes of clause (3) of the first sentence of this subsection, an industry category is a discrete group of similar goods and services. Such groups shall be determined by the Administration in accordance with the definition of a "United States industry" under the North American Industry Classification System, as established by the Office of Management and Budget, except that the Administration shall limit such an industry category to a greater extent than provided under such classification codes if the Administration receives evidence indicating that further segmentation for purposes of this paragraph is warranted due to special capital equipment needs or special labor or geographic requirements or to recognize a new industry. A market for goods or services may not be segmented under the preceding sentence due to geographic requirements unless the Government typically designates the area where work for contracts for such goods or services is to be performed and Government purchases comprise the major portion of the entire domestic market for such goods or services and, due to the fixed location of facilities, high mobilization costs, or similar economic factors, it is unreasonable to expect competition from business concerns located outside of the general areas where such concerns are located. A contract may not be awarded under this subsection if the award of the contract would result in a cost to the awarding agency which exceeds a fair market price.

(b) Placement of contracts by contracting procurement agency

With respect to any work to be performed the amount of which would exceed the maximum amount of any contract for which a surety may be guaranteed against loss under section 694b of this title, the contracting procurement agency shall, to the extent practicable, place contracts so as to allow more than one small business concern to perform such work.

(c) Programs for blind and handicapped individuals

(1) As used in this subsection:

(A) The term "Committee" means the Committee for Purchase From People Who Are Blind or Severely Disabled established under section 8502 of title 41.

(B) The term "public or private organization for the handicapped" has the same meaning given such term in section 632(e) of this title.

(C) The term "handicapped individual" has the same meaning given such term in section 632(f) of this title.

(2)(A) During fiscal year 1995, public or private organizations for the handicapped shall be eligible to participate in programs authorized under this section in an aggregate amount not to exceed $40,000,000.

(B) None of the amounts authorized for participation by subparagraph (A) may be placed on the procurement list maintained by the Committee pursuant to section 8503 of title 41.

(3) The Administrator shall monitor and evaluate such participation.

(4)(A) Not later than ten days after the announcement of a proposed award of a contract by an

agency or department to a public or private organization for the handicapped, a for-profit small business concern that has experienced or is likely to experience severe economic injury as the result of the proposed award may file an appeal of the proposed award with the Administrator.

(B) If such a concern files an appeal of a proposed award under subparagraph (A) and the Administrator, after consultation with the Executive Director of the Committee, finds that the concern has experienced or is likely to experience severe economic injury as the result of the proposed award, not later than thirty days after the filing of the appeal, the Administration shall require each agency and department having procurement powers to take such action as may be appropriate to alleviate economic injury sustained or likely to be sustained by the concern.

(5) Each agency and department having procurement powers shall report to the Office of Federal Procurement Policy each time a contract subject to paragraph (2)(A) is entered into, and shall include in its report the amount of the next higher bid submitted by a for-profit small business concern. The Office of Federal Procurement Policy shall collect data reported under the preceding sentence through the Federal procurement data system and shall report to the Administration which shall notify all such agencies and departments when the maximum amount of awards authorized under paragraph (2)(A) has been made during any fiscal year.

(6) For the purpose of this subsection, a contract may be awarded only if at least 75 per centum of the direct labor performed on each item being produced under the contract in the sheltered workshop or performed in providing each type of service under the contract by the sheltered workshop is performed by handicapped individuals.

(7) Agencies awarding one or more contracts to such an organization pursuant to the provisions of this subsection may use multiyear contracts, if appropriate.

(d) Priority

For purposes of this section priority shall be given to the awarding of contracts and the placement of subcontracts to small business concerns which shall perform a substantial proportion of the production on those contracts and subcontracts within areas of concentrated unemployment or underemployment or within labor surplus areas. Notwithstanding any other provision of law, total labor surplus area set-asides pursuant to Defense Manpower Policy Number 4 (32A C.F.R. Chapter 1) or any successor policy shall be authorized if the Secretary or his designee specifically determines that there is a reasonable expectation that offers will be obtained from a sufficient number of eligible concerns so that awards will be made at reasonable prices. As soon as practicable and to the extent possible, in determining labor surplus areas, consideration shall be given to those persons who would be available for employment were suitable employment available. Until such definition reflects such number, the present criteria of such policy shall govern.

(e) Procurement strategies; contract bundling

(1) In general

To the maximum extent practicable, procurement strategies used by a Federal department or agency having contracting authority shall facilitate the maximum participation of small business concerns as prime contractors, subcontractors, and suppliers, and each such Federal department or agency shall—

(A) provide opportunities for the participation of small business concerns during acquisition planning processes and in acquisition plans; and

(B) invite the participation of the appropriate Director of Small and Disadvantaged Business Utilization in acquisition planning processes and provide that Director access to acquisition plans.

(2) Market research

(A) In general

Before proceeding with an acquisition strategy that could lead to a contract containing consolidated procurement requirements, the head of an agency shall conduct market research to determine whether consolidation of the requirements is necessary and justified.

(B) Factors

For purposes of subparagraph (A), consolidation of the requirements may be determined as being necessary and justified if, as compared to the benefits that would be derived from contracting to meet those requirements if not consolidated, the Federal Government would derive from the consolidation measurably substantial benefits, including any combination of benefits that, in combination, are measurably substantial. Benefits described in the preceding sentence may include the following:

(i) Cost savings.
(ii) Quality improvements.
(iii) Reduction in acquisition cycle times.
(iv) Better terms and conditions.
(v) Any other benefits.

(C) Reduction of costs not determinative

The reduction of administrative or personnel costs alone shall not be a justification for bundling of contract requirements unless the cost savings are expected to be substantial in relation to the dollar value of the procurement requirements to be consolidated.

(3) Strategy specifications

If the head of a contracting agency determines that a proposed procurement strategy for a procurement involves a substantial bundling of contract requirements, the proposed procurement strategy shall—

(A) identify specifically the benefits anticipated to be derived from the bundling of contract requirements;

(B) set forth an assessment of the specific impediments to participation by small business concerns as prime contractors that result from the bundling of contract requirements and specify actions designed to maximize small business participation as subcontractors (including suppliers) at various tiers under the contract or contracts that are awarded to meet the requirements; and

(C) include a specific determination that the anticipated benefits of the proposed bundled contract justify its use.

(4) Contract teaming

In the case of a solicitation of offers for a bundled contract that is issued by the head of an agency, a small-business concern may submit an offer that provides for use of a particular team of subcontractors for the performance of the contract. The head of the agency shall evaluate the offer in the same manner as other offers, with due consideration to the capabilities of all of the proposed subcontractors. If a small business concern teams under this paragraph, it shall not affect its status as a small business concern for any other purpose.

(f) Repealed. Pub. L. 103–355, title VII, §7101(a), Oct. 13, 1994, 108 Stat. 3367

(g) Goals for participation of small business concerns in procurement contracts

(1) GOVERNMENTWIDE GOALS.—

(A) ESTABLISHMENT.—The President shall annually establish Governmentwide goals for procurement contracts awarded to small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women in accordance with the following:

(i) The Governmentwide goal for participation by small business concerns shall be established at not less than 23 percent of the total value of all prime contract awards for each fiscal year.

(ii) The Governmentwide goal for participation by small business concerns owned and controlled by service-disabled veterans shall be established at not less than 3 percent of the total value of all prime contract and subcontract awards for each fiscal year.

(iii) The Governmentwide goal for participation by qualified HUBZone small business concerns shall be established at not less than 3 percent of the total value of all prime contract and subcontract awards for each fiscal year.

(iv) The Governmentwide goal for participation by small business concerns owned and controlled by socially and economically disadvantaged individuals shall be established at not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year.

(v) The Governmentwide goal for participation by small business concerns owned and controlled by women shall be established at not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year.

(B) ACHIEVEMENT OF GOVERNMENTWIDE GOALS.—Each agency shall have an annual goal that presents, for that agency, the maximum practicable opportunity for small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women to participate in the performance of contracts let by such agency. The Small Business Administration and the Administrator for Federal Procurement Policy shall, when exercising their authority pursuant to paragraph (2), insure that the cumulative annual prime contract goals for all agencies meet or exceed the annual Governmentwide prime contract goal established by the President pursuant to this paragraph.

(2)(A) The head of each Federal agency shall, after consultation with the Administration, establish goals for the participation by small business concerns, by small business concerns owned and controlled by service-disabled veterans, by qualified HUBZone small business concerns, by small business concerns owned and controlled by socially and economically disadvantaged individuals, and by small business concerns owned and controlled by women in procurement contracts of such agency. Such goals shall separately address prime contract awards and subcontract awards for each category of small business covered.

(B) Goals established under this subsection shall be jointly established by the Administration and the head of each Federal agency and shall realistically reflect the potential of small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women to perform such contracts and to perform subcontracts under such contracts.

(C) Whenever the Administration and the head of any Federal agency fail to agree on established goals, the disagreement shall be submitted to the Administrator for Federal Procurement Policy for final determination.

(D) After establishing goals under this paragraph for a fiscal year, the head of each Federal agency shall develop a plan for achieving such goals at both the prime contract and the subcontract level, which shall apportion responsibilities among the agency's acquisition executives and officials. In establishing goals under this paragraph, the head of each Federal agency shall make a consistent effort to annually expand participation by small business concerns from each industry category in procurement contracts and subcontracts of such agency, including participation by small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

(E) The head of each Federal agency, in attempting to attain expanded participation under subparagraph (D), shall consider—

(i) contracts awarded as the result of unrestricted competition; and

(ii) contracts awarded after competition restricted to eligible small business concerns under this section and under the program established under section 637(a) of this title.

(F)(i) Each procurement employee or program manager described in clause (ii) shall communicate to the subordinates of the procurement employee or program manager the importance of achieving goals established under subparagraph (A).

(ii) A procurement employee or program manager described in this clause is a senior procurement executive, senior program manager, or Director of Small and Disadvantaged Business Utilization of a Federal agency having contracting authority.

(3) First tier subcontracts that are awarded by Management and Operating contractors sponsored by the Department of Energy to small business concerns, small businesses concerns owned and controlled by service disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women, shall be considered toward the annually established agency and Government-wide goals for procurement contracts awarded.

(h) Reporting on goals for procurement contracts awarded to small business concerns

(1) Agency reports

At the conclusion of each fiscal year, the head of each Federal agency shall submit to the Administrator a report describing—

(A) the extent of the participation by small business concerns, small business concerns owned and controlled by veterans (including service-disabled veterans), qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women in the procurement contracts of such agency during such fiscal year;

(B) whether the agency achieved the goals established for the agency under subsection (g)(2) with respect to such fiscal year;

(C) any justifications for a failure to achieve such goals; and

(D) a remediation plan with proposed new practices to better meet such goals, including analysis of factors leading to any failure to achieve such goals.

(2) Reports by Administrator

Not later than 60 days after receiving a report from each Federal agency under paragraph (1) with respect to a fiscal year, the Administrator shall submit to the President and Congress, and to make available on a public Web site, a report that includes—

(A) a copy of each report submitted to the Administrator under paragraph (1);

(B) a determination of whether each goal established by the President under subsection (g)(1) for such fiscal year was achieved;

(C) a determination of whether each goal established by the head of a Federal agency under subsection (g)(2) for such fiscal year was achieved;

(D) the reasons for any failure to achieve a goal established under paragraph (1) or (2) of subsection (g) for such fiscal year and a description of actions planned by the applicable agency to address such failure, including the Administrator's comments and recommendations on the proposed remediation plan; and

(E) for the Federal Government and each Federal agency, an analysis of the number and dollar amount of prime contracts awarded during such fiscal year to—

(i) small business concerns—

(I) in the aggregate;

(II) through sole source contracts;

(III) through competitions restricted to small business concerns; and

(IV) through unrestricted competition;

(ii) small business concerns owned and controlled by service-disabled veterans—

(I) in the aggregate;

(II) through sole source contracts;

(III) through competitions restricted to small business concerns;

(IV) through competitions restricted to small business concerns owned and controlled by

service-disabled veterans; and
(V) through unrestricted competition;

(iii) qualified HUBZone small business concerns—
(I) in the aggregate;
(II) through sole source contracts;
(III) through competitions restricted to small business concerns;
(IV) through competitions restricted to qualified HUBZone small business concerns;
(V) through unrestricted competition where a price evaluation preference was used; and
(VI) through unrestricted competition where a price evaluation preference was not used;

(iv) small business concerns owned and controlled by socially and economically disadvantaged individuals—
(I) in the aggregate;
(II) through sole source contracts;
(III) through competitions restricted to small business concerns;
(IV) through competitions restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals;
(V) through unrestricted competition; and
(VI) by reason of that concern's certification as a small business owned and controlled by socially and economically disadvantaged individuals;

(v) small business concerns owned by an Indian tribe (as such term is defined in section 637(a)(13) of this title) other than an Alaska Native Corporation—
(I) in the aggregate;
(II) through sole source contracts;
(III) through competitions restricted to small business concerns;
(IV) through competitions restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals; and
(V) through unrestricted competition;

(vi) small business concerns owned by a Native Hawaiian Organization—
(I) in the aggregate;
(II) through sole source contracts;
(III) through competitions restricted to small business concerns;
(IV) through competitions restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals; and
(V) through unrestricted competition;

(vii) small business concerns owned by an Alaska Native Corporation—
(I) in the aggregate;
(II) through sole source contracts;
(III) through competitions restricted to small business concerns;
(IV) through competitions restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals; and
(V) through unrestricted competition; and

(viii) small business concerns owned and controlled by women—
(I) in the aggregate;
(II) through competitions restricted to small business concerns;
(III) through competitions restricted using the authority under section 637(m)(2) of this title;
(IV) through competitions restricted using the authority under section 637(m)(2) of this

title and in which the waiver authority under section 637(m)(3) of this title was used; and
(V) through unrestricted competition; and

(F) for the Federal Government, the number, dollar amount, and distribution with respect to the North American Industry Classification System of subcontracts awarded during such fiscal year to small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women, provided that such information is publicly available through data systems developed pursuant to the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109–282), or otherwise available as provided in paragraph (3).

(3) Access to data

(A) Federal Procurement Data System

To assist in the implementation of this section, the Administration shall have access to information collected through the Federal Procurement Data System, Federal Subcontracting Reporting System, or any new or successor system.

(B) Agency procurement data sources

To assist in the implementation of this section, the head of each contracting agency shall provide, upon request of the Administration, procurement information collected through agency data collection sources in existence at the time of the request. Contracting agencies shall not be required to establish new data collection systems to provide such data.

(i) Small business set-asides

Nothing in this chapter or any other provision of law precludes exclusive small business set-asides for procurements of architectural and engineering services, research, development, test and evaluation, and each Federal agency is authorized to develop such set-asides to further the interests of small business in those areas.

(j) Small business reservation

(1) Each contract for the purchase of goods and services that has an anticipated value greater than $2,500 but not greater than $100,000 shall be reserved exclusively for small business concerns unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with market prices and are competitive with regard to the quality and delivery of the goods or services being purchased.

(2) In carrying out paragraph (1), a contracting officer shall consider a responsive offer timely received from an eligible small business offeror.

(3) Nothing in paragraph (1) shall be construed as precluding an award of a contract with a value not greater than $100,000 under the authority of subsection (a) of section 637 of this title, section 2323 of title 10, section 712 [1] of the Business Opportunity Development Reform Act of 1988 (Public Law 100–656; 15 U.S.C. 644 note), or section 7102 of the Federal Acquisition Streamlining Act of 1994.

(k) Office of Small and Disadvantaged Business Utilization; Director

There is hereby established in each Federal agency having procurement powers an office to be known as the "Office of Small and Disadvantaged Business Utilization". The management of each such office shall be vested in an officer or employee of such agency, with experience serving in any combination of the following roles: program manager, deputy program manager, or assistant program manager for Federal acquisition program; chief engineer, systems engineer, assistant engineer, or product support manager for Federal acquisition program; Federal contracting officer; small business technical advisor; contracts administrator for Federal Government contracts; attorney specializing in Federal procurement law; small business liaison officer; officer or employee who managed Federal Government contracts for a small business; or individual whose primary

responsibilities were for the functions and duties of section 637, 644 or 657q of this title. Such officer or employee—

(1) shall be known as the "Director of Small and Disadvantaged Business Utilization" for such agency;

(2) shall be appointed by the head of such agency to a position that is a Senior Executive Service position (as such term is defined under section 3132(a) of title 5), except that, for any agency in which the positions of Chief Acquisition Officer and senior procurement executive (as such terms are defined under section 657q(a) of this title) are not Senior Executive Service positions, the Director of Small and Disadvantaged Business Utilization may be appointed to a position compensated at not less than the minimum rate of basic pay payable for grade GS–15 of the General Schedule under section 5332 of title 5 (including comparability payments under section 5304 of title 5);

(3) shall be responsible only to (including with respect to performance appraisals), and report directly and exclusively to, the head of such agency or to the deputy of such head, except that the Director for the Office of the Secretary of Defense shall be responsible only to (including with respect to performance appraisals), and report directly and exclusively to, such Secretary or the Secretary's designee;

(4) shall be responsible for the implementation and execution of the functions and duties under this section and section 637 of this title which relate to such agency;

(5) shall identify proposed solicitations that involve significant bundling of contract requirements, and work with the agency acquisition officials and the Administration to revise the procurement strategies for such proposed solicitations where appropriate to increase the probability of participation by small businesses as prime contractors, or to facilitate small business participation as subcontractors and suppliers, if a solicitation for a bundled contract is to be issued;

(6) shall assist small business concerns to obtain payments, required late payment interest penalties, or information regarding payments due to such concerns from an executive agency or a contractor, in conformity with chapter 39 of title 31 or any other protection for contractors or subcontractors (including suppliers) that is included in the Federal Acquisition Regulation or any individual agency supplement to such Government-wide regulation, [2]

(7) shall have supervisory authority over personnel of such agency to the extent that the functions and duties of such personnel relate to functions and duties under this section and section 637 of this title;

(8) shall assign a small business technical adviser to each office to which the Administration has assigned a procurement center representative—

(A) who shall be a full-time employee of the procuring activity and shall be well qualified, technically trained and familiar with the supplies or services purchased at the activity; and

(B) whose principal duty shall be to assist the Administration procurement center representative in his duties and functions relating to this section and section 637 of this title,[2]

(9) shall cooperate, and consult on a regular basis, with the Administration with respect to carrying out the functions and duties described in paragraph (4) of this subsection;

(10) shall make recommendations to contracting officers as to whether a particular contract requirement should be awarded pursuant to subsection (a), section 637(a) of this title, or section 2323 of title 10, which shall be made with due regard to the requirements of subsection (m) of this section, and the failure of the contracting officer to accept any such recommendations shall be documented and included within the appropriate contract file;

(11) shall review and advise such agency on any decision to convert an activity performed by a small business concern to an activity performed by a Federal employee;

(12) shall provide to the Chief Acquisition Officer and senior procurement executive of such agency advice and comments on acquisition strategies, market research, and justifications related to section 657q of this title;

(13) may provide training to small business concerns and contract specialists, except that such training may only be provided to the extent that the training does not interfere with the Director

carrying out other responsibilities under this subsection;

(14) shall receive unsolicited proposals and, when appropriate, forward such proposals to personnel of the activity responsible for reviewing such proposals;

(15) shall carry out exclusively the duties enumerated in this chapter, and shall, while the Director, not hold any other title, position, or responsibility, except as necessary to carry out responsibilities under this subsection; and

(16) shall submit, each fiscal year, to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a report describing—

(A) the training provided by the Director under paragraph (13) in the most recently completed fiscal year;

(B) the percentage of the budget of the Director used for such training in the most recently completed fiscal year; and

(C) the percentage of the budget of the Director used for travel in the most recently completed fiscal year.

This subsection shall not apply to the Administration.

(l) Procurement center representatives

(1) ASSIGNMENT AND ROLE.—The Administrator shall assign to each major procurement center a procurement center representative with such assistance as may be appropriate.

(2) ACTIVITIES.—A procurement center representative is authorized to—

(A) attend any provisioning conference or similar evaluation session during which determinations are made as to whether requirements are to be procured through other than full and open competition and make recommendations with respect to such requirements to the members of such conference or session;

(B) review, at any time, barriers to small business participation in Federal contracting previously imposed on goods and services through acquisition method coding or similar procedures, and recommend to personnel of the appropriate activity the prompt reevaluation of such barriers;

(C) review barriers to small business participation in Federal contracting arising out of restrictions on the rights of the United States in technical data, and, when appropriate, recommend that personnel of the appropriate activity initiate a review of the validity of such an asserted restriction;

(D) review any bundled or consolidated solicitation or contract in accordance with this chapter;

(E) have access to procurement records and other data of the procurement center commensurate with the level of such representative's approved security clearance classification, with such data provided upon request in electronic format, when available;

(F) receive unsolicited proposals from small business concerns and transmit such proposals to personnel of the activity responsible for reviewing such proposals, who shall furnish the procurement center representative with information regarding the disposition of any such proposal;

(G) consult with the Director the Office of Small and Disadvantaged Business Utilization of that agency and the agency personnel described in paragraph [3] (7) and (8) of subsection (k) with regard to agency insourcing decisions covered by subsection (k)(11);

(H) be an advocate for the maximum practicable utilization of small business concerns in Federal contracting, including by advocating against the consolidation or bundling of contract requirements when not justified; and

(I) carry out any other responsibility assigned by the Administrator.

(3) APPEALS.—A procurement center representative is authorized to appeal the failure to act favorably on any recommendation made pursuant to paragraph (2). Such appeal shall be filed and processed in the same manner and subject to the same conditions and limitations as an appeal filed

by the Administrator pursuant to subsection (a) of this section.

(4) The Administration shall assign and co-locate at least two small business technical advisers to each major procurement center in addition to such other advisers as may be authorized from time to time. The sole duties of such advisers shall be to assist the procurement center representative for the center to which such advisers are assigned in carrying out the functions described in paragraph (2) and the representatives referred to in subsection (k)(6) of this section.

(5) POSITION REQUIREMENTS

(A) IN GENERAL.—A procurement center representative assigned under this subsection shall—

(i) be a full-time employee of the Administration;

(ii) be fully qualified, technically trained, and familiar with the goods and services procured by the major procurement center to which that representative is assigned; and

(iii) have a Level III Federal Acquisition Certification in Contracting (or any successor certification) or the equivalent Department of Defense certification, except that any person serving in such a position on January 2, 2013, may continue to serve in that position for a period of 5 years without the required certification.

(B) COMPENSATION.—The Administrator shall establish personnel positions for procurement center representatives assigned under this subsection, which are classified at a grade level of the General Schedule sufficient to attract and retain highly qualified personnel.

(6) MAJOR PROCUREMENT CENTER DEFINED.—For purposes of this subsection, the term "major procurement center" means a procurement center that, in the opinion of the Administrator, purchases substantial dollar amounts of goods or services, including goods or services that are commercially available.

(7) TRAINING

(A) AUTHORIZATION.—At such times as the Administrator deems appropriate, the breakout procurement center representative [4] shall conduct familiarization sessions for contracting officers and other appropriate personnel of the procurement center to which such representative is assigned. Such sessions shall acquaint the participants with the provisions of this subsection and shall instruct them in methods designed to further the purposes of such subsection.

(B) LIMITATION.—A procurement center representative may provide training under subparagraph (A) only to the extent that the training does not interfere with the representative carrying out other activities under this subsection.

(8) ANNUAL BRIEFING AND REPORT.—A procurement center representative shall prepare and personally deliver an annual briefing and report to the head of the procurement center to which such representative is assigned. Such briefing and report shall detail the past and planned activities of the representative and shall contain such recommendations for improvement in the operation of the center as may be appropriate. The head of such center shall personally receive such briefing and report and shall, within 60 calendar days after receipt, respond, in writing, to each recommendation made by such representative.

(m) Relationship to other procurement programs

(1) Each agency subject to the requirements of section 2323 of title 10 shall, when implementing such requirements—

(A) establish policies and procedures that insure that there will be no reduction in the number of [5] dollar value of contracts awarded pursuant to this section and section 637(a) of this title in order to achieve any goal or other program objective; and

(B) assure that such requirements will not alter or change the procurement process used to implement this section or section 637(a) of this title.

(2) All procurement center representatives (including those referred to in subsection (k)(6) of this

section), in addition to such other duties as may be assigned by the Administrator, shall—

(A) monitor the performance of the procurement activities to which they are assigned to ascertain the degree of compliance with the requirements of paragraph (1);

(B) report to their immediate supervisors all instances of noncompliance with such requirements; and

(C) increase, insofar as possible, the number and dollar value of procurements that may be used for the programs established under this section, section 637(a) of this title, and section 2323 of title 10.

(n) Determination of labor surplus areas

For purposes of this section, the determination of labor surplus areas shall be made on the basis of the criteria in effect at the time of the determination, except that any minimum population criteria shall not exceed twenty-five thousand. Such determination, as modified by the preceding sentence, shall be made by the Secretary of Labor.

(o) Limitations on subcontracting

A concern may not be awarded a contract under subsection (a) as a small business concern unless the concern agrees to satisfy the requirements of section 657s of this title.

(p) Access to data

(1) Bundled contract defined

In this subsection, the term "bundled contract" has the meaning given such term in section 632(o)(1) of this title.

(2) Database

(A) [6] In general

Not later than 180 days after December 21, 2000, the Administrator of the Small Business Administration shall develop and shall thereafter maintain a database containing data and information regarding—

(i) each bundled contract awarded by a Federal agency; and

(ii) each small business concern that has been displaced as a prime contractor as a result of the award of such a contract.

(3) Analysis

For each bundled contract that is to be recompeted as a bundled contract, the Administrator shall determine—

(A) the amount of savings and benefits (in accordance with subsection (e) of this section) achieved under the bundling of contract requirements; and

(B) whether such savings and benefits will continue to be realized if the contract remains bundled, and whether such savings and benefits would be greater if the procurement requirements were divided into separate solicitations suitable for award to small business concerns.

(4) Annual report on contract bundling

(A) In general

Not later than 1 year after December 21, 2000, and annually in March thereafter, the Administration shall transmit a report on contract bundling to the Committees on Small Business of the House of Representatives and the Senate.

(B) Contents

Each report transmitted under subparagraph (A) shall include—

(i) data on the number, arranged by industrial classification, of small business concerns displaced as prime contractors as a result of the award of bundled contracts by Federal agencies; and

(ii) a description of the activities with respect to previously bundled contracts of each

Federal agency during the preceding year, including—

(I) data on the number and total dollar amount of all contract requirements that were bundled; and

(II) with respect to each bundled contract, data or information on—

(aa) the justification for the bundling of contract requirements;

(bb) the cost savings realized by bundling the contract requirements over the life of the contract;

(cc) the extent to which maintaining the bundled status of contract requirements is projected to result in continued cost savings;

(dd) the extent to which the bundling of contract requirements complied with the contracting agency's small business subcontracting plan, including the total dollar value awarded to small business concerns as subcontractors and the total dollar value previously awarded to small business concerns as prime contractors; and

(ee) the impact of the bundling of contract requirements on small business concerns unable to compete as prime contractors for the consolidated requirements and on the industries of such small business concerns, including a description of any changes to the proportion of any such industry that is composed of small business concerns.

(5) Access to data

(A) Federal procurement data system

To assist in the implementation of this section, the Administration shall have access to information collected through the Federal Procurement Data System.

(B) Agency procurement data sources

To assist in the implementation of this section, the head of each contracting agency shall provide, upon request of the Administration, procurement information collected through existing agency data collection sources.

(q) Reports related to procurement center representatives

(1) Teaming requirements

Each Federal agency shall include in each solicitation for any multiple award contract above the substantial bundling threshold of the Federal agency a provision soliciting bids from any responsible source, including responsible small business concerns and teams or joint ventures of small business concerns.

(2) Policies on reduction of contract bundling

(A) In general

Not later than 1 year after September 27, 2010, the Federal Acquisition Regulatory Council established under section 1302(a) of title 41 shall amend the Federal Acquisition Regulation issued under section 1303(a) of title 41 to—

(i) establish a Government-wide policy regarding contract bundling, including regarding the solicitation of teaming and joint ventures under paragraph (1); and

(ii) require that the policy established under clause (i) be published on the website of each Federal agency.

(B) Rationale for contract bundling

Not later than 30 days after the date on which the head of a Federal agency submits data certifications to the Administrator for Federal Procurement Policy, the head of the Federal agency shall publish on the website of the Federal agency a list and rationale for any bundled contract for which the Federal agency solicited bids or that was awarded by the Federal agency.

(3) Reporting

Not later than 90 days after September 27, 2010, and every 3 years thereafter, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the

Committee on Small Business of the House of Representatives a report regarding procurement center representatives and commercial market representatives, which shall—

(A) identify each area for which the Administration has assigned a procurement center representative or a commercial market representative;

(B) explain why the Administration selected the areas identified under subparagraph (A); and

(C) describe the activities performed by procurement center representatives and commercial market representatives.

(r) Multiple award contracts

Not later than 1 year after September 27, 2010, the Administrator for Federal Procurement Policy and the Administrator, in consultation with the Administrator of General Services, shall, by regulation, establish guidance under which Federal agencies may, at their discretion—

(1) set aside part or parts of a multiple award contract for small business concerns, including the subcategories of small business concerns identified in subsection (g)(2);

(2) notwithstanding the fair opportunity requirements under section 2304c(b) of title 10 and section 4106(c) of title 41, set aside orders placed against multiple award contracts for small business concerns, including the subcategories of small business concerns identified in subsection (g)(2); and

(3) reserve 1 or more contract awards for small business concerns under full and open multiple award procurements, including the subcategories of small business concerns identified in subsection (g)(2).

(Pub. L. 85–536, §2[15], July 18, 1958, 72 Stat. 395; Pub. L. 95–89, title V, §502, Aug. 4, 1977, 91 Stat. 562; Pub. L. 95–507, title II, §§221, 232, 233, Oct. 24, 1978, 92 Stat. 1770, 1772; Pub. L. 96–302, title I, §§116, 117, July 2, 1980, 94 Stat. 839; Pub. L. 98–577, title IV, §403(a), Oct. 30, 1984, 98 Stat. 3080; Pub. L. 99–272, title XVIII, §18003(a), Apr. 7, 1986, 100 Stat. 363; Pub. L. 99–500, §101(c) [title X, §§903(d), 921(a), (b)(1), (c)(2)–(e), 922(c)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–132, 1783–147 to 1783–149, 1783–152, and Pub. L. 99–591, §101(c) [title X, §§903(d), 921(a), (b)(1), (c)(2)–(e), 922(c)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–132, 3341–147 to 3341–149, 3341–152; Pub. L. 99–661, div. A, title IX, formerly title IV, §§903(d), 921(a), (b)(1), (c)(2)–(e), 922(c), Nov. 14, 1986, 100 Stat. 3912, 3926–3928, 3932, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–26, §10(a)(1), (b)(1), Apr. 21, 1987, 101 Stat. 288; Pub. L. 100–180, div. A, title VIII, §809(a)–(c), Dec. 4, 1987, 101 Stat. 1130; Pub. L. 100–496, §12, Oct. 17, 1988, 102 Stat. 2465; Pub. L. 100–590, title I, §§110, 133(a), Nov. 3, 1988, 102 Stat. 2994, 3005; Pub. L. 100–656, title V, §§502, 503, title VI, §§601, 603, Nov. 15, 1988, 102 Stat. 3881, 3887, 3888; Pub. L. 101–37, §§19, 21, June 15, 1989, 103 Stat. 74, 75; Pub. L. 101–510, div. A, title VIII, §806(e)(3), Nov. 5, 1990, 104 Stat. 1593; Pub. L. 101–574, title II, §208, Nov. 15, 1990, 104 Stat. 2820; Pub. L. 102–190, div. A, title VIII, §806(d), Dec. 5, 1991, 105 Stat. 1419; Pub. L. 102–366, title II, §232(b), Sept. 4, 1992, 106 Stat. 1002; Pub. L. 102–484, div. A, title VIII, §801(h)(8), Oct. 23, 1992, 106 Stat. 2446; Pub. L. 102–569, title IX, §911(b), Oct. 29, 1992, 106 Stat. 4486; Pub. L. 103–355, title IV, §4004, title VII, §§7101(a), 7106(a), Oct. 13, 1994, 108 Stat. 3338, 3367, 3374; Pub. L. 103–403, title III, §305, Oct. 22, 1994, 108 Stat. 4189; Pub. L. 104–106, div. D, title XLIII, §4321(c)(3), Feb. 10, 1996, 110 Stat. 674; Pub. L. 105–135, title IV, §413, title VI, §603(b), Dec. 2, 1997, 111 Stat. 2618, 2632; Pub. L. 106–50, title V, §502, title VI, §601, Aug. 17, 1999, 113 Stat. 247, 248; Pub. L. 106–554, §1(a)(9) [title VIII, §§806(a), 810], Dec. 21, 2000, 114 Stat. 2763, 2763A–706; Pub. L. 111–240, title I, §§1312(a), (b), 1331, 1333, 1346, 1347(b)(2), Sept. 27, 2010, 124 Stat. 2537, 2541, 2542, 2546, 2547; Pub. L. 112–239, div. A, title XVI, §§1621, 1623, 1631(a), (b), 1632, 1691, 1696(a), (b)(3), Jan. 2, 2013, 126 Stat. 2067, 2069–2071, 2073, 2087, 2090, 2091; Pub. L. 113–66, div. A, title XVI, §1613, Dec. 26, 2013, 127 Stat. 948; Pub. L. 113–76, div. D, title III, §318, Jan. 17, 2014, 128 Stat. 178.)

REFERENCES IN TEXT

The Federal Funding Accountability and Transparency Act of 2006, referred to in subsec. (h)(2)(F), is Pub. L. 109–282, Sept. 26, 2006, 120 Stat. 1186, which is set out as a note under section 6101 of Title 31, Money and Finance.

Section 712 of the Business Opportunity Development Reform Act of 1988 (Public Law 100–656; 15 U.S.C. 644 note), referred to in subsec. (j)(3), was repealed by Pub. L. 111–240, title I, §1335(a), Sept. 27, 2010, 124 Stat. 2543.

Section 7102 of the Federal Acquisition Streamlining Act of 1994, referred to in subsec. (j)(3), is section 7102 of Pub. L. 103–355, which is set out below.

CODIFICATION

In subsec. (c)(1)(A), "section 8502 of title 41" substituted for "the first section of the Act entitled 'An Act to create a Committee on Purchases of Blind-made Products, and for other purposes', approved June 25, 1938 (41 U.S.C. 46)" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (c)(2)(B), "section 8503 of title 41" substituted for "section 2 of the Act entitled 'An Act to create a Committee on Purchases of Blind-made Products, and for other purposes', approved June 25, 1938 (41 U.S.C. 47)" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (q)(2)(A), "section 1302(a) of title 41" substituted for "section 25(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 4219(a))" and "section 1303(a) of title 41" substituted for "section 25 of such Act" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (r)(2), "section 4106(c) of title 41" substituted for "section 303J(b) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253j(b))" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

PRIOR PROVISIONS

Prior similar provisions were contained in section 214 of act July 30, 1953, ch. 282, title II, 67 Stat. 238, as amended by act Aug. 9, 1955, ch. 628, §9, 69 Stat. 551, which was previously classified to section 643 of this title. The provisions of section 215 of act July 30, 1953, formerly classified to this section, were transferred to section 2[10] of Pub. L. 85–536, and are classified to section 639 of this title. See Codification note set out under section 631 of this title.

AMENDMENTS

2014—Subsec. (g)(3). Pub. L. 113–76 added par. (3).

2013—Subsec. (e)(1). Pub. L. 112–239, §1623, substituted "a Federal department or agency" for "the various agencies" and ", and each such Federal department or agency shall—" and subpars. (A) and (B) for period at end.

Subsec. (g)(1). Pub. L. 112–239, §1631(a), amended par. (1) generally. Prior to amendment, par. (1) related to annual Government-wide goals for participation of small business concerns in procurement contracts.

Subsec. (g)(2)(A). Pub. L. 112–239, §1631(b)(1), inserted at end "Such goals shall separately address prime contract awards and subcontract awards for each category of small business covered."

Subsec. (g)(2)(D). Pub. L. 112–239, §1631(b)(2), substituted "After establishing goals under this paragraph for a fiscal year, the head of each Federal agency shall develop a plan for achieving such goals at both the prime contract and the subcontract level, which shall apportion responsibilities among the agency's acquisition executives and officials. In establishing goals under this paragraph, the head of each Federal agency shall make a consistent effort to annually expand participation by small business concerns from each industry category in procurement contracts and subcontracts of such agency, including participation by small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women." for "For the purpose of establishing goals under this subsection, the head of each Federal agency shall make consistent efforts to annually expand participation by small business concerns from each industry category in procurement contracts of the agency, including participation by small business concerns owned and controlled by service-disabled veterans, by qualified HUBZone small business concerns, by small business concerns owned and controlled by socially and economically disadvantaged individuals, and by small business concerns owned and controlled by women."

Subsec. (g)(2)(E), (F). Pub. L. 112–239, §1631(b)(3), added subpars. (E) and (F) and struck out former subpars. (E) and (F) which read as follows:

"(E) The head of each Federal agency, in attempting to attain the participation described in subparagraph (D), shall consider—

"(i) contracts awarded as the result of unrestricted competition; and

"(ii) contracts awarded after competition restricted to eligible small business concerns under this section and under the program established under section 637(a) of this title.

"(F)(i) Each procurement employee or program manager described in clause (ii) shall communicate to the subordinates of the procurement employee or program manager the importance of achieving small business goals.

"(ii) A procurement employee or program manager described in this clause is a senior procurement executive, senior program manager, or Director of Small and Disadvantaged Business Utilization of a Federal agency having contracting authority."

Subsec. (h). Pub. L. 112–239, §1632, amended subsec. (h) generally. Prior to amendment, subsec. (h) related to annual Federal agency reports to Small Business Administration and inclusion of Administration information in President's annual state of small business report to Congress.

Subsec. (h)(1)(D). Pub. L. 113–66 added subpar. (D).

Subsec. (k). Pub. L. 112–239, §1691(d), substituted ", with experience serving in any combination of the following roles: program manager, deputy program manager, or assistant program manager for Federal acquisition program; chief engineer, systems engineer, assistant engineer, or product support manager for Federal acquisition program; Federal contracting officer; small business technical advisor; contracts administrator for Federal Government contracts; attorney specializing in Federal procurement law; small business liaison officer; officer or employee who managed Federal Government contracts for a small business; or individual whose primary responsibilities were for the functions and duties of section 637, 644 or 657q of this title. Such officer or employee" for "who shall" in introductory provisions.

Subsec. (k)(1). Pub. L. 112–239, §1691(e)(1), substituted "shall be known" for "be known" and "such agency;" for "such agency,".

Subsec. (k)(2). Pub. L. 112–239, §1691(e)(2), substituted "shall be appointed by" for "be appointed by".

Pub. L. 112–239, §1691(a), substituted "such agency to a position that is a Senior Executive Service position (as such term is defined under section 3132(a) of title 5), except that, for any agency in which the positions of Chief Acquisition Officer and senior procurement executive (as such terms are defined under section 657q(a) of this title) are not Senior Executive Service positions, the Director of Small and Disadvantaged Business Utilization may be appointed to a position compensated at not less than the minimum rate of basic pay payable for grade GS–15 of the General Schedule under section 5332 of such title (including comparability payments under section 5304 of such title);" for "such agency,".

Subsec. (k)(3). Pub. L. 112–239, §1691(e)(3), substituted "Director" for "director" and "Secretary's designee;" for "Secretary's designee,".

Pub. L. 112–239, §1691(b), substituted "shall be responsible only to (including with respect to performance appraisals), and report directly and exclusively to, the head" for "be responsible only to, and report directly to, the head" and "be responsible only to (including with respect to performance appraisals), and report directly and exclusively to, such Secretary" for "be responsible only to, and report directly to, such Secretary".

Subsec. (k)(4). Pub. L. 112–239, §1691(e)(4), substituted "shall be responsible" for "be responsible" and "such agency;" for "such agency,".

Subsec. (k)(5). Pub. L. 112–239, §1691(e)(5), substituted "shall identify proposed" for "identify proposed".

Subsec. (k)(6). Pub. L. 112–239, §1691(e)(6), substituted "shall assist small" for "assist small".

Subsec. (k)(7). Pub. L. 112–239, §1691(e)(7), substituted "shall have supervisory" for "have supervisory" and "this title;" for "this title,".

Subsec. (k)(8). Pub. L. 112–239, §1691(e)(8)(A), substituted "shall assign a" for "assign a" in introductory provisions.

Subsec. (k)(8)(A). Pub. L. 112–239, §1691(e)(8)(B), substituted "the activity; and" for "the activity, and".

Subsec. (k)(9). Pub. L. 112–239, §1691(e)(9), substituted "shall cooperate, and" for "cooperate, and" and "subsection;" for "subsection, and".

Subsec. (k)(10). Pub. L. 112–239, §1691(e)(10), substituted "shall make recommendations" for "make recommendations", "subsection (a), section 637(a) of this title, or section 2323 of title 10, which shall" for "subsection (a) of this section, or section 637(a) of this title or section 2323 of title 10. Such recommendations shall", and "contract file;" for "contract file."

Subsec. (k)(11) to (16). Pub. L. 112–239, §1691(c), added pars. (11) to (16).

Subsec. (l). Pub. L. 112–239, §1621(a), inserted heading.

Subsec. (l)(1). Pub. L. 112–239, §1621(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "The Administration shall assign to each major procurement center a breakout procurement center representative with such assistance as may be appropriate. The breakout procurement center representative shall carry out the activities described in paragraph (2), and shall be an advocate for the breakout of items for procurement through full and open competition, whenever appropriate, while maintaining the integrity of the

system in which such items are used, and an advocate for the use of full and open competition, whenever appropriate, for the procurement of supplies and services by such center. Any breakout procurement center representative assigned under this subsection shall be in addition to the representative referred to in subsection (k)(6) of this section."

Subsec. (l)(2). Pub. L. 112–239, §1621(c)(1), inserted heading and substituted "A" for "In addition to carrying out the responsibilities assigned by the Administration, a breakout" in introductory provisions.

Subsec. (l)(2)(B). Pub. L. 112–239, §1621(c)(2), substituted "review, at any time, barriers to small business participation in Federal contracting" for "review, at any time, restrictions on competition", "goods and services" for "items" and "barriers" for "limitations".

Subsec. (l)(2)(C). Pub. L. 112–239, §1621(c)(3), substituted "review barriers to small business participation in Federal contracting" for "review restrictions on competition".

Subsec. (l)(2)(D). Pub. L. 112–239, §1621(c)(4), added subpar. (D) and struck out former subpar. (D) which read as follows: "obtain from any governmental source, and make available to personnel of the appropriate activity, technical data necessary for the preparation of a competitive solicitation package for any item of supply or service previously procured noncompetitively due to the unavailability of such technical data;".

Subsec. (l)(2)(E). Pub. L. 112–239, §1621(c)(5), added subpar. (E) and struck out former subpar. (E) which read as follows: "have access to procurement records and other data of the procurement center commensurate with the level of such representative's approved security clearance classification;".

Subsec. (l)(2)(F) to (I). Pub. L. 112–239, §1621(c)(6), added subpars. (F) to (I) and struck out former subpars. (F) and (G) which read as follows:

"(F) receive unsolicited engineering proposals and, when appropriate (i) conduct a value analysis of such proposal to determine whether such proposal, if adopted, will result in lower costs to the United States without substantially impeding legitimate acquisition objectives and forward to personnel of the appropriate activity recommendations with respect to such proposal, or (ii) forward such proposals without analysis to personnel of the activity responsible for reviewing such proposals and who shall furnish the breakout procurement center representative with information regarding the disposition of any such proposal; and

"(G) review the systems that account for the acquisition and management of technical data within the procurement center to assure that such systems provide the maximum availability and access to data needed for the preparation of offers to sell to the United States those supplies to which such data pertain which potential offerors are entitled to receive."

Subsec. (l)(3). Pub. L. 112–239, §1621(d), inserted heading and substituted "A procurement center representative" for "A breakout procurement center representative".

Subsec. (l)(4). Pub. L. 112–239, §1621(e), substituted "procurement center representative" for "breakout procurement center representative".

Subsec. (l)(5). Pub. L. 112–239, §1621(f), inserted par. heading, added subpar. (A), redesignated subpar. (C) as (B), inserted subpar. heading and substituted "The Administrator shall establish personnel positions for procurement center representatives assigned under" for "The Administration shall establish personnel positions for breakout procurement representatives and advisers assigned pursuant to" in subpar. (B), and struck out former subpars. (A) and (B) which read as follows:

"(A) The breakout procurement center representatives and technical advisers assigned pursuant to this subsection shall be—

"(i) full-time employees of the Administration; and

"(ii) fully qualified, technically trained, and familiar with the supplies and services procured by the major procurement center to which they are assigned.

"(B) In addition to the requirements of subparagraph (A), each breakout procurement center representative, and at least one technical adviser assigned to such representative, shall be an accredited engineer."

Subsec. (l)(6). Pub. L. 112–239, §1621(g), inserted heading and substituted in text "goods or services, including goods or services that are commercially available" for "other than commercial items and which has the potential to incur significant savings as the result of the placement of a breakout procurement center representative".

Subsec. (l)(7). Pub. L. 112–239, §1621(h)(1), (2), (4), inserted par. heading, inserted subpar. (A) heading, and added subpar. (B). Former par. (7)(B) redesignated (8).

Subsec. (l)(8). Pub. L. 112–239, §1621(h)(3), redesignated subpar. (7)(B) as par. (8), inserted heading, and substituted "A procurement center representative" for "The breakout procurement center representative" and "60" for "sixty".

Subsec. (o). Pub. L. 112–239, §1696(b)(3), added subsec. (o) and struck out former subsec. (o) which related to requirements for performance of contracts by employees of small business concerns.

Subsec. (p). Pub. L. 112–239, §1696(a)(1), substituted "Access to data" for "Database, analysis, and annual report with respect to bundled contracts" in heading.

Subsec. (q). Pub. L. 112–239, §1696(a)(2), substituted "Reports related to procurement center representatives" for "Bundling accountability measures" in heading.

2010—Subsec. (g)(1). Pub. L. 111–240, §1347(b)(2), inserted "and subcontract" before "awards for fiscal year 2003" in fourth sentence.

Pub. L. 111–240, §1312(b), substituted "Administrator for Federal Procurement Policy" for "Administrator of the Office of Federal Procurement Policy".

Subsec. (g)(2). Pub. L. 111–240, §1333, designated first to fifth sentences as subpars. (A) to (E), respectively, substituted "the participation described in subparagraph (D)" for "such participation" in subpar. (E), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (E), and added subpar. (F).

Pub. L. 111–240, §1312(b), substituted "Administrator for Federal Procurement Policy" for "Administrator of the Office of Federal Procurement Policy".

Subsec. (h)(2). Pub. L. 111–240, §1346, in introductory provisions, substituted "submit to the President and the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives the compilation and analysis, which shall include the following:" for "submit them to the President and the Congress. The Administration's submission to the President shall include the following:".

Subsec. (q). Pub. L. 111–240, §1312(a), added subsec. (q).

Subsec. (r). Pub. L. 111–240, §1331, added subsec. (r).

2000—Subsec. (a). Pub. L. 106–554, §1(a)(9) [title VIII, §806(a)], in eighth sentence, substituted "definition of a 'United States industry' under the North American Industry Classification System, as established" for "four-digit standard industrial classification codes contained in the Standard Industrial Classification Manual published".

Subsec. (p). Pub. L. 106–554, §1(a)(9) [title VIII, §810], added subsec. (p).

1999—Subsec. (g)(1). Pub. L. 106–50, §502(a)(3), inserted "small business concerns owned and controlled by service-disabled veterans," after "the maximum practicable opportunity for small business concerns," in penultimate sentence.

Pub. L. 106–50, §502(a)(2), inserted after second sentence "The Government-wide goal for participation by small business concerns owned and controlled by service-disabled veterans shall be established at not less than 3 percent of the total value of all prime contract and subcontract awards for each fiscal year."

Pub. L. 106–50, §502(a)(1), inserted "small business concerns owned and controlled by service disabled veterans," after "small business concerns," the first place appearing in first sentence.

Subsec. (g)(2). Pub. L. 106–50, §502(b)(3), inserted "small business concerns owned and controlled by service-disabled veterans, by" after "including participation by" in fourth sentence.

Pub. L. 106–50, §502(b)(2), inserted "small business concerns owned and controlled by service-disabled veterans," after "small business concerns," the first place appearing in second sentence.

Pub. L. 106–50, §502(b)(1), inserted "by small business concerns owned and controlled by service-disabled veterans," after "small business concerns," the first place appearing in first sentence.

Subsec. (h)(1). Pub. L. 106–50, §601(a), inserted "small business concerns owned and controlled by veterans (including service-disabled veterans)," after "small business concerns," the first place appearing.

Subsec. (h)(2). Pub. L. 106–50, §601(b)(1), inserted "and the Congress" before period at end of first sentence in introductory provisions.

Subsec. (h)(2)(A), (D), (E). Pub. L. 106–50, §601(b)(2), inserted "small business concerns owned and controlled by service-disabled veterans," after "small business concerns," the first place appearing.

1997—Subsec. (a). Pub. L. 105–135, §413(b), in third sentence, inserted "or the solicitation involves an unnecessary or unjustified bundling of contract requirements, as determined by the Administration," after "discrete construction projects,", substituted "(4)" for "or (4)", and inserted before period at end ", or (5) why the agency has determined that the bundled contract (as defined in section 632(o) of this title) is necessary and justified".

Subsec. (e). Pub. L. 105–135, §413(a), added subsec. (e).

Subsec. (g)(1). Pub. L. 105–135, §603(b)(1), inserted "qualified HUBZone small business concerns," after "small business concerns," in two places, substituted "not less than 23 percent of the total value" for "not less than 20 percent of the total value", and inserted after second sentence "The Governmentwide goal for participation by qualified HUBZone small business concerns shall be established at not less than 1 percent of the total value of all prime contract awards for fiscal year 1999, not less than 1.5 percent of the total value of all prime contract awards for fiscal year 2000, not less than 2 percent of the total value of all prime contract

awards for fiscal year 2001, not less than 2.5 percent of the total value of all prime contract awards for fiscal year 2002, and not less than 3 percent of the total value of all prime contract awards for fiscal year 2003 and each fiscal year thereafter."

Subsec. (g)(2). Pub. L. 105–135, §603(b)(2)(B), (C), inserted "qualified HUBZone small business concerns," after "small business concerns," in second sentence and substituted "by qualified HUBZone small business concerns, by small business concerns owned and controlled by socially and economically disadvantaged individuals, and by small business concerns owned and controlled by women" for "by small business concerns from each industry category in procurement contracts of the agency, including participation by small business concerns owned and controlled by socially and economically disadvantaged individuals and participation by small business concerns owned and controlled by women" before period at end of fourth sentence.

Pub. L. 105–135, §603(b)(2)(A), which directed substitution of ", by qualified HUBZone small business concerns, by small business concerns owned and controlled by socially and economically disadvantaged individuals" for ",, by small business concerns owned and controlled by socially and economically disadvantaged individuals" in first sentence, was executed by making the insertion for the quoted language which started with a single comma to reflect the probable intent of Congress and the amendment by Pub. L. 104–106, §4321(c)(3). See 1996 Amendment note below.

Subsec. (h). Pub. L. 105–135, §603(b)(3), inserted "qualified HUBZone small business concerns," after "small business concerns," wherever appearing.

Subsec. (k)(5) to (10). Pub. L. 105–135, §413(c)(1), (2), added par. (5) and redesignated former pars. (5) to (9) as (6) to (10), respectively.

1996—Subsec. (g)(2). Pub. L. 104–106 struck out second comma after "goals for the participation by small business concerns,".

1994—Subsec. (c)(2)(A). Pub. L. 103–403, §305(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "During each of fiscal years 1989 through 1993, public or private organizations for the handicapped shall be eligible to participate in programs authorized under this section in an aggregate amount for each year as follows: In 1989 not more than $30,000,000, in 1990 not more than $40,000,000, and in each of 1991, 1992 and 1993 not more than $50,000,000."

Subsec. (c)(7). Pub. L. 103–403, §305(2), added par. (7).

Subsec. (e). Pub. L. 103–355, §7101(a), struck out subsec. (e) which read as follows: "In carrying out small business set-aside programs, departments, agencies, and instrumentalities of the executive branch shall award contracts, and encourage the placement of subcontracts for procurement to the following in the manner and in the order stated:

"(1) concerns which are small business concerns and which are located in labor surplus areas, on the basis of a total set-aside;

"(2) concerns which are small business concerns, on the basis of a total set-aside;

"(3) concerns which are small business concerns and which are located in a labor surplus area, on the basis of a partial set-aside;

"(4) concerns which are small business concerns, on the basis of a partial set-aside."

Subsec. (f). Pub. L. 103–355, §7101(a), struck out subsec. (f) which read as follows: "After priority is given to the small business concerns specified in subsection (e) of this section, priority shall also be given to the awarding of contracts and the placement of subcontracts, on the basis of a total set-aside, to concerns which—

"(1) are not eligible under subsection (e) of this section;

"(2) are not small business concerns; and

"(3) will perform a substantial proportion of the production on those contracts and subcontracts within areas of concentrated unemployment or underemployment or within labor surplus areas."

Subsec. (g)(1). Pub. L. 103–355, §7106(a)(1), substituted ", small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women" for "and small business concerns owned and controlled by socially and economically disadvantaged individuals" in first sentence and in sentence beginning with "Notwithstanding the".

Pub. L. 103–355, §7106(a)(2)(A), inserted after third sentence "The Government-wide goal for participation by small business concerns owned and controlled by women shall be established at not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year."

Subsec. (g)(2). Pub. L. 103–355, §7106(a)(2)(B), in first sentence substituted ", by small business concerns owned and controlled by socially and economically disadvantaged individuals, and by small business concerns owned and controlled by women" for "and by small business concerns owned and controlled by socially and economically disadvantaged individuals,".

Pub. L. 103–355, §7106(a)(1), in second sentence substituted ", small business concerns owned and

controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women" for "and small business concerns owned and controlled by socially and economically disadvantaged individuals".

Pub. L. 103–355, §7106(a)(2)(C), in fourth sentence inserted at end "and participation by small business concerns owned and controlled by women".

Subsec. (h)(1), (2)(A), (D), (E). Pub. L. 103–355, §7106(a)(1), substituted ", small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women" for "and small business concerns owned and controlled by socially and economically disadvantaged individuals".

Subsec. (h)(2)(F). Pub. L. 103–355, §7106(a)(3), substituted "small business concerns owned and controlled by women" for "women-owned small business enterprises".

Subsec. (j). Pub. L. 103–355, §4004, amended subsec. (j) generally. Prior to amendment, subsec. (j) read as follows: "Each contract for the procurement of goods and services which has an anticipated value not in excess of the small purchase threshold and which is subject to small purchase procedures shall be reserved exclusively for small business concerns unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with market prices and in terms of quality and delivery of the goods or services being purchased. In utilizing small purchase procedures, contracting officers shall, wherever circumstances permit, choose a method of payment which minimizes paperwork and facilitates prompt payment to contractors."

1992—Subsec. (c)(1)(A). Pub. L. 102–569 substituted "From People Who Are Blind or Severely Disabled" for "from the Blind and Other Severely Handicapped".

Subsec. (c)(2)(B). Pub. L. 102–366, §232(b)(1), which directed the substitution of "Blind-made" for "Blindmade", could not be executed to text because "Blindmade" did not appear in subpar. (B).

Subsec. (k)(3), (5). Pub. L. 102–366, §232(b)(2), substituted comma for semicolon at end of pars. (3) and (5).

Subsec. (k)(9). Pub. L. 102–484, §801(h)(8)(A), substituted "section 2323 of title 10" for "section 1207 of Public Law 99–661".

Subsec. (l)(6). Pub. L. 102–366, §232(b)(3), inserted period at end.

Subsec. (m)(1). Pub. L. 102–484, §801(h)(8)(B), substituted "section 2323 of title 10" for "section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 2301 note)".

Subsec. (m)(2)(B). Pub. L. 102–366, §232(b)(4), substituted "requirements" for "requirement".

Subsec. (m)(2)(C). Pub. L. 102–484, §801(h)(8)(C), substituted "section 2323 of title 10" for "section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 2301 note)".

1991—Subsec. (k)(5). Pub. L. 102–190 amended par. (5) generally. Prior to amendment, par. (5) read as follows: "assist small business concerns to obtain payments, late payment interest penalties, or information due to such concerns, in conformity with chapter 39 of title 31;".

1990—Subsec. (a). Pub. L. 101–574 inserted after second sentence "If a proposed procurement includes in its statement of work goods or services currently being performed by a small business, and if the proposed procurement is in a quantity or estimated dollar value the magnitude of which renders small business prime contract participation unlikely, or if a proposed procurement for construction seeks to package or consolidate discrete construction projects, the Procurement Activity shall provide a copy of the proposed procurement to the Procurement Activity's Small Business Procurement Center Representative at least 30 days prior to the solicitation's issuance along with a statement explaining (1) why the proposed acquisition cannot be divided into reasonably small lots (not less than economic production runs) to permit offers on quantities less than the total requirement, (2) why delivery schedules cannot be established on a realistic basis that will encourage small business participation to the extent consistent with the actual requirements of the Government, (3) why the proposed acquisition cannot be offered so as to make small business participation likely, or (4) why construction cannot be procured as separate discrete projects. The thirty-day notification process shall occur concurrently with other processing steps required prior to issuance of the solicitation. Within 15 days after receipt of the proposed procurement and accompanying statement, if the Procurement Center Representative believes that the procurement as proposed will render small business prime contract participation unlikely, the Representative shall recommend to the Procurement Activity alternative procurement methods which would increase small business prime contracting opportunities."

Subsec. (j). Pub. L. 101–510 substituted "not in excess of the small purchase threshold" for "of less than $25,000".

1989—Subsec. (h)(2)(A). Pub. L. 101–37, §19, inserted "individuals" after "economically disadvantaged".

Subsec. (m)(1)(A). Pub. L. 101–37, §21, substituted "procedures" for "procedure".

1988—Subsec. (c). Pub. L. 100–590, §133(a), amended subsec. (c) generally, substituting provisions

relating to programs for blind and handicapped individuals for provisions relating to eligibility, participating organizations, monitoring and evaluation, and report to Congressional committees.

Subsec. (g). Pub. L. 100–656, §502, added par. (1) and designated existing provisions as par. (2) and former pars. (1) and (2) as subpars. (A) and (B).

Subsec. (h). Pub. L. 100–656, §503, designated existing provisions as par. (1), struck out at end "The Administration shall submit to the Select Committee on Small Business of the Senate and the Committee on Small Business of the House of Representatives information obtained from such reports, together with appropriate comments.", and added pars. (2) and (3).

Subsec. (k)(3). Pub. L. 100–656, §603(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "be responsible only to, and report directly to, the head of such agency or to his deputy, except that in the case of the Department of Defense the Director of the Office of Small and Disadvantaged Business Utilization shall be responsible to, and report directly to, the Under Secretary of Defense for Acquisition,".

Subsec. (k)(5) to (8). Pub. L. 100–496 added par. (5) and redesignated former pars. (5) to (7) as (6) to (8), respectively.

Subsec. (k)(9). Pub. L. 100–656, §603(2)–(4), added par. (9).

Subsec. (l)(2)(D). Pub. L. 100–590, §110(1), struck out "unrestricted" before "technical data" in two places.

Subsec. (l)(2)(E). Pub. L. 100–590, §110(2), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: "have access to the unclassified procurement records and other data of the procurement center;".

Subsec. (l)(3). Pub. L. 100–590, §110(3), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "A breakout procurement center representative is authorized to appeal a failure to act favorably on any recommendation made pursuant to paragraph (2). Such appeal shall be in writing, specifically reciting both the circumstances of the appeal and the basis of the recommendation. The appeal shall be decided by a person within the employ of the appropriate activity who is at least one supervisory level above the person who initially failed to act favorably on the recommendation. Such appeal shall be decided within 30 calendar days of its receipt."

Subsec. (l)(6). Pub. L. 100–590, §110(4), amended par. (6) generally. Prior to amendment, par. (6) read as follows: "For purposes of this subsection, the term 'major procurement center' means a procurement center of the Department of Defense that awarded contracts for items other than commercial items totaling at least $150,000,000 in the preceding fiscal year, and such other procurement centers as designated by the Administrator."

Subsec. (l)(7). Pub. L. 100–590, §110(5), added par. (7).

Subsec. (m). Pub. L. 100–656, §601, amended subsec. (m) generally, substituting provisions related to implementation of section 1207 of Pub. L. 99–661 for former provisions related to labor surplus area procurement and manpower programs.

1987—Subsec. (a). Pub. L. 100–26, §10(a)(1), made technical amendment to directory language of section 921(a)(1) of Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661. See 1986 Amendment note below.

Subsec. (g). Pub. L. 100–180, §809(a)(2), struck out "having a value of $25,000 or more" after "procurement contracts of such agency".

Pub. L. 100–180, §809(a)(1), provided for temporarily inserting "having a value of $25,000 or more" after "procurement contracts of such agency". See Effective Date of 1987 Amendments note below.

Subsec. (o)(1). Pub. L. 100–180, §809(b)(1), substituted "subsection (a)" for "this subsection" in introductory provisions.

Subsec. (o)(1)(A). Pub. L. 100–26, §10(b)(1)(A), substituted "at least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern" for "the concern will perform at least 50 percent of the cost of the contract with its own employees".

Subsec. (o)(3). Pub. L. 100–26, §10(b)(1)(B), substituted "requirements of such paragraph" for "requirements of such subparagraph" and inserted at end "The percentage applicable to any such requirement shall be determined in accordance with paragraph (2)."

Subsec. (p). Pub. L. 100–180, §809(c), struck out subsec. (p) which read as follows:

"(1) Except as provided in paragraphs (2) and (3), the head of any Federal agency shall, within five days of the agency's decision to set aside a procurement for small business concerns under this section, provide the names and addresses of the small business concerns expected to respond to the procurement to any person who requests such information.

"(2) The Secretary of Defense may decline to provide information under paragraph (1) in order to protect national security interests.

"(3) The head of a Federal agency is not required to release any information under paragraph (1) that is not required to be released under section 552 of title 5."

1986—Subsec. (a). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§921(a), (b)], Pub. L. 99–661, §921(a), (b), as amended by Pub. L. 100–26, §10(a)(1), amended subsec. (a) identically, inserting "in each industry category" in cl. (3), and inserting provision identifying an industry category, providing for determination of such category by the Administrator, and permitting segmentation of a market for goods and services under certain circumstances and provision that a contract not be awarded if the award would result in a cost to the awarding agency which exceeds a fair market price.

Subsec. (g). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§921(d)], Pub. L. 99–661, §921(d), amended subsec. (g) identically, striking out "having values of $10,000 or more" after "such agency" and inserting provision requiring the head of each Federal agency to make consistent efforts to annually expand participation by small business concerns from each industry category in procurement contracts of the agency.

Subsec. (j). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§922(c)], Pub. L. 99–661, §922(c), amended subsec. (j) identically, substituting "$25,000" for "$10,000".

Subsec. (k)(3). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§903(d)], Pub. L. 99–661, §903(d), which directed identical amendments to par. (3) by inserting ", except that in the case of the Department of Defense the Director of the Office of Small and Disadvantaged Business Utilization shall be responsible to, and report directly to, the Under Secretary of Defense for Acquisition" was executed by inserting that phrase immediately before the comma at the end as the probable intent of Congress.

Subsec. (n). Pub. L. 99–272 added subsec. (n).

Subsecs. (o), (p). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§921(c)(2), (e)], Pub. L. 99–661, §921(c)(2), (e), amended section identically, adding subsecs. (o) and (p).

1984—Subsecs. (l), (m). Pub. L. 98–577 added subsec. (l) and redesignated former subsec. (l) as (m).

1980—Subsec. (c). Pub. L. 96–302, §116, substituted provisions covering participation of not-for-profit organizations in certain authorized programs during fiscal years 1981, through 1983, the monitoring and evaluation of such participation as causing severe economic injury to for-profit small businesses and transmission of report to congressional committees not later than Jan. 1, 1982, respecting impact of contracts on the for-profit small businesses for provisions respecting eligibility during fiscal year 1978, of public and private organizations and individuals to participate in the award of contracts and requiring transmission of a report by March 1, 1979.

Subsec. (d). Pub. L. 96–302, §117(a), substituted "small business concerns" for "concerns".

Subsec. (e). Pub. L. 96–302, §117(b), in revising text, struck out from introductory clause reference to labor surplus areas; reenacted par. (1) reversing order of reference to small business concerns and location in labor surplus areas; reenacted par. (2); added par. (3); redesignated former par. (3) as (4); and struck out former par. (4) as to concerns located in labor surplus areas on basis of total set-aside, as covered in par. (1).

Subsec. (f). Pub. L. 96–302, §117(b), substituted provision respecting other priorities in placement of contracts for requirement that subsecs. (d) and (e) of this section cease to be effective subsequent to Sept. 30, 1980, unless renewed prior to such date.

1978—Subsec. (f). Pub. L. 95–507, §232, substituted "September 30, 1980" for "September 30, 1979".

Subsecs. (g) to (k). Pub. L. 95–507, §221, added subsecs. (g) to (k).

Subsec. (l). Pub. L. 95–507, §233, added subsec. (l).

1977—Pub. L. 95–89 designated existing provisions as subsec. (a) and added subsecs. (b) to (f).

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 2302 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by sections 4004 and 7106(a) of Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–37 applicable as if included in Pub. L. 100–656, see section 32 of Pub. L.

101–37, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 502 and 503 of Pub. L. 100–656 effective Oct. 1, 1989, and amendment by sections 601 and 603 of Pub. L. 100–656 effective Nov. 15, 1988, see section 803(a)(7), (b)(4)(C), of Pub. L. 100–656, as amended, set out as a note under section 631 of this title.

Amendment by Pub. L. 100–496 applicable to payments under contracts awarded, contracts renewed, and contract options exercised during or after the first fiscal quarter which begins more than 90 days after Oct. 17, 1988, see section 14(a) of Pub. L. 100–496, set out as a note under section 3902 of Title 31, Money and Finance.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–180, div. A, title VIII, §809(a)(1), Dec. 4, 1987, 101 Stat. 1130, provided that the amendment made by that section is in effect until Sept. 30, 1988.

Pub. L. 100–180, div. A, title VIII, §809(a)(2), Dec. 4, 1987, 101 Stat. 1130, as amended by Pub. L. 100–656, title VII, §731, Nov. 15, 1988, 102 Stat. 3897, provided that the amendment made by that section is effective Oct. 1, 1989.

Amendment by section 10(a)(1), (b)(1) of Pub. L. 100–26 applicable as if included in each instance of the Defense Acquisition Improvement Act (as specified in section 2 of Pub. L. 100–26) [title X of section 101(c) of Pub. L. 99–500 and Pub. L. 99–591, and title IX of div. A of Pub. L. 99–661] when each was enacted [Oct. 18, 1986, Oct. 30, 1986, and Nov. 14, 1986, respectively], see section 12(c) of Pub. L. 100–26, set out as a note under section 632 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–272, title XVIII, §18003(b), Apr. 7, 1986, 100 Stat. 364, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the ninetieth day after the date of the enactment of this Act [Apr. 7, 1986].

Amendment by section 101(c) [title X, §921(a), (b)(1), (c)(2)–(e)] of Pub. L. 99–500 and Pub. L. 99–591, and section 921(a), (b)(1), (c)(2)–(e) of Pub. L. 99–661 effective Oct. 1, 1987, see section 101(c) of Pub. L. 99–500 and Pub. L. 99–591, and section 921(g) of Pub. L. 99–661, set out as a note under section 632 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–302 effective Oct. 1, 1980, see section 507 of Pub. L. 96–302, set out as a note under section 631 of this title.

ADDITIONAL REQUIREMENTS FOR THE SMALL BUSINESS PREFERENCE PROGRAMS FOR PRIME AND SUBCONTRACT FEDERAL PROCUREMENT GOALS AND ACHIEVEMENTS

Pub. L. 112–239, div. A, title XVI, §1631(c), Jan. 2, 2013, 126 Stat. 2072, provided that: "Not later than 180 days after the date of the enactment of this part [Jan. 2, 2013], the Administrator of the Small Business Administration shall review and revise the Goaling Guidelines for the Small Business Preference Programs for Prime and Subcontract Federal Procurement Goals and Achievements to the extent necessary to ensure that—

"(1) agency subcontracting goals are established on the basis of realistically achievable improvements to levels of subcontracting rather than on the basis of an average of previous years' subcontracting performance;

"(2) agency contracting and subcontracting goals are established in a manner that does not exclude categories of contracts on the basis of—

"(A) the type of goods or services for which the agency contracts;

"(B) in the case of contracts subject to competitive procedures under chapter 33 of title 41, United States Code—

"(i) whether or not funding for the contracts is made directly available to the agency by an Appropriations Act or is made available by reimbursement from another agency or account; or

"(ii) whether or not the contract is subject to the Federal Acquisition Regulation; and

"(3) whenever an agency contracting or subcontracting goal is established at a level lower than the Governmentwide goal for small business concerns or the relevant category of small business concerns, the Administration is required to document the basis for the decision to establish such lower goal."

ELECTRONIC PROCUREMENT CENTER REPRESENTATIVE

Pub. L. 111–240, title I, §1312(d), Sept. 27, 2010, 124 Stat. 2538, provided that:

"(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act [Sept. 27, 2010], the Administrator [of the Small Business Administration] shall implement a 3-year pilot electronic procurement center representative program.

"(2) REPORT.—Not later than 30 days after the pilot program under paragraph (1) ends, the Comptroller General of the United States shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report regarding the pilot program."

SMALL BUSINESS TEAMS PILOT PROGRAM

Pub. L. 111–240, title I, §1314, Sept. 27, 2010, 124 Stat. 2540, provided that:

"(a) DEFINITIONS.—In this section—

"(1) the term 'Pilot Program' means the Small Business Teaming Pilot Program established under subsection (b); and

"(2) the term 'eligible organization' means a well-established national organization for small business concerns with the capacity to provide assistance to small business concerns (which may be provided with the assistance of the Administrator) relating to—

"(A) customer relations and outreach;

"(B) team relations and outreach; and

"(C) performance measurement and quality assurance.

"(b) ESTABLISHMENT.—The Administrator shall establish a Small Business Teaming Pilot Program for teaming and joint ventures involving small business concerns.

"(c) GRANTS.—Under the Pilot Program, the Administrator may make grants to eligible organizations to provide assistance and guidance to teams of small business concerns seeking to compete for larger procurement contracts.

"(d) CONTRACTING OPPORTUNITIES.—The Administrator shall work with eligible organizations receiving a grant under the Pilot Program to recommend appropriate contracting opportunities for teams or joint ventures of small business concerns.

"(e) REPORT.—Not later than 1 year before the date on which the authority to carry out the Pilot Program terminates under subsection (f), the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report on the effectiveness of the Pilot Program.

"(f) TERMINATION.—The authority to carry out the Pilot Program shall terminate 5 years after the date of enactment of this Act [Sept. 27, 2010].

"(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for grants under subsection (c) $5,000,000 for each of fiscal years 2010 through 2015."

[For definitions of "Administrator" and "small business concern" as used in section 1314 of Pub. L. 111–240, set out above, see section 1001 of Pub. L. 111–240, set out as a note under section 632 of this title.]

MANUFACTURING CONTRACTS THROUGH MANUFACTURING APPLICATION AND EDUCATION CENTERS

Pub. L. 103–403, title III, §303, Oct. 22, 1994, 108 Stat. 4188, authorized the Small Business Administration to promote the award of Federal manufacturing contracts to small business concerns that participate in manufacturing application and education centers by working with the Department of Commerce and other agencies to identify components and subsystems that are both critical and currently foreign-sourced, such authority to terminate on Sept. 30, 1997.

PILOT PROGRAM FOR VERY SMALL BUSINESS CONCERNS

Pub. L. 103–403, title III, §304, Oct. 22, 1994, 108 Stat. 4188, as amended by Pub. L. 105–135, title V, §508, Dec. 2, 1997, 111 Stat. 2627; Pub. L. 106–554, §1(a)(9) [title V, §503(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–695, required the Administrator of the Small Business Administration to establish and carry out a pilot program related to improved access to Federal contract opportunities for very small business concerns beginning not later than Aug. 30, 1995, and expiring on Sept. 30, 2003.

EXPEDITED RESOLUTION OF CONTRACT ADMINISTRATION MATTERS

Pub. L. 103–355, title II, §2353, Oct. 13, 1994, 108 Stat. 3323, provided that:

"(a) REGULATIONS REQUIRED.—(1) The Federal Acquisition Regulation shall include provisions that require a contracting officer—

"(A) to make every reasonable effort to respond in writing within 30 days to any written request made to a contracting officer with respect to a matter relating to the administration of a contract that is received

from a small business concern; and

"(B) in the event that the contracting officer is unable to reply within the 30-day period, to transmit to the contractor within such period a written notification of a specific date by which the contracting officer expects to respond.

"(2) The provisions shall not apply to a request for a contracting officer's decision under the Contract Disputes Act of 1978 ([former] 41 U.S.C. 601 et seq.) [see 41 U.S.C. 7101 et seq.].

"(b) RULE OF CONSTRUCTION.—Nothing in this section shall be considered as creating any rights under the Contract Disputes Act of 1978 ([former] 41 U.S.C. 601 et seq.) [see 41 U.S.C. 7101 et seq.].

"(c) DEFINITION.—In this section, the term 'small business concern' means a business concern that meets the requirements of section 3(a) of the Small Business Act (15 U.S.C. 632(a)) and the regulations promulgated pursuant to that section."

CONTRACTING PROGRAM FOR CERTAIN SMALL BUSINESSES

Pub. L. 103–355, title VII, §7102, Oct. 13, 1994, 108 Stat. 3367, as amended by Pub. L. 106–554, §1(a)(9) [title V, §503(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–695, provided that:

"(a) PROCUREMENT PROCEDURES AUTHORIZED.—(1) To facilitate the attainment of a goal for the participation of small business concerns owned and controlled by socially and economically disadvantaged individuals that is established for a Federal agency pursuant to section 15(g)(1) of the Small Business Act (15 U.S.C. 644(g)(1)), the head of the agency may enter into contracts using—

"(A) less than full and open competition by restricting the competition for such awards to small business concerns owned and controlled by socially and economically disadvantaged individuals described in subsection (d)(3)(C) of section 8 of the Small Business Act (15 U.S.C. 637); and

"(B) a price evaluation preference not in excess of 10 percent when evaluating an offer received from such a small business concern as the result of an unrestricted solicitation.

"(2) Paragraph (1) does not apply to the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration.

"(b) IMPLEMENTATION THROUGH THE FEDERAL ACQUISITION REGULATION.—

"(1) IN GENERAL.—The Federal Acquisition Regulation shall be revised to provide for uniform implementation of the authority provided in subsection (a).

"(2) MATTERS TO BE ADDRESSED.—The revisions of the Federal Acquisition Regulation made pursuant to paragraph (1) shall include—

"(A) conditions for the use of advance payments;

"(B) provisions for contract payment terms that provide for—

"(i) accelerated payment for work performed during the period for contract performance; and

"(ii) full payment for work performed;

"(C) guidance on how contracting officers may use, in solicitations for various classes of products or services, a price evaluation preference pursuant to subsection (a)(1)(B), to provide a reasonable advantage to small business concerns owned and controlled by socially and economically disadvantaged individuals without effectively eliminating any participation of other small business concerns; and

"(D)(i) procedures for a person to request the head of a Federal agency to determine whether the use of competitions restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals at a contracting activity of such agency has caused a particular industry category to bear a disproportionate share of the contracts awarded to attain the goal established for that contracting activity; and

"(ii) guidance for limiting the use of such restricted competitions in the case of any contracting activity and class of contracts determined in accordance with such procedures to have caused a particular industry category to bear a disproportionate share of the contracts awarded to attain the goal established for that contracting activity.

"(c) TERMINATION.—This section shall cease to be effective at the end of September 30, 2003."

[For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

SMALL BUSINESS PROCUREMENT ADVISORY COUNCIL

Pub. L. 103–355, title VII, §7104, Oct. 13, 1994, 108 Stat. 3369, formerly set out as a note under this section, was transferred to section 644a of this title.

PROCUREMENT PROCEDURES UNDER SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM ACT OF 1988

Pub. L. 102–366, title II, §202(h), Sept. 4, 1992, 106 Stat. 996, provided for procurement procedures under the Small Business Competitiveness Demonstration Program Act of 1988 prior to implementation of improvements to the collection of data regarding prime contract awards and of a system for collecting such data.

MODIFICATIONS OF TEST PLAN AND POLICY DIRECTION UNDER SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM ACT OF 1988

Pub. L. 102–366, title II, §202(i), Sept. 4, 1992, 106 Stat. 996, required the Administrator for Federal Procurement Policy to issue certain modifications to the test plan and policy direction under the Small Business Competitiveness Demonstration Program Act of 1988.

CONTRACT BUNDLING STUDY

Pub. L. 102–366, title III, §321, Sept. 4, 1992, 106 Stat. 1006, provided that the Administrator of the Small Business Administration was to conduct a study regarding the impact of the practice known as "contract bundling" on the participation of small business concerns in the Federal procurement process and, not later than May 15, 1993, to submit a report on the results of the study to the Committees on Small Business of the Senate and the House of Representatives.

SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM

Pub. L. 100–656, title VII, §§701–722, Nov. 15, 1988, 102 Stat. 3889–3895, as amended by Pub. L. 101–37, §§23–29, June 15, 1989, 103 Stat. 75, 76; Pub. L. 101–574, title II, §243, Nov. 15, 1990, 104 Stat. 2827; Pub. L. 102–54, §13(e), June 13, 1991, 105 Stat. 275; Pub. L. 102–366, title II, §§201–202(g), 203, Sept. 4, 1992, 106 Stat. 993–996; Pub. L. 102–484, div. A, title VIII, §801(h)(9), Oct. 23, 1992, 106 Stat. 2446; Pub. L. 102–564, title III, §307(a), Oct. 28, 1992, 106 Stat. 4263; Pub. L. 103–160, div. A, title VIII, §850(2), Nov. 30, 1993, 107 Stat. 1726; Pub. L. 103–446, title XII, §1202(a)(1), Nov. 2, 1994, 108 Stat. 4689; Pub. L. 104–208, div. D, title I, §108(a)–(c)(1), Sept. 30, 1996, 110 Stat. 3009–732, 3009–733; Pub. L. 105–18, title II, §2002, June 12, 1997, 111 Stat. 174; Pub. L. 105–135, title IV, §§401–405, Dec. 2, 1997, 111 Stat. 2616; Pub. L. 108–375, div. A, title VIII, §821, Oct. 28, 2004, 118 Stat. 2016, known as the Small Business Competitiveness Demonstration Program Act of 1988, established a Small Business Competitiveness Demonstration Program, prior to repeal by Pub. L. 111–240, title I, §1335(a), Sept. 27, 2010, 124 Stat. 2543.

[Pub. L. 111–240, title I, §1335(b), Sept. 27, 2010, 124 Stat. 2543, provided that: "The amendment made by this section [repealing sections 701–722 of Pub. L. 100–656, formerly set out above, and section 741 of Pub. L. 100–656, formerly set out below]—

["(1) shall take effect on the date of enactment of this Act [Sept. 27, 2010]; and

["(2) apply to the first full fiscal year after the date of enactment of this Act."]

SEGMENTATION OF INDUSTRY CATEGORY OF SHIPBUILDING AND SHIP REPAIR

Pub. L. 100–656, title VII, §741, Nov. 15, 1988, 102 Stat. 3897, authorized the Small Business Administration to segment the industry category of shipbuilding and ship repair, prior to repeal by Pub. L. 111–240, title I, §1335(a), Sept. 27, 2010, 124 Stat. 2543.

PROGRAMS FOR BLIND AND HANDICAPPED INDIVIDUALS; REPORT ON IMPACT ON SMALL BUSINESS CONCERNS

Pub. L. 100–590, title I, §133(b), Nov. 3, 1988, 102 Stat. 3006, provided that not later than Sept. 30, 1992, the General Accounting Office was to prepare a report describing the impact that contracts awarded under subsec. (c) of this section had on for-profit small business concerns for fiscal years 1989 through 1991, and transmit the report to the Committees on Small Business of the Senate and the House of Representatives.

TASK FORCE ON PURCHASES FROM BLIND AND SEVERELY HANDICAPPED INDIVIDUALS; ESTABLISHMENT; MEETINGS; RECOMMENDATIONS

Pub. L. 100–590, title I, §133(c), Nov. 3, 1988, 102 Stat. 3006, provided that: "There is established within the Small Business Administration a task force on purchases from the blind and severely handicapped which shall consist of one representative of the small business community appointed by the Administrator of the Small Business Administration and one individual knowledgeable in the affiars [sic] of or experienced in the work of sheltered workshops appointed by the Executive Director of the Committee for Purchase from the Blind and Other Severely Handicapped established under the first section of the Act entitled 'An Act to create a Committee on Purchases of Blind-made Products, and for other purposes', approved June 25, 1938 ([former]

41 U.S.C. 46) [now 41 U.S.C. 8502]. The task force shall meet at least once every six months for the purpose of reviewing the award of contracts under section 15(c) of the Small Business Act [15 U.S.C. 644(c)] and recommending to the Small Business Administration such administrative or statutory changes as it deems appropriate."

STANDARDS FOR MEASURING COST SAVINGS FROM BREAKOUT PROCUREMENT CENTER REPRESENTATIVES

Pub. L. 98–577, title IV, §403(b), Oct. 30, 1984, 98 Stat. 3082, provided that:

"(1) The Administrator of the Small Business Administration and the Comptroller General of the United States shall jointly establish standards for measuring cost savings achieved through the efforts of breakout procurement center representatives and for measuring the extent to which competition has been increased as a result of such efforts. Thereafter, the Administrator shall annually prepare and submit to the Congress a report setting forth—

"(A) the cost savings achieved during the year covered by such report through the efforts of breakout procurement center representatives;

"(B) an evaluation of the extent to which competition has been increased as a result of such efforts; and

"(C) such other information as the Administrator may deem appropriate.

"(2) Within 180 days following the submission of the second annual report to Congress by the Administrator, the Comptroller General shall report to the Congress an evaluation of the Administration's adherence to the standards jointly established and the accuracy of the information the Administration has submitted to the Congress."

EX. ORD. NO. 13157. INCREASING OPPORTUNITIES FOR WOMEN-OWNED SMALL BUSINESSES

Ex. Ord. No. 13157, May 23, 2000, 65 F.R. 34035, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Small Business Act, 15 U.S.C. 631, *et seq*., section 7106 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355) [amending 15 U.S.C. 632, 637, 644, 645], and the Office of Federal Procurement Policy [Act], [former] 41 U.S.C. 403, *et seq*., and in order to strengthen the executive branch's commitment to increased opportunities for women-owned small businesses, it is hereby ordered as follows:

SECTION 1. *Executive Branch Policy*. In order to reaffirm and strengthen the statutory policy contained in the Small Business Act, 15 U.S.C. 644(g)(1), it shall be the policy of the executive branch to take the steps necessary to meet or exceed the 5 percent Government-wide goal for participation in procurement by women-owned small businesses (WOSBs). Further, the executive branch shall implement this policy by establishing a participation goal for WOSBs of not less than 5 percent of the total value of all prime contract awards for each fiscal year and of not less than 5 percent of the total value of all subcontract awards for each fiscal year.

SEC. 2. *Responsibilities of Federal Departments and Agencies*. Each department and agency (hereafter referred to collectively as "agency") that has procurement authority shall develop a long-term comprehensive strategy to expand opportunities for WOSBs. Where feasible and consistent with the effective and efficient performance of its mission, each agency shall establish a goal of achieving a participation rate for WOSBs of not less than 5 percent of the total value of all prime contract awards for each fiscal year and of not less than 5 percent of the total value of all subcontract awards for each fiscal year. The agency's plans shall include, where appropriate, methods and programs as set forth in section 4 of this order.

SEC. 3. *Responsibilities of the Small Business Administration*. The Small Business Administration (SBA) shall establish an Assistant Administrator for Women's Procurement within the SBA's Office of Government Contracting. This officer shall be responsible for:

(a) working with each agency to develop and implement policies to achieve the participation goals for WOSBs for the executive branch and individual agencies;

(b) advising agencies on how to implement strategies that will increase the participation of WOSBs in Federal procurement;

(c) evaluating, on a semiannual basis, using the Federal Procurement Data System (FPDS), the achievement of prime and subcontract goals and actual prime and subcontract awards to WOSBs for each agency;

(d) preparing a report, which shall be submitted by the Administrator of the SBA to the President, through the Interagency Committee on Women's Business Enterprise and the Office of Federal Procurement Policy (OFPP), on findings based on the FPDS, regarding prime contracts and subcontracts awarded to

WOSBs;

(e) making recommendations and working with Federal agencies to expand participation rates for WOSBs, with a particular emphasis on agencies in which the participation rate for these businesses is less than 5 percent;

(f) providing a program of training and development seminars and conferences to instruct women on how to participate in the SBA's 8(a) [15 U.S.C. 637(a)] program, the Small Disadvantaged Business (SDB) program, the HUBZone program, and other small business contracting programs for which they may be eligible;

(g) developing and implementing a single uniform Federal Government-wide website, which provides links to other websites within the Federal system concerning acquisition, small businesses, and women-owned businesses, and which provides current procurement information for WOSBs and other small businesses;

(h) developing an interactive electronic commerce database that allows small businesses to register their businesses and capabilities as potential contractors for Federal agencies, and enables contracting officers to identify and locate potential contractors; and

(i) working with existing women-owned business organizations, State and local governments, and others in order to promote the sharing of information and the development of more uniform State and local standards for WOSBs that reduce the burden on these firms in competing for procurement opportunities.

SEC. 4. *Other Responsibilities of Federal Agencies*. To the extent permitted by law, each Federal agency shall work with the SBA to ensure maximum participation of WOSBs in the procurement process by taking the following steps:

(a) designating a senior acquisition official who will work with the SBA to identify and promote contracting opportunities for WOSBs;

(b) requiring contracting officers, to the maximum extent practicable, to include WOSBs in competitive acquisitions;

(c) prescribing procedures to ensure that acquisition planners, to the maximum extent practicable, structure acquisitions to facilitate competition by and among small businesses, HUBZone small businesses, SDBs, and WOSBs, and providing guidance on structuring acquisitions, including, but not limited to, those expected to result in multiple award contracts, in order to facilitate competition by and among these groups;

(d) implementing mentor-protege programs, which include women-owned small business firms; and

(e) offering industry-wide as well as industry-specific outreach, training, and technical assistance programs for WOSBs including, where appropriate, the use of Government acquisitions forecasts, in order to assist WOSBs in developing their products, skills, business planning practices, and marketing techniques.

SEC. 5. *Subcontracting Plans*. The head of each Federal agency, or designated representative, shall work closely with the SBA, OFPP, and others to develop procedures to increase compliance by prime contractors with subcontracting plans proposed under section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or section 834 of Public Law 101–189, as amended (15 U.S.C. 637 note), including subcontracting plans involving WOSBs.

SEC. 6. *Action Plans*. If a Federal agency fails to meet its annual goals in expanding contract opportunities for WOSBs, it shall work with the SBA to develop an action plan to increase the likelihood that participation goals will be met or exceeded in future years.

SEC. 7. *Compliance*. Independent agencies are requested to comply with the provisions of this order.

SEC. 8. *Consultation and Advice*. In developing the long-term comprehensive strategies required by section 2 of this order, Federal agencies shall consult with, and seek information and advice from, State and local governments, WOSBs, other private-sector partners, and other experts.

SEC. 9. *Judicial Review*. This order is for internal management purposes for the Federal Government. It does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, its employees, or any other person.

WILLIAM J. CLINTON.

EX. ORD. NO. 13170. INCREASING OPPORTUNITIES AND ACCESS FOR DISADVANTAGED BUSINESSES

Ex. Ord. No. 13170, Oct. 6, 2000, 65 F.R. 60827, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Small Business Act (15 U.S.C. 631 *et seq*.), section 7102 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355, 15 U.S.C. 644 note), the Office of Federal Procurement

Policy Act ([former] 41 U.S.C. 403 *et seq*.), Executive Order 11625 [15 U.S.C. 631 note], and to provide for increased access for disadvantaged businesses to Federal contracting opportunities, it is hereby ordered as follows:

SECTION 1. *Policy*. It is the policy of the executive branch to ensure nondiscrimination in Federal procurement opportunities for businesses in the Small Disadvantaged Business Program (SDBs), businesses in the section 8(a) Business Development program of the Small Business Administration (8(a)s), and Minority Business Enterprises (MBEs) as defined in section 6 of Executive Order 11625, of October 13, 1971, and to take affirmative action to ensure inclusion of these businesses in Federal contracting. These businesses are of vital importance to job growth and the economic strength of the United States but have faced historic exclusion and underutilization in Federal procurement. All agencies within the executive branch with procurement authority are required to take all necessary steps, as permitted by law, to increase contracting between the Federal Government and SDBs, 8(a)s, and MBEs.

SEC. 2. *Responsibilities of Executive Departments and Agencies with Procurement Authority*. The head of each executive department and agency shall carry out the terms of this order and shall designate, where appropriate, his or her Deputy Secretary or equivalent to implement the terms of this order.

(a) Each department and agency with procurement authority shall:

(i) aggressively seek to ensure that 8(a)s, SDBs, and MBEs are aware of future prime contracting opportunities through wide dissemination of contract announcements, including sources likely to reach 8(a)s, SDBs, other small businesses, and MBEs. Each department and agency shall use all available forms of communication to implement this provision, including the Internet, speciality press, and trade press;

(ii) work with the Small Business Administration (SBA) to ensure that information regarding sole source contracts awarded through the section 8(a) program receives the widest dissemination possible to 8(a)s;

(iii) ensure that the price evaluation preference programs authorized by the Federal Acquisition Streamlining Act of 1994 [Pub. L. 103–355, see Tables for classification] are used to the maximum extent permitted by law in areas of economic activity in which SDBs have historically been underused;

(iv) aggressively use the firms in the section 8(a) program, particularly in the developmental stage of the program, so that these firms have an opportunity to overcome artificial barriers to Federal contracting and gain access to the Federal procurement arena;

(v) ensure that department and agency heads take all reasonable steps so that prime contractors meet or exceed Federal subcontracting goals, and enforce subcontracting commitments as required by the Small Business Act (15 U.S.C. 637(d)) and other related laws. In particular, they shall ensure that prime contractors actively solicit bids for subcontracting opportunities from 8(a)s and SDBs, and fulfill their SDB and section 8(d) subcontracting obligations. Enforcement of SDB subcontracting plan commitments shall include assessments of liquidated damages, where appropriate, pursuant to applicable contract clauses;

(vi) encourage the establishment of business-to-business mentoring and teaming relationships, including the implementation of Mentor-Protege programs, to foster the development of the technical and managerial capabilities of 8(a)s and SDBs and to facilitate long-term business relationships;

(vii) offer information, training, and technical assistance programs for 8(a)s and SDBs including, where appropriate, Government acquisition forecasts in order to assist 8(a)s and SDBs in developing their products, skills, business planning practices, and marketing techniques;

(viii) train program and procurement officials regarding the policy of including 8(a)s and SDBs in Federal procurement. This includes prescribing procedures to ensure that acquisition planners, to the maximum extent practicable, structure acquisitions to facilitate competition by SDBs and 8(a)s, including their participation in the competition of multiple award requirements;

(ix) provide the information required by the Department of Commerce when it requests data to develop the benchmarks used in the price evaluation preference programs authorized by the Federal Acquisition Streamlining Act of 1994;

(x) ensure that Directors of Offices of Small and Disadvantaged Business Utilization carry out their responsibilities to maximize the participation of 8(a)s and SDBs in Federal procurement and, in particular, ensure that the Directors report directly to the head of each department or agency as required by law; and

(xi) as required by law, establish with the Small Business Administration small business goals to ensure that the government-wide goal for participation of small business concerns is not less than 23 percent of Federal prime contracts. Where feasible and consistent with the effective and efficient performance of its mission, each agency shall establish a goal of achieving a participation rate for SDBs of not less than 5 percent of the total value of prime contract awards for each fiscal year and of not less than 5 percent of the total value of subcontract awards for each year. Each agency shall also establish a goal for awards made to 8(a) firms pursuant to section 8(a) of the Small Business Act [15 U.S.C. 637(a)]. These

goals shall be considered the minimum goals and every effort shall be taken to exceed these goals wherever feasible.

(b) Each department and agency with procurement authority shall:

(i) develop a long-term comprehensive plan to implement the requirements of section 2(a) of this order and submit this plan to the Director of the Office of Management and Budget (OMB) within 90 days of the date of this order. The Director of OMB shall review each plan and report to the President on the sufficiency of each plan to carry out the terms of this order; and

(ii) annually, by April 30 each year, assess its efforts and the results of those efforts to increase utilization of 8(a)s, SDBs, and MBEs as both prime contractors and subcontractors and report on those efforts to the President through the Director of OMB, who shall review the evaluations made of the agency assessments by the Small Business Administration.

SEC. 3. *Responsibilities of the Small Business Administration*. The Administrator of the SBA shall:

(a) evaluate on a semi-annual basis, using the Federal Procurement Data System (FPDS), the achievement of government-wide prime and subcontract goals and the actual prime and subcontract awards to 8(a)s and SDBs for each department and agency. The OMB shall review SBA's evaluation;

(b) ensure that Procurement Center Representatives receive adequate training regarding the section 8(a) and SDB programs and that they consistently and aggressively seek opportunities for maximizing the use of 8(a)s and SDBs in department and agency procurements; and

(c) ensure that each department and agency's small and disadvantaged business procurement goals as well as the amount of procurement of each department and agency with 8(a)s, SDBs, and MBEs is publicly available in an easily accessible and understandable format such as through publication on the Internet.

SEC. 4. *Federal Advertising*. Each department or agency that contracts with businesses to develop advertising for the department or agency or to broadcast Federal advertising shall take an aggressive role in ensuring substantial minority-owned entities' participation, including 8(a), SDB, and MBE, in Federal advertising-related procurements. Each department and agency shall ensure that all creation, placement, and transmission of Federal advertising is fully reflective of the Nation's diversity. To achieve this diversity, special attention shall be given to ensure placement in publications and television and radio stations that reach specific ethnic and racial audiences. Each department and agency shall ensure that payment for Federal advertising is commensurate with fair market rates in the relevant market. Each department and agency shall structure advertising contracts as commercial acquisitions consistent with part 12 of the Federal Acquisition Regulation processes and paperwork to enhance participation by 8(a)s, SDBs, and MBEs.

SEC. 5. *Information Technology*. Each department and agency shall aggressively seek to ensure substantial 8(a), SDB, and MBE participation in procurements for and related to information technology, including procurements in the telecommunications industry. In so doing, the Chief Information Officer in each department and agency shall coordinate with procurement officials to implement this section.

SEC. 6. *General Services Administration Schedules*. The SBA and the General Services Administration (GSA) shall act promptly to expand inclusion of 8(a)s and SDBs on GSA Schedules, and provide greater opportunities for 8(a) and SDB participation in orders under such schedules. The GSA should ensure that procurement and program officials at all levels that use GSA Schedules aggressively seek to utilize the Schedule contracts of 8(a)s and SDBs. The GSA shall allow agencies ordering from designated 8(a) firms under the Multiple Award Schedule to count those orders toward their 8(a) procurement goals.

SEC. 7. *Bundling Contracts*. To the extent permitted by law, departments and agencies must submit to the SBA for review any contracts that are proposed to be bundled. The determination of the SBA with regard to the appropriateness of bundling in each instance must be carefully reviewed by the department or agency head, or his or her designee, and must be given due consideration. If there is an unresolvable conflict, then the SBA or the department or agency can seek assistance from the OMB.

SEC. 8. *Awards Program*. The Secretary of Commerce and the Administrator of the SBA shall jointly undertake a feasibility study to determine the appropriateness of an awards program for executive departments and agencies who best exemplify the letter and intent of this order in increasing opportunities for 8(a)s, SDBs, and MBEs in Federal procurement. Such study shall be presented to the President within 90 days of the date of this order.

SEC. 9. *Applicability*. Independent agencies are requested to comply with the provisions of this order.

SEC. 10. *Administration, Enforcement, and Judicial Review*.

(a) This order shall be carried out to the extent permitted by law and consistent with the Administration's priorities and appropriations.

(b) This order is not intended and should not be construed to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees.

WILLIAM J. CLINTON.

DELEGATION OF AUTHORITY TO ESTABLISH ANNUAL GOALS FOR PARTICIPATION OF SMALL BUSINESS CONCERNS IN PROCUREMENT CONTRACTS

Memorandum of the President of the United States, June 6, 1990, 55 F.R. 27453–27455, provided:

Memorandum for the Director of the Office of Management and Budget

By the authority vested in me as President by the Constitution and laws of the United States, including section 15(g) of the Small Business Act, as amended [subsec. (g) of this section], and section 301 of Title 3 of the United States Code, I hereby delegate to the Director of the Office of Management and Budget the authority vested in the President to establish the annual goals required by Section 502 of the Business Opportunity Development Reform Act of 1988 (P.L. 100–656) [amending this section].

You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE BUSH.

CONTINUED COMMITMENT TO SMALL, SMALL DISADVANTAGED, AND SMALL WOMEN-OWNED BUSINESSES IN FEDERAL PROCUREMENT

Memorandum of President of the United States, Oct. 13, 1994, 59 F.R. 52397, provided:

Memorandum for the Heads of Executive Departments and Agencies [and] the President's Management Council

It is the policy of the Federal Government that a fair proportion of its contracts be placed with small, small disadvantaged, and small women-owned businesses. Such businesses should also have the maximum practicable opportunity to participate as subcontractors in contracts awarded by the Federal Government consistent with efficient contract performance. I am committed to the continuation of this policy. Therefore, I ask that you encourage the use of various tools, including set-asides, price preferences, and section 8(a) of the Small Business Act (15 U.S.C. 637(a)), as necessary to achieve this policy objective.

The Federal Acquisition Streamlining Act of 1994 [Pub. L. 103–355, see Short Title of 1994 Act note set out under section 101 of Title 41, Public Contracts] authorizes civilian agencies to utilize set-aside procurements for small disadvantaged businesses. The Act also, for the first time, establishes goals for contracting with small women-owned businesses. These provisions, along with others in the Act, will provide greater access to Federal Government business opportunities for small, small disadvantaged, and small women-owned businesses. Department and agency heads should ensure that efforts to streamline acquisition procedures encourage the participation of these businesses in Federal procurements.

This memorandum shall be published in the Federal Register.

WILLIAM J. CLINTON.

[1] See References in Text note below.

[2] So in original. The comma probably should be a semicolon.

[3] So in original. Probably should be "paragraphs".

[4] So in original. Probably should be "the procurement center representative".

[5] So in original. Probably should be "or".

[6] So in original. No subpar. (B) has been enacted.

§644a. Small Business Procurement Advisory Council

(a) Establishment

There is hereby established an interagency council to be known as the "Small Business Procurement Advisory Council" (hereinafter in this section referred to as the "Council").

(b) Duties

The duties of the Council are—

(1) to develop positions on proposed procurement regulations affecting the small business

community;

(2) to submit comments reflecting such positions to appropriate regulatory authorities;

(3) to conduct reviews of each Office of Small and Disadvantaged Business Utilization established under section 644(k) of this title to determine the compliance of each Office with requirements under such section;

(4) to identify best practices for maximizing small business utilization in Federal contracting that may be implemented by Federal agencies having procurement powers; and

(5) to submit, annually, to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a report describing—

(A) the comments submitted under paragraph (2) during the 1-year period ending on the date on which the report is submitted, including any outcomes related to the comments;

(B) the results of reviews conducted under paragraph (3) during such 1-year period; and

(C) best practices identified under paragraph (4) during such 1-year period.

(c) Membership

The Council shall be composed of the following members:

(1) The Administrator of the Small Business Administration (or the designee of the Administrator).

(2) The Director of the Minority Business Development Agency.

(3) The head of each Office of Small and Disadvantaged Business Utilization in each Federal agency having procurement powers.

(d) Chairman

The Council shall be chaired by the Administrator of the Small Business Administration (or the designee of the Administrator).

(e) Meetings

The Council shall meet at the call of the chairman as necessary to consider proposed procurement regulations affecting the small business community.

(f) Consideration of Council comments

The Federal Acquisition Regulatory Council and other appropriate regulatory authorities shall consider comments submitted in a timely manner pursuant to subsection (b)(2).

(Pub. L. 103–355, title VII, §7104, Oct. 13, 1994, 108 Stat. 3369; Pub. L. 112–239, div. A, title XVI, §1692, Jan. 2, 2013, 126 Stat. 2089.)

CODIFICATION

Section was formerly set out as a note under section 644 of this title.

Section was enacted as part of the Federal Acquisition Streamlining Act of 1994, and not as part of the Small Business Act which comprises this chapter.

AMENDMENTS

2013—Subsec. (b)(3) to (5). Pub. L. 112–239, §1692(a), added pars. (3) to (5).

Subsec. (c)(3). Pub. L. 112–239, §1692(b), struck out "(established under section 644(k) of this title)" after "Utilization".

Subsec. (d). Pub. L. 112–239, §1692(c), inserted "(or the designee of the Administrator)" after "Small Business Administration".

§645. Offenses and penalties

(a) False statements; overvaluation of securities

Whoever makes any statement knowing it to be false, or whoever willfully overvalues any security, for the purpose of obtaining for himself or for any applicant any loan, or extension thereof by renewal, deferment of action, or otherwise, or the acceptance, release, or substitution of security therefor, or for the purpose of influencing in any way the action of the Administration, or for the

purpose of obtaining money, property, or anything of value, under this chapter, shall be punished by a fine of not more than $5,000 or by imprisonment for not more than two years, or both.

(b) Embezzlement, etc.

Whoever, being connected in any capacity with the Administration, (1) embezzles, abstracts, purloins, or willfully misapplies any moneys, funds, securities, or other things of value, whether belonging to it or pledged or otherwise entrusted to it, or (2) with intent to defraud the Administration or any other body politic or corporate, or any individual, or to deceive any officer, auditor, or examiner of the Administration, makes any false entry in any book, report, or statement of or to the Administration, or, without being duly authorized, draws any order or issues, puts forth, or assigns any note, debenture, bond, or other obligation, or draft, bill of exchange, mortgage, judgment, or decree thereof, or (3) with intent to defraud participates or shares in or receives directly or indirectly any money, profit, property, or benefit through any transaction, loan, commission, contract, or any other act of the Administration, or (4) gives any unauthorized information concerning any future action or plan of the Administration which might affect the value of securities, or, having such knowledge, invests or speculates, directly or indirectly, in the securities or property of any company or corporation receiving loans or other assistance from the Administration, shall be punished by a fine of not more than $10,000 or by imprisonment for not more than five years, or both.

(c) Concealment, etc.

Whoever, with intent to defraud, knowingly conceals, removes, disposes of, or converts to his own use or to that of another, any property mortgaged or pledged to, or held by, the Administration, shall be fined not more than $5,000 or imprisoned not more than five years, or both; but if the value of such property does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(d) Misrepresentation, etc.

(1) Whoever misrepresents the status of any concern or person as a "small business concern", a "qualified HUBZone small business concern", a "small business concern owned and controlled by socially and economically disadvantaged individuals", or a "small business concern owned and controlled by women", in order to obtain for oneself or another any—

(A) prime contract to be awarded pursuant to section 638, 644, or 657a of this title;

(B) subcontract to be awarded pursuant to section 637(a) of this title;

(C) subcontract that is to be included as part or all of a goal contained in a subcontracting plan required pursuant to section 637(d) of this title; or

(D) prime or subcontract to be awarded as a result, or in furtherance, of any other provision of Federal law that specifically references section 637(d) of this title for a definition of program eligibility,[1] shall be subject to the penalties and remedies described in paragraph (2).

(2) Any person who violates paragraph (1) shall—

(A) be punished by a fine of not more than $500,000 or by imprisonment for not more than 10 years, or both;

(B) be subject to the administrative remedies prescribed by the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–3812);

(C) be subject to suspension and debarment as specified in subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation); and

(D) be ineligible for participation in any program or activity conducted under the authority of this chapter or the Small Business Investment Act of 1958 (15 U.S.C. 661 et seq.) for a period not to exceed 3 years.

(3) LIMITATION ON LIABILITY.—This subsection shall not apply to any conduct in violation of subsection (a) if the defendant acted in good faith reliance on a written advisory opinion from a Small Business Development Center (as defined in this chapter), or an entity participating in the

Procurement Technical Assistance Cooperative Agreement Program defined in chapter 142 of title 10; however nothing in this chapter shall obligate either entity to provide such a letter nor shall the provision of such a letter in any way render the providing entity liable to the business concern should the Administrator later determine that the concern is not a small business concern. Upon issuance of an advisory opinion under this paragraph, the entity issuing the advisory opinion shall remit a copy of the opinion to the General Counsel of the Administration, who may reject the advisory opinion. If the General Counsel of the Administration rejects the advisory opinion, the Administration shall notify the entity issuing the advisory opinion and the recipient of the opinion, after which time the business concern may not rely upon the opinion.

(e) Representations under subsection (d) of this section to be in writing

Any representation of the status of any concern or person as a "small business concern", a "HUBZone small business concern", a "small business concern owned and controlled by socially and economically disadvantaged individuals", or a "small business concern owned and controlled by women" in order to obtain any prime contract or subcontract enumerated in subsection (d) of this section shall be in writing.

(f) Misrepresentation of compliance with section 636(j)(10)(I)

Whoever falsely certifies past compliance with the requirements of section 636(j)(10)(I) of this title shall be subject to the penalties prescribed in subsection (d) of this section.

(g) Subcontracting limitations

(1) In general

Whoever violates a requirement established under section 657s of this title shall be subject to the penalties prescribed in subsection (d), except that, for an entity that exceeded a limitation on subcontracting under such section, the fine described in subsection (d)(2)(A) shall be treated as the greater of—

(A) $500,000; or

(B) the dollar amount expended, in excess of permitted levels, by the entity on subcontractors.

(2) Monitoring

Not later than 1 year after January 2, 2013, the Administrator shall take such actions as are necessary to ensure that an existing Federal subcontracting reporting system is modified to notify the Administrator, the appropriate Director of the Office of Small and Disadvantaged Business Utilization, and the appropriate contracting officer if a requirement established under section 657s of this title is violated.

(Pub. L. 85–536, §2[16], July 18, 1958, 72 Stat. 395; Pub. L. 88–264, §2, Feb. 5, 1964, 78 Stat. 8; Pub. L. 99–272, title XVIII, §18009, Apr. 7, 1986, 100 Stat. 368; Pub. L. 100–656, title IV, §405, Nov. 15, 1988, 102 Stat. 3875; Pub. L. 103–355, title VII, §7106(c), Oct. 13, 1994, 108 Stat. 3376; Pub. L. 105–85, div. A, title X, §1073(g)(4), Nov. 18, 1997, 111 Stat. 1906; Pub. L. 105–135, title VI, §603(c), Dec. 2, 1997, 111 Stat. 2632; Pub. L. 112–239, div. A, title XVI, §§1652, 1681(a), 1682(a), Jan. 2, 2013, 126 Stat. 2081, 2085, 2086.)

REFERENCES IN TEXT

The Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–3812), referred to in subsec. (d)(2)(B), is subtitle B of title VI of Pub. L. 99–509, Oct. 21, 1986, 100 Stat. 1934, as amended, which is classified generally to chapter 38 (§3801 et seq.) of Title 31, Money and Finance. For complete classification of this Act to the Code, see Short Title note set out under section 3801 of Title 31 and Tables.

The Small Business Investment Act of 1958, referred to in subsec. (d)(2)(D), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, as amended, which is classified principally to chapter 14B (§661 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

PRIOR PROVISIONS

Prior similar provisions were contained in section 209 of act July 30, 1953, ch. 282, title II, 67 Stat. 237,

which was previously classified to section 638 of this title. The provisions of section 216 of act July 30, 1953, formerly classified to this section, were transferred to section 2[8] of Pub. L. 85–536, which was classified to section 637(c) of this title prior to repeal by Pub. L. 102–191. See section 656 of this title.

AMENDMENTS

2013—Subsec. (d)(2)(C). Pub. L. 112–239, §1682(a), struck out "on the basis that such misrepresentation indicates a lack of business integrity that seriously and directly affects the present responsibility to perform any contract awarded by the Federal Government or a subcontract under such a contract" after "regulation)".

Subsec. (d)(3). Pub. L. 112–239, §1681(a), added par. (3).

Subsec. (g). Pub. L. 112–239, §1652, added subsec. (g).

1997—Subsec. (d)(1). Pub. L. 105–135, §603(c)(1)(A), inserted ", a 'qualified HUBZone small business concern'," after " 'small business concern',".

Pub. L. 105–85 substituted "concern owned and controlled by women" for "concerns owned and controlled by women".

Subsec. (d)(1)(A). Pub. L. 105–135, §603(c)(1)(B), substituted "section 638, 644, or 657a" for "section 638 or 644".

Subsec. (e). Pub. L. 105–135, §603(c)(2), inserted ", a 'HUBZone small business concern'," after " 'small business concern',".

Pub. L. 105–85 substituted "concern owned and controlled by women" for "concerns owned and controlled by women".

1994—Subsec. (d)(1). Pub. L. 103–355, §7106(c)(1), substituted ", a 'small business concern owned and controlled by socially and economically disadvantaged individuals', or a 'small business concerns owned and controlled by women' " for "or 'small business concern owned and controlled by socially and economically disadvantaged individuals' ".

Subsec. (e). Pub. L. 103–355, §7106(c)(2), substituted ", a 'small business concern owned and controlled by socially and economically disadvantaged individuals', or a 'small business concerns owned and controlled by women' " for "or 'small business concern owned and controlled by socially and economically disadvantaged individuals' ".

1988—Subsec. (d). Pub. L. 100–656, §405(a), amended subsec. (d) generally, designating existing provisions as par. (1), redesignating former pars. (1) to (4) as subpars. (A) to (D), respectively, and in subpar. (D), substituting "subject to the penalties and remedies described in paragraph (2)" for "punished by a fine of not more than $50,000 or by imprisonment for not more than five years, or both", and adding par. (2).

Subsec. (f). Pub. L. 100–656, §405(b), added subsec. (f).

1986—Subsecs. (d), (e). Pub. L. 99–272 added subsecs. (d) and (e).

1964—Subsec. (c). Pub. L. 88–264 added subsec. (c).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of Title 10, Armed Forces.

REGULATIONS

Pub. L. 112–239, div. A, title XVI, §1681(b), Jan. 2, 2013, 126 Stat. 2085, provided that: "Not later than 270 days after the date of enactment of this part [Jan. 2, 2013], the Administrator of the Small Business Administration shall issue rules defining what constitutes an adequate advisory opinion for purposes of section 16(d)(3) of the Small Business Act [15 U.S.C. 645(d)(3)]."

DEVELOPMENT AND PROMULGATION OF GUIDANCE

Pub. L. 112–239, div. A, title XVI, §1682(b), Jan. 2, 2013, 126 Stat. 2086, provided that: "Not later than 270 days after the date of enactment of this part [Jan. 2, 2013], the Administrator of the Small Business Administration shall develop and promulgate guidance implementing this section [amending this section and enacting provisions set out as a note below]."

PUBLICATION OF PROCEDURES REGARDING SUSPENSION AND DEBARMENT

Pub. L. 112–239, div. A, title XVI, §1682(c), Jan. 2, 2013, 126 Stat. 2086, provided that: "Not later than 270 days after the date of enactment of this part [Jan. 2, 2013], the Administrator [of the Small Business

Administration] shall publish and maintain on the [Small Business] Administration's Web site the current standard operating procedures of the Administration for suspension and debarment, and the name and contact information for the individual designated by the Administrator as the senior individual responsible for suspension and debarment proceedings."

[1] *So in original. Following provision probably should be set flush with par. (1).*

§645a. Annual report on suspensions and debarments proposed by Small Business Administration

(a) Report requirement

The Administrator of the Small Business Administration shall submit each year to the Committee on Small Business and Entrepreneurship of the Senate, and the Committee on Small Business of the House of Representatives a report on the suspension and debarment actions taken by the Administrator during the year preceding the year of submission of the report.

(b) Matters covered

The report required by subsection (a) shall include the following information for the year covered by the report:

(1) Number

The number of contractors proposed for suspension or debarment.

(2) Source

The office within a Federal agency that originated each proposal for suspension or debarment.

(3) Reasons

The reason for each proposal for suspension or debarment.

(4) Results

The result of each proposal for suspension or debarment, and the reason for such result.

(5) Referrals

The number of suspensions or debarments referred to the Inspector General of the Small Business Administration or another agency, or to the Attorney General (for purposes of this paragraph, the Administrator may redact identifying information on names of companies or other information in order to protect the integrity of any ongoing criminal or civil investigation).

(Pub. L. 112–239, div. A, title XVI, §1683, Jan. 2, 2013, 126 Stat. 2086.)

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 2013, and not as part of the Small Business Act which comprises this chapter.

§646. Liens

Any interest held by the Administration in property, as security for a loan, shall be subordinate to any lien on such property for taxes due on the property to a State, or political subdivision thereof, in any case where such lien would, under applicable State law, be superior to such interest if such interest were held by any party other than the United States.

(Pub. L. 85–536, §2[17], July 18, 1958, 72 Stat. 396.)

PRIOR PROVISIONS

Section 217 of act July 30, 1953, ch. 282, title II, 67 Stat. 239, was previously classified to this section. See section 640 of this title, and Codification note set out under section 631 of this title.

§647. Duplication of activities of other Federal departments or agencies

(a) General prohibition; exception

The Administration shall not duplicate the work or activity of any other department or agency of the Federal Government,,[1] and nothing contained in this chapter shall be construed to authorize any such duplication unless such work or activity is expressly provided for in this chapter. If loan applications are being refused or loans denied by such other department or agency responsible for such work or activity due to administrative withholding from obligation or withholding from apportionment, or due to administratively declared moratorium, then, for purposes of this section, no duplication shall be deemed to have occurred.

(b) Definitions

As used in this chapter—

(1) "agricultural enterprises" means those businesses engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries; and

(2) "credit elsewhere" means the availability of sufficient credit from non-Federal sources at reasonable rates and terms, taking into consideration prevailing private rates and terms in the community in or near where the concern transacts business for similar purposes and periods of time.

(Pub. L. 85–536, §2[18], July 18, 1958, 72 Stat. 396; Pub. L. 93–386, §5, Aug. 23, 1974, 88 Stat. 746; Pub. L. 94–305, title I, §112(e), June 4, 1976, 90 Stat. 667; Pub. L. 96–38, title I, §101(c), July 25, 1979, 93 Stat. 119; Pub. L. 96–302, title I, §119(c), July 2, 1980, 94 Stat. 841; Pub. L. 98–270, title III, §303, Apr. 18, 1984, 98 Stat. 160; Pub. L. 98–369, div. B, title IV, §2401, July 18, 1984, 98 Stat. 1116; Pub. L. 99–272, title XVIII, §18006(a)(3), Apr. 7, 1986, 100 Stat. 366.)

PRIOR PROVISIONS

Prior similar provisions were contained in section 225, of act July 30, 1953, ch. 282, as added by act Aug. 9, 1955, ch. 628, §14, 69 Stat. 551, which was previously classified to section 651 of this title. The provisions of section 218 of act July 30, 1953, formerly classified to this section, were transferred to section 2[12] of Pub. L. 85–536, and are classified to section 641 of this title. See Codification note set out under section 631 of this title.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–272 struck out agricultural enterprises exception and proviso that, prior to Oct. 1, 1987, an agricultural enterprise not be eligible for loan assistance under section 636(b)(1) of this title to repair or replace property other than residences and/or personal property unless it is declined for, or would be declined for, emergency loan assistance at substantially similar interest rates from the Farmers Home Administration under subchapter III of the Consolidated Farm and Rural Development Act.

1984—Subsec. (a). Pub. L. 98–369 substituted "October 1, 1987" for "October 1, 1986".

Pub. L. 98–270 substituted "October 1, 1986" for "October 1, 1983".

1980—Subsec. (a). Pub. L. 96–302, §119(c)(1), inserted proviso relating to eligibility for loan assistance prior to October 1, 1983.

Subsec. (b). Pub. L. 96–302, §119(c)(2), added par. (1) and designated as par. (2) existing definition of "credit elsewhere".

1979—Pub. L. 96–38 designated existing provisions as subsec. (a) and added subsec. (b).

1976—Pub. L. 94–305 inserted reference to those enterprises engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries.

1974—Pub. L. 93–386 inserted provision authorizing the refusal of loan applications and the denial of loans, for purposes of this section, to be deemed nonduplication of activities.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–270 effective Oct. 1, 1983, see section 313 of Pub. L. 98–270, set out as a note under section 632 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–302 inapplicable to disasters commencing on or before Oct. 1, 1980, see section 119(d) of Pub. L. 96–302, set out as a note under section 636 of this title.

PROGRAMS ADMINISTERED BY THE DEPARTMENT OF COMMERCE

Pub. L. 95–507, §207, Oct. 24, 1978, 92 Stat. 1767, provided that: "Nothing in this chapter [meaning chapter 1 of title II of Pub. L. 95–507, consisting of sections 201–206 of Pub. L. 95–507 which amended sections 631, 633, 636, and 637 of this title] is intended to duplicate or limit any programs or projects administered by the Department of Commerce."

[1] *So in original.*

§648. Small business development center program authorization

(a) Grants, contracts and cooperative agreements for establishment of small business development centers and for small business activities and purposes; role of Administration; non-Federal additional amount; amount of grant; eligibility

(1) The Administration is authorized to make grants (including contracts and cooperative agreements) to any State government or any agency thereof, any regional entity, any State-chartered development, credit or finance corporation, any women's business center operating pursuant to section 656 of this title, any public or private institution of higher education, including but not limited to any land-grant college or university, any college or school of business, engineering, commerce, or agriculture, community college or junior college, or to any entity formed by two or more of the above entities (herein referred to as "applicants") to assist in establishing small business development centers and to any such body for: small business oriented employment or natural resources development programs; studies, research, and counseling concerning the managing, financing, and operation of small business enterprises; management and technical assistance regarding small business participation in international markets, export promotion and technology transfer; delivery or distribution of such services and information; and providing access to business analysts who can refer small business concerns to available experts: *Provided*, That after December 31, 1990, the Administration shall not make a grant to any applicant other than an institution of higher education or a women's business center operating pursuant to section 656 of this title as a Small Business Development Center unless the applicant was receiving a grant (including a contract or cooperative agreement) on such date. The Administration shall require any applicant for a small business development center grant with performance commencing on or after January 1, 1992 to have its own budget and to primarily utilize institutions of higher education and women's business centers operating pursuant to section 656 of this title to provide services to the small business community. The term of such grants shall be made on a calendar year basis or to coincide with the Federal fiscal year.

(2) COOPERATION TO PROVIDE INTERNATIONAL TRADE SERVICES.—

(A) INFORMATION AND SERVICES.—The small business development centers shall work in close cooperation with the Administration's regional and local offices, the Department of Commerce, appropriate Federal, State and local agencies (including State trade agencies), and the small business community to serve as an active information dissemination and service delivery mechanism for existing trade promotion, trade finance, trade adjustment, trade remedy and trade data collection programs of particular utility for small businesses.

(B) COOPERATION WITH STATE TRADE AGENCIES AND EXPORT ASSISTANCE CENTERS.—A small business development center that counsels a small business concern on issues relating to international trade shall—

(i) consult with State trade agencies and Export Assistance Centers to provide appropriate services to the small business concern; and

(ii) as necessary, refer the small business concern to a State trade agency or an Export Assistance Center for further counseling or assistance.

(C) DEFINITION.—In this paragraph, the term "Export Assistance Center" has the same meaning as in section 649 of this title.

(3) The Small Business Development Center Program shall be under the general management and oversight of the Administration for the delivery of programs and services to the small business community. Such programs and services shall be jointly developed, negotiated, and agreed upon, with full participation of both parties, pursuant to an executed cooperative agreement between the Small Business Development Center applicant and the Administration.

(A) Small business development centers are authorized to form an association to pursue matters of common concern. If more than a majority of the small business development centers which are operating pursuant to agreements with the Administration are members of such an association, the Administration is authorized and directed to recognize the existence and activities of such an association and to consult with it and develop documents (i) announcing the annual scope of activities pursuant to this section, (ii) requesting proposals to deliver assistance as provided in this section and (iii) governing the general operations and administration of the Small Business Development Center Program, specifically including the development of regulations and a uniform negotiated cooperative agreement for use on an annual basis when entering into individual negotiated agreements with small business development centers.

(B) Provisions governing audits, cost principles and administrative requirements for Federal grants, contracts and cooperative agreements which are included in uniform requirements of Office of Management and Budget (OMB) Circulars shall be incorporated by reference and shall not be set forth in summary or other form in regulations.

(C) On an annual basis, the Small Business Development Center shall review and coordinate public and private partnerships and cosponsorships with the Administration for the purpose of more efficiently leveraging available resources on a National [1] and a State basis.

(4) SMALL BUSINESS DEVELOPMENT CENTER PROGRAM LEVEL.—

(A) IN GENERAL.—The Administration shall require as a condition of any grant (or amendment or modification thereof) made to an applicant under this section, that a matching amount (excluding any fees collected from recipients of such assistance) equal to the amount of such grant be provided from sources other than the Federal Government, to be comprised of not less than 50 percent cash and not more than 50 percent of indirect costs and in-kind contributions.

(B) RESTRICTION.—The matching amount described in subparagraph (A) shall not include any indirect costs or in-kind contributions derived from any Federal program.

(C) FUNDING FORMULA.—

(i) IN GENERAL.—Subject to clause (iii), the amount of a formula grant received by a State under this subparagraph shall be equal to an amount determined in accordance with the following formula:

(I) The annual amount made available under section 20(a) [2] for the Small Business Development Center Program, less any reductions made for expenses authorized by clause (v) of this subparagraph, shall be divided on a pro rata basis, based on the percentage of the population of each State, as compared to the population of the United States.

(II) If the pro rata amount calculated under subclause (I) for any State is less than the minimum funding level under clause (iii), the Administration shall determine the aggregate amount necessary to achieve that minimum funding level for each such State.

(III) The aggregate amount calculated under subclause (II) shall be deducted from the amount calculated under subclause (I) for States eligible to receive more than the minimum funding level. The deductions shall be made on a pro rata basis, based on the population of each such State, as compared to the total population of all such States.

(IV) The aggregate amount deducted under subclause (III) shall be added to the grants of those States that are not eligible to receive more than the minimum funding level in order to achieve the minimum funding level for each such State, except that the eligible amount of a grant to any State shall not be reduced to an amount below the minimum funding level.

(ii) GRANT DETERMINATION.—The amount of a grant that a State is eligible to apply for under this subparagraph shall be the amount determined under clause (i), subject to any modifications required under clause (iii), and shall be based on the amount available for the fiscal year in which performance of the grant commences, but not including amounts distributed in accordance with clause (iv). The amount of a grant received by a State under any provision of this subparagraph shall not exceed the amount of matching funds from sources other than the Federal Government, as required under subparagraph (A).

(iii) MINIMUM FUNDING LEVEL.—The amount of the minimum funding level for each State shall be determined for each fiscal year based on the amount made available for that fiscal year to carry out this section, as follows:

(I) If the amount made available is not less than $81,500,000 and not more than $90,000,000, the minimum funding level shall be $500,000.

(II) If the amount made available is less than $81,500,000, the minimum funding level shall be the remainder of $500,000 minus a percentage of $500,000 equal to the percentage amount by which the amount made available is less than $81,500,000.

(III) If the amount made available is more than $90,000,000, the minimum funding level shall be the sum of $500,000 plus a percentage of $500,000 equal to the percentage amount by which the amount made available exceeds $90,000,000.

(iv) DISTRIBUTIONS.—Subject to clause (iii), if any State does not apply for, or use, its full funding eligibility for a fiscal year, the Administration shall distribute the remaining funds as follows:

(I) If the grant to any State is less than the amount received by that State in fiscal year 2000, the Administration shall distribute such remaining funds, on a pro rata basis, based on the percentage of shortage of each such State, as compared to the total amount of such remaining funds available, to the extent necessary in order to increase the amount of the grant to the amount received by that State in fiscal year 2000, or until such funds are exhausted, whichever first occurs.

(II) If any funds remain after the application of subclause (I), the remaining amount may be distributed as supplemental grants to any State, as the Administration determines, in its discretion, to be appropriate, after consultation with the association referred to in subsection (a)(3)(A) of this section.

(v) USE OF AMOUNTS.—

(I) IN GENERAL.—Of the amounts made available in any fiscal year to carry out this section—

(aa) not more than $500,000 may be used by the Administration to pay expenses enumerated in subparagraphs (B) through (D) of section 20(a)(1); [2] and

(bb) not more than $500,000 may be used by the Administration to pay the examination expenses enumerated in section 20(a)(1)(E).[2]

(II) LIMITATION.—No funds described in subclause (I) may be used for examination expenses under section 20(a)(1)(E) [2] if the usage would reduce the amount of grants made available under clause (i)(I) of this subparagraph to less than $85,000,000 (after excluding any amounts provided in appropriations Acts, or accompanying report language, for specific institutions or for purposes other than the general small business development center program) or would further reduce the amount of such grants below such amount.

(vi) EXCLUSIONS.—Grants provided to a State by the Administration or another Federal agency to carry out subsection (a)(6) or (c)(3)(G) of this section, or for supplemental grants set forth in clause (iv)(II) of this subparagraph, shall not be included in the calculation of maximum funding for a State under clause (ii) of this subparagraph.

(vii) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subparagraph—

(I) $130,000,000 for fiscal year 2005; and

(II) $135,000,000 for fiscal year 2006.

(viii) LIMITATION.—From the funds appropriated pursuant to clause (vii), the Administration shall reserve not less than $1,000,000 in each fiscal year to develop portable assistance for startup and sustainability non-matching grant programs to be conducted by eligible small business development centers in communities that are economically challenged as a result of a business or government facility down sizing or closing, which has resulted in the loss of jobs or small business instability. A non-matching grant under this clause shall not exceed $100,000, and shall be used for small business development center personnel expenses and related small business programs and services.

(ix) STATE DEFINED.—In this subparagraph, the term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(5) FEDERAL CONTRACTS WITH SMALL BUSINESS DEVELOPMENT CENTERS.—

(A) IN GENERAL.—Subject to the conditions set forth in subparagraph (B), a small business development center may enter into a contract with a Federal department or agency to provide specific assistance to small business concerns.

(B) CONTRACT PREREQUISITES.—Before bidding on a contract described in subparagraph (A), a small business development center shall receive approval from the Associate Administrator of the small business development center program of the subject and general scope of the contract. Each approval under subparagraph (A) shall be based upon a determination that the contract will provide assistance to small business concerns and that performance of the contract will not hinder the small business development center in carrying out the terms of the grant received by the small business development center from the Administration.

(C) EXEMPTION FROM MATCHING REQUIREMENT.—A contract under this paragraph shall not be subject to the matching funds or eligibility requirements of paragraph (4).

(D) ADDITIONAL PROVISION.—Notwithstanding any other provision of law, a contract for assistance under this paragraph shall not be applied to any Federal department or agency's small business, woman-owned business, or socially and economically disadvantaged business contracting goal under section 644(g) of this title.

(6) Any applicant which is funded by the Administration as a Small Business Development Center may apply for an additional grant to be used solely to assist—

(A) with the development and enhancement of exports by small business concerns;

(B) in technology transfer; and

(C) with outreach, development, and enhancement of minority-owned small business startups or expansions, HUBZone small business concerns, veteran-owned small business startups or expansions, and women-owned small business startups or expansions, in communities impacted by base closings or military or corporate downsizing, or in rural or underserved communities;

as provided under subparagraphs (B) through (G) of subsection (c)(3) of this section. Applicants for such additional grants shall comply with all of the provisions of this section, including providing matching funds, except that funding under this paragraph shall be effective for any fiscal year to the extent provided in advance in appropriations Acts and shall be in addition to the dollar program limitations specified in paragraphs (4) and (5). No recipient of funds under this paragraph shall receive a grant which would exceed its pro rata share of a $15,000,000 program based upon the populations to be served by the Small Business Development Center as compared to the total population of the United States. The minimum amount of eligibility for any State shall be $100,000.

(7) PRIVACY REQUIREMENTS.—

(A) IN GENERAL.—A small business development center, consortium of small business development centers, or contractor or agent of a small business development center may not disclose the name, address, or telephone number of any individual or small business concern receiving assistance under this section without the consent of such individual or small business concern, unless—

(i) the Administrator is ordered to make such a disclosure by a court in any civil or criminal enforcement action initiated by a Federal or State agency; or

(ii) the Administrator considers such a disclosure to be necessary for the purpose of conducting a financial audit of a small business development center, but a disclosure under this clause shall be limited to the information necessary for such audit.

(B) ADMINISTRATOR USE OF INFORMATION.—This section shall not—

(i) restrict Administrator access to program activity data; or

(ii) prevent the Administrator from using client information to conduct client surveys.

(C) REGULATIONS.—

(i) IN GENERAL.—The Administrator shall issue regulations to establish standards—

(I) for disclosures with respect to financial audits under subparagraph (A)(ii); and

(II) for client surveys under subparagraph (B)(ii), including standards for oversight of such surveys and for dissemination and use of client information.

(ii) MAXIMUM PRIVACY PROTECTION.—Regulations under this subparagraph, shall, to the extent practicable, provide for the maximum amount of privacy protection.

(iii) INSPECTOR GENERAL.—Until the effective date of regulations under this subparagraph, any client survey and the use of such information shall be approved by the Inspector General who shall include such approval in his semi-annual report.

(b) Area plan inconsistent with applicant's plan: assistance unavailable 1981 through 1983; plan of applicant: submittal to Administration, action on plan, review by Administration, assistance to out-of-State businesses

(1) Financial assistance shall not be made available to any applicant if approving such assistance would be inconsistent with a plan for the area involved which has been adopted by an agency recognized by the State government as authorized to do so and approved by the Administration in accordance with the standards and requirements established pursuant to this section.

(2) An applicant may apply to participate in the program by submitting to the Administration for approval a plan naming those authorized in subsection (a) of this section to participate in the program, the geographic area to be served, the services that it would provide, the method for delivering services, a budget, and any other information and assurances the Administration may require to insure that the applicant will carry out the activities eligible for assistance. The Administration is authorized to approve, conditionally approve or reject a plan or combination of plans submitted. In all cases, the Administration shall review plans for conformity with the plan submitted pursuant to paragraph (1) of this subsection, and with a view toward providing small business with the most comprehensive and coordinated assistance in the State or part thereof to be served.

(3) At the discretion of the Administration, the Administration is authorized to permit a small business development center to provide advice, information and assistance, as described in subsection (c) of this section, to small businesses located outside the State, but only to the extent such businesses are located within close geographical proximity to the small business development center, as determined by the Administration.

(c) Problem-solving assistance; development center extension services; staff and access requirements; assistance services; changing services for evolving needs; qualified small business vendors; non-profit entities; cooperation with regional and local offices, etc.; information sharing system

(1) Applicants receiving grants under this section shall assist small businesses in solving problems concerning operations, manufacturing, engineering, technology exchange and development, personnel administration, marketing, sales, merchandising, finance, accounting, business strategy development, and other disciplines required for small business growth and expansion, innovation, increased productivity, and management improvement, and for decreasing industry economic concentrations.

(2) A small business development center shall provide services as close as possible to small businesses by providing extension services and utilizing satellite locations when necessary. The facilities and staff of each Small Business Development Center shall be located in such places as to provide maximum accessibility and benefits to the small businesses which the center is intended to serve. To the extent possible, it also shall make full use of other Federal and State government programs that are concerned with aiding small business. A small business development center shall have—

(A) a full-time staff, including a full-time director who shall have the authority to make expenditures under the center's budget and who shall manage the program activities;

(B) access to business analysts to counsel, assist, and inform small business clients;

(C) access to technology transfer agents to provide state of art technology to small businesses through coupling with national and regional technology data sources;

(D) access to information specialists to assist in providing information searches and referrals to small business;

(E) access to part-time professional specialists to conduct research or to provide counseling assistance whenever the need arises; and

(F) access to laboratory and adaptive engineering facilities.

(3) Services provided by a small business development center shall include, but shall not be limited to—

(A) furnishing one-to-one individual counseling to small businesses, including—

(i) working with individuals to increase awareness of basic credit practices and credit requirements;

(ii) working with individuals to develop business plans, financial packages, credit applications, and contract proposals;

(iii) working with the Administration to develop and provide informational tools for use in working with individuals on pre-business startup planning, existing business expansion, and export planning; and

(iv) working with individuals referred by the local offices of the Administration and Administration participating lenders;

(B) assisting in technology transfer, research and development, including applied research, and coupling from existing sources to small businesses, including—

(i) working to increase the access of small businesses to the capabilities of automated flexible manufacturing systems;

(ii) working through existing networks and developing new networks for technology transfer that encourage partnership between the small business and academic communities to help commercialize university-based research and development and introduce university-based engineers and scientists to their counterparts in small technology-based firms; and

(iii) exploring the viability of developing shared production facilities, under appropriate circumstances;

(C) in cooperation with the Department of Commerce and other relevant Federal agencies, actively assisting small businesses in exporting by identifying and developing potential export markets, facilitating export transactions, developing linkages between United States small business firms and prescreened foreign buyers, assisting small businesses to participate in international trade shows, assisting small businesses in obtaining export financing, and facilitating

the development or reorientation of marketing and production strategies; where appropriate, the Small Business Development Center and the Administration may work in cooperation with the State to establish a State international trade center for these purposes;

(D) developing a program in conjunction with the Export-Import Bank and local and regional Administration offices that will enable Small Business Development Centers to serve as an information network and to assist small business applicants for Export-Import Bank financing programs, and otherwise identify and help to make available export financing programs to small businesses;

(E) working closely with the small business community, small business consultants, State agencies, universities and other appropriate groups to make translation services more readily available to small business firms doing business, or attempting to develop business, in foreign markets;

(F) in providing assistance under this subsection, applicants shall cooperate with the Department of Commerce and other relevant Federal agencies to increase access to available export market information systems, including the CIMS system;

(G) assisting small businesses to develop and implement strategic business plans to timely and effectively respond to the planned closure (or reduction) of a Department of Defense facility within the community, or actual or projected reductions in such firms' business base due to the actual or projected termination (or reduction) of a Department of Defense program or a contract in support of such program—

(i) by developing broad economic assessments of the adverse impacts of—

(I) the closure (or reduction) of the Department of Defense facility on the small business concerns providing goods or services to such facility or to the military and civilian personnel currently stationed or working at such facility; and

(II) the termination (or reduction) of a Department of Defense program (or contracts under such program) on the small business concerns participating in such program as a prime contractor, subcontractor or supplier at any tier;

(ii) by developing, in conjunction with appropriate Federal, State, and local governmental entities and other private sector organizations, the parameters of a transition adjustment program adaptable to the needs of individual small business concerns;

(iii) by conducting appropriate programs to inform the affected small business community regarding the anticipated adverse impacts identified under clause (i) and the economic adjustment assistance available to such firms; and

(iv) by assisting small business concerns to develop and implement an individualized transition business plan.[3]

(H) maintaining current information concerning Federal, State, and local regulations that affect small businesses and counsel [4] small businesses on methods of compliance. Counseling and technology development shall be provided when necessary to help small businesses find solutions for complying with environmental, energy, health, safety, and other Federal, State, and local regulations;

(I) coordinating and conducting research into technical and general small business problems for which there are no ready solutions;

(J) providing and maintaining a comprehensive library that contains current information and statistical data needed by small businesses;

(K) maintaining a working relationship and open communications with the financial and investment communities, legal associations, local and regional private consultants, and local and regional small business groups and associates in order to help address the various needs of the small business community;

(L) conducting in-depth surveys for local small business groups in order to develop general information regarding the local economy and general small business strengths and weaknesses in the locality;

(M) in cooperation with the Department of Commerce, the Administration and other relevant Federal agencies, actively assisting rural small businesses in exporting by identifying and developing potential export markets for rural small businesses, facilitating export transactions for rural small businesses, developing linkages between United States' rural small businesses and prescreened foreign buyers, assisting rural small businesses to participate in international trade shows, assisting rural small businesses in obtaining export financing and developing marketing and production strategies;

(N) assisting rural small businesses—

(i) in developing marketing and production strategies that will enable them to better compete in the domestic market—

(ii) by providing technical assistance needed by rural small businesses;

(iii) by making available managerial assistance to rural small business concerns; and

(iv) by providing information and assistance in obtaining financing for business startups and expansion;

(O) in conjunction with the United States Travel and Tourism Administration, assist rural small business in developing the tourism potential of rural communities by—

(i) identifying the cultural, historic, recreational, and scenic resources of such communities;

(ii) providing assistance to small businesses in developing tourism marketing and promotion plans relating to tourism in rural areas; and

(iii) assisting small business concerns to obtain capital for starting or expanding businesses primarily serving tourists;

(P) maintaining lists of local and regional private consultants to whom small businesses can be referred;

(Q) providing information to small business concerns regarding compliance with regulatory requirements;

(R) developing informational publications, establishing resource centers of reference materials, and distributing compliance guides published under section 312(a) [5] of the Small Business Regulatory Enforcement Fairness Act of 1996;

(S) providing small business owners with access to a wide variety of export-related information by establishing on-line computer linkages between small business development centers and an international trade data information network with ties to the Export Assistance Center program; and

(T) providing information and assistance to small business concerns with respect to establishing drug-free workplace programs on or before October 1, 2006.

(4) A small business development center shall continue to upgrade and modify its services, as needed, in order to meet the changing and evolving needs of the small business community.

(5) In addition to the methods prescribed in paragraph (2), a small business development center shall utilize and compensate as one of its resources qualified small business vendors, including but not limited to, private management consultants, private consulting engineers and private testing laboratories, to provide services as described in this subsection to small businesses on behalf of such small business development center.

(6) In any State (A) in which the Administration has not made a grant pursuant to paragraph (1) of subsection (a) of this section, or (B) in which no application for a grant has been made by a Small Business Development Center pursuant to paragraph (6) of such subsection within 60 days after the effective date of any grant under subsection (a)(1) of this section to such center or the date the Administration notifies the grantee funded under subsection (a)(1) of this section that funds are available for grant applications pursuant to subsection (a)(6) of this section, whichever date occurs last, the Administration may make grants to a non-profit entity in that State to carry out the activities specified in paragraph (6) of subsection (a) of this section. Any such applicants shall comply with the matching funds requirement of paragraph (4) of subsection (a) of this section. Such grants shall be

effective for any fiscal year only to the extent provided in advance in appropriations Acts, and each State shall be limited to the pro rata share provisions of paragraph (6) of subsection (a) of this section.

(7) In performing the services identified in paragraph (3), the Small Business Development Centers shall work in close cooperation with the Administration's regional and local offices, the local small business community, and appropriate State and local agencies.

(8) The Associate Administrator for Small Business Development Centers, in consultation with the Small Business Development Centers, shall develop and implement an information sharing system. Subject to amounts approved in advance in appropriations Acts, the Administration may make grants or enter [6] cooperative agreements with one or more centers to carry out the provisions of this paragraph. Said grants or cooperative agreements shall be awarded for periods of no more than five years duration. The matching funds provisions of subsection (a) of this section shall not be applicable to grants or cooperative agreements under this paragraph. The system shall—

(A) allow Small Business Development Centers participating in the program to exchange information about their programs; and

(B) provide information central to technology transfer.

(d) Enhancing export potential of businesses within State; State Office of International Trade

Where appropriate, the Small Business Development Centers shall work in conjunction with the relevant State agency and the Department of Commerce to develop a comprehensive plan for enhancing the export potential of small businesses located within the State. This plan may involve the cofunding and staffing of a State Office of International Trade within the State Small Business Development Center, using joint State and Federal funding, and any other appropriate measures directed at improving the export performance of small businesses within the State.

(e) Laboratory assistance; reimbursement for services

Laboratories operated and funded by the Federal Government are authorized and directed to cooperate with the Administration in developing and establishing programs to support small business development centers by making facilities and equipment available; providing experiment station capabilities in adaptive engineering; providing library and technical information processing capabilities; and providing professional staff for consulting. The Administration is authorized to reimburse the laboratories for such services.

(f) National Science Foundation; cooperation with Administration and Small Business Development Centers; center support

The National Science Foundation is authorized and directed to cooperate with the Administration and with the Small Business Development Centers in developing and establishing programs to support the centers.

(g) National Aeronautics and Space Administration and regional technology transfer centers

The National Aeronautics and Space Administration and regional technology transfer centers supported by the National Aeronautics and Space Administration are authorized and directed to cooperate with small business development centers participating in the program.

(h) Associate Administrator for Small Business Development Centers

(1) Appointment and compensation

The Administrator shall appoint an Associate Administrator for Small Business Development Centers who shall report to an official who is not more than one level below the Office of the Administrator and who shall serve without regard to the provisions of title 5 governing appointments in the competitive service, and without regard to chapter 51, and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at a rate not less than the rate of GS–17 of the General Schedule.

(2) Duties

(A) In general

The sole responsibility of the Associate Administrator for Small Business Development Centers shall be to administer the small business development center program. Duties of the position shall include recommending the annual program budget, reviewing the annual budgets submitted by each applicant, establishing appropriate funding levels therefore,[7] selecting applicants to participate in this program, implementing the provisions of this section, maintaining a clearinghouse to provide for the dissemination and exchange of information between small business development centers and conducting audits of recipients of grants under this section.

(B) Consultation requirements

In carrying out the duties described in this subsection, the Associate Administrator shall confer with and seek the advice of the Board established by subsection (i) of this section and Administration officials in areas served by the small business development centers; however, the Associate Administrator shall be responsible for the management and administration of the program and shall not be subject to the approval or concurrence of such Administration officials.

(i) National Small Business Development Center Advisory Board; establishment; membership; term; Chairman; advisory and counseling functions; meetings; compensation

(1) There is established a National Small Business Development Center Advisory Board (herein referred to as "Board") which shall consist of nine members appointed from civilian life by the Administrator and who shall be persons of outstanding qualifications known to be familiar and sympathetic with small business needs and problems. No more than three members shall be from universities or their affiliates and six shall be from small businesses or associations representing small businesses. At the time of the appointment of the Board, the Administrator shall designate one-third of the members and at least one from each category whose term shall end in two years from the date of appointment, a second third whose term shall end in three years from the date of appointment, and the final third whose term shall end in four years from the date of appointment. Succeeding Boards shall have three-year terms, with one-third of the Board changing each year.

(2) The Board shall elect a Chairman and advise, counsel, and confer with the Associate Administrator for Small Business Development Centers in carrying out the duties described in this section. The Board shall meet at least semiannually and at the call of the Chairman of the Board. Each member of the Board shall be entitled to be compensated at the rate not in excess of the per diem, equivalent of the highest rate of pay for individuals occupying the position under GS–18 of the General Schedule for each day engaged in activities of the Board and shall be entitled to be reimbursed for expenses as a member of the Board.

(j) Small business development center advisory board; establishment; chairman; conferences with director on policy

(1) Each small business development center shall establish an advisory board.

(2) Each small business development center advisory board shall elect a chairman and advise, counsel, and confer with the director of the small business development center on all policy matters pertaining to the operation of the small business development center, including who may be eligible to receive assistance from, and how local and regional private consultants may participate with the small business development center.

(k) Program examination and accreditation

(1) Examination

Not later than 180 days after October 22, 1994, the Administration shall develop and implement a biennial programmatic and financial examination of each small business development center established pursuant to this section.

(2) Accreditation

The Administration may provide financial support, by contract or otherwise, to the association authorized by subsection (a)(3)(A) of this section for the purpose of developing a small business

development center accreditation program.

(3) Extension or renewal of cooperative agreements

(A) In general

In extending or renewing a cooperative agreement of a small business development center, the Administration shall consider the results of the examination and accreditation program conducted pursuant to paragraphs (1) and (2).

(B) Accreditation requirement

After September 30, 2000, the Administration may not renew or extend any cooperative agreement with a small business development center unless the center has been approved under the accreditation program conducted pursuant to this subsection, except that the Associate Administrator for Small Business Development Centers may waive such accreditation requirement, in the discretion of the Associate Administrator, upon a showing that the center is making a good faith effort to obtain accreditation.

(l) Contract authority

The authority to enter into contracts shall be in effect for each fiscal year only to the extent and in the amounts as are provided in advance in appropriations Acts. After the administration has entered a contract, either as a grant or a cooperative agreement, with any applicant under this section, it shall not suspend, terminate, or fail to renew or extend any such contract unless the Administration provides the applicant with written notification setting forth the reasons therefore [7] and affording the applicant an opportunity for a hearing, appeal, or other administrative proceeding under the provisions of chapter 5 of title 5. If any contract or cooperative agreement under this section with an entity that is covered by this section is not renewed or extended, any award of a successor contract or cooperative agreement under this section to another entity shall be made on a competitive basis.

(m) Prohibition on certain fees

A small business development center shall not impose or otherwise collect a fee or other compensation in connection with the provision of counseling services under this section.

(n) Veterans assistance and services program

(1) In general

A small business development center may apply for a grant under this subsection to carry out a veterans assistance and services program.

(2) Elements of program

Under a program carried out with a grant under this subsection, a small business development center shall—

(A) create a marketing campaign to promote awareness and education of the services of the center that are available to veterans, and to target the campaign toward veterans, service-disabled veterans, military units, Federal agencies, and veterans organizations;

(B) use technology-assisted online counseling and distance learning technology to overcome the impediments to entrepreneurship faced by veterans and members of the Armed Forces; and

(C) increase coordination among organizations that assist veterans, including by establishing virtual integration of service providers and offerings for a one-stop point of contact for veterans who are entrepreneurs or owners of small business concerns.

(3) Amount of grants

A grant under this subsection shall be for not less than $75,000 and not more than $250,000.

(4) Funding

Subject to amounts approved in advance in appropriations Acts, the Administration may make grants or enter into cooperative agreements to carry out the provisions of this subsection.

(Pub. L. 85–536, §2[21], as added Pub. L. 96–302, title II, §202, July 2, 1980, 94 Stat. 843; amended

Pub. L. 98–395, §2, Aug. 21, 1984, 98 Stat. 1366; Pub. L. 100–418, title VIII, §8006(b), Aug. 23, 1988, 102 Stat. 1557; Pub. L. 100–590, title I, §§134, 135(3), Nov. 3, 1988, 102 Stat. 3006, 3007; Pub. L. 101–515, title V, §§5(a), 6, Nov. 5, 1990, 104 Stat. 2142; Pub. L. 101–574, title II, §201(a)(1), title III, §303, Nov. 15, 1990, 104 Stat. 2818, 2828; Pub. L. 102–366, title II, §§212, 223(a), Sept. 4, 1992, 106 Stat. 998, 1000; Pub. L. 103–81, §9(a), Aug. 13, 1993, 107 Stat. 783; Pub. L. 103–403, title IV, §§402–404, Oct. 22, 1994, 108 Stat. 4190, 4191; Pub. L. 104–66, title II, §2121, Dec. 21, 1995, 109 Stat. 730; Pub. L. 104–121, title II, §214(a), Mar. 29, 1996, 110 Stat. 859; Pub. L. 104–208, div. D, title I, §106, Sept. 30, 1996, 110 Stat. 3009–731; Pub. L. 105–135, title V, §§502, 506(a), Dec. 2, 1997, 111 Stat. 2622, 2624; Pub. L. 105–277, div. C, title IX, §905, Oct. 21, 1998, 112 Stat. 2681–710; Pub. L. 106–554, §1(a)(9) [title V, §503(e), title VIII, §804(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–695, 2763A–703; Pub. L. 107–20, title II, §2203(b), July 24, 2001, 115 Stat. 170; Pub. L. 108–447, div. K, title I, §§122, 142, Dec. 8, 2004, 118 Stat. 3449, 3454; Pub. L. 110–186, title I, §107, Feb. 14, 2008, 122 Stat. 627; Pub. L. 111–240, title I, §1209, Sept. 27, 2010, 124 Stat. 2536.)

REFERENCES IN TEXT

Section 20(a), referred to in subsec. (a)(4)(C)(i)(I), (v), means section 2[20(a)] of Pub. L. 85–536, as amended, which is set out as a note under section 631 of this title.

Section 312(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, referred to in subsec. (c)(3)(R), probably means section 212(a) of Pub. L. 104–121, which is set out in a note under section 601 of Title 5, Government Organization and Employees, because Pub. L. 104–121 does not contain a section 312.

The General Schedule, referred to in subsecs. (h)(1) and (i)(2), is set out under section 5332 of Title 5.

CODIFICATION

October 22, 1994, referred to in subsec. (k)(1), was in the original "the date of enactment of this subsection", which was translated as meaning the date of enactment of Pub. L. 103–403, which amended subsec. (k) generally, to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 648 of this title, act July 30, 1953, ch. 282, title II, §219, 67 Stat. 239, which related to requirements for loans, was omitted as superseded by section 642 of this title. See Codification note set out under section 631 of this title.

A prior section 2[21] of Pub. L. 85–536 was renumbered section 2[47] and is set out as a note under section 631 of this title.

AMENDMENTS

2010—Subsec. (a)(2). Pub. L. 111–240 designated existing provisions as subpar. (A), inserted par. (2) and subpar. (A) headings, substituted "The small business development centers" for "The Small Business Development Centers", inserted "(including State trade agencies)," after "local agencies", and added subpars. (B) and (C).

2008—Subsec. (n). Pub. L. 110–186 added subsec. (n).

2004—Subsec. (a)(4)(C)(vii) to (ix). Pub. L. 108–447, §122(b), added cls. (vii) and (viii), redesignated former cl. (viii) as (ix), and struck out heading and text of former cl. (vii). Text read as follows: "There is authorized to be appropriated to carry out this subparagraph $125,000,000 for each of fiscal years 2001, 2002, and 2003."

Subsec. (a)(7). Pub. L. 108–447, §142(a), added par. (7).

Subsec. (c)(3)(T). Pub. L. 108–447, §122(a), substituted "October 1, 2006" for "October 1, 2003".

Subsec. (k). Pub. L. 108–447, §142(b), substituted "Accreditation" for "Certification" and "accreditation" for "certification" wherever appearing in headings and text.

2001—Subsec. (a)(4)(C)(v)(II). Pub. L. 107–20 inserted ", or accompanying report language," after "in appropriations Acts".

2000—Subsec. (a)(4)(C). Pub. L. 106–554, §1(a)(9) [title VIII, §804(b)], amended heading and text of subpar. (C) generally, substituting present provisions for provisions providing that the amount of a grant received by a State under this section would be equal to the greater of $500,000, or the sum of the State's pro rata share of the national program, plus $300,000 in fiscal year 1998, $400,000 in fiscal year 1999, and $500,000 in each fiscal year thereafter, provisions relating to pro rata reductions, matching requirement, and exception for grants provided to a small business development center to carry out the provisions of subsection

(c)(3)(G), and provisions setting forth appropriations of $85,000,000 for fiscal year 1998, $90,000,000 for fiscal year 1999, and $95,000,000 for fiscal year 2000 and each fiscal year thereafter.

Subsec. (c)(3)(T). Pub. L. 106–554, §1(a)(9) [title V, §503(e)], substituted "2003" for "2000".

1998—Subsec. (c)(3)(T). Pub. L. 105–277 added subpar. (T).

1997—Subsec. (a)(1). Pub. L. 105–135, §502(a)(1), inserted "any women's business center operating pursuant to section 656 of this title," after "credit or finance corporation,", "or a women's business center operating pursuant to section 656 of this title" after "other than an institution of higher education", and "and women's business centers operating pursuant to section 656 of this title" after "utilize institutions of higher education".

Subsec. (a)(3). Pub. L. 105–135, §502(a)(2)(A), substituted "for the delivery of programs and services to the small business community. Such programs and services shall be jointly developed, negotiated, and agreed upon, with full participation of both parties, pursuant to an executed cooperative agreement between the Small Business Development Center applicant and the Administration" for ", but with recognition that a partnership exists under this section between the Administration and the applicant for the delivery of assistance to the small business community. Services shall be provided pursuant to a negotiated cooperative agreement with full participation of both parties".

Subsec. (a)(3)(C). Pub. L. 105–135, §502(a)(2)(B), added subpar. (C).

Subsec. (a)(4)(C)(i). Pub. L. 105–135, §502(a)(3)(A), added cl. (i) and struck out heading and text of former cl. (i). Text read as follows: "Except as provided in clause (ii), no State receiving funds under this section shall receive a grant that exceeds—

"(I) for fiscal year 1995, the sum of such State's pro rata share of a national program based upon the population of the State as compared to the total population in the United States, and $125,000; or

"(II) in each succeeding fiscal year, the sum of such State's pro rata share of a national program based upon the population of the State as compared to the total population in the United States, and $200,000."

Subsec. (a)(4)(C)(iii). Pub. L. 105–135, §502(a)(3)(B), added cl. (iii) and struck out former cl. (iii) which read as follows:

"(iii) AMOUNT.—The amount of the national program shall be—

"(I) $70,000,000 through September 30, 1996;

"(II) $77,500,000 from October 1, 1996 through September 30, 1997; and

"(III) $85,000,000 beginning October 1, 1997."

Subsec. (a)(6)(C). Pub. L. 105–135, §502(a)(4), added subpar. (C).

Subsec. (c)(3). Pub. L. 105–135, §502(b)(4), redesignated closing provisions as par. (4). Former par. (4) redesignated (5).

Subsec. (c)(3)(A). Pub. L. 105–135, §502(b)(1)(A), substituted "businesses, including—" for "businesses;" in introductory provisions and added cls. (i) to (iv).

Subsec. (c)(3)(B). Pub. L. 105–135, §502(b)(1)(B), realigned margins.

Subsec. (c)(3)(C). Pub. L. 105–135, §502(b)(1)(B), (C), realigned margins and inserted "and the Administration" after "Small Business Development Center".

Subsec. (c)(3)(D) to (G), (M) to (O), (Q), (R). Pub. L. 105–135, §502(b)(1)(B), realigned margins.

Subsec. (c)(3)(S). Pub. L. 105–135, §506(a), added subpar. (S).

Subsec. (c)(4). Pub. L. 105–135, §502(b)(4), redesignated closing provisions of par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (c)(5). Pub. L. 105–135, §502(b)(3), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Pub. L. 105–135, §502(b)(2), realigned margins, substituted "subsection (a)(1) of this section" for "paragraph (a)(1)" and "whichever date occurs last," for "which ever date occurs last,,".

Subsec. (c)(6) to (8). Pub. L. 105–135, §502(b)(3), redesignated pars. (5) to (7) as (6) to (8), respectively.

Subsec. (l). Pub. L. 105–135, §502(c), inserted at end "If any contract or cooperative agreement under this section with an entity that is covered by this section is not renewed or extended, any award of a successor contract or cooperative agreement under this section to another entity shall be made on a competitive basis."

Subsec. (m). Pub. L. 105–135, §502(d), added subsec. (m).

1996—Subsec. (c)(3)(Q), (R). Pub. L. 104–121 added subpars. (Q) and (R).

Subsec. (c)(7). Pub. L. 104–208, §106(a)(2)(A), substituted "Associate Administrator for Small Business Development Centers" for "Deputy Associate Administrator of the Small Business Development Center program".

Subsec. (h). Pub. L. 104–208, §106(a)(1), amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows:

"(h)(1) The Administrator shall appoint a Associate Administrator for Small Business Development Centers who shall report to an official who is not more than one level below the Office of the Administrator and who

shall serve without regard to the provisions of title 5 governing appointments in the competitive service, and without regard to chapter 51, and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at a rate not less than the rate of GS–17 of the General Schedule.

"(2) The sole responsibility of the Associate Administrator for Small Business Development Centers shall be to administer the small business development center program. Duties of the position shall include, but are not limited to, recommending the annual program budget, reviewing the annual budgets submitted by each applicant, establishing appropriate funding levels therefore, selecting applicants to participate in this program, implementing the provisions of this section, maintaining a clearinghouse to provide for the dissemination and exchange of information between small business development centers and conducting audits of recipients of grants under this section. The Associate Administrator for Small Business Development Centers shall confer with and seek the advise and counsel of the Board in carrying out the responsibilities described in this subsection."

Subsec. (i)(2). Pub. L. 104–208, §106(a)(2)(B), substituted "Associate Administrator for Small Business Development Centers" for "Deputy Associate Administrator for Management Assistance".

Subsec. (k)(3). Pub. L. 104–208, §106(b), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: "In extending or renewing a cooperative agreement of a small business development center, the Administration shall consider the results of the examination and certification program conducted pursuant to paragraphs (1) and (2)."

Subsec. (l). Pub. L. 104–208, §106(c), amended heading and text of subsec. (l) generally. Prior to amendment, text read as follows: "The authority to enter into contracts shall be in effect for each fiscal year only to the extent or in the amounts as are provided in advance in appropriations Acts. After the administration has entered a contract, either as a grant or a cooperative agreement, with any applicant under this section, it shall not suspend, terminate or fail to renew or extend any such contract unless the Administration provides the applicant with written notification setting forth the reasons therefor and affording the applicant an opportunity for a hearing, appeal or other administrative proceeding under the provisions of the Administrative Procedures Act."

1995—Subsec. (g). Pub. L. 104–66 amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: "The National Aeronautics and Space Administration and industrial application centers supported by the National Aeronautics and Space Administration are authorized and directed to cooperate with small business development centers participating in this program. The National Aeronautics and Space Administration shall report annually on the performance of such industrial application centers with recommendations to the Administration and the Congress on how such industrial application centers can be strengthened and expanded. The National Aeronautics and Space Administration shall include in its report to Congress information on the ability of industrial application centers to interact with the Nation's small business community and recommendations to the Administration on continued funding."

1994—Subsec. (a)(4). Pub. L. 103–403, §402, amended par. (4) generally. Prior to amendment, par. (4) read as follows: "Except as provided in paragraph (4), the Administration shall require, as a condition to any grant (or amendment or modification thereof) made to an applicant under this section that an additional amount (excluding any fees collected from recipients of such assistance) equal to the amount of such grant be provided from sources other than the Federal Government: *Provided*, That the additional amount shall not include any amount of indirect costs or in-kind contributions paid for under any Federal program, nor shall such indirect costs or in-kind contributions exceed 50 per centum of the non-Federal additional amount: *Provided further*, That no recipient of funds under this section shall receive a grant which would exceed its pro rata share of a $70,000,000 program based upon the population to be served by the Small Business Development Center as compared to the total population of the United States, plus $100,000 for each State, but no State shall receive less than $200,000."

Subsec. (a)(5). Pub. L. 103–403, §403, amended par. (5) generally, substituting present provisions for former provisions which required matching amount from non-Federal sources equal to amount of Federal grant.

Subsec. (k). Pub. L. 103–403, §404, amended subsec. (k) generally. Prior to amendment, subsec. (k) read as follows: "Within six months of August 21, 1984, the Administration shall develop and implement a program proposal for onsite evaluation of each Small Business Development Center. Such evaluation shall be conducted at least once every two years and shall provide for the participation of a representative of at least one other Small Business Development Center on a cost-reimbursement basis."

1993—Subsec. (c)(7). Pub. L. 103–81 substituted "system. Subject to amounts approved in advance in appropriations Acts, the Administration may make grants or enter cooperative agreements with one or more centers to carry out the provisions of this paragraph. Said grants or cooperative agreements shall be awarded for periods of no more than five years duration. The matching funds provisions of subsection (a) of this

section shall not be applicable to grants or cooperative agreements under this paragraph. The system shall" for "system which will" in introductory provisions.

1992—Subsec. (a)(3)(A), (B). Pub. L. 102–366, §223(a), added subpars. (A) and (B).

Subsec. (c)(3)(D) to (G). Pub. L. 102–366, §212, redesignated former subpars. (E) to (G) as (D) to (F), respectively, added subpar. (G), and struck out former subpar. (D) which read as follows: "assisting small businesses in developing and implementing marketing and production strategies that will enable them to better compete within the domestic market;".

1990—Subsec. (a)(1). Pub. L. 101–515, §6, struck out period at end of first sentence and inserted ": *Provided*, That after December 31, 1990, the Administration shall not make a grant to any applicant other than an institution of higher education as a Small Business Development Center unless the applicant was receiving a grant (including a contract or cooperative agreement) on such date. The Administration shall require any applicant for a small business development center grant with performance commencing on or after January 1, 1992 to have its own budget and to primarily utilize institutions of higher education to provide services to the small business community."

Subsec. (a)(4). Pub. L. 101–515, §5(a), and Pub. L. 101–574, §201(a)(1), amended par. (4) identically, substituting "*Provided further,* That no recipient of funds under this section shall receive a grant which would exceed its pro rata share of a $70,000,000 program based upon the population to be served by the Small Business Development Center as compared to the total population of the United States, plus $100,000 for each State, but no State shall receive less than $200,000." for "*Provided further,* That no recipient of funds under this section shall receive a grant which would exceed its pro rata share of a $65,000,000 program based upon the population to be served by the Small Business Development Center as compared to the total population in the United States, or $200,000, whichever is greater."

Subsec. (c)(3)(M) to (P). Pub. L. 101–574, §303, added subpars. (M) to (O) and redesignated former subpar. (M) as (P).

1988—Subsec. (a)(1). Pub. L. 100–418, §8006(b)(1), inserted provision relating to management and technical assistance regarding small business participation in international markets, export promotion and technology transfer.

Subsec. (a)(2) to (6). Pub. L. 100–418, §8006(b)(2), (3), added par. (2), redesignated former pars. (2) to (4) as (3) to (5), respectively, and added par. (6).

Subsec. (c)(3)(B) to (M). Pub. L. 100–418, §8006(b)(4), (5), added subpars. (B) to (G), redesignated former subpars. (C) to (H) as (H) to (M), respectively, and struck out former subpar. (B) which read as follows: "assisting in technology transfer, research, and coupling from existing sources to small businesses;".

Subsec. (c)(5). Pub. L. 100–590, §135(3), inserted "or the date the Administration notifies the grantee funded under subsection (a)(1) of this section that funds are available for grant applications pursuant to subsection (a)(6) of this section, which ever date occurs last," after "such center".

Pub. L. 100–418, §8006(b)(6), added par. (5).

Subsec. (c)(6), (7). Pub. L. 100–418, §8006(b)(6), added pars. (6) and (7).

Subsecs. (d) to (g). Pub. L. 100–418, §8006(b)(7), added subsec. (d) and redesignated former subsecs. (d) to (f) as (e) to (g), respectively. Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 100–590, §134(1), (2), which directed that subsec. (g) be amended by substituting "Associate Administrator for Small Business Development Centers" for "Deputy Associate Administrator for Management Assistance" in three places, and in par. (1) by substituting "an official who is not more than one level below the Office of the Administrator" for "the Associate Administrator for Management Assistance", was executed to subsec. (h) to reflect the probable intent of Congress and the intervening redesignation of subsec. (g) as (h) by section 8006(b)(7) of Pub. L. 100–418.

Pub. L. 100–418, §8006(b)(7), redesignated former subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsecs. (i) to (k). Pub. L. 100–418, §8006(b)(7), redesignated former subsecs. (h) to (j) as (i) to (k), respectively. Former subsec. (k) redesignated (l).

Subsec. (l) Pub. L. 100–590, §134(3), which directed that subsec. (k) be amended by inserting provisions which prohibited Administration from suspending, terminating or failing to renew or extend any contract without written notification and opportunity for hearing, appeal or other administrative proceeding, was executed to subsec. (l) to reflect the probable intent of Congress and the intervening redesignation of subsec. (k) as (l) by section 8006(b)(7) of Pub. L. 100–418.

Pub. L. 100–418, §8006(b)(7), redesignated former subsec. (k) as (l).

1984—Subsec. (a)(1). Pub. L. 98–395, §2(1), inserted "The term of such grants shall be made on a calendar year basis or to coincide with the Federal fiscal year."

Subsec. (a)(2) to (4). Pub. L. 98–395, §2(2), added pars. (2) to (4). Former par. (2), which contained provisions similar to par. (3), was struck out.

Subsec. (b)(1). Pub. L. 98–395, §2(3), substituted "Financial" for "During fiscal years 1981, 1982, and 1983, financial".

Subsec. (c)(2). Pub. L. 98–395, §2(4), inserted in provisions preceding subpar. (A) "The facilities and staff of each Small Business Development Center shall be located in such places as to provide maximum accessibility and benefits to the small businesses which the center is intended to serve."

Subsec. (c)(2)(A). Pub. L. 98–395, §2(5), substituted "including a full-time director who shall have the authority to make expenditures under the center's budget and who shall manage the program activities;" for "including a staff director to manage the program activities."

Subsec. (e). Pub. L. 98–395, §2(6), substituted provisions authorizing the National Science Foundation to cooperate with the Administration and with Small Business Development Centers in developing and establishing programs to support the centers, for former provisions which related to the National Science Foundation and innovation centers, and reports to be made to the Administration and Congress.

Subsec. (h)(2). Pub. L. 98–395, §2(7), substituted "at least semiannually" for "at least quarterly".

Subsec. (i)(1). Pub. L. 98–395, §2(8), substituted "shall" for "may".

Subsec. (j). Pub. L. 98–395, §2(9), substituted provisions mandating that the Administration develop and implement program proposals for onsite evaluation of each Small Business Development Center for provisions which related to the establishment of program evaluation plans and their submission to Congressional committees.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by Pub. L. 104–208 effective Oct. 1, 1996, see section 3 of Pub. L. 104–208, set out as a note under section 633 of this title.

Amendment by Pub. L. 104–121 effective on expiration of 90 days after Mar. 29, 1996, see section 216 of Pub. L. 104–121, set out in a Small Business Regulatory Fairness note under section 601 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1990 AMENDMENTS

Pub. L. 101–574, title II, §201(a)(2), Nov. 15, 1990, 104 Stat. 2818, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to contracts, grants, or cooperative agreements for performance commencing on or after October 1, 1991. Contracts, grants, or cooperative agreements the performance of which commences before October 1, 1991, shall receive funding for the entire term of performance without regard to the amendment made by paragraph (1) and according to the State's pro rata share of a $65,000,000 program as computed on the effective date of this section [Nov. 15, 1990] under population estimates used for calendar year 1990 agreements, plus $50,000 for each State, but no State shall receive less than $200,000."

Pub. L. 101–515, title V, §5(c), Nov. 5, 1990, 104 Stat. 2142, provided that: "The amendments to the second proviso in subsection (a)(4) [15 U.S.C. 648(a)(4)] made by subsection (a) of this section shall apply to contracts, grants or cooperative agreements for performance commencing on or after October 1, 1991; contracts, grants or cooperative agreements for performance commencing prior thereto shall receive funding for the entire term of performance without regard to this amendment and according to the State's pro rata share of a $65,000,000 program as computed on the effective date of this section [Nov. 5, 1990] under population estimates used for calendar year 1990 agreements, plus $50,000 for each State, but no State shall receive less than $200,000."

EFFECTIVE AND TERMINATION DATES

Pub. L. 96–302, title II, §204, July 2, 1980, 94 Stat. 848, as amended by Pub. L. 98–177, Nov. 29, 1983, 97 Stat. 1125; Pub. L. 98–395, §4, Aug. 21, 1984, 98 Stat. 1368; Pub. L. 101–162, title V, (6), Nov. 21, 1989, 103 Stat. 1028, which provided for the repeal, effective Oct. 1, 1991, of sections 201 and 202 of Pub. L. 96–302, which enacted this section and provisions set out as a note under section 631 of this title and redesignated section 2[21] as 2[30] of Pub. L. 85–536, set out as a note under section 631 of this title, was repealed by Pub. L. 101–515, §5(b), Nov. 5, 1990, 104 Stat. 2142, and Pub. L. 101–574, title II, §201(b), Nov. 15, 1990, 104 Stat. 2818.

Section effective Oct. 1, 1980, see section 507 of Pub. L. 96–302, set out as an Effective Date of 1980 Amendment note under section 631 of this title.

SHORT TITLE

For short title of title II of Pub. L. 96–302 as the Small Business Development Center Act of 1980, see Short Title of 1980 Amendment note set out under section 631 of this title.

REGULATIONS

Pub. L. 102–366, title II, §223(b), Sept. 4, 1992, 106 Stat. 1000, as amended by Pub. L. 103–81, §9(c), Aug. 13, 1993, 107 Stat. 783, provided that not later than 180 days after Sept. 4, 1992, the Administrator of the Small Business Administration was to submit to the Committees on Small Business and the Committees on Appropriations of the Senate and the House of Representatives proposed regulations for the Small Business Development Center Program authorized by this section.

SMALL BUSINESS TECHNOLOGY TRANSFER DEMONSTRATION PROGRAM

Pub. L. 101–574, title II, §231, Nov. 15, 1990, 104 Stat. 2823, as amended by Pub. L. 102–564, title III, §302, Oct. 28, 1992, 106 Stat. 4262, established within the Small Business Administration a Small Business Technology Transfer Demonstration Program to demonstrate the feasibility of providing small businesses with education, training, and technical assistance with respect to technology transfer and application and provided that the Program would terminate on Sept. 30, 1995.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

[1] So in original. Probably should not be capitalized.

[2] See References in Text note below.

[3] So in original. The period probably should be a semicolon.

[4] So in original. Probably should be "counseling".

[5] See References in Text note below.

[6] So in original. Probably should be "enter into".

[7] So in original. Probably should be "therefor,".

§648a. Repealed. Pub. L. 102–140, title VI, §609(e), Oct. 28, 1991, 105 Stat. 826

Section, Pub. L. 85–536, §2[21A], as added Pub. L. 101–515, title V, §9(a), Nov. 5, 1990, 104 Stat. 2144, related to Small Business Development Center Technical Assistance Program.

EFFECTIVE DATE OF REPEAL; TERMINATION OF FUNDING

Pub. L. 102–140, title VI, §609(e), Oct. 28, 1991, 105 Stat. 826, provided that: "Notwithstanding any other law, no funds shall be appropriated to carry out section 21A of the Small Business Act [15 U.S.C. 648a] after September 30, 1991, and such section is repealed October 1, 1992."

§648b. Grants for SBDCs

(a) In general

The Administrator may make grants to small business development centers under section 648 of this title to provide targeted technical assistance to small business concerns seeking access to capital or credit, Federal procurement opportunities, energy efficiency audits to reduce energy bills,

opportunities to export products or provide services to foreign customers, adopting, making innovations in, and using broadband technologies, or other assistance.

(b) Allocation

(1) In general

Subject to paragraph (2), and notwithstanding the requirements of section 648(a)(4)(C)(iii) of this title, the amount appropriated to carry out this section shall be allocated under the formula under section 648(a)(4)(C)(i) of this title.

(2) Minimum funding

The amount made available under this section to each State shall be not less than $325,000.

(3) Types of uses

Of the total amount of the grants awarded by the Administrator under this section—

(A) not less than 80 percent shall be used for counseling of small business concerns; and

(B) not more than 20 percent may be used for classes or seminars.

(c) No non-Federal share required

Notwithstanding section 648(a)(4)(A) of this title, the recipient of a grant made under this section shall not be required to provide non-Federal matching funds.

(d) Distribution

Not later than 30 days after the date on which amounts are appropriated to carry out this section, the Administrator shall disburse the total amount appropriated.

(e) Authorization of appropriations

There is authorized to be appropriated to the Administrator $50,000,000 to carry out this section.

(Pub. L. 111–240, title I, §1402, Sept. 27, 2010, 124 Stat. 2550.)

CODIFICATION

Section was enacted as part of the Small Business Jobs Act of 2010, and not as part of the Small Business Act which comprises this chapter.

DEFINITIONS

For definition of "Administrator" and "small business concern" as used in this section, see section 1001 of Pub. L. 111–240, set out as a note under section 632 of this title.

§649. Office of International Trade

(a) Establishment

(1) Office

There is established within the Administration an Office of International Trade which shall implement the programs pursuant to this section for the primary purposes of increasing—

(A) the number of small business concerns that export; and

(B) the volume of exports by small business concerns.

(2) Associate Administrator

The head of the Office shall be the Associate Administrator for International Trade, who shall be responsible to the Administrator.

(b) Trade distribution network

The Associate Administrator, working in close cooperation with the Secretary of Commerce, the United States Trade Representative, the Secretary of Agriculture, the Secretary of State, the President of the Export-Import Bank of the United States, the President of the Overseas Private Investment Corporation, Director [1] of the United States Trade and Development Agency, and other

relevant Federal agencies, small business development centers engaged in export promotion efforts, Export Assistance Centers, regional and district offices of the Administration, the small business community, and relevant State and local export promotion programs, shall—

(1) maintain a distribution network, using regional and district offices of the Administration, the small business development center network, networks of women's business centers, the Service Corps of Retired Executives authorized by section 637(b)(1) of this title, and Export Assistance Centers, for programs relating to—

(A) trade promotion;

(B) trade finance;

(C) trade adjustment assistance;

(D) trade remedy assistance; and

(E) trade data collection;

(2) aggressively market the programs described in paragraph (1) and disseminate information, including computerized marketing data, to small business concerns on exporting trends, market-specific growth, industry trends, and international prospects for exports;

(3) promote export assistance programs through the district and regional offices of the Administration, the small business development center network, Export Assistance Centers, the network of women's business centers, chapters of the Service Corps of Retired Executives, State and local export promotion programs, and partners in the private sector; and

(4) give preference in hiring or approving the transfer of any employee into the Office or to a position described in subsection (c)(9) to otherwise qualified applicants who are fluent in a language in addition to English, to—

(A) accompany small business concerns on foreign trade missions; and

(B) translate documents, interpret conversations, and facilitate multilingual transactions, including by providing referral lists for translation services, if required.

(c) Promotion of sales opportunities

The Associate Administrator shall promote sales opportunities for small business goods and services abroad. To accomplish this objective the office shall—

(1) establish annual goals for the Office relating to—

(A) enhancing the exporting capability of small business concerns and small manufacturers;

(B) facilitating technology transfers;

(C) enhancing programs and services to assist small business concerns and small manufacturers to compete effectively and efficiently in foreign markets;

(D) increasing the ability of small business concerns to access capital; and

(E) disseminating information concerning Federal, State, and private programs and initiatives;

(2) in cooperation with the Department of Commerce, other relevant agencies, regional and local Administration offices, the Small Business Development Center network, and State programs, develop a mechanism for—

(A) identifying subsectors of the small business community with strong export potential;

(B) identifying areas of demand in foreign markets;

(C) prescreening foreign buyers for commercial and credit purposes; and

(D) assisting in increasing international marketing by disseminating relevant information regarding market leads, linking potential sellers and buyers, and catalyzing the formation of joint ventures, where appropriate;

(3) in cooperation with the Department of Commerce, actively assist small business concerns in forming and using export trading companies, export management companies and research and development pools authorized under section 638 of this title;

(4) work in conjunction with other Federal agencies, regional and district offices of the Administration, the small business development center network, and the private sector to identify

and publicize translation services, including those available through colleges and universities participating in the small business development center program;

(5) work closely with the Department of Commerce and other relevant Federal agencies to—

(A) collect, analyze and periodically update relevant data regarding the small business share of United States exports and the nature of State exports (including the production of Gross State Product figures) and disseminate that data to the public and to Congress;

(B) make recommendations to the Secretary of Commerce and to Congress regarding revision of the North American Industry Classification System codes to encompass industries currently overlooked and to create North American Industry Classification System codes for export trading companies and export management companies;

(C) improve the utility and accessibility of existing export promotion programs for small business concerns; and

(D) increase the accessibility of the Export Trading Company contact facilitation service;

(6) make available to the small business community information regarding conferences on exporting and international trade sponsored by the public and private sector;

(7) provide small business concerns with access to up to date and complete export information by—

(A) making available, at the regional and district offices of the Administration through cooperation with the Department of Commerce, export information, including, but not limited to, the worldwide information and trade system and world trade data reports;

(B) maintaining a list of financial institutions that finance export operations;

(C) maintaining a directory of all Federal, regional, State and private sector programs that provide export information and assistance to small business concerns; and

(D) preparing and publishing such reports as it determines to be necessary concerning market conditions, sources of financing, export promotion programs, and other information pertaining to the needs of small business exporting firms so as to insure that the maximum information is made available to small business concerns in a readily usable form;

(8) encourage through cooperation with the Department of Commerce, greater small business participation in trade fairs, shows, missions, and other domestic and overseas export development activities of the Department of Commerce;

(9) facilitate decentralized delivery of export information and assistance to small business concerns by assigning primary responsibility for export development to one individual in each district office and providing each Administration regional office with a full-time export development specialist, who shall—

(A) assist small business concerns in obtaining export information and assistance from other Federal departments and agencies;

(B) maintain a directory of all programs which provide export information and assistance to small business concerns in the region;

(C) encourage financial institutions to develop and expand programs for export financing;

(D) provide advice to personnel of the Administration involved in making loans, loan guarantees, and extensions and revolving lines of credit, and providing other forms of assistance to small business concerns engaged in exports;

(E) within one hundred and eighty days of their appointment, participate in training programs designed by the Administrator, in conjunction with the Department of Commerce and other Federal departments and agencies, to study export programs and to examine the needs of small business concerns for export information and assistance;

(F) participate, jointly with employees of the Office, in an annual training program that focuses on current small business needs for exporting; and

(G) develop and conduct training programs for exporters and lenders, in cooperation with the Export Assistance Centers, the Department of Commerce, the Department of Agriculture, small business development centers, women's business centers, the Export-Import Bank of the United

States, the Overseas Private Investment Corporation, and other relevant Federal agencies;

(10) make available on the website of the Administration the name and contact information of each individual described in paragraph (9);

(11) carry out a nationwide marketing effort using technology, online resources, training, and other strategies to promote exporting as a business development opportunity for small business concerns;

(12) disseminate information to the small business community through regional and district offices of the Administration, the small business development center network, Export Assistance Centers, the network of women's business centers, chapters of the Service Corps of Retired Executives authorized by section 637(b)(1) of this title, State and local export promotion programs, and partners in the private sector regarding exporting trends, market-specific growth, industry trends, and prospects for exporting; and

(13) establish and carry out training programs for the staff of the regional and district offices of the Administration and resource partners of the Administration on export promotion and providing assistance relating to exports.

(d) Export financing programs

(1) In general

The Associate Administrator shall work in cooperation with the Export-Import Bank of the United States, the Department of Commerce, other relevant Federal agencies, and the States to develop a program through which export specialists in the regional offices of the Administration, regional and local loan officers, and Small Business Development Center personnel can facilitate the access of small businesses to relevant export financing programs of the Export-Import Bank of the United States and to export and pre-export financing programs available from the Administration and the private sector.

(2) Trade finance specialist

To accomplish the goal established under paragraph (1), the Associate Administrator shall—

(A) designate at least 1 individual within the Administration as a trade finance specialist to oversee international loan programs and assist Administration employees with trade finance issues; and

(B) work in cooperation with the Export-Import Bank and the small business community, including small business trade associations, to—

(i) aggressively market existing Administration export financing and pre-export financing programs;

(ii) identify financing available under various Export-Import Bank programs, and aggressively market those programs to small businesses;

(iii) assist in the development of financial intermediaries and facilitate the access of those intermediaries to existing financing programs;

(iv) promote greater participation by private financial institutions, particularly those institutions already participating in loan programs under this chapter, in export finance; and

(v) provide for the participation of appropriate Administration personnel in training programs conducted by the Export-Import Bank.

(e) Trade remedies

The Associate Administrator shall—

(1) work in cooperation with other Federal agencies and the private sector to counsel small businesses with respect to initiating and participating in any proceedings relating to the administration of the United States trade laws; and

(2) work with the Department of Commerce, the Office of the United States Trade Representative, and the International Trade Commission to increase access to trade remedy proceedings for small businesses.

(f) Reporting requirement

The Associate Administrator shall submit an annual report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives that contains—

(1) a description of the progress of the Office in implementing the requirements of this section;

(2) a detailed account of the results of export growth activities of the Administration, including the activities of each district and regional office of the Administration, based on the performance measures described in subsection (i); [2]

(3) an estimate of the total number of jobs created or retained as a result of export assistance provided by the Administration and resource partners of the Administration;

(4) for any travel by the staff of the Office, the destination of such travel and the benefits to the Administration and to small business concerns resulting from such travel; and

(5) a description of the participation by the Office in trade negotiations.

(g) Studies

The Associate Administrator, in cooperation, where appropriate, with the Division of Economic Research of the Office of Advocacy, and with other Federal agencies, shall undertake studies regarding the following issues and shall report to the Committees on Small Business of the House of Representatives and the Senate, and to other relevant Committees of the House and Senate within 6 months after August 23, 1988, with specific recommendations on—

(1) the viability and cost of establishing an annual, competitive small business export incentive program similar to the Small Business Innovation Research program and alternative methods of structuring such a program;

(2) methods of streamlining trade remedy proceedings to increase access for, and reduce expenses incurred by, smaller firms;

(3) methods of improving the current small business foreign sales corporation tax incentives and providing small businesses with greater benefits from this initiative;

(4) methods of identifying potential export markets for United States small businesses; maintaining and disseminating current foreign market data; and devising a comprehensive export marketing strategy for United States small business goods and services, and shall include data on the volume and dollar amount of goods and services, identified by type, imported by United States trading partners over the past 10 years; and

(5) the results of a survey of major United States trading partners to identify the domestic policies, programs and incentives, and the private sector initiatives, which exist to encourage the formation and growth of small business.

(h) Discharge of international trade responsibilities of Administration

The Administrator shall ensure that—

(1) the responsibilities of the Administration regarding international trade are carried out by the Associate Administrator;

(2) the Associate Administrator has sufficient resources to carry out such responsibilities; and

(3) the Associate Administrator has direct supervision and control over—

(A) the staff of the Office; and

(B) any employee of the Administration whose principal duty station is an Export Assistance Center, or any successor entity.

(i) Export and trade counseling

(1) Definition

In this subsection—

(A) the term "lead small business development center" means a small business development center that has received a grant from the Administration; and

(B) the term "lead women's business center" means a women's business center that has received a grant from the Administration.

(2) Certification program

The Administrator shall establish an export and trade counseling certification program to certify employees of lead small business development centers and lead women's business centers in providing export assistance to small business concerns.

(3) Number of certified employees

The Administrator shall ensure that the number of employees of each lead small business development center who are certified in providing export assistance is not less than the lesser of—

(A) 5; or

(B) 10 percent of the total number of employees of the lead small business development center.

(4) Reimbursement for certification

(A) In general

Subject to the availability of appropriations, the Administrator shall reimburse a lead small business development center or a lead women's business center for costs relating to the certification of an employee of the lead small business center or lead women's business center in providing export assistance under the program established under paragraph (2).

(B) Limitation

The total amount reimbursed by the Administrator under subparagraph (A) may not exceed $350,000 in any fiscal year.

(j) Performance measures

(1) In general

The Associate Administrator shall develop performance measures for the Administration to support export growth goals for the activities of the Office under this section that include—

(A) the number of small business concerns that—

(i) receive assistance from the Administration;

(ii) had not exported goods or services before receiving the assistance described in clause (i); and

(iii) export goods or services;

(B) the number of small business concerns receiving assistance from the Administration that export goods or services to a market outside the United States into which the small business concern did not export before receiving the assistance;

(C) export revenues by small business concerns assisted by programs of the Administration;

(D) the number of small business concerns referred to an Export Assistance Center or a small business development center by the staff of the Office;

(E) the number of small business concerns referred to the Administration by an Export Assistance Center or a small business development center; and

(F) the number of small business concerns referred to the Department of Commerce, the Department of Agriculture, the Department of State, the Export-Import Bank of the United States, the Overseas Private Investment Corporation, or the United States Trade and Development Agency by the staff of the Office, an Export Assistance Center, or a small business development center.

(2) Joint performance measures

The Associate Administrator shall develop joint performance measures for the district offices of the Administration and the Export Assistance Centers that include the number of export loans made under—

(A) section 636(a)(16) of this title;

(B) the Export Working Capital Program established under section 636(a)(14) of this title;

(C) the Preferred Lenders Program, as defined in section 636(a)(2)(C)(ii) of this title; and

(D) the export express program established under section 636(a)(34) of this title.

(3) Consistency of tracking

The Associate Administrator, in coordination with the departments and agencies that are represented on the Trade Promotion Coordinating Committee established under section 4727 of this title and the small business development center network, shall develop a system to track exports by small business concerns, including information relating to the performance measures developed under paragraph (1), that is consistent with systems used by the departments and agencies and the network.

(k) Export Assistance Centers

(1) Export finance specialists

(A) Minimum number of export finance specialists

On and after the date that is 90 days after September 27, 2010, the Administrator, in coordination with the Secretary of Commerce, shall ensure that the number of export finance specialists is not less than the number of such employees so assigned on January 1, 2003.

(B) Export finance specialists assigned to each region of the Administration

On and after the date that is 2 years after September 27, 2010, the Administrator, in coordination with the Secretary of Commerce, shall ensure that there are not fewer than 3 export finance specialists in each region of the Administration.

(2) Placement of export finance specialists

(A) Priority

The Administrator shall give priority, to the maximum extent practicable, to placing employees of the Administration at any Export Assistance Center that—

(i) had an Administration employee assigned to the Export Assistance Center before January 2003; and

(ii) has not had an Administration employee assigned to the Export Assistance Center during the period beginning January 2003, and ending on September 27, 2010, either through retirement or reassignment.

(B) Needs of exporters

The Administrator shall, to the maximum extent practicable, strategically assign Administration employees to Export Assistance Centers, based on the needs of exporters.

(C) Rule of construction

Nothing in this subsection may be construed to require the Administrator to reassign or remove an export finance specialist who is assigned to an Export Assistance Center on September 27, 2010.

(3) Goals

The Associate Administrator shall work with the Department of Commerce, the Export-Import Bank of the United States, and the Overseas Private Investment Corporation to establish shared annual goals for the Export Assistance Centers.

(4) Oversight

The Associate Administrator shall designate an individual within the Administration to oversee all activities conducted by Administration employees assigned to Export Assistance Centers.

(l) Definitions

In this section—

(1) the term "Associate Administrator" means the Associate Administrator for International Trade described in subsection (a)(2);

(2) the term "Export Assistance Center" means a one-stop shop for United States exporters established by the United States and Foreign Commercial Service of the Department of Commerce pursuant to section 4721(b)(8) of this title;

(3) the term "export finance specialist" means a full-time equivalent employee of the Office assigned to an Export Assistance Center to carry out the duties described in subsection (e); and

(4) the term "Office" means the Office of International Trade established under subsection (a)(1).

(Pub. L. 85–536, §2[22], as added Pub. L. 96–481, title I, §113(a), Oct. 21, 1980, 94 Stat. 2323; amended Pub. L. 100–418, title VIII, §8003, Aug. 23, 1988, 102 Stat. 1554; Pub. L. 111–240, title I, §§1203(a), (c), 1204(a), 1205(a), Sept. 27, 2010, 124 Stat. 2521, 2522, 2527.)

PRIOR PROVISIONS

A prior section 649, act July 30, 1953, ch. 282, title II, §220, 67 Stat. 240, which required a fair charge for use of Government-owned property, was omitted as superseded by section 643 of this title. See Codification note set out under section 631 of this title.

AMENDMENTS

2010—Pub. L. 111–240, §1203(a)(1), inserted section catchline.

Subsec. (a). Pub. L. 111–240, §1203(a), inserted subsec. (a) heading, designated existing provisions as par. (1), inserted par. (1) heading, substituted "for the primary purposes of increasing—" for period at end, added subpars. (A) and (B) of par. (1), and added par. (2).

Subsec. (b). Pub. L. 111–240, §1204(a)(1), added subsec. (b) and struck out former subsec. (b) which related to development of distribution network, marketing of programs and dissemination of information, and bilingual job applicants.

Subsec. (c). Pub. L. 111–240, §1204(a)(2)(A), inserted heading and substituted "The Associate Administrator" for "The Office" in introductory provisions.

Subsec. (c)(1). Pub. L. 111–240, §1204(a)(2)(C), added par. (1). Former par. (1) redesignated (2).

Subsec. (c)(2). Pub. L. 111–240, §1204(a)(2)(D), substituted "mechanism for—

"(A) identifying subsectors of the small business community with strong export potential;

"(B) identifying areas of demand in foreign markets;

"(C) prescreening foreign buyers for commercial and credit purposes; and

"(D) assisting"

for "mechanism for (A) identifying sub-sectors of the small business community with strong export potential; (B) identifying areas of demand in foreign markets; (C) prescreening foreign buyers for commercial and credit purposes; and (D) assisting".

Pub. L. 111–240, §1204(a)(2)(B), redesignated par. (1) as (2). Former par. (2) redesignated (3).

Subsec. (c)(3). Pub. L. 111–240, §1204(a)(2)(E), substituted "assist small business concerns in forming and using" for "assist small businesses in the formation and utilization of".

Pub. L. 111–240, §1204(a)(2)(B), redesignated par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (c)(4). Pub. L. 111–240, §1204(a)(2)(F), substituted "district" for "local", "small business development center network" for "Small Business Development Center network", and "small business development center program" for "Small Business Development Center Program" and struck out "existing" before "translation".

Pub. L. 111–240, §1204(a)(2)(B), redesignated par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (c)(5). Pub. L. 111–240, §1204(a)(2)(B), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (c)(5)(A). Pub. L. 111–240, §1204(a)(2)(G)(i), substituted "Gross State Product" for "Gross State Produce".

Subsec. (c)(5)(B). Pub. L. 111–240, §1204(a)(2)(G)(ii), substituted "North American Industry Classification System" for "SIC" in two places.

Subsec. (c)(5)(C). Pub. L. 111–240, §1204(a)(2)(G)(iii), substituted "small business concerns" for "small businesses".

Subsec. (c)(6). Pub. L. 111–240, §1204(a)(2)(H), substituted semicolon for period at end.

Pub. L. 111–240, §1204(a)(2)(B), redesignated par. (5) as (6). Former par. (6) redesignated (7).

Subsec. (c)(7). Pub. L. 111–240, §1204(a)(2)(I)(i)(II), (v), substituted "small business concerns" for "small businesses" and "up to date" for "current" in introductory provisions.

Pub. L. 111–240, §1204(a)(2)(I)(i)(I), which directed amendment of introductory provisions by inserting "concerns" after "small business", could not be executed because the words "small business" did not appear.

Pub. L. 111–240, §1204(a)(2)(B), redesignated par. (6) as (7). Former par. (7) redesignated (8).

Subsec. (c)(7)(A). Pub. L. 111–240, §1204(a)(2)(I)(ii), substituted "regional and district offices of the Administration" for "Administration's regional offices".

Subsec. (c)(7)(B). Pub. L. 111–240, §1204(a)(2)(I)(iii), struck out "current" before "list".

Subsec. (c)(7)(C). Pub. L. 111–240, §1204(a)(2)(I)(iv), (v), struck out "current" before "directory" and substituted "small business concerns" for "small businesses".

Subsec. (c)(7)(D). Pub. L. 111–240, §1204(a)(2)(I)(v), substituted "small business concerns" for "small businesses".

Subsec. (c)(8). Pub. L. 111–240, §1204(a)(2)(J), struck out "and" at end. The amendment was made to reflect the probable intent of Congress, in the absence of quotation marks around the word "and" in the directory language.

Pub. L. 111–240, §1204(a)(2)(B), redesignated par. (7) as (8). Former par. (8) redesignated (9).

Subsec. (c)(9). Pub. L. 111–240, §1204(a)(2)(K)(i), (vi), in introductory provisions, substituted "small business concerns" for "small businesses" and "individual in each district office and providing each Administration regional office with a full-time export development specialist, who" for "person in each district office. Such specialists" and struck out "full-time export development specialists to each Administration regional office and assigning" before "primary responsibility".

Pub. L. 111–240, §1204(a)(2)(B), redesignated par. (8) as (9).

Subsec. (c)(9)(A). Pub. L. 111–240, §1204(a)(2)(K)(vi), substituted "small business concerns" for "small businesses".

Subsec. (c)(9)(B). Pub. L. 111–240, §1204(a)(2)(K)(vi), substituted "small business concerns" for "small businesses".

Pub. L. 111–240, §1204(a)(2)(K)(ii)(II), which directed amendment by substituting "in" for "with", was executed by making the substitution for "within", to reflect the probable intent of Congress.

Pub. L. 111–240, §1204(a)(2)(K)(ii)(I), struck out "current" before "directory".

Subsec. (c)(9)(D). Pub. L. 111–240, §1204(a)(2)(K)(iii), (vi), substituted "personnel of the Administration involved in making" for "Administration personnel involved in granting" and "small business concerns" for "small businesses" and struck out "and" at end.

Subsec. (c)(9)(E). Pub. L. 111–240, §1204(a)(2)(K)(iv), substituted "the needs of small business concerns" for "small businesses' needs" and semicolon for period at end.

Subsec. (c)(9)(F), (G). Pub. L. 111–240, §1204(a)(2)(K)(v), added subpars. (F) and (G).

Subsec. (c)(10) to (13). Pub. L. 111–240, §1204(a)(2)(L), added pars. (10) to (13).

Subsec. (d). Pub. L. 111–240, §1204(a)(3), inserted subsec. (d) heading, designated first sentence of existing provisions as par. (1), inserted par. (1) heading, substituted "The Associate Administrator" for "The Office" in par. (1), designated second sentence of existing provisions as par. (2), inserted par. (2) heading, substituted "To accomplish the goal established under paragraph (1), the Associate Administrator shall—" for "To accomplish this goal, the Office shall work" in par. (2), added subpar. (A) and inserted "(B) work" before "in cooperation", redesignated former pars. (1) to (5) as cls. (i) to (v), respectively, of subpar. (B) of par. (2), and realigned margins.

Subsec. (e). Pub. L. 111–240, §1204(a)(4), inserted heading and substituted "The Associate Administrator" for "The Office" in introductory provisions.

Subsec. (f). Pub. L. 111–240, §1204(a)(5), amended subsec. (f) generally. Prior to amendment, text read as follows: "The Office shall report to the Committees on Small Business of the House of Representatives and the Senate on an annual basis as to its progress in implementing the requirements under this section."

Subsec. (g). Pub. L. 111–240, §1204(a)(6), inserted heading and substituted "The Associate Administrator" for "The Office" in introductory provisions.

Subsec. (h). Pub. L. 111–240, §1203(c), added subsec. (h).

Subsecs. (i), (j). Pub. L. 111–240, §1204(a)(7), added subsecs. (i) and (j).

Subsecs. (k), (l). Pub. L. 111–240, §1205(a), added subsecs. (k) and (l).

1988—Subsecs. (b) to (g). Pub. L. 100–418 added subsec. (b), redesignated former subsec. (b) as (c) and added pars. (1) to (5) and redesignated former pars. (1) to (3) as (6) to (8), respectively, and added subsecs. (d) to (g).

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

EFFECTIVE DATE

Pub. L. 96–481, title I, §113(b), Oct. 21, 1980, 94 Stat. 2324, provided that: "The amendment made by subsection (a) [enacting this section] shall take effect on October 1, 1980, or the date of enactment of this Act [Oct. 21, 1980], whichever occurs later."

SHORT TITLE

For short title of part B of title I of Pub. L. 96–481 as the Small Business Export Expansion Act of 1980, see Short Title of 1980 Amendment note set out under section 631 of this title.

IMPLEMENTATION

Pub. L. 111–240, title I, §1203(e), Sept. 27, 2010, 124 Stat. 2522, provided that: "Not later than 90 days after the date of enactment of this Act [Sept. 27, 2010], the Administrator of the Small Business Administration shall appoint an Associate Administrator for International Trade under section 22(a) of the Small Business Act (15 U.S.C. 649(a)), as added by this section."

STUDY AND REPORT ON FILLING GAPS IN HIGH-AND-LOW-EXPORT VOLUME AREAS

Pub. L. 111–240, title I, §1205(b), Sept. 27, 2010, 124 Stat. 2529, provided that:

"(1) STUDY AND REPORT.—Not later than 6 months after the date of enactment of this Act [Sept. 27, 2010], and every 2 years thereafter, the Administrator shall—

"(A) conduct a study of—

"(i) the volume of exports for each State;

"(ii) the availability of export finance specialists in each State;

"(iii) the number of exporters in each State that are small business concerns;

"(iv) the percentage of exporters in each State that are small business concerns;

"(v) the change, if any, in the number of exporters that are small business concerns in each State—

"(I) for the first study conducted under this subparagraph, during the 10-year period ending on the date of enactment of this Act [Sept. 27, 2010]; and

"(II) for each subsequent study, during the 10-year period ending on the date the study is commenced;

"(vi) the total value of the exports in each State by small business concerns;

"(vii) the percentage of the total volume of exports in each State that is attributable to small business concerns; and

"(viii) the change, if any, in the percentage of the total volume of exports in each State that is attributable to small business concerns—

"(I) for the first study conducted under this subparagraph, during the 10-year period ending on the date of enactment of this Act [Sept. 27, 2010]; and

"(II) for each subsequent study, during the 10-year period ending on the date the study is commenced; and

"(B) submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report containing—

"(i) the results of the study under subparagraph (A);

"(ii) to the extent practicable, a recommendation regarding how to eliminate gaps between the supply of and demand for export finance specialists in the 15 States that have the greatest volume of exports, based upon the most recent data available from the Department of Commerce;

"(iii) to the extent practicable, a recommendation regarding how to eliminate gaps between the supply of and demand for export finance specialists in the 15 States that have the lowest volume of exports, based upon the most recent data available from the Department of Commerce; and

"(iv) such additional information as the Administrator determines is appropriate.

"(2) DEFINITION.—In this subsection, the term 'export finance specialist' has the meaning given that term in section 22(l) of the Small Business Act [15 U.S.C. 649(l)], as added by this title."

[For definitions of "Administrator" and "small business concern" as used in section 1205(b) of Pub. L. 111–240, set out above, see section 1001 of Pub. L. 111–240, set out as a note under section 632 of this title.]

CONGRESSIONAL DECLARATION OF POLICY

Pub. L. 96–481, title I, §111, Oct. 21, 1980, 94 Stat. 2323, provided that:

"(a) The Congress finds and declares that—

"(1) a strong export policy is essential to the health and well-being of the United States economy;

"(2) exports of goods and services account for one out of every six jobs in the manufacturing sector and 10 per centum of the gross national product.

"(3) every billion dollars in new exports is estimated to provide forty thousand jobs;

"(4) there is increased and fierce competition in international markets to United States goods and services;

"(5) small businesses account for no more than 10 per centum of all United States export sales;

"(6) Federal Government programs are not sufficiently responsive to the needs of small business for export education and development of overseas marketing opportunities necessary to insure that small businesses realize their potential; and

"(7) it is in the national interest to systematically and consistently promote and encourage small business participation in international markets.

"(b) It is therefore the purpose of this part [enacting this section, amending section 636 of this title, and enacting provisions set out as notes under sections 631 and 649 of this title] to encourage and promote small business exporting by—

"(1) providing educational and marketing assistance to small businesses;

"(2) insuring better access to export information and assistance for small businesses by upgrading and expanding the export development programs and services of the Department of Commerce and the Small Business Administration; and

"(3) promoting the competitive viability of such firms in export trade and encouraging increased tourism in the United States by creating a program to provide limited financial, technical, and management assistance as may be necessary."

[1] *So in original. Probably should be preceded by "the".*

[2] *So in original. Probably should be a reference to subsection (j).*

§649a. Omitted

CODIFICATION

Section, Pub. L. 96–481, title III, §301(a)–(d), Oct. 21, 1980, 94 Stat. 2330, which related to establishment, staffing, functions, evaluation, and reporting requirements of export promotion centers, terminated Oct. 1, 1983.

EFFECTIVE AND TERMINATION DATES

Pub. L. 96–481, title III, §301(e), Oct. 21, 1980, 94 Stat. 2331, provided that: "This section shall take effect on October 1, 1980, or on the date of the enactment of this section [Oct. 21, 1980] whichever occurs later and shall expire on October 1, 1983."

§649b. Grants, contracts and cooperative agreements for international marketing programs

(a) Limitations and restrictions

The Secretary of Commerce (hereinafter referred to as the "Secretary") is authorized to make grants (including contracts and cooperative agreements) to a qualified applicant to encourage the development and implementation of a small business international marketing program (hereinafter referred to as "the program"). Each qualified applicant under sections 649a to 649d of this title may receive a Federal grant not to exceed $150,000 annually for each of three years: *Provided*, That not more than one-third of these Federal funds may be used for the purpose of hiring personnel. Nothing in this section shall be construed as authorizing the Secretary to enter into contracts or incur obligations except to such extent and in such amounts as are provided in appropriation Acts.

(b) Eligibility

(1) To be eligible for a grant under this section, an applicant proposing to carry out a small business international marketing program must submit to the Secretary an application demonstrating, at a minimum:

(A) the geographical area to be served;

(B) the number of firms to be assisted;

(C) the staff required to administer the program;

(D) the means to counsel small businesses interested in pursuing export sales, including

providing information concerning available financing, credit insurance, tax treatment, potential markets and marketing assistance, export pricing, shipping, documentation, and foreign financing and business customs;

(E) the ability to provide market analysis of the export potential of small business concerns; and

(F) the capability for developing contacts with potential foreign customers and distributors for small business and their products, including arrangements and sponsorship of foreign trade missions for small business concerns to meet with identified potential customers, distributors, sales representatives, and organizations interested in licensing or joint ventures: *Provided, however,* That no portion of any Federal funds may be used to directly underwrite any small business participation in foreign trade missions abroad.

(2) Program services shall be provided to small business concerns through outreach services at the most local level practicable.

(3) Each small business international marketing program shall have a full-time staff director to manage program activities, and access to export specialists to counsel and to assist small business clients in international marketing.

(c) Advisory board establishment

(1) Each small business international marketing program shall establish an advisory board of nine members to be appointed by the staff director of the program, not less than five members of whom shall be small business persons or representatives of small business associations.

(2) Each advisory board shall elect a chairman and shall advise, counsel, and confer with the staff director of the program on all policy matters pertaining to the operation of the program (including who may be eligible to receive assistance, ways to promote the sale of United States products and services in foreign markets or to encourage tourism in the United States, and how to maximize local and regional private consultant participation in the program).

(d) Grant requirements

The Secretary shall require, as a condition to any grant (or amendment or modification thereof) made to an applicant under this section, that a sum equal to the amount of such grant be provided from sources other than the Federal Government: *Provided,* That the additional amount shall not include any amount of indirect costs or in-kind contributions paid for under any Federal program, nor shall indirect costs or in-kind contributions exceed 50 per centum of the non-Federal additional amount.

(e) Program evaluation; reports

The Secretary shall develop a plan to evaluate programs approved under this section which shall only—

(1) determine the impact of small business international marketing programs on those small businesses assisted;

(2) determine the amount of export sales generated by small businesses assisted through such programs; and

(3) make recommendations concerning continuation and/or expansion of the program and possible improvements in the program structure. Such evaluation shall be submitted to the Congress by October 1, 1982.

(f) Recipients' duty to furnish information

For the purpose of the evaluation under subsection (e) of this section, the Secretary is authorized to require any small business international marketing program, or party receiving assistance under this section, to furnish such information as is deemed appropriate to complete the required evaluation.

(g) "Applicant" defined

As used in this section, the term "applicant" means any State government or agency or instrumentality thereof, any Small Business Administration—designated small business development

center, any for profit small business, any nonprofit corporation, any regional commission, or any combination of such entities, which will carry out a small business international marketing program.

(h) Contract authority

The authority to enter into contracts shall be in effect for each fiscal year only to the extent or in the amounts as are provided in advance in appropriation Acts.

(Pub. L. 96–481, title III, §302, Oct. 21, 1980, 94 Stat. 2331.)

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

STATE TRADE AND EXPORT PROMOTION GRANT PROGRAM

Pub. L. 111–240, title I, §1207, Sept. 27, 2010, 124 Stat. 2532, as amended by Pub. L. 112–239, div. A, title XVI, §1699a, Jan. 2, 2013, 126 Stat. 2092, provided that:

"(a) DEFINITIONS.—In this section—

"(1) the term 'eligible small business concern' means a small business concern that—

"(A) has been in business for not less than the 1-year period ending on the date on which assistance is provided using a grant under this section;

"(B) is operating profitably, based on operations in the United States;

"(C) has demonstrated understanding of the costs associated with exporting and doing business with foreign purchasers, including the costs of freight forwarding, customs brokers, packing and shipping, as determined by the Associate Administrator; and

"(D) has in effect a strategic plan for exporting;

"(2) the term 'program' means the State Trade and Export Promotion Grant Program established under subsection (b);

"(3) the term 'small business concern owned and controlled by women' has the meaning given that term in section 3 of the Small Business Act (15 U.S.C. 632);

"(4) the term 'socially and economically disadvantaged small business concern' has the meaning given that term in section 8(a)(4)(A) of the Small Business Act (15 U.S.C. 6537(a)(4)(A) [637(a)(4)(A)]); and

"(5) the term 'State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.

"(b) ESTABLISHMENT OF PROGRAM.—The Associate Administrator shall establish a 3-year trade and export promotion pilot program to be known as the State Trade and Export Promotion Grant Program, to make grants to States to carry out export programs that assist eligible small business concerns in—

"(1) participation in a foreign trade mission;

"(2) a foreign market sales trip;

"(3) a subscription to services provided by the Department of Commerce;

"(4) the payment of website translation fees;

"(5) the design of international marketing media;

"(6) a trade show exhibition;

"(7) participation in training workshops; or

"(8) any other export initiative determined appropriate by the Associate Administrator.

"(c) GRANTS.—

"(1) JOINT REVIEW.—In carrying out the program, the Associate Administrator may make a grant to a State to increase the number of eligible small business concerns in the State that export or to increase the value of the exports by eligible small business concerns in the State.

"(2) CONSIDERATIONS.—In making grants under this section, the Associate Administrator may give priority to an application by a State that proposes a program that—

"(A) focuses on eligible small business concerns as part of an export promotion program;

"(B) demonstrates success in promoting exports by—

"(i) socially and economically disadvantaged small business concerns;

"(ii) small business concerns owned or controlled by women; and

"(iii) rural small business concerns;

"(C) promotes exports from a State that is not 1 of the 10 States with the highest percentage of exporters that are small business concerns, based upon the latest data available from the Department of Commerce; and

"(D) promotes new-to-market export opportunities to the People's Republic of China for eligible small business concerns in the United States.

"(3) LIMITATIONS.—

"(A) SINGLE APPLICATION.—A State may not submit more than 1 application for a grant under the program in any 1 fiscal year.

"(B) PROPORTION OF AMOUNTS.—The total value of grants under the program made during a fiscal year to the 10 States with the highest number of exporters that are small business concerns, based upon the latest data available from the Department of Commerce, shall be not more than 40 percent of the amounts appropriated for the program for that fiscal year.

"(4) APPLICATION.—A State desiring a grant under the program shall submit an application at such time, in such manner, and accompanied by such information as the Associate Administrator may establish.

"(d) COMPETITIVE BASIS.—The Associate Administrator shall award grants under the program on a competitive basis.

"(e) FEDERAL SHARE.—The Federal share of the cost of an export program carried out using a grant under the program shall be—

"(1) for a State that has a high export volume, as determined by the Associate Administrator, not more than 65 percent; and

"(2) for a State that does not have a high export volume, as determined by the Associate Administrator, not more than 75 percent.

"(f) NON-FEDERAL SHARE.—The non-Federal share of the cost of an export program carried [out] using a grant under the program shall be comprised of not less than 50 percent cash and not more than 50 percent of indirect costs and in-kind contributions, except that no such costs or contributions may be derived from funds from any other Federal program.

"(g) REPORTS.—

"(1) INITIAL REPORT.—Not later than 120 days after the date of enactment of this Act [Sept. 27, 2010], the Associate Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report, which shall include—

"(A) a description of the structure of and procedures for the program;

"(B) a management plan for the program; and

"(C) a description of the merit-based review process to be used in the program.

"(2) ANNUAL REPORTS.—The Associate Administrator shall submit an annual report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives regarding the program, which shall include—

"(A) the number and amount of grants made under the program during the preceding year;

"(B) a list of the States receiving a grant under the program during the preceding year, including the activities being performed with grant; and

"(C) the effect of each grant on exports by eligible small business concerns in the State receiving the grant.

"(h) REVIEWS BY INSPECTOR GENERAL.—

"(1) IN GENERAL.—The Inspector General of the Administration shall conduct a review of—

"(A) the extent to which recipients of grants under the program are measuring the performance of the activities being conducted and the results of the measurements; and

"(B) the overall management and effectiveness of the program.

"(2) REPORT.—Not later than September 30, 2012, the Inspector General of the Administration shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report regarding the review conducted under paragraph (1).

"(i) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out the program $30,000,000 for each of fiscal years 2011, 2012, and 2013.

"(j) TERMINATION.—The authority to carry out the program shall terminate 3 years after the date on

which the Associate Administrator establishes the program."

[For definitions of "Associate Administrator" and "rural small business concern" as used in section 1207 of Pub. L. 111–240, set out above, see section 1202(a) of Pub. L. 111–240, set out as a note below.]

[For definitions of "Administration" and "small business concern" as used in section 1207 of Pub. L. 111–240, set out above, see section 1001 of Pub. L. 111–240, set out as a note under section 632 of this title.]

DEFINITIONS

Pub. L. 111–240, title I, §1202(a), Sept. 27, 2010, 124 Stat. 2520, provided that: "In this subtitle [subtitle B (§§1201–1209) of title I of Pub. L. 111–240, see Short Title of 2010 Amendment note set out under section 631 of this title]—

"(1) the term 'Associate Administrator' means the Associate Administrator for International Trade appointed under section 22(a)(2) of the Small Business Act [15 U.S.C. 649(a)(2)], as amended by this subtitle;

"(2) the term 'Export Assistance Center' means a one-stop shop referred to in section 2301(b)(8) of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4721(b)(8)); and

"(3) the term 'rural small business concern' means a small business concern located in a rural area, as that term is defined in section 1393(a)(2) of the Internal Revenue Code of 1986 [26 U.S.C. 1393(a)(2)]."

[For definition of "small business concern" as used in section 1202(a) of Pub. L. 111–240, set out above, see section 1001 of Pub. L. 111–240, set out as a note under section 632 of this title.]

§649c. Authorization of appropriations

At least one small business international program shall be established within each region of the Department of Commerce. There are authorized to be appropriated to the Secretary $1,500,000 for each fiscal year 1981, 1982, and 1983, to carry out the program established in section 649b of this title.

(Pub. L. 96–481, title III, §303, Oct. 21, 1980, 94 Stat. 2332.)

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

§649d. Central information clearinghouse

The Secretary through the International Trade Administration, shall, only to such extent and in such amounts as are provided in appropriation Acts on and after October 1, 1980, maintain a central clearinghouse to provide for the collection, dissemination, and exchange of information between programs established pursuant to sections 649a and 649b of this title, the Office of International Trade of the Small Business Administration, and other interested concerns.

(Pub. L. 96–481, title III, §304, Oct. 21, 1980, 94 Stat. 2333.)

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

§650. Supervisory and enforcement authority for small business lending companies

(a) In general

The Administrator is authorized—

(1) to supervise the safety and soundness of small business lending companies and non-Federally regulated lenders;

(2) with respect to small business lending companies to set capital standards to regulate, to examine, and to enforce laws governing such companies, in accordance with the purposes of this chapter; and

(3) with respect to non-Federally regulated lenders to regulate, to examine, and to enforce laws governing the lending activities of such lenders under section 636(a) of this title in accordance with the purposes of this chapter.

(b) Capital directive

(1) In general

If the Administrator determines that a small business lending company is being operated in an imprudent manner, the Administrator may, in addition to any other action authorized by law, issue a directive to such company to increase capital to such level as the Administrator determines will result in the safe and sound operation of such company.

(2) Delegation

The Administrator may not delegate the authority granted under paragraph (1) except to an Associate Deputy Administrator.

(3) Regulations

The Administrator shall issue regulations outlining the conditions under which the Administrator may determine the level of capital pursuant to paragraph (1).

(c) Civil action

If a small business lending company violates this chapter, the Administrator may institute a civil action in an appropriate district court to terminate the rights, privileges, and franchises of the company under this chapter.

(d) Revocation or suspension of loan authority

(1) The Administrator may revoke or suspend the authority of a small business lending company or a non-Federally regulated lender to make, service or liquidate business loans authorized by section 636(a) of this title—

(A) for false statements knowingly made in any written submission required under this chapter;

(B) for omission of a material fact from any written submission required under this chapter;

(C) for willful or repeated violation of this chapter;

(D) for willful or repeated violation of any condition imposed by the Administrator with respect to any application, request, or agreement under this chapter; or

(E) for violation of any cease and desist order of the Administrator under this section.

(2) The Administrator may revoke or suspend authority under paragraph (1) only after a hearing under subsection (f) of this section. The Administrator may delegate power to revoke or suspend authority under paragraph (1) only to the Deputy Administrator and only if the Administrator is unavailable to take such action.

(A) The Administrator, after finding extraordinary circumstances and in order to protect the financial or legal position of the United States, may issue a suspension order without conducting a hearing pursuant to subsection (f) of this section. If the Administrator issues a suspension under the preceding sentence, the Administrator shall within two business days follow the procedures set forth in subsection (f) of this section.

(B) Any suspension under paragraph (1) shall remain in effect until the Administrator makes a decision pursuant to subparagraph (4) to permanently revoke the authority of the small business lending company or non-Federally regulated lender, suspend the authority for a time certain, or terminate the suspension.

(3) The small business lending company or non-Federally regulated lender must notify borrowers of a revocation and that a new entity has been appointed to service their loans. The Administrator or an employee of the Administration designated by the Administrator may provide such notice to the borrower.

(4) Any revocation or suspension under paragraph (1) shall be made by the Administrator except that the Administrator shall delegate to an administrative law judge as that term is used in section

3105 of title 5 the authority to conduct any hearing required under subsection (f) of this section. The Administrator shall base the decision to revoke on the record of the hearing.

(e) Cease and desist order

(1) Where a small business lending company, a non-Federally regulated lender, or other person violates this chapter or is engaging or is about to engage in any acts or practices which constitute or will constitute a violation of this chapter, the Administrator may order, after the opportunity for hearing pursuant to subsection (f) of this section, the company, lender, or other person to cease and desist from such action or failure to act. The Administrator may delegate the authority under the preceding sentence only to the Deputy Administrator and only if the Administrator is unavailable to take such action.

(2) The Administrator, after finding extraordinary circumstances and in order to protect the financial or legal position of the United States, may issue a cease and desist order without conducting a hearing pursuant to subsection (f) of this section. If the Administrator issues a cease and desist order under the preceding sentence, the Administrator shall within two business days follow the procedures set forth in subsection (f) of this section.

(3) The Administrator may further order such small business lending company or non-Federally regulated lender or other person to take such action or to refrain from such action as the Administrator deems necessary to insure compliance with this chapter.

(4) A cease and desist order under this subsection may also provide for the suspension of authority to lend in subsection (d) of this section.

(f) Procedure for revocation or suspension of loan authority and for cease and desist order

(1) Before revoking or suspending authority under subsection (d) of this section or issuing a cease and desist order under subsection (e) of this section, the Administrator shall serve an order to show cause upon the small business lending company, non-Federally regulated lender, or other person why an order revoking or suspending the authority or a cease and desist order should not be issued. The order to show cause shall contain a statement of the matters of fact and law asserted by the Administrator and the legal authority and jurisdiction under which a hearing is to be held, and shall set forth that a hearing will be held before an administrative law judge at a time and place stated in the order. Such hearing shall be conducted pursuant to the provisions of sections 554, 556, and 557 of title 5. If after hearing, or a waiver thereof, the Administrator determines that an order revoking or suspending the authority or a cease and desist order should be issued, the Administrator shall promptly issue such order, which shall include a statement of the findings of the Administrator and the grounds and reasons therefor and specify the effective date of the order, and shall cause the order to be served on the small business lending company, non-Federally regulated lender, or other person involved.

(2) Witnesses summoned before the Administrator shall be paid by the party at whose instance they were called the same fees and mileage that are paid witnesses in the courts of the United States.

(3) A cease and desist order, suspension or revocation issued by the Administrator, after the hearing under this subsection is final agency action for purposes of chapter 7 of title 5. An adversely aggrieved party shall have 20 days from the date of issuance of the cease and desist order, suspension or revocation, to seek judicial review in an appropriate district court.

(g) Removal or suspension of management official

(1) Definition

In this section, the term "management official" means, with respect to a small business lending company or a non-Federally regulated lender, an officer, director, general partner, manager, employee, agent, or other participant in the management of the affairs of the company's or lender's activities under section 636(a) of this title.

(2) Removal of management official

(A) Notice

The Administrator may serve upon any management official a written notice of its intention

to remove that management official if, in the opinion of the Administrator, the management official—

(i) willfully and knowingly commits a substantial violation of—

(I) this chapter;

(II) any regulation issued under this chapter;

(III) a final cease-and-desist order under this chapter; or

(IV) any agreement by the management official, the small business lending company or non-Federally regulated lender under this chapter; or

(ii) willfully and knowingly commits a substantial breach of a fiduciary duty of that person as a management official and the violation or breach of fiduciary duty is one involving personal dishonesty on the part of such management official.

(B) Contents of notice

A notice under subparagraph (A) shall contain a statement of the facts constituting grounds therefor and shall fix a time and place at which a hearing, conducted pursuant to sections 554, 556, and 557 of title 5, will be held thereon.

(C) Hearing

(i) Timing

A hearing under subparagraph (B) shall be held not earlier than 30 days and later than 60 days after the date of service of notice of the hearing, unless an earlier or a later date is set by the Administrator at the request of—

(I) the management official, and for good cause shown; or

(II) the Attorney General.

(ii) Consent

Unless the management official appears at a hearing under this paragraph in person or by a duly authorized representative, the management official shall be deemed to have consented to the issuance of an order of removal under subparagraph (A).

(D) Order of removal

(i) In general

In the event of consent under subparagraph (C)(ii), or if upon the record made at a hearing under this subsection, the Administrator finds that any of the grounds specified in the notice of removal has been established, the Administrator may issue such orders of removal from office as the Administrator deems appropriate.

(ii) Effectiveness

An order under clause (i) shall—

(I) take effect 30 days after the date of service upon the subject small business lending company or non-Federally regulated lender and the management official concerned (except in the case of an order issued upon consent as described in subparagraph (C)(ii), which shall become effective at the time specified in such order); and

(II) remain effective and enforceable, except to such extent as it is stayed, modified, terminated, or set aside by action of the Administrator or a reviewing court in accordance with this section.

(3) Authority to suspend or prohibit participation

(A) In general

In order to protect a small business lending company, a non-Federally regulated lender or the interests of the Administration or the United States, the Administrator may suspend from office or prohibit from further participation in any manner in the management or conduct of the affairs of a small business lending company or a non-Federally regulated lender a management official

by written notice to such effect served upon the management official. Such suspension or prohibition may prohibit the management official from making, servicing, reviewing, approving, or liquidating any loan under section 636(a) of this title.

(B) Effectiveness

A suspension or prohibition under subparagraph (A)—

(i) shall take effect upon service of notice under paragraph (2); and

(ii) unless stayed by a court in proceedings authorized by subparagraph (C), shall remain in effect—

(I) pending the completion of the administrative proceedings pursuant to a notice of intention to remove served under paragraph (2); and

(II) until such time as the Administrator dismisses the charges specified in the notice, or, if an order of removal or prohibition is issued against the management official, until the effective date of any such order.

(C) Judicial review of suspension prior to hearing

Not later than 10 days after a management official is suspended or prohibited from participation under subparagraph (A), the management official may apply to an appropriate district court for a stay of the suspension or prohibition pending the completion of the administrative proceedings pursuant to a notice of intent to remove served upon the management official under paragraph (2).

(4) Authority to suspend on criminal charges

(A) In general

If a management official is charged in any information, indictment, or complaint authorized by a United States attorney, with a felony involving dishonesty or breach of trust, the Administrator may, by written notice served upon the management official, suspend the management official from office or prohibit the management official from further participation in any manner in the management or conduct of the affairs of the small business lending company or non-Federally regulated lender.

(B) Effectiveness

A suspension or prohibition under subparagraph (A) shall remain in effect until the information, indictment, or complaint is finally disposed of, or until terminated by the Administrator or upon an order of a district court.

(C) Authority upon conviction

If a judgment of conviction with respect to an offense described in subparagraph (A) is entered against a management official, then at such time as the judgment is not subject to further judicial review (and for purposes of this subparagraph shall not include any petition for a writ of habeas corpus), the Administrator may issue and serve upon the management official an order removing the management official, effective upon service of a copy of the order upon the small business lending company or non-Federally regulated lender.

(D) Authority upon dismissal or other disposition

A finding of not guilty or other disposition of charges described in subparagraph (A) shall not preclude the Administrator from instituting proceedings under subsection (e) or (f) of this section.

(5) Notification to small business lending company or a non-Federally regulated lender

Copies of each notice required to be served on a management official under this section shall also be served upon the small business lending company or non-Federally regulated lender involved.

(6) Final agency action and judicial review

(A) Issuance of orders

After a hearing under this subsection, and not later than 30 days after the Administrator notifies the parties that the case has been submitted for final decision, the Administrator shall render a decision in the matter (which shall include findings of fact upon which its decision is predicated), and shall issue and cause to be served upon each party to the proceeding an order or orders consistent with this section. The decision of the Administrator shall constitute final agency action for purposes of chapter 7 of title 5.

(B) Judicial review

An adversely aggrieved party shall have 20 days from the date of issuance of the order to seek judicial review in an appropriate district court.

(h) Appointment of receiver

(1) In any proceeding under subsection (f)(4) of this section or subsection (g)(6)(C) [1] of this section, the court may take exclusive jurisdiction of a small business lending company or a non-Federally regulated lender and appoint a receiver to hold and administer the assets of the company or lender.

(2) Upon request of the Administrator, the court may appoint the Administrator as a receiver under paragraph (1).

(i) Possession of assets

(1) If a small business lending company or a non-Federally regulated lender is not in compliance with capital requirements or is insolvent, the Administrator may take possession of the portfolio of loans guaranteed by the Administrator and sell such loans to a third party by means of a receiver appointed under subsection (h) of this section.

(2) If a small business lending company or a non-Federally regulated lender is not in compliance with capital requirements or is insolvent or otherwise operating in an unsafe and unsound condition, the Administrator may take possession of servicing activities of loans that are guaranteed by the Administrator and sell such servicing rights to a third party by means of a receiver appointed under subsection (h) of this section.

(j) Penalties and forfeitures

(1) Except as provided in paragraph (2), a small business lending company or a non-Federally regulated lender which violates any regulation or written directive issued by the Administrator regarding the filing of any regular or special report shall pay to the United States a civil penalty of not more than $5,000 for each day of the continuance of the failure to file such report, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The civil penalties under this subsection may be enforced in a civil action brought by the Administrator. The penalties under this subsection shall not apply to any affiliate of a small business lending company that procures at least 10 percent of its annual purchasing requirements from small manufacturers.

(2) The Administrator may by rules and regulations that shall be codified in the Code of Federal Regulations, after an opportunity for notice and comment, or upon application of an interested party, at any time previous to such failure, by order, after notice and opportunity for hearing which shall be conducted pursuant to sections 554, 556, and 557 of title 5, exempt in whole or in part, any small business lending company or non-Federally regulated lender from paragraph (1), upon such terms and conditions and for such period of time as it deems necessary and appropriate, if the Administrator finds that such action is not inconsistent with the public interest or the protection of the Administration. The Administrator may for the purposes of this section make any alternative requirements appropriate to the situation.

(Pub. L. 85–536, §2[23], as added Pub. L. 98–473, title I, §111A(a), Oct. 12, 1984, 98 Stat. 1965; Pub. L. 108–447, div. K, title I, §161, Dec. 8, 2004, 118 Stat. 3458.)

PRIOR PROVISIONS

A prior section 650, acts July 30, 1953, ch. 282, title II, §221, 67 Stat. 240; June 30, 1955, ch. 251, §4, 69 Stat. 225; Aug. 9, 1955, ch. 628, §13, 69 Stat. 551; Pub. L. 85–120, §2, Aug. 3, 1957, 71 Stat. 341, provided for a termination date of the Small Business Act of 1953, and was omitted from the general revision by Pub.

L. 85–536. See Codification note set out under section 631 of this title.

AMENDMENTS

2004—Pub. L. 108–447 amended section catchline and text generally. Prior to amendment, text related to disaster loan assistance to small business concerns in the fishing industry due to El Nino-related ocean conditions.

[1] *So in original. There is no subsec. (f)(4) or (g)(6)(C) of this section.*

§651. National small business tree planting program

(a) Authorization of grants and contracts with States

The Administrator is authorized to make grants to or to enter into contracts with any State for the purpose of contracting with small businesses to plant trees on land owned or controlled by such State or local government. The Administrator shall require as a condition of any grant (or amendment or modification thereof) under this section that the applicant also contribute to the project a sum equal to at least 25 per centum of a particular project cost from sources other than the Federal Government. Such non-Federal money may include inkind contributions, including the cost or value of providing care and maintenance for a period of three years after the planting of the trees, but shall not include any value attributable to the land on which the trees are to be planted, nor may any part of any grant be used to pay for land or land charges: *Provided,* That not less than one-half of the amounts appropriated under this section shall be allocated to each State, the District of Columbia, and the Commonwealth of Puerto Rico on the basis of the population in each area as compared to the total population in all areas as provided by the Census Bureau of the Department of Commerce in the annual population estimate or the decennial census, whichever is most current. The Administrator may give a priority in awarding the remaining one-half of appropriated amounts to applicants who agree to contribute more than the requisite 25 per centum, and shall give priority to a proposal to restore an area determined to be a major disaster by the President on a date not more than three years prior to the fiscal year for which the application is made.

(b) Establishment by Administrator

In order to accomplish the objectives of this section, the Administrator, in consultation with appropriate Federal agencies, shall be responsible for formulating a national small business tree planting program. Based on this program, a State may submit a detailed proposal for tree planting by contract.

(c) Utilization of small business concerns in implementing program

To encourage and develop the capacity of small business concerns, to utilize this important segment of our economy, and to permit rapid increases in employment opportunities in local communities, grantees are directed to utilize small business contractors or concerns in connection with the program established by this section, and shall, to the extent practicable, divide the project to allow more than one small business concern to perform the work under the project.

(d) Cooperation of Federal agencies; technical services

For purposes of this section, agencies of the Federal Government are hereby authorized to cooperate with all grantees and with State foresters or other appropriate officials by providing without charge, in furtherance of this program, technical services with respect to the planting and growing of such trees.

(e) Authorization of appropriations

There are authorized to be appropriated to carry out the objectives of this section, $15,000,000 for fiscal year 1991 and $30,000,000 for each of the fiscal years 1995 through 1997, and all of such sums may remain available until expended.

(f) Rules and regulations

Notwithstanding any other law, rule, or regulation, the administration shall publish in the Federal Register proposed rules and regulations implementing this section within sixty days after November 5, 1990, and shall publish final rules and regulations within one hundred and twenty days of November 5, 1990.

(g) Definitions

As used in this section:

(1) the term "local government" includes political subdivisions of a State such as counties, parishes, cities, towns and municipalities;

(2) the term "planting" includes watering, application of fertilizer and herbicides, pruning and shaping, and other subsequent care and maintenance for a period of three years after the trees are planted; and

(3) the term "State" includes any agency thereof.

(h) Annual report to President and Congress

The Administrator shall submit annually to the President and the Congress a report on activities within the scope of this section.

(Pub. L. 85–536, §2[24], as added Pub. L. 101–515, title V, §4, Nov. 5, 1990, 104 Stat. 2140; amended Pub. L. 103–211, title I, §201, Feb. 12, 1994, 108 Stat. 5; Pub. L. 103–317, title IV, Aug. 26, 1994, 108 Stat. 1755.)

PRIOR PROVISIONS

A prior section 651, act July 30, 1953, ch. 282, §225, as added Aug. 9, 1955, ch. 628, §14, 69 Stat. 551, prohibited duplication of activities, and was omitted as superseded by section 647 of this title. See Codification note set out under section 631 of this title.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–211 inserted at end ", and shall give priority to a proposal to restore an area determined to be a major disaster by the President on a date not more than three years prior to the fiscal year for which the application is made".

Subsec. (e). Pub. L. 103–317 substituted "fiscal years 1995 through 1997" for "fiscal years 1992 through 1994".

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (h) of this section relating to submitting annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 191 of House Document No. 103–7.

§652. Central European Enterprise Development Commission

(a) Establishment

There is hereby established a Central European Small Business Enterprise Development Commission (hereinafter in this section referred to as the "Commission"). The Commission shall be comprised of a representative of each of the following: the Small Business Administration, the Association of American Universities, and the Association of Small Business Development Centers.

(b) Management and technical assistance to designated Central European countries

The Commission shall develop in Czechoslovakia, Poland and Hungary (hereinafter referred to as "designated Central European countries") a self-sustaining system to provide management and technical assistance to small business owners.

(1) Not later than 90 days after November 5, 1990, the Commission, in consultation with the Agency for International Development, shall enter [1] a contract with one or more entities to—

(A) determine the needs of small businesses in the designated Central European countries for management and technical assistance;

(B) evaluate appropriate Small Business Development Center-programs which might be

replicated in order to meet the needs of each of such countries; and

(C) identify and assess the capability of educational institutions in each such country to develop a Small Business Development Center type program.

(2) Not later than 18 months after November 5, 1990, the Commission shall review the recommendations submitted to it and shall formulate and contract for the establishment of a three-year management and technical assistance demonstration program.

(c) Eligibility

In order to be eligible to participate, the educational institution in each designated Central European country shall—

(1) obtain the prior approval of the government to conduct the program;

(2) agree to provide partial financial support for the program, either directly or indirectly, during the second and third years of the demonstration program; and

(3) agree to obtain private sector involvement in the delivery of assistance under the program.

(d) Initial meeting and organization

The Commission shall meet and organize not later than 30 days after November 5, 1990.

(e) Reimbursement for necessary expenses

Members of the Commission shall serve without pay, except they shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out their functions in the same manner as persons employed intermittently in the Federal Government are allowed expenses under section 5703 of title 5.

(f) Meetings; quorum

Two Commissioners shall constitute a quorum for the transaction of business. Meetings shall be at the call of the Chairperson who shall be elected by the Members of the Commission.

(g) Authority; personnel

The Commission shall not have any authority to appoint staff, but upon request of the Chairperson, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of such department or agency to the Commission to assist in carrying out the Commission's functions under this section without regard to section 3341 of title 5. The Administrator of the General Services Administration shall provide, on a reimbursable basis, such administrative support services as the Commission may request.

(h) Initial and annual reports to Congress

The Commission shall report to Congress not later than December 1, 1991, and annually thereafter, on the progress in carrying out the provisions of this section.

(i) Authorization of appropriations

There are hereby authorized to be appropriated to the Small Business Administration the sum of $3,000,000 for fiscal year 1991, $5,000,000 for fiscal year 1992, $2,000,000 for each of fiscal years 1993 and 1994, and $1,000,000 for fiscal year 1995 to carry out the provisions of this section. Such sums shall be disbursed by the Small Business Administration as requested by the Commission and may remain available until expended. Any authority to enter contracts or other spending authority provided for in this section is subject to amounts provided for in advance in appropriations Acts.

(Pub. L. 85–536, §2[25], as added Pub. L. 101–515, title V, §7, Nov. 5, 1990, 104 Stat. 2142; amended Pub. L. 103–81, §9(b), Aug. 13, 1993, 107 Stat. 783; Pub. L. 103–403, title IV, §405, Oct. 22, 1994, 108 Stat. 4192.)

AMENDMENTS

1994—Pub. L. 103–403 substituted ", $2,000,000 for each of fiscal years 1993 and 1994, and $1,000,000 for fiscal year 1995" for "and $2,000,000 for each of fiscal years 1993 and 1994".

1993—Subsec. (i). Pub. L. 103–81 substituted "$2,000,000 for each of fiscal years 1993 and 1994" for

"$8,000,000 for fiscal year 1993".

[1] *So in original. Probably should be "enter into".*

§653. Office of Rural Affairs

(a) Establishment

There is hereby established in the Small Business Administration an Office of Rural Affairs (hereafter in this section referred to as the "Office").

(b) Appointment of director

The Office shall be headed by a director who shall be appointed by the Administrator not later than 90 days after November 15, 1990.

(c) Functions

The Office shall—

(1) strive to achieve an equitable distribution of the financial assistance available from the Administration for small business concerns located in rural areas;

(2) to the extent practicable, compile annual statistics on rural areas, including statistics concerning the population, poverty, job creation and retention, unemployment, business failures, and business startups;

(3) provide information to industries, organizations, and State and local governments concerning the assistance available to rural small business concerns through the Administration and through other Federal departments and agencies;

(4) provide information to industries, organizations, educational institutions, and State and local governments concerning programs administered by private organizations, educational institutions, and Federal, State, and local governments which improve the economic opportunities of rural citizens; and

(5) work with the United States Tourism and Travel Administration to assist small businesses in rural areas with tourism promotion and development.

(Pub. L. 85–536, §2[26], as added Pub. L. 101–574, title III, §302, Nov. 15, 1990, 104 Stat. 2827.)

CATALOG OF PROGRAMS TO ASSIST RURAL SMALL BUSINESS CONCERNS

Pub. L. 101–574, title III, §304, Nov. 15, 1990, 104 Stat. 2829, required the Small Business Administration to compile a catalog of programs administered by Federal and State departments and agencies which offer assistance to small business concerns in rural areas by no later than 180 days after Nov. 15, 1990, and to issue updates of the catalog by Feb. 1, 1993, and Feb. 1, 1995.

RURAL SMALL BUSINESS CONFERENCES

Pub. L. 101–574, title III, §306, Nov. 15, 1990, 104 Stat. 2829, provided that:

"(a) IN GENERAL.—The Chief Counsel for Advocacy of the Small Business Administration shall, as soon as practicable after the catalog (described in section 305 [probably means section 304, set out above] and hereinafter referred to as the 'catalog') is issued, but not later than 90 days after the date such catalog is issued, convene regional rural conferences in 5 cities or towns in the United States.

"(b) PREPARATIONS.—Prior to the conferences, the Office of Advocacy shall—

"(1) select the sites for the conferences in order to encourage the maximum participation of all interested parties including private citizens and representatives of business, government, educational and nonprofit institutions; and

"(2) distribute the catalog of programs and such other background materials prepared by the Office of Advocacy as the Chief Counsel deems appropriate.

"(c) PURPOSES OF THE CONFERENCES.—The conference shall—

"(1) review the effectiveness of current Federal programs to promote rural small business and its needs, with particular reference to the catalog of such programs;

"(2) review how current Federal programs could be made more accessible to small businesses located in rural areas;

"(3) make recommendations on how current programs can be approved to better address small business needs in rural areas;

"(4) review the availability and cost of capital, transportation, and telecommunications in rural areas;

"(5) review the availability of technical assistance and training programs for small business needs in rural areas, including marketing, computer training, accounting, financing, and international trade; and

"(6) determine any additional needs of small businesses in rural areas.

"(d) REPORT.—The Chief Counsel for Advocacy shall prepare a summary of the findings and recommendations of each regional conference. Not later than 60 days after the last of the 5 regional conferences have been held, the Chief Counsel for Advocacy shall transmit such summaries to the Congress and the President, along with conclusions and recommendations, including specific legislative proposals and recommendations for administrative or other actions. The transmittal of the required information shall be deemed a report of the Chief Counsel for Advocacy under the terms and conditions of section 206 of Public Law 94–305 [15 U.S.C. 634f]. To the extent practicable, the report shall estimate the cost of implementing each recommendation of a regional conference as well as those of the Chief Counsel."

RURAL TOURISM TRAINING PROGRAM

Pub. L. 101–574, title III, §311, Nov. 15, 1990, 104 Stat. 2832, provided that: "The Chief Counsel for Advocacy of the Small Business Administration shall conduct training sessions on the types of Federal assistance available for the development of rural small businesses engaged in tourism and tourism-related activities. Such training sessions shall be conducted in conjunction with the Office of Rural Affairs (established pursuant to section 26 of the Small Business Act [15 U.S.C. 653]) and appropriate personnel designated by each district office of the Administration."

§654. Paul D. Coverdell drug-free workplace program

(a) Definitions

In this section:

(1) Drug-free workplace program

The term "drug-free workplace program" means a program that includes—

(A) a written policy, including a clear statement of expectations for workplace behavior, prohibitions against reporting to work or working under the influence of illegal drugs or alcohol, prohibitions against the use or possession of illegal drugs in the workplace, and the consequences of violating those expectations and prohibitions;

(B) drug and alcohol abuse prevention training for a total of not less than 2 hours for each employee, and additional voluntary drug and alcohol abuse prevention training for employees who are parents;

(C) employee illegal drug testing, with analysis conducted by a drug testing laboratory certified by the Substance Abuse and Mental Health Services Administration, or approved by the College of American Pathologists for forensic drug testing, and a review of each positive test result by a medical review officer;

(D) employee access to an employee assistance program, including confidential assessment, referral, and short-term problem resolution; and

(E) continuing alcohol and drug abuse prevention education.

(2) Eligible intermediary

The term "eligible intermediary" means an organization—

(A) that has not less than 2 years of experience in carrying out drug-free workplace programs;

(B) that has a drug-free workplace policy in effect;

(C) that is located in a State, the District of Columbia, or a territory of the United States; and

(D)(i) the purpose of which is—

(I) to develop comprehensive drug-free workplace programs or to supply drug-free workplace services; or

(II) to provide other forms of assistance and services to small business concerns; or

(ii) that is eligible to receive a grant under chapter 2 of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1521 et seq.).

(3) Employee

The term "employee" includes any—

(A) applicant for employment;

(B) employee;

(C) supervisor;

(D) manager;

(E) officer of a small business concern who is active in management of the concern; and

(F) owner of a small business concern who is active in management of the concern.

(4) Medical review officer

The term "medical review officer"—

(A) means a licensed physician with knowledge of substance abuse disorders; and

(B) does not include any—

(i) employee of the small business concern; or

(ii) employee or agent of, or any person having a financial interest in, the laboratory for which the illegal drug test results are being reviewed.

(b) Establishment

(1) In general

There is established a drug-free workplace demonstration program, under which the Administrator may make grants to, or enter into cooperative agreements or contracts with, eligible intermediaries for the purpose of providing financial and technical assistance to small business concerns seeking to establish a drug-free workplace program.

(2) Additional grants for technical assistance

In addition to grants under paragraph (1), the Administrator may make grants to, or enter into cooperative agreements or contracts with, any grantee for the purpose of providing, in cooperation with one or more small business development centers, technical assistance to small business concerns seeking to establish a drug-free workplace program.

(3) 2-year grants

Each grant made under this subsection shall be for a period of 2 years, subject to an annual performance review by the Administrator.

(c) Promotion of effective practices of eligible intermediaries

(1) Technical assistance and information

The Administrator, after consultation with the Director of the Center for Substance Abuse and Prevention, shall provide technical assistance and information to each eligible intermediary under subsection (b) of this section regarding the most effective practices in establishing and carrying out drug-free workplace programs.

(2) Evaluation of program

(A) Data collection and analysis

Each eligible intermediary receiving a grant under this section shall establish a system to collect and analyze information regarding the effectiveness of drug-free workplace programs established with assistance provided under this section through the intermediary, including information regarding any increase or decrease among employees in drug use, awareness of the adverse consequences of drug use, and absenteeism, injury, and disciplinary problems related to drug use. Such system shall conform to such requirements as the Administrator, after consultation with the Director of the Center for Substance Abuse and Prevention, may prescribe. Not more than 5 percent of the amount of each grant made under subsection (b) of this section shall be used by the eligible intermediary to carry out this paragraph.

(B) Method of evaluation

The Administrator, after consultation with the Director of the Center for Substance Abuse and Prevention, shall provide technical assistance and guidance to each eligible intermediary receiving a grant under subsection (b) of this section regarding the collection and analysis of information to evaluate the effectiveness of drug-free workplace programs established with assistance provided under this section, including the information referred to in paragraph (1). Such assistance shall include the identification of additional information suitable for measuring the benefits of drug-free workplace programs to the small business concern and to the concern's employees and the identification of methods suitable for analyzing such information.

(d) Evaluation and coordination

Not later than 18 months after October 21, 1998, the Administrator, in coordination with the Secretary of Labor, the Secretary of Health and Human Services, and the Director of National Drug Control Policy, shall—

(1) evaluate the drug-free workplace programs established with assistance made available under this section; and

(2) submit to Congress a report describing the results of the evaluation under paragraph (1).

(e) Contract authority

In carrying out this section, the Administrator may—

(1) contract with public and private entities to provide assistance related to carrying out the program under this section; and

(2) compensate those entities for provision of that assistance.

(f) Construction

Nothing in this section may be construed to require an employer who attends a program offered by an intermediary to contract for any service offered by the intermediary.

(g) Authorization

(1) In general

There is authorized to be appropriated to carry out this section (other than subsection (b)(2)), $5,000,000 for each of fiscal years 2005 and 2006. Amounts made available under this paragraph shall remain available until expended.

(2) Small business development centers

Of the total amount made available under paragraph (1) for each of fiscal years 2005 and 2006, not more than the greater of 10 percent or $500,000 may be used to carry out section 648(c)(3)(T) of this title.

(3) Additional authorization for technical assistance grants

There are authorized to be appropriated to carry out subsection (b)(2) of this section, $1,500,000 for each of fiscal years 2005 and 2006. Amounts made available under this paragraph shall remain available until expended.

(4) Limitation on administrative costs

Not more than 5 percent of the total amount made available under this subsection for any fiscal year shall be used for administrative costs (determined without regard to the administrative costs of eligible intermediaries).

(Pub. L. 85–536, §2[27], as added Pub. L. 101–574, title III, §310, Nov. 15, 1990, 104 Stat. 2831; amended Pub. L. 105–277, div. C, title IX, §904, Oct. 21, 1998, 112 Stat. 2681–708; Pub. L. 106–554, §1(a)(9) [title V, §503(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–695; Pub. L. 108–447, div. K, title I, §§123–126, Dec. 8, 2004, 118 Stat. 3449–3451.)

REFERENCES IN TEXT

The National Narcotics Leadership Act of 1988, referred to in subsec. (a)(2)(D)(ii), is subtitle A of title I of Pub. L. 100–690, Nov. 18, 1988, 102 Stat. 4181, as amended. Chapter 2 of the Act is classified generally to

subchapter II (§1521 et seq.) of chapter 20 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under former section 1501 of Title 21 and Tables.

AMENDMENTS

2004—Subsec. (a)(2)(D). Pub. L. 108–447, §125, amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: "the purpose of which is—

"(i) to develop comprehensive drug-free workplace programs or to supply drug-free workplace services; or

"(ii) to provide other forms of assistance and services to small business concerns."

Subsec. (b). Pub. L. 108–447, §124, designated existing provisions as par. (1), inserted heading, and added pars. (2) and (3).

Subsec. (c). Pub. L. 108–447, §126, amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: "Each drug-free workplace program established with assistance made available under this section shall—

"(1) include, as reasonably necessary and appropriate, practices and procedures to ensure the confidentiality of illegal drug test results and of any participation by an employee in a rehabilitation program;

"(2) prohibit the mandatory disclosure of medical information by an employee prior to a confirmed positive illegal drug test; and

"(3) require that a medical review officer reviewing illegal drug test results shall report only the final results, limited to those drugs for which the employee tests positive, in writing and in a manner designed to ensure the confidentiality of the results."

Subsec. (g)(1). Pub. L. 108–447, §123(a), substituted "(other than subsection (b)(2)), $5,000,000 for each of fiscal years 2005 and 2006. Amounts made available under this paragraph" for ", $5,000,000 for each of fiscal years 2001 through 2003. Amounts made available under this subsection".

Subsec. (g)(2). Pub. L. 108–447, §123(b), substituted "paragraph (1) for each of fiscal years 2005 and 2006, not more than the greater of 10 percent or $500,000" for "this subsection, not more than the greater of 10 percent or $1,000,000".

Subsec. (g)(3), (4). Pub. L. 108–447, §123(c), (d), added pars. (3) and (4).

2000—Pub. L. 106–554, §1(a)(9) [title V, §503(a)(1)], substituted "Paul D. Coverdell drug-free workplace program" for "Drug-free workplace demonstration program" in section catchline.

Subsec. (g)(1). Pub. L. 106–554, §1(a)(9) [title V, §503(a)(2)], substituted "$5,000,000 for each of fiscal years 2001 through 2003" for "$10,000,000 for fiscal years 1999 and 2000".

1998—Pub. L. 105–277 amended section catchline and text generally. Prior to amendment, text consisted of subsecs. (a) to (c) authorizing Administration to make grants to conduct tourism demonstration programs, establishing purpose of program, placing a condition on grant recipients, authorizing appropriations, and requiring report to President and Congress.

FINDINGS AND PURPOSES OF 1998 AMENDMENT

Pub. L. 105–277, div. C, title IX, §902, Oct. 21, 1998, 112 Stat. 2681–707, provided that:

"(a) FINDINGS.—Congress finds that—

"(1) 74 percent of adults who use illegal drugs are employed;

"(2) small business concerns employ over 50 percent of the Nation's workforce;

"(3) in more than 88 percent of families with children under the age of 18, at least 1 parent is employed; and

"(4) employees who use and abuse addictive illegal drugs and alcohol increase costs for businesses and risk the health and safety of all employees because—

"(A) absenteeism is 66 percent higher among drug users than individuals who do not use drugs;

"(B) health benefit utilization is 300 percent higher among drug users than individuals who do not use drugs;

"(C) 47 percent of workplace accidents are drug-related;

"(D) disciplinary actions are 90 percent higher among drug users than among individuals who do not use drugs; and

"(E) employee turnover is significantly higher among drug users than among individuals who do not use drugs.

"(b) PURPOSES.—The purposes of this title [see Short Title of 1998 Amendment note set out under section 631 of this title] are to—

"(1) educate small business concerns about the advantages of a drug-free workplace;

"(2) provide grants and technical assistance in addition to financial incentives to enable small business concerns to create a drug-free workplace;

"(3) assist working parents in keeping their children drug-free; and

"(4) encourage small business employers and employees alike to participate in drug-free workplace programs."

SENSE OF CONGRESS FOR 1998 AMENDMENT

Pub. L. 105–277, div. C, title IX, §903, Oct. 21, 1998, 112 Stat. 2681–708, provided that: "It is the sense of Congress that—

"(1) businesses should adopt drug-free workplace programs;

"(2) States should consider incentives to encourage businesses to adopt drug-free workplace programs; and

"(3) such incentives may include—

"(A) financial incentives, including—

"(i) a reduction in workers' compensation premiums;

"(ii) a reduction in unemployment insurance premiums; and

"(iii) tax deductions in an amount equal to the amount of expenditures for employee assistance programs, treatment, or illegal drug testing; and

"(B) other incentives, such as the adoption of liability limitations, as recommended by the President's Commission on Model State Drug Laws."

§655. Pilot Technology Access Program

(a) Establishment

The Administration, in consultation with the National Institute of Standards and Technology and the National Technical Information Service, shall establish a Pilot Technology Access Program, for making awards under this section to Small Business Development Centers (hereinafter in this section referred to as "Centers").

(b) Criteria for selection of Centers

The Administrator of the Small Business Administration shall establish competitive, merit-based criteria for the selection of Centers to receive awards on the basis of—

(1) the ability of the applicant to carry out the purposes described in subsection (d) of this section in a manner relevant to the needs of industries in the area served by the Center;

(2) the ability of the applicant to integrate the implementation of this program with existing Federal and State technical and business assistance resources; and

(3) the ability of the applicant to continue providing technology access after the termination of this pilot program.

(c) Matching requirement

To be eligible to receive an award under this section, an applicant shall provide a matching contribution at least equal to that received under such award, not more than 50 percent of which may be waived overhead or in-kind contributions.

(d) Purpose of awards

Awards made under this section shall be for the purpose of increasing access by small businesses to on-line data base services that provide technical and business information, and access to technical experts, in a wide range of technologies, through such activities as—

(1) defraying the cost of access by small businesses to the data base services;

(2) training small businesses in the use of the data base services; and

(3) establishing a public point of access to the data base services.

Activities described in paragraphs (1) through (3) may be carried out through contract with a private entity.

(e) Renewal of awards

Awards previously made under section 648a [1] of this title may be renewed under this section.

(f) Interim report

Two years after the date on which the first award was issued under section 648a [1] of this title, the General Accounting Office shall submit to the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives and to the Committee on Small Business and the Committee on Commerce, Science, and Transportation of the Senate, an interim report on the implementation of the program under such section and this section, including the judgments of the participating Centers as to its effect on small business productivity and innovation.

(g) Final report

Three years after such date, the General Accounting Office shall submit to the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives and to the Committee on Small Business and the Committee on Commerce, Science and Transportation of the Senate, a final report evaluating the effectiveness of the Program under section 648a [1] of this title and this section in improving small business productivity and innovation.

(h) Authorization of appropriations

There are authorized to be appropriated to the Small Business Administration $5 million for each of fiscal years 1992 through 1995 to carry out this section, and such amounts may remain available until expended.

(i) Funding from other sources; employment of Centers by Federal agencies

Centers are encouraged to seek funding from Federal and non-Federal sources other than those provided for in this section to assist small businesses in the identification of appropriate technologies to fill their needs, the transfer of technologies from Federal laboratories, public and private universities, and other public and private institutions, the analysis of commercial opportunities represented by such technologies, and such other functions as the development, business planning, market research, and financial packaging required for commercialization. Insofar as such Centers pursue these activities, Federal agencies are encouraged to employ these Centers to interface with small businesses for such purposes as facilitating small business participation in Federal procurement and fostering commercialization of Federally-funded research and development.

(Pub. L. 85–536, §2[28], as added Pub. L. 102–140, title VI, §609(d), Oct. 28, 1991, 105 Stat. 825.)

REFERENCES IN TEXT

Section 648a of this title, referred to in subsecs. (e) to (g), was repealed by Pub. L. 102–140, title VI, §609(e), Oct. 28, 1991, 105 Stat. 826, effective Oct. 1, 1992.

CHANGE OF NAME

General Accounting Office redesignated Government Accountability Office by section 8 of Pub. L. 108–271, set out as a note under section 702 of Title 31, Money and Finance.

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

[1] *See References in Text note below.*

§656. Women's business center program

(a) Definitions

In this section—

(1) the term "Assistant Administrator" means the Assistant Administrator of the Office of Women's Business Ownership established under subsection (g) of this section;

(2) the term "private nonprofit organization" means an entity that is described in section 501(c) of title 26 and exempt from taxation under section 501(a) of such title;

(3) the term "small business concern owned and controlled by women", either startup or existing, includes any small business concern—

(A) that is not less than 51 percent owned by 1 or more women; and

(B) the management and daily business operations of which are controlled by 1 or more women; and

(4) the term "women's business center site" means the location of—

(A) a women's business center; or

(B) 1 or more women's business centers, established in conjunction with another women's business center in another location within a State or region—

(i) that reach a distinct population that would otherwise not be served;

(ii) whose services are targeted to women; and

(iii) whose scope, function, and activities are similar to those of the primary women's business center or centers in conjunction with which it was established.

(b) Authority

The Administration may provide financial assistance to private nonprofit organizations to conduct 5-year projects for the benefit of small business concerns owned and controlled by women. The projects shall provide—

(1) financial assistance, including training and counseling in how to apply for and secure business credit and investment capital, preparing and presenting financial statements, and managing cash flow and other financial operations of a business concern;

(2) management assistance, including training and counseling in how to plan, organize, staff, direct, and control each major activity and function of a small business concern; and

(3) marketing assistance, including training and counseling in identifying and segmenting domestic and international market opportunities, preparing and executing marketing plans, developing pricing strategies, locating contract opportunities, negotiating contracts, and utilizing varying public relations and advertising techniques.

(c) Conditions of participation

(1) Non-Federal contributions

As a condition of receiving financial assistance authorized by this section, the recipient organization shall agree to obtain, after its application has been approved and notice of award has been issued, cash contributions from non-Federal sources as follows:

(A) in the first and second years, 1 non-Federal dollar for each 2 Federal dollars; and

(B) in the third, fourth, and fifth years, 1 non-Federal dollar for each Federal dollar.

(2) Form of non-Federal contributions

Not more than one-half of the non-Federal sector matching assistance may be in the form of in-kind contributions that are budget line items only, including office equipment and office space.

(3) Form of Federal contributions

The financial assistance authorized pursuant to this section may be made by grant, contract, or cooperative agreement and may contain such provision, as necessary, to provide for payments in lump sum or installments, and in advance or by way of reimbursement. The Administration may disburse up to 25 percent of each year's Federal share awarded to a recipient organization after notice of the award has been issued and before the non-Federal sector matching funds are obtained.

(4) Failure to obtain non-Federal funding

If any recipient of assistance fails to obtain the required non-Federal contribution during any project, it shall not be eligible thereafter for advance disbursements pursuant to paragraph (3) during the remainder of that project, or for any other project for which it is or may be funded by the Administration, and prior to approving assistance to such organization for any other projects, the Administration shall specifically determine whether the Administration believes that the

recipient will be able to obtain the requisite non-Federal funding and enter a written finding setting forth the reasons for making such determination.

(d) Contract authority

A women's business center may enter into a contract with a Federal department or agency to provide specific assistance to women and other underserved small business concerns. Performance of such contract should not hinder the women's business centers in carrying out the terms of the grant received by the women's business centers from the Administration.

(e) Submission of 5-year plan

Each applicant organization initially shall submit a 5-year plan to the Administration on proposed fundraising and training activities, and a recipient organization may receive financial assistance under this program for a maximum of 5 years per women's business center site.

(f) Criteria

The Administration shall evaluate and rank applicants in accordance with predetermined selection criteria that shall be stated in terms of relative importance. Such criteria and their relative importance shall be made publicly available and stated in each solicitation for applications made by the Administration. The criteria shall include—

(1) the experience of the applicant in conducting programs or ongoing efforts designed to impart or upgrade the business skills of women business owners or potential owners;

(2) the present ability of the applicant to commence a project within a minimum amount of time;

(3) the ability of the applicant to provide training and services to a representative number of women who are both socially and economically disadvantaged; and

(4) the location for the women's business center site proposed by the applicant.

(g) Office of Women's Business Ownership

(1) Establishment

There is established within the Administration an Office of Women's Business Ownership, which shall be responsible for the administration of the Administration's programs for the development of women's business enterprises (as defined in section 7108 of this title). The Office of Women's Business Ownership shall be administered by an Assistant Administrator, who shall be appointed by the Administrator.

(2) Assistant Administrator of the Office of Women's Business Ownership

(A) Qualification

The position of Assistant Administrator shall be a Senior Executive Service position under section 3132(a)(2) of title 5. The Assistant Administrator shall serve as a noncareer appointee (as defined in section 3132(a)(7) of that title).

(B) Responsibilities and duties

(i) Responsibilities

The responsibilities of the Assistant Administrator shall be to administer the programs and services of the Office of Women's Business Ownership established to assist women entrepreneurs in the areas of—

(I) starting and operating a small business;

(II) development of management and technical skills;

(III) seeking Federal procurement opportunities; and

(IV) increasing the opportunity for access to capital.

(ii) Duties

The Assistant Administrator shall—

(I) administer and manage the Women's Business Center program;

(II) recommend the annual administrative and program budgets for the Office of

Women's Business Ownership (including the budget for the Women's Business Center program);

(III) establish appropriate funding levels therefore [1] ;

(IV) review the annual budgets submitted by each applicant for the Women's Business Center program;

(V) select applicants to participate in the program under this section;

(VI) implement this section;

(VII) maintain a clearinghouse to provide for the dissemination and exchange of information between women's business centers;

(VIII) serve as the vice chairperson of the Interagency Committee on Women's Business Enterprise;

(IX) serve as liaison for the National Women's Business Council; and

(X) advise the Administrator on appointments to the Women's Business Council.

(C) Consultation requirements

In carrying out the responsibilities and duties described in this paragraph, the Assistant Administrator shall confer with and seek the advice of the Administration officials in areas served by the women's business centers.

(h) Program examination

(1) In general

The Administration shall—

(A) develop and implement an annual programmatic and financial examination of each women's business center established pursuant to this section, pursuant to which each such center shall provide to the Administration—

(i) an itemized cost breakdown of actual expenditures for costs incurred during the preceding year; and

(ii) documentation regarding the amount of matching assistance from non-Federal sources obtained and expended by the center during the preceding year in order to meet the requirements of subsection (c) of this section and, with respect to any in-kind contributions described in subsection (c)(2) of this section that were used to satisfy the requirements of subsection (c) of this section, verification of the existence and valuation of those contributions; and

(B) analyze the results of each such examination and, based on that analysis, make a determination regarding the programmatic and financial viability of each women's business center.

(2) Conditions for continued funding

In determining whether to award a contract (as a sustainability grant) under subsection (l) of this section or to renew a contract (either as a grant or cooperative agreement) under this section with a women's business center, the Administration—

(A) shall consider the results of the most recent examination of the center under paragraph (1); and

(B) may withhold such award or renewal, if the Administration determines that—

(i) the center has failed to provide any information required to be provided under clause (i) or (ii) of paragraph (1)(A), or the information provided by the center is inadequate; or

(ii) the center has failed to provide any information required to be provided by the center for purposes of the report of the Administration under subsection (j) of this section, or the information provided by the center is inadequate.

(i) Contract authority

The authority of the Administrator to enter into contracts shall be in effect for each fiscal year only to the extent and in the amounts as are provided in advance in appropriations Acts. After the

Administrator has entered into a contract, either as a grant or a cooperative agreement, with any applicant under this section, it shall not suspend, terminate, or fail to renew or extend any such contract unless the Administrator provides the applicant with written notification setting forth the reasons therefore [1] and affords the applicant an opportunity for a hearing, appeal, or other administrative proceeding under chapter 5 of title 5.

(j) Management report

(1) In general

The Administration shall prepare and submit to the Committees on Small Business of the House of Representatives and the Senate a report on the effectiveness of all projects conducted under this section.

(2) Contents

Each report submitted under paragraph (1) shall include information concerning, with respect to each women's business center established pursuant to this section—

(A) the number of individuals receiving assistance;
(B) the number of startup business concerns formed;
(C) the gross receipts of assisted concerns;
(D) the employment increases or decreases of assisted concerns;
(E) to the maximum extent practicable, increases or decreases in profits of assisted concerns; and
(F) the most recent analysis, as required under subsection (h)(1)(B) of this section, and the subsequent determination made by the Administration under that subsection.

(k) Authorization of appropriations

(1) In general

There is authorized to be appropriated, to remain available until the expiration of the pilot program under subsection (l) of this section—

(A) $12,000,000 for fiscal year 2000;
(B) $12,800,000 for fiscal year 2001;
(C) $13,700,000 for fiscal year 2002; and
(D) $14,500,000 for fiscal year 2003.

(2) Use of amounts

(A) In general

Except as provided in subparagraph (B), amounts made available under this subsection for fiscal year 1999, and each fiscal year thereafter, may only be used for grant awards and may not be used for costs incurred by the Administration in connection with the management and administration of the program under this section.

(B) Exceptions

Of the amount made available under this subsection for a fiscal year, the following amounts shall be available for selection panel costs, post-award conference costs, and costs related to monitoring and oversight:

(i) For fiscal year 2000, 2 percent.
(ii) For fiscal year 2001, 1.9 percent.
(iii) For fiscal year 2002, 1.9 percent.
(iv) For fiscal year 2003, 1.6 percent.

(3) Expedited acquisition

Notwithstanding any other provision of law, the Administrator, acting through the Assistant Administrator, may use such expedited acquisition methods as the Administrator determines to be appropriate to carry out this section, except that the Administrator shall ensure that all small business sources are provided a reasonable opportunity to submit proposals.

(4) Reservation of funds for sustainability pilot program

(A) In general

Subject to subparagraph (B), of the total amount made available under this subsection for a fiscal year, the following amounts shall be reserved for sustainability grants under subsection (l) of this section:

(i) For fiscal year 2000, 17 percent.
(ii) For fiscal year 2001, 18.8 percent.
(iii) For fiscal year 2002, 30.2 percent.
(iv) For fiscal year 2003, 30.2 percent.

(B) Use of unawarded funds for sustainability pilot program grants

If the amount reserved under subparagraph (A) for any fiscal year is not fully awarded to private nonprofit organizations described in subsection (l)(1)(B) of this section, the Administration is authorized to use the unawarded amount to fund additional women's business center sites or to increase funding of existing women's business center sites under subsection (b) of this section.

(l) Repealed. Pub. L. 110–28, title VIII, §8305(b), May 25, 2007, 121 Stat. 210

(m) Continued funding for centers

(1) In general

A nonprofit organization described in paragraph (2) shall be eligible to receive, subject to paragraph (3), a 3-year grant under this subsection.

(2) Applicability

A nonprofit organization described in this paragraph is a nonprofit organization that has received funding under subsection (b) or (l).

(3) Application and approval criteria

(A) Criteria

Subject to subparagraph (B), the Administrator shall develop and publish criteria for the consideration and approval of applications by nonprofit organizations under this subsection.

(B) Contents

Except as otherwise provided in this subsection, the conditions for participation in the grant program under this subsection shall be the same as the conditions for participation in the program under subsection (l), as in effect on May 25, 2007.

(C) Notification

Not later than 60 days after the date of the deadline to submit applications for each fiscal year, the Administrator shall approve or deny any application under this subsection and notify the applicant for each such application.

(4) Award of grants

(A) In general

Subject to the availability of appropriations, the Administrator shall make a grant for the Federal share of the cost of activities described in the application to each applicant approved under this subsection.

(B) Amount

A grant under this subsection shall be for not more than $150,000, for each year of that grant.

(C) Federal share

The Federal share under this subsection shall be not more than 50 percent.

(D) Priority

In allocating funds made available for grants under this section, the Administrator shall give applications under this subsection or subsection (l) priority over first-time applications under subsection (b).

(5) Renewal

(A) In general

The Administrator may renew a grant under this subsection for additional 3-year periods, if the nonprofit organization submits an application for such renewal at such time, in such manner, and accompanied by such information as the Administrator may establish.

(B) Unlimited renewals

There shall be no limitation on the number of times a grant may be renewed under subparagraph (A).

(n) Privacy requirements

(1) In general

A women's business center may not disclose the name, address, or telephone number of any individual or small business concern receiving assistance under this section without the consent of such individual or small business concern, unless—

(A) the Administrator is ordered to make such a disclosure by a court in any civil or criminal enforcement action initiated by a Federal or State agency; or

(B) the Administrator considers such a disclosure to be necessary for the purpose of conducting a financial audit of a women's business center, but a disclosure under this subparagraph shall be limited to the information necessary for such audit.

(2) Administration use of information

This subsection shall not—

(A) restrict Administration access to program activity data; or

(B) prevent the Administration from using client information (other than the information described in subparagraph (A)) to conduct client surveys.

(3) Regulations

The Administrator shall issue regulations to establish standards for requiring disclosures during a financial audit under paragraph (1)(B).

(o) Study and report on representation of women

(1) Study

The Administrator shall periodically conduct a study to identify industries, as defined under the North American Industry Classification System, underrepresented by small business concerns owned and controlled by women.

(2) Report

Not later than 5 years after January 2, 2013, and every 5 years thereafter, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report on the results of each study under paragraph (1) conducted during the 5-year period ending on the date of the report.

(Pub. L. 85–536, §2[29], formerly §2[28], as added Pub. L. 102–191, §2, Dec. 5, 1991, 105 Stat. 1589; renumbered §2[29] and amended Pub. L. 103–403, title IV, §§411, 412, Oct. 22, 1994, 108 Stat. 4192, 4193; Pub. L. 105–135, title III, §308(a), Dec. 2, 1997, 111 Stat. 2611; Pub. L. 106–17, §§2(a), 3, Apr. 6, 1999, 113 Stat. 27; Pub. L. 106–165, §§2–4(b), Dec. 9, 1999, 113 Stat. 1795–1798; Pub. L. 110–28, title VIII, §8305(a), (b), May 25, 2007, 121 Stat. 209, 210; Pub. L. 111–240, title I, §1401(b), (c)(2), Sept. 27, 2010, 124 Stat. 2549, 2550; Pub. L. 112–239, div. A, title XVI, §1697(b), Jan. 2, 2013, 126 Stat. 2091.)

REFERENCES IN TEXT

Subsec. (l), referred to in subsecs. (h)(2), (k)(1), (4), and (m)(2), (3)(B), (4)(D), was repealed by Pub. L. 110–28, title VIII, §8305(b), May 25, 2007, 121 Stat. 210, effective Oct. 1 of the first full fiscal year after May 25, 2007.

CODIFICATION

May 25, 2007, referred to in subsec. (m)(3)(B), was in the original "the date of enactment of this Act", which was translated as meaning the date of enactment of Pub. L. 110–28, which enacted subsec. (m), to reflect the probable intent of Congress.

AMENDMENTS

2013—Subsec. (o). Pub. L. 112–239 added subsec. (o).

2010—Subsec. (c)(1). Pub. L. 111–240, §1401(c)(2)(A), substituted "As a condition" for "Subject to paragraph (5), as a condition" in introductory provisions.

Pub. L. 111–240, §1401(b)(1), substituted "Subject to paragraph (5), as a condition" for "As a condition" in introductory provisions.

Subsec. (c)(5). Pub. L. 111–240, §1401(c)(2)(B), struck out par. (5) which related to waiver of non-Federal share relating to technical assistance and counseling.

Pub. L. 111–240, §1401(b)(2), added par. (5).

2007—Subsec. (l). Pub. L. 110–28, §8305(b), struck out subsec. (l) which related to establishment of a sustainability pilot program.

Subsecs. (m), (n). Pub. L. 110–28, §8305(a), added subsecs. (m) and (n).

1999—Subsec. (a)(2) to (4). Pub. L. 106–165, §2(1), added par. (2) and redesignated former pars. (2) and (3) as pars. (3) and (4), respectively.

Subsec. (b). Pub. L. 106–165, §2(2), inserted "nonprofit" after "private" in introductory provisions.

Subsec. (c)(1). Pub. L. 106–17, §2(a), inserted "and" after the semicolon in subpar. (A), added subpar. (B), and struck out former subpars. (B) and (C) which read as follows:

"(B) in the third and fourth years, 1 non-Federal dollar for each Federal dollar; and

"(C) in the fifth year, 2 non-Federal dollars for each Federal dollar."

Subsec. (h). Pub. L. 106–165, §3(1), added subsec. (h) and struck out heading and text of former subsec. (h). Text read as follows:

"(1) IN GENERAL.—Not later than 180 days after December 2, 1997, the Administrator shall develop and implement an annual programmatic and financial examination of each women's business center established pursuant to this section.

"(2) EXTENSION OF CONTRACTS.—In extending or renewing a contract with a women's business center, the Administrator shall consider the results of the examination conducted under paragraph (1)."

Subsec. (j). Pub. L. 106–165, §3(2), added subsec. (j) and struck out heading and text of former subsec. (j). Text read as follows: "The Administrator shall prepare and submit an annual report to the Committees on Small Business of the House of Representatives and the Senate on the effectiveness of all projects conducted under the authority of this section. Such report shall provide information concerning—

"(1) the number of individuals receiving assistance;

"(2) the number of startup business concerns formed;

"(3) the gross receipts of assisted concerns;

"(4) increases or decreases in profits of assisted concerns; and

"(5) the employment increases or decreases of assisted concerns."

Subsec. (k)(1). Pub. L. 106–165, §4(b)(1), added par. (1) and struck out heading and text of former par. (1). Text read as follows: "There is authorized to be appropriated $11,000,000 for each fiscal year to carry out the projects authorized under this section, of which, for fiscal year 1998, not more than 5 percent may be used for administrative expenses related to the program under this section."

Pub. L. 106–17, §3, substituted "$11,000,000" for "$8,000,000".

Subsec. (k)(2). Pub. L. 106–165, §4(b)(2), designated existing provisions as subpar. (A), inserted heading, substituted "Except as provided in subparagraph (B), amounts made" for "Amounts made", and added subpar. (B).

Subsec. (k)(4). Pub. L. 106–165, §4(b)(3), added par. (4).

Subsec. (l). Pub. L. 106–165, §4(a), added subsec. (l).

1997—Pub. L. 105–135 amended section generally, substituting provisions relating to women's business center program for provisions relating to women's demonstration projects.

1994—Subsec. (g). Pub. L. 103–403, §411(2), substituted "1997" for "1995".

Subsec. (h). Pub. L. 103–403, §412, added subsec. (h).

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–240, title I, §1401(c), Sept. 27, 2010, 124 Stat. 2549, provided that the amendment made by section 1401(c)(2) is effective Oct. 1, 2012.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–28, title VIII, §8305(b), May 25, 2007, 121 Stat. 210, provided that the amendment made by section 8305(b) is effective Oct. 1 of the first full fiscal year after May 25, 2007.

EFFECTIVE DATE OF 1999 AMENDMENTS

Pub. L. 106–165, §6, Dec. 9, 1999, 113 Stat. 1801, provided that: "This Act [amending this section and enacting provisions set out as notes under this section and section 631 of this title] and the amendments made by this Act shall take effect on October 1, 1999."

Pub. L. 106–17, §2(b), Apr. 6, 1999, 113 Stat. 27, provided that: "The amendments made by this section [amending this section] shall apply beginning October 1, 1998."

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

REGULATIONS

Pub. L. 106–165, §4(c), Dec. 9, 1999, 113 Stat. 1799, provided that: "Not later than 30 days after the date of enactment of this Act [Dec. 9, 1999], the Administrator of the Small Business Administration shall issue guidelines to implement the amendments made by this section [amending this section]."

TRANSITIONAL RULE

Pub. L. 110–28, title VIII, §8305(c), May 25, 2007, 121 Stat. 210, provided that: "Notwithstanding any other provision of law, a grant or cooperative agreement that was awarded under subsection (l) of section 29 of the Small Business Act (15 U.S.C. 656), on or before the day before the date described in subsection (b) of this section [set out as an Effective Date of 2007 Amendment note above], shall remain in full force and effect under the terms, and for the duration, of such grant or agreement."

APPLICABILITY

Pub. L. 105–135, title III, §308(b), Dec. 2, 1997, 111 Stat. 2615, provided that:

"(1) IN GENERAL.—Subject to paragraph (2), any organization conducting a 3-year project under section 29 of the Small Business Act (15 U.S.C. 656) (as in effect on the day before the effective date of this Act [Dec. 2, 1997]) on September 30, 1997, may request an extension of the term of that project to a total term of 5 years. If such an extension is made, the organization shall receive financial assistance in accordance with section 29(c) of the Small Business Act (as amended by this section) subject to procedures established by the Administrator, in coordination with the Assistant Administrator of the Office of Women's Business Ownership established under section 29 of the Small Business Act (15 U.S.C. 656) (as amended by this section).

"(2) TERMS OF ASSISTANCE FOR CERTAIN ORGANIZATIONS.—Any organization operating in the third year of a 3-year project under section 29 of the Small Business Act (15 U.S.C. 656) (as in effect on the day before the effective date of this Act) on September 30, 1997, may request an extension of the term of that project to a total term of 5 years. If such an extension is made, during the fourth and fifth years of the project, the organization shall receive financial assistance in accordance with section 29(c)(1)(C) of the Small Business Act (as amended by this section) subject to procedures established by the Administrator, in coordination with the Assistant Administrator of the Office of Women's Business Ownership established under section 29 of the Small Business Act (15 U.S.C. 656) (as amended by this section)."

[1] *So in original. Probably should be "therefor".*

§657. Oversight of regulatory enforcement

(a) Definitions

For purposes of this section, the term—

(1) "Board" means a Regional Small Business Regulatory Fairness Board established under subsection (c) of this section; and

(2) "Ombudsman" means the Small Business and Agriculture Regulatory Enforcement Ombudsman designated under subsection (b) of this section.

(b) SBA Enforcement Ombudsman

(1) Not later than 180 days after March 29, 1996, the Administrator shall designate a Small Business and Agriculture Regulatory Enforcement Ombudsman, who shall report directly to the Administrator, utilizing personnel of the Small Business Administration to the extent practicable. Other agencies shall assist the Ombudsman and take actions as necessary to ensure compliance with the requirements of this section. Nothing in this section is intended to replace or diminish the activities of any Ombudsman or similar office in any other agency.

(2) The Ombudsman shall—

(A) work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort, or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by such personnel;

(B) establish means to receive comments from small business concerns regarding actions by agency employees conducting compliance or enforcement activities with respect to the small business concern, means to refer comments to the Inspector General of the affected agency in the appropriate circumstances, and otherwise seek to maintain the identity of the person and small business concern making such comments on a confidential basis to the same extent as employee identities are protected under section 7 of the Inspector General Act of 1978 (5 U.S.C. App.);

(C) based on substantiated comments received from small business concerns and the Boards, annually report to Congress and affected agencies evaluating the enforcement activities of agency personnel including a rating of the responsiveness to small business of the various regional and program offices of each agency;

(D) coordinate and report annually on the activities, findings and recommendations of the Boards to the Administrator and to the heads of affected agencies; and

(E) provide the affected agency with an opportunity to comment on draft reports prepared under subparagraph (C), and include a section of the final report in which the affected agency may make such comments as are not addressed by the Ombudsman in revisions to the draft.

(c) Regional Small Business Regulatory Fairness Boards

(1) Not later than 180 days after March 29, 1996, the Administrator shall establish a Small Business Regulatory Fairness Board in each regional office of the Small Business Administration.

(2) Each Board established under paragraph (1) shall—

(A) meet at least annually to advise the Ombudsman on matters of concern to small businesses relating to the enforcement activities of agencies;

(B) report to the Ombudsman on substantiated instances of excessive enforcement actions of agencies against small business concerns including any findings or recommendations of the Board as to agency enforcement policy or practice; and

(C) prior to publication, provide comment on the annual report of the Ombudsman prepared under subsection (b) of this section.

(3) Each Board shall consist of five members, who are owners, operators, or officers of small business concerns, appointed by the Administrator, after receiving the recommendations of the chair and ranking minority member of the Committees on Small Business of the House of Representatives and the Senate. Not more than three of the Board members shall be of the same political party. No member shall be an officer or employee of the Federal Government, in either the executive branch or the Congress.

(4) Members of the Board shall serve at the pleasure of the Administrator for terms of three years

or less.

(5) The Administrator shall select a chair from among the members of the Board who shall serve at the pleasure of the Administrator for not more than 1 year as chair.

(6) A majority of the members of the Board shall constitute a quorum for the conduct of business, but a lesser number may hold hearings.

(d) Powers of Boards

(1) The Board may hold such hearings and collect such information as appropriate for carrying out this section.

(2) The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(3) The Board may accept donations of services necessary to conduct its business, provided that the donations and their sources are disclosed by the Board.

(4) Members of the Board shall serve without compensation, provided that, members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5 while away from their homes or regular places of business in the performance of services for the Board.

(Pub. L. 85–536, §2[30], as added Pub. L. 104–121, title II, §222(2), Mar. 29, 1996, 110 Stat. 860.)

REFERENCES IN TEXT

Section 7 of the Inspector General Act of 1978, referred to in subsec. (b)(2)(B), is section 7 of Pub. L. 95–452, which is set out in the Appendix to Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 2[30] of Pub. L. 85–536 was renumbered section 2[47] and is set out as a note under section 631 of this title.

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

EFFECTIVE DATE

Section effective on expiration of 90 days after Mar. 29, 1996, see section 224 of Pub. L. 104–121 set out in a Small Business Regulatory Fairness note under section 601 of Title 5, Government Organization and Employees.

§657a. HUBZone program

(a) In general

There is established within the Administration a program to be carried out by the Administrator to provide for Federal contracting assistance to qualified HUBZone small business concerns in accordance with this section.

(b) Eligible contracts

(1) Definitions

In this subsection—

(A) the term "contracting officer" has the meaning given that term in section 2101(1) of title 41; and

(B) the term "full and open competition" has the meaning given that term in section 107 of title 41.

(2) Authority of contracting officer

(A) Sole source contracts

A contracting officer may award sole source contracts under this section to any qualified

HUBZone small business concern, if—

(i) the qualified HUBZone small business concern is determined to be a responsible contractor with respect to performance of such contract opportunity, and the contracting officer does not have a reasonable expectation that 2 or more qualified HUBZone small business concerns will submit offers for the contracting opportunity;

(ii) the anticipated award price of the contract (including options) will not exceed—

(I) $5,000,000, in the case of a contract opportunity assigned a standard industrial classification code for manufacturing; or

(II) $3,000,000, in the case of all other contract opportunities; and

(iii) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price.

(B) Restricted competition

A contract opportunity may be awarded pursuant to this section on the basis of competition restricted to qualified HUBZone small business concerns if the contracting officer has a reasonable expectation that not less than 2 qualified HUBZone small business concerns will submit offers and that the award can be made at a fair market price.

(C) Appeals

Not later than 5 days from the date the Administration is notified of a procurement officer's decision not to award a contract opportunity under this section to a qualified HUBZone small business concern, the Administrator may notify the contracting officer of the intent to appeal the contracting officer's decision, and within 15 days of such date the Administrator may file a written request for reconsideration of the contracting officer's decision with the Secretary of the department or agency head.

(3) Price evaluation preference in full and open competitions

(A) In general

Subject to subparagraph (B), in any case in which a contract is to be awarded on the basis of full and open competition, the price offered by a qualified HUBZone small business concern shall be deemed as being lower than the price offered by another offeror (other than another small business concern), if the price offered by the qualified HUBZone small business concern is not more than 10 percent higher than the price offered by the otherwise lowest, responsive, and responsible offeror.

(B) Procurement of commodities

For purchases by the Secretary of Agriculture of agricultural commodities, the price evaluation preference shall be—

(i) 10 percent, for the portion of a contract to be awarded that is not greater than 25 percent of the total volume being procured for each commodity in a single invitation;

(ii) 5 percent, for the portion of a contract to be awarded that is greater than 25 percent, but not greater than 40 percent, of the total volume being procured for each commodity in a single invitation; and

(iii) zero, for the portion of a contract to be awarded that is greater than 40 percent of the total volume being procured for each commodity in a single invitation.

(C) Procurement of commodities for international food aid export operations

The price evaluation preference for purchases of agricultural commodities by the Secretary of Agriculture for export operations through international food aid programs administered by the Farm Service Agency shall be 5 percent on the first portion of a contract to be awarded that is not greater than 20 percent of the total volume of each commodity being procured in a single invitation.

(D) Treatment of preference

A contract awarded to a HUBZone small business concern under a preference described in subparagraph (B) shall not be counted toward the fulfillment of any requirement partially set aside for competition restricted to small business concerns.

(4) Relationship to other contracting preferences

A procurement may not be made from a source on the basis of a preference provided in paragraph (2) or (3), if the procurement would otherwise be made from a different source under section 4124 or 4125 of title 18 or chapter 85 of title 41.

(c) Enforcement; penalties

(1) Verification of eligibility

In carrying out this section, the Administrator shall establish procedures relating to—

(A) the filing, investigation, and disposition by the Administration of any challenge to the eligibility of a small business concern to receive assistance under this section (including a challenge, filed by an interested party, relating to the veracity of a certification made or information provided to the Administration by a small business concern under section 632(p)(5) of this title); and

(B) verification by the Administrator of the accuracy of any certification made or information provided to the Administration by a small business concern under section 632(p)(5) of this title.

(2) Examinations

The procedures established under paragraph (1) may provide for program examinations (including random program examinations) by the Administrator of any small business concern making a certification or providing information to the Administrator under section 632(p)(5) of this title.

(3) Provision of data

Upon the request of the Administrator, the Secretary of Labor, the Secretary of Housing and Urban Development, and the Secretary of the Interior (or the Assistant Secretary for Indian Affairs), shall promptly provide to the Administrator such information as the Administrator determines to be necessary to carry out this subsection.

(4) Penalties

In addition to the penalties described in section 645(d) of this title, any small business concern that is determined by the Administrator to have misrepresented the status of that concern as a "HUBZone small business concern" for purposes of this section, shall be subject to—

(A) section 1001 of title 18; and

(B) sections 3729 through 3733 of title 31.

(d) Authorization of appropriations

There is authorized to be appropriated to carry out the program established by this section $10,000,000 for each of fiscal years 2004 through 2006.

(Pub. L. 85–536, §2[31], as added Pub. L. 105–135, title VI, §602(b)(1)(B), Dec. 2, 1997, 111 Stat. 2629; amended Pub. L. 106–554, §1(a)(9) [title V, §503(b), title VI, §612(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–695, 2763A–699; Pub. L. 108–447, div. K, title I, §§153, 154, Dec. 8, 2004, 118 Stat. 3458; Pub. L. 111–240, title I, §1347(b)(1), (c), Sept. 27, 2010, 124 Stat. 2547.)

CODIFICATION

In subsec. (b)(1)(A), "section 2101(1) of title 41" substituted for "section 27(f)(5) of the Office of Federal Procurement Policy Act (41 U.S.C. 423(f)(5))" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (b)(1)(B), "section 107 of title 41" substituted for "section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (b)(4), "chapter 85 of title 41" substituted for "the Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.)" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public

Contracts.

PRIOR PROVISIONS

A prior section 2[31] of Pub. L. 85–536 was renumbered section 2[47] and is set out as a note under section 631 of this title.

AMENDMENTS

2010—Subsec. (b)(2). Pub. L. 111–240, §1347(c)(1), struck out introductory provisions which read as follows: "Notwithstanding any other provision of law—".

Subsec. (b)(2)(A). Pub. L. 111–240, §1347(c)(2)(A), inserted heading and substituted "A contracting" for "a contracting" in introductory provisions.

Subsec. (b)(2)(A)(iii). Pub. L. 111–240, §1347(c)(2)(B), substituted period for semicolon at end.

Subsec. (b)(2)(B). Pub. L. 111–240, §1347(c)(3), which directed amendment of subpar. (B) by inserting heading and substituting "A contract opportunity may" for "a contract opportunity shall", and period for "; and", was executed by inserting heading and substituting "A contract opportunity may" for "a contract opportunity may" and period for "; and", to reflect the probable intent of Congress and the intervening amendment by Pub. L. 111–240, §1347(b)(1). See below.

Pub. L. 111–240, §1347(b)(1), substituted "may" for "shall".

Subsec. (b)(2)(C). Pub. L. 111–240, §1347(c)(4), inserted heading and substituted "Not later" for "not later".

2004—Subsec. (b)(3)(C), (D). Pub. L. 108–447, §153, which directed amendment of par. (3) by redesignating subpar. (C) as (D) and adding a new subpar. (C) at the end, was executed by making the redesignation as directed but by adding the new subpar. (C) after subpar. (B) to reflect the probable intent of Congress.

Subsec. (d). Pub. L. 108–447, §154, substituted "2004 through 2006" for "2001 through 2003".

2000—Subsec. (b)(3). Pub. L. 106–554, §1(a)(9) [title VI, §612(a)], designated existing provisions as subpar. (A), inserted heading, substituted "Subject to subparagraph (B), in any" for "In any", and added subpars. (B) and (C).

Subsec. (d). Pub. L. 106–554, §1(a)(9) [title V, §503(b)], added subsec. (d).

EFFECTIVE DATE

Section effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as an Effective Date of 1997 Amendment note under section 631 of this title.

INITIAL LIMITED APPLICABILITY

Pub. L. 105–135, title VI, §602(b)(2), Dec. 2, 1997, 111 Stat. 2631, as amended by Pub. L. 106–113, div. B, §1000(a)(5) [title II, §212], Nov. 29, 1999, 113 Stat. 1536, 1501A–295, limited the applicability of 15 U.S.C. 657a to certain procurements beginning on Dec. 2, 1997, and ending on Sept. 30, 2000.

REPORT

Pub. L. 105–135, title VI, §606, Dec. 2, 1997, 111 Stat. 2635, required the Administrator to submit to Congress, by Mar. 1, 2002, a report on the HUBZone program and the degree to which the program resulted in increased employment opportunities and an increased level of investment in HUBZones.

§657b. Veterans programs

(a) Office of Veterans Business Development

There is established in the Administration an Office of Veterans Business Development, which shall be administered by the Associate Administrator for Veterans Business Development (in this section referred to as the "Associate Administrator") appointed under section 633(b)(1) of this title.

(b) Associate Administrator for Veterans Business Development

The Associate Administrator—

(1) shall be an appointee in the Senior Executive Service;

(2) shall be responsible for the formulation, execution, and promotion of policies and programs of the Administration that provide assistance to small business concerns owned and controlled by veterans and small business concerns owned and controlled by service-disabled veterans. The

Associate Administrator shall act as an ombudsman for full consideration of veterans in all programs of the Administration; and

(3) shall report to and be responsible directly to the Administrator.

(c) Interagency task force

(1) Establishment

Not later than 90 days after February 14, 2008, the President shall establish an interagency task force to coordinate the efforts of Federal agencies necessary to improve capital and business development opportunities for, and ensure achievement of the pre-established Federal contracting goals for, small business concerns owned and controlled by service-disabled veterans and small business concerns owned and controlled by veterans (in this section referred to as the "task force").

(2) Membership

The members of the task force shall include—

(A) the Administrator, who shall serve as chairperson of the task force; and

(B) a senior level representative from—

(i) the Department of Veterans Affairs;

(ii) the Department of Defense;

(iii) the Administration (in addition to the Administrator);

(iv) the Department of Labor;

(v) the Department of the Treasury;

(vi) the General Services Administration;

(vii) the Office of Management and Budget; and

(viii) 4 representatives from a veterans service organization or military organization or association, selected by the President.

(3) Duties

The task force shall—

(A) consult regularly with veterans service organizations and military organizations in performing the duties of the task force; and

(B) coordinate administrative and regulatory activities and develop proposals relating to—

(i) improving capital access and capacity of small business concerns owned and controlled by service-disabled veterans and small business concerns owned and controlled by veterans through loans, surety bonding, and franchising;

(ii) ensuring achievement of the pre-established Federal contracting goals for small business concerns owned and controlled by service-disabled veterans and small business concerns owned and controlled by veterans through expanded mentor-protégé assistance and matching such small business concerns with contracting opportunities;

(iii) increasing the integrity of certifications of status as a small business concern owned and controlled by service-disabled veterans or a small business concern owned and controlled by veterans;

(iv) reducing paperwork and administrative burdens on veterans in accessing business development and entrepreneurship opportunities;

(v) increasing and improving training and counseling services provided to small business concerns owned and controlled by veterans; and

(vi) making other improvements relating to the support for veterans business development by the Federal Government.

(d) Participation in TAP Workshops

(1) In general

The Associate Administrator shall increase veteran outreach by ensuring that Veteran Business Outreach Centers regularly participate, on a nationwide basis, in the workshops of the Transition Assistance Program of the Department of Labor.

(2) Presentations

In carrying out paragraph (1), a Veteran Business Outreach Center may provide grants to entities located in Transition Assistance Program locations to make presentations on the opportunities available from the Administration for recently separating or separated veterans. Each presentation under this paragraph shall include, at a minimum, a description of the entrepreneurial and business training resources available from the Administration.

(3) Written materials

The Associate Administrator shall—

(A) create written materials that provide comprehensive information on self-employment and veterans entrepreneurship, including information on resources available from the Administration on such topics; and

(B) make the materials created under subparagraph (A) available to the Secretary of Labor for inclusion in the Transition Assistance Program manual.

(4) Reports

The Associate Administrator shall submit to Congress progress reports on the implementation of this subsection.

(e) Women veterans business training

The Associate Administrator shall—

(1) compile information on existing resources available to women veterans for business training, including resources for—

(A) vocational and technical education;

(B) general business skills, such as marketing and accounting; and

(C) business assistance programs targeted to women veterans; and

(2) disseminate the information compiled under paragraph (1) through Veteran Business Outreach Centers and women's business centers.

(f) Authorization of appropriations

There are authorized to be appropriated to carry out this section—

(1) $1,500,000 for fiscal year 2005; and

(2) $2,000,000 for fiscal year 2006.

(Pub. L. 85–536, §2[32], as added Pub. L. 106–50, title II, §201(b)(2), Aug. 17, 1999, 113 Stat. 235; amended Pub. L. 108–447, div. K, title I, §145, Dec. 8, 2004, 118 Stat. 3455; Pub. L. 110–186, title I, §§102, 104, Feb. 14, 2008, 122 Stat. 624, 625.)

PRIOR PROVISIONS

A prior section 2[32] of Pub. L. 85–536 was renumbered section 2[47] and is set out as a note under section 631 of this title.

AMENDMENTS

2008—Subsec. (c). Pub. L. 110–186, §102(2), added subsec. (c). Former subsec. (c) redesignated (f).
Subsecs. (d), (e). Pub. L. 110–186, §104, added subsecs. (d) and (e).
Subsec. (f). Pub. L. 110–186, §102(1), redesignated subsec. (c) as (f).
2004—Subsec. (c). Pub. L. 108–447 added subsec. (c).

CONGRESSIONAL FINDINGS

Pub. L. 106–50, title I, §101, Aug. 17, 1999, 113 Stat. 234, provided that: "Congress finds the following:

"(1) Veterans of the United States Armed Forces have been and continue to be vital to the small business enterprises of the United States.

"(2) In serving the United States, veterans often faced great risks to preserve the American dream of freedom and prosperity.

"(3) The United States has done too little to assist veterans, particularly service-disabled veterans, in playing a greater role in the economy of the United States by forming and expanding small business enterprises.

"(4) Medical advances and new medical technologies have made it possible for service-disabled veterans to play a much more active role in the formation and expansion of small business enterprises in the United States.

"(5) The United States must provide additional assistance and support to veterans to better equip them to form and expand small business enterprises, thereby enabling them to realize the American dream that they fought to protect."

CONGRESSIONAL PURPOSE

Pub. L. 106–50, title I, §102, Aug. 17, 1999, 113 Stat. 234, provided that: "The purpose of this Act [see Short Title of 1999 Amendments note set out under section 631 of this title] is to expand existing and establish new assistance programs for veterans who own or operate small businesses. This Act accomplishes this purpose by—

"(1) expanding the eligibility for certain small business assistance programs to include veterans;

"(2) directing certain departments and agencies of the United States to take actions that enhance small business assistance to veterans; and

"(3) establishing new institutions to provide small business assistance to veterans or to support the institutions that provide such assistance."

ADVISORY COMMITTEE ON VETERANS BUSINESS AFFAIRS

Pub. L. 106–50, title II, §203, Aug. 17, 1999, 113 Stat. 239, as amended by Pub. L. 108–447, div. K, title I, §143(b), Dec. 8, 2004, 118 Stat. 3455; Pub. L. 110–186, title I, §103(b), Feb. 14, 2008, 122 Stat. 625; Pub. L. 112–239, div. A, title XVI, §1699(c)(3), Jan. 2, 2013, 126 Stat. 2092, provided that:

"(a) IN GENERAL.—There is established an advisory committee to be known as the 'Advisory Committee on Veterans Business Affairs' (in this section referred to as the 'Committee'), which shall serve as an independent source of advice and policy recommendations to—

"(1) the Administrator of the Small Business Administration (in this section referred to as the 'Administrator');

"(2) the Associate Administrator for Veterans Business Development of the Small Business Administration;

"(3) the Congress;

"(4) the President; and

"(5) other United States policymakers.

"(b) MEMBERSHIP.—

"(1) IN GENERAL.—The Committee shall be composed of 15 members, of whom—

"(A) eight shall be veterans who are owners of small business concerns (within the meaning of the term under section 3 of the Small Business Act (15 U.S.C. 632)); and

"(B) seven shall be representatives of veterans organizations.

"(2) APPOINTMENT.—

"(A) IN GENERAL.—The members of the Committee shall be appointed by the Administrator in accordance with this section.

"(B) INITIAL APPOINTMENTS.—Not later than 90 days after the date of the enactment of this Act [Aug. 17, 1999], the Administrator shall appoint the initial members of the Committee.

"(3) POLITICAL AFFILIATION.—Not more than eight members of the Committee shall be of the same political party as the President.

"(4) PROHIBITION ON FEDERAL EMPLOYMENT.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), no member of the Committee may serve as an officer or employee of the United States.

"(B) EXCEPTION.—A member of the Committee who accepts a position as an officer or employee of the United States after the date of the member's appointment to the Committee may continue to serve on the Committee for not more than 30 days after such acceptance.

"(5) TERM OF SERVICE.—

"(A) IN GENERAL.—Subject to subparagraph (B), the term of service of each member of the Committee shall be 3 years.

"(B) TERMS OF INITIAL APPOINTEES.—As designated by the Administrator at the time of appointment, of the members first appointed—

"(i) six shall be appointed for a term of 4 years; and

"(ii) five shall be appointed for a term of 5 years.

"(6) VACANCIES.—The Administrator shall fill any vacancies on the membership of the Committee not later than 30 days after the date on which such vacancy occurs.

"(7) CHAIRPERSON.—

"(A) IN GENERAL.—The members of the Committee shall elect one of the members to be Chairperson of the Committee.

"(B) VACANCIES IN OFFICE OF CHAIRPERSON.—Any vacancy in the office of the Chairperson of the Committee shall be filled by the Committee at the first meeting of the Committee following the date on which the vacancy occurs.

"(c) DUTIES.—The duties of the Committee shall be the following:

"(1) Review, coordinate, and monitor plans and programs developed in the public and private sectors, that affect the ability of small business concerns owned and controlled by veterans to obtain capital and credit and to access markets.

"(2) Promote the collection of business information and survey data as they relate to veterans and small business concerns owned and controlled by veterans.

"(3) Monitor and promote plans, programs, and operations of the departments and agencies of the United States that may contribute to the formation and growth of small business concerns owned and controlled by veterans.

"(4) Develop and promote initiatives, policies, programs, and plans designed to foster small business concerns owned and controlled by veterans.

"(5) Develop a comprehensive plan, to be updated annually, for joint public-private sector efforts to facilitate growth and development of small business concerns owned and controlled by veterans.

"(d) POWERS.—

"(1) HEARINGS.—Subject to subsection (e), the Committee may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Committee considers advisable to carry out its duties.

"(2) INFORMATION FROM FEDERAL AGENCIES.—Upon request of the Chairperson of the Committee, the head of any department or agency of the United States shall furnish such information to the Committee as the Committee considers to be necessary to carry out its duties.

"(3) USE OF MAILS.—The Committee may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

"(4) GIFTS.—The Committee may accept, use, and dispose of gifts or donations of services or property.

"(e) MEETINGS.—

"(1) IN GENERAL.—The Committee shall meet, not less than three times per year, at the call of the Chairperson or at the request of the Administrator.

"(2) LOCATION.—Each meeting of the full Committee shall be held at the headquarters of the Small Business Administration located in Washington, District of Columbia. The Administrator shall provide suitable meeting facilities and such administrative support as may be necessary for each full meeting of the Committee.

"(3) TASK GROUPS.—The Committee may, from time-to-time, establish temporary task groups as may be necessary in order to carry out its duties.

"(f) COMPENSATION AND EXPENSES.—

"(1) NO COMPENSATION.—Members of the Committee shall serve without compensation for their service to the Committee.

"(2) EXPENSES.—The members of the Committee shall be reimbursed for travel and subsistence expenses in accordance with section 5703 of title 5, United States Code.

"(g) REPORT.—Not later than 30 days after the end of each fiscal year beginning after the date of the enactment of this section [Aug. 17, 1999], the Committee shall transmit to the Congress and the President a report describing the activities of the Committee and any recommendations developed by the Committee for the promotion of small business concerns owned and controlled by veterans."

SCORE PROGRAM

Pub. L. 106–50, title III, §301, Aug. 17, 1999, 113 Stat. 242, provided that:

"(a) IN GENERAL.—The Administrator of the Small Business Administration shall enter into a memorandum of understanding with the Service Core [probably should be "Corps"] of Retired Executives (described in section 8(b)(1)(B) of the Small Business Act (15 U.S.C. 637(b)(1)(B)) and in this section referred to as 'SCORE') to provide for the following:

"(1) The appointment by SCORE in its national office of an individual to act as National Veterans Business Coordinator, whose duties shall relate exclusively to veterans business matters, and who shall be responsible for the establishment and administration of a program to coordinate counseling and training

regarding entrepreneurship to veterans through the chapters of SCORE throughout the United States.

"(2) The assistance of SCORE in the [sic] establishing and maintaining a toll-free telephone number and an Internet website to provide access for veterans to information about the counseling and training regarding entrepreneurship available to veterans through SCORE.

"(3) The collection of statistics concerning services provided by SCORE to veterans, including service-disabled veterans, for inclusion in each annual report published by the Administrator under section 4(b)(2)(B) of the Small Business Act (15 U.S.C. 633(b)(2)(B)).

"(b) RESOURCES.—The Administrator shall provide to SCORE such resources as the Administrator determines necessary for SCORE to carry out the requirements of the memorandum of understanding specified in paragraph (1)."

ENTREPRENEURIAL ASSISTANCE

Pub. L. 106–50, title III, §302, Aug. 17, 1999, 113 Stat. 242, provided that: "Not later than 180 days after the date of the enactment of this Act [Aug. 17, 1999], the Secretary of Veterans Affairs, the Administrator of the Small Business Administration, and the head of the association formed pursuant to section 21(a)(3)(A) of the Small Business Act (15 U.S.C. 648(a)(3)(A)) shall enter into a memorandum of understanding with respect to entrepreneurial assistance to veterans, including service-disabled veterans, through Small Business Development Centers (described in section 21 of the Small Business Act (15 U.S.C. 648)) and facilities of the Department of Veterans Affairs. Such assistance shall include the following:

"(1) Conducting of studies and research, and the distribution of information generated by such studies and research, on the formation, management, financing, marketing, and operation of small business concerns by veterans.

"(2) Provision of training and counseling to veterans concerning the formation, management, financing, marketing, and operation of small business concerns.

"(3) Provision of management and technical assistance to the owners and operators of small business concerns regarding international markets, the promotion of exports, and the transfer of technology.

"(4) Provision of assistance and information to veterans regarding procurement opportunities with Federal, State, and local agencies, especially such agencies funded in whole or in part with Federal funds.

"(5) Establishment of an information clearinghouse to collect and distribute information, including by electronic means, on the assistance programs of Federal, State, and local governments, and of the private sector, including information on office locations, key personnel, telephone numbers, mail and electronic addresses, and contracting and subcontracting opportunities.

"(6) Provision of Internet or other distance learning academic instruction for veterans in business subjects, including accounting, marketing, and business fundamentals.

"(7) Compilation of a list of small business concerns owned and controlled by service-disabled veterans that provide products or services that could be procured by the United States and delivery of such list to each department and agency of the United States. Such list shall be delivered in hard copy and electronic form and shall include the name and address of each such small business concern and the products or services that it provides."

ANNUAL REPORT OF ADMINISTRATOR

Pub. L. 106–50, title VI, §603, Aug. 17, 1999, 113 Stat. 248, provided that: "The Administrator of the Small Business Administration shall transmit annually to the Committees on Small Business and Veterans Affairs of the House of Representatives and the Senate [Committee on Small Business of Senate now Committee on Small Business and Entrepreneurship of Senate] a report on the needs of small business concerns owned and controlled by veterans and small business concerns owned and controlled by service-disabled veterans, which shall include information on—

"(1) the availability of Small Business Administration programs for such small business concerns and the degree of utilization of such programs by such small business concerns during the preceding 12-month period, including statistical information on such utilization as compared to the small business community as a whole;

"(2) the percentage and dollar value of Federal contracts awarded to such small business concerns during the preceding 12-month period, based on the data collected pursuant to section 604(d) [set out below]; and

"(3) proposals to improve the access of such small business concerns to the assistance made available by the United States."

DATA AND INFORMATION COLLECTION

Pub. L. 106–50, title VI, §604, Aug. 17, 1999, 113 Stat. 249, provided that:

"(a) INFORMATION ON FEDERAL PROCUREMENT PRACTICES.—The Administrator of the Small Business Administration shall, for each fiscal year—

"(1) collect information concerning the procurement practices and procedures of each department and agency of the United States having procurement authority;

"(2) publish and disseminate such information to procurement officers in all Federal agencies; and

"(3) make such information available to any small business concern requesting such information.

"(b) IDENTIFICATION OF SMALL BUSINESS CONCERNS OWNED BY ELIGIBLE VETERANS .—Each fiscal year, the Secretary of Veterans Affairs shall, in consultation with the Assistant Secretary of Labor for Veterans' Employment and Training and the Administrator of the Small Business Administration, identify small business concerns owned and controlled by veterans in the United States. The Secretary shall inform each small business concern identified under this paragraph that information on Federal procurement is available from the Administrator.

"(c) SELF-EMPLOYMENT OPPORTUNITIES.—The Secretary of Labor, the Secretary of Veterans Affairs, and the Administrator of the Small Business Administration shall enter into a memorandum of understanding to provide for coordination of vocational rehabilitation services, technical and managerial assistance, and financial assistance to veterans, including service-disabled veterans, seeking to employ themselves by forming or expanding small business concerns. The memorandum of understanding shall include recommendations for expanding existing programs or establishing new programs to provide such services or assistance to such veterans.

"(d) DATA COLLECTION REQUIRED.—The Federal Procurement Data System described in section 6(d)(4)(A) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 405(d)(4)(A)) [now 41 U.S.C. 1122(a)(4)(A)] shall be modified to collect data regarding the percentage and dollar value of prime contracts and subcontracts awarded to small business concerns owned and controlled by veterans and small business concerns owned and controlled by service-disabled veterans."

EX. ORD. NO. 13540. INTERAGENCY TASK FORCE ON VETERANS SMALL BUSINESS DEVELOPMENT

Ex. Ord. No. 13540, Apr. 26, 2010, 75 F.R. 22497, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 102 of title I of the Military Reservist and Veteran Small Business Reauthorization and Opportunity Act of 2008 (Public Law 110–186) (the "Act"), and in order to establish an interagency task force to coordinate the efforts of Federal agencies to improve capital, business development opportunities, and pre-established Federal contracting goals for small business concerns owned and controlled by veterans and service-disabled veterans, it is hereby ordered as follows:

SECTION 1. *Establishment.* The Administrator of the Small Business Administration (Administrator) shall establish within the Small Business Administration an Interagency Task Force on Veterans Small Business Development (Task Force).

SEC. 2. *Membership*. The Administrator shall serve as Chair of the Task Force and shall direct its work. Other members shall consist of:

(a) a senior level representative, designated by the head of the respective department or agency, from each of the following:

(i) the Department of the Treasury;

(ii) the Department of Defense;

(iii) the Department of Labor;

(iv) the Department of Veterans Affairs;

(v) the Office of Management and Budget;

(vi) the Small Business Administration (in addition to the Administrator); and

(vii) the General Services Administration; and

(b) four representatives from a veterans' service or military organization or association, who shall be appointed by the Administrator.

SEC. 3. *Functions*. Consistent with the Act and other applicable law, the Task Force shall:

(a) consult regularly with veterans service and military organizations in performing the duties of the Task Force;

(b) coordinate administrative and regulatory activities and develop proposals relating to:

(i) improving capital access and capacity of small business concerns owned and controlled by veterans and service-disabled veterans through loans, surety bonding, and franchising;

(ii) ensuring achievement of the pre-established Federal contracting goals for small business concerns owned and controlled by veterans and service-disabled veterans through expanded mentor-protégé assistance

and matching such small business concerns with contracting opportunities;

(iii) increasing the integrity of certifications of status as a small business concern owned and controlled by a veteran or service-disabled veteran;

(iv) reducing paperwork and administrative burdens on veterans in accessing business development and entrepreneurship opportunities;

(v) increasing and improving training and counseling services provided to small business concerns owned and controlled by veterans; and

(vi) making other improvements relating to the support for veterans business development by the Federal Government; and

(c) not later than 1 year after its first meeting and annually thereafter, forward to the President a report on the performance of its functions, including any proposals developed pursuant to subsection (b) of this section.

SEC. 4. *General Provisions*. (a) The Small Business Administration shall provide funding and administrative support for the Task Force to the extent permitted by law and within existing appropriations.

(b) Nothing in this order shall be construed to impair or otherwise effect [sic]:

(i) authority granted by law to an executive department, agency, or the head thereof; and

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.) (FACA), may apply to the Task Force, any functions of the President under the FACA, except for those in section 6 of the FACA, shall be performed by the Administrator in accordance with guidelines issued by the Administrator of General Services.

(d) This order is not intended to and does not create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

EXTENSION OF TERM OF INTERAGENCY TASK FORCE ON VETERANS SMALL BUSINESS DEVELOPMENT

Term of Interagency Task Force on Veterans Small Business Development extended until Sept. 30, 2013, by Ex. Ord. No. 13591, Nov. 23, 2011, 76 F.R. 74623, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

Term of Interagency Task Force on Veterans Small Business Development extended until Sept. 30, 2015, by Ex. Ord. No. 13652, Sept. 30, 2013, 78 F.R. 61817, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

DEFINITIONS

Pub. L. 106–50, title I, §103(b), Aug. 17, 1999, 113 Stat. 235, provided that: "In this Act [see Short Title of 1999 Amendments note set out under section 631 of this title], the definitions contained in section 3(q) of the Small Business Act [15 U.S.C. 632(q)], as added by this section, apply."

§657c. Repealed. Pub. L. 112–239, div. A, title XVI, §1699(a), Jan. 2, 2013, 126 Stat. 2092

Section, Pub. L. 85–536, §2[33], as added Pub. L. 106–50, title II, §202(a), Aug. 17, 1999, 113 Stat. 236; amended Pub. L. 106–554, §1(a)(9) [title VIII, §808], Dec. 21, 2000, 114 Stat. 2763, 2763A–706; Pub. L. 108–447, div. B, title VI, §636, div. K, title I, §§143(a), 146, Dec. 8, 2004, 118 Stat. 2922, 3455; Pub. L. 110–186, title I, §103(a), Feb. 14, 2008, 122 Stat. 625, established the National Veterans Business Development Corporation.

REPRESENTATION OF AUTHORIZATION

Pub. L. 112–239, div. A, title XVI, §1699(b), Jan. 2, 2013, 126 Stat. 2092, provided that: "On and after the date of enactment of this Act [Jan. 2, 2013], the National Veterans Business Development Corporation and any successor thereto may not represent that the corporation is federally chartered or in any other manner authorized by the Federal Government."

§657d. Federal and State Technology Partnership Program

(a) Definitions

In this section and section 657e of this title, the following definitions apply:

(1) Applicant

The term "applicant" means an entity, organization, or individual that submits a proposal for an award or a cooperative agreement under this section.

(2) Business advice and counseling

The term "business advice and counseling" means providing advice and assistance on matters described in section 657e(c)(2)(B) of this title to small business concerns to guide them through the SBIR and STTR program process, from application to award and successful completion of each phase of the program.

(3) FAST program

The term "FAST program" means the Federal and State Technology Partnership Program established under this section.

(4) Mentor

The term "mentor" means an individual described in section 657e(c)(2) of this title.

(5) Mentoring Network

The term "Mentoring Network" means an association, organization, coalition, or other entity (including an individual) that meets the requirements of section 657e(c) of this title.

(6) Recipient

The term "recipient" means a person that receives an award or becomes party to a cooperative agreement under this section.

(7) SBIR program

The term "SBIR program" has the same meaning as in section 638(e)(4) of this title.

(8) State

The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(9) STTR program

The term "STTR program" has the same meaning as in section 638(e)(6) of this title.

(b) Establishment of Program

The Administrator shall establish a program to be known as the Federal and State Technology Partnership Program, the purpose of which shall be to strengthen the technological competitiveness of small business concerns in the States.

(c) Grants and cooperative agreements

(1) Joint review

In carrying out the FAST program under this section, the Administrator and the SBIR program managers at the National Science Foundation and the Department of Defense shall jointly review proposals submitted by applicants and may make awards or enter into cooperative agreements under this section based on the factors for consideration set forth in paragraph (2), in order to enhance or develop in a State—

(A) technology research and development by small business concerns;

(B) technology transfer from university research to technology-based small business concerns;

(C) technology deployment and diffusion benefiting small business concerns;

(D) the technological capabilities of small business concerns through the establishment or operation of consortia comprised of entities, organizations, or individuals, including—

(i) State and local development agencies and entities;
(ii) representatives of technology-based small business concerns;
(iii) industries and emerging companies;
(iv) universities; and
(v) small business development centers; and

(E) outreach, financial support, and technical assistance to technology-based small business concerns participating in or interested in participating in an SBIR program, including initiatives—

(i) to make grants or loans to companies to pay a portion or all of the cost of developing SBIR proposals;

(ii) to establish or operate a Mentoring Network within the FAST program to provide business advice and counseling that will assist small business concerns that have been identified by FAST program participants, program managers of participating SBIR agencies, the Administration, or other entities that are knowledgeable about the SBIR and STTR programs as good candidates for the SBIR and STTR programs, and that would benefit from mentoring, in accordance with section 657e of this title;

(iii) to create or participate in a training program for individuals providing SBIR outreach and assistance at the State and local levels; and

(iv) to encourage the commercialization of technology developed through SBIR program funding.

(2) Selection considerations

In making awards or entering into cooperative agreements under this section, the Administrator and the SBIR program managers referred to in paragraph (1)—

(A) may only consider proposals by applicants that intend to use a portion of the Federal assistance provided under this section to provide outreach, financial support, or technical assistance to technology-based small business concerns participating in or interested in participating in the SBIR program; and

(B) shall consider, at a minimum—

(i) whether the applicant has demonstrated that the assistance to be provided would address unmet needs of small business concerns in the community, and whether it is important to use Federal funding for the proposed activities;

(ii) whether the applicant has demonstrated that a need exists to increase the number or success of small high-technology businesses in the State, as measured by the number of first phase and second phase SBIR awards that have historically been received by small business concerns in the State;

(iii) whether the projected costs of the proposed activities are reasonable;

(iv) whether the proposal integrates and coordinates the proposed activities with other State and local programs assisting small high-technology firms in the State;

(v) the manner in which the applicant will measure the results of the activities to be conducted; and

(vi) whether the proposal addresses the needs of small business concerns—

(I) owned and controlled by women;

(II) owned and controlled by minorities; and

(III) located in areas that have historically not participated in the SBIR and STTR programs.

(3) Proposal limit

Not more than one proposal may be submitted for inclusion in the FAST program under this section to provide services in any one State in any 1 fiscal year.

(4) Process

Proposals and applications for assistance under this section shall be in such form and subject to

such procedures as the Administrator shall establish. The Administrator shall promulgate regulations establishing standards for the consideration of proposals under paragraph (2), including standards regarding each of the considerations identified in paragraph (2)(B).

(d) Cooperation and coordination

In carrying out the FAST program under this section, the Administrator shall cooperate and coordinate with—

(1) Federal agencies required by section 638 of this title to have an SBIR program; and

(2) entities, organizations, and individuals actively engaged in enhancing or developing the technological capabilities of small business concerns, including—

(A) State and local development agencies and entities;

(B) State committees established under the Experimental Program to Stimulate Competitive Research of the National Science Foundation (as established under section 1862g of title 42);

(C) State science and technology councils; and

(D) representatives of technology-based small business concerns.

(e) Administrative requirements

(1) Competitive basis

Awards and cooperative agreements under this section shall be made or entered into, as applicable, on a competitive basis.

(2) Matching requirements

(A) In general

The non-Federal share of the cost of an activity (other than a planning activity) carried out using an award or under a cooperative agreement under this section shall be—

(i) 50 cents for each Federal dollar, in the case of a recipient that will serve small business concerns located in one of the 18 States receiving the fewest SBIR first phase awards (as described in section 638(e)(4)(A) of this title);

(ii) except as provided in subparagraph (B), 1 dollar for each Federal dollar, in the case of a recipient that will serve small business concerns located in one of the 16 States receiving the greatest number of such SBIR first phase awards; and

(iii) except as provided in subparagraph (B), 75 cents for each Federal dollar, in the case of a recipient that will serve small business concerns located in a State that is not described in clause (i) or (ii) that is receiving such SBIR first phase awards.

(B) Low-income areas

The non-Federal share of the cost of the activity carried out using an award or under a cooperative agreement under this section shall be 50 cents for each Federal dollar that will be directly allocated by a recipient described in subparagraph (A) to serve small business concerns located in a qualified census tract, as that term is defined in section 42(d)(5)(C)(ii) [1] of title 26. Federal dollars not so allocated by that recipient shall be subject to the matching requirements of subparagraph (A).

(C) Types of funding

The non-Federal share of the cost of an activity carried out by a recipient shall be comprised of not less than 50 percent cash and not more than 50 percent of indirect costs and in-kind contributions, except that no such costs or contributions may be derived from funds from any other Federal program.

(D) Rankings

For purposes of subparagraph (A), the Administrator shall reevaluate the ranking of a State once every 2 fiscal years, beginning with fiscal year 2001, based on the most recent statistics compiled by the Administrator.

(3) Duration

Awards may be made or cooperative agreements entered into under this section for multiple years, not to exceed 5 years in total.

(f) Reports

(1) Initial report

Not later than 120 days after December 21, 2000, the Administrator shall prepare and submit to the Committee on Small Business of the Senate and the Committee on Science and the Committee on Small Business of the House of Representatives a report, which shall include, with respect to the FAST program, including Mentoring Networks—

(A) a description of the structure and procedures of the program;

(B) a management plan for the program; and

(C) a description of the merit-based review process to be used in the program.

(2) Annual reports

The Administrator shall submit an annual report to the Committee on Small Business of the Senate and the Committee on Science and the Committee on Small Business of the House of Representatives regarding—

(A) the number and amount of awards provided and cooperative agreements entered into under the FAST program during the preceding year;

(B) a list of recipients under this section, including their location and the activities being performed with the awards made or under the cooperative agreements entered into; and

(C) the Mentoring Networks and the mentoring database, as provided for under section 657e of this title, including—

(i) the status of the inclusion of mentoring information in the database required by section 638(k) of this title; and

(ii) the status of the implementation and description of the usage of the Mentoring Networks.

(g) Reviews by Inspector General

(1) In general

The Inspector General of the Administration shall conduct a review of—

(A) the extent to which recipients under the FAST program are measuring the performance of the activities being conducted and the results of such measurements; and

(B) the overall management and effectiveness of the FAST program.

(2) Report

During the first quarter of fiscal year 2004, the Inspector General of the Administration shall submit a report to the Committee on Small Business of the Senate and the Committee on Science and the Committee on Small Business of the House of Representatives on the review conducted under paragraph (1).

(h) Program levels

(1) In general

There is authorized to be appropriated to carry out the FAST program, including Mentoring Networks, under this section and section 657e of this title, $10,000,000 for each of fiscal years 2001 through 2005.

(2) Mentoring database

Of the total amount made available under paragraph (1) for fiscal years 2001 through 2005, a reasonable amount, not to exceed a total of $500,000, may be used by the Administration to carry out section 657e(d) of this title.

(i) Termination

The authority to carry out the FAST program under this section shall terminate on September 30, 2005.

(Pub. L. 85–536, §2[34], as added Pub. L. 106–554, §1(a)(9) [title I, §111(b)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–674; amended Pub. L. 107–50, §8, Oct. 15, 2001, 115 Stat. 265.)

REFERENCES IN TEXT

Subpar. (C) of section 42(d)(5) of title 26, referred to in subsec. (e)(2)(B), was redesignated (B) by Pub. L. 110–289, div. C, title I, §3003(g)(3), July 30, 2008, 122 Stat. 2882.

PRIOR PROVISIONS

A prior section 2[34] of Pub. L. 85–536 was renumbered section 2[47] and is set out as a note under section 631 of this title.

AMENDMENTS

2001—Subsec. (c)(2)(B)(vi). Pub. L. 107–50, §8(a), added cl. (vi).

Subsec. (c)(4). Pub. L. 107–50, §8(b), inserted at end "The Administrator shall promulgate regulations establishing standards for the consideration of proposals under paragraph (2), including standards regarding each of the considerations identified in paragraph (2)(B)."

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

Committee on Science of House of Representatives changed to Committee on Science and Technology of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

FINDINGS

Pub. L. 106–554, §1(a)(9) [title I, §111(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–674, provided that: "Congress finds that—

"(1) programs to foster economic development among small high-technology firms vary widely among the States;

"(2) States that do not aggressively support the development of small high-technology firms, including participation by small business concerns in the SBIR program, are at a competitive disadvantage in establishing a business climate that is conducive to technology development; and

"(3) building stronger national, State, and local support for science and technology research in these disadvantaged States will expand economic opportunities in the United States, create jobs, and increase the competitiveness of the United States in the world market."

[1] *See References in Text note below.*

§657e. Mentoring Networks

(a) Findings

Congress finds that—

(1) the SBIR and STTR programs create jobs, increase capacity for technological innovation, and boost international competitiveness;

(2) increasing the quantity of applications from all States to the SBIR and STTR programs would enhance competition for such awards and the quality of the completed projects; and

(3) mentoring is a natural complement to the FAST program of reaching out to new companies regarding the SBIR and STTR programs as an effective and low-cost way to improve the likelihood that such companies will succeed in such programs in developing and commercializing their research.

(b) Authorization for Mentoring Networks

The recipient of an award or participant in a cooperative agreement under section 657d of this title may use a reasonable amount of such assistance for the establishment of a Mentoring Network under

this section.

(c) Criteria for Mentoring Networks

A Mentoring Network established using assistance under section 657d of this title shall—

(1) provide business advice and counseling to high technology small business concerns located in the State or region served by the Mentoring Network and identified under section 657d(c)(1)(E)(ii) of this title as potential candidates for the SBIR or STTR programs;

(2) identify volunteer mentors who—

(A) are persons associated with a small business concern that has successfully completed one or more SBIR or STTR funding agreements; and

(B) have agreed to guide small business concerns through all stages of the SBIR or STTR program process, including providing assistance relating to—

(i) proposal writing;
(ii) marketing;
(iii) Government accounting;
(iv) Government audits;
(v) project facilities and equipment;
(vi) human resources;
(vii) third phase partners;
(viii) commercialization;
(ix) venture capital networking; and
(x) other matters relevant to the SBIR and STTR programs;

(3) have experience working with small business concerns participating in the SBIR and STTR programs;

(4) contribute information to the national database referred to in subsection (d) of this section; and

(5) agree to reimburse volunteer mentors for out-of-pocket expenses related to service as a mentor under this section.

(d) Mentoring database

The Administrator shall—

(1) include in the database required by section 638(k)(1) of this title, in cooperation with the SBIR, STTR, and FAST programs, information on Mentoring Networks and mentors participating under this section, including a description of their areas of expertise;

(2) work cooperatively with Mentoring Networks to maintain and update the database;

(3) take such action as may be necessary to aggressively promote Mentoring Networks under this section; and

(4) fulfill the requirements of this subsection either directly or by contract.

(Pub. L. 85–536, §2[35], as added Pub. L. 106–554, §1(a)(9) [title I, §112], Dec. 21, 2000, 114 Stat. 2763, 2763A–680.)

§657f. Procurement program for small business concerns owned and controlled by service-disabled veterans

(a) Sole source contracts

In accordance with this section, a contracting officer may award a sole source contract to any small business concern owned and controlled by service-disabled veterans if—

(1) such concern is determined to be a responsible contractor with respect to performance of such contract opportunity and the contracting officer does not have a reasonable expectation that 2 or more small business concerns owned and controlled by service-disabled veterans will submit offers for the contracting opportunity;

(2) the anticipated award price of the contract (including options) will not exceed—

(A) $5,000,000, in the case of a contract opportunity assigned a standard industrial classification code for manufacturing; or

(B) $3,000,000, in the case of any other contract opportunity; and

(3) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price.

(b) Restricted competition

In accordance with this section, a contracting officer may award contracts on the basis of competition restricted to small business concerns owned and controlled by service-disabled veterans if the contracting officer has a reasonable expectation that not less than 2 small business concerns owned and controlled by service-disabled veterans will submit offers and that the award can be made at a fair market price.

(c) Relationship to other contracting preferences

A procurement may not be made from a source on the basis of a preference provided under subsection (a) or (b) of this section if the procurement would otherwise be made from a different source under section 4124 or 4125 of title 18 or chapter 85 of title 41.

(d) Enforcement; penalties

Rules similar to the rules of paragraphs (5) and (6) of section 637(m) of this title shall apply for purposes of this section.

(e) Contracting officer

For purposes of this section, the term "contracting officer" has the meaning given such term in section 2101(1) of title 41.

(Pub. L. 85–536, §2[36], as added Pub. L. 108–183, title III, §308, Dec. 16, 2003, 117 Stat. 2662.)

CODIFICATION

In subsec. (c), "chapter 85 of title 41" substituted for "the Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.)" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (e), "section 2101(1) of title 41" substituted for "section 27(f)(5) of the Office of Federal Procurement Policy Act (41 U.S.C. 423(f)(5))" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

PRIOR PROVISIONS

A prior section 2[36] of Pub. L. 85–536 was renumbered section 2[47] and is set out as a note under section 631 of this title.

§657g. Participation in federally funded projects

Any small business concern that is certified, or otherwise meets the criteria for participation in any program under section 637(a) of this title, shall not be required by any State, or political subdivision thereof, to meet additional criteria or certification, unrelated to the capability to provide the requested products or services, in order to participate as a small disadvantaged business in any program or project that is funded, in whole or in part, by the Federal Government.

(Pub. L. 108–447, div. K, title I, §155, Dec. 8, 2004, 118 Stat. 3458.)

CODIFICATION

Section was enacted as part of the Small Business Reauthorization and Manufacturing Assistance Act of 2004, and also as part of the Consolidated Appropriations Act, 2005, and not as part of the Small Business Act which comprises this chapter.

NOTICE REGARDING PARTICIPATION OF SMALL BUSINESS CONCERNS

Pub. L. 109–59, title X, §10201, Aug. 10, 2005, 119 Stat. 1932, provided that: "The Secretary [of

Transportation] shall notify each State or political subdivision of a State to which the Secretary awards a grant or other Federal funds of the criteria for participation by a small business concern in any program or project that is funded, in whole or in part, by the Federal Government under section 155 of the Small Business Reauthorization and Manufacturing Assistance Act of 2004 (15 U.S.C. 567g [657g])."

§657h. Small business energy efficiency

(a) Definitions

In this section—

(1) the terms "Administration" and "Administrator" mean the Small Business Administration and the Administrator thereof, respectively;

(2) the term "association" means the association of small business development centers established under section 648(a)(3)(A) of this title;

(3) the term "disability" has the meaning given that term in section 12102 of title 42;

(4) the term "Efficiency Program" means the Small Business Energy Efficiency Program established under subsection (c)(1);

(5) the term "electric utility" has the meaning given that term in section 2602 of title 16;

(6) the term "high performance green building" has the meaning given that term in section 17061 of title 42;

(7) the term "on-bill financing" means a low interest or no interest financing agreement between a small business concern and an electric utility for the purchase or installation of equipment, under which the regularly scheduled payment of that small business concern to that electric utility is not reduced by the amount of the reduction in cost attributable to the new equipment and that amount is credited to the electric utility, until the cost of the purchase or installation is repaid;

(8) the term "small business concern" has the same meaning as in section 632 of this title;

(9) the term "small business development center" means a small business development center described in section 648 of this title;

(10) the term "telecommuting" means the use of telecommunications to perform work functions under circumstances which reduce or eliminate the need to commute;

(11) the term "Telecommuting Pilot Program" means the pilot program established under subsection (d)(1)(A); and

(12) the term "veteran" has the meaning given that term in section 101 of title 38.

(b) Implementation of small business energy efficiency program

(1) In general

Not later than 90 days after December 19, 2007, the Administrator shall promulgate final rules establishing the Government-wide program authorized under subsection (d) of section 6307 of title 42 that ensure compliance with that subsection by not later than 6 months after December 19, 2007.

(2) Program required

The Administrator shall develop and coordinate a Government-wide program, building on the Energy Star for Small Business program, to assist small business concerns in—

(A) becoming more energy efficient;

(B) understanding the cost savings from improved energy efficiency; and

(C) identifying financing options for energy efficiency upgrades.

(3) Consultation and cooperation

The program required by paragraph (2) shall be developed and coordinated—

(A) in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency; and

(B) in cooperation with any entities the Administrator considers appropriate, such as industry trade associations, industry members, and energy efficiency organizations.

(4) Availability of information

The Administrator shall make available the information and materials developed under the program required by paragraph (2) to—

(A) small business concerns, including smaller design, engineering, and construction firms; and

(B) other Federal programs for energy efficiency, such as the Energy Star for Small Business program.

(5) Strategy and report

(A) Strategy required

The Administrator shall develop a strategy to educate, encourage, and assist small business concerns in adopting energy efficient building fixtures and equipment.

(B) Report

Not later than December 31, 2008, the Administrator shall submit to Congress a report containing a plan to implement the strategy developed under subparagraph (A).

(c) Small business sustainability initiative

(1) Authority

The Administrator shall establish a Small Business Energy Efficiency Program to provide energy efficiency assistance to small business concerns through small business development centers.

(2) Small business development centers

(A) In general

In carrying out the Efficiency Program, the Administrator shall enter into agreements with small business development centers under which such centers shall—

(i) provide access to information and resources on energy efficiency practices, including on-bill financing options;

(ii) conduct training and educational activities;

(iii) offer confidential, free, one-on-one, in-depth energy audits to the owners and operators of small business concerns regarding energy efficiency practices;

(iv) give referrals to certified professionals and other providers of energy efficiency assistance who meet such standards for educational, technical, and professional competency as the Administrator shall establish;

(v) to the extent not inconsistent with controlling State public utility regulations, act as a facilitator between small business concerns, electric utilities, lenders, and the Administration to facilitate on-bill financing arrangements;

(vi) provide necessary support to small business concerns to—

(I) evaluate energy efficiency opportunities and opportunities to design or construct high performance green buildings;

(II) evaluate renewable energy sources, such as the use of solar and small wind to supplement power consumption;

(III) secure financing to achieve energy efficiency or to design or construct high performance green buildings; and

(IV) implement energy efficiency projects;

(vii) assist owners of small business concerns with the development and commercialization of clean technology products, goods, services, and processes that use renewable energy sources, dramatically reduce the use of natural resources, and cut or eliminate greenhouse gas emissions through—

(I) technology assessment;

(II) intellectual property;

(III) Small Business Innovation Research submissions under section 638 of this title;
(IV) strategic alliances;
(V) business model development; and
(VI) preparation for investors; and

(viii) help small business concerns improve environmental performance by shifting to less hazardous materials and reducing waste and emissions, including by providing assistance for small business concerns to adapt the materials they use, the processes they operate, and the products and services they produce.

(B) Reports

Each small business development center participating in the Efficiency Program shall submit to the Administrator and the Administrator of the Environmental Protection Agency an annual report that includes—

(i) a summary of the energy efficiency assistance provided by that center under the Efficiency Program;

(ii) the number of small business concerns assisted by that center under the Efficiency Program;

(iii) statistics on the total amount of energy saved as a result of assistance provided by that center under the Efficiency Program; and

(iv) any additional information determined necessary by the Administrator, in consultation with the association.

(C) Reports to Congress

Not later than 60 days after the date on which all reports under subparagraph (B) relating to a year are submitted, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report summarizing the information regarding the Efficiency Program submitted by small business development centers participating in that program.

(3) Eligibility

A small business development center shall be eligible to participate in the Efficiency Program only if that center is certified under section 648(k)(2) of this title.

(4) Selection of participating State programs

From among small business development centers submitting applications to participate in the Efficiency Program, the Administrator—

(A) shall, to the maximum extent practicable, select small business development centers in such a manner so as to promote a nationwide distribution of centers participating in the Efficiency Program; and

(B) may not select more than 1 small business development center in a State to participate in the Efficiency Program.

(5) Matching requirement

Subparagraphs (A) and (B) of section 648(a)(4) of this title shall apply to assistance made available under the Efficiency Program.

(6) Grant amounts

Each small business development center selected to participate in the Efficiency Program under paragraph (4) shall be eligible to receive a grant in an amount equal to—

(A) not less than $100,000 in each fiscal year; and

(B) not more than $300,000 in each fiscal year.

(7) Evaluation and report

The Comptroller General of the United States shall—

(A) not later than 30 months after the date of disbursement of the first grant under the

Efficiency Program, initiate an evaluation of that program; and

(B) not later than 6 months after the date of the initiation of the evaluation under subparagraph (A), submit to the Administrator, the Committee on Small Business and Entrepreneurship of the Senate, and the Committee on Small Business of the House of Representatives, a report containing—

(i) the results of the evaluation; and

(ii) any recommendations regarding whether the Efficiency Program, with or without modification, should be extended to include the participation of all small business development centers.

(8) Guarantee

To the extent not inconsistent with State law, the Administrator may guarantee the timely payment of a loan made to a small business concern through an on-bill financing agreement on such terms and conditions as the Administrator shall establish through a formal rulemaking, after providing notice and an opportunity for comment.

(9) Implementation

Subject to amounts approved in advance in appropriations Acts and separate from amounts approved to carry out section 648(a)(1) of this title, the Administrator may make grants or enter into cooperative agreements to carry out this subsection.

(10) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to make grants and enter into cooperative agreements to carry out this subsection.

(11) Termination

The authority under this subsection shall terminate 4 years after the date of disbursement of the first grant under the Efficiency Program.

(d) Small business telecommuting

(1) Pilot program

(A) In general

The Administrator shall conduct, in not more than 5 of the regions of the Administration, a pilot program to provide information regarding telecommuting to employers that are small business concerns and to encourage such employers to offer telecommuting options to employees.

(B) Special outreach to individuals with disabilities

In carrying out the Telecommuting Pilot Program, the Administrator shall make a concerted effort to provide information to—

(i) small business concerns owned by or employing individuals with disabilities, particularly veterans who are individuals with disabilities;

(ii) Federal, State, and local agencies having knowledge and expertise in assisting individuals with disabilities, including veterans who are individuals with disabilities; and

(iii) any group or organization, the primary purpose of which is to aid individuals with disabilities or veterans who are individuals with disabilities.

(C) Permissible activities

In carrying out the Telecommuting Pilot Program, the Administrator may—

(i) produce educational materials and conduct presentations designed to raise awareness in the small business community of the benefits and the ease of telecommuting;

(ii) conduct outreach—

(I) to small business concerns that are considering offering telecommuting options; and

(II) as provided in subparagraph (B); and

(iii) acquire telecommuting technologies and equipment to be used for demonstration purposes.

(D) Selection of regions

In determining which regions will participate in the Telecommuting Pilot Program, the Administrator shall give priority consideration to regions in which Federal agencies and private-sector employers have demonstrated a strong regional commitment to telecommuting.

(2) Report to Congress

Not later than 2 years after the date on which funds are first appropriated to carry out this subsection, the Administrator shall transmit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report containing the results of an evaluation of the Telecommuting Pilot Program and any recommendations regarding whether the pilot program, with or without modification, should be extended to include the participation of all regions of the Administration.

(3) Termination

The Telecommuting Pilot Program shall terminate 4 years after the date on which funds are first appropriated to carry out this subsection.

(4) Authorization of appropriations

There is authorized to be appropriated to the Administration $5,000,000 to carry out this subsection.

(Pub. L. 110–140, title XII, §1203, Dec. 19, 2007, 121 Stat. 1766.)

CODIFICATION

Section is comprised of section 1203 of Pub. L. 110–140. Subsec. (e) of section 1203 of Pub. L. 110–140 amended section 638 of this title.

Section was enacted as part of the Energy Independence and Security Act of 2007, and not as part of the Small Business Act which comprises this chapter.

EFFECTIVE DATE

Section effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as a note under section 1824 of Title 2, The Congress.

§657i. Coordination of disaster assistance programs with FEMA

(a) Coordination required

The Administrator shall ensure that the disaster assistance programs of the Administration are coordinated, to the maximum extent practicable, with the disaster assistance programs of the Federal Emergency Management Agency.

(b) Regulations required

The Administrator, in consultation with the Administrator of the Federal Emergency Management Agency, shall establish regulations to ensure that each application for disaster assistance is submitted as quickly as practicable to the Administration or directed to the appropriate agency under the circumstances.

(c) Completion; revision

The initial regulations shall be completed not later than 270 days after the date of the enactment of the Small Business Disaster Response and Loan Improvements Act of 2008. Thereafter, the regulations shall be revised on an annual basis.

(d) Report

The Administrator shall include a report on the regulations whenever the Administration submits the report required by section 657o of this title.

(Pub. L. 85–536, §2[37], as added Pub. L. 110–234, title XII, §12062(2), May 22, 2008, 122 Stat. 1407, and Pub. L. 110–246, §4(a), title XII, §12062(2), June 18, 2008, 122 Stat. 1664, 2169.)

REFERENCES IN TEXT

The date of the enactment of the Small Business Disaster Response and Loan Improvements Act of 2008, referred to in subsec. (c), is the date of enactment of subtitle B (§§12051–12091) of title XII of Pub. L. 110–246, which was approved June 18, 2008.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

PRIOR PROVISIONS

A prior section 2[37] of Pub. L. 85–536 was renumbered section 2[47] and is set out as a note under section 631 of this title.

EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.

§657j. Information tracking and follow-up system for disaster assistance

(a) System required

The Administrator shall develop, implement, or maintain a centralized information system to track communications between personnel of the Administration and applicants for disaster assistance. The system shall ensure that whenever an applicant for disaster assistance communicates with such personnel on a matter relating to the application, the following information is recorded:

(1) The method of communication.
(2) The date of communication.
(3) The identity of the personnel.
(4) A summary of the subject matter of the communication.

(b) Follow-up required

The Administrator shall ensure that an applicant for disaster assistance receives, by telephone, mail, or electronic mail, follow-up communications from the Administration at all critical stages of the application process, including the following:

(1) When the Administration determines that additional information or documentation is required to process the application.
(2) When the Administration determines whether to approve or deny the loan.
(3) When the primary contact person managing the loan application has changed.

(Pub. L. 85–536, §2[38], as added Pub. L. 110–234, title XII, §12067, May 22, 2008, 122 Stat. 1410, and Pub. L. 110–246, §4(a), title XII, §12067, June 18, 2008, 122 Stat. 1664, 2172.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.

§657k. Disaster processing redundancy

(a) In general

The Administrator shall ensure that the Administration has in place a facility for disaster loan processing that, whenever the Administration's primary facility for disaster loan processing becomes unavailable, is able to take over all disaster loan processing from that primary facility within 2 days.

(b) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this section.

(Pub. L. 85–536, §2[39], as added Pub. L. 110–234, title XII, §12069, May 22, 2008, 122 Stat. 1411, and Pub. L. 110–246, §4(a), title XII, §12069, June 18, 2008, 122 Stat. 1664, 2173.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.

§657*l*. Comprehensive disaster response plan

(a) Plan required

The Administrator shall develop, implement, or maintain a comprehensive written disaster response plan. The plan shall include the following:

(1) For each region of the Administration, a description of the disasters most likely to occur in that region.

(2) For each disaster described under paragraph (1)—

(A) an assessment of the disaster;

(B) an assessment of the demand for Administration assistance most likely to occur in response to the disaster;

(C) an assessment of the needs of the Administration, with respect to such resources as information technology, telecommunications, human resources, and office space, to meet the demand referred to in subparagraph (B); and

(D) guidelines pursuant to which the Administration will coordinate with other Federal agencies and with State and local authorities to best respond to the demand referred to in subparagraph (B) and to best use the resources referred to in that subparagraph.

(b) Completion; revision

The first plan required by subsection (a) shall be completed not later than 180 days after the date of the enactment of this section. Thereafter, the Administrator shall update the plan on an annual basis and following any major disaster relating to which the Administrator declares eligibility for additional disaster assistance under section 636(b)(9) of this title.

(c) Knowledge required

The Administrator shall carry out subsections (a) and (b) through an individual with substantial knowledge in the field of disaster readiness and emergency response.

(d) Report

The Administrator shall include a report on the plan whenever the Administration submits the report required by section 657o of this title.

(Pub. L. 85–536, §2[40], as added Pub. L. 110–234, title XII, §12075, May 22, 2008, 122 Stat. 1414, and Pub. L. 110–246, §4(a), title XII, §12075, June 18, 2008, 122 Stat. 1664, 2176.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (b), is the date of enactment of Pub. L.

110–246, which was approved June 18, 2008.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.

§657m. Plans to secure sufficient office space

(a) Plans required

The Administrator shall develop long-term plans to secure sufficient office space to accommodate an expanded workforce in times of disaster.

(b) Report

The Administrator shall include a report on the plans developed under subsection (a) each time the Administration submits a report required under section 657o of this title.

(Pub. L. 85–536, §2[41], as added Pub. L. 110–234, title XII, §12076, May 22, 2008, 122 Stat. 1415, and Pub. L. 110–246, §4(a), title XII, §12076, June 18, 2008, 122 Stat. 1664, 2177.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.

§657n. Immediate Disaster Assistance program

(a) Program required

The Administrator shall carry out a program, to be known as the Immediate Disaster Assistance program, under which the Administration participates on a deferred (guaranteed) basis in 85 percent of the balance of the financing outstanding at the time of disbursement of the loan if such balance is less than or equal to $25,000 for businesses affected by a disaster.

(b) Eligibility requirement

To receive a loan guaranteed under subsection (a), the applicant shall also apply for, and meet basic eligibility standards for, a loan under subsection (b) or (c) of section 636 of this title.

(c) Use of proceeds

A person who receives a loan under subsection (b) or (c) of section 636 of this title shall use the proceeds of that loan to repay all loans guaranteed under subsection (a), if any, before using the proceeds for any other purpose.

(d) Loan terms

(1) No prepayment penalty

There shall be no prepayment penalty on a loan guaranteed under subsection (a).

(2) Repayment

A person who receives a loan guaranteed under subsection (a) and who is disapproved for a

loan under subsection (b) or (c) of section 636 of this title, as the case may be, shall repay the loan guaranteed under subsection (a) not later than the date established by the Administrator, which may not be earlier than 10 years after the date on which the loan guaranteed under subsection [1] is disbursed.

(e) Approval or disapproval

The Administrator shall ensure that each applicant for a loan under the program receives a decision approving or disapproving of the application within 36 hours after the Administration receives the application.

(Pub. L. 85–536, §2[42], as added Pub. L. 110–234, title XII, §12084, May 22, 2008, 122 Stat. 1420, and Pub. L. 110–246, §4(a), title XII, §12084, June 18, 2008, 122 Stat. 1664, 2182.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.

[1] *So in original. Probably should be "subsection (a)".*

§657*o*. Annual reports on disaster assistance

Not later than 45 days after the end of a fiscal year, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report on the disaster assistance operations of the Administration for that fiscal year. The report shall—

(1) specify the number of Administration personnel involved in such operations;

(2) describe any material changes to those operations, such as changes to technologies used or to personnel responsibilities;

(3) describe and assess the effectiveness of the Administration in responding to disasters during that fiscal year, including a description of the number and amounts of loans made for damage and for economic injury; and

(4) describe the plans of the Administration for preparing to respond to disasters during the next fiscal year.

(Pub. L. 85–536, §2[43], as added Pub. L. 110–234, title XII, §12091(g), May 22, 2008, 122 Stat. 1426, and Pub. L. 110–246, §4(a), title XII, §12091(g), June 18, 2008, 122 Stat. 1664, 2188.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.

§657p. Outreach regarding health insurance options available to children

(a) Definitions

In this section—

(1) the terms "Administration" and "Administrator" means the Small Business Administration and the Administrator thereof, respectively;

(2) the term "certified development company" means a development company participating in the program under title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.);

(3) the term "Medicaid program" means the program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.);

(4) the term "Service Corps of Retired Executives" means the Service Corps of Retired Executives authorized by section 637(b)(1) of this title;

(5) the term "small business concern" has the meaning given that term in section 632 of this title;

(6) the term "small business development center" means a small business development center described in section 648 of this title;

(7) the term "State" has the meaning given that term for purposes of title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.);

(8) the term "State Children's Health Insurance Program" means the State Children's Health Insurance Program established under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.);

(9) the term "task force" means the task force established under subsection (b)(1); and

(10) the term "women's business center" means a women's business center described in section 656 of this title.

(b) Establishment of task force

(1) Establishment

There is established a task force to conduct a nationwide campaign of education and outreach for small business concerns regarding the availability of coverage for children through private insurance options, the Medicaid program, and the State Children's Health Insurance Program.

(2) Membership

The task force shall consist of the Administrator, the Secretary of Health and Human Services, the Secretary of Labor, and the Secretary of the Treasury.

(3) Responsibilities

The campaign conducted under this subsection shall include—

(A) efforts to educate the owners of small business concerns about the value of health coverage for children;

(B) information regarding options available to the owners and employees of small business concerns to make insurance more affordable, including Federal and State tax deductions and credits for health care-related expenses and health insurance expenses and Federal tax exclusion for health insurance options available under employer-sponsored cafeteria plans under section 125 of title 26;

(C) efforts to educate the owners of small business concerns about assistance available through public programs; and

(D) efforts to educate the owners and employees of small business concerns regarding the availability of the hotline operated as part of the Insure Kids Now program of the Department of Health and Human Services.

(4) Implementation

In carrying out this subsection, the task force may—

(A) use any business partner of the Administration, including—

(i) a small business development center;

(ii) a certified development company;

(iii) a women's business center; and

(iv) the Service Corps of Retired Executives;

(B) enter into—

(i) a memorandum of understanding with a chamber of commerce; and

(ii) a partnership with any appropriate small business concern or health advocacy group; and

(C) designate outreach programs at regional offices of the Department of Health and Human Services to work with district offices of the Administration.

(5) Website

The Administrator shall ensure that links to information on the eligibility and enrollment requirements for the Medicaid program and State Children's Health Insurance Program of each State are prominently displayed on the website of the Administration.

(6) Report

(A) In general

Not later than 2 years after February 4, 2009, and every 2 years thereafter, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report on the status of the nationwide campaign conducted under paragraph (1).

(B) Contents

Each report submitted under subparagraph (A) shall include a status update on all efforts made to educate owners and employees of small business concerns on options for providing health insurance for children through public and private alternatives.

(Pub. L. 111–3, title VI, §621, Feb. 4, 2009, 123 Stat. 104.)

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in subsec. (a)(2), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689. Title V of the Act is classified generally to subchapter V (§695 et seq.) of chapter 14B of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

The Social Security Act, referred to in subsec. (a)(3), (7), (8), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Titles XIX and XXI of the Act are classified generally to subchapters XIX (§1396 et seq.) and XXI (§1397aa et seq.), respectively, of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

CODIFICATION

Section was enacted as part of the Children's Health Insurance Program Reauthorization Act of 2009, and not as part of the Small Business Act which comprises this chapter.

EFFECTIVE DATE

Section effective Apr. 1, 2009, and applicable to child health assistance and medical assistance provided on or after that date, with certain exceptions, see section 3 of Pub. L. 111–3, set out as a note under section 1396 of Title 42, The Public Health and Welfare.

§657q. Consolidation of contract requirements

(a) Definitions

In this section—

(1) the term "Chief Acquisition Officer" means the employee of a Federal agency designated as the Chief Acquisition Officer for the Federal agency under section 1702(a) of title 41;

(2) the term "consolidation of contract requirements", with respect to contract requirements of a Federal agency, means a use of a solicitation to obtain offers for a single contract or a multiple award contract—

(A) to satisfy 2 or more requirements of the Federal agency for goods or services that have

been provided to or performed for the Federal agency under 2 or more separate contracts lower in cost than the total cost of the contract for which the offers are solicited; or

(B) to satisfy requirements of the Federal agency for construction projects to be performed at 2 or more discrete sites; and

(3) the term "senior procurement executive" means an official designated under section 1702(c) of title 41 as the senior procurement executive for a Federal agency.

(b) Policy

The head of each Federal agency shall ensure that the decisions made by the Federal agency regarding consolidation of contract requirements of the Federal agency are made with a view to providing small business concerns with appropriate opportunities to participate as prime contractors and subcontractors in the procurements of the Federal agency.

(c) Limitation on use of acquisition strategies involving consolidation

(1) In general

Subject to paragraph (4), the head of a Federal agency may not carry out an acquisition strategy that includes a consolidation of contract requirements of the Federal agency with a total value of more than $2,000,000, unless the senior procurement executive or Chief Acquisition Officer for the Federal agency, before carrying out the acquisition strategy—

(A) conducts market research;

(B) identifies any alternative contracting approaches that would involve a lesser degree of consolidation of contract requirements;

(C) makes a written determination that the consolidation of contract requirements is necessary and justified;

(D) identifies any negative impact by the acquisition strategy on contracting with small business concerns; and

(E) ensures that steps will be taken to include small business concerns in the acquisition strategy.

(2) Determination that consolidation is necessary and justified

(A) In general

A senior procurement executive or Chief Acquisition Officer may determine that an acquisition strategy involving a consolidation of contract requirements is necessary and justified for the purposes of paragraph (1)(C) if the benefits of the acquisition strategy substantially exceed the benefits of each of the possible alternative contracting approaches identified under paragraph (1)(B).

(B) Savings in administrative or personnel costs

For purposes of subparagraph (A), savings in administrative or personnel costs alone do not constitute a sufficient justification for a consolidation of contract requirements in a procurement unless the expected total amount of the cost savings, as determined by the senior procurement executive or Chief Acquisition Officer, is expected to be substantial in relation to the total cost of the procurement.

(3) Benefits to be considered

The benefits considered for the purposes of paragraphs (1) and (2) may include cost and, regardless of whether quantifiable in dollar amounts—

(A) quality;

(B) acquisition cycle;

(C) terms and conditions; and

(D) any other benefit.

(Pub. L. 85–536, §2[44], as added Pub. L. 111–240, title I, §1313(a)(2), Sept. 27, 2010, 124 Stat. 2538; amended Pub. L. 112–239, div. A, title XVI, §1671(a), (b), (c)(2), Jan. 2, 2013, 126 Stat. 2084,

2085.)

CODIFICATION

In subsec. (a)(1), "section 1702(a) of title 41" substituted for "section 16(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(a))" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (a)(3), "section 1702(c) of title 41" substituted for "section 16(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(c))" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

PRIOR PROVISIONS

A prior section 2[44] of Pub. L. 85–536 was renumbered section 2[47] and is set out as a note under section 631 of this title.

AMENDMENTS

2013—Subsec. (a)(2). Pub. L. 112–239, §1671(a), substituted "or a multiple award contract—" and subpars. (A) and (B) for "or a multiple award contract to satisfy 2 or more requirements of the Federal agency for goods or services that have been provided to or performed for the Federal agency under 2 or more separate contracts lower in cost than the total cost of the contract for which the offers are solicited; and".

Subsec. (c)(1)(E). Pub. L. 112–239, §1671(b), substituted "ensures" for "certifies to the head of the Federal agency".

Subsec. (c)(4). Pub. L. 112–239, §1671(c)(2), struck out par. (4). Prior to amendment, text read as follows:

"(A) IN GENERAL.—The Department of Defense and each military department shall comply with this section until after the date described in subparagraph (C).

"(B) RULE.—After the date described in subparagraph (C), contracting by the Department of Defense or a military department shall be conducted in accordance with section 2382 of title 10.

"(C) DATE.—The date described in this subparagraph is the date on which the Administrator determines the Department of Defense or a military department is in compliance with the Government-wide contracting goals under section 644 of this title."

§657r. Mentor-protege programs

(a) Administration program

(1) Authority

The Administrator is authorized to establish a mentor-protege program for all small business concerns.

(2) Model for program

The mentor-protege program established under paragraph (1) shall be identical to the mentor-protege program of the Administration for small business concerns that participate in the program under section 637(a) of this title (as in effect on January 2, 2013), except that the Administrator may modify the program to the extent necessary given the types of small business concerns included as proteges.

(b) Programs of other agencies

(1) Approval required

Except as provided in paragraph (4), a Federal department or agency may not carry out a mentor-protege program for small business concerns unless—

(A) the head of the department or agency submits a plan to the Administrator for the program; and

(B) the Administrator approves such plan.

(2) Basis for approval

The Administrator shall approve or disapprove a plan submitted under paragraph (1) based on whether the program proposed—

(A) will assist proteges to compete for Federal prime contracts and subcontracts; and

(B) complies with the regulations issued under paragraph (3).

(3) Regulations

Not later than 270 days after January 2, 2013, the Administrator shall issue, subject to notice and comment, regulations with respect to mentor-protege programs, which shall ensure that such programs improve the ability of proteges to compete for Federal prime contracts and subcontracts and which shall address, at a minimum, the following:

(A) Eligibility criteria for program participants, including any restrictions on the number of mentor-protege relationships permitted for each participant.

(B) The types of developmental assistance to be provided by mentors, including how the assistance provided shall improve the competitive viability of the proteges.

(C) Whether any developmental assistance provided by a mentor may affect the status of a program participant as a small business concern due to affiliation.

(D) The length of mentor-protege relationships.

(E) The effect of mentor-protege relationships on contracting.

(F) Benefits that may accrue to a mentor as a result of program participation.

(G) Reporting requirements during program participation.

(H) Postparticipation reporting requirements.

(I) The need for a mentor-protege pair, if accepted to participate as a pair in a mentor-protege program of any Federal department or agency, to be accepted to participate as a pair in all Federal mentor-protege programs.

(J) Actions to be taken to ensure benefits for proteges and to protect a protege against actions by a mentor that—

(i) may adversely affect the protege's status as a small business concern; or

(ii) provide disproportionate economic benefits to the mentor relative to those provided the protege.

(4) Limitation on applicability

Paragraph (1) does not apply to the following:

(A) Any mentor-protege program of the Department of Defense.

(B) Any mentoring assistance provided under a Small Business Innovation Research Program or a Small Business Technology Transfer Program.

(C) Until the date that is 1 year after the date on which the Administrator issues regulations under paragraph (3), any Federal department or agency operating a mentor-protege program in effect on January 2, 2013.

(c) Reporting

(1) In general

Not later than 2 years after January 2, 2013, and annually thereafter, the Administrator shall submit to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a report that—

(A) identifies each Federal mentor-protege program;

(B) specifies the number of participants in each such program, including the number of participants that are—

(i) small business concerns;

(ii) small business concerns owned and controlled by service-disabled veterans;

(iii) qualified HUBZone small business concerns;

(iv) small business concerns owned and controlled by socially and economically disadvantaged individuals; or

(v) small business concerns owned and controlled by women;

(C) describes the type of assistance provided to proteges under each such program;

(D) describes the benefits provided to mentors under each such program; and

(E) describes the progress of proteges under each such program with respect to competing for

Federal prime contracts and subcontracts.

(2) Provision of information

The head of each Federal department or agency carrying out a mentor-protege program shall provide to the Administrator, on an annual basis, the information necessary for the Administrator to submit a report required under paragraph (1).

(d) Definitions

In this section, the following definitions apply:

(1) Mentor

The term "mentor" means a for-profit business concern, of any size, that—

(A) has the ability to assist and commits to assisting a protege to compete for Federal prime contracts and subcontracts; and

(B) satisfies any other requirements imposed by the Administrator.

(2) Mentor-protege program

The term "mentor-protege program" means a program that pairs a mentor with a protege for the purpose of assisting the protege to compete for Federal prime contracts and subcontracts.

(3) Protege

The term "protege" means a small business concern that—

(A) is eligible to enter into Federal prime contracts and subcontracts; and

(B) satisfies any other requirements imposed by the Administrator.

(e) Current mentor protege agreements

Mentors and proteges with approved agreement in a program operating pursuant to subsection (b)(4)(C) shall be permitted to continue their relationship according to the terms specified in their agreement until the expiration date specified in the agreement.

(f) Submission of agency plans

Agencies operating mentor protege programs pursuant to subsection (b)(4)(C) shall submit the plans specified in subsection (b)(1)(A) to the Administrator within 6 months of the promulgation of rules required by subsection (b)(3). The Administrator shall provide initial comments on each plan within 60 days of receipt, and final approval or denial of each plan within 180 days after receipt.

(Pub. L. 85–536, §2[45], as added Pub. L. 112–239, div. A, title XVI, §1641(2), Jan. 2, 2013, 126 Stat. 2077.)

PRIOR PROVISIONS

A prior section 2[45] of Pub. L. 85–536 was renumbered section 2[47] and is set out as a note under section 631 of this title.

§657s. Limitations on subcontracting

(a) In general

If awarded a contract under section 637(a), 637(m), 644(a), 657a, or 657f of this title, a covered small business concern—

(1) in the case of a contract for services, may not expend on subcontractors more than 50 percent of the amount paid to the concern under the contract;

(2) in the case of a contract for supplies (other than from a regular dealer in such supplies), may not expend on subcontractors more than 50 percent of the amount, less the cost of materials, paid to the concern under the contract;

(3) in the case of a contract described in paragraphs (1) and (2)—

(A) shall determine for which category, services (as described in paragraph (1)) or supplies (as described in paragraph (2)), the greatest percentage of the contract is awarded;

(B) shall determine the amount awarded under the contract for that category of services or supplies; and

(C) may not expend on subcontractors, with respect to the amount determined under subparagraph (B), more than 50 percent of that amount; and

(4) in the case of a contract for supplies from a regular dealer in such supplies, shall supply the product of a domestic small business manufacturer or processor, unless a waiver of such requirement is granted—

(A) by the Administrator, after reviewing a determination by the applicable contracting officer that no small business manufacturer or processor can reasonably be expected to offer a product meeting the specifications (including period for performance) required by the contract; or

(B) by the Administrator for a product (or class of products), after determining that no small business manufacturer or processor is available to participate in the Federal procurement market.

(b) Similarly situated entities

Contract amounts expended by a covered small business concern on a subcontractor that is a similarly situated entity shall not be considered subcontracted for purposes of determining whether the covered small business concern has violated a requirement established under subsection (a) or (d).

(c) Modifications of percentages

The Administrator may change, by rule (after providing notice and an opportunity for public comment), a percentage specified in paragraphs (1) through (4) of subsection (a) if the Administrator determines that such change is necessary to reflect conventional industry practices among business concerns that are below the numerical size standard for businesses in that industry category.

(d) Other contracts

(1) In general

With respect to a category of contracts to which a requirement under subsection (a) does not apply, the Administrator is authorized to establish, by rule (after providing notice and an opportunity for public comment), a requirement that a covered small business concern may not expend on subcontractors more than a specified percentage of the amount paid to the concern under a contract in that category.

(2) Uniformity

A requirement established under paragraph (1) shall apply to all covered small business concerns.

(3) Construction projects

The Administrator shall establish, through public rulemaking, requirements similar to those specified in paragraph (1) to be applicable to contracts for general and specialty construction and to contracts for any other industry category not otherwise subject to the requirements of such paragraph. The percentage applicable to any such requirement shall be determined in accordance with paragraph (1).

(e) Definitions

In this section, the following definitions apply:

(1) Covered small business concern

The term "covered small business concern" means a business concern that—

(A) with respect to a contract awarded under section 637(a) of this title, is a small business concern eligible to receive contracts under that section;

(B) with respect to a contract awarded under section 637(m) of this title—

(i) is a small business concern owned and controlled by women (as defined in that section);

or

(ii) is a small business concern owned and controlled by women (as defined in that section) that is not less than 51 percent owned by 1 or more women who are economically disadvantaged (and such ownership is determined without regard to any community property law);

(C) with respect to a contract awarded under section 644(a) of this title, is a small business concern;

(D) with respect to a contract awarded under section 657a of this title, is a qualified HUBZone small business concern; or

(E) with respect to a contract awarded under section 657f of this title, is a small business concern owned and controlled by service-disabled veterans.

(2) Similarly situated entity

The term "similarly situated entity" means a subcontractor that—

(A) if a subcontractor for a small business concern, is a small business concern;

(B) if a subcontractor for a small business concern eligible to receive contracts under section 637(a) of this title, is such a concern;

(C) if a subcontractor for a small business concern owned and controlled by women (as defined in section 637(m) of this title), is such a concern;

(D) if a subcontractor for a small business concern owned and controlled by women (as defined in section 637(m) of this title) that is not less than 51 percent owned by 1 or more women who are economically disadvantaged (and such ownership is determined without regard to any community property law), is such a concern;

(E) if a subcontractor for a qualified HUBZone small business concern, is such a concern; or

(F) if a subcontractor for a small business concern owned and controlled by service-disabled veterans, is such a concern.

(Pub. L. 85–536, §2[46], as added Pub. L. 112–239, div. A, title XVI, §1651, Jan. 2, 2013, 126 Stat. 2079.)

INAPPLICABILITY OF REQUIREMENT TO REVIEW AND JUSTIFY CERTAIN CONTRACTS

Pub. L. 113–66, div. A, title XVI, §1615, Dec. 26, 2013, 127 Stat. 950, provided that: "In the case of a contract to which the provisions of section 46 of the Small Business Act (15 U.S.C. 657s) apply, the requirements under section 802 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 126 Stat. 1824; 10 U.S.C. 2304 note) do not apply."

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SUBCHAPTER I—GENERAL PROVISIONS

§661. Congressional declaration of policy

It is declared to be the policy of the Congress and the purpose of this chapter to improve and stimulate the national economy in general and the small-business segment thereof in particular by establishing a program to stimulate and supplement the flow of private equity capital and long-term loan funds which small-business concerns need for the sound financing of their business operations and for their growth, expansion, and modernization, and which are not available in adequate supply: *Provided, however,* That this policy shall be carried out in such manner as to insure the maximum participation of private financing sources.

It is the intention of the Congress that the provisions of this chapter shall be so administered that any financial assistance provided hereunder shall not result in a substantial increase of unemployment in any area of the country. It is the intention of the Congress that in the award of financial assistance under this chapter, when practicable, priority be accorded to small business concerns which lease or purchase equipment and supplies which are produced in the United States and that small business concerns receiving such assistance be encouraged to continue to lease or purchase such equipment and supplies.

(Pub. L. 85–699, title I, §102, Aug. 21, 1958, 72 Stat. 689; Pub. L. 102–366, title IV, §416, Sept. 4, 1992, 106 Stat. 1019.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 85–699, which enacted this chapter, amended sections 77c, 77ddd, 80a–18, 633 and 636 of this title, and sections 217 [now 212], 218 [now 213], 221 [now 216], 657, 1006 and 1014 of Title 18, Crimes and Criminal Procedure, repealed section 352a of Title 12, Banks and Banking, and enacted notes set out under this section and section 352a of Title 12. Sections 212 and 213 of Title 18, as renumbered by Pub. L. 87–849, were subsequently repealed. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

AMENDMENTS

1992—Pub. L. 102–366 inserted at end "It is the intention of the Congress that in the award of financial assistance under this chapter, when practicable, priority be accorded to small business concerns which lease or purchase equipment and supplies which are produced in the United States and that small business concerns receiving such assistance be encouraged to continue to lease or purchase such equipment and supplies."

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–232, §1, May 28, 2004, 118 Stat. 649, provided that:"This Act [amending section 697e of this title] may be cited as the 'Premier Certified Lenders Program Improvement Act of 2004'."

SHORT TITLE OF 2001 AMENDMENT

Pub. L. 107–100, §1, Dec. 21, 2001, 115 Stat. 966, provided that: "This Act [amending sections 636, 683, 687d, 687e, and 697 of this title, section 1833a of Title 12, Banks and Banking, and section 1014 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as notes under sections 636, 683, and 697 of this title] may be cited as the 'Small Business Investment Company Amendments Act of 2001'."

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(8) [§1(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–653, provided that: "This section [enacting part B of subchapter III of this chapter, amending section 683 of this title, section 109 of Title 11, Bankruptcy, and section 1464 of Title 12, Banks and Banking, and amending provisions set out as a note under section 631 of this title] may be cited as the 'New Markets Venture Capital Program Act of 2000'."

Pub. L. 106–554, §1(a)(9) [title III, §301], Dec. 21, 2000, 114 Stat. 2763, 2763A–684, provided that: "This title [enacting section 697g of this title, amending sections 695 to 697 and 697e of this title, enacting provisions set out as a note under section 697g of this title, and repealing provisions set out as a note under section 697e of this title] may be cited as the 'Certified Development Company Program Improvements Act of 2000'."

Pub. L. 106–554, §1(a)(9) [title IV, §401], Dec. 21, 2000, 114 Stat. 2763, 2763A–690, provided that: "This title [amending sections 662, 682, 683, and 687b of this title] may be cited as the 'Small Business Investment Corrections Act of 2000'."

SHORT TITLE OF 1999 AMENDMENT

Pub. L. 106–9, §1, Apr. 5, 1999, 113 Stat. 17, provided that: "This Act [amending sections 662, 683, 687, and 687m of this title and provisions set out as notes under this section and section 631 of this title] may be cited as the 'Small Business Investment Improvement Act of 1999'."

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–403, title V, §501, Oct. 22, 1994, 108 Stat. 4198, provided that: "This title [enacting section 697f of this title and provisions set out as a note under section 697f of this title] may be cited as the 'Small Business Prepayment Penalty Relief Act of 1994'."

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–366, title IV, §401, Sept. 4, 1992, 106 Stat. 1007, provided that: "This Act [probably means "This title", amending this section and sections 662, 682, 683, 685 to 687, 687b, and 687l of this title, enacting provisions set out as notes under this section and sections 681 and 687b of this title, and amending provisions set out as a note under section 631 of this title] may be cited as the 'Small Business Equity Enhancement Act of 1992'."

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–590, title II, §201, Nov. 3, 1988, 102 Stat. 3007, provided that: "This title [amending sections 694b and 694c of this title and enacting provisions set out as notes under section 694b of this title] may be cited as the 'Preferred Surety Bond Guarantee Program Act of 1988'."

SHORT TITLE OF 1972 AMENDMENT

Pub. L. 92–595, §1, Oct. 27, 1972, 86 Stat. 1314, provided: "That this Act [enacting sections 687i and 687j of this title and amending sections 80a–18, 633, 636, 662, 681, 683, 684, and 686 of this title] may be cited as the 'Small Business Investment Act Amendments of 1972'."

SHORT TITLE OF 1967 AMENDMENT

Pub. L. 90–104, title II, §201, Oct. 11, 1967, 81 Stat. 269, provided that: "This title [amending sections 681, 682, 683, 684, 686, 687, 687b, and 692 of this title] may be cited as the 'Small Business Investment Act Amendments of 1967'."

SHORT TITLE OF 1966 AMENDMENT

Pub. L. 89–779, §1, Nov. 6, 1966, 80 Stat. 1359, provided: "That this Act [enacting sections 687e, 687f, 687g, and 687h of this title and amending sections 633, 671, 687, 687a, 687b, and 687c of this title, and sections 5315 and 5316 of Title 5, Government Organization and Employees] may be cited as the 'Small Business Investment Act Amendments of 1966'."

SHORT TITLE OF 1964 AMENDMENT

Pub. L. 88–273, §1, Feb. 28, 1964, 78 Stat. 146, provided: "That this Act [enacting section 687d and amending sections 682, 686, and 687 of this title] may be cited as the 'Small Business Investment Act Amendments of 1963'."

SHORT TITLE OF 1961 AMENDMENT

Pub. L. 87–341, §1, Oct. 3, 1961, 75 Stat. 752, provided: "That this Act [enacting sections 687a, 687b, and 687c of this title, amending sections 633, 662, 681, 683 to 687, and 696 of this title, and enacting provisions set out as notes under sections 631 and 686 of this title] may be cited as the 'Small Business Investment Act Amendments of 1961'."

SHORT TITLE OF 1960 AMENDMENT

Pub. L. 86–502, §1, June 11, 1960, 74 Stat. 196, provided: "That this Act [amending sections 662, 681, 682, and 684 of this title, and section 26–610 of the District of Columbia Code, 1973 edition] may be cited as the 'Small Business Investment Act Amendments of 1960'."

SHORT TITLE

Pub. L. 85–699, title I, §101, Aug. 21, 1958, 72 Stat. 689, as amended by Pub. L. 106–9, §2(d)(3), Apr. 5, 1999, 113 Stat. 18, provided that: "This Act [enacting this chapter, amending sections 77c, 77ddd, 80a–18, 633 and 636 of this title, and sections 217 [now 212], 218 [now 213], 221 [now 216], 657, 1006 and 1014 of Title 18, Crimes and Criminal Procedure, repealing section 352a of Title 12, Banks and Banking, and enacting notes set out under this section and former section 352a of title 12] may be cited as the 'Small Business Investment Act of 1958'."

REGULATIONS

Pub. L. 102–366, title IV, §415, Sept. 4, 1992, 106 Stat. 1018, provided that: "Notwithstanding any law, rule, regulation or administrative moratorium, except as otherwise expressly provided in this Act [probably means "this title", see Short Title of 1992 Amendment note above], the Small Business Administration shall—

"(1) within 90 days after the date of enactment of this Act [Sept. 4, 1992], publish in the Federal Register proposed rules and regulations implementing this Act and the amendments made by this Act; and

"(2) within 180 days after the date of enactment of this Act, publish in the Federal Register final rules and regulations implementing this Act, and enter such contracts as are necessary to implement this Act and the amendments made by this Act."

EFFECT OF SMALL BUSINESS EQUITY ENHANCEMENT ACT OF 1992 ON SECURITIES LAWS

Pub. L. 102–366, title IV, §418, Sept. 4, 1992, 106 Stat. 1019, provided that: "Nothing in this Act [probably means "this title", see Short Title of 1992 Amendment note above] (and no amendment made by this Act) shall be construed to affect the applicability of the securities laws, as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(47)], or any of the rules and regulations thereunder, or otherwise supersede or limit the jurisdiction of the Securities and Exchange Commission or the authority at any time conferred under the securities laws."

§662. Definitions

As used in this chapter—

(1) the term "Administration" means the Small Business Administration;

(2) the term "Administrator" means the Administrator of the Small Business Administration;

(3) the terms "small business investment company", "company", and "licensee" mean a company approved by the Administration to operate under the provisions of this chapter and issued a license as provided in section 681 of this title;

(4) the term "State" includes the several States, the territories and possessions of the United States, the Commonwealth of Puerto Rico, and the District of Columbia;

(5) the term "small-business concern" shall have the same meaning as in the Small Business Act [15 U.S.C. 631 et seq.], except that, for purposes of this chapter—

(A) an investment by a venture capital firm, investment company (including a small business investment company) employee welfare benefit plan or pension plan, or trust, foundation, or endowment that is exempt from Federal income taxation—

(i) shall not cause a business concern to be deemed not independently owned and operated regardless of the allocation of control during the investment period under any investment agreement between the business concern and the entity making the investment;

(ii) shall be disregarded in determining whether a business concern satisfies size standards established pursuant to section 3(a)(2) of the Small Business Act [15 U.S.C. 632(a)(2)]; and

(iii) shall be disregarded in determining whether a small business concern is a smaller enterprise; and

(B) in determining whether a business concern satisfies net income standards established pursuant to section 3(a)(2) of the Small Business Act [15 U.S.C. 632(a)(2)], if the business concern is not required by law to pay Federal income taxes at the enterprise level, but is required to pass income through to the shareholders, partners, beneficiaries, or other equitable owners of the business concern, the net income of the business concern shall be determined by allowing a deduction in an amount equal to the sum of—

(i) if the business concern is not required by law to pay State (and local, if any) income taxes at the enterprise level, the net income (determined without regard to this subparagraph), multiplied by the marginal State income tax rate (or by the combined State and local income tax rates, as applicable) that would have applied if the business concern were a corporation; and

(ii) the net income (so determined) less any deduction for State (and local) income taxes calculated under clause (i), multiplied by the marginal Federal income tax rate that would have applied if the business concern were a corporation;

(6) the term "development companies" means enterprises incorporated under State law with the authority to promote and assist the growth and development of small-business concerns in the areas covered by their operations;

(7) the term "license" means a license issued by the Administration as provided in section 681 of this title;

(8) the term "articles" means articles of incorporation for an incorporated body and means the functional equivalent or other similar documents specified by the Administrator for other business entities;

(9) the term "private capital"—

(A) means the sum of—

(i) the paid-in capital and paid-in surplus of a corporate licensee, the contributed capital of the partners of a partnership licensee, or the equity investment of the members of a limited liability company licensee; and

(ii) unfunded binding commitments, from investors that meet criteria established by the Administrator, to contribute capital to the licensee: *Provided,* That such unfunded

commitments may be counted as private capital for purposes of approval by the Administrator of any request for leverage, but leverage shall not be funded based on such commitments; and

(B) does not include any—

(i) funds borrowed by a licensee from any source;

(ii) funds obtained through the issuance of leverage; or

(iii) funds obtained directly or indirectly from any Federal, State, or local government, or any government agency or instrumentality, except for—

(I) funds obtained from the business revenues (excluding any governmental appropriation) of any federally chartered or government-sponsored corporation established prior to October 1, 1987;

(II) funds invested by an employee welfare benefit plan or pension plan; and

(III) any qualified nonprivate funds (if the investors of the qualified nonprivate funds do not control, directly or indirectly, the management, board of directors, general partners, or members of the licensee);

(10) the term "leverage" includes—

(A) debentures purchased or guaranteed by the Administration;

(B) participating securities purchased or guaranteed by the Administration; and

(C) preferred securities outstanding as of October 1, 1995;

(11) the term "third party debt" means any indebtedness for borrowed money, other than indebtedness owed to the Administration;

(12) the term "smaller enterprise" means any small business concern that, together with its affiliates—

(A) has—

(i) a net financial worth of not more than $6,000,000, as of the date on which assistance is provided under this chapter to that business concern; and

(ii) an average net income for the 2-year period preceding the date on which assistance is provided under this chapter to that business concern, of not more than $2,000,000, after Federal income taxes (excluding any carryover losses) except that, for purposes of this clause, if the business concern is not required by law to pay Federal income taxes at the enterprise level, but is required to pass income through to the shareholders, partners, beneficiaries, or other equitable owners of the business concern, the net income of the business concern shall be determined by allowing a deduction in an amount equal to the sum of—

(I) if the business concern is not required by law to pay State (and local, if any) income taxes at the enterprise level, the net income (determined without regard to this clause), multiplied by the marginal State income tax rate (or by the combined State and local income tax rates, as applicable) that would have applied if the business concern were a corporation; and

(II) the net income (so determined) less any deduction for State (and local) income taxes calculated under subclause (I), multiplied by the marginal Federal income tax rate that would have applied if the business concern were a corporation; or

(B) satisfies the standard industrial classification size standards established by the Administration for the industry in which the small business concern is primarily engaged;

(13) the term "qualified nonprivate funds" means any—

(A) funds directly or indirectly invested in any applicant or licensee on or before August 16, 1982, by any Federal agency, other than the Administration, under a provision of law explicitly mandating the inclusion of those funds in the definition of the term "private capital";

(B) funds directly or indirectly invested in any applicant or licensee by any Federal agency under a provision of law enacted after September 4, 1992, explicitly mandating the inclusion of those funds in the definition of the term "private capital"; and

(C) funds invested in any applicant or licensee by one or more State or local government entities (including any guarantee extended by those entities) in an aggregate amount that does not exceed 33 percent of the private capital of the applicant or licensee;

(14) the terms "employee welfare benefit plan" and "pension plan" have the same meanings as in section 3 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1002], and are intended to include—

(A) public and private pension or retirement plans subject to such Act [29 U.S.C. 1001 et seq.]; and

(B) similar plans not covered by such Act that have been established and that are maintained by the Federal Government or any State or political subdivision, or any agency or instrumentality thereof, for the benefit of employees;

(15) the term "member" means, with respect to a licensee that is a limited liability company, a holder of an ownership interest or a person otherwise admitted to membership in the limited liability company;

(16) the term "limited liability company" means a business entity that is organized and operating in accordance with a State limited liability company statute approved by the Administration;

(17) the term "long term", when used in connection with equity capital or loan funds invested in any small business concern or smaller enterprise, means any period of time not less than 1 year;

(18) the term "Energy Saving debenture" means a deferred interest debenture that—

(A) is issued at a discount;

(B) has a 5-year maturity or a 10-year maturity;

(C) requires no interest payment or annual charge for the first 5 years;

(D) is restricted to Energy Saving qualified investments; and

(E) is issued at no cost (as defined in section 661a [1] of title 2) with respect to purchasing and guaranteeing the debenture; and

(19) the term "Energy Saving qualified investment" means investment in a small business concern that is primarily engaged in researching, manufacturing, developing, or providing products, goods, or services that reduce the use or consumption of non-renewable energy resources.

(Pub. L. 85–699, title I, §103, Aug. 21, 1958, 72 Stat. 690; Pub. L. 86–502, §3, June 11, 1960, 74 Stat. 196; Pub. L. 87–341, §2, Oct. 3, 1961, 75 Stat. 752; Pub. L. 92–595, §2(a), Oct. 27, 1972, 86 Stat. 1314; Pub. L. 94–305, title I, §106(a), June 4, 1976, 90 Stat. 666; Pub. L. 102–366, title IV, §410, Sept. 4, 1992, 106 Stat. 1017; Pub. L. 104–208, div. D, title II, §208(a), Sept. 30, 1996, 110 Stat. 3009–739; Pub. L. 105–135, title II, §213, Dec. 2, 1997, 111 Stat. 2601; Pub. L. 106–9, §2(c), Apr. 5, 1999, 113 Stat. 17; Pub. L. 106–554, §1(a)(9) [title IV, §402], Dec. 21, 2000, 114 Stat. 2763, 2763A–690; Pub. L. 110–140, title XII, §1205(b), Dec. 19, 2007, 121 Stat. 1773.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in text, see References in Text note set out under section 661 of this title.

The Small Business Act, referred to in par. (5), is Pub. L. 85–536, §2(1 et seq.), July 18, 1958, 72 Stat. 384, which is classified to chapter 14A (§631 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 631 of this title and Tables. The term "small-business concern" is defined in section 632 of this title.

The Employee Retirement Income Security Act of 1974, referred to in par. (14), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, which is classified principally to chapter 18 (§1001 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and

Tables.

Section 661a of title 2, referred to in par. (18)(E), was in the original "section 502 of the Credit Reform Act of 1990", which was translated as reading "section 502 of the Federal Credit Reform Act of 1990", to reflect the probable intent of Congress.

AMENDMENTS

2007—Pars. (18), (19). Pub. L. 110–140 added pars. (18) and (19).

2000—Par. (5)(A)(i). Pub. L. 106–554, §1(a)(9) [title IV, §402(a)], inserted before semicolon at end "regardless of the allocation of control during the investment period under any investment agreement between the business concern and the entity making the investment".

Par. (17). Pub. L. 106–554, §1(a)(9) [title IV, §402(b)], added par. (17).

1999—Par. (5). Pub. L. 106–9, §2(c)(1), designated existing provisions after "for purposes of this chapter" as subpar. (A), redesignated former subpars. (A) to (C) as cls. (i) to (iii), respectively, and added subpar. (B).

Par. (12)(A)(ii). Pub. L. 106–9, §2(c)(2), inserted before "; or": "except that, for purposes of this clause, if the business concern is not required by law to pay Federal income taxes at the enterprise level, but is required to pass income through to the shareholders, partners, beneficiaries, or other equitable owners of the business concern, the net income of the business concern shall be determined by allowing a deduction in an amount equal to the sum of—

"(I) if the business concern is not required by law to pay State (and local, if any) income taxes at the enterprise level, the net income (determined without regard to this clause), multiplied by the marginal State income tax rate (or by the combined State and local income tax rates, as applicable) that would have applied if the business concern were a corporation; and

"(II) the net income (so determined) less any deduction for State (and local) income taxes calculated under subclause (I), multiplied by the marginal Federal income tax rate that would have applied if the business concern were a corporation".

1997—Par. (9)(B)(iii). Pub. L. 105–135 added subcl. (I) and redesignated former subcls. (I) and (II) as (II) and (III), respectively.

1996—Par. (5). Pub. L. 104–208, §208(a)(1), inserted before semicolon at end ", except that, for purposes of this chapter, an investment by a venture capital firm, investment company (including a small business investment company) employee welfare benefit plan or pension plan, or trust, foundation, or endowment that is exempt from Federal income taxation—

"(A) shall not cause a business concern to be deemed not independently owned and operated;

"(B) shall be disregarded in determining whether a business concern satisfies size standards established pursuant to section 3(a)(2) of the Small Business Act; and

"(C) shall be disregarded in determining whether a small business concern is a smaller enterprise".

Par. (9). Pub. L. 104–208, §208(a)(2), amended par. (9) generally. Prior to amendment, par. (9) read as follows: "notwithstanding any other provision of law, the term 'private capital' means the private paid-in capital and paid-in surplus of a corporate licensee, or the private partnership capital of an unincorporate licensee, inclusive of (A) any funds invested in the licensee by a public or private pension fund, (B) any funds invested in the licensee by State or local government entities, to the extent that such investment does not exceed 33 percent of a licensee's total private capital and otherwise meets criteria established by the Administration, and (C) unfunded commitments from institutional investors that meet criteria established by the Administration, but it excludes any funds which are borrowed by the licensee from any source or which are obtained or derived, directly or indirectly, from any Federal source, including the Administration: *Provided*, That no unfunded commitment from an institutional investor may be used for the purpose of meeting the minimum amount of private capital required by this chapter or as the basis for the Administration to issue obligations to provide financing; and".

Pars. (10) to (16). Pub. L. 104–208, §208(a)(3), added pars. (10) to (16) and struck out former par. (10) which read as follows: "the term 'leverage' includes debentures purchased or guaranteed by the Administration, participating securities purchased or guaranteed by the Administration, or preferred securities issued by companies licensed under section 681(d) of this title and which have been purchased by the Administration."

1992—Pars. (9), (10). Pub. L. 102–366 added pars. (9) and (10).

1976—Par. (8). Pub. L. 94–305 added par. (8).

1972—Par. (3). Pub. L. 92–595 substituted "section 681" for "section 681(c)".

Par. (7). Pub. L. 92–595 substituted "section 681" for "section 681(c)".

1961—Par. (3). Pub. L. 87–341, §2(1), inserted "licensee" and substituted "company approved by the Administration to operate under the provisions of this chapter and issued a license as provided in section

681(c) of this title" for "small business investment company organized as provided in subchapter III of this chapter, including (except for purposes of sections 681 and 687(f) of this title) a State-chartered investment company which has obtained the approval of the Administrator to operate under the provisions of this chapter as provided in section 688 of this title and a company converted into a small business investment company under section 691 of this title".

Par. (7). Pub. L. 87–341, §2(2), added par. (7).

1960—Par. (4). Pub. L. 86–502 substituted definition of "State" for definition of "United States".

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

EFFECT OF SMALL BUSINESS EQUITY ENHANCEMENT ACT OF 1992 ON SECURITIES LAWS

Nothing in amendment by Pub. L. 102–366 to be construed to affect applicability of securities laws or to otherwise supersede or limit jurisdiction of Securities and Exchange Commission, see section 418 of Pub. L. 102–366, set out as a note under section 661 of this title.

[1] *See References in Text note below.*

SUBCHAPTER II—SMALL BUSINESS INVESTMENT DIVISION OF SMALL BUSINESS ADMINISTRATION

§671. Establishment; Associate Administrator; appointment and compensation

There is hereby established in the Small Business Administration a division to be known as the Small Business Investment Division. The Division shall be headed by an Associate Administrator who shall be appointed by the Administrator, and shall receive compensation at the rate provided by law for other Associate Administrators of the Small Business Administration.

(Pub. L. 85–699, title II, §201, Aug. 21, 1958, 72 Stat. 690; Pub. L. 89–117, title III, §316(b), Aug. 10, 1965, 79 Stat. 484; Pub. L. 89–779, §2, Nov. 6, 1966, 80 Stat. 1359.)

AMENDMENTS

1966—Pub. L. 89–779 substituted "Associated Administrator" for "Deputy Administrator" as the head of the Small Business Investment Division of the Small Business Administration, substituted the rate provided by law for other Associate Administrators of the Small Business Administration for the rate provided by law for the other Deputy Administrators of the Small Business Administration as the standard of compensation for the head of the Small Business Investment Division, and struck out provisions spelling out the proper exercise of the powers conferred on the Administration and on the Administrator through the Small Business Investment Division and the Division head. See section 687(f) of this title.

1965—Pub. L. 89–117 provided that the powers conferred by subchapters IV–A and V of this chapter shall be exercised through such divisions, sections, or other personnel as the Administrator in his discretion determines.

§672. Repealed. Pub. L. 87–341, §11(h)(1), Oct. 3, 1961, 75 Stat. 757

Section, Pub. L. 85–699, title II, §202(b), Aug. 21, 1958, 72 Stat. 691, authorized appropriations for business expenses.

SUBCHAPTER III—INVESTMENT DIVISION PROGRAMS

PART A—SMALL BUSINESS INVESTMENT COMPANIES

§681. Organization

(a) Incorporation and charter under State law, period of succession; area of operations

A small business investment company shall be an incorporated body, a limited liability company, or a limited partnership organized and chartered or otherwise existing under State law solely for the purpose of performing the functions and conducting the activities contemplated under this subchapter, which, if incorporated, has succession for a period of not less than thirty years unless sooner dissolved by its shareholders, and if a limited partnership, has succession for a period of not less than ten years, and possesses the powers reasonably necessary to perform such functions and conduct such activities. The area in which the company is to conduct its operations, and the establishment of branch offices or agencies (if authorized by the articles), shall be subject to the approval of the Administration.

(b) Articles of incorporation; approval

The articles of any small business investment company shall specify in general terms the objects for which the company is formed, the name assumed by such company, the area or areas in which its operations are to be carried on, the place where its principal office is to be located, and the amount and classes of its shares of capital stock. Such articles may contain any other provisions not inconsistent with this chapter that the company may see fit to adopt for the regulation of its business and the conduct of its affairs. Such articles and any amendments thereto adopted from time to time shall be subject to the approval of the Administration.

(c) Issuance of license

(1) Submission of application

Each applicant for a license to operate as a small business investment company under this chapter shall submit to the Administrator an application, in a form and including such documentation as may be prescribed by the Administrator.

(2) Procedures

(A) Status

Not later than 90 days after the initial receipt by the Administrator of an application under this subsection, the Administrator shall provide the applicant with a written report detailing the status of the application and any requirements remaining for completion of the application.

(B) Approval or disapproval

Within a reasonable time after receiving a completed application submitted in accordance with this subsection and in accordance with such requirements as the Administrator may prescribe by regulation, the Administrator shall—

(i) approve the application and issue a license for such operation to the applicant if the requirements of this section are satisfied; or

(ii) disapprove the application and notify the applicant in writing of the disapproval.

(3) Matters considered

In reviewing and processing any application under this subsection, the Administrator—

(A) shall determine whether—

(i) the applicant meets the requirements of subsections (a) and (c) of section 682 of this

title; and

(ii) the management of the applicant is qualified and has the knowledge, experience, and capability necessary to comply with this chapter;

(B) shall take into consideration—

(i) the need for and availability of financing for small business concerns in the geographic area in which the applicant is to commence business;

(ii) the general business reputation of the owners and management of the applicant; and

(iii) the probability of successful operations of the applicant, including adequate profitability and financial soundness; and

(C) shall not take into consideration any projected shortage or unavailability of leverage.

(4) Exception

(A) In general

Notwithstanding any other provision of this chapter, the Administrator may, in the discretion of the Administrator and based on a showing of special circumstances and good cause, approve an application and issue a license under this subsection with respect to any applicant that—

(i) has private capital of not less than $3,000,000;

(ii) would otherwise be issued a license under this subsection, except that the applicant does not satisfy the requirements of section 682(a) of this title; and

(iii) has a viable business plan reasonably projecting profitable operations and a reasonable timetable for achieving a level of private capital that satisfies the requirements of section 682(a) of this title.

(B) Leverage

An applicant licensed pursuant to the exception provided in this paragraph shall not be eligible to receive leverage as a licensee until the applicant satisfies the requirements of section 682(a) of this title, unless the applicant—

(i) files an application for a license not later than 180 days after December 2, 1997;

(ii) is located in a State that is not served by a licensee; and

(iii) agrees to be limited to 1 tier of leverage available under section 682(b) of this title, until the applicant meets the requirements of section 682(a) of this title.

(e) [1] Fees

(1) In general

The Administration may prescribe fees to be paid by each applicant for a license to operate as a small business investment company under this chapter.

(2) Use of amounts

Fees collected under this subsection—

(A) shall be deposited in the account for salaries and expenses of the Administration; and

(B) are authorized to be appropriated solely to cover the costs of licensing examinations.

(Pub. L. 85–699, title III, §301, Aug. 21, 1958, 72 Stat. 691; Pub. L. 86–502, §4, June 11, 1960, 74 Stat. 196; Pub. L. 87–341, §11(a), (b), Oct. 3, 1961, 75 Stat. 756; Pub. L. 90–104, title II, §202, Oct. 11, 1967, 81 Stat. 269; Pub. L. 92–595, §2(b), Oct. 27, 1972, 86 Stat. 1314; Pub. L. 94–305, title I, §106(b)–(d), June 4, 1976, 90 Stat. 666; Pub. L. 95–507, title I, §104, Oct. 24, 1978, 92 Stat. 1758; Pub. L. 100–590, title I, §105, Nov. 3, 1988, 102 Stat. 2993; Pub. L. 104–208, div. D, title II, §208(b)(1)–(3)(A), Sept. 30, 1996, 110 Stat. 3009–741, 3009–742; Pub. L. 105–135, title II, §§212, 214, Dec. 2, 1997, 111 Stat. 2601.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsecs. (b), (c), and (e), see References in Text note set out under section 661 of this title.

AMENDMENTS

1997—Subsec. (c)(4)(B). Pub. L. 105–135, §212, amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: "An applicant licensed pursuant to the exception provided in this paragraph shall not be eligible to receive leverage as a licensee until the applicant satisfies the requirements of section 682(a) of this title."

Subsec. (e). Pub. L. 105–135, §214, added subsec. (e).

1996—Subsec. (a). Pub. L. 104–208, §208(b)(1), substituted "body, a limited liability company, or" for "body or" in first sentence.

Subsec. (c). Pub. L. 104–208, §208(b)(2), inserted heading and amended text of subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "The articles and amendments thereto shall be forwarded to the Administration for consideration and approval or disapproval. In determining whether to approve such a company's articles and permit it to operate under the provisions of this chapter, the Administration shall give due regard, among other things, to the need and availability for the financing of small business concerns in the geographic area in which the proposed company is to commence business, the general business reputation and character of the proposed owners and management of the company, and the probability of successful operations of such company including adequate profitability and financial soundness. After consideration of all relevant factors, if it approves the company's articles, the Administration may in its discretion approve the company to operate under the provisions of this chapter and issue the company a license for such operation."

Subsec. (d). Pub. L. 104–208, §208(b)(3)(A), struck out subsec. (d) which read as follows: "Notwithstanding any other provision of this chapter, a small business investment company, the investment policy of which is that its investments will be made solely in small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages may be organized and chartered under State business or nonprofit corporation statutes, or formed as a limited partnership, and may be licensed by the Administration to operate under the provisions of this chapter."

1988—Subsec. (a). Pub. L. 100–590 substituted ", if incorporated, has succession for a period of not less than thirty years unless sooner dissolved by its shareholders, and if a limited partnership, has succession for a period of not less than ten years," for "has succession for a period of not less than thirty years unless sooner dissolved by its shareholders or partners".

1978—Subsec. (d). Pub. L. 95–507 authorized small business investment companies to form as limited partnerships.

1976—Subsec. (a). Pub. L. 94–305, §106(b), inserted reference to limited partnership and reference to partners, struck out "of incorporation" after "by the articles", and inserted "or otherwise existing" after "chartered".

Subsec. (b). Pub. L. 94–305, §106(c), struck out "of incorporation" after "The articles".

Subsec. (c). Pub. L. 94–305, §106(d), struck out "of incorporation" after "articles" wherever appearing.

1972—Subsec. (d). Pub. L. 92–595 added subsec. (d).

1967—Subsec. (c). Pub. L. 90–104 provided for consideration of availability of financing, the geographic area, the business reputation, ownership factor, and probability of successful operations of company including adequate profitability and financial soundness and eliminated from consideration the number of such companies previously organized in the United States and the volume of their operations.

1961—Subsec. (a). Pub. L. 87–341, §11(a), provided that small business investment companies shall be incorporated, organized and chartered under State law, with a minimum succession period of thirty years unless sooner dissolved by its activities and functions, its area of operation shall be subject to the Administration's approval, and deleted provisions setting the minimum number of incorporators at 10, no company shall be chartered by the Administration unless it determined that none could be chartered under the laws of the State and operate in accordance with this chapter, and that no such company shall be chartered by the Administration under this section after June 30, 1961.

Subsec. (c). Pub. L. 87–341, §11(b)(1), (2), substituted "such a company's articles of incorporation and permit it to operate under the provisions of this chapter" for "the establishment of such a company and its proposed articles of incorporation", and provided that if the Administration approves the company to operate under the provisions of this chapter, it may issue the company a license for such operation.

Subsec. (d). Pub. L. 87–341, §11(b)(3), repealed subsec. (d) which specified the general powers of a company formed under this section.

Subsec. (e). Pub. L. 87–341, §11(b)(3), repealed subsec. (e) which provided for a board of directors for a company formed under this section.

1960—Subsec. (d)(9) to (11). Pub. L. 86–502 repealed par. (9) which empowered companies to act as depositories or fiscal agents of the United States, and redesignated pars. (10) and (11) as (9) and (10),

respectively.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Pub. L. 90–104, title II, §211, Oct. 11, 1967, 81 Stat. 272, provided that: "The effective date of this title [amending this section and sections 682 to 684, 686, 687, 687b, and 692 of this title] shall be ninety days after enactment [Oct. 11, 1967], except that, with respect to section 207 [amending section 686 of this title], it shall be January 1, 1968."

SAVINGS PROVISION

Pub. L. 104–208, div. D, title II, §208(b)(3)(B), Sept. 30, 1996, 110 Stat. 3009–742, provided that: "The repeal under subparagraph (A) [repealing subsec. (d) of this section] shall not be construed to require the Administrator to cancel, revoke, withdraw, or modify any license issued under section 301(d) of the Small Business Investment Act of 1958 [subsec. (d) of this section] before the date of enactment of this Act [Sept. 30, 1996]."

REGULATORY REVIEW

Pub. L. 102–366, title IV, §408(d), Sept. 4, 1992, 106 Stat. 1017, directed Small Business Administration, not later than 90 days after Sept. 4, 1992, to complete a review of regulations intended to provide for safety and soundness of small business investment companies which obtain financing from the Administration under provisions of the Small Business Investment Act of 1958, 15 U.S.C. 661 et seq., and to exempt from such regulations, or to separately regulate, companies which do not obtain financing from the Administration.

REPORTS TO CONGRESS

Pub. L. 102–366, title IV, §408(e), Sept. 4, 1992, 106 Stat. 1017, directed Administration, within 180 days after Sept. 4, 1992, to report on actions taken pursuant to section 408(d) of Pub. L. 102–366, formerly set out above, to the Committees on Small Business of the Senate and the House of Representatives, including the rationale for its actions.

Pub. L. 102–366, title IV, §417(b), Sept. 4, 1992, 106 Stat. 1019, provided that not later than 4 years after Sept. 4, 1992, the Comptroller General was to transmit to Congress a report that reviewed the Small Business Investment Company program established under the Small Business Investment Act of 1958 (15 U.S.C. 661 et seq.) for the 3-year period following Sept. 4, 1992, with respect to each item listed in section 687(g)(3) of this title.

[1] So in original. No subsec. (d) has been enacted.

§682. Capital requirements

(a) Amount

(1) In general

Except as provided in paragraph (2), the private capital of each licensee shall be not less than—

(A) $5,000,000; or

(B) $10,000,000, with respect to each licensee authorized or seeking authority to issue participating securities to be purchased or guaranteed by the Administration under this chapter.

(2) Exception

The Administrator may, in the discretion of the Administrator and based on a showing of special circumstances and good cause, permit the private capital of a licensee authorized or seeking authorization to issue participating securities to be purchased or guaranteed by the Administration to be less than $10,000,000, but not less than $5,000,000, if the Administrator determines that such action would not create or otherwise contribute to an unreasonable risk of default or loss to the Federal Government.

(3) Adequacy

In addition to the requirements of paragraph (1), the Administrator shall—

(A) determine whether the private capital of each licensee is adequate to assure a reasonable prospect that the licensee will be operated soundly and profitably, and managed actively and prudently in accordance with its articles; and

(B) determine that the licensee will be able [1] both prior to licensing and prior to approving any request for financing, to make periodic payments on any debt of the company which is interest bearing and shall take into consideration the income which the company anticipates on its contemplated investments, the experience of the company's owners and managers, the history of the company as an entity, if any, and the company's financial resources.

(4) Exemption from capital requirements

The Administrator may, in the discretion of the Administrator, approve leverage for any licensee licensed under subsection (c) or (d) of section 681 of this title before September 30, 1996, that does not meet the capital requirements of paragraph (1), if—

(A) the licensee certifies in writing that not less than 50 percent of the aggregate dollar amount of its financings after September 30, 1996, will be provided to smaller enterprises; and

(B) the Administrator determines that such action would not create or otherwise contribute to an unreasonable risk of default or loss to the United States Government.

(b) Financial institution investments

(1) Certain banks

Notwithstanding the provisions of section 1845(a)(1) [2] of title 12, any national bank, or any member bank of the Federal Reserve System or nonmember insured bank to the extent permitted under applicable State law, may invest in any 1 or more small business investment companies, or in any entity established to invest solely in small business investment companies, except that in no event shall the total amount of such investments of any such bank exceed 5 percent of the capital and surplus of the bank.

(2) Certain savings associations

Notwithstanding any other provision of law, any Federal savings association may invest in any one or more small business investment companies, or in any entity established to invest solely in small business investment companies, except that in no event may the total amount of such investments by any such Federal savings association exceed 5 percent of the capital and surplus of the Federal savings association.

(c) Diversification of ownership

The Administrator shall ensure that the management of each licensee licensed after September 30, 1996, is sufficiently diversified from and unaffiliated with the ownership of the licensee in a manner that ensures independence and objectivity in the financial management and oversight of the investments and operations of the licensee.

(Pub. L. 85–699, title III, §302, Aug. 21, 1958, 72 Stat. 692; Pub. L. 86–502, §5, June 11, 1960, 74 Stat. 196; Pub. L. 87–341, §3, Oct. 3, 1961, 75 Stat. 752; Pub. L. 88–273, §2, Feb. 28, 1964, 78 Stat. 146; Pub. L. 90–104, title II, §§203(a), 204, Oct. 11, 1967, 81 Stat. 269, 270; Pub. L. 94–305, title I, §§106(e), 107, June 4, 1976, 90 Stat. 666; Pub. L. 95–89, title II, §210, Aug. 4, 1977, 91 Stat. 558; Pub. L. 95–507, title I, §105, Oct. 24, 1978, 92 Stat. 1758; Pub. L. 102–366, title IV, §§406(a), 409, Sept. 4, 1992, 106 Stat. 1015, 1017; Pub. L. 104–208, div. D, title II, §208(c), Sept. 30, 1996, 110 Stat. 3009–742; Pub. L. 105–135, title II, §215(a), Dec. 2, 1997, 111 Stat. 2601; Pub. L. 106–554, §1(a)(9) [title IV, §403], Dec. 21, 2000, 114 Stat. 2763, 2763A–690.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (a)(1)(B), see References in Text note set out under section 661 of this title.

Subsection (d) of section 681 of this title, referred to in subsec. (a)(4), was repealed by Pub. L. 104–208,

div. D, title II, §208(b)(3)(A), Sept. 30, 1996, 110 Stat. 3009–742.

Section 1845(a)(1) of title 12, referred to in subsec. (b)(1), was repealed by Pub. L. 89–485, §9, July 1, 1966, 80 Stat. 240. See section 371c of Title 12, Banks and Banking.

CODIFICATION

September 30, 1996, referred to in subsecs. (a)(4) and (c), was in the original "the date of enactment of the Small Business Program Improvement Act of 1996", which was translated as meaning the date of enactment of the Small Business Programs Improvement Act of 1996, to reflect the probable intent of Congress.

AMENDMENTS

2000—Subsec. (b). Pub. L. 106–554 inserted subsec. heading, designated existing provisions as par. (1), inserted par. heading, and added par. (2).

1997—Subsec. (b). Pub. L. 105–135 substituted "any national bank, or any member bank of the Federal Reserve System or nonmember insured bank to the extent permitted under applicable State law, may invest in any 1 or more small business investment companies, or in any entity established to invest solely in small business investment companies, except that in no event shall the total amount of such investments of any such bank exceed 5 percent of the capital and surplus of the bank." for "shares of stock in small business investment companies shall be eligible for purchase by national banks, and shall be eligible for purchase by other member banks of the Federal Reserve System and nonmember insured banks to the extent permitted under applicable State law; except that in no event may any such bank acquire shares in any small business investment company if, upon the making of that acquisition, the aggregate amount of shares in small business investment companies then held by the bank would exceed 5 percent of its capital and surplus."

1996—Subsec. (a). Pub. L. 104–208, §208(c)(1), inserted heading and substituted pars. (1) to (3)(A) and "determine that the licensee will be able" in par. (3)(B) for "The combined private paid-in capital and paid-in surplus of any company licensed pursuant to section 681(c) and (d) of this title shall not be less than $150,000: *Provided, however*, That the combined private paid-in capital and paid-in surplus of any company licensed on or after October 1, 1992 pursuant to section 681(c) of this title shall be not less than $2,500,000 and pursuant to section 681(d) of this title shall be not less than $1,500,000. In all cases, such capital and surplus shall be adequate to assure a reasonable prospect that the company will be operated soundly and profitably, and managed actively and prudently in accordance with its articles. The Administration shall also determine the ability of the company,".

Subsec. (a)(4). Pub. L. 104–208, §208(c)(2), added par. (4).

Subsec. (c). Pub. L. 104–208, §208(c)(3), inserted heading and amended text of subsec. (c) generally. Prior to amendment, text read as follows: "The aggregate amount of shares in any such company or companies which may be owned or controlled by any stockholder, or by any group or class of stockholders, may be limited by the Administration."

1992—Subsec. (a). Pub. L. 102–366 substituted "1992 pursuant to section 681(c) of this title shall be not less than $2,500,000 and pursuant to section 681(d) of this title shall be not less than $1,500,000" for "1979 pursuant to section 681(c) and (d) of this title shall be not less than $500,000" and inserted at end "The Administration shall also determine the ability of the company, both prior to licensing and prior to approving any request for financing, to make periodic payments on any debt of the company which is interest bearing and shall take into consideration the income which the company anticipates on its contemplated investments, the experience of the company's owners and managers, the history of the company as an entity, if any, and the company's financial resources."

1978—Subsec. (a). Pub. L. 95–507 provided that the combined private paid-in capital and paid-in surplus of any company licensed on or after Oct. 1, 1979 pursuant to section 681(c) and (d) of this title would not be less than $500,000.

1977—Subsec. (b). Pub. L. 95–89 inserted "and" between "capital" and "surplus".

1976—Subsec. (a). Pub. L. 94–305, §106(e), struck out "of incorporation" after "its articles".

Subsec. (b). Pub. L. 94–305, §107, struck out provisions prohibiting the bank from acquiring shares in a small business investment company if the bank would hold 50 percent or more of any class of equity securities issued by that investment company and having actual or potential voting rights.

1967—Subsec. (a). Pub. L. 90–104, §203(a), substituted small business investment company minimum capital requirement, a combined private paid-in capital and paid-in surplus, of $150,000 and adequate to assure reasonable prospect of sound and profitable company operations and active and prudent management in accordance with the articles of incorporation for former requirement of a paid-in capital and surplus equal to at least $300,000, and eliminated provisions for purchase of debentures of such companies in an amount not to exceed the lesser of $700,000 or the amount of paid-in capital and surplus of the company from other sources

and for subordination of debentures (both incorporated in section 686(b) of this title), for such purchases by the Administration only during certain prescribed period, and deeming the debentures part of the capital and surplus for certain purposes.

Subsec. (b). Pub. L. 90–104, §204, substituted prohibition against bank acquisition of small business investment company stock if, upon such acquisition, the aggregate amount of shares in such companies then held by the bank would exceed 5 percent of the capital and surplus, or the bank would hold 50 percent or more of any class of equity securities issued by that investment company and having actual or potential voting rights for former prohibition against holding of shares in an amount aggregating more than 2 percent of its capital and surplus.

1964—Subsec. (a). Pub. L. 88–273 increased the limitation on Administration purchase of debentures from $400,000 to $700,000 and extended the period for such purchase from three years after date of issuance of license or date of enactment of Pub. L. 87–341, the Small Business Investment Act Amendments of 1961 (Oct. 3, 1961), whichever is later, to five years after date of issuance of license or date of enactment of Pub. L. 88–273, the Small Business Investment Act Amendments of 1963 (Feb. 28, 1964), whichever is later.

1961—Subsec. (a). Pub. L. 87–341, §3(a), inserted "and growth", limited the purchase of debentures to the extent that necessary funds are not available to the company involved from private sources on reasonable terms, increased the amount of purchasable debentures to not more than the lesser of $400,000 or the paid-in capital and surplus of the company from other sources, and restricted such purchases to such period as may be fixed by the Administration, but not ending more than three years after the date of issuance of the company's license under section 681c of this title, or Oct. 3, 1961, whichever is later, and deleted provisions limiting purchase of debentures to $150,000.

Subsec. (b). Pub. L. 87–341, §3(b), increased the maximum amount of shares a bank may hold in small business investment companies to 2 percent of the capital and surplus.

1960—Subsec. (b). Pub. L. 86–502 substituted "Notwithstanding the provisions of section 1845(a)(1) of title 12, shares" for "Shares".

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–104 effective 90 days after Oct. 11, 1967, see section 211 of Pub. L. 90–104, set out as a note under section 681 of this title.

EFFECT OF SMALL BUSINESS EQUITY ENHANCEMENT ACT OF 1992 ON SECURITIES LAWS

Nothing in amendment by Pub. L. 102–366 to be construed to affect applicability of securities laws or to otherwise supersede or limit jurisdiction of Securities and Exchange Commission, see section 418 of Pub. L. 102–366, set out as a note under section 661 of this title.

[1] So in original. Probably should be followed by a comma.

[2] See References in Text note below.

§683. Borrowing operations

(a) Authority to issue obligations

Each small business investment company shall have authority to borrow money and to issue its securities, promissory notes, or other obligations under such general conditions and subject to such limitations and regulations as the Administration may prescribe.

(b) Debentures and participating securities

To encourage the formation and growth of small business investment companies the Administration is authorized when authorized in appropriation Acts, to purchase, or to guarantee the timely payment of all principal and interest as scheduled on, debentures or participating securities issued by such companies. Such purchases or guarantees may be made by the Administration on such

terms and conditions as it deems appropriate, pursuant to regulations issued by the Administration. The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee under this subsection. Debentures purchased or guaranteed by the Administration under this subsection shall be subordinate to any other debenture bonds, promissory notes, or other debts and obligations of such companies, unless the Administration in its exercise of reasonable investment prudence and in considering the financial soundness of such company determines otherwise. Such debentures may be issued for a term of not to exceed fifteen years and shall bear interest at a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities on such debentures, adjusted to the nearest one-eighth of 1 percent, plus, for debentures obligated after September 30, 2001, an additional charge, in an amount established annually by the Administration, as necessary to reduce to zero the cost (as defined in section 661a of title 2) to the Administration of purchasing and guaranteeing debentures under this chapter, which amount may not exceed 1.38 percent per year, and which shall be paid to and retained by the Administration. The debentures or participating securities shall also contain such other terms as the Administration may fix, and shall be subject to the following restrictions and limitations:

(1) The total amount of debentures and participating securities that may be guaranteed by the Administration and outstanding from a company licensed under section 681(c) of this title shall not exceed 300 per centum of the private capital of such company: *Provided,* That nothing in this paragraph shall require any such company that on March 31, 1993, has outstanding debentures in excess of 300 per centum of its private capital to prepay such excess: *And provided further,* That any such company may apply for an additional debenture guarantee or participating security guarantee with the proceeds to be used solely to pay the amount due on such maturing debenture, but the maturity of the new debenture or security shall be not later than September 30, 2002.

(2) MAXIMUM LEVERAGE.—

(A) IN GENERAL.—The maximum amount of outstanding leverage made available to any one company licensed under section 681(c) of this title may not exceed the lesser of—

(i) 300 percent of such company's private capital; or

(ii) $150,000,000.

(B) MULTIPLE LICENSES UNDER COMMON CONTROL.—The maximum amount of outstanding leverage made available to two or more companies licensed under section 681(c) of this title that are commonly controlled (as determined by the Administrator) and not under capital impairment may not exceed $225,000,000.

(C) INVESTMENTS IN LOW-INCOME GEOGRAPHIC AREAS.—(i) In calculating the outstanding leverage of a company for the purposes of subparagraph (A), the Administrator shall not include the amount of the cost basis of any equity investment made by the company in a smaller enterprise located in a low-income geographic area (as defined in section 689 of this title), to the extent that the total of such amounts does not exceed 50 percent of the company's private capital.

(ii) The maximum amount of outstanding leverage made available to—

(I) any 1 company described in clause (iii) may not exceed the lesser of 300 percent of private capital of the company, or $175,000,000; and

(II) 2 or more companies described in clause (iii) that are under common control (as determined by the Administrator) may not exceed $250,000,000.

(iii) A company described in this clause is a company licensed under section 681(c) of this title in the first fiscal year after February 17, 2009, or any fiscal year thereafter that certifies in writing that not less than 50 percent of the dollar amount of investments of that company shall be made in companies that are located in a low-income geographic area (as that term is defined in section 689 of this title).

(D) INVESTMENTS IN ENERGY SAVING SMALL BUSINESSES.—

(i) IN GENERAL.—Subject to clause (ii), in calculating the outstanding leverage of a company for purposes of subparagraph (A), the Administrator shall exclude the amount of the cost basis of any Energy Saving qualified investment in a smaller enterprise made in the first fiscal year after December 19, 2007, or any fiscal year thereafter by a company licensed in the applicable fiscal year.

(ii) LIMITATIONS.—

(I) AMOUNT OF EXCLUSION.—The amount excluded under clause (i) for a company shall not exceed 33 percent of the private capital of that company.

(II) MAXIMUM INVESTMENT.—A company shall not make an Energy Saving qualified investment in any one entity in an amount equal to more than 20 percent of the private capital of that company.

(III) OTHER TERMS.—The exclusion of amounts under clause (i) shall be subject to such terms as the Administrator may impose to ensure that there is no cost (as that term is defined in section 661a of title 2) with respect to purchasing or guaranteeing any debenture involved.

(3) Subject to the foregoing dollar and percentage limits, a company licensed under section 681(c) of this title may issue and have outstanding both guaranteed debentures and participating securities: *Provided*, That the total amount of participating securities outstanding shall not exceed 200 per centum of private capital.

For purposes of this subsection, the term "venture capital" includes such common stock, preferred stock, or other financing with subordination or nonamortization characteristics as the Administration determines to be substantially similar to equity financing.

(c) Third party debt

The Administrator—

(1) shall not permit a licensee having outstanding leverage to incur third party debt that would create or contribute to an unreasonable risk of default or loss to the Federal Government; and

(2) shall permit such licensees to incur third party debt only on such terms and subject to such conditions as may be established by the Administrator, by regulation or otherwise.

(d) Investments in smaller enterprises

The Administrator shall require each licensee, as a condition of approval of an application for leverage, to certify in writing that not less than 25 percent of the aggregate dollar amount of financings of that licensee shall be provided to smaller enterprises.

(e) Capital impairment

Before approving any application for leverage submitted by a licensee under this chapter, the Administrator—

(1) shall determine that the private capital of the licensee meets the requirements of section 682(a) of this title; and

(2) shall determine, taking into account the nature of the assets of the licensee, the amount and terms of any third party debt owed by such licensee, and any other factors determined to be relevant by the Administrator, that the private capital of the licensee has not been impaired to such an extent that the issuance of additional leverage would create or otherwise contribute to an unreasonable risk of default or loss to the Federal Government.

(f) Redemption or repurchase of preferred stock

Notwithstanding any other provision of law—

(1) the Administrator may allow the issuer of any preferred stock sold to the Administration before November 1, 1989 to redeem or repurchase such stock, upon the payment to the Administration of an amount less than the par value of such stock, for a repurchase price determined by the Administrator after consideration of all relevant factors, including—

(A) the market value of the stock;

(B) the value of benefits provided and anticipated to accrue to the issuer;
(C) the amount of dividends paid, accrued, and anticipated; and
(D) the estimate of the Administrator of any anticipated redemption; and

(2) any moneys received by the Administration from the repurchase of preferred stock shall be available solely to provide debenture leverage to licensees having 50 percent or more in aggregate dollar amount of their financings invested in smaller enterprises.

(g) Guarantee of payment of and authority to purchase participating securities

In order to encourage small business investment companies to provide equity capital to small businesses, the Administration is authorized to guarantee the payment of the redemption price and prioritized payments on participating securities issued by such companies which are licensed pursuant to section 681(c) of this title, and a trust or a pool acting on behalf of the Administration is authorized to purchase such securities. Such guarantees and purchases shall be made on such terms and conditions as the Administration shall establish by regulation. For purposes of this section, (A) the term "participating securities" includes preferred stock, a preferred limited partnership interest or a similar instrument, including debentures under the terms of which interest is payable only to the extent of earnings and (B) the term "prioritized payments" includes dividends on stock, interest on qualifying debentures, or priority returns on preferred limited partnership interests which are paid only to the extent of earnings. Participating securities guaranteed under this subsection shall be subject to the following restrictions and limitations, in addition to such other restrictions and limitations as the Administration may determine:

(1) Participating securities shall be redeemed not later than 15 years after their date of issuance for an amount equal to 100 per centum of the original issue price plus the amount of any accrued prioritized payment: *Provided*, That if, at the time the securities are redeemed, whether as scheduled or in advance, the issuing company (A) has not paid all accrued prioritized payments in full as provided in paragraph (2) below and (B) has not sold or otherwise disposed of all investments subject to profit distributions pursuant to paragraph (11), the company's obligation to pay accrued and unpaid prioritized payments shall continue and payment shall be made from the realized gain, if any, on the disposition of such investments, but if on disposition there is no realized gain, the obligation to pay accrued and unpaid prioritized payments shall be extinguished: *Provided further*, That in the interim, the company shall not make any in-kind distributions of such investments unless it pays to the Administration such sums, up to the amount of the unrealized appreciation on such investments, as may be necessary to pay in full the accrued prioritized payments.

(2) Prioritized payments on participating securities shall be preferred and cumulative and payable out of the retained earnings available for distribution, as defined by the Administration, of the issuing company at a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities on such securities, adjusted to the nearest one-eighth of 1 percent, plus, for participating securities obligated after September 30, 2001, an additional charge, in an amount established annually by the Administration, as necessary to reduce to zero the cost (as defined in section 661a of title 2) to the Administration of purchasing and guaranteeing participating securities under this chapter, which amount may not exceed 1.46 percent per year, and which shall be paid to and retained by the Administration.

(3) In the event of liquidation of the company, participating securities shall be senior in priority for all purposes to all other equity interests in the issuing company, whenever created.

(4) Any company issuing a participating security under this chapter shall commit to invest or shall invest an amount equal to the outstanding face value of such security solely in equity capital. As used in this subsection, "equity capital" means common or preferred stock or a similar instrument, including subordinated debt with equity features which is not amortized and which provides for interest payments from appropriate sources, as determined by the Administration.

(5) The only debt (other than leverage obtained in accordance with this subchapter) which any

company issuing a participating security under this subsection may have outstanding shall be temporary debt in amounts limited to not more than 50 per centum of private capital.

(6) The Administration may permit the proceeds of a participating security to be used to pay the principal amount due on outstanding debentures guaranteed by the Administration, if (A) the company has outstanding equity capital invested in an amount equal to the amount of the debentures being refinanced and (B) the Administration receives profit participation on such terms and conditions as it may determine, but not to exceed the per centums specified in paragraph (11).

(7) For purposes of computing profit participation under paragraph (11), except as otherwise determined by the Administration, the management expenses of any company which issues participating securities shall not be greater than 2.5 per centum per annum of the combined capital of the company, plus $125,000 if the company's combined capital is less than $20,000,000. For purposes of this paragraph, (A) the term "combined capital" means the aggregate amount of private capital and outstanding leverage and (B) the term "management expenses" includes salaries, office expenses, travel, business development, office and equipment rental, bookkeeping and the development, investigation and monitoring of investments, but does not include the cost of services provided by specialized outside consultants, outside lawyers and outside auditors, who perform services not generally expected of a venture capital company nor does such term include the cost of services provided by any affiliate of the company which are not part of the normal process of making and monitoring venture capital investments.

(8) Notwithstanding paragraph (9), if a company is operating as a limited partnership or as a subchapter S corporation or an equivalent pass-through entity for tax purposes and if there are no accumulated and unpaid prioritized payments, the company may make annual distributions to the partners, shareholders, or members in amounts not greater than each partner's, shareholder's, or member's maximum tax liability. For purposes of this paragraph, the term "maximum tax liability" means the amount of income allocated to each partner, shareholder, or member (including an allocation to the Administration as if it were a taxpayer) for Federal income tax purposes in the income tax return filed or to be filed by the company with respect to the fiscal year of the company immediately preceding such distribution, multiplied by the highest combined marginal Federal and State income tax rates for corporations or individuals, whichever is higher, on each type of income included in such return. For purposes of this paragraph, the term "State income tax" means the income tax of the State where the company's principal place of business is located. A company may also elect to make a distribution under this paragraph at any time during any calendar quarter based on an estimate of the maximum tax liability. If a company makes 1 or more interim distributions for a calendar year, and the aggregate amount of those distributions exceeds the maximum amount that the company could have distributed based on a single annual computation, any subsequent distribution by the company under this paragraph shall be reduced by an amount equal to the excess amount distributed.

(9) After making any distributions as provided in paragraph (8), a company with participating securities outstanding may distribute the balance of income to its investors, specifically including the Administration, in the per centums specified in paragraph (11), if there are no accumulated and unpaid prioritized payments and if all amounts due the Administration pursuant to paragraph (11) have been paid in full, subject to the following conditions:

(A) As of the date of the proposed distribution, if the amount of leverage outstanding is more than 200 per centum of the amount of private capital, any amounts distributed shall be made to private investors and to the Administration in the ratio of leverage to private capital.

(B) As of the date of the proposed distribution, if the amount of leverage outstanding is more than 100 per centum but not more than 200 per centum of the amount of private capital, 50 per centum of any amounts distributed shall be made to the Administration and 50 per centum shall be made to the private investors.

(C) If the amount of leverage outstanding is 100 per centum, or less, of the amount of private capital, the ratio shall be that for distribution of profits as provided in paragraph (11).

(D) Any amounts received by the Administration under subparagraph (A) or (B) shall be applied first as profit participation as provided in paragraph (11) and any remainder shall be

applied as a prepayment of the principal amount of the participating securities or debentures.

(10) After making any distributions pursuant to paragraph (8), a company with participating securities outstanding may return capital to its investors, specifically including the Administration, if there are no accumulated and unpaid prioritized payments and if all amounts due the Administration pursuant to paragraph (11) have been paid in full. Any distributions under this paragraph shall be made to private investors and to the Administration in the ratio of private capital to leverage as of the date of the proposed distribution: *Provided*, That if the amount of leverage outstanding is less than 50 per centum of the amount of private capital or $10,000,000, whichever is less, no distribution shall be required to be made to the Administration unless the Administration determines, on a case by case basis, to require distributions to the Administration to reduce the amount of outstanding leverage to an amount less than $10,000,000.

(11)(A) A company which issues participating securities shall agree to allocate to the Administration a share of its profits determined by the relationship of its private capital to the amount of participating securities guaranteed by the Administration in accordance with the following:

(i) If the total amount of participating securities is 100 per centum of private capital or less, the company shall allocate to the Administration a per centum share computed as follows: the amount of participating securities divided by private capital times 9 per centum.

(ii) If the total amount of participating securities is more than 100 per centum but not greater than 200 per centum of private capital, the company shall allocate to the Administration a per centum share computed as follows:

(I) 9 per centum, plus

(II) 3 per centum of the amount of participating securities minus private capital divided by private capital.

(B) Notwithstanding any other provision of this paragraph—

(i) in no event shall the total per centum required by this paragraph exceed 12 per centum, unless required pursuant to the provisions of (ii) below,

(ii) if, on the date the participating securities are marketed, the interest rate on Treasury bonds with a maturity of 10 years is a rate other than 8 per centum, the Administration shall adjust the rate specified in paragraph (A) above, either higher or lower, by the same per centum by which the Treasury bond rate is higher or lower than 8 per centum, and

(iii) this paragraph shall not be construed to create any ownership interest of the Administration in the company.

(12) A company may elect to make an in-kind distribution of securities only if such securities are publicly traded and marketable. The company shall deposit the Administration's share of such securities for disposition with a trustee designated by the Administration or, at its option and with the agreement of the company, the Administration may direct the company to retain the Administration's share. If the company retains the Administration's share, it shall sell the Administration's share and promptly remit the proceeds to the Administration. As used in this paragraph, the term "trustee" means a person who is knowledgeable about and proficient in the marketing of thinly traded securities.

(h) Computation of amounts due under participating securities

The computation of amounts due the Administration under participating securities shall be subject to the following terms and conditions:

(1) The formula in subsection (g)(11) of this section shall be computed annually and the Administration shall receive distributions of its profit participation at the same time as other investors in the company.

(2) The formula shall not be modified due to an increase in the private capital unless the increase is provided for in a proposed business plan submitted to and approved by the Administration.

(3) After distributions have been made, the Administration's share of such distributions shall not be recomputed or reduced.

(4) If the company prepays or repays the participating securities, the Administration shall receive the requisite participation upon the distribution of profits due to any investments held by the company on the date of the repayment or prepayment.

(5) If a company is licensed on or before March 31, 1993, it may elect to exclude from profit participation all investments held on that date and in such case the Administration shall determine the amount of the future expenses attributable to such prior investment: *Provided*, That if the company issues participating securities to refinance debentures as authorized in subsection (g)(6) of this section, it may not elect to exclude profits on existing investments under this paragraph.

(i) Leverage fee

With respect to leverage granted by the Administration to a licensee, the Administration shall collect from the licensee a nonrefundable fee in an amount equal to 3 percent of the face amount of leverage granted to the licensee in the following manner: 1 percent upon the date on which the Administration enters into any commitment for such leverage with the licensee, and the balance of 2 percent (or 3 percent if no commitment has been entered into by the Administration) on the date on which the leverage is drawn by the licensee.

(j) Calculation of subsidy rate

All fees, interest, and profits received and retained by the Administration under this section shall be included in the calculations made by the Director of the Office of Management and Budget to offset the cost (as that term is defined in section 661a of title 2) to the Administration of purchasing and guaranteeing debentures and participating securities under this chapter.

(k) Energy saving debentures

In addition to any other authority under this chapter, a small business investment company licensed in the first fiscal year after December 19, 2007, or any fiscal year thereafter may issue Energy Saving debentures.

(Pub. L. 85–699, title III, §303, Aug. 21, 1958, 72 Stat. 692; Pub. L. 87–341, §4, Oct. 3, 1961, 75 Stat. 752; Pub. L. 88–273, §3, Feb. 28, 1964, 78 Stat. 146; Pub. L. 90–104, title II, §205, Oct. 11, 1967, 81 Stat. 270; Pub. L. 92–213, §10, Dec. 22, 1971, 85 Stat. 776; Pub. L. 92–595, §2(c), (d), Oct. 27, 1972, 86 Stat. 1314; Pub. L. 94–305, title I, §104, June 4, 1976, 90 Stat. 665; Pub. L. 95–507, title I, §101, Oct. 24, 1978, 92 Stat. 1757; Pub. L. 101–162, title V, (4), Nov. 21, 1989, 103 Stat. 1025; Pub. L. 101–574, title II, §215(a)(1), (b), Nov. 15, 1990, 104 Stat. 2822; Pub. L. 102–366, title IV, §§402, 403, 412, 413, Sept. 4, 1992, 106 Stat. 1008, 1009, 1018; Pub. L. 103–403, title II, §215, Oct. 22, 1994, 108 Stat. 4184; Pub. L. 104–208, div. D, title II, §208(d)(1)–(4)(A), (5), (6), (h)(1)(A), Sept. 30, 1996, 110 Stat. 3009–743, 3009–744, 3009–746; Pub. L. 105–135, title II, §215(b)–(d), Dec. 2, 1997, 111 Stat. 2602, 2603; Pub. L. 106–9, §2(d)(1), Apr. 5, 1999, 113 Stat. 18; Pub. L. 106–554, §1(a)(8) [§1(d)], §1(a)(9) [title IV, §§404, 405], Dec. 21, 2000, 114 Stat. 2763, 2763A–664, 2763A–690, 2763A–691; Pub. L. 107–100, §2(a), Dec. 21, 2001, 115 Stat. 966; Pub. L. 108–84, §117, Sept. 30, 2003, 117 Stat. 1044; Pub. L. 108–172, §1(b), Dec. 6, 2003, 117 Stat. 2065; Pub. L. 108–447, div. K, title II, §201, Dec. 8, 2004, 118 Stat. 3465; Pub. L. 110–140, title XII, §§1205(a), 1206, Dec. 19, 2007, 121 Stat. 1773; Pub. L. 111–5, div. A, title V, §505(a), (c), Feb. 17, 2009, 123 Stat. 156, 157.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsecs. (b), (e), (g)(2), (4), (j), and (k), see References in Text note set out under section 661 of this title.

AMENDMENTS

2009—Subsec. (b)(2)(A), (B). Pub. L. 111–5, §505(a)(1), added subpars. (A) and (B) and struck out former subpars. (A) and (B) which set forth the maximum amount of outstanding leverage for a company with private

capital of not more than $15,000,000, for a company with from $15,000,000 to $30,000,000 in private capital, and for a company with private capital of more than $30,000,000, and set forth provisions relating to initial and annual adjustments of amounts.

Subsec. (b)(2)(C). Pub. L. 111–5, §505(a)(2), designated existing provisions as cl. (i) and added cls. (ii) and (iii).

Subsec. (b)(4). Pub. L. 111–5, §505(a)(3), struck out par. (4) which related to maximum aggregate amount of leverage.

Subsec. (d). Pub. L. 111–5, §505(c), amended subsec. (d) generally. Prior to amendment, subsec. (d) related to written certification that not less than 20 percent of the licensee's aggregate dollar amount of financings would be provided to smaller enterprises, required additional written certification by those licensees with leverage over $90,000,000, and set forth provisions relating to multiple licensees.

2007—Subsec. (b)(2)(D). Pub. L. 110–140, §1206(a), added subpar. (D).

Subsec. (b)(4)(E). Pub. L. 110–140, §1206(b), added subpar. (E).

Subsec. (k). Pub. L. 110–140, §1205(a), added subsec. (k).

2004—Subsec. (g)(4). Pub. L. 108–447 substituted "chapter" for "subsection" in first sentence and "from appropriate sources, as determined by the Administration" for "contingent upon and limited to the extent of earnings" in second sentence.

2003—Subsec. (g)(2). Pub. L. 108–84 and Pub. L. 108–172 amended par. (2) identically, substituting "1.46 percent" for "1.38 percent".

2001—Subsec. (b). Pub. L. 107–100, §2(a)(1), in introductory provisions, substituted "September 30, 2001" for "September 30, 2000", struck out "of not more than 1 percent per year" after "annually by the Administration,", and inserted "which amount may not exceed 1.38 percent per year, and" before "which shall be paid".

Subsec. (g)(2). Pub. L. 107–100, §2(a)(2), substituted "September 30, 2001" for "September 30, 2000", struck out "of not more than 1 percent per year" after "annually by the Administration,", and inserted "which amount may not exceed 1.38 percent per year, and" before "which shall be paid".

2000—Subsec. (b). Pub. L. 106–554, §1(a)(9) [title IV, §404(a)], in introductory provisions, substituted "plus, for debentures obligated after September 30, 2000, an additional charge, in an amount established annually by the Administration, of not more than 1 percent per year as necessary to reduce to zero the cost (as defined in section 661a of title 2) to the Administration of purchasing and guaranteeing debentures under this chapter, which shall be paid to and retained by the Administration" for "plus an additional charge of 1 percent per annum which shall be paid to and retained by the Administration".

Subsec. (b)(2). Pub. L. 106–554, §1(a)(8) [§1(d)(1)], amended par. (2) generally, revising structure of par. from one consisting of introductory provisions and subpars. (A) to (D) to one consisting of subpars. (A) and (B), and adding subpar. (C).

Subsec. (b)(4)(D). Pub. L. 106–554, §1(a)(8) [§1(d)(2)], added subpar. (D).

Subsec. (g)(2). Pub. L. 106–554, §1(a)(9) [title IV, §404(b)], substituted "plus, for participating securities obligated after September 30, 2000, an additional charge, in an amount established annually by the Administration, of not more than 1 percent per year as necessary to reduce to zero the cost (as defined in section 661a of title 2) to the Administration of purchasing and guaranteeing participating securities under this chapter, which shall be paid to and retained by the Administration" for "plus an additional charge of 1 percent per annum which shall be paid to and retained by the Administration".

Subsec. (g)(8). Pub. L. 106–554, §1(a)(9) [title IV, §405], substituted "subchapter S corporation" for "subchapter s corporation", "any time during any calendar quarter based on an" for "the end of any calendar quarter based on a quarterly", and "interim distributions for a calendar year," for "quarterly distributions for a calendar year,".

1999—Subsec. (g)(13). Pub. L. 106–9 struck out heading and text of par. (13). Text read as follows:

"(A) IN GENERAL.—Subject to the provisions of subparagraph (B), of the amount of the annual program level of participating securities approved in appropriations Acts, 50 percent shall be reserved for funding small business investment companies with private capital of not more than $20,000,000.

"(B) EXCEPTION.—During the last quarter of each fiscal year, if the Administrator determines that there is a lack of qualified applicants with private capital of not more than $20,000,000, the Administrator may utilize all or any part of the program level for securities reserved under subparagraph (A) for qualified applicants with private capital of more than $20,000,000."

1997—Subsec. (b)(2)(D). Pub. L. 105–135, §215(b)(1)(A), added subpar. (D).

Subsec. (b)(4). Pub. L. 105–135, §215(b)(1)(B), added par. (4) and struck out former par. (4) which read as follows: "In no event shall the aggregate amount of outstanding leverage of any such company or companies which are commonly controlled as determined by the Administration exceed $90,000,000, unless the

Administration determines on a case by case basis to permit a higher amount for companies under common control and imposes such additional terms and conditions as it determines appropriate to minimize the risk of loss to the Administration in the event of default."

Subsec. (d). Pub. L. 105–135, §215(b)(2), added subsec. (d) and struck out heading and text of former subsec. (d). Text read as follows: "The Administrator shall require each licensee, as a condition of approval of an application for leverage, to certify in writing that not less than 20 percent of the aggregate dollar amount of the financings of the licensee will be provided to smaller enterprises."

Subsec. (g)(8). Pub. L. 105–135, §215(c), inserted at end "A company may also elect to make a distribution under this paragraph at the end of any calendar quarter based on a quarterly estimate of the maximum tax liability. If a company makes 1 or more quarterly distributions for a calendar year, and the aggregate amount of those distributions exceeds the maximum amount that the company could have distributed based on a single annual computation, any subsequent distribution by the company under this paragraph shall be reduced by an amount equal to the excess amount distributed."

Subsec. (i). Pub. L. 105–135, §215(d), substituted "in the following manner: 1 percent upon the date on which the Administration enters into any commitment for such leverage with the licensee, and the balance of 2 percent (or 3 percent if no commitment has been entered into by the Administration) on the date on which the leverage is drawn by the licensee" for ", payable upon the earlier of the date of entry into any commitment for such leverage or the date on which the leverage is drawn by the licensee" before period at end.

1996—Subsec. (a). Pub. L. 104–208, §208(h)(1)(A)(i), substituted "securities," for "debenture bonds,".

Subsec. (b). Pub. L. 104–208, §208(d)(1), (6)(A), in first sentence struck out "(but only to the extent that the necessary funds are not available to said company from private sources on reasonable terms)" after "is authorized" and in fifth sentence substituted "1 percent, plus an additional charge of 1 percent per annum which shall be paid to and retained by the Administration" for "1 per centum, plus such additional charge, if any, toward covering other costs of the program as the Administration may determine to be consistent with its purposes".

Subsec. (c). Pub. L. 104–208, §208(d)(2), inserted heading and amended text of subsec. (c) generally. Prior to amendment, text consisted of 7 pars. which authorized the Administration to purchase securities and to purchase or guarantee payments on debentures issued by small business investment companies operating under section 681(d) of this title.

Subsec. (d). Pub. L. 104–208, §208(d)(3), inserted heading and amended text of subsec. (d) generally. Prior to amendment, text read as follows: "If the Administration guarantees debentures issued by a small business investment company operating under authority of section 681(d) of this title, it shall make, on behalf of the company payments in such amounts as will reduce the effective rate of interest to be paid by the company during the first five years of the term of such debentures to a rate of interest 3 points below the market rate of interest determined pursuant to section 687l of this title. Such payments shall be made by the Administration to the holder of the debenture, its agents or assigns, or to the appropriate central registration agent, if any. The authority to reduce interest rates as provided in this subsection shall be limited to amounts provided in advance in appropriations Acts, and the total amount shall be reserved within the business loan and investment fund to pay an amount equal to the amount of the reduction as it becomes due."

Subsec. (e). Pub. L. 104–208, §208(d)(4)(A), inserted heading and amended text of subsec. (e) generally. Prior to amendment, text read as follows: "In determining the private capital of a small business investment company licensed under section 681(d) of this title and notwithstanding section 662(9) of this title, Federal, State, or local government funds received from sources other than the Administration shall be included solely for regulatory purposes, and not for the purpose of obtaining financial assistance from or licensing by the Administration, providing such funds were invested to November 21, 1989: *Provided*, That such companies may include in private capital for any purpose funds indirectly obtained from State or local governments. As used in this subsection, the term 'capital indirectly obtained' includes income generated by a State financing authority or similar State institution or agency or from the investment of State or local money or amounts originally provided to nonprofit institutions or corporations which such institutions or corporations, in their discretion, determine to invest in a company licensed under section 681(d) of this title."

Subsec. (f). Pub. L. 104–208, §208(h)(1)(A)(ii), added subsec. (f) and struck out former subsec. (f) which read as follows: "Notwithstanding the provisions of any other law, rule, or regulation, the Administration is authorized to allow the issuer of any preferred stock heretofore sold to the Administration to redeem or repurchase such stock upon the payment to the Administration of an amount less than the par value of such stock. The Administration, in its sole discretion, shall determine the repurchase price after considering factors including, but not limited to, the market value of the stock, the value of benefits previously provided and anticipated to accrue to the issuer, the amount of dividends previously paid, accrued, and anticipated, and the Administration's estimate of any anticipated redemption. The Administration may guarantee debentures as

provided in paragraph (5) of subsection (c) of this section and allow the issuer to use the proceeds to make the payments authorized herein. Any monies received by the Administration from the repurchase of preferred stock shall be deposited in the business loan and investment fund and shall be available solely to provide assistance to companies operating under the authority of section 681(d) of this title, to the extent and in the amounts provided in advance in appropriations Acts."

Subsec. (g)(2). Pub. L. 104–208, §208(d)(6)(B), substituted "1 percent, plus an additional charge of 1 percent per annum which shall be paid to and retained by the Administration" for "1 per centum, plus, at the time the guarantee is issued, such additional charge, if any, toward covering other costs of the program as the Administration may determine to be consistent with its purposes, but not to exceed 2 per centum".

Subsec. (g)(4). Pub. L. 104–208, §208(d)(5), struck out "and maintain" after "shall invest".

Subsec. (g)(8). Pub. L. 104–208, §208(h)(1)(A)(iii), substituted "partners, shareholders, or members" for "partners or shareholders", "partner's, shareholder's, or member's" for "partner's or shareholder's", and "partner, shareholder, or member" for "partner or shareholder".

Subsecs. (i), (j). Pub. L. 104–208, §208(d)(6)(C), added subsecs. (i) and (j).

1994—Subsec. (g)(13). Pub. L. 103–403 added par. (13).

1992—Subsec. (b). Pub. L. 102–366, §402(1), inserted "or participating securities" after "debentures" in first and sixth sentences.

Subsec. (b)(1) to (4). Pub. L. 102–366, §402(2), added pars. (1) to (4) and struck out former pars. (1) to (3) which read as follows:

"(1) The total amount of debentures purchased or guaranteed and outstanding at any one time from a company which does not qualify under the terms of paragraph (2) of this subsection, shall not exceed 300 percent of the combined private paid-in capital and paid-in surplus of such company. In no event shall the debentures guaranteed and outstanding under this subchapter of any such company or companies which are commonly controlled as determined by the Administration exceed $35,000,000.

"(2) The total amount of debentures which may be purchased or guaranteed and outstanding at any one time from a company not complying with section 681(d) of this title, which has investments or legal commitments of 65 per centum or more of its total funds available for investment in small business concerns invested or committed in venture capital, and which has combined private paid-in capital and paid-in surplus of $500,000 or more shall not exceed 400 per centum of its combined private paid-in capital and paid-in surplus. In no event shall the debentures of any such company purchased or guaranteed and outstanding under this paragraph exceed $35,000,000. Such additional purchases or guarantees which the Administration makes under this paragraph shall contain conditions to insure appropriate maintenance by the company receiving such assistance of the described ratio during the period in which debentures under this paragraph are outstanding.

"(3) Outstanding amounts of financial assistance provided to a company by the Administration prior to the effective date of the Small Business Investment Act Amendments of 1967 shall be deducted from the maximum amount of debentures which the Administration would otherwise be authorized to purchase or guarantee under this subsection."

Subsec. (c). Pub. L. 102–366, §412(1), (2), struck out "preferred" before "securities" in first sentence and inserted at end "As used in this subsection, the term 'securities' means shares of nonvoting stock or other corporate securities or limited partnership interests which have similar characteristics."

Subsec. (c)(1). Pub. L. 102–366, §412(3), in introductory provisions substituted "such securities" for "shares of nonvoting stock (or other corporate securities having similar characteristics)".

Subsec. (c)(6). Pub. L. 102–366, §402(3), inserted before period at end ", except as provided in paragraph (7)".

Subsec. (c)(7). Pub. L. 102–366, §402(4), added par. (7).

Subsec. (e). Pub. L. 102–366, §413, inserted "licensed under section 681(d) of this title and notwithstanding section 662(9) of this title" after "company" and substituted "to November 21, 1989: *Provided*, That such companies may include in private capital for any purpose funds indirectly obtained from State or local governments. As used in this subsection, the term 'capital indirectly obtained' includes income generated by a State financing authority or similar State institution or agency or from the investment of State or local money or amounts originally provided to nonprofit institutions or corporations which such institutions or corporations, in their discretion, determine to invest in a company licensed under section 681(d) of this title." for "prior to November 21, 1989."

Subsecs. (g), (h). Pub. L. 102–366, §403, added subsecs. (g) and (h).

1990—Subsec. (b)(1). Pub. L. 101–574, §215(a)(1), amended last sentence generally. Prior to amendment, last sentence read as follows: "In no event shall the debentures of any such company purchased or guaranteed and outstanding under this paragraph exceed $35,000,000."

Subsec. (c)(6). Pub. L. 101–574, §215(b)(1), inserted "under the provisions of this subchapter," after

"debentures or securities".

Subsec. (d). Pub. L. 101–574, §215(b)(2), struck out after second sentence "The aggregate amount of debentures with interest rate reductions as provided in this subsection or as provided in section 687i of this title which may be outstanding at any time from any such company shall not exceed 200 per centum of the private paid-in capital and paid-in surplus of such company."

1989—Subsec. (c). Pub. L. 101–162 added subsec. (c) and struck out former subsec. (c) which contained provisions substantially similar to introductory provisions and pars. (1) to (4).

Subsecs. (d) to (f). Pub. L. 101–162 added subsecs. (d) to (f).

1978—Subsec. (c)(1). Pub. L. 95–507 increased the amount of preferred stock small business investment companies were authorized to sell to the Administration so long as such preferred stock leverage did not exceed 200 per centum of the qualified paid-in capital and so long as the amount of such stock purchased by the Administration was not greater in amount than the investment companies' outstanding equity investments and inserted definition of "equity securities".

1976—Subsec. (b)(1). Pub. L. 94–305, §104(a), substituted "300" for "200" and "$35,000,000" for "$15,000,000".

Subsec. (b)(2). Pub. L. 94–305, §104(b), substituted "400" for "300" and "$35,000,000" for "$20,000,000".

Subsec. (c)(2)(iii). Pub. L. 94–305, §104(c), substituted "400" for "300" and "300" for "200".

Subsec. (c)(4). Pub. L. 94–305, §104(c)(2), substituted "300" for "200".

1972—Subsec. (b)(1). Pub. L. 92–595, §2(c)(1), (2), substituted "combined private paid-in capital" for "combined paid-in capital" and "$15,000,000" for "$7,500,000".

Subsec. (b)(2). Pub. L. 92–595, §2(c)(3), substituted provisions relating to the purchase of debentures from companies not complying with section 681(d) of this title having investments or legal commitments of 65 per cent or more and whose combined private paid-in capital and paid-in surplus is $500,000 or more for provisions relating to such purchase from companies having investments or legal commitments of 65 per cent or more and whose combined paid-in capital and paid-in surplus is $1,000,000 or more, and increased the maximum amount of outstanding debentures from $10,000,000 to $20,000,000.

Subsec. (c). Pub. L. 92–595, §2(d), added subsec. (c).

1971—Subsec. (b). Pub. L. 92–213 inserted provision for a guaranty authority for the Administration and inserted requirement that such guaranty authority of the Administration be exercised only when authorized in appropriation Acts, authorized the purchase or guaranty on such terms as the Administration deems appropriate pursuant to regulations issued by the Administration, pledged the full faith and credit of the United States to the payment of amounts required to be paid in full under such guaranty, and struck out provision authorizing Administration cooperation with banks or other lending institutions in the purchase of debentures.

1967—Subsec. (b). Pub. L. 90–104 substituted purchase of debenture provisions of former section 682(a) of this title for former provision for loans (eliminating participation on deferred (standby) basis), incorporated subordination provision of such former section 682(a) (inserting provision for Administration exercise of reasonable investment prudence and for consideration of financial soundness of the company), provided for maximum term of fifteen years, substituted rate of interest taking into consideration current average market yield on outstanding marketable Treasury obligations with remaining periods to maturity comparable to average maturities on such debentures, as adjusted plus charge toward cost of programs, for rate of interest not lower than average investment yield on marketable Treasury obligations outstanding at time of loan involved, and added pars. (1) to (3) and definition of venture capital, former par. (1) limiting Administration purchases of company obligations to 50 per centum of paid-in capital and surplus or $4,000,000, whichever is less, and par. (2) requiring loans to be of such sound value as reasonably to assure repayment.

1964—Subsec. (b). Pub. L. 88–273 provided for participation loans by Administration with lending institutions on an immediate or deferred basis and for a minimum interest rate measured by the average investment yield on marketable obligations of the United States outstanding at the time of the loan involved, and designated existing provisions as clauses (1) and (2).

1961—Subsec. (b). Pub. L. 87–341 limited the Administration's authorization to lend funds to the extent that the funds are not available to the company involved from private sources on reasonable terms, and the total amount of obligations, including commitments to purchase such obligations, which can be purchased in any one company to not more than 50 percent of the paid-in capital and surplus or $4,000,000, whichever is less, and inserted "All loans made by the Administration under this subsection shall be of such sound value as reasonably to assure repayment."

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of

Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–100, §2(b), Dec. 21, 2001, 115 Stat. 966, provided that: "The amendments made by this section [amending this section] shall become effective on October 1, 2001."

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–574, title II, §215(a)(2), Nov. 15, 1990, 104 Stat. 2822, as amended by Pub. L. 102–140, title VI, §609(c), Oct. 28, 1991, 105 Stat. 825, provided that: "The amendments made by paragraph (1) [amending this section] shall become effective on July 1, 1992."

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–104 effective 90 days after Oct. 11, 1967, see section 211 of Pub. L. 90–104, set out as a note under section 681 of this title.

REGULATIONS

Pub. L. 104–208, div. D, title II, §208(d)(4)(B), Sept. 30, 1996, 110 Stat. 3009–744, provided that:

"(i) UNIFORM APPLICABILITY.—Any regulation issued by the Administration to implement section 303(e) of the Small Business Investment Act of 1958 [15 U.S.C. 683(e)] that applies to any licensee with outstanding leverage obtained before the effective date of that regulation, shall apply uniformly to all licensees with outstanding leverage obtained before that effective date.

"(ii) DEFINITIONS.—For purposes of this subparagraph, the terms 'Administration', 'leverage' and 'licensee' have the same meanings as in section 103 of the Small Business Investment Act of 1958 [15 U.S.C. 662]."

EFFECT OF SMALL BUSINESS EQUITY ENHANCEMENT ACT OF 1992 ON SECURITIES LAWS

Nothing in amendment by Pub. L. 102–366 to be construed to affect applicability of securities laws or to otherwise supersede or limit jurisdiction of Securities and Exchange Commission, see section 418 of Pub. L. 102–366, set out as a note under section 661 of this title.

§684. Equity capital for small-business concerns

(a) Function of investment companies

It shall be a function of each small business investment company to provide a source of equity capital for incorporated and unincorporated small-business concerns, in such manner and under such terms as the small business investment company may fix in accordance with the regulations of the Administration.

(b) Conditions

Before any capital is provided to a small-business concern under this section—

(1) the company may require such concern to refinance any or all of its outstanding indebtedness so that the company is the only holder of any evidence of indebtedness of such concern; and

(2) except as provided in regulations issued by the Administration, such concern shall agree that it will not thereafter incur any indebtedness without first securing the approval of the company and giving the company the first opportunity to finance such indebtedness.

(c) Repealed. Pub. L. 90–104, title II, §206, Oct. 11, 1967, 81 Stat. 271

(d) Direct or cooperative provision of capital

Equity capital provided to incorporated small business concerns under this section may be provided directly or in cooperation with other investors, incorporated or unincorporated, through

agreements to participate on an immediate basis.

(Pub. L. 85–699, title III, §304, Aug. 21, 1958, 72 Stat. 693; Pub. L. 86–502, §6, June 11, 1960, 74 Stat. 196; Pub. L. 87–341, §5, Oct. 3, 1961, 75 Stat. 752; Pub. L. 90–104, title II, §206, Oct. 11, 1967, 81 Stat. 271; Pub. L. 92–595, §2(e), Oct. 27, 1972, 86 Stat. 1316.)

AMENDMENTS

1972—Subsec. (a). Pub. L. 92–595 extended the function of small business investment companies to provide a source of equity capital to unincorporated business concerns.

1967—Subsec. (c). Pub. L. 90–104 repealed subsec. (c) which authorized purchase of stock of investment companies by small-business concerns in an amount equal to 5 per centum of capital provided.

1961—Subsec. (d). Pub. L. 87–341 added subsec. (d).

1960—Subsec. (a). Pub. L. 86–502 struck out "primary" before "function", and substituted "a source of equity capital for incorporated small-business concerns, in such manner and under such terms as the small business investment company may fix in accordance with the regulations of the Administration" for "a source of needed equity capital for small-business concerns in the manner and subject to the conditions described in this section".

Subsec. (b). Pub. L. 86–502 redesignated subsec. (c) as (b), and repealed former subsec. (b) which required capital to be secured only through the purchase of debenture bonds.

Subsecs. (c), (d). Pub. L. 86–502 redesignated subsec. (d) as (c), and substituted "such concern shall have the right, exercisable in whole or in such part as such concern may elect, to become a stockholder-proprietor by investing in the capital stock of the company 5 per centum" for "such concern shall be required to become a stockholder-proprietor of the company by investing in the capital stock of the company, in an amount equal to not less than 2 percent nor more than 5 percent". Former subsec. (c) redesignated (b).

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–104 effective 90 days after Oct. 11, 1967, see section 211 of Pub. L. 90–104, set out as a note under section 681 of this title.

§685. Long-term loans to small-business concerns

(a) Authorization

Each company is authorized to make loans, in the manner and subject to the conditions described in this section, to incorporated and unincorporated small-business concerns in order to provide such concerns with funds needed for sound financing, growth, modernization, and expansion.

(b) Direct loans; loans on participation basis

Loans made under this section may be made directly or in cooperation with other lenders, incorporated or unincorporated, through agreements to participate on an immediate or deferred basis.

(c) Maximum rate of interest

The maximum rate of interest for the company's share of any loan made under this section shall be determined by the Administration: *Provided*, That the Administration also shall permit those companies which have issued debentures pursuant to this chapter to charge a maximum rate of interest based upon the coupon rate of interest on the outstanding debentures, determined on an annual basis, plus such other expenses of the company as may be approved by the Administration.

(d) Maturity

Any loan made under this section shall have a maturity not exceeding twenty years.

(e) Soundness of loan; security

Any loan made under this section shall be of such sound value, or so secured, as reasonably to assure repayment.

(f) Extension or renewal

Any company which has made a loan to a small-business concern under this section is authorized to extend the maturity of or renew such loan for additional periods, not exceeding ten years, if the

company finds that such extension or renewal will aid in the orderly liquidation of such loan.

(Pub. L. 85–699, title III, §305, Aug. 21, 1958, 72 Stat. 693; Pub. L. 87–341, §6, Oct. 3, 1961, 75 Stat. 753; Pub. L. 94–305, title I, §105, June 4, 1976, 90 Stat. 666; Pub. L. 102–366, title IV, §411, Sept. 4, 1992, 106 Stat. 1018.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (c), see References in Text note set out under section 661 of this title.

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–366 inserted before period at end ": *Provided*, That the Administration also shall permit those companies which have issued debentures pursuant to this chapter to charge a maximum rate of interest based upon the coupon rate of interest on the outstanding debentures, determined on an annual basis, plus such other expenses of the company as may be approved by the Administration".

1976—Subsec. (b). Pub. L. 94–305 struck out provision that in agreements to participate in loans on a deferred basis, the participation by the company shall not be in excess of 90 percentum of the balance of the loan outstanding at the time of disbursement.

1961—Subsec. (b). Pub. L. 87–341 substituted "other lenders, incorporated or unincorporated" for "other lending institutions".

EFFECT OF SMALL BUSINESS EQUITY ENHANCEMENT ACT OF 1992 ON SECURITIES LAWS

Nothing in amendment by Pub. L. 102–366 to be construed to affect applicability of securities laws or to otherwise supersede or limit jurisdiction of Securities and Exchange Commission, see section 418 of Pub. L. 102–366, set out as a note under section 661 of this title.

§686. Aggregate limitations on amount of assistance to any single enterprise

(a) Percentage limitation on private capital

If any small business investment company has obtained financing from the Administrator and such financing remains outstanding, the aggregate amount of securities acquired and for which commitments may be issued by such company under the provisions of this subchapter for any single enterprise shall not, without the approval of the Administrator, exceed 10 percent of the sum of—

(1) the private capital of such company; and

(2) the total amount of leverage projected by the company in the company's business plan that was approved by the Administrator at the time of the grant of the company's license.

(b) Repealed. Pub. L. 92–595, §2(f), Oct. 27, 1972, 86 Stat. 1316

(c) Application of provisions to commitments incurred prior to effective date of section

With respect to obligations or securities acquired prior to the effective date of the Small Business Investment Act Amendments of 1967, and with respect to legally binding commitments issued prior to such date, the provisions of this section as in effect immediately prior to such effective date shall continue to apply.

(Pub. L. 85–699, title III, §306, Aug. 21, 1958, 72 Stat. 694; Pub. L. 87–341, §7(a), Oct. 3, 1961, 75 Stat. 753; Pub. L. 88–273, §4, Feb. 28, 1964, 78 Stat. 146; Pub. L. 90–104, title II, §207, Oct. 11, 1967, 81 Stat. 271; Pub. L. 92–595, §2(f), Oct. 27, 1972, 86 Stat. 1316; Pub. L. 102–366, title IV, §408(a), Sept. 4, 1992, 106 Stat. 1016; Pub. L. 111–5, div. A, title V, §505(b), Feb. 17, 2009, 123 Stat. 156.)

REFERENCES IN TEXT

For effective date of the Small Business Investment Act Amendments of 1967, referred to in subsec. (c), see Effective Date of 1967 Amendment note set out under section 681 of this title.

AMENDMENTS

2009—Subsec. (a). Pub. L. 111–5 amended subsec. (a) generally. Prior to amendment, text read as follows:

"If any small business investment company has obtained financing from the Administration and such financing remains outstanding, the aggregate amount of obligations and securities acquired and for which commitments may be issued by such company under the provisions of this subchapter for any single enterprise shall not exceed 20 per centum of the private capital of such company, without the approval of the Administration."

1992—Subsec. (a). Pub. L. 102–366 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "Without the approval of the Administration, the aggregate amount of obligations and securities acquired and for which commitments may be issued by any small business investment company under the provisions of this chapter for any single enterprise shall not exceed 20 percent of the combined private paid-in capital and paid-in surplus of such company."

1972—Subsec. (a). Pub. L. 92–595, §2(f)(1), substituted "combined private paid-in capital" for "combined paid-in capital".

Subsec. (b). Pub. L. 92–595, §2(f)(2), repealed subsec. (b) which enumerated the items making up the combined paid-in capital and paid-in surplus of companies licensed prior to January 1, 1968.

1967—Subsec. (a). Pub. L. 90–104 substituted "paid-in capital and paid-in surplus of such company" for "capital and surplus of such small business investment company authorized by this chapter".

Subsecs. (b), (c). Pub. L. 90–104 added subsecs. (b) and (c).

1964—Pub. L. 88–273 struck out the $500,000 limitation on amount of assistance to any single enterprise.

1961—Pub. L. 87–341 inserted "or (2) $500,000, whichever is the lesser".

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–104 effective Jan. 1, 1968, see section 211 of Pub. L. 90–104, set out as a note under section 681 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Pub. L. 87–341, §7(b), Oct. 3, 1961, 75 Stat. 753, provided that: "The amendment made by subsection (a) [amending this section] shall apply only with respect to obligations and securities acquired by a small business investment company on or after the date of the enactment of this Act [Oct. 3, 1961]; except that such amendment shall not apply with respect to any obligations or securities so acquired pursuant to a commitment issued before such date."

EFFECT OF SMALL BUSINESS EQUITY ENHANCEMENT ACT OF 1992 ON SECURITIES LAWS

Nothing in amendment by Pub. L. 102–366 to be construed to affect applicability of securities laws or to otherwise supersede or limit jurisdiction of Securities and Exchange Commission, see section 418 of Pub. L. 102–366, set out as a note under section 661 of this title.

§687. Operation and regulation of companies

(a) Cooperation with banks and other financial institutions

Wherever practicable the operations of a small business investment company, including the generation of business, may be undertaken in cooperation with banks or other investors or lenders, incorporated or unincorporated, and any servicing or initial investigation required for loans or acquisitions of securities by the company under the provisions of this chapter may be handled through such banks or other investors or lenders on a fee basis. Any small business investment company may receive fees for services rendered to such banks and other investors and lenders.

(b) Use of advisory services; depository or fiscal agents; investment of funds

Each small business investment company may make use, wherever practicable, of the advisory services of the Federal Reserve System and of the Department of Commerce which are available for and useful to industrial and commercial businesses, and may provide consulting and advisory services on a fee basis and have on its staff persons competent to provide such services. Any Federal Reserve bank is authorized to act as a depository or fiscal agent for any company operating under provisions of this chapter. Any such company that is licensed before October 1, 2004 and has outstanding financings is authorized to invest funds not needed for its operations—

(1) in direct obligations of, or obligations guaranteed as to principal and interest by, the United

States;

(2) in certificates of deposit or other accounts of federally insured banks or other federally insured depository institutions, if the certificates or other accounts mature or are otherwise fully available not more than 1 year after the date of the investment; or

(3) in mutual funds, securities, or other instruments that consist of, or represent pooled assets of, investments described in paragraphs (1) or (2).

(c) Rules and regulations

The Administration is authorized to prescribe regulations governing the operations of small business investment companies, and to carry out the provisions of this chapter, in accordance with the purposes of this chapter.

(d) Forfeiture of rights, privileges, and franchises; jurisdiction

Should any small business investment company violate or fail to comply with any of the provisions of this chapter or of regulations prescribed hereunder, all of its rights, privileges, and franchises derived therefrom may thereby be forfeited. Before any such company shall be declared dissolved, or its rights, privileges, and franchises forfeited, any noncompliance with or violation of this chapter shall be determined and adjudged by a court of the United States of competent jurisdiction in a suit brought for that purpose in the district, territory, or other place subject to the jurisdiction of the United States, in which the principal office of such company is located. Any such suit shall be brought by the United States at the instance of the Administration or the Attorney General.

(e) Liability of United States

Except as expressly provided otherwise in this chapter, nothing in this chapter or in any other provision of law shall be deemed to impose any liability on the United States with respect to any obligation entered into, or stocks issued, or commitments made, by any company operating under the provisions of this chapter.

(f) Performance of functions, powers, and duties by Administration and Administrator

In the performance of, and with respect to the functions, powers, and duties vested by this chapter, the Administrator and the Administration shall (in addition to any authority otherwise vested by this chapter) have the functions, powers, and duties set forth in the Small Business Act [15 U.S.C. 631 et seq.], and the provisions of sections 13 and 16 of that Act [15 U.S.C. 642, 645], insofar as applicable, are extended to the functions of the Administrator and the Administration under this chapter.

(g) Annual report on Small Business Investment activities

(1) The Administration shall include in its annual report, made pursuant to section 10(a) of the Small Business Act [15 U.S.C. 639(a)], a full and detailed account of its operations under this chapter. Such report shall set forth the amount of losses sustained by the Government as a result of such operations during the preceding fiscal year, together with an estimate of the total losses which the Government can reasonably expect to incur as a result of such operations during the then current fiscal year.

(2) In its annual report for the year ending December 31, 1967, and in each succeeding annual report made pursuant to section 10(a) of the Small Business Act [15 U.S.C. 639(a)], the Administration shall include full and detailed accounts relative to the following matters:

(A) The Administration's recommendations with respect to the feasibility and organization of a small business capital bank to encourage private financing of small business investment companies to replace Government financing of such companies.

(B) The Administration's plans to insure the provision of small business investment company financing to all areas of the country and to all eligible small business concerns including steps taken to accomplish same.

(C) Steps taken by the Administration to maximize recoupment of Government funds incident to the inauguration and administration of the small business investment company program and to

insure compliance with statutory and regulatory standards relating thereto.

(D) An accounting by the Office of Management and Budget with respect to Federal expenditures to business by executive agencies, specifying the proportion of said expenditures going to business concerns falling above and below small business size standards applicable to small business investment companies.

(E) An accounting by the Treasury Department with respect to tax revenues accruing to the Government from business concerns, incorporated and unincorporated, specifying the source of such revenues by concerns falling above and below the small business size standards applicable to small business investment companies.

(F) An accounting by the Treasury Department with respect to both tax losses and increased tax revenues related to small business investment company financing of both individual and corporate business taxpayers.

(G) Recommendations of the Treasury Department with respect to additional tax incentives to improve and facilitate the operations of small business investment companies and to encourage the use of their financing facilities by eligible small business concerns.

(H) A report from the Securities and Exchange Commission enumerating actions undertaken by that agency to simplify and minimize the regulatory requirements governing small business investment companies under the Federal securities laws and to eliminate overlapping regulation and jurisdiction as between the Securities and Exchange Commission, the Administration, and other agencies of the executive branch.

(I) A report from the Securities and Exchange Commission with respect to actions taken to facilitate and stabilize the access of small business concerns to the securities markets.

(J) Actions undertaken by the Securities and Exchange Commission to simplify compliance by small business investment companies with the requirements of the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.] and to facilitate the election to be taxed as regulated investment companies pursuant to section 851 of title 26.

(3) In its annual report for the year ending on December 31, 1993, and in each succeeding annual report made pursuant to section 10(a) of the Small Business Act [15 U.S.C. 639(a)], the Administration shall include a full and detailed description or account relating to—

(A) the number of small business investment companies the Administration licensed, the number of licensees that have been placed in liquidation, and the number of licensees that have surrendered their licenses in the previous year, identifying the amount of government leverage each has received and the type of leverage instruments each has used;

(B) the amount of government leverage that each licensee received in the previous year and the types of leverage instruments each licensee used;

(C) for each type of financing instrument, the sizes, geographic locations, and other characteristics of the small business investment companies using them, including the extent to which the investment companies have used the leverage from each instrument to make small business loans, equity investments, or both; and

(D) the frequency with which each type of investment instrument has been used in the current year and a comparison of the current year with previous years.

(h) Certifications of eligibility

(1) Certification by small business concern

Prior to receiving financial assistance from a company licensed pursuant to section 681 of this title, a small business concern shall certify in writing that it meets the eligibility requirements of the Small Business Investment Company Program or the Specialized Small Business Investment Company Program, as applicable.

(2) Certification by company

Prior to providing financial assistance to a small business concern under this chapter, a company licensed pursuant to section 681 of this title shall certify in writing that it has reviewed the application for assistance of the small business concern and that all documentation and other

information supports the eligibility of the applicant.

(3) Retention of certifications

Certificates made pursuant to paragraphs (1) and (2) shall be retained by the company licensed pursuant to section 681 of this title for the duration of the financial assistance.

(i) Interest rates

(1) The purpose of this subsection is to facilitate the orderly and necessary flow of long-term loans and equity funds from small business investment companies to small business concerns.

(2) In the case of a business loan, the small business investment company making such loan may charge interest on such loan at a rate which does not exceed the maximum rate prescribed by regulation by the Administration for loans made by any licensee (determined without regard to any State rate incorporated by such regulation). In this paragraph, the term "interest" includes only the maximum mandatory sum, expressed in dollars or as a percentage rate, that is payable with respect to the business loan amount received by the small business concern, and does not include the value, if any, of contingent obligations, including warrants, royalty, or conversion rights, granting the small business investment company an ownership interest in the equity or increased future revenue of the small business concern receiving the business loan.

(3) A State law or constitutional provision shall be preempted for purposes of paragraph (2) with respect to any loan if such loan is made before the date, on or after April 1, 1980, on which such State adopts a law or certifies that the voters of such State have voted in favor of any provision, constitutional or otherwise, which states explicitly and by its terms that such State does not want the provisions of this subsection to apply with respect to loans made in such State, except that such State law or constitutional or other provision shall be preempted in the case of a loan made, on or after the date on which such law is adopted or such certification is made, pursuant to a commitment to make such loan which was entered into on or after April 1, 1980, and prior to the date on which such law is adopted or such certification is made.

(4)(A) If the maximum rate of interest authorized under paragraph (2) on any loan made by a small business investment company exceeds the rate which would be authorized by applicable State law if such State law were not preempted for purposes of this subsection, the charging of interest at any rate in excess of the rate authorized by paragraph (2) shall be deemed a forfeiture of the greater of (i) all interest which the loan carries with it, or (ii) all interest which has been agreed to be paid thereon.

(B) In the case of any loan with respect to which there is a forfeiture of interest under subparagraph (A), the person who paid the interest may recover from a small business investment company making such loan an amount equal to twice the amount of the interest paid on such loan. Such interest may be recovered in a civil action commenced in a court of appropriate jurisdiction not later than two years after the most recent payment of interest.

(Pub. L. 85–699, title III, §308, Aug. 21, 1958, 72 Stat. 694; Pub. L. 87–341, §§8, 11(c)(d), Oct. 3, 1961, 75 Stat. 753, 756; Pub. L. 88–273, §5, Feb. 28, 1964, 78 Stat. 147; Pub. L. 89–779, §3, Nov. 6, 1966, 80 Stat. 1359; Pub. L. 90–104, title II, §210, Oct. 11, 1967, 81 Stat. 271; 1970 Reorg. Plan No. 2, §102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085; Pub. L. 93–501, title II, §204, Oct. 29, 1974, 88 Stat. 1559; Pub. L. 95–507, title I, §102, Oct. 24, 1978, 92 Stat. 1757; Pub. L. 96–104, title I, §104, Nov. 5, 1979, 93 Stat. 790; Pub. L. 96–161, title II, §204, Dec. 28, 1979, 93 Stat. 1236; Pub. L. 96–221, title V, §§524, 529, Mar. 31, 1980, 94 Stat. 166, 168; Pub. L. 99–226, §1, Dec. 28, 1985, 99 Stat. 1744; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 102–366, title IV, §§408(c), 417(a), Sept. 4, 1992, 106 Stat. 1016, 1019; Pub. L. 103–403, title II, §214, Oct. 22, 1994, 108 Stat. 4184; Pub. L. 104–208, div. D, title II, §208(e), (h)(1)(B), Sept. 30, 1996, 110 Stat. 3009–745, 3009–747; Pub. L. 106–9, §2(a), Apr. 5, 1999, 113 Stat. 17; Pub. L. 108–447, div. K, title II, §202, Dec. 8, 2004, 118 Stat. 3465.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsecs. (a) to (h), see References in Text note set out under section 661 of this title.

The Small Business Act, referred to in subsec. (f), is Pub. L. 85–536, §2(1 et seq.), July 18, 1958, 72 Stat. 384, which is classified generally to chapter 14A (§631 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 631 of this title and Tables.

The Investment Company Act of 1940, referred to in subsec. (g)(2)(J), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a–51 of this title and Tables.

CODIFICATION

Section 204 of Pub. L. 96–161, cited as a credit to this section, was repealed by section 529 of Pub. L. 96–221 effective at the close of Mar. 31, 1980. The amendment of this section by that repealed provision, described in the 1979 Amendment note set out under this section, shall continue to apply to any loan made, any deposit made, or any obligation issued in any State during any period when the amendment was in effect in such State.

Section 104 of Pub. L. 96–104, cited as a credit to this section, was repealed by section 212 of Pub. L. 96–161, effective at the close of Dec. 27, 1979. The amendment of this section by that repealed provision, described in the 1979 Amendment note set out under this section, shall continue in effect for limited purposes pursuant to section 212 of Pub. L. 96–161. See Saving Provisions note, describing the provisions of section 212 of Pub. L. 96–161, set out under section 85 of Title 12, Banks and Banking.

Section 204 of Pub. L. 93–501, cited as a credit to this section, was repealed by Pub. L. 96–104, §1, Nov. 5, 1979, 93 Stat. 789. The amendment of this section by that repealed provision, described in the 1974 Amendment note, shall continue in effect for limited purposes pursuant to section 1 of Pub. L. 96–104. See Savings Provisions note, describing the provisions of section 1 of Pub. L. 96–104, set out under section 85 of Title 12, Banks and Banking.

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–447, which directed the amendment of section 308(b) of the Small Business Investment Act by substituting "Any such company that is licensed before October 1, 2004 and has outstanding financings is authorized to invest funds not needed for its operations—" and pars. (1) to (3) for last sentence, was executed to this section, which is section 308 of the Small Business Investment Act of 1958, to reflect the probable intent of Congress. Prior to amendment, last sentence read as follows: "Such companies with outstanding financings are authorized to invest funds not reasonably needed for their operations in direct obligations of, or obligations guaranteed as to principal and interest by, the United States, or in certificates of deposit maturing within one year or less, issued by any institution the accounts of which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, or in savings accounts of such institutions."

1999—Subsec. (i)(2). Pub. L. 106–9 inserted at end: "In this paragraph, the term 'interest' includes only the maximum mandatory sum, expressed in dollars or as a percentage rate, that is payable with respect to the business loan amount received by the small business concern, and does not include the value, if any, of contingent obligations, including warrants, royalty, or conversion rights, granting the small business investment company an ownership interest in the equity or increased future revenue of the small business concern receiving the business loan."

1996—Subsec. (e). Pub. L. 104–208, §208(e), substituted "Except as expressly provided otherwise in this chapter, nothing" for "Nothing".

Subsec. (h). Pub. L. 104–208, §208(h)(1)(B), substituted "section 681 of this title" for "subsection (c) or (d) of section 681 of this title" in pars. (1) to (3).

1994—Subsec. (h). Pub. L. 103–403 added subsec. (h).

1992—Subsec. (b). Pub. L. 102–366, §408(c), inserted "with outstanding financings" after "Such companies" in third sentence.

Subsec. (g)(3). Pub. L. 102–366, §417(a), added par. (3).

1986—Subsec. (g)(2)(J). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

1985—Subsec. (i)(2). Pub. L. 99–226, §1(a), substituted "the maximum rate prescribed by regulation by the Administration for loans made by any licensee (determined without regard to any State rate incorporated by such regulation)." for "the lowest of the rates described in subparagraphs (A), (B), and (C)" and struck out subpars. (A), (B), and (C) which described the rates.

Subsec. (i)(3). Pub. L. 99–226, §1(b), substituted "paragraph (2)" for "paragraph (2)(B)".

1980—Subsec. (h). Pub. L. 96–221, §529, repealed Pub. L. 96–104 and title II of Pub. L. 96–161, resulting

in the striking out of subsec. (h) which related to the limitation on interest rates, overcharges, forfeitures, and the recovery of interest payments. See subsec. (i) of this section for successor provisions. See also Codification and 1979 Amendment notes under this section.

Subsec. (i). Pub. L. 96–221, §524, added subsec. (i).

1979—Subsec. (h). Pub. L. 96–161 reenacted subsec. (h) [as added by Pub. L. 96–104] with three substitutions of dates: in par. (3)(A) "in the case of a State statute, July 1, 1980" was substituted for "July 1, 1981", in par. (3)(B) "December 28, 1979" was substituted for "November 5, 1979", and in par. (3)(C) "December 28, 1979" was substituted for "November 5, 1979".

Pub. L. 96–104 added subsec. (h). A prior subsec. (h), also relating to limitation on interest rates, overcharges, forfeitures, and the recovery of interest payments, was repealed by section 1 of Pub. L. 96–104.

1978—Subsec. (b). Pub. L. 95–507 inserted provisions authorizing small business investment companies to invest funds not reasonably needed for their operations in certificates of deposit maturing within one year or less issued by particular insured institutions and savings accounts of institutions insured by the Federal Deposit Insurance Corporation.

1974—Subsec. (h). Pub. L. 93–501 added subsec. (h).

1967—Subsec. (g). Pub. L. 90–104 designated existing provisions as par. (1) and added par. (2).

1966—Subsec. (c). Pub. L. 89–779, §3(1), struck out provisions subjecting each small business investment company to examinations by examiners approved by the Administration and requiring the submission of reports by the companies. See section 687b(b) of this title.

Subsecs. (f), (g). Pub. L. 89–799, §3(2), added subsecs. (f) and (g).

1964—Subsec. (b). Pub. L. 88–273 authorized investment of funds in insured savings accounts (up to the amount of insurance) in institutions insured by the Federal Savings and Loan Insurance Corporation.

1961—Subsec. (a). Pub. L. 87–341, §8, substituted "investors or lenders" for "financial institutions" wherever appearing, and provided that these investors or lenders can be either incorporated or unincorporated.

Subsec. (b). Pub. L. 87–341, §11(c), substituted "operating under the provisions of this chapter" for "organized under this chapter".

Subsec. (e). Pub. L. 87–341, §11(d), redesignated subsec. (g) as (e), substituted "operating under the provisions of this chapter" for "organized under this chapter", and repealed former subsec. (e) which related to obtaining restraining orders against violators of this chapter.

Subsec. (f). Pub. L. 87–341, §11(d), repealed subsec. (f) which permitted small business investment companies to extend their corporate existence for a term of not more than 30 years. See subsec. (a) of section 681 of this title.

Subsec. (g). Pub. L. 87–341, §11(d), redesignated subsec. (g) as (e).

EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99–226, §2, Dec. 28, 1985, 99 Stat. 1744, provided that: "This Act [amending this section] shall apply to maximum interest rates prescribed by the Administration on or after April 1, 1980."

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–221, title V, §529, Mar. 31, 1980, 94 Stat. 168, provided that the amendment made by that section is effective at the close of Mar. 31, 1980.

EFFECTIVE DATE OF 1979 AMENDMENTS

Pub. L. 96–161, title II, §207, Dec. 28, 1979, 93 Stat. 1238, which provided that amendment by Pub. L. 96–161 was applicable to loans made in any State during the period beginning on Dec. 28, 1979, and ending on the earliest of (1) in the case of a State statute, July 1, 1980; (2) the date, after Dec. 28, 1979, on which such State adopts a law stating in substance that such State does not want the amendment of this section made by Pub. L. 96–161 to apply with respect to loans made in such State; or (3) the date on which such State certifies that the voters of such State, after Dec. 28, 1979, have voted in favor of, or to retain, any law, provision of the constitution of such State, or amendment to the constitution of such State which prohibits the charging of interest at the rates provided in the amendment of this section by Pub. L. 96–161, was repealed by Pub. L. 96–221, title V, §529, Mar. 31, 1980, 94 Stat. 168.

Pub. L. 96–104, title I, §107, Nov. 5, 1979, 93 Stat. 792, which provided that amendment by Pub. L. 96–104 was applicable to loans made by any State during the period beginning on Nov. 5, 1979, and ending on the earlier of July 1, 1981, or the date after Nov. 5, 1979, on which such State adopts a law stating in substance that such State does not want the amendment of this section to apply with respect to loans made in such State, or the date on which such State certifies that the voters of such State have voted in favor of, or to retain, any law, provision of the constitution of such State, or amendment of the constitution of such State,

which prohibits the charging of interest at the rates provided in the amendment of this section, was repealed by Pub. L. 96–161, title II, §212, Dec. 28, 1979, 93 Stat. 1239.

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93–501, title II, §206, Oct. 29, 1974, 88 Stat. 1560, which provided that amendment by Pub. L. 93–501 was applicable to loans made in any state after Oct. 29, 1974, but prior to the earlier of July 1, 1977 or the date of enactment by the state of a law prohibiting the charging of interest at the rates provided in the amendment of this section, was repealed by Pub. L. 96–104, §1, Nov. 5, 1979, 93 Stat. 789.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–104 effective 90 days after Oct. 11, 1967, see section 211 of Pub. L. 90–104, set out as a note under section 681 of this title.

SAVINGS PROVISION

Pub. L. 96–221, title V, §529, Mar. 31, 1980, 94 Stat. 168, provided in part that, notwithstanding the repeal of Pub. L. 96–104 and title II of Pub. L. 96–161, the provisions of subsec. (h) of this section [which had been added to this section by those repealed laws] shall continue to apply to any loan made, any deposit made, or any obligation issued to any State during any period when those provisions were in effect in such State.

EFFECT OF SMALL BUSINESS EQUITY ENHANCEMENT ACT OF 1992 ON SECURITIES LAWS

Nothing in amendment by Pub. L. 102–366 to be construed to affect applicability of securities laws or to otherwise supersede or limit jurisdiction of Securities and Exchange Commission, see section 418 of Pub. L. 102–366, set out as a note under section 661 of this title.

TRANSFER OF FUNCTIONS

Bureau of the Budget designated as Office of Management and Budget and Offices of Director, Deputy Director, and Assistant Directors of Bureau of the Budget designated Director, Deputy Director, and Assistant Directors of Office of Management and Budget, respectively. Records, property, personnel, and funds of Bureau of the Budget transferred to Office of Management and Budget. See Part I of Reorganization Plan 2 of 1970, set out in the Appendix to Title 5, Government Organization and Employees.

CHOICE OF HIGHEST APPLICABLE INTEREST RATE

In any case in which one or more provisions of, or amendments made by, title V of Pub. L. 96–221, section 1735f–7a of Title 12, Banks and Banking, or any other provisions of law, including section 85 of Title 12, apply with respect to the same loan, mortgage, credit sale, or advance, such loan, mortgage, credit sale, or advance may be made at the highest applicable rate, see section 528 of Pub. L. 96–221, set out as a note under section 1735f–7a of Title 12.

STATES HAVING CONSTITUTIONAL PROVISIONS REGARDING MAXIMUM INTEREST RATES

Pub. L. 96–161, title II, §213, Dec. 28, 1979, 93 Stat. 1240, provided that the provisions of title II of Pub. L. 96–161, which amended this section and repealed provisions which had formerly amended this section, to continue to apply until July 1, 1981, in the case of any State having a constitutional provision regarding maximum interest rates.

DEFINITION OF "STATE"

For purposes of subsec. (i) of this section, the term "State" to include the several States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Trust Territories of the Pacific Islands, the Northern Mariana Islands, and the Virgin Islands, see section 527 of Pub. L. 96–221, set out as a note under section 1735f–7a of Title 12, Banks and Banking.

§687a. Revocation and suspension of licenses; cease and desist orders

(a) Grounds for suspension or revocation

A license may be revoked or suspended by the Administration—

(1) for false statements knowingly made in any written statement required under this subchapter, or under any regulation issued under this subchapter by the Administration;

(2) if any written statement required under this subchapter, or under any regulation issued under this subchapter by the Administrator, fails to state a material fact necessary in order to make the statement not misleading in the light of the circumstances under which the statement was made;

(3) for willful or repeated violation of, or willful or repeated failure to observe, any provision of this chapter;

(4) for willful or repeated violation of, or willful or repeated failure to observe, any rule or regulation of the Administration authorized by this chapter; or

(5) for violation of, or failure to observe, any cease and desist order issued by the Administration under this section.

(b) Grounds for cease and desist order

Where a licensee or any other person has not complied with any provision of this chapter, or of any regulation issued pursuant thereto by the Administration, or is engaging or is about to engage in any acts or practices which constitute or will constitute a violation of such chapter or regulation, the Administration may order such licensee or other person to cease and desist from such action or failure to act. The Administration may further order such licensee or other person to take such action or to refrain from such action as the Administration deems necessary to insure compliance with this chapter and the regulations. The Administration may also suspend the license of a licensee, against whom an order has been issued, until such licensee complies with such order.

(c) Order to show cause; contents; hearing; issuance and service

Before revoking or suspending a license pursuant to subsection (a) of this section, or issuing a cease and desist order pursuant to subsection (b) of this section, the Administration shall serve upon the licensee and any other person involved an order to show cause why an order revoking or suspending the license or a cease and desist order should not be issued. Any such order to show cause shall contain a statement of the matters of fact and law asserted by the Administration and the legal authority and jurisdiction under which a hearing is to be held, and shall set forth that a hearing will be held before the Administration at a time and place stated in the order. If after hearing, or a waiver thereof, the Administration determines on the record that an order revoking or suspending the license or a cease and desist order should issue, it shall promptly issue such order, which shall include a statement of the findings of the Administration and the grounds and reasons therefor and specify the effective date of the order, and shall cause the order to be served on the licensee and any other person involved.

(d) Subpena of person, and books, papers and documents; fees and mileage; enforcement

The Administration may require by subpena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to the hearing from any place in the United States. Witnesses summoned before the Administration shall be paid by the party at whose instance they were called the same fees and mileage that are paid witnesses in the courts of the United States. In case of disobedience to a subpena, the Administration, or any party to a proceeding before the Administration, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents.

(e) Petition to modify or set aside order; filing, time and place, Administration to submit record; action of court; review

An order issued by the Administration under this section shall be final and conclusive unless within thirty days after the service thereof the licensee, or other person against whom an order is issued, appeals to the United States court of appeals for the circuit in which such licensee has its principal place of business by filing with the clerk of such court a petition praying that the Administration's order be set aside or modified in the manner stated in the petition. After the expiration of such thirty days, a petition may be filed only by leave of court on a showing of reasonable grounds for failure to file the petition theretofore. The clerk of the court shall immediately cause a copy of the petition to be delivered to the Administration, and the Administration shall thereupon certify and file in the court a transcript of the record upon which the order complained of was entered. If before such record is filed the Administration amends or sets

aside its order, in whole or in part, the petitioner may amend the petition within such time as the court may determine, on notice to the Administration. The filing of a petition for review shall not of itself stay or suspend the operation of the order of the Administration, but the court of appeals in its discretion may restrain or suspend, in whole or in part, the operation of the order pending the final hearing and determination of the petition. The court may affirm, modify, or set aside the order of the Administration. If the court determines that the just and proper disposition of the case requires the taking of additional evidence, the court shall order the Administration to reopen the hearing for the taking of such evidence, in such manner and upon such terms and conditions as the court may deem proper. The Administration may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file its modified or new findings and the amendments, if any, of its order, with the record of such additional evidence. No objection to an order of the Administration shall be considered by the court unless such objection was urged before the Administration or, if it was not so urged, unless there were reasonable grounds for failure to do so. The judgment and decree of the court affirming, modifying, or setting aside any such order of the Administration shall be subject only to review by the Supreme Court of the United States upon certification or certiorari as provided in section 1254 of title 28.

(f) Enforcement of order

If any licensee or other person against which or against whom an order is issued under this section fails to obey the order, the Administration may apply to the United States court of appeals, within the circuit where the licensee has its principal place of business, for the enforcement of the order, and shall file a transcript of the record upon which the order complained of was entered. Upon the filing of the application the court shall cause notice thereof to be served on the licensee or other person. The evidence to be considered, the procedure to be followed, and the jurisdiction of the court shall be the same as is provided in subsection (e) of this section for applications to set aside or modify orders.

(Pub. L. 85–699, title III, §309, as added Pub. L. 87–341, §9, Oct. 3, 1961, 75 Stat. 753; amended Pub. L. 89–779, §4, Nov. 6, 1966, 80 Stat. 1359; Pub. L. 98–620, title IV, §402(15)(A), (B), Nov. 8, 1984, 98 Stat. 3358.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsecs. (a)(3), (4) and (b), see References in Text note set out under section 661 of this title.

AMENDMENTS

1984—Subsec. (e). Pub. L. 98–620, §402(15)(A), struck out provision that the proceedings in such cases in the court of appeals had to be made a preferred cause and had to be expedited in every way.

Subsec. (f). Pub. L. 98–620, §402(15)(B), struck out provision that the proceedings in such cases had to be made a preferred cause and expedited in every way.

1966—Subsec. (a). Pub. L. 89–779, §4(b), inserted reference to revocation in introductory text preceding par. (1), and, in pars. (1) and (2), deleted restriction which limited the grounds for suspension or revocation for false or misleading statements to the situation in which such statements were made for the purpose of obtaining a license.

Subsec. (b). Pub. L. 89–779, §4(c), expanded the Administration's authority to issue cease and desist orders by authorizing their issuance against individuals who have not complied with provisions of this chapter and against both licensees and individuals who have violated or are about to violate this chapter or regulations issued pursuant thereto.

Subsec. (c). Pub. L. 89–779, §4(d), inserted references to persons involved other than the licensee and to the revocation of licenses so as to conform the subsec. to the expansion of the Administration's authority to revoke licenses and to issue cease and desist orders to persons other than licensees under subsecs. (a) and (b).

Subsec. (e). Pub. L. 89–779, §4(e), authorized the appeal from an order issued by the Administration under this section by other persons, besides the licensee, against whom an order is issued.

Subsec. (f). Pub. L. 89–779, §4(f), provided that individuals as well as licensees are to be affected by subsec. (f).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L.

98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§687b. Investigations and examinations; power to subpena and take oaths and affirmations; aid of courts; examiners; reports

(a) Investigation of violations

The Administration may make such investigations as it deems necessary to determine whether a licensee or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter, or of any rule or regulation under this chapter, or of any order issued under this chapter. The Administration shall permit any person to file with it a statement in writing, under oath or otherwise as the Administration shall determine, as to all the facts and circumstances concerning the matter to be investigated. For the purpose of any investigation, the Administration is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, and documents which are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States. In case of contumacy by, or refusal to obey a subpena issued to, any person, including a licensee, the Administration may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, and documents; and such court may issue an order requiring such person to appear before the Administration, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found.

(b) Examinations and reports

Each small business investment company shall be subject to examinations made by direction of the Investment Division of the Administration, which may be conducted with the assistance of a private sector entity that has both the qualifications to conduct and expertise in conducting such examinations, and the cost of such examinations, including the compensation of the examiners, may in the discretion of the Administration be assessed against the company examined and when so assessed shall be paid by such company. Fees collected under this subsection shall be deposited in the account for salaries and expenses of the Administration, and are authorized to be appropriated solely to cover the costs of examinations and other program oversight activities. Every such company shall make such reports to the Administration at such times and in such form as the Administration may require; except that the Administration is authorized to exempt from making such reports any such company which is registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.] to the extent necessary to avoid duplication in reporting requirements.

(c) Examinations of small business investment companies

Each small business investment company shall be examined at least every two years in such detail so as to determine whether or not—

(1) it has engaged solely in lawful activities and those contemplated by this subchapter;

(2) it has engaged in prohibited conflicts of interest;

(3) it has acquired or exercised illegal control of an assisted small business;

(4) it has made investments in small businesses for not less than 1 year;

(5) it has invested more than 20 per centum of its capital in any individual small business, if such restriction is applicable;

(6) it has engaged in relending, foreign investments, or passive investments; or

(7) it has charged an interest rate in excess of the maximum permitted by law:

Provided, That the Administration may waive the examination (A) for up to one additional year if,

in its discretion, it determines such a delay would be appropriate, based upon the amount of debentures being issued by the company and its repayment record, the prior operating experience of the company, the contents and results of the last examination and the management expertise of the company, or (B) if it is a company whose operations have been suspended while the company is involved in litigation or is in receivership.

(d) Valuations

(1) Frequency of valuations

(A) In general

Each licensee shall submit to the Administrator a written valuation of the loans and investments of the licensee not less often than semiannually or otherwise upon the request of the Administrator, except that any licensee with no leverage outstanding shall submit such valuations annually, unless the Administrator determines otherwise.

(B) Material adverse changes

Not later than 30 days after the end of a fiscal quarter of a licensee during which a material adverse change in the aggregate valuation of the loans and investments or operations of the licensee occurs, the licensee shall notify the Administrator in writing of the nature and extent of that change.

(C) Independent certification

(i) In general

Not less than once during each fiscal year, each licensee shall submit to the Administrator the financial statements of the licensee, audited by an independent certified public accountant approved by the Administrator.

(ii) Audit requirements

Each audit conducted under clause (i) shall include—

(I) a review of the procedures and documentation used by the licensee in preparing the valuations required by this section; and

(II) a statement by the independent certified public accountant that such valuations were prepared in conformity with the valuation criteria applicable to the licensee established in accordance with paragraph (2).

(2) Valuation criteria

Each valuation submitted under this subsection shall be prepared by the licensee in accordance with valuation criteria, which shall—

(A) be established or approved by the Administrator; and

(B) include appropriate safeguards to ensure that the noncash assets of a licensee are not overvalued.

(Pub. L. 85–699, title III, §310, as added Pub. L. 87–341, §9, Oct. 3, 1961, 75 Stat. 755; amended Pub. L. 89–779, §5, Nov. 6, 1966, 80 Stat. 1360; Pub. L. 90–104, title II, §208, Oct. 11, 1967, 81 Stat. 271; Pub. L. 100–590, title I, §104, Nov. 3, 1988, 102 Stat. 2992; Pub. L. 102–366, title IV, §§406(b), 407(a), 408(b), Sept. 4, 1992, 106 Stat. 1016; Pub. L. 104–208, div. D, title II, §208(f), (h)(1)(C), Sept. 30, 1996, 110 Stat. 3009–745, 3009–747; Pub. L. 105–135, title II, §216, Dec. 2, 1997, 111 Stat. 2603; Pub. L. 106–554, §1(a)(9) [title IV, §406], Dec. 21, 2000, 114 Stat. 2763, 2763A–691.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (a), see References in Text note set out under section 661 of this title.

The Investment Company Act of 1940, referred to in subsec. (b), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a–51 of this title and Tables.

AMENDMENTS

2000—Subsec. (c)(4). Pub. L. 106–554 substituted "1 year" for "five years".

1997—Subsec. (b). Pub. L. 105–135 inserted after first sentence "Fees collected under this subsection shall be deposited in the account for salaries and expenses of the Administration, and are authorized to be appropriated solely to cover the costs of examinations and other program oversight activities."

1996—Subsec. (b). Pub. L. 104–208, §208(f)(1), inserted "which may be conducted with the assistance of a private sector entity that has both the qualifications to conduct and expertise in conducting such examinations," after "Investment Division of the Administration," in first sentence.

Subsec. (c)(4). Pub. L. 104–208, §208(h)(1)(C), struck out "not less than four years in the case of section 301(d) licensees and in all other cases," after "small businesses for".

Subsec. (d). Pub. L. 104–208, §208(f)(2), inserted heading and amended text of subsec. (d) generally. Prior to amendment, text read as follows: "Each small business investment company shall adopt written guidelines for determination of the value of investments made by such company. The board of directors of corporations and the general partners of partnerships shall have the sole responsibility for making a good faith determination of the fair market value of the investments made by such company. Determinations shall be made and reported to the Administration not less than semiannually or at more frequent intervals as the Administration determines appropriate: *Provided*, That any company which does not have outstanding financial assistance under the provisions of this subchapter shall be required to make such determinations and reports to the Administration annually, unless the Administration, in its discretion, determines otherwise."

1992—Subsec. (b). Pub. L. 102–366, §407(a), substituted "Investment Division of" for "Administration by examiners selected or approved by".

Subsec. (c)(5). Pub. L. 102–366, §408(b), inserted before semicolon at end ", if such restriction is applicable".

Subsec. (d). Pub. L. 102–366, §406(b), added subsec. (d).

1988—Subsec. (b). Pub. L. 100–590 struck out second sentence, which read as follows: "Each such company shall be examined at least once each year, except that the Administrator may waive examination in the case of a company whose operations have been suspended by reason of the fact that the company is involved in litigation or is in receivership."

Subsec. (c). Pub. L. 100–590 added subsec. (c).

1967—Subsec. (b). Pub. L. 90–104 required at least annual examination of small business investment companies but provided for waiver of examination of a company whose operations have been suspended because the company is involved in litigation or is in receivership.

1966—Pub. L. 89–779 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–104 effective 90 days after Oct. 11, 1967, see section 211 of Pub. L. 90–104, set out as a note under section 681 of this title.

EFFECT OF SMALL BUSINESS EQUITY ENHANCEMENT ACT OF 1992 ON SECURITIES LAWS

Nothing in amendment by Pub. L. 102–366 to be construed to affect applicability of securities laws or to otherwise supersede or limit jurisdiction of Securities and Exchange Commission, see section 418 of Pub. L. 102–366, set out as a note under section 661 of this title.

TRANSFER OF RESOURCES

Pub. L. 102–366, title IV, §407(b), Sept. 4, 1992, 106 Stat. 1016, provided that: "Effective October 1, 1992, the personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, and other funds employed, held, used, arising from, available or to be made available, which are related to the examination function provided by section 310 of the Small Business Investment Act of 1958 [15 U.S.C. 687b] shall be transferred by the Inspector General of the Small Business Administration to the Investment Division of the Small Business Administration."

§687c. Injunctions and other orders

(a) Grounds; jurisdiction of court

Whenever, in the judgment of the Administration, a licensee or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter, or of any rule or regulation under this chapter, or of any order issued under this chapter, the Administration may make application to the proper district court of the United States or a United States court of any place subject to the jurisdiction of the United States for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, rule, regulation, or order, and such courts shall have jurisdiction of such actions and, upon a showing by the Administration that such licensee or other person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order, shall be granted without bond.

(b) Equity jurisdiction of licensee and assets thereof

In any such proceeding the court as a court of equity may, to such extent as it deems necessary, take exclusive jurisdiction of the licensee or licensees and the assets thereof, wherever located; and the court shall have jurisdiction in any such proceeding to appoint a trustee or receiver to hold or administer under the direction of the court the assets so possessed.

(c) Trusteeship or receivership over licensee

The Administration shall have authority to act as trustee or receiver of the licensee. Upon request by the Administration, the court may appoint the Administration to act in such capacity unless the court deems such appointment inequitable or otherwise inappropriate by reason of the special circumstances involved.

(Pub. L. 85–699, title III, §311, as added Pub. L. 87–341, §9, Oct. 3, 1961, 75 Stat. 755; amended Pub. L. 89–779, §6, Nov. 6, 1966, 80 Stat. 1360; Pub. L. 98–620, title IV, §402(15)(C), Nov. 8, 1984, 98 Stat. 3358.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (a), see References in Text note set out under section 661 of this title.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–620 struck out provision that the proceedings in such a case had to be made a preferred cause and had to be expedited in every way.

1966—Subsec. (c). Pub. L. 89–779 added subsec. (c).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§687d. Conflicts of interest

For the purpose of controlling conflicts of interest which may be detrimental to small business concerns, to small business investment companies, to the shareholders, partners, or members of either, or to the purposes of this chapter, the Administration shall adopt regulations to govern transactions with any officer, director, shareholder, partner, or member of any small business investment company, or with any person or concern, in which any interest, direct or indirect, financial or otherwise, is held by any officer, director, shareholder, partner, or member of (1) any small business investment company, or (2) any person or concern with an interest, direct or indirect, financial or otherwise, in any small business investment company. Such regulations shall include appropriate requirements for public disclosure necessary to the purposes of this section.

(Pub. L. 85–699, title III, §312, as added Pub. L. 88–273, §6(a), Feb. 28, 1964, 78 Stat. 147; amended Pub. L. 94–305, title I, §106(f), June 4, 1976, 90 Stat. 666; Pub. L. 104–208, div. D, title II, §208(h)(1)(D), Sept. 30, 1996, 110 Stat. 3009–747; Pub. L. 107–100, §3, Dec. 21, 2001, 115 Stat.

966.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in text, see References in Text note set out under section 661 of this title.

AMENDMENTS

2001—Pub. L. 107–100 struck out "(including disclosure in the locality most directly affected by the transaction)" after "public disclosure".

1996—Pub. L. 104–208, §208(h)(1)(D), substituted "shareholders, partners, or members" for "shareholders or partners" and substituted "shareholder, partner, or member" for "shareholder, or partner" in two places.

1976—Pub. L. 94–305, §106(f)(2), which directed the substitution of "shareholder, or partner" for "or shareholders" wherever appearing, was executed by making the substitution for "or shareholder" in two places to reflect the probable intent of Congress.

Pub. L. 94–305, §106(f)(1), inserted "or partners" after "to the shareholders".

§687e. Removal or suspension of management officials

(a) Definition of "management official"

In this section, the term "management official" means an officer, director, general partner, manager, employee, agent, or other participant in the management or conduct of the affairs of a licensee.

(b) Removal of management officials

(1) Notice of removal

The Administrator may serve upon any management official a written notice of its intention to remove that management official whenever, in the opinion of the Administrator—

(A) such management official—

(i) has willfully and knowingly committed any substantial violation of—

(I) this chapter;

(II) any regulation issued under this chapter; or

(III) a cease-and-desist order which has become final; or

(ii) has willfully and knowingly committed or engaged in any act, omission, or practice which constitutes a substantial breach of a fiduciary duty of that person as a management official; and

(B) the violation or breach of fiduciary duty is one involving personal dishonesty on the part of such management official.

(2) Contents of notice

A notice of intention to remove a management official, as provided in paragraph (1), shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon.

(3) Hearings

(A) Timing

A hearing described in paragraph (2) shall be fixed for a date not earlier than 30 days nor later than 60 days after the date of service of notice of the hearing, unless an earlier or a later date is set by the Administrator at the request of—

(i) the management official, and for good cause shown; or

(ii) the Attorney General of the United States.

(B) Consent

Unless the management official shall appear at a hearing described in this paragraph in

person or by a duly authorized representative, that management official shall be deemed to have consented to the issuance of an order of removal under paragraph (1).

(4) Issuance of order of removal

(A) In general

In the event of consent under paragraph (3)(B), or if upon the record made at a hearing described in this subsection, the Administrator finds that any of the grounds specified in the notice of removal has been established, the Administrator may issue such orders of removal from office as the Administrator deems appropriate.

(B) Effectiveness

An order under subparagraph (A) shall—

(i) become effective at the expiration of 30 days after the date of service upon the subject licensee and the management official concerned (except in the case of an order issued upon consent as described in paragraph (3)(B), which shall become effective at the time specified in such order); and

(ii) remain effective and enforceable, except to such extent as it is stayed, modified, terminated, or set aside by action of the Administrator or a reviewing court in accordance with this section.

(c) Authority to suspend or prohibit participation

(1) In general

The Administrator may, if the Administrator deems it necessary for the protection of the licensee or the interests of the Administration, suspend from office or prohibit from further participation in any manner in the management or conduct of the affairs of the licensee, or both, any management official referred to in subsection (b)(1) of this section, by written notice to such effect served upon the management official.

(2) Effectiveness

A suspension or prohibition under paragraph (1)—

(A) shall become effective upon service of notice under paragraph (1); and

(B) unless stayed by a court in proceedings authorized by paragraph (3), shall remain in effect—

(i) pending the completion of the administrative proceedings pursuant to a notice of intention to remove served under subsection (b) of this section; and

(ii) until such time as the Administrator shall dismiss the charges specified in the notice, or, if an order of removal or prohibition is issued against the management official, until the effective date of any such order.

(3) Judicial review

Not later than 10 days after any management official has been suspended from office or prohibited from participation in the management or conduct of the affairs of a licensee, or both, under paragraph (1), that management official may apply to the United States district court for the judicial district in which the home office of the licensee is located, or the United States District Court for the District of Columbia, for a stay of the suspension or prohibition pending the completion of the administrative proceedings pursuant to a notice of intent to remove served upon the management official under subsection (b) of this section, and such court shall have jurisdiction to stay such action.

(d) Authority to suspend on criminal charges

(1) In general

Whenever a management official is charged in any information, indictment, or complaint authorized by a United States attorney, with the commission of or participation in a felony involving dishonesty or breach of trust, the Administrator may, by written notice served upon that

management official, suspend that management official from office or prohibit that management official from further participation in any manner in the management or conduct of the affairs of the licensee, or both.

(2) Effectiveness

A suspension or prohibition under paragraph (1) shall remain in effect until the subject information, indictment, or complaint is finally disposed of, or until terminated by the Administrator.

(3) Authority upon conviction

If a judgment of conviction with respect to an offense described in paragraph (1) is entered against a management official, then at such time as the judgment is not subject to further appellate review, the Administrator may issue and serve upon the management official an order removing that management official, which removal shall become effective upon service of a copy of the order upon the licensee.

(4) Authority upon dismissal or other disposition

A finding of not guilty or other disposition of charges described in paragraph (1) shall not preclude the Administrator from thereafter instituting proceedings to suspend or remove the management official from office, or to prohibit the management official from participation in the management or conduct of the affairs of the licensee, or both, pursuant to subsection (b) or (c) of this section.

(e) Notification to licensees

Copies of each notice required to be served on a management official under this section shall also be served upon the interested licensee.

(f) Procedural provisions; judicial review

(1) Hearing venue

Any hearing provided for in this section shall be—

(A) held in the Federal judicial district or in the territory in which the principal office of the licensee is located, unless the party afforded the hearing consents to another place; and

(B) conducted in accordance with the provisions of chapter 5 of title 5.

(2) Issuance of orders

After a hearing provided for in this section, and not later than 90 days after the Administrator has notified the parties that the case has been submitted for final decision, the Administrator shall render a decision in the matter (which shall include findings of fact upon which its decision is predicated), and shall issue and cause to be served upon each party to the proceeding an order or orders consistent with the provisions of this section.

(3) Authority to modify orders

The Administrator may modify, terminate, or set aside any order issued under this section—

(A) at any time, upon such notice, and in such manner as the Administrator deems proper, unless a petition for review is timely filed in a court of appeals of the United States, as provided in paragraph (4)(B), and thereafter until the record in the proceeding has been filed in accordance with paragraph (4)(C); and

(B) upon such filing of the record, with permission of the court.

(4) Judicial review

(A) In general

Judicial review of an order issued under this section shall be exclusively as provided in this subsection.

(B) Petition for review

Any party to a hearing provided for in this section may obtain a review of any order issued

pursuant to paragraph (2) (other than an order issued with the consent of the management official concerned, or an order issued under subsection (d) of this section), by filing in the court of appeals of the United States for the circuit in which the principal office of the licensee is located, or in the United States Court of Appeals for the District of Columbia Circuit, not later than 30 days after the date of service of such order, a written petition praying that the order of the Administrator be modified, terminated, or set aside.

(C) Notification to administration

A copy of a petition filed under subparagraph (B) shall be forthwith transmitted by the clerk of the court to the Administrator, and thereupon the Administrator shall file in the court the record in the proceeding, as provided in section 2112 of title 28.

(D) Court jurisdiction

Upon the filing of a petition under subparagraph (A)—

(i) the court shall have jurisdiction, which, upon the filing of the record under subparagraph (C), shall be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Administrator, except as provided in the last sentence of paragraph (3)(B);

(ii) review of such proceedings shall be had as provided in chapter 7 of title 5; and

(iii) the judgment and decree of the court shall be final, except that the judgment and decree shall be subject to review by the Supreme Court of the United States upon certiorari, as provided in section 1254 of title 28.

(E) Judicial review not a stay

The commencement of proceedings for judicial review under this paragraph shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Administrator under this section.

(Pub. L. 85–699, title III, §313, as added Pub. L. 89–779, §7, Nov. 6, 1966, 80 Stat. 1360; amended Pub. L. 107–100, §5, Dec. 21, 2001, 115 Stat. 967.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (b)(1)(A)(i)(I), (II), see References in Text note set out under section 661 of this title.

AMENDMENTS

2001—Pub. L. 107–100 amended section catchline and text generally. Prior to amendment, text related to removal and suspension of directors and officers of licensees, with regard to written notice of intention to remove and grounds for removal; suspension pending completion of administrative proceedings; a hearing upon notice of intention to remove a director or officer and issuance of an order of removal; a stay of suspension and/or prohibition by a United States district court; suspension of directors and officers charged with felonies involving dishonesty or breach of trust; and procedural aspects of hearings provided for in this section.

§687f. Unlawful acts and omissions by officers, directors, employees, or agents

(a) Violation by licensee deemed violation by persons participating

Wherever a licensee violates any provision of this chapter or regulation issued thereunder by reason of its failure to comply with the terms thereof or by reason of its engaging in any act or practice which constitutes or will constitute a violation thereof, such violation shall be deemed to be also a violation and an unlawful act on the part of any person who, directly or indirectly, authorizes, orders, participates in, or causes, brings about, counsels, aids, or abets in the commission of any acts, practices, or transactions which constitute or will constitute, in whole or in part, such violation.

(b) Breach of fiduciary duty

It shall be unlawful for any officer, director, employee, agent, or other participant in the

management or conduct of the affairs of a licensee to engage in any act or practice, or to omit any act, in breach of his fiduciary duty as such officer, director, employee, agent, or participant, if, as a result thereof, the licensee has suffered or is in imminent danger of suffering financial loss or other damage.

(c) Disqualification of officers and employees for dishonesty, fraud, or breach of trust

Except with the written consent of the Administration, it shall be unlawful—

(1) for any person hereafter to take office as an officer, director, or employee of a licensee, or to become an agent or participant in the conduct of the affairs or management of a licensee, if—

(A) he has been convicted of a felony, or any other criminal offense involving dishonesty or breach of trust, or

(B) he has been found civilly liable in damages, or has been permanently or temporarily enjoined by an order, judgment, or decree of a court of competent jurisdiction, by reason of any act or practice involving fraud or breach of trust; or

(2) for any person to continue to serve in any of the above-described capacities, if—

(A) he is hereafter convicted of a felony, or any other criminal offense involving dishonesty or breach of trust, or

(B) he is hereafter found civilly liable in damages, or is permanently or temporarily enjoined by an order, judgment, or decree of a court of competent jurisdiction, by reason of any act or practice involving fraud or breach of trust.

(Pub. L. 85–699, title III, §314, as added Pub. L. 89–779, §7, Nov. 6, 1966, 80 Stat. 1363.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (a), see References in Text note set out under section 661 of this title.

§687g. Penalties and forfeitures

(a) Report violations

Except as provided in subsection (b) of this section, a licensee which violates any regulation or written directive issued by the Administrator, requiring the filing of any regular or special report pursuant to section 687b(b) of this title, shall forfeit and pay to the United States a civil penalty of not more than $100 for each and every day of the continuance of the licensee's failure to file such report, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The civil penalties provided for in this section shall accrue to the United States and may be recovered in a civil action brought by the Administration.

(b) Exemption from reporting requirements

The Administration may by rules and regulations, or upon application of an interested party, at any time previous to such failure, by order, after notice and opportunity for hearing, exempt in whole or in part, any small business investment company from the provisions of subsection (a) of this section, upon such terms and conditions and for such period of time as it deems necessary and appropriate, if the Administration finds that such action is not inconsistent with the public interest or the protection of the Administration. The Administration may for the purposes of this section make any alternative requirements appropriate to the situation.

(Pub. L. 85–699, title III, §315, as added Pub. L. 89–779, §7, Nov. 6, 1966, 80 Stat. 1364.)

§687h. Jurisdiction and service of process

Any suit or action brought under section 687, 687a, 687c, 687e, or 687g of this title by the Administration at law or in equity to enforce any liability or duty created by, or to enjoin any violation of, this chapter, or any rule, regulation, or order promulgated thereunder, shall be brought

in the district wherein the licensee maintains its principal office, and process in such cases may be served in any district in which the defendant maintains its principal office or transacts business, or wherever the defendant may be found.

(Pub. L. 85–699, title III, §316, as added Pub. L. 89–779, §7, Nov. 6, 1966, 80 Stat. 1364.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in text, see References in Text note set out under section 661 of this title.

§§687i, 687j. Repealed. Pub. L. 104–208, div. D, title II, §208(h)(1)(E), Sept. 30, 1996, 110 Stat. 3009–747

Section 687i, Pub. L. 85–699, title III, §317, as added Pub. L. 92–595, §2(g), Oct. 27, 1972, 86 Stat. 1316; amended Pub. L. 95–507, title I, §103, Oct. 24, 1978, 92 Stat. 1758, established effective rate of interest of debentures purchased by Administration from small business investment company under authority of section 683(c) of this title.

Section 687j, Pub. L. 85–699, title III, §318, as added Pub. L. 92–595, §2(g), Oct. 27, 1972, 86 Stat. 1316, authorized Administration to extend benefits of sections 683(c) and 687i of this title to any small business investment company operating under authority of section 681(d) of this title, and which was owned, in whole or in part, by one or more small business investment companies, in accordance with regulations promulgated by Administration.

§687k. Guaranteed obligations not eligible for purchase by Federal Financing Bank

Nothing in any provision of law shall be construed to authorize the Federal Financing Bank to acquire after September 30, 1985—

(1) any obligation the payment of principal or interest on which has at any time been guaranteed in whole or in part under this subchapter,

(2) any obligation which is an interest in any obligation described in paragraph (1), or

(3) any obligation which is secured by, or substantially all of the value of which is attributable to, any obligation described in paragraph (1) or (2).

(Pub. L. 85–699, title III, §318, formerly §320, as added Pub. L. 99–272, title XVIII, §18004(a), Apr. 7, 1986, 100 Stat. 364; renumbered §318, Pub. L. 104–208, div. D, title II, §208(h)(1)(E), Sept. 30, 1996, 110 Stat. 3009–747.)

PRIOR PROVISIONS

A prior section 318 of Pub. L. 85–699 was classified to section 687j of this title, prior to repeal by Pub. L. 104–208.

§687*l*. Issuance and guarantee of trust certificates

(a) Issuance; debentures or participating securities composing trust or pool

The Administration is authorized to issue trust certificates representing ownership of all or a fractional part of debentures issued by small business investment companies and guaranteed by the Administration under this chapter, or participating securities which are issued by such companies and purchased and guaranteed pursuant to section 683(g) of this title: *Provided*, That such trust certificates shall be based on and backed by a trust or pool approved by the Administration and composed solely of guaranteed debentures or guaranteed participating securities.

(b) Terms and conditions of guarantee; payment of principal and interest

The Administration is authorized, upon such terms and conditions as are deemed appropriate, to

guarantee the timely payment of the principal of and interest on trust certificates issued by the Administration or its agent for purposes of this section. Such guarantee shall be limited to the extent of principal and interest on the guaranteed debentures or the redemption price of and priority payments on the participating securities, which compose the trust or pool. In the event that a debenture in such trust or pool is prepaid, or participating securities are redeemed, either voluntarily or involuntarily, or in the event of default of a debenture or voluntary or involuntary redemption of a participating security, the guarantee of timely payment of principal and interest on the trust certificates shall be reduced in proportion to the amount of principal and interest such prepaid debenture or redeemed participating security and priority payments represent in the trust or pool. Interest on prepaid or defaulted debentures, or priority payments on participating securities, shall accrue and be guaranteed by the Administration only through the date of payment on the guarantee. During the term of the trust certificate, it may be called for redemption due to prepayment or default of all debentures or redemption, whether voluntary or involuntary, of all participating securities residing in the pool.

(c) Full faith and credit of United States

The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee of such trust certificates issued by the Administration or its agent pursuant to this section.

(d) Collection of fees

The Administration shall not collect a fee for any guarantee under this section: *Provided,* That nothing herein shall preclude any agent of the Administration from collecting a fee approved by the Administration for the functions described in subsection (f)(2) of this section.

(e) Subrogation rights; ownership rights in debentures or participating securities

(1) In the event the Administration pays a claim under a guarantee issued under this section, it shall be subrogated fully to the rights satisfied by such payment.

(2) No State or local law, and no Federal law, shall preclude or limit the exercise by the Administration of its ownership rights in the debentures or participating securities residing in a trust or pool against which trust certificates are issued.

(f) Central registration requirements; regulation of brokers and dealers

(1) The Administration shall provide for a central registration of all trust certificates sold pursuant to this section.

(2) The Administrator shall contract with an agent or agents to carry out on behalf of the Administration the pooling and the central registration functions of this section including, notwithstanding any other provision of law, maintenance on behalf of and under the direction of the Administration, such commercial bank accounts or investments in obligations of the United States as may be necessary to facilitate trusts or pools backed by debentures or participating securities guaranteed under this chapter, and the issuance of trust certificates to facilitate such poolings. Such agent or agents shall provide a fidelity bond or insurance in such amounts as the Administration determines to be necessary to fully protect the interests of the Government.

(3) Prior to any sale, the Administrator shall require the seller to disclose to a purchaser of a trust certificate issued pursuant to this section, information on the terms, conditions, and yield of such instrument.

(4) The Administrator is authorized to regulate brokers and dealers in trust certificates sold pursuant to this section.

(5) Nothing in this subsection shall prohibit the use of a book-entry or other electronic form of registration for trust certificates.

(Pub. L. 85–699, title III, §319, formerly §321, as added Pub. L. 99–272, title XVIII, §18005(a), Apr. 7, 1986, 100 Stat. 364; amended Pub. L. 101–162, title V, (5), Nov. 21, 1989, 103 Stat. 1028; Pub. L. 102–366, title IV, §404, Sept. 4, 1992, 106 Stat. 1013; renumbered §319 and amended Pub. L. 104–208, div. D, title II, §§205(b), 208(h)(1)(E), (F), Sept. 30, 1996, 110 Stat. 3009–738, 3009–747.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsecs. (a) and (f)(2), see References in Text note set out under section 661 of this title.

PRIOR PROVISIONS

A prior section 319 of Pub. L. 85–699, which amended section 80a–18 of this title, was renumbered section 317.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–208, §208(h)(1)(F)(i), struck out ", including companies operating under the authority of section 681(d) of this title," after "investment companies".

Subsec. (f)(1). Pub. L. 104–208, §205(b)(1), struck out at end "Such central registration shall include with respect to each sale—

"(A) identification of each small business investment company;

"(B) the interest rate or prioritized payment rate paid by the small business investment company;

"(C) commissions, fees, or discounts paid to brokers and dealers in trust certificates;

"(D) identification of each purchaser of the trust certificate;

"(E) the price paid by the purchaser for the trust certificate;

"(F) the interest rate on the trust certificate;

"(G) the fee of any agent for carrying out the functions described in paragraph (2); and

"(H) such other information as the Administration deems appropriate."

Subsec. (f)(2). Pub. L. 104–208, §208(h)(1)(F)(ii), inserted "or investments in obligations of the United States" after "accounts".

Subsec. (f)(5). Pub. L. 104–208, §205(b)(2), added par. (5).

1992—Pub. L. 102–366 amended section generally, in subsec. (a) authorizing issuance of trust certificates representing ownership of participating securities, in subsec. (b) inserting provisions authorizing Administration to guarantee payment of redemption price of and priority payments on participating securities, in subsec. (e)(2) including participating securities within prohibition against preclusion or limitation of Administration's ownership rights, and in subsec. (f) in par. (1) substituting provisions relating to small business investment company for provisions relating to development company and requiring prioritized payment rate to be included in central registration requirements, and in par. (2) inserting provisions relating to participating securities, contracts to carry out pooling, and maintenance of commercial bank accounts.

1989—Subsec. (a). Pub. L. 101–162 inserted ", including companies operating under the authority of section 681(d) of this title," after "investment companies".

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 205 of Pub. L. 104–208 effective Oct. 1, 1996, see section 3 of Pub. L. 104–208, set out as a note under section 633 of this title.

Amendment by section 208 of Pub. L. 104–208 effective Sept. 30, 1996, see section 208(j) of Pub. L. 104–208, set out as a note under section 634 of this title.

REGULATIONS

Pub. L. 99–272, title XVIII, §18005(b), Apr. 7, 1986, 100 Stat. 365, provided that:

"(1) Notwithstanding any law, rule, or regulation, within 60 days after the date of the enactment of this Act [Apr. 7, 1986], the Small Business Administration shall develop and promulgate final rules and regulations to implement the central registration provisions provided for in section 321(f)(1) of the Small Business Investment Act [15 U.S.C. 687l(f)(1)], and shall contract with an agent for an initial period of not to exceed two years to carry out the functions provided for in sections 321(f)(2) and 321(f)(3) of such Act.

"(2) Notwithstanding any law, rule, or regulation, within 60 days after the date of the enactment of this Act [Apr. 7, 1986], the Small Business Administration also shall consult with representatives of appropriate Federal and State agencies and officials, the securities industry, financial institutions and lenders, and small business persons, and shall develop and promulgate final rules and regulations to implement sections 504 and 505 [section 321; 15 U.S.C. 687l] of the Small Business Investment Act."

EFFECT OF SMALL BUSINESS EQUITY ENHANCEMENT ACT OF 1992 ON SECURITIES LAWS

Nothing in amendment by Pub. L. 102–366 to be construed to affect applicability of securities laws or to otherwise supersede or limit jurisdiction of Securities and Exchange Commission, see section 418 of Pub. L.

102–366, set out as a note under section 661 of this title.

§687m. Periodic issuance of guarantees and trust certificates

The Administration shall issue guarantees under section 683 of this title and trust certificates under section 687l of this title at periodic intervals of not less than every 12 months and shall do so at such shorter intervals as its [1] deems appropriate, taking into consideration the amount and number of such guarantees or trust certificates.

(Pub. L. 85–699, title III, §320, formerly §322, as added Pub. L. 100–590, title I, §106(a), Nov. 3, 1988, 102 Stat. 2993; renumbered §320 and amended Pub. L. 104–208, div. D, title II, §208(h)(1)(E), (G), Sept. 30, 1996, 110 Stat. 3009–747; Pub. L. 105–135, title II, §215(e), Dec. 2, 1997, 111 Stat. 2603; Pub. L. 106–9, §2(d)(2), Apr. 5, 1999, 113 Stat. 18.)

PRIOR PROVISIONS

A prior section 320 of Pub. L. 85–699 was renumbered section 318 and is classified to section 687k of this title.

AMENDMENTS

1999—Pub. L. 106–9 substituted "12 months" for "6 months".

1997—Pub. L. 105–135 substituted "6 months" for "three months".

1996—Pub. L. 104–208 made technical amendment to reference in original act which appears in text as reference to section 687l of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

[1] So in original. Probably should be "it".

§688. Repealed. Pub. L. 87–341, §11(e), Oct. 3, 1961, 75 Stat. 756

Section, Pub. L. 85–699, title III, §309, Aug. 21, 1958, 72 Stat. 696, related to approval of State chartered investment companies. See subsec. (a) of section 681 of this title.

PART B—NEW MARKETS VENTURE CAPITAL PROGRAM

§689. Definitions

In this part, the following definitions apply:

(1) Developmental venture capital

The term "developmental venture capital" means capital in the form of equity capital investments in businesses made with a primary objective of fostering economic development in low-income geographic areas. For the purposes of this paragraph, the term "equity capital" has the same meaning given such term in section 683(g)(4) of this title.

(2) Low-income individual

The term "low-income individual" means an individual whose income (adjusted for family size) does not exceed—

(A) for metropolitan areas, 80 percent of the area median income; and

(B) for nonmetropolitan areas, the greater of—

(i) 80 percent of the area median income; or
(ii) 80 percent of the statewide nonmetropolitan area median income.

(3) Low-income geographic area

the [1] term "low-income geographic area" means—

(A) any population census tract (or in the case of an area that is not tracted for population census tracts, the equivalent county division, as defined by the Bureau of the Census of the Department of Commerce for purposes of defining poverty areas), if—

(i) the poverty rate for that census tract is not less than 20 percent;

(ii) in the case of a tract—

(I) that is located within a metropolitan area, 50 percent or more of the households in that census tract have an income equal to less than 60 percent of the area median gross income; or

(II) that is not located within a metropolitan area, the median household income for such tract does not exceed 80 percent of the statewide median household income; or

(iii) as determined by the Administrator based on objective criteria, a substantial population of low-income individuals reside, an inadequate access to investment capital exists, or other indications of economic distress exist in that census tract; or

(B) any area located within—

(i) a HUBZone (as defined in section 632(p) of this title and the implementing regulations issued under that section);

(ii) an urban empowerment zone or urban enterprise community (as designated by the Secretary of Housing and Urban Development); or

(iii) a rural empowerment zone or rural enterprise community (as designated by the Secretary of Agriculture).

(4) New Markets Venture Capital company

The term "New Markets Venture Capital company" means a company that—

(A) has been granted final approval by the Administrator under section 689c(e) of this title; and

(B) has entered into a participation agreement with the Administrator.

(5) Operational assistance

The term "operational assistance" means management, marketing, and other technical assistance that assists a small business concern with business development.

(6) Participation agreement

The term "participation agreement" means an agreement, between the Administrator and a company granted final approval under section 689c(e) of this title, that—

(A) details the company's operating plan and investment criteria; and

(B) requires the company to make investments in smaller enterprises at least 80 percent of which are located in low-income geographic areas.

(7) Specialized small business investment company

The term "specialized small business investment company" means any small business investment company that—

(A) invests solely in small business concerns that contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages;

(B) is organized or chartered under State business or nonprofit corporations statutes, or formed as a limited partnership; and

(C) was licensed under section 681(d) of this title, as in effect before September 30, 1996.

(8) State

The term "State" means such [2] of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States.

(Pub. L. 85–699, title III, §351, as added Pub. L. 106–554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–653.)

[1] So in original. Probably should be capitalized.

[2] So in original. Probably should be "each".

§689a. Purposes

The purposes of the New Markets Venture Capital Program established under this part are—

(1) to promote economic development and the creation of wealth and job opportunities in low-income geographic areas and among individuals living in such areas by encouraging developmental venture capital investments in smaller enterprises primarily located in such areas; and

(2) to establish a developmental venture capital program, with the mission of addressing the unmet equity investment needs of small enterprises located in low-income geographic areas, to be administered by the Administrator—

(A) to enter into participation agreements with New Markets Venture Capital companies;

(B) to guarantee debentures of New Markets Venture Capital companies to enable each such company to make developmental venture capital investments in smaller enterprises in low-income geographic areas; and

(C) to make grants to New Markets Venture Capital companies, and to other entities, for the purpose of providing operational assistance to smaller enterprises financed, or expected to be financed, by such companies.

(Pub. L. 85–699, title III, §352, as added Pub. L. 106–554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–655.)

§689b. Establishment

In accordance with this part, the Administrator shall establish a New Markets Venture Capital Program, under which the Administrator may—

(1) enter into participation agreements with companies granted final approval under section 689c(e) of this title for the purposes set forth in section 689a of this title;

(2) guarantee the debentures issued by New Markets Venture Capital companies as provided in section 689d of this title; and

(3) make grants to New Markets Venture Capital companies, and to other entities, under section 689g of this title.

(Pub. L. 85–699, title III, §353, as added Pub. L. 106–554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–655.)

§689c. Selection of New Markets Venture Capital companies

(a) Eligibility

A company shall be eligible to apply to participate, as a New Markets Venture Capital company, in the program established under this part if—

(1) the company is a newly formed for-profit entity or a newly formed for-profit subsidiary of

an existing entity;

(2) the company has a management team with experience in community development financing or relevant venture capital financing; and

(3) the company has a primary objective of economic development of low-income geographic areas.

(b) Application

To participate, as a New Markets Venture Capital company, in the program established under this part a company meeting the eligibility requirements set forth in subsection (a) of this section shall submit an application to the Administrator that includes—

(1) a business plan describing how the company intends to make successful developmental venture capital investments in identified low-income geographic areas;

(2) information regarding the community development finance or relevant venture capital qualifications and general reputation of the company's management;

(3) a description of how the company intends to work with community organizations and to seek to address the unmet capital needs of the communities served;

(4) a proposal describing how the company intends to use the grant funds provided under this part to provide operational assistance to smaller enterprises financed by the company, including information regarding whether the company intends to use licensed professionals, when necessary, on the company's staff or from an outside entity;

(5) with respect to binding commitments to be made to the company under this part, an estimate of the ratio of cash to in-kind contributions;

(6) a description of the criteria to be used to evaluate whether and to what extent the company meets the objectives of the program established under this part;

(7) information regarding the management and financial strength of any parent firm, affiliated firm, or any other firm essential to the success of the company's business plan; and

(8) such other information as the Administrator may require.

(c) Conditional approval

(1) In general

From among companies submitting applications under subsection (b) of this section, the Administrator shall, in accordance with this subsection, conditionally approval [1] companies to participate in the New Markets Venture Capital Program.

(2) Selection criteria

In selecting companies under paragraph (1), the Administrator shall consider the following:

(A) The likelihood that the company will meet the goal of its business plan.

(B) The experience and background of the company's management team.

(C) The need for developmental venture capital investments in the geographic areas in which the company intends to invest.

(D) The extent to which the company will concentrate its activities on serving the geographic areas in which it intends to invest.

(E) The likelihood that the company will be able to satisfy the conditions under subsection (d) of this section.

(F) The extent to which the activities proposed by the company will expand economic opportunities in the geographic areas in which the company intends to invest.

(G) The strength of the company's proposal to provide operational assistance under this part as the proposal relates to the ability of the applicant to meet applicable cash requirements and properly utilize in-kind contributions, including the use of resources for the services of licensed professionals, when necessary, whether provided by persons on the company's staff or by persons outside of the company.

(H) Any other factors deemed appropriate by the Administrator.

(3) Nationwide distribution

The Administrator shall select companies under paragraph (1) in such a way that promotes investment nationwide.

(d) Requirements to be met for final approval

The Administrator shall grant each conditionally approved company a period of time, not to exceed 2 years, to satisfy the following requirements:

(1) Capital requirement

Each conditionally approved company shall raise not less than $5,000,000 of private capital or binding capital commitments from one or more investors (other than agencies or departments of the Federal Government) who met criteria established by the Administrator.

(2) Nonadministration resources for operational assistance

(A) In general

In order to provide operational assistance to smaller enterprises expected to be financed by the company, each conditionally approved company—

(i) shall have binding commitments (for contribution in cash or in kind)—

(I) from any sources other than the Small Business Administration that meet criteria established by the Administrator;

(II) payable or available over a multiyear period acceptable to the Administrator (not to exceed 10 years); and

(III) in an amount not less than 30 percent of the total amount of capital and commitments raised under paragraph (1);

(ii) shall have purchased an annuity—

(I) from an insurance company acceptable to the Administrator;

(II) using funds (other than the funds raised under paragraph (1)), from any source other than the Administrator; and

(III) that yields cash payments over a multiyear period acceptable to the Administrator (not to exceed 10 years) in an amount not less than 30 percent of the total amount of capital and commitments raised under paragraph (1); or

(iii) shall have binding commitments (for contributions in cash or in kind) of the type described in clause (i) and shall have purchased an annuity of the type described in clause (ii), which in the aggregate make available, over a multiyear period acceptable to the Administrator (not to exceed 10 years), an amount not less than 30 percent of the total amount of capital and commitments raised under paragraph (1).

(B) Exception

The Administrator may, in the discretion of the Administrator and based upon a showing of special circumstances and good cause, consider an applicant to have satisfied the requirements of subparagraph (A) if the applicant has—

(i) a viable plan that reasonably projects the capacity of the applicant to raise the amount (in cash or in-kind) required under subparagraph (A); and

(ii) binding commitments in an amount equal to not less than 20 percent of the total amount required under paragraph (A).

(C) Limitation

In order to comply with the requirements of subparagraphs (A) and (B), the total amount of a company's in-kind contributions may not exceed 50 percent of the company's total contributions.

(e) Final approval; designation

The Administrator shall, with respect to each applicant conditionally approved to operate as a New Markets Venture Capital company under subsection (c) of this section, either—

(1) grant final approval to the applicant to operate as a New Markets Venture Capital company under this part and designate the applicant as such a company, if the applicant—

(A) satisfies the requirements of subsection (d) of this section on or before the expiration of the time period described in that subsection; and

(B) enters into a participation agreement with the Administrator; or

(2) if the applicant fails to satisfy the requirements of subsection (d) of this section on or before the expiration of the time period described in that subsection, revoke the conditional approval granted under that subsection.

(Pub. L. 85–699, title III, §354, as added Pub. L. 106–554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–655.)

[1] *So in original. Probably should be "approve".*

§689d. Debentures

(a) In general

The Administrator may guarantee the timely payment of principal and interest, as scheduled, on debentures issued by any New Markets Venture Capital company.

(b) Terms and conditions

The Administrator may make guarantees under this section on such terms and conditions as it deems appropriate, except that the term of any debenture guaranteed under this section shall not exceed 15 years.

(c) Full faith and credit of the United States

The full faith and credit of the United States is pledged to pay all amounts that may be required to be paid under any guarantee under this part.

(d) Maximum guarantee

(1) In general

Under this section, the Administrator may guarantee the debentures issued by a New Markets Venture Capital company only to be [1] extent that the total face amount of outstanding guaranteed debentures of such company does not exceed 150 percent of the private capital of the company, as determined by the Administrator.

(2) Treatment of certain Federal funds

For the purposes of paragraph (1), private capital shall include capital that is considered to be Federal funds, if such capital is contributed by an investor other than an agency or department of the Federal Government.

(e) Investment limitations

(1) Definition

In this subsection, the term "covered New Markets Venture Capital company" means a New Markets Venture Capital company—

(A) granted final approval by the Administrator under section 689c(e) of this title on or after March 1, 2002; and

(B) that has obtained a financing from the Administrator.

(2) Limitation

Except to the extent approved by the Administrator, a covered New Markets Venture Capital company may not acquire or issue commitments for securities under this subchapter for any single enterprise in an aggregate amount equal to more than 10 percent of the sum of—

(A) the regulatory capital of the covered New Markets Venture Capital company; and

(B) the total amount of leverage projected in the participation agreement of the covered New Markets Venture Capital.

(Pub. L. 85–699, title III, §355, as added Pub. L. 106–554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–658; amended Pub. L. 111–240, title I, §1115, Sept. 27, 2010, 124 Stat. 2508.)

AMENDMENTS

2010—Subsec. (e). Pub. L. 111–240 added subsec. (e).

[1] *So in original. Probably should be "the".*

§689e. Issuance and guarantee of trust certificates

(a) Issuance

The Administrator may issue trust certificates representing ownership of all or a fractional part of debentures issued by a New Markets Venture Capital company and guaranteed by the Administrator under this part, if such certificates are based on and backed by a trust or pool approved by the Administrator and composed solely of guaranteed debentures.

(b) Guarantee

(1) In general

The Administrator may, under such terms and conditions as it deems appropriate, guarantee the timely payment of the principal of and interest on trust certificates issued by the Administrator or its agents for purposes of this section.

(2) Limitation

Each guarantee under this subsection shall be limited to the extent of principal and interest on the guaranteed debentures that compose the trust or pool.

(3) Prepayment or default

In the event that a debenture in a trust or pool is prepaid, or in the event of default of such a debenture, the guarantee of timely payment of principal and interest on the trust certificates shall be reduced in proportion to the amount of principal and interest such prepaid debenture represents in the trust or pool. Interest on prepaid or defaulted debentures shall accrue and be guaranteed by the Administrator only through the date of payment of the guarantee. At any time during its term, a trust certificate may be called for redemption due to prepayment or default of all debentures.

(c) Full faith and credit of the United States

The full faith and credit of the United States is pledged to pay all amounts that may be required to be paid under any guarantee of a trust certificate issued by the Administrator or its agents under this section.

(d) Fees

The Administrator shall not collect a fee for any guarantee of a trust certificate under this section, but any agent of the Administrator may collect a fee approved by the Administrator for the functions described in subsection (f)(2) of this section.

(e) Subrogation and ownership rights

(1) Subrogation

In the event the Administrator pays a claim under a guarantee issued under this section, it shall be subrogated fully to the rights satisfied by such payment.

(2) Ownership rights

No Federal, State, or local law shall preclude or limit the exercise by the Administrator of its

ownership rights in the debentures residing in a trust or pool against which trust certificates are issued under this section.

(f) Management and administration

(1) Registration

The Administrator may provide for a central registration of all trust certificates issued under this section.

(2) Contracting of functions

(A) In general

The Administrator may contract with an agent or agents to carry out on behalf of the Administrator the pooling and the central registration functions provided for in this section including, notwithstanding any other provision of law—

(i) maintenance, on behalf of and under the direction of the Administrator, of such commercial bank accounts or investments in obligations of the United States as may be necessary to facilitate the creation of trusts or pools backed by debentures guaranteed under this part; and

(ii) the issuance of trust certificates to facilitate the creation of such trusts or pools.

(B) Fidelity bond or insurance requirement

Any agent performing functions on behalf of the Administrator under this paragraph shall provide a fidelity bond or insurance in such amounts as the Administrator determines to be necessary to fully protect the interests of the United States.

(3) Regulation of brokers and dealers

The Administrator may regulate brokers and dealers in trust certificates issued under this section.

(4) Electronic registration

Nothing in this subsection may be construed to prohibit the use of a book-entry or other electronic form of registration for trust certificates issued under this section.

(Pub. L. 85–699, title III, §356, as added Pub. L. 106–554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–658.)

§689f. Fees

Except as provided in section 689e(d) of this title, the Administrator may charge such fees as it deems appropriate with respect to any guarantee or grant issued under this part.

(Pub. L. 85–699, title III, §357, as added Pub. L. 106–554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–660.)

§689g. Operational assistance grants

(a) In general

(1) Authority

In accordance with this section, the Administrator may make grants to New Markets Venture Capital companies and to other entities, as authorized by this part, to provide operational assistance to smaller enterprises financed, or expected to be financed, by such companies or other entities.

(2) Terms

Grants made under this subsection shall be made over a multiyear period not to exceed 10 years,

under such other terms as the Administrator may require.

(3) Grants to specialized small business investment companies

(A) Authority

In accordance with this section, the Administrator may make grants to specialized small business investment companies to provide operational assistance to smaller enterprises financed, or expected to be financed, by such companies after the effective date of the New Markets Venture Capital Program Act of 2000.

(B) Use of funds

The proceeds of a grant made under this paragraph may be used by the company receiving such grant only to provide operational assistance in connection with an equity investment (made with capital raised after the effective date of the New Markets Venture Capital Program Act of 2000) in a business located in a low-income geographic area.

(C) Submission of plans

A specialized small business investment company shall be eligible for a grant under this section only if the company submits to the Administrator, in such form and manner as the Administrator may require, a plan for use of the grant.

(4) Grant amount

(A) New Markets Venture Capital companies

The amount of a grant made under this subsection to a New Markets Venture Capital company shall be equal to the resources (in cash or in kind) raised by the company under section 689c(d)(2) of this title.

(B) Other entities

The amount of a grant made under this subsection to any entity other than a New Markets Venture Capital company shall be equal to the resources (in cash or in kind) raised by the entity in accordance with the requirements applicable to New Market Venture Capital companies set forth in section 689c(d)(2) of this title.

(5) Pro rata reductions

If the amount made available to carry out this section is insufficient for the Administrator to provide grants in the amounts provided for in paragraph (4), the Administrator shall make pro rata reductions in the amounts otherwise payable to each company and entity under such paragraph.

(b) Supplemental grants

(1) In general

The Administrator may make supplemental grants to New Markets Venture Capital companies and to other entities, as authorized by this part under such terms as the Administrator may require, to provide additional operational assistance to smaller enterprises financed, or expected to be financed, by the companies.

(2) Matching requirement

The Administrator may require, as a condition of any supplemental grant made under this subsection, that the company or entity receiving the grant provide from resources (in a [1] cash or in kind), other then [2] those provided by the Administrator, a matching contribution equal to the amount of the supplemental grant.

(c) Limitation

None of the assistance made available under this section may be used for any overhead or general and administrative expense of a New Markets Venture Capital company or a specialized small business investment company.

(Pub. L. 85–699, title III, §358, as added Pub. L. 106–554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114

Stat. 2763, 2763A–660.)

REFERENCES IN TEXT

The effective date of the New Markets Venture Capital Program Act of 2000, referred to in subsec. (a)(3)(A), (B), probably means the date of enactment of section 1 of H.R. 5663, as enacted by Pub. L. 106–554, §1(a)(8), which was approved Dec. 21, 2000.

[1] So in original. The article probably should not appear.

[2] So in original. Probably should be "than".

§689h. Bank participation

(a) In general

Except as provided in subsection (b) of this section, any national bank, any member bank of the Federal Reserve System, and (to the extent permitted under applicable State law) any insured bank that is not a member of such system, may invest in any New Markets Venture Capital company, or in any entity established to invest solely in New Markets Venture Capital companies.

(b) Limitation

No bank described in subsection (a) of this section may make investments described in such subsection that are greater than 5 percent of the capital and surplus of the bank.

(Pub. L. 85–699, title III, §359, as added Pub. L. 106–554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–661.)

§689i. Federal Financing Bank

Section 687k of this title shall not apply to any debenture issued by a New Markets Venture Capital company under this part.

(Pub. L. 85–699, title III, §360, as added Pub. L. 106–554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–661.)

§689j. Reporting requirement

Each New Markets Venture Capital company that participates in the program established under this part shall provide to the Administrator such information as the Administrator may require, including—

(1) information related to the measurement criteria that the company proposed in its program application; and

(2) in each case in which the company under this part makes an investment in, or a loan or grant to, a business that is not located in a low-income geographic area, a report on the number and percentage of employees of the business who reside in such areas.

(Pub. L. 85–699, title III, §361, as added Pub. L. 106–554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–661.)

§689k. Examinations

(a) In general

Each New Markets Venture Capital company that participates in the program established under this part shall be subject to examinations made at the direction of the Investment Division of the

Small Business Administration in accordance with this section.

(b) Assistance of private sector entities

Examinations under this section may be conducted with the assistance of a private sector entity that has both the qualifications and the expertise necessary to conduct such examinations.

(c) Costs

(1) [1] Assessment

(A) In general

The Administrator may assess the cost of examinations under this section, including compensation of the examiners, against the company examined.

(B) Payment

Any company against which the Administrator assesses costs under this paragraph shall pay such costs.

(d) Deposit of funds

Funds collected under this section shall be deposited in the account for salaries and expenses of the Small Business Administration.

(Pub. L. 85–699, title III, §362, as added Pub. L. 106–554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–662.)

[1] So in original. No par. (2) has been enacted.

§689*l*. Injunctions and other orders

(a) In general

Whenever, in the judgment of the Administrator, a New Markets Venture Capital company or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter, or of any rule or regulation under this chapter, or of any order issued under this chapter, the Administrator may make application to the proper district court of the United States or a United States court of any place subject to the jurisdiction of the United States for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, rule, regulation, or order, and such courts shall have jurisdiction of such actions and, upon a showing by the Administrator that such New Markets Venture Capital company or other person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order, shall be granted without bond.

(b) Jurisdiction

In any proceeding under subsection (a) of this section, the court as a court of equity may, to such extent as it deems necessary, take exclusive jurisdiction of the New Market Venture Capital company and the assets thereof, wherever located, and the court shall have jurisdiction in any such proceeding to appoint a trustee or receiver to hold or administer under the direction of the court the assets so possessed.

(c) Administrator as trustee or receiver

(1) Authority

The Administrator may act as trustee or receiver of a New Markets Venture Capital company.

(2) Appointment

Upon request of the Administrator, the court may appoint the Administrator to act as a trustee or receiver of a New Markets Venture Capital company unless the court deems such appointment inequitable or otherwise inappropriate by reason of the special circumstances involved.

(Pub. L. 85–699, title III, §363, as added Pub. L. 106–554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–662.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (a), see References in Text note set out under section 661 of this title.

§689m. Additional penalties for noncompliance

(a) In general

With respect to any New Markets Venture Capital company that violates or fails to comply with any of the provisions of this chapter, of any regulation issued under this chapter, or of any participation agreement entered into under this chapter, the Administrator may in accordance with this section—

(1) void the participation agreement between the Administrator and the company; and

(2) cause the company to forfeit all of the rights and privileges derived by the company from this chapter.

(b) Adjudication of noncompliance

(1) In general

Before the Administrator may cause a New Markets Venture Capital company to forfeit rights or privileges under subsection (a) of this section, a court of the United States of competent jurisdiction must find that the company committed a violation, or failed to comply, in a cause of action brought for that purpose in the district, territory, or other place subject to the jurisdiction of the United States, in which the principal office of the company is located.

(2) Parties authorized to file causes of action

Each cause of action brought by the United States under this subsection shall be brought by the Administrator or by the Attorney General.

(Pub. L. 85–699, title III, §364, as added Pub. L. 106–554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–663.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (a), see References in Text note set out under section 661 of this title.

§689n. Unlawful acts and omissions; breach of fiduciary duty

(a) Parties deemed to commit a violation

Whenever any New Markets Venture Capital company violates any provision of this chapter, of a regulation issued under this chapter, or of a participation agreement entered into under this chapter, by reason of its failure to comply with its terms or by reason of its engaging in any act or practice that constitutes or will constitute a violation thereof, such violation shall also be deemed to be a violation and an unlawful act committed by any person who, directly or indirectly, authorizes, orders, participates in, causes, brings about, counsels, aids, or abets in the commission of any acts, practices, or transactions that constitute or will constitute, in whole or in part, such violation.

(b) Fiduciary duties

It shall be unlawful for any officer, director, employee, agent, or other participant in the management or conduct of the affairs of a New Markets Venture Capital company to engage in any act or practice, or to omit any act or practice, in breach of the person's fiduciary duty as such officer, director, employee, agent, or participant if, as a result thereof, the company suffers or is in imminent danger of suffering financial loss or other damage.

(c) Unlawful acts

Except with the written consent of the Administrator, it shall be unlawful—

(1) for any person to take office as an officer, director, or employee of any New Markets Venture Capital company, or to become an agent or participant in the conduct of the affairs or management of such a company, if the person—

(A) has been convicted of a felony, or any other criminal offense involving dishonesty or breach of trust; or

(B) has been found civilly liable in damages, or has been permanently or temporarily enjoined by an order, judgment, or decree of a court of competent jurisdiction, by reason of any act or practice involving fraud, or breach of trust; and

(2) for any person [1] continue to serve in any of the capacities described in paragraph (1), if—

(A) the person is convicted of a felony, or any other criminal offense involving dishonesty or breach of trust; or

(B) the person is found civilly liable in damages, or is permanently or temporarily enjoined by an order, judgment, or decree of a court of competent jurisdiction, by reason of any act or practice involving fraud or breach of trust.

(Pub. L. 85–699, title III, §365, as added Pub. L. 106–554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–663.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (a), see References in Text note set out under section 661 of this title.

[1] So in original. Probably should be followed by "to".

§689*o*. Removal or suspension of directors or officers

Using the procedures for removing or suspending a director or an officer of a licensee set forth in section 687e of this title (to the extent such procedures are not inconsistent with the requirements of this part), the Administrator may remove or suspend any director or officer of any New Markets Venture Capital company.

(Pub. L. 85–699, title III, §366, as added Pub. L. 106–554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–664.)

§689p. Regulations

The Administrator may issue such regulations as it deems necessary to carry out the provisions of this part in accordance with its purposes.

(Pub. L. 85–699, title III, §367, as added Pub. L. 106–554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–664.)

§689q. Authorization of appropriations

(a) In general

There are authorized to be appropriated for fiscal years 2001 through 2006, to remain available until expended, the following sums:

(1) Such subsidy budget authority as may be necessary to guarantee $150,000,000 of debentures under this part.

(2) $30,000,000 to make grants under this part.

(b) Funds collected for examinations

Funds deposited under section 689k(c)(2) of this title are authorized to be appropriated only for the costs of examinations under section 689k of this title and for the costs of other oversight activities with respect to the program established under this part.

(Pub. L. 85–699, title III, §368, as added Pub. L. 106–554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–664.)

PART C—RENEWABLE FUEL CAPITAL INVESTMENT PILOT PROGRAM

§690. Definitions

In this part:

(1) Operational assistance

The term "operational assistance" means management, marketing, and other technical assistance that assists a small business concern with business development.

(2) Participation agreement

The term "participation agreement" means an agreement, between the Administrator and a company granted final approval under section 690c(e) of this title, that—

(A) details the operating plan and investment criteria of the company; and

(B) requires the company to make investments in smaller enterprises primarily engaged in researching, manufacturing, developing, producing, or bringing to market goods, products, or services that generate or support the production of renewable energy.

(3) Renewable energy

The term "renewable energy" means energy derived from resources that are regenerative or that cannot be depleted, including solar, wind, ethanol, and biodiesel fuels.

(4) Renewable Fuel Capital Investment company

The term "Renewable Fuel Capital Investment company" means a company—

(A) that—

(i) has been granted final approval by the Administrator under section 690c(e) of this title; and

(ii) has entered into a participation agreement with the Administrator; or

(B) that has received conditional approval under section 690c(c) of this title.

(5) State

The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States.

(6) Venture capital

The term "venture capital" means capital in the form of equity capital investments, as that term is defined in section 683(g)(4) of this title.

(Pub. L. 85–699, title III, §381, as added Pub. L. 110–140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1774.)

EFFECTIVE DATE

Part effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as a note under section 1824 of Title 2, The Congress.

§690a. Purposes

The purposes of the Renewable Fuel Capital Investment Program established under this part are—

(1) to promote the research, development, manufacture, production, and bringing to market of goods, products, or services that generate or support the production of renewable energy by encouraging venture capital investments in smaller enterprises primarily engaged [1] such activities; and

(2) to establish a venture capital program, with the mission of addressing the unmet equity investment needs of smaller enterprises engaged in researching, developing, manufacturing, producing, and bringing to market goods, products, or services that generate or support the production of renewable energy, to be administered by the Administrator—

(A) to enter into participation agreements with Renewable Fuel Capital Investment companies;

(B) to guarantee debentures of Renewable Fuel Capital Investment companies to enable each such company to make venture capital investments in smaller enterprises engaged in the research, development, manufacture, production, and bringing to market of goods, products, or services that generate or support the production of renewable energy; and

(C) to make grants to Renewable Fuel Investment Capital companies, and to other entities, for the purpose of providing operational assistance to smaller enterprises financed, or expected to be financed, by such companies.

(Pub. L. 85–699, title III, §382, as added Pub. L. 110–140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1775.)

[1] *So in original. Probably should be followed by "in".*

§690b. Establishment

The Administrator shall establish a Renewable Fuel Capital Investment Program, under which the Administrator may—

(1) enter into participation agreements for the purposes described in section 690a of this title; and

(2) guarantee the debentures issued by Renewable Fuel Capital Investment companies as provided in section 690d of this title.

(Pub. L. 85–699, title III, §383, as added Pub. L. 110–140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1776.)

§690c. Selection of Renewable Fuel Capital Investment companies

(a) Eligibility

A company is eligible to apply to be designated as a Renewable Fuel Capital Investment company if the company—

(1) is a newly formed for-profit entity or a newly formed for-profit subsidiary of an existing entity;

(2) has a management team with experience in alternative energy financing or relevant venture capital financing; and

(3) has a primary objective of investment in smaller enterprises that research, manufacture, develop, produce, or bring to market goods, products, or services that generate or support the production of renewable energy.

(b) Application

A company desiring to be designated as a Renewable Fuel Capital Investment company shall

submit an application to the Administrator that includes—

(1) a business plan describing how the company intends to make successful venture capital investments in smaller enterprises primarily engaged in the research, manufacture, development, production, or bringing to market of goods, products, or services that generate or support the production of renewable energy;

(2) information regarding the relevant venture capital qualifications and general reputation of the management of the company;

(3) a description of how the company intends to seek to address the unmet capital needs of the smaller enterprises served;

(4) a proposal describing how the company intends to use the grant funds provided under this part to provide operational assistance to smaller enterprises financed by the company, including information regarding whether the company has employees with appropriate professional licenses or will contract with another entity when the services of such an individual are necessary;

(5) with respect to binding commitments to be made to the company under this part, an estimate of the ratio of cash to in-kind contributions;

(6) a description of whether and to what extent the company meets the criteria under subsection (c)(2) and the objectives of the program established under this part;

(7) information regarding the management and financial strength of any parent firm, affiliated firm, or any other firm essential to the success of the business plan of the company; and

(8) such other information as the Administrator may require.

(c) Conditional approval

(1) In general

From among companies submitting applications under subsection (b), the Administrator shall conditionally approve companies to operate as Renewable Fuel Capital Investment companies.

(2) Selection criteria

In conditionally approving companies under paragraph (1), the Administrator shall consider—

(A) the likelihood that the company will meet the goal of its business plan;

(B) the experience and background of the management team of the company;

(C) the need for venture capital investments in the geographic areas in which the company intends to invest;

(D) the extent to which the company will concentrate its activities on serving the geographic areas in which it intends to invest;

(E) the likelihood that the company will be able to satisfy the conditions under subsection (d);

(F) the extent to which the activities proposed by the company will expand economic opportunities in the geographic areas in which the company intends to invest;

(G) the strength of the proposal by the company to provide operational assistance under this part as the proposal relates to the ability of the company to meet applicable cash requirements and properly use in-kind contributions, including the use of resources for the services of licensed professionals, when necessary, whether provided by employees or contractors; and

(H) any other factor determined appropriate by the Administrator.

(3) Nationwide distribution

From among companies submitting applications under subsection (b), the Administrator shall consider the selection criteria under paragraph (2) and shall, to the maximum extent practicable, approve at least one company from each geographic region of the Administration.

(d) Requirements to be met for final approval

(1) In general

The Administrator shall grant each conditionally approved company 2 years to satisfy the requirements of this subsection.

(2) Capital requirement

Each conditionally approved company shall raise not less than $3,000,000 of private capital or binding capital commitments from 1 or more investors (which shall not be departments or agencies of the Federal Government) who meet criteria established by the Administrator.

(3) Nonadministration resources for operational assistance

(A) In general

In order to provide operational assistance to smaller enterprises expected to be financed by the company, each conditionally approved company shall have binding commitments (for contribution in cash or in-kind)—

(i) from sources other than the Administration that meet criteria established by the Administrator; and

(ii) payable or available over a multiyear period determined appropriate by the Administrator (not to exceed 10 years).

(B) Exception

The Administrator may, in the discretion of the Administrator and based upon a showing of special circumstances and good cause, consider an applicant to have satisfied the requirements of subparagraph (A) if the applicant has—

(i) a viable plan that reasonably projects the capacity of the applicant to raise the amount (in cash or in-kind) required under subparagraph (A); and

(ii) binding commitments in an amount equal to not less than 20 percent of the total amount required under paragraph [1] (A).

(C) Limitation

The total amount of a [2] in-kind contributions by a company shall be not more than 50 percent of the total contributions by a company.

(e) Final approval; designation

The Administrator shall, with respect to each applicant conditionally approved under subsection (c)—

(1) grant final approval to the applicant to operate as a Renewable Fuel Capital Investment company under this part and designate the applicant as such a company, if the applicant—

(A) satisfies the requirements of subsection (d) on or before the expiration of the time period described in that subsection; and

(B) enters into a participation agreement with the Administrator; or

(2) if the applicant fails to satisfy the requirements of subsection (d) on or before the expiration of the time period described in paragraph (1) of that subsection, revoke the conditional approval granted under that subsection.

(Pub. L. 85–699, title III, §384, as added Pub. L. 110–140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1776.)

[1] So in original. Probably should be "subparagraph".

[2] So in original. The article probably should not appear.

§690d. Debentures

(a) In general

The Administrator may guarantee the timely payment of principal and interest, as scheduled, on debentures issued by any Renewable Fuel Capital Investment company.

(b) Terms and conditions

The Administrator may make guarantees under this section on such terms and conditions as it determines appropriate, except that—

(1) the term of any debenture guaranteed under this section shall not exceed 15 years; and

(2) a debenture guaranteed under this section—

(A) shall carry no front-end or annual fees;

(B) shall be issued at a discount;

(C) shall require no interest payments during the 5-year period beginning on the date the debenture is issued;

(D) shall be prepayable without penalty after the end of the 1-year period beginning on the date the debenture is issued; and

(E) shall require semiannual interest payments after the period described in subparagraph (C).

(c) Full faith and credit of the United States

The full faith and credit of the United States is pledged to pay all amounts that may be required to be paid under any guarantee under this part.

(d) Maximum guarantee

(1) In general

Under this section, the Administrator may guarantee the debentures issued by a Renewable Fuel Capital Investment company only to the extent that the total face amount of outstanding guaranteed debentures of such company does not exceed 150 percent of the private capital of the company, as determined by the Administrator.

(2) Treatment of certain Federal funds

For the purposes of paragraph (1), private capital shall include capital that is considered to be Federal funds, if such capital is contributed by an investor other than a department or agency of the Federal Government.

(Pub. L. 85–699, title III, §385, as added Pub. L. 110–140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1778.)

§690e. Issuance and guarantee of trust certificates

(a) Issuance

The Administrator may issue trust certificates representing ownership of all or a fractional part of debentures issued by a Renewable Fuel Capital Investment company and guaranteed by the Administrator under this part, if such certificates are based on and backed by a trust or pool approved by the Administrator and composed solely of guaranteed debentures.

(b) Guarantee

(1) In general

The Administrator may, under such terms and conditions as it determines appropriate, guarantee the timely payment of the principal of and interest on trust certificates issued by the Administrator or its agents for purposes of this section.

(2) Limitation

Each guarantee under this subsection shall be limited to the extent of principal and interest on the guaranteed debentures that compose the trust or pool.

(3) Prepayment or default

If a debenture in a trust or pool is prepaid, or in the event of default of such a debenture, the guarantee of timely payment of principal and interest on the trust certificates shall be reduced in proportion to the amount of principal and interest such prepaid debenture represents in the trust or

pool. Interest on prepaid or defaulted debentures shall accrue and be guaranteed by the Administrator only through the date of payment of the guarantee. At any time during its term, a trust certificate may be called for redemption due to prepayment or default of all debentures.

(c) Full faith and credit of the United States

The full faith and credit of the United States is pledged to pay all amounts that may be required to be paid under any guarantee of a trust certificate issued by the Administrator or its agents under this section.

(d) Fees

The Administrator shall not collect a fee for any guarantee of a trust certificate under this section, but any agent of the Administrator may collect a fee approved by the Administrator for the functions described in subsection (f)(2).

(e) Subrogation and ownership rights

(1) Subrogation

If the Administrator pays a claim under a guarantee issued under this section, it shall be subrogated fully to the rights satisfied by such payment.

(2) Ownership rights

No Federal, State, or local law shall preclude or limit the exercise by the Administrator of its ownership rights in the debentures residing in a trust or pool against which trust certificates are issued under this section.

(f) Management and administration

(1) Registration

The Administrator may provide for a central registration of all trust certificates issued under this section.

(2) Contracting of functions

(A) In general

The Administrator may contract with an agent or agents to carry out on behalf of the Administrator the pooling and the central registration functions provided for in this section, including, not withstanding any other provision of law—

(i) maintenance, on behalf of and under the direction of the Administrator, of such commercial bank accounts or investments in obligations of the United States as may be necessary to facilitate the creation of trusts or pools backed by debentures guaranteed under this part; and

(ii) the issuance of trust certificates to facilitate the creation of such trusts or pools.

(B) Fidelity bond or insurance requirement

Any agent performing functions on behalf of the Administrator under this paragraph shall provide a fidelity bond or insurance in such amounts as the Administrator determines to be necessary to fully protect the interests of the United States.

(3) Regulation of brokers and dealers

The Administrator may regulate brokers and dealers in trust certificates issued under this section.

(4) Electronic registration

Nothing in this subsection may be construed to prohibit the use of a book-entry or other electronic form of registration for trust certificates issued under this section.

(Pub. L. 85–699, title III, §386, as added Pub. L. 110–140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1779.)

§690f. Fees

(a) In general

Except as provided in section 690e(d) of this title, the Administrator may charge such fees as it determines appropriate with respect to any guarantee or grant issued under this part, in an amount established annually by the Administrator, as necessary to reduce to zero the cost (as defined in section 661a of title 2) to the Administration of purchasing and guaranteeing debentures under this part, which amounts shall be paid to and retained by the Administration.

(b) Offset

The Administrator may, as provided by section 690g of this title, offset fees charged and collected under subsection (a).

(Pub. L. 85–699, title III, §387, as added Pub. L. 110–140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1780.)

§690g. Fee contribution

(a) In general

To the extent that amounts are made available to the Administrator for the purpose of fee contributions, the Administrator shall contribute to fees paid by the Renewable Fuel Capital Investment companies under section 690f of this title.

(b) Annual adjustment

Each fee contribution under subsection (a) shall be effective for 1 fiscal year and shall be adjusted as necessary for each fiscal year thereafter to ensure that amounts under subsection (a) are fully used. The fee contribution for a fiscal year shall be based on the outstanding commitments made and the guarantees and grants that the Administrator projects will be made during that fiscal year, given the program level authorized by law for that fiscal year and any other factors that the Administrator determines appropriate.

(Pub. L. 85–699, title III, §388, as added Pub. L. 110–140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1780.)

§690h. Operational assistance grants

(a) In general

(1) Authority

The Administrator may make grants to Renewable Fuel Capital Investment companies to provide operational assistance to smaller enterprises financed, or expected to be financed, by such companies or other entities.

(2) Terms

A grant under this subsection shall be made over a multiyear period not to exceed 10 years, under such other terms as the Administrator may require.

(3) Grant amount

The amount of a grant made under this subsection to a Renewable Fuel Capital Investment company shall be equal to the lesser of—

(A) 10 percent of the resources (in cash or in-kind) raised by the company under section 690c(d)(2) of this title; or

(B) $1,000,000.

(4) Pro rata reductions

If the amount made available to carry out this section is insufficient for the Administrator to provide grants in the amounts provided for in paragraph (3), the Administrator shall make pro rata reductions in the amounts otherwise payable to each company and entity under such paragraph.

(5) Grants to conditionally approved companies

(A) In general

Subject to subparagraphs (B) and (C), upon the request of a company conditionally approved under section 690c(c) of this title, the Administrator shall make a grant to the company under this subsection.

(B) Repayment by companies not approved

If a company receives a grant under this paragraph and does not enter into a participation agreement for final approval, the company shall, subject to controlling Federal law, repay the amount of the grant to the Administrator.

(C) Deduction of grant to approved company

If a company receives a grant under this paragraph and receives final approval under section 690c(e) of this title, the Administrator shall deduct the amount of the grant from the total grant amount the company receives for operational assistance.

(D) Amount of grant

No company may receive a grant of more than $100,000 under this paragraph.

(b) Supplemental grants

(1) In general

The Administrator may make supplemental grants to Renewable Fuel Capital Investment companies and to other entities, as authorized by this part, under such terms as the Administrator may require, to provide additional operational assistance to smaller enterprises financed, or expected to be financed, by the companies.

(2) Matching requirement

The Administrator may require, as a condition of any supplemental grant made under this subsection, that the company or entity receiving the grant provide from resources (in a [1] cash or in kind), other then [2] those provided by the Administrator, a matching contribution equal to the amount of the supplemental grant.

(c) Limitation

None of the assistance made available under this section may be used for any overhead or general and administrative expense of a Renewable Fuel Capital Investment company.

(Pub. L. 85–699, title III, §389, as added Pub. L. 110–140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1781.)

[1] So in original. The article probably should not appear.

[2] So in original. Probably should be "than".

§690i. Bank participation

(a) In general

Except as provided in subsection (b), any national bank, any member bank of the Federal Reserve System, and (to the extent permitted under applicable State law) any insured bank that is not a member of such system, may invest in any Renewable Fuel Capital Investment company, or in any entity established to invest solely in Renewable Fuel Capital Investment companies.

(b) Limitation

No bank described in subsection (a) may make investments described in such subsection that are greater than 5 percent of the capital and surplus of the bank.

(Pub. L. 85–699, title III, §390, as added Pub. L. 110–140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1782.)

§690j. Federal Financing Bank

Notwithstanding section 687k of this title, the Federal Financing Bank may acquire a debenture issued by a Renewable Fuel Capital Investment company under this part.

(Pub. L. 85–699, title III, §391, as added Pub. L. 110–140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1782.)

§690k. Reporting requirement

Each Renewable Fuel Capital Investment company that participates in the program established under this part shall provide to the Administrator such information as the Administrator may require, including—

(1) information related to the measurement criteria that the company proposed in its program application; and

(2) in each case in which the company makes, under this part, an investment in, or a loan or a grant to, a business that is not primarily engaged in the research, development, manufacture, or bringing to market or [1] renewable energy sources, a report on the nature, origin, and revenues of the business in which investments are made.

(Pub. L. 85–699, title III, §392, as added Pub. L. 110–140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1782.)

[1] So in original. Probably should be "of".

§690*l*. Examinations

(a) In general

Each Renewable Fuel Capital Investment company that participates in the program established under this part shall be subject to examinations made at the direction of the Investment Division of the Administration in accordance with this section.

(b) Assistance of private sector entities

Examinations under this section may be conducted with the assistance of a private sector entity that has both the qualifications and the expertise necessary to conduct such examinations.

(c) Costs

(1) Assessment

(A) In general

The Administrator may assess the cost of examinations under this section, including compensation of the examiners, against the company examined.

(B) Payment

Any company against which the Administrator assesses costs under this paragraph shall pay such costs.

(2) Deposit of funds

Funds collected under this section shall be deposited in the account for salaries and expenses of the Administration.

(Pub. L. 85–699, title III, §393, as added Pub. L. 110–140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1782.)

§690m. Miscellaneous

To the extent such procedures are not inconsistent with the requirements of this part, the Administrator may take such action as set forth in sections 687a, 687c, 687d, and 687f of this title and an officer, director, employee, agent, or other participant in the management or conduct of the affairs of a Renewable Fuel Capital Investment company shall be subject to the requirements of such sections.

(Pub. L. 85–699, title III, §394, as added Pub. L. 110–140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1783.)

§690n. Removal or suspension of directors or officers

Using the procedures for removing or suspending a director or an officer of a licensee set forth in section 687e of this title (to the extent such procedures are not inconsistent with the requirements of this part), the Administrator may remove or suspend any director or officer of any Renewable Fuel Capital Investment company.

(Pub. L. 85–699, title III, §395, as added Pub. L. 110–140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1783.)

§690*o*. Regulations

The Administrator may issue such regulations as the Administrator determines necessary to carry out the provisions of this part in accordance with its purposes.

(Pub. L. 85–699, title III, §396, as added Pub. L. 110–140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1783.)

§690p. Authorizations of appropriations

(a) In general

Subject to the availability of appropriations, the Administrator is authorized to make $15,000,000 in operational assistance grants under section 690h of this title for each of fiscal years 2008 and 2009.

(b) Funds collected for examinations

Funds deposited under section 690l(c)(2) of this title are authorized to be appropriated only for the costs of examinations under section 690l of this title and for the costs of other oversight activities with respect to the program established under this part.

(Pub. L. 85–699, title III, §397, as added Pub. L. 110–140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1783.)

§690q. Termination

The program under this part shall terminate at the end of the second full fiscal year after the date that the Administrator establishes the program under this part.

(Pub. L. 85–699, title III, §398, as added Pub. L. 110–140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1783.)

SUBCHAPTER IV—STATE CHARTERED INVESTMENT COMPANIES AND STATE DEVELOPMENT COMPANIES

§691. Repealed. Pub. L. 87–341, §11(f), Oct. 3, 1961, 75 Stat. 756

Section, Pub. L. 85–699, title IV, §401, Aug. 21, 1958, 72 Stat. 696, related to conversion of any investment company, or any State development company, into a small business investment company.

SUBCHAPTER IV–A—GUARANTEES

PART A—COMMERCIAL OR INDUSTRIAL LEASE AND QUALIFIED CONTRACT GUARANTEES

§692. Authority of Administration to guarantee payment of rentals by small business concerns under leases of commercial and industrial property

(a) Nonavailability of guarantees from other sources; participation with qualified sureties

The Administration may, whenever it determines such action to be necessary or desirable, and upon such terms and conditions as it may prescribe, guarantee the payment of rentals under leases of commercial and industrial property entered into by small business concerns to enable such concerns to obtain such leases. Any such guarantee may be made or effected either directly or in cooperation with any qualified surety company or other qualified company through a participation agreement with such company. The foregoing powers shall be subject, however, to the following restrictions and limitations:

(1) No guarantee shall be issued by the Administration (A) if a guarantee meeting the requirements of the applicant is otherwise available on reasonable terms, and (B) unless the Administration determines that there exists a reasonable expectation that the small business concern in behalf of which the guarantee is issued will perform the covenants and conditions of the lease.

(2) The Administration shall, to the greatest extent practicable, exercise the powers conferred by this section in cooperation with qualified surety or other companies on a participation basis.

(b) Uniform annual fee; processing fees

The Administration shall fix a uniform annual fee for its share of any guarantee under this section which shall be payable in advance at such time as may be prescribed by the Administrator. The amount of any such fee shall be determined in accordance with sound actuarial practices and procedures, to the extent practicable, but in no case shall such amount exceed, on the Administration's share of any guarantee made under this part, 2½ per centum per annum of the minimum annual guaranteed rental payable under any guaranteed lease: *Provided*, That the Administration shall fix the lowest fee that experience under the program established hereby has shown to be justified. The Administration may also fix such uniform fees for the processing of applications for guarantees under this section as the Administrator determines are reasonable and necessary to pay the administrative expenses that are incurred in connection therewith.

(c) Escrow; default; additional discretionary provisions

In connection with the guarantee of rentals under any lease pursuant to authority conferred by this section, the Administrator may require, in order to minimize the financial risk assumed under such guarantee—

(1) that the lessee pay an amount, not to exceed one-fourth of the minimum guaranteed annual rental required under the lease, which shall be held in escrow and shall be available (A) to meet rental charges accruing in any month for which the lessee is in default, or (B) if no default occurs during the term of the lease, for application (with accrued interest) toward final payments of rental charges under the lease;

(2) that upon occurrence of a default under the lease, the lessor shall, as a condition precedent to enforcing any claim under the lease guarantee, utilize the entire period, for which there are funds available in escrow for payment of rentals, in reasonably diligent efforts to eliminate or minimize losses, by releasing the commercial or industrial property covered by the lease to another qualified tenant, and no claim shall be made or paid under the guarantee until such effort has been made and such escrow funds have been exhausted;

(3) that any guarantor of the lease will become a successor of the lessor for the purpose of collecting from a lessee in default rentals which are in arrears and with respect to which the lessor has received payment under a guarantee made pursuant to this section; and

(4) such other provisions, not inconsistent with the purposes of this part, as the Administrator may in his discretion require.

(Pub. L. 85–699, title IV, §401, as added Pub. L. 89–117, title III, §316(a), Aug. 10, 1965, 79 Stat. 482; amended Pub. L. 90–104, title II, §209, Oct. 11, 1967, 81 Stat. 271; Pub. L. 91–609, title IX, §911(a)(2), Dec. 31, 1970, 84 Stat. 1812.)

AMENDMENTS

1970—Subsecs. (b), (c)(4). Pub. L. 91–609 substituted "part" for "title".

1967—Subsec. (a). Pub. L. 90–104 struck out from introductory text "that are (1) eligible for loans under section 636(b)(3) of this title, or (2) eligible for loans under subchapter IV of chapter 34 of Title 42," after "small business concerns".

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–104 effective 90 days after Oct. 11, 1967, see section 211 of Pub. L. 90–104, set out as a note under section 681 of this title.

§693. Powers of Administration respecting loans; liquidation of obligations through creation of new leases, execution of subleases, and assignments of leases

Without limiting the authority conferred upon the Administrator and the Administration by section 671 of this title, the Administrator and the Administration shall have, in the performance of and with respect to the functions, powers, and duties conferred by this part, all the authority and be subject to the same conditions prescribed in section 634(b) of this title with respect to loans, including the authority to execute subleases, assignments of lease and new leases with any person, firm, organization, or other entity, in order to aid in the liquidation of obligations of the Administration hereunder.

(Pub. L. 85–699, title IV, §402, as added Pub. L. 89–117, title III, §316(a), Aug. 10, 1965, 79 Stat. 483; amended Pub. L. 91–609, title IX, §911(a)(2), Dec. 31, 1970, 84 Stat. 1812.)

AMENDMENTS

1970—Pub. L. 91–609 substituted "part" for "title".

§694. Repealed. Pub. L. 100–590, title I, §111(b), Nov. 3, 1988, 102 Stat. 2995

Section, Pub. L. 85–699, title IV, §403, as added Pub. L. 89–117, title III, §316(a), Aug. 10, 1965, 79 Stat. 484; amended Pub. L. 91–609, title IX, §911(a)(3), Dec. 31, 1970, 84 Stat. 1812; Pub. L. 93–386, §6(a)(2), Aug. 23, 1974, 88 Stat. 747; Pub. L. 94–305, title I, §103, June 4, 1976, 90 Stat. 665; Pub. L. 95–89, title I, §103, Aug. 4, 1977, 91 Stat. 556, provided for revolving fund for commercial or industrial lease guarantees.

TRANSFER OF REMAINING LEASE GUARANTEE FUND MONEYS

Pub. L. 100–590, title I, §111(b), Nov. 3, 1988, 102 Stat. 2995, provided in part that: "Any moneys remaining in the Lease Guarantee Fund on the date of enactment of this Act [Nov. 3, 1988] shall be transferred to the Small Business Administration's business loan and investment fund."

§694–1. Planning design or installation of pollution control facilities

(a) Definitions

For purposes of this section, the term—

(1) "pollution control facilities" means such property (both real and personal) as the Administration in its discretion determines is likely to help prevent, reduce, abate, or control noise, air or water pollution or contamination by removing, altering, disposing or storing pollutants, contaminants, wastes, or heat, and such property (both real and personal) as the Administration determines will be used for the collection, storage, treatment, utilization, processing, or final disposal of solid or liquid waste.

(2) "person" includes corporations, companies, associations, firms, partnerships, societies, joint stock companies, States, territories, and possessions of the United States, or subdivisions of any of the foregoing, and the District of Columbia, as well as individuals.

(3) "qualified contract" means a lease, sublease, loan agreement, installment sales contract, or similar instrument, entered into between a small business concern and any person.

(b) Financing disadvantage; guarantee of payment by Administration; restrictions and limitations

The Administration may, whenever it determines that small business concerns are or are likely to be at an operational or financing disadvantage with other business concerns with respect to the planning, design, or installation of pollution control facilities, or the obtaining of financing therefor (including financing by means of revenue bonds issued by States, political subdivisions thereof, or other public bodies), guarantee the payment of rentals or other amounts due under qualified contracts. Any such guarantee may be made or effected either directly or in cooperation with any qualified surety company or other qualified company through a participation agreement with such company. The foregoing powers shall be subject, however, to the following restrictions and limitations:

(1) Notwithstanding any other law, rule, or regulation or fiscal policy to the contrary, the guarantee authorized in the case of pollution control facilities or property shall be issued when such property is acquired by the use of proceeds from industrial revenue bonds which provide the holders interest which is exempt from Federal income tax, and the Administration is expressly prohibited from denying such guarantee due to the property being so acquired.

(2) Any such guarantee shall be for the full amount of the payments due under such qualified contract and shall be a full faith and credit obligation of the United States.

(3) No guarantee shall be issued by the Administration unless the Administration determines that there exists a reasonable expectation that the small business concern in behalf of which the guarantee is issued will perform the covenants and conditions of the qualified contract.

(c) Uniform annual fees; processing fees; time and condition for payment; periodic review

The Administration shall fix a uniform annual fee for any guarantee issued under this section which shall be payable at such time and under such conditions as may be prescribed by the Administrator. The fee shall be set at an amount which the Administration deems reasonable and necessary and shall be subject to periodic review in order that the lowest fee that experience under the program shows to be justified will be placed into effect. In no case shall such amount be less than

1 per centum or more than 3½ per centum per annum of the minimum annual guaranteed rental payable under any qualified contract guaranteed under this section. The Administration may also fix such uniform fees for the processing of applications for guarantees under this section as the Administrator determines are reasonable and necessary to pay the administrative expenses that are incurred in connection therewith.

(d) Requirements of Administration; escrow; default; discretionary provisions

In connection with the guarantee of rentals under any qualified contract pursuant to authority conferred by this section, the Administrator may require, in order to minimize the financial risk assumed under such guarantee—

(1) that the lessee pay an amount, not to exceed one-fourth of the average annual payments for which a guarantee is issued under this section, which shall be held in escrow and shall be available (A) to meet rental charges accruing in any month for which the lessee is in default, or (B) if no default occurs during the term of the qualified contract, for application (with accrued interest) toward final payments of rental charges under the qualified contract;

(2) that upon occurrence of a default under the qualified contract, the lessor shall, as a condition precedent to enforcing any claim under the qualified contract guarantee, utilize the entire period, for which there are funds available in escrow for payment of rentals, in reasonable diligent efforts to eliminate or minimize losses, by releasing the property covered by the qualified contract to another qualified lessee, and no claim shall be made or paid under the guarantee until such effort has been made and such escrow funds have been exhausted;

(3) that any guarantor of the qualified contract will become a successor of the lessor for the purpose of collecting from a lessee in default rentals which are in arrears and with respect to which the lessor has received payment under a guarantee made pursuant to this section; and

(4) such other provisions, not inconsistent with the purposes of this section as the Administrator may in his discretion require.

(e) Assignment of guarantee

Any guarantee issued under this section may be assigned with the permission of the Administration by the person to whom the payments under qualified contracts are due.

(f) Application of section 693 of this title

Section 693 of this title shall apply to the administration of this section.

(Pub. L. 85–699, title IV, §404, as added Pub. L. 94–305, title I, §102, June 4, 1976, 90 Stat. 663; amended Pub. L. 98–473, title I, §115, Oct. 12, 1984, 98 Stat. 1967.)

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98–473, §115(1), (2), substituted "shall be issued" for "may be issued" and inserted ", and the Administration is expressly prohibited from denying such guarantee due to the property being so acquired".

Subsec. (c). Pub. L. 98–473, §115(3), substituted "be less than 1 per centum or more than 3½ per centum" for "exceed 3½ per centum".

§694–2. Revolving fund for qualified contract guarantees; investment of idle funds

There is created within the Treasury a separate fund for guarantees which shall be available to the Administrator without fiscal year limitations as a revolving fund for the purpose of section 694–1 of this title. All amounts received by the Administrator, including any moneys, property, or assets derived by him from his operations in connection with section 694–1 of this title shall be deposited in the fund. All expenses and payments, excluding administrative expenses, pursuant to operations of the Administrator under section 694–1 of this title shall be paid from the fund. Moneys in the fund not needed for the payment of current operating expenses or for the payment of claims arising under this part may be invested in bonds or other obligations of, or bonds or other obligations guaranteed

as to principal and interest by, the United States; except that moneys provided as capital for the fund shall not be so invested.

(Pub. L. 85–699, title IV, §405, as added Pub. L. 94–305, title I, §102, June 4, 1976, 90 Stat. 665; amended Pub. L. 95–89, title I, §104, Aug. 4, 1977, 91 Stat. 556; Pub. L. 96–302, title I, §112, July 2, 1980, 94 Stat. 837.)

AMENDMENTS

1980—Pub. L. 96–302 inserted investment of idle funds provision.

1977—Pub. L. 95–89 prohibited payment of administrative expenses from the fund and deleted provisions which authorized: a $15,000,000 appropriation of capital for the fund; payment during the fiscal year into the Treasury as miscellaneous receipts, from the fund, of interest on the cumulative amount of appropriations available as capital to the fund less the average undisbursed cash balance in the fund during the year; and investment of noncapital moneys, when not needed for payment of current operating expenses or claims arising under section 694–2 of this title, in Federal bonds or obligations or bonds or obligations guaranteed by the United States as to principal and interest.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–302 effective Oct. 1, 1980, see section 507 of Pub. L. 96–302, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–89 effective Oct. 1, 1977, see section 106 of Pub. L. 95–89, set out as a note under section 633 of this title.

PART B—SURETY BOND GUARANTEES

§694a. Definitions

As used in this part—

(1) The term "bid bond" means a bond conditioned upon the bidder on a contract entering into the contract, if he receives the award thereof, and furnishing the prescribed payment bond and performance bond.

(2) The term "payment bond" means a bond conditioned upon the payment by the principal of money to persons under contract with him.

(3) The term "performance bond" means a bond conditioned upon the completion by the principal of a contract in accordance with its terms.

(4) The term "surety" means the person who (A) under the terms of a bid bond, undertakes to pay a sum of money to the obligee in the event the principal breaches the conditions of the bond, (B) under the terms of a performance bond, undertakes to incur the cost of fulfilling the terms of a contract in the event the principal breaches the conditions of the contract, (C) under the terms of a payment bond, undertakes to make payment to all persons supplying labor and material in the prosecution of the work provided for in the contract if the principal fails to make prompt payment, or (D) is an agent, independent agent, underwriter, or any other company or individual empowered to act on behalf of such person.

(5) The term "obligee" means (A) in the case of a bid bond, the person requesting bids for the performance of a contract, or (B) in the case of a payment bond or performance bond, the person who has contracted with a principal for the completion of the contract and to whom the obligation of the surety runs in the event of a breach by the principal of the conditions of a payment bond or performance bond.

(6) The term "principal" means (A) in the case of a bid bond, a person bidding for the award of a contract, or (B) the person primarily liable to complete a contract for the obligee, or to make payments to other persons in respect of such contract, and for whose performance of his obligation

the surety is bound under the terms of a payment or performance bond. A principal may be a prime contractor or a subcontractor.

(7) The term "prime contractor" means the person with whom the obligee has contracted to perform the contract.

(8) The term "subcontractor" means a person who has contracted with a prime contractor or with another subcontractor to perform a contract.

(9) Notwithstanding any other provision of law or any rule, regulation, or order of the Administration, for purpose of sections 694a, 694b, and 694c of this title the term "small business concern" means a business concern that meets the size standard for the primary industry in which such business concern, and the affiliates of such business concern, is engaged, as determined by the Administrator in accordance with the North American Industry Classification System.

(Pub. L. 85–699, title IV, §410, as added Pub. L. 91–609, title IX, §911(a)(4), Dec. 31, 1970, 84 Stat. 1812; amended Pub. L. 95–507, title I, §110, Oct. 24, 1978, 92 Stat. 1758; Pub. L. 111–5, div. A, title V, §508(c), Feb. 17, 2009, 123 Stat. 158; Pub. L. 112–239, div. A, title XVI, §1695(c), Jan. 2, 2013, 126 Stat. 2090.)

AMENDMENTS

2013—Par. (9). Pub. L. 112–239 added par. (9).

2009—Par. (9). Pub. L. 111–5, §508(c), (f), temporarily added par. (9) which read as follows: "Notwithstanding any other provision of law or any rule, regulation, or order of the Administration, for purposes of sections 694a, 694b, and 694c of this title the term "small business concern" means a business concern that meets the size standard for the primary industry in which such business concern, and the affiliates of such business concern, is engaged, as determined by the Administrator in accordance with the North American Industry Classification System." See Termination Date of 2009 Amendment note below.

1978—Par. (4)(D). Pub. L. 95–507 added cl. (D).

TERMINATION DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. A, title V, §508(f), Feb. 17, 2009, 123 Stat. 159, provided that: "The amendments made by this section [amending this section and section 694b of this title] shall remain in effect until September 30, 2010."

TECHNICAL ASSISTANCE IN CONNECTION WITH CONSTRUCTION CONTRACTS; AUTHORIZATION OF APPROPRIATIONS

Section 911(b) of Pub. L. 91–609 authorized the Secretary of Housing and Urban Development to take such steps and carry out such activities as he determined to be necessary or desirable to provide, either directly or by contract or other arrangement, technical assistance to any contractor or subcontractor for whom a bid, payment, or performance bond is guaranteed under part B of title IV of the Small Business Investment Act of 1958 [this part] in connection with any construction contract, in order to assist such contractor or subcontractor in obtaining or carrying out such contract, and authorized to be appropriated for each of the first three fiscal years ending after the date of the enactment of this Act [Dec. 31, 1970] such sums, not to exceed $1,500,000, as were necessary to enable the Secretary to carry out his functions under paragraph (1).

§694b. Surety bond guarantees

(a) Authority of Administration to guarantee surety against loss from principal's breach of bond

(1)(A) The Administration may, upon such terms and conditions as it may prescribe, guarantee and enter into commitments to guarantee any surety against loss resulting from a breach of the terms of a bid bond, payment bond, performance bond, or bonds ancillary thereto, by a principal on any total work order or contract amount at the time of bond execution that does not exceed $6,500,000, as adjusted for inflation in accordance with section 1908 of title 41.

(B) The Administrator may guarantee a surety under subparagraph (A) for a total work order or contract amount that does not exceed $10,000,000, if a contracting officer of a Federal agency certifies that such a guarantee is necessary.

(2) The terms and conditions of said guarantees and commitments may vary from surety to surety

on the basis of the Administration's experience with the particular surety.

(3) The Administration may authorize any surety, without further administration approval, to issue, monitor, and service such bonds subject to the Administration's guarantee.

(4) No such guarantee may be issued, unless—

(A) the person who would be principal under the bond is a small business concern;

(B) the bond is required in order for such person to bid on a contract, or to serve as a prime contractor or subcontractor thereon;

(C) such person is not able to obtain such bond on reasonable terms and conditions without a guarantee under this section; and

(D) there is a reasonable expectation that such principal will perform the covenants and conditions of the contract with respect to which such bond is required, and the terms and conditions of such bond are reasonable in the light of the risks involved and the extent of the surety's participation.

(5)(A) The Administration shall promptly act upon an application from a surety to participate in the Preferred Surety Bond Guarantee Program, authorized by paragraph (3), in accordance with criteria and procedures established in regulations pursuant to subsection (d) of this section.

(B) The Administration is authorized to reduce the allotment of bond guarantee authority or terminate the participation of a surety in the Preferred Surety Bond Guarantee Program based on the rate of participation of such surety during the 4 most recent fiscal year quarters compared to the median rate of participation by the other sureties in the program.

(b) Indemnification of surety against loss from avoiding breach

Subject to the provisions of this section, in connection with the issuance by the Administration of a guarantee to a surety as provided by subsection (a) of this section, the Administration may agree to indemnify such surety against a loss sustained by such surety in avoiding or attempting to avoid a breach of the terms of a bond guaranteed by the Administration pursuant to subsection (a) of this section: *Provided, however—*

(1) prior to making any payment under this subsection, the Administration shall first determine that a breach of the terms of such bond was imminent;

(2) a surety must obtain approval from the Administration prior to making any payments pursuant to this subsection unless the surety is participating under the authority of subsection (a)(3) of this section; and

(3) no payment by the Administration pursuant to this subsection shall exceed 10 per centum of the contract price unless the Administrator determines that a greater payment should be made as a result of a finding by the Administrator that the surety's loss sustained in avoiding or attempting to avoid such breach was necessary and reasonable.

In no event shall the Administration pay a surety pursuant to this subsection an amount exceeding the guaranteed share of the bond available to such surety pursuant to subsection (a) of this section.

(c) Limitation of liability

Any guarantee or agreement to indemnify under this section shall obligate the Administration to pay to the surety a sum—

(1) not to exceed 70 per centum of the loss incurred and paid by a surety authorized to issue bonds subject to the Administration's guarantee under subsection (a)(3) of this section;

(2) not to exceed 90 per centum of the loss incurred and paid in the case of a surety requiring the Administration's specific approval for the issuance of such bond, but in no event may the Administration make any duplicate payment pursuant to subsection (b) of this section or any other subsection;

(3) equal to 90 per centum of the loss incurred and paid in the case of a surety requiring the administration's [1] specific approval for the issuance of a bond, if—

(A) the total amount of the contract at the time of execution of the bond or bonds is $100,000 or less, or

(B) the bond was issued to a small business concern owned and controlled by socially and economically disadvantaged individuals as defined by section 637(d) of this title, or to a qualified HUBZone small business concern (as defined in section 632(p) of this title); or

(4) determined pursuant to subsection (b) of this section, if applicable.

(d) Regulations

The Administration may establish and periodically review regulations for participating sureties which shall require such sureties to meet Administration standards for underwriting, claim practices, and loss ratios.

(e) Reimbursement of surety; conditions

Pursuant to any such guarantee or agreement, the Administration shall reimburse the surety, as provided in subsection (c) of this section, except that the Administration shall be relieved of liability (in whole or in part within the discretion of the Administration) if—

(1) the surety obtained such guarantee or agreement, or applied for such reimbursement, by fraud or material misrepresentation,

(2) the total contract amount at the time of execution of the bond or bonds exceeds $6,500,000,

(3) the surety has breached a material term or condition of such guarantee agreement, or

(4) the surety has substantially violated the regulations promulgated by the Administration pursuant to subsection (d).

(f) Procedure for reimbursement

The Administration may, upon such terms and conditions as it may prescribe, adopt a procedure for reimbursing a surety for its paid losses billed each month, based upon prior monthly payments to such surety, with subsequent adjustments after such disbursement.

(g) Audit

(1) Each participating surety shall make reports to the Administration at such times and in such form as the Administration may require.

(2) The Administration may at all reasonable times audit, in the offices of a participating surety, all documents, files, books, records, and other material relevant to the Administration's guarantee, commitments to guarantee, or agreements to indemnify any surety pursuant to this section.

(3) Each surety participating under the authority of paragraph (3) of subsection (a) of this section shall be audited at least once every three years by examiners selected and approved by the Administration.

(h) Administrative provisions

The Administration shall administer this part on a prudent and economically justifiable basis and establish such fee or fees for small business concerns and premium or premiums for sureties as it deems reasonable and necessary, to be payable at such time and under such conditions as may be determined by the Administration.

(i) Powers of Administration respecting loans

The provisions of section 693 of this title shall apply in the administration of this section.

(j) Administration not to deny liability based on information provided as part of application

For bonds made or executed with the prior approval of the Administration, the Administration shall not deny liability to a surety based upon material information that was provided as part of the guarantee application.

(Pub. L. 85–699, title IV, §411, as added Pub. L. 91–609, title IX, §911(a)(4), Dec. 31, 1970, 84 Stat. 1813; amended Pub. L. 93–386, §§6(a)(3), 11, Aug. 23, 1974, 88 Stat. 747, 749; Pub. L. 95–507, title I, §111, Oct. 24, 1978, 92 Stat. 1758; Pub. L. 96–302, title I, §115, July 2, 1980, 94 Stat. 839; Pub. L. 99–272, title XVIII, §18014, Apr. 7, 1986, 100 Stat. 370; Pub. L. 100–590, title II, §§202–204, Nov. 3, 1988, 102 Stat. 3007–3009; Pub. L. 104–208, div. D, title II, §206(a), Sept. 30, 1996, 110 Stat. 3009–738; Pub. L. 105–135, title VI, §604(d), Dec. 2, 1997, 111 Stat. 2633; Pub. L. 106–554,

§1(a)(9) [title VIII, §805(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–705; Pub. L. 108–447, div. K, title II, §203(a), (b), Dec. 8, 2004, 118 Stat. 3465, 3466; Pub. L. 111–5, div. A, title V, §508(a), (b), Feb. 17, 2009, 123 Stat. 158; Pub. L. 112–239, div. A, title XVI, §1695(a), (b), Jan. 2, 2013, 126 Stat. 2089, 2090.)

AMENDMENTS

2013—Subsec. (a)(1). Pub. L. 112–239, §1695(a), designated existing provisions as subpar. (A), substituted "does not exceed $6,500,000, as adjusted for inflation in accordance with section 1908 of title 41." for "does not exceed $2,000,000.", and added subpar. (B).

Subsec. (e). Pub. L. 112–239, §1695(b)(1), added subsec. (e) and struck out former subsec. (e). Prior to amendment, text read as follows: "Pursuant to any such guarantee or agreement, the Administration shall reimburse the surety, as provided in subsection (c) of this section, except that the Administration shall be relieved of all liability if—

"(1) the surety obtained such guarantee or agreement, or applied for such reimbursement, by fraud or material misrepresentation,

"(2) the total contract amount at the time of execution of the bond or bonds exceeds $2,000,000,

"(3) the surety has breached a material term or condition of such guarantee agreement, or

"(4) the surety has substantially violated the regulations promulgated by the Administration pursuant to subsection (d) of this section."

Subsec. (j). Pub. L. 112–239, §1695(b)(2), added subsec. (j).

2009—Subsec. (a)(1). Pub. L. 111–5, §508(a), (f), temporarily amended par. (1) by designating existing provisions as subpar. (A), substituting "$5,000,000" for "$2,000,000", and adding subpar. (B) which read as follows: "The Administrator may guarantee a surety under subparagraph (A) for a total work order or contract amount that does not exceed $10,000,000, if a contracting officer of a Federal agency certifies that such a guarantee is necessary." See Termination Date of 2009 Amendment note below.

Subsec. (e). Pub. L. 111–5, §508(b)(1), (f), temporarily added subsec. (e), the text of which read as follows:

"Pursuant to any such guarantee or agreement, the Administration shall reimburse the surety, as provided in subsection (c) of this section, except that the Administration shall be relieved of liability (in whole or in part within the discretion of the Administration) if—

"(1) the surety obtained such guarantee or agreement, or applied for such reinbursement, by fraud or material misrepresentation,

"(2) the total contract amount at the time of execution of the bond or bonds exceeds $5,000,000,

"(3) the surety has breached a material term or condition of such guarantee agreement, or

"(4) the surety has substantially violated the regulations promulgated by the Administration pursuant to subsection (d)."

See Termination Date of 2009 Amendment note below.

Subsec. (k). Pub. L. 111–5, §508(b)(2), (f), temporarily added subsec. (k) which read as follows: "For bonds made or executed with the prior approval of the Administration, the Administration shall not deny liability to a surety based upon material information that was provided as part of the guaranty application." See Termination Date of 2009 Amendment note below.

2004—Subsec. (a)(1). Pub. L. 108–447, §203(a), substituted "total work order or contract amount at the time of bond execution that does not exceed" for "contract up to".

Subsec. (g)(3). Pub. L. 108–447, §203(b), substituted "every three years" for "each year".

2000—Subsecs. (a)(1), (e)(2). Pub. L. 106–554 substituted "$2,000,000" for "$1,250,000".

1997—Subsec. (c)(3)(B). Pub. L. 105–135 inserted ", or to a qualified HUBZone small business concern (as defined in section 632(p) of this title)" before semicolon.

1996—Subsec. (a)(5). Pub. L. 104–208 added par. (5).

1988—Subsec. (a). Pub. L. 100–590, §202, amended subsec. (a) generally, substituting pars. (1) to (4) for former pars. (1) to (6).

Subsec. (b). Pub. L. 100–590, §203(c), added par. (2), redesignated former par. (2) as (3), struck out former par. (3) which prohibited the making subsequent to two years after Oct. 24, 1978, of new agreements to indemnify, and inserted concluding provision: "In no event shall the Administration pay a surety pursuant to this subsection an amount exceeding the guaranteed share of the bond available to such surety pursuant to subsection (a) of this section."

Subsec. (c). Pub. L. 100–590, §203(b), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "Any guarantee or agreement to indemnify under this section shall obligate the Administration to

pay to the surety a sum not to exceed (1) in the case of a breach of contract, 90 percent of the loss incurred and paid by the surety as the result of the breach; or (2) in a case in which subsection (b) of this section applies, the amount determined under subsection (b) of this section."

Subsec. (e)(3), (4). Pub. L. 100–590, §203(c), added pars. (3) and (4).

Subsec. (g). Pub. L. 100–590, §204, amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: "The Administration may at all reasonable times audit in the offices of a participating surety all documents, files, books, records, and other material relevant to the Administration's guarantee, commitments to guarantee, or agreements to indemnify any surety pursuant to this section."

1986—Subsecs. (a), (e)(2). Pub. L. 99–272 substituted "$1,250,000" for "$1,000,000".

1980—Subsec. (c). Pub. L. 96–302 struck out "to or on behalf of the obligee, or to labor and materialmen, in fulfilling the terms of the contract" after "paid by the surety" in cl. (1).

1978—Subsec. (a). Pub. L. 95–507 amended subsec. (a) generally, striking out requirement that the Administration consult with the Secretary of Housing and Urban Development, and inserting authority to vary the terms and conditions of guarantees on the basis of experience with a particular surety and authority to guarantee bonds ancillary and conterminous with the other named bonds.

Subsec. (b). Pub. L. 95–507 substituted provisions relating to indemnification of a surety against loss sustained in attempting to avoid or avoiding breach for provisions relating to the extent of liability of the Administration for loss incurred by a surety.

Subsec. (c). Pub. L. 95–507 substituted provisions relating to the limitation of the Administration's guarantee liability for provisions relating to the administration of the program and a study and report to Congress regarding the economic soundness of the program.

Subsec. (d). Pub. L. 95–507 substituted provisions relating to regulations for participating sureties for provisions relating to the application of section 693 of this title in the administration of this section.

Subsecs. (e) to (i). Pub. L. 95–507 added subsecs. (e) to (i).

1974—Subsec. (a). Pub. L. 93–386, §6(a)(3), substituted "$1,000,000" for "$500,000".

Subsec. (c). Pub. L. 93–386, §11, inserted provisions relating to the administration of the program on a prudent and economically justifiable basis and provisions requiring the Administration to publish the cost of the program to the Administration, to conduct a study of the program in order to determine what must be done to make the program economically sound, and to transmit a report to Congress of the findings, conclusions, and recommendations of the study.

TERMINATION DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–5 to remain in effect until Sept. 30, 2010, see section 508(f) of Pub. L. 111–5, set out as a note under section 694a of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–208, div. D, title II, §206(b), Sept. 30, 1996, 110 Stat. 3009–739, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to applications received (or pending substantive evaluation) on or after October 1, 1995."

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENT

Pub. L. 100–590, title II, §207, Nov. 3, 1988, 102 Stat. 3009, as amended by Pub. L. 101–574, title II, §216(a), Nov. 15, 1990, 104 Stat. 2822; Pub. L. 103–403, title III, §302, Oct. 22, 1994, 108 Stat. 4188; Pub. L. 104–36, §7, Oct. 12, 1995, 109 Stat. 297; Pub. L. 105–135, title V, §503, Dec. 2, 1997, 111 Stat. 2624; Pub. L. 106–554, §1(a)(9) [title VIII, §805(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–706, which provided that the provisions contained in section 694b(a)(3) of this title would cease to be effective after Sept. 30, 2003, was repealed by Pub. L. 108–447, div. K, title II, §203(c), Dec. 8, 2004, 118 Stat. 3466.

Pub. L. 100–590, title II, §209, Nov. 3, 1988, 102 Stat. 3010, provided that: "Except as otherwise provided in this title, the provisions of this title [amending this section and section 694c of this title and enacting provisions set out as notes under this section], shall become effective upon expiration of one hundred and eighty days after the date of its enactment [Nov. 3, 1988]."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–302 effective Oct. 1, 1980, see section 507 of Pub. L. 96–302, set out as a note under section 631 of this title.

REGULATIONS

Pub. L. 100–590, title II, §205, Nov. 3, 1988, 102 Stat. 3009, provided that: "The Administration shall promulgate final regulations to implement the amendments made by this title [amending this section and section 694c of this title] not later than one hundred and eighty days after the date of the enactment of this Act [Nov. 3, 1988]."

SMALL BUSINESS ACCESS TO SURETY BONDING SURVEY

Pub. L. 102–366, title III, subtitle A, Sept. 4, 1992, 106 Stat. 1002–1005, known as the Small Business Access to Surety Bonding Survey Act of 1992, directed Comptroller General to conduct a comprehensive survey of business firms, from a statistically valid sample of business firms developed from the most recent list of construction firms maintained by Dun and Bradstreet Company and using a questionnaire with specifically designated questions, to obtain data on the experiences of such firms, and especially the experiences of small business concerns, in obtaining surety bonds from corporate surety firms and to submit a report to Congress, not later than 18 months after Sept. 4, 1992, which report was to contain a summary of responses of business firms to the survey and a description of any trends found by Comptroller General in such responses, which specific information on responses and trends of small business concerns, small business concerns owned and controlled by women, and small business concerns owned and controlled by socially and economically disadvantaged individuals.

EVALUATION OF PREFERRED SURETY BOND GUARANTEE PROGRAM; REPORT

Pub. L. 100–590, title II, §206, Nov. 3, 1988, 102 Stat. 3009, as amended by Pub. L. 101–574, title II, §216(b), Nov. 15, 1990, 104 Stat. 2823, directed Comptroller General, not later than 3 years after Nov. 3, 1988, to transmit a report to Congress evaluating the preferred surety bond guarantee program, with such report to be transmitted not later than Mar. 1, 1994, and cover the period Oct. 1, 1990, through Sept. 30, 1993.

[1] *So in original. Probably should be capitalized.*

§694c. Revolving fund for surety bond guarantees

(a) There is created within the Treasury a separate fund for guarantees which shall be available to the Administrator without fiscal year limitation as a revolving fund for the purposes of this part. All amounts received by the Administrator, including any moneys, property, or assets derived by him from his operations in connection with this part, shall be deposited in the fund. All expenses and payments, excluding administrative expenses, pursuant to operations of the Administrator under this part shall be paid from the fund.

(b) Such sums as may be appropriated to the Fund to carry out the programs authorized by this part shall be without fiscal year limitation.

(Pub. L. 85–699, title IV, §412, as added Pub. L. 93–386, §6(a)(4), Aug. 23, 1974, 88 Stat. 747; amended Pub. L. 94–305, title I, §113, June 4, 1976, 90 Stat. 667; Pub. L. 95–14, §4, Mar. 24, 1977, 91 Stat. 25; Pub. L. 95–89, title I, §105, Aug. 4, 1977, 91 Stat. 556; Pub. L. 96–302, title I, §111, July 2, 1980, 94 Stat. 837; Pub. L. 100–590, title II, §208, Nov. 3, 1988, 102 Stat. 3009.)

AMENDMENTS

1988—Pub. L. 100–590 designated existing provisions as subsec. (a) and added subsec. (b).

1980—Pub. L. 96–302 repealed investment of idle funds provision, which is covered in section 694–2 of this title.

1977—Pub. L. 95–89 prohibited payment of administrative expenses from the fund and deleted provisions which authorized: a $110,000,000 appropriation of capital for the fund; and payment during the fiscal year into the Treasury as miscellaneous receipts, from the fund, of interest on the cumulative amount of appropriations available as capital to the fund less the average undisbursed cash balance in the fund during the year.

Pub. L. 95–14 substituted "$110,000,000" for "$56,500,000".

1976—Pub. L. 94–305 substituted "$56,500,000" for "$35,000,000".

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–590 effective on expiration of 180 days after Nov. 3, 1988, see section 209 of

Pub. L. 100–590, set out as an Effective and Termination Dates of 1988 Amendment note under section 694b of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–302 effective Oct. 1, 1980, see section 507 of Pub. L. 96–302, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–89 effective Oct. 1, 1977, see section 106 of Pub. L. 95–89, set out as a note under section 633 of this title.

SUBCHAPTER V—LOANS TO STATE AND LOCAL DEVELOPMENT COMPANIES

§695. State development companies

(a) Congressional finding and declaration of purpose

The Congress hereby finds and declares that the purpose of this subchapter is to foster economic development and to create or preserve job opportunities in both urban and rural areas by providing long-term financing for small business concerns through the development company program authorized by this subchapter.

(b) Loans; obligations of development companies

The Administration is authorized to make loans to State development companies to assist in carrying out the purposes of this chapter. Any funds advanced under this subsection shall be in exchange for obligations of the development company which bear interest at such rate, and contain such other terms, as the Administration may fix, and funds may be so advanced without regard to the use and investment by the development company of funds secured by it from other sources.

(c) Maximum loans to development companies

The total amount of obligations purchased and outstanding at any one time by the Administration under this section from any one State development company shall not exceed the total amount borrowed by it from all other sources. Funds advanced to a State development company under this section shall be treated on an equal basis with those funds borrowed by such company after August 21, 1958, regardless of source, which have the highest priority, except when this requirement is waived by the Administrator.

(d) Eligibility for assistance

In order to qualify for assistance under this subchapter, the development company must demonstrate that the project to be funded is directed toward at least one of the following economic development objectives—

(1) the creation of job opportunities within two years of the completion of the project or the preservation or retention of jobs attributable to the project;

(2) improving the economy of the locality, such as stimulating other business development in the community, bringing new income into the area, or assisting the community in diversifying and stabilizing its economy; or

(3) the achievement of one or more of the following public policy goals:

(A) business district revitalization,

(B) expansion of exports,

(C) expansion of minority business development or women-owned business development,

(D) rural development,

(E) expansion of small business concerns owned and controlled by veterans, as defined in

section 632(q) of this title, especially service-disabled veterans, as defined in such section 632(q) of this title,

(F) enhanced economic competition, including the advancement of technology, plan retooling, conversion to robotics, or competition with imports,

(G) changes necessitated by Federal budget cutbacks, including defense related industries,

(H) business restructuring arising from Federally mandated standards or policies affecting the environment or the safety and health of employees,

(I) reduction of energy consumption by at least 10 percent,

(J) increased use of sustainable design, including designs that reduce the use of greenhouse gas emitting fossil fuels, or low-impact design to produce buildings that reduce the use of non-renewable resources and minimize environmental impact,

(K) plant, equipment and process upgrades of renewable energy sources such as the small-scale production of energy for individual buildings or communities consumption, commonly known as micropower, or renewable fuels producers including biodiesel and ethanol producers, or

(L) reduction of rates of unemployment in labor surplus areas, as such areas are determined by the Secretary of Labor.

In subparagraphs (J) and (K), terms have the meanings given those terms under the Leadership in Energy and Environmental Design (LEED) standard for green building certification, as determined by the Administrator.

If eligibility is based upon the criteria set forth in paragraph (2) or (3), the project need not meet the job creation or job preservation criteria developed by the Administration if the overall portfolio of the development company meets or exceeds such job creation or retention criteria.

(e) Creation or retention of jobs

(1) A project meets the objective set forth in subsection (d)(1) of this section if the project creates or retains one job for every $65,000 guaranteed by the Administration, except that the amount is $100,000 in the case of a project of a small manufacturer.

(2) Paragraph (1) does not apply to a project for which eligibility is based on the objectives set forth in paragraph (2) or (3) of subsection (d) of this section, if the development company's portfolio of outstanding debentures creates or retains one job for every $65,000 guaranteed by the Administration.

(3) For projects in Alaska, Hawaii, State-designated enterprise zones, empowerment zones and enterprise communities, labor surplus areas, as determined by the Secretary of Labor, and for other areas designated by the Administrator, the development company's portfolio may average not more than $75,000 per job created or retained.

(4) Loans for projects of small manufacturers shall be excluded from calculations under paragraph (2) or (3).

(5) Under regulations prescribed by the Administrator, the Administrator may waive, on a case-by-case basis or by regulation, any requirement of this subsection (other than paragraph (4)). With respect to any waiver the Administrator is prohibited from adopting a dollar amount that is lower than the amounts set forth in paragraphs (1), (2), and (3).

(6) As used in this subsection, the term "small manufacturer" means a small business concern—

(A) the primary business of which is classified in sector 31, 32, or 33 of the North American Industrial Classification System; and

(B) all of the production facilities of which are located in the United States.

(Pub. L. 85–699, title V, §501, Aug. 21, 1958, 72 Stat. 696; Pub. L. 100–590, title I, §115(a), (b)(1), Nov. 3, 1988, 102 Stat. 2997; Pub. L. 101–574, title II, §214(a), (b), Nov. 15, 1990, 104 Stat. 2821; Pub. L. 106–50, title IV, §405, Aug. 17, 1999, 113 Stat. 246; Pub. L. 106–554, §1(a)(9) [title III, §302], Dec. 21, 2000, 114 Stat. 2763, 2763A–684; Pub. L. 108–447, div. K, title I, §105, Dec. 8, 2004, 118 Stat. 3444; Pub. L. 110–140, title XII, §1204(a), Dec. 19, 2007, 121 Stat. 1772; Pub. L.

111–5, div. A, title V, §504(b), Feb. 17, 2009, 123 Stat. 156; Pub. L. 111–240, title I, §1132, Sept. 27, 2010, 124 Stat. 2514.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (b), see References in Text note set out under section 661 of this title.

AMENDMENTS

2010—Subsec. (d)(3)(L). Pub. L. 111–240 added subpar. (L).

2009—Subsec. (e)(1), (2). Pub. L. 111–5, which directed amendment of section 501(e)(1), (2) of the Small Business Investment Act by substituting "$65,000" for "$50,000", was executed by making the substitution in subsec. (e)(1), (2) of this section, which is section 501 of the Small Business Investment Act of 1958, to reflect the probable intent of Congress.

2007—Subsec. (d)(3). Pub. L. 110–140, §1204(a)(4), inserted the following concluding provisions: "In subparagraphs (J) and (K), terms have the meanings given those terms under the Leadership in Energy and Environmental Design (LEED) standard for green building certification, as determined by the Administrator."

Subsec. (d)(3)(I) to (K). Pub. L. 110–140, §1204(a)(1)–(3), added subpars. (I) to (K).

2004—Subsec. (e). Pub. L. 108–447 added subsec. (e).

2000—Subsec. (d)(3)(C). Pub. L. 106–554 inserted "or women-owned business development" before comma at end.

1999—Subsec. (d)(3)(E)–(H). Pub. L. 106–50 added subpar. (E) and redesignated former subpars. (E) to (G) as (F) to (H), respectively.

1990—Subsec. (a). Pub. L. 101–574, §214(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "The Congress hereby finds and declares that the purpose of this subchapter is to foster economic development in both urban and rural areas by providing long term financing for small business concerns through the development company program authorized by this subchapter. In order to carry out this objective, the Administration is hereby directed to place greater emphasis on the needs of rural areas and the promotion of the development company program in such areas, and is further directed to develop a plan for greater outreach of procurement and export trade seminars in such areas. As used in this subchapter, the term 'rural areas' means those localities with populations of less than 20,000."

Subsec. (d). Pub. L. 101–574, §214(b), added subsec. (d).

1988—Pub. L. 100–590 inserted "State development companies" as section catchline, added subsec. (a), and redesignated former subsecs. (a) and (b) as (b) and (c), respectively.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

BUDGETARY TREATMENT OF LOANS AND FINANCINGS

Assistance made available under any financings made under this subchapter during 2-year period beginning Oct. 1, 2002, to be treated as a separate program of the Small Business Administration for purposes of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.) only, see section 6(c) of Pub. L. 107–100, set out as a note under section 636 of this title.

LOAN LIQUIDATION PILOT PROGRAM

Pub. L. 104–208, div. D, title II, §204, Sept. 30, 1996, 110 Stat. 3009–736, provided that:

"(a) IN GENERAL.—The Administrator shall carry out a loan liquidation pilot program (in this section referred to as the 'pilot program') in accordance with the requirements of this section.

"(b) SELECTION OF DEVELOPMENT COMPANIES.—

"(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act [Sept. 30, 1996], the Administrator shall establish a pilot program under which certain development companies authorized to make loans and issue debentures under title V of the Small Business Investment Act of 1958 [15 U.S.C. 695 et seq.] are selected by the Administrator in accordance with this subsection to carry out loan liquidations.

"(2) CONFLICTS OF INTEREST.—The development companies selected under paragraph (1) shall agree not to take any action that would create a potential conflict of interest involving the development company, the third party lender, or an associate of the third party lender.

"(3) QUALIFICATIONS.—In order to qualify to participate in the pilot program under this section, each development company shall—

"(A) have not less than 6 years of experience in the program established by title V of the Small Business Investment Act of 1958;

"(B) have made, during the 6 most recent fiscal years, an average of not less than 10 loans per year through the program established by such title V of the Small Business Investment Act of 1958;

"(C) have not less than 2 years of experience in liquidating loans under the authority of a Federal, State, or other lending program; and

"(D) meet such other requirements as the Administration may establish.

"(c) AUTHORITY OF DEVELOPMENT COMPANIES.—The development companies selected under subsection (b) shall, for loans in their portfolio of loans made through debentures guaranteed under title V of the Small Business Investment Act of 1958 [15 U.S.C. 695 et seq.] that are in default after the date of enactment of this Act [Sept. 30, 1996], be authorized to—

"(1) perform all liquidation and foreclosure functions, including the acceleration or purchase of community injection funds, subject to such company obtaining prior written approval from the Administrator before committing the agency to purchase any other indebtedness secured by the property: *Provided*, That the Administrator shall approve or deny a request for such purchase within a period of 10 business days; and

"(2) liquidate such loans in a reasonable and sound manner and according to commercially accepted practices pursuant to a liquidation plan approved by the administrator in advance of its implementation. If the administrator does not approve or deny a request for approval of a liquidation plan within 10 business days of the date on which the request is made (or with respect to any routine liquidation activity under such a plan, within 5 business days) such request shall be deemed to be approved.

"(d) AUTHORITY OF THE ADMINISTRATOR.—In carrying out the pilot program, the Administrator shall—

"(1) have full authority to rescind the authority granted any development company under this section upon a 10-day written notice stating the reasons for the rescission; and

"(2) not later than 90 days after the admission of the development companies specified in subsection (b), implement the pilot program.

"(e) REPORT.—

"(1) IN GENERAL.—The Administrator shall issue a report on the results of the pilot program to the Committees on Small Business of the House of Representatives and the Senate [Committee on Small Business of Senate now Committee on Small Business and Entrepreneurship of Senate]. The report shall include information relating to—

"(A) the total dollar amount of each loan and project liquidated;

"(B) the total dollar amount guaranteed by the Administration;

"(C) total dollar losses;

"(D) total recoveries both as percentage of the amount guaranteed and the total cost of the project; and

"(E) a comparison of the pilot program information with the same information for liquidation conducted outside the pilot program over the period of time.

"(2) REPORTING PERIOD.—The report shall be based on data from, and issued not later than 90 days after the close of, the first eight 8 [sic] fiscal quarters of the pilot program's operation after the date of implementation."

[Section 204 of title II of div. D of Pub. L. 104–208, set out above, to cease to have effect beginning on the date on which final regulations are issued to carry out section 697g of this title, see section 1(a)(9) [title III, §307(b)] of Pub. L. 106–554, set out as a Regulations note under section 697g of this title.]

§696. Loans for plant acquisition, construction, conversion and expansion

The Administration may, in addition to its authority under section 695 of this title, make loans for plant acquisition, construction, conversion or expansion, including the acquisition of land, to State and local development companies, and such loans may be made or effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis: *Provided, however*, That the foregoing powers shall be subject to the following restrictions and limitations:

(1) USE OF PROCEEDS.—The proceeds of any such loan shall be used solely by the borrower to assist 1 or more identifiable small business concerns and for a sound business purpose approved by the Administration.

(2) MAXIMUM AMOUNT.—

(A) IN GENERAL.—Loans made by the Administration under this section shall be limited to—

(i) $5,000,000 for each small business concern if the loan proceeds will not be directed toward a goal or project described in clause (ii), (iii), (iv), or (v);

(ii) $5,000,000 for each small business concern if the loan proceeds will be directed toward 1 or more of the public policy goals described under section 695(d)(3) of this title;

(iii) $5,500,000 for each project of a small manufacturer;

(iv) $5,500,000 for each project that reduces the borrower's energy consumption by at least 10 percent; and

(v) $5,500,000 for each project that generates renewable energy or renewable fuels, such as biodiesel or ethanol production.

(B) DEFINITION.—As used in this paragraph, the term "small manufacturer" means a small business concern—

(i) the primary business of which is classified in sector 31, 32, or 33 of the North American Industrial Classification System; and

(ii) all of the production facilities of which are located in the United States.

(3) CRITERIA FOR ASSISTANCE.—

(A) IN GENERAL.—Any development company assisted under this section or section 697 of this title must meet the criteria established by the Administration, including the extent of participation to be required or amount of paid-in capital to be used in each instance as is determined to be reasonable by the Administration.

(B) COMMUNITY INJECTION FUNDS.—

(i) SOURCES OF FUNDS.—Community injection funds may be derived, in whole or in part, from—

(I) State or local governments;

(II) banks or other financial institutions;

(III) foundations or other not-for-profit institutions; or

(IV) the small business concern (or its owners, stockholders, or affiliates) receiving assistance through a body authorized by this subchapter.

(ii) FUNDING FROM INSTITUTIONS.—Not less than 50 percent of the total cost of any project financed pursuant to clauses [1] (i), (ii), or (iii) of subparagraph (C) shall come from the institutions described in subclauses (I), (II), and (III) of clause (i).

(C) FUNDING FROM A SMALL BUSINESS CONCERN.—The small business concern (or its owners, stockholders, or affiliates) receiving assistance through a body authorized by this subchapter shall provide—

(i) at least 15 percent of the total cost of the project financed, if the small business concern has been in operation for a period of 2 years or less;

(ii) at least 15 percent of the total cost of the project financed if the project involves the construction of a limited or single purpose building or structure;

(iii) at least 20 percent of the total cost of the project financed if the project involves both of the conditions set forth in clauses (i) and (ii); or

(iv) at least 10 percent of the total cost of the project financed, in all other circumstances, at the discretion of the development company.

(D) SELLER FINANCING.—Seller-provided financing may be used to meet the requirements of subparagraph (B), if the seller subordinates the interest of the seller in the property to the debenture guaranteed by the Administration.

(E) COLLATERALIZATION.—

(i) IN GENERAL.—The collateral provided by the small business concern shall generally

include a subordinate lien position on the property being financed under this subchapter, and is only 1 of the factors to be evaluated in the credit determination. Additional collateral shall be required only if the Administration determines, on a case-by-case basis, that additional security is necessary to protect the interest of the Government.

(ii) APPRAISALS.—With respect to commercial real property provided by the small business concern as collateral, an appraisal of the property by a State licensed or certified appraiser—

(I) shall be required by the Administration before disbursement of the loan if the estimated value of that property is more than $250,000; or

(II) may be required by the Administration or the lender before disbursement of the loan if the estimated value of that property is $250,000 or less, and such appraisal is necessary for appropriate evaluation of creditworthiness.

(4) If the project is to construct a new facility, up to 33 per centum of the total project may be leased, if reasonable projections of growth demonstrate that the assisted small business concern will need additional space within three years and will fully utilize such additional space within ten years.

(5) LIMITATION ON LEASING.—In addition to any portion of the project permitted to be leased under paragraph (4), not to exceed 20 percent of the project may be leased by the assisted small business to 1 or more other tenants, if the assisted small business occupies permanently and uses not less than a total of 60 percent of the space in the project after the execution of any leases authorized under this section.

(6) OWNERSHIP REQUIREMENTS.—Ownership requirements to determine the eligibility of a small business concern that applies for assistance under any credit program under this subchapter shall be determined without regard to any ownership interest of a spouse arising solely from the application of the community property laws of a State for purposes of determining marital interests.

(7) PERMISSIBLE DEBT REFINANCING.—

(A) IN GENERAL.—Any financing approved under this subchapter may include a limited amount of debt refinancing.

(B) EXPANSIONS.—If the project involves expansion of a small business concern, any amount of existing indebtedness that does not exceed 50 percent of the project cost of the expansion may be refinanced and added to the expansion cost, if—

(i) the proceeds of the indebtedness were used to acquire land, including a building situated thereon, to construct a building thereon, or to purchase equipment;

(ii) the existing indebtedness is collateralized by fixed assets;

(iii) the existing indebtedness was incurred for the benefit of the small business concern;

(iv) the financing under this subchapter will be used only for refinancing existing indebtedness or costs relating to the project financed under this subchapter;

(v) the financing under this subchapter will provide a substantial benefit to the borrower when prepayment penalties, financing fees, and other financing costs are accounted for;

(vi) the borrower has been current on all payments due on the existing debt for not less than 1 year preceding the date of refinancing; and

(vii) the financing under section 697a of this title will provide better terms or rate of interest than the existing indebtedness at the time of refinancing.

(Pub. L. 85–699, title V, §502, Aug. 21, 1958, 72 Stat. 697; Pub. L. 87–27, §26, May 1, 1961, 75 Stat. 63; Pub. L. 87–341, §10, Oct. 3, 1961, 75 Stat. 756; Pub. L. 94–305, title I, §§108(a), 110, June 4, 1976, 90 Stat. 666, 667; Pub. L. 95–507, title I, §112, Oct. 24, 1978, 92 Stat. 1760; Pub. L. 97–35, title XIX, §1909, Aug. 13, 1981, 95 Stat. 778; Pub. L. 100–418, title VIII, §8007(b), Aug. 23, 1988, 102 Stat. 1561; Pub. L. 100–590, title I, §116(a), (b)(1), Nov. 3, 1988, 102 Stat. 2997, 2998; Pub. L. 101–574, title II, §214(c), Nov. 15, 1990, 104 Stat. 2822; Pub. L. 104–208, div. D, title II, §202(a), Sept. 30, 1996, 110 Stat. 3009–734; Pub. L. 105–135, title II, §221, Dec. 2, 1997, 111 Stat. 2603; Pub. L. 106–554, §1(a)(9) [title II, §208(b), title III, §303, title VIII, §802(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–683, 2763A–684, 2763A–702; Pub. L. 108–447, div. K, title I, §104, Dec. 8, 2004, 118 Stat. 3444; Pub. L. 110–140, title XII, §1204(b), Dec. 19, 2007, 121 Stat. 1772; Pub. L.

111–5, div. A, title V, §504(a), Feb. 17, 2009, 123 Stat. 155; Pub. L. 111–240, title I, §§1112, 1122, Sept. 27, 2010, 124 Stat. 2508, 2510.)

AMENDMENTS

2010—Par. (2)(A)(i). Pub. L. 111–240, §1122(c), substituted "clause (ii), (iii), (iv), or (v)" for "subparagraph (B) or (C)".

Pub. L. 111–240, §1112(1), substituted "$5,000,000" for "$1,500,000".

Par. (2)(A)(ii). Pub. L. 111–240, §1112(2), substituted "$5,000,000" for "$2,000,000".

Par. (2)(A)(iii) to (v). Pub. L. 111–240, §1112(3)–(5), substituted "$5,500,000" for "$4,000,000".

Par. (7)(C). Pub. L. 111–240, §1122(b), struck out subpar. (C) relating to refinancing not involving expansions.

Pub. L. 111–240, §1122(a), added subpar. (C).

2009—Par. (7). Pub. L. 111–5 added par. (7).

2007—Par. (2)(A)(iv), (v). Pub. L. 110–140 added cls. (iv) and (v).

2004—Par. (2). Pub. L. 108–447 amended par. (2) generally. Prior to amendment, par. (2) read as follows: "Loans made by the Administration under this section shall be limited to $1,000,000 for each such identifiable small business concern, except loans meeting the criteria specified in section 695(d)(3) of this title, which shall be limited to $1,300,000 for each such identifiable small business concern."

2000—Par. (2). Pub. L. 106–554, §1(a)(9) [title III, §303], amended par. (2) generally. Prior to amendment, par. (2) read as follows: "Loans made by the Administration under this section shall be limited to $750,000 for each such identifiable small-business concern, except loans meeting the criteria specified in section 695(d)(3) of this title shall be limited to $1,000,000 for each such identifiable small business concern."

Par. (3)(E). Pub. L. 106–554, §1(a)(9) [title II, §208(b)], designated existing provisions as cl. (i), inserted heading, and added cl. (ii).

Par. (6). Pub. L. 106–554, §1(a)(9) [title VIII, §802(b)], added par. (6).

1997—Par. (1). Pub. L. 105–135, §221(1), added par. (1) and struck out former par. (1) which read as follows: "The proceeds of any such loan shall be used solely by such borrower to assist in identifiable small-business concern and for a sound business purpose approved by the Administration."

Par. (3)(D), (E). Pub. L. 105–135, §221(2), added subpars. (D) and (E).

Par. (5). Pub. L. 105–135, §221(3), added par. (5).

1996—Par. (3). Pub. L. 104–208 inserted heading and amended text of par. (3) generally. Prior to amendment, text read as follows: "Any development company assisted under this section must meet criteria established by the Administration, including the extent of participation to be required or amount of paid-in capital to be used in each instance as is determined to be reasonable by the Administration. Community injection funds may be derived, in whole or in part, from—

"(A) State or local governments;

"(B) banks or other financial institutions;

"(C) foundations or other not-for-profit institutions; or

"(D) a small business concern (or its owners, stockholders, or affiliates) receiving assistance through bodies authorized under this subchapter."

1990—Par. (2). Pub. L. 101–574 struck out period at end and inserted ", except loans meeting the criteria specified in section 695(d)(3) of this title shall be limited to $1,000,000 for each such identifiable small business concern."

1988—Pub. L. 100–590, §116(b)(1), inserted "Loans for plant acquisition, construction, conversion, and expansion" as section catchline.

Par. (2). Pub. L. 100–418 substituted "$750,000" for "$500,000".

Par. (4). Pub. L. 100–590, §116(a), added par. (4).

1981—Pars. (1) to (4). Pub. L. 97–35 redesignated pars. (2) to (4) as (1) to (3), respectively. Former par. (1), which provided that all loans made shall be so secured as reasonably to assure repayment and that in agreements to participate in loans on a deferred basis, such participation by the Administration shall not be in excess of 90 per centum of the balance of the loan outstanding at the time of disbursement, was struck out.

Par. (5). Pub. L. 97–35 struck out par. (5) which provided that loans, including extensions and renewals, may be made for a period not exceeding twenty-five years and that an extension may be granted up to ten years, if such extension will aid in the orderly liquidation of the loan, and that the Administration may fix the rate of interest.

1978—Par. (4). Pub. L. 95–507 inserted provisions relating to derivation of community injection funds.

1976—Pub. L. 94–305, §108(a), inserted "acquisition," after "plant" in introductory text.

Par. (3). Pub. L. 94–305, §110, substituted "$500,000" for "$350,000".

1961—Par. (3). Pub. L. 87–341, §10(1), substituted "$350,000" for "$250,000".

Par. (5). Pub. L. 87–341, §10(2), substituted "twenty-five" for "ten" before "years plus such additional period".

Par. (6). Pub. L. 87–27 struck out par. (6) which provided for termination of authority of the Administration to make loans to local development companies after June 30, 1961.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–240, title I, §1122(b), Sept. 27, 2010, 124 Stat. 2512, provided that the amendment made by section 1122(b) is effective 2 years after Sept. 27, 2010.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Oct. 1, 1996, see section 3 of Pub. L. 104–208, set out as a note under section 633 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 1918 of Pub. L. 97–35, set out as a note under section 631 of this title.

[1] *So in original. Probably should be "clause".*

§697. Development company debentures

(a) Guarantees; Administration authority; regulatory terms and conditions; full faith and credit; subordination of debentures

(1) Except as provided in subsection (b) of this section, the Administration may guarantee the timely payment of all principal and interest as scheduled on any debenture issued by any qualified State or local development company.

(2) Such guarantees may be made on such terms and conditions as the Administration may be regulation determine to be appropriate: *Provided*, That the Administration shall not decline to issue such guarantee when the ownership interests of the small business concern and the ownership interests of the property to be financed with the proceeds of a loan made pursuant to subsection (b)(1) of this section are not identical because one or more of the following classes of relatives have an ownership interest in either the small business concern or the property: father, mother, son, daughter, wife, husband, brother, or sister: *Provided further*, That the Administrator or his designee has determined on a case-by-case basis that such ownership interest, such guarantee, and the proceeds of such loan, will substantially benefit the small business concern.

(3) The full faith and credit of the United States in pledged to the payment of all amounts guaranteed under this subsection.

(4) Any debenture issued by any State or local development company with respect to which a guarantee is made under this subsection, may be subordinated by the Administration to any other debenture, promissory note, or other debt or obligation of such company.

(b) Statutory terms and conditions

No guarantee may be made with respect to any debenture under subsection (a) of this section unless—

(1) such debenture is issued for the purpose of making one or more loans to small business concerns, the proceeds of which shall be used by such concern for the purposes set forth in section

696 of this title;

(2) necessary funds for making such loans are not available to such company from private sources on reasonable terms;

(3) the interest rate on such debenture is not less than the rate of interest determined by the Secretary of the Treasury for purposes of section 683(b) of this title;

(4) the aggregate amount of such debenture does not exceed the amount of loans to be made from the proceeds of such debenture (other than any excess attributable to the administrative costs of such loans);

(5) the amount of any loan to be made from such proceeds does not exceed an amount equal to 50 percent of the cost of the project with respect to which such loan is made;

(6) the Administration approves each loan to be made from such proceeds; and

(7) with respect to each loan made from the proceeds of such debenture, the Administration—

(A) assesses and collects a fee, which shall be payable by the borrower, in an amount established annually by the Administration, which amount shall not exceed—

(i) the lesser of—

(I) 0.9375 percent per year of the outstanding balance of the loan; and

(II) the minimum amount necessary to reduce the cost (as defined in section 661a of title 2) to the Administration of purchasing and guaranteeing debentures under this chapter to zero; and

(ii) 50 percent of the amount established under clause (i) in the case of a loan made during the 2-year period beginning on October 1, 2002, for the life of the loan; and

(B) uses the proceeds of such fee to offset the cost (as such term is defined in section 661a of title 2) to the Administration of making guarantees under subsection (a) of this section.

(c) Commercial loan interest rate

(1) The purpose of this subsection is to facilitate the orderly and necessary flow of long-term loans from certified development companies to small business concerns.

(2) Notwithstanding the provisions of the constitution or laws of any State limiting the rate or amount of interest which may be charged, taken, received, or reserved, the maximum legal rate of interest on any commercial loan which funds any portion of the cost of the project financed pursuant to this section or section 697a of this title which is not funded by a debenture guaranteed under this section shall be a rate which is established by the Administrator of the Small Business Administration under the authority of this section.

(3) The Administrator is authorized and directed to establish and publish quarterly a maximum legal interest rate for any commercial loan which funds any portion of the cost of the project financed pursuant to this section or section 697a of this title which is not funded by a debenture guaranteed under this section.

(d) Charges for Administration expenses

(1) Level of charges

The Administration may impose an additional charge for administrative expenses with respect to each debenture for which payment of principal and interest is guaranteed under subsection (a) of this section.

(2) Participation fee

The Administration shall collect a one-time fee in an amount equal to 50 basis points on the total participation in any project of any institution described in subclause (I), (II), or (III) of section 696(3)(B)(i) of this title. Such fee shall be imposed only when the participation of the institution will occupy a senior credit position to that of the development company. All proceeds of the fee shall be used to offset the cost (as that term is defined in section 661a of title 2) to the Administration of making guarantees under subsection (a) of this section.

(3) Development company fee

The Administration shall collect annually from each development company a fee of 0.125 percent of the outstanding principal balance of any guaranteed debenture authorized by the Administration after September 30, 1996. Such fee shall be derived from the servicing fees collected by the development company pursuant to regulation, and shall not be derived from any additional fees imposed on small business concerns. All proceeds of the fee shall be used to offset the cost (as that term is defined in section 661a of title 2) to the Administration of making guarantees under subsection (a) of this section.

(e) "Qualified State or local development company" defined; exception for rural company; authority

(1) For purposes of this section, the term "qualified State or local development company" means any State or local development company which, as determined by the Administration, has—

(A) a full-time professional staff;

(B) professional management ability (including adequate accounting, legal, and business-servicing abilities); and

(C) a board of directors, or membership, which meets on a regular basis to make management decisions for such company, including decisions relating to the making and servicing of loans by such company.

(2) A company in a rural area shall be deemed to have satisfied the requirements of a full-time professional staff and professional management ability if it contracts with another certified development company which has such staff and management ability and which is located in the same general area to provide such services.

(3) Notwithstanding any other provision of law, qualified State or local development companies shall be authorized to prepare applications for deferred participation loans under section 636(a) of this title, to service such loans and to charge a reasonable fee for servicing such loans.

(f) Effective date

The fees authorized by subsections (b) and (d) of this section shall apply to financings approved by the Administration on or after October 1, 1996.

(g) Calculation of subsidy rate

All fees, interest, and profits received and retained by the Administration under this section shall be included in the calculations made by the Director of the Office of Management and Budget to offset the cost (as that term is defined in section 661a of title 2) to the Administration of purchasing and guaranteeing debentures under this chapter.

(h) Required actions upon default

(1) Initial actions

Not later than the 45th day after the date on which a payment on a loan funded through a debenture guaranteed under this section is due and not received, the Administration shall—

(A) take all necessary steps to bring such a loan current; or

(B) implement a formal written deferral agreement.

(2) Purchase or acceleration of debenture

Not later than the 65th day after the date on which a payment on a loan described in paragraph (1) is due and not received, and absent a formal written deferral agreement, the administration [1] shall take all necessary steps to purchase or accelerate the debenture.

(3) Prepayment penalties

With respect to the portion of any project derived from funds set forth in section 696(3) of this title, the Administration—

(A) shall negotiate the elimination of any prepayment penalties or late fees on defaulted loans made prior to September 30, 1996;

(B) shall not pay any prepayment penalty or late fee on the default based purchase of loans

issued after September 30, 1996; and

(C) for any project financed after September 30, 1996, shall not pay any default interest rate higher than the interest rate on the note prior to the date of default.

(i) Two-year waiver of fees

The Administration may not assess or collect any up front guarantee fee with respect to loans made under this subchapter during the 2-year period beginning on October 1, 2002.

(Pub. L. 85–699, title V, §503, as added Pub. L. 96–302, title I, §113(a), July 2, 1980, 94 Stat. 837; amended Pub. L. 100–590, title I, §§112(c), 114, 117(a), Nov. 3, 1988, 102 Stat. 2996–2998; Pub. L. 101–515, title V, §8, Nov. 5, 1990, 104 Stat. 2144; Pub. L. 103–403, title II, §213(1), Oct. 22, 1994, 108 Stat. 4184; Pub. L. 104–36, §6, Oct. 12, 1995, 109 Stat. 297; Pub. L. 104–208, div. D, title II, §§202(b)–(e), 203, Sept. 30, 1996, 110 Stat. 3009–735, 3009–736; Pub. L. 105–135, title II, §222, Dec. 2, 1997, 111 Stat. 2604; Pub. L. 106–554, §1(a)(9) [title III, §304], Dec. 21, 2000, 114 Stat. 2763, 2763A–684; Pub. L. 107–100, §6(b), Dec. 21, 2001, 115 Stat. 971; Pub. L. 108–199, div. B, title VI, §631, Jan. 23, 2004, 118 Stat. 100; Pub. L. 108–205, §2, Mar. 15, 2004, 118 Stat. 553; Pub. L. 108–217, §2, Apr. 5, 2004, 118 Stat. 591; Pub. L. 108–306, §2, Sept. 24, 2004, 118 Stat. 1131; Pub. L. 108–447, div. B, title V, div. K, title II, §204, Dec. 8, 2004, 118 Stat. 2911, 3466.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsecs. (b)(7)(A)(ii) and (g), see References in Text note set out under section 661 of this title.

AMENDMENTS

2004—Subsec. (f). Pub. L. 108–447, §204, struck out ", but shall not apply to financings approved by the Administration on or after October 1, 2005" before period at end.

Pub. L. 108–447, title V, substituted "October 1, 2005" for "October 1, 2004".

Pub. L. 108–217 substituted "October 1, 2004" for "May 21, 2004".

Pub. L. 108–205, as amended by Pub. L. 108–306, substituted "May 21, 2004" for "March 15, 2004".

Pub. L. 108–199 substituted "March 15, 2004" for "October 1, 2003" before period at end.

2001—Subsec. (b)(7)(A). Pub. L. 107–100, §6(b)(1), designated existing provisions following "not exceed" as cl. (i), redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, of cl. (i), realigned margins, and added cl. (ii).

Subsec. (i). Pub. L. 107–100, §6(b)(2), added subsec. (i).

2000—Subsec. (f). Pub. L. 106–554 amended heading and text of subsec. (f) generally. Prior to amendment, text read as follows: "The fees authorized by subsections (b) and (c) of this section shall apply to financings approved by the Administration on or after October 1, 1996, but shall not apply to financings approved by the Administration on or after October 1, 2000."

1997—Subsec. (b)(7)(A). Pub. L. 105–135, §222(1), added subpar. (A) and struck out former subpar. (A) which read as follows: "assesses and collects a fee, which shall be payable by the borrower, in an amount equal to the lesser of—

"(i) 0.9375 percent per year of the outstanding balance of the loan; or

"(ii) such percentage per year of the outstanding balance of the loan as the Administrator may determine to be necessary to reduce the cost (as that term is defined in section 661a of title 2) to the Administration of purchasing and guaranteeing debentures under this chapter to an amount that, taking into consideration any available appropriated funds, would permit the Administration to purchase or guarantee $2,000,000,000 of debentures in fiscal year 1997; and".

Subsec. (f). Pub. L. 105–135, §222(2), substituted "2000" for "1997".

1996—Subsec. (b)(7)(A). Pub. L. 104–208, §202(b), substituted "equal to the lesser of—" for "equal to 0.125 percent per year of the outstanding balance of the loan" and added cls. (i) and (ii).

Subsec. (d). Pub. L. 104–208, §202(c), inserted heading and amended text of subsec. (d) generally. Prior to amendment, text read as follows: "The Administration may impose an additional charge for administrative expenses with respect to each debenture for which payment of principal and interest is guaranteed under subsection (a) of this section."

Subsec. (f). Pub. L. 104–208, §202(d), added subsec. (f).

Subsec. (g). Pub. L. 104–208, §202(e), added subsec. (g).

Subsec. (h). Pub. L. 104–208, §203, added subsec. (h).

1995—Subsec. (b)(7). Pub. L. 104–36 added par. (7).

1994—Subsec. (c) to (e). Pub. L. 103–403 made technical amendment to Pub. L. 100–590, §112(c). See 1988 Amendment note below.

1990—Subsec. (e)(3). Pub. L. 101–515 added par. (3).

1988—Subsec. (a)(2). Pub. L. 100–590, §114, inserted two provisos that Administration not decline to issue such guarantee when ownership interests of small business concern and of property to be financed with loan are not identical, and that Administrator has determined on case-by-case basis that such ownership interest, guarantee, and loan, will substantially benefit small business concern.

Subsec. (c). Pub. L. 100–590, §112(c)(B), formerly §112(c)(1)(B), as amended by Pub. L. 103–403, added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 100–590, §112(c)(A), formerly §112(c)(1)(A), as amended by Pub. L. 103–403, redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 100–590, §117, which directed substitution of "(1) For purposes of" for "For purposes of", redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, and added par. (2), was executed to subsec. (e) to reflect the probable intent of Congress and the intervening redesignation of subsec. (d) as (e) by Pub. L. 100–590, §112(c)(1).

Pub. L. 100–590, §112(c)(A), formerly §112(c)(1)(A), as amended by Pub. L. 103–403, redesignated former subsec. (d) as (e).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–306, §2, Sept. 24, 2004, 118 Stat. 1131, provided in part that: "The amendment made by the preceding sentence [amending section 2 of Pub. L. 108–205, which amended this section] shall take effect as if included in the enactment of the section to which it relates."

EFFECTIVE DATE OF 2001 AMENDMENT; USE OF FUNDS

Pub. L. 107–100, §6(d), (e), Dec. 21, 2001, 115 Stat. 972, provided that:

"(d) USE OF FUNDS.—The amendments made by this section to section 503 of the Small Business Investment Act of 1958 [15 U.S.C. 697], shall be effective only to the extent that funds are made available under appropriations Acts, which funds shall be utilized by the Administrator to offset the cost (as such term is defined in section 502 of the Federal Credit Reform Act of 1990 [2 U.S.C. 661a]) of such amendments.

"(e) EFFECTIVE DATE.—The amendments made by this section [amending this section and section 636 of this title] shall become effective on October 1, 2002."

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Oct. 1, 1996, see section 3 of Pub. L. 104–208, set out as a note under section 633 of this title.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–36 inapplicable to loans made or guaranteed under Small Business Act or Small Business Investment Act of 1958 before Oct. 12, 1995, unless such loans are refinanced, extended, restructured, or renewed on or after Oct. 12, 1995, see section 8 of Pub. L. 104–36, set out as a note under section 634 of this title.

TERMINATION DATE OF 1988 AMENDMENT

Pub. L. 100–590, title I, §112(c), Nov. 3, 1988, 102 Stat. 2996, as amended by Pub. L. 101–515, title V, §3, Nov. 5, 1990, 104 Stat. 2140; Pub. L. 103–317, title IV, Aug. 26, 1994, 108 Stat. 1755, which provided that the amendment made by paragraph (1), amending this section, was to be repealed on Oct. 1, 1997, was repealed by Pub. L. 103–403, title II, §213(2), Oct. 22, 1994, 108 Stat. 4184.

EFFECTIVE DATE

Section effective Oct. 1, 1980, see section 507 of Pub. L. 96–302, set out as an Effective Date of 1980 Amendment note under section 631 of this title.

[1] *So in original. Probably should be capitalized.*

§697a. Private debenture sales

(a) Notwithstanding any other law, rule, or regulation, the Administration shall sell to investors, either publicly or by private placement, debentures pursuant to section 697 of this title as follows:

(1) Of the program levels otherwise authorized by law for fiscal year 1986, an amount not to exceed $200,000,000.

(2) Of the program levels otherwise authorized by law for each of fiscal years 1987 and 1988, an amount not to exceed $425,000,000.

(3) All of the program levels authorized for fiscal year 1989 and subsequent fiscal years.

(b) Nothing in any provision of law shall be construed to authorize the Federal Financing Bank to acquire—

(1) any obligation the payment of principal or interest on which at any time has been guaranteed in whole or in part under section 697 of this title and which is being sold pursuant to the provisions of the program authorized in this section;

(2) any obligation which is an interest in any obligation described in paragraph (1); or

(3) any obligation which is secured by, or substantially all of the value of which is attributable to, any obligation described in paragraph (1) or (2).

(Pub. L. 85–699, title V, §504, as added Pub. L. 99–272, title XVIII, §18008(a), Apr. 7, 1986, 100 Stat. 366; amended Pub. L. 100–72, §2 July 11, 1987, 101 Stat. 477; Pub. L. 100–590, title I, §112(a), Nov. 3, 1988, 102 Stat. 2996.)

AMENDMENTS

1988—Pub. L. 100–590 inserted "Private debenture sales" as section catchline and amended text generally. Prior to amendment, text read as follows:

"(a) Notwithstanding any other law, rule, or regulation, the Administration shall conduct a pilot program involving the sale to investors, either publicly or by private placement, of debentures guaranteed pursuant to section 697 of this title as follows—

"(1) of the program levels otherwise authorized by law for fiscal year 1986, an amount not to exceed $200,000,000;

"(2) of the program levels otherwise authorized by law for fiscal year 1987, an amount not to exceed $425,000,000; and

"(3) of the program levels otherwise authorized by law for fiscal year 1988, an amount not to exceed $425,000,000.

"(b) Nothing in any provision of law shall be construed to authorize the Federal Financing Bank to acquire—

"(1) any obligation the payment of principal or interest on which at any time has been guaranteed in whole or in part under section 697 of this title and which is being sold pursuant to the provisions of the pilot program authorized in this section,

"(2) any obligation which is an interest in any obligation described in paragraph (1), or

"(3) any obligation which is secured by, or substantially all of the value of which is attributable to, any obligation described in paragraph (1) or (2)."

1987—Subsec. (a). Pub. L. 100–72 struck out "and" at end of par. (1), substituted "$425,000,000; and" for "$295,000,000." in par. (2), and added par. (3).

REGULATIONS

Small Business Administration to promulgate final rules and regulations to implement this section within 60 days of Apr. 7, 1986, see section 18008(d)(2) of Pub. L. 99–272, set out as a note under section 697b of this title.

PILOT PROGRAM REPORT

Pub. L. 99–272, title XVIII, §18008(b), Apr. 7, 1986, 100 Stat. 367, required the Small Business Administration to report to the President and Congress on the pilot program under former 15 U.S.C. 697a involving debenture sales to investors not later than 90 days after the date of the last debenture sale in each fiscal year, and unless a report was made by Oct. 1 of 1986 and 1987, the Administration was to make an interim report by such dates.

§697b. Pooling of debentures

(a) Issuance; debentures composing trust or pool

The Administration is authorized to issue trust certificates representing ownership of all or a fractional part of debentures issued by State or local development companies and guaranteed by the Administration under this chapter: *Provided*, That such trust certificates shall be based on and backed by a trust or pool approved by the Administration and composed solely of guaranteed debentures.

(b) Terms and conditions of guarantee; payment of principal and interest

The Administration is authorized, upon such terms and conditions as are deemed appropriate, to guarantee the timely payment of the principal of and interest on trust certificates issued by the Administration or its agent for purposes of this section. Such guarantee shall be limited to the extent of principal and interest on the guaranteed debentures which compose the trust or pool. In the event that a debenture in such trust or pool is prepaid, either voluntarily or in the event of default, the guarantee of timely payment of principal and interest on the trust certificates shall be reduced in proportion to the amount of principal and interest such prepaid debenture represents in the trust or pool. Interest on prepaid or defaulted debentures shall accrue and be guaranteed by the Administration only through the date of payment on the guarantee. During the term of the trust certificate, it may be called for redemption due to prepayment or default of all debentures constituting the pool.

(c) Full faith and credit of United States

The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee of such trust certificates issued by the Administration or its agent pursuant to this section.

(d) Collection of fees

The Administration shall not collect any fee for any guarantee under this section: *Provided*, That nothing herein shall preclude any agent of the Administration from collecting a fee approved by the Administration for the functions described in subsection (f)(2) of this section.

(e) Subrogation rights; ownership rights in debentures

(1) In the event the Administration pays a claim under a guarantee issued under this section, it shall be subrogated fully to the rights satisfied by such payment.

(2) No State or local law, and no Federal law, shall preclude or limit the exercise by the Administration of its ownership rights in the debentures constituting the trust or pool against which the trust certificates are issued.

(f) Central registration requirements; regulation of brokers and dealers; electronic registration

(1) The Administration shall—

(A) provide for a central registration of all trust certificates sold pursuant to this section;

(B) contract with an agent to carry out on behalf of the Administration the central registration functions of this section and the issuance of trust certificates to facilitate poolings; such agent shall provide a fidelity bond or insurance in such amounts as the Administration determines to be necessary to fully protect the interests of the Government;

(C) prior to any sale, require the seller to disclose to a purchaser of a trust certificate issued pursuant to this section, information on the terms, conditions, and yield of such instrument; and

(D) have the authority to regulate brokers and dealers in trust certificates sold pursuant to this section.

(2) Nothing in this subsection shall prohibit the utilization of a book-entry or other electronic form of registration for trust certificates.

(Pub. L. 85–699, title V, §505, as added Pub. L. 99–272, title XVIII, §18008(c), Apr. 7, 1986, 100

Stat. 367; amended Pub. L. 100–590, title I, §111(d)(1), (2), Nov. 3, 1988, 102 Stat. 2995; Pub. L. 104–208, div. D, title II, §205(c), Sept. 30, 1996, 110 Stat. 3009–738.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (a), see References in Text note set out under section 661 of this title.

AMENDMENTS

1996—Subsec. (f). Pub. L. 104–208 designated existing provisions as par. (1), redesignated former pars. (1) to (4) as subpars. (A) to (D), respectively, of par. (1), in subpar. (A) substituted "provide for a central registration of all trust certificates sold pursuant to this section;" for "provide for a central registration of all trust certificates sold pursuant to this section; such central registration shall include with respect to each sale, identification of each development company; the interest rate paid by the development company; commissions, fees, or discounts paid to brokers and dealers in trust certificates; identification of each purchaser of the trust certificate; the price paid by the purchaser for the trust certificate; the interest rate paid on the trust certificate; the fees of any agent for carrying out the functions described in paragraph (2); and such other information as the Administration deems appropriate;", and added par. (2).

1988—Pub. L. 100–590, §111(d)(2), inserted "Pooling of debentures" as section catchline.

Subsec. (a). Pub. L. 100–590, §111(d)(1), substituted "all or a" for "all of a".

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Oct. 1, 1996, see section 3 of Pub. L. 104–208, set out as a note under section 633 of this title.

RULES AND REGULATIONS FOR IMPLEMENTATION OF CENTRAL REGISTRATION, PILOT PROGRAM AND TRUST CERTIFICATE PROVISIONS; CONSULTATION

Pub. L. 99–272, title XVIII, §18008(d), Apr. 7, 1986, 100 Stat. 368, provided that:

"(1) Notwithstanding any law, rule, or regulation, within 60 days after the date of enactment of this Act [Apr. 7, 1986], the Small Business Administration shall develop and promulgate final rules and regulations to implement the central registration provisions provided for in section 505(f)(1) of the Small Business Investment Act [15 U.S.C. 697b(f)(1)], and shall contract with an agent for an initial period of not to exceed two years to carry out the functions provided for in section 505(f)(2) of such Act.

"(2) Notwithstanding any law, rule or regulation, within 60 days after the date of enactment of this Act [Apr. 7, 1986], the Small Business Administration also shall consult with representatives of appropriate Federal and State agencies and officials, the securities industry, financial institutions and lenders, and small business persons, and shall develop and promulgate final rules and regulations to implement sections 504 and 505 of the Small Business Investment Act [15 U.S.C. 697a, 697b]."

§697c. Restrictions on development company assistance

NOTWITHSTANDING ANY OTHER PROVISION OF LAW: (1) on or after May 1, 1991, no development company may accept funding from any source, including but not limited to any department or agency of the United States Government, if such funding includes any conditions, priorities or restrictions upon the types of small businesses to which they may provide financial assistance under this subchapter or if it includes any conditions or imposes any requirements, directly or indirectly, upon any recipient of assistance under this subchapter; and (2) before such date, no department or agency of the United States Government which provides funding to any development company shall impose any condition, priority or restriction upon the type of small business which receives financing under this subchapter nor shall it include any condition or impose any requirement, directly or indirectly, upon any recipient of assistance under this subchapter: *Provided,* That the foregoing shall not affect any such conditions, priorities or restrictions if the department or agency also provides all of the financial assistance to be delivered by the development company to the small business and such conditions, priorities or restrictions are limited solely to the financial assistance so provided.

(Pub. L. 85–699, title V, §506, as added Pub. L. 100–590, title I, §117(b), Nov. 3, 1988, 102 Stat. 2998.)

§697d. Accredited Lenders Program

(a) Establishment

The Administration is authorized to establish an Accredited Lenders Program for qualified State and local development companies that meet the requirements of subsection (b) of this section.

(b) Requirements

The Administration may designate a qualified State or local development company as an accredited lender if such company—

(1) has been an active participant in the Development Company Program authorized by sections 696, 697, and 697a of this title for not less than the preceding 12 months;

(2) has well-trained, qualified personnel who are knowledgeable in the Administration's lending policies and procedures for such Development Company Program;

(3) has the ability to process, close, and service financing for plant and equipment under such Development Company Program;

(4) has a loss rate on the company's debentures that is reasonable and acceptable to the Administration;

(5) has a history of submitting to the Administration complete and accurate debenture guaranty application packages; and

(6) has demonstrated the ability to serve small business credit needs for financing plant and equipment through the Development Company Program.

(c) Expedited processing of loan applications

The Administration shall develop an expedited procedure for processing a loan application or servicing action submitted by a qualified State or local development company that has been designated as an accredited lender in accordance with subsection (b) of this section.

(d) Suspension or revocation of designation

(1) In general

The designation of a qualified State or local development company as an accredited lender may be suspended or revoked if the Administration determines that—

(A) the development company has not continued to meet the criteria for eligibility under subsection (b) of this section; or

(B) the development company has failed to adhere to the Administration's rules and regulations or is violating any other applicable provision of law.

(2) Effect

A suspension or revocation under paragraph (1) shall not affect any outstanding debenture guarantee.

(e) "Qualified State or local development company" defined

For purposes of this section, the term "qualified State or local development company" has the same meaning as in section 697(e) of this title.

(Pub. L. 85–699, title V, §507, as added Pub. L. 103–403, title II, §212(a), Oct. 22, 1994, 108 Stat. 4183.)

REGULATIONS

Pub. L. 103–403, title II, §212(b), Oct. 22, 1994, 108 Stat. 4184, provided that: "Not later than 120 days after the date of enactment of this Act [Oct. 22, 1994], the Administration shall promulgate final regulations to carry out this section [enacting this section and provisions set out below]."

REPORT ON IMPLEMENTATION OF PROGRAM

Pub. L. 103–403, title II, §212(c), Oct. 22, 1994, 108 Stat. 4184, provided that: "Not later than 1 year after the effective date of regulations promulgated under subsection (b) [set out above], and biennially thereafter,

the Administration shall report to the Committees on Small Business of the Senate and the House of Representatives [Committee on Small Business of Senate now Committee on Small Business and Entrepreneurship of Senate] on the implementation of this section [enacting this section and provisions set out above]. Such report shall include data on the number of development companies designated as accredited lenders, their debenture guarantee volume, their loss rates, the average processing time on their guarantee applications, and such other information as the Administration deems appropriate."

§697e. Premier Certified Lenders Program

(a) Establishment

The Administration may establish a Premier Certified Lenders Program for certified development companies that meet the requirements of subsection (b) of this section.

(b) Requirements

(1) Application

To be eligible to participate in the Premier Certified Lenders Program established under subsection (a) of this section, a certified development company shall prepare and submit to the Administration an application at such time, in such manner, and containing such information as the Administration may require.

(2) Designation

The Administration may designate a certified development company as a premier certified lender—

(A) if the company is an active certified development company in good standing and has been an active participant in the accredited lenders program during the entire 12-month period preceding the date on which the company submits an application under paragraph (1), except that the Administration may waive this requirement if the company is qualified to participate in the accredited lenders program;

(B) if the company has a history of—

(i) submitting to the Administration adequately analyzed debenture guarantee application packages; and

(ii) of properly closing section 504 [15 U.S.C. 697a] loans and servicing its loan portfolio;

(C) if the company agrees to assume and to reimburse the Administration for 10 percent of any loss sustained by the Administration as a result of default by the company in the payment of principal or interest on a debenture issued by such company and guaranteed by the Administration under this section (15 percent in the case of any such loss attributable to a debenture issued by the company during any period for which an election is in effect under subsection (c)(7) of this section for such company); and

(D) the [1] Administrator determines, with respect to the company, that the loss reserve established in accordance with subsection (c) of this section is sufficient for the company to meet its obligations to protect the Federal Government from risk of loss.

(3) Applicability of criteria after designation

The Administrator may revoke the designation of a certified development company as a premier certified lender under this section at any time, if the Administrator determines that the certified development company does not meet any requirement described in subparagraphs (A) through (D) of paragraph (2).

(c) Loss reserve

(1) Establishment

A company designated as a premier certified lender shall establish a loss reserve for financing approved pursuant to this section.

(2) Amount

The amount of each loss reserve established under paragraph (1) shall be 10 percent of the amount of the company's exposure, as determined under subsection (b)(2)(C) of this section.

(3) Assets

Each loss reserve established under paragraph (1) shall be comprised of—

(A) segregated funds on deposit in an account or accounts with a federally insured depository institution or institutions selected by the company, subject to a collateral assignment in favor of, and in a format acceptable to, the Administration;

(B) irrevocable letter or letters of credit, with a collateral assignment in favor of, and a commercially reasonable format acceptable to, the Administration; or

(C) any combination of the assets described in subparagraphs (A) and (B).

(4) Contributions

The company shall make contributions to the loss reserve, either cash or letters of credit as provided above, in the following amounts and at the following intervals:

(A) 50 percent when a debenture is closed.

(B) 25 percent additional not later than 1 year after a debenture is closed.

(C) 25 percent additional not later than 2 years after a debenture is closed.

(5) Replenishment

If a loss has been sustained by the Administration, any portion of the loss reserve, and other funds provided by the premier company as necessary, may be used to reimburse the Administration for the premier company's share of the loss as provided in subsection (b)(2)(C) of this section. If the company utilizes the reserve, within 30 days it shall replace an equivalent amount of funds.

(6) Disbursements

(A) In general

The Administration shall allow the certified development company to withdraw from the loss reserve amounts attributable to any debenture that has been repaid.

(B) Temporary reduction based on outstanding balance

Notwithstanding subparagraph (A), during the 2-year period beginning on the date that is 90 days after May 28, 2004, the Administration shall allow the certified development company to withdraw from the loss reserve such amounts as are in excess of 1 percent of the aggregate outstanding balances of debentures to which such loss reserve relates. The preceding sentence shall not apply with respect to any debenture before 100 percent of the contribution described in paragraph (4) with respect to such debenture has been made.

(7) Alternative loss reserve

(A) Election

With respect to any eligible calendar quarter, any qualified high loss reserve PCL may elect to have the requirements of this paragraph apply in lieu of the requirements of paragraphs (2) and (4) for such quarter.

(B) Contributions

(i) Ordinary rules inapplicable

Except as provided under clause (ii) and paragraph (5), a qualified high loss reserve PCL that makes the election described in subparagraph (A) with respect to a calendar quarter shall not be required to make contributions to its loss reserve during such quarter.

(ii) Based on loss

A qualified high loss reserve PCL that makes the election described in subparagraph (A) with respect to any calendar quarter shall, before the last day of such quarter, make such

contributions to its loss reserve as are necessary to ensure that the amount of the loss reserve of the PCL is—

(I) not less than $100,000; and

(II) sufficient, as determined by a qualified independent auditor, for the PCL to meet its obligations to protect the Federal Government from risk of loss.

(iii) Certification

Before the end of any calendar quarter for which an election is in effect under subparagraph (A), the head of the PCL shall submit to the Administrator a certification that the loss reserve of the PCL is sufficient to meet such PCL's obligation to protect the Federal Government from risk of loss. Such certification shall be in such form and submitted in such manner as the Administrator may require and shall be signed by the head of such PCL and the auditor making the determination under clause (ii)(II).

(C) Disbursements

(i) Ordinary rule inapplicable

Paragraph (6) shall not apply with respect to any qualified high loss reserve PCL for any calendar quarter for which an election is in effect under subparagraph (A).

(ii) Excess funds

At the end of each calendar quarter for which an election is in effect under subparagraph (A), the Administration shall allow the qualified high loss reserve PCL to withdraw from its loss reserve the excess of—

(I) the amount of the loss reserve, over

(II) the greater of $100,000 or the amount which is determined under subparagraph (B)(ii) to be sufficient to meet the PCL's obligation to protect the Federal Government from risk of loss.

(D) Recontribution

If the requirements of this paragraph apply to a qualified high loss reserve PCL for any calendar quarter and cease to apply to such PCL for any subsequent calendar quarter, such PCL shall make a contribution to its loss reserve in such amount as the Administrator may determine provided that such amount does not exceed the amount which would result in the total amount in the loss reserve being equal to the amount which would have been in such loss reserve had this paragraph never applied to such PCL. The Administrator may require that such payment be made as a single payment or as a series of payments.

(E) Risk management

If a qualified high loss reserve PCL fails to meet the requirement of subparagraph (F)(iii) during any period for which an election is in effect under subparagraph (A) and such failure continues for 180 days, the requirements of paragraphs (2), (4), and (6) shall apply to such PCL as of the end of such 180-day period and such PCL shall make the contribution to its loss reserve described in subparagraph (D). The Administrator may waive the requirements of this subparagraph.

(F) Qualified high loss reserve PCL

The term "qualified high loss reserve PCL" means, with respect to any calendar year, any premier certified lender designated by the Administrator as a qualified high loss reserve PCL for such year. The Administrator shall not designate a company under the preceding sentence unless the Administrator determines that—

(i) the amount of the loss reserve of the company is not less than $100,000;

(ii) the company has established and is utilizing an appropriate and effective process for analyzing the risk of loss associated with its portfolio of PCLP loans and for grading each PCLP loan made by the company on the basis of the risk of loss associated with such loan; and

(iii) the company meets or exceeds 4 or more of the specified risk management benchmarks as of the most recent assessment by the Administration or the Administration has issued a waiver with respect to the requirement of this clause.

(G) Specified risk management benchmarks

For purposes of this paragraph, the term "specified risk management benchmarks" means the following rates, as determined by the Administrator:

(i) Currency rate.
(ii) Delinquency rate.
(iii) Default rate.
(iv) Liquidation rate.
(v) Loss rate.

(H) Qualified independent auditor

For purposes of this paragraph, the term "qualified independent auditor" means any auditor who—

(i) is compensated by the qualified high loss reserve PCL;
(ii) is independent of such PCL; and
(iii) has been approved by the Administrator during the preceding year.

(I) PCLP loan

For purposes of this paragraph, the term "PCLP loan" means any loan guaranteed under this section.

(J) Eligible calendar quarter

For purposes of this paragraph, the term "eligible calendar quarter" means—

(i) the first calendar quarter that begins after the end of the 90-day period beginning with May 28, 2004; and
(ii) the 7 succeeding calendar quarters.

(K) Calendar quarter

For purposes of this paragraph, the term "calendar quarter" means—

(i) the period which begins on January 1 and ends on March 31 of each year;
(ii) the period which begins on April 1 and ends on June 30 of each year;
(iii) the period which begins on July 1 and ends on September 30 of each year; and
(iv) the period which begins on October 1 and ends on December 31 of each year.

(L) Regulations

Not later than 45 days after May 28, 2004, the Administrator shall publish in the Federal Register and transmit to the Congress regulations to carry out this paragraph. Such regulations shall include provisions relating to—

(i) the approval of auditors under subparagraph (H); and
(ii) the designation of qualified high loss reserve PCLs under subparagraph (F), including the determination of whether a process for analyzing risk of loss is appropriate and effective for purposes of subparagraph (F)(ii).

(8) Bureau of PCLP Oversight

(A) Establishment

There is hereby established in the Small Business Administration a bureau to be known as the Bureau of PCLP Oversight.

(B) Purpose

The Bureau of PCLP Oversight shall carry out such functions of the Administration under this subsection as the Administrator may designate.

(C) Deadline

Not later than 90 days after May 28, 2004—

(i) the Administrator shall ensure that the Bureau of PCLP Oversight is prepared to carry out any functions designated under subparagraph (B), and

(ii) the Office of the Inspector General of the Administration shall report to the Congress on the preparedness of the Bureau of PCLP Oversight to carry out such functions.

(d) Sale of certain defaulted loans

(1) Notice

If, upon default in repayment, the Administration acquires a loan guaranteed under this section and identifies such loan for inclusion in a bulk asset sale of defaulted or repurchased loans or other financings, it shall give prior notice thereof to any certified development company which has a contingent liability under this section. The notice shall be given to the company as soon as possible after the financing is identified, but not less than 90 days before the date the Administration first makes any records on such financing available for examination by prospective purchasers prior to its offering in a package of loans for bulk sale.

(2) Limitations

The Administration shall not offer any loan described in paragraph (1) as part of a bulk sale unless it—

(A) provides prospective purchasers with the opportunity to examine the Administration's records with respect to such loan; and

(B) provides the notice required by paragraph (1).

(e) Loan approval authority

(1) In general

Notwithstanding section 697(b)(6) of this title, and subject to such terms and conditions as the Administration may establish, the Administration may permit a company designated as a premier certified lender under this section to approve, authorize, close, service, foreclose, litigate (except that the Administration may monitor the conduct of any such litigation to which a premier certified lender is a party), and liquidate loans that are funded with the proceeds of a debenture issued by such company and may authorize the guarantee of such debenture.

(2) Scope of review

The approval of a loan by a premier certified lender shall be subject to final approval as to eligibility of any guarantee by the Administration pursuant to section 697(a) of this title, but such final approval shall not include review of decisions by the lender involving creditworthiness, loan closing, or compliance with legal requirements imposed by law or regulation.

(f) Review

After the issuance and sale of debentures under this section, the Administration, at intervals not greater than 12 months, shall review the financings made by each premier certified lender. The review shall include the lender's credit decisions and general compliance with the eligibility requirements for each financing approved under the program authorized under this section. The Administration shall consider the findings of the review in carrying out its responsibilities under subsection (g) of this section, but such review shall not affect any outstanding debenture guarantee.

(g) Suspension or revocation

The designation of a certified development company as a premier certified lender may be suspended or revoked if the Administration determines that the company—

(1) has not continued to meet the criteria for eligibility under subsection (b) of this section;

(2) has not established or maintained the loss reserve required under subsection (c) of this section;

(3) is failing to adhere to the Administration's rules and regulations; or

(4) is violating any other applicable provision of law.

(h) Effect of suspension or revocation

A suspension or revocation under subsection (g) of this section shall not affect any outstanding debenture guarantee.

(i) Program goals

Each certified development company participating in the program under this section shall establish a goal of processing a minimum of not less than 50 percent of the loan applications for assistance under section 697a of this title pursuant to the program authorized under this section.

(j) Report

Not later than 1 year after October 22, 1994, and annually thereafter, the Administration shall report to the Committees on Small Business of the Senate and the House of Representatives on the implementation of this section. Each report shall include—

(1) the number of certified development companies designated as premier certified lenders;

(2) the debenture guarantee volume of such companies;

(3) a comparison of the loss rate for premier certified lenders to the loss rate for accredited and other lenders, specifically comparing default rates and recovery rates on liquidations; and

(4) such other information as the Administration deems appropriate.

(Pub. L. 85–699, title V, §508, as added and amended Pub. L. 103–403, title II, §217, Oct. 22, 1994, 108 Stat. 4185; Pub. L. 105–135, title II, §223(a), Dec. 2, 1997, 111 Stat. 2604; Pub. L. 106–554, §1(a)(9) [title III, §§305, 306], Dec. 21, 2000, 114 Stat. 2763, 2763A–685; Pub. L. 108–232, §§2–3(c), May 28, 2004, 118 Stat. 649–652.)

CODIFICATION

May 28, 2004, referred to in subsec. (c)(8)(C), was in the original "the date of enactment of this Act", which was translated as meaning the date of enactment of Pub. L. 108–232, which enacted subsec. (c)(8), to reflect the probable intent of Congress.

October 22, 1994, referred to in subsec. (j), was in the original "the date of enactment of this Act", which was translated as meaning the date of enactment of Pub. L. 103–403, which enacted this section, to reflect the probable intent of Congress.

AMENDMENTS

2004—Subsec. (b)(2)(C). Pub. L. 108–232, §3(b), inserted "(15 percent in the case of any such loss attributable to a debenture issued by the company during any period for which an election is in effect under subsection (c)(7) of this section for such company)" before "; and".

Subsec. (b)(2)(D). Pub. L. 108–232, §3(c)(1), substituted "subsection (c)" for "subsection (c)(2)".

Subsec. (c)(5). Pub. L. 108–232, §3(c)(2), struck out "10 percent" after "the premier company's".

Subsec. (c)(6). Pub. L. 108–232, §2, designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

Subsec. (c)(7), (8). Pub. L. 108–232, §3(a), added pars. (7) and (8).

2000—Pub. L. 106–554, §1(a)(9) [title III, §305], repealed Pub. L. 103–403, §217(b). See 1994 Amendment note below.

Subsec. (a). Pub. L. 106–554, §1(a)(9) [title III, §306(1)], substituted "The" for "On a pilot program basis, the".

Subsecs. (d), (e). Pub. L. 106–554, §1(a)(9) [title III, §306(2), (5)], added heading and text of subsec. (d) and redesignated former subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 106–554, §1(a)(9) [title III, §306(2), (3)], redesignated subsec. (e) as (f) and substituted "subsection (g)" for "subsection (f)". Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 106–554, §1(a)(9) [title III, §306(2)], redesignated subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 106–554, §1(a)(9) [title III, §306(2), (4)], redesignated subsec. (g) as (h) and substituted "subsection (g)" for "subsection (f)". Former subsec. (h) redesignated (i).

Subsecs. (i), (j). Pub. L. 106–554, §1(a)(9) [title III, §306(2)], redesignated subsecs. (h) and (i) as (i) and (j), respectively.

1997—Subsec. (a). Pub. L. 105–135, §223(a)(1), struck out "not more than 15" before "certified development companies".

Subsec. (b)(2). Pub. L. 105–135, §223(a)(2)(A)(i), struck out "if such company" after "premier certified lender" in introductory provisions.

Subsec. (b)(2)(A), (B). Pub. L. 105–135, §223(a)(2)(A)(ii), added subpars. (A) and (B) and struck out former subpars. (A) and (B) which read as follows:

"(A) has been an active participant in the accredited lenders program during the 12-month period preceding the date on which the company submits an application under paragraph (1), except that, prior to January 1, 1996, the Administration may waive this requirement if the company is qualified to participate in the accredited lenders program;

"(B) has a history of submitting to the Administration adequately analyzed debenture guarantee application packages; and".

Subsec. (b)(2)(C). Pub. L. 105–135, §223(a)(2)(A)(iii), inserted "if the company" before "agrees to assume" and substituted "; and" for period at end.

Subsec. (b)(2)(D). Pub. L. 105–135, §223(a)(2)(A)(iv), added subpar. (D).

Subsec. (b)(3). Pub. L. 105–135, §223(a)(2)(B), added par. (3).

Subsec. (c). Pub. L. 105–135, §223(a)(3), added subsec. (c) and struck out heading and text of former subsec. (c). Text read as follows:

"(1) ESTABLISHMENT.—A company designated as a premier certified lender shall establish a loss reserve for financings approved pursuant to this section.

"(2) AMOUNT.—The amount of the loss reserve shall be based upon the greater of—

"(A) the historic loss rate on debentures issued by such company; or

"(B) 10 percent of the amount of the company's exposure as determined under subsection (b)(2)(C) of this section.

"(3) ASSETS.—The loss reserve shall be comprised of segregated assets of the company which shall be securitized in favor of the Administration.

"(4) CONTRIBUTIONS.—The company shall make contributions to the loss reserve in the following amounts and at the following intervals:

"(A) 50 percent when a debenture is closed.

"(B) 25 percent not later than 1 year after a debenture is closed.

"(C) 25 percent not later than 2 years after a debenture is closed."

Subsec. (d)(1). Pub. L. 105–135, §223(a)(4), substituted "to approve, authorize, close, service, foreclose, litigate (except that the Administration may monitor the conduct of any such litigation to which a premier certified lender is a party), and liquidate loans" for "to approve loans".

Subsec. (f). Pub. L. 105–135, §223(a)(5), substituted "certified development company" for "State or local development company" in introductory provisions.

Subsec. (g). Pub. L. 105–135, §223(a)(6), substituted "revocation" for "designation" in heading.

Subsec. (h). Pub. L. 105–135, §223(a)(7), added subsec. (h) and struck out heading and text of former subsec. (h). Text read as follows: "Not later than 180 days after October 22, 1994, the Administration shall promulgate regulations to carry out this section."

Subsec. (i)(3). Pub. L. 105–135, §223(a)(8), substituted "other lenders, specifically comparing default rates and recovery rates on liquidations" for "other lenders".

1994—Pub. L. 103–403, §217(b), which directed repeal of this section effective Oct. 1, 2000, and was repealed by section 1(a)(9) [title III, §305] of Pub. L. 106–554, was not executed to reflect the probable intent of Congress and the amendments to this section by section 1(a)(9) [title III, §306] of Pub. L. 106–554. See Termination Date note below.

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

TERMINATION DATE

Section 217(b) of Pub. L. 103–403, as amended by Pub. L. 105–135, title II, §223(c), Dec. 2, 1997, 111 Stat. 2606, which provided that this section was to be repealed effective Oct. 1, 2000, was repealed by Pub. L. 106–554, §1(a)(9) [title III, §305], Dec. 21, 2000, 114 Stat. 2763, 2763A–685.

REGULATIONS

Pub. L. 105–135, title II, §223(b), Dec. 2, 1997, 111 Stat. 2606, provided that: "The Administrator shall—

"(1) not later than 150 days after the date of enactment of this Act [Dec. 2, 1997], promulgate

regulations to carry out the amendments made by subsection (a) [amending this section]; and

"(2) not later than 180 days after the date of enactment of this Act, issue program guidelines and fully implement the amendments made by subsection (a)."

[1] *So in original. Probably should be preceded by "if".*

§697f. Prepayment of development company debentures

(a) In general

(1) Prepayment authorized

Subject to the requirements set forth in subsection (b) of this section, an issuer of a debenture purchased by the Federal Financing Bank and guaranteed by the Administration under this chapter may, at the election of the borrower (in the case of a loan under section 697 of this title) or the issuer (in the case of a small business investment company) and with the approval of the Administration, prepay such debenture in accordance with the provisions of this section.

(2) Procedure

(A) In general

In making a prepayment under paragraph (1)—

(i) the borrower (in the case of a loan under section 697 of this title) or the issuer (in the case of a small business investment company) shall pay to the Federal Financing Bank an amount that is equal to the sum of the unpaid principal balance due on the debenture as of the date of the prepayment (plus accrued interest at the coupon rate on the debenture) and the amount of the repurchase premium described in subparagraph (B); and

(ii) the Administration shall pay to the Federal Financing Bank the difference between the repurchase premium paid by the borrower under this subsection and the repurchase premium that the Federal Financing Bank would otherwise have received.

(B) Repurchase premium

(i) In general

For purposes of subparagraph (A)(i), the repurchase premium is the amount equal to the product of—

(I) the unpaid principal balance due on the debenture on the date of prepayment; and

(II) the applicable percentage rate, as determined in accordance with clauses (ii) and (iii).

(ii) Applicable percentage rate

For purposes of clause (i)(II), the applicable percentage rate means—

(I) with respect to a 10-year term loan, 8.5 percent;

(II) with respect to a 15-year term loan, 9.5 percent;

(III) with respect to a 20-year term loan, 10.5 percent; and

(IV) with respect to a 25-year term loan, 11.5 percent.

(iii) Adjustments to applicable percentage rate

The percentage rates described in clause (ii) shall be increased or decreased by the Administration by a factor not to exceed one-third, if the same factor is applied in each case and if the Administration determines that an adjustment is necessary, based on the number of borrowers having given notice of their intent to participate, in order to make the program (including the amounts appropriated for this purpose under Public Law 103–317) result in no substantial net gain or loss of revenue to the Federal Financing Bank or to the Administration. Amounts collected in excess of the amount necessary to ensure revenue neutrality shall be refunded to the borrowers.

(b) Requirements

For purposes of subsection (a) of this section, the requirements of this subsection are that—

(1) the debenture is outstanding and neither the loan that secures the debenture, if any, nor the debenture is in default on the date on which the prepayment is made;

(2) State, local, or personal funds, or the proceeds of a refinancing in accordance with subsection (d) of this section under the programs authorized by this subchapter, are used to prepay or roll over the debenture; and

(3) with respect to a debenture issued under section 697 of this title, the issuer certifies that the benefits, net of fees and expenses authorized herein, associated with prepayment of the debenture are entirely passed through to the borrower.

(c) No prepayment fees or penalties

No fees or penalties other than those specified in this section may be imposed on the issuer, the borrower, the Administration, or any fund or account administered by the Administration as the result of a prepayment under this section.

(d) Refinancing limitations

(1) In general

The refinancing of a debenture under sections 697a and 697b of this title, in accordance with subsection (b)(2) of this section—

(A) shall not exceed the amount necessary to prepay existing debentures, including all costs associated with the refinancing and any applicable prepayment penalty or repurchase premium; and

(B) except as provided in paragraphs (2) and (3), shall be subject to the provisions of sections 697a and 697b of this title and the rules and regulations promulgated thereunder, including rules and regulations governing payment of authorized expenses, commissions, fees, and discounts to brokers and dealers in trust certificates issued pursuant to section 697b of this title.

(2) Job creation

An applicant for refinancing under section 697a of this title of a loan made pursuant to section 697 of this title shall not be required to demonstrate that a requisite number of jobs will be created with the proceeds of a refinancing.

(3) Loan processing fee

To cover the cost of loan packaging, processing, and other administrative functions, a development company that provides refinancing under subsection (b)(2) of this section may impose a one-time loan processing fee, not to exceed 0.5 percent of the principal amount of the loan.

(4) New debentures

Issuers of debentures under subchapter III of this chapter may issue new debentures in accordance with such subchapter in order to prepay existing debentures as authorized in this section.

(5) Preliminary notice

(A) In general

The Administration shall use certified mail and other reasonable means to notify each eligible borrower of the prepayment program provided in this subchapter. Each preliminary notice shall specify the range and dollar amount of repurchase premiums which could be required of that borrower in order to participate in the program. In carrying out this program, the Administration shall provide a period of not less than 45 days following the receipt of such notice by the borrower during which the borrower must notify the Administration of the borrower's intent to participate in the program. The Administration shall require that a borrower who gives notice of its intent to participate to make an earnest money deposit of $1,000 which shall not be refundable but which shall be credited toward the final repurchase premium.

(B) "Borrower" defined

For purposes of this paragraph, the term "borrower", in the case of a small business investment company or a specialized small business investment company, means "issuer".

(6) Final notice

Based upon the response to the preliminary notice under paragraph (5), the Administration shall make a final computation of the necessary prepayment premiums and shall notify each qualified respondent of the results of such computation. Each qualified respondent shall be afforded not less than 4 months to complete the prepayment.

(e) Definitions

For purposes of this section—

(1) the term "issuer" means—

(A) the qualified State or local development company that issued a debenture pursuant to section 697 of this title, which has been purchased by the Federal Financing Bank; and

(B) a small business investment company licensed pursuant to section 681 of this title; or

(2) the term "borrower" means a small business concern whose loan secures a debenture issued pursuant to section 697 of this title.

(f) Regulations

Not later than 30 days after October 22, 1994, the Administration shall promulgate such regulations as may be necessary to carry out this section.

(g) Authorization

There are authorized to be appropriated $30,000,000 to carry out the provisions of The Small Business Prepayment Penalty Relief Act of 1994.

(Pub. L. 85–699, title V, §509, as added Pub. L. 103–403, title V, §503, Oct. 22, 1994, 108 Stat. 4199; amended Pub. L. 104–208, div. D, title II, §208(h)(1)(H), Sept. 30, 1996, 110 Stat. 3009–747.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (a)(1), see References in Text note set out under section 661 of this title.

Public Law 103–317, referred to in subsec. (a)(2)(B)(iii), is Pub. L. 103–317, Aug. 26, 1994, 108 Stat. 1724, known as the Departments of Commerce, Justice, and State, The Judiciary, and Related Agencies Appropriations Act, 1995. For complete classification of this Act to the Code, see Tables.

The Small Business Prepayment Penalty Relief Act of 1994, referred to in subsec. (g), is title V of Pub. L. 103–403, Oct. 22, 1994, 108 Stat. 4198, which enacted this section and provisions set out as notes under this section and section 661 of this title. For complete classification of this Act to the Code, see Short Title of 1994 Amendment note set out under section 661 of this title and Tables.

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–208, §208(h)(1)(H)(i), struck out at end "A small business investment company operating under the authority of section 681(d) of this title that has issued a debenture that was purchased by and is held by the Administration, may, under the same terms and conditions, prepay such debenture, and the penalty as provided in this section, and shall thereafter be immediately eligible to apply for additional assistance from the Administration."

Subsec. (e)(1)(B). Pub. L. 104–208, §208(h)(1)(H)(ii), substituted "section 681 of this title" for "subsection (c) or (d) of section 681 of this title".

INTENTION OF CONGRESS

Pub. L. 103–403, title V, §502, Oct. 22, 1994, 108 Stat. 4198, provided that:

"(a) IN GENERAL.—The Small Business Administration shall fully utilize the $30,000,000 appropriated in Public Law 103–317 [108 Stat. 1724] to reduce, in accordance with this title [enacting this section and provisions set out as a note under section 661 of this title] and the amendments made by this title, prepayment penalties imposed in connection with debentures issued under—

"(1) section 303 or 503 of the Small Business Investment Act of 1958 [15 U.S.C. 683, 697], which

have been purchased by the Federal Financing Bank; and

"(2) title III [probably means title III of Pub. L. 85–699, which is classified to section 681 et seq. of this title] to companies operating under section 301(d) of such Act [15 U.S.C. 681(d)], which have been purchased by the Small Business Administration.

"(b) EQUAL OPPORTUNITY.—In order to provide an equal opportunity to participate in the program authorized under this title, the Small Business Administration shall afford each borrower or issuer of a debenture subject to this title, not less than 45 days to elect to participate and to provide an earnest money deposit. The Administration shall subsequently allow a period of not less than 4 months, during which those borrowers or issuers that elect to participate shall be allowed to complete the prepayment process.

"(c) RESTRICTIONS ON PARTICIPATION.—In no event shall the Small Business Administration—

"(1) allow any borrower or issuer to participate in the program if the borrower or issuer fails to—

"(A) make a timely election and provide the deposit on a timely basis; or

"(B) complete the prepayment process within the required time; or

"(2) allow any borrower or issuer to participate in the program at a percentage rate other than the rate finally determined to be applicable to all other borrowers or issuers with similar terms of years."

§697g. Foreclosure and liquidation of loans

(a) Delegation of authority

In accordance with this section, the Administration shall delegate to any qualified State or local development company (as defined in section 697(e) of this title) that meets the eligibility requirements of subsection (b)(1) of this section the authority to foreclose and liquidate, or to otherwise treat in accordance with this section, defaulted loans in its portfolio that are funded with the proceeds of debentures guaranteed by the Administration under section 697 of this title.

(b) Eligibility for delegation

(1) Requirements

A qualified State or local development company shall be eligible for a delegation of authority under subsection (a) of this section if—

(A) the company—

(i) has participated in the loan liquidation pilot program established by the Small Business Programs Improvement Act of 1996 (15 U.S.C. 695 note), as in effect on the day before promulgation of final regulations by the Administration implementing this section;

(ii) is participating in the Premier Certified Lenders Program under section 697e of this title; or

(iii) during the 3 fiscal years immediately prior to seeking such a delegation, has made an average of not less than 10 loans per year that are funded with the proceeds of debentures guaranteed under section 697 of this title; and

(B) the company—

(i) has one or more employees—

(I) with not less than 2 years of substantive, decision-making experience in administering the liquidation and workout of problem loans secured in a manner substantially similar to loans funded with the proceeds of debentures guaranteed under section 697 of this title; and

(II) who have completed a training program on loan liquidation developed by the Administration in conjunction with qualified State and local development companies that meet the requirements of this paragraph; or

(ii) submits to the Administration documentation demonstrating that the company has contracted with a qualified third-party to perform any liquidation activities and secures the approval of the contract by the Administration with respect to the qualifications of the contractor and the terms and conditions of liquidation activities.

(2) Confirmation

On request the Administration shall examine the qualifications of any company described in subsection (a) of this section to determine if such company is eligible for the delegation of authority under this section. If the Administration determines that a company is not eligible, the Administration shall provide the company with the reasons for such ineligibility.

(c) Scope of delegated authority

(1) In general

Each qualified State or local development company to which the Administration delegates authority under section [1] (a) may with respect to any loan described in subsection (a) of this section—

(A) perform all liquidation and foreclosure functions, including the purchase in accordance with this subsection of any other indebtedness secured by the property securing the loan, in a reasonable and sound manner according to commercially accepted practices, pursuant to a liquidation plan approved in advance by the Administration under paragraph (2)(A);

(B) litigate any matter relating to the performance of the functions described in subparagraph (A), except that the Administration may—

(i) defend or bring any claim if—

(I) the outcome of the litigation may adversely affect the Administration's management of the loan program established under section 696 of this title; or

(II) the Administration is entitled to legal remedies not available to a qualified State or local development company and such remedies will benefit either the Administration or the qualified State or local development company; or

(ii) oversee the conduct of any such litigation; and

(C) take other appropriate actions to mitigate loan losses in lieu of total liquidation or foreclosures, including the restructuring of a loan in accordance with prudent loan servicing practices and pursuant to a workout plan approved in advance by the Administration under paragraph (2)(C).

(2) Administration approval

(A) Liquidation plan

(i) In general

Before carrying out functions described in paragraph (1)(A), a qualified State or local development company shall submit to the Administration a proposed liquidation plan.

(ii) Administration action on plan

(I) Timing

Not later than 15 business days after a liquidation plan is received by the Administration under clause (i), the Administration shall approve or reject the plan.

(II) Notice of no decision

With respect to any plan that cannot be approved or denied within the 15-day period required by subclause (I), the Administration shall within such period provide in accordance with subparagraph (E) notice to the company that submitted the plan.

(iii) Routine actions

In carrying out functions described in paragraph (1)(A), a qualified State or local development company may undertake routine actions not addressed in a liquidation plan without obtaining additional approval from the Administration.

(B) Purchase of indebtedness

(i) In general

In carrying out functions described in paragraph (1)(A), a qualified State or local development company shall submit to the Administration a request for written approval before committing the Administration to the purchase of any other indebtedness secured by the property securing a defaulted loan.

(ii) Administration action on request

(I) Timing

Not later than 15 business days after receiving a request under clause (i), the Administration shall approve or deny the request.

(II) Notice of no decision

With respect to any request that cannot be approved or denied within the 15-day period required by subclause (I), the Administration shall within such period provide in accordance with subparagraph (E) notice to the company that submitted the request.

(C) Workout plan

(i) In general

In carrying out functions described in paragraph (1)(C), a qualified State or local development company shall submit to the Administration a proposed workout plan.

(ii) Administration action on plan

(I) Timing

Not later than 15 business days after a workout plan is received by the Administration under clause (i), the Administration shall approve or reject the plan.

(II) Notice of no decision

With respect to any workout plan that cannot be approved or denied within the 15-day period required by subclause (I), the Administration shall within such period provide in accordance with subparagraph (E) notice to the company that submitted the plan.

(D) Compromise of indebtedness

In carrying out functions described in paragraph (1)(A), a qualified State or local development company may—

(i) consider an offer made by an obligor to compromise the debt for less than the full amount owing; and

(ii) pursuant to such an offer, release any obligor or other party contingently liable, if the company secures the written approval of the Administration.

(E) Contents of notice of no decision

Any notice provided by the Administration under subparagraph (A)(ii)(II), (B)(ii)(II), or (C)(ii)(II)—

(i) shall be in writing;

(ii) shall state the specific reason for the Administration's inability to act on a plan or request;

(iii) shall include an estimate of the additional time required by the Administration to act on the plan or request; and

(iv) if the Administration cannot act because insufficient information or documentation was provided by the company submitting the plan or request, shall specify the nature of such additional information or documentation.

(3) Conflict of interest

In carrying out functions described in paragraph (1), a qualified State or local development company shall take no action that would result in an actual or apparent conflict of interest between the company (or any employee of the company) and any third party lender, associate of a third

party lender, or any other person participating in a liquidation, foreclosure, or loss mitigation action.

(d) Suspension or revocation of authority

The Administration may revoke or suspend a delegation of authority under this section to any qualified State or local development company, if the Administration determines that the company—

(1) does not meet the requirements of subsection (b)(1) of this section;

(2) has violated any applicable rule or regulation of the Administration or any other applicable law; or

(3) fails to comply with any reporting requirement that may be established by the Administration relating to carrying out of functions described in paragraph (1).

(e) Report

(1) In general

Based on information provided by qualified State and local development companies and the Administration, the Administration shall annually submit to the Committees on Small Business of the House of Representatives and of the Senate a report on the results of delegation of authority under this section.

(2) Contents

Each report submitted under paragraph (1) shall include the following information:

(A) With respect to each loan foreclosed or liquidated by a qualified State or local development company under this section, or for which losses were otherwise mitigated by the company pursuant to a workout plan under this section—

(i) the total cost of the project financed with the loan;

(ii) the total original dollar amount guaranteed by the Administration;

(iii) the total dollar amount of the loan at the time of liquidation, foreclosure, or mitigation of loss;

(iv) the total dollar losses resulting from the liquidation, foreclosure, or mitigation of loss; and

(v) the total recoveries resulting from the liquidation, foreclosure, or mitigation of loss, both as a percentage of the amount guaranteed and the total cost of the project financed.

(B) With respect to each qualified State or local development company to which authority is delegated under this section, the totals of each of the amounts described in clauses (i) through (v) of subparagraph (A).

(C) With respect to all loans subject to foreclosure, liquidation, or mitigation under this section, the totals of each of the amounts described in clauses (i) through (v) of subparagraph (A).

(D) A comparison between—

(i) the information provided under subparagraph (C) with respect to the 12-month period preceding the date on which the report is submitted; and

(ii) the same information with respect to loans foreclosed and liquidated, or otherwise treated, by the Administration during the same period.

(E) The number of times that the Administration has failed to approve or reject a liquidation plan in accordance with subparagraph (A)(i), a workout plan in accordance with subparagraph (C)(i), or to approve or deny a request for purchase of indebtedness under subparagraph (B)(i), including specific information regarding the reasons for the Administration's failure and any delays that resulted.

(Pub. L. 85–699, title V, §510, as added Pub. L. 106–554, §1(a)(9) [title III, §307(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–685.)

REFERENCES IN TEXT

The Small Business Programs Improvement Act of 1996, referred to in subsec. (b)(1)(A)(i), is Pub. L. 104–208, div. D, Sept. 30, 1996, 110 Stat. 3009–724. Provisions relating to loan liquidation pilot program are contained in section 204 of title II of div. D of Pub. L. 104–208, which is set out as a note under section 695 of this title. For complete classification of this Act to the Code, see Short Title of 1996 Amendment note set out under section 631 of this title and Tables.

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

REGULATIONS

Pub. L. 106–554, §1(a)(9) [title III, §307(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–689, provided that:

"(1) IN GENERAL.—Not later than 150 days after the date of the enactment of this Act [Dec. 21, 2000], the Administrator shall issue such regulations as may be necessary to carry out section 510 of the Small Business Investment Act of 1958 [15 U.S.C. 697g], as added by subsection (a) of this section.

"(2) TERMINATION OF PILOT PROGRAM.—Beginning on the date on which final regulations are issued under paragraph (1), section 204 of the Small Business Programs Improvement Act of 1996 [Pub. L. 104–208, div. D] (15 U.S.C. 695 note) shall cease to have effect."

[1] *So in original. Probably should be "subsection".*

CHAPTER 15—ECONOMIC RECOVERY

SUBCHAPTER I—GENERALLY

Sec.

701 to 712. Omitted or Repealed.

712a. Limitation of obligations for administrative expenses of certain agencies; limitation on life of certain agencies.

713 to 713a–3. Omitted or Repealed.

713a–4. Obligations of Commodity Credit Corporation; issuance; sale; purchase; redemption; etc.

713a–5. Exemption of Commodity Credit Corporation and its obligations from taxation.

713a–6. Sale of surplus agricultural commodities to foreign governments.

713a–7. Exchange of surplus agricultural commodities for reserve stocks of strategic materials.

713a–8. Omitted.

713a–9. Reimbursement of corporation from funds of Government agencies for services, losses, operating costs, or commodities purchased.

713a–10. Omitted.

713a–11. Annual appropriations to reimburse Commodity Credit Corporation for net realized loss.

713a–11a. Interest prohibited when reimbursing Corporation for net realized losses.

713a–12. Deposit of net realized gain of Commodity Credit Corporation in Treasury.

713a–13. Policies and procedures for minimum acquisition of stocks by Commodity Credit Corporation, encouragement of marketing through private trade channels and procurement of maximum returns in marketplace for producers and Corporation.

713a–14, 713b. Repealed.

713c. Federal Surplus Commodities Corporation; continuance of existence; purchase and distribution of surplus agricultural commodities.

713c–1. Annual report to Congress by Federal Surplus Commodities Corporation.

713c–2. Purchase and distribution of surplus fishery products.

713c–3. Promotion of the free flow of domestically produced fishery products.

SUBCHAPTER II—COMMODITY CREDIT CORPORATION

714. Creation and purpose of Corporation.
714a. Location of offices.
714b. General powers of Corporation.
714c. Specific powers of Corporation.
714d. Laws applicable to Corporation.
714e. Capital stock; amount; interest.
714f. Use of funds.
714g. Board of Directors.
714h. Officers and employees; appointment; duties.
714i. Cooperation with other governmental agencies.
714j. Utilization of associations and trade facilities.
714k. Records; annual report.
714*l*. Interest of Members of Congress.
714m. Crimes and offenses.
714n. Transfer of assets of Commodity Credit Corporation, a Delaware corporation.
714*o*. Dissolution of Delaware corporation.
714p. Release of innocent purchasers of converted goods.

SUBCHAPTER I—GENERALLY

§701. Omitted

CODIFICATION

Section was section 1 of the National Industrial Recovery Act of June 16, 1933, ch. 90, 48 Stat. 195, as amended and modified by act June 14, 1935, ch. 246, 49 Stat. 375, which declared a national emergency and laid down policy objectives for the industrial recovery. After the act was held unconstitutional in *A. L. A. Schechter Poultry Corporation v. U.S.* (N.Y. 1935, 55 S.Ct. 837, 295 U.S. 495, 79 L.Ed. 1570, 97 A.L.R. 947), the National Recovery Administration was terminated and its functions and agencies transferred by Executive Orders Nos. 7252 and 7323, set out under sections 703 to 712 of this title.

§§702 to 702f. Repealed. Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 648

Section 702, act June 16, 1933, ch. 90, §2, 48 Stat. 195, and sections 702a to 702f, act June 19, 1934, ch. 677, §§1–6, 48 Stat. 1183, provided for establishment of agencies to administer the National Industrial Recovery Act during period of emergency and for regulation of employer-employee relations.

§§703 to 712. Omitted

CODIFICATION

Sections 703 to 712 of this title were sections 3 to 10, 303, and 304 of the National Industrial Recovery Act of June 16, 1933, ch. 90, 48 Stat. 195, as amended and modified by act June 14, 1935, ch. 246, 49 Stat. 375. After the act was held unconstitutional in *A. L. A. Schechter Poultry Corporation v. U.S.* (N. Y. 1935, 55 S. Ct. 837, 295 U. S. 495, 79 L. Ed. 1570, 97 A. L. R. 947), the National Recovery Administration was terminated and its functions and agencies transferred by Executive Order Nos. 7252 and 7323, see below. Subsequently, sections 303 and 304 of the Act, classified to sections 711 and 712 of this title, were repealed by Pub. L. 107–217, §6(b), Aug. 21, 2002, 116 Stat. 1304. For history of the Commodity Credit Corporation, the Electric Home and Farm Authority, and the Export-Import Bank of Washington, see notes set out under section 712a of this title.

EX. ORD. NO. 7252. TERMINATING THE NATIONAL RECOVERY ADMINISTRATION AND TRANSFERRING CERTAIN AGENCIES AND FUNCTIONS THEREOF TO THE DEPARTMENTS OF COMMERCE AND LABOR

Ex. Ord. No. 7252, Dec. 21, 1935, provided:

1. The National Recovery Administration and the office of Administrator thereof are hereby terminated.

2. The Division of Review, the Division of Business Cooperation, and the Advisory Council, as constituted by Ex. Ord. No. 7075 of June 15, 1935, together with all of their officers and employees, files, records, equipment, and property of every kind, are hereby transferred to the Department of Commerce. The Secretary of Commerce is authorized and directed, under the general direction of the President, to appoint, employ, discharge, and fix the compensation and define the duties and direct the conduct of all officers and employees engaged in the administration of the agencies transferred by this Order to the Department of Commerce, to exercise and perform in connection with the said agencies the functions and duties now exercised and performed, or authorized to be exercised and performed, by the National Recovery Administration, to report to the President on all matters relating thereto, and to terminate the functions and duties of the said agencies not later than April 1, 1936.

3. The Consumers' Division, established within the National Recovery Administration by Executive Order No. 7120 of July 30, 1935, together with all of its officers and employees, files, records, equipment, and property of every kind, are hereby transferred to the Department of Labor. The Secretary of Labor is authorized and directed, under the general direction of the President, to appoint, employ, discharge, and fix the compensation and define the duties and direct the conduct of all officers and employees as may be engaged in the administration of the said Consumers' Division, to exercise and perform in connection with said Consumers' Division the functions and duties now exercised and performed, or authorized to be exercised and performed, by the National Recovery Administration, and to report to the President on all matters relating thereto.

4. No person transferred by this Order shall by such transfer acquire a civil service status. Any new appointments under this Order may be made without regard to the Civil Service Rules and Regulations.

5. All Orders and Regulations heretofore issued concerning the administration of Title I of the National Industrial Recovery Act, as amended, are hereby modified to the extent necessary to make this Order fully effective.

6. This Order shall become effective on January 1, 1936.

EXECUTIVE ORDER NO. 7323

Ex. Ord. No. 7323, Mar. 26, 1936, 1 F.R. 69, created the Committee of Industrial Analysis to complete the summary of the results and accomplishments of the National Industrial Recovery Administration and report thereon, which report was transmitted to the President on February 17, 1937.

NATIONAL EMERGENCY COUNCIL

National Emergency Council abolished and functions transferred to Executive Office of President and to Office of Education in Federal Security Agency by Reorg. Plan No. II of 1939, §§201(a), 301, eff. July 1, 1939, 4 F.R. 2732, 53 Stat. 1434, 1435, set out in the Appendix to Title 5, Government Organization and Employees. See also sections 401 to 404 of Reorg. Plan No. II of 1939, for provisions relating to transfer of functions, records, property, personnel, and funds.

NATIONAL RESOURCES COMMITTEE

National Resources Committee abolished and functions and personnel transferred to National Resources Planning Board in Executive Office of President, which Board was also directed to wind up affairs of the Committee, by Reorg. Plan No. I of 1939, §§4, 5, eff. July 1, 1939, 4 F.R. 2727, 2728, 53 Stat. 1423, 1424, set out in the Appendix to Title 5, Government Organization and Employees. See, also, sections 7 to 9 of 1939 Reorg. Plan for provisions relating to transfer of records, property, funds, and personnel.

§712a. Limitation of obligations for administrative expenses of certain agencies; limitation on life of certain agencies

(a) Notwithstanding any other provision of law, none of the establishments or agencies named in subsection (b) of this section shall, after June 30, 1937, incur any obligations for administrative expenses, except pursuant to an annual appropriation specifically therefor, nor shall any such establishment or agency continue to function after said date unless established by or pursuant to law: *Provided*, That nothing contained in this section shall be construed to extend the period during which any such establishment or agency heretofore has been authorized by law to function.

(b) [1., 2. Repealed] 3. Federal Housing Administration; 4. Federal Surplus Commodities

Corporation; 5. Export-Import Bank of the United States; 6. Second Export-Import Bank of Washington, District of Columbia; 7. Reconstruction Finance Corporation; 8. Electric Home and Farm Authority; 9. Commodity Credit Corporation; 10. Federal Emergency Administration of Public Works; [11. Repealed] 12. Reconstruction Finance Mortgage Company.

(June 22, 1936, ch. 689, §7, 49 Stat. 1647; Pub. L. 87–353, §3(l), Oct. 4, 1961, 75 Stat. 774; Pub. L. 90–267, §1(a), Mar. 13, 1968, 82 Stat. 47; Pub. L. 101–73, title VII, §741, Aug. 9, 1989, 103 Stat. 436.)

AMENDMENTS

1989—Subsec. (b). Pub. L. 101–73 struck out "1. Federal Home Loan Bank Board; 2. Home Owners' Loan Corporation;" and "11. Federal Savings and Loan Insurance Corporation;".

1961—Subsec. (b). Pub. L. 87–353 struck out item 4. Federal Farm Mortgage Corporation and redesignated former items 5 to 13 as 4 to 12, respectively.

TRANSFERS OF FUNCTIONS AND CHANGES IN NAMES

Federal Housing Administration consolidated into National Housing Agency during World War II by Ex. Ord. No. 9070, Feb. 24, 1942. Federal Housing Administration subsequently consolidated into Housing and Home Finance Agency by Reorg. Plan No. 3 of 1947, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954. Functions, powers, and duties of the Federal Housing Administration thereafter transferred to Secretary of Housing and Urban Development. See section 3534(a) of Title 42, The Public Health and Welfare.

Federal Surplus Commodities Corporation, which was included in Surplus Marketing Administration by Reorg. Plan No. III of 1940, §5, eff. June 30, 1940, 5 F.R. 2108, 54 Stat. 1232, consolidated into Agricultural Marketing Administration by Ex. Ord. No. 9069, Feb. 23, 1942. Agricultural Marketing Administration consolidated into Food Distribution Administration of Department of Agriculture by Ex. Ord. No. 9280, Dec. 5, 1942. Food Distribution Administration consolidated into War Food Administration in Department of Agriculture by Ex. Ord. No. 9322, Mar. 26, 1943, 8 F.R. 3807, as amended by Ex. Ord. No. 9334, Apr. 19, 1943, 8 F.R. 5423. War Food Administration terminated and functions transferred to Secretary of Agriculture by Ex. Ord. No. 9577, June 29, 1945, 10 F.R. 8087. Functions of Surplus Marketing Administration transferred to Secretary of Agriculture by Reorg. Plan No. 3 of 1946, §501, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Export-Import Bank of Washington was set out as one of several agencies for which Federal Loan Administrator should supervise administration and be responsible for coordination of functions and activities by Reorg. Plan No. I of 1939, §402, eff. July 1, 1939, 4 F.R. 2730, 53 Stat. 1429, set out in the Appendix to Title 5, Government Organization and Employees. Bank terminated by act July 31, 1945, ch. 341, §10, 59 Stat. 529, and a new Export-Import Bank of Washington was created by such act, which is set out as chapter 6A (§635 et seq.) of Title 12, Banks and Banking. "Export-Import Bank of Washington" changed to "Export-Import Bank of the United States" to conform to such change in name in Act July 31, 1945, provided for in section 1(a) of Pub. L. 90–267, Mar. 13, 1968, 82 Stat. 47.

Second Export-Import Bank of Washington, D.C. was established under Ex. Ord. No. 6638, Mar. 9, 1934. Its commitments were transferred to Export-Import Bank of Washington (see above) and it was abolished by Ex. Ord. No. 7365, May 7, 1936, 1 F.R. 372.

Federal Loan Agency's and Federal Loan Administrator's functions and duties relating to Reconstruction Finance Corporation, Reconstruction Finance Mortgage Company, Electric Home and Farm Authority and Export-Import Bank of Washington, and other agencies, transferred to Department of Commerce, during World War II, see Ex. Ord. No. 9071, Feb. 24, 1942, 7 F.R. 1531. By act Feb. 24, 1945, ch. 4, 59 Stat. 5, former sections 1801 to 1805 of Title 12, Federal Loan Agency was reconstituted an independent establishment of Federal Government, and was abolished and its property and functions transferred to Reconstruction Finance Corporation by act June 30, 1947, ch. 166, title II, §204, 61 Stat. 208. Section 6(a) of 1957 Reorg. Plan No. 1, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647, set out as a note under section 601 of this title, abolished Reconstruction Finance Corporation.

Electric Home and Farm Authority was set out as one of several agencies for which Federal Loan Administrator should supervise administration and be responsible for coordination of functions and activities, by Reorg. Plan No. I of 1939, §402, eff. July 1, 1939, 4 F.R. 2730, 53 Stat. 1429, set out in the Appendix to Title 5, Government Organization and Employees.

Electric Home and Farm Authority, Inc., was authorized by Ex. Ord. No. 6514, Dec. 19, 1933. Existence continued until February 1, 1937, by act Mar. 31, 1936, ch. 163, §1, 49 Stat. 1186; extended to "close of business on June 30, 1939" by act Jan. 26, 1937, ch. 6, §2, 50 Stat. 5; to "June 30, 1941" by act Mar. 4, 1939, ch. 4, 53 Stat. 510 and to Jan. 22, 1947, by act June 10, 1941, ch. 190, §2, 55 Stat. 248. Said Authority

dissolved on Oct. 13, 1942, by Ex. Ord. No. 9256, Oct. 13, 1942, 7 F.R. 8334, and for purposes of liquidation and payment of liabilities all assets, funds, records, contracts, personnel, and property were transferred to former Reconstruction Finance Corporation.

Commodity Credit Corporation, Federal Farm Mortgage Corporation, and Farm Credit Administration, and their functions and activities, together with their respective personnel, records, and property transferred to Department of Agriculture by Reorg. Plan No. I of 1939, §401, eff. July 1, 1939, 4 F.R. 2730, 53 Stat. 1429, set out in the Appendix to Title 5, Government Organization and Employees. Administration of program of Commodity Credit Corporation and functions of Federal Surplus Commodities Corporation transferred to Secretary of Agriculture by Reorg. Plan No. 3 of 1946, §501, eff. July 16, 1946, 11 F.R. 7877, 60 Stat. 1100. See also notes under section 713 of this title.

Federal Emergency Administration of Public Works, created by act June 16, 1933, ch. 90, title II, §201, 48 Stat. 200, transferred to Federal Works Agency to be administered as Public Works Administration by Reorg. Plan No. I of 1939, §§301 and 305, eff. July 1, 1939, 4 F.R. 2729, 2730, 53 Stat. 1426, 1428. Federal Emergency Administration of Public Works further continued to June 30, 1940, by Res. of June 21, 1938, ch. 554, title II, §202, 52 Stat. 817. The act of June 16, 1933, ch. 90, title II, terminated June 30, 1943, by provisions of act June 27, 1942, ch. 450, §1, 56 Stat. 410. Ex. Ord. No. 9357, June 30, 1943, 8 F.R. 9041, transferred functions of Public Works Administration to office of Federal Works Administrator.

For changes affecting other agencies enumerated in subsection (b) of this section, see Reorg. Plan No. I of 1939, §§301, 305, 401, 402, eff. July 1, 1939, 4 F.R. 2729, 2730, 53 Stat. 1426, 1428, 1429, and Reorg. Plan No. III of 1940, §5, eff. June 30, 1940, 5 F.R. 2108, 54 Stat. 1232. Reorganization Plans I and III are set out in the Appendix to Title 5, Government Organization and Employees.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

Functions of corporations of Department of Agriculture, boards of directors and officers of such corporations; Advisory Board of Commodity Credit Corporation; and Farm Credit Administration or any agency, officer or entity of, under, or subject to the supervision of the Administration excepted from functions of officers, agencies and employees transferred to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, §1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

APPLICABILITY TO NATIONAL HOUSING AGENCY; TRANSFER OF FUNDS; REPORT TO CONGRESS

Act May 3, 1945, ch. 106, title I, §101, 59 Stat. 122, provided in part: "Section 7 of the First Deficiency Appropriation Act, 1936 [this section], shall continue to apply to administrative expenses of and for the constituent units of the National Housing Agency mentioned in said section 7 [this section] and shall also apply to such expenses of said National Housing Agency in connection with the functions and purposes of said constituent units, and none of the funds made available by this Act [act May 3, 1945, ch. 106, title I, §101, 59 Stat. 106] for such administrative expenses shall be obligated or expended unless and until an appropriate appropriation account shall have been established therefor pursuant to an appropriation warrant or a covering warrant, and all such expenditures shall be accounted for and audited in accordance with the Budget and Accounting Act, as amended [see chapters 11 and 35 of Title 31, Money and Finance]: *Provided further*, That the Administrator may, with the approval of the President of the United States, transfer to this authorization or to an authorization of a constituent unit from funds available for administrative expenses of the constituent units or the Office of the Administrator such additional sums as represent a consolidation in the Office of the Administrator or in a constituent unit of any of the administrative functions of the National Housing Agency; but no such transfer of funds shall be made unless the consolidation will result in a reduction in manpower and a savings in administrative expenses, which savings shall not be used for administrative expenses but instead shall be returned to or remain in the funds from which administrative expenses are drawn under this authorization: *Provided further*, That a report of such transfers and the savings effected thereby shall be submitted to Congress in the annual budget."

Similar provisions were contained in acts June 26, 1943, ch. 145, title I, §101, 57 Stat. 184; June 27, 1944, ch. 286, title I, §101, 58 Stat. 375.

§713. Omitted

CODIFICATION

Section, acts Jan. 31, 1935, ch. 2, §7, 49 Stat. 4; Jan. 26, 1937, ch. 6, §2(a), 50 Stat. 5; Mar. 4, 1939, ch. 5,

§1(a), 53 Stat. 510; Dec. 23, 1943, ch. 383, 57 Stat. 643, was omitted as terminated by its own terms on June 30, 1948. It related to the Commodity Credit Corporation, which was recreated as a Federal corporation by section 714 of this title.

Subsec. (a), continuing the Commodity Credit Corporation, a Delaware corporation, until the close of business on June 30, 1948, authorizing the Corporation to use all its assets (including capital and net earnings therefrom and all moneys allocated to or borrowed by it) in the exercise of its functions as a United States agency, including the making of loans on agricultural commodities, and requiring the Corporation to maintain complete and accurate books of account and to determine the procedures to be followed in the transaction of corporate business, was superseded by sections 714, 714b(a), (d), (l), and 714f of this title.

Initial proviso clause of subsec. (b), "That the Corporation shall continue to have the authority to make final and conclusive settlement and adjustment of any claims by or against the Corporation or the accounts of its fiscal officers" was superseded by section 714b(k) of this title.

Remainder of section, relating to audit of financial transactions of the Corporation, was superseded by sections 841 to 870 of former Title 31 [see chapter 91 of Title 31, Money and Finance]. See, particularly, sections 846, 850 and 851 of former title 31 [31 U.S.C. 9101(3), 9105 and 9106].

REPEALS

Act July 1, 1941, ch. 270, §1, 55 Stat. 498, formerly classified to this section, was repealed by Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 651.

Acts July 16, 1943, ch. 241, §1, 57 Stat. 556; Feb. 28, 1944, ch. 71, §1, 58 Stat. 105; Apr. 12, 1945, ch. 54, §5, 59 Stat. 51; June 30, 1947, ch. 164, 61 Stat. 201, formerly classified to this section, were repealed by Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 652, 654.

DISSOLUTION OF CORPORATION

Secretary of Agriculture authorized to dissolve the Delaware corporation under authority of section 714o of this title.

TRANSFER OF ASSETS OF CORPORATION

Assets, funds, liabilities, etc., of Delaware corporation transferred to newly created Commodity Credit Corporation under authority of section 714n of this title.

SUBSIDY OPERATIONS

Act July 25, 1946, ch. 671, §6, 60 Stat. 671, provided that the last paragraph of section 902(e) of Appendix to Title 50, War and National Defense, should not apply to operations of the Commodity Credit Corporation and the former Reconstruction Finance Corporation for the fiscal year ending June 30, 1947, and placed limitations on certain subsidy payments made during such fiscal year June 30, 1947.

INCREASE IN CERTAIN SUBSIDY PAYMENTS

Act July 31, 1945, ch. 332, 59 Stat. 506, provided that subsidy payments with respect to livestock, wheat, and butter, shall be increased to certain amounts from time to time by the Secretary of Agriculture.

ALLOCATION OF LIVESTOCK AND POULTRY FEEDS

Act July 25, 1946, ch. 671, §15, 60 Stat. 677, directed Secretary of Agriculture to allocate livestock and poultry feeds through the Commodity Credit Corporation when an emergency condition arises with regard to such feeds.

PURCHASES OF WHEAT PRIOR TO APRIL 1, 1947

Act July 25, 1946, ch. 671, §16, 60 Stat. 677, provided that the Commodity Credit Corporation shall offer to purchase the wheat of producers, subject to certain limitations, which wheat has been required to be sold pursuant to Government order and was delivered to a grain elevator prior to April 1, 1947.

§713a. Repealed. June 30, 1947, ch. 166, title II, §206(p), 61 Stat. 208

Section, act Apr. 10, 1936, ch. 168, 49 Stat. 1191, authorized increase of capital stock of the Corporation by $97,000,000.

§§713a–1, 713a–2. Repealed. Pub. L. 87–155, §1, Aug. 17, 1961, 75 Stat. 391

Section 713a–1, acts Mar. 8, 1938, ch. 44, §1, 52 Stat. 107; July 1, 1941, ch. 270, §2, 55 Stat. 498; Apr. 12, 1945, ch. 54, §4, 59 Stat. 51; Mar. 20, 1954, ch. 102, §1(b), 68 Stat. 30, related to annual appraisal of assets of Commodity Credit Corporation, and to restoration of any capital impairment. See section 713a–11 of this title for provisions authorizing appropriations to reimburse the Commodity Credit Corporation for its net realized yearly losses.

Section 713a–2, act Mar. 8, 1938, ch. 44, §2, 52 Stat. 107, related to deposit in Treasury of any capital excess of Commodity Credit Corporation. See section 713a–12 of this title for provisions requiring any net realized gain for the year by the Commodity Credit Corporation to be deposited in the Treasury.

§713a–3. Omitted

CODIFICATION

Section, act Mar. 8, 1938, ch. 44, §3, 52 Stat. 107, referred to stock of the Delaware corporation.

§713a–4. Obligations of Commodity Credit Corporation; issuance; sale; purchase; redemption; etc.

With the approval of the Secretary of the Treasury, the Commodity Credit Corporation is authorized to issue and have outstanding at any one time, bonds, notes, debentures, and other similar obligations in an aggregate amount not exceeding $30,000,000,000. Such obligations shall be in such forms and denominations, shall have such maturities, shall bear such rates of interest, shall be subject to such terms and conditions, and shall be issued in such manner and sold at such prices as may be prescribed by the Commodity Credit Corporation, with the approval of the Secretary of the Treasury. Such obligations shall be fully and unconditionally guaranteed both as to interest and principal by the United States, and such guaranty shall be expressed on the face thereof, and such obligations shall be lawful investments and may be accepted as security for all fiduciary, trust, and public funds the investment or deposit of which shall be under the authority or control of the United States or any officer or officers thereof. In the event that the Commodity Credit Corporation shall be unable to pay upon demand, when due, the principal of, or interest on, such obligations, the Secretary of the Treasury shall pay to the holder the amount thereof which is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, and thereupon to the extent of the amount so paid the Secretary of the Treasury shall succeed to all the rights of the holders of such obligations. The Secretary of the Treasury, in his discretion, is authorized to purchase any obligations of the Commodity Credit Corporation issued hereunder, and for such purpose the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds from the sale of any securities hereafter issued under chapter 31 of title 31 and the purposes for which securities may be issued under such chapter are extended to include any purchases of the Commodity Credit Corporation's obligations hereunder. The Secretary of the Treasury may at any time sell any of the obligations of the Commodity Credit Corporation acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of the obligations of the Commodity Credit Corporation shall be treated as public-debt transactions of the United States. No such obligations shall be issued in excess of the assets of the Commodity Credit Corporation, including the assets to be obtained from the proceeds of such obligations, but a failure to comply with this provision shall not invalidate the obligations or the guaranty of the same: *Provided*, That this sentence shall not limit the authority of the Corporation to issue obligations for the purpose of carrying out its annual budget programs submitted to and approved by the Congress pursuant to chapter 91 of title 31. The Commodity Credit Corporation shall have power to purchase such obligations in the open market at any time and at any price.

(Mar. 8, 1938, ch. 44, §4, 52 Stat. 108; Mar. 4, 1939, ch. 5, §1(d), 53 Stat. 511; Aug. 9, 1940, ch. 649, 54 Stat. 782; July 1, 1941, ch. 270, §3, 55 Stat. 498; July 16, 1943, ch. 241, §2, 57 Stat. 566; Apr. 12, 1945, ch. 54, §1, 59 Stat. 50; Oct. 31, 1949, ch. 792, title IV, §410, 63 Stat. 1057; June 28, 1950, ch. 381, §1, 64 Stat. 261; Mar. 20, 1954, ch. 102, §1(a), 68 Stat. 30; Aug. 31, 1954, ch. 1172,

§1, 68 Stat. 1047; Aug. 11, 1955, ch. 782, §1, 69 Stat. 634; Aug. 1, 1956, ch. 815, §1(b), 70 Stat. 783; Pub. L. 95–279, title III, §301(b), May 15, 1978, 92 Stat. 242; Pub. L. 100–202, §101(k) [title I, §101], Dec. 22, 1987, 101 Stat. 1329–322, 1329–336.)

CODIFICATION

"Chapter 31 of title 31" and "such chapter" substituted in text for "the Second Liberty Bond Act, as amended" and "such Act, as amended,", and "chapter 91 of title 31" substituted for "the Government Corporation Control Act (31 U.S.C., 1946 edition, sec. 841)" on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1987—Pub. L. 100–202 substituted "$30,000,000,000" for "$25,000,000,000".
1978—Pub. L. 95–279 substituted "$25,000,000,000" for "$14,500,000,000".
1956—Act Aug. 1, 1956, substituted "$14,500,000,000" for "$12,000,000,000".
1955—Act Aug. 11, 1955, substituted "$12,000,000,000 for "$10,000,000,000".
1954—Act Aug. 31, 1954, substituted "$10,000,000,000" for "$8,500,000,000".
Act Mar. 20, 1954, substituted "$8,500,000,000" for "$6,750,000,000".
1950—Act June 28, 1950, substituted "$6,750,000,000" for "$4,750,000,000".
1949—Act Oct. 31, 1949, inserted proviso in next to last sentence.
1945—Act Apr. 12, 1945, substituted "$4,750,000,000" for "$3,000,000,000".
1943—Act July 16, 1943, substituted "$3,000,000,000" for "$2,650,000,000".
1941—Act July 1, 1941, substituted "$2,650,000,000" for "$1,400,000,000".
1940—Act Aug. 9, 1940, substituted "$1,400,000,000 for "$900,000,000".
1939—Act Mar. 4, 1939, substituted $900,000,000" for "$500,000,000".

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–279, title III, §301(d), May 15, 1978, 92 Stat. 242, provided that: "The provisions of this section [amending this section and section 714b of this title and enacting provision set out as a note under section 714b of this title] shall become effective October 1, 1978."

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of Department of Agriculture from transfer of functions to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions From Transfer of Functions note set out under section 712a of this title.

DISCHARGE OF INDEBTEDNESS

Act May 26, 1947, ch. 82, title I, §101, 61 Stat. 109, provided in part that on the date of enactment of that Act [May 26, 1947] the Secretary of the Treasury was authorized and directed to discharge $641,832,080.64 of the indebtedness of the Commodity Credit Corporation to the Secretary of the Treasury by canceling notes in such amount issued by the Corporation to the Secretary of the Treasury pursuant to section 4 of the Act of March 8, 1938, as amended [this section].

§713a–5. Exemption of Commodity Credit Corporation and its obligations from taxation

Bonds, notes, debentures, and other similar obligations issued by the Commodity Credit Corporation under the provisions of sections 713a–1 to 713a–5 of this title shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation (except surtaxes, estate, inheritance, and gift taxes). The Commodity Credit Corporation, including its franchise, its capital, reserves, and surplus, and its income shall be exempt from all taxation imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority; except that any real property of the Commodity Credit Corporation shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed.

(Mar. 8, 1938, ch. 44, §5, 52 Stat. 108.)

REFERENCES IN TEXT

Sections 713a–1 to 713a–5, referred to in text, was in the original "this Act". Section 1 and 2 of that act, set out as sections 713a–1 and 713a–2 of this title, have been repealed and section 3 of that act, set out as section 713a–3 of this title, has been omitted.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of Department of Agriculture from transfer of functions to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions From Transfer of Functions note set out under section 712a of this title.

§713a–6. Sale of surplus agricultural commodities to foreign governments

Notwithstanding any other provision of law, the Commodity Credit Corporation, with the approval of the President, is authorized to sell surplus agricultural commodities, acquired by such Corporation through its loan operations, to foreign governments on the condition that, except for rotation to prevent deterioration, such commodities shall be held in reserve by such governments for a period of not less than five years from the date of acquisition, and shall not be disposed of unless a war or war emergency results in a serious interruption of normal supplies of such commodities: *Provided*, That under this section no concession below the prevailing world market price for the unrestricted use of such commodities, as determined by the Secretary of Agriculture, shall be granted, in consideration of the obligation assumed by such governments to hold such commodities in reserve as required hereinbefore, in excess of a maximum amount equal to the average carrying charges, as estimated by the Secretary of Agriculture, that would be incurred if such commodities should be held for an additional eighteen months' period by the Commodity Credit Corporation. In determining specific cotton to be sold under this section, the determination shall be made by sampling and selection at the place where the cotton is stored on the date of signing any sales agreement or contract under this section, and no cotton shall be sold under any such sales agreement or contract which, after such date, is transported to any other place and there sampled and selected: *Provided further*, That in case of a sale, settlement must be made within sixty days after delivery and not more than five hundred thousand bales of cotton shall be sold upon the terms and conditions provided in this section.

(Aug. 11, 1939, ch. 701, 53 Stat. 1418.)

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of Department of Agriculture from transfer of functions to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions From Transfer of Functions note set out under section 712a of this title.

§713a–7. Exchange of surplus agricultural commodities for reserve stocks of strategic materials

Notwithstanding any other provision of law, whenever the President, by and with the advice and consent of the Senate, has concluded a treaty involving the exchange of surplus agricultural commodities produced in the United States which are held under loans made or made available by the Commodity Credit Corporation for stocks of strategic and critical materials produced abroad, the Commodity Credit Corporation is authorized, upon terms and conditions prescribed by the Secretary of Agriculture, to accept such strategic and critical materials in exchange for such surplus agricultural commodities; and for the purpose of such exchange the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Interior acting jointly through the agency of the Munitions Board shall determine which materials are strategic and critical and the quantity and quality of such materials. In order to carry out the provisions of this section, the Commodity Credit Corporation is authorized, upon terms and conditions prescribed by the Secretary of Agriculture, to

procure, convey, transport, handle, store, maintain, or rotate such surplus agricultural commodities, and such reserve stocks of strategic and critical materials, as may be necessary to accomplish the purposes of this section.

The Commodity Credit Corporation is authorized and directed to transfer to warehouses in or near cotton manufacturing centers in New England not to exceed three hundred thousand bales of cotton, to which it now has title or may hereafter acquire title, having regard for the grades and staples customarily required by manufacturers in that area: *Provided*, That all necessary costs in connection with such transfer will not result in additional net cost to the Corporation.

In determining specific cotton to be exchanged under this section, the determination shall be made by sampling and selection at the place where the cotton is stored on the date of ratification of a treaty providing for such exchange, and no cotton shall be exchanged under such treaty which, after such date, is transported to another place and there sampled and selected. Such reserve stocks of strategic and critical materials shall be stored on military or naval reservations or in other locations approved by the Secretary of the Army and the Secretary of the Navy. The Commodity Credit Corporation is authorized to transfer such reserve stocks of strategic and critical materials, upon such terms and conditions as the Secretary of Agriculture shall approve, to any other governmental agency. Such reserve stocks or strategic and critical materials shall be made available or disposed of by the Commodity Credit Corporation or other governmental agency only upon order of the President in accordance with the terms of the applicable treaty; when necessary to prevent deterioration, the Commodity Credit Corporation or other governmental agency is authorized to replace those quantities of the reserve stocks of such strategic and critical materials subject to deterioration with equivalent quantities of the same materials. The funds now or hereafter made available to the Commodity Credit Corporation are made available to carry out the purposes of this section. There is authorized to be appropriated such additional sums as may be required to carry out the provisions of this section. All funds for carrying out the provisions of this section shall be available for allotment to bureaus and offices of the Department of Agriculture, and for transfer to such other agencies of the Federal Government as the Secretary of Agriculture may request to cooperate or assist in carrying out the provisions of this section.

(Aug. 11, 1939, ch. 690, 53 Stat. 1407; July 26, 1947, ch. 343, title II, §205(a), 61 Stat. 501.)

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011 to 3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

TRANSFER OF FUNCTIONS

Munitions Board abolished by section 2 of Reorg. Plan No. 6 of 1953, 18 F.R. 3743, 67 Stat. 638, set out in the Appendix to Title 5, Government Organization and Employees, and functions of Munitions Board transferred to Secretary of Defense by section 1 of Reorg. Plan No. 6 of 1953.

Army and Navy Munitions Board ceased to exist when Chairman of Board of Munitions took office and records and personnel of Army and Navy Munitions Board were transferred to Munitions Board by act July 26, 1947, ch. 343, title II, §213, 61 Stat. 505.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of Department of Agriculture from transfer of functions to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions From Transfer of Functions note set out under section 712a of this title.

§713a–8. Omitted

CODIFICATION

Section, acts July 1, 1941, ch. 270, §4, 55 Stat. 498; Oct. 2, 1942, ch. 578, §9(a), 56 Stat. 768; Feb. 28,

1944, ch. 71, §2, 58 Stat. 105; Ex. Ord. No. 9577, June 30, 1945, 10 F.R. 8087, which related to operations to cover the expansion of production of nonbasic agricultural commodities and to fulfillment of commitments to producers during the existing emergency, was omitted in light of the termination of hostilities declared by Proc. No. 2714 of Dec. 31, 1946 and Joint Res. July 25, 1947, ch. 327, §3, 61 Stat. 451, providing that July 25, 1947, be deemed the date of termination of any state of war or national emergency theretofore declared or proclaimed.

§713a–9. Reimbursement of corporation from funds of Government agencies for services, losses, operating costs, or commodities purchased

Full reimbursement shall be made to the Commodity Credit Corporation for services performed, losses sustained, operating costs incurred, or commodities purchased or delivered to or on behalf of the Lend-Lease Administration, the Army or Navy, the Board of Economic Warfare, the Reconstruction Finance Corporation, or any other Government agency, from the appropriate funds of these agencies.

(July 16, 1943, ch. 241, §4, 57 Stat. 566.)

TRANSFER OF FUNCTIONS

Lend-Lease Administration and Board of Economic Warfare, referred to in text, consolidated with Foreign Economic Administration by Ex. Ord. No. 9380, Sept. 25, 1943. Foreign Economic Administration subsequently terminated and functions of Lend-Lease Administration and Board of Economic Warfare transferred to Department of State pursuant to Ex. Ord. No. 9630, Sept. 27, 1945, 10 F.R. 12245, as amended by Ex. Ord. No. 9730, May 27, 1946, 11 F.R. 5777.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of Department of Agriculture from transfer of functions to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions From Transfer of Functions note set out under section 712a of this title.

ABOLITION OF RECONSTRUCTION FINANCE CORPORATION

Section 6(a) of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647, set out as a note under section 601 of this title, abolished Reconstruction Finance Corporation.

§713a–10. Omitted

Section was a composite of provisions contained in the Agriculture, Rural Development, and Related Agencies Appropriation Act for Fiscal Year 1983 (Pub. L. 97–370, title I, title IV, title VI, §625, Dec. 18, 1982, 96 Stat. 1797, 1798, 1808, 1812, as amended Pub. L. 99–386, title II, §202, Aug. 22, 1986, 100 Stat. 823, and related to the authority of the Commodity Corporation to make expenditures and to make contracts and commitments without regard to fiscal year limitations, with exceptions for the amount of funds to be transferred to support the General Sales Manager and to carry out the Export Credit Sales direct loan program. For provisions applicable to subsequent fiscal years, see the appropriate Agriculture, Rural Development, and Related Agencies Appropriation Act. Similar provisions were contained in the following prior appropriations acts:

Dec. 23, 1981, Pub. L. 97–103, title I, title IV, 95 Stat. 1476, 1477, 1485.
Aug. 13, 1981, Pub. L. 97–35, title I, §152, 95 Stat. 370.
Dec. 15, 1980, Pub. L. 96–528, title I, 94 Stat. 3103, 3104.
Nov. 9, 1979, Pub. L. 96–108, title I, 93 Stat. 829.
Oct. 11, 1978, Pub. L. 95–448, title I, 92 Stat. 1081, 1082.
Aug. 12, 1977, Pub. L. 95–97, title I, 91 Stat. 817, 818.
July 12, 1976, Pub. L. 94–351, title I, 90 Stat. 858.
Oct. 21, 1975, Pub. L. 94–122, title I, 89 Stat. 652, 653.
Dec. 31, 1974, Pub. L. 93–563, title I, 88 Stat. 1830.
Oct. 24, 1973, Pub. L. 93–135, title I, 87 Stat. 477.
Aug. 22, 1972, Pub. L. 92–399, title I, 86 Stat. 600.
Aug. 10, 1971, Pub. L. 92–73, title I, 85 Stat. 190.

Dec. 31, 1970, Pub. L. 91–566, title III, 84 Stat. 1494, 1495.
Nov. 26, 1969, Pub. L. 91–127, title III, 83 Stat. 259.
Aug. 8, 1968, Pub. L. 90–463, title III, 82 Stat. 652.
Oct. 14, 1967, Pub. L. 90–113, title III, 81 Stat. 332.
Sept. 7, 1966, Pub. L. 89–556, title III, 80 Stat. 702.
Nov. 2, 1965, Pub. L. 89–316, title III, 79 Stat. 1177, 1178.
Sept. 2, 1964, Pub. L. 88–573, title III, 78 Stat. 874.
Dec. 30, 1963, Pub. L. 88–250, title III, 77 Stat. 831.
Oct. 24, 1962, Pub. L. 87–879, title III, 76 Stat. 1213.
July 26, 1961, Pub. L. 87–112, title III, 75 Stat. 238, 239.
June 29, 1960, Pub. L. 86–532, title II, 74 Stat. 242.
April 13, 1960, Pub. L. 86–424, 74 Stat. 42.
July 8, 1959, Pub. L. 86–80, title II, 73 Stat. 177.
May 20, 1959, Pub. L. 86–30, title I, 73 Stat. 36.
June 13, 1958, Pub. L. 85–459, title II, 72 Stat. 198.
Aug. 2, 1957, Pub. L. 85–118, title II, 71 Stat. 338.
June 4, 1956, ch. 355, title II, 70 Stat. 238.
May 19, 1956, ch. 313, Ch. I, 70 Stat. 162.
May 23, 1955, ch. 43, title II, 69 Stat. 60, 61.
Jan. 25, 1955, ch. 3, Ch. II, 69 Stat. 5.
June 29, 1954, ch. 409, title II, 68 Stat. 317.
July 28, 1953, ch. 251, title II, 67 Stat. 222.
July 5, 1952, ch. 574, title II, 66 Stat. 353.
Aug. 31, 1951, ch. 374, title III, 65 Stat. 244.
Sept. 6, 1950, ch. 896, Ch. VI, title II, 64 Stat. 677.
June 29, 1949, ch. 280, title II, 63 Stat. 346.
July 19, 1948, ch. 543, title II, §202, 62 Stat. 531.
July 30, 1947, ch. 356, title II, §202, 61 Stat. 550.

§713a–11. Annual appropriations to reimburse Commodity Credit Corporation for net realized loss

There is authorized to be appropriated annually for each fiscal year by means of a current, indefinite appropriation, out of any money in the Treasury not otherwise appropriated, an amount sufficient to reimburse Commodity Credit Corporation for its net realized loss incurred during such fiscal year, as reflected in its accounts and shown in its report of its financial condition as of the close of such fiscal year. Reimbursement of net realized loss shall be with appropriated funds, as provided herein, rather than through the cancellation of notes.

(Pub. L. 87–155, §2, Aug. 17, 1961, 75 Stat. 391; Pub. L. 100–203, title I, §1506(a), Dec. 22, 1987, 101 Stat. 1330–28.)

AMENDMENTS

1987—Pub. L. 100–203 substituted "by means of a current, indefinite appropriation" for ", commencing with the fiscal year ending June 30, 1961".

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title I, §1506(c), Dec. 22, 1987, 101 Stat. 1330–29, provided that: "This section and the amendment made by this section [amending this section and enacting provisions set out as a note below] shall apply beginning with fiscal year 1988."

OPERATING EXPENSES

Pub. L. 100–203, title I, §1506(b), Dec. 22, 1987, 101 Stat. 1330–29, provided that: "No funds may be appropriated for operating expenses of the Commodity Credit Corporation except as authorized under section 2 of Public Law 87–155 [15 U.S.C. 713a–11] to reimburse the Corporation for net realized losses."

§713a–11a. Interest prohibited when reimbursing Corporation for net realized losses

After September 30, 1964, the portion of borrowings from Treasury equal to the unreimbursed realized losses recorded on the books of the Commodity Credit Corporation after September 30 of the fiscal year in which such losses are realized, shall not bear interest and interest shall not be accrued or paid thereon.

(Pub. L. 89–316, title III, §301, Nov. 2, 1965, 79 Stat. 1178; Pub. L. 94–273, §2(6), Apr. 21, 1976, 90 Stat. 375.)

AMENDMENTS

1976—Pub. L. 94–273 substituted "September" for "June".

§713a–12. Deposit of net realized gain of Commodity Credit Corporation in Treasury

In the event the accounts of the Commodity Credit Corporation reflect a net realized gain for any such fiscal year, the amount of such net realized gain shall be deposited in the Treasury by the Commodity Credit Corporation and shall be credited to miscellaneous receipts.

(Pub. L. 87–155, §3, Aug. 17, 1961, 75 Stat. 391.)

§713a–13. Policies and procedures for minimum acquisition of stocks by Commodity Credit Corporation, encouragement of marketing through private trade channels and procurement of maximum returns in marketplace for producers and Corporation

Congress hereby reconfirms its long-standing policy of favoring the use by governmental agencies of the usual and customary channels, facilities, and arrangements of trade and commerce, and directs the Secretary of Agriculture and the Commodity Credit Corporation to the maximum extent practicable to adopt policies and procedures designed to minimize the acquisition of stocks by the Commodity Credit Corporation, to encourage orderly marketing of farm commodities through private competitive trade channels, both cooperative and noncooperative, and to obtain maximum returns in the marketplace for producers and for the Commodity Credit Corporation.

(Pub. L. 87–703, title IV, §402, Sept. 27, 1962, 76 Stat. 632.)

§713a–14. Repealed. Pub. L. 113–79, title I, §1423(a), Feb. 7, 2014, 128 Stat. 695

Section, Pub. L. 99–198, title I, §153, Dec. 23, 1985, 99 Stat. 1377; Pub. L. 100–418, title IV, §4308, Aug. 23, 1988, 102 Stat. 1399; Pub. L. 100–435, title I, §106, Sept. 19, 1988, 102 Stat. 1651; Pub. L. 101–624, title I, §114, Nov. 28, 1990, 104 Stat. 3380; Pub. L. 103–465, title IV, §411(b), Dec. 8, 1994, 108 Stat. 4963; Pub. L. 104–127, title I, §148, Apr. 4, 1996, 110 Stat. 920; Pub. L. 107–171, title I, §1503(a), May 13, 2002, 116 Stat. 207; Pub. L. 110–234, title I, §1503, May 22, 2008, 122 Stat. 992; Pub. L. 110–246, §4(a), title I, §1503, June 18, 2008, 122 Stat. 1664, 1721, related to the dairy export incentive program.

§713b. Repealed. July 31, 1945, ch. 341, §10, 59 Stat. 529

Section, acts Jan. 31, 1935, ch. 2, §9, 49 Stat. 4; Jan. 26, 1937, ch. 6, §2(a), 50 Stat. 5; Mar. 4, 1939, ch. 5, §1(b), (c), 53 Stat. 510; Mar. 2, 1940, ch. 34, 54 Stat. 38; Sept. 26, 1940, ch. 734, §3, 54 Stat. 962, related to the Export-Import Bank of Washington, its continuation of existence, and its powers. See chapter 6A (§635 et seq.) of Title 12, Banks and Banking.

Section was also repealed by act June 30, 1947, ch. 166, title II, §206(m), 61 Stat. 208.

Section 10 of act July 31, 1945, which repealed this section, was repealed by Pub. L. 102–429, title I, §121(c)(1), Oct. 21, 1992, 106 Stat. 2199.

DISSOLUTION OF SECOND EXPORT-IMPORT BANK OF WASHINGTON, D.C.

Ex. Ord. No. 7365, May 7, 1936, 1 F.R. 372, dissolved said Bank on June 30, 1936, and provided that all remaining funds be covered into United States Treasury as miscellaneous receipts and all records transferred to Export-Import Bank of Washington.

§713c. Federal Surplus Commodities Corporation; continuance of existence; purchase and distribution of surplus agricultural commodities

In carrying out the provisions of clause (2) of section 612c of title 7, the Secretary of Agriculture may transfer to the Federal Surplus Commodities Corporation, which Corporation is continued, until June 30, 1945, as an agency of the United States under the direction of the Secretary of Agriculture, such funds, appropriated by said section, as may be necessary for the purpose of effectuating clause (2) of said section: *Provided*, That such transferred funds, together with other funds of the Corporation, may be used for purchasing, exchanging, processing, distributing, disposing, transporting, storing, and handling of agricultural commodities and products thereof and inspection costs, commissions, and other incidental costs and expenses, without regard to the provisions of existing law governing the expenditure of public funds and for administrative expenses, including rent, printing and binding, and the employment of persons and means, in the District of Columbia and elsewhere, such employment of persons to be in accordance with the provisions of law applicable to the employment of persons by the Agricultural Adjustment Administration. In carrying out clause (2) of said section, the funds appropriated by said section may be used for the purchase, without regard to the provisions of existing law governing the expenditure of public funds, of agricultural commodities and products thereof, and such commodities, as well as agricultural commodities and products thereof purchased under the preceding paragraph of this section, may be donated for relief purposes and for use in nonprofit summer camps for children.

(June 28, 1937, ch. 385, 50 Stat. 323; Feb. 16, 1938, ch. 30, title II, §204, 52 Stat. 38; June 27, 1942, ch. 454, 56 Stat. 461; Pub. L. 85–483, §2, July 2, 1958, 72 Stat. 287.)

AMENDMENTS

1958—Pub. L. 85–483 permitted donation of commodities for use in nonprofit summer camps for children.

1942—Act June 27, 1942, provided for the continuance of the Corporation from June 30, 1942, to June 30, 1945. It read as follows: "The Federal Surplus Commodities Corporation is hereby continued as an agency of the United States, under the direction of the Secretary of Agriculture, until June 30, 1945."

1938—Act Feb. 16, 1938, substituted "until June 30, 1942" for "until June 30, 1939".

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Surplus Commodities Corporation, see Transfer of Functions note set out under section 712a of this title.

§713c–1. Annual report to Congress by Federal Surplus Commodities Corporation

The Federal Surplus Commodities Corporation shall submit to Congress on the first day of each regular session an annual report setting forth a statement of the activities, receipts, and expenditures of the Corporation during the previous year.

(Feb. 16, 1938, ch. 30, title II, §204, 52 Stat. 38.)

CODIFICATION

Section was previously classified to section 1293 of Title 7, Agriculture.

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Surplus Commodities Corporation, see Transfer of Functions note set out under section 712a of this title.

§713c–2. Purchase and distribution of surplus fishery products

Any part of the funds not to exceed $1,500,000 per year, created under and to carry out the provisions of section 612c of title 7, may also be used by the Secretary of Agriculture for the purpose of diverting surplus fishery products (including fish, shellfish, mollusks, and crustacea) from the normal channels of trade and commerce by acquiring them and providing for their distribution through Federal, State, and private relief channels: *Provided*, That none of the funds made available to the Secretary of Agriculture under this section and section 713c–3 of this title shall be used to purchase any of the commodities designated in this section and section 713c–3 of this title which may have been produced in any foreign country. The provisions of law relating to the acquisition of materials or supplies for the United States shall not apply to the acquisition of commodities under this section and section 713c–3 of this title.

(Aug. 11, 1939, ch. 696, §1, 53 Stat. 1411; 1940 Reorg. Plan No. III, §5, eff. June 30, 1940, 5 F.R. 2108, 54 Stat. 1232; 1946 Reorg. Plan No. 3, §501, eff. July 16, 1946, 11 F.R. 7877, 60 Stat. 1100.)

CODIFICATION

The first part of this section originally read: "Any part of the funds not to exceed $1,500,000 per year, transferred by the Secretary of Agriculture to the Federal Surplus Commodities Corporation created under and to carry out the provisions of section 612c of title 7 may also be used by such Corporation", etc., and the reference in the proviso to the Secretary of Agriculture originally read: "Federal Surplus Commodities Corporation". See Transfer of Functions note below.

TRANSFER OF FUNCTIONS

Functions of all officers, agencies, and employees of Department of Agriculture transferred, with certain exceptions, to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, §1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

For transfer of functions of Federal Surplus Commodities Corporation, see Transfer of Functions note set out under section 712a of this title.

SIMILAR PROVISIONS

Earlier provisions on this subject were contained in act Mar. 5, 1937, ch. 29, 50 Stat. 27, and in Joint Res. Apr. 12, 1937, ch. 73, 50 Stat. 61. The former forbade acquisition of commodities thereunder after 90 days after its enactment, but permitted distribution of commodities after such period. The latter made funds available to be used in accordance with the provisions of the former.

Joint Res. Apr. 12, 1937, ch. 73, 50 Stat. 61, provided as follows: "That not to exceed $1,000,000 of the funds available to the Federal Surplus Commodities Corporation may be used by such Corporation for the purpose of diverting surplus fish (including shellfish) and the products thereof from the normal channels of trade and commerce by the acquisition and distribution thereof in accordance with the provisions of the Act entitled 'An Act to authorize the purchase and distribution of products of the fishing industry', approved March 5, 1937."

Act Mar. 5, 1937, ch. 29, 50 Stat. 27, provided as follows: "That there is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $2,000,000 for the purpose of enabling the Federal Surplus Commodities Corporation to divert surplus fish (including shellfish) and the products thereof from the normal channels of trade and commerce by acquiring them and providing for their distribution through Federal, State, and private relief agencies. No commodities shall be acquired under this Act after ninety days after the date of its enactment: *Provided, however*, That distribution thereof may extend beyond said period. The provisions of law relating to the acquisition of materials or supplies for the United States shall not apply to the acquisition of commodities under this Act."

§713c–3. Promotion of the free flow of domestically produced fishery products

(a) Definitions

As used in this section—

(1) The term "person" means—

(A) any individual who is a citizen or national of the United States or a citizen of the Northern Mariana Islands;

(B) any fishery development foundation or other private nonprofit corporation located in Alaska; and

(C) any corporation, partnership, association, or other entity (including, but not limited to, any fishery development foundation or other private nonprofit corporation not located in Alaska), nonprofit or otherwise, if such entity is a citizen of the United States within the meaning of section 50501 of title 46 and for purposes of applying such section 50501 with respect to this section—

(i) the term "State" as used therein includes any State referred to in paragraph (3),

(ii) citizens of the United States must own not less than 75 percent of the interest in the entity or, in the case of a nonprofit entity, exercise control in the entity that is determined by the Secretary to be the equivalent of such ownership, and

(iii) nationals of the United States and citizens of the Northern Mariana Islands shall be treated as citizens of the United States in meeting the ownership and control requirements referred to in clause (ii).

(2) The term "Secretary" means the Secretary of Commerce.

(3) The term "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the Northern Mariana Islands, and any other Commonwealth, territory, or possession of the United States.

(4) The term "United States fishery" means any fishery, including any tuna fishery, that is, or may be, engaged in by citizens or nationals of the United States or citizens of the Northern Mariana Islands.

(5) The term "citizen of the Northern Mariana Islands" means—

(A) an individual who qualifies as such under section 8 of the Schedule on Transitional Matters attached to the Constitution of the Northern Mariana Islands; or

(B) a corporation, partnership, association, or other entity organized or existing under the laws of the Northern Mariana Islands, not less than 75 percent of the interest in which is owned by individuals referred to in subparagraph (A) or citizens or nationals of the United States, in cases in which "owned" is used in the same sense as in section 50501 of title 46.

(b) Transfer of funds

(1) The Secretary of Agriculture shall transfer to the Secretary each fiscal year, beginning with the fiscal year commencing July 1, 1954, and ending on June 30, 1957, from moneys made available to carry out the provisions of section 612c of title 7, an amount equal to 30 per centum of the gross receipts from duties collected under the customs laws on fishery products (including fish, shellfish, mollusks, crustacea, aquatic plants and animals, and any products thereof, including processed and manufactured products), which shall be maintained in a separate fund only for—

(A) use by the Secretary—

(i) to provide financial assistance for the purpose of carrying out fisheries research and development projects approved under subsection (c) of this section,[1]

(ii) to implement the national fisheries research and development program provided for under subsection (d) of this section;

(iii) to implement the Northwest Atlantic Ocean Fisheries Reinvestment Program established under section 1863 of title 16; and

(iv) to fund the Federal share of a fishing capacity reduction program established under section 1861a of title 16; and

(B) the provision of moneys, subject to paragraph (2), to carry out the purposes of the Fisheries Promotion Fund established under section 208(a) [2] of the Fish and Seafood Promotion Act of

1986 [16 U.S.C. 4008(a)].

(2) There are transferred from the fund established under paragraph (1) to the Fisheries Promotion Fund referred to in paragraph (1)(B) $750,000 in fiscal year 1987, $3,000,000 in each of fiscal years 1988 and 1989, and $2,000,000 in each of fiscal years 1990 and 1991.

(c) Fisheries research and development projects

(1) The Secretary shall make grants from the fund established under subsection (b) of this section to assist persons in carrying out research and development projects addressed to any aspect of United States fisheries, including, but not limited to, harvesting, processing, marketing, and associated infrastructures.

(2) The Secretary shall—

(A) at least once each fiscal year, receive, during a 60-day period specified by him, applications for grants under this subsection;

(B) prescribe the form and manner in which applications for grants under this subsection must be made, including, but not limited to, the specification of the information which must accompany applications to ensure that the proposed projects comply with Federal law and can be evaluated in accordance with paragraph (3)(B); and

(C) approve or disapprove each such application before the close of the 120th day after the last day of the 60-day period (specified under subparagraph (a)) in which the application was received.

(3) No application for a grant under this subsection may be approved unless the Secretary—

(A) is satisfied that the applicant has the requisite technical and financial capability to carry out the project; and

(B) evaluates the proposed project as to—

(i) soundness of design,

(ii) the possibilities of securing productive results,

(iii) minimization of duplication with other fisheries research and development projects,

(iv) the organization and management of the project,

(v) methods proposed for monitoring and evaluating the success or failure of the project, and

(vi) such other criteria as the Secretary may require.

(4) Each grant made under this subsection shall be subject to such terms and conditions as the Secretary may require to protect the interests of the United States, including, but not limited to, the following:

(A) The recipient of the grant must keep such records as the Secretary shall require as being necessary or appropriate for disclosing the use made of grant funds and shall allow the Secretary and the Comptroller General of the United States, or any of their authorized representatives, access to such records for purposes of audit and examination.

(B) The amount of a grant may not be less than 50 percent of the estimated cost of the project.

(C) The recipient of the grant must submit to the Secretary periodic project status reports.

(5)(A) If the cost of a project will be shared by the grant recipient, the Secretary shall accept, as a part or all of that share, the value of in-kind contributions made by the recipient, or made available to, and applied by, the recipient, with respect to the project.

(B) For purposes of subparagraph (A), in-kind contributions may be in the form of, but are not limited to, personal services rendered in carrying out functions related to, and permission to use real or personal property owned by others (for which consideration is not required) in carrying out the project. The Secretary shall establish (i) the training, experience, and other qualifications which shall be required in order for services to be considered as in-kind contributions; and (ii) the standards under which the Secretary will determine the value of in-kind contributions for purposes of subparagraph (A).

(C) Any valuation determination made by the Secretary for purposes of this paragraph shall be conclusive.

(d) National fisheries research and development program

(1) The Secretary shall carry out a national program of research and development addressed to such aspects of United States fisheries (including, but not limited to, harvesting, processing, marketing, and associated infrastructures) if not adequately covered by proj- ects assisted under subsection (c) of this section, as the Secretary deems appropriate.

(2) The Secretary shall, after consultation with appropriate representatives of the fishing industry, submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives, an annual report, that must be submitted not later than 60 days before the close of each fiscal year, containing—

(A) the fisheries development goals and funding priorities under paragraph (1) for the next fiscal year;

(B) a description of all pending projects assisted under subsection (c) of this section or carried out under paragraph (1), in addition to—

(i) a list of those applications approved and those disapproved under subsection (c) of this section, and the total amount of grants made, for the current fiscal year, and

(ii) a statement of the extent to which available funds were not obligated or expended by the Secretary for grants under subsection (c) of this section during the current fiscal year; and

(C) an assessment of each project assisted under subsection (c) of this section or carried out under paragraph (1) that was completed in the preceding fiscal year regarding the extent to which (i) the objectives of the project were attained, and (ii) the project contributed to fishery development.

(e) Allocation of fund moneys

(1) Notwithstanding any other provision of law, all moneys in the fund shall be used exclusively for the purpose of promoting United States fisheries in accordance with the provisions of this section, and no such moneys shall be transferred from the fund for any other purpose. With respect to any fiscal year, all moneys in the fund, including the sum of all unexpended moneys carried over into that fiscal year and all moneys transferred to the fund under subsection (b) of this section or any other provision of law with respect to that fiscal year, shall be allocated as follows:

(A) the Secretary shall use no less than 60 per centum of such moneys to make direct industry assistance grants to develop the United States fisheries and to expand domestic and foreign markets for United States fishery products pursuant to subsection (c) of this section; and

(B) the Secretary shall use the balance of the moneys in the fund to finance those activities of the National Marine Fisheries Service which are directly related to development of the United States fisheries pursuant to subsection (d) of this section.

(2) The Secretary shall, consistent with the number of meritorious applications received with respect to any fiscal year, obligate or expend all of the moneys in the fund described in paragraph (1). Any such moneys which are not expended in a given fiscal year shall remain available for expenditure in accordance with this section without fiscal year limitation, except that the Secretary shall not obligate such moneys at a rate less than that necessary to prevent the balance of moneys in the fund from exceeding $3,000,000 at the end of any fiscal year.

(Aug. 11, 1939, ch. 696, §2, 53 Stat. 1412; July 1, 1954, ch. 447, 68 Stat. 376; Aug. 8, 1956, ch. 1036, §12(b), 70 Stat. 1124; Pub. L. 89–348, §1(13), Nov. 8, 1965, 79 Stat. 1311; Pub. L. 96–561, title II, §210, Dec. 22, 1980, 94 Stat. 3287; Pub. L. 97–424, title IV, §423(a), Jan. 6, 1983, 96 Stat. 2164; Pub. L. 99–659, title II, §209(e), Nov. 14, 1986, 100 Stat. 3721; Pub. L. 101–627, title VII, §703, Nov. 28, 1990, 104 Stat. 4463; Pub. L. 102–567, title IX, §902(c), Oct. 29, 1992, 106 Stat. 4319; Pub. L. 104–208, div. A, title I, §101(a) [title II, §211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009–41; Pub. L. 104–297, title I, §116(c), Oct. 11, 1996, 110 Stat. 3603.)

CODIFICATION

"Section 50501 of title 46" substituted for "section 2 of the Shipping Act, 1916 (46 U.S.C. 802)" in subsec.

(a)(1)(C) and (5)(B) and "such section 50501" substituted for "such section 2" in subsec. (a)(1)(C) on authority of Pub. L. 109–304, §18(c), Oct. 6, 2006, 120 Stat. 1709, section 8(b) of which enacted parts A and B of subtitle V of Title 46, Shipping.

AMENDMENTS

1996—Subsec. (b)(1)(A)(iii). Pub. L. 104–208 made technical amendment to reference in original act which appears in text as reference to section 1863 of title 16.

Subsec. (b)(1)(A)(iv). Pub. L. 104–297 added cl. (iv).

Pub. L. 104–208 made technical amendment to reference in original act which appears in text as reference to section 1861a of title 16.

1992—Subsec. (b)(1)(A). Pub. L. 102–567 struck out "and" at end of cl. (i) and added cl. (iii).

1990—Subsec. (b)(2). Pub. L. 101–627 substituted "each of fiscal years 1990 and 1991" for "fiscal year 1990".

1986—Subsec. (b). Pub. L. 99–659 designated existing provisions as introductory provisions and subpar. (A) of par. (1) and added pars. (1)(B) and (2).

1983—Subsec. (e). Pub. L. 97–424 amended subsec. (e) generally, which formerly had provided:

"(1) With respect to any fiscal year, not less than 50 percent of—

"(A) the moneys transferred to the fund under subsection (b) of this section or any other provision of law with respect to that fiscal year; and

"(B) such existing fund moneys carried over into that fiscal year;

shall be used by the Secretary during that fiscal year to provide financial assistance for projects under subsection (c) of this section; and the remainder of such moneys in the fund shall be used to implement the national fisheries research and development program established under subsection (d) of this section during that fiscal year.

"(2) Moneys accruing to the fund established under subsection (b) of this section for any fiscal year and not expended with respect to that year shall remain available for expenditure under this section without fiscal year limitation."

1980—Subsec. (a). Pub. L. 96–561, §210(2), (3), added subsec. (a) and redesignated former subsec. (a) as (b).

Subsec. (b). Pub. L. 96–561, §210(1), (2), (4), redesignated subsec. (a) as (b), substituted "transfer to the Secretary" for "transfer to the Secretary of Commerce", "only for use by the Secretary" for "and used by the Secretary of Commerce", and provision directing that the fund be used to provide financial assistance for carrying out fisheries research and development projects and to implement the national fisheries research and development program for provision directing that the fund be used to promote free flow of domestically produced fisheries products by conducting a fishery educational service and fishery technological, biological, and related research programs, to acquire, construct, or maintain vessels and other facilities necessary for conducting research, to develop and increase markets for fishery products of domestic origin, and to conduct any biological, technological, or other research pertaining to American fisheries, and struck out former subsec. (b) which authorized any agency or wholly owned government corporation of the United States to transfer to the Secretary of Commerce any vessels or equipment excess to its needs.

Subsec. (c). Pub. L. 96–561, §210(1), (5), added subsec. (c) and struck out former subsec. (c) which directed the Secretary of Commerce to cooperate with other Federal, State, and local agencies for promotion of free flow of domestically produced fishery products and provided for the appointment of an advisory committee of the American fisheries industry to advise the Secretary in formulation of policy, rules, and regulations.

Subsec. (d). Pub. L. 96–561, §210(1), (5), added subsec. (d) and struck out former subsec. (d) which authorized the Secretary of Commerce to retransfer any funds available under this section, not to exceed $1,500,000, to the Secretary of Agriculture to be used for the purposes specified in section 713c–2 of this title.

Subsec. (e). Pub. L. 96–561, §210(1), (5), added subsec. (e) and struck out former subsec. (e) which provided that the special fund created for use of the Secretary of Commerce under subsec. (a) of this section and the annual accruals thereto be available for each year until expended by the Secretary.

1965—Subsec. (f). Pub. L. 89–348 repealed subsec. (f) which required an annual report to the appropriate committees of Congress on the use of the separate fund.

1956—Subsec. (e). Act Aug. 8, 1956, struck out provisions which limited expenditures to not more than $3,000,000 in any fiscal year, restricted the balance of the fund to not more than $5,000,000 at the end of any fiscal year, and required the Secretary of the Interior to retransfer funds in excess of the $5,000,000 to the Secretary of Agriculture.

1954—Act July 1, 1954, amended section generally, to encourage the distribution of fishery products.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(a) [title II, §211(b)] of div. A of Pub. L. 104–208 provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97–424, title IV, §423(b), Jan. 6, 1983, 96 Stat. 2165, provided that: "The amendment made by subsection (a) of this section [amending this section] shall take effect on October 1, 1983."

SHORT TITLE

Section 2 of act Aug. 11, 1939, which enacted this section, is popularly known as the "Saltonstall-Kennedy Act".

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (d)(2) of this section relating to submitting annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 50 of House Document No. 103–7.

ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction transferred by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. Committee on Merchant Marine and Fisheries of House of Representatives treated as referring to Committee on Resources of House of Representatives in case of provisions relating to fisheries, wildlife, international fishing agreements, marine affairs (including coastal zone management) except for measures relating to oil and other pollution of navigable waters, or oceanography by section 1(b)(3) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Resources of House of Representatives changed to Committee on Natural Resources of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

TRANSFER OF FUNCTIONS

Functions of all officers, agencies, and employees of Department of Agriculture transferred, with certain exceptions, to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, §1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

CONTINUATION OF AUTHORIZATION FOR TRANSFER OF FUNDS

Act Aug. 8, 1956, ch. 1036, §12(a), 70 Stat. 1124, provided that: "The authorization for the transfer of certain funds from the Secretary of Agriculture to the Secretary of the Interior and their maintenance in a separate fund as contained in section 2(a) of the Act of August 11, 1939, as amended July 1, 1954 (68 Stat. 376), [now subsec. (b) of this section], shall be continued for the year ending June 30, 1957, and each year thereafter."

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

[1] So in original. The comma probably should be a semicolon.

[2] So in original. Probably should be section "209(a)".

SUBCHAPTER II—COMMODITY CREDIT CORPORATION

§714. Creation and purpose of Corporation

For the purpose of stabilizing, supporting, and protecting farm income and prices, of assisting in the maintenance of balanced and adequate supplies of agricultural commodities, products thereof, foods, feeds, and fibers (hereinafter collectively referred to as "agricultural commodities"), and of facilitating the orderly distribution of agricultural commodities, there is created a body corporate to be known as Commodity Credit Corporation (hereinafter referred to as the "Corporation"), which shall be an agency and instrumentality of the United States, within the Department of Agriculture, subject to the general supervision and direction of the Secretary of Agriculture (hereinafter referred to as the "Secretary").

(June 29, 1948, ch. 704, §2, 62 Stat. 1070; June 7, 1949, ch. 175, §1, 63 Stat. 154.)

AMENDMENTS

1949—Act June 7, 1949, placed the general supervision and direction of the Commodity Credit Corporation in the Secretary of Agriculture.

EFFECTIVE DATE

Section 18 of act June 29, 1948, provided that sections 714 to 714o of this title shall take effect as of midnight June 30, 1948.

SHORT TITLE

Congress in enacting sections 714 to 714p of this title provided by section 1 of act June 29, 1948, that they should be popularly known as the "Commodity Credit Corporation Charter Act".

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of Department of Agriculture from transfer of functions to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions From Transfer of Functions note set out under section 712a of this title.

ESTABLISHING QUALITY AS GOAL FOR COMMODITY CREDIT CORPORATION PROGRAMS

Pub. L. 101–624, title XXV, §2517, formerly §2518, Nov. 28, 1990, 104 Stat. 4078, as renumbered by Pub. L. 104–66, title I, §1011(h), Dec. 21, 1995, 109 Stat. 710, provided that: "In carrying out its activities the Commodity Credit Corporation shall, to the extent practicable, provide for program provisions that promote quality in the production and marketing of crops and livestock in the United States."

[Pub. L. 104–127, title VII, §711, Apr. 4, 1996, 110 Stat. 1112, which directed the repeal of section 2517 of the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. 101–624, relating to a study of transportation of fertilizer and agricultural chemicals to farmers, was not executed to provisions set out above, to reflect the probable intent of Congress and the amendment by Pub. L. 104–66, title I, §1011(h), Dec. 21, 1995, 109 Stat. 710, which repealed section 2517 of Pub. L. 101–624 relating to such study, and renumbered section 2518 of Pub. L. 101–624, set out above, as section 2517 of Pub. L. 101–624.]

§714a. Location of offices

The Corporation may establish offices in such place or places as it may deem necessary or desirable in the conduct of its business.

(June 29, 1948, ch. 704, §3, 62 Stat. 1070.)

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of Department of Agriculture from transfer of functions to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions From Transfer of Functions note set out under section 712a of this title.

§714b. General powers of Corporation

The Corporation—

(a) Shall have succession in its corporate name.

(b) May adopt, alter, and use a corporate seal, which shall be judicially noticed.

(c) May sue and be sued, but no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the Corporation or its property. The district courts of the United States, including the district courts of any Territory or possession, shall have exclusive original jurisdiction, without regard to the amount in controversy, of all suits brought by or against the Corporation: *Provided*, That the Corporation may intervene in any court in any suit, action, or proceeding in which it has an interest. Any suit against the Corporation shall be brought in the District of Columbia, or in the district wherein the plaintiff resides or is engaged in business. No suit by or against the Corporation shall be allowed unless (1) it shall have been brought within six years after the right accrued on which suit is brought, or (2) in the event that the person bringing such suit shall have been under legal disability or beyond the seas at the time the right accrued, the suit shall have been brought within three years after the disability shall have ceased or within six years after the right accrued on which suit is brought, whichever period is longer. The defendant in any suit by or against the Corporation may plead, by way of set-off or counterclaim, any cause of action, whether arising out of the same transaction or not, which would otherwise be barred by such limitation if the claim upon which the defendant's cause of action is based had not been barred prior to the date that the plaintiff's cause of action arose: *Provided*, That the defendant shall not be awarded a judgment on any such set-off or counterclaim for any amount in excess of the amount of the plaintiff's claim established in the suit. All suits against the Corporation shall be tried by the court without a jury. Notwithstanding any other provision of this subchapter, the Federal Tort Claims Act (Public Law 601, Seventy-ninth Congres [1] shall be applicable to the Corporation. Any suit by or against the United States as the real party in interest based upon any claim by or against the Corporation shall be subject to the provisions of subsection (c) of this section to the same extent as though such suit were by or against the Corporation, except that (1) any such suit against the United States based upon any claim of the type enumerated in section 1491 of title 28, may be brought in the United States Court of Federal Claims, and (2) no such suit against the United States may be brought in a district court unless such suit might, without regard to the provisions of this subchapter, be brought in such court.

(d) May adopt, amend, and repeal bylaws, rules, and regulations governing the manner in which its business may be conducted and the powers vested in it may be exercised.

(e) Shall have all the rights, privileges, and immunities of the United States with respect to the right to priority of payment with respect to debts due from insolvent, deceased, or bankrupt debtors. The Corporation may assert such rights, privileges, and immunities in any suit, action, or proceeding.

(f) Shall be entitled to the use of the United States mails in the same manner and upon the same conditions as the executive departments of the Federal Government.

(g) May enter into and carry out such contracts or agreements as are necessary in the conduct of its business, except that obligations under all such contracts or agreements (other than reimbursable agreements under section 714i of this title) for equipment or services relating to automated data processing, information technologies, or related items (including telecommunications equipment and computer hardware and software) may not exceed $170,000,000 in fiscal year 1996 and not more than $188,000,000 in the 6-fiscal year period beginning on October 1, 1996, unless additional amounts for such contracts and agreements are provided in advance in appropriation Acts. State and local regulatory laws or rules shall not be applicable with respect to contracts or agreements of the Corporation or the parties thereto to the extent that such contracts or agreements provide that such laws or rules shall not be applicable, or to the extent that such laws or rules are inconsistent with such contracts or agreements.

(h) May contract for the use, in accordance with the usual customs of trade and commerce, of plants and facilities for the physical handling, storage, processing, servicing, and transportation of the agricultural commodities subject to its control. The Corporation shall not have power to acquire real property or any interest therein except that it may (a) rent or lease office space necessary for the conduct of its business and (b) acquire real property or any interest therein for the purpose of providing storage adequate to carry out effectively and efficiently any of the Corporation's programs, or of securing or discharging obligations owing to the Corporation, or of otherwise protecting the

financial interests of the Corporation: *Provided*, That the authority contained in this subsection shall not be utilized by the Corporation for the purpose of acquiring real property, or any interest therein, in order to provide storage facilities for any commodity unless the Corporation determines that existing privately owned storage facilities for such commodity in the area concerned are not adequate: *Provided further*, That no refrigerated cold storage facilities shall be constructed or purchased except with funds specifically provided by Congress for that purpose: *And provided further*, That any contract entered into by the Corporation for the use of a storage facility shall provide at least that (1) the rental rate charged for an extended term in excess of one year shall be at an annual rate less than that which is charged for a one-year contract, (2) any obligation of the Corporation to pay for the use of any space in a facility shall be relieved to the extent that the Corporation does not use the space and payment is made by another person for the use of such space, and (3) if the Corporation determines that it no longer needs the space reserved in the facility, the Corporation may be relieved, for the remaining term of the contract, of its obligations to an extent and in a manner that will provide significant savings to the Corporation while permitting the owner of the facility reasonable time to lease such space to another person: *And provided further*, That nothing contained in this subsection shall limit the duty of the Corporation, to the maximum extent practicable consistent with the fulfillment of the Corporation's purposes and the effective and efficient conduct of its business, to utilize the usual and customary channels, facilities, and arrangements of trade and commerce in the warehousing of commodities: *And provided further*, That to encourage the storage of grain on farms, where it can be stored at the lowest cost, the Corporation may make loans to grain growers needing storage facilities when such growers shall apply to the Corporation for financing the construction or purchase of suitable storage, and these loans shall be deducted from the proceeds of price support loans or purchase agreements made between the Corporation and the growers, except that the Secretary shall make such loans in areas in which the Secretary determines that there is a deficiency of such storage. To encourage the alleviation of natural resource conservation problems that reduce the productive capacity of the Nation's land and water resources or that cause degradation of environmental quality, the Corporation may, beginning December 22, 1981, make loans to any agricultural producer for those natural resource conservation and environmental enhancement measures that are recommended by the applicable county and State committees established under section 590h(b) of title 16 and are included in the producer's conservation plan approved by the local soil and water conservation district; such loans shall be for a period not to exceed ten years at a rate of interest based upon the rate of interest charged the Corporation by the United States Treasury; the Corporation may make loans to any one producer in any fiscal year in an amount not to exceed $25,000; loans up to $10,000 in amount may be unsecured and loans in excess of $10,000 shall be secured; and the total of such unsecured and secured loans made in each fiscal year shall not exceed $200,000,000: *Provided*, That the authority provided by this sentence to make loans shall be effective only to the extent and in such amounts as may be provided for in prior appropriation Acts. Notwithstanding any other provision of law, the Commodity Credit Corporation shall, to the maximum extent practicable, in consultation with the Secretary of State, and upon terms and conditions prescribed or approved by the Secretary of Agriculture, accept strategic and critical materials produced abroad in exchange for agricultural commodities acquired by the Corporation. Insofar as practicable, in effecting such exchange of goods, the Secretary shall: (1) use normal commercial trade channels; (2) take action to avoid displacing usual marketings of United States agricultural commodities and the products thereof; (3) take reasonable precautions to prevent the resale or transshipment to other countries, or use for other than domestic use in the importing country, of agricultural commodities used for such exchange; and (4) give priority to commodities easily storable and those which serve as prime incentive goods to stimulate production of critical and strategic materials. The Corporation may solicit bids from, and utilize, private trading firms to effect such exchange of goods. The determination of the quantities and qualities of such materials which are desirable for stock piling and the determination of which materials are strategic and critical shall be made in the manner prescribed by section 3 of the Strategic and Critical Materials Stock Piling Act [50 U.S.C. 98b]. Strategic and critical materials acquired by Commodity Credit Corporation in exchange for agricultural commodities shall, to the

extent approved by the President, be transferred to the stock pile provided for by the Strategic and Critical Materials Stock Piling Act [50 U.S.C. 98 et seq.]; and in the same fiscal year such materials are transferred to the stock pile the Commodity Credit Corporation shall be reimbursed for the strategic and critical materials so transferred to the stock pile from the funds made available for the purpose of the Strategic and Critical Materials Stock Piling Act, in an amount equal to the fair market value, as determined by the Secretary of the Treasury, of the material transferred to the stock pile. If the volume of petroleum products (including crude oil) stored in the Strategic Petroleum Reserve is less than the level prescribed under section 6234 of title 42, the Corporation shall, to the maximum extent practicable and with the approval of the Secretary of Agriculture, make available annually to the Secretary of Energy, upon the request of the Secretary of Energy, a quantity of agricultural products owned by the Corporation with a market value at the time of such request of at least $300,000,000 for use by the Secretary of Energy in acquiring petroleum products (including crude oil) produced abroad for placement in the Strategic Petroleum Reserve through an exchange of such agricultural products. The terms and conditions of each such exchange, including provisions for full reimbursement to the Commodity Credit Corporation, shall be determined by the Secretary of Energy and the Secretary of Agriculture. Nothing contained herein shall limit the authority of the Commodity Credit Corporation to acquire, hold, or dispose of such quantity of strategic and critical materials as it deems advisable in carrying out its functions and protecting its assets: *Provided*, That, notwithstanding any other provision of law, where a grain storage facility owned by the Corporation is not needed by the Corporation and, upon being offered for sale no person offers to pay the minimum price set by the Corporation for such facility for use in connection with storage or handling of agricultural commodities, then the Corporation may, without declaring such facility to be excess property, sell it by bids at not less than such minimum price to any public or private nonprofit agency or organization for use for the purposes of such agency or organization. This provision shall apply also to facilities which on the effective date of this Act have been declared excess to the needs of the Commodity Credit Corporation but have not been claimed by any other Government agency, or surplus to the needs of the Government but not disposed of pursuant to the provisions of chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41.

(i) May borrow money subject to any provision of law applicable to the Corporation: *Provided*, That the total of all money borrowed by the Corporation, other than trust deposits and advances received on sales, shall not at any time exceed in the aggregate $30,000,000,000. The Corporation shall at all times reserve a sufficient amount of its authorized borrowing power which, together with other funds available to the Corporation, will enable it to purchase, in accordance with its contracts with lending agencies, notes, or other obligations evidencing loans made by such agencies under the Corporation's programs.

(j) Shall determine the character of and the necessity for its obligations and expenditures and the manner in which they shall be incurred, allowed, and paid.

(k) Shall have authority to make final and conclusive settlement and adjustment of any claims by or against the Corporation or the accounts of its fiscal officers.

(l) May make such loans and advances of its funds as are necessary in the conduct of its business.

(m) Shall have such powers as may be necessary or appropriate for the exercise of the powers specifically vested in the Corporation, and all such incidental powers as are customary in corporations generally; but any research financed by the Corporation shall relate to the conservation or disposal of commodities owned or controlled by the Corporation and shall be conducted in collaboration with research agencies of the Department of Agriculture. Notwithstanding any other provision of this subchapter, the Corporation may, in the exercise of its power to remove and dispose of surplus agricultural commodities, export, or cause to be exported, not to exceed such amounts of commodities owned by the Corporation as will enable the Corporation to finance research and development of external combustion engines using fuel other than that derived from petroleum and petroleum products. The total value of commodities exported annually for the purposes of the research authorized by the preceding sentence may not exceed $30,000,000.

(June 29, 1948, ch. 704, §4, 62 Stat. 1070; June 7, 1949, ch. 175, §§2, 5, 63 Stat. 154, 156; Aug. 10,

1949, ch. 412, §12(a), 63 Stat. 591; June 28, 1950, ch. 381, §2, 64 Stat. 261; Mar. 20, 1954, ch. 102, §2, 68 Stat. 30; Aug. 31, 1954, ch. 1172, §2, 68 Stat. 1047; Aug. 11, 1955, ch. 782, §2, 69 Stat. 634; Aug. 1, 1956, ch. 815, §1(a), 70 Stat. 783; Pub. L. 89–758, Nov. 5, 1966, 80 Stat. 1307; Pub. L. 95–113, title XI, §1104, Sept. 29, 1977, 91 Stat. 954; Pub. L. 95–279, title III, §301(a), May 15, 1978, 92 Stat. 242; Pub. L. 96–41, §3(b), July 30, 1979, 93 Stat. 325; Pub. L. 96–234, §3, Apr. 11, 1980, 94 Stat. 333; Pub. L. 97–35, title I, §151, Aug. 13, 1981, 95 Stat. 370; Pub. L. 97–98, title XV, §1520(a), title XVI, §1606, Dec. 22, 1981, 95 Stat. 1335, 1347; Pub. L. 97–164, title I, §161(1), Apr. 2, 1982, 96 Stat. 49; Pub. L. 99–198, title XI, §1167(b), title XVII, §1761, Dec. 23, 1985, 99 Stat. 1503, 1651; Pub. L. 99–260, §11, Mar. 20, 1986, 100 Stat. 52; Pub. L. 100–202, §101(k) [title I, §101], Dec. 22, 1987, 101 Stat. 1329–322, 1329–336; Pub. L. 102–572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 104–127, title I, §161(b)(1), Apr. 4, 1996, 110 Stat. 934; Pub. L. 105–185, title V, §521(a), June 23, 1998, 112 Stat. 580; Pub. L. 105–277, div. A, §101(a) [title VII, §756], Oct. 21, 1998, 112 Stat. 2681, 2681–34.)

REFERENCES IN TEXT

The Federal Tort Claims Act, referred to in subsec. (c), is title IV of act Aug. 2, 1946, ch. 753, 60 Stat. 842, which was classified principally to chapter 20 (§§921, 922, 931–934, 941–946) of former Title 28, Judicial Code and Judiciary. Title IV of act Aug. 2, 1946, was substantially repealed and reenacted as sections 1346(b) and 2671 et seq. of Title 28, Judiciary and Judicial Procedure, by act June 25, 1948, ch. 646, 62 Stat. 992, the first section of which enacted Title 28. The Federal Tort Claims Act is also commonly used to refer to chapter 171 of Title 28, Judiciary and Judicial Procedure. For complete classification of title IV to the Code, see Tables. For distribution of former sections of Title 28 into the revised Title 28, see Table at the beginning of Title 28.

The Strategic and Critical Materials Stock Piling Act, referred to in subsec. (h), is act June 7, 1939, ch. 190, as revised generally by Pub. L. 96–41, §2, July 30, 1979, 93 Stat. 319, which is classified generally to subchapter III (§98 et seq.) of chapter 5 of Title 50, War and National Defense. For complete classification of this Act to the Code, see section 98 of Title 50 and Tables.

The effective date of this Act, referred to in subsec. (h), probably refers to the effective date of Pub. L. 89–758, which was approved on Nov. 5, 1966.

CODIFICATION

The words "of the District of Columbia and" in the phrase of subsec. (c) reading "including the district courts of the District of Columbia and of any Territory or possession" have been deleted as superfluous in view of section 132(a) of Title 28, Judiciary and Judicial Procedure, which states that "There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district" and section 88 of Title 28 which states that "The District of Columbia constitutes one judicial district".

In subsec. (h), "chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41" substituted for "the Federal Property and Administrative Services Act of 1949, as amended" on authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, which Act enacted Title 40, Public Buildings, Property, and Works, and Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

Amendment by Pub. L. 95–113, which directed the Corporation to make secured storage facility loans of not to exceed $50,000, later increased to $100,000, to growers of dry or high moisture grain, soybeans, rice, and high moisture forage and silage during the period Oct. 1, 1977, to Sept. 30, 1981, was omitted from the Code as terminated. See Effective and Termination Dates of 1977 Amendment note set out below.

AMENDMENTS

1998—Subsec. (g). Pub. L. 105–277 substituted "$188,000,000" for "$193,000,000".

Pub. L. 105–185 substituted "$193,000,000" for "$275,000,000".

1996—Subsec. (g). Pub. L. 104–127, §161(b)(1)(A), inserted before period at end of first sentence ", except that obligations under all such contracts or agreements (other than reimbursable agreements under section 714i of this title) for equipment or services relating to automated data processing, information technologies, or related items (including telecommunications equipment and computer hardware and software) may not exceed $170,000,000 in fiscal year 1996 and not more than $275,000,000 in the 6-fiscal year period beginning on October 1, 1996, unless additional amounts for such contracts and agreements are provided in advance in appropriation Acts".

Subsec. (h). Pub. L. 104–127, §161(b)(1)(B), in second sentence, struck out "shall have power to acquire personal property necessary to the conduct of its business but" after "The Corporation".

1992—Subsec. (c). Pub. L. 102–572 substituted "United States Court of Federal Claims" for "United States Claims Court".

1987—Subsec. (i). Pub. L. 100–202 substituted "$30,000,000,000" for "$25,000,000,000".

1986—Subsec. (m). Pub. L. 99–260 inserted provision authorizing the Corporation to dispose of or export surplus agricultural commodities in amounts that will enable the Corporation to finance research and development of external combustion engines using fuel other than that derived from petroleum and petroleum products and limiting the total value of the commodities exported annually to a maximum of $30,000,000.

1985—Subsec. (h). Pub. L. 99–198, §1761, inserted an additional proviso reading as follows: "That any contract entered into by the Corporation for the use of a storage facility shall provide at least that (1) the rental rate charged for an extended term in excess of one year shall be at an annual rate less than that which is charged for a one-year contract, (2) any obligation of the Corporation to pay for the use of any space in a facility shall be relieved to the extent that the Corporation does not use the space and payment is made by another person for the use of such space, and (3) if the Corporation determines that it no longer needs the space reserved in the facility, the Corporation may be relieved, for the remaining term of the contract, of its obligations to an extent and in a manner that will provide significant savings to the Corporation while permitting the owner of the facility reasonable time to lease such space to another person:".

Pub. L. 99–198, §1167(b), in sentence beginning "Notwithstanding any other provision of law" substituted "Commodity Credit Corporation shall, to the maximum extent practicable, in consultation with the Secretary of State, and upon terms and conditions prescribed or approved by the Secretary of Agriculture, accept strategic and critical materials" for "Commodity Credit Corporation is authorized, upon terms and conditions prescribed or approved by the Secretary of Agriculture, to accept strategic and critical materials"; in sentence beginning "Insofar as practicable" substituted "the Secretary shall: (1) use normal commercial trade channels; (2) take action to avoid displacing usual marketings of United States agricultural commodities and the products thereof; (3) take reasonable precautions to prevent the resale or transshipment to other countries, or use for other than domestic use in the importing country, of agricultural commodities used for such exchange; and (4) give priority" for "normal commercial trade channels shall be utilized and priority shall be given"; inserted sentence reading "The Corporation may solicit bids from, and utilize, private trading firms to effect such exchange of goods."; in sentence beginning "Strategic and critical materials" substituted "in the same fiscal year such materials are transferred" for "when transferred"; and inserted sentence beginning "If the volume of petroleum products" and sentence beginning "the terms and conditions" relating to acquisition of petroleum products for placement in the Strategic Petroleum Reserve and terms and conditions of each exchange.

1982—Subsec. (c). Pub. L. 97–164 substituted "Claims Court" for "Court of Claims".

1981—Subsec. (h). Pub. L. 97–98 inserted ", except that the Secretary shall make such loans in areas in which the Secretary determines that there is a deficiency of such storage", and inserted provision authorizing the Secretary to make loans to grain growers needing storage facilities for the storage of grain on farms in areas where the Secretary determines that there is a deficiency of such storage and also inserted provision that, to encourage the alleviation of natural resource conservation problems that reduce the productive capacity of the Nation's land and water resources or that cause degradation of environmental quality, the Corporation may, beginning December 22, 1981, make loans to any agricultural producer for those natural resource conservation and environmental enhancement measures that are recommended by the applicable county and State committees established under section 590h(b) of title 16 and are included in the producer's conservation plan approved by the local soil and water conservation district, that such loans shall be for a period not to exceed ten years at a rate of interest based upon the rate of interest charged the Corporation by the United States Treasury, that the Corporation may make loans to any one producer in any fiscal year in an amount not to exceed $25,000, that loans up to $10,000 in amount may be unsecured and loans in excess of $10,000 shall be secured, that the total of such unsecured and secured loans made in each fiscal year shall not exceed $200,000,000, and that the authority to make such loans be effective only to the extent and in such amounts as may be provided for in prior appropriation Acts.

Pub. L. 97–35 substituted "the Corporation may make loans" for "the Corporation shall make loans" in fourth proviso.

1980—Subsec. (h). Pub. L. 96–234 substituted "$100,000" for "$50,000" in two places, and struck out provisions respecting the size of the facility for purposes of obtaining loans.

1979—Subsec. (h). Pub. L. 96–41 substituted "section 3 of the Strategic and Critical Materials Stock Piling Act" for "section 2 of the Strategic and Critical Materials Stock Piling Act (60 Stat. 596)" and "the President" for "the Munitions Board of the Department of Defense".

1978—Subsec. (i). Pub. L. 95–279 substituted "$25,000,000,000" for "$14,500,000,000".

1977—Subsec. (h). Pub. L. 95–113 inserted proviso directing the Corporation to make secured storage facility loans of not to exceed $50,000 to growers of dry or high moisture grain, soybeans, rice, and high moisture forage and silage during the period Oct. 1, 1977, to Sept. 30, 1981. See Codification note set out above.

1966—Subsec. (h). Pub. L. 89–758 inserted provisions allowing for the sale of grain storage facilities by bids when no person offers to pay the minimum price set by the Commodity Credit Corporation at not less than the minimum price to any public or private nonprofit agency.

1956—Subsec. (i). Act Aug. 1, 1956, substituted "$14,500,000,000" for "$12,000,000,000".

1955—Subsec. (i). Act Aug. 11, 1955, substituted "$12,000,000,000" for "$10,000,000,000".

1954—Subsec. (i). Act Aug. 31, 1954, substituted "$10,000,000,000" for "$8,500,000,000".

Subsec. (i). Act Mar. 20, 1954, substituted "$8,500,000,000" for "$6,750,000,000".

1950—Subsec. (i). Act June 28, 1950, substituted "$6,750,000,000" for "$4,750,000,000".

1949—Subsec. (c). Act June 7, 1949, §5, conferred jurisdiction on the district courts "without regard to the amount in controversy", enabled the Corporation and persons having claims against the Corporation to plead set-offs and counterclaims which are barred by the statute of limitations, if, at the time the plaintiff's cause of action arose, the defendant's cause of action on which the set-off or counterclaim is based was not barred by the statute of limitations, and provided that certain claims against the United States could be brought in the United States Court of Claims.

Subsec. (h). Act June 7, 1949, §2, enabled the Corporation to acquire items of personal and real property to be used in connection with the care, preservation, storage, and handling of agricultural commodities controlled by it, and enabled the Corporation to take liens on real property as security for obligations owing to it and to bid in on any execution or foreclosure sale to protect its financial interests in the matter.

CHANGE OF NAME

National Military Establishment changed to Department of Defense by act Aug. 10, 1949.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–185, title V, §521(b), June 23, 1998, 112 Stat. 580, provided that: "The amendment made by subsection (a) [amending this section] takes effect on October 1, 1997."

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–98 effective Dec. 22, 1981, see section 1801 of Pub. L. 97–98, set out as an Effective Date note under section 4301 of Title 7, Agriculture.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–279 effective Oct. 1, 1978, see section 301(d) of Pub. L. 95–279, set out as a note under section 713a–4 of this title.

EFFECTIVE AND TERMINATION DATES OF 1977 AMENDMENT

Section 1104 of Pub. L. 95–113 provided that the amendment made by that section is effective only with respect to the fiscal years beginning Oct. 1, 1977, and ending Sept. 30, 1981.

DELEGATION OF FUNCTIONS

Functions of President under subsec. (h) of this section delegated to Secretary of Defense, see section 2 of Ex. Ord. No. 12626, Feb. 25, 1988, 53 F.R. 6114, set out as a note under section 98 of Title 50, War and National Defense.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of Department of Agriculture from transfer of functions to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions From Transfer of Functions note set

out under section 712a of this title.

STORAGE COST ADJUSTMENT FOR FISCAL YEARS 1988 AND 1989

Pub. L. 100–203, title I, §1106, Dec. 22, 1987, 101 Stat. 1330–5, required the Secretary of Agriculture to reduce expenditures of the Commodity Credit Corporation for commercial storage, transportation, and handling of commodities owned by the Corporation by $230,000,000 from the amount of funds otherwise projected to be expended in fiscal years 1988 and 1989 under the budget base determined under section 901 of title 2.

INCREASE IN BORROWING AUTHORITY EFFECTIVE ONLY TO EXTENT PROVIDED IN APPROPRIATION ACTS

Pub. L. 95–279, title III, §301(c), May 15, 1978, 92 Stat. 242, provided that: "The increase in the borrowing authority of the Commodity Credit Corporation made by this section [amending this section and section 713a–4 of this title] shall be effective only to the extent provided in appropriation Acts."

[1] So in original. Should be "Congress)".

§714c. Specific powers of Corporation

In the fulfillment of its purposes and in carrying out its annual budget programs submitted to and approved by the Congress pursuant to chapter 91 of title 31, the Corporation is authorized to use its general powers only to—

(a) Support the prices of agricultural commodities (other than tobacco) through loans, purchases, payments, and other operations.

(b) Make available materials and facilities required in connection with the production and marketing of agricultural commodities (other than tobacco).

(c) Procure agricultural commodities (other than tobacco) for sale to other Government agencies, foreign governments, and domestic, foreign, or international relief or rehabilitation agencies, and to meet domestic requirements.

(d) Remove and dispose of or aid in the removal or disposition of surplus agricultural commodities (other than tobacco).

(e) Increase the domestic consumption of agricultural commodities (other than tobacco) by expanding or aiding in the expansion of domestic markets or by developing or aiding in the development of new and additional markets, marketing facilities, and uses for such commodities.

(f) Export or cause to be exported, or aid in the development of foreign markets for, agricultural commodities (other than tobacco) (including fish and fish products, without regard to whether such fish are harvested in aquacultural operations).

(g) Carry out conservation or environmental programs authorized by law.

(h) Carry out such other operations as the Congress may specifically authorize or provide for.

In the Corporation's purchasing and selling operations with respect to agricultural commodities (other than tobacco) (except sales to other Government agencies), and in the warehousing, transporting, processing, or handling of agricultural commodities (other than tobacco), the Corporation shall, to the maximum extent practicable consistent with the fulfillment of the Corporation's purposes and the effective and efficient conduct of its business, utilize the usual and customary channels, facilities, and arrangements of trade and commerce (including, at the option of the Corporation, the use of private sector entities).

(June 29, 1948, ch. 704, §5, 62 Stat. 1072; Pub. L. 98–623, title IV, §405(a), Nov. 8, 1984, 98 Stat. 3409; Pub. L. 104–127, title III, §381(a), Apr. 4, 1996, 110 Stat. 1016; Pub. L. 107–171, title I, §1609, May 13, 2002, 116 Stat. 218; Pub. L. 108–357, title VI, §612(d), Oct. 22, 2004, 118 Stat. 1524.)

CODIFICATION

"Chapter 91 of title 31" substituted in provision preceding subsec. (a) for "the Government Corporation Control Act (31 U.S.C., 1940 edition, Supp. V, 841)" on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982,

96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

2004—Pub. L. 108–357 inserted "(other than tobacco)" after "agricultural commodities" wherever appearing.

2002—Pub. L. 107–171 inserted "(including, at the option of the Corporation, the use of private sector entities)" before period at end of last sentence.

1996—Subsecs. (g), (h). Pub. L. 104–127 added subsec. (g) and redesignated former subsec. (g) as (h).

1984—Subsec. (f). Pub. L. 98–623 inserted "(including fish and fish products, without regard to whether such fish are harvested in aquacultural operations)".

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to the 2005 and subsequent crops of tobacco, see section 643 of Pub. L. 108–357, set out as an Effective Date note under section 518 of Title 7, Agriculture.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–127, title III, §381(b), Apr. 4, 1996, 110 Stat. 1016, provided that: "The amendments made by subsection (a) [amending this section] shall become effective on January 1, 1997."

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–623, title IV, §405(d), Nov. 8, 1984, 98 Stat. 3409, provided that: "For purposes of section 135 of the Omnibus Budget Reconciliation Act of 1982 (7 U.S.C. 612c note) [Pub. L. 97–253], the amendments made by this section [amending this section and sections 1707a and 1732 of Title 7, Agriculture] shall be considered to have taken effect before the date of the enactment of that Act [Sept. 8, 1982]."

CONTINUATION OF LIABILITY FOR 2004 AND EARLIER CROP YEARS

Amendment by sections 611 to 614 of Pub. L. 108–357 not to affect the liability of any person under any provision of law so amended with respect to the 2004 or an earlier crop of tobacco, see section 614 of Pub. L. 108–357, set out as a note under section 515 of Title 7, Agriculture.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of Department of Agriculture from transfer of functions to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions From Transfer of Functions note set out under section 712a of this title.

EXPORT ENHANCEMENT PROGRAM; PROMOTION OF UNITED STATES MEAT EXPORTS

Pub. L. 101–220, §2, Dec. 12, 1989, 103 Stat. 1876, provided that:

"(a) COMMISSARIES.—During each of fiscal years 1990, 1991, and 1992, the Commodity Credit Corporation shall, in carrying out the export enhancement program established pursuant to section 5(f) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714c(f)), promote the export of United States meat, including poultry products, to commissaries on military installations in the European Community.

"(b) FUNDING.—

"(1) IN GENERAL.—Except as provided in paragraph (2), of the amounts made available by the Commodity Credit Corporation to exporters, processors, and foreign importers under the authority of section 5(f) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714c(f)) in commodities of the Commodity Credit Corporation to enhance the export of United States commodities by making the price of such commodities competitive in the world market, the Commodity Credit Corporation shall make available to carry out subsection (a) not less than $14,000,000 in funds or commodities for fiscal year 1990, not less than $9,300,000 in funds or commodities for fiscal year 1991, and not less than $4,600,000 in funds or commodities for fiscal year 1992.

"(2) TRANSPORTATION COSTS.—Funds or commodities shall be made available under this section only to the extent that funds are made available by the Department of Defense for the costs of transporting the meat to the commissaries.

"(c) REIMBURSEMENT OF CORPORATION.—Section 4 of the Act of July 16, 1943 (57 Stat. 566, chapter 241; 15 U.S.C. 713a [15 U.S.C. 713a–9]) shall not apply to services performed, losses sustained, operating costs incurred, or commodities purchased or delivered by the Commodity Credit Corporation pursuant to this section."

USE OF COMMODITY CREDIT CORPORATION FOR PURCHASE OF AGRICULTURAL PRODUCTS FORMERLY INTENDED FOR EXPORT TO SOVIET UNION

Pub. L. 96–494, title II, §206, Dec. 3, 1980, 94 Stat. 2572, provided that: "Notwithstanding any other provision of law, the Secretary of Agriculture may use, subject to such terms and conditions as the Secretary may deem appropriate, the funds, facilities, and authorities of the Commodity Credit Corporation in purchasing and handling agricultural products, other than grains, that—

"(1) were intended to be exported to the Union of Soviet Socialist Republics under contracts entered into prior to January 5, 1980, but

"(2) cannot be exported under such contracts due to the imposition, on January 4, 1980, of restrictions on the export of agricultural products to the Union of Soviet Socialist Republics,

in the same manner and under the same conditions as the Secretary purchases and handles grains under similar contracts and subject to the imposition of the same restrictions."

§714d. Laws applicable to Corporation

The Federal statutes applicable to Commodity Credit Corporation, a Delaware corporation, shall be applicable to the Corporation. Commodity Credit Corporation, a Delaware corporation, shall cease to be an agency of the United States as provided in section 713(a) of this title.

(June 29, 1948, ch. 704, §6, 62 Stat. 1072.)

REFERENCES IN TEXT

Section 713(a) of this title, referred to in text, was omitted from the Code. See Codification note under former section 713 of this title.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of Department of Agriculture from transfer of functions to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions From Transfer of Functions note set out under section 712a of this title.

§714e. Capital stock; amount; interest

The Corporation shall have a capital stock of $100,000,000 which shall be subscribed by the United States. Such subscription shall be deemed to be fully paid by the transfer of assets to the Corporation pursuant to section 714n of this title. The Corporation shall pay interest to the United States Treasury on the amount of its capital stock, and on the amount of the obligations of the Corporation purchased by the Secretary of the Treasury pursuant to the Act of March 8, 1938 (U.S.C., title 15, sec. 713a–4), as amended, at such rates as may be determined by the Secretary of the Treasury to be appropriate in view of the terms for which such amounts are made available to the Corporation.

(June 29, 1948, ch. 704, §7, 62 Stat. 1072.)

REFERENCES IN TEXT

Act of March 8, 1938, referred to in text, is act Mar. 8, 1938, ch. 44, §§1–5, 52 Stat. 107, which was classified to sections 713a–1 to 713a–5 of this title. Sections 713a–1 and 713a–2 were repealed by Pub. L. 87–155, §1, Aug. 17, 1961, 75 Stat. 391, and section 713a–3 was omitted from the Code.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of Department of Agriculture from transfer of functions to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions From Transfer of Functions note set out under section 712a of this title.

§714f. Use of funds

The Corporation is authorized to use in the conduct of its business all its funds and other assets, including capital and net earnings therefrom, and all funds and other assets which have been or may hereafter be transferred or allocated to, borrowed by, or otherwise acquired by it.

(June 29, 1948, ch. 704, §8, 62 Stat. 1072.)

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of Department of Agriculture from transfer of functions to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions From Transfer of Functions note set out under section 712a of this title.

§714g. Board of Directors

(a) Composition; appointment, tenure and compensation; quorum; duties

The management of the Corporation shall be vested in a board of directors (hereinafter referred to as the "Board"), subject to the general supervision and direction of the Secretary. The Secretary shall be an ex officio director and shall serve as Chairman of the Board. The Board shall consist of seven members (in addition to the Secretary), who shall be appointed by the President. In addition to their duties as members of the Board, such appointed members shall perform such other duties as may be prescribed by the Secretary. Each appointed member of the Board shall receive compensation at such rate not in excess of the maximum then payable under chapter 51 and subchapter III of chapter 53 of title 5 as may be fixed by the Secretary, except that any such member who holds another office or position under the Federal Government the compensation for which exceeds such rate may elect to receive compensation at the rate provided for such other office or position in lieu of the compensation provided by this section. A majority of the directors shall constitute a quorum of the Board and action shall be taken only by a majority vote of those present.

(b) Advisory board; composition, tenure and compensation; meetings; duties

In addition to the Board of Directors there shall be an advisory board reflecting broad agricultural and business experience in its membership and consisting of five members who shall be appointed by the President, and who shall serve at the pleasure of the President. Not more than three of such members shall belong to the same political party. The advisory board shall meet at the call of the Secretary, who shall require it to meet not less often than once each ninety days; shall survey the general policies of the Corporation, including its policies in connection with the purchase, storage, and sale of commodities, and the operation of lending and price-support programs; and shall advise the Secretary with respect thereto. Members of the advisory board shall receive for their services as members compensation of not to exceed $50 per diem when actually engaged in the performance of their duties as such, together with their necessary traveling expenses while going to and coming from meetings.

(June 29, 1948, ch. 704, §9, 62 Stat. 1072; June 7, 1949, ch. 175, §3, 63 Stat. 155; Oct. 28, 1949, ch. 782, title XI, §1106(a), 63 Stat. 972; Pub. L. 94–561, §4, Oct. 19, 1976, 90 Stat. 2643; Pub. L. 112–166, §2(a)(3), Aug. 10, 2012, 126 Stat. 1283.)

CODIFICATION

In subsec. (a), "chapter 51 and subchapter III of chapter 53 of title 5" substituted for "the Classification Act of 1949, as amended" on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

2012—Subsec. (a). Pub. L. 112–166 struck out "by and with the advice and consent of the Senate" before period at end of third sentence.

1976—Subsec. (a). Pub. L. 94–561 increased number of Board of Directors from six to seven members.

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

Act June 7, 1949, amended section generally by bringing the Board under the direct control of the Secretary who will serve as Chairman of the Board, and by adding subsec. (b) to provide for the appointment and duties of an advisory board.

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–166 effective 60 days after Aug. 10, 2012, and applicable to appointments

made on and after that effective date, including any nomination pending in the Senate on that date, see section 6(a) of Pub. L. 112–166, set out as a note under section 113 of Title 6, Domestic Security.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–561 effective Oct. 19, 1976, see section 5 of Pub. L. 94–561, set out as a note under section 5313 of Title 5, Government Organization and Employees.

REPEALS

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

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of Department of Agriculture from transfer of functions to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions From Transfer of Functions note set out under section 712a of this title.

TERMINATION OF ADVISORY BOARDS

Advisory boards in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§714h. Officers and employees; appointment; duties

The Secretary shall appoint such officers and employees as may be necessary for the conduct of the business of the Corporation, define their authority and duties, delegate to them such of the powers vested in the Corporation as he may determine. With the exception of experts, appointments shall be made pursuant to the civil-service laws and chapter 51 and subchapter III of chapter 53 of title 5.

(June 29, 1948, ch. 704, §10, 62 Stat. 1073; June 7, 1949, ch. 175, §4, 63 Stat. 156; Oct. 28, 1949, ch. 782, title XI, §1106(a), 63 Stat. 972; Pub. L. 92–310, title II, §224(b), June 6, 1972, 86 Stat. 206.)

CODIFICATION

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

AMENDMENTS

1972—Pub. L. 92–310 struck out provisions which permitted the Secretary to designate officers and employees to be bonded, and which authorized the Corporation to pay the premium on the bonds.

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

Act June 7, 1949, amended section generally to permit the Secretary to appoint the officers and employees of the Corporation and to define their authority and duties.

REPEALS

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

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of Department of Agriculture from transfer of functions to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions From Transfer of Functions note set out under section 712a of this title.

SALES MANAGER

Pub. L. 87–367, title I, §103(11), Oct. 4, 1961, 75 Stat. 789, repealed such part of section 101 of act Aug. 4, 1955, ch. 451, Ch. I, 69 Stat. 451, which authorized the position of sales manager in the Commodity Credit

Corporation to be placed in grade 17 of the General Schedule of the Classification Act of 1949. See section 5332 of Title 5, Government Organization and Employees.

Positions existing prior to Oct. 4, 1961, compensation thereof and appointments thereto unaffected by changes made by Pub. L. 87–367 and positions in grades 16, 17 and 18 of the General Schedule of the Classification Act of 1949 prior to Oct. 4, 1961, to remain in respective grades, until appropriate action is taken under title I of Pub. L. 87–367 and section 5108 of Title 5, see section 104 of Pub. L. 87–367.

§714i. Cooperation with other governmental agencies

The Corporation may, with the consent of the agency concerned, accept and utilize, on a compensated or uncompensated basis, the officers, employees, services, facilities, and information of any agency of the Federal Government, including any bureau, office, administration, or other agency of the Department of Agriculture, and of any State, the District of Columbia, any Territory or possession, or any political subdivision thereof. The Corporation may allot to any bureau, office, administration, or other agency of the Department of Agriculture or transfer to such other agencies as it may request to assist it in the conduct of its business any of the funds available to it for administrative expenses. The personnel and facilities of the Corporation may, with the consent of the Corporation, be utilized on a reimbursable basis by any agency of the Federal Government, including any bureau, office, administration, or other agency of the Department of Agriculture, in the performance of any part or all of the functions of such agency. After September 30, 1996, the total amount of all allotments and fund transfers from the Corporation under this section (including allotments and transfers for automated data processing or information resource management activities) for a fiscal year may not exceed the total amount of the allotments and transfers made under this section in fiscal year 1995.

(June 29, 1948, ch. 704, §11, 62 Stat. 1073; Pub. L. 104–127, title I, §161(b)(2), Apr. 4, 1996, 110 Stat. 934.)

AMENDMENTS

1996—Pub. L. 104–127 inserted at end "After September 30, 1996, the total amount of all allotments and fund transfers from the Corporation under this section (including allotments and transfers for automated data processing or information resource management activities) for a fiscal year may not exceed the total amount of the allotments and transfers made under this section in fiscal year 1995."

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of Department of Agriculture from transfer of functions to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions From Transfer of Functions note set out under section 712a of this title.

CLARIFICATION OF USE OF FUNDS FOR TECHNICAL ASSISTANCE

Pub. L. 113–79, title X, §10017, Feb. 7, 2014, 128 Stat. 953, provided that: "In the case of each program established or amended by this title [title X of Pub. L. 113–79, see Tables for classification] that is authorized or required to be carried out using funds of the Commodity Credit Corporation, the use of those funds to provide technical assistance shall not be considered an allotment or fund transfer from the Commodity Credit Corporation for purposes of the limit on expenditures for technical assistance imposed by section 11 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714i)."

§714j. Utilization of associations and trade facilities

The Corporation may, in the conduct of its business, utilize on a contract or fee basis, committees or associations of producers, producer-owned and producer-controlled cooperative associations, and trade facilities.

(June 29, 1948, ch. 704, §12, 62 Stat. 1073.)

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of Department of Agriculture from transfer of functions to

Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions From Transfer of Functions note set out under section 712a of this title.

§714k. Records; annual report

The Corporation shall at all times maintain complete and accurate books of account and shall file annually with the Secretary of Agriculture a complete report as to the business of the Corporation, a copy of which shall be forwarded by the Secretary of Agriculture to the President for transmission to the Congress. In addition to the annual report, the Corporation shall submit to Congress on a quarterly basis an itemized report of all expenditures over $10,000 made under section 714c or 714i of this title during the period covered by the report, including expenditures in the form of allotments or fund transfers to other agencies and departments of the Federal Government.

(June 29, 1948, ch. 704, §13, 62 Stat. 1073; Pub. L. 104–127, title I, §161(b)(3), Apr. 4, 1996, 110 Stat. 934.)

AMENDMENTS

1996—Pub. L. 104–127 inserted at end "In addition to the annual report, the Corporation shall submit to Congress on a quarterly basis an itemized report of all expenditures over $10,000 made under section 714c or 714i of this title during the period covered by the report, including expenditures in the form of allotments or fund transfers to other agencies and departments of the Federal Government."

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which the requirement, under the 1st sentence of this section, to transmit to Congress a complete annual report as to the business of the Corporation, is listed on page 46), see section 3003 of Pub. L. 104–66, as amended, and section 1(a)(4) [div. A, §1402] of Pub. L. 106–554, set out as notes under section 1113 of Title 31, Money and Finance.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of Department of Agriculture from transfer of functions to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions From Transfer of Functions note set out under section 712a of this title.

DELEGATION OF CERTAIN REPORTING AUTHORITY

Memorandum of President of the United States, Dec. 8, 2004, 69 F.R. 74941, provided:

Memorandum for the Secretary of Agriculture

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby delegate to you the functions conferred upon the President by section 13 of Public Law 806, 80th Congress (15 U.S.C. 714k), to provide the specified report to the Congress.

You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

§714*l*. Interest of Members of Congress

The provisions of section 6306(a) of title 41 shall apply to all contracts or agreements of the Corporation, except contracts or agreements of a kind which the Corporation may enter into with farmers participating in a program of the Corporation.

(June 29, 1948, ch. 704, §14, 62 Stat. 1074.)

CODIFICATION

In text, "section 6306(a) of title 41" substituted for "section 1 of the Act of February 27, 1877, as amended (41 U.S.C., 1940 edition, 22)" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of Department of Agriculture from transfer of functions to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions From Transfer of Functions note set out under section 712a of this title.

§714m. Crimes and offenses

(a) False statements; overvaluation of securities

Whoever makes any statement knowing it to be false, or whoever willfully overvalues any security, for the purpose of influencing in any way the action of the Corporation, or for the purpose of obtaining for himself or another, money, property, or anything of value, under this subchapter, or under any other Act applicable to the Corporation, shall, upon conviction thereof, be punished by a fine of not more than $10,000 or by imprisonment by not more than five years, or both.

(b) Embezzlement, etc.; false entries; fraudulent issue of obligations of Corporation

Whoever, being connected in any capacity with the Corporation or any of its programs, (i) embezzles, abstracts, purloins, or willfully misapplies any money, funds, securities, or other things of value, whether belonging to the Corporation or pledged or otherwise entrusted to it; or (ii) with intent to defraud the Corporation, or any other body, politic or corporate, or any individual, or to deceive any officer, auditor, or examiner of the Corporation, makes any false entry in any book, report, or statement of, or to, the Corporation, or draws any order, or issues, puts forth or assigns any note or other obligation or draft, mortgage, judgment, or decree thereof; or (iii) with intent to defraud the Corporation, participates or shares in, or receives directly or indirectly any money, profit, property, or benefits through any transaction, loan, commission, contract, or any other act of the Corporation, shall, upon conviction thereof, be punished by a fine of not more than $10,000 or by imprisonment for not more than five years, or both.

(c) Larceny; conversion of property

Whoever shall willfully steal, conceal, remove, dispose of, or convert to his own use or to that of another any property owned or held by, or mortgaged or pledged to, the Corporation, or any property mortgaged or pledged as security for any promissory note, or other evidence of indebtedness, which the Corporation has guaranteed or is obligated to purchase upon tender, shall, upon conviction thereof, if such property be of an amount or value in excess of $500, be punished by a fine of not more than $10,000 or by imprisonment for not more than five years, or both, and, if such property be of an amount or value of $500 or less, be punished by a fine of not more than $1,000 or by imprisonment for not more than one year, or both.

(d) Conspiracy to commit offense

Whoever conspires with another to accomplish any of the acts made unlawful by the preceding provisions of this section shall, upon conviction thereof, be subject to the same fine or imprisonment, or both, as is applicable in the case of conviction for doing such unlawful acts.

(e) General statutes applicable

All the general penal statutes relating to crimes and offenses against the United States shall apply with respect to the Corporation, its property, money, contracts and agreements, employees, and operations: *Provided,* That such general penal statutes shall not apply to the extent that they relate to crimes and offenses punishable under subsections (a), (b), (c), and (d) of this section: *Provided further,* That sections 431 and 432 of title 18 shall not apply to contracts or agreements of a kind which the Corporation may enter into with farmers participating in a program of the Corporation.

(f) Use of words "Commodity Credit Corporation"

No individual, association, partnership, or corporation shall use the words "Commodity Credit Corporation" or any combination of the same, as the name or a part thereof under which he or it shall

do or purport to do business. Every individual, partnership, association, or corporation violating this prohibition shall be guilty of a misdemeanor and shall be punished by a fine of not more than $1,000 or by imprisonment for not more than one year, or both.

(June 29, 1948, ch. 704, §15, 62 Stat. 1074; June 7, 1949, ch. 175, §6, 63 Stat. 157; Aug. 1, 1956, ch. 815, §2, 70 Stat. 783.)

CODIFICATION

In subsec. (e), "sections 431 and 432 of title 18" substituted for "sections 114 and 115 of the Act of March 4, 1909, as amended (18 U.S.C., 1940 edition, 204, 205)" on authority of act June 25, 1948, ch. 645, 62 Stat. 683, the first section of which enacted Title 18, Crimes and Criminal Procedure.

AMENDMENTS

1956—Subsec. (c). Act Aug. 1, 1956, made it an offense to willfully steal or convert property mortgaged or pledged to a lending agency under a program of the Corporation and prescribed punishment not exceeding $1,000 fine or one year imprisonment or both in the case of property of an amount or value of $500 or less.

1949—Subsec. (f). Act June 7, 1949, added subsec. (f).

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of Department of Agriculture from transfer of functions to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions From Transfer of Functions note set out under section 712a of this title.

§714n. Transfer of assets of Commodity Credit Corporation, a Delaware corporation

The assets, funds, property, and records of Commodity Credit Corporation, a Delaware corporation, are transferred to the Corporation. The rights, privileges, and powers, and the duties and liabilities of Commodity Credit Corporation, a Delaware corporation, in respect to any contract, agreement, loan, account, or other obligation shall become the rights, privileges, and powers, and the duties and liabilities, respectively, of the Corporation. The enforceable claims of or against Commodity Credit Corporation, a Delaware corporation, shall become the claims of or against, and may be enforced by or against, the Corporation: *Provided*, That nothing in this subchapter shall limit or extend any period of limitation otherwise applicable to such claims against the Corporation.

(June 29, 1948, ch. 704, §16, 62 Stat. 1075.)

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of Department of Agriculture from transfer of functions to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions From Transfer of Functions note set out under section 712a of this title.

§714*o*. Dissolution of Delaware corporation

The Secretary of Agriculture, representing the United States as the sole owner of the capital stock of Commodity Credit Corporation, a Delaware corporation, is authorized and directed to institute or cause to be instituted such proceedings as are required for the dissolution of said Corporation under the laws of the State of Delaware. The costs of such dissolution of said Corporation shall be borne by the Corporation.

(June 29, 1948, ch. 704, §17, 62 Stat. 1075.)

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of Department of Agriculture from transfer of functions to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions From Transfer of Functions note set out under section 712a of this title.

§714p. Release of innocent purchasers of converted goods

A buyer in the ordinary course of business of fungible goods sold and physically delivered by a warehouseman or other dealer who was regularly engaged in the business of buying and selling such goods shall take or be deemed to have taken such goods free of any claim, existing or hereafter arising, by Commodity Credit Corporation, based on the want of authority in the seller to sell such goods, provided the buyer purchased such goods for value in good faith and did not know or have reason to know of any defect in the seller's authority to sell such goods. To be entitled to relief under this section a buyer must assert as an affirmative defense and establish by a preponderance of the evidence the facts necessary to entitle him to such relief.

(June 29, 1948, ch. 704, §19, as added May 23, 1955, ch. 46, 69 Stat. 65.)

CHAPTER 15A—INTERSTATE TRANSPORTATION OF PETROLEUM PRODUCTS

Sec.

715. Purpose of chapter.
715a. Definitions.
715b. Interstate transportation of contraband oil forbidden.
715c. Suspension of operation of section 715b of this title.
715d. Enforcement of chapter.
715e. Penalties for violation of chapter.
715f. Forfeiture of contraband oil shipped in violation of law; procedure.
715g. Refusal of carrier to accept shipment without certificate of clearance; certificate as justifying acceptance of shipment.
715h. Hearings and investigation by boards; appointment of board and employees.
715i. Restraining violations.
715j. "President" as including agencies, officers and employees.
715k. Saving clause.
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715m. Cooperation between Secretary of the Interior and Federal and State authorities.

CONSTRUCTION OF PETROLEUM PIPE LINES

Act July 30, 1941, ch. 333, 55 Stat. 610, as amended June 30, 1943, ch. 180, 57 Stat. 270; June 8, 1945, ch. 177, 59 Stat. 233; July 25, 1947, ch. 327, §1, 61 Stat. 449, related to the construction of pipe lines for the transportation and/or distribution of petroleum or petroleum products moving in interstate commerce, or the extension or completion of any such pipe lines already wholly or partly constructed, that might be necessary for national-defense purposes. Section 9 of Act July 30, 1941, provided that neither the President, any department or agency of the Government nor any person shall exercise any of the powers conferred by sections 2, 3, 4, or 6 of Act July 30, 1941, after June 30, 1946, and in no case shall any pipe line constructed, extended or completed under authority of section 4 be operated or maintained by or under the direction or control of the President or any department or agency of the Government after the expiration of one year after the termination of the unlimited national emergency proclaimed on May 27, 1941. Joint Res. July 25, 1947, ch. 327, §3, 61 Stat. 451, provided that in the interpretation of Act July 30, 1941, the date July 25, 1947, shall be deemed to be the date of termination of any state of war theretofore declared by Congress and of the national emergency proclaimed by the President on May 27, 1941.

NATIONAL DEFENSE PIPE LINES

Construction of a national defense pipe line from Baton Rouge, Louisiana, to Greensboro, North Carolina, by the Plantation Pipe Line Company was authorized by Proc. No. 2505, Aug. 23, 1941, 6 F.R. 4429, 55 Stat. 1670.

Construction of a national defense pipe line from South Portland, Maine, through North Troy, Vermont, to Montreal, Canada, by the Portland Pipe Line Company was authorized by Proc. No. 2517, Oct. 1, 1941, 6 F.R. 5081, 55 Stat. 1691.

Construction of a national defense pipe line from Port Saint Joe, Florida, to Chattanooga, Tennessee, by the

Southeastern Pipe Line Company was authorized by Proc. No. 2508, Sept. 3, 1941, 6 F.R. 4583, 55 Stat. 1672.

Construction of one or more national defense pipe lines from Port Saint Joe, and other points on the Gulf Coast of Florida to the Saint Johns River, Florida, and a crude-oil pipe line from Yazoo, Mississippi, to Charleston, South Carolina and/or Savannah, Georgia, was authorized by act July 23, 1942, ch. 520, §1, 56 Stat. 703, as amended June 17, 1943, ch. 127, 57 Stat. 156.

Construction of a national defense pipe line from El Dorado, Arkansas, to Helena, Arkansas, by the Project Five Pipe Line Corporation, was authorized by Proc. No. 2567, Aug. 28, 1942, 7 F.R. 6839, 56 Stat. 1975.

§715. Purpose of chapter

It is declared to be the policy of Congress to protect interstate and foreign commerce from the diversion and obstruction of, and the burden and harmful effect upon, such commerce caused by contraband oil as herein defined, and to encourage the conservation of deposits of crude oil situated within the United States.

(Feb. 22, 1935, ch. 18, §1, 49 Stat. 30.)

SHORT TITLE

Act Feb. 22, 1935, which is classified to this chapter, is popularly known as the "Hot Oil Act" and also as the "Connally Hot Oil Act".

§715a. Definitions

As used in this chapter—

(1) The term "contraband oil" means petroleum which, or any constituent part of which, was produced, transported, or withdrawn from storage in excess of the amounts permitted to be produced, transported, or withdrawn from storage under the laws of a State or under any regulation or order prescribed thereunder by any board, commission, officer, or other duly authorized agency of such State, or any of the products of such petroleum, except petroleum or any of its constituent parts, title to which has been acquired by a State pursuant to its laws.

(2) The term "products" or "petroleum products" includes any article produced or derived in whole or in part from petroleum or any product thereof by refining, processing, manufacturing, or otherwise.

(3) The term "interstate commerce" means commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof, or from any place in the United States to a foreign country, but only insofar as such commerce takes place within the United States.

(4) The term "person" includes an individual, partnership, corporation, or joint-stock company,

(Feb. 22, 1935, ch. 18, §2, 49 Stat. 30; Pub. L. 89–644, Oct. 13, 1966, 80 Stat. 890.)

AMENDMENTS

1966—Pub. L. 89–644 inserted provisions in par. (1) exempting petroleum or any of its constituent parts, title to which has been acquired by a State pursuant to its laws.

§715b. Interstate transportation of contraband oil forbidden

The shipment or transportation in interstate commerce from any State of contraband oil produced in such State is prohibited. For the purposes of this section contraband oil shall not be deemed to have been produced in a State if none of the petroleum constituting such contraband oil, or from which it was produced or derived, was produced, transported, or withdrawn from storage in excess of the amounts permitted to be produced, transported, or withdrawn from storage under the laws of such State or under any regulation or order prescribed thereunder by any board, commission, officer, or other duly authorized agency of such State.

(Feb. 22, 1935, ch. 18, §3, 49 Stat. 31.)

§715c. Suspension of operation of section 715b of this title

Whenever the President finds that the amount of petroleum and petroleum products moving in interstate commerce is so limited as to be the cause, in whole or in part, of a lack of parity between supply (including imports and reasonable withdrawals from storage) and consumptive demand (including exports and reasonable additions to storage) resulting in an undue burden on or restriction of interstate commerce in petroleum and petroleum products, he shall by proclamation declare such finding, and thereupon the provisions of section 715b of this title shall be inoperative until such time as the President shall find and by proclamation declare that the conditions which gave rise to the suspension of the operation of the provisions of such section no longer exist. If any provision of this section or the application thereof shall be held to be invalid, the validity of application of section 715b of this title shall not be affected thereby.

(Feb. 22, 1935, ch. 18, §4, 49 Stat. 31.)

§715d. Enforcement of chapter

(a) Rules and regulations

The President shall prescribe such regulations as he finds necessary or appropriate for the enforcement of the provisions of this chapter, including but not limited to regulations requiring reports, maps, affidavits, and other documents relating to the production, storage, refining, processing, transporting, or handling of petroleum and petroleum products, and providing for the keeping of books and records, and for the inspection of such books and records and of properties and facilities.

(b) Certificate of clearance for petroleum and petroleum products

Whenever the President finds it necessary or appropriate for the enforcement of the provisions of this chapter he shall require certificates of clearance for petroleum and petroleum products moving or to be moved in interstate commerce from any particular area, and shall establish a board or boards for the issuance of such certificates. A certificate of clearance shall be issued by a board so established in any case where such board determines that the petroleum or petroleum products in question does not constitute contraband oil. Denial of any such certificate shall be by order of the board, and only after reasonable opportunity for hearing. Whenever a certificate of clearance is required for any area in any State, it shall be unlawful to ship or transport petroleum or petroleum products in interstate commerce from such area unless a certificate has been obtained therefor.

(c) Review of order of denial of certificate of clearance

Any person whose application for a certificate of clearance is denied may obtain a review of the order denying such application in the United States District Court for the district wherein the board is sitting by filing in such court within thirty days after the entry of such order a written petition praying that the order of the board be modified or set aside, in whole or in part. A copy of such petition shall be forthwith served upon the board, and thereupon the board shall certify and file in the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript, such court shall have jurisdiction to affirm, modify, or set aside such order, in whole or in part. No objection to the order of the board shall be considered by the court unless such objection shall have been urged before the board. The finding of the board as to the facts, if supported by evidence, shall be conclusive. The judgment and decree of the court shall be final, subject to review as provided in sections 1254, 1291, and 1292 of title 28.

(Feb. 22, 1935, ch. 18, §5, 49 Stat. 31.)

CODIFICATION

In subsec. (c), "sections 1254, 1291, and 1292 of title 28" substituted for "sections 128 and 240 of the Judicial Code, as amended [28 U.S.C. 225 and 347]" on authority of act June 25, 1948, ch. 646, 62 Stat. 869, the first section of which enacted Title 28, Judiciary and Judicial Procedure.

§715e. Penalties for violation of chapter

Any person knowingly violating any provision of this chapter or any regulation prescribed thereunder shall upon conviction be punished by a fine of not to exceed $2,000 or by imprisonment for not to exceed six months, or by both such fine and imprisonment.

(Feb. 22, 1935, ch. 18, §6, 49 Stat. 32.)

§715f. Forfeiture of contraband oil shipped in violation of law; procedure

(a) Seizure procedure; return of contraband oil

Contraband oil shipped or transported in interstate commerce in violation of the provisions of this chapter shall be liable to be proceeded against in any district court of the United States within the jurisdiction of which the same may be found, and seized for forfeiture to the United States by a process of libel for condemnation; but in any such case the court may in its discretion, and under such terms and conditions as it shall prescribe, order the return of such contraband oil to the owner thereof where undue hardship would result from such forfeiture. The proceedings in such cases shall conform as nearly as may be to proceedings in rem in admiralty, except that either party may demand a trial by jury of any issue of fact joined in any such case, and all such proceedings shall be at the suit of and in the name of the United States. Contraband oil forfeited to the United States as provided in this section shall be used or disposed of pursuant to such rules and regulations as the President shall prescribe.

(b) Certificates of clearance

No such forfeiture shall be made in the case of contraband oil owned by any person (other than a person shipping such contraband oil in violation of the provisions of this chapter) who has with respect to such contraband oil a certificate of clearance which on its face appears to be valid and to have been issued by a board created under authority of section 715d of this title, certifying that the shipment in question is not contraband oil, and such person had no reasonable ground for believing such certificate to be invalid or to have been issued as a result of fraud or misrepresentation of fact.

(Feb. 22, 1935, ch. 18, §7, 49 Stat. 32.)

§715g. Refusal of carrier to accept shipment without certificate of clearance; certificate as justifying acceptance of shipment

No common carrier who shall refuse to accept petroleum or petroleum products from any area in which certificates of clearance are required under authority of this chapter, by reason of the failure of the shipper to deliver such a certificate to such carrier, or who shall refuse to accept any petroleum or petroleum products when having reasonable ground for believing that such petroleum or petroleum products constitute contraband oil, shall be liable on account of such refusal for any penalties or damages. No common carrier shall be subject to any penalty under section 715e of this title in any case where (1) such carrier has a certificate of clearance which on its face appears to be valid and to have been issued by a board created under authority of section 715d of this title, certifying that the shipment in question is not contraband oil, and such carrier had no reasonable ground for believing such certificate to be invalid or to have been issued as a result of fraud or misrepresentation of fact, or (2) such carrier, as respects any shipment originating in any area where certificates of clearance are not required under authority of this chapter, had no reasonable ground for believing such petroleum or petroleum products to constitute contraband oil.

(Feb. 22, 1935, ch. 18, §8, 49 Stat. 32.)

§715h. Hearings and investigation by boards; appointment of board and employees

(a) Hearings

Any board established under authority of section 715d of this title, and any agency designated under authority of section 715j of this title, may hold and conduct such hearings, investigations, and proceedings as may be necessary for the purposes of this chapter, and for such purposes those provisions of section 78u of this title relating to the administering of oaths and affirmations, and to the attendance and testimony of witnesses and the production of evidence (including penalties), shall apply.

(b) Appointments

The members of any board established under authority of section 715d of this title shall be appointed by the President, subject to chapter 51 and subchapter III of chapter 53 of title 5; and any such board may appoint, subject to chapter 51 and subchapter III of chapter 53 of title 5, such employees as may be necessary for the execution of its functions under this chapter.

(Feb. 22, 1935, ch. 18, §9, 49 Stat. 33; Oct. 28, 1949, ch. 782, title XI, §1106(a), 63 Stat. 972.)

CODIFICATION

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

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

AMENDMENTS

1949—Subsec. (b). Act Oct. 28, 1949, substituted "Classification Act of 1949" for "Classification Act of 1923".

REPEALS

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

§715i. Restraining violations

(a) Mandatory injunction upon application of President

Upon application of the President, by the Attorney General, the United States District Courts shall have jurisdiction to issue mandatory injunctions commanding any person to comply with the provisions of this chapter or any regulation issued thereunder.

(b) Discretionary action in district court to enjoin acts or practices

Whenever it shall appear to the President that any person is engaged or about to engage in any acts or practices that constitute or will constitute a violation of any provision of this chapter or of any regulation thereunder, he may in his discretion, by the Attorney General, bring an action in the proper United States District Court to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond.

(c) Exclusive jurisdiction of district court; review

The United States District Courts shall have exclusive jurisdiction of violations of this chapter or the regulations thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this chapter or the regulations thereunder. Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by this chapter or regulations thereunder, or to enjoin any violation of this chapter or any regulations thereunder, may be brought in any such district or in the district wherein the defendant is found or is an inhabitant or transacts business, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 1254, 1291, and 1292 of title 28.

(Feb. 22, 1935, ch. 18, §10, 49 Stat. 33.)

CODIFICATION

In subsec. (c), "sections 1254, 1291, and 1292 of title 28" substituted for "sections 128 and 240 of the Judicial Code, as amended [28 U.S.C. 225 and 347]" on authority of act June 25, 1948, ch. 646, 62 Stat. 869, the first section of which enacted Title 28, Judiciary and Judicial Procedure.

§715j. "President" as including agencies, officers and employees

Wherever reference is made in this chapter to the President such reference shall be held to include, in addition to the President, any agency, officer, or employee who may be designated by the President for the execution of any of the powers and functions vested in the President under this chapter.

(Feb. 22, 1935, ch. 18, §11, 49 Stat. 33.)

DELEGATION OF FUNCTIONS

Ex. Ord. No. 6979, Feb. 28, 1935, which designated and appointed Secretary of the Interior to execute powers and functions vested in President by this chapter except those vested in him by section 715c of this title, was superseded by Ex. Ord. No. 10752, set out below.

Ex. Ord. No. 7756, Dec. 1, 1937, 2 F.R. 2664, which delegated to Secretary of the Interior powers and functions vested in President under this chapter except those vested in him by section 715c of this title, and authorized Secretary to establish a Petroleum Conservation Division in Department of the Interior, the functions and duties of which shall be: (1) to assist, in such manner as may be prescribed by Secretary of the Interior, in administering said act, (2) to cooperate with oil and gas-producing States in prevention of waste in oil and gas production and in adoption of uniform oil- and gas-conservation laws and regulations, and (3) to keep informed currently as to facts which may be required for exercise of responsibility of President under section 715c of this title, was superseded by Ex. Ord. No. 10752, set out below.

EX. ORD. NO. 10752. DELEGATION OF FUNCTIONS TO THE SECRETARY OF THE INTERIOR

Ex. Ord. No. 10752, Feb. 12, 1958, 23 F.R. 973, provided:

SECTION 1. The Secretary of the Interior is hereby designated and appointed as the agent of the President for the execution of all the powers and functions vested in the President by the act of February 22, 1935, 49 Stat. 30, entitled "An Act to regulate interstate and foreign commerce in petroleum and its products by prohibiting the shipment in such commerce of petroleum and its products produced in violation of State law, and for other purposes," as amended (15 U.S.C. 715 *et seq*.), except those vested in the President by section 4 of the act (15 U.S.C. 715c).

SEC. 2. The Secretary of the Interior may make such provisions in the Department of the Interior as he may deem appropriate to administer the said act.

SEC. 3. This Executive order supersedes Executive Order No. 6979 of February 28, 1935, Executive Order No. 7756 of December 1, 1937 (2 F.R. 2664), Executive Order No. 9732 of June 3, 1946 (11 F.R. 5985), and paragraph (q) of section 1 of Executive Order No. 10250 of June 5, 1951 (16 F.R. 5385).

DWIGHT D. EISENHOWER.

§715k. Saving clause

If any provision of this chapter, or the application thereof to any person or circumstance, shall be held invalid, the validity of the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

(Feb. 22, 1935, ch. 18, §12, 49 Stat. 33.)

§715*l*. Repealed. June 22, 1942, ch. 436, 56 Stat. 381

Section, acts Feb. 22, 1935, ch. 18, §13, 49 Stat. 33; June 14, 1937, ch. 335, 50 Stat. 257; June 29, 1939, ch. 250, 53 Stat. 927, provided for expiration of this chapter on June 30, 1942.

§715m. Cooperation between Secretary of the Interior and Federal and State authorities

The Secretary of the Interior, in carrying out this chapter, is authorized to cooperate with Federal and State authorities.

(June 25, 1946, ch. 472, §3, 60 Stat. 307.)

CODIFICATION

Section was not enacted as a part act Feb. 22, 1935, which comprises this chapter.

DELEGATION OF FUNCTIONS

Delegation of President's authority to Secretary of the Interior, see note set out under section 715j of this title.

CHAPTER 15B—NATURAL GAS

Sec.

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§717. Regulation of natural gas companies

(a) Necessity of regulation in public interest

As disclosed in reports of the Federal Trade Commission made pursuant to S. Res. 83 (Seventieth Congress, first session) and other reports made pursuant to the authority of Congress, it is declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest.

(b) Transactions to which provisions of chapter applicable

The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, and to the importation or exportation of natural gas in foreign commerce and to persons engaged in such importation or exportation, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.

(c) Intrastate transactions exempt from provisions of chapter; certification from State commission as conclusive evidence

The provisions of this chapter shall not apply to any person engaged in or legally authorized to engage in the transportation in interstate commerce or the sale in interstate commerce for resale, of natural gas received by such person from another person within or at the boundary of a State if all the natural gas so received is ultimately consumed within such State, or to any facilities used by such person for such transportation or sale, provided that the rates and service of such person and facilities be subject to regulation by a State commission. The matters exempted from the provisions of this chapter by this subsection are declared to be matters primarily of local concern and subject to regulation by the several States. A certification from such State commission to the Federal Power Commission that such State commission has regulatory jurisdiction over rates and service of such person and facilities and is exercising such jurisdiction shall constitute conclusive evidence of such regulatory power or jurisdiction.

(d) Vehicular natural gas jurisdiction

The provisions of this chapter shall not apply to any person solely by reason of, or with respect to, any sale or transportation of vehicular natural gas if such person is—

(1) not otherwise a natural-gas company; or

(2) subject primarily to regulation by a State commission, whether or not such State commission has, or is exercising, jurisdiction over the sale, sale for resale, or transportation of vehicular natural gas.

(June 21, 1938, ch. 556, §1, 52 Stat. 821; Mar. 27, 1954, ch. 115, 68 Stat. 36; Pub. L. 102–486, title IV, §404(a)(1), Oct. 24, 1992, 106 Stat. 2879; Pub. L. 109–58, title III, §311(a), Aug. 8, 2005, 119 Stat. 685.)

AMENDMENTS

2005—Subsec. (b). Pub. L. 109–58 inserted "and to the importation or exportation of natural gas in foreign commerce and to persons engaged in such importation or exportation," after "such transportation or sale,".

1992—Subsec. (d). Pub. L. 102–486 added subsec. (d).

1954—Subsec. (c). Act Mar. 27, 1954, added subsec. (c).

TERMINATION OF FEDERAL POWER COMMISSION; TRANSFER OF FUNCTIONS

Federal Power Commission terminated and functions, personnel, property, funds, etc., transferred to Secretary of Energy (except for certain functions transferred to Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291, and 7293 of Title 42, The Public Health and Welfare.

STATE LAWS AND REGULATIONS

Pub. L. 102–486, title IV, §404(b), Oct. 24, 1992, 106 Stat. 2879, provided that: "The transportation or sale of natural gas by any person who is not otherwise a public utility, within the meaning of State law—

"(1) in closed containers; or

"(2) otherwise to any person for use by such person as a fuel in a self-propelled vehicle,

shall not be considered to be a transportation or sale of natural gas within the meaning of any State law, regulation, or order in effect before January 1, 1989. This subsection shall not apply to any provision of any State law, regulation, or order to the extent that such provision has as its primary purpose the protection of public safety."

EMERGENCY NATURAL GAS ACT OF 1977

Pub. L. 95–2, Feb. 2, 1977, 91 Stat. 4, authorized President to declare a natural gas emergency and to require emergency deliveries and transportation of natural gas until the earlier of Apr. 30, 1977, or termination of emergency by President and provided for antitrust protection, emergency purchases, adjustment in charges for local distribution companies, relationship to Natural Gas Act, effect of certain contractual obligations, administrative procedure and judicial review, enforcement, reporting to Congress, delegation of authorities, and preemption of inconsistent State or local action.

EXECUTIVE ORDER NO. 11969

Ex. Ord. No. 11969, Feb. 2, 1977, 42 F.R. 6791, as amended by Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957, which delegated to the Secretary of Energy the authority vested in the President by the Emergency Natural Gas Act of 1977 except the authority to declare and terminate a natural gas emergency, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

PROCLAMATION NO. 4485

Proc. No. 4485, Feb. 2, 1977, 42 F.R. 6789, declared that a natural gas emergency existed within the meaning of section 3 of the Emergency Natural Gas Act of 1977, set out as a note above, which emergency was terminated by Proc. No. 4495, Apr. 1, 1977, 42 F.R. 18053, formerly set out below.

PROCLAMATION NO. 4495

Proc. No. 4495, Apr. 1, 1977, 42 F.R. 18053, terminated the natural gas emergency declared to exist by Proc. No. 4485, Feb. 2, 1977, 42 F.R. 6789, formerly set out above.

§717a. Definitions

When used in this chapter, unless the context otherwise requires—

(1) "Person" includes an individual or a corporation.

(2) "Corporation" includes any corporation, joint-stock company, partnership, association, business trust, organized group of persons, whether incorporated or not, receiver or receivers, trustee or trustees of any of the foregoing, but shall not include municipalities as hereinafter defined.

(3) "Municipality" means a city, county, or other political subdivision or agency of a State.

(4) "State" means a State admitted to the Union, the District of Columbia, and any organized Territory of the United States.

(5) "Natural gas" means either natural gas unmixed, or any mixture of natural and artificial gas.

(6) "Natural-gas company" means a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale.

(7) "Interstate commerce" means commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof, but only insofar as such commerce takes place within the United States.

(8) "State commission" means the regulatory body of the State or municipality having jurisdiction to regulate rates and charges for the sale of natural gas to consumers within the State or municipality.

(9) "Commission" and "Commissioner" means the Federal Power Commission, and a member thereof, respectively.

(10) "Vehicular natural gas" means natural gas that is ultimately used as a fuel in a self-propelled vehicle.

(11) "LNG terminal" includes all natural gas facilities located onshore or in State waters that are used to receive, unload, load, store, transport, gasify, liquefy, or process natural gas that is imported to the United States from a foreign country, exported to a foreign country from the United States, or transported in interstate commerce by waterborne vessel, but does not include—

(A) waterborne vessels used to deliver natural gas to or from any such facility; or

(B) any pipeline or storage facility subject to the jurisdiction of the Commission under section 717f of this title.

(June 21, 1938, ch. 556, §2, 52 Stat. 821; Pub. L. 102–486, title IV, §404(a)(2), Oct. 24, 1992, 106 Stat. 2879; Pub. L. 109–58, title III, §311(b), Aug. 8, 2005, 119 Stat. 685.)

AMENDMENTS

2005—Par. (11). Pub. L. 109–58 added par. (11).

1992—Par. (10). Pub. L. 102–486 added par. (10).

TERMINATION OF FEDERAL POWER COMMISSION; TRANSFER OF FUNCTIONS

Federal Power Commission terminated and functions, personnel, property, funds, etc., transferred to Secretary of Energy (except for certain functions transferred to Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a)(1), 7291, and 7293 of Title 42, The Public Health and Welfare.

§717b. Exportation or importation of natural gas; LNG terminals

(a) Mandatory authorization order

After six months from June 21, 1938, no person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the Commission authorizing it to do so. The Commission shall issue such order upon application, unless, after opportunity for hearing, it finds that the proposed exportation or importation will not be consistent with the public interest. The Commission may by its order grant such application, in whole or in part, with such modification and upon such terms and conditions as the Commission may find necessary or appropriate, and may from time to time, after opportunity for hearing, and for good cause shown, make such supplemental order in the premises as it may find necessary or appropriate.

(b) Free trade agreements

With respect to natural gas which is imported into the United States from a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas, and with respect to liquefied natural gas—

(1) the importation of such natural gas shall be treated as a "first sale" within the meaning of section 3301(21) of this title; and

(2) the Commission shall not, on the basis of national origin, treat any such imported natural gas on an unjust, unreasonable, unduly discriminatory, or preferential basis.

(c) Expedited application and approval process

For purposes of subsection (a) of this section, the importation of the natural gas referred to in subsection (b) of this section, or the exportation of natural gas to a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas, shall be deemed to be consistent with the public interest, and applications for such importation or exportation shall be granted without modification or delay.

(d) Construction with other laws

Except as specifically provided in this chapter, nothing in this chapter affects the rights of States under—

(1) the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.);

(2) the Clean Air Act (42 U.S.C. 7401 et seq.); or

(3) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

(e) LNG terminals

(1) The Commission shall have the exclusive authority to approve or deny an application for the siting, construction, expansion, or operation of an LNG terminal. Except as specifically provided in this chapter, nothing in this chapter is intended to affect otherwise applicable law related to any Federal agency's authorities or responsibilities related to LNG terminals.

(2) Upon the filing of any application to site, construct, expand, or operate an LNG terminal, the Commission shall—

(A) set the matter for hearing;

(B) give reasonable notice of the hearing to all interested persons, including the State commission of the State in which the LNG terminal is located and, if not the same, the Governor-appointed State agency described in section 717b–1 of this title;

(C) decide the matter in accordance with this subsection; and

(D) issue or deny the appropriate order accordingly.

(3)(A) Except as provided in subparagraph (B), the Commission may approve an application described in paragraph (2), in whole or part, with such modifications and upon such terms and conditions as the Commission find [1] necessary or appropriate.

(B) Before January 1, 2015, the Commission shall not—

(i) deny an application solely on the basis that the applicant proposes to use the LNG terminal exclusively or partially for gas that the applicant or an affiliate of the applicant will supply to the facility; or

(ii) condition an order on—

(I) a requirement that the LNG terminal offer service to customers other than the applicant, or any affiliate of the applicant, securing the order;

(II) any regulation of the rates, charges, terms, or conditions of service of the LNG terminal; or

(III) a requirement to file with the Commission schedules or contracts related to the rates, charges, terms, or conditions of service of the LNG terminal.

(C) Subparagraph (B) shall cease to have effect on January 1, 2030.

(4) An order issued for an LNG terminal that also offers service to customers on an open access basis shall not result in subsidization of expansion capacity by existing customers, degradation of service to existing customers, or undue discrimination against existing customers as to their terms or conditions of service at the facility, as all of those terms are defined by the Commission.

(f) Military installations

(1) In this subsection, the term "military installation"—

(A) means a base, camp, post, range, station, yard, center, or homeport facility for any ship or other activity under the jurisdiction of the Department of Defense, including any leased facility, that is located within a State, the District of Columbia, or any territory of the United States; and

(B) does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects, as determined by the Secretary of Defense.

(2) The Commission shall enter into a memorandum of understanding with the Secretary of Defense for the purpose of ensuring that the Commission coordinate and consult [2] with the Secretary of Defense on the siting, construction, expansion, or operation of liquefied natural gas facilities that

may affect an active military installation.

(3) The Commission shall obtain the concurrence of the Secretary of Defense before authorizing the siting, construction, expansion, or operation of liquefied natural gas facilities affecting the training or activities of an active military installation.

(June 21, 1938, ch. 556, §3, 52 Stat. 822; Pub. L. 102–486, title II, §201, Oct. 24, 1992, 106 Stat. 2866; Pub. L. 109–58, title III, §311(c), Aug. 8, 2005, 119 Stat. 685.)

REFERENCES IN TEXT

The Coastal Zone Management Act of 1972, referred to in subsec. (d)(1), is title III of Pub. L. 89–454 as added by Pub. L. 92–583, Oct. 27, 1972, 86 Stat. 1280, as amended, which is classified generally to chapter 33 (§1451 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1451 of Title 16 and Tables.

The Clean Air Act, referred to in subsec. (d)(2), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

The Federal Water Pollution Control Act, referred to in subsec. (d)(3), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

AMENDMENTS

2005—Pub. L. 109–58, §311(c)(1), inserted "; LNG terminals" after "natural gas" in section catchline. Subsecs. (d) to (f). Pub. L. 109–58, §311(c)(2), added subsecs. (d) to (f).

1992—Pub. L. 102–486 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of Energy and Commission, Commissioners, or other official in Federal Energy Regulatory Commission related to compliance with authorizations for importation of natural gas from Alberta as pre-deliveries of Alaskan gas issued under this section with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to the Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(d), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out under section 719e of this title. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of this title. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of this title.

DELEGATION OF FUNCTIONS

Functions of President respecting certain facilities constructed and maintained on United States borders delegated to Secretary of State, see Ex. Ord. No. 11423, Aug. 16, 1968, 33 F.R. 11741, set out as a note under section 301 of Title 3, The President.

EX. ORD. NO. 10485. PERFORMANCE OF FUNCTIONS RESPECTING ELECTRIC POWER AND NATURAL GAS FACILITIES LOCATED ON UNITED STATES BORDERS

Ex. Ord. No. 10485. Sept. 3, 1953, 18 F.R. 5397, as amended by Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957, provided:

SECTION 1. (a) The Secretary of Energy is hereby designated and empowered to perform the following-described functions:

(1) To receive all applications for permits for the construction, operation, maintenance, or connection, at the borders of the United States, of facilities for the transmission of electric energy between the United States and a foreign country.

(2) To receive all applications for permits for the construction, operation, maintenance, or connection, at the borders of the United States, of facilities for the exportation or importation of natural gas to or from a foreign country.

(3) Upon finding the issuance of the permit to be consistent with the public interest, and, after obtaining the favorable recommendations of the Secretary of State and the Secretary of Defense thereon, to issue to the applicant, as appropriate, a permit for such construction, operation, maintenance, or connection. The Secretary of Energy shall have the power to attach to the issuance of the permit and to the exercise of the rights granted thereunder such conditions as the public interest may in its judgment require.

(b) In any case wherein the Secretary of Energy, the Secretary of State, and the Secretary of Defense cannot agree as to whether or not a permit should be issued, the Secretary of Energy shall submit to the President for approval or disapproval the application for a permit with the respective views of the Secretary of Energy, the Secretary of State and the Secretary of Defense.

SEC. 2. [Deleted.]

SEC. 3. The Secretary of Energy is authorized to issue such rules and regulations, and to prescribe such procedures, as it may from time to time deem necessary or desirable for the exercise of the authority delegated to it by this order.

SEC. 4. All Presidential Permits heretofore issued pursuant to Executive Order No. 8202 of July 13, 1939, and in force at the time of the issuance of this order, and all permits issued hereunder, shall remain in full force and effect until modified or revoked by the President or by the Secretary of Energy.

SEC. 5. Executive Order No. 8202 of July 13, 1939, is hereby revoked.

[1] So in original. Probably should be "finds".

[2] So in original. Probably should be "coordinates and consults".

§717b–1. State and local safety considerations

(a) Promulgation of regulations

The Commission shall promulgate regulations on the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) pre-filing process within 60 days after August 8, 2005. An applicant shall comply with pre-filing process required under the National Environmental Policy Act of 1969 prior to filing an application with the Commission. The regulations shall require that the pre-filing process commence at least 6 months prior to the filing of an application for authorization to construct an LNG terminal and encourage applicants to cooperate with State and local officials.

(b) State consultation

The Governor of a State in which an LNG terminal is proposed to be located shall designate the appropriate State agency for the purposes of consulting with the Commission regarding an application under section 717b of this title. The Commission shall consult with such State agency regarding State and local safety considerations prior to issuing an order pursuant to section 717b of this title. For the purposes of this section, State and local safety considerations include—

(1) the kind and use of the facility;
(2) the existing and projected population and demographic characteristics of the location;
(3) the existing and proposed land use near the location;
(4) the natural and physical aspects of the location;
(5) the emergency response capabilities near the facility location; and
(6) the need to encourage remote siting.

(c) Advisory report

The State agency may furnish an advisory report on State and local safety considerations to the Commission with respect to an application no later than 30 days after the application was filed with the Commission. Before issuing an order authorizing an applicant to site, construct, expand, or operate an LNG terminal, the Commission shall review and respond specifically to the issues raised by the State agency described in subsection (b) of this section in the advisory report. This subsection shall apply to any application filed after August 8, 2005. A State agency has 30 days after August 8, 2005 to file an advisory report related to any applications pending at the Commission as of August 8, 2005.

(d) Inspections

The State commission of the State in which an LNG terminal is located may, after the terminal is operational, conduct safety inspections in conformance with Federal regulations and guidelines with respect to the LNG terminal upon written notice to the Commission. The State commission may notify the Commission of any alleged safety violations. The Commission shall transmit information regarding such allegations to the appropriate Federal agency, which shall take appropriate action and notify the State commission.

(e) Emergency Response Plan

(1) In any order authorizing an LNG terminal the Commission shall require the LNG terminal operator to develop an Emergency Response Plan. The Emergency Response Plan shall be prepared in consultation with the United States Coast Guard and State and local agencies and be approved by the Commission prior to any final approval to begin construction. The Plan shall include a cost-sharing plan.

(2) A cost-sharing plan developed under paragraph (1) shall include a description of any direct cost reimbursements that the applicant agrees to provide to any State and local agencies with responsibility for security and safety—

(A) at the LNG terminal; and

(B) in proximity to vessels that serve the facility.

(June 21, 1938, ch. 556, §3A, as added Pub. L. 109–58, title III, §311(d), Aug. 8, 2005, 119 Stat. 687.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (a), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

§717c. Rates and charges

(a) Just and reasonable rates and charges

All rates and charges made, demanded, or received by any natural-gas company for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges, shall be just and reasonable, and any such rate or charge that is not just and reasonable is declared to be unlawful.

(b) Undue preferences and unreasonable rates and charges prohibited

No natural-gas company shall, with respect to any transportation or sale of natural gas subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

(c) Filing of rates and charges with Commission; public inspection of schedules

Under such rules and regulations as the Commission may prescribe, every natural-gas company shall file with the Commission, within such time (not less than sixty days from June 21, 1938) and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection, schedules showing all rates and charges for any transportation or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

(d) Changes in rates and charges; notice to Commission

Unless the Commission otherwise orders, no change shall be made by any natural-gas company in any such rate, charge, classification, or service, or in any rule, regulation, or contract relating thereto, except after thirty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the thirty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

(e) Authority of Commission to hold hearings concerning new schedule of rates

Whenever any such new schedule is filed the Commission shall have authority, either upon complaint of any State, municipality, State commission, or gas distributing company, or upon its own initiative without complaint, at once, and if it so orders, without answer or formal pleading by the natural-gas company, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such schedules and delivering to the natural-gas company affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect; and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made at the expiration of the suspension period, on motion of the natural-gas company making the filing, the proposed change of rate, charge, classification, or service shall go into effect. Where increased rates or charges are thus made effective, the Commission may, by order, require the natural-gas company to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and, upon completion of the hearing and decision, to order such natural-gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified. At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the natural-gas company, and the Commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible.

(f) Storage services

(1) In exercising its authority under this chapter or the Natural Gas Policy Act of 1978 (15 U.S.C. 3301 et seq.), the Commission may authorize a natural gas company (or any person that will be a natural gas company on completion of any proposed construction) to provide storage and storage-related services at market-based rates for new storage capacity related to a specific facility placed in service after August 8, 2005, notwithstanding the fact that the company is unable to demonstrate that the company lacks market power, if the Commission determines that—

(A) market-based rates are in the public interest and necessary to encourage the construction of the storage capacity in the area needing storage services; and

(B) customers are adequately protected.

(2) The Commission shall ensure that reasonable terms and conditions are in place to protect consumers.

(3) If the Commission authorizes a natural gas company to charge market-based rates under this subsection, the Commission shall review periodically whether the market-based rate is just, reasonable, and not unduly discriminatory or preferential.

(June 21, 1938, ch. 556, §4, 52 Stat. 822; Pub. L. 87–454, May 21, 1962, 76 Stat. 72; Pub. L. 109–58, title III, §312, Aug. 8, 2005, 119 Stat. 688.)

REFERENCES IN TEXT

The Natural Gas Policy Act of 1978, referred to in subsec. (f)(1), is Pub. L. 95–621, Nov. 9, 1978, 92 Stat. 3350, as amended, which is classified generally to chapter 60 (§3301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3301 of this title and Tables.

AMENDMENTS

2005—Subsec. (f). Pub. L. 109–58 added subsec. (f).

1962—Subsec. (e). Pub. L. 87–454 inserted "or gas distributing company" after "State commission", and struck out proviso which denied authority to the Commission to suspend the rate, charge, classification, or service for the sale of natural gas for resale for industrial use only.

ADVANCE RECOVERY OF EXPENSES INCURRED BY NATURAL GAS COMPANIES FOR NATURAL GAS RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROJECTS

Pub. L. 102–104, title III, Aug. 17, 1991, 105 Stat. 531, authorized Federal Energy Regulatory Commission, pursuant to this section, to allow recovery, in advance, of expenses by natural-gas companies for research, development and demonstration activities by Gas Research Institute for projects on use of natural gas in motor vehicles and on use of natural gas to control emissions from combustion of other fuels, subject to Commission finding that benefits, including environmental benefits, to both existing and future ratepayers resulting from such activities exceed all direct costs to both existing and future ratepayers, prior to repeal by Pub. L. 102–486, title IV, §408(c), Oct. 24, 1992, 106 Stat. 2882.

§717c–1. Prohibition on market manipulation

It shall be unlawful for any entity, directly or indirectly, to use or employ, in connection with the purchase or sale of natural gas or the purchase or sale of transportation services subject to the jurisdiction of the Commission, any manipulative or deceptive device or contrivance (as those terms are used in section 78j(b) of this title) in contravention of such rules and regulations as the Commission may prescribe as necessary in the public interest or for the protection of natural gas ratepayers. Nothing in this section shall be construed to create a private right of action.

(June 21, 1938, ch. 556, §4A, as added Pub. L. 109–58, title III, §315, Aug. 8, 2005, 119 Stat. 691.)

§717d. Fixing rates and charges; determination of cost of production or transportation

(a) Decreases in rates

Whenever the Commission, after a hearing had upon its own motion or upon complaint of any State, municipality, State commission, or gas distributing company, shall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order: *Provided, however*, That the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural gas company; but the Commission may order a decrease where existing rates are unjust, unduly discriminatory, preferential, otherwise unlawful, or are not the lowest reasonable rates.

(b) Costs of production and transportation

The Commission upon its own motion, or upon the request of any State commission, whenever it can do so without prejudice to the efficient and proper conduct of its affairs, may investigate and determine the cost of the production or transportation of natural gas by a natural-gas company in

cases where the Commission has no authority to establish a rate governing the transportation or sale of such natural gas.

(June 21, 1938, ch. 556, §5, 52 Stat. 823.)

§717e. Ascertainment of cost of property

(a) Cost of property

The Commission may investigate and ascertain the actual legitimate cost of the property of every natural-gas company, the depreciation therein, and, when found necessary for rate-making purposes, other facts which bear on the determination of such cost or depreciation and the fair value of such property.

(b) Inventory of property; statements of costs

Every natural-gas company upon request shall file with the Commission an inventory of all or any part of its property and a statement of the original cost thereof, and shall keep the Commission informed regarding the cost of all additions, betterments, extensions, and new construction.

(June 21, 1938, ch. 556, §6, 52 Stat. 824.)

§717f. Construction, extension, or abandonment of facilities

(a) Extension or improvement of facilities on order of court; notice and hearing

Whenever the Commission, after notice and opportunity for hearing, finds such action necessary or desirable in the public interest, it may by order direct a natural-gas company to extend or improve its transportation facilities, to establish physical connection of its transportation facilities with the facilities of, and sell natural gas to, any person or municipality engaged or legally authorized to engage in the local distribution of natural or artificial gas to the public, and for such purpose to extend its transportation facilities to communities immediately adjacent to such facilities or to territory served by such natural-gas company, if the Commission finds that no undue burden will be placed upon such natural-gas company thereby: *Provided*, That the Commission shall have no authority to compel the enlargement of transportation facilities for such purposes, or to compel such natural-gas company to establish physical connection or sell natural gas when to do so would impair its ability to render adequate service to its customers.

(b) Abandonment of facilities or services; approval of Commission

No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment.

(c) Certificate of public convenience and necessity

(1)(A) No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extensions thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations: *Provided, however*, That if any such natural-gas company or predecessor in interest was bona fide engaged in transportation or sale of natural gas, subject to the jurisdiction of the Commission, on February 7, 1942, over the route or routes or within the area for which application is made and has so operated since that time, the Commission shall issue such certificate without requiring further proof that public convenience and

necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission within ninety days after February 7, 1942. Pending the determination of any such application, the continuance of such operation shall be lawful.

(B) In all other cases the Commission shall set the matter for hearing and shall give such reasonable notice of the hearing thereon to all interested persons as in its judgment may be necessary under rules and regulations to be prescribed by the Commission; and the application shall be decided in accordance with the procedure provided in subsection (e) of this section and such certificate shall be issued or denied accordingly: *Provided, however*, That the Commission may issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for a certificate, and may by regulation exempt from the requirements of this section temporary acts or operations for which the issuance of a certificate will not be required in the public interest.

(2) The Commission may issue a certificate of public convenience and necessity to a natural-gas company for the transportation in interstate commerce of natural gas used by any person for one or more high-priority uses, as defined, by rule, by the Commission, in the case of—

(A) natural gas sold by the producer to such person; and

(B) natural gas produced by such person.

(d) Application for certificate of public convenience and necessity

Application for certificates shall be made in writing to the Commission, be verified under oath, and shall be in such form, contain such information, and notice thereof shall be served upon such interested parties and in such manner as the Commission shall, by regulation, require.

(e) Granting of certificate of public convenience and necessity

Except in the cases governed by the provisos contained in subsection (c)(1) of this section, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operation, sale, service, construction, extension, or acquisition covered by the application, if it is found that the applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of this chapter and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, sale, operation, construction, extension, or acquisition, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied. The Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require.

(f) Determination of service area; jurisdiction of transportation to ultimate consumers

(1) The Commission, after a hearing had upon its own motion or upon application, may determine the service area to which each authorization under this section is to be limited. Within such service area as determined by the Commission a natural-gas company may enlarge or extend its facilities for the purpose of supplying increased market demands in such service area without further authorization; and

(2) If the Commission has determined a service area pursuant to this subsection, transportation to ultimate consumers in such service area by the holder of such service area determination, even if across State lines, shall be subject to the exclusive jurisdiction of the State commission in the State in which the gas is consumed. This section shall not apply to the transportation of natural gas to another natural gas company.

(g) Certificate of public convenience and necessity for service of area already being served

Nothing contained in this section shall be construed as a limitation upon the power of the Commission to grant certificates of public convenience and necessity for service of an area already being served by another natural-gas company.

(h) Right of eminent domain for construction of pipelines, etc.

When any holder of a certificate of public convenience and necessity cannot acquire by contract,

or is unable to agree with the owner of property to the compensation to be paid for, the necessary right-of-way to construct, operate, and maintain a pipe line or pipe lines for the transportation of natural gas, and the necessary land or other property, in addition to right-of-way, for the location of compressor stations, pressure apparatus, or other stations or equipment necessary to the proper operation of such pipe line or pipe lines, it may acquire the same by the exercise of the right of eminent domain in the district court of the United States for the district in which such property may be located, or in the State courts. The practice and procedure in any action or proceeding for that purpose in the district court of the United States shall conform as nearly as may be with the practice and procedure in similar action or proceeding in the courts of the State where the property is situated: *Provided*, That the United States district courts shall only have jurisdiction of cases when the amount claimed by the owner of the property to be condemned exceeds $3,000.

(June 21, 1938, ch. 556, §7, 52 Stat. 824; Feb. 7, 1942, ch. 49, 56 Stat. 83; July 25, 1947, ch. 333, 61 Stat. 459; Pub. L. 95–617, title VI, §608, Nov. 9, 1978, 92 Stat. 3173; Pub. L. 100–474, §2, Oct. 6, 1988, 102 Stat. 2302.)

AMENDMENTS

1988—Subsec. (f). Pub. L. 100–474 designated existing provisions as par. (1) and added par. (2).

1978—Subsec. (c). Pub. L. 95–617, §608(a), (b)(1), designated existing first paragraph as par. (1)(A) and existing second paragraph as par. (1)(B) and added par. (2).

Subsec. (e). Pub. L. 95–617, §608(b)(2), substituted "subsection (c)(1)" for "subsection (c)".

1947—Subsec. (h). Act July 25, 1947, added subsec. (h).

1942—Subsecs. (c) to (g). Act Feb. 7, 1942, struck out subsec. (c), and added new subsecs. (c) to (g).

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–474, §3, Oct. 6, 1988, 102 Stat. 2302, provided that: "The provisions of this Act [amending this section and enacting provisions set out as a note under section 717w of this title] shall become effective one hundred and twenty days after the date of enactment [Oct. 6, 1988]."

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of Energy and Commission, Commissioners, or other official in Federal Energy Regulatory Commission related to compliance with certificates of public convenience and necessity issued under this section with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(d), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out under section 719e of this title. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of this title. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of this title.

§717g. Accounts; records; memoranda

(a) Rules and regulations for keeping and preserving accounts, records, etc.

Every natural-gas company shall make, keep, and preserve for such periods, such accounts, records of cost-accounting procedures, correspondence, memoranda, papers, books, and other records as the Commission may by rules and regulations prescribe as necessary or appropriate for purposes of the administration of this chapter: *Provided, however*, That nothing in this chapter shall relieve any such natural-gas company from keeping any accounts, memoranda, or records which such natural-gas company may be required to keep by or under authority of the laws of any State. The Commission may prescribe a system of accounts to be kept by such natural-gas companies, and may classify such natural-gas companies and prescribe a system of accounts for each class. The Commission, after notice and opportunity for hearing, may determine by order the accounts in which particular outlays or receipts shall be entered, charged, or credited. The burden of proof to justify

every accounting entry questioned by the Commission shall be on the person making, authorizing, or requiring such entry, and the Commission may suspend a charge or credit pending submission of satisfactory proof in support thereof.

(b) Access to and inspection of accounts and records

The Commission shall at all times have access to and the right to inspect and examine all accounts, records, and memoranda of natural-gas companies; and it shall be the duty of such natural-gas companies to furnish to the Commission, within such reasonable time as the Commission may order, any information with respect thereto which the Commission may by order require, including copies of maps, contracts, reports of engineers, and other data, records, and papers, and to grant to all agents of the Commission free access to its property and its accounts, records, and memoranda when requested so to do. No member, officer, or employee of the Commission shall divulge any fact or information which may come to his knowledge during the course of examination of books, records, data, or accounts, except insofar as he may be directed by the Commission or by a court.

(c) Books, accounts, etc., of the person controlling gas company subject to examination

The books, accounts, memoranda, and records of any person who controls directly or indirectly a natural-gas company subject to the jurisdiction of the Commission and of any other company controlled by such person, insofar as they relate to transactions with or the business of such natural-gas company, shall be subject to examination on the order of the Commission.

(June 21, 1938, ch. 556, §8, 52 Stat. 825.)

§717h. Rates of depreciation

(a) Depreciation and amortization

The Commission may, after hearing, require natural-gas companies to carry proper and adequate depreciation and amortization accounts in accordance with such rules, regulations, and forms of account as the Commission may prescribe. The Commission may from time to time ascertain and determine, and by order fix, the proper and adequate rates of depreciation and amortization of the several classes of property of each natural-gas company used or useful in the production, transportation, or sale of natural gas. Each natural-gas company shall conform its depreciation and amortization accounts to the rates so ascertained, determined, and fixed. No natural-gas company subject to the jurisdiction of the Commission shall charge to operating expenses any depreciation or amortization charges on classes of property other than those prescribed by the Commission, or charge with respect to any class of property a percentage of depreciation or amortization other than that prescribed therefor by the Commission. No such natural-gas company shall in any case include in any form under its operating or other expenses any depreciation, amortization, or other charge or expenditure included elsewhere as a depreciation or amortization charge or otherwise under its operating or other expenses. Nothing in this section shall limit the power of a State commission to determine in the exercise of its jurisdiction, with respect to any natural-gas company, the percentage rates of depreciation or amortization to be allowed, as to any class of property of such natural-gas company, or the composite depreciation or amortization rate, for the purpose of determining rates or charges.

(b) Rules

The Commission, before prescribing any rules or requirements as to accounts, records, or memoranda, or as to depreciation or amortization rates, shall notify each State commission having jurisdiction with respect to any natural-gas company involved and shall give reasonable opportunity to each such commission to present its views and shall receive and consider such views and recommendations.

(June 21, 1938, ch. 556, §9, 52 Stat. 826.)

§717i. Periodic and special reports

(a) Form and contents of reports

Every natural-gas company shall file with the Commission such annual and other periodic or special reports as the Commission may by rules and regulations or order prescribe as necessary or appropriate to assist the Commission in the proper administration of this chapter. The Commission may prescribe the manner and form in which such reports shall be made, and require from such natural-gas companies specific answers to all questions upon which the Commission may need information. The Commission may require that such reports shall include, among other things, full information as to assets and liabilities, capitalization, investment and reduction thereof, gross receipts, interest due and paid, depreciation, amortization, and other reserves, cost of facilities, cost of maintenance and operation of facilities for the production, transportation, or sale of natural gas, cost of renewal and replacement of such facilities, transportation, delivery, use, and sale of natural gas. The Commission may require any such natural-gas company to make adequate provision for currently determining such costs and other facts. Such reports shall be made under oath unless the Commission otherwise specifies.

(b) Unlawful conduct

It shall be unlawful for any natural-gas company willfully to hinder, delay, or obstruct the making, filing, or keeping of any information, document, report, memorandum, record, or account required to be made, filed, or kept under this chapter or any rule, regulation, or order thereunder.

(June 21, 1938, ch. 556, §10, 52 Stat. 826.)

§717j. State compacts for conservation, transportation, etc., of natural gas

(a) Assembly of pertinent information; report to Congress

In case two or more States propose to the Congress compacts dealing with the conservation, production, transportation, or distribution of natural gas it shall be the duty of the Commission to assemble pertinent information relative to the matters covered in any such proposed compact, to make public and to report to the Congress information so obtained, together with such recommendations for further legislation as may appear to be appropriate or necessary to carry out the purposes of such proposed compact and to aid in the conservation of natural-gas resources within the United States and in the orderly, equitable, and economic production, transportation, and distribution of natural gas.

(b) Assembly of information relative to operation of compact; report to Congress

It shall be the duty of the Commission to assemble and keep current pertinent information relative to the effect and operation of any compact between two or more States heretofore or hereafter approved by the Congress, to make such information public, and to report to the Congress, from time to time, the information so obtained, together with such recommendations as may appear to be appropriate or necessary to promote the purposes of such compact.

(c) Availability of services, etc., of other agencies

In carrying out the purposes of this chapter, the Commission shall, so far as practicable, avail itself of the services, records, reports, and information of the executive departments and other agencies of the Government, and the President may, from time to time, direct that such services and facilities be made available to the Commission.

(June 21, 1938, ch. 556, §11, 52 Stat. 827.)

§717k. Officials dealing in securities

It shall be unlawful for any officer or director of any natural-gas company to receive for his own

benefit, directly or indirectly, any money or thing of value in respect to the negotiation, hypothecation, or sale by such natural-gas company of any security issued, or to be issued, by such natural-gas company, or to share in any of the proceeds thereof, or to participate in the making or paying of any dividends, other than liquidating dividends, of such natural-gas company from any funds properly included in capital account.

(June 21, 1938, ch. 556, §12, 52 Stat. 827.)

§717*l*. Complaints

Any State, municipality, or State commission complaining of anything done or omitted to be done by any natural-gas company in contravention of the provisions of this chapter may apply to the Commission by petition, which shall briefly state the facts, whereupon a statement of the complaint thus made shall be forwarded by the Commission to such natural-gas company, which shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time to be specified by the Commission.

(June 21, 1938, ch. 556, §13, 52 Stat. 827.)

§717m. Investigations by Commission

(a) Power of Commission

The Commission may investigate any facts, conditions, practices, or matters which it may find necessary or proper in order to determine whether any person has violated or is about to violate any provisions of this chapter or any rule, regulation, or order thereunder, or to aid in the enforcement of the provisions of this chapter or in prescribing rules or regulations thereunder, or in obtaining information to serve as a basis for recommending further legislation to the Congress. The Commission may permit any person to file with it a statement in writing, under oath or otherwise, as it shall determine, as to any or all facts and circumstances concerning a matter which may be the subject of investigation. The Commission, in its discretion, may publish in the manner authorized by section 825k of title 16, and make available to State commissions and municipalities, information concerning any such matter.

(b) Determination of adequacy of gas reserves

The Commission may, after hearing, determine the adequacy or inadequacy of the gas reserves held or controlled by any natural-gas company, or by anyone on its behalf, including its owned or leased properties or royalty contracts; and may also, after hearing, determine the propriety and reasonableness of the inclusion in operating expenses, capital, or surplus of all delay rentals or other forms of rental or compensation for unoperated lands and leases. For the purpose of such determinations, the Commission may require any natural-gas company to file with the Commission true copies of all its lease and royalty agreements with respect to such gas reserves.

(c) Administration of oaths and affirmations; subpena of witnesses, etc.

For the purpose of any investigation or any other proceeding under this chapter, any member of the Commission, or any officer designated by it, is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records which the Commission finds relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States or at any designated place of hearing. Witnesses summoned by the Commission to appear before it shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(d) Jurisdiction of courts of United States

In case of contumacy by, or refusal to obey a subpena issued to, any person, the Commission may

invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, contracts, agreements, and other records. Such court may issue an order requiring such person to appear before the Commission or member or officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found or may be doing business. Any person who willfully shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in his or its power so to do, in obedience to the subpena of the Commission, shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year, or both.

(e) Testimony of witnesses

The testimony of any witness may be taken at the instance of a party, in any proceeding or investigation pending before the Commission, by deposition at any time after the proceeding is at issue. The Commission may also order testimony to be taken by deposition in any proceeding or investigation pending before it at any stage of such proceeding or investigation. Such depositions may be taken before any person authorized to administer oaths not being of counsel or attorney to either of the parties, nor interested in the proceeding or investigation. Reasonable notice must first be given in writing by the party or his attorney proposing to take such deposition to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce documentary evidence, in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission, as hereinbefore provided. Such testimony shall be reduced to writing by the person taking deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent.

(f) Deposition of witnesses in a foreign country

If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken before an officer or person designated by the Commission, or agreed upon by the parties by stipulation in writing to be filed with the Commission. All depositions must be promptly filed with the Commission.

(g) Witness fees

Witnesses whose depositions are taken as authorized in this chapter, and the person or officer taking the same, shall be entitled to the same fees as are paid for like services in the courts of the United States.

(June 21, 1938, ch. 556, §14, 52 Stat. 828; Pub. L. 91–452, title II, §218, Oct. 15, 1970, 84 Stat. 929.)

AMENDMENTS

1970—Subsec. (h). Pub. L. 91–452 struck out subsec. (h) which related to the immunity from prosecution of any individual compelled to testify or produce evidence, documentary or otherwise, after claiming his privilege against self-incrimination.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–452 effective on sixtieth day following Oct. 15, 1970, and not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91–452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

STUDY AND REPORT ON NATURAL GAS PIPELINE AND STORAGE FACILITIES IN NEW ENGLAND

Pub. L. 107–355, §26, Dec. 17, 2002, 116 Stat. 3012, provided that:

"(a) STUDY.—The Federal Energy Regulatory Commission, in consultation with the Department of Energy, shall conduct a study on the natural gas pipeline transmission network in New England and natural gas storage facilities associated with that network.

"(b) CONSIDERATION.—In carrying out the study, the Commission shall consider the ability of natural gas pipeline and storage facilities in New England to meet current and projected demand by gas-fired power generation plants and other consumers.

"(c) REPORT.—Not later than 1 year after the date of enactment of this Act [Dec. 17, 2002], the Federal Energy Regulatory Commission shall prepare and submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives a report containing the results of the study conducted under subsection (a), including recommendations for addressing potential natural gas transmission and storage capacity problems in New England."

§717n. Process coordination; hearings; rules of procedure

(a) Definition

In this section, the term "Federal authorization"—

(1) means any authorization required under Federal law with respect to an application for authorization under section 717b of this title or a certificate of public convenience and necessity under section 717f of this title; and

(2) includes any permits, special use authorizations, certifications, opinions, or other approvals as may be required under Federal law with respect to an application for authorization under section 717b of this title or a certificate of public convenience and necessity under section 717f of this title.

(b) Designation as lead agency

(1) In general

The Commission shall act as the lead agency for the purposes of coordinating all applicable Federal authorizations and for the purposes of complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) Other agencies

Each Federal and State agency considering an aspect of an application for Federal authorization shall cooperate with the Commission and comply with the deadlines established by the Commission.

(c) Schedule

(1) Commission authority to set schedule

The Commission shall establish a schedule for all Federal authorizations. In establishing the schedule, the Commission shall—

(A) ensure expeditious completion of all such proceedings; and

(B) comply with applicable schedules established by Federal law.

(2) Failure to meet schedule

If a Federal or State administrative agency does not complete a proceeding for an approval that is required for a Federal authorization in accordance with the schedule established by the Commission, the applicant may pursue remedies under section 717r(d) of this title.

(d) Consolidated record

The Commission shall, with the cooperation of Federal and State administrative agencies and officials, maintain a complete consolidated record of all decisions made or actions taken by the Commission or by a Federal administrative agency or officer (or State administrative agency or officer acting under delegated Federal authority) with respect to any Federal authorization. Such record shall be the record for—

(1) appeals or reviews under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et

seq.), provided that the record may be supplemented as expressly provided pursuant to section 319 of that Act [16 U.S.C. 1465]; or

(2) judicial review under section 717r(d) of this title of decisions made or actions taken of Federal and State administrative agencies and officials, provided that, if the Court determines that the record does not contain sufficient information, the Court may remand the proceeding to the Commission for further development of the consolidated record.

(e) Hearings; parties

Hearings under this chapter may be held before the Commission, any member or members thereof, or any representative of the Commission designated by it, and appropriate records thereof shall be kept. In any proceeding before it, the Commission in accordance with such rules and regulations as it may prescribe, may admit as a party any interested State, State commission, municipality or any representative of interested consumers or security holders, or any competitor of a party to such proceeding, or any other person whose participation in the proceeding may be in the public interest.

(f) Procedure

All hearings, investigations, and proceedings under this chapter shall be governed by rules of practice and procedure to be adopted by the Commission, and in the conduct thereof the technical rules of evidence need not be applied. No informality in any hearing, investigation, or proceeding or in the manner of taking testimony shall invalidate any order, decision, rule, or regulation issued under the authority of this chapter.

(June 21, 1938, ch. 556, §15, 52 Stat. 829; Pub. L. 109–58, title III, §313(a), Aug. 8, 2005, 119 Stat. 688.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (b)(1), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The Coastal Zone Management Act of 1972, referred to in subsec. (d)(1), is title III of Pub. L. 89–454, as added by Pub. L. 92–583, Oct. 27, 1972, 86 Stat. 1280, as amended, which is classified generally to chapter 33 (§1451 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1451 of Title 16 and Tables.

AMENDMENTS

2005—Pub. L. 109–58 substituted "Process coordination; hearings; rules of procedure" for "Hearings; rules of procedure" in section catchline, added subsecs. (a) to (d), and redesignated former subsecs. (a) and (b) as (e) and (f), respectively.

§717*o*. Administrative powers of Commission; rules, regulations, and orders

The Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this chapter. Among other things, such rules and regulations may define accounting, technical, and trade terms used in this chapter; and may prescribe the form or forms of all statements, declarations, applications, and reports to be filed with the Commission, the information which they shall contain, and the time within which they shall be filed. Unless a different date is specified therein, rules and regulations of the Commission shall be effective thirty days after publication in the manner which the Commission shall prescribe. Orders of the Commission shall be effective on the date and in the manner which the Commission shall prescribe. For the purposes of its rules and regulations, the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters. All rules and regulations of the Commission shall be filed with its secretary and shall be kept open in convenient form for public inspection and examination during reasonable business hours.

(June 21, 1938, ch. 556, §16, 52 Stat. 830.)

§717p. Joint boards

(a) Reference of matters to joint boards; composition and power

The Commission may refer any matter arising in the administration of this chapter to a board to be composed of a member or members, as determined by the Commission, from the State or each of the States affected or to be affected by such matter. Any such board shall be vested with the same power and be subject to the same duties and liabilities as in the case of a member of the Commission when designated by the Commission to hold any hearings. The action of such board shall have such force and effect and its proceedings shall be conducted in such manner as the Commission shall by regulations prescribe. The Board shall be appointed by the Commission from persons nominated by the State commission of each State affected, or by the Governor of such State if there is no State commission. Each State affected shall be entitled to the same number of representatives on the board unless the nominating power of such State waives such right. The Commission shall have discretion to reject the nominee from any State, but shall thereupon invite a new nomination from that State. The members of a board shall receive such allowances for expenses as the Commission shall provide. The Commission may, when in its discretion sufficient reason exists therefor, revoke any reference to such a board.

(b) Conference with State commissions regarding rate structure, costs, etc.

The Commission may confer with any State commission regarding rate structures, costs, accounts, charges, practices, classifications, and regulations of natural-gas companies; and the Commission is authorized, under such rules and regulations as it shall prescribe, to hold joint hearings with any State commission in connection with any matter with respect to which the Commission is authorized to act. The Commission is authorized in the administration of this chapter to avail itself of such cooperation, services, records, and facilities as may be afforded by any State commission.

(c) Information and reports available to State commissions

The Commission shall make available to the several State commissions such information and reports as may be of assistance in State regulation of natural-gas companies. Whenever the Commission can do so without prejudice to the efficient and proper conduct of its affairs, it may, upon request from a State commission, make available to such State commission as witnesses any of its trained rate, valuation, or other experts, subject to reimbursement of the compensation and traveling expenses of such witnesses. All sums collected hereunder shall be credited to the appropriation from which the amounts were expended in carrying out the provisions of this subsection.

(June 21, 1938, ch. 556, §17, 52 Stat. 830.)

§717q. Appointment of officers and employees

The Commission is authorized to appoint and fix the compensation of such officers, attorneys, examiners, and experts as may be necessary for carrying out its functions under this chapter; and the Commission may, subject to civil-service laws, appoint such other officers and employees as are necessary for carrying out such functions and fix their salaries in accordance with chapter 51 and subchapter III of chapter 53 of title 5.

(June 21, 1938, ch. 556, §18, 52 Stat. 831; Oct. 28, 1949, ch. 782, title XI, §1106(a), 63 Stat. 972.)

CODIFICATION

Provisions that authorized the Commission to appoint and fix the compensation of such officers, attorneys, examiners, and experts as may be necessary for carrying out its functions under this chapter "without regard to the provisions of other laws applicable to the employment and compensation of officers and employees of the United States" are omitted as obsolete and superseded.

As to the compensation of such personnel, sections 1202 and 1204 of the Classification Act of 1949, 63

Stat. 972, 973, repealed the Classification Act of 1923 and all other laws or parts of laws inconsistent with the 1949 Act. The Classification Act of 1949 was repealed by Pub. L. 89–554, Sept. 6, 1966, §8(a), 80 Stat. 632, and reenacted as chapter 51 and subchapter III of chapter 53 of Title 5, Government Organization and Employees. Section 5102 of Title 5 contains the applicability provisions of the 1949 Act, and section 5103 of Title 5 authorizes the Office of Personnel Management to determine the applicability to specific positions and employees.

Such appointments are now subject to the civil service laws unless specifically excepted by those laws or by laws enacted subsequent to Executive Order 8743, Apr. 23, 1941, issued by the President pursuant to the Act of Nov. 26, 1940, ch. 919, title I, §1, 54 Stat. 1211, which covered most excepted positions into the classified (competitive) civil service. The Order is set out as a note under section 3301 of Title 5.

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

AMENDMENTS

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

REPEALS

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

§717r. Rehearing and review

(a) Application for rehearing; time

Any person, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this chapter to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon such application the Commission shall have power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied. No proceeding to review any order of the Commission shall be brought by any person unless such person shall have made application to the Commission for a rehearing thereon. Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b) of this section, the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.

(b) Review of Commission order

Any party to a proceeding under this chapter aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were

reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which is supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(c) Stay of Commission order

The filing of an application for rehearing under subsection (a) of this section shall not, unless specifically ordered by the Commission, operate as a stay of the Commission's order. The commencement of proceedings under subsection (b) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(d) Judicial review

(1) In general

The United States Court of Appeals for the circuit in which a facility subject to section 717b of this title or section 717f of this title is proposed to be constructed, expanded, or operated shall have original and exclusive jurisdiction over any civil action for the review of an order or action of a Federal agency (other than the Commission) or State administrative agency acting pursuant to Federal law to issue, condition, or deny any permit, license, concurrence, or approval (hereinafter collectively referred to as "permit") required under Federal law, other than the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.).

(2) Agency delay

The United States Court of Appeals for the District of Columbia shall have original and exclusive jurisdiction over any civil action for the review of an alleged failure to act by a Federal agency (other than the Commission) or State administrative agency acting pursuant to Federal law to issue, condition, or deny any permit required under Federal law, other than the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), for a facility subject to section 717b of this title or section 717f of this title. The failure of an agency to take action on a permit required under Federal law, other than the Coastal Zone Management Act of 1972, in accordance with the Commission schedule established pursuant to section 717n(c) of this title shall be considered inconsistent with Federal law for the purposes of paragraph (3).

(3) Court action

If the Court finds that such order or action is inconsistent with the Federal law governing such permit and would prevent the construction, expansion, or operation of the facility subject to section 717b of this title or section 717f of this title, the Court shall remand the proceeding to the agency to take appropriate action consistent with the order of the Court. If the Court remands the order or action to the Federal or State agency, the Court shall set a reasonable schedule and deadline for the agency to act on remand.

(4) Commission action

For any action described in this subsection, the Commission shall file with the Court the consolidated record of such order or action to which the appeal hereunder relates.

(5) Expedited review

The Court shall set any action brought under this subsection for expedited consideration.

(June 21, 1938, ch. 556, §19, 52 Stat. 831; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Pub. L. 85–791, §19, Aug. 28, 1958, 72 Stat. 947; Pub. L. 109–58, title III, §313(b), Aug. 8, 2005, 119 Stat. 689.)

REFERENCES IN TEXT

The Coastal Zone Management Act of 1972, referred to in subsec. (d)(1), (2), is title III of Pub. L. 89–454, as added by Pub. L. 92–583, Oct. 27, 1972, 86 Stat. 1280, as amended, which is classified generally to chapter 33 (§1451 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1451 of Title 16 and Tables.

CODIFICATION

In subsec. (b), "section 1254 of title 28" substituted for "sections 239 and 240 of the Judicial Code, as amended [28 U.S.C. 346, 347]" on authority of act June 25, 1948, ch. 646, 62 Stat. 869, the first section of which enacted Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

2005—Subsec. (d). Pub. L. 109–58 added subsec. (d).

1958—Subsec. (a). Pub. L. 85–791, §19(a), inserted sentence providing that until record in a proceeding has been filed in a court of appeals, Commission may modify or set aside any finding or order issued by it.

Subsec. (b). Pub. L. 85–791, §19(b), in second sentence, substituted "transmitted by the clerk of the court to" for "served upon", substituted "file with the court" for "certify and file with the court a transcript of", and inserted "as provided in section 2112 of title 28", and, in third sentence, substituted "petition" for "transcript", and "jurisdiction, which upon the filing of the record with it shall be exclusive" for "exclusive jurisdiction".

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals" wherever appearing.

§717s. Enforcement of chapter

(a) Action in district court for injunction

Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this chapter, or of any rule, regulation, or order thereunder, it may in its discretion bring an action in the proper district court of the United States, or the United States courts of any Territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices and to enforce compliance with this chapter or any rule, regulation, or order thereunder, and upon a proper showing a permanent or temporary injunction or decree or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices or concerning apparent violations of the Federal antitrust laws to the Attorney General, who, in his discretion, may institute the necessary criminal proceedings.

(b) Mandamus

Upon application of the Commission the district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of this chapter or any rule, regulation, or order of the Commission thereunder.

(c) Employment of attorneys by Commission

The Commission may employ such attorneys as it finds necessary for proper legal aid and service of the Commission or its members in the conduct of their work, or for proper representation of the public interest in investigations made by it, or cases or proceedings pending before it, whether at the Commission's own instance or upon complaint, or to appear for or represent the Commission in any case in court; and the expenses of such employment shall be paid out of the appropriation for the Commission.

(d) Violation of market manipulation provisions

In any proceedings under subsection (a) of this section, the court may prohibit, conditionally or unconditionally, and permanently or for such period of time as the court determines, any individual who is engaged or has engaged in practices constituting a violation of section 717c–1 of this title

(including related rules and regulations) from—

(1) acting as an officer or director of a natural gas company; or

(2) engaging in the business of—

(A) the purchasing or selling of natural gas; or

(B) the purchasing or selling of transmission services subject to the jurisdiction of the Commission.

(June 21, 1938, ch. 556, §20, 52 Stat. 832; June 25, 1948, ch. 646, §1, 62 Stat. 875, 895; Pub. L. 109–58, title III, §318, Aug. 8, 2005, 119 Stat. 693.)

CODIFICATION

The words "the District Court of the United States for the District of Columbia" in subsec. (a) following "district court of the United States" and in subsec. (b) following "district courts of the United States" omitted as superfluous in view of section 132(a) of Title 28, Judiciary and Judicial Procedure, which states that "There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district", and section 88 of title 28 which states that "The District of Columbia constitutes one judicial district".

AMENDMENTS

2005—Subsec. (d). Pub. L. 109–58 added subsec. (d).

§717t. General penalties

(a) Any person who willfully and knowingly does or causes or suffers to be done any act, matter, or thing in this chapter prohibited or declared to be unlawful, or who willfully and knowingly omits or fails to do any act, matter, or thing in this chapter required to be done, or willfully and knowingly causes or suffers such omission or failure, shall, upon conviction thereof, be punished by a fine of not more than $1,000,000 or by imprisonment for not more than 5 years, or both.

(b) Any person who willfully and knowingly violates any rule, regulation, restriction, condition, or order made or imposed by the Commission under authority of this chapter, shall, in addition to any other penalties provided by law, be punished upon conviction thereof by a fine of not exceeding $50,000 for each and every day during which such offense occurs.

(June 21, 1938, ch. 556, §21, 52 Stat. 833; Pub. L. 109–58, title III, §314(a)(1), Aug. 8, 2005, 119 Stat. 690.)

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–58, §314(a)(1)(A), substituted "$1,000,000" for "$5,000" and "5 years" for "two years".

Subsec. (b). Pub. L. 109–58, §314(a)(1)(B), substituted "$50,000" for "$500".

§717t–1. Civil penalty authority

(a) In general

Any person that violates this chapter, or any rule, regulation, restriction, condition, or order made or imposed by the Commission under authority of this chapter, shall be subject to a civil penalty of not more than $1,000,000 per day per violation for as long as the violation continues.

(b) Notice

The penalty shall be assessed by the Commission after notice and opportunity for public hearing.

(c) Amount

In determining the amount of a proposed penalty, the Commission shall take into consideration the nature and seriousness of the violation and the efforts to remedy the violation.

(June 21, 1938, ch. 556, §22, as added Pub. L. 109–58, title III, §314(b)(1)(B), Aug. 8, 2005, 119 Stat. 691.)

PRIOR PROVISIONS

A prior section 22 of act June 21, 1938, was renumbered section 24 and is classified to section 717u of this title.

§717t–2. Natural gas market transparency rules

(a) In general

(1) The Commission is directed to facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce, having due regard for the public interest, the integrity of those markets, fair competition, and the protection of consumers.

(2) The Commission may prescribe such rules as the Commission determines necessary and appropriate to carry out the purposes of this section. The rules shall provide for the dissemination, on a timely basis, of information about the availability and prices of natural gas sold at wholesale and in interstate commerce to the Commission, State commissions, buyers and sellers of wholesale natural gas, and the public.

(3) The Commission may—

(A) obtain the information described in paragraph (2) from any market participant; and

(B) rely on entities other than the Commission to receive and make public the information, subject to the disclosure rules in subsection (b) of this section.

(4) In carrying out this section, the Commission shall consider the degree of price transparency provided by existing price publishers and providers of trade processing services, and shall rely on such publishers and services to the maximum extent possible. The Commission may establish an electronic information system if it determines that existing price publications are not adequately providing price discovery or market transparency.

(b) Information exempted from disclosure

(1) Rules described in subsection (a)(2) of this section, if adopted, shall exempt from disclosure information the Commission determines would, if disclosed, be detrimental to the operation of an effective market or jeopardize system security.

(2) In determining the information to be made available under this section and the time to make the information available, the Commission shall seek to ensure that consumers and competitive markets are protected from the adverse effects of potential collusion or other anticompetitive behaviors that can be facilitated by untimely public disclosure of transaction-specific information.

(c) Information sharing

(1) Within 180 days of August 8, 2005, the Commission shall conclude a memorandum of understanding with the Commodity Futures Trading Commission relating to information sharing, which shall include, among other things, provisions ensuring that information requests to markets within the respective jurisdiction of each agency are properly coordinated to minimize duplicative information requests, and provisions regarding the treatment of proprietary trading information.

(2) Nothing in this section may be construed to limit or affect the exclusive jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.).

(d) Compliance with requirements

(1) The Commission shall not condition access to interstate pipeline transportation on the reporting requirements of this section.

(2) The Commission shall not require natural gas producers, processors, or users who have a de minimis market presence to comply with the reporting requirements of this section.

(e) Retroactive effect

(1) Except as provided in paragraph (2), no person shall be subject to any civil penalty under this section with respect to any violation occurring more than 3 years before the date on which the person is provided notice of the proposed penalty under section 717t–1(b) of this title.

(2) Paragraph (1) shall not apply in any case in which the Commission finds that a seller that has entered into a contract for the transportation or sale of natural gas subject to the jurisdiction of the Commission has engaged in fraudulent market manipulation activities materially affecting the contract in violation of section 717c–1 of this title.

(June 21, 1938, ch. 556, §23, as added Pub. L. 109–58, title III, §316, Aug. 8, 2005, 119 Stat. 691.)

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in subsec. (c)(2), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

PRIOR PROVISIONS

A prior section 23 of act June 21, 1938, was renumbered section 25 and is classified to section 717v of this title.

§717u. Jurisdiction of offenses; enforcement of liabilities and duties

The District Courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have exclusive jurisdiction of violations of this chapter or the rules, regulations, and orders thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this chapter or any rule, regulation, or order thereunder. Any criminal proceeding shall be brought in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by, or to enjoin any violation of, this chapter or any rule, regulation, or order thereunder may be brought in any such district or in the district wherein the defendant is an inhabitant, and process in such cases may be served wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 1254, 1291, and 1292 of title 28. No costs shall be assessed against the Commission in any judicial proceeding by or against the Commission under this chapter.

(June 21, 1938, ch. 556, §24, formerly §22, 52 Stat. 833; June 25, 1948, ch. 646, §1, 62 Stat. 875, 895; renumbered §24, Pub. L. 109–58, title III, §314(b)(1)(A), Aug. 8, 2005, 119 Stat. 690.)

CODIFICATION

The words "the District Court of the United States for the District of Columbia" following "The District Courts of the United States" omitted as superfluous in view of section 132(a) of Title 28, Judiciary and Judicial Procedure, which states that "There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district" and section 88 of title 28 which states that "The District of Columbia constitutes one judicial district".

"Sections 1254, 1291, and 1292 of title 28" substituted in text for "sections 128 and 240 of the Judicial Code, as amended [28 U.S.C. 225 and 347]" on authority of act June 25, 1948, ch. 646, 62 Stat. 869, the first section of which enacted Title 28.

PRIOR PROVISIONS

A prior section 24 of act June 21, 1938, was renumbered section 26 and is classified to section 717w of this title.

§717v. Separability

If any provision of this chapter, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of the chapter, and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

(June 21, 1938, ch. 556, §25, formerly §23, 52 Stat. 833; renumbered §25, Pub. L. 109–58, title III, §314(b)(1)(A), Aug. 8, 2005, 119 Stat. 690.)

§717w. Short title

This chapter may be cited as the "Natural Gas Act."

(June 21, 1938, ch. 556, §26, formerly §24, 52 Stat. 833; renumbered §26, Pub. L. 109–58, title III, §314(b)(1)(A), Aug. 8, 2005, 119 Stat. 690.)

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–474, §1, Oct. 6, 1988, 102 Stat. 2302, provided that: "This Act [amending section 717f of this title and enacting provisions set out as a note under section 717f of this title] may be cited as the 'Uniform Regulatory Jurisdiction Act of 1988'."

§717x. Conserved natural gas

(a) Determination of entitlement

(1) For purposes of determining the natural gas entitlement of any local distribution company under any curtailment plan, if the Commission revises any base period established under such plan, the volumes of natural gas which such local distribution company demonstrates—

(A) were sold by the local distribution company, for a priority use immediately before the implementation of conservation measures, and

(B) were conserved by reason of the implementation of such conservation measures,

shall be treated by the Commission following such revision as continuing to be used for the priority use referred to in subparagraph (A).

(2) The Commission shall, by rule, prescribe methods for measurement of volumes of natural gas to which subparagraphs (A) and (B) of paragraph (1) apply.

(b) Conditions, limitations, etc.

Subsection (a) of this section shall not limit or otherwise affect any provision of any curtailment plan, or any other provision of law or regulation, under which natural gas may be diverted or allocated to respond to emergency situations or to protect public health, safety, and welfare.

(c) Definitions

For purposes of this section—

(1) The term "conservation measures" means such energy conservation measures, as determined by the Commission, as were implemented after the base period established under the curtailment plan in effect on November 9, 1978.

(2) The term "local distribution company" means any person engaged in the transportation, or local distribution, of natural gas and the sale of natural gas for ultimate consumption.

(3) The term "curtailment plan" means a plan (including any modification of such plan required by the Natural Gas Policy Act of 1978 [15 U.S.C. 3301 et seq.]) in effect under the Natural Gas Act [15 U.S.C. 717 et seq.] which provides for recognizing and implementing priorities of service during periods of curtailed deliveries.

(Pub. L. 95–617, title VI, §605, Nov. 9, 1978, 92 Stat. 3167.)

REFERENCES IN TEXT

The Natural Gas Policy Act of 1978, referred to in subsec. (c)(3), is Pub. L. 95–621, Nov. 9, 1978, 92 Stat. 3350, as amended, which is classified generally to chapter 60 (§3301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3301 of this title and Tables.

The Natural Gas Act, referred to in subsec. (c)(3), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to this chapter (§717 et seq.). For complete classification of this Act to the Code, see section 717w of this title and Tables.

CODIFICATION

Section was enacted as part of the Public Utility Regulatory Policies Act of 1978, and not as part of the

Natural Gas Act which comprises this chapter.

DEFINITIONS

For definitions of terms used in this section, see section 2602 of Title 16, Conservation.

§717y. Voluntary conversion of natural gas users to heavy fuel oil

(a) Transfer of contractual interests

(1) In order to facilitate voluntary conversion of facilities from the use of natural gas to the use of heavy petroleum fuel oil, the Commission shall, by rule, provide a procedure for the approval by the Commission of any transfer to any person described in paragraph 2(B)(i), (ii), or (iii) of contractual interests involving the receipt of natural gas described in paragraph 2(A).

(2)(A) The rule required under paragraph (1) shall apply to—

(i) natural gas—

(I) received by the user pursuant to a contract entered into before September 1, 1977, not including any renewal or extension thereof entered into or on or after such date other than any such extension or renewal pursuant to the exercise by such user of an option to extend or renew such contract;

(II) other than natural gas the sale for resale or the transportation of which was subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act [15 U.S.C. 717 et seq.] as of September 1, 1977;

(III) which was used as a fuel in any facility in existence on September 1, 1977.

(ii) natural gas subject to a prohibition order issued under section 717z of this title.

(B) The rule required under paragraph (1) shall permit the transfer of contractual interests—

(i) to any interstate pipeline;

(ii) to any local distribution company served by an interstate pipeline; and

(iii) to any person served by an interstate pipeline for a high priority use by such person.

(3) The rule required under paragraph (1) shall provide that any transfer of contractual interests pursuant to such rule shall be under such terms and conditions as the Commission may prescribe. Such rule shall include a requirement for refund of any consideration, received by the person transferring contractual interests pursuant to such rule, to the extent such consideration exceeds the amount by which the costs actually incurred, during the remainder of the period of the contract with respect to which such contractual interests are transferred, in direct association with the use of heavy petroleum fuel oil as a fuel in the applicable facility exceeds the price under such contract for natural gas, subject to such contract, delivered during such period.

(4) In prescribing the rule required under paragraph (1), and in determining whether to approve any transfer of contractual interests, the Commission shall consider whether such transfer of contractual interests is likely to increase demand for imported refined petroleum products.

(b) Commission approval

(1) No transfer of contractual interests authorized by the rule required under subsection (a)(1) of this section may take effect unless the Commission issues a certificate of public convenience and necessity for such transfer if such natural gas is to be resold by the person to whom such contractual interests are to be transferred. Such certificate shall be issued by the Commission in accordance with the requirements of this subsection and those of section 7 of the Natural Gas Act [15 U.S.C. 717f], and the provisions of such Act [15 U.S.C. 717 et seq.] applicable to the determination of satisfaction of the public convenience and necessity requirements of such section.

(2) The rule required under subsection (a)(1) of this section shall set forth guidelines for the application on a regional or national basis (as the Commission determines appropriate) of the criteria specified in subsection (e)(2) and (3) of this section to determine the maximum consideration

permitted as just compensation under this section.

(c) Restrictions on transfers unenforceable

Any provision of any contract, which provision prohibits any transfer of any contractual interests thereunder, or any commingling or transportation of natural gas subject to such contract with natural gas the sale for resale or transportation of which is subject to the jurisdiction of the Commission under the Natural Gas Act [15 U.S.C. 717 et seq.], or terminates such contract on the basis of any such transfer, commingling, or transportation, shall be unenforceable in any court of the United States and in any court of any State if applied with respect to any transfer approved under the rule required under subsection (a)(1) of this section.

(d) Contractual obligations unaffected

The person acquiring contractual interests transferred pursuant to the rule required under subsection (a)(1) of this section shall assume the contractual obligations which the person transferring such contractual interests has under such contract. This section shall not relieve the person transferring such contractual interests from any contractual obligation of such person under such contract if such obligation is not performed by the person acquiring such contractual interests.

(e) Definitions

For purposes of this section—

(1) The term "natural gas" has the same meaning as provided by section 2(5) of the Natural Gas Act [15 U.S.C. 717a(5)].

(2) The term "just compensation", when used with respect to any contractual interests pursuant to the rule required under subsection (a)(1) of this section, means the maximum amount of, or method of determining, consideration which does not exceed the amount by which—

(A) the reasonable costs (not including capital costs) incurred, during the remainder of the period of the contract with respect to which contractual interests are transferred pursuant to the rule required under subsection (a)(1) of this section, in direct association with the use of heavy petroleum fuel oil as a fuel in the applicable facility, exceeds

(B) the price under such contract for natural gas, subject to such contract, delivered during such period.

For purposes of subparagraph (A), the reasonable costs directly associated with the use of heavy petroleum fuel oil as a fuel shall include an allowance for the amortization, over the remaining useful life, of the undepreciated value of depreciable assets located on the premises containing such facility, which assets were directly associated with the use of natural gas and are not usable in connection with the use of such heavy petroleum fuel oil.

(3) The term "just compensation", when used with respect to any intrastate pipeline which would have transported or distributed natural gas with respect to which contractual interests are transferred pursuant to the rule required under subsection (a)(1) of this section, means an amount equal to any loss of revenue, during the remaining period of the contract with respect to which contractual interests are transferred pursuant to the rule required under subsection (a)(1) of this section, to the extent such loss—

(A) is directly incurred by reason of the discontinuation of the transportation or distribution of natural gas resulting from the transfer of contractual interests pursuant to the rule required under subsection (a)(1) of this section; and

(B) is not offset by—

(i) a reduction in expenses associated with such discontinuation; and

(ii) revenues derived from other transportation or distribution which would not have occurred if such contractual interests had not been transferred.

(4) The term "contractual interests" means the right to receive natural gas under contract as affected by an applicable curtailment plan filed with the Commission or the appropriate State regulatory authority.

(5) The term "interstate pipeline" means any person engaged in natural gas transportation subject to the jurisdiction of the Commission under the Natural Gas Act [15 U.S.C. 717 et seq.].

(6) The term "high-priority use" means any use of natural gas (other than its use for the generation of steam for industrial purposes or electricity) identified by the Commission as a high priority use for which the Commission determines a substitute fuel is not reasonably available.

(7) The term "heavy petroleum fuel oil" means number 4, 5, or 6 fuel oil which is domestically refined.

(8) The term "local distribution company" means any person, other than any intrastate pipeline or any interstate pipeline, engaged in the transportation, or local distribution, of natural gas and the sale of natural gas for ultimate consumption.

(9) The term "intrastate pipeline" means any person engaged in natural gas transportation (not including gathering) which is not subject to the jurisdiction of the Commission under the Natural Gas Act.

(10) The term "facility" means any electric powerplant, or major fuel burning installation, as such terms are defined in the Powerplant and Industrial Fuel Use Act of 1978 [42 U.S.C. 8301 et seq.].

(11) The term "curtailment plan" means a plan (including any modification of such plan required by the Natural Gas Policy Act of 1978 [15 U.S.C. 3301 et seq.]), in effect under the Natural Gas Act or State law, which provides for recognizing and implementing priorities of service during periods of curtailed deliveries by any local distribution company, intrastate pipeline, or interstate pipeline.

(12) The term "interstate commerce" has the same meaning as such term has under the Natural Gas Act.

(f) Coordination with this chapter

(1) Consideration in any transfer of contractual interests pursuant to the rule required under subsection (a)(1) of this section shall be deemed just and reasonable for purposes of sections 4 and 5 of the Natural Gas Act [15 U.S.C. 717c, 717d] if such consideration does not exceed just compensation.

(2) No person shall be subject to the jurisdiction of the Commission under the Natural Gas Act [15 U.S.C. 717 et seq.] as a natural gas-company (within the meaning of such Act) or to regulation as a common carrier under any provision of Federal or State law solely by reason of making any sale, or engaging in any transportation, of natural gas with respect to which contractual interests are transferred pursuant to the rule required under subsection (a)(1) of this section.

(3) Nothing in this section shall exempt from the jurisdiction of the Commission under the Natural Gas Act [15 U.S.C. 717 et seq.] any transportation in interstate commerce of natural gas, any sale in interstate commerce for resale of natural gas, or any person engaged in such transportation or such sale to the extent such transportation, sale, or person is subject to the jurisdiction of the Commission under such Act without regard to the transfer of contractual interests pursuant to the rule required under subsection (a)(1) of this section.

(4) Nothing in this section shall exempt any person from any obligation to obtain a certificate of public convenience and necessity for the sale in interstate commerce for resale or the transportation in interstate commerce of natural gas with respect to which contractual interests are transferred pursuant to the rule required under subsection (a)(1) of this section.

(g) Volume limitation

No supplier of natural gas under any contract, with respect to which contractual interests have been transferred pursuant to the rule required under subsection (a)(1) of this section, shall be required to supply natural gas during any relevant period in volume amounts which exceed the lesser of—

(1) the volume determined by reference to the maximum delivery obligations specified in such contract;

(2) the volume which such supplier would have been required to supply, under the curtailment plan in effect for such supplier, to the person, who transferred contractual interests pursuant to the

rule required under subsection (a)(1) of this section, if no such transfer had occurred; and

(3) the volume actually delivered or for which payment would have been made pursuant to such contract during the 12-calendar-month period ending immediately before such transfer of contractual interests.

(Pub. L. 95–617, title VI, §606, Nov. 9, 1978, 92 Stat. 3167.)

REFERENCES IN TEXT

The Natural Gas Act, referred to in subsecs. (a)(2)(A)(i)(II), (b)(1), (c), (e)(5), (9), (11), (12), (f)(2), (3), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to this chapter (§717 et seq.). For complete classification of this Act to the Code, see section 717w of this title and Tables.

The Powerplant and Industrial Fuel Use Act of 1978, referred to in subsec. (e)(10), is Pub. L. 95–620, Nov. 9, 1978, 92 Stat. 3291, as amended, which is classified principally to chapter 92 (§8301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of Title 42 and Tables.

The Natural Gas Policy Act of 1978, referred to in subsec. (e)(11), is Pub. L. 95–621, Nov. 9, 1978, 92 Stat. 3350, as amended, which is classified generally to chapter 60 (§3301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3301 of this title and Tables.

CODIFICATION

Section was enacted as part of the Public Utility Regulatory Policies Act of 1978, and not as part of the Natural Gas Act which comprises this chapter.

DEFINITIONS

For definitions of terms used in this section, see section 2602 of Title 16, Conservation.

§717z. Emergency conversion of utilities and other facilities

(a) Presidential declaration

The President may declare a natural gas supply emergency (or extend a previously declared emergency) if he finds that—

(1) a severe natural gas shortage, endangering the supply of natural gas for high-priority uses, exists or is imminent in the United States or in any region thereof; and

(2) the exercise of authorities under this section is reasonably necessary, having exhausted other alternatives (not including section 3363 of this title) to the maximum extent practicable, to assist in meeting natural gas requirements for such high-priority uses.

(b) Limitation

(1) Any declaration of a natural gas supply emergency (or extension thereof) under subsection (a) of this section, shall terminate at the earlier of—

(A) the date on which the President finds that any shortage described in subsection (a) of this section does not exist or is not imminent; or

(B) 120 days after the date of such declaration of emergency (or extension thereof).

(2) Nothing in this subsection shall prohibit the President from extending, under subsection (a) of this section, any emergency (or extension thereof) previously declared under subsection (a) of this section, upon the expiration of such declaration of emergency (or extension thereof) under paragraph (1)(B).

(c) Prohibitions

During a natural gas emergency declared under this section, the President may, by order, prohibit the burning of natural gas by any electric powerplant or major fuel-burning installation if the President determines that—

(1) such powerplant or installation had on September 1, 1977 (or at any time thereafter) the capability to burn petroleum products without damage to its facilities or equipment and without interference with operational requirements;

(2) significant quantities of natural gas which would otherwise be burned by such powerplant or installation could be made available before the termination of such emergency to any person served by an interstate pipeline for use by such person in a high-priority use; and

(3) petroleum products will be available for use by such powerplant or installation throughout the period the order is in effect.

(d) Limitations

The President may specify in any order issued under this section the periods of time during which such order will be in effect and the quantity (or rate of use) of natural gas that may be burned by an electric powerplant or major fuel-burning installation during such period, including the burning of natural gas by an electric powerplant to meet peak load requirements. No such order may continue in effect after the termination or expiration of such natural gas supply emergency.

(e) Exemption for secondary uses

The President shall exempt from any order issued under this section the burning of natural gas for the necessary processes of ignition, startup, testing, and flame stabilization by an electric powerplant or major fuel-burning installation.

(f) Exemption for air-quality emergencies

The President shall exempt any electric powerplant or major fuel-burning installation in whole or in part, from any order issued under this section for such period and to such extent as the President determines necessary to alleviate any imminent and substantial endangerment to the health of persons within the meaning of section 7603 of title 42.

(g) Limitation on injunctive relief

(1) Except as provided in paragraph (2), no court shall have jurisdiction to grant any injunctive relief to stay or defer the implementation of any order issued under this section unless such relief is in connection with a final judgment entered with respect to such order.

(2)(A) On the petition of any person aggrieved by an order issued under this section, the United States District Court for the District of Columbia may, after an opportunity for a hearing before such court and on an appropriate showing, issue a preliminary injunction temporarily enjoining, in whole or in part, the implementation of such order.

(B) For purposes of this paragraph, subpenas for witnesses who are required to attend the District Court for the District of Columbia may be served in any judicial district of the United States, except that no writ of subpena under the authority of this section shall issue for witnesses outside of the District of Columbia at a greater distance than 100 miles from the place of holding court unless the permission of the District Court for the District of Columbia has been granted after proper application and cause shown.

(h) Definitions

For purposes of this section—

(1) The terms "electric powerplant", "powerplant", "major fuel-burning installation", and "installation" shall have the same meanings as such terms have under section 8302 of title 42.

(2) The term "petroleum products" means crude oil, or any product derived from crude oil other than propane.

(3) The term "high priority use" means any—

(A) use of natural gas in a residence;

(B) use of natural gas in a commercial establishment in amounts less than 50 Mcf on a peak day; or

(C) any use of natural gas the curtailment of which the President determines would endanger life, health, or maintenance of physical property.

(4) The term "Mcf", when used with respect to natural gas, means 1,000 cubic feet of natural gas measured at a pressure of 14.73 pounds per square inch (absolute) and a temperature of 60 degrees Fahrenheit.

(i) Use of general terms

In applying the provisions of this section in the case of natural gas subject to a prohibition order issued under this section, the term "petroleum products" (as defined in subsection (h)(2) of this section) shall be substituted for the term "heavy petroleum fuel oil" (as defined in section 717y(e)(7) of this title) if the person subject to any order under this section demonstrates to the Commission that the acquisition and use of heavy petroleum fuel oil is not technically or economically feasible.

(Pub. L. 95–617, title VI, §607, Nov. 9, 1978, 92 Stat. 3171.)

CODIFICATION

Section was enacted as part of the Public Utility Regulatory Policies Act of 1978, and not as part of the Natural Gas Act which comprises this chapter.

DELEGATION OF FUNCTIONS

Functions of President under this section, except for authority to declare, extend, and terminate a natural gas supply emergency pursuant to subsecs. (a) and (b) of this section, delegated to Secretary of Energy, see section 1–102 of Ex. Ord. No. 12235, Sept. 3, 1980, 45 F.R. 58803, set out as a note under section 3364 of this title.

DEFINITIONS

For definitions of terms used in this section, see section 2602 of Title 16, Conservation.

CHAPTER 15C—ALASKA NATURAL GAS TRANSPORTATION

Sec.

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§719. Congressional findings

The Congress finds and declares that—

(1) a natural gas supply shortage exists in the contiguous States of the United States;

(2) large reserves of natural gas in the State of Alaska could help significantly to alleviate this supply shortage;

(3) the expeditious construction of a viable natural gas transportation system for delivery of Alaska natural gas to United States markets is in the national interest; and

(4) the determinations whether to authorize a transportation system for delivery of Alaska natural gas to the contiguous States and, if so, which system to select, involve questions of the

utmost importance respecting national energy policy, international relations, national security, and economic and environmental impact, and therefore should appropriately be addressed by the Congress and the President in addition to those Federal officers and agencies assigned functions under law pertaining to the selection, construction, and initial operation of such a system.

(Pub. L. 94–586, §2, Oct. 22, 1976, 90 Stat. 2903.)

EXPIRATION DATE

Pub. L. 94–586, §20, Oct. 22, 1976, 90 Stat. 2916, provided that: "This Act [this chapter] shall terminate in the event that no decision of the President takes effect under section 8 of this Act [section 719f of this title], such termination to occur at the end of the last day on which a decision could be, but is not, approved under such section."

SHORT TITLE

Pub. L. 94–586, §1, Oct. 22, 1976, 90 Stat. 2903, provided that: "This Act [enacting this chapter and provisions set out as notes under this section and section 1651 of Title 43, Public Lands] may be cited as the 'Alaska Natural Gas Transportation Act of 1976'."

ANTITRUST STUDY

Pub. L. 94–586, §19, Oct. 22, 1976, 90 Stat. 2916, directed Attorney General of United States to conduct a thorough study of antitrust issues and problems relating to production and transportation of Alaska natural gas and, not later than six months after Oct. 22, 1976, to complete such study and submit to Congress a report containing his findings and recommendations with respect thereto.

§719a. Congressional statement of purpose

The purpose of this chapter is to provide the means for making a sound decision as to the selection of a transportation system for delivery of Alaska natural gas to the contiguous States for construction and initial operation by providing for the participation of the President and the Congress in the selection process, and, if such a system is approved under this chapter, to expedite its construction and initial operation by (1) limiting the jurisdiction of the courts to review the actions of Federal officers or agencies taken pursuant to the direction and authority of this chapter, and (2) permitting the limitation of administrative procedures and effecting the limitation of judicial procedures related to such actions. To accomplish this purpose it is the intent of the Congress to exercise its constitutional powers to the fullest extent in the authorizations and directions herein made, and particularly with respect to the limitation of judicial review of actions of Federal officers or agencies taken pursuant thereto.

(Pub. L. 94–586, §3, Oct. 22, 1976, 90 Stat. 2903.)

§719b. Definitions

As used in this chapter:

(1) the term "Alaska natural gas" means natural gas derived from the area of the State of Alaska generally known as the North Slope of Alaska, including the Continental Shelf thereof;

(2) the term "Commission" means the Federal Power Commission;

(3) the term "Secretary" means the Secretary of the Interior;

(4) the term "provision of law" means any provision of a Federal statute or rule, regulation, or order issued thereunder; and

(5) the term "approved transportation system" means the system for the transportation of Alaska natural gas designated by the President pursuant to section 719e(a) or 719f(b) of this title and approved by joint resolution of the Congress pursuant to section 719f of this title.

(Pub. L. 94–586, §4, Oct. 22, 1976, 90 Stat. 2904.)

TRANSFER OF FUNCTIONS

Federal Power Commission terminated and functions, personnel, property, funds, etc., transferred to

Secretary of Energy (except for certain functions transferred to Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a)(1), 7291, and 7293 of Title 42, The Public Health and Welfare.

§719c. Federal Power Commission reviews and reports

(a) Proceedings: suspension, vacation or removal of suspension; issuance of certificate of convenience and necessity

(1) Notwithstanding any provision of the Natural Gas Act or any other provision of law, the Commission shall suspend all proceedings pending before the Commission on October 22, 1976, relating to a system for the transportation of Alaska natural gas as soon as the Commission determines to be practicable after such date, and the Commission may refuse to act on any application, amendment thereto, or other requests for action under the Natural Gas Act relating to a system for the transportation of Alaska natural gas until such time as (A) a decision of the President designating such a system for approval takes effect pursuant to section 719f of this title, (B) no such decision takes effect pursuant to section 719f of this title, or (C) the President decides not to designate such a system for approval under section 719f of this title and so advises the Congress pursuant to section 719e of this title.

(2) In the event a decision of the President designating such a system takes effect pursuant to this chapter, the Commission shall forthwith vacate proceedings suspended under paragraph (1) and, pursuant to section 719g of this title and in accordance with the President's decision, issue a certificate of public convenience and necessity respecting such system.

(3) In the event such a decision of the President does not take effect pursuant to this chapter or the President decides not to designate such a system and so advises the Congress pursuant to section 719e of this title, the suspension provided for in paragraph (1) of this subsection shall be removed.

(b) Recommendation; submittal to President; rule for presentation of data, views, and arguments; Federal agency cooperation

(1) The Commission shall review all applications for the issuance of a certificate of public convenience and necessity relating to the transportation of Alaska natural gas pending on October 22, 1976, and any amendments thereto which are timely made, and after consideration of any alternative transportation system which the Commission determines to be reasonable, submit to the President not later than May 1, 1977, a recommendation concerning the selection of such a transportation system. Such recommendation may be in the form of a proposed certificate of public convenience and necessity, or in such other form as the Commission determines to be appropriate, or may recommend that no decision respecting the selection of such a transportation system be made at this time or pursuant to this chapter. Any recommendation that the President approve a particular transportation system shall (A) include a description of the nature and route of the system, (B) designate a person to construct and operate the system, which person shall be the applicant, if any, which filed for a certificate of public convenience and necessity to construct and operate such system, (C) if such recommendation is for an all-land pipeline transportation system, or a transportation system involving water transportation, include provision for new facilities to the extent necessary to assure direct pipeline delivery of Alaska natural gas contemporaneously to points both east and west of the Rocky Mountains in the lower continental United States.

(2) The Commission may, by rule, provide for the presentation of data, views, and arguments before the Commission or a delegate of the Commission pursuant to such procedures as the Commission determines to be appropriate to carry out its responsibilities under paragraph (1) of this subsection. Such a rule shall, to the extent determined by the Commission, apply, notwithstanding any provision of law that would otherwise have applied to the presentation of data, views, and arguments.

(3) The Commission may request such information and assistance from any Federal agency as the Commission determines to be necessary or appropriate to carry out its responsibilities under this chapter. Any Federal agency requested to submit information or provide assistance shall submit such information to the Commission at the earliest practicable time after receipt of a Commission request.

(c) Report; public availability; factors to be discussed

The Commission shall accompany any recommendation under subsection (b)(1) of this section with a report, which shall be available to the public, explaining the basis for such recommendation and including for each transportation system reviewed or considered a discussion of the following:

(1) for each year of the 20-year period which begins with the first year following October 22, 1976, the estimated—

(A) volumes of Alaska natural gas which would be available to each region of the United States directly, or indirectly by displacement or otherwise, and

(B) transportation costs and delivered prices of any such volumes of gas by region;

(2) the effects of each of the factors described in subparagraphs (A) and (B) of paragraph (1) on the projected natural gas supply and demand for each region of the United States and on the projected supplies of alternative fuels available by region to offset shortages of natural gas occurring in such region for each such year;

(3) the impact upon competition;

(4) the extent to which the system provides a means for the transportation to United States markets of natural resources or other commodities from sources in addition to the Prudhoe Bay Reserve;

(5) environmental impacts;

(6) safety and efficiency in design and operation and potential for interruption in deliveries of Alaska natural gas;

(7) construction schedules and possibilities for delay in such schedules or for delay occurring as a result of other factors;

(8) feasibility of financing;

(9) extent of reserves, both proven and probable and their deliverability by year for each year of the 20-year period which begins with the first year following October 22, 1976;

(10) the estimate of the total delivered cost to users of the natural gas to be transported by the system by year for each year of the 20-year period which begins with the first year following October 22, 1976;

(11) capability and cost of expanding the system to transport additional volumes of natural gas in excess of initial system capacity;

(12) an estimate of the capital and operating costs, including an analysis of the reliability of such estimates and the risk of cost overruns; and

(13) such other factors as the Commission determines to be appropriate.

(d) Recommendation not based upon Canadian pipeline system decision

The recommendation by the Commission pursuant to this section shall not be based upon the fact that the Government of Canada or agencies thereof have not, by then rendered a decision as to authorization of a pipeline system to transport Alaska natural gas through Canada.

(e) Transportation system: recommendation, submittal to President; environmental impact statement: submittal to President

If the Commission recommends the approval of a particular transportation system, it shall submit to the President with such recommendation (1) an identification of those facilities and operations which are proposed to be encompassed within the term "construction and initial operation" in order to define the scope of directions contained in section 719g of this title and (2) the terms and conditions permitted under the Natural Gas Act [15 U.S.C. 717 et seq.], which the Commission determines to be appropriate for inclusion in a certificate of public convenience and necessity to be issued respecting such system. The Commission shall submit to the President contemporaneously with its' report an environmental impact statement prepared respecting the recommended system, if any, and each environmental impact statement which may have been prepared respecting any other system reported on under this section.

(Pub. L. 94–586, §5, Oct. 22, 1976, 90 Stat. 2904.)

REFERENCES IN TEXT

The Natural Gas Act, referred to in subsecs. (a)(1) and (e), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§717 et seq.) of this title. For complete classification of this Act to the Code, see section 717w of this title and Tables.

TRANSFER OF FUNCTIONS

Enforcement functions authorized by, and supplemental enforcement authority created by this chapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(h)(1), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out under section 719e of this title. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of this title. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of this title.

Federal Power Commission terminated and functions, personnel, property, funds, etc., transferred to Secretary of Energy (except for certain functions transferred to Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a)(1), 7291, and 7293 of Title 42, The Public Health and Welfare.

§719d. Federal and State officer or agency and other interested persons' reports

(a) Federal officer or agency comments; submittal to President; public availability

Not later than July 1, 1977, any Federal officer or agency may submit written comments to the President with respect to the recommendation and report of the Commission and alternative methods for transportation of Alaska natural gas for delivery to the contiguous States. Such comments shall be made available to the public by the President when submitted to him, unless expressly exempted from this requirement in whole or in part by the President, under section 552(b)(1) of title 5. Any such written comment shall include information within the competence of such Federal officer or agency with respect to—

(1) environmental considerations, including air and water quality and noise impacts;

(2) the safety of the transportation systems;

(3) international relations, including the status and time schedule for any necessary Canadian approvals and plans;

(4) national security, particularly security of supply;

(5) sources of financing for capital costs;

(6) the impact upon competition;

(7) impact on the national economy, including regional natural gas requirements; and

(8) relationship of the proposed transportation system to other aspects of national energy policy.

(b) State officer or agency and other interested persons' comments; submittal to President

Not later than July 1, 1977, the Governor of any State, any municipality, State utility commission, and any other interested person may submit to the President such written comments with respect to the recommendation and report of the Commission and alternative systems for delivering Alaska natural gas to the contiguous States as they determine to be appropriate.

(c) Report of Federal officer or agency to the President

Not later than July 1, 1977, each Federal officer or agency shall report to the President with respect to actions to be taken by such officer or agency under section 719g(a) of this title relative to each transportation system reported on by the Commission under section 719c(c) of this title and shall include such officer's or agency's recommendations with respect to any provision of law to be waived pursuant to section 719f(g) of this title in conjunction with any decision of the President which designates a system for approval.

(d) Report of Council on Environmental Quality to the President

Following receipt by the President of the Commission's recommendations, the Council on Environmental Quality shall afford interested persons an opportunity to present oral and written data, views, and arguments respecting the environmental impact statements submitted by the Commission under section 719c(e) of this title. Not later than July 1, 1977, the Council on Environmental Quality shall submit to the President a report, which shall be contemporaneously made available by the Council to the public, summarizing any data, views, and arguments received and setting forth the Council's views concerning the legal and factual sufficiency of each such environmental impact statement and other matters related to environmental impact as the Council considers to be relevant.

(Pub. L. 94–586, §6, Oct. 22, 1976, 90 Stat. 2906.)

TRANSFER OF FUNCTIONS

Enforcement functions authorized by, and supplemental enforcement authority created by this chapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(h)(1), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out under section 719e of this title. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of this title. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of this title.

Federal Power Commission terminated and functions, personnel, property, funds, etc., transferred to Secretary of Energy (except for certain functions transferred to Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a)(1), 7291, and 7293 of Title 42, The Public Health and Welfare.

§719e. Presidential decision and report

(a) Dateline for decision; transmission to Congress, delay: notice to Congress; contents of decision; chairman, appointment; Federal inspector of construction: duties, including establishment of joint surveillance and monitoring agreement

(1) As soon as practicable after July 1, 1977, but not later than September 1, 1977, the President shall issue a decision as to whether a transportation system for delivery of Alaska natural gas should be approved under this chapter. If he determines such a system should be so approved, his decision shall designate such a system for approval pursuant to section 719f of this title and shall be consistent with section 719c(b)(1)(C) of this title to assure delivery of Alaska natural gas to points both east and west of the Rocky Mountains in the continental United States. The President in making his decision shall take into consideration the Commission's recommendation pursuant to section 719c of this title, the report under section 719c(c) of this title, and any comments submitted under section 719d of this title; and his decision to designate a system for approval shall be based on his determination as to which system, if any, best serves the national interest.

(2) The President, for a period of up to 90 additional calendar days after September 1, 1977, may delay the issuance of his decision and transmittal thereof to the House of Representatives and the Senate, if he determines (A) that there exists no environmental impact statement prepared relative to a system he wishes to consider or that any prepared environmental impact statement relative to a system he wishes to consider is legally or factually insufficient, or (B) that the additional time is otherwise necessary to enable him to make a sound decision on an Alaska natural gas transportation system. The President shall promptly, but in no case any later than September 1, 1977, notify the House of Representatives and the Senate if he so delays his decision and submit a full explanation of the basis of any such delay.

(3) If, on or before May 1, 1977, the President determines to delay issuance and transmittal of his decision to the House of Representatives and the Senate pursuant to paragraph (2) of this subsection,

he may authorize a delay of not more than 90 days in the date of taking of any action specified in sections 719c and 719d of this title. The President shall promptly notify the House of Representatives and the Senate of any such authorization of delay and submit a full explanation of the basis of any such authorization.

(4) If the President determines to designate for approval a transportation system for delivery of Alaska natural gas to the contiguous States, he shall in such decision—

(A) describe the nature and route of the system designated for approval;

(B) designate a person to construct and operate such a system, which person shall be the applicant, if any, which filed for a certificate of public convenience and necessity to construct and operate such system;

(C) identify those facilities, the construction of which, and those operations, the conduct of which, shall be encompassed within the term "construction and initial operation" for purposes of defining the scope of the directions contained in section 719g of this title, taking into consideration any recommendation of the Commission with respect thereto; and

(D) identify those provisions of law, relating to any determination of a Federal officer or agency as to whether a certificate, permit, right-of-way, lease, or other authorization shall be issued or be granted, which provisions the President finds (i) involve determinations which are subsumed in his decision and (ii) require waiver pursuant to section 719f(g) of this title in order to permit the expeditious construction and initial operation of the transportation system.

(5) Repealed. Pub. L. 102–486, title XXX, §3012(a), Oct. 24, 1992, 106 Stat. 3128.

(6) If the President determines to designate for approval a transportation system for delivery of Alaska natural gas to the contiguous States, he may identify in such decision such terms and conditions permissible under existing law as he determines appropriate for inclusion with respect to any issuance or authorization directed to be made pursuant to section 719g of this title.

(b) Transmittal to Congress

The decision of the President made pursuant to subsection (a) of this section shall be transmitted to both Houses of Congress and shall be considered received by such Houses for the purposes of this section on the first day on which both are in session occurring after such decision is transmitted. Such decision shall be accompanied by a report explaining in detail the basis for his decision with specific reference to the factors set forth in sections 719c(c) and 719d(a) of this title, and the reasons for any revision, modification of, or substitution for, the Commission recommendation.

(c) Financial analysis

The report of the President pursuant to subsection (b) of this section shall contain a financial analysis for the transportation system designated for approval. Unless the President finds and states in his report submitted pursuant to this section that he reasonably anticipates that the system designated by him can be privately financed, constructed, and operated, his report shall also be accompanied by his recommendation concerning the use of existing Federal financing authority or the need for new Federal financing authority.

(d) Views and objectives involving intergovernmental and international cooperation

In making his decision under subsection (a) of this section the President shall inform himself, through appropriate consultation, of the views and objectives of the States, the Government of Canada, and other governments with respect to those aspects of such a decision that may involve intergovernmental and international cooperation among the Government of the United States, the States, the Government of Canada, and any other government.

(e) Decision effective as provided in section 719f of this title; financing authority unaffected

If the President determines to designate a transportation system for approval, the decision of the President shall take effect as provided in section 719f of this title, except that the approval of a decision of the President shall not be construed as amending or otherwise affecting the laws of the United States so as to grant any new financing authority as may have been identified by the President pursuant to subsection (c) of this section.

(Pub. L. 94–586, §7, Oct. 22, 1976, 90 Stat. 2907; Pub. L. 102–486, title XXX, §3012(a), Oct. 24, 1992, 106 Stat. 3128.)

AMENDMENTS

1992—Subsec. (a)(5). Pub. L. 102–486 struck out par. (5) which provided for Presidential appointment of officer or board to serve as Federal inspector of construction of Alaska natural gas transportation system and specified duties and powers of such inspector.

TRANSFER OF FUNCTIONS

Enforcement functions authorized by, and supplemental enforcement authority created by this chapter, all functions assigned to the person or board to be appointed by the President under subsec. (a)(5) of this section, and, pursuant to subsec. (a)(6) of this section, function of enforcing terms and conditions described in section 5 of the Decision and Report to the Congress on the Alaska Natural Gas Transportation System, approved by Congress pursuant to Pub. L. 95–158, set out under section 719f of this title, with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see sections 102(h) and 203(a) of Reorg. Plan No. 1 of 1979 set out below. Subsec. (a)(5) of this section was repealed, Office of the Federal Inspector for the Alaska Natural Gas Transportation System, created pursuant to subsec. (a)(5) abolished, and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out below. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of this title.

Federal Power Commission terminated and functions, personnel, property, funds, etc., transferred to Secretary of Energy (except for certain functions transferred to Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a)(1), 7291, and 7293 of Title 42, The Public Health and Welfare.

ABOLITION OF OFFICE OF FEDERAL INSPECTOR

Pub. L. 102–486, title XXX, §3012(b), Oct. 24, 1992, 106 Stat. 3128, provided that: "The Office of Federal Inspector of Construction for the Alaska Natural Gas Transportation System [also known as "Office of the Federal Inspector for the Alaska Natural Gas Transportation System"], created pursuant to the paragraph [15 U.S.C. 719e(a)(5)] repealed by subsection (a) of this section, is abolished. All functions and authority vested in the Inspector are hereby transferred to the Secretary of Energy."

[Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of this title.]

REORGANIZATION PLAN NO. 1 OF 1979

EFF. JULY 1, 1979, 44 F.R. 33663, 93 STAT. 1373

Prepared by the President and transmitted to the Senate and House of Representatives in Congress assembled, April 2, 1979, pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.

OFFICE OF THE FEDERAL INSPECTOR FOR CONSTRUCTION OF THE ALASKA NATURAL GAS TRANSPORTATION SYSTEM

PART I. OFFICE OF THE FEDERAL INSPECTOR AND TRANSFER OF FUNCTIONS

SECTION 101. ESTABLISHMENT OF THE OFFICE OF FEDERAL INSPECTOR FOR THE ALASKA NATURAL GAS TRANSPORTATION SYSTEM

(a) There is hereby established as an independent establishment in the executive branch, the Office of the Federal Inspector for the Alaska Natural Gas Transportation System (the "Office").

(b) The Office shall be headed by a Federal Inspector for the Alaska Natural Gas Transportation System (the "Federal Inspector") who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter prescribed by law for Level III of the Executive Schedule [5 U.S.C. 5314], and who shall serve at the pleasure of the President.

(c) Each Federal agency having statutory responsibilities over any aspect of the Alaska Natural Gas Transportation System shall appoint an Agency Authorized Officer to represent that authority on all matters pertaining to pre-construction, construction, and initial operation of the system.

SEC. 102. TRANSFER OF FUNCTIONS TO THE FEDERAL INSPECTOR

Subject to the provisions of Sections 201, 202, and 203 of this Plan, all functions insofar as they relate to enforcement of Federal statutes or regulations and to enforcement of terms, conditions, and stipulations of grants, certificates, permits and other authorizations issued by Federal agencies with respect to pre-construction, construction, and initial operation of an "approved transportation system" for transport of Canadian natural gas and "Alaskan natural gas," as such terms are defined in the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719 et seq.), hereinafter called the "Act", are hereby transferred to the Federal Inspector. This transfer shall vest in the Federal Inspector exclusive responsibility for enforcement of all Federal statutes relevant in any manner to pre-construction, construction, and initial operation. With respect to each of the statutory authorities cited below, the transferred functions include all enforcement functions of the given agencies or their officials under the statutes as may be related to the enforcement of such terms, conditions, and stipulations, including but not limited to the specific sections of the statute cited. "Enforcement", for purposes of this transfer of functions, includes monitoring and any other compliance or oversight activities reasonably related to the enforcement process. These transferred functions include:

(a) Such enforcement functions of the Administrator or other appropriate official or entity in the Environmental Protection Agency related to compliance with: national pollutant discharge elimination system permits provided for in Section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342); spill prevention, containment and countermeasure plans in Section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321); review of the Corps of Engineers' dredged and fill material permits issued under Section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344); new source performance standards in Section 111 of the Clean Air Act, as amended by the Clean Air Act Amendments of 1977 (42 U.S.C. 7411); prevention of significant deterioration review and approval in Sections 160–169 of the Clean Air Act, as amended by the Clean Air Amendments of 1977 (42 U.S.C. 7470 et seq.); and the resource conservation and recovery permits issued under the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.);

(b) Such enforcement functions of the Secretary of the Army, the Chief of Engineers, or other appropriate officer or entity in the Corps of Engineers of the United States Army related to compliance with: dredged and fill material permits issued under Section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344); and permits for structures in navigable waters, issued under Section 10 of the Rivers and Harbors Appropriation Act of 1899 (33 U.S.C. 403);

(c) Such enforcement functions of the Secretary or other appropriate officer or entity in the Department of Transportation related to compliance with: the Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. 1671, et seq.) and the gas pipeline safety regulations issued thereunder; the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, et seq.) and authorizations and regulations issued thereunder; and permits for bridges across navigable waters, issued under Section 9 of the Rivers and Harbors Appropriation Act of 1899 (33 U.S.C. 401);

(d) Such enforcement functions of the Secretary or other appropriate officer or entity in the Department of Energy and such enforcement functions of the Commission, Commissioners, or other appropriate officer or entity in the Federal Energy Regulatory Commission related to compliance with: the certificates of public convenience and necessity, issued under Section 7 of the Natural Gas Act, as amended (15 U.S.C. 717f); and authorizations for importation of natural gas from Alberta as predeliveries of Alaskan gas issued under Section 3 of the Natural Gas Act, as amended (15 U.S.C. 717b);

(e) Such enforcement functions of the Secretary or other appropriate officer or entity in the Department of the Interior related to compliance with: grants of rights-of-way and temporary use permits for Federal land, issued under Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185); land use permits for temporary use of public lands and other associated land uses, issued under Sections 302, 501, and 503–511 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732, 1761, and 1763–1771); materials sales contracts under the Materials Act of 1947 (30 U.S.C. 601–603); rights-of-way across Indian lands, issued under the Rights of Way Through Indian Lands Act (25 U.S.C. 321, et seq.); removal permits issued under the Materials Act of 1947 (30 U.S.C. 601–603); approval to cross national wildlife refuges, National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668jj) and the Upper Mississippi River Wildlife and Fish Refuge Act (16 U.S.C. 721–731); wildlife consultation in the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.); protection of certain birds in the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.); Bald and Golden Eagles Protection Act (16 U.S.C. 668–668d); review of Corps of Engineers dredged and fill material permits issued under Section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344); rights-of-way across recreation lands issued under the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 4601–4—4601–11); historic preservation under the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470–470f); permits issued under the Antiquities Act of 1906 (16 U.S.C. 432, 433); and system activities requiring coordination and approval under general authorities of the National Trails System Act, as amended (16 U.S.C. 1241–1249), the Wilderness Act, as amended (16 U.S.C.

1131–1136), the Wild and Scenic Rivers Act, as amended (16 U.S.C. 1271–1287), the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Act of April 27, 1935 (prevention of soil erosion) (16 U.S.C. 590a–f), and an Act to Provide for the Preservation of Historical and Archeological Data, as amended (16 U.S.C. 469–469c);

(f) Such enforcement functions of the Secretary or other appropriate officer or entity in the Department of Agriculture, insofar as they involve lands and programs under the jurisdiction of that Department, related to compliance with: associated land use permits authorized for and in conjunction with grants of rights-of-way across Federal lands issued under Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185); land use permits for other associated land uses issued under Sections 501 and 503–511 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761, 1763–1771), under the Organic Administration Act of June 4, 1897, as amended (16 U.S.C. 473, 474–482, 551), and under Title III of the Bankhead-Jones Farm Tenant Act of 1937, as amended (7 U.S.C. 1010–1012); removal of materials under the Materials Act of 1947 (30 U.S.C. 601–603) and objects of antiquity under the Antiquities Act of 1906 (16 U.S.C. 432, 433); construction and utilization of national forest roads under the Roads and Trails System Act of 1964 (16 U.S.C. 532–538); and system activities requiring coordination and approval under general authorities of the National Forest Management Act of 1976 (16 U.S.C. 1600 et seq.); the Multiple Use-Sustained-Yield Act of 1960 (16 U.S.C. 528–531); the Forest and Rangelands Renewable Resources Planning Act of 1974 (16 U.S.C. 1601–1610); the National Trails System Act, as amended (16 U.S.C. 1241–1249); the Wilderness Act, as amended (16 U.S.C. 1131–1136); the Wild and Scenic Rivers Act, as amended (16 U.S.C. 1271–1287); the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 460 et seq.) [16 U.S.C. 460l–4 to 460l–11]; the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1151 et seq.) [33 U.S.C. 1251 et seq.]; the Fish and Wildlife Coordination Act and Fish and Game Sanctuaries Act (16 U.S.C. 661 et seq. and 694, 694a–b, respectively); the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470–470f); an Act to Provide for the Preservation of Historical and Archeological Data, as amended (16 U.S.C. 469–469c); the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); the Watershed Protection and Flood Prevention Act, as amended (16 U.S.C. 1001 et seq.); the Soil and Water [Resources] Conservation Act of 1977 (16 U.S.C. 2001 et seq.); and the Act of April 27, 1935 (prevention of soil erosion) (16 U.S.C. 590a–f);

(g) Such enforcement functions of the Secretary or other appropriate officer or entity in the Department of the Treasury related to compliance with permits for interstate transport of explosives and compliance with regulations for the storage of explosives, Title XI of the Organized Crime Control Act of 1970 (18 U.S.C. 841–848);

(h)(1) The enforcement functions authorized by, and supplemental enforcement authority created by the Act (15 U.S.C. 719 et seq.);

(2) All functions assigned to the person or board to be appointed by the President under Section 7(a)(5) of the Act (15 U.S.C. 719e); and

(3) Pursuant to Section 7(a)(6) of the Act (15 U.S.C. 719e), enforcement of the terms and conditions described in Section 5 of the Decision and Report to the Congress on the Alaska Natural Gas Transportation System, as approved by the Congress pursuant to Public Law 95–158 (91 Stat. 1268), November 2[8], 1977 [set out under 15 U.S.C. 719f], (hereinafter the "Decision").

PART II. OTHER PROVISIONS

SEC. 201. EXECUTIVE POLICY BOARD

The Executive Policy Board for the Alaska Natural Gas Transportation System, hereinafter the "Executive Policy Board", which shall be established by executive order, shall advise the Federal Inspector on the performance of the Inspector's functions. All other functions assigned, or which could be assigned pursuant to the Decision, to the Executive Policy Board are hereby transferred to the Federal Inspector.

SEC. 202. FEDERAL INSPECTOR AND AGENCY AUTHORIZED OFFICERS

(a) The Agency Authorized Officers shall be detailed to and located within the Office. The Federal Inspector shall delegate to each Agency Authorized Officer the authority to enforce the terms, conditions, and stipulations of each grant, permit, or other authorization issued by the Federal agency which appointed the Agency Authorized Officer. In the exercise of these enforcement functions, the Agency Authorized Officers shall be subject to the supervision and direction of the Federal Inspector, whose decision on enforcement matters shall constitute "action" for purposes of Section 10 of the Act (15 U.S.C. 719h).

(b) The Federal Inspector shall be responsible for coordinating the expeditious discharge of nonenforcement activities by Federal agencies and coordinating the compliance by all the Federal agencies with Section 9 of the Act (15 U.S.C. 719g). Such coordination shall include requiring submission of scheduling plans for all permits, certificates, grants or other necessary authorizations, and coordinating scheduling of system-related

agency activities. Such coordination may include serving as the "one window" point for filing for and issuance of all necessary permits, certificates, grants or other authorizations, and, consistent with law, Federal government requests for data or information related to any application for a permit, certificate, grant or other authorization. Upon agreement between the Federal Inspector and the head of any agency, that agency may delegate to the Federal Inspector any statutory function vested in such agency related to the functions of the Federal Inspector.

(c) The Federal Inspector and Agency Authorized Officers in implementing the enforcement authorities herein transferred shall carry out the enforcement policies and procedures established by the Federal agencies which nominally administer these authorities, except where the Federal Inspector determines that such policies and procedures would require action inconsistent with Section 9 of the Act (15 U.S.C. 719g).

(d) Under the authority of Section 15 of the Act (15 U.S.C. 719m), the Federal Inspector will undertake to obtain appropriations for all aspects of the Federal Inspector's operations. Such undertaking shall include appropriations for all of the functions specified in the Act and in the general terms and conditions of the Decision as well as for the enforcement activities of the Federal Inspector. The Federal Inspector will consult with the various Federal agencies as to resource requirements for enforcing their respective permits and other authorizations in preparing a unified budget for the Office. The budget shall be reviewed by the Executive Policy Board.

SEC. 203. SUBSEQUENT TRANSFER PROVISION

(a) Effective upon the first anniversary of the date of initial operation of the Alaska Natural Gas Transportation System, the functions transferred by Section 102 of this Plan shall be transferred to the agency which performed the functions on the date prior to date the provisions of Section 102 of this Plan were made effective pursuant to Section 205 of this Plan.

(b) Upon the issuance of the final determination order by the Director of the Office of Management and Budget for the transfers provided for by subsection (a) of this section, the Office and the position of Federal Inspector shall, effective on the date of that order, stand abolished.

SEC. 204. INCIDENTAL TRANSFERS

So much of the personnel, property, records and unexpended balances of appropriations, allocations and other funds employed, used, held, available, or to be made available in connection with the functions transferred under this Plan, as the Director of the Office of Management and Budget shall determine, shall be transferred to the appropriate agency or component at such time or times as the Director of the Office of Management and Budget shall provide, except that no such unexpended balances transferred shall be used for purposes other than those for which the appropriation was originally made. The Director of the Office of Management and Budget shall provide for the terminating of the affairs of the Office and the Federal Inspector upon their abolition pursuant to this Plan and for such further measures and dispositions as such Director deems necessary to effectuate the purposes of this Plan.

SEC. 205. EFFECTIVE DATE

This Plan shall become effective at such time or times as the President shall specify, but not sooner than the earliest time allowable under Section 906 of Title 5 of the United States Code, except that the provisions of Section 203 shall occur as provided by the terms of that Section.

[Pursuant to Ex. Ord. No. 12142, June 21, 1979, 44 F.R. 36927, this Reorg. Plan is effective July 1, 1979].

[For abolition of Office of the Federal Inspector for the Alaska Natural Gas Transportation System and transfer of functions and authority, see section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note above.]

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I am submitting to you today Reorganization Plan No. 1 of 1979 to create the Office of Federal Inspector for the Alaska Natural Gas Transportation System and establish the position of Federal Inspector. Creation of this Office and the transfer of appropriate Federal enforcement authority and responsibility is consistent with my September 1977 Decision and Report to the Congress on the Alaska Natural Gas Transportation System. This decision was approved by the Congress November 2, 1977.

The Alaska Gas Transportation System is a 4,748-mile pipeline to be constructed in partnership with Canada. Canada completed legislation enacting a similar transfer last year and has already appointed an official to coordinate its activities prior to and during pipeline construction. The Northwest Alaska Pipeline Company has been selected to construct the pipeline, with completion scheduled in late 1984. Estimated construction costs are $10–$15 billion, to be financed by private investment.

Natural gas is among the Nation's most valuable fuels. It is in the national interest to bring Alaskan gas reserves to market at the lowest possible price for consumers. Construction of a gas pipeline from the Prudhoe Bay reserves in Alaska through Canada to points in the West and Midwest United States will provide a system which will deliver more Alaskan natural gas at less cost to a greater number of Americans than any alternative transportation system. Every effort must be made to ensure timely completion of the pipeline at the lowest possible cost consistent with Federal regulatory policies.

As a result of our experience in construction of the Trans-Alaska Oil Pipeline, we recognize the need for the Federal Government to be in a strong position to manage its own role in this project through prompt, coordinated decisionmaking in pre-construction approval functions and in enforcing the terms and conditions of the permits, certificates, leases, and other authorizations to be issued by various Federal agencies. We must avoid duplicating the delays and cost escalations experienced in the construction of the Trans-Alaska Pipeline System. The Plan I am submitting would establish clear responsibility for the efficient functioning of Federal enforcement activities by assigning the Federal Inspector authority to carry out these responsibilities.

The Alaska Natural Gas Transportation Act of 1976 [15 U.S.C. 719 et seq.] only provided for monitoring the construction of the pipeline. The Plan transfers to the Federal Inspector the authority to supervise the enforcement of terms and conditions of the permits and other authorizations, including those to be issued by the Departments of Agriculture, Interior, Transportation, and Treasury, and the Environmental Protection Agency, the Federal Energy Regulatory Commission, and the U.S. Army Corps of Engineers. The Plan provides for the Federal Inspector to coordinate other Federal activities directly related to the pipeline project. Federal agencies retain their authority to issue permits and related authorizations, but enforcement of the terms and conditions of these authorizations is transferred to the Federal Inspector. Transfer of enforcement authority from Federal agencies to the Federal Inspector is limited in scope to their participation in this project and in duration to the pre-construction, construction, and initial operation phases of the project.

The Decision and Report to the Congress recommended an Executive Policy Board with policy-making and supervisory authority over the Federal Inspector. I plan to sign an Executive Order upon approval of this Plan by the Congress which will create an Executive Policy Board which will be only advisory, but which will enhance communication and coordinate among Federal agencies and with the Federal Inspector. The Plan modifies the Decision and Report in that regard. The Federal Inspector will use the policies and procedures of the agencies involved in exercising the transferred enforcement responsibilities to the maximum extent practicable. The Board provides the opportunity for agencies to contribute to the policy deliberations of the Inspector and exercises an oversight role to insure that pipeline activities are carried on within existing regulatory policy. The Board is required to review the budget of the Office of the Federal Inspector and periodically report to me on the progress of construction and on major problems encountered. I am convinced that the Federal Inspector must have authority commensurate with his responsibilities.

Each of the provisions of this proposed reorganization would accomplish one or more of the purposes set forth in Section 901(a) of Title 5 of the United States Code. The appointment and compensation of the Federal Inspector is in accordance with the provisions of the Alaska Natural Gas Transportation Act of 1976 [15 U.S.C. 719 et seq.], and the Reorganization Act of 1977. The provisions for appointment and pay in this Plan are necessary by reason of a reorganization made by the Plan. The rate of compensation is comparable to rates for similar positions within the Executive Branch. This reorganization will result in a reduction in the cost of construction for the pipeline system and ultimately in savings to American consumers. A small increase in cost to the Federal government will result from the creation of the Office of the Federal Inspector. The Plan requires that the Office and the position of Federal Inspector will be abolished upon the first anniversary date after the pipeline becomes operational.

JIMMY CARTER.

THE WHITE HOUSE, April 2, 1979.

EX. ORD. NO. 12142. ALASKA NATURAL GAS TRANSPORTATION SYSTEM

Ex. Ord. No. 12142, June 21, 1979, 44 F.R. 36927, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including Section 301 of Title 3 of the United States Code and Sections 201 and 205 of Reorganization Plan No. 1 of 1979 [set out above], it is hereby ordered as follows:

1–101. Reorganization Plan No. 1 of 1979 [set out above], not having been disapproved by Congress (S. Res. 126, 125 Cong. Rec. S 6563–64 (May 23, 1979); H. Res. 199, 125 Cong. Rec. H 3950–51 (May 31, 1979)), shall be effective on July 1, 1979.

1–102. In accord with Section 201 of that Plan, there is hereby established the Executive Policy Board for the system for the transportation of Alaska natural gas ("the System") as such system is defined in the Alaska

Natural Gas Transportation Act of 1976 (15 U.S.C. 719 et seq.).

1–103. The Board shall consist of the Secretaries of the Departments of Agriculture, Energy, Labor, Transportation, and the Interior, the Administrator of the Environmental Protection Agency, the Chief of Engineers of the United States Army, and the Chairman of the Federal Energy Regulatory Commission. Additional members may be elected to the Board by vote of a majority of the members. The Board will by majority vote elect a Chairman to serve for a one-year term.

1–104. The Board shall perform the following functions:

(a) Advise the Federal Inspector for the Alaska Natural Gas Transportation System (the "Federal Inspector") established by Reorganization Plan No. 1 of 1979, on policy issues in accord with applicable law and existing Departmental or Agency policies.

(b) Provide advice, through the Federal Inspector, to the officers representing and exercising the functions of the Federal Departments and Agencies that concern the System ("Agency Authorized Officers").

(c) Advise the Federal Inspector and the Agency Authorized Officers on matters concerning enforcement actions.

(d) At least every six months, assess the progress made and problems encountered in constructing the System and make necessary recommendations to the Federal Inspector.

1–105. The Federal Inspector shall keep the Board informed of the progress made and problems encountered in the course of construction of the System.

1–106. Whenever the Federal Inspector determines that implementation of Departmental or Agency enforcement policies and procedures would require action inconsistent with Section 9 of the Alaska Natural Gas Transportation Act of 1976 [15 U.S.C. 719g], the Federal Inspector shall issue a written statement of such determination including a complete factual and legal basis for the determination. A copy of each statement shall be forwarded promptly to the Board and made available to the public by the Federal Inspector.

1–107. After written notice of a proposed enforcement action is given by the Federal Inspector, the Federal Inspector will be subject to the rules of procedure for ex parte contacts as reflected in the guidelines and policies of Departments and Agencies from which the specific enforcement authority is transferred.

1–108. The Federal Inspector and all employees of the Office of the Federal Inspector shall be subject to the provisions of Executive Order No. 11222 concerning standards of conduct for Federal employees. The Federal Inspector shall issue standards of conduct, pursuant to the Order, for the Office of the Federal Inspector.

1–109. To the extent permitted by law, each Department and Agency shall cooperate with and furnish necessary information and assistance to the Board in the performance of its functions.

1–110. This Order shall be effective on July 1, 1979.

JIMMY CARTER.

§719f. Congressional review

(a) Effectiveness of decision designating transportation system for approval upon enactment of joint resolution

Any decision under section 719e(a) of this title or subsection (b) of this section designating for approval a transportation system for the delivery of Alaska natural gas shall take effect upon enactment of a joint resolution within the first period of 60 calendar days of continuous session of Congress beginning on the date after the date of receipt by the Senate and House of Representatives of a decision transmitted pursuant to section 719e(b) of this title or subsection (b) of this section.

(b) New decision: statement of reasons for proposal; transmittal to Congress

If the Congress does not enact such a joint resolution within such 60-day period, the President, not later than the end of the 30th day following the expiration of the 60-day period, may propose a new decision and shall provide a detailed statement concerning the reasons for such proposal. The new decision shall be submitted in accordance with section 719e(a) of this title and transmitted to the House of Representatives and the Senate on the same day while both are in session and shall take effect pursuant to subsection (a) of this section. In the event that a resolution respecting the President's decision was defeated by vote of either House, no new decision may be transmitted pursuant to this subsection unless such decision differs in a material respect from the previous decision.

(c) Sessions of Congress

For purposes of this section—

(1) continuity of session of Congress is broken only by an adjournment sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 60-day calendar period.

(d) Rules under rulemaking powers of Congress; change of rules; "resolution" defined; referral to Congressional committees; debate limitation; motion for consideration of resolution; debate on resolution; nondebatable motions and appeals from procedural decisions

(1) This subsection is enacted by Congress—

(A) as an exercise of the rulemaking power of each House of Congress, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by paragraph (2) of this subsection; and it supersedes other rules only to the extent that it is inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as those rules relate to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of such House.

(2) For purposes of this chapter, the term "resolution" means (A) a joint resolution, the resolving clause of which is as follows: "That the House of Representatives and Senate approve the Presidential decision on an Alaska natural gas transportation system submitted to the Congress on _____, 19 , and find that any environmental impact statements prepared relative to such system and submitted with the President's decision are in compliance with the Natural [1] Environmental Policy Act of 1969."; the blank space therein shall be filled with the date on which the President submits his decision to the House of Representatives and the Senate; or (B) a joint resolution described in subsection (g) of this section.

(3) A resolution once introduced with respect to a Presidential decision on an Alaska natural gas transportation system shall be referred to one or more committees (and all resolutions with respect to the same Presidential decision on an Alaska natural gas transportation system shall be referred to the same committee or committees) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(4)(A) If any committee to which a resolution with respect to a Presidential decision on an Alaska natural gas transportation system has been referred has not reported it at the end of 30 calendar days after its referral, it shall be in order to move either to discharge such committee from further consideration of such resolution or to discharge such committee from consideration of any other resolution with respect to such Presidential decision on an Alaska natural gas transportation system which has been referred to such committee.

(B) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same Presidential decision on an Alaska natural gas transportation system), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same Presidential decision on an Alaska natural gas transportation system.

(5)(A) When any committee has reported, or has been discharged from further consideration of, a resolution, but in no case earlier than 30 days after the date of receipt of the President's decision to the Congress, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion

shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(B) Debate on the resolution described in paragraph (2)(A) of this subsection shall be limited to not more than 10 hours and on any resolution described in subsection (g) of this section to one hour. This time shall be divided equally between those favoring and those opposing such resolution. A motion further to limit debate shall not be debatable. An amendment to, or motion to recommit the resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such resolution was agreed to or disagreed to or, thereafter within such 60-day period, to consider any other resolution respecting the same Presidential decision.

(6)(A) Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolution and motions to proceed to the consideration of other business, shall be decided without debate.

(B) Appeals from the decision of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedures relating to a resolution shall be decided without debate.

(e) Presidential finding respecting and supplementation or modification of environmental impact statement; submittal to Congressional committees

The President shall find that any required environmental impact statement relative to the Alaska natural gas transportation system designated for approval by the President has been prepared and that such statement is in compliance with the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.]. Such finding shall be set forth in the report of the President submitted under section 719e of this title. The President may supplement or modify the environmental impact statements prepared by the Commission or other Federal officers or agencies. Any such environmental impact statement shall be submitted contemporaneously with the transmittal to the Senate and House of Representatives of the President's decision pursuant to section 719e(b) of this title or subsection (b) of this section.

(f) Report of Commission: submittal to Congress; Council on Environmental Quality: hearings, report, submittal to Congress; Congressional committee hearings

Within 20 days of the transmittal of the President's decision to the Congress under section 719e(b) of this title or under subsection (b) of this section, (1) the Commission shall submit to the Congress a report commenting on the decision and including any information with regard to that decision which the Commission considers appropriate, and (2) the Council on Environmental Quality shall provide an opportunity to any interested person to present oral and written data, views, and arguments on any environmental impact statement submitted by the President relative to any system designated by him for approval which is different from any system reported on by the Commission under section 719c(c) of this title, and shall submit to the Congress a report summarizing any such views received. The committees in each House of Congress to which a resolution has been referred under subsection (d)(3) of this section shall conduct hearings on the Council's report and include in any report of the committee respecting such resolution the findings of the committee on the legal and factual sufficiency of any environmental impact statement submitted by the President relative to any system designated by him for approval.

(g) Waiver; submittal to Congress

(1) At any time after a decision designating a transportation system is submitted to the Congress pursuant to this section, if the President finds that any provision of law applicable to actions to be taken under subsection (a) or (c) of section 719g of this title require waiver in order to permit expeditious construction and initial operation of the approved transportation system, the President may submit such proposed waiver to both Houses of Congress.

(2) Such provision shall be waived with respect to actions to be taken under subsection (a) or (c) of section 719g of this title upon enactment of a joint resolution pursuant to the procedures specified in subsections (c) and (d) of this section (other than subsection (d)(2) thereof) within the first period

of 60 calendar days of continuous session of Congress beginning on the date after the date of receipt by the Senate and House of Representatives of such proposal.

(3) The resolving clause of the joint resolution referred to in this subsection is as follows: "That the House of Representatives and Senate approve the waiver of the provision of law ( ) as proposed by the President, submitted to the Congress on , 19 ." The first blank space therein being filled with the citation to the provision of law and the second blank space therein being filled with the date on which the President submits his decision to the House of Representatives and the Senate.

(4) In the case of action with respect to a joint resolution described in this subsection, the phrase "a waiver of a provision of law" shall be substituted in subsection (d) of this section for the phrase "the Alaska natural gas transportation system.".

(Pub. L. 94–586, §8, Oct. 22, 1976, 90 Stat. 2909.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsecs. (d)(2) and (e), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

TRANSFER OF FUNCTIONS

Enforcement functions authorized by, and supplemental enforcement authority created by this chapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(h)(1), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out under section 719e of this title. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of this title. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of this title.

Federal Power Commission terminated and functions, personnel, property, funds, etc., transferred to Secretary of Energy (except for certain functions transferred to Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a)(1), 7291, and 7293 of Title 42, The Public Health and Welfare.

CONGRESSIONAL APPROVAL OF PRESIDENTIAL RECOMMENDATIONS FOR WAIVER OF LAW TO PERMIT EXPEDITIOUS CONSTRUCTION AND INITIAL OPERATION OF SYSTEM

Pub. L. 97–93, Dec. 15, 1981, 95 Stat. 1204, provided: "That the House of Representatives and Senate approve the waiver of the provision of law (Public Law 95–158 [set out as a note below], Public Law numbered 688, Seventy-fifth Congress, second session [section 717 et seq. of this title], and Public Law 94–163 [42 U.S.C. 6201 et seq.]) as proposed by the President, submitted to the Congress on October 15, 1981." [The Message of the President, dated Oct. 15, 1981, submitting the findings and proposed waiver of law, is set out in 17 Weekly Compilation of Presidential Documents 1135, Oct. 19, 1981.]

CONGRESSIONAL APPROVAL OF PRESIDENTIAL DECISION ON ALASKA NATURAL GAS TRANSPORTATION SYSTEM

Pub. L. 95–158, Nov. 8, 1977, 91 Stat. 1268, provided: "That the House of Representatives and Senate approve the Presidential decision on an Alaska natural gas transportation system submitted to the Congress on September 22, 1977, and find that any environmental impact statements prepared relative to such system and submitted with the President's decision are in compliance with the Natural [National] Environmental Policy Act of 1969 [section 4321 et seq. of Title 42, The Public Health and Welfare]."

[1] *So in original. Probably should be "National".*

§719g. Transportation system certificates, rights-of-way, permits, leases, or other

authorizations

(a) Earliest practicable date for issuance or grant of authorizations

To the extent that the taking of any action which is necessary or related to the construction and initial operation of the approved transportation system requires a certificate, right-of-way, permit, lease, or other authorization to be issued or granted by a Federal officer or agency, such Federal officer or agency shall—

(1) to the fullest extent permitted by the provisions of law administered by such officer or agency, but

(2) without regard to any provision of law which is waived pursuant to section 719f(g) of this title issue or grant such certificates, permits, rights-of-way, leases, and other authorizations at the earliest practicable date.

(b) Expedition and precedence of actions on applications or requests

All actions of a Federal officer or agency with respect to consideration of applications or requests for the issuance or grant of a certificate, right-of-way, permit, lease, or other authorization to which subsection (a) of this section applies shall be expedited and any such application or request shall take precedence over any similar applications or requests of the Federal officer or agency.

(c) Required terms and conditions

Any certificate, right-of-way, permit, lease, or other authorization issued or granted pursuant to the direction under subsection (a) of this section shall include the terms and conditions required by law unless waived pursuant to a resolution under section 719f(g) of this title, and may include terms and conditions permitted by law, except that with respect to terms and conditions permitted but not required, the Federal officer or agency, notwithstanding any such other provision of law, shall have no authority to include terms and conditions as would compel a change in the basic nature and general route of the approved transportation system or those the inclusion of which would otherwise prevent or impair in any significant respect the expeditious construction and initial operation of such transportation system.

(d) Additions to, and amendment or abrogation of authorizations; exception

Any Federal officer or agency, with respect to any certificate, permit, right-of-way, lease, or other authorization issued or granted by such officer or agency, may, to the extent permitted under laws administered by such officer or agency add to, amend or abrogate any term or condition included in such certificate, permit, right-of-way, lease, or other authorization except that with respect to any such action which is permitted but not required by law, such Federal officer or agency, notwithstanding any such other provision of law, shall have no authority to take such action if the terms and conditions to be added, or as amended, would compel a change in the basic nature and general route of the approved transportation system or would otherwise prevent or impair in any significant respect the expeditious construction and initial operation of such transportation system.

(e) Appropriate terms and conditions

Any Federal officer or agency to which subsection (a) of this section applies, to the extent permitted under laws administered by such officer or agency, shall include in any certificate, permit, right-of-way, lease, or authorization issued or granted those terms and conditions identified in the President's decision as appropriate for inclusion except that the requirement to include such terms and conditions shall not limit the Federal officer or agency's authority under subsection (d) of this section.

(Pub. L. 94–586, §9, Oct. 22, 1976, 90 Stat. 2912.)

TRANSFER OF FUNCTIONS

Enforcement functions authorized by, and supplemental enforcement authority created by this chapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(h)(1), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376,

effective July 1, 1979, set out under section 719e of this title. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of this title. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of this title.

§719h. Judicial review

(a) Exclusiveness of remedy

Notwithstanding any other provision of law, the actions of Federal officers or agencies taken pursuant to section 719g of this title, shall not be subject to judicial review except as provided in this section.

(b) Limitations for filing claims

(1) Claims alleging the invalidity of this chapter may be brought not later than the 60th day following the date a decision takes effect pursuant to section 719f of this title.

(2) Claims alleging that an action will deny rights under the Constitution of the United States, or that an action is in excess of statutory jurisdiction, authority, or limitations, or short of statutory right may be brought not later than the 60th day following the date of such action, except that if a party shows that he did not know of the action complained of, and a reasonable person acting in the circumstances would not have known, he may bring a claim alleging the invalidity of such action on the grounds stated above not later than the 60th day following the date of his acquiring actual or constructive knowledge of such action.

(c) Jurisdiction

(1) Special Courts

(A) In general

A claim under subsection (b) of this section shall be barred unless a complaint is filed prior to the expiration of such time limits in the United States Court of Appeals for the District of Columbia acting as a Special Court.

(B) Exclusive jurisdiction

The Special Court shall have exclusive jurisdiction to determine such proceeding in accordance with the procedures hereinafter provided, and no other court of the United States, or any State, territory, or possession of the United States, or of the District of Columbia, shall have jurisdiction of any such claim in any proceeding instituted prior to or on or after October 22, 1976.

(2) Expedited consideration

The Special Court shall set any action brought under this section for expedited consideration, taking into account the national interest described in section 719 of this title.

(3) Environmental impact statements

The enactment of a joint resolution under section 719f of this title approving the decision of the President shall be conclusive as to the legal and factual sufficiency of the environmental impact statements submitted by the President relative to the approved transportation system and no court shall have jurisdiction to consider questions respecting the sufficiency of such statements under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.].

(Pub. L. 94–586, §10, Oct. 22, 1976, 90 Stat. 2913; Pub. L. 98–620, title IV, §402(16), Nov. 8, 1984, 98 Stat. 3358; Pub. L. 108–324, div. C, §107(d), Oct. 13, 2004, 118 Stat. 1261.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (c)(3), is Pub. L. 91–190, Jan. 1,

1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–324, §107(d)(1), inserted heading.

Subsec. (c)(1). Pub. L. 108–324, §107(d)(1), (2), designated first sentence as subpar. (A) and inserted par. and subpar. headings and designated last sentence as subpar. (B), inserted subpar. heading, and substituted "The Special Court shall have" for "Such court shall have".

Subsec. (c)(2). Pub. L. 108–324, §107(d)(3), added par. (2).

Subsec. (c)(3). Pub. L. 108–324, §107(d)(4), inserted heading.

1984—Subsec. (c)(2). Pub. L. 98–620 struck out par. (2) which required that any such proceeding had to be assigned for hearing and completed at the earliest possible date, would, to the greatest extent practicable, take precedence over all other matters pending on the docket of the court at that time, and had to be expedited in every way by such court and such court had to render its decision relative to any claim within 90 days from the date such claim was brought unless such court determined that a longer period of time was required to satisfy requirements of the United States Constitution.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

TRANSFER OF FUNCTIONS

Enforcement functions authorized by, and supplemental enforcement authority created by this chapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(h)(1), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out under section 719e of this title. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of this title. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of this title.

§719i. Supplemental enforcement authority

(a) Compliance order or civil action

In addition to remedies available under other applicable provisions of law, whenever any Federal officer or agency determines that any person is in violation of any applicable provision of law administered or enforceable by such officer or agency or any rule, regulation, or order under such provision, including any term or condition of any certificate, right-of-way, permit, lease, or other authorization, issued or granted by such officer or agency, such officer or agency may—

(1) issue a compliance order requiring such person to comply with such provision or any rule, regulation, or order thereunder, or

(2) bring a civil action in accordance with subsection (c) of this section.

(b) Specificity of compliance order

Any order issued under subsection (a) of this section shall state with reasonable specificity the nature of the violation and a time of compliance, not to exceed 30 days, which the officer or agency, as the case may be, determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(c) Appropriate relief and jurisdiction of civil action

Upon a request of such officer or agency, as the case may be, the Attorney General may commence a civil action for appropriate relief, including a permanent or temporary injunction or a

civil penalty not to exceed $25,000 per day for violations of the compliance order issued under subsection (a) of this section. Any action under this subsection may be brought in any district court of the United States for the district in which the defendant is located, resides, or is doing business, and such court shall have jurisdiction to restrain such violation, require compliance, or impose such penalty or give ancillary relief.

(Pub. L. 94–586, §11, Oct. 22, 1976, 90 Stat. 2914.)

TRANSFER OF FUNCTIONS

Enforcement functions authorized by, and supplemental enforcement authority created by this chapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(h)(1), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out under section 719e of this title. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of this title. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of this title.

§719j. Export limitations

Any exports of Alaska natural gas shall be subject to the requirements of the Natural Gas Act [15 U.S.C. 717 et seq.] and section 103 of the Energy Policy and Conservation Act [42 U.S.C. 6212], except that in addition to the requirements of such Acts, before any Alaska natural gas in excess of 1,000 Mcf per day may be exported to any nation other than Canada or Mexico, the President must make and publish an express finding that such exports will not diminish the total quantity or quality nor increase the total price of energy available to the United States.

(Pub. L. 94–586, §12, Oct. 22, 1976, 90 Stat. 2914.)

REFERENCES IN TEXT

The Natural Gas Act, referred to in text, is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§717 et seq.) of this title. For complete classification of this Act to the Code, see section 717w of this title and Tables.

The Energy Policy and Conservation Act, referred to in text, is Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, as amended, which is classified principally to chapter 77 (§6201 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of Title 42 and Tables.

TRANSFER OF FUNCTIONS

Enforcement functions authorized by, and supplemental enforcement authority created by this chapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(h)(1), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out under section 719e of this title. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of this title. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of this title.

§719k. Equal access to facilities

(a) Ownership in transportation system

There shall be included in the terms of any certificate, permit, right-of-way, lease, or other authorization issued or granted pursuant to the directions contained in section 719g of this title, a provision that no person seeking to transport natural gas in the Alaska natural gas transportation system shall be prevented from doing so or be discriminated against in the terms and conditions of service on the basis of degree of ownership, or lack thereof, of the Alaska natural gas transportation system.

(b) Use within Alaska

The State of Alaska is authorized to ship its royalty gas on the approved transportation system for use within Alaska and, to the extent its contracts for the sale of royalty gas so provide, to withdraw such gas from the interstate market for use within Alaska; the Federal Power Commission shall issue all authorizations necessary to effectuate such shipment and withdrawal subject to review by the Commission only of the justness and reasonableness of the rate charged for such transportation.

(Pub. L. 94–586, §13, Oct. 22, 1976, 90 Stat. 2915.)

TRANSFER OF FUNCTIONS

Enforcement functions authorized by, and supplemental enforcement authority created by this chapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(h)(1), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out under section 719e of this title. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of this title. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of this title.

Federal Power Commission terminated and functions, personnel, property, funds, etc., transferred to Secretary of Energy (except for certain functions transferred to Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a)(1), 7291, and 7293 of Title 42, The Public Health and Welfare.

§719*l*. Antitrust laws

Nothing in this chapter, and no action taken hereunder, shall imply or effect an amendment to, or exemption from, any provision of the antitrust laws.

(Pub. L. 94–586, §14, Oct. 22, 1976, 90 Stat. 2915.)

§719m. Authorization of appropriations

There is hereby authorized to be appropriated beginning in fiscal year 1978 and each fiscal year thereafter, such sums as may be necessary to carry out the functions of the Federal inspector appointed by the President with the advice and consent of the Senate under section 719e of this title.

(Pub. L. 94–586, §15, Oct. 22, 1976, 90 Stat. 2915.)

TRANSFER OF FUNCTIONS

Enforcement functions authorized by, and supplemental enforcement authority created by this chapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(h)(1), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out under section 719e of this title. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of this title. Functions and authority vested in Secretary of Energy

subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of this title.

§719n. Separability

If any provision of this chapter, or the application thereof, is held invalid, the remainder of this chapter shall not be affected thereby.

(Pub. L. 94–586, §16, Oct. 22, 1976, 90 Stat. 2915.)

§719*o*. Civil rights; affirmative action of Federal officers and agencies; rules: promulgation and enforcement

All Federal officers and agencies shall take such affirmative action as is necessary to assure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from receiving, or participating in any activity conducted under, any certificates, permit, right-of-way, lease, or other authorization granted or issued pursuant to this chapter. The appropriate Federal officers and agencies shall promulgate such rules as are necessary to carry out the purposes of this section and may enforce this section, and any rules promulgated under this section through agency and department provisions and rules which shall be similar to those established and in effect under title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.].

(Pub. L. 94–586, §17, Oct. 22, 1976, 90 Stat. 2915.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in text, is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§2000d et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

TRANSFER OF FUNCTIONS

Enforcement functions authorized by, and supplemental enforcement authority created by this chapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(h)(1), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out under section 719e of this title. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of this title. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of this title.

CHAPTER 15D—ALASKA NATURAL GAS PIPELINE

Sec.

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720*l*. Sense of Congress concerning natural gas demand.
720m. Sense of Congress concerning Alaskan ownership.
720n. Loan guarantees.

§720. Definitions

In this chapter:

(1) Alaska natural gas

The term "Alaska natural gas" means natural gas derived from the area of the State of Alaska lying north of 64 degrees north latitude.

(2) Alaska natural gas transportation project

The term "Alaska natural gas transportation project" means any natural gas pipeline system that carries Alaska natural gas to the border between Alaska and Canada (including related facilities subject to the jurisdiction of the Commission) that is authorized under—

(A) the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719 et seq.); or

(B) section 720a of this title.

(3) Alaska natural gas transportation system

The term "Alaska natural gas transportation system" means the Alaska natural gas transportation project authorized under the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719 et seq.) and designated and described in section 2 of the President's decision.

(4) Commission

The term "Commission" means the Federal Energy Regulatory Commission.

(5) Federal Coordinator

The term "Federal Coordinator" means the head of the Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects established by section 720d(a) of this title.

(6) President's decision

The term "President's decision" means the decision and report to Congress on the Alaska natural gas transportation system—

(A) issued by the President on September 22, 1977, in accordance with section 7 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719e); and

(B) approved by Public Law 95–158 (15 U.S.C. 719f note; 91 Stat. 1268).

(7) Secretary

The term "Secretary" means the Secretary of Energy.

(8) State

The term "State" means the State of Alaska.

(Pub. L. 108–324, div. C, §102, Oct. 13, 2004, 118 Stat. 1255.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this division", meaning division C of Pub. L. 108–324, Oct. 13, 2004, 118 Stat. 1255, which is classified principally to this chapter. For complete classification of division C to the Code, see Short Title note set out below and Tables.

The Alaska Natural Gas Transportation Act of 1976, referred to in pars. (2)(A) and (3), is Pub. L. 94–586, Oct. 22, 1976, 90 Stat. 2903, as amended, which is classified generally to chapter 15C (§719 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 719 of this title and Tables.

SHORT TITLE

Pub. L. 108–324, div. C, §101, Oct. 13, 2004, 118 Stat. 1255, provided that: "This division [enacting this chapter and amending section 719h of this title] may be cited as the 'Alaska Natural Gas Pipeline Act'."

§720a. Issuance of certificate of public convenience and necessity

(a) Authority of the Commission

Notwithstanding the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719 et seq.), the Commission may, in accordance with section 7(c) of the Natural Gas Act (15 U.S.C. 717f(c)), consider and act on an application for the issuance of a certificate of public convenience and necessity authorizing the construction and operation of an Alaska natural gas transportation project other than the Alaska natural gas transportation system.

(b) Issuance of certificate

(1) In general

The Commission shall issue a certificate of public convenience and necessity authorizing the construction and operation of an Alaska natural gas transportation project under this section if the applicant has satisfied the requirements of section 7(e) of the Natural Gas Act (15 U.S.C. 717f(e)).

(2) Considerations

In considering an application under this section, the Commission shall presume that—

(A) a public need exists to construct and operate the proposed Alaska natural gas transportation project; and

(B) sufficient downstream capacity will exist to transport the Alaska natural gas moving through the project to markets in the contiguous United States.

(c) Expedited approval process

Not later than 60 days after the date of issuance of the final environmental impact statement under section 720b of this title for an Alaska natural gas transportation project, the Commission shall issue a final order granting or denying any application for a certificate of public convenience and necessity for the project under section 7(c) of the Natural Gas Act (15 U.S.C. 717f(c)) and this section.

(d) Prohibition of certain pipeline route

No license, permit, lease, right-of-way, authorization, or other approval required under Federal law for the construction of any pipeline to transport natural gas from land within the Prudhoe Bay oil and gas lease area may be granted for any pipeline that follows a route that—

(1) traverses land beneath navigable waters (as defined in section 1301 of title 43) beneath, or the adjacent shoreline of, the Beaufort Sea; and

(2) enters Canada at any point north of 68 degrees north latitude.

(e) Open season

(1) In general

Not later than 120 days after October 13, 2004, the Commission shall issue regulations governing the conduct of open seasons for Alaska natural gas transportation projects (including procedures for the allocation of capacity).

(2) Regulations

The regulations referred to in paragraph (1) shall—

(A) include the criteria for and timing of any open seasons;

(B) promote competition in the exploration, development, and production of Alaska natural gas; and

(C) for any open season for capacity exceeding the initial capacity, provide the opportunity for the transportation of natural gas other than from the Prudhoe Bay and Point Thomson units.

(3) Applicability

Except in a case in which an expansion is ordered in accordance with section 720c of this title, initial or expansion capacity on any Alaska natural gas transportation project shall be allocated in accordance with procedures to be established by the Commission in regulations issued under paragraph (1).

(f) Projects in the contiguous United States

(1) In general

An application for additional or expanded pipeline facilities that may be required to transport Alaska natural gas from Canada to markets in the contiguous United States may be made in accordance with the Natural Gas Act [15 U.S.C. 717 et seq.].

(2) Expansion

To the extent that a pipeline facility described in paragraph (1) includes the expansion of any facility constructed in accordance with the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719 et seq.), that Act shall continue to apply.

(g) Study of in-State needs

The holder of the certificate of public convenience and necessity issued, modified, or amended by the Commission for an Alaska natural gas transportation project shall demonstrate that the holder has conducted a study of Alaska in-State needs, including tie-in points along the Alaska natural gas transportation project for in-State access.

(h) Alaska royalty gas

(1) In general

Except as provided in paragraph (2), the Commission, on a request by the State and after a hearing, may provide for reasonable access to the Alaska natural gas transportation project by the State (or State designee) for the transportation of royalty gas of the State for the purpose of meeting local consumption needs within the State.

(2) Exception

The rates of shippers of subscribed capacity on an Alaska natural gas transportation project described in paragraph (1), as in effect as of the date on which access under that paragraph is granted, shall not be increased as a result of such access.

(i) Regulations

The Commission may issue such regulations as are necessary to carry out this section.

(Pub. L. 108–324, div. C, §103, Oct. 13, 2004, 118 Stat. 1256.)

REFERENCES IN TEXT

The Alaska Natural Gas Transportation Act of 1976, referred to in subsecs. (a) and (f)(2), is Pub. L. 94–586, Oct. 22, 1976, 90 Stat. 2903, as amended, which is classified generally to chapter 15C (§719 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 719 of this title and Tables.

The Natural Gas Act, referred to in subsec. (f)(1), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§717 et seq.) of this title. For complete classification of this Act to the Code, see section 717w of this title and Tables.

§720b. Environmental reviews

(a) Compliance with NEPA

The issuance of a certificate of public convenience and necessity authorizing the construction and operation of any Alaska natural gas transportation project under section 720a of this title shall be

treated as a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(b) Designation of lead agency

(1) In general

The Commission—

(A) shall be the lead agency for purposes of complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(B) shall be responsible for preparing the environmental impact statement required by section 102(2)(c) [1] of that Act [42 U.S.C. 4332(2)(C)] with respect to an Alaska natural gas transportation project under section 720a of this title.

(2) Consolidation of statements

In carrying out paragraph (1), the Commission shall prepare a single environmental impact statement, which shall consolidate the environmental reviews of all Federal agencies considering any aspect of the Alaska natural gas transportation project covered by the environmental impact statement.

(c) Other agencies

(1) In general

Each Federal agency considering an aspect of the construction and operation of an Alaska natural gas transportation project under section 720a of this title shall—

(A) cooperate with the Commission; and

(B) comply with deadlines established by the Commission in the preparation of the environmental impact statement under this section.

(2) Satisfaction of NEPA requirements

The environmental impact statement prepared under this section shall be adopted by each Federal agency described in paragraph (1) in satisfaction of the responsibilities of the Federal agency under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) with respect to the Alaska natural gas transportation project covered by the environmental impact statement.

(d) Expedited process

The Commission shall—

(1) not later than 1 year after the Commission determines that the application under section 720a of this title with respect to an Alaska natural gas transportation project is complete, issue a draft environmental impact statement under this section; and

(2) not later than 180 days after the date of issuance of the draft environmental impact statement, issue a final environmental impact statement, unless the Commission for good cause determines that additional time is needed.

(Pub. L. 108–324, div. C, §104, Oct. 13, 2004, 118 Stat. 1257.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (b)(1)(A), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

[1] So in original. Probably should be section "102(2)(C)".

§720c. Pipeline expansion

(a) Authority

With respect to any Alaska natural gas transportation project, on a request by 1 or more persons and after giving notice and an opportunity for a hearing, the Commission may order the expansion of the Alaska natural gas project if the Commission determines that such an expansion is required by the present and future public convenience and necessity.

(b) Responsibilities of Commission

Before ordering an expansion under subsection (a), the Commission shall—

(1) approve or establish rates for the expansion service that are designed to ensure the recovery, on an incremental or rolled-in basis, of the cost associated with the expansion (including a reasonable rate of return on investment);

(2) ensure that the rates do not require existing shippers on the Alaska natural gas transportation project to subsidize expansion shippers;

(3) find that a proposed shipper will comply with, and the proposed expansion and the expansion of service will be undertaken and implemented based on, terms and conditions consistent with the tariff of the Alaska natural gas transportation project in effect as of the date of the expansion;

(4) find that the proposed facilities will not adversely affect the financial or economic viability of the Alaska natural gas transportation project;

(5) find that the proposed facilities will not adversely affect the overall operations of the Alaska natural gas transportation project;

(6) find that the proposed facilities will not diminish the contract rights of existing shippers to previously subscribed certificated capacity;

(7) ensure that all necessary environmental reviews have been completed; and

(8) find that adequate downstream facilities exist or are expected to exist to deliver incremental Alaska natural gas to market.

(c) Requirement for a firm transportation agreement

Any order of the Commission issued in accordance with this section shall be void unless the person requesting the order executes a firm transportation agreement with the Alaska natural gas transportation project within such reasonable period of time as the order may specify.

(d) Limitation

Nothing in this section expands or otherwise affects any authority of the Commission with respect to any natural gas pipeline located outside the State.

(e) Regulations

The Commission may issue such regulations as are necessary to carry out this section.

(Pub. L. 108–324, div. C, §105, Oct. 13, 2004, 118 Stat. 1258.)

§720d. Federal Coordinator

(a) Establishment

There is established, as an independent office in the executive branch, the Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects.

(b) Federal Coordinator

(1) Appointment

The Office shall be headed by a Federal Coordinator for Alaska Natural Gas Transportation Projects, who shall be appointed by the President, by and with the advice and consent of the Senate, to serve a term to last until 1 year following the completion of the project referred to in section 720a of this title.

(2) Compensation

The Federal Coordinator shall be compensated at the rate prescribed for level III of the Executive Schedule (5 U.S.C. 5314).

(c) Duties

The Federal Coordinator shall be responsible for—

(1) coordinating the expeditious discharge of all activities by Federal agencies with respect to an Alaska natural gas transportation project; and

(2) ensuring the compliance of Federal agencies with the provisions of this chapter.

(d) Reviews and actions of other Federal agencies

(1) Expedited reviews and actions

All reviews conducted and actions taken by any Federal agency relating to an Alaska natural gas transportation project authorized under this section shall be expedited, in a manner consistent with completion of the necessary reviews and approvals by the deadlines under this chapter.

(2) Prohibition of certain terms and conditions

No Federal agency may include in any certificate, right-of-way, permit, lease, or other authorization issued to an Alaska natural gas transportation project any term or condition that may be permitted, but is not required, by any applicable law if the Federal Coordinator determines that the term or condition would prevent or impair in any significant respect the expeditious construction and operation, or an expansion, of the Alaska natural gas transportation project.

(3) Prohibition of certain actions

Unless required by law, no Federal agency shall add to, amend, or abrogate any certificate, right-of-way, permit, lease, or other authorization issued to an Alaska natural gas transportation project if the Federal Coordinator determines that the action would prevent or impair in any significant respect the expeditious construction and operation, or an expansion, of the Alaska natural gas transportation project.

(4) Limitation

The Federal Coordinator shall not have authority to—

(A) override—

(i) the implementation or enforcement of regulations issued by the Commission under section 720a of this title; or

(ii) an order by the Commission to expand the project under section 720c of this title; or

(B) impose any terms, conditions, or requirements in addition to those imposed by the Commission or any agency with respect to construction and operation, or an expansion of, the project.

(e) State coordination

(1) In general

The Federal Coordinator and the State shall enter into a joint surveillance and monitoring agreement similar to the agreement in effect during construction of the Trans-Alaska Pipeline, to be approved by the President and the Governor of the State, for the purpose of monitoring the construction of the Alaska natural gas transportation project.

(2) Primary responsibility

With respect to an Alaska natural gas transportation project—

(A) the Federal Government shall have primary surveillance and monitoring responsibility in areas where the Alaska natural gas transportation project crosses Federal land or private land; and

(B) the State government shall have primary surveillance and monitoring responsibility in areas where the Alaska natural gas transportation project crosses State land.

(f) Transfer of Federal Inspector functions and authority

On appointment of the Federal Coordinator by the President, all of the functions and authority of the Office of Federal Inspector of Construction for the Alaska Natural Gas Transportation System vested in the Secretary under section 3012(b) of the Energy Policy Act of 1992 (15 U.S.C. 719e note; Public Law 102–486), including all functions and authority described and enumerated in the Reorganization Plan No. 1 of 1979 (44 Fed. Reg. 33663), Executive Order No. 12142 of June 21, 1979 (44 Fed. Reg. 36927), and section 5 of the President's decision, shall be transferred to the Federal Coordinator.

(g) Temporary authority

The functions, authorities, duties, and responsibilities of the Federal Coordinator shall be vested in the Secretary until the earlier of the appointment of the Federal Coordinator by the President, or 18 months after October 13, 2004.

(h) Administration

(1) Personnel appointments

(A) In general

The Federal Coordinator may appoint and terminate such personnel as the Federal Coordinator determines to be appropriate.

(B) Authority of Federal Coordinator

Personnel appointed by the Federal Coordinator under subparagraph (A) shall be appointed without regard to the provisions of title 5 governing appointments in the competitive service.

(2) Compensation

(A) In general

Subject to subparagraph (B), personnel appointed by the Federal Coordinator under paragraph (1)(A) shall be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 (relating to classification and General Schedule pay rates).

(B) Maximum level of compensation

The rate of pay for personnel appointed by the Federal Coordinator under paragraph (1)(A) shall not exceed the maximum level of rate payable for level III of the Executive Schedule (5 U.S.C. 5314).

(C) Allowances

Section 5941 of title 5 shall apply to personnel appointed by the Federal Coordinator under paragraph (1)(A).

(3) Temporary services

(A) In general

The Federal Coordinator may procure temporary and intermittent services in accordance with section 3109(b) of title 5.

(B) Maximum level of compensation

The level of compensation of an individual employed on a temporary or intermittent basis under subparagraph (A) shall not exceed the maximum level of rate payable for level III of the Executive Schedule (5 U.S.C. 5314).

(4) Fees, charges, and commissions

(A) In general

With respect to the duties of the Federal Coordinator, as described in this chapter, the Federal Coordinator shall have similar authority to establish, change, and abolish reasonable filing and service fees, charges, and commissions, require deposits of payments, and provide refunds as provided to the Secretary of the Interior in section 1734 of title 43.

(B) Authority of Secretary of the Interior

Subparagraph (A) shall not affect the authority of the Secretary of the Interior to establish, change, and abolish reasonable filing and service fees, charges, and commissions, require deposits of payments, and provide refunds under section 1734 of title 43.

(C) Use of funds

The Federal Coordinator is authorized to use, without further appropriation, amounts collected under subparagraph (A) to carry out this section.

(Pub. L. 108–324, div. C, §106, Oct. 13, 2004, 118 Stat. 1259; Pub. L. 109–148, div. A, title VIII, §8128, Dec. 30, 2005, 119 Stat. 2731; Pub. L. 110–140, title VIII, §802, Dec. 19, 2007, 121 Stat. 1717.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (c)(2) and (d)(1), was in the original "this division", meaning division C of Pub. L. 108–324, Oct. 13, 2004, 118 Stat. 1255, which is classified principally to this chapter. This chapter, referred to in subsec. (h)(4)(A), was in the original "this Act", also meaning division C of Pub. L. 108–324 as provided in section 2 of Pub. L. 108–324, 118 Stat. 1220. For complete classification of division C to the Code, see Short Title note set out under section 720 of this title and Tables.

Reorganization Plan No. 1 of 1979, referred to in subsec. (f), is set out as a note under section 719e of this title.

Executive Order No. 12142, referred to in subsec. (f), is set out as a note under section 719e of this title.

AMENDMENTS

2007—Subsec. (h). Pub. L. 110–140 added subsec. (h).

2005—Subsec. (g). Pub. L. 109–148 substituted "earlier" for "later".

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

§720e. Judicial review

(a) Exclusive jurisdiction

Except for review by the Supreme Court on writ of certiorari, the United States Court of Appeals for the District of Columbia Circuit shall have original and exclusive jurisdiction to determine—

(1) the validity of any final order or action (including a failure to act) of any Federal agency or officer under this chapter;

(2) the constitutionality of any provision of this chapter, or any decision made or action taken under this chapter; or

(3) the validity of any determination, permit, approval, authorization, review, or other related action taken under any provision of law relating to a gas transportation project constructed and operated in accordance with section 720a of this title, including—

(A) subchapter II of chapter 5, and chapter 7, of title 5 (commonly known as the "Administrative Procedure Act");

(B) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(C) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(D) the National Historic Preservation Act (16 U.S.C. 470 et seq.); and

(E) the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.).

(b) Deadline for filing claim

A claim arising under this chapter may be brought not later than 60 days after the date of the decision or action giving rise to the claim.

(c) Expedited consideration

The United States Court of Appeals for the District of Columbia Circuit shall set any action

brought under subsection (a) for expedited consideration, taking into account the national interest of enhancing national energy security by providing access to the significant gas reserves in Alaska needed to meet the anticipated demand for natural gas.

(Pub. L. 108–324, div. C, §107, Oct. 13, 2004, 118 Stat. 1261; Pub. L. 111–11, title XIII, §13003, Mar. 30, 2009, 123 Stat. 1448.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), was in the original "this division", meaning division C of Pub. L. 108–324, Oct. 13, 2004, 118 Stat. 1255, which is classified principally to this chapter. For complete classification of division C to the Code, see Short Title note set out under section 720 of this title and Tables.

The Endangered Species Act of 1973, referred to in subsec. (a)(3)(B), is Pub. L. 93–205, Dec. 28, 1973, 87 Stat. 884, which is classified principally to chapter 35 (§1531 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of Title 16 and Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (a)(3)(C), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The National Historic Preservation Act, referred to in subsec. (a)(3)(D), is Pub. L. 89–665, Oct. 15, 1966, 80 Stat. 915, which is classified generally to subchapter II (§470 et seq.) of chapter 1A of Title 16, Conservation. For complete classification of this Act to the Code, see section 470(a) of Title 16 and Tables.

The Alaska National Interest Lands Conservation Act, referred to in subsec. (a)(3)(E), is Pub. L. 96–487, Dec. 2, 1980, 94 Stat. 2371. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of Title 16, Conservation, and Tables.

CODIFICATION

Section is comprised of section 107 of Pub. L. 108–324. Subsec. (d) of section 107 of Pub. L. 108–324 amended section 719h of this title.

AMENDMENTS

2009—Subsec. (a)(3). Pub. L. 111–11 added par. (3) and struck out former par. (3) which read as follows: "the adequacy of any environmental impact statement prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to any action under this chapter."

§720f. State jurisdiction over in-State delivery of natural gas

(a) Local distribution

Any facility receiving natural gas from an Alaska natural gas transportation project for delivery to consumers within the State—

(1) shall be deemed to be a local distribution facility within the meaning of section 1(b) of the Natural Gas Act (15 U.S.C. 717(b)); and

(2) shall not be subject to the jurisdiction of the Commission.

(b) Additional pipelines

Except as provided in section 720a(d) of this title, nothing in this chapter shall preclude or otherwise affect a future natural gas pipeline that may be constructed to deliver natural gas to Fairbanks, Anchorage, Matanuska-Susitna Valley, or the Kenai peninsula or Valdez or any other site in the State for consumption within or distribution outside the State.

(c) Rate coordination

(1) In general

In accordance with the Natural Gas Act [15 U.S.C. 717 et seq.], the Commission shall establish rates for the transportation of natural gas on any Alaska natural gas transportation project.

(2) Consultation

In carrying out paragraph (1), the Commission, in accordance with section 17(b) of the Natural Gas Act (15 U.S.C. 717p(b)), shall consult with the State regarding rates (including rate

settlements) applicable to natural gas transported on and delivered from the Alaska natural gas transportation project for use within the State.

(Pub. L. 108–324, div. C, §108, Oct. 13, 2004, 118 Stat. 1261.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this division", meaning division C of Pub. L. 108–324, Oct. 13, 2004, 118 Stat. 1255, which is classified principally to this chapter. For complete classification of division C to the Code, see Short Title note set out under section 720 of this title and Tables.

The Natural Gas Act, referred to in subsec. (c)(1), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§717 et seq.) of this title. For complete classification of this Act to the Code, see section 717w of this title and Tables.

§720g. Study of alternative means of construction

(a) Requirement of study

If no application for the issuance of a certificate or amended certificate of public convenience and necessity authorizing the construction and operation of an Alaska natural gas transportation project has been filed with the Commission by the date that is 18 months after October 13, 2004, the Secretary shall conduct a study of alternative approaches to the construction and operation of such an Alaska natural gas transportation project.

(b) Scope of study

The study under subsection (a) shall take into consideration the feasibility of—

(1) establishing a Federal Government corporation to construct an Alaska natural gas transportation project; and

(2) securing alternative means of providing Federal financing and ownership (including alternative combinations of Government and private corporate ownership) of the Alaska natural gas transportation project.

(c) Consultation

In conducting the study under subsection (a), the Secretary shall consult with the Secretary of the Treasury and the Secretary of the Army (acting through the Chief of Engineers).

(d) Report

On completion of any study under subsection (a), the Secretary shall submit to Congress a report that describes—

(1) the results of the study; and

(2) any recommendations of the Secretary (including proposals for legislation to implement the recommendations).

(Pub. L. 108–324, div. C, §109, Oct. 13, 2004, 118 Stat. 1262.)

§720h. Clarification of ANGTA status and authorities

(a) Savings clause

Nothing in this chapter affects—

(1) any decision, certificate, permit, right-of-way, lease, or other authorization issued under section 9 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719g); or

(2) any Presidential finding or waiver issued in accordance with that Act [15 U.S.C. 719 et seq.].

(b) Clarification of authority to amend terms and conditions to meet current project requirements

Any Federal agency responsible for granting or issuing any certificate, permit, right-of-way, lease,

or other authorization under section 9 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719g) may add to, amend, or rescind any term or condition included in the certificate, permit, right-of-way, lease, or other authorization to meet current project requirements (including the physical design, facilities, and tariff specifications), if the addition, amendment, or rescission—

(1) would not compel any change in the basic nature and general route of the Alaska natural gas transportation system as designated and described in section 2 of the President's decision; or

(2) would not otherwise prevent or impair in any significant respect the expeditious construction and initial operation of the Alaska natural gas transportation system.

(c) Updated environmental reviews

The Secretary shall require the sponsor of the Alaska natural gas transportation system to submit such updated environmental data, reports, permits, and impact analyses as the Secretary determines are necessary to develop detailed terms, conditions, and compliance plans required by section 5 of the President's decision.

(Pub. L. 108–324, div. C, §110, Oct. 13, 2004, 118 Stat. 1262.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this division", meaning division C of Pub. L. 108–324, Oct. 13, 2004, 118 Stat. 1255, which is classified principally to this chapter. For complete classification of division C to the Code, see Short Title note set out under section 720 of this title and Tables.

The Alaska Natural Gas Transportation Act of 1976, referred to in subsec. (a)(2), is Pub. L. 94–586, Oct. 22, 1976, 90 Stat. 2903, as amended, which is classified generally to chapter 15C (§719 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 719 of this title and Tables.

§720i. Sense of Congress concerning use of steel manufactured in North America and negotiation of a project labor agreement

It is the sense of Congress that—

(1) an Alaska natural gas transportation project would provide significant economic benefits to the United States and Canada; and

(2) to maximize those benefits, the sponsors of the Alaska natural gas transportation project should make every effort to—

(A) use steel that is manufactured in North America; and

(B) negotiate a project labor agreement to expedite construction of the pipeline.

(Pub. L. 108–324, div. C, §111, Oct. 13, 2004, 118 Stat. 1263.)

§720j. Sense of Congress concerning participation by small business concerns

(a) Definition of small business concern

In this section, the term "small business concern" has the meaning given the term in section 632(a) of this title.

(b) Sense of Congress

It is the sense of Congress that—

(1) an Alaska natural gas transportation project would provide significant economic benefits to the United States and Canada; and

(2) to maximize those benefits, the sponsors of the Alaska natural gas transportation project should maximize the participation of small business concerns in contracts and subcontracts awarded in carrying out the project.

(Pub. L. 108–324, div. C, §112, Oct. 13, 2004, 118 Stat. 1263; Pub. L. 111–68, div. A, title I, §1501(b), Oct. 1, 2009, 123 Stat. 2041.)

AMENDMENTS

2009—Subsec. (c). Pub. L. 111–68 struck out subsec. (c) which related to study to determine extent to which small business concerns participate in construction of oil and gas pipelines in the United States.

§720k. Alaska pipeline construction training program

(a) Program

(1) Establishment

The Secretary of Labor (in this section referred to as the "Secretary") shall make grants to the Alaska Workforce Investment Board—

(A) to recruit and train adult and dislocated workers in Alaska, including Alaska Natives, in the skills required to construct and operate an Alaska gas pipeline system; and

(B) for the design and construction of a training facility to be located in Fairbanks, Alaska, to support an Alaska gas pipeline training program.

(2) Coordination with existing programs

The training program established with the grants authorized under paragraph (1) shall be consistent with the vision and goals set forth in the State of Alaska Unified Plan, as developed pursuant to the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.).

(b) Requirements for grants

The Secretary shall make a grant under subsection (a) only if—

(1) the Governor of the State of Alaska requests the grant funds and certifies in writing to the Secretary that there is a reasonable expectation that the construction of the Alaska natural gas pipeline system will commence by the date that is 2 years after the date of the certification; and

(2) the Secretary of Energy concurs in writing to the Secretary with the certification made under paragraph (1) after considering—

(A) the status of necessary Federal and State permits;

(B) the availability of financing for the Alaska natural gas pipeline project; and

(C) other relevant factors.

(c) Authorization of appropriations

There are authorized to be appropriated to the Secretary to carry out this section $20,000,000. Not more than 15 percent of the funds may be used for the facility described in subsection (a)(1)(B).

(Pub. L. 108–324, div. C, §113, Oct. 13, 2004, 118 Stat. 1264; Pub. L. 113–128, title V, §512(c), July 22, 2014, 128 Stat. 1706.)

AMENDMENT OF SUBSECTION (A)(2)

Pub. L. 113–128, title V, §§506, 512(c), July 22, 2014, 128 Stat. 1703, 1706, provided that, effective on the first day of the first full program year after July 22, 2014 [probably July 1, 2015], subsection (a)(2) of this section is amended by striking "consistent with the vision and goals set forth in the State of Alaska Unified Plan, as developed pursuant to the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.)" and inserting "consistent with the vision and goals set forth in the State of Alaska unified plan or combined plan, as appropriate, as developed pursuant to section 3112 or 3113, as appropriate, of title 29". See 2014 Amendment note below.

REFERENCES IN TEXT

The Workforce Investment Act of 1998, referred to in subsec. (a)(2), is Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

AMENDMENTS

2014—Subsec. (a)(2). Pub. L. 113–128 substituted "consistent with the vision and goals set forth in the State of Alaska unified plan or combined plan, as appropriate, as developed pursuant to section 3112 or 3113,

as appropriate, of title 29" for "consistent with the vision and goals set forth in the State of Alaska Unified Plan, as developed pursuant to the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.)".

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–128 effective on the first day of the first full program year after July 22, 2014 [probably July 1, 2015], see section 506 of Pub. L. 113–128, set out as an Effective Date note under section 3101 of Title 29, Labor.

§720*l*. Sense of Congress concerning natural gas demand

It is the sense of Congress that—

(1) North American demand for natural gas will increase dramatically over the course of the next several decades;

(2) both the Alaska Natural Gas Pipeline and the Mackenzie Delta Natural Gas project in Canada will be necessary to help meet the increased demand for natural gas in North America;

(3) Federal and State officials should work together with officials in Canada to ensure both projects can move forward in a mutually beneficial fashion;

(4) Federal and State officials should acknowledge that the smaller scope, fewer permitting requirements, and lower cost of the Mackenzie Delta project means it will most likely be completed before the Alaska Natural Gas Pipeline;

(5) natural gas production in the 48 contiguous States and Canada will not be able to meet all domestic demand in the coming decades; and

(6) as a result, natural gas delivered from Alaskan North Slope will not displace or reduce the commercial viability of Canadian natural gas produced from the Mackenzie Delta or production from the 48 contiguous States.

(Pub. L. 108–324, div. C, §114, Oct. 13, 2004, 118 Stat. 1264.)

§720m. Sense of Congress concerning Alaskan ownership

It is the sense of Congress that—

(1) Alaska Native Regional Corporations, companies owned and operated by Alaskans, and individual Alaskans should have the opportunity to own shares of the Alaska natural gas pipeline in a way that promotes economic development for the State; and

(2) to facilitate economic development in the State, all project sponsors should negotiate in good faith with any willing Alaskan person that desires to be involved in the project.

(Pub. L. 108–324, div. C, §115, Oct. 13, 2004, 118 Stat. 1265.)

§720n. Loan guarantees

(a) Authority

(1) The Secretary may enter into agreements with 1 or more holders of a certificate of public convenience and necessity issued under section 720a(b) of this title or section 719g of this title or with an entity the Secretary determines is qualified to construct and operate a liquefied natural gas project to transport liquefied natural gas from Southcentral Alaska to West Coast States, to issue Federal guarantee instruments with respect to loans and other debt obligations for a qualified infrastructure project.

(2) Subject to the requirements of this section, the Secretary may also enter into agreements with 1 or more owners of the Canadian portion of a qualified infrastructure project to issue Federal guarantee instruments with respect to loans and other debt obligations for a qualified infrastructure project as though such owner were a holder described in paragraph (1).

(3) The authority of the Secretary to issue Federal guarantee instruments under this section for a qualified infrastructure project shall expire on the date that is 2 years after the date on which the final

certificate of public convenience and necessity (including any Canadian certificates of public convenience and necessity) is issued for the project. A final certificate shall be considered to have been issued when all certificates of public convenience and necessity have been issued that are required for the initial transportation of commercially economic quantities of natural gas from Alaska to the continental United States.

(b) Conditions

(1) The Secretary may issue a Federal guarantee instrument for a qualified infrastructure project only after a certificate of public convenience and necessity under section 720a(b) of this title or an amended certificate under section 719g of this title has been issued for the project, or after the Secretary certifies there exists a qualified entity to construct and operate a liquefied natural gas project to transport liquefied natural gas from Southcentral Alaska to West Coast States. In no case shall loan guarantees be issued for more than one qualified project.

(2) The Secretary may issue a Federal guarantee instrument under this section for a qualified infrastructure project only if the loan or other debt obligation guaranteed by the instrument has been issued by an eligible lender.

(3) The Secretary shall not require as a condition of issuing a Federal guarantee instrument under this section any contractual commitment or other form of credit support of the sponsors (other than equity contribution commitments and completion guarantees), or any throughput or other guarantee from prospective shippers greater than such guarantees as shall be required by the project owners.

(4) Such loan guarantee may be utilized only by the project chosen by the Federal Energy Regulatory Commission as the qualified project.

(c) Limitations on amounts

(1) The amount of loans and other debt obligations guaranteed under this section for a qualified infrastructure project shall not exceed 80 percent of the total capital costs of the project, including interest during construction.

(2) The principal amount of loans and other debt obligations guaranteed under this section shall not exceed, in the aggregate, $18,000,000,000, which amount shall be indexed for United States dollar inflation from October 13, 2004, as measured by the Consumer Price Index, except that the total amount of principal that may be guaranteed for a qualified liquefied natural gas project may not exceed a principal amount in which the cost of loan guarantees, as defined by section 661a(5) of title 2, exceeds $2,000,000,000.

(d) Loan terms and fees

(1) The Secretary may issue Federal guarantee instruments under this section that take into account repayment profiles and grace periods justified by project cash flows and project-specific considerations. The term of any loan guaranteed under this section shall not exceed 30 years.

(2) An eligible lender may assess and collect from the borrower such other fees and costs associated with the application and origination of the loan or other debt obligation as are reasonable and customary for a project finance transaction in the oil and gas sector.

(e) Regulations

The Secretary may issue regulations to carry out this section.

(f) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to cover the cost of loan guarantees under this section, as defined by section 661a(5) of title 2. Such sums shall remain available until expended.

(g) Definitions

In this section:

(1) Consumer Price Index

The term "Consumer Price Index" means the Consumer Price Index for all-urban consumers, United States city average, as published by the Bureau of Labor Statistics, or if such index shall

cease to be published, any successor index or reasonable substitute thereof.

(2) Eligible lender

The term "eligible lender" means any non-Federal qualified institutional buyer (as defined by section 230.144A(a) of title 17, Code of Federal Regulations (or any successor regulation), known as Rule 144A(a) of the Securities and Exchange Commission and issued under the Securities Act of 1933 [15 U.S.C. 77a et seq.]), including—

(A) a qualified retirement plan (as defined in section 4974(c) of title 26) that is a qualified institutional buyer; and

(B) a governmental plan (as defined in section 414(d) of title 26) that is a qualified institutional buyer.

(3) Federal guarantee instrument

The term "Federal guarantee instrument" means any guarantee or other pledge by the Secretary to pledge the full faith and credit of the United States to pay all of the principal and interest on any loan or other debt obligation entered into by a holder of a certificate of public convenience and necessity.

(4) Qualified infrastructure project

The term "qualified infrastructure project" means an Alaskan natural gas transportation project or system consisting of the design, engineering, finance, construction, and completion of pipelines and related transportation and production systems (including gas treatment plants [1] liquification plants and liquefied natural gas tankers for transportation of liquefied natural gas from southcentral Alaska to the West Coast), and appurtenances thereto, that are used to transport natural gas from the Alaska North Slope to the continental United States.

(Pub. L. 108–324, div. C, §116, Oct. 13, 2004, 118 Stat. 1265; Pub.L. 108–199, div. H, §146, Jan. 23, 2004, 118 Stat. 444; Pub. L. 108–447, div. J, title I, §114, Dec. 8, 2004, 118 Stat. 3346.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (g)(2), is title I of act May 27, 1933, ch. 38, 48 Stat. 74, as amended, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

AMENDMENTS

2004—Subsec. (a)(1). Pub.L. 108–199, §146(1), as amended by Pub. L. 108–447, §114(a)(1), (2), which directed the amendment of subsec. (a) by inserting "or with an entity the Secretary determines is qualified to construct and operate a liquefied natural gas project to transport liquefied natural gas from Southcentral Alaska to West Coast States," before "to issue", was executed to par. (1) of subsec. (a) to reflect the probable intent of Congress.

Subsec. (b)(1). Pub.L. 108–199, §146(2), as amended by Pub. L. 108–447, §114(1)–(3), inserted before period at end ", or after the Secretary certifies there exists a qualified entity to construct and operate a liquefied natural gas project to transport liquefied natural gas from Southcentral Alaska to West Coast States. In no case shall loan guarantees be issued for more than one qualified project".

Subsec. (b)(4). Pub. L. 108–447, §114(b), added par. (4).

Subsec. (c)(2). Pub. L. 108–199, §146(3), as amended by Pub. L. 108–447, §114(1), (2), (4), which directed the amendment of subsec. (a)(2) by inserting ", except that the total amount of principal that may be guaranteed for a qualified liquefied natural gas project may not exceed a principal amount in which the cost of loan guarantees, as defined by section 661a(5) of title 2, exceeds $2,000,000,000" before period at end, was executed by making the amendment to subsec. (c)(2), to reflect the probable intent of Congress.

Subsec. (g)(4). Pub.L. 108–199, §146(4), as amended by Pub. L. 108–447, §114(1), (2), (5), inserted "or system" after "gas transportation project" and "liquification plants and liquefied natural gas tankers for transportation of liquefied natural gas from Southcentral Alaska to the West Coast" after "including gas treatment plants".

[1] *So in original. Probably should be followed by a comma.*

CHAPTER 16—EMERGENCY RELIEF

§§721, 722. Omitted

CODIFICATION

Sections, acts May 12, 1933, ch. 30, §§1, 2, 48 Stat. 55, 56; Feb. 15, 1934, ch. 13, §1, 48 Stat. 351, were enacted as temporary legislation during the economic emergency in 1933.

SUPPLEMENTARY LEGISLATION

Legislation supplementary to the Federal Emergency Relief Act of 1933 was contained in the following acts, executive orders, and reorganization plans: Res. Apr. 8, 1935, ch. 48, 49 Stat. 115; Aug. 12, 1935, ch. 508, §3, 49 Stat. 596; Aug. 24, 1935, ch. 641, §55, 49 Stat. 781; Feb. 11, 1936, ch. 49, §7, 49 Stat. 1134; Feb. 11, 1936, ch. 51, 49 Stat. 1135; June 22, 1936, ch. 689, title II, 49 Stat. 1608; Res. Feb. 24, 1937, ch. 17, 50 Stat. 21; June 29, 1937, 11 p.m., ch. 401, 50 Stat. 357; Mar. 2, 1938, ch. 38, 52 Stat. 83; June 21, 1938, ch. 554, 52 Stat. 817; Feb. 4, 1939, ch. 1, 53 Stat. 508; Res. Apr. 1, 1939, ch. 34, 53 Stat. 555; Apr. 13, 1939, ch. 62, 53 Stat. 578; Res. June 30, 1939, ch. 252, 53 Stat. 927; Apr. 6, 1940, ch. 77, 54 Stat. 99; June 26, 1940, ch. 428, title II, 54 Stat. 590; Res. June 26, 1940, ch. 432, 54 Stat. 611; June 27, 1940, ch. 437, title I, 54 Stat. 633; Oct. 9, 1940, ch. 780, title I, 54 Stat. 1035; Mar. 1, 1941, ch. 9, §1, 55 Stat. 15; Apr. 5, 1941, ch. 40, §1, 55 Stat. 110; July 1, 1941, ch. 266, 55 Stat. 396; July 1, 1941, ch. 269, title II, 55 Stat. 487; Dec. 17, 1941, ch. 591, 55 Stat. 810; June 27, 1942, ch. 450, §1, 56 Stat. 410; July 2, 1942, ch. 475, title II, 56 Stat. 571; Res. July 2, 1942, ch. 479, 56 Stat. 634; June 22, 1943, ch. 138, 57 Stat. 161; June 26, 1943, ch. 145, title I, §101, 57 Stat. 180; July 12, 1943, ch. 221, title VII, 57 Stat. 518; July 12, 1943, 4 p.m., E. W. T., ch. 229, title I, 57 Stat. 539, 540; Dec. 23, 1943, ch. 380, title I, 57 Stat. 615; June 28, 1944, ch. 302, title II, 58 Stat. 564; June 28, 1944, ch. 304, title I, 58 Stat. 602; Apr. 25, 1945, ch. 95, title I, §1, 59 Stat. 80.

Ex. Ord. Nos. 7305, Feb. 28, 1936; 7334, Apr. 3, 1936, 1 F.R. 121; 7436, Aug. 21, 1936, 1 F.R. 1204; 7469, Oct. 13, 1936, 1 F.R. 1581; 7512, Dec. 16, 1936, 1 F.R. 2159; 7553, Feb. 17, 1937, 2 F.R. 338.

Reorg. Plan No. I of 1939, §§201, 206, 301, 305, 306, eff. July 1, 1939, 4 F.R. 2728–2730, 53 Stat. 1424–1428.

§723. Repealed. Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 648

Section, acts May 12, 1933, ch. 30, §3, 46 Stat. 56; Feb. 15, 1934, ch. 13, §1, 48 Stat. 351, was enacted as temporary legislation during the economic emergency in 1933.

§§724 to 728. Omitted

CODIFICATION

Sections, acts May 12, 1933, ch. 30, §§4–8, 48 Stat. 56–58; Feb. 15, 1934, ch. 13, §1, 48 Stat. 351, were enacted as temporary legislation during the economic emergency in 1933.

CHAPTER 16A—EMERGENCY PETROLEUM ALLOCATION

§§751 to 760h. Omitted

CODIFICATION

Sections 751 to 760h were omitted pursuant to section 760g of this title.

Section 751, Pub. L. 93–159, §2, Nov. 27, 1973, 87 Stat. 628, provided Congressional findings and declaration of purpose.

Section 752, Pub. L. 93–159, §3, Nov. 27, 1973, 87 Stat. 628, provided definitions for this chapter.

Section 753, Pub. L. 93–159, §4, Nov. 27, 1973, 87 Stat. 629; Pub. L. 93–511, Dec. 5, 1974, 88 Stat. 1608; Pub. L. 94–99, §2, Sept. 29, 1975, 89 Stat. 481; Pub. L. 94–133, §1, Nov. 14, 1975, 89 Stat. 694; Pub. L. 94–163, title IV, §§401(b)(1)–(3), 402(a), 403(a), 451, Dec. 22, 1975, 89 Stat. 946, 948; Pub. L. 96–294, title II, §274, June 30, 1980, 94 Stat. 711, provided for mandatory allocation.

Section 754, Pub. L. 93–159, §5, Nov. 27, 1973, 87 Stat. 633; Pub. L. 94–163, title IV, §452, Dec. 22, 1975, 89 Stat. 948, provided for administration, enforcement, delegation of authority, and civil and criminal penalties.

Section 755, Pub. L. 93–159, §6, Nov. 27, 1973, 87 Stat. 633; Pub. L. 94–163, title IV, §453, Dec. 22, 1975, 89 Stat. 949, related to impact of this chapter on other laws.

Section 756, Pub. L. 93–159, §7, Nov. 27, 1973, 87 Stat. 635, related to monitoring of program by Federal Trade Commission.

Section 757, Pub. L. 93–159, §8, as added Pub. L. 94–163, title IV, §401(a), Dec. 22, 1975, 89 Stat. 941; amended Pub. L. 94–385, title I, §§121, 122, Aug. 14, 1976, 90 Stat. 1132, 1133, related to oil pricing policy.

Section 758, Pub. L. 93–159, §9, as added Pub. L. 94–163, title IV, §401(a), Dec. 22, 1975, 89 Stat. 946, related to passthroughs of cost price decreases.

Section 759, Pub. L. 93–159, §10, as added Pub. L. 94–163, title IV, §402(c), Dec. 22, 1975, 89 Stat. 947, limited pricing authority of President.

Section 760, Pub. L. 93–159, §11, as added Pub. L. 94–163, title IV, §454, Dec. 22, 1975, 89 Stat. 950, related to reevaluation and promulgation of amendments to regulations and report to Congress.

Section 760a, Pub. L. 93–159, §12, as added Pub. L. 94–163, title IV, §455, Dec. 22, 1975, 89 Stat. 950, related to conversion mechanism to standby authorities.

Section 760b, Pub. L. 93–159, §13, as added Pub. L. 94–163, title IV, §456, Dec. 22, 1975, 89 Stat. 952, related to standby purchase authority of President.

Section 760c, Pub. L. 93–159, §14, as added Pub. L. 94–163, title IV, §457, Dec. 22, 1975, 89 Stat. 953, related to direct Presidential control of refinery operations.

Section 760d, Pub. L. 93–159, §15, as added Pub. L. 94–163, title IV, §458, Dec. 22, 1975, 89 Stat. 953, related to Presidential control of domestic oil and oil product inventories.

Section 760e, Pub. L. 93–159, §16, as added Pub. L. 94–163, title IV, §459, Dec. 22, 1975, 89 Stat. 954, prohibited willful accumulation of excess crude, etc., oil during severe energy supply interruption.

Section 760f, Pub. L. 93–159, §17, as added Pub. L. 94–163, title IV, §460, Dec. 22, 1975, 89 Stat. 955, authorized President to amend regulations requiring allocation of asphalt, and thereafter to exempt asphalt from such regulation.

Section 760g, Pub. L. 93–159, §18, as added Pub. L. 94–163, title IV, §461, Dec. 22, 1975, 89 Stat. 955, provided for conversion of certain Presidential authority from mandatory to discretionary, for expiration of certain limitations, and for expiration, at midnight Sept. 30, 1981, of President's authority to promulgate and amend any regulation or to issue any order under this chapter, but such expiration not to affect any action or pending proceedings, administrative, civil, or criminal, not finally determined on such date, nor any administrative, civil, or criminal action or proceeding, whether or not pending, based upon any act committed or liability incurred prior to such expiration date.

Section 760h, Pub. L. 93–159, §19, as added Pub. L. 94–163, title IV, §462, Dec. 22, 1975, 89 Stat. 955, provided for reimbursement to States for implementation of delegated responsibilities.

CHAPTER 16B—FEDERAL ENERGY ADMINISTRATION

SUBCHAPTER I—FEDERAL ENERGY ADMINISTRATION

Sec.

761. Congressional declaration of purpose.
762. Establishment.
763. Repealed.
764. Specific functions and purposes.
765. Transfer of functions.
766. Administrative provisions.
767. Transitional and savings provisions.
768. Repealed.
769. Definitions.

770. Appointments.
771. Comptroller General, powers and duties.
772. Administrator's information-gathering power.
773. Public disclosure of information.
774. Reports and recommendations.
775. Sex discrimination; enforcement; other legal remedies.
776. Repealed.
777. Economic analysis of proposed actions.
778. Management oversight review; report to Administrator.
779. Coordination with, and technical assistance to, State governments.
780. Office of Private Grievances and Redress.
781. Comprehensive energy plan.
782. Petrochemical report to Congress.
783. Hydroelectric generating facilities; lists, transmittal to Congress; construction schedule and cost estimates for expedited construction program; prospective accomplishments from expedited completion of facilities; statement of appropriated but not obligated funds.
784. Exports of coal and refined petroleum products.
785. Foreign ownership; comprehensive review; sources of information; report to Congress; monitoring activity.
786. Repealed.
787. Project Independence Evaluation System documentation; access to model by Congress and public.
788. Use of commercial standards.
789. Repealed.

SUBCHAPTER II—OFFICE OF ENERGY INFORMATION AND ANALYSIS

790. Establishment of Office of Energy Information and Analysis.
790a. National Energy Information System; information required to be maintained.
790b. Administrative provisions.
790c. Analysis and evaluation of energy information; establishment and maintenance by Director of professional, etc., capability; specific capabilities.
790d. Repealed.
790e. Coordination by Director of energy information gathering activities of Federal agencies.
790f. Reports by Director.
790g. Access by Director to energy information.
790h. Congressional access to energy information; disclosure by Congress.

SUBCHAPTER I—FEDERAL ENERGY ADMINISTRATION

§761. Congressional declaration of purpose

(a) Objectives

The Congress hereby declares that the general welfare and the common defense and security require positive and effective action to conserve scarce energy supplies, to insure fair and efficient distribution of, and the maintenance of fair and reasonable consumer prices for, such supplies, to promote the expansion of readily usable energy sources, and to assist in developing policies and plans to meet the energy needs of the Nation.

(b) Necessity for reorganization

The Congress finds that to help achieve these objectives, and to assure a coordinated and effective approach to overcoming energy shortages, it is necessary to reorganize certain agencies and functions of the executive branch and to establish a Federal Energy Administration.

(c) Creation of Federal Energy Administration

The sole purpose of this chapter is to create an administration in the executive branch, called the Federal Energy Administration, to vest in the Administration certain functions as provided in this chapter, and to transfer to such Administration certain executive branch functions authorized by other laws, where such transfer is necessary on an interim basis to deal with the Nation's energy shortages.

(Pub. L. 93–275, §2, May 7, 1974, 88 Stat. 97.)

EFFECTIVE AND TERMINATION DATES

Section 30 of Pub. L. 93–275, as amended by Pub. L. 94–332, June 30, 1976, 90 Stat. 784; Pub. L. 94–385, title I, §112(a), Aug. 14, 1976, 90 Stat. 1132; Pub. L. 95–70, §6, July 21, 1977, 91 Stat. 277, under which this chapter became effective sixty days after May 7, 1974, and was to terminate Sept. 30, 1978, was repealed by Pub. L. 95–91, title VII, §709(a)(1), Aug. 4, 1977, 91 Stat. 607.

SHORT TITLE OF 1977 AMENDMENT

Pub. L. 95–70, §1, July 21, 1977, 91 Stat. 275, provided that: "This Act [enacting sections 788 and 789 of this title and amending sections 766 and 792 of this title, sections 6246, 6309, and 6881 of Title 42, The Public Health and Welfare, and notes under this section] may be cited as the 'Federal Energy Administration Authorization Act of 1977'."

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94–385, title I, §101, Aug. 14, 1976, 90 Stat. 1127, provided that: "This title [enacting sections 787, 790 to 790h of this title, amending sections 757, 764, 766, 772, 774, 777 and 784 of this title and sections 5818, 6211 and 6295 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under this section and sections 753, 757, and 790 of this title] may be cited as the 'Federal Energy Administration Act Amendments of 1976'."

SHORT TITLE

Pub. L. 93–275, §1, May 7, 1974, 88 Stat. 96, provided that: "This Act [enacting this chapter and provisions set out as notes under this section] may be cited as the 'Federal Energy Administration Act of 1974'."

SEPARABILITY

Pub. L. 93–275, §27, May 7, 1974, 88 Stat. 115, provided that: "If any provision of this Act [this chapter], or the application thereof to any person or circumstance, is held invalid, the remainder of this Act [this chapter], and the application of such provision to other persons or circumstances, shall not be affected thereby."

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administration or in its Administrator, officers, and components transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

AUTHORIZATION OF APPROPRIATIONS

Pub. L. 93–275, §29, May 7, 1974, 88 Stat. 115, as amended by Pub. L. 94–385, title I, §110, Aug. 14, 1976, 90 Stat. 1130; Pub. L. 95–70, §2, July 21, 1977, 91 Stat. 275, provided that:

"(a) There are authorized to be appropriated to the Federal Energy Administration the following sums:

"(1) subject to the restrictions specified in subsection (b), to carry out the functions identified as assigned to Executive Direction and Administration of the Federal Energy Administration as of January 1, 1977—

"(A) for the fiscal year ending September 30, 1977, not to exceed $35,627,000; and

"(B) for the fiscal year ending September 30, 1978, not to exceed $41,017,000.

"(2) to carry out the functions identified as assigned to the Office of Energy Information and Analysis as of January 1, 1977—

"(A) for the fiscal year ending September 30, 1977, not to exceed $34,971,000; and

"(B) for the fiscal year ending September 30, 1978, not to exceed $43,544,000.

"(3) to carry out the functions identified as assigned to the Office of Regulatory Programs as of January 1, 1977—

"(A) for the fiscal year ending September 30, 1977, not to exceed $62,459,000; and

"(B) for the fiscal year ending September 30, 1978, not to exceed $62,459,000.

"(4) to carry out the functions identified as assigned to the Office of Conservation and Environment as

of January 1, 1977 (other than functions described in part A [section 6861 et seq. of Title 42, The Public Health and Welfare] and part D [section 6881 et seq. of Title 42] of title IV of the Energy Conservation and Production Act, parts B [section 6291 et seq. of Title 42] and C [section 6321 et seq. of Title 42] of title III of the Energy Policy and Conservation Act and, for the fiscal year ending September 30, 1977, functions described in title II of the Energy Conservation and Production Act [section 6801 et seq. of Title 42] and in paragraph (7) of this subsection)—

"(A) for the fiscal year ending September 30, 1977, not to exceed $38,603,000; and

"(B) for the fiscal year ending September 30, 1978, not to exceed $46,908,000.

"(5) to carry out the functions identified as assigned to the Office of Energy Resource Development as of January 1, 1977—

"(A) for the fiscal year ending September 30, 1977, not to exceed $16,934,000; and

"(B) for the fiscal year ending September 30, 1978, not to exceed $26,017,000.

"(6) to carry out the functions identified as assigned to the Office of International Energy Affairs as of January 1, 1977—

"(A) for the fiscal year ending September 30, 1977, not to exceed $1,921,000; and

"(B) for the fiscal year ending September 30, 1978, not to exceed $1,846,000.

"(7) subject to the restriction specified in subsection (c), to carry out a program to develop the policies, plans, implementation strategies, and program definitions for promoting accelerated utilization and widespread commercialization of solar energy and to provide overall coordination of Federal solar energy commercialization activities, for the fiscal year ending September 30, 1977, not to exceed $2,500,000.

"(8) for the purpose of permitting public use of the Project Independence Evaluation System pursuant to section 31 of this Act [section 787 of this title], not to exceed the aggregate amount of the fees estimated to be charged for such use.

"(b) The following restrictions shall apply to the authorization of appropriations specified in paragraph (1) of subsection (a)—

"(1) amounts to carry out the functions identified as assigned to the Office of Communication and Public Affairs as of January 1, 1977, shall not exceed $2,112,000 for the fiscal year ending September 30, 1977; and

"(2) no amounts authorized to be appropriated in such paragraph may be used to carry out the functions identified as assigned to the Office of Nuclear Affairs as of January 1, 1976.

"(c) No amounts authorized to be appropriated in paragraphs (5) (B) and (7) of subsection (a) may be used to carry out solar energy research, development, or demonstration activities.

"(d) Subject to the provisions of any other law enacted after the date of the enactment of this subsection [July 21, 1977], if any function for which funds are authorized to be appropriated by this section is transferred by or pursuant to any such provision of law to any department, agency, or office, the unexpended balances of appropriations, authorizations, allocations, and other funds, held, used, arising from, available to, or to be made available in connection with such function shall be transferred to such department, agency, or office, but shall continue to be subject to any restriction to which they were subject before such transfer."

ADVICE AND CONSENT OF SENATE REQUIRED FOR APPOINTMENT OF DIRECTOR OF ENERGY POLICY OFFICE

Pub. L. 93–153, title IV, §404, Nov. 16, 1973, 87 Stat. 590, directed that Director of Energy Policy Office be appointed by President, by and with advice and consent of Senate, but that if any individual serving in this office on Nov. 16, 1973, were nominated for such position, he may continue to act unless and until such nomination were disapproved by Senate.

EXECUTIVE ORDER NO. 11712

Ex. Ord. No. 11712, Apr. 18, 1973, 38 F.R. 9657, which related to the Special Committee on Energy and the National Energy Office, was superseded by Ex. Ord. No. 11726, June 29, 1973, 38 F.R. 17711, formerly set out as a note under section 791a of Title 16, Conservation.

EXECUTIVE ORDER NO. 11726

Ex. Ord. No. 11726, June 29, 1973, 38 F.R. 17711, formerly set out as a note under section 791a of Title 16, Conservation, which established the Energy Policy Office, was superseded by Ex. Ord. No. 11775, Mar. 26, 1974, 39 F.R. 11415, set out below.

EX. ORD. NO. 11775. ABOLITION OF ENERGY POLICY OFFICE

Ex. Ord. No. 11775, Mar. 26, 1974, 39 F.R. 11415, as amended by Ex. Ord. No. 11790, June 25, 1974, 39 F.R. 23185, provided:

Executive Order No. 11726 of June 29, 1973, established in the Executive Office of the President an Energy Policy Office. Executive Order No. 11748 of December 4, 1973 [set out as a note under section 754 of this title], established in the Executive Office of the President a Federal Energy Office. In order to permit an orderly transition, the Energy Policy Office was continued in being on an interim basis. That transition has been successfully completed and the Energy Policy Office should now be abolished.

NOW, THEREFORE, by virtue of the authority vested in me as the President of the United States of America it is hereby ordered as follows:

SEC. 1. The Energy Policy Office is hereby abolished and Executive Order No. 11726 of June 29, 1973, is hereby superseded.

SEC. 2. [Revoked by Ex. Ord. No. 11790, June 25, 1974, 39 F.R. 23185].

SEC. 3. The Administrator of General Services shall take such steps as may be necessary to wind up the affairs of the Energy Policy Office, and unobligated funds, if any, that may remain available to defray the expenses of that Office shall be returned to the Emergency Fund of the President.

RICHARD NIXON.

EX. ORD. NO. 11790. EFFECTUATION OF CHAPTER

Ex. Ord. No. 11790, June 25, 1974, 39 F.R. 23185, as amended by Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957; Ex. Ord. No. 12919, §904(c), June 3, 1994, 59 F.R. 29534, provided:

Under and by virtue of the authority vested in me by the Federal Energy Administration Act of 1974 (Public Law 93–275) [this chapter], the Emergency Petroleum Allocation Act of 1973 (Public Law 93–159; 87 Stat. 627) [15 U.S.C. §751 et seq.], the Economic Stabilization Act of 1970, as amended [formerly 12 U.S.C. §1904 note], the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, et seq.), and section 301 of title 3 of the United States Code, it is hereby ordered as follows:

SECTION 1. Pursuant to the authority vested in me by section 30 of the Federal Energy Administration Act of 1974 [set out above], notice is hereby given that that act shall be effective as of June 27, 1974.

SEC. 2. (a) There is hereby delegated to the Secretary of Energy (hereinafter referred to as the "Secretary"), all authority vested in the President by the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. §751 et seq.].

(b) The Secretary shall submit to the Congress the reports required by section 4(c)(2) of the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. §753(c)(2)].

SEC. 3. (a) There is hereby delegated to the Secretary the authority vested in the President by section 203(a)(3) of the Economic Stabilization Act of 1970, as amended [formerly 12 U.S.C. §1904 note], to the extent such authority remains available under the provisions of section 218 of that act [formerly 12 U.S.C. §1904 note].

(b) The authority under the Economic Stabilization Act of 1970, as amended [formerly 12 U.S.C. §1904 note], that was delegated to the Administrator of the Federal Energy Office by the Chairman of the Cost of Living Council pursuant to section 4(b) of Executive Order No. 11748 of December 4, 1973 [set out as a note under section 754 of this title], is hereby transferred to the Secretary to the extent such authority remains available under the provisions of section 218 of that act [formerly 12 U.S.C. §1904 note].

SEC. 4. Notwithstanding the provisions of Executive Order No. 12919, as amended [formerly set out as a note under section 2153 of Title 50, Appendix, War and National Defense], the Secretary is authorized to exercise the authority vested in the President by the Defense Production Act of 1950, as amended [50 U.S.C. App. §2061 et seq.], except section 708 thereof [50 U.S.C. App. §2158], as it relates to the production, conservation, use, control, distribution, and allocation of energy, without approval, ratification, or other action of the President or any other official of the executive branch of the Government.

SEC. 5. (a) The Federal Energy Office established by Executive Order No. 11748 is hereby abolished, and that Executive order is hereby revoked.

(b) The authority vested in the Administrator of the Federal Energy Office to appoint a Deputy Administrator of that Office and to compensate that officer at the rate prescribed for officers and positions at level III of the Executive Schedule (5 U.S.C. 5314) is hereby revoked.

(c) All orders, regulations, circulars, or other directives issued and all other actions taken pursuant to any authority delegated or transferred to the Secretary by this order prior to and in effect on the date of this order are hereby confirmed and ratified, and shall remain in full force and effect, as if issued under this order, unless or until altered, amended, or revoked by the Secretary or by such competent authority as he may specify.

(d) All personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with functions of the Administrator of the Federal Energy Office, as Administrator of that Office or as Chairman of the Oil Policy Committee, are hereby transferred to the Secretary.

SEC. 6. All authority delegated or transferred to the Secretary by this order may be further delegated, in whole or in part, by the Secretary to any other office or any department or agency of the United States, or, if authorized by law, to any State or officer thereof.

SECS. 7 to 10. [Deleted.]

EXECUTIVE ORDER NO. 11930

Ex. Ord. No. 11930, July 30, 1976, 41 F.R. 32399, which related to the establishment of the Federal Energy Office and the performance by the Office of the energy functions of the Federal Energy Administration, was revoked by Ex. Ord. No. 11933, Aug. 25, 1976, 41 F.R. 36641, set out below.

EX. ORD. NO. 11933. TERMINATION OF FEDERAL ENERGY OFFICE

Ex. Ord. No. 11933, Aug. 25, 1976, 41 F.R. 36641, provided:

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. Executive Order No. 11930 of July 30, 1976, which established the Federal Energy Office, is, consistent with the Federal Energy Administration Act Amendments of 1976 (Title I of Public Law 94–385) [for classification, see Short Title of 1976 Amendment note set out above], hereby revoked as of the date of its issuance.

SEC. 2. All orders, rules, regulations, rulings, interpretations, and other directives issued or pending, all rule making, judicial and administrative proceedings commenced or pending, all voluntary agreements, plans of action, and all other actions of whatever nature taken, continued, confirmed, ratified or made effective under Executive Order 11930, shall, in accordance with the Federal Energy Administration Act Amendments of 1976 [for classification, see Short Title of 1976 Amendment note set out above], be deemed to have been actions of the Federal Energy Administration and shall continue and remain in full force and effect, unless amended or revoked by the Federal Energy Administration.

SEC. 3. All authority and responsibility vested in the Federal Energy Administration by Executive order or proclamation prior to July 31, 1976 was not revoked by Executive Order No. 11930, subsists in the Federal Energy Administration, and shall be deemed to have been continuously vested in the Federal Energy Administration, whose existence has been retroactively extended by the Federal Energy Administration Act Amendments of 1976 [for classification, see Short Title of 1976 Amendment note set out above].

GERALD R. FORD.

§762. Establishment

There is hereby established an independent agency in the executive branch to be known as the Federal Energy Administration (hereinafter in this chapter referred to as the "Administration").

(Pub. L. 93–275, §3, May 7, 1974, 88 Stat. 97.)

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administration or in its Administrator, officers, and components transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§763. Repealed. Pub. L. 95–91, title VII, §709(a)(1), Aug. 4, 1977, 91 Stat. 607

Section, Pub. L. 93–275, §4, May 7, 1974, 88 Stat. 97, related to officers of Federal Energy Administration.

§764. Specific functions and purposes

(a) Limitation on discretionary powers

Subject to the provisions and procedures set forth in this chapter, the Administrator shall be responsible for such actions as are taken to assure that adequate provision is made to meet the energy

needs of the Nation. To that end, he shall make such plans and direct and conduct such programs related to the production, conservation, use, control, distribution, rationing, and allocation of all forms of energy as are appropriate in connection with only those authorities or functions—

(1) specifically transferred to or vested in him by or pursuant to this chapter;

(2) delegated to him by the President pursuant to specific authority vested in the President by law; and

(3) otherwise specifically vested in the Administrator by the Congress.

(b) Duties

To the extent authorized by subsection (a) of this section, the Administrator shall—

(1) advise the President and the Congress with respect to the establishment of a comprehensive national energy policy in relation to the energy matters for which the Administration has responsibility, and, in coordination with the Secretary of State, the integration of domestic and foreign policies relating to energy resource management;

(2) assess the adequacy of energy resources to meet demands in the immediate and longer range future for all sectors of the economy and for the general public;

(3) develop effective arrangements for the participation of State and local governments in the resolution of energy problems;

(4) develop plans and programs for dealing with energy production shortages;

(5) promote stability in energy prices to the consumer, promote free and open competition in all aspects of the energy field, prevent unreasonable profits within the various segments of the energy industry, and promote free enterprise;

(6) assure that energy programs are designed and implemented in a fair and efficient manner so as to minimize hardship and inequity while assuring that the priority needs of the Nation are met;

(7) develop and oversee the implementation of equitable voluntary and mandatory energy conservation programs and promote efficiencies in the use of energy resources;

(8) develop and recommend policies on the import and export of energy resources;

(9) collect, evaluate, assemble, and analyze energy information on reserves, production, demand, and related economic data;

(10) work with business, labor, consumer and other interests and obtain their cooperation;

(11) in administering any pricing authority, provide by rule, for equitable allocation of all component costs of producing propane gas. Such rules may require that (a) only those costs directly related to the production of propane may be allocated by any producer to such gas for purposes of establishing any price for propane, and (b) prices for propane shall be based on the prices for propane in effect on May 15, 1973. The Administrator shall not allow costs attributable to changes in ownership and movement of propane gas where, in the opinion of the Administrator, such changes in ownership and movement occur primarily for the purpose of establishing a higher price; and

(12) perform such other functions as may be prescribed by law.

(c) Exercise of delegated discretion concerning exemptions

(1) The Administrator shall not exercise the discretion delegated to him by the President, pursuant to section 754(b) [1] of this title, to submit to the Congress as one energy action any amendment to the regulation under section 753(a) [1] of this title, pursuant to section 760a [1] of this title, which amendment exempts any oil, refined petroleum product, or refined product category from both the allocation and pricing provisions of the regulation under section 753 [1] of this title.

(2) Nothing in this subsection shall prevent the Administrator from concurrently submitting an energy action relating to price together with an energy action relating to allocation of the same oil, refined petroleum product, or refined product category.

(Pub. L. 93–275, §5, May 7, 1974, 88 Stat. 98; Pub. L. 94–385, title I, §102, Aug. 14, 1976, 90 Stat. 1127.)

REFERENCES IN TEXT

Sections 753, 754, and 760a of this title, referred to in subsec. (c)(1), were omitted from the Code pursuant

to section 760g of this title, which provided for the expiration of the President's authority under those sections on Sept. 30, 1981.

AMENDMENTS

1976—Subsec. (c). Pub. L. 94–385 added subsec. (c).

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

[1] *See References in Text note below.*

§765. Transfer of functions

(a) Functions of Secretary and Department of the Interior

There are hereby transferred to and vested in the Administrator all functions of the Secretary of the Interior, the Department of the Interior, and officers and components of that Department—

(1) as relate to or are utilized by the Office of Petroleum Allocation;
(2) as relate to or are utilized by the Office of Energy Conservation;
(3) as relate to or are utilized by the Office of Energy Data and Analysis; and
(4) as relate to or are utilized by the Office of Oil and Gas.

(b) Functions of Chairman and Executive Director of Cost of Living Council

There are hereby transferred to and vested in the Administrator all functions of the Chairman of the Cost of Living Council, the Executive Director of the Cost of Living Council, and the Cost of Living Council, and officers and components thereof, as relate to or are utilized by the Energy Division of the Cost of Living Council.

(Pub. L. 93–275, §6, May 7, 1974, 88 Stat. 100.)

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

ABOLITION OF COST OF LIVING COUNCIL

Cost of Living Council abolished July 1, 1974, by Ex. Ord. No. 11788, §1, June 18, 1974, 39 F.R. 22113.

§766. Administrative provisions

(a) Rules, regulations, and procedures; Environmental Protection Agency, notification; quality of environment, publication of comments; emergency preclusion of review by Environmental Protection Agency

The Administrator may promulgate such rules, regulations, and procedures as may be necessary to carry out the functions vested in him: *Provided*, That:

(1) The Administrator shall, before promulgating proposed rules, regulations, or policies affecting the quality of the environment, provide a period of not less than five working days during which the Administrator of the Environmental Protection Agency may provide written comments concerning the impact of such rules, regulations, or policies on the quality of the environment. Such comments shall be published together with publication of notice of the proposed action.

(2) The review required by paragraph (1) of this subsection may be waived for a period of fourteen days if there is an emergency situation which, in the judgment of the Administrator,

requires making effective the action proposed to be taken at a date earlier than would permit the Administrator of the Environmental Protection Agency the five working days opportunity for prior comment required by paragraph (1). Notice of any such waiver shall be given to the Administrator of the Environmental Protection Agency and filed with the Federal Register with the publication of notice of proposed or final agency action and shall include an explanation of the reasons for such waiver, together with supporting data and a description of the factual situation in such detail as the Administrator determines will apprise such agency and the public of the reasons for such waiver.

The review required by paragraphs (1) and (2) of this subsection may be waived for a period of fourteen days if there is an emergency situation which, in the judgment of the Administrator, requires immediate action.

(b) Adjustments; procedures respecting application and operation; judicial review

Any officer or agency authorized to issue any rule or regulation, or any order having the applicability and effect of a rule as defined in section 551(4) of title 5, pursuant to this chapter shall provide for the making of such adjustments, consistent with the other purposes of this chapter, as may be necessary to prevent special hardship, inequity, or unfair distribution of burdens and shall, by rule, establish procedures which are available to any person for the purpose of seeking an interpretation, modification, rescission of, exception to, or exemption from, such rules, regulations, and orders. Such officer or agency shall, within ninety days after August 14, 1976, establish criteria and guidelines by which such special hardship, inequity, or unfair distribution of burdens shall be evaluated. Such officer or agency shall additionally insure that each decision on any application or petition requesting an adjustment shall specify the standards of hardship, inequity, or unfair distribution of burden by which any disposition was made, and the specific application of such standards to the facts contained in any such application or petition. If any person is aggrieved or adversely affected by a denial of a request for adjustment under the preceding sentences, he may request a review of such denial by the agency and may obtain judicial review in accordance with subsection (c) of this section when such a denial becomes final. The agency shall, by rule, establish appropriate procedures, including a hearing when requested, for review of a denial, and where deemed advisable by the agency, for considering other requests for action under this paragraph, except that no review of a denial under this subparagraph shall be controlled by the same officer denying the adjustment pursuant to this subparagraph.

(c) Judicial review of administrative rulemaking; filing of petition in United States Court of Appeals

Judicial review of administrative rulemaking of general and national applicability done under this chapter, except that done pursuant to the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 751 et seq.],[1] may be obtained only by filing a petition for review in the United States Court of Appeals for the District of Columbia within thirty days from the date of promulgation of any such rule, regulation, or order, and judicial review of administrative rulemaking of general, but less than national, applicability done under this chapter, except that done pursuant to the Emergency Petroleum Allocation Act of 1973,[1] may be obtained only by filing a petition for review in the United States Court of Appeals for the appropriate circuit within thirty days from the date of promulgation of any such rule, regulation, or order, the appropriate circuit being defined as the circuit which contains the area or the greater part of the area within which the rule, regulation, or order is to have effect.

(d) to (k) Repealed or Redesignated. Pub. L. 95–91, title VII, §709(a)(2)(B), (C), (F), (G), Aug. 4, 1977, 91 Stat. 608

(l) Authority and responsibility of General Counsel

Effective beginning July 1, 1977, amounts authorized to be appropriated under this chapter or any other Act shall not be available for the payment of salaries and other expenses with respect to any office of regional counsel of the Administration unless such office is under the direct supervision and

control of the General Counsel of the Administration.

(Pub. L. 93–275, §7, May 7, 1974, 88 Stat. 100; Pub. L. 94–385, title I, §§103–106, Aug. 14, 1976, 90 Stat. 1127–1129; Pub. L. 95–70, §8, July 21, 1977, 91 Stat. 277; Pub. L. 95–91, title VII, §709(a)(2), Aug. 4, 1977, 91 Stat. 607.)

REFERENCES IN TEXT

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (c), is Pub. L. 93–159, Nov. 27, 1973, 87 Stat. 628, as amended, which was classified generally to chapter 16A (§751 et seq.) of this title, was omitted from the Code pursuant to section 760g of this title, which provided for the expiration of the President's authority under that chapter on Sept. 30, 1981.

AMENDMENTS

1977—Subsec. (a). Pub. L. 95–91, §709(a)(2)(A), struck out subsec. (a) provisions: for appointment, employment, and compensation of officers and employees; for prescription of their authority and duties; for placement of specified number of positions in GS–16, 17, and 18 and making competitive service provisions inapplicable to a limited number of such positions; and making classification standards and procedures applicable to the authority provided for in this section and for duration of such authority; and redesignated subsec. (c) as (a).

Subsec. (b). Pub. L. 95–91, §709(a)(2)(A), (C)–(E), struck out subsec. (b) provisions respecting employment and compensation of experts and consultants, redesignated subsec. (i)(1)(D) as (b), and substituted therein "any rule or regulation, or any order having the applicability and effect of a rule as defined in section 551(4) of title 5 pursuant to this chapter" for "the rules, regulations, or orders described in paragraph (A)" and "subsection (c) of this section" for "paragraph (2) of this subsection".

Subsec. (c). Pub. L. 95–91, §709(a)(2)(F), redesignated subsec. (i)(2)(A) as (c). Former subsec. (c) redesignated (a).

Subsecs. (d) to (h). Pub. L. 95–91, §709(a)(2)(B), struck out subsecs. (d) to (h) relating to: interagency cooperation and reimbursement; seal and judicial notice; acceptance of gifts; contract authority; and performance of other necessary activities.

Subsec. (i)(1)(A) to (C). Pub. L. 95–91, §709(a)(2)(C), struck out subpar. (A) to (C) provisions relating to: application of subch. II of ch. 5 of title 5 to rules, regulations, or orders issued under this chapter; publication of notice of proposed rules, regulations, or orders in the Federal Register and opportunity for comment and waiver of the requirements when warranted by considerations of public health, safety, or welfare; and opportunity for oral presentation of views, data, and arguments where rules, regulations, or orders are likely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses.

Subsec. (i)(1)(D). Pub. L. 95–91, §709(a)(2)(C), redesignated subpar. (D) as subsec. (b).

Subsec. (i)(E), (F). Pub. L. 95–91, §709(a)(2)(C), struck out provisions of subpars. (E) and (F) providing for public availability of internal rules and guidelines of the agency forming a basis for rules, regulations, or orders and agency opinions respecting determinations of requests for exception or exemption from rules or orders; and procedures for holding hearings or oral presentation of views with respect to rules or regulations the effects of which are confined to a single unit of local government or the residents thereof, a single geographic area within a State or the residents thereof, or a single State or the residents thereof.

Subsec. (i)(2)(A). Pub. L. 95–91, §709(a)(2)(F), redesignated subpar. (A) as subsec. (c).

Subsec. (i)(2)(B), (3). Pub. L. 95–91, §709(a)(2)(F), (G), struck out par. (2)(B) provisions relating to jurisdiction of federal district courts, power of courts of competent jurisdiction to consider defenses, removal of cases raising constitutional defenses, and concurrent jurisdiction of cases or controversies arising under rules, regulations, or orders of State or local government agencies; and par. (3) provisions relating to procedures for State or local government agencies.

Subsecs. (j), (k). Pub. L. 95–91, §709(a)(2)(G), struck out subsecs. (j) and (k) relating to information for independent regulatory agencies and limitation on enforcement authority of the Administrator.

Subsec. (l). Pub. L. 95–70 added subsec. (l).

1976—Subsec. (c). Pub. L. 94–385, §103, struck out provisions relating to review of rules, regulations and procedures by the Cost of Living Council and redistributed remaining provisions as pars. (1) and (2).

Subsec. (i)(1)(D). Pub. L. 94–385, §104, inserted provisions which require any officer or agency authorized to issue rules, regulations or orders to establish criteria and guidelines for evaluation of special hardship situations, to include in every decision the standards applied in the disposition of such situations, and requiring the hearing upon request of the aggrieved party to be heard by an officer other than the one denying the adjustment.

Subsec. (i)(1)(F). Pub. L. 94–385, §105, added subpar. (F).

Subsec. (k). Pub. L. 94–385, §106, added subsec. (k).

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

[1] *See References in Text note below.*

§767. Transitional and savings provisions

(a) Continuance of effective status

All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges—

(1) which have been issued, made, granted, or allowed to become effective by the President, by any Federal department or agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under this chapter, and

(2) which are in effect at the time this chapter takes effect,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked by the President, the Administrator, other authorized officials, a court of competent jurisdiction, or by operation of law.

(b) Pending proceedings; orders, appeals, payments

This chapter shall not affect any proceeding pending, at the time this chapter takes effect, before any department or agency (or component thereof) regarding functions which are transferred by this chapter; but such proceedings, to the extent that they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals (except as provided in section 766(i)(2) of this title) shall be taken therefrom, and payments shall be made pursuant to such orders, as if this chapter had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions, and to the same extent, that such proceeding could have been discontinued if this chapter had not been enacted.

(c) Commencement of suits before effective date

Except as provided in subsection (e) of this section—

(1) the provisions of this chapter shall not affect suits commenced prior to the date this chapter takes effect, and

(2) in all such suits proceedings shall be had, appeals taken, and judgments rendered, in the same manner and effect as if this chapter had not been enacted.

(d) Litigation; abatement prohibition; Federal parties

No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of any department or agency, functions of which are transferred by this chapter, shall abate by reason of the enactment of this chapter. No cause of action by or against any department or agency, functions of which are transferred by this chapter, or by or against any officer thereof in his official capacity shall abate by reason of the enactment of this chapter. Causes of actions, suits, actions, or other proceedings may be asserted by or against the United States or such official as may be appropriate and, in any litigation pending when this chapter takes effect, the court may at any time, on its own motion or that of any party, enter any order which will give effect to the provisions of this section.

(e) Substitution of parties

If, before the date on which this chapter takes effect, any department or agency, or officer thereof in his official capacity, is a party to a suit, and under this chapter any function of such department, agency, or officer is transferred to the Administrator, or any other official, then such suit shall be continued as if this chapter had not been enacted, with the Administrator, or other official as the case may be, substituted.

(f) Judicial review; other requirements respecting notices, hearings, action upon record, and administrative review; conflicting provisions

Final orders and actions of any official or component in the performance of functions transferred by this chapter shall be subject to judicial review to the same extent and in the same manner as if such orders or actions had been made or taken by the officer, department, agency, or instrumentality in the performance of such functions immediately preceding the effective date of this chapter. Any statutory requirements relating to notices, hearings, action upon the record, or administrative review that apply to any function transferred or delegated by this chapter shall apply to the performance of those functions by the Administrator, or any officer or component of the Administration. In the event of any inconsistency between the provisions of this subsection and section 766 of this title, the provisions of section 766 of this title shall govern.

(g) References in other laws deemed references to transferee offices or officers

With respect to any function transferred by this chapter and performed after the effective date of this chapter, reference in any other law to any department or agency, or any officer or office, the functions of which are so transferred, shall be deemed to refer to the Administration, Administrator, or other office or officers in which this chapter vests such functions.

(h) Presidential functions, authorities, and delegations unaffected

Nothing contained in this chapter shall be construed to limit, curtail, abolish, or terminate any function of the President which he had immediately before the effective date of this chapter; or to limit, curtail, abolish, or terminate his authority to perform such function; or to limit, curtail, abolish, or terminate his authority to delegate, redelegate, or terminate any delegations of functions.

(i) References to other provisions deemed references to such provisions as amended or supplemented

Any reference in this chapter to any provision of law shall be deemed to include, as appropriate, references thereto as now or hereafter amended or supplemented.

(Pub. L. 93–275, §8, May 7, 1974, 88 Stat. 103.)

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§768. Repealed. Pub. L. 95–91, title VII, §709(a)(1), Aug. 4, 1977, 91 Stat. 607

Section, Pub. L. 93–275, §9, May 7, 1974, 88 Stat. 105, related to incidental transfers of personnel, assets, liabilities, contracts, etc., by the Director of the Office of Management and Budget necessary and appropriate to accomplish the intent and purpose of this chapter.

§769. Definitions

As used in this chapter—

(1) any reference to "function" or "functions" shall be deemed to include references to duty, obligation, power, authority, responsibility, right, privilege, and activity, or the plural thereof, as the case may be; and

(2) any reference to "perform" or "performance", when used in relation to functions, shall be deemed to include the exercise of power, authority, rights, and privileges.

(Pub. L. 93–275, §10, May 7, 1974, 88 Stat. 105.)

§770. Appointments

(a) Interim funds

Funds available to any department or agency (or any official or component thereof), and lawfully authorized for any of the specific functions which are transferred to the Administrator by this chapter, may, with the approval of the President, be used to pay the compensation and expenses of any officer appointed pursuant to this chapter until such times as funds for that purpose are otherwise available.

(b) Interim appointments

In the event that any officer required by this chapter to be appointed by and with the advice and consent of the Senate shall not have entered upon office on the effective date of this chapter, the President may designate any officer, whose appointment was required to be made by and with the advice and consent of the Senate and who was such an officer immediately prior to the effective date of this chapter, or any officer who was performing essentially the same functions immediately prior to the effective date of this chapter to act in such office until the office is filled as provided in this chapter: *Provided*, That any officer acting pursuant to the provisions of this subsection may act no longer than a period of thirty days unless during such period his appointment as such an officer is submitted to the Senate for its advice and consent.

(c) Nontemporary personnel; transferee rights for one year

Transfer of nontemporary personnel pursuant to this chapter shall not cause any such employee to be separated or reduced in grade or compensation, except for cause, for one year after such transfer.

(d) Compensation of new position at not less than provided for in Executive Schedule for previous position in cases of appointees without break in service

Any person who, on the effective date of this chapter, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, and who, without a break in service, is appointed in the Administration to a position having duties comparable to those performed immediately preceding his appointment, shall continue to be compensated in his new position at not less than the rate provided for his previous position.

(Pub. L. 93–275, §11, May 7, 1974, 88 Stat. 105.)

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§771. Comptroller General, powers and duties

(a) Scope of activities; monitoring activity; data to Comptroller General from Administration; reports and recommendations to Congress

For the duration of this chapter, the Comptroller General of the United States shall monitor and evaluate the operations of the Administration including its reporting activities. The Comptroller General shall (1) conduct studies of existing statutes and regulations governing the Administration's programs; (2) review the policies and practices of the Administration; (3) review and evaluate the procedures followed by the Administrator in gathering, analyzing, and interpreting energy statistics, data, and information related to the management and conservation of energy, including but not limited to data related to energy costs, supply, demand, industry structure, and environmental

impacts; and (4) evaluate particular projects or programs. The Comptroller General shall have access to such data within the possession or control of the Administration from any public or private source whatever, notwithstanding the provisions of any other law, as are necessary to carry out his responsibilities under this chapter and shall report to the Congress at such times as he deems appropriate with respect to the Administration's programs, including his recommendations for modifications in existing laws, regulations, procedures, and practices.

(b) Access to material and written energy information from owners or operators of facilities or business premises engaged in energy matters; scope of information

The Comptroller General or any of his authorized representatives in carrying out his responsibilities under this section may request access to any books, documents, papers, statistics, data, records, and information of any person owning or operating facilities or business premises who is engaged in any phase of energy supply or major energy consumption, where such material relates to the purposes of this chapter, including but not limited to energy costs, demand, supply, industry structure, and environmental impacts. The Comptroller General may request such person to submit in writing such energy information as the Comptroller General may prescribe.

(c) Access to material and information from recipients of Federal funds or assistance under Federal transactions

The Comptroller General of the United States, or any of his duly authorized representatives, shall have access to and the right to examine any books, documents, papers, records, or other recorded information of any recipients of Federal funds or assistance under contracts, leases, cooperative agreements, or other transactions entered into pursuant to subsection (d) or (g) of section 766 [1] of this title which in the opinion of the Comptroller General may be related or pertinent to such contracts, leases, cooperative agreements, or similar transactions.

(d) Subpenas; committee resolution; issuance; production of evidence

To assist in carrying out his responsibilities under this section, the Comptroller General may, with the concurrence of a duly established committee of Congress having legislative or investigative jurisdiction over the subject matter and upon the adoption of a resolution by such a committee which sets forth specifically the scope and necessity therefor, and the specific identity of those persons from whom information is sought, sign and issue subpenas requiring the production of the books, documents, papers, statistics, data, records, and information referred to in subsection (b) of this section.

(e) Enforcement of subpenas; jurisdiction; order for production of evidence; contempt

In case of disobedience to a subpena issued under subsection (d) of this section, the Comptroller General may invoke the aid of any district court of the United States in requiring the production of the books, documents, papers, statistics, data, records, and information referred to in subsection (b) of this section. Any district court of the United States within the jurisdiction where such person is found or transacts business may, in case of contumacy or refusal to obey a subpena issued by the Comptroller General, issue an order requiring such person to produce the books, documents, papers, statistics, data, records, or information; and any failure to obey such order of the court shall be punished by the court as a contempt thereof.

(f) Availability to public of reports submitted to Congress; prohibited disclosures: confidential information and trade secrets; preservation of confidentiality in disclosures to Government

Reports submitted by the Comptroller General to the Congress pursuant to this section shall be available to the public at reasonable cost and upon identifiable request. The Comptroller General may not disclose to the public any information which concerns or relates to a trade secret or other matter referred to in section 1905 of title 18, except that such information shall be disclosed by the Comptroller General or the Administrator, in a manner designed to preserve its confidentiality—

(1) to other Federal Government departments, agencies, and officials for official use upon request;

(2) to committees of Congress upon request; and

(3) to a court in any judicial proceeding under court order.

(Pub. L. 93–275, §12, May 7, 1974, 88 Stat. 106.)

REFERENCES IN TEXT

Subsections (d) and (g) of section 766 of this title, referred to in subsec. (c), were repealed by Pub. L. 95–91, title VII, §709(a)(2)(B), Aug. 4, 1977, 91 Stat. 608.

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

Functions of Comptroller General of United States under this section made applicable with respect to monitoring and evaluation of all functions and activities of Department of Energy by section 7137 of Title 42.

[1] *See References in Text note below.*

§772. Administrator's information-gathering power

(a) Comprehensive and particular energy information; categorical groupings; monitoring activity and policy guidance

The Administrator shall collect, assemble, evaluate, and analyze energy information by categorical groupings, established by the Administrator, of sufficient comprehensiveness and particularity to permit fully informed monitoring and policy guidance with respect to the exercise of his functions under this chapter.

(b) Information and data to Administrator from owners or operators of facilities or business premises engaged in energy matters

All persons owning or operating facilities or business premises who are engaged in any phase of energy supply or major energy consumption shall make available to the Administrator such information and periodic reports, records, documents, and other data, relating to the purposes of this chapter, including full identification of all data and projections as to source, time, and methodology of development, as the Administrator may prescribe by regulation or order as necessary or appropriate for the proper exercise of functions under this chapter.

(c) General or special orders for filing reports or answers in writing to specific questions, surveys, or questionnaires; oath or otherwise; filing period

The Administrator may require, by general or special orders, any person engaged in any phase of energy supply or major energy consumption to file with the Administrator in such form as he may prescribe, reports or answers in writing to such specific questions, surveys, or questionnaires as may be necessary to enable the Administrator to carry out his functions under this chapter. Such reports and answers shall be made under oath, or otherwise, as the Administrator may prescribe, and shall be filed with the Administrator within such reasonable period as he may prescribe.

(d) Investigations, physical inspections, inventories and samples, copies, and interrogations

The Administrator, to verify the accuracy of information he has received or otherwise to obtain information necessary to perform his functions under this chapter, is authorized to conduct investigations, and in connection therewith, to conduct, at reasonable times and in a reasonable manner, physical inspections at energy facilities and business premises, to inventory and sample any stock of fuels or energy sources therein, to inspect and copy records, reports, and documents from which energy information has been or is being compiled, and to question such persons as he may deem necessary.

(e) Subpenas; attendance and testimony of witnesses; production of evidence; enforcement; judicial orders; contempt

(1) The Administrator, or any of his duly authorized agents, shall have the power to require by subpena the attendance and testimony of witnesses, and the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence which the Administrator is authorized to obtain pursuant to this section.

(2) Any appropriate United States district court may, in case of contumacy or refusal to obey a subpena issued pursuant to this section, issue an order requiring the party to whom such subpena is directed to appear before the Administration and to give testimony touching on the matter in question, or to produce any matter described in paragraph (1) of this subsection, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(f) Federal information concerning energy resources on Federal lands; scope of information

The Administrator shall collect from departments, agencies and instrumentalities of the executive branch of the Government (including independent agencies), and each such department, agency, and instrumentality is authorized and directed to furnish, upon his request, information concerning energy resources on lands owned by the Government of the United States. Such information shall include, but not be limited to, quantities of reserves, current or proposed leasing agreements, environmental considerations, and economic impact analyses.

(g) Maintenance of records and accounts

With respect to any person who is subject to any rule, regulation, or order promulgated by the Administrator or to any provision of law the administration of which is vested in or transferred or delegated to the Administrator, the Administrator may require, by rule, the keeping of such accounts or records as he determines are necessary or appropriate for determining compliance with such rule, regulation, order, or any applicable provision of law.

(h) Alleviation of reporting burdens for small businesses

In exercising his authority under this chapter and any other provision of law relating to the collection of energy information, the Administrator shall take into account the size of businesses required to submit reports with the Administrator so as to avoid, to the greatest extent practicable, overly burdensome reporting requirements on small marketers and distributors of petroleum products and other small business concerns required to submit reports to the Administrator.

(i) Penalties for failure to file information

Any failure to make information available to the Administrator under subsection (b) of this section, any failure to comply with any general or special order under subsection (c) of this section, or any failure to allow the Administrator to act under subsection (d) of this section shall be subject to the same penalties as any violation of section 796 of this title or any rule, regulation, or order issued under such section.

(Pub. L. 93–275, §13, May 7, 1974, 88 Stat. 107; Pub. L. 94–385, title I, §§107, 108, Aug. 14, 1976, 90 Stat. 1129.)

AMENDMENTS

1976—Subsecs. (g), (h). Pub. L. 94–385, §107, added subsecs. (g) and (h).
Subsec. (i). Pub. L. 94–385, §108, added subsec. (i).

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§773. Public disclosure of information

(a) Analyses, data, information, reports, and summaries; objectives of disclosure

The Administrator shall make public, on a continuing basis, any statistical and economic analyses, data, information, and whatever reports and summaries are necessary to keep the public fully and

currently informed as to the nature, extent, and projected duration of shortages of energy supplies, the impact of such shortages, and the steps being taken to minimize such impacts.

(b) Freedom of Information Act applicable; disclosure of confidential information or trade secrets; disclosure of matter included in public annual reports to Securities and Exchange Commission and matter excepted from such disclosure

Subject to the provisions of this chapter, section 552 of title 5 shall apply to public disclosure of information by the Administrator: *Provided,* That notwithstanding said section, the provisions of section 1905 of title 18, or any other provision of law, (1) all matters reported to, or otherwise obtained by, any person exercising authority under this chapter containing trade secrets or other matter referred to in section 1905 of title 18, may be disclosed to other persons authorized to perform functions under this chapter solely to carry out the purposes of the chapter, or when relevant in any proceeding under this chapter, and (2) the Administrator shall disclose to the public, at a reasonable cost, and upon a request which reasonably describes the matter sought, any matter of the type which could not be excluded from public annual reports to the Securities and Exchange Commission pursuant to section 78m or 78o(d) of this title by a business enterprise exclusively engaged in the manufacture or sale of a single product, unless such matter concerns or relates to the trade secrets, processes, operations, style of work, or apparatus of a business enterprise.

(c) Guidelines and procedures for handling information pertaining to individuals; access of individuals to such personal information

To protect and assure privacy of individuals and confidentiality of personal information, the Administrator is directed to establish guidelines and procedures for handling any information which the Administration obtains pertaining to individuals. He shall provide, to the extent practicable, in such guidelines and procedures a method for allowing any such individual to gain access to such information pertaining to himself.

(Pub. L. 93–275, §14, May 7, 1974, 88 Stat. 108.)

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§774. Reports and recommendations

(a) Administrator's initial submittal to President and Congress

Not later than one year after the effective date of this chapter, the Administrator shall submit a report to the President and Congress which will provide a complete and independent analysis of actual oil and gas reserves and resources in the United States and its Outer Continental Shelf, as well as of the existing productive capacity and the extent to which such capacity could be increased for crude oil and each major petroleum product each year for the next ten years through full utilization of available technology and capacity. The report shall also contain the Administration's recommendations for improving the utilization and effectiveness of Federal energy data and its manner of collection. The data collection and analysis portion of this report shall be prepared by the Federal Trade Commission for the Administration. Unless specifically prohibited by law, all Federal agencies shall make available estimates, statistics, data and other information in their files which, in the judgment of the Commission or Administration, are necessary for the purposes of this subsection.

(b) Administrator's annual report to Congress; contents

The Administrator shall prepare and submit directly to the Congress and the President every year after May 7, 1974, a report which shall include—

(1) a review and analysis of the major actions taken by the Administrator;

(2) an analysis of the impact these actions have had on the Nation's civilian requirements for energy supplies for materials and commodities;

(3) a projection of the energy supply for the midterm and long term for each of the major types of fuel and the potential size and impact of any anticipated shortages, including recommendations for measures to—

(A) minimize deficiencies of energy supplies in relation to needs;

(B) maintain the health and safety of citizens;

(C) maintain production and employment at the highest feasible level;

(D) equitably share the burden of shortages among individuals and business firms; and

(E) minimize any distortion of voluntary choices of individuals and firms;

(4) a summary listing of all recipients of funds and the amount thereof within the preceding period;

(5) a summary listing of information-gathering activities conducted under section 772 of this title; and

(6) an analysis of the energy needs of the United States and the methods by which such needs can be met, including both tax and nontax proposals and energy conservation strategies.

In the first annual report submitted after August 14, 1976, the Administrator shall include in such report with respect to the analysis referred to in paragraph (6) a specific discussion of the utility and relative benefits of employing a Btu tax as a means for obtaining national energy goals.

(c) Citizen fuel use; summer guidelines

Not later than thirty days after the effective date of this chapter, the Administrator shall issue preliminary summer guidelines for citizen fuel use.

(d) Administrator's interim reports to Congress

The Administrator shall provide interim reports to the Congress from time to time and when requested by committees of Congress.

(e) Energy needs analysis; time for submission; contents; continuation of analysis after termination of Administration

The analysis referred to in subsection (b)(6) of this section shall include, for each of the next five fiscal years following the year in which the annual report is submitted and for the tenth fiscal year following such year—

(1) the effect of various conservation programs on such energy needs;

(2) the alternate methods of meeting the energy needs identified in such annual report and of—

(A) the relative capital and other economic costs of each such method;

(B) the relative environmental, national security, and balance-of-trade risks of each such method;

(C) the other relevant advantages and disadvantages of each such method; and

(3) recommendations for the best method or methods of meeting the energy needs identified in such annual report and for legislation needed to meet those needs.

Notwithstanding the termination of this chapter, the President shall designate an appropriate Federal agency to conduct the analysis specified in subsection (b)(6) of this section.

(Pub. L. 93–275, §15, May 7, 1974, 88 Stat. 108; Pub. L. 94–385, title I, §109(a)–(c), Aug. 14, 1976, 90 Stat. 1130.)

REFERENCES IN TEXT

For effective date of this chapter, referred to in subsecs. (a) and (c), see Effective and Termination Dates note set out under section 761 of this title.

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–385, §109(a), redesignated subsec. (b) as (a) and struck out former subsec. (a) relating to submission of a report by the President to Congress with recommendations for disposition,

continuation, or reorganization of Energy Administration and organization of the Federal Government for the management of energy and natural resources policies and programs.

Subsec. (b). Pub. L. 94–385, §109(a)(2), (b), redesignated subsec. (c) as (b) and added par. (6) and provisions requiring Administrator to include in report a discussion on benefits of employing a utility and Btu tax as a means for obtaining national energy goals. Former subsec. (b) redesignated (a).

Subsecs. (c) to (e). Pub. L. 94–385, §109(a)(2), (c), redesignated subsecs. (c) to (e) as (b) to (d), respectively, and added new subsec. (e).

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§775. Sex discrimination; enforcement; other legal remedies

No individual shall on the grounds of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity carried on or receiving Federal assistance under this chapter. This provision will be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination, under title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.]. However, this remedy is not exclusive and will not prejudice or remove any other legal remedies available to any individual alleging discrimination.

(Pub. L. 93–275, §16, May 7, 1974, 88 Stat. 109.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in text, is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§2000d et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

§776. Repealed. Pub. L. 105–28, §2(b)(2), July 18, 1997, 111 Stat. 245

Section, Pub. L. 93–275, §17, May 7, 1974, 88 Stat. 110, related to composition and manner of meeting of boards, task forces, commissions, committees, or similar groups not composed entirely of full-time Government employees, established or utilized by Administrator.

§777. Economic analysis of proposed actions

(a) Scope of analysis

In carrying out the provisions of this chapter, the Administrator shall, to the greatest extent practicable, insure that the potential economic impacts of proposed regulatory and other actions are evaluated and considered, including but not limited to an analysis of the effect of such actions on—

(1) the fiscal integrity of State and local governments;

(2) vital industrial sectors of the economy;

(3) employment, by industrial and trade sectors, as well as on a national, regional, State, and local basis;

(4) the economic vitality of regional, State, and local areas;

(5) the availability and price of consumer goods and services;

(6) the gross national product;

(7) low and middle income families as defined by the Bureau of Labor Statistics;

(8) competition in all sectors of industry; and

(9) small business.

(b) Conservation measures

The Administrator shall develop analyses of the economic impact of various conservation measures on States or significant sectors thereof, considering the impact on both energy for fuel and energy as feed stock for industry.

(c) Explicit analyses; interagency cooperation; other review and cause of action provisions

Such analyses shall, wherever possible, be made explicit, and to the extent possible, other Federal agencies and agencies of State and local governments which have special knowledge and expertise relevant to the impact of proposed regulatory or other actions shall be consulted in making the analyses and all Federal agencies are authorized and directed to cooperate with the Administrator in preparing such analyses: *Provided*, That the Administrator's actions pursuant to this section shall not create any right of review or cause of action except as would otherwise exist under other provisions of law.

(d) Monitoring economic impact of energy actions; report and recommendations to Congress

The Administrator, together with the Secretaries of Labor and Commerce, shall monitor the economic impact of any energy actions taken by the Administrator, and shall provide the Congress with an annual report on the impact of the energy shortage and the Administrator's actions on employment and the economy. Such report shall contain recommendations as to whether additional Federal programs of employment and economic assistance should be put into effect to minimize the impact of the energy shortage and any actions taken.

(e) Industrial or regional discrimination; equal bearing of costs and burdens of meeting energy shortages

The Administrator shall formulate and implement regulatory and other actions in a manner (1) which does not unduly discriminate against any industry or any region of the United States; and (2) designed to insure that, to the greatest extent possible, the costs and burdens of meeting energy shortages shall be borne equally by every sector and segment of the country and of the economy.

(Pub. L. 93–275, §18, May 7, 1974, 88 Stat. 110; Pub. L. 94–385, title I, §109(d), Aug. 14, 1976, 90 Stat. 1130.)

AMENDMENTS

1976—Subsec. (d). Pub. L. 94–385 substituted "an annual report" for "a report every six months".

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (d) of this section relating to providing an annual report to Congress on the impact of the energy shortage and the Administrator's actions on employment and the economy, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 84 of House Document No. 103–7.

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§778. Management oversight review; report to Administrator

The Administrator may, for a period not to exceed thirty days in any one calendar year, provide for the exercise or performance of a management oversight review with respect to the conduct of any Federal or State (with consent of the Governor) energy program conducted pursuant to this chapter. Such review may be conducted by contract or by any Federal department or agency. A written report shall be submitted to the Administrator concerning the findings of the review.

(Pub. L. 93–275, §19, May 7, 1974, 88 Stat. 111.)

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The

§779. Coordination with, and technical assistance to, State governments

(a) Report to Congress and State governments: organization of Administration; report to the public, Congress and State governments; scope of nontechnical report; comments of State governments respecting rules, regulations, or policies and programs; energy shortages, status reports; information clearinghouse

The Administrator shall—

(1) coordinate Federal energy programs and policies with such programs and policies of State governments by providing—

(A) within sixty days of the effective date of this chapter, the Congress and State governments with a report on the manner in which he has organized the Administration based upon the functions delegated by the President or assigned to the Administrator by this chapter or under the authority of other Acts; and

(B) within one hundred and twenty days of the effective date of this chapter, the public, State governments, and all Members of the Congress with a report in nontechnical language which—

(i) describes the functions performed by the Administration;

(ii) sets forth in detail the organization of the Administration, the location of its offices (including regional, State, and local offices), the names and phone numbers of Administration officials, and other appropriate information concerning the operation of the Administration;

(iii) delineates the role that State, and Federal governments will or may perform in achieving the purposes of this chapter; and

(iv) provides the public with a clear understanding of their duties and obligations, rights, and responsibilities under any of the programs or functions of the Administration;

(2) before promulgating any rules, regulations, or policies, and before establishing any programs under the authority of this chapter, provide, where practicable, a reasonable period in which State governments may provide written comments if such rules, regulations, policies, or programs substantially affect the authority or responsibility of such State governments;

(3) provide, in accordance with the provisions of this chapter, upon request, to State governments all relevant information he possesses concerning the status and impact of energy shortages, the extent and location of available supplies and shortages of crude oil, petroleum products, natural gas, and coal, within the distribution area serving that particular State government; and

(4) provide for a central clearinghouse for Federal agencies and State governments seeking energy information and assistance from the Federal Government.

(b) Technical assistance; task forces; conferences: expenses of participation; model legislation; uniform criteria, procedures, and forms for grant or contract applications for State government energy proposals

Pursuant to his responsibility under this section, the Administrator shall—

(1) provide technical assistance—including advice and consultation relating to State programs, and, where necessary, the use of task forces of public officials and private persons assigned to work with State governments—to assist State governments in dealing with energy problems and shortages and their impact and in the development of plans, programs, and policies to meet the problems and shortages so identified;

(2) convene conferences of State and Federal officials, and such other persons as the Administrator designates, to promote the purposes of this chapter, and the Administrator is authorized to pay reasonable expenses incurred in the participation of individuals in such conferences;

(3) draft and make available to State governments model legislation with respect to State energy programs and policies; and

(4) promote the promulgation of uniform criteria, procedures, and forms for grant or contract applications for energy proposals submitted by State governments.

(Pub. L. 93–275, §20, May 7, 1974, 88 Stat. 111.)

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§780. Office of Private Grievances and Redress

(a) Establishment; director; statement of purpose

The Administrator shall establish and maintain an Office of Private Grievances and Redress, headed by a director, to receive and evaluate petitions filed in accordance with subsection (b) of this section, and to make recommendations to the Administrator for appropriate action.

(b) Petition for special redress, relief, or other extraordinary assistance; nature of remedy

Any person, adversely affected by any order, rule, or regulation issued by the Administrator in carrying out the functions assigned to him under this chapter, may petition the Administrator for special redress, relief, or other extraordinary assistance, apart from, or in addition to, any right or privilege to seek redress of grievances provided in section 766 of this title.

(c) Statement for annual report; recommendations to Congress

The Administrator shall submit to the Secretary for inclusion in the annual report required by section 7267 of title 42 a statement on the nature and number of the grievances which have been filed, and the action taken and relief provided, pursuant to this section; and he shall make recommendations to the Congress from time to time concerning legislative or administrative actions which may be taken to better assist persons adversely affected by the energy shortages and to distribute more equitably the burdens resulting from any measures adopted, or actions taken, by him.

(Pub. L. 93–275, §21, May 7, 1974, 88 Stat. 112; Pub. L. 96–470, title II, §203(h), Oct. 19, 1980, 94 Stat. 2244.)

AMENDMENTS

1980—Subsec. (c). Pub. L. 96–470 substituted "submit to the Secretary for inclusion in the annual report required by section 7267 of title 42 a statement" for "report quarterly to the Congress".

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§781. Comprehensive energy plan

(a) Report to President and Congress; analytical justification; scope of analysis

Pursuant and subject to the provisions and procedures set forth in this chapter, the Administrator shall, within six months from May 7, 1974, develop and report to the Congress and the President a comprehensive plan designed to alleviate the energy shortage, for the time period covered by this chapter. Such plan shall be accompanied by full analytical justification for the actions proposed therein. Such analysis shall include, but not be limited to—

(1) estimates of the energy savings of each action and of the program as a whole;

(2) estimates of any windfall losses and gains to be experienced by corporations, industries, and citizens grouped by socioeconomic class;

(3) estimates of the impact on supplies and consumption of energy forms consequent to such

price changes as are or may be proposed; and

(4) a description of alternative actions which the Administrator has considered together with a rationale in explanation of the rejection of any such alternatives in preference to the measures actually proposed.

(b) Alterations; analytical justifications

The Administrator may, from time to time, modify or otherwise alter any such plan, except that, upon request of an appropriate committee of the Congress, the Administrator shall supply analytical justifications for any such alterations.

(c) Monitoring activity

The Administrator shall be responsible for monitoring any such plans as are implemented with respect to their effectiveness in achieving the anticipated benefits.

(Pub. L. 93–275, §22, May 7, 1974, 88 Stat. 113.)

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§782. Petrochemical report to Congress

(a) Scope of report

Within ninety days after he has entered upon the office of Administrator or has been designated by the President to act in such office, the Administrator, or acting Administrator, as the case may be, with the assistance of the Department of Commerce, the Cost of Living Council, and the United States International Trade Commission shall, by written report, inform the Congress as to the—

(1) effect of current petrochemical prices upon the current level of petrochemical exports, and export levels expected for 1975;

(2) effect of current and expected 1975 petrochemical export levels upon domestic petrochemical raw materials and products available to petrochemical producers, converters, and fabricators currently and in 1975;

(3) current contribution of petrochemical imports to domestic supplies and the expected contributions in 1975;

(4) anticipated economic effects of current and expected 1975 levels of domestic supplies of petrochemicals upon domestic producers, converters, and fabricators of petrochemical raw materials and products; and

(5) exact nature, extent, and sources of data and other information available to the Federal Government regarding the matters set forth in paragraphs (1) through (4) of this subsection, including the exact nature, extent, and sources of such data and information utilized in connection with the report required by this subsection.

(b) "Petrochemical" defined

As used in this section, the term "petrochemical" includes organic chemicals, cyclic intermediates, plastics and resins, synthetic fibers, elastomers, organic dyes, organic pigments, detergents, surface active agents, carbon black and ammonia.

(Pub. L. 93–275, §23, May 7, 1974, 88 Stat. 113; Pub. L. 93–618, title I, §171(b), Jan. 3, 1975, 88 Stat. 2009.)

AMENDMENTS

1975—Subsec. (a). Pub. L. 93–618 substituted "United States International Trade Commission" for "United States Tariff Commission".

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

ABOLITION OF COST OF LIVING COUNCIL

Cost of Living Council abolished July 1, 1974, by Ex. Ord. No. 11788, §1, June 18, 1974, 39 FR 22113.

§783. Hydroelectric generating facilities; lists, transmittal to Congress; construction schedule and cost estimates for expedited construction program; prospective accomplishments from expedited completion of facilities; statement of appropriated but not obligated funds

Within ninety days of the effective date of this chapter, the Administrator of the Federal Energy Administration, in consultation with the Secretary of the Interior and the Secretary of the Army, shall—

(1) transmit to the Congress—

(A) a list of hydroelectric generating facilities and electric power transmission facilities which have been authorized for construction by the Congress and which are not yet completed, and

(B) a list of opportunities to increase the capacity of existing hydroelectric generating facilities, and

(2) provide, for each such facility which is listed—

(A) a construction schedule and cost estimates for an expedited construction program which would make the facility available for service at the earliest practicable date, and

(B) a statement of the accomplishments which could be provided by the expedited completion of each facility and a statement of any funds which have been appropriated but not yet obligated.

(Pub. L. 93–275, §24, May 7, 1974, 88 Stat. 114.)

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§784. Exports of coal and refined petroleum products

(a) File concerning export transactions, sales, exchanges or shipments: establishment and maintenance; scope of information

The Administrator is authorized and directed to establish and maintain a file which shall contain information concerning every transaction, sale, exchange or shipment involving the export from the United States to a foreign nation of coal, crude oil, residual oil or any refined petroleum product. Information to be included in the file shall be current and shall include, but shall not be limited to, the name of the exporter (including the name or names of the holders of any beneficial interests), the volume and type of product involved in the export transaction, the manner of shipment and identification of the vessel or carrier, the destination, the name of the purchaser if a sale, exchange or other transaction is involved, and a statement of reasons justifying the export.

(b) Information and report to committee of Congress or head of Federal agency from Administrator; exception: disclosure detrimental to national security

Upon request of any committee of Congress or the head of any Federal agency, the Administrator shall promptly provide any information maintained in the file and a report thereon to such committee, or agency head, except where the President finds such disclosure to be detrimental to

national security.

(c) Information to Administrator from Federal agency

Notwithstanding any other provision of law, any Federal agency which collects or has information relevant to the functions required by this section shall make such information available to the Administrator.

(d) Collection of independent information

The Administrator shall not be required to collect independently information described in subsection (a) of this section if he can secure the information described in subsection (a) of this section from other Federal agencies and the information secured from such agencies is available to the Congress pursuant to a request under subsection (b) of this section.

(Pub. L. 93–275, §25, May 7, 1974, 88 Stat. 114; Pub. L. 94–385, title I, §111, Aug. 14, 1976, 90 Stat. 1132.)

AMENDMENTS

1976—Subsec. (d). Pub. L. 94–385 added subsec. (d).

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§785. Foreign ownership; comprehensive review; sources of information; report to Congress; monitoring activity

The Administrator shall conduct a comprehensive review of foreign ownership of, influence on, and control of domestic energy sources and supplies. Such review shall draw upon existing information, where available, and any independent investigation necessary by the Administration. The Administrator shall, on or before the expiration of the one hundred and eighty day period following the effective date of this chapter, report to the Congress in sufficient detail so as to apprise the Congress as to the extent and forms of such foreign ownership of, influence on, and control of domestic energy sources and supplies, and shall thereafter continue to monitor such ownership, influence and control.

(Pub. L. 93–275, §26, May 7, 1974, 88 Stat. 115.)

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§786. Repealed. Pub. L. 95–91, title VII, §709(a)(1), Aug. 4, 1977, 91 Stat. 607

Section, Pub. L. 93–275, §28, May 7, 1974, 88 Stat. 115, provided that upon termination of this chapter, any functions or personnel transferred by this chapter shall revert to the department, agency, or office from which they were transferred.

§787. Project Independence Evaluation System documentation; access to model by Congress and public

The Administrator of the Federal Energy Administration shall—

(1) submit to the Congress, not later than September 1, 1976, full and complete structural and parametric documentation, and not later than January 1, 1977, operating documentation, of the

Project Independence Evaluation System computer model;

(2) provide access to such model to representatives of committees of the Congress in an expeditious manner; and

(3) permit the use of such model on the computer system maintained by the Federal Energy Administration by any member of the public upon such reasonable terms and conditions as the Administrator shall, by rule, prescribe. Such rules shall provide that any member of the public who uses such model may be charged a fair and reasonable fee, as determined by the Administrator, for using such model.

(Pub. L. 93–275, §31, as added Pub. L. 94–385, title I, §113, Aug. 14, 1976, 90 Stat. 1132.)

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§788. Use of commercial standards

(a) General notice of proposed rulemaking

If any proposed rule by the Administrator contains any commercial standards, or specifically authorizes or requires the use of any such standards, then any general notice of the proposed rulemaking shall—

(1) identify, by name, the organization which promulgated such standards; and

(2) state whether or not, in the judgment of the Administrator, such organization complied with the requirements of subsection (b) of this section in the promulgation of such standards.

(b) Promulgation of commercial standards

An organization complies with the requirements of this subsection in promulgating any commercial standards if—

(1) it gives interested persons adequate notice of the proposed promulgation of the standards and an opportunity to participate in the promulgation process through the presentation of their views in hearings or meetings which are open to the public;

(2) the membership of the organization at the time of the promulgation of the standards is sufficiently balanced so as to allow for the effective representation of all interested persons;

(3) before promulgating such standards, it makes available to the public any records of proceedings of the organization, and any documents, letters, memorandums, and materials, relating to such standards; and

(4) it has procedures allowing interested persons to—

(A) obtain a reconsideration of any action taken by the organization relating to the promulgation of such standards, and

(B) obtain a review of the standards (including a review of the basis or adequacy of such standards).

(c) Consultation with Attorney General and Chairman of Federal Trade Commission; impact of rules on competition

The Administrator shall not incorporate within any rule, nor prescribe any rule specifically authorizing or requiring the use of, any commercial standards unless he has consulted with the Attorney General and the Chairman of the Federal Trade Commission concerning the impact of such standards on competition and neither such individual recommends against such incorporation or use.

(d) Rules relating to Administration procurement activities

The foregoing provisions of this section shall not apply with respect to rules prescribed by the Administrator which relate to the procurement activities of the Administration.

(e) Participation of Administration employees in organizations relating to promulgation of

commercial standards

Not later than 90 days after July 21, 1977, the Administrator shall prescribe, by rule, guidelines or criteria which set forth the extent to which, and the terms and conditions under which, employees of the Administration may participate in their official capacity in the activities of any organization (which is not a Federal entity) which relate to the promulgation of commercial standards. Such guidelines and criteria may allow for such participation if it is in the public interest and relates to the purposes of this chapter, but in no event may such employees who are participating in their official capacity be allowed under such guidelines or criteria to vote on any matter relating to commercial standards.

(f) "Commercial standards" defined

As used in this section, the term "commercial standards" means—

(1) specifications of materials;
(2) methods of testing;
(3) criteria for adequate performance or operation;
(4) model codes;
(5) classification of components;
(6) delineation of procedures or definition of terms;
(7) measurement of quantity or quality for evaluating or referring to materials, products, systems, services, or practices; or
(8) similar rules, procedures, requirements, or standards;

which are promulgated by any organization which is not a Federal entity. For purposes of the preceding sentence, any revision by any such organization of any such rule, procedure, requirement, or standard shall be considered to be the same as the promulgation of such standard.

(Pub. L. 93–275, §32, as added Pub. L. 95–70, §9, July 21, 1977, 91 Stat. 278.)

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§789. Repealed. Pub. L. 104–106, div. D, title XLIII, §4304(b)(2), Feb. 10, 1996, 110 Stat. 664

Section, Pub. L. 93–275, §33, as added Pub. L. 95–70, §10, July 21, 1977, 91 Stat. 279, related to organizational conflicts of interest of persons contracting to perform research, development, or evaluation activities or technical and management support services.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 4401 of Pub. L. 104–106, set out as an Effective Date of 1996 Amendment note under section 2302 of Title 10, Armed Forces.

SUBCHAPTER II—OFFICE OF ENERGY INFORMATION AND ANALYSIS

§790. Establishment of Office of Energy Information and Analysis

(a) Director; appointment; qualifications

(1) There is established within the Federal Energy Administration an Office of Energy Information and Analysis (hereinafter in this chapter referred to as the "Office") which shall be headed by a Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) The Director shall be a person who, by reason of professional background and experience, is specially qualified to manage an energy information system.

(b) Delegation of authority by Administrator

The Administrator shall delegate (which delegation may be on a nonexclusive basis as the Administrator may determine may be necessary to assure the faithful execution of his authorities and responsibilities under law) the authority vested in him under section 796 of this title and section 772 of this title and the Director may act in the name of the Administrator under section 797 of this title and section 772 of this title for the purpose of obtaining enforcement of the authorities delegated to him.

(c) "Energy information" defined

As used in this chapter the term "energy information" shall have the meaning described in section 796 of this title.

(Pub. L. 93–275, §51, as added Pub. L. 94–385, title I, §142, Aug. 14, 1976, 90 Stat. 1135.)

EFFECTIVE DATE

Pub. L. 94–385, title I, §143, Aug. 14, 1976, 90 Stat. 1140, provided that: "The amendments made by this part C to the Federal Energy Administration Act of 1974 [enacting this subchapter] shall take effect 150 days after the date of enactment of this Act [Aug. 14, 1976], except that section 56(c) of the Federal Energy Administration Act of 1974 (as added by this part) [section 790e(c) of this title] shall take effect on the date of enactment of this Act [Aug. 14, 1976]."

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

Functions assigned to Director of Office of Energy Information and Analysis under this subchapter vested in Administrator of Energy Information Administration within Department of Energy by section 7135(c) of Title 42.

CONGRESSIONAL FINDINGS AND PURPOSE

Pub. L. 94–385, title I, §141, Aug. 14, 1976, 90 Stat. 1135, provided that:

"(a) The Congress finds that the public interest requires that decisionmaking, with respect to this Nation's energy requirements and the sufficiency and availability of energy resources and supplies, be based on adequate, accurate, comparable, coordinated, and credible energy information.

"(b) The purpose of this title [see Short Title note set out under section 761 of this title] is to establish within the Federal Energy Administration an Office of Energy Information and Analysis and a National Energy Information System to assure the availability of adequate, comparable, accurate, and credible energy information to the Federal Energy Administration, to other Government agencies responsible for energy-related policy decisions, to the Congress, and to the public."

§790a. National Energy Information System; information required to be maintained

(a) It shall be the duty of the Director to establish a National Energy Information System (hereinafter referred to in this chapter as the "System"), which shall be operated and maintained by the Office. The System shall contain such information as is required to provide a description of and facilitate analysis of energy supply and consumption within and affecting the United States on the basis of such geographic areas and economic sectors as may be appropriate to meet adequately the needs of—

(1) the Federal Energy Administration in carrying out its lawful functions;

(2) the Congress;

(3) other officers and employees of the United States in whom have been vested, or to whom have been delegated energy-related policy decisionmaking responsibilities; and

(4) the States to the extent required by the Natural Gas Act [15 U.S.C. 717 et seq.] and the

Federal Power Act [16 U.S.C. 791a et seq.].

(b) At a minimum, the System shall contain such energy information as is necessary to carry out the Administration's statistical and forecasting activities, and shall include, at the earliest date and to the maximum extent practical subject to the resources available and the Director's ordering of those resources to meet the responsibilities of his Office, such energy information as is required to define and permit analysis of—

(1) the institutional structure of the energy supply system including patterns of ownership and control of mineral fuel and nonmineral energy resources and the production, distribution, and marketing of mineral fuels and electricity;

(2) the consumption of mineral fuels, nonmineral energy resources, and electricity by such classes, sectors, and regions as may be appropriate for the purposes of this chapter;

(3) the sensitivity of energy resource reserves, exploration, development, production, transportation, and consumption to economic factors, environmental constraints, technological improvements, and substitutability of alternate energy sources;

(4) the comparability of energy information and statistics that are supplied by different sources;

(5) industrial, labor, and regional impacts of changes in patterns of energy supply and consumption;

(6) international aspects, economic and otherwise, of the evolving energy situation; and

(7) long-term relationships between energy supply and consumption in the United States and world communities.

(Pub. L. 93–275, §52, as added Pub. L. 94–385, title I, §142, Aug. 14, 1976, 90 Stat. 1135; amended Pub. L. 95–91, title VII, §709(a)(3), Aug. 4, 1977, 91 Stat. 608.)

REFERENCES IN TEXT

The Natural Gas Act, referred to in subsec. (a)(4), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§717 et seq.) of this title. For complete classification of this Act to the Code, see section 717w of this title and Tables.

The Federal Power Act, referred to in subsec. (a)(4), is act June 10, 1920, ch. 285, 41 Stat. 1063, as amended, which is classified generally to chapter 12 (§791a et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables.

AMENDMENTS

1977—Subsec. (a)(4). Pub. L. 95–91 added par. (4).

EFFECTIVE DATE

Section effective 150 days after Aug. 14, 1976, see section 143 of Pub. L. 94–385, set out as a note under section 790 of this title.

TRANSFER OF FUNCTIONS

Functions assigned to Director of Office of Energy Information and Analysis under this subchapter vested in Administrator of Energy Information Administration within Department of Energy by section 7135(c) of Title 42, The Public Health and Welfare.

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42.

§790b. Administrative provisions

(a) Compensation of Director

The Director of the Office shall receive compensation at the rate now or hereafter prescribed for offices and positions at level IV of the Executive Schedule as specified in section 5315 of title 5.

(b) Authorization of Director to appoint and fix compensation of employees

To carry out the functions of the Office, the Director, on behalf of the Administrator, is authorized to appoint and fix the compensation of such professionally qualified employees as he deems

necessary, including up to ten of the employees in grade GS–16, GS–17, or GS–18 authorized by section 766 of this title.

(c) Delegation of functions by the Director

The functions and powers of the Office shall be vested in or delegated to the Director, who may from time to time, and to the extent permitted by law, consistent with the purposes of this chapter, delegate such of his functions as he deems appropriate. Such delegation may be made, upon request, to any officer or agency of the Federal Government.

(d) Access to Director by Congress; requests for appropriations

(1) The Director shall be available to the Congress to provide testimony on such subjects under his authority and responsibility as the Congress may request, including but not limited to energy information and analyses thereof.

(2) Any request for appropriations for the Federal Energy Administration submitted to the Congress shall identify the portion of such request intended for the support of the Office, and a statement of the differences, if any, between the amounts requested and the Director's assessment of the budgetary needs of the Office.

(Pub. L. 93–275, §53, as added Pub. L. 94–385, title I, §142, Aug. 14, 1976, 90 Stat. 1136.)

EFFECTIVE DATE

Section effective 150 days after Aug. 14, 1976, see section 143 of Pub. L. 94–385, set out as a note under section 790 of this title.

TRANSFER OF FUNCTIONS

Functions assigned to Director of Office of Energy Information and Analysis under this subchapter vested in Administrator of Energy Information Administration within Department of Energy by section 7135(c) of Title 42, The Public Health and Welfare.

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§790c. Analysis and evaluation of energy information; establishment and maintenance by Director of professional, etc., capability; specific capabilities

(a) The Director shall establish and maintain the scientific, engineering, statistical, or other technical capability to perform analysis of energy information to—

(1) verify the accuracy of items of energy information submitted to the Director; and

(2) insure the coordination and comparability of the energy information in possession of the Office and other Federal agencies.

(b) The Director shall establish and maintain the professional and analytic capability to evaluate independently the adequacy and comprehensiveness of the energy information in possession of the Office and other agencies of the Federal Government in relation to the purposes of this chapter and for the performance of the analyses described in section 790a of this title. Such analytic capability shall include—

(1) expertise in economics, finance, and accounting;

(2) the capability to evaluate estimates of reserves of mineral fuels and nonmineral energy resources utilizing alternative methodologies;

(3) the development and evaluation of energy flow and accounting models describing the production, distribution, and consumption of energy by the various sectors of the economy and

lines of commerce in the energy industry;

(4) the development and evaluation of alternative forecasting models describing the short- and long-term relationships between energy supply and consumption and appropriate variables; and

(5) such other capabilities as the Director deems necessary to achieve the purposes of this chapter.

(Pub. L. 93–275, §54, as added Pub. L. 94–385, title I, §142, Aug. 14, 1976, 90 Stat. 1137.)

EFFECTIVE DATE

Section effective 150 days after Aug. 14, 1976, see section 143 of Pub. L. 94–385, set out as a note under section 790 of this title.

TRANSFER OF FUNCTIONS

Functions assigned to Director of Office of Energy Information and Analysis under this subchapter vested in Administrator of the Energy Information Administration within Department of Energy by section 7135(c) of Title 42, The Public Health and Welfare.

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42.

§790d. Repealed. Pub. L. 104–66, title I, §1051(k), Dec. 21, 1995, 109 Stat. 717

Section, Pub. L. 93–275, §55, as added Pub. L. 94–385, title I, §142, Aug. 14, 1976, 90 Stat. 1137; amended Pub. L. 95–91, title VII, §709(a)(4), Aug. 4, 1977, 91 Stat. 608, related to annual performance audit review of Office of Energy Information and Analysis procedures and methodology by Professional Audit Review Team.

§790e. Coordination by Director of energy information gathering activities of Federal agencies

(a) Review

In carrying out the purposes of this chapter the Director shall, as he deems appropriate, review the energy information gathering activities of Federal agencies with a view toward avoiding duplication of effort and minimizing the compliance burden on business enterprises and other persons.

(b) Policy recommendations

In exercising his responsibilities under subsection (a) of this section, the Director shall recommend policies which, to the greatest extent practicable—

(1) provide adequately for the energy information needs of the various departments and agencies of the Federal Government, the Congress, and the public;

(2) minimize the burden of reporting energy information on businesses, other persons, and especially small businesses;

(3) reduce the cost to Government of obtaining information; and

(4) utilize files of information and existing facilities of established Federal agencies.

(c) Report to Administrator by other Federal agencies involved in collection of energy information; cooperation of other Federal agencies; report by Administrator to President, Congress, and Energy Resources Council

(1) At the earliest practicable date after August 14, 1976, each Federal agency which is engaged in the gathering of energy information as a part of an established program, function, or other activity shall promptly provide the Administrator with a report on energy information which—

(A) identifies the statutory authority upon which the energy information collection activities of such agency is based;

(B) lists and describes the energy information needs and requirements of such agency; and

(C) lists and describes the categories, definitions, levels of detail, and frequency of collection of the energy information collected by such agency.

Such agencies shall cooperate with the Administrator and provide such other descriptive information with respect to energy information activities as the Administrator may request. The Administrator shall prepare a report on his activities under this subsection, which report shall include recommendations with respect to the coordination of energy information activities of the Federal Government. Such report shall be available to the Congress and shall be transmitted to the President and to the Energy Resources Council for use in preparation of the plan required under subsection (c) of section 5818 of title 42.

(Pub. L. 93–275, §56, as added Pub. L. 94–385, title I, §142, Aug. 14, 1976, 90 Stat. 1138.)

REFERENCES IN TEXT

Section 5818 of title 42, referred to in subsec. (c), was repealed by Pub. L. 95–91, title VII, §709(b), Aug. 4, 1977, 91 Stat. 608.

EFFECTIVE DATE

Section effective 150 days after Aug. 14, 1976, except that subsec. (c) of this section effective Aug. 14, 1976, see section 143 of Pub. L. 94–385, set out as a note under section 790 of this title.

TRANSFER OF FUNCTIONS

Functions assigned to Director of Office of Energy Information and Analysis under this subchapter vested in Administrator of Energy Information Administration within Department of Energy by section 7135(c) of Title 42, The Public Health and Welfare.

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42.

§790f. Reports by Director

(a) Periodic and special reports by Director to Congress and public; contents

The Director shall make periodic reports and may make special reports to the Congress and the public, including but not limited to—

(1) such reports as the Director determines are necessary to provide a comprehensive picture of the quarterly, monthly, and, as appropriate, weekly supply and consumption of the various nonmineral energy resources, mineral fuels, and electricity in the United States; the information reported may be organized by company, by States, by regions, or by such other producing and consuming sectors, or combinations thereof, and shall be accompanied by an appropriate discussion of the evolution of the energy supply and consumption situation and such national and international trends and their effects as the Director may find to be significant; and

(2) an annual report which includes, but is not limited to, a description of the activities of the Office and the National Energy Information System during the preceding year; a summary of all special reports published during the preceding year; a summary of statistical information collected during the preceding year; short-, medium-, and long-term energy consumption and supply trends and forecasts under various assumptions; and, to the maximum extent practicable, a summary or schedule of the amounts of mineral fuel resources, nonmineral energy resources, and mineral fuels that can be brought to market at various prices and technologies and their relationship to forecasted demands.

(b) Duty of Director to insure adequate documentation of forecasts and reports; periodic audit and validation of analytical methodologies; availability of information to public

(1) The Director, on behalf of the Administrator, shall insure that adequate documentation for all statistical and forecast reports prepared by the Director is made available to the public at the time of publication of such reports. The Director shall periodically audit and validate analytical methodologies employed in the preparation of periodic statistical and forecast reports.

(2) The Director shall, on a regular basis, make available to the public information which contains validation and audits of periodic statistical and forecast reports.

(c) Approval prior to publication of forecasts and reports

Prior to publication, the Director may not be required to obtain the approval of any other officer or employee of the United States with respect to the substance of any statistical or forecasting technical reports which he has prepared in accordance with law.

(Pub. L. 93–275, §57, as added Pub. L. 94–385, title I, §142, Aug. 14, 1976, 90 Stat. 1139.)

EFFECTIVE DATE

Section effective 150 days after Aug. 14, 1976, see section 143 of Pub. L. 94–385, set out as a note under section 790 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (a)(2) of this section relating to an annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 90 of House Document No. 103–7.

TRANSFER OF FUNCTIONS

Functions assigned to Director of Office of Energy Information and Analysis under this subchapter vested in Administrator of Energy Information Administration within Department of Energy by section 7135(c) of Title 42, The Public Health and Welfare.

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42.

§790g. Access by Director to energy information

(a) Access by Director to energy information in possession of other Federal agencies; limitations

In furtherance and not in limitation of any other authority, the Director, on behalf of the Administrator, shall have access to energy information in the possession of any Federal agency except information—

(1) the disclosure of which to another Federal agency is expressly prohibited by law; or

(2) the disclosure of which the agency so requested determines would significantly impair the discharge of authorities and responsibilities which have been delegated to, or vested by law, in such agency.

(b) Authority to obtain information from original or alternate sources

In the event that energy information in the possession of another Federal agency which is required to achieve the purposes of this chapter is denied the Director or the Administrator pursuant to paragraph (1) or paragraph (2) of subsection (a) of this section, the Administrator, or the Director, on behalf of the Administrator, shall take appropriate action, pursuant to authority granted by law, to obtain said information from the original sources or a suitable alternate source. Such source shall be notified of the reason for this request for information.

(Pub. L. 93–275, §58, as added Pub. L. 94–385, title I, §142, Aug. 14, 1976, 90 Stat. 1139.)

EFFECTIVE DATE

Section effective 150 days after Aug. 14, 1976, see section 143 of Pub. L. 94–385, set out as a note under section 790 of this title.

TRANSFER OF FUNCTIONS

Functions assigned to Director of Office of Energy Information and Analysis under this subchapter vested in Administrator of Energy Information Administration within Department of Energy by section 7135(c) of Title 42, The Public Health and Welfare.

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42.

§790h. Congressional access to energy information; disclosure by Congress

The Director shall promptly provide upon request any energy information in the possession of the Office to any duly established committee of the Congress. Such information shall be deemed the property of such committee and may not be disclosed except in accordance with the rules of such committee and the Rules of the House of Representatives or the Senate and as permitted by law.

(Pub. L. 93–275, §59, as added Pub. L. 94–385, title I, §142, Aug. 14, 1976, 90 Stat. 1140.)

EFFECTIVE DATE

Section effective 150 days after Aug. 14, 1976, see section 143 of Pub. L. 94–385, set out as a note under section 790 of this title.

TRANSFER OF FUNCTIONS

Functions assigned to Director of Office of Energy Information and Analysis under this subchapter vested in Administrator of Energy Information Administration within Department of Energy by section 7135(c) of Title 42, The Public Health and Welfare.

CHAPTER 16C—ENERGY SUPPLY AND ENVIRONMENTAL COORDINATION

Sec.

791. Congressional declaration of purpose.
792. Coal conversion and allocation.
793. Protection of public health and environment.
794. Energy conservation study.
795. Report to Congress by January 31, 1975.
796. Reporting of energy information.
797. Enforcement.
798. Definitions.

§791. Congressional declaration of purpose

The purposes of this chapter are (1) to provide for a means to assist in meeting the essential needs of the United States for fuels, in a manner which is consistent, to the fullest extent practicable, with existing national commitments to protect and improve the environment, and (2) to provide requirements for reports respecting energy resources.

(Pub. L. 93–319, §1(b), June 22, 1974, 88 Stat. 246.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 93–319 which, in addition to enacting this chapter and provision set out as a note under this section, enacted sections 1857c–10 and 1857f–6f of Title 42, The Public Health and Welfare, and amended sections 1857b–1, 1857c–5, 1857c–8, 1857c–9, 1857d–1, 1857f–1, 1857f–6e, 1857f–7, 1857h–5, and 1857l of Title 42. For complete classification of this Act to the Code, see Tables.

SHORT TITLE

Pub. L. 93–319, §1(a), June 22, 1974, 88 Stat. 246, provided that Pub. L. 93–319 [enacting this chapter, enacting sections 1857c–10 and 1857f–6f of Title 42, The Public Health and Welfare, and amending sections 1857b–1, 1857c–5, 1857c–8, 1857c–9, 1857d–1, 1857f–1, 1857f–6e, 1857f–7, 1857h–5, and 1857l of Title 42] may be cited as the "Energy Supply and Environmental Coordination Act of 1974".

§792. Coal conversion and allocation

(a) Powerplant and fuel burning installations

The Federal Energy Administrator—

(1) shall, by order, prohibit any powerplant, and

(2) may, by order, prohibit any major fuel burning installation, other than a powerplant,

from burning natural gas or petroleum products as its primary energy source, if the requirements of subsection (b) of this section are met and if (A) the Federal Energy Administrator determines such powerplant or installation on June 22, 1974, had, or thereafter acquires or is designed with, the capability and necessary plant equipment to burn coal, or (B) such powerplant or installation is required to meet a design or construction requirement under subsection (c) of this section.

(b) Prerequisites to issuance or effectiveness of orders prohibiting use of natural gas or petroleum products as primary energy source

The requirements referred to in subsection (a) of this section are as follows:

(1) An order under subsection (a) of this section may not be issued with respect to a powerplant or installation unless the Federal Energy Administrator finds (A) that the burning of coal by such plant or installation, in lieu of petroleum products or natural gas, is practicable and consistent with the purposes of this chapter, (B) that coal and coal transportation facilities will be available during the period the order is in effect, and (C) in the case of a powerplant, that the prohibition under subsection (a) of this section will not impair the reliability of service in the area served by such plant. Such an order shall be rescinded or modified to the extent the Federal Energy Administrator determines that any requirement described in subparagraph (A), (B), or (C) of this paragraph is no longer met; and such an order may at any time be modified if the Federal Energy Administrator determines that such order, as modified, complies with the requirements of this section.

(2)(A) Before issuing an order under subsection (a) of this section which is applicable to a powerplant or installation for a period ending on or before June 30, 1975, the Federal Energy Administrator (i) shall give notice to the public and afford interested persons an opportunity for written presentations of data, views, and arguments, (ii) shall consult with the Administrator of the Environmental Protection Agency, and (iii) shall take into account the likelihood that the powerplant or installation will be permitted to burn coal after June 30, 1975.

(B) An order described in subparagraph (A) of this paragraph shall not become effective until the date which the Administrator of the Environmental Protection Agency certifies pursuant to section 1857c–10(d)(1)(A) [1] of title 42 is the earliest date that such plant or installation will be able to comply with the air pollution requirements which will be applicable to it. Such order shall not be effective for any period certified by the Administrator of the Environmental Protection Agency pursuant to section 1857c–10(d)(3)(B) [1] of title 42.

(3)(A) Before issuing an order under subsection (a) of this section which is applicable to a powerplant or installation after June 30, 1975 (or modifying an order to which paragraph (2) applies, so as to apply such order to a powerplant or installation after such date), the Federal Energy Administrator shall give notice to the public and afford interested persons an opportunity for oral and written presentations of data, views, and arguments.

(B) An order (or modification thereof) described in subparagraph (A) of this paragraph shall not become effective until (i) the Administrator of the Environmental Protection Agency notifies the Federal Energy Administrator under section 1857c–10(d)(1)(B) [1] of title 42 that such plant or installation will be able on and after July 1, 1975, to burn coal and to comply with all applicable air pollution requirements without a compliance date extension under section 1857c–10(c) [1] of title 42, or (ii) if such notification is not given, the date which the Administrator of the Environmental Protection Agency certifies pursuant to section 1857c–10(d)(1)(B) [1] of title 42 is the earliest date that such plant or installation will be able to comply with all applicable requirements of such 1857c–10 [1] of title 42. Such order (or modification) shall not be effective during any period certified by the Administrator of the Environmental Protection Agency under section 1857c–10(d)(3)(B) [1] of title 42.

(c) Construction and design of powerplants or other major fuel burning installations

The Federal Energy Administrator may require that any powerplant or other major fuel burning installation in the early planning process (other than a combustion gas turbine or combined cycle unit) be designed and constructed so as to be capable of using coal as its primary energy source. No powerplant or other major fuel burning installation may be required under this subsection to be so designed and constructed, if the Administrator determines that (1) in the case of a powerplant to do so is likely to result in an impairment of reliability or adequacy of service, or (2) an adequate and reliable supply of coal is not expected to be available. In considering whether to impose a design and construction requirement under this subsection, the Federal Energy Administrator shall consider the existence and effects of any contractual commitment for the construction of such facilities and the capability of the owner to recover any capital investment made as a result of any requirement imposed under this subsection.

(d) Allocation of coal

The Federal Energy Administrator may, by rule or order, allocate coal (1) to any powerplant or major fuel-burning installation to which an order under subsection (a) of this section has been issued, or (2) to any other person to the extent necessary to carry out the purposes of this chapter.

(e) Definitions

For purposes of this section:

(1) The term "powerplant" means a fossil-fuel fired electric generating unit which produces electric power for purposes of sale or exchange.

(2) The term "coal" includes coal derivatives.

(f) Expiration of authority; effective dates

(1) Authority to issue orders or rules under subsections (a) through (d) of this section shall expire at midnight, December 31, 1978. Such a rule or order may take effect at any time before January 1, 1985.

(2) Authority to amend, repeal, rescind, modify, or enforce such rules or orders shall expire at midnight, December 31, 1984; but the expiration of such authority shall not affect any administrative or judicial proceeding which relates to any act or omission which occurred prior to January 1, 1985.

(Pub. L. 93–319, §2, June 22, 1974, 88 Stat. 246; Pub. L. 94–163, title I, §101, Dec. 22, 1975, 89 Stat. 875; Pub. L. 95–70, §7, July 21, 1977, 91 Stat. 277.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b)(1) and (d), was in the original "this Act", meaning Pub. L. 93–319. For complete classification of this Act to the Code, see Short Title note set out under section 791 of this title and Tables.

Section 1857c–10 of title 42, referred to in subsec. (b)(2)(B), (3)(B), was in the original a reference to section 119 of the Clean Air Act, and was repealed by Pub. L. 95–95, §112(b), which provided in part that references in this section to section 1857c–10 shall be construed to refer to section 7413(d) of title 42 and to paragraph (5) thereof in particular. Subsequently, section 7413 of title 42 was amended generally by Pub. L. 101–549, title VII, §701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, subsec. (d) no longer relates to final compliance orders. See section 7413(a) of title 42 for provisions relating generally to compliance orders. For further details, see Compliance Orders note set out below.

AMENDMENTS

1977—Subsec. (f)(1). Pub. L. 95–70 substituted "shall expire at midnight, December 31, 1978" for "shall expire at midnight, June 30, 1977".

1975—Subsec. (a). Pub. L. 94–163, §101(b), authorized the Administrator to prohibit any powerplant or other fuel burning installation from burning natural gas or petroleum products as its primary energy source if such powerplant or other installation is required to meet a design or construction requirement under subsec. (c) of this section.

Subsec. (c). Pub. L. 94–163, §101(c), inserted "or other major fuel burning installation" after "powerplant" wherever appearing and inserted "in the case of a powerplant" after "if the Administrator determines that (1)".

Subsec. (f)(1). Pub. L. 94–163, §101(a)(1), substituted "June 30, 1977" for "June 30, 1975" and "January 1, 1985" for "January 1, 1979".

Subsec. (f)(2). Pub. L. 94–163, §101(a)(2), substituted "December 31, 1984" for "December 31, 1978" and

"January 1, 1985" for "January 1, 1979".

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

COMPLIANCE ORDERS

Pub. L. 95–95, title I, §112(b), Aug. 7, 1977, 91 Stat. 709, repealed section 119 of the Clean Air Act, which was classified to section 1857c–10 of Title 42, The Public Health and Welfare, and which related to the Administrator's authority to deal with the energy shortage. Section 112(b) of Pub. L. 95–95 provided that:

"(1) Section 119 of such Act [section 1857c–10 of Title 42, The Public Health and Welfare] is hereby repealed. All references to such section 119 [section 1857c–10 of Title 42] or subsections thereof in section 2 of the Energy Supply and Environmental Coordination Act of 1974 (Public Law 93–319) [this section] or any amendment thereto, or any subsequent enactment which supersedes such Act [Pub. L. 93–319, June 22, 1974, 88 Stat. 246], shall be construed to refer to section 113(d) of the Clean Air Act [section 7413(d) of Title 42] and to paragraph (5) thereof in particular. Any certification or notification required to be given by the Administrator of the Environmental Protection Agency under section 2 of the Energy Supply and Environmental Coordination Act of 1974 [this section] or any amendment thereto, or any subsequent enactment which supersedes such Act, shall be given only when the Governor of the State in which is located the source to which the proposed order under section 113(d)(5) of the Clean Air Act [section 7413(d)(5) of Title 42] is to be issued gives his prior written concurrence.

"(2) In the case of any major stationary source to which any requirement is applicable under section 113(d)(5)(B) of the Clean Air Act [section 7413(d)(5)(B) of Title 42] and for which certification is required under section 2 of the Energy Supply and Environmental Coordination Act of 1974 [this section] or any amendment thereto, or any subsequent enactment which supersedes such Act [Pub. L. 93–319], the Administrator of the Environmental Protection Agency shall certify the date which he determines is the earliest date that such source will be able to comply with all such requirements. In the case of any plant or installation which the Administrator of the Environmental Protection Agency determines (after consultation with the State) will not be subject to an order under section 113(d) of the Clean Air Act [section 7413(d) of Title 42] and for which certification is required under section 2 of the Energy Supply and Environmental Coordination Act of 1974 [this section] or any amendment thereto, or any subsequent enactment which supersedes such Act [Pub. L. 93–319], the Administrator of the Environmental Protection Agency shall certify the date which he determines is the earliest date that such plant or installation will be able to burn coal in compliance with all applicable emission limitations under the implementation plan.

"(3) Any certification required under section 2 of the Energy Supply and Environmental Coordination Act of 1974 [this section] or any amendment thereto, or any subsequent enactment which supersedes such Act [Pub. L. 93–319], or under this subsection may be provided in an order under section 113(d) of the Clean Air Act [section 7413(d) of Title 42]."

[1] *See References in Text note below.*

§793. Protection of public health and environment

(a) Distribution of low sulfur fuel

Any allocation program provided for in section 792 of this title or in the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 751 et seq.],[1] shall, to the maximum extent practicable, include measures to assure that available low sulfur fuel will be distributed on a priority basis to those areas of the United States designated by the Administrator of the Environmental Protection Agency as requiring low sulfur fuel to avoid or minimize adverse impact on public health.

(b) Study of chronic effects of sulfur oxide emissions among exposed populations

In order to determine the health effects of emissions of sulfur oxides to the air resulting from any conversions to burning coal to which section 119 [1] of the Clean Air Act [42 U.S.C. 1857c–10] applies, the Department of Health and Human Services shall, through the National Institute of Environmental Health Sciences and in cooperation with the Environmental Protection Agency,

conduct a study of chronic effects among exposed populations. The sum of $3,500,000 is authorized to be appropriated for such a study. In order to assure that long-term studies can be conducted without interruption, such sums as are appropriated shall be available until expended.

(c) Major Federal actions significantly affecting the quality of the human environment

(1) No action taken under the Clean Air Act [42 U.S.C. 7401 et seq.] shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.].

(2) No action under section 792 of this title for a period of one year after initiation of such action shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.]. However, before any action under section 792 of this title that has a significant impact on the environment is taken, if practicable, or in any event within sixty days after such action is taken, an environmental evaluation with analysis equivalent to that required under section 102(2)(C) of the National Environmental Policy Act [42 U.S.C. 4332(2)(C)], to the greatest extent practicable within this time constraint, shall be prepared and circulated to appropriate Federal, State, and local government agencies and to the public for a thirty-day comment period after which a public hearing shall be held upon request to review outstanding environmental issues. Such an evaluation shall not be required where the action in question has been preceded by compliance with the National Environmental Policy Act by the appropriate Federal agency. Any action taken under section 792 of this title which will be in effect for more than a one-year period or any action to extend an action taken under section 792 of this title to a total period of more than one year shall be subject to the full provisions of the National Environmental Policy Act, notwithstanding any other provision of this chapter.

(d) Importation of hydroelectric energy

In order to expedite the prompt construction of facilities for the importation of hydroelectric energy thereby helping to reduce the shortage of petroleum products in the United States, the Federal Power Commission is hereby authorized and directed to issue a Presidential permit pursuant to Executive Order 10485 of September 3, 1953, for the construction, operation, maintenance, and connection of facilities for the transmission of electric energy at the borders of the United States without preparing an environmental impact statement pursuant to section 102 of the National Environmental Policy Act of 1969 [42 U.S.C. 4332] for facilities for the transmission of electric energy between Canada and the United States in the vicinity of Fort Covington, New York.

(Pub. L. 93–319, §7, June 22, 1974, 88 Stat. 259; Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (a), is Pub. L. 93–159, Nov. 27, 1973, 87 Stat. 628, as amended, which was classified generally to chapter 16A (§751 et seq.) of this title, was omitted from the Code pursuant to section 760g of this title, which provided for the expiration of the President's authority under that chapter on Sept. 30, 1981.

Section 119 of the Clean Air Act [42 U.S.C. 1857c–10], referred to in subsec. (b), was repealed by Pub. L. 95–95, §112(b)(1), Aug. 7, 1977, 91 Stat. 709, which is set out as a Compliance Orders note under section 792 of this title. A new section 119 of the Clean Air Act was added by Pub. L. 95–95, §117(b), and is classified to section 7419 of Title 42, The Public Health and Welfare.

The Clean Air Act, referred to in subsec. (c), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of Title 42. For complete classification of this Act of the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (c), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note under section 4321 of Title 42 and Tables.

This chapter, referred to in subsec. (c)(2), was in the original "this Act", meaning Pub. L. 93–319. For complete classification of this Act to the Code, see Short Title note set out under section 791 of this title and Tables.

Executive Order 10485 of September 3, 1953, referred to in subsec. (d), is Ex. Ord. No. 10485, Sept. 3,

1953, 18 F.R. 5397, which is set out as a note under section 717b of this title.

CHANGE OF NAME

"Department of Health and Human Services" substituted for "Department of Health, Education, and Welfare" in subsec. (b), pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

TRANSFER OF FUNCTIONS

Federal Power Commission terminated and functions, personnel, property, funds, etc., transferred to Secretary of Energy (except for certain functions transferred to Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a)(1), 7291, and 7293 of Title 42, The Public Health and Welfare.

[1] *See References in Text note below.*

§794. Energy conservation study

(a) Study of conservation methods

The Federal Energy Administrator shall conduct a study on potential methods of energy conservation and, not later than six months after June 22, 1974, shall submit to Congress a report on the results of such study. The study shall include, but not be limited to, the following:

(1) the energy conservation potential of restricting exports of fuels or energy-intensive products, or goods, including an analysis of balance-of-payments and foreign relations implications of any such restrictions;

(2) alternative requirements, incentives, or disincentives for increasing industrial recycling and resource recovery in order to reduce energy demand, including the economic costs and fuel consumption tradeoff which may be associated with such recycling and resource recovery in lieu of transportation and use of virgin materials; and

(3) means for incentives or disincentives to increase efficiency of industrial use of energy.

(b) Emergency mass transportation assistance plan

Within ninety days of June 22, 1974, the Secretary of Transportation, after consultation with the Federal Energy Administrator, shall submit to the Congress for appropriate action an "Emergency Mass Transportation Assistance Plan" for the purpose of conserving energy by expanding and improving public mass transportation systems and encouraging increased ridership as alternatives to automobile travel.

(c) Recommendations in plan

Such plan shall include, but shall not be limited to—

(1) recommendations for emergency temporary grants to assist States and local public bodies and agencies thereof in the payment of operating expenses incurred in connection with the provision of expanded mass transportation service in urban areas;

(2) recommendations for additional emergency assistance for the purchase of buses and rolling stock for fixed rail, including the feasibility of accelerating the timetable for such assistance under section 142(a)(2) of title 23 for the purpose of providing additional capacity for and encouraging increased use of public mass transportation systems;

(3) recommendations for a program of demonstration projects to determine the feasibility of fare-free and low-fare urban mass transportation systems, including reduced rates for elderly and handicapped persons during nonpeak hours of transportation;

(4) recommendations for additional emergency assistance for the construction of fringe and transportation corridor parking facilities to serve bus and other mass transportation passengers;

(5) recommendations on the feasibility of providing tax incentives for persons who use public mass transportation systems.

(Pub. L. 93–319, §8, June 22, 1974, 88 Stat. 260.)

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§795. Report to Congress by January 31, 1975

The Administrator of the Environmental Protection Agency shall report to Congress not later than January 31, 1975, on the implementation of sections 3 through 7 of the Energy Supply and Environmental Coordination Act of 1974.

(Pub. L. 93–319, §9, June 22, 1974, 88 Stat. 261.)

REFERENCES IN TEXT

Sections 3 through 7 of the Energy Supply and Environmental Coordination Act of 1974, referred to in text, are sections 3 through 7 of Pub. L. 93–319, June 22, 1974, 88 Stat. 248–260, which sections enacted section 793 of this title and section 1857c–10 of Title 42, The Public Health and Welfare, and amended sections 1857c–5, 1857c–8, 1857c–9, 1857d–1, 1857f–1, and 1857h–5 of Title 42. Section 1857c–10 of Title 42 was repealed by Pub. L. 95–95, §112(b)(1). On enactment of Pub. L. 95–95, sections 1857c–5, 1857c–8, 1857c–9, 1857d–1, 1857f–1, and 1857h–5 were reclassified to sections 7410, 7413, 7414, 7416, 7521, and 7607, respectively, of Title 42.

§796. Reporting of energy information

(a) Authority of Federal Energy Administrator to request, acquire, and collect energy information; rules and regulations

For the purpose of assuring that the Federal Energy Administrator, the Congress, the States, and the public have access to and are able to obtain reliable energy information, the Federal Energy Administrator shall request, acquire, and collect such energy information as he determines to be necessary to assist in the formulation of energy policy or to carry out the purposes of this chapter or the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 751 et seq.].[1] The Federal Energy Administrator shall promptly promulgate rules pursuant to subsection (b)(1)(A) of this section requiring reports of such information to be submitted to the Federal Energy Administrator at least every ninety calendar days.

(b) Powers of Federal Energy Administrator in obtaining energy information; verification of accuracy; compliance orders

(1) In order to obtain energy information for the purpose of carrying out the provisions of subsection (a) of this section, the Federal Energy Administrator is authorized—

(A) to require, by rule, any person who is engaged in the production, processing, refining, transportation by pipeline, or distribution (at other than the retail level) of energy resources to submit reports;

(B) to sign and issue subpenas for the attendance and testimony of witnesses and the production of books, records, papers, and other documents;

(C) to require any person, by general or special order, to submit answers in writing to interrogatories, requests for reports or for other information; and such answers or other submissions shall be made within such reasonable period, and under oath or otherwise, as the Federal Energy Administrator may determine; and

(D) to administer oaths.

(2) For the purpose of verifying the accuracy of any energy information requested, acquired, or collected by the Federal Energy Administrator, the Federal Energy Administrator, or any officer or employer [2] duly designated by him, upon presenting appropriate credentials and a written notice from the Federal Energy Administrator to the owner, operator, or agent in charge, may—

(A) enter, at reasonable times, any business premise or facility; and

(B) inspect, at reasonable times and in a reasonable manner, any such premise or facility, inventory and sample any stock of energy resources therein, and examine and copy books, records, papers, or other documents, relating to any such energy information.

(3) Any United States district court within the jurisdiction of which any inquiry is carried on may, upon petition by the Attorney General at the request of the Federal Energy Administrator, in the case of refusal to obey a subpena or order of the Federal Energy Administrator issued under this section, issue an order requiring compliance therewith; and any failure to obey the order of the court may be punished by the court as a contempt thereof.

(c) Development of initial report; quarterly reports; accounting practices

(1) The Federal Energy Administrator shall exercise the authorities granted to him under subsection (b)(1)(A) of this section to develop, within thirty days after June 22, 1974, as full and accurate a measure as is reasonably practicable of—

(A) domestic reserves and production;

(B) imports; and

(C) inventories;

of crude oil, residual fuel oil, refined petroleum products, natural gas, and coal.

(2) For each calendar quarter beginning with the first complete calendar quarter following June 22, 1974, the Federal Energy Administrator shall develop and publish a report containing the following energy information:

(A) Imports of crude oil, residual fuel oil, refined petroleum products (by product), natural gas, and coal, identifying (with respect to each such oil, product, gas, or coal) country of origin, arrival point, quantity received, and the geographic distribution within the United States.

(B) Domestic reserves and production of crude oil, natural gas, and coal.

(C) Refinery activities, showing for each refinery within the United States (i) the amounts of crude oil run by such refinery, (ii) amounts of crude oil allocated to such refinery pursuant to regulations and orders of the Federal Energy Administrator, his delegate pursuant to the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 751 et seq.],[1] or any other person authorized by law to issue regulations and orders with respect to the allocation of crude oil, (iii) percentage of refinery capacity utilized, and (iv) amounts of products refined from such crude oil.

(D) Report of inventories, on a national, regional, and State-by-State basis—

(i) of various refined petroleum products, related refiners, refineries, suppliers to refiners, share of market, and allocation fractions;

(ii) of various refined petroleum products, previous quarter deliveries and anticipated three-month available supplies;

(iii) of anticipated monthly supply of refined petroleum products, amount of set-aside for assignment by the State, anticipated State requirements, excess or shortfall of supply, and allocation fraction of base year; and

(iv) of LPG by State and owner: quantities stored, and existing capacities, and previous priorities on types, inventories of suppliers, and changes in supplier inventories.

(3) In order to carry out his responsibilities under subsection (a) of this section, the Federal Energy Administrator shall require, pursuant to subsection (b)(1)(A) of this section, that persons engaged, in whole or in part, in the production of crude oil or natural gas—

(A) keep energy information in accordance with the accounting practices developed pursuant to section 503 of the Energy Policy and Conservation Act [42 U.S.C. 6383], and

(B) submit reports with respect to energy information kept in accordance with such practices.

The Administrator shall file quarterly reports with the President and the Congress compiled from accounts kept in accordance with such section 503 and submitted to the Administrator in accordance

with this paragraph. Such reports shall present energy information in the categories specified in subsection (c) of such section 503 to the extent that such information may be compiled from such accounts. Such energy information shall be collected and such quarterly reports made for each calendar quarter which begins 6 months after the date on which the accounting practices developed pursuant to such section 503 are made effective.

(d) Confidential information

Upon a showing satisfactory to the Federal Energy Administrator by any person that any energy information obtained under this section from such person would, if made public, divulge methods or processes entitled to protection as trade secrets or other proprietary information of such person, such information, or portion thereof, shall be confidential in accordance with the provisions of section 1905 of title 18; except that such information, or part thereof, shall not be deemed confidential for purposes of disclosure, upon request, to (1) any delegate of the Federal Energy Administrator for the purpose of carrying out this chapter and the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 751 et seq.],[1] (2) the Attorney General, the Secretary of the Interior, the Federal Trade Commission, the Federal Power Commission, or the Government Accountability Office, when necessary to carry out those agencies' duties and responsibilities under this and other statutes, and (3) the Congress, or any committee of Congress upon request of the Chairman.

(e) Definitions

As used in this section:

(1) The term "energy information" includes (A) all information in whatever form on (i) fuel reserves, exploration, extraction, and energy resources (including petrochemical feedstocks) wherever located; (ii) production, distribution, and consumption of energy and fuels wherever carried on; and (B) matters relating to energy and fuels, such as corporate structure and proprietary relationships, costs, prices, capital investment, and assets, and other matters directly related thereto, wherever they exist.

(2) The term "person" means any natural person, corporation, partnership, association, consortium, or any entity organized for a common business purpose, wherever situated, domiciled, or doing business, who directly or through other persons subject to their control does business in any part of the United States.

(3) The term "United States" when used in the geographical sense means the States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

(f) Availability of energy information

Information obtained by the Administration under authority of this chapter shall be available to the public in accordance with the provisions of section 552 of title 5.

(g) Independent nature of authority to gather energy information

The authority contained in this section is in addition to, independent of, not limited by, and not in limitation of, any other authority of the Federal Energy Administrator.

(Pub. L. 93–319, §11, June 22, 1974, 88 Stat. 262; Pub. L. 94–163, title V, §§505(a), 506, Dec. 22, 1975, 89 Stat. 960; Pub. L. 95–620, title VII, §762(d), Nov. 9, 1978, 92 Stat. 3346; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 93–319. For complete classification of this Act to the Code, see Short Title note set out under section 791 of this title and Tables.

The Emergency Petroleum Allocation Act of 1973, referred to in subsecs. (a), (c)(2)(C), and (d), is Pub. L. 93–159, Nov. 27, 1973, 87 Stat. 628, as amended, which was classified generally to chapter 16A (§751 et seq.) of this title, was omitted from the Code pursuant to section 760g of this title, which provided for the expiration of the President's authority under that chapter on Sept. 30, 1981.

AMENDMENTS

2004—Subsec. (d). Pub. L. 108–271 substituted "Government Accountability Office" for "General

Accounting Office".

1978—Subsec. (g). Pub. L. 95–620 struck out provisions comprising par. (2) relating to termination of this section at midnight, Dec. 31, 1979, and designated remaining provisions as subsec. (g).

1975—Subsec. (c)(3). Pub. L. 94–163, §505(a), added par. (3).

Subsec. (g)(2). Pub. L. 94–163, §506, substituted "December 31, 1979" for "June 30, 1975" in two places.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–620 effective 180 days after Nov. 9, 1978, see section 901 of Pub. L. 95–620, set out as an Effective Date note under section 8301 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 94–163, title V, §505(b), Dec. 22, 1975, 89 Stat. 960, provided that: "The amendment made by subsection (a) to section 11(c) of the Energy Supply and Environmental Coordination Act of 1974 [subsec. (c) of this section] shall take effect on the first day of the first accounting quarter to which such practices apply."

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

Federal Power Commission terminated and functions, personnel, property, funds, etc., transferred to Secretary of Energy (except for certain functions transferred to Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a)(1), 7291, and 7293 of Title 42.

[1] *See References in Text note below.*

[2] *So in original. Probably should be "employee".*

§797. Enforcement

(a) Violations

It shall be unlawful for any person to violate any provision of section 792 of this title (relating to coal conversion and allocation) or section 796 of this title (relating to energy information) or to violate any rule, regulation, or order issued pursuant to any such provision.

(b) Penalties; injunctions; declaratory judgments

(1) Whoever violates any provision of subsection (a) of this section shall be subject to a civil penalty of not more than $2,500 for each violation.

(2) Whoever willfully violates any provision of subsection (a) of this section shall be fined not more than $5,000 for each violation.

(3) It shall be unlawful for any person to offer for sale or distribute in commerce any coal in violation of an order or regulation issued pursuant to section 792(d) of this title. Any person who knowingly and willfully violates this paragraph after having been subjected to a civil penalty for a prior violation of the same provision of any order or regulation issued pursuant to section 792(d) of this title shall be fined not more than $50,000, or imprisoned not more than six months, or both.

(4) Whenever it appears to the Federal Energy Administrator or any person authorized by the Federal Energy Administrator to exercise authority under section 792 of this title or section 796 of this title that any individual or organization has engaged, is engaged, or is about to engage in acts or practices constituting a violation of subsection (a) of this section the Federal Energy Administrator or such person may request the Attorney General to bring a civil action to enjoin such acts or practices, and upon a proper showing, a temporary restraining order or a preliminary or permanent injunction shall be granted without bond. In such action, the court may also issue mandatory injunctions commanding any person to comply with any provision, the violation of which is prohibited by subsection (a) of this section.

(5) Any person suffering legal wrong because of any act or practice arising out of any violation of subsection (a) of this section may bring a civil action for appropriate relief, including an action for a

declaratory judgment or writ of injunction. United States district courts shall have jurisdiction of actions under this paragraph without regard to the amount in controversy. Nothing in this paragraph shall authorize any person to recover damages.

(Pub. L. 93–319, §12, June 22, 1974, 88 Stat. 264.)

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§798. Definitions

(a) For purposes of this chapter and the Clean Air Act [42 U.S.C. 7401 et seq.] the term "Federal Energy Administrator" means the Administrator of the Federal Energy Administration established by Federal Energy Administration Act of 1974 [15 U.S.C. 761 et seq.]; except that until such Administrator takes office and after such Administration ceases to exist, such term means any officer of the United States designated as Federal Energy Administrator by the President for purposes of this chapter and section 119 [1] of the Clean Air Act [42 U.S.C. 1857c–10].

(b) For purposes of this chapter, the term "petroleum product" means crude oil, residual fuel oil, or any refined petroleum product (as defined in section 752(5) [1] of this title).

(Pub. L. 93–319, §14, June 22, 1974, 88 Stat. 265.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), was in the original "this Act", meaning Pub. L. 93–319. For complete classification of this Act to the Code, see Short Title note set out under section 791 of this title and Tables.

The Clean Air Act, referred to in subsec. (a), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

Section 119 of the Clean Air Act [42 U.S.C. 1857c–10], referred to in subsec. (a), was repealed by Pub. L. 95–95, §112(b)(1), Aug. 7, 1977, 91 Stat. 709, which is set out as a Compliance Orders note under section 792 of this title. A new section 119 of the Clean Air Act was added by Pub. L. 95–95, §117(b), and is classified to section 7419 of Title 42.

The Federal Energy Administration Act of 1974, referred to in subsec. (a), is Pub. L. 93–275, May 7, 1974, 88 Stat. 96, as amended, which is classified generally to chapter 16B (§761 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 761 of this title and Tables.

Section 752 of this title, referred to in subsec. (b), was omitted from the Code pursuant to section 760g of this title, which provided for the expiration of the President's authority under that section on Sept. 30, 1981.

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

[1] *See References in Text note below.*

CHAPTER 17—PRODUCTION, MARKETING, AND USE OF BITUMINOUS COAL

SUBCHAPTER A—BITUMINOUS COAL CONSERVATION ACT OF 1935

§§801 to 827. Repealed. Apr. 26, 1937, ch. 127, §20(a), 50 Stat. 90

Sections, act Aug. 30, 1935, ch. 824, §§1–23, 49 Stat. 991, comprised the Bituminous Coal Conservation Act of 1935.

SUBCHAPTER B—BITUMINOUS COAL ACT OF 1937

§§828 to 852. Repealed. Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 649, 651

Sections, act Apr. 26, 1937, ch. 127, §§1–22, 50 Stat. 75–91, related to the regulation of interstate commerce of bituminous coal.

Section 849 of this title was amended by acts Apr. 11, 1941, ch. 64, §1(a), 55 Stat. 134; Apr. 24, 1943, ch. 68, 57 Stat. 68; May 21, 1943, ch. 97, 57 Stat. 82.

Section 852 of this title was added by act Apr. 11, 1941, ch. 64, §2, 55 Stat. 134.

CHAPTER 18—TRANSPORTATION OF FIREARMS

§§901 to 910. Repealed. Pub. L. 90–351, title IV, §906, June 19, 1968, 82 Stat. 234

Section 901, acts June 30, 1938, ch. 850, §1, 52 Stat. 1250; Aug. 6, 1939, ch. 500, 53 Stat. 1222; Mar. 10, 1947, ch. 15, 61 Stat. 11; Oct. 3, 1961, Pub. L. 87–342, §1, 75 Stat. 757, defined in pars. (1) to (7) the terms "person", "interstate or foreign commerce", "firearm", "manufacturer", "dealer", "fugitive from justice", and "ammunition". See section 921(a)(1) to (3), (9), (10), (11), (14), and (16) of Title 18, Crimes and Criminal Procedure, respectively.

Section 902, acts June 30, 1938, ch. 850, §2, 52 Stat. 1250; Oct. 3, 1961, Pub. L. 87–342, §2, 75 Stat. 757, prohibited certain enumerated acts, including transporting, shipping, or receiving firearms or ammunition in commerce, subsecs. (a), (d) to (i) of which are covered in section 922(a)(1), (c), (e) to (i) of Title 18, Crimes and Criminal Procedure, respectively, such subsecs. (d) to (i) also being covered generally in section 922(d) and such subsec. (i) in section 923(f), the presumption from possession rule of subsecs. (f) and (i) being omitted, and subsecs. (b) and (c) of which prohibited receipt with knowledge that transportation or shipment was in violation of former subsec. (a) or that the transportation or shipment was to a person without a license where State laws require prospective purchaser to exhibit a license to licensed manufacturer or dealer, respectively.

Section 903, act June 30, 1938, ch. 850, §3, 52 Stat. 1251, provided for licenses to transport, ship, or receive firearms or ammunition. For subsecs. (a), (b), and (d), see sections 923(a), (b), 922(b)(5), (k), 923(d), (f) of Title 18, respectively.

Section 904, act June 30, 1938, ch. 850, §4, 52 Stat. 1252, excepted certain persons from the provisions of the chapter. See section 925(a) of Title 18.

Section 905, acts June 30, 1938, ch. 850, §5, 52 Stat. 1252; Feb. 7, 1950, ch. 2, 64 Stat. 3, prescribed penalties for violations. See section 924(a) and (c) of Title 18.

Section 906, act June 30, 1938, ch. 850, §6, 52 Stat. 1252, provided for effective date of chapter 18. Similar provisions are set out as a note under section 921 of Title 18.

Section 907, act June 30, 1938, ch. 850, §7, 52 Stat. 1252, authorized rules and regulations. See section 926 of Title 18.

Section 908, act June 30, 1938, ch. 850, §8, 52 Stat. 1252, contained separability clause. See section 928 of Title 18.

Section 909, act June 30, 1938, ch. 850, §9, 52 Stat. 1252, provided for the Federal Firearms Act as the short title for chapter 18.

Section 910, act June 30, 1938, ch. 850, §10, as added Sept. 15, 1965, Pub. L. 89–184, 79 Stat. 788, provided for relief from disabilities resulting from conviction, application of provisions, public interest, and publication in Federal Register. See section 925(c) of Title 18.

EFFECTIVE DATE OF REPEAL

Repeal effective 180 days after June 19, 1968, except that valid license issued thereunder shall not terminate until expiration according to terms of license unless sooner revoked or terminated pursuant to applicable law, see section 907 of Pub. L. 90–351, set out as a note under section 921 of Title 18, Crimes and Criminal Procedure.

CHAPTER 19—MISCELLANEOUS

Sec.

1001. Prize-fight films as subjects of interstate or foreign commerce.
1002. Golden Gate Bridge tolls; Government traffic and personnel in performance of office business not subject to tolls.
1003. Authorization for free travel on Golden Gate Bridge; issuance, presentation, and acceptance; other authorization devices.
1004. Penalties.
1005. San Francisco-Oakland Bay Bridge tolls; Government traffic and personnel on official business exempted; Government personnel on Yerba Buena Island or Treasure Island exempted.
1006. Authorization for free travel on San Francisco-Oakland Bay Bridge; issuance, presentation, and acceptance; other authorization devices.
1007. Penalties.

§1001. Prize-fight films as subjects of interstate or foreign commerce

Every film or other pictorial representation of any prize fight or encounter of pugilists, under whatever name, transported into any State, Territory, or possession, for use, sale, storage, exhibition, or other disposition therein is divested of its character as a subject of interstate or foreign commerce to the extent that it shall upon crossing the boundary of such State, Territory, or possession, be subject to the operation and effect of the laws of such State, Territory, or possession enacted in the exercise of its police power.

(June 29, 1940, ch. 443, §1, 54 Stat. 686.)

§1002. Golden Gate Bridge tolls; Government traffic and personnel in performance of office business not subject to tolls

Tolls may be charged for the passage or transit over the Golden Gate Bridge of Government traffic, of military or naval personnel and their dependents, and of civilian employees of the Army and Navy traveling on Government business, but such tolls shall not be in excess of the tolls charged for the passage or transit of other like traffic over such bridge: *Provided, however,* That subject to the provisions of section 1003 of this title, military and naval personnel, and civilian employees of the Army and Navy, when such personnel or employees are engaged in the performance of official duties requiring the use of such bridge, together with the conveyances being used by them in the performance of such duties, shall have the use of such bridge free of toll.

(Mar. 14, 1944, ch. 92, §1, 58 Stat. 116.)

EFFECTIVE DATE

Act Mar. 14, 1944, ch. 92, §4, 58 Stat. 116, provided: "The provisions of this Act [sections 1002 to 1004 of this title] shall take effect thirty days after the date of its enactment."

§1003. Authorization for free travel on Golden Gate Bridge; issuance,

presentation, and acceptance; other authorization devices

(a) The use of the Golden Gate Bridge free of toll, provided for in section 1002 of this title, shall be granted upon the presentation and surrender at the toll lanes of an authorization certifying that the traffic in question is entitled to such right. Such authorization shall be issued and signed by any military or naval officer designated for such purpose in accordance with regulations which shall be prescribed by the Secretary of the Army and the Secretary of the Navy, respectively. The names and signatures of officers so designated shall be furnished to the Golden Gate Bridge and Highway District, and thereafter authorizations signed by them shall be accepted by such bridge and highway district as prima facie evidence of the facts stated therein.

(b) Notwithstanding the provisions of subsection (a) of this section, such right to use the Golden Gate Bridge free of toll may be established by any other device or means which may be acceptable to the Golden Gate Bridge and Highway District; and the Secretary of the Army and the Golden Gate Bridge and Highway District, and the Secretary of the Navy and the Golden Gate Bridge and Highway District, may enter into any appropriate agreements to secure the effective, convenient, and just exercise of such right.

(Mar. 14, 1944, ch. 92, §2, 58 Stat. 116.)

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011 to 3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

SECRETARY OF THE AIR FORCE

For transfer of certain functions relating to finance and fiscal matters, insofar as they pertain to Secretary of the Air Force, from Secretary of the Army to Secretary of the Air Force, see Secretary of Defense Transfer Order Nos. 25, Oct. 14, 1948, and 40 [App. B(61)], July 22, 1949.

§1004. Penalties

Whoever secures or attempts to secure the exemption from toll provided for in sections 1002 to 1004 of this title or an authorization referred to in section 1003 of this title, knowing that he is not entitled thereto, and whoever signs or issues any such authorization certifying to such right of exemption, knowing that such right does not exist, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than $100 or by imprisonment for not more than ten days, or by both such fine and imprisonment.

(Mar. 14, 1944, ch. 92, §3, 58 Stat. 116.)

§1005. San Francisco-Oakland Bay Bridge tolls; Government traffic and personnel on official business exempted; Government personnel on Yerba Buena Island or Treasure Island exempted

Tolls may be charged for the passage or transit over the San Francisco-Oakland Bay Bridge of Government traffic, or military, naval, or civilian personnel and their dependents, and of civilian employees of the Army and Navy traveling on Government business, but such tolls shall not be in excess of the tolls charged for the passage or transit of other like traffic over such bridge: *Provided, however*, That subject to the provisions of section 1006 of this title, military, Coast Guard, and naval personnel, and civilian employees of the Army and Navy and Coast Guard and personnel and employees of the National Ocean Survey, when such personnel or employees are engaged in the performance of official duties requiring the use of such bridge, together with the conveyances being used by them in the performance of such duties, shall have the use of such bridge free of toll:

Provided further, That subject to the provisions of section 1006 of this title, military, Coast Guard, and naval personnel, civilian employees of the Army and Navy and Coast Guard and personnel and employees of the National Ocean Survey, and their dependents, when such personnel, employees, or dependents are resident or employed on Yerba Buena Island or Treasure Island, or on any vessel berthed at any point on said islands, together with the conveyances being used by them, when proceeding to or from said islands, shall have the use of such bridge free of toll.

(July 1, 1946, ch. 528, §1, 60 Stat. 347.)

EFFECTIVE DATE

Section 4 of act July 1, 1946, provided that sections 1005 to 1007 of this title shall be effective thirty days after July 1, 1946.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Coast and Geodetic Survey consolidated with Weather Bureau of Department of Commerce to form new agency in Department of Commerce known as Environmental Science Services Administration and offices of Director and Deputy Director of Coast and Geodetic Survey abolished by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out in the Appendix to Title 5, Government Organization and Employees. All functions of Survey, Director of Survey, and officers, employees, and organizational entities of Survey transferred to Secretary of Commerce and all personnel (including commissioned officers) and property of Survey, not already transferred by 1950 Reorg. Plan No. 5, deemed transferred to Administration. Subsequently, Environmental Science Services Administration abolished by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out in the Appendix to title 5, which created National Oceanic and Atmospheric Administration in Department of Commerce. By order of Acting Associate Administrator of NOAA, organization name of Coast and Geodetic Survey changed to National Ocean Survey.

§1006. Authorization for free travel on San Francisco-Oakland Bay Bridge; issuance, presentation, and acceptance; other authorization devices

(a) The use of the San Francisco-Oakland Bay Bridge free of toll, provided for in section 1005 of this title, shall be granted upon the presentation and surrender at the toll lanes of an authorization certifying that the traffic or person in question is entitled to such right. Such authorization shall be issued and signed by any officer or official designated for such purpose in accordance with regulations which shall be prescribed by the Secretary of the Department having control of the personnel exempted by section 1005 of this title. The names and signatures of officers so designated shall be furnished to the California Toll Bridge Authority and thereafter authorizations signed by them shall be accepted by such authority as prima facie evidence of the facts stated therein.

(b) Notwithstanding the provisions of subsection (a) of this section, such right to use the San Francisco-Oakland Bay Bridge free of toll may be established by any other device or means which may be acceptable to the California Toll Bridge Authority; and the Secretary of the appropriate Department and the California Toll Bridge Authority may enter into any appropriate agreements to secure the effective, convenient, and just exercise of such right.

(July 1, 1946, ch. 528, §2, 60 Stat. 348.)

§1007. Penalties

Whoever secures or attempts to secure the exemption from toll provided for in sections 1005 to 1007 of this title or an authorization referred to in section 1006 of this title, knowing that he is not entitled thereto, and whoever signs or issues any such authorization certifying to such right of exemption, knowing that such right does not exist, shall be guilty of a misdemeanor, and, upon

conviction thereof, shall be punished by a fine of not more than $100 or by imprisonment for not more than ten days, or by both such fine and imprisonment.

(July 1, 1946, ch. 528, §3, 60 Stat. 348.)

CHAPTER 20—REGULATION OF INSURANCE

Sec.

1011. Declaration of policy.
1012. Regulation by State law; Federal law relating specifically to insurance; applicability of certain Federal laws after June 30, 1948.
1013. Suspension until June 30, 1948, of application of certain Federal laws; Sherman Act applicable to agreements to, or acts of, boycott, coercion, or intimidation.
1014. Effect on other laws.
1015. "State" defined.

§1011. Declaration of policy

Congress hereby declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.

(Mar. 9, 1945, ch. 20, §1, 59 Stat. 33.)

SHORT TITLE

Act Mar. 9, 1945, ch. 20, 59 Stat. 33, which is classified to this chapter, is popularly known as the "McCarran-Ferguson Act".

SEPARABILITY

Act Mar. 9, 1945, ch. 20, §6, 59 Stat. 34, provided: "If any provision of this Act [this chapter], or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the Act, and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected."

§1012. Regulation by State law; Federal law relating specifically to insurance; applicability of certain Federal laws after June 30, 1948

(a) State regulation

The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.

(b) Federal regulation

No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance: *Provided*, That after June 30, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended [15 U.S.C. 41 et seq.], shall be applicable to the business of insurance to the extent that such business is not regulated by State Law.

(Mar. 9, 1945, ch. 20, §2, 59 Stat. 34; July 25, 1947, ch. 326, 61 Stat. 448.)

REFERENCES IN TEXT

Act of July 2, 1890, as amended, known as the Sherman Act, referred to in subsec. (b), is classified to sections 1 to 7 of this title.

Act of October 15, 1914, as amended, known as the Clayton Act, referred to in subsec. (b), is act Oct. 15,

1914, ch. 323, 38 Stat. 730, as amended, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of this title and to sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of this title and Tables.

Act of September 26, 1914, known as the Federal Trade Commission Act, as amended, referred to in subsec. (b), is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

AMENDMENTS

1947—Act July 25, 1947, substituted "June 30, 1948" for "January 1, 1948".

§1013. Suspension until June 30, 1948, of application of certain Federal laws; Sherman Act applicable to agreements to, or acts of, boycott, coercion, or intimidation

(a) Until June 30, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act [15 U.S.C. 41 et seq.], and the Act of June 19, 1936, known as the Robinson-Patman Anti-Discrimination Act, shall not apply to the business of insurance or to acts in the conduct thereof.

(b) Nothing contained in this chapter shall render the said Sherman Act inapplicable to any agreement to boycott, coerce, or intimidate, or act of boycott, coercion, or intimidation.

(Mar. 9, 1945, ch. 20, §3, 59 Stat. 34; July 25, 1947, ch. 326, 61 Stat. 448.)

REFERENCES IN TEXT

Act of July 2, 1890, as amended, known as the Sherman Act, referred to in subsecs. (a) and (b), is classified to sections 1 to 7 of this title.

Act of October 15, 1914, as amended, known as the Clayton Act, referred to in subsec. (a), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of this title and to sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of this title and Tables.

Act of September 26, 1914, known as the Federal Trade Commission Act, referred to in subsec. (a), is generally classified to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

Act of June 19, 1936, known as the Robinson-Patman Anti-Discrimination Act, referred to in subsec. (a), is act June 19, 1936, ch. 592, 49 Stat. 1526, known as the Robinson-Patman Antidiscrimination Act and also as the Robinson-Patman Price Discrimination Act, which enacted sections 13a, 13b, and 21a of this title and amended section 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 13 of this title and Tables.

AMENDMENTS

1947—Act July 25, 1947, substituted "June 30, 1948" for "January 1, 1948".

§1014. Effect on other laws

Nothing contained in this chapter shall be construed to affect in any manner the application to the business of insurance of the Act of July 5, 1935, as amended, known as the National Labor Relations Act [29 U.S.C. 151 et seq.], or the Act of June 25, 1938, as amended, known as the Fair Labor Standards Act of 1938 [29 U.S.C. 201 et seq.], or the Act of June 5, 1920, known as the Merchant Marine Act, 1920.

(Mar. 9, 1945, ch. 20, §4, 59 Stat. 34.)

REFERENCES IN TEXT

Act of July 5, 1935, as amended, known as the National Labor Relations Act, referred to in text, is act July 5, 1935, ch. 372, 49 Stat. 449, as amended which is classified generally to subchapter II (§151 et seq.) of chapter 7 of Title 29, Labor. For complete classification of this Act to the Code, see section 167 of Title 29

and Tables.

Act of June 25, 1938, as amended, known as the Fair Labor Standards Act, referred to in text, is classified generally to chapter 8 (§201 et seq.) of Title 29. For complete classification of this Act to the Code, see section 201 of Title 29 and Tables.

Act of June 5, 1920, known as the Merchant Marine Act, 1920, referred to in text, is ch. 250, 41 Stat. 988, which was classified principally to chapter 24 (§861 et seq.) of former Title 46, Shipping, which became chapter 24 of the former Appendix to Title 46. The Act was substantially repealed and the provisions thereof restated in Title 46, Shipping, by Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 500, and Pub. L. 109–304, Oct. 6, 2006, 120 Stat. 1485. Section 29 of the Act was transferred and is now classified to section 38 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Tables. For disposition of sections of former Title 46 and of the former Appendix to Title 46, see Disposition Table preceding section 101 of Title 46.

§1015. "State" defined

As used in this chapter, the term "State" includes the several States, Alaska, Hawaii, Puerto Rico, Guam, and the District of Columbia.

(Mar. 9, 1945, ch. 20, §5, 59 Stat. 34; Aug. 1, 1956, ch. 852, §4, 70 Stat. 908.)

AMENDMENTS

1956—Act Aug. 1, 1956, included "Guam" in definition of State.

ADMISSION OF ALASKA AND HAWAII TO STATEHOOD

Alaska was admitted into the Union on Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 FR 81, 73 Stat. c16, and Hawaii was admitted into the Union on Aug. 21, 1959, on issuance of Proc. No. 3309, Aug. 21, 1959, 24 FR 6868, 73 Stat. c74. For Alaska Statehood Law, see Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as a note preceding section 21 of Title 48, Territories and Insular Possessions. For Hawaii Statehood Law, see Pub. L. 86–3, Mar. 18, 1959, 73 Stat. 4, set out as a note preceding section 491 of Title 48.

CHAPTER 21—NATIONAL POLICY ON EMPLOYMENT AND PRODUCTIVITY

Sec.

1021. Congressional declarations.
1022. Economic Report of President; coverage; supplementary reports; reference to Congressional joint committee; percentage rate of unemployment; definitions.
1022a. Medium-term economic goals and policies respecting full employment and balanced growth.
1022b. Presentation of analysis respecting short-term and medium-term goals in Economic Report of President; mutually reinforcing means.
1022c. Inclusion of priority policies and programs in President's Budget.
1022d. President's Budget.
1022e. Inflation.
1022f. Advisory board or boards.
1023. Council of Economic Advisers.
1024. Joint Economic Committee.
1025. Printing of monthly publication by Joint Economic Committee entitled "Economic Indicators"; distribution.
1026. Repealed.

§1021. Congressional declarations

(a) Generally

The Congress declares that it is the continuing policy and responsibility of the Federal Government to use all practicable means, consistent with its needs and obligations and other essential national policies, and with the assistance and cooperation of both small and larger businesses, agriculture, labor, and State and local governments, to coordinate and utilize all its plans, functions, and resources for the purpose of creating and maintaining, in a manner calculated to foster and promote free competitive enterprise and the general welfare, conditions which promote useful employment opportunities, including self-employment, for those able, willing, and seeking to work, and promote full employment and production, increased real income, balanced growth, a balanced Federal budget, adequate productivity growth, proper attention to national priorities, achievement of an improved trade balance through increased exports and improvement in the international competitiveness of agriculture, business, and industry, and reasonable price stability as provided in section 1022b(b) of this title.

(b) Full opportunities for employment

The Congress further declares and establishes as a national goal the fulfillment of the right to full opportunities for useful paid employment at fair rates of compensation of all individuals able, willing, and seeking to work.

(c) Inflation

The Congress further declares that inflation is a major national problem requiring improved government policies relating to food, energy, improved and coordinated fiscal and monetary management, the reform of outmoded rules and regulations of the Federal Government, the correction of structural defects in the economy that prevent or seriously impede competition in private markets, and other measures to reduce the rate of inflation.

(d) Coordination of Federal policies and programs

The Congress further declares that it is the purpose of the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. 3101 et seq.] to improve the coordination and integration of the policies and programs of the Federal Government toward achievement of the objectives of such Act through better management, increased efficiency, and attention to long-range as well as short-range problems and to balancing the Federal budget.

(e) Federal controls

The Congress further declares that, although it is the purpose under the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. 3101 et seq.] to seek diligently and to encourage the voluntary cooperation of the private sector in helping to achieve the objectives of such Act, no provisions of such Act or this chapter shall be used, with respect to any portion of the private sector of the economy, to provide for Federal Government control of production, employment, allocation of resources, or wages and prices, except to the extent authorized under other Federal laws.

(f) Expansion of private employment

The Congress further declares that it is the purpose of the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. 3101 et seq.] to maximize and place primary emphasis upon the expansion of private employment, and all programs and policies under such Act shall be in accord with such purpose. Toward this end, the effort to expand jobs to the full employment level shall be in this order of priority to the extent consistent with balanced growth—

(1) expansion of conventional private jobs through improved use of general economic and structural policies, including measures to encourage private sector investment and capital formation;

(2) expansion of private employment through Federal assistance in connection with the priority programs in such Act;

(3) expansion of public employment other than through the provisions of section 206 of such Act [15 U.S.C. 3116]; and

(4) when recommended by the President under section 206 of such Act [15 U.S.C. 3116] and subject to the limitations in such section, the creation of employment through the methods set

forth in such section.

(g) Trade deficits

The Congress further declares that trade deficits are a major national problem requiring a strong national export policy including improved Government policies relating to the promotion, facilitation, and financing of commercial and agricultural exports, Government policies designed to reduce foreign barriers to exports through international negotiation and agreement, Federal support for research, development, and diffusion of new technologies to promote innovation in agriculture, business, and industry, the elimination or modification of Government rules or regulations that burden or disadvantage exports and the national and international competitiveness of agriculture, business, and industry, the reexamination of antitrust laws and policies when necessary to enable agriculture, business, and industry to meet foreign competition in the United States and abroad, and the achievement of a free and fair international trading system and a sound and stable international monetary order.

(h) Balanced Federal budget

The Congress further declares that it is the purpose of the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. 3101 et seq.] to achieve a balanced Federal budget consistent with the achievement of the medium-term goals specified in section 1022a of this title.

(i) Investment needs of private enterprise

The Congress further declares that it is the continuing policy and responsibility of the Federal Government, in cooperation with State and local governments, to use all practical means consistent with other essential considerations of national policy to provide sufficient incentives to assure meeting the investment needs of private enterprise, including the needs of small and medium sized businesses, in order to increase the production of goods, the provision of services, employment, the opportunity for profit, the payment of taxes, and to reduce and control inflation. To the extent it is reasonably possible to do so, private enterprise investments in depressed urban and rural areas should be promoted to reduce the high levels of unemployment that exist there.

(j) Reliance on private sector

The Congress further declares that it is the purpose of the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. 3101 et seq.] to rely principally on the private sector for expansion of economic activity and creation of new jobs for a growing labor force. Toward this end, it is the purpose of this chapter to encourage the adoption of fiscal policies that would establish the share of the gross national product accounted for by Federal outlays at the lowest level consistent with national needs and priorities.

(Feb. 20, 1946, ch. 33, §2, 60 Stat. 23; Pub. L. 95–523, title I, §102, Oct. 27, 1978, 92 Stat. 1890.)

REFERENCES IN TEXT

The Full Employment and Balanced Growth Act of 1978, referred to in subsecs. (d), (e), (f), (h), and (j), is Pub. L. 95–523, Oct. 27, 1978, 92 Stat. 1887, as amended, which is classified principally to chapter 58 (§3101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

AMENDMENTS

1978—Pub. L. 95–523 designated existing provisions as subsec. (a), inserted provisions relating to promotion of balanced growth, a balanced Federal budget, adequate productivity growth, proper attention to national priorities, improvement in trade balance, and reasonable price stability, and added subsecs. (b) to (j).

SHORT TITLE

Act Feb. 20, 1946, ch. 33, §1, 60 Stat. 23, provided: "This Act [enacting this chapter] may be cited as the 'Employment Act of 1946'."

STATEMENT OF PURPOSE

Pub. L. 95–523, title I, §101, Oct. 27, 1978, 92 Stat. 1890, provided that: "It is the purpose of this title [enacting sections 1022a to 1022f of this title, amending sections 1021, 1022 and 1023 of this title and section

225a of Title 12, Banks and Banking, and enacting provisions set out as a note under section 225a of Title 12]—

"(1) to declare the general policies of this Act [see Short Title note under section 3101 of this title];

"(2) to provide an open process under which economic goals and policies are proposed, reviewed, and established;

"(3) to provide for yearly review of national economic policies to ensure their consistency with these goals to the maximum extent possible; and

"(4) to strengthen and supplement the purposes and policies of the Employment Act of 1946 [this chapter]."

§1022. Economic Report of President; coverage; supplementary reports; reference to Congressional joint committee; percentage rate of unemployment; definitions

(a) Time of submission; contents

The President shall annually transmit to the Congress not later than 10 days after the submission of the budget under section 1105(a) of title 31, with copies transmitted to the Governor of each State and to other appropriate State and local officials, an economic report (hereinafter in this chapter referred to as the "Economic Report") together with the annual report of the Council of Economic Advisers submitted in accord with section 1023(c) of this title, setting forth—

(1) the current and foreseeable trends in the levels of employment, unemployment, production, capital formation, real income, Federal budget outlays and receipts, productivity, international trade and payments, and prices, and a review and analysis of recent domestic and international developments affecting economic trends in the Nation;

(2)(A) annual numerical goals for employment and unemployment, production, real income, productivity, Federal outlays as a proportion of gross national product, and prices for the calendar year in which the Economic Report is transmitted and for the following calendar year, designated as short-term goals, which shall be consistent with achieving as rapidly as feasible the goals of full employment and production, increased real income, balanced growth, fiscal policies that would establish the share of an expanding gross national product accounted for by Federal outlays at the lowest level consistent with national needs and priorities, a balanced Federal budget, adequate productivity growth, price stability, achievement of an improved trade balance, and proper attention to national priorities; and

(B) annual numerical goals as specified in subparagraph (A) for the three successive calendar years, designated as medium term goals;

(3) employment objectives for certain significant subgroups of the labor force, including youth, women, minorities, handicapped persons, veterans, and middle-aged and older persons; and

(4) a program for carrying out the policy declared in section 1021 of this title, together with such recommendations for legislation as the President may deem necessary or desirable.

(b) Supplementary reports

The President may transmit from time to time to the Congress reports supplementary to the Economic Report, each of which shall include such supplementary or revised recommendations as he may deem necessary or desirable to achieve the policy declared in section 1021 of this title.

(c) Referral to joint committee

The Economic Report, and all supplementary reports transmitted under subsection (b) of this section, shall, when transmitted to Congress, be referred to the joint committee created by section 1024 of this title.

(d) Rate of unemployment

For the purposes of the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. 3101 et seq.] the percentage rate of unemployment as [1] a percentage of the civilian labor force as set forth by the Bureau of Labor Statistics in the Department of Labor as computed under the procedures in

effect as of October 27, 1978.

(e) "Inflation"; "prices"; "reasonable price stability" defined

For the purpose of the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. 3101 et seq.], the terms "inflation", "prices", and "reasonable price stability" refer to the rate of change or level of the consumer price index as set forth by the Bureau of Labor Statistics, United States Department of Labor.

(Feb. 20, 1946, ch. 33, §3, 60 Stat. 24; Aug. 2, 1946, ch. 753, title II, §226, 60 Stat. 838; June 18, 1956, ch. 399, §1, 70 Stat. 289; Pub. L. 95–523, title I, §103, Oct. 27, 1978, 92 Stat. 1892; Pub. L. 96–10, §6(d), May 10, 1979, 93 Stat. 24; Pub. L. 101–508, title XIII, §13112(e), Nov. 5, 1990, 104 Stat. 1388–609.)

REFERENCES IN TEXT

The Full Employment and Balanced Growth Act of 1978, referred to in subsecs. (d) and (e), is Pub. L. 95–523, Oct. 27, 1978, 92 Stat. 1887, as amended, which is classified principally to chapter 58 (§3101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

CODIFICATION

In subsec. (a), "section 1023(c) of this title" was in the original "section 11(c) of this Act", which is classified to section 1024(c) of this title. The citation has been editorially translated as indicated to reflect the probable intent of Congress because the reporting requirements appear in section 10(c) of the Act, which is classified to section 1023(c) of this title.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–508, which directed the substitution of "annually transmit to the Congress not later than 10 days after the submission of the budget under section 1105(a) of title 31" for "transmit to the Congress during the first twenty days of each regular session" in section "103(a) of the Full Employment and Balanced Growth Act of 1978 (15 U.S.C. 1022(a)", was executed to this section, section 3 of the Employment Act of 1946, as amended by that Act, to reflect the probable intent of Congress.

1979—Subsec. (a)(2)(A). Pub. L. 96–10 inserted reference to Federal outlays as a proportion of gross national product.

1978—Subsec. (a). Pub. L. 95–523, §103(a), among other changes, inserted provisions relating to the annual report of the Council of Economic Advisers and the inclusion in the President's Economic Report of annual numerical goals for employment, unemployment, production etc., and employment objectives for certain subgroups and struck out provisions relating to the review of the Federal Government's economic program and economic conditions affecting employment in the United States.

Subsecs. (d), (e). Pub. L. 95–523, §103(b), added subsecs. (d) and (e).

1956—Subsec. (a). Act June 18, 1956, substituted "not later than January 20 of each year" for "at the beginning of each regular session (commencing with the year 1947)".

1946—Subsec. (a). Act Aug. 2, 1946, substituted "at" for "within 60 days after".

EFFECTIVE DATE OF 1946 AMENDMENT

Amendment by act Aug. 2, 1946, effective Aug. 2, 1946, see section 245 of that act, set out as a note under section 4301 of Title 2, The Congress.

[1] So in original. Probably should be "is".

§1022a. Medium-term economic goals and policies respecting full employment and balanced growth

(a) Incorporation of necessary programs and policies

In each Economic Report after October 27, 1978, the President shall incorporate (as part of the five-year numerical goals in each Economic Report) medium-term annual numerical goals specified in section 1022(a)(2)(B) of this title, and in each President's Budget submitted immediately prior

thereto, the President shall incorporate the programs and policies the President deems necessary to achieve such medium-term goals and a balanced Federal budget and to achieve reasonable price stability as rapidly as feasible as provided for in section 1022b(b) of this title.

(b) Interim numerical goals for initial Economic Reports

The medium-term goals in the first three Economic Reports and, subject to the provisions of subsection (d) of this section, in each Economic Report thereafter shall include (as part of the five-year goals in each Economic Report) interim numerical goals for—

(1) reducing the rate of unemployment, as set forth pursuant to section 1022(d) of this title, to not more than 3 per centum among individuals aged twenty and over and 4 per centum among individuals aged sixteen and over within a period not extending beyond the fifth calendar year after the first such Economic Report;

(2) reducing the rate of inflation, as set forth pursuant to section 1022(e) of this title, to not more than 3 per centum within a period not extending beyond the fifth calendar year after the first such Economic Report: *Provided*, That policies and programs for reducing the rate of inflation shall be designed so as not to impede achievement of the goals and timetables specified in clause (1) of this subsection for the reduction of unemployment; and

(3) reducing the share of the Nation's gross national product accounted for by Federal outlays to 21 per centum or less by 1981, and to 20 per centum or less by 1983 and thereafter, or the lowest level consistent with national needs and priorities: *Provided*, That policies and programs for achieving the goal specified in this clause shall be designed so as not to impede achievement of the goals and timetables specified in clause (1) of this subsection for the reduction of unemployment.

For purposes of this subsection, the first Economic Report shall be the Report issued in the first calendar year after October 27, 1978.

(c) Achievement of full employment, balanced budget, zero inflation rate, and 20 per centum level of Federal outlays as a proportion of gross national product for succeeding Economic Reports

(1) Upon achievement of the 3 and 4 per centum goals specified in subsection (b)(1) of this section, each succeeding Economic Report shall have the goal of achieving as soon as practicable and maintaining thereafter full employment and a balanced budget.

(2) Upon achievement of the 3 per centum goal specified in subsection (b)(2) of this section, each succeeding Economic Report shall have the goal of achieving by 1988 a rate of inflation of zero per centum: *Provided*, That policies and programs for reducing the rate of inflation shall be designed so as not to impede achievement of the goals and timetables specified in clause (1) of this subsection for the reduction of unemployment.

(3) Upon achievement of the 20 per centum goal specified in subsection (b)(3) of this section, each succeeding Economic Report shall have the goal of establishing the share of an expanding gross national product accounted for by Federal outlays at a level of 20 per centum or less, or the lowest level consistent with national needs and priorities: *Provided*, That policies and programs for achieving the goal specified in this clause shall be designed so as not to impede achievement of the goals and timetables specified in subsection (b)(1) of this section for the reduction of unemployment.

(d) Review by President; report to Congress; modification of timetables

In the second Economic Report after October 27, 1978, the President shall review the numerical goals and timetables for the reduction of unemployment, inflation, and Federal outlays as a proportion of gross national product, and the goal of balancing the Federal budget; report to the Congress on the degree of progress being made, the programs and policies being used, and any obstacles to achieving such goals and timetables; and, if necessary, propose corrective economic measures toward achievement of such goals and timetables: *Provided*, That beginning with the second Report and in any subsequent Reports, if the President finds it necessary, the President may recommend modification of the timetable or timetables for the achievement of the goals provided for

in subsection (b) of this section and the annual numerical goals to make them consistent with the modified timetable or timetables, and the Congress may take such action as it deems appropriate consistent with title III of the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. 3131 et seq.].

(e) Interim numerical goals for succeeding Economic Reports

If, after achievement of the 3 and 4 per centum goals specified in subsection (b) of this section, the unemployment rate for a year as set forth pursuant to section 1022(d) of this title is more than 3 per centum among individuals aged twenty and over or more than 4 per centum among individuals aged sixteen and over, the next Economic Report after such rate is set forth and each succeeding Economic Report shall include (as part of the five-year goals in each Economic Report) the interim numerical goal of reducing unemployment to not more than the levels specified in subsection (b)(1) of this section as soon as practicable but not later than the fifth calendar year after the first such Economic Report, counting as the first calendar year the year in which such Economic Report is issued: *Provided*, That, if the President finds it necessary, the President may, under the authority provided in subsection (d) of this section, recommend modification of the timetable provided for in this subsection for the reduction of unemployment, and for the purposes of section 304 of the Full Employment and Balanced Growth Act of 1978, such recommendation by the President shall be treated as a recommendation made under subsection (d) of this section.

(f) Action taken to reduce unemployment

(1) In taking action to reduce unemployment in accord with the numerical goals and timetable established under subsection (b) of this section, every effort shall be made to reduce those differences between the rates of unemployment among youth, women [1] minorities, handicapped persons, veterans, middle-aged and older persons and other labor force groups and the overall rate of unemployment which are caused by any improper factors with the ultimate objective of removing such differentials to the extent possible.

(2) Insofar as the differences specified in the preceding paragraph are due to lack of training and skills, occupational practices, and other relevant factors, the Secretary of Labor shall—

(A) take such action as practicable to achieve the objectives of this subsection;

(B) make studies, develop information, and make recommendations toward remedying these differences in rates of unemployment, and prepare and submit to the President an annual report containing the recommendations; and

(C) make recommendations, as deemed necessary, to the Congress related to the objectives of this paragraph.

(g) Definitions

(1) The term "middle-aged and older persons" as used in this section includes any individual forty-five years of age or older.

(2) For purposes of this section, the term "veteran" shall mean the same as defined in section 4211(1) or (2) of title 38.

(Feb. 20, 1946, ch. 33, §4, as added Pub. L. 95–523, title I, §104, Oct. 27, 1978, 92 Stat. 1893; amended Pub. L. 96–10, §6(a)–(c), May 10, 1979, 93 Stat. 23, 24; Pub. L. 103–446, title XII, §1203(c)(4), Nov. 2, 1994, 108 Stat. 4690; Pub. L. 105–277, div. A, §101(f) [title VIII, §405(d)(11)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–420.)

REFERENCES IN TEXT

The Full Employment and Balanced Growth Act of 1978, referred to in subsec. (d), is Pub. L. 95–523, Oct. 27, 1978, 92 Stat. 1887, as amended. Title III of the Full Employment and Balanced Growth Act of 1978 is classified principally to subchapter II (§3131 et seq.) of chapter 58 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

Section 304 of the Full Employment and Balanced Growth Act of 1978, referred to in subsec. (e), is Pub. L. 95–523, §304, Oct. 27, 1978, 92 Stat. 1906, which amended section 632 of Title 2, The Congress.

PRIOR PROVISIONS

A prior section 4 of act Feb. 20, 1946, was renumbered section 10 and is classified to section 1023 of this title.

AMENDMENTS

1998—Subsec. (f)(2)(B). Pub. L. 105–277 substituted "and prepare and submit to the President an annual report containing the recommendations" for "and include these in the annual Employment and Training Report of the President required under section 705(a) of the Comprehensive Employment and Training Act of 1973 (hereinafter in this chapter referred to as 'CETA')".

1994—Subsec. (g)(2). Pub. L. 103–446 substituted "this section" for "this subsection" and "section 4211(1) or (2) of title 38" for "section 2011(1) or (2)(A) of title 38".

1979—Subsec. (b)(3). Pub. L. 96–10, §6(a), added par. (3).

Subsec. (c)(3). Pub. L. 96–10, §6(b), added par. (3).

Subsec. (d). Pub. L. 96–10, §6(c), inserted reference to Federal outlays as a proportion of gross national product.

[1] *So in original. Probably should be followed by a comma.*

§1022b. Presentation of analysis respecting short-term and medium-term goals in Economic Report of President; mutually reinforcing means

(a) Analysis of goals

To aid in determining the short-term and medium-term goals for employment, production, real income, and prices, analysis shall be presented in the Economic Report with respect to major aspects of the appropriate composition or structure of each goal, and as to the appropriate apportionment of total national production among its major components (private investment, consumer expenditures, and public outlays) as affected by relative income flows and other factors, in order to promote balanced growth and a balanced Federal budget, reduce cyclical disturbances, and achieve the other purposes of this chapter and the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. 3101 et seq.].

(b) Means to achieve goals

In choosing means to achieve the goal for the reduction of unemployment and choosing means to achieve the goal of reasonable price stability, those means which are mutually reinforcing shall be used to the extent practicable.

(Feb. 20, 1946, ch. 33, §5, as added Pub. L. 95–523, title I, §105, Oct. 27, 1978, 92 Stat. 1895.)

REFERENCES IN TEXT

The Full Employment and Balanced Growth Act of 1978, referred to in subsec. (a), is Pub. L. 95–523, Oct. 27, 1978, 92 Stat. 1887, as amended, which is classified principally to chapter 58 (§3101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

PRIOR PROVISIONS

A prior section 5 of act Feb. 20, 1946, was renumbered section 11 and is classified to section 1024 of this title.

§1022c. Inclusion of priority policies and programs in President's Budget

To contribute to the achievement of the goals under the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. 3101 et seq.], the President's Budget for each fiscal year beginning after October 27, 1978, shall include priority policies and programs, which shall include, to the extent deemed appropriate by the President, consideration of the following—

(A) development of energy sources and supplies, transportation, and environmental improvement;

(B) proper attention to the problems and needs of smaller businesses including (i) the availability of investment capital, management and technical expertise, and technology and labor needs, (ii) analysis of economic and social trends which may affect smaller businesses, (iii) government policies and programs (including agency regulations and excessive paperwork requirements) that may create undue hardship for or reduce the competitiveness of smaller businesses, and (iv) other policies and programs to remove barriers to competition and to strengthen and promote the creation and growth of smaller businesses;

(C) development of a comprehensive national agricultural policy that assures—

(i) production levels adequate to meet the nutritional needs of all Americans and respond to rising food requirements throughout the world;

(ii) farm and ranch income at full parity levels that will improve opportunities for farm families, encourage production, provide for essential capital investment in farming, and provide for farm prices at full parity in the market place;

(iii) renewed commitment to the protection and conservation of rural land and water through support for improved conservation practices and research, and attention to agricultural land use in the formulation of plans for energy, water and mineral resources, transportation, and commercial, industrial, and residential development; and

(iv) support for programs and public services designed to respond to the unique economic and social conditions of rural communities;

(D) proper attention to the relationship between Federal programs and policies and the problems and needs of urban areas, including inner cities and the employment problems of their residents, especially youths;

(E) proper attention to the quality and quantity of health care, education and training programs, child care and other human services, and housing, essential to a full employment economy and to moving toward their availability for all individuals at costs within their means;

(F) policies concerning Federal aid to State and local governments, especially for public investment and unemployment related costs;

(G) national defense and other needed international programs;

(H) proper attention to the relationship between Federal grants, contracts, and procurement and the closure of military bases and other Federal facilities and the distribution of jobs and income among different regions of the Nation, and among urban, suburban, and rural areas;

(I) proper attention to balancing the Federal budget;

(J) proper attention to the dislocation of jobs caused by Federal laws, regulations, and policies;

(K) policies and programs designed to increase exports and improve the international competitive position of agriculture, business, and industry, including measures to promote a free and fair international trading system, a sound and stable international monetary system and innovation in agriculture, business, and industry;

(L) such other priority policies and programs as the President deems appropriate.

(Feb. 20, 1946, ch. 33, §6, as added Pub. L. 95–523, title I, §106, Oct. 27, 1978, 92 Stat. 1895.)

REFERENCES IN TEXT

The Full Employment and Balanced Growth Act of 1978, referred to in provision preceding par. (A), is Pub. L. 95–523, Oct. 27, 1978, 92 Stat. 1887, as amended, which is classified principally to chapter 58 (§3101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

§1022d. President's Budget

(a) Recommendations

The President's Budget shall recommend levels of outlays and receipts which shall be consistent with the short-term economic goals of section 1022(a)(2)(A) of this title.

(b) Five-year projections of outlays and receipts

The President's Budget shall provide five-year projections of outlays and receipts consistent with the medium-term goals of section 1022a(b) of this title.

(c) Inclusion in Economic Report of President; purposeful development of expenditure and revenue elements; considerations governing determination of size of President's expenditures and revenue proposals

The principal elements in the President's Budget shall be set forth briefly in each Economic Report, toward the end of making clear the relationship between the President's Budget and the goals and policies set forth in such Economic Report. Both the expenditure and revenue elements of the President's Budget shall be developed to promote the purposes, policies, and goals of the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. 3101 et seq.]. The size of the President's expenditure and revenue proposals, and the relationships between such proposals, shall be determined in a manner which gives consideration to the needs of the economy and the people in the priority areas set forth in section 1022c of this title, and the relationship between the President's expenditure and revenue proposals shall be guided accordingly.

(Feb. 20, 1946, ch. 33, §7, as added Pub. L. 95–523, title I, §107, Oct. 27, 1978, 92 Stat. 1896.)

REFERENCES IN TEXT

The Full Employment and Balanced Growth Act of 1978, referred to in subsec. (c), is Pub. L. 95–523, Oct. 27, 1978, 92 Stat. 1887, as amended, which is classified principally to chapter 58 (§3101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

§1022e. Inflation

(a) Methods and requirements for achieving price stability

The Congress determines that the objective of achieving reasonable price stability as soon as feasible, as set forth in section 1022(a)(3) of this title and section 1022a(a) of this title, shall be pursued by the methods and subject to the requirements of section 1022b(b) of this title.

(b) Coordination of fiscal or monetary policies with specific targeted policies

The Congress finds that sole dependence upon fiscal or monetary policies or both to combat inflation can exacerbate both inflation and unemployment. The Congress finds that the coordinated use of fiscal and monetary policies in conjunction with specific targeted policies are necessary to combat inflation.

(c) Policy initiation and recommendations; elements of structural policies

The President shall initiate specific policies to reduce the rate of inflation, including recommendations to the Congress where necessary, and include recommendations within the Economic Report and the President's budget to the extent practicable. Structural policies to reduce the rate of inflation may include—

(1) an effective information system to monitor and analyze inflationary trends in individual economic sectors, so that the President and Congress can be alerted to developing inflation problems especially those caused by bottlenecks inhibiting the flow of goods and services;

(2) programs and policies for alleviating shortages of goods, services, labor, and capital, with particular emphasis on food, energy, and critical industrial materials to aid in stabilizing prices;

(3) the establishment of stockpiles of agricultural commodities and other critical materials to help stabilize prices, meet emergency needs, and promote adequate income to producers;

(4) encouragement to labor and management to increase productivity within the national framework of full employment through voluntary arrangements in industries and economic sectors;

(5) recommendations to increase competition in the private sector and to improve the economic climate for the creation and growth of smaller businesses, including recommendations to

strengthen and enforce the antitrust laws, the patent laws, and the internal revenue laws and regulations;

(6) removal or proper modification of such Government restrictions and regulations as added unnecessarily to inflationary costs;

(7) increasing exports and improving the international competitive position of agriculture, business, and industry; and

(8) such other administrative actions and recommendations for legislation as the President deems desirable, to promote reasonable price stability.

(Feb. 20, 1946, ch. 33, §8, as added Pub. L. 95–523, title I, §109, Oct. 27, 1978, 92 Stat. 1898.)

§1022f. Advisory board or boards

(a) Establishment

An advisory board or boards (including regional advisory boards) may be established as the President deems appropriate, to advise and consult periodically with one or more of the following: The President, the Council of Economic Advisers, and such other departments and agencies of the executive branch of the Federal Government as the President shall determine.

(b) Composition; duties; compensation

Such advisory board or boards shall include appropriate representation of labor, small and larger businesses and industries, agriculture, consumers, State and local officials, and the public at large, and shall advise and consult with respect to matters related to this chapter, the Full Employment aand [1] Balanced Growth Act of 1978 [15 U.S.C. 3101 et seq.], and other appropriate matters related to national economic programs and policies. The President shall, in accordance with applicable provisions of law, take the steps necessary to provide appropriate compensation to the members of such advisory board or boards.

(Feb. 20, 1946, ch. 33, §9, as added Pub. L. 95–523, title I, §111, Oct. 27, 1978, 92 Stat. 1899.)

REFERENCES IN TEXT

The Full Employment and Balanced Growth Act of 1978, referred to in subsec. (b), is Pub. L. 95–523, Oct. 27, 1978, 92 Stat. 1887, as amended, which is classified principally to chapter 58 (§3101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

[1] *So in original. Probably should be "and".*

§1023. Council of Economic Advisers

(a) Creation; composition; qualifications; chairman and vice chairman

(1) Creation

There is created in the Executive Office of the President a Council of Economic Advisers (hereinafter called the "Council").

(2) Composition

The Council shall be composed of three members, of whom—

(A) 1 shall be the chairman who shall be appointed by the President by and with the advice and consent of the Senate; and

(B) 2 shall be appointed by the President.

(3) Qualifications

Each member shall be a person who, as a result of training, experience, and attainments, is exceptionally qualified to analyze and interpret economic developments, to appraise programs and activities of the Government in the light of the policy declared in section 1021 of this title, and to formulate and recommend national economic policy to promote full employment, production, and purchasing power under free competitive enterprise.

(4) Vice chairman

The President shall designate 1 of the members of the Council as vice chairman, who shall act as chairman in the absence of the chairman.

(b) Employment of specialists, experts, and other personnel

The Council is authorized to employ, and fix the compensation of, such specialists and other experts as may be necessary for the carrying out of its functions under this chapter, without regard to the civil-service laws, and is authorized, subject to the civil-service laws, to employ such other officers and employees as may be necessary for carrying out its functions under this chapter, and fix their compensation in accordance with chapter 51 and subchapter III of chapter 53 of title 5.

(c) Duties

It shall be the duty and function of the Council—

(1) to assist and advise the President in the preparation of the Economic Report;

(2) to gather timely and authoritative information concerning economic developments and economic trends, both current and prospective, to analyze and interpret such information in the light of the policy declared in section 1021 of this title for the purpose of determining whether such developments and trends are interfering, or are likely to interfere, with the achievement of such policy, and to compile and submit to the President studies relating to such developments and trends;

(3) to appraise the various programs and activities of the Federal Government in the light of the policy declared in section 1021 of this title for the purpose of determining the extent to which such programs and activities are contributing, and the extent to which they are not contributing, to the achievement of such policy, and to make recommendations to the President with respect thereto;

(4) to develop and recommend to the President national economic policies to foster and promote free competitive enterprise including small and larger business, to avoid economic fluctuations or to diminish the effects thereof, and to maintain full employment, production, and purchasing power;

(5) to make and furnish such studies, reports thereon, and recommendations with respect to matters of Federal economic policy and legislation as the President may request.

(d) Annual report

The Council shall make an annual report to the President in December of each year.

(e) Consultation with other groups and agencies; utilization of Government services and private research agencies

In exercising its powers, functions and duties under this chapter—

(1) the Council may constitute such advisory committees and may consult with such representatives of industry, agriculture, labor, consumers, State and local governments, and other groups, as it deems advisable, and shall consult with the board or boards established under section 1022f of this title;

(2) the Council shall, to the fullest extent possible, utilize the services, facilities, and information (including statistical information) of other Government agencies as well as of private research agencies, in order that duplication of effort and expense may be avoided.

In its work under this chapter and the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. 3101 et seq.], the Council is authorized and directed to seek and obtain the cooperation of the various executive and independent agencies in the development of specialized studies essential to its responsibilities.

(f) Appropriations

To enable the Council to exercise its powers, functions, and duties under this chapter, there are authorized to be appropriated such sums as may be necessary.

(Feb. 20, 1946, ch. 33, §10, formerly §4, 60 Stat. 24; Oct. 28, 1949, ch. 782, title XI, §1106(a), 63 Stat. 972; Pub. L. 87–49, June 16, 1961, 75 Stat. 93; renumbered §10 and amended Pub. L. 95–523, title I, §§104, 110, Oct. 27, 1978, 92 Stat. 1893, 1899; Pub. L. 112–166, §2(o), Aug. 10, 2012, 126 Stat. 1287.)

REFERENCES IN TEXT

The Full Employment and Balanced Growth Act of 1978, referred to in subsec. (e), is Pub. L. 95–523, Oct. 27, 1978, 92 Stat. 1887, as amended, which is classified principally to chapter 58 (§3101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

CODIFICATION

In subsec. (a), provisions that fixed the compensation of members of the Council have been omitted as obsolete. The positions of chairman and members of the Council are under the Executive Schedule, see sections 5313 and 5315 of Title 5, Government Organization and Employees.

In subsec. (b), provisions that authorized the Council to fix the compensation of such specialists and other experts as may be necessary for the carrying out of its functions under this chapter, without regard to "the Classification Act of 1923, as amended", were omitted as obsolete. Sections 1202 and 1204 of the Classification Act of 1949, 63 Stat. 972, 973, repealed the 1923 Act and all laws or parts of laws inconsistent with the 1949 Act. While section 1106(a) of the 1949 Act provided that references in other laws to the 1923 Act should be held and considered to mean the 1949 Act, it did not have the effect of continuing the exceptions contained in this subsection because of section 1106(b) which provided that the application of the 1949 Act to any position, officer, or employee shall not be affected by section 1106(a). The Classification Act of 1949 was repealed by Pub. L. 89–554, Sept. 6, 1966, §8(a), 80 Stat. 632 (of which section 1 revised and enacted Title 5, Government Organization and Employees, into law). Section 5102 of Title 5 contains the applicability provisions of the 1949 Act, and section 5103 of Title 5 authorizes the Office of Personnel Management to determine the applicability to specific positions and employees.

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

AMENDMENTS

2012—Subsec. (a). Pub. L. 112–166 added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: "There is created in the Executive Office of the President a Council of Economic Advisers (hereinafter called the "Council"). The Council shall be composed of three members who shall be appointed by the President by and with the advice and consent of the Senate, and each of whom shall be a person who, as a result of his training, experience, and attainments, is exceptionally qualified to analyze and interpret economic developments, to appraise programs and activities of the Government in the light of the policy declared in section 1021 of this title, and to formulate and recommend national economic policy to promote full employment, production, and purchasing power under free competitive enterprise. The President shall designate one of the members of the Council as chairman and one as vice chairman, who shall act as chairman in the absence of the chairman."

1978—Subsec. (a). Pub. L. 95–523, §110(a)(1), inserted "full" after "policy to promote".

Subsec. (c)(4). Pub. L. 95–523, §110(a)(2), inserted "including small and larger business" after "free competitive enterprise" and inserted "full" after "and to maintain".

Subsec. (e). Pub. L. 95–523, §110(a)(3), (4), inserted in par. (1) ", and shall consult with the board or boards established under section 1022f of this title" after "as it deems advisable" and after par. (2) inserted provisions authorizing and directing the Council to seek and obtain the cooperation of executive and independent agencies in the development of specialized studies essential to its responsibilities.

1961—Subsec. (f). Pub. L. 87–49 struck out provisions which limited the appropriations for salaries of the members and officers and employees of the Council to not more than $345,000 for each fiscal year.

1949—Subsec. (b). Act Oct. 28, 1949, substituted "Classification Act of 1949" for "Classification Act of 1923".

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–166 effective 60 days after Aug. 10, 2012, and applicable to appointments made on and after that effective date, including any nomination pending in the Senate on that date, see section 6(a) of Pub. L. 112–166, set out as a note under section 113 of Title 6, Domestic Security.

REPEALS

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

TRANSFER OF FUNCTIONS

Certain functions of Council of Economic Advisers transferred to Chairman, see 1953 Reorg. Plan No. 9, eff. Aug. 1, 1953, 18 F.R. 4542, set out below. 1953 Reorg. Plan No. 9 also abolished office of Vice Chairman.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

REORGANIZATION PLAN NO. 9 OF 1953

EFF. AUG. 1, 1953, 18 F.R. 4543, 67 STAT. 644

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, June 1, 1953, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949, as amended [see 5 U.S.C. 901 et seq.].

COUNCIL OF ECONOMIC ADVISERS

The functions vested in the Council of Economic Advisers by section 4(b) of the Employment Act of 1946 (60 Stat. 24) [subsec. (b) of this section], and so much of the functions vested in the Council by section 4(c) of that Act [subsec. (c) of this section] as consists of reporting to the President with respect to any function of the Council under the said section 4(c) [subsec. (c) of this section], are hereby transferred to the Chairman of the Council of Economic Advisers. The position of Vice Chairman of the Council of Economic Advisers, provided for in the last sentence of section 4(a) of the said Act [subsec. (a) of this section] is hereby abolished.

EXECUTIVE ORDER NO. 10802

Ex. Ord. No. 10802, Jan. 23, 1959, 24 F.R. 557, which established the Committee on Government Activities Affecting Prices and Costs, was revoked by Ex. Ord. No. 10928, Mar. 23, 1961, 26 F.R. 2547.

EXECUTIVE ORDER NO. 11453

Ex. Ord. No. 11453, Jan. 24, 1969, 34 F.R. 1301, which established the Cabinet Committee on Economic Policy, was revoked by Ex. Ord. No. 11702, Jan. 25, 1973, 38 F.R. 2957, set out as a note under section 887d of Title 20, Education.

EXECUTIVE ORDER NO. 12296

Ex. Ord. No. 12296, Mar. 2, 1981, 46 F.R. 15129, as amended by Ex. Ord. No. 12309, June 9, 1981, 46 F.R. 30997, which related to the establishment, functions, administration, and termination of the President's Economic Policy Advisory Board, was revoked by Ex. Ord. No. 12692, Sept. 29, 1989, 54 F.R. 40627, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

Term of the President's Economic Policy Advisory Board extended until Sept. 30, 1984, by Ex. Ord. No. 12399, Dec. 31, 1982, 48 F.R. 379, formerly set out as a note under section 14 of the Federal Advisory

Committee Act in the Appendix to Title 5.

Term of the President's Economic Policy Advisory Board extended until Sept. 30, 1985, by Ex. Ord. No. 12489, Sept. 28, 1984, 49 F.R. 38927, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Economic Policy Advisory Board extended until Sept. 30, 1987, by Ex. Ord. No. 12534, Sept. 30, 1985, 50 F.R. 40319, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Economic Policy Advisory Board extended until Sept. 30, 1989, by Ex. Ord. No. 12610, Sept. 30, 1987, 52 F.R. 36901, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

EX. ORD. NO. 12835. ESTABLISHMENT OF NATIONAL ECONOMIC COUNCIL

Ex. Ord. No. 12835, Jan. 25, 1993, 58 F.R. 6189, as amended by Ex. Ord. No. 13286, §27, Feb. 28, 2003, 68 F.R. 10625; Ex. Ord. No. 13499, Feb. 5, 2009, 74 F.R. 6979; Ex. Ord. No. 13569, §2, Apr. 5, 2011, 76 F.R. 19891, provided:

By the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, including sections 105, 107, and 301 of title 3, United States Code, it is hereby ordered as follows:

SECTION 1. *Establishment.* There is established the National Economic Council ("the Council").

SEC. 2. *Membership*. The Council shall comprise the:

(a) President, who shall serve as Chairman of the Council;
(b) Vice President;
(c) Secretary of State;
(d) Secretary of the Treasury;
(e) Secretary of Agriculture;
(f) Secretary of Commerce;
(g) Secretary of Labor;
(h) Secretary of Housing and Urban Development;
(i) Secretary of Transportation;
(j) Secretary of Energy;
(k) Secretary of Homeland Security;
(l) Secretary of Health and Human Services;
(m) Secretary of Education;
(n) Senior Advisor and Assistant to the President for Intergovernmental Affairs and Public Liaison;
(o) Chair of the Council on Environmental Quality;
(p) Assistant to the President and Chief Technology Officer;
(q) Administrator of the Small Business Administration[;]
(r) Administrator of the Environmental Protection Agency;
(s) Chair of the Council of Economic Advisers;
(t) Director of the Office of Management and Budget;
(u) United States Trade Representative;
(v) Assistant to the President for Economic Policy;
(w) Assistant to the President for Domestic Policy;
(x) National Security Adviser;
(y) Assistant to the President for Science and Technology Policy; and
(z) Such other officials of executive departments and agencies as the President may, from time to time, designate.

SEC. 3. *Meetings of the Council*. The President, or upon his direction, the Assistant to the President for Economic Policy ("the Assistant"), may convene meetings of the Council. The President shall preside over the meetings of the Council, provided that in his absence the Vice President, and in his absence the Assistant, will preside.

SEC. 4. *Functions*. (a) The principal functions of the Council are: (1) to coordinate the economic policy-making process with respect to domestic and international economic issues; (2) to coordinate economic policy advice to the President; (3) to ensure that economic policy decisions and programs are consistent with the President's stated goals, and to ensure that those goals are being effectively pursued; and (4) to monitor implementation of the President's economic policy agenda. The Assistant may take such actions, including drafting a Charter, as may be necessary or appropriate to implement such functions.

(b) All executive departments and agencies, whether or not represented on the Council, shall coordinate

economic policy through the Council.

(c) In performing the foregoing functions, the Assistant will, when appropriate, work in conjunction with the Assistant to the President for Domestic Policy and the Assistant to the President for National Security.

(d) The Secretary of the Treasury will continue to be the senior economic official in the executive branch and the President's chief economic spokesperson. The Director of the Office of Management and Budget, as the President's principal budget spokesperson, will continue to be the senior budget official in the executive branch. The Council of Economic Advisers will continue its traditional analytic, forecasting and advisory functions.

SEC. 5. *Administration*. (a) The Council may function through established or ad hoc committees, task forces or interagency groups.

(b) The Council shall have a staff to be headed by the Assistant to the President for Economic Policy. The Council shall have such staff and other assistance as may be necessary to carry out the provisions of this order.

(c) All executive departments and agencies shall cooperate with the Council and provide such assistance, information, and advice to the Council as the Council may request, to the extent permitted by law.

§1024. Joint Economic Committee

(a) Composition

There is established a Joint Economic Committee, to be composed of ten Members of the Senate, to be appointed by the President of the Senate, and ten Members of the House of Representatives, to be appointed by the Speaker of the House of Representatives. In each case, the majority party shall be represented by six Members and the minority party shall be represented by four Members.

(b) Functions

It shall be the function of the joint committee—

(1) to make a continuing study of matters relating to the Economic Report;

(2) to study means of coordinating programs in order to further the policy of this chapter; and

(3) as a guide to the several committees of the Congress dealing with legislation relating to the Economic Report, not later than March 1 of each year (beginning with the year 1947) to file a report with the Senate and the House of Representatives containing its findings and recommendations with respect to each of the main recommendations made by the President in the Economic Report, and from time to time to make such other reports and recommendations to the Senate and House of Representatives as it deems advisable.

(c) Vacancies; selection of chairman and vice chairman

Vacancies in the membership of the joint committee shall not affect the power of the remaining members to execute the functions of the joint committee, and shall be filled in the same manner as in the case of the original selection. The joint committee shall select a chairman and a vice chairman from among its members.

(d) Hearings; employment and compensation of personnel; cost of stenographic services; utilization of Government services and private research agencies

The joint committee, or any duly authorized subcommittee thereof, is authorized to hold such hearings as it deems advisable, and, within the limitations of its appropriations, the joint committee is empowered to appoint and fix the compensation of such experts, consultants, technicians, and clerical and stenographic assistants, to procure such printing and binding, and to make such expenditures, as it deems necessary and advisable. The cost of stenographic services to report hearings of the joint committee, or any subcommittee thereof, shall not exceed 25 cents per hundred words. The joint committee is authorized to utilize the services, information, and facilities of the departments and establishments of the Government, and also of private research agencies.

(e) Appropriations

To enable the joint committee to exercise its powers, functions, and duties under this chapter, there are authorized to be appropriated for each fiscal year such sums as may be necessary, to be disbursed by the Secretary of the Senate on vouchers signed by the chairman or vice chairman,

except that vouchers shall not be required for the disbursement of salaries of employees paid at an annual rate.

(f) Service as attorney or expert for committee

Service of one individual, until the completion of the investigation authorized by Senate Concurrent Resolution 26, Eighty-first Congress, as an attorney or expert for the joint committee, in any business or professional field, on a part-time basis, with or without compensation, shall not be considered as service or employment bringing such individual within the provisions of section 281, 283, or 284 of title 18,[1] or of any other Federal law imposing restrictions, requirements, or penalties in relation to the employment of persons, the performance of services, or the payment or receipt of compensation in connection with any claim, proceeding, or matter involving the United States.

(Feb. 20, 1946, ch. 33, §11, formerly §5, 60 Stat. 25; Aug. 2, 1946, ch. 753, title II, §225, 60 Stat. 838; Feb. 2, 1948, ch. 42, 62 Stat. 16; Oct. 6, 1949, ch. 627, §§1, 2, 63 Stat. 721; June 18, 1956, ch. 399, §2, 70 Stat. 290; Pub. L. 86–1, Feb. 17, 1959, 73 Stat. 3; Pub. L. 88–661, Oct. 13, 1964, 78 Stat. 1093; Pub. L. 90–2, Jan. 25, 1967, 81 Stat. 4; Pub. L. 93–554, title I, ch. III, Dec. 27, 1974, 88 Stat. 1776; renumbered §11, Pub. L. 95–523, §104, Oct. 27, 1978, 92 Stat. 1893.)

REFERENCES IN TEXT

Sections 281 and 283 of title 18, referred to in subsec. (f), were repealed by Pub. L. 87–849, §2, Oct. 23, 1962, 76 Stat. 1126, except as they may apply to retired officers of the armed forces of the United States, and were supplanted by sections 203 and 205 of Title 18, Crimes and Criminal Procedure.

Section 284 of title 18, referred to in subsec. (f), was repealed by Pub. L. 87–849, §2, Oct. 23, 1962, 76 Stat. 1126, and was supplanted by section 207 of title 18.

AMENDMENTS

1974—Subsec. (e). Pub. L. 93–554 inserted exception relating to requirement of vouchers for the disbursement of salaries of employees paid at an annual rate.

1967—Subsec. (a). Pub. L. 90–2 substituted "ten", "six", and "four" for "eight", "five", and "three", respectively.

1964—Subsec. (e). Pub. L. 88–661 authorized appropriations for such sums as may be necessary for each fiscal year and eliminated provisions which limited the authorization to a maximum of $125,000 yearly.

1959—Subsec. (a). Pub. L. 86–1 added one additional Senator and one Representative to the Committee, and substituted provisions requiring the majority party to be represented by five Members and the minority party to be represented by three Members for provisions which required representation to reflect as nearly as may be feasible the relative membership of the majority and minority parties.

1956—Subsec. (a). Act June 19, 1956, substituted "Joint Economic Committee" for "Joint Committee on the Economic Report".

1949—Subsec. (e). Act Oct. 6, 1949, §1, substituted "$125,000" for "$50,000".

Subsec. (f). Act Oct. 6, 1949, §2, added subsec. (f).

1948—Subsec. (b)(3). Act Feb. 2, 1948, substituted "March 1" for "February 1".

1946—Subsec. (b)(3). Act Aug. 2, 1946, substituted "February 1" for "May 1".

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93–554 provided that the amendment made by Pub. L. 93–554 is effective Jan. 1, 1975.

EFFECTIVE DATE OF 1946 AMENDMENT

Amendment by act Aug. 2, 1946, effective Aug. 2, 1946, see section 245 of that act, set out as a note under section 4301 of Title 2, The Congress.

SENATE MEMBERS OF JOINT ECONOMIC COMMITTEE FOR 107TH CONGRESS

Pub. L. 107–20, title II, §2806, July 24, 2001, 115 Stat. 185, provided: "That notwithstanding any other provision of law, and specifically section 5(a) of the Employment Act of 1946 (15 U.S.C. 1024(a)), the Members of the Senate to be appointed by the President of the Senate shall for the duration of the One Hundred Seventh Congress, be represented by six Members of the majority party and five Members of the minority party."

Similar provisions were contained in Pub. L. 107–3, Mar. 13, 2001, 115 Stat. 5.

AGENCY CONTRIBUTIONS FOR EMPLOYEES OF JOINT ECONOMIC COMMITTEE

Pub. L. 106–554, §1(a)(2) [title I, §7], Dec. 21, 2000, 114 Stat. 2763, 2763A–98, provided that:

"(a) Agency contributions for employees whose salaries are disbursed by the Secretary of the Senate from the appropriations account 'Joint Economic Committee' under the heading 'JOINT ITEMS' shall be paid from the Senate appropriations account for 'Salaries, Officers and Employees'.

"(b) This section shall apply to pay periods beginning on or after October 1, 2000."

[1] *See References in Text note below.*

§1025. Printing of monthly publication by Joint Economic Committee entitled "Economic Indicators"; distribution

The Joint Economic Committee is authorized to issue a monthly publication entitled "Economic Indicators", and a sufficient quantity shall be printed to furnish one copy to each Member of Congress; the Secretary and the Sergeant at Arms of the Senate; the Clerk, Sergeant at Arms, and Chief Administrative Officer of the House of Representatives; two copies to the libraries of the Senate and House, and the Congressional Library; seven hundred copies to the Joint Economic Committee; and the required number of copies to the Superintendent of Documents for distribution to depository libraries; and the Superintendent of Documents is authorized to have copies printed for sale to the public.

(June 23, 1949, ch. 237, 63 Stat. 264; Pub. L. 104–186, title II, §217, Aug. 20, 1996, 110 Stat. 1747.)

CODIFICATION

Section was not enacted as a part of the Employment Act of 1946 which comprises this chapter.

"Joint Economic Committee" substituted in text for "Joint Committee on the Economic Report" to conform to act June 18, 1956, ch. 399, §2, 70 Stat. 290. See section 1024(a) of this title.

AMENDMENTS

1996—Pub. L. 104–186 substituted "Chief Administrative Officer" for "Doorkeeper".

§1026. Repealed. Pub. L. 94–136, title VI, §601, Nov. 28, 1975, 89 Stat. 742

Section, Pub. L. 92–210, §4, Dec. 22, 1971, 85 Stat. 753; Pub. L. 93–34, May 14, 1973, 87 Stat. 72, created the President's National Commission on Productivity and authorized appropriations for its operation through June 30, 1973. Thereafter, the Commission's name was changed to the National Commission on Productivity and Work Quality by Pub. L. 93–311, June 8, 1974, 88 Stat. 236 and appropriations were authorized to continue operations through November 30, 1975, by Pub. L. 94–42, §2, June 28, 1975, 89 Stat. 232, and Pub. L. 94–100, §2, Oct. 1, 1975, 89 Stat. 483. See section 2401 et seq. of this title.

CHAPTER 22—TRADEMARKS

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Sec.

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EFFECTIVE DATE

This chapter, act July 5, 1946, ch. 540, 60 Stat. 427, became effective one year from July 5, 1946, and repealed chapter 3 of this title as of that date. See notes under section 1051 of this title.

PRIOR LAWS

The Trade-Mark Act of 1905 superseded the Trade-Mark Act of Mar. 3, 1881, ch. 138, 21 Stat. 502, entitled "An Act to authorize the registration of trade-marks and protect the same," and also act Aug. 5, 1882, ch. 393, 22 Stat. 298, entitled "An Act relating to the registration of trade marks". Former section 109 of this title repealed all inconsistent acts and parts of acts, except so far as they might apply to certificates of registration issued under the Trade-Mark Act of Mar. 3, 1881, ch. 138, and act Aug. 5, 1882, ch. 393.

SUBCHAPTER I—THE PRINCIPAL REGISTER

§1051. Application for registration; verification

(a) Application for use of trademark

(1) The owner of a trademark used in commerce may request registration of its trademark on the principal register hereby established by paying the prescribed fee and filing in the Patent and Trademark Office an application and a verified statement, in such form as may be prescribed by the Director, and such number of specimens or facsimiles of the mark as used as may be required by the Director.

(2) The application shall include specification of the applicant's domicile and citizenship, the date of the applicant's first use of the mark, the date of the applicant's first use of the mark in commerce, the goods in connection with which the mark is used, and a drawing of the mark.

(3) The statement shall be verified by the applicant and specify that—

(A) the person making the verification believes that he or she, or the juristic person in whose behalf he or she makes the verification, to be the owner of the mark sought to be registered;

(B) to the best of the verifier's knowledge and belief, the facts recited in the application are accurate;

(C) the mark is in use in commerce; and

(D) to the best of the verifier's knowledge and belief, no other person has the right to use such mark in commerce either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive, except that, in the case of every application claiming concurrent use, the applicant shall—

(i) state exceptions to the claim of exclusive use; and

(ii) shall [1] specify, to the extent of the verifier's knowledge—

(I) any concurrent use by others;

(II) the goods on or in connection with which and the areas in which each concurrent use exists;

(III) the periods of each use; and

(IV) the goods and area for which the applicant desires registration.

(4) The applicant shall comply with such rules or regulations as may be prescribed by the Director. The Director shall promulgate rules prescribing the requirements for the application and for obtaining a filing date herein.

(b) Application for bona fide intention to use trademark

(1) A person who has a bona fide intention, under circumstances showing the good faith of such person, to use a trademark in commerce may request registration of its trademark on the principal register hereby established by paying the prescribed fee and filing in the Patent and Trademark Office an application and a verified statement, in such form as may be prescribed by the Director.

(2) The application shall include specification of the applicant's domicile and citizenship, the goods in connection with which the applicant has a bona fide intention to use the mark, and a drawing of the mark.

(3) The statement shall be verified by the applicant and specify—

(A) that the person making the verification believes that he or she, or the juristic person in whose behalf he or she makes the verification, to be entitled to use the mark in commerce;

(B) the applicant's bona fide intention to use the mark in commerce;

(C) that, to the best of the verifier's knowledge and belief, the facts recited in the application are accurate; and

(D) that, to the best of the verifier's knowledge and belief, no other person has the right to use such mark in commerce either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive.

Except for applications filed pursuant to section 1126 of this title, no mark shall be registered until the applicant has met the requirements of subsections (c) and (d) of this section.

(4) The applicant shall comply with such rules or regulations as may be prescribed by the Director. The Director shall promulgate rules prescribing the requirements for the application and for obtaining a filing date herein.

(c) Amendment of application under subsection (b) to conform to requirements of subsection (a)

At any time during examination of an application filed under subsection (b) of this section, an applicant who has made use of the mark in commerce may claim the benefits of such use for purposes of this chapter, by amending his or her application to bring it into conformity with the requirements of subsection (a) of this section.

(d) Verified statement that trademark is used in commerce

(1) Within six months after the date on which the notice of allowance with respect to a mark is issued under section 1063(b)(2) of this title to an applicant under subsection (b) of this section, the applicant shall file in the Patent and Trademark Office, together with such number of specimens or facsimiles of the mark as used in commerce as may be required by the Director and payment of the prescribed fee, a verified statement that the mark is in use in commerce and specifying the date of the applicant's first use of the mark in commerce and those goods or services specified in the notice of allowance on or in connection with which the mark is used in commerce. Subject to examination and acceptance of the statement of use, the mark shall be registered in the Patent and Trademark Office, a certificate of registration shall be issued for those goods or services recited in the statement of use for which the mark is entitled to registration, and notice of registration shall be published in the Official

Gazette of the Patent and Trademark Office. Such examination may include an examination of the factors set forth in subsections (a) through (e) of section 1052 of this title. The notice of registration shall specify the goods or services for which the mark is registered.

(2) The Director shall extend, for one additional 6-month period, the time for filing the statement of use under paragraph (1), upon written request of the applicant before the expiration of the 6-month period provided in paragraph (1). In addition to an extension under the preceding sentence, the Director may, upon a showing of good cause by the applicant, further extend the time for filing the statement of use under paragraph (1) for periods aggregating not more than 24 months, pursuant to written request of the applicant made before the expiration of the last extension granted under this paragraph. Any request for an extension under this paragraph shall be accompanied by a verified statement that the applicant has a continued bona fide intention to use the mark in commerce and specifying those goods or services identified in the notice of allowance on or in connection with which the applicant has a continued bona fide intention to use the mark in commerce. Any request for an extension under this paragraph shall be accompanied by payment of the prescribed fee. The Director shall issue regulations setting forth guidelines for determining what constitutes good cause for purposes of this paragraph.

(3) The Director shall notify any applicant who files a statement of use of the acceptance or refusal thereof and, if the statement of use is refused, the reasons for the refusal. An applicant may amend the statement of use.

(4) The failure to timely file a verified statement of use under paragraph (1) or an extension request under paragraph (2) shall result in abandonment of the application, unless it can be shown to the satisfaction of the Director that the delay in responding was unintentional, in which case the time for filing may be extended, but for a period not to exceed the period specified in paragraphs (1) and (2) for filing a statement of use.

(e) Designation of resident for service of process and notices

If the applicant is not domiciled in the United States the applicant may designate, by a document filed in the United States Patent and Trademark Office, the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, or if the registrant does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark, such notices or process may be served on the Director.

(July 5, 1946, ch. 540, title I, §1, 60 Stat. 427; Pub. L. 87–772, §1, Oct. 9, 1962, 76 Stat. 769; Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 100–667, title I, §103, Nov. 16, 1988, 102 Stat. 3935; Pub. L. 105–330, title I, §103, title II, §201(a)(1), Oct. 30, 1998, 112 Stat. 3064, 3069; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A–583; Pub. L. 107–273, div. C, title III, §13207(b)(1), (2), Nov. 2, 2002, 116 Stat. 1906.)

PRIOR PROVISIONS

Subsecs. (a) to (c) are from acts Feb. 20, 1905, ch. 592, §§1, 2, 33 Stat. 724; May 4, 1906, ch. 2081, §1, 34 Stat. 168; Feb. 18, 1909, ch. 144, 35 Stat. 628; Apr. 11, 1930, ch. 132, §4, 46 Stat. 155; June 10, 1938, ch. 332, §1, 52 Stat. 638.

Subsec. (d) is from act Feb. 20, 1905, ch. 592, §3, 33 Stat. 725.

AMENDMENTS

2002—Subsec. (d)(1). Pub. L. 107–273, §13207(b)(1), in first sentence, substituted "specifying the date of the applicant's first use of the mark in commerce and those goods or services specified in the notice of allowance on or in connection with which the mark is used in commerce." for "specifying the date of the applicant's first use of the mark in commerce and,, those goods or services specified in the notice of allowance on or in connection with which the mark is used in commerce."

Subsec. (e). Pub. L. 107–273, §13207(b)(2), amended subsec. (e) generally. Prior to amendment, subsec. (e) required applicant not domiciled in United States to designate name and address of some person resident in

the United States on whom may be served notices or process in proceedings affecting the mark and provided that notices or process be served by leaving with such person or mailing to him a copy, or upon Director if designated person cannot be found.

1999—Subsecs. (a), (b), (d), (e). Pub. L. 106–113 substituted "Director" for "Commissioner" wherever appearing.

1998—Subsec. (a). Pub. L. 105–330, §103(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) related to application by owner of a trademark used in commerce to register the trademark by filing in the Patent and Trademark Office a written application in prescribed form and verified by applicant, by paying prescribed fee, and by complying with prescribed rules or regulations.

Subsec. (b). Pub. L. 105–330, §103(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) related to application, by person with bona fide intention, under circumstances showing good faith, to use a trademark in commerce, to register trademark by filing in the Patent and Trademark Office a written application in prescribed form and verified by applicant, by paying prescribed fee, and by complying with prescribed rules or regulations.

Subsec. (d)(1). Pub. L. 105–330, §201(a)(1)(A), inserted "and," after "specifying the date of the applicant's first use of the mark in commerce".

Pub. L. 105–330, §201(a)(1)(B), which directed the striking out of "and, the mode or manner in which the mark is used on or in connection with such goods or services", was executed by striking out ", and the mode or manner in which the mark is used on or in connection with such goods or services" after "notice of allowance on or in connection with which the mark is used in commerce", to reflect the probable intent of Congress.

Subsec. (d)(4). Pub. L. 105–330, §103(c), amended par. (4) generally. Prior to amendment, par. (4) read as follows: "The failure to timely file a verified statement of use under this subsection shall result in abandonment of the application."

1988—Subsec. (a). Pub. L. 100–667, §103(1) to (7), inserted "(a)" preceding introductory provisions and substituted "may apply to register his or her" for "may register his", redesignated former subsecs. (a) to (c) as pars. (1) to (3), respectively, redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, in par. (1)(A), substituted "used on or in connection with" for "applied to" and "goods on or in connection" for "goods in connection", in par. (1)(C), struck out "actually" after "the mark as", and in par. (2), substituted "prescribed" for "filing".

Subsecs. (b), (c). Pub. L. 100–667, §103(3), (9), added subsecs. (b) and (c) and redesignated former subsecs. (b) and (c) as pars. (2) and (3), respectively, of subsec. (a).

Subsecs. (d), (e). Pub. L. 100–667, §103(8), (9), added subsec. (d) and redesignated former subsec. (d) as (e).

1975—Subsecs. (a), (b), (d). Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

1962—Subsec. (a)(1). Pub. L. 87–772 substituted "as to be likely, when applied to the goods of such other person, to cause confusion, or to cause mistake, or to deceive" for "as might be calculated to deceive", and struck out "or services" after "use by others, the goods".

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–330, title I, §109(b), Oct. 30, 1998, 112 Stat. 3069, provided that: "This title [see Short Title of 1998 Amendment note below] and the amendments made by this title shall apply to any application for registration of a trademark pending on, or filed on or after, the effective date of this Act [probably should be "this title", see section 110 of Pub. L. 105–330, set out as an Effective Date of 1998 Amendment note below]."

Pub. L. 105–330, title I, §110, Oct. 30, 1998, 112 Stat. 3069, provided that: "This title [see Short Title of 1998 Amendment note below] and the amendments made by this title shall take effect—

"(1) on the date that is 1 year after the date of the enactment of this Act [Oct. 30, 1998], or

"(2) upon the entry into force of the Trademark Law Treaty with respect to the United States [Aug. 12, 2000],

whichever occurs first."

Pub. L. 105–330, title II, §201(b), Oct. 30, 1998, 112 Stat. 3070, provided that: "The amendments made by this section [amending this section and sections 1052, 1057, 1064, 1091, 1094, 1113 to 1115, 1121, and 1124

of this title] shall take effect on the date of enactment of this Act [Oct. 30, 1998], and shall apply only to any civil action filed or proceeding before the United States Patent and Trademark Office commenced on or after such date relating to the registration of a mark."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–667, title I, §136, Nov. 16, 1988, 102 Stat. 3948, provided that: "This title and the amendments made by this title [see Short Title of 1988 Amendment note below] shall become effective on the date which is one year after the date of enactment of this Act [Nov. 16, 1988]."

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

EFFECTIVE DATE

Section 46(a) of act July 5, 1946, provided that this chapter shall be in force and take effect one year from July 5, 1946.

SHORT TITLE OF 2010 AMENDMENT

Pub. L. 111–146, §1, Mar. 17, 2010, 124 Stat. 66, provided that: "This Act [amending sections 1057, 1058, 1065, 1071, and 1141k of this title] may be cited as the 'Trademark Technical and Conforming Amendment Act of 2010'."

SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109–312, §1(a), Oct. 6, 2006, 120 Stat. 1730, provided that: "This Act [amending sections 1052, 1063, 1064, 1092, 1125, and 1127 of this title] may be cited as the 'Trademark Dilution Revision Act of 2006'."

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–482, §1, Dec. 23, 2004, 118 Stat. 3912, provided that: "This Act [amending section 1117 of this title, section 504 of Title 17, Copyrights, sections 2318 and 3559 of Title 18, Crimes and Criminal Procedure, and sections 85 and 112 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as notes under this section, section 1117 of this title, sections 2311 and 2318 of Title 18, and listed in a table relating to sentencing guidelines set out as a note under section 994 of Title 28] may be cited as the 'Intellectual Property Protection and Courts Amendments Act of 2004'."

Pub. L. 108–482, title II, §201, Dec. 23, 2004, 118 Stat. 3916, provided that: "This title [amending section 1117 of this title, section 504 of Title 17, Copyrights, and section 3559 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as notes under section 1117 of this title and listed in a table relating to sentencing guidelines set out as a note under section 994 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'Fraudulent Online Identity Sanctions Act'."

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107–273, div. C, title III, §13401, Nov. 2, 2002, 116 Stat. 1913, provided that: "This subtitle [subtitle D (§§13401–13403) of title III of div. C of Pub. L. 107–273, enacting subchapter IV of this chapter and provisions set out as a note under section 1141 of this title] may be cited as the 'Madrid Protocol Implementation Act'."

SHORT TITLE OF 1999 AMENDMENTS

Pub. L. 106–113, div. B, §1000(a)(9) [title III, §3001(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–545, provided that: "This title [enacting section 1129 of this title, amending sections 1114, 1116, 1117, 1125, and 1127 of this title, section 470a of Title 16, Conservation, and section 1338 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as notes under this section and sections 1117 and 1125 of this title] may be cited as the 'Anticybersquatting Consumer Protection Act'."

Pub. L. 106–43, §1, Aug. 5, 1999, 113 Stat. 218, provided that: "This Act [amending sections 1052 to 1054, 1060, 1063, 1064, 1091, 1092, 1114, 1116 to 1118, 1122, and 1124 to 1127 of this title, enacting provisions set out as a note under section 1052 of this title, and amending provisions set out as a note under this section] may be cited as the 'Trademarks Amendments Act of 1999'."

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–330, title I, §101, Oct. 30, 1998, 112 Stat. 3064, provided that: "This title [amending this section and sections 1058 to 1060, 1062, and 1126 of this title and enacting provisions set out as notes under

this section and sections 1058 and 1059 of this title] may be cited as the 'Trademark Law Treaty Implementation Act'."

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–98, §1, Jan. 16, 1996, 109 Stat. 985, provided that: "This Act [amending sections 1125 and 1127 of this title and enacting provisions set out as a note under section 1125 of this title] may be cited as the 'Federal Trademark Dilution Act of 1995'."

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–542, §1, Oct. 27, 1992, 106 Stat. 3567, provided that: "This Act [enacting section 1122 of this title, amending sections 1114, 1125, and 1127 of this title, and enacting provisions set out as a note under section 1114 of this title] may be cited as the 'Trademark Remedy Clarification Act'."

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–667, title I, §101, Nov. 16, 1988, 102 Stat. 3935, provided that: "This title [amending this section and sections 1052 to 1060, 1062 to 1066, 1068, 1069, 1071, 1091, 1092, 1094, 1095, 1111, 1112, 1114 to 1118, 1121, and 1125 to 1127 of this title, redesignating section 1121a of this title as section 1121(b) of this title, and enacting provisions set out as notes under sections 1051 and 1058 of this title] may be cited as the 'Trademark Law Revision Act of 1988'."

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98–620, title I, §101, Nov. 8, 1984, 98 Stat. 3335, provided that: "This title [amending sections 1064 and 1127 of this title and enacting provisions set out as a note under section 1064 of this title] may be cited as the 'Trademark Clarification Act of 1984'."

SHORT TITLE

Act July 5, 1946, ch. 540, 60 Stat. 427, which is classified to this chapter, is popularly known as the "Lanham Act" and also as the "Trademark Act of 1946".

REPEAL OF INCONSISTENT PROVISIONS; CERTAIN PROVISIONS NOT AFFECTED

Act July 5, 1946, ch. 540, title XI, §46(a), 60 Stat. 444, as amended by Pub. L. 106–43, §6(b), Aug. 5, 1999, 113 Stat. 220, provided in part that all acts and parts of acts inconsistent with this chapter are repealed effective one year from July 5, 1946, but that "nothing contained in this Act [this chapter] shall be construed as limiting, restricting, modifying, or repealing any statute in force on the effective date of this Act [July 5, 1947] which does not relate to trademarks, or as restricting or increasing the authority of any Federal department or regulatory agency except as may be specifically provided in this Act [this chapter]."

Act July 5, 1946, ch. 540, title XI, §48, 60 Stat. 446, provided that: "Section 4 of the Act of January 5, 1905 (U.S.C., title 36, sec. 4), as amended, entitled 'An Act to incorporate the National Red Cross' [see 18 U.S.C. 706], and section 7 of the Act of June 15, 1916 (U.S.C., title 36, sec. 27), entitled 'An Act to incorporate the Boy Scouts of America, and for other purposes' [see 36 U.S.C. 30905], and the Act of June 20, 1936 (U.S.C., title 22, sec. 248), entitled 'An Act to prohibit the commercial use of the coat of arms of the Swiss Confederation' [see 18 U.S.C. 708], are not repealed or affected by this Act."

SAVINGS PROVISION

Pub. L. 106–113, div. B, §1000(a)(9) [title III, §3008], Nov. 29, 1999, 113 Stat. 1536, 1501A–551, provided that: "Nothing in this title [see Short Title of 1999 Amendments note above] shall affect any defense available to a defendant under the Trademark Act of 1946 [15 U.S.C. 1051 et seq.] (including any defense under section 43(c)(4) of such Act [15 U.S.C. 1125(c)(4)] or relating to fair use) or a person's right of free speech or expression under the first amendment of the United States Constitution."

SEPARABILITY

Act July 5, 1946, ch. 540, title XI, §50, 60 Stat. 446, provided that: "If any provision of this Act [this chapter] or the application of such provision to any person or circumstance is held invalid, the remainder of the Act shall not be affected thereby."

TRANSFER OF FUNCTIONS

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

PENDING PROCEEDINGS AND EXISTING REGISTRATION AND RIGHTS UNDER PRIOR ACTS

Act July 5, 1946, ch. 540, title XI, §46(a), 60 Stat. 444, provided in part that this chapter, except as otherwise specifically provided therein, shall not affect any suit, proceeding or appeal pending on the effective date of this chapter and that the repeal of all inconsistent acts "shall not affect the validity of registrations granted or applied for under any of said Acts prior to the effective date of this Act [July 5, 1947], or rights or remedies thereunder except as provided in sections 8, 12, 14, 15, and 47 of this Act [sections 1058, 1062, 1064, and 1065 of this title and note under this section]."

Act July 5, 1946, ch. 540, title XI, §§46(b), 47, 60 Stat. 445, provided:

"(b) Registrations now existing under the Act of March 3, 1881, or the Act of February 20, 1905 [sections 81 to 109 of this title], shall continue in full force and effect for the unexpired terms thereof and may be renewed under the provisions of section 9 of this Act [section 1059 of this title]. Such registrations and the renewals thereof shall be subject to and shall be entitled to the benefits of the provisions of this Act [this chapter] to the same extent and with the same force and effect as though registered on the principal register established by this Act [this chapter] except as limited in sections 8, 12, 14, and 15 of this Act [sections 1058, 1062, 1064, 1065, of this title]. Marks registered under the 'ten-year proviso' of section 5 of the Act of February 20, 1905, as amended [former section 85 of this title], shall be deemed to have become distinctive of the registrant's goods in commerce under paragraph (f) of section 2 of this Act [section 1052 of this title] and may be renewed under section 9 hereof [section 1059 of this title] as marks coming within said paragraph.

"Registrations now existing under the Act of March 19, 1920 [former sections 121 to 128 of this title], shall expire six months after the effective date of this Act [July 5, 1947], or twenty years from the dates of their registrations, whichever date is later. Such registrations shall be subject to and entitled to the benefits of the provisions of this Act [this chapter] relating to marks registered on the supplemental register established by this Act [this chapter], and may not be renewed unless renewal is required to support foreign registrations. In that event renewal may be effected on the supplemental register under the provisions of section 9 of this Act [section 1059 of this title].

"Marks registered under previous Acts may, if eligible, also be registered under this Act [this chapter].

"SEC. 47. (a) All applications for registration pending in the Patent Office at the effective date of this Act [July 5, 1947] may be amended, if practicable, to bring them under the provisions of this Act [this chapter]. The prosecution of such applications so amended and the grant of registrations thereon shall be proceeded with in accordance with the provisions of this Act [this chapter]. If such amendments are not made, the prosecution of said applications shall be proceeded with and registrations thereon granted in accordance with the Acts under which said applications were filed, and said Acts are hereby continued in force to this extent and for this purpose only, notwithstanding the foregoing general repeal thereof.

"(b) In any case in which an appeal is pending before the United States Court of Customs and Patent Appeals or any United States Circuit Court of Appeals or the United States Court of Appeals for the District of Columbia or the United States Supreme Court at the effective date of this Act [July 5, 1947], the court, if it be of the opinion that the provisions of this Act [this chapter] are applicable to the subject matter of the appeal, may apply such provision or may remand the case to the Commissioner [now Director] or to the district court for the taking of additional evidence or a new trial or for reconsideration of the decision on the record as made, as the appellate court may deem proper."

Act July 5, 1946, ch. 540, title XI, §49, 60 Stat. 446, provided: "Nothing herein [in this chapter] shall adversely affect the rights or the enforcement of rights in marks acquired in good faith prior to the effective date of this Act [July 5, 1947]."

EMERGENCY RELIEF FROM POSTAL SITUATION AFFECTING TRADEMARK CASES

Relief as to filing date of trademark application or registration and excusal of delayed fees or actions affected by postal situation beginning on Mar. 18, 1970, and ending on or about Mar. 30, 1970, see note set out under section 111 of Title 35, Patents.

[1] So in original. The word "shall" probably should not appear.

§1052. Trademarks registrable on principal register; concurrent registration

No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it—

(a) Consists of or comprises immoral, deceptive, or scandalous matter; or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute; or a geographical indication which, when used on or in connection with wines or spirits, identifies a place other than the origin of the goods and is first used on or in connection with wines or spirits by the applicant on or after one year after the date on which the WTO Agreement (as defined in section 3501(9) of title 19) enters into force with respect to the United States.

(b) Consists of or comprises the flag or coat of arms or other insignia of the United States, or of any State or municipality, or of any foreign nation, or any simulation thereof.

(c) Consists of or comprises a name, portrait, or signature identifying a particular living individual except by his written consent, or the name, signature, or portrait of a deceased President of the United States during the life of his widow, if any, except by the written consent of the widow.

(d) Consists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive: *Provided*, That if the Director determines that confusion, mistake, or deception is not likely to result from the continued use by more than one person of the same or similar marks under conditions and limitations as to the mode or place of use of the marks or the goods on or in connection with which such marks are used, concurrent registrations may be issued to such persons when they have become entitled to use such marks as a result of their concurrent lawful use in commerce prior to (1) the earliest of the filing dates of the applications pending or of any registration issued under this chapter; (2) July 5, 1947, in the case of registrations previously issued under the Act of March 3, 1881, or February 20, 1905, and continuing in full force and effect on that date; or (3) July 5, 1947, in the case of applications filed under the Act of February 20, 1905, and registered after July 5, 1947. Use prior to the filing date of any pending application or a registration shall not be required when the owner of such application or registration consents to the grant of a concurrent registration to the applicant. Concurrent registrations may also be issued by the Director when a court of competent jurisdiction has finally determined that more than one person is entitled to use the same or similar marks in commerce. In issuing concurrent registrations, the Director shall prescribe conditions and limitations as to the mode or place of use of the mark or the goods on or in connection with which such mark is registered to the respective persons.

(e) Consists of a mark which (1) when used on or in connection with the goods of the applicant is merely descriptive or deceptively misdescriptive of them, (2) when used on or in connection with the goods of the applicant is primarily geographically descriptive of them, except as indications of regional origin may be registrable under section 1054 of this title, (3) when used on or in connection with the goods of the applicant is primarily geographically deceptively misdescriptive of them, (4) is primarily merely a surname, or (5) comprises any matter that, as a whole, is functional.

(f) Except as expressly excluded in subsections (a), (b), (c), (d), (e)(3), and (e)(5) of this section, nothing in this chapter shall prevent the registration of a mark used by the applicant which has become distinctive of the applicant's goods in commerce. The Director may accept as prima facie evidence that the mark has become distinctive, as used on or in connection with the applicant's goods in commerce, proof of substantially exclusive and continuous use thereof as a mark by the applicant in commerce for the five years before the date on which the claim of distinctiveness is made. Nothing in this section shall prevent the registration of a mark which, when used on or in connection with the goods of the applicant, is primarily geographically deceptively misdescriptive of them, and which became distinctive of the applicant's goods in commerce before December 8, 1993.

A mark which would be likely to cause dilution by blurring or dilution by tarnishment under section 1125(c) of this title, may be refused registration only pursuant to a proceeding brought under section 1063 of this title. A registration for a mark which would be likely to cause dilution by blurring or dilution by tarnishment under section 1125(c) of this title, may be canceled pursuant to a proceeding brought under either section 1064 of this title or section 1092 of this title.

(July 5, 1946, ch. 540, title I, §2, 60 Stat. 428; Pub. L. 87–772, §2, Oct. 9, 1962, 76 Stat. 769; Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 100–667, title I, §104, Nov. 16, 1988, 102 Stat. 3937; Pub. L. 103–182, title III, §333(a), Dec. 8, 1993, 107 Stat. 2114; Pub. L. 103–465, title V, §522, Dec. 8, 1994, 108 Stat. 4982; Pub. L. 105–330, title II, §201(a)(2), (12), Oct. 30, 1998, 112 Stat. 3069, 3070; Pub. L. 106–43, §2(a), Aug. 5, 1999, 113 Stat. 218; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A–583; Pub. L. 109–312, §3(a), Oct. 6, 2006, 120 Stat. 1732.)

REFERENCES IN TEXT

Acts March 3, 1881, and February 20, 1905, referred to in subsec. (d), are acts Mar. 3, 1881, ch. 138, 21 Stat. 502, and Feb. 20, 1905, ch. 592, 33 Stat. 724, which were repealed insofar as inconsistent with this chapter by act July 5, 1946, ch. 540, §46(a), 60 Stat. 444. Act Feb. 20, 1905, was classified to sections 81 to 109 of this title.

PRIOR PROVISIONS

Acts Feb. 20, 1905, ch. 592, §5, 33 Stat. 725; Mar. 2, 1907, ch. 2573, §1, 34 Stat. 1251; Feb. 18, 1911, ch. 113, 36 Stat. 918; Jan. 8, 1913, ch. 7, 37 Stat. 649; Mar. 19, 1920, ch. 104, §9, 41 Stat. 535; June 7, 1924, ch. 341, 43 Stat. 647.

AMENDMENTS

2006—Pub. L. 109–312, which directed substitution of "A mark which would be likely to cause dilution by blurring or dilution by tarnishment under section 1125(c) of this title, may be refused registration only pursuant to a proceeding brought under section 1063 of this title. A registration for a mark which would be likely to cause dilution by blurring or dilution by tarnishment under section 1125(c) of this title, may be canceled pursuant to a proceeding brought under either section 1064 of this title or section 1092 of this title." for last two sentences in subsec. (f) of this section, was executed by making the substitution for "A mark which when used would cause dilution under section 1125(c) of this title may be refused registration only pursuant to a proceeding brought under section 1063 of this title. A registration for a mark which when used would cause dilution under section 1125(c) of this title may be canceled pursuant to a proceeding brought under either section 1064 of this title or section 1092 of this title." in concluding provisions of section to reflect the probable intent of Congress.

1999—Pub. L. 106–43 inserted concluding provisions.

Subsecs. (d), (f). Pub. L. 106–113 substituted "Director" for "Commissioner" wherever appearing.

1998—Pub. L. 105–330, §201(a)(12), substituted "trademark" for "trade-mark" in introductory provisions.

Subsec. (e). Pub. L. 105–330, §201(a)(2)(A), struck out "or" before "(4)" and inserted ", or (5) comprises any matter that, as a whole, is functional" before period at end.

Subsec. (f). Pub. L. 105–330, §201(a)(2)(B), substituted "subsections (a), (b), (c), (d), (e)(3), and (e)(5)" for "paragraphs (a), (b), (c), (d), and (e)(3)".

1994—Subsec. (a). Pub. L. 103–465 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "Consists of or comprises immoral, deceptive, or scandalous matter; or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute."

1993—Subsec. (e). Pub. L. 103–182, §333(a)(1), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: "Consists of a mark which, (1) when used on or in connection with the goods of the applicant is merely descriptive or deceptively misdescriptive of them, or (2) when used on or in connection with the goods of the applicant is primarily geographically descriptive or deceptively misdescriptive of them, except as indications of regional origin may be registrable under section 1054 of this title, or (3) is primarily merely a surname."

Subsec. (f). Pub. L. 103–182, §333(a)(2), substituted "(d), and (e)(3)" for "and (d)" and inserted at end "Nothing in this section shall prevent the registration of a mark which, when used on or in connection with the goods of the applicant, is primarily geographically deceptively misdescriptive of them, and which became distinctive of the applicant's goods in commerce before December 8, 1993."

1988—Subsec. (d). Pub. L. 100–667, §104(1), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "Consists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when applied to the goods of the applicant, to cause confusion, or to cause mistake, or to deceive: *Provided*, That when the Commissioner determines that confusion, mistake, or deception is not likely to result from the continued use by more than one person of the same or similar marks under conditions and

limitations as to the mode or place of use of the marks or the goods in connection with which such marks are used, concurrent registrations may be issued to such persons when they have become entitled to use such marks as a result of their concurrent lawful use in commerce prior to (i) the earliest of the filing dates of the applications pending or of any registration issued under this chapter; or (ii) July 5, 1947, in the case of registrations previously issued under the Act of March 3, 1881, or February 20, 1905, and continuing in full force and effect on that date; or (iii) July 5, 1947, in the case of applications filed under the Act of February 20, 1905, and registered after July 5, 1947. Concurrent registrations may also be issued by the Commissioner when a court of competent jurisdiction has finally determined that more than one person is entitled to use the same or similar marks in commerce. In issuing concurrent registrations, the Commissioner shall prescribe conditions and limitations as to the mode or place of use of the mark or the goods in connection with which such mark is registered to the respective persons."

Subsec. (e). Pub. L. 100–667, §104(2), substituted "used on or in connection with" for "applied to" in two places.

Subsec. (f). Pub. L. 100–667, §104(3), substituted "used on or in connection with" for "applied to" and "five years before the date on which the claim of distinctiveness is made" for "five years next preceding the date of the filing of the application for its registration"

1975—Subsec. (d). Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

1962—Subsec. (d). Pub. L. 87–772, among other changes, substituted provisions authorizing the issuance of concurrent registrations to persons when they have become entitled to use such marks as a result of their concurrent lawful use in commerce prior to the earliest of the filing dates of the applications pending or of any registration issued under this chapter, or July 5, 1947, in the case of registrations previously issued under the act of Mar. 3, 1881, or Feb. 20, 1905, and continuing in full force and effect on that date, or July 5, 1947, in the case of applications under the act of Feb. 20, 1905, and registered after July 5, 1947, for provisions which restricted issuance of concurrent registrations to persons entitled to use such mark as a result of their concurrent lawful use thereof in commerce prior to any of the filing dates of the applications involved, and provisions directing that issuance of the mark be upon such conditions and limitations as to the mode or place of use of the marks or the goods in connection with which such marks are used, for provisions which required issuance under conditions and limitations as to the mode or place of use of the goods in connection with which such registrations may be granted, and eliminated provisions which limited confusion, mistake, or deception to purchasers, required written notice of applications for concurrent registrations and of hearings thereon, and publication in the Official Gazette upon a decision to grant such a registration and permitted a court to order such a registration under section 4915 of the Revised Statutes.

EFFECTIVE DATE OF 1999 AMENDMENTS

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

Pub. L. 106–43, §2(e), Aug. 5, 1999, 113 Stat. 218, provided that: "The amendments made by this section [amending this section and sections 1063, 1064, and 1092 of this title] shall take effect on the date of enactment of this Act [Aug. 5, 1999] and shall apply only to any application for registration filed on or after January 16, 1996."

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–330 effective Oct. 30, 1998, and applicable only to any civil action filed or proceeding before the United States Patent and Trademark Office commenced on or after such date relating to the registration of a mark, see section 201(b) of Pub. L. 105–330, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–465, title V, §523, Dec. 8, 1994, 108 Stat. 4982, provided that: "The amendments made by this subtitle [subtitle B (§§521–523) of title V of Pub. L. 103–465, amending this section and section 1127 of this title] take effect one year after the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995]."

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–182, title III, §335, Dec. 8, 1993, 107 Stat. 2116, provided that:

"(a) IN GENERAL.—Subject to subsections (b) and (c), the amendments made by this subtitle [subtitle C (§§331–335) of title III of Pub. L. 103–182, enacting section 104A of Title 17, Copyrights, amending this

section, section 1091 of this title, and section 104 of Title 35, Patents, and amending provisions set out as a note under section 109 of Title 17] take effect on the date the Agreement [North American Free Trade Agreement] enters into force with respect to the United States [Jan. 1, 1994].

"(b) SECTION 331.—The amendments made by section 331 [amending section 104 of Title 35] shall apply to all patent applications that are filed on or after the date of the enactment of this Act [Dec. 8, 1993]: *Provided*, That an applicant for a patent, or a patentee, may not establish a date of invention by reference to knowledge or use thereof, or other activity with respect thereto, in a NAFTA country, except as provided in sections 119 and 365 of title 35, United States Code, that is earlier than the date of the enactment of this Act.

"(c) SECTION 333.—The amendments made by section 333 [amending this section and section 1091 of this title] shall apply only to trademark applications filed on or after the date of the enactment of this Act."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

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

URUGUAY ROUND AGREEMENTS: ENTRY INTO FORCE

The Uruguay Round Agreements, including the World Trade Organization Agreement and agreements annexed to that Agreement, as referred to in section 3511(d) of Title 19, Customs Duties, entered into force with respect to the United States on Jan. 1, 1995. See note set out under section 3511 of Title 19.

MARKS REGISTERED UNDER TEN-YEAR PROVISO OF TRADE-MARK ACT OF 1905

Marks registered under the "ten-year proviso" of section 5 of the act of Feb. 20, 1905, as amended, deemed to have become distinctive of the registrant's goods in commerce under par. (f) of this section, see section 46(b) of act July 5, 1946, set out in note under section 1051 of this title.

§1053. Service marks registrable

Subject to the provisions relating to the registration of trademarks, so far as they are applicable, service marks shall be registrable, in the same manner and with the same effect as are trademarks, and when registered they shall be entitled to the protection provided in this chapter in the case of trademarks. Applications and procedure under this section shall conform as nearly as practicable to those prescribed for the registration of trademarks.

(July 5, 1946, ch. 540, title I, §3, 60 Stat. 429; Pub. L. 100–667, title I, §105, Nov. 16, 1988, 102 Stat. 3938; Pub. L. 106–43, §6(b), Aug. 5, 1999, 113 Stat. 220.)

AMENDMENTS

1999—Pub. L. 106–43 substituted "trademarks" for "trade-marks" wherever appearing.

1988—Pub. L. 100–667 struck out "used in commerce" after "applicable, service marks" and ", except when used so as to represent falsely that the owner thereof makes or sells the goods on which such mark is used. The Commissioner may establish a separate register for such service marks" after "case of trade-marks".

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

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

§1054. Collective marks and certification marks registrable

Subject to the provisions relating to the registration of trademarks, so far as they are applicable, collective and certification marks, including indications of regional origin, shall be registrable under this chapter, in the same manner and with the same effect as are trademarks, by persons, and nations, States, municipalities, and the like, exercising legitimate control over the use of the marks sought to be registered, even though not possessing an industrial or commercial establishment, and when registered they shall be entitled to the protection provided in this chapter in the case of trademarks, except in the case of certification marks when used so as to represent falsely that the owner or a user thereof makes or sells the goods or performs the services on or in connection with which such mark is used. Applications and procedure under this section shall conform as nearly as practicable to those prescribed for the registration of trademarks.

(July 5, 1946, ch. 540, title I, §4, 60 Stat. 429; Pub. L. 100–667, title I, §106, Nov. 16, 1988, 102 Stat. 3938; Pub. L. 106–43, §6(b), Aug. 5, 1999, 113 Stat. 220.)

PRIOR PROVISIONS

Acts Feb. 20, 1905, ch. 592, §1, 33 Stat. 724; May 4, 1906, ch. 2081, §1, 34 Stat. 168; Feb. 18, 1909, ch. 144, 35 Stat. 628; Apr. 11, 1930, ch. 132, §4, 46 Stat. 155; June 10, 1938, ch. 332, §1, 52 Stat. 638.

AMENDMENTS

1999—Pub. L. 106–43 substituted "trademarks" for "trade-marks" wherever appearing.

1988—Pub. L. 100–667 substituted "origin," for "origin used in commerce," and "except in the case of certification marks when" for "except when" and struck out after first sentence "The Commissioner may establish a separate register for such collective marks and certification marks."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

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

§1055. Use by related companies affecting validity and registration

Where a registered mark or a mark sought to be registered is or may be used legitimately by related companies, such use shall inure to the benefit of the registrant or applicant for registration, and such use shall not affect the validity of such mark or of its registration, provided such mark is not used in such manner as to deceive the public. If first use of a mark by a person is controlled by

the registrant or applicant for registration of the mark with respect to the nature and quality of the goods or services, such first use shall inure to the benefit of the registrant or applicant, as the case may be.

(July 5, 1946, ch. 540, title I, §5, 60 Stat. 429; Pub. L. 100–667, title I, §107, Nov. 16, 1988, 102 Stat. 3938.)

AMENDMENTS

1988—Pub. L. 100–667 inserted at end "If first use of a mark by a person is controlled by the registrant or applicant for registration of the mark with respect to the nature and quality of the goods or services, such first use shall inure to the benefit of the registrant or applicant, as the case may be."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

§1056. Disclaimer of unregistrable matter

(a) Compulsory and voluntary disclaimers

The Director may require the applicant to disclaim an unregistrable component of a mark otherwise registrable. An applicant may voluntarily disclaim a component of a mark sought to be registered.

(b) Prejudice of rights

No disclaimer, including those made under subsection (e) of section 1057 of this title, shall prejudice or affect the applicant's or registrant's rights then existing or thereafter arising in the disclaimed matter, or his right of registration on another application if the disclaimed matter be or shall have become distinctive of his goods or services.

(July 5, 1946, ch. 540, title I, §6, 60 Stat. 429; Pub. L. 87–772, §3, Oct. 9, 1962, 76 Stat. 769; Pub. L. 100–667, title I, §108, Nov. 16, 1988, 102 Stat. 3938; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A–583.)

AMENDMENTS

1999—Subsec. (a). Pub. L. 106–113 substituted "Director" for "Commissioner".

1988—Subsec. (b). Pub. L. 100–667 substituted "subsection (e)" for "paragraph (d)".

1962—Pub. L. 87–772, among other changes, provided that an applicant may voluntarily disclaim a component of a mark sought to be registered.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of Commerce, with certain exceptions, to Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§1, 2,

eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

§1057. Certificates of registration

(a) Issuance and form

Certificates of registration of marks registered upon the principal register shall be issued in the name of the United States of America, under the seal of the United States Patent and Trademark Office, and shall be signed by the Director or have his signature placed thereon, and a record thereof shall be kept in the United States Patent and Trademark Office. The registration shall reproduce the mark, and state that the mark is registered on the principal register under this chapter, the date of the first use of the mark, the date of the first use of the mark in commerce, the particular goods or services for which it is registered, the number and date of the registration, the term thereof, the date on which the application for registration was received in the United States Patent and Trademark Office, and any conditions and limitations that may be imposed in the registration.

(b) Certificate as prima facie evidence

A certificate of registration of a mark upon the principal register provided by this chapter shall be prima facie evidence of the validity of the registered mark and of the registration of the mark, of the owner's ownership of the mark, and of the owner's exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the certificate, subject to any conditions or limitations stated in the certificate.

(c) Application to register mark considered constructive use

Contingent on the registration of a mark on the principal register provided by this chapter, the filing of the application to register such mark shall constitute constructive use of the mark, conferring a right of priority, nationwide in effect, on or in connection with the goods or services specified in the registration against any other person except for a person whose mark has not been abandoned and who, prior to such filing—

(1) has used the mark;

(2) has filed an application to register the mark which is pending or has resulted in registration of the mark; or

(3) has filed a foreign application to register the mark on the basis of which he or she has acquired a right of priority, and timely files an application under section 1126(d) of this title to register the mark which is pending or has resulted in registration of the mark.

(d) Issuance to assignee

A certificate of registration of a mark may be issued to the assignee of the applicant, but the assignment must first be recorded in the United States Patent and Trademark Office. In case of change of ownership the Director shall, at the request of the owner and upon a proper showing and the payment of the prescribed fee, issue to such assignee a new certificate of registration of the said mark in the name of such assignee, and for the unexpired part of the original period.

(e) Surrender, cancellation, or amendment by owner

Upon application of the owner the Director may permit any registration to be surrendered for cancellation, and upon cancellation appropriate entry shall be made in the records of the United States Patent and Trademark Office. Upon application of the owner and payment of the prescribed fee, the Director for good cause may permit any registration to be amended or to be disclaimed in part: *Provided*, That the amendment or disclaimer does not alter materially the character of the mark. Appropriate entry shall be made in the records of the United States Patent and Trademark Office and upon the certificate of registration.

(f) Copies of United States Patent and Trademark Office records as evidence

Copies of any records, books, papers, or drawings belonging to the United States Patent and Trademark Office relating to marks, and copies of registrations, when authenticated by the seal of the

United States Patent and Trademark Office and certified by the Director, or in his name by an employee of the Office duly designated by the Director, shall be evidence in all cases wherein the originals would be evidence; and any person making application therefor and paying the prescribed fee shall have such copies.

(g) Correction of United States Patent and Trademark Office mistake

Whenever a material mistake in a registration, incurred through the fault of the United States Patent and Trademark Office, is clearly disclosed by the records of the Office a certificate stating the fact and nature of such mistake shall be issued without charge and recorded and a printed copy thereof shall be attached to each printed copy of the registration and such corrected registration shall thereafter have the same effect as if the same had been originally issued in such corrected form, or in the discretion of the Director a new certificate of registration may be issued without charge. All certificates of correction heretofore issued in accordance with the rules of the United States Patent and Trademark Office and the registrations to which they are attached shall have the same force and effect as if such certificates and their issue had been specifically authorized by statute.

(h) Correction of applicant's mistake

Whenever a mistake has been made in a registration and a showing has been made that such mistake occurred in good faith through the fault of the applicant, the Director is authorized to issue a certificate of correction or, in his discretion, a new certificate upon the payment of the prescribed fee: *Provided*, That the correction does not involve such changes in the registration as to require republication of the mark.

(July 5, 1946, ch. 540, title I, §7, 60 Stat. 430; Aug. 17, 1950, ch. 733, 64 Stat. 459; Pub. L. 87–772, §4, Oct. 9, 1962, 76 Stat. 769; Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 100–667, title I, §109, Nov. 16, 1988, 102 Stat. 3938; Pub. L. 105–330, title II, §201(a)(3), Oct. 30, 1998, 112 Stat. 3070; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A–583; Pub. L. 111–146, §3(a), Mar. 17, 2010, 124 Stat. 66.)

PRIOR PROVISIONS

Subsecs. (a) and (c) are from acts Feb. 20, 1905, ch. 592, §11, 33 Stat. 727; Mar. 4, 1925, ch. 535, §3, 43 Stat. 1269.

Subsec. (e) is from act Mar. 19, 1920, ch. 104, §7, 41 Stat. 535.

Subsec. (f) is from act Mar. 4, 1925, ch. 535, §1, 43 Stat. 1268.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–146, §3(a)(1), inserted "United States" before "Patent and Trademark Office" wherever appearing.

Subsec. (b). Pub. L. 111–146, §3(a)(2), substituted "owner's" for "registrant's" in two places.

Subsec. (d). Pub. L. 111–146, §3(a)(1), inserted "United States" before "Patent and Trademark Office".

Subsec. (e). Pub. L. 111–146, §3(a)(1), (3), inserted "United States" before "Patent and Trademark Office" in two places, substituted "owner" for "registrant" in two places, and struck out "or, if said certificate is lost or destroyed, upon a certified copy thereof" after "certificate of registration".

Subsec. (f). Pub. L. 111–146, §3(a)(1), inserted "United States" before "Patent and Trademark Office" in two places.

Subsec. (g). Pub. L. 111–146, §3(a)(4), amended subsec. (g) generally. Prior to amendment, text read as follows: "Whenever a material mistake in a registration, incurred through the fault of the Patent and Trademark Office, is clearly disclosed by the records of the Office a certificate stating the fact and nature of such mistake, shall be issued without charge and recorded and a printed copy thereof shall be attached to each printed copy of the registration certificate and such corrected registration shall thereafter have the same effect as if the same had been originally issued in such corrected form, or in the discretion of the Director a new certificate of registration may be issued without charge. All certificates of correction heretofore issued in accordance with the rules of the Patent and Trademark Office and the registrations to which they are attached shall have the same force and effect as if such certificates and their issue had been specifically authorized by statute."

1999—Subsecs. (a), (d) to (h). Pub. L. 106–113 substituted "Director" for "Commissioner" wherever appearing.

1998—Subsec. (a). Pub. L. 105–330 struck out second period at end of first sentence.

1988—Subsec. (b). Pub. L. 100–667, §109(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "A certificate of registration of a mark upon the principal register provided by this chapter shall be prima facie evidence of the validity of the registration, registrant's ownership of the mark, and of registrant's exclusive right to use the mark in commerce in connection with the goods or services specified in the certificate, subject to any conditions and limitations stated therein."

Subsec. (c). Pub. L. 100–667, §109(3), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 100–667, §109(2), (4), redesignated former subsec. (c) as (d) and substituted "prescribed fee" for "fee herein provided". Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 100–667, §109(2), redesignated former subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 100–667, §109(2), (5), redesignated former subsec. (e) as (f) and substituted "prescribed fee" for "fee required by law". Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 100–667, §109(2), redesignated former subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 100–667, §109(2), (6), redesignated former subsec. (g) as (h) and substituted "prescribed fee" for "required fee".

1975—Subsecs. (a), (c) to (f). Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

1962—Subsec. (a). Pub. L. 87–772 substituted "signature placed" for "name printed", and struck out provisions requiring an attestation by an assistant commissioner or by one of the law examiners designated by the Commissioner, together with printed copies of the drawing and statement of the applicant, to be kept in books for that purpose.

Subsec. (d). Pub. L. 87–772, among other charges, removed the requirement of a fee in connection with the voluntary surrender or cancellation of a registration.

Subsec. (e). Pub. L. 87–772 substituted "an employee of the Office" for "a chief of division", among other changes.

Subsec. (f). Pub. L. 87–772, among other changes, struck out ", signed by the Commissioner and sealed with the seal of the Patent Office" after "nature of such mistake".

1950—Subsec. (a). Act Aug. 17, 1950, made it unnecessary to include in the certificate a statement of the applicant.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–330 effective Oct. 30, 1998, and applicable only to any civil action filed or proceeding before the United States Patent and Trademark Office commenced on or after such date relating to the registration of a mark, see section 201(b) of Pub. L. 105–330, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

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

§1058. Duration, affidavits and fees

(a) Time periods for required affidavits

Each registration shall remain in force for 10 years, except that the registration of any mark shall be canceled by the Director unless the owner of the registration files in the United States Patent and Trademark Office affidavits that meet the requirements of subsection (b), within the following time periods:

(1) Within the 1-year period immediately preceding the expiration of 6 years following the date of registration under this chapter or the date of the publication under section 1062(c) of this title.

(2) Within the 1-year period immediately preceding the expiration of 10 years following the date of registration, and each successive 10-year period following the date of registration.

(3) The owner may file the affidavit required under this section within the 6-month grace period immediately following the expiration of the periods established in paragraphs (1) and (2), together with the fee described in subsection (b) and the additional grace period surcharge prescribed by the Director.

(b) Requirements for affidavit

The affidavit referred to in subsection (a) shall—

(1)(A) state that the mark is in use in commerce;

(B) set forth the goods and services recited in the registration on or in connection with which the mark is in use in commerce;

(C) be accompanied by such number of specimens or facsimiles showing current use of the mark in commerce as may be required by the Director; and

(D) be accompanied by the fee prescribed by the Director; or

(2)(A) set forth the goods and services recited in the registration on or in connection with which the mark is not in use in commerce;

(B) include a showing that any nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark; and

(C) be accompanied by the fee prescribed by the Director.

(c) Deficient affidavit

If any submission filed within the period set forth in subsection (a) is deficient, including that the affidavit was not filed in the name of the owner of the registration, the deficiency may be corrected after the statutory time period, within the time prescribed after notification of the deficiency. Such submission shall be accompanied by the additional deficiency surcharge prescribed by the Director.

(d) Notice of requirement

Special notice of the requirement for such affidavit shall be attached to each certificate of registration and notice of publication under section 1062(c) of this title.

(e) Notification of acceptance or refusal

The Director shall notify any owner who files any affidavit required by this section of the Director's acceptance or refusal thereof and, in the case of a refusal, the reasons therefor.

(f) Designation of resident for service of process and notices

If the owner is not domiciled in the United States, the owner may designate, by a document filed in the United States Patent and Trademark Office, the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the last designated address, or if the owner does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark, such notices or process may be served on the Director.

(July 5, 1946, ch. 540, title I, §8, 60 Stat. 431; Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub.

L. 97–247, §8, Aug. 27, 1982, 96 Stat. 320; Pub. L. 100–667, title I, §110, Nov. 16, 1988, 102 Stat. 3939; Pub. L. 105–330, title I, §105, Oct. 30, 1998, 112 Stat. 3066; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B), (C)], Nov. 29, 1999, 113 Stat. 1536, 1501A–583; Pub. L. 107–273, div. C, title III, §13207(b)(3), Nov. 2, 2002, 116 Stat. 1906; Pub. L. 111–146, §3(d)(1), Mar. 17, 2010, 124 Stat. 67.)

PRIOR PROVISIONS

Act Feb. 20, 1905, ch. 592, §12, 33 Stat. 727.

AMENDMENTS

2010—Pub. L. 111–146 amended section generally. Prior to amendment, section related to duration of registrations, affidavits of continuing use, grace period for submissions and correction of deficiencies, certain notice requirements related to affidavits, and designation of resident for service of process and notices.

2002—Subsec. (f). Pub. L. 107–273 amended subsec. (f) generally. Prior to amendment, text read as follows: "If the registrant is not domiciled in the United States, the registrant shall designate by a written document filed in the Patent and Trademark Office the name and address of some person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, such notice or process may be served upon the Director."

1999—Subsecs. (a) to (c). Pub. L. 106–113, §1000(a)(9) [title IV, §4732(b)(1)(B)], substituted "Director" for "Commissioner" wherever appearing.

Subsec. (e). Pub. L. 106–113, §1000(a)(9) [title IV, §4732(b)(1)(B), (C)], amended subsec. (e) identically, substituting "Director" for "Commissioner".

Subsec. (f). Pub. L. 106–113, §1000(a)(9) [title IV, §4732(b)(1)(B)], substituted "Director" for "Commissioner".

1998—Pub. L. 105–330 amended section catchline and text generally. Prior to amendment, text consisted of subsecs. (a) to (c) relating to affidavits of continuing use, registrations published under other provisions of law, and notification of acceptance or refusal of affidavits.

1988—Subsec. (a). Pub. L. 100–667 substituted "ten" for "twenty" and "setting forth those goods or services recited in the registration on or in connection with which the mark is in use in commerce and attaching to the affidavit a specimen or facsimile showing current use of the mark, or showing that any" for "showing that said mark is in use in commerce or showing that its".

1982—Subsecs. (a), (b). Pub. L. 97–247 struck out "still" after "showing that said mark is", and inserted "in commerce" after "use".

1975—Subsecs. (a), (b). Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–330 effective on the date that is 1 year after Oct. 30, 1998, see section 110 of Pub. L. 105–330, set out as a note under section 1051 of this title.

Pub. L. 105–330, title I, §109(a), Oct. 30, 1998, 112 Stat. 3069, provided that: "The provisions of section 8 of the Trademark Act of 1946 [15 U.S.C. 1058], as amended by section 105 of this Act, shall apply to a registration for trademark issued or renewed for a 20-year term, if the expiration date of the registration is on or after the effective date of this Act [probably should be "this title", see section 110 of Pub. L. 105–330, set out as an Effective Date of 1998 Amendment note under section 1051 of this title]."

For provisions relating to applicability of amendment by Pub. L. 105–330 to applications for registration of trademarks, see section 109(b) of Pub. L. 105–330, set out as a note under section 1051 of this title.

Pub. L. 105–330, title I, §109(c), Oct. 30, 1998, 112 Stat. 3069, provided that: "The provisions of section 8 of the Trademark Act of 1946 [15 U.S.C. 1058], as amended by section 105 of this Act, shall apply to the filing of an affidavit if the sixth or tenth anniversary of the registration, or the sixth anniversary of publication of the registration under section 12(c) of the Trademark Act of 1946 [15 U.S.C. 1062(c)], for which the affidavit is filed is on or after the effective date of this Act [probably should be "this title", see section 110 of Pub. L. 105–330, set out as an Effective Date of 1998 Amendment note under section 1051 of this title]."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–247 effective six months after Aug. 27, 1982, see section 17(c) of Pub. L. 97–247, set out as a note under section 294 of Title 35, Patents.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, and saving clause, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

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

REFERENCES TO TRADEMARK ACT OF 1946

Pub. L. 105–330, title I, §102, Oct. 30, 1998, 112 Stat. 3064, provided that: "For purposes of this title [see Short Title of 1998 Amendment note set out under section 1051 of this title], the Act entitled 'An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes', approved July 5, 1946 (15 U.S.C. 1051 et seq.), shall be referred to as the 'Trademark Act of 1946'."

PENDING APPLICATIONS

Act July 5, 1946, ch. 540, title XI, §51, as added Nov. 16, 1988, Pub. L. 100–667, title I, §135, 102 Stat. 3948, provided that: "All certificates of registration based upon applications for registration pending in the Patent and Trademark Office on the effective date of the Trademark Law Revision Act of 1988 [see Effective Date of 1988 Amendment note set out under section 1051 of this title] shall remain in force for a period of 10 years."

§1059. Renewal of registration

(a) Period of renewal; time for renewal

Subject to the provisions of section 1058 of this title, each registration may be renewed for periods of 10 years at the end of each successive 10-year period following the date of registration upon payment of the prescribed fee and the filing of a written application, in such form as may be prescribed by the Director. Such application may be made at any time within 1 year before the end of each successive 10-year period for which the registration was issued or renewed, or it may be made within a grace period of 6 months after the end of each successive 10-year period, upon payment of a fee and surcharge prescribed therefor. If any application filed under this section is deficient, the deficiency may be corrected within the time prescribed after notification of the deficiency, upon payment of a surcharge prescribed therefor.

(b) Notification of refusal of renewal

If the Director refuses to renew the registration, the Director shall notify the registrant of the Commissioner's [1] refusal and the reasons therefor.

(c) Designation of resident for service of process and notices

If the registrant is not domiciled in the United States the registrant may designate, by a document filed in the United States Patent and Trademark Office, the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or

mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, or if the registrant does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark, such notices or process may be served on the Director.

(July 5, 1946, ch. 540, title I, §9, 60 Stat. 431; Pub. L. 87–772, §5, Oct. 9, 1962, 76 Stat. 770; Pub. L. 100–667, title I, §111, Nov. 16, 1988, 102 Stat. 3939; Pub. L. 105–330, title I, §106, Oct. 30, 1998, 112 Stat. 3067; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B), (C)], Nov. 29, 1999, 113 Stat. 1536, 1501A–583; Pub. L. 107–273, div. C, title III, §13207(b)(4), Nov. 2, 2002, 116 Stat. 1907.)

PRIOR PROVISIONS

Act Feb. 20, 1905, ch. 592, §12, 33 Stat. 727.

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–273 amended subsec. (c) generally. Prior to amendment, text read as follows: "If the registrant is not domiciled in the United States, the registrant shall designate by a written document filed in the Patent and Trademark Office the name and address of some person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, such notice or process may be served upon the Director."

1999—Subsec. (a). Pub. L. 106–113, §1000(a)(9) [title IV, §4732(b)(1)(B)], substituted "Director" for "Commissioner".

Subsec. (b). Pub. L. 106–113, §1000(a)(9) [title IV, §4732(b)(1)(B), (C)], amended subsec. (b) identically, substituting "Director" for "Commissioner" in two places.

Subsec. (c). Pub. L. 106–113, §1000(a)(9) [title IV, §4732(b)(1)(B)], substituted "Director" for "Commissioner".

1998—Pub. L. 105–330 amended section catchline and text generally. Prior to amendment, text consisted of subsecs. (a) to (c) relating to period of renewal and time for renewal, notification of refusal of renewal, and applicants for renewal not domiciled in the United States.

1988—Subsec. (a). Pub. L. 100–667, §111(1), substituted "ten" for "twenty".

Subsec. (c). Pub. L. 100–667, §111(2), substituted "1051(e)" for "1051(d)".

1962—Pub. L. 87–772 designated existing provisions as subsecs. (a) and (c), added subsec. (b), and among other changes, amended subsec. (a) by substituting provisions requiring a verified application specifying the goods or services recited in the registration on or in connection with which the mark is still in use in commerce and having attached a specimen showing current use of the mark, or showing that any nonuse is due to special circumstances which excuse the nonuse and that it's not due to an intention to abandon the mark, for provisions requiring an affidavit by the registrant stating that the mark is still in use in commerce.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–330 effective on the date that is 1 year after Oct. 30, 1998, see section 110 of Pub. L. 105–330, set out as a note under section 1051 of this title.

For provisions relating to applicability of amendment by Pub. L. 105–330 to applications for registration of trademarks, see section 109(b) of Pub. L. 105–330, set out as a note under section 1051 of this title.

Pub. L. 105–330, title I, §109(d), Oct. 30, 1998, 112 Stat. 3069, provided that: "The amendment made by section 106 [amending this section] shall apply to the filing of an application for renewal of a registration if the expiration date of the registration for which the renewal application is filed is on or after the effective date of this Act [probably should be "this title", see section 110 of Pub. L. 105–330, set out as an Effective Date of 1998 Amendment note under section 1051 of this title]."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

RENEWAL UNDER PRIOR ACTS

Renewal of registrations under prior acts, see section 46(b) of act July 5, 1946, set out as a note under section 1051 of this title.

EXTENSION OF TIME FOR RENEWAL BY FOREIGN REGISTRANT

Act July 17, 1946, ch. 587, 60 Stat. 568, provided for extension of time for renewal by a foreign registrant and expired by its own terms July 17, 1949.

[1] *So in original. Probably should be "Director's".*

§1060. Assignment

(a)(1) A registered mark or a mark for which an application to register has been filed shall be assignable with the good will of the business in which the mark is used, or with that part of the good will of the business connected with the use of and symbolized by the mark. Notwithstanding the preceding sentence, no application to register a mark under section 1051(b) of this title shall be assignable prior to the filing of an amendment under section 1051(c) of this title to bring the application into conformity with section 1051(a) of this title or the filing of the verified statement of use under section 1051(d) of this title, except for an assignment to a successor to the business of the applicant, or portion thereof, to which the mark pertains, if that business is ongoing and existing.

(2) In any assignment authorized by this section, it shall not be necessary to include the good will of the business connected with the use of and symbolized by any other mark used in the business or by the name or style under which the business is conducted.

(3) Assignments shall be by instruments in writing duly executed. Acknowledgment shall be prima facie evidence of the execution of an assignment, and when the prescribed information reporting the assignment is recorded in the United States Patent and Trademark Office, the record shall be prima facie evidence of execution.

(4) An assignment shall be void against any subsequent purchaser for valuable consideration without notice, unless the prescribed information reporting the assignment is recorded in the United States Patent and Trademark Office within 3 months after the date of the assignment or prior to the subsequent purchase.

(5) The United States Patent and Trademark Office shall maintain a record of information on assignments, in such form as may be prescribed by the Director.

(b) An assignee not domiciled in the United States may designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, or if the assignee does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark, such notices or process may be served upon the Director.

(July 5, 1946, ch. 540, title I, §10, 60 Stat. 431; Pub. L. 87–772, §6, Oct. 9, 1962, 76 Stat. 770; Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 100–667, title I, §112, Nov. 16, 1988, 102 Stat. 3939; Pub. L. 105–330, title I, §107, Oct. 30, 1998, 112 Stat. 3068; Pub. L. 106–43, §6(a), Aug. 5, 1999, 113 Stat. 220; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A–583; Pub. L. 107–273, div. C, title III, §13207(b)(5), Nov. 2, 2002, 116 Stat. 1907.)

PRIOR PROVISIONS

Act Feb. 20, 1905, ch. 592, §10, 33 Stat. 727.

AMENDMENTS

2002—Subsecs. (a), (b). Pub. L. 107–273 amended subsecs. (a) and (b) generally, in subsec. (a) substituting pars. (1) to (5) for substantially identical undesignated provisions, and in subsec. (b) adding provisions relating to service on Director if assignee does not designate name and address of a person resident in the United States on whom may be served notices or process.

1999—Pub. L. 106–43, §6(a)(2), (3), which directed the amendment of this section by substituting "mark." for "mark," in the first sentence and striking out a second period at the end of the third sentence, could not be executed because "mark," and the second period did not appear subsequent to amendment by Pub. L. 105–330. See 1998 Amendment note below.

Subsec. (a). Pub. L. 106–113, §1000(a)(9) [title IV, §4732(b)(1)(B)], substituted "Director" for "Commissioner" in last sentence.

Pub. L. 106–43, §6(a)(1), which directed the amendment of the penultimate sentence of this section by substituting "assignment" for "subsequent purchase", was executed by making the substitution for "subsequent purchase" in two places in the penultimate sentence of subsec. (a), after "date of the" and "prior to the", to reflect the probable intent of Congress.

Subsec. (b). Pub. L. 106–113, §1000(a)(9) [title IV, §4732(b)(1)(B)], substituted "Director" for "Commissioner" in last sentence.

1998—Pub. L. 105–330 amended section catchline and text generally. Prior to amendment, text read as follows:

"A registered mark or a mark for which application to register has been filed shall be assignable with the goodwill of the business in which the mark is used, or with that part of the goodwill of the business connected with the use of and symbolized by the mark,. However, no application to register a mark under section 1051(b) of this title shall be assignable prior to the filing of the verified statement of use under section 1051(d) of this title, except to a successor to the business of the applicant, or portion thereof, to which the mark pertains, if that business is ongoing and existing. In any assignment authorized by this section it shall not be necessary to include the goodwill of the business connected with the use of and symbolized by any other mark used in the business or by the name or style under which the business is conducted. Assignments shall be by instruments in writing duly executed. Acknowledgment shall be prima facie evidence of the execution of an assignment and when recorded in the Patent and Trademark Office the record shall be prima facie evidence of execution. An assignment shall be void as against any subsequent purchaser for a valuable consideration without notice, unless it is recorded in the Patent and Trademark Office within three months after the date thereof or prior to such subsequent purchase. A separate record of assignments submitted for recording hereunder shall be maintained in the Patent and Trademark Office.

"An assignee not domiciled in the United States shall be subject to and comply with the provisions of section 1051(e) of this title."

1988—Pub. L. 100–667 substituted ". However, no application to register a mark under section 1051(b) of this title shall be assignable prior to the filing of the verified statement of use under section 1051(d) of this title, except to a successor to the business of the applicant, or portion thereof, to which the mark pertains, if that business is ongoing and existing. In any assignment authorized by this section" for "and in any such assignment" in first par., and "1051(e)" for "1051(d)" in last par.

1975—Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

1962—Pub. L. 87–772 substituted provisions which require a separate record of assignments to be kept in the Patent Office, for provisions which required the Commissioner to keep such record, and eliminated provisions permitting the cancellation of any assigned registration at any time if the registered mark is being used by, or with the permission of, the assignee so as to misrepresent the source of the goods or services in connection with which the mark is used.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–330 effective on the date that is 1 year after Oct. 30, 1998, see section 110 of Pub. L. 105–330, set out as a note under section 1051 of this title.

For provisions relating to applicability of amendment by Pub. L. 105–330 to applications for registration of

trademarks, see section 109(b) of Pub. L. 105–330, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

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

§1061. Execution of acknowledgments and verifications

Acknowledgments and verifications required under this chapter may be made before any person within the United States authorized by law to administer oaths, or, when made in a foreign country, before any diplomatic or consular officer of the United States or before any official authorized to administer oaths in the foreign country concerned whose authority is proved by a certificate of a diplomatic or consular officer of the United States, or apostille of an official designated by a foreign country which, by treaty or convention, accords like effect to apostilles of designated officials in the United States, and shall be valid if they comply with the laws of the state or country where made.

(July 5, 1946, ch. 540, title I, §11, 60 Stat. 432; Pub. L. 97–247, §14(c), Aug. 27, 1982, 96 Stat. 321.)

PRIOR PROVISIONS

Acts Feb. 20, 1905, ch. 592, §2, 33 Stat. 724; Feb. 18, 1909, ch. 144, 35 Stat. 627.

AMENDMENTS

1982—Pub. L. 97–247 substituted "is" for "shall be" after "whose authority", and inserted ", or apostille of an official designated by a foreign country which, by treaty or convention, accords like effect to apostilles of designated officials in the United States".

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–247 effective Aug. 27, 1982, see section 17(a) of Pub. L. 97–247, set out as a note under section 41 of Title 35, Patents.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

§1062. Publication

(a) Examination and publication

Upon the filing of an application for registration and payment of the prescribed fee, the Director shall refer the application to the examiner in charge of the registration of marks, who shall cause an examination to be made and, if on such examination it shall appear that the applicant is entitled to registration, or would be entitled to registration upon the acceptance of the statement of use required by section 1051(d) of this title, the Director shall cause the mark to be published in the Official Gazette of the Patent and Trademark Office: *Provided*, That in the case of an applicant claiming

concurrent use, or in the case of an application to be placed in an interference as provided for in section 1066 of this title the mark, if otherwise registrable, may be published subject to the determination of the rights of the parties to such proceedings.

(b) Refusal of registration; amendment of application; abandonment

If the applicant is found not entitled to registration, the examiner shall advise the applicant thereof and of the reasons therefor. The applicant shall have a period of six months in which to reply or amend his application, which shall then be reexamined. This procedure may be repeated until (1) the examiner finally refuses registration of the mark or (2) the applicant fails for a period of six months to reply or amend or appeal, whereupon the application shall be deemed to have been abandoned, unless it can be shown to the satisfaction of the Director that the delay in responding was unintentional, whereupon such time may be extended.

(c) Republication of marks registered under prior acts

A registrant of a mark registered under the provisions of the Act of March 3, 1881, or the Act of February 20, 1905, may, at any time prior to the expiration of the registration thereof, upon the payment of the prescribed fee file with the Director an affidavit setting forth those goods stated in the registration on which said mark is in use in commerce and that the registrant claims the benefits of this chapter for said mark. The Director shall publish notice thereof with a reproduction of said mark in the Official Gazette, and notify the registrant of such publication and of the requirement for the affidavit of use or nonuse as provided for in subsection (b) of section 1058 of this title. Marks published under this subsection shall not be subject to the provisions of section 1063 of this title.

(July 5, 1946, ch. 540, title I, §12, 60 Stat. 432; Pub. L. 87–772, §7, Oct. 9, 1962, 76 Stat. 770; Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 100–667, title I, §113, Nov. 16, 1988, 102 Stat. 3940; Pub. L. 105–330, title I, §104, Oct. 30, 1998, 112 Stat. 3066; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A–583.)

REFERENCES IN TEXT

Acts March 3, 1881 and February 20, 1905, referred to in subsec. (c), are acts Mar. 3, 1881, ch. 138, 21 Stat. 502 and Feb. 20, 1905, ch. 592, 33 Stat. 724, which were repealed insofar as inconsistent with this chapter by act July 5, 1946, ch. 540, §46(a), 60 Stat. 444. Act Feb. 20, 1905, was classified to sections 81 to 109 of this title.

PRIOR PROVISIONS

Acts Feb. 20, 1905, ch. 592, §6, 33 Stat. 726; Mar. 2, 1907, ch. 2573, §2, 34 Stat. 1252.

AMENDMENTS

1999—Pub. L. 106–113 substituted "Director" for "Commissioner" wherever appearing.

1998—Subsec. (b). Pub. L. 105–330 substituted "unintentional" for "unavoidable" in last sentence.

1988—Subsec. (a). Pub. L. 100–667 substituted "prescribed fee" for "fee herein provided", and "entitled to registration, or would be entitled to registration upon the acceptance of the statement of use required by section 1051(d) of this title, the" for "entitled to registration, the".

1975—Subsec. (a). Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

1962—Subsec. (a). Pub. L. 87–772 inserted proviso permitting publication of the mark in the case of an applicant claiming concurrent use, or an application to be placed in an interference, if such mark is otherwise registrable, subject to the determination of the rights of the parties.

Subsec. (c). Pub. L. 87–772 inserted "Marks published under" before "this subsection shall not be subject".

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–330 effective on the date that is 1 year after Oct. 30, 1998, see section 110 of Pub. L. 105–330, set out as a note under section 1051 of this title.

For provisions relating to applicability of amendment by Pub. L. 105–330 to applications for registration of trademarks, see section 109(b) of Pub. L. 105–330, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

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

§1063. Opposition to registration

(a) Any person who believes that he would be damaged by the registration of a mark upon the principal register, including the registration of any mark which would be likely to cause dilution by blurring or dilution by tarnishment under section 1125(c) of this title, may, upon payment of the prescribed fee, file an opposition in the Patent and Trademark Office, stating the grounds therefor, within thirty days after the publication under subsection (a) of section 1062 of this title of the mark sought to be registered. Upon written request prior to the expiration of the thirty-day period, the time for filing opposition shall be extended for an additional thirty days, and further extensions of time for filing opposition may be granted by the Director for good cause when requested prior to the expiration of an extension. The Director shall notify the applicant of each extension of the time for filing opposition. An opposition may be amended under such conditions as may be prescribed by the Director.

(b) Unless registration is successfully opposed—

(1) a mark entitled to registration on the principal register based on an application filed under section 1051(a) of this title or pursuant to section 1126 of this title shall be registered in the Patent and Trademark Office, a certificate of registration shall be issued, and notice of the registration shall be published in the Official Gazette of the Patent and Trademark Office; or

(2) a notice of allowance shall be issued to the applicant if the applicant applied for registration under section 1051(b) of this title.

(July 5, 1946, ch. 540, title I, §13, 60 Stat. 433; Pub. L. 87–772, §8, Oct. 9, 1962, 76 Stat. 771; Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 93–600, §1, Jan. 2, 1975, 88 Stat. 1955; Pub. L. 97–247, §9(a), Aug. 27, 1982, 96 Stat. 320; Pub. L. 100–667, title I, §114, Nov. 16, 1988, 102 Stat. 3940; Pub. L. 106–43, §2(b), Aug. 5, 1999, 113 Stat. 218; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A–583; Pub. L. 109–312, §3(b), Oct. 6, 2006, 120 Stat. 1732.)

PRIOR PROVISIONS

Acts Feb. 20, 1905, ch. 592, §§6, 7, 33 Stat. 726; Mar. 2, 1907, ch. 2573, §2, 34 Stat. 1252.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–312 substituted "the registration of any mark which would be likely to cause dilution by blurring or dilution by tarnishment" for "as a result of dilution".

1999—Subsec. (a). Pub. L. 106–113 substituted "Director" for "Commissioner" wherever appearing.

Pub. L. 106–43 inserted ", including as a result of dilution under section 1125(c) of this title," after "principal register" in first sentence.

1988—Pub. L. 100–667 designated existing provisions as subsec. (a), substituted "prescribed fee" for

"required fee", and added subsec. (b).

1982—Pub. L. 97–247 substituted "an" for "a verified" after "required fee, file", inserted "when requested prior to the expiration of an extension" after "Commissioner for good cause" and struck out provision that an unverified opposition could be filed by a duly authorized attorney, but such opposition would be null and void unless verified by the opposer within a reasonable time after such filing is fixed by the Commissioner.

1975—Pub. L. 93–600 substituted provisions relating to extensions of time for filing opposition upon written request prior to the expiration of the thirty-day period for an additional thirty days, and further extensions for good cause, for provisions relating to extensions of the time for filing opposition for good cause shown.

Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

1962—Pub. L. 87–772 inserted "An opposition may be amended under such conditions as may be prescribed by the Commissioner", and struck out "notice of" after "file a verified" and "time for filing".

EFFECTIVE DATE OF 1999 AMENDMENTS

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

Amendment by Pub. L. 106–43 effective Aug. 5, 1999, and applicable only to any application for registration filed on or after Jan. 16, 1996, see section 2(e) of Pub. L. 106–43, set out as a note under section 1052 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–247 effective six months after Aug. 27, 1982, see section 17(c) of Pub. L. 97–247, set out as a note under section 294 of Title 35, Patents.

EFFECTIVE DATE OF 1975 AMENDMENTS

Pub. L. 93–600, §4, Jan. 2, 1975, 88 Stat. 1955, provided that: "This Act [amending this section and sections 1071 and 1117 of this title] shall become effective upon enactment [Jan. 2, 1975], but shall not affect any suit, proceeding, or appeal then pending."

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

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

§1064. Cancellation of registration

A petition to cancel a registration of a mark, stating the grounds relied upon, may, upon payment of the prescribed fee, be filed as follows by any person who believes that he is or will be damaged, including as a result of a likelihood of dilution by blurring or dilution by tarnishment under section 1125(c) of this title, by the registration of a mark on the principal register established by this chapter, or under the Act of March 3, 1881, or the Act of February 20, 1905:

(1) Within five years from the date of the registration of the mark under this chapter.

(2) Within five years from the date of publication under section 1062(c) of this title of a mark registered under the Act of March 3, 1881, or the Act of February 20, 1905.

(3) At any time if the registered mark becomes the generic name for the goods or services, or a portion thereof, for which it is registered, or is functional, or has been abandoned, or its

registration was obtained fraudulently or contrary to the provisions of section 1054 of this title or of subsection (a), (b), or (c) of section 1052 of this title for a registration under this chapter, or contrary to similar prohibitory provisions of such prior Acts for a registration under such Acts, or if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used. If the registered mark becomes the generic name for less than all of the goods or services for which it is registered, a petition to cancel the registration for only those goods or services may be filed. A registered mark shall not be deemed to be the generic name of goods or services solely because such mark is also used as a name of or to identify a unique product or service. The primary significance of the registered mark to the relevant public rather than purchaser motivation shall be the test for determining whether the registered mark has become the generic name of goods or services on or in connection with which it has been used.

(4) At any time if the mark is registered under the Act of March 3, 1881, or the Act of February 20, 1905, and has not been published under the provisions of subsection (c) of section 1062 of this title.

(5) At any time in the case of a certification mark on the ground that the registrant (A) does not control, or is not able legitimately to exercise control over, the use of such mark, or (B) engages in the production or marketing of any goods or services to which the certification mark is applied, or (C) permits the use of the certification mark for purposes other than to certify, or (D) discriminately refuses to certify or to continue to certify the goods or services of any person who maintains the standards or conditions which such mark certifies:

Provided, That the Federal Trade Commission may apply to cancel on the grounds specified in paragraphs (3) and (5) of this section any mark registered on the principal register established by this chapter, and the prescribed fee shall not be required. Nothing in paragraph (5) shall be deemed to prohibit the registrant from using its certification mark in advertising or promoting recognition of the certification program or of the goods or services meeting the certification standards of the registrant. Such uses of the certification mark shall not be grounds for cancellation under paragraph (5), so long as the registrant does not itself produce, manufacture, or sell any of the certified goods or services to which its identical certification mark is applied.

(July 5, 1946, ch. 540, title I, §14, 60 Stat. 433; Pub. L. 87–772, §9, Oct. 9, 1962, 76 Stat. 771; Pub. L. 97–247, §9(b), Aug. 27, 1982, 96 Stat. 320; Pub. L. 98–620, title I, §102, Nov. 8, 1984, 98 Stat. 3335; Pub. L. 100–667, title I, §115, Nov. 16, 1988, 102 Stat. 3940; Pub. L. 105–330, title II, §201(a)(4), title III, §301, Oct. 30, 1998, 112 Stat. 3070; Pub. L. 106–43, §2(c), Aug. 5, 1999, 113 Stat. 218; Pub. L. 109–312, §3(c), Oct. 6, 2006, 120 Stat. 1732.)

REFERENCES IN TEXT

Acts March 3, 1881 and February 20, 1905, referred to in opening par. and pars. (2) and (4), are acts Mar. 3, 1881, ch. 138, 21 Stat. 502 and Feb. 20, 1905, ch. 592, 33 Stat. 724, which were repealed insofar as inconsistent with this chapter by act July 5, 1946, ch. 540, §46(a), 60 Stat. 444. Act Feb. 20, 1905, was classified to sections 81 to 109 of this title.

PRIOR PROVISIONS

Act Feb. 20, 1905, ch. 592, §13, 33 Stat. 728.

AMENDMENTS

2006—Pub. L. 109–312 substituted ", including as a result of a likelihood of dilution by blurring or dilution by tarnishment under section 1125(c) of this title," for ", including as a result of dilution under section 1125(c) of this title," in introductory provisions.

1999—Pub. L. 106–43 inserted ", including as a result of dilution under section 1125(c) of this title," after "damaged" in introductory provisions.

1998—Pub. L. 105–330, §301, inserted at end "Nothing in paragraph (5) shall be deemed to prohibit the registrant from using its certification mark in advertising or promoting recognition of the certification program or of the goods or services meeting the certification standards of the registrant. Such uses of the certification mark shall not be grounds for cancellation under paragraph (5), so long as the registrant does not itself

produce, manufacture, or sell any of the certified goods or services to which its identical certification mark is applied."

Par. (3). Pub. L. 105–330, §201(a)(4), inserted "or is functional," before "or has been abandoned".

1988—Pub. L. 100–667, §115(1), (7), in introductory provisions, inserted "as follows" and substituted "1905:" for "1905—", and in concluding proviso substituted "paragraphs (3) and (5)" for "subsections (c) and (e)".

Par. (1). Pub. L. 100–667, §115(2), substituted "(1) Within" for "(a) within" and "chapter." for "chapter; or".

Par. (2). Pub. L. 100–667, §115(3), substituted "(2) Within" for "(b) within", and "1905." for "1905; or".

Par. (3). Pub. L. 100–667, §115(4), substituted "(3)" for "(c)" and amended text generally. Prior to amendment, text read as follows: "at any time if the registered mark becomes the common descriptive name of an article or substance, or has been abandoned, or its registration was obtained fraudulently or contrary to the provisions of section 1054 of this title or of subsections (a), (b), or (c) of section 1052 of this title for a registration hereunder, or contrary to similar prohibitory provisions of said prior Acts for a registration thereunder, or if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services in connection with which the mark is used. A registered mark shall not be deemed to be the common descriptive name of goods or services solely because such mark is also used as a name of or to identify a unique product or service. The primary significance of the registered mark to the relevant public rather than purchaser motivation shall be the test for determining whether the registered mark has become the common descriptive name of goods or services in connection with which it has been used; or".

Par. (4). Pub. L. 100–667, §115(5), substituted "(4) At" for "(d) at", and "title." for "title; or".

Par. (5). Pub. L. 100–667, §115(6), substituted "(5) At" for "(e) at" and redesignated former pars. (1) to (4) as subpars. (A) to (D), respectively.

1984—Par. (c). Pub. L. 98–620 inserted provision that a registered mark shall not be deemed to be the common descriptive name of goods or services solely because such mark is also used as a name of or to identify a unique product or service, and that the primary significance of the registered mark to the relevant public rather than purchaser motivation shall be the test for determining whether the registered mark has become the common descriptive name of goods or services in connection with which it has been used.

1982—Pub. L. 97–247 struck out "verified" before "petition to cancel" in provision preceding par. (a).

1962—Pub. L. 87–772 inserted provisions which require a verified petition to cancel a registration, redesignated par. (d) as (e), added par. (d) which is composed of provisions formerly part of par. (c), and in said par. (c), substituted "registrant" for "assignee", and struck out "on which the patent has expired" before "or has been abandoned", and "has been assigned and" before "is being used by".

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–43 effective Aug. 5, 1999, and applicable only to any application for registration filed on or after Jan. 16, 1996, see section 2(e) of Pub. L. 106–43, set out as a note under section 1052 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 201(a)(4) of Pub. L. 105–330 effective Oct. 30, 1998, and applicable only to any civil action filed or proceeding before the United States Patent and Trademark Office commenced on or after such date relating to the registration of a mark, see section 201(b) of Pub. L. 105–330, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–247 effective six months after Aug. 27, 1982, see section 17(c) of Pub. L. 97–247, set out as a note under section 294 of Title 35, Patents.

FINALITY OF JUDGMENTS PRIOR TO NOVEMBER 8, 1984

Pub. L. 98–620, title I, §104, Nov. 8, 1984, 98 Stat. 3336, provided that: "Nothing in this title [amending this section and section 1127 of this title and enacting provisions set out as a note under section 1051 of this title] shall be construed to provide a basis for reopening of any final judgment entered prior to the date of enactment of this title [Nov. 8, 1984]."

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

RESTRICTION ON USE OF FUNDS TO CANCEL REGISTRATION OF TRADEMARKS

For provisions restricting the use of funds authorized to be appropriated to carry out section 41 et seq. of this title for fiscal year 1980, 1981, or 1982, for the purpose of taking any action under this section with respect to the cancellation of the registration of any mark on the ground that such mark has become the common descriptive name of an article or substance, see section 18 of Pub. L. 96–252, set out as a note under section 57c of this title.

§1065. Incontestability of right to use mark under certain conditions

Except on a ground for which application to cancel may be filed at any time under paragraphs (3) and (5) of section 1064 of this title, and except to the extent, if any, to which the use of a mark registered on the principal register infringes a valid right acquired under the law of any State or Territory by use of a mark or trade name continuing from a date prior to the date of registration under this chapter of such registered mark, the right of the owner to use such registered mark in commerce for the goods or services on or in connection with which such registered mark has been in continuous use for five consecutive years subsequent to the date of such registration and is still in use in commerce, shall be incontestable: *Provided*, That—

(1) there has been no final decision adverse to the owner's claim of ownership of such mark for such goods or services, or to the owner's right to register the same or to keep the same on the register; and

(2) there is no proceeding involving said rights pending in the United States Patent and Trademark Office or in a court and not finally disposed of; and

(3) an affidavit is filed with the Director within one year after the expiration of any such five-year period setting forth those goods or services stated in the registration on or in connection with which such mark has been in continuous use for such five consecutive years and is still in use in commerce, and other matters specified in paragraphs (1) and (2) of this section; and

(4) no incontestable right shall be acquired in a mark which is the generic name for the goods or services or a portion thereof, for which it is registered.

Subject to the conditions above specified in this section, the incontestable right with reference to a mark registered under this chapter shall apply to a mark registered under the Act of March 3, 1881, or the Act of February 20, 1905, upon the filing of the required affidavit with the Director within one year after the expiration of any period of five consecutive years after the date of publication of a mark under the provisions of subsection (c) of section 1062 of this title.

The Director shall notify any registrant who files the above-prescribed affidavit of the filing thereof.

(July 5, 1946, ch. 540, title I, §15, 60 Stat. 433; Pub. L. 87–772, §10, Oct. 9, 1962, 76 Stat. 771; Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 97–247, §10, Aug. 27, 1982, 96 Stat. 320; Pub. L. 100–667, title I, §116, Nov. 16, 1988, 102 Stat. 3941; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A–583; Pub. L. 111–146, §3(b), Mar. 17, 2010, 124 Stat. 67.)

REFERENCES IN TEXT

Acts March 3, 1881 and February 20, 1905, referred to in text, are acts Mar. 3, 1881, ch. 138, 21 Stat. 502 and Feb. 20, 1905, ch. 592, 33 Stat. 724, which were repealed insofar as inconsistent with this chapter by act

July 5, 1946, ch. 540, §46(a), 60 Stat. 444. Act Feb. 20, 1905, was classified to sections 81 to 109 of this title.

AMENDMENTS

2010—Pub. L. 111–146, §3(b)(1), substituted "right of the owner" for "right of the registrant" in introductory provisions.

Par. (1). Pub. L. 111–146, §3(b)(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "there has been no final decision adverse to registrant's claim of ownership of such mark for such goods or services, or to registrant's right to register the same or to keep the same on the register; and".

Par. (2). Pub. L. 111–146, §3(b)(3), inserted "United States" before "Patent and Trademark Office".

1999—Pub. L. 106–113 substituted "Director" for "Commissioner" in par. (3) and in two places in concluding provisions.

1988—Pub. L. 100–667, in introductory provisions, substituted "paragraphs (3) and (5)" for "subsections (c) and (e)", in par. (3) "paragraphs" for "subsections", and in par. (4) "the generic name for the goods or services or a portion thereof, for which it is registered" for "the common descriptive name of any article or substance, patented or otherwise".

1982—Pub. L. 97–247 substituted "registration" for "the publication" in provision preceding par. (1).

1975—Par. (2). Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

1962—Pub. L. 87–772 substituted "(c) and (e) of section 1064" for "(c) and (d) of section 1064" in provision preceding par. (1), and struck out "or trade name" after "in a mark" in par. (4).

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–247 effective six months after Aug. 27, 1982, see section 17(c) of Pub. L. 97–247, set out as a note under section 294 of Title 35, Patents.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

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

§1066. Interference; declaration by Director

Upon petition showing extraordinary circumstances, the Director may declare that an interference exists when application is made for the registration of a mark which so resembles a mark previously registered by another, or for the registration of which another has previously made application, as to be likely when used on or in connection with the goods or services of the applicant to cause confusion or mistake or to deceive. No interference shall be declared between an application and the registration of a mark the right to the use of which has become incontestable.

(July 5, 1946, ch. 540, title I, §16, 60 Stat. 434; Pub. L. 87–772, §11, Oct. 9, 1962, 76 Stat. 771; Pub. L. 97–247, §11, Aug. 27, 1982, 96 Stat. 321; Pub. L. 100–667, title I, §117, Nov. 16, 1988, 102 Stat. 3941; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat.

1536, 1501A–583.)

PRIOR PROVISIONS

Act Feb. 20, 1905, ch. 592, §7, 33 Stat. 726.

AMENDMENTS

1999—Pub. L. 106–113 substituted "Director" for "Commissioner".

1988—Pub. L. 100–667 substituted "used on or in connection with the goods or services" for "applied to the goods or when used in connection with the services".

1982—Pub. L. 97–247 substituted "Upon petition showing extraordinary circumstances, the Commissioner may declare that an interference exists when application is made for the registration of a mark which so resembles a mark previously registered by another, or for the registration of which another has previously made application, as to be likely when applied to the goods or when used in connection with the services of the applicant to cause confusion or mistake or to deceive" for "Whenever application is made for the registration of a mark which so resembles a mark previously registered by another, or for the registration of which another has previously made application, as to be likely when applied to the goods or when used in connection with the services of the applicant to cause confusion or mistake or to deceive, the Commissioner may declare that an interference exists".

1962—Pub. L. 87–772 struck out "purchasers" after "or to deceive".

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–247 effective six months after Aug. 27, 1982, see section 17(c) of Pub. L. 97–247, set out as a note under section 294 of Title 35, Patents.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

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

§1067. Interference, opposition, and proceedings for concurrent use registration or for cancellation; notice; Trademark Trial and Appeal Board

(a) In every case of interference, opposition to registration, application to register as a lawful concurrent user, or application to cancel the registration of a mark, the Director shall give notice to all parties and shall direct a Trademark Trial and Appeal Board to determine and decide the respective rights of registration.

(b) The Trademark Trial and Appeal Board shall include the Director, Deputy [1] Director of the United States Patent and Trademark Office [2] the Commissioner for Patents, the Commissioner for Trademarks, and administrative trademark judges who are appointed by the Secretary of Commerce, in consultation with the Director.

(c) AUTHORITY OF THE SECRETARY.—The Secretary of Commerce may, in his or her discretion, deem the appointment of an administrative trademark judge who, before August 12, 2008, held office pursuant to an appointment by the Director to take effect on the date on which the

Director initially appointed the administrative trademark judge.

(d) DEFENSE TO CHALLENGE OF APPOINTMENT.—It shall be a defense to a challenge to the appointment of an administrative trademark judge on the basis of the judge's having been originally appointed by the Director that the administrative trademark judge so appointed was acting as a de facto officer.

(July 5, 1946, ch. 540, title I, §17, 60 Stat. 434; Pub. L. 85–609, §1(a), Aug. 8, 1958, 72 Stat. 540; Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 96–455, §1, Oct. 15, 1980, 94 Stat. 2024; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4716], Nov. 29, 1999, 113 Stat. 1536, 1501A–580; Pub. L. 107–273, div. C, title III, §13203(a)(1), Nov. 2, 2002, 116 Stat. 1902; Pub. L. 110–313, §1(b), Aug. 12, 2008, 122 Stat. 3014.)

PRIOR PROVISIONS

Act Feb. 20, 1905, ch. 592, §7, 33 Stat. 726.

AMENDMENTS

2008—Subsec. (b). Pub. L. 110–313, §1(b)(1), inserted "Deputy Director of the United States Patent and Trademark Office" after "Director," and substituted "appointed by the Secretary of Commerce, in consultation with the Director" for "appointed by the Director".

Subsecs. (c), (d). Pub. L. 110–313, §1(b)(2), added subsecs. (c) and (d).

2002—Subsec. (b). Pub. L. 107–273, which directed amendment of subsec. (b) by inserting "the Deputy Commissioner," after "Commissioner,", could not be executed because "Commissioner," does not appear in text.

1999—Pub. L. 106–113 amended section generally. Prior to amendment, section read as follows:

"In every case of interference, opposition to registration, application to register as a lawful concurrent user, or application to cancel the registration of a mark, the Commissioner shall give notice to all parties and shall direct a Trademark Trial and Appeal Board to determine and decide the respective rights of registration.

"The Trademark Trial and Appeal Board shall include the Commissioner, the Deputy Commissioner, the Assistant Commissioners, and members appointed by the Commissioner. Employees of the Patent and Trademark Office and other persons, all of whom shall be competent in trademark law, shall be eligible for appointment as members. Each case shall be heard by at least three members of the Board, the members hearing such case to be designated by the Commissioner."

1980—Pub. L. 96–455 inserted provisions requiring that the Trademark Trial and Appeal Board include the Deputy Commissioner and members appointed by the Commissioner and provisions that employees of the Patent and Trademark Office and other persons, all of whom shall be competent in trademark law, shall be eligible for appointment as members; and struck out provision that the Board include Patent and Trademark Office employees, designated by the Commissioner and whose qualifications have been approved by the Civil Service Commission as being adequate for appointment to the position of examiner in charge of interferences.

1975—Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

1958—Pub. L. 85–609 substituted "a Trademark Trial and Appeal Board" for "the examiner in charge of interferences" in first paragraph, and inserted second paragraph relating to the composition of the Board.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

EFFECTIVE DATE OF 1980 AMENDMENT; BOARD MEMBERSHIP AS OF OCTOBER 15, 1980, UNAFFECTED

Pub. L. 96–455, §2, Oct. 15, 1980, 94 Stat. 2024, provided that: "This amendment [amending this section] shall become effective on the date of its enactment [Oct. 15, 1980]. Members of the Trademark Trial and Appeal Board on the date of enactment shall continue to be members under and in accordance with the provisions of section 17 of the Act of July 5, 1946, as amended [this section], in effect immediately preceding the date of enactment."

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–609, §3, Aug. 8, 1958, 72 Stat. 541, provided that: "This Act [amending this section and sections 1070, 1071, 1092, and 1113 of this title] shall take effect on approval [Aug. 8, 1958]; it shall apply to ex parte appeals taken to the Commissioner prior to the date of approval which have not been heard but shall not apply to any such appeal which has been heard or decided in which event further proceedings may be had as though this Act had not been passed; it shall apply to inter partes cases instituted prior to the date of approval which have not been heard by an examiner of interferences, but shall not apply to any such case which has been heard or decided by an examiner of interferences in which event further proceedings may be had as though this Act had not passed."

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

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

REORGANIZATION PLAN NO. 5 OF 1950

Pub. L. 85–609, §2, Aug. 8, 1958, 72 Stat. 540, provided that: "The provisions of this Act [amending this section and sections 1070, 1071, 1092, and 1113 of this title] shall be subject to Reorganization Plan No. 5 of 1950 (64 Stat. 1263)."

[1] So in original. Probably should be preceded by "the".

[2] So in original. Probably should be followed by a comma.

§1068. Action of Director in interference, opposition, and proceedings for concurrent use registration or for cancellation

In such proceedings the Director may refuse to register the opposed mark, may cancel the registration, in whole or in part, may modify the application or registration by limiting the goods or services specified therein, may otherwise restrict or rectify with respect to the register the registration of a registered mark, may refuse to register any or all of several interfering marks, or may register the mark or marks for the person or persons entitled thereto, as the rights of the parties under this chapter may be established in the proceedings: *Provided*, That in the case of the registration of any mark based on concurrent use, the Director shall determine and fix the conditions and limitations provided for in subsection (d) of section 1052 of this title. However, no final judgment shall be entered in favor of an applicant under section 1051(b) of this title before the mark is registered, if such applicant cannot prevail without establishing constructive use pursuant to section 1057(c) of this title.

(July 5, 1946, ch. 540, title I, §18, 60 Stat. 434; Pub. L. 100–667, title I, §118, Nov. 16, 1988, 102 Stat. 3941; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A–583.)

PRIOR PROVISIONS

Act Feb. 20, 1905, ch. 592, §§7, 13, 33 Stat. 726, 728.

AMENDMENTS

1999—Pub. L. 106–113 substituted "Director" for "Commissioner" in two places.

1988—Pub. L. 100–667 substituted "the registration, in whole or in part, may modify the application or registration by limiting the goods or services specified therein, may otherwise restrict or rectify with respect to

the register" for "or restrict", and "may refuse" for "or may refuse", and inserted provisions that no final judgment be entered before mark is registered if applicant cannot prevail without establishing constructive use.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

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

§1069. Application of equitable principles in inter partes proceedings

In all inter partes proceedings equitable principles of laches, estoppel, and acquiescence, where applicable may be considered and applied.

(July 5, 1946, ch. 540, title I, §19, 60 Stat. 434; Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 100–667, title I, §119, Nov. 16, 1988, 102 Stat. 3941.)

AMENDMENTS

1988—Pub. L. 100–667 struck out at end "The provisions of this section shall also govern proceedings heretofore begun in the Patent and Trademark Office and not finally determined."

1975—Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

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

§1070. Appeals to Trademark Trial and Appeal Board from decisions of examiners

An appeal may be taken to the Trademark Trial and Appeal Board from any final decision of the examiner in charge of the registration of marks upon the payment of the prescribed fee.

(July 5, 1946, ch. 540, title I, §20, 60 Stat. 435; Pub. L. 85–609, §1(b), Aug. 8, 1958, 72 Stat. 540.)

PRIOR PROVISIONS

Act Feb. 20, 1905, ch. 592, §§8, 13, 33 Stat. 726, 728.

AMENDMENTS

1958—Pub. L. 85–609 substituted "Trademark Trial and Appeal Board" for "Commissioner in person" and "fee" for "fees", and struck out "of interferences or" after "examiner in charge".

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date and applicability of amendment by Pub. L. 85–609, see section 3 of Pub. L. 85–609, set out as a note under section 1067 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

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

REORGANIZATION PLAN NO. 5 OF 1950

Amendment by Pub. L. 85–609 as subject to Reorganization Plan No. 5 of 1950, see note set out under section 1067 of this title.

§1071. Appeal to courts

(a) Persons entitled to appeal; United States Court of Appeals for the Federal Circuit; waiver of civil action; election of civil action by adverse party; procedure

(1) An applicant for registration of a mark, party to an interference proceeding, party to an opposition proceeding, party to an application to register as a lawful concurrent user, party to a cancellation proceeding, a registrant who has filed an affidavit as provided in section 1058 of this title or section 1141k of this title, or an applicant for renewal, who is dissatisfied with the decision of the Director or Trademark Trial and Appeal Board, may appeal to the United States Court of Appeals for the Federal Circuit thereby waiving his right to proceed under subsection (b) of this section: *Provided*, That such appeal shall be dismissed if any adverse party to the proceeding, other than the Director, shall, within twenty days after the appellant has filed notice of appeal according to paragraph (2) of this subsection, files notice with the Director that he elects to have all further proceedings conducted as provided in subsection (b) of this section. Thereupon the appellant shall have thirty days thereafter within which to file a civil action under subsection (b) of this section, in default of which the decision appealed from shall govern the further proceedings in the case.

(2) When an appeal is taken to the United States Court of Appeals for the Federal Circuit, the appellant shall file in the United States Patent and Trademark Office a written notice of appeal directed to the Director, within such time after the date of the decision from which the appeal is taken as the Director prescribes, but in no case less than 60 days after that date.

(3) The Director shall transmit to the United States Court of Appeals for the Federal Circuit a certified list of the documents comprising the record in the United States Patent and Trademark Office. The court may request that the Director forward the original or certified copies of such documents during pendency of the appeal. In an ex parte case, the Director shall submit to that court a brief explaining the grounds for the decision of the United States Patent and Trademark Office, addressing all the issues involved in the appeal. The court shall, before hearing an appeal, give notice of the time and place of the hearing to the Director and the parties in the appeal.

(4) The United States Court of Appeals for the Federal Circuit shall review the decision from

which the appeal is taken on the record before the United States Patent and Trademark Office. Upon its determination the court shall issue its mandate and opinion to the Director, which shall be entered of record in the United States Patent and Trademark Office and shall govern the further proceedings in the case. However, no final judgment shall be entered in favor of an applicant under section 1051(b) of this title before the mark is registered, if such applicant cannot prevail without establishing constructive use pursuant to section 1057(c) of this title.

(b) Civil action; persons entitled to; jurisdiction of court; status of Director; procedure

(1) Whenever a person authorized by subsection (a) of this section to appeal to the United States Court of Appeals for the Federal Circuit is dissatisfied with the decision of the Director or Trademark Trial and Appeal Board, said person may, unless appeal has been taken to said United States Court of Appeals for the Federal Circuit, have remedy by a civil action if commenced within such time after such decision, not less than sixty days, as the Director appoints or as provided in subsection (a) of this section. The court may adjudge that an applicant is entitled to a registration upon the application involved, that a registration involved should be canceled, or such other matter as the issues in the proceeding require, as the facts in the case may appear. Such adjudication shall authorize the Director to take any necessary action, upon compliance with the requirements of law. However, no final judgment shall be entered in favor of an applicant under section 1051(b) of this title before the mark is registered, if such applicant cannot prevail without establishing constructive use pursuant to section 1057(c) of this title.

(2) The Director shall not be made a party to an inter partes proceeding under this subsection, but he shall be notified of the filing of the complaint by the clerk of the court in which it is filed and shall have the right to intervene in the action.

(3) In any case where there is no adverse party, a copy of the complaint shall be served on the Director, and, unless the court finds the expenses to be unreasonable, all the expenses of the proceeding shall be paid by the party bringing the case, whether the final decision is in favor of such party or not. In suits brought hereunder, the record in the United States Patent and Trademark Office shall be admitted on motion of any party, upon such terms and conditions as to costs, expenses, and the further cross-examination of the witnesses as the court imposes, without prejudice to the right of any party to take further testimony. The testimony and exhibits of the record in the United States Patent and Trademark Office, when admitted, shall have the same effect as if originally taken and produced in the suit.

(4) Where there is an adverse party, such suit may be instituted against the party in interest as shown by the records of the United States Patent and Trademark Office at the time of the decision complained of, but any party in interest may become a party to the action. If there are adverse parties residing in a plurality of districts not embraced within the same State, or an adverse party residing in a foreign country, the United States District Court for the Eastern District of Virginia shall have jurisdiction and may issue summons against the adverse parties directed to the marshal of any district in which any adverse party resides. Summons against adverse parties residing in foreign countries may be served by publication or otherwise as the court directs.

(July 5, 1946, ch. 540, title I, §21, 60 Stat. 435; July 19, 1952, ch. 950, §2, 66 Stat. 814; Pub. L. 85–609, §1(c), Aug. 8, 1958, 72 Stat. 540; Pub. L. 87–772, §12, Oct. 9, 1962, 76 Stat. 771; Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 93–600, §2, Jan. 2, 1975, 88 Stat. 1955; Pub. L. 97–164, title I, §162(1), Apr. 2, 1982, 96 Stat. 49; Pub. L. 98–620, title IV, §414(b), Nov. 8, 1984, 98 Stat. 3363; Pub. L. 100–667, title I, §120, Nov. 16, 1988, 102 Stat. 3942; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A–583; Pub. L. 111–146, §3(c), Mar. 17, 2010, 124 Stat. 67; Pub. L. 112–29, §9(a), Sept. 16, 2011, 125 Stat. 316.)

CODIFICATION

Pub. L. 93–596, which provided for the substitution of "Patent and Trademark Office" for "Patent Office" each time appearing in this chapter, became effective Jan. 2, 1975, as did Pub. L. 93–600, which in the course of amending subsec. (a)(3) and (4) of this section, referred merely to "Patent Office". "Patent and Trademark Office" has been substituted for "Patent Office" in subsec. (a)(3) and (4) on authority of Pub. L. 93–596.

PRIOR PROVISIONS

Acts Feb. 20, 1905, ch. 592, §§9, 22, 33 Stat. 727, 729; Mar. 2, 1929, ch. 488, §2(b), 45 Stat. 1478.

AMENDMENTS

2011—Subsec. (b)(4). Pub. L. 112–29 substituted "United States District Court for the Eastern District of Virginia" for "United States District Court for the District of Columbia".

2010—Subsec. (a)(1). Pub. L. 111–146, §3(c)(2), inserted "or section 1141k of this title" after "section 1058 of this title".

Subsec. (a)(2) to (4). Pub. L. 111–146, §3(c)(1), inserted "United States" before "Patent and Trademark Office" wherever appearing.

Subsec. (b)(3). Pub. L. 111–146, §3(c)(1), inserted "United States" before "Patent and Trademark Office" in two places.

Subsec. (b)(4). Pub. L. 111–146, §3(c)(1), (3), inserted "United States" before "Patent and Trademark Office" and substituted "If there are" for "If there be".

1999—Pub. L. 106–113 substituted "Director" for "Commissioner" wherever appearing.

1988—Subsec. (a)(1). Pub. L. 100–667, §120(1), made technical amendments to references in the original act to subsection (b) of this section resulting in no change in text, and substituted "paragraph (2) of this subsection" for "subsection (a)(2) of this section" and "action under subsection" for "action under said subsection".

Subsec. (a)(4). Pub. L. 100–667, §120(2), inserted provision that no final judgment be entered before mark is registered if applicant cannot prevail without establishing constructive use.

Subsec. (b)(1). Pub. L. 100–667, §120(3), made technical amendments to references in the original act to subsection (a) of this section resulting in no change in text and inserted provision that no final judgment be entered before mark is registered if applicant cannot prevail without establishing constructive use.

Subsec. (b)(3). Pub. L. 100–667, §120(4), amended first sentence generally. Prior to amendment, first sentence read as follows: "In all cases where there is no adverse party, a copy of the complaint shall be served on the Commissioner; and all the expenses of the proceedings shall be paid by the party bringing them, whether the final decision is in his favor or not."

1984—Subsec. (a)(2). Pub. L. 98–620 substituted provisions requiring the appellant to file a written notice of appeal in the Patent and Trademark Office directed to the Commissioner for provisions requiring the appellant to file the notice of appeal with the Commissioner, and struck out provision which required the notice of appeal to specify the party or parties taking the appeal, to designate the decision or part thereof appealed from, and to state that the appeal was being taken to the United States Court of Appeals for the Federal Circuit.

Subsec. (a)(3). Pub. L. 98–620 substituted provisions requiring the Commissioner to transmit to the United States Court of Appeals for the Federal Circuit a certified list of the documents comprising the record in the Patent and Trademark Office for provisions which required the Commissioner to transmit to the court certified copies of all the necessary original papers and evidence in the case specified by the appellant, and any additional papers and evidence specified by the appellee, and inserted provision that the court may request that the Commissioner forward the original or certified copies of such documents during the pendency of the appeal.

Subsec. (a)(4). Pub. L. 98–620 substituted provisions requiring the court to review the decision from which the appeal is taken on the record before the Patent and Trademark Office, and, upon its determination, to issue its mandate and opinion to the Commissioner for provisions which required the court to decide such appeal on the evidence produced before the Patent and Trademark Office and to return to the Commissioner a certificate of its proceedings and decision.

1982—Subsecs. (a)(1), (2), (b)(1). Pub. L. 97–164 substituted "United States Court of Appeals for the Federal Circuit" for "United States Court of Customs and Patent Appeals" and "Court of Customs and Patent Appeals" wherever appearing.

1975—Subsec. (a)(2). Pub. L. 93–600 substituted provisions relating to filing of notice of appeal with the Commissioner and the contents of such notice of appeal, for provisions relating to giving notice of appeal to the Commissioner and requiring filing in the Patent Office reasons for appeal.

Subsec. (a)(3). Pub. L. 93–600 inserted provision requiring the Commissioner to furnish the court with a brief explaining the grounds of the decision of the Office.

Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

Subsec. (a)(4). Pub. L. 93–600 substituted "decide" for "hear and determine" and struck out "Upon its determination," before "the court shall return" and provision requiring the decision to be confined to the points set forth in the reasons of appeal.

Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office" in two places.

Subsec. (b)(3), (4). Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

1962—Pub. L. 87–772 amended section generally, and among other changes, incorporated with necessary changes in language, the various provisions of Title 35, Patents, relating to the procedure of appeals to the Court of Customs and Patent Appeals and review by civil action in patent cases, which had previously been incorporated by reference only.

1958—Pub. L. 85–609 authorized appeals by persons dissatisfied with the decision of the Trademark Trial and Appeal Board, and substituted "Trademark Trial and Appeal Board" for "Commissioner" in proviso.

1952—Act July 19, 1952, substituted references to new title 35 for repealed section of title 35.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112–29, §9(b), Sept. 16, 2011, 125 Stat. 316, provided that: "The amendments made by this section [amending this section and sections 32, 145, 146, 154, and 293 of Title 35, Patents] shall take effect on the date of the enactment of this Act [Sept. 16, 2011] and shall apply to any civil action commenced on or after that date."

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 applicable to proceedings pending in the Patent and Trademark Office on Nov. 8, 1984, and to appeals pending in the United States Court of Appeals for the Federal Circuit on that date, see section 414(c) of Pub. L. 98–620, set out as a note under section 142 of Title 35, Patents.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1975 AMENDMENTS

Amendment by Pub. L. 93–600 effective Jan. 2, 1975, but not to affect any suit, proceeding, or appeal then pending, see section 4 of Pub. L. 93–600, set out as a note under section 1063 of this title.

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date and applicability of amendment by Pub. L. 85–609, see section 3 of Pub. L. 85–609, set out as a note under section 1067 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

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

REORGANIZATION PLAN NO. 5 OF 1950

Amendment by Pub. L. 85–609 as subject to Reorganization Plan No. 5 of 1950, see note set out under section 1067 of this title.

§1072. Registration as constructive notice of claim of ownership

Registration of a mark on the principal register provided by this chapter or under the Act of March

3, 1881, or the Act of February 20, 1905, shall be constructive notice of the registrant's claim of ownership thereof.

(July 5, 1946, ch. 540, title I, §22, 60 Stat. 435.)

REFERENCES IN TEXT

Acts March 3, 1881, and February 20, 1905, referred to in text, are acts Mar. 3, 1881, ch. 138, 21 Stat. 502 and Feb. 20, 1905, ch. 592, 33 Stat. 724, which were repealed insofar as inconsistent with this chapter by act July 5, 1946, ch. 540, §46(a), 60 Stat. 444. Act Feb. 20, 1905, was classified to sections 81 to 109 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

SUBCHAPTER II—THE SUPPLEMENTAL REGISTER

§1091. Supplemental register

(a) Marks registerable

In addition to the principal register, the Director shall keep a continuation of the register provided in paragraph (b) of section 1 of the Act of March 19, 1920, entitled "An Act to give effect to certain provisions of the convention for the protection of trademarks and commercial names, made and signed in the city of Buenos Aires, in the Argentine Republic, August 20, 1910, and for other purposes", to be called the supplemental register. All marks capable of distinguishing applicant's goods or services and not registrable on the principal register provided in this chapter, except those declared to be unregistrable under subsections (a), (b), (c), (d), and (e)(3) of section 1052 of this title, which are in lawful use in commerce by the owner thereof, on or in connection with any goods or services may be registered on the supplemental register upon the payment of the prescribed fee and compliance with the provisions of subsections (a) and (e) of section 1051 of this title so far as they are applicable. Nothing in this section shall prevent the registration on the supplemental register of a mark, capable of distinguishing the applicant's goods or services and not registrable on the principal register under this chapter, that is declared to be unregistrable under section 1052(e)(3) of this title, if such mark has been in lawful use in commerce by the owner thereof, on or in connection with any goods or services, since before December 8, 1993.

(b) Application and proceedings for registration

Upon the filing of an application for registration on the supplemental register and payment of the prescribed fee the Director shall refer the application to the examiner in charge of the registration of marks, who shall cause an examination to be made and if on such examination it shall appear that the applicant is entitled to registration, the registration shall be granted. If the applicant is found not entitled to registration the provisions of subsection (b) of section 1062 of this title shall apply.

(c) Nature of mark

For the purposes of registration on the supplemental register, a mark may consist of any trademark, symbol, label, package, configuration of goods, name, word, slogan, phrase, surname, geographical name, numeral, device, any matter that as a whole is not functional, or any combination of any of the foregoing, but such mark must be capable of distinguishing the applicant's goods or services.

(July 5, 1946, ch. 540, title II, §23, 60 Stat. 435; Pub. L. 87–772, §13, Oct. 9, 1962, 76 Stat. 773; Pub. L. 100–667, title I, §121, Nov. 16, 1988, 102 Stat. 3942; Pub. L. 103–182, title III, §333(b), Dec. 8, 1993, 107 Stat. 2114; Pub. L. 105–330, title II, §201(a)(5), Oct. 30, 1998, 112 Stat. 3070;

Pub. L. 106–43, §6(b), Aug. 5, 1999, 113 Stat. 220; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A–583; Pub. L. 107–273, div. C, title III, §13207(b)(6), Nov. 2, 2002, 116 Stat. 1908.)

REFERENCES IN TEXT

Paragraph (b) of section 1 of the Act of March 19, 1920, referred to in subsec. (a), is paragraph (b) of section 1 of act Mar. 19, 1920, ch. 104, 41 Stat. 533, which was classified to section 121(b) of this title, and repealed by act July 5, 1946, ch. 540, §46(a), 60 Stat. 444, insofar as inconsistent.

PRIOR PROVISIONS

Acts Mar. 19, 1920, ch. 104, §1, 41 Stat. 533; Apr. 11, 1930, ch. 132, §4, 46 Stat. 155; June 10, 1938, ch. 332, §2, 52 Stat. 638.

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–273 struck out second comma after "numeral".

1999—Subsec. (a). Pub. L. 106–113 substituted "Director" for "Commissioner".

Pub. L. 106–43 substituted "trademarks" for "trade-marks".

Subsec. (b). Pub. L. 106–113 substituted "Director" for "Commissioner".

1998—Subsec. (c). Pub. L. 105–330 substituted ", device, any matter that as a whole is not functional," for "or device".

1993—Subsec. (a). Pub. L. 103–182 substituted "(d), and (e)(3)" for "and (d)" and inserted at end "Nothing in this section shall prevent the registration on the supplemental register of a mark, capable of distinguishing the applicant's goods or services and not registrable on the principal register under this chapter, that is declared to be unregistrable under section 1052(e)(3) of this title, if such mark has been in lawful use in commerce by the owner thereof, on or in connection with any goods or services, since before December 8, 1993."

1988—Pub. L. 100–667, §121(6), struck out undesignated concluding par. which read as follows: "Upon a proper showing by the applicant that he requires domestic registration as a basis for foreign protection of his mark, the Commissioner may waive the requirement of a full year's use and may grant registration forthwith."

Subsec. (a). Pub. L. 100–667, §121(1), (4), designated first par. as subsec. (a), made technical amendment to reference in the original act to subsections (a), (b), (c), and (d) of section 1052 of this title resulting in no change in text, substituted "are in lawful use in commerce by the owner thereof, on" for "have been in lawful use in commerce by the proprietor thereof, upon", struck out "for the year preceding the filing of the application" after "any goods and services", and inserted "subsections (a) and (e) of" before "section 1051".

Subsec. (b). Pub. L. 100–667, §121(2), (5), designated second par. as subsec. (b) and substituted "prescribed fee" for "fee herein provided".

Subsec. (c). Pub. L. 100–667, §121(3), designated third par. as subsec. (c).

1962—Pub. L. 87–772 struck out "has begun the lawful use of his mark in foreign commerce and that he" before "requires domestic registration" in last par.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–330 effective Oct. 30, 1998, and applicable only to any civil action filed or proceeding before the United States Patent and Trademark Office commenced on or after such date relating to the registration of a mark, see section 201(b) of Pub. L. 105–330, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–182 applicable only to trademark applications filed on or after Dec. 8, 1993, see section 335(c) of Pub. L. 103–182, set out in a note under section 1052 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations

and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

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

§1092. Publication; not subject to opposition; cancellation

Marks for the supplemental register shall not be published for or be subject to opposition, but shall be published on registration in the Official Gazette of the Patent and Trademark Office. Whenever any person believes that such person is or will be damaged by the registration of a mark on the supplemental register—

(1) for which the effective filing date is after the date on which such person's mark became famous and which would be likely to cause dilution by blurring or dilution by tarnishment under section 1125(c) of this title; or

(2) on grounds other than dilution by blurring or dilution by tarnishment,

such person may at any time, upon payment of the prescribed fee and the filing of a petition stating the ground therefor, apply to the Director to cancel such registration. The Director shall refer such application to the Trademark Trial and Appeal Board which shall give notice thereof to the registrant. If it is found after a hearing before the Board that the registrant is not entitled to registration, or that the mark has been abandoned, the registration shall be canceled by the Director. However, no final judgment shall be entered in favor of an applicant under section 1051(b) of this title before the mark is registered, if such applicant cannot prevail without establishing constructive use pursuant to section 1057(c) of this title.

(July 5, 1946, ch. 540, title II, §24, 60 Stat. 436; Pub. L. 85–609, §1(d), Aug. 8, 1958, 72 Stat. 540; Pub. L. 87–772, §14, Oct. 9, 1962, 76 Stat. 773; Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 100–667, title I, §122, Nov. 16, 1988, 102 Stat. 3943; Pub. L. 106–43, §2(d), Aug. 5, 1999, 113 Stat. 218; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A–583; Pub. L. 109–312, §3(d), Oct. 6, 2006, 120 Stat. 1732.)

PRIOR PROVISIONS

Act Mar. 19, 1920, ch. 104, §2, 41 Stat. 534.

AMENDMENTS

2006—Pub. L. 109–312 amended second sentence generally. Prior to amendment, second sentence read as follows: "Whenever any person believes that he is or will be damaged by the registration of a mark on this register, including as a result of dilution under section 1125(c) of this title, he may at any time, upon payment of the prescribed fee and the filing of a petition stating the ground therefor, apply to the Director to cancel such registration." The words following "tarnishment," in second sentence are shown as a flush provision notwithstanding directory language showing them as part of cl. (2), to reflect the probable intent of Congress.

1999—Pub. L. 106–113 substituted "Director" for "Commissioner" wherever appearing.

Pub. L. 106–43 inserted ", including as a result of dilution under section 1125(c) of this title," after "register" in second sentence.

1988—Pub. L. 100–667 struck out "verified" after "filing of a", substituted "is not entitled to registration," for "was not entitled to register the mark at the time of his application for registration thereof," struck out "is not used by the registrant or" after "that the mark", and inserted provision that no final judgment be entered before mark is registered if applicant cannot prevail without establishing constructive use.

1975—Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

1962—Pub. L. 87–772 provided for payment of the prescribed fee and the filing of a verified petition.

1958—Pub. L. 85–609 substituted provisions requiring the Commissioner to refer applications to the Trademark Trial and Appeal Board for provisions which required referral to the examiner in charge of interferences.

EFFECTIVE DATE OF 1999 AMENDMENTS

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

Amendment by Pub. L. 106–43 effective Aug. 5, 1999, and applicable only to any application for registration filed on or after Jan. 16, 1996, see section 2(e) of Pub. L. 106–43, set out as a note under section 1052 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date and applicability of amendment by Pub. L. 85–609, see section 3 of Pub. L. 85–609, set out as a note under section 1067 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

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

REORGANIZATION PLAN NO. 5 OF 1950

Amendment by Pub. L. 85–609 as subject to Reorganization Plan No. 5 of 1950, see note set out under section 1067 of this title.

§1093. Registration certificates for marks on principal and supplemental registers to be different

The certificates of registration for marks registered on the supplemental register shall be conspicuously different from certificates issued for marks registered on the principal register.

(July 5, 1946, ch. 540, title II, §25, 60 Stat. 436.)

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

§1094. Provisions of chapter applicable to registrations on supplemental register

The provisions of this chapter shall govern so far as applicable applications for registration and registrations on the supplemental register as well as those on the principal register, but applications for and registrations on the supplemental register shall not be subject to or receive the advantages of sections 1051(b), 1052(e), 1052(f), 1057(b), 1057(c), 1062(a), 1063 to 1068, inclusive, 1072, 1115 and 1124 of this title.

(July 5, 1946, ch. 540, title II, §26, 60 Stat. 436; Pub. L. 100–667, title I, §123, Nov. 16, 1988, 102 Stat. 3943; Pub. L. 105–330, title II, §201(a)(6), Oct. 30, 1998, 112 Stat. 3070.)

PRIOR PROVISIONS

Act Mar. 19, 1920, ch. 104, §6, 41 Stat. 535.

AMENDMENTS

1998—Pub. L. 105–330 substituted ", 1057(c)," for "1057(c),,".

1988—Pub. L. 100–667 inserted reference to sections 1051(b) and 1057(c).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–330 effective Oct. 30, 1998, and applicable only to any civil action filed or proceeding before the United States Patent and Trademark Office commenced on or after such date relating to the registration of a mark, see section 201(b) of Pub. L. 105–330, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

§1095. Registration on principal register not precluded

Registration of a mark on the supplemental register, or under the Act of March 19, 1920, shall not preclude registration by the registrant on the principal register established by this chapter. Registration of a mark on the supplemental register shall not constitute an admission that the mark has not acquired distinctiveness.

(July 5, 1946, ch. 540, title II, §27, 60 Stat. 436; Pub. L. 100–667, title I, §124, Nov. 16, 1988, 102 Stat. 3943.)

REFERENCES IN TEXT

Act of March 19, 1920, referred to in text, is act Mar. 19, 1920, ch. 104, §§1–9, 41 Stat. 533, which was generally classified to sections 121 to 128 of this title, and which was repealed insofar as inconsistent with this chapter by act July 5, 1946, ch. 540, §46(a), 60 Stat. 444.

AMENDMENTS

1988—Pub. L. 100–667 inserted at end "Registration of a mark on the supplemental register shall not constitute an admission that the mark has not acquired distinctiveness."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

§1096. Registration on supplemental register not used to stop importations

Registration on the supplemental register or under the Act of March 19, 1920, shall not be filed in the Department of the Treasury or be used to stop importations.

(July 5, 1946, ch. 540, title II, §28, 60 Stat. 436.)

REFERENCES IN TEXT

Act of March 19, 1920, referred to in text, is act Mar. 19, 1920, ch. 104, §§1–9, 41 Stat. 533, which was generally classified to sections 121 to 128 of this title, and which was repealed insofar as inconsistent with this chapter by act July 5, 1946, ch. 540, §46(b), 60 Stat. 444.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

SUBCHAPTER III—GENERAL PROVISIONS

§1111. Notice of registration; display with mark; recovery of profits and damages in infringement suit

Notwithstanding the provisions of section 1072 of this title, a registrant of a mark registered in the Patent and Trademark Office, may give notice that his mark is registered by displaying with the mark the words "Registered in U.S. Patent and Trademark Office" or "Reg. U.S. Pat. & Tm. Off." or the letter R enclosed within a circle, thus ®; and in any suit for infringement under this chapter by such a registrant failing to give such notice of registration, no profits and no damages shall be recovered under the provisions of this chapter unless the defendant had actual notice of the registration.

(July 5, 1946, ch. 540, title III, §29, 60 Stat. 436; Pub. L. 87–772, §15, Oct. 9, 1962, 76 Stat. 773; Pub. L. 93–596, §§1, 2, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 100–667, title I, §125, Nov. 16, 1988, 102 Stat. 3943.)

PRIOR PROVISIONS

Acts Feb. 20, 1905, ch. 592, §28, 33 Stat. 730; Mar. 19, 1920, ch. 104, §§5, 6, 41 Stat. 534, 535.

AMENDMENTS

1988—Pub. L. 100–667 struck out "as used" after "with the mark".

1975—Pub. L. 93–596 substituted "Patent and Trademark Office, may give notice that his mark is registered by displaying with the mark as used the words 'Registered in U.S. Patent and Trademark Office' or 'Reg. U.S. Pat. & Tm. Off.' " for "Patent Office, may give notice that his mark is registered by displaying with the mark as used the words 'Registered in U.S. Patent Office' or 'Reg. U.S. Pat. Off.' ".

1962—Pub. L. 87–772 substituted "in the Patent Office, may" for "under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register established by this chapter, shall", and "to give such notice of registration," for "so to mark goods bearing the registered mark, or by a registrant under the Act of March 19, 1920, or by the registrant of a mark on the supplemental register provided by this chapter".

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 93–596, §4, Jan. 2, 1975, 88 Stat. 1949, provided that: "This Act [amending this section, sections 1051, 1052, 1057, 1058, 1060, 1062, 1063, 1065, 1067, 1069, 1071, 1092, 1112, 1113, 1116 to 1120, 1123, and 1127 of this title, and sections 2 to 4, 6 to 8, 10, 11, 21 to 26, 31 to 33, 41, 104, 119, 121, 122, 135, 142 to 144, 146, 152, 153, 253 to 255, 261, 288, and 293 of Title 35, Patents, and enacting provisions set out as a note under section 1 of title 35] shall become effective upon enactment [Jan. 2, 1975]. However, any registrant may continue to give notice of his registration in accordance with section 29 of the Trademark Act of 1946 (60 Stat. 427), as amended Oct. 9, 1962 (76 Stat. 769) [this section], as an alternative to notice in accordance with section 29 of the Trademark Act as amended by section 2 of this Act, regardless of whether his mark was registered before or after the effective date of this Act."

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

§1112. Classification of goods and services; registration in plurality of classes

The Director may establish a classification of goods and services, for convenience of Patent and Trademark Office administration, but not to limit or extend the applicant's or registrant's rights. The applicant may apply to register a mark for any or all of the goods or services on or in connection with which he or she is using or has a bona fide intention to use the mark in commerce: *Provided*, That if the Director by regulation permits the filing of an application for the registration of a mark for goods or services which fall within a plurality of classes, a fee equaling the sum of the fees for filing an application in each class shall be paid, and the Director may issue a single certificate of registration for such mark.

(July 5, 1946, ch. 540, title IV, §30, 60 Stat. 436; Pub. L. 87–772, §16, Oct. 9, 1962, 76 Stat. 773; Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 100–667, title I, §126, Nov. 16, 1988, 102 Stat. 3943; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A–583.)

PRIOR PROVISIONS

Act May 4, 1906, ch. 2081, §2, 34 Stat. 169.

AMENDMENTS

1999—Pub. L. 106–113 substituted "Director" for "Commissioner" wherever appearing.

1988—Pub. L. 100–667 inserted "or registrant's" after "applicant's" and substituted "may apply" for "may file an application", "goods or services on or in connection with which he or she is using or has a bona fide intention to use the mark in commerce:" for "goods and services upon or in connection with which he is actually using the mark:", and "*Provided*, That if the Commissioner by regulation permits the filing of an application for the registration of a mark for goods or services which fall" for "*Provided*, That when such goods or services fall".

1975—Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

1962—Pub. L. 87–772, among other changes, substituted "may" for "shall".

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

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

§1113. Fees

(a) Applications; services; materials

The Director shall establish fees for the filing and processing of an application for the registration of a trademark or other mark and for all other services performed by and materials furnished by the Patent and Trademark Office related to trademarks and other marks. Fees established under this subsection may be adjusted by the Director once each year to reflect, in the aggregate, any

fluctuations during the preceding 12 months in the Consumer Price Index, as determined by the Secretary of Labor. Changes of less than 1 percent may be ignored. No fee established under this section shall take effect until at least 30 days after notice of the fee has been published in the Federal Register and in the Official Gazette of the Patent and Trademark Office.

(b) Waiver; Indian products

The Director may waive the payment of any fee for any service or material related to trademarks or other marks in connection with an occasional request made by a department or agency of the Government, or any officer thereof. The Indian Arts and Crafts Board will not be charged any fee to register Government trademarks of genuineness and quality for Indian products or for products of particular Indian tribes and groups.

(July 5, 1946, ch. 540, title V, §31, 60 Stat. 437; Pub. L. 85–609, §1(e), Aug. 8, 1958, 72 Stat. 540; Pub. L. 89–83, §3, July 24, 1965, 79 Stat. 260; Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 96–517, §5, Dec. 12, 1980, 94 Stat. 3018; Pub. L. 97–247, §3(f), Aug. 27, 1982, 96 Stat. 319; Pub. L. 97–256, title I, §103, Sept. 8, 1982, 96 Stat. 816; Pub. L. 102–204, §5(f)(1), Dec. 10, 1991, 105 Stat. 1640; Pub. L. 105–330, title II, §201(a)(7), Oct. 30, 1998, 112 Stat. 3070; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A–583.)

PRIOR PROVISIONS

Acts Feb. 20, 1905, ch. 592, §§14, 15, 33 Stat. 728; Mar. 19, 1920, ch. 104, §8, 41 Stat. 535; Apr. 11, 1930, ch. 132, §4, 46 Stat. 155.

AMENDMENTS

1999—Pub. L. 106–113 substituted "Director" for "Commissioner" wherever appearing.

1998—Pub. L. 105–330 made technical amendment relating to section catchline.

1991—Subsec. (a). Pub. L. 102–204 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "The Commissioner will establish fees for the filing and processing of an application for the registration of a trademark or other mark and for all other services performed by and materials furnished by the Patent and Trademark Office related to trademarks and other marks. However, no fee for the filing or processing of an application for the registration of a trademark or other mark or for the renewal or assignment of a trademark or other mark will be adjusted more than once every three years. No fee established under this section will take effect prior to sixty days following notice in the Federal Register."

1982—Subsec. (a). Pub. L. 97–256 struck out "of Patents" after "Commissioner".

Pub. L. 97–247 struck out provisions directing that fees be set and adjusted by the Commissioner to recover in aggregate 50 per centum of the estimated average cost to the Office of processing and that fees for all other services or materials related to trademarks and other marks recover the estimated average cost to the Office of performing the service or furnishing the material.

1980—Subsec. (a). Pub. L. 96–517 in revising fee provisions required the Commissioner to establish fees based on recovery of estimated average cost of processing applications, performing services and providing material; authorized triennial adjustments; and prescribed an effective date for fees; deleted prior provisions containing statutory schedule covering fees for filing: applications for registration and renewals, affidavits, revival petitions for abandoned applications, opposition or application for cancellation, disclaimers, and notice of benefits for a mark to be published; and fees covering: appeals from examiners in charge of registration, certificates of amendment, certifying, printed copies of registered marks, and recordation of documents and papers relating to property in a registration or application.

Subsec. (b). Pub. L. 96–517 added subsec. (b) and struck out former subsec. (b) authorizing Commissioner to establish charges for copies of records, publications, or services of Patent and Trademark Office. See subsec. (a).

Subsec. (c). Pub. L. 96–517 in revising fee provisions struck out subsec. (c) authorizing Commissioner to refund any mistaken or excessive payments.

1975—Subsec. (a). Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

Subsec. (b). Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

1965—Pub. L. 89–83 increased fees for filing an application for registration of a mark from $25 to $35; for issuance of a new certificate of registration following a change of ownership of a mark or correction of a registrant's mistake from $10 to $15; for a certificate of correction of registrant's mistake from $10 to $15; for filing a disclaimer from $10 to $15; and for recording an assignment, agreement, or other paper relating to the property in a registration or application from $3 for documents not exceeding six pages plus $1 for each

additional two pages or less and 50 cents additional for each additional registration or application included in one writing, to a $20 fee for every document plus an additional fee of $3 for each additional item where the document relates to more than one application or registration; eliminated provisions which established fees for the surrender or cancellation of a registration, for an abstract of title, for a title report required for office use, for certificates that marks have not been registered, and for copies of various specified records and documents; added the fees for filing and affidavit under section 1058(a) or (b) of this title and for filing a petition for the revival of an abandoned application; empowered the Commissioner to establish charges for copies of records, publications or services furnished by the Patent Office; and made the provisions relating to refunds of sums paid by mistake permissive.

1958—Pub. L. 85–609 struck out "to the Commissioner" after "on appeal from an examiner in charge of the registration of marks", and provisions which required payment of a $25 fee on appeals from an examiner in charge of interferences to the Commissioner.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–330 effective Oct. 30, 1998, and applicable only to any civil action filed or proceeding before the United States Patent and Trademark Office commenced on or after such date relating to the registration of a mark, see section 201(b) of Pub. L. 105–330, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–247 effective Oct. 1, 1982, see section 17(a) of Pub. L. 97–247, set out as a note under section 41 of Title 35, Patents.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–517 effective Dec. 12, 1980, with provision for continuation of fees in effect as of such date until corresponding fees are established under this section, see section 8(a), (d) of Pub. L. 96–517, set out as a note under section 41 of Title 35, Patents.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

For effective date and applicability of amendment by Pub. L. 89–83, see section 7(a), (d) of Pub. L. 89–83, set out as a note under section 41 of Title 35, Patents.

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date and applicability of amendment by Pub. L. 85–609, see section 3 of Pub. L. 85–609, set out as a note under section 1067 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

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

APPROPRIATIONS AND FEES AUTHORIZED TO BE CARRIED OVER

For provisions authorizing fees collected under this chapter, and certain appropriations, to remain available until expended, see section 2 of Pub. L. 99–607, set out as a note under section 42 of Title 35, Patents.

TRADEMARK FEES

Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4203], Nov. 29, 1999, 113 Stat. 1536, 1501A–554, as

amended by Pub. L. 107–273, div. C, title III, §13208, Nov. 2, 2002, 116 Stat. 1908, provided that: "Notwithstanding the second sentence of section 31(a) of the Trademark Act of 1946 (15 U.S.C. 1113(a)), the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office is authorized in fiscal year 2000 to adjust trademark fees without regard to fluctuations in the Consumer Price Index during the preceding 12 months."

Pub. L. 103–179, §4, Dec. 3, 1993, 107 Stat. 2040, provided that: "Effective on the date of the enactment of this Act [Dec. 3, 1993], the fee under section 31(a) of the Trademark Act of 1946 (15 U.S.C. 1113(a)) for filing an application for the registration of a trademark shall be $245. Any adjustment of such fee under the second sentence of such section may not be effective before October 1, 1994."

Pub. L. 102–204, §5(f)(2), Dec. 10, 1991, 105 Stat. 1640, provided that fees established by Commissioner of Patents and Trademarks under 15 U.S.C. 1113(a) during fiscal year 1992 could reflect fluctuations during the preceding 3 years in the Consumer Price Index and could take effect on or after 1 day after such fees are published in the Federal Register and that the last sentence of 31 U.S.C. 31(a) and 5 U.S.C. 553 did not apply to the establishment of such fees.

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 100–703, title I, §103(a), Nov. 19, 1988, 102 Stat. 4674.

Pub. L. 99–607, §3(a), Nov. 6, 1986, 100 Stat. 3470.

REORGANIZATION PLAN NO. 5 OF 1950

Amendment by Pub. L. 85–609 as subject to Reorganization Plan No. 5 of 1950, see note set out under section 1067 of this title.

§1114. Remedies; infringement; innocent infringement by printers and publishers

(1) Any person who shall, without the consent of the registrant—

(a) use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or

(b) reproduce, counterfeit, copy, or colorably imitate a registered mark and apply such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive,

shall be liable in a civil action by the registrant for the remedies hereinafter provided. Under subsection (b) hereof, the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such imitation is intended to be used to cause confusion, or to cause mistake, or to deceive.

As used in this paragraph, the term "any person" includes the United States, all agencies and instrumentalities thereof, and all individuals, firms, corporations, or other persons acting for the United States and with the authorization and consent of the United States, and any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity. The United States, all agencies and instrumentalities thereof, and all individuals, firms, corporations, other persons acting for the United States and with the authorization and consent of the United States, and any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this chapter in the same manner and to the same extent as any nongovernmental entity.

(2) Notwithstanding any other provision of this chapter, the remedies given to the owner of a right infringed under this chapter or to a person bringing an action under section 1125(a) or (d) of this title shall be limited as follows:

(A) Where an infringer or violator is engaged solely in the business of printing the mark or violating matter for others and establishes that he or she was an innocent infringer or innocent

violator, the owner of the right infringed or person bringing the action under section 1125(a) of this title shall be entitled as against such infringer or violator only to an injunction against future printing.

(B) Where the infringement or violation complained of is contained in or is part of paid advertising matter in a newspaper, magazine, or other similar periodical or in an electronic communication as defined in section 2510(12) of title 18, the remedies of the owner of the right infringed or person bringing the action under section 1125(a) of this title as against the publisher or distributor of such newspaper, magazine, or other similar periodical or electronic communication shall be limited to an injunction against the presentation of such advertising matter in future issues of such newspapers, magazines, or other similar periodicals or in future transmissions of such electronic communications. The limitations of this subparagraph shall apply only to innocent infringers and innocent violators.

(C) Injunctive relief shall not be available to the owner of the right infringed or person bringing the action under section 1125(a) of this title with respect to an issue of a newspaper, magazine, or other similar periodical or an electronic communication containing infringing matter or violating matter where restraining the dissemination of such infringing matter or violating matter in any particular issue of such periodical or in an electronic communication would delay the delivery of such issue or transmission of such electronic communication after the regular time for such delivery or transmission, and such delay would be due to the method by which publication and distribution of such periodical or transmission of such electronic communication is customarily conducted in accordance with sound business practice, and not due to any method or device adopted to evade this section or to prevent or delay the issuance of an injunction or restraining order with respect to such infringing matter or violating matter.

(D)(i)(I) A domain name registrar, a domain name registry, or other domain name registration authority that takes any action described under clause (ii) affecting a domain name shall not be liable for monetary relief or, except as provided in subclause (II), for injunctive relief, to any person for such action, regardless of whether the domain name is finally determined to infringe or dilute the mark.

(II) A domain name registrar, domain name registry, or other domain name registration authority described in subclause (I) may be subject to injunctive relief only if such registrar, registry, or other registration authority has—

(aa) not expeditiously deposited with a court, in which an action has been filed regarding the disposition of the domain name, documents sufficient for the court to establish the court's control and authority regarding the disposition of the registration and use of the domain name;

(bb) transferred, suspended, or otherwise modified the domain name during the pendency of the action, except upon order of the court; or

(cc) willfully failed to comply with any such court order.

(ii) An action referred to under clause (i)(I) is any action of refusing to register, removing from registration, transferring, temporarily disabling, or permanently canceling a domain name—

(I) in compliance with a court order under section 1125(d) of this title; or

(II) in the implementation of a reasonable policy by such registrar, registry, or authority prohibiting the registration of a domain name that is identical to, confusingly similar to, or dilutive of another's mark.

(iii) A domain name registrar, a domain name registry, or other domain name registration authority shall not be liable for damages under this section for the registration or maintenance of a domain name for another absent a showing of bad faith intent to profit from such registration or maintenance of the domain name.

(iv) If a registrar, registry, or other registration authority takes an action described under clause (ii) based on a knowing and material misrepresentation by any other person that a domain name is identical to, confusingly similar to, or dilutive of a mark, the person making the knowing and material misrepresentation shall be liable for any damages, including costs and attorney's fees,

incurred by the domain name registrant as a result of such action. The court may also grant injunctive relief to the domain name registrant, including the reactivation of the domain name or the transfer of the domain name to the domain name registrant.

(v) A domain name registrant whose domain name has been suspended, disabled, or transferred under a policy described under clause (ii)(II) may, upon notice to the mark owner, file a civil action to establish that the registration or use of the domain name by such registrant is not unlawful under this chapter. The court may grant injunctive relief to the domain name registrant, including the reactivation of the domain name or transfer of the domain name to the domain name registrant.

(E) As used in this paragraph—

(i) the term "violator" means a person who violates section 1125(a) of this title; and

(ii) the term "violating matter" means matter that is the subject of a violation under section 1125(a) of this title.

(3)(A) Any person who engages in the conduct described in paragraph (11) of section 110 of title 17 and who complies with the requirements set forth in that paragraph is not liable on account of such conduct for a violation of any right under this chapter. This subparagraph does not preclude liability, nor shall it be construed to restrict the defenses or limitations on rights granted under this chapter, of a person for conduct not described in paragraph (11) of section 110 of title 17, even if that person also engages in conduct described in paragraph (11) of section 110 of such title.

(B) A manufacturer, licensee, or licensor of technology that enables the making of limited portions of audio or video content of a motion picture imperceptible as described in subparagraph (A) is not liable on account of such manufacture or license for a violation of any right under this chapter, if such manufacturer, licensee, or licensor ensures that the technology provides a clear and conspicuous notice at the beginning of each performance that the performance of the motion picture is altered from the performance intended by the director or copyright holder of the motion picture. The limitations on liability in subparagraph (A) and this subparagraph shall not apply to a manufacturer, licensee, or licensor of technology that fails to comply with this paragraph.

(C) The requirement under subparagraph (B) to provide notice shall apply only with respect to technology manufactured after the end of the 180-day period beginning on April 27, 2005.

(D) Any failure by a manufacturer, licensee, or licensor of technology to qualify for the exemption under subparagraphs (A) and (B) shall not be construed to create an inference that any such party that engages in conduct described in paragraph (11) of section 110 of title 17 is liable for trademark infringement by reason of such conduct.

(July 5, 1946, ch. 540, title VI, §32, 60 Stat. 437; Pub. L. 87–772, §17, Oct. 9, 1962, 76 Stat. 773; Pub. L. 100–667, title I, §127, Nov. 16, 1988, 102 Stat. 3943; Pub. L. 102–542, §3(a), Oct. 27, 1992, 106 Stat. 3567; Pub. L. 105–330, title II, §201(a)(8), Oct. 30, 1998, 112 Stat. 3070; Pub. L. 106–43, §4(a), Aug. 5, 1999, 113 Stat. 219; Pub. L. 106–113, div. B, §1000(a)(9) [title III, §3004], Nov. 29, 1999, 113 Stat. 1536, 1501A–549; Pub. L. 109–9, title II, §202(b), Apr. 27, 2005, 119 Stat. 223.)

PRIOR PROVISIONS

Acts Feb. 20, 1905, ch. 592, §16, 33 Stat. 728; Mar. 19, 1920, ch. 104, §4, 41 Stat. 534.

AMENDMENTS

2005—Par. (3). Pub. L. 109–9 added par. (3).

1999—Par. (1). Pub. L. 106–43, in undesignated par., inserted after "includes" in first sentence "the United States, all agencies and instrumentalities thereof, and all individuals, firms, corporations, or other persons acting for the United States and with the authorization and consent of the United States, and" and, in second sentence, substituted "The United States, all agencies and instrumentalities thereof, and all individuals, firms, corporations, other persons acting for the United States and with the authorization and consent of the United States, and any" for "Any".

Par. (2). Pub. L. 106–113, §1000(a)(9) [title III, §3004(1)], in introductory provisions, substituted "under section 1125(a) or (d) of this title" for "under section 1125(a) of this title".

Par. (2)(D), (E). Pub. L. 106–113, §1000(a)(9) [title III, §3004(2)], added subpar. (D) and redesignated former subpar. (D) as (E).

1998—Par. (1). Pub. L. 105–330 substituted "As used in this paragraph" for "As used in this subsection" in last paragraph.

1992—Par. (1). Pub. L. 102–542 inserted at end "As used in this subsection, the term 'any person' includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this chapter in the same manner and to the same extent as any nongovernmental entity."

1988—Par. (2). Pub. L. 100–667 amended par. (2) generally. Prior to amendment, par. (2) read as follows: "Notwithstanding any other provision of this chapter, the remedies given to the owner of the right infringed shall be limited as follows: (a) Where an infringer in engaged solely in the business of printing the mark for others and establishes that he was an innocent infringer the owner of the right infringed shall be entitled as against such infringer only to an injunction against future printing; (b) where the infringement complained of is contained in or is part of paid advertising matter in a newspaper, magazine, or other similar periodical the remedies of the owner of the right infringed as against the publisher or distributor of such newspaper, magazine, or other similar periodical shall be confined to an injunction against the presentation of such advertising matter in future issues of such newspapers, magazines, or other similar periodical: *Provided*, That these limitations shall apply only to innocent infringers; (c) injunction relief shall not be available to the owner of the right infringed in respect of an issue of a newspaper, magazine, or other similar periodical containing infringing matter when restraining the dissemination of such infringing matter in any particular issue of such periodical would delay the delivery of such issue after the regular time therefor, and such delay would be due to the method by which publication and distribution of such periodical is customarily conducted in accordance with sound business practice, and not to any method or device adopted for the evasion of this section or to prevent or delay the issuance of an injunction or restraining order with respect to such infringing matter."

1962—Par. (1). Pub. L. 87–772 amended provisions generally, and among other changes, inserted "distribution", and struck out "purchasers as to the source of origin of such goods or services" after "or to deceive" in subsec. (a), inserted provisions regarding the likelihood of such use causing confusion, mistake, or deception, in subsec. (b), and struck out the limitation on recovery under subsec. (b) to acts committed with knowledge that such acts would deceive purchasers.

Par. (2)(b). Pub. L. 87–772 substituted "publisher" for "published".

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 applicable to all domain names registered before, on, or after Nov. 29, 1999, see section 1000(a)(9) [title III, §3010] of Pub. L. 106–113, set out as a note under section 1117 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–330 effective Oct. 30, 1998, and applicable only to any civil action filed or proceeding before the United States Patent and Trademark Office commenced on or after such date relating to the registration of a mark, see section 201(b) of Pub. L. 105–330, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–542, §4, Oct. 27, 1992, 106 Stat. 3568, provided that: "The amendments made by this Act [enacting section 1122 of this title and amending this section and sections 1125 and 1127 of this title] shall take effect with respect to violations that occur on or after the date of the enactment of this Act [Oct. 27, 1992]."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

§1115. Registration on principal register as evidence of exclusive right to use

mark; defenses

(a) Evidentiary value; defenses

Any registration issued under the Act of March 3, 1881, or the Act of February 20, 1905, or of a mark registered on the principal register provided by this chapter and owned by a party to an action shall be admissible in evidence and shall be prima facie evidence of the validity of the registered mark and of the registration of the mark, of the registrant's ownership of the mark, and of the registrant's exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the registration subject to any conditions or limitations stated therein, but shall not preclude another person from proving any legal or equitable defense or defect, including those set forth in subsection (b) of this section, which might have been asserted if such mark had not been registered.

(b) Incontestability; defenses

To the extent that the right to use the registered mark has become incontestable under section 1065 of this title, the registration shall be conclusive evidence of the validity of the registered mark and of the registration of the mark, of the registrant's ownership of the mark, and of the registrant's exclusive right to use the registered mark in commerce. Such conclusive evidence shall relate to the exclusive right to use the mark on or in connection with the goods or services specified in the affidavit filed under the provisions of section 1065 of this title, or in the renewal application filed under the provisions of section 1059 of this title if the goods or services specified in the renewal are fewer in number, subject to any conditions or limitations in the registration or in such affidavit or renewal application. Such conclusive evidence of the right to use the registered mark shall be subject to proof of infringement as defined in section 1114 of this title, and shall be subject to the following defenses or defects:

(1) That the registration or the incontestable right to use the mark was obtained fraudulently; or

(2) That the mark has been abandoned by the registrant; or

(3) That the registered mark is being used by or with the permission of the registrant or a person in privity with the registrant, so as to misrepresent the source of the goods or services on or in connection with which the mark is used; or

(4) That the use of the name, term, or device charged to be an infringement is a use, otherwise than as a mark, of the party's individual name in his own business, or of the individual name of anyone in privity with such party, or of a term or device which is descriptive of and used fairly and in good faith only to describe the goods or services of such party, or their geographic origin; or

(5) That the mark whose use by a party is charged as an infringement was adopted without knowledge of the registrant's prior use and has been continuously used by such party or those in privity with him from a date prior to (A) the date of constructive use of the mark established pursuant to section 1057(c) of this title, (B) the registration of the mark under this chapter if the application for registration is filed before the effective date of the Trademark Law Revision Act of 1988, or (C) publication of the registered mark under subsection (c) of section 1062 of this title: *Provided, however*, That this defense or defect shall apply only for the area in which such continuous prior use is proved; or

(6) That the mark whose use is charged as an infringement was registered and used prior to the registration under this chapter or publication under subsection (c) of section 1062 of this title of the registered mark of the registrant, and not abandoned: *Provided, however*, That this defense or defect shall apply only for the area in which the mark was used prior to such registration or such publication of the registrant's mark; or

(7) That the mark has been or is being used to violate the antitrust laws of the United States; or

(8) That the mark is functional; or

(9) That equitable principles, including laches, estoppel, and acquiescence, are applicable.

(July 5, 1946, ch. 540, title VI, §33, 60 Stat. 438; Pub. L. 87–772, §18, Oct. 9, 1962, 76 Stat. 774; Pub. L. 100–667, title I, §128(a), (b), Nov. 16, 1988, 102 Stat. 3944; Pub. L. 105–330, title II, §201(a)(9), Oct. 30, 1998, 112 Stat. 3070; Pub. L. 107–273, div. C, title III, §13207(b)(7), Nov. 2,

2002, 116 Stat. 1908.)

REFERENCES IN TEXT

Acts March 3, 1881, and February 20, 1905, referred to in subsec. (a), are acts Mar. 3, 1881, ch. 138, 21 Stat. 502 and Feb. 20, 1905, ch. 592, 33 Stat. 724, which were repealed insofar as inconsistent with this chapter by act July 5, 1946, ch. 540, §46(a), 60 Stat. 444. Act Feb. 20, 1905, was classified to sections 81 to 109 of this title.

The effective date of the Trademark Law Revision Act of 1988, referred to in subsec. (b)(5), is one year after Nov. 16, 1988. See section 136 of Pub. L. 100–667, set out as an Effective Date of 1988 Amendment note under section 1051 of this title.

PRIOR PROVISIONS

Act Feb. 20, 1905, ch. 592, §§16, 21, 33 Stat. 728, 729.

AMENDMENTS

2002—Subsec. (b)(8). Pub. L. 107–273 realigned margins.

1998—Subsec. (b)(8), (9). Pub. L. 105–330 added par. (8) and redesignated former par. (8) as (9).

1988—Subsec. (a). Pub. L. 100–667, §128(a), inserted "the validity of the registered mark and of the registration of the mark, of the registrant's ownership of the mark, and of the" after "facie evidence of", inserted "or in connection with" after "in commerce on", substituted "another person" for "an opposing party", and inserted ", including those set forth in subsection (b) of this section," after "or defect".

Subsec. (b). Pub. L. 100–667, §128(b)(1), amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: "If the right to use the registered mark has become incontestable under section 1065 of this title, the registration shall be conclusive evidence of the registrant's exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the affidavit filed under the provisions of said section 1065 subject to any conditions or limitations stated therein except when one of the following defenses or defects is established:".

Subsec. (b)(3). Pub. L. 100–667, §128(b)(2), inserted "on or" after "goods or services".

Subsec. (b)(4). Pub. L. 100–667, §128(b)(3), struck out "trade or service" after "than as a" and "to users" after "only to describe".

Subsec. (b)(5). Pub. L. 100–667, §128(b)(4), substituted "(A) the date of constructive use of the mark established pursuant to section 1057(c) of this title, (B) the registration of the mark under this chapter if the application for registration is filed before the effective date of the Trademark Law Revision Act of 1988, or (C)" for "registration of the mark under this chapter or".

Subsec. (b)(8). Pub. L. 100–667, §128(b)(5), (6), added par. (8).

1962—Subsec. (a). Pub. L. 87–772 substituted "registration subject to" for "certificate subject to", and struck out "certificate of" before "registration issued".

Subsec. (b). Pub. L. 87–772 substituted "registration shall" for "certificate shall", and "affidavit filed under the provisions of said section 1065" for "certificate" in text preceding par. (1), substituted "registrant or a person in privity with the registrant," for "assignee", and struck out "has been assigned and" after "registered mark" in par. (3), substituted "registration of the mark under this chapter or" for "the", and struck out "(a) or" before "(c) of section 1062" in par. (5), inserted "registration under this chapter", substituted "such registration or such" for "the date of", and struck out "(a) or" before "(c) of section 1062", "only where the said mark has been published pursuant to subsections (c) of section 1062 of this title and shall apply" after "defect shall apply", and "under subsection (a) or (c) of section 1062 of this title" after "registrant's mark", in par. (6).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–330 effective Oct. 30, 1998, and applicable only to any civil action filed or proceeding before the United States Patent and Trademark Office commenced on or after such date relating to the registration of a mark, see section 201(b) of Pub. L. 105–330, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

§1116. Injunctive relief

(a) Jurisdiction; service

The several courts vested with jurisdiction of civil actions arising under this chapter shall have power to grant injunctions, according to the principles of equity and upon such terms as the court may deem reasonable, to prevent the violation of any right of the registrant of a mark registered in the Patent and Trademark Office or to prevent a violation under subsection (a), (c), or (d) of section 1125 of this title. Any such injunction may include a provision directing the defendant to file with the court and serve on the plaintiff within thirty days after the service on the defendant of such injunction, or such extended period as the court may direct, a report in writing under oath setting forth in detail the manner and form in which the defendant has complied with the injunction. Any such injunction granted upon hearing, after notice to the defendant, by any district court of the United States, may be served on the parties against whom such injunction is granted anywhere in the United States where they may be found, and shall be operative and may be enforced by proceedings to punish for contempt, or otherwise, by the court by which such injunction was granted, or by any other United States district court in whose jurisdiction the defendant may be found.

(b) Transfer of certified copies of court papers

The said courts shall have jurisdiction to enforce said injunction, as provided in this chapter, as fully as if the injunction had been granted by the district court in which it is sought to be enforced. The clerk of the court or judge granting the injunction shall, when required to do so by the court before which application to enforce said injunction is made, transfer without delay to said court a certified copy of all papers on file in his office upon which said injunction was granted.

(c) Notice to Director

It shall be the duty of the clerks of such courts within one month after the filing of any action, suit, or proceeding involving a mark registered under the provisions of this chapter to give notice thereof in writing to the Director setting forth in order so far as known the names and addresses of the litigants and the designating number or numbers of the registration or registrations upon which the action, suit, or proceeding has been brought, and in the event any other registration be subsequently included in the action, suit, or proceeding by amendment, answer, or other pleading, the clerk shall give like notice thereof to the Director, and within one month after the judgment is entered or an appeal is taken the clerk of the court shall give notice thereof to the Director, and it shall be the duty of the Director on receipt of such notice forthwith to endorse the same upon the file wrapper of the said registration or registrations and to incorporate the same as a part of the contents of said file wrapper.

(d) Civil actions arising out of use of counterfeit marks

(1)(A) In the case of a civil action arising under section 1114(1)(a) of this title or section 220506 of title 36 with respect to a violation that consists of using a counterfeit mark in connection with the sale, offering for sale, or distribution of goods or services, the court may, upon ex parte application, grant an order under subsection (a) of this section pursuant to this subsection providing for the seizure of goods and counterfeit marks involved in such violation and the means of making such marks, and records documenting the manufacture, sale, or receipt of things involved in such violation.

(B) As used in this subsection the term "counterfeit mark" means—

(i) a counterfeit of a mark that is registered on the principal register in the United States Patent and Trademark Office for such goods or services sold, offered for sale, or distributed and that is in use, whether or not the person against whom relief is sought knew such mark was so registered; or

(ii) a spurious designation that is identical with, or substantially indistinguishable from, a designation as to which the remedies of this chapter are made available by reason of section 220506 of title 36;

but such term does not include any mark or designation used on or in connection with goods or services of which the manufacture [1] or producer was, at the time of the manufacture or production in question authorized to use the mark or designation for the type of goods or services so manufactured or produced, by the holder of the right to use such mark or designation.

(2) The court shall not receive an application under this subsection unless the applicant has given such notice of the application as is reasonable under the circumstances to the United States attorney for the judicial district in which such order is sought. Such attorney may participate in the proceedings arising under such application if such proceedings may affect evidence of an offense against the United States. The court may deny such application if the court determines that the public interest in a potential prosecution so requires.

(3) The application for an order under this subsection shall—

(A) be based on an affidavit or the verified complaint establishing facts sufficient to support the findings of fact and conclusions of law required for such order; and

(B) contain the additional information required by paragraph (5) of this subsection to be set forth in such order.

(4) The court shall not grant such an application unless—

(A) the person obtaining an order under this subsection provides the security determined adequate by the court for the payment of such damages as any person may be entitled to recover as a result of a wrongful seizure or wrongful attempted seizure under this subsection; and

(B) the court finds that it clearly appears from specific facts that—

(i) an order other than an ex parte seizure order is not adequate to achieve the purposes of section 1114 of this title;

(ii) the applicant has not publicized the requested seizure;

(iii) the applicant is likely to succeed in showing that the person against whom seizure would be ordered used a counterfeit mark in connection with the sale, offering for sale, or distribution of goods or services;

(iv) an immediate and irreparable injury will occur if such seizure is not ordered;

(v) the matter to be seized will be located at the place identified in the application;

(vi) the harm to the applicant of denying the application outweighs the harm to the legitimate interests of the person against whom seizure would be ordered of granting the application; and

(vii) the person against whom seizure would be ordered, or persons acting in concert with such person, would destroy, move, hide, or otherwise make such matter inaccessible to the court, if the applicant were to proceed on notice to such person.

(5) An order under this subsection shall set forth—

(A) the findings of fact and conclusions of law required for the order;

(B) a particular description of the matter to be seized, and a description of each place at which such matter is to be seized;

(C) the time period, which shall end not later than seven days after the date on which such order is issued, during which the seizure is to be made;

(D) the amount of security required to be provided under this subsection; and

(E) a date for the hearing required under paragraph (10) of this subsection.

(6) The court shall take appropriate action to protect the person against whom an order under this subsection is directed from publicity, by or at the behest of the plaintiff, about such order and any seizure under such order.

(7) Any materials seized under this subsection shall be taken into the custody of the court. For seizures made under this section, the court shall enter an appropriate protective order with respect to discovery and use of any records or information that has been seized. The protective order shall provide for appropriate procedures to ensure that confidential, private, proprietary, or privileged information contained in such records is not improperly disclosed or used.

(8) An order under this subsection, together with the supporting documents, shall be sealed until

the person against whom the order is directed has an opportunity to contest such order, except that any person against whom such order is issued shall have access to such order and supporting documents after the seizure has been carried out.

(9) The court shall order that service of a copy of the order under this subsection shall be made by a Federal law enforcement officer (such as a United States marshal or an officer or agent of the United States Customs Service, Secret Service, Federal Bureau of Investigation, or Post Office) or may be made by a State or local law enforcement officer, who, upon making service, shall carry out the seizure under the order. The court shall issue orders, when appropriate, to protect the defendant from undue damage from the disclosure of trade secrets or other confidential information during the course of the seizure, including, when appropriate, orders restricting the access of the applicant (or any agent or employee of the applicant) to such secrets or information.

(10)(A) The court shall hold a hearing, unless waived by all the parties, on the date set by the court in the order of seizure. That date shall be not sooner than ten days after the order is issued and not later than fifteen days after the order is issued, unless the applicant for the order shows good cause for another date or unless the party against whom such order is directed consents to another date for such hearing. At such hearing the party obtaining the order shall have the burden to prove that the facts supporting findings of fact and conclusions of law necessary to support such order are still in effect. If that party fails to meet that burden, the seizure order shall be dissolved or modified appropriately.

(B) In connection with a hearing under this paragraph, the court may make such orders modifying the time limits for discovery under the Rules of Civil Procedure as may be necessary to prevent the frustration of the purposes of such hearing.

(11) A person who suffers damage by reason of a wrongful seizure under this subsection has a cause of action against the applicant for the order under which such seizure was made, and shall be entitled to recover such relief as may be appropriate, including damages for lost profits, cost of materials, loss of good will, and punitive damages in instances where the seizure was sought in bad faith, and, unless the court finds extenuating circumstances, to recover a reasonable attorney's fee. The court in its discretion may award prejudgment interest on relief recovered under this paragraph, at an annual interest rate established under section 6621(a)(2) of title 26, commencing on the date of service of the claimant's pleading setting forth the claim under this paragraph and ending on the date such recovery is granted, or for such shorter time as the court deems appropriate.

(July 5, 1946, ch. 540, title VI, §34, 60 Stat. 439; Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 98–473, title II, §1503(1), Oct. 12, 1984, 98 Stat. 2179; Pub. L. 100–667, title I, §128(c)–(e), Nov. 16, 1988, 102 Stat. 3945; Pub. L. 104–153, §6, July 2, 1996, 110 Stat. 1388; Pub. L. 106–43, §3(a)(1), Aug. 5, 1999, 113 Stat. 218; Pub. L. 106–113, div. B, §1000(a)(9) [title III, §3003(a)(1), title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A–548, 1501A–583; Pub. L. 107–273, div. C, title III, §13207(b)(8)–(10), Nov. 2, 2002, 116 Stat. 1908; Pub. L. 110–403, title I, §102(b), Oct. 13, 2008, 122 Stat. 4258.)

REFERENCES IN TEXT

The Rules of Civil Procedure, referred to in subsec. (d)(10)(B), probably means the Federal Rules of Civil Procedure, which are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

PRIOR PROVISIONS

Acts Feb. 20, 1905, ch. 592, §§19, 20, 33 Stat. 729; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167; June 25, 1936, ch. 804, 49 Stat. 1921.

AMENDMENTS

2008—Subsec. (d)(7). Pub. L. 110–403 amended par. (7) generally. Prior to amendment, par. (7) read as follows: "Any materials seized under this subsection shall be taken into the custody of the court. The court shall enter an appropriate protective order with respect to discovery by the applicant of any records that have been seized. The protective order shall provide for appropriate procedures to assure that confidential information contained in such records is not improperly disclosed to the applicant."

2002—Subsec. (d)(1)(A), (B)(ii). Pub. L. 107–273, §13207(b)(8), (9), substituted "section 220506 of title 36" for "section 110 of the Act entitled 'An Act to incorporate the United States Olympic Association',

approved September 21, 1950 (36 U.S.C. 380)".

Subsec. (d)(11). Pub. L. 107–273, §13207(b)(10), substituted "6621(a)(2) of title 26" for "6621 of title 26".

1999—Subsec. (a). Pub. L. 106–113, §1000(a)(9) [title III, §3003(a)(1)], substituted "(a), (c), or (d)" for "(a) or (c)" in first sentence.

Pub. L. 106–43 substituted "subsection (a) or (c) of section 1125 of this title" for "section 1125(a) of this title" in first sentence.

Subsec. (c). Pub. L. 106–113, §1000(a)(9) [title IV, §4732(b)(1)(B)], substituted "Director" for "Commissioner" wherever appearing.

1996—Subsec. (d)(9). Pub. L. 104–153 inserted first sentence and struck out former first sentence which read as follows: "The court shall order that a United States marshal or other law enforcement officer is to serve a copy of the order under this subsection and then is to carry out the seizure under such order."

1988—Subsec. (a). Pub. L. 100–667, §128(c), inserted "or to prevent a violation under section 1125(a) of this title" after "Office" in first sentence.

Subsec. (c). Pub. L. 100–667, §128(d), substituted "proceeding involving a mark registered" for "proceeding arising" and "judgment is entered or an appeal is taken" for "decision is rendered, appeal taken or a decree issued".

Subsec. (d)(1)(B). Pub. L. 100–667, §128(e), inserted "on or" after "or designation used" in concluding provisions.

1984—Pub. L. 98–473 designated first, second, and third undesignated pars. as subsecs. (a), (b), and (c), respectively and added subsec. (d).

1975—Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 1000(a)(9) [title III, §3003(a)(1)] of Pub. L. 106–113 applicable to all domain names registered before, on, or after Nov. 29, 1999, see section 1000(a)(9) [title III, §3010] of Pub. L. 106–113, set out as a note under section 1117 of this title.

Amendment by section 1000(a)(9) [title IV, §4732(b)(1)(B)] of Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

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

[1] *So in original. Probably should be "manufacturer".*

§1117. Recovery for violation of rights

(a) Profits; damages and costs; attorney fees

When a violation of any right of the registrant of a mark registered in the Patent and Trademark Office, a violation under section 1125(a) or (d) of this title, or a willful violation under section 1125(c) of this title, shall have been established in any civil action arising under this chapter, the plaintiff shall be entitled, subject to the provisions of sections 1111 and 1114 of this title, and subject to the principles of equity, to recover (1) defendant's profits, (2) any damages sustained by the plaintiff, and (3) the costs of the action. The court shall assess such profits and damages or cause the same to be assessed under its direction. In assessing profits the plaintiff shall be required to prove defendant's sales only; defendant must prove all elements of cost or deduction claimed. In assessing damages the court may enter judgment, according to the circumstances of the case, for any sum above the amount found as actual damages, not exceeding three times such amount. If the court shall find that the amount of the recovery based on profits is either inadequate or excessive the court may in its discretion enter judgment for such sum as the court shall find to be just, according to the circumstances of the case. Such sum in either of the above circumstances shall constitute compensation and not a penalty. The court in exceptional cases may award reasonable attorney fees to the prevailing party.

(b) Treble damages for use of counterfeit mark

In assessing damages under subsection (a) for any violation of section 1114(1)(a) of this title or section 220506 of title 36, in a case involving use of a counterfeit mark or designation (as defined in section 1116(d) of this title), the court shall, unless the court finds extenuating circumstances, enter judgment for three times such profits or damages, whichever amount is greater, together with a reasonable attorney's fee, if the violation consists of—

(1) intentionally using a mark or designation, knowing such mark or designation is a counterfeit mark (as defined in section 1116(d) of this title), in connection with the sale, offering for sale, or distribution of goods or services; or

(2) providing goods or services necessary to the commission of a violation specified in paragraph (1), with the intent that the recipient of the goods or services would put the goods or services to use in committing the violation.

In such a case, the court may award prejudgment interest on such amount at an annual interest rate established under section 6621(a)(2) of title 26, beginning on the date of the service of the claimant's pleadings setting forth the claim for such entry of judgment and ending on the date such entry is made, or for such shorter time as the court considers appropriate.

(c) Statutory damages for use of counterfeit marks

In a case involving the use of a counterfeit mark (as defined in section 1116(d) of this title) in connection with the sale, offering for sale, or distribution of goods or services, the plaintiff may elect, at any time before final judgment is rendered by the trial court, to recover, instead of actual damages and profits under subsection (a) of this section, an award of statutory damages for any such use in connection with the sale, offering for sale, or distribution of goods or services in the amount of—

(1) not less than $1,000 or more than $200,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just; or

(2) if the court finds that the use of the counterfeit mark was willful, not more than $2,000,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just.

(d) Statutory damages for violation of section 1125(d)(1)

In a case involving a violation of section 1125(d)(1) of this title, the plaintiff may elect, at any

time before final judgment is rendered by the trial court, to recover, instead of actual damages and profits, an award of statutory damages in the amount of not less than $1,000 and not more than $100,000 per domain name, as the court considers just.

(e) Rebuttable presumption of willful violation

In the case of a violation referred to in this section, it shall be a rebuttable presumption that the violation is willful for purposes of determining relief if the violator, or a person acting in concert with the violator, knowingly provided or knowingly caused to be provided materially false contact information to a domain name registrar, domain name registry, or other domain name registration authority in registering, maintaining, or renewing a domain name used in connection with the violation. Nothing in this subsection limits what may be considered a willful violation under this section.

(July 5, 1946, ch. 540, title VI, §35, 60 Stat. 439; Pub. L. 87–772, §19, Oct. 9, 1962, 76 Stat. 774; Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 93–600, §3, Jan. 2, 1975, 88 Stat. 1955; Pub. L. 98–473, title II, §1503(2), Oct. 12, 1984, 98 Stat. 2182; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–667, title I, §129, Nov. 16, 1988, 102 Stat. 3945; Pub. L. 104–153, §7, July 2, 1996, 110 Stat. 1388; Pub. L. 106–43, §3(b), Aug. 5, 1999, 113 Stat. 219; Pub. L. 106–113, div. B, §1000(a)(9) [title III, §3003(a)(2), (b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–549; Pub. L. 107–273, div. C, title III, §13207(a), (b)(11), Nov. 2, 2002, 116 Stat. 1906, 1908; Pub. L. 108–482, title II, §202, Dec. 23, 2004, 118 Stat. 3916; Pub. L. 110–403, title I, §§103, 104, Oct. 13, 2008, 122 Stat. 4259.)

PRIOR PROVISIONS

Acts Feb. 20, 1905, ch. 592, §§16, 19, 33 Stat. 728, 729; Mar. 19, 1920, ch. 104, §4, 41 Stat. 534.

AMENDMENTS

2008—Subsec. (b). Pub. L. 110–403, §103, amended subsec. (b) generally. Prior to amendment, text read as follows: "In assessing damages under subsection (a) of this section, the court shall, unless the court finds extenuating circumstances, enter judgment for three times such profits or damages, whichever is greater, together with a reasonable attorney's fee, in the case of any violation of section 1114(1)(a) of this title or section 220506 of title 36 that consists of intentionally using a mark or designation, knowing such mark or designation is a counterfeit mark (as defined in section 1116(d) of this title), in connection with the sale, offering for sale, or distribution of goods or services. In such cases, the court may in its discretion award prejudgment interest on such amount at an annual interest rate established under section 6621(a)(2) of title 26, commencing on the date of the service of the claimant's pleadings setting forth the claim for such entry and ending on the date such entry is made, or for such shorter time as the court deems appropriate."

Subsec. (c)(1). Pub. L. 110–403, §104(1), substituted "$1,000" for "$500" and "$200,000" for "$100,000".

Subsec. (c)(2). Pub. L. 110–403, §104(2), substituted "$2,000,000" for "$1,000,000".

2004—Subsec. (e). Pub. L. 108–482 added subsec. (e).

2002—Subsec. (a). Pub. L. 107–273, §13207(a), substituted "a violation under section 1125(a) or (d) of this title," for "a violation under section 1125(a), (c), or (d) of this title,".

Subsec. (b). Pub. L. 107–273, §13207(b)(11), substituted "section 220506 of title 36" for "section 110 of the Act entitled 'An Act to incorporate the United States Olympic Association', approved September 21, 1950 (36 U.S.C. 380)" and "6621(a)(2) of title 26" for "6621 of title 26".

1999—Subsec. (a). Pub. L. 106–113, §1000(a)(9) [title III, §3003(a)(2)], inserted ", (c), or (d)" after "section 1125(a)" in first sentence.

Pub. L. 106–43 substituted "a violation under section 1125(a) of this title, or a willful violation under section 1125(c) of this title," for "or a violation under section 1125(a) of this title," in first sentence.

Subsec. (d). Pub. L. 106–113, §1000(a)(9) [title III, §3003(b)], added subsec. (d).

1996—Subsec. (c). Pub. L. 104–153 added subsec. (c).

1988—Subsec. (a). Pub. L. 100–667 inserted ", or a violation under section 1125(a) of this title," after "Office" in first sentence.

1986—Subsec. (b). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

1984—Pub. L. 98–473 designated existing provisions as subsec. (a) and added subsec. (b).

1975—Pub. L. 93–600 inserted provisions relating to awarding of attorney fees in exceptional cases.

Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

1962—Pub. L. 87–772 substituted "1114" for "1113(1)(b)".

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, §1000(a)(9) [title III, §3010], Nov. 29, 1999, 113 Stat. 1536, 1501A–552, provided that: "Sections 3002(a), 3003, 3004, 3005, and 3008 of this title [amending this section and sections 1114, 1116, 1125, and 1127 of this title, and enacting provisions set out as a note under section 1051 of this title] shall apply to all domain names registered before, on, or after the date of the enactment of this Act [Nov. 29, 1999], except that damages under subsection (a) or (d) of section 35 of the Trademark Act of 1946 (15 U.S.C. 1117), as amended by section 3003 of this title, shall not be available with respect to the registration, trafficking, or use of a domain name that occurs before the date of the enactment of this Act."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1975 AMENDMENTS

Amendment by Pub. L. 93–600 effective Jan. 2, 1975, but not to affect any suit, proceeding, or appeal then pending, see section 4 of Pub. L. 93–600, set out as a note under section 1063 of this title.

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

CONSTRUCTION OF 2004 AMENDMENT

Pub. L. 108–482, title II, §205, Dec. 23, 2004, 118 Stat. 3917, provided that:

"(a) FREE SPEECH AND PRESS.—Nothing in this title [see Short Title of 2004 Amendment note set out under section 1051 of this title] shall enlarge or diminish any rights of free speech or of the press for activities related to the registration or use of domain names.

"(b) DISCRETION OF COURTS IN DETERMINING RELIEF.—Nothing in this title shall restrict the discretion of a court in determining damages or other relief to be assessed against a person found liable for the infringement of intellectual property rights.

"(c) DISCRETION OF COURTS IN DETERMINING TERMS OF IMPRISONMENT.—Nothing in this title shall be construed to limit the discretion of a court to determine the appropriate term of imprisonment for an offense under applicable law."

TRANSFER OF FUNCTIONS

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

§1118. Destruction of infringing articles

In any action arising under this chapter, in which a violation of any right of the registrant of a mark registered in the Patent and Trademark Office, a violation under section 1125(a) of this title, or a willful violation under section 1125(c) of this title, shall have been established, the court may order that all labels, signs, prints, packages, wrappers, receptacles, and advertisements in the possession of the defendant, bearing the registered mark or, in the case of a violation of section 1125(a) of this title or a willful violation under section 1125(c) of this title, the word, term, name, symbol, device, combination thereof, designation, description, or representation that is the subject of the violation, or any reproduction, counterfeit, copy, or colorable imitation thereof, and all plates, molds, matrices, and other means of making the same, shall be delivered up and destroyed. The party seeking an order under this section for destruction of articles seized under section 1116(d) of this title shall give ten days' notice to the United States attorney for the judicial district in which such order is sought (unless

good cause is shown for lesser notice) and such United States attorney may, if such destruction may affect evidence of an offense against the United States, seek a hearing on such destruction or participate in any hearing otherwise to be held with respect to such destruction.

(July 5, 1946, ch. 540, title VI, §36, 60 Stat. 440; Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 98–473, title II, §1503(3), Oct. 12, 1984, 98 Stat. 2182; Pub. L. 100–667, title I, §130, Nov. 16, 1988, 102 Stat. 3945; Pub. L. 106–43, §3(c), Aug. 5, 1999, 113 Stat. 219.)

PRIOR PROVISIONS

Acts Feb. 20, 1905, ch. 592, §20, 33 Stat. 729; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167; June 25, 1936, ch. 804, 49 Stat. 1921.

AMENDMENTS

1999—Pub. L. 106–43, in first sentence, substituted "a violation under section 1125(a) of this title, or a willful violation under section 1125(c) of this title," for "or a violation under section 1125(a) of this title," and inserted "or a willful violation under section 1125(c) of this title" before ", the word,".

1988—Pub. L. 100–667 inserted in first sentence ", or a violation under section 1125(a) of this title," after "Office" and "or, in the case of a violation of section 1125(a) of this title, the word, term, name, symbol, device, combination thereof, designation, description, or representation that is the subject of the violation," after "registered mark".

1984—Pub. L. 98–473 inserted "The party seeking an order under this section for destruction of articles seized under section 1116(d) of this title shall give ten days' notice to the United States attorney for the judicial district in which such order is sought (unless good cause is shown for lesser notice) and such United States attorney may, if such destruction may affect evidence of an offense against the United States, seek a hearing on such destruction or participate in any hearing otherwise to be held with respect to such destruction."

1975—Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

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

§1119. Power of court over registration

In any action involving a registered mark the court may determine the right to registration, order the cancelation of registrations, in whole or in part, restore canceled registrations, and otherwise rectify the register with respect to the registrations of any party to the action. Decrees and orders shall be certified by the court to the Director, who shall make appropriate entry upon the records of the Patent and Trademark Office, and shall be controlled thereby.

(July 5, 1946, ch. 540, title VI, §37, 60 Stat. 440; Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A–583.)

PRIOR PROVISIONS

Act Feb. 20, 1905, ch. 592, §22, 33 Stat. 729.

AMENDMENTS

1999—Pub. L. 106–113 substituted "Director" for "Commissioner".
1975—Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

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

§1120. Civil liability for false or fraudulent registration

Any person who shall procure registration in the Patent and Trademark Office of a mark by a false or fraudulent declaration or representation, oral or in writing, or by any false means, shall be liable in a civil action by any person injured thereby for any damages sustained in consequence thereof.

(July 5, 1946, ch. 540, title VI, §38, 60 Stat. 440; Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949.)

PRIOR PROVISIONS

Act Feb. 20, 1905, ch. 592, §25, 33 Stat. 730.

AMENDMENTS

1975—Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

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

§1121. Jurisdiction of Federal courts; State and local requirements that registered trademarks be altered or displayed differently; prohibition

(a) The district and territorial courts of the United States shall have original jurisdiction and the courts of appeal of the United States (other than the United States Court of Appeals for the Federal Circuit) shall have appellate jurisdiction, of all actions arising under this chapter, without regard to

the amount in controversy or to diversity or lack of diversity of the citizenship of the parties.

(b) No State or other jurisdiction of the United States or any political subdivision or any agency thereof may require alteration of a registered mark, or require that additional trademarks, service marks, trade names, or corporate names that may be associated with or incorporated into the registered mark be displayed in the mark in a manner differing from the display of such additional trademarks, service marks, trade names, or corporate names contemplated by the registered mark as exhibited in the certificate of registration issued by the United States Patent and Trademark Office.

(July 5, 1946, ch. 540, title VI, §39, formerly §§39 and 39a, 60 Stat. 440; Pub. L. 97–164, title I, §148, Apr. 2, 1982, 96 Stat. 46; Pub. L. 97–296, Oct. 12, 1982, 96 Stat. 1316; Pub. L. 100–667, title I, §131, Nov. 16, 1988, 102 Stat. 3946; Pub. L. 105–330, title II, §201(a)(10), Oct. 30, 1998, 112 Stat. 3070.)

CODIFICATION

Pub. L. 100–667, §131(b)(1), transferred section 39a of act July 5, 1946, which was classified to section 1121a of this title, to subsec. (b) of this section.

In subsec. (a), the words "and the United States Court of Appeals for the District of Columbia" following "the Courts of Appeal of the United States" have been deleted as superfluous in view of section 41 of Title 28, Judiciary and Judicial Procedure, which includes the District of Columbia within the eleven judicial circuits of the United States. The word "and" has been inserted preceding "the courts of appeal of the United States" to preserve the conjunctive sense of the sentence.

PRIOR PROVISIONS

Acts Feb. 20, 1905, ch. 592, §17, 33 Stat. 728; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167; June 7, 1934, ch. 426, 48 Stat. 926; June 25, 1936, ch. 804, 49 Stat. 1921.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–330 substituted "courts" for "circuit courts" before "of appeal of the United States".

1988—Subsec. (a). Pub. L. 100–667, §131(a), designated existing provisions as subsec. (a).

Subsec. (b). Pub. L. 100–667, §131(b), redesignated section 1121a of this title as subsec. (b) of this section and substituted "service marks" for "servicemarks" in two places.

1982—Pub. L. 97–164 inserted "(other than the United States Court of Appeals for the Federal Circuit)".

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–330 effective Oct. 30, 1998, and applicable only to any civil action filed or proceeding before the United States Patent and Trademark Office commenced on or after such date relating to the registration of a mark, see section 201(b) of Pub. L. 105–330, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

§1121a. Transferred

CODIFICATION

Section, act July 5, 1946, ch. 540, title VI, §39a, as added Oct. 12, 1982, Pub. L. 97–296, 96 Stat. 1316, which prohibited State and local requirements that registered trademarks be altered or displayed differently, was transferred to subsec. (b) of section 39 of act July 5, 1946, by section 131(b)(1) of Pub. L. 100–667 and is

classified to section 1121(b) of this title.

§1122. Liability of United States and States, and instrumentalities and officials thereof

(a) Waiver of sovereign immunity by the United States

The United States, all agencies and instrumentalities thereof, and all individuals, firms, corporations, other persons acting for the United States and with the authorization and consent of the United States, shall not be immune from suit in Federal or State court by any person, including any governmental or nongovernmental entity, for any violation under this chapter.

(b) Waiver of sovereign immunity by States

Any State, instrumentality of a State or any officer or employee of a State or instrumentality of a State acting in his or her official capacity, shall not be immune, under the eleventh amendment of the Constitution of the United States or under any other doctrine of sovereign immunity, from suit in Federal court by any person, including any governmental or nongovernmental entity for any violation under this chapter.

(c) Remedies

In a suit described in subsection (a) or (b) of this section for a violation described therein, remedies (including remedies both at law and in equity) are available for the violation to the same extent as such remedies are available for such a violation in a suit against any person other than the United States or any agency or instrumentality thereof, or any individual, firm, corporation, or other person acting for the United States and with authorization and consent of the United States, or a State, instrumentality of a State, or officer or employee of a State or instrumentality of a State acting in his or her official capacity. Such remedies include injunctive relief under section 1116 of this title, actual damages, profits, costs and attorney's fees under section 1117 of this title, destruction of infringing articles under section 1118 of this title, the remedies provided for under sections 1114, 1119, 1120, 1124 and 1125 of this title, and for any other remedies provided under this chapter.

(July 5, 1946, ch. 540, title VI, §40, as added Pub. L. 102–542, §3(b), Oct. 27, 1992, 106 Stat. 3567; amended Pub. L. 106–43, §4(b), Aug. 5, 1999, 113 Stat. 219.)

CONSTITUTIONALITY

For information regarding constitutionality of section 40 of act July 5, 1946, as added by section 3(b) of Pub. L. 102–542, see Congressional Research Service, The Constitution of the United States of America: Analysis and Interpretation, Appendix 1, Acts of Congress Held Unconstitutional in Whole or in Part by the Supreme Court of the United States.

PRIOR PROVISIONS

A prior section 1122, act July 5, 1946, ch. 540, title VI, §40, 60 Stat. 440, related to review of cases by the Supreme Court, prior to repeal by act May 24, 1949, ch. 139, §142, 63 Stat. 109. See section 1254 of Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1999—Subsec. (a). Pub. L. 106–43, §4(b)(2), added subsec. (a). Former subsec. (a) redesignated (b).

Subsec. (b). Pub. L. 106–43, §4(b)(1), (2), redesignated subsec. (a) as (b) and inserted heading. Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 106–43, §4(b)(1), (3), redesignated subsec. (b) as (c) and in first sentence substituted "subsection (a) or (b) of this section for a violation described therein" for "subsection (a) of this section for a violation described in that subsection" and inserted "the United States or any agency or instrumentality thereof, or any individual, firm, corporation, or other person acting for the United States and with authorization and consent of the United States, or" after "other than".

EFFECTIVE DATE

Section effective with respect to violations that occur on or after Oct. 27, 1992, see section 4 of Pub. L.

102–542, set out as an Effective Date of 1992 Amendment note under section 1114 of this title.

§1123. Rules and regulations for conduct of proceedings in Patent and Trademark Office

The Director shall make rules and regulations, not inconsistent with law, for the conduct of proceedings in the Patent and Trademark Office under this chapter.

(July 5, 1946, ch. 540, title VI, §41, 60 Stat. 440; Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A–583.)

PRIOR PROVISIONS

Act Feb. 20, 1905, ch. 592, §26, 33 Stat. 730.

AMENDMENTS

1999—Pub. L. 106–113 substituted "Director" for "Commissioner".
1975—Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

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

§1124. Importation of goods bearing infringing marks or names forbidden

Except as provided in subsection (d) of section 1526 of title 19, no article of imported merchandise which shall copy or simulate the name of any domestic manufacture, or manufacturer, or trader, or of any manufacturer or trader located in any foreign country which, by treaty, convention, or law affords similar privileges to citizens of the United States, or which shall copy or simulate a trademark registered in accordance with the provisions of this chapter or shall bear a name or mark calculated to induce the public to believe that the article is manufactured in the United States, or that it is manufactured in any foreign country or locality other than the country or locality in which it is in fact manufactured, shall be admitted to entry at any customhouse of the United States; and, in order to aid the officers of the customs in enforcing this prohibition, any domestic manufacturer or trader, and any foreign manufacturer or trader, who is entitled under the provisions of a treaty, convention, declaration, or agreement between the United States and any foreign country to the advantages afforded by law to citizens of the United States in respect to trademarks and commercial names, may require his name and residence, and the name of the locality in which his goods are manufactured, and a copy of the certificate of registration of his trademark, issued in accordance with the provisions of this chapter, to be recorded in books which shall be kept for this purpose in the Department of the Treasury, under such regulations as the Secretary of the Treasury shall prescribe, and may furnish to the Department facsimiles of his name, the name of the locality in

which his goods are manufactured, or of his registered trademark, and thereupon the Secretary of the Treasury shall cause one or more copies of the same to be transmitted to each collector or other proper officer of customs.

(July 5, 1946, ch. 540, title VII, §42, 60 Stat. 440; Pub. L. 95–410, title II, §211(b), Oct. 3, 1978, 92 Stat. 903; Pub. L. 105–330, title II, §201(a)(11), (12), Oct. 30, 1998, 112 Stat. 3070; Pub. L. 106–43, §6(b), Aug. 5, 1999, 113 Stat. 220.)

PRIOR PROVISIONS

Act Feb. 20, 1905, ch. 592, §27, 33 Stat. 730.

AMENDMENTS

1999—Pub. L. 106–43 substituted "trademarks" for "trade-marks".

1998—Pub. L. 105–330, §201(a)(11), substituted "name of any domestic" for "name of the any domestic".

Pub. L. 105–330, §201(a)(12), substituted "trademark" for "trade-mark" wherever appearing.

1978—Pub. L. 95–410 substituted "Except as provided in subsection (d) of section 1526 of title 19, no article" for "No article".

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–330 effective Oct. 30, 1998, and applicable only to any civil action filed or proceeding before the United States Patent and Trademark Office commenced on or after such date relating to the registration of a mark, see section 201(b) of Pub. L. 105–330, set out as a note under section 1051 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

Offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise of Bureau of Customs of Department of the Treasury to which appointments were required to be made by President with advice and consent of Senate ordered abolished, with such offices to be terminated not later than Dec. 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. Functions of offices eliminated were already vested in Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

§1125. False designations of origin, false descriptions, and dilution forbidden

(a) Civil action

(1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which—

(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or

(B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities,

shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

(2) As used in this subsection, the term "any person" includes any State, instrumentality of a State or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this chapter in the same manner and to the same extent as any nongovernmental entity.

(3) In a civil action for trade dress infringement under this chapter for trade dress not registered on the principal register, the person who asserts trade dress protection has the burden of proving that the matter sought to be protected is not functional.

(b) Importation

Any goods marked or labeled in contravention of the provisions of this section shall not be imported into the United States or admitted to entry at any customhouse of the United States. The owner, importer, or consignee of goods refused entry at any customhouse under this section may have any recourse by protest or appeal that is given under the customs revenue laws or may have the remedy given by this chapter in cases involving goods refused entry or seized.

(c) Dilution by blurring; dilution by tarnishment

(1) Injunctive relief

Subject to the principles of equity, the owner of a famous mark that is distinctive, inherently or through acquired distinctiveness, shall be entitled to an injunction against another person who, at any time after the owner's mark has become famous, commences use of a mark or trade name in commerce that is likely to cause dilution by blurring or dilution by tarnishment of the famous mark, regardless of the presence or absence of actual or likely confusion, of competition, or of actual economic injury.

(2) Definitions

(A) For purposes of paragraph (1), a mark is famous if it is widely recognized by the general consuming public of the United States as a designation of source of the goods or services of the mark's owner. In determining whether a mark possesses the requisite degree of recognition, the court may consider all relevant factors, including the following:

(i) The duration, extent, and geographic reach of advertising and publicity of the mark, whether advertised or publicized by the owner or third parties.

(ii) The amount, volume, and geographic extent of sales of goods or services offered under the mark.

(iii) The extent of actual recognition of the mark.

(iv) Whether the mark was registered under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register.

(B) For purposes of paragraph (1), "dilution by blurring" is association arising from the similarity between a mark or trade name and a famous mark that impairs the distinctiveness of the famous mark. In determining whether a mark or trade name is likely to cause dilution by blurring, the court may consider all relevant factors, including the following:

(i) The degree of similarity between the mark or trade name and the famous mark.

(ii) The degree of inherent or acquired distinctiveness of the famous mark.

(iii) The extent to which the owner of the famous mark is engaging in substantially exclusive use of the mark.

(iv) The degree of recognition of the famous mark.

(v) Whether the user of the mark or trade name intended to create an association with the famous mark.

(vi) Any actual association between the mark or trade name and the famous mark.

(C) For purposes of paragraph (1), "dilution by tarnishment" is association arising from the similarity between a mark or trade name and a famous mark that harms the reputation of the famous mark.

(3) Exclusions

The following shall not be actionable as dilution by blurring or dilution by tarnishment under this subsection:

(A) Any fair use, including a nominative or descriptive fair use, or facilitation of such fair

use, of a famous mark by another person other than as a designation of source for the person's own goods or services, including use in connection with—

(i) advertising or promotion that permits consumers to compare goods or services; or

(ii) identifying and parodying, criticizing, or commenting upon the famous mark owner or the goods or services of the famous mark owner.

(B) All forms of news reporting and news commentary.

(C) Any noncommercial use of a mark.

(4) Burden of proof

In a civil action for trade dress dilution under this chapter for trade dress not registered on the principal register, the person who asserts trade dress protection has the burden of proving that—

(A) the claimed trade dress, taken as a whole, is not functional and is famous; and

(B) if the claimed trade dress includes any mark or marks registered on the principal register, the unregistered matter, taken as a whole, is famous separate and apart from any fame of such registered marks.

(5) Additional remedies

In an action brought under this subsection, the owner of the famous mark shall be entitled to injunctive relief as set forth in section 1116 of this title. The owner of the famous mark shall also be entitled to the remedies set forth in sections 1117(a) and 1118 of this title, subject to the discretion of the court and the principles of equity if—

(A) the mark or trade name that is likely to cause dilution by blurring or dilution by tarnishment was first used in commerce by the person against whom the injunction is sought after October 6, 2006; and

(B) in a claim arising under this subsection—

(i) by reason of dilution by blurring, the person against whom the injunction is sought willfully intended to trade on the recognition of the famous mark; or

(ii) by reason of dilution by tarnishment, the person against whom the injunction is sought willfully intended to harm the reputation of the famous mark.

(6) Ownership of valid registration a complete bar to action

The ownership by a person of a valid registration under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register under this chapter shall be a complete bar to an action against that person, with respect to that mark, that—

(A) is brought by another person under the common law or a statute of a State; and

(B)(i) seeks to prevent dilution by blurring or dilution by tarnishment; or

(ii) asserts any claim of actual or likely damage or harm to the distinctiveness or reputation of a mark, label, or form of advertisement.

(7) Savings clause

Nothing in this subsection shall be construed to impair, modify, or supersede the applicability of the patent laws of the United States.

(d) Cyberpiracy prevention

(1)(A) A person shall be liable in a civil action by the owner of a mark, including a personal name which is protected as a mark under this section, if, without regard to the goods or services of the parties, that person—

(i) has a bad faith intent to profit from that mark, including a personal name which is protected as a mark under this section; and

(ii) registers, traffics in, or uses a domain name that—

(I) in the case of a mark that is distinctive at the time of registration of the domain name, is identical or confusingly similar to that mark;

(II) in the case of a famous mark that is famous at the time of registration of the domain name, is identical or confusingly similar to or dilutive of that mark; or

(III) is a trademark, word, or name protected by reason of section 706 of title 18 or section 220506 of title 36.

(B)(i) In determining whether a person has a bad faith intent described under subparagraph (A), a court may consider factors such as, but not limited to—

(I) the trademark or other intellectual property rights of the person, if any, in the domain name;

(II) the extent to which the domain name consists of the legal name of the person or a name that is otherwise commonly used to identify that person;

(III) the person's prior use, if any, of the domain name in connection with the bona fide offering of any goods or services;

(IV) the person's bona fide noncommercial or fair use of the mark in a site accessible under the domain name;

(V) the person's intent to divert consumers from the mark owner's online location to a site accessible under the domain name that could harm the goodwill represented by the mark, either for commercial gain or with the intent to tarnish or disparage the mark, by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the site;

(VI) the person's offer to transfer, sell, or otherwise assign the domain name to the mark owner or any third party for financial gain without having used, or having an intent to use, the domain name in the bona fide offering of any goods or services, or the person's prior conduct indicating a pattern of such conduct;

(VII) the person's provision of material and misleading false contact information when applying for the registration of the domain name, the person's intentional failure to maintain accurate contact information, or the person's prior conduct indicating a pattern of such conduct;

(VIII) the person's registration or acquisition of multiple domain names which the person knows are identical or confusingly similar to marks of others that are distinctive at the time of registration of such domain names, or dilutive of famous marks of others that are famous at the time of registration of such domain names, without regard to the goods or services of the parties; and

(IX) the extent to which the mark incorporated in the person's domain name registration is or is not distinctive and famous within the meaning of subsection (c).

(ii) Bad faith intent described under subparagraph (A) shall not be found in any case in which the court determines that the person believed and had reasonable grounds to believe that the use of the domain name was a fair use or otherwise lawful.

(C) In any civil action involving the registration, trafficking, or use of a domain name under this paragraph, a court may order the forfeiture or cancellation of the domain name or the transfer of the domain name to the owner of the mark.

(D) A person shall be liable for using a domain name under subparagraph (A) only if that person is the domain name registrant or that registrant's authorized licensee.

(E) As used in this paragraph, the term "traffics in" refers to transactions that include, but are not limited to, sales, purchases, loans, pledges, licenses, exchanges of currency, and any other transfer for consideration or receipt in exchange for consideration.

(2)(A) The owner of a mark may file an in rem civil action against a domain name in the judicial district in which the domain name registrar, domain name registry, or other domain name authority that registered or assigned the domain name is located if—

(i) the domain name violates any right of the owner of a mark registered in the Patent and Trademark Office, or protected under subsection (a) or (c) of this section; and

(ii) the court finds that the owner—

(I) is not able to obtain in personam jurisdiction over a person who would have been a defendant in a civil action under paragraph (1); or

(II) through due diligence was not able to find a person who would have been a defendant in a civil action under paragraph (1) by—

(aa) sending a notice of the alleged violation and intent to proceed under this paragraph to the registrant of the domain name at the postal and e-mail address provided by the registrant

to the registrar; and

(bb) publishing notice of the action as the court may direct promptly after filing the action.

(B) The actions under subparagraph (A)(ii) shall constitute service of process.

(C) In an in rem action under this paragraph, a domain name shall be deemed to have its situs in the judicial district in which—

(i) the domain name registrar, registry, or other domain name authority that registered or assigned the domain name is located; or

(ii) documents sufficient to establish control and authority regarding the disposition of the registration and use of the domain name are deposited with the court.

(D)(i) The remedies in an in rem action under this paragraph shall be limited to a court order for the forfeiture or cancellation of the domain name or the transfer of the domain name to the owner of the mark. Upon receipt of written notification of a filed, stamped copy of a complaint filed by the owner of a mark in a United States district court under this paragraph, the domain name registrar, domain name registry, or other domain name authority shall—

(I) expeditiously deposit with the court documents sufficient to establish the court's control and authority regarding the disposition of the registration and use of the domain name to the court; and

(II) not transfer, suspend, or otherwise modify the domain name during the pendency of the action, except upon order of the court.

(ii) The domain name registrar or registry or other domain name authority shall not be liable for injunctive or monetary relief under this paragraph except in the case of bad faith or reckless disregard, which includes a willful failure to comply with any such court order.

(3) The civil action established under paragraph (1) and the in rem action established under paragraph (2), and any remedy available under either such action, shall be in addition to any other civil action or remedy otherwise applicable.

(4) The in rem jurisdiction established under paragraph (2) shall be in addition to any other jurisdiction that otherwise exists, whether in rem or in personam.

(July 5, 1946, ch. 540, title VIII, §43, 60 Stat. 441; Pub. L. 100–667, title I, §132, Nov. 16, 1988, 102 Stat. 3946; Pub. L. 102–542, §3(c), Oct. 27, 1992, 106 Stat. 3568; Pub. L. 104–98, §3(a), Jan. 16, 1996, 109 Stat. 985; Pub. L. 106–43, §§3(a)(2), 5, Aug. 5, 1999, 113 Stat. 219, 220; Pub. L. 106–113, div. B, §1000(a)(9) [title III, §3002(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–545; Pub. L. 109–312, §2, Oct. 6, 2006, 120 Stat. 1730; Pub. L. 112–190, §1(a), Oct. 5, 2012, 126 Stat. 1436.)

REFERENCES IN TEXT

Acts March 3, 1881, and February 20, 1905, referred to in subsec. (c)(2)(A)(iv), (6), are acts Mar. 3, 1881, ch. 138, 21 Stat. 502, and Feb. 20, 1905, ch. 592, 33 Stat. 724, which were repealed insofar as inconsistent with this chapter by act July 5, 1946, ch. 540, §46(a), 60 Stat. 444. Act Feb. 20, 1905, was classified to sections 81 to 109 of this title.

PRIOR PROVISIONS

Act Mar. 19, 1920, ch. 104, §3, 41 Stat. 534.

AMENDMENTS

2012—Subsec. (c)(6). Pub. L. 112–190 added subpars. (A) and (B) and struck out former subpars. (A) and (B) which read as follows:

"(A)(i) is brought by another person under the common law or a statute of a State; and

"(ii) seeks to prevent dilution by blurring or dilution by tarnishment; or

"(B) asserts any claim of actual or likely damage or harm to the distinctiveness or reputation of a mark, label, or form of advertisement."

2006—Subsec. (c). Pub. L. 109–312, §2(1), added subsec. (c) and struck out former subsec. (c) which related to remedies for dilution of famous marks.

Subsec. (d)(1)(B)(i)(IX). Pub. L. 109–312, §2(2), substituted "subsection (c)" for "subsection (c)(1)".

1999—Subsec. (a)(3). Pub. L. 106–43, §5, added par. (3).

Subsec. (c)(2). Pub. L. 106–43, §3(a)(2), inserted "as set forth in section 1116 of this title" after "relief" in first sentence.

Subsec. (d). Pub. L. 106–113 added subsec. (d).

1996—Subsec. (c). Pub. L. 104–98 added subsec. (c).

1992—Subsec. (a). Pub. L. 102–542 designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, and added par. (2).

1988—Subsec. (a). Pub. L. 100–667 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "Any person who shall affix, apply, or annex, or use in connection with any goods or services, or any container or containers for goods, a false designation of origin, or any false description or representation, including words or other symbols tending falsely to describe or represent the same, and shall cause such goods or services to enter into commerce, and any person who shall with knowledge of the falsity of such designation of origin or description or representation cause or procure the same to be transported or used in commerce or deliver the same to any carrier to be transported or used, shall be liable to a civil action by any person doing business in the locality falsely indicated as that of origin or in the region in which said locality is situated, or by any person who believes that he is or is likely to be damaged by the use of any such false description or representation."

EFFECTIVE DATE OF 2012 AMENDMENT

Pub. L. 112–190, §1(b), Oct. 5, 2012, 126 Stat. 1436, provided that: "The amendment made by subsection (a) [amending this section] shall apply to any action commenced on or after the date of the enactment of this Act [Oct. 5, 2012]."

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 applicable to all domain names registered before, on, or after Nov. 29, 1999, see section 1000(a)(9) [title III, §3010] of Pub. L. 106–113, set out as a note under section 1117 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–98, §5, Jan. 16, 1996, 109 Stat. 987, provided that: "This Act [amending this section and section 1127 of this title and enacting provisions set out as a note under section 1051 of this title] and the amendments made by this Act shall take effect on the date of the enactment of this Act [Jan. 16, 1996]."

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–542 effective with respect to violations that occur on or after Oct. 27, 1992, see section 4 of Pub. L. 102–542, set out as a note under section 1114 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

STUDY ON ABUSIVE DOMAIN NAME REGISTRATIONS INVOLVING PERSONAL NAMES

Pub. L. 106–113, div. B, §1000(a)(9) [title III, §3006], Nov. 29, 1999, 113 Stat. 1536, 1501A–550, provided that:

"(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Nov. 29, 1999], the Secretary of Commerce, in consultation with the Patent and Trademark Office and the Federal Election Commission, shall conduct a study and report to Congress with recommendations on guidelines and procedures for resolving disputes involving the registration or use by a person of a domain name that includes the personal name of another person, in whole or in part, or a name confusingly similar thereto, including consideration of and recommendations for—

"(1) protecting personal names from registration by another person as a second level domain name for purposes of selling or otherwise transferring such domain name to such other person or any third party for financial gain;

"(2) protecting individuals from bad faith uses of their personal names as second level domain names by others with malicious intent to harm the reputation of the individual or the goodwill associated with that individual's name;

"(3) protecting consumers from the registration and use of domain names that include personal names in the second level domain in manners which are intended or are likely to confuse or deceive the public as to the affiliation, connection, or association of the domain name registrant, or a site accessible under the domain name, with such other person, or as to the origin, sponsorship, or approval of the goods, services, or commercial activities of the domain name registrant;

"(4) protecting the public from registration of domain names that include the personal names of government officials, official candidates, and potential official candidates for Federal, State, or local political office in the United States, and the use of such domain names in a manner that disrupts the electoral process or the public's ability to access accurate and reliable information regarding such individuals;

"(5) existing remedies, whether under State law or otherwise, and the extent to which such remedies are sufficient to address the considerations described in paragraphs (1) through (4); and

"(6) the guidelines, procedures, and policies of the Internet Corporation for Assigned Names and Numbers and the extent to which they address the considerations described in paragraphs (1) through (4).

"(b) GUIDELINES AND PROCEDURES.—The Secretary of Commerce shall, under its Memorandum of Understanding with the Internet Corporation for Assigned Names and Numbers, collaborate to develop guidelines and procedures for resolving disputes involving the registration or use by a person of a domain name that includes the personal name of another person, in whole or in part, or a name confusingly similar thereto."

§1126. International conventions

(a) Register of marks communicated by international bureaus

The Director shall keep a register of all marks communicated to him by the international bureaus provided for by the conventions for the protection of industrial property, trademarks, trade and commercial names, and the repression of unfair competition to which the United States is or may become a party, and upon the payment of the fees required by such conventions and the fees required in this chapter may place the marks so communicated upon such register. This register shall show a facsimile of the mark or trade or commercial name; the name, citizenship, and address of the registrant; the number, date, and place of the first registration of the mark, including the dates on which application for such registration was filed and granted and the term of such registration; a list of goods or services to which the mark is applied as shown by the registration in the country of origin, and such other data as may be useful concerning the mark. This register shall be a continuation of the register provided in section 1(a) of the Act of March 19, 1920.

(b) Benefits of section to persons whose country of origin is party to convention or treaty

Any person whose country of origin is a party to any convention or treaty relating to trademarks, trade or commercial names, or the repression of unfair competition, to which the United States is also a party, or extends reciprocal rights to nationals of the United States by law, shall be entitled to the benefits of this section under the conditions expressed herein to the extent necessary to give effect to any provision of such convention, treaty or reciprocal law, in addition to the rights to which any owner of a mark is otherwise entitled by this chapter.

(c) Prior registration in country of origin; country of origin defined

No registration of a mark in the United States by a person described in subsection (b) of this section shall be granted until such mark has been registered in the country of origin of the applicant, unless the applicant alleges use in commerce.

For the purposes of this section, the country of origin of the applicant is the country in which he has a bona fide and effective industrial or commercial establishment, or if he has not such an establishment the country in which he is domiciled, or if he has not a domicile in any of the countries described in subsection (b) of this section, the country of which he is a national.

(d) Right of priority

An application for registration of a mark under section 1051, 1053, 1054, or 1091 of this title or under subsection (e) of this section, filed by a person described in subsection (b) of this section who

has previously duly filed an application for registration of the same mark in one of the countries described in subsection (b) of this section shall be accorded the same force and effect as would be accorded to the same application if filed in the United States on the same date on which the application was first filed in such foreign country: *Provided*, That—

(1) the application in the United States is filed within six months from the date on which the application was first filed in the foreign country;

(2) the application conforms as nearly as practicable to the requirements of this chapter, including a statement that the applicant has a bona fide intention to use the mark in commerce;

(3) the rights acquired by third parties before the date of the filing of the first application in the foreign country shall in no way be affected by a registration obtained on an application filed under this subsection;

(4) nothing in this subsection shall entitle the owner of a registration granted under this section to sue for acts committed prior to the date on which his mark was registered in this country unless the registration is based on use in commerce.

In like manner and subject to the same conditions and requirements, the right provided in this section may be based upon a subsequent regularly filed application in the same foreign country, instead of the first filed foreign application: *Provided*, That any foreign application filed prior to such subsequent application has been withdrawn, abandoned, or otherwise disposed of, without having been laid open to public inspection and without leaving any rights outstanding, and has not served, nor thereafter shall serve, as a basis for claiming a right of priority.

(e) Registration on principal or supplemental register; copy of foreign registration

A mark duly registered in the country of origin of the foreign applicant may be registered on the principal register if eligible, otherwise on the supplemental register in this chapter provided. Such applicant shall submit, within such time period as may be prescribed by the Director, a true copy, a photocopy, a certification, or a certified copy of the registration in the country of origin of the applicant. The application must state the applicant's bona fide intention to use the mark in commerce, but use in commerce shall not be required prior to registration.

(f) Domestic registration independent of foreign registration

The registration of a mark under the provisions of subsections (c), (d), and (e) of this section by a person described in subsection (b) of this section shall be independent of the registration in the country of origin and the duration, validity, or transfer in the United States of such registration shall be governed by the provisions of this chapter.

(g) Trade or commercial names of foreign nationals protected without registration

Trade names or commercial names of persons described in subsection (b) of this section shall be protected without the obligation of filing or registration whether or not they form parts of marks.

(h) Protection of foreign nationals against unfair competition

Any person designated in subsection (b) of this section as entitled to the benefits and subject to the provisions of this chapter shall be entitled to effective protection against unfair competition, and the remedies provided in this chapter for infringement of marks shall be available so far as they may be appropriate in repressing acts of unfair competition.

(i) Citizens or residents of United States entitled to benefits of section

Citizens or residents of the United States shall have the same benefits as are granted by this section to persons described in subsection (b) of this section.

(July 5, 1946, ch. 540, title IX, §44, 60 Stat. 441; Pub. L. 87–333, §2, Oct. 3, 1961, 75 Stat. 748; Pub. L. 87–772, §20, Oct. 9, 1962, 76 Stat. 774; Pub. L. 100–667, title I, §133, Nov. 16, 1988, 102 Stat. 3946; Pub. L. 105–330, title I, §108, Oct. 30, 1998, 112 Stat. 3068; Pub. L. 106–43, §6(b), Aug. 5, 1999, 113 Stat. 220; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A–583; Pub. L. 107–273, div. C, title III, §13207(b)(12), Nov. 2, 2002, 116 Stat. 1908.)

REFERENCES IN TEXT

Section 1(a) of the Act of March 19, 1920, referred to in subsec. (a), is section 1(a) of act Mar. 19, 1920, ch. 104, 41 Stat. 533, which was classified to section 121(a) of this title, and repealed by act July 5, 1946, ch. 540, §46(a), 60 Stat. 444, insofar as inconsistent with this chapter.

PRIOR PROVISIONS

Acts Feb. 20, 1905, ch. 592, §§1, 2, 4, 33 Stat. 724, 725; May 4, 1906, ch. 2081, §§1, 3, 34 Stat. 168, 169; Feb. 18, 1909, ch. 144, 35 Stat. 628; Mar. 19, 1920, ch. 104, §§1, 6, 41 Stat. 533, 535; Apr. 11, 1930, ch. 132, §4, 46 Stat. 155; June 20, 1936, ch. 617, 49 Stat. 1539; June 10, 1938, ch. 332, §§1, 2, 3, 52 Stat. 638, 639.

AMENDMENTS

2002—Subsec. (e). Pub. L. 107–273 substituted "a true copy, a photocopy, a certification," for "a certification".

1999—Subsec. (a). Pub. L. 106–113 substituted "Director" for "Commissioner".

Pub. L. 106–43 substituted "trademarks" for "trade-marks".

Subsec. (e). Pub. L. 106–113 substituted "Director" for "Commissioner".

1998—Subsec. (d). Pub. L. 105–330, §108(1)(A), in introductory provisions, substituted "or 1091 of this title or under subsection (e) of this section" for "1091 of this title, or subsection (e) of this section".

Subsec. (d)(3), (4). Pub. L. 105–330, §108(1)(B), made technical amendment to reference in original act which appears in text as reference to this subsection.

Subsec. (e). Pub. L. 105–330, §108(2), substituted "Such applicant shall submit, within such time period as may be prescribed by the Commissioner, a certification or a certified copy of the registration in the country of origin of the applicant" for "The application therefor shall be accompanied by a certification or a certified copy of the registration in the country of origin of the applicant".

1988—Subsec. (a). Pub. L. 100–667, §133(2), substituted "required in this chapter" for "herein prescribed".

Subsec. (c). Pub. L. 100–667, §133(1), made technical amendment in two places to references in the original act to subsection (b) of this section, resulting in no change in text.

Subsec. (d). Pub. L. 100–667, §133(1), (3), (4), (5), in introductory provisions, made technical amendment in two places to references in the original act to subsection (b) of this section, resulting in no change in text, and substituted "section 1051, 1053, 1054, or 1091 of this title, or subsection (e) of this section" for "sections 1051, 1052, 1053, 1054, or 1091 of this title", in par. (2), substituted "including a statement that the applicant has a bona fide intention to use the mark in commerce" for "but use in commerce need not be alleged", and in par. (3), substituted "foreign" for "foreing".

Subsec. (e). Pub. L. 100–667, §133(6), inserted at end "The application must state the applicant's bona fide intention to use the mark in commerce, but use in commerce shall not be required prior to registration."

Subsec. (f). Pub. L. 100–667, §133(1), (7), made technical amendment to references in the original act to subsections (c), (d), and (e) of this section and to subsection (b) of this section, resulting in no change in text.

Subsecs. (g) to (i). Pub. L. 100–667, §133(1), (8), made technical amendment to references in the original act to subsection (b) of this section, resulting in no change in text.

1962—Subsec. (b). Pub. L. 87–772 inserted "or extends reciprocal rights to nationals of the United States by law," and substituted provisions requiring the person's country of origin to be a party to any convention or treaty, for provisions which required such persons to be nationals of, domiciled in, or have a bona fide and effective business or commercial establishment in a foreign country which was a party to the International Convention for the Protection of Industrial Property, or the General Inter-American Convention for Trade Mark and Commercial Protection, or any other convention or treaty relating to trademarks, trade, or commercial names.

Subsec. (e). Pub. L. 87–772 inserted "certification or a" after "accompanied by a" and struck out "application for or" before "registration".

1961—Subsec. (d). Pub. L. 87–333 inserted par. at end authorizing the right provided by this section to be based upon a subsequent application in the same foreign country, instead of the first application, provided that any foreign application filed prior to such subsequent one was withdrawn, or otherwise disposed of, without having been open to public inspection and without leaving any rights outstanding, nor any basis for claiming priority.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–330 effective on the date that is 1 year after Oct. 30, 1998, see section 110 of Pub. L. 105–330, set out as a note under section 1051 of this title.

For provisions relating to applicability of amendment by Pub. L. 105–330 to applications for registration of trademarks, see section 109(b) of Pub. L. 105–330, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Pub. L. 87–333, §3, Oct. 3, 1961, 75 Stat. 748, provided that: "This Act [amending this section and section 119 of Title 35, Patents] shall take effect on the date when the Convention of Paris for the Protection of Industrial Property of March 20, 1883, as revised at Lisbon, October 31, 1958, comes into force with respect to the United States and shall apply only to applications thereafter filed in the United States by persons entitled to the benefit of said convention, as revised at the time of such filing."

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

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

§1127. Construction and definitions; intent of chapter

In the construction of this chapter, unless the contrary is plainly apparent from the context—

The United States includes and embraces all territory which is under its jurisdiction and control.

The word "commerce" means all commerce which may lawfully be regulated by Congress.

The term "principal register" refers to the register provided for by sections 1051 to 1072 of this title, and the term "supplemental register" refers to the register provided for by sections 1091 to 1096 of this title.

The term "person" and any other word or term used to designate the applicant or other entitled to a benefit or privilege or rendered liable under the provisions of this chapter includes a juristic person as well as a natural person. The term "juristic person" includes a firm, corporation, union, association, or other organization capable of suing and being sued in a court of law.

The term "person" also includes the United States, any agency or instrumentality thereof, or any individual, firm, or corporation acting for the United States and with the authorization and consent of the United States. The United States, any agency or instrumentality thereof, and any individual, firm, or corporation acting for the United States and with the authorization and consent of the United States, shall be subject to the provisions of this chapter in the same manner and to the same extent as any nongovernmental entity.

The term "person" also includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this chapter in the same manner and to the same extent as any nongovernmental entity.

The terms "applicant" and "registrant" embrace the legal representatives, predecessors, successors and assigns of such applicant or registrant.

The term "Director" means the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

The term "related company" means any person whose use of a mark is controlled by the owner of the mark with respect to the nature and quality of the goods or services on or in connection with which the mark is used.

The terms "trade name" and "commercial name" mean any name used by a person to identify his or her business or vocation.

The term "trademark" includes any word, name, symbol, or device, or any combination thereof—

(1) used by a person, or

(2) which a person has a bona fide intention to use in commerce and applies to register on the principal register established by this chapter,

to identify and distinguish his or her goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown.

The term "service mark" means any word, name, symbol, or device, or any combination thereof—

(1) used by a person, or

(2) which a person has a bona fide intention to use in commerce and applies to register on the principal register established by this chapter,

to identify and distinguish the services of one person, including a unique service, from the services of others and to indicate the source of the services, even if that source is unknown. Titles, character names, and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor.

The term "certification mark" means any word, name, symbol, or device, or any combination thereof—

(1) used by a person other than its owner, or

(2) which its owner has a bona fide intention to permit a person other than the owner to use in commerce and files an application to register on the principal register established by this chapter,

to certify regional or other origin, material, mode of manufacture, quality, accuracy, or other characteristics of such person's goods or services or that the work or labor on the goods or services was performed by members of a union or other organization.

The term "collective mark" means a trademark or service mark—

(1) used by the members of a cooperative, an association, or other collective group or organization, or

(2) which such cooperative, association, or other collective group or organization has a bona fide intention to use in commerce and applies to register on the principal register established by this chapter,

and includes marks indicating membership in a union, an association, or other organization.

The term "mark" includes any trademark, service mark, collective mark, or certification mark.

The term "use in commerce" means the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark. For purposes of this chapter, a mark shall be deemed to be in use in commerce—

(1) on goods when—

(A) it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto, or if the nature of the goods makes such placement impracticable, then on documents associated with the goods or their sale, and

(B) the goods are sold or transported in commerce, and

(2) on services when it is used or displayed in the sale or advertising of services and the services are rendered in commerce, or the services are rendered in more than one State or in the United States and a foreign country and the person rendering the services is engaged in commerce in connection with the services.

A mark shall be deemed to be "abandoned" if either of the following occurs:

(1) When its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for 3 consecutive years shall be prima facie evidence

of abandonment. "Use" of a mark means the bona fide use of such mark made in the ordinary course of trade, and not made merely to reserve a right in a mark.

(2) When any course of conduct of the owner, including acts of omission as well as commission, causes the mark to become the generic name for the goods or services on or in connection with which it is used or otherwise to lose its significance as a mark. Purchaser motivation shall not be a test for determining abandonment under this paragraph.

The term "colorable imitation" includes any mark which so resembles a registered mark as to be likely to cause confusion or mistake or to deceive.

The term "registered mark" means a mark registered in the United States Patent and Trademark Office under this chapter or under the Act of March 3, 1881, or the Act of February 20, 1905, or the Act of March 19, 1920. The phrase "marks registered in the Patent and Trademark Office" means registered marks.

The term "Act of March 3, 1881", "Act of February 20, 1905", or "Act of March 19, 1920", means the respective Act as amended.

A "counterfeit" is a spurious mark which is identical with, or substantially indistinguishable from, a registered mark.

The term "domain name" means any alphanumeric designation which is registered with or assigned by any domain name registrar, domain name registry, or other domain name registration authority as part of an electronic address on the Internet.

The term "Internet" has the meaning given that term in section 230(f)(1) of title 47.

Words used in the singular include the plural and vice versa.

The intent of this chapter is to regulate commerce within the control of Congress by making actionable the deceptive and misleading use of marks in such commerce; to protect registered marks used in such commerce from interference by State, or territorial legislation; to protect persons engaged in such commerce against unfair competition; to prevent fraud and deception in such commerce by the use of reproductions, copies, counterfeits, or colorable imitations of registered marks; and to provide rights and remedies stipulated by treaties and conventions respecting trademarks, trade names, and unfair competition entered into between the United States and foreign nations.

(July 5, 1946, ch. 540, title X, §45, 60 Stat. 443; Pub. L. 87–772, §21, Oct. 9, 1962, 76 Stat. 774; Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 98–620, title I, §103, Nov. 8, 1984, 98 Stat. 3335; Pub. L. 100–667, title I, §134, Nov. 16, 1988, 102 Stat. 3946; Pub. L. 102–542, §3(d), Oct. 27, 1992, 106 Stat. 3568; Pub. L. 103–465, title V, §521, Dec. 8, 1994, 108 Stat. 4981; Pub. L. 104–98, §4, Jan. 16, 1996, 109 Stat. 986; Pub. L. 106–43, §§4(c), 6(b), Aug. 5, 1999, 113 Stat. 219, 220; Pub. L. 106–113, div. B, §1000(a)(9) [title III, §3005, title IV, §4732(b)(1)(A)], Nov. 29, 1999, 113 Stat. 1536, 1501A–550, 1501A–583; Pub. L. 109–312, §3(e), Oct. 6, 2006, 120 Stat. 1733.)

REFERENCES IN TEXT

Acts March 3, 1881, February 20, 1905, and March 19, 1920, referred to in text, are acts Mar. 3, 1881, ch. 138, 21 Stat. 502; Feb. 20, 1905, ch. 592, 33 Stat. 724; and Mar. 19, 1920, ch. 104, 41 Stat. 533, which were repealed insofar as inconsistent with this chapter by act July 5, 1946, ch. 540, §46(a), 60 Stat. 444. Act Feb. 20, 1905, was classified to sections 81 to 109 of this title. Act Mar. 19, 1920, had been generally classified to sections 121 to 128 of this title.

PRIOR PROVISIONS

Acts Feb. 20, 1905, ch. 592, §29, 33 Stat. 731; June 10, 1938, ch. 332, §5, 52 Stat. 639.

AMENDMENTS

2006—Pub. L. 109–312 struck out par. defining "dilution" after par. defining "abandoned".

1999—Pub. L. 106–113, §1000(a)(9) [title IV, §4732(b)(1)(A)], substituted par. defining "Director" for par. which read as follows: "The term 'Commissioner' means the Commissioner of Patents and Trademarks."

Pub. L. 106–113, §1000(a)(9) [title III, §3005], inserted pars. defining "domain name" and "Internet" after par. defining "counterfeit".

Pub. L. 106–43, §6(b), substituted "trademarks" for "trade-marks" in last undesignated par.

Pub. L. 106–43, §4(c), between pars. defining "person" inserted: "The term 'person' also includes the United States, any agency or instrumentality thereof, or any individual, firm, or corporation acting for the United States and with the authorization and consent of the United States. The United States, any agency or instrumentality thereof, and any individual, firm, or corporation acting for the United States and with the authorization and consent of the United States, shall be subject to the provisions of this chapter in the same manner and to the same extent as any nongovernmental entity."

1996—Pub. L. 104–98 inserted par. defining "dilution" after par. defining "abandoned".

1994—Pub. L. 103–465 amended par. defining "abandoned" generally. Prior to amendment, par. read as follows: "A mark shall be deemed to be 'abandoned' when either of the following occurs:

"(1) When its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for two consecutive years shall be prima facie evidence of abandonment. 'Use' of a mark means the bona fide use of that mark made in the ordinary course of trade, and not made merely to reserve a right in a mark.

"(2) When any course of conduct of the owner, including acts of omission as well as commission, causes the mark to become the generic name for the goods or services on or in connection with which it is used or otherwise to lose its significance as a mark. Purchaser motivation shall not be a test for determining abandonment under this paragraph."

1992—Pub. L. 102–542 inserted after fourth undesignated par. "The term 'person' also includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this chapter in the same manner and to the same extent as any nongovernmental entity."

1988—Pub. L. 100–667, §134(1), amended par. defining "related company" generally. Prior to amendment, par. read as follows: "The term 'related company' means any person who legitimately controls or is controlled by the registrant or applicant for registration in respect to the nature and quality of the goods or services in connection with which the mark is used."

Pub. L. 100–667, §134(2), amended par. defining "trade name" and "commercial name" generally. Prior to amendment, par. read as follows: "The terms 'trade name' and 'commercial name' include individual names and surnames, firm names and trade names used by manufacturers, industrialists, merchants, agriculturists, and others to identify their businesses, vocations, or occupations; the names or titles lawfully adopted and used by persons, firms, associations, corporations, companies, unions, and any manufacturing, industrial, commercial, agricultural, or other organizations engaged in trade or commerce and capable of suing and being sued in a court of law."

Pub. L. 100–667, §134(3), amended par. defining "trademark" generally. Prior to amendment, par. read as follows: "The term 'trademark' includes any word, name, symbol, or device or any combination thereof adopted and used by a manufacturer or merchant to identify and distinguish his goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown."

Pub. L. 100–667, §134(4), amended par. defining "service mark" generally. Prior to amendment, par. read as follows: "The term 'service mark' means a mark used in the sale or advertising of services to identify and distinguish the services of one person, including a unique service, from the services of others and to indicate the source of the services, even if that source is unknown. Titles, character names and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor."

Pub. L. 100–667, §134(5), amended par. defining "certification mark" generally. Prior to amendment, par. read as follows: "The term 'certification mark' means a mark used upon or in connection with the products or services of one or more persons other than the owner of the mark to certify regional or other origin, material, mode of manufacture, quality, accuracy or other characteristics of such goods or services or that the work or labor on the goods or services was performed by members of a union or other organization."

Pub. L. 100–667, §134(6), amended par. defining "collective mark" generally. Prior to amendment, par. read as follows: "The term 'collective mark' means a trade-mark or service mark used by the members of a cooperative, an association or other collective group or organization and includes marks used to indicate membership in a union, an association or other organization."

Pub. L. 100–667, §134(7), amended par. defining "mark" generally. Prior to amendment, par. read as follows: "The term 'mark' includes any trade-mark, service mark, collective mark, or certification mark entitled to registration under this chapter whether registered or not."

Pub. L. 100–667, §134(8), substituted par. defining "use in commerce" for former par. which read as follows: "For the purposes of this chapter a mark shall be deemed to be used in commerce (a) on goods when it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags

or labels affixed thereto and the goods are sold or transported in commerce and (b) on services when it is used or displayed in the sale or advertising of services and the services are rendered in commerce, or the services are rendered in more than one State or in this and a foreign country and the person rendering the services is engaged in commerce in connection therewith." and par. providing when a mark is deemed abandoned for former par. which read as follows: "A mark shall be deemed to be 'abandoned'—

"(a) When its use has been discontinued with intent not to resume. Intent not to resume may be inferred from circumstances. Nonuse for two consecutive years shall be prima facie abandonment.

"(b) When any course of conduct of the registrant, including acts of omission as well as commission, causes the mark to lose its significance as an indication of origin. Purchaser motivation shall not be a test for determining abandonment under this subparagraph."

1984—Pub. L. 98–620, §103(1), in definition of "trademark" substituted "trademark" for "trade-mark", and substituted "identify and distinguish his goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown" for "identify his goods and distinguish them from those manufactured or sold by others".

Pub. L. 98–620, §103(2), in definition of "service mark" substituted "The term 'service mark' means a mark used in the sale or advertising of services to identify and distinguish the services of one person, including a unique service, from the services of others and to indicate the source of the services, even if that source is unknown" for "The term 'service mark' means a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others".

Pub. L. 98–620, §103(3), in subpar. (b) of par. relating to when a mark shall be deemed to be "abandoned", inserted "Purchaser motivation shall not be a test for determining abandonment under this subparagraph."

1975—Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office" in two places and "Commissioner of Patents and Trademarks" for "Commissioner of Patents" in definition of "Commissioner".

1962—Pub. L. 87–772 substituted, "predecessors," for "and" in definition of "applicant" and "registrant", "Titles, character names and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor" for "and includes without limitation the marks, names, symbols, titles, designations, slogans, character names, and distinctive features of radio or other advertising used in commerce", in definition of "service mark", inserted "or the services are rendered in more than one State or in this and a foreign country and the person rendering the services is engaged in commerce in connection therewith" in fifteenth paragraph relating to use in commerce, struck out "purchasers" after "deceive" in definition of "colorable imitation", and substituted "commerce" for "commence" in last par. relating to the intent of the chapter.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 1000(a)(9) [title III, §3005] of Pub. L. 106–113 applicable to all domain names registered before, on, or after Nov. 29, 1999, see section 1000(a)(9) [title III, §3010] of Pub. L. 106–113, set out as a note under section 1117 of this title.

Amendment by section 1000(a)(9) [title IV, §4732(b)(1)(A)] of Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective one year after the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], see section 523 of Pub. L. 103–465, set out as a note under section 1052 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–542 effective with respect to violations that occur on or after Oct. 27, 1992, see section 4 of Pub. L. 102–542, set out as a note under section 1114 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

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

§1128. Repealed. Pub. L. 110–403, title III, §305(a)(1), Oct. 13, 2008, 122 Stat. 4270

Section, Pub. L. 106–58, title VI, §653, Sept. 29, 1999, 113 Stat. 480; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4741(b)(1)], Nov. 29, 1999, 113 Stat. 1536, 1501A–586; Pub. L. 108–447, div. B, title II, §210, Dec. 8, 2004, 118 Stat. 2884, established the National Intellectual Property Law Enforcement Coordination Council.

EFFECTIVE DATE OF REPEAL

Pub. L. 110–403, title III, §305(a)(1), Oct. 13, 2008, 122 Stat. 4270, provided that the repeal of this section is effective upon confirmation of the Intellectual Property Enforcement Coordinator by the Senate and publication of such appointment in the Congressional Record. The Senate confirmed the first Intellectual Property Enforcement Coordinator on Dec. 3, 2009, as reflected in that day's Congressional Record. See 155 Cong. Rec. 29389 (2009).

§1129. Transferred

CODIFICATION

Section, Pub. L. 106–113, div. B, §1000(a)(9) [title III, §3002(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–548, which related to cyberpiracy protections for individuals, was transferred to section 8131 of this title.

SUBCHAPTER IV—THE MADRID PROTOCOL

§1141. Definitions

In this subchapter:

(1) Basic application

The term "basic application" means the application for the registration of a mark that has been filed with an Office of a Contracting Party and that constitutes the basis for an application for the international registration of that mark.

(2) Basic registration

The term "basic registration" means the registration of a mark that has been granted by an Office of a Contracting Party and that constitutes the basis for an application for the international registration of that mark.

(3) Contracting Party

The term "Contracting Party" means any country or inter-governmental organization that is a party to the Madrid Protocol.

(4) Date of recordal

The term "date of recordal" means the date on which a request for extension of protection, filed

after an international registration is granted, is recorded on the International Register.

(5) Declaration of bona fide intention to use the mark in commerce

The term "declaration of bona fide intention to use the mark in commerce" means a declaration that is signed by the applicant for, or holder of, an international registration who is seeking extension of protection of a mark to the United States and that contains a statement that—

(A) the applicant or holder has a bona fide intention to use the mark in commerce;

(B) the person making the declaration believes himself or herself, or the firm, corporation, or association in whose behalf he or she makes the declaration, to be entitled to use the mark in commerce; and

(C) no other person, firm, corporation, or association, to the best of his or her knowledge and belief, has the right to use such mark in commerce either in the identical form of the mark or in such near resemblance to the mark as to be likely, when used on or in connection with the goods of such other person, firm, corporation, or association, to cause confusion, mistake, or deception.

(6) Extension of protection

The term "extension of protection" means the protection resulting from an international registration that extends to the United States at the request of the holder of the international registration, in accordance with the Madrid Protocol.

(7) Holder of an international registration

A "holder" of an international registration is the natural or juristic person in whose name the international registration is recorded on the International Register.

(8) International application

The term "international application" means an application for international registration that is filed under the Madrid Protocol.

(9) International Bureau

The term "International Bureau" means the International Bureau of the World Intellectual Property Organization.

(10) International Register

The term "International Register" means the official collection of data concerning international registrations maintained by the International Bureau that the Madrid Protocol or its implementing regulations require or permit to be recorded.

(11) International registration

The term "international registration" means the registration of a mark granted under the Madrid Protocol.

(12) International registration date

The term "international registration date" means the date assigned to the international registration by the International Bureau.

(13) Madrid Protocol

The term "Madrid Protocol" means the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, adopted at Madrid, Spain, on June 27, 1989.

(14) Notification of refusal

The term "notification of refusal" means the notice sent by the United States Patent and Trademark Office to the International Bureau declaring that an extension of protection cannot be granted.

(15) Office of a Contracting Party

The term "Office of a Contracting Party" means—

(A) the office, or governmental entity, of a Contracting Party that is responsible for the

registration of marks; or

(B) the common office, or governmental entity, of more than 1 Contracting Party that is responsible for the registration of marks and is so recognized by the International Bureau.

(16) Office of origin

The term "office of origin" means the Office of a Contracting Party with which a basic application was filed or by which a basic registration was granted.

(17) Opposition period

The term "opposition period" means the time allowed for filing an opposition in the United States Patent and Trademark Office, including any extension of time granted under section 1063 of this title.

(July 5, 1946, ch. 540, title XII, §60, as added Pub. L. 107–273, div. C, title III, §13402, Nov. 2, 2002, 116 Stat. 1913.)

EFFECTIVE DATE

Pub. L. 107–273, div. C, title III, §13403, Nov. 2, 2002, 116 Stat. 1920, provided that: "This subtitle [subtitle D (§§13401–13403) of title III of div. C of Pub. L. 107–273, enacting this subchapter and provisions set out as a note under section 1051 of this title] and the amendments made by this subtitle shall take effect on the later of—

"(1) the date on which the Madrid Protocol (as defined in section 60 of the Trademark Act of 1946 [this section]) enters into force with respect to the United States [Nov. 2, 2003]; or

"(2) the date occurring 1 year after the date of enactment of this Act [Nov. 2, 2002]."

§1141a. International applications based on United States applications or registrations

(a) In general

The owner of a basic application pending before the United States Patent and Trademark Office, or the owner of a basic registration granted by the United States Patent and Trademark Office may file an international application by submitting to the United States Patent and Trademark Office a written application in such form, together with such fees, as may be prescribed by the Director.

(b) Qualified owners

A qualified owner, under subsection (a) of this section, shall—

(1) be a national of the United States;

(2) be domiciled in the United States; or

(3) have a real and effective industrial or commercial establishment in the United States.

(July 5, 1946, ch. 540, title XII, §61, as added Pub. L. 107–273, div. C, title III, §13402, Nov. 2, 2002, 116 Stat. 1915.)

§1141b. Certification of the international application

(a) Certification procedure

Upon the filing of an application for international registration and payment of the prescribed fees, the Director shall examine the international application for the purpose of certifying that the information contained in the international application corresponds to the information contained in the basic application or basic registration at the time of the certification.

(b) Transmittal

Upon examination and certification of the international application, the Director shall transmit the international application to the International Bureau.

(July 5, 1946, ch. 540, title XII, §62, as added Pub. L. 107–273, div. C, title III, §13402, Nov. 2,

2002, 116 Stat. 1915.)

§1141c. Restriction, abandonment, cancellation, or expiration of a basic application or basic registration

With respect to an international application transmitted to the International Bureau under section 1141b of this title, the Director shall notify the International Bureau whenever the basic application or basic registration which is the basis for the international application has been restricted, abandoned, or canceled, or has expired, with respect to some or all of the goods and services listed in the international registration—

(1) within 5 years after the international registration date; or

(2) more than 5 years after the international registration date if the restriction, abandonment, or cancellation of the basic application or basic registration resulted from an action that began before the end of that 5-year period.

(July 5, 1946, ch. 540, title XII, §63, as added Pub. L. 107–273, div. C, title III, §13402, Nov. 2, 2002, 116 Stat. 1915.)

§1141d. Request for extension of protection subsequent to international registration

The holder of an international registration that is based upon a basic application filed with the United States Patent and Trademark Office or a basic registration granted by the Patent and Trademark Office may request an extension of protection of its international registration by filing such a request—

(1) directly with the International Bureau; or

(2) with the United States Patent and Trademark Office for transmittal to the International Bureau, if the request is in such form, and contains such transmittal fee, as may be prescribed by the Director.

(July 5, 1946, ch. 540, title XII, §64, as added Pub. L. 107–273, div. C, title III, §13402, Nov. 2, 2002, 116 Stat. 1916.)

§1141e. Extension of protection of an international registration to the United States under the Madrid Protocol

(a) In general

Subject to the provisions of section 1141h of this title, the holder of an international registration shall be entitled to the benefits of extension of protection of that international registration to the United States to the extent necessary to give effect to any provision of the Madrid Protocol.

(b) If the United States is office of origin

Where the United States Patent and Trademark Office is the office of origin for a trademark application or registration, any international registration based on such application or registration cannot be used to obtain the benefits of the Madrid Protocol in the United States.

(July 5, 1946, ch. 540, title XII, §65, as added Pub. L. 107–273, div. C, title III, §13402, Nov. 2, 2002, 116 Stat. 1916.)

§1141f. Effect of filing a request for extension of protection of an international registration to the United States

(a) Requirement for request for extension of protection

A request for extension of protection of an international registration to the United States that the International Bureau transmits to the United States Patent and Trademark Office shall be deemed to be properly filed in the United States if such request, when received by the International Bureau, has attached to it a declaration of bona fide intention to use the mark in commerce that is verified by the applicant for, or holder of, the international registration.

(b) Effect of proper filing

Unless extension of protection is refused under section 1141h of this title, the proper filing of the request for extension of protection under subsection (a) of this section shall constitute constructive use of the mark, conferring the same rights as those specified in section 1057(c) of this title, as of the earliest of the following:

(1) The international registration date, if the request for extension of protection was filed in the international application.

(2) The date of recordal of the request for extension of protection, if the request for extension of protection was made after the international registration date.

(3) The date of priority claimed pursuant to section 1141g of this title.

(July 5, 1946, ch. 540, title XII, §66, as added Pub. L. 107–273, div. C, title III, §13402, Nov. 2, 2002, 116 Stat. 1916.)

§1141g. Right of priority for request for extension of protection to the United States

The holder of an international registration with a request for an extension of protection to the United States shall be entitled to claim a date of priority based on a right of priority within the meaning of Article 4 of the Paris Convention for the Protection of Industrial Property if—

(1) the request for extension of protection contains a claim of priority; and

(2) the date of international registration or the date of the recordal of the request for extension of protection to the United States is not later than 6 months after the date of the first regular national filing (within the meaning of Article 4(A)(3) of the Paris Convention for the Protection of Industrial Property) or a subsequent application (within the meaning of Article 4(C)(4) of the Paris Convention for the Protection of Industrial Property).

(July 5, 1946, ch. 540, title XII, §67, as added Pub. L. 107–273, div. C, title III, §13402, Nov. 2, 2002, 116 Stat. 1917.)

§1141h. Examination of and opposition to request for extension of protection; notification of refusal

(a) Examination and opposition

(1) A request for extension of protection described in section 1141f(a) of this title shall be examined as an application for registration on the Principal Register under this chapter, and if on such examination it appears that the applicant is entitled to extension of protection under this subchapter, the Director shall cause the mark to be published in the Official Gazette of the United States Patent and Trademark Office.

(2) Subject to the provisions of subsection (c) of this section, a request for extension of protection under this subchapter shall be subject to opposition under section 1063 of this title.

(3) Extension of protection shall not be refused on the ground that the mark has not been used in commerce.

(4) Extension of protection shall be refused to any mark not registrable on the Principal Register.

(b) Notification of refusal

If,[1] a request for extension of protection is refused under subsection (a) of this section, the Director shall declare in a notification of refusal (as provided in subsection (c) of this section) that the extension of protection cannot be granted, together with a statement of all grounds on which the refusal was based.

(c) Notice to International Bureau

(1) Within 18 months after the date on which the International Bureau transmits to the Patent and Trademark Office a notification of a request for extension of protection, the Director shall transmit to the International Bureau any of the following that applies to such request:

(A) A notification of refusal based on an examination of the request for extension of protection.

(B) A notification of refusal based on the filing of an opposition to the request.

(C) A notification of the possibility that an opposition to the request may be filed after the end of that 18-month period.

(2) If the Director has sent a notification of the possibility of opposition under paragraph (1)(C), the Director shall, if applicable, transmit to the International Bureau a notification of refusal on the basis of the opposition, together with a statement of all the grounds for the opposition, within 7 months after the beginning of the opposition period or within 1 month after the end of the opposition period, whichever is earlier.

(3) If a notification of refusal of a request for extension of protection is transmitted under paragraph (1) or (2), no grounds for refusal of such request other than those set forth in such notification may be transmitted to the International Bureau by the Director after the expiration of the time periods set forth in paragraph (1) or (2), as the case may be.

(4) If a notification specified in paragraph (1) or (2) is not sent to the International Bureau within the time period set forth in such paragraph, with respect to a request for extension of protection, the request for extension of protection shall not be refused and the Director shall issue a certificate of extension of protection pursuant to the request.

(d) Designation of agent for service of process

In responding to a notification of refusal with respect to a mark, the holder of the international registration of the mark may designate, by a document filed in the United States Patent and Trademark Office, the name and address of a person residing in the United States on whom notices or process in proceedings affecting the mark may be served. Such notices or process may be served upon the person designated by leaving with that person, or mailing to that person, a copy thereof at the address specified in the last designation filed. If the person designated cannot be found at the address given in the last designation, or if the holder does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person residing in the United States for service of notices or process in proceedings affecting the mark, the notice or process may be served on the Director.

(July 5, 1946, ch. 540, title XII, §68, as added Pub. L. 107–273, div. C, title III, §13402, Nov. 2, 2002, 116 Stat. 1917.)

[1] *So in original. The comma probably should not appear.*

§1141i. Effect of extension of protection

(a) Issuance of extension of protection

Unless a request for extension of protection is refused under section 1141h of this title, the Director shall issue a certificate of extension of protection pursuant to the request and shall cause notice of such certificate of extension of protection to be published in the Official Gazette of the United States Patent and Trademark Office.

(b) Effect of extension of protection

From the date on which a certificate of extension of protection is issued under subsection (a) of this section—

(1) such extension of protection shall have the same effect and validity as a registration on the Principal Register; and

(2) the holder of the international registration shall have the same rights and remedies as the owner of a registration on the Principal Register.

(July 5, 1946, ch. 540, title XII, §69, as added Pub. L. 107–273, div. C, title III, §13402, Nov. 2, 2002, 116 Stat. 1918.)

§1141j. Dependence of extension of protection to the United States on the underlying international registration

(a) Effect of cancellation of international registration

If the International Bureau notifies the United States Patent and Trademark Office of the cancellation of an international registration with respect to some or all of the goods and services listed in the international registration, the Director shall cancel any extension of protection to the United States with respect to such goods and services as of the date on which the international registration was canceled.

(b) Effect of failure to renew international registration

If the International Bureau does not renew an international registration, the corresponding extension of protection to the United States shall cease to be valid as of the date of the expiration of the international registration.

(c) Transformation of an extension of protection into a United States application

The holder of an international registration canceled in whole or in part by the International Bureau at the request of the office of origin, under article 6(4) of the Madrid Protocol, may file an application, under section 1051 or 1126 of this title, for the registration of the same mark for any of the goods and services to which the cancellation applies that were covered by an extension of protection to the United States based on that international registration. Such an application shall be treated as if it had been filed on the international registration date or the date of recordal of the request for extension of protection with the International Bureau, whichever date applies, and, if the extension of protection enjoyed priority under section 1141g of this title, shall enjoy the same priority. Such an application shall be entitled to the benefits conferred by this subsection only if the application is filed not later than 3 months after the date on which the international registration was canceled, in whole or in part, and only if the application complies with all the requirements of this chapter which apply to any application filed pursuant to section 1051 or 1126 of this title.

(July 5, 1946, ch. 540, title XII, §70, as added Pub. L. 107–273, div. C, title III, §13402, Nov. 2, 2002, 116 Stat. 1918.)

§1141k. Duration, affidavits and fees

(a) Time periods for required affidavits

Each extension of protection for which a certificate has been issued under section 1141i of this title shall remain in force for the term of the international registration upon which it is based, except that the extension of protection of any mark shall be canceled by the Director unless the holder of the international registration files in the United States Patent and Trademark Office affidavits that meet the requirements of subsection (b), within the following time periods:

(1) Within the 1-year period immediately preceding the expiration of 6 years following the date of issuance of the certificate of extension of protection.

(2) Within the 1-year period immediately preceding the expiration of 10 years following the

date of issuance of the certificate of extension of protection, and each successive 10-year period following the date of issuance of the certificate of extension of protection.

(3) The holder may file the affidavit required under this section within a grace period of 6 months after the end of the applicable time period established in paragraph (1) or (2), together with the fee described in subsection (b) and the additional grace period surcharge prescribed by the Director.

(b) Requirements for affidavit

The affidavit referred to in subsection (a) shall—

(1)(A) state that the mark is in use in commerce;

(B) set forth the goods and services recited in the extension of protection on or in connection with which the mark is in use in commerce;

(C) be accompanied by such number of specimens or facsimiles showing current use of the mark in commerce as may be required by the Director; and

(D) be accompanied by the fee prescribed by the Director; or

(2)(A) set forth the goods and services recited in the extension of protection on or in connection with which the mark is not in use in commerce;

(B) include a showing that any nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark; and

(C) be accompanied by the fee prescribed by the Director.

(c) Deficient affidavit

If any submission filed within the period set forth in subsection (a) is deficient, including that the affidavit was not filed in the name of the holder of the international registration, the deficiency may be corrected after the statutory time period, within the time prescribed after notification of the deficiency. Such submission shall be accompanied by the additional deficiency surcharge prescribed by the Director.

(d) Notice of requirement

Special notice of the requirement for such affidavit shall be attached to each certificate of extension of protection.

(e) Notification of acceptance or refusal

The Director shall notify the holder of the international registration who files any affidavit required by this section of the Director's acceptance or refusal thereof and, in the case of a refusal, the reasons therefor.

(f) Designation of resident for service of process and notices

If the holder of the international registration of the mark is not domiciled in the United States, the holder may designate, by a document filed in the United States Patent and Trademark Office, the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the last designated address, or if the holder does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark, such notices or process may be served on the Director.

(July 5, 1946, ch. 540, title XII, §71, as added Pub. L. 107–273, div. C, title III, §13402, Nov. 2, 2002, 116 Stat. 1919; amended Pub. L. 111–146, §3(d)(2), Mar. 17, 2010, 124 Stat. 68.)

AMENDMENTS

2010—Pub. L. 111–146 amended section generally. Prior to amendment, section related to required affidavits and fees, contents of affidavit, notification of Director's acceptance or refusal, and service of notice or process.

§1141*l*. Assignment of an extension of protection

An extension of protection may be assigned, together with the goodwill associated with the mark, only to a person who is a national of, is domiciled in, or has a bona fide and effective industrial or commercial establishment either in a country that is a Contracting Party or in a country that is a member of an intergovernmental organization that is a Contracting Party.

(July 5, 1946, ch. 540, title XII, §72, as added Pub. L. 107–273, div. C, title III, §13402, Nov. 2, 2002, 116 Stat. 1920.)

§1141m. Incontestability

The period of continuous use prescribed under section 1065 of this title for a mark covered by an extension of protection issued under this subchapter may begin no earlier than the date on which the Director issues the certificate of the extension of protection under section 1141i of this title, except as provided in section 1141n of this title.

(July 5, 1946, ch. 540, title XII, §73, as added Pub. L. 107–273, div. C, title III, §13402, Nov. 2, 2002, 116 Stat. 1920.)

§1141n. Rights of extension of protection

When a United States registration and a subsequently issued certificate of extension of protection to the United States are owned by the same person, identify the same mark, and list the same goods or services, the extension of protection shall have the same rights that accrued to the registration prior to issuance of the certificate of extension of protection.

(July 5, 1946, ch. 540, title XII, §74, as added Pub. L. 107–273, div. C, title III, §13402, Nov. 2, 2002, 116 Stat. 1920.)

CHAPTER 23—DISSEMINATION OF TECHNICAL, SCIENTIFIC AND ENGINEERING INFORMATION

Sec.

1151. Purpose of chapter.
1152. Clearinghouse for technical information; removal of security classification.
1153. Rules, regulations, and fees.
1153a. Repealed.
1154. Reference of data to armed services and other Government agencies.
1155. General standards and limitations; preservation of security classification.
1156. Use of existing facilities.
1157. Relation to other provisions.

§1151. Purpose of chapter

The purpose of this chapter is to make the results of technological research and development more readily available to industry and business, and to the general public, by clarifying and defining the functions and responsibilities of the Department of Commerce as a central clearinghouse for technical information which is useful to American industry and business.

(Sept. 9, 1950, ch. 936, §1, 64 Stat. 823.)

§1152. Clearinghouse for technical information; removal of security classification

The Secretary of Commerce (hereinafter referred to as the "Secretary") is directed to establish and maintain within the Department of Commerce a clearinghouse for the collection and dissemination of scientific, technical, and engineering information, and to this end to take such steps as he may deem necessary and desirable—

(a) To search for, collect, classify, coordinate, integrate, record, and catalog such information from whatever sources, foreign and domestic, that may be available;

(b) To make such information available to industry and business, to State and local governments, to other agencies of the Federal Government, and to the general public, through the preparation of abstracts, digests, translations, bibliographies, indexes, and microfilm and other reproductions, for distribution either directly or by utilization of business, trade, technical, and scientific publications and services;

(c) To effect, within the limits of his authority as now or hereafter defined by law, and with the consent of competent authority, the removal of restrictions on the dissemination of scientific and technical data in cases where consideration of national security permit the release of such data for the benefit of industry and business.

(Sept. 9, 1950, ch. 936, §2, 64 Stat. 823.)

§1153. Rules, regulations, and fees

The Secretary is authorized to make, amend, and rescind such orders, rules, and regulations as he may deem necessary to carry out the provisions of this chapter, and to establish, from time to time, a schedule or schedules of reasonable fees or charges for services performed or for documents or other publications furnished under this chapter.

It is the policy of this chapter, to the fullest extent feasible and consistent with the objectives of this chapter, that each of the services and functions provided herein shall be self-sustaining or self-liquidating and that the general public shall not bear the cost of publications and other services which are for the special use and benefit of private groups and individuals; but nothing herein shall be construed to require the levying of fees or charges for services performed or publications furnished to any agency or instrumentality of the Federal Government, or for publications which are distributed pursuant to reciprocal arrangements for the exchange of information or which are otherwise issued primarily for the general benefit of the public.

(Sept. 9, 1950, ch. 936, §3, 64 Stat. 823; Pub. L. 91–412, §3(e), Sept. 25, 1970, 84 Stat. 864.)

AMENDMENTS

1970—Pub. L. 91–412 struck out provisos of first par. for deposit of moneys received for services and publications after Sept. 9, 1950, in a special account in the Treasury, to be available, subject to appropriation authorizations, for reimbursement of appropriations and for refunds to organizations and individuals entitled thereto, and making appropriations reimbursed by the special account available for original purposes. See section 1526 of this title.

§1153a. Repealed. Pub. L. 91–412, §3(f), Sept. 25, 1970, 84 Stat. 865

Section, act Oct. 22, 1951, ch. 533, title III, §301, 65 Stat. 586, provided for reimbursement of appropriations. See section 1526 of this title.

§1154. Reference of data to armed services and other Government agencies

The Secretary is directed to refer to the armed services all scientific or technical information, coming to his attention, which he deems to have an immediate or potential practical military value or significance, and to refer to the heads of other Government agencies such scientific or technical information as relates to activities within the primary responsibility of such agencies.

(Sept. 9, 1950, ch. 936, §4, 64 Stat. 824.)

§1155. General standards and limitations; preservation of security classification

Notwithstanding any other provision of this chapter, the Secretary shall respect and preserve the security classification of any scientific or technical information, data, patents, inventions, or discoveries in, or coming into, the possession or control of the Department of Commerce, the classified status of which the President or his designee or designees certify as being essential in the interest of national defense, and nothing in this chapter shall be construed as modifying or limiting any other statute relating to the classification of information for reasons of national defense or security.

(Sept. 9, 1950, ch. 936, §5, 64 Stat. 824.)

§1156. Use of existing facilities

(a) Available assistance

The Secretary may utilize any personnel, facilities, bureaus, agencies, boards, administrations, offices, or other instrumentalities of the Department of Commerce which he may require to carry out the purposes of this chapter.

(b) Cooperation of other agencies

The Secretary is authorized to call upon other departments and independent establishments and agencies of the Government to provide, with their consent, such available services, facilities, or other cooperation as he shall deem necessary or helpful in carrying out the provisions of this chapter, and he is directed to utilize existing facilities to the full extent deemed feasible.

(Sept. 9, 1950, ch. 936, §6, 64 Stat. 824.)

§1157. Relation to other provisions

Nothing in this chapter shall be construed to repeal or amend any other legislation pertaining to the Department of Commerce or its component offices or bureaus.

(Sept. 9, 1950, ch. 936, §7, 64 Stat. 824.)

CHAPTER 24—TRANSPORTATION OF GAMBLING DEVICES

Sec.

1171. Definitions.
1172. Transportation of gambling devices as unlawful; exceptions; authority of Federal Trade Commission.
1173. Registration of manufacturers and dealers.
1174. Labeling and marking of shipping packages.
1175. Specific jurisdictions within which manufacturing, repairing, selling, possessing, etc., prohibited; exceptions.
1176. Penalties.
1177. Confiscation of gambling devices and means of transportation; laws governing.
1178. Nonapplicability of chapter to certain machines and devices.

§1171. Definitions

As used in this chapter—

(a) The term "gambling device" means—

(1) any so-called "slot machine" or any other machine or mechanical device an essential part of which is a drum or reel with insignia thereon, and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property; or

(2) any other machine or mechanical device (including, but not limited to, roulette wheels and similar devices) designed and manufactured primarily for use in connection with gambling, and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property; or

(3) any subassembly or essential part intended to be used in connection with any such machine or mechanical device, but which is not attached to any such machine or mechanical device as a constituent part.

(b) The term "State" includes the District of Columbia, Puerto Rico, the Virgin Islands, and Guam.

(c) The term "possession of the United States" means any possession of the United States which is not named in subsection (b) of this section.

(d) The term "interstate or foreign commerce" means commerce (1) between any State or possession of the United States and any place outside of such State or possession, or (2) between points in the same State or possession of the United States but through any place outside thereof.

(e) The term "intrastate commerce" means commerce wholly within one State or possession of the United States.

(f) The term "boundaries" has the same meaning given that term in section 1301 of title 43.

(Jan. 2, 1951, ch. 1194, §1, 64 Stat. 1134; Pub. L. 87–840, §§2, 3, Oct. 18, 1962, 76 Stat. 1075; Pub. L. 102–251, title II, §202(c), Mar. 9, 1992, 106 Stat. 62.)

AMENDMENTS

1992—Subsec. (f). Pub. L. 102–251 added subsec. (f).

1962—Subsec. (a)(2), (3). Pub. L. 87–840, §2, substituted provisions including machines and mechanical devices designed and manufactured primarily for gambling by the operation of which a person may become entitled to receive, as the result of chance, any money or property, for provisions which included machines or mechanical devices designed and manufactured to operate by inserting a coin, token, or similar object, in par. (2), and inserted ", but which is not attached to any such machine or mechanical device as a constituent part", in par. (3).

Subsec. (b). Pub. L. 87–840, §3, substituted "the District of Columbia" for "Alaska, Hawaii".

Subsecs. (d) and (e). Pub. L. 87–840, §3, added subsecs. (d) and (e).

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–840, §7, Oct. 18, 1962, 76 Stat. 1077, provided that: "The amendments made by this Act [enacting section 1178 of this title and amending this section and sections 1172 and 1173 of this title] shall take effect on the sixtieth day after the date of its enactment [Oct. 18, 1962]."

SHORT TITLE OF 1962 AMENDMENT

Pub. L. 87–840, §1, Oct. 18, 1962, 76 Stat. 1075, provided: "That this Act [enacting section 1178 of this title and amending this section and sections 1172 and 1173 of this title] may be cited as the 'Gambling Devices Act of 1962'."

SHORT TITLE

Act Jan. 2, 1951, which enacted this chapter and a note set out under this section, is popularly known as the "Gambling Devices Transportation Act".

SEPARABILITY

Act Jan. 2, 1951, ch. 1194, §8, 64 Stat. 1136, provided that: "If any provision of this Act [this chapter] or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act [this chapter] which can be given effect without the invalid provision or

application, and to this end the provisions of this Act [this chapter] are declared to be severable."

§1172. Transportation of gambling devices as unlawful; exceptions; authority of Federal Trade Commission

(a) General rule

It shall be unlawful knowingly to transport any gambling device to any place in a State or a possession of the United States from any place outside of such State or possession: *Provided*, That this section shall not apply to transportation of any gambling device to a place in any State which has enacted a law providing for the exemption of such State from the provisions of this section, or to a place in any subdivision of a State if the State in which such subdivision is located has enacted a law providing for the exemption of such subdivision from the provisions of this section, nor shall this section apply to any gambling device used or designed for use at and transported to licensed gambling establishments where betting is legal under applicable State laws: *Provided, further*, That it shall not be unlawful to transport in interstate or foreign commerce any gambling device into any State in which the transported gambling device is specifically enumerated as lawful in a statute of that State.

(b) Authority of Federal Trade Commission

Nothing in this chapter shall be construed to interfere with or reduce the authority, or the existing interpretation of the authority, of the Federal Trade Commission under the Federal Trade Commission Act [15 U.S.C. 41 et. seq.].

(c) Exception

This section does not prohibit the transport of a gambling device to a place in a State or a possession of the United States on a vessel on a voyage, if—

(1) use of the gambling device on a portion of that voyage is, by reason of subsection (b) of section 1175 of this title, not a violation of that section; and

(2) the gambling device remains on board that vessel while in that State.

(Jan. 2, 1951, ch. 1194, §2, 64 Stat. 1134; Pub. L. 87–840, §4, Oct. 18, 1962, 76 Stat. 1075; Pub. L. 102–251, title II, §202(a), Mar. 9, 1992, 106 Stat. 61.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (b), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

AMENDMENTS

1992—Pub. L. 102–251, §202(a)(1), (3), (4), designated existing provisions as subsecs. (a) and (b), inserted headings, and added subsec. (c).

Pub. L. 102–251, §202(a)(2), which directed that ", District of Columbia," be struck out in subsec. (a), was executed by striking out ", the District of Columbia," after "place in a State" and "outside of such State" to reflect the probable intent of Congress.

1962—Pub. L. 87–840 excepted gambling devices used or designed for use at and transported to licensed gambling establishments where betting is legal under State laws, and provided that it shall not be unlawful to transport such devices into any State in which the device is specifically enumerated as lawful in a State statute.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment effective on sixtieth day after Oct. 18, 1962, see section 7 of Pub. L. 87–840, set out as a note under section 1171 of this title.

§1173. Registration of manufacturers and dealers

(a) Activities requiring registration; contents of registration statement

(1) It shall be unlawful for any person engaged in the business of manufacturing gambling devices, if the activities of such business in any way affect interstate or foreign commerce, to manufacture any gambling device during any calendar year, unless, after November 30 of the preceding calendar year, and before the date on which such device is manufactured, such person has registered with the Attorney General under this subsection, regardless of whether such device ever enters interstate or foreign commerce.

(2) It shall be unlawful for any person during any calendar year to engage in the business of repairing, reconditioning, buying, selling, leasing, using, or making available for use by others any gambling device, if in such business he sells, ships, or delivers any such device knowing that it will be introduced into interstate or foreign commerce after the effective date of the Gambling Devices Act of 1962, unless, after November 30 of the preceding calendar year, and before the date such sale, shipment, or delivery occurs, such person has registered with the Attorney General under this subsection.

(3) It shall be unlawful for any person during any calendar year to engage in the business of repairing, reconditioning, buying, selling, leasing, using, or making available for use by others any gambling device, if in such business he buys or receives any such device knowing that it has been transported in interstate or foreign commerce after the effective date of the Gambling Devices Act of 1962, unless, after November 30, of the preceding calendar year and before the date on which he buys or receives such device, such person has registered with the Attorney General under this subsection.

(4) Each person who registers with the Attorney General pursuant to this subsection shall set forth in such registration (A) his name and each trade name under which he does business, (B) the address of each of his places of business in any State or possession of the United States, (C) the address of a place, in a State or possession of the United States in which such a place of business is located, where he will keep all records required to be kept by him by subsection (c) of this section, and (D) each activity described in paragraph (1), (2), or (3) of this subsection which he intends to engage in during the calendar year with respect to which such registration is made.

(b) Numbering of devices

(1) Every manufacturer of a gambling device defined in paragraph (a)(1) or (a)(2) of section 1171 of this title shall number seriatim each such gambling device manufactured by him and permanently affix on each such device, so as to be clearly visible, such number, his name, and, if different, any trade name under which he does business, and the date of manufacture of such device.

(2) Every manufacturer of a gambling device defined in paragraph (a)(3) of section 1171 of this title shall, if the size of such device permits it, number seriatim each such gambling device manufactured by him and permanently affix on each such device, so as to be clearly visible, such number, his name, and, if different, any trade name under which he does business, and the date of manufacture of such device.

(c) Records; required information

(1) Every person required to register under subsection (a) of this section for any calendar year shall, on and after the date of such registration or the first day of such year (whichever last occurs), maintain a record by calendar month for all periods thereafter in such year of—

(A) each gambling device manufactured, purchased, or otherwise acquired by him,

(B) each gambling device owned or possessed by him or in his custody, and

(C) each gambling device sold, delivered, or shipped by him in intrastate, interstate, or foreign commerce.

(2) Such record shall show—

(A) in the case of each such gambling device defined in paragraph (a)(1) or (a)(2) of section 1171 of this title, the information which is required to be affixed on such gambling device by subsection (b)(1) of this section; and

(B) in the case of each such gambling device defined in paragraph (a)(3) of section 1171 of this

title, the information required to be affixed on such gambling device by subsection (b)(2) of this section, or, if such gambling device does not have affixed on it any such information, its catalog listing, description, and, in the case of each such device owned or possessed by him or in his custody, its location.

Such record shall also show (i) in the case of any such gambling device described in paragraph (1)(A) of this subsection, the name and address of the person from whom such device was purchased or acquired and the name and address of the carrier; and (ii) in the case of any such gambling device described in paragraph (1)(C) of this subsection, the name and address of the buyer and consignee thereof and the name and address of the carrier.

(d) Retention of records

Each record required to be maintained under this section shall be kept by the person required to make it at the place designated by him pursuant to subsection (a)(4)(C) of this section for a period of at least five years from the last day of the calendar month of the year with respect to which such record is required to be maintained.

(e) Dealing in, owning, possessing, or having custody of devices not marked or numbered; false entries in records

(1) It shall be unlawful (A) for any person during any period in which he is required to be registered under subsection (a) of this section to sell, deliver, or ship in intrastate, interstate, or foreign commerce or own, possess, or have in his custody any gambling device which is not marked and numbered as required by subsection (b) of this section; or (B) for any person to remove, obliterate, or alter any mark or number on any gambling device required to be placed thereon by such subsection (b).

(2) It shall be unlawful for any person knowingly to make or cause to be made, any false entry in any record required to be kept under this section.

(f) Authority of Federal Bureau of Investigation

Agents of the Federal Bureau of Investigation shall, at any place designated pursuant to subsection (a)(4)(C) of this section by any person required to register by subsection (a) of this section, at all reasonable times, have access to and the right to copy any of the records required to be kept by this section, and, in case of refusal by any person registered under such subsection (a) to allow inspection and copying of such records, the United States district court for the district in which such place is located shall have jurisdiction to issue an order compelling production of such records for inspection or copying.

(Jan. 2, 1951, ch. 1194, §3, 64 Stat. 1135; Pub. L. 87–840, §5, Oct. 18, 1962, 76 Stat. 1075.)

REFERENCES IN TEXT

The effective date of the Gambling Devices Act of 1962, referred to in subsec. (a)(2), (3), is the effective date of Pub. L. 87–840, which is the sixtieth day after Oct. 18, 1962. See Effective Date of 1962 Amendment note set out under section 1171 of this title.

AMENDMENTS

1962—Pub. L. 87–840 amended section generally. Prior to amendment, section read as follows: "Upon first engaging in business, and thereafter on or before the 1st day of July of each year, every manufacturer of and dealer in gambling devices shall register with the Attorney General his name or trade name, the address of his principal place of business, and the addresses of his places of business in such district. On or before the last day of each month every manufacturer of and dealer in gambling devices shall file with the Attorney General an inventory and record of all sales and deliveries of gambling devices as of the close of the preceding calendar month for the place or places of business in the district. The monthly record of sales and deliveries of such gambling devices shall show the mark and number identifying each article together with the name and address of the buyer or consignee thereof and the name and address of the carrier. Duplicate bills or invoices, if complete in the foregoing respects, may be used in filing the record of sales and deliveries. For the purposes of this chapter, every manufacturer or dealer shall mark and number each gambling device, so that it is individually identifiable. In cases of sale, delivery, or shipment of gambling devices in unassembled form, the

manufacturer or dealer shall separately mark and number the components of each gambling device with a common mark and number as if it were an assembled gambling device. It shall be unlawful for any manufacturer or dealer to sell, deliver, or ship any gambling device which is not marked and numbered for identification as herein provided; and it shall be unlawful for any manufacturer or dealer to manufacture, recondition, repair, sell, deliver, or ship any gambling device without having registered as required by this section, or without filing monthly the required inventories and records of sales and deliveries."

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment effective on sixtieth day after Oct. 18, 1962, see section 7 of Pub. L. 87–840, set out as a note under section 1171 of this title.

§1174. Labeling and marking of shipping packages

All gambling devices, and all packages containing any such, when shipped or transported shall be plainly and clearly labeled or marked so that the name and address of the shipper and of the consignee, and the nature of the article or the contents of the package may be readily ascertained on an inspection of the outside of the article or package.

(Jan. 2, 1951, ch. 1194, §4, 64 Stat. 1135.)

§1175. Specific jurisdictions within which manufacturing, repairing, selling, possessing, etc., prohibited; exceptions

(a) General rule

It shall be unlawful to manufacture, recondition, repair, sell, transport, possess, or use any gambling device in the District of Columbia, in any possession of the United States, within Indian country as defined in section 1151 of title 18 or within the special maritime and territorial jurisdiction of the United States as defined in section 7 of title 18, including on a vessel documented under chapter 121 of title 46 or documented under the laws of a foreign country.

(b) Exception

(1) In general

Except for a voyage or a segment of a voyage that begins and ends in the State of Hawaii, or as provided in paragraph (2), this section does not prohibit—

(A) the repair, transport, possession, or use of a gambling device on a vessel that is not within the boundaries of any State or possession of the United States;

(B) the transport or possession, on a voyage, of a gambling device on a vessel that is within the boundaries of any State or possession of the United States, if—

(i) use of the gambling device on a portion of that voyage is, by reason of subparagraph (A), not a violation of this section; and

(ii) the gambling device remains on board that vessel while the vessel is within the boundaries of that State or possession; or

(C) the repair, transport, possession, or use of a gambling device on a vessel on a voyage that begins in the State of Indiana and that does not leave the territorial jurisdiction of that State, including such a voyage on Lake Michigan.

(2) Application to certain voyages

(A) General rule

Paragraph (1)(A) does not apply to the repair or use of a gambling device on a vessel that is on a voyage or segment of a voyage described in subparagraph (B) of this paragraph if the State or possession of the United States in which the voyage or segment begins and ends has enacted a statute the terms of which prohibit that repair or use on that voyage or segment.

(B) Voyage and segment described

A voyage or segment of a voyage referred to in subparagraph (A) is a voyage or segment, respectively—

(i) that begins and ends in the same State or possession of the United States, and

(ii) during which the vessel does not make an intervening stop within the boundaries of another State or possession of the United States or a foreign country.

(C) Exclusion of certain voyages and segments

Except for a voyage or segment of a voyage that occurs within the boundaries of the State of Hawaii, a voyage or segment of a voyage is not described in subparagraph (B) if it includes or consists of a segment—

(i) that begins and ends in the same State;

(ii) that is part of a voyage to another State or to a foreign country; and

(iii) in which the vessel reaches the other State or foreign country within 3 days after leaving the State in which it begins.

(c) Exception for Alaska

(1) With respect to a vessel operating in Alaska, this section does not prohibit, nor may the State of Alaska make it a violation of law for there to occur, the repair, transport, possession, or use of any gambling device on board a vessel which provides sleeping accommodations for all of its passengers and that is on a voyage or segment of a voyage described in paragraph (2), except that such State may, within its boundaries—

(A) prohibit the use of a gambling device on a vessel while it is docked or anchored or while it is operating within 3 nautical miles of a port at which it is scheduled to call; and

(B) require the gambling devices to remain on board the vessel.

(2) A voyage referred to in paragraph (1) is a voyage that—

(A) includes a stop in Canada or in a State other than the State of Alaska;

(B) includes stops in at least 2 different ports situated in the State of Alaska; and

(C) is of at least 60 hours duration.

(Jan. 2, 1951, ch. 1194, §5, 64 Stat. 1135; Pub. L. 102–251, title II, §202(b), Mar. 9, 1992, 106 Stat. 61; Pub. L. 104–264, title XII, §1222, Oct. 9, 1996, 110 Stat. 3286; Pub. L. 104–324, title XI, §1106, Oct. 19, 1996, 110 Stat. 3967; Pub. L. 106–554, §1(a)(4) [div. B, title I, §147], Dec. 21, 2000, 114 Stat. 2763, 2763A–251.)

AMENDMENTS

2000—Subsec. (b)(1). Pub. L. 106–554 inserted "for a voyage or a segment of a voyage that begins and ends in the State of Hawaii, or" after "Except" in introductory provisions.

1996—Subsec. (b)(1)(C). Pub. L. 104–324, §1106(b), added subpar. (C).

Subsec. (b)(2)(C). Pub. L. 104–264, §1222, and Pub. L. 104–324, §1106(a), made substantially identical amendments, adding subpar. (C). The text of subpar. (C) is based on amendment by Pub. L. 104–324.

Subsec. (c). Pub. L. 104–324, §1106(c), added subsec. (c).

1992—Subsec. (a). Pub. L. 102–251, §202(b)(1), (2), designated existing provisions as subsec. (a), inserted heading, and inserted before period at end ", including on a vessel documented under chapter 121 of title 46 or documented under the laws of a foreign country".

Subsec. (b). Pub. L. 102–251, §202(b)(3), added subsec. (b).

EFFECTIVE DATE OF 1996 AMENDMENT

Except as otherwise specifically provided, amendment by Pub. L. 104–264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104–264, set out as a note under section 106 of Title 49, Transportation.

§1176. Penalties

Whoever violates any of the provisions of sections 1172, 1173, 1174, or 1175 of this title shall be fined not more than $5,000 or imprisoned not more than two years, or both.

(Jan. 2, 1951, ch. 1194, §6, 64 Stat. 1135.)

§1177. Confiscation of gambling devices and means of transportation; laws governing

Any gambling device transported, delivered, shipped, manufactured, reconditioned, repaired, sold, disposed of, received, possessed, or used in violation of the provisions of this chapter shall be seized and forfeited to the United States. All provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of vessels, vehicles, merchandise, and baggage for violation of the customs laws; the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, insofar as applicable and not inconsistent with the provisions hereof: *Provided*, That such duties as are imposed upon the collector of customs or any other person with respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws shall be performed with respect to seizures and forfeitures of gambling devices under this chapter by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General.

(Jan. 2, 1951, ch. 1194, §7, 64 Stat. 1135.)

TRANSFER OF FUNCTIONS

Offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in Bureau of Customs of Department of the Treasury to which appointments were required to be made by President with advice and consent of Senate ordered abolished with such offices to be terminated not later than Dec. 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. Functions of offices eliminated were already vested in Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

§1178. Nonapplicability of chapter to certain machines and devices

None of the provisions of this chapter shall be construed to apply—

(1) to any machine or mechanical device designed and manufactured primarily for use at a racetrack in connection with parimutuel betting,

(2) to any machine or mechanical device, such as a coin-operated bowling alley, shuffleboard, marble machine (a so-called pinball machine), or mechanical gun, which is not designed and manufactured primarily for use in connection with gambling, and (A) which when operated does not deliver, as a result of the application of an element of chance, any money or property, or (B) by the operation of which a person may not become entitled to receive, as the result of the application of an element of chance, any money or property, or

(3) to any so-called claw, crane, or digger machine and similar devices which are not operated by coin, are actuated by a crank, and are designed and manufactured primarily for use at carnivals or county or State fairs.

(Jan. 2, 1951, ch. 1194, §9, as added Pub. L. 87–840, §6, Oct. 18, 1962, 76 Stat. 1077.)

EFFECTIVE DATE

Section effective on sixtieth day after Oct. 18, 1962, see section 7 of Pub. L. 87–840, set out as an Effective Date of 1962 Amendment note under section 1171 of this title.

CHAPTER 25—FLAMMABLE FABRICS

Sec.

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§1191. Definitions

As used in this chapter—

(a) The term "person" means an individual, partnership, corporation, association, or any other form of business enterprise.

(b) The term "commerce" means commerce among the several States or with foreign nations or in any territory of the United States or in the District of Columbia or between any such territory and another, or between any such territory and any State or foreign nation, or between the District of Columbia or the Commonwealth of Puerto Rico and any State or territory or foreign nation, or between the Commonwealth of Puerto Rico and any State or territory or foreign nation or the District of Columbia.

(c) The term "territory" includes the insular possessions of the United States and also any territory of the United States.

(d) The term "article of wearing apparel" means any costume or article of clothing worn or intended to be worn by individuals.

(e) The term "interior furnishing" means any type of furnishing made in whole or in part of fabric or related material and intended for use or which may reasonably be expected to be used, in homes, offices, or other places of assembly or accommodation.

(f) The term "fabric" means any material (except fiber, filament, or yarn for other than retail sale) woven, knitted, felted, or otherwise produced from or in combination with any natural or synthetic fiber, film, or substitute therefor which is intended for use or which may reasonably be expected to be used, in any product as defined in paragraph (h) of this section.

(g) The term "related material" means paper, plastic, rubber, synthetic film, or synthetic foam which is intended for use or which may reasonably be expected to be used in any product as defined in paragraph (h) of this section.

(h) The term "product" means any article of wearing apparel or interior furnishing.

(i) The term "Commission" means the Consumer Product Safety Commission.

(j) The term "Federal Trade Commission Act" means the Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914, as amended [15 U.S.C. 41 et seq.].

(June 30, 1953, ch. 164, §2, 67 Stat. 111; Pub. L. 90–189, §1, Dec. 14, 1967, 81 Stat. 568; Pub. L. 110–314, title II, §204(c)(2)(A), Aug. 14, 2008, 122 Stat. 3042.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in par. (j), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete

classification of this Act to the Code, see section 58 of this title and Tables.

AMENDMENTS

2008—Par. (i). Pub. L. 110–314 added par. (i) and struck out former par. (i) which read as follows: "The term 'Commission' means the Federal Trade Commission."

1967—Par. (b). Pub. L. 90–189, §1(1), reduced from capital to lower-case the first letter of "territory" wherever appearing and redefined "commerce" to include commerce between the Commonwealth of Puerto Rico and any State or territory or foreign nation or the District of Columbia.

Par. (c). Pub. L. 90–189, §1(2), reduced from capital to lower-case the first letter of "territory" wherever appearing.

Par. (d). Pub. L. 90–189, §1(3), struck out provisions which excepted hats, gloves, and footwear from definition of "article of wearing apparel" provided that: such hats did not constitute or form part of a covering for the neck, face, or shoulders when worn by individuals; such gloves were not more than fourteen inches in length and were not affixed to or did not form an integral part of another garment; and such footwear did not consist of hosiery in whole or in part and was not affixed to or did not form an integral part of another garment.

Par. (e). Pub. L. 90–189, §1(5), (6), added par. (e) and redesignated former par. (e) as (f).

Par. (f). Pub. L. 90–189, §1(4), (5), (7), redesignated par. (e) as (f), substituted "(except fiber, filament, or yarn for other than retail sale)" for "(other than fiber, filament, or yarn)" and "for use or which may reasonably be expected to be used, in any product as defined in paragraph (h) of this section" for "or sold for use in wearing apparel except that interlining fabrics when intended or sold for use in wearing apparel shall not be subject to this chapter", and struck out former par. (f) which defined "interlining".

Pars. (g) to (j). Pub. L. 90–189, §1(5), (8), added pars. (g) and (h) and redesignated former pars. (g) and (h) as (i) and (j), respectively.

EFFECTIVE DATE

Act June 30, 1953, ch. 164, §12, 67 Stat. 115, provided: "This Act [enacting this chapter] shall take effect one year after the date of its passage [June 30, 1953]."

SHORT TITLE

Act June 30, 1953, ch. 164, §1, 67 Stat. 111, provided: "This Act [enacting this chapter] may be cited as the 'Flammable Fabrics Act'."

SAVINGS PROVISION

Pub. L. 90–189, §11, Dec. 14, 1967, 81 Stat. 574, provided that: "Notwithstanding the provisions of this Act [amending this section and sections 1192 to 1195, 1197, 1198, and 1200 of this title and enacting sections 1201 to 1204 of this title], the standards of flammability in effect under the provisions of the Flammable Fabrics Act, as amended [this chapter], on the day preceding the date of enactment of this Act [Dec. 14, 1967], shall continue in effect for the fabrics and articles of wearing apparel to which they are applicable until superseded or modified by the Secretary of Commerce pursuant to the authority conferred by the amendments made by this Act."

APPROPRIATIONS

Act June 30, 1953, ch. 164, §13, 67 Stat. 115, as amended by Pub. L. 90–189, §9, Dec. 14, 1967, 81 Stat. 573; Pub. L. 92–542, Oct. 25, 1972, 86 Stat. 1108, appropriated $1,500,000 for the fiscal year ending June 30, 1968, $2,250,000 each for the fiscal year ending June 30, 1969, and the fiscal year ending June 30, 1970, and $4,000,000 for the fiscal year ending June 30, 1973, to carry out the provisions of this chapter.

HAZARDOUS SUBSTANCES

Federal Hazardous Substances Act as not modifying this chapter or regulations promulgated thereunder, see Pub. L. 86–613, §18, (formerly §17), July 12, 1960, 74 Stat. 380, as amended Pub. L. 89–756, §4(a), Nov. 3, 1966, 80 Stat. 1305; renumbered and amended Pub. L. 91–113, §4(a), (b)(1), Nov. 6, 1969, 83 Stat. 190, set out as a note under section 1261 of this title.

§1192. Prohibited transactions

(a) Nonconforming products

The manufacture for sale, the sale, or the offering for sale, in commerce, or the importation into

the United States, or the introduction, delivery for introduction, transportation or causing to be transported, in commerce, or the sale or delivery after a sale or shipment in commerce, of any product, fabric, or related material which fails to conform to an applicable standard or regulation issued or amended under the provisions of section 1193 of this title, shall be unlawful and shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(b) Nonconforming components

The manufacture for sale, the sale, or the offering for sale, of any product made of fabric or related material which fails to conform to an applicable standard or regulation issued or amended under section 1193 of this title, and which has been shipped or received in commerce shall be unlawful and shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(June 30, 1953, ch. 164, §3, 67 Stat. 111; Pub. L. 90–189, §2, Dec. 14, 1967, 81 Stat. 568.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in text, is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

AMENDMENTS

1967—Subsec. (a). Pub. L. 90–189 substituted "or the sale or delivery after a sale or shipment in commerce, of any product, fabric, or related material which fails to conform to an applicable standard or regulation issued or amended under the provisions of section 1193 of this title" for "or for the purpose of sale or delivery after sale in commerce, of any article of wearing apparel which under the provisions of section 1193 of this title is so highly flammable as to be dangerous when worn by individuals".

Subsecs. (b), (c). Pub. L. 90–189 struck out former subsec. (b) which made the sale or the offering for sale, in commerce, or the importation into the United States, or the introduction, delivery for introduction, transportation or causing to be transported in commerce or for the purpose of sale or delivery after sale in commerce, of any fabric which under the provisions of section 1193 of this title was so highly flammable as to be dangerous when worn by individuals unlawful and an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act, redesignated subsec. (c) as (b) and, in subsec. (b) as so redesignated, substituted "product made of fabric or related material which fails to conform to an applicable standard or regulation issued or amended under section 1193 of this title" for "article of wearing apparel made of fabric which under section 1193 of this title is so highly flammable as to be dangerous when worn by individuals".

TRANSFER OF FUNCTIONS

Functions of Secretary of Health, Education, and Welfare, Secretary of Commerce, and Federal Trade Commission under this chapter transferred to Consumer Product Safety Commission, along with functions of Federal Trade Commission under Federal Trade Commission Act, to extent such functions relate to administration and enforcement of this chapter, see section 2079 of this title.

§1193. Flammability standards or regulations

(a) Proceedings by Commission for determination

Whenever the Commission finds on the basis of the investigations or research conducted pursuant to section 1201 of this title that a new or amended flammability standard or other regulation, including labeling, for a fabric, related material, or product may be needed to protect the public against unreasonable risk of the occurrence of fire leading to death or personal injury, or significant property damage, it shall institute proceedings for the determination of an appropriate flammability standard (including conditions and manner of testing) or other regulation or amendment thereto for such fabric, related material, or product.

(b) Necessary findings; effective date; exemptions

Each standard, regulation, or amendment thereto promulgated pursuant to this section shall be

based on findings that such standard, regulation, or amendment thereto is needed to adequately protect the public against unreasonable risk of the occurrence of fire leading to death, injury, or significant property damage, is reasonable, technologically practicable, and appropriate, is limited to such fabrics, related materials, or products which have been determined to present such unreasonable risks, and shall be stated in objective terms. Each such standard, regulation, or amendment thereto, shall become effective twelve months from the date on which such standard, regulation, or amendment is promulgated, unless the Commission finds for good cause shown that an earlier or later effective date is in the public interest and publishes the reason for such finding. Each such standard or regulation or amendment thereto shall exempt fabrics related materials, or products in inventory or with the trade as of the date on which the standard, regulation, or amendment thereto, becomes effective except that, if the Commission finds that any such fabric, related material, or product is so highly flammable as to be dangerous when used by consumers for the purpose for which it is intended, it may under such conditions as the Commission may prescribe, withdraw, or limit the exemption for such fabric, related material, or product.

(c) Collection of information by Commission; confidential status of trade secrets and related information; disclosure of confidential information

The Commission may obtain from any person by regulation or subpena issued pursuant thereto such information in the form of testimony, books, records, or other writings as is pertinent to the findings or determinations which it is required or authorized to make pursuant to this chapter. All information reported to or otherwise obtained by the Commission or its representative pursuant to this subsection which information contains or relates to a trade secret or other matter referred to in section 1905 of title 18, shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this chapter or when relevant in any proceeding under this chapter. Nothing in this section shall authorize the withholding of information by the Commission or any officer or employee under its control, from the duly authorized committees of the Congress.

(d) Applicability of section 553 of title 5; oral presentation

Standards, regulations, and amendments to standards and regulations under this section shall be made in accordance with section 553 of title 5, except that interested persons shall be given an opportunity for the oral presentation of data, views, or arguments in addition to an opportunity to make written submissions. A transcript shall be kept of any oral presentation.

(e) Judicial review; additional information before Commission; applicability of sections 701 to 706 of title 5; finality of judgment; survival of action

(1) Any person who will be adversely affected by any such standard or regulation or amendment thereto when it is effective may at any time prior to the sixtieth day after such standard or regulation or amendment thereto is issued file a petition with the United States court of appeals for the circuit wherein such person resides or has his principal place of business, for a judicial review thereof. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commission or other officer designated by him [1] for that purpose. The Commission thereupon shall file in the court the record of the proceedings on which the Commission based the standard or regulation, as provided in section 2112 of title 28.

(2) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Commission, and to be adduced upon the hearing, in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, and its recommendations, if any, for the modification or setting aside of its original standard or regulation or amendment thereto, with the return of such additional evidence.

(3) Upon the filing of the petition referred to in paragraph (1) of this subsection, the court shall

have jurisdiction to review the standard or regulation in accordance with chapter 7 of title 5 and to grant appropriate relief as provided in such chapter. The standard or regulation shall not be affirmed unless the findings required by the first sentence of subsection (b) of this section are supported by substantial evidence on the record taken as a whole. For purposes of this paragraph, the term "record" means the standard or regulation, any notice published with respect to the promulgation of such standard or regulation, the transcript required by subsection (d) of this section of any oral presentation, any written submission of interested parties, and any other information which the Commission considers relevant to such standard or regulation.

(4) The judgment of the court affirming or setting aside, in whole or in part, any such standard or regulation of the Commission shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(5) The remedies provided for in this subsection shall be in addition to and not in substitution for any other remedies provided by law.

(f) Transcript of proceedings

A certified copy of the transcript of the record and proceedings under subsection (e) shall be furnished by the Commission to any interested party at his request, and payment of the costs thereof, and shall be admissible in any criminal, exclusion of imports, or other proceeding arising under or in respect of this chapter, irrespective of whether proceedings with respect to the standard or regulation or amendment thereto have previously been initiated or become final under subsection (e) of this section.

(g) Promulgation of regulation; commencement of proceeding; publication of prescribed notice of proposed rulemaking

A proceeding for the promulgation of a regulation under this section for a fabric, related material, or product may be commenced by a notice of proposed rulemaking or by the publication in the Federal Register of an advance notice of proposed rulemaking which shall—

(1) identify the fabric, related material, or product and the nature of the risk of injury associated with the fabric, related material, or product;

(2) include a summary of each of the regulatory alternatives under consideration by the Commission (including voluntary standards);

(3) include information with respect to any existing standard known to the Commission which may be relevant to the proceedings, together with a summary of the reasons why the Commission believes preliminarily that such standard does not eliminate or adequately reduce the risk of injury identified in paragraph (1);

(4) invite interested persons to submit to the Commission, within such period as the Commission shall specify in the notice (which period shall not be less than 30 days or more than 60 days after the date of publication of the notice), comments with respect to the risk of injury identified by the Commission, the regulatory alternatives being considered, and other possible alternatives for addressing the risk;

(5) invite any person (other than the Commission) to submit to the Commission, within such period as the Commission shall specify in the notice (which period shall not be less than 30 days after the date of publication of the notice), an existing standard or a portion of a standard as a proposed regulation.[2]

(6) invite any person (other than the Commission) to submit to the Commission, within such period as the Commission shall specify in the notice (which period shall not be less than 30 days after the date of publication of the notice), a statement of intention to modify or develop a voluntary standard to address the risk of injury identified in paragraph (1) together with a description of a plan to modify or develop the standard.

The Commission shall transmit such notice within 10 calendar days to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives.

(h) Voluntary standard; publication as proposed regulation; prerequisites for reliance by Commission

(1) If the Commission determines that any standard submitted to it in response to an invitation in a notice published under subsection (g)(5) of this section if promulgated (in whole, in part, or in combination with any other standard submitted to the Commission or any part of such a standard) as a regulation, would eliminate or adequately reduce the risk of injury identified in the notice provided under subsection (g)(1) of this section, the Commission may publish such standard, in whole, in part, or in such combination and with nonmaterial modifications, as a proposed regulation under this section.

(2) If the Commission determines that—

(A) compliance with any standard submitted to it in response to an invitation in a notice published under subsection (g)(6) of this section is likely to result in the elimination or adequate reduction of the risk of injury identified in the notice, and

(B) it is likely that there will be substantial compliance with such standard,

the Commission shall terminate any proceeding to promulgate a regulation respecting such risk of injury and shall publish in the Federal Register a notice which includes the determination of the Commission and which notifies the public that the Commission will rely on the voluntary standard to eliminate or reduce the risk of injury, except that the Commission shall terminate any such proceeding and rely on a voluntary standard only if such voluntary standard is in existence. For purposes of this section, a voluntary standard shall be considered to be in existence when it is finally approved by the organization or other person which developed such standard, irrespective of the effective date of the standard. Before relying upon any voluntary standard, the Commission shall afford interested persons (including manufacturers, consumers, and consumer organizations) a reasonable opportunity to submit written comments regarding such standard. The Commission shall consider such comments in making any determination regarding reliance on the involved voluntary standard under this subsection.

(3) The Commission shall devise procedures to monitor compliance with any voluntary standards—

(A) upon which the Commission has relied under paragraph (2) of this subsection;

(B) which were developed with the participation of the Commission; or

(C) whose development the Commission has monitored.

(i) Publication of proposed rule by Commission; preliminary regulatory analysis; contents; transmission of notice by Commission to Committees

No regulation may be proposed by the Commission under this section unless the Commission publishes in the Federal Register the text of the proposed rule, including any alternatives, which the Commission proposes to promulgate, together with a preliminary regulatory analysis containing—

(1) a preliminary description of the potential benefits and potential costs of the proposed regulation, including any benefits or costs that cannot be quantified in monetary terms, and an identification of those likely to receive the benefits and bear the costs;

(2) a discussion of the reasons any standard or portion of a standard submitted to the Commission under subsection (g)(5) of this section was not published by the Commission as the proposed regulation or part of the proposed regulation;

(3) a discussion of the reasons for the Commission's preliminary determination that efforts proposed under subsection (g)(6) of this section and assisted by the Commission as required by section 2054(a)(3) of this title would not, within a reasonable period of time, be likely to result in the development of a voluntary standard that would eliminate or adequately reduce the risk of injury identified in the notice provided under subsection (g)(1) of this section; and

(4) a description of any reasonable alternatives to the proposed regulation, together with a summary description of their potential costs and benefits, and a brief explanation of why such alternatives should not be published as a proposed regulation.

The Commission shall transmit such notice within 10 calendar days to the appropriate Congressional committees. Nothing in this subsection shall preclude any person from submitting an existing standard or portion of a standard as a proposed regulation.

(j) Final regulatory analysis; contents; publication; judicial review of regulation

(1) The Commission shall not promulgate a regulation under this section unless it has prepared a final regulatory analysis of the regulation containing the following information:

(A) A description of the potential benefits and potential costs of the regulation, including costs and benefits that cannot be quantified in monetary terms, and the identification of those likely to receive the benefits and bear the costs.

(B) A description of any alternatives to the final regulation which were considered by the Commission, together with a summary description of their potential benefits and costs and a brief explanation of the reasons why these alternatives were not chosen.

(C) A summary of any significant issues raised by the comments submitted during the public comment period in response to the preliminary regulatory analysis, and a summary of the assessment by the Commission of such issues.

The Commission shall publish its final regulatory analysis with the regulation.

(2) The Commission shall not promulgate a regulation under this section unless it finds (and includes such finding in the regulation)—

(A) in the case of a regulation which relates to a risk of injury with respect to which persons who would be subject to such regulation have adopted and implemented a voluntary standard, that—

(i) compliance with such voluntary standard is not likely to result in the elimination or adequate reduction of such risk of injury; or

(ii) it is unlikely that there will be substantial compliance with such voluntary standard;

(B) that the benefits expected from the regulation bear a reasonable relationship to its costs; and

(C) that the regulation imposes the least burdensome requirement which prevents or adequately reduces the risk of injury for which the regulation is being promulgated.

(3)(A) Any regulatory analysis prepared under subsection (i) of this section or paragraph (1) shall not be subject to independent judicial review, except that when an action for judicial review of a regulation is instituted, the contents of any such regulatory analysis shall constitute part of the whole rulemaking record of agency action in connection with such review.

(B) The provisions of subparagraph (A) shall not be construed to alter the substantive or procedural standards otherwise applicable to judicial review of any action by the Commission.

(k) Petition to initiate rulemaking

The Commission shall grant, in whole or in part, or deny any petition under section 553(e) of title 5 requesting the Commission to initiate a rulemaking, within a reasonable time after the date on which such petition is filed. The Commission shall state the reasons for granting or denying such petition. The Commission may not deny any such petition on the basis of a voluntary standard unless the voluntary standard is in existence at the time of the denial of the petition, the Commission has determined that the voluntary standard is likely to result in the elimination or adequate reduction of the risk of injury identified in the petition, and it is likely that there will be substantial compliance with the standard.

(June 30, 1953, ch. 164, §4, 67 Stat. 112; Aug. 23, 1954, ch. 833, 68 Stat. 770; Pub. L. 90–189, §3, Dec. 14, 1967, 81 Stat. 569; Pub. L. 94–284, §20(a), May 11, 1976, 90 Stat. 515; Pub. L. 97–35, title XII, §1203(b)(2), Aug. 13, 1981, 95 Stat. 711; Pub. L. 101–608, title I, §§107(c), 108(c), 110(c), Nov. 16, 1990, 104 Stat. 3112–3114; Pub. L. 110–314, title II, §204(c)(1), (2)(B)–(E), Aug. 14, 2008, 122 Stat. 3042.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–314, §204(c)(2)(B), (D), substituted "Commission" for "Secretary of Commerce" and "it" for "he".

Subsec. (b). Pub. L. 110–314, §204(c)(2)(B)–(D), substituted "Commission finds for" for "Secretary of Commerce finds for", "Commission finds that" for "Secretary finds that", "Commission may" for "Secretary may", and "it may" for "he may".

Subsec. (c). Pub. L. 110–314, §204(c)(2)(B)–(D), substituted "Commission may" for "Secretary of Commerce may", "it is required" for "he is required", "Commission or its" for "Secretary or his", "Commission or any" for "Secretary or any", and "its control" for "his control".

Subsec. (e)(1). Pub. L. 110–314, §204(c)(2)(C), substituted "Commission" for "Secretary" wherever appearing.

Subsec. (e)(2). Pub. L. 110–314, §204(c)(2)(C), (D), substituted "Commission" for "Secretary" and "its" for "his" wherever appearing and substituted "it" for "he".

Subsec. (e)(4). Pub. L. 110–314, §204(c)(2)(C), substituted "Commission" for "Secretary".

Subsec. (e)(5), (6). Pub. L. 110–314, §204(c)(2)(E), redesignated par. (6) as (5) and struck out former par. (5) which read as follows: "Any action instituted under this subsection shall survive, notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office."

Subsec. (f). Pub. L. 110–314, §204(c)(2)(C), substituted "Commission" for "Secretary".

Subsec. (g). Pub. L. 110–314, §204(c)(1)(A), substituted "may be commenced by a notice of proposed rulemaking or" for "shall be commenced" in introductory provisions.

Subsec. (i). Pub. L. 110–314, §204(c)(1)(B), (C), in introductory provisions, substituted "unless the" for "unless, not less than 60 days after publication of the notice required in subsection (g) of this section, the" and in concluding provisions, substituted "appropriate Congressional committees. Nothing in this subsection shall preclude any person from submitting an existing standard or portion of a standard as a proposed regulation." for "Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives."

1990—Subsec. (h)(2). Pub. L. 101–608, §108(c), struck out period at end and inserted ", except that the Commission shall terminate any such proceeding and rely on a voluntary standard only if such voluntary standard is in existence. For purposes of this section, a voluntary standard shall be considered to be in existence when it is finally approved by the organization or other person which developed such standard, irrespective of the effective date of the standard. Before relying upon any voluntary standard, the Commission shall afford interested persons (including manufacturers, consumers, and consumer organizations) a reasonable opportunity to submit written comments regarding such standard. The Commission shall consider such comments in making any determination regarding reliance on the involved voluntary standard under this subsection."

Subsec. (h)(3). Pub. L. 101–608, §107(c), added par. (3).

Subsec. (k). Pub. L. 101–608, §110(c), added subsec. (k).

1981—Subsecs. (g) to (j). Pub. L. 97–35 added subsecs. (g) to (j).

1976—Subsec. (d). Pub. L. 94–284, §20(a)(1), provided that standards, regulations, and amendments made thereto, be made in accordance with section 553 of title 5, except that oral presentation be available with a transcript of such oral presentation kept.

Subsec. (e)(3). Pub. L. 94–284, §20(a)(2), provided that the court not affirm a standard or regulation unless the findings of the Secretary are supported by substantial evidence on the record.

1967—Pub. L. 90–189 revised section generally to achieve greater flexibility in the promulgation of flammability standards by substituting provisions authorizing the Secretary of Commerce to issue standards of flammability or regulations (including labeling) for fabrics, related materials or products after observing certain specified procedural requirements for provisions which prescribed certain fixed standards of flammability which could be updated only by legislation.

1954—Subsec. (c). Act Aug. 23, 1954, added subsec. (c).

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 applicable with respect to regulations under this chapter and chapters 30 and 47 of this title for which notices of proposed rulemaking are issued after Aug. 14, 1981, see section 1215 of Pub. L. 97–35, set out a note under section 2052 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–284, §20(b), May 11, 1976, 90 Stat. 515, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to standards, regulations, and amendments to standards and regulations, under section 4 of the Flammable Fabrics Act [this section] the proceedings for the promulgation of which were begun after the date of the enactment of this Act [May 11, 1976]."

[1] *So in original. Probably should be "it".*

[2] *So in original. Probably should be "regulation; and".*

§1194. Administration and enforcement

(a) Enforcement under Federal Trade Commission Act provisions; civil action to enforce standard or regulation

Except as otherwise specifically provided herein, sections 1192, 1194, 1195, and 1197(b) of this title shall be enforced by the Commission under rules, regulations and procedures provided for in the Federal Trade Commission Act [15 U.S.C. 41 et seq.]. In the case of an attorney general of a State alleging a violation of a standard or regulation under section 1193 of this title that affects or may affect such State or its residents, such attorney general may bring a civil action for an injunction to enforce the requirement of such standard or regulation. The procedural requirements of section 2073 of this title shall apply to any such action.

(b) Application of Federal Trade Commission Act provisions

The Commission is authorized and directed to prevent any person from violating the provisions of section 1192 of this title in the same manner, by the same means and with the same jurisdiction, powers and duties as though all applicable terms and provisions of the Federal Trade Commission Act [15 U.S.C. 41 et seq.] were incorporated into and made a part of this chapter; and any such person violating any provision of section 1192 of this title shall be subject to the penalties and entitled to the privileges and immunities provided in said Federal Trade Commission Act as though the applicable terms and provisions of the said Federal Trade Commission Act were incorporated into and made a part of this chapter.

(c) Rules and regulations

The Commission is authorized and directed to prescribe such rules and regulations, including provisions for maintenance of records relating to fabrics, related materials, and products, as may be necessary and proper for administration and enforcement of this chapter. The violation of such rules and regulations shall be unlawful and shall be an unfair method of competition and an unfair and deceptive act or practice, in commerce, under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(d) Inspection and analysis of products; cooperation with other governmental entities

The Commission is authorized to—

(1) cause inspections, analyses, tests, and examinations to be made of any product, fabric or related material which it has reason to believe falls within the prohibitions of this chapter; and

(2) cooperate on matters related to the purposes of this chapter with any department or agency of the Government; with any State or territory or with the District of Columbia or the Commonwealth of Puerto Rico; or with any department, agency, or political subdivision thereof; or with any person.

(e) Penalties

(1) Any person who knowingly violates a regulation or standard under section 1193 of this title shall be subject to a civil penalty not to exceed $100,000 for each such violation, except that the maximum civil penalty shall not exceed $15,000,000 for any related series of violations.

(2) In determining the amount of any penalty to be sought upon commencing an action seeking to assess a penalty for a violation of a regulation or standard under section 1193 of this title, the Commission shall consider the nature, circumstances, extent, and gravity of the violations, the severity of the risk of injury, the occurrence or absence of injury, the appropriateness of such penalty in relation to the size of the business of the person charged, and such other factors as appropriate.

(3) Any civil penalty under this subsection may be compromised by the Commission. In determining the amount of such penalty or whether it should be remitted or mitigated, and in what amount, the Commission shall consider the nature, circumstances, extent, and gravity of the violations, the appropriateness of such penalty to the size of the business of the persons charged, the severity of the risk of injury, and [1] the occurrence or absence of injury, and such other factors as appropriate. The amount of such penalty when finally determined, or the amount agreed on compromise, may be deducted from any sums owing by the United States to the person charged.

(4) As used in paragraph (1), the term "knowingly" means (A) having actual knowledge, or (B) the presumed having of knowledge deemed to be possessed by a reasonable person who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations.

(5)(A) The maximum penalty amounts authorized in paragraph (1) shall be adjusted for inflation as provided in this paragraph.

(B) Not later than December 1, 2011, and December 1 of each fifth calendar year thereafter, the Commission shall prescribe and publish in the Federal Register a schedule of maximum authorized penalties that shall apply for violations that occur after January 1 of the year immediately following such publication.

(C) The schedule of maximum authorized penalties shall be prescribed by increasing each of the amounts referred to in paragraph (1) by the cost-of-living adjustment for the preceding five years. Any increase determined under the preceding sentence shall be rounded to—

(i) in the case of penalties greater than $1,000 but less than or equal to $10,000, the nearest multiple of $1,000;

(ii) in the case of penalties greater than $10,000 but less than or equal to $100,000, the nearest multiple of $5,000;

(iii) in the case of penalties greater than $100,000 but less than or equal to $200,000, the nearest multiple of $10,000; and

(iv) in the case of penalties greater than $200,000, the nearest multiple of $25,000.

(D) For purposes of this subsection:

(i) The term "Consumer Price Index" means the Consumer Price Index for all-urban consumers published by the Department of Labor.

(ii) The term "cost-of-living adjustment for the preceding five years" means the percentage by which—

(I) the Consumer Price Index for the month of June of the calendar year preceding the adjustment; exceeds

(II) the Consumer Price Index for the month of June preceding the date on which the maximum authorized penalty was last adjusted.

(June 30, 1953, ch. 164, §5, 67 Stat. 112; Pub. L. 90–189, §4, Dec. 14, 1967, 81 Stat. 570; Pub. L. 101–608, title I, §§115(c), 118(b), Nov. 16, 1990, 104 Stat. 3120, 3122; Pub. L. 110–314, title II, §217(a)(3), (b)(1)(C), Aug. 14, 2008, 122 Stat. 3058, 3059.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsecs. (a), (b), and (c), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

AMENDMENTS

2008—Subsec. (e)(1). Pub. L. 110–314, §217(a)(3)(A), (B), substituted "$100,000" for "$5,000" and "$15,000,000" for "$1,250,000".

Subsec. (e)(2). Pub. L. 110–314, §217(b)(1)(C)(i), substituted "nature, circumstances, extent, and gravity" for "nature and number" and "absence of injury," for "absence of injury, and" and inserted ", and such other factors as appropriate" before period at end.

Subsec. (e)(3). Pub. L. 110–314, §217(b)(1)(C)(ii)(III), which directed insertion of ", and such other factors as appropriate" before the period, was executed by making the insertion before period at end of second sentence, to reflect the probable intent of Congress.

Pub. L. 110–314, §217(b)(1)(C)(ii)(II), which directed the substitution of "absence of injury," for "absence of injury, and", could not be executed because "absence of injury, and" did not appear in par. (3).

Pub. L. 110–314, §217(b)(1)(C)(ii)(I), substituted "nature, circumstances, extent, and gravity" for "nature and number".

Subsec. (e)(5)(B). Pub. L. 110–314, §217(a)(3)(C), which directed the substitution of "December 1, 2011," for "December 1, 1994," in par. (6)(B) of subsec. (e)(1), was executed by making the substitution in par. (5)(B) of subsec. (e) to reflect the probable intent of Congress because subsec. (e) does not contain a par. (6).

1990—Subsec. (a). Pub. L. 101–608, §118(b), inserted at end "In the case of an attorney general of a State alleging a violation of a standard or regulation under section 1193 of this title that affects or may affect such State or its residents, such attorney general may bring a civil action for an injunction to enforce the requirement of such standard or regulation. The procedural requirements of section 2073 of this title shall apply to any such action."

Subsec. (e). Pub. L. 101–608, §115(c), added subsec. (e).

1967—Subsec. (c). Pub. L. 90–189, §4(a), inserted ", including provisions for maintenance of records relating to fabrics, related materials, and products," after "rules and regulations" and inserted sentence making violations of such rules and regulations unlawful and an unfair method of competition and an unfair and deceptive act or practice, in commerce, under the Federal Trade Commission Act.

Subsec. (d)(1). Pub. L. 90–189, §4(b), substituted "product, fabric or related material" for "article of wearing apparel or fabric".

Subsec. (d)(2). Pub. L. 90–189, §4(b), substituted "or territory or with the District of Columbia or the Commonwealth of Puerto Rico" for ", Territory, or possession or with the District of Columbia".

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–314, title II, §217(a)(4), Aug. 14, 2008, 122 Stat. 3058, provided that: "The amendments made by this subsection [amending this section and sections 1264 and 2069 of this title] shall take effect on the date that is the earlier of the date on which final regulations are issued under subsection (b)(2) [set out as a note under section 2069 of this title] or 1 year after the date of enactment of this Act [Aug. 14, 2008]."

TRANSFER OF FUNCTIONS

Functions of Secretary of Health, Education, and Welfare, Secretary of Commerce, and Federal Trade Commission under this chapter transferred to Consumer Product Safety Commission, along with functions of Federal Trade Commission under Federal Trade Commission Act, to extent such functions relate to administration and enforcement of this chapter, see section 2079 of this title.

CIVIL PENALTY CRITERIA

The Consumer Product Safety Commission to issue a final regulation providing its interpretation of penalty factors described in subsec. (e)(2) of this section no later than 1 year after Aug. 14, 2008, see section 217(b)(2) of Pub. L. 110–314, set out as a note under section 2069 of this title.

[1] *So in original. The word "and" probably should not appear.*

§1195. Injunction and condemnation proceedings

(a) Temporary injunction; venue

Whenever the Commission has reason to believe that any person is violating or is about to violate section 1192 of this title, or a rule or regulation prescribed under section 1194(c) of this title, and that it would be in the public interest to enjoin such violation until complaint under the Federal Trade

Commission Act [15 U.S.C. 41 et seq.] is issued and dismissed by the Commission or until order to cease and desist made thereon by the Commission has become final within the meaning of the Federal Trade Commission Act or is set aside by the court on review, the Commission may bring suit in the district court of the United States for the district in which such person resides or transacts business, or, if such person resides or transacts business in Guam or the Virgin Islands, then in the District Court of Guam or in the District Court of the Virgin Islands (as the case may be), to enjoin such violation and upon proper showing a temporary injunction or restraining order shall be granted without bond.

(b) Process of libel for seizure and confiscation; manner of procedure; consolidation of trials

Whenever the Commission has reason to believe that any product has been manufactured or introduced into commerce or any fabric or related material has been introduced in commerce in violation of section 1192 of this title, it may institute proceedings by process of libel for the seizure and confiscation of such product, fabric, or related material in any district court of the United States within the jurisdiction of which such product, fabric, or related material is found. Proceedings in cases instituted under the authority of this section shall conform as nearly as may be to proceedings in rem in admiralty, except that on demand of either party and in the discretion of the court, any issue of fact shall be tried by jury. Whenever such proceedings involving identical products, fabrics, or related materials are pending in two or more jurisdictions, they may be consolidated for trial by order of any such court upon application seasonably made by any party in interest upon notice to all other parties in interest. Any court granting an order of consolidation shall cause prompt notification thereof to be given to other courts having jurisdiction in the cases covered thereby and the clerks of such other courts shall transmit all pertinent records and papers to the court designated for the trial of such consolidated proceedings.

(c) Application by defendant for representative sample of seized materials

In any such action the court, upon application seasonably made before trial, shall by order allow any party in interest, his attorney or agent, to obtain a representative sample of the product, fabric, or related material seized.

(d) Disposal of condemned materials

If such products, fabrics, or related materials are condemned by the court they shall be disposed of by destruction, by delivery to the owner or claimant thereof upon payment of court costs and fees and storage and other proper expenses and upon execution of good and sufficient bond to the effect that such products, fabrics, or related materials will not be disposed of until properly and adequately treated or processed so as to render them lawful for introduction into commerce, or by sale upon execution of good and sufficient bond to the effect that such products, fabrics, or related materials will not be disposed of until properly and adequately treated or processed so as to render them lawful for introduction into commerce. If such products, fabrics, or related materials are disposed of by sale the proceeds, less costs and charges, shall be paid into the Treasury of the United States.

(June 30, 1953, ch. 164, §6, 67 Stat. 113; Pub. L. 90–189, §5, Dec. 14, 1967, 81 Stat. 571.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (a), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

AMENDMENTS

1967—Subsec. (a). Pub. L. 90–189, §5(a), inserted ", or a rule or regulation prescribed under section 1194 (c) of this title," after "section 1192 of this title" and substituted "for the district in which such person resides or transacts business, or, if such person resides or transacts business in Guam or the Virgin Islands, then in the District Court of Guam or in the District Court of the Virgin Islands (as the case may be)" for "or in the United States court of any Territory for the district or Territory in which such person resides or transacts business".

Subsec. (b). Pub. L. 90–189, §5(b), substituted "product" for "article of wearing apparel", "product, fabric, or related material" for "article of wearing apparel or fabric" in two places and "products, fabrics, or related materials" for "articles of wearing apparel or fabrics", and inserted "or related material" before "has been

introduced in commerce".

Subsec. (c). Pub. L. 90–189, §5(b), substituted "product, fabric, or related material" for "article of wearing apparel or fabric".

Subsec. (d). Pub. L. 90–189, §5(b), substituted "products, fabrics, or related materials" for "articles of wearing apparel or fabrics" wherever appearing and struck out "for wearing apparel purposes" before "until properly and adequately treated or processed" in two places.

TRANSFER OF FUNCTIONS

Functions of Secretary of Health, Education, and Welfare, Secretary of Commerce, and Federal Trade Commission under this chapter transferred to Consumer Product Safety Commission, along with functions of Federal Trade Commission under Federal Trade Commission Act, to extent such functions relate to administration and enforcement of this chapter, see section 2079 of this title.

§1196. Penalties

Violation of section 1192 or 1197(b) of this title, or failure to comply with section 1202(c) of this title, is punishable by—

(1) imprisonment for not more than 5 years for a knowing and willful violation of that section;

(2) a fine determined under section 3571 of title 18; or

(3) both.

(June 30, 1953, ch. 164, §7, 67 Stat. 114; Pub. L. 95–631, §8(b), Nov. 10, 1978, 92 Stat. 3747; Pub. L. 110–314, title II, §217(c)(4), Aug. 14, 2008, 122 Stat. 3060.)

AMENDMENTS

2008—Pub. L. 110–314 amended section generally. Prior to amendment, text read as follows: "Any person who willfully violates section 1192 or 1197(b) of this title, or who fails to comply with section 1202(c) of this title, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than $5,000 or be imprisoned not more than one year or both in the discretion of the court: *Provided*, That nothing herein shall limit other provisions of this chapter."

1978—Pub. L. 95–631 authorized penalties for noncompliance with section 1202(c) of this title.

§1197. Guaranties

(a) Defense to prosecution

No person shall be subject to prosecution under section 1196 of this title for a violation of section 1192 of this title if such person (1) establishes a guaranty received in good faith signed by and containing the name and address of the person by whom the product, fabric, or related material guaranteed was manufactured or from whom it was received, to the effect that reasonable and representative tests made in accordance with standards issued or amended under the provisions of section 1193 of this title show that the fabric or related material covered by the guaranty, or used in the product covered by the guaranty, conforms with applicable flammability standards issued or amended under the provisions of section 1193 of this title, and (2) has not, by further processing, affected the flammability of the fabric, related material, or product covered by the guaranty which he received. Such guaranty shall be either (1) a separate guaranty specifically designating the product, fabric, or related material guaranteed, in which case it may be on the invoice or other paper relating to such product, fabric, or related material; (2) a continuing guaranty given by seller to buyer applicable to any product, fabric, or related material sold or to be sold to buyer by seller in a form as the Commission by rules and regulations may prescribe; or (3) a continuing guaranty filed with the Commission applicable to any product, fabric, or related material handled by a guarantor, in such form as the Commission by rules or regulations may prescribe.

(b) False guaranty

It shall be unlawful for any person to furnish, with respect to any product, fabric, or related material, a false guaranty (except a person relying upon a guaranty to the same effect received in

good faith signed by and containing the name and address of the person by whom the product, fabric, or related material guaranteed was manufactured or from whom it was received) with reason to believe the product, fabric, or related material falsely guaranteed may be introduced, sold, or transported in commerce, and any person who violates the provisions of this subsection is guilty of an unfair method of competition, and an unfair or deceptive act or practice, in commerce within the meaning of the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(June 30, 1953, ch. 164, §8, 67 Stat. 114; Pub. L. 90–189, §6, Dec. 14, 1967, 81 Stat. 572.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (b), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

AMENDMENTS

1967—Subsec. (a). Pub. L. 90–189 substituted "product, fabric, or related material" for "wearing apparel or fabric" wherever appearing and "in accordance with standards issued or amended under the provisions of section 1193 of this title show that the fabric or related material covered by the guaranty, or used in the product covered by the guaranty, conforms with applicable flammability standards issued or amended under the provisions of section 1193 of this title" for "under the procedures provided in section 1193 of this title show that the fabric covered by the guaranty, or used in the wearing apparel covered by the guaranty, is not, under the provisions of section 1193 of this title, so highly flammable as to be dangerous when worn by individuals", added cl. (2), and redesignated former cl. (2) as (3).

Subsec. (b). Pub. L. 90–189 substituted "product, fabric, or related material" for "wearing apparel or fabric" wherever appearing.

TRANSFER OF FUNCTIONS

Functions of Secretary of Health, Education, and Welfare, Secretary of Commerce, and Federal Trade Commission under this chapter transferred to Consumer Product Safety Commission, along with functions of Federal Trade Commission under Federal Trade Commission Act, to extent such functions relate to administration and enforcement of this chapter, see section 2079 of this title.

§1198. Shipments from foreign countries; demand for redelivery; claim for liquidated damages

An imported product, fabric, or related material to which flammability standards under this chapter are applicable shall not be delivered from customs custody except as provided in section 1499 of title 19. In the event an imported product, fabric, or related material is delivered from customs custody under bond, as provided in section 1499 of title 19 and fails to conform with an applicable flammability standard in effect on the date of entry of such merchandise, the Secretary of the Treasury shall demand redelivery and in the absence thereof shall assert a claim for liquidated damages for breach of a condition of the bond arising out of such failure to conform or redeliver in accordance with regulations prescribed by the Secretary of the Treasury or his delegate. When asserting a claim for liquidated damages against an importer for failure to redeliver such nonconforming goods, the liquidated damages shall be not less than 10 per centum of the value of the nonconforming merchandise if, within five years prior thereto, the importer has previously been assessed liquidated damages for failure to redeliver nonconforming goods in response to a demand from the Secretary of the Treasury as set forth above.

(June 30, 1953, ch. 164, §9, 67 Stat. 114; Pub. L. 90–189, §7, Dec. 14, 1967, 81 Stat. 572.)

AMENDMENTS

1967—Pub. L. 90–189 substituted provisions prohibiting the delivery from customs of imported products, fabrics, or related materials to which flammability standards are applicable, except as provided in section 1499 of title 19, and requiring the Secretary of the Treasury to demand redelivery in the event any such imported product, fabric, or related material is delivered from customs custody under bond and fails to conform with an applicable flammability standard, and in the absence of such redelivery to assert a claim for liquidated

damages for breach of the bond, which damages shall not be less than 10 per centum of the value of the nonconforming merchandise if, within 5 years prior thereto, the importer has previously been assessed liquidated damages for failure to redeliver nonconforming goods in response to a demand by the Secretary for provisions which authorized the Commission to prohibit any person who had exported or who had attempted to export from any foreign country into the United States any wearing apparel or fabric which was so highly flammable as to be dangerous when worn by individuals from further participation in the exportation from any foreign country into the United States of any wearing apparel or fabric except upon filing bonds with the Secretary of the Treasury in a sum double the value of said products and any duty thereon, conditioned upon compliance with the provisions of this chapter.

TRANSFER OF FUNCTIONS

Functions of Secretary of Health, Education, and Welfare, Secretary of Commerce, and Federal Trade Commission under this chapter transferred to Consumer Product Safety Commission, along with functions of Federal Trade Commission under Federal Trade Commission Act, to extent such functions relate to administration and enforcement of this chapter, see section 2079 of this title.

§1199. Chapter as additional legislation

The provisions of this chapter shall be held to be in addition to, and not in substitution for or limitation of, the provisions of any other law. If any provision of this chapter or the application thereof to any person or circumstances is held invalid the remainder of the chapter and the application of such provisions to any other person or circumstances shall not be affected thereby.

(June 30, 1953, ch. 164, §10, 67 Stat. 115.)

TRANSFER OF FUNCTIONS

Functions of Secretary of Health, Education, and Welfare, Secretary of Commerce, and Federal Trade Commission under this chapter transferred to Consumer Product Safety Commission, along with functions of Federal Trade Commission under Federal Trade Commission Act, to extent such functions relate to administration and enforcement of this chapter, see section 2079 of this title.

§1200. Persons excluded from operation of chapter

The provisions of this chapter shall not apply (a) to any common carrier, contract carrier, or freight forwarder in transporting a product, fabric, or related material shipped or delivered for shipment into commerce in the ordinary course of its business; (b) to any converter, processor, or finisher in performing a contract or commission service for the account of a person subject to the provisions of this chapter: *Provided*, That said converter, processor, or finisher does not cause any product, fabric, or related material to become subject to this chapter contrary to the terms of the contract or commission service; or (c) to any product, fabric, or related material shipped or delivered for shipment into commerce for the purpose of finishing or processing such product, fabric, or related material so that it conforms with applicable flammability standards issued or amended under the provisions of section 1193 of this title.

(June 30, 1953, ch. 164, §11, 67 Stat. 115; Pub. L. 90–189, §8, Dec. 14, 1967, 81 Stat. 573.)

AMENDMENTS

1967—Pub. L. 90–189 substituted "in transporting a product, fabric, or related material" for "with respect to an article of wearing apparel or fabric", "product, fabric, or related material" for "article of wearing apparel or fabric" in two places, and "such product, fabric, or related material so that it conforms with applicable flammability standards issued or amended under the provisions of section 1193 of this title" for "to render such article or fabric not so highly flammable, under the provisions of section 1193 of this title, as to be dangerous when worn by individuals".

TRANSFER OF FUNCTIONS

Functions of Secretary of Health, Education, and Welfare, Secretary of Commerce, and Federal Trade Commission under this chapter transferred to Consumer Product Safety Commission, along with functions of

Federal Trade Commission under Federal Trade Commission Act, to extent such functions relate to administration and enforcement of this chapter, see section 2079 of this title.

§1201. Study and investigation; research, development and training

(a) The Consumer Product Safety Commission shall conduct a continuing study and investigation of the deaths, injuries, and economic losses resulting from accidental burning of products, fabrics, or related materials.

(b) In cooperation with appropriate public and private agencies, the Commission is authorized to—

(1) conduct research into the flammability of products, fabrics, and materials;

(2) conduct feasibility studies on reduction of flammability of products, fabrics, and materials;

(3) develop flammability test methods and testing devices; and

(4) offer appropriate training in the use of flammability test methods and testing devices.

(June 30, 1953, ch. 164, §14, as added Pub. L. 90–189, §10, Dec. 14, 1967, 81 Stat. 573; amended Pub. L. 92–573, §30(b), Oct. 27, 1972, 86 Stat. 1231; Pub. L. 96–470, title I, §114, Oct. 19, 1980, 94 Stat. 2240; Pub. L. 97–35, title XII, §1211(e), Aug. 13, 1981, 95 Stat. 721; Pub. L. 110–314, title II, §204(c)(2)(B), Aug. 14, 2008, 122 Stat. 3042.)

CODIFICATION

In subsec. (a), pursuant to Pub. L. 92–573 and as amended by Pub. L. 110–314, the words "in cooperation with the Commission", meaning the Consumer Product Safety Commission, which followed "Consumer Product Safety Commission", have been omitted from the Code as redundant in that they would provide for the Consumer Product Safety Commission to cooperate with itself.

AMENDMENTS

2008—Pub. L. 110–314 substituted "Commission" for "Secretary of Commerce" in subsecs. (a) and (b).

1981—Subsec. (a). Pub. L. 97–35 struck out provisions relating to the submission of an annual report by the Secretary of Health and Human Services to the President and to the Congress containing the results of a study and investigation.

1980—Subsec. (b). Pub. L. 96–470 struck out provision requiring the Secretary to report the results of activities under this subsection to Congress.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, see section 1215 of Pub. L. 97–35, set out as a note under section 2052 of this title.

TRANSFER OF FUNCTIONS

"Consumer Product Safety Commission" substituted for "Secretary of Health, Education, and Welfare" in subsec. (a) pursuant to section 30(b) of Pub. L. 92–573, which is classified to section 2079(b) of this title and which transferred functions of Secretary of Health, Education, and Welfare, Secretary of Commerce, and Federal Trade Commission under this chapter to Consumer Product Safety Commission.

TOXICOLOGIC RISKS OF FLAME-RETARDANT CHEMICALS IN RESIDENTIAL UPHOLSTERED FURNITURE

Pub. L. 105–276, title IV, §423, Oct. 21, 1998, 112 Stat. 2510, provided that:

"(a) Within 90 days of the enactment of this Act [Oct. 21, 1998], the Consumer Product Safety Commission shall make all necessary arrangements for the Committee on Toxicology of the National Academy of Sciences (NAS) to conduct an independent 12-month study of the potential toxicologic risks of all flame-retardant chemicals identified by the NAS and the Commission as likely candidates for use in residential upholstered furniture for the purpose of meeting regulations proposed by the Commission for flame resistance of residential upholstered furniture.

"(b) Upon completion of its report, the Academy shall send the report to the Commission, which shall provide it to the Congress.

"(c) The Commission, before promulgating any notice of proposed rulemaking or final rulemaking setting flammability standards for residential upholstered furniture, shall consider fully the findings and conclusions of the Academy."

§1202. Exemptions

(a) Exports; risk of injury to residents of United States

This chapter shall not apply to any fabric, related material, or product which is to be exported from the United States, if such fabric, related material, or product, and any container in which it is enclosed, bears a stamp or label stating that such fabric, related material, or product is intended for export and such fabric, related material, or product is in fact exported from the United States; unless the Commission determines that exportation of such fabric, related material, or product presents an unreasonable risk of injury to persons residing within the United States; except that this chapter shall apply to any fabric, related material, or product manufactured for sale, offered for sale, or intended for shipment to any installation of the United States located outside of the United States.

(b) Imports intended for export; risk of injury to residents of United States

This chapter shall not apply to any fabric, related material, or product which is imported into the United States for dyeing, finishing, other processing, or storage in bond, and export from the United States, if such fabric, related material, or product, and any container in which it is enclosed, bears a stamp or label stating that such fabric, related material, or product is intended for export, and such fabric, related material, or product is in fact exported from the United States, unless the Commission determines that exportation of such fabric, related material, or product presents an unreasonable risk of injury to persons residing within the United States; except that this chapter shall apply to any such imported fabric, related material, or product manufactured for sale, offered for sale, or intended for shipment to any installation of the United States located outside of the United States.

(c) Statement of exportation: filing period, information; notification of foreign country; petition for minimum filing period; good cause

Not less than thirty days before any person exports to a foreign country any fabric, related material, or product that fails to conform to an applicable flammability standard or regulation in effect under this chapter, such person shall file a statement with the Commission notifying the Commission of such exportation, and the Commission, upon receipt of such statement, shall promptly notify the government of such country of such exportation and of the basis for such flammability standard or regulation. Any statement filed with the Commission under the preceding sentence shall specify the anticipated date of shipment of such fabric, related material, or product, the country and port of destination of such fabric, related material, or product, and the quantity of such fabric, related material, or product that will be exported, and shall contain such other information as the Commission may by regulation require. Upon petition filed with the Commission by any person required to file a statement under this subsection respecting an exportation, the Commission may, for good cause shown, exempt such person from the requirement of this subsection that such a statement be filed no less than thirty days before the date of the exportation, except that in no case shall the Commission permit such a statement to be filed later than the tenth day before such date.

(d) Authority to prohibit exports

Notwithstanding any other provision of this section, the Consumer Product Safety Commission may prohibit, by order, a person from exporting from the United States for purpose of sale any fabric or related material that the Commission determines is not in conformity with an applicable standard or rule under this chapter, unless the importing country has notified the Commission that such country accepts the importation of such fabric or related material, provided that if the importing country has not so notified the Commission within 30 days after the Commission has provided notice to the importing country of the impending shipment, the Commission may take such action as is appropriate with respect to the disposition of the fabric or related material under the circumstances.

(e) Export pursuant to section 2066(e)

Nothing in this section shall apply to any fabric or related material, the export of which is

permitted by the Secretary of the Treasury pursuant to section 2066(e) of this title.

(June 30, 1953, ch. 164, §15, as added Pub. L. 90–189, §10, Dec. 14, 1967, 81 Stat. 574; amended Pub. L. 95–631, §8(a), Nov. 10, 1978, 92 Stat. 3746; Pub. L. 110–314, title II, §§204(c)(2)(F), 221(b), Aug. 14, 2008, 122 Stat. 3042, 3066.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–314, §204(c)(2)(F), which directed the substitution of "Commission" for "Consumer Product Safety Commission (hereinafter in this section referred to as the 'Commission') in section 15 (15 U.S.C. 1202)", was executed by making the substitution for "Consumer Product Safety Commission (hereinafter in this section referred to as the 'Commission')" to reflect the probable intent of Congress.

Subsecs. (d), (e). Pub. L. 110–314, §221(b), added subsecs. (d) and (e).

1978—Subsec. (a). Pub. L. 95–631, §8(a)(1), made chapter applicable to exports when the Commission determines that exportation presents an unreasonable risk of injury to persons residing within the United States.

Subsec. (b). Pub. L. 95–631, §8(a)(2), made chapter applicable to imports intended for export when the Commission determines that exportation presents an unreasonable risk of injury to persons residing within the United States.

Subsec. (c). Pub. L. 95–631, §8(a)(3), added subsec. (c).

§1203. Preemption of Federal standards

(a) Standards or regulations designed to protect against same risk as State standards or regulations; identical State standards

Except as provided in subsections (b) and (c) of this section, whenever a flammability standard or other regulation for a fabric, related material, or product is in effect under this chapter, no State or political subdivision of a State may establish or continue in effect a flammability standard or other regulation for such fabric, related material, or product if the standard or other regulation is designed to protect against the same risk of occurrence of fire with respect to which the standard or other regulation under this chapter is in effect unless the State or political subdivision standard or other regulation is identical to the Federal standard or other regulation.

(b) State standards or regulations which afford a higher degree of protection

The Federal Government and the government of any State or political subdivision of a State may establish and continue in effect a flammability standard or other regulation applicable to a fabric, related material, or product for its own use which standard or other regulation is designed to protect against a risk of occurrence of fire with respect to which a flammability standard or other regulation is in effect under this chapter and which is not identical to such standard or other regulation if the Federal, State, or political subdivision standard or other regulation provides a higher degree of protection from such risk of occurrence of fire than the standard or other regulation in effect under this chapter.

(c) Exemption for State standards or regulations; requirements; determination of burden on interstate commerce; notice and hearing

(1) Upon application of a State or political subdivision of a State, the Commission may, by regulation promulgated in accordance with paragraph (2), exempt from subsection (a) of this section, under such conditions as may be prescribed in such regulation, any flammability standard or other regulation of such State or political subdivision applicable to a fabric, related material, or product subject to a standard or other regulation in effect under this chapter, if—

(A) compliance with the State or political subdivision requirement would not cause the fabric, related material, or product to be in violation of the standard or other regulation in effect under this chapter, and

(B) the State or political subdivision standard or other regulation (i) provides a significantly higher degree of protection from the risk of occurrence of fire with respect to which the Federal standard or other regulation is in effect, and (ii) does not unduly burden interstate commerce.

In determining the burden, if any, of a State or political subdivision flammability standard or other regulation on interstate commerce the Commission shall consider and make appropriate (as determined by the Commission in its discretion) findings on the technological and economic feasibility of complying with such flammability standard or other regulation, the cost of complying with such flammability standard or other regulation, the geographic distribution of the fabric, related material, or product to which the flammability standard or other regulation would apply, the probability of other States or political subdivisions applying for an exemption under this subsection for a similar flammability standard or other regulation, and the need for a national, uniform flammability standard or other regulation under this chapter for such fabric, related material, or product.

(2) A regulation under paragraph (1) granting an exemption for a flammability standard or other regulation of a State or political subdivision of a State may be promulgated by the Commission only after it has provided, in accordance with section 553(b) of title 5, notice with respect to the promulgation of the regulation and has provided opportunity for the oral presentation of views respecting its promulgation.

(d) Flammability standards or regulations

In this section, a reference to a flammability standard or other regulation for a fabric, related material, or product in effect under this chapter includes a standard of flammability continued in effect by section 11 of the Act of December 14, 1967 (Public Law 90–189).

(June 30, 1953, ch. 164, §16, as added Pub. L. 90–189, §10, Dec. 14, 1967, 81 Stat. 574; amended Pub. L. 94–284, §17(b), May 11, 1976, 90 Stat. 512; Pub. L. 110–314, title II, §204(c)(2)(G), Aug. 14, 2008, 122 Stat. 3043.)

REFERENCES IN TEXT

Section 11 of the Act of December 14, 1967 (Public Law 90–189), referred to in subsec. (d), is set out as a note under section 1191 of this title.

AMENDMENTS

2008—Subsec. (d). Pub. L. 110–314 amended subsec. (d) generally. Prior to amendment, text read as follows: "For purposes of this section—

"(1) a reference to a flammability standard or other regulation for a fabric, related material, or product in effect under this chapter includes a standard of flammability continued in effect by section 11 of the Act of December 14, 1967 (Public Law 90–189); and

"(2) the term 'Commission' means the Consumer Product Safety Commission."

1976—Pub. L. 94–284 substituted provisions which permitted the use of flammability standards or regulations not identical with the standards or regulations in effect under this chapter provided that the standards or regulations used afford a higher degree of protection from the risk of the occurrence of fire than the standards or regulation under this chapter, and which permitted the Commission, by regulation promulgated in accordance with section 553 of title 5, to grant an exemption for a flammability standard or other regulation of a State or political subdivision of a State, for the prior supremacy of chapter provision.

PREEMPTION

The provisions of this section establishing the extent to which the Flammable Fabrics Act (15 U.S.C. 1191 et seq.) preempts, limits, or otherwise affects any other Federal, State, or local law, any rule, procedure, or regulation, or any cause of action under State or local law not to be expanded or contracted in scope, or limited, modified or extended in application, by any rule or regulation under the Flammable Fabrics Act, or by reference in any preamble, statement of policy, executive branch statements, or other matter associated with the publication of any such rule or regulation, see section 231 of Pub. L. 110–314, set out as a note under section 2051 of this title.

§1204. Congressional veto of flammability regulations

(a) Transmission to Congress

The Commission shall transmit to the Secretary of the Senate and the Clerk of the House of Representatives a copy of any flammability regulation promulgated by the Commission under section 1193 of this title.

(b) Disapproval by concurrent resolution

Any regulation specified in subsection (a) of this section shall not take effect if—

(1) within the ninety calendar days of continuous session of the Congress which occur after the date of the promulgation of such regulation, both Houses of the Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows (with the blank spaces appropriately filled): "That the Congress disapproves the flammability regulation which was promulgated under the Flammable Fabrics Act by the Consumer Product Safety Commission with respect to and which was transmitted to the Congress on and disapproves the regulation for the following reasons: ."; or

(2) within the sixty calendar days of continuous session of the Congress which occur after the date of the promulgation of such regulation, one House of the Congress adopts such concurrent resolution and transmits such resolution to the other House and such resolution is not disapproved by such other House within the thirty calendar days of continuous session of the Congress which occur after the date of such transmittal.

(c) Presumptions from Congressional action or inaction

Congressional inaction on, or rejection of, a concurrent resolution of disapproval under this section shall not be construed as an expression of approval of the regulation involved, and shall not be construed to create any presumption of validity with respect to such regulation.

(d) Continuous session of Congress

For purposes of this section—

(1) continuity of session is broken only by an adjournment of the Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the periods of continuous session of the Congress specified in subsection (b) of this section.

(June 30, 1953, ch. 164, §17, as added Pub. L. 97–35, title XII, §1207(d), Aug. 13, 1981, 95 Stat. 719; amended Pub. L. 110–314, title II, §204(c)(2)(C), (H), Aug. 14, 2008, 122 Stat. 3042, 3043.)

REFERENCES IN TEXT

The Flammable Fabrics Act, referred to in subsec. (b), is act June 30, 1953, ch. 164, 67 Stat. 111, as amended, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1191 of this title and Tables.

PRIOR PROVISIONS

A prior section 1204, act June 30, 1953, ch. 164, §17, as added Dec. 14, 1967, Pub. L. 90–189, §10, 81 Stat. 574; amended May 11, 1976, Pub. L. 94–284, §19, 90 Stat. 514, related to the National Advisory Committee for Flammable Fabrics Act, prior to repeal by Pub. L. 97–35, title XII, §1205(b), Aug. 13, 1981, 95 Stat. 716, eff. Aug. 13, 1981.

AMENDMENTS

2008—Pub. L. 110–314, §204(c)(2)(H), which directed substitution of "Commission" for "Consumer Product Safety Commission" in this section, was executed by making the substitution in subsec. (a) before "shall transmit", but not in subsec. (b)(1), to reflect the probable intent of Congress.

Subsec. (a). Pub. L. 110–314, §204(c)(2)(C), which directed substitution of "Commission" for "Secretary" wherever appearing in the Flammable Fabrics Act, classified to this chapter, was not executed in subsec. (a) of this section, where "Secretary" precedes "of the Senate", to reflect the probable intent of Congress. Amendment was part of a series of conforming amendments to change references to the "Secretary" of Commerce to "Commission".

EFFECTIVE DATE

Section applicable with respect to consumer product safety rules under chapter 47 of this title and regulations under this chapter and chapter 30 of this title promulgated after Aug. 13, 1981, see section 1215 of

Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 2052 of this title.

CHAPTER 26—HOUSEHOLD REFRIGERATORS

Sec.
1211. Prohibition against transportation of refrigerators without safety devices.
1212. Violations; misdemeanor; penalties.
1213. Publication of safety standards in Federal Register.
1214. "Interstate commerce" defined.

§1211. Prohibition against transportation of refrigerators without safety devices

It shall be unlawful for any person to introduce or deliver for introduction into interstate commerce any household refrigerator manufactured on or after the date this section takes effect unless it is equipped with a device, enabling the door thereof to be opened from the inside, which conforms with standards prescribed pursuant to section 1213 of this title.

(Aug. 2, 1956, ch. 890, §1, 70 Stat. 953.)

REFERENCES IN TEXT

For date this section takes effect, referred to in text, see Effective Date note below.

EFFECTIVE DATE

Act Aug. 2, 1956, ch. 890, §5, 70 Stat. 953, provided that: "This Act [this chapter] shall take effect on the date of its enactment [Aug. 2, 1956], except that the first section of this Act [this section] shall take effect one year and 90 days after the date of publication of commercial standards first established under section 3 of this Act [section 1213 of this title]. In the event of a change in said commercial standards first established, a like period shall be allowed for compliance with said change in commercial standards."

TRANSFER OF FUNCTIONS

Functions of Secretary of Commerce and Federal Trade Commission under this chapter transferred to Consumer Product Safety Commission, see section 2079 of this title.

§1212. Violations; misdemeanor; penalties

Any person who violates section 1211 of this title shall be guilty of a misdemeanor and shall, upon conviction thereof, be subject to imprisonment for not more than one year, or a fine of not more than $1,000, or both.

(Aug. 2, 1956, ch. 890, §2, 70 Stat. 953.)

TRANSFER OF FUNCTIONS

Functions of Secretary of Commerce and Federal Trade Commission under this chapter transferred to Consumer Product Safety Commission, see section 2079 of this title.

§1213. Publication of safety standards in Federal Register

The Consumer Product Safety Commission shall prescribe and publish in the Federal Register commercial standards for devices which, when used in or on household refrigerators, will enable the doors thereof to be opened easily from the inside; and the standards first established under this section shall be so prescribed and published not later than one year after August 2, 1956.

(Aug. 2, 1956, ch. 890, §3, 70 Stat. 953; Pub. L. 92–573, §30(c), Oct. 27, 1972, 86 Stat. 1231.)

TRANSFER OF FUNCTIONS

"Consumer Product Safety Commission" substituted for "Secretary of Commerce" pursuant to section 30(c)

of Pub. L. 92–573, which is classified to section 2079(c) of this title and which transferred functions of Secretary of Commerce and Federal Trade Commission under this chapter to Consumer Product Safety Commission.

§1214. "Interstate commerce" defined

As used in this chapter, the term "interstate commerce" includes commerce between one State, Territory, possession, the District of Columbia, or the Commonwealth of Puerto Rico and another State, Territory, possession, the District of Columbia, or the Commonwealth of Puerto Rico.

(Aug. 2, 1956, ch. 890, §4, 70 Stat. 953.)

TRANSFER OF FUNCTIONS

Functions of Secretary of Commerce and Federal Trade Commission under this chapter transferred to Consumer Product Safety Commission, see section 2079 of this title.

CHAPTER 27—AUTOMOBILE DEALER SUITS AGAINST MANUFACTURERS

Sec.

1221. Definitions.
1222. Authorization of suits against manufacturers; amount of recovery; defenses.
1223. Limitations.
1224. Antitrust laws as affected.
1225. State laws as affected.
1226. Motor vehicle franchise contract dispute resolution process.

§1221. Definitions

As used in this chapter—

(a) The term "automobile manufacturer" shall mean any person, partnership, corporation, association, or other form of business enterprise engaged in the manufacturing or assembling of passenger cars, trucks, or station wagons, including any person, partnership, or corporation which acts for and is under the control of such manufacturer or assembler in connection with the distribution of said automotive vehicles.

(b) The term "franchise" shall mean the written agreement or contract between any automobile manufacturer engaged in commerce and any automobile dealer which purports to fix the legal rights and liabilities of the parties to such agreement or contract.

(c) The term "automobile dealer" shall mean any person, partnership, corporation, association, or other form of business enterprise resident in the United States or in any Territory thereof or in the District of Columbia operating under the terms of a franchise and engaged in the sale or distribution of passenger cars, trucks, or station wagons.

(d) The term "commerce" shall mean commerce among the several States of the United States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or among the Territories or between any Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

(e) The term "good faith" shall mean the duty of each party to any franchise, and all officers, employees, or agents thereof to act in a fair and equitable manner toward each other so as to guarantee the one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party: *Provided*, That recommendation, endorsement, exposition, persuasion, urging or argument shall not be deemed to constitute a lack of good faith.

(Aug. 8, 1956, ch. 1038, §1, 70 Stat. 1125.)

§1222. Authorization of suits against manufacturers; amount of recovery; defenses

An automobile dealer may bring suit against any automobile manufacturer engaged in commerce, in any district court of the United States in the district in which said manufacturer resides, or is found, or has an agent, without respect to the amount in controversy, and shall recover the damages by him sustained and the cost of suit by reason of the failure of said automobile manufacturer from and after August 8, 1956, to act in good faith in performing or complying with any of the terms or provisions of the franchise, or in terminating, canceling, or not renewing the franchise with said dealer: *Provided*, That in any such suit the manufacturer shall not be barred from asserting in defense of any such action the failure of the dealer to act in good faith.

(Aug. 8, 1956, ch. 1038, §2, 70 Stat. 1125.)

§1223. Limitations

Any action brought pursuant to this chapter shall be forever barred unless commenced within three years after the cause of action shall have accrued.

(Aug. 8, 1956, ch. 1038, §3, 70 Stat. 1125.)

§1224. Antitrust laws as affected

No provision of this chapter shall repeal, modify, or supersede, directly or indirectly, any provision of the antitrust laws of the United States.

(Aug. 8, 1956, ch. 1038, §4, 70 Stat. 1125.)

§1225. State laws as affected

This chapter shall not invalidate any provision of the laws of any State except insofar as there is a direct conflict between an express provision of this chapter and an express provision of State law which can not [1] be reconciled.

(Aug. 8, 1956, ch. 1038, §5, 70 Stat. 1126.)

[1] *So in original. Probably should be "cannot".*

§1226. Motor vehicle franchise contract dispute resolution process

(a) Election of arbitration

(1) Definitions

For purposes of this subsection—

(A) the term "motor vehicle" has the meaning given such term in section 30102(6) of title 49; and

(B) the term "motor vehicle franchise contract" means a contract under which a motor vehicle manufacturer, importer, or distributor sells motor vehicles to any other person for resale to an ultimate purchaser and authorizes such other person to repair and service the manufacturer's motor vehicles.

(2) Consent required

Notwithstanding any other provision of law, whenever a motor vehicle franchise contract provides for the use of arbitration to resolve a controversy arising out of or relating to such

contract, arbitration may be used to settle such controversy only if after such controversy arises all parties to such controversy consent in writing to use arbitration to settle such controversy.

(3) Explanation required

Notwithstanding any other provision of law, whenever arbitration is elected to settle a dispute under a motor vehicle franchise contract, the arbitrator shall provide the parties to such contract with a written explanation of the factual and legal basis for the award.

(b) Application

Subsection (a) of this section shall apply to contracts entered into, amended, altered, modified, renewed, or extended after November 2, 2002.

(Pub. L. 107–273, div. C, title I, §11028, Nov. 2, 2002, 116 Stat. 1835.)

CODIFICATION

Section was enacted as part of the 21st Century Department of Justice Appropriations Authorization Act, and not as part of act Aug. 8, 1956, ch. 1038, which comprises this chapter.

CHAPTER 28—DISCLOSURE OF AUTOMOBILE INFORMATION

Sec.

1231. Definitions.
1232. Label and entry requirements.
1232a. Repealed.
1233. Violations and penalties.

§1231. Definitions

For purposes of this chapter—

(a) The term "manufacturer" shall mean any person engaged in the manufacturing or assembling of new automobiles, including any person importing new automobiles for resale and any person who acts for and is under the control of such manufacturer, assembler, or importer in connection with the distribution of new automobiles.

(b) The term "person" means an individual, partnership, corporation, business trust, or any organized group of persons.

(c) The term "automobile" includes any passenger car or station wagon.

(d) The term "new automobile" means an automobile the equitable or legal title to which has never been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.

(e) The term "dealer" shall mean any person resident or located in the United States or any Territory thereof or in the District of Columbia engaged in the sale or the distribution of new automobiles to the ultimate purchaser.

(f) The term "final assembly point" means—

(1) in the case of a new automobile manufactured or assembled in the United States, or in any Territory of the United States, the plant, factory, or other place at which a new automobile is produced or assembled by a manufacturer and from which such automobile is delivered to a dealer in such a condition that all component parts necessary to the mechanical operation of such automobile are included with such automobile, whether or not such component parts are permanently installed in or on such automobile; and

(2) in the case of a new automobile imported into the United States, the port of importation.

(g) The term "ultimate purchaser" means, with respect to any new automobile, the first person, other than a dealer purchasing in his capacity as a dealer, who in good faith purchases such new automobile for purposes other than resale.

(h) The term "commerce" shall mean commerce among the several States of the United States or

with foreign nations, or in any Territory of the United States or in the District of Columbia, or among the Territories or between any Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation. New automobiles delivered to, or for further delivery to, ultimate purchasers within the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, Virgin Islands, American Samoa, the Trust Territories of the Pacific, the Canal Zone, Wake Island, Midway Island, Kingman Reef, Johnson Island, or within any other place under the jurisdiction of the United States shall be deemed to have been distributed in commerce.

(Pub. L. 85–506, §2, July 7, 1958, 72 Stat. 325; Pub. L. 92–359, July 28, 1972, 86 Stat. 502.)

REFERENCES IN TEXT

For definition of Canal Zone, referred to in subsec. (h), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1972—Subsec. (h). Pub. L. 92–359 inserted provision that new automobiles delivered to ultimate purchasers within the United States and other enumerated areas shall be deemed to have been distributed in commerce.

EFFECTIVE DATE

Pub. L. 85–506, §5, July 7, 1958, 72 Stat. 327, provided that: "This Act [enacting this chapter] shall take effect on the first day of October 1958 or on the first day of the introduction of any new model of automobile in any line of automobile beginning after the date of enactment of this Act [July 7, 1958], whichever date shall last occur."

SHORT TITLE

Pub. L. 85–506, §1, July 7, 1958, 72 Stat. 325, provided: "This Act [enacting this chapter] may be cited as the 'Automobile Information Disclosure Act'."

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§1232. Label and entry requirements

Every manufacturer of new automobiles distributed in commerce shall, prior to the delivery of any new automobile to any dealer, or at or prior to the introduction date of new models delivered to a dealer prior to such introduction date, securely affix to the windshield, or side window of such automobile a label on which such manufacturer shall endorse clearly, distinctly and legibly true and correct entries disclosing the following information concerning such automobile—

(a) the make, model, and serial or identification number or numbers;

(b) the final assembly point;

(c) the name, and the location of the place of business, of the dealer to whom it is to be delivered;

(d) the name of the city or town at which it is to be delivered to such dealer;

(e) the method of transportation used in making delivery of such automobile, if driven or towed from final assembly point to place of delivery;

(f) the following information:

(1) the retail price of such automobile suggested by the manufacturer;

(2) the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment, physically attached to such automobile at the time of its delivery to such dealer, which is not included within the price of such automobile as stated pursuant to paragraph (1);

(3) the amount charged, if any, to such dealer for the transportation of such automobile to the location at which it is delivered to such dealer; and

(4) the total of the amounts specified pursuant to paragraphs (1), (2), and (3);

(g) if one or more safety ratings for such automobile have been assigned and formally published or released by the National Highway Traffic Safety Administration under the New Car Assessment Program, information about safety ratings that—

(1) includes a graphic depiction of the number of stars, or other applicable rating, that corresponds to each such assigned safety rating displayed in a clearly differentiated fashion indicating the maximum possible safety rating;

(2) refers to safety rating categories that may include frontal impact crash tests, side impact crash tests, and rollover resistance tests (whether or not such automobile has been assigned a safety rating for such tests);

(3) contains information describing the nature and meaning of the crash test data presented and a reference to additional vehicle safety resources, including http://www.safecar.gov; [1] and

(4) is presented in a legible, visible, and prominent fashion and covers at least—

(A) 8 percent of the total area of the label; or

(B) an area with a minimum length of 4½ inches and a minimum height of 3½ inches; and

(h) if an automobile has not been tested by the National Highway Traffic Safety Administration under the New Car Assessment Program, or safety ratings for such automobile have not been assigned in one or more rating categories, a statement to that effect.

(Pub. L. 85–506, §3, July 7, 1958, 72 Stat. 326; Pub. L. 109–59, title X, §10307(a), Aug. 10, 2005, 119 Stat. 1941; Pub. L. 112–141, div. C, title I, §31314, July 6, 2012, 126 Stat. 772.)

AMENDMENTS

2012—Subsec. (g)(2). Pub. L. 112–141 inserted "safety rating categories that may include" after "refers to".
2005—Subsec. (f)(3). Pub. L. 109–59, §10307(a)(2), inserted "and" at end.
Subsecs. (g), (h). Pub. L. 109–59, §10307(a)(1), (3), (4), added subsecs. (g) and (h).

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112–141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of Title 23, Highways.

REGULATIONS

Pub. L. 109–59, title X, §10307(b), Aug. 10, 2005, 119 Stat. 1942, provided that: "The Secretary of Transportation shall issue regulations to ensure that the labeling requirements under subsections (g) and (h) of section 3 of the Automobile Information Disclosure Act [15 U.S.C. 1232(g), (h)], as added by subsection (a), are implemented by September 1, 2007."

[1] *So in original. Probably should be "http://www.safercar.gov;".*

§1232a. Repealed. Pub. L. 92–178, title IV, §401(g)(7)(A), Dec. 10, 1971, 85 Stat. 534

Section, Pub. L. 91–614, title III, §304, Dec. 31, 1970, 84 Stat. 1845, related to Federal manufacturers excise tax on labels and provided for violations and penalties. It was not a part of the Automobile Information Disclosure Act, which comprises this chapter generally.

EFFECTIVE DATE OF REPEAL

Pub. L. 92–178, title IV, §401(g)(7)(B), Dec. 10, 1971, 85 Stat. 534, provided that: "Subparagraph (A) [repealing this section] shall apply to acts (or failures to act) after the date of the enactment of this Act [Dec. 10, 1971]."

§1233. Violations and penalties

(a) Failure to affix required label

Any manufacturer of automobiles distributed in commerce who willfully fails to affix to any new automobile manufactured or imported by him the label required by section 1232 of this title shall be fined not more than $1,000. Such failure with respect to each automobile shall constitute a separate offense.

(b) Failure to endorse required label

Any manufacturer of automobiles distributed in commerce who willfully fails to endorse clearly, distinctly and legibly any label as required by section 1232 of this title, or who makes a false endorsement of any such label, shall be fined not more than $1,000. Such failure or false endorsement with respect to each automobile shall constitute a separate offense.

(c) Removal, alteration, or illegibility of required label

Any person who willfully removes, alters, or renders illegible any label affixed to a new automobile pursuant to section 1232 of this title, or any endorsement thereon, prior to the time that such automobile is delivered to the actual custody and possession of the ultimate purchaser of such new automobile, except where the manufacturer relabels the automobile in the event the same is rerouted, repurchased, or reacquired by the manufacturer of such automobile, shall be fined not more than $1,000, or imprisoned not more than one year, or both. Such removal, alteration, or rendering illegible with respect to each automobile shall constitute a separate offense.

(Pub. L. 85–506, §4, July 7, 1958, 72 Stat. 326.)

CHAPTER 29—MANUFACTURE, TRANSPORTATION, OR DISTRIBUTION OF SWITCHBLADE KNIVES

Sec.

1241. Definitions.
1242. Introduction, manufacture for introduction, transportation or distribution in interstate commerce; penalty.
1243. Manufacture, sale, or possession within specific jurisdictions; penalty.
1244. Exceptions.
1245. Ballistic knives.

§1241. Definitions

As used in this chapter—

(a) The term "interstate commerce" means commerce between any State, Territory, possession of the United States, or the District of Columbia, and any place outside thereof.

(b) The term "switchblade knife" means any knife having a blade which opens automatically—

(1) by hand pressure applied to a button or other device in the handle of the knife, or

(2) by operation of inertia, gravity, or both.

(Pub. L. 85–623, §1, Aug. 12, 1958, 72 Stat. 562.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 85–623, which enacted sections 1241 to 1244 of this title and amended section 1716 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE

Pub. L. 85–623, §6, Aug. 12, 1958, 72 Stat. 563, provided that: "This Act [enacting this chapter and amending section 1716 of Title 18, Crimes and Criminal Procedure] shall take effect on the sixtieth day after the date of its enactment [Aug. 12, 1958]."

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–570, title X, §10001, Oct. 27, 1986, 100 Stat. 3207–166, provided that: "This title [enacting

section 1245 of this title, amending section 1716 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as a note under section 1245 of this title] may be cited as the 'Ballistic Knife Prohibition Act of 1986'."

SHORT TITLE

Pub. L. 85–623, Aug. 12, 1958, 72 Stat. 562, which enacted this chapter, is popularly known as the "Federal Switchblade Act".

§1242. Introduction, manufacture for introduction, transportation or distribution in interstate commerce; penalty

Whoever knowingly introduces, or manufactures for introduction, into interstate commerce, or transports or distributes in interstate commerce, any switchblade knife, shall be fined not more than $2,000 or imprisoned not more than five years, or both.

(Pub. L. 85–623, §2, Aug. 12, 1958, 72 Stat. 562.)

§1243. Manufacture, sale, or possession within specific jurisdictions; penalty

Whoever, within any Territory or possession of the United States, within Indian country (as defined in section 1151 of title 18), or within the special maritime and territorial jurisdiction of the United States (as defined in section 7 of title 18), manufactures, sells, or possesses any switchblade knife, shall be fined not more than $2,000 or imprisoned not more than five years, or both.

(Pub. L. 85–623, §3, Aug. 12, 1958, 72 Stat. 562.)

§1244. Exceptions

Sections 1242 and 1243 of this title shall not apply to—

(1) any common carrier or contract carrier, with respect to any switchblade knife shipped, transported, or delivered for shipment in interstate commerce in the ordinary course of business;

(2) the manufacture, sale, transportation, distribution, possession, or introduction into interstate commerce, of switchblade knives pursuant to contract with the Armed Forces;

(3) the Armed Forces or any member or employee thereof acting in the performance of his duty;

(4) the possession, and transportation upon his person, of any switchblade knife with a blade three inches or less in length by any individual who has only one arm; or

(5) a knife that contains a spring, detent, or other mechanism designed to create a bias toward closure of the blade and that requires exertion applied to the blade by hand, wrist, or arm to overcome the bias toward closure to assist in opening the knife.

(Pub. L. 85–623, §4, Aug. 12, 1958, 72 Stat. 562; Pub. L. 111–83, title V, §562, Oct. 28, 2009, 123 Stat. 2183.)

AMENDMENTS

2009—Par. (5). Pub. L. 111–83 added par. (5).

§1245. Ballistic knives

(a) Prohibition and penalties for possession, manufacture, sale, or importation

Whoever in or affecting interstate commerce, within any Territory or possession of the United States, within Indian country (as defined in section 1151 of title 18), or within the special maritime and territorial jurisdiction of the United States (as defined in section 7 of title 18), knowingly possesses, manufactures, sells, or imports a ballistic knife shall be fined as provided in title 18, or imprisoned not more than ten years, or both.

(b) Prohibition and penalties for possession or use during commission of Federal crime of violence

Whoever possesses or uses a ballistic knife in the commission of a Federal crime of violence shall be fined as provided in title 18, or imprisoned not less than five years and not more than ten years, or both.

(c) Exceptions

The exceptions provided in paragraphs (1), (2), and (3) of section 1244 of this title with respect to switchblade knives shall apply to ballistic knives under subsection (a) of this section.

(d) "Ballistic knife" defined

As used in this section, the term "ballistic knife" means a knife with a detachable blade that is propelled by a spring-operated mechanism.

(Pub. L. 85–623, §7, as added Pub. L. 99–570, title X, §10002, Oct. 27, 1986, 100 Stat. 3207–167; amended Pub. L. 100–690, title VI, §6472, Nov. 18, 1988, 102 Stat. 4379.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–690, §6472(1), substituted "in or affecting interstate commerce, within any Territory or possession of the United States, within Indian country (as defined in section 1151 of title 18), or within the special maritime and territorial jurisdiction of the United States (as defined in section 7 of title 18), knowingly possesses, manufactures, sells, or imports" for "knowingly possesses, manufactures, sells, or imports".

Subsec. (b). Pub. L. 100–690, §6472(2), struck out "or State" after "Federal".

EFFECTIVE DATE

Pub. L. 99–570, title X, §10004, Oct. 27, 1986, 100 Stat. 3207–167, provided that: "The amendments made by this title [enacting this section, amending section 1716 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as a note under section 1241 of this title] shall take effect 30 days after the date of enactment of this title [Oct. 27, 1986]."

CHAPTER 30—HAZARDOUS SUBSTANCES

Sec.

1261. Definitions.
1262. Declaration of hazardous substances.
1263. Prohibited acts.
1264. Penalties; exceptions.
1265. Seizures.
1266. Hearing before report of criminal violation.
1267. Injunctions; criminal contempt; trial by court or jury.
1268. Proceedings in name of United States; subpenas.
1269. Regulations.
1270. Examinations and investigations.
1271. Records of interstate shipment.
1272. Publicity; reports; dissemination of information.
1273. Imports.
1274. Remedies respecting banned hazardous substances.
1275. Toxicological Advisory Board.
1276. Congressional veto of hazardous substances regulations.
1277. Labeling of art materials.
1278. Requirements for labeling certain toys and games.
1278a. Children's products containing lead; lead paint rule.

§1261. Definitions

For the purposes of this chapter—

(a) The term "territory" means any territory or possession of the United States, including the District of Columbia and the Commonwealth of Puerto Rico but excluding the Canal Zone.

(b) The term "interstate commerce" means (1) commerce between any State or territory and any place outside thereof, and (2) commerce within the District of Columbia or within any territory not organized with a legislative body.

(c) The term "Commission" means the Consumer Product Safety Commission.

(d) Repealed. Pub. L. 110–314, title II, §204(b)(4)(A), Aug. 14, 2008, 122 Stat. 3041

(e) The term "person" includes an individual, partnership, corporation, and association.

(f) The term "hazardous substance" means:

(1)(A) Any substance or mixture of substances which (i) is toxic, (ii) is corrosive, (iii) is an irritant, (iv) is a strong sensitizer, (v) is flammable or combustible, or (vi) generates pressure through decomposition, heat, or other means, if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children.

(B) Any substances which the Commission by regulation finds, pursuant to the provisions of section 1262(a) of this title, meet the requirements of subparagraph (1)(A) of this paragraph.

(C) Any radioactive substance, if, with respect to such substance as used in a particular class of article or as packaged, the Commission determines by regulation that the substance is sufficiently hazardous to require labeling in accordance with this chapter in order to protect the public health.

(D) Any toy or other article intended for use by children which the Commission by regulation determines, in accordance with section 1262(e) of this title, presents an electrical, mechanical, or thermal hazard.

(E) Any solder which has a lead content in excess of 0.2 percent.

(2) The term "hazardous substance" shall not apply to pesticides subject to the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.], nor to foods, drugs and cosmetics subject to the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.], nor to substances intended for use as fuels when stored in containers and used in the heating, cooking, or refrigeration system of a house, nor to tobacco and tobacco products, but such term shall apply to any article which is not itself a pesticide within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act but which is a hazardous substance within the meaning of subparagraph (1) of this paragraph by reason of bearing or containing such a pesticide.

(3) The term "hazardous substance" shall not include any source material, special nuclear material, or byproduct material as defined in the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.], and regulations issued pursuant thereto by the Atomic Energy Commission.

(g) The term "toxic" shall apply to any substance (other than a radioactive substance) which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface.

(h)(1) The term "highly toxic" means any substance which falls within any of the following categories: (a) Produces death within fourteen days in half or more than half of a group of ten or more laboratory white rats each weighing between two hundred and three hundred grams, at a single dose of fifty milligrams or less per kilogram of body weight, when orally administered; or (b) produces death within fourteen days in half or more than half of a group of ten or more laboratory white rats each weighing between two hundred and three hundred grams, when inhaled continuously for a period of one hour or less at an atmospheric concentration of two hundred parts per million by volume or less of gas or vapor or two milligrams per liter by volume or less of mist or dust, provided such concentration is likely to be encountered by man when the substance is used in any reasonably foreseeable manner; or (c) produces death within fourteen days in half or more than half of a group of ten or more rabbits tested in a dosage of two hundred milligrams or less per kilogram of body weight, when administered by continuous contact with the bare skin for twenty-four hours or less.

(2) If the Commission finds that available data on human experience with any substance indicate results different from those obtained on animals in the above-named dosages or concentrations, the human data shall take precedence.

(i) The term "corrosive" means any substance which in contact with living tissue will cause destruction of tissue by chemical action; but shall not refer to action on inanimate surfaces.

(j) The term "irritant" means any substance not corrosive within the meaning of subparagraph (i) of this section which on immediate, prolonged, or repeated contact with normal living tissue will induce a local inflammatory reaction.

(k) The term "strong sensitizer" means a substance which will cause on normal living tissue through an allergic or photodynamic process a hypersensitivity which becomes evident on reapplication of the same substance and which is designated as such by the Commission. Before designating any substance as a strong sensitizer, the Commission, upon consideration of the frequency of occurrence and severity of the reaction, shall find that the substance has a significant potential for causing hypersensitivity.

(l)(1) The terms "extremely flammable", "flammable", and "combustible" as applied to any substance, liquid, solid, or the content of a self-pressurized container shall be defined by regulations issued by the Commission.

(2) The test methods found by the Commission to be generally applicable for defining the flammability or combustibility characteristics of any such substance shall also be specified in such regulations.

(3) In establishing definitions and test methods related to flammability and combustibility, the Commission shall consider the existing definitions and test methods of other Federal agencies involved in the regulation of flammable and combustible substances in storage, transportation and use; and to the extent possible, shall establish compatible definitions and test methods.

(4) Until such time as the Commission issues a regulation under paragraph (1) defining the term "combustible" as applied to liquids, such term shall apply to any liquid which has a flash point above eighty degrees Fahrenheit to and including one hundred and fifty degrees, as determined by the Tagliabue Open Cup Tester.

(m) The term "radioactive substance" means a substance which emits ionizing radiation.

(n) The term "label" means a display of written, printed, or graphic matter upon the immediate container of any substance or, in the case of an article which is unpackaged or is not packaged in an immediate container intended or suitable for delivery to the ultimate consumer, a display of such matter directly upon the article involved or upon a tag or other suitable material affixed thereto; and a requirement made by or under authority of this chapter that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears (1) on the outside container or wrapper, if any there be, unless it is easily legible through the outside container or wrapper and (2) on all accompanying literature where there are directions for use, written or otherwise.

(o) The term "immediate container" does not include package liners.

(p) The term "misbranded hazardous substance" means a hazardous substance (including a toy, or other article intended for use by children, which is a hazardous substance, or which bears or contains a hazardous substance in such manner as to be susceptible of access by a child to whom such toy or other article is entrusted) intended, or packaged in a form suitable, for use in the household or by children, if the packaging or labeling of such substance is in violation of an applicable regulation issued pursuant to section 1472 or 1473 of this title or if such substance, except as otherwise provided by or pursuant to section 1262 of this title, fails to bear a label—

(1) which states conspicuously (A) the name and place of business of the manufacturer, packer, distributor or seller; (B) the common or usual name or the chemical name (if there be no common or usual name) of the hazardous substance or of each component which contributes substantially to its hazard, unless the Commission by regulation permits or requires the use of a recognized generic name; (C) the signal word "DANGER" on substances which are extremely flammable, corrosive, or highly toxic; (D) the signal word "WARNING" or "CAUTION" on all other hazardous substances; (E) an affirmative statement of the principal hazard or hazards, such as

"Flammable", "Combustible", "Vapor Harmful", "Causes Burns", "Absorbed Through Skin", or similar wording descriptive of the hazard; (F) precautionary measures describing the action to be followed or avoided, except when modified by regulation of the Commission pursuant to section 1262 of this title; (G) instruction, when necessary or appropriate, for first-aid treatment; (H) the word "poison" for any hazardous substance which is defined as "highly toxic" by subsection (h) of this section; (I) instructions for handling and storage of packages which require special care in handling or storage; and (J) the statement (i) "Keep out of the reach of children" or its practical equivalent, or, (ii) if the article is intended for use by children and is not a banned hazardous substance, adequate directions for the protection of children from the hazard, and

(2) on which any statements required under subparagraph (1) of this paragraph are located prominently and are in the English language in conspicuous and legible type in contrast by typography, layout, or color with other printed matter on the label.

The term "misbranded hazardous substance" also includes a household substance as defined in section 1471(2)(D) [1] of this title if it is a substance described in paragraph (1) of subsection (f) of this section and its packaging or labeling is in violation of an applicable regulation issued pursuant to section 1472 or 1473 of this title.

(q)(1) The term "banned hazardous substance" means (A) any toy, or other article intended for use by children, which is a hazardous substance, or which bears or contains a hazardous substance in such manner as to be susceptible of access by a child to whom such toy or other article is entrusted; or (B) any hazardous substance intended, or packaged in a form suitable, for use in the household, which the Commission by regulation classifies as a "banned hazardous substance" on the basis of a finding that, notwithstanding such cautionary labeling as is or may be required under this chapter for that substance, the degree or nature of the hazard involved in the presence or use of such substance in households is such that the objective of the protection of the public health and safety can be adequately served only by keeping such substance, when so intended or packaged, out of the channels of interstate commerce: *Provided*, That the Commission, by regulation, (i) shall exempt from clause (A) of this paragraph articles, such as chemical sets, which by reason of their functional purpose require the inclusion of the hazardous substance involved or necessarily present an electrical, mechanical, or thermal hazard, and which bear labeling giving adequate directions and warnings for safe use and are intended for use by children who have attained sufficient maturity, and may reasonably be expected, to read and heed such directions and warnings, and (ii) shall exempt from clause (A), and provide for the labeling of, common fireworks (including toy paper caps, cone fountains, cylinder fountains, whistles without report, and sparklers) to the extent that it determines that such articles can be adequately labeled to protect the purchasers and users thereof.

(2) Proceedings for the issuance, amendment, or repeal of regulations pursuant to clause (B) of subparagraph (1) of this paragraph shall be governed by the provisions of subsections (f) through (i) of section 1262 of this title, except that if the Commission finds that the distribution for household use of the hazardous substance involved presents an imminent hazard to the public health, it may by order published in the Federal Register give notice of such finding, and thereupon such substance when intended or offered for household use, or when so packaged as to be suitable for such use, shall be deemed to be a "banned hazardous substance" pending the completion of proceedings relating to the issuance of such regulations.

(r) An article may be determined to present an electrical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture may cause personal injury or illness by electric shock.

(s) An article may be determined to present a mechanical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness (1) from fracture, fragmentation, or disassembly of the article, (2) from propulsion of the article (or any part or accessory thereof), (3) from points or other protrusions, surfaces, edges, openings, or closures, (4) from moving parts, (5) from lack or

insufficiency of controls to reduce or stop motion, (6) as a result of self-adhering characteristics of the article, (7) because the article (or any part or accessory thereof) may be aspirated or ingested, (8) because of instability, or (9) because of any other aspect of the article's design or manufacture.

(t) An article may be determined to present a thermal hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness because of heat as from heated parts, substances, or surfaces.

(Pub. L. 86–613, §2, July 12, 1960, 74 Stat. 372; Pub. L. 89–756, §§2(a)–(c), 3(a), Nov. 3, 1966, 80 Stat. 1303, 1304; Pub. L. 91–113, §§2(a), (c), (d), 3, Nov. 6, 1969, 83 Stat. 187–189; Pub. L. 91–601, §6(a), formerly §7(a), Dec. 30, 1970, 84 Stat. 1673, renumbered Pub. L. 97–35, title XII, §1205(c), Aug. 13, 1981, 95 Stat. 716; Pub. L. 92–516, §3(1), Oct. 21, 1972, 86 Stat. 998; Pub. L. 94–284, §3(c), May 11, 1976, 90 Stat. 503; Pub. L. 95–631, §9, Nov. 10, 1978, 92 Stat. 3747; Pub. L. 99–339, title I, §109(d)(1), June 19, 1986, 100 Stat. 653; Pub. L. 110–314, title II, §204(b)(2), (4)(A), (B), (D), Aug. 14, 2008, 122 Stat. 3041, 3042.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 86–613. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

For definition of Canal Zone, referred to in subsec. (a), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsec. (f)(2), is act June 25, 1947, ch. 125, as amended generally by Pub. L. 92–516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (§136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables.

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (f)(2), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

The Atomic Energy Act of 1954, as amended, referred to in subsec. (f)(3), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 919, which is classified principally to chapter 23 (§2011 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 42 and Tables.

Section 1471(2)(D) of this title, referred to in subsec. (p), was redesignated section 1471(2)(C) by Pub. L. 94–284, §3(a)(2), May 11, 1976, 90 Stat. 503.

AMENDMENTS

2008—Subsec. (c). Pub. L. 110–314, §204(b)(4)(A), added subsec. (c) and struck out former subsec. (c) which read as follows: "The term 'Department' means the Department of Health, Education, and Welfare."

Subsec. (d). Pub. L. 110–314, §204(b)(4)(A), struck out subsec. (d) which read as follows: "The term 'Secretary' means the Secretary of Health, Education, and Welfare."

Subsecs. (f)(1)(B) to (D), (h)(2), (k), (p)(1). Pub. L. 110–314, §204(b)(4)(B), substituted "Commission" for "Secretary" wherever appearing.

Subsec. (q). Pub. L. 110–314, §204(b)(4)(B), (D), substituted "Commission" for "Secretary" wherever appearing and "it" for "he" in two places.

Subsec. (q)(2). Pub. L. 110–314, §204(b)(2), substituted "Proceedings for the issuance, amendment, or repeal of regulations pursuant to clause (B) of subparagraph (1) of this paragraph shall be governed by the provisions of subsections (f) through (i) of section 1262 of this title, except that if" for "Proceedings for the issuance, amendment, or repeal of regulations pursuant to clause (B) of paragraph (1) of this subsection shall be governed by the provisions of sections 371(e), (f), and (g) of title 21: *Provided*, That if".

1986—Subsec. (f)(1)(E). Pub. L. 99–339 added subpar. (E).

1978—Subsec. (l). Pub. L. 95–631 transferred the duties hereunder to the Commission from the Secretary; incorporated in provisions designated par. (1) existing text, authorized regulations to be applicable to liquids, and struck out definition of "extremely flammable" as substance with flash point at or below twenty degrees Fahrenheit and "flammable" as substance with a flash point of above twenty degrees to and including eighty degrees Fahrenheit, as determined by the Tagliabue Open Cup Tester; incorporated in provisions designated par. (2) existing text extended to liquids covered in term "substance"; added par. (3); and incorporated in provisions designated par. (4) existing text applicable until superseded by regulation.

1976—Subsec. (f)(2). Pub. L. 94–284 inserted "nor to tobacco and tobacco products," after "or refrigeration system of a house".

1972—Subsec. (f)(2). Pub. L. 92–516 substituted "pesticides" for "economic poisons" and "a pesticide" for "an economic poison" wherever appearing.

1970—Subsec. (p). Pub. L. 91–601 substituted in text preceding par. (1) "if the packaging or labeling of such substance is in violation of an applicable regulation issued pursuant to section 1472 or 1473 of this title or if such substance" for "which substance" and inserted following and below par. (2) provision including in "misbranded hazardous substance" a household substance as defined in section 1471(2)(D) of this title if it is a substance described in par. (1) of subsec. (f) of this section and its packaging or labeling is in violation of an applicable regulation issued pursuant to section 1472 or 1473 of this title.

1969—Subsec. (f)(1)(A). Pub. L. 91–113, §3(a), inserted "or combustible" after "is flammable".

Subsec. (f)(1)(D). Pub. L. 91–113, §2(a), added subsec. (f)(1)(D).

Subsec. (l). Pub. L. 91–113, §3(b), inserted definition of term "combustible" and expanded references to "flammability" and "flammable" to include "combustibility" and "combustible", respectively.

Subsec. (p)(1)(E). Pub. L. 91–113, §3(c), inserted "Combustible" to the enumerated affirmative statements of the principal hazard or hazards required to be stated on the label of a hazardous substance.

Subsec. (q)(1). Pub. L. 91–113, §2(c), inserted "or necessarily present an electrical, mechanical, or thermal hazard" after "hazardous substance involved".

Subsecs. (r) to (t). Pub. L. 91–113, §2(d), added subsecs. (r) to (t).

1966—Subsec. (f). Pub. L. 89–756, §2(a), provided that "hazardous substances" shall apply to any article which is not itself an economic poison within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act but which is a hazard substance within the meaning of par. (1) of this subsec. by reason of its bearing or containing an economic poison.

Subsec. (n). Pub. L. 89–756, §2(b), enlarged term "label" to include, where the article is unpackaged or is packaged in an immediate container not intended or suitable for delivery to the ultimate consumer, a display of written, printed or graphic matter directly upon the article involved or upon a tag or other suitable material affixed thereto.

Subsec. (p). Pub. L. 89–756, §2(c), in introductory text preceding par. (1) substituted "misbranded hazardous substance" for "misbranded package" and "misbranded package of a hazardous substance" and as so retermed enlarged applicability to include toys and other articles intended for use by children, which are hazardous substances, or which bear or contain hazardous substances when susceptible of access by children, and in par. (1), clause (J) inserted further category of "misbranded hazardous substance" where the article is intended for use by children and is not a banned hazardous substance and fails to bear a label with adequate directions for the protection of children from the hazard.

Subsec. (q). Pub. L. 89–756, §3(a), added subsec. (q).

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–339, title I, §109(d)(3), June 19, 1986, 100 Stat. 653, provided that: "The amendments made by this subsection [amending this section and section 1263 of this title] shall become effective 24 months after the enactment of this Act [June 19, 1986]."

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–516 effective at close of Oct. 21, 1972, except if regulations are necessary for the implementation of any provision that becomes effective on Oct. 21, 1972, and continuation in effect of subchapter I of chapter 6 of title 7, and regulations thereunder, relating to the control of economic poisons, as in existence prior to Oct. 21, 1972, until superseded by provisions of Pub. L. 92–516 and regulations thereunder, see section 4 of Pub. L. 92–516, set out as a note under section 136 of Title 7, Agriculture.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–601 effective Dec. 30, 1970, and regulations establishing special packaging standards effective no sooner than 180 days or later than one year from date regulations are final, or an earlier date published in Federal Register, see section 8 of Pub. L. 91–601, set out as a note under section 1471 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–113, §5, Nov. 6, 1969, 83 Stat. 190, provided that: "The amendments made by this Act [see Short Title of 1969 Amendment note below] shall take effect on the sixtieth day following the date of the enactment of this Act [Nov. 6, 1969]."

EFFECTIVE DATE

Pub. L. 86–613, §17, formerly §16, July 12, 1960, 74 Stat. 380, renumbered Pub. L. 91–113, §4(a), Nov. 6,

1969, 83 Stat. 189, and amended by Pub. L. 110–314, title II, §204(b)(4)(B), Aug. 14, 2008, 122 Stat. 3041, provided that: "This Act [enacting this chapter and repealing sections 401 to 411 of this title] shall take effect upon the date of its enactment [July 12, 1960]; but no penalty or condemnation shall be enforced for any violation of this Act which occurs—

"(a) prior to the expiration of the sixth calendar month after the month in which this Act is enacted [July 1960], or

"(b) prior to the expiration of such additional period or periods, ending not more than eighteen months after the month of enactment of this Act [July 1960], as the Commission may prescribe on the basis of a finding that conditions exist which necessitate the prescribing of such additional period or periods: *Provided*, That the Commission may limit the application of such additional period or periods to violations related to specified provisions of this Act, or to specified kinds of hazardous substances or packages thereof."

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–267, §1, June 16, 1994, 108 Stat. 722, provided that: "This Act [enacting sections 1278 and 6001 to 6006 of this title and provisions set out as notes under this section and sections 1278, 2064, and 6001 of this title] may be cited as the 'Child Safety Protection Act'."

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98–491, §1, Oct. 17, 1984, 98 Stat. 2269, provided: "That this Act [amending section 1274 of this title] may be cited as the 'Toy Safety Act of 1984'."

SHORT TITLE OF 1969 AMENDMENT

Pub. L. 91–113, §1, Nov. 6, 1969, 83 Stat. 187, provided that: "This Act [enacting section 1274 of this title, amending this section and section 1262 of this title, enacting provisions set out as notes under this section, and amending provisions set out as notes under this section and section 401 of this title] may be cited as the 'Child Protection and Toy Safety Act of 1969'."

SHORT TITLE OF 1966 AMENDMENT

Pub. L. 89–756, §1, Nov. 3, 1966, 80 Stat. 1303, provided that: "This title [probably means this "Act", amending this section, sections 1262, 1263, 1264, 1265, 1273 of this title, and provisions set out as a note under this section] may be cited as the 'Child Protection Act of 1966'."

SHORT TITLE

Pub. L. 86–613, §1, July 12, 1960, 74 Stat. 372, as amended by Pub. L. 89–756, §5, Nov. 3, 1966, 80 Stat. 1305, provided: "This Act [enacting this chapter, repealing sections 401 to 411 of this title, and enacting notes set out under this section] may be cited as the 'Federal Hazardous Substances Act'."

SEPARABILITY

Pub. L. 86–613, §16, formerly §15, July 12, 1960, 74 Stat. 380, renumbered Pub. L. 91–113, §4(a), Nov. 6, 1969, 83 Stat. 189, provided that: "If any provision of this Act [enacting this chapter and repealing sections 401 to 411 of this title] is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the Act and the applicability thereof to other persons and circumstances shall not be affected thereby."

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of Title 42, The Public Health and Welfare. See, also, Transfer of Functions notes set out under those sections.

EFFECT UPON FEDERAL AND STATE LAW

Pub. L. 86–613, §18, formerly §17, July 12, 1960, 74 Stat. 380, as amended by Pub. L. 89–756, §4(a), Nov. 3, 1966, 80 Stat. 1305; renumbered and amended by Pub. L. 91–113, §4(a), (b)(1), Nov. 6, 1969, 83 Stat. 189, 190; Pub. L. 94–284, §17(a), May 11, 1976, 90 Stat. 510; Pub. L. 110–314, title II, §204(b)(4)(J), Aug. 14, 2008, 122 Stat. 3042, provided that:

"(a) Nothing in this act [enacting this chapter and repealing sections 401 to 411 of this title] shall be construed to modify or affect the provisions of the Flammable Fabrics Act, as amended (15 U.S.C. 1191 to 1200) [sections 1191 to 1204 of this title], or any regulations promulgated thereunder; or of chapter 39, title 18, United States Code, as amended (18 U.S.C. 831 et seq.), or any regulations promulgated thereunder or under sections 204(a)(2) and 204(a)(3) of the Interstate Commerce Act, as amended [section 31502 of Title 49, Transportation] (relating to the transportation of dangerous substances and explosives by surface carriers);

or of section 1716, title 18, United States Code, or any regulations promulgated thereunder (relating to mailing of dangerous substances); or of section 902 [section 1472 of former Title 49] or regulations promulgated under section 601 of the Federal Aviation Act of 1958 [section 1421 of former Title 49] (relating to transportation of dangerous substances and explosives in aircraft); or of the Federal Food, Drug, and Cosmetic Act [chapter 9 of Title 21, Food and Drugs]; or of the Public Health Service Act [chapter 6A of Title 42, The Public Health and Welfare]; or of the Federal Insecticide, Fungicide, and Rodenticide Act [section 136 et seq. of Title 7, Agriculture]; or of the Dangerous Drug Act for the District of Columbia (70 Stat. 612), or the Act entitled 'An Act to regulate the practice of pharmacy and the sale of poisons in the District of Columbia, and for other purposes', approved May 7, 1906 (34 Stat. 175), as amended; or of any other Act of Congress, except as specified in section 19 [set out as a note under sections 401 to 411 of this title].

"(b)(1)(A) Except as provided in paragraphs (2) and (3), if a hazardous substance or its packaging is subject to a cautionary labeling requirement under section 2(p) or 3(b) [subsec. (p) of this section or section 1262(b) of this title] designed to protect against a risk of illness or injury associated with the substance, no State or political subdivision of a State may establish or continue in effect a cautionary labeling requirement applicable to such substance or packaging and designed to protect against the same risk of illness or injury unless such cautionary labeling requirement is identical to the labeling requirement under section 2(p) or 3(b) [subsec. (p) of this section or section 1262(b) of this title].

"(B) Except as provided in paragraphs (2), (3), and (4), if under regulations of the Commission promulgated under or for the enforcement of section 2(q) [subsec. (q) of this section] a requirement is established to protect against a risk of illness or injury associated with a hazardous substance, no State or political subdivision of a State may establish or continue in effect a requirement applicable to such substance and designed to protect against the same risk of illness or injury unless such requirement is identical to the requirement established under such regulations.

"(2) The Federal Government and the government of any State or political subdivision of a State may establish and continue in effect a requirement applicable to a hazardous substance for its own use (or to the packaging of such a substance) which requirement is designed to protect against a risk of illness or injury associated with such substance and which is not identical to a requirement described in paragraph (1) applicable to such substance (or packaging) and designed to protect against the same risk of illness or injury if the Federal, State, or political subdivision requirement provides a higher degree of protection from such risk of illness or injury than the requirement described in paragraph (1).

"(3)(A) Upon application of a State or political subdivision of a State, the Commission may, by regulation promulgated in accordance with subparagraph (B), exempt from paragraph (1), under such conditions as may be prescribed in such regulation, any requirement of such State or political subdivision designed to protect against a risk of illness or injury associated with a hazardous substance if—

"(i) compliance with the requirement would not cause the hazardous substance (or its packaging) to be in violation of the applicable requirement described in paragraph (1), and

"(ii) the State or political subdivision requirement (I) provides a significantly higher degree of protection from such risk of illness or injury than the requirement described in paragraph (1), and (II) does not unduly burden interstate commerce.

In determining the burden, if any, of a State or political subdivision requirement on interstate commerce the Commission shall consider and make appropriate (as determined by the Commission in its discretion) findings on the technological and economic feasibility of complying with such requirement, the cost of complying with such requirement, the geographic distribution of the substance to which the requirement would apply, the probability of other States or political subdivisions applying for an exemption under this paragraph for a similar requirement, and the need for a national, uniform requirement under this Act [this chapter] for such substance (or its packaging).

"(B) A regulation under subparagraph (A) granting an exemption for a requirement of a State or political subdivision of a State may be promulgated by the Commission only after it has provided, in accordance with section 553(b) of title 5, United States Code, notice with respect to the promulgation of the regulation and has provided opportunity for the oral presentation of views respecting its promulgation.

"(4) Paragraph (1)(B) does not prohibit a State or a political subdivision of a State from establishing or continuing in effect a requirement which is designed to protect against a risk of illness or injury associated with fireworks devices or components thereof and which provides a higher degree of protection from such risk of illness or injury than a requirement in effect under a regulation of the Commission described in such paragraph."

[The provisions of section 18 of Pub. L. 86–613, set out above, establishing the extent to which the Federal Hazardous Substances Act [see Short Title note above] preempts, limits, or otherwise affects any other Federal, State, or local law, any rule, procedure, or regulation, or any cause of action under State or local law

not to be expanded or contracted in scope, or limited, modified or extended in application, by any rule or regulation under the Federal Hazardous Substances Act, or by reference in any preamble, statement of policy, executive branch statements, or other matter associated with the publication of any such rule or regulation, see section 231 of Pub. L. 110–314, set out as a note under section 2051 of this title.]

SMALL BALLS AS BANNED HAZARDOUS SUBSTANCES

Pub. L. 103–267, title I, §101(b), June 16, 1994, 108 Stat. 725, provided that: "A small ball—

"(1) intended for children under the age of 3 years of age, and

"(2) with a diameter of 1.75 inches or less,

shall be considered a banned hazardous substance under section 2(q) of the Federal Hazardous Substances Act (15 U.S.C. 1261(q))."

[Section 101(b) of Pub. L. 103–267, set out above, effective Jan. 1, 1995, see section 101(d) of Pub. L. 103–267, set out as an Effective Date note under section 1278 of this title.]

[1] *See References in Text note below.*

§1262. Declaration of hazardous substances

(a) Rulemaking

(1) In general

Whenever in the judgment of the Commission such action will promote the objectives of this chapter by avoiding or resolving uncertainty as to its application, the Commission may by regulation declare to be a hazardous substance, for the purposes of this chapter, any substance or mixture of substances, which it finds meets the requirements of section 1261(f)(1)(A) of this title.

(2) Procedure

Proceedings for the issuance, amendment, or repeal of regulations under this subsection and the admissibility of the record of such proceedings in other proceedings, shall be governed by the provisions of subsections (f) through (i) of this section.

(b) Reasonable variations or additional label requirements

If the Commission finds that the requirements of section 1261(p)(1) of this title are not adequate for the protection of the public health and safety in view of the special hazard presented by any particular hazardous substance, it may by regulation establish such reasonable variations or additional label requirements as it finds necessary for the protection of the public health and safety; and any such hazardous substance intended, or packaged in a form suitable, for use in the household or by children, which fails to bear a label in accordance with such regulations shall be deemed to be a misbranded hazardous substance.

(c) Exemption from requirements by regulation

If the Commission finds that, because of the size of the package involved or because of the minor hazard presented by the substance contained therein, or for other good and sufficient reasons, full compliance with the labeling requirements otherwise applicable under this chapter is impracticable or is not necessary for the adequate protection of the public health and safety, the Commission shall promulgate regulations exempting such substance from these requirements to the extent it determines to be consistent with adequate protection of the public health and safety.

(d) Exemption from requirements of this chapter of substances or containers adequately regulated by other provisions of law

The Commission may exempt from the requirements established by or pursuant to this chapter any hazardous substance or container of a hazardous substance with respect to which it finds that adequate requirements satisfying the purposes of this chapter have been established by or pursuant to any other Act of Congress.

(e) Regulation of toys or articles intended for use by children

(1) A determination by the Commission that a toy or other article intended for use by children presents an electrical, mechanical, or thermal hazard shall be made by regulation in accordance with the procedures prescribed by section 553 (other than clause (B) of the last sentence of subsection (b) of such section) of title 5 unless the Commission elects the procedures prescribed by subsection (e) of section 371 of title 21, in which event such subsection and subsections (f) and (g) of such section 371 of title 21 shall apply to the making of such determination. If the Commission makes such election, it shall publish that fact with the proposal required to be published under paragraph (1) of such subsection (e).

(2) If, before or during a proceeding pursuant to paragraph (1) of this subsection, the Commission finds that, because of an electrical, mechanical, or thermal hazard, distribution of the toy or other article involved presents an imminent hazard to the public health and it, by order published in the Federal Register, gives notice of such finding, such toy or other article shall be deemed to be a banned hazardous substance for purposes of this chapter until the proceeding has been completed. If not yet initiated when such order is published, such a proceeding shall be initiated as promptly as possible.

(3)(A) In the case of any toy or other article intended for use by children which is determined by the Commission, in accordance with section 553 of title 5, to present an electrical, mechanical, or thermal hazard, any person who will be adversely affected by such a determination may, at any time prior to the 60th day after the regulation making such determination is issued by the Commission, file a petition with the United States Court of Appeals for the circuit in which such person resides or has his principal place of business for a judicial review of such determination. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commission or other officer designated by him [1] for that purpose. The Commission shall file in the court the record of the proceedings on which the Commission based its determination, as provided in section 2112 of title 28.

(B) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there was no opportunity to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Commission in a hearing or in such other manner, and upon such terms and conditions, as to the court may seem proper. The Commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, and its recommendation, if any, for the modification or setting aside of its original determination, with the return of such additional evidence.

(C) Upon the filing of the petition under this paragraph, the court shall have jurisdiction to review the determination of the Commission in accordance with subparagraphs (A), (B), (C), and (D) of paragraph (2) of the second sentence of section 706 of title 5. If the court ordered additional evidence to be taken under subparagraph (B) of this paragraph, the court shall also review the Secretary's [2] determination to determine if, on the basis of the entire record before the court pursuant to subparagraphs (A) and (B) of this paragraph, it is supported by substantial evidence. If the court finds the determination is not so supported, the court may set it aside. With respect to any determination reviewed under this paragraph, the court may grant appropriate relief pending conclusion of the review proceedings, as provided in section 705 of title 5.

(D) The judgment of the court affirming or setting aside, in whole or in part, any such determination of the Commission shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28.

(f) Commencement of proceeding for promulgation of regulation; notice

A proceeding for the promulgation of a regulation under section 1261(q)(1) of this title classifying an article or substance as a banned hazardous substance or a regulation under subsection (e) of this section may be commenced by the publication in the Federal Register of an advance notice of proposed rulemaking which shall—

(1) identify the article or substance and the nature of the risk of injury associated with the article or substance;

(2) include a summary of each of the regulatory alternatives under consideration by the Commission (including voluntary standards);

(3) include information with respect to any existing standard known to the Commission which may be relevant to the proceedings, together with a summary of the reasons why the Commission believes preliminarily that such standard does not eliminate or adequately reduce the risk of injury identified in paragraph (1);

(4) invite interested persons to submit to the Commission, within such period as the Commission shall specify in the notice (which period shall not be less than 30 days or more than 60 days after the date of publication of the notice), comments with respect to the risk of injury identified by the Commission, the regulatory alternatives being considered, and other possible alternatives for addressing the risk;

(5) invite any person (other than the Commission) to submit to the Commission, within such period as the Commission shall specify in the notice (which period shall not be less than 30 days after the date of publication of the notice), an existing standard or a portion of a standard as a proposed regulation under section 1261(q)(1) of this title or subsection (e) of this section; and

(6) invite any person (other than the Commission) to submit to the Commission, within such period as the Commission shall specify in the notice (which period shall not be less than 30 days after the date of publication of the notice), a statement of intention to modify or develop a voluntary standard to address the risk of injury identified in paragraph (1) together with a description of a plan to modify or develop the standard.

The Commission shall transmit such notice within 10 calendar days to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives.

(g) Publication of standard; termination of proceeding for promulgation of regulation; monitoring of compliance

(1) If the Commission determines that any standard submitted to it in response to an invitation in a notice published under subsection (f)(5) of this section if promulgated (in whole, in part, or in combination with any other standard submitted to the Commission or any part of such a standard) as a regulation under section 1261(q)(1) of this title or subsection (e) of this section, as the case may be, would eliminate or adequately reduce the risk of injury identified in a notice provided under subsection (f)(1) of this section, the Commission may publish such standard, in whole, in part, or in such combination and with nonmaterial modifications, as a proposed regulation under such section or subsection.

(2) If the Commission determines that—

(A) compliance with any standard submitted to it in response to an invitation in a notice published under subsection (f)(6) of this section is likely to result in the elimination or adequate reduction of the risk of injury identified in the notice, and

(B) it is likely that there will be substantial compliance with such standard,

the Commission shall terminate any proceeding to promulgate a regulation under section 1261(q)(1) of this title or subsection (e) of this section, respecting such risk of injury and shall publish in the Federal Register a notice which includes the determination of the Commission and which notifies the public that the Commission will rely on the voluntary standard to eliminate or reduce the risk of injury, except that the Commission shall terminate any such proceeding and rely on a voluntary standard only if such voluntary standard is in existence. For purposes of this section, a voluntary standard shall be considered to be in existence when it is finally approved by the organization or other person which developed such standard, irrespective of the effective date of the standard. Before relying upon any voluntary standard, the Commission shall afford interested persons (including manufacturers, consumers, and consumer organizations) a reasonable opportunity to submit written comments regarding such standard. The Commission shall consider such comments in making any determination regarding reliance on the involved voluntary standard under this subsection.

(3) The Commission shall devise procedures to monitor compliance with any voluntary standards—

(A) upon which the Commission has relied under paragraph (2) of this subsection;

(B) which were developed with the participation of the Commission; or

(C) whose development the Commission has monitored.

(h) Publication of proposed rule together with preliminary regulatory analysis

No regulation under section 1261(q)(1) of this title classifying an article or substance as a banned hazardous substance and no regulation under subsection (e) of this section may be proposed by the Commission unless the Commission publishes in the Federal Register the text of the proposed rule, including any alternatives, which the Commission proposes to promulgate, together with a preliminary regulatory analysis containing—

(1) a preliminary description of the potential benefits and potential costs of the proposed regulation, including any benefits or costs that cannot be quantified in monetary terms, and an identification of those likely to receive the benefits and bear the costs;

(2) a discussion of the reasons any standard or portion of a standard submitted to the Commission under subsection (f)(5) of this section was not published by the Commission as the proposed regulation or part of the proposed regulation;

(3) a discussion of the reasons for the Commission's preliminary determination that efforts proposed under subsection (f)(6) of this section and assisted by the Commission as required by section 2054(a)(3) of this title would not, within a reasonable period of time, be likely to result in the development of a voluntary standard that would eliminate or adequately reduce the risk of injury identified in the notice provided under subsection (f)(1) of this section; and

(4) a description of any reasonable alternatives to the proposed regulation, together with a summary description of their potential costs and benefits, and a brief explanation of why such alternatives should not be published as a proposed regulation.

The Commission shall transmit such notice within 10 calendar days to the appropriate Congressional committees. Nothing in this subsection shall preclude any person from submitting an existing standard or portion of a standard as a proposed regulation.

(i) Publication of final regulatory analysis with regulation; required findings; judicial review

(1) The Commission shall not promulgate a regulation under section 1261(q)(1) of this title classifying an article or substance as a banned hazardous substance or a regulation under subsection (e) of this section unless it has prepared a final regulatory analysis of the regulation containing the following information:

(A) A description of the potential benefits and potential costs of the regulation, including costs and benefits that cannot be quantified in monetary terms, and the identification of those likely to receive the benefits and bear the costs.

(B) A description of any alternatives to the final regulation which were considered by the Commission, together with a summary description of their potential benefits and costs and a brief explanation of the reasons why these alternatives were not chosen.

(C) A summary of any significant issues raised by the comments submitted during the public comment period in response to the preliminary regulatory analysis, and a summary of the assessment by the Commission of such issues.

The Commission shall publish its final regulatory analysis with the regulation.

(2) The Commission shall not promulgate a regulation under section 1261(q)(1) of this title classifying an article or substance as a banned hazardous substance or a regulation under subsection (e) of this section unless it finds (and includes such finding in the regulation)—

(A) in the case of a regulation which relates to a risk of injury with respect to which persons who would be subject to such regulation have adopted and implemented a voluntary standard, that—

(i) compliance with such voluntary standard is not likely to result in the elimination or

adequate reduction of such risk of injury; or

(ii) it is unlikely that there will be substantial compliance with such voluntary standard;

(B) that the benefits expected from the regulation bear a reasonable relationship to its costs; and

(C) that the regulation imposes the least burdensome requirement which prevents or adequately reduces the risk of injury for which the regulation is being promulgated.

(3)(A) Any regulatory analysis prepared under subsection (h) of this section or paragraph (1) shall not be subject to independent judicial review, except that when an action for judicial review of a regulation is instituted, the contents of any such regulatory analysis shall constitute part of the whole rulemaking record of agency action in connection with such review.

(B) The provisions of subparagraph (A) shall not be construed to alter the substantive or procedural standards otherwise applicable to judicial review of any action by the Commission.

(j) Petition to initiate rulemaking

The Commission shall grant, in whole or in part, or deny any petition under section 553(e) of title 5 requesting the Commission to initiate a rulemaking, within a reasonable time after the date on which such petition is filed. The Commission shall state the reasons for granting or denying such petition. The Commission may not deny any such petition on the basis of a voluntary standard unless the voluntary standard is in existence at the time of the denial of the petition, the Commission has determined that the voluntary standard is likely to result in the elimination or adequate reduction of the risk of injury identified in the petition, and it is likely that there will be substantial compliance with the standard.

(Pub. L. 86–613, §3, July 12, 1960, 74 Stat. 374; Pub. L. 89–756, §2(d), (e), Nov. 3, 1966, 80 Stat. 1303, 1304; Pub. L. 91–113, §2(b), Nov. 6, 1969, 83 Stat. 187; Pub. L. 97–35, title XII, §1203(b)(1), Aug. 13, 1981, 95 Stat. 708; Pub. L. 101–608, title I, §§107(b), 108(b), 110(b), Nov. 16, 1990, 104 Stat. 3112, 3113; Pub. L. 110–314, title II, §204(b)(1), (3), (4)(B), (D), Aug. 14, 2008, 122 Stat. 3041, 3042.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–314, §204(b)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) authorized the Commission to declare hazardous substances by regulation and detailed proceedings for the issuance, amendment, or repeal of such regulations.

Subsecs. (b) to (e). Pub. L. 110–314, §204(b)(4)(D), substituted "it" for "he" and "its" for "his" wherever appearing in reference to the Secretary of Health, Education, and Welfare.

Pub. L. 110–314, §204(b)(4)(B), substituted "Commission" for "Secretary" wherever appearing.

Subsec. (f). Pub. L. 110–314, §204(b)(3)(A), substituted "may be commenced" for "shall be commenced" in introductory provisions.

Subsec. (g)(1). Pub. L. 110–314, §204(b)(3)(B), substituted "identified in a notice" for "identified in the notice".

Subsec. (h). Pub. L. 110–314, §204(b)(3)(C), (D), in introductory provisions, substituted "unless the" for "unless, not less than 60 days after publication of the notice required in subsection (f) of this section, the" and in concluding provisions, substituted "appropriate Congressional committees. Nothing in this subsection shall preclude any person from submitting an existing standard or portion of a standard as a proposed regulation." for "Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives."

1990—Subsec. (g)(2). Pub. L. 101–608, §108(b), struck out period at end and inserted ", except that the Commission shall terminate any such proceeding and rely on a voluntary standard only if such voluntary standard is in existence. For purposes of this section, a voluntary standard shall be considered to be in existence when it is finally approved by the organization or other person which developed such standard, irrespective of the effective date of the standard. Before relying upon any voluntary standard, the Commission shall afford interested persons (including manufacturers, consumers, and consumer organizations) a reasonable opportunity to submit written comments regarding such standard. The Commission shall consider such comments in making any determination regarding reliance on the involved voluntary standard under this subsection."

Subsec. (g)(3). Pub. L. 101–608, §107(b), added par. (3).

Subsec. (j). Pub. L. 101–608, §110(b), added subsec. (j).

1981—Subsecs. (f) to (i). Pub. L. 97–35 added subsecs. (f) to (i).

1969—Subsec. (e). Pub. L. 91–113 added subsec. (e).

1966—Subsec. (b). Pub. L. 89–756, §2(d), substituted "any such hazardous substance intended, or packaged in a form suitable, for use in the household or by children, which fails to bear a label in accordance with such regulations shall be deemed to be a misbranded hazardous substance" for "any container of such hazardous substance, intended or suitable for household use, which fails to bear a label in accordance with such regulations shall be deemed to be a misbranded package of a hazardous substance".

Subsec. (d). Pub. L. 89–756, §2(e), inserted "hazardous substance or" before "container of a hazardous substance".

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 applicable with respect to regulations under this chapter and chapters 25 and 47 of this title for which notices of proposed rulemaking are issued after Aug. 14, 1981, see section 1215 of Pub. L. 97–35, set out as a note under section 2052 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–113 effective on sixtieth day following Nov. 6, 1969, see section 5 of Pub. L. 91–113, set out as a note under section 1261 of this title.

NATIONAL COMMISSION ON PRODUCT SAFETY

Pub. L. 90–146, Nov. 20, 1967, 81 Stat. 466, as amended by Pub. L. 91–51, Aug. 4, 1969, 83 Stat. 86, established a National Commission on Product Safety to study and investigate the scope and adequacy of measures to protect consumers against unreasonable risk of injuries which may be caused by hazardous household products and required the Commission to transmit its final report to the President and to the Congress by June 30, 1970. Ninety days after submission of its final report the Commission ceased to exist by the express terms of Pub. L. 90–146.

[1] *So in original. Probably should be "it".*

[2] *So in original. Probably should be "Commission's".*

§1263. Prohibited acts

The following acts and the causing thereof are prohibited:

(a) The introduction or delivery for introduction into interstate commerce of any misbranded hazardous substance or banned hazardous substance.

(b) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the label of, or the doing of any other act with respect to, a hazardous substance, if such act is done while the substance is in interstate commerce, or while the substance is held for sale (whether or not the first sale) after shipment in interstate commerce, and results in the hazardous substance being a misbranded hazardous substance or banned hazardous substance.

(c) The receipt in interstate commerce of any misbranded hazardous substance or banned hazardous substance and the delivery or proffered delivery thereof for pay or otherwise.

(d) The giving of a guarantee or undertaking referred to in section 1264(b)(2) of this title which guarantee or undertaking is false, except by a person who relied upon a guarantee or undertaking to the same effect signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the hazardous substance.

(e) The failure to permit entry or inspection as authorized by section 1270(b) of this title or to permit access to and copying of any record as authorized by section 1271 of this title.

(f) The introduction or delivery for introduction into interstate commerce, or the receipt in interstate commerce and subsequent delivery or proffered delivery for pay or otherwise, of a hazardous substance in a reused food, drug, or cosmetic container or in a container which, though not a reused container, is identifiable as a food, drug, or cosmetic container by its labeling or by other identification. The reuse of a food, drug, or cosmetic container as a container for a hazardous substance shall be deemed to be an act which results in the hazardous substance being a misbranded hazardous substance. As used in this paragraph, the terms "food", "drug", and "cosmetic" shall have the same meanings as in the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.].

(g) The manufacture of a misbranded hazardous substance or banned hazardous substance within the District of Columbia or within any territory not organized with a legislative body.

(h) The use by any person to his own advantage, or revealing other than to the Commission or officers or employees of the Commission, or to the courts when relevant in any judicial proceeding under this chapter, of any information acquired under authority of section 1270 of this title concerning any method of process which as a trade secret is entitled to protection.

(i) The failure to notify the Commission with respect to exports, pursuant to section 1273(d) of this title.

(j) The failure to comply with an order issued under section 1274 of this title.

(k) The introduction or delivery for introduction into interstate commerce of any lead solder which has a lead content in excess of 0.2 percent which does not prominently display a warning label stating the lead content of the solder and warning that the use of such solder in the making of joints or fittings in any private or public potable water supply system is prohibited.

(Pub. L. 86–613, §4, July 12, 1960, 74 Stat. 375; Pub. L. 89–756, §§2(f), 3(b), Nov. 3, 1966, 80 Stat. 1304, 1305; Pub. L. 95–631, §7(a), Nov. 10, 1978, 92 Stat. 3745; Pub. L. 97–35, title XII, §1211(f)(2), Aug. 13, 1981, 95 Stat. 723; Pub. L. 99–339, title I, §109(d)(2), June 19, 1986, 100 Stat. 653; Pub. L. 110–314, title II, §204(b)(4)(B), (C), (H), Aug. 14, 2008, 122 Stat. 3041, 3042.)

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (f), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

AMENDMENTS

2008—Subsec. (h). Pub. L. 110–314, §204(b)(4)(B), (C), substituted "Commission or officers or employees of the Commission" for "Secretary or officers or employees of the Department".

Subsec. (i). Pub. L. 110–314, §204(b)(4)(H), substituted "Commission" for "Consumer Product Safety Commission".

1986—Subsec. (k). Pub. L. 99–339 added subsec. (k).

1981—Subsec. (j). Pub. L. 97–35 added subsec. (j).

1978—Subsec. (i). Pub. L. 95–631 added subsec. (i).

1966—Subsec. (a). Pub. L. 89–756, §§2(f)(1), 3(b), substituted "misbranded hazardous substance or banned hazardous substance" for "misbranded package of a hazardous substance".

Subsec. (b). Pub. L. 89–756, §§2(f)(2), 3(b), substituted "being a misbranded hazardous substance or banned hazardous substance" for "being in a misbranded package".

Subsec. (c). Pub. L. 89–756, §§2(f)(1), 3(b), substituted "misbranded hazardous substance or banned hazardous substance" for "misbranded package of a hazardous substance".

Subsec. (f). Pub. L. 89–756, §2(f)(2), substituted "being a misbranded hazardous substance" for "being in a misbranded package".

Subsec. (g). Pub. L. 89–756, §§2(f)(1), 3(b), substituted "misbranded hazardous substance or banned hazardous substance" for "misbranded package of a hazardous substance".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–339 effective 24 months after June 19, 1986, see section 109(d)(3) of Pub. L. 99–339, set out as a note under section 1261 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, see section 1215 of Pub. L. 97–35, set out as a note under section 2052 of this title.

§1264. Penalties; exceptions

(a) Criminal penalties

Any person who violates any of the provisions of section 1263 of this title shall be guilty of a misdemeanor and shall on conviction thereof be subject to a fine of not more than $500 or to imprisonment for not more than ninety days, or both; but for offenses committed with intent to defraud or mislead, or for second and subsequent offenses, the penalty shall be imprisonment for not more than 5 years, a fine determined under section 3571 of title 18, or both.

(b) Exceptions

No person shall be subject to the penalties of subsection (a) of this section, (1) for having violated section 1263(c) of this title, if the receipt, delivery, or proffered delivery of the hazardous substance was made in good faith, unless he refuses to furnish on request of an officer or employee duly designated by the Commission, the name and address of the person from whom he purchased or received such hazardous substance, and copies of all documents, if any there be, pertaining to the delivery of the hazardous substance to him; or (2) for having violated section 1263(a) of this title, if he established a guarantee or undertaking signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the hazardous substance, to the effect that the hazardous substance is not a misbranded hazardous substance or a banned hazardous substance within the meaning of those terms in this chapter; or (3) for having violated subsection (a) or (c) of section 1263 of this title with respect to any hazardous substance shipped or delivered for shipment for export to any foreign country, in a package marked for export on the outside of the shipping container and labeled in accordance with the specifications of the foreign purchaser and in accordance with the laws of the foreign country, but if such hazardous substance is sold or offered for sale in domestic commerce or if the Commission determines that exportation of such substance presents an unreasonable risk of injury to persons residing within the United States, this clause shall not apply.

(c) Civil penalties

(1) Any person who knowingly violates section 1263 of this title shall be subject to a civil penalty not to exceed $100,000 for each such violation. Subject to paragraph (2), a violation of subsections (a), (b), (c), (d), (f), (g), (i), (j), and (k) of section 1263 of this title shall constitute a separate offense with respect to each substance involved, except that the maximum civil penalty shall not exceed $15,000,000 for any related series of violations. A violation of section 1263(e) of this title shall constitute a separate violation with respect to each failure or refusal to allow or perform an act required by section 1263(e) of this title; and, if such violation is a continuing one, each day of such violation shall constitute a separate offense, except that the maximum civil penalty shall not exceed $15,000,000 for any related series of violations.

(2) The second sentence of paragraph (1) of this subsection shall not apply to violations of subsection (a) or (c) of section 1263 of this title—

(A) if the person who violated such subsection is not the manufacturer, importer, or private labeler or a distributor of the substances involved; and

(B) if such person did not have either (i) actual knowledge that such person's distribution or sale of the substance violated such subsection, or (ii) notice from the Commission that such distribution or sale would be a violation of such subsection.

(3) In determining the amount of any penalty to be sought upon commencing an action seeking to assess a penalty for a violation of section 1263 of this title, the Commission shall consider the nature, circumstances, extent, and gravity of the violation, including the nature of the substance, the severity

of the risk of injury, the occurrence or absence of injury, the amount of the substance distributed, the appropriateness of such penalty in relation to the size of the business of the person charged, including how to mitigate undue adverse economic impacts on small businesses, and such other factors as appropriate.

(4) Any civil penalty under this subsection may be compromised by the Commission. In determining the amount of such penalty or whether it should be remitted or mitigated, and in what amount, the Commission shall consider the appropriateness of such penalty to the size of the business of the persons charged, including how to mitigate undue adverse economic impacts on small businesses, the nature, circumstances, extent, and gravity of the violation, including,[1] the nature of the substance involved, the severity of the risk of injury, the occurrence or absence of injury, and the amount of the substance distributed, and such other factors as appropriate. The amount of such penalty when finally determined, or the amount agreed on compromise, may be deducted from any sums owing by the United States to the person charged.

(5) As used in the first sentence of paragraph (1), the term "knowingly" means (A) having actual knowledge, or (B) the presumed having of knowledge deemed to be possessed by a reasonable person who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations.

(6)(A) The maximum penalty amounts authorized in paragraph (1) shall be adjusted for inflation as provided in this paragraph.

(B) Not later than December 1, 2011, and December 1 of each fifth calendar year thereafter, the Commission shall prescribe and publish in the Federal Register a schedule of maximum authorized penalties that shall apply for violations that occur after January 1 of the year immediately following such publication.

(C) The schedule of maximum authorized penalties shall be prescribed by increasing each of the amounts referred to in paragraph (1) by the cost-of-living adjustment for the preceding five years. Any increase determined under the preceding sentence shall be rounded to—

(i) in the case of penalties greater than $1,000 but less than or equal to $10,000, the nearest multiple of $1,000;

(ii) in the case of penalties greater than $10,000 but less than or equal to $100,000, the nearest multiple of $5,000;

(iii) in the case of penalties greater than $100,000 but less than or equal to $200,000, the nearest multiple of $10,000; and

(iv) in the case of penalties greater than $200,000, the nearest multiple of $25,000.

(D) For purposes of this subsection:

(i) The term "Consumer Price Index" means the Consumer Price Index for all-urban consumers published by the Department of Labor.

(ii) The term "cost-of-living adjustment for the preceding five years" means the percentage by which—

(I) the Consumer Price Index for the month of June of the calendar year preceding the adjustment; exceeds

(II) the Consumer Price Index for the month of June preceding the date on which the maximum authorized penalty was last adjusted.

(d) Civil action for injunction

In the case of an attorney general of a State alleging a violation that affects or may affect such State or its residents, such attorney general may bring a civil action for an injunction to enforce any requirement of this chapter relating to misbranded or banned hazardous substances. The procedural requirements of section 2073 of this title shall apply to any such action.

(Pub. L. 86–613, §5, July 12, 1960, 74 Stat. 376; Pub. L. 89–756, §§2(g), 3(c), Nov. 3, 1966, 80 Stat. 1304, 1305; Pub. L. 95–631, §7(b), Nov. 10, 1978, 92 Stat. 3745; Pub. L. 101–608, title I, §§115(b), 118(a), Nov. 16, 1990, 104 Stat. 3119, 3121; Pub. L. 110–314, title II, §§204(b)(4)(B), (H), 217(a)(2), (b)(1)(B), (c)(3), Aug. 14, 2008, 122 Stat. 3041, 3042, 3058, 3059, 3060.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–314, §217(c)(3), substituted "5 years, a fine determined under section 3571 of title 18, or both." for "one year, or a fine of not more than $3,000, or both such imprisonment and fine."

Subsec. (b). Pub. L. 110–314, §204(b)(4)(B), (H), substituted "Commission" for "Secretary" in cl. (1) and "Commission" for "Consumer Product Safety Commission" in cl. (3).

Subsec. (c)(1). Pub. L. 110–314, §217(a)(2)(A), (B), substituted "$100,000" for "$5,000" and substituted "$15,000,000" for "$1,250,000" in two places.

Subsec. (c)(3). Pub. L. 110–314, §217(b)(1)(B)(i), inserted "the nature, circumstances, extent, and gravity of the violation, including" after "shall consider", substituted "substance distributed," for "substance distributed, and", and inserted ", including how to mitigate undue adverse economic impacts on small businesses, and such other factors as appropriate" before period at end.

Subsec. (c)(4). Pub. L. 110–314, §217(b)(1)(B)(ii)(II), inserted ", and such other factors as appropriate" after "substance distributed".

Pub. L. 110–314, §217(b)(1)(B)(ii)(I), which directed insertion of ", including how to mitigate undue adverse economic impacts on small businesses, the nature, circumstances, extent, and gravity of the violation, including" after "person charged", was executed by making the insertion after "persons charged" to reflect the probable intent of Congress.

Subsec. (c)(6)(B). Pub. L. 110–314, §217(a)(2)(C), which directed substitution of "December 1, 2011," for "December 1, 1994," in par. (6)(B) of subsec. (c)(1), was executed by making the substitution in subsec. (c)(6)(B) to reflect the probable intent of Congress.

1990—Subsec. (c). Pub. L. 101–608, §115(b), added subsec. (c).

Subsec. (d). Pub. L. 101–608, §118(a), added subsec. (d).

1978—Subsec. (b)(3). Pub. L. 95–631 substituted "with respect to" for "in respect of" and made cl. (3) inapplicable when the Consumer Product Safety Commission determines that exportation of the substance presents an unreasonable risk of injury to persons residing within the United States.

1966—Subsec. (b). Pub. L. 89–756 substituted "a misbranded hazardous substance or a banned hazardous substance within the meaning of those terms" for "in misbranded packages within the meaning of that term".

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 217(a)(2) of Pub. L. 110–314 effective on the date that is the earlier of the date on which final regulations are issued under section 217(b)(2) of Pub. L. 110–314, set out as a note under section 2069 of this title, or 1 year after Aug. 14, 2008, see section 217(a)(4) of Pub. L. 110–314, set out as a note under section 1194 of this title.

CIVIL PENALTY CRITERIA

The Consumer Product Safety Commission to issue a final regulation providing its interpretation of penalty factors described in subsec. (c)(3) of this section no later than 1 year after Aug. 14, 2008, see section 217(b)(2) of Pub. L. 110–314, set out as a note under section 2069 of this title.

[1] *So in original. The comma probably should not appear.*

§1265. Seizures

(a) Grounds and jurisdiction

Any misbranded hazardous substance or banned hazardous substance when introduced into or while in interstate commerce or while held for sale (whether or not the first sale) after shipment in interstate commerce, or which may not, under the provisions of section 1263(f) of this title, be introduced into interstate commerce, or which has been manufactured in violation of section 1263(g) of this title, shall be liable to be proceeded against while in interstate commerce or at any time thereafter, on libel of information and condemned in any district court in the United States within the jurisdiction of which the hazardous substance is found: *Provided*, That this section shall not apply to a hazardous substance intended for export to any foreign country if it (1) is in a package branded in accordance with the specifications of the foreign purchaser, (2) is labeled in accordance with the laws of the foreign country, and (3) is labeled on the outside of the shipping package to show that it is intended for export, and (4) is so exported.

(b) Procedure; multiplicity of pending proceedings

Such hazardous substance shall be liable to seizure by process pursuant to the libel, and the procedure in cases under this section shall conform, as nearly as may be, to the procedure in admiralty; except that on demand of either party any issue of fact joined in any such case shall be tried by jury. When libel for condemnation proceedings under this section, involving the same claimant and the same issues of misbranding, are pending in two or more jurisdictions, such pending proceedings, upon application of the United States or the claimant seasonably made to the court of one such jurisdiction, shall be consolidated for trial by order of such court, and tried in (1) any district selected by the applicant where one of such proceedings is pending; or (2) a district agreed upon by stipulation between the parties. If no order for consolidation is so made within a reasonable time, the United States or the claimant may apply to the court of one such jurisdiction, and such court (after giving the other party, the claimant, or the United States attorney for such district, reasonable notice and opportunity to be heard) shall by order, unless good cause to the contrary is shown, specify a district of reasonable proximity to the claimant's principal place of business, in which all such pending proceedings shall be consolidated for trial and tried. Such order of consolidation shall not apply so as to require the removal of any case the date for trial of which has been fixed. The court granting such order shall give prompt notification thereof to the other courts having jurisdiction of the cases covered thereby.

(c) Disposition of goods after decree of condemnation

Any hazardous substance condemned under this section shall, after entry of the decree, be disposed of by destruction or sale as the court may, in accordance with the provisions of this section, direct and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the Treasury of the United States; but such hazardous substance shall not be sold under such decree contrary to the provisions of this chapter or the laws of the jurisdiction in which sold: *Provided*, That, after entry of the decree and upon the payment of the costs of such proceedings and the execution of a good and sufficient bond conditioned that such hazardous substance shall not be sold or disposed of contrary to the provisions of this chapter or the laws of any State or territory in which sold, the court may by order direct that such hazardous substance be delivered to the owner thereof to be destroyed or brought into compliance with the provisions of this chapter under the supervision of an officer or employee duly designated by the Commission, and the expense of such supervision shall be paid by the person obtaining release of the hazardous substance under bond.

(d) Costs and fees

When a decree of condemnation is entered against the hazardous substance, court costs and fees, and storage and other proper expenses, shall be awarded against the person, if any, intervening as claimant of the hazardous substance.

(e) Removal of case for trial

In the case of removal for trial of any case as provided by subsection (b) of this section—

(1) the clerk of the court from which removal is made shall promptly transmit to the court in which the case is to be tried all records in the case necessary in order that such court may exercise jurisdiction;

(2) the court to which such case is removed shall have the powers and be subject to the duties, for purposes of such case, which the court from which removal was made would have had, or to which such court would have been subject, if such case had not been removed.

(Pub. L. 86–613, §6, July 12, 1960, 74 Stat. 376; Pub. L. 89–756, §§2(h), 3(d), Nov. 3, 1966, 80 Stat. 1304, 1305; Pub. L. 110–314, title II, §204(b)(4)(B), Aug. 14, 2008, 122 Stat. 3041.)

AMENDMENTS

2008—Subsec. (c). Pub. L. 110–314 substituted "Commission" for "Secretary".

1966—Subsec. (a). Pub. L. 89–756 substituted "Any misbranded hazardous substance or banned hazardous substance" for "Any hazardous substance that is in a misbranded package".

§1266. Hearing before report of criminal violation

Before any violation of this chapter is reported by the Commission to any United States attorney for institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views, either orally or in writing, with regard to such contemplated proceeding.

(Pub. L. 86–613, §7, July 12, 1960, 74 Stat. 377; Pub. L. 110–314, title II, §204(b)(4)(B), Aug. 14, 2008, 122 Stat. 3041.)

AMENDMENTS

2008—Pub. L. 110–314 substituted "Commission" for "Secretary".

§1267. Injunctions; criminal contempt; trial by court or jury

(a) Jurisdiction

The United States district courts and the United States courts of the territories shall have jurisdiction, for cause shown and subject to the provisions of rule 65(a) and (b) of the Federal Rules of Civil Procedure, to restrain violations of this chapter.

(b) Trials

In any proceeding for criminal contempt for violation of an injunction or restraining order issued under this section, which violation also constitutes a violation of this chapter, trial shall be by the court or, upon demand of the accused, by a jury. Such trial shall be conducted in accordance with the practice and procedure applicable in the case of proceedings subject to the provisions of rule 42(b) of the Federal Rules of Criminal Procedure.

(Pub. L. 86–613, §8, July 12, 1960, 74 Stat. 378.)

TRANSFER OF FUNCTIONS

Functions of Secretary of Health, Education, and Welfare under this chapter transferred to Consumer Product Safety Commission, see section 2079 of this title.

§1268. Proceedings in name of United States; subpenas

All criminal proceedings and all libel or injunction proceedings for the enforcement, or to restrain violations, of this chapter shall be by and in the name of the United States. Subpenas for witnesses who are required to attend a court of the United States in any district may run into any other district in any such proceeding.

(Pub. L. 86–613, §9, July 12, 1960, 74 Stat. 378.)

TRANSFER OF FUNCTIONS

Functions of Secretary of Health, Education, and Welfare under this chapter transferred to Consumer Product Safety Commission, see section 2079 of this title.

§1269. Regulations

(a) Authority

The authority to promulgate regulations for the efficient enforcement of this chapter, except as otherwise provided in this section, is vested in the Commission.

(b) Joint regulations

The Secretary of the Treasury and the Commission shall jointly prescribe regulations for the efficient enforcement of the provisions of section 1273 of this title, except as otherwise provided therein. Such regulations shall be promulgated in such manner and take effect at such time, after due

notice, as the Commission shall determine.

(Pub. L. 86–613, §10, July 12, 1960, 74 Stat. 378; Pub. L. 110–314, title II, §204(b)(4)(B), (E), Aug. 14, 2008, 122 Stat. 3041, 3042.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–314, §204(b)(4)(B), substituted "Commission" for "Secretary".

Subsec. (b). Pub. L. 110–314, §204(b)(4)(E), substituted "Commission" for "Secretary of Health, Education, and Welfare" in two places.

§1270. Examinations and investigations

(a) Authority to conduct

The Commission is authorized to conduct examinations, inspections, and investigations for the purposes of this chapter through officers and employees of the Commission or through any health officer or employee of any State, territory, or political subdivision thereof, duly commissioned by the Commission as an officer of the Commission.

(b) Inspection; notice; samples

For purposes of enforcement of this chapter, officers or employees duly designated by the Commission, upon presenting appropriate credentials and a written notice to the owner, operator, or agent in charge, are authorized (1) to enter, at reasonable times, any factory, warehouse, or establishment in which hazardous substances are manufactured, processed, packed, or held for introduction into interstate commerce or are held after such introduction, or to enter any vehicle being used to transport or hold such hazardous substances in interstate commerce; (2) to inspect, at reasonable times and within reasonable limits and in a reasonable manner, such factory, warehouse, establishment, or vehicle, and all pertinent equipment, finished and unfinished materials, and labeling therein; and (3) to obtain samples of such materials or packages thereof, or of such labeling. A separate notice shall be given for each such inspection, but a notice shall not be required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable promptness.

(c) Receipt for sample; results of analysis

If the officer or employee obtains any sample, prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the samples obtained. If an analysis is made of such sample, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge.

(Pub. L. 86–613, §11, July 12, 1960, 74 Stat. 378; Pub. L. 110–314, title II, §204(b)(4)(B), (C), Aug. 14, 2008, 122 Stat. 3041, 3042.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–314, §204(b)(4)(B), (C), substituted "Commission is authorized" for "Secretary is authorized", "employees of the Commission" for "employees of the Department", "commissioned by the Commission" for "commissioned by the Secretary", and "officer of the Commission" for "officer of the Department".

Subsec. (b). Pub. L. 110–314, §204(b)(4)(B), substituted "Commission" for "Secretary".

§1271. Records of interstate shipment

For the purpose of enforcing the provisions of this chapter, carriers engaged in interstate commerce, and persons receiving hazardous substances in interstate commerce or holding such hazardous substances so received shall, upon the request of an officer or employee duly designated by the Commission, permit such officer or employee, at reasonable times, to have access to and to copy all records showing the movement in interstate commerce of any such hazardous substance, or

the holding thereof during or after such movement, and the quantity, shipper, and consignee thereof; and it shall be unlawful for any such carrier or person to fail to permit such access to and copying of any record so requested when such request is accompanied by a statement in writing specifying the nature or kind of such hazardous substance to which such request relates: *Provided*, That evidence obtained under this section, or any evidence which is directly or indirectly derived from such evidence, shall not be used in a criminal prosecution of the person from whom obtained: *Provided further*, That carriers shall not be subject to the other provisions of this chapter by reason of their receipt, carriage, holding, or delivery of hazardous substances in the usual course of business as carriers.

(Pub. L. 86–613, §12, July 12, 1960, 74 Stat. 379; Pub. L. 91–452, title II, §219, Oct. 15, 1970, 84 Stat. 929; Pub. L. 110–314, title II, §204(b)(4)(B), Aug. 14, 2008, 122 Stat. 3041.)

AMENDMENTS

2008—Pub. L. 110–314 substituted "Commission" for "Secretary".

1970—Pub. L. 91–452 inserted ", or any evidence which is directly or indirectly derived from such evidence," after "under this section".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–452 effective on sixtieth day following Oct. 15, 1970, and not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91–452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

§1272. Publicity; reports; dissemination of information

(a) Summaries of judgments, decrees, orders

The Commission may cause to be published from time to time reports summarizing any judgments, decrees, or court orders which have been rendered under this chapter, including the nature of the charge and the disposition thereof.

(b) Information as to health dangers and investigations

The Commission may also cause to be disseminated information regarding hazardous substances in situations involving, in the opinion of the Commission, imminent danger to health. Nothing in this section shall be construed to prohibit the Commission from collecting, reporting, and illustrating the results of the investigations of the Commission.

(Pub. L. 86–613, §13, July 12, 1960, 74 Stat. 379; Pub. L. 110–314, title II, §204(b)(4)(B), (C), Aug. 14, 2008, 122 Stat. 3041, 3042.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–314, §204(b)(4)(B), substituted "Commission" for "Secretary".

Subsec. (b). Pub. L. 110–314, §204(b)(4)(B), (C), substituted "Commission" for "Department" after "investigations of the" and for "Secretary" wherever appearing.

§1273. Imports

(a) Delivery of samples to Commission; examination; refusal of admission

The Secretary of the Treasury shall deliver to the Commission, upon its request, samples of hazardous substances which are being imported or offered for import into the United States, giving notice thereof to the owner or consignee, who may appear before the Commission and have the right to introduce testimony. If it appears from the examination of such samples or otherwise that such hazardous substance is a misbranded hazardous substance or banned hazardous substance or in violation of section 1263(f) of this title, then such hazardous substance shall be refused admission, except as provided in subsection (b) of this section. The Secretary of the Treasury shall cause the

destruction of any such hazardous substance refused admission unless such hazardous substance is exported, under regulations prescribed by the Secretary of the Treasury, within ninety days of the date of notice of such refusal or within such additional time as may be permitted pursuant to such regulations.

(b) Disposition of refused articles

Pending decision as to the admission of a hazardous substance being imported or offered for import, the Secretary of the Treasury may authorize delivery of such hazardous substance to the owner or consignee upon the execution by him of a good and sufficient bond providing for the payment of such liquidated damages in the event of default as may be required pursuant to regulations of the Secretary of the Treasury. If it appears to the Commission that the hazardous substance can, by relabeling or other action, be brought into compliance with this chapter, final determination as to admission of such hazardous substance may be deferred and, upon filing of timely written application by the owner or consignee and the execution by him of a bond as provided in the preceding provisions of this subsection, the Secretary [1] may, in accordance with regulations, authorize the applicant to perform such relabeling or other action specified in such authorization (including destruction or export of rejected hazardous substances or portions thereof, as may be specified in the Secretary's [2] authorization). All such relabeling or other action pursuant to such authorization shall, in accordance with regulations, be under the supervision of an officer or employee of the Commission designated by the Secretary [1], or an officer or employee of the Department of the Treasury designated by the Secretary of the Treasury.

(c) Expenses in connection with refused articles

All expenses (including travel, per diem, or subsistence, and salaries of officers or employees of the United States) in connection with the destruction provided for in subsection (a) of this section and the supervision of the relabeling or other action authorized under the provisions of subsection (b) of this section, the amount of such expenses to be determined in accordance with regulations, and all expenses in connection with the storage, cartage, or labor with respect to any hazardous substance refused admission under subsection (a) of this section, shall be paid by the owner or consignee and, in default of such payment, shall constitute a lien against any future importations made by such owner or consignee.

(d) Statement of exportation: filing period, information; notification of foreign country; petition for minimum filing period: good cause

Not less than thirty days before any person exports to a foreign country any misbranded hazardous substance or banned hazardous substance, such person shall file a statement with the Commission notifying the Commission of such exportation, and the Commission, upon receipt of such statement, shall promptly notify the government of such country of such exportation and the basis upon which such substance is considered misbranded or has been banned under this chapter. Any statement filed with the Commission under the preceding sentence shall specify the anticipated date of shipment of such substance, the country and port of destination of such substance, and the quantity of such substance that will be exported, and shall contain such other information as the Commission may by regulation require. Upon petition filed with the Commission by any person required to file a statement under this subsection respecting an exportation, the Commission may, for good cause shown, exempt such person from the requirement of this subsection that such a statement be filed no less than thirty days before the date of the exportation, except that in no case shall the Commission permit such a statement to be filed later than the tenth day before such date.

(Pub. L. 86–613, §14, July 12, 1960, 74 Stat. 379; Pub. L. 89–756, §§2(i), 3(e), Nov. 3, 1966, 80 Stat. 1304, 1305; Pub. L. 95–631, §7(c), Nov. 10, 1978, 92 Stat. 3746; Pub. L. 110–314, title II, §204(b)(4)(D), (F)–(I), Aug. 14, 2008, 122 Stat. 3042.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–314, §204(b)(4)(D), (F), substituted "upon its request" for "upon his request" and substituted "Commission" for "Secretary of Health, Education, and Welfare" in two places.

Subsec. (b). Pub. L. 110–314, §204(b)(4)(F), (G), substituted "appears to the Commission" for "appears to the Secretary of Health, Education, and Welfare" and "Commission designated by" for "Department of Health, Education, and Welfare designated by".

Subsec. (d). Pub. L. 110–314, §204(b)(4)(H), (I), substituted "statement with the Commission" for "statement with the Consumer Product Safety Commission" and struck out "(hereinafter in this section referred to as the 'Commission')" before "notifying".

1978—Subsec. (d). Pub. L. 95–631 added subsec. (d).

1966—Subsec. (a). Pub. L. 89–756 substituted "a misbranded hazardous substance or banned hazardous substance" for "in misbranded packages".

[1] *So in original. Probably should be "Commission".*

[2] *So in original. Probably should be "Commission's".*

§1274. Remedies respecting banned hazardous substances

(a) Notice to protect public; form and contents

If any article or substance sold in commerce is defined as a banned hazardous substance (whether or not it was such at the time of its sale) and the Commission determines (after affording interested persons, including consumers and consumer organizations, an opportunity for a hearing) that notification is required to adequately protect the public from such article or substance, the Commission may order the manufacturer or any distributor or dealer of the article or substance to take any one or more of the following actions:

(1) To give public notice that the article or substance is a banned hazardous substance.

(2) To mail such notice to each person who is a manufacturer, distributor, or dealer of such article or substance.

(3) To mail such notice to every person to whom the person giving the notice knows such article or substance was delivered or sold.

An order under this subsection shall specify the form and content of any notice required to be given under the order.

(b) Order of Commission; repair, replacement, or refund

If any article or substance sold in commerce is defined as a banned hazardous substance (whether or not it was such at the time of its sale) and the Commission determines (after affording interested persons, including consumers and consumer organizations, an opportunity for a hearing) that action under this subsection is in the public interest, the Commission may order the manufacturer, distributor, or dealer to take whichever of the following actions the person to whom the order is directed elects:

(1) If repairs to or changes in the article or substance may be made so that it will not be a banned hazardous substance, to make such repairs or changes.

(2) To replace such article or substance with a like or equivalent article or substance which is not a banned hazardous substance.

(3) To refund the purchase price of the article or substance (less a reasonable allowance for use, if the article or substance has been in the possession of the consumer for one year or more—

(A) at the time of public notice under subsection (a) of this section, or

(B) at the time the consumer receives actual notice that the article or substance is a banned hazardous substance,

whichever first occurs).

An order under this subsection may also require the person to whom it applies to submit a plan, satisfactory to the Commission, for taking the action which such person has elected to take. The

Commission shall specify in the order the persons to whom refunds must be made if the person to whom the order is directed elects to take the action described in paragraph (3). If an order under this subsection is directed to more than one person, the Commission shall specify which person has the election under this subsection. An order under this subsection may prohibit the person to whom it applies from manufacturing for sale, offering for sale, distributing in commerce, or importing into the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States), or from doing any combination of such actions, with respect to the article or substance with respect to which the order was issued.

(c) Discretionary remedial activities available to Commission; orders; contents

(1) If the Commission determines (after affording interested persons, including consumers and consumer organizations, an opportunity for a hearing in accordance with subsection (e) of this section) that any toy or other article intended for use by children that is not a banned hazardous substance contains a defect which creates a substantial risk of injury to children (because of the pattern of defect, the number of defective toys or such articles distributed in commerce, the severity of the risk, or otherwise) and that notification is required to protect adequately the public from such toy or article, the Commission may order the manufacturer or any distributor or dealer of such toy or article to take any one or more of the following actions:

(A) To give public notice that such defective toy or article contains a defect which creates a substantial risk of injury to children.

(B) To mail such notice to each person who is a manufacturer, distributor, or dealer of such toy or article.

(C) To mail such notice to every person to whom the person giving notice knows such toy or article was delivered or sold.

An order under this paragraph shall specify the form and content of any notice required to be given under the order.

(2) If the Commission determines (after affording interested persons, including consumers and consumer organizations, an opportunity for a hearing in accordance with subsection (e) of this section) that any toy or other article intended for use by children that is not a banned hazardous substance contains a defect which creates a substantial risk of injury to children (because of the pattern of defect, the number of defective toys or such articles distributed in commerce, the severity of the risk, or otherwise) and that action under this paragraph is in the public interest, the Commission may order the manufacturer, distributor, or dealer to take whichever of the following actions the person to whom the order is directed elects:

(A) If repairs to or changes in the toy or article can be made so that it will not contain a defect which creates a substantial risk of injury to children, to make such repairs or changes.

(B) To replace such toy or article with a like or equivalent toy or article which does not contain a defect which creates a substantial risk of injury to children.

(C) To refund the purchase price of such toy or article (less a reasonable allowance for use, if such toy or article has been in the possession of the consumer for 1 year or more (i) at the time of public notice under paragraph (1)(A), or (ii) at the time the consumer receives actual notice that the toy or article contains a defect which creates a substantial risk of injury to children, whichever first occurs).

An order under this paragraph may also require the person to whom it applies to submit a plan, satisfactory to the Commission, for taking the action which such person has elected to take. The Commission shall specify in the order the person to whom refunds must be made if the person to whom the order is directed elects to take the action described in subparagraph (C). If an order under this paragraph is directed to more than one person, the Commission shall specify which person has the election under this paragraph. An order under this paragraph may prohibit the person to whom it applies from manufacturing for sale, offering for sale, distributing in commerce, or importing into

the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States), or from doing any combination of such actions, with respect to the toy or article with respect to which the order was issued.

(d) Charge for remedy; reimbursement for expenses

(1) No charge shall be made to any person (other than a manufacturer, distributor, or dealer) who avails himself of any remedy provided under an order issued under subsection (b) or (c) of this section, and the person subject to the order shall reimburse each person (other than a manufacturer, distributor, or dealer) who is entitled to such a remedy for any reasonable and foreseeable expenses incurred by such person in availing himself of such remedy.

(2) An order issued under subsection (a), (b), or (c) of this section with respect to a toy, article or substance may require any person who is a manufacturer, distributor, or dealer of the toy, article or substance to reimburse any other person who is a manufacturer, distributor, or dealer of such toy, article or substance for such other person's expenses in connection with carrying out the order, if the Commission determines such reimbursement to be in the public interest.

(e) Hearing; representative of class

An order under subsection (a), (b), or (c) of this section may be issued only after an opportunity for a hearing in accordance with section 554 of title 5, except that, if the Commission determines that any person who wishes to participate in such hearing is a part of a class of participants who share an identity of interest, the Commission may limit such person's participation in such hearing to participation through a single representative designated by such class (or by the Commission if such class fails to designate such a representative).

(f) "Manufacturer" defined

For purposes of this section (1) the term "manufacturer" includes an importer for resale, and (2) a dealer who sells at wholesale an article or substance shall with respect to that sale be considered the distributor of that article or substance.

(g) Cost-benefit analysis of notification or other action not required

Nothing in this section shall be construed to require the Commission, in determining that an article or substance distributed in commerce presents a substantial product hazard and that notification or other action under this section should be taken, to prepare a comparison of the costs that would be incurred in providing notification or taking other action under this section with the benefits from such notification or action.

(Pub. L. 86–613, §15, as added Pub. L. 91–113, §4(a), Nov. 6, 1969, 83 Stat. 189; amended Pub. L. 97–35, title XII, §1211(f)(1), Aug. 13, 1981, 95 Stat. 721; Pub. L. 97–414, §9(l), Jan. 4, 1983, 96 Stat. 2065; Pub. L. 98–491, §2, Oct. 17, 1984, 98 Stat. 2269; Pub. L. 100–418, title I, §1214(c), Aug. 23, 1988, 102 Stat. 1156; Pub. L. 101–608, title I, §111(b), Nov. 16, 1990, 104 Stat. 3114; Pub. L. 110–314, title II, §204(b)(4)(H), Aug. 14, 2008, 122 Stat. 3042.)

REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsecs. (b) and (c)(2), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of Title 19, Customs Duties.

AMENDMENTS

2008—Subsec. (b). Pub. L. 110–314 substituted "Commission may order" for "Consumer Product Safety Commission may order" in introductory provisions.

1990—Subsec. (g). Pub. L. 101–608 added subsec. (g).

1988—Subsecs. (b), (c)(2). Pub. L. 100–418 substituted "general note 2 of the Harmonized Tariff Schedule of the United States" for "general headnote 2 to the Tariff Schedules of the United States".

1984—Subsec. (c). Pub. L. 98–491, §2(a)(2), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 98–491, §2(a)(1), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (d)(1). Pub. L. 98–491, §2(b), inserted "or (c)" after "subsection (b)".

Subsec. (d)(2). Pub. L. 98–491, §2(c), (d), substituted "a toy, article" for "an article", "toy, article" for

"article" in two places, and "subsection (a), (b), or (c)" for "subsection (a) or (b)".

Subsec. (e). Pub. L. 98–491, §2(a)(2), (d), redesignated subsec. (d) as (e) and substituted "subsection (a), (b), or (c)" for "subsection (a) or (b)". Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 98–491, §2(a)(1), redesignated subsec. (e) as (f).

1983—Subsec. (e). Pub. L. 97–414 added subsec. (e).

1981—Pub. L. 97–35 revised section generally and substituted provisions authorizing the Commission to require the manufacturers, distributors, or dealers as the case may be to notify the public that the article or substance was a banned hazardous one, and to repair, replace or refund the purchase price, when the Commission determines after providing the manufacturer, distributor, or dealer an opportunity for a hearing that banned hazardous substances were sold for provisions requiring the manufacturer, distributor or dealer to repurchase the banned hazardous article or substance.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub. L. 100–418, set out as an Effective Date note under section 3001 of Title 19, Customs Duties.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, see section 1215 of Pub. L. 97–35, set out as a note under section 2052 of this title.

EFFECTIVE DATE

Section effective on sixtieth day following Nov. 6, 1969, see section 5 of Pub. L. 91–113, set out as an Effective Date of 1969 Amendment note under section 1261 of this title.

§1275. Toxicological Advisory Board

(a) Establishment; functions; review and recommendations

(1) Within 180 days after November 10, 1978, the Commission shall establish, in accordance with subsection (b) of this section, a Toxicological Advisory Board (hereinafter in this section referred to as the "Board") to advise the Commission on precautionary labeling for hazardous substances. The Board shall provide scientific and technical advice to the Commission concerning—

(A) proper labeling under sections 1261(p)(1) and 1262(b) of this title, with special attention to—

(i) the description of precautionary measures required under section 1261(p)(1)(F) of this title;

(ii) the statement describing the hazards associated with a hazardous substance as required under section 1261(p)(1)(E) of this title; and

(iii) instructions for first-aid treatment under section 1261(p)(1)(G) of this title; and

(B) the exemption of certain substances from labeling requirements under this chapter as permitted under section 1262(c) of this title.

(2) In carrying out its duties under paragraph (1)(A), the Board shall review any labeling requirements or guidelines which have been established by the Commission under section 1261(p)(1) or 1262(b) of this title. Based upon its review the Board shall develop and submit to the Commission, within one year after the date that the Board is established, any recommendations for revisions in such labeling requirements or guidelines which the Board considers to be appropriate, including any general recommendations which may be of assistance to the Commission in carrying out its responsibilities under section 1261(p)(1) or 1262(b) of this title. The Board shall periodically review the labeling requirements and guidelines established by the Commission under such sections to determine whether such requirements and guidelines reflect relevant changes in scientific knowledge and shall revise any general recommendations submitted to the Commission under this paragraph to reflect such changes.

(b) Membership; appointment; qualifications; Chairman; term of office; reappointment; vacancies; meetings; compensation and travel expenses; Federal nonemployee status

(1) The Board shall be composed of nine members appointed by the Commission. Each member of the Board shall be qualified by training and experience in one or more fields applicable to the duties of the Board, and at least three of the members of the Board shall be members of the American Board of Medical Toxicology. The Chairman of the Board shall be elected by the Board from among its members.

(2) The members of the Board shall be appointed for terms of three years. Members of the Board may be reappointed.

(3) Any vacancy in the Board shall be filled in the same manner in which the original appointment was made. Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall serve only for the remainder of such term.

(4) The Board shall meet at such times and places as may be designated by the Commission in consultation with the Chairman, but not less than two times each year.

(5) Members of the Board who are not officers or employees of the United States shall, while attending meetings or conferences of the Board or while otherwise engaged in the business of the Board, be entitled to receive compensation at a rate fixed by the Commission, not exceeding the daily equivalent of the annual rate of basic pay payable for grade GS–18 of the General Schedule under section 5332 of title 5. While away from their homes or regular places of business, such members may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed under section 5703(b) [1] of such title. Individuals serving as members on the Board shall not be considered officers or employees of the United States by reason of receiving payments under this paragraph.

(c) Termination

The Board shall terminate on the date six years after the date it is established under this section.

(Pub. L. 86–613, §20, as added Pub. L. 95–631, §10, Nov. 10, 1978, 92 Stat. 3747; amended Pub. L. 110–314, title II, §204(b)(4)(H), (I), Aug. 14, 2008, 122 Stat. 3042.)

REFERENCES IN TEXT

Section 5703 of title 5, referred to in subsec. (b)(5), was amended generally by Pub. L. 94–22, §4, May 19, 1975, 89 Stat. 85, and, as so amended, does not contain a subsec. (b).

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–314 substituted "Commission" for "Consumer Product Safety Commission" after "November 10, 1978, the" and struck out "(hereinafter in this section referred to as the 'Commission')" immediately thereafter.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

[1] *See References in Text note below.*

§1276. Congressional veto of hazardous substances regulations

(a) Transmission to Congress

The Commission shall transmit to the Secretary of the Senate and the Clerk of the House of Representatives a copy of any regulation promulgated by the Commission under section 1261(q)(1) of this title or subsection (e) of section 1262 of this title.

(b) Disapproval by concurrent resolution

Any regulation specified in subsection (a) of this section shall not take effect if—

(1) within the ninety calendar days of continuous session of the Congress which occur after the date of the promulgation of such regulation, both Houses of the Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows (with the blank spaces appropriately filled): "That the Congress disapproves the regulation which was promulgated under the Federal Hazardous Substances Act by the Consumer Product Safety Commission with respect to and which was transmitted to the Congress on and disapproves the regulation for the following reasons: ."; or

(2) within the sixty calendar days of continuous session of the Congress which occur after the date of the promulgation of such regulation, one House of the Congress adopts such concurrent resolution and transmits such resolution to the other House and such resolution is not disapproved by such other House within the thirty calendar days of continuous session of the Congress which occur after the date of such transmittal.

(c) Presumptions from Congressional action or inaction

Congressional inaction on, or rejection of, a concurrent resolution of disapproval under this section shall not be construed as an expression of approval of the regulation involved, and shall not be construed to create any presumption of validity with respect to such regulation.

(d) Continuous session of Congress

For purposes of this section—

(1) continuity of session is broken only by an adjournment of the Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the periods of continuous session of the Congress specified in subsection (b) of this section.

(Pub. L. 86–613, §21, as added Pub. L. 97–35, title XII, §1207(c), Aug. 13, 1981, 95 Stat. 718; amended Pub. L. 110–314, title II, §204(b)(4)(H), Aug. 14, 2008, 122 Stat. 3042.)

REFERENCES IN TEXT

The Federal Hazardous Substances Act, referred to in subsec. (b), is Pub. L. 86–613, July 12, 1960, 74 Stat. 372, as amended, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1261 of this title and Tables.

AMENDMENTS

2008—Pub. L. 110–314, which directed the substitution of "Commission" for "Consumer Product Safety Commission" in this section, was executed by making the substitution in subsec. (a), before "shall transmit", but not in subsec. (b)(1), to reflect the probable intent of Congress.

EFFECTIVE DATE

Section applicable with respect to consumer product safety rules under chapter 47 of this title and regulations under this chapter and chapter 25 of this title promulgated after Aug. 13, 1981, see section 1215 of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 2052 of this title.

§1277. Labeling of art materials

(a) Regulation status of standard D–4236 of American Society for Testing and Materials

On and after the last day of the 2-year period beginning on November 18, 1988, the requirements for the labeling of art materials set forth in the version of the standard of the American Society for Testing and Materials designated D–4236 that is in effect on November 18, 1988, and as modified by subsection (b) of this section shall be deemed to be a regulation issued by the Commission under section 1262(b) of this title.

(b) Requirements applicable to standard D–4236

The following shall apply with respect to the standard of the American Society for Testing and Materials referred to in subsection (a) of this section:

(1) The term "art material or art material product" shall mean any substance marketed or represented by the producer or repackager as suitable for use in any phase of the creation of any work of visual or graphic art of any medium. The term does not include economic poisons subject to the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.] or drugs, devices, or cosmetics subject to the Federal Food, Drug, and Cosmetics Act [21 U.S.C. 301 et seq.].

(2) The standard referred to in subsection (a) of this section as modified by this subsection applies to art materials intended for users of any age.

(3) Each producer or repackager of art materials shall describe in writing the criteria used to determine whether an art material has the potential for producing chronic adverse health effects. Each producer or repackager shall be responsible for submitting to the Commission these criteria and a list of art materials that require hazard warning labels under this section.

(4) Upon the request of the Commission, a producer or repackager of art materials shall submit to the Commission product formulations and the criteria used to determine whether the art material or its ingredients have the potential for producing chronic adverse health effects.

(5) All art materials that require chronic hazard labeling pursuant to this section must include on the label the name and address of the producer or repackager of the art materials and an appropriate telephone number and a statement signifying that such art materials are inappropriate for use by children.

(6) If an art material producer or repackager becomes newly aware of any significant information regarding the hazards of an art material or ways to protect against the hazard, this new information must be incorporated into the labels of such art materials that are manufactured after 12 months from the date of discovery. If a producer or repackager reformulates an art material, the new formulation must be evaluated and labeled in accordance with the standard referred to in subsection (a) of this section as modified by this subsection.

(7) If the Commission determines that an art material in a container equal to or smaller than one fluid ounce (30 ml) (if the product is sold by volume) or one ounce net weight (28 g) (if the product is sold by weight) has the potential for producing chronic adverse health effects with customary or reasonably foreseeable use despite its small size, the Commission may require the art material to carry a label which conveys all the information required under the standard referred to in subsection (a) of this section as modified by this subsection for art materials in a container greater than one fluid ounce or one ounce net weight. If the information cannot fit on the package label, the Commission shall require the art material to have a package insert which conveys all this information. If the art material has a package insert, the label on the product shall include a signal word in conformance with paragraph 5 of the standard referred to in subsection (a) of this section, a list of potentially harmful or sensitizing components, and the statement "see package insert before use". For purposes of this subsection, the term "package insert" means a display of written, printed, or graphic matter upon a leaflet or suitable material accompanying the art material. This requirement is in addition to, and is not meant to supersede, the requirement of paragraph 5.8 of the standard designated D–4236.

(8) In determining whether an art material has the potential for producing chronic adverse health effects, including carcinogenicity and potential carcinogenicity, a toxicologist shall take into account opinions of various regulatory agencies and scientific bodies.

(c) Revisions incorporated into standard D–4236; notice and hearing; amendment; opportunity for comment; transcript of proceedings

If the Commission determines that a revision proposed by the American Society for Testing and Materials is in the public interest, it shall incorporate the revision into the standard referred to in subsection (a) of this section as modified by subsection (b) of this section after providing notice and an opportunity for comment. If at any time the Commission finds that the standard referred to in subsection (a) of this section as modified by subsection (b) of this section is inadequate for the protection of the public interest, it shall promulgate an amendment to the standard which will adequately protect the public interest. Such final standard shall be promulgated pursuant to section

553 of title 5, except that the Commission shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions. A transcript shall be kept of any oral presentation.

(d) Guidelines for determining chronically hazardous art materials; issuance; public hearing; scope of criteria; review; amendment

(1) Within 1 year of November 18, 1988, the Commission shall issue guidelines which specify criteria for determining when any customary or reasonably foreseeable use of an art material can result in a chronic hazard. In developing such guidelines the Commission shall conduct a public hearing and provide reasonable opportunity for the submission of comments.

(2) The guidelines established under paragraph (1) shall include—

(A) criteria for determining when art materials may produce chronic adverse health effects in children and criteria for determining when art materials may produce such health effects in adults,

(B) criteria for determining which substances contained in art materials have the potential for producing chronic adverse health effects and what those effects are,

(C) criteria for determining the bioavailability of chronically hazardous substances contained in art materials when the products are used in a customary or reasonably foreseeable manner, and

(D) criteria for determining acceptable daily intake levels for chronically hazardous substances contained in art materials.

Where appropriate, criteria used for assessing risks to children may be the same as those used for adults.

(3) The Commission shall periodically review the guidelines established under paragraph (1) to determine whether the guidelines reflect relevant changes in scientific knowledge and in the formulations of art materials, and shall amend the guidelines to reflect such changes.

(e) Informational and educational materials; development and distribution

The Commission shall develop informational and educational materials about art materials and shall distribute the informational and educational materials to interested persons.

(f) Injunctions

The Commission may bring an action under section 1267 of this title to enjoin the purchase of any art material required to be labeled under this chapter which is for use by children in pre-kindergarten, kindergarten, or grades 1 through 6.

(Pub. L. 86–613, §23, as added Pub. L. 100–695, Nov. 18, 1988, 102 Stat. 4568.)

REFERENCES IN TEXT

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsec. (b)(1), is act June 25, 1947, ch. 125, as amended generally by Pub. L. 92–516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (§136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables.

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (b)(1), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

CODIFICATION

Pub. L. 100–695 enacted section 23 of Pub. L. 86–613, classified to this section, without a prior enactment of a section 22 of Pub. L. 86–613.

§1278. Requirements for labeling certain toys and games

(a) Toys or games for children who are at least 3

(1) Requirement

The packaging of any toy or game intended for use by children who are at least 3 years old but

not older than 6 years (or such other upper age limit as the Commission may determine, which may not be less than 5 years old), any descriptive material which accompanies such toy or game, and, in the case of bulk sales of such toy or game when unpackaged, any bin, container for retail display, or vending machine from which the unpackaged toy or game is dispensed shall bear or contain the cautionary statement described in paragraph (2) if the toy or game—

(A) is manufactured for sale, offered for sale, or distributed in commerce in the United States, and

(B) includes a small part, as defined by the Commission.

(2) Label

The cautionary statement required by paragraph (1) for a toy or game shall be as follows:

(b) Balloons, small balls, and marbles

(1) Requirement

In the case of any latex balloon, any ball with a diameter of 1.75 inches or less intended for children 3 years of age or older, any marble intended for children 3 years of age or older, or any toy or game which contains such a balloon, ball, or marble, which is manufactured for sale, offered for sale, or distributed in commerce in the United States—

(A) the packaging of such balloon, ball, marble, toy, or game,

(B) any descriptive material which accompanies such balloon, ball, marble, toy, or game, and

(C) in the case of bulk sales of any such product when unpackaged, any bin, container for retail display, or vending machine from which such unpackaged balloon, ball, marble, toy, or game is dispensed,

shall bear or contain the cautionary statement described in paragraph (2).

(2) Label

The cautionary statement required under paragraph (1) for a balloon, ball, marble, toy, or game shall be as follows:

(A) Balloons

In the case of balloons, or toys or games that contain latex balloons, the following cautionary statement applies:

(B) Balls

In the case of balls, the following cautionary statement applies:

(C) Marbles

In the case of marbles, the following cautionary statement applies:

(D) Toys and games

In the case of toys or games containing balls, the following cautionary statement applies:

In the case of toys or games containing marbles, the following cautionary statement applies:

(c) Advertising

(1) Requirement

(A) Cautionary statement

Any advertisement by a retailer, manufacturer, importer, distributor, or private labeler (including advertisements on Internet websites or in catalogues or other printed materials) that

provides a direct means for the purchase or order of a product for which a cautionary statement is required under subsection (a) or (b) shall include the appropriate cautionary statement displayed on or immediately adjacent to that advertisement, as modified by regulations issued under paragraph (3).

(B) Application to retailers

(i) Requirement to inform

A manufacturer, importer, distributor, or private labeler that provides such a product to a retailer shall inform the retailer of any cautionary statement requirement applicable to the product.

(ii) Retailer's requirement to inquire

A retailer is not in violation of subparagraph (A) if the retailer requested information from the manufacturer, importer, distributor, or private labeler as to whether the cautionary statement required by subparagraph (A) applies to the product that is the subject of the advertisement and the manufacturer, importer, distributor, or private labeler provided false information or did not provide such information.

(C) Display

The cautionary statement required by subparagraph (A) shall be prominently displayed—

(i) in the primary language used in the advertisement;

(ii) in conspicuous and legible type in contrast by typography, layout, or color with other material printed or displayed in such advertisement; and

(iii) in a manner consistent with part 1500 of title 16, Code of Federal Regulations.

(D) Definitions

In this subsection:

(i) The terms "manufacturer", "distributor", and "private labeler" have the meaning given those terms in section 2052 of this title.

(ii) The term "retailer" has the meaning given that term in section 2052 of this title, but does not include an individual whose selling activity is intermittent and does not constitute a trade or business.

(2) Effective date

The requirement in paragraph (1) shall take effect—

(A) with respect to advertisements on Internet websites, 120 days after August 14, 2008; and

(B) with respect to catalogues and other printed materials, 180 days after August 14, 2008.

(3) Rulemaking

Notwithstanding any provision of chapter 6 of title 5 or the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Commission shall, not later than 90 days after August 14, 2008, promulgate regulations to effectuate this section with respect to catalogues and other printed material. The Commission may, under such regulations, provide a grace period of no more than 180 days for catalogues and other printed material printed prior to the effective date of paragraph (1) during which time distribution of such catalogues and other printed material shall not be considered a violation of such paragraph. The Commission may promulgate regulations concerning the size and placement of the cautionary statement required by paragraph (1) of this subsection as appropriate relative to the size and placement of the advertisements in such catalogues and other printed material. The Commission shall promulgate regulations that clarify the applicability of these requirements to catalogues and other printed material distributed solely between businesses and not to individual consumers.

(4) Enforcement

The requirements in paragraph (1) shall be treated as a consumer product safety standard promulgated under section 2058 of this title. The publication or distribution of any advertisement that is not in compliance with paragraph (1) shall be treated as a prohibited act under section

2068(a)(1) of this title.

(d) General labeling requirements

(1) In general

Except as provided in paragraphs (2) and (3), any cautionary statement required under subsection (a) or (b) of this section shall be—

(A) displayed in its entirety on the principal display panel of the product's package, and on any descriptive material which accompanies the product, and, in the case of bulk sales of such product when unpackaged, on the bin, container for retail display of the product, and any vending machine from which the unpackaged product is dispensed, and

(B) displayed in the English language in conspicuous and legible type in contrast by typography, layout, or color with other printed matter on such package, descriptive materials, bin, container, and vending machine, and in a manner consistent with part 1500 of title 16, Code of Federal Regulations (or successor regulations thereto).

(2) Exception for products manufactured outside United States

In the case of a product manufactured outside the United States and directly shipped from the manufacturer to the consumer by United States mail or other delivery service, the accompanying material inside the package of the product may fail to bear the required statement if other accompanying material shipped with the product bears such statement.

(3) Special rules for certain packages

(A) A cautionary statement required by subsection (a) or (b) of this section may, in lieu of display on the principal display panel of the product's package, be displayed on another panel of the package if—

(i) the package has a principal display panel of 15 square inches or less and the required statement is displayed in three or more languages; and

(ii) the statement specified in subparagraph (B) is displayed on the principal display panel and is accompanied by an arrow or other indicator pointing toward the place on the package where the statement required by subsection (a) or (b) of this section appears.

(B)(i) In the case of a product to which subsection (a) of this section, subsection (b)(2)(B) of this section, subsection (b)(2)(C) of this section, or subsection (b)(2)(D) of this section applies, the statement specified by this subparagraph is as follows:

(ii) In the case of a product to which subsection (b)(2)(A) of this section applies, the statement specified by this subparagraph is as follows:

(e) Treatment as misbranded hazardous substance

A balloon, ball, marble, toy, or game, that is not in compliance with the requirements of this subsection [1] shall be considered a misbranded hazardous substance under section 1261(p) of this title.

(Pub. L. 86–613, §24, as added Pub. L. 103–267, title I, §101(a), June 16, 1994, 108 Stat. 722; amended Pub. L. 110–314, title I, §105, Aug. 14, 2008, 122 Stat. 3031.)

REFERENCES IN TEXT

The Paperwork Reduction Act of 1980, referred to in subsec. (c)(3), is Pub. L. 96–511, Dec. 11, 1980, 94 Stat. 2812, which was classified principally to chapter 35 (§3501 et seq.) of Title 44, Public Printing and Documents, prior to the general amendment of that chapter by Pub. L. 104–13, §2, May 22, 1995, 109 Stat. 163. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 101 of Title 44 and Tables.

AMENDMENTS

2008—Subsecs. (c) to (e). Pub. L. 110–314 added subsec. (c) and redesignated former subsecs. (c) and (d)

as (d) and (e), respectively.

EFFECTIVE DATE

Pub. L. 103–267, title I, §101(d), June 16, 1994, 108 Stat. 725, provided that: "Subsections (a) and (b) [enacting this section and provisions set out as a note under section 1261 of this title] shall take effect January 1, 1995, and section 24 of the Federal Hazardous Substances Act [this section] shall apply only to products entered into commerce on or after January 1, 1995."

REGULATIONS

Pub. L. 103–267, title I, §101(c), June 16, 1994, 108 Stat. 725, provided that: "The Consumer Product Safety Commission (hereinafter referred to as the 'Commission') shall promulgate regulations, under section 553 of title 5, United States Code, for the implementation of this section [enacting this section and provisions set out as notes under this section and section 1261 of this title] and section 24 of the Federal Hazardous Substances Act [this section] by July 1, 1994, or the date that is 6 months after the date of enactment of this Act [June 16, 1994], whichever occurs first. Subsections (f) through (i) of section 3 of the Federal Hazardous Substances Act (15 U.S.C. 1262) shall not apply with respect to the issuance of regulations under this subsection."

PREEMPTION

Pub. L. 103–267, title I, §101(e), June 16, 1994, 108 Stat. 725, provided that:

"(1) IN GENERAL.—Subject to paragraph (2), a State or political subdivision of a State may not establish or enforce a requirement relating to cautionary labeling of small parts hazards or choking hazards in any toy, game, marble, small ball, or balloon intended or suitable for use by children unless such requirement is identical to a requirement established by amendments made by this section to the Federal Hazardous Substances Act [enacting this section] or by regulations promulgated by the Commission.

"(2) EXCEPTION.—A State or political subdivision of a State may, until January 1, 1995, enforce a requirement described in paragraph (1) if such requirement was in effect on October 2, 1993."

[1] *So in original. Probably should be "this section".*

§1278a. Children's products containing lead; lead paint rule

(a) General lead ban

(1) Treatment as a banned hazardous substance

Except as expressly provided in subsection (b) beginning on the dates provided in paragraph (2), any children's product (as defined in section 3(a) of the Consumer Product Safety Act (15 U.S.C. 2052(a))) that contains more lead than the limit established by paragraph (2) shall be treated as a banned hazardous substance under the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.).

(2) Lead limit

(A) 600 parts per million

Except as provided in subparagraphs (B), (C), (D), and (E), beginning 180 days after August 14, 2008, the lead limit referred to in paragraph (1) is 600 parts per million total lead content by weight for any part of the product.

(B) 300 parts per million

Except as provided by subparagraphs (C), (D), and (E), beginning on the date that is 1 year after August 14, 2008, the lead limit referred to in paragraph (1) is 300 parts per million total lead content by weight for any part of the product.

(C) 100 parts per million

Except as provided in subparagraphs (D) and (E), beginning on the date that is 3 years after August 14, 2008, subparagraph (B) shall be applied by substituting "100 parts per million" for "300 parts per million" unless the Commission determines that a limit of 100 parts per million is

not technologically feasible for a product or product category. The Commission may make such a determination only after notice and a hearing and after analyzing the public health protections associated with substantially reducing lead in children's products.

(D) Alternate reduction of limit

If the Commission determines under subparagraph (C) that the 100 parts per million limit is not technologically feasible for a product or product category, the Commission shall, by regulation, establish an amount that is the lowest amount of lead, lower than 300 parts per million, the Commission determines to be technologically feasible to achieve for that product or product category. The amount of lead established by the Commission under the preceding sentence shall be substituted for the 300 parts per million limit under subparagraph (B) beginning on the date that is 3 years after August 14, 2008.

(E) Periodic review and further reductions

The Commission shall, based on the best available scientific and technical information, periodically review and revise downward the limit set forth in this subsection, no less frequently than every 5 years after promulgation of the limit under subparagraph (C) or (D) to require the lowest amount of lead that the Commission determines is technologically feasible to achieve. The amount of lead established by the Commission under the preceding sentence shall be substituted for the lead limit in effect immediately before such revision.

(3) Application

Each limit set forth in paragraph (2) (except for the limit set forth in subparagraphs (A) and (B)) shall apply only to a children's product (as defined in section 3(a) of the Consumer Product Safety Act (15 U.S.C. 2052(a))) that is manufactured after the effective date of such respective limit.

(b) Exclusion of certain materials or products and inaccessible component parts

(1) Functional purpose exception

(A) In general

The Commission, on its own initiative or upon petition by an interested party, shall grant an exception to the limit in subsection (a) for a specific product, class of product, material, or component part if the Commission, after notice and a hearing, determines that—

(i) the product, class of product, material, or component part requires the inclusion of lead because it is not practicable or not technologically feasible to manufacture such product, class of product, material, or component part, as the case may be, in accordance with subsection (a) by removing the excessive lead or by making the lead inaccessible;

(ii) the product, class of product, material, or component part is not likely to be placed in the mouth or ingested, taking into account normal and reasonably foreseeable use and abuse of such product, class of product, material, or component part by a child; and

(iii) an exception for the product, class of product, material, or component part will have no measurable adverse effect on public health or safety, taking into account normal and reasonably foreseeable use and abuse.

(B) Measurement

For purposes of subparagraph (A)(iii), there is no measurable adverse effect on public health or safety if the exception described in subparagraph (A) will result in no measurable increase in blood lead levels of a child. The Commission may adopt an alternative method of measurement other than blood lead levels if it determines, after notice and a hearing, that such alternative method is a better scientific method for measuring adverse effect on public health and safety.

(C) Procedures for granting exception

(i) Burden of proof

A party seeking an exception under subparagraph (A) has the burden of demonstrating that it meets the requirements of such subparagraph.

(ii) Grounds for decision

In the case where a party has petitioned for an exception, in determining whether to grant the exception, the Commission may base its decision solely on the materials presented by the party seeking the exception and any materials received through notice and a hearing.

(iii) Admissible evidence

In demonstrating that it meets the requirements of subparagraph (A), a party seeking an exception under such subparagraph may rely on any nonproprietary information submitted by any other party seeking such an exception and such information shall be considered part of the record presented by the party that relies on that information.

(iv) Scope of exception

If an exception is sought for an entire product, the burden is on the petitioning party to demonstrate that the criteria in subparagraph (A) are met with respect to every accessible component or accessible material of the product.

(D) Limitation on exception

If the Commission grants an exception for a product, class of product, material, or component part under subparagraph (A), the Commission may, as necessary to protect public health or safety—

(i) establish a lead limit that such product, class of product, material, or component part may not exceed; or

(ii) place a manufacturing expiration date on such exception or establish a schedule after which the manufacturer of such product, class of product, material, or component part shall be in full compliance with the limit established under clause (i) or the limit set forth in subsection (a).

(E) Application of exception

An exception under subparagraph (A) for a product, class of product, material, or component part shall apply regardless of the date of manufacture unless the Commission expressly provides otherwise.

(F) Previously submitted petitions

A party seeking an exception under this paragraph may rely on materials previously submitted in connection with a petition for exclusion under this section. In such cases, petitioners must notify the Commission of their intent to rely on materials previously submitted. Such reliance does not affect petitioners' obligation to demonstrate that they meet all requirements of this paragraph as required by subparagraph (C)(i).

(2) Exception for inaccessible component parts

(A) In general

The limits established under subsection (a) shall not apply to any component part of a children's product that is not accessible to a child through normal and reasonably foreseeable use and abuse of such product, as determined by the Commission. A component part is not accessible under this subparagraph if such component part is not physically exposed by reason of a sealed covering or casing and does not become physically exposed through reasonably foreseeable use and abuse of the product. Reasonably foreseeable use and abuse shall include swallowing, mouthing, breaking, or other children's activities, and the aging of the product.

(B) Inaccessibility proceeding

Within 1 year after August 14, 2008, the Commission shall promulgate a rule providing guidance with respect to what product components, or classes of components, will be considered to be inaccessible for purposes of subparagraph (A).

(C) Application pending CPSC guidance

Until the Commission promulgates a rule pursuant to subparagraph (B), the determination of

whether a product component is inaccessible to a child shall be made in accordance with the requirements laid out in subparagraph (A) for considering a component to be inaccessible to a child.

(3) Certain barriers disqualified

For purposes of this subsection, paint, coatings, or electroplating may not be considered to be a barrier that would render lead in the substrate inaccessible to a child, or to prevent absorption of any lead into the human body, through normal and reasonably foreseeable use and abuse of the product.

(4) Certain electronic devices

If the Commission determines that it is not technologically feasible for certain electronic devices, including devices containing batteries, to comply with subsection (a), the Commission, by regulation, shall—

(A) issue requirements to eliminate or minimize the potential for exposure to and accessibility of lead in such electronic devices, which may include requirements that such electronic devices be equipped with a child-resistant cover or casing that prevents exposure to and accessibility of the parts of the product containing lead; and

(B) establish a schedule by which such electronic devices shall be in full compliance with the limits in subsection (a), unless the Commission determines that full compliance will not be technologically feasible for such devices within a schedule set by the Commission.

(5) Exception for off-highway vehicles

(A) In general

Subsection (a) shall not apply to an off-highway vehicle.

(B) Off-highway vehicle defined

For purposes of this section, the term "off-highway vehicle"—

(i) means any motorized vehicle—

(I) that is manufactured primarily for use off public streets, roads, and highways;

(II) designed to travel on 2, 3, or 4 wheels; and

(III) that has either—

(aa) a seat designed to be straddled by the operator and handlebars for steering control; or

(bb) a nonstraddle seat, steering wheel, seat belts, and roll-over protective structure; and

(ii) includes a snowmobile.

(6) Bicycles and related products

In lieu of the lead limits established in subsection (a)(2), the limits set forth for each respective material in the notice of the Commission entitled "Notice of Stay of Enforcement Pertaining to Bicycles and Related Products", published June 30, 2009 (74 Fed. Reg. 31254), shall apply to any metal component part of the products to which the stay of enforcement described in such notice applies, except that after December 31, 2011, the limits set forth in such notice shall not be more than 300 parts per million total lead content by weight for any metal component part of the products to which such stay pertains.

(7) Exclusion of certain used children's products

(A) General exclusion

The lead limits established under subsection (a) shall not apply to a used children's product.

(B) Definition

In this paragraph, the term "used children's product" means a children's product (as defined in section 3(a) of the Consumer Product Safety Act (15 U.S.C. 2052(a)) [1] that was obtained by the

seller for use and not for the purpose of resale or was obtained by the seller, either directly or indirectly, from a person who obtained such children's product for use and not for the purpose of resale. Such term also includes a children's product that was donated to the seller for charitable distribution or resale to support charitable purposes. Such term shall not include—

(i) children's metal jewelry;

(ii) any children's product for which the donating party or the seller has actual knowledge that the product is in violation of the lead limits in this section; or

(iii) any other children's product or product category that the Commission determines, after notice and a hearing.

For purposes of this definition, the term "seller" includes a person who lends or donates a used children's product.

(8) Periodic review

The Commission shall, based on the best available scientific and technical information, periodically review and revise the regulations promulgated pursuant to this subsection no less frequently than every 5 years after the first promulgation of a regulation under this subsection to make them more stringent and to require the lowest amount of lead the Commission determines is technologically feasible to achieve.

(c) Application with ASTM F963

To the extent that any regulation promulgated by the Commission under this section (or any section of the Consumer Product Safety Act [15 U.S.C. 2051 et seq.] or any other Act enforced by the Commission, as such Acts are affected by this section) is inconsistent with the ASTM F963 standard, such promulgated regulation shall supersede the ASTM F963 standard to the extent of the inconsistency.

(d) Technological feasibility defined

For purposes of this section, a limit shall be deemed technologically feasible with regard to a product or product category if—

(1) a product that complies with the limit is commercially available in the product category;

(2) technology to comply with the limit is commercially available to manufacturers or is otherwise available within the common meaning of the term;

(3) industrial strategies or devices have been developed that are capable or will be capable of achieving such a limit by the effective date of the limit and that companies, acting in good faith, are generally capable of adopting; or

(4) alternative practices, best practices, or other operational changes would allow the manufacturer to comply with the limit.

(e) Pending rulemaking proceedings to have no effect

The pendency of a rulemaking proceeding to consider—

(1) a delay in the effective date of a limit or an alternate limit under this section related to technological feasibility,

(2) an exception for certain products or materials or inaccessibility guidance under subsection (b) of this section, or

(3) any other request for modification of or exemption from any regulation, rule, standard, or ban under this Act or any other Act enforced by the Commission,

shall not delay the effect of any provision or limit under this section nor shall it stay general enforcement of the requirements of this section.

(f) More stringent lead paint ban

(1) In general

Effective on the date that is 1 year after August 14, 2008, the Commission shall modify section 1303.1 of its regulations (16 C.F.R. 1301.1) by substituting "0.009 percent" for "0.06 percent" in

subsection (a) of that section.

(2) Periodic review and reduction

The Commission shall, no less frequently than every 5 years after the date on which the Commission modifies the regulations pursuant to paragraph (1), review the limit for lead in paint set forth in section 1303.1 of title 16, Code of Federal Regulations (as revised by paragraph (1)), and shall by regulation revise downward the limit to require the lowest amount of lead that the Commission determines is technologically feasible to achieve.

(3) Methods for screening lead in small painted areas

In order to provide for effective and efficient enforcement of the limit set forth in section 1303.1 of title 16, Code of Federal Regulations, the Commission may rely on x-ray fluorescence technology or other alternative methods for measuring lead in paint or other surface coatings on products subject to such section where the total weight of such paint or surface coating is no greater than 10 milligrams or where such paint or surface coating covers no more than 1 square centimeter of the surface area of such products. Such alternative methods for measurement shall not permit more than 2 micrograms of lead in a total weight of 10 milligrams or less of paint or other surface coating or in a surface area of 1 square centimeter or less.

(4) Alternative methods of measuring lead in paint generally

(A) Study

Not later than 1 year after August 14, 2008, the Commission shall complete a study to evaluate the effectiveness, precision, and reliability of x-ray fluorescence technology and other alternative methods for measuring lead in paint or other surface coatings when used on a children's product or furniture article in order to determine compliance with part 1303 of title 16, Code of Federal Regulations, as modified pursuant to this subsection.

(B) Rulemaking

If the Commission determines, based on the study in subparagraph (A), that x-ray fluorescence technology or other alternative methods for measuring lead in paint are as effective, precise, and reliable as the methodology used by the Commission for compliance determinations prior to August 14, 2008, the Commission may promulgate regulations governing the use of such methods in determining the compliance of products with part 1303 of title 16, Code of Federal Regulations, as modified pursuant to this subsection. Any regulations promulgated by the Commission shall ensure that such alternative methods are no less effective, precise, and reliable than the methodology used by the Commission prior to August 14, 2008.

(5) Periodic review

The Commission shall, no less frequently than every 5 years after the Commission completes the study required by paragraph (4)(A), review and revise any methods for measurement utilized by the Commission pursuant to paragraph (3) or pursuant to any regulations promulgated under paragraph (4) to ensure that such methods are the most effective methods available to protect children's health. The Commission shall conduct an ongoing effort to study and encourage the further development of alternative methods for measuring lead in paint and other surface coating that can effectively, precisely, and reliably detect lead levels at or below the level set forth in part 1303 of title 16, Code of Federal Regulations, or any lower level established by regulation.

(6) No effect on legal limit

Nothing in paragraph (3), nor reliance by the Commission on any alternative method of measurement pursuant to such paragraph, nor any rule prescribed pursuant to paragraph (4), nor any method established pursuant to paragraph (5) shall be construed to alter the limit set forth in section 1303 of title 16, Code of Federal Regulations, as modified pursuant to this subsection, or provide any exemption from such limit.

(7) Construction

Nothing in this subsection shall be construed to affect the authority of the Commission or any

other person to use alternative methods for detecting lead as a screening method to determine whether further testing or action is needed.

(g) Treatment as a regulation under the FHSA

Any ban imposed by subsection (a) or rule promulgated under subsection (a) or (b) of this section, and section 1303.1 of title 16, Code of Federal Regulations (as modified pursuant to subsection (f)(1) or (2)), or any successor regulation, shall be considered a regulation of the Commission promulgated under or for the enforcement of section 2(q) of the Federal Hazardous Substances Act (15 U.S.C. 1261(q)).

(Pub. L. 110–314, title I, §101, Aug. 14, 2008, 122 Stat. 3017; Pub. L. 112–28, §§1, 10(b), Aug. 12, 2011, 125 Stat. 273, 283.)

REFERENCES IN TEXT

The Federal Hazardous Substances Act, referred to in subsec. (a)(1), is Pub. L. 86–613, July 12, 1960, 74 Stat. 372, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1261 of this title and Tables.

The Consumer Product Safety Act, referred to in subsec. (c), is Pub. L. 92–573, Oct. 27, 1972, 86 Stat. 1207, which is classified generally to chapter 47 (§2051 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2051 of this title and Tables.

This Act, referred to in subsec. (e)(3), is Pub. L. 110–314, Aug. 14, 2008, 122 Stat. 3016, known as the Consumer Product Safety Improvement Act of 2008. For complete classification of this Act to the Code, see Short Title of 2008 Amendment note set out under section 2051 of this title and Tables.

CODIFICATION

Section was enacted as part of the Consumer Product Safety Improvement Act of 2008, and not as part of the Federal Hazardous Substances Act which comprises this chapter.

AMENDMENTS

2011—Subsec. (a)(1). Pub. L. 112–28, §10(b), substituted "(as defined in section 3(a) of the Consumer Product Safety Act (15 U.S.C. 2052(a)))" for "(as defined in section 3(a)(16) of the Consumer Product Safety Act (15 U.S.C. 2052(a)(16)))".

Subsec. (a)(3). Pub. L. 112–28, §1(a), added par. (3).

Subsec. (b)(1). Pub. L. 112–28, §1(b)(1), added par. (1) and struck out former par. (1). Prior to amendment, text read as follows: "The Commission may, by regulation, exclude a specific product or material from the prohibition in subsection (a) if the Commission, after notice and a hearing, determines on the basis of the best-available, objective, peer-reviewed, scientific evidence that lead in such product or material will neither—

"(A) result in the absorption of any lead into the human body, taking into account normal and reasonably foreseeable use and abuse of such product by a child, including swallowing, mouthing, breaking, or other children's activities, and the aging of the product; nor

"(B) have any other adverse impact on public health or safety."

Subsec. (b)(2)(A). Pub. L. 112–28, §1(b)(2), substituted "include" for "include to,".

Subsec. (b)(5) to (8). Pub. L. 112–28, §1(b)(3), added pars. (5) to (7) and redesignated former par. (5) as (8).

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112–28, §11, Aug. 12, 2011, 125 Stat. 283, provided that: "Except as provided otherwise, the amendments made by this Act [amending this section and sections 2055a, 2056a, 2056b, 2057c, 2063, 2068, and 2076 of this title and enacting provisions set out as a note under section 2089 of this title] shall take effect on the date of enactment of this Act [Aug. 12, 2011]."

DEFINITION

For definition of "Commission" used in this section, see section 2(a) of Pub. L. 110–314, set out as a note under section 2051 of this title.

[1] *So in original. Probably should be "2052(a)))".*

CHAPTER 31—DESTRUCTION OF PROPERTY MOVING IN COMMERCE

§§1281, 1282. Repealed. Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379

Section 1281, Pub. L. 87–221, §1, Sept. 13, 1961, 75 Stat. 494, related to willful destruction or injury, or attempted destruction or injury, of property moving in interstate or foreign commerce in possession of common or contract carriers, penalties for such acts, and proof of interstate or foreign nature of property. See section 80501 of Title 49, Transportation.

Section 1282, Pub. L. 87–221, §2, Sept. 13, 1961, 75 Stat. 494, provided that judgment of conviction or acquittal on merits under laws of any State or possession, District of Columbia, or Puerto Rico, was bar to prosecution under this chapter for same acts. See section 80501 of Title 49.

CHAPTER 32—TELECASTING OF PROFESSIONAL SPORTS CONTESTS

Sec.

1291. Exemption from antitrust laws of agreements covering the telecasting of sports contests and the combining of professional football leagues.
1292. Area telecasting restriction limitation.
1293. Intercollegiate and interscholastic football contest limitations.
1294. Antitrust laws unaffected as regards to other activities of professional sports contests.
1295. "Persons" defined.

§1291. Exemption from antitrust laws of agreements covering the telecasting of sports contests and the combining of professional football leagues

The antitrust laws, as defined in section 1 of the Act of October 15, 1914, as amended (38 Stat. 730) [15 U.S.C. 12], or in the Federal Trade Commission Act, as amended (38 Stat. 717) [15 U.S.C. 41 et seq.], shall not apply to any joint agreement by or among persons engaging in or conducting the organized professional team sports of football, baseball, basketball, or hockey, by which any league of clubs participating in professional football, baseball, basketball, or hockey contests sells or otherwise transfers all or any part of the rights of such league's member clubs in the sponsored telecasting of the games of football, baseball, basketball, or hockey, as the case may be, engaged in or conducted by such clubs. In addition, such laws shall not apply to a joint agreement by which the member clubs of two or more professional football leagues, which are exempt from income tax under section 501(c)(6) of the Internal Revenue Code of 1986 [26 U.S.C. 501(c)(6)], combine their operations in expanded single league so exempt from income tax, if such agreement increases rather than decreases the number of professional football clubs so operating, and the provisions of which are directly relevant thereto.

(Pub. L. 87–331, §1, Sept. 30, 1961, 75 Stat. 732; Pub. L. 89–800, §6(b)(1), Nov. 8, 1966, 80 Stat. 1515; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in text, is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

AMENDMENTS

1986—Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

1966—Pub. L. 89–800 extended exemption from antitrust laws to include a joint agreement by which the member clubs of two or more professional football leagues combine their operations in an expanded single league.

SHORT TITLE

Pub. L. 87–331, Sept. 30, 1961, 75 Stat. 732, as amended, which enacted this chapter, is popularly known as the Sports Broadcasting Act of 1961.

SAVINGS PROVISION

Pub. L. 87–331, §6, Sept. 30, 1961, 75 Stat. 732, provided that: "Nothing in this Act [this chapter] shall affect any cause of action existing on the effective date hereof [Sept. 30, 1961] in respect to the organized professional team sports of baseball, football, basketball, or hockey."

§1292. Area telecasting restriction limitation

Section 1291 of this title shall not apply to any joint agreement described in the first sentence in such section which prohibits any person to whom such rights are sold or transferred from televising any games within any area, except within the home territory of a member club of the league on a day when such club is playing a game at home.

(Pub. L. 87–331, §2, Sept. 30, 1961, 75 Stat. 732; Pub. L. 89–800, §6(b)(2), Nov. 8, 1966, 80 Stat. 1515.)

AMENDMENTS

1966—Pub. L. 89–800 substituted "described in the first sentence of such section" for "described in such section".

§1293. Intercollegiate and interscholastic football contest limitations

The first sentence of section 1291 of this title shall not apply to any joint agreement described in such section which permits the telecasting of all or a substantial part of any professional football game on any Friday after six o'clock postmeridian or on any Saturday during the period beginning on the second Friday in September and ending on the second Saturday in December in any year from any telecasting station located within seventy-five miles of the game site of any intercollegiate or interscholastic football contest scheduled to be played on such a date if—

(1) such intercollegiate football contest is between institutions of higher learning both of which confer degrees upon students following completion of sufficient credit hours to equal a four-year course, or

(2) in the case of an interscholastic football contest, such contest is between secondary schools, both of which are accredited or certified under the laws of the State or States in which they are situated and offer courses continuing through the twelfth grade of the standard school curriculum, or the equivalent, and

(3) such intercollegiate or interscholastic football contest and such game site were announced through publication in a newspaper of general circulation prior to August 1 of such year as being regularly scheduled for such day and place.

(Pub. L. 87–331, §3, Sept. 30, 1961, 75 Stat. 732; Pub. L. 89–800, §6(b)(3), Nov. 8, 1966, 80 Stat. 1515.)

AMENDMENTS

1966—Pub. L. 89–800 substituted "The first sentence of section 1291 of this title" for "Section 1291 of this title" at beginning of section, extended limitation granted for football contests on game sites located within 75 miles of telecasting stations to include interscholastic contests, redesignated cl. (2) as (3), added a new cl. (2), and, in cl. (3) as so redesignated, substituted "newspaper of general circulation prior to August 1" for "daily newspaper of general circulation prior to March 1" as description of the type newspaper required for the announcement of the game site of intercollegiate or interscholastic football games.

§1294. Antitrust laws unaffected as regards to other activities of professional sports contests

Nothing contained in this chapter shall be deemed to change, determine, or otherwise affect the applicability or nonapplicability of the antitrust laws to any act, contract, agreement, rule, course of conduct, or other activity by, between, or among persons engaging in, conducting, or participating in the organized professional team sports of football, baseball, basketball, or hockey, except the agreements to which section 1291 of this title shall apply.

(Pub. L. 87–331, §4, Sept. 30, 1961, 75 Stat. 732.)

§1295. "Persons" defined

As used in this chapter, "persons" means any individual, partnership, corporation, or unincorporated association or any combination or association thereof.

(Pub. L. 87–331, §5, Sept. 30, 1961, 75 Stat. 732.)

CHAPTER 33—BRAKE FLUID REGULATION

§§1301 to 1303. Repealed. Pub. L. 89–563, title I, §117(a), Sept. 9, 1966, 80 Stat. 727

Sections, Pub. L. 87–637, §§1–3, Sept. 5, 1962, 76 Stat. 437, provided for promulgation of standards for hydraulic brake fluid used in motor vehicles and set the penalty for the unlawful sale, importation, or introduction into commerce of fluid not meeting the published standards. See chapter 38 (§1381 et seq.) of this title.

SAVINGS PROVISION

Pub. L. 89–563, title I, §117(b)–(e), Sept. 9, 1966, 80 Stat. 727, provided that persons willfully violating sections 1301 to 1303 and 1321 to 1323 of this title would be punished in accordance with provisions of laws in effect on date of violation, prior to repeal by Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379.

CHAPTER 34—ANTITRUST CIVIL PROCESS

Sec.

1311. Definitions.
1312. Civil investigative demands.
1313. Custodian of documents, answers and transcripts.
1314. Judicial proceedings.

§1311. Definitions

For the purposes of this chapter—

(a) The term "antitrust law" includes:

(1) Each provision of law defined as one of the antitrust laws by section 12 of this title; and

(2) Any statute enacted on and after September 19, 1962, by the Congress which prohibits, or makes available to the United States in any court of the United States any civil remedy with respect to any restraint upon or monopolization of interstate or foreign trade or commerce;

(b) The term "antitrust order" means any final order, decree, or judgment of any court of the United States, duly entered in any case or proceeding arising under any antitrust law;

(c) The term "antitrust investigation" means any inquiry conducted by any antitrust investigator for the purpose of ascertaining whether any person is or has been engaged in any antitrust

violation or in any activities in preparation for a merger, acquisition, joint venture, or similar transaction, which, if consummated, may result in an antitrust violation;

(d) The term "antitrust violation" means any act or omission in violation of any antitrust law, any antitrust order or, with respect to the International Antitrust Enforcement Assistance Act of 1994 [15 U.S.C. 6201 et seq.], any of the foreign antitrust laws;

(e) The term "antitrust investigator" means any attorney or investigator employed by the Department of Justice who is charged with the duty of enforcing or carrying into effect any antitrust law;

(f) The term "person" means any natural person, partnership, corporation, association, or other legal entity, including any person acting under color or authority of State law;

(g) The term "documentary material" includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, and any product of discovery;

(h) The term "custodian" means the custodian or any deputy custodian designated under section 1313(a) of this title;

(i) The term "product of discovery" includes without limitation the original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission obtained by any method of discovery in any judicial litigation or in any administrative litigation of an adversarial nature; any digest, analysis, selection, compilation, or any derivation thereof; and any index or manner of access thereto; and

(j) The term "agent" includes any person retained by the Department of Justice in connection with the enforcement of the antitrust laws.

(k) The term "foreign antitrust laws" has the meaning given such term in section 12 of the International Antitrust Enforcement Assistance Act of 1994 [15 U.S.C. 6211].

(Pub. L. 87–664, §2, Sept. 19, 1962, 76 Stat. 548; Pub. L. 94–435, title I, §101, Sept. 30, 1976, 90 Stat. 1383; Pub. L. 96–349, §§2(a), 7(a)(1), Sept. 12, 1980, 94 Stat. 1154, 1158; Pub. L. 103–438, §3(e)(1)(A), Nov. 2, 1994, 108 Stat. 4598.)

REFERENCES IN TEXT

This chapter, referred to in opening phrase, was in the original "this Act", meaning Pub. L. 87–664, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note below and Tables.

The International Antitrust Enforcement Assistance Act of 1994, referred to in subsec. (d), is Pub. L. 103–438, Nov. 2, 1994, 108 Stat. 4597, which is classified principally to chapter 88 (§6201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

AMENDMENTS

1994—Subsec. (d). Pub. L. 103–438, §3(e)(1)(A)(i), substituted ", any" for "or any" and inserted before semicolon at end "or, with respect to the International Antitrust Enforcement Assistance Act of 1994, any of the foreign antitrust laws".

Subsec. (k). Pub. L. 103–438, §3(e)(1)(A)(ii), added subsec. (k).

1980—Subsec. (g). Pub. L. 96–349, §2(a)(1), extended definition of "documentary material" to include any product of discovery.

Subsec. (h). Pub. L. 96–349, §2(a)(2), substituted a semicolon for period at end.

Subsec. (i). Pub. L. 96–349, §2(a)(3), added subsec. (i).

Subsec. (j). Pub. L. 96–349, §7(a)(1), added subsec. (j).

1976—Subsec. (a). Pub. L. 94–435, §101(1), in par. (1) inserted "and" after semicolon preceding par. (2), struck out par. (2) which included the Federal Trade Commission Act in definition of antitrust law for purposes of this chapter, redesignated par. (3) as (2), struck out "(A)" before "any restraint", and struck out subpar. (B) which related to any unfair trade practice in or affecting interstate or foreign trade or commerce.

Subsec. (c). Pub. L. 94–435, §101(2), inserted "or in any activities in preparation for a merger, acquisition, joint venture, or similar transaction, which if consummated, may result in an antitrust violation;" after "engaged in any antitrust violation".

Subsec. (f). Pub. L. 94–435, §101(3), included "any natural person" and "any person acting under color or authority of State law" in definition of "person".

Subsec. (h). Pub. L. 94–435, §101(4), substituted "the custodian" for "the antitrust document custodian".

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–435, title I, §106, Sept. 30, 1976, 90 Stat. 1390, provided that: "The amendments to the Antitrust Civil Process Act [see section 1 of Pub. L. 87–664 set out as a Short Title note under this section] and to section 1505 of title 18, United States Code, made by this title [title I of Pub. L. 94–435] shall take effect on the date of enactment of this Act [Sept. 30, 1976], except section 3(i)(8) of the Antitrust Civil Process Act [section 1312(i)(8) of this title] (as amended by this Act) shall take effect on the later of (1) the date of enactment of this Act [Sept. 30, 1976], or (2) October 1, 1976. Any such amendment which provides for the production of documentary material, answers to interrogatories, or oral testimony shall apply to any act or practice without regard to the date on which it occurred."

SHORT TITLE OF 1980 AMENDMENT

Pub. L. 96–349, §1, Sept. 12, 1980, 94 Stat. 1154, provided: "That this Act [amending sections 15, 15a, 15c, 16, 18, and 1311 to 1314 of this title, section 1905 of Title 18, Crimes and Criminal Procedure, and section 1927 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as notes under sections 15, 16, and 18 of this title] may be cited as the 'Antitrust Procedural Improvements Act of 1980'."

SHORT TITLE

Pub. L. 87–664, §1, Sept. 19, 1962, 76 Stat. 548, provided: "That this Act [enacting this chapter and amending section 1505 of Title 18, Crimes and Criminal Procedure] may be cited as the 'Antitrust Civil Process Act'."

SAVINGS PROVISION

Pub. L. 87–664, §7, Sept. 19, 1962, 76 Stat. 552, provided that: "Nothing contained in this Act [see Short Title note above] shall impair the authority of the Attorney General, the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, or any antitrust investigator to (a) lay before any grand jury impaneled before any district court of the United States any evidence concerning any alleged antitrust violation, (b) invoke the power of any such court to compel the production of any evidence before any such grand jury, or (c) institute any proceeding for the enforcement of any order or process issued in execution of such power, or to punish disobedience of any such order of process by any person, including a natural person."

§1312. Civil investigative demands

(a) Issuance; service; production of material; testimony

Whenever the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, has reason to believe that any person may be in possession, custody, or control of any documentary material, or may have any information, relevant to a civil antitrust investigation or, with respect to the International Antitrust Enforcement Assistance Act of 1994 [15 U.S.C. 6201 et seq.], an investigation authorized by section 3 of such Act [15 U.S.C. 6202], he may, prior to the institution of a civil or criminal proceeding by the United States thereon, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such documentary material for inspection any copying or reproduction, to answer in writing written interrogatories, to give oral testimony concerning documentary material or information, or to furnish any combination of such material, answers, or testimony. Whenever a civil investigative demand is an express demand for any product of discovery, the Attorney General or the Assistant Attorney General in charge of the Antitrust Division shall cause to be served, in any manner authorized by this section, a copy of such demand upon the person from whom the discovery was obtained and notify the person to whom such demand is issued of the date on which such copy was served.

(b) Contents; return date for demand for product of discovery

Each such demand shall—

(1) state the nature of—

(A) the conduct constituting the alleged antitrust violation, or

(B) the activities in preparation for a merger, acquisition, joint venture, or similar transaction,

which, if consummated, may result in an antitrust violation,

which are under investigation and the provision of law applicable thereto;

(2) if it is a demand for production of documentary material—

(A) describe the class or classes of documentary material to be produced thereunder with such definiteness and certainty as to permit such material to be fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(C) identify the custodian to whom such material shall be made available; or

(3) if it is a demand for answers to written interrogatories—

(A) propound with definiteness and certainty the written interrogatories to be answered;

(B) prescribe a date or dates at which time answers to written interrogatories shall be submitted; and

(C) identify the custodian to whom such answers shall be submitted; or

(4) if it is a demand for the giving of oral testimony—

(A) prescribe a date, time, and place at which oral testimony shall be commenced; and

(B) identify an antitrust investigator who shall conduct the examination and the custodian to whom the transcript of such examination shall be submitted.

Any such demand which is an express demand for any product of discovery shall not be returned or returnable until twenty days after a copy of such demand has been served upon the person from whom the discovery was obtained.

(c) Protected material or information; demand for product of discovery superseding disclosure restrictions except trial preparation materials

(1) No such demand shall require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony, if such material, answers, or testimony would be protected from disclosure under—

(A) the standards applicable to subpenas or subpenas duces tecum issued by a court of the United States in aid of a grand jury investigation, or

(B) the standards applicable to discovery requests under the Federal Rules of Civil Procedure, to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of this chapter.

(2) Any such demand which is an express demand for any product of discovery supersedes any inconsistent order, rule, or provision of law (other than this chapter) preventing or restraining disclosure of such product of discovery to any person. Disclosure of any product of discovery pursuant to any such express demand does not constitute a waiver of any right or privilege, including without limitation any right or privilege which may be invoked to resist discovery of trial preparation materials, to which the person making such disclosure may be entitled.

(d) Service; jurisdiction

(1) Any such demand may be served by any antitrust investigator, or by any United States marshal or deputy marshal, at any place within the territorial jurisdiction of any court of the United States.

(2) any [1] such demand or any petition filed under section 1314 of this title may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States, in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign country. To the extent that the courts of the United States can assert jurisdiction over such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this chapter by such person that such court would have if such person were personally within the jurisdiction of such court.

(e) Service upon legal entities and natural persons

(1) Service of any such demand or of any petition filed under section 1314 of this title may be made upon a partnership, corporation, association, or other legal entity by—

(A) delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

(B) delivering a duly executed copy thereof to the principal office or place of business of the partnership, corporation, association, or entity to be served; or

(C) depositing such copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such partnership, corporation, association, or entity at its principal office or place of business.

(2) Service of any such demand or of any petition filed under section 1314 of this title may be made upon any natural person by—

(A) delivering a duly executed copy thereof to the person to be served; or

(B) depositing such copy in the United States mails by registered or certified mail, return receipt requested, duly addressed to such person at his residence or principal office or place of business.

(f) Proof of service

A verified return by the individual serving any such demand or petition setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

(g) Sworn certificates

The production of documentary material in response to a demand served pursuant to this section shall be made under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances relating to such production, to the effect that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the custodian.

(h) Interrogatories

Each interrogatory in a demand served pursuant to this section shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for the objection shall be stated in lieu of an answer, and it shall be submitted under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by a person or persons responsible for answering each interrogatory, to the effect that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted.

(i) Oral examinations

(1) The examination of any person pursuant to a demand for oral testimony served under this section shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian.

(2) The antitrust investigator or investigators conducting the examination shall exclude from the place where the examination is held all other persons except the person being examined, his counsel, the officer before whom the testimony is to be taken, and any stenographer taking such testimony. The provisions of section 30 [2] of this title shall not apply to such examinations.

(3) The oral testimony of any person taken pursuant to a demand served under this section shall be

taken in the judicial district of the United States within which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the antitrust investigator conducting the examination and such person.

(4) When the testimony is fully transcribed, the antitrust investigator or the officer shall afford the witness (who may be accompanied by counsel) a reasonable opportunity to examine the transcript; and the transcript shall be read to or by the witness, unless such examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the officer or the antitrust investigator with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within thirty days of his being afforded a reasonable opportunity to examine it, the officer or the antitrust investigator shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reason, if any, given therefor.

(5) The officer shall certify on the transcript that the witness was duly sworn by him and that the transcript is a true record of the testimony given by the witness, and the officer or antitrust investigator shall promptly deliver it or send it by registered or certified mail to the custodian.

(6) Upon payment of reasonable charges therefor, the antitrust investigator shall furnish a copy of the transcript to the witness only, except that the Assistant Attorney General in charge of the Antitrust Division may for good cause limit such witness to inspection of the official transcript of his testimony.

(7)(A) Any person compelled to appear under a demand for oral testimony pursuant to this section may be accompanied, represented, and advised by counsel. Counsel may advise such person, in confidence, either upon the request of such person or upon counsel's own initiative, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may properly be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person shall not otherwise object to or refuse to answer any question, and shall not by himself or through counsel otherwise interrupt the oral examination. If such person refuses to answer any question, the antitrust investigator conducting the examination may petition the district court of the United States pursuant to section 1314 of this title for an order compelling such person to answer such question.

(B) If such person refuses to answer any question on grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of Part V of title 18.

(8) Any person appearing for oral examination pursuant to a demand served under this section shall be entitled to the same fees and mileage which are paid to witnesses in the district courts of the United States.

(Pub. L. 87–664, §3, Sept. 19, 1962, 76 Stat. 548; Pub. L. 94–435, title I, §102, Sept. 30, 1976, 90 Stat. 1384; Pub. L. 96–349, §2(b)(1)–(3), Sept. 12, 1980, 94 Stat. 1154; Pub. L. 103–438, §3(e)(1)(B), Nov. 2, 1994, 108 Stat. 4598.)

REFERENCES IN TEXT

The International Antitrust Enforcement Assistance Act of 1994, referred to in subsec. (a), is Pub. L. 103–438, Nov. 2, 1994, 108 Stat. 4597, which is classified principally to chapter 88 (§6201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

This chapter, referred to in subsecs. (c)(1)(B), (2) and (d), was in the original "this Act", meaning Pub. L. 87–664, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1311 of this title and Tables.

Section 30 of this title, referred to in subsec. (i)(2), was repealed by Pub. L. 107–273, div. C, title IV, §14102(f), Nov. 2, 2002, 116 Stat. 1922.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–438 inserted "or, with respect to the International Antitrust Enforcement Assistance Act of 1994, an investigation authorized by section 3 of such Act" after "investigation" and "by the United States" after "proceeding".

1980—Subsec. (a). Pub. L. 96–349, §2(b)(1), inserted provision for service and notice of a civil investigative demand for any product of discovery.

Subsec. (b). Pub. L. 96–349, §2(b)(2), inserted provision respecting time demand for product of discovery is returnable.

Subsec. (c). Pub. L. 96–349, §2(b)(3), designated existing provisions as par. (1), redesignated as cls. (A) and (B) former cls. (1) and (2), and added par. (2).

1976—Subsec. (a). Pub. L. 94–435 struck out "under investigation" before "may be in possession", inserted "or may have any information" after "any documentary material", and inserted provision requiring the production of documentary material for inspection or reproduction, answers in writing to written interrogatories, the giving of oral testimony concerning documentary material or information, and the furnishing of any combination of such material, answers, or testimony.

Subsec. (b). Pub. L. 94–435 restructured subsec. (b) and as so restructured, in par. (1) inserted provisions of cl. (B), in par. (2), added cls. (B) and (C), in par. (3) substituted provisions relating to written interrogatories for provisions relating to prescription of a return date for demanded material, and in par. (4), substituted provisions relating to oral testimony for provisions requiring a demand to identify the custodian to whom demanded material shall be made available.

Subsec. (c). Pub. L. 94–435 inserted provision relating to the submission of answers to written interrogatories and the giving of oral testimony, struck out provisions of par. (1) relating to the reasonableness requirement for demands for documentary material, redesignated par. (2) as (1) and provided that protected status of any information or material would be determined by standards applicable in the case of a subpena or subpena duces tecum issued by a court of the United States, and added par. (2).

Subsec. (d). Pub. L. 94–435 redesignated existing provisions as par. (1) and added par. (2).

Subsec. (e). Pub. L. 94–435 redesignated existing provisions as par. (1), inserted "return receipt requested" after "certified mail" in par. (C), and added par. (2).

Subsecs. (g) to (i). Pub. L. 94–435 added subsecs. (g) to (i).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–435 effective Sept. 30, 1976, except subsec. (i)(8) of this section effective Oct. 1, 1976, see section 106 of Pub. L. 94–435, set out as a note under section 1311 of this title.

[1] So in original. Probably should be capitalized.

[2] See References in Text note below.

§1313. Custodian of documents, answers and transcripts

(a) Designation

The Assistant Attorney General in charge of the Antitrust Division of the Department of Justice shall designate an antitrust investigator to serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this chapter, and such additional antitrust investigators as he shall determine from time to time to be necessary to serve as deputies to such officer.

(b) Production of materials

Any person, upon whom any demand under section 1312 of this title for the production of documentary material has been duly served, shall make such material available for inspection and copying or reproduction to the custodian designated therein at the principal place of business of such person (or at such other place as such custodian and such person thereafter may agree and prescribe in writing or as the court may direct, pursuant to section 1314(d) [1] of this title) on the return date specified in such demand (or on such later date as such custodian may prescribe in writing). Such person may upon written agreement between such person and the custodian substitute copies for originals of all or any part of such material.

(c) Responsibility for materials; disclosure

(1) The custodian to whom any documentary material, answers to interrogatories, or transcripts of oral testimony are delivered shall take physical possession thereof, and shall be responsible for the use made thereof and for the return of documentary material, pursuant to this chapter.

(2) The custodian may cause the preparation of such copies of such documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any duly authorized official, employee, or agent of the Department of Justice under regulations which shall be promulgated by the Attorney General. Notwithstanding paragraph (3) of this subsection, such material, answers, and transcripts may be used by any such official, employee, or agent in connection with the taking of oral testimony pursuant to this chapter.

(3) Except as otherwise provided in this section, while in the possession of the custodian, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, so produced shall be available for examination, without the consent of the person who produced such material, answers, or transcripts, and, in the case of any product of discovery produced pursuant to an express demand for such material, of the person from whom the discovery was obtained, by any individual other than a duly authorized official, employee, or agent of the Department of Justice. Nothing in this section is intended to prevent disclosure to either body of the Congress or to any authorized committee or subcommittee thereof.

(4) While in the possession of the custodian and under such reasonable terms and conditions as the Attorney General shall prescribe, (A) documentary material and answers to interrogatories shall be available for examination by the person who produced such material or answers, or by any duly authorized representative of such person, and (B) transcripts of oral testimony shall be available for examination by the person who produced such testimony, or his counsel.

(d) Use of investigative files

(1) Whenever any attorney of the Department of Justice has been designated to appear before any court, grand jury, or Federal administrative or regulatory agency in any case or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony may deliver to such attorney such material, answers, or transcripts for official use in connection with any such case, grand jury, or proceeding as such attorney determines to be required. Upon the completion of any such case, grand jury, or proceeding, such attorney shall return to the custodian any such material, answers, or transcripts so delivered which have not passed into the control of such court, grand jury, or agency through the introduction thereof into the record of such case or proceeding.

(2) The custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony may deliver to the Federal Trade Commission, in response to a written request, copies of such material, answers, or transcripts for use in connection with an investigation or proceeding under the Commission's jurisdiction. Such material, answers, or transcripts may only be used by the Commission in such manner and subject to such conditions as apply to the Department of Justice under this chapter.

(e) Return of material to producer

If any documentary material has been produced in the course of any antitrust investigation by any person pursuant to a demand under this chapter and—

(1) any case or proceeding before any court or grand jury arising out of such investigation, or any proceeding before any Federal administrative or regulatory agency involving such material, has been completed, or

(2) no case or proceeding, in which such material may be used, has been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of such investigation,

the custodian shall, upon written request of the person who produced such material, return to such person any such material (other than copies thereof furnished to the custodian pursuant to subsection (b) of this section or made by the Department of Justice pursuant to subsection (c) of this section)

which has not passed into the control of any court, grand jury, or agency through the introduction thereof into the record of such case or proceeding.

(f) Appointment of successor custodians

In the event of the death, disability, or separation from service in the Department of Justice of the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony produced under any demand issued pursuant to this chapter, or the official relief of such custodian from responsibility for the custody and control of such material, answers, or transcripts, the Assistant Attorney General in charge of the Antitrust Division shall promptly (1) designate another antitrust investigator to serve as custodian of such material, answers, or transcripts, and (2) transmit in writing to the person who produced such material, answers, or testimony notice as to the identity and address of the successor so designated. Any successor designated under this subsection shall have with regard to such material, answers, or transcripts all duties and responsibilities imposed by this chapter upon his predecessor in office with regard thereto, except that he shall not be held responsible for any default or dereliction which occurred prior to his designation.

(Pub. L. 87–664, §4, Sept. 19, 1962, 76 Stat. 549; Pub. L. 94–435, title I, §103, Sept. 30, 1976, 90 Stat. 1387; Pub. L. 96–349, §§2(b)(4), 7(a)(2), Sept. 12, 1980, 94 Stat. 1155, 1158.)

REFERENCES IN TEXT

Section 1314(d) of this title, referred to in subsec. (b), was redesignated section 1314(e) of this title by Pub. L. 96–349.

This chapter, referred to in subsecs. (c), (e), and (f), was in the original "this Act", meaning Pub. L. 87–664, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1311 of this title and Tables.

AMENDMENTS

1980—Subsec. (c)(2). Pub. L. 96–349, §7(a)(2), provided for use of copies of documentary material by agents of the Department of Justice, including use by such agents in connection with the taking of oral testimony.

Subsec. (c)(3). Pub. L. 96–349, §§2(b)(4), 7(a)(2), inserted ", and, in the case of any product of discovery produced pursuant to an express demand for such material, of the person from whom the discovery was obtained" before ", by any individual" and reference to "agent" of the Department of Justice.

1976—Subsec. (a). Pub. L. 94–435 substituted "custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this chapter" for "antitrust documentary custodian".

Subsec. (b). Pub. L. 94–435 struck out "issued" after "any demand", inserted "for the production of documentary material" before "has been duly served", and substituted "copies for originals of all or any part of such material" for "for copies of all or any part of such material originals thereof".

Subsec. (c). Pub. L. 94–435, among other changes, inserted provisions relating to answers to interrogatories and transcripts of oral testimony and, in par. (1), substituted "of documentary material" for "thereof", in par. (2), inserted "by any duly authorized official or employee of the Department of Justice" after "for official use", and inserted a provision relating to the use of documentary material, answers to interrogatories, and transcripts in connection with the taking of oral testimony, in par. (3), inserted "Except as otherwise provided in this section" before "while in the possession", substituted "no documentary material" for "no material", "official" for "officer, member", and inserted provision relating to disclosure of information to Congress or authorized committees or subcommittees thereof, in par. (4), added cl. (B).

Subsec. (d). Pub. L. 94–435, among other changes, in par. (1), inserted provisions relating to answers to interrogatories and transcripts of oral testimony, substituted a provision that an attorney designated under this section be from the Department of Justice for a provision that a designated attorney be appearing on behalf of the United States, provided that such an attorney can make an appearance under this section before a Federal administrative or regulatory agency in addition to a court or grand jury, and added par. (2).

Subsec. (e). Pub. L. 94–435, among other changes, inserted provisions of subsec. (f) relating to the institution of a case or proceeding within a reasonable time after examination and analysis of any evidence assembled during the course of an investigation, and relating to written demand for the return of such material, and, in addition, provided that copies furnished the custodian pursuant to subsec. (b) of this section need not be returned by the custodian.

Subsecs. (f), (g). Pub. L. 94–435 redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e)(2).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–435 effective Sept. 30, 1976, see section 106 of Pub. L. 94–435, set out as a note under section 1311 of this title.

[1] *See References in Text note below.*

§1314. Judicial proceedings

(a) Petition for enforcement; venue

Whenever any person fails to comply with any civil investigative demand duly served upon him under section 1312 of this title or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the Attorney General, through such officers or attorneys as he may designate, may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this chapter.

(b) Petition for order modifying or setting aside demand; time for petition; suspension of time allowed for compliance with demand during pendency of petition; grounds for relief

(1) Within twenty days after the service of any such demand upon any person, or at any time before the return date specified in the demand, whichever period is shorter, or within such period exceeding twenty days after service or in excess of such return date as may be prescribed in writing, subsequent to service, by any antitrust investigator named in the demand, such person may file and serve upon such antitrust investigator, and in the case of any express demand for any product of discovery upon the person from whom such discovery was obtained, a petition for an order modifying or setting aside such demand—

(A) in the district court of the United States for the judicial district within which such person resides, is found, or transacts business; or

(B) in the case of a petition addressed to an express demand for any product of discovery, only in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending.

(2) The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court, except that such person shall comply with any portions of the demand not sought to be modified or set aside. Such petition shall specify each ground upon which the petitioner relies in seeking such relief and may be based upon any failure of such demand to comply with the provisions of this chapter, or upon any constitutional or other legal right or privilege of such person.

(c) Petition for order modifying or setting aside demand for production of product of discovery; grounds for relief; stay of compliance with demand and of running of time allowed for compliance with demand

Whenever any such demand is an express demand for any product of discovery, the person from whom such discovery was obtained may file, at any time prior to compliance with such express demand, in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending, and serve upon any antitrust investigator named in the demand and upon the recipient of the demand, a petition for an order of such court modifying or setting aside those portions of the demand requiring production of any such product of discovery. Such petition shall specify each ground upon which the petitioner relies in seeking such relief and may be based upon any failure of such portions of the demand to comply with the provisions of this chapter, or upon any constitutional or other legal right or privilege of the petitioner. During the pendency of such petition, the court may stay, as it deems proper, compliance with the demand and the running of the time allowed for compliance with the demand.

(d) Petition for order requiring performance by custodian of duties; venue

At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories delivered, or transcripts of oral testimony given by any person in compliance with any such demand, such person, and, in the case of an express demand for any product of discovery, the person from whom such discovery was obtained, may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this chapter.

(e) Jurisdiction; appeal; contempts

Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this chapter. Any final order so entered shall be subject to appeal pursuant to section 1291 of title 28. Any disobedience of any final order entered under this section by any court shall be punished as a contempt thereof.

(f) Applicability of Federal Rules of Civil Procedure

To the extent that such rules may have application and are not inconsistent with the provisions of this chapter, the Federal Rules of Civil Procedure shall apply to any petition under this chapter.

(g) Disclosure exemption

Any documentary material, answers to written interrogatories, or transcripts of oral testimony provided pursuant to any demand issued under this chapter shall be exempt from disclosure under section 552 of title 5.

(Pub. L. 87–664, §5, Sept. 19, 1962, 76 Stat. 551; Pub. L. 94–435, title I, §104, Sept. 30, 1976, 90 Stat. 1389; Pub. L. 96–349, §2(b)(5), Sept. 12, 1980, 94 Stat. 1155.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 87–664, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1311 of this title and Tables.

The Federal Rules of Civil Procedure, referred to in subsec. (f), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1980—Subsec. (b). Pub. L. 96–349, §2(b)(5)(A), designated existing provisions as par. (1), provided for filing and serving a petition for an order modifying or setting aside a demand in the case of an express demand for any product of discovery upon the person from whom the discovery was obtained, incorporated existing provision in cl. (A), added cl. (B), and designated existing provisions as par. (2).

Subsecs. (c), (d). Pub. L. 96–349, §2(b)(5)(B) to (D), added subsec. (c), redesignated former subsec. (c) as (d) and authorized petition, in the case of an express demand for any product of discovery, by the person from whom the discovery was obtained, for an order requiring performance by the custodian of his duties. Former subsec. (d) redesignated (e).

Subsecs. (e) to (g). Pub. L. 96–349, §2(b)(5)(B), redesignated former subsecs. (d) to (f) as (e) to (g), respectively.

1976—Subsec. (a). Pub. L. 94–435, §104(a), struck out provision which permitted a petition for an enforcement order to be filed in the judicial district where a person who had failed to comply with a demand and who transacted business in one or more districts, maintained his principal place of business, or in such other district, in which such person transacted business, as was agreed upon by the parties to the petition.

Subsec. (b). Pub. L. 94–435, §104(b), (c), inserted "or within such period exceeding twenty days after service or in excess of such return date as may be prescribed in writing, subsequent to service, by any antitrust investigator named in the demand," after "whichever period is shorter", substituted "antitrust investigator" for "custodian" before "a petition for an order", and inserted proviso that petitioner should comply with portions of a contested demand which are not being challenged.

Subsec. (c). Pub. L. 94–435, §104(d), substituted "or answers to interrogatories delivered, or transcripts of oral testimony given" for "delivered".

Subsec. (f). Pub. L. 94–435, §104(e), added subsec. (f).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–435 effective Sept. 30, 1976, see section 106 of Pub. L. 94–435, set out as a note under section 1311 of this title.

CHAPTER 35—SEAT BELT REGULATION

§§1321 to 1323. Repealed. Pub. L. 89–563, title I, §117(a), Sept. 9, 1966, 80 Stat. 727

Sections, Pub. L. 88–201, §§1–3, Dec. 13, 1963, 77 Stat. 361, provided for the promulgation of standards for seat belts in motor vehicles and set the penalty for the unlawful sale, importation, or introduction into commerce of seat belts not meeting the published standards. For savings provision, see section 117(b) to (e) of Pub. L. 89–563, formerly set out as a note under section 1301 of this title.

CHAPTER 36—CIGARETTE LABELING AND ADVERTISING

Sec.

1331. Congressional declaration of policy and purpose.
1332. Definitions.
1333. Labeling.
1334. Preemption.
1335. Unlawful advertisements on medium of electronic communication.
1335a. List of cigarette ingredients; annual submission to Secretary; transmittal to Congress; confidentiality.
1336. Authority of Federal Trade Commission; unfair or deceptive acts or practices.
1337. Omitted.
1338. Criminal penalty.
1339. Injunction proceedings.
1340. Cigarettes for export.
1341. Smoking, research, education and information.

§1331. Congressional declaration of policy and purpose

It is the policy of the Congress, and the purpose of this chapter, to establish a comprehensive Federal Program to deal with cigarette labeling and advertising with respect to any relationship between smoking and health, whereby—

(1) the public may be adequately informed about any adverse health effects of cigarette smoking by inclusion of warning notices on each package of cigarettes and in each advertisement of cigarettes; and

(2) commerce and the national economy may be (A) protected to the maximum extent consistent with this declared policy and (B) not impeded by diverse, nonuniform, and confusing cigarette labeling and advertising regulations with respect to any relationship between smoking and health.

(Pub. L. 89–92, §2, July 27, 1965, 79 Stat. 282; Pub. L. 91–222, §2, Apr. 1, 1970, 84 Stat. 87; Pub. L. 98–474, §6(a), Oct. 12, 1984, 98 Stat. 2204.)

AMENDMENTS

1984—Par. (1). Pub. L. 98–474 substituted "about any adverse health effects of cigarette smoking by inclusion of warning notices on each package of cigarettes and in each advertisement;" for "that cigarette smoking may be hazardous to health by inclusion of a warning to that effect on each package of cigarettes;".

1970—Pub. L. 91–222 reenacted section without change.

EFFECTIVE DATE OF 1970 AMENDMENT

Pub. L. 91–222, §3, Apr. 1, 1970, 84 Stat. 90, provided in part that: "All other provisions of the amendment made by this Act [enacting section 1340 of this title, amending this section and sections 1332 and 1335 to 1339 of this title, and enacting provisions set out as notes under this section] except where otherwise specified shall take effect on January 1, 1970."

EFFECTIVE DATE

Pub. L. 89–92, §12, formerly §11, July 27, 1965, 79 Stat. 284, as renumbered by Pub. L. 98–474, §5(a), Oct. 12, 1984, 98 Stat. 2203, provided that: "This Act [this chapter] shall take effect on January 1, 1966."

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98–474, §1, Oct. 12, 1984, 98 Stat. 2200, provided that: "This Act [enacting sections 1335a and 1341 of this title, amending this section and sections 1332, 1333, 1336, and 1337 of this title, and enacting provisions set out as notes under this section and sections 1333 and 1335a of this title] may be cited as the 'Comprehensive Smoking Education Act'."

SHORT TITLE OF 1973 AMENDMENT

Pub. L. 93–109, §1, Sept. 21, 1973, 87 Stat. 352, provided: "That this Act [amending sections 1332 and 1335 of this title] may be cited as the 'Little Cigar Act of 1973'."

SHORT TITLE OF 1970 AMENDMENT

Pub. L. 91–222, §1, Apr. 1, 1970, 84 Stat. 87, provided: "That this Act [enacting section 1340 of this title, amending this section and sections 1332 to 1339 of this title, and enacting provisions set out as notes under this section and sections 1333 and 1334 of this title] may be cited as the 'Public Health Cigarette Smoking Act of 1969'."

SHORT TITLE

Pub. L. 89–92, §1, July 27, 1965, 79 Stat. 282, provided: "This Act [enacting this chapter] may be cited as the 'Federal Cigarette Labeling and Advertising Act'."

SEPARABILITY

Pub. L. 89–92, §13, formerly §12, as added by Pub. L. 91–222, §2, Apr. 1, 1970, 84 Stat. 90, and renumbered Pub. L. 98–474, §5(a), Oct. 12, 1984, 98 Stat. 2203, provided that: "If any provision of this Act [this chapter] or the application thereof to any person or circumstances is held invalid, the other provisions of this Act [this chapter] and the application of such provisions to other persons or circumstances shall not be affected thereby."

CONGRESSIONAL STATEMENT OF PURPOSE

Pub. L. 98–474, §2, Oct. 12, 1984, 98 Stat. 2200, provided that: "It is the purpose of this Act [see Short Title of 1984 Amendment note above] to provide a new strategy for making Americans more aware of any adverse health effects of smoking, to assure the timely and widespread dissemination of research findings and to enable individuals to make informed decisions about smoking."

§1332. Definitions

As used in this chapter—

(1) The term "cigarette" means—

(A) any roll of tobacco wrapped in paper or in any substance not containing tobacco, and

(B) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (A).

(2) The term "commerce" means (A) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island and any place outside thereof; (B) commerce between points in any state, the District of Columbia, the Commonwealth of Puerto Rico, Guam,

the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island, but through any place outside thereof; or (C) commerce wholly within the District of Columbia, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island.

(3) The term "United States", when used in a geographical sense, includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, and Johnston Island. The term "State" includes any political division of any State.

(4) The term "package" means a pack, box, carton, or container of any kind in which cigarettes are offered for sale, sold, or otherwise distributed to consumers.

(5) The term "person" means an individual, partnership, corporation, or any other business or legal entity.

(6) The term "sale or distribution" includes sampling or any other distribution not for sale.

(7) The term "little cigar" means any roll of tobacco wrapped in leaf tobacco or any substance containing tobacco (other than any roll of tobacco which is a cigarette within the meaning of subsection (1)) and as to which one thousand units weigh not more than three pounds.

(8) The term "brand style" means a variety of cigarettes distinguished by the tobacco used, tar and nicotine content, flavoring used, size of the cigarette, filtration on the cigarette, or packaging.

(9) The term "Secretary" means the Secretary of Health and Human Services.

(Pub. L. 89–92, §3, July 27, 1965, 79 Stat. 282; Pub. L. 91–222, §2, Apr. 1, 1970, 84 Stat. 88; Pub. L. 93–109, §2, Sept. 21, 1973, 87 Stat. 352; Pub. L. 98–474, §6(b), Oct. 12, 1984, 98 Stat. 2204; Pub. L. 99–92, §11(b), Aug. 16, 1985, 99 Stat. 403.)

AMENDMENTS

1985—Pars. (8), (9). Pub. L. 99–92 added par. (8) and redesignated former par. (8) as (9).
1984—Par. (8). Pub. L. 98–474 added par. (8).
1973—Subsec. (7). Pub. L. 93–109 added subsec. (7).
1970—Subsec. (3). Pub. L. 91–222 inserted provisions defining "State".

EFFECTIVE DATE OF 1973 AMENDMENT

Pub. L. 93–109, §4, Sept. 21, 1973, 87 Stat. 352, provided that: "The amendment made by this Act [amending this section and section 1335 of this title] shall become effective thirty days after the date of enactment [Sept. 21, 1973]."

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–222 effective Jan. 1, 1970, except where otherwise specified, see section 3 of Pub. L. 91–222, set out in part as a note under section 1331 of this title.

§1333. Labeling

(a) Label requirements

(1) In general

It shall be unlawful for any person to manufacture, package, sell, offer to sell, distribute, or import for sale or distribution within the United States any cigarettes the package of which fails to bear, in accordance with the requirements of this section, one of the following labels:

WARNING: Cigarettes are addictive.
WARNING: Tobacco smoke can harm your children.
WARNING: Cigarettes cause fatal lung disease.
WARNING: Cigarettes cause cancer.
WARNING: Cigarettes cause strokes and heart disease.
WARNING: Smoking during pregnancy can harm your baby.
WARNING: Smoking can kill you.
WARNING: Tobacco smoke causes fatal lung disease in nonsmokers.

WARNING: Quitting smoking now greatly reduces serious risks to your health.

(2) Placement; typography; etc.

Each label statement required by paragraph (1) shall be located in the upper portion of the front and rear panels of the package, directly on the package underneath the cellophane or other clear wrapping. Each label statement shall comprise the top 50 percent of the front and rear panels of the package. The word "WARNING" shall appear in capital letters and all text shall be in conspicuous and legible 17-point type, unless the text of the label statement would occupy more than 70 percent of such area, in which case the text may be in a smaller conspicuous and legible type size, provided that at least 60 percent of such area is occupied by required text. The text shall be black on a white background, or white on a black background, in a manner that contrasts, by typography, layout, or color, with all other printed material on the package, in an alternating fashion under the plan submitted under subsection (c).

(3) Does not apply to foreign distribution

The provisions of this subsection do not apply to a tobacco product manufacturer or distributor of cigarettes which does not manufacture, package, or import cigarettes for sale or distribution within the United States.

(4) Applicability to retailers

A retailer of cigarettes shall not be in violation of this subsection for packaging that—

(A) contains a warning label;

(B) is supplied to the retailer by a license- or permit-holding tobacco product manufacturer, importer, or distributor; and

(C) is not altered by the retailer in a way that is material to the requirements of this subsection.

(b) Advertising requirements

(1) In general

It shall be unlawful for any tobacco product manufacturer, importer, distributor, or retailer of cigarettes to advertise or cause to be advertised within the United States any cigarette unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a).

(2) Typography, etc.

Each label statement required by subsection (a) in cigarette advertising shall comply with the standards set forth in this paragraph. For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent (including a smoke constituent) yield shall comprise at least 20 percent of the area of the advertisement and shall appear in a conspicuous and prominent format and location at the top of each advertisement within the trim area. The Secretary may revise the required type sizes in such area in such manner as the Secretary determines appropriate. The word "WARNING" shall appear in capital letters, and each label statement shall appear in conspicuous and legible type. The text of the label statement shall be black if the background is white and white if the background is black, under the plan submitted under subsection (c). The label statements shall be enclosed by a rectangular border that is the same color as the letters of the statements and that is the width of the first downstroke of the capital "W" of the word "WARNING" in the label statements. The text of such label statements shall be in a typeface pro rata to the following requirements: 45-point type for a whole-page broadsheet newspaper advertisement; 39-point type for a half-page broadsheet newspaper advertisement; 39-point type for a whole-page tabloid newspaper advertisement; 27-point type for a half-page tabloid newspaper advertisement; 31.5-point type for a double page spread magazine or whole-page magazine advertisement; 22.5-point type for a 28 centimeter by 3 column advertisement; and 15-point type for a 20 centimeter by 2 column advertisement. The label statements shall be in English, except that—

(A) in the case of an advertisement that appears in a newspaper, magazine, periodical, or

other publication that is not in English, the statements shall appear in the predominant language of the publication; and

(B) in the case of any other advertisement that is not in English, the statements shall appear in the same language as that principally used in the advertisement.

(3) Matchbooks

Notwithstanding paragraph (2), for matchbooks (defined as containing not more than 20 matches) customarily given away with the purchase of tobacco products, each label statement required by subsection (a) may be printed on the inside cover of the matchbook.

(4) Adjustment by Secretary

The Secretary may, through a rulemaking under section 553 of title 5, adjust the format and type sizes for the label statements required by this section; the text, format, and type sizes of any required tar, nicotine yield, or other constituent (including smoke constituent) disclosures; or the text, format, and type sizes for any other disclosures required under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.]. The text of any such label statements or disclosures shall be required to appear only within the 20 percent area of cigarette advertisements provided by paragraph (2). The Secretary shall promulgate regulations which provide for adjustments in the format and type sizes of any text required to appear in such area to ensure that the total text required to appear by law will fit within such area.

(c) Marketing requirements

(1) Random display

The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

(2) Rotation

The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of cigarettes in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

(3) Review

The Secretary shall review each plan submitted under paragraph (2) and approve it if the plan—

(A) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

(B) assures that all of the labels required under this section will be displayed by the tobacco product manufacturer, importer, distributor, or retailer at the same time.

(4) Applicability to retailers

This subsection and subsection (b) apply to a retailer only if that retailer is responsible for or directs the label statements required under this section except that this paragraph shall not relieve a retailer of liability if the retailer displays, in a location open to the public, an advertisement that does not contain a warning label or has been altered by the retailer in a way that is material to the requirements of this subsection and subsection (b).

(d) [1] Graphic label statements

Not later than 24 months after June 22, 2009, the Secretary shall issue regulations that require color graphics depicting the negative health consequences of smoking to accompany the label statements specified in subsection (a)(1). The Secretary may adjust the type size, text and format of the label statements specified in subsections (a)(2) and (b)(2) as the Secretary determines appropriate so that both the graphics and the accompanying label statements are clear, conspicuous, legible and appear within the specified area.

(d) [1] Change in required statements

The Secretary through a rulemaking conducted under section 553 of title 5 may adjust the format, type size, color graphics, and text of any of the label requirements, or establish the format, type size, and text of any other disclosures required under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.], if the Secretary finds that such a change would promote greater public understanding of the risks associated with the use of tobacco products.

(e) Tar, nicotine, and other smoke constituent disclosure

(1) In general

The Secretary shall, by a rulemaking conducted under section 553 of title 5, determine (in the Secretary's sole discretion) whether cigarette and other tobacco product manufacturers shall be required to include in the area of each cigarette advertisement specified by subsection (b) of this section, or on the package label, or both, the tar and nicotine yields of the advertised or packaged brand. Any such disclosure shall be in accordance with the methodology established under such regulations, shall conform to the type size requirements of subsection (b) of this section, and shall appear within the area specified in subsection (b) of this section.

(2) Resolution of differences

Any differences between the requirements established by the Secretary under paragraph (1) and tar and nicotine yield reporting requirements established by the Federal Trade Commission shall be resolved by a memorandum of understanding between the Secretary and the Federal Trade Commission.

(3) Cigarette and other tobacco product constituents

In addition to the disclosures required by paragraph (1), the Secretary may, under a rulemaking conducted under section 553 of title 5, prescribe disclosure requirements regarding the level of any cigarette or other tobacco product constituent including any smoke constituent. Any such disclosure may be required if the Secretary determines that disclosure would be of benefit to the public health, or otherwise would increase consumer awareness of the health consequences of the use of tobacco products, except that no such prescribed disclosure shall be required on the face of any cigarette package or advertisement. Nothing in this section shall prohibit the Secretary from requiring such prescribed disclosure through a cigarette or other tobacco product package or advertisement insert, or by any other means under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.].

(4) Retailers

This subsection applies to a retailer only if that retailer is responsible for or directs the label statements required under this section.

(Pub. L. 89–92, §4, July 27, 1965, 79 Stat. 283; Pub. L. 91–222, §2, Apr. 1, 1970, 84 Stat. 88; Pub. L. 98–474, §4(a), Oct. 12, 1984, 98 Stat. 2201; Pub. L. 99–92, §11[(a)], Aug. 16, 1985, 99 Stat. 402; Pub. L. 99–117, §11(d), Oct. 7, 1985, 99 Stat. 495; Pub. L. 111–31, div. A, title II, §§201(a), 202(b), 206, June 22, 2009, 123 Stat. 1842, 1845, 1849.)

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsecs. (b)(4), (d), and (e)(3), is act June 25, 1938, ch. 675, 52 Stat. 1040, which is classified generally to chapter 9 (§301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

AMENDMENTS

2009—Pub. L. 111–31, §201(a), amended section generally. Prior to amendment, section related to cigarette labeling requirements.

Subsec. (d). Pub. L. 111–31, §202(b), added subsec. (d) relating to change in required statements.

Subsec. (e). Pub. L. 111–31, §206, added subsec. (e).

1985—Subsec. (c). Pub. L. 99–92 designated existing provisions as par. (1), substituted "Except as provided in paragraph (2), the" for "The label", and added par. (2).

Subsec. (c)(2)(A). Pub. L. 99–117 substituted "brand style" for "brand" in provisions preceding cl. (i).

1984—Pub. L. 98–474 amended section generally, designating existing provisions as subsec. (a), expanding choice of warnings to be placed on cigarette packaging and further expanding scope of places that must contain warnings to include advertisements and outdoor billboards, and adding subsecs. (b) to (d).

1970—Pub. L. 91–222 substituted "Warning: The Surgeon General Has Determined That Cigarette Smoking Is Dangerous to Your Health" for "Caution: Cigarette Smoking May Be Hazardous to Your Health."

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–31, div. A, title II, §201(b), June 22, 2009, 123 Stat. 1845, provided that: "The amendment made by subsection (a) [amending this section] shall take effect 15 months after the issuance of the regulations required by subsection (a) [final rule issued June 22, 2011, eff. Sept. 22, 2012; see 76 F.R. 36628]. Such effective date shall be with respect to the date of manufacture, provided that, in any case, beginning 30 days after such effective date, a manufacturer shall not introduce into the domestic commerce of the United States any product, irrespective of the date of manufacture, that is not in conformance with section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333), as amended by subsection (a)."

EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99–92, §11(c), Aug. 16, 1985, 99 Stat. 403, provided that:

"(1) The amendments made by subsection (a) [probably refers to undesignated par. preceding subsec. (b), amending this section] shall take effect October 12, 1985, except that—

"(A) on and after the date of the enactment of this Act [Aug. 16, 1985] a manufacturer or importer of cigarettes may apply to the Federal Trade Commission to have the label rotation specified in section 4(c)(2) of the Federal Cigarette Labeling and Advertising Act [subsec. (c)(2) of this section], as amended by subsection (a), apply to its brand styles of cigarettes and the Commission may take action on such an application, and

"(B) a manufacturer or importer of cigarettes may elect to have the amendments apply at an earlier date or dates selected by the manufacturer or importer.

"(2) The Federal Trade Commission may, upon application of a manufacturer or importer of cigarettes with an approved application under section 4(c)(2) of the Federal Cigarette Labeling and Advertising Act [subsec. (c)(2) of this section], as amended by subsection (a), extend the effective date specified in paragraph (1) to January 11, 1986. The Commission may approve an application for such an extension only if the Commission determines that the effective date specified in such paragraph (1) would cause unreasonable economic hardship to the applicant. Section 4 of the Federal Cigarette Labeling and Advertising Act [this section], as in effect before October 12, 1985, shall apply with respect to a manufacturer or importer with an application approved under this paragraph."

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–474, §4(b), Oct. 12, 1984, 98 Stat. 2203, provided that: "The amendment made by subsection (a) [amending this section] shall take effect upon the expiration of a one-year period beginning on the date of the enactment of this Act [Oct. 12, 1984]."

EFFECTIVE DATE OF 1970 AMENDMENT

Pub. L. 91–222, §3, Apr. 1, 1970, 84 Stat. 90, provided in part that: "Section 4 of the amendment made by this Act [amending this section] shall take effect on the first day of the seventh calendar month which begins after the date of the enactment of this Act [Apr. 1, 1970]."

[1] So in original. There are two subsecs. designated (d).

§1334. Preemption

(a) Additional statements

Except to the extent the Secretary requires additional or different statements on any cigarette package by a regulation, by an order, by a standard, by an authorization to market a product, or by a condition of marketing a product, pursuant to the Family Smoking Prevention and Tobacco Control

Act (and the amendments made by that Act), or as required under section 387c(a)(2) of title 21 or section 387t(a) of title 21, no statement relating to smoking and health, other than the statement required by section 1333 of this title, shall be required on any cigarette package.

(b) State regulations

No requirement or prohibition based on smoking and health shall be imposed under State law with respect to the advertising or promotion of any cigarettes the packages of which are labeled in conformity with the provisions of this chapter.

(c) Exception

Notwithstanding subsection (b), a State or locality may enact statutes and promulgate regulations, based on smoking and health, that take effect after the effective date of the Family Smoking Prevention and Tobacco Control Act, imposing specific bans or restrictions on the time, place, and manner, but not content, of the advertising or promotion of any cigarettes.

(Pub. L. 89–92, §5, July 27, 1965, 79 Stat. 283; Pub. L. 91–222, §2, Apr. 1, 1970, 84 Stat. 88; Pub. L. 111–31, div. A, title II, §§202(a), 203, June 22, 2009, 123 Stat. 1845, 1846.)

REFERENCES IN TEXT

The Family Smoking Prevention and Tobacco Control Act, referred to in subsec. (a), is div. A of Pub. L. 111–31, June 22, 2009, 123 Stat. 1776. For complete classification of this Act to the Code, see Short Title of 2009 Amendment note set out under section 301 of Title 21, Food and Drugs, and Tables.

The effective date of the Family Smoking Prevention and Tobacco Control Act, referred to in subsec. (c), probably means the date of enactment of Pub. L. 111–31, which was approved June 22, 2009.

AMENDMENTS

2009—Subsec. (a). Pub. L. 111–31, §202(a), substituted "Except to the extent the Secretary requires additional or different statements on any cigarette package by a regulation, by an order, by a standard, by an authorization to market a product, or by a condition of marketing a product, pursuant to the Family Smoking Prevention and Tobacco Control Act (and the amendments made by that Act), or as required under section 387c(a)(2) of title 21 or section 387t(a) of title 21, no" for "No".

Subsec. (c). Pub. L. 111–31, §203, added subsec. (c).

1970—Subsec. (b). Pub. L. 91–222 substituted provision that no requirement or prohibition based on smoking and health should be imposed under State law with respect to the advertising or promotion of any cigarettes which packages are labeled in conformity with the provisions of this chapter for provision that no statement relating to smoking and health should be required in the advertising of any cigarettes which packages are labeled in conformity with the provisions of this chapter.

Subsecs. (c), (d). Pub. L. 91–222 struck out subsecs. (c) and (d) relating to the authority of the Federal Trade Commission with respect to unfair or deceptive advertising acts or practices, and reports to Congress by the Secretary of Health, Education, and Welfare and the Federal Trade Commission. See sections 1336 and 1337 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Pub. L. 91–222, §3, Apr. 1, 1970, 84 Stat. 90, provided in part that: "Section 5 of the amendment made by this Act [amending this section] shall take effect as of July 1, 1969."

§1335. Unlawful advertisements on medium of electronic communication

After January 1, 1971, it shall be unlawful to advertise cigarettes and little cigars on any medium of electronic communication subject to the jurisdiction of the Federal Communications Commission.

(Pub. L. 89–92, §6, July 27, 1965, 79 Stat. 283; Pub. L. 91–222, §2, Apr. 1, 1970, 84 Stat. 89; Pub. L. 93–109, §3, Sept. 21, 1973, 87 Stat. 352.)

AMENDMENTS

1973—Pub. L. 93–109 extended prohibition against advertisements to little cigars.

1970—Pub. L. 91–222 substituted provision that after January 1, 1971, it shall be unlawful to advertise cigarettes on any medium of electronic communication subject to the jurisdiction of the Federal

Communications Commission, for provision that a violation of this chapter should constitute misdemeanor and be punishable by fine. See, now, section 1338 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–109 effective thirty days after Sept. 21, 1973, see section 4 of Pub. L. 93–109, set out as a note under section 1332 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–222 effective Jan. 1, 1970, except where otherwise specified, see section 3 of Pub. L. 91–222, set out in part as a note under section 1331 of this title.

§1335a. List of cigarette ingredients; annual submission to Secretary; transmittal to Congress; confidentiality

(a) Each person who manufactures, packages, or imports cigarettes shall annually provide the Secretary with a list of the ingredients added to tobacco in the manufacture of cigarettes which does not identify the company which uses the ingredients or the brand of cigarettes which contain the ingredients. A person or group of persons required to provide a list by this subsection may designate an individual or entity to provide the list required by this subsection.

(b)(1) At such times as the Secretary considers appropriate, the Secretary shall transmit to the Congress a report, based on the information provided under subsection (a) of this section, respecting—

(A) a summary of research activities and proposed research activities on the health effects of ingredients added to tobacco in the manufacture of cigarettes and the findings of such research;

(B) information pertaining to any such ingredient which in the judgement of the Secretary poses a health risk to cigarette smokers; and

(C) any other information which the Secretary determines to be in the public interest.

(2)(A) Any information provided to the Secretary under subsection (a) of this section shall be treated as trade secret or confidential information subject to section 552(b)(4) of title 5 and section 1905 of title 18 and shall not be revealed, except as provided in paragraph (1), to any person other than those authorized by the Secretary in carrying out their official duties under this section.

(B) Subparagraph (A) does not authorize the withholding of a list provided under subsection (a) of this section from any duly authorized subcommittee or committee of the Congress. If a subcommittee or committee of the Congress requests the Secretary to provide it such a list, the Secretary shall make the list available to the subcommittee or committee and shall, at the same time, notify in writing the person who provided the list of such request.

(C) The Secretary shall establish written procedures to assure the confidentiality of information provided under subsection (a) of this section. Such procedures shall include the designation of a duly authorized agent to serve as custodian of such information. The agent—

(i) shall take physical possession of the information and, when not in use by a person authorized to have access to such information, shall store it in a locked cabinet or file, and

(ii) shall maintain a complete record of any person who inspects or uses the information.

Such procedures shall require that any person permitted access to the information shall be instructed in writing not to disclose the information to anyone who is not entitled to have access to the information.

(Pub. L. 89–92, §7, as added Pub. L. 98–474, §5(a), Oct. 12, 1984, 98 Stat. 2203.)

PRIOR PROVISIONS

A prior section 7 of Pub. L. 89–92 was renumbered section 8 and is classified to section 1336 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–474, §5(b), Oct. 12, 1984, 98 Stat. 2204, provided that: "Section 7 of the Federal Cigarette

Labeling and Advertising Act [this section] added by subsection (a) shall take effect upon the expiration of the one-year period beginning on the date of the enactment of this Act [Oct. 12, 1984]."

§1336. Authority of Federal Trade Commission; unfair or deceptive acts or practices

Nothing in this chapter (other than the requirements of section 1333 of this title) shall be construed to limit, restrict, expand, or otherwise affect the authority of the Federal Trade Commission with respect to unfair or deceptive acts or practices in the advertising of cigarettes.

(Pub. L. 89–92, §8, formerly §7, July 27, 1965, 79 Stat. 283; Pub. L. 91–222, §2, Apr. 1, 1970, 84 Stat. 89; renumbered §8 and amended Pub. L. 98–474, §§5(a), 6(c), Oct. 12, 1984, 98 Stat. 2203, 2204; Pub. L. 99–92, §12, Aug. 16, 1985, 99 Stat. 404.)

PRIOR PROVISIONS

A prior section 8 of Pub. L. 89–92 was renumbered section 9, classified to section 1337 of this title, and subsequently omitted from the Code.

AMENDMENTS

1985—Pub. L. 99–92 struck out "(b)" after "1333".

1984—Pub. L. 98–474 amended section generally, striking out subsecs. (a) and (c) which dealt with the authority of the Federal Trade Commission with respect to its pending trade regulation rule proceeding relating to cigarette advertising and its authority to issue trade regulation rules or to require an affirmative statement in any cigarette advertisement, which left the provisions of former subsec. (b) to constitute this section.

1970—Pub. L. 91–222 substituted provisions concerning the action of the Federal Trade Commission with respect to its pending trade regulation rule proceeding relating to cigarette advertising, the Commission's authority with respect to unfair or deceptive cigarette advertising acts or practices, and its authority to issue trade regulation rules or to require an affirmative statement in any cigarette advertisement, for provisions investing the several district courts with jurisdiction, for cause shown, to prevent and restrain violations of this chapter upon proper application. See section 1339 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–222 effective Jan. 1, 1970, except where otherwise specified, see section 3 of Pub. L. 91–222, set out in part as a note under section 1331 of this title.

§1337. Omitted

CODIFICATION

Section, Pub. L. 89–92, §9, formerly §8, July 27, 1965, 79 Stat. 283; Pub. L. 91–222, §2, Apr. 1, 1970, 84 Stat. 89; renumbered §9 and amended Pub. L. 98–474, §§5(a), 6(d), Oct. 12, 1984, 98 Stat. 2203, 2205, which required the Secretary of Health and Human Services to transmit an annual report to Congress concerning health consequences of smoking and recommendations for legislation, and which required the Federal Trade Commission to transmit an annual report to Congress concerning practices and methods of cigarette advertising and promotion and recommendations for legislation, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, pages 95 and 172 of House Document No. 103–7.

A prior section 9 of Pub. L. 89–92 was renumbered section 10 and is classified to section 1338 of this title.

§1338. Criminal penalty

Any person who violates the provisions of this chapter shall be guilty of a misdemeanor and shall on conviction thereof be subject to a fine of not more than $10,000.

(Pub. L. 89–92, §10, formerly §9, July 27, 1965, 79 Stat. 284; Pub. L. 91–222, §2, Apr. 1, 1970, 84 Stat. 89; renumbered §10, Pub. L. 98–474, §5(a), Oct. 12, 1984, 98 Stat. 2203.)

PRIOR PROVISIONS

A prior section 10 of Pub. L. 89–92 was renumbered section 11 and is classified to section 1339 of this title.

AMENDMENTS

1970—Pub. L. 91–222 substituted provisions that violators shall be guilty of a misdemeanor and subject to fine, for provision that if any part of this chapter be held invalid, other provisions thereof shall not be affected. See Separability note set out under section 1331 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–222 effective Jan. 1, 1970, except where otherwise specified, see section 3 of Pub. L. 91–222, set out in part as a note under section 1331 of this title.

§1339. Injunction proceedings

The several district courts of the United States are invested with jurisdiction, for cause shown, to prevent and restrain violations of this chapter upon the application of the Attorney General of the United States acting through the several United States attorneys in their several districts.

(Pub. L. 89–92, §11, formerly §10, July 27, 1965, 79 Stat. 284; Pub. L. 91–222, §2, Apr. 1, 1970, 84 Stat. 89; renumbered §11, Pub. L. 98–474, §5(a), Oct. 12, 1984, 98 Stat. 2203.)

PRIOR PROVISIONS

Two prior sections 11 of Pub. L. 89–92 were renumbered section 12 by section 5(a) of Pub. L. 98–474 and are classified to section 1340 of this title and as an Effective Date note under section 1331 of this title.

AMENDMENTS

1970—Pub. L. 91–222 substituted provision that the several district courts are invested with jurisdiction in injunction proceedings, for provisions that regulation of advertising terminate on July 1, 1969, but that such termination shall not be construed as limiting, expanding or otherwise affecting such jurisdiction which Federal Trade Commission or other federal agencies had prior to July 27, 1965.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–222 effective Jan. 1, 1970, except where otherwise specified, see section 3 of Pub. L. 91–222, set out in part as a note under section 1331 of this title.

§1340. Cigarettes for export

Packages of cigarettes manufactured, imported, or packaged (1) for export from the United States or (2) for delivery to a vessel or aircraft, as supplies, for consumption beyond the jurisdiction of the internal revenue laws of the United States shall be exempt from the requirements of this chapter, but such exemptions shall not apply to cigarettes manufactured, imported, or packaged for sale or distribution to members or units of the Armed Forces of the United States located outside of the United States.

(Pub. L. 89–92, §12, formerly §11, as added Pub. L. 91–222, §2, Apr. 1, 1970, 84 Stat. 89; renumbered §12, Pub. L. 98–474, §5(a), Oct. 12, 1984, 98 Stat. 2203.)

CODIFICATION

Another section 12 of Pub. L. 89–92, July 27, 1965, 79 Stat. 284, is set out as an Effective Date note under section 1331 of this title.

PRIOR PROVISIONS

A prior section 12 of Pub. L. 89–92 was renumbered section 13 and is set out as a Separability note under section 1331 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1970, see section 3 of Pub. L. 91–222, set out in part as a note under section 1331

of this title.

§1341. Smoking, research, education and information

(a) Establishment of program; Secretary; functions

The Secretary of Health and Human Services (hereinafter in this section referred to as the "Secretary") shall establish and carry out a program to inform the public of any dangers to human health presented by cigarette smoking. In carrying out such program, the Secretary shall—

(1) conduct and support research on the effect of cigarette smoking on human health and develop materials for informing the public of such effect;

(2) coordinate all research and educational programs and other activities within the Department of Health and Human Services (hereinafter in this section referred to as the "Department") which relate to the effect of cigarette smoking on human health and coordinate, through the Interagency Committee on Smoking and Health (established under subsection (b) of this section), such activities with similar activities of other Federal agencies and of private agencies;

(3) establish and maintain a liaison with appropriate private entities, other Federal agencies, and State and local public agencies respecting activities relating to the effect of cigarette smoking on human health;

(4) collect, analyze, and disseminate (through publications, bibliographies, and otherwise) information, studies, and other data relating to the effect of cigarette smoking on human health, and develop standards, criteria, and methodologies for improved information programs related to smoking and health;

(5) compile and make available information on State and local laws relating to the use and consumption of cigarettes; and

(6) undertake any other additional information and research activities which the Secretary determines necessary and appropriate to carry out this section.

(b) Interagency Committee on Smoking and Health; composition; chairman; compensation; staffing and other assistance

(1) To carry out the activities described in paragraphs (2) and (3) of subsection (a) of this section there is established an Interagency Committee on Smoking and Health. The Committee shall be composed of—

(A) members appointed by the Secretary from appropriate institutes and agencies of the Department, which may include the National Cancer Institute, the National Heart, Lung, and Blood Institute, the Eunice Kennedy Shriver National Institute of Child Health and Human Development, the National Institute on Drug Abuse, the Health Resources and Services Administration, and the Centers for Disease Control and Prevention;

(B) at least one member appointed from the Federal Trade Commission, the Department of Education, the Department of Labor, and any other Federal agency designated by the Secretary, the appointment of whom shall be made by the head of the entity from which the member is appointed; and

(C) five members appointed by the Secretary from physicians and scientists who represent private entities involved in informing the public about the health effects of smoking.

The Secretary shall designate the chairman of the Committee.

(2) While away from their homes or regular places of business in the performance of services for the Committee, members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistance,[1] in the manner provided by sections 5702 and 5703 of title 5.

(3) The Secretary shall make available to the Committee such staff, information, and other assistance as it may require to carry out its activities effectively.

(c) Report to Congress; contents

The Secretary shall transmit a report to Congress not later than January 1, 1986, and biennially

thereafter which shall contain—

(1) an overview and assessment of Federal activities undertaken to inform the public of the health consequences of smoking and the extent of public knowledge of such consequences,

(2) a description of the Secretary's and Committee's activities under subsection (a) of this section,

(3) information regarding the activities of the private sector taken in response to the effects of smoking on health, and

(4) such recommendations as the Secretary may consider appropriate.

(Pub. L. 98–474, §3, Oct. 12, 1984, 98 Stat. 2200; Pub. L. 99–92, §13, Aug. 16, 1985, 99 Stat. 404; Pub. L. 102–531, title III, §312(a), Oct. 27, 1992, 106 Stat. 3504; Pub. L. 110–154, §1(c)(1), Dec. 21, 2007, 121 Stat. 1827.)

CODIFICATION

Section was enacted as part of the Comprehensive Smoking Education Act, and not as part of the Federal Cigarette Labeling and Advertising Act which comprises this chapter.

AMENDMENTS

2007—Subsec. (b)(1)(A). Pub. L. 110–154 substituted "Eunice Kennedy Shriver National Institute of Child Health and Human Development" for "National Institute of Child Health and Human Development".

1992—Subsec. (b)(1)(A), Pub. L. 102–531 substituted "Centers for Disease Control and Prevention" for "Centers for Disease Control".

1985—Subsec. (c). Pub. L. 99–92 substituted "1986" for "1985".

[1] So in original. Probably should be "subsistence,".

CHAPTER 37—STATE TECHNICAL SERVICES

Sec.

1351. Declaration of purpose.
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§1351. Declaration of purpose

Congress finds that wider diffusion and more effective application of science and technology in business, commerce, and industry are essential to the growth of the economy, to higher levels of employment, and to the competitive position of United States products in world markets. The Congress also finds that the benefits of federally financed research, as well as other research, must be placed more effectively in the hands of American business, commerce, and industrial establishments. The Congress further finds that the several States through cooperation with universities, communities, and industries can contribute significantly to these purposes by providing technical services designed to encourage a more effective application of science and technology to both new and established business, commerce, and industrial establishments. The Congress, therefore, declares that the purpose of this chapter is to provide a national program of incentives and support for the several States individually and in cooperation with each other in their establishing and maintaining State and interstate technical service programs designed to achieve these ends.

(Pub. L. 89–182, §1, Sept. 14, 1965, 79 Stat. 679.)

SHORT TITLE

Pub. L. 89–182, §19, Sept. 14, 1965, 79 Stat. 684, provided that: "This Act [this chapter] may be cited as the 'State Technical Services Act of 1965'."

§1352. Definitions

For the purposes of this chapter—

(a) "Technical services" means activities or programs designed to enable businesses, commerce, and industrial establishments to acquire and use scientific and engineering information more effectively through such means as—

(1) preparing and disseminating technical reports, abstracts, computer tapes, microfilm, reviews, and similar scientific or engineering information, including the establishment of State or interstate technical information centers for this purpose;

(2) providing a reference service to identify sources of engineering and other scientific expertise; and

(3) sponsoring industrial workshops, seminars, training programs, extension courses, demonstrations, and field visits designed to encourage the more effective application of scientific and engineering information.

(b) "Designated agency" means the institution or agency which has been designated as administrator of the program for any State or States under section 1353 or 1357 of this title.

(c) "Qualified institution" means (1) an institution of higher learning with a program leading to a degree in science, engineering, or business administration which is accredited by a nationally recognized accrediting agency or association to be listed by the Secretary of Education, or such an institution which is listed separately after evaluation by the Secretary of Education pursuant to this subsection; or (2) a State agency or a private, nonprofit institution which meets criteria of competence established by the Secretary of Commerce and published in the Federal Register. For the purpose of this subsection the Secretary of Education shall publish a list of nationally recognized accrediting agencies or associations which he determines to be reliable authority as to the quality of science, engineering, or business education or training offered. When the Secretary of Education determines that there is no nationally recognized accrediting agency or association qualified to accredit such programs he shall publish a list of institutions he finds qualified after prior evaluation by an advisory committee, composed of persons he determines to be specially qualified to evaluate the training provided under such programs.

(d) "Participating institution" means each qualified institution in a State, which participates in the administration or execution of the State technical services program as provided by this chapter.

(e) "Secretary" means the Secretary of Commerce.

(f) "State" means one of the States of the United States, the District of Columbia, the

Commonwealth of Puerto Rico, Guam or the Virgin Islands.

(g) "Governor", in the case of the District of Columbia, means the Board of Commissioners of the District of Columbia.

(Pub. L. 89–182, §2, Sept. 14, 1965, 79 Stat. 679; Pub. L. 89–771, Nov. 6, 1966, 80 Stat. 1322; Pub. L. 96–88, title III, §301(a)(1), title V, §507, Oct. 17, 1979, 93 Stat. 677, 692.)

AMENDMENTS

1966—Subsec. (f). Pub. L. 89–771 included Guam within definition of "State".

TRANSFER OF FUNCTIONS

"Secretary of Education" substituted for "United States Commissioner of Education" and "Commissioner" in subsec. (c) pursuant to sections 301(a)(1) and 507 of Pub. L. 96–88, which are classified to sections 3441(a)(1) and 3507 of Title 20, Education, and which transferred all functions of Commissioner of Education to Secretary of Education.

Except as otherwise provided in Reorg. Plan No. 3 of 1967, eff. Aug. 11, 1967 (in part), 32 F.R. 11669, 81 Stat. 948, functions of Board of Commissioners of District of Columbia transferred to Commissioner of District of Columbia by section 401 of Reorg. Plan No. 3 of 1967. Office of Commissioner of District of Columbia, as established by Reorg. Plan No. 3 of 1967, abolished as of noon Jan. 2, 1975, by Pub. L. 93–198, title VII, §711, Dec. 24, 1973, 87 Stat. 818, and replaced by office of Mayor of District of Columbia by section 421 of Pub. L. 93–198.

§1353. Selection of designated agency

The Governor of any State which wishes to receive Federal payments under this chapter in support of its existing or planned technical services program shall designate, under appropriate State laws and regulations, an institution or agency to administer and coordinate that program and to prepare and submit a plan and programs to the Secretary of Commerce for approval under this chapter.

(Pub. L. 89–182, §3, Sept. 14, 1965, 79 Stat. 680.)

§1354. Five-year plan; annual technical services program

The designated agency shall prepare and submit to the Secretary in accordance with such regulations as he may publish—

(a) A five-year plan which may be revised annually and which shall: (1) outline the technological and economic conditions of the State, taking into account its region, business, commerce, and its industrial potential and identify the major regional and industrial problems; (2) identify the general approaches and methods to be used in the solution of these problems and outline the means for measuring the impact of such assistance on the State or regional economy; and (3) explain the methods to be used in administering and coordinating the technical services program.

(b) An annual technical services program which shall (1) identify specific methods, which may include contracts, for accomplishing particular goals and outline the likely impact of these methods in terms of the five-year plan; (2) contain a detailed budget, together with procedures for adequate fiscal control, fund accounting, and auditing, to assure proper disbursement for funds paid to the State under this chapter; and (3) indicate the specific responsibilities assigned to each participating institution in the State.

(Pub. L. 89–182, §4, Sept. 14, 1965, 79 Stat. 680.)

§1355. Conditions precedent to acceptance of plans and programs for review and approval by Secretary

The Secretary shall not accept the five-year plan of a State for review and approval under this

chapter unless the Governor of the State or his designee determines and certifies that the plan is consistent with State policies and objectives; and the Secretary shall not accept an annual technical services program for review and approval under this chapter unless the designated agency has, as certified thereto by the Governor or his designee—

(a) invited all qualified institutions in the State to submit proposals for providing technical services under the chapter;

(b) coordinated its programs with other States and with other publicly supported activities within the State, as appropriate;

(c) established adequate rules to insure that no officer or employee of the State, the designated agency, or any participating institution, shall receive compensation for technical services he performs, for which funds are provided under this chapter, from sources other than his employer, and shall not otherwise maintain any private interest in conflict with his public responsibility;

(d) determined that matching funds will be available from State or other non-Federal sources;

(e) determined that such technical services program does not provide a service which on the date of such certification is economically and readily available in such State from private technical services, professional consultants, or private institutions;

(f) planned no services specially related to a particular firm or company, public work, or other capital project except insofar as the services are of general concern to the industry and commerce of the community, State, or region;

(g) provided for making public all reports prepared in the course of furnishing technical services supported under this chapter or for making them available at cost to any person on request.

(Pub. L. 89–182, §5, Sept. 14, 1965, 79 Stat. 681.)

§1356. Review and approval of plans and programs by Secretary

The Secretary shall review the five-year plan and each annual program submitted by a designated agency under section 1354 or 1357 of this title, and shall approve only those which (1) bear the certification required by the Governor or his designee under section 1355 of this title; (2) comply with regulations and meet criteria that the Secretary shall promulgate and publish in the Federal Register; and (3) otherwise accomplish the purpose of this chapter.

(Pub. L. 89–182, §6, Sept. 14, 1965, 79 Stat. 681.)

§1357. Interstate cooperation in administration and coordination of plans and programs

Two or more States may cooperate in administering and coordinating their plans and programs supported under this chapter, in which event all or part of the sums authorized and payable under section 1360 of this title to all of the cooperating States may be paid to the designated agency, participating institutions, or persons authorized to receive them under the terms of the agreement between the cooperating States. When the cooperative agreement designates an interstate agency to act on behalf of all of the cooperating States, it shall submit to the Secretary for review and approval under section 1356 of this title an interstate five-year plan and an annual interstate technical services program which, as nearly as practicable, shall meet the requirements of sections 1354 and 1355 of this title.

(Pub. L. 89–182, §7, Sept. 14, 1965, 79 Stat. 681.)

§1358. Consent of Congress for interstate compacts; reservation of right to alter, amend, or repeal

(a) The consent of the Congress is given to any two or more States to enter into agreement or

compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance and in designating agencies, under section 1357 of this title, for accomplishing the purposes of this chapter.

(b) The right to alter, amend, or repeal this section, or consent granted by this section, is expressly reserved.

(Pub. L. 89–182, §8, Sept. 14, 1965, 79 Stat. 682.)

§1359. Advisory councils for technical services; appointment; functions; compensation and expenses

Each designated agency shall appoint an advisory council for technical services, the members of which shall represent broad community interests and shall be qualified to evaluate programs submitted under section 1354 of this title. The advisory council shall review each annual program, evaluate its relation to the purposes of this chapter, and report its findings to the designated agency and the Governor or his designee. Each report of each advisory council shall be available to the Secretary on request. Members of any such advisory council shall not be compensated for serving as such, but may be reimbursed for necessary expenses incurred by them in connection with attending meetings of any advisory council of which they are members.

(Pub. L. 89–182, §9, Sept. 14, 1965, 79 Stat. 682.)

TERMINATION OF ADVISORY COUNCILS

Advisory councils in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§1360. Appropriations and payments

(a) Authorization of appropriations

There are authorized to be appropriated for the purposes of this chapter, $10,000,000 for the fiscal year ending June 30, 1966; $20,000,000 for the fiscal year ending June 30, 1967; $30,000,000 for the fiscal year ending June 30, 1968; $6,600,000 for the fiscal year ending June 30, 1969; $10,000,000 for the fiscal year ending June 30, 1970; $10,000,000 for the fiscal year ending June 30, 1971.

(b) Authorization of annual payments; maximum amounts

From these amounts, the Secretary is authorized to make an annual payment to each designated agency, participating institution, or person authorized to receive payments in support of each approved technical services program. Maximum amounts which may be paid to the States under this subsection shall be fixed in accordance with regulations which the Secretary shall promulgate and publish in the Federal Register from time to time, considering (1) population according to the last decennial census; (2) business, commercial, industrial and economic development and productive efficiency; and (3) technical resources.

(c) Payments for programs of special merit or additional programs

The Secretary may reserve an amount equal to not more than 20 per centum of the total amount appropriated for each year under this section and is authorized to make payments from such amount to any designated agency or participating institution for technical services programs which he determines have special merit or to any qualified institution for additional programs which he determines are necessary to accomplish the purposes of this chapter, under criteria and regulations that he shall promulgate and publish in the Federal Register.

(d) Expenses of administration

An amount equal to not more than 5 per centum of the total amount appropriated each year under this section shall be available to the Secretary for the direct expenses of administering this chapter.

(e) Limitations on payments

(1) No amount paid for any technical services program under subsection (b) or (c) of this section shall exceed the amount of non-Federal funds expended to carry out such program: *Provided*, That the Secretary may pay an amount not to exceed $25,000 a year for each of the first three fiscal years to each designated agency, other than a designated agency under section 1357 of this title, to assist in the preparation of the five-year plan and the initial annual technical services programs, without regard to any of the preceding requirements of this section.

(2) No funds appropriated pursuant to the provisions of this section shall be paid to any designated agency, participating institution, or person on account of any such agency or institution, to carry out any technical services activity or program in any State if such activity or program duplicates any activity or program readily available in such State from Federal or State agencies, including publicly supported institutions of higher learning in such State.

(Pub. L. 89–182, §10, Sept. 14, 1965, 79 Stat. 682; Pub. L. 90–422, July 24, 1968, 82 Stat. 423.)

AMENDMENTS

1968—Subsec. (a). Pub. L. 90–422 authorized appropriation of $6,600,000 for fiscal year ending June 30, 1969, $10,000,000 for fiscal year ending June 30, 1970, and $10,000,000 for fiscal year ending June 30, 1971.

§1361. Reference services to assist designated agencies to obtain information outside State

The Secretary is authorized and directed to aid designated agencies in carrying out their technical services programs by providing reference services which a designated agency may use to obtain scientific, technical, and engineering information from sources outside the State or States which it serves, for the purposes of this chapter.

(Pub. L. 89–182, §11, Sept. 14, 1965, 79 Stat. 683.)

§1362. Rules and regulations

The Secretary is authorized to establish such policies, standards, criteria, and procedures and to prescribe such rules and regulations as he may deem necessary or appropriate for the administration of this chapter.

(Pub. L. 89–182, §12, Sept. 14, 1965, 79 Stat. 683.)

§1363. Prohibition against control over educational institutions; functions or responsibilities of other departments not affected

(a) Control of educational institutions

Nothing contained in this chapter shall be construed as authorizing a department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over, or impose any requirements or conditions with respect to the personnel, curriculum, methods of instruction, or administration of any educational institution.

(b) Functions of other agencies

Nothing contained in this chapter shall be deemed to affect the functions or responsibilities under law of any other department or agency of the United States.

(Pub. L. 89–182, §13, Sept. 14, 1965, 79 Stat. 683.)

§1364. Annual report by designated agencies to Secretary; reports by Secretary to President and Congress

(a) Agency reports

Each designated agency shall make an annual report to the Secretary on or before the first day of September of each year on the work accomplished under the technical services program and the status of current services, together with a detailed statement of the amounts received under any of the provisions of this chapter during the preceding fiscal year, and of their disbursement.

(b) Reports of Secretary of Commerce

The Secretary shall make a complete report with respect to the administration of this chapter to the President and the Congress not later than January 31 following the end of each fiscal year for which amounts are appropriated pursuant to this chapter.

(Pub. L. 89–182, §14, Sept. 14, 1965, 79 Stat. 683.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which a report related to the "State Technical Services Act" required under "15 U.S.C. 7364", probably referring to the report related to the State Technical Services Act of 1965 required under subsec. (b) of this section, is listed on page 52), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

§1365. Public committee; appointment; functions; report

Within three years from September 14, 1965, the Secretary shall appoint a public committee, none of the members of which shall have been directly concerned with the preparation of plans, administration of programs or participation in programs under this chapter. The Committee shall evaluate the significance and impact of the program under this chapter and make recommendations concerning the program. A report shall be transmitted to the Secretary within sixty days after the end of such three-year period.

(Pub. L. 89–182, §15, Sept. 14, 1965, 79 Stat. 684.)

§1366. Termination of payments for noncompliance with law or diversion of funds

Whenever the Secretary, after reasonable notice and opportunity for hearing to any designated agency or participating institution receiving funds under this chapter finds that—

(a) the agency or institution is not complying substantially with provisions of this chapter, with the regulations promulgated by the Secretary, or with the approved annual technical services program; or

(b) any funds paid to the agency or institution under the provisions of this chapter have been lost, misapplied, or otherwise diverted from the purposes for which they were paid or furnished—

the Secretary shall notify such agency or institution that no further payments will be made under the provisions of this chapter until he is satisfied that there is substantial compliance or the diversion has been corrected or, if compliance or correction is impossible, until such agency or institution repays or arranges for the repayment of Federal funds which have been diverted or improperly expended.

(Pub. L. 89–182, §16, Sept. 14, 1965, 79 Stat. 684.)

§1367. Repayments

Upon notice by the Secretary to any designated agency or participating institution that no further payments will be made pending substantial compliance, correction, or repayment under section 1366 of this title, any funds which may have been paid to such agency or institution under this chapter and which are not expended by the agency or institution on the date of such notice, shall be repaid to the Secretary and be deposited to the account of the appropriations from which they originally were paid.

(Pub. L. 89–182, §17, Sept. 14, 1965, 79 Stat. 684.)

§1368. Records

(a) Grant recipients

Each recipient of a grant under this chapter shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and the disposition of such grant, the total cost of the related approved program, the amount and nature of the cost of the program supplied by other sources, and such other records as will facilitate an effective audit.

(b) Access to records of recipients

The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the recipient that are pertinent to amounts received under this chapter.

(Pub. L. 89–182, §18, Sept. 14, 1965, 79 Stat. 684.)

CHAPTER 38—TRAFFIC AND MOTOR VEHICLE SAFETY

§1381. Repealed. Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379

Section, Pub. L. 89–563, §1, Sept. 9, 1966, 80 Stat. 718, provided congressional declaration of purpose of this chapter. See section 30101 of Title 49, Transportation.

SHORT TITLE

Pub. L. 89–563, title I, §101, Sept. 9, 1966, 80 Stat. 718, provided that Pub. L. 89–563 could be cited as the "National Traffic and Motor Vehicle Safety Act of 1966", prior to repeal by Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379.

SUBCHAPTER I—MOTOR VEHICLE SAFETY STANDARDS

PART A—GENERAL PROVISIONS

§§1391, 1392. Repealed. Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379

Section 1391, Pub. L. 89–563, title I, §102, Sept. 9, 1966, 80 Stat. 718; Pub. L. 91–265, §2, May 22, 1970, 84 Stat. 262; Pub. L. 93–492, title I, §110(a), title II, §201, Oct. 27, 1974, 88 Stat. 1484, provided definitions for purposes of this subchapter. See sections 30102, 30111, and 30125 of Title 49, Transportation.

Section 1392, Pub. L. 89–563, title I, §103, Sept. 9, 1966, 80 Stat. 719; Pub. L. 89–670, Oct. 15, 1966, 80

Stat. 931; Pub. L. 93–492, title II, §202, Oct. 27, 1974, 88 Stat. 1484; Pub. L. 94–346, §§2, 3, July 8, 1976, 90 Stat. 815; Pub. L. 97–331, §3, Oct. 15, 1982, 96 Stat. 1619; Pub. L. 102–240, title II, §2505, Dec. 18, 1991, 105 Stat. 2084, related to motor vehicle safety standards. See sections 30103, 30111, and 30125 of Title 49.

§1393. Repealed. Pub. L. 93–492, title I, §107(b), Oct. 27, 1974, 88 Stat. 1482

Section, Pub. L. 89–563, title I, §104, Sept. 9, 1966, 80 Stat. 720; Pub. L. 93–492, title I, §107(a), Oct. 27, 1974, 88 Stat. 1481, provided for National Motor Vehicle Safety Advisory Council; subsec. (a) relating to establishment and membership of Council, representative of the general public, publication of names of members, and selection of Chairman; subsec. (b) relating to consultations with Secretary of Transportation; and subsec. (c) relating to compensation and travel expenses of members.

EFFECTIVE DATE OF REPEAL

Section 107(b) of Pub. L. 93–492 provided that the repeal of this section is effective Oct. 1, 1977, prior to repeal by Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379.

§§1394 to 1410b. Repealed. Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379

Section 1394, Pub. L. 89–563, title I, §105, Sept. 9, 1966, 80 Stat. 720, related to judicial review of orders establishing standards, presentation of additional evidence before Secretary, and certified copy of transcript of record. See sections 30103 and 30161 of Title 49, Transportation.

Section 1395, Pub. L. 89–563, title I, §106, Sept. 9, 1966, 80 Stat. 721, related to research, testing, development, and training in traffic and vehicle safety.

Section 1396, Pub. L. 89–563, title I, §107, Sept. 9, 1966, 80 Stat. 721, related to cooperation of Secretary with governmental and private agencies in developing motor vehicle safety standards and methods for determining compliance with such standards. See sections 30111 and 30166 of Title 49.

Section 1397, Pub. L. 89–563, title I, §108, Sept. 9, 1966, 80 Stat. 722; Pub. L. 93–492, title I, §103(a), title II, §203, Oct. 27, 1974, 88 Stat. 1477, 1485; Pub. L. 100–562, §2(a)–(d), Oct. 31, 1988, 102 Stat. 2818, 2824, prohibited manufacture, sale, delivery, or importation of substandard vehicles and rendering inoperative certain devices, elements of design, or motor vehicle equipment. See sections 30103, 30112, 30114, 30115, 30117 to 30122, 30125, 30126, 30141 to 30147, 30166, and 30167 of Title 49.

Section 1398, Pub. L. 89–563, title I, §109, Sept. 9, 1966, 80 Stat. 723; Pub. L. 93–492, title I, §103(b), Oct. 27, 1974, 88 Stat. 1478, related to civil penalties for violations of former section 1397 of this title and Secretary's authority to compromise such penalties. See section 30165 of Title 49.

Section 1399, Pub. L. 89–563, title I, §110, Sept. 9, 1966, 80 Stat. 723; Pub. L. 93–492, title I, §§102(b)(2), 103(c), Oct. 27, 1974, 88 Stat. 1477, 1478, related to jurisdiction of United States district courts for injunctive relief for violations of this subchapter, criminal contempt proceedings, venue, subpoenas, and designation of agent for service of process. See sections 30163 to 30165 of Title 49.

Section 1400, Pub. L. 89–563, title I, §111, Sept. 9, 1966, 80 Stat. 724, required manufacturer or distributor to repurchase or repair motor vehicle or motor vehicle equipment not in compliance with safety standards and provided for civil action against manufacturer or distributor refusing to repurchase or repair. See section 30116 of Title 49.

Section 1401, Pub. L. 89–563, title I, §112, Sept. 9, 1966, 80 Stat. 725; Pub. L. 91–265, §3, May 22, 1970, 84 Stat. 262; Pub. L. 93–492, title I, §104, Oct. 27, 1974, 88 Stat. 1478, related to inspections and investigations for enforcement of this subchapter and of motor vehicle accidents. See sections 30117, 30166, and 30167 of Title 49.

Section 1402, Pub. L. 89–563, title I, §113, as added Pub. L. 93–492, title I, §105, Oct. 27, 1974, 88 Stat. 1480, required manufacturer opposing action of Secretary under this chapter on ground of increased cost to submit cost information necessary to evaluation of manufacturer's statement. See section 30167 of Title 49.

A prior section 1402, Pub. L. 89–563, title I, §113, Sept. 9, 1966, 80 Stat. 725; Pub. L. 91–265, §4(a)–(c), May 22, 1970, 84 Stat. 262, related to discovery of defects by manufacturer, prior to repeal by section 102(a) of Pub. L. 93–492 effective on sixtieth day after Oct. 27, 1974.

Section 1403, Pub. L. 89–563, title I, §114, Sept. 9, 1966, 80 Stat. 726, related to certification of conformity with motor vehicle safety standards and form and placement of certification. See section 30115 of Title 49.

Section 1404, Pub. L. 89–563, title I, §115, Sept. 9, 1966, 80 Stat. 727, as amended by Pub. L. 89–670, §§3(f)(1), 8(i), Oct. 15, 1966, 80 Stat. 931, 943, and Pub. L. 90–83, §10(b), Sept. 11, 1967, 81 Stat. 224, authorized Secretary of Transportation to carry out the provisions of this chapter through a National Traffic

Safety Bureau, headed by a Traffic Safety Director.

Section 1405, Pub. L. 89–563, title I, §116, Sept. 9, 1966, 80 Stat. 727, related to effect of this chapter on antitrust laws of the United States. See section 30103 of Title 49.

Section 1406, Pub. L. 89–563, title I, §118, Sept. 9, 1966, 80 Stat. 728, required Secretary, in exercising authority under this subchapter, to utilize services, research, and testing facilities of public agencies to maximum extent practicable.

Section 1407, Pub. L. 89–563, title I, §119, Sept. 9, 1966, 80 Stat. 728, authorized Secretary to issue, amend, and revoke such rules and regulations as Secretary deemed necessary to carry out this subchapter.

Section 1408, Pub. L. 89–563, title I, §120, Sept. 9, 1966, 80 Stat. 728; Pub. L. 91–265, §5, May 22, 1970, 84 Stat. 263; Pub. L. 93–492, title I, §110(b), Oct. 27, 1974, 88 Stat. 1484, related to annual report to Congress. See section 30169 of Title 49.

Section 1409, Pub. L. 89–563, title I, §121, Sept. 9, 1966, 80 Stat. 728; Pub. L. 91–265, §1, May 22, 1970, 84 Stat. 262; Pub. L. 92–548, §2, Oct. 25, 1972, 86 Stat. 1159; Pub. L. 93–492, title I, §101, Oct. 27, 1974, 88 Stat. 1470; Pub. L. 94–346, §1, July 8, 1976, 90 Stat. 815; Pub. L. 97–331, §2(a), Oct. 15, 1982, 96 Stat. 1619, authorized appropriations to carry out this chapter for fiscal years 1983, 1984, and 1985.

Section 1410, Pub. L. 89–563, title I, §123, as added Pub. L. 90–283, Apr. 10, 1968, 82 Stat. 72; amended Pub. L. 92–548, §3, Oct. 25, 1972, 86 Stat. 1159, related to exemption from safety standards of motor vehicles. See section 30113 of Title 49.

Section 1410a, Pub. L. 89–563, title I, §124, as added Pub. L. 93–492, title I, §106, Oct. 27, 1974, 88 Stat. 1481, related to petitions of interested persons to commence proceedings on orders issued under sections 1392 and 1412(b) of this title. See sections 30103 and 30162 of Title 49.

Section 1410b, Pub. L. 89–563, title I, §125, as added Pub. L. 93–492, title I, §109, Oct. 27, 1974, 88 Stat. 1482; amended S. Res. 4, Feb. 4, 1977; H. Res. 549, Mar. 25, 1980, related to occupant restraint systems. See section 30124 of Title 49.

PART B—DISCOVERY, NOTIFICATION, AND REMEDY OF MOTOR VEHICLE DEFECTS

§§1411 to 1420. Repealed. Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379

Section 1411, Pub. L. 89–563, title I, §151, as added Pub. L. 93–492, title I, §102(a), Oct. 27, 1974, 88 Stat. 1470, related to notification respecting manufacturer's finding of defect or failure to comply with motor vehicle safety standard. See section 30118 of Title 49, Transportation.

Section 1412, Pub. L. 89–563, title I, §152, as added Pub. L. 93–492, title I, §102(a), Oct. 27, 1974, 88 Stat. 1470, related to notification of Secretary's finding of defect or failure to comply with motor vehicle safety standard, publication in Federal Register, and opportunity to present data, views, and arguments. See section 30118 of Title 49.

Section 1413, Pub. L. 89–563, title I, §153, as added Pub. L. 93–492, title I, §102(a), Oct. 27, 1974, 88 Stat. 1471; amended Pub. L. 97–331, §4(b), Oct. 15, 1982, 96 Stat. 1620; Pub. L. 102–240, title II, §2504(a), Dec. 18, 1991, 105 Stat. 2083, related to contents, time, and method of notification regarding manufacturer's finding of defect or failure to comply with motor vehicle safety standard. See sections 30118 and 30119 of Title 49.

Section 1414, Pub. L. 89–563, title I, §154, as added Pub. L. 93–492, title I, §102(a), Oct. 27, 1974, 88 Stat. 1472; amended Pub. L. 102–240, title II, §2504(b), Dec. 18, 1991, 105 Stat. 2083, related to remedy for defect or failure to comply with motor vehicle safety standard. See sections 30119 and 30120 of Title 49.

Section 1415, Pub. L. 89–563, title I, §155, as added Pub. L. 93–492, title I, §102(a), Oct. 27, 1974, 88 Stat. 1474; amended Pub. L. 98–620, title IV, §402(17), Nov. 8, 1984, 98 Stat. 3358, related to enforcement of notification and remedy orders. See section 30121 of Title 49.

Section 1416, Pub. L. 89–563, title I, §156, as added Pub. L. 93–492, title I, §102(a), Oct. 27, 1974, 88 Stat. 1475, related to hearing on reasonableness of notification and remedy for defect or failure to comply with motor vehicle safety standard. See sections 30118 and 30120 of Title 49.

Section 1417, Pub. L. 89–563, title I, §157, as added Pub. L. 93–492, title I, §102(a), Oct. 27, 1974, 88 Stat. 1475, related to exemption for inconsequential defect or failure to comply with motor vehicle safety standard. See sections 30118 and 30120 of Title 49.

Section 1418, Pub. L. 89–563, title I, §158, as added Pub. L. 93–492, title I, §102(a), Oct. 27, 1974, 88 Stat.

1475; amended Pub. L. 95–599, title III, §317, Nov. 6, 1978, 92 Stat. 2752; Pub. L. 97–331, §4(a), Oct. 15, 1982, 96 Stat. 1619, related to information, disclosure, and recordkeeping, and to confidential information. See sections 30117, 30166, and 30167 of Title 49.

Section 1419, Pub. L. 89–563, title I, §159, as added Pub. L. 93–492, title I, §102(a), Oct. 27, 1974, 88 Stat. 1476, provided definitions for purposes of this part. See section 30102 of Title 49.

Section 1420, Pub. L. 89–563, title I, §160, as added Pub. L. 93–492, title I, §102(a), Oct. 27, 1974, 88 Stat. 1477, provided that this part did not create or affect warranty obligations under State or Federal law and that consumer remedies under this part were in addition to, and not in lieu of, rights or remedies under State or Federal law. See section 30103 of Title 49.

SUBCHAPTER II—TIRE SAFETY

§§1421 to 1426. Repealed. Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379

Section 1421, Pub. L. 89–563, title II, §201, Sept. 9, 1966, 80 Stat. 728, related to labeling for pneumatic tires and required contents of label.

Section 1422, Pub. L. 89–563, title II, §202, Sept. 9, 1966, 80 Stat. 729, related to maximum permissible load standards for original equipment tires. See section 30123 of Title 49, Transportation.

Section 1423, Pub. L. 89–563, title II, §203, Sept. 9, 1966, 80 Stat. 729, related to uniform quality grading system for motor vehicle tires and elimination of deceptive and confusing tire nomenclature. See section 30123 of Title 49.

Section 1424, Pub. L. 89–563, title II, §204, Sept. 9, 1966, 80 Stat. 729; Pub. L. 93–492, title I, §110(c), Oct. 27, 1974, 88 Stat. 1484, related to regrooved tires. See sections 30123, 30163, and 30165 of Title 49.

Section 1425, Pub. L. 89–563, title II, §205, Sept. 9, 1966, 80 Stat. 729, provided that, in event of conflict, orders and regulations issued by Secretary under this subchapter and subchapter I of this chapter applicable to motor vehicle tires were to prevail over orders and interpretations issued by Federal Trade Commission. See section 30123 of Title 49.

Section 1426, Pub. L. 89–563, title II, §206, as added Pub. L. 91–265, §6, May 22, 1970, 84 Stat. 263, related to safety standards for retreaded tires.

SUBCHAPTER III—RESEARCH AND TEST FACILITIES

§1431. Repealed. Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379

Section, Pub. L. 89–563, title III, §301, as added Pub. L. 91–265, §7, May 22, 1970, 84 Stat. 263; amended H. Res. 988, Jan. 3, 1975; S. Res. 4, Feb. 4, 1977; H. Res. 549, Mar. 25, 1980, related to facilities for research and testing in traffic safety.

CHAPTER 39—FAIR PACKAGING AND LABELING PROGRAM

Sec.

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§1451. Congressional declaration of policy

Informed consumers are essential to the fair and efficient functioning of a free market economy. Packages and their labels should enable consumers to obtain accurate information as to the quantity of the contents and should facilitate value comparisons. Therefore, it is hereby declared to be the policy of the Congress to assist consumers and manufacturers in reaching these goals in the marketing of consumer goods.

(Pub. L. 89–755, §2, Nov. 3, 1966, 80 Stat. 1296.)

EFFECTIVE DATE

Pub. L. 89–755, §13, Nov. 3, 1966, 80 Stat. 1302, provided that: "This Act [enacting this chapter] shall take effect on July 1, 1967: *Provided*, That the Secretary (with respect to any consumer commodity which is a food, drug, device, or cosmetic, as those terms are defined by the Federal Food, Drug, and Cosmetic Act) [section 301 et seq. of Title 21, Food and Drugs], and the Commission (with respect to any other consumer commodity) may by regulation postpone, for an additional twelve-month period, the effective date of this Act [this chapter] with respect to any class or type of consumer commodity on the basis of a finding that such a postponement would be in the public interest."

SHORT TITLE

Pub. L. 89–755, §1, Nov. 3, 1966, 80 Stat. 1296, provided: "That this Act [enacting this chapter] may be cited as the 'Fair Packaging and Labeling Act'."

§1452. Unfair and deceptive packaging and labeling; scope of prohibition

(a) Nonconforming labels

It shall be unlawful for any person engaged in the packaging or labeling of any consumer commodity (as defined in this chapter) for distribution in commerce, or for any person (other than a common carrier for hire, a contract carrier for hire, or a freight forwarder for hire) engaged in the distribution in commerce of any packaged or labeled consumer commodity, to distribute or to cause to be distributed in commerce any such commodity if such commodity is contained in a package, or if there is affixed to that commodity a label, which does not conform to the provisions of this chapter and of regulations promulgated under the authority of this chapter.

(b) Exemptions

The prohibition contained in subsection (a) of this section shall not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons (1) are engaged in the packaging or labeling of such commodities, or (2) prescribe or specify by any means the manner in which such commodities are packaged or labeled.

(Pub. L. 89–755, §3, Nov. 3, 1966, 80 Stat. 1296.)

§1453. Requirements of labeling; placement, form, and contents of statement of quantity; supplemental statement of quantity

(a) Contents of label

No person subject to the prohibition contained in section 1452 of this title shall distribute or cause to be distributed in commerce any packaged consumer commodity unless in conformity with regulations which shall be established by the promulgating authority pursuant to section 1455 of this title which shall provide that—

(1) The commodity shall bear a label specifying the identity of the commodity and the name and place of business of the manufacturer, packer, or distributor;

(2) The net quantity of contents (in terms of weight or mass, measure, or numerical count) shall be separately and accurately stated in a uniform location upon the principal display panel of that label, using the most appropriate units of both the customary inch/pound system of measure, as provided in paragraph (3) of this subsection, and, except as provided in paragraph (3)(A)(ii) or paragraph (6) of this subsection, the SI metric system;

(3) The separate label statement of net quantity of contents appearing upon or affixed to any package—

(A)(i) if on a package labeled in terms of weight, shall be expressed in pounds, with any remainder in terms of ounces or common or decimal fractions of the pound; or in the case of liquid measure, in the largest whole unit (quarts, quarts and pints, or pints, as appropriate) with any remainder in terms of fluid ounces or common or decimal fractions of the pint or quart;

(ii) if on a random package, may be expressed in terms of pounds and decimal fractions of the pound carried out to not more than three decimal places and is not required to, but may, include a statement in terms of the SI metric system carried out to not more than three decimal places;

(iii) if on a package labeled in terms of linear measure, shall be expressed in terms of the largest whole unit (yards, yards and feet, or feet, as appropriate) with any remainder in terms of inches or common or decimal fractions of the foot or yard;

(iv) if on a package labeled in terms of measure of area, shall be expressed in terms of the largest whole square unit (square yards, square yards and square feet, or square feet, as appropriate) with any remainder in terms of square inches or common or decimal fractions of the square foot or square yard;

(B) shall appear in conspicuous and easily legible type in distinct contrast (by topography, layout, color, embossing, or molding) with other matter on the package;

(C) shall contain letters or numerals in a type size which shall be (i) established in relationship to the area of the principal display panel of the package, and (ii) uniform for all packages of substantially the same size; and

(D) shall be so placed that the lines of printed matter included in that statement are generally parallel to the base on which the package rests as it is designed to be displayed; and

(4) The label of any package of a consumer commodity which bears a representation as to the number of servings of such commodity contained in such package shall bear a statement of the net quantity (in terms of weight or mass, measure, or numerical count) of each such serving.

(5) For purposes of paragraph (3)(A)(ii) of this subsection the term "random package" means a package which is one of a lot, shipment, or delivery of packages of the same consumer commodity with varying weights or masses, that is, packages with no fixed weight or mass pattern.

(6) The requirement of paragraph (2) that the statement of net quantity of contents include a statement in terms of the SI metric system shall not apply to foods that are packaged at the retail store level.

(b) Supplemental statements

No person subject to the prohibition contained in section 1452 of this title shall distribute or cause to be distributed in commerce any packaged consumer commodity if any qualifying words or phrases appear in conjunction with the separate statement of the net quantity of contents required by subsection (a) of this section, but nothing in this subsection or in paragraph (2) of subsection (a) of this section shall prohibit supplemental statements, at other places on the package, describing in nondeceptive terms the net quantity of contents: *Provided*, That such supplemental statements of net quantity of contents shall not include any term qualifying a unit of weight or mass, measure, or count that tends to exaggerate the amount of the commodity contained in the package.

(Pub. L. 89–755, §4, Nov. 3, 1966, 80 Stat. 1297; Pub. L. 102–245, title I, §107(a), Feb. 14, 1992, 106 Stat. 13; Pub. L. 102–329, §§1, 3, Aug. 3, 1992, 106 Stat. 847, 848.)

AMENDMENTS

1992—Pub. L. 102–245, §107, which directed amendment of section, effective two years after Feb. 14, 1992, by substituting "weight or mass" for "weight" in subsecs. (a)(2), (4), (5) and (b) and "weights or masses" for "weights" in subsec. (a)(5), by inserting ", using the most appropriate units of the SI metric system as the primary system for measuring quantity" after "panel of that label" in subsec. (a)(2), by substituting "that also displays the avoirdupois system of measure, and that contains" for "containing" in subsec. (a)(3)(A)(i), by inserting "that also displays the avoirdupois system of measure" after "random package" in subsec. (a)(3)(A)(ii), by inserting "that also displays the avoirdupois system of measure" after "linear measure" in subsec. (a)(3)(A)(iii), and by inserting "that also displays the avoirdupois system of measure" in subsec. (a)(3)(A)(iv), was repealed by Pub. L. 102–329, §3.

Subsec. (a)(2). Pub. L. 102–329, §1(1), (3), substituted "weight or mass" for "weight" and inserted before semicolon at end ", using the most appropriate units of both the customary inch/pound system of measure, as provided in paragraph (3) of this subsection, and, except as provided in paragraph (3)(A)(ii) or paragraph (6) of this subsection, the SI metric system".

Subsec. (a)(3)(A)(i). Pub. L. 102–329, §1(4)(A), substituted "labeled in terms of weight, shall be expressed in pounds" for "containing less than four pounds or one gallon and labeled in terms of weight or fluid measure, shall, unless subparagraph (ii) applies and such statement is set forth in accordance with such subparagraph, be expressed both in ounces (with identification as to avoirdupois or fluid ounces) and, if applicable, in pounds for weight units".

Subsec. (a)(3)(A)(ii). Pub. L. 102–329, §1(4)(B), (C), substituted "three" for "two" and inserted before semicolon at end "and is not required to, but may, include a statement in terms of the SI metric system carried out to not more than three decimal places".

Subsec. (a)(3)(A)(iii). Pub. L. 102–329, §1(4)(D), substituted "in terms of" for "both in terms of inches and".

Subsec. (a)(3)(A)(iv). Pub. L. 102–329, §1(4)(E), substituted "in terms of" for "both in terms of square inches and".

Subsec. (a)(4). Pub. L. 102–329, §1(1), substituted "weight or mass" for "weight".

Subsec. (a)(5). Pub. L. 102–329, §1(1), (2), substituted "weight or mass" for "weight" and "weights or masses" for "weights".

Subsec. (a)(6). Pub. L. 102–329, §1(5), added par. (6).

Subsec. (b). Pub. L. 102–329, §1(1), substituted "weight or mass" for "weight".

EFFECTIVE DATE OF 1992 AMENDMENTS

Pub. L. 102–329, §2, Aug. 3, 1992, 106 Stat. 847, provided that: "The amendments made by section 1 [amending this section and section 1454 of this title] shall take effect on February 14, 1994. The amendments made by section 1 shall have no effect on the sale or distribution of products whose labels have been printed before such effective date. Nothing in the amendments made by section 1 shall apply to unit pricing, advertising, recipe programs, nutrition labeling, or other general pricing information. Nothing in the amendments made by section 1 shall be construed to require changes in package size or to affect in any way the size of packages."

Section 107(b) of Pub. L. 102–245, which provided that section 107 of Pub. L. 102–245 which amended this section and section 1454 of this title was to take effect 2 years after Feb. 14, 1992, was repealed by Pub. L. 102–329, §3, Aug. 3, 1992, 106 Stat. 848.

§1454. Rules and regulations

(a) Promulgating authority

The authority to promulgate regulations under this chapter is vested in (A) the Secretary of Health and Human Services (referred to hereinafter as the "Secretary") with respect to any consumer commodity which is a food, drug, device, or cosmetic, as each such term is defined by section 321 of title 21; and (B) the Federal Trade Commission (referred to hereinafter as the "Commission") with respect to any other consumer commodity.

(b) Exemption of commodities from regulations

If the promulgating authority specified in this section finds that, because of the nature, form, or quantity of a particular consumer commodity, or for other good and sufficient reasons, full

compliance with all the requirements otherwise applicable under section 1453 of this title is impracticable or is not necessary for the adequate protection of consumers, the Secretary or the Commission (whichever the case may be) shall promulgate regulations exempting such commodity from those requirements to the extent and under such conditions as the promulgating authority determines to be consistent with section 1451 of this title.

(c) Scope of additional regulations

Whenever the promulgating authority determines that regulations containing prohibitions or requirements other than those prescribed by section 1453 of this title are necessary to prevent the deception of consumers or to facilitate value comparisons as to any consumer commodity, such authority shall promulgate with respect to that commodity regulations effective to—

(1) establish and define standards for characterization of the size of a package enclosing any consumer commodity, which may be used to supplement the label statement of net quantity of contents of packages containing such commodity, but this paragraph shall not be construed as authorizing any limitation on the size, shape, weight or mass, dimensions, or number of packages which may be used to enclose any commodity;

(2) regulate the placement upon any package containing any commodity, or upon any label affixed to such commodity, of any printed matter stating or representing by implication that such commodity is offered for retail sale at a price lower than the ordinary and customary retail sale price or that a retail sale price advantage is accorded to purchasers thereof by reason of the size of that package or the quantity of its contents;

(3) require that the label on each package of a consumer commodity (other than one which is a food within the meaning of section 321(f) of title 21) bear (A) the common or usual name of such consumer commodity, if any, and (B) in case such consumer commodity consists of two or more ingredients, the common or usual name of each such ingredient listed in order of decreasing predominance, but nothing in this paragraph shall be deemed to require that any trade secret be divulged; or

(4) prevent the nonfunctional-slack-fill of packages containing consumer commodities.

For purposes of paragraph (4) of this subsection, a package shall be deemed to be nonfunctionally slack-filled if it is filled to substantially less than its capacity for reasons other than (A) protection of the contents of such package or (B) the requirements of machines used for enclosing the contents in such package.

(d) Development by manufacturers, packers, and distributors of voluntary product standards

Whenever the Secretary of Commerce determines that there is undue proliferation of the weights or masses, measures, or quantities in which any consumer commodity or reasonably comparable consumer commodities are being distributed in packages for sale at retail and such undue proliferation impairs the reasonable ability of consumers to make value comparisons with respect to such consumer commodity or commodities, he shall request manufacturers, packers, and distributors of the commodity or commodities to participate in the development of a voluntary product standard for such commodity or commodities under the procedures for the development of voluntary products standards established by the Secretary pursuant to section 272 of this title. Such procedures shall provide adequate manufacturer, packer, distributor, and consumer representation.

(e) Report and recommendations to Congress upon industry failure to develop or abide by voluntary product standards

If (1) after one year after the date on which the Secretary of Commerce first makes the request of manufacturers, packers, and distributors to participate in the development of a voluntary product standard as provided in subsection (d) of this section, he determines that such a standard will not be published pursuant to the provisions of such subsection (d), or (2) if such a standard is published and the Secretary of Commerce determines that it has not been observed, he shall promptly report such

determination to the Congress with a statement of the efforts that have been made under the voluntary standards program and his recommendation as to whether Congress should enact legislation providing regulatory authority to deal with the situation in question.

(Pub. L. 89–755, §5, Nov. 3, 1966, 80 Stat. 1298; Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 102–245, title I, §107(a)(1), (2), Feb. 14, 1992, 106 Stat. 13; Pub. L. 102–329, §§1(1), (2), 3, Aug. 3, 1992, 106 Stat. 847, 848.)

AMENDMENTS

1992—Pub. L. 102–245, §107(a)(1), (2), (b), which directed amendment of section, effective two years after Feb. 14, 1992, by substituting "weight or mass" for "weight" in subsec. (c)(1) and "weights or masses" for "weights" in subsec. (d), was repealed by Pub. L. 102–329, §3.

Subsec. (c)(1). Pub. L. 102–329, §1(1), substituted "weight or mass" for "weight".

Subsec. (d). Pub. L. 102–329, §1(2), substituted "weights or masses" for "weights".

CHANGE OF NAME

"Secretary of Health and Human Services" substituted for "Secretary of Health, Education, and Welfare" in subsec. (a) pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–329 effective Feb. 14, 1994, but with such amendment to have no effect on the sale or distribution of products whose labels have been printed before such date, no application to unit pricing, advertising, recipe programs, nutrition labeling, or other general pricing information, and no construction requiring changes in package size or affecting in any way the size of packages, see section 2 of Pub. L. 102–329, set out as a note under section 1453 of this title.

§1455. Procedure for promulgation of regulations

(a) Hearings by Secretary of Health and Human Services

Regulations promulgated by the Secretary under section 1453 or 1454 of this title shall be promulgated, and shall be subject to judicial review, pursuant to the provisions of subsections (e), (f), and (g) of section 371 of title 21. Hearings authorized or required for the promulgation of any such regulations by the Secretary shall be conducted by the Secretary or by such officer or employees of the Department of Health and Human Services as he may designate for that purpose.

(b) Judicial review; hearings by Federal Trade Commission

Regulations promulgated by the Commission under section 1453 or 1454 of this title shall be promulgated, and shall be subject to judicial review, by proceedings taken in conformity with the provisions of subsections (e), (f), and (g) of section 371 of title 21 in the same manner, and with the same effect, as if such proceedings were taken by the Secretary pursuant to subsection (a) of this section. Hearings authorized or required for the promulgation of any such regulations by the Commission shall be conducted by the Commission or by such officer or employee of the Commission as the Commission may designate for that purpose.

(c) Cooperation with other departments and agencies

In carrying into effect the provisions of this chapter, the Secretary and the Commission are authorized to cooperate with any department or agency of the United States, with any State, Commonwealth, or possession of the United States, and with any department, agency, or political subdivision of any such State, Commonwealth, or possession.

(d) Returnable or reusable glass containers for beverages

No regulation adopted under this chapter shall preclude the continued use of returnable or reusable glass containers for beverages in inventory or with the trade as of the effective date of this Act, nor shall any regulation under this chapter preclude the orderly disposal of packages in inventory or with the trade as of the effective date of such regulation.

(Pub. L. 89–755, §6, Nov. 3, 1966, 80 Stat. 1299; Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

The effective date of this Act, referred to in subsec. (d), refers to the effective date of Pub. L. 89–755 which enacted this chapter to take effect July 1, 1967. See Effective Date note set out under section 1451 of this title.

CHANGE OF NAME

"Department of Health and Human Services" substituted for "Department of Health, Education, and Welfare" in subsec. (a), pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

§1456. Enforcement

(a) Misbranded consumer commodities

Any consumer commodity which is a food, drug, device, or cosmetic, as each such term is defined by section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321), and which is introduced or delivered for introduction into commerce in violation of any of the provisions of this chapter, or the regulations issued pursuant to this chapter, shall be deemed to be misbranded within the meaning of chapter III of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 331 et seq.], but the provisions of section 303 of that Act (21 U.S.C. 333) shall have no application to any violation of section 1452 of this title.

(b) Unfair or deceptive acts or practices in commerce

Any violation of any of the provisions of this chapter, or the regulations issued pursuant to this chapter, with respect to any consumer commodity which is not a food, drug, device, or cosmetic, shall constitute an unfair or deceptive act or practice in commerce in violation of section 45(a) of this title and shall be subject to enforcement under section 45(b) of this title.

(c) Imports

In the case of any imports into the United States of any consumer commodity covered by this chapter, the provisions of sections 1453 and 1454 of this title shall be enforced by the Secretary of the Treasury pursuant to section 801(a) and (b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381).

(Pub. L. 89–755, §7, Nov. 3, 1966, 80 Stat. 1300.)

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsecs. (a) and (c), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended. Chapter III of the Act is classified generally to subchapter III (§331 et seq.) of chapter 9 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

§1457. Omitted

CODIFICATION

Section, Pub. L. 89–755, §8, Nov. 3, 1966, 80 Stat. 1300; Pub. L. 93–608, §3(2), Jan. 2, 1975, 88 Stat. 1972; Pub. L. 97–375, title II, §§202(d), 206(b), Dec. 21, 1982, 96 Stat. 1822, 1823, which required officers and agencies required or authorized by this chapter to promulgate regulations, to transmit an annual report to Congress describing activities carried out for the administration and enforcement of this chapter, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, pages 54, 92, and 172 of House Document No. 103–7.

§1458. Cooperation with State authorities; transmittal of regulations to States;

noninterference with existing programs

(a) A copy of each regulation promulgated under this chapter shall be transmitted promptly to the Secretary of Commerce, who shall (1) transmit copies thereof to all appropriate State officers and agencies, and (2) furnish to such State officers and agencies information and assistance to promote to the greatest practicable extent uniformity in State and Federal regulation of the labeling of consumer commodities.

(b) Nothing contained in this section shall be construed to impair or otherwise interfere with any program carried into effect by the Secretary of Health and Human Services under other provisions of law in cooperation with State governments or agencies, instrumentalities, or political subdivisions thereof.

(Pub. L. 89–755, §9, Nov. 3, 1966, 80 Stat. 1301; Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695.)

CHANGE OF NAME

"Secretary of Health and Human Services" substituted for "Secretary of Health, Education, and Welfare" in subsec. (b) pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

§1459. Definitions

For the purpose of this chapter—

(a) The term "consumer commodity", except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic (as those terms are defined by the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.]), and any other article, product, or commodity of any kind or class which is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of such consumption or use. Such term does not include—

(1) any meat or meat product, poultry or poultry product, or tobacco or tobacco product;

(2) any commodity subject to packaging or labeling requirements imposed by the Secretary of Agriculture pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.], or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the Act of March 4, 1913 [21 U.S.C. 151 et seq.], commonly known as the Virus-Serum-Toxin Act;

(3) any drug subject to the provisions of section 503(b)(1) or 506 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 353(b)(1) and 356];

(4) any beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act [27 U.S.C. 201 et seq.]; or

(5) any commodity subject to the provisions of the Federal Seed Act [7 U.S.C. 1551 et seq.].

(b) The term "package" means any container or wrapping in which any consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers, but does not include—

(1) shipping containers or wrappings used solely for the transportation of any consumer commodity in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof;

(2) shipping containers or outer wrappings used by retailers to ship or deliver any commodity to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity; or

(3) containers subject to the provisions of the Act of August 3, 1912 (37 Stat. 250, as amended; 15 U.S.C. 231–233), or the Act of March 4, 1915 (38 Stat. 1186, as amended; 15 U.S.C. 234–236).

(c) The term "label" means any written, printed, or graphic matter affixed to any consumer commodity or affixed to or appearing upon a package containing any consumer commodity.

(d) The term "person" includes any firm, corporation, or association.

(e) The term "commerce" means (1) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, and any place outside thereof, and (2) commerce within the District of Columbia or within any territory or possession of the United States not organized with a legislative body, but shall not include exports to foreign countries.

(f) The term "principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(Pub. L. 89–755, §10, Nov. 3, 1966, 80 Stat. 1301; Pub. L. 90–628, §2, Oct. 22, 1968, 82 Stat. 1320.)

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to subsec. (a), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsec. (a)(2), is act June 25, 1947, ch. 125, as amended generally by Pub. L. 92–516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (§136 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables.

The Virus-Serum-Toxin Act, referred to in subsec. (a)(2), is the eighth paragraph under the heading "Bureau of Animal Industry" of act Mar. 4, 1913, ch. 145, 37 Stat. 832, as amended, which is classified generally to chapter 5 (§151 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 151 of Title 21 and Tables.

The Federal Alcohol Administration Act, referred to in subsec. (a)(4), is act Aug. 29, 1935, ch. 814, 49 Stat. 977, as amended, which is classified generally to chapter 8 (§201 et seq.) of Title 27, Intoxicating Liquors. For complete classification of this Act to the Code, see section 201 of Title 27 and Tables.

The Federal Seed Act, referred to in subsec. (a)(5), is act Aug. 9, 1939, ch. 615, 53 Stat. 1275, as amended, which is classified generally to chapter 37 (§1551 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1551 of Title 7 and Tables.

AMENDMENTS

1968—Subsec. (b)(3). Pub. L. 90–628 struck out reference to the Act of August 31, 1916, and the Act of May 21, 1928.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–628 effective 60 days after Oct. 22, 1968, see section 3 of Pub. L. 90–628, set out as a note under section 251 of this title.

§1460. Savings provisions

Nothing contained in this chapter shall be construed to repeal, invalidate, or supersede—

(a) the Federal Trade Commission Act [15 U.S.C. 41 et seq.] or any statute defined therein as an antitrust Act;

(b) the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.]; or

(c) the Federal Hazardous Substances Labeling Act [15 U.S.C. 1261 et seq.].

(Pub. L. 89–755, §11, Nov. 3, 1966, 80 Stat. 1302.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in text, is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

The Federal Food, Drug, and Cosmetic Act, referred to in text, is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§301 et seq.) of Title 21, Food and Drugs, For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

The Federal Hazardous Substances Labeling Act, referred to in text, is Pub. L. 86–613, July 12, 1960, 74

Stat. 372, as amended, which is classified generally to chapter 30 (§1261 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1261 of this title and Tables.

§1461. Effect upon State law

It is hereby declared that it is the express intent of Congress to supersede any and all laws of the States or political subdivisions thereof insofar as they may now or hereafter provide for the labeling of the net quantity of contents of the package of any consumer commodity covered by this chapter which are less stringent than or require information different from the requirements of section 1453 of this title or regulations promulgated pursuant thereto.

(Pub. L. 89–755, §12, Nov. 3, 1966, 80 Stat. 1302.)

CHAPTER 39A—SPECIAL PACKAGING OF HOUSEHOLD SUBSTANCES FOR PROTECTION OF CHILDREN

Sec.

1471. Definitions.
1472. Special packaging standards.
1473. Conventional packages, marketing.
1474. Regulations for special packaging standards.
1475. Repealed.
1476. Preemption of Federal standards.
1477. Enforcement by State Attorneys General.

§1471. Definitions

For the purpose of this Act—

(1) The term "Commission" means the Consumer Product Safety Commission.

(2) The term "household substance" means any substance which is customarily produced or distributed for sale for consumption or use, or customarily stored, by individuals in or about the household and which is—

(A) a hazardous substance as that term is defined in section 1261(f) of this title;

(B) a food, drug, or cosmetic as those terms are defined in section 321 of title 21; or

(C) a substance intended for use as fuel when stored in a portable container and used in the heating, cooking, or refrigeration system of a house.

(3) The term "package" means the immediate container or wrapping in which any household substance is contained for consumption, use, or storage by individuals in or about the household, and, for purposes of section 1473(a)(2) of this title, also means any outer container or wrapping used in the retail display of any such substance to consumers. Such term does not include—

(A) any shipping container or wrapping used solely for the transportation of any household substance in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof, or

(B) any shipping container or outer wrapping used by retailers to ship or deliver any household substance to consumers unless it is the only such container or wrapping.

(4) The term "special packaging" means packaging that is designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and not difficult for normal adults to use properly, but does not mean packaging which all such children cannot open or obtain a toxic or harmful amount within a reasonable time.

(5) The term "labeling" means all labels and other written, printed, or graphic matter (A) upon any

household substance or its package, or (B) accompanying such substance.

(Pub. L. 91–601, §2, Dec. 30, 1970, 84 Stat. 1670; Pub. L. 92–516, §3(2), Oct. 21, 1972, 86 Stat. 998; Pub. L. 92–573, §30(a), Oct. 27, 1972, 86 Stat. 1231; Pub. L. 94–284, §3(a), May 11, 1976, 90 Stat. 503.)

REFERENCES IN TEXT

This Act, referred to in text, means Pub. L. 91–601 which enacted this chapter, section 136(z)(2)(i) of Title 7, Agriculture, and sections 343(n), 352(p), and 362(f) of Title 21, Food and Drugs, amended section 1261(p) of this title and section 353(b)(2) of Title 21, and enacted provisions set out as a note under this section. For complete classification of this Act to the Code, see Short Title note below and Tables.

AMENDMENTS

1976—Par. (2). Pub. L. 94–284 struck out subpar. (B) which included pesticide as defined in section 136(u) of Title 7 within meaning of "household substance", and redesignated subpars. (C) and (D) as (B) and (C), respectively.

1972—Par. (2)(B). Pub. L. 92–516 substituted "a pesticide" for "an economic poison".

EFFECTIVE DATE OF 1972 AMENDMENT

For effective date of amendment by Pub. L. 92–516, see section 4 of Pub. L. 92–516, set out as an Effective Date note under section 136 of Title 7, Agriculture.

EFFECTIVE DATE

Pub. L. 91–601, §8, formerly §9, Dec. 30, 1970, 84 Stat. 1674, as amended by Pub. L. 92–573, §30(a), Oct. 27, 1972, 86 Stat. 1231, and renumbered by Pub. L. 97–35, title XII, §1205(c), Aug. 13, 1981, 95 Stat. 716, provided that: "This Act [see Short Title note set out below] shall take effect on the date of its enactment [Dec. 30, 1970]. Each regulation establishing a special packaging standard shall specify the date such standard is to take effect which date shall not be sooner than one hundred and eighty days or later than one year from the date such regulation is final, unless the Commission, for good cause found, determines that an earlier effective date is in the public interest and publishes in the Federal Register his reason for such finding, in which case such earlier date shall apply. No such standard shall be effective as to household substances subject to this Act packaged prior to the effective date of such final regulation."

SHORT TITLE

Pub. L. 91–601, §1, Dec. 30, 1970, 84 Stat. 1670, provided that: "This Act [enacting this chapter, section 135(z)(2)(i) of Title 7, Agriculture, and sections 343(n), 352(p), and 362(f) of Title 21, Food and Drugs, amending section 1261(p) of this title and section 353(b)(2) of Title 21, and enacting provisions set out as a note under this section] may be cited as the 'Poison Prevention Packaging Act of 1970'."

TRANSFER OF FUNCTIONS

"Commission" substituted for "Secretary" and "Consumer Product Safety Commission" substituted for "Secretary of Health, Education, and Welfare" in par. (1) pursuant to section 30(a) of Pub. L. 92–573, which is classified to section 2079(a) of this title and which transferred functions of Secretary of Health, Education, and Welfare under this chapter to Consumer Product Safety Commission.

§1472. Special packaging standards

(a) Establishment

The Commission,[1] may establish in accordance with the provisions of this Act, by regulation, standards for the special packaging of any household substance if it finds that—

(1) the degree or nature of the hazard to children in the availability of such substance, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance; and

(2) the special packaging to be required by such standard is technically feasible, practicable, and appropriate for such substance.

(b) Considerations

In establishing a standard under this section, the Commission shall consider—

(1) the reasonableness of such standard;

(2) available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances;

(3) the manufacturing practices of industries affected by this Act; and

(4) the nature and use of the household substance.

(c) Publication of findings, reasons, and citation of statutory authorizations

In carrying out this Act, the Commission shall publish its findings, its reasons therefor, and citation of the sections of statutes which authorize its action.

(d) Limitation

Nothing in this Act shall authorize the Commission to prescribe specific packaging designs, product content, package quantity, or, with the exception of authority granted in section 1473(a)(2) of this title, labeling. In this case of a household substance for which special packaging is required pursuant to a regulation under this section, the Commission may in such regulation prohibit the packaging of such substance in packages which it determines are unnecessarily attractive to children.

(e) Cost-benefit analysis not required

Nothing in this Act shall be construed to require the Consumer Product Safety Commission, in establishing a standard under this section, to prepare a comparison of the costs that would be incurred in complying with such standard with the benefits of such standard.

(Pub. L. 91–601, §3, Dec. 30, 1970, 84 Stat. 1670; Pub. L. 92–573, §30(a), Oct. 27, 1972, 86 Stat. 1231; Pub. L. 97–414, §9(k), Jan. 4, 1983, 96 Stat. 2065; Pub. L. 110–314, title II, §233, Aug. 14, 2008, 122 Stat. 3073.)

REFERENCES IN TEXT

For classification to the Code of "this Act", referred to in text, see References in Text note set out under section 1471 of this title.

AMENDMENTS

2008—Subsec. (e). Pub. L. 110–314 added subsec. (e).

1983—Subsec. (a). Pub. L. 97–414 struck out ", after consultation with the technical advisory committee provided for in section 1475 of this title" after "The Commission".

TRANSFER OF FUNCTIONS

"Commission" substituted for "Secretary", "it" substituted for "he", and "its" substituted for "his" wherever appearing in subsecs. (a) to (d) pursuant to section 30(a) of Pub. L. 92–573, which is classified to section 2079(a) of this title and which transferred functions of Secretary of Health, Education, and Welfare under this chapter to Consumer Product Safety Commission.

[1] Comma retained in amendment by Pub. L. 97–414.

§1473. Conventional packages, marketing

(a) Noncomplying packages for elderly or handicapped persons; labeling statements

For the purpose of making any household substance which is subject to a standard established under section 1472 of this title readily available to elderly or handicapped persons unable to use such substance when packaged in compliance with such standard, the manufacturer or packer, as the case may be, may package any household substance, subject to such a standard, in packaging of a single size which does not comply with such standard if—

(1) the manufacturer (or packer) also supplies such substance in packages which comply with such standard; and

(2) the packages of such substance which do not meet such standard bear conspicuous labeling stating: "This package for households without young children"; except that the Commission may

by regulation prescribe a substitute statement to the same effect for packaging too small to accommodate such labeling.

(b) Noncomplying packages for substances dispensed pursuant to orders of medical practitioners

In the case of a household substance which is subject to such a standard and which is dispensed pursuant to an order of physician, dentist, or other licensed medical practitioner authorized to prescribe, such substance may be dispensed in noncomplying packages only when directed in such order or when requested by the purchaser.

(c) Exclusive use of special packaging; necessary circumstances

In the case of a household substance subject to such a standard which is packaged under subsection (a) of this section in a noncomplying package, if the Commission determines that such substance is not also being supplied by a manufacturer (or packer) in popular size packages which comply with such standard, it may, after giving the manufacturer (or packer) an opportunity to comply with the purposes of this Act, by order require such substance to be packaged by such manufacturer (or packer) exclusively in special packaging complying with such standard if it finds, after opportunity for hearing, that such exclusive use of special packaging is necessary to accomplish the purposes of this Act.

(Pub. L. 91–601, §4, Dec. 30, 1970, 84 Stat. 1671; Pub. L. 92–573, §30(a), Oct. 27, 1972, 86 Stat. 1231.)

REFERENCES IN TEXT

For classification to the Code of "this Act", referred to in subsec. (c), see References in Text note set out under section 1471 of this title.

TRANSFER OF FUNCTIONS

"Commission" substituted for "Secretary" in subsecs. (a) and (c) and "it" substituted for "he" in subsec. (c) pursuant to section 30(a) of Pub. L. 92–573, which is classified to section 2079(a) of this title and which transferred functions of Secretary of Health, Education, and Welfare under this chapter to Consumer Product Safety Commission.

§1474. Regulations for special packaging standards

(a) Rule making procedure; election and application of procedure under section 371 of title 21; publication of election and proposal

Proceedings to issue, amend, or repeal a regulation prescribing a standard under section 1472 of this title shall be conducted in accordance with the procedures prescribed by section 553 (other than paragraph (3)(B) of the last sentence of subsection (b) of such section) of title 5 unless the Commission elects the procedures prescribed by subsection (e) of section 371 of title 21, in which event such subsection and subsections (f) and (g) of such section 371 shall apply to such proceedings. If the Commission makes such election, it shall publish that fact with the proposal required to be published under paragraph (1) of such subsection (e).

(b) Judicial review; petition; record; additional evidence; jurisdiction of court of appeals; scope of review; relief pending review; finality of judgment; review by Supreme Court

(1) In the case of any standard prescribed by a regulation issued in accordance with section 553 of title 5, any person who will be adversely affected by such a standard may, at any time prior to the 60th day after the regulation prescribing such standard is issued by the Commission, file a petition with the United States Court of Appeals for the circuit in which such person resides or has his principal place of business for a judicial review of such standard. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commission or other officer designated by it for that purpose. The Commission shall file in the court the record of the proceedings on which the Commission based its standard, as provided in section 2112 of title 28.

(2) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there was no opportunity to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Commission in a hearing or in such other manner, and upon such terms and conditions, as to the court may seem proper. The Commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, and its recommendation, if any, for the modification or setting aside of its original standard, with the return of such additional evidence.

(3) Upon the filing of the petition under paragraph (1) of this subsection the court shall have jurisdiction to review the standard of the Commission in accordance with subparagraphs (A), (B), (C), and (D) of paragraph (2) of section 706 of title 5. If the court ordered additional evidence to be taken under paragraph (2) of this subsection, the court shall also review the Commission's standard to determine if, on the basis of the entire record before the court pursuant to paragraphs (1) and (2) of this subsection, it is supported by substantial evidence. If the court finds the standard is not so supported, the court may set it aside.

(4) With respect to any standard reviewed under this subsection, the court may grant appropriate relief pending conclusion of the review proceedings, as provided in section 705 of such title 5.

(5) The judgment of the court affirming or setting aside, in whole or in part, any such standard of the Commission shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28.

(Pub. L. 91–601, §5, Dec. 30, 1970, 84 Stat. 1671; Pub. L. 92–573, §30(a), Oct. 27, 1972, 86 Stat. 1231.)

TRANSFER OF FUNCTIONS

In subsec. (a), "Commission" substituted for "Secretary" and "it" substituted for "he"; in subsec. (b), "Commission" substituted for "Secretary", "it" substituted for "him" and "he", "its" substituted for "his", and "Commission's" substituted for "Secretary's" pursuant to section 30(a) of Pub. L. 92–573, which is classified to section 2079(a) of this title and which transferred functions of Secretary of Health, Education, and Welfare under this chapter to Consumer Product Safety Commission.

§1475. Repealed. Pub. L. 97–35, title XII, §1205(c), Aug. 13, 1981, 95 Stat. 716

Section, Pub. L. 91–601, §6, Dec. 30, 1970, 84 Stat. 1672, provided for appointment of a technical advisory committee to assist the Secretary in carrying out the purposes of the Poison Prevention Packaging Act of 1970.

EFFECTIVE DATE OF REPEAL

Repeal effective Aug. 13, 1981, see section 1215 of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 2052 of this title.

§1476. Preemption of Federal standards

(a) Exception for identical State standards

Except as provided in subsections (b) and (c) of this section, whenever a standard established by the Commission under this Act applicable to a household substance is in effect, no State or political subdivision thereof shall have any authority either to establish or continue in effect, with respect to such household substance, any standard for special packaging (and any exemption therefrom and requirement related thereto) which is not identical to the standard established under section 1472 of this title (and any exemption therefrom and requirement related thereto) of this Act.

(b) Federal or State standards which afford a higher degree of protection

The Federal Government and the government of any State or political subdivision of a State may

establish and continue in effect, with respect to a household substance for its own use, a standard for special packaging or related requirement which is designed to protect against a risk of illness or injury with respect to which a standard for special packaging or related requirement is in effect under this Act and which is not identical to such standard or requirement if the Federal, State, or political subdivision standard or requirement provides a higher degree of protection from such risk of illness or injury than the standard or requirement in effect under this Act.

(c) Exemption for State standards; requirements; determination of burden on interstate commerce; notice and hearing

(1) Upon application of a State or political subdivision of a State, the Commission may, by regulation promulgated in accordance with paragraph (2), exempt from subsection (a) of this section, under such conditions as may be prescribed in such regulation, any standard for special packaging or related requirement of such State or political subdivision applicable to a household substance subject to a standard or requirement in effect under this Act if—

(A) compliance with the State or political subdivision standard or requirement would not cause the household substance to be in violation of the standard or requirement in effect under this Act, and

(B) the State or political subdivision standard or requirement (i) provides a significantly higher degree of protection from the risk of illness or injury with respect to which the Federal standard or requirement is in effect, and (ii) does not unduly burden interstate commerce.

In determining the burden, if any, of a State or political subdivision standard or requirement on interstate commerce the Commission shall consider and make appropriate (as determined by the Commission in its discretion) findings on the technological and economic feasibility of complying with such standard or requirement, the cost of complying with such standard or requirement, the geographic distribution of the household substance to which the standard or requirement would apply, the probability of other States or political subdivisions applying for an exemption under this subsection for a similar standard or requirement, and the need for a national, uniform standard or requirement under this Act for such household substance.

(2) A regulation under paragraph (1) granting an exemption for a standard or requirement of a State or political subdivision of a State may be promulgated by the Commission only after it has provided, in accordance with section 553(b) of title 5 notice with respect to the promulgation of the regulation and has provided opportunity for the oral presentation of views respecting its promulgation.

(Pub. L. 91–601, §7, formerly §8, Dec. 30, 1970, 84 Stat. 1673; Pub. L. 92–573, §30(a), Oct. 27, 1972, 86 Stat. 1231; Pub. L. 94–284, §17(c), May 11, 1976, 90 Stat. 513; renumbered §7, Pub. L. 97–35, title XII, §1205(c), Aug. 13, 1981, 95 Stat. 716.)

REFERENCES IN TEXT

For classification to the Code of "this Act", referred to in text, see References in Text note set out under section 1471 of this title.

AMENDMENTS

1976—Pub. L. 94–284 substituted "(a) Except as provided in subsections (b) and (c) of this section, whenever" for "Whenever" in existing provision, and added subsecs. (b) and (c).

TRANSFER OF FUNCTIONS

"Commission" substituted for "Secretary" in subsec. (a) pursuant to section 30(a) of Pub. L. 92–573, which is classified to section 2079(a) of this title and which transferred functions of Secretary of Health, Education, and Welfare under this chapter to Consumer Product Safety Commission.

PREEMPTION

The provisions of this section establishing the extent to which the Poison Prevention Packaging Act of 1970 [15 U.S.C. 1471 et seq.] preempts, limits, or otherwise affects any other Federal, State, or local law, any rule, procedure, or regulation, or any cause of action under State or local law not to be expanded or contracted in scope, or limited, modified or extended in application, by any rule or regulation under the Poison Prevention

Packaging Act of 1970, or by reference in any preamble, statement of policy, executive branch statements, or other matter associated with the publication of any such rule or regulation, see section 231 of Pub. L. 110–314, set out as a note under section 2051 of this title.

§1477. Enforcement by State Attorneys General

The attorney general of a State, or other authorized State officer, alleging a violation of a standard or rule promulgated under section 1472 of this title that affects or may affect such State or its residents, may bring an action on behalf of the residents of the State in any United States district court for the district in which the defendant is found or transacts business to obtain appropriate injunctive relief. The procedural requirements of section 2073(b) of this title shall apply to any such action.

(Pub. L. 91–601, §9, as added Pub. L. 110–314, title II, §218(b)(1), Aug. 14, 2008, 122 Stat. 3062.)

PRIOR PROVISIONS

A prior section 9 of Pub. L. 91–601 was renumbered section 8 and is set out as a note under section 1471 of this title.

CHAPTER 40—DEPARTMENT OF COMMERCE

Sec.

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§1501. Establishment of Department; Secretary; seal

There shall be at the seat of government an executive department to be known as the Department of Commerce, and a Secretary of Commerce, who shall be the head thereof, who shall be appointed by the President, by and with the advice and consent of the Senate, and whose term and tenure of office shall be like that of the heads of the other executive departments; and the provisions of title 4 of the Revised Statutes, including all amendments thereto, shall be applicable to said department. The said Secretary shall cause a seal of office to be made for the said department of such device as the President shall approve, and judicial notice shall be taken of the said seal.

(Feb. 14, 1903, ch. 552, §1, 32 Stat. 825; Feb. 17, 1909, ch. 137, §§1, 2, 35 Stat. 626; Mar. 4, 1909, ch. 297, §1, 35 Stat. 861; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736; Mar. 3, 1917, ch. 163, §1, 39 Stat. 1111; Mar. 4, 1925, ch. 549, §4, 43 Stat. 1301.)

REFERENCES IN TEXT

Title 4 of the Revised Statutes, referred to in text, was entitled "Provisions Applicable to All Executive Departments", and consisted of R.S. §§158 to 198. For provisions of the Code derived from such title 4, see sections 101, 301, 303, 304, 503, 2952, 3101, 3106, 3341, 3345 to 3349, 5535, 5536 of Title 5, Government Organization and Employees; section 207 of Title 18, Crimes and Criminal Procedure; sections 514, 520 of Title 28, Judiciary and Judicial Procedure; section 3321 of Title 31, Money and Finance.

CODIFICATION

Section was formerly classified to section 591 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 378.

TRANSFER OF FUNCTIONS

A Department of Labor, under charge of a Commissioner of Labor, was established by act June 13, 1888, ch. 380, 25 Stat. 182, and by section 9 of that act, the Bureau of Labor created under act June 27, 1884, ch. 127, 23 Stat. 60, was to cease on the organization of the Department. The Department of Commerce and Labor, as an Executive Department, with a Secretary of Commerce and Labor as the head thereof, was established by act Feb. 14, 1903, ch. 552, 32 Stat. 825, and by section 4 of that act, the Department of Labor was placed under the jurisdiction and made a part of the Department of Commerce and Labor with various other offices, bureaus, and branches of the public service also transferred to and placed under the jurisdiction of the Department so established. In subsequent appropriation and other acts, the Department of Labor was designated as the Bureau of Labor in that Department. But by act March 4, 1913, ch. 141, 37 Stat. 736, a new executive department was created, to be called "The Department of Labor," with a Secretary of Labor to be the head thereof, and the Department of Commerce and Labor was thereafter to be called the Department of Commerce, and the Secretary thereof to be called the Secretary of Commerce.

Functions of all other officers of Department of Commerce and functions of all agencies and employees of such Department, with a few exceptions, transferred to Secretary of Commerce, with power vested in him to authorize their performance or the performance of any of his functions by any such officers, agencies, and employees by Reorg. Plan No. 5 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out below.

DEPUTY SECRETARY OF COMMERCE

For provisions directing the President to appoint a Deputy Secretary of Commerce, by and with the advice and consent of the Senate, with the Deputy Secretary to receive compensation at the rate payable for Level II of the Executive Schedule and with the Deputy Secretary to perform such duties and exercise such powers as the Secretary may from time to time prescribe, see section 2(b)(1) of 1979 Reorg. Plan No. 3, set out in the Appendix to Title 5, Government Organization and Employees.

Creation of the Office of Deputy Secretary of Commerce by section 2(b)(1) of 1979 Reorg. Plan. No. 3 effective Dec. 7, 1979, see Ex. Ord. 12175, set out as a note under section 2171 of Title 19, Customs Duties.

ORDER OF SUCCESSION

For order of succession during any period when both Secretary and Deputy Secretary of Commerce are unable to perform functions and duties of office of Secretary, see Ex. Ord. No. 13242, Dec. 18, 2001, 66 F.R. 66260, listed in a table under section 3345 of Title 5, Government Organization and Employees.

REORGANIZATION PLAN NO. 5 OF 1950

Eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, as amended July 2, 1954, ch. 456, title III, §304, 68 Stat. 430
Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, March 13, 1950, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949 [see 5 U.S.C. 901 et seq.].

DEPARTMENT OF COMMERCE

SECTION 1. TRANSFER OF FUNCTIONS TO THE SECRETARY

(a) Except as otherwise provided in subsection (b) of this section, there are hereby transferred to the Secretary of Commerce all functions of all other officers of the Department of Commerce and all functions of all agencies and employees of such Department.

(b) This section shall not apply to the functions vested by the Administrative Procedure Act (60 Stat. 237) [see 5 U.S.C. 551 et seq. and 701 et seq.] in hearing examiners employed by the Department of Commerce, nor to the functions of the Civil Aeronautics Board, of the Inland Waterways Corporation, or of the Advisory Board of the Inland Waterways Corporation.

SEC. 2. PERFORMANCE OF FUNCTIONS OF SECRETARY

The Secretary of Commerce may from time to time make such provisions as he shall deem appropriate authorizing the performance by any other officer, or by any agency or employee, of the Department of Commerce of any function of the Secretary, including any function transferred to the Secretary by the provisions of this reorganization plan.

SEC. 3. ADMINISTRATIVE ASSISTANT SECRETARY

[Repealed. July 2, 1954, ch. 456, title III, §304, 68 Stat. 430. Section authorized an Administrative Assistant Secretary of Commerce.]

SEC. 4. INCIDENTAL TRANSFERS

The Secretary of Commerce may from time to time effect such transfers within the Department of Commerce of any of the records, property, personnel, and unexpended balances (available or to be made available) of appropriations, allocations, and other funds of such Department as he may deem necessary in order to carry out the provisions of this reorganization plan.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 5 of 1950, prepared in accordance with the Reorganization Act of 1949 and providing for reorganizations in the Department of Commerce. My reasons for transmitting this plan are stated in an accompanying general message.

After investigation I have found and hereby declare that each reorganization included in Reorganization Plan No. 5 of 1950 is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949.

I have found and hereby declare that it is necessary to include in the accompanying reorganization plan, by reason of reorganizations made thereby, provisions for the appointment and compensation of an Administrative Assistant Secretary of Commerce. The rate of compensation fixed for this officer is that which I have found to prevail in respect to comparable officers in the executive branch of the Government.

The taking effect of the reorganizations included in this plan may not in itself result in substantial immediate savings. However, many benefits in improved operations are probable during the next years which will result in a reduction in expenditures as compared with those that would be otherwise necessary. An itemization of these reductions in advance of actual experience under this plan is not practicable.

HARRY S. TRUMAN.

THE WHITE HOUSE, March 13, 1950.

FEDERAL MARITIME BOARD, AND MARITIME FUNCTIONS OF SECRETARY OF COMMERCE

Section 307 of Reorg. Plan No. 21 of 1950, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1273, set out in the Appendix to Title 5, Government Organization and Employees, provided that the functions transferred by the provisions of that Plan should not be subject to the provisions of Reorg. Plan No. 5 of 1950, set out above. Said Reorg. Plan No. 21 of 1950 created, within the Department of Commerce, the Federal Maritime Board, and the Maritime Administration, the latter, with a Maritime Administrator at its head. It abolished the United States Maritime Commission, transferring some of its functions and some of the functions of its Chairman to said Federal Maritime Board. It transferred the remainder of the functions of that Commission and its Chairman to the Secretary of Commerce, with power vested in him to authorize their performance by said Maritime Administrator.

EXECUTIVE ORDER NO. 13339

Ex. Ord. No. 13339, May 13, 2004, 69 F.R. 28037, as amended by Ex. Ord. No. 13403, §3, May 12, 2006, 71 F.R. 28543, which established in the Department of Commerce a President's Advisory Commission on Asian Americans and Pacific Islanders, was superseded by Ex. Ord. No. 13515, §4(a), Oct. 14, 2009, 74 F.R. 53638, set out below.

EX. ORD. NO. 13515. INCREASING PARTICIPATION OF ASIAN AMERICANS AND PACIFIC ISLANDERS IN FEDERAL PROGRAMS

Ex. Ord. No. 13515, Oct. 14, 2009, 74 F.R. 53635, as amended by Ex. Ord. No. 13585, §4, Oct. 7, 2011, 76 F.R. 62282; Ex. Ord. No. 13652, §8, Sept. 30, 2013, 78 F.R. 61819, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America,

it is hereby ordered as follows:

SECTION 1. *Policy*. The more than 16 million Asian Americans and Pacific Islanders (AAPIs) across our country have helped build a strong and vibrant America. The AAPI communities represent many ethnicities and languages that span generations, and their shared achievements are an important part of the American experience. They have started businesses and generated jobs, including founding some of our Nation's most successful and innovative enterprises. The AAPI communities have made important contributions to science and technology, culture and the arts, and the professions, including business, law, medicine, education, and politics.

While we acknowledge the many contributions of the AAPI communities to our Nation, we also recognize the challenges still faced by many AAPIs. Of the more than a million AAPI-owned businesses, many firms are small sole-proprietorships that continue to need assistance to access available resources such as business development counseling and small business loans. The AAPI community also continues to face barriers to employment and workplace advancement. Specific challenges experienced by AAPI subgroups include lower college-enrollment rates by Pacific Islanders than other ethnic groups and high poverty rates among Hmong Americans, Cambodian Americans, Malaysian Americans, and other individual AAPI communities. Additionally, one in five non-elderly AAPIs lacks health insurance.

The purpose of this order is to establish a President's Advisory Commission on Asian Americans and Pacific Islanders and a White House Initiative on Asian Americans and Pacific Islanders. Each will work to improve the quality of life and opportunities for Asian Americans and Pacific Islanders through increased access to, and participation in, Federal programs in which they may be underserved. In addition, each will work to advance relevant evidence-based research, data collection, and analysis for AAPI populations and subpopulations.

SEC. 2. *President's Advisory Commission on Asian Americans and Pacific Islanders*. There is established in the Department of Education the President's Advisory Commission on Asian Americans and Pacific Islanders (Commission).

(a) *Mission and Function of the Commission*. The Commission shall provide advice to the President, through the Co-Chairs of the Initiative, on: (i) the development, monitoring, and coordination of executive branch efforts to improve the quality of life of AAPIs through increased participation in Federal programs in which such persons may be underserved; (ii) the compilation of research and data related to AAPI populations and subpopulations; (iii) the development, monitoring, and coordination of Federal efforts to improve the economic and community development of AAPI businesses; and (iv) strategies to increase public and private-sector collaboration, and community involvement in improving the health, education, environment, and well-being of AAPIs.

(b) *Membership of the Commission*. The Commission shall consist of not more than 20 members appointed by the President. The Commission shall include members who: (i) have a history of involvement with the AAPI communities; (ii) are from the fields of education, commerce, business, health, human services, housing, environment, arts, agriculture, labor and employment, transportation, justice, veterans affairs, and economic and community development; (iii) are from civic associations representing one or more of the diverse AAPI communities; or (iv) have such other experience as the President deems appropriate. The President shall designate one member of the Commission to serve as Chair, who shall convene regular meetings of the Commission, determine its agenda, and direct its work.

(c) *Administration of the Commission*. The Co-Chairs of the Initiative shall designate an Executive Director for the Commission. The Department of Education shall provide funding and administrative support for the Commission to the extent permitted by law and within existing appropriations. Members of the Commission shall serve without compensation, but shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707). Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.) (the "Act"), may apply to the administration of the Commission, any functions of the President under the Act, except that of reporting to the Congress, shall be performed by the Secretary of Education, in accordance with the guidelines issued by the Administrator of General Services.

(d) *Termination Date*. The Commission shall terminate 2 years from the date of this order, unless renewed by the President.

SEC. 3. *White House Initiative on Asian Americans and Pacific Islanders*. There is established the White House Initiative on Asian Americans and Pacific Islanders (Initiative), a Federal interagency working group whose members shall be selected by their respective agencies. The Secretary of Education and a senior official to be designated by the President from the membership of the Initiative shall serve as Co-Chairs of the Initiative. The Executive Director of the Commission established in section 2 of this order shall also serve as the Executive Director of the Initiative and shall report to the Co-Chairs on Initiative matters.

(a) *Mission and Function of the Initiative*. The Initiative shall work to improve the quality of life of AAPIs through increased participation in Federal programs in which AAPIs may be underserved. The Initiative shall advise the Co-Chairs on the implementation and coordination of Federal programs as they relate to AAPIs across executive departments and agencies.

(b) *Membership of the Initiative*. In addition to the Co-Chairs, the Initiative shall consist of senior officials from the following executive branch departments, agencies, and offices:

(i) the Department of State;

(ii) the Department of the Treasury;

(iii) the Department of Defense;

(iv) the Department of Justice;

(v) the Department of the Interior;

(vi) the Department of Agriculture;

(vii) the Department of Commerce;

(viii) the Department of Labor;

(ix) the Department of Housing and Urban Development;

(x) the Department of Transportation;

(xi) the Department of Energy;

(xii) the Department of Education;

(xiii) the Department of Health and Human Services;

(xiv) the Department of Veterans Affairs;

(xv) the Department of Homeland Security;

(xvi) the Office of Management and Budget;

(xvii) the Environmental Protection Agency;

(xviii) the Small Business Administration;

(xix) the General Services Administration;

(xx) the National Aeronautics and Space Administration;

(xxi) the Office of Personnel Management;

(xxii) the Social Security Administration;

(xxiii) the White House Office of Cabinet Affairs;

(xxiv) the White House Office of Intergovernmental Affairs and Public Engagement;

(xxv) the National Economic Council;

(xxvi) the Domestic Policy Council;

(xxvii) the Office of Science and Technology Policy; and

(xxviii) other executive branch departments, agencies, and offices as the President may, from time to time, designate.

At the direction of the Co-Chairs, the Initiative may establish subgroups consisting exclusively of Initiative members or their designees under this section, as appropriate. The Initiative is encouraged to invite other affected agencies, such as the Consumer Financial Protection Bureau, the Corporation for National and Community Service, the Equal Employment Opportunity Commission, and the Federal Communications Commission to attend meetings and participate in the Initiative as appropriate.

(c) *Administration of the Initiative*. The Department of Education shall provide funding and administrative support for the Initiative to the extent permitted by law and within existing appropriations. The Co-Chairs shall convene regular meetings of the Initiative, determine its agenda, and direct its work.

(d) *Federal Agency Plans and Interagency Plan*. Each executive department and agency designated by the Initiative shall prepare a plan (agency plan) for, and shall document, its efforts to improve the quality of life of Asian Americans and Pacific Islanders through increased participation in Federal programs in which Asian Americans and Pacific Islanders may be underserved. Where appropriate, this agency plan shall address, among other things, the agency's efforts to:

(i) identify Federal programs in which AAPIs may be underserved and improve the quality of life for AAPIs through increased participation in these programs;

(ii) identify ways to foster the recruitment, career development, and advancement of AAPIs in the Federal Government;

(iii) identify high-priority action items for which measurable progress may be achieved within 2 years to improve the health, environment, opportunity, and well-being of AAPIs, and implement those action items;

(iv) increase public-sector, private-sector, and community involvement in improving the health, environment, opportunity, and well-being of AAPIs;

(v) foster evidence-based research, data-collection, and analysis on AAPI populations and subpopulations, including research and data on public health, environment, education, housing, employment, and other

economic indicators of AAPI community well-being; and

(vi) solicit public input from AAPI communities on ways to increase and improve opportunities for public participation in Federal programs considering a number of factors, including language barriers.

Each agency, in its plan, shall provide appropriate measurable objectives and, after the first year, shall provide for the assessment of that agency's performance on the goals set in the previous year's plan. Each agency plan shall be submitted to the Co-Chairs by a date to be established by the Co-Chairs. The Co-Chairs shall review the agency plans and develop for submission to the President a Federal interagency plan to improve the quality of life of AAPIs through increased participation in Federal programs in which such persons may be underserved. Actions described in the Federal interagency plan shall address improving access by AAPIs to Federal programs and fostering advances in relevant research and data.

SEC. 4. *General Provisions*.

(a) This order supersedes Executive Order 13125 of June 7, 1999, and Executive Order 13339 of May 13, 2004.

(b) The heads of executive departments and agencies shall assist and provide information to the Commission, consistent with applicable law, as may be necessary to carry out the functions of the Commission. Each executive department and agency shall bear its own expenses of participating in the Commission.

(c) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to an executive department, agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(d) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(e) For purposes of this order, the term "Asian American and Pacific Islander" includes persons within the jurisdiction of the United States having ancestry of any of the original peoples of East Asia, Southeast Asia, or South Asia, or any of the aboriginal, indigenous, or native peoples of Hawaii and other Pacific Islands.

(f) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

EXTENSION OF TERM OF COMMISSION ON ASIAN AMERICANS AND PACIFIC ISLANDERS

Term of Commission on Asian Americans and Pacific Islanders extended until Sept. 30, 2013, by Ex. Ord. No. 13585, Sept. 30, 2011, 76 F.R. 62281, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

Term of Commission on Asian Americans and Pacific Islanders extended until Sept. 30, 2015, by Ex. Ord. No. 13652, Sept. 30, 2013, 78 F.R. 61817, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

§§1502, 1503. Omitted

CODIFICATION

Section 1502, act June 5, 1939, ch. 180, §1, 53 Stat. 808, established position of Under Secretary of Commerce. Position abolished by section 2(b)(2) of Reorg. Plan No. 3 of 1979, 44 F.R. 69273, 93 Stat. 1381, set out in the Appendix to Title 5, Government Organization and Employees.

Section 1503, act June 5, 1939, ch. 180, §2, 53 Stat. 808, provided for performance by Under Secretary of Commerce of Secretary's duties on latter's death, absence, etc.

UNDER SECRETARY FOR INTERNATIONAL TRADE

The additional office of Under Secretary for International Trade, in the Department of Commerce, was provided for by section 2(c) of Reorg. Plan No. 3 of 1979, 44 F.R. 69273, 93 Stat. 1381, set out in the Appendix to Title 5, Government Organization and Employees, to be appointed by the President, by and with the advice and consent of the Senate, to receive compensation at the rate payable for Level III of the Executive Schedule, and to perform such duties and exercise such powers as the Secretary of Commerce may from time to time prescribe.

UNDER SECRETARY FOR TRANSPORTATION

The additional office of "Under Secretary of Commerce for Transportation", in the Department of Commerce, was provided for by section 301 of Reorg. Plan No. 21 of 1950, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1273, set out in the Appendix to Title 5, Government Organization and Employees, to be appointed by the President, by and with the advice and consent of the Senate, to receive compensation at the rate prescribed by law for Under Secretaries of Executive departments, and to perform such duties as the Secretary of Commerce shall prescribe.

§1503a. Under Secretary of Commerce for Economic Affairs

There shall be in the Department of Commerce an Under Secretary of Commerce for Economic Affairs who shall be appointed by the President by and with the advice and consent of the Senate. The Under Secretary shall perform such duties as the Secretary of Commerce shall prescribe.

(Pub. L. 97–195, §1(a), June 16, 1982, 96 Stat. 115.)

§1503b. Under Secretary of Commerce for Oceans and Atmosphere; duties; appointment; compensation

There shall be in the Department of Commerce an Under Secretary of Commerce for Oceans and Atmosphere who shall serve as the Administrator of the National Oceanic and Atmospheric Administration established by Reorganization Plan No. 4 of 1970 [5 U.S.C. App.] and perform such duties as the Secretary of Commerce shall prescribe. The Under Secretary shall be appointed by the President by and with the advice and consent of the Senate and shall be compensated at the rate now or hereafter provided for Level III of the Executive Schedule Pay Rates (5 U.S.C. 5314).

(Pub. L. 99–659, title IV, §407(a), Nov. 14, 1986, 100 Stat. 3739.)

REFERENCES IN TEXT

Reorganization Plan No. 4 of 1970, referred to in text, is set out under section 1511 of this title.

SERVICE BY INCUMBENT ADMINISTRATOR AND DEPUTY ADMINISTRATOR OF THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Pub. L. 99–659, title IV, §407(c), Nov. 14, 1986, 100 Stat. 3739, provided that: "The individual serving on the date of enactment of this Act [Nov. 14, 1986]—

"(A) as the Administrator of the National Oceanic and Atmospheric Administration shall also serve as the Under Secretary of Commerce for Oceans and Atmosphere until such time as a successor is appointed under subsection (a) of this section [enacting this section]; and

"(B) as the Deputy Administrator of the National Oceanic and Atmospheric Administration shall also serve as the Assistant Secretary of Commerce for Oceans and Atmosphere until such time as a successor is appointed under subsection (b) of this section [enacting section 1507(c) of this title]."

§1504. Repealed. Pub. L. 97–195, §1(c)(1), June 16, 1982, 96 Stat. 115

Section, acts Feb. 14, 1903, ch. 552, §2, 32 Stat. 826; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736; Mar. 3, 1917, ch. 163, §1, 39 Stat. 1111, provided for appointment by President of an Assistant Secretary of Commerce, who would perform such duties as prescribed by Secretary or required by law.

§1505. Additional Assistant Secretary; duties, rank of Assistant Secretaries

There shall be in the Department of Commerce one additional Assistant Secretary of Commerce, who shall be appointed by the President, by and with the advice and consent of the Senate. The Secretary of Commerce may assign to his Assistant Secretaries such duties, including the direction of the Bureau of Foreign and Domestic Commerce, as he shall prescribe, or may be required by law. The Assistant Secretaries of Commerce shall be without numerical distinction of rank.

(July 15, 1947, ch. 251, 61 Stat. 326.)

CODIFICATION

Provisions of last sentence that fixed the compensation of the Assistant Secretaries of Commerce have been omitted as the positions are under the Executive Schedule under section 5315 of Title 5, Government Organization and Employees.

Section was formerly classified to section 592a of Title 5 prior to the general revision and enactment of Title 5 by Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 378.

PRIOR PROVISIONS

Prior provisions for an additional Assistant Secretary of Commerce were contained in act May 20, 1926, ch. 344, §8 (1st sentence), 44 Stat. 573, as amended June 23, 1938, ch. 601, §1107(k), 52 Stat. 1029. Said position was terminated by section 592a–1 of former Title 5, Executive Departments and Government Officers and Employees. Section 8 of act May 20, 1926, was subsequently repealed by Pub. L. 85–726, title XIV, §1401(a), Aug. 23, 1958, 72 Stat. 806, and Pub. L. 97–195, §1(c)(2), June 16, 1982, 96 Stat. 115.

TRANSFER OF FUNCTIONS

Pursuant to powers transferred to Secretary of Commerce under Reorg. Plan No. 5 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out as a note under section 1501 of this title, Secretary has reassigned functions of Bureau of Foreign and Domestic Commerce to other officers of Department.

ORDER OF SUCCESSION

For order of succession during any period when both Secretary and Deputy Secretary of Commerce are unable to perform functions and duties of office of Secretary, see Ex. Ord. No. 13242, Dec. 18, 2001, 66 F.R. 66260, listed in a table under section 3345 of Title 5, Government Organization and Employees.

§1506. Additional Assistant Secretary; appointment; applicability of section 1505

There shall be on and after July 2, 1954 in the Department of Commerce, in addition to the Assistant Secretaries now provided for by law, one additional Assistant Secretary of Commerce, who shall be appointed by the President by and with the advice and consent of the Senate, and who shall be subject in all respects to the provisions of section 1505 of this title, relating to Assistant Secretaries of Commerce.

(July 2, 1954, ch. 456, title III, §304, 68 Stat. 430.)

CODIFICATION

Section constitutes the first sentence of section 304 of act July 2, 1954. The second sentence of such section 304 repealed section 3 of Reorg. Plan 5 of 1950, 15 F.R. 3174, 64 Stat. 1263, set out as a note under section 1501 of this title, which established the position of Administrative Assistant Secretary of Commerce.

Section was formerly classified to section 592a–3 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 378.

§1507. Additional Assistant Secretary; appointment; compensation; duties

There shall be in the Department of Commerce, in addition to the Assistant Secretaries now provided by law, one additional Assistant Secretary of Commerce who shall be appointed by the President by and with the advice and consent of the Senate, shall receive compensation at the rate prescribed by law for Assistant Secretaries of Commerce, and shall perform such duties as the Secretary of Commerce shall prescribe.

(Pub. L. 87–405, Feb. 16, 1962, 76 Stat. 9.)

CODIFICATION

Section was formerly classified to section 592a–4 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 378.

§1507a. Repealed. Pub. L. 97–31, §12(5), Aug. 6, 1981, 95 Stat. 154

Section, Pub. L. 91–469, §42(a), Oct. 21, 1970, 84 Stat. 1038, related to appointment, compensation, and duties of the Assistant Secretary for Maritime Affairs.

§1507b. Assistant Secretary of Commerce; appointment; compensation; duties

There shall be in the Department of Commerce, in addition to the Assistant Secretaries provided by law as of November 12, 1977, one additional Assistant Secretary of Commerce who shall be appointed by the President, by and with the advice and consent of the Senate. Such Assistant Secretary shall perform such duties as the Secretary of Commerce shall prescribe.

(Pub. L. 95–173, §9(a), Nov. 12, 1977, 91 Stat. 1360; Pub. L. 97–195, §1(c)(4), June 16, 1982, 96 Stat. 115.)

AMENDMENTS

1982—Pub. L. 97–195 substituted "Such Assistant Secretary shall perform such duties" for "Such Assistant Secretary shall receive compensation at the rate prescribed by law for Assistant Secretaries of Commerce, and shall perform such duties".

§1507c. Assistant Secretary of Commerce for Oceans and Atmosphere; duties; appointment; compensation

There shall be in the Department of Commerce, in addition to the Assistant Secretaries of Commerce provided by law before November 14, 1986, one additional Assistant Secretary of Commerce who shall have the title Assistant Secretary of Commerce for Oceans and Atmosphere and shall serve as the Deputy Administrator of the National Oceanic and Atmospheric Administration established by Reorganization Plan No. 4 of 1970 [5 U.S.C. App.] and perform such duties and functions as the Under Secretary of Commerce for Oceans and Atmosphere shall prescribe. The Assistant Secretary for Oceans and Atmosphere shall be appointed by the President by and with the advice and consent of the Senate and shall be compensated at the rate now or hereafter provided for Level IV of the Executive Schedule Pay Rates (5 U.S.C. 5315).

(Pub. L. 99–659, title IV, §407(b), Nov. 14, 1986, 100 Stat. 3739.)

REFERENCES IN TEXT

Reorganization Plan No. 4 of 1970, referred to in text, is set out under section 1511 of this title.

SERVICE BY INCUMBENT ADMINISTRATOR AND DEPUTY ADMINISTRATOR OF THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Individuals serving on Nov. 14, 1986, as Deputy Administrator of National Oceanic and Atmospheric Administration to also serve as Assistant Secretary of Commerce for Oceans and Atmosphere, until successor is appointed, see section 407(c)(B) of Pub. L. 99–659, set out as a note under section 1503b of this title.

§1508. General Counsel

There shall be in the Department of Commerce a General Counsel, who shall be appointed by the President, by and with the advice and consent of the Senate.

(Mar. 18, 1904, ch. 716, §1, 33 Stat. 135; July 17, 1952, ch. 932, §2, 66 Stat. 758; Aug. 20, 1954, ch. 776, 68 Stat. 753.)

CODIFICATION

Provisions of section that fixed the compensation of the General Counsel have been omitted as the position is under the Executive Schedule under section 5315 of Title 5, Government Organization and Employees.

Section was formerly classified to section 592b of Title 5 prior to the general revision and enactment of Title 5 by Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 378.

AMENDMENTS

1954—Act Aug. 20, 1954, established rate of compensation.

1952—Act July 17, 1952, redesignated Solicitor as General Counsel and provided that "all laws and orders relating or referring to the Solicitor shall be deemed to relate or refer to the General Counsel".

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of Commerce, with certain exceptions, to Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out as a note under section 1501 of this title.

ORDER OF SUCCESSION

For order of succession during any period when both Secretary and Deputy Secretary of Commerce are unable to perform functions and duties of office of Secretary, see Ex. Ord. No. 13242, Dec. 18, 2001, 66 F.R. 66260, listed in a table under section 3345 of Title 5, Government Organization and Employees.

§1509. Designation of officer to sign routine papers

The Secretary may designate an officer of the Department to sign minor routine official papers and documents during the temporary absence of the Secretary, the Under Secretary, and the Assistant Secretaries of the Department.

(May 21, 1945, ch. 129, title III, §301, 59 Stat. 188; July 15, 1947, ch. 251, 61 Stat. 326.)

CODIFICATION

Assistant Secretary changed to Assistant Secretaries by act July 15, 1947, which provided for an additional Assistant Secretary. See section 1505 of this title.

Section was formerly classified to section 593a of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 378.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of Commerce, with certain exceptions, to Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out as a note under section 1501 of this title.

§1510. Clerical assistants

There shall also be such clerical assistants as may from time to time be authorized by the Congress.

(Feb. 14, 1903, ch. 552, §2, 32 Stat. 826; July 16, 1952, ch. 878, §2, 66 Stat. 710.)

CODIFICATION

Section was formerly classified to section 594 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 378.

AMENDMENTS

1952—Act July 16, 1952, provided for clerical assistants instead of a disbursing clerk.

DISBURSEMENT CLERK

Section, act Feb. 14, 1903, ch. 552, §2, 32 Stat. 826, provided for a disbursing clerk in the Department of Commerce.

TRANSFER OF DISBURSEMENT AGENCIES

Division of Disbursement and certain other offices and agencies and their functions consolidated into Fiscal Service of Department of the Treasury by Reorg. Plan No. III of 1940, §1(a)(1), eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231, set out in the Appendix to Title 5, Government Organization and Employees. See section 306 of Title 31, Money and Finance.

§1511. Bureaus in Department

The following named bureaus, administrations, services, offices, and programs of the public service, and all that pertains thereto, shall be under the jurisdiction and subject to the control of the Secretary of Commerce:

(1) National Oceanic and Atmospheric Administration;

(2) United States Travel and Tourism Administration;

(3) National Institute of Standards and Technology;

(4) United States Patent and Trademark Office [1]

(5) Bureau of the Census; and

(6) such other bureaus or other organizational units as the Secretary of Commerce may from time to time establish in accordance with law.

(Feb. 14, 1903, ch. 552, §§4, 12, 32 Stat. 826, 830; June 17, 1910, ch. 301, §4, 36 Stat. 537; Aug. 23, 1912, ch. 350, §1, 37 Stat. 407; Mar. 4, 1913, ch. 141, §3, 37 Stat. 737; Jan. 5, 1923, ch. 23, §1, 42 Stat. 1109; June 30, 1932, ch. 314, pt. II, title V, §501, 47 Stat. 415; Feb. 22, 1934, Ex. Ord. 6611; May 27, 1936, ch. 463, §1, 49 Stat. 1380; 1939 Reorg. Plan No. II, §§2(a), 4(e), 6, eff. July 1, 1936, 4 F.R. 2731, 53 Stat. 1432; 1940 Reorg. Plan No. IV, §§7, 8, eff. June 30, 1940, 5 F.R. 2422, 54 Stat. 1235, 1236; 1946 Reorg. Plan No. 3, §§101–104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; June 30, 1949, ch. 288, title I, §103(a), 63 Stat. 380; Aug. 4, 1949, ch. 393, §20, 63 Stat. 561; 1949 Reorg. Plan No. 7, §1, eff. Aug. 19, 1949, 14 F.R. 5228, 63 Stat. 1070; 1950 Reorg. Plan No. 21, §§101, 106, 201, 15 F.R. 3178, 64 Stat. 1273; Pub. L. 93–498, §23, Oct. 29, 1974, 88 Stat. 1549; Pub. L. 93–596, §3, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 95–422, §2(c), Oct. 5, 1978, 92 Stat. 932; Pub. L. 97–31, §12(6), Aug. 6, 1981, 95 Stat. 154; Pub. L. 97–63, §4(a)(1), Oct. 16, 1981, 95 Stat. 1014; Pub. L. 100–418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4732(b)(6)], Nov. 29, 1999, 113 Stat. 1536, 1501A–583; Pub. L. 106–503, title I, §110(b), Nov. 13, 2000, 114 Stat. 2302.)

CODIFICATION

Section was formerly classified to section 597 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 378.

AMENDMENTS

2000—Pars. (5) to (7). Pub. L. 106–503 inserted "and" after "Census;" in par. (5), redesignated par. (7) as (6) and struck out former par. (6) which read as follows: "United States Fire Administration; and".

1999—Pub. L. 106–113 redesignated pars. (a) to (g) as (1) to (7), respectively, realigned margins, and in par. (4) substituted "United States Patent and Trademark Office" for "Patent and Trademark Office;".

1988—Subsec. (c). Pub. L. 100–418 substituted "National Institute of Standards and Technology" for "National Bureau of Standards".

1981—Pars. (c) to (g). Pub. L. 97–31 struck out par. (c) "Maritime Administration" and redesignated pars. (d) to (h) as (c) to (g), respectively.

1978—Par. (g). Pub. L. 95–422 substituted "United States Fire Administration" for "National Fire Prevention and Control Administration".

1974—Pub. L. 93–498 amended section generally, substituting reference to Secretary of Commerce for Department of Commerce, substituting letters for numbers in the designation for enumerated bodies, and in such enumeration substituted reference to National Oceanic and Atmospheric Administration, United States Travel Service, Maritime Administration, National Bureau of Standards, Patent Office, Bureau of the Census, National Fire Prevention and Control Administration and such other bureaus or other organizational units as the Secretary of Commerce may from time to time establish in accordance with law, for reference to The Bureau of Foreign and Domestic Commerce, The Bureau of Public Roads, The Civil Aeronautics Authority, The Census Office, The Coast and Geodetic Survey, The Federal Maritime Board, The Inland Waterways Corporation, The Maritime Administration, The National Bureau of Standards, The Patent Office, and The Weather Bureau.

CHANGE OF NAME

"United States Travel and Tourism Administration" substituted for "United States Travel Service" in par.

(b), pursuant to section 4(a)(1) of Pub. L. 97–63, which established United States Travel and Tourism Administration in place of United States Travel Service, effective Oct. 1, 1981. See section 2124 of Title 22, Foreign Relations and Intercourse.

"Patent and Trademark Office" substituted for "Patent Office", in par. (d) [now par. (4)] pursuant to section 3 of Pub. L. 93–596, set out as a note under section 1 of Title 35, Patents.

In order to implement the provisions of Reorganization Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, as amended, set out below, the following organizational names appearing in chapter IX of subtitle B of Title 15, Code of Federal Regulations, which covers the administration of the National Oceanic and Atmospheric Administration, were changed by order of the Acting Associate Administrator, 35 F.R. 19249, Dec. 19, 1970, as follows: Environmental Science Services Administration to National Oceanic and Atmospheric Administration (ESSA to NOAA); Coast and Geodetic Survey to National Ocean Survey; and Weather Bureau to National Weather Service.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

REPEALS

Act June 17, 1910, ch. 301, §4, 36 Stat. 537, cited as a credit to this section, was repealed by act Aug. 4, 1949, ch. 393, §20, 63 Stat. 561.

Act June 30, 1932, ch. 314, pt. II, title V, §501, 47 Stat. 415, cited as a credit to this section, was repealed by Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 648 and Pub. L. 97–258, §5(b), Sept. 13, 1982, 96 Stat. 1068, 1074.

Act May 27, 1936, ch. 463, §1, 49 Stat. 1380, cited as a credit to this section, was repealed by Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 649.

TRANSFER OF FUNCTIONS; ORGANIZATIONAL HISTORY

For transfer of functions, personnel, assets, and liabilities of the Department of Commerce, including the functions of the Secretary of Commerce relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(2) and sections 121(g)(3), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of Secretary of Commerce, Department of Commerce, and officers and components of Department of Commerce as they related to or were utilized by Office of Energy Programs within Department of Commerce, but limited to industrial energy conservation programs, transferred to, and vested in, Secretary of Energy as part of creation of Department of Energy by Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565. See section 7157 of Title 42, The Public Health and Welfare.

For transfer of functions of other officers, employees, and agencies of Department of Commerce, with certain exceptions, to Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out as a note under section 1501 of this title.

Public Roads Administration, which was redesignated Bureau of Public Roads and, with its functions, transferred from Federal Works Agency to General Services Administration by section 103(a) of act June 30, 1949 (see Historical and Revision Notes and 2006 Amendment note under section 303 of Title 40, Public Buildings, Property, and Works), was subsequently transferred to Department of Commerce, and then to Department of Transportation, by Reorg. Plan No. 7 of 1949, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

Federal Maritime Board was created as an agency within Department of Commerce by Reorg. Plan No. 21 of 1950, §§101, 106, set out in the Appendix to Title 5, and sections 103 to 105 of the Plan transferred to Board and its chairman certain functions of former United States Maritime Commission and chairman thereof. Section 307 of the Plan provided that functions transferred to Federal Maritime Board and its chairman should not be subject to the provisions of Reorg. Plan No. 5 of 1950, also eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in note under section 1501 of this title, which, with a few additional exceptions, transferred functions of all officers, agencies, and employees of Department of Commerce to Secretary of Commerce, and authorized him to delegate any functions so transferred, or any of his other functions, to any of such officers, agencies and employees. Section 304 of Reorg. Plan No. 7 of 1961, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840, set out in the Appendix to Title 5, abolished Federal Maritime Board, including offices of members of Board. Functions of Board transferred either to Federal Maritime Commission, which was established as an independent body, or to Secretary of Commerce by sections 103 and 202 of Reorg. Plan No. 7 of 1961.

Maritime Administration, with a Maritime Administrator at its head, was established in Department of

Commerce by Reorg. Plan No. 21 of 1950, §201, set out in the Appendix to Title 5, and section 204 of the Plan transferred certain functions of former United States Maritime Commission and its Chairman to Secretary of Commerce, with power vested in Secretary to authorize their performance by Administrator. Section 307 of the Plan provided that functions transferred to Secretary by that Plan should not be subject to provisions of Reorg. Plan No. 5 of 1950, also eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in note under section 1501 of this title, which, with a few additional exceptions, transferred functions of all other officers, agencies, and employees of Department of Commerce to Secretary of Commerce, and authorized him to delegate any functions so transferred, or any of his other functions, to any of such officers, agencies, and employees.

Section 304 of Reorg. Plan No. 7 of 1961, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840, set out in the Appendix to Title 5, abolished Federal Maritime Board, including offices of members of Board. Functions of Board transferred either to Federal Maritime Commission, which was established as an independent body, or to Secretary of Commerce by sections 103 and 202 of Reorg. Plan No. 7 of 1961.

Maritime Administration of Department of Commerce transferred to Department of Transportation, and all related functions of Secretary and other officers and offices of Department of Commerce transferred to Department of Transportation and vested in Secretary of Transportation, by Maritime Act of 1981, Pub. L. 97–31, Aug. 6, 1981, 95 Stat. 151, which was repealed in part by Pub. L. 109–304, §19, Oct. 6, 2006, 120 Stat. 1710. See section 109 of Title 49, Transportation.

Community Relations Service transferred from Department of Commerce to Department of Justice by Reorg. Plan No. 1 of 1966, eff. Apr. 22, 1966, 31 F.R. 6187, 80 Stat. 1607, set out in the Appendix to Title 5.

Department of Commerce, prior to act Mar. 4, 1913, was known as Department of Commerce and Labor. The following agencies which were placed under jurisdiction of Department of Commerce and Labor by act Feb. 13, 1903, which act established the Department, were abolished or transferred as follows:

Office of United States Shipping Commissioner abolished by Reorg. Plan No. 3 of 1946, §§101 to 104, eff. July 16, 1946, which transferred functions to Commandant of Coast Guard and Commissioner of Customs. See Appendix to Title 5, Government Organization and Employees.

Bureau of Navigation and the Steamboat Inspection Service consolidated into Bureau of Navigation and Steamboat Inspection by act June 30, 1932, which name was changed to Bureau of Marine Inspection and Navigation by act May 27, 1936, cited to text. Bureau abolished and functions transferred to Commandant of Coast Guard and Commissioner of Customs by Reorg. Plan No. 3 of 1946. See Appendix to Title 5.

Bureau of Fisheries transferred to Department of the Interior by section 4(e) of Reorg. Plan No. II of 1939. Reorg. Plan No. II of 1939 is set out in the Appendix to Title 5.

Bureau of Immigration changed to Bureau of Immigration and Naturalization by act June 29, 1906, ch. 3592, §1, 34 Stat. 596. Commissioner General of Immigration, Commissioners of Immigration, and Bureau of Immigration and Naturalization, transferred to Department of Labor by act Mar. 4, 1913. Subsequently, by Ex. Ord. No. 6166, §14 of June 10, 1933, and Reorg. Plan No. V of 1940, eff. June 14, 1940, 5 F.R. 2223, 54 Stat. 1238, Bureau of Immigration and Bureau of Naturalization consolidated to form Immigration and Naturalization Service and transferred to Department of Justice.

Light-House Board and Light-House Establishment consolidated under Bureau of Lighthouses by act June 17, 1910, ch. 301, §4, 36 Stat. 537. Bureau of Lighthouses transferred to Coast Guard in Department of the Treasury by Reorg. Plan No. II of 1939, §2(a). Reorg. Plan No. II of 1939 is set out in the Appendix to Title 5. Said section 4 of act June 17, 1910, was repealed by section 20 of act Aug. 4, 1949, section 1 of which reestablished Coast Guard by enacting Title 14, Coast Guard. Coast Guard transferred to Department of Transportation, and all functions, powers, and duties relating to Coast Guard of Secretary of the Treasury and of other officers and offices of Department of the Treasury transferred to Secretary of Transportation by Pub. L. 89–670, §6(b)(1), Oct. 15, 1966, 80 Stat. 938. Section 6(b)(2) of Pub. L. 89–670, however, provided that notwithstanding such transfer of functions, Coast Guard shall operate as part of Navy in time of war or when President directs as provided in section 3 of Title 14, Coast Guard. See section 108 of Title 49, Transportation.

Bureau of Mines transferred from Department of the Interior to Department of Commerce by Ex. Ord. No. 4239, eff. July 1, 1925, and retransferred to Department of the Interior by Ex. Ord. No. 6611, Feb. 24, 1934. For provisions relating to closure and transfer of functions of the United States Bureau of Mines, see note set out under section 1 of Title 30, Mineral Lands and Mining.

The following agencies acquired their status in the manner indicated:

Bureau of Foreign and Domestic Commerce resulted from a consolidation of Bureau of Manufactures and Bureau of Statistics by act Aug. 23, 1912.

Civil Aeronautics Authority [Civil Aeronautics Board] transferred to Department of Commerce by section 7 of Reorg. Plan No. IV of 1940, set out in the Appendix to Title 5. For transfer of functions of Civil Aeronautics Board see section 1551 et seq. and section 1655(d) of former Title 49, Transportation.

Inland Waterways Corporation transferred to Department of Commerce by section 6 of Reorg. Plan No. II of 1939. Reorg. Plan No. II of 1939 is set out in the Appendix of Title 5. Pub. L. 88–67, §2, July 19, 1963, 77 Stat. 81, provided generally for liquidation of affairs of Inland Waterways Corporation.

Patent Office transferred from Department of the Interior by Ex. Ord. of Mar. 17, 1925, as authorized by section 12 of act Feb. 14, 1903. See section 1517 of this title.

Environmental Science Services Administration in Department of Commerce, including offices of Administrator and Deputy Administrator thereof, abolished by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out in the Appendix to Title 5, which created National Oceanic and Atmospheric Administration in Department of Commerce and transferred personnel, property, records, and unexpended balances of funds of Environmental Science Services Administration to such newly created National Oceanic and Atmospheric Administration. Components of Environmental Science Services Administration thus transferred included Weather Bureau, Coast and Geodetic Survey, Environmental Data Service, National Environmental Satellite Center, and ESSA Research Laboratories.

Weather Bureau transferred from Department of Agriculture by section 8 of Reorg. Plan No. IV of 1940. Reorg. Plan IV of 1940 is set out in the Appendix to Title 5. Coast and Geodetic Survey and Weather Bureau consolidated to form a new agency in Department of Commerce known as Environmental Science Services Administration by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 4443, set out in the Appendix to Title 5.

Functions, powers, and duties of Office of Audits and Investigations and Inspections Staff and that portion of office referred to as Office of Investigations and Security which had responsibility for investigation of alleged criminal violations and program abuse in Department of Commerce transferred to Office of Inspector General in Department of Commerce, as established by Pub. L. 95–452, §2, Oct. 12, 1978, 92 Stat. 1101, set out in the Appendix to Title 5, Government Organization and Employees. See section 9(a)(1)(B) of Pub. L. 95–452, set out in the Appendix to Title 5.

REORGANIZATION PLAN NO. 4 OF 1970

EFF. OCT. 3, 1970, 35 F.R. 15627, 84 STAT. 2090, AS AMENDED PUB. L. 94–461, §4(C)(1), OCT. 8, 1976, 90 STAT. 1969; PUB. L. 95–219, §3(A)(1), DEC. 28, 1977, 91 STAT. 1613; PUB. L. 98–498, TITLE III, §320(C)(3), OCT. 19, 1984, 98 STAT. 2309; PUB. L. 99–659, TITLE IV, §407(D), NOV. 14, 1986, 100 STAT. 3739; PUB. L. 112–166, §2(B)(1), AUG. 10, 2012, 126 STAT. 1283

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, July 9, 1970, pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

SECTION 1. TRANSFERS TO SECRETARY OF COMMERCE

The following are hereby transferred to the Secretary of Commerce:

(a) All functions vested by law in the Bureau of Commercial Fisheries of the Department of the Interior or in its head, together with all functions vested by law in the Secretary of the Interior or the Department of the Interior which are administered through that Bureau or are primarily related to the Bureau, exclusive of functions with respect to (1) Great Lakes fishery research and activities related to the Great Lakes Fisheries Commission, (2) Missouri River Reservoir research, (3) the Gulf Breeze Biological Laboratory of the said Bureau at Gulf Breeze, Florida, and (4) Trans-Alaska pipeline investigations.

(b) The functions vested in the Secretary of the Interior by the Act of September 22, 1959 (Public Law 86–359, 73 Stat. 642, 16 U.S.C. 760c [probably means 760e]–760g; relating to migratory marine species of game fish).

(c) The functions vested by law in the Secretary of the Interior, or in the Department of the Interior or in any officer or instrumentality of that Department, which are administered through the Marine Minerals Technology Center of the Bureau of Mines.

(d) All functions vested in the National Science Foundation by the National Sea Grant College and Program Act of 1966 (80 Stat. 988), as amended (33 U.S.C. 1121 et seq.).

(e) Those functions vested in the Secretary of Defense or in any officer, employee, or organizational entity of the Department of Defense by the provision of Public Law 91–144, 83 Stat. 326, under the heading "Operation and maintenance, general" with respect to "surveys and charting of northern and northwestern lakes and connecting waters," or by other law, which come under the mission assigned as of July 1, 1969, to the United States Army Engineer District, Lake Survey, Corps of Engineers, Department of the Army and

relate to (1) the conduct of hydrographic surveys of the Great Lakes and their outflow rivers, Lake Champlain, New York State Barge Canals, and the Minnesota-Ontario border lakes, and the compilation and publication of navigation charts, including recreational aspects, and the Great Lakes Pilot for the benefit and use of the public, (2) the conception, planning, and conduct of basic research and development in the fields of water motion, water characteristics, water quantity, and ice and snow, and (3) the publication of data and the results of research projects in forms useful to the Corps of Engineers and the public, and the operation of a Regional Data Center for the collection, coordination, analysis, and the furnishing to interested agencies of data relating to water resources of the Great Lakes.

(f) So much of the functions of the transferor officers and agencies referred to in or affected by the foregoing provisions of this section as is incidental to or necessary for the performance by or under the Secretary of Commerce of the functions transferred by those provisions or relates primarily to those functions. The transfers to the Secretary of Commerce made by this section shall be deemed to include the transfer of authority, provided by law, to prescribe regulations relating primarily to the transferred functions.

SEC. 2. ESTABLISHMENT OF ADMINISTRATION

(a) There is hereby established in the Department of Commerce an agency which shall be known as the National Oceanic and Atmospheric Administration, hereinafter referred to as the "Administration."

(b) There shall be at the head of the Administration the Administrator of the National Oceanic and Atmospheric Administration, hereinafter referred to as the "Administrator." The Administrator shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for Level III of the Executive Schedule Pay Rates (5 U.S.C. 5314).

(c) There shall be in the Administration a Deputy Administrator of the National Oceanic and Atmospheric Administration who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for Level IV of the Executive Schedule Pay Rates (5 U.S.C. 5315). The Deputy Administrator shall perform such functions as the Administrator shall from time to time assign or delegate, and shall act as Administrator during the absence or disability of the Administrator or in the event of a vacancy in the office of Administrator.

(d) There shall be in the Administration a Chief Scientist of the National Oceanic and Atmospheric Administration who shall be appointed by the President and shall be compensated at the rate now or hereafter provided for Level V of the Executive Schedule Pay Rates (5 U.S.C. 5316). The Chief Scientist shall be the principal scientific adviser to the Administrator, and shall perform such other duties as the Administrator may direct. The Chief Scientist shall be an individual who is, by reason of scientific education and experience, knowledgeable in the principles of oceanic, atmospheric, or other scientific disciplines important to the work of the Administration. [As amended Pub. L. 94–461, §4(c)(1), Oct. 8, 1976, 90 Stat. 1969; Pub. L. 99–659, title IV, §407(d), Nov. 14, 1986, 100 Stat. 3739; Pub. L. 112–166, §2(b)(1), Aug. 10, 2012, 126 Stat. 1283.]

(e)(1) There shall be in the Administration a General Counsel and five Assistant Administrators, one of whom shall be the Assistant Administrator for Coastal Zone Management and one of whom shall be the Assistant Administrator for Fisheries. The General Counsel and each Assistant Administrator shall be appointed by the Secretary, subject to approval of the President, and shall be compensated at a rate now or hereafter provided for level V of the Executive Schedule Pay Rates (5 U.S.C. 5316).

(2) The General Counsel shall serve as the chief legal officer for all legal matters which may arise in connection with the conduct of the functions of the Administration.

(3) The Assistant Administrator for Coastal Zone Management shall be an individual who is, by reason of background and experience, especially qualified to direct the implementation and administration of the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.).

(4) The Assistant Administrator for Fisheries shall be responsible for all matters related to living marine resources which may arise in connection with the conduct of the functions of the Administration. [As amended Pub. L. 95–219, §3(a)(1), Dec. 28, 1977, 91 Stat. 1613.]

(f) The President may appoint in the Administration, by and with the advice and consent of the Senate, two commissioned officers to serve at any one time as the designated heads of two principal constituent organizational entities of the Administration, or the President may designate one such officer as the head of such an organizational entity and the other as the head of the commissioned corps of the Administration. Any such designation shall create a vacancy on the active list and the officer while serving under this subsection shall have the rank, pay, and allowances of a rear admiral (upper half).

(g) Any commissioned officer of the Administration who has served under (d) or (f) and is retired while so serving or is retired after the completion of such service while serving in a lower rank or grade, shall be retired with the rank, pay, and allowances authorized by law for the highest grade and rank held by him; but any such officer, upon termination of his appointment in a rank above that of captain, shall, unless appointed or

assigned to some other position for which a higher rank or grade is provided, revert to the grade and number he would have occupied had he not served in a rank above that of captain and such officer shall be an extra number in that grade.

SEC. 3. PERFORMANCE OF TRANSFERRED FUNCTIONS

The provisions of sections 2 and 4 of Reorganization Plan No. 5 of 1950 (64 Stat. 1263) shall be applicable to the functions transferred hereunder to the Secretary of Commerce.

SEC. 4. INCIDENTAL TRANSFERS

(a) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with the functions transferred to the Secretary of Commerce by this reorganization plan as the Director of the Office of Management and Budget shall determine shall be transferred to the Department of Commerce at such time or times as the Director shall direct.

(b) Such further measures and dispositions as the Director of the Office of Management and Budget shall deem to be necessary in order to effectuate the transfers referred to in subsection (a) of this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

(c) The personnel, property, records, and unexpended balances of appropriations, allocations, and other funds of the Environmental Science Services Administration shall become personnel, property, records, and unexpended balances of the National Oceanic and Atmospheric Administration or of such other organizational entity or entities of the Department of Commerce as the Secretary of Commerce shall determine.

(d) The Commissioned Officer Corps of the Environmental Science Services Administration shall become the Commissioned Officer Corps of the National Oceanic and Atmospheric Administration. Members of the Corps, including those appointed hereafter, shall be entitled to all rights, privileges, and benefits heretofore available under any law to commissioned officers of the Environmental Science Services Administration, including those rights, privileges, and benefits heretofore accorded by law to commissioned officers of the former Coast and Geodetic Survey.

(e) Any personnel, property, records, and unexpended balances of appropriations, allocations, and other funds of the Bureau of Commercial Fisheries not otherwise transferred shall become personnel, property, records, and unexpended balances of such organizational entity or entities of the Department of the Interior as the Secretary of the Interior shall determine.

SEC. 5. INTERIM OFFICERS

(a) The President may authorize any person who immediately prior to the effective date of this reorganization plan held a position in the executive branch of the Government to act as Administrator until the office of Administrator is for the first time filled pursuant to provisions of this reorganization plan or by recess appointment, as the case may be.

(b) The President may similarly authorize any such person to act as Deputy Administrator and authorize any such person to act as Associate Administrator.

(c) The President may similarly authorize a member of the former Commissioned Officer Corps of the Environmental Science Services Administration to act as the head of one principal constituent organizational entity of the Administration.

(d) The President may authorize any person who serves in an acting capacity under the foregoing provisions of this section to receive the compensation attached to the office in respect of which he so serves. Such compensation, if authorized, shall be in lieu of, but not in addition to, other compensation from the United States to which such person may be entitled.

SEC. 6. ABOLITIONS

(a) Subject to the provisions of this reorganization plan, the following, exclusive of any functions, are hereby abolished:

(1) The Environmental Science Services Administration in the Department of Commerce (established by Reorganization Plan No. 2 of 1965, 79 Stat. 1318), including the offices of Administrator of the Environmental Science Services Administration and Deputy Administrator of the Environmental Science Services Administration.

(2) The Bureau of Commercial Fisheries in the Department of the Interior (16 U.S.C. 742b), including the office of Director of the Bureau of Commercial Fisheries.

(b) Such provisions as may be necessary with respect to terminating any outstanding affairs shall be made by the Secretary of Commerce in the case of the Environmental Science Services Administration and by the Secretary of the Interior in the case of the Bureau of Commercial Fisheries.

MESSAGE OF THE PRESIDENT [1]

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 4 of 1970, prepared in accordance with chapter 9 of title 5 of the United States Code. The plan would transfer to the Secretary of Commerce various functions relating to the oceans and atmosphere, including commercial fishery functions, and would establish a National Oceanic and Atmospheric Administration in the Department of Commerce. My reasons for transmitting this plan are stated in a more extended accompanying message.

After investigation, I have found and hereby declare that each reorganization included in Reorganization Plan No. 4 of 1970 is necessary to accomplish one or more of the purposes set forth in section 901(a) of title 5 of the United States Code. In particular, the plan is responsive to section 901(a)(1), "to promote the better execution of the laws, the more effective management of the executive branch and of its agencies and functions, and the expeditious administration of the public business;" and section 901(a)(3), "to increase the efficiency of the operations of the Government to the fullest extent practicable."

The reorganizations provided for in the plan make necessary the appointment and compensation of new officers as specified in section 2 of the plan. The rates of compensation fixed for these officers are comparable to those fixed for other officers in the executive branch who have similar responsibilities.

The reorganization plan should result in the more efficient operation of the Government. It is not practical, however, to itemize or aggregate the exact expenditure reductions which will result from this action.

RICHARD NIXON.

THE WHITE HOUSE, July 9, 1970.

EXECUTIVE ORDER NO. 11567

Ex. Ord. No. 11567, Nov. 16, 1970, 35 F.R. 17701, which prescribed the compensation of the Director and Deputy Director of the Bureau of Domestic Commerce, was superseded by Ex. Ord. No. 11759, Jan. 15, 1974, 39 F.R. 2077, formerly set out below.

EXECUTIVE ORDER NO. 11759

Ex. Ord. No. 11759, Jan. 15, 1974, 39 F.R. 2077, which related to compensation of certain officials in the Domestic and International Business Administration, was superseded by Ex. Ord. No. 12096, Nov. 2, 1978, 43 F.R. 51597, formerly set out below.

EXECUTIVE ORDER NO. 12096

Ex. Ord. No. 12096, Nov. 2, 1978, 43 F.R. 51597, which related to compensation of certain officials in the Industry and Trade Administration, was revoked by Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 989, set out as a note under section 2171 of Title 19, Customs Duties.

[1] So in original. Probably should be followed by a semicolon.

[1] For additional Message of the President see Reorganization Plan No. 3 of 1970, Title 5, Appendix, Government Officers and Employees.

§1511a. Repealed. Pub. L. 95–219, §3(a)(2), Dec. 28, 1977, 91 Stat. 1613

Section, Pub. L. 94–370, §15(a), July 26, 1976, 90 Stat. 1032, authorized appointment and set forth compensation level for an Associate Administrator for Coastal Zone Management.

§1511b. United States fishery trade officers

(a) Appointment

For purposes of carrying out export promotion and other fishery development responsibilities, the Secretary of Commerce (hereinafter in this section referred to as the "Secretary") shall appoint not fewer than six officers who shall serve abroad to promote United States fishing interests. These officers shall be knowledgeable about the United States fishing industry, preferably with experience

derived from the harvesting, processing, or marketing sectors of the industry or from the administration of fisheries programs. Such officers, who shall be employees of the Department of Commerce, shall have the designation of fishery trade officers.

(b) Assignment

Upon the request of the Secretary, the Secretary of State shall officially assign fishery trade officers to such diplomatic missions of the United States as the Secretary designates (three of which shall be those in Brussels, Belgium; Rome, Italy; and Tokyo, Japan) and shall obtain for them diplomatic privileges and immunities equivalent to those enjoyed by foreign service personnel of comparable rank and salary.

(c) Functions of fishery trade officers

The functions of fishery trade officers appointed under subsection (a) of this section shall be—

(1) to increase the effectiveness of United States fishery export promotion efforts through such activities as the coordination of market development efforts and the provision of services and facilities for exporters of United States fishery products;

(2) to develop, maintain, and make available to interested persons listings of (A) trade, government, and other organizations that are concerned with, or have an interest in, international trade in United States fishery products, and (B) United States fishery products available for such trade;

(3) to prepare quarterly reports regarding (A) the supply, demand, and prices of each United States fishery product exported, or for which there may be export potential, to the foreign nation or area concerned, and (B) the trade barriers or incentives of such nation or area that affect imports of such products;

(4) to prepare weekly statements regarding the prices for each fishery product for which there may be United States export potential to the foreign nation or area concerned; and

(5) to carry out such other functions as the Secretary may require.

(d) Administration

The Secretary of State and the Secretary shall enter into cooperative arrangements concerning the provision of office space, equipment, facilities, clerical services, and such other administrative support as may be required for fishery trade officers and their families.

(Pub. L. 96–561, title II, §211, Dec. 22, 1980, 94 Stat. 3290.)

§1511c. Estuarine Programs Office

(a) Establishment

The Administrator of the National Oceanic and Atmospheric Administration (hereinafter in this section referred to as the "Administrator") shall establish within the Administration an Estuarine Programs Office.

(b) Functions

The Estuarine Programs Office shall—

(1) develop and implement a national estuarine strategy for the Administration that integrates the research, regulatory, and trusteeship responsibilities of the Administration;

(2) coordinate the estuarine activities of the various organizations within the Administration, including activities in estuarine research and assessment, fisheries research, coastal management, and habitat conservation;

(3) coordinate the estuarine activities of the Administration with the activities of other Federal and State agencies; and

(4) provide technical assistance to the Administrator, to other Federal agencies, and to State and local government agencies in—

(A) assessing the condition of estuaries;

(B) identifying estuaries of critical national or regional importance;

(C) identifying technical and management alternatives for the restoration and protection of estuarine resources; and

(D) monitoring the implementation and effectiveness of estuarine management plans.

(c) Authorization

There are authorized to be appropriated to the Administration not to exceed $500,000 for fiscal year 1987, $530,000 for fiscal year 1988, $560,000 for fiscal year 1989, and $600,000 for fiscal year 1990 to carry out the provisions of this section.

(Pub. L. 99–659, title IV, §406, Nov. 14, 1986, 100 Stat. 3738.)

§1511d. Chesapeake Bay Office

(a) Establishment

(1) The Secretary of Commerce shall establish, within the National Oceanic and Atmospheric Administration, an office to be known as the Chesapeake Bay Office (in this section referred to as the "Office").

(2) The Office shall be headed by a Director who shall be appointed by the Secretary of Commerce, in consultation with the Chesapeake Executive Council. Any individual appointed as Director shall have knowledge and experience in research or resource management efforts in the Chesapeake Bay.

(3) The Director may appoint such additional personnel for the Office as the Director determines necessary to carry out this section.

(b) Functions

The Office, in consultation with the Chesapeake Executive Council, shall—

(1) provide technical assistance to the Administrator, to other Federal departments and agencies, and to State and local government agencies in—

(A) assessing the processes that shape the Chesapeake Bay system and affect its living resources;

(B) identifying technical and management alternatives for the restoration and protection of living resources and the habitats they depend upon; and

(C) monitoring the implementation and effectiveness of management plans;

(2) develop and implement a strategy for the National Oceanic and Atmospheric Administration that integrates the science, research, monitoring, data collection, regulatory, and management responsibilities of the Secretary of Commerce in such a manner as to assist the cooperative, intergovernmental Chesapeake Bay Program to meet the commitments of the Chesapeake Bay Agreement;

(3) coordinate the programs and activities of the various organizations within the National Oceanic and Atmospheric Administration, the Chesapeake Bay Regional Sea Grant Programs, and the Chesapeake Bay units of the National Estuarine Research Reserve System, including—

(A) programs and activities in—

(i) coastal and estuarine research, monitoring, and assessment;

(ii) fisheries research and stock assessments;

(iii) data management;

(iv) remote sensing;

(v) coastal management;

(vi) habitat conservation and restoration; and

(vii) atmospheric deposition; and

(B) programs and activities of the Cooperative Oxford Laboratory of the National Ocean Service with respect to—

(i) nonindigenous species;

(ii) estuarine and marine species pathology;
(iii) human pathogens in estuarine and marine environments; and
(iv) ecosystem health;

(4) coordinate the activities of the National Oceanic and Atmospheric Administration with the activities of the Environmental Protection Agency and other Federal, State, and local agencies;

(5) establish an effective mechanism which shall ensure that projects have undergone appropriate peer review and provide other appropriate means to determine that projects have acceptable scientific and technical merit for the purpose of achieving maximum utilization of available funds and resources to benefit the Chesapeake Bay area;

(6) remain cognizant of ongoing research, monitoring, and management projects and assist in the dissemination of the results and findings of those projects; and

(7) submit a biennial report to the Congress and the Secretary of Commerce with respect to the activities of the Office and on the progress made in protecting and restoring the living resources and habitat of the Chesapeake Bay, which report shall include an action plan consisting of—

(A) a list of recommended research, monitoring, and data collection activities necessary to continue implementation of the strategy described in paragraph (2); and

(B) proposals for—

(i) continuing any new National Oceanic and Atmospheric Administration activities in the Chesapeake Bay; and

(ii) the integration of those activities with the activities of the partners in the Chesapeake Bay Program to meet the commitments of the Chesapeake 2000 agreement and subsequent agreements.

(c) Chesapeake Bay fishery and habitat restoration small watershed grants program

(1) In general

The Director of the Chesapeake Bay Office of the National Oceanic and Atmospheric Administration (in this section referred to as the "Director"), in cooperation with the Chesapeake Executive Council, shall carry out a community-based fishery and habitat restoration small grants and technical assistance program in the Chesapeake Bay watershed.

(2) Projects

(A) Support

The Director shall make grants under this subsection to pay the Federal share of the cost of projects that are carried out by entities eligible under paragraph (3) for the restoration of fisheries and habitats in the Chesapeake Bay.

(B) Federal share

The Federal share under subparagraph (A) shall not exceed 75 percent.

(C) Types of projects

Projects for which grants may be made under this subsection include—

(i) the improvement of fish passageways;
(ii) the creation of natural or artificial reefs or substrata for habitats;
(iii) the restoration of wetland or sea grass;
(iv) the production of oysters for restoration projects; and
(v) the prevention, identification, and control of nonindigenous species.

(3) Eligible entities

The following entities are eligible to receive grants under this subsection:

(A) The government of a political subdivision of a State in the Chesapeake Bay watershed, and the government of the District of Columbia.

(B) An organization in the Chesapeake Bay watershed (such as an educational institution or a community organization)—

(i) that is described in section 501(c) of title 26 and is exempt from taxation under section 501(a) of that title; and

(ii) that will administer such grants in coordination with a government referred to in subparagraph (A).

(4) Additional requirements

The Director may prescribe any additional requirements, including procedures, that the Director considers necessary to carry out the program under this subsection.

(d) Chesapeake Executive Council

For purposes of this section, "Chesapeake Executive Council" means the representatives from the Commonwealth of Virginia, the State of Maryland, the Commonwealth of Pennsylvania, the Environmental Protection Agency, the District of Columbia, and the Chesapeake Bay Commission, who are signatories to the Chesapeake Bay Agreement, and any future signatories to that Agreement.

(e) Authorization of appropriations

There is authorized to be appropriated to the Department of Commerce for the Chesapeake Bay Office $6,000,000 for each of fiscal years 2002 through 2006.

(Pub. L. 102–567, title III, §307, Oct. 29, 1992, 106 Stat. 4284; Pub. L. 107–372, title IV, §401(a), Dec. 19, 2002, 116 Stat. 3096.)

AMENDMENTS

2002—Pub. L. 107–372 substituted "Chesapeake Bay Office" for "Chesapeake Bay Estuarine Resources Office" in section catchline and amended text generally, substituting provisions establishing Office, describing functions, establishing habitat restoration small watershed grants program, and authorizing appropriations, for provisions establishing Office, describing functions, and requiring identification of funding request in President's annual budget.

MULTIPLE SPECIES MANAGEMENT STRATEGY

Pub. L. 107–372, title IV, §401(c), Dec. 19, 2002, 116 Stat. 3099, provided that:

"(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act [Dec. 19, 2002], the Director of the Chesapeake Bay Office of the National Oceanic and Atmospheric Administration shall begin a 5-year study, in cooperation with the scientific community of the Chesapeake Bay, appropriate State and interstate resource management entities, and appropriate Federal agencies—

"(A) to determine and expand the understanding of the role and response of living resources in the Chesapeake Bay ecosystem; and

"(B) to develop a multiple species management strategy for the Chesapeake Bay.

"(2) REQUIRED ELEMENTS OF STUDY.—In order to improve the understanding necessary for the development of the strategy under paragraph (1)(B), the study shall—

"(A) determine the current status and trends of fish and shellfish that live in the Chesapeake Bay and its tributaries and are selected for study;

"(B) evaluate and assess interactions among the fish and shellfish referred to in subparagraph (A) and other living resources, with particular attention to the impact of changes within and among trophic levels; and

"(C) recommend management actions to optimize the return of a healthy and balanced ecosystem for the Chesapeake Bay."

§1511e. Repealed. Pub. L. 111–314, §6, Dec. 18, 2010, 124 Stat. 3444

Section, Pub. L. 105–309, §8, Oct. 30, 1998, 112 Stat. 2937; Pub. L. 107–305, §14, Nov. 27, 2002, 116 Stat. 2380; Pub. L. 108–447, div. B, title II, Dec. 8, 2004, 118 Stat. 2878, related to Office of Space Commercialization. See section 50702 of Title 51, National and Commercial Space Programs.

§1512. Powers and duties of Department

It shall be the province and duty of said Department to foster, promote, and develop the foreign

and domestic commerce, the mining, manufacturing, and fishery industries of the United States; and to this end it shall be vested with jurisdiction and control of the departments, bureaus, offices, and branches of the public service hereinafter specified, and with such other powers and duties as may be prescribed by law.

(Feb. 14, 1903, ch. 552, §3, 32 Stat. 826; Pub. L. 97–31, §12(7), Aug. 6, 1981, 95 Stat. 154.)

CODIFICATION

Section was formerly classified to section 596 of Title 5 prior to the general revision and enactment of Title 5 by Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 378.

AMENDMENTS

1981—Pub. L. 97–31 struck out references to shipping and transportation facilities.

EMERGENCY PREPAREDNESS FUNCTIONS

For assignment of certain emergency preparedness functions to the Secretary of Commerce, see Parts 1, 2, and 4 of Ex. Ord. No. 12656, Nov. 18, 1988, 53 F.R. 47491, set out as a note under section 5195 of Title 42, The Public Health and Welfare.

EXECUTIVE ORDER NO. 12864

Ex. Ord. No. 12864, Sept. 15, 1993, 58 F.R. 48773, as amended by Ex. Ord. No. 12890, Dec. 30, 1993, 59 F.R. 499; Ex. Ord. No. 12921, June 13, 1994, 59 F.R. 30667; Ex. Ord. No. 12970, Sept. 14, 1995, 60 F.R. 48359, which established the United States Advisory Council on the National Information Infrastructure, was revoked by Ex. Ord. No. 13062, §3(d), Sept. 29, 1997, 62 F.R. 51756, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

EX. ORD. NO. 13577. ESTABLISHMENT OF THE SELECTUSA INITIATIVE

Ex. Ord. No. 13577, June 15, 2011, 76 F.R. 35715, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to support private-sector job creation and enhance economic growth by encouraging and supporting business investment in the United States, it is hereby ordered as follows:

SECTION 1. *Policy*. Business investment in the United States by both domestic and foreign firms, whether in the form of new equipment or facilities or the expansion of existing facilities, is a major engine of economic growth and job creation. In an era of global capital mobility, the United States faces increasing competition for retaining and attracting industries of the future and the jobs they create. My Administration is committed to enhancing the efforts of the United States to win the growing global competition for business investment by leveraging our advantages as the premier business location in the world.

As a place to do business, the United States offers a hardworking, diverse, and educated workforce, strong protection of intellectual property rights, a predictable and transparent legal system, relatively low taxes, highly developed infrastructure, and access to the world's most lucrative consumer market. We welcome both domestic and foreign businesses to invest across the broad spectrum of the U.S. market.

The Federal Government lacks the centralized investment promotion infrastructure and resources to attract business investment that is often found in other industrialized countries. Currently, States and cities are competing against foreign governments to attract business investment. Our Nation needs to retain business investment and pursue and win new investment in the United States by better marketing our strengths, providing clear, complete, and consistent information, and removing unnecessary obstacles to investment.

SEC. 2. *SelectUSA Initiative*. (a) *Establishment.* There is established the SelectUSA Initiative (Initiative), a Government-wide initiative to attract and retain investment in the American economy. The Initiative is to be housed in the Department of Commerce. The mission of this Initiative shall be to facilitate business investment in the United States in order to create jobs, spur economic growth, and promote American competitiveness. The Initiative will provide enhanced coordination of Federal activities in order to increase the impact of Federal resources that support both domestic and foreign investment in the United States. In providing assistance, the Initiative shall work to maximize impact on business investment, job creation, and economic growth. The Initiative shall work on behalf of the entire Nation and shall exercise strict neutrality with regard to specific locations within the United States.

(b) *Functions*.

(i) The Initiative shall coordinate outreach and engagement by the Federal Government to promote the United States as the premier location to operate a business.

(ii) The Initiative shall serve as an ombudsman that facilitates the resolution of issues involving Federal programs or activities related to pending investments.

(iii) The Initiative shall provide information to domestic and foreign firms on: the investment climate in the United States; Federal programs and incentives available to investors; and State and local economic development organizations.

(iv) The Initiative shall report quarterly to the President through the National Economic Council, the Domestic Policy Council, and the National Security Staff, describing its outreach activities, requests for information received, and efforts to resolve issues.

(c) *Administration*. The Department of Commerce shall provide funding and administrative support for the Initiative through resources and staff assigned to work on the Initiative, to the extent permitted by law and within existing appropriations. The Secretary of Commerce shall designate a senior staff member as the Executive Director to lead the Initiative. The Executive Director shall coordinate activities both within the Department of Commerce and with other executive departments and agencies that have activities relating to business investment decisions.

(d) *Federal Interagency Investment Working Group*.

(i) There is established the Federal Interagency Investment Working Group (Working Group), which will be convened and chaired by the Initiative's Executive Director, in coordination with the Director of the National Economic Council.

(ii) The Working Group shall consist of senior officials from the Departments of State, the Treasury, Defense, Justice, the Interior, Agriculture, Commerce, Labor, Veterans Affairs, Health and Human Services, Housing and Urban Development, Transportation, Energy, Education, and Homeland Security, the Environmental Protection Agency, the Small Business Administration, the Export-Import Bank of the United States, the Office of the United States Trade Representative, the Domestic Policy Council, the National Economic Council, the National Security Staff, the Office of Management and Budget, and the Council of Economic Advisers, as well as such additional executive departments, agencies, and offices as the Secretary of Commerce may designate. Senior officials shall be designated by and report to the Deputy Secretary or official at the equivalent level of their respective offices, departments, and agencies.

(iii) The Working Group shall coordinate activities to promote business investment and respond to specific issues that affect business investment decisions.

(iv) The Department of Commerce shall provide funding and administrative support for the Working Group to the extent permitted by law and within existing appropriations.

(e) *Department and Agency Participation.* All executive departments and agencies that have activities relating to business investment decisions shall cooperate with the Initiative, as requested by the Initiative's Executive Director, to support its objectives.

SEC. 3. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to an executive department, agency, or the head thereof, or the status of that department or agency within the Federal Government; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

[Reference to the National Security Staff deemed to be a reference to the National Security Council Staff, see Ex. Ord. No. 13657, set out as a note under section 3021 of Title 50, War and National Defense.]

§1513. Duties and powers vested in Department

All duties performed and all power and authority possessed or exercised by the head of any executive department in and over any bureau, office, officer, board, branch, or division of the public service transferred to the Department of Commerce, or any business arising therefrom or pertaining thereto, or in relation to the duties performed by and authority conferred by law upon such bureau, officer, office, board, branch, or division of the public service, whether of an appellate or revisory character or otherwise, shall be vested in and exercised by the Secretary of Commerce.

(Feb. 14, 1903, ch. 552, §10, 32 Stat. 829.)

CODIFICATION

Section was formerly classified to section 599 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 378.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of Commerce, with certain exceptions, to Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out as a note under section 1501 of this title.

GOVERNMENT INTEREST IN PATENTS

For duties and powers of Secretary of Commerce with respect to interest of Government in patents, see executive orders set out as notes under section 266 of Title 35, Patents.

§1513a. Cost estimates for National Oceanic and Atmospheric Administration programs included in Department budget justification

Beginning in fiscal year 2007 and for each fiscal year thereafter, the Secretary of Commerce shall include in the budget justification materials that the Secretary submits to Congress in support of the Department of Commerce budget (as submitted with the budget of the President under section 1105(a) of title 31) an estimate for each National Oceanic and Atmospheric Administration procurement, acquisition and construction program having a total multiyear program cost of more than $5,000,000 and an estimate of the budgetary requirements for each such program for each of the five subsequent fiscal years.

(Pub. L. 109–108, title II, Nov. 22, 2005, 119 Stat. 2312.)

CODIFICATION

Section is from the Department of Commerce and Related Agencies Appropriations Act, 2006, which is title II of the Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006.

SIMILAR PROVISIONS

Similar provisions were contained in the following prior appropriation acts:
Pub. L. 113–76, div. B, title I, Jan. 17, 2014, 128 Stat. 49.
Pub. L. 113–6, div. B, title I, Mar. 26, 2013, 127 Stat. 239.
Pub. L. 112–55, div. B, title I, Nov. 18, 2011, 125 Stat. 597.
Pub. L. 111–117, div. B, title I, Dec. 16, 2009, 123 Stat. 3119.
Pub. L. 108–447, div. B, title II, Dec. 8, 2004, 118 Stat. 2881.

§1513b. Cost estimates for National Institute of Standards and Technology construction projects included in Department budget justification

Beginning in fiscal year 2007 and for each fiscal year thereafter, the Secretary of Commerce shall include in the budget justification materials that the Secretary submits to Congress in support of the Department of Commerce budget (as submitted with the budget of the President under section 1105(a) of title 31) an estimate for each National Institute of Standards and Technology construction project having a total multiyear program cost of more than $5,000,000 and simultaneously the budget justification materials shall include an estimate of the budgetary requirements for each such project for each of the five subsequent fiscal years.

(Pub. L. 109–108, title II, Nov. 22, 2005, 119 Stat. 2311.)

CODIFICATION

Section is from the Department of Commerce and Related Agencies Appropriations Act, 2006, which is title II of the Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006.

SIMILAR PROVISIONS

Similar provisions were contained in the following appropriation acts:
Pub. L. 113–76, div. B, title I, Jan. 17, 2014, 128 Stat. 47.
Pub. L. 113–6, div. B, title I, Mar. 26, 2013, 127 Stat. 238.
Pub. L. 112–55, div. B, title I, Nov. 18, 2011, 125 Stat. 596.
Pub. L. 111–117, div. B, title I, Dec. 16, 2009, 123 Stat. 3117.
Pub. L. 111–8, div. B, title I, Mar. 11, 2009, 123 Stat. 564.
Pub. L. 110–161, div. B, title I, Dec. 26, 2007, 121 Stat. 1889.

§1514. Basic authority for performance of certain functions and activities of Department

Appropriations are authorized for the following activities of the Department of Commerce:

(a) furnishing to employees of the Department of Commerce and other Federal agencies (including Army, Navy, and Air Force personnel where Army, Navy, or Air Force facilities or supplies are not available and upon request of the service concerned), and their dependents, in Alaska and other points outside the continental United States, free emergency medical services by contract or otherwise and free emergency medical supplies, where in the judgment of the Secretary furnishing of such supplies and services is necessary;

(b) when deemed necessary by the Secretary of Commerce, purchasing, transporting, storing, and distributing food and other subsistence supplies for resale to employees of the Department of Commerce and other Federal agencies (including Army, Navy, and Air Force personnel where Army, Navy, or Air Force facilities or supplies are not available and upon request of the service concerned), and their dependents, in Alaska and other points outside the continental United States at a reasonable value as determined by the Secretary of Commerce, the proceeds from such resales to be credited to the appropriation from which the expenditure was made;

(c) when deemed necessary by the Secretary of Commerce, the establishment, maintenance, and operation of messing facilities, by contract or otherwise, in Alaska and other points outside the continental United States where suitable family facilities are not available, such service to be furnished to employees of the Department of Commerce and other Federal agencies (including Army, Navy, and Air Force personnel where Army, Navy, or Air Force facilities are not available and upon request of the service concerned), and their dependents, in accordance with regulations established by the Secretary of Commerce, and at a reasonable value determined in accordance therewith, the proceeds from the furnishing of such services to be credited to the appropriation from which the expenditures are made;

(d) reimbursement, under regulations prescribed by the Secretary, of officers and employees in or under the Department of Commerce, for food, clothing, medicines, and other supplies furnished by them in emergencies for the temporary relief of distressed persons in remote localities;

(e) providing motion-picture equipment and film for recreation of crews of vessels of the National Ocean Survey, for recreation of employees in remote localities where such facilities are not available, and for training purposes;

(f) erecting, altering, repairing, equipping, furnishing, and maintaining, by contract or otherwise, such living and working quarters and facilities as may be necessary to carry out its authorized work at remote localities not on foreign soil where such living and working accommodations are not otherwise available.

(Oct. 26, 1949, ch. 733, 63 Stat. 907; Aug. 30, 1954, ch. 1076, §1(11), 68 Stat. 967; Pub. L. 93–608, §1(3), Jan. 2, 1975, 88 Stat. 1967.)

CODIFICATION

Section was formerly classified to section 596a of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, §1, Sept. 6, 1966, 80 Stat. 378.

AMENDMENTS

1975—Subsec. (b). Pub. L. 93–608 struck out proviso requiring an annual report to Congress of the total

expenditures made for such supplies and total proceeds from resales.

1954—Subsec. (c). Act Aug. 30, 1954, struck out proviso requiring the Secretary of Commerce to submit annually to Congress a report showing the expenditures for the establishment, maintenance, and operation of messing facilities in Alaska and other points outside the continental United States.

CHANGE OF NAME

Coast and Geodetic Survey consolidated with National Weather Bureau in 1965 to form Environmental Science Services Administration by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318. Environmental Science Services Administration abolished in 1970 and its personnel, property, records, etc., transferred to National Oceanic and Atmospheric Administration by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out as a note under section 1511 of this title. By order of Acting Associate Administrator of National Oceanic and Atmospheric Administration, 35 F.R. 19249, Dec. 19, 1970, Coast and Geodetic Survey redesignated National Ocean Survey. See notes under section 311 of this title.

§1515. Records, etc., of bureaus transferred to Department of Commerce

The official records and papers on file in and pertaining exclusively to the business of any bureau, office, department, or branch of the public service transferred to the Department of Commerce, together with the furniture in use in such bureau, office, department, or branch of the public service, are transferred to the Department of Commerce.

(Feb. 14, 1903, ch. 552, §4, 32 Stat. 826.)

CODIFICATION

Section was formerly classified to section 598 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, §1, Sept. 6, 1966, 80 Stat. 378.

CHANGE OF NAME

Act Mar. 4, 1913, ch. 141, 37 Stat. 736, provided that Department of Commerce and Labor and Secretary of Commerce and Labor were to be thereafter called Department of Commerce and Secretary of Commerce.

§1516. Statistical information

The Secretary of Commerce shall have control of the work of gathering and distributing statistical information naturally relating to the subjects confided to his department; and he shall have the power and authority to rearrange the statistical work of the bureaus and offices confided to the Department of Commerce, and to consolidate any of the statistical bureaus and offices above described. He shall also have authority to call upon other departments of the Government for statistical data and results obtained by them; and he may collate, arrange, and publish such statistical information so obtained in such manner as to him may seem wise.

(Feb. 14, 1903, ch. 552, §4, 32 Stat. 826.)

CODIFICATION

Section was formerly classified to section 601 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, §1, Sept. 6, 1966, 80 Stat. 378.

CHANGE OF NAME

Act Mar. 4, 1913, ch. 141, 37 Stat. 736, provided that Department of Commerce and Labor and Secretary of Commerce and Labor were to be thereafter called Department of Commerce and Secretary of Commerce.

§1516a. Statistics relating to social, health, and economic conditions of Americans of Spanish origin or descent

The Department of Commerce, the Department of Labor, the Department of Health and Human Services, and the Department of Agriculture shall each collect, and publish regularly, statistics which

indicate the social, health, and economic condition of Americans of Spanish origin or descent.

(Pub. L. 94–311, §2, June 16, 1976, 90 Stat. 688; Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695.)

CHANGE OF NAME

"Department of Health and Human Services" substituted for "Department of Health, Education, and Welfare" pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

DEVELOPMENT OF PROGRAM FOR THE COLLECTION, ANALYSIS AND PUBLICATION OF DATA

Pub. L. 94–311, §3, June 16, 1976, 90 Stat. 688, provided that: "The Director of the Office of Management and Budget, in cooperation with the Secretary of Commerce and with the heads of other data-gathering Federal agencies, shall develop a Government-wide program for the collection, analysis, and publication of data with respect to Americans of Spanish origin or descent."

§1517. Transfer of statistical or scientific work

The President is authorized, by order in writing, to transfer at any time the whole or any part of any office, bureau, division, or other branch of the public service engaged in statistical or scientific work, from the Department of State, the Department of the Treasury, the Department of Defense, the Department of Justice, the United States Postal Service, or the Department of the Interior, to the Department of Commerce; and in every such case the duties and authority performed by and conferred by law upon such office, bureau, division, or other branch of the public service, or the part thereof so transferred, shall be thereby transferred with such office, bureau, division, or other branch of the public service, or the part thereof which is so transferred. All power and authority conferred by law, both supervisory and appellate, upon the department from which such transfer is made, or the Secretary thereof, in relation to the said office, bureau, division, or other branch of the public service, or the part thereof so transferred, shall immediately, when such transfer is so ordered by the President, be fully conferred upon and vested in the Department of Commerce, or the Secretary thereof, as the case may be, as to the whole or part of such office, bureau, division, or other branch of the public service so transferred.

(Feb. 14, 1903, ch. 552, §12, 32 Stat. 830; July 26, 1947, ch. 343, title II, §201(a), 61 Stat. 499; Aug. 10, 1949, ch. 412, §4, 63 Stat. 579; Pub. L. 91–375, §§4(a), 6(o), Aug. 12, 1970, 84 Stat. 773, 783.)

CODIFICATION

Section was formerly classified to section 602 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, §1, Sept. 6, 1966, 80 Stat. 378.

CHANGE OF NAME

"United States Postal Service" substituted for "Post Office Department" in text pursuant to Pub. L. 91–375, §§4(a), 6(o), Aug. 12, 1970, 84 Stat. 773, 783, which are set out as notes preceding section 101 of Title 39, Postal Service, and under section 201 of Title 39, respectively, which abolished Post Office Department, transferred its functions to United States Postal Service, and provided that references in other laws to Post Office Department shall be considered a reference to United States Postal Service.

Department of Defense substituted for Departments of the Army and Navy by act July 26, 1947, as amended Aug. 10, 1949.

Act Mar. 4, 1913, ch. 141, 37 Stat. 736, provided that Department of Commerce and Labor and Secretary of Commerce and Labor were to be thereafter called Department of Commerce and Secretary of Commerce.

METEOROLOGICAL SATELLITE (METSAT) AND ASSOCIATED GROUND SYSTEMS; EXPENDITURE OF FUNDS TO DEVELOP PROPOSALS TO TRANSFER OWNERSHIP TO PRIVATE ENTITIES PROHIBITED

Pub. L. 98–166, title I, §101, Nov. 28, 1983, 97 Stat. 1076, provided that: "No funds made available by this Act, or any other Act, may be used—

"(1) by the Source Evaluation Board for Civil Space Remote Sensing as established by the Secretary of

Commerce to develop or issue a request for proposal to transfer the ownership or lease the use of any meteorological satellite (METSAT) or associated ground system to any private entity; or

"(2) by the National Oceanic and Atmospheric Administration to transfer the ownership of any meteorological satellite (METSAT) or associated ground system to any private entity."

CIVIL LAND REMOTE SENSING SATELLITE SYSTEM; TERMINATION

Pub. L. 98–52, title II, §202, July 15, 1983, 97 Stat. 285, as amended by Pub. L. 103–437, §5(b)(1), Nov. 2, 1994, 108 Stat. 4582, provided that: "Notwithstanding title II of the National Aeronautics and Space Administration Authorization Act, 1983 [Pub. L. 97–324, set out as a note below], the Secretary of Commerce shall not transfer the ownership or management of any civil land, meteorological, or ocean remote sensing space satellite system and associated ground system equipment unless, in addition to any other requirement of law—

"(1) the Secretary of Commerce or his designee has presented, in writing, to the Speaker of the House of Representatives and the President of the Senate, and to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, a comprehensive statement of recommended policies, procedures, conditions, and limitations to which any transfer should be subject; and

"(2) the Congress thereafter enacts a law which contains such policies, procedures, conditions, or limitations (or a combination thereof) as it deems appropriate for any such transfer."

Pub. L. 97–324, title II, §201, Oct. 15, 1982, 96 Stat. 1601, as amended by Pub. L. 98–365, title VI, §608, July 17, 1984, 98 Stat. 466; Pub. L. 103–437, §5(b)(2), Nov. 2, 1994, 108 Stat. 4582, provided that:

"(a) The Secretary of Commerce is authorized to plan and provide for the management and operation of civil remote-sensing space systems, which may include the Landsat 4 and 5 satellites and associated ground system equipment transferred from the National Aeronautics and Space Administration; to provide for user fees; and to plan for the transfer of the operation of civil remote-sensing space systems to the private sector when in the national interest.

"(b)(1) As part of his planning for the transfer of the ownership and operation of civil operational land remote sensing satellite systems to the private sector the Secretary shall—

"(A) Conduct a study to define the current, projected, and potential needs of the government for land remote sensing data.

"(B) Determine and describe the equipment, software, and data inventory that could be transferred to the private sector.

"(C) Compare various feasible financial and organizational approaches for such a transfer. Criteria for the comparison should include considerations such as: maintenance of data continuity; maintenance of United States leadership; national security; international obligations; potential for market growth; marketing ability; sunk and projected cost to the Government; independence of subsidy or financial guarantee from the Government; potential of financial return to the Government; and price of data to users. The following institutional alternatives should be compared: (i) wholly private ownership and operation of the system by an entity competitively selected; (ii) phased-in Government/private ownership and operation; (iii) a legislatively chartered privately owned corporation; and (iv) continued ownership and operation by the Federal Government.

The Secretary shall complete these studies and report on them to the Congress by February 1, 1983.

"(2) In addition to the studies and comparisons called for in section 201(b)(1) the Secretary shall fund at least two parallel studies outside the government independently to assess the alternatives called for in section 201(b)(1)(C). These studies should be submitted to the Congress by April 1, 1983.

"(c) There is authorized to be appropriated $14,955,000 for the fiscal year 1983, for the purpose of carrying out the provisions of this title [this note].

"(d) No moneys authorized by this title [this note] shall be used to transfer to the private sector the ownership or management of any civil land remote sensing space satellite system and associated ground system equipment unless (A) a period of thirty days has passed after the receipt by the Speaker of the House of Representatives, the President of the Senate, the House Committee on Science, Space, and Technology, and the Senate Committee on Commerce, Science, and Transportation, of a message from the Secretary of Commerce or his designee containing a full and complete plan for the action proposed to be taken together with the reasons therefor and expected funding impacts, or (B) each such committee before the expiration of such period has transmitted to the Secretary written notice to the effect that such committee has no objection to the proposed action."

EX. ORD. NO. 11564. TRANSFER OF CERTAIN PROGRAMS AND ACTIVITIES TO SECRETARY OF COMMERCE

Ex. Ord. No. 11564, Oct. 6, 1970, 35 F.R. 15801, provided:

By virtue of the authority vested in me by section 12 of the Act of February 14, 1903, as amended (15 U.S.C. 1517) [this section] and section 12(d) of the Act of October 15, 1966 (49 U.S.C. 1651 note), as President of the United States, and in further implementation of Reorganization Plan No. 4 of 1970 [set out as a note under section 1511 of this title] transferring certain functions to the Secretary of Commerce and establishing the National Oceanic and Atmospheric Administration in the Department of Commerce, it is ordered as follows:

SECTION 1. (a) The following programs and activities are hereby transferred to the Secretary of Commerce:

(1) The National Oceanographic Instrumentation Center of the Department of the Navy, Department of Defense.

(2) The National Oceanographic Data Center of the Department of the Navy, Department of Defense.

(3) The Ocean Station Vessel Meteorological Program of the Department of the Navy, Department of Defense.

(4) The Trust Territories Upper Air Observation Program of the Department of the Navy, Department of Defense.

(5) The Hydroclimatic Network Program of the Corps of Engineers of the Department of the Army, Department of Defense.

(6) The National Data Buoy Development Project of the Coast Guard, Department of Transportation.

(b) All of the power and authority of the transferor Departments conferred by law which is related to or incidental to, in support of, or necessary for, the operation of the programs and activities transferred by subsection (a) above, may be utilized by the Secretary of Commerce for the operation of those programs and activities.

SEC. 2. (a) Such personnel and positions and so much of the property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, authorized, affected, available, or to be made available in connection with the operation of the programs and activities transferred by section 1 hereof from the Department of Defense and the Department of Transportation as the Director of the Office of Management and Budget shall determine shall be transferred from those Departments to the Department of Commerce at such time or times as the Director shall direct.

(b) Subject to the direction of the Director of the Office of Management and Budget, the appropriate officers of the Government shall make necessary administrative arrangements for the assumption by the Secretary of Commerce of the programs and activities so transferred.

RICHARD NIXON.

§1518. Custody of buildings; officers transferred

The Secretary of Commerce shall have charge, in the buildings or premises occupied by or appropriated to the Department of Commerce, of the library, furniture, fixtures, records, and other property pertaining to it or acquired for use in its business; and he shall be allowed to expend for periodicals and the purposes of the library, and for the rental of appropriate quarters for the accommodation of the Department of Commerce within the District of Columbia, and for all other incidental expenses, such sums as Congress may provide from time to time. Where any office, bureau, or branch of the public service transferred to the Department of Commerce is occupying rented buildings or premises, it may still continue to do so until other suitable quarters are provided for its use. All officers, clerks, and employees employed on February 14, 1903, in or by any of the bureaus, offices, departments, or branches of the public service transferred to the Department of Commerce are each and all transferred to said department, except where otherwise provided by law. All laws prescribing the work and defining the duties of the several bureaus, offices, departments, or branches of the public service transferred to and made a part of the Department of Commerce shall, so far as the same are not in conflict with the provisions of this Act, remain in full force and effect until otherwise provided by law.

(Feb. 14, 1903, ch. 552, §9, 32 Stat. 829.)

REFERENCES IN TEXT

This Act, referred to in text, is act Feb. 14, 1903, ch. 552, 32 Stat. 825, as amended, which is classified to

sections 175, 1501, 1504, 1510, 1511, 1512, 1513, 1515, 1516, 1517 to 1519 of this title.

CODIFICATION

Section was formerly classified to section 603 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, §1, Sept. 6, 1966, 80 Stat. 378.

CHANGE OF NAME

Act Mar. 4, 1913, ch. 141, 37 Stat. 736, provided that Department of Commerce and Labor and Secretary of Commerce and Labor were to be thereafter called Department of Commerce and Secretary of Commerce.

§1519. Annual and special reports

The Secretary of Commerce shall annually, at the close of each fiscal year, make a report in writing to Congress, giving an account of all moneys received and disbursed by him and his Department, and describing the work done by the Department in fostering, promoting, and developing the foreign and domestic commerce, the mining, manufacturing, and fishery industries; of the United States, and making such recommendations as he shall deem necessary for the effective performance of the duties and purposes of the Department. He shall also from time to time make such special investigations and reports as he may be required to do by the President, or by either House of Congress, or which he himself may deem necessary and urgent.

(Feb. 14, 1903, ch. 552, §8, 32 Stat. 829; Pub. L. 97–31, §12(7), Aug. 6, 1981, 95 Stat. 154.)

CODIFICATION

Section was formerly classified to section 604 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, §1, Sept. 6, 1966, 80 Stat. 378.

AMENDMENTS

1981—Pub. L. 97–31 struck out references to shipping and transportation facilities.

CHANGE OF NAME

Act Mar. 4, 1913, ch. 141, 37 Stat. 736, provided that Department of Commerce and Labor and Secretary of Commerce and Labor were to be thereafter called Department of Commerce and Secretary of Commerce.

§1519a. Repealed. Pub. L. 97–449, §7(b), Jan. 12, 1983, 96 Stat. 2443

Section, Pub. L. 96–371, §2, Oct. 3, 1980, 94 Stat. 1362; Pub. L. 97–31, §12(8), Aug. 6, 1981, 95 Stat. 154, required an annual report to Congress by the Secretary of Transportation respecting conditions of the public ports of the United States. See section 308(c) of Title 49, Transportation.

§1520. Repealed. Pub. L. 91–412, §3(d), Sept. 25, 1970, 84 Stat. 864

Section, act Dec. 19, 1942, ch. 780, 56 Stat. 1067, authorized Secretary of Commerce to establish schedule of fees or charges for services or publications furnished by Department of Commerce, excepting Federal and State governments, provided for covering proceeds thereof into the Treasury as miscellaneous receipts, and specified that its provisions shall not alter, amend, modify, or repeal any existing law for prescription of fees or charges. See sections 1525 to 1527 of this title.

§1521. Working capital fund; establishment; amount; uses; reimbursement

There is established a working capital fund of $100,000, without fiscal year limitation, for the payment of salaries and other expenses necessary to the maintenance and operation of (1) central duplicating, photographic, drafting, and photostating services and (2) such other services as the Secretary, with the approval of the Director of the Office of Management and Budget, determines may be performed more advantageously as central services; said fund to be reimbursed from

applicable funds of bureaus, offices, and agencies for which services are performed on the basis of rates which shall include estimated or actual charges for personal services, materials, equipment (including maintenance, repairs, and depreciation) and other expenses: *Provided*, That such central services shall, to the fullest extent practicable, be used to make unnecessary the maintenance of separate like services in the bureaus, offices, and agencies of the Department: *Provided further*, That a separate schedule of expenditures and reimbursements, and a statement of the current assets and liabilities of the working capital fund as of the close of the last completed fiscal year, shall be included in the annual Budget.

(June 28, 1944, ch. 294, title III, §301, 58 Stat. 415; 1970 Reorg. Plan No. 2, §102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085.)

CODIFICATION

Section was formerly classified to section 607 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, §1, Sept. 6, 1966, 80 Stat. 378.

TRANSFER OF FUNCTIONS

Functions vested by law (including reorganization plan) in Bureau of the Budget or Director of Bureau of the Budget transferred to President by section 101 of Reorg. Plan No. 2 of 1970, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085, set out in the Appendix to Title 5, Government Organization and Employees. Section 102 of Reorg. Plan No. 2 of 1970 redesignated Bureau of the Budget as Office of Management and Budget.

§1522. Acceptance of gifts and bequests for purposes of the Department; separate fund; disbursements

The Secretary of Commerce is hereby authorized to accept, hold, administer, and utilize gifts and bequests of property, both real and personal, for the purpose of aiding or facilitating the work of the Department of Commerce. Gifts and bequests of money and the proceeds from sales of other property received as gifts or bequests shall be deposited in the Treasury in a separate fund and shall be disbursed upon order of the Secretary of Commerce. Property accepted pursuant to this provision, and the proceeds thereof, shall be used as nearly as possible in accordance with the terms of the gift or bequest.

(Pub. L. 88–611, §1, Oct. 2, 1964, 78 Stat. 991.)

CODIFICATION

Section was formerly classified to section 608a of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, §1, Sept. 6, 1966, 80 Stat. 378.

TRANSFER OF FUNDS

Pub. L. 88–611, §4(b), Oct. 2, 1964, 78 Stat. 991, provided that: "All gifts and bequests received under the provisions of law repealed by subsection (a) of this section [which repealed section 278a of this title, section 883g of Title 33, Navigation and Navigable Waters, and section 1126(g) of former Title 46, Shipping] and all funds held on the date of enactment of this Act [Oct. 2, 1964] in the United States Merchant Marine Academy general gift fund, established by subsection (g) of section 216 of the Merchant Marine Act, 1936 [section 1126(g) of former Title 46], shall be transferred to the fund authorized by this Act [sections 1522 to 1524 of this title] and shall be administered in accordance with the provisions of this Act [sections 1522 to 1524 of this title]."

§1523. Tax status of gifts and bequests of property

For the purpose of Federal income, estate, and gift taxes, property accepted under section 1522 of this title shall be considered as a gift or bequest to or for the use of the United States.

(Pub. L. 88–611, §2, Oct. 2, 1964, 78 Stat. 991.)

CODIFICATION

Section was formerly classified to section 608b of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, §1, Sept. 6, 1966, 80 Stat. 378.

§1524. Investment and reinvestments of moneys; credit and disbursement of interest

Upon the request of the Secretary of Commerce, the Secretary of the Treasury may invest and reinvest in securities of the United States or in securities guaranteed as to principal and interest by the United States any moneys contained in the fund authorized herein. Income accruing from such securities, and from any other property accepted pursuant to section 1522 of this title, shall be deposited to the credit of the fund authorized herein, and shall be disbursed upon order of the Secretary of Commerce.

(Pub. L. 88–611, §3, Oct. 2, 1964, 78 Stat. 991.)

CODIFICATION

Section was formerly classified to section 608c of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, §1, Sept. 6, 1966, 80 Stat. 378.

§1525. Special studies; special compilations, lists, bulletins, or reports; clearinghouse for technical information; transcripts or copies; cost payments for special work; joint projects: cost apportionment, waiver

The Secretary of Commerce is authorized, upon the request of any person, firm, organization, or others, public or private, to make special studies on matters within the authority of the Department of Commerce; to prepare from its records special compilations, lists, bulletins, or reports; to perform the functions authorized by section 1152 of this title; and to furnish transcripts or copies of its studies, compilations, and other records; upon the payment of the actual or estimated cost of such special work.

In the case of nonprofit organizations, research organizations, or public organizations or agencies, the Secretary may engage in joint projects, or perform services, on matters of mutual interest, the cost of which shall be apportioned equitably, as determined by the Secretary, who may, however, waive payment of any portion of such costs by others, when authorized to do so under regulations approved by the Office of Management and Budget.

(Pub. L. 91–412, §1, Sept. 25, 1970, 84 Stat. 864; 1970 Reorg. Plan No. 2, §102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085.)

TRANSFER OF FUNCTIONS

Functions vested by law (including reorganization plan) in Bureau of the Budget or Director of Bureau of the Budget transferred to President by section 101 of Reorg. Plan No. 2 of 1970, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085, set out in the Appendix to Title 5, Government Organization and Employees. Section 102 of Reorg. Plan No. 2 of 1970 redesignated Bureau of the Budget as Office of Management and Budget.

§1526. Receipts for work or services; deposit in special accounts; availability for payment of costs, repayment or advances to appropriations or funds, refunds, credits to working capital funds; appropriation limitation of annual expenditures from accounts

All payments for work or services performed or to be performed under this Act shall be deposited in a separate account or accounts which may be used to pay directly the costs of such work or services, to repay or make advances to appropriations or funds which do or will initially bear all or part of such costs, or to refund excess sums when necessary: *Provided*, That said receipts may be

credited to a working capital fund otherwise established by law, and used under the law governing said funds, if the fund is available for use by the agency of the Department of Commerce which is responsible for performing the work or services for which payment is received. Acts appropriating funds to the Department of Commerce may include provisions limiting annual expenditure from said account or accounts.

(Pub. L. 91–412, §2, Sept. 25, 1970, 84 Stat. 864.)

REFERENCES IN TEXT

This Act, referred to in text, means Pub. L. 91–412, which enacted sections 1525 to 1527, amended section 1153, and repealed sections 189, 189a, 192, 192a, 1153a, and 1520 of this title.

§1527. Fees or charges for services or publications under existing law unaffected

Except as to those laws expressly repealed herein, nothing in this Act shall alter, amend, modify, or repeal any existing law prescribing fees or charges or authorizing the prescribing of fees or charges for services performed or for any publication furnished by the Department of Commerce, or any of its several bureaus or offices.

(Pub. L. 91–412, §4, Sept. 25, 1970, 84 Stat. 865.)

REFERENCES IN TEXT

This Act, referred to in text, means Pub. L. 91–412, which enacted sections 1525 to 1527, amended section 1153, and repealed sections 189, 189a, 192, 192a, 1153a, and 1520 of this title.

Laws expressly repealed herein, referred to in text, means amendment of section 1153 and repeal of sections 189, 189a, 192, 192a, 1153a, and 1520 of this title, as heretofore noted.

§1527a. Economics and Statistics Administration Revolving Fund

There is hereby established the Economics and Statistics Administration Revolving Fund which shall be available without fiscal year limitation. For initial capitalization, there is appropriated $1,677,000 to the Fund: *Provided*, That the Secretary of Commerce is authorized to disseminate economic and statistical data products as authorized by sections 1525 to 1527 of this title and, notwithstanding section 4912 of this title, charge fees necessary to recover the full costs incurred in their production. Notwithstanding section 3302 of title 31, receipts received from these data dissemination activities shall be credited to this account as offsetting collections, to be available for carrying out these purposes without further appropriation.

(Pub. L. 103–317, title II, Aug. 26, 1994, 108 Stat. 1744.)

DISSEMINATION OF ECONOMIC AND STATISTICAL DATA PRODUCTS; FEES

Pub. L. 105–119, title II, Nov. 26, 1997, 111 Stat. 2474, provided in part that: "The Secretary of Commerce is authorized to disseminate economic and statistical data products as authorized by sections 1, 2, and 4 of Public Law 91–412 (15 U.S.C. 1525–1527) and, notwithstanding section 5412 of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4912), charge fees necessary to recover the full costs incurred in their production. Notwithstanding 31 U.S.C. 3302, receipts received from these data dissemination activities shall be credited to this account, to be available for carrying out these purposes without further appropriation."

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 104–208, div. A, title I, §101(a) [title II], Sept. 30, 1996, 110 Stat. 3009, 3009–34.

Pub. L. 104–134, title I, §101[(a)] [title II], Apr. 26, 1996, 110 Stat. 1321, 1321–25; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327.

§1528. Transferred

CODIFICATION

Section, act Feb. 28, 1920, ch. 91, §500, 41 Stat. 499; 1939 Reorg. Plan No. II, §6, eff. July 1, 1939, 4 F.R.

2732, 53 Stat. 1434; Aug. 6, 1981, Pub. L. 97–31, §12(9), 95 Stat. 154, relating to a policy of development of water transportation, was transferred to section 142 of former Title 49, Transportation, and was repealed by Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379, and reenacted by section 4(j)(6)(A) thereof as section 303a of Title 49, Transportation.

§1529. Relinquishment of legislative jurisdiction over certain lands

Notwithstanding any other law, the Secretary of Commerce, whenever the Secretary considers it desirable, may relinquish to a State, or to a Commonwealth, territory, or possession of the United States, all or part of the legislative jurisdiction of the United States over lands or interests under the Secretary's control in that State, Commonwealth, territory, or possession. Relinquishment of legislative jurisdiction under this section may be accomplished—

(1) by filing with the Governor (or, if none exists, with the chief executive officer) of the State, Commonwealth, territory, or possession concerned a notice of relinquishment to take effect upon acceptance of the notice; or

(2) as required by the laws of the State, Commonwealth, territory, or possession.

(Pub. L. 98–623, title IV, §406, Nov. 8, 1984, 98 Stat. 3409.)

§1530. Awarding of contracts for performance of commercial activity by National Oceanic and Atmospheric Administration

The Administration may not award any contract for the performance of any "commercial activity", as defined by paragraph 6.a. of the Office of Management and Budget Circular Memorandum A–76, which is performed by Administration employees until at least 30 calendar days after the Administrator of the Administration has presented, in writing, to the President of the Senate, the Speaker of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Merchant Marine and Fisheries and the Committee on Science, Space, and Technology of the House of Representatives, a full and complete description of such proposed contract, together with supporting documentation. Such documentation shall include—

(1) a comparison of the cost of such activity as performed by employees of the Administration and the cost of such activity as performed under the proposed contract;

(2) a comparison of the services performed by employees of the Administration and the services to be performed under the proposed contract; and

(3) an assessment of the benefits to the Federal Government of proceeding with the proposed contract.

(Pub. L. 99–272, title VI, §6083, Apr. 7, 1986, 100 Stat. 135; Pub. L. 103–437, §5(b)(3), Nov. 2, 1994, 108 Stat. 4582.)

AMENDMENTS

1994—Pub. L. 103–437 in introductory provisions substituted "Committee on Science, Space, and Technology" for "Committee on Science and Technology" before "of the House".

ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction transferred by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. For treatment of references to Committee on Merchant Marine and Fisheries, see section 1(b)(3) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

§1531. Buying Power Maintenance accounts for International Trade Administration, Export Administration, and United States Travel and Tourism Administration

In order to maintain overseas program activity for the Department of Commerce provided for each fiscal year at the appropriated program levels, the Secretary may establish Buying Power Maintenance accounts for the International Trade Administration, the Export Administration, and the United States Travel and Tourism Administration. There are authorized to be appropriated for such accounts such sums as may be necessary to offset adverse fluctuations in foreign currency exchange rates, or unbudgeted overseas wage and price changes. To eliminate substantial gains to the approved levels of overseas operations, the Secretary shall transfer to a Buying Power Maintenance account such amounts determined to be excessive to the needs of the approved level of overseas operations because of fluctuations in foreign currency exchange rates or changes in unbudgeted overseas wages and prices, including unobligated balances associated with the overseas program. To offset adverse fluctuations in foreign currency exchange rates or unbudgeted overseas wage and price changes, the Secretary may transfer from a Buying Power Maintenance account such amounts determined to be necessary to maintain the approved level of overseas operations under an appropriation account. Funds transferred by the Secretary to or from a Buying Power Maintenance account to another account shall be merged with and be available for the same purpose, and for the same time period, as the funds in the account into which transferred. Any restriction contained in an appropriation Act or other provision of law limiting the amounts available for the Department of Commerce that may be obligated or expended shall be deemed to be adjusted to the extent necessary to offset the net effect of fluctuations in foreign currency exchange rates or unbudgeted overseas wage and price changes in order to maintain approved levels.

(Pub. L. 100–202, §101(a) [title I, §108], Dec. 22, 1987, 101 Stat. 1329, 1329–7.)

§1532. Telecommunications; electromagnetic radiation; research, analysis, dissemination of information; other functions of Secretary

The Secretary of Commerce is authorized to—

(1) conduct research on all of the telecommunications sciences, including wave propagation and reception, the conditions which affect electromagnetic wave propagation and reception, electromagnetic noise and interference, radio system characteristics, operating techniques affecting the use of the electromagnetic spectrum, and methods for improving the use of the electromagnetic spectrum for telecommunications purposes;

(2) prepare and issue predictions of electromagnetic wave propagation conditions and warnings of disturbances in such conditions;

(3) investigate conditions which affect the transmission of radio waves from their source to a receiver and the compilation and distribution of information on such transmission of radio waves as a basis for choice of frequencies to be used in radio operations;

(4) conduct research and analysis in the general field of telecommunications sciences in support of assigned functions and in support of other Government agencies;

(5) investigate nonionizing electromagnetic radiation and its uses, as well as methods and procedures for measuring and assessing electromagnetic environments, for the purpose of developing and coordinating policies and procedures affecting Federal Government use of the electromagnetic spectrum for telecommunications purposes;

(6) compile, evaluate, publish, and otherwise disseminate general scientific and technical data resulting from the performance of the functions specified in this section or from other sources when such data are important to science, engineering, or industry, or to the general public, and are not available elsewhere; and

(7) undertake such other activities similar to those specified in this subsection as the Secretary of Commerce determines appropriate.

(Pub. L. 100–418, title V, §5112(b), Aug. 23, 1988, 102 Stat. 1430.)

§1533. Repealed. Pub. L. 111–358, title IV, §407(c), Jan. 4, 2011, 124 Stat. 4004

Section, Pub. L. 100–418, title V, §5163(d), Aug. 23, 1988, 102 Stat. 1451, established the Commerce, Science, and Technology Fellowship Program within the Department of Commerce.

CODIFICATION

Pub. L. 111–358, §407(c), which directed the repeal of section 5163(d) of the Omnibus Trade and Competition Act of 1988, was executed by repealing this section, which was section 5163(d) of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418), to reflect the probable intent of Congress.

§1534. Assessment of fees for access to environmental data

(a) Basis of assessment

Except as otherwise provided in this section, the Secretary is authorized to assess fees, based on fair market value, for access to environmental data and information and products derived therefrom collected and/or archived by the National Oceanic and Atmospheric Administration.

(b) Eligible recipients; waiver of fees in cases of foreign governments and international organizations

(1) The Secretary shall provide data, information, and products described in subsection (a) of this section to Federal, State, and local government agencies, to universities, and to other nonprofit institutions at the cost of reproduction and transmission, if such data, information, and products are to be used for research and not for commercial purposes.

(2) The Secretary shall waive the assessment of fees under subsection (a) of this section as necessary to continue to provide data, information, or products to foreign governments and international organizations on a basis of exchanging such data, information, and products or as otherwise provided by international agreement.

(3) The Secretary shall waive the assessment of fees authorized by subsection (a) of this section as necessary to continue to provide weather warnings, watches, and similar products and services essential to the mission of the National Oceanic Atmospheric [1] Administration.

(c) Publication of fee schedules in Federal Register; initial schedule effective for three-year period

The initial schedule of any fees assessed under this section, and any subsequent amendment to such schedule, shall be published by the Secretary in the Federal Register at least 30 days before such fees will take effect. The initial schedule shall remain in effect without amendment for the three-year period beginning on the date that fees under the schedule take effect.

(d) Effective date of assessments; progressive increments

Any assessment of fees under this section by the National Environmental Satellite, Data, and Information Service for archived data shall meet the following requirements:

(1) The initial schedule of fees established by the National Environmental Satellite, Data, and Information Service for archived data shall remain in effect for the 3-year period beginning on the date that the fees under that schedule take effect.

(2) With respect to the first one-year period during which the initial fee schedule is in effect, fees shall be assessed at no more than one-third of the fair market value specified in subsection (a) of this section.

(3) With respect to the second one-year period during which the initial fee schedule is in effect, fees shall be assessed at not more than two-thirds of such fair market value.

(4) With respect to the third one-year period during which the initial fee schedule is in effect, and with respect to any period thereafter, fees shall be assessed at no more than the full amount of such fair market value.

(e) Data archive center operations; availability of fees for expenses of centers

Fees collected under this section by the National Environmental Satellite, Data, and Information Service for archived data shall be available to the National Environmental Satellite, Data, and

Information Service for expenses incurred in the operation of its data archive centers.

(f) Report to Congressional committees

The Secretary shall, not later than 90 days after November 17, 1988, submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives a report which sets forth—

(1) any plan of the Secretary for assessing fees under this section by the National Environmental Satellite, Data, and Information Service for archived data, including the methodology and bases by which the amount of such fees shall be determined, and the estimated revenues therefrom; and

(2) any plan of the Secretary for using revenues generated from such fees, as well as other resources, to improve the capability of the National Environmental Satellite, Data, and Information Service to collect, manage, process, archive, and disseminate the increasing amounts of data generated from satellites, radars, and other technologies.

(g) Other assessment authorities unaffected

The authority of the Secretary to assess fees under this section shall be in addition to, and shall not be construed to limit, the authority under any other law to assess fees relating to the environmental data activities of the National Oceanic and Atmospheric Administration, including the authority of the Secretary pursuant to section 1307 of title 44. Nothing in this section shall be construed to authorize the Secretary to assess fees for nautical and aeronautical products of the National Oceanic and Atmospheric Administration in addition to those fees authorized under section 1307 of title 44.

(Pub. L. 100–685, title IV, §409, Nov. 17, 1988, 102 Stat. 4100; Pub. L. 101–508, title X, §10201(a), Nov. 5, 1990, 104 Stat. 1388–392.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–508, §10201(a)(1), substituted "and information and products derived therefrom collected and/or archived by the National Oceanic and Atmospheric Administration" for "data archived by the National Environmental Satellite, Data, and Information Service of the National Oceanic and Atmospheric Administration".

Subsec. (b)(1). Pub. L. 101–508, §10201(a)(2), inserted ", information, and products" after "provide data" and substituted "data, information, and products are" for "data is".

Subsec. (b)(2). Pub. L. 101–508, §10201(a)(3), inserted ", information, or products" after "provide data" and substituted "basis of exchanging such data, information, and products" for "data exchange basis".

Subsec. (b)(3). Pub. L. 101–508, §10201(a)(4), added par. (3).

Subsec. (d). Pub. L. 101–508, §10201(a)(6), inserted "by the National Environmental Satellite, Data, and Information Service for archived data" after "under this section" in introductory provisions.

Subsec. (d)(1). Pub. L. 101–508, §10201(a)(5), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "No fees shall be assessed under this section until after September 30, 1989."

Subsecs. (e), (f)(1). Pub. L. 101–508, §10201(a)(6), inserted "by the National Environmental Satellite, Data, and Information Service for archived data" after "under this section".

Subsec. (g). Pub. L. 101–508, §10201(a)(7), inserted before period at end ", including the authority of the Secretary pursuant to section 1307 of title 44. Nothing in this section shall be construed to authorize the Secretary to assess fees for nautical and aeronautical products of the National Oceanic and Atmospheric Administration in addition to those fees authorized under section 1307 of title 44".

EFFECT OF AMENDMENTS

Pub. L. 101–508, title X, §10201(b), Nov. 5, 1990, 104 Stat. 1388–393, provided that:

"(1) The increase in revenues to the United States attributable to the amendments made by subsection (a) [amending this section] shall not exceed—

"(A) $2,000,000 for each of the fiscal years 1991, 1992, and 1993; and

"(B) $3,000,000 for each of the fiscal years 1994 and 1995.

"(2) Increases in revenues to the United States described in paragraph (1) shall be achieved by the Secretary of Commerce through fair and equitable increases in fees for services offered by the various programs of the National Oceanic and Atmospheric Administration.

"(3) The Secretary of Commerce shall notify the Congress of any changes in fee schedules under section 409 of the Act of November 17, 1988 (15 U.S.C. 1534), before such changes take effect."

[1] *So in original. Probably should be preceded by "and".*

§1535. Repealed. Pub. L. 111–314, §6, Dec. 18, 2010, 124 Stat. 3444

Section, Pub. L. 101–611, title I, §115(b), Nov. 16, 1990, 104 Stat. 3201, related to annual reports of activities of the Office of Space Commerce. See section 50703 of Title 51, National and Commercial Space Programs.

§1536. Prohibition against fraudulent use of "Made in America" labels

If it has been finally determined by a court or a Federal agency that any person intentionally affixed a label bearing a "Made in America" inscription, or an inscription with the same meaning, to any product sold in or shipped to the United States that is not made in the United States, that person shall be ineligible to receive any contract or subcontract from the Department of Commerce, pursuant to the debarment, suspension, and ineligibility procedures in subpart 9.4 of chapter 1 of title 48, Code of Federal Regulations.

(Pub. L. 102–245, title I, §111(b), Feb. 14, 1992, 106 Stat. 14.)

§1537. Needs assessment for data management, archival, and distribution

(1) Not later than 12 months after October 29, 1992, and at least biennially thereafter, the Secretary of Commerce shall complete an assessment of the adequacy of the environmental data and information systems of the National Oceanic and Atmospheric Administration. In conducting such an assessment, the Secretary shall take into consideration the need to—

(A) provide adequate capacity to manage, archive, and disseminate environmental data and information collected and processed, or expected to be collected and processed, by the National Oceanic and Atmospheric Administration and other appropriate departments and agencies;

(B) establish, develop, and maintain information bases, including necessary management systems, which will promote consistent, efficient, and compatible transfer and use of data;

(C) develop effective interfaces among the environmental data and information systems of the National Oceanic and Atmospheric Administration and other appropriate departments and agencies;

(D) develop and use nationally accepted formats and standards for data collected by various national and international sources; and

(E) integrate and interpret data from different sources to produce information that can be used by decisionmakers in developing policies that effectively respond to national and global environmental concerns.

(2) Not later than 12 months after October 29, 1992, and biennially thereafter, the Secretary of Commerce shall develop and submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives a comprehensive plan, based on the assessment under paragraph (1), to modernize and improve the environmental data and information systems of the National Oceanic and Atmospheric Administration. The report shall—

(A) set forth modernization and improvement objectives for the 10-year period beginning with the year in which the plan is submitted, including facility requirements and critical new technological components that would be necessary to meet the objectives set forth;

(B) propose specific agency programs and activities for implementing the plan;

(C) identify the data and information management, archival, and distribution responsibilities of the National Oceanic and Atmospheric Administration with respect to other Federal departments and agencies and international organizations, including the role of the National Oceanic and

Atmospheric Administration with respect to large data systems like the Earth Observing System Data and Information System; and

(D) provide an implementation schedule and estimate funding levels necessary to achieve modernization and improvement objectives.

(Pub. L. 102–567, title I, §106(c), Oct. 29, 1992, 106 Stat. 4274.)

§1538. Notice of reprogramming

(a) In general

The Secretary of Commerce shall provide notice to the Committee on Commerce, Science, and Transportation and Committee on Appropriations of the Senate and to the Committee on Merchant Marine and Fisheries, Committee on Science, Space, and Technology, and Committee on Appropriations of the House of Representatives, not less than 15 days before reprogramming funds available for a program, project, or activity of the National Oceanic and Atmospheric Administration in an amount greater than the lesser of $250,000 or 5 percent of the total funding of such program, project, or activity if the reprogramming—

(1) augments an existing program, project, or activity;

(2) reduces by 5 percent or more (A) the funding for an existing program, project, or activity or (B) the numbers of personnel therefor as approved by Congress; or

(3) results from any general savings from a reduction in personnel which would result in a change in an existing program, project, or activity.

(b) Notice of reorganization

The Secretary of Commerce shall provide notice to the Committees on Merchant Marine and Fisheries, Science, Space, and Technology, and Appropriations of the House of Representatives, and the Committees on Commerce, Science, and Transportation and Appropriations of the Senate not later than 15 days before any major reorganization of any program, project, or activity of the National Oceanic and Atmospheric Administration.

(Pub. L. 102–567, title IV, §403, Oct. 29, 1992, 106 Stat. 4291.)

ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction transferred by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. For treatment of references to Committee on Merchant Marine and Fisheries, see section 1(b)(3) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

§1539. Financial assistance

(a) Processing of applications

Within 12 months after October 29, 1992, the Secretary of Commerce shall develop and, after notice and opportunity for public comment, promulgate regulations or guidelines to ensure that a completed application for a grant, contract, or other financial assistance under a nondiscretionary assistance program shall be processed and approved or disapproved within 75 days after submission of the application to the responsible program office of the National Oceanic and Atmospheric Administration.

(b) Notification of applicant

Not later than 14 days after the date on which the Secretary of Commerce receives an application for a contract, grant, or other financial assistance provided under a nondiscretionary assistance program administered by the National Oceanic and Atmospheric Administration, the Secretary shall indicate in writing to the applicant whether or not the application is complete and, if not complete, shall specify the additional material that the applicant must provide to complete the application.

(c) Exemption

In the case of a program for which the recipient of a grant, contract, or other financial assistance is specified by statute to be, or has customarily been, a State or an interstate fishery commission, such financial assistance may be provided by the Secretary to that recipient on a sole-source basis, notwithstanding any other provision of law.

(d) "Nondiscretionary assistance program" defined

In this section, the term "nondiscretionary assistance program" means any program for providing financial assistance—

(1) under which the amount of funding for, and the intended recipient of, the financial assistance is specified by Congress; or

(2) the recipients of which have customarily been a State or an interstate fishery commission.

(Pub. L. 102–567, title IV, §404, Oct. 29, 1992, 106 Stat. 4292.)

§1540. Cooperative agreements

The Secretary of Commerce, acting through the Under Secretary of Commerce for Oceans and Atmosphere, may enter into cooperative agreements and other financial agreements with any nonprofit organization to—

(1) aid and promote scientific and educational activities to foster public understanding of the National Oceanic and Atmospheric Administration or its programs; and

(2) solicit private donations for the support of such activities.

(Pub. L. 102–567, title IV, §406, Oct. 29, 1992, 106 Stat. 4293.)

COOPERATIVE AGREEMENTS FOR RESEARCH, EDUCATION, TRAINING, AND OUTREACH

Pub. L. 108–199, div. B, title II, Jan. 23, 2004, 118 Stat. 71, provided in part: "That, hereafter, the Secretary of Commerce may enter into cooperative agreements with the Joint and Cooperative Institutes as designated by the Secretary to use the personnel, services, or facilities of such organizations for research, education, training, and outreach".

Similar provisions were contained in Pub. L. 108–7, div. B, title II, Feb. 20, 2003, 117 Stat. 74.

§1541. Administrative Law Judges

Notwithstanding section 559 of title 5, with respect to any marine resource conservation law or regulation administered by the Secretary of Commerce acting through the National Oceanic and Atmospheric Administration, all adjudicatory functions which are required by chapter 5 of title 5 to be performed by an Administrative Law Judge may be performed by the United States Coast Guard on a reimbursable basis. Should the United States Coast Guard require the detail of an Administrative Law Judge to perform any of these functions, it may request such temporary or occasional assistance from the Office of Personnel Management pursuant to section 3344 of title 5.

(Pub. L. 105–160, §10, Mar. 6, 1998, 112 Stat. 27.)

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§1542. Establishment of the Ernest F. Hollings Scholarship Program

(a) Establishment

The Administrator of the National Oceanic and Atmospheric Administration shall establish and administer the Ernest F. Hollings Scholarship Program. Under the program, the Administrator shall award scholarships in oceanic and atmospheric science, research, technology, and education to be known as Ernest F. Hollings Scholarships.

(b) Purposes

The purposes of the Ernest F. Hollings Scholarships Program are—

(1) to increase undergraduate training in oceanic and atmospheric science, research, technology, and education and foster multidisciplinary training opportunities;

(2) to increase public understanding and support for stewardship of the ocean and atmosphere and improve environmental literacy;

(3) to recruit and prepare students for public service careers with the National Oceanic and Atmospheric Administration and other natural resource and science agencies at the Federal, State and Local levels of government; and

(4) to recruit and prepare students for careers as teachers and educators in oceanic and atmospheric science and to improve scientific and environmental education in the United States.

(c) Award

Each Ernest F. Hollings Scholarship—

(1) shall be used to support undergraduate studies in oceanic and atmospheric science, research, technology, and education that support the purposes of the programs and missions of the National Oceanic and Atmospheric Administration;

(2) shall recognize outstanding scholarship and ability;

(3) shall promote participation by groups underrepresented in oceanic and atmospheric science and technology; and

(4) shall be awarded competitively in accordance with guidelines issued by the Administrator and published in the Federal Register.

(d) Eligibility

In order to be eligible to participate in the program, an individual must—

(1) be enrolled or accepted for enrollment as a full-time student at an institution of higher education (as defined in section 1001(a) of title 20) in an academic field or discipline described in subsection (c) of this section;

(2) be a United States citizen;

(3) not have received a scholarship under this section for more than 4 academic years, unless the Administrator grants a waiver; and

(4) submit an application at such time, in such manner, and containing such information, agreements, or assurances as the Administrator may require.

(e) Distribution of funds

The amount of each Ernest F. Hollings Scholarship shall be provided directly to a recipient selected by the Administrator upon receipt of certification that the recipient will adhere to a specific and detailed plan of study and research approved by an institution of higher education.

(f) Funding

Of the total amount appropriated for fiscal year 2005 and annually hereafter to the National Oceanic and Atmospheric Administration, the Administrator shall make available for the Ernest F. Hollings Scholarship program one-tenth of 1 percent of such appropriations.

(g) Scholarship repayment requirement

The Administrator shall require an individual receiving a scholarship under this section to repay the full amount of the scholarship to the National Oceanic and Atmospheric Administration if the Administrator determines that the individual, in obtaining or using the scholarship, engaged in fraudulent conduct or failed to comply with any term or condition of the scholarship. Such

repayments shall be deposited in the NOAA Operations, Research, and Facilities Appropriations Account and treated as an offsetting collection and only be available for financing additional scholarships.

(Pub. L. 108–447, div. B, title II, §214, Dec. 8, 2004, 118 Stat. 2884.)

§1543. Task force on job repatriation and manufacturing growth

The Secretary of Commerce shall maintain a task force on job repatriation and manufacturing growth and shall produce an annual report on related incentive strategies, implementation plans and program results.

(Pub. L. 113–76, div. B, title I, Jan. 17, 2014, 128 Stat. 50.)

CODIFICATION

Section is from the appropriation act cited as the credit to this section.

SIMILAR PROVISIONS

Similar provisions were contained in the following prior appropriation acts:
Pub. L. 113–6, div. B, title I, Mar. 26, 2013, 127 Stat. 240.

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SUBCHAPTER I—CONSUMER CREDIT COST DISCLOSURE

PART A—GENERAL PROVISIONS

§1601. Congressional findings and declaration of purpose

(a) Informed use of credit

The Congress finds that economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit. The informed use of credit results from an awareness of the cost thereof by consumers. It is the purpose of this subchapter to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices.

(b) Terms of personal property leases

The Congress also finds that there has been a recent trend toward leasing automobiles and other durable goods for consumer use as an alternative to installment credit sales and that these leases have been offered without adequate cost disclosures. It is the purpose of this subchapter to assure a meaningful disclosure of the terms of leases of personal property for personal, family, or household purposes so as to enable the lessee to compare more readily the various lease terms available to him, limit balloon payments in consumer leasing, enable comparison of lease terms with credit terms where appropriate, and to assure meaningful and accurate disclosures of lease terms in advertisements.

(Pub. L. 90–321, title I, §102, May 29, 1968, 82 Stat. 146; Pub. L. 93–495, title III, §302, Oct. 28, 1974, 88 Stat. 1511; Pub. L. 94–240, §2, Mar. 23, 1976, 90 Stat. 257.)

AMENDMENTS

1976—Pub. L. 94–240 designated existing provisions as subsec. (a) and added subsec. (b).

1974—Pub. L. 93–495 inserted provisions expanding purposes of subchapter to include protection of consumer against inaccurate and unfair credit billing and credit card practices.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–203, title XIV, §1400(c), July 21, 2010, 124 Stat. 2136, provided that:

"(1) REGULATIONS.—The regulations required to be prescribed under this title [see Tables for classification] or the amendments made by this title shall—

"(A) be prescribed in final form before the end of the 18-month period beginning on the designated transfer date; and

"(B) take effect not later than 12 months after the date of issuance of the regulations in final form.

"(2) EFFECTIVE DATE ESTABLISHED BY RULE.—Except as provided in paragraph (3), a section, or provision thereof, of this title shall take effect on the date on which the final regulations implementing such section, or provision, take effect.

"(3) EFFECTIVE DATE.—A section of this title for which regulations have not been issued on the date that is 18 months after the designated transfer date shall take effect on such date."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–240 effective on expiration of one year after Mar. 23, 1976, see section 6 of Pub. L. 94–240, set out as an Effective Date note under section 1667 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93–495, see section 308 of Pub. L. 93–495, set out as an Effective Date note under section 1666 of this title.

EFFECTIVE DATE

Section 504(a) of Pub. L. 90–321 provided that this part is effective May 29, 1968.

SHORT TITLE OF 2010 AMENDMENT

Pub. L. 111–319, §1, Dec. 18, 2010, 124 Stat. 3457, provided that: "This Act [amending section 1681m of this title and enacting provisions set out as a note under section 1681m of this title] may be cited as the 'Red Flag Program Clarification Act of 2010'."

Pub. L. 111–203, title XIV, §1400(a), July 21, 2010, 124 Stat. 2136, provided that: "This title [see Tables for classification] may be cited as the 'Mortgage Reform and Anti-Predatory Lending Act'."

SHORT TITLE OF 2009 AMENDMENT

Pub. L. 111–93, §1, Nov. 6, 2009, 123 Stat. 2998, provided that: "This Act [amending section 1666b of this title] may be cited as the 'Credit CARD Technical Corrections Act of 2009'."

Pub. L. 111–24, §1(a), May 22, 2009, 123 Stat. 1734, provided that: "This Act [enacting sections 1616, 1651, 1665c to 1665e, 1666i–1, 1666i–2, and 1693l–1 of this title and section 1a–7b of Title 16, Conservation, amending sections 1602, 1632, 1637, 1640, 1650, 1666b, 1666c, 1666j, 1681b, 1681j, and 1693m to 1693r of this title, enacting provisions set out as notes under sections 1602, 1637, 1638, 1666b, 1681j, and 1693l–1 of this title and section 5311 of Title 31, Money and Finance, and amending provisions set out as notes under sections 1638 and 1693 of this title] may be cited as the 'Credit Card Accountability Responsibility and Disclosure Act of 2009' or the 'Credit CARD Act of 2009'."

SHORT TITLE OF 2008 AMENDMENT

Pub. L. 110–315, title X, §1001, Aug. 14, 2008, 122 Stat. 3478, provided that: "This title [enacting section 1650 of this title and sections 1019d and 9709 of Title 20, Education, amending sections 1602, 1603, 1638, and 1640 of this title, section 2903 of Title 12, Banks and Banking, and section 1092 of Title 20, and enacting provisions set out as notes under sections 1638 and 1640 of this title, section 2903 of Title 12, and section 9709 of Title 20] may be cited as the 'Private Student Loan Transparency and Improvement Act of 2008'."

Pub. L. 110–289, div. B, title V, §2501, July 30, 2008, 122 Stat. 2855, provided that: "This title [amending sections 1638 and 1640 of this title and sections 24 and 338a of Title 12, Banks and Banking, and enacting provisions set out as a note under section 1638 of this title] may be cited as the 'Mortgage Disclosure Improvement Act of 2008'."

Pub. L. 110–241, §1, June 3, 2008, 122 Stat. 1565, provided that: "This Act [amending section 1681n of this title and enacting provisions set out as notes under section 1681n of this title] may be cited as the 'Credit and Debit Card Receipt Clarification Act of 2007'."

SHORT TITLE OF 2003 AMENDMENT

Pub. L. 108–159, §1(a), Dec. 4, 2003, 117 Stat. 1952, provided that: "This Act [enacting sections 1681c–1, 1681c–2, 1681s–3, 1681w, and 1681x of this title and sections 9701 to 9708 of Title 20, Education, amending sections 1681a, 1681b, 1681c, 1681g, 1681i, 1681j, 1681m, 1681o, 1681p, 1681s, 1681s–2, 1681t, 1681u, and 1681v of this title and section 5318 of Title 31, Money and Finance, enacting provisions set out as notes under this section, sections 1681, 1681a, 1681b, 1681c, 1681c–1, 1681i, 1681j, 1681m, 1681n, 1681s–2, 1681s–3 of this title, and section 9701 of Title 20, and amending provisions set out as a note under this section] may be cited as the 'Fair and Accurate Credit Transactions Act of 2003'."

SHORT TITLE OF 1999 AMENDMENT

Pub. L. 106–102, title VII, §701, Nov. 12, 1999, 113 Stat. 1463, provided that: "This subtitle [subtitle A (§§701–705) of title VII of Pub. L. 106–102, amending sections 1693b, 1693c, and 1693h of this title] may be cited as the 'ATM Fee Reform Act of 1999'."

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–347, §1, Nov. 2, 1998, 112 Stat. 3208, provided that: "This Act [amending sections 1681a to 1681c, 1681g, 1681i, 1681k, and 1681s of this title and enacting provisions set out as a note under section

1681a of this title] may be cited as the 'Consumer Reporting Employment Clarification Act of 1998'."

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–208, div. A, title II, §2401, Sept. 30, 1996, 110 Stat. 3009–426, provided that: "This chapter [chapter 1 (§§2401–2422) of subtitle D of title II of div. A of Pub. L. 104–208, enacting section 1681s–2 of this title, amending sections 1681a to 1681e, 1681g to 1681j, 1681m to 1681o, 1681q to 1681s, and 1681t of this title, and enacting provisions set out as notes under sections 1681a, 1681b, and 1681g of this title] may be cited as the 'Consumer Credit Reporting Reform Act of 1996'."

SHORT TITLE OF 1995 AMENDMENTS

Pub. L. 104–29, §1, Sept. 30, 1995, 109 Stat. 271, provided that: "This Act [enacting section 1649 of this title, amending sections 1605, 1631, 1635, 1640, and 1641 of this title, and enacting provisions set out as notes under section 1605 of this title] may be cited as the 'Truth in Lending Act Amendments of 1995'."

Pub. L. 104–12, §1, May 18, 1995, 109 Stat. 161, provided that: "This Act [amending section 1640 of this title] may be cited as the 'Truth in Lending Class Action Relief Act of 1995'."

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–325, title I, §151, Sept. 23, 1994, 108 Stat. 2190, provided that: "This subtitle [subtitle B (§§151–158) of title I of Pub. L. 103–325, enacting sections 1639 and 1648 of this title, amending sections 1602, 1604, 1610, 1640, 1641, and 1647 of this title, and enacting provisions set out as notes under this section and section 1602 of this title] may be cited as the 'Home Ownership and Equity Protection Act of 1994'."

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–537, §1, Oct. 27, 1992, 106 Stat. 3531, provided that: "This Act [enacting section 1681s–1 of this title, amending section 1681a of this title, and enacting provisions set out as a note under section 1681a of this title] may be cited as the 'Ted Weiss Child Support Enforcement Act of 1992'."

SHORT TITLE OF 1988 AMENDMENTS

Pub. L. 100–709, §1, Nov. 23, 1988, 102 Stat. 4725, provided that: "This Act [enacting sections 1637a, 1647, and 1665b of this title, amending sections 1632 and 1637 of this title, and enacting provisions set out as notes under section 1637a of this title] may be cited as the 'Home Equity Loan Consumer Protection Act of 1988'."

Pub. L. 100–583, §1, Nov. 3, 1988, 102 Stat. 2960, provided that: "This Act [amending sections 1610, 1632, 1637, 1640, and 1646 of this title and enacting provisions set out as a note under section 1637 of this title] may be cited as the 'Fair Credit and Charge Card Disclosure Act of 1988'."

SHORT TITLE OF 1981 AMENDMENT

Pub. L. 97–25, §1, July 27, 1981, 95 Stat. 144, provided: "That this Act [amending sections 1602 and 1666f of this title, section 29 of Title 12, Banks and Banking, and sections 205 and 212 of Title 42, The Public Health and Welfare; enacting provisions set out as notes under this section and sections 1602 and 1666f of this title; and amending provisions set out as notes under sections 1602 and 1666f of this title] may be cited as the 'Cash Discount Act'."

SHORT TITLE OF 1980 AMENDMENT

Pub. L. 96–221, title VI, §601, Mar. 31, 1980, 94 Stat. 168, provided that: "This title [enacting section 1646 of this title, amending sections 57a, 1602 to 1607, 1610, 1612, 1613, 1631, 1632, 1635, 1637, 1638, 1640, 1641, 1643, 1663, 1664, 1665a, 1666, 1666d, 1667d, and 1691f of this title, repealing sections 1614, 1636, and 1639 of this title, and enacting provisions set out as notes under sections 1602 and 1607 of this title] may be cited as the 'Truth in Lending Simplification and Reform Act'."

SHORT TITLE OF 1976 AMENDMENTS

Pub. L. 94–240, §1, Mar. 23, 1976, 90 Stat. 257, provided that: "This Act [enacting sections 1667 to 1667e of this title, amending this section and section 1640 of this title, and enacting provisions set out as a note under section 1667 of this title] may be cited as the 'Consumer Leasing Act of 1976'."

Pub. L. 94–239, §1(a), Mar. 23, 1976, 90 Stat. 251, provided that: "This Act [enacting section 1691f of this title, amending this section and sections 1691b, 1691c, 1691d, 1691e of this title, repealing section 1609 of this title, enacting provisions set out as notes under this section, and repealing provision set out as a note under this section] may be cited as the 'Equal Credit Opportunity Act Amendments of 1976'."

Section 1(c) of Pub. L. 94–239 repealed section 501 of Pub. L. 93–495, title V, Oct. 28, 1974, 88 Stat.

1521, which provided that subchapter IV of this chapter and notes set out under section 1691 were to be cited as the "Equal Credit Opportunity Act".

SHORT TITLE OF 1974 AMENDMENT

Pub. L. 93–495, title III, §301, Oct. 28, 1974, 88 Stat. 1511, provided that: "This title [enacting sections 1666 to 1666j of this title, amending this section and sections 1602, 1610, 1631, 1632, and 1637 of this title, and enacting provision set out as a note under section 1666 of this title] may be cited as the 'Fair Credit Billing Act'."

SHORT TITLE

Pub. L. 90–321, §1, May 29, 1968, 82 Stat. 146, provided that: "This Act [enacting this chapter, sections 891 to 896 of Title 18, Crimes and Criminal Procedure, and provisions set out as notes under this section, sections 1631 and 1671 of this title, and section 891 of Title 18] may be cited as the 'Consumer Credit Protection Act'."

Pub. L. 90–321, title I, §101, May 29, 1968, 82 Stat. 146, provided that: "This title [enacting this subchapter] may be cited as the 'Truth in Lending Act'."

Section 401 of title IV of Pub. L. 90–321, as added by Pub. L. 104–208, div. A, title II, §2451, Sept. 30, 1996, 110 Stat. 3009–454, provided that: "This title [enacting subchapter II–A of this chapter] may be cited as the 'Credit Repair Organizations Act'."

Section 601 of title VI of Pub. L. 90–321, as added by Pub. L. 91–508, title VI, §601, Oct. 26, 1970, 84 Stat. 1128, as amended by Pub. L. 108–159, title VIII, §811(a), Dec. 4, 2003, 117 Stat. 2011, provided that: "This title [enacting subchapter III of this chapter] may be cited as the 'Fair Credit Reporting Act'."

Section 709 of title VII of Pub. L. 90–321, as added by section 1(b) of Pub. L. 94–239, Mar. 23, 1976, 90 Stat. 251, provided that: "This title [enacting subchapter IV of this chapter and notes set out under section 1691 of this title] may be cited as the 'Equal Credit Opportunity Act'."

Section 801 of title VIII of Pub. L. 90–321, as added by Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 874, provided that: "This title [enacting subchapter V of this chapter] may be cited as the 'Fair Debt Collection Practices Act'."

Section 901 of title IX of Pub. L. 90–321, as added Pub. L. 95–630, title XX, §2001, Nov. 10, 1978, 92 Stat. 3728, provided that: "This title [enacting subchapter VI of this chapter] may be cited as the 'Electronic Fund Transfer Act'."

SEVERABILITY

Pub. L. 90–321, title V, §501, May 29, 1968, 82 Stat. 167, provided that: "If a provision enacted by this Act [see Short Title note above], is held invalid, all valid provisions that are severable from the invalid provision remain in effect. If a provision enacted by this Act is held invalid in one or more of its applications, the provision remains in effect in all valid applications that are severable from the invalid application or applications."

EXEMPTION OR MODIFICATION OF MORTGAGE DISCLOSURE REQUIREMENTS

Pub. L. 111–203, title XIV, §1405(b), July 21, 2010, 124 Stat. 2142, provided that: "Notwithstanding any other provision of this title [see Tables for classification], in order to improve consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures, the Board may, by rule, exempt from or modify disclosure requirements, in whole or in part, for any class of residential mortgage loans if the Board determines that such exemption or modification is in the interest of consumers and in the public interest."

ANALYSIS OF FURTHER RESTRICTIONS ON OFFERS OF CREDIT OR INSURANCE

Pub. L. 108–159, title II, §213(e), Dec. 4, 2003, 117 Stat. 1979, provided that:

"(1) IN GENERAL.—The Board shall conduct a study of—

"(A) the ability of consumers to avoid receiving written offers of credit or insurance in connection with transactions not initiated by the consumer; and

"(B) the potential impact that any further restrictions on providing consumers with such written offers of credit or insurance would have on consumers.

"(2) REPORT.—The Board shall submit a report summarizing the results of the study required under paragraph (1) to the Congress not later than 12 months after the date of enactment of this Act [Dec. 4, 2003], together with such recommendations for legislative or administrative action as the Board may determine to be appropriate.

"(3) CONTENT OF REPORT.—The report described in paragraph (2) shall address the following issues:

"(A) The current statutory or voluntary mechanisms that are available to a consumer to notify lenders and insurance providers that the consumer does not wish to receive written offers of credit or insurance.

"(B) The extent to which consumers are currently utilizing existing statutory and voluntary mechanisms to avoid receiving offers of credit or insurance.

"(C) The benefits provided to consumers as a result of receiving written offers of credit or insurance.

"(D) Whether consumers incur significant costs or are otherwise adversely affected by the receipt of written offers of credit or insurance.

"(E) Whether further restricting the ability of lenders and insurers to provide written offers of credit or insurance to consumers would affect—

"(i) the cost consumers pay to obtain credit or insurance;

"(ii) the availability of credit or insurance;

"(iii) consumers' knowledge about new or alternative products and services;

"(iv) the ability of lenders or insurers to compete with one another; and

"(v) the ability to offer credit or insurance products to consumers who have been traditionally underserved."

[For definitions of terms used in section 213(e) of Pub. L. 108–159, set out above, see section 2 of Pub. L. 108–159, set out as a Definitions note under section 1681 of this title.]

FEDERAL RESERVE STUDY OF HOME EQUITY LENDING AND APPROPRIATE INTEREST RATE INDEX

Pub. L. 103–325, title I, §157, Sept. 23, 1994, 108 Stat. 2197, provided that: "During the period beginning 180 days after the date of enactment of this Act [Sept. 23, 1994] and ending 2 years after that date of enactment, the Board of Governors of the Federal Reserve System shall conduct a study and submit to the Congress a report, including recommendations for any appropriate legislation, regarding—

"(1) whether a consumer engaging in an open end credit transaction (as defined in section 103 of the Truth in Lending Act [15 U.S.C. 1602]) secured by the consumer's principal dwelling is provided adequate protections under Federal law, including section 127A of the Truth in Lending Act [15 U.S.C. 1637a]; and

"(2) whether a more appropriate interest rate index exists for purposes of subparagraph (A) of section 103(aa)(1) [now 103(bb)(1)] of the Truth in Lending Act (as added by section 152(a) of this Act [15 U.S.C. 1602(bb)(1)(A)]) than the yield on Treasury securities referred to in that subparagraph."

HEARINGS ON HOME EQUITY LENDING

Pub. L. 103–325, title I, §158, Sept. 23, 1994, 108 Stat. 2197, as amended by Pub. L. 111–203, title X, §1096, July 21, 2010, 124 Stat. 2102, provided that:

"(a) HEARINGS.—Not less than once during the 3-year period beginning on the date of enactment of this Act [Sept. 23, 1994], and regularly thereafter, the Bureau, in consultation with the Advisory Board to the Bureau, shall conduct a public hearing to examine the home equity loan market and the adequacy of existing regulatory and legislative provisions and the provisions of this subtitle [see Short Title of 1994 Amendment note above] in protecting the interests of consumers, and low-income consumers in particular.

"(b) PARTICIPATION.—In conducting hearings required by subsection (a), the Bureau shall solicit participation from consumers, representatives of consumers, lenders, and other interested parties."

STUDY BY FEDERAL RESERVE BOARD OF GOVERNORS COVERING EFFECT OF CHARGE CARD TRANSACTIONS UPON CARD ISSUERS, MERCHANTS, AND CONSUMERS

Pub. L. 97–25, title II, §202, July 27, 1981, 95 Stat. 145, directed Board of Governors of Federal Reserve System, not later than 2 years after July 27, 1981, to prepare a study and submit its findings to Congress on the effect of charge card transactions upon card issuers, merchants, and consumers.

INFERENCE OF LEGISLATIVE INTENT IN SECTION CAPTIONS AND CATCHLINES

Pub. L. 90–321, title V, §502, May 29, 1968, 82 Stat. 167, provided that: "Captions and catchlines are intended solely as aids to convenient reference, and no inference as to the legislative intent with respect to any provision enacted by this Act [enacting this chapter, section 891 to 896 of Title 18, Crimes and Criminal Procedure, and provisions set out as notes under this section, sections 1631 and 1671 of this title, and section 891 of Title 18] may be drawn from them."

GRAMMATICAL USAGES

Pub. L. 90–321, title V, §503, May 30, 1968, 82 Stat. 167, provided that: "In this Act [enacting this chapter, sections 891 to 896 of Title 18, Crimes and Criminal Procedure, and provisions set out as notes under this section, sections 1631 and 1671 of this title, and section 891 of Title 18]:

"(1) The word 'may' is used to indicate that an action either is authorized or is permitted.
"(2) The word 'shall' is used to indicate that an action is both authorized and required.
"(3) The phrase 'may not' is used to indicate that an action is both unauthorized and forbidden.
"(4) Rules of law are stated in the indicative mood."

DEFINITION

Pub. L. 111–203, title XIV, §1495, July 21, 2010, 124 Stat. 2207, provided that: "For purposes of this title [see Tables for classification], the term 'designated transfer date' means the date established under section 1062 of this Act [12 U.S.C. 5582]."

§1602. Definitions and rules of construction

(a) The definitions and rules of construction set forth in this section are applicable for the purposes of this subchapter.

(b) BUREAU.—The term "Bureau" means the Bureau of Consumer Financial Protection.

(c) The term "Board" refers to the Board of Governors of the Federal Reserve System.

(d) The term "organization" means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(e) The term "person" means a natural person or an organization.

(f) The term "credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(g) The term "creditor" refers only to a person who both (1) regularly extends, whether in connection with loans, sales of property or services, or otherwise, consumer credit which is payable by agreement in more than four installments or for which the payment of a finance charge is or may be required, and (2) is the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by agreement. Notwithstanding the preceding sentence, in the case of an open-end credit plan involving a credit card, the card issuer and any person who honors the credit card and offers a discount which is a finance charge are creditors. For the purpose of the requirements imposed under part D of this subchapter and sections 1637(a)(5), 1637(a)(6), 1637(a)(7), 1637(b)(1), 1637(b)(2), 1637(b)(3), 1637(b)(8), and 1637(b)(10) of this title, the term "creditor" shall also include card issuers whether or not the amount due is payable by agreement in more than four installments or the payment of a finance charge is or may be required, and the Bureau shall, by regulation, apply these requirements to such card issuers, to the extent appropriate, even though the requirements are by their terms applicable only to creditors offering open-end credit plans. Any person who originates 2 or more mortgages referred to in subsection (aa) of this section in any 12-month period or any person who originates 1 or more such mortgages through a mortgage broker shall be considered to be a creditor for purposes of this subchapter. The term "creditor" includes a private educational lender (as that term is defined in section 1650 of this title) for purposes of this subchapter.

(h) The term "credit sale" refers to any sale in which the seller is a creditor. The term includes any contract in the form of a bailment or lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the property and services involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the property upon full compliance with his obligations under the contract.

(i) The adjective "consumer", used with reference to a credit transaction, characterizes the transaction as one in which the party to whom credit is offered or extended is a natural person, and the money, property, or services which are the subject of the transaction are primarily for personal, family, or household purposes.

(j) The terms "open end credit plan" and "open end consumer credit plan" mean a plan under which the creditor reasonably contemplates repeated transactions, which prescribes the terms of such transactions, and which provides for a finance charge which may be computed from time to time on the outstanding unpaid balance. A credit plan or open end consumer credit plan which is an open end

credit plan or open end consumer credit plan within the meaning of the preceding sentence is an open end credit plan or open end consumer credit plan even if credit information is verified from time to time.

(k) The term "adequate notice," as used in section 1643 of this title, means a printed notice to a cardholder which sets forth the pertinent facts clearly and conspicuously so that a person against whom it is to operate could reasonably be expected to have noticed it and understood its meaning. Such notice may be given to a cardholder by printing the notice on any credit card, or on each periodic statement of account, issued to the cardholder, or by any other means reasonably assuring the receipt thereof by the cardholder.

(l) The term "credit card" means any card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(m) The term "accepted credit card" means any credit card which the cardholder has requested and received or has signed or has used, or authorized another to use, for the purpose of obtaining money, property, labor, or services on credit.

(n) The term "cardholder" means any person to whom a credit card is issued or any person who has agreed with the card issuer to pay obligations arising from the issuance of a credit card to another person.

(o) The term "card issuer" means any person who issues a credit card, or the agent of such person with respect to such card.

(p) The term "unauthorized use," as used in section 1643 of this title, means a use of a credit card by a person other than the cardholder who does not have actual, implied, or apparent authority for such use and from which the cardholder receives no benefit.

(q) The term "discount" as used in section 1666f of this title means a reduction made from the regular price. The term "discount" as used in section 1666f of this title shall not mean a surcharge.

(r) The term "surcharge" as used in this section and section 1666f of this title means any means of increasing the regular price to a cardholder which is not imposed upon customers paying by cash, check, or similar means."

(s) The term "State" refers to any State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States.

(t) The term "agricultural purposes" includes the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures those agricultural products, including but not limited to the acquisition of farmland, real property with a farm residence, and personal property and services used primarily in farming.

(u) The term "agricultural products" includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(v) The term "material disclosures" means the disclosure, as required by this subchapter, of the annual percentage rate, the method of determining the finance charge and the balance upon which a finance charge will be imposed, the amount of the finance charge, the amount to be financed, the total of payments, the number and amount of payments, the due dates or periods of payments scheduled to repay the indebtedness, and the disclosures required by section 1639(a) of this title.

(w) The term "dwelling" means a residential structure or mobile home which contains one to four family housing units, or individual units of condominiums or cooperatives.

(x) The term "residential mortgage transaction" means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained against the consumer's dwelling to finance the acquisition or initial construction of such dwelling.

(y) As used in this section and section 1666f of this title, the term "regular price" means the tag or posted price charged for the property or service if a single price is tagged or posted, or the price charged for the property or service when payment is made by use of an open-end credit plan or a credit card if either (1) no price is tagged or posted, or (2) two prices are tagged or posted, one of

which is charged when payment is made by use of an open-end credit plan or a credit card and the other when payment is made by use of cash, check, or similar means. For purposes of this definition, payment by check, draft, or other negotiable instrument which may result in the debiting of an open-end credit plan or a credit cardholder's open-end account shall not be considered payment made by use of the plan or the account.

(z) Any reference to any requirement imposed under this subchapter or any provision thereof includes reference to the regulations of the Bureau under this subchapter or the provision thereof in question.

(aa) The disclosure of an amount or percentage which is greater than the amount or percentage required to be disclosed under this subchapter does not in itself constitute a violation of this subchapter.

(bb) HIGH-COST MORTGAGE.—

(1) DEFINITION.—

(A) IN GENERAL.—The term "high-cost mortgage", and a mortgage referred to in this subsection, means a consumer credit transaction that is secured by the consumer's principal dwelling, other than a reverse mortgage transaction, if—

(i) in the case of a credit transaction secured—

(I) by a first mortgage on the consumer's principal dwelling, the annual percentage rate at consummation of the transaction will exceed by more than 6.5 percentage points (8.5 percentage points, if the dwelling is personal property and the transaction is for less than $50,000) the average prime offer rate, as defined in section 1639c(b)(2)(B) of this title, for a comparable transaction; or

(II) by a subordinate or junior mortgage on the consumer's principal dwelling, the annual percentage rate at consummation of the transaction will exceed by more than 8.5 percentage points the average prime offer rate, as defined in section 1639c(b)(2)(B) of this title, for a comparable transaction;

(ii) the total points and fees payable in connection with the transaction, other than bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or mortgage originator, exceed—

(I) in the case of a transaction for $20,000 or more, 5 percent of the total transaction amount; or

(II) in the case of a transaction for less than $20,000, the lesser of 8 percent of the total transaction amount or $1,000 (or such other dollar amount as the Board shall prescribe by regulation); or

(iii) the credit transaction documents permit the creditor to charge or collect prepayment fees or penalties more than 36 months after the transaction closing or such fees or penalties exceed, in the aggregate, more than 2 percent of the amount prepaid.

(B) INTRODUCTORY RATES TAKEN INTO ACCOUNT.—For purposes of subparagraph (A)(i), the annual percentage rate of interest shall be determined based on the following interest rate:

(i) In the case of a fixed-rate transaction in which the annual percentage rate will not vary during the term of the loan, the interest rate in effect on the date of consummation of the transaction.

(ii) In the case of a transaction in which the rate of interest varies solely in accordance with an index, the interest rate determined by adding the index rate in effect on the date of consummation of the transaction to the maximum margin permitted at any time during the loan agreement.

(iii) In the case of any other transaction in which the rate may vary at any time during the term of the loan for any reason, the interest charged on the transaction at the maximum rate that may be charged during the term of the loan.

(C) MORTGAGE INSURANCE.—For the purposes of computing the total points and fees under paragraph (4), the total points and fees shall exclude—

(i) any premium provided by an agency of the Federal Government or an agency of a State;

(ii) any amount that is not in excess of the amount payable under policies in effect at the time of origination under section 203(c)(2)(A) of the National Housing Act (12 U.S.C. 1709(c)(2)(A)), provided that the premium, charge, or fee is required to be refundable on a pro-rated basis and the refund is automatically issued upon notification of the satisfaction of the underlying mortgage loan; and

(iii) any premium paid by the consumer after closing.

(2)(A) After the 2-year period beginning on the effective date of the regulations promulgated under section 155 of the Riegle Community Development and Regulatory Improvement Act of 1994, and no more frequently than biennially after the first increase or decrease under this subparagraph, the Bureau may by regulation increase or decrease the number of percentage points specified in paragraph (1)(A), if the Bureau determines that the increase or decrease is—

(i) consistent with the consumer protections against abusive lending provided by the amendments made by subtitle B of title I of the Riegle Community Development and Regulatory Improvement Act of 1994; and

(ii) warranted by the need for credit.

(B) An increase or decrease under subparagraph (A)—

(i) may not result in the number of percentage points referred to in paragraph (1)(A)(i)(I) being less than 6 percentage points or greater than 10 percentage points; and

(ii) may not result in the number of percentage points referred to in paragraph (1)(A)(i)(II) being less than 8 percentage points or greater than 12 percentage points.

(C) In determining whether to increase or decrease the number of percentage points referred to in subparagraph (A), the Bureau shall consult with representatives of consumers, including low-income consumers, and lenders.

(3) The amount specified in paragraph (1)(B)(ii) shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index, as reported on June 1 of the year preceding such adjustment.

(4) For purposes of paragraph (1)(B), points and fees shall include—

(A) all items included in the finance charge, except interest or the time-price differential;

(B) all compensation paid directly or indirectly by a consumer or creditor to a mortgage originator from any source, including a mortgage originator that is also the creditor in a table-funded transaction;

(C) each of the charges listed in section 1605(e) of this title (except an escrow for future payment of taxes), unless—

(i) the charge is reasonable;

(ii) the creditor receives no direct or indirect compensation; and

(iii) the charge is paid to a third party unaffiliated with the creditor; and

(D) premiums or other charges payable at or before closing for any credit life, credit disability, credit unemployment, or credit property insurance, or any other accident, loss-of-income, life or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, except that insurance premiums or debt cancellation or suspension fees calculated and paid in full on a monthly basis shall not be considered financed by the creditor;

(E) the maximum prepayment fees and penalties which may be charged or collected under the terms of the credit transaction;

(F) all prepayment fees or penalties that are incurred by the consumer if the loan refinances a previous loan made or currently held by the same creditor or an affiliate of the creditor; and

(G) such other charges as the Bureau determines to be appropriate.

(5) CALCULATION OF POINTS AND FEES FOR OPEN-END CONSUMER CREDIT PLANS .—In the case of open-end consumer credit plans, points and fees shall be calculated, for purposes of this section and section 1639 of this title, by adding the total points and fees known at or before closing, including the maximum prepayment penalties which may be charged or collected under the terms of the credit transaction, plus the minimum additional fees the consumer would be required to pay to draw down an amount equal to the total credit line.

(6) This subsection shall not be construed to limit the rate of interest or the finance charge that a person may charge a consumer for any extension of credit.

(cc) [1] The term "reverse mortgage transaction" means a nonrecourse transaction in which a mortgage, deed of trust, or equivalent consensual security interest is created against the consumer's principal dwelling—

(1) securing one or more advances; and

(2) with respect to which the payment of any principal, interest, and shared appreciation or equity is due and payable (other than in the case of default) only after—

(A) the transfer of the dwelling;

(B) the consumer ceases to occupy the dwelling as a principal dwelling; or

(C) the death of the consumer.

(cc) [1] DEFINITIONS RELATING TO MORTGAGE ORIGINATION AND RESIDENTIAL MORTGAGE LOANS.—

(1) COMMISSION.—Unless otherwise specified, the term "Commission" means the Federal Trade Commission.

(2) MORTGAGE ORIGINATOR.—The term "mortgage originator"—

(A) means any person who, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain—

(i) takes a residential mortgage loan application;

(ii) assists a consumer in obtaining or applying to obtain a residential mortgage loan; or

(iii) offers or negotiates terms of a residential mortgage loan;

(B) includes any person who represents to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such person can or will provide any of the services or perform any of the activities described in subparagraph (A);

(C) does not include any person who is (i) not otherwise described in subparagraph (A) or (B) and who performs purely administrative or clerical tasks on behalf of a person who is described in any such subparagraph, or (ii) an employee of a retailer of manufactured homes who is not described in clause (i) or (iii) of subparagraph (A) and who does not advise a consumer on loan terms (including rates, fees, and other costs);

(D) does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless such person or entity is compensated by a lender, a mortgage broker, or other mortgage originator or by any agent of such lender, mortgage broker, or other mortgage originator;

(E) does not include, with respect to a residential mortgage loan, a person, estate, or trust that provides mortgage financing for the sale of 3 properties in any 12-month period to purchasers of such properties, each of which is owned by such person, estate, or trust and serves as security for the loan, provided that such loan—

(i) is not made by a person, estate, or trust that has constructed, or acted as a contractor for the construction of, a residence on the property in the ordinary course of business of such person, estate, or trust;

(ii) is fully amortizing;

(iii) is with respect to a sale for which the seller determines in good faith and documents

that the buyer has a reasonable ability to repay the loan;

(iv) has a fixed rate or an adjustable rate that is adjustable after 5 or more years, subject to reasonable annual and lifetime limitations on interest rate increases; and

(v) meets any other criteria the Board may prescribe;

(F) does not include the creditor (except the creditor in a table-funded transaction) under paragraph (1), (2), or (4) of section 1639b(c) of this title; and

(G) does not include a servicer or servicer employees, agents and contractors, including but not limited to those who offer or negotiate terms of a residential mortgage loan for purposes of renegotiating, modifying, replacing and subordinating principal of existing mortgages where borrowers are behind in their payments, in default or have a reasonable likelihood of being in default or falling behind.

(3) NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.—The term "Nationwide Mortgage Licensing System and Registry" has the same meaning as in the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 [12 U.S.C. 5101 et seq.].

(4) OTHER DEFINITIONS RELATING TO MORTGAGE ORIGINATOR.—For purposes of this subsection, a person "assists a consumer in obtaining or applying to obtain a residential mortgage loan" by, among other things, advising on residential mortgage loan terms (including rates, fees, and other costs), preparing residential mortgage loan packages, or collecting information on behalf of the consumer with regard to a residential mortgage loan.

(5) RESIDENTIAL MORTGAGE LOAN.—The term "residential mortgage loan" means any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling, other than a consumer credit transaction under an open end credit plan or, for purposes of sections 1639b and 1639c of this title and section 1638(a) (16), (17), (18), and (19) of this title, and sections 1638(f) and 1640(k) of this title, and any regulations promulgated thereunder, an extension of credit relating to a plan described in section 101(53D) of title 11.

(6) SECRETARY.—The term "Secretary", when used in connection with any transaction or person involved with a residential mortgage loan, means the Secretary of Housing and Urban Development.

(7) SERVICER.—The term "servicer" has the same meaning as in section 2605(i)(2) of title 12.

(dd) BONA FIDE DISCOUNT POINTS AND PREPAYMENT PENALTIES.—For the purposes of determining the amount of points and fees for purposes of subsection (aa), either the amounts described in paragraph (1) or (2) of the following paragraphs, but not both, shall be excluded:

(1) Up to and including 2 bona fide discount points payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage's interest rate will be discounted does not exceed by more than 1 percentage point—

(A) the average prime offer rate, as defined in section 1639c of this title; or

(B) if secured by a personal property loan, the average rate on a loan in connection with which insurance is provided under title I of the National Housing Act (12 U.S.C. 1702 et seq.).

(2) Unless 2 bona fide discount points have been excluded under paragraph (1), up to and including 1 bona fide discount point payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage's interest rate will be discounted does not exceed by more than 2 percentage points—

(A) the average prime offer rate, as defined in section 1639c of this title; or

(B) if secured by a personal property loan, the average rate on a loan in connection with which insurance is provided under title I of the National Housing Act (12 U.S.C. 1702 et seq.).

(3) For purposes of paragraph (1), the term "bona fide discount points" means loan discount points which are knowingly paid by the consumer for the purpose of reducing, and which in fact

result in a bona fide reduction of, the interest rate or time-price differential applicable to the mortgage.

(4) Paragraphs (1) and (2) shall not apply to discount points used to purchase an interest rate reduction unless the amount of the interest rate reduction purchased is reasonably consistent with established industry norms and practices for secondary mortgage market transactions.

(Pub. L. 90–321, title I, §103, May 29, 1968, 82 Stat. 147; Pub. L. 91–508, title V, §501, Oct. 26, 1970, 84 Stat. 1126; Pub. L. 93–495, title III, §303, Oct. 28, 1974, 88 Stat. 1511; Pub. L. 94–222, §3(a), Feb. 27, 1976, 90 Stat. 197; Pub. L. 96–221, title VI, §§602, 603(a), (b), 604, 612(a)(2), (b), Mar. 31, 1980, 94 Stat. 168, 169, 175, 176; Pub. L. 97–25, title I, §102, July 27, 1981, 95 Stat. 144; Pub. L. 97–320, title VII, §702(a), Oct. 15, 1982, 96 Stat. 1538; Pub. L. 103–325, title I, §§152(a)–(c), 154(a), Sept. 23, 1994, 108 Stat. 2190, 2191, 2196; Pub. L. 110–315, title X, §1011(b), Aug. 14, 2008, 122 Stat. 3481; Pub. L. 111–24, title I, §108, May 22, 2009, 123 Stat. 1743; Pub. L. 111–203, title X, §1100A(1), (2), title XIV, §§1401, 1431, July 21, 2010, 124 Stat. 2107, 2137, 2157.)

REFERENCES IN TEXT

The Riegle Community Development and Regulatory Improvement Act of 1994, referred to in subsec. (bb)(2)(A)(i), is Pub. L. 103–325, Sept. 23, 1994, 108 Stat. 2160. Section 155 of the Act is set out below. For classification of subtitle B of title I of the Act, known as the "Home Ownership and Equity Protection Act of 1994", see Short Title of 1994 Amendment note set out under section 1601 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4701 of Title 12, Banks and Banking, and Tables.

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008, referred to in subsec. (cc)(3), is title V of div. A of Pub. L. 110–289, July 30, 2008, 122 Stat. 2810, also known as the S.A.F.E. Mortgage Licensing Act of 2008, which is classified generally to chapter 51 (§5101 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 5101 of Title 12 and Tables.

The National Housing Act, referred to in subsec. (dd)(1)(B), (2)(B), is act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to chapter 13 (§1701 et seq.) of Title 12, Banks and Banking. Title I of the Act is classified generally to subchapter II (§1702 et seq.) of chapter 13 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

AMENDMENTS

2010—Pub. L. 111–203, §1100A(2), which directed substitution of "Bureau" for "Board" wherever appearing, was executed by making the substitution wherever appearing in subsecs. (g), (z), and (bb)(2)(A), (C), (4)(D), but not in subsec. (c), to reflect the probable intent of Congress.

Subsecs. (b) to (z). Pub. L. 111–203, §1100(A)(1), added subsec. (b) and redesignated former subsecs. (b) to (z) as (c) to (aa), respectively.

Subsec. (bb). Pub. L. 111–203, §1431(a), which directed amendment of subsec. (aa) by inserting subsec. heading, adding par. (1), and striking out former par. (1), was executed by making the amendment to subsec. (bb) to reflect the probable intent of Congress and the redesignation of subsec. (aa) as (bb) by Pub. L. 111–203, §1100(A)(1). See below. Text of former par. (1) read as follows: "A mortgage referred to in this subsection means a consumer credit transaction that is secured by the consumer's principal dwelling, other than a residential mortgage transaction, a reverse mortgage transaction, or a transaction under an open end credit plan, if—

"(A) the annual percentage rate at consummation of the transaction will exceed by more than 10 percentage points the yield on Treasury securities having comparable periods of maturity on the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor; or

"(B) the total points and fees payable by the consumer at or before closing will exceed the greater of—

"(i) 8 percent of the total loan amount; or

"(ii) $400."

Pub. L. 111–203, §1100(A)(1), redesignated subsec. (aa) as (bb). Former subsec. (bb) redesignated (cc).

Subsec. (bb)(2)(B). Pub. L. 111–203, §1431(b), which directed amendment of subsec. (aa)(2) by adding subpar. (B) and striking out former subpar. (B), was executed by making the amendment to subsec. (bb)(2) to

reflect the probable intent of Congress and the redesignation of subsec. (aa) as (bb) by Pub. L. 111–203, §1100(A)(1). See above. Text of former subpar. (B) read as follows: "An increase or decrease under subparagraph (A) may not result in the number of percentage points referred to in subparagraph (A) being—

"(i) less that 8 percentage points; or

"(ii) greater than 12 percentage points."

Subsec. (bb)(4)(B). Pub. L. 111–203, §1431(c)(1)(A), which directed amendment of subsec. (aa)(4) by adding subpar. (B) and struck out former subpar. (B), was executed by making the amendment to subsec. (bb)(4) to reflect the probable intent of Congress and the redesignation of subsec. (aa) as (bb) by Pub. L. 111–203, §1100(A)(1). See above. Text of former subpar. (B) read as follows: "all compensation paid to mortgage brokers;".

Subsec. (bb)(4)(D) to (G). Pub. L. 111–203, §1431(c)(1)(B), (C), which directed amendment of subsec. (aa)(4) by adding subpars. (D) to (F) and redesignating former subpar. (D) as (G), was executed by making the amendment to subsec. (bb)(4) to reflect the probable intent of Congress and the redesignation of subsec. (aa) as (bb) by Pub. L. 111–203, §1100(A)(1). See above.

Subsec. (bb)(5), (6). Pub. L. 111–203, §1431(c)(2), which directed amendment of subsec. (aa) by adding par. (5) and redesignating former par. (5) as (6), was executed by making the amendment to subsec. (bb) to reflect the probable intent of Congress and the redesignation of subsec. (aa) as (bb) by Pub. L. 111–203, §1100(A)(1). See above.

Subsec. (cc). Pub. L. 111–203, §1401, added subsec. (cc) relating to definitions relating to mortgage origination and residential mortgage loans.

Pub. L. 111–203, §1100(A)(1), redesignated subsec. (bb) as (cc) defining the term "reverse mortgage transaction".

Subsec. (dd). Pub. L. 111–203, §1431(d), added subsec. (dd).

2009—Subsec. (i). Pub. L. 111–24 substituted "terms 'open end credit plan' and 'open end consumer credit plan' mean" for "term 'open end credit plan' means" in first sentence and inserted "or open end consumer credit plan" after "credit plan" wherever appearing in second sentence.

2008—Subsec. (f). Pub. L. 110–315 inserted at end "The term 'creditor' includes a private educational lender (as that term is defined in section 1650 of this title) for purposes of this subchapter."

1994—Subsec. (f). Pub. L. 103–325, §152(c), inserted at end "Any person who originates 2 or more mortgages referred to in subsection (aa) of this section in any 12-month period or any person who originates 1 or more such mortgages through a mortgage broker shall be considered to be a creditor for purposes of this subchapter."

Subsec. (u). Pub. L. 103–325, §152(b), substituted "the due dates" for "and the due dates" and inserted before period at end ", and the disclosures required by section 1639(a) of this title".

Subsec. (aa). Pub. L. 103–325, §152(a), added subsec. (aa).

Subsec. (bb). Pub. L. 103–325, §154(a), added subsec. (bb).

1982—Subsec. (f). Pub. L. 97–320 struck out provision that a person who regularly arranged for the extension of consumer credit payable in more than four installments or for which the payment of a finance charge was or might have been required from persons not creditors was a creditor, and provision that this subchapter applied to any creditor, irrespective of his or its status as a natural person or any type of organization, who was a card issuer.

1981—Subsecs. (x) to (z). Pub. L. 97–25 added subsec. (z) and, effective Apr. 10, 1982, redesignated subsecs. (x), (y), and (z) as (y), (z), and (x), respectively.

1980—Subsec. (f). Pub. L. 96–221, §602(a), substituted provisions defining term "creditor" as referring only to a person who both regularly extends consumer credit, subject to specified conditions, and is the person to whom the debt arising is initially payable on the face of the indebtedness or by agreement, and notwithstanding such provisions, also refers to a person regularly arranging for the extension of consumer credit, and a card issuer and any person honoring the credit card, subject to specified conditions, for provisions defining term "creditor" as referring only to creditors who regularly extend, or arrange for the extension of credit payable in more than four installments or where a finance charge is or may be required, and substituted "(a)(5)" for "(a)(6)", "(a)(6)" for "(a)(7)", "(a)(7)" for "(a)(8)", "(b)(8)" for "(b)(9)", and "(b)(10)" for "(b)(11)".

Subsec. (g). Pub. L. 96–221, §602(b), substituted "in which the seller is a creditor" for "with respect to which credit is extended or arranged by the seller".

Subsec. (h). Pub. L. 96–221, §603(a), struck out applicability to agricultural purposes.

Subsec. (i). Pub. L. 96–221, §604, inserted provisions respecting the reasonable contemplations of the creditor, and verification of credit information from time to time.

Subsecs. (s), (t). Pub. L. 96–221, §603(b), added subsecs. (s) and (t). Former subsecs. (s) and (t)

redesignated (x) and (y), respectively.

Subsec. (u). Pub. L. 96–221, §612(a)(2), added subsec. (u).

Subsecs. (v), (w). Pub. L. 96–221, §612(b), added subsecs. (v) and (w).

Subsecs. (x), (y). Pub. L. 96–221, §603(b), redesignated former subsecs. (s) and (t) as (x) and (y), respectively.

1976—Subsecs. (p) to (t). Pub. L. 94–222 added subsecs. (p) and (q) and redesignated former subsecs. (p) to (r) as (r) to (t), respectively.

1974—Subsec. (f). Pub. L. 93–495 inserted provision requiring the credit to be payable by agreement in more than four installments and defining term "creditor" for the purposes of the requirements imposed under the enumerated sections of this chapter.

1970—Subsecs. (j) to (r). Pub. L. 91–508 added subsecs. (j) to (o) and redesignated former subsecs. (j) to (l) as (p) to (r), respectively.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 1100A(1), (2) of Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

Amendment by sections 1401 and 1431 of Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–24, §3, May 22, 2009, 123 Stat. 1735, provided that: "This Act [enacting sections 1616, 1651, 1665c to 1665e, 1666i–1, 1666i–2, and 1693l–1 of this title and section 1a–7b of Title 16, Conservation, amending this section and sections 1632, 1637, 1640, 1650, 1666b, 1666c, 1666j, 1681b, 1681j, and 1693m to 1693r of this title, enacting provisions set out as notes under this section and sections 1637, 1638, 1666b, 1681j, and 1693l–1 of this title and section 5311 of Title 31, Money and Finance, and amending provisions set out as notes under sections 1638 and 1693 of this title] and the amendments made by this Act shall become effective 9 months after the date of enactment of this Act [May 22, 2009], except as otherwise specifically provided in this Act."

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–320, title VII, §702(b), Oct. 15, 1982, 96 Stat. 1538, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the effective date of title VI of the Depository Institutions Deregulation and Monetary Control Act of 1980 [two years and six months after Mar. 31, 1980, see Effective Date of 1980 Amendment note below]."

EFFECTIVE DATE OF 1981 AMENDMENT

Section 102(b) of Pub. L. 97–25 provided that the amendment made by that section is effective Apr. 10, 1982.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–221, title VI, §625, Mar. 31, 1980, 94 Stat. 185, as amended by Pub. L. 97–25, title III, §301, July 27, 1981, 95 Stat. 145; Pub. L. 97–110, title III, §301, Dec. 26, 1981, 95 Stat. 1515, provided that:

"(a) Except as provided in section 608(b) [set out as an Effective Date of 1980 Amendment note under section 1607 of this title], the amendments made by this title [enacting section 1646 of this title, amending sections 57a, 1602 to 1606, 1610, 1612, 1613, 1631, 1632, 1635, 1637, 1638, 1640, 1641, 1643, 1663, 1664, 1665a, 1666, 1666d, 1667d, and 1691f of this title, repealing sections 1614, 1636, and 1639 of this title, and enacting provisions set out as a note under section 1601 of this title] shall take effect upon the expiration of two years and six months after the date of enactment of this title [Mar. 31, 1980].

"(b) All regulations, forms, and clauses required to be prescribed under the amendments made by this title shall be promulgated at least one year prior to such effective date.

"(c) Notwithstanding subsections (a) and (b), any creditor may comply with the amendments made by this title, in accordance with the regulations, forms, and clauses prescribed by the Board, prior to such effective date. Any creditor who elects to comply with such amendments and any assignee of such a creditor shall be subject to the provisions of sections 130 and 131 of the Truth in Lending Act, as amended by sections 615 and 616, respectively, of this title [sections 1640 and 1641 of this title]."

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93–495, see section 308 of Pub. L. 93–495, set out as an Effective Date note under section 1666 of this title.

REGULATIONS

Pub. L. 111–24, §2, May 22, 2009, 123 Stat. 1735, provided that: "The Board of Governors of the Federal Reserve System (in this Act [see Short Title of 2009 Amendment note set out under section 1601 of this title] referred to as the 'Board') may issue such rules and publish such model forms as it considers necessary to carry out this Act and the amendments made by this Act."

Pub. L. 103–325, title I, §155, Sept. 23, 1994, 108 Stat. 2197, provided that: "Not later than 180 days after the date of enactment of this Act [Sept. 23, 1994], the Board of Governors of the Federal Reserve System shall issue such regulations as may be necessary to carry out this subtitle [subtitle B (§§151–158) of title I of Pub. L. 103–325, see Short Title of 1994 Amendment note set out under section 1601 of this title], and such regulations shall become effective on the date on which disclosure regulations are required to become effective under section 105(d) of the Truth in Lending Act [15 U.S.C. §1604(d)]."

APPLICABILITY OF 1994 AMENDMENTS AND REGULATIONS TO SUBSECTION (AA) MORTGAGES

Pub. L. 103–325, title I, §156, Sept. 23, 1994, 108 Stat. 2197, provided that: "This subtitle [subtitle B (§§151–158) of title I of Pub. L. 103–325, see Short Title of 1994 Amendment note set out under section 1601 of this title], and the amendments made by this subtitle, shall apply to every mortgage referred to in section 103(aa) of the Truth in Lending Act [now 15 U.S.C. 1602(bb)] (as added by section 152(a) of this Act) consummated on or after the date on which regulations issued under section 155 [set out above] become effective."

[1] So in original. Two subsecs. (cc) have been enacted.

§1603. Exempted transactions

This subchapter does not apply to the following:

(1) Credit transactions involving extensions of credit primarily for business, commercial, or agricultural purposes, or to government or governmental agencies or instrumentalities, or to organizations.

(2) Transactions in securities or commodities accounts by a broker-dealer registered with the Securities and Exchange Commission.

(3) Credit transactions, other than those in which a security interest is or will be acquired in real property, or in personal property used or expected to be used as the principal dwelling of the consumer and other than private education loans (as that term is defined in section 1650(a) of this title), in which the total amount financed exceeds $50,000.

(4) Transactions under public utility tariffs, if the Bureau determines that a State regulatory body regulates the charges for the public utility services involved, the charges for delayed payment, and any discount allowed for early payment.

(5) Transactions for which the Bureau, by rule, determines that coverage under this subchapter is not necessary to carry out the purposes of this subchapter.

(6) Repealed. Pub. L. 96–221, title VI, §603(c)(3), Mar. 31, 1980, 94 Stat. 169.

(7) Loans made, insured, or guaranteed pursuant to a program authorized by title IV of the Higher Education Act of 1965 [20 U.S.C. 1070 et seq., 42 U.S.C. 2751 et seq.].

(Pub. L. 90–321, title I, §104, May 29, 1968, 82 Stat. 147; Pub. L. 93–495, title IV, §402, Oct. 28, 1974, 88 Stat. 1517; Pub. L. 96–221, title VI, §603(c), Mar. 31, 1980, 94 Stat. 169; Pub. L. 97–320, title VII, §701(a), Oct. 15, 1982, 96 Stat. 1538; Pub. L. 104–208, div. A, title II, §2102(a), Sept. 30, 1996, 110 Stat. 3009–398; Pub. L. 110–315, title X, §1022, Aug. 14, 2008, 122 Stat. 3488; Pub. L. 111–203, title X, §§1100A(2), 1100E(a)(1), July 21, 2010, 124 Stat. 2107, 2111.)

ADJUSTMENTS FOR INFLATION

For requirement of inflation adjustment of dollar amounts in par. (3) of this section, see section 1100E(b) of Pub. L. 111–203, set out as a note below.

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in par. (7), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended. Title IV of the Higher Education Act of 1965 is classified generally to subchapter IV (§1070 et seq.) of chapter 28 of Title 20, Education, and part C (§2751 et seq.) of subchapter I of chapter 34 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

AMENDMENTS

2010—Par. (3). Pub. L. 111–203, §1100E(a)(1), substituted "$50,000" for "$25,000".

Pars. (4), (5). Pub. L. 111–203, §1100A(2), substituted "Bureau" for "Board".

2008—Par. (3). Pub. L. 110–315 inserted "and other than private education loans (as that term is defined in section 1650(a) of this title)" after "consumer".

1996—Pars. (5) to (7). Pub. L. 104–208 added par. (5) and redesignated former pars. (5) and (6) as (6) and (7), respectively.

1982—Par. (6). Pub. L. 97–320 added par. (6).

1980—Par. (1). Pub. L. 96–221, §603(c)(1), inserted provision relating to applicability to agricultural purposes.

Par. (3). Pub. L. 96–221, §603(c)(2), substituted provision excepting security interest in real property, or in personal property used as the consumer's principal dwelling, for provisions excepting real property transactions.

Par. (5). Pub. L. 96–221, §603(c)(3), struck out par. (5) which related to credit transactions primarily for agricultural purposes where the amount financed exceeds $25,000.

1974—Par. (5). Pub. L. 93–495 added par. (5).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 701(c) of Pub. L. 97–320, as amended by Pub. L. 97–457, §31, Jan. 12, 1983, 96 Stat. 2511, provided that: "The amendment made by subsection (a) [amending this section] and subsection (b) [enacting section 1099 of Title 20, Education] shall be effective with respect to loans made prior to, on, and after the date of the enactment of this Act [Oct. 15, 1982]."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–495 effective Oct. 28, 1974, see section 416 of Pub. L. 93–495, set out as an Effective Date note under section 1665a of this title.

EXCEPTIONS IN AREAS WHERE MAJOR DISASTER EXISTS

Board of Governors of Federal Reserve System authorized to make exceptions to requirements of this subchapter for transactions within an area in which the President has determined that a major disaster exists, if Board determines that exception can reasonably be expected to alleviate hardships to the public that outweigh possible adverse effects, see section 50002 of Pub. L. 105–18, set out as a note under section 4008 of Title 12, Banks and Banking, and similar provisions listed thereunder.

ADJUSTMENTS FOR INFLATION

Pub. L. 111–203, title X, §1100E(b), July 21, 2010, 124 Stat. 2111, provided that: "On and after December 31, 2011, the Bureau [of Consumer Financial Protection] shall adjust annually the dollar amounts described in sections 104(3) and 181(1) of the Truth in Lending Act [15 U.S.C. 1603(3), 1667(1)] (as amended by this

section), by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as published by the Bureau of Labor Statistics, rounded to the nearest multiple of $100, or $1,000, as applicable."

§1604. Disclosure guidelines

(a) Promulgation, contents, etc., of regulations

The Bureau shall prescribe regulations to carry out the purposes of this subchapter. Except with respect to the provisions of section 1639 of this title that apply to a mortgage referred to in section 1602(aa) [1] of this title, such regulations may contain such additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions, as in the judgment of the Bureau are necessary or proper to effectuate the purposes of this subchapter, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

(b) Model disclosure forms and clauses; publication, criteria, compliance, etc.

The Bureau shall publish a single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of this subchapter in conjunction with the disclosure requirements of the Real Estate Settlement Procedures Act of 1974 [12 U.S.C. 2601 et seq.] that, taken together, may apply to a transaction that is subject to both or either provisions of law. The purpose of such model disclosure shall be to facilitate compliance with the disclosure requirements of this subchapter and the Real Estate Settlement Procedures Act of 1974, and to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures. In devising such forms, the Bureau shall consider the use by creditors or lessors of data processing or similar automated equipment. Nothing in this subchapter may be construed to require a creditor or lessor to use any such model form or clause prescribed by the Bureau under this section. A creditor or lessor shall be deemed to be in compliance with the disclosure provisions of this subchapter with respect to other than numerical disclosures if the creditor or lessor (1) uses any appropriate model form or clause as published by the Bureau, or (2) uses any such model form or clause and changes it by (A) deleting any information which is not required by this subchapter, or (B) rearranging the format, if in making such deletion or rearranging the format, the creditor or lessor does not affect the substance, clarity, or meaningful sequence of the disclosure.

(c) Procedures applicable for adoption of model forms and clauses

Model disclosure forms and clauses shall be adopted by the Bureau after notice duly given in the Federal Register and an opportunity for public comment in accordance with section 553 of title 5.

(d) Effective dates of regulations containing new disclosure requirements

Any regulation of the Bureau, or any amendment or interpretation thereof, requiring any disclosure which differs from the disclosures previously required by this part, part D, or part E of this subchapter or by any regulation of the Bureau promulgated thereunder shall have an effective date of that October 1 which follows by at least six months the date of promulgation, except that the Bureau may at its discretion take interim action by regulation, amendment, or interpretation to lengthen the period of time permitted for creditors or lessors to adjust their forms to accommodate new requirements or shorten the length of time for creditors or lessors to make such adjustments when it makes a specific finding that such action is necessary to comply with the findings of a court or to prevent unfair or deceptive disclosure practices. Notwithstanding the previous sentence, any creditor or lessor may comply with any such newly promulgated disclosure requirements prior to the effective date of the requirements.

(f) [2] Exemption authority

(1) In general

The Bureau may exempt, by regulation, from all or part of this subchapter all or any class of transactions, other than transactions involving any mortgage described in section 1602(aa) [1] of this title, for which, in the determination of the Bureau, coverage under all or part of this subchapter does not provide a meaningful benefit to consumers in the form of useful information or protection.

(2) Factors for consideration

In determining which classes of transactions to exempt in whole or in part under paragraph (1), the Bureau shall consider the following factors and publish its rationale at the time a proposed exemption is published for comment:

(A) The amount of the loan and whether the disclosures, right of rescission, and other provisions provide a benefit to the consumers who are parties to such transactions, as determined by the Bureau.

(B) The extent to which the requirements of this subchapter complicate, hinder, or make more expensive the credit process for the class of transactions.

(C) The status of the borrower, including—

(i) any related financial arrangements of the borrower, as determined by the Bureau;

(ii) the financial sophistication of the borrower relative to the type of transaction; and

(iii) the importance to the borrower of the credit, related supporting property, and coverage under this subchapter, as determined by the Bureau;

(D) whether the loan is secured by the principal residence of the consumer; and

(E) whether the goal of consumer protection would be undermined by such an exemption.

(g) Waiver for certain borrowers

(1) In general

The Bureau, by regulation, may exempt from the requirements of this subchapter certain credit transactions if—

(A) the transaction involves a consumer—

(i) with an annual earned income of more than $200,000; or

(ii) having net assets in excess of $1,000,000 at the time of the transaction; and

(B) a waiver that is handwritten, signed, and dated by the consumer is first obtained from the consumer.

(2) Adjustments by the Bureau

The Bureau, at its discretion, may adjust the annual earned income and net asset requirements of paragraph (1) for inflation.

(h) Deference

Notwithstanding any power granted to any Federal agency under this subchapter, the deference that a court affords to the Bureau with respect to a determination made by the Bureau relating to the meaning or interpretation of any provision of this subchapter, other than section 1639e or 1639h of this title, shall be applied as if the Bureau were the only agency authorized to apply, enforce, interpret, or administer the provisions of this subchapter.

(i) Authority of the Board to prescribe rules

Notwithstanding subsection (a), the Board shall have authority to prescribe rules under this subchapter with respect to a person described in section 5519(a) of title 12. Regulations prescribed under this subsection may contain such classifications, differentiations, or other provisions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this subchapter, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

(Pub. L. 90–321, title I, §105, May 29, 1968, 82 Stat. 148; Pub. L. 96–221, title VI, §605, Mar. 31, 1980, 94 Stat. 170; Pub. L. 103–325, title I, §152(e)(2)(A), Sept. 23, 1994, 108 Stat. 2194; Pub. L.

104–208, div. A, title II, §§2102(b), 2104, Sept. 30, 1996, 110 Stat. 3009–399, 3009–401; Pub. L. 111–203, title X, §1100A(2), (4)–(7), title XIV, §1472(c), July 21, 2010, 124 Stat. 2107, 2108, 2190.)

REFERENCES IN TEXT

Section 1602(aa) of this title, referred to in subsecs. (a) and (f)(1), was redesignated section 1602(bb) of this title by Pub. L. 111–203, title X, §1100A(1)(A), July 21, 2010, 124 Stat. 2107.

The Real Estate Settlement Procedures Act of 1974, referred to in subsec. (b), is Pub. L. 93–533, Dec. 22, 1974, 88 Stat. 1724, which is classified principally to chapter 27 (§2601 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 12 and Tables.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, §1100A(2), (4), substituted "Bureau" for "Board" in two places, substituted "Except with respect to the provisions of section 1639 of this title that apply to a mortgage referred to in section 1602(aa) of this title, such regulations may contain such additional requirements,"for "Except in the case of a mortgage referred to in section 1602(aa) of this title, these regulations may contain such", and inserted "all or" after "exceptions for".

Subsec. (b). Pub. L. 111–203, §1100A(2), (5), substituted "Bureau" for "Board" wherever appearing in last three sentences and substituted first two sentences for former first sentence which read as follows: "The Board shall publish model disclosure forms and clauses for common transactions to facilitate compliance with the disclosure requirements of this subchapter and to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures."

Subsecs. (c), (d). Pub. L. 111–203, §1100A(2), substituted "Bureau" for "Board" wherever appearing.

Subsec. (f). Pub. L. 111–203, §1100A(2), (6), substituted "Bureau" for "Board" wherever appearing and inserted "all or" after "from all or part of this subchapter" in par. (1).

Subsec. (g). Pub. L. 111–203, §1100A(2), substituted "Bureau" for "Board" in pars. (1) and (2).

Subsec. (h). Pub. L. 111–203, §1472(c), which directed addition of subsec. (h) at end of section, was executed by adding subsec. (h) before subsec. (i), to reflect the probable intent of Congress and prior amendment by Pub. L. 111–203, §1100A(7). See below.

Subsec. (i). Pub. L. 111–203, §1100A(7), added subsec. (i).

1996—Subsec. (f). Pub. L. 104–208, §2102(b), added subsec. (f).

Subsec. (g). Pub. L. 104–208, §2104, added subsec. (g).

1994—Subsec. (a). Pub. L. 103–325 substituted "Except in the case of a mortgage referred to in section 1602(aa) of this title, these" for "These" in second sentence.

1980—Pub. L. 96–221 designated existing provisions as subsec. (a) and added subsecs. (b) to (d).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 1100A(2), (4)–(7) of Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

Amendment by section 1472(c) of Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

[1] *See References in Text note below.*

[2] *So in original. No subsec. (e) has been enacted.*

§1605. Determination of finance charge

(a) "Finance charge" defined

Except as otherwise provided in this section, the amount of the finance charge in connection with any consumer credit transaction shall be determined as the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit. The finance charge does not include charges of a type payable in a comparable cash transaction. The finance charge shall not include fees and amounts imposed by third party closing agents (including settlement agents, attorneys, and escrow and title companies) if the creditor does not require the imposition of the charges or the services provided and does not retain the charges. Examples of charges which are included in the finance charge include any of the following types of charges which are applicable:

(1) Interest, time price differential, and any amount payable under a point, discount, or other system or additional charges.

(2) Service or carrying charge.

(3) Loan fee, finder's fee, or similar charge.

(4) Fee for an investigation or credit report.

(5) Premium or other charge for any guarantee or insurance protecting the creditor against the obligor's default or other credit loss.

(6) Borrower-paid mortgage broker fees, including fees paid directly to the broker or the lender (for delivery to the broker) whether such fees are paid in cash or financed.

(b) Life, accident, or health insurance premiums included in finance charge

Charges or premiums for credit life, accident, or health insurance written in connection with any consumer credit transaction shall be included in the finance charges unless

(1) the coverage of the debtor by the insurance is not a factor in the approval by the creditor of the extension of credit, and this fact is clearly disclosed in writing to the person applying for or obtaining the extension of credit; and

(2) in order to obtain the insurance in connection with the extension of credit, the person to whom the credit is extended must give specific affirmative written indication of his desire to do so after written disclosure to him of the cost thereof.

(c) Property damage and liability insurance premiums included in finance charge

Charges or premiums for insurance, written in connection with any consumer credit transaction, against loss of or damage to property or against liability arising out of the ownership or use of property, shall be included in the finance charge unless a clear and specific statement in writing is furnished by the creditor to the person to whom the credit is extended, setting forth the cost of the insurance if obtained from or through the creditor, and stating that the person to whom the credit is extended may choose the person through which the insurance is to be obtained.

(d) Items exempted from computation of finance charge in all credit transactions

If any of the following items is itemized and disclosed in accordance with the regulations of the Bureau in connection with any transaction, then the creditor need not include that item in the computation of the finance charge with respect to that transaction:

(1) Fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting or releasing or satisfying any security related to the credit transaction.

(2) The premium payable for any insurance in lieu of perfecting any security interest otherwise required by the creditor in connection with the transaction, if the premium does not exceed the fees and charges described in paragraph (1) which would otherwise be payable.

(3) Any tax levied on security instruments or on documents evidencing indebtedness if the payment of such taxes is a precondition for recording the instrument securing the evidence of indebtedness.

(e) Items exempted from computation of finance charge in extensions of credit secured by an

interest in real property

The following items, when charged in connection with any extension of credit secured by an interest in real property, shall not be included in the computation of the finance charge with respect to that transaction:

(1) Fees or premiums for title examination, title insurance, or similar purposes.

(2) Fees for preparation of loan-related documents.

(3) Escrows for future payments of taxes and insurance.

(4) Fees for notarizing deeds and other documents.

(5) Appraisal fees, including fees related to any pest infestation or flood hazard inspections conducted prior to closing.

(6) Credit reports.

(f) Tolerances for accuracy

In connection with credit transactions not under an open end credit plan that are secured by real property or a dwelling, the disclosure of the finance charge and other disclosures affected by any finance charge—

(1) shall be treated as being accurate for purposes of this subchapter if the amount disclosed as the finance charge—

(A) does not vary from the actual finance charge by more than $100; or

(B) is greater than the amount required to be disclosed under this subchapter; and

(2) shall be treated as being accurate for purposes of section 1635 of this title if—

(A) except as provided in subparagraph (B), the amount disclosed as the finance charge does not vary from the actual finance charge by more than an amount equal to one-half of one percent of the total amount of credit extended; or

(B) in the case of a transaction, other than a mortgage referred to in section 1602(aa) [1] of this title, which—

(i) is a refinancing of the principal balance then due and any accrued and unpaid finance charges of a residential mortgage transaction as defined in section 1602(w) [1] of this title, or is any subsequent refinancing of such a transaction; and

(ii) does not provide any new consolidation or new advance;

if the amount disclosed as the finance charge does not vary from the actual finance charge by more than an amount equal to one percent of the total amount of credit extended.

(Pub. L. 90–321, title I, §106, May 29, 1968, 82 Stat. 148; Pub. L. 96–221, title VI §606, Mar. 31, 1980, 94 Stat. 170; Pub. L. 104–29, §§2(a), (b)(1), (c)–(e), 3(a), Sept. 30, 1995, 109 Stat. 271, 272; Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

REFERENCES IN TEXT

Subsecs. (aa) and (w) of section 1602 of this title, referred to in subsec. (f)(2)(B), were redesignated subsecs. (bb) and (x), respectively, of section 1602 of this title by Pub. L. 111–203, title X, §1100A(1)(A), July 21, 2010, 124 Stat. 2107.

AMENDMENTS

2010—Subsec. (d). Pub. L. 111–203 substituted "Bureau" for "Board" in introductory provisions.

1995—Subsec. (a). Pub. L. 104–29, §2(a), in introductory provisions inserted after second sentence "The finance charge shall not include fees and amounts imposed by third party closing agents (including settlement agents, attorneys, and escrow and title companies) if the creditor does not require the imposition of the charges or the services provided and does not retain the charges."

Subsec. (a)(6). Pub. L. 104–29, §2(b)(1), added par. (6).

Subsec. (d)(3). Pub. L. 104–29, §2(c), added par. (3).

Subsec. (e)(2). Pub. L. 104–29, §2(d), amended par. (2) generally, substituting "loan-related" for "a deed, settlement statement, or other".

Subsec. (e)(5). Pub. L. 104–29, §2(e), inserted before period ", including fees related to any pest infestation or flood hazard inspections conducted prior to closing".

Subsec. (f). Pub. L. 104–29, §3(a), added subsec. (f).

1980—Subsec. (a). Pub. L. 96–221, §606(a), inserted provisions excluding charges of a type payable in comparable cash transactions and indicated that pars. (1) to (5) are examples of charges.

Subsec. (d). Pub. L. 96–221, §606(b), struck out pars. (3) and (4) setting forth applicability to taxes and any other type of charge, respectively.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1995 AMENDMENT

Pub. L. 104–29, §2(b)(2), Sept. 30, 1995, 109 Stat. 271, provided that: "The amendment made by paragraph (1) [amending this section] shall take effect on the earlier of—

"(A) 60 days after the date on which the Board of Governors of the Federal Reserve System issues final regulations under paragraph (3) [set out below]; or

"(B) the date that is 12 months after the date of the enactment of this Act [Sept. 30, 1995]."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

REGULATIONS

Pub. L. 104–29, §2(b)(3), Sept. 30, 1995, 109 Stat. 271, provided that: "The Board of Governors of the Federal Reserve System shall promulgate regulations implementing the amendment made by paragraph (1) [amending this section] by no later than 6 months after the date of the enactment of this Act [Sept. 30, 1995]."

ENSURING THAT FINANCE CHARGES REFLECT COST OF CREDIT

Pub. L. 104–29, §2(f), Sept. 30, 1995, 109 Stat. 272, provided that:

"(1) REPORT.—

"(A) IN GENERAL.—Not later than 6 months after the date of the enactment of this Act [Sept. 30, 1995], the Board of Governors of the Federal Reserve System shall submit to the Congress a report containing recommendations on any regulatory or statutory changes necessary—

"(i) to ensure that finance charges imposed in connection with consumer credit transactions more accurately reflect the cost of providing credit; and

"(ii) to address abusive refinancing practices engaged in for the purpose of avoiding rescission.

"(B) REPORT REQUIREMENTS.—In preparing the report under this paragraph, the Board shall—

"(i) consider the extent to which it is feasible to include in finance charges all charges payable directly or indirectly by the consumer to whom credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit (especially those charges excluded from finance charges under section 106 of the Truth in Lending Act [15 U.S.C. 1605] as of the date of the enactment of this Act), excepting only those charges which are payable in a comparable cash transaction; and

"(ii) consult with and consider the views of affected industries and consumer groups.

"(2) REGULATIONS.—The Board of Governors of the Federal Reserve System shall prescribe any appropriate regulation in order to effect any change included in the report under paragraph (1), and shall publish the regulation in the Federal Register before the end of the 1-year period beginning on the date of enactment of this Act."

[1] *See References in Text note below.*

§1606. Determination of annual percentage rate

(a) "Annual percentage rate" defined

The annual percentage rate applicable to any extension of consumer credit shall be determined, in accordance with the regulations of the Bureau,

(1) in the case of any extension of credit other than under an open end credit plan, as

(A) that nominal annual percentage rate which will yield a sum equal to the amount of the finance charge when it is applied to the unpaid balances of the amount financed, calculated according to the actuarial method of allocating payments made on a debt between the amount financed and the amount of the finance charge, pursuant to which a payment is applied first to the accumulated finance charge and the balance is applied to the unpaid amount financed; or

(B) the rate determined by any method prescribed by the Bureau as a method which materially simplifies computation while retaining reasonable accuracy as compared with the rate determined under subparagraph (A).[1]

(2) in the case of any extension of credit under an open end credit plan, as the quotient (expressed as a percentage) of the total finance charge for the period to which it relates divided by the amount upon which the finance charge for that period is based, multiplied by the number of such periods in a year.

(b) Computation of rate of finance charges for balances within a specified range

Where a creditor imposes the same finance charge for balances within a specified range, the annual percentage rate shall be computed on the median balance within the range, except that if the Bureau determines that a rate so computed would not be meaningful, or would be materially misleading, the annual percentage rate shall be computed on such other basis as the Bureau may be regulation require.

(c) Allowable tolerances for purposes of compliance with disclosure requirements

The disclosure of an annual percentage rate is accurate for the purpose of this subchapter if the rate disclosed is within a tolerance not greater than one-eighth of 1 per centum more or less than the actual rate or rounded to the nearest one-fourth of 1 per centum. The Bureau may allow a greater tolerance to simplify compliance where irregular payments are involved.

(d) Use of rate tables or charts having allowable variance from determined rates

The Bureau may authorize the use of rate tables or charts which may provide for the disclosure of annual percentage rates which vary from the rate determined in accordance with subsection (a)(1)(A) of this section by not more than such tolerances as the Bureau may allow. The Bureau may not allow a tolerance greater than 8 per centum of that rate except to simplify compliance where irregular payments are involved.

(e) Authorization of tolerances in determining annual percentage rates

In the case of creditors determining the annual percentage rate in a manner other than as described in subsection (d) of this section, the Bureau may authorize other reasonable tolerances.

(Pub. L. 90–321, title I, §107, May 29, 1968, 82 Stat. 149; Pub. L. 96–221, title VI, §607, Mar. 31, 1980, 94 Stat. 170; Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

AMENDMENTS

2010—Pub. L. 111–203 substituted "Bureau" for "Board" wherever appearing.

1980—Subsec. (c). Pub. L. 96–221, §607(a), substituted provisions relating to allowable tolerances for purposes of compliance with disclosure requirements, for provisions relating to rounding off of annual percentage rates which are converted from single add-on or other rates.

Subsec. (e). Pub. L. 96–221, §607(b), struck out reference to subsection (c) of this section.

Subsec. (f). Pub. L. 96–221, §607(c), struck out subsec. (f) setting forth requirements for form of expressing percentage rates prior to Jan. 1, 1971.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980,

with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

[1] *So in original.*

§1607. Administrative enforcement

(a) Enforcing agencies

Subject to subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.], compliance with the requirements imposed under this subchapter shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to—

(A) national banks, Federal savings associations, and Federal branches and Federal agencies of foreign banks;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.]; and

(C) banks and State savings associations insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), and insured State branches of foreign banks;

(2) the Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the Director of the National Credit Union Administration, with respect to any Federal credit union;

(3) part A of subtitle VII of title 49, by the Secretary of Transportation, with respect to any air carrier or foreign air carrier subject to that part;

(4) the Packers and Stockyards Act, 1921 [7 U.S.C. 181 et seq.] (except as provided in section 406 of that Act [7 U.S.C. 226, 227]), by the Secretary of Agriculture, with respect to any activities subject to that Act;

(5) the Farm Credit Act of 1971 [12 U.S.C. 2001 et seq.], by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association; and

(6) subtitle E of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5561 et seq.], by the Bureau, with respect to any person subject to this subchapter.

(7) sections 21B and 21C of the Securities Exchange Act of 1934 [15 U.S.C. 78u–2, 78u–3], in the case of a broker or dealer, other than a depository institution, by the Securities and Exchange Commission.

(b) Violations of this subchapter deemed violations of pre-existing statutory requirements; additional agency powers

For the purpose of the exercise by any agency referred to in subsection (a) of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this subchapter shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (a) of this section, each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this subchapter, any other authority conferred on it by law.

(c) Overall enforcement authority of the Federal Trade Commission

Except to the extent that enforcement of the requirements imposed under this subchapter is specifically committed to some other Government agency under any of paragraphs (1) through (5) of subsection (a), and subject to subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.], the Federal Trade Commission shall be authorized to enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act [15 U.S.C. 41 et seq.], a violation of any requirement imposed under this subchapter shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person with the requirements under this subchapter, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act.

(d) Rules and regulations

The authority of the Bureau to issue regulations under this subchapter does not impair the authority of any other agency designated in this section to make rules respecting its own procedures in enforcing compliance with requirements imposed under this subchapter.

(e) Adjustment of finance charges; procedures applicable, coverage, criteria, etc.

(1) In carrying out its enforcement activities under this section, each agency referred to in subsection (a) or (c) of this section, in cases where an annual percentage rate or finance charge was inaccurately disclosed, shall notify the creditor of such disclosure error and is authorized in accordance with the provisions of this subsection to require the creditor to make an adjustment to the account of the person to whom credit was extended, to assure that such person will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower. For the purposes of this subsection, except where such disclosure error resulted from a willful violation which was intended to mislead the person to whom credit was extended, in determining whether a disclosure error has occurred and in calculating any adjustment, (A) each agency shall apply (i) with respect to the annual percentage rate, a tolerance of one-quarter of 1 percent more or less than the actual rate, determined without regard to section 1606(c) of this title, and (ii) with respect to the finance charge, a corresponding numerical tolerance as generated by the tolerance provided under this subsection for the annual percentage rate; except that (B) with respect to transactions consummated after two years following March 31, 1980, each agency shall apply (i) for transactions that have a scheduled amortization of ten years or less, with respect to the annual percentage rate, a tolerance not to exceed one-quarter of 1 percent more or less than the actual rate, determined without regard to section 1606(c) of this title, but in no event a tolerance of less than the tolerances allowed under section 1606(c) of this title, (ii) for transactions that have a scheduled amortization of more than ten years, with respect to the annual percentage rate, only such tolerances as are allowed under section 1606(c) of this title, and (iii) for all transactions, with respect to the finance charge, a corresponding numerical tolerance as generated by the tolerances provided under this subsection for the annual percentage rate.

(2) Each agency shall require such an adjustment when it determines that such disclosure error resulted from (A) a clear and consistent pattern or practice of violations, (B) gross negligence, or (C) a willful violation which was intended to mislead the person to whom the credit was extended. Notwithstanding the preceding sentence, except where such disclosure error resulted from a willful violation which was intended to mislead the person to whom credit was extended, an agency need not require such an adjustment if it determines that such disclosure error—

(A) resulted from an error involving the disclosure of a fee or charge that would otherwise be excludable in computing the finance charge, including but not limited to violations involving the disclosures described in sections 1605(b), (c) and (d) of this title, in which event the agency may require such remedial action as it determines to be equitable, except that for transactions consummated after two years after March 31, 1980, such an adjustment shall be ordered for violations of section 1605(b) of this title;

(B) involved a disclosed amount which was 10 per centum or less of the amount that should have been disclosed and (i) in cases where the error involved a disclosed finance charge, the

annual percentage rate was disclosed correctly, and (ii) in cases where the error involved a disclosed annual percentage rate, the finance charge was disclosed correctly; in which event the agency may require such adjustment as it determines to be equitable;

(C) involved a total failure to disclose either the annual percentage rate or the finance charge, in which event the agency may require such adjustment as it determines to be equitable; or

(D) resulted from any other unique circumstance involving clearly technical and nonsubstantive disclosure violations that do not adversely affect information provided to the consumer and that have not misled or otherwise deceived the consumer.

In the case of other such disclosure errors, each agency may require such an adjustment.

(3) Notwithstanding paragraph (2), no adjustment shall be ordered—

(A) if it would have a significantly adverse impact upon the safety or soundness of the creditor, but in any such case, the agency may—

(i) require a partial adjustment in an amount which does not have such an impact; or

(ii) require the full adjustment, but permit the creditor to make the required adjustment in partial payments over an extended period of time which the agency considers to be reasonable, if (in the case of an agency referred to in paragraph (1), (2), or (3) of subsection (a) of this section), the agency determines that a partial adjustment or making partial payments over an extended period is necessary to avoid causing the creditor to become undercapitalized pursuant to section 38 of the Federal Deposit Insurance Act [12 U.S.C. 1831o];

(B) the [1] amount of the adjustment would be less than $1, except that if more than one year has elapsed since the date of the violation, the agency may require that such amount be paid into the Treasury of the United States, or

(C) except where such disclosure error resulted from a willful violation which was intended to mislead the person to whom credit was extended, in the case of an open-end credit plan, more than two years after the violation, or in the case of any other extension of credit, as follows:

(i) with respect to creditors that are subject to examination by the agencies referred to in paragraphs (1) through (3) of subsection (a) of this section, except in connection with violations arising from practices identified in the current examination and only in connection with transactions that are consummated after the date of the immediately preceding examination, except that where practices giving rise to violations identified in earlier examinations have not been corrected, adjustments for those violations shall be required in connection with transactions consummated after the date of examination in which such practices were first identified;

(ii) with respect to creditors that are not subject to examination by such agencies, except in connection with transactions that are consummated after May 10, 1978; and

(iii) in no event after the later of (I) the expiration of the life of the credit extension, or (II) two years after the agreement to extend credit was consummated.

(4)(A) Notwithstanding any other provision of this section, an adjustment under this subsection may be required by an agency referred to in subsection (a) or (c) of this section only by an order issued in accordance with cease and desist procedures provided by the provision of law referred to in such subsections.

(B) In case of an agency which is not authorized to conduct cease and desist proceedings, such an order may be issued after an agency hearing on the record conducted at least thirty but not more than sixty days after notice of the alleged violation is served on the creditor. Such a hearing shall be deemed to be a hearing which is subject to the provisions of section 8(h) of the Federal Deposit Insurance Act [12 U.S.C. 1818(h)] and shall be subject to judicial review as provided therein.

(5) Except as otherwise specifically provided in this subsection and notwithstanding any provision of law referred to in subsection (a) or (c) of this section, no agency referred to in subsection (a) or (c) of this section may require a creditor to make dollar adjustments for errors in any requirements under this subchapter, except with regard to the requirements of section 1666d of this title.

(6) A creditor shall not be subject to an order to make an adjustment, if within sixty days after

discovering a disclosure error, whether pursuant to a final written examination report or through the creditor's own procedures, the creditor notifies the person concerned of the error and adjusts the account so as to assure that such person will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower.

(7) Notwithstanding the second sentence of subsection (e)(1), subsection (e)(3)(C)(i), and subsection (e)(3)(C)(ii) of this section, each agency referred to in subsection (a) or (c) of this section shall require an adjustment for an annual percentage rate disclosure error that exceeds a tolerance of one quarter of one percent less than the actual rate, determined without regard to section 1606(c) of this title, with respect to any transaction consummated between January 1, 1977, and March 31, 1980.

(Pub. L. 90–321, title I, §108, May 29, 1968, 82 Stat. 150; Pub. L. 91–206, §3, Mar. 10, 1970, 84 Stat. 49; Pub. L. 93–495, title IV, §403, Oct. 28, 1974, 88 Stat. 1517; Pub. L. 95–630, title V, §501, Nov. 10, 1978, 92 Stat. 3680; Pub. L. 96–221, title VI, §608(a), (c), Mar. 21, 1980, 94 Stat. 171, 173; Pub. L. 98–443, §9(n), Oct. 4, 1984, 98 Stat. 1708; Pub. L. 101–73, title VII, §744(k), Aug. 9, 1989, 103 Stat. 439; Pub. L. 102–242, title II, §212(b), Dec. 19, 1991, 105 Stat. 2299; Pub. L. 102–550, title XVI, §1604(a)(5), Oct. 28, 1992, 106 Stat. 4082; Pub. L. 104–208, div. A, title II, §2106, Sept. 30, 1996, 110 Stat. 3009–402; Pub. L. 111–203, title X, §1100A(2), (8), title XIV, §1414(b), July 21, 2010, 124 Stat. 2107, 2108, 2152.)

REFERENCES IN TEXT

The Consumer Financial Protection Act of 2010, referred to in subsecs. (a) and (c), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955. Subtitles B (§§1021–1029A) and E (§§1051–1058) of the Act are classified generally to parts B (§5511 et seq.) and E (§5561 et seq.), respectively, of subchapter V of chapter 53 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 12 and Tables.

Sections 25 and 25A of the Federal Reserve Act, referred to in subsec. (a)(1)(B), are classified to subchapters I (§601 et seq.) and II (§611 et seq.), respectively, of chapter 6 of Title 12, Banks and Banking.

The Federal Credit Union Act, referred to in subsec. (a)(2), is act June 26, 1934, ch. 750, 48 Stat. 1216, which is classified generally to chapter 14 (§1751 et seq.) of Title 12. For complete classification of this Act to the Code, see section 1751 of Title 12 and Tables.

The Packers and Stockyards Act, 1921, referred to in subsec. (a)(4), is act Aug. 15, 1921, ch. 64, 42 Stat. 159, which is classified generally to chapter 9 (§181 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 181 of Title 7 and Tables.

The Farm Credit Act of 1971, referred to in subsec. (a)(5), is Pub. L. 92–181, Dec. 10, 1971, 85 Stat. 583, which is classified generally to chapter 23 (§2001 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 12 and Tables.

The Federal Trade Commission Act, referred to in subsec. (c), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

CODIFICATION

In subsec. (a)(3), "part A of subtitle VII of title 49" substituted for "the Federal Aviation Act of 1958" and "that part" substituted for "that Act" on authority of Pub. L. 103–272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, §1100A(8)(A), added subsec. (a) and struck out former subsec. (a) which listed agencies under which compliance with subchapter requirements would be enforced.

Subsec. (a)(7). Pub. L. 111–203, §1414(b), added par. (7).

Subsec. (c). Pub. L. 111–203, §1100A(8)(B), added subsec. (c) and struck out former subsec. (c). Prior to amendment, text read as follows: "Except to the extent that enforcement of the requirements imposed under this subchapter is specifically committed to some other Government agency under subsection (a) of this section, the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this subchapter shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade

Commission Act are available to the Commission to enforce compliance by any person with the requirements imposed under this subchapter, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act."

Subsec. (d). Pub. L. 111–203, §1100A(2), substituted "Bureau" for "Board".

1996—Subsec. (e)(3). Pub. L. 104–208 struck out "ordered (A) if" and inserted "ordered—

"(A) if";

struck out "may require a partial" and inserted "may—

"(i) require a partial";

struck out ", except that with respect to any transaction consumated after March 31, 1980, the agency shall require" and inserted "; or

"(ii) require";

directed the substitution of "reasonable, if (in the case of an agency referred to in paragraph (1), (2), or (3) of subsection (a) of this section), the agency determines that a partial adjustment or making partial payments over an extended period is necessary to avoid causing the creditor to become undercapitalized pursuant to section 38 of the Federal Deposit Insurance Act;

"(B) the";

for "reasonable, (B) the", which was executed by making the substitution for "reasonable, (B) if the"; and struck out "(C) except" and inserted

"(C) except".

1992—Subsec. (a)(1)(C). Pub. L. 102–550 substituted semicolon for period at end.

1991—Subsec. (a). Pub. L. 102–242, §212(b)(2), inserted at end "The terms used in paragraph (1) that are not defined in this subchapter or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101)."

Pub. L. 102–242, §212(b)(1), added par. (1) and struck out former par. (1) which read as follows: "section 8 of the Federal Deposit Insurance Act, in the case of

"(A) national banks, by the Comptroller of the Currency.

"(B) member banks of the Federal Reserve System (other than national banks), by the Board.

"(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation."

1989—Subsec. (a)(2). Pub. L. 101–73 amended par. (2) generally. Prior to amendment, par. (2) read as follows: "section 5(d) of the Home Owner's Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions."

1984—Subsec. (a)(4). Pub. L. 98–443 substituted "Secretary of Transportation" for "Civil Aeronautics Board".

1980—Subsec. (e). Pub. L. 96–221, §608(a), added subsec. (e).

Pub. L. 96–221, §608(c), struck out in pars. (1)(A)(i) and (7) ", except in the case of an irregular mortgage lending transaction" after "section 1606(c) of this title". See Effective Date of 1980 Amendment note below.

1974—Subsec. (a)(4) to (6). Pub. L. 93–495 redesignated pars. (5) and (6) as (4) and (5), respectively. Former par. (4), which related to enforcement by the Interstate Commerce Commission, was struck out.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 1100A(2), (8) of Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

Amendment by section 1414(b) of Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98–443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–221, title VI, §608(b), Mar. 31, 1980, 94 Stat. 173, provided that: "This section [amending this section] shall take effect on the date of enactment of the Truth in Lending Simplification and Reform Act [Mar. 31, 1980]."

Pub. L. 96–221, title VI, §608(c), Mar. 31, 1980, 94 Stat. 173, provided that the amendment made by that section is effective one year after Mar. 31, 1980.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–495 effective Oct. 28, 1974, see section 416 of Pub. L. 93–495, set out as an Effective Date note under section 1665a of this title.

TRANSFER OF FUNCTIONS

"National Credit Union Administration Board" substituted for "Director of the Bureau of Federal Credit Unions" in subsec. (a)(3) pursuant to section 3 of Pub. L. 91–206 and section 501 of Pub. L. 95–630 [12 U.S.C. 1752a] which transferred functions of Bureau of Federal Credit Unions, and Director thereof, to National Credit Union Administration and vested authority for management of Administration in National Credit Union Administration Board.

[1] So in original. Probably should be preceded by "if".

§1608. Views of other agencies

In the exercise of its functions under this subchapter, the Bureau may obtain upon requests the views of any other Federal agency which, in the judgment of the Bureau, exercises regulatory or supervisory functions with respect to any class of creditors subject to this subchapter.

(Pub. L. 90–321, title I, §109, May 29, 1968, 82 Stat. 150; Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

AMENDMENTS

2010—Pub. L. 111–203 substituted "Bureau" for "Board" in two places.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§1609. Repealed. Pub. L. 94–239, §3(b)(1), Mar. 23, 1976, 90 Stat. 253

Section, Pub. L. 90–321, title I, §110, May 29, 1968, 82 Stat. 151, provided for establishment of an advisory committee authorized to seek to achieve a fair representation of interests of sellers of merchandise on credit, lenders, and the public.

EFFECTIVE DATE OF REPEAL

Repeal effective Mar. 23, 1976, see section 708 of Pub. L. 90–321, set out as an Effective Date note under section 1691 of this title.

§1610. Effect on other laws

(a) Inconsistent provisions; procedures applicable for determination

(1) Except as provided in subsection (e) of this section, this part and parts B and C of this subchapter, do not annul, alter, or affect the laws of any State relating to the disclosure of information in connection with credit transactions, except to the extent that those laws are

inconsistent with the provisions of this subchapter, and then only to the extent of the inconsistency. Upon its own motion or upon the request of any creditor, State, or other interested party which is submitted in accordance with procedures prescribed in regulations of the Bureau, the Bureau shall determine whether any such inconsistency exists. If the Bureau determines that a State-required disclosure is inconsistent, creditors located in that State may not make disclosures using the inconsistent term or form, and shall incur no liability under the law of that State for failure to use such term or form, notwithstanding that such determination is subsequently amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(2) Upon its own motion or upon the request of any creditor, State, or other interested party which is submitted in accordance with procedures prescribed in regulations of the Bureau, the Bureau shall determine whether any disclosure required under the law of any State is substantially the same in meaning as a disclosure required under this subchapter. If the Bureau determines that a State-required disclosure is substantially the same in meaning as a disclosure required by this subchapter, then creditors located in that State may make such disclosure in compliance with such State law in lieu of the disclosure required by this subchapter, except that the annual percentage rate and finance charge shall be disclosed as required by section 1632 of this title, and such State-required disclosure may not be made in lieu of the disclosures applicable to certain mortgages under section 1639 of this title.

(b) State credit charge statutes

Except as provided in section 1639 of this title, this subchapter does not otherwise annul, alter or affect in any manner the meaning, scope or applicability of the laws of any State, including, but not limited to, laws relating to the types, amounts or rates of charges, or any element or elements of charges, permissible under such laws in connection with the extension or use of credit, nor does this subchapter extend the applicability of those laws to any class of persons or transactions to which they would not otherwise apply. The provisions of section 1639 of this title do not annul, alter, or affect the applicability of the laws of any State or exempt any person subject to the provisions of section 1639 of this title from complying with the laws of any State, with respect to the requirements for mortgages referred to in section 1602(aa) [1] of this title, except to the extent that those State laws are inconsistent with any provisions of section 1639 of this title, and then only to the extent of the inconsistency.

(c) Disclosure as evidence

In any action or proceeding in any court involving a consumer credit sale, the disclosure of the annual percentage rate as required under this subchapter in connection with that sale may not be received as evidence that the sale was a loan or any type of transaction other than a credit sale.

(d) Contract or other obligations under State or Federal law

Except as specified in sections 1635, 1640, and 1666e of this title, this subchapter and the regulations issued thereunder do not affect the validity or enforceability of any contract or obligation under State or Federal law.

(e) Certain credit and charge card application and solicitation disclosure provisions

The provisions of subsection (c) of section 1632 of this title and subsections (c), (d), (e), and (f) of section 1637 of this title shall supersede any provision of the law of any State relating to the disclosure of information in any credit or charge card application or solicitation which is subject to the requirements of section 1637(c) of this title or any renewal notice which is subject to the requirements of section 1637(d) of this title, except that any State may employ or establish State laws for the purpose of enforcing the requirements of such sections.

(Pub. L. 90–321, title I, §111, May 29, 1968, 82 Stat. 151; Pub. L. 93–495, title III, §307(b), Oct. 28, 1974, 88 Stat. 1516; Pub. L. 96–221, title VI, §609, Mar. 31, 1980, 94 Stat. 173; Pub. L. 100–583, §4, Nov. 3, 1988, 102 Stat. 2967; Pub. L. 103–325, title I, §152(e)(2)(B), (C), Sept. 23, 1994, 108 Stat. 2194; Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

REFERENCES IN TEXT

Section 1602(aa) of this title, referred to in subsec. (b), was redesignated section 1602(bb) of this title by Pub. L. 111–203, title X, §1100A(1)(A), July 21, 2010, 124 Stat. 2107.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203 substituted "Bureau" for "Board" wherever appearing.

1994—Subsec. (a)(2). Pub. L. 103–325, §152(e)(2)(B), which directed the amendment of par. (2) by inserting ", and such State-required disclosure may not be made in lieu of the disclosures applicable to certain mortgages under section 1639 of this title" before period, was executed by making the insertion before period at end of par. (2), to reflect the probable intent of Congress.

Subsec. (b). Pub. L. 103–325, §152(e)(2)(C), substituted "Except as provided in section 1639 of this title, this subchapter" for "This subchapter" and inserted at end "The provisions of section 1639 of this title do not annul, alter, or affect the applicability of the laws of any State or exempt any person subject to the provisions of section 1639 of this title from complying with the laws of any State, with respect to the requirements for mortgages referred to in section 1602(aa) of this title, except to the extent that those State laws are inconsistent with any provisions of section 1639 of this title, and then only to the extent of the inconsistency."

1988—Subsec. (a)(1). Pub. L. 100–583, §4(1), substituted "Except as provided in subsection (e) of this section, this part" for "This part".

Subsec. (e). Pub. L. 100–583, §4(2), added subsec. (e).

1980—Subsec. (a). Pub. L. 96–221 designated existing provisions as par. (1), substituted provisions respecting the effect of this part and parts B and C of this subchapter, and procedures applicable for determination, for provisions respecting the effect of this subchapter, and added par. (2).

1974—Subsec. (d). Pub. L. 93–495 inserted reference to section 1666e of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93–495, see section 308 of Pub. L. 93–495, set out as an Effective Date note under section 1666 of this title.

[1] See References in Text note below.

§1611. Criminal liability for willful and knowing violation

Whoever willfully and knowingly

(1) gives false or inaccurate information or fails to provide information which he is required to disclose under the provisions of this subchapter or any regulation issued thereunder,

(2) uses any chart or table authorized by the Bureau under section 1606 of this title in such a manner as to consistently understate the annual percentage rate determined under section 1606(a)(1)(A) of this title, or

(3) otherwise fails to comply with any requirement imposed under this subchapter,

shall be fined not more than $5,000 or imprisoned not more than one year, or both.

(Pub. L. 90–321, title I, §112, May 29, 1968, 82 Stat. 151; Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

AMENDMENTS

2010—Par. (2). Pub. L. 111–203 substituted "Bureau" for "Board".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§1612. Effect on government agencies

(a) Consultation requirements respecting compliance of credit instruments issued to participating creditor

Any department or agency of the United States which administers a credit program in which it extends, insures, or guarantees consumer credit and in which it provides instruments to a creditor which contain any disclosures required by this subchapter shall, prior to the issuance or continued use of such instruments, consult with the Bureau to assure that such instruments comply with this subchapter.

(b) Inapplicability of Federal civil or criminal penalties to Federal, State, and local agencies

No civil or criminal penalty provided under this subchapter for any violation thereof may be imposed upon the United States or any department or agency thereof, or upon any State or political subdivision thereof, or any agency of any State or political subdivision.

(c) Inapplicability of Federal civil or criminal penalties to participating creditor where violating instrument issued by United States

A creditor participating in a credit program administered, insured, or guaranteed by any department or agency or the United States shall not be held liable for a civil or criminal penalty under this subchapter in any case in which the violation results from the use of an instrument required by any such department or agency.

(d) Applicability of State penalties to violations by participating creditor

A creditor participating in a credit program administered, insured, or guaranteed by any department or agency of the United States shall not be held liable for a civil or criminal penalty under the laws of any State (other than laws determined under section 1610 of this title to be inconsistent with this subchapter) for any technical or procedural failure, such as a failure to use a specific form, to make information available at a specific place on an instrument, or to use a specific typeface, as required by State law, which is caused by the use of an instrument required to be used by such department or agency.

(Pub. L. 90–321, title I, §113, May 29, 1968, 82 Stat. 151; Pub. L. 96–221, title VI, §622(a), Mar. 31, 1980, 94 Stat. 184; Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203 substituted "Bureau" for "Board".

1980—Pub. L. 96–221 amended section generally, designating existing provisions as subsec. (b) and adding subsecs. (a), (c), and (d).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

§1613. Annual reports to Congress by Bureau

Each year the Bureau shall make a report to the Congress concerning the administration of its functions under this subchapter, including such recommendations as the Bureau deems necessary or appropriate. In addition, each report of the Bureau shall include its assessment of the extent to which compliance with the requirements imposed under this subchapter is being achieved.

(Pub. L. 90–321, title I, §114, May 29, 1968, 82 Stat. 151; Pub. L. 96–221, title VI, §610(a), Mar. 31, 1980, 94 Stat. 174; Pub. L. 97–375, title II, §209(b), Dec. 21, 1982, 96 Stat. 1825; Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

AMENDMENTS

2010—Pub. L. 111–203 substituted "Bureau" for "Board" wherever appearing.

1982—Pub. L. 97–375 struck out requirement that the Attorney General make a report on the same terms as the Board.

1980—Pub. L. 96–221 substituted "Each year" for "Not later than January 3 of each year after 1969,".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

§1614. Repealed. Pub. L. 96–221, title VI, §616(b), Mar. 31, 1980, 94 Stat. 182

Section, Pub. L. 90–321, title I, §115, as added Pub. L. 93–495, title IV, §413(a), Oct. 28, 1974, 88 Stat. 1520, related to liability of assignees. See section 1641 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as an Effective Date of 1980 Amendment note under section 1602 of this title.

§1615. Prohibition on use of "Rule of 78's" in connection with mortgage refinancings and other consumer loans

(a) Prompt refund of unearned interest required

(1) In general

If a consumer prepays in full the financed amount under any consumer credit transaction, the creditor shall promptly refund any unearned portion of the interest charge to the consumer.

(2) Exception for refund of de minimus [1] amount

No refund shall be required under paragraph (1) with respect to the prepayment of any consumer credit transaction if the total amount of the refund would be less than $1.

(3) Applicability to refinanced transactions and acceleration by the creditor

This subsection shall apply with respect to any prepayment of a consumer credit transaction described in paragraph (1) without regard to the manner or the reason for the prepayment, including—

(A) any prepayment made in connection with the refinancing, consolidation, or restructuring

of the transaction; and

(B) any prepayment made as a result of the acceleration of the obligation to repay the amount due with respect to the transaction.

(b) Use of "Rule of 78's" prohibited

For the purpose of calculating any refund of interest required under subsection (a) of this section for any precomputed consumer credit transaction of a term exceeding 61 months which is consummated after September 30, 1993, the creditor shall compute the refund based on a method which is at least as favorable to the consumer as the actuarial method.

(c) Statement of prepayment amount

(1) In general

Before the end of the 5-day period beginning on the date an oral or written request is received by a creditor from a consumer for the disclosure of the amount due on any precomputed consumer credit account, the creditor or assignee shall provide the consumer with a statement of—

(A) the amount necessary to prepay the account in full; and

(B) if the amount disclosed pursuant to subparagraph (A) includes an amount which is required to be refunded under this section with respect to such prepayment, the amount of such refund.

(2) Written statement required if request is in writing

If the customer's request is in writing, the statement under paragraph (1) shall be in writing.

(3) 1 free annual statement

A consumer shall be entitled to obtain 1 statement under paragraph (1) each year without charge.

(4) Additional statements subject to reasonable fees

Any creditor may impose a reasonable fee to cover the cost of providing any statement under paragraph (1) to any consumer in addition to the 1 free annual statement required under paragraph (3) if the amount of the charge for such additional statement is disclosed to the consumer before furnishing such statement.

(d) Definitions

For the purpose of this section—

(1) Actuarial method

The term "actuarial method" means the method of allocating payments made on a debt between the amount financed and the finance charge pursuant to which a payment is applied first to the accumulated finance charge and any remainder is subtracted from, or any deficiency is added to, the unpaid balance of the amount financed.

(2) Consumer, credit

The terms "consumer" and "creditor" have the meanings given to such terms in section 1602 of this title.

(3) Creditor

The term "creditor"—

(A) has the meaning given to such term in section 1602 of this title; and

(B) includes any assignee of any creditor with respect to credit extended in connection with any consumer credit transaction and any subsequent assignee with respect to such credit.

(Pub. L. 102–550, title IX, §933, Oct. 28, 1992, 106 Stat. 3891.)

CODIFICATION

Section was enacted as part of the Housing and Community Development Act of 1992, and not as part of the Consumer Credit Protection Act which comprises this chapter.

[1] *So in original. Probably should be "de minimis".*

§1616. Board review of consumer credit plans and regulations

(a) Required review

Not later than 2 years after the effective date of this Act and every 2 years thereafter, except as provided in subsection (c)(2), the Board shall conduct a review, within the limits of its existing resources available for reporting purposes, of the consumer credit card market, including—

(1) the terms of credit card agreements and the practices of credit card issuers;

(2) the effectiveness of disclosure of terms, fees, and other expenses of credit card plans;

(3) the adequacy of protections against unfair or deceptive acts or practices relating to credit card plans; and

(4) whether or not, and to what extent, the implementation of this Act and the amendments made by this Act has affected—

(A) cost and availability of credit, particularly with respect to non-prime borrowers;

(B) the safety and soundness of credit card issuers;

(C) the use of risk-based pricing; or

(D) credit card product innovation.

(b) Solicitation of public comment

In connection with conducting the review required by subsection (a), the Board shall solicit comment from consumers, credit card issuers, and other interested parties, such as through hearings or written comments.

(c) Regulations

(1) Notice

Following the review required by subsection (a), the Board shall publish a notice in the Federal Register that—

(A) summarizes the review, the comments received from the public solicitation, and other evidence gathered by the Board, such as through consumer testing or other research; and

(B) either—

(i) proposes new or revised regulations or interpretations to update or revise disclosures and protections for consumer credit cards, as appropriate; or

(ii) states the reason for the determination of the Board that new or revised regulations are not necessary.

(2) Revision of review period following material revision of regulations

In the event that the Board materially revises regulations on consumer credit card plans, a review need not be conducted until 2 years after the effective date of the revised regulations, which thereafter shall be treated as the new date for the biennial review required by subsection (a).

(d) Board report to the Congress

The Board shall report to Congress not less frequently than every 2 years, except as provided in subsection (c)(2), on the status of its most recent review, its efforts to address any issues identified from the review, and any recommendations for legislation.

(e) Additional reporting

The Federal banking agencies (as that term is defined in section 1813 of title 12) and the Federal Trade Commission shall provide annually to the Board, and the Board shall include in its annual report to Congress under section 247 of title 12, information about the supervisory and enforcement activities of the agencies with respect to compliance by credit card issuers with applicable Federal consumer protection statutes and regulations, including—

(1) this Act, the amendments made by this Act, and regulations prescribed under this Act and

such amendments; and

(2) section 5 of the Federal Trade Commission Act [15 U.S.C. 45], and regulations prescribed under the Federal Trade Commission Act [15 U.S.C. 41 et seq.], including part 227 of title 12 of the Code of Federal Regulations, as prescribed by the Board (referred to as "Regulation AA").

(Pub. L. 111–24, title V, §502, May 22, 2009, 123 Stat. 1755.)

REFERENCES IN TEXT

The effective date of this Act, referred to in subsec. (a), is 9 months after May 22, 2009, except as otherwise specifically provided in Pub. L. 111–24, see section 3 of Pub. L. 111–24, set out as an Effective Date of 2009 Amendment note under section 1602 of this title.

This Act, referred to in subsecs. (a)(4) and (e)(1), is Pub. L. 111–24, May 22, 2009, 123 Stat. 1734, known as the Credit Card Accountability Responsibility and Disclosure Act of 2009, and also as the Credit CARD Act of 2009, which enacted this section and sections 1651, 1665c to 1665e, 1666i–1, 1666i–2, and 1693l–1 of this title and section 1a–7b of Title 16, Conservation, amended sections 1602, 1632, 1637, 1640, 1650, 1666b, 1666c, 1666j, 1681b, 1681j, and 1693m to 1693r of this title, enacted provisions set out as notes under sections 1602, 1637, 1638, 1666b, 1681j, and 1693l–1 of this title and section 5311 of Title 31, Money and Finance, and amended provisions set out as notes under sections 1638 and 1693 of this title. For complete classification of this Act to the Code, see Short Title of 2009 Amendment note set out under section 1601 of this title and Tables.

The Federal Trade Commission Act, referred to in subsec. (e)(2), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

CODIFICATION

Section was enacted as part of the Credit Card Accountability Responsibility and Disclosure Act of 2009, also known as the Credit CARD Act of 2009, and not as part of the Consumer Credit Protection Act which comprises this chapter.

EFFECTIVE DATE

Section effective 9 months after May 22, 2009, except as otherwise specifically provided, see section 3 of Pub. L. 111–24, set out as an Effective Date of 2009 Amendment note under section 1602 of this title.

DEFINITION

For definition of "Board", see section 2 of Pub. L. 111–24, set out as a Regulations note under section 1602 of this title.

PART B—CREDIT TRANSACTIONS

§1631. Disclosure requirements

(a) Duty of creditor or lessor respecting one or more than one obligor

Subject to subsection (b) of this section, a creditor or lessor shall disclose to the person who is obligated on a consumer lease or a consumer credit transaction the information required under this subchapter. In a transaction involving more than one obligor, a creditor or lessor, except in a transaction under section 1635 of this title, need not disclose to more than one of such obligors if the obligor given disclosure is a primary obligor.

(b) Creditor or lessor required to make disclosure

If a transaction involves one creditor as defined in section 1602(f) [1] of this title, or one lessor as defined in section 1667(3) of this title, such creditor or lessor shall make the disclosures. If a transaction involves more than one creditor or lessor, only one creditor or lessor shall by required to make the disclosures. The Bureau shall by regulation specify which creditor or lessor shall make the disclosures.

(c) Estimates as satisfying statutory requirements; basis of disclosure for per diem interest

The Bureau may provide by regulation that any portion of the information required to be disclosed by this subchapter may be given in the form of estimates where the provider of such information is not in a position to know exact information. In the case of any consumer credit transaction a portion of the interest on which is determined on a per diem basis and is to be collected upon the consummation of such transaction, any disclosure with respect to such portion of interest shall be deemed to be accurate for purposes of this subchapter if the disclosure is based on information actually known to the creditor at the time that the disclosure documents are being prepared for the consummation of the transaction.

(d) Tolerances for numerical disclosures

The Bureau shall determine whether tolerances for numerical disclosures other than the annual percentage rate are necessary to facilitate compliance with this subchapter, and if it determines that such tolerances are necessary to facilitate compliance, it shall by regulation permit disclosures within such tolerances. The Bureau shall exercise its authority to permit tolerances for numerical disclosures other than the annual percentage rate so that such tolerances are narrow enough to prevent such tolerances from resulting in misleading disclosures or disclosures that circumvent the purposes of this subchapter.

(Pub. L. 90–321, title I, §121, May 29, 1968, 82 Stat. 152; Pub. L. 93–495, title III, §307(c), (d), title IV, §409, Oct. 28, 1974, 88 Stat. 1516, 1519; Pub. L. 94–205, §11, Jan. 2, 1976, 89 Stat. 1159; Pub. L. 96–221, title VI, §611, Mar. 31, 1980, 94 Stat. 174; Pub. L. 104–29, §3(b), Sept. 30, 1995, 109 Stat. 273; Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

REFERENCES IN TEXT

Section 1602(f) of this title, referred to in subsec. (b), was redesignated section 1602(g) of this title by Pub. L. 111–203, title X, §1100A(1)(A), July 21, 2010, 124 Stat. 2107.

AMENDMENTS

2010—Subsecs. (b) to (d). Pub. L. 111–203 substituted "Bureau" for "Board" wherever appearing.

1995—Subsec. (c). Pub. L. 104–29 inserted at end "In the case of any consumer credit transaction a portion of the interest on which is determined on a per diem basis and is to be collected upon the consummation of such transaction, any disclosure with respect to such portion of interest shall be deemed to be accurate for purposes of this subchapter if the disclosure is based on information actually known to the creditor at the time that the disclosure documents are being prepared for the consummation of the transaction."

1980—Subsec. (a). Pub. L. 96–221 substituted provisions respecting to which obligor duty of creditor or lessor, where one or more than one obligor is involved, is owed, for provisions setting forth clear and conspicuous disclosure requirements for creditors to persons extended consumer credit.

Subsec. (b). Pub. L. 96–221 substituted provisions relating to disclosure requirements of creditor or lessor, for provisions relating to statement of information where more than one obligor is involved.

Subsecs. (c), (d). Pub. L. 96–221 added subsecs. (c) and (d).

1976—Subsec. (c). Pub. L. 94–205 struck out subsec. (c) which related to disclosure including a full statement of closing costs incurred and permitted estimates of such information where the lender was not in a position to know exact information.

1974—Subsec. (a). Pub. L. 93–495, §307(c), inserted reference to part D of this subchapter and struck out "and upon whom a finance charge is or may be imposed" after "extended".

Subsec. (b). Pub. L. 93–495, §307(d), inserted reference to part D of this subchapter.

Subsec. (c). Pub. L. 93–495, §409, added subsec (c).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to

such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–205 effective Jan. 2, 1976, see section 12 of Pub. L. 94–205, set out as a note under section 2602 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by section 307(c), (d) of Pub. L. 93–495, see section 308 of Pub. L. 93–495, set out as an Effective Date note under section 1666 of this title.

For effective date of amendment by section 409 of Pub. L. 93–495, see section 416 of Pub. L. 93–495, set out as an Effective Date note under section 1665a of this title.

EFFECTIVE DATE

Pub. L. 90–321, title V, §504(b), May 29, 1968, 82 Stat. 167, provided in part that chapter 2 of title I, which enacted sections 1631 to 1641 of this title, is effective July 1, 1969.

REAL ESTATE SETTLEMENT PROCEDURES

Provisions of Real Estate Settlement Procedures Act of 1974, as superseding provisions of subsec. (c) of this section insofar as applying to federally related mortgage loans, see section 2605 of Title 12, Banks and Banking.

[1] *See References in Text note below.*

§1632. Form of disclosure; additional information

(a) Information clearly and conspicuously disclosed; "annual percentage rate" and "finance charge"; order of disclosures and use of different terminology

Information required by this subchapter shall be disclosed clearly and conspicuously, in accordance with regulations of the Bureau. The terms "annual percentage rate" and "finance charge" shall be disclosed more conspicuously than other terms, data, or information provided in connection with a transaction, except information relating to the identify of the creditor. Except as provided in subsection (c) of this section, regulations of the Bureau need not require that disclosures pursuant to this subchapter be made in the order set forth in this subchapter and, except as otherwise provided, may permit the use of terminology different from that employed in this subchapter if it conveys substantially the same meaning.

(b) Optional information by creditor or lessor

Any creditor or lessor may supply additional information or explanation with any disclosures required under parts D and E of this subchapter and, except as provided in sections 1637a(b)(3) and 1638(b)(1) of this title, under this part.

(c) Tabular format required for certain disclosures under section 1637(c)

(1) In general

The information described in paragraphs (1)(A), (3)(B)(i)(I), (4)(A), and (4)(C)(i)(I) of section 1637(c) of this title shall be—

(A) disclosed in the form and manner which the Bureau shall prescribe by regulations; and

(B) placed in a conspicuous and prominent location on or with any written application, solicitation, or other document or paper with respect to which such disclosure is required.

(2) Tabular format

(A) Form of table to be prescribed

In the regulations prescribed under paragraph (1)(A) of this subsection, the Bureau shall require that the disclosure of such information shall, to the extent the Bureau determines to be

practicable and appropriate, be in the form of a table which—

(i) contains clear and concise headings for each item of such information; and

(ii) provides a clear and concise form for stating each item of information required to be disclosed under each such heading.

(B) Bureau discretion in prescribing order and wording of table

In prescribing the form of the table under subparagraph (A), the Bureau may—

(i) list the items required to be included in the table in a different order than the order in which such items are set forth in paragraph (1)(A) or (4)(A) of section 1637(c) of this title; and

(ii) subject to subparagraph (C), employ terminology which is different than the terminology which is employed in section 1637(c) of this title if such terminology conveys substantially the same meaning.

(C) Grace period

Either the heading or the statement under the heading which relates to the time period referred to in section 1637(c)(1)(A)(iii) of this title shall contain the term "grace period".

(d) Additional electronic disclosures

(1) Posting agreements

Each creditor shall establish and maintain an Internet site on which the creditor shall post the written agreement between the creditor and the consumer for each credit card account under an open-end consumer credit plan.

(2) Creditor to provide contracts to the Bureau

Each creditor shall provide to the Bureau, in electronic format, the consumer credit card agreements that it publishes on its Internet site.

(3) Record repository

The Bureau shall establish and maintain on its publicly available Internet site a central repository of the consumer credit card agreements received from creditors pursuant to this subsection, and such agreements shall be easily accessible and retrievable by the public.

(4) Exception

This subsection shall not apply to individually negotiated changes to contractual terms, such as individually modified workouts or renegotiations of amounts owed by a consumer under an open end consumer credit plan.

(5) Regulations

The Bureau, in consultation with the other Federal banking agencies (as that term is defined in section 1681a of this title) and the Bureau,[1] may promulgate regulations to implement this subsection, including specifying the format for posting the agreements on the Internet sites of creditors and establishing exceptions to paragraphs (1) and (2), in any case in which the administrative burden outweighs the benefit of increased transparency, such as where a credit card plan has a de minimis number of consumer account holders.

(Pub. L. 90–321, title I, §122, May 29, 1968, 82 Stat. 152; Pub. L. 93–495, title III, §307(e), (f), Oct. 28, 1974, 88 Stat. 1516, 1517; Pub. L. 96–221, title VI, §611, Mar. 31, 1980, 94 Stat. 175; Pub. L. 100–583, §2(b), Nov. 3, 1988, 102 Stat. 2966; Pub. L. 100–709, §2(d), Nov. 23, 1988, 102 Stat. 4731; Pub. L. 111–24, title II, §204, May 22, 2009, 123 Stat. 1746; Pub. L. 111–203, title X, §1100A(2), (3), July 21, 2010, 124 Stat. 2107.)

AMENDMENTS

2010—Subsecs. (a), (c). Pub. L. 111–203, §1100A(2), substituted "Bureau" for "Board" wherever appearing.

Subsec. (d)(2), (3). Pub. L. 111–203, §1100A(2), substituted "Bureau" for "Board" wherever appearing.

Subsec. (d)(5). Pub. L. 111–203 substituted "The Bureau, in" for "The Board, in" and "and the Bureau,

may" for "and the Federal Trade Commission, may".

2009—Subsec. (d). Pub. L. 111–24 added subsec. (d).

1988—Subsec. (a). Pub. L. 100–583, §2(b)(1), substituted "Except as provided in subsection (c) of this section, regulations" for "Regulations".

Subsec. (b). Pub. L. 100–709 substituted "sections 1637a(b)(3) and 1638(b)(1)" for "section 1638(b)(1)".

Subsec. (c). Pub. L. 100–583, §2(b)(2), added subsec. (c).

1980—Subsec. (a). Pub. L. 96–221 substituted provisions setting forth form of disclosure to meet requirements of this subchapter, for provisions setting forth form of disclosure authorized under this part or part D of this subchapter.

Subsec. (b). Pub. L. 96–221 substituted provisions setting forth disclosure requirements for additional information by creditors or lessors, for provisions setting forth disclosure requirements for additional information by creditors.

1974—Subsecs. (a), (b). Pub. L. 93–495 inserted references to part D of this subchapter.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–24 effective 9 months after May 22, 2009, except as otherwise specifically provided, see section 3 of Pub. L. 111–24, set out as a note under section 1602 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

For effective date of amendments by Pub. L. 100–709, see Regulations; Effective Date note below.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93–495, see section 308 of Pub. L. 93–495, set out as an Effective Date note under section 1666 of this title.

REGULATIONS; EFFECTIVE DATE

For provisions relating to promulgation of regulations to implement amendment by Pub. L. 100–709, and effective date of such amendment in connection with those regulations, see section 7 of Pub. L. 100–709, set out as a note under section 1637a of this title.

For provisions relating to promulgation of regulations to implement amendment by Pub. L. 100–583, and effective date of such amendment in connection with those regulations, see section 7 of Pub. L. 100–583, set out as a note under section 1637 of this title.

[1] *So in original.*

§1633. Exemption for State-regulated transactions

The Bureau shall by regulation exempt from the requirements of this part any class of credit transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this part, and that there is adequate provision for enforcement.

(Pub. L. 90–321, title I, §123, May 29, 1968, 82 Stat. 152; Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

AMENDMENTS

2010—Pub. L. 111–203 substituted "Bureau" for "Board".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§1634. Effect of subsequent occurrence

If information disclosed in accordance with this part is subsequently rendered inaccurate as the result of any act, occurrence, or agreement subsequent to the delivery of the required disclosures, the inaccuracy resulting therefrom does not constitute a violation of this part.

(Pub. L. 90–321, title I, §124, May 29, 1968, 82 Stat. 152.)

§1635. Right of rescission as to certain transactions

(a) Disclosure of obligor's right to rescind

Except as otherwise provided in this section, in the case of any consumer credit transaction (including opening or increasing the credit limit for an open end credit plan) in which a security interest, including any such interest arising by operation of law, is or will be retained or acquired in any property which is used as the principal dwelling of the person to whom credit is extended, the obligor shall have the right to rescind the transaction until midnight of the third business day following the consummation of the transaction or the delivery of the information and rescission forms required under this section together with a statement containing the material disclosures required under this subchapter, whichever is later, by notifying the creditor, in accordance with regulations of the Bureau, of his intention to do so. The creditor shall clearly and conspicuously disclose, in accordance with regulations of the Bureau, to any obligor in a transaction subject to this section the rights of the obligor under this section. The creditor shall also provide, in accordance with regulations of the Bureau, appropriate forms for the obligor to exercise his right to rescind any transaction subject to this section.

(b) Return of money or property following rescission

When an obligor exercises his right to rescind under subsection (a) of this section, he is not liable for any finance or other charge, and any security interest given by the obligor, including any such interest arising by operation of law, becomes void upon such a rescission. Within 20 days after receipt of a notice of rescission, the creditor shall return to the obligor any money or property given as earnest money, downpayment, or otherwise, and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction. If the creditor has delivered any property to the obligor, the obligor may retain possession of it. Upon the performance of the creditor's obligations under this section, the obligor shall tender the property to the creditor, except that if return of the property in kind would be impracticable or inequitable, the obligor shall tender its reasonable value. Tender shall be made at the location of the property or at the residence of the obligor, at the option of the obligor. If the creditor does not take possession of the property within 20 days after tender by the obligor, ownership of the property vests in the obligor without obligation on his part to pay for it. The procedures prescribed by this subsection shall apply except when otherwise ordered by a court.

(c) Rebuttable presumption of delivery of required disclosures

Notwithstanding any rule of evidence, written acknowledgment of receipt of any disclosures required under this subchapter by a person to whom information, forms, and a statement is required to be given pursuant to this section does no more than create a rebuttable presumption of delivery thereof.

(d) Modification and waiver of rights

The Bureau may, if it finds that such action is necessary in order to permit homeowners to meet bona fide personal financial emergencies, prescribe regulations authorizing the modification or

waiver of any rights created under this section to the extent and under the circumstances set forth in those regulations.

(e) Exempted transactions; reapplication of provisions

This section does not apply to—

(1) a residential mortgage transaction as defined in section 1602(w) [1] of this title;

(2) a transaction which constitutes a refinancing or consolidation (with no new advances) of the principal balance then due and any accrued and unpaid finance charges of an existing extension of credit by the same creditor secured by an interest in the same property;

(3) a transaction in which an agency of a State is the creditor; or

(4) advances under a preexisting open end credit plan if a security interest has already been retained or acquired and such advances are in accordance with a previously established credit limit for such plan.

(f) Time limit for exercise of right

An obligor's right of rescission shall expire three years after the date of consummation of the transaction or upon the sale of the property, whichever occurs first, notwithstanding the fact that the information and forms required under this section or any other disclosures required under this part have not been delivered to the obligor, except that if (1) any agency empowered to enforce the provisions of this subchapter institutes a proceeding to enforce the provisions of this section within three years after the date of consummation of the transaction, (2) such agency finds a violation of this section, and (3) the obligor's right to rescind is based in whole or in part on any matter involved in such proceeding, then the obligor's right of rescission shall expire three years after the date of consummation of the transaction or upon the earlier sale of the property, or upon the expiration of one year following the conclusion of the proceeding, or any judicial review or period for judicial review thereof, whichever is later.

(g) Additional relief

In any action in which it is determined that a creditor has violated this section, in addition to rescission the court may award relief under section 1640 of this title for violations of this subchapter not relating to the right to rescind.

(h) Limitation on rescission

An obligor shall have no rescission rights arising solely from the form of written notice used by the creditor to inform the obligor of the rights of the obligor under this section, if the creditor provided the obligor the appropriate form of written notice published and adopted by the Bureau, or a comparable written notice of the rights of the obligor, that was properly completed by the creditor, and otherwise complied with all other requirements of this section regarding notice.

(i) Rescission rights in foreclosure

(1) In general

Notwithstanding section 1649 of this title, and subject to the time period provided in subsection (f) of this section, in addition to any other right of rescission available under this section for a transaction, after the initiation of any judicial or nonjudicial foreclosure process on the primary dwelling of an obligor securing an extension of credit, the obligor shall have a right to rescind the transaction equivalent to other rescission rights provided by this section, if—

(A) a mortgage broker fee is not included in the finance charge in accordance with the laws and regulations in effect at the time the consumer credit transaction was consummated; or

(B) the form of notice of rescission for the transaction is not the appropriate form of written notice published and adopted by the Bureau or a comparable written notice, and otherwise complied with all the requirements of this section regarding notice.

(2) Tolerance for disclosures

Notwithstanding section 1605(f) of this title, and subject to the time period provided in subsection (f) of this section, for the purposes of exercising any rescission rights after the initiation

of any judicial or nonjudicial foreclosure process on the principal dwelling of the obligor securing an extension of credit, the disclosure of the finance charge and other disclosures affected by any finance charge shall be treated as being accurate for purposes of this section if the amount disclosed as the finance charge does not vary from the actual finance charge by more than $35 or is greater than the amount required to be disclosed under this subchapter.

(3) Right of recoupment under State law

Nothing in this subsection affects a consumer's right of rescission in recoupment under State law.

(4) Applicability

This subsection shall apply to all consumer credit transactions in existence or consummated on or after September 30, 1995.

(Pub. L. 90–321, title I, §125, May 29, 1968, 82 Stat. 153; Pub. L. 93–495, title IV, §§404, 405, 412, Oct. 28, 1974, 88 Stat. 1517, 1519; Pub. L. 96–221, title VI, §612(a)(1), (3)–(6), Mar. 31, 1980, 94 Stat. 175, 176; Pub. L. 98–479, title II, §205, Oct. 17, 1984, 98 Stat. 2234; Pub. L. 104–29, §§5, 8, Sept. 30, 1995, 109 Stat. 274, 275; Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

REFERENCES IN TEXT

Section 1602(w) of this title, referred to in subsec. (e)(1), was redesignated section 1602(x) of this title by Pub. L. 111–203, title X, §1100A(1)(A), July 21, 2010, 124 Stat. 2107.

AMENDMENTS

2010—Subsecs. (a), (d), (h), (i)(1)(B). Pub. L. 111–203 substituted "Bureau" for "Board" wherever appearing.

1995—Subsec. (h). Pub. L. 104–29, §5, added subsec. (h).

Subsec. (i). Pub. L. 104–29, §8, added subsec. (i).

1984—Subsec. (e). Pub. L. 98–479 redesignated par. (1) as subsec. (e), redesignated subpars. (A), (B), (C), and (D) of par. (1) as pars. (1), (2), (3), and (4), respectively, and struck out par. (2) which read as follows: "The provisions of paragraph (1)(D) shall cease to be effective 3 years after the effective date of the Truth in Lending Simplification Reform Act."

1980—Subsec. (a). Pub. L. 96–221, §612(a)(1), substituted provisions relating to the right of rescission until midnight of the third business day following the consummation of the transaction or the delivery of the information and rescission forms required together with the statement containing the material disclosures required under this subchapter, whichever is later, for provisions relating to right of rescission until midnight of the third business day following the consummation of the transaction or the delivery of the required disclosures and all other material disclosures required under this part, whichever is later.

Subsec. (b). Pub. L. 96–221, §612(a)(3), (4), inserted provisions setting forth applicability of procedures prescribed by this subsection, and substituted "20" for "ten" in two places.

Subsec. (c). Pub. L. 96–221, §612(a)(5), inserted "information, forms, and" after "whom".

Subsec. (e). Pub. L. 96–221, §612(a)(6), substituted provisions relating to nonapplicability to residential mortgage transactions, refinancing or consolidation transactions, etc., for provisions relating to nonapplicability to creation or retention of first liens.

Subsec. (f). Pub. L. 96–221, §612(a)(6), substituted provisions setting forth duration of right of rescission where the required information and forms or other disclosures required under this part have not been delivered to the obligor, and exceptions to such term, for provisions setting forth duration of right of rescission where the required disclosures or any other material disclosures required under this part have not been delivered to the obligor.

Subsec. (g). Pub. L. 96–221, §612(a)(6), added subsec. (g).

1974—Subsecs. (a), (b). Pub. L. 93–495, §404, inserted provisions relating to security interest arising by operation of law.

Subsec. (e). Pub. L. 93–495, §412, inserted exemption for consumer credit transactions where a State agency is the creditor.

Subsec. (f). Pub. L. 93–495, §405, added subsec. (f).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–495 effective Oct. 28, 1974, see section 416 of Pub. L. 93–495, set out as an Effective Date note under section 1665a of this title.

[1] *See References in Text note below.*

§1636. Repealed. Pub. L. 96–221, title VI, §614(e)(1), Mar. 31, 1980, 94 Stat. 180

Section, Pub. L. 90–321, title I, §126, May 29, 1968, 82 Stat. 153, related to contents of periodic statements.

EFFECTIVE DATE OF REPEAL

Repeal effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as an Effective Date of 1980 Amendment note under section 1602 of this title.

§1637. Open end consumer credit plans

(a) Required disclosures by creditor

Before opening any account under an open end consumer credit plan, the creditor shall disclose to the person to whom credit is to be extended each of the following items, to the extent applicable:

(1) The conditions under which a finance charge may be imposed, including the time period (if any) within which any credit extended may be repaid without incurring a finance charge, except that the creditor may, at his election and without disclosure, impose no such finance charge if payment is received after the termination of such time period. If no such time period is provided, the creditor shall disclose such fact.

(2) The method of determining the balance upon which a finance charge will be imposed.

(3) The method of determining the amount of the finance charge, including any minimum or fixed amount imposed as a finance charge.

(4) Where one or more periodic rates may be used to compute the finance charge, each such rate, the range of balances to which it is applicable, and the corresponding nominal annual percentage rate determined by multiplying the periodic rate by the number of periods in a year.

(5) Identification of other charges which may be imposed as part of the plan, and their method of computation, in accordance with regulations of the Bureau.

(6) In cases where the credit is or will be secured, a statement that a security interest has been or will be taken in (A) the property purchased as part of the credit transaction, or (B) property not purchased as part of the credit transaction identified by item or type.

(7) A statement, in a form prescribed by regulations of the Bureau of the protection provided by sections 1666 and 1666i of this title to an obligor and the creditor's responsibilities under sections 1666a and 1666i of this title. With respect to one billing cycle per calendar year, at intervals of not

less than six months or more than eighteen months, the creditor shall transmit such statement to each obligor to whom the creditor is required to transmit a statement pursuant to subsection (b) of this section for such billing cycle.

(8) In the case of any account under an open end consumer credit plan which provides for any extension of credit which is secured by the consumer's principal dwelling, any information which—

(A) is required to be disclosed under section 1637a(a) of this title; and

(B) the Bureau determines is not described in any other paragraph of this subsection.

(b) Statement required with each billing cycle

The creditor of any account under an open end consumer credit plan shall transmit to the obligor, for each billing cycle at the end of which there is an outstanding balance in that account or with respect to which a finance charge is imposed, a statement setting forth each of the following items to the extent applicable:

(1) The outstanding balance in the account at the beginning of the statement period.

(2) The amount and date of each extension of credit during the period, and a brief identification, on or accompanying the statement of each extension of credit in a form prescribed by the Bureau sufficient to enable the obligor either to identify the transaction or to relate it to copies of sales vouchers or similar instruments previously furnished, except that a creditor's failure to disclose such information in accordance with this paragraph shall not be deemed a failure to comply with this part or this subchapter if (A) the creditor maintains procedures reasonably adapted to procure and provide such information, and (B) the creditor responds to and treats any inquiry for clarification or documentation as a billing error and an erroneously billed amount under section 1666 of this title. In lieu of complying with the requirements of the previous sentence, in the case of any transaction in which the creditor and seller are the same person, as defined by the Bureau, and such person's open end credit plan has fewer than 15,000 accounts, the creditor may elect to provide only the amount and date of each extension of credit during the period and the seller's name and location where the transaction took place if (A) a brief identification of the transaction has been previously furnished, and (B) the creditor responds to and treats any inquiry for clarification or documentation as a billing error and an erroneously billed amount under section 1666 of this title.

(3) The total amount credited to the account during the period.

(4) The amount of any finance charge added to the account during the period, itemized to show the amounts, if any, due to the application of percentage rates and the amount, if any, imposed as a minimum or fixed charge.

(5) Where one or more periodic rates may be used to compute the finance charge, each such rate, the range of balances to which it is applicable, and, unless the annual percentage rate (determined under section 1606(a)(2) of this title) is required to be disclosed pursuant to paragraph (6), the corresponding nominal annual percentage rate determined by multiplying the periodic rate by the number of periods in a year.

(6) Where the total finance charge exceeds 50 cents for a monthly or longer billing cycle, or the pro rata part of 50 cents for a billing cycle shorter than monthly, the total finance charge expressed as an annual percentage rate (determined under section 1606(a)(2) of this title), except that if the finance charge is the sum of two or more products of a rate times a portion of the balance, the creditor may, in lieu of disclosing a single rate for the total charge, disclose each such rate expressed as an annual percentage rate, and the part of the balance to which it is applicable.

(7) The balance on which the finance charge was computed and a statement of how the balance was determined. If the balance is determined without first deducting all credits during the period, that fact and the amount of such payments shall also be disclosed.

(8) The outstanding balance in the account at the end of the period.

(9) The date by which or the period (if any) within which, payment must be made to avoid additional finance charges, except that the creditor may, at his election and without disclosure, impose no such additional finance charge if payment is received after such date or the termination of such period.

(10) The address to be used by the creditor for the purpose of receiving billing inquiries from the obligor.

(11)(A) A written statement in the following form: "Minimum Payment Warning: Making only the minimum payment will increase the amount of interest you pay and the time it takes to repay your balance.", or such similar statement as is established by the Bureau pursuant to consumer testing.

(B) Repayment information that would apply to the outstanding balance of the consumer under the credit plan, including—

(i) the number of months (rounded to the nearest month) that it would take to pay the entire amount of that balance, if the consumer pays only the required minimum monthly payments and if no further advances are made;

(ii) the total cost to the consumer, including interest and principal payments, of paying that balance in full, if the consumer pays only the required minimum monthly payments and if no further advances are made;

(iii) the monthly payment amount that would be required for the consumer to eliminate the outstanding balance in 36 months, if no further advances are made, and the total cost to the consumer, including interest and principal payments, of paying that balance in full if the consumer pays the balance over 36 months; and

(iv) a toll-free telephone number at which the consumer may receive information about accessing credit counseling and debt management services.

(C)(i) Subject to clause (ii), in making the disclosures under subparagraph (B), the creditor shall apply the interest rate or rates in effect on the date on which the disclosure is made until the date on which the balance would be paid in full.

(ii) If the interest rate in effect on the date on which the disclosure is made is a temporary rate that will change under a contractual provision applying an index or formula for subsequent interest rate adjustment, the creditor shall apply the interest rate in effect on the date on which the disclosure is made for as long as that interest rate will apply under that contractual provision, and then apply an interest rate based on the index or formula in effect on the applicable billing date.

(D) All of the information described in subparagraph (B) shall—

(i) be disclosed in the form and manner which the Bureau shall prescribe, by regulation, and in a manner that avoids duplication; and

(ii) be placed in a conspicuous and prominent location on the billing statement.

(E) In the regulations prescribed under subparagraph (D), the Bureau shall require that the disclosure of such information shall be in the form of a table that—

(i) contains clear and concise headings for each item of such information; and

(ii) provides a clear and concise form stating each item of information required to be disclosed under each such heading.

(F) In prescribing the form of the table under subparagraph (E), the Bureau shall require that—

(i) all of the information in the table, and not just a reference to the table, be placed on the billing statement, as required by this paragraph; and

(ii) the items required to be included in the table shall be listed in the order in which such items are set forth in subparagraph (B).

(G) In prescribing the form of the table under subparagraph (D), the Bureau shall employ terminology which is different than the terminology which is employed in subparagraph (B), if such terminology is more easily understood and conveys substantially the same meaning.

(12) REQUIREMENTS RELATING TO LATE PAYMENT DEADLINES AND PENALTIES.—

(A) LATE PAYMENT DEADLINE REQUIRED TO BE DISCLOSED.—In the case of a credit card account under an open end consumer credit plan under which a late fee or charge

may be imposed due to the failure of the obligor to make payment on or before the due date for such payment, the periodic statement required under subsection (b) with respect to the account shall include, in a conspicuous location on the billing statement, the date on which the payment is due or, if different, the date on which a late payment fee will be charged, together with the amount of the fee or charge to be imposed if payment is made after that date.

(B) DISCLOSURE OF INCREASE IN INTEREST RATES FOR LATE PAYMENTS.—If 1 or more late payments under an open end consumer credit plan may result in an increase in the annual percentage rate applicable to the account, the statement required under subsection (b) with respect to the account shall include conspicuous notice of such fact, together with the applicable penalty annual percentage rate, in close proximity to the disclosure required under subparagraph (A) of the date on which payment is due under the terms of the account.

(C) PAYMENTS AT LOCAL BRANCHES.—If the creditor, in the case of a credit card account referred to in subparagraph (A), is a financial institution which maintains branches or offices at which payments on any such account are accepted from the obligor in person, the date on which the obligor makes a payment on the account at such branch or office shall be considered to be the date on which the payment is made for purposes of determining whether a late fee or charge may be imposed due to the failure of the obligor to make payment on or before the due date for such payment.

(c) Disclosure in credit and charge card applications and solicitations

(1) Direct mail applications and solicitations

(A) Information in tabular format

Any application to open a credit card account for any person under an open end consumer credit plan, or a solicitation to open such an account without requiring an application, that is mailed to consumers shall disclose the following information, subject to subsection (e) of this section and section 1632(c) of this title:

(i) Annual percentage rates

(I) Each annual percentage rate applicable to extensions of credit under such credit plan.

(II) Where an extension of credit is subject to a variable rate, the fact that the rate is variable, the annual percentage rate in effect at the time of the mailing, and how the rate is determined.

(III) Where more than one rate applies, the range of balances to which each rate applies.

(ii) Annual and other fees

(I) Any annual fee, other periodic fee, or membership fee imposed for the issuance or availability of a credit card, including any account maintenance fee or other charge imposed based on activity or inactivity for the account during the billing cycle.

(II) Any minimum finance charge imposed for each period during which any extension of credit which is subject to a finance charge is outstanding.

(III) Any transaction charge imposed in connection with use of the card to purchase goods or services.

(iii) Grace period

(I) The date by which or the period within which any credit extended under such credit plan for purchases of goods or services must be repaid to avoid incurring a finance charge, and, if no such period is offered, such fact shall be clearly stated.

(II) If the length of such "grace period" varies, the card issuer may disclose the range of days in the grace period, the minimum number of days in the grace period, or the average number of days in the grace period, if the disclosure is identified as such.

(iv) Balance calculation method

(I) The name of the balance calculation method used in determining the balance on which the finance charge is computed if the method used has been defined by the Bureau, or a

detailed explanation of the balance calculation method used if the method has not been so defined.

(II) In prescribing regulations to carry out this clause, the Bureau shall define and name not more than the 5 balance calculation methods determined by the Bureau to be the most commonly used methods.

(B) Other information

In addition to the information required to be disclosed under subparagraph (A), each application or solicitation to which such subparagraph applies shall disclose clearly and conspicuously the following information, subject to subsections (e) and (f) of this section:

(i) Cash advance fee

Any fee imposed for an extension of credit in the form of cash.

(ii) Late fee

Any fee imposed for a late payment.

(iii) Over-the-limit fee

Any fee imposed in connection with an extension of credit in excess of the amount of credit authorized to be extended with respect to such account.

(2) Telephone solicitations

(A) In general

In any telephone solicitation to open a credit card account for any person under an open end consumer credit plan, the person making the solicitation shall orally disclose the information described in paragraph (1)(A).

(B) Exception

Subparagraph (A) shall not apply to any telephone solicitation if—

(i) the credit card issuer—

(I) does not impose any fee described in paragraph (1)(A)(ii)(I); or

(II) does not impose any fee in connection with telephone solicitations unless the consumer signifies acceptance by using the card;

(ii) the card issuer discloses clearly and conspicuously in writing the information described in paragraph (1) within 30 days after the consumer requests the card, but in no event later than the date of delivery of the card; and

(iii) the card issuer discloses clearly and conspicuously that the consumer is not obligated to accept the card or account and the consumer will not be obligated to pay any of the fees or charges disclosed unless the consumer elects to accept the card or account by using the card.

(3) Applications and solicitations by other means

(A) In general

Any application to open a credit card account for any person under an open end consumer credit plan, and any solicitation to open such an account without requiring an application, that is made available to the public or contained in catalogs, magazines, or other publications shall meet the disclosure requirements of subparagraph (B), (C), or (D).

(B) Specific information

An application or solicitation described in subparagraph (A) meets the requirement of this subparagraph if such application or solicitation contains—

(i) the information—

(I) described in paragraph (1)(A) in the form required under section 1632(c) of this title, subject to subsection (e) of this section, and

(II) described in paragraph (1)(B) in a clear and conspicuous form, subject to subsections (e) and (f) of this section;

(ii) a statement, in a conspicuous and prominent location on the application or solicitation, that—

(I) the information is accurate as of the date the application or solicitation was printed;

(II) the information contained in the application or solicitation is subject to change after such date; and

(III) the applicant should contact the creditor for information on any change in the information contained in the application or solicitation since it was printed;

(iii) a clear and conspicuous disclosure of the date the application or solicitation was printed; and

(iv) a disclosure, in a conspicuous and prominent location on the application or solicitation, of a toll free telephone number or a mailing address at which the applicant may contact the creditor to obtain any change in the information provided in the application or solicitation since it was printed.

(C) General information without any specific term

An application or solicitation described in subparagraph (A) meets the requirement of this subparagraph if such application or solicitation—

(i) contains a statement, in a conspicuous and prominent location on the application or solicitation, that—

(I) there are costs associated with the use of credit cards; and

(II) the applicant may contact the creditor to request disclosure of specific information of such costs by calling a toll free telephone number or by writing to an address, specified in the application;

(ii) contains a disclosure, in a conspicuous and prominent location on the application or solicitation, of a toll free telephone number and a mailing address at which the applicant may contact the creditor to obtain such information; and

(iii) does not contain any of the items described in paragraph (1).

(D) Applications or solicitations containing subsection (a) disclosures

An application or solicitation meets the requirement of this subparagraph if it contains, or is accompanied by—

(i) the disclosures required by paragraphs (1) through (6) of subsection (a) of this section;

(ii) the disclosures required by subparagraphs (A) and (B) of paragraph (1) of this subsection included clearly and conspiciously [1] (except that the provisions of section 1632(c) of this title shall not apply); and

(iii) a toll free telephone number or a mailing address at which the applicant may contact the creditor to obtain any change in the information provided.

(E) Prompt response to information requests

Upon receipt of a request for any of the information referred to in subparagraph (B), (C), or (D), the card issuer or the agent of such issuer shall promptly disclose all of the information described in paragraph (1).

(4) Charge card applications and solicitations

(A) In general

Any application or solicitation to open a charge card account shall disclose clearly and conspicuously the following information in the form required by section 1632(c) of this title, subject to subsection (e) of this section:

(i) Any annual fee, other periodic fee, or membership fee imposed for the issuance or availability of the charge card, including any account maintenance fee or other charge imposed based on activity or inactivity for the account during the billing cycle.

(ii) Any transaction charge imposed in connection with use of the card to purchase goods or services.

(iii) A statement that charges incurred by use of the charge card are due and payable upon receipt of a periodic statement rendered for such charge card account.

(B) Other information

In addition to the information required to be disclosed under subparagraph (A), each written application or solicitation to which such subparagraph applies shall disclose clearly and conspicuously the following information, subject to subsections (e) and (f) of this section:

(i) Cash advance fee

Any fee imposed for an extension of credit in the form of cash.

(ii) Late fee

Any fee imposed for a late payment.

(iii) Over-the-limit fee

Any fee imposed in connection with an extension of credit in excess of the amount of credit authorized to be extended with respect to such account.

(C) Applications and solicitations by other means

Any application to open a charge card account, and any solicitation to open such an account without requiring an application, that is made available to the public or contained in catalogs, magazines, or other publications shall contain—

(i) the information—

(I) described in subparagraph (A) in the form required under section 1632(c) of this title, subject to subsection (e) of this section, and

(II) described in subparagraph (B) in a clear and conspicuous form, subject to subsections (e) and (f) of this section;

(ii) a statement, in a conspicuous and prominent location on the application or solicitation, that—

(I) the information is accurate as of the date the application or solicitation was printed;

(II) the information contained in the application or solicitation is subject to change after such date; and

(III) the applicant should contact the creditor for information on any change in the information contained in the application or solicitation since it was printed;

(iii) a clear and conspicuous disclosure of the date the application or solicitation was printed; and

(iv) a disclosure, in a conspicuous and prominent location on the application or solicitation, of a toll free telephone number or a mailing address at which the applicant may contact the creditor to obtain any change in the information provided in the application or solicitation since it was printed.

(D) Issuers of charge cards which provide access to open end consumer credit plans

If a charge card permits the card holder to receive an extension of credit under an open end consumer credit plan, which is not maintained by the charge card issuer, the charge card issuer may provide the information described in subparagraphs (A) and (B) in the form required by such subparagraphs in lieu of the information required to be provided under paragraph (1), (2), or (3) with respect to any credit extended under such plan, if the charge card issuer discloses clearly and conspicuously to the consumer in the application or solicitation that—

(i) the charge card issuer will make an independent decision as to whether to issue the card;

(ii) the charge card may arrive before the decision is made with respect to an extension of credit under an open end consumer credit plan; and

(iii) approval by the charge card issuer does not constitute approval by the issuer of the extension of credit.

The information required to be disclosed under paragraph (1) shall be provided to the charge card holder by the creditor which maintains such open end consumer credit plan before the first extension of credit under such plan.

(E) Charge card defined

For the purposes of this subsection, the term "charge card" means a card, plate, or other single credit device that may be used from time to time to obtain credit which is not subject to a finance charge.

(5) Regulatory authority of the Bureau

The Bureau may, by regulation, require the disclosure of information in addition to that otherwise required by this subsection or subsection (d) of this section, and modify any disclosure of information required by this subsection or subsection (d) of this section, in any application to open a credit card account for any person under an open end consumer credit plan or any application to open a charge card account for any person, or a solicitation to open any such account without requiring an application, if the Bureau determines that such action is necessary to carry out the purposes of, or prevent evasions of, any paragraph of this subsection.

(6) Additional notice concerning "introductory rates"

(A) In general

Except as provided in subparagraph (B), an application or solicitation to open a credit card account and all promotional materials accompanying such application or solicitation for which a disclosure is required under paragraph (1), and that offers a temporary annual percentage rate of interest, shall—

(i) use the term "introductory" in immediate proximity to each listing of the temporary annual percentage rate applicable to such account, which term shall appear clearly and conspicuously;

(ii) if the annual percentage rate of interest that will apply after the end of the temporary rate period will be a fixed rate, state in a clear and conspicuous manner in a prominent location closely proximate to the first listing of the temporary annual percentage rate (other than a listing of the temporary annual percentage rate in the tabular format described in section 1632(c) of this title), the time period in which the introductory period will end and the annual percentage rate that will apply after the end of the introductory period; and

(iii) if the annual percentage rate that will apply after the end of the temporary rate period will vary in accordance with an index, state in a clear and conspicuous manner in a prominent location closely proximate to the first listing of the temporary annual percentage rate (other than a listing in the tabular format prescribed by section 1632(c) of this title), the time period in which the introductory period will end and the rate that will apply after that, based on an annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation.

(B) Exception

Clauses (ii) and (iii) of subparagraph (A) do not apply with respect to any listing of a temporary annual percentage rate on an envelope or other enclosure in which an application or solicitation to open a credit card account is mailed.

(C) Conditions for introductory rates

An application or solicitation to open a credit card account for which a disclosure is required under paragraph (1), and that offers a temporary annual percentage rate of interest shall, if that rate of interest is revocable under any circumstance or upon any event, clearly and conspicuously disclose, in a prominent manner on or with such application or solicitation—

(i) a general description of the circumstances that may result in the revocation of the

temporary annual percentage rate; and

(ii) if the annual percentage rate that will apply upon the revocation of the temporary annual percentage rate—

(I) will be a fixed rate, the annual percentage rate that will apply upon the revocation of the temporary annual percentage rate; or

(II) will vary in accordance with an index, the rate that will apply after the temporary rate, based on an annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation.

(D) Definitions

In this paragraph—

(i) the terms "temporary annual percentage rate of interest" and "temporary annual percentage rate" mean any rate of interest applicable to a credit card account for an introductory period of less than 1 year, if that rate is less than an annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation; and

(ii) the term "introductory period" means the maximum time period for which the temporary annual percentage rate may be applicable.

(E) Relation to other disclosure requirements

Nothing in this paragraph may be construed to supersede subsection (a) of section 1632 of this title, or any disclosure required by paragraph (1) or any other provision of this subsection.

(7) Internet-based solicitations

(A) In general

In any solicitation to open a credit card account for any person under an open end consumer credit plan using the Internet or other interactive computer service, the person making the solicitation shall clearly and conspicuously disclose—

(i) the information described in subparagraphs (A) and (B) of paragraph (1); and

(ii) the information described in paragraph (6).

(B) Form of disclosure

The disclosures required by subparagraph (A) shall be—

(i) readily accessible to consumers in close proximity to the solicitation to open a credit card account; and

(ii) updated regularly to reflect the current policies, terms, and fee amounts applicable to the credit card account.

(C) Definitions

For purposes of this paragraph—

(i) the term "Internet" means the international computer network of both Federal and non-Federal interoperable packet switched data networks; and

(ii) the term "interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

(8) Applications from underage consumers

(A) Prohibition on issuance

No credit card may be issued to, or open end consumer credit plan established by or on behalf of, a consumer who has not attained the age of 21, unless the consumer has submitted a written application to the card issuer that meets the requirements of subparagraph (B).

(B) Application requirements

An application to open a credit card account by a consumer who has not attained the age of 21 as of the date of submission of the application shall require—

(i) the signature of a cosigner, including the parent, legal guardian, spouse, or any other individual who has attained the age of 21 having a means to repay debts incurred by the consumer in connection with the account, indicating joint liability for debts incurred by the consumer in connection with the account before the consumer has attained the age of 21; or

(ii) submission by the consumer of financial information, including through an application, indicating an independent means of repaying any obligation arising from the proposed extension of credit in connection with the account.

(C) Safe harbor

The Bureau shall promulgate regulations providing standards that, if met, would satisfy the requirements of subparagraph (B)(ii).

(d) Disclosure prior to renewal

(1) In general

A card issuer that has changed or amended any term of the account since the last renewal that has not been previously disclosed or that imposes any fee described in subsection (c)(1)(A)(ii)(I) or (c)(4)(A)(i) of this section shall transmit to a consumer at least 30 days prior to the scheduled renewal date of the consumer's credit or charge card account a clear and conspicuous disclosure of—

(A) the date by which, the month by which, or the billing period at the close of which, the account will expire if not renewed;

(B) the information described in subsection (c)(1)(A) or (c)(4)(A) of this section that would apply if the account were renewed, subject to subsection (e) of this section; and

(C) the method by which the consumer may terminate continued credit availability under the account.

(2) Short-term renewals

The Bureau may by regulation provide for fewer disclosures than are required by paragraph (1) in the case of an account which is renewable for a period of less than 6 months.

(e) Other rules for disclosures under subsections (c) and (d)

(1) Fees determined on the basis of a percentage

If the amount of any fee required to be disclosed under subsection (c) or (d) of this section is determined on the basis of a percentage of another amount, the percentage used in making such determination and the identification of the amount against which such percentage is applied shall be disclosed in lieu of the amount of such fee.

(2) Disclosure only of fees actually imposed

If a credit or charge card issuer does not impose any fee required to be disclosed under any provision of subsection (c) or (d) of this section, such provision shall not apply with respect to such issuer.

(f) Disclosure of range of certain fees which vary by State allowed

If the amount of any fee required to be disclosed by a credit or charge card issuer under paragraph (1)(B), (3)(B)(i)(II), (4)(B), or (4)(C)(i)(II) of subsection (c) of this section varies from State to State, the card issuer may disclose the range of such fees for purposes of subsection (c) of this section in lieu of the amount for each applicable State, if such disclosure includes a statement that the amount of such fee varies from State to State.

(g) Insurance in connection with certain open end credit card plans

(1) Change in insurance carrier

Whenever a card issuer that offers any guarantee or insurance for repayment of all or part of the outstanding balance of an open end credit card plan proposes to change the person providing that guarantee or insurance, the card issuer shall send each insured consumer written notice of the proposed change not less than 30 days prior to the change, including notice of any increase in the

rate or substantial decrease in coverage or service which will result from such change. Such notice may be included on or with the monthly statement provided to the consumer prior to the month in which the proposed change would take effect.

(2) Notice of new insurance coverage

In any case in which a proposed change described in paragraph (1) occurs, the insured consumer shall be given the name and address of the new guarantor or insurer and a copy of the policy or group certificate containing the basic terms and conditions, including the premium rate to be charged.

(3) Right to discontinue guarantee or insurance

The notices required under paragraphs (1) and (2) shall each include a statement that the consumer has the option to discontinue the insurance or guarantee.

(4) No preemption of State law

No provision of this subsection shall be construed as superseding any provision of State law which is applicable to the regulation of insurance.

(5) Bureau definition of substantial decrease in coverage or service

The Bureau shall define, in regulations, what constitutes a "substantial decrease in coverage or service" for purposes of paragraph (1).

(h) Prohibition on certain actions for failure to incur finance charges

A creditor of an account under an open end consumer credit plan may not terminate an account prior to its expiration date solely because the consumer has not incurred finance charges on the account. Nothing in this subsection shall prohibit a creditor from terminating an account for inactivity in 3 or more consecutive months.

(i) Advance notice of rate increase and other changes required

(1) Advance notice of increase in interest rate required

In the case of any credit card account under an open end consumer credit plan, a creditor shall provide a written notice of an increase in an annual percentage rate (except in the case of an increase described in paragraph (1), (2), or (3) of section 1666i–1(b) of this title) not later than 45 days prior to the effective date of the increase.

(2) Advance notice of other significant changes required

In the case of any credit card account under an open end consumer credit plan, a creditor shall provide a written notice of any significant change, as determined by rule of the Bureau, in the terms (including an increase in any fee or finance charge, other than as provided in paragraph (1)) of the cardholder agreement between the creditor and the obligor, not later than 45 days prior to the effective date of the change.

(3) Notice of right to cancel

Each notice required by paragraph (1) or (2) shall be made in a clear and conspicuous manner, and shall contain a brief statement of the right of the obligor to cancel the account pursuant to rules established by the Bureau before the effective date of the subject rate increase or other change.

(4) Rule of construction

Closure or cancellation of an account by the obligor shall not constitute a default under an existing cardholder agreement, and shall not trigger an obligation to immediately repay the obligation in full or through a method that is less beneficial to the obligor than one of the methods described in section 1666i–1(c)(2) of this title, or the imposition of any other penalty or fee.

(j) Prohibition on penalties for on-time payments

(1) Prohibition on double-cycle billing and penalties for on-time payments

Except as provided in paragraph (2), a creditor may not impose any finance charge on a credit card account under an open end consumer credit plan as a result of the loss of any time period provided by the creditor within which the obligor may repay any portion of the credit extended without incurring a finance charge, with respect to—

(A) any balances for days in billing cycles that precede the most recent billing cycle; or

(B) any balances or portions thereof in the current billing cycle that were repaid within such time period.

(2) Exceptions

Paragraph (1) does not apply to—

(A) any adjustment to a finance charge as a result of the resolution of a dispute; or

(B) any adjustment to a finance charge as a result of the return of a payment for insufficient funds.

(k) Opt-in required for over-the-limit transactions if fees are imposed

(1) In general

In the case of any credit card account under an open end consumer credit plan under which an over-the-limit fee may be imposed by the creditor for any extension of credit in excess of the amount of credit authorized to be extended under such account, no such fee shall be charged, unless the consumer has expressly elected to permit the creditor, with respect to such account, to complete transactions involving the extension of credit under such account in excess of the amount of credit authorized.

(2) Disclosure by creditor

No election by a consumer under paragraph (1) shall take effect unless the consumer, before making such election, received a notice from the creditor of any over-the-limit fee in the form and manner, and at the time, determined by the Bureau. If the consumer makes the election referred to in paragraph (1), the creditor shall provide notice to the consumer of the right to revoke the election, in the form prescribed by the Bureau, in any periodic statement that includes notice of the imposition of an over-the-limit fee during the period covered by the statement.

(3) Form of election

A consumer may make or revoke the election referred to in paragraph (1) orally, electronically, or in writing, pursuant to regulations prescribed by the Bureau. The Bureau shall prescribe regulations to ensure that the same options are available for both making and revoking such election.

(4) Time of election

A consumer may make the election referred to in paragraph (1) at any time, and such election shall be effective until the election is revoked in the manner prescribed under paragraph (3).

(5) Regulations

The Bureau shall prescribe regulations—

(A) governing disclosures under this subsection; and

(B) that prevent unfair or deceptive acts or practices in connection with the manipulation of credit limits designed to increase over-the-limit fees or other penalty fees.

(6) Rule of construction

Nothing in this subsection shall be construed to prohibit a creditor from completing an over-the-limit transaction, provided that a consumer who has not made a valid election under paragraph (1) is not charged an over-the-limit fee for such transaction.

(7) Restriction on fees charged for an over-the-limit transaction

With respect to a credit card account under an open end consumer credit plan, an over-the-limit fee may be imposed only once during a billing cycle if the credit limit on the account is exceeded, and an over-the-limit fee, with respect to such excess credit, may be imposed only once in each of

the 2 subsequent billing cycles, unless the consumer has obtained an additional extension of credit in excess of such credit limit during any such subsequent cycle or the consumer reduces the outstanding balance below the credit limit as of the end of such billing cycle.

(l) Limit on fees related to method of payment

With respect to a credit card account under an open end consumer credit plan, the creditor may not impose a separate fee to allow the obligor to repay an extension of credit or finance charge, whether such repayment is made by mail, electronic transfer, telephone authorization, or other means, unless such payment involves an expedited service by a service representative of the creditor.

(m) Use of term "fixed rate"

With respect to the terms of any credit card account under an open end consumer credit plan, the term "fixed", when appearing in conjunction with a reference to the annual percentage rate or interest rate applicable with respect to such account, may only be used to refer to an annual percentage rate or interest rate that will not change or vary for any reason over the period specified clearly and conspicuously in the terms of the account.

(n) Standards applicable to initial issuance of subprime or "fee harvester" cards

(1) In general

If the terms of a credit card account under an open end consumer credit plan require the payment of any fees (other than any late fee, over-the-limit fee, or fee for a payment returned for insufficient funds) by the consumer in the first year during which the account is opened in an aggregate amount in excess of 25 percent of the total amount of credit authorized under the account when the account is opened, no payment of any fees (other than any late fee, over-the-limit fee, or fee for a payment returned for insufficient funds) may be made from the credit made available under the terms of the account.

(2) Rule of construction

No provision of this subsection may be construed as authorizing any imposition or payment of advance fees otherwise prohibited by any provision of law.

(o) Due dates for credit card accounts

(1) In general

The payment due date for a credit card account under an open end consumer credit plan shall be the same day each month.

(2) Weekend or holiday due dates

If the payment due date for a credit card account under an open end consumer credit plan is a day on which the creditor does not receive or accept payments by mail (including weekends and holidays), the creditor may not treat a payment received on the next business day as late for any purpose.

(p) Parental approval required to increase credit lines for accounts for which parent is jointly liable

No increase may be made in the amount of credit authorized to be extended under a credit card account for which a parent, legal guardian, or spouse of the consumer, or any other individual has assumed joint liability for debts incurred by the consumer in connection with the account before the consumer attains the age of 21, unless that parent, guardian, or spouse approves in writing, and assumes joint liability for, such increase.

(r) [2] College card agreements

(1) Definitions

For purposes of this subsection, the following definitions shall apply:

(A) College affinity card

The term "college affinity card" means a credit card issued by a credit card issuer under an open end consumer credit plan in conjunction with an agreement between the issuer and an institution of higher education, or an alumni organization or foundation affiliated with or related to such institution, under which such cards are issued to college students who have an affinity with such institution, organization and—

(i) the creditor has agreed to donate a portion of the proceeds of the credit card to the institution, organization, or foundation (including a lump sum or 1-time payment of money for access);

(ii) the creditor has agreed to offer discounted terms to the consumer; or

(iii) the credit card bears the name, emblem, mascot, or logo of such institution, organization, or foundation, or other words, pictures, or symbols readily identified with such institution, organization, or foundation.

(B) College student credit card account

The term "college student credit card account" means a credit card account under an open end consumer credit plan established or maintained for or on behalf of any college student.

(C) College student

The term "college student" means an individual who is a full-time or a part-time student attending an institution of higher education.

(D) Institution of higher education

The term "institution of higher education" has the same meaning as in section [3] 1001 and 1002 of title 20.

(2) Reports by creditors

(A) In general

Each creditor shall submit an annual report to the Bureau containing the terms and conditions of all business, marketing, and promotional agreements and college affinity card agreements with an institution of higher education, or an alumni organization or foundation affiliated with or related to such institution, with respect to any college student credit card issued to a college student at such institution.

(B) Details of report

The information required to be reported under subparagraph (A) includes—

(i) any memorandum of understanding between or among a creditor, an institution of higher education, an alumni association, or foundation that directly or indirectly relates to any aspect of any agreement referred to in such subparagraph or controls or directs any obligations or distribution of benefits between or among any such entities;

(ii) the amount of any payments from the creditor to the institution, organization, or foundation during the period covered by the report, and the precise terms of any agreement under which such amounts are determined; and

(iii) the number of credit card accounts covered by any such agreement that were opened during the period covered by the report, and the total number of credit card accounts covered by the agreement that were outstanding at the end of such period.

(C) Aggregation by institution

The information required to be reported under subparagraph (A) shall be aggregated with respect to each institution of higher education or alumni organization or foundation affiliated with or related to such institution.

(D) Initial report

The initial report required under subparagraph (A) shall be submitted to the Bureau before the end of the 9-month period beginning on May 22, 2009.

(3) Reports by Bureau

The Bureau shall submit to the Congress, and make available to the public, an annual report that lists the information concerning credit card agreements submitted to the Bureau under paragraph (2) by each institution of higher education, alumni organization, or foundation.

(Pub. L. 90–321, title I, §127, May 29, 1968, 82 Stat. 153; Pub. L. 93–495, title III, §§304, 305, title IV, §§411, 415, Oct. 28, 1974, 88 Stat. 1511, 1519, 1521; Pub. L. 96–221, title VI, §613(a)–(e), Mar. 31, 1980, 94 Stat. 176, 177; Pub. L. 100–583, §§2(a), 6, Nov. 3, 1988, 102 Stat. 2960, 2968; Pub. L. 100–709, §2(b), Nov. 23, 1988, 102 Stat. 4729; Pub. L. 109–8, title XIII, §§1301(a), 1303(a), 1304(a), 1305(a), 1306(a), Apr. 20, 2005, 119 Stat. 204, 209, 211, 212; Pub. L. 111–24, title I, §§101(a)(1), 102(a), 103, 105, 106(a), title II, §§201(a), 202, 203, title III, §§301, 303, 305(a), May 22, 2009, 123 Stat. 1735, 1738, 1741–1743, 1745–1749; Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

AMENDMENTS

2010—Pub. L. 111–203 substituted "Bureau" for "Board" wherever appearing.

2009—Subsec. (b)(11). Pub. L. 111–24, §201(a), amended par. (11) generally, revising the minimum payment disclosures required from creditors.

Subsec. (b)(12). Pub. L. 111–24, §202, amended par. (12) generally. Prior to amendment, par. (12) read as follows: "If a late payment fee is to be imposed due to the failure of the obligor to make payment on or before a required payment due date, the following shall be stated clearly and conspicuously on the billing statement:

"(A) The date on which that payment is due or, if different, the earliest date on which a late payment fee may be charged.

"(B) The amount of the late payment fee to be imposed if payment is made after such date."

Subsec. (c)(8). Pub. L. 111–24, §301, added par. (8).

Subsec. (d)(1). Pub. L. 111–24, §203(3), substituted "A card issuer that has changed or amended any term of the account since the last renewal that has not been previously disclosed or" for "Except as provided in paragraph (2), a card issuer" in introductory provisions.

Subsec. (d)(2), (3). Pub. L. 111–24, §203(1), (2), redesignated par. (3) as (2) and struck out former par. (2) which provided a special rule for certain disclosures.

Subsec. (i). Pub. L. 111–24, §101(a)(1), added subsec. (i).

Subsecs. (j) to (l). Pub. L. 111–24, §102(a), added subsecs. (j) to (l).

Subsec. (m). Pub. L. 111–24, §103, added subsec. (m).

Subsec. (n). Pub. L. 111–24, §105, added subsec. (n).

Subsec. (o). Pub. L. 111–24, §106(a), added subsec. (o).

Subsec. (p). Pub. L. 111–24, §303, added subsec. (p).

Subsec. (r). Pub. L. 111–24, §305(a), added subsec. (r).

2005—Subsec. (b)(11). Pub. L. 109–8, §1301(a), added par. (11).

Subsec. (b)(12). Pub. L. 109–8, §1305(a), added par. (12).

Subsec. (c)(6). Pub. L. 109–8, §1303(a), added par. (6).

Subsec. (c)(7). Pub. L. 109–8, §1304(a), added par. (7).

Subsec. (h). Pub. L. 109–8, §1306(a), added subsec. (h).

1988—Subsec. (a)(8). Pub. L. 100–709 added par. (8).

Subsecs. (c) to (f). Pub. L. 100–583, §2(a), added subsecs. (c) to (f).

Subsec. (g). Pub. L. 100–583, §6, added subsec. (g).

1980—Subsec. (a)(1). Pub. L. 96–221, §613(a)(1), inserted provisions requiring the creditor to disclose that no time period is provided.

Subsec. (a)(5). Pub. L. 96–221, §613(a)(2), (3), redesignated par. (6) as (5) and inserted provisions relating to identification of other charges, and regulations by the Board. Former par. (5), relating to elective rights of the creditor, was struck out.

Subsec. (a)(6). Pub. L. 96–221, §613(a)(2), (3), redesignated par. (7) as (6) and revised nomenclature and expanded statement requirements. Former par. (6) redesignated (5).

Subsec. (a)(7), (8). Pub. L. 96–221, §613(a)(2), (d), redesignated par. (8) as (7) and substituted provisions relating to one billing cycle per calendar year, for provisions relating to each of two billing cycles per year. Former par. (7) redesignated (6).

Subsec. (b)(2). Pub. L. 96–221, §613(b), inserted provisions relating to failure of the creditor to disclose information in accordance with this paragraph, and made minor changes in phraseology.

Subsec. (b)(7) to (11). Pub. L. 96–221, §613(c), struck out par. (7) which related to elective rights of the creditor, and redesignated pars. (8) to (11) as (7) to (10), respectively.

Subsec. (c). Pub. L. 96–221, §613(e), struck out subsec. (c) which related to the time for making disclosures with respect to open end consumer credit plans having an outstanding balance of more than $1 at or after the close of the first full billing cycle.

1974—Subsec. (a)(1). Pub. L. 93–495, §415(1), inserted exception relating to nonimposition of a finance charge at the election of the creditor and without disclosure.

Subsec. (a)(8). Pub. L. 93–495, §304(a), added par. (8).

Subsec. (b)(2). Pub. L. 93–495, §411, substituted provisions requiring a brief identification on or accompanying the statement of credit extension sufficient to enable the obligor to identify the transaction or relate it to copies of sales vouchers or similar instruments previously furnished, for provisions requiring for purchases a brief identification, unless previously furnished, of the goods or services purchased.

Subsec. (b)(10). Pub. L. 93–495, §415(2), inserted exception relating to nonimposition of additional finance charge at the election of the creditor and without disclosure.

Subsec. (b)(11). Pub. L. 93–495, §305, added par. (11).

Subsec. (c). Pub. L. 93–495, §304(b), substituted provisions relating to disclosure requirements in a notice mailed or delivered to the obligor not later than the time of mailing the next statement required by subsec. (b) of this section, for provisions relating to disclosure requirements in a notice mailed or delivered to the obligor not later than thirty days after July 1, 1969.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–24 effective 9 months after May 22, 2009, except as otherwise specifically provided, see section 3 of Pub. L. 111–24, set out as a note under section 1602 of this title.

Pub. L. 111–24, title I, §101(a)(2), May 22, 2009, 123 Stat. 1736, provided that: "Notwithstanding section 3 [see Effective Date of 2009 Amendment note set out under section 1602 of this title], section 127(i) of the Truth in Lending Act [15 U.S.C. 1637(i)], as added by this subsection, shall become effective 90 days after the date of enactment of this Act [May 22, 2009]."

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–8, title XIII, §1301(b)(2), Apr. 20, 2005, 119 Stat. 207, provided that: "Section 127(b)(11) of the Truth in Lending Act [subsec. (b)(11) of this section], as added by subsection (a) of this section, and the regulations issued under paragraph (1) of this subsection [set out as a note under this section] shall not take effect until the later of—

"(A) 18 months after the date of enactment of this Act [Apr. 20, 2005]; or

"(B) 12 months after the publication of such final regulations by the Board [of Governors of the Federal Reserve System] [Jan. 29, 2009, see 74 F.R. 5244]."

Pub. L. 109–8, title XIII, §1303(b)(2), Apr. 20, 2005, 119 Stat. 211, provided that: "Section 127(c)(6) of the Truth in Lending Act [subsec. (c)(6) of this section], as added by this section, and regulations issued under paragraph (1) of this subsection [set out as a note under this section] shall not take effect until the later of—

"(A) 12 months after the date of enactment of this Act [Apr. 20, 2005]; or

"(B) 12 months after the date of publication of such final regulations by the Board [of Governors of the Federal Reserve System] [Jan. 29, 2009, see 74 F.R. 5244]."

Pub. L. 109–8, title XIII, §1304(b)(2), Apr. 20, 2005, 119 Stat. 212, provided that: "The amendment made by subsection (a) [amending this section] and the regulations issued under paragraph (1) of this subsection [set out as a note under this section] shall not take effect until the later of—

"(A) 12 months after the date of enactment of this Act [Apr. 20, 2005]; or

"(B) 12 months after the date of publication of such final regulations by the Board [of Governors of the Federal Reserve System] [Jan. 29, 2009, see 74 F.R. 5244]."

Pub. L. 109–8, title XIII, §1305(b)(2), Apr. 20, 2005, 119 Stat. 212, provided that: "The amendment made by subsection (a) [amending this section] and regulations issued under paragraph (1) of this subsection [set out as a note under this section] shall not take effect until the later of—

"(A) 12 months after the date of enactment of this Act [Apr. 20, 2005]; or

"(B) 12 months after the date of publication of such final regulations by the Board [of Governors of the Federal Reserve System] [Jan. 29, 2009, see 74 F.R. 5244]."

Pub. L. 109–8, title XIII, §1306(b)(2), Apr. 20, 2005, 119 Stat. 212, provided that: "The amendment made by subsection (a) [amending this section] and regulations issued under paragraph (1) of this subsection [set out as a note under this section] shall not take effect until the later of—

"(A) 12 months after the date of enactment of this Act [Apr. 20, 2005]; or

"(B) 12 months after the date of publication of such final regulations by the Board [of Governors of the Federal Reserve System] [Jan. 29, 2009, see 74 F.R. 5244]."

EFFECTIVE DATE OF 1988 AMENDMENT

For effective date of amendments by Pub. L. 100–709, see Regulations; Effective Date note below.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by sections 304 and 305 of Pub. L. 93–495, see section 308 of Pub. L. 93–495, set out as an Effective Date note under section 1666 of this title.

For effective date of amendment by section 411 of Pub. L. 93–495, see section 416 of Pub. L. 93–495, set out as an Effective Date note under section 1665a of this title.

Amendment by section 415 of Pub. L. 93–495 effective Oct. 28, 1974, see section 416 of Pub. L. 93–495, set out as an Effective Date note under section 1665a of this title.

REGULATIONS

Pub. L. 111–24, title II, §201(c), May 22, 2009, 123 Stat. 1745, provided that:

"(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act [May 22, 2009], the Board [of Governors of the Federal Reserve System] shall issue guidelines, by rule, in consultation with the Secretary of the Treasury, for the establishment and maintenance by creditors of a toll-free telephone number for purposes of providing information about accessing credit counseling and debt management services, as required under section 127(b)(11)(B)(iv) of the Truth in Lending Act [15 U.S.C. 1637(b)(11)(B)(iv)], as added by this section.

"(2) APPROVED AGENCIES.—Guidelines issued under this subsection shall ensure that referrals provided by the toll-free number referred to in paragraph (1) include only those nonprofit budget and credit counseling agencies approved by a United States bankruptcy trustee pursuant to section 111(a) of title 11, United States Code."

Pub. L. 109–8, title XIII, §1301(b)(1), Apr. 20, 2005, 119 Stat. 207, provided that: "The Board of Governors of the Federal Reserve System (hereafter in this title [amending this section and sections 1637a, 1638, 1664, and 1665b of this title and enacting provisions set out as notes under this section and section 1637a of this title] referred to as the 'Board') shall promulgate regulations implementing the requirements of section 127(b)(11) of the Truth in Lending Act [subsec. (b)(11) of this section], as added by subsection (a) of this section."

Pub. L. 109–8, title XIII, §1303(b)(1), Apr. 20, 2005, 119 Stat. 211, provided that: "The Board [of Governors of the Federal Reserve System] shall promulgate regulations implementing the requirements of section 127(c)(6) of the Truth in Lending Act [subsec. (c)(6) of this section], as added by this section."

Pub. L. 109–8, title XIII, §1304(b)(1), Apr. 20, 2005, 119 Stat. 211, provided that: "The Board [of Governors of the Federal Reserve System] shall promulgate regulations implementing the requirements of section 127(c)(7) of the Truth in Lending Act [subsec. (c)(7) of this section], as added by this section."

Pub. L. 109–8, title XIII, §1305(b)(1), Apr. 20, 2005, 119 Stat. 212, provided that: "The Board [of Governors of the Federal Reserve System] shall promulgate regulations implementing the requirements of section 127(b)(12) of the Truth in Lending Act [subsec. (b)(12) of this section], as added by this section."

Pub. L. 109–8, title XIII, §1306(b)(1), Apr. 20, 2005, 119 Stat. 212, provided that: "The Board [of Governors of the Federal Reserve System] shall promulgate regulations implementing the requirements of section 127(h) of the Truth in Lending Act [subsec. (h) of this section], as added by this section."

Pub. L. 109–8, title XIII, §1309, Apr. 20, 2005, 119 Stat. 213, provided that:

"(a) REGULATIONS.—Not later than 6 months after the date of enactment of this Act [Apr. 20, 2005], the Board [of Governors of the Federal Reserve System], in consultation with the other Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813]), the National Credit Union Administration Board, and the Federal Trade Commission, shall promulgate regulations to provide guidance

regarding the meaning of the term 'clear and conspicuous', as used in subparagraphs (A), (B), and (C) of section 127(b)(11) and clauses (ii) and (iii) of section 127(c)(6)(A) of the Truth in Lending Act [subsecs. (b)(11) and (c)(6)(A) of this section].

"(b) EXAMPLES.—Regulations promulgated under subsection (a) shall include examples of clear and conspicuous model disclosures for the purposes of disclosures required by the provisions of the Truth in Lending Act [15 U.S.C. 1601 et seq.] referred to in subsection (a).

"(c) STANDARDS.—In promulgating regulations under this section, the Board [of Governors of the Federal Reserve System] shall ensure that the clear and conspicuous standard required for disclosures made under the provisions of the Truth in Lending Act referred to in subsection (a) can be implemented in a manner which results in disclosures which are reasonably understandable and designed to call attention to the nature and significance of the information in the notice."

REGULATIONS; EFFECTIVE DATE

For provisions relating to promulgation of regulations to implement amendment by Pub. L. 100–709, and effective date of such amendment in connection with those regulations, see section 7 of Pub. L. 100–709, set out as a note under section 1637a of this title.

Pub. L. 100–583, §7, Nov. 3, 1988, 102 Stat. 2968, provided that: "Any regulation required to be prescribed by the Board under the amendments made by section 2 [amending this section and section 1632 of this title] shall—

"(1) take effect not later than the end of the 150-day period beginning on the date of the enactment of this Act [Nov. 3, 1988]; and

"(2) apply only with respect to applications, solicitations, and other material distributed after the end of the 150-day period beginning after the end of the period referred to in paragraph (1), except that—

"(A) in the case of applications and solicitations subject to paragraph (3) or (4)(C) of section 127(c) of the Truth in Lending Act [15 U.S.C. 1637(c)(3), (4)(C)] (as added by section 2), such period shall be 240 days; and

"(B) any card issuer may, at its option, comply with the requirements of the amendments made by this Act [see Short Title of 1988 Amendment note under section 1601 of this title] prior to the applicable effective date, in which case the amendments made by this Act shall be fully applicable to such card issuer."

REPORTS TO CONGRESS

Pub. L. 111–24, title III, §305(b), May 22, 2009, 123 Stat. 1750, provided that:

"(1) STUDY.—The Comptroller General of the United States shall, from time to time, review the reports submitted by creditors under section 127(r) of the Truth in Lending Act [15 U.S.C. 1637(r)], as added by this section, and the marketing practices of creditors to determine the impact that college affinity card agreements and college student card agreements have on credit card debt.

"(2) REPORT.—Upon completion of any study under paragraph (1), the Comptroller General shall periodically submit a report to the Congress on the findings and conclusions of the study, together with such recommendations for administrative or legislative action as the Comptroller General determines to be appropriate."

Pub. L. 100–583, §8, Nov. 3, 1988, 102 Stat. 2969, provided that: "Not later than 1 year after the regulations prescribed under section 7 of this Act [set out as a note above] become effective and annually thereafter, the Board of Governors of the Federal Reserve System shall transmit to the Congress a report containing an assessment by the Board of the profitability of credit card operations of depository institutions, including an analysis of any impact of the amendments made by this Act [see Short Title of 1988 Amendment note under section 1601 of this title] on such profitability."

[1] So in original. Probably should be "conspicuously".

[2] So in original. No subsec. (q) has been enacted.

[3] So in original. Probably should be "sections".

§1637a. Disclosure requirements for open end consumer credit plans secured by

consumer's principal dwelling

(a) Application disclosures

In the case of any open end consumer credit plan which provides for any extension of credit which is secured by the consumer's principal dwelling, the creditor shall make the following disclosures in accordance with subsection (b) of this section:

(1) Fixed annual percentage rate

Each annual percentage rate imposed in connection with extensions of credit under the plan and a statement that such rate does not include costs other than interest.

(2) Variable percentage rate

In the case of a plan which provides for variable rates of interest on credit extended under the plan—

(A) a description of the manner in which such rate will be computed and a statement that such rate does not include costs other than interest;

(B) a description of the manner in which any changes in the annual percentage rate will be made, including—

(i) any negative amortization and interest rate carryover;

(ii) the timing of any such changes;

(iii) any index or margin to which such changes in the rate are related; and

(iv) a source of information about any such index;

(C) if an initial annual percentage rate is offered which is not based on an index—

(i) a statement of such rate and the period of time such initial rate will be in effect; and

(ii) a statement that such rate does not include costs other than interest;

(D) a statement that the consumer should ask about the current index value and interest rate;

(E) a statement of the maximum amount by which the annual percentage rate may change in any 1-year period or a statement that no such limit exists;

(F) a statement of the maximum annual percentage rate that may be imposed at any time under the plan;

(G) subject to subsection (b)(3) of this section, a table, based on a $10,000 extension of credit, showing how the annual percentage rate and the minimum periodic payment amount under each repayment option of the plan would have been affected during the preceding 15-year period by changes in any index used to compute such rate;

(H) a statement of—

(i) the maximum annual percentage rate which may be imposed under each repayment option of the plan;

(ii) the minimum amount of any periodic payment which may be required, based on a $10,000 outstanding balance, under each such option when such maximum annual percentage rate is in effect; and

(iii) the earliest date by which such maximum annual interest rate may be imposed; and

(I) a statement that interest rate information will be provided on or with each periodic statement.

(3) Other fees imposed by the creditor

An itemization of any fees imposed by the creditor in connection with the availability or use of credit under such plan, including annual fees, application fees, transaction fees, and closing costs (including costs commonly described as "points"), and the time when such fees are payable.

(4) Estimates of fees which may be imposed by third parties

(A) Aggregate amount

An estimate, based on the creditor's experience with such plans and stated as a single amount

or as a reasonable range, of the aggregate amount of additional fees that may be imposed by third parties (such as governmental authorities, appraisers, and attorneys) in connection with opening an account under the plan.

(B) Statement of availability

A statement that the consumer may ask the creditor for a good faith estimate by the creditor of the fees that may be imposed by third parties.

(5) Statement of risk of loss of dwelling

A statement that—

(A) any extension of credit under the plan is secured by the consumer's dwelling; and

(B) in the event of any default, the consumer risks the loss of the dwelling.

(6) Conditions to which disclosed terms are subject

(A) Period during which such terms are available

A clear and conspicuous statement—

(i) of the time by which an application must be submitted to obtain the terms disclosed; or

(ii) if applicable, that the terms are subject to change.

(B) Right of refusal if certain terms change

A statement that—

(i) the consumer may elect not to enter into an agreement to open an account under the plan if any term changes (other than a change contemplated by a variable feature of the plan) before any such agreement is final; and

(ii) if the consumer makes an election described in clause (i), the consumer is entitled to a refund of all fees paid in connection with the application.

(C) Retention of information

A statement that the consumer should make or otherwise retain a copy of information disclosed under this subparagraph.

(7) Rights of creditor with respect to extensions of credit

A statement that—

(A) under certain conditions, the creditor may terminate any account under the plan and require immediate repayment of any outstanding balance, prohibit any additional extension of credit to the account, or reduce the credit limit applicable to the account; and

(B) the consumer may receive, upon request, more specific information about the conditions under which the creditor may take any action described in subparagraph (A).

(8) Repayment options and minimum periodic payments

The repayment options under the plan, including—

(A) if applicable, any differences in repayment options with regard to—

(i) any period during which additional extensions of credit may be obtained; and

(ii) any period during which repayment is required to be made and no additional extensions of credit may be obtained;

(B) the length of any repayment period, including any differences in the length of any repayment period with regard to the periods described in clauses (i) and (ii) of subparagraph (A); and

(C) an explanation of how the amount of any minimum monthly or periodic payment will be determined under each such option, including any differences in the determination of any such amount with regard to the periods described in clauses (i) and (ii) of subparagraph (A).

(9) Example of minimum payments and maximum repayment period

An example, based on a $10,000 outstanding balance and the interest rate (other than a rate not based on the index under the plan) which is, or was recently, in effect under such plan, showing

the minimum monthly or periodic payment, and the time it would take to repay the entire $10,000 if the consumer paid only the minimum periodic payments and obtained no additional extensions of credit.

(10) Statement concerning balloon payments

If, under any repayment option of the plan, the payment of not more than the minimum periodic payments required under such option over the length of the repayment period—

(A) would not repay any of the principal balance; or

(B) would repay less than the outstanding balance by the end of such period,

as the case may be, a statement of such fact, including an explicit statement that at the end of such repayment period a balloon payment (as defined in section 1665b(f) of this title) would result which would be required to be paid in full at that time.

(11) Negative amortization

If applicable, a statement that—

(A) any limitation in the plan on the amount of any increase in the minimum payments may result in negative amortization;

(B) negative amortization increases the outstanding principal balance of the account; and

(C) negative amortization reduces the consumer's equity in the consumer's dwelling.

(12) Limitations and minimum amount requirements on extensions of credit

(A) Number and dollar amount limitations

Any limitation contained in the plan on the number of extensions of credit and the amount of credit which may be obtained during any month or other defined time period.

(B) Minimum balance and other transaction amount requirements

Any requirement which establishes a minimum amount for—

(i) the initial extension of credit to an account under the plan;

(ii) any subsequent extension of credit to an account under the plan; or

(iii) any outstanding balance of an account under the plan.

(13) Statement regarding tax deductibility

A statement that—

(A) the consumer should consult a tax advisor regarding the deductibility of interest and charges under the plan; and

(B) in any case in which the extension of credit exceeds the fair market value (as defined under title 26) of the dwelling, the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes.

(14) Disclosure requirements established by Bureau

Any other term which the Bureau requires, in regulations, to be disclosed.

(b) Time and form of disclosures

(1) Time of disclosure

(A) In general

The disclosures required under subsection (a) of this section with respect to any open end consumer credit plan which provides for any extension of credit which is secured by the consumer's principal dwelling and the pamphlet required under subsection (e) of this section shall be provided to any consumer at the time the creditor distributes an application to establish an account under such plan to such consumer.

(B) Telephone, publications, and third party applications

In the case of telephone applications, applications contained in magazines or other publications, or applications provided by a third party, the disclosures required under subsection

(a) of this section and the pamphlet required under subsection (e) of this section shall be provided by the creditor before the end of the 3-day period beginning on the date the creditor receives a completed application from a consumer.

(2) Form

(A) In general

Except as provided in paragraph (1)(B), the disclosures required under subsection (a) of this section shall be provided on or with any application to establish an account under an open end consumer credit plan which provides for any extension of credit which is secured by the consumer's principal dwelling.

(B) Segregation of required disclosures from other information

The disclosures required under subsection (a) of this section shall be conspicuously segregated from all other terms, data, or additional information provided in connection with the application, either by grouping the disclosures separately on the application form or by providing the disclosures on a separate form, in accordance with regulations of the Bureau.

(C) Precedence of certain information

The disclosures required by paragraphs (5), (6), and (7) of subsection (a) of this section shall precede all of the other required disclosures.

(D) Special provision relating to variable interest rate information

Whether or not the disclosures required under subsection (a) of this section are provided on the application form, the variable rate information described in subsection (a)(2) of this section may be provided separately from the other information required to be disclosed.

(3) Requirement for historical table

In preparing the table required under subsection (a)(2)(G) of this section, the creditor shall consistently select one rate of interest for each year and the manner of selecting the rate from year to year shall be consistent with the plan.

(c) Third party applications

In the case of an application to open an account under any open end consumer credit plan described in subsection (a) of this section which is provided to a consumer by any person other than the creditor—

(1) such person shall provide such consumer with—

(A) the disclosures required under subsection (a) of this section with respect to such plan, in accordance with subsection (b) of this section; and

(B) the pamphlet required under subsection (e) of this section; or

(2) if such person cannot provide specific terms about the plan because specific information about the plan terms is not available, no nonrefundable fee may be imposed in connection with such application before the end of the 3-day period beginning on the date the consumer receives the disclosures required under subsection (a) of this section with respect to the application.

(d) "Principal dwelling" defined

For purposes of this section and sections 1647 and 1665b of this title, the term "principal dwelling" includes any second or vacation home of the consumer.

(e) Pamphlet

In addition to the disclosures required under subsection (a) of this section with respect to an application to open an account under any open end consumer credit plan described in such subsection, the creditor or other person providing such disclosures to the consumer shall provide—

(1) a pamphlet published by the Bureau pursuant to section 4 of the Home Equity [1] Consumer Protection Act of 1988; or

(2) any pamphlet which provides substantially similar information to the information described

in such section, as determined by the Bureau.

(Pub. L. 90–321, title I, §127A, as added Pub. L. 100–709, §2(a), Nov. 23, 1988, 102 Stat. 4725; amended Pub. L. 109–8, title XIII, §1302(a)(1), Apr. 20, 2005, 119 Stat. 208; Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

REFERENCES IN TEXT

Section 4 of the Home Equity Loan Consumer Protection Act of 1988, referred to in subsec. (e)(1), is section 4 of Pub. L. 100–709, which is set out as a note below.

AMENDMENTS

2010—Subsecs. (a)(14), (b)(2)(B), (e). Pub. L. 111–203 substituted "Bureau" for "Board" wherever appearing.

2005—Subsec. (a)(13). Pub. L. 109–8 substituted "tax deductibility" for "consultation of tax advisor" in heading, designated existing provisions as introductory provisions and subpar. (A), inserted dash, substituted "; and" for period at end of subpar. (A), and added subpar. (B).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of Title 11.

EFFECTIVE DATE

For effective date of section, see Regulations; Effective Date note below.

REGULATIONS

Pub. L. 109–8, title XIII, §1302(c), Apr. 20, 2005, 119 Stat. 209, provided that:

"(1) IN GENERAL.—The Board [of Governors of the Federal Reserve System] shall promulgate regulations implementing the amendments made by this section [amending this section and sections 1638, 1664, and 1665b of this title].

"(2) EFFECTIVE DATE.—Regulations issued under paragraph (1) shall not take effect until the later of—

"(A) 12 months after the date of enactment of this Act [Apr. 20, 2005]; or

"(B) 12 months after the date of publication of such final regulations by the Board."

REGULATIONS; EFFECTIVE DATE

Pub. L. 100–709, §7, Nov. 23, 1988, 102 Stat. 4734, provided that:

"(a) REGULATIONS.—Before the end of the 60-day period beginning on the date of the enactment of this Act [Nov. 23, 1988], the Board of Governors of the Federal Reserve System shall prescribe such regulations as may be necessary to carry out the proposes [sic] of the amendments made by this Act [enacting this section and sections 1647 and 1665b of this title, amending sections 1632 and 1637 of this title, and enacting provisions set out as notes under this section and section 1601 of this title].

"(b) EFFECTIVE DATE.—The amendments made by this Act, and the regulations prescribed pursuant to subsection (a) with respect to such amendments, shall apply to—

"(1) any agreement to open an account under an open end consumer credit plan under which extensions of credit are secured by a consumer's principal dwelling which is entered into after the end of the 5-month period beginning on the date on which the regulations prescribed under subsection (a) become final; and

"(2) any application to open such an account which is distributed by, or received by a creditor, after the end of such 5-month period.

"(c) VOLUNTARY COMPLIANCE.—Notwithstanding subsection (b), any creditor may comply with the amendments made by this Act, in accordance with the regulations prescribed by the Board, before the effective date established under such subsection."

CONSUMER EDUCATION

Pub. L. 100–709, §4, Nov. 23, 1988, 102 Stat. 4733, provided that: "The Board of Governors of the Federal Reserve System shall develop and prepare a pamphlet for distribution to consumers which contains—

"(1) a general description of open end consumer credit plans secured by the consumer's principal dwelling and the terms and conditions under which such loans are generally extended; and

"(2) a discussion of the potential advantages and disadvantages of such plans, including how to compare among home equity plans and between home equity and closed end credit plans."

[1] *So in original. Probably should be followed by "Loan".*

§1638. Transactions other than under an open end credit plan

(a) Required disclosures by creditor

For each consumer credit transaction other than under an open end credit plan, the creditor shall disclose each of the following items, to the extent applicable:

(1) The identity of the creditor required to make disclosure.

(2)(A) The "amount financed", using that term, which shall be the amount of credit of which the consumer has actual use. This amount shall be computed as follows, but the computations need not be disclosed and shall not be disclosed with the disclosures conspicuously segregated in accordance with subsection (b)(1) of this section:

(i) take the principal amount of the loan or the cash price less downpayment and trade-in;

(ii) add any charges which are not part of the finance charge or of the principal amount of the loan and which are financed by the consumer, including the cost of any items excluded from the finance charge pursuant to section 1605 of this title; and

(iii) subtract any charges which are part of the finance charge but which will be paid by the consumer before or at the time of the consummation of the transaction, or have been withheld from the proceeds of the credit.

(B) In conjunction with the disclosure of the amount financed, a creditor shall provide a statement of the consumer's right to obtain, upon a written request, a written itemization of the amount financed. The statement shall include spaces for a "yes" and "no" indication to be initialed by the consumer to indicate whether the consumer wants a written itemization of the amount financed. Upon receiving an affirmative indication, the creditor shall provide, at the time other disclosures are required to be furnished, a written itemization of the amount financed. For the purposes of this subparagraph, "itemization of the amount financed" means a disclosure of the following items, to the extent applicable:

(i) the amount that is or will be paid directly to the consumer;

(ii) the amount that is or will be credited to the consumer's account to discharge obligations owed to the creditor;

(iii) each amount that is or will be paid to third persons by the creditor on the consumer's behalf, together with an identification of or reference to the third person; and

(iv) the total amount of any charges described in the preceding subparagraph (A)(iii).

(3) The "finance charge", not itemized, using that term.

(4) The finance charge expressed as an "annual percentage rate", using that term. This shall not be required if the amount financed does not exceed $75 and the finance charge does not exceed $5, or if the amount financed exceeds $75 and the finance charge does not exceed $7.50.

(5) The sum of the amount financed and the finance charge, which shall be termed the "total of payments".

(6) The number, amount, and due dates or period of payments scheduled to repay the total of payments.

(7) In a sale of property or services in which the seller is the creditor required to disclose pursuant to section 1631(b) of this title, the "total sale price", using that term, which shall be the total of the cash price of the property or services, additional charges, and the finance charge.

(8) Descriptive explanations of the terms "amount financed", "finance charge", "annual

percentage rate", "total of payments", and "total sale price" as specified by the Bureau. The descriptive explanation of "total sale price" shall include reference to the amount of the downpayment.

(9) Where the credit is secured, a statement that a security interest has been taken in (A) the property which is purchased as part of the credit transaction, or (B) property not purchased as part of the credit transaction identified by item or type.

(10) Any dollar charge or percentage amount which may be imposed by a creditor solely on account of a late payment, other than a deferral or extension charge.

(11) A statement indicating whether or not the consumer is entitled to a rebate of any finance charge upon refinancing or prepayment in full pursuant to acceleration or otherwise, if the obligation involves a precomputed finance charge. A statement indicating whether or not a penalty will be imposed in those same circumstances if the obligation involves a finance charge computed from time to time by application of a rate to the unpaid principal balance.

(12) A statement that the consumer should refer to the appropriate contract document for any information such document provides about nonpayment, default, the right to accelerate the maturity of the debt, and prepayment rebates and penalties.

(13) In any residential mortgage transaction, a statement indicating whether a subsequent purchaser or assignee of the consumer may assume the debt obligation on its original terms and conditions.

(14) In the case of any variable interest rate residential mortgage transaction, in disclosures provided at application as prescribed by the Bureau for a variable rate transaction secured by the consumer's principal dwelling, at the option of the creditor, a statement that the periodic payments may increase or decrease substantially, and the maximum interest rate and payment for a $10,000 loan originated at a recent interest rate, as determined by the Bureau, assuming the maximum periodic increases in rates and payments under the program, or a historical example illustrating the effects of interest rate changes implemented according to the loan program.

(15) In the case of a consumer credit transaction that is secured by the principal dwelling of the consumer, in which the extension of credit may exceed the fair market value of the dwelling, a clear and conspicuous statement that—

(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

(B) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.

(16) In the case of a variable rate residential mortgage loan for which an escrow or impound account will be established for the payment of all applicable taxes, insurance, and assessments—

(A) the amount of initial monthly payment due under the loan for the payment of principal and interest, and the amount of such initial monthly payment including the monthly payment deposited in the account for the payment of all applicable taxes, insurance, and assessments; and

(B) the amount of the fully indexed monthly payment due under the loan for the payment of principal and interest, and the amount of such fully indexed monthly payment including the monthly payment deposited in the account for the payment of all applicable taxes, insurance, and assessments.

(17) In the case of a residential mortgage loan, the aggregate amount of settlement charges for all settlement services provided in connection with the loan, the amount of charges that are included in the loan and the amount of such charges the borrower must pay at closing, the approximate amount of the wholesale rate of funds in connection with the loan, and the aggregate amount of other fees or required payments in connection with the loan.

(18) In the case of a residential mortgage loan, the aggregate amount of fees paid to the mortgage originator in connection with the loan, the amount of such fees paid directly by the consumer, and any additional amount received by the originator from the creditor.

(19) In the case of a residential mortgage loan, the total amount of interest that the consumer will pay over the life of the loan as a percentage of the principal of the loan. Such amount shall be computed assuming the consumer makes each monthly payment in full and on-time, and does not make any over-payments.

(b) Form and timing of disclosures; residential mortgage transaction requirements

(1) Except as otherwise provided in this part, the disclosures required under subsection (a) of this section shall be made before the credit is extended. Except for the disclosures required by subsection (a)(1) of this section, all disclosures required under subsection (a) of this section and any disclosure provided for in subsection (b), (c), or (d) of section 1605 of this title shall be conspicuously segregated from all other terms, data, or information provided in connection with a transaction, including any computations or itemization.

(2)(A) Except as provided in subparagraph (G), in the case of any extension of credit that is secured by the dwelling of a consumer, which is also subject to the Real Estate Settlement Procedures Act [12 U.S.C. 2601 et seq.], good faith estimates of the disclosures required under subsection (a) of this section shall be made in accordance with regulations of the Bureau under section 1631(c) of this title and shall be delivered or placed in the mail not later than three business days after the creditor receives the consumer's written application, which shall be at least 7 business days before consummation of the transaction.

(B) In the case of an extension of credit that is secured by the dwelling of a consumer, the disclosures provided under subparagraph (A),[1] shall be in addition to the other disclosures required by subsection (a), and shall—

(i) state in conspicuous type size and format, the following: "You are not required to complete this agreement merely because you have received these disclosures or signed a loan application."; and

(ii) be provided in the form of final disclosures at the time of consummation of the transaction, in the form and manner prescribed by this section.

(C) In the case of an extension of credit that is secured by the dwelling of a consumer, under which the annual rate of interest is variable, or with respect to which the regular payments may otherwise be variable, in addition to the other disclosures required by subsection (a), the disclosures provided under this subsection shall do the following:

(i) Label the payment schedule as follows: "Payment Schedule: Payments Will Vary Based on Interest Rate Changes".

(ii) State in conspicuous type size and format examples of adjustments to the regular required payment on the extension of credit based on the change in the interest rates specified by the contract for such extension of credit. Among the examples required to be provided under this clause is an example that reflects the maximum payment amount of the regular required payments on the extension of credit, based on the maximum interest rate allowed under the contract, in accordance with the rules of the Bureau. Prior to issuing any rules pursuant to this clause, the Bureau shall conduct consumer testing to determine the appropriate format for providing the disclosures required under this subparagraph to consumers so that such disclosures can be easily understood, including the fact that the initial regular payments are for a specific time period that will end on a certain date, that payments will adjust afterwards potentially to a higher amount, and that there is no guarantee that the borrower will be able to refinance to a lower amount.

(D) In any case in which the disclosure statement under subparagraph (A) contains an annual percentage rate of interest that is no longer accurate, as determined under section 1606(c) of this title, the creditor shall furnish an additional, corrected statement to the borrower, not later than 3 business days before the date of consummation of the transaction.

(E) The consumer shall receive the disclosures required under this paragraph before paying any fee to the creditor or other person in connection with the consumer's application for an extension of credit that is secured by the dwelling of a consumer. If the disclosures are mailed to the consumer,

the consumer is considered to have received them 3 business days after they are mailed. A creditor or other person may impose a fee for obtaining the consumer's credit report before the consumer has received the disclosures under this paragraph, provided the fee is bona fide and reasonable in amount.

(F) WAIVER OF TIMELINESS OF DISCLOSURES.—To expedite consummation of a transaction, if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency, the consumer may waive or modify the timing requirements for disclosures under subparagraph (A), provided that—

(i) the term "bona fide personal emergency" may be further defined in regulations issued by the Bureau;

(ii) the consumer provides to the creditor a dated, written statement describing the emergency and specifically waiving or modifying those timing requirements, which statement shall bear the signature of all consumers entitled to receive the disclosures required by this paragraph; and

(iii) the creditor provides to the consumers at or before the time of such waiver or modification, the final disclosures required by paragraph (1).

(G)(i) In the case of an extension of credit relating to a plan described in section 101(53D) of title 11—

(I) the requirements of subparagraphs (A) through (E) shall not apply; and

(II) a good faith estimate of the disclosures required under subsection (a) shall be made in accordance with regulations of the Bureau under section 1631(c) of this title before such credit is extended, or shall be delivered or placed in the mail not later than 3 business days after the date on which the creditor receives the written application of the consumer for such credit, whichever is earlier.

(ii) If a disclosure statement furnished within 3 business days of the written application (as provided under clause (i)(II)) contains an annual percentage rate which is subsequently rendered inaccurate, within the meaning of section 1606(c) of this title, the creditor shall furnish another disclosure statement at the time of settlement or consummation of the transaction.

(3) In the case of a credit transaction described in paragraph (15) of subsection (a) of this section, disclosures required by that paragraph shall be made to the consumer at the time of application for such extension of credit.

(4) REPAYMENT ANALYSIS REQUIRED TO INCLUDE ESCROW PAYMENTS.—

(A) IN GENERAL.—In the case of any consumer credit transaction secured by a first mortgage or lien on the principal dwelling of the consumer, other than a consumer credit transaction under an open end credit plan or a reverse mortgage, for which an impound, trust, or other type of account has been or will be established in connection with the transaction for the payment of property taxes, hazard and flood (if any) insurance premiums, or other periodic payments or premiums with respect to the property, the information required to be provided under subsection (a) with respect to the number, amount, and due dates or period of payments scheduled to repay the total of payments shall take into account the amount of any monthly payment to such account for each such repayment in accordance with section 10(a)(2) of the Real Estate Settlement Procedures Act of 1974 [12 U.S.C. 2609(a)(2)].

(B) ASSESSMENT VALUE.—The amount taken into account under subparagraph (A) for the payment of property taxes, hazard and flood (if any) insurance premiums, or other periodic payments or premiums with respect to the property shall reflect the taxable assessed value of the real property securing the transaction after the consummation of the transaction, including the value of any improvements on the property or to be constructed on the property (whether or not such construction will be financed from the proceeds of the transaction), if known, and the replacement costs of the property for hazard insurance, in the initial year after the transaction.

(c) Timing of disclosures on unsolicited mailed or telephone purchase orders or loan requests

(1) If a creditor receives a purchase order by mail or telephone without personal solicitation, and the cash price and the total sale price and the terms of financing, including the annual percentage

rate, are set forth in the creditor's catalog or other printed material distributed to the public, then the disclosures required under subsection (a) of this section may be made at any time not later than the date the first payment is due.

(2) If a creditor receives a request for a loan by mail or telephone without personal solicitation and the terms of financing, including the annual percentage rate for representative amounts of credit, are set forth in the creditor's printed material distributed to the public, or in the contract of loan or other printed material delivered to the obligor, then the disclosures required under subsection (a) of this section may be made at any time not later than the date the first payment is due.

(d) Timing of disclosure in cases of an addition of a deferred payment price to an existing outstanding balance

If a consumer credit sale is one of a series of consumer credit sales transactions made pursuant to an agreement providing for the addition of the deferred payment price of that sale to an existing outstanding balance, and the person to whom the credit is extended has approved in writing both the annual percentage rate or rates and the method of computing the finance charge or charges, and the creditor retains no security interest in any property as to which he has received payments aggregating the amount of the sales price including any finance charges attributable thereto, then the disclosure required under subsection (a) of this section for the particular sale may be made at any time not later than the date the first payment for that sale is due. For the purposes of this subsection, in the case of items purchased on different dates, the first purchased shall be deemed first paid for, and in the case of items purchased on the same date, the lowest price shall be deemed first paid for.

(e) Terms and disclosure with respect to private education loans

(1) Disclosures required in private education loan applications and solicitations

In any application for a private education loan, or a solicitation for a private education loan without requiring an application, the private educational lender shall disclose to the borrower, clearly and conspicuously—

(A) the potential range of rates of interest applicable to the private education loan;

(B) whether the rate of interest applicable to the private education loan is fixed or variable;

(C) limitations on interest rate adjustments, both in terms of frequency and amount, or the lack thereof, if applicable;

(D) requirements for a co-borrower, including any changes in the applicable interest rates without a co-borrower;

(E) potential finance charges, late fees, penalties, and adjustments to principal, based on defaults or late payments of the borrower;

(F) fees or range of fees applicable to the private education loan;

(G) the term of the private education loan;

(H) whether interest will accrue while the student to whom the private education loan relates is enrolled at a covered educational institution;

(I) payment deferral options;

(J) general eligibility criteria for the private education loan;

(K) an example of the total cost of the private education loan over the life of the loan—

(i) which shall be calculated using the principal amount and the maximum rate of interest actually offered by the private educational lender; and

(ii) calculated both with and without capitalization of interest, if an option exists for postponing interest payments;

(L) that a covered educational institution may have school-specific education loan benefits and terms not detailed on the disclosure form;

(M) that the borrower may qualify for Federal student financial assistance through a program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) [and 42 U.S.C. 2751 et seq.], in lieu of, or in addition to, a loan from a non-Federal source;

(N) the interest rates available with respect to such Federal student financial assistance through a program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.)

[and 42 U.S.C. 2751 et seq.];

(O) that, as provided in paragraph (6)—

(i) the borrower shall have the right to accept the terms of the loan and consummate the transaction at any time within 30 calendar days (or such longer period as the private educational lender may provide) following the date on which the application for the private education loan is approved and the borrower receives the disclosure documents required under this subsection for the loan; and

(ii) except for changes based on adjustments to the index used for a loan, the rates and terms of the loan may not be changed by the private educational lender during the period described in clause (i);

(P) that, before a private education loan may be consummated, the borrower must obtain from the relevant institution of higher education the form required under paragraph (3), and complete, sign, and return such form to the private educational lender;

(Q) that the consumer may obtain additional information concerning such Federal student financial assistance from their institution of higher education, or at the website of the Department of Education; and

(R) such other information as the Bureau shall prescribe, by rule, as necessary or appropriate for consumers to make informed borrowing decisions.

(2) Disclosures at the time of private education loan approval

Contemporaneously with the approval of a private education loan application, and before the loan transaction is consummated, the private educational lender shall disclose to the borrower, clearly and conspicuously—

(A) the applicable rate of interest in effect on the date of approval;

(B) whether the rate of interest applicable to the private education loan is fixed or variable;

(C) limitations on interest rate adjustments, both in terms of frequency and amount, or the lack thereof, if applicable;

(D) the initial approved principal amount;

(E) applicable finance charges, late fees, penalties, and adjustments to principal, based on borrower defaults or late payments, including limitations on the discharge of a private education loan in bankruptcy;

(F) fees or range of fees applicable to the private education loan;

(G) the maximum term under the private education loan program;

(H) an estimate of the total amount for repayment, at both the interest rate in effect on the date of approval and at the maximum possible rate of interest offered by the private educational lender and applicable to the borrower, to the extent that such maximum rate may be determined, or if not, a good faith estimate thereof;

(I) any principal and interest payments required while the student for whom the private education loan is intended is enrolled at a covered educational institution and unpaid interest that will accrue during such enrollment;

(J) payment deferral options applicable to the borrower;

(K) whether monthly payments are graduated;

(L) that, as provided in paragraph (6)—

(i) the borrower shall have the right to accept the terms of the loan and consummate the transaction at any time within 30 calendar days (or such longer period as the private educational lender may provide) following the date on which the application for the private education loan is approved and the borrower receives the disclosure documents required under this subsection for the loan; and

(ii) except for changes based on adjustments to the index used for a loan, the rates and terms of the loan may not be changed by the private educational lender during the period described in clause (i);

(M) that the borrower—

(i) may qualify for Federal financial assistance through a program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) [and 42 U.S.C. 2751 et seq.], in lieu of, or in addition to, a loan from a non-Federal source; and

(ii) may obtain additional information concerning such assistance from their institution of higher education or the website of the Department of Education;

(N) the interest rates available with respect to such Federal financial assistance through a program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) [and 42 U.S.C. 2751 et seq.];

(O) the maximum monthly payment, calculated using the maximum rate of interest actually offered by the private educational lender and applicable to the borrower, to the extent that such maximum rate may be determined, or if not, a good faith estimate thereof; and

(P) such other information as the Bureau shall prescribe, by rule, as necessary or appropriate for consumers to make informed borrowing decisions.

(3) Self-certification of information

(A) In general

Before a private educational lender may consummate a private education loan with respect to a student attending an institution of higher education, the lender shall obtain from the applicant for the private education loan the form developed by the Secretary of Education under section 155 of the Higher Education Act of 1965 [20 U.S.C. 1019d], signed by the applicant, in written or electronic form.

(B) Rule of construction

No other provision of this subsection shall be construed to require a private educational lender to perform any additional duty under this paragraph, other than collecting the form required under subparagraph (A).

(4) Disclosures at the time of private education loan consummation

Contemporaneously with the consummation of a private education loan, a private educational lender shall make to the borrower each of the disclosures described in—

(A) paragraph (2)(A) (adjusted, as necessary, for the rate of interest in effect on the date of consummation, based on the index used for the loan);

(B) subparagraphs (B) through (K) and (M) through (P) of paragraph (2); and

(C) paragraph (7).

(5) Format of disclosures

(A) Model form

Not later than 2 years after August 14, 2008, the Bureau shall, based on consumer testing, and in consultation with the Secretary of Education, develop and issue model forms that may be used, at the option of the private educational lender, for the provision of disclosures required under this subsection.

(B) Format

Model forms developed under this paragraph shall—

(i) be comprehensible to borrowers, with a clear format and design;

(ii) provide for clear and conspicuous disclosures;

(iii) enable borrowers easily to identify material terms of the loan and to compare such terms among private education loans; and

(iv) be succinct, and use an easily readable type font.

(C) Safe harbor

Any private educational lender that elects to provide a model form developed under this subsection that accurately reflects the practices of the private educational lender shall be deemed to be in compliance with the disclosures required under this subsection.

(6) Effective period of approved rate of interest and loan terms

(A) In general

With respect to a private education loan, the borrower shall have the right to accept the terms of the loan and consummate the transaction at any time within 30 calendar days (or such longer period as the private educational lender may provide) following the date on which the application for the private education loan is approved and the borrower receives the disclosure documents required under this subsection for the loan, and the rates and terms of the loan may not be changed by the private educational lender during that period.

(B) Prohibition on changes

Except for changes based on adjustments to the index used for a loan, the rates and terms of the loan may not be changed by the private educational lender prior to the earlier of—

(i) the date of acceptance of the terms of the loan and consummation of the transaction by the borrower, as described in subparagraph (A); or

(ii) the expiration of the period described in subparagraph (A).

(7) Right to cancel

With respect to a private education loan, the borrower may cancel the loan, without penalty to the borrower, at any time within 3 business days of the date on which the loan is consummated, and the private educational lender shall disclose such right to the borrower in accordance with paragraph (4).

(8) Prohibition on disbursement

No funds may be disbursed with respect to a private education loan until the expiration of the 3-day period described in paragraph (7).

(9) Bureau regulations

In issuing regulations under this subsection, the Bureau shall prevent, to the extent possible, duplicative disclosure requirements for private educational lenders that are otherwise required to make disclosures under this subchapter, except that in any case in which the disclosure requirements of this subsection differ or conflict with the disclosure requirements of any other provision of this subchapter, the requirements of this subsection shall be controlling.

(10) Definitions

For purposes of this subsection, the terms "covered educational institution", "private educational lender", and "private education loan" have the same meanings as in section 1650 of this title.

(11) Duties of lenders participating in preferred lender arrangements

Each private educational lender that has a preferred lender arrangement with a covered educational institution shall annually, by a date determined by the Bureau, in consultation with the Secretary of Education, provide to the covered educational institution such information as the Bureau determines to include in the model form developed under paragraph (5) for each type of private education loan that the lender plans to offer to students attending the covered educational institution, or to the families of such students, for the next award year (as that term is defined in section 481 of the Higher Education Act of 1965 [20 U.S.C. 1088]).

(f) Periodic statements for residential mortgage loans

(1) In general

The creditor, assignee, or servicer with respect to any residential mortgage loan shall transmit to the obligor, for each billing cycle, a statement setting forth each of the following items, to the extent applicable, in a conspicuous and prominent manner:

(A) The amount of the principal obligation under the mortgage.

(B) The current interest rate in effect for the loan.

(C) The date on which the interest rate may next reset or adjust.

(D) The amount of any prepayment fee to be charged, if any.

(E) A description of any late payment fees.

(F) A telephone number and electronic mail address that may be used by the obligor to obtain information regarding the mortgage.

(G) The names, addresses, telephone numbers, and Internet addresses of counseling agencies or programs reasonably available to the consumer that have been certified or approved and made publicly available by the Secretary of Housing and Urban Development or a State housing finance authority (as defined in section 1441a–1 of title 12).

(H) Such other information as the Board [2] may prescribe in regulations.

(2) Development and use of standard form

The Board [2] shall develop and prescribe a standard form for the disclosure required under this subsection, taking into account that the statements required may be transmitted in writing or electronically.

(3) Exception

Paragraph (1) shall not apply to any fixed rate residential mortgage loan where the creditor, assignee, or servicer provides the obligor with a coupon book that provides the obligor with substantially the same information as required in paragraph (1).

(Pub. L. 90–321, title I, §128, May 29, 1968, 82 Stat. 155; Pub. L. 96–221, title VI, §614(a)–(c), Mar. 31, 1980, 94 Stat. 178, 179; Pub. L. 104–208, div. A, title II, §2105, Sept. 30, 1996, 110 Stat. 3009–402; Pub. L. 109–8, title XIII, §1302(b)(1), Apr. 20, 2005, 119 Stat. 208; Pub. L. 110–289, div. B, title V, §2502(a), July 30, 2008, 122 Stat. 2855; Pub. L. 110–315, title X, §1021(a), Aug. 14, 2008, 122 Stat. 3483; Pub. L. 110–343, div. A, title I, §130(a), Oct. 3, 2008, 122 Stat. 3797; Pub. L. 111–203, title X, §1100A(2), title XIV, §§1419, 1420, 1465, July 21, 2010, 124 Stat. 2107, 2154, 2155, 2185.)

REFERENCES IN TEXT

The Real Estate Settlement Procedures Act, referred to in subsec. (b)(2)(A), probably refers to the Real Estate Settlement Procedures Act of 1974, Pub. L. 93–533, Dec. 22, 1974, 88 Stat. 1724, which is classified principally to chapter 27 (§2601 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 12 and Tables.

The Higher Education Act of 1965, referred to in subsec. (e)(1)(M), (N), (2)(M)(i), (N), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219. Title IV of the Act is classified generally to subchapter IV (§1070 et seq.) of chapter 28 of Title 20, Education, and part C (§2751 et seq.) of subchapter I of chapter 34 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

AMENDMENTS

2010—Pub. L. 111–203, §1100A(2), substituted "Bureau" for "Board" wherever appearing.

Subsec. (a)(16) to (19). Pub. L. 111–203, §1419, added pars. (16) to (19).

Subsec. (b)(4). Pub. L. 111–203, §1465, added par. (4).

Subsec. (f). Pub. L. 111–203, §1420, added subsec. (f).

2008—Subsec. (b)(2). Pub. L. 110–289, §2502(a)(1), designated existing provisions as subpar. (A).

Subsec. (b)(2)(A). Pub. L. 110–343, §130(a)(1), substituted "Except as provided in subparagraph (G), in the case" for "In the case".

Pub. L. 110–289, §2502(a)(5), (6), struck out ", whichever is earlier" after "consummation of the transaction" and "If the disclosure statement furnished within three days of the written application contains an annual percentage rate which is subsequently rendered inaccurate within the meaning of section 1606(c) of this title, the creditor shall furnish another statement at the time of settlement or consummation." at the end.

Pub. L. 110–289, §2502(a)(4), which directed insertion of ", which shall be at least 7 business days before consummation of the transaction" after "written application", was executed by making the insertion after "written application" the first place appearing.

Pub. L. 110–289, §2502(a)(2), (3), substituted "any extension of credit that is secured by the dwelling of a consumer" for "a residential mortgage transaction, as defined in section 1602(w) of this title" and "and" for "before the credit is extended, or".

Subsec. (b)(2)(B) to (F). Pub. L. 110–289, §2502(a)(6), added subpars. (B) to (F).

Subsec. (b)(2)(G). Pub. L. 110–343, §130(a)(2), amended subpar. (G) generally. Prior to amendment, subpar. (G) read as follows: "The requirements of subparagraphs (B), (C), (D) and (E) shall not apply to extensions of credit relating to plans described in section 101(53D) of title 11."

Pub. L. 110–289, §2502(a)(6), added subpar. (G).

Subsec. (e). Pub. L. 110–315 added subsec. (e).

2005—Subsec. (a)(15). Pub. L. 109–8, §1302(b)(1)(A), added par. (15).

Subsec. (b)(3). Pub. L. 109–8, §1302(b)(1)(B), added par. (3).

1996—Subsec. (a)(14). Pub. L. 104–208 added par. (14).

1980—Subsec. (a). Pub. L. 96–221, §614(a), substituted provisions setting forth required disclosures by the creditor for transactions other than under an open end credit plan, for provisions setting forth required disclosures by the creditor for sales not under open end credit plans.

Subsec. (b). Pub. L. 96–221, §614(b), designated existing provisions as par. (1), inserted provisions relating to the conspicuous segregation of required disclosures, and struck out provisions authorizing the required information to be disclosed in the signed evidence of indebtedness, and added par. (2).

Subsec. (c). Pub. L. 96–221, §614(c), designated existing provisions as par. (1), substituted "total sale" for "deferred payment", and added par. (2).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 1100A(2) of Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

Amendment by sections 1419, 1420, and 1465 of Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. A, title I, §130(b), Oct. 3, 2008, 122 Stat. 3797, provided that: "The amendments made by subsection (a) [amending this section] shall take effect as if included in the amendments made by section 2502 of the Mortgage Disclosure Improvement Act of 2008 (Public Law 110–289) [amending this section and section 1640 of this title]."

Pub. L. 110–315, title X, §1003, Aug. 14, 2008, 122 Stat. 3478, provided that:

"(a) IN GENERAL.—Except as provided in subsection (b) and as otherwise provided in this title [see Short Title of 2008 Amendment note set out under section 1601 of this title], this title and the amendments made by this title shall become effective on the date of enactment of this Act [Aug. 14, 2008].

"(b) EFFECT NOTWITHSTANDING REGULATIONS.—Paragraphs (1), (2), (3), (4), (6), (7), and (8) of section 128(e) [15 U.S.C. 1638(e)] and section 140(c) of the Truth in Lending Act [15 U.S.C. 1650(c)], as added by this title, shall become effective on the earlier of the date on which regulations issued under section 1002 [set out as a note below] become effective [Such regulations were issued effective Sept. 14, 2009, with compliance optional until Feb. 14, 2010. See 74 F.R. 41194.] or 18 months after the date of enactment of this Act [Aug. 14, 2008]."

Pub. L. 110–289, div. B, title V, §2502(c), July 30, 2008, 122 Stat. 2857, provided that:

"(1) GENERAL DISCLOSURES.—Except as provided in paragraph (2), the amendments made by subsection (a) [amending this section] shall become effective 12 months after the date of enactment of this Act [July 30, 2008].

"(2) VARIABLE INTEREST RATES.—Subparagraph (C) of section 128(b)(2) of the Truth in Lending Act (15 U.S.C. 1638(b)(2)(C)), as added by subsection (a) of this section, shall become effective on the earlier of—

"(A) the compliance date established by the Board for such purpose, by regulation; or

"(B) 30 months after the date of enactment of this Act [July 30, 2008]."

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of Title 11.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to

such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

REGULATIONS

Pub. L. 110–315, title X, §1002, Aug. 14, 2008, 122 Stat. 3478, provided that: "Not later than 365 days after the date of enactment of this Act [Aug. 14, 2008], the Board of Governors of the Federal Reserve System shall issue regulations in final form to implement paragraphs (1), (2), (3), (4), (6), (7), and (8) of section 128(e) [15 U.S.C. 1638(e)] and section 140(c) of the Truth in Lending Act [15 U.S.C. 1650(c)], as added by this title, which regulations shall become effective not later than 6 months after their date of issuance."

[1] So in original. The comma probably should not appear.

[2] So in original. Probably should be "Bureau".

§1638a. Reset of hybrid adjustable rate mortgages

(a) Hybrid adjustable rate mortgages defined

For purposes of this section, the term "hybrid adjustable rate mortgage" means a consumer credit transaction secured by the consumer's principal residence with a fixed interest rate for an introductory period that adjusts or resets to a variable interest rate after such period.

(b) Notice of reset and alternatives

During the 1-month period that ends 6 months before the date on which the interest rate in effect during the introductory period of a hybrid adjustable rate mortgage adjusts or resets to a variable interest rate or, in the case of such an adjustment or resetting that occurs within the first 6 months after consummation of such loan, at consummation, the creditor or servicer of such loan shall provide a written notice, separate and distinct from all other correspondence to the consumer, that includes the following:

(1) Any index or formula used in making adjustments to or resetting the interest rate and a source of information about the index or formula.

(2) An explanation of how the new interest rate and payment would be determined, including an explanation of how the index was adjusted, such as by the addition of a margin.

(3) A good faith estimate, based on accepted industry standards, of the creditor or servicer of the amount of the monthly payment that will apply after the date of the adjustment or reset, and the assumptions on which this estimate is based.

(4) A list of alternatives consumers may pursue before the date of adjustment or reset, and descriptions of the actions consumers must take to pursue these alternatives, including—

(A) refinancing;

(B) renegotiation of loan terms;

(C) payment forbearances; and

(D) pre-foreclosure sales.

(5) The names, addresses, telephone numbers, and Internet addresses of counseling agencies or programs reasonably available to the consumer that have been certified or approved and made publicly available by the Secretary of Housing and Urban Development or a State housing finance authority (as defined in section 1441a–1 of title 12).

(6) The address, telephone number, and Internet address for the State housing finance authority (as so defined) for the State in which the consumer resides.

(c) Savings clause

The Board may require the notice in paragraph (b) or other notice consistent with this chapter for adjustable rate mortgage loans that are not hybrid adjustable rate mortgage loans.

(Pub. L. 90–321, title I, §128A, as added Pub. L. 111–203, title XIV, §1418(a), July 21, 2010, 124 Stat. 2153.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original "this Act" meaning Pub. L. 90–321, May 29, 1968, 82 Stat. 146, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

EFFECTIVE DATE

Section effective on the date on which final regulations implementing such section take effect, or on the date that is 18 months after the designated transfer date, if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1601 of this title.

§1639. Requirements for certain mortgages

(a) Disclosures

(1) Specific disclosures

In addition to other disclosures required under this subchapter, for each mortgage referred to in section 1602(aa) [1] of this title, the creditor shall provide the following disclosures in conspicuous type size:

(A) "You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application.".

(B) "If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan.".

(2) Annual percentage rate

In addition to the disclosures required under paragraph (1), the creditor shall disclose—

(A) in the case of a credit transaction with a fixed rate of interest, the annual percentage rate and the amount of the regular monthly payment; or

(B) in the case of any other credit transaction, the annual percentage rate of the loan, the amount of the regular monthly payment, a statement that the interest rate and monthly payment may increase, and the amount of the maximum monthly payment, based on the maximum interest rate allowed pursuant to section 3806 of title 12.

(b) Time of disclosures

(1) In general

The disclosures required by this section shall be given not less than 3 business days prior to consummation of the transaction.

(2) New disclosures required

(A) In general

After providing the disclosures required by this section, a creditor may not change the terms of the extension of credit if such changes make the disclosures inaccurate, unless new disclosures are provided that meet the requirements of this section.

(B) Telephone disclosure

A creditor may provide new disclosures pursuant to subparagraph (A) by telephone, if—

(i) the change is initiated by the consumer; and

(ii) at the consummation of the transaction under which the credit is extended—

(I) the creditor provides to the consumer the new disclosures, in writing; and

(II) the creditor and consumer certify in writing that the new disclosures were provided by telephone, by not later than 3 days prior to the date of consummation of the transaction.

(3) Modifications

The Bureau may, if it finds that such action is necessary to permit homeowners to meet bona fide personal financial emergencies, prescribe regulations authorizing the modification or waiver of rights created under this subsection, to the extent and under the circumstances set forth in those regulations.

(c) No prepayment penalty

(1) In general [2]

(A) Limitation on terms

A mortgage referred to in section 1602(aa) [1] of this title may not contain terms under which a consumer must pay a prepayment penalty for paying all or part of the principal before the date on which the principal is due.

(B) Construction

For purposes of this subsection, any method of computing a refund of unearned scheduled interest is a prepayment penalty if it is less favorable to the consumer than the actuarial method (as that term is defined in section 1615(d) of this title).

(d) Limitations after default

A mortgage referred to in section 1602(aa) [1] of this title may not provide for an interest rate applicable after default that is higher than the interest rate that applies before default. If the date of maturity of a mortgage referred to in subsection [3] 1602(aa) [1] of this title is accelerated due to default and the consumer is entitled to a rebate of interest, that rebate shall be computed by any method that is not less favorable than the actuarial method (as that term is defined in section 1615(d) of this title).

(e) No balloon payments

No high-cost mortgage may contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments. This subsection shall not apply when the payment schedule is adjusted to the seasonal or irregular income of the consumer.

(f) No negative amortization

A mortgage referred to in section 1602(aa) [1] of this title may not include terms under which the outstanding principal balance will increase at any time over the course of the loan because the regular periodic payments do not cover the full amount of interest due.

(g) No prepaid payments

A mortgage referred to in section 1602(aa) [1] of this title may not include terms under which more than 2 periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the consumer.

(h) Prohibition on extending credit without regard to payment ability of consumer

A creditor shall not engage in a pattern or practice of extending credit to consumers under mortgages referred to in section 1602(aa) [1] of this title based on the consumers' collateral without regard to the consumers' repayment ability, including the consumers' current and expected income, current obligations, and employment.

(i) Requirements for payments under home improvement contracts

A creditor shall not make a payment to a contractor under a home improvement contract from amounts extended as credit under a mortgage referred to in section 1602(aa) [1] of this title, other than—

(1) in the form of an instrument that is payable to the consumer or jointly to the consumer and the contractor; or

(2) at the election of the consumer, by a third party escrow agent in accordance with terms established in a written agreement signed by the consumer, the creditor, and the contractor before

the date of payment.

(j) Recommended default

No creditor shall recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a high-cost mortgage that refinances all or any portion of such existing loan or debt.

(k) Late fees

(1) In general

No creditor may impose a late payment charge or fee in connection with a high-cost mortgage—

(A) in an amount in excess of 4 percent of the amount of the payment past due;

(B) unless the loan documents specifically authorize the charge or fee;

(C) before the end of the 15-day period beginning on the date the payment is due, or in the case of a loan on which interest on each installment is paid in advance, before the end of the 30-day period beginning on the date the payment is due; or

(D) more than once with respect to a single late payment.

(2) Coordination with subsequent late fees

If a payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period, and the only delinquency or insufficiency of payment is attributable to any late fee or delinquency charge assessed on any earlier payment, no late fee or delinquency charge may be imposed on such payment.

(3) Failure to make installment payment

If, in the case of a loan agreement the terms of which provide that any payment shall first be applied to any past due principal balance, the consumer fails to make an installment payment and the consumer subsequently resumes making installment payments but has not paid all past due installments, the creditor may impose a separate late payment charge or fee for any principal due (without deduction due to late fees or related fees) until the default is cured.

(l) Acceleration of debt

No high-cost mortgage may contain a provision which permits the creditor to accelerate the indebtedness, except when repayment of the loan has been accelerated by default in payment, or pursuant to a due-on-sale provision, or pursuant to a material violation of some other provision of the loan document unrelated to payment schedule.

(m) Restriction on financing points and fees

No creditor may directly or indirectly finance, in connection with any high-cost mortgage, any of the following:

(1) Any prepayment fee or penalty payable by the consumer in a refinancing transaction if the creditor or an affiliate of the creditor is the noteholder of the note being refinanced.

(2) Any points or fees.

(n) Consequence of failure to comply

Any mortgage that contains a provision prohibited by this section shall be deemed a failure to deliver the material disclosures required under this subchapter, for the purpose of section 1635 of this title.

(o) "Affiliate" defined

For purposes of this section, the term "affiliate" has the same meaning as in section 1841(k) of title 12.

(p) Discretionary regulatory authority of Bureau

(1) Exemptions

The Bureau may, by regulation or order, exempt specific mortgage products or categories of

mortgages from any or all of the prohibitions specified in subsections (c) through (i) of this section, if the Bureau finds that the exemption—

(A) is in the interest of the borrowing public; and

(B) will apply only to products that maintain and strengthen home ownership and equity protection.

(2) Prohibitions

The Bureau, by regulation or order, shall prohibit acts or practices in connection with—

(A) mortgage loans that the Bureau finds to be unfair, deceptive, or designed to evade the provisions of this section; and

(B) refinancing of mortgage loans that the Bureau finds to be associated with abusive lending practices, or that are otherwise not in the interest of the borrower.

(q) Civil penalties in Federal Trade Commission enforcement actions

For purposes of enforcement by the Federal Trade Commission, any violation of a regulation issued by the Bureau pursuant to subsection (l)(2) shall be treated as a violation of a rule promulgated under section 57a of this title regarding unfair or deceptive acts or practices.

(r) Prohibitions on evasions, structuring of transactions, and reciprocal arrangements

A creditor may not take any action in connection with a high-cost mortgage—

(1) to structure a loan transaction as an open-end credit plan or another form of loan for the purpose and with the intent of evading the provisions of this subchapter; or

(2) to divide any loan transaction into separate parts for the purpose and with the intent of evading provisions of this subchapter.

(s) Modification and deferral fees prohibited

A creditor, successor in interest, assignee, or any agent of any of the above, may not charge a consumer any fee to modify, renew, extend, or amend a high-cost mortgage, or to defer any payment due under the terms of such mortgage.

(t) Payoff statement

(1) Fees

(A) In general

Except as provided in subparagraph (B), no creditor or servicer may charge a fee for informing or transmitting to any person the balance due to pay off the outstanding balance on a high-cost mortgage.

(B) Transaction fee

When payoff information referred to in subparagraph (A) is provided by facsimile transmission or by a courier service, a creditor or servicer may charge a processing fee to cover the cost of such transmission or service in an amount not to exceed an amount that is comparable to fees imposed for similar services provided in connection with consumer credit transactions that are secured by the consumer's principal dwelling and are not high-cost mortgages.

(C) Fee disclosure

Prior to charging a transaction fee as provided in subparagraph (B), a creditor or servicer shall disclose that payoff balances are available for free pursuant to subparagraph (A).

(D) Multiple requests

If a creditor or servicer has provided payoff information referred to in subparagraph (A) without charge, other than the transaction fee allowed by subparagraph (B), on 4 occasions during a calendar year, the creditor or servicer may thereafter charge a reasonable fee for providing such information during the remainder of the calendar year.

(2) Prompt delivery

Payoff balances shall be provided within 5 business days after receiving a request by a consumer or a person authorized by the consumer to obtain such information.

(u) Pre-loan counseling

(1) In general

A creditor may not extend credit to a consumer under a high-cost mortgage without first receiving certification from a counselor that is approved by the Secretary of Housing and Urban Development, or at the discretion of the Secretary, a State housing finance authority, that the consumer has received counseling on the advisability of the mortgage. Such counselor shall not be employed by the creditor or an affiliate of the creditor or be affiliated with the creditor.

(2) Disclosures required prior to counseling

No counselor may certify that a consumer has received counseling on the advisability of the high-cost mortgage unless the counselor can verify that the consumer has received each statement required (in connection with such loan) by this section or the Real Estate Settlement Procedures Act of 1974 [12 U.S.C. 2601 et seq.] with respect to the transaction.

(3) Regulations

The Board [4] may prescribe such regulations as the Board determines to be appropriate to carry out the requirements of paragraph (1).

(v) Corrections and unintentional violations

A creditor or assignee in a high-cost mortgage who, when acting in good faith, fails to comply with any requirement under this section will not be deemed to have violated such requirement if the creditor or assignee establishes that either—

(1) within 30 days of the loan closing and prior to the institution of any action, the consumer is notified of or discovers the violation, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the consumer—

(A) make the loan satisfy the requirements of this part; or

(B) in the case of a high-cost mortgage, change the terms of the loan in a manner beneficial to the consumer so that the loan will no longer be a high-cost mortgage; or

(2) within 60 days of the creditor's discovery or receipt of notification of an unintentional violation or bona fide error and prior to the institution of any action, the consumer is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the consumer—

(A) make the loan satisfy the requirements of this part; or

(B) in the case of a high-cost mortgage, change the terms of the loan in a manner beneficial so that the loan will no longer be a high-cost mortgage.

(Pub. L. 90–321, title I, §129, as added Pub. L. 103–325, title I, §152(d), Sept. 23, 1994, 108 Stat. 2191; amended Pub. L. 111–8, div. D, title VI, §626(c), Mar. 11, 2009, 123 Stat. 679; Pub. L. 111–203, title X, §1100A(2), (9), title XIV, §§1432, 1433, July 21, 2010, 124 Stat. 2107, 2109, 2160.)

REFERENCES IN TEXT

Section 1602(aa) of this title, referred to in text, was redesignated section 1602(bb) of this title by Pub. L. 111–203, title X, §1100A(1)(A), July 21, 2010, 124 Stat. 2107.

The Real Estate Settlement Procedures Act of 1974, referred to in subsec. (u)(2), is Pub. L. 93–533, Dec. 22, 1974, 88 Stat. 1724, which is classified principally to chapter 27 (§2601 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 12 and Tables.

PRIOR PROVISIONS

A prior section 1639, Pub. L. 90–321, title I, §129, May 29, 1968, 82 Stat. 156, related to consumer loans not under open end credit plans, prior to repeal by Pub. L. 96–221, title VI, §614(d)(1), Mar. 31, 1980, 94 Stat.

180. Repeal effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as an Effective Date of 1980 Amendment note under section 1602 of this title.

AMENDMENTS

2010—Pub. L. 111–203, §1100A(2), substituted "Bureau" for "Board" wherever appearing.

Subsec. (c)(2). Pub. L. 111–203, §1432(a), struck out par. (2) which related to exception to prepayment penalty prohibition.

Subsec. (e). Pub. L. 111–203, §1432(b), amended subsec. (e) generally. Prior to amendment, text read as follows: "A mortgage referred to in section 1602(aa) of this title having a term of less than 5 years may not include terms under which the aggregate amount of the regular periodic payments would not fully amortize the outstanding principal balance."

Subsecs. (j) to (l). Pub. L. 111–203, §1433(a)(2), added subsecs. (j) to (l). Former subsecs. (j) to (l) redesignated (n) to (p), respectively.

Subsec. (m). Pub. L. 111–203, §1433(a)(2), added subsec. (m). Former subsec. (m) redesignated (q).

Pub. L. 111–203, §1100A(9), added subsec. (m) and struck out former subsec. (m). Prior to amendment, text read as follows: "For purposes of enforcement by the Federal Trade Commission, any violation of a regulation issued by the Federal Reserve Board pursuant to subsection (l)(2) of this section shall be treated as a violation of a rule promulgated under section 57a of this title regarding unfair or deceptive acts or practices."

Subsecs. (n) to (q). Pub. L. 111–203, §1433(a)(1), redesignated former subsecs. (j) to (m) as (n) to (q), respectively.

Subsecs. (r) to (v). Pub. L. 111–203, §1433(b)–(f), added subsecs. (r) to (v).

2009—Subsec. (m). Pub. L. 111–8 added subsec. (m).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 1100A(2), (9) of Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

Amendment by sections 1432 and 1433 of Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of this title.

[1] See References in Text note below.

[2] So in original. There is no par. (2).

[3] So in original. Probably should be "section".

[4] So in original. Probably should be "Bureau".

§1639a. Duty of servicers of residential mortgages

(a) In general

Notwithstanding any other provision of law, whenever a servicer of residential mortgages agrees to enter into a qualified loss mitigation plan with respect to 1 or more residential mortgages originated before May 20, 2009, including mortgages held in a securitization or other investment vehicle—

(1) to the extent that the servicer owes a duty to investors or other parties to maximize the net present value of such mortgages, the duty shall be construed to apply to all such investors and parties, and not to any individual party or group of parties; and

(2) the servicer shall be deemed to have satisfied the duty set forth in paragraph (1) if, before December 31, 2012, the servicer implements a qualified loss mitigation plan that meets the

following criteria:

(A) Default on the payment of such mortgage has occurred, is imminent, or is reasonably foreseeable, as such terms are defined by guidelines issued by the Secretary of the Treasury or his designee under the Emergency Economic Stabilization Act of 2008 [12 U.S.C. 5201 et seq.].

(B) The mortgagor occupies the property securing the mortgage as his or her principal residence.

(C) The servicer reasonably determined, consistent with the guidelines issued by the Secretary of the Treasury or his designee, that the application of such qualified loss mitigation plan to a mortgage or class of mortgages will likely provide an anticipated recovery on the outstanding principal mortgage debt that will exceed the anticipated recovery through foreclosures.

(b) No liability

A servicer that is deemed to be acting in the best interests of all investors or other parties under this section shall not be liable to any party who is owed a duty under subsection (a)(1), and shall not be subject to any injunction, stay, or other equitable relief to such party, based solely upon the implementation by the servicer of a qualified loss mitigation plan.

(c) Standard industry practice

The qualified loss mitigation plan guidelines issued by the Secretary of the Treasury under the Emergency Economic Stabilization Act of 2008 [12 U.S.C. 5201 et seq.] shall constitute standard industry practice for purposes of all Federal and State laws.

(d) Scope of safe harbor

Any person, including a trustee, issuer, and loan originator, shall not be liable for monetary damages or be subject to an injunction, stay, or other equitable relief, based solely upon the cooperation of such person with a servicer when such cooperation is necessary for the servicer to implement a qualified loss mitigation plan that meets the requirements of subsection (a).

(e) Reporting

Each servicer that engages in qualified loss mitigation plans under this section shall regularly report to the Secretary of the Treasury the extent, scope, and results of the servicer's modification activities. The Secretary of the Treasury shall prescribe regulations or guidance specifying the form, content, and timing of such reports.

(f) Definitions

As used in this section—

(1) the term "qualified loss mitigation plan" means—

(A) a residential loan modification, workout, or other loss mitigation plan, including to the extent that the Secretary of the Treasury determines appropriate, a loan sale, real property disposition, trial modification, pre-foreclosure sale, and deed in lieu of foreclosure, that is described or authorized in guidelines issued by the Secretary of the Treasury or his designee under the Emergency Economic Stabilization Act of 2008 [12 U.S.C. 5201 et seq.]; and

(B) a refinancing of a mortgage under the Hope for Homeowners program;

(2) the term "servicer" means the person responsible for the servicing for others of residential mortgage loans (including of a pool of residential mortgage loans); and

(3) the term "securitization vehicle" means a trust, special purpose entity, or other legal structure that is used to facilitate the issuing of securities, participation certificates, or similar instruments backed by or referring to a pool of assets that includes residential mortgages (or instruments that are related to residential mortgages such as credit-linked notes).

(g) Rule of construction

No provision of subsection (b) or (d) shall be construed as affecting the liability of any servicer or person as described in subsection (d) for actual fraud in the origination or servicing of a loan or in the implementation of a qualified loss mitigation plan, or for the violation of a State or Federal law,

including laws regulating the origination of mortgage loans, commonly referred to as predatory lending laws.

(Pub. L. 90–321, title I, §129A, as added Pub. L. 110–289, div. A, title IV, §1403, July 30, 2008, 122 Stat. 2809; renumbered §129 and amended Pub. L. 111–22, div. A, title II, §201(b), May 20, 2009, 123 Stat. 1638; renumbered §129A, Pub. L. 111–203, title XIV, §1402(a)(1), July 21, 2010, 124 Stat. 2138.)

REFERENCES IN TEXT

The Emergency Economic Stabilization Act of 2008, referred to in subsecs. (a)(2)(A), (c), (f)(1)(A), is div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, which is classified principally to chapter 52 (§5201 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 5201 of Title 12 and Tables.

AMENDMENTS

2009—Pub. L. 111–22 amended section generally. Prior to amendment, section related to fiduciary duty of servicers of pooled residential mortgages without providing for date limitation for implementing modifications or workout plans.

FINDINGS

Pub. L. 111–22, div. A, title II, §201(a), May 20, 2009, 123 Stat. 1638, provided that: "Congress finds the following:

"(1) Increasing numbers of mortgage foreclosures are not only depriving many Americans of their homes, but are also destabilizing property values and negatively affecting State and local economies as well as the national economy.

"(2) In order to reduce the number of foreclosures and to stabilize property values, local economies, and the national economy, servicers must be given—

"(A) authorization to—

"(i) modify mortgage loans and engage in other loss mitigation activities consistent with applicable guidelines issued by the Secretary of the Treasury or his designee under the Emergency Economic Stabilization Act of 2008 [12 U.S.C. 5201 et seq.]; and

"(ii) refinance mortgage loans under the Hope for Homeowners program; and

"(B) a safe harbor to enable such servicers to exercise these authorities."

§1639b. Residential mortgage loan origination

(a) Finding and purpose

(1) Finding

The Congress finds that economic stabilization would be enhanced by the protection, limitation, and regulation of the terms of residential mortgage credit and the practices related to such credit, while ensuring that responsible, affordable mortgage credit remains available to consumers.

(2) Purpose

It is the purpose of this section and section 1639c of this title to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive or abusive.

(b) Duty of care

(1) Standard

Subject to regulations prescribed under this subsection, each mortgage originator shall, in addition to the duties imposed by otherwise applicable provisions of State or Federal law—

(A) be qualified and, when required, registered and licensed as a mortgage originator in accordance with applicable State or Federal law, including the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 [12 U.S.C. 5101 et seq.]; and

(B) include on all loan documents any unique identifier of the mortgage originator provided by the Nationwide Mortgage Licensing System and Registry.

(2) Compliance procedures required

The Bureau shall prescribe regulations requiring depository institutions to establish and maintain procedures reasonably designed to assure and monitor the compliance of such depository institutions, the subsidiaries of such institutions, and the employees of such institutions or subsidiaries with the requirements of this section and the registration procedures established under section 1507 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 [12 U.S.C. 5106].

(c) Prohibition on steering incentives

(1) In general

For any residential mortgage loan, no mortgage originator shall receive from any person and no person shall pay to a mortgage originator, directly or indirectly, compensation that varies based on the terms of the loan (other than the amount of the principal).

(2) Restructuring of financing origination fee

(A) In general

For any mortgage loan, a mortgage originator may not receive from any person other than the consumer and no person, other than the consumer, who knows or has reason to know that a consumer has directly compensated or will directly compensate a mortgage originator may pay a mortgage originator any origination fee or charge except bona fide third party charges not retained by the creditor, mortgage originator, or an affiliate of the creditor or mortgage originator.

(B) Exception

Notwithstanding subparagraph (A), a mortgage originator may receive from a person other than the consumer an origination fee or charge, and a person other than the consumer may pay a mortgage originator an origination fee or charge, if—

(i) the mortgage originator does not receive any compensation directly from the consumer; and

(ii) the consumer does not make an upfront payment of discount points, origination points, or fees, however denominated (other than bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or originator), except that the Bureau may, by rule, waive or provide exemptions to this clause if the Bureau determines that such waiver or exemption is in the interest of consumers and in the public interest.

(3) Regulations

The Bureau shall prescribe regulations to prohibit—

(A) mortgage originators from steering any consumer to a residential mortgage loan that—

(i) the consumer lacks a reasonable ability to repay (in accordance with regulations prescribed under section 1639c(a) of this title); or

(ii) has predatory characteristics or effects (such as equity stripping, excessive fees, or abusive terms);

(B) mortgage originators from steering any consumer from a residential mortgage loan for which the consumer is qualified that is a qualified mortgage (as defined in section 1639c(b)(2) of this title) to a residential mortgage loan that is not a qualified mortgage;

(C) abusive or unfair lending practices that promote disparities among consumers of equal credit worthiness but of different race, ethnicity, gender, or age; and

(D) mortgage originators from—

(i) mischaracterizing the credit history of a consumer or the residential mortgage loans available to a consumer;

(ii) mischaracterizing or suborning the mischaracterization of the appraised value of the property securing the extension of credit; or

(iii) if unable to suggest, offer, or recommend to a consumer a loan that is not more

expensive than a loan for which the consumer qualifies, discouraging a consumer from seeking a residential mortgage loan secured by a consumer's principal dwelling from another mortgage originator.

(4) Rules of construction

No provision of this subsection shall be construed as—

(A) permitting any yield spread premium or other similar compensation that would, for any residential mortgage loan, permit the total amount of direct and indirect compensation from all sources permitted to a mortgage originator to vary based on the terms of the loan (other than the amount of the principal);

(B) limiting or affecting the amount of compensation received by a creditor upon the sale of a consummated loan to a subsequent purchaser;

(C) restricting a consumer's ability to finance, at the option of the consumer, including through principal or rate, any origination fees or costs permitted under this subsection, or the mortgage originator's right to receive such fees or costs (including compensation) from any person, subject to paragraph (2)(B), so long as such fees or costs do not vary based on the terms of the loan (other than the amount of the principal) or the consumer's decision about whether to finance such fees or costs; or

(D) prohibiting incentive payments to a mortgage originator based on the number of residential mortgage loans originated within a specified period of time.

(d) Liability for violations

(1) In general

For purposes of providing a cause of action for any failure by a mortgage originator, other than a creditor, to comply with any requirement imposed under this section and any regulation prescribed under this section, section 1640 of this title shall be applied with respect to any such failure by substituting "mortgage originator" for "creditor" each place such term appears in each such subsection.[1]

(2) Maximum

The maximum amount of any liability of a mortgage originator under paragraph (1) to a consumer for any violation of this section shall not exceed the greater of actual damages or an amount equal to 3 times the total amount of direct and indirect compensation or gain accruing to the mortgage originator in connection with the residential mortgage loan involved in the violation, plus the costs to the consumer of the action, including a reasonable attorney's fee.

(e) Discretionary regulatory authority

(1) In general

The Bureau shall, by regulations, prohibit or condition terms, acts or practices relating to residential mortgage loans that the Bureau finds to be abusive, unfair, deceptive, predatory, necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of this section and section 1639c of this title, necessary or proper to effectuate the purposes of this section and section 1639c of this title, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections, or are not in the interest of the borrower.

(2) Application

The regulations prescribed under paragraph (1) shall be applicable to all residential mortgage loans and shall be applied in the same manner as regulations prescribed under section 1604 of this title.

(f) Timeshare plans

This section and any regulations promulgated thereunder do not apply to an extension of credit relating to a plan described in section 101(53D) of title 11.

(Pub. L. 90–321, title I, §129B, as added and amended Pub. L. 111–203, title X, §1100A(2), title XIV, §§1402(a)(2), 1403–1405(a), July 21, 2010, 124 Stat. 2107, 2139–2141.)

REFERENCES IN TEXT

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008, referred to in subsec. (b)(1)(A), is title V of div. A of Pub. L. 110–289, July 30, 2008, 122 Stat. 2810, also known as the S.A.F.E. Mortgage Licensing Act of 2008, which is classified generally to chapter 51 (§5101 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 5101 of Title 12 and Tables.

AMENDMENTS

2010—Pub. L. 111–203, §1100A(2), substituted "Bureau" for "Board" wherever appearing.
Subsec. (c). Pub. L. 111–203, §1403, added subsec. (c).
Subsec. (d). Pub. L. 111–203, §1404, added subsec. (d).
Subsecs. (e), (f). Pub. L. 111–203, §1405(a), added subsecs. (e) and (f).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 1100A(2) of Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

Amendment by sections 1403–1405(a) of Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of this title.

EFFECTIVE DATE

Section effective on the date on which final regulations implementing such section take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1601 of this title.

RULE OF CONSTRUCTION

Pub. L. 111–203, title XIV, §1415, July 21, 2010, 124 Stat. 2153, provided that: "Except as otherwise expressly provided in section 129B or 129C of the Truth in Lending Act [15 U.S.C. 1639b, 1639c] (as added by this title), no provision of such section 129B or 129C shall be construed as superseding, repealing, or affecting any duty, right, obligation, privilege, or remedy of any person under any other provision of the Truth in Lending Act [15 U.S.C. 1601 et seq.] or any other provision of Federal or State law."

[For definition of "State" as used in section 1415 of Pub. L. 111–203, set out above, see section 5301 of Title 12, Banks and Banking.]

[1] So in original. Probably should be "in such section."

§1639c. Minimum standards for residential mortgage loans

(a) Ability to repay

(1) In general

In accordance with regulations prescribed by the Bureau, no creditor may make a residential mortgage loan unless the creditor makes a reasonable and good faith determination based on verified and documented information that, at the time the loan is consummated, the consumer has a reasonable ability to repay the loan, according to its terms, and all applicable taxes, insurance (including mortgage guarantee insurance), and assessments.

(2) Multiple loans

If the creditor knows, or has reason to know, that 1 or more residential mortgage loans secured by the same dwelling will be made to the same consumer, the creditor shall make a reasonable and good faith determination, based on verified and documented information, that the consumer has a

reasonable ability to repay the combined payments of all loans on the same dwelling according to the terms of those loans and all applicable taxes, insurance (including mortgage guarantee insurance), and assessments.

(3) Basis for determination

A determination under this subsection of a consumer's ability to repay a residential mortgage loan shall include consideration of the consumer's credit history, current income, expected income the consumer is reasonably assured of receiving, current obligations, debt-to-income ratio or the residual income the consumer will have after paying non-mortgage debt and mortgage-related obligations, employment status, and other financial resources other than the consumer's equity in the dwelling or real property that secures repayment of the loan. A creditor shall determine the ability of the consumer to repay using a payment schedule that fully amortizes the loan over the term of the loan.

(4) Income verification

A creditor making a residential mortgage loan shall verify amounts of income or assets that such creditor relies on to determine repayment ability, including expected income or assets, by reviewing the consumer's Internal Revenue Service Form W–2, tax returns, payroll receipts, financial institution records, or other third-party documents that provide reasonably reliable evidence of the consumer's income or assets. In order to safeguard against fraudulent reporting, any consideration of a consumer's income history in making a determination under this subsection shall include the verification of such income by the use of—

(A) Internal Revenue Service transcripts of tax returns; or

(B) a method that quickly and effectively verifies income documentation by a third party subject to rules prescribed by the Bureau.

(5) Exemption

With respect to loans made, guaranteed, or insured by Federal departments or agencies identified in subsection (b)(3)(B)(ii), such departments or agencies may exempt refinancings under a streamlined refinancing from this income verification requirement as long as the following conditions are met:

(A) The consumer is not 30 days or more past due on the prior existing residential mortgage loan.

(B) The refinancing does not increase the principal balance outstanding on the prior existing residential mortgage loan, except to the extent of fees and charges allowed by the department or agency making, guaranteeing, or insuring the refinancing.

(C) Total points and fees (as defined in section 1602(aa)(4) [1] of this title, other than bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or mortgage originator) payable in connection with the refinancing do not exceed 3 percent of the total new loan amount.

(D) The interest rate on the refinanced loan is lower than the interest rate of the original loan, unless the borrower is refinancing from an adjustable rate to a fixed-rate loan, under guidelines that the department or agency shall establish for loans they make, guarantee, or issue.

(E) The refinancing is subject to a payment schedule that will fully amortize the refinancing in accordance with the regulations prescribed by the department or agency making, guaranteeing, or insuring the refinancing.

(F) The terms of the refinancing do not result in a balloon payment, as defined in subsection (b)(2)(A)(ii).

(G) Both the residential mortgage loan being refinanced and the refinancing satisfy all requirements of the department or agency making, guaranteeing, or insuring the refinancing.

(6) Nonstandard loans

(A) Variable rate loans that defer repayment of any principal or interest

For purposes of determining, under this subsection, a consumer's ability to repay a variable

rate residential mortgage loan that allows or requires the consumer to defer the repayment of any principal or interest, the creditor shall use a fully amortizing repayment schedule.

(B) Interest-only loans

For purposes of determining, under this subsection, a consumer's ability to repay a residential mortgage loan that permits or requires the payment of interest only, the creditor shall use the payment amount required to amortize the loan by its final maturity.

(C) Calculation for negative amortization

In making any determination under this subsection, a creditor shall also take into consideration any balance increase that may accrue from any negative amortization provision.

(D) Calculation process

For purposes of making any determination under this subsection, a creditor shall calculate the monthly payment amount for principal and interest on any residential mortgage loan by assuming—

(i) the loan proceeds are fully disbursed on the date of the consummation of the loan;

(ii) the loan is to be repaid in substantially equal monthly amortizing payments for principal and interest over the entire term of the loan with no balloon payment, unless the loan contract requires more rapid repayment (including balloon payment), in which case the calculation shall be made (I) in accordance with regulations prescribed by the Bureau, with respect to any loan which has an annual percentage rate that does not exceed the average prime offer rate for a comparable transaction, as of the date the interest rate is set, by 1.5 or more percentage points for a first lien residential mortgage loan; and by 3.5 or more percentage points for a subordinate lien residential mortgage loan; or (II) using the contract's repayment schedule, with respect to a loan which has an annual percentage rate, as of the date the interest rate is set, that is at least 1.5 percentage points above the average prime offer rate for a first lien residential mortgage loan; and 3.5 percentage points above the average prime offer rate for a subordinate lien residential mortgage loan; and

(iii) the interest rate over the entire term of the loan is a fixed rate equal to the fully indexed rate at the time of the loan closing, without considering the introductory rate.

(E) Refinance of hybrid loans with current lender

In considering any application for refinancing an existing hybrid loan by the creditor into a standard loan to be made by the same creditor in any case in which there would be a reduction in monthly payment and the mortgagor has not been delinquent on any payment on the existing hybrid loan, the creditor may—

(i) consider the mortgagor's good standing on the existing mortgage;

(ii) consider if the extension of new credit would prevent a likely default should the original mortgage reset and give such concerns a higher priority as an acceptable underwriting practice; and

(iii) offer rate discounts and other favorable terms to such mortgagor that would be available to new customers with high credit ratings based on such underwriting practice.

(7) Fully-indexed rate defined

For purposes of this subsection, the term "fully indexed rate" means the index rate prevailing on a residential mortgage loan at the time the loan is made plus the margin that will apply after the expiration of any introductory interest rates.

(8) Reverse mortgages and bridge loans

This subsection shall not apply with respect to any reverse mortgage or temporary or bridge loan with a term of 12 months or less, including to any loan to purchase a new dwelling where the consumer plans to sell a different dwelling within 12 months.

(9) Seasonal income

If documented income, including income from a small business, is a repayment source for a

residential mortgage loan, a creditor may consider the seasonality and irregularity of such income in the underwriting of and scheduling of payments for such credit.

(b) Presumption of ability to repay

(1) In general

Any creditor with respect to any residential mortgage loan, and any assignee of such loan subject to liability under this subchapter, may presume that the loan has met the requirements of subsection (a), if the loan is a qualified mortgage.

(2) Definitions

For purposes of this subsection, the following definitions shall apply:

(A) Qualified mortgage

The term "qualified mortgage" means any residential mortgage loan—

(i) for which the regular periodic payments for the loan may not—

(I) result in an increase of the principal balance; or

(II) except as provided in subparagraph (E), allow the consumer to defer repayment of principal;

(ii) except as provided in subparagraph (E), the terms of which do not result in a balloon payment, where a "balloon payment" is a scheduled payment that is more than twice as large as the average of earlier scheduled payments;

(iii) for which the income and financial resources relied upon to qualify the obligors on the loan are verified and documented;

(iv) in the case of a fixed rate loan, for which the underwriting process is based on a payment schedule that fully amortizes the loan over the loan term and takes into account all applicable taxes, insurance, and assessments;

(v) in the case of an adjustable rate loan, for which the underwriting is based on the maximum rate permitted under the loan during the first 5 years, and a payment schedule that fully amortizes the loan over the loan term and takes into account all applicable taxes, insurance, and assessments;

(vi) that complies with any guidelines or regulations established by the Bureau relating to ratios of total monthly debt to monthly income or alternative measures of ability to pay regular expenses after payment of total monthly debt, taking into account the income levels of the borrower and such other factors as the Bureau may determine relevant and consistent with the purposes described in paragraph (3)(B)(i);

(vii) for which the total points and fees (as defined in subparagraph (C)) payable in connection with the loan do not exceed 3 percent of the total loan amount;

(viii) for which the term of the loan does not exceed 30 years, except as such term may be extended under paragraph (3), such as in high-cost areas; and

(ix) in the case of a reverse mortgage (except for the purposes of subsection (a) of this section, to the extent that such mortgages are exempt altogether from those requirements), a reverse mortgage which meets the standards for a qualified mortgage, as set by the Bureau in rules that are consistent with the purposes of this subsection.

(B) Average prime offer rate

The term "average prime offer rate" means the average prime offer rate for a comparable transaction as of the date on which the interest rate for the transaction is set, as published by the Bureau..[2]

(C) Points and fees

(i) In general

For purposes of subparagraph (A), the term "points and fees" means points and fees as defined by section 1602(aa)(4) [1] of this title (other than bona fide third party charges not

retained by the mortgage originator, creditor, or an affiliate of the creditor or mortgage originator).

(ii) Computation

For purposes of computing the total points and fees under this subparagraph, the total points and fees shall exclude either of the amounts described in the following subclauses, but not both:

(I) Up to and including 2 bona fide discount points payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage's interest rate will be discounted does not exceed by more than 1 percentage point the average prime offer rate.

(II) Unless 2 bona fide discount points have been excluded under subclause (I), up to and including 1 bona fide discount point payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage's interest rate will be discounted does not exceed by more than 2 percentage points the average prime offer rate.

(iii) Bona fide discount points defined

For purposes of clause (ii), the term "bona fide discount points" means loan discount points which are knowingly paid by the consumer for the purpose of reducing, and which in fact result in a bona fide reduction of, the interest rate or time-price differential applicable to the mortgage.

(iv) Interest rate reduction

Subclauses (I) and (II) of clause (ii) shall not apply to discount points used to purchase an interest rate reduction unless the amount of the interest rate reduction purchased is reasonably consistent with established industry norms and practices for secondary mortgage market transactions.

(D) Smaller loans

The Bureau shall prescribe rules adjusting the criteria under subparagraph (A)(vii) in order to permit lenders that extend smaller loans to meet the requirements of the presumption of compliance under paragraph (1). In prescribing such rules, the Bureau shall consider the potential impact of such rules on rural areas and other areas where home values are lower.

(E) Balloon loans

The Bureau may, by regulation, provide that the term "qualified mortgage" includes a balloon loan—

(i) that meets all of the criteria for a qualified mortgage under subparagraph (A) (except clauses (i)(II), (ii), (iv), and (v) of such subparagraph);

(ii) for which the creditor makes a determination that the consumer is able to make all scheduled payments, except the balloon payment, out of income or assets other than the collateral;

(iii) for which the underwriting is based on a payment schedule that fully amortizes the loan over a period of not more than 30 years and takes into account all applicable taxes, insurance, and assessments; and

(iv) that is extended by a creditor that—

(I) operates predominantly in rural or underserved areas;

(II) together with all affiliates, has total annual residential mortgage loan originations that do not exceed a limit set by the Bureau;

(III) retains the balloon loans in portfolio; and

(IV) meets any asset size threshold and any other criteria as the Bureau may establish, consistent with the purposes of this part.

(3) Regulations

(A) In general

The Bureau shall prescribe regulations to carry out the purposes of this subsection.

(B) Revision of safe harbor criteria

(i) In general

The Bureau may prescribe regulations that revise, add to, or subtract from the criteria that define a qualified mortgage upon a finding that such regulations are necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of this section, necessary and appropriate to effectuate the purposes of this section and section 1639b of this title, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections.

(ii) Loan definition

The following agencies shall, in consultation with the Bureau, prescribe rules defining the types of loans they insure, guarantee, or administer, as the case may be, that are qualified mortgages for purposes of paragraph (2)(A), and such rules may revise, add to, or subtract from the criteria used to define a qualified mortgage under paragraph (2)(A), upon a finding that such rules are consistent with the purposes of this section and section 1639b of this title, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections:

(I) The Department of Housing and Urban Development, with regard to mortgages insured under the National Housing Act [12 U.S.C. 1701 et seq.].

(II) The Department of Veterans Affairs, with regard to a loan made or guaranteed by the Secretary of Veterans Affairs.

(III) The Department of Agriculture, with regard [3] loans guaranteed by the Secretary of Agriculture pursuant to section 1472(h) of title 42.

(IV) The Rural Housing Service, with regard to loans insured by the Rural Housing Service.

(c) Prohibition on certain prepayment penalties

(1) Prohibited on certain loans

(A) In general

A residential mortgage loan that is not a "qualified mortgage", as defined under subsection (b)(2), may not contain terms under which a consumer must pay a prepayment penalty for paying all or part of the principal after the loan is consummated.

(B) Exclusions

For purposes of this subsection, a "qualified mortgage" may not include a residential mortgage loan that—

(i) has an adjustable rate; or

(ii) has an annual percentage rate that exceeds the average prime offer rate for a comparable transaction, as of the date the interest rate is set—

(I) by 1.5 or more percentage points, in the case of a first lien residential mortgage loan having a original principal obligation amount that is equal to or less than the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the 6th sentence of section 1454(a)(2) of title 12;

(II) by 2.5 or more percentage points, in the case of a first lien residential mortgage loan having a original principal obligation amount that is more than the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the 6th sentence of section 1454(a)(2) of title 12; and

(III) by 3.5 or more percentage points, in the case of a subordinate lien residential mortgage loan.

(2) Publication of average prime offer rate and APR thresholds

The Bureau—

(A) shall publish, and update at least weekly, average prime offer rates;

(B) may publish multiple rates based on varying types of mortgage transactions; and

(C) shall adjust the thresholds established under subclause (I), (II), and (III) of paragraph (1)(B)(ii) as necessary to reflect significant changes in market conditions and to effectuate the purposes of the Mortgage Reform and Anti-Predatory Lending Act.

(3) Phased-out penalties on qualified mortgages

A qualified mortgage (as defined in subsection (b)(2)) may not contain terms under which a consumer must pay a prepayment penalty for paying all or part of the principal after the loan is consummated in excess of the following limitations:

(A) During the 1-year period beginning on the date the loan is consummated, the prepayment penalty shall not exceed an amount equal to 3 percent of the outstanding balance on the loan.

(B) During the 1-year period beginning after the period described in subparagraph (A), the prepayment penalty shall not exceed an amount equal to 2 percent of the outstanding balance on the loan.

(C) During the 1-year period beginning after the 1-year period described in subparagraph (B), the prepayment penalty shall not exceed an amount equal to 1 percent of the outstanding balance on the loan.

(D) After the end of the 3-year period beginning on the date the loan is consummated, no prepayment penalty may be imposed on a qualified mortgage.

(4) Option for no prepayment penalty required

A creditor may not offer a consumer a residential mortgage loan product that has a prepayment penalty for paying all or part of the principal after the loan is consummated as a term of the loan without offering the consumer a residential mortgage loan product that does not have a prepayment penalty as a term of the loan.

(d) Single premium credit insurance prohibited

No creditor may finance, directly or indirectly, in connection with any residential mortgage loan or with any extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer, any credit life, credit disability, credit unemployment, or credit property insurance, or any other accident, loss-of-income, life, or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, except that—

(1) insurance premiums or debt cancellation or suspension fees calculated and paid in full on a monthly basis shall not be considered financed by the creditor; and

(2) this subsection shall not apply to credit unemployment insurance for which the unemployment insurance premiums are reasonable, the creditor receives no direct or indirect compensation in connection with the unemployment insurance premiums, and the unemployment insurance premiums are paid pursuant to another insurance contract and not paid to an affiliate of the creditor.

(e) Arbitration

(1) In general

No residential mortgage loan and no extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer may include terms which require arbitration or any other nonjudicial procedure as the method for resolving any controversy or settling any claims arising out of the transaction.

(2) Post-controversy agreements

Subject to paragraph (3), paragraph (1) shall not be construed as limiting the right of the consumer and the creditor or any assignee to agree to arbitration or any other nonjudicial procedure as the method for resolving any controversy at any time after a dispute or claim under the transaction arises.

(3) No waiver of statutory cause of action

No provision of any residential mortgage loan or of any extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer, and no other agreement between the consumer and the creditor relating to the residential mortgage loan or extension of credit referred to in paragraph (1), shall be applied or interpreted so as to bar a consumer from bringing an action in an appropriate district court of the United States, or any other court of competent jurisdiction, pursuant to section 1640 of this title or any other provision of law, for damages or other relief in connection with any alleged violation of this section, any other provision of this subchapter, or any other Federal law.

(f) Mortgages with negative amortization

No creditor may extend credit to a borrower in connection with a consumer credit transaction under an open or closed end consumer credit plan secured by a dwelling or residential real property that includes a dwelling, other than a reverse mortgage, that provides or permits a payment plan that may, at any time over the term of the extension of credit, result in negative amortization unless, before such transaction is consummated—

(1) the creditor provides the consumer with a statement that—

(A) the pending transaction will or may, as the case may be, result in negative amortization;

(B) describes negative amortization in such manner as the Bureau shall prescribe;

(C) negative amortization increases the outstanding principal balance of the account; and

(D) negative amortization reduces the consumer's equity in the dwelling or real property; and

(2) in the case of a first-time borrower with respect to a residential mortgage loan that is not a qualified mortgage, the first-time borrower provides the creditor with sufficient documentation to demonstrate that the consumer received homeownership counseling from organizations or counselors certified by the Secretary of Housing and Urban Development as competent to provide such counseling.

(g) Protection against loss of anti-deficiency protection

(1) Definition

For purposes of this subsection, the term "anti-deficiency law" means the law of any State which provides that, in the event of foreclosure on the residential property of a consumer securing a mortgage, the consumer is not liable, in accordance with the terms and limitations of such State law, for any deficiency between the sale price obtained on such property through foreclosure and the outstanding balance of the mortgage.

(2) Notice at time of consummation

In the case of any residential mortgage loan that is, or upon consummation will be, subject to protection under an anti-deficiency law, the creditor or mortgage originator shall provide a written notice to the consumer describing the protection provided by the anti-deficiency law and the significance for the consumer of the loss of such protection before such loan is consummated.

(3) Notice before refinancing that would cause loss of protection

In the case of any residential mortgage loan that is subject to protection under an anti-deficiency law, if a creditor or mortgage originator provides an application to a consumer, or receives an application from a consumer, for any type of refinancing for such loan that would cause the loan to lose the protection of such anti-deficiency law, the creditor or mortgage originator shall provide a written notice to the consumer describing the protection provided by the anti-deficiency law and the significance for the consumer of the loss of such protection before any agreement for any such refinancing is consummated.

(h) Policy regarding acceptance of partial payment

In the case of any residential mortgage loan, a creditor shall disclose prior to settlement or, in the case of a person becoming a creditor with respect to an existing residential mortgage loan, at the time such person becomes a creditor—

(1) the creditor's policy regarding the acceptance of partial payments; and

(2) if partial payments are accepted, how such payments will be applied to such mortgage and if such payments will be placed in escrow.

(i) Timeshare plans

This section and any regulations promulgated under this section do not apply to an extension of credit relating to a plan described in section 101(53D) of title 11.

(Pub. L. 90–321, title I, §129C, as added and amended Pub. L. 111–203, title X, §1100A(2), title XIV, §§1411(a)(2), 1412, 1414(a), (c), (d), July 21, 2010, 124 Stat. 2107, 2142, 2145, 2149, 2152.)

REFERENCES IN TEXT

Section 1602(aa)(4) of this title, referred to in subsecs. (a)(5)(C) and (b)(2)(C)(i), was redesignated section 1602(bb)(4) of this title by Pub. L. 111–203, title X, §1100A(1)(A), July 21, 2010, 124 Stat. 2107.

This part, referred to in subsec. (b)(2)(E)(iv)(IV), was in the original "this subtitle", and was translated as reading "this chapter", meaning chapter 2 of title I of Pub. L. 90–321, to reflect the probable intent of Congress. Title I of Pub. L. 90–321 does not contain subtitles.

The National Housing Act, referred to in subsec. (b)(3)(B)(ii)(I), is act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to chapter 13 (§1701 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

The Mortgage Reform and Anti-Predatory Lending Act, referred to in subsec. (c)(2)(C), is title XIV of Pub. L. 111–203, July 21, 2010, 124 Stat. 2136. For complete classification of this Act to the Code, see Short Title of 2010 Amendment note set out under section 1601 of this title and Tables.

AMENDMENTS

2010—Pub. L. 111–203, §1100A(2), substituted "Bureau" for "Board" wherever appearing.

Subsec. (b). Pub. L. 111–203, §1412, added subsec. (b).

Subsecs. (c) to (f). Pub. L. 111–203, §1414(a), added subsecs. (c) to (f).

Subsec. (g). Pub. L. 111–203, §1414(c), added subsec. (g).

Subsecs. (h), (i). Pub. L. 111–203, §1414(d), added subsecs. (h) and (i).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 1100A(2) of Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

Amendment by sections 1412 and 1414(a), (c), (d) of Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date, if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of this title.

EFFECTIVE DATE

Section effective on the date on which final regulations implementing such section take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1601 of this title.

RULE OF CONSTRUCTION

Pub. L. 111–203, title XIV, §1411(a)(1), July 21, 2010, 124 Stat. 2142, provided that: "No regulation, order, or guidance issued by the Bureau under this title [see Tables for classification] shall be construed as requiring a depository institution to apply mortgage underwriting standards that do not meet the minimum underwriting standards required by the appropriate prudential regulator of the depository institution."

[For definitions of "Bureau" and "depository institution" as used in section 1411(a)(1) of Pub. L. 111–203, set out above, see section 5301 of Title 12, Banks and Banking.]

[1] See References in Text note below.

[2] So in original.

[3] So in original. Probably should be followed by "to".

§1639d. Escrow or impound accounts relating to certain consumer credit transactions

(a) In general

Except as provided in subsection (b), (c), (d), or (e), a creditor, in connection with the consummation of a consumer credit transaction secured by a first lien on the principal dwelling of the consumer, other than a consumer credit transaction under an open end credit plan or a reverse mortgage, shall establish, before the consummation of such transaction, an escrow or impound account for the payment of taxes and hazard insurance, and, if applicable, flood insurance, mortgage insurance, ground rents, and any other required periodic payments or premiums with respect to the property or the loan terms, as provided in, and in accordance with, this section.

(b) When required

No impound, trust, or other type of account for the payment of property taxes, insurance premiums, or other purposes relating to the property may be required as a condition of a real property sale contract or a loan secured by a first deed of trust or mortgage on the principal dwelling of the consumer, other than a consumer credit transaction under an open end credit plan or a reverse mortgage, except when—

(1) any such impound, trust, or other type of escrow or impound account for such purposes is required by Federal or State law;

(2) a loan is made, guaranteed, or insured by a State or Federal governmental lending or insuring agency;

(3) the transaction is secured by a first mortgage or lien on the consumer's principal dwelling having an original principal obligation amount that—

(A) does not exceed the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date such interest rate set, pursuant to the sixth sentence of section 1454(a)(2) of title 12, and the annual percentage rate will exceed the average prime offer rate as defined in section 1639c of this title by 1.5 or more percentage points; or

(B) exceeds the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date such interest rate set, pursuant to the sixth sentence of section 1454(a)(2) of title 12, and the annual percentage rate will exceed the average prime offer rate as defined in section 1639c of this title by 2.5 or more percentage points; or

(4) so required pursuant to regulation.

(c) Exemptions

The Bureau may, by regulation, exempt from the requirements of subsection (a) a creditor that—

(1) operates predominantly in rural or underserved areas;

(2) together with all affiliates, has total annual mortgage loan originations that do not exceed a limit set by the Bureau;

(3) retains its mortgage loan originations in portfolio; and

(4) meets any asset size threshold and any other criteria the Bureau may establish, consistent with the purposes of this part.

(d) Duration of mandatory escrow or impound account

An escrow or impound account established pursuant to subsection (b) shall remain in existence for a minimum period of 5 years, beginning with the date of the consummation of the loan, unless and until—

(1) such borrower has sufficient equity in the dwelling securing the consumer credit transaction so as to no longer be required to maintain private mortgage insurance;

(2) such borrower is delinquent;

(3) such borrower otherwise has not complied with the legal obligation, as established by rule; or

(4) the underlying mortgage establishing the account is terminated.

(e) Limited exemptions for loans secured by shares in a cooperative or in which an association must maintain a master insurance policy

Escrow accounts need not be established for loans secured by shares in a cooperative. Insurance premiums need not be included in escrow accounts for loans secured by dwellings or units, where the borrower must join an association as a condition of ownership, and that association has an obligation to the dwelling or unit owners to maintain a master policy insuring the dwellings or units.

(f) Clarification on escrow accounts for loans not meeting statutory test

For mortgages not covered by the requirements of subsection (b), no provision of this section shall be construed as precluding the establishment of an impound, trust, or other type of account for the payment of property taxes, insurance premiums, or other purposes relating to the property—

(1) on terms mutually agreeable to the parties to the loan;

(2) at the discretion of the lender or servicer, as provided by the contract between the lender or servicer and the borrower; or

(3) pursuant to the requirements for the escrowing of flood insurance payments for regulated lending institutions in section 102(d) of the Flood Disaster Protection Act of 1973 [42 U.S.C. 4012a(d)].

(g) Administration of mandatory escrow or impound accounts

(1) In general

Except as may otherwise be provided for in this subchapter or in regulations prescribed by the Bureau, escrow or impound accounts established pursuant to subsection (b) shall be established in a federally insured depository institution or credit union.

(2) Administration

Except as provided in this section or regulations prescribed under this section, an escrow or impound account subject to this section shall be administered in accordance with—

(A) the Real Estate Settlement Procedures Act of 1974 [12 U.S.C. 2601 et seq.] and regulations prescribed under such Act;

(B) the Flood Disaster Protection Act of 1973 and regulations prescribed under such Act; and

(C) the law of the State, if applicable, where the real property securing the consumer credit transaction is located.

(3) Applicability of payment of interest

If prescribed by applicable State or Federal law, each creditor shall pay interest to the consumer on the amount held in any impound, trust, or escrow account that is subject to this section in the manner as prescribed by that applicable State or Federal law.

(4) Penalty coordination with RESPA

Any action or omission on the part of any person which constitutes a violation of the Real Estate Settlement Procedures Act of 1974 or any regulation prescribed under such Act for which the person has paid any fine, civil money penalty, or other damages shall not give rise to any additional fine, civil money penalty, or other damages under this section, unless the action or omission also constitutes a direct violation of this section.

(h) Disclosures relating to mandatory escrow or impound account

In the case of any impound, trust, or escrow account that is required under subsection (b), the creditor shall disclose by written notice to the consumer at least 3 business days before the consummation of the consumer credit transaction giving rise to such account or in accordance with timeframes established in prescribed regulations the following information:

(1) The fact that an escrow or impound account will be established at consummation of the

transaction.

(2) The amount required at closing to initially fund the escrow or impound account.

(3) The amount, in the initial year after the consummation of the transaction, of the estimated taxes and hazard insurance, including flood insurance, if applicable, and any other required periodic payments or premiums that reflects, as appropriate, either the taxable assessed value of the real property securing the transaction, including the value of any improvements on the property or to be constructed on the property (whether or not such construction will be financed from the proceeds of the transaction) or the replacement costs of the property.

(4) The estimated monthly amount payable to be escrowed for taxes, hazard insurance (including flood insurance, if applicable) and any other required periodic payments or premiums.

(5) The fact that, if the consumer chooses to terminate the account in the future, the consumer will become responsible for the payment of all taxes, hazard insurance, and flood insurance, if applicable, as well as any other required periodic payments or premiums on the property unless a new escrow or impound account is established.

(6) Such other information as the Bureau determines necessary for the protection of the consumer.

(i) Definitions

For purposes of this section, the following definitions shall apply:

(1) Flood insurance

The term "flood insurance" means flood insurance coverage provided under the national flood insurance program pursuant to the National Flood Insurance Act of 1968 [42 U.S.C. 4001 et seq.].

(2) Hazard insurance

The term "hazard insurance" shall have the same meaning as provided for "hazard insurance", "casualty insurance", "homeowner's insurance", or other similar term under the law of the State where the real property securing the consumer credit transaction is located.

(j) Disclosure notice required for consumers who waive escrow services

(1) In general

If—

(A) an impound, trust, or other type of account for the payment of property taxes, insurance premiums, or other purposes relating to real property securing a consumer credit transaction is not established in connection with the transaction; or

(B) a consumer chooses, and provides written notice to the creditor or servicer of such choice, at any time after such an account is established in connection with any such transaction and in accordance with any statute, regulation, or contractual agreement, to close such account,

the creditor or servicer shall provide a timely and clearly written disclosure to the consumer that advises the consumer of the responsibilities of the consumer and implications for the consumer in the absence of any such account.

(2) Disclosure requirements

Any disclosure provided to a consumer under paragraph (1) shall include the following:

(A) Information concerning any applicable fees or costs associated with either the non-establishment of any such account at the time of the transaction, or any subsequent closure of any such account.

(B) A clear and prominent statement that the consumer is responsible for personally and directly paying the non-escrowed items, in addition to paying the mortgage loan payment, in the absence of any such account, and the fact that the costs for taxes, insurance, and related fees can be substantial.

(C) A clear explanation of the consequences of any failure to pay non-escrowed items, including the possible requirement for the forced placement of insurance by the creditor or servicer and the potentially higher cost (including any potential commission payments to the

servicer) or reduced coverage for the consumer in the event of any such creditor-placed insurance.

(D) Such other information as the Bureau determines necessary for the protection of the consumer.

(Pub. L. 90–321, title I, §129D, as added and amended Pub. L. 111–203, title X, §1100A(2), title XIV, §§1461(a), 1462, July 21, 2010, 124 Stat. 2107, 2178, 2181.)

REFERENCES IN TEXT

This part, referred to in subsec. (c)(4), was in the original "this subtitle", and was translated as reading "this chapter", meaning chapter 2 of title I of Pub. L. 90–321, to reflect the probable intent of Congress. Title I of Pub. L. 90–321 does not contain subtitles.

The Real Estate Settlement Procedures Act of 1974, referred to in subsec. (g)(2)(A), (4), is Pub. L. 93–533, Dec. 22, 1974, 88 Stat. 1724, which is classified principally to chapter 27 (§2601 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 12 and Tables.

The Flood Disaster Protection Act of 1973, referred to in subsec. (g)(2)(B), is Pub. L. 93–234, Dec. 31, 1973, 87 Stat. 975. For complete classification of this Act to the Code, see Short Title of 1973 Amendment note set out under section 4001 of Title 42, The Public Health and Welfare, and Tables.

The National Flood Insurance Act of 1968, referred to in subsec. (i)(1), is title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, which is classified principally to chapter 50 (§4001 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of Title 42 and Tables.

AMENDMENTS

2010—Pub. L. 111–203, §1100A(2), substituted "Bureau" for "Board" wherever appearing.

Subsec. (j). Pub. L. 111–203, §1462, added subsec. (j).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 1100A(2) of Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

Amendment by section 1462 of Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of this title.

EFFECTIVE DATE

Section effective on the date on which final regulations implementing such section take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1601 of this title.

EXEMPTIONS AND MODIFICATIONS

Pub. L. 111–203, title XIV, §1461(b), July 21, 2010, 124 Stat. 2181, provided that: "The Board may prescribe rules that revise, add to, or subtract from the criteria of section 129D(b) of the Truth in Lending Act [15 U.S.C. 1639d(b)] if the Board determines that such rules are in the interest of consumers and in the public interest."

§1639e. Appraisal independence requirements

(a) In general

It shall be unlawful, in extending credit or in providing any services for a consumer credit transaction secured by the principal dwelling of the consumer, to engage in any act or practice that violates appraisal independence as described in or pursuant to regulations prescribed under this section.

(b) Appraisal independence

For purposes of subsection (a), acts or practices that violate appraisal independence shall include—

(1) any appraisal of a property offered as security for repayment of the consumer credit transaction that is conducted in connection with such transaction in which a person with an interest in the underlying transaction compensates, coerces, extorts, colludes, instructs, induces, bribes, or intimidates a person, appraisal management company, firm, or other entity conducting or involved in an appraisal, or attempts, to compensate, coerce, extort, collude, instruct, induce, bribe, or intimidate such a person, for the purpose of causing the appraised value assigned, under the appraisal, to the property to be based on any factor other than the independent judgment of the appraiser;

(2) mischaracterizing, or suborning any mischaracterization of, the appraised value of the property securing the extension of the credit;

(3) seeking to influence an appraiser or otherwise to encourage a targeted value in order to facilitate the making or pricing of the transaction; and

(4) withholding or threatening to withhold timely payment for an appraisal report or for appraisal services rendered when the appraisal report or services are provided for in accordance with the contract between the parties.

(c) Exceptions

The requirements of subsection (b) shall not be construed as prohibiting a mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company, employee of an appraisal management company, consumer, or any other person with an interest in a real estate transaction from asking an appraiser to undertake 1 or more of the following:

(1) Consider additional, appropriate property information, including the consideration of additional comparable properties to make or support an appraisal.

(2) Provide further detail, substantiation, or explanation for the appraiser's value conclusion.

(3) Correct errors in the appraisal report.

(d) Prohibitions on conflicts of interest

No certified or licensed appraiser conducting, and no appraisal management company procuring or facilitating, an appraisal in connection with a consumer credit transaction secured by the principal dwelling of a consumer may have a direct or indirect interest, financial or otherwise, in the property or transaction involving the appraisal.

(e) Mandatory reporting

Any mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company, employee of an appraisal management company, or any other person involved in a real estate transaction involving an appraisal in connection with a consumer credit transaction secured by the principal dwelling of a consumer who has a reasonable basis to believe an appraiser is failing to comply with the Uniform Standards of Professional Appraisal Practice, is violating applicable laws, or is otherwise engaging in unethical or unprofessional conduct, shall refer the matter to the applicable State appraiser certifying and licensing agency.

(f) No extension of credit

In connection with a consumer credit transaction secured by a consumer's principal dwelling, a creditor who knows, at or before loan consummation, of a violation of the appraisal independence standards established in subsections [1] (b) or (d) shall not extend credit based on such appraisal unless the creditor documents that the creditor has acted with reasonable diligence to determine that the appraisal does not materially misstate or misrepresent the value of such dwelling.

(g) Rules and interpretive guidelines

(1) In general

Except as provided under paragraph (2), the Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, the Federal Housing Finance Agency, and the Bureau may jointly issue rules, interpretive guidelines,

and general statements of policy with respect to acts or practices that violate appraisal independence in the provision of mortgage lending services for a consumer credit transaction secured by the principal dwelling of the consumer and mortgage brokerage services for such a transaction, within the meaning of subsections (a), (b), (c), (d), (e), (f), (h), and (i).

(2) Interim final regulations

The Board shall, for purposes of this section, prescribe interim final regulations no later than 90 days after July 21, 2010, defining with specificity acts or practices that violate appraisal independence in the provision of mortgage lending services for a consumer credit transaction secured by the principal dwelling of the consumer or mortgage brokerage services for such a transaction and defining any terms in this section or such regulations. Rules prescribed by the Board under this paragraph shall be deemed to be rules prescribed by the agencies jointly under paragraph (1).

(h) Appraisal report portability

Consistent with the requirements of this section, the Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, the Federal Housing Finance Agency, and the Bureau may jointly issue regulations that address the issue of appraisal report portability, including regulations that ensure the portability of the appraisal report between lenders for a consumer credit transaction secured by a 1-4 unit single family residence that is the principal dwelling of the consumer, or mortgage brokerage services for such a transaction.

(i) Customary and reasonable fee

(1) In general

Lenders and their agents shall compensate fee appraisers at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised. Evidence for such fees may be established by objective third-party information, such as government agency fee schedules, academic studies, and independent private sector surveys. Fee studies shall exclude assignments ordered by known appraisal management companies.

(2) Fee appraiser definition

For purposes of this section, the term "fee appraiser" means a person who is not an employee of the mortgage loan originator or appraisal management company engaging the appraiser and is—

(A) a State licensed or certified appraiser who receives a fee for performing an appraisal and certifies that the appraisal has been prepared in accordance with the Uniform Standards of Professional Appraisal Practice; or

(B) a company not subject to the requirements of section 3353 of title 12 that utilizes the services of State licensed or certified appraisers and receives a fee for performing appraisals in accordance with the Uniform Standards of Professional Appraisal Practice.

(3) Exception for complex assignments

In the case of an appraisal involving a complex assignment, the customary and reasonable fee may reflect the increased time, difficulty, and scope of the work required for such an appraisal and include an amount over and above the customary and reasonable fee for non-complex assignments.

(j) Sunset

Effective on the date the interim final regulations are promulgated pursuant to subsection (g), the Home Valuation Code of Conduct announced by the Federal Housing Finance Agency on December 23, 2008, shall have no force or effect.

(k) Penalties

(1) First violation

In addition to the enforcement provisions referred to in section 1640 of this title, each person who violates this section shall forfeit and pay a civil penalty of not more than $10,000 for each

day any such violation continues.

(2) Subsequent violations

In the case of any person on whom a civil penalty has been imposed under paragraph (1), paragraph (1) shall be applied by substituting "$20,000" for "$10,000" with respect to all subsequent violations.

(3) Assessment

The agency referred to in subsection (a) or (c) of section 1607 of this title with respect to any person described in paragraph (1) shall assess any penalty under this subsection to which such person is subject.

(Pub. L. 90–321, title I, §129E, as added Pub. L. 111–203, title XIV, §1472(a), July 21, 2010, 124 Stat. 2187.)

EFFECTIVE DATE

Section effective on the date on which final regulations implementing such section take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1601 of this title.

[1] *So in original. Probably should be "subsection".*

§1639f. Requirements for prompt crediting of home loan payments

(a) In general

In connection with a consumer credit transaction secured by a consumer's principal dwelling, no servicer shall fail to credit a payment to the consumer's loan account as of the date of receipt, except when a delay in crediting does not result in any charge to the consumer or in the reporting of negative information to a consumer reporting agency, except as required in subsection (b).

(b) Exception

If a servicer specifies in writing requirements for the consumer to follow in making payments, but accepts a payment that does not conform to the requirements, the servicer shall credit the payment as of 5 days after receipt.

(Pub. L. 90–321, title I, §129F, as added Pub. L. 111–203, title XIV, §1464(a), July 21, 2010, 124 Stat. 2184.)

EFFECTIVE DATE

Section effective on the date on which final regulations implementing such section take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1601 of this title.

§1639g. Requests for payoff amounts of home loan

A creditor or servicer of a home loan shall send an accurate payoff balance within a reasonable time, but in no case more than 7 business days, after the receipt of a written request for such balance from or on behalf of the borrower.

(Pub. L. 90–321, title I, §129G, as added Pub. L. 111–203, title XIV, §1464(b), July 21, 2010, 124 Stat. 2184.)

EFFECTIVE DATE

Section effective on the date on which final regulations implementing such section take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date,

see section 1400(c) of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1601 of this title.

§1639h. Property appraisal requirements

(a) In general

A creditor may not extend credit in the form of a higher-risk mortgage to any consumer without first obtaining a written appraisal of the property to be mortgaged prepared in accordance with the requirements of this section.

(b) Appraisal requirements

(1) Physical property visit

Subject to the rules prescribed under paragraph (4), an appraisal of property to be secured by a higher-risk mortgage does not meet the requirement of this section unless it is performed by a certified or licensed appraiser who conducts a physical property visit of the interior of the mortgaged property.

(2) Second appraisal under certain circumstances

(A) In general

If the purpose of a higher-risk mortgage is to finance the purchase or acquisition of the mortgaged property from a person within 180 days of the purchase or acquisition of such property by that person at a price that was lower than the current sale price of the property, the creditor shall obtain a second appraisal from a different certified or licensed appraiser. The second appraisal shall include an analysis of the difference in sale prices, changes in market conditions, and any improvements made to the property between the date of the previous sale and the current sale.

(B) No cost to applicant

The cost of any second appraisal required under subparagraph (A) may not be charged to the applicant.

(3) Certified or licensed appraiser defined

For purposes of this section, the term "certified or licensed appraiser" means a person who—

(A) is, at a minimum, certified or licensed by the State in which the property to be appraised is located; and

(B) performs each appraisal in conformity with the Uniform Standards of Professional Appraisal Practice and title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 [12 U.S.C. 3331 et seq.], and the regulations prescribed under such title, as in effect on the date of the appraisal.

(4) Regulations

(A) In general

The Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, the Federal Housing Finance Agency, and the Bureau shall jointly prescribe regulations to implement this section.

(B) Exemption

The agencies listed in subparagraph (A) may jointly exempt, by rule, a class of loans from the requirements of this subsection or subsection (a) if the agencies determine that the exemption is in the public interest and promotes the safety and soundness of creditors.

(c) Free copy of appraisal

A creditor shall provide 1 copy of each appraisal conducted in accordance with this section in connection with a higher-risk mortgage to the applicant without charge, and at least 3 days prior to

the transaction closing date.

(d) Consumer notification

At the time of the initial mortgage application, the applicant shall be provided with a statement by the creditor that any appraisal prepared for the mortgage is for the sole use of the creditor, and that the applicant may choose to have a separate appraisal conducted at the expense of the applicant.

(e) Violations

In addition to any other liability to any person under this subchapter, a creditor found to have willfully failed to obtain an appraisal as required in this section shall be liable to the applicant or borrower for the sum of $2,000.

(f) Higher-risk mortgage defined

For purposes of this section, the term "higher-risk mortgage" means a residential mortgage loan, other than a reverse mortgage loan that is a qualified mortgage, as defined in section 1639c of this title, secured by a principal dwelling—

(1) that is not a qualified mortgage, as defined in section 1639c of this title; and

(2) with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction, as defined in section 1639c of this title, as of the date the interest rate is set—

(A) by 1.5 or more percentage points, in the case of a first lien residential mortgage loan having an original principal obligation amount that does not exceed the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the sixth sentence of section 1454(a)(2) of title 12;

(B) by 2.5 or more percentage points, in the case of a first lien residential mortgage loan having an original principal obligation amount that exceeds the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the sixth sentence of section 1454(a)(2) of title 12; and

(C) by 3.5 or more percentage points for a subordinate lien residential mortgage loan.

(Pub. L. 90–321, title I, §129H, as added Pub. L. 111–203, title XIV, §1471, July 21, 2010, 124 Stat. 2185.)

REFERENCES IN TEXT

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989, referred to in subsec. (b)(3)(B), is Pub. L. 101–73, Aug. 9, 1989, 103 Stat. 183. Title XI of the Act is classified principally to chapter 34A (§3331 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title of 1989 Amendment note set out under section 1811 of Title 12 and Tables.

EFFECTIVE DATE

Section effective on the date on which final regulations implementing such section take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1601 of this title.

§1640. Civil liability

(a) Individual or class action for damages; amount of award; factors determining amount of award

Except as otherwise provided in this section, any creditor who fails to comply with any requirement imposed under this part, including any requirement under section 1635 of this title, subsection (f) or (g) of section 1641 of this title, or part D or E of this subchapter with respect to any person is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of the failure;

(2)(A)(i) in the case of an individual action twice the amount of any finance charge in

connection with the transaction, (ii) in the case of an individual action relating to a consumer lease under part E of this subchapter, 25 per centum of the total amount of monthly payments under the lease, except that the liability under this subparagraph shall not be less than $200 nor greater than $2,000, (iii) in the case of an individual action relating to an open end consumer credit plan that is not secured by real property or a dwelling, twice the amount of any finance charge in connection with the transaction, with a minimum of $500 and a maximum of $5,000, or such higher amount as may be appropriate in the case of an established pattern or practice of such failures; [1] or (iv) in the case of an individual action relating to a credit transaction not under an open end credit plan that is secured by real property or a dwelling, not less than $400 or greater than $4,000; or

(B) in the case of a class action, such amount as the court may allow, except that as to each member of the class no minimum recovery shall be applicable, and the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same creditor shall not be more than the lesser of $1,000,000 or 1 per centum of the net worth of the creditor;

(3) in the case of any successful action to enforce the foregoing liability or in any action in which a person is determined to have a right of rescission under section 1635 or 1638(e)(7) of this title, the costs of the action, together with a reasonable attorney's fee as determined by the court; and

(4) in the case of a failure to comply with any requirement under section 1639 of this title, paragraph (1) or (2) of section 1639b(c) of this title, or section 1639c(a) of this title, an amount equal to the sum of all finance charges and fees paid by the consumer, unless the creditor demonstrates that the failure to comply is not material.

In determining the amount of award in any class action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's failure of compliance was intentional. In connection with the disclosures referred to in subsections (a) and (b) of section 1637 of this title, a creditor shall have a liability determined under paragraph (2) only for failing to comply with the requirements of section 1635 of this title, 1637(a) [2] of this title, or any of paragraphs (4) through (13) of section 1637(b) of this title, or for failing to comply with disclosure requirements under State law for any term or item that the Bureau has determined to be substantially the same in meaning under section 1610(a)(2) of this title as any of the terms or items referred to in section 1637(a) of this title, or any of paragraphs (4) through (13) of section 1637(b) of this title. In connection with the disclosures referred to in subsection (c) or (d) of section 1637 of this title, a card issuer shall have a liability under this section only to a cardholder who pays a fee described in section 1637(c)(1)(A)(ii)(I) or section 1637(c)(4)(A)(i) of this title or who uses the credit card or charge card. In connection with the disclosures referred to in section 1638 of this title, a creditor shall have a liability determined under paragraph (2) only for failing to comply with the requirements of section 1635 of this title, of paragraph (2) (insofar as it requires a disclosure of the "amount financed"), (3), (4), (5), (6), or (9) of section 1638(a) of this title, or section 1638(b)(2)(C)(ii) of this title, of subparagraphs (A), (B), (D), (F), or (J) of section 1638(e)(2) of this title (for purposes of paragraph (2) or (4) of section 1638(e) of this title), or paragraph (4)(C), (6), (7), or (8) of section 1638(e) of this title, or for failing to comply with disclosure requirements under State law for any term which the Bureau has determined to be substantially the same in meaning under section 1610(a)(2) of this title as any of the terms referred to in any of those paragraphs of section 1638(a) of this title or section 1638(b)(2)(C)(ii) of this title. With respect to any failure to make disclosures required under this part or part D or E of this subchapter, liability shall be imposed only upon the creditor required to make disclosure, except as provided in section 1641 of this title.

(b) Correction of errors

A creditor or assignee has no liability under this section or section 1607 of this title or section 1611 of this title for any failure to comply with any requirement imposed under this part or part E of

this subchapter, if within sixty days after discovering an error, whether pursuant to a final written examination report or notice issued under section 1607(e)(1) of this title or through the creditor's or assignee's own procedures, and prior to the institution of an action under this section or the receipt of written notice of the error from the obligor, the creditor or assignee notifies the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to assure that the person will not be required to pay an amount in excess of the charge actually disclosed, or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower.

(c) Unintentional violations; bona fide errors

A creditor or assignee may not be held liable in any action brought under this section or section 1635 of this title for a violation of this subchapter if the creditor or assignee shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. Examples of a bona fide error include, but are not limited to, clerical, calculation, computer malfunction and programing, and printing errors, except that an error of legal judgment with respect to a person's obligations under this subchapter is not a bona fide error.

(d) Liability in transaction or lease involving multiple obligors

When there are multiple obligors in a consumer credit transaction or consumer lease, there shall be no more than one recovery of damages under subsection (a)(2) of this section for a violation of this subchapter.

(e) Jurisdiction of courts; limitations on actions; State attorney general enforcement

Except as provided in the subsequent sentence, any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation or, in the case of a violation involving a private education loan (as that term is defined in section 1650(a) of this title), 1 year from the date on which the first regular payment of principal is due under the loan. Any action under this section with respect to any violation of section 1639, 1639b, or 1639c of this title may be brought in any United States district court, or in any other court of competent jurisdiction, before the end of the 3-year period beginning on the date of the occurrence of the violation. This subsection does not bar a person from asserting a violation of this subchapter in an action to collect the debt which was brought more than one year from the date of the occurrence of the violation as a matter of defense by recoupment or set-off in such action, except as otherwise provided by State law. An action to enforce a violation of section 1639, 1639b, 1639c, 1639d, 1639e, 1639f, 1639g, or 1639h of this title may also be brought by the appropriate State attorney general in any appropriate United States district court, or any other court of competent jurisdiction, not later than 3 years after the date on which the violation occurs. The State attorney general shall provide prior written notice of any such civil action to the Federal agency responsible for enforcement under section 1607 of this title and shall provide the agency with a copy of the complaint. If prior notice is not feasible, the State attorney general shall provide notice to such agency immediately upon instituting the action. The Federal agency may—

(1) intervene in the action;

(2) upon intervening—

(A) remove the action to the appropriate United States district court, if it was not originally brought there; and

(B) be heard on all matters arising in the action; and

(3) file a petition for appeal.

(f) Good faith compliance with rule, regulation, or interpretation of Bureau or with interpretation or approval of duly authorized official or employee of Federal Reserve System

No provision of this section, section 1607(b) of this title, section 1607(c) of this title, section 1607(e) of this title, or section 1611 of this title imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Bureau or in conformity with any interpretation or approval by an official or employee of the Federal

Reserve System duly authorized by the Bureau to issue such interpretations or approvals under such procedures as the Bureau may prescribe therefor, notwithstanding that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(g) Recovery for multiple failures to disclose

The multiple failure to disclose to any person any information required under this part or part D or E of this subchapter to be disclosed in connection with a single account under an open end consumer credit plan, other single consumer credit sale, consumer loan, consumer lease, or other extension of consumer credit, shall entitle the person to a single recovery under this section but continued failure to disclose after a recovery has been granted shall give rise to rights to additional recoveries. This subsection does not bar any remedy permitted by section 1635 of this title.

(h) Offset from amount owed to creditor or assignee; rights of defaulting consumer

A person may not take any action to offset any amount for which a creditor or assignee is potentially liable to such person under subsection (a)(2) of this section against any amount owed by such person, unless the amount of the creditor's or assignee's liability under this subchapter has been determined by judgment of a court of competent jurisdiction in an action of which such person was a party. This subsection does not bar a consumer then in default on the obligation from asserting a violation of this subchapter as an original action, or as a defense or counterclaim to an action to collect amounts owed by the consumer brought by a person liable under this subchapter.

(i) Class action moratorium

(1) In general

During the period beginning on May 18, 1995, and ending on October 1, 1995, no court may enter any order certifying any class in any action under this subchapter—

(A) which is brought in connection with any credit transaction not under an open end credit plan which is secured by a first lien on real property or a dwelling and constitutes a refinancing or consolidation of an existing extension of credit; and

(B) which is based on the alleged failure of a creditor—

(i) to include a charge actually incurred (in connection with the transaction) in the finance charge disclosed pursuant to section 1638 of this title;

(ii) to properly make any other disclosure required under section 1638 of this title as a result of the failure described in clause (i); or

(iii) to provide proper notice of rescission rights under section 1635(a) of this title due to the selection by the creditor of the incorrect form from among the model forms prescribed by the Bureau or from among forms based on such model forms.

(2) Exceptions for certain alleged violations

Paragraph (1) shall not apply with respect to any action—

(A) described in clause (i) or (ii) of paragraph (1)(B), if the amount disclosed as the finance charge results in an annual percentage rate that exceeds the tolerance provided in section 1606(c) of this title; or

(B) described in paragraph (1)(B)(iii), if—

(i) no notice relating to rescission rights under section 1635(a) of this title was provided in any form; or

(ii) proper notice was not provided for any reason other than the reason described in such paragraph.

(j) Private educational lender

A private educational lender (as that term is defined in section 1650(a) of this title) has no liability under this section for failure to comply with section 1638(e)(3) of this title).[3]

(k) Defense to foreclosure

(1) In general

Notwithstanding any other provision of law, when a creditor, assignee, or other holder of a residential mortgage loan or anyone acting on behalf of such creditor, assignee, or holder, initiates a judicial or nonjudicial foreclosure of the residential mortgage loan, or any other action to collect the debt in connection with such loan, a consumer may assert a violation by a creditor of paragraph (1) or (2) of section 1639b(c) of this title, or of section 1639c(a) of this title, as a matter of defense by recoupment or set off without regard for the time limit on a private action for damages under subsection (e).

(2) Amount of recoupment or setoff

(A) In general

The amount of recoupment or set-off under paragraph (1) shall equal the amount to which the consumer would be entitled under subsection (a) for damages for a valid claim brought in an original action against the creditor, plus the costs to the consumer of the action, including a reasonable attorney's fee.

(B) Special rule

Where such judgment is rendered after the expiration of the applicable time limit on a private action for damages under subsection (e), the amount of recoupment or set-off under paragraph (1) derived from damages under subsection (a)(4) shall not exceed the amount to which the consumer would have been entitled under subsection (a)(4) for damages computed up to the day preceding the expiration of the applicable time limit.

(l) Exemption from liability and rescission in case of borrower fraud or deception

In addition to any other remedy available by law or contract, no creditor or assignee shall be liable to an obligor under this section, if such obligor, or co-obligor has been convicted of obtaining by actual fraud such residential mortgage loan.

(Pub. L. 90–321, title I, §130, May 29, 1968, 82 Stat. 157; Pub. L. 93–495, title IV, §§406, 407, 408(a)–(d), Oct. 28, 1974, 88 Stat. 1518; Pub. L. 94–222, §3(b), Feb. 27, 1976, 90 Stat. 197; Pub. L. 94–240, §4, Mar. 23, 1976, 90 Stat. 260; Pub. L. 96–221, title VI, §615, Mar. 31, 1980, 94 Stat. 180; Pub. L. 100–583, §3, Nov. 3, 1988, 102 Stat. 2966; Pub. L. 103–325, title I, §153(a), (b), Sept. 23, 1994, 108 Stat. 2195; Pub. L. 104–12, §2, May 18, 1995, 109 Stat. 161; Pub. L. 104–29, §6, Sept. 30, 1995, 109 Stat. 274; Pub. L. 110–289, div. B, title V, §2502(b), July 30, 2008, 122 Stat. 2857; Pub. L. 110–315, title X, §1012(a), Aug. 14, 2008, 122 Stat. 3482; Pub. L. 111–22, div. A, title IV, §404(b), May 20, 2009, 123 Stat. 1658; Pub. L. 111–24, title I, §107, title II, §201(b), May 22, 2009, 123 Stat. 1743, 1745; Pub. L. 111–203, title X, §1100A(2), title XIV, §§1413, 1416, 1417, 1422, July 21, 2010, 124 Stat. 2107, 2148, 2153, 2157.)

AMENDMENTS

2010—Pub. L. 111–203, §1100A(2), substituted "Bureau" for "Board" wherever appearing.

Subsec. (a)(2)(A)(ii). Pub. L. 111–203, §1416(a)(1), substituted "$200" for "$100" and "$2,000" for "$1,000".

Subsec. (a)(2)(B). Pub. L. 111–203, §1416(a)(2), substituted "$1,000,000" for "$500,000".

Subsec. (a)(4). Pub. L. 111–203, §1416(a)(3), inserted ", paragraph (1) or (2) of section 1639b(c) of this title, or section 1639c(a) of this title" after "section 1639 of this title".

Subsec. (e). Pub. L. 111–203, §1422, substituted "section 1639, 1639b, 1639c, 1639d, 1639e, 1639f, 1639g, or 1639h of this title may also" for "section 1639 of this title may also".

Pub. L. 111–203, §1416(b), in first sentence substituted "Except as provided in the subsequent sentence, any action" for "Any action" and inserted after first sentence "Any action under this section with respect to any violation of section 1639, 1639b, or 1639c of this title may be brought in any United States district court, or in any other court of competent jurisdiction, before the end of the 3-year period beginning on the date of the occurrence of the violation."

Subsec. (k). Pub. L. 111–203, §1413, added subsec. (k).

Subsec. (l). Pub. L. 111–203, §1417, added subsec. (l).

2009—Subsec. (a). Pub. L. 111–24, §201(b), in concluding provisions, substituted "In connection with the disclosures referred to in subsections (a) and (b) of section 1637 of this title, a creditor shall have a liability determined under paragraph (2) only for failing to comply with the requirements of section 1635 of this title,

1637(a) of this title, or any of paragraphs (4) through (13) of section 1637(b) of this title, or for failing to comply with disclosure requirements under State law for any term or item that the Board has determined to be substantially the same in meaning under section 1610(a)(2) of this title as any of the terms or items referred to in section 1637(a) of this title, or any of paragraphs (4) through (13) of section 1637(b) of this title." for "In connection with the disclosures referred to in subsections (a) and (b) of section 1637 of this title, a creditor shall have a liability determined under paragraph (2) only for failing to comply with the requirements of section 1635 of this title, section 1637(a) of this title, or of paragraph (4), (5), (6), (7), (8), (9), or (10) of section 1637(b) of this title or for failing to comply with disclosure requirements under State law for any term or item which the Board has determined to be substantially the same in meaning under section 1610(a)(2) of this title as any of the terms or items referred to in section 1637(a) of this title or any of those paragraphs of section 1637(b) of this title."

Pub. L. 111–22, §404(b), which directed insertion of "subsection (f) or (g) of section 1641 of this title," after "section 1635 of this title,", was executed by making the insertion only in the introductory provisions to reflect the probable intent of Congress.

Subsec. (a)(2)(A)(iii), (iv). Pub. L. 111–24, §107, added cl. (iii) and redesignated former cl. (iii) as (iv).

2008—Subsec. (a). Pub. L. 110–315, §1012(a)(1)(B), in fourth sentence of concluding provisions, substituted "1635 of this title," for "1635 of this title or" and inserted "of subparagraphs (A), (B), (D), (F), or (J) of section 1638(e)(2) of this title (for purposes of paragraph (2) or (4) of section 1638(e) of this title), or paragraph (4)(C), (6), (7), or (8) of section 1638(e) of this title," before "or for failing".

Pub. L. 110–289, §2502(b)(2), in concluding provisions, inserted "or section 1638(b)(2)(C)(ii) of this title," before "or for failing to comply" and "or section 1638(b)(2)(C)(ii) of this title" before ". With respect to".

Subsec. (a)(2)(A)(iii). Pub. L. 110–289, §2502(b)(1), substituted "not less than $400 or greater than $4,000" for "not less than $200 or greater than $2,000".

Subsec. (a)(3). Pub. L. 110–315, §1012(a)(1)(A), inserted "or 1638(e)(7)" after "section 1635".

Subsec. (e). Pub. L. 110–315, §1012(a)(2), inserted before period at end of first sentence "or, in the case of a violation involving a private education loan (as that term is defined in section 1650(a) of this title), 1 year from the date on which the first regular payment of principal is due under the loan".

Subsec. (j). Pub. L. 110–315, §1012(a)(3), added subsec. (j).

1995—Subsec. (a)(2)(A)(iii). Pub. L. 104–29 added cl. (iii).

Subsec. (i). Pub. L. 104–12 added subsec. (i).

1994—Subsec. (a)(4). Pub. L. 103–325, §153(a), added par. (4).

Subsec. (e). Pub. L. 103–325, §153(b), inserted at end "An action to enforce a violation of section 1639 of this title may also be brought by the appropriate State attorney general in any appropriate United States district court, or any other court of competent jurisdiction, not later than 3 years after the date on which the violation occurs. The State attorney general shall provide prior written notice of any such civil action to the Federal agency responsible for enforcement under section 1607 of this title and shall provide the agency with a copy of the complaint. If prior notice is not feasible, the State attorney general shall provide notice to such agency immediately upon instituting the action. The Federal agency may—

"(1) intervene in the action;

"(2) upon intervening—

"(A) remove the action to the appropriate United States district court, if it was not originally brought there; and

"(B) be heard on all matters arising in the action; and

"(3) file a petition for appeal."

1988—Subsec. (a). Pub. L. 100–583 substituted "in subsections (a) and (b) of section 1637" for "in section 1637" in third sentence and inserted provisions limiting liability of card issuer under this section to cardholders who pay fee or use credit card or charge card.

1980—Subsec. (a). Pub. L. 96–221, §615(b), in introductory text inserted provisions respecting applicability of section 1635 of this title, and in text following numbered pars. inserted provisions relating to disclosures required under sections 1637 and 1638 of this title.

Subsec. (a)(2)(B). Pub. L. 96–221, §615(a)(1), substituted provisions respecting recovery under this subparagraph in any class action or series of class actions, for provisions respecting recovery in a class action.

Subsec. (a)(3). Pub. L. 96–221, §615(a)(2), inserted provisions relating to right of rescission under section 1635 of this title.

Subsec. (b). Pub. L. 96–221, §615(a)(3), substituted provisions relating to correction of errors within sixty days by a creditor or assignee, for provisions relating to correction of errors within fifteen days by a creditor.

Subsec. (c). Pub. L. 96–221, §615(a)(3), substituted provisions relating to liability of a creditor or assignee in any action brought under this section or section 1635 of this title, for provisions relating to liability of a

creditor in any action brought under this section.

Subsec. (d). Pub. L. 96–221, §615(a)(3), substituted provisions relating to liability in transaction or lease involving multiple obligors, for provisions relating to liability of subsequent assignees original creditor.

Subsec. (e). Pub. L. 96–221, §615(a)(4), inserted provisions relating to limitations on actions.

Subsec. (f). Pub. L. 96–221, §615(a)(5), inserted references to section 1607(b), (c), and (e) of this title.

Subsec. (g). Pub. L. 96–221, §615(a)(6), inserted provisions relating to remedy under section 1635 of this title.

Subsec. (h). Pub. L. 96–221, §615(a)(7), substituted provisions relating to offset from amounts owed to the creditor or assignee, and rights of defaulting consumer, for provisions relating to offset from amounts owed to the creditor.

1976—Subsec. (a). Pub. L. 94–240, §4(1), inserted "or E" after "part D".

Subsec. (a)(2)(A). Pub. L. 94–240, §4(2), designated existing provision as cl. (i) and added cl. (ii).

Subsec. (a)(2)(B). Pub. L. 94–240, §4(3), substituted "lesser of $500,000" for "lesser of $100,000".

Subsec. (b). Pub. L. 94–240, §4(4), inserted "or part E of this subchapter" after "this part" and struck out "finance" after "required to pay a".

Subsec. (f). Pub. L. 94–222 inserted "or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor" after "by the Board", and substituted "interpretation, or approval" for "or interpretation" before "is amended".

Subsec. (g). Pub. L. 94–240, §4(5), inserted "or part D or E of this subchapter" after "this part", and "consumer lease" after "consumer loan".

1974—Subsec. (a). Pub. L. 93–495, §408(a), substituted provisions setting forth determination of amount of liability of any creditor failing to comply with any requirement imposed under part D of this subchapter or this part, for provisions setting forth determination of amount of liability of any creditor failing to disclose in connection with any consumer credit transaction any information required under this part to be disclosed to specified persons.

Subsec. (b). Pub. L. 93–495, §408(b), inserted "for any failure to comply with any requirement imposed under this part," before "if within".

Subsec. (c). Pub. L. 93–495, §408(c), substituted "subchapter" for "part".

Subsec. (f). Pub. L. 93–495, §406, added subsec. (f).

Subsec. (g). Pub. L. 93–495, §407, added subsec. (g).

Subsec. (h). Pub. L. 93–495, §408(d), added subsec. (h).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 1100A(2) of Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

Amendment by sections 1413, 1416, 1417, and 1422 of Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date, if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–24 effective 9 months after May 22, 2009, except as otherwise specifically provided, see section 3 of Pub. L. 111–24, set out as a note under section 1602 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–315, title X, §1012(b), Aug. 14, 2008, 122 Stat. 3482, provided that: "The amendments made by this section [amending this section] shall have the same effective date as provisions referred to in section 1003(b) [set out as a note under section 1638 of this title]."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–240 effective on expiration of one year after Mar. 23, 1976, see section 6 of Pub. L. 94–240, set out as an Effective Date note under section 1667 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–495 effective Oct. 28, 1974, see section 416 of Pub. L. 93–495, set out as an Effective Date note under section 1665a of this title.

DETERMINATION OF LIABILITY PRIOR TO OCTOBER 28, 1974

Pub. L. 93–495, title IV, §408(e), Oct. 28, 1974, 88 Stat. 1519, provided that: "The amendments made by sections 406, 407, and 408 [amending this section] shall apply in determining the liability of any person under chapter 2 or 4 of the Truth in Lending Act [this part or part D of this subchapter], unless prior to the date of enactment of this Act [Oct. 28, 1974] such liability has been determined by final judgment of a court of competent jurisdiction and no further review of such judgment may be had by appeal or otherwise."

[1] So in original. The semicolon probably should be a comma.

[2] So in original. Probably should be preceded by "section".

[3] So in original. The closing parenthesis probably should not appear.

§1641. Liability of assignees

(a) Prerequisites

Except as otherwise specifically provided in this subchapter, any civil action for a violation of this subchapter or proceeding under section 1607 of this title which may be brought against a creditor may be maintained against any assignee of such creditor only if the violation for which such action or proceeding is brought is apparent on the face of the disclosure statement, except where the assignment was involuntary. For the purpose of this section, a violation apparent on the face of the disclosure statement includes, but is not limited to (1) a disclosure which can be determined to be incomplete or inaccurate from the face of the disclosure statement or other documents assigned, or (2) a disclosure which does not use the terms required to be used by this subchapter.

(b) Proof of compliance with statutory provisions

Except as provided in section 1635(c) of this title, in any action or proceeding by or against any subsequent assignee of the original creditor without knowledge to the contrary by the assignee when he acquires the obligation, written acknowledgement of receipt by a person to whom a statement is required to be given pursuant to this subchapter shall be conclusive proof of the delivery thereof and, except as provided in subsection (a) of this section, of compliance with this part. This section does not affect the rights of the obligor in any action against the original creditor.

(c) Right of rescission by consumer unaffected

Any consumer who has the right to rescind a transaction under section 1635 of this title may rescind the transaction as against any assignee of the obligation.

(d) Rights upon assignment of certain mortgages

(1) In general

Any person who purchases or is otherwise assigned a mortgage referred to in section 1602(aa) [1] of this title shall be subject to all claims and defenses with respect to that mortgage that the consumer could assert against the creditor of the mortgage, unless the purchaser or assignee demonstrates, by a preponderance of the evidence, that a reasonable person exercising ordinary due diligence, could not determine, based on the documentation required by this subchapter, the itemization of the amount financed, and other disclosure of disbursements that the mortgage was a

mortgage referred to in section 1602(aa) [1] of this title. The preceding sentence does not affect rights of a consumer under subsection (a), (b), or (c) of this section or any other provision of this subchapter.

(2) Limitation on damages

Notwithstanding any other provision of law, relief provided as a result of any action made permissible by paragraph (1) may not exceed—

(A) with respect to actions based upon a violation of this subchapter, the amount specified in section 1640 of this title; and

(B) with respect to all other causes of action, the sum of—

(i) the amount of all remaining indebtedness; and

(ii) the total amount paid by the consumer in connection with the transaction.

(3) Offset

The amount of damages that may be awarded under paragraph (2)(B) shall be reduced by the amount of any damages awarded under paragraph (2)(A).

(4) Notice

Any person who sells or otherwise assigns a mortgage referred to in section 1602(aa) [1] of this title shall include a prominent notice of the potential liability under this subsection as determined by the Bureau.

(e) Liability of assignee for consumer credit transactions secured by real property

(1) In general

Except as otherwise specifically provided in this subchapter, any civil action against a creditor for a violation of this subchapter, and any proceeding under section 1607 of this title against a creditor, with respect to a consumer credit transaction secured by real property may be maintained against any assignee of such creditor only if—

(A) the violation for which such action or proceeding is brought is apparent on the face of the disclosure statement provided in connection with such transaction pursuant to this subchapter; and

(B) the assignment to the assignee was voluntary.

(2) Violation apparent on the face of the disclosure described

For the purpose of this section, a violation is apparent on the face of the disclosure statement if—

(A) the disclosure can be determined to be incomplete or inaccurate by a comparison among the disclosure statement, any itemization of the amount financed, the note, or any other disclosure of disbursement; or

(B) the disclosure statement does not use the terms or format required to be used by this subchapter.

(f) Treatment of servicer

(1) In general

A servicer of a consumer obligation arising from a consumer credit transaction shall not be treated as an assignee of such obligation for purposes of this section unless the servicer is or was the owner of the obligation.

(2) Servicer not treated as owner on basis of assignment for administrative convenience

A servicer of a consumer obligation arising from a consumer credit transaction shall not be treated as the owner of the obligation for purposes of this section on the basis of an assignment of the obligation from the creditor or another assignee to the servicer solely for the administrative convenience of the servicer in servicing the obligation. Upon written request by the obligor, the servicer shall provide the obligor, to the best knowledge of the servicer, with the name, address, and telephone number of the owner of the obligation or the master servicer of the obligation.

(3) "Servicer" defined

For purposes of this subsection, the term "servicer" has the same meaning as in section 2605(i)(2) of title 12.

(4) Applicability

This subsection shall apply to all consumer credit transactions in existence or consummated on or after September 30, 1995.

(g) Notice of new creditor

(1) In general

In addition to other disclosures required by this subchapter, not later than 30 days after the date on which a mortgage loan is sold or otherwise transferred or assigned to a third party, the creditor that is the new owner or assignee of the debt shall notify the borrower in writing of such transfer, including—

(A) the identity, address, telephone number of the new creditor;
(B) the date of transfer;
(C) how to reach an agent or party having authority to act on behalf of the new creditor;
(D) the location of the place where transfer of ownership of the debt is recorded; and
(E) any other relevant information regarding the new creditor.

(2) Definition

As used in this subsection, the term "mortgage loan" means any consumer credit transaction that is secured by the principal dwelling of a consumer.

(Pub. L. 90–321, title I, §131, May 29, 1968, 82 Stat. 157; Pub. L. 96–221, title VI, §616(a), Mar. 31, 1980, 94 Stat. 182; Pub. L. 103–325, title I, §153(c), Sept. 23, 1994, 108 Stat. 2195; Pub. L. 104–29, §7, Sept. 30, 1995, 109 Stat. 274; Pub. L. 111–22, div. A, title IV, §404(a), May 20, 2009, 123 Stat. 1658; Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

REFERENCES IN TEXT

Section 1602(aa) of this title, referred to in subsec. (d)(1), (4), was redesignated section 1602(bb) of this title by Pub. L. 111–203, title X, §1100A(1)(A), July 21, 2010, 124 Stat. 2107.

AMENDMENTS

2010—Subsec. (d)(4). Pub. L. 111–203 substituted "Bureau" for "Board".
2009—Subsec. (g). Pub. L. 111–22 added subsec. (g).
1995—Subsec. (e). Pub. L. 104–29, §7(a), added subsec. (e).
Subsec. (f). Pub. L. 104–29, §7(b), added subsec. (f).
1994—Subsec. (d). Pub. L. 103–325 added subsec. (d).
1980—Pub. L. 96–221 added subsecs. (a) and (c), designated existing provisions as subsec. (b), substituted "excepted as provided in subsection (a) of this section" for "unless the violation is apparent on the face of the statement", and struck out exception for actions under section 1640(d) of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

[1] *See References in Text note below.*

§1642. Issuance of credit cards

No credit card shall be issued except in response to a request or application therefor. This prohibition does not apply to the issuance of a credit card in renewal of, or in substitution for, an accepted credit card.

(Pub. L. 90–321, title I, §132, as added Pub. L. 91–508, title V, §502(a), Oct. 26, 1970, 84 Stat. 1126.)

EFFECTIVE DATE

Pub. L. 91–508, title V, §503(1), Oct. 26, 1970, 84 Stat. 1127, provided that: "Section 132 of such Act [this section] takes effect on date of enactment of this title [Oct. 26, 1970]."

§1643. Liability of holder of credit card

(a) Limits on liability

(1) A cardholder shall be liable for the unauthorized use of a credit card only if—

(A) the card is an accepted credit card;

(B) the liability is not in excess of $50;

(C) the card issuer gives adequate notice to the cardholder of the potential liability;

(D) the card issuer has provided the cardholder with a description of a means by which the card issuer may be notified of loss or theft of the card, which description may be provided on the face or reverse side of the statement required by section 1637(b) of this title or on a separate notice accompanying such statement;

(E) the unauthorized use occurs before the card issuer has been notified that an unauthorized use of the credit card has occurred or may occur as the result of loss, theft, or otherwise; and

(F) the card issuer has provided a method whereby the user of such card can be identified as the person authorized to use it.

(2) For purposes of this section, a card issuer has been notified when such steps as may be reasonably required in the ordinary course of business to provide the card issuer with the pertinent information have been taken, whether or not any particular officer, employee, or agent of the card issuer does in fact receive such information.

(b) Burden of proof

In any action by a card issuer to enforce liability for the use of a credit card, the burden of proof is upon the card issuer to show that the use was authorized or, if the use was unauthorized, then the burden of proof is upon the card issuer to show that the conditions of liability for the unauthorized use of a credit card, as set forth in subsection (a) of this section, have been met.

(c) Liability imposed by other laws or by agreement with issuer

Nothing in this section imposes liability upon a cardholder for the unauthorized use of a credit card in excess of his liability for such use under other applicable law or under any agreement with the card issuer.

(d) Exclusiveness of liability

Except as provided in this section, a cardholder incurs no liability from the unauthorized use of a credit card.

(Pub. L. 90–321, title I, §133, as added Pub. L. 91–508, title V, §502(a), Oct. 26, 1970, 84 Stat. 1126; amended Pub. L. 96–221, title VI, §617, Mar. 31, 1980, 94 Stat. 182.)

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–221 revised existing provisions into pars. (1) and (2) and, as so revised, in par. (1) made changes in structure and phraseology and revised means of notice and verification, and in par. (2) made changes in phraseology.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

EFFECTIVE DATE

Pub. L. 91–508, title V, §503(2), Oct. 26, 1970, 84 Stat. 1127, provided that: "Section 133 of such Act [this section] takes effect upon the expiration of 90 days after such date of enactment [Oct. 26, 1970]."

§1644. Fraudulent use of credit cards; penalties

(a) Use, attempt or conspiracy to use card in transaction affecting interstate or foreign commerce

Whoever knowingly in a transaction affecting interstate or foreign commerce, uses or attempts or conspires to use any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card to obtain money, goods, services, or anything else of value which within any one-year period has a value aggregating $1,000 or more; or

(b) Transporting, attempting or conspiring to transport card in interstate commerce

Whoever, with unlawful or fraudulent intent, transports or attempts or conspires to transport in interstate or foreign commerce a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained; or

(c) Use of interstate commerce to sell or transport card

Whoever, with unlawful or fraudulent intent, uses any instrumentality of interstate or foreign commerce to sell or transport a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained; or

(d) Receipt, concealment, etc., of goods obtained by use of card

Whoever knowingly receives, conceals, uses, or transports money, goods, services, or anything else of value (except tickets for interstate or foreign transportation) which (1) within any one-year period has a value aggregating $1,000 or more, (2) has moved in or is part of, or which constitutes interstate or foreign commerce, and (3) has been obtained with a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card; or

(e) Receipt, concealment, etc., of tickets for interstate or foreign transportation obtained by use of card

Whoever knowingly receives, conceals, uses, sells, or transports in interstate or foreign commerce one or more tickets for interstate or foreign transportation, which (1) within any one-year period have a value aggregating $500 or more, and (2) have been purchased or obtained with one or more counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit cards; or

(f) Furnishing of money, etc., through use of card

Whoever in a transaction affecting interstate or foreign commerce furnishes money, property, services, or anything else of value, which within any one-year period has a value aggregating $1,000 or more, through the use of any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained—

shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(Pub. L. 90–321, title I, §134, as added Pub. L. 91–508, title V, §502(a), Oct. 26, 1970, 84 Stat.

1127; amended Pub. L. 93–495, title IV, §414, Oct. 28, 1974, 88 Stat. 1520.)

AMENDMENTS

1974—Pub. L. 93–495 generally reorganized provisions by designating former unlettered paragraph cls. (a) to (f), and as so designated, expanded prohibitions relating to fraudulent use of credit cards, decreased amount required for fraudulent use from a retail value aggregating $5,000, or more, to enumerated amounts for particular activities, and increased the punishment from a sentence of not more than five years to a sentence of not more than ten years.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–495 effective Oct. 28, 1974, see section 416 of Pub. L. 93–495, set out as an Effective Date note under section 1665a of this title.

EFFECTIVE DATE

Pub. L. 91–508, title V, §503(3), Oct. 26, 1970, 84 Stat. 1127, provided that: "Section 134 of such Act [this section] applies to offenses committed on or after such date of enactment [Oct. 26, 1970]."

§1645. Business credit cards; limits on liability of employees

The exemption provided by section 1603(1) of this title does not apply to the provisions of sections 1642, 1643, and 1644 of this title, except that a card issuer and a business or other organization which provides credit cards issued by the same card issuer to ten or more of its employees may by contract agree as to liability of the business or other organization with respect to unauthorized use of such credit cards without regard to the provisions of section 1643 of this title, but in no case may such business or other organization or card issuer impose liability upon any employee with respect to unauthorized use of such a credit card except in accordance with and subject to the limitations of section 1643 of this title.

(Pub. L. 90–321, title I, §135, as added Pub. L. 93–495, title IV, §410(a), Oct. 28, 1974, 88 Stat. 1519.)

EFFECTIVE DATE

Section effective Oct. 28, 1974, see section 416 of Pub. L. 93–495, set out as a note under section 1665a of this title.

§1646. Dissemination of annual percentage rates; implementation, etc.

(a) Annual percentage rates

The Bureau shall collect, publish, and disseminate to the public, on a demonstration basis in a number of standard metropolitan statistical areas to be determined by the Bureau, the annual percentage rates charged for representative types of nonsale credit by creditors in such areas. For the purpose of this section, the Bureau is authorized to require creditors in such areas to furnish information necessary for the Bureau to collect, publish, and disseminate such information.

(b) Credit card price and availability information

(1) Collection required

The Bureau shall collect, on a semiannual basis, credit card price and availability information, including the information required to be disclosed under section 1637(c) of this title, from a broad sample of financial institutions which offer credit card services.

(2) Sample requirements

The broad sample of financial institutions required under paragraph (1) shall include—

(A) the 25 largest issuers of credit cards; and

(B) not less than 125 additional financial institutions selected by the Bureau in a manner that ensures—

(i) an equitable geographical distribution within the sample; and
(ii) the representation of a wide spectrum of institutions within the sample.

(3) Report of information from sample

Each financial institution in the broad sample established pursuant to paragraph (2) shall report the information to the Bureau in accordance with such regulations or orders as the Bureau may prescribe.

(4) Public availability of collected information; report to Congress

The Bureau shall—

(A) make the information collected pursuant to this subsection available to the public upon request; and

(B) report such information semiannually to Congress.

(c) Implementation

The Bureau is authorized to enter into contracts or other arrangements with appropriate persons, organizations, or State agencies to carry out its functions under subsections (a) and (b) of this section and to furnish financial assistance in support thereof.

(Pub. L. 90–321, title I, §136, as added Pub. L. 96–221, title VI, §618(a), Mar. 31, 1980, 94 Stat. 183; amended Pub. L. 100–583, §5, Nov. 3, 1988, 102 Stat. 2967; Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

AMENDMENTS

2010—Pub. L. 111–203 substituted "Bureau" for "Board" wherever appearing.

1988—Subsecs. (b), (c). Pub. L. 100–583 added subsec. (b), redesignated former subsec. (b) as (c), and substituted "subsections (a) and (b)" for "subsection (a)".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as an Effective Date of 1980 Amendment note under section 1602 of this title.

§1647. Home equity plans

(a) Index requirement

In the case of extensions of credit under an open end consumer credit plan which are subject to a variable rate and are secured by a consumer's principal dwelling, the index or other rate of interest to which changes in the annual percentage rate are related shall be based on an index or rate of interest which is publicly available and is not under the control of the creditor.

(b) Grounds for acceleration of outstanding balance

A creditor may not unilaterally terminate any account under an open end consumer credit plan under which extensions of credit are secured by a consumer's principal dwelling and require the immediate repayment of any outstanding balance at such time, except in the case of—

(1) fraud or material misrepresentation on the part of the consumer in connection with the account;

(2) failure by the consumer to meet the repayment terms of the agreement for any outstanding balance; or

(3) any other action or failure to act by the consumer which adversely affects the creditor's

security for the account or any right of the creditor in such security.

This subsection does not apply to reverse mortgage transactions.

(c) Change in terms

(1) In general

No open end consumer credit plan under which extensions of credit are secured by a consumer's principal dwelling may contain a provision which permits a creditor to change unilaterally any term required to be disclosed under section 1637a(a) of this title or any other term, except a change in insignificant terms such as the address of the creditor for billing purposes.

(2) Certain changes not precluded

Notwithstanding the provisions of subsection [1] (1), a creditor may make any of the following changes:

(A) Change the index and margin applicable to extensions of credit under such plan if the index used by the creditor is no longer available and the substitute index and margin would result in a substantially similar interest rate.

(B) Prohibit additional extensions of credit or reduce the credit limit applicable to an account under the plan during any period in which the value of the consumer's principal dwelling which secures any outstanding balance is significantly less than the original appraisal value of the dwelling.

(C) Prohibit additional extensions of credit or reduce the credit limit applicable to the account during any period in which the creditor has reason to believe that the consumer will be unable to comply with the repayment requirements of the account due to a material change in the consumer's financial circumstances.

(D) Prohibit additional extensions of credit or reduce the credit limit applicable to the account during any period in which the consumer is in default with respect to any material obligation of the consumer under the agreement.

(E) Prohibit additional extensions of credit or reduce the credit limit applicable to the account during any period in which—

(i) the creditor is precluded by government action from imposing the annual percentage rate provided for in the account agreement; or

(ii) any government action is in effect which adversely affects the priority of the creditor's security interest in the account to the extent that the value of the creditor's secured interest in the property is less than 120 percent of the amount of the credit limit applicable to the account.

(F) Any change that will benefit the consumer.

(3) Material obligations

Upon the request of the consumer and at the time an agreement is entered into by a consumer to open an account under an open end consumer credit plan under which extensions of credit are secured by the consumer's principal dwelling, the consumer shall be given a list of the categories of contract obligations which are deemed by the creditor to be material obligations of the consumer under the agreement for purposes of paragraph (2)(D).

(4) Consumer benefit

(A) In general

For purposes of paragraph (2)(F), a change shall be deemed to benefit the consumer if the change is unequivocally beneficial to the borrower and the change is beneficial through the entire term of the agreement.

(B) Bureau categorization

The Bureau may, by regulation, determine categories of changes that benefit the consumer.

(d) Terms changed after application

If any term or condition described in section 1637a(a) of this title which is disclosed to a consumer in connection with an application to open an account under an open end consumer credit plan described in such section (other than a variable feature of the plan) changes before the account is opened, and if, as a result of such change, the consumer elects not to enter into the plan agreement, the creditor shall refund all fees paid by the consumer in connection with such application.

(e) Additional requirements relating to refunds and imposition of nonrefundable fees

(1) In general

No nonrefundable fee may be imposed by a creditor or any other person in connection with any application by a consumer to establish an account under any open end consumer credit plan which provides for extensions of credit which are secured by a consumer's principal dwelling before the end of the 3-day period beginning on the date such consumer receives the disclosure required under section 1637a(a) of this title and the pamphlet required under section 1637a(e) of this title with respect to such application.

(2) Constructive receipt

For purposes of determining when a nonrefundable fee may be imposed in accordance with this subsection if the disclosures and pamphlet referred to in paragraph (1) are mailed to the consumer, the date of the receipt of the disclosures by such consumer shall be deemed to be 3 business days after the date of mailing by the creditor.

(Pub. L. 90–321, title I, §137, as added Pub. L. 100–709, §3, Nov. 23, 1988, 102 Stat. 4731; amended Pub. L. 103–325, title I, §154(c), Sept. 23, 1994, 108 Stat. 2197; Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

AMENDMENTS

2010—Subsec. (c)(4)(B). Pub. L. 111–203 substituted "Bureau" for "Board" in heading and text.

1994—Subsec. (b). Pub. L. 103–325 inserted at end "This subsection does not apply to reverse mortgage transactions."

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE

For effective date of section, see Regulations; Effective Date note below.

REGULATIONS; EFFECTIVE DATE

For provisions relating to promulgation of regulations to implement amendment by Pub. L. 100–709 [enacting this section], and effective date of such amendment in connection with those regulations, see section 7 of Pub. L. 100–709, set out as a note under section 1637a of this title.

[1] *So in original. Probably should be "paragraph".*

§1648. Reverse mortgages

(a) In general

In addition to the disclosures required under this subchapter, for each reverse mortgage, the creditor shall, not less than 3 days prior to consummation of the transaction, disclose to the consumer in conspicuous type a good faith estimate of the projected total cost of the mortgage to the consumer expressed as a table of annual interest rates. Each annual interest rate shall be based on a projected total future credit extension balance under a projected appreciation rate for the dwelling and a term for the mortgage. The disclosure shall include—

(1) statements of the annual interest rates for not less than 3 projected appreciation rates and not

less than 3 credit transaction periods, as determined by the Bureau, including—

(A) a short-term reverse mortgage;

(B) a term equaling the actuarial life expectancy of the consumer; and

(C) such longer term as the Bureau deems appropriate; and

(2) a statement that the consumer is not obligated to complete the reverse mortgage transaction merely because the consumer has received the disclosure required under this section or has signed an application for the reverse mortgage.

(b) Projected total cost

In determining the projected total cost of the mortgage to be disclosed to the consumer under subsection (a) of this section, the creditor shall take into account—

(1) any shared appreciation or equity that the lender will, by contract, be entitled to receive;

(2) all costs and charges to the consumer, including the costs of any associated annuity that the consumer elects or is required to purchase as part of the reverse mortgage transaction;

(3) all payments to and for the benefit of the consumer, including, in the case in which an associated annuity is purchased (whether or not required by the lender as a condition of making the reverse mortgage), the annuity payments received by the consumer and financed from the proceeds of the loan, instead of the proceeds used to finance the annuity; and

(4) any limitation on the liability of the consumer under reverse mortgage transactions (such as nonrecourse limits and equity conservation agreements).

(Pub. L. 90–321, title I, §138, as added Pub. L. 103–325, title I, §154(b), Sept. 23, 1994, 108 Stat. 2196; amended Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111–203 substituted "Bureau" for "Board" in two places.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§1649. Certain limitations on liability

(a) Limitations on liability

For any closed end consumer credit transaction that is secured by real property or a dwelling, that is subject to this subchapter, and that is consummated before September 30, 1995, a creditor or any assignee of a creditor shall have no civil, administrative, or criminal liability under this subchapter for, and a consumer shall have no extended rescission rights under section 1635(f) of this title with respect to—

(1) the creditor's treatment, for disclosure purposes, of—

(A) taxes described in section 1605(d)(3) of this title;

(B) fees described in section 1605(e)(2) and (5) of this title;

(C) fees and amounts referred to in the 3rd sentence of section 1605(a) of this title; or

(D) borrower-paid mortgage broker fees referred to in section 1605(a)(6) of this title;

(2) the form of written notice used by the creditor to inform the obligor of the rights of the obligor under section 1635 of this title if the creditor provided the obligor with a properly dated form of written notice published and adopted by the Bureau or a comparable written notice, and otherwise complied with all the requirements of this section regarding notice; or

(3) any disclosure relating to the finance charge imposed with respect to the transaction if the amount or percentage actually disclosed—

(A) may be treated as accurate for purposes of this subchapter if the amount disclosed as the finance charge does not vary from the actual finance charge by more than $200;

(B) may, under section 1605(f)(2) of this title, be treated as accurate for purposes of section 1635 of this title; or

(C) is greater than the amount or percentage required to be disclosed under this subchapter.

(b) Exceptions

Subsection (a) of this section shall not apply to—

(1) any individual action or counterclaim brought under this subchapter which was filed before June 1, 1995;

(2) any class action brought under this subchapter for which a final order certifying a class was entered before January 1, 1995;

(3) the named individual plaintiffs in any class action brought under this subchapter which was filed before June 1, 1995; or

(4) any consumer credit transaction with respect to which a timely notice of rescission was sent to the creditor before June 1, 1995.

(Pub. L. 90–321, title I, §139, as added Pub. L. 104–29, §4(a), Sept. 30, 1995, 109 Stat. 273; amended Pub. L. 104–208, div. A, title II, §2107(a), Sept. 30, 1996, 110 Stat. 3009–402; Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

AMENDMENTS

2010—Subsec. (a)(2). Pub. L. 111–203 substituted "Bureau" for "Board".

1996—Subsec. (a). Pub. L. 104–208 substituted "For any closed end consumer credit transaction that is secured by real property or a dwelling, that is subject to this subchapter, and" for "For any consumer credit transaction subject to this subchapter".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–208, div. A, title II, §2107(b), Sept. 30, 1996, 110 Stat. 3009–402, provided that: "The amendment made by subsection (a) [amending this section] shall be effective as of September 30, 1995."

§1650. Preventing unfair and deceptive private educational lending practices and eliminating conflicts of interest

(a) Definitions

As used in this section—

(1) the term "covered educational institution"—

(A) means any educational institution that offers a postsecondary educational degree, certificate, or program of study (including any institution of higher education); and

(B) includes an agent, officer, or employee of the educational institution;

(2) the term "gift"—

(A)(i) means any gratuity, favor, discount, entertainment, hospitality, loan, or other item having more than a de minimis monetary value, including services, transportation, lodging, or meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred; and

(ii) includes an item described in clause (i) provided to a family member of an officer, employee, or agent of a covered educational institution, or to any other individual based on that individual's relationship with the officer, employee, or agent, if—

(I) the item is provided with the knowledge and acquiescence of the officer, employee, or agent; and

(II) the officer, employee, or agent has reason to believe the item was provided because of the official position of the officer, employee, or agent; and

(B) does not include—

(i) standard informational material related to a loan, default aversion, default prevention, or financial literacy;

(ii) food, refreshments, training, or informational material furnished to an officer, employee, or agent of a covered educational institution, as an integral part of a training session or through participation in an advisory council that is designed to improve the service of the private educational lender to the covered educational institution, if such training or participation contributes to the professional development of the officer, employee, or agent of the covered educational institution;

(iii) favorable terms, conditions, and borrower benefits on a private education loan provided to a student employed by the covered educational institution, if such terms, conditions, or benefits are not provided because of the student's employment with the covered educational institution;

(iv) the provision of financial literacy counseling or services, including counseling or services provided in coordination with a covered educational institution, to the extent that such counseling or services are not undertaken to secure—

(I) applications for private education loans or private education loan volume;

(II) applications or loan volume for any loan made, insured, or guaranteed under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) [and 42 U.S.C. 2751 et seq.]; or

(III) the purchase of a product or service of a specific private educational lender;

(v) philanthropic contributions to a covered educational institution from a private educational lender that are unrelated to private education loans and are not made in exchange for any advantage related to private education loans; or

(vi) State education grants, scholarships, or financial aid funds administered by or on behalf of a State;

(3) the term "institution of higher education" has the same meaning as in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002);

(4) the term "postsecondary educational expenses" means any of the expenses that are included as part of the cost of attendance of a student, as defined under section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087ll);

(5) the term "preferred lender arrangement" has the same meaning as in section 151 of the Higher Education Act of 1965 [20 U.S.C. 1019];

(6) the term "private educational lender" means—

(A) a financial institution, as defined in section 1813 of title 12 that solicits, makes, or extends private education loans;

(B) a Federal credit union, as defined in section 1752 of title 12 that solicits, makes, or extends private education loans; and

(C) any other person engaged in the business of soliciting, making, or extending private education loans;

(7) the term "private education loan"—

(A) means a loan provided by a private educational lender that—

(i) is not made, insured, or guaranteed under of [1] title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) [and 42 U.S.C. 2751 et seq.]; and

(ii) is issued expressly for postsecondary educational expenses to a borrower, regardless of whether the loan is provided through the educational institution that the subject student attends or directly to the borrower from the private educational lender; and

(B) does not include an extension of credit under an open end consumer credit plan, a reverse

mortgage transaction, a residential mortgage transaction, or any other loan that is secured by real property or a dwelling; and

(8) the term "revenue sharing" means an arrangement between a covered educational institution and a private educational lender under which—

(A) a private educational lender provides or issues private education loans with respect to students attending the covered educational institution;

(B) the covered educational institution recommends to students or others the private educational lender or the private education loans of the private educational lender; and

(C) the private educational lender pays a fee or provides other material benefits, including profit sharing, to the covered educational institution in connection with the private education loans provided to students attending the covered educational institution or a borrower acting on behalf of a student.

(b) Prohibition on certain gifts and arrangements

A private educational lender may not, directly or indirectly—

(1) offer or provide any gift to a covered educational institution in exchange for any advantage or consideration provided to such private educational lender related to its private education loan activities; or

(2) engage in revenue sharing with a covered educational institution.

(c) Prohibition on co-branding

A private educational lender may not use the name, emblem, mascot, or logo of the covered educational institution, or other words, pictures, or symbols readily identified with the covered educational institution, in the marketing of private education loans in any way that implies that the covered educational institution endorses the private education loans offered by the private educational lender.

(d) Advisory Board compensation

Any person who is employed in the financial aid office of a covered educational institution, or who otherwise has responsibilities with respect to private education loans or other financial aid of the institution, and who serves on an advisory board, commission, or group established by a private educational lender or group of such lenders shall be prohibited from receiving anything of value from the private educational lender or group of lenders. Nothing in this subsection prohibits the reimbursement of reasonable expenses incurred by an employee of a covered educational institution as part of their service on an advisory board, commission, or group described in this subsection.

(e) Prohibition on prepayment or repayment fees or penalty

It shall be unlawful for any private educational lender to impose a fee or penalty on a borrower for early repayment or prepayment of any private education loan.

(f) Credit card protections for college students

(1) Disclosure required

An institution of higher education shall publicly disclose any contract or other agreement made with a card issuer or creditor for the purpose of marketing a credit card.

(2) Inducements prohibited

No card issuer or creditor may offer to a student at an institution of higher education any tangible item to induce such student to apply for or participate in an open end consumer credit plan offered by such card issuer or creditor, if such offer is made—

(A) on the campus of an institution of higher education;

(B) near the campus of an institution of higher education, as determined by rule of the Bureau; or

(C) at an event sponsored by or related to an institution of higher education.

(3) Sense of the Congress

It is the sense of the Congress that each institution of higher education should consider adopting the following policies relating to credit cards:

(A) That any card issuer that markets a credit card on the campus of such institution notify the institution of the location at which such marketing will take place.

(B) That the number of locations on the campus of such institution at which the marketing of credit cards takes place be limited.

(C) That credit card and debt education and counseling sessions be offered as a regular part of any orientation program for new students of such institution.

(Pub. L. 90–321, title I, §140, as added Pub. L. 110–315, title X, §1011(a), Aug. 14, 2008, 122 Stat. 3479; amended Pub. L. 111–24, title III, §304, May 22, 2009, 123 Stat. 1749; Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsec. (a)(2)(B)(iv)(II), (7)(A)(i), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219. Title IV of the Act is classified generally to subchapter IV (§1070 et seq.) of chapter 28 of Title 20, Education, and part C (§2751 et seq.) of subchapter I of chapter 34 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

AMENDMENTS

2010—Subsec. (f)(2)(B). Pub. L. 111–203 substituted "Bureau" for "Board".

2009—Subsec. (f). Pub. L. 111–24 added subsec. (f).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–24 effective 9 months after May 22, 2009, except as otherwise specifically provided, see section 3 of Pub. L. 111–24, set out as a note under section 1602 of this title.

EFFECTIVE DATE

Subsec. (c) of this section effective on the earlier of the date on which regulations issued under section 1002 of Pub. L. 110–315 (set out as a Regulations note under section 1638 of this title) become effective or 18 months after Aug. 14, 2008, see section 1003(b) of Pub. L. 110–315, set out as an Effective Date of 2008 Amendment note under section 1638 of this title. Such regulations were issued effective Sept. 14, 2009, with compliance optional until Feb. 14, 2010.

[1] *So in original. The word "of" probably should not appear.*

§1651. Procedure for timely settlement of estates of decedent obligors

The Bureau, in consultation with the Bureau [1] and each other agency referred to in section 1607(a) of this title, shall prescribe regulations to require any creditor, with respect to any credit card account under an open end consumer credit plan, to establish procedures to ensure that any administrator of an estate of any deceased obligor with respect to such account can resolve outstanding credit balances in a timely manner.

(Pub. L. 90–321, title I, §140A, as added Pub. L. 111–24, title V, §504(a), May 22, 2009, 123 Stat. 1756; amended Pub. L. 111–203, title X, §1100A(2), (3), July 21, 2010, 124 Stat. 2107.)

AMENDMENTS

2010—Pub. L. 111–203, §1100A(3), substituted "the Bureau" for "the Federal Trade Commission".
Pub. L. 111–203, §1100A(2), substituted "The Bureau" for "The Board".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section effective 9 months after May 22, 2009, except as otherwise specifically provided, see section 3 of Pub. L. 111–24, set out as an Effective Date of 2009 Amendment note under section 1602 of this title.

[1] *So in original.*

PART C—CREDIT ADVERTISING AND LIMITS ON CREDIT CARD FEES

§1661. Catalogs and multiple-page advertisements

For the purposes of this part, a catalog or other multiple-page advertisement shall be considered a single advertisement if it clearly and conspicuously displays a credit terms table on which the information required to be stated under this part is clearly set forth.

(Pub. L. 90–321, title I, §141, May 29, 1968, 82 Stat. 158.)

EFFECTIVE DATE

Pub. L. 90–321, title V, §504(b), May 29, 1968, 82 Stat. 167, provided that chapter 3 of title I, which enacted sections 1661 to 1665 of this title, is effective July 1, 1969.

§1662. Advertising of downpayments and installments

No advertisement to aid, promote, or assist directly or indirectly any extension of consumer credit may state

(1) that a specific periodic consumer credit amount or installment amount can be arranged, unless the creditor usually and customarily arranges credit payments or installments for that period and in that amount.

(2) that a specified downpayment is required in connection with any extension of consumer credit, unless the creditor usually and customarily arranges downpayments in that amount.

(Pub. L. 90–321, title I, §142, May 29, 1968, 82 Stat. 158.)

§1663. Advertising of open end credit plans

No advertisement to aid, promote, or assist directly or indirectly the extension of consumer credit under an open end credit plan may set forth any of the specific terms of that plan unless it also clearly and conspicuously sets forth all of the following items:

(1) Any minimum or fixed amount which could be imposed.

(2) In any case in which periodic rates may be used to compute the finance charge, the periodic rates expressed as annual percentage rates.

(3) Any other term that the Bureau may by regulation require to be disclosed.

(Pub. L. 90–321, title I, §143, May 29, 1968, 82 Stat. 158; Pub. L. 96–221, title VI, §§613(f), 619(a), Mar. 31, 1980, 94 Stat. 177, 183; Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

AMENDMENTS

2010—Par. (3). Pub. L. 111–203 substituted "Bureau" for "Board".

1980—Pub. L. 96–221 in existing introductory text struck out applicability of rate determined under section 1637(a)(5) of this title, and amended section generally substituting items setting forth minimum or fixed amount, etc., set out in pars. (1) to (3), for items time period, etc., set out in pars. (1) to (5).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

§1664. Advertising of credit other than open end plans

(a) Exclusion of open end credit plans

Except as provided in subsection (b) of this section, this section applies to any advertisement to aid, promote, or assist directly or indirectly any consumer credit sale, loan, or other extension of credit subject to the provisions of this subchapter, other than an open end credit plan.

(b) Advertisements of residential real estate

The provisions of this section do not apply to advertisements of residential real estate except to the extent that the Bureau may by regulation require.

(c) Rate of finance charge expressed as annual percentage rate

If any advertisement to which this section applies states the rate of a finance charge, the advertisement shall state the rate of that charge expressed as an annual percentage rate.

(d) Requisite disclosures in advertisement

If any advertisement to which this section applies states the amount of the downpayment, if any, the amount of any installment payment, the dollar amount of any finance charge, or the number of installments or the period of repayment, then the advertisement shall state all of the following items:

(1) The downpayment, if any.

(2) The terms of repayment.

(3) The rate of the finance charge expressed as an annual percentage rate.

(e) Credit transaction secured by principal dwelling of consumer

Each advertisement to which this section applies that relates to a consumer credit transaction that is secured by the principal dwelling of a consumer in which the extension of credit may exceed the fair market value of the dwelling, and which advertisement is disseminated in paper form to the public or through the Internet, as opposed to by radio or television, shall clearly and conspicuously state that—

(1) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

(2) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.

(Pub. L. 90–321, title I, §144, May 29, 1968, 82 Stat. 158; Pub. L. 96–221, title VI, §619(b), Mar. 31, 1980, 94 Stat. 183; Pub. L. 109–8, title XIII, §1302(b)(2), Apr. 20, 2005, 119 Stat. 209; Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–203 substituted "Bureau" for "Board".

2005—Subsec. (e). Pub. L. 109–8 added subsec. (e).

1980—Subsec. (d). Pub. L. 97–221 substituted items setting forth downpayment, etc., set out in pars. (1) to (3), for items setting forth cash price or amount of loan, etc., set out in pars. (1) to (4).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of Title 11.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

§1665. Nonliability of advertising media

There is no liability under this part on the part of any owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated.

(Pub. L. 90–321, title I, §145, May 29, 1968, 82 Stat. 159.)

§1665a. Use of annual percentage rate in oral disclosures; exceptions

In responding orally to any inquiry about the cost of credit, a creditor, regardless of the method used to compute finance charges, shall state rates only in terms of the annual percentage rate, except that in the case of an open end credit plan, the periodic rate also may be stated and, in the case of an other than open end credit plan where a major component of the finance charge consists of interest computed at a simple annual rate, the simple annual rate also may be stated. The Bureau may, by regulation, modify the requirements of this section or provide an exception from this section for a transaction or class of transactions for which the creditor cannot determine in advance the applicable annual percentage rate.

(Pub. L. 90–321, title I, §146, as added Pub. L. 93–495, title IV, §401(a), Oct. 28, 1974, 88 Stat. 1517; amended Pub. L. 96–221, title VI, §623(a), Mar. 31, 1980, 94 Stat. 185; Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

AMENDMENTS

2010—Pub. L. 111–203 substituted "Bureau" for "Board".

1980—Pub. L. 96–221 substituted provisions relating to use of annual percentage rate in oral disclosures by creditors, for provisions setting forth requirements for advertisements concerning consumer credit repayable in more than four installments.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

EFFECTIVE DATE

Pub. L. 93–495, title IV, §416, Oct. 28, 1974, 88 Stat. 1521, provided that: "This title [enacting this section and sections 1614 and 1645 of this title, amending sections 1603, 1607, 1635, 1637, 1640, and 1644 of this title, and enacting provision set out as a note under section 1640 of this title] takes effect upon the date of its

enactment [Oct. 28, 1974], except that sections 409 [amending section 1631 of this title] and 411 [amending section 1637 of this title] take effect upon the expiration of one year after the date of its enactment [Oct. 28, 1974]."

§1665b. Advertising of open end consumer credit plans secured by consumer's principal dwelling

(a) In general

If any advertisement to aid, promote, or assist, directly or indirectly, the extension of consumer credit through an open end consumer credit plan under which extensions of credit are secured by the consumer's principal dwelling states, affirmatively or negatively, any of the specific terms of the plan, including any periodic payment amount required under such plan, such advertisement shall also clearly and conspicuously set forth the following information, in such form and manner as the Bureau may require:

(1) Loan fees and opening cost estimates

Any loan fee the amount of which is determined as a percentage of the credit limit applicable to an account under the plan and an estimate of the aggregate amount of other fees for opening the account, based on the creditor's experience with the plan and stated as a single amount or as a reasonable range.

(2) Periodic rates

In any case in which periodic rates may be used to compute the finance charge, the periodic rates expressed as an annual percentage rate.

(3) Highest annual percentage rate

The highest annual percentage rate which may be imposed under the plan.

(4) Other information

Any other information the Bureau may by regulation require.

(b) Tax deductibility

(1) In general

If any advertisement described in subsection (a) of this section contains a statement that any interest expense incurred with respect to the plan is or may be tax deductible, the advertisement shall not be misleading with respect to such deductibility.

(2) Credit in excess of fair market value

Each advertisement described in subsection (a) of this section that relates to an extension of credit that may exceed the fair market value of the dwelling, and which advertisement is disseminated in paper form to the public or through the Internet, as opposed to by radio or television, shall include a clear and conspicuous statement that—

(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

(B) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.

(c) Certain terms prohibited

No advertisement described in subsection (a) of this section with respect to any home equity account may refer to such loan as "free money" or use other terms determined by the Bureau by regulation to be misleading.

(d) Discounted initial rate

(1) In general

If any advertisement described in subsection (a) of this section includes an initial annual

percentage rate that is not determined by the index or formula used to make later interest rate adjustments, the advertisement shall also state with equal prominence the current annual percentage rate that would have been applied using the index or formula if such initial rate had not been offered.

(2) Quoted rate must be reasonably current

The annual percentage rate required to be disclosed under the paragraph (1) rate must be current as of a reasonable time given the media involved.

(3) Period during which initial rate is in effect

Any advertisement to which paragraph (1) applies shall also state the period of time during which the initial annual percentage rate referred to in such paragraph will be in effect.

(e) Balloon payment

If any advertisement described in subsection (a) of this section contains a statement regarding the minimum monthly payment under the plan, the advertisement shall also disclose, if applicable, the fact that the plan includes a balloon payment.

(f) "Balloon payment" defined

For purposes of this section and section 1637a of this title, the term "balloon payment" means, with respect to any open end consumer credit plan under which extensions of credit are secured by the consumer's principal dwelling, any repayment option under which—

(1) the account holder is required to repay the entire amount of any outstanding balance as of a specified date or at the end of a specified period of time, as determined in accordance with the terms of the agreement pursuant to which such credit is extended; and

(2) the aggregate amount of the minimum periodic payments required would not fully amortize such outstanding balance by such date or at the end of such period.

(Pub. L. 90–321, title I, §147, as added Pub. L. 100–709, §2(c), Nov. 23, 1988, 102 Stat. 4730; amended Pub. L. 109–8, title XIII, §1302(a)(2), Apr. 20, 2005, 119 Stat. 208; Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

AMENDMENTS

2010—Subsecs. (a), (c). Pub. L. 111–203 substituted "Bureau" for "Board" wherever appearing.

2005—Subsec. (b). Pub. L. 109–8 designated existing provisions as par. (1), inserted par. heading, and added par. (2).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of Title 11.

EFFECTIVE DATE

For effective date of section, see Regulations; Effective Date note below.

REGULATIONS; EFFECTIVE DATE

For provisions relating to promulgation of regulations to implement amendment by Pub. L. 100–709 [enacting this section], and effective date of such amendment in connection with those regulations, see section 7 of Pub. L. 100–709, set out as a note under section 1637a of this title.

§1665c. Interest rate reduction on open end consumer credit plans

(a) In general

If a creditor increases the annual percentage rate applicable to a credit card account under an open end consumer credit plan, based on factors including the credit risk of the obligor, market conditions, or other factors, the creditor shall consider changes in such factors in subsequently determining whether to reduce the annual percentage rate for such obligor.

(b) Requirements

With respect to any credit card account under an open end consumer credit plan, the creditor shall—

(1) maintain reasonable methodologies for assessing the factors described in subsection (a);

(2) not less frequently than once every 6 months, review accounts as to which the annual percentage rate has been increased since January 1, 2009, to assess whether such factors have changed (including whether any risk has declined);

(3) reduce the annual percentage rate previously increased when a reduction is indicated by the review; and

(4) in the event of an increase in the annual percentage rate, provide in the written notice required under section 1637(i) of this title a statement of the reasons for the increase.

(c) Rule of construction

This section shall not be construed to require a reduction in any specific amount.

(d) Rulemaking

The Bureau [1] shall issue final rules not later than 9 months after May 22, 2009, to implement the requirements of and evaluate compliance with this section, and subsections (a), (b), and (c) shall become effective 15 months after May 22, 2009.

(Pub. L. 90–321, title I, §148, as added Pub. L. 111–24, title I, §101(c), May 22, 2009, 123 Stat. 1737; amended Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

AMENDMENTS

2010—Subsec. (d). Pub. L. 111–203 substituted "Bureau" for "Board".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section effective 9 months after May 22, 2009, except as otherwise specifically provided, see section 3 of Pub. L. 111–24, set out as an Effective Date of 2009 Amendment note under section 1602 of this title.

[1] So in original. Probably should be "Board".

§1665d. Reasonable penalty fees on open end consumer credit plans

(a) In general

The amount of any penalty fee or charge that a card issuer may impose with respect to a credit card account under an open end consumer credit plan in connection with any omission with respect to, or violation of, the cardholder agreement, including any late payment fee, over-the-limit fee, or any other penalty fee or charge, shall be reasonable and proportional to such omission or violation.

(b) Rulemaking required

The Bureau, in consultation with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, and the National Credit Union Administration Board, shall issue final rules not later than 9 months after May

22, 2009, to establish standards for assessing whether the amount of any penalty fee or charge described under subsection (a) is reasonable and proportional to the omission or violation to which the fee or charge relates. Subsection (a) shall become effective 15 months after May 22, 2009.

(c) Considerations

In issuing rules required by this section, the Bureau shall consider—

(1) the cost incurred by the creditor from such omission or violation;
(2) the deterrence of such omission or violation by the cardholder;
(3) the conduct of the cardholder; and
(4) such other factors as the Bureau may deem necessary or appropriate.

(d) Differentiation permitted

In issuing rules required by this subsection, the Bureau may establish different standards for different types of fees and charges, as appropriate.

(e) Safe harbor rule authorized

The Bureau, in consultation with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, and the National Credit Union Administration Board, may issue rules to provide an amount for any penalty fee or charge described under subsection (a) that is presumed to be reasonable and proportional to the omission or violation to which the fee or charge relates.

(Pub. L. 90–321, title I, §149, as added Pub. L. 111–24, title I, §102(b)(1), May 22, 2009, 123 Stat. 1740; amended Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

AMENDMENTS

2010—Subsecs. (b) to (e). Pub. L. 111–203, §1100A(2), which directed amendment of this section by substituting "Bureau" for "Board" wherever appearing, was executed by making the substitution for "Board" the first time appearing in subsecs. (b) and (e), and wherever appearing in subsecs. (c) and (d), to reflect the probable intent of Congress.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section effective 9 months after May 22, 2009, except as otherwise specifically provided, see section 3 of Pub. L. 111–24, set out as an Effective Date of 2009 Amendment note under section 1602 of this title.

§1665e. Consideration of ability to repay

A card issuer may not open any credit card account for any consumer under an open end consumer credit plan, or increase any credit limit applicable to such account, unless the card issuer considers the ability of the consumer to make the required payments under the terms of such account.

(Pub. L. 90–321, title I, §150, as added Pub. L. 111–24, title I, §109(a), May 22, 2009, 123 Stat. 1743.)

EFFECTIVE DATE

Section effective 9 months after May 22, 2009, except as otherwise specifically provided, see section 3 of Pub. L. 111–24, set out as an Effective Date of 2009 Amendment note under section 1602 of this title.

PART D—CREDIT BILLING

§1666. Correction of billing errors

(a) Written notice by obligor to creditor; time for and contents of notice; procedure upon receipt of notice by creditor

If a creditor, within sixty days after having transmitted to an obligor a statement of the obligor's account in connection with an extension of consumer credit, receives at the address disclosed under section 1637(b)(10) of this title a written notice (other than notice on a payment stub or other payment medium supplied by the creditor if the creditor so stipulates with the disclosure required under section 1637(a)(7) of this title) from the obligor in which the obligor—

(1) sets forth or otherwise enables the creditor to identify the name and account number (if any) of the obligor,

(2) indicates the obligor's belief that the statement contains a billing error and the amount of such billing error, and

(3) sets forth the reasons for the obligor's belief (to the extent applicable) that the statement contains a billing error,

the creditor shall, unless the obligor has, after giving such written notice and before the expiration of the time limits herein specified, agreed that the statement was correct—

(A) not later than thirty days after the receipt of the notice, send a written acknowledgment thereof to the obligor, unless the action required in subparagraph (B) is taken within such thirty-day period, and

(B) not later than two complete billing cycles of the creditor (in no event later than ninety days) after the receipt of the notice and prior to taking any action to collect the amount, or any part thereof, indicated by the obligor under paragraph (2) either—

(i) make appropriate corrections in the account of the obligor, including the crediting of any finance charges on amounts erroneously billed, and transmit to the obligor a notification of such corrections and the creditor's explanation of any change in the amount indicated by the obligor under paragraph (2) and, if any such change is made and the obligor so requests, copies of documentary evidence of the obligor's indebtedness; or

(ii) send a written explanation or clarification to the obligor, after having conducted an investigation, setting forth to the extent applicable the reasons why the creditor believes the account of the obligor was correctly shown in the statement and, upon request of the obligor, provide copies of documentary evidence of the obligor's indebtedness. In the case of a billing error where the obligor alleges that the creditor's billing statement reflects goods not delivered to the obligor or his designee in accordance with the agreement made at the time of the transaction, a creditor may not construe such amount to be correctly shown unless he determines that such goods were actually delivered, mailed, or otherwise sent to the obligor and provides the obligor with a statement of such determination.

After complying with the provisions of this subsection with respect to an alleged billing error, a creditor has no further responsibility under this section if the obligor continues to make substantially the same allegation with respect to such error.

(b) Billing error

For the purpose of this section, a "billing error" consists of any of the following:

(1) A reflection on a statement of an extension of credit which was not made to the obligor or, if made, was not in the amount reflected on such statement.

(2) A reflection on a statement of an extension of credit for which the obligor requests additional clarification including documentary evidence thereof.

(3) A reflection on a statement of goods or services not accepted by the obligor or his designee or not delivered to the obligor or his designee in accordance with the agreement made at the time of a transaction.

(4) The creditor's failure to reflect properly on a statement a payment made by the obligor or a credit issued to the obligor.

(5) A computation error or similar error of an accounting nature of the creditor on a statement.

(6) Failure to transmit the statement required under section 1637(b) of this title to the last address of the obligor which has been disclosed to the creditor, unless that address was furnished less than twenty days before the end of the billing cycle for which the statement is required.

(7) Any other error described in regulations of the Bureau.

(c) Action by creditor to collect amount or any part thereof regarded by obligor to be a billing error

For the purposes of this section, "action to collect the amount, or any part thereof, indicated by an obligor under paragraph (2)" does not include the sending of statements of account, which may include finance charges on amounts in dispute, to the obligor following written notice from the obligor as specified under subsection (a) of this section, if—

(1) the obligor's account is not restricted or closed because of the failure of the obligor to pay the amount indicated under paragraph (2) of subsection (a) of this section, and

(2) the creditor indicates the payment of such amount is not required pending the creditor's compliance with this section.

Nothing in this section shall be construed to prohibit any action by a creditor to collect any amount which has not been indicated by the obligor to contain a billing error.

(d) Restricting or closing by creditor of account regarded by obligor to contain a billing error

Pursuant to regulations of the Bureau, a creditor operating an open end consumer credit plan may not, prior to the sending of the written explanation or clarification required under paragraph (B)(ii), restrict or close an account with respect to which the obligor has indicated pursuant to subsection (a) of this section that he believes such account to contain a billing error solely because of the obligor's failure to pay the amount indicated to be in error. Nothing in this subsection shall be deemed to prohibit a creditor from applying against the credit limit on the obligor's account the amount indicated to be in error.

(e) Effect of noncompliance with requirements by creditor

Any creditor who fails to comply with the requirements of this section or section 1666a of this title forfeits any right to collect from the obligor the amount indicated by the obligor under paragraph (2) of subsection (a) of this section, and any finance charges thereon, except that the amount required to be forfeited under this subsection may not exceed $50.

(Pub. L. 90–321, title I, §161, as added Pub. L. 93–495, title III, §306, Oct. 28, 1974, 88 Stat. 1512; amended Pub. L. 96–221, title VI §§613(g), 620, Mar. 31, 1980, 94 Stat. 177, 184; Pub. L. 111–203, title X, §§1087, 1100A(2), July 21, 2010, 124 Stat. 2086, 2107.)

CODIFICATION

Pub L. 111–203, §1100A(2), which directed the substitution of "Bureau" for "Board" wherever appearing in title I of Pub. L. 90–321, was executed to this section, which is section 161 of title I of Pub. L. 90–321. Section 1087 of Pub. L. 111–203, which directed the making of an identical amendment in title III of Pub. L. 93–495, which added this section to title I of Pub. L. 90–321, has not been executed.

AMENDMENTS

2010—Subsecs. (b)(7), (d). Pub. L. 111–203, §1100A(2), substituted "Bureau" for "Board". See Codification note above.

1980—Subsec. (a). Pub. L. 96–221, §613(g), substituted "(b)(10)" for "(b)(11)" and "(a)(7)" for "(a)(8)".

Subsec. (b)(6), (7). Pub. L. 96–221, §620(a), added par. (6) and redesignated former par. (6) as (7).

Subsec. (c). Pub. L. 96–221, §620(b), inserted provisions respecting finance charges on amounts in dispute.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

EFFECTIVE DATE

Pub. L. 93–495, title III, §308, Oct. 28, 1974, 88 Stat. 1517, provided that: "This title [enacting this section and sections 1666a to 1666j of this title, amending sections 1601, 1602, 1610, 1631, 1632, and 1637 of this title, and enacting provision set out as a note under section 1601 of this title] takes effect upon the expiration of one year after the date of its enactment [Oct. 28, 1974]."

SHORT TITLE

Title III of Pub. L. 93–495, which is classified principally to this part, is known as the "Fair Credit Billing Act". For complete classification of Title III to the Code, see Short Title of 1974 Amendment note set out under section 1601 of this title and Tables.

§1666a. Regulation of credit reports

(a) Reports by creditor on obligor's failure to pay amount regarded as billing error

After receiving a notice from an obligor as provided in section 1666(a) of this title, a creditor or his agent may not directly or indirectly threaten to report to any person adversely on the obligor's credit rating or credit standing because of the obligor's failure to pay the amount indicated by the obligor under section 1666(a)(2) of this title, and such amount may not be reported as delinquent to any third party until the creditor has met the requirements of section 1666 of this title and has allowed the obligor the same number of days (not less than ten) thereafter to make payment as is provided under the credit agreement with the obligor for the payment of undisputed amounts.

(b) Reports by creditor on delinquent amounts in dispute; notification of obligor of parties notified of delinquency

If a creditor receives a further written notice from an obligor that an amount is still in dispute within the time allowed for payment under subsection (a) of this section, a creditor may not report to any third party that the amount of the obligor is delinquent because the obligor has failed to pay an amount which he has indicated under section 1666(a)(2) of this title, unless the creditor also reports that the amount is in dispute and, at the same time, notifies the obligor of the name and address of each party to whom the creditor is reporting information concerning the delinquency.

(c) Reports by creditor of subsequent resolution of delinquent amounts

A creditor shall report any subsequent resolution of any delinquencies reported pursuant to subsection (b) of this section to the parties to whom such delinquencies were initially reported.

(Pub. L. 90–321, title I, §162, as added Pub. L. 93–495, title III, §306, Oct. 28, 1974, 88 Stat. 1513.)

§1666b. Timing of payments

(a) Time to make payments

A creditor may not treat a payment on a credit card account under an open end consumer credit plan as late for any purpose, unless the creditor has adopted reasonable procedures designed to ensure that each periodic statement including the information required by section 1637(b) of this title is mailed or delivered to the consumer not later than 21 days before the payment due date.

(b) Grace period

If an open end consumer credit plan provides a time period within which an obligor may repay any portion of the credit extended without incurring an additional finance charge, such additional finance charge may not be imposed with respect to such portion of the credit extended for the billing cycle of

which such period is a part, unless a statement which includes the amount upon which the finance charge for the period is based was mailed or delivered to the consumer not later than 21 days before the date specified in the statement by which payment must be made in order to avoid imposition of that finance charge.

(Pub. L. 90–321, title I, §163, as added Pub. L. 93–495, title III, §306, Oct. 28, 1974, 88 Stat. 1514; amended Pub. L. 111–24, title I, §106(b)(1), May 22, 2009, 123 Stat. 1742; Pub. L. 111–93, §2, Nov. 6, 2009, 123 Stat. 2998.)

AMENDMENTS

2009—Pub. L. 111–24 amended section generally, adding provisions relating to late payments and delivery of periodic statements, substituting provisions requiring a 21-day statement delivery period for provisions requiring a 14-day period before the imposition of additional finance charges, and striking provisions relating to excusable cause for creditor's failure to make timely mailing or delivery of periodic statements.

Subsec. (a). Pub. L. 111–93 inserted "a credit card account under" after "payment on".

EFFECTIVE DATE

Pub. L. 111–24, title I, §106(b)(2), May 22, 2009, 123 Stat. 1742, provided that: "Notwithstanding section 3 [see Effective Date of 2009 Amendment note set out under section 1602 of this title], section 163 of the Truth in Lending Act [15 U.S.C. 1666b], as amended by this subsection, shall become effective 90 days after the date of enactment of this Act [May 22, 2009]."

§1666c. Prompt and fair crediting of payments

(a) In general

Payments received from an obligor under an open end consumer credit plan by the creditor shall be posted promptly to the obligor's account as specified in regulations of the Bureau. Such regulations shall prevent a finance charge from being imposed on any obligor if the creditor has received the obligor's payment in readily identifiable form, by 5:00 p.m. on the date on which such payment is due, in the amount, manner, and location indicated by the creditor to avoid the imposition thereof.

(b) Application of payments

(1) In general

Upon receipt of a payment from a cardholder, the card issuer shall apply amounts in excess of the minimum payment amount first to the card balance bearing the highest rate of interest, and then to each successive balance bearing the next highest rate of interest, until the payment is exhausted.

(2) Clarification relating to certain deferred interest arrangements

A creditor shall allocate the entire amount paid by the consumer in excess of the minimum payment amount to a balance on which interest is deferred during the last 2 billing cycles immediately preceding the expiration of the period during which interest is deferred.

(c) Changes by card issuer

If a card issuer makes a material change in the mailing address, office, or procedures for handling cardholder payments, and such change causes a material delay in the crediting of a cardholder payment made during the 60-day period following the date on which such change took effect, the card issuer may not impose any late fee or finance charge for a late payment on the credit card account to which such payment was credited.

(Pub. L. 90–321, title I, §164, as added Pub. L. 93–495, title III, §306, Oct. 28, 1974, 88 Stat. 1514; amended Pub. L. 111–24, title I, §104, May 22, 2009, 123 Stat. 1741; Pub. L. 111–203, title X, §§1087, 1100A(2), July 21, 2010, 124 Stat. 2086, 2107.)

CODIFICATION

Pub L. 111–203, §1100A(2), which directed the substitution of "Bureau" for "Board" wherever appearing in title I of Pub. L. 90–321, was executed to this section, which is section 164 of title I of Pub. L. 90–321. Section 1087 of Pub. L. 111–203, which directed the making of an identical amendment in title III of Pub. L. 93–495, which added this section to title I of Pub. L. 90–321, has not been executed.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, §1100A(2), substituted "Bureau" for "Board". See Codification note above.

2009—Pub. L. 111–24, §104(1), substituted "Prompt and fair crediting of payments" for "Prompt crediting of payments" in section catchline, designated existing provisions as subsec. (a), and inserted subsec. (a) heading.

Subsec. (a). Pub. L. 111–24, §104(2), (3), inserted ", by 5:00 p.m. on the date on which such payment is due," after "in readily identifiable form" and substituted "manner, and location" for "manner, location, and time".

Subsecs. (b), (c). Pub. L. 111–24, §104(4), added subsecs. (b) and (c).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–24 effective 9 months after May 22, 2009, except as otherwise specifically provided, see section 3 of Pub. L. 111–24, set out as a note under section 1602 of this title.

§1666d. Treatment of credit balances

Whenever a credit balance in excess of $1 is created in connection with a consumer credit transaction through (1) transmittal of funds to a creditor in excess of the total balance due on an account, (2) rebates of unearned finance charges or insurance premiums, or (3) amounts otherwise owed to or held for the benefit of an obligor, the creditor shall—

(A) credit the amount of the credit balance to the consumer's account;

(B) refund any part of the amount of the remaining credit balance, upon request of the consumer; and

(C) make a good faith effort to refund to the consumer by cash, check, or money order any part of the amount of the credit balance remaining in the account for more than six months, except that no further action is required in any case in which the consumer's current location is not known by the creditor and cannot be traced through the consumer's last known address or telephone number.

(Pub. L. 90–321, title I, §165, as added Pub. L. 93–495, title III, §306, Oct. 28, 1974, 88 Stat. 1514; amended Pub. L. 96–221, title VI, §621(a), Mar. 31, 1980, 94 Stat. 184.)

AMENDMENTS

1980—Pub. L. 96–221 substituted provisions relating to duties of creditor whenever a credit balance in excess of $1 is created in connection with a consumer credit transaction, for provisions relating to duties of creditor whenever an obligor transmits funds to creditor in excess of the total balance due on an open end consumer credit account.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

§1666e. Notification of credit card issuer by seller of return of goods, etc., by obligor; credit for account of obligor

With respect to any sales transaction where a credit card has been used to obtain credit, where the seller is a person other than the card issuer, and where the seller accepts or allows a return of the goods or forgiveness of a debit for services which were the subject of such sale, the seller shall promptly transmit to the credit card issuer, a credit statement with respect thereto and the credit card issuer shall credit the account of the obligor for the amount of the transaction.

(Pub. L. 90–321, title I, §166, as added Pub. L. 93–495, title III, §306, Oct. 28, 1974, 88 Stat. 1514.)

§1666f. Inducements to cardholders by sellers of cash discounts for payments by cash, check or similar means; finance charge for sales transactions involving cash discounts

(a) Cash discounts

With respect to credit [1] card which may be used for extensions of credit in sales transactions in which the seller is a person other than the card issuer, the card issuer may not, by contract or otherwise, prohibit any such seller from offering a discount to a cardholder to induce the cardholder to pay by cash, check, or similar means rather than use a credit card.

(b) Finance charge

With respect to any sales transaction, any discount from the regular price offered by the seller for the purpose of inducing payment by cash, checks, or other means not involving the use of an open-end credit plan or a credit card shall not constitute a finance charge as determined under section 1605 of this title if such discount is offered to all prospective buyers and its availability is disclosed clearly and conspicuously.

(Pub. L. 90–321, title I, §167, as added Pub. L. 93–495, title III, §306, Oct. 28, 1974, 88 Stat. 1515; amended Pub. L. 94–222, §3(c)(1), Feb. 27, 1976, 90 Stat. 197; Pub. L. 97–25, title I, §101, July 27, 1981, 95 Stat. 144.)

AMENDMENTS

1981—Subsec. (b). Pub. L. 97–25 substituted "With respect to any sales transaction, any discount from the regular price offered by the seller for the purpose of inducing payment by cash, checks, or other means not involving the use of an open-end credit plan or a credit card shall not constitute a finance charge as determined under section 1605 of this title if such discount is offered to all prospective buyers and its availability is disclosed clearly and conspicuously" for "With respect to any sales transaction, any discount not in excess of 5 per centum offered by the seller for the purpose of inducing payment by cash, check, or other means not involving the use of a credit card shall not constitute a finance charge as determined under section 1605 of this title, if such discount is offered to all prospective buyers and its availability is disclosed to all prospective buyers clearly and conspicuously in accordance with regulations of the Board".

1976—Subsec. (a). Pub. L. 94–222 temporarily designated existing provisions as par. (1) and added par. (2). See Termination Date of 1976 Amendment note below.

TERMINATION DATE OF 1976 AMENDMENT

Section 3(c)(2) of Pub. L. 94–222, as amended by Pub. L. 95–630, title XV, §1501, Nov. 10, 1978, 92 Stat. 3713; Pub. L. 97–25, title II, §201, July 27, 1981, 95 Stat. 44, provided that: "The amendments made by paragraph (1) [amending this section] shall cease to be effective on February 27, 1984."

NULLIFICATION OF BOARD RULES AND REGULATIONS UNDER SUBSECTION (B) OF THIS SECTION IN EFFECT ON JULY 26, 1981

Pub. L. 97–25, title I, §103, July 27, 1981, 95 Stat. 144, provided that: "Any rule or regulation of the Board of Governors of the Federal Reserve System pursuant to section 167(b) of the Truth in Lending Act [subsec. (b) of this section], as such section was in effect on the day before the date of enactment of this Act [July 27, 1981], is null and void."

[1] *So in original. Probably should be preceded by "a".*

§1666g. Tie-in services prohibited for issuance of credit card

Notwithstanding any agreement to the contrary, a card issuer may not require a seller, as a condition to participating in a credit card plan, to open an account with or procure any other service from the card issuer or its subsidiary or agent.

(Pub. L. 90–321, title I, §168, as added Pub. L. 93–495, title III, §306, Oct. 28, 1974, 88 Stat. 1515.)

§1666h. Offset of cardholder's indebtedness by issuer of credit card with funds deposited with issuer by cardholder; remedies of creditors under State law not affected

(a) Offset against consumer's funds

A card issuer may not take any action to offset a cardholder's indebtedness arising in connection with a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer unless—

(1) such action was previously authorized in writing by the cardholder in accordance with a credit plan whereby the cardholder agrees periodically to pay debts incurred in his open end credit account by permitting the card issuer periodically to deduct all or a portion of such debt from the cardholder's deposit account, and

(2) such action with respect to any outstanding disputed amount not be taken by the card issuer upon request of the cardholder.

In the case of any credit card account in existence on the effective date of this section, the previous written authorization referred to in clause (1) shall not be required until the date (after such effective date) when such account is renewed, but in no case later than one year after such effective date. Such written authorization shall be deemed to exist if the card issuer has previously notified the cardholder that the use of his credit card account will subject any funds which the card issuer holds in deposit accounts of such cardholder to offset against any amounts due and payable on his credit card account which have not been paid in accordance with the terms of the agreement between the card issuer and the cardholder.

(b) Attachments and levies

This section does not alter or affect the right under State law of a card issuer to attach or otherwise levy upon funds of a cardholder held on deposit with the card issuer if that remedy is constitutionally available to creditors generally.

(Pub. L. 90–321, title I, §169, as added Pub. L. 93–495, title III, §306, Oct. 28, 1974, 88 Stat. 1515.)

REFERENCES IN TEXT

For effective date of this section, referred to in subsec. (a), see Effective Date note set out under section 1666 of this title.

§1666i. Assertion by cardholder against card issuer of claims and defenses arising out of credit card transaction; prerequisites; limitation on amount of claims or defenses

(a) Claims and defenses assertible

Subject to the limitation contained in subsection (b) of this section, a card issuer who has issued a credit card to a cardholder pursuant to an open end consumer credit plan shall be subject to all claims (other than tort claims) and defenses arising out of any transaction in which the credit card is used as a method of payment or extension of credit if (1) the obligor has made a good faith attempt to obtain satisfactory resolution of a disagreement or problem relative to the transaction from the person

honoring the credit card; (2) the amount of the initial transaction exceeds $50; and (3) the place where the initial transaction occurred was in the same State as the mailing address previously provided by the cardholder or was within 100 miles from such address, except that the limitations set forth in clauses (2) and (3) with respect to an obligor's right to assert claims and defenses against a card issuer shall not be applicable to any transaction in which the person honoring the credit card (A) is the same person as the card issuer, (B) is controlled by the card issuer, (C) is under direct or indirect common control with the card issuer, (D) is a franchised dealer in the card issuer's products or services, or (E) has obtained the order for such transaction through a mail solicitation made by or participated in by the card issuer in which the cardholder is solicited to enter into such transaction by using the credit card issued by the card issuer.

(b) Amount of claims and defenses assertible

The amount of claims or defenses asserted by the cardholder may not exceed the amount of credit outstanding with respect to such transaction at the time the cardholder first notifies the card issuer or the person honoring the credit card of such claim or defense. For the purpose of determining the amount of credit outstanding in the preceding sentence, payments and credits to the cardholder's account are deemed to have been applied, in the order indicated, to the payment of: (1) late charges in the order of their entry to the account; (2) finance charges in order of their entry to the account; and (3) debits to the account other than those set forth above, in the order in which each debit entry to the account was made.

(Pub. L. 90–321, title I, §170, as added Pub. L. 93–495, title III, §306, Oct. 28, 1974, 88 Stat. 1515.)

§1666i–1. Limits on interest rate, fee, and finance charge increases applicable to outstanding balances

(a) In general

In the case of any credit card account under an open end consumer credit plan, no creditor may increase any annual percentage rate, fee, or finance charge applicable to any outstanding balance, except as permitted under subsection (b).

(b) Exceptions

The prohibition under subsection (a) shall not apply to—

(1) an increase in an annual percentage rate upon the expiration of a specified period of time, provided that—

(A) prior to commencement of that period, the creditor disclosed to the consumer, in a clear and conspicuous manner, the length of the period and the annual percentage rate that would apply after expiration of the period;

(B) the increased annual percentage rate does not exceed the rate disclosed pursuant to subparagraph (A); and

(C) the increased annual percentage rate is not applied to transactions that occurred prior to commencement of the period;

(2) an increase in a variable annual percentage rate in accordance with a credit card agreement that provides for changes in the rate according to operation of an index that is not under the control of the creditor and is available to the general public;

(3) an increase due to the completion of a workout or temporary hardship arrangement by the obligor or the failure of the obligor to comply with the terms of a workout or temporary hardship arrangement, provided that—

(A) the annual percentage rate, fee, or finance charge applicable to a category of transactions following any such increase does not exceed the rate, fee, or finance charge that applied to that category of transactions prior to commencement of the arrangement; and

(B) the creditor has provided the obligor, prior to the commencement of such arrangement, with clear and conspicuous disclosure of the terms of the arrangement (including any increases

due to such completion or failure); or

(4) an increase due solely to the fact that a minimum payment by the obligor has not been received by the creditor within 60 days after the due date for such payment, provided that the creditor shall—

(A) include, together with the notice of such increase required under section 1637(i) of this title, a clear and conspicuous written statement of the reason for the increase and that the increase will terminate not later than 6 months after the date on which it is imposed, if the creditor receives the required minimum payments on time from the obligor during that period; and

(B) terminate such increase not later than 6 months after the date on which it is imposed, if the creditor receives the required minimum payments on time during that period.

(c) Repayment of outstanding balance

(1) In general

The creditor shall not change the terms governing the repayment of any outstanding balance, except that the creditor may provide the obligor with one of the methods described in paragraph (2) of repaying any outstanding balance, or a method that is no less beneficial to the obligor than one of those methods.

(2) Methods

The methods described in this paragraph are—

(A) an amortization period of not less than 5 years, beginning on the effective date of the increase set forth in the notice required under section 1637(i) of this title; or

(B) a required minimum periodic payment that includes a percentage of the outstanding balance that is equal to not more than twice the percentage required before the effective date of the increase set forth in the notice required under section 1637(i) of this title.

(d) Outstanding balance defined

For purposes of this section, the term "outstanding balance" means the amount owed on a credit card account under an open end consumer credit plan as of the end of the 14th day after the date on which the creditor provides notice of an increase in the annual percentage rate, fee, or finance charge in accordance with section 1637(i) of this title.

(Pub. L. 90–321, title I, §171, as added Pub. L. 111–24, title I, §101(b)(2), May 22, 2009, 123 Stat. 1736.)

PRIOR PROVISIONS

A prior section 171 of Pub. L. 90–321 was renumbered section 173 and is classified to section 1666j of this title.

EFFECTIVE DATE

Section effective 9 months after May 22, 2009, except as otherwise specifically provided, see section 3 of Pub. L. 111–24, set out as an Effective Date of 2009 Amendment note under section 1602 of this title.

§1666i–2. Additional limits on interest rate increases

(a) Limitation on increases within first year

Except in the case of an increase described in paragraph (1), (2), (3), or (4) of section 1666i–1(b) of this title, no increase in any annual percentage rate, fee, or finance charge on any credit card account under an open end consumer credit plan shall be effective before the end of the 1-year period beginning on the date on which the account is opened.

(b) Promotional rate minimum term

No increase in any annual percentage rate applicable to a credit card account under an open end

consumer credit plan that is a promotional rate (as that term is defined by the Bureau) shall be effective before the end of the 6-month period beginning on the date on which the promotional rate takes effect, subject to such reasonable exceptions as the Bureau may establish, by rule.

(Pub. L. 90–321, title I, §172, as added Pub. L. 111–24, title I, §101(d), May 22, 2009, 123 Stat. 1738; amended Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–203 substituted "Bureau" for "Board" in two places.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section effective 9 months after May 22, 2009, except as otherwise specifically provided, see section 3 of Pub. L. 111–24, set out as an Effective Date of 2009 Amendment note under section 1602 of this title.

§1666j. Applicability of State laws

(a) Consistency of provisions

This part does not annul, alter, or affect, or exempt any person subject to the provisions of this part from complying with, the laws of any State with respect to credit billing practices, except to the extent that those laws are inconsistent with any provision of this part, and then only to the extent of the inconsistency. The Bureau is authorized to determine whether such inconsistencies exist. The Bureau may not determine that any State law is inconsistent with any provision of this part if the Bureau determines that such law gives greater protection to the consumer.

(b) Exemptions by Bureau from credit billing requirements

The Bureau shall by regulation exempt from the requirements of this part any class of credit transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this part or that such law gives greater protection to the consumer, and that there is adequate provision for enforcement.

(c) Finance charge or other charge for credit for sales transactions involving cash discounts

Notwithstanding any other provisions of this subchapter, any discount offered under section 1666f(b) of this title shall not be considered a finance charge or other charge for credit under the usury laws of any State or under the laws of any State relating to disclosure of information in connection with credit transactions, or relating to the types, amounts or rates of charges, or to any element or elements of charges permissible under such laws in connection with the extension or use of credit.

(Pub. L. 90–321, title I, §173, formerly §171, as added Pub. L. 93–495, title III, §306, Oct. 28, 1974, 88 Stat. 1516; amended Pub. L. 94–222, §3(d), Feb. 27, 1976, 90 Stat. 198; renumbered §173, Pub. L. 111–24, title I, §101(b)(1), May 22, 2009, 123 Stat. 1736; Pub. L. 111–203, title X, §§1087, 1100A(2), July 21, 2010, 124 Stat. 2086, 2107.)

CODIFICATION

Pub L. 111–203, §1100A(2), which directed the substitution of "Bureau" for "Board" wherever appearing in title I of Pub. L. 90–321, was executed to this section, which is section 173 of title I of Pub. L. 90–321. Section 1087 of Pub. L. 111–203, which directed the making of an identical amendment in title III of Pub. L. 93–495, which added this section to title I of Pub. L. 90–321, has not been executed.

AMENDMENTS

2010—Subsecs. (a), (b). Pub. L. 111–203, §1100A(2), substituted "Bureau" for "Board" wherever appearing. See Codification note above.

1976—Subsec. (c). Pub. L. 94–222 added subsec. (c).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

PART E—CONSUMER LEASES

§1667. Definitions

For purposes of this part—

(1) The term "consumer lease" means a contract in the form of a lease or bailment for the use of personal property by a natural person for a period of time exceeding four months, and for a total contractual obligation not exceeding $50,000, primarily for personal, family, or household purposes, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease, except that such term shall not include any credit sale as defined in section 1602(g) [1] of this title. Such term does not include a lease for agricultural, business, or commercial purposes, or to a government or governmental agency or instrumentality, or to an organization.

(2) The term "lessee" means a natural person who leases or is offered a consumer lease.

(3) The term "lessor" means a person who is regularly engaged in leasing, offering to lease, or arranging to lease under a consumer lease.

(4) The term "personal property" means any property which is not real property under the laws of the State where situated at the time offered or otherwise made available for lease.

(5) The terms "security" and "security interest" mean any interest in property which secures payment or performance of an obligation.

(Pub. L. 90–321, title I, §181, as added Pub. L. 94–240, §3, Mar. 23, 1976, 90 Stat. 257; amended Pub. L. 111–203, title X, §1100E(a)(2), July 21, 2010, 124 Stat. 2111.)

ADJUSTMENTS FOR INFLATION

For requirement of inflation adjustment of dollar amounts in par. (1) of this section, see section 1100E(b) of Pub. L. 111–203, set out as a note under section 1603 of this title.

REFERENCES IN TEXT

Section 1602(g) of this title, referred to in par. (1), was redesignated section 1602(h) of this title by Pub. L. 111–203, title X, §1100A(1)(A), July 21, 2010, 124 Stat. 2107.

AMENDMENTS

2010—Par. (1). Pub. L. 111–203 substituted "$50,000" for "$25,000".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Pub. L. 94–240, §6, Mar. 23, 1976, 90 Stat. 261, provided that: "This Act [enacting this section and sections 1667a to 1667e of this title, amending sections 1601 and 1640 of this title, and enacting provisions set out as a note under section 1601 of this title] takes effect one year after the date of its enactment [Mar. 23, 1976]."

ADJUSTMENTS FOR INFLATION

On and after Dec. 31, 2011, dollar amount described in par. (1) of this section to be adjusted annually by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers, see section 1100E(b) of Pub. L. 111–203, set out as a note under section 1603 of this title.

[1] *See References in Text note below.*

§1667a. Consumer lease disclosures

Each lessor shall give a lessee prior to the consummation of the lease a dated written statement on which the lessor and lessee are identified setting out accurately and in a clear and conspicuous manner the following information with respect to that lease, as applicable:

(1) A brief description or identification of the leased property;

(2) The amount of any payment by the lessee required at the inception of the lease;

(3) The amount paid or payable by the lessee for official fees, registration, certificate of title, or license fees or taxes;

(4) The amount of other charges payable by the lessee not included in the periodic payments, a description of the charges and that the lessee shall be liable for the differential, if any, between the anticipated fair market value of the leased property and its appraised actual value at the termination of the lease, if the lessee has such liability;

(5) A statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term and whether or not the lessee has the option to purchase the leased property and at what price and time;

(6) A statement identifying all express warranties and guarantees made by the manufacturer or lessor with respect to the leased property, and identifying the party responsible for maintaining or servicing the leased property together with a description of the responsibility;

(7) A brief description of insurance provided or paid for by the lessor or required of the lessee, including the types and amounts of the coverages and costs;

(8) A description of any security interest held or to be retained by the lessor in connection with the lease and a clear identification of the property to which the security interest relates;

(9) The number, amount, and due dates or periods of payments under the lease and the total amount of such periodic payments;

(10) Where the lease provides that the lessee shall be liable for the anticipated fair market value of the property on expiration of the lease, the fair market value of the property at the inception of the lease, the aggregate cost of the lease on expiration, and the differential between them; and

(11) A statement of the conditions under which the lessee or lessor may terminate the lease prior to the end of the term and the amount or method of determining any penalty or other charge for delinquency, default, late payments, or early termination.

The disclosures required under this section may be made in the lease contract to be signed by the lessee. The Bureau may provide by regulation that any portion of the information required to be disclosed under this section may be given in the form of estimates where the lessor is not in a position to know exact information.

(Pub. L. 90–321, title I, §182, as added Pub. L. 94–240, §3, Mar. 23, 1976, 90 Stat. 258; amended Pub. L. 111–203, title X, §1100A(2), (10)(B), July 21, 2010, 124 Stat. 2107, 2109.)

AMENDMENTS

2010—Pub. L. 111–203, §1100A(2), (10)(B), made similar amendments, resulting in the substitution of "The Bureau" for "The Board" in concluding provisions.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§1667b. Lessee's liability on expiration or termination of lease

(a) Estimated residual value of property as basis; presumptions; action by lessor for excess liability; mutually agreeable final adjustment

Where the lessee's liability on expiration of a consumer lease is based on the estimated residual

value of the property such estimated residual value shall be a reasonable approximation of the anticipated actual fair market value of the property on lease expiration. There shall be a rebuttable presumption that the estimated residual value is unreasonable to the extent that the estimated residual value exceeds the actual residual value by more than three times the average payment allocable to a monthly period under the lease. In addition, where the lessee has such liability on expiration of a consumer lease there shall be a rebuttable presumption that the lessor's estimated residual value is not in good faith to the extent that the estimated residual value exceeds the actual residual value by more than three times the average payment allocable to a monthly period under the lease and such lessor shall not collect from the lessee the amount of such excess liability on expiration of a consumer lease unless the lessor brings a successful action with respect to such excess liability. In all actions, the lessor shall pay the lessee's reasonable attorney's fees. The presumptions stated in this section shall not apply to the extent the excess of estimated over actual residual value is due to physical damage to the property beyond reasonable wear and use, or to excessive use, and the lease may set standards for such wear and use if such standards are not unreasonable. Nothing in this subsection shall preclude the right of a willing lessee to make any mutually agreeable final adjustment with respect to such excess residual liability, provided such an agreement is reached after termination of the lease.

(b) Penalties and charges for delinquency, default, or early termination

Penalties or other charges for delinquency, default, or early termination may be specified in the lease but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the delinquency, default, or early termination, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

(c) Independent professional appraisal of residual value of property at termination of lease; finality

If a lease has a residual value provision at the termination of the lease, the lessee may obtain at his expense, a professional appraisal of the leased property by an independent third party agreed to by both parties. Such appraisal shall be final and binding on the parties.

(Pub. L. 90–321, title I, §183, as added Pub. L. 94–240, §3, Mar. 23, 1976, 90 Stat. 259.)

§1667c. Consumer lease advertising; liability of advertising media

(a) In general

If an advertisement for a consumer lease includes a statement of the amount of any payment or a statement that any or no initial payment is required, the advertisement shall clearly and conspicuously state, as applicable—

(1) the transaction advertised is a lease;

(2) the total amount of any initial payments required on or before consummation of the lease or delivery of the property, whichever is later;

(3) that a security deposit is required;

(4) the number, amount, and timing of scheduled payments; and

(5) with respect to a lease in which the liability of the consumer at the end of the lease term is based on the anticipated residual value of the property, that an extra charge may be imposed at the end of the lease term.

(b) Advertising medium not liable

No owner or employee of any entity that serves as a medium in which an advertisement appears or through which an advertisement is disseminated, shall be liable under this section.

(c) Radio advertisements

(1) In general

An advertisement by radio broadcast to aid, promote, or assist, directly or indirectly, any

consumer lease shall be deemed to be in compliance with the requirements of subsection (a) of this section if such advertisement clearly and conspicuously—

(A) states the information required by paragraphs (1) and (2) of subsection (a) of this section;

(B) states the number, amounts, due dates or periods of scheduled payments, and the total of such payments under the lease;

(C) includes—

(i) a referral to—

(I) a toll-free telephone number established in accordance with paragraph (2) that may be used by consumers to obtain the information required under subsection (a) of this section; or

(II) a written advertisement that—

(aa) appears in a publication in general circulation in the community served by the radio station on which such advertisement is broadcast during the period beginning 3 days before any such broadcast and ending 10 days after such broadcast; and

(bb) includes the information required to be disclosed under subsection (a) of this section; and

(ii) the name and dates of any publication referred to in clause (i)(II); and

(D) includes any other information which the Bureau determines necessary to carry out this part.

(2) Establishment of toll-free number

(A) In general

In the case of a radio broadcast advertisement described in paragraph (1) that includes a referral to a toll-free telephone number, the lessor who offers the consumer lease shall—

(i) establish such a toll-free telephone number not later than the date on which the advertisement including the referral is broadcast;

(ii) maintain such telephone number for a period of not less than 10 days, beginning on the date of any such broadcast; and

(iii) provide the information required under subsection (a) of this section with respect to the lease to any person who calls such number.

(B) Form of information

The information required to be provided under subparagraph (A)(iii) shall be provided verbally or, if requested by the consumer, in written form.

(3) No effect on other law

Nothing in this subsection shall affect the requirements of Federal law as such requirements apply to advertisement by any medium other than radio broadcast.

(Pub. L. 90–321, title I, §184, as added Pub. L. 94–240, §3, Mar. 23, 1976, 90 Stat. 259; amended Pub. L. 103–325, title III, §336(a), Sept. 23, 1994, 108 Stat. 2234; Pub. L. 104–208, div. A, title II, §2605(c), Sept. 30, 1996, 110 Stat. 3009–473; Pub. L. 111–203, title X, §1100A(2), (10)(A), July 21, 2010, 124 Stat. 2107, 2109.)

AMENDMENTS

2010—Subsec. (c)(1)(D). Pub. L. 111–203, §1100A(2), (10)(A), made similar amendments, resulting in the substitution of "the Bureau" for "the Board".

1996—Subsec. (a). Pub. L. 104–208, §2605(c)(1), (3), added subsec. (a) and struck out former subsec. (a) consisting of introductory provisions and 5 pars. relating to contents of lease agreements required if consumer lease advertisement stated amount of payment, number of required payments, or that any or no payments were required at lease inception.

Subsec. (b). Pub. L. 104–208, §2605(c)(3), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 104–208, §2605(c)(1), (2), redesignated subsec. (b) as (c) and struck out former subsec. (c) which read as follows: "There is no liability under this section on the part of any owner or personnel, as

such, of any medium in which an advertisement appears or through which it is disseminated."

1994—Subsecs. (b), (c). Pub. L. 103–325 added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

STUDY OF ADVERTISING RULES

Pub. L. 103–325, title III, §336(b), Sept. 23, 1994, 108 Stat. 2235, provided that: "Not later than 365 days after the date of enactment of this Act [Sept. 23, 1994], the Board of Governors of the Federal Reserve System shall submit a report to the Congress on—

"(1) the current rules applicable to credit advertising;

"(2) how such rules could be modified to increase consumer benefit and decrease creditor costs; and

"(3) how such rules could be modified, if at all, for radio advertisements without diminishing consumer protection."

§1667d. Civil liability of lessors

(a) Grounds for maintenance of action

Any lessor who fails to comply with any requirement imposed under section 1667a or 1667b of this title with respect to any person is liable to such person as provided in section 1640 of this title.

(b) Additional grounds for maintenance of action; "creditor" defined

Any lessor who fails to comply with any requirement imposed under section 1667c of this title with respect to any person who suffers actual damage from the violation is liable to such person as provided in section 1640 of this title. For the purposes of this section, the term "creditor" as used in sections 1640 and 1641 of this title shall include a lessor as defined in this part.

(c) Jurisdiction of courts; time limitation

Notwithstanding section 1640(e) of this title, any action under this section may be brought in any United States district court or in any other court of competent jurisdiction. Such actions alleging a failure to disclose or otherwise comply with the requirements of this part shall be brought within one year of the termination of the lease agreement.

(Pub. L. 90–321, title I, §185, as added Pub. L. 94–240, §3, Mar. 23, 1976, 90 Stat. 260; amended Pub. L. 96–221, title VI, §624, Mar. 31, 1980, 94 Stat. 185.)

AMENDMENTS

1980—Subsec. (b). Pub. L. 96–221 struck out applicability of section 1614 of this title to term "creditor".

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

§1667e. Applicability of State laws; exemptions by Bureau from leasing requirements

(a) This part does not annul, alter, or affect, or exempt any person subject to the provisions of this part from complying with, the laws of any State with respect to consumer leases, except to the extent that those laws are inconsistent with any provision of this part, and then only to the extent of the inconsistency. The Bureau is authorized to determine whether such inconsistencies exist. The Bureau may not determine that any State law is inconsistent with any provision of this part if the Bureau determines that such law gives greater protection and benefit to the consumer.

(b) The Bureau shall by regulation exempt from the requirements of this part any class of lease transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this part or that such law gives greater protection and benefit to the consumer, and that there is adequate provision for enforcement.

(Pub. L. 90–321, title I, §186, as added Pub. L. 94–240, §3, Mar. 23, 1976, 90 Stat. 260; amended Pub. L. 111–203, title X, §1100A(2), (10), July 21, 2010, 124 Stat. 2107, 2109.)

AMENDMENTS

2010—Pub. L. 111–203, §1100A(2), (10), substituted "Bureau" for "Board", "the Bureau" for "the Board", and "The Bureau" for "The Board" wherever appearing.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§1667f. Regulations

(a) Regulations authorized

(1) In general

The Bureau shall prescribe regulations to update and clarify the requirements and definitions applicable to lease disclosures and contracts, and any other issues specifically related to consumer leasing, to the extent that the Bureau determines such action to be necessary—

(A) to carry out this part;

(B) to prevent any circumvention of this part; or

(C) to facilitate compliance with the requirements of the [1] part.

(2) Classifications, adjustments

Any regulations prescribed under paragraph (1) may contain classifications and differentiations, and may provide for adjustments and exceptions for any class of transactions, as the Bureau considers appropriate.

(b) Model disclosure

(1) Publication

The Bureau shall establish and publish model disclosure forms to facilitate compliance with the disclosure requirements of this part and to aid the consumer in understanding the transaction to which the subject disclosure form relates.

(2) Use of automated equipment

In establishing model forms under this subsection, the Bureau shall consider the use by lessors of data processing or similar automated equipment.

(3) Use optional

A lessor may utilize a model disclosure form established by the Bureau under this subsection for purposes of compliance with this part, at the discretion of the lessor.

(4) Effect of use

Any lessor who properly uses the material aspects of any model disclosure form established by the Bureau under this subsection shall be deemed to be in compliance with the disclosure requirements to which the form relates.

(Pub. L. 90–321, title I, §187, as added Pub. L. 104–208, div. A, title II, §2605(b)(1), Sept. 30, 1996, 110 Stat. 3009–471; amended Pub. L. 111–203, title X, §1100A(2), (10), July 21, 2010, 124 Stat. 2107, 2109.)

AMENDMENTS

2010—Pub. L. 111–203, §1100A(2), (10), substituted "Bureau" for "Board", "the Bureau" for "the Board", and "The Bureau" for "The Board " wherever appearing.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section 2605(b)(2) of div. A of Pub. L. 104–208 provided that:

"(A) IN GENERAL.—Any regulation of the Board, or any amendment or interpretation of any regulation of the Board issued pursuant to section 187 of the Truth in Lending Act [15 U.S.C. 1667f] (as added by paragraph (1) of this subsection), shall become effective on the first October 1 that follows the date of promulgation of that regulation, amendment, or interpretation by not less than 6 months.

"(B) LONGER PERIOD.—The Board may, at the discretion of the Board, extend the time period referred to in subparagraph (A) in accordance with subparagraph (C), to permit lessors to adjust their disclosure forms to accommodate the requirements of section 127 [187] of the Truth in Lending Act (as added by paragraph (1) of this subsection).

"(C) SHORTER PERIOD.—The Board may shorten the time period referred to in subparagraph (A), if the Board makes a specific finding that such action is necessary to comply with the findings of a court or to prevent an unfair or deceptive practice.

"(D) COMPLIANCE BEFORE EFFECTIVE DATE.—Any lessor may comply with any means of disclosure provided for in section 127 [187] of the Truth in Lending Act (as added by paragraph (1) of this subsection) before the effective date of such requirement.

"(E) DEFINITIONS.—For purposes of this subsection, the term 'lessor' has the same meaning as in section 181 of the Truth in Lending Act [15 U.S.C. 1667]."

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSES

Section 2605(a) of div. A of Pub. L. 104–208 provided that:

"(1) FINDINGS.—The Congress finds that—

"(A) competition among the various financial institutions and other firms engaged in the business of consumer leasing is greatest when there is informed use of leasing;

"(B) the informed use of leasing results from an awareness of the cost of leasing by consumers; and

"(C) there has been a continued trend toward leasing automobiles and other durable goods for consumer use as an alternative to installment credit sales and that leasing product advances have occurred such that lessors have been unable to provide consistent industry-wide disclosures to fully account for the competitive progress that has occurred.

"(2) PURPOSES.—The purposes of this section are—

"(A) to assure a simple, meaningful disclosure of leasing terms so that the consumer will be able to compare more readily the various leasing terms available to the consumer and avoid the uninformed use of leasing, and to protect the consumer against inaccurate and unfair leasing practices;

"(B) to provide for adequate cost disclosures that reflect the marketplace without impairing competition and the development of new leasing products; and

"(C) to provide the Board with the regulatory authority to assure a simplified, meaningful definition and disclosure of the terms of certain leases of personal property for personal, family, or household purposes so as to—

"(i) enable the lessee to compare more readily the various lease terms available to the lessee;

"(ii) enable comparison of lease terms with credit terms, as appropriate; and

"(iii) assure meaningful and accurate disclosures of lease terms in advertisements."

[1] *So in original. Probably should be "this".*

SUBCHAPTER II—RESTRICTIONS ON GARNISHMENT

§1671. Congressional findings and declaration of purpose

(a) Disadvantages of garnishment

The Congress finds:

(1) The unrestricted garnishment of compensation due for personal services encourages the making of predatory extensions of credit. Such extensions of credit divert money into excessive credit payments and thereby hinder the production and flow of goods in interstate commerce.

(2) The application of garnishment as a creditors' remedy frequently results in loss of employment by the debtor, and the resulting disruption of employment, production, and consumption constitutes a substantial burden on interstate commerce.

(3) The great disparities among the laws of the several States relating to garnishment have, in effect, destroyed the uniformity of the bankruptcy laws and frustrated the purposes thereof in many areas of the country.

(b) Necessity for regulation

On the basis of the findings stated in subsection (a) of this section, the Congress determines that the provisions of this subchapter are necessary and proper for the purpose of carrying into execution the powers of the Congress to regulate commerce and to establish uniform bankruptcy laws.

(Pub. L. 90–321, title III, §301, May 29, 1968, 82 Stat. 163.)

EFFECTIVE DATE

Pub. L. 90–321, title V, §504(c), May 29, 1968, 82 Stat. 167, provided that: "Title III [enacting this section and sections 1672 to 1677 of this title] takes effect on July 1, 1970."

§1672. Definitions

For the purposes of this subchapter:

(a) The term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

(b) The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

(c) The term "garnishment" means any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt.

(Pub. L. 90–321, title III, §302, May 29, 1968, 82 Stat. 163.)

§1673. Restriction on garnishment

(a) Maximum allowable garnishment

Except as provided in subsection (b) of this section and in section 1675 of this title, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed

(1) 25 per centum of his disposable earnings for that week, or

(2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 206(a)(1) of title 29 in effect at the time the earnings are payable,

whichever is less. In the case of earnings for any pay period other than a week, the Secretary of Labor shall by regulation prescribe a multiple of the Federal minimum hourly wage equivalent in effect to that set forth in paragraph (2).

(b) Exceptions

(1) The restrictions of subsection (a) of this section do not apply in the case of

(A) any order for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure, which is established by State law, which affords substantial due process, and which is subject to judicial review.

(B) any order of any court of the United States having jurisdiction over cases under chapter 13 of title 11.

(C) any debt due for any State or Federal tax.

(2) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce any order for the support of any person shall not exceed—

(A) where such individual is supporting his spouse or dependent child (other than a spouse or child with respect to whose support such order is used), 50 per centum of such individual's disposable earnings for that week; and

(B) where such individual is not supporting such a spouse or dependent child described in clause (A), 60 per centum of such individual's disposable earnings for that week;

except that, with respect to the disposable earnings of any individual for any workweek, the 50 per centum specified in clause (A) shall be deemed to be 55 per centum and the 60 per centum specified in clause (B) shall be deemed to be 65 per centum, if and to the extent that such earnings are subject to garnishment to enforce a support order with respect to a period which is prior to the twelve-week period which ends with the beginning of such workweek.

(c) Execution or enforcement of garnishment order or process prohibited

No court of the United States or any State, and no State (or officer or agency thereof), may make, execute, or enforce any order or process in violation of this section.

(Pub. L. 90–321, title III, §303, May 29, 1968, 82 Stat. 163; Pub. L. 95–30, title V, §501(e)(1)–(3), May 23, 1977, 91 Stat. 161, 162; Pub. L. 95–598, title III, §312(a), Nov. 6, 1978, 92 Stat. 2676.)

AMENDMENTS

1978—Subsec. (b)(1)(B). Pub. L. 95–598 substituted "court of the United States having jurisdiction over cases under chapter 13 of title 11" for "court of bankruptcy under chapter XIII of the Bankruptcy Act".

1977—Subsec. (b). Pub. L. 95–30, §501(e)(1), (2), designated existing provisions as par. (1) and existing pars. (1), (2), and (3) as subpars. (A), (B), and (C) thereof, substituted "for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure, which is established by State law, which affords substantial due process, and which is subject to judicial review" for "of any court for the support of any person" in subpar. (A) as so redesignated, and added par. (2).

Subsec. (c). Pub. L. 95–30, §501(e)(3), inserted ", and no State (or officer or agency thereof)," after "or any State".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95–30, title V, §501(e)(5), May 23, 1977, 91 Stat. 162, provided that: "The amendments made by this subsection [amending this section and section 1675 of this title] shall take effect on the first day of the first calendar month which begins after the date of enactment of this Act [May 23, 1977]."

§1674. Restriction on discharge from employment by reason of garnishment

(a) Termination of employment

No employer may discharge any employee by reason of the fact that his earnings have been subjected to garnishment for any one indebtedness.

(b) Penalties

Whoever willfully violates subsection (a) of this section shall be fined not more than $1,000, or

imprisoned not more than one year, or both.

(Pub. L. 90–321, title III, §304, May 29, 1968, 82 Stat. 163.)

§1675. Exemption for State-regulated garnishments

The Secretary of Labor may by regulation exempt from the provisions of section 1673(a) and (b)(2) of this title garnishments issued under the laws of any State if he determines that the laws of that State provide restrictions on garnishment which are substantially similar to those provided in section 1673(a) and (b)(2) of this title.

(Pub. L. 90–321, title III, §305, May 29, 1968, 82 Stat. 164; Pub. L. 95–30, title V, §501(e)(4), May 23, 1977, 91 Stat. 162.)

AMENDMENTS

1977—Pub. L. 95–30 substituted "section 1673(a) and (b)(2) of this title" for "section 1673(a) of this title" in two places.

§1676. Enforcement by Secretary of Labor

The Secretary of Labor, acting through the Wage and Hour Division of the Department of Labor, shall enforce the provisions of this subchapter.

(Pub. L. 90–321, title III, §306, May 29, 1968, 82 Stat. 164.)

§1677. Effect on State laws

This subchapter does not annul, alter, or affect, or exempt any person from complying with, the laws of any State

(1) prohibiting garnishments or providing for more limited garnishment than are allowed under this subchapter, or

(2) prohibiting the discharge of any employee by reason of the fact that his earnings have been subjected to garnishment for more than one indebtedness.

(Pub. L. 90–321, title III, §307, May 29, 1968, 82 Stat. 164.)

SUBCHAPTER II–A—CREDIT REPAIR ORGANIZATIONS

§1679. Findings and purposes

(a) Findings

The Congress makes the following findings:

(1) Consumers have a vital interest in establishing and maintaining their credit worthiness and credit standing in order to obtain and use credit. As a result, consumers who have experienced credit problems may seek assistance from credit repair organizations which offer to improve the credit standing of such consumers.

(2) Certain advertising and business practices of some companies engaged in the business of credit repair services have worked a financial hardship upon consumers, particularly those of limited economic means and who are inexperienced in credit matters.

(b) Purposes

The purposes of this subchapter are—

(1) to ensure that prospective buyers of the services of credit repair organizations are provided

with the information necessary to make an informed decision regarding the purchase of such services; and

(2) to protect the public from unfair or deceptive advertising and business practices by credit repair organizations.

(Pub. L. 90–321, title IV, §402, as added Pub. L. 104–208, div. A, title II, §2451, Sept. 30, 1996, 110 Stat. 3009–455.)

PRIOR PROVISIONS

A prior title IV of Pub. L. 90–321, May 29, 1968, 82 Stat. 164, as amended by Pub. L. 91–344, July 20, 1970, 84 Stat. 440; Pub. L. 92–321, June 30, 1972, 86 Stat. 382, which was set out as a note under section 1601 of this title, established a bipartisan National Commission on Consumer Finance to study the functioning and structure of the consumer finance industry as well as consumer credit transactions generally. The Commission was to submit a final report by Dec. 31, 1972, and was to cease to exist thereafter.

EFFECTIVE DATE OF SUBCHAPTER

Section 413 of title IV of Pub. L. 90–321, as added by Pub. L. 104–208, div. A, title II, §2451, Sept. 30, 1996, 110 Stat. 3009–462, provided that: "This title [enacting this subchapter] shall apply after the end of the 6-month period beginning on the date of the enactment of the Credit Repair Organizations Act [Sept. 30, 1996], except with respect to contracts entered into by a credit repair organization before the end of such period."

SHORT TITLE

This subchapter known as the "Credit Repair Organizations Act", see Short Title note set out under section 1601 of this title.

§1679a. Definitions

For purposes of this subchapter, the following definitions apply:

(1) Consumer

The term "consumer" means an individual.

(2) Consumer credit transaction

The term "consumer credit transaction" means any transaction in which credit is offered or extended to an individual for personal, family, or household purposes.

(3) Credit repair organization

The term "credit repair organization"—

(A) means any person who uses any instrumentality of interstate commerce or the mails to sell, provide, or perform (or represent that such person can or will sell, provide, or perform) any service, in return for the payment of money or other valuable consideration, for the express or implied purpose of—

(i) improving any consumer's credit record, credit history, or credit rating; or

(ii) providing advice or assistance to any consumer with regard to any activity or service described in clause (i); and

(B) does not include—

(i) any nonprofit organization which is exempt from taxation under section 501(c)(3) of title 26;

(ii) any creditor (as defined in section 1602 of this title), with respect to any consumer, to the extent the creditor is assisting the consumer to restructure any debt owed by the consumer to the creditor; or

(iii) any depository institution (as that term is defined in section 1813 of title 12) or any Federal or State credit union (as those terms are defined in section 1752 of title 12), or any affiliate or subsidiary of such a depository institution or credit union.

(4) Credit

The term "credit" has the meaning given to such term in section 1602(e) [1] of this title.

(Pub. L. 90–321, title IV, §403, as added Pub. L. 104–208, div. A, title II, §2451, Sept. 30, 1996, 110 Stat. 3009–455.)

REFERENCES IN TEXT

Section 1602(e) of this title, referred to in par. (4), was redesignated section 1602(f) of this title by Pub. L. 111–203, title X, §1100A(1)(A), July 21, 2010, 124 Stat. 2107.

PRIOR PROVISIONS

For a prior section 403 of Pub. L. 90–321, see note set out under section 1679 of this title.

[1] *See References in Text note below.*

§1679b. Prohibited practices

(a) In general

No person may—

(1) make any statement, or counsel or advise any consumer to make any statement, which is untrue or misleading (or which, upon the exercise of reasonable care, should be known by the credit repair organization, officer, employee, agent, or other person to be untrue or misleading) with respect to any consumer's credit worthiness, credit standing, or credit capacity to—

(A) any consumer reporting agency (as defined in section 1681a(f) of this title); or

(B) any person—

(i) who has extended credit to the consumer; or

(ii) to whom the consumer has applied or is applying for an extension of credit;

(2) make any statement, or counsel or advise any consumer to make any statement, the intended effect of which is to alter the consumer's identification to prevent the display of the consumer's credit record, history, or rating for the purpose of concealing adverse information that is accurate and not obsolete to—

(A) any consumer reporting agency;

(B) any person—

(i) who has extended credit to the consumer; or

(ii) to whom the consumer has applied or is applying for an extension of credit;

(3) make or use any untrue or misleading representation of the services of the credit repair organization; or

(4) engage, directly or indirectly, in any act, practice, or course of business that constitutes or results in the commission of, or an attempt to commit, a fraud or deception on any person in connection with the offer or sale of the services of the credit repair organization.

(b) Payment in advance

No credit repair organization may charge or receive any money or other valuable consideration for the performance of any service which the credit repair organization has agreed to perform for any consumer before such service is fully performed.

(Pub. L. 90–321, title IV, §404, as added Pub. L. 104–208, div. A, title II, §2451, Sept. 30, 1996, 110 Stat. 3009–456.)

PRIOR PROVISIONS

For a prior section 404 of Pub. L. 90–321, see note set out under section 1679 of this title.

§1679c. Disclosures

(a) Disclosure required

Any credit repair organization shall provide any consumer with the following written statement before any contract or agreement between the consumer and the credit repair organization is executed:

"Consumer Credit File Rights Under State and Federal Law

"You have a right to dispute inaccurate information in your credit report by contacting the credit bureau directly. However, neither you nor any 'credit repair' company or credit repair organization has the right to have accurate, current, and verifiable information removed from your credit report. The credit bureau must remove accurate, negative information from your report only if it is over 7 years old. Bankruptcy information can be reported for 10 years.

"You have a right to obtain a copy of your credit report from a credit bureau. You may be charged a reasonable fee. There is no fee, however, if you have been turned down for credit, employment, insurance, or a rental dwelling because of information in your credit report within the preceding 60 days. The credit bureau must provide someone to help you interpret the information in your credit file. You are entitled to receive a free copy of your credit report if you are unemployed and intend to apply for employment in the next 60 days, if you are a recipient of public welfare assistance, or if you have reason to believe that there is inaccurate information in your credit report due to fraud.

"You have a right to sue a credit repair organization that violates the Credit Repair Organization Act. This law prohibits deceptive practices by credit repair organizations.

"You have the right to cancel your contract with any credit repair organization for any reason within 3 business days from the date you signed it.

"Credit bureaus are required to follow reasonable procedures to ensure that the information they report is accurate. However, mistakes may occur.

"You may, on your own, notify a credit bureau in writing that you dispute the accuracy of information in your credit file. The credit bureau must then reinvestigate and modify or remove inaccurate or incomplete information. The credit bureau may not charge any fee for this service. Any pertinent information and copies of all documents you have concerning an error should be given to the credit bureau.

"If the credit bureau's reinvestigation does not resolve the dispute to your satisfaction, you may send a brief statement to the credit bureau, to be kept in your file, explaining why you think the record is inaccurate. The credit bureau must include a summary of your statement about disputed information with any report it issues about you.

"The Federal Trade Commission regulates credit bureaus and credit repair organizations. For more information contact:

"The Public Reference Branch

"Federal Trade Commission

"Washington, D.C. 20580".

(b) Separate statement requirement

The written statement required under this section shall be provided as a document which is separate from any written contract or other agreement between the credit repair organization and the consumer or any other written material provided to the consumer.

(c) Retention of compliance records

(1) In general

The credit repair organization shall maintain a copy of the statement signed by the consumer acknowledging receipt of the statement.

(2) Maintenance for 2 years

The copy of any consumer's statement shall be maintained in the organization's files for 2 years after the date on which the statement is signed by the consumer.

(Pub. L. 90–321, title IV, §405, as added Pub. L. 104–208, div. A, title II, §2451, Sept. 30, 1996, 110 Stat. 3009–457.)

REFERENCES IN TEXT

The Credit Repair Organization Act, referred to in subsec. (a), probably means the Credit Repair Organizations Act, Pub. L. 90–321, title IV, as added Pub. L. 104–208, div. A, title II, §2451, Sept. 30, 1996, 110 Stat. 3009–454, which is classified generally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

PRIOR PROVISIONS

For a prior section 405 of Pub. L. 90–321, see note set out under section 1679 of this title.

§1679d. Credit repair organizations contracts

(a) Written contracts required

No services may be provided by any credit repair organization for any consumer—

(1) unless a written and dated contract (for the purchase of such services) which meets the requirements of subsection (b) of this section has been signed by the consumer; or

(2) before the end of the 3-business-day period beginning on the date the contract is signed.

(b) Terms and conditions of contract

No contract referred to in subsection (a) of this section meets the requirements of this subsection unless such contract includes (in writing)—

(1) the terms and conditions of payment, including the total amount of all payments to be made by the consumer to the credit repair organization or to any other person;

(2) a full and detailed description of the services to be performed by the credit repair organization for the consumer, including—

(A) all guarantees of performance; and

(B) an estimate of—

(i) the date by which the performance of the services (to be performed by the credit repair organization or any other person) will be complete; or

(ii) the length of the period necessary to perform such services;

(3) the credit repair organization's name and principal business address; and

(4) a conspicuous statement in bold face type, in immediate proximity to the space reserved for the consumer's signature on the contract, which reads as follows: "You may cancel this contract without penalty or obligation at any time before midnight of the 3rd business day after the date on which you signed the contract. See the attached notice of cancellation form for an explanation of this right.".

(Pub. L. 90–321, title IV, §406, as added Pub. L. 104–208, div. A, title II, §2451, Sept. 30, 1996, 110 Stat. 3009–458.)

PRIOR PROVISIONS

For a prior section 406 of Pub. L. 90–321, see note set out under section 1679 of this title.

§1679e. Right to cancel contract

(a) In general

Any consumer may cancel any contract with any credit repair organization without penalty or obligation by notifying the credit repair organization of the consumer's intention to do so at any time

before midnight of the 3rd business day which begins after the date on which the contract or agreement between the consumer and the credit repair organization is executed or would, but for this subsection, become enforceable against the parties.

(b) Cancellation form and other information

Each contract shall be accompanied by a form, in duplicate, which has the heading "Notice of Cancellation" and contains in bold face type the following statement:

"You may cancel this contract, without any penalty or obligation, at any time before midnight of the 3rd day which begins after the date the contract is signed by you.

"To cancel this contract, mail or deliver a signed, dated copy of this cancellation notice, or any other written notice to [name of credit repair organization] at [address of credit repair organization] before midnight on [date]

"I hereby cancel this transaction,

[date]

[purchaser's signature].".

(c) Consumer copy of contract required

Any consumer who enters into any contract with any credit repair organization shall be given, by the organization—

(1) a copy of the completed contract and the disclosure statement required under section 1679c of this title; and

(2) a copy of any other document the credit repair organization requires the consumer to sign,

at the time the contract or the other document is signed.

(Pub. L. 90–321, title IV, §407, as added Pub. L. 104–208, div. A, title II, §2451, Sept. 30, 1996, 110 Stat. 3009–459.)

PRIOR PROVISIONS

For a prior section 407 of Pub. L. 90–321, see note set out under section 1679 of this title.

§1679f. Noncompliance with this subchapter

(a) Consumer waivers invalid

Any waiver by any consumer of any protection provided by or any right of the consumer under this subchapter—

(1) shall be treated as void; and

(2) may not be enforced by any Federal or State court or any other person.

(b) Attempt to obtain waiver

Any attempt by any person to obtain a waiver from any consumer of any protection provided by or any right of the consumer under this subchapter shall be treated as a violation of this subchapter.

(c) Contracts not in compliance

Any contract for services which does not comply with the applicable provisions of this subchapter—

(1) shall be treated as void; and

(2) may not be enforced by any Federal or State court or any other person.

(Pub. L. 90–321, title IV, §408, as added Pub. L. 104–208, div. A, title II, §2451, Sept. 30, 1996, 110 Stat. 3009–459.)

§1679g. Civil liability

(a) Liability established

Any person who fails to comply with any provision of this subchapter with respect to any other person shall be liable to such person in an amount equal to the sum of the amounts determined under each of the following paragraphs:

(1) Actual damages

The greater of—

(A) the amount of any actual damage sustained by such person as a result of such failure; or

(B) any amount paid by the person to the credit repair organization.

(2) Punitive damages

(A) Individual actions

In the case of any action by an individual, such additional amount as the court may allow.

(B) Class actions

In the case of a class action, the sum of—

(i) the aggregate of the amount which the court may allow for each named plaintiff; and

(ii) the aggregate of the amount which the court may allow for each other class member,

without regard to any minimum individual recovery.

(3) Attorneys' fees

In the case of any successful action to enforce any liability under paragraph (1) or (2), the costs of the action, together with reasonable attorneys' fees.

(b) Factors to be considered in awarding punitive damages

In determining the amount of any liability of any credit repair organization under subsection (a)(2) of this section, the court shall consider, among other relevant factors—

(1) the frequency and persistence of noncompliance by the credit repair organization;

(2) the nature of the noncompliance;

(3) the extent to which such noncompliance was intentional; and

(4) in the case of any class action, the number of consumers adversely affected.

(Pub. L. 90–321, title IV, §409, as added Pub. L. 104–208, div. A, title II, §2451, Sept. 30, 1996, 110 Stat. 3009–459.)

§1679h. Administrative enforcement

(a) In general

Compliance with the requirements imposed under this subchapter with respect to credit repair organizations shall be enforced under the Federal Trade Commission Act [15 U.S.C. 41 et seq.] by the Federal Trade Commission.

(b) Violations of this subchapter treated as violations of Federal Trade Commission Act

(1) In general

For the purpose of the exercise by the Federal Trade Commission of the Commission's functions and powers under the Federal Trade Commission Act [15 U.S.C. 41 et seq.], any violation of any requirement or prohibition imposed under this subchapter with respect to credit repair organizations shall constitute an unfair or deceptive act or practice in commerce in violation of section 5(a) of the Federal Trade Commission Act [15 U.S.C. 45(a)].

(2) Enforcement authority under other law

All functions and powers of the Federal Trade Commission under the Federal Trade Commission Act shall be available to the Commission to enforce compliance with this subchapter by any person subject to enforcement by the Federal Trade Commission pursuant to this

subsection, including the power to enforce the provisions of this subchapter in the same manner as if the violation had been a violation of any Federal Trade Commission trade regulation rule, without regard to whether the credit repair organization—

(A) is engaged in commerce; or

(B) meets any other jurisdictional tests in the Federal Trade Commission Act.

(c) State action for violations

(1) Authority of States

In addition to such other remedies as are provided under State law, whenever the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating this subchapter, the State—

(A) may bring an action to enjoin such violation;

(B) may bring an action on behalf of its residents to recover damages for which the person is liable to such residents under section 1679g of this title as a result of the violation; and

(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorney fees as determined by the court.

(2) Rights of Commission

(A) Notice to Commission

The State shall serve prior written notice of any civil action under paragraph (1) upon the Federal Trade Commission and provide the Commission with a copy of its complaint, except in any case where such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action.

(B) Intervention

The Commission shall have the right—

(i) to intervene in any action referred to in subparagraph (A);

(ii) upon so intervening, to be heard on all matters arising in the action; and

(iii) to file petitions for appeal.

(3) Investigatory powers

For purposes of bringing any action under this subsection, nothing in this subsection shall prevent the chief law enforcement officer, or an official or agency designated by a State, from exercising the powers conferred on the chief law enforcement officer or such official by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(4) Limitation

Whenever the Federal Trade Commission has instituted a civil action for violation of this subchapter, no State may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Commission for any violation of this subchapter that is alleged in that complaint.

(Pub. L. 90–321, title IV, §410, as added Pub. L. 104–208, div. A, title II, §2451, Sept. 30, 1996, 110 Stat. 3009–460.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsecs. (a) and (b), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

§1679i. Statute of limitations

Any action to enforce any liability under this subchapter may be brought before the later of—

(1) the end of the 5-year period beginning on the date of the occurrence of the violation

involved; or

(2) in any case in which any credit repair organization has materially and willfully misrepresented any information which—

(A) the credit repair organization is required, by any provision of this subchapter, to disclose to any consumer; and

(B) is material to the establishment of the credit repair organization's liability to the consumer under this subchapter,

the end of the 5-year period beginning on the date of the discovery by the consumer of the misrepresentation.

(Pub. L. 90–321, title IV, §411, as added Pub. L. 104–208, div. A, title II, §2451, Sept. 30, 1996, 110 Stat. 3009–461.)

§1679j. Relation to State law

This subchapter shall not annul, alter, affect, or exempt any person subject to the provisions of this subchapter from complying with any law of any State except to the extent that such law is inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency.

(Pub. L. 90–321, title IV, §412, as added Pub. L. 104–208, div. A, title II, §2451, Sept. 30, 1996, 110 Stat. 3009–462.)

SUBCHAPTER III—CREDIT REPORTING AGENCIES

§1681. Congressional findings and statement of purpose

(a) Accuracy and fairness of credit reporting

The Congress makes the following findings:

(1) The banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the banking system.

(2) An elaborate mechanism has been developed for investigating and evaluating the credit worthiness, credit standing, credit capacity, character, and general reputation of consumers.

(3) Consumer reporting agencies have assumed a vital role in assembling and evaluating consumer credit and other information on consumers.

(4) There is a need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy.

(b) Reasonable procedures

It is the purpose of this subchapter to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this subchapter.

(Pub. L. 90–321, title VI, §602, as added Pub. L. 91–508, title VI, §601, Oct. 26, 1970, 84 Stat. 1128.)

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–159, §3, Dec. 4, 2003, 117 Stat. 1953, provided that: "Except as otherwise specifically provided in this Act [see Short Title of 2003 Amendment note set out under section 1601 of this title] and the

amendments made by this Act—

"(1) before the end of the 2-month period beginning on the date of enactment of this Act [Dec. 4, 2003], the Board and the Commission shall jointly prescribe regulations in final form establishing effective dates for each provision of this Act; and

"(2) the regulations prescribed under paragraph (1) shall establish effective dates that are as early as possible, while allowing a reasonable time for the implementation of the provisions of this Act, but in no case shall any such effective date be later than 10 months after the date of issuance of such regulations in final form."

[For final rules adopted by Board of Governors of the Federal Reserve System and Federal Trade Commission establishing effective dates for provisions of Pub. L. 108–159, see 68 F.R. 74467 (joint interim final rules) and 69 F.R. 6526 (joint final rules).]

EFFECTIVE DATE

Section 504(d) of Pub. L. 90–321, as added by Pub. L. 91–508, title VI, §602, Oct. 26, 1970, 84 Stat. 1136, provided that: "Title VI [enacting this subchapter] takes effect upon the expiration of one hundred and eighty days following the date of its enactment [Oct. 26, 1970]."

SHORT TITLE

This subchapter known as the "Fair Credit Reporting Act", see Short Title note set out under section 1601 of this title.

STUDY OF EFFECTS OF CREDIT SCORES AND CREDIT-BASED INSURANCE SCORES ON AVAILABILITY AND AFFORDABILITY OF FINANCIAL PRODUCTS

Pub. L. 108–159, title II, §215, Dec. 4, 2003, 117 Stat. 1984, provided that:

"(a) STUDY REQUIRED.—The Commission and the Board, in consultation with the Office of Fair Housing and Equal Opportunity of the Department of Housing and Urban Development, shall conduct a study of—

"(1) the effects of the use of credit scores and credit-based insurance scores on the availability and affordability of financial products and services, including credit cards, mortgages, auto loans, and property and casualty insurance;

"(2) the statistical relationship, utilizing a multivariate analysis that controls for prohibited factors under the Equal Credit Opportunity Act [15 U.S.C. 1691 et seq.] and other known risk factors, between credit scores and credit-based insurance scores and the quantifiable risks and actual losses experienced by businesses;

"(3) the extent to which, if any, the use of credit scoring models, credit scores, and credit-based insurance scores impact on the availability and affordability of credit and insurance to the extent information is currently available or is available through proxies, by geography, income, ethnicity, race, color, religion, national origin, age, sex, marital status, and creed, including the extent to which the consideration or lack of consideration of certain factors by credit scoring systems could result in negative or differential treatment of protected classes under the Equal Credit Opportunity Act, and the extent to which, if any, the use of underwriting systems relying on these models could achieve comparable results through the use of factors with less negative impact; and

"(4) the extent to which credit scoring systems are used by businesses, the factors considered by such systems, and the effects of variables which are not considered by such systems.

"(b) PUBLIC PARTICIPATION.—The Commission shall seek public input about the prescribed methodology and research design of the study described in subsection (a), including from relevant Federal regulators, State insurance regulators, community, civil rights, consumer, and housing groups.

"(c) REPORT REQUIRED.—

"(1) IN GENERAL.—Before the end of the 24-month period beginning on the date of enactment of this Act [Dec. 4, 2003], the Commission shall submit a detailed report on the study conducted pursuant to subsection (a) to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

"(2) CONTENTS OF REPORT.—The report submitted under paragraph (1) shall include the findings and conclusions of the Commission, recommendations to address specific areas of concerns addressed in the study, and recommendations for legislative or administrative action that the Commission may determine to be necessary to ensure that credit and credit-based insurance scores are used appropriately and fairly to avoid negative effects."

FTC STUDY OF ISSUES RELATING TO THE FAIR CREDIT REPORTING ACT

Pub. L. 108–159, title III, §318, Dec. 4, 2003, 117 Stat. 1998, provided that:

"(a) STUDY REQUIRED.—

"(1) IN GENERAL.—The Commission shall conduct a study on ways to improve the operation of the Fair Credit Reporting Act [15 U.S.C. 1681 et seq.].

"(2) AREAS FOR STUDY.—In conducting the study under paragraph (1), the Commission shall review—

"(A) the efficacy of increasing the number of points of identifying information that a credit reporting agency is required to match to ensure that a consumer is the correct individual to whom a consumer report relates before releasing a consumer report to a user, including—

"(i) the extent to which requiring additional points of such identifying information to match would—

"(I) enhance the accuracy of credit reports; and

"(II) combat the provision of incorrect consumer reports to users;

"(ii) the extent to which requiring an exact match of the first and last name, social security number, and address and ZIP Code of the consumer would enhance the likelihood of increasing credit report accuracy; and

"(iii) the effects of allowing consumer reporting agencies to use partial matches of social security numbers and name recognition software on the accuracy of credit reports;

"(B) requiring notification to consumers when negative information has been added to their credit reports, including—

"(i) the potential impact of such notification on the ability of consumers to identify errors on their credit reports; and

"(ii) the potential impact of such notification on the ability of consumers to remove fraudulent information from their credit reports;

"(C) the effects of requiring that a consumer who has experienced an adverse action based on a credit report receives a copy of the same credit report that the creditor relied on in taking the adverse action, including—

"(i) the extent to which providing such reports to consumers would increase the ability of consumers to identify errors in their credit reports; and

"(ii) the extent to which providing such reports to consumers would increase the ability of consumers to remove fraudulent information from their credit reports;

"(D) any common financial transactions that are not generally reported to the consumer reporting agencies, but would provide useful information in determining the credit worthiness of consumers; and

"(E) any actions that might be taken within a voluntary reporting system to encourage the reporting of the types of transactions described in subparagraph (D).

"(3) COSTS AND BENEFITS.—With respect to each area of study described in paragraph (2), the Commission shall consider the extent to which such requirements would benefit consumers, balanced against the cost of implementing such provisions.

"(b) REPORT REQUIRED.—Not later than 1 year after the date of enactment of this Act [Dec. 4, 2003], the chairman of the Commission shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives containing a detailed summary of the findings and conclusions of the study under this section, together with such recommendations for legislative or administrative actions as may be appropriate."

FTC STUDY OF THE ACCURACY OF CONSUMER REPORTS

Pub. L. 108–159, title III, §319, Dec. 4, 2003, 117 Stat. 1999, provided that:

"(a) STUDY REQUIRED.—Until the final report is submitted under subsection (b)(2), the Commission shall conduct an ongoing study of the accuracy and completeness of information contained in consumer reports prepared or maintained by consumer reporting agencies and methods for improving the accuracy and completeness of such information.

"(b) BIENNIAL REPORTS REQUIRED.—

"(1) INTERIM REPORTS.—The Commission shall submit an interim report to the Congress on the study conducted under subsection (a) at the end of the 1-year period beginning on the date of enactment of this Act [Dec. 4, 2003] and biennially thereafter for 8 years.

"(2) FINAL REPORT.—The Commission shall submit a final report to the Congress on the study conducted under subsection (a) at the end of the 2-year period beginning on the date on which the final interim report is submitted to the Congress under paragraph (1).

"(3) CONTENTS.—Each report submitted under this subsection shall contain a detailed summary of

the findings and conclusions of the Commission with respect to the study required under subsection (a) and such recommendations for legislative and administrative action as the Commission may determine to be appropriate."

DEFINITIONS

Pub. L. 108–159, §2, Dec. 4, 2003, 117 Stat. 1953, provided that: "As used in this Act [see Short Title of 2003 Amendment note set out under section 1601 of this title]—

"(1) the term 'Board' means the Board of Governors of the Federal Reserve System;

"(2) the term 'Commission', other than as used in title V [20 U.S.C. 9701 et seq.], means the Federal Trade Commission;

"(3) the terms 'consumer', 'consumer report', 'consumer reporting agency', 'creditor', 'Federal banking agencies', and 'financial institution' have the same meanings as in section 603 of the Fair Credit Reporting Act [15 U.S.C. 1681a], as amended by this Act; and

"(4) the term 'affiliates' means persons that are related by common ownership or affiliated by corporate control."

§1681a. Definitions; rules of construction

(a) Definitions and rules of construction set forth in this section are applicable for the purposes of this subchapter.

(b) The term "person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(c) The term "consumer" means an individual.

(d) CONSUMER REPORT.—

(1) IN GENERAL.—The term "consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for—

(A) credit or insurance to be used primarily for personal, family, or household purposes;

(B) employment purposes; or

(C) any other purpose authorized under section 1681b of this title.

(2) EXCLUSIONS.—Except as provided in paragraph (3), the term "consumer report" does not include—

(A) subject to section 1681s–3 of this title, any—

(i) report containing information solely as to transactions or experiences between the consumer and the person making the report;

(ii) communication of that information among persons related by common ownership or affiliated by corporate control; or

(iii) communication of other information among persons related by common ownership or affiliated by corporate control, if it is clearly and conspicuously disclosed to the consumer that the information may be communicated among such persons and the consumer is given the opportunity, before the time that the information is initially communicated, to direct that such information not be communicated among such persons;

(B) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device;

(C) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his or her decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made, and such person makes the disclosures to the consumer required under section 1681m of this title; or

(D) a communication described in subsection (o) or (x) [1] of this section.

(3) RESTRICTION ON SHARING OF MEDICAL INFORMATION.—Except for information or any communication of information disclosed as provided in section 1681b(g)(3) of this title, the exclusions in paragraph (2) shall not apply with respect to information disclosed to any person related by common ownership or affiliated by corporate control, if the information is—

(A) medical information;

(B) an individualized list or description based on the payment transactions of the consumer for medical products or services; or

(C) an aggregate list of identified consumers based on payment transactions for medical products or services.

(e) The term "investigative consumer report" means a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information shall not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

(f) The term "consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

(g) The term "file", when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

(h) The term "employment purposes" when used in connection with a consumer report means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.

(i) MEDICAL INFORMATION.—The term "medical information"—

(1) means information or data, whether oral or recorded, in any form or medium, created by or derived from a health care provider or the consumer, that relates to—

(A) the past, present, or future physical, mental, or behavioral health or condition of an individual;

(B) the provision of health care to an individual; or

(C) the payment for the provision of health care to an individual.[2]

(2) does not include the age or gender of a consumer, demographic information about the consumer, including a consumer's residence address or e-mail address, or any other information about a consumer that does not relate to the physical, mental, or behavioral health or condition of a consumer, including the existence or value of any insurance policy.

(j) DEFINITIONS RELATING TO CHILD SUPPORT OBLIGATIONS.—

(1) OVERDUE SUPPORT.—The term "overdue support" has the meaning given to such term in section 666(e) of title 42.

(2) STATE OR LOCAL CHILD SUPPORT ENFORCEMENT AGENCY.—The term "State or local child support enforcement agency" means a State or local agency which administers a State or local program for establishing and enforcing child support obligations.

(k) ADVERSE ACTION.—

(1) ACTIONS INCLUDED.—The term "adverse action"—

(A) has the same meaning as in section 1691(d)(6) of this title; and

(B) means—

(i) a denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any insurance, existing or applied for, in connection with the underwriting of insurance;

(ii) a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee;

(iii) a denial or cancellation of, an increase in any charge for, or any other adverse or unfavorable change in the terms of, any license or benefit described in section 1681b(a)(3)(D) of this title; and

(iv) an action taken or determination that is—

(I) made in connection with an application that was made by, or a transaction that was initiated by, any consumer, or in connection with a review of an account under section 1681b(a)(3)(F)(ii) of this title; and

(II) adverse to the interests of the consumer.

(2) APPLICABLE FINDINGS, DECISIONS, COMMENTARY, AND ORDERS.—For purposes of any determination of whether an action is an adverse action under paragraph (1)(A), all appropriate final findings, decisions, commentary, and orders issued under section 1691(d)(6) of this title by the Bureau or any court shall apply.

(l) FIRM OFFER OF CREDIT OR INSURANCE.—The term "firm offer of credit or insurance" means any offer of credit or insurance to a consumer that will be honored if the consumer is determined, based on information in a consumer report on the consumer, to meet the specific criteria used to select the consumer for the offer, except that the offer may be further conditioned on one or more of the following:

(1) The consumer being determined, based on information in the consumer's application for the credit or insurance, to meet specific criteria bearing on credit worthiness or insurability, as applicable, that are established—

(A) before selection of the consumer for the offer; and

(B) for the purpose of determining whether to extend credit or insurance pursuant to the offer.

(2) Verification—

(A) that the consumer continues to meet the specific criteria used to select the consumer for the offer, by using information in a consumer report on the consumer, information in the consumer's application for the credit or insurance, or other information bearing on the credit worthiness or insurability of the consumer; or

(B) of the information in the consumer's application for the credit or insurance, to determine that the consumer meets the specific criteria bearing on credit worthiness or insurability.

(3) The consumer furnishing any collateral that is a requirement for the extension of the credit or insurance that was—

(A) established before selection of the consumer for the offer of credit or insurance; and

(B) disclosed to the consumer in the offer of credit or insurance.

(m) CREDIT OR INSURANCE TRANSACTION THAT IS NOT INITIATED BY THE CONSUMER.—The term "credit or insurance transaction that is not initiated by the consumer" does not include the use of a consumer report by a person with which the consumer has an account or insurance policy, for purposes of—

(1) reviewing the account or insurance policy; or

(2) collecting the account.

(n) STATE.—The term "State" means any State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States.

(o) EXCLUDED COMMUNICATIONS.—A communication is described in this subsection if it is a communication—

(1) that, but for subsection (d)(2)(D) of this section, would be an investigative consumer report;

(2) that is made to a prospective employer for the purpose of—

(A) procuring an employee for the employer; or

(B) procuring an opportunity for a natural person to work for the employer;

(3) that is made by a person who regularly performs such procurement;

(4) that is not used by any person for any purpose other than a purpose described in subparagraph (A) or (B) of paragraph (2); and

(5) with respect to which—

(A) the consumer who is the subject of the communication—

(i) consents orally or in writing to the nature and scope of the communication, before the collection of any information for the purpose of making the communication;

(ii) consents orally or in writing to the making of the communication to a prospective employer, before the making of the communication; and

(iii) in the case of consent under clause (i) or (ii) given orally, is provided written confirmation of that consent by the person making the communication, not later than 3 business days after the receipt of the consent by that person;

(B) the person who makes the communication does not, for the purpose of making the communication, make any inquiry that if made by a prospective employer of the consumer who is the subject of the communication would violate any applicable Federal or State equal employment opportunity law or regulation; and

(C) the person who makes the communication—

(i) discloses in writing to the consumer who is the subject of the communication, not later than 5 business days after receiving any request from the consumer for such disclosure, the nature and substance of all information in the consumer's file at the time of the request, except that the sources of any information that is acquired solely for use in making the communication and is actually used for no other purpose, need not be disclosed other than under appropriate discovery procedures in any court of competent jurisdiction in which an action is brought; and

(ii) notifies the consumer who is the subject of the communication, in writing, of the consumer's right to request the information described in clause (i).

(p) CONSUMER REPORTING AGENCY THAT COMPILES AND MAINTAINS FILES ON CONSUMERS ON A NATIONWIDE BASIS.—The term "consumer reporting agency that compiles and maintains files on consumers on a nationwide basis" means a consumer reporting agency that regularly engages in the practice of assembling or evaluating, and maintaining, for the purpose of furnishing consumer reports to third parties bearing on a consumer's credit worthiness, credit standing, or credit capacity, each of the following regarding consumers residing nationwide:

(1) Public record information.

(2) Credit account information from persons who furnish that information regularly and in the ordinary course of business.

(q) DEFINITIONS RELATING TO FRAUD ALERTS.—

(1) ACTIVE DUTY MILITARY CONSUMER.—The term "active duty military consumer" means a consumer in military service who—

(A) is on active duty (as defined in section 101(d)(1) of title 10) or is a reservist performing duty under a call or order to active duty under a provision of law referred to in section 101(a)(13) of title 10; and

(B) is assigned to service away from the usual duty station of the consumer.

(2) FRAUD ALERT; ACTIVE DUTY ALERT.—The terms "fraud alert" and "active duty alert" mean a statement in the file of a consumer that—

(A) notifies all prospective users of a consumer report relating to the consumer that the consumer may be a victim of fraud, including identity theft, or is an active duty military consumer, as applicable; and

(B) is presented in a manner that facilitates a clear and conspicuous view of the statement described in subparagraph (A) by any person requesting such consumer report.

(3) IDENTITY THEFT.—The term "identity theft" means a fraud committed using the identifying information of another person, subject to such further definition as the Bureau may prescribe, by regulation.

(4) IDENTITY THEFT REPORT.—The term "identity theft report" has the meaning given that term by rule of the Bureau, and means, at a minimum, a report—

(A) that alleges an identity theft;

(B) that is a copy of an official, valid report filed by a consumer with an appropriate Federal, State, or local law enforcement agency, including the United States Postal Inspection Service, or such other government agency deemed appropriate by the Bureau; and

(C) the filing of which subjects the person filing the report to criminal penalties relating to the filing of false information if, in fact, the information in the report is false.

(5) NEW CREDIT PLAN.—The term "new credit plan" means a new account under an open end credit plan (as defined in section 1602(i) [1] of this title) or a new credit transaction not under an open end credit plan.

(r) CREDIT AND DEBIT RELATED TERMS—

(1) CARD ISSUER.—The term "card issuer" means—

(A) a credit card issuer, in the case of a credit card; and

(B) a debit card issuer, in the case of a debit card.

(2) CREDIT CARD.—The term "credit card" has the same meaning as in section 1602 of this title.

(3) DEBIT CARD.—The term "debit card" means any card issued by a financial institution to a consumer for use in initiating an electronic fund transfer from the account of the consumer at such financial institution, for the purpose of transferring money between accounts or obtaining money, property, labor, or services.

(4) ACCOUNT AND ELECTRONIC FUND TRANSFER.—The terms "account" and "electronic fund transfer" have the same meanings as in section 1693a of this title.

(5) CREDIT AND CREDITOR.—The terms "credit" and "creditor" have the same meanings as in section 1691a of this title.

(s) FEDERAL BANKING AGENCY.—The term "Federal banking agency" has the same meaning as in section 1813 of title 12.

(t) FINANCIAL INSTITUTION.—The term "financial institution" means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person that, directly or indirectly, holds a transaction account (as defined in section 461(b) of title 12) belonging to a consumer.

(u) RESELLER.—The term "reseller" means a consumer reporting agency that—

(1) assembles and merges information contained in the database of another consumer reporting agency or multiple consumer reporting agencies concerning any consumer for purposes of furnishing such information to any third party, to the extent of such activities; and

(2) does not maintain a database of the assembled or merged information from which new consumer reports are produced.

(v) COMMISSION.—The term "Commission" means the Bureau.[3]

(w) The term "Bureau" means the Bureau of Consumer Financial Protection.

(x) NATIONWIDE SPECIALTY CONSUMER REPORTING AGENCY.—The term "nationwide specialty consumer reporting agency" means a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis relating to—

(1) medical records or payments;

(2) residential or tenant history;

(3) check writing history;

(4) employment history; or

(5) insurance claims.

(y) EXCLUSION OF CERTAIN COMMUNICATIONS FOR EMPLOYEE INVESTIGATIONS.—

(1) COMMUNICATIONS DESCRIBED IN THIS SUBSECTION.—A communication is described in this subsection if—

(A) but for subsection (d)(2)(D) of this section, the communication would be a consumer report;

(B) the communication is made to an employer in connection with an investigation of—

(i) suspected misconduct relating to employment; or

(ii) compliance with Federal, State, or local laws and regulations, the rules of a self-regulatory organization, or any preexisting written policies of the employer;

(C) the communication is not made for the purpose of investigating a consumer's credit worthiness, credit standing, or credit capacity; and

(D) the communication is not provided to any person except—

(i) to the employer or an agent of the employer;

(ii) to any Federal or State officer, agency, or department, or any officer, agency, or department of a unit of general local government;

(iii) to any self-regulatory organization with regulatory authority over the activities of the employer or employee;

(iv) as otherwise required by law; or

(v) pursuant to section 1681f of this title.

(2) SUBSEQUENT DISCLOSURE.—After taking any adverse action based in whole or in part on a communication described in paragraph (1), the employer shall disclose to the consumer a summary containing the nature and substance of the communication upon which the adverse action is based, except that the sources of information acquired solely for use in preparing what would be but for subsection (d)(2)(D) of this section an investigative consumer report need not be disclosed.

(3) SELF-REGULATORY ORGANIZATION DEFINED.—For purposes of this subsection, the term "self-regulatory organization" includes any self-regulatory organization (as defined in section 78c(a)(26) of this title), any entity established under title I of the Sarbanes-Oxley Act of 2002 [15 U.S.C. 7211 et seq.], any board of trade designated by the Commodity Futures Trading Commission, and any futures association registered with such Commission.

(Pub. L. 90–321, title VI, §603, as added Pub. L. 91–508, title VI, §601, Oct. 26, 1970, 84 Stat. 1128; amended Pub. L. 102–537, §2(b), Oct. 27, 1992, 106 Stat. 3531; Pub. L. 104–208, div. A, title II, §2402, Sept. 30, 1996, 110 Stat. 3009–426; Pub. L. 105–347, §6(1)–(3), Nov. 2, 1998, 112 Stat. 3211; Pub. L. 108–159, title I, §111, title II, §214(c)(1), title IV, §411(b), (c), title VI, §611, Dec. 4, 2003, 117 Stat. 1954, 1983, 2001, 2010; Pub. L. 111–203, title X, §1088(a)(1), (2)(A), (C), (3), July 21, 2010, 124 Stat. 2086, 2087.)

REFERENCES IN TEXT

Subsection (x) of this section, referred to in subsec. (d)(2)(D), was redesignated subsection (y) of this

section by Pub. L. 111–203, title X, §1088(a)(1), July 21, 2010, 124 Stat. 2086.

Section 1602(i) of this title, referred to in subsec. (q)(5), was redesignated section 1602(j) of this title by Pub. L. 111–203, title X, §1100A(1)(A), July 21, 2010, 124 Stat. 2107.

The Sarbanes-Oxley Act of 2002, referred to in subsec. (y)(3), is Pub. L. 107–204, July 30, 2002, 116 Stat. 745. Title I of the Act is classified principally to subchapter I (§7211 et seq.) of chapter 98 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7201 of this title and Tables.

AMENDMENTS

2010—Subsec. (k)(2). Pub. L. 111–203, §1088(a)(3), substituted "Bureau" for "Board of Governors of the Federal Reserve System".

Subsec. (q)(3), (4). Pub. L. 111–203, §1088(a)(2)(C), substituted "the Bureau" for "the Commission" wherever appearing.

Subsec. (v). Pub. L. 111–203, §1088(a)(2)(A), substituted "Bureau" for "Federal Trade Commission".

Subsecs. (w) to (y). Pub. L. 111–203, §1088(a)(1), added subsec. (w) and redesignated former subsecs. (w) and (x) as (x) and (y), respectively.

2003—Subsec. (d)(2). Pub. L. 108–159, §411(b)(1), substituted "Except as provided in paragraph (3), the term" for "The term" in introductory provisions.

Subsec. (d)(2)(A). Pub. L. 108–159, §214(c)(1), inserted "subject to section 1681s–3 of this title," after "(A)" in introductory provisions.

Subsec. (d)(2)(D). Pub. L. 108–159, §611(b), inserted "or (x)" after "subsection (o)".

Subsec. (d)(3). Pub. L. 108–159, §411(b)(2), added par. (3).

Subsec. (i). Pub. L. 108–159, §411(c), inserted heading and amended text of subsec. (i) generally. Prior to amendment, text read as follows: "The term 'medical information' means information or records obtained, with the consent of the individual to whom it relates, from licensed physicians or medical practitioners, hospitals, clinics, or other medical or medically related facilities."

Subsecs. (q) to (w). Pub. L. 108–159, §111, added subsecs. (q) to (w).

Subsec. (x). Pub. L. 108–159, §611(a), added subsec. (x).

1998—Subsec. (d)(2)(A)(iii). Pub. L. 105–347, §6(1), struck out "any" before "communication of other".

Subsec. (o)(1). Pub. L. 105–347, §6(2), substituted "(d)(2)(D)" for "(d)(2)(E)".

Subsec. (o)(4). Pub. L. 105–347, §6(3), substituted "and" for "or" at end.

1996—Subsec. (d). Pub. L. 104–208, §2402(e), inserted subsec. heading, designated existing provisions as par. (1) and inserted heading, redesignated cls. (1) to (3) as subpars. (A) to (C), respectively, added par. (2), and struck out at end "The term does not include (A) any report containing information solely as to transactions or experiences between the consumer and the person making the report; (B) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device; or (C) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made and such person makes the disclosures to the consumer required under section 1681m of this title."

Subsec. (k). Pub. L. 104–208, §2402(a), added subsec. (k).

Subsec. (l). Pub. L. 104–208, §2402(b), added subsec. (l).

Subsec. (m). Pub. L. 104–208, §2402(c), added subsec. (m).

Subsec. (n). Pub. L. 104–208, §2402(d), added subsec. (n).

Subsec. (o). Pub. L. 104–208, §2402(f), added subsec. (o).

Subsec. (p). Pub. L. 104–208, §2402(g), added subsec. (p).

1992—Subsec. (j). Pub. L. 102–537 added subsec. (j).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–159 subject to joint regulations establishing effective dates as prescribed by Federal Reserve Board and Federal Trade Commission, except as otherwise provided, see section 3 of Pub. L. 108–159, set out as a note under section 1681 of this title.

Pub. L. 108–159, title IV, §411(d), Dec. 4, 2003, 117 Stat. 2002, provided that: "This section [amending this section and section 1681b of this title] shall take effect at the end of the 180-day period beginning on the date of enactment of this Act [Dec. 4, 2003], except that paragraph (2) of section 604(g) of the Fair Credit

Reporting Act [15 U.S.C. 1681b(g)(2)] (as amended by subsection (a) of this section) shall take effect on the later of—

"(1) the end of the 90-day period beginning on the date on which the regulations required under paragraph (5)(B) of such section 604(g) are issued in final form; or

"(2) the date specified in the regulations referred to in paragraph (1)."

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–347, §7, Nov. 2, 1998, 112 Stat. 3211, provided that: "The amendments made by this Act [amending this section and sections 1681b, 1681c, 1681g, 1681i, 1681k, and 1681s of this title] shall be deemed to have the same effective date [see section 2420 of Pub. L. 104–208, set out as a note below] as the amendments made by section 2403 of the Consumer Credit Reporting Reform Act of 1996 (Public Law 104–208; 110 Stat. 3009–1257 [3009–430]) [amending section 1681b of this title]."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–208, div. A, title II, §2420, Sept. 30, 1996, 110 Stat. 3009–454, provided that:

"(a) IN GENERAL.—Except as otherwise specifically provided in this chapter [chapter 1 (§§2401–2422) of subtitle D of title II of div. A of Pub. L. 104–208, see Short Title of 1996 Amendment note set out under section 1601 of this title], the amendments made by this chapter shall become effective 365 days after the date of enactment of this Act [Sept. 30, 1996].

"(b) EARLY COMPLIANCE.—Any person or other entity that is subject to the requirements of this chapter may, at its option, comply with any provision of this chapter before the date on which that provision becomes effective under this chapter, in which case, each of the corresponding provisions of this chapter shall be fully applicable to such person or entity."

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–537, §2(d), Oct. 27, 1992, 106 Stat. 3532, provided that: "The amendments made by this section [enacting section 1681s–1 of this title and amending this section] shall take effect on January 1, 1993."

CONSTRUCTION OF 1996 AMENDMENT

Pub. L. 104–208, div. A, title II, §2421, Sept. 30, 1996, 110 Stat. 3009–454, provided that: "Nothing in this chapter [chapter 1 (§§2401–2422) of subtitle D of title II of div. A of Pub. L. 104–208, see Short Title of 1996 Amendment note set out under section 1601 of this title] or the amendments made by this chapter shall be considered to supersede or otherwise affect section 2721 of title 18, United States Code, with respect to motor vehicle records for surveys, marketing, or solicitations."

[1] See References in Text note below.

[2] So in original. The period probably should be "; and".

[3] So in original.

§1681b. Permissible purposes of consumer reports

(a) In general

Subject to subsection (c) of this section, any consumer reporting agency may furnish a consumer report under the following circumstances and no other:

(1) In response to the order of a court having jurisdiction to issue such an order, or a subpoena issued in connection with proceedings before a Federal grand jury.

(2) In accordance with the written instructions of the consumer to whom it relates.

(3) To a person which it has reason to believe—

(A) intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

(B) intends to use the information for employment purposes; or

(C) intends to use the information in connection with the underwriting of insurance involving

the consumer; or

(D) intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(E) intends to use the information, as a potential investor or servicer, or current insurer, in connection with a valuation of, or an assessment of the credit or prepayment risks associated with, an existing credit obligation; or

(F) otherwise has a legitimate business need for the information—

(i) in connection with a business transaction that is initiated by the consumer; or

(ii) to review an account to determine whether the consumer continues to meet the terms of the account.

(G) executive departments and agencies in connection with the issuance of government-sponsored individually-billed travel charge cards.

(4) In response to a request by the head of a State or local child support enforcement agency (or a State or local government official authorized by the head of such an agency), if the person making the request certifies to the consumer reporting agency that—

(A) the consumer report is needed for the purpose of establishing an individual's capacity to make child support payments or determining the appropriate level of such payments;

(B) the paternity of the consumer for the child to which the obligation relates has been established or acknowledged by the consumer in accordance with State laws under which the obligation arises (if required by those laws);

(C) the person has provided at least 10 days' prior notice to the consumer whose report is requested, by certified or registered mail to the last known address of the consumer, that the report will be requested; and

(D) the consumer report will be kept confidential, will be used solely for a purpose described in subparagraph (A), and will not be used in connection with any other civil, administrative, or criminal proceeding, or for any other purpose.

(5) To an agency administering a State plan under section 654 of title 42 for use to set an initial or modified child support award.

(6) To the Federal Deposit Insurance Corporation or the National Credit Union Administration as part of its preparation for its appointment or as part of its exercise of powers, as conservator, receiver, or liquidating agent for an insured depository institution or insured credit union under the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.] or the Federal Credit Union Act [12 U.S.C. 1751 et seq.], or other applicable Federal or State law, or in connection with the resolution or liquidation of a failed or failing insured depository institution or insured credit union, as applicable.

(b) Conditions for furnishing and using consumer reports for employment purposes

(1) Certification from user

A consumer reporting agency may furnish a consumer report for employment purposes only if—

(A) the person who obtains such report from the agency certifies to the agency that—

(i) the person has complied with paragraph (2) with respect to the consumer report, and the person will comply with paragraph (3) with respect to the consumer report if paragraph (3) becomes applicable; and

(ii) information from the consumer report will not be used in violation of any applicable Federal or State equal employment opportunity law or regulation; and

(B) the consumer reporting agency provides with the report, or has previously provided, a summary of the consumer's rights under this subchapter, as prescribed by the Bureau under

section 1681g(c)(3) [1] of this title.

(2) Disclosure to consumer

(A) In general

Except as provided in subparagraph (B), a person may not procure a consumer report, or cause a consumer report to be procured, for employment purposes with respect to any consumer, unless—

(i) a clear and conspicuous disclosure has been made in writing to the consumer at any time before the report is procured or caused to be procured, in a document that consists solely of the disclosure, that a consumer report may be obtained for employment purposes; and

(ii) the consumer has authorized in writing (which authorization may be made on the document referred to in clause (i)) the procurement of the report by that person.

(B) Application by mail, telephone, computer, or other similar means

If a consumer described in subparagraph (C) applies for employment by mail, telephone, computer, or other similar means, at any time before a consumer report is procured or caused to be procured in connection with that application—

(i) the person who procures the consumer report on the consumer for employment purposes shall provide to the consumer, by oral, written, or electronic means, notice that a consumer report may be obtained for employment purposes, and a summary of the consumer's rights under section 1681m(a)(3) [1] of this title; and

(ii) the consumer shall have consented, orally, in writing, or electronically to the procurement of the report by that person.

(C) Scope

Subparagraph (B) shall apply to a person procuring a consumer report on a consumer in connection with the consumer's application for employment only if—

(i) the consumer is applying for a position over which the Secretary of Transportation has the power to establish qualifications and maximum hours of service pursuant to the provisions of section 31502 of title 49, or a position subject to safety regulation by a State transportation agency; and

(ii) as of the time at which the person procures the report or causes the report to be procured the only interaction between the consumer and the person in connection with that employment application has been by mail, telephone, computer, or other similar means.

(3) Conditions on use for adverse actions

(A) In general

Except as provided in subparagraph (B), in using a consumer report for employment purposes, before taking any adverse action based in whole or in part on the report, the person intending to take such adverse action shall provide to the consumer to whom the report relates—

(i) a copy of the report; and

(ii) a description in writing of the rights of the consumer under this subchapter, as prescribed by the Bureau under section 1681g(c)(3) [1] of this title.

(B) Application by mail, telephone, computer, or other similar means

(i) If a consumer described in subparagraph (C) applies for employment by mail, telephone, computer, or other similar means, and if a person who has procured a consumer report on the consumer for employment purposes takes adverse action on the employment application based in whole or in part on the report, then the person must provide to the consumer to whom the report relates, in lieu of the notices required under subparagraph (A) of this section and under section 1681m(a) of this title, within 3 business days of taking such action, an oral, written or electronic notification—

(I) that adverse action has been taken based in whole or in part on a consumer report

received from a consumer reporting agency;

(II) of the name, address and telephone number of the consumer reporting agency that furnished the consumer report (including a toll-free telephone number established by the agency if the agency compiles and maintains files on consumers on a nationwide basis);

(III) that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide to the consumer the specific reasons why the adverse action was taken; and

(IV) that the consumer may, upon providing proper identification, request a free copy of a report and may dispute with the consumer reporting agency the accuracy or completeness of any information in a report.

(ii) If, under clause (B)(i)(IV), the consumer requests a copy of a consumer report from the person who procured the report, then, within 3 business days of receiving the consumer's request, together with proper identification, the person must send or provide to the consumer a copy of a report and a copy of the consumer's rights as prescribed by the Bureau under section 1681g(c)(3) [1] of this title.

(C) Scope

Subparagraph (B) shall apply to a person procuring a consumer report on a consumer in connection with the consumer's application for employment only if—

(i) the consumer is applying for a position over which the Secretary of Transportation has the power to establish qualifications and maximum hours of service pursuant to the provisions of section 31502 of title 49, or a position subject to safety regulation by a State transportation agency; and

(ii) as of the time at which the person procures the report or causes the report to be procured the only interaction between the consumer and the person in connection with that employment application has been by mail, telephone, computer, or other similar means.

(4) Exception for national security investigations

(A) In general

In the case of an agency or department of the United States Government which seeks to obtain and use a consumer report for employment purposes, paragraph (3) shall not apply to any adverse action by such agency or department which is based in part on such consumer report, if the head of such agency or department makes a written finding that—

(i) the consumer report is relevant to a national security investigation of such agency or department;

(ii) the investigation is within the jurisdiction of such agency or department;

(iii) there is reason to believe that compliance with paragraph (3) will—

(I) endanger the life or physical safety of any person;

(II) result in flight from prosecution;

(III) result in the destruction of, or tampering with, evidence relevant to the investigation;

(IV) result in the intimidation of a potential witness relevant to the investigation;

(V) result in the compromise of classified information; or

(VI) otherwise seriously jeopardize or unduly delay the investigation or another official proceeding.

(B) Notification of consumer upon conclusion of investigation

Upon the conclusion of a national security investigation described in subparagraph (A), or upon the determination that the exception under subparagraph (A) is no longer required for the reasons set forth in such subparagraph, the official exercising the authority in such subparagraph shall provide to the consumer who is the subject of the consumer report with regard to which such finding was made—

(i) a copy of such consumer report with any classified information redacted as necessary;

(ii) notice of any adverse action which is based, in part, on the consumer report; and

(iii) the identification with reasonable specificity of the nature of the investigation for which the consumer report was sought.

(C) Delegation by head of agency or department

For purposes of subparagraphs (A) and (B), the head of any agency or department of the United States Government may delegate his or her authorities under this paragraph to an official of such agency or department who has personnel security responsibilities and is a member of the Senior Executive Service or equivalent civilian or military rank.

(D) Definitions

For purposes of this paragraph, the following definitions shall apply:

(i) Classified information

The term "classified information" means information that is protected from unauthorized disclosure under Executive Order No. 12958 or successor orders.

(ii) National security investigation

The term "national security investigation" means any official inquiry by an agency or department of the United States Government to determine the eligibility of a consumer to receive access or continued access to classified information or to determine whether classified information has been lost or compromised.

(c) Furnishing reports in connection with credit or insurance transactions that are not initiated by consumer

(1) In general

A consumer reporting agency may furnish a consumer report relating to any consumer pursuant to subparagraph (A) or (C) of subsection (a)(3) of this section in connection with any credit or insurance transaction that is not initiated by the consumer only if—

(A) the consumer authorizes the agency to provide such report to such person; or

(B)(i) the transaction consists of a firm offer of credit or insurance;

(ii) the consumer reporting agency has complied with subsection (e) of this section;

(iii) there is not in effect an election by the consumer, made in accordance with subsection (e) of this section, to have the consumer's name and address excluded from lists of names provided by the agency pursuant to this paragraph; and

(iv) the consumer report does not contain a date of birth that shows that the consumer has not attained the age of 21, or, if the date of birth on the consumer report shows that the consumer has not attained the age of 21, such consumer consents to the consumer reporting agency to such furnishing.

(2) Limits on information received under paragraph (1)(B)

A person may receive pursuant to paragraph (1)(B) only—

(A) the name and address of a consumer;

(B) an identifier that is not unique to the consumer and that is used by the person solely for the purpose of verifying the identity of the consumer; and

(C) other information pertaining to a consumer that does not identify the relationship or experience of the consumer with respect to a particular creditor or other entity.

(3) Information regarding inquiries

Except as provided in section 1681g(a)(5) of this title, a consumer reporting agency shall not furnish to any person a record of inquiries in connection with a credit or insurance transaction that is not initiated by a consumer.

(d) Reserved

(e) Election of consumer to be excluded from lists

(1) In general

A consumer may elect to have the consumer's name and address excluded from any list provided by a consumer reporting agency under subsection (c)(1)(B) of this section in connection with a credit or insurance transaction that is not initiated by the consumer, by notifying the agency in accordance with paragraph (2) that the consumer does not consent to any use of a consumer report relating to the consumer in connection with any credit or insurance transaction that is not initiated by the consumer.

(2) Manner of notification

A consumer shall notify a consumer reporting agency under paragraph (1)—

(A) through the notification system maintained by the agency under paragraph (5); or

(B) by submitting to the agency a signed notice of election form issued by the agency for purposes of this subparagraph.

(3) Response of agency after notification through system

Upon receipt of notification of the election of a consumer under paragraph (1) through the notification system maintained by the agency under paragraph (5), a consumer reporting agency shall—

(A) inform the consumer that the election is effective only for the 5-year period following the election if the consumer does not submit to the agency a signed notice of election form issued by the agency for purposes of paragraph (2)(B); and

(B) provide to the consumer a notice of election form, if requested by the consumer, not later than 5 business days after receipt of the notification of the election through the system established under paragraph (5), in the case of a request made at the time the consumer provides notification through the system.

(4) Effectiveness of election

An election of a consumer under paragraph (1)—

(A) shall be effective with respect to a consumer reporting agency beginning 5 business days after the date on which the consumer notifies the agency in accordance with paragraph (2);

(B) shall be effective with respect to a consumer reporting agency—

(i) subject to subparagraph (C), during the 5-year period beginning 5 business days after the date on which the consumer notifies the agency of the election, in the case of an election for which a consumer notifies the agency only in accordance with paragraph (2)(A); or

(ii) until the consumer notifies the agency under subparagraph (C), in the case of an election for which a consumer notifies the agency in accordance with paragraph (2)(B);

(C) shall not be effective after the date on which the consumer notifies the agency, through the notification system established by the agency under paragraph (5), that the election is no longer effective; and

(D) shall be effective with respect to each affiliate of the agency.

(5) Notification system

(A) In general

Each consumer reporting agency that, under subsection (c)(1)(B) of this section, furnishes a consumer report in connection with a credit or insurance transaction that is not initiated by a consumer, shall—

(i) establish and maintain a notification system, including a toll-free telephone number, which permits any consumer whose consumer report is maintained by the agency to notify the agency, with appropriate identification, of the consumer's election to have the consumer's name and address excluded from any such list of names and addresses provided by the agency for such a transaction; and

(ii) publish by not later than 365 days after September 30, 1996, and not less than annually thereafter, in a publication of general circulation in the area served by the agency—

(I) a notification that information in consumer files maintained by the agency may be used in connection with such transactions; and

(II) the address and toll-free telephone number for consumers to use to notify the agency of the consumer's election under clause (i).

(B) Establishment and maintenance as compliance

Establishment and maintenance of a notification system (including a toll-free telephone number) and publication by a consumer reporting agency on the agency's own behalf and on behalf of any of its affiliates in accordance with this paragraph is deemed to be compliance with this paragraph by each of those affiliates.

(6) Notification system by agencies that operate nationwide

Each consumer reporting agency that compiles and maintains files on consumers on a nationwide basis shall establish and maintain a notification system for purposes of paragraph (5) jointly with other such consumer reporting agencies.

(f) Certain use or obtaining of information prohibited

A person shall not use or obtain a consumer report for any purpose unless—

(1) the consumer report is obtained for a purpose for which the consumer report is authorized to be furnished under this section; and

(2) the purpose is certified in accordance with section 1681e of this title by a prospective user of the report through a general or specific certification.

(g) Protection of medical information

(1) Limitation on consumer reporting agencies

A consumer reporting agency shall not furnish for employment purposes, or in connection with a credit or insurance transaction, a consumer report that contains medical information (other than medical contact information treated in the manner required under section 1681c(a)(6) of this title) about a consumer, unless—

(A) if furnished in connection with an insurance transaction, the consumer affirmatively consents to the furnishing of the report;

(B) if furnished for employment purposes or in connection with a credit transaction—

(i) the information to be furnished is relevant to process or effect the employment or credit transaction; and

(ii) the consumer provides specific written consent for the furnishing of the report that describes in clear and conspicuous language the use for which the information will be furnished; or

(C) the information to be furnished pertains solely to transactions, accounts, or balances relating to debts arising from the receipt of medical services, products, or devises, where such information, other than account status or amounts, is restricted or reported using codes that do not identify, or do not provide information sufficient to infer, the specific provider or the nature of such services, products, or devices, as provided in section 1681c(a)(6) of this title.

(2) Limitation on creditors

Except as permitted pursuant to paragraph (3)(C) or regulations prescribed under paragraph (5)(A), a creditor shall not obtain or use medical information (other than medical information treated in the manner required under section 1681c(a)(6) of this title) pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit.

(3) Actions authorized by Federal law, insurance activities and regulatory determinations

Section 1681a(d)(3) of this title shall not be construed so as to treat information or any communication of information as a consumer report if the information or communication is disclosed—

(A) in connection with the business of insurance or annuities, including the activities

described in section 18B of the model Privacy of Consumer Financial and Health Information Regulation issued by the National Association of Insurance Commissioners (as in effect on January 1, 2003);

(B) for any purpose permitted without authorization under the Standards for Individually Identifiable Health Information promulgated by the Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996, or referred to under section 1179 of such Act,[1] or described in section 6802(e) of this title; or

(C) as otherwise determined to be necessary and appropriate, by regulation or order, by the Bureau or the applicable State insurance authority (with respect to any person engaged in providing insurance or annuities).

(4) Limitation on redisclosure of medical information

Any person that receives medical information pursuant to paragraph (1) or (3) shall not disclose such information to any other person, except as necessary to carry out the purpose for which the information was initially disclosed, or as otherwise permitted by statute, regulation, or order.

(5) Regulations and effective date for paragraph (2)

(A) [2] Regulations required

The Bureau may, after notice and opportunity for comment, prescribe regulations that permit transactions under paragraph (2) that are determined to be necessary and appropriate to protect legitimate operational, transactional, risk, consumer, and other needs (and which shall include permitting actions necessary for administrative verification purposes), consistent with the intent of paragraph (2) to restrict the use of medical information for inappropriate purposes.

(6) Coordination with other laws

No provision of this subsection shall be construed as altering, affecting, or superseding the applicability of any other provision of Federal law relating to medical confidentiality.

(Pub. L. 90–321, title VI, §604, as added Pub. L. 91–508, title VI, §601, Oct. 26, 1970, 84 Stat. 1129; amended Pub. L. 101–73, title IX, §964(c), Aug. 9, 1989, 103 Stat. 506; Pub. L. 104–193, title III, §352, Aug. 22, 1996, 110 Stat. 2240; Pub. L. 104–208, div. A, title II, §§2403, 2404(a), (b), 2405, Sept. 30, 1996, 110 Stat. 3009–430, 3009–431, 3009–433, 3009–434; Pub. L. 105–107, title III, §311(a), Nov. 20, 1997, 111 Stat. 2255; Pub. L. 105–347, §§2, 3, 6(4), Nov. 2, 1998, 112 Stat. 3208, 3210, 3211; Pub. L. 107–306, title VIII, §811(b)(8)(A), Nov. 27, 2002, 116 Stat. 2426; Pub. L. 108–159, title II, §213(c), title IV, §§411(a), 412(f), title VIII, §811(b), Dec. 4, 2003, 117 Stat. 1979, 1999, 2003, 2011; Pub. L. 108–177, title III, §361(j), Dec. 13, 2003, 117 Stat. 2625; Pub. L. 109–351, title VII, §719, Oct. 13, 2006, 120 Stat. 1998; Pub. L. 110–161, div. D, title VII, §743, Dec. 26, 2007, 121 Stat. 2033; Pub. L. 111–24, title III, §302, May 22, 2009, 123 Stat. 1748; Pub. L. 111–203, title X, §1088(a)(2)(A), (4), July 21, 2010, 124 Stat. 2087.)

REFERENCES IN TEXT

The Federal Deposit Insurance Act, referred to in subsec. (a)(6), is act Sept. 21, 1950, ch. 967, §2, 64 Stat. 873, which is classified generally to chapter 16 (§1811 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of Title 12 and Tables.

The Federal Credit Union Act, referred to in subsec. (a)(6), is act June 26, 1934, ch. 750, 48 Stat. 1216, which is classified principally to chapter 14 (§1751 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1751 of Title 12 and Tables.

Section 1681g(c) of this title, referred to in subsec. (b)(1)(B), (3)(A)(ii), (B)(ii), was amended generally by Pub. L. 108–159, title II, §211(c), Dec. 4, 2003, 117 Stat. 1970, and, as so amended, no longer contains a par. (3).

Section 1681m(a)(3) of this title, referred to in subsec. (b)(2)(B)(i), was redesignated section 1681m(a)(4) of this title by Pub. L. 111–203, title X, §1100F(1)(A), July 21, 2010, 124 Stat. 2112.

Executive Order No. 12958, referred to in subsec. (b)(4)(D)(i), which was formerly set out under section 435 (now section 3161) of Title 50, War and National Defense, was revoked by Ex. Ord. No. 13526, §6.2(g), Dec. 29, 2009, 75 F.R. 731.

The Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (g)(3)(B), is Pub. L.

104–191, Aug. 21, 1996, 110 Stat. 1936. For complete classification of this Act to the Code, see Short Title of 1996 Amendments note set out under section 201 of Title 42, The Public Health and Welfare, and Tables.

Section 1179 of such Act, referred to in subsec. (g)(3)(B), probably means section 1179 of the Social Security Act, as added by section 262(a) of Pub. L. 104–191, title II, Aug. 21, 1996, 110 Stat. 2030, which is classified to section 1320d–8 of Title 42, The Public Health and Welfare.

AMENDMENTS

2010—Subsec. (b)(1)(B), (3)(A)(ii), (B)(ii). Pub. L. 111–203, §1088(a)(2)(A), substituted "Bureau" for "Federal Trade Commission".

Subsec. (g)(3)(C). Pub. L. 111–203, §1088(a)(4)(A), added subpar. (C) and struck out former subpar. (C) which read as follows: "as otherwise determined to be necessary and appropriate, by regulation or order and subject to paragraph (6), by the Commission, any Federal banking agency or the National Credit Union Administration (with respect to any financial institution subject to the jurisdiction of such agency or Administration under paragraph (1), (2), or (3) of section 1681s(b) of this title, or the applicable State insurance authority (with respect to any person engaged in providing insurance or annuities)."

Subsec. (g)(5). Pub. L. 111–203, §1088(a)(4)(B), added par. (5) and struck out former par. (5) which related to prescription of par. (2) regulations by each Federal banking agency and the National Credit Union Administration and required issuance of final regulations before the end of the 6-month period beginning on Dec. 4, 2003.

2009—Subsec. (c)(1)(B)(iv). Pub. L. 111–24 added cl. (iv).

2007—Subsec. (a)(3)(G). Pub. L. 110–161 added subpar. (G).

2006—Subsec. (a)(6). Pub. L. 109–351 added par. (6).

2003—Subsec. (a). Pub. L. 108–159, §811(b), realigned margins.

Subsec. (b)(4)(D) to (F). Pub. L. 108–177 struck out subpars. (D) and (E) and redesignated subpar. (F) as (D). Prior to amendment, subpars. (D) and (E) read as follows:

"(D) REPORT TO THE CONGRESS.—Except as provided in subparagraph (E), not later than January 31 of each year, the head of each agency and department of the United States Government that exercised authority under this paragraph during the preceding year shall submit a report to the Congress on the number of times the department or agency exercised such authority during the year.

"(E) REPORTS TO CONGRESSIONAL INTELLIGENCE COMMITTEES.—In the case of a report to be submitted under subparagraph (D) to the congressional intelligence committees (as defined in section 401a of title 50), the submittal date for such report shall be as provided in section 415b of title 50."

Subsec. (e)(3)(A), (4)(B)(i). Pub. L. 108–159, §213(c), substituted "5-year period" for "2-year period".

Subsec. (g). Pub. L. 108–159, §411(a), amended heading and text of subsec. (g) generally. Prior to amendment, text read as follows: "A consumer reporting agency shall not furnish for employment purposes, or in connection with a credit or insurance transaction, a consumer report that contains medical information about a consumer, unless the consumer consents to the furnishing of the report."

Subsec. (g)(1). Pub. L. 108–159, §412(f)(1), inserted "(other than medical contact information treated in the manner required under section 1681c(a)(6) of this title)" after "a consumer report that contains medical information" in introductory provisions.

Subsec. (g)(2). Pub. L. 108–159, §412(f)(2), inserted "(other than medical information treated in the manner required under section 1681c(a)(6) of this title)" after "a creditor shall not obtain or use medical information".

2002—Subsec. (b)(4)(D). Pub. L. 107–306, §811(b)(8)(A)(i), substituted "Except as provided in subparagraph (E), not later than" for "Not later than".

Subsec. (b)(4)(E), (F). Pub. L. 107–306, §811(b)(8)(A)(ii), (iii), added subpar. (E) and redesignated former subpar. (E) as (F).

1998—Subsec. (b)(1)(B). Pub. L. 105–347, §3, inserted ", or has previously provided," before "a summary".

Subsec. (b)(2). Pub. L. 105–347, §2(a), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: "A person may not procure a consumer report, or cause a consumer report to be procured, for employment purposes with respect to any consumer, unless—

"(A) a clear and conspicuous disclosure has been made in writing to the consumer at any time before the report is procured or caused to be procured, in a document that consists solely of the disclosure, that a consumer report may be obtained for employment purposes; and

"(B) the consumer has authorized in writing the procurement of the report by that person."

Subsec. (b)(3). Pub. L. 105–347, §2(b), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: "In using a consumer report for employment purposes, before taking any adverse action based in whole or in part on the report, the person intending to take such adverse action shall

provide to the consumer to whom the report relates—

"(A) a copy of the report; and

"(B) a description in writing of the rights of the consumer under this subchapter, as prescribed by the Federal Trade Commission under section 1681g(c)(3) of this title."

Subsec. (g). Pub. L. 105–347, §6(4), struck out "or a direct marketing transaction" after "or insurance transaction".

1997—Subsec. (b)(4). Pub. L. 105–107 added par. (4).

1996—Pub. L. 104–208, §§2403(a), 2404(a)(1), designated existing provisions as subsec. (a) and inserted heading, substituted "Subject to subsection (c) of this section, any consumer reporting agency" for "A consumer reporting agency" in introductory provisions, added subpars. (E) and (F) of par. (3), and struck out former subpar. (E) of par. (3) which read as follows: "otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer."

Subsec. (b). Pub. L. 104–208, §2403(b), added subsec. (b).

Subsecs. (c) to (e). Pub. L. 104–208, §2404(a)(2), added subsecs. (c) to (e).

Subsec. (f). Pub. L. 104–208, §2404(b), added subsec. (f).

Subsec. (g). Pub. L. 104–208, §2405, added subsec. (g).

Pars. (4), (5). Pub. L. 104–193 added pars. (4) and (5).

1989—Par. (1). Pub. L. 101–73 inserted ", or a subpoena issued in connection with proceedings before a Federal grand jury" before period at end.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–24 effective 9 months after May 22, 2009, except as otherwise specifically provided, see section 3 of Pub. L. 111–24, set out as a note under section 1602 of this title.

EFFECTIVE DATE OF 2003 AMENDMENTS

Amendment by Pub. L. 108–177 effective Dec. 31, 2003, see section 361(n) of Pub. L. 108–177, set out as a note under section 1611 of Title 10, Armed Forces.

Amendment by Pub. L. 108–159 subject to joint regulations establishing effective dates as prescribed by Federal Reserve Board and Federal Trade Commission, except as otherwise provided, see section 3 of Pub. L. 108–159, set out as a note under section 1681 of this title.

Amendment by section 411 of Pub. L. 108–159 effective at end of 180-day period beginning on Dec. 4, 2003, with certain exceptions, see section 411(d) of Pub. L. 108–159, set out as an Effective Date of 2003 Amendment note under section 1681a of this title.

Pub. L. 108–159, title IV, §412(g), Dec. 4, 2003, 117 Stat. 2003, provided that: "The amendments made by this section [amending this section and sections 1681c, 1681s, and 1681s–2 of this title] shall take effect at the end of the 15-month period beginning on the date of enactment of this Act [Dec. 4, 2003]."

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–347 deemed to have same effective date as amendments made by section 2403 of Pub. L. 104–208, see section 7 of Pub. L. 105–347, set out as a note under section 1681a of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–107, title III, §311(c), Nov. 20, 1997, 111 Stat. 2256, provided that: "The amendments made by subsections (a) and (b) [amending this section and section 1681e of this title] shall take effect as if such amendments had been included in chapter 1 of subtitle D of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 [chapter 1 (§§2401–2422) of subtitle D of title II of div. A of Pub. L. 104–208], as of the date of the enactment of such Act [Sept. 30, 1996]."

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by Pub. L. 104–208 effective 365 days after Sept. 30, 1996, with special rule for early compliance, see section 2420 of Pub. L. 104–208, set out as a note under section 1681a of this title.

For effective date of amendment by Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of Title 42, The Public Health and Welfare.

PUBLIC AWARENESS CAMPAIGN

Pub. L. 108–159, title II, §213(d), Dec. 4, 2003, 117 Stat. 1979, provided that: "The Commission shall actively publicize and conspicuously post on its website any address and the toll-free telephone number established as part of a notification system for opting out of prescreening under section 604(e) of the Fair Credit Reporting Act (15 U.S.C. 1681b(e)), and otherwise take measures to increase public awareness regarding the availability of the right to opt out of prescreening."

[For definitions of terms used in section 213(d) of Pub. L. 108–159, set out above, see section 2 of Pub. L. 108–159, set out as a Definitions note under section 1681 of this title.]

COORDINATION WITH FEDERAL LAWS RELATING TO MEDICAL CONFIDENTIALITY

Pub. L. 108–159, title IV, §412(d), Dec. 4, 2003, 117 Stat. 2002, provided that: "No provision of any amendment made by this section [amending this section and sections 1681c, 1681s, and 1681s–2 of this title] shall be construed as altering, affecting, or superseding the applicability of any other provision of Federal law relating to medical confidentiality."

FTC GUIDELINES REGARDING PRESCREENING FOR INSURANCE TRANSACTIONS

Pub. L. 104–208, div. A, title II, §2404(c), Sept. 30, 1996, 110 Stat. 3009–434, provided that: "The Federal Trade Commission may issue such guidelines as it deems necessary with respect to the use of consumer reports in connection with insurance transactions that are not initiated by the consumer pursuant to section 604(c) of the Fair Credit Reporting Act [15 U.S.C. 1681b(c)], as added by subsection (a) of this section."

[1] See References in Text note below.

[2] So in original. No subpar. (B) has been enacted.

§1681c. Requirements relating to information contained in consumer reports

(a) Information excluded from consumer reports

Except as authorized under subsection (b) of this section, no consumer reporting agency may make any consumer report containing any of the following items of information:

(1) Cases under title 11 or under the Bankruptcy Act that, from the date of entry of the order for relief or the date of adjudication, as the case may be, antedate the report by more than 10 years.

(2) Civil suits, civil judgments, and records of arrest that, from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period.

(3) Paid tax liens which, from date of payment, antedate the report by more than seven years.

(4) Accounts placed for collection or charged to profit and loss which antedate the report by more than seven years.

(5) Any other adverse item of information, other than records of convictions of crimes which antedates the report by more than seven years.

(6) The name, address, and telephone number of any medical information furnisher that has notified the agency of its status, unless—

(A) such name, address, and telephone number are restricted or reported using codes that do not identify, or provide information sufficient to infer, the specific provider or the nature of such services, products, or devices to a person other than the consumer; or

(B) the report is being provided to an insurance company for a purpose relating to engaging in the business of insurance other than property and casualty insurance.

(b) Exempted cases

The provisions of paragraphs (1) through (5) of subsection (a) of this section are not applicable in the case of any consumer credit report to be used in connection with—

(1) a credit transaction involving, or which may reasonably be expected to involve, a principal amount of $150,000 or more;

(2) the underwriting of life insurance involving, or which may reasonably be expected to involve, a face amount of $150,000 or more; or

(3) the employment of any individual at an annual salary which equals, or which may reasonably be expected to equal $75,000, or more.

(c) Running of reporting period

(1) In general

The 7-year period referred to in paragraphs (4) and (6) of subsection (a) of this section shall begin, with respect to any delinquent account that is placed for collection (internally or by referral to a third party, whichever is earlier), charged to profit and loss, or subjected to any similar action, upon the expiration of the 180-day period beginning on the date of the commencement of the delinquency which immediately preceded the collection activity, charge to profit and loss, or similar action.

(2) Effective date

Paragraph (1) shall apply only to items of information added to the file of a consumer on or after the date that is 455 days after September 30, 1996.

(d) Information required to be disclosed

(1) Title 11 information

Any consumer reporting agency that furnishes a consumer report that contains information regarding any case involving the consumer that arises under title 11 shall include in the report an identification of the chapter of such title 11 under which such case arises if provided by the source of the information. If any case arising or filed under title 11 is withdrawn by the consumer before a final judgment, the consumer reporting agency shall include in the report that such case or filing was withdrawn upon receipt of documentation certifying such withdrawal.

(2) Key factor in credit score information

Any consumer reporting agency that furnishes a consumer report that contains any credit score or any other risk score or predictor on any consumer shall include in the report a clear and conspicuous statement that a key factor (as defined in section 1681g(f)(2)(B) of this title) that adversely affected such score or predictor was the number of enquiries, if such a predictor was in fact a key factor that adversely affected such score. This paragraph shall not apply to a check services company, acting as such, which issues authorizations for the purpose of approving or processing negotiable instruments, electronic fund transfers, or similar methods of payments, but only to the extent that such company is engaged in such activities.

(e) Indication of closure of account by consumer

If a consumer reporting agency is notified pursuant to section 1681s–2(a)(4) of this title that a credit account of a consumer was voluntarily closed by the consumer, the agency shall indicate that fact in any consumer report that includes information related to the account.

(f) Indication of dispute by consumer

If a consumer reporting agency is notified pursuant to section 1681s–2(a)(3) of this title that information regarding a consumer who [1] was furnished to the agency is disputed by the consumer, the agency shall indicate that fact in each consumer report that includes the disputed information.

(g) Truncation of credit card and debit card numbers

(1) In general

Except as otherwise provided in this subsection, no person that accepts credit cards or debit cards for the transaction of business shall print more than the last 5 digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of the sale or transaction.

(2) Limitation

This subsection shall apply only to receipts that are electronically printed, and shall not apply to transactions in which the sole means of recording a credit card or debit card account number is by

handwriting or by an imprint or copy of the card.

(3) Effective date

This subsection shall become effective—

(A) 3 years after December 4, 2003, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is in use before January 1, 2005; and

(B) 1 year after December 4, 2003, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is first put into use on or after January 1, 2005.

(h) Notice of discrepancy in address

(1) In general

If a person has requested a consumer report relating to a consumer from a consumer reporting agency described in section 1681a(p) of this title, the request includes an address for the consumer that substantially differs from the addresses in the file of the consumer, and the agency provides a consumer report in response to the request, the consumer reporting agency shall notify the requester of the existence of the discrepancy.

(2) Regulations

(A) Regulations required

The Bureau shall,,[2] in consultation with the Federal banking agencies, the National Credit Union Administration, and the Federal Trade Commission,,[2] prescribe regulations providing guidance regarding reasonable policies and procedures that a user of a consumer report should employ when such user has received a notice of discrepancy under paragraph (1).

(B) Policies and procedures to be included

The regulations prescribed under subparagraph (A) shall describe reasonable policies and procedures for use by a user of a consumer report—

(i) to form a reasonable belief that the user knows the identity of the person to whom the consumer report pertains; and

(ii) if the user establishes a continuing relationship with the consumer, and the user regularly and in the ordinary course of business furnishes information to the consumer reporting agency from which the notice of discrepancy pertaining to the consumer was obtained, to reconcile the address of the consumer with the consumer reporting agency by furnishing such address to such consumer reporting agency as part of information regularly furnished by the user for the period in which the relationship is established.

(Pub. L. 90–321, title VI, §605, as added Pub. L. 91–508, title VI, §601, Oct. 26, 1970, 84 Stat. 1129; amended Pub. L. 95–598, title III, §312(b), Nov. 6, 1978, 92 Stat. 2676; Pub. L. 104–208, div. A, title II, §2406(a)–(e)(1), Sept. 30, 1996, 110 Stat. 3009–434, 3009–435; Pub. L. 105–347, §5, Nov. 2, 1998, 112 Stat. 3211; Pub. L. 108–159, title I, §113, title II, §212(d), title III, §315, title IV, §412(b), (c), title VIII, §811(c)(1), (2)(A), Dec. 4, 2003, 117 Stat. 1959, 1977, 1996, 2002, 2011; Pub. L. 111–203, title X, §1088(a)(2)(D), (5), July 21, 2010, 124 Stat. 2087.)

REFERENCES IN TEXT

The Bankruptcy Act, referred to in subsec. (a)(1), was act July 1, 1898, ch. 541, 30 Stat. 544, as amended, which was classified to section 1 et seq. of former Title 11, Bankruptcy, prior to its repeal by Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2549, section 101 of which enacted revised Title 11.

AMENDMENTS

2010—Subsec. (h)(2)(A). Pub. L. 111–203, §1088(a)(5), substituted ", in consultation with the Federal banking agencies, the National Credit Union Administration, and the Federal Trade Commission," for "with respect to the entities that are subject to their respective enforcement authority under section 1681s of this title".

Pub. L. 111–203, §1088(a)(2)(D), substituted "The Bureau shall" for "The Federal banking agencies, the

National Credit Union Administration, and the Commission shall jointly".

2003—Subsec. (a)(1). Pub. L. 108–159, §811(c)(1), substituted "(1) Cases" for "(1) cases".

Subsec. (a)(2). Pub. L. 108–159, §811(c)(2)(A), made technical correction to directory language of Pub. L. 105–347, §5(1). See 1998 Amendment note below.

Subsec. (a)(6). Pub. L. 108–159, §412(b), added par. (6).

Subsec. (b). Pub. L. 108–159, §412(c), substituted "The provisions of paragraphs (1) through (5) of subsection (a)" for "The provisions of subsection (a)" in introductory provisions.

Subsec. (d). Pub. L. 108–159, §212(d), designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsec. (g). Pub. L. 108–159, §113, added subsec. (g).

Subsec. (h). Pub. L. 108–159, §315, added subsec. (h).

1998—Subsec. (a)(2). Pub. L. 105–347, §5(1), as amended by Pub. L. 108–159, §811(c)(2)(A), substituted "Civil suits, civil judgments, and records of arrest that" for "Suits and judgments which".

Subsec. (a)(5), (6). Pub. L. 105–347, §5(2)–(4), redesignated par. (6) as (5), inserted ", other than records of convictions of crimes" after "of information", and struck out former par. (5) which read as follows: "Records of arrest, indictment, or conviction of crime which, from date of disposition, release, or parole, antedate the report by more than seven years."

1996—Pub. L. 104–208, §2406(e)(1), amended section catchline.

Subsec. (a). Pub. L. 104–208, §2406(a)(1), inserted heading.

Subsec. (b). Pub. L. 104–208, §2406(a)(2), substituted "$150,000" for "$50,000" in pars. (1) and (2) and "$75,000" for "$20,000" in par. (3).

Subsec. (c). Pub. L. 104–208, §2406(b), added subsec. (c).

Subsec. (d). Pub. L. 104–208, §2406(c), added subsec. (d).

Subsecs. (e), (f). Pub. L. 104–208, §2406(d), added subsecs. (e) and (f).

1978—Subsec. (a)(1). Pub. L. 95–598 substituted "cases under title 11 or under the Bankruptcy Act that, from the date of entry of the order for relief or the date of adjudication, as the case may be, antedate the report by more than 10 years" for "Bankruptcies which, from date of adjudication of the most recent bankruptcy, antedate the report by more than fourteen years".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–159 subject to joint regulations establishing effective dates as prescribed by Federal Reserve Board and Federal Trade Commission, except as otherwise provided, see section 3 of Pub. L. 108–159, set out as a note under section 1681 of this title.

Amendment by section 412 of Pub. L. 108–159 effective at end of 15-month period beginning on Dec. 4, 2003, see section 412(g) of Pub. L. 108–159, set out as a note under section 1681b of this title.

Pub. L. 108–159, title VIII, §811(c)(2)(B), Dec. 4, 2003, 117 Stat. 2011, provided that: "The amendment made by subparagraph (A) [amending this section] shall be deemed to have the same effective date as section 5(1) of Public Law 105–347 (112 Stat. 3211) [see Effective Date of 1998 Amendment note below]."

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–347 deemed to have same effective date as amendments made by section 2403 of Pub. L. 104–208, see section 7 of Pub. L. 105–347, set out as a note under section 1681a of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective 365 days after Sept. 30, 1996, with special rule for early compliance, see section 2420 of Pub. L. 104–208, set out as a note under section 1681a of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

[1] So in original. Probably should be "which".

[2] So in original.

§1681c–1. Identity theft prevention; fraud alerts and active duty alerts

(a) One-call fraud alerts

(1) Initial alerts

Upon the direct request of a consumer, or an individual acting on behalf of or as a personal representative of a consumer, who asserts in good faith a suspicion that the consumer has been or is about to become a victim of fraud or related crime, including identity theft, a consumer reporting agency described in section 1681a(p) of this title that maintains a file on the consumer and has received appropriate proof of the identity of the requester shall—

(A) include a fraud alert in the file of that consumer, and also provide that alert along with any credit score generated in using that file, for a period of not less than 90 days, beginning on the date of such request, unless the consumer or such representative requests that such fraud alert be removed before the end of such period, and the agency has received appropriate proof of the identity of the requester for such purpose; and

(B) refer the information regarding the fraud alert under this paragraph to each of the other consumer reporting agencies described in section 1681a(p) of this title, in accordance with procedures developed under section 1681s(f) of this title.

(2) Access to free reports

In any case in which a consumer reporting agency includes a fraud alert in the file of a consumer pursuant to this subsection, the consumer reporting agency shall—

(A) disclose to the consumer that the consumer may request a free copy of the file of the consumer pursuant to section 1681j(d) of this title; and

(B) provide to the consumer all disclosures required to be made under section 1681g of this title, without charge to the consumer, not later than 3 business days after any request described in subparagraph (A).

(b) Extended alerts

(1) In general

Upon the direct request of a consumer, or an individual acting on behalf of or as a personal representative of a consumer, who submits an identity theft report to a consumer reporting agency described in section 1681a(p) of this title that maintains a file on the consumer, if the agency has received appropriate proof of the identity of the requester, the agency shall—

(A) include a fraud alert in the file of that consumer, and also provide that alert along with any credit score generated in using that file, during the 7-year period beginning on the date of such request, unless the consumer or such representative requests that such fraud alert be removed before the end of such period and the agency has received appropriate proof of the identity of the requester for such purpose;

(B) during the 5-year period beginning on the date of such request, exclude the consumer from any list of consumers prepared by the consumer reporting agency and provided to any third party to offer credit or insurance to the consumer as part of a transaction that was not initiated by the consumer, unless the consumer or such representative requests that such exclusion be rescinded before the end of such period; and

(C) refer the information regarding the extended fraud alert under this paragraph to each of the other consumer reporting agencies described in section 1681a(p) of this title, in accordance with procedures developed under section 1681s(f) of this title.

(2) Access to free reports

In any case in which a consumer reporting agency includes a fraud alert in the file of a consumer pursuant to this subsection, the consumer reporting agency shall—

(A) disclose to the consumer that the consumer may request 2 free copies of the file of the consumer pursuant to section 1681j(d) of this title during the 12-month period beginning on the

date on which the fraud alert was included in the file; and

(B) provide to the consumer all disclosures required to be made under section 1681g of this title, without charge to the consumer, not later than 3 business days after any request described in subparagraph (A).

(c) Active duty alerts

Upon the direct request of an active duty military consumer, or an individual acting on behalf of or as a personal representative of an active duty military consumer, a consumer reporting agency described in section 1681a(p) of this title that maintains a file on the active duty military consumer and has received appropriate proof of the identity of the requester shall—

(1) include an active duty alert in the file of that active duty military consumer, and also provide that alert along with any credit score generated in using that file, during a period of not less than 12 months, or such longer period as the Bureau shall determine, by regulation, beginning on the date of the request, unless the active duty military consumer or such representative requests that such fraud alert be removed before the end of such period, and the agency has received appropriate proof of the identity of the requester for such purpose;

(2) during the 2-year period beginning on the date of such request, exclude the active duty military consumer from any list of consumers prepared by the consumer reporting agency and provided to any third party to offer credit or insurance to the consumer as part of a transaction that was not initiated by the consumer, unless the consumer requests that such exclusion be rescinded before the end of such period; and

(3) refer the information regarding the active duty alert to each of the other consumer reporting agencies described in section 1681a(p) of this title, in accordance with procedures developed under section 1681s(f) of this title.

(d) Procedures

Each consumer reporting agency described in section 1681a(p) of this title shall establish policies and procedures to comply with this section, including procedures that inform consumers of the availability of initial, extended, and active duty alerts and procedures that allow consumers and active duty military consumers to request initial, extended, or active duty alerts (as applicable) in a simple and easy manner, including by telephone.

(e) Referrals of alerts

Each consumer reporting agency described in section 1681a(p) of this title that receives a referral of a fraud alert or active duty alert from another consumer reporting agency pursuant to this section shall, as though the agency received the request from the consumer directly, follow the procedures required under—

(1) paragraphs (1)(A) and (2) of subsection (a) of this section, in the case of a referral under subsection (a)(1)(B) of this section;

(2) paragraphs (1)(A), (1)(B), and (2) of subsection (b) of this section, in the case of a referral under subsection (b)(1)(C) of this section; and

(3) paragraphs (1) and (2) of subsection (c) of this section, in the case of a referral under subsection (c)(3) of this section.

(f) Duty of reseller to reconvey alert

A reseller shall include in its report any fraud alert or active duty alert placed in the file of a consumer pursuant to this section by another consumer reporting agency.

(g) Duty of other consumer reporting agencies to provide contact information

If a consumer contacts any consumer reporting agency that is not described in section 1681a(p) of this title to communicate a suspicion that the consumer has been or is about to become a victim of fraud or related crime, including identity theft, the agency shall provide information to the consumer on how to contact the Bureau and the consumer reporting agencies described in section 1681a(p) of this title to obtain more detailed information and request alerts under this section.

(h) Limitations on use of information for credit extensions

(1) Requirements for initial and active duty alerts

(A) Notification

Each initial fraud alert and active duty alert under this section shall include information that notifies all prospective users of a consumer report on the consumer to which the alert relates that the consumer does not authorize the establishment of any new credit plan or extension of credit, other than under an open-end credit plan (as defined in section 1602(i) [1] of this title), in the name of the consumer, or issuance of an additional card on an existing credit account requested by a consumer, or any increase in credit limit on an existing credit account requested by a consumer, except in accordance with subparagraph (B).

(B) Limitation on users

(i) In general

No prospective user of a consumer report that includes an initial fraud alert or an active duty alert in accordance with this section may establish a new credit plan or extension of credit, other than under an open-end credit plan (as defined in section 1602(i) [1] of this title), in the name of the consumer, or issue an additional card on an existing credit account requested by a consumer, or grant any increase in credit limit on an existing credit account requested by a consumer, unless the user utilizes reasonable policies and procedures to form a reasonable belief that the user knows the identity of the person making the request.

(ii) Verification

If a consumer requesting the alert has specified a telephone number to be used for identity verification purposes, before authorizing any new credit plan or extension described in clause (i) in the name of such consumer, a user of such consumer report shall contact the consumer using that telephone number or take reasonable steps to verify the consumer's identity and confirm that the application for a new credit plan is not the result of identity theft.

(2) Requirements for extended alerts

(A) Notification

Each extended alert under this section shall include information that provides all prospective users of a consumer report relating to a consumer with—

(i) notification that the consumer does not authorize the establishment of any new credit plan or extension of credit described in clause (i), other than under an open-end credit plan (as defined in section 1602(i) [1] of this title), in the name of the consumer, or issuance of an additional card on an existing credit account requested by a consumer, or any increase in credit limit on an existing credit account requested by a consumer, except in accordance with subparagraph (B); and

(ii) a telephone number or other reasonable contact method designated by the consumer.

(B) Limitation on users

No prospective user of a consumer report or of a credit score generated using the information in the file of a consumer that includes an extended fraud alert in accordance with this section may establish a new credit plan or extension of credit, other than under an open-end credit plan (as defined in section 1602(i) [1] of this title), in the name of the consumer, or issue an additional card on an existing credit account requested by a consumer, or any increase in credit limit on an existing credit account requested by a consumer, unless the user contacts the consumer in person or using the contact method described in subparagraph (A)(ii) to confirm that the application for a new credit plan or increase in credit limit, or request for an additional card is not the result of identity theft.

(Pub. L. 90–321, title VI, §605A, as added Pub. L. 108–159, title I, §112(a), Dec. 4, 2003, 117 Stat. 1955; amended Pub. L. 111–203, title X, §1088(a)(2)(C), July 21, 2010, 124 Stat. 2087.)

REFERENCES IN TEXT

Section 1602(i) of this title, referred to in subsec. (h), was redesignated section 1602(j) of this title by Pub. L. 111–203, title X, §1100A(1)(A), July 21, 2010, 124 Stat. 2107.

AMENDMENTS

2010—Subsecs. (c)(1), (g). Pub. L. 111–203 substituted "the Bureau" for "the Commission".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section subject to joint regulations establishing effective dates as prescribed by Federal Reserve Board and Federal Trade Commission, except as otherwise provided, see section 3 of Pub. L. 108–159, set out as an Effective Date of 2003 Amendment note under section 1681 of this title.

REGULATIONS

Pub. L. 108–159, title I, §112(b), Dec. 4, 2003, 117 Stat. 1959, as amended by Pub. L. 111–203, title X, §1088(b)(1), July 21, 2010, 124 Stat. 2092, provided that: "The Bureau shall prescribe regulations to define what constitutes appropriate proof of identity for purposes of sections 605A , 605B, and 609(a)(1) of the Fair Credit Reporting Act [15 U.S.C. 1681c–1, 1681c–2, 1681g(a)(1)], as amended by this Act."

PUBLIC CAMPAIGN TO PREVENT IDENTITY THEFT

Pub. L. 108–159, title I, §151(b), Dec. 4, 2003, 117 Stat. 1964, provided that: "Not later than 2 years after the date of enactment of this Act [Dec. 4, 2003], the Commission shall establish and implement a media and distribution campaign to teach the public how to prevent identity theft. Such campaign shall include existing Commission education materials, as well as radio, television, and print public service announcements, video cassettes, interactive digital video discs (DVD's) or compact audio discs (CD's), and Internet resources."

[For definitions of terms used in section 151(b) of Pub. L. 108–159, set out above, see section 2 of Pub. L. 108–159, set out as a Definitions note under section 1681 of this title.]

[1] *See References in Text note below.*

§1681c–2. Block of information resulting from identity theft

(a) Block

Except as otherwise provided in this section, a consumer reporting agency shall block the reporting of any information in the file of a consumer that the consumer identifies as information that resulted from an alleged identity theft, not later than 4 business days after the date of receipt by such agency of—

(1) appropriate proof of the identity of the consumer;

(2) a copy of an identity theft report;

(3) the identification of such information by the consumer; and

(4) a statement by the consumer that the information is not information relating to any transaction by the consumer.

(b) Notification

A consumer reporting agency shall promptly notify the furnisher of information identified by the consumer under subsection (a) of this section—

(1) that the information may be a result of identity theft;

(2) that an identity theft report has been filed;

(3) that a block has been requested under this section; and

(4) of the effective dates of the block.

(c) Authority to decline or rescind

(1) In general

A consumer reporting agency may decline to block, or may rescind any block, of information

relating to a consumer under this section, if the consumer reporting agency reasonably determines that—

(A) the information was blocked in error or a block was requested by the consumer in error;

(B) the information was blocked, or a block was requested by the consumer, on the basis of a material misrepresentation of fact by the consumer relevant to the request to block; or

(C) the consumer obtained possession of goods, services, or money as a result of the blocked transaction or transactions.

(2) Notification to consumer

If a block of information is declined or rescinded under this subsection, the affected consumer shall be notified promptly, in the same manner as consumers are notified of the reinsertion of information under section 1681i(a)(5)(B) of this title.

(3) Significance of block

For purposes of this subsection, if a consumer reporting agency rescinds a block, the presence of information in the file of a consumer prior to the blocking of such information is not evidence of whether the consumer knew or should have known that the consumer obtained possession of any goods, services, or money as a result of the block.

(d) Exception for resellers

(1) No reseller file

This section shall not apply to a consumer reporting agency, if the consumer reporting agency—

(A) is a reseller;

(B) is not, at the time of the request of the consumer under subsection (a) of this section, otherwise furnishing or reselling a consumer report concerning the information identified by the consumer; and

(C) informs the consumer, by any means, that the consumer may report the identity theft to the Bureau to obtain consumer information regarding identity theft.

(2) Reseller with file

The sole obligation of the consumer reporting agency under this section, with regard to any request of a consumer under this section, shall be to block the consumer report maintained by the consumer reporting agency from any subsequent use, if—

(A) the consumer, in accordance with the provisions of subsection (a) of this section, identifies, to a consumer reporting agency, information in the file of the consumer that resulted from identity theft; and

(B) the consumer reporting agency is a reseller of the identified information.

(3) Notice

In carrying out its obligation under paragraph (2), the reseller shall promptly provide a notice to the consumer of the decision to block the file. Such notice shall contain the name, address, and telephone number of each consumer reporting agency from which the consumer information was obtained for resale.

(e) Exception for verification companies

The provisions of this section do not apply to a check services company, acting as such, which issues authorizations for the purpose of approving or processing negotiable instruments, electronic fund transfers, or similar methods of payments, except that, beginning 4 business days after receipt of information described in paragraphs (1) through (3) of subsection (a) of this section, a check services company shall not report to a national consumer reporting agency described in section 1681a(p) of this title, any information identified in the subject identity theft report as resulting from identity theft.

(f) Access to blocked information by law enforcement agencies

No provision of this section shall be construed as requiring a consumer reporting agency to prevent a Federal, State, or local law enforcement agency from accessing blocked information in a

consumer file to which the agency could otherwise obtain access under this subchapter.

(Pub. L. 90–321, title VI, §605B, as added Pub. L. 108–159, title I, §152(a), Dec. 4, 2003, 117 Stat. 1964; amended Pub. L. 111–203, title X, §1088(a)(2)(C), July 21, 2010, 124 Stat. 2087.)

AMENDMENTS

2010—Subsec. (d)(1)(C). Pub. L. 111–203 substituted "the Bureau" for "the Commission".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section subject to joint regulations establishing effective dates as prescribed by Federal Reserve Board and Federal Trade Commission, except as otherwise provided, see section 3 of Pub. L. 108–159, set out as an Effective Date of 2003 Amendment note under section 1681 of this title.

§1681d. Disclosure of investigative consumer reports

(a) Disclosure of fact of preparation

A person may not procure or cause to be prepared an investigative consumer report on any consumer unless—

(1) it is clearly and accurately disclosed to the consumer that an investigative consumer report including information as to his character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made, and such disclosure (A) is made in a writing mailed, or otherwise delivered, to the consumer, not later than three days after the date on which the report was first requested, and (B) includes a statement informing the consumer of his right to request the additional disclosures provided for under subsection (b) of this section and the written summary of the rights of the consumer prepared pursuant to section 1681g(c) of this title; and

(2) the person certifies or has certified to the consumer reporting agency that—

(A) the person has made the disclosures to the consumer required by paragraph (1); and

(B) the person will comply with subsection (b) of this section.

(b) Disclosure on request of nature and scope of investigation

Any person who procures or causes to be prepared an investigative consumer report on any consumer shall, upon written request made by the consumer within a reasonable period of time after the receipt by him of the disclosure required by subsection (a)(1) of this section, make a complete and accurate disclosure of the nature and scope of the investigation requested. This disclosure shall be made in a writing mailed, or otherwise delivered, to the consumer not later than five days after the date on which the request for such disclosure was received from the consumer or such report was first requested, whichever is the later.

(c) Limitation on liability upon showing of reasonable procedures for compliance with provisions

No person may be held liable for any violation of subsection (a) or (b) of this section if he shows by a preponderance of the evidence that at the time of the violation he maintained reasonable procedures to assure compliance with subsection (a) or (b) of this section.

(d) Prohibitions

(1) Certification

A consumer reporting agency shall not prepare or furnish an investigative consumer report unless the agency has received a certification under subsection (a)(2) of this section from the person who requested the report.

(2) Inquiries

A consumer reporting agency shall not make an inquiry for the purpose of preparing an

investigative consumer report on a consumer for employment purposes if the making of the inquiry by an employer or prospective employer of the consumer would violate any applicable Federal or State equal employment opportunity law or regulation.

(3) Certain public record information

Except as otherwise provided in section 1681k of this title, a consumer reporting agency shall not furnish an investigative consumer report that includes information that is a matter of public record and that relates to an arrest, indictment, conviction, civil judicial action, tax lien, or outstanding judgment, unless the agency has verified the accuracy of the information during the 30-day period ending on the date on which the report is furnished.

(4) Certain adverse information

A consumer reporting agency shall not prepare or furnish an investigative consumer report on a consumer that contains information that is adverse to the interest of the consumer and that is obtained through a personal interview with a neighbor, friend, or associate of the consumer or with another person with whom the consumer is acquainted or who has knowledge of such item of information, unless—

(A) the agency has followed reasonable procedures to obtain confirmation of the information, from an additional source that has independent and direct knowledge of the information; or

(B) the person interviewed is the best possible source of the information.

(Pub. L. 90–321, title VI, §606, as added Pub. L. 91–508, title VI, §601, Oct. 26, 1970, 84 Stat. 1130; amended Pub. L. 104–208, div. A, title II, §§2408(d)(2), 2414, Sept. 30, 1996, 110 Stat. 3009–438, 3009–449.)

AMENDMENTS

1996—Subsec. (a)(1)(B). Pub. L. 104–208, §§2408(d)(2), 2414(1), inserted "and the written summary of the rights of the consumer prepared pursuant to section 1681g(c) of this title" before the semicolon and substituted "and" for "or" at end.

Subsec. (a)(2). Pub. L. 104–208, §2414(2), added par. (2) and struck out former par. (2) which read as follows: "the report is to be used for employment purposes for which the consumer has not specifically applied."

Subsec. (b). Pub. L. 104–208, §2414(3), substituted ", make a complete" for ", shall make a complete".

Subsec. (d). Pub. L. 104–208, §2414(4), added subsec. (d).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective 365 days after Sept. 30, 1996, with special rule for early compliance, see section 2420 of Pub. L. 104–208, set out as a note under section 1681a of this title.

§1681e. Compliance procedures

(a) Identity and purposes of credit users

Every consumer reporting agency shall maintain reasonable procedures designed to avoid violations of section 1681c of this title and to limit the furnishing of consumer reports to the purposes listed under section 1681b of this title. These procedures shall require that prospective users of the information identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose. Every consumer reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by such prospective user prior to furnishing such user a consumer report. No consumer reporting agency may furnish a consumer report to any person if it has reasonable grounds for believing that the consumer report will not be used for a purpose listed in section 1681b of this title.

(b) Accuracy of report

Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.

(c) Disclosure of consumer reports by users allowed

A consumer reporting agency may not prohibit a user of a consumer report furnished by the agency on a consumer from disclosing the contents of the report to the consumer, if adverse action against the consumer has been taken by the user based in whole or in part on the report.

(d) Notice to users and furnishers of information

(1) Notice requirement

A consumer reporting agency shall provide to any person—

(A) who regularly and in the ordinary course of business furnishes information to the agency with respect to any consumer; or

(B) to whom a consumer report is provided by the agency;

a notice of such person's responsibilities under this subchapter.

(2) Content of notice

The Bureau shall prescribe the content of notices under paragraph (1), and a consumer reporting agency shall be in compliance with this subsection if it provides a notice under paragraph (1) that is substantially similar to the Bureau prescription under this paragraph.

(e) Procurement of consumer report for resale

(1) Disclosure

A person may not procure a consumer report for purposes of reselling the report (or any information in the report) unless the person discloses to the consumer reporting agency that originally furnishes the report—

(A) the identity of the end-user of the report (or information); and

(B) each permissible purpose under section 1681b of this title for which the report is furnished to the end-user of the report (or information).

(2) Responsibilities of procurers for resale

A person who procures a consumer report for purposes of reselling the report (or any information in the report) shall—

(A) establish and comply with reasonable procedures designed to ensure that the report (or information) is resold by the person only for a purpose for which the report may be furnished under section 1681b of this title, including by requiring that each person to which the report (or information) is resold and that resells or provides the report (or information) to any other person—

(i) identifies each end user of the resold report (or information);

(ii) certifies each purpose for which the report (or information) will be used; and

(iii) certifies that the report (or information) will be used for no other purpose; and

(B) before reselling the report, make reasonable efforts to verify the identifications and certifications made under subparagraph (A).

(3) Resale of consumer report to a Federal agency or department

Notwithstanding paragraph (1) or (2), a person who procures a consumer report for purposes of reselling the report (or any information in the report) shall not disclose the identity of the end-user of the report under paragraph (1) or (2) if—

(A) the end user is an agency or department of the United States Government which procures the report from the person for purposes of determining the eligibility of the consumer concerned to receive access or continued access to classified information (as defined in section 1681b(b)(4)(E)(i) [1] of this title); and

(B) the agency or department certifies in writing to the person reselling the report that nondisclosure is necessary to protect classified information or the safety of persons employed by or contracting with, or undergoing investigation for work or contracting with the agency or

department.

(Pub. L. 90–321, title VI, §607, as added Pub. L. 91–508, title VI, §601, Oct. 26, 1970, 84 Stat. 1130; amended Pub. L. 104–208, div. A, title II, §2407, Sept. 30, 1996, 110 Stat. 3009–435; Pub. L. 105–107, title III, §311(b), Nov. 20, 1997, 111 Stat. 2256; Pub. L. 111–203, title X, §1088(a)(2)(A), July 21, 2010, 124 Stat. 2087.)

REFERENCES IN TEXT

Section 1681b(b)(4) of this title, referred to in subsec. (e)(3)(A), was subsequently amended, and section 1681b(b)(4)(E) no longer defines the term "classified information". However, such term is defined elsewhere in that section.

AMENDMENTS

2010—Subsec. (d)(2). Pub. L. 111–203 substituted "Bureau" for "Federal Trade Commission" in two places.

1997—Subsec. (e)(3). Pub. L. 105–107 added par. (3).

1996—Subsecs. (c) to (e). Pub. L. 104–208 added subsecs. (c) to (e).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–107 effective as if included in chapter 1 of subtitle D of the Economic Growth and Regulatory Paperwork Reduction Act of 1996, Pub. L. 104–208, as of Sept. 30, 1996, see section 311(c) of Pub. L. 105–107, set out as a note under section 1681b of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective 365 days after Sept. 30, 1996, with special rule for early compliance, see section 2420 of Pub. L. 104–208, set out as a note under section 1681a of this title.

[1] See References in Text note below.

§1681f. Disclosures to governmental agencies

Notwithstanding the provisions of section 1681b of this title, a consumer reporting agency may furnish identifying information respecting any consumer, limited to his name, address, former addresses, places of employment, or former places of employment, to a governmental agency.

(Pub. L. 90–321, title VI, §608, as added Pub. L. 91–508, title VI, §601, Oct. 26, 1970, 84 Stat. 1131.)

§1681g. Disclosures to consumers

(a) Information on file; sources; report recipients

Every consumer reporting agency shall, upon request, and subject to section 1681h(a)(1) of this title, clearly and accurately disclose to the consumer:

(1) All information in the consumer's file at the time of the request, except that—

(A) if the consumer to whom the file relates requests that the first 5 digits of the social security number (or similar identification number) of the consumer not be included in the disclosure and the consumer reporting agency has received appropriate proof of the identity of the requester, the consumer reporting agency shall so truncate such number in such disclosure; and

(B) nothing in this paragraph shall be construed to require a consumer reporting agency to disclose to a consumer any information concerning credit scores or any other risk scores or predictors relating to the consumer.

(2) The sources of the information; except that the sources of information acquired solely for use in preparing an investigative consumer report and actually used for no other purpose need not be disclosed: *Provided*, That in the event an action is brought under this subchapter, such sources shall be available to the plaintiff under appropriate discovery procedures in the court in which the action is brought.

(3)(A) Identification of each person (including each end-user identified under section 1681e(e)(1) of this title) that procured a consumer report—

(i) for employment purposes, during the 2-year period preceding the date on which the request is made; or

(ii) for any other purpose, during the 1-year period preceding the date on which the request is made.

(B) An identification of a person under subparagraph (A) shall include—

(i) the name of the person or, if applicable, the trade name (written in full) under which such person conducts business; and

(ii) upon request of the consumer, the address and telephone number of the person.

(C) Subparagraph (A) does not apply if—

(i) the end user is an agency or department of the United States Government that procures the report from the person for purposes of determining the eligibility of the consumer to whom the report relates to receive access or continued access to classified information (as defined in section 1681b(b)(4)(E)(i) [1] of this title); and

(ii) the head of the agency or department makes a written finding as prescribed under section 1681b(b)(4)(A) of this title.

(4) The dates, original payees, and amounts of any checks upon which is based any adverse characterization of the consumer, included in the file at the time of the disclosure.

(5) A record of all inquiries received by the agency during the 1-year period preceding the request that identified the consumer in connection with a credit or insurance transaction that was not initiated by the consumer.

(6) If the consumer requests the credit file and not the credit score, a statement that the consumer may request and obtain a credit score.

(b) Exempt information

The requirements of subsection (a) of this section respecting the disclosure of sources of information and the recipients of consumer reports do not apply to information received or consumer reports furnished prior to the effective date of this subchapter except to the extent that the matter involved is contained in the files of the consumer reporting agency on that date.

(c) Summary of rights to obtain and dispute information in consumer reports and to obtain credit scores

(1) Commission [2] summary of rights required

(A) In general

The Commission [2] shall prepare a model summary of the rights of consumers under this subchapter.

(B) Content of summary

The summary of rights prepared under subparagraph (A) shall include a description of—

(i) the right of a consumer to obtain a copy of a consumer report under subsection (a) of this section from each consumer reporting agency;

(ii) the frequency and circumstances under which a consumer is entitled to receive a consumer report without charge under section 1681j of this title;

(iii) the right of a consumer to dispute information in the file of the consumer under section

1681i of this title;

(iv) the right of a consumer to obtain a credit score from a consumer reporting agency, and a description of how to obtain a credit score;

(v) the method by which a consumer can contact, and obtain a consumer report from, a consumer reporting agency without charge, as provided in the regulations of the Bureau prescribed under section 211(c) [1] of the Fair and Accurate Credit Transactions Act of 2003; and

(vi) the method by which a consumer can contact, and obtain a consumer report from, a consumer reporting agency described in section 1681a(w) [1] of this title, as provided in the regulations of the Bureau prescribed under section 1681j(a)(1)(C) of this title.

(C) Availability of summary of rights

The Commission [2] shall—

(i) actively publicize the availability of the summary of rights prepared under this paragraph;

(ii) conspicuously post on its Internet website the availability of such summary of rights; and

(iii) promptly make such summary of rights available to consumers, on request.

(2) Summary of rights required to be included with agency disclosures

A consumer reporting agency shall provide to a consumer, with each written disclosure by the agency to the consumer under this section—

(A) the summary of rights prepared by the Bureau under paragraph (1);

(B) in the case of a consumer reporting agency described in section 1681a(p) of this title, a toll-free telephone number established by the agency, at which personnel are accessible to consumers during normal business hours;

(C) a list of all Federal agencies responsible for enforcing any provision of this subchapter, and the address and any appropriate phone number of each such agency, in a form that will assist the consumer in selecting the appropriate agency;

(D) a statement that the consumer may have additional rights under State law, and that the consumer may wish to contact a State or local consumer protection agency or a State attorney general (or the equivalent thereof) to learn of those rights; and

(E) a statement that a consumer reporting agency is not required to remove accurate derogatory information from the file of a consumer, unless the information is outdated under section 1681c of this title or cannot be verified.

(d) Summary of rights of identity theft victims

(1) In general

The Commission,[2] in consultation with the Federal banking agencies and the National Credit Union Administration, shall prepare a model summary of the rights of consumers under this subchapter with respect to the procedures for remedying the effects of fraud or identity theft involving credit, an electronic fund transfer, or an account or transaction at or with a financial institution or other creditor.

(2) Summary of rights and contact information

Beginning 60 days after the date on which the model summary of rights is prescribed in final form by the Bureau pursuant to paragraph (1), if any consumer contacts a consumer reporting agency and expresses a belief that the consumer is a victim of fraud or identity theft involving credit, an electronic fund transfer, or an account or transaction at or with a financial institution or other creditor, the consumer reporting agency shall, in addition to any other action that the agency may take, provide the consumer with a summary of rights that contains all of the information required by the Bureau under paragraph (1), and information on how to contact the Bureau to obtain more detailed information.

(e) Information available to victims

(1) In general

For the purpose of documenting fraudulent transactions resulting from identity theft, not later than 30 days after the date of receipt of a request from a victim in accordance with paragraph (3), and subject to verification of the identity of the victim and the claim of identity theft in accordance with paragraph (2), a business entity that has provided credit to, provided for consideration products, goods, or services to, accepted payment from, or otherwise entered into a commercial transaction for consideration with, a person who has allegedly made unauthorized use of the means of identification of the victim, shall provide a copy of application and business transaction records in the control of the business entity, whether maintained by the business entity or by another person on behalf of the business entity, evidencing any transaction alleged to be a result of identity theft to—

(A) the victim;

(B) any Federal, State, or local government law enforcement agency or officer specified by the victim in such a request; or

(C) any law enforcement agency investigating the identity theft and authorized by the victim to take receipt of records provided under this subsection.

(2) Verification of identity and claim

Before a business entity provides any information under paragraph (1), unless the business entity, at its discretion, otherwise has a high degree of confidence that it knows the identity of the victim making a request under paragraph (1), the victim shall provide to the business entity—

(A) as proof of positive identification of the victim, at the election of the business entity—

(i) the presentation of a government-issued identification card;

(ii) personally identifying information of the same type as was provided to the business entity by the unauthorized person; or

(iii) personally identifying information that the business entity typically requests from new applicants or for new transactions, at the time of the victim's request for information, including any documentation described in clauses (i) and (ii); and

(B) as proof of a claim of identity theft, at the election of the business entity—

(i) a copy of a police report evidencing the claim of the victim of identity theft; and

(ii) a properly completed—

(I) copy of a standardized affidavit of identity theft developed and made available by the Bureau; or

(II) an [3] affidavit of fact that is acceptable to the business entity for that purpose.

(3) Procedures

The request of a victim under paragraph (1) shall—

(A) be in writing;

(B) be mailed to an address specified by the business entity, if any; and

(C) if asked by the business entity, include relevant information about any transaction alleged to be a result of identity theft to facilitate compliance with this section including—

(i) if known by the victim (or if readily obtainable by the victim), the date of the application or transaction; and

(ii) if known by the victim (or if readily obtainable by the victim), any other identifying information such as an account or transaction number.

(4) No charge to victim

Information required to be provided under paragraph (1) shall be so provided without charge.

(5) Authority to decline to provide information

A business entity may decline to provide information under paragraph (1) if, in the exercise of good faith, the business entity determines that—

(A) this subsection does not require disclosure of the information;

(B) after reviewing the information provided pursuant to paragraph (2), the business entity does not have a high degree of confidence in knowing the true identity of the individual requesting the information;

(C) the request for the information is based on a misrepresentation of fact by the individual requesting the information relevant to the request for information; or

(D) the information requested is Internet navigational data or similar information about a person's visit to a website or online service.

(6) Limitation on liability

Except as provided in section 1681s of this title, sections 1681n and 1681o of this title do not apply to any violation of this subsection.

(7) Limitation on civil liability

No business entity may be held civilly liable under any provision of Federal, State, or other law for disclosure, made in good faith pursuant to this subsection.

(8) No new recordkeeping obligation

Nothing in this subsection creates an obligation on the part of a business entity to obtain, retain, or maintain information or records that are not otherwise required to be obtained, retained, or maintained in the ordinary course of its business or under other applicable law.

(9) Rule of construction

(A) In general

No provision of subtitle A of title V of Public Law 106–102 [15 U.S.C. 6801 et seq.], prohibiting the disclosure of financial information by a business entity to third parties shall be used to deny disclosure of information to the victim under this subsection.

(B) Limitation

Except as provided in subparagraph (A), nothing in this subsection permits a business entity to disclose information, including information to law enforcement under subparagraphs (B) and (C) of paragraph (1), that the business entity is otherwise prohibited from disclosing under any other applicable provision of Federal or State law.

(10) Affirmative defense

In any civil action brought to enforce this subsection, it is an affirmative defense (which the defendant must establish by a preponderance of the evidence) for a business entity to file an affidavit or answer stating that—

(A) the business entity has made a reasonably diligent search of its available business records; and

(B) the records requested under this subsection do not exist or are not reasonably available.

(11) Definition of victim

For purposes of this subsection, the term "victim" means a consumer whose means of identification or financial information has been used or transferred (or has been alleged to have been used or transferred) without the authority of that consumer, with the intent to commit, or to aid or abet, an identity theft or a similar crime.

(12) Effective date

This subsection shall become effective 180 days after December 4, 2003.

(13) Effectiveness study

Not later than 18 months after December 4, 2003, the Comptroller General of the United States shall submit a report to Congress assessing the effectiveness of this provision.

(f) Disclosure of credit scores

(1) In general

Upon the request of a consumer for a credit score, a consumer reporting agency shall supply to the consumer a statement indicating that the information and credit scoring model may be different than the credit score that may be used by the lender, and a notice which shall include—

(A) the current credit score of the consumer or the most recent credit score of the consumer that was previously calculated by the credit reporting agency for a purpose related to the extension of credit;

(B) the range of possible credit scores under the model used;

(C) all of the key factors that adversely affected the credit score of the consumer in the model used, the total number of which shall not exceed 4, subject to paragraph (9);

(D) the date on which the credit score was created; and

(E) the name of the person or entity that provided the credit score or credit file upon which the credit score was created.

(2) Definitions

For purposes of this subsection, the following definitions shall apply:

(A) Credit score

The term "credit score"—

(i) means a numerical value or a categorization derived from a statistical tool or modeling system used by a person who makes or arranges a loan to predict the likelihood of certain credit behaviors, including default (and the numerical value or the categorization derived from such analysis may also be referred to as a "risk predictor" or "risk score"); and

(ii) does not include—

(I) any mortgage score or rating of an automated underwriting system that considers one or more factors in addition to credit information, including the loan to value ratio, the amount of down payment, or the financial assets of a consumer; or

(II) any other elements of the underwriting process or underwriting decision.

(B) Key factors

The term "key factors" means all relevant elements or reasons adversely affecting the credit score for the particular individual, listed in the order of their importance based on their effect on the credit score.

(3) Timeframe and manner of disclosure

The information required by this subsection shall be provided in the same timeframe and manner as the information described in subsection (a) of this section.

(4) Applicability to certain uses

This subsection shall not be construed so as to compel a consumer reporting agency to develop or disclose a score if the agency does not—

(A) distribute scores that are used in connection with residential real property loans; or

(B) develop scores that assist credit providers in understanding the general credit behavior of a consumer and predicting the future credit behavior of the consumer.

(5) Applicability to credit scores developed by another person

(A) In general

This subsection shall not be construed to require a consumer reporting agency that distributes credit scores developed by another person or entity to provide a further explanation of them, or to process a dispute arising pursuant to section 1681i of this title, except that the consumer reporting agency shall provide the consumer with the name and address and website for contacting the person or entity who developed the score or developed the methodology of the score.

(B) Exception

This paragraph shall not apply to a consumer reporting agency that develops or modifies scores that are developed by another person or entity.

(6) Maintenance of credit scores not required

This subsection shall not be construed to require a consumer reporting agency to maintain credit scores in its files.

(7) Compliance in certain cases

In complying with this subsection, a consumer reporting agency shall—

(A) supply the consumer with a credit score that is derived from a credit scoring model that is widely distributed to users by that consumer reporting agency in connection with residential real property loans or with a credit score that assists the consumer in understanding the credit scoring assessment of the credit behavior of the consumer and predictions about the future credit behavior of the consumer; and

(B) a statement indicating that the information and credit scoring model may be different than that used by the lender.

(8) Fair and reasonable fee

A consumer reporting agency may charge a fair and reasonable fee, as determined by the Bureau, for providing the information required under this subsection.

(9) Use of enquiries as a key factor

If a key factor that adversely affects the credit score of a consumer consists of the number of enquiries made with respect to a consumer report, that factor shall be included in the disclosure pursuant to paragraph (1)(C) without regard to the numerical limitation in such paragraph.

(g) Disclosure of credit scores by certain mortgage lenders

(1) In general

Any person who makes or arranges loans and who uses a consumer credit score, as defined in subsection (f) of this section, in connection with an application initiated or sought by a consumer for a closed end loan or the establishment of an open end loan for a consumer purpose that is secured by 1 to 4 units of residential real property (hereafter in this subsection referred to as the "lender") shall provide the following to the consumer as soon as reasonably practicable:

(A) Information required under subsection (f)

(i) In general

A copy of the information identified in subsection (f) of this section that was obtained from a consumer reporting agency or was developed and used by the user of the information.

(ii) Notice under subparagraph (D)

In addition to the information provided to it by a third party that provided the credit score or scores, a lender is only required to provide the notice contained in subparagraph (D).

(B) Disclosures in case of automated underwriting system

(i) In general

If a person that is subject to this subsection uses an automated underwriting system to underwrite a loan, that person may satisfy the obligation to provide a credit score by disclosing a credit score and associated key factors supplied by a consumer reporting agency.

(ii) Numerical credit score

However, if a numerical credit score is generated by an automated underwriting system used by an enterprise, and that score is disclosed to the person, the score shall be disclosed to the consumer consistent with subparagraph (C).

(iii) Enterprise defined

For purposes of this subparagraph, the term "enterprise" has the same meaning as in paragraph (6) of section 4502 of title 12.

(C) Disclosures of credit scores not obtained from a consumer reporting agency

A person that is subject to the provisions of this subsection and that uses a credit score, other than a credit score provided by a consumer reporting agency, may satisfy the obligation to provide a credit score by disclosing a credit score and associated key factors supplied by a consumer reporting agency.

(D) Notice to home loan applicants

A copy of the following notice, which shall include the name, address, and telephone number of each consumer reporting agency providing a credit score that was used:

"NOTICE TO THE HOME LOAN APPLICANT

"In connection with your application for a home loan, the lender must disclose to you the score that a consumer reporting agency distributed to users and the lender used in connection with your home loan, and the key factors affecting your credit scores.

"The credit score is a computer generated summary calculated at the time of the request and based on information that a consumer reporting agency or lender has on file. The scores are based on data about your credit history and payment patterns. Credit scores are important because they are used to assist the lender in determining whether you will obtain a loan. They may also be used to determine what interest rate you may be offered on the mortgage. Credit scores can change over time, depending on your conduct, how your credit history and payment patterns change, and how credit scoring technologies change.

"Because the score is based on information in your credit history, it is very important that you review the credit-related information that is being furnished to make sure it is accurate. Credit records may vary from one company to another.

"If you have questions about your credit score or the credit information that is furnished to you, contact the consumer reporting agency at the address and telephone number provided with this notice, or contact the lender, if the lender developed or generated the credit score. The consumer reporting agency plays no part in the decision to take any action on the loan application and is unable to provide you with specific reasons for the decision on a loan application.

"If you have questions concerning the terms of the loan, contact the lender.".

(E) Actions not required under this subsection

This subsection shall not require any person to—

(i) explain the information provided pursuant to subsection (f) of this section;

(ii) disclose any information other than a credit score or key factors, as defined in subsection (f) of this section;

(iii) disclose any credit score or related information obtained by the user after a loan has closed;

(iv) provide more than 1 disclosure per loan transaction; or

(v) provide the disclosure required by this subsection when another person has made the disclosure to the consumer for that loan transaction.

(F) No obligation for content

(i) In general

The obligation of any person pursuant to this subsection shall be limited solely to providing a copy of the information that was received from the consumer reporting agency.

(ii) Limit on liability

No person has liability under this subsection for the content of that information or for the omission of any information within the report provided by the consumer reporting agency.

(G) Person defined as excluding enterprise

As used in this subsection, the term "person" does not include an enterprise (as defined in paragraph (6) of section 4502 of title 12).

(2) Prohibition on disclosure clauses null and void

(A) In general

Any provision in a contract that prohibits the disclosure of a credit score by a person who makes or arranges loans or a consumer reporting agency is void.

(B) No liability for disclosure under this subsection

A lender shall not have liability under any contractual provision for disclosure of a credit score pursuant to this subsection.

(Pub. L. 90–321, title VI, §609, as added Pub. L. 91–508, title VI, §601, Oct. 26, 1970, 84 Stat. 1131; amended Pub. L. 103–325, title III, §339, Sept. 23, 1994, 108 Stat. 2237; Pub. L. 104–208, div. A, title II, §2408(a)–(d)(1), (e)(5)(A), Sept. 30, 1996, 110 Stat. 3009–436, 3009–437, 3009–439; Pub. L. 105–347, §4(a), Nov. 2, 1998, 112 Stat. 3210; Pub. L. 108–159, title I, §§115, 151(a)(1), title II, §§211(c), 212(a)–(c), title VIII, §811(d), Dec. 4, 2003, 117 Stat. 1961, 1970, 1973–1975, 2011; Pub. L. 111–203, title X, §1088(a)(2)(C), July 21, 2010, 124 Stat. 2087.)

REFERENCES IN TEXT

Section 1681b(b)(4) of this title, referred to in subsec. (a)(3)(C)(i), was subsequently amended, and section 1681b(b)(4)(E) no longer defines the term "classified information". However, such term is defined elsewhere in that section.

For the effective date of this subchapter, referred to in subsec. (b), see section 504(d) of Pub. L. 90–321, set out as an Effective Date note under section 1681 of this title.

Section 211(c) of the Fair and Accurate Credit Transactions Act of 2003, referred to in subsec. (c)(1)(B)(v), probably means section 211(d) of Pub. L. 108–159, which is set out as a note under section 1681j of this title and relates to the promulgation of regulations. Section 211(c) of Pub. L. 108–159 amended this section.

Section 1681a(w) of this title, referred to in subsec. (c)(1)(B)(vi), was redesignated section 1681a(x) of this title by Pub. L. 111–203, title X, §1088(a)(1), July 21, 2010, 124 Stat. 2086.

Public Law 106–102, referred to in subsec. (e)(9)(A), is Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1338, as amended, known as the Gramm-Leach-Bliley Act. Subtitle A of title V of the Act is classified principally to subchapter I (§ 6801 et seq.) of chapter 94 of this title. For complete classification of this Act to the Code, see Short Title of 1999 Amendment note set out under section 1811 of Title 12, Banks and Banking, and Tables.

AMENDMENTS

2010—Pub. L. 111–203 substituted "the Bureau" for "the Commission" wherever appearing.

2003—Subsec. (a)(1). Pub. L. 108–159, §115, substituted "except that—

"(A) if the consumer to whom the file relates requests that the first 5 digits of the social security number (or similar identification number) of the consumer not be included in the disclosure and the consumer reporting agency has received appropriate proof of the identity of the requester, the consumer reporting agency shall so truncate such number in such disclosure; and

"(B) nothing"

for "except that nothing".

Subsec. (a)(2), (3)(C). Pub. L. 108–159, §811(d), realigned margins.

Subsec. (a)(6). Pub. L. 108–159, §212(a), added par. (6).

Subsec. (c). Pub. L. 108–159, §211(c), amended subsec. (c) generally. Prior to amendment, subsec. (c) related to the summary of rights required to be included with disclosure to consumers by consumer reporting agencies.

Subsecs. (d), (e). Pub. L. 108–159, §151(a)(1), added subsecs. (d) and (e).

Subsec. (f). Pub. L. 108–159, §212(b), added subsec. (f).

Subsec. (g). Pub. L. 108–159, §212(c), added subsec. (g).

1998—Subsec. (a)(3)(C). Pub. L. 105–347 added subpar. (C).

1996—Subsec. (a). Pub. L. 104–208, §2408(e)(5)(A), in introductory provisions substituted ", and subject to section 1681h(a)(1) of this title" for "and proper identification of any consumer".

Subsec. (a)(1). Pub. L. 104–208, §2408(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "The nature and substance of all information (except medical information) in its files on the consumer at the time of the request."

Subsec. (a)(3). Pub. L. 104–208, §2408(b), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "The recipients of any consumer report on the consumer which it has furnished—

"(A) for employment purposes within the two-year period preceding the request, and

"(B) for any other purpose within the six-month period preceding the request."

Subsec. (a)(5). Pub. L. 104–208, §2408(c), added par. (5).

Subsec. (c). Pub. L. 104–208, §2408(d)(1), added subsec. (c).

1994—Subsec. (a)(4). Pub. L. 103–325 added par. (4).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–159 subject to joint regulations establishing effective dates as prescribed by Federal Reserve Board and Federal Trade Commission, except as otherwise provided, see section 3 of Pub. L. 108–159, set out as a note under section 1681 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–347 deemed to have same effective date as amendments made by section 2403 of Pub. L. 104–208, see section 7 of Pub. L. 105–347, set out as a note under section 1681a of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective 365 days after Sept. 30, 1996, with special rule for early compliance, see section 2420 of Pub. L. 104–208, set out as a note under section 1681a of this title.

SIMPLIFIED DISCLOSURE TO MAXIMIZE COMPREHENSIBILITY AND STANDARDIZATION

Pub. L. 104–208, div. A, title II, §2408(e)(2), (3), Sept. 30, 1996, 110 Stat. 3009–438, 3009–439, provided that:

"(2) SIMPLIFIED DISCLOSURE.—Not later than 90 days after the date of enactment of this Act [Sept. 30, 1996], each consumer reporting agency shall develop a form on which such consumer reporting agency shall make the disclosures required under section 609(a) of the Fair Credit Reporting Act [15 U.S.C. 1681g(a)], for the purpose of maximizing the comprehensibility and standardization of such disclosures.

"(3) GOALS.—The Federal Trade Commission shall take appropriate action to assure that the goals of comprehensibility and standardization are achieved in accordance with paragraph (2)."

[1] See References in Text note below.

[2] So in original. Probably should be "Bureau".

[3] So in original. The word "an" probably should not appear.

§1681h. Conditions and form of disclosure to consumers

(a) In general

(1) Proper identification

A consumer reporting agency shall require, as a condition of making the disclosures required under section 1681g of this title, that the consumer furnish proper identification.

(2) Disclosure in writing

Except as provided in subsection (b) of this section, the disclosures required to be made under section 1681g of this title shall be provided under that section in writing.

(b) Other forms of disclosure

(1) In general

If authorized by a consumer, a consumer reporting agency may make the disclosures required under [1] 1681g of this title—

(A) other than in writing; and

(B) in such form as may be—
(i) specified by the consumer in accordance with paragraph (2); and
(ii) available from the agency.

(2) Form

A consumer may specify pursuant to paragraph (1) that disclosures under section 1681g of this title shall be made—

(A) in person, upon the appearance of the consumer at the place of business of the consumer reporting agency where disclosures are regularly provided, during normal business hours, and on reasonable notice;
(B) by telephone, if the consumer has made a written request for disclosure by telephone;
(C) by electronic means, if available from the agency; or
(D) by any other reasonable means that is available from the agency.

(c) Trained personnel

Any consumer reporting agency shall provide trained personnel to explain to the consumer any information furnished to him pursuant to section 1681g of this title.

(d) Persons accompanying consumer

The consumer shall be permitted to be accompanied by one other person of his choosing, who shall furnish reasonable identification. A consumer reporting agency may require the consumer to furnish a written statement granting permission to the consumer reporting agency to discuss the consumer's file in such person's presence.

(e) Limitation of liability

Except as provided in sections 1681n and 1681o of this title, no consumer may bring any action or proceeding in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any consumer reporting agency, any user of information, or any person who furnishes information to a consumer reporting agency, based on information disclosed pursuant to section 1681g, 1681h, or 1681m of this title, or based on information disclosed by a user of a consumer report to or for a consumer against whom the user has taken adverse action, based in whole or in part on the report [2] except as to false information furnished with malice or willful intent to injure such consumer.

(Pub. L. 90–321, title VI, §610, as added Pub. L. 91–508, title VI, §601, Oct. 26, 1970, 84 Stat. 1131; amended Pub. L. 104–208, div. A, title II, §2408(e)(1), (4), (5)(B), Sept. 30, 1996, 110 Stat. 3009–438, 3009–439.)

AMENDMENTS

1996—Pub. L. 104–208, §2408(e)(5)(B), inserted "and form" after "Conditions" in section catchline.

Subsec. (a). Pub. L. 104–208, §2408(e)(1), inserted heading and amended text of subsec. (a) generally. Prior to amendment, text read as follows: "A consumer reporting agency shall make the disclosures required under section 1681g of this title during normal business hours and on reasonable notice."

Subsec. (b). Pub. L. 104–208, §2408(e)(1), inserted heading and amended text of subsec. (b) generally. Prior to amendment, text read as follows: "The disclosures required under section 1681g of this title shall be made to the consumer—

"(1) in person if he appears in person and furnishes proper identification; or

"(2) by telephone if he has made a written request, with proper identification, for telephone disclosure and the toll charge, if any, for the telephone call is prepaid by or charged directly to the consumer."

Subsec. (e). Pub. L. 104–208, §2408(e)(4), inserted "or based on information disclosed by a user of a consumer report to or for a consumer against whom the user has taken adverse action, based in whole or in part on the report" before "except".

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective 365 days after Sept. 30, 1996, with special rule for early compliance, see section 2420 of Pub. L. 104–208, set out as a note under section 1681a of this title.

[1] *So in original. Probably should be followed by "section".*

[2] *So in original. Probably should be followed by a comma.*

§1681i. Procedure in case of disputed accuracy

(a) Reinvestigations of disputed information

(1) Reinvestigation required

(A) In general

Subject to subsection (f) of this section, if the completeness or accuracy of any item of information contained in a consumer's file at a consumer reporting agency is disputed by the consumer and the consumer notifies the agency directly, or indirectly through a reseller, of such dispute, the agency shall, free of charge, conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate and record the current status of the disputed information, or delete the item from the file in accordance with paragraph (5), before the end of the 30-day period beginning on the date on which the agency receives the notice of the dispute from the consumer or reseller.

(B) Extension of period to reinvestigate

Except as provided in subparagraph (C), the 30-day period described in subparagraph (A) may be extended for not more than 15 additional days if the consumer reporting agency receives information from the consumer during that 30-day period that is relevant to the reinvestigation.

(C) Limitations on extension of period to reinvestigate

Subparagraph (B) shall not apply to any reinvestigation in which, during the 30-day period described in subparagraph (A), the information that is the subject of the reinvestigation is found to be inaccurate or incomplete or the consumer reporting agency determines that the information cannot be verified.

(2) Prompt notice of dispute to furnisher of information

(A) In general

Before the expiration of the 5-business-day period beginning on the date on which a consumer reporting agency receives notice of a dispute from any consumer or a reseller in accordance with paragraph (1), the agency shall provide notification of the dispute to any person who provided any item of information in dispute, at the address and in the manner established with the person. The notice shall include all relevant information regarding the dispute that the agency has received from the consumer or reseller.

(B) Provision of other information

The consumer reporting agency shall promptly provide to the person who provided the information in dispute all relevant information regarding the dispute that is received by the agency from the consumer or the reseller after the period referred to in subparagraph (A) and before the end of the period referred to in paragraph (1)(A).

(3) Determination that dispute is frivolous or irrelevant

(A) In general

Notwithstanding paragraph (1), a consumer reporting agency may terminate a reinvestigation of information disputed by a consumer under that paragraph if the agency reasonably determines that the dispute by the consumer is frivolous or irrelevant, including by reason of a failure by a consumer to provide sufficient information to investigate the disputed information.

(B) Notice of determination

Upon making any determination in accordance with subparagraph (A) that a dispute is frivolous or irrelevant, a consumer reporting agency shall notify the consumer of such determination not later than 5 business days after making such determination, by mail or, if authorized by the consumer for that purpose, by any other means available to the agency.

(C) Contents of notice

A notice under subparagraph (B) shall include—

(i) the reasons for the determination under subparagraph (A); and

(ii) identification of any information required to investigate the disputed information, which may consist of a standardized form describing the general nature of such information.

(4) Consideration of consumer information

In conducting any reinvestigation under paragraph (1) with respect to disputed information in the file of any consumer, the consumer reporting agency shall review and consider all relevant information submitted by the consumer in the period described in paragraph (1)(A) with respect to such disputed information.

(5) Treatment of inaccurate or unverifiable information

(A) In general

If, after any reinvestigation under paragraph (1) of any information disputed by a consumer, an item of the information is found to be inaccurate or incomplete or cannot be verified, the consumer reporting agency shall—

(i) promptly delete that item of information from the file of the consumer, or modify that item of information, as appropriate, based on the results of the reinvestigation; and

(ii) promptly notify the furnisher of that information that the information has been modified or deleted from the file of the consumer.

(B) Requirements relating to reinsertion of previously deleted material

(i) Certification of accuracy of information

If any information is deleted from a consumer's file pursuant to subparagraph (A), the information may not be reinserted in the file by the consumer reporting agency unless the person who furnishes the information certifies that the information is complete and accurate.

(ii) Notice to consumer

If any information that has been deleted from a consumer's file pursuant to subparagraph (A) is reinserted in the file, the consumer reporting agency shall notify the consumer of the reinsertion in writing not later than 5 business days after the reinsertion or, if authorized by the consumer for that purpose, by any other means available to the agency.

(iii) Additional information

As part of, or in addition to, the notice under clause (ii), a consumer reporting agency shall provide to a consumer in writing not later than 5 business days after the date of the reinsertion—

(I) a statement that the disputed information has been reinserted;

(II) the business name and address of any furnisher of information contacted and the telephone number of such furnisher, if reasonably available, or of any furnisher of information that contacted the consumer reporting agency, in connection with the reinsertion of such information; and

(III) a notice that the consumer has the right to add a statement to the consumer's file disputing the accuracy or completeness of the disputed information.

(C) Procedures to prevent reappearance

A consumer reporting agency shall maintain reasonable procedures designed to prevent the reappearance in a consumer's file, and in consumer reports on the consumer, of information that is deleted pursuant to this paragraph (other than information that is reinserted in accordance

with subparagraph (B)(i)).

(D) Automated reinvestigation system

Any consumer reporting agency that compiles and maintains files on consumers on a nationwide basis shall implement an automated system through which furnishers of information to that consumer reporting agency may report the results of a reinvestigation that finds incomplete or inaccurate information in a consumer's file to other such consumer reporting agencies.

(6) Notice of results of reinvestigation

(A) In general

A consumer reporting agency shall provide written notice to a consumer of the results of a reinvestigation under this subsection not later than 5 business days after the completion of the reinvestigation, by mail or, if authorized by the consumer for that purpose, by other means available to the agency.

(B) Contents

As part of, or in addition to, the notice under subparagraph (A), a consumer reporting agency shall provide to a consumer in writing before the expiration of the 5-day period referred to in subparagraph (A)—

(i) a statement that the reinvestigation is completed;

(ii) a consumer report that is based upon the consumer's file as that file is revised as a result of the reinvestigation;

(iii) a notice that, if requested by the consumer, a description of the procedure used to determine the accuracy and completeness of the information shall be provided to the consumer by the agency, including the business name and address of any furnisher of information contacted in connection with such information and the telephone number of such furnisher, if reasonably available;

(iv) a notice that the consumer has the right to add a statement to the consumer's file disputing the accuracy or completeness of the information; and

(v) a notice that the consumer has the right to request under subsection (d) of this section that the consumer reporting agency furnish notifications under that subsection.

(7) Description of reinvestigation procedure

A consumer reporting agency shall provide to a consumer a description referred to in paragraph (6)(B)(iii) by not later than 15 days after receiving a request from the consumer for that description.

(8) Expedited dispute resolution

If a dispute regarding an item of information in a consumer's file at a consumer reporting agency is resolved in accordance with paragraph (5)(A) by the deletion of the disputed information by not later than 3 business days after the date on which the agency receives notice of the dispute from the consumer in accordance with paragraph (1)(A), then the agency shall not be required to comply with paragraphs (2), (6), and (7) with respect to that dispute if the agency—

(A) provides prompt notice of the deletion to the consumer by telephone;

(B) includes in that notice, or in a written notice that accompanies a confirmation and consumer report provided in accordance with subparagraph (C), a statement of the consumer's right to request under subsection (d) of this section that the agency furnish notifications under that subsection; and

(C) provides written confirmation of the deletion and a copy of a consumer report on the consumer that is based on the consumer's file after the deletion, not later than 5 business days after making the deletion.

(b) Statement of dispute

If the reinvestigation does not resolve the dispute, the consumer may file a brief statement setting

forth the nature of the dispute. The consumer reporting agency may limit such statements to not more than one hundred words if it provides the consumer with assistance in writing a clear summary of the dispute.

(c) Notification of consumer dispute in subsequent consumer reports

Whenever a statement of a dispute is filed, unless there is reasonable grounds to believe that it is frivolous or irrelevant, the consumer reporting agency shall, in any subsequent consumer report containing the information in question, clearly note that it is disputed by the consumer and provide either the consumer's statement or a clear and accurate codification or summary thereof.

(d) Notification of deletion of disputed information

Following any deletion of information which is found to be inaccurate or whose accuracy can no longer be verified or any notation as to disputed information, the consumer reporting agency shall, at the request of the consumer, furnish notification that the item has been deleted or the statement, codification or summary pursuant to subsection (b) or (c) of this section to any person specifically designated by the consumer who has within two years prior thereto received a consumer report for employment purposes, or within six months prior thereto received a consumer report for any other purpose, which contained the deleted or disputed information.

(e) Treatment of complaints and report to Congress

(1) In general

The Commission [1] shall—

(A) compile all complaints that it receives that a file of a consumer that is maintained by a consumer reporting agency described in section 1681a(p) of this title contains incomplete or inaccurate information, with respect to which, the consumer appears to have disputed the completeness or accuracy with the consumer reporting agency or otherwise utilized the procedures provided by subsection (a) of this section; and

(B) transmit each such complaint to each consumer reporting agency involved.

(2) Exclusion

Complaints received or obtained by the Bureau pursuant to its investigative authority under the Consumer Financial Protection Act of 2010 shall not be subject to paragraph (1).

(3) Agency responsibilities

Each consumer reporting agency described in section 1681a(p) of this title that receives a complaint transmitted by the Bureau pursuant to paragraph (1) shall—

(A) review each such complaint to determine whether all legal obligations imposed on the consumer reporting agency under this subchapter (including any obligation imposed by an applicable court or administrative order) have been met with respect to the subject matter of the complaint;

(B) provide reports on a regular basis to the Bureau regarding the determinations of and actions taken by the consumer reporting agency, if any, in connection with its review of such complaints; and

(C) maintain, for a reasonable time period, records regarding the disposition of each such complaint that is sufficient to demonstrate compliance with this subsection.

(4) Rulemaking authority

The Commission [1] may prescribe regulations, as appropriate to implement this subsection.

(5) Annual report

The Commission [1] shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives an annual report regarding information gathered by the Bureau under this subsection.

(f) Reinvestigation requirement applicable to resellers

(1) Exemption from general reinvestigation requirement

Except as provided in paragraph (2), a reseller shall be exempt from the requirements of this section.

(2) Action required upon receiving notice of a dispute

If a reseller receives a notice from a consumer of a dispute concerning the completeness or accuracy of any item of information contained in a consumer report on such consumer produced by the reseller, the reseller shall, within 5 business days of receiving the notice, and free of charge—

(A) determine whether the item of information is incomplete or inaccurate as a result of an act or omission of the reseller; and

(B) if—

(i) the reseller determines that the item of information is incomplete or inaccurate as a result of an act or omission of the reseller, not later than 20 days after receiving the notice, correct the information in the consumer report or delete it; or

(ii) if the reseller determines that the item of information is not incomplete or inaccurate as a result of an act or omission of the reseller, convey the notice of the dispute, together with all relevant information provided by the consumer, to each consumer reporting agency that provided the reseller with the information that is the subject of the dispute, using an address or a notification mechanism specified by the consumer reporting agency for such notices.

(3) Responsibility of consumer reporting agency to notify consumer through reseller

Upon the completion of a reinvestigation under this section of a dispute concerning the completeness or accuracy of any information in the file of a consumer by a consumer reporting agency that received notice of the dispute from a reseller under paragraph (2)—

(A) the notice by the consumer reporting agency under paragraph (6), (7), or (8) of subsection (a) of this section shall be provided to the reseller in lieu of the consumer; and

(B) the reseller shall immediately reconvey such notice to the consumer, including any notice of a deletion by telephone in the manner required under paragraph (8)(A).

(4) Reseller reinvestigations

No provision of this subsection shall be construed as prohibiting a reseller from conducting a reinvestigation of a consumer dispute directly.

(Pub. L. 90–321, title VI, §611, as added Pub. L. 91–508, title VI, §601, Oct. 26, 1970, 84 Stat. 1132; amended Pub. L. 104–208, div. A, title II, §2409, Sept. 30, 1996, 110 Stat. 3009–439; Pub. L. 105–347, §6(5), Nov. 2, 1998, 112 Stat. 3211; Pub. L. 108–159, title III, §§313(a), 314(a), 316, 317, Dec. 4, 2003, 117 Stat. 1994–1996, 1998; Pub. L. 111–203, title X, §1088(a)(2)(C), (6), July 21, 2010, 124 Stat. 2087.)

REFERENCES IN TEXT

The Consumer Financial Protection Act of 2010, referred to in subsec. (e)(2), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955, which enacted subchapter V (§5481 et seq.) of chapter 53 of Title 12, Banks and Banking, and enacted and amended numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 12 and Tables.

AMENDMENTS

2010—Subsec. (e)(2). Pub. L. 111–203, §1088(a)(6), added par. (2) and struck out former par. (2) which read as follows: "Complaints received or obtained by the Commission pursuant to its investigative authority under the Federal Trade Commission Act shall not be subject to paragraph (1)."

Subsec. (e)(3), (5). Pub. L. 111–203, §1088(a)(2)(C), substituted "the Bureau" for "the Commission" wherever appearing.

2003—Subsec. (a)(1)(A). Pub. L. 108–159, §317, substituted "shall, free of charge, conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate" for "shall reinvestigate free of charge".

Pub. L. 108–159, §316(a)(1), substituted "Subject to subsection (f) of this section, if the completeness" for "If the completeness" and inserted ", or indirectly through a reseller," after "notifies the agency directly" and

"or reseller" before period at end.

Subsec. (a)(2)(A). Pub. L. 108–159, §316(a)(2), inserted "or a reseller" after "dispute from any consumer" and "or reseller" before period at end.

Subsec. (a)(2)(B). Pub. L. 108–159, §316(c), struck out "from consumer" after "information" in heading.

Pub. L. 108–159, §316(a)(3), inserted "or the reseller" after "from the consumer".

Subsec. (a)(5)(A). Pub. L. 108–159, §314(a), substituted "shall—" and cls. (i) and (ii) for "shall promptly delete that item of information from the consumer's file or modify that item of information, as appropriate, based on the results of the reinvestigation."

Subsec. (e). Pub. L. 108–159, §313(a), added subsec. (e).

Subsec. (f). Pub. L. 108–159, §316(b), added subsec. (f).

1998—Subsec. (a)(7). Pub. L. 105–347 substituted "(6)(B)(iii)" for "(6)(B)(iv)".

1996—Subsec. (a). Pub. L. 104–208, §2409(a), inserted heading and amended text of subsec. (a) generally. Prior to amendment, text read as follows: "If the completeness or accuracy of any item of information contained in his file is disputed by a consumer, and such dispute is directly conveyed to the consumer reporting agency by the consumer, the consumer reporting agency shall within a reasonable period of time reinvestigate and record the current status of that information unless it has reasonable grounds to believe that the dispute by the consumer is frivolous or irrelevant. If after such reinvestigation such information is found to be inaccurate or can no longer be verified, the consumer reporting agency shall promptly delete such information. The presence of contradictory information in the consumer's file does not in and of itself constitute reasonable grounds for believing the dispute is frivolous or irrelevant."

Subsec. (d). Pub. L. 104–208, §2409(b), struck out at end "The consumer reporting agency shall clearly and conspicuously disclose to the consumer his rights to make such a request. Such disclosure shall be made at or prior to the time the information is deleted or the consumer's statement regarding the disputed information is received."

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–159 subject to joint regulations establishing effective dates as prescribed by Federal Reserve Board and Federal Trade Commission, except as otherwise provided, see section 3 of Pub. L. 108–159, set out as a note under section 1681 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–347 deemed to have same effective date as amendments made by section 2403 of Pub. L. 104–208, see section 7 of Pub. L. 105–347, set out as a note under section 1681a of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective 365 days after Sept. 30, 1996, with special rule for early compliance, see section 2420 of Pub. L. 104–208, set out as a note under section 1681a of this title.

PROMPT INVESTIGATION OF DISPUTED CONSUMER INFORMATION

Pub. L. 108–159, title III, §313(b), Dec. 4, 2003, 117 Stat. 1994, provided that:

"(1) STUDY REQUIRED.—The Board and the Commission shall jointly study the extent to which, and the manner in which, consumer reporting agencies and furnishers of consumer information to consumer reporting agencies are complying with the procedures, time lines, and requirements under the Fair Credit Reporting Act [this subchapter] for the prompt investigation of the disputed accuracy of any consumer information, the completeness of the information provided to consumer reporting agencies, and the prompt correction or deletion, in accordance with such Act, of any inaccurate or incomplete information or information that cannot be verified.

"(2) REPORT REQUIRED.—Before the end of the 12-month period beginning on the date of enactment of this Act [Dec. 4, 2003], the Board and the Commission shall jointly submit a progress report to the Congress on the results of the study required under paragraph (1).

"(3) CONSIDERATIONS.—In preparing the report required under paragraph (2), the Board and the Commission shall consider information relating to complaints compiled by the Commission under section 611(e) of the Fair Credit Reporting Act [15 U.S.C. 1681i(e)], as added by this section.

"(4) RECOMMENDATIONS.—The report required under paragraph (2) shall include such recommendations as the Board and the Commission jointly determine to be appropriate for legislative or

administrative action, to ensure that—

"(A) consumer disputes with consumer reporting agencies over the accuracy or completeness of information in a consumer's file are promptly and fully investigated and any incorrect, incomplete, or unverifiable information is corrected or deleted immediately thereafter;

"(B) furnishers of information to consumer reporting agencies maintain full and prompt compliance with the duties and responsibilities established under section 623 of the Fair Credit Reporting Act [15 U.S.C. 1681s–2]; and

"(C) consumer reporting agencies establish and maintain appropriate internal controls and management review procedures for maintaining full and continuous compliance with the procedures, time lines, and requirements under the Fair Credit Reporting Act [this subchapter] for the prompt investigation of the disputed accuracy of any consumer information and the prompt correction or deletion, in accordance with such Act, of any inaccurate or incomplete information or information that cannot be verified."

[For definitions of terms used in section 313(b) of Pub. L. 108–159, set out above, see section 2 of Pub. L. 108–159, set out as a Definitions note under section 1681 of this title.]

[1] *So in original. Probably should be "Bureau".*

§1681j. Charges for certain disclosures

(a) Free annual disclosure

(1) Nationwide consumer reporting agencies

(A) In general

All consumer reporting agencies described in subsections (p) and (w) [1] of section 1681a of this title shall make all disclosures pursuant to section 1681g of this title once during any 12-month period upon request of the consumer and without charge to the consumer.

(B) Centralized source

Subparagraph (A) shall apply with respect to a consumer reporting agency described in section 1681a(p) of this title only if the request from the consumer is made using the centralized source established for such purpose in accordance with section 211(c) [1] of the Fair and Accurate Credit Transactions Act of 2003.

(C) Nationwide specialty consumer reporting agency

(i) In general

The Commission [2] shall prescribe regulations applicable to each consumer reporting agency described in section 1681a(w) [1] of this title to require the establishment of a streamlined process for consumers to request consumer reports under subparagraph (A), which shall include, at a minimum, the establishment by each such agency of a toll-free telephone number for such requests.

(ii) Considerations

In prescribing regulations under clause (i), the Bureau shall consider—

(I) the significant demands that may be placed on consumer reporting agencies in providing such consumer reports;

(II) appropriate means to ensure that consumer reporting agencies can satisfactorily meet those demands, including the efficacy of a system of staggering the availability to consumers of such consumer reports; and

(III) the ease by which consumers should be able to contact consumer reporting agencies with respect to access to such consumer reports.

(iii) Date of issuance

The Commission [2] shall issue the regulations required by this subparagraph in final form

not later than 6 months after December 4, 2003.

(iv) Consideration of ability to comply

The regulations of the Bureau under this subparagraph shall establish an effective date by which each nationwide specialty consumer reporting agency (as defined in section 1681a(w)[1] of this title) shall be required to comply with subsection (a) of this section, which effective date—

(I) shall be established after consideration of the ability of each nationwide specialty consumer reporting agency to comply with subsection (a) of this section; and

(II) shall be not later than 6 months after the date on which such regulations are issued in final form (or such additional period not to exceed 3 months, as the Bureau determines appropriate).

(2) Timing

A consumer reporting agency shall provide a consumer report under paragraph (1) not later than 15 days after the date on which the request is received under paragraph (1).

(3) Reinvestigations

Notwithstanding the time periods specified in section 1681i(a)(1) of this title, a reinvestigation under that section by a consumer reporting agency upon a request of a consumer that is made after receiving a consumer report under this subsection shall be completed not later than 45 days after the date on which the request is received.

(4) Exception for first 12 months of operation

This subsection shall not apply to a consumer reporting agency that has not been furnishing consumer reports to third parties on a continuing basis during the 12-month period preceding a request under paragraph (1), with respect to consumers residing nationwide.

(b) Free disclosure after adverse notice to consumer

Each consumer reporting agency that maintains a file on a consumer shall make all disclosures pursuant to section 1681g of this title without charge to the consumer if, not later than 60 days after receipt by such consumer of a notification pursuant to section 1681m of this title, or of a notification from a debt collection agency affiliated with that consumer reporting agency stating that the consumer's credit rating may be or has been adversely affected, the consumer makes a request under section 1681g of this title.

(c) Free disclosure under certain other circumstances

Upon the request of the consumer, a consumer reporting agency shall make all disclosures pursuant to section 1681g of this title once during any 12-month period without charge to that consumer if the consumer certifies in writing that the consumer—

(1) is unemployed and intends to apply for employment in the 60-day period beginning on the date on which the certification is made;

(2) is a recipient of public welfare assistance; or

(3) has reason to believe that the file on the consumer at the agency contains inaccurate information due to fraud.

(d) Free disclosures in connection with fraud alerts

Upon the request of a consumer, a consumer reporting agency described in section 1681a(p) of this title shall make all disclosures pursuant to section 1681g of this title without charge to the consumer, as provided in subsections (a)(2) and (b)(2) of section 1681c–1 of this title, as applicable.

(e) Other charges prohibited

A consumer reporting agency shall not impose any charge on a consumer for providing any notification required by this subchapter or making any disclosure required by this subchapter, except as authorized by subsection (f) of this section.

(f) Reasonable charges allowed for certain disclosures

(1) In general

In the case of a request from a consumer other than a request that is covered by any of subsections (a) through (d) of this section, a consumer reporting agency may impose a reasonable charge on a consumer—

(A) for making a disclosure to the consumer pursuant to section 1681g of this title, which charge—

(i) shall not exceed $8; and

(ii) shall be indicated to the consumer before making the disclosure; and

(B) for furnishing, pursuant to section 1681i(d) of this title, following a reinvestigation under section 1681i(a) of this title, a statement, codification, or summary to a person designated by the consumer under that section after the 30-day period beginning on the date of notification of the consumer under paragraph (6) or (8) of section 1681i(a) of this title with respect to the reinvestigation, which charge—

(i) shall not exceed the charge that the agency would impose on each designated recipient for a consumer report; and

(ii) shall be indicated to the consumer before furnishing such information.

(2) Modification of amount

The Bureau shall increase the amount referred to in paragraph (1)(A)(i) on January 1 of each year, based proportionally on changes in the Consumer Price Index, with fractional changes rounded to the nearest fifty cents.

(g) Prevention of deceptive marketing of credit reports

(1) In general

Subject to rulemaking pursuant to section 205(b) of the Credit CARD Act of 2009, any advertisement for a free credit report in any medium shall prominently disclose in such advertisement that free credit reports are available under Federal law at: "AnnualCreditReport.com" (or such other source as may be authorized under Federal law).

(2) Television and radio advertisement

In the case of an advertisement broadcast by television, the disclosures required under paragraph (1) shall be included in the audio and visual part of such advertisement. In the case of an advertisement broadcast by televison [3] or radio, the disclosure required under paragraph (1) shall consist only of the following: "This is not the free credit report provided for by Federal law".

(Pub. L. 90–321, title VI, §612, as added Pub. L. 91–508, title VI, §601, Oct. 26, 1970, 84 Stat. 1132; amended Pub. L. 104–208, div. A, title II, §2410, Sept. 30, 1996, 110 Stat. 3009–442; Pub. L. 108–159, title II, §211(a), Dec. 4, 2003, 117 Stat. 1968; Pub. L. 111–24, title II, §205(a), May 22, 2009, 123 Stat. 1747; Pub. L. 111–203, title X, §1088(a)(2)(A), (C), July 21, 2010, 124 Stat. 2087.)

REFERENCES IN TEXT

Section 1681a(w) of this title, referred to in subsec. (a)(1)(A), (C)(i), (iv), was redesignated section 1681a(x) of this title by Pub. L. 111–203, title X, §1088(a)(1), July 21, 2010, 124 Stat. 2086.

Section 211(c) of the Fair and Accurate Credit Transactions Act of 2003, referred to in subsec. (a)(1)(B), probably means section 211(d) of Pub. L. 108–159, which is set out as a note below and relates to the establishment of a centralized source. Section 211(c) of Pub. L. 108–159 amended section 1681g of this title.

Section 205(b) of the Credit CARD Act of 2009, referred to in subsec. (g), is section 205(b) of Pub. L. 111–24, which is set out as a note below.

AMENDMENTS

2010—Subsec. (a)(1)(C). Pub. L. 111–203, §1088(a)(2)(C), substituted "the Bureau" for "the Commission" wherever appearing.

Subsec. (f)(2). Pub. L. 111–203, §1088(a)(2)(A), substituted "Bureau" for "Federal Trade Commission".

2009—Subsec. (g). Pub. L. 111–24 added subsec. (g).

2003—Subsec. (a). Pub. L. 108–159, §211(a)(2), added subsec. (a). Former subsec. (a) redesignated (f).

Subsec. (d). Pub. L. 108–159, §211(a)(4), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 108–159, §211(a)(3), (5), redesignated subsec. (d) as (e) and substituted "subsection (f)" for "subsection (a)".

Subsec. (f). Pub. L. 108–159, §211(a)(1), (6), redesignated subsec. (a) as (f) and substituted "In the case of a request from a consumer other than a request that is covered by any of subsections (a) through (d) of this section, a" for "Except as provided in subsections (b), (c), and (d) of this section, a" in par. (1).

1996—Pub. L. 104–208 amended section generally. Prior to amendment, section read as follows: "A consumer reporting agency shall make all disclosures pursuant to section 1681g of this title and furnish all consumer reports pursuant to section 1681i(d) of this title without charge to the consumer if, within thirty days after receipt by such consumer of a notification pursuant to section 1681m of this title or notification from a debt collection agency affiliated with such consumer reporting agency stating that the consumer's credit rating may be or has been adversely affected, the consumer makes a request under section 1681g or 1681i(d) of this title. Otherwise, the consumer reporting agency may impose a reasonable charge on the consumer for making disclosure to such consumer pursuant to section 1681g of this title, the charge for which shall be indicated to the consumer prior to making disclosure; and for furnishing notifications, statements, summaries, or codifications to person designated by the consumer pursuant to section 1681i(d) of this title, the charge for which shall be indicated to the consumer prior to furnishing such information and shall not exceed the charge that the consumer reporting agency would impose on each designated recipient for a consumer report except that no charge may be made for notifying such persons of the deletion of information which is found to be inaccurate or which can no longer be verified."

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–24 effective 9 months after May 22, 2009, except as otherwise specifically provided, see section 3 of Pub. L. 111–24, set out as a note under section 1602 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–159 subject to joint regulations establishing effective dates as prescribed by Federal Reserve Board and Federal Trade Commission, except as otherwise provided, see section 3 of Pub. L. 108–159, set out as a note under section 1681 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective 365 days after Sept. 30, 1996, with special rule for early compliance, see section 2420 of Pub. L. 104–208, set out as a note under section 1681a of this title.

REGULATIONS

Pub. L. 111–24, title II, §205(b), May 22, 2009, 123 Stat. 1747, provided that:

"(1) IN GENERAL.—Not later than 9 months after the date of enactment of this Act [May 22, 2009], the Federal Trade Commission shall issue a final rule to carry out this section.

"(2) CONTENT.—The rule required by this subsection—

"(A) shall include specific wording to be used in advertisements in accordance with this section; and

"(B) for advertisements on the Internet, shall include whether the disclosure required under section 612(g)(1) of the Fair Credit Reporting Act [15 U.S.C. 1681j(g)(1)] (as added by this section) shall appear on the advertisement or the website on which the free credit report is made available.

"(3) INTERIM DISCLOSURES.—If an advertisement subject to section 612(g) of the Fair Credit Reporting Act [15 U.S.C. 1681j(g)], as added by this section, is made public after the 9-month deadline specified in paragraph (1), but before the rule required by paragraph (1) is finalized, such advertisement shall include the disclosure: 'Free credit reports are available under Federal law at: "AnnualCreditReport.com".' "

Pub. L. 108–159, title II, §211(d), Dec. 4, 2003, 117 Stat. 1972, as amended by Pub. L. 111–203, §1088(b)(2), July 21, 2010, 124 Stat. 2092, provided that:

"(1) IN GENERAL.—The Bureau [probably means the Bureau of Consumer Financial Protection] shall prescribe regulations applicable to consumer reporting agencies described in section 603(p) of the Fair Credit Reporting Act [15 U.S.C. 1681a(p)], to require the establishment of—

"(A) a centralized source through which consumers may obtain a consumer report from each such consumer reporting agency, using a single request, and without charge to the consumer, as provided in section 612(a) of the Fair Credit Reporting Act [15 U.S.C. 1681j(a)] (as amended by this section); and

"(B) a standardized form for a consumer to make such a request for a consumer report by mail or through an Internet website.

"(2) CONSIDERATIONS.—In prescribing regulations under paragraph (1), the Bureau shall consider—

"(A) the significant demands that may be placed on consumer reporting agencies in providing such consumer reports;

"(B) appropriate means to ensure that consumer reporting agencies can satisfactorily meet those demands, including the efficacy of a system of staggering the availability to consumers of such consumer reports; and

"(C) the ease by which consumers should be able to contact consumer reporting agencies with respect to access to such consumer reports.

"(3) CENTRALIZED SOURCE.—The centralized source for a request for a consumer report from a consumer required by this subsection shall provide for—

"(A) a toll-free telephone number for such purpose;

"(B) use of an Internet website for such purpose; and

"(C) a process for requests by mail for such purpose.

"(4) TRANSITION.—The regulations of the Bureau under paragraph (1) shall provide for an orderly transition by consumer reporting agencies described in section 603(p) of the Fair Credit Reporting Act [15 U.S.C. 1681a(p)] to the centralized source for consumer report distribution required by section 612(a)(1)(B) [15 U.S.C. 1681j(a)(1)(B)], as amended by this section, in a manner that—

"(A) does not temporarily overwhelm such consumer reporting agencies with requests for disclosures of consumer reports beyond their capacity to deliver; and

"(B) does not deny creditors, other users, and consumers access to consumer reports on a time-sensitive basis for specific purposes, such as home purchases or suspicions of identity theft, during the transition period.

"(5) TIMING.—Regulations required by this subsection shall—

"(A) be issued in final form not later than 6 months after the date of enactment of this Act [Dec. 4, 2003]; and

"(B) become effective not later than 6 months after the date on which they are issued in final form.

"(6) SCOPE OF REGULATIONS.—

"(A) IN GENERAL.—The Bureau shall, by rule, determine whether to require a consumer reporting agency that compiles and maintains files on consumers on substantially a nationwide basis, other than one described in section 603(p) of the Fair Credit Reporting Act [15 U.S.C. 1681a(p)], to make free consumer reports available upon consumer request, and if so, whether such consumer reporting agencies should make such free reports available through the centralized source described in paragraph (1)(A).

"(B) CONSIDERATIONS.—Before making any determination under subparagraph (A), the Bureau shall consider—

"(i) the number of requests for consumer reports to, and the number of consumer reports generated by, the consumer reporting agency, in comparison with consumer reporting agencies described in subsections (p) and (w) [now (x)] of section 603 of the Fair Credit Reporting Act [15 U.S.C. 1681a(p), (w) [x]];

"(ii) the overall scope of the operations of the consumer reporting agency;

"(iii) the needs of consumers for access to consumer reports provided by consumer reporting agencies free of charge;

"(iv) the costs of providing access to consumer reports by consumer reporting agencies free of charge; and

"(v) the effects on the ongoing competitive viability of such consumer reporting agencies if such free access is required."

[For definitions of terms used in section 211(d) of Pub. L. 108–159, set out above, see section 2 of Pub. L. 108–159, set out as a Definitions note under section 1681 of this title.]

[1] See References in Text note below.

[2] So in original. Probably should be "Bureau".

[3] So in original. Probably should be "television".

§1681k. Public record information for employment purposes

(a) In general

A consumer reporting agency which furnishes a consumer report for employment purposes and which for that purpose compiles and reports items of information on consumers which are matters of public record and are likely to have an adverse effect upon a consumer's ability to obtain employment shall—

(1) at the time such public record information is reported to the user of such consumer report, notify the consumer of the fact that public record information is being reported by the consumer reporting agency, together with the name and address of the person to whom such information is being reported; or

(2) maintain strict procedures designed to insure that whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported it is complete and up to date. For purposes of this paragraph, items of public record relating to arrests, indictments, convictions, suits, tax liens, and outstanding judgments shall be considered up to date if the current public record status of the item at the time of the report is reported.

(b) Exemption for national security investigations

Subsection (a) of this section does not apply in the case of an agency or department of the United States Government that seeks to obtain and use a consumer report for employment purposes, if the head of the agency or department makes a written finding as prescribed under section 1681b(b)(4)(A) of this title.

(Pub. L. 90–321, title VI, §613, as added Pub. L. 91–508, title VI, §601, Oct. 26, 1970, 84 Stat. 1133; amended Pub. L. 105–347, §4(b), Nov. 2, 1998, 112 Stat. 3210.)

AMENDMENTS

1998—Pub. L. 105–347 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–347 deemed to have same effective date as amendments made by section 2403 of Pub. L. 104–208, see section 7 of Pub. L. 105–347, set out as a note under section 1681a of this title.

§1681*l*. Restrictions on investigative consumer reports

Whenever a consumer reporting agency prepares an investigative consumer report, no adverse information in the consumer report (other than information which is a matter of public record) may be included in a subsequent consumer report unless such adverse information has been verified in the process of making such subsequent consumer report, or the adverse information was received within the three-month period preceding the date the subsequent report is furnished.

(Pub. L. 90–321, title VI, §614, as added Pub. L. 91–508, title VI, §601, Oct. 26, 1970, 84 Stat. 1133.)

§1681m. Requirements on users of consumer reports

(a) Duties of users taking adverse actions on basis of information contained in consumer reports

If any person takes any adverse action with respect to any consumer that is based in whole or in part on any information contained in a consumer report, the person shall—

(1) provide oral, written, or electronic notice of the adverse action to the consumer;

(2) provide to the consumer written or electronic disclosure—

(A) of a numerical credit score as defined in section 1681g(f)(2)(A) of this title used by such person in taking any adverse action based in whole or in part on any information in a consumer

report; and

(B) of the information set forth in subparagraphs (B) through (E) of section 1681g(f)(1) of this title;

(3) provide to the consumer orally, in writing, or electronically—

(A) the name, address, and telephone number of the consumer reporting agency (including a toll-free telephone number established by the agency if the agency compiles and maintains files on consumers on a nationwide basis) that furnished the report to the person; and

(B) a statement that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the consumer the specific reasons why the adverse action was taken; and

(4) provide to the consumer an oral, written, or electronic notice of the consumer's right—

(A) to obtain, under section 1681j of this title, a free copy of a consumer report on the consumer from the consumer reporting agency referred to in paragraph (3), which notice shall include an indication of the 60-day period under that section for obtaining such a copy; and

(B) to dispute, under section 1681i of this title, with a consumer reporting agency the accuracy or completeness of any information in a consumer report furnished by the agency.

(b) Adverse action based on information obtained from third parties other than consumer reporting agencies

(1) In general

Whenever credit for personal, family, or household purposes involving a consumer is denied or the charge for such credit is increased either wholly or partly because of information obtained from a person other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, the user of such information shall, within a reasonable period of time, upon the consumer's written request for the reasons for such adverse action received within sixty days after learning of such adverse action, disclose the nature of the information to the consumer. The user of such information shall clearly and accurately disclose to the consumer his right to make such written request at the time such adverse action is communicated to the consumer.

(2) Duties of person taking certain actions based on information provided by affiliate

(A) Duties, generally

If a person takes an action described in subparagraph (B) with respect to a consumer, based in whole or in part on information described in subparagraph (C), the person shall—

(i) notify the consumer of the action, including a statement that the consumer may obtain the information in accordance with clause (ii); and

(ii) upon a written request from the consumer received within 60 days after transmittal of the notice required by clause (i), disclose to the consumer the nature of the information upon which the action is based by not later than 30 days after receipt of the request.

(B) Action described

An action referred to in subparagraph (A) is an adverse action described in section 1681a(k)(1)(A) of this title, taken in connection with a transaction initiated by the consumer, or any adverse action described in clause (i) or (ii) of section 1681a(k)(1)(B) of this title.

(C) Information described

Information referred to in subparagraph (A)—

(i) except as provided in clause (ii), is information that—

(I) is furnished to the person taking the action by a person related by common ownership or affiliated by common corporate control to the person taking the action; and

(II) bears on the credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living of the consumer; and

(ii) does not include—

(I) information solely as to transactions or experiences between the consumer and the person furnishing the information; or

(II) information in a consumer report.

(c) Reasonable procedures to assure compliance

No person shall be held liable for any violation of this section if he shows by a preponderance of the evidence that at the time of the alleged violation he maintained reasonable procedures to assure compliance with the provisions of this section.

(d) Duties of users making written credit or insurance solicitations on basis of information contained in consumer files

(1) In general

Any person who uses a consumer report on any consumer in connection with any credit or insurance transaction that is not initiated by the consumer, that is provided to that person under section 1681b(c)(1)(B) of this title, shall provide with each written solicitation made to the consumer regarding the transaction a clear and conspicuous statement that—

(A) information contained in the consumer's consumer report was used in connection with the transaction;

(B) the consumer received the offer of credit or insurance because the consumer satisfied the criteria for credit worthiness or insurability under which the consumer was selected for the offer;

(C) if applicable, the credit or insurance may not be extended if, after the consumer responds to the offer, the consumer does not meet the criteria used to select the consumer for the offer or any applicable criteria bearing on credit worthiness or insurability or does not furnish any required collateral;

(D) the consumer has a right to prohibit information contained in the consumer's file with any consumer reporting agency from being used in connection with any credit or insurance transaction that is not initiated by the consumer; and

(E) the consumer may exercise the right referred to in subparagraph (D) by notifying a notification system established under section 1681b(e) of this title.

(2) Disclosure of address and telephone number; format

A statement under paragraph (1) shall—

(A) include the address and toll-free telephone number of the appropriate notification system established under section 1681b(e) of this title; and

(B) be presented in such format and in such type size and manner as to be simple and easy to understand, as established by the Bureau, by rule, in consultation with the Federal Trade Commission, the Federal banking agencies, and the National Credit Union Administration.

(3) Maintaining criteria on file

A person who makes an offer of credit or insurance to a consumer under a credit or insurance transaction described in paragraph (1) shall maintain on file the criteria used to select the consumer to receive the offer, all criteria bearing on credit worthiness or insurability, as applicable, that are the basis for determining whether or not to extend credit or insurance pursuant to the offer, and any requirement for the furnishing of collateral as a condition of the extension of credit or insurance, until the expiration of the 3-year period beginning on the date on which the offer is made to the consumer.

(4) Authority of Federal agencies regarding unfair or deceptive acts or practices not affected

This section is not intended to affect the authority of any Federal or State agency to enforce a prohibition against unfair or deceptive acts or practices, including the making of false or misleading statements in connection with a credit or insurance transaction that is not initiated by the consumer.

(e) Red flag guidelines and regulations required

(1) Guidelines

The Federal banking agencies, the National Credit Union Administration, the Federal Trade Commission, the Commodity Futures Trading Commission, and the Securities and Exchange Commission shall jointly, with respect to the entities that are subject to their respective enforcement authority under section 1681s of this title—

(A) establish and maintain guidelines for use by each financial institution and each creditor regarding identity theft with respect to account holders at, or customers of, such entities, and update such guidelines as often as necessary;

(B) prescribe regulations requiring each financial institution and each creditor to establish reasonable policies and procedures for implementing the guidelines established pursuant to subparagraph (A), to identify possible risks to account holders or customers or to the safety and soundness of the institution or customers; and

(C) prescribe regulations applicable to card issuers to ensure that, if a card issuer receives notification of a change of address for an existing account, and within a short period of time (during at least the first 30 days after such notification is received) receives a request for an additional or replacement card for the same account, the card issuer may not issue the additional or replacement card, unless the card issuer, in accordance with reasonable policies and procedures—

(i) notifies the cardholder of the request at the former address of the cardholder and provides to the cardholder a means of promptly reporting incorrect address changes;

(ii) notifies the cardholder of the request by such other means of communication as the cardholder and the card issuer previously agreed to; or

(iii) uses other means of assessing the validity of the change of address, in accordance with reasonable policies and procedures established by the card issuer in accordance with the regulations prescribed under subparagraph (B).

(2) Criteria

(A) In general

In developing the guidelines required by paragraph (1)(A), the agencies described in paragraph (1) shall identify patterns, practices, and specific forms of activity that indicate the possible existence of identity theft.

(B) Inactive accounts

In developing the guidelines required by paragraph (1)(A), the agencies described in paragraph (1) shall consider including reasonable guidelines providing that when a transaction occurs with respect to a credit or deposit account that has been inactive for more than 2 years, the creditor or financial institution shall follow reasonable policies and procedures that provide for notice to be given to a consumer in a manner reasonably designed to reduce the likelihood of identity theft with respect to such account.

(3) Consistency with verification requirements

Guidelines established pursuant to paragraph (1) shall not be inconsistent with the policies and procedures required under section 5318(l) of title 31.

(4) Definitions

As used in this subsection, the term "creditor"—

(A) means a creditor, as defined in section 1691a of this title, that regularly and in the ordinary course of business—

(i) obtains or uses consumer reports, directly or indirectly, in connection with a credit transaction;

(ii) furnishes information to consumer reporting agencies, as described in section 1681s–2 of this title, in connection with a credit transaction; or

(iii) advances funds to or on behalf of a person, based on an obligation of the person to

repay the funds or repayable from specific property pledged by or on behalf of the person;

(B) does not include a creditor described in subparagraph (A)(iii) that advances funds on behalf of a person for expenses incidental to a service provided by the creditor to that person; and

(C) includes any other type of creditor, as defined in that section 1691a of this title, as the agency described in paragraph (1) having authority over that creditor may determine appropriate by rule promulgated by that agency, based on a determination that such creditor offers or maintains accounts that are subject to a reasonably foreseeable risk of identity theft.

(f) Prohibition on sale or transfer of debt caused by identity theft

(1) In general

No person shall sell, transfer for consideration, or place for collection a debt that such person has been notified under section 1681c–2 of this title has resulted from identity theft.

(2) Applicability

The prohibitions of this subsection shall apply to all persons collecting a debt described in paragraph (1) after the date of a notification under paragraph (1).

(3) Rule of construction

Nothing in this subsection shall be construed to prohibit—

(A) the repurchase of a debt in any case in which the assignee of the debt requires such repurchase because the debt has resulted from identity theft;

(B) the securitization of a debt or the pledging of a portfolio of debt as collateral in connection with a borrowing; or

(C) the transfer of debt as a result of a merger, acquisition, purchase and assumption transaction, or transfer of substantially all of the assets of an entity.

(g) Debt collector communications concerning identity theft

If a person acting as a debt collector (as that term is defined in subchapter V of this chapter) on behalf of a third party that is a creditor or other user of a consumer report is notified that any information relating to a debt that the person is attempting to collect may be fraudulent or may be the result of identity theft, that person shall—

(1) notify the third party that the information may be fraudulent or may be the result of identity theft; and

(2) upon request of the consumer to whom the debt purportedly relates, provide to the consumer all information to which the consumer would otherwise be entitled if the consumer were not a victim of identity theft, but wished to dispute the debt under provisions of law applicable to that person.

(h) Duties of users in certain credit transactions

(1) In general

Subject to rules prescribed as provided in paragraph (6), if any person uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that person, based in whole or in part on a consumer report, the person shall provide an oral, written, or electronic notice to the consumer in the form and manner required by regulations prescribed in accordance with this subsection.

(2) Timing

The notice required under paragraph (1) may be provided at the time of an application for, or a grant, extension, or other provision of, credit or the time of communication of an approval of an application for, or grant, extension, or other provision of, credit, except as provided in the regulations prescribed under paragraph (6).

(3) Exceptions

No notice shall be required from a person under this subsection if—

(A) the consumer applied for specific material terms and was granted those terms, unless those terms were initially specified by the person after the transaction was initiated by the consumer and after the person obtained a consumer report; or

(B) the person has provided or will provide a notice to the consumer under subsection (a) of this section in connection with the transaction.

(4) Other notice not sufficient

A person that is required to provide a notice under subsection (a) of this section cannot meet that requirement by providing a notice under this subsection.

(5) Content and delivery of notice

A notice under this subsection shall, at a minimum—

(A) include a statement informing the consumer that the terms offered to the consumer are set based on information from a consumer report;

(B) identify the consumer reporting agency furnishing the report;

(C) include a statement informing the consumer that the consumer may obtain a copy of a consumer report from that consumer reporting agency without charge;

(D) include the contact information specified by that consumer reporting agency for obtaining such consumer reports (including a toll-free telephone number established by the agency in the case of a consumer reporting agency described in section 1681a(p) of this title); and

(E) include a statement informing the consumer of—

(i) a numerical credit score as defined in section 1681g(f)(2)(A) of this title, used by such person in making the credit decision described in paragraph (1) based in whole or in part on any information in a consumer report; and

(ii) the information set forth in subparagraphs (B) through (E) of section 1681g(f)(1) of this title.

(6) Rulemaking

(A) Rules required

The Bureau shall prescribe rules to carry out this subsection.

(B) Content

Rules required by subparagraph (A) shall address, but are not limited to—

(i) the form, content, time, and manner of delivery of any notice under this subsection;

(ii) clarification of the meaning of terms used in this subsection, including what credit terms are material, and when credit terms are materially less favorable;

(iii) exceptions to the notice requirement under this subsection for classes of persons or transactions regarding which the agencies determine that notice would not significantly benefit consumers;

(iv) a model notice that may be used to comply with this subsection; and

(v) the timing of the notice required under paragraph (1), including the circumstances under which the notice must be provided after the terms offered to the consumer were set based on information from a consumer report.

(7) Compliance

A person shall not be liable for failure to perform the duties required by this section if, at the time of the failure, the person maintained reasonable policies and procedures to comply with this section.

(8) Enforcement

(A) No civil actions

Sections 1681n and 1681o of this title shall not apply to any failure by any person to comply

with this section.

(B) Administrative enforcement

This section shall be enforced exclusively under section 1681s of this title by the Federal agencies and officials identified in that section.

(Pub. L. 90–321, title VI, §615, as added Pub. L. 91–508, title VI, §601, Oct. 26, 1970, 84 Stat. 1133; amended Pub. L. 104–208, div. A, title II, §2411, Sept. 30, 1996, 110 Stat. 3009–443; Pub. L. 108–159, title I, §§114, 154(b), 155, title II, §213(a), title III, §311(a), title VIII, §811(h), Dec. 4, 2003, 117 Stat. 1960, 1967, 1978, 1988, 2012; Pub. L. 111–203, title X, §§1088(a)(2)(C), (7)–(9), 1100F, July 21, 2010, 124 Stat. 2087, 2088, 2112; Pub. L. 111–319, §2(a), Dec. 18, 2010, 124 Stat. 3457.)

AMENDMENTS

2010—Subsec. (a)(2) to (4). Pub. L. 111–203, §1100F(1), added par. (2), redesignated former pars. (2) and (3) as (3) and (4), respectively, and substituted "paragraph (3)" for "paragraph (2)" in par. (4).

Subsec. (d)(2)(B). Pub. L. 111–203, §1088(a)(7), substituted "the Federal Trade Commission, the Federal banking agencies," for "the Federal banking agencies".

Pub. L. 111–203, §1088(a)(2)(C), substituted "the Bureau" for "the Commission".

Subsec. (e)(1). Pub. L. 111–203, §1088(a)(8), substituted "the Federal Trade Commission, the Commodity Futures Trading Commission, and the Securities and Exchange Commission" for "and the Commission" in introductory provisions.

Subsec. (e)(4). Pub. L. 111–319 added par. (4).

Subsec. (h)(5)(E). Pub. L. 111–203, §1100F(2), added subpar. (E).

Subsec. (h)(6)(A). Pub. L. 111–203, §1088(a)(9), added subpar. (A) and struck out former subpar. (A). Prior to amendment, text read as follows: "The Commission and the Board shall jointly prescribe rules."

2003—Subsec. (d)(2). Pub. L. 108–159, §213(a), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: "A statement under paragraph (1) shall include the address and toll-free telephone number of the appropriate notification system established under section 1681b(e) of this title."

Subsec. (e). Pub. L. 108–159, §811(h), repealed Pub. L. 104–208, §2411(c). See 1996 Amendment note below.

Pub. L. 108–159, §114, added subsec. (e) and struck out former subsec. (e) designation that had been added with no heading or text by Pub. L. 104–208, §2411(c). See note above and 1996 Amendment note below.

Subsec. (f). Pub. L. 108–159, §154(b), added subsec. (f).

Subsec. (g). Pub. L. 108–159, §155, added subsec. (g).

Subsec. (h). Pub. L. 108–159, §311(a), added subsec. (h).

1996—Subsec. (a). Pub. L. 104–208, §2411(a), inserted heading and amended text of subsec. (a) generally. Prior to amendment, text read as follows: "Whenever credit or insurance for personal, family, or household purposes, or employment involving a consumer is denied or the charge for such credit or insurance is increased either wholly or partly because of information contained in a consumer report from a consumer reporting agency, the user of the consumer report shall so advise the consumer against whom such adverse action has been taken and supply the name and address of the consumer reporting agency making the report."

Subsec. (b). Pub. L. 104–208, §2411(e), inserted subsec. heading, designated existing provisions as par. (1) and inserted heading, and added par. (2).

Subsec. (c). Pub. L. 104–208, §2411(d), substituted "this section" for "subsections (a) and (b) of this section".

Subsec. (d). Pub. L. 104–208, §2411(b), added subsec. (d).

Subsec. (e). Pub. L. 104–208, §2411(c), which added subsec. (e) containing subsec. designation, but no heading or text, was repealed by Pub. L. 108–159, §811(h).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–319, §2(b), Dec. 18, 2010, 124 Stat. 3458, provided that: "The amendment made by this section [amending this section] shall become effective on the date of enactment of this Act [Dec. 18, 2010]."

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–159 subject to joint regulations establishing effective dates as prescribed by Federal Reserve Board and Federal Trade Commission, except as otherwise provided, see section 3 of Pub. L.

108–159, set out as a note under section 1681 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective 365 days after Sept. 30, 1996, with special rule for early compliance, see section 2420 of Pub. L. 104–208, set out as a note under section 1681a of this title.

REGULATIONS

Pub. L. 108–159, title II, §213(b), Dec. 4, 2003, 117 Stat. 1979, provided that: "Regulations required by section 615(d)(2) of the Fair Credit Reporting Act [15 U.S.C. 1681m(d)(2)], as amended by this section, shall be issued in final form not later than 1 year after the date of enactment of this Act [Dec. 4, 2003]."

§1681n. Civil liability for willful noncompliance

(a) In general

Any person who willfully fails to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of—

(1)(A) any actual damages sustained by the consumer as a result of the failure or damages of not less than $100 and not more than $1,000; or

(B) in the case of liability of a natural person for obtaining a consumer report under false pretenses or knowingly without a permissible purpose, actual damages sustained by the consumer as a result of the failure or $1,000, whichever is greater;

(2) such amount of punitive damages as the court may allow; and

(3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(b) Civil liability for knowing noncompliance

Any person who obtains a consumer report from a consumer reporting agency under false pretenses or knowingly without a permissible purpose shall be liable to the consumer reporting agency for actual damages sustained by the consumer reporting agency or $1,000, whichever is greater.

(c) Attorney's fees

Upon a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper.

(d) Clarification of willful noncompliance

For the purposes of this section, any person who printed an expiration date on any receipt provided to a consumer cardholder at a point of sale or transaction between December 4, 2004, and June 3, 2008, but otherwise complied with the requirements of section 1681c(g) of this title for such receipt shall not be in willful noncompliance with section 1681c(g) of this title by reason of printing such expiration date on the receipt.

(Pub. L. 90–321, title VI, §616, as added Pub. L. 91–508, title VI, §601, Oct. 26, 1970, 84 Stat. 1134; amended Pub. L. 104–208, div. A, title II, §2412(a)–(c), (e)(1), Sept. 30, 1996, 110 Stat. 3009–446; Pub. L. 110–241, §3(a), June 3, 2008, 122 Stat. 1566.)

AMENDMENTS

2008—Subsec. (d). Pub. L. 110–241 added subsec. (d).

1996—Subsec. (a). Pub. L. 104–208, §2412(a), designated existing provisions as subsec. (a), inserted heading, and in introductory provisions substituted "Any person who" for "Any consumer reporting agency or user of information which".

Subsec. (a)(1). Pub. L. 104–208, §2412(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "any actual damages sustained by the consumer as a result of the failure;".

Subsec. (b). Pub. L. 104–208, §2412(c), added subsec. (b).

Subsec. (c). Pub. L. 104–208, §2412(e)(1), added subsec. (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective 365 days after Sept. 30, 1996, with special rule for early compliance, see section 2420 of Pub. L. 104–208, set out as a note under section 1681a of this title.

CONSTRUCTION

Pub. L. 108–159, title III, §312(f), Dec. 4, 2003, 117 Stat. 1993, provided that: "Nothing in this section, the amendments made by this section, or any other provision of this Act [see Short Title of 2003 Amendment note set out under section 1601 of this title] shall be construed to affect any liability under section 616 or 617 of the Fair Credit Reporting Act (15 U.S.C. 1681n, 1681o) that existed on the day before the date of enactment of this Act [Dec. 4, 2003]."

STATEMENT OF FINDINGS AND PURPOSE FOR 2008 AMENDMENT

Pub. L. 110–241, §2, June 3, 2008, 122 Stat. 1565, provided that:

"(a) FINDINGS.—The Congress finds as follows:

"(1) The Fair and Accurate Credit Transactions Act [of 2003] (commonly referred to as 'FACTA') [Pub. L. 108–159, see Short Title of 2003 Amendment note set out under section 1601 of this title] was enacted into law in 2003 and 1 of the purposes of such Act is to prevent criminals from obtaining access to consumers' private financial and credit information in order to reduce identity theft and credit card fraud.

"(2) As part of that law, the Congress enacted a requirement, through an amendment to the Fair Credit Reporting Act [15 U.S.C. 1681 et seq.], that no person that accepts credit cards or debit cards for the transaction of business shall print more than the last 5 digits of the card number or the expiration date upon any receipt provided to the card holder at the point of the sale or transaction.

"(3) Many merchants understood that this requirement would be satisfied by truncating the account number down to the last 5 digits based in part on the language of the provision as well as the publicity in the aftermath of the passage of the law.

"(4) Almost immediately after the deadline for compliance passed, hundreds of lawsuits were filed alleging that the failure to remove the expiration date was a willful violation of the Fair Credit Reporting Act even where the account number was properly truncated.

"(5) None of these lawsuits contained an allegation of harm to any consumer's identity.

"(6) Experts in the field agree that proper truncation of the card number, by itself as required by the amendment made by the Fair and Accurate Credit Transactions Act [of 2003], regardless of the inclusion of the expiration date, prevents a potential fraudster from perpetrating identity theft or credit card fraud.

"(7) Despite repeatedly being denied class certification, the continued appealing and filing of these lawsuits represents a significant burden on the hundreds of companies that have been sued and could well raise prices to consumers without corresponding consumer protection benefit.

"(b) PURPOSE.—The purpose of this Act [amending this section and enacting provisions set out as notes under this section and section 1601 of this title] is to ensure that consumers suffering from any actual harm to their credit or identity are protected while simultaneously limiting abusive lawsuits that do not protect consumers but only result in increased cost to business and potentially increased prices to consumers."

RETROACTIVE EFFECT OF 2008 AMENDMENT

Pub. L. 110–241, §3(b), June 3, 2008, 122 Stat. 1566, provided that: "The amendment made by subsection (a) [amending this section] shall apply to any action, other than an action which has become final, that is brought for a violation of [section] 605(g) of the Fair Credit Reporting Act [15 U.S.C. 1681c(g)] to which such amendment applies without regard to whether such action is brought before or after the date of the enactment of this Act [June 3, 2008]."

§1681*o*. Civil liability for negligent noncompliance

(a) In general

Any person who is negligent in failing to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of—

(1) any actual damages sustained by the consumer as a result of the failure; and

(2) in the case of any successful action to enforce any liability under this section, the costs of

the action together with reasonable attorney's fees as determined by the court.

(b) Attorney's fees

On a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper.

(Pub. L. 90–321, title VI, §617, as added Pub. L. 91–508, title VI, §601, Oct. 26, 1970, 84 Stat. 1134; amended Pub. L. 104–208, div. A, title II, §2412(d), (e)(2), Sept. 30, 1996, 110 Stat. 3009–446, 3009–447; Pub. L. 108–159, title VIII, §811(e), Dec. 4, 2003, 117 Stat. 2012.)

AMENDMENTS

2003—Subsec. (a)(1). Pub. L. 108–159 inserted "and" after semicolon at end.

1996—Subsec. (a). Pub. L. 104–208, §2412(d), designated existing provisions as subsec. (a), inserted heading, and substituted "Any person who" for "Any consumer reporting agency or user of information which".

Subsec. (b). Pub. L. 104–208, §2412(e)(2), added subsec. (b).

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–159 subject to joint regulations establishing effective dates as prescribed by Federal Reserve Board and Federal Trade Commission, except as otherwise provided, see section 3 of Pub. L. 108–159, set out as a note under section 1681 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective 365 days after Sept. 30, 1996, with special rule for early compliance, see section 2420 of Pub. L. 104–208, set out as a note under section 1681a of this title.

§1681p. Jurisdiction of courts; limitation of actions

An action to enforce any liability created under this subchapter may be brought in any appropriate United States district court, without regard to the amount in controversy, or in any other court of competent jurisdiction, not later than the earlier of—

(1) 2 years after the date of discovery by the plaintiff of the violation that is the basis for such liability; or

(2) 5 years after the date on which the violation that is the basis for such liability occurs.

(Pub. L. 90–321, title VI, §618, as added Pub. L. 91–508, title VI, §601, Oct. 26, 1970, 84 Stat. 1134; amended Pub. L. 108–159, title I, §156, Dec. 4, 2003, 117 Stat. 1968.)

AMENDMENTS

2003—Pub. L. 108–159 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: "An action to enforce any liability created under this subchapter may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within two years from the date on which the liability arises, except that where a defendant has materially and willfully misrepresented any information required under this subchapter to be disclosed to an individual and the information so misrepresented is material to the establishment of the defendant's liability to that individual under this subchapter, the action may be brought at any time within two years after discovery by the individual of the misrepresentation."

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–159 subject to joint regulations establishing effective dates as prescribed by Federal Reserve Board and Federal Trade Commission, except as otherwise provided, see section 3 of Pub. L. 108–159, set out as a note under section 1681 of this title.

§1681q. Obtaining information under false pretenses

Any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses shall be fined under title 18, imprisoned for not more than 2 years, or both.

(Pub. L. 90–321, title VI, §619, as added Pub. L. 91–508, title VI, §601, Oct. 26, 1970, 84 Stat. 1134; amended Pub. L. 104–208, div. A, title II, §2415(a), Sept. 30, 1996, 110 Stat. 3009–450.)

AMENDMENTS

1996—Pub. L. 104–208 substituted "fined under title 18, imprisoned for not more than 2 years, or both" for "fined not more than $5,000 or imprisoned not more than one year, or both".

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective 365 days after Sept. 30, 1996, with special rule for early compliance, see section 2420 of Pub. L. 104–208, set out as a note under section 1681a of this title.

§1681r. Unauthorized disclosures by officers or employees

Any officer or employee of a consumer reporting agency who knowingly and willfully provides information concerning an individual from the agency's files to a person not authorized to receive that information shall be fined under title 18, imprisoned for not more than 2 years, or both.

(Pub. L. 90–321, title VI, §620, as added Pub. L. 91–508, title VI, §601, Oct. 26, 1970, 84 Stat. 1134; amended Pub. L. 104–208, div. A, title II, §2415(b), Sept. 30, 1996, 110 Stat. 3009–450.)

AMENDMENTS

1996—Pub. L. 104–208 substituted "fined under title 18, imprisoned for not more than 2 years, or both" for "fined not more than $5,000 or imprisoned not more than one year, or both".

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective 365 days after Sept. 30, 1996, with special rule for early compliance, see section 2420 of Pub. L. 104–208, set out as a note under section 1681a of this title.

§1681s. Administrative enforcement

(a) Enforcement by Federal Trade Commission

(1) In general

The Federal Trade Commission shall be authorized to enforce compliance with the requirements imposed by this subchapter under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), with respect to consumer reporting agencies and all other persons subject thereto, except to the extent that enforcement of the requirements imposed under this subchapter is specifically committed to some other Government agency under any of subparagraphs (A) through (G) of subsection (b)(1), and subject to subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.], subsection (b).[1] For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement or prohibition imposed under this subchapter shall constitute an unfair or deceptive act or practice in commerce, in violation of section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)), and shall be subject to enforcement by the Federal Trade Commission under section 5(b) of that Act [15 U.S.C. 45(b)] with respect to any consumer reporting agency or person that is subject to enforcement by the Federal Trade Commission pursuant to this subsection, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act. The Federal Trade Commission shall have such procedural, investigative, and enforcement powers, including the power to issue procedural rules in enforcing compliance with the requirements imposed under this subchapter and to require the filing of reports, the production of documents, and the appearance of witnesses, as though the applicable terms and conditions of the Federal Trade Commission Act were part of this subchapter. Any person violating any of the

provisions of this subchapter shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act as though the applicable terms and provisions of such Act are part of this subchapter.

(2) Penalties

(A) Knowing violations

Except as otherwise provided by subtitle B of the Consumer Financial Protection Act of 2010, in the event of a knowing violation, which constitutes a pattern or practice of violations of this subchapter, the Federal Trade Commission may commence a civil action to recover a civil penalty in a district court of the United States against any person that violates this subchapter. In such action, such person shall be liable for a civil penalty of not more than $2,500 per violation.

(B) Determining penalty amount

In determining the amount of a civil penalty under subparagraph (A), the court shall take into account the degree of culpability, any history of such prior conduct, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

(C) Limitation

Notwithstanding paragraph (2), a court may not impose any civil penalty on a person for a violation of section 1681s–2(a)(1) of this title, unless the person has been enjoined from committing the violation, or ordered not to commit the violation, in an action or proceeding brought by or on behalf of the Federal Trade Commission, and has violated the injunction or order, and the court may not impose any civil penalty for any violation occurring before the date of the violation of the injunction or order.

(b) Enforcement by other agencies

(1) In general

Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance with the requirements imposed under this subchapter with respect to consumer reporting agencies, persons who use consumer reports from such agencies, persons who furnish information to such agencies, and users of information that are subject to section 1681m(d) of this title shall be enforced under—

(A) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to—

(i) any national bank or State savings association, and any Federal branch or Federal agency of a foreign bank;

(ii) any member bank of the Federal Reserve System (other than a national bank), a branch or agency of a foreign bank (other than a Federal branch, Federal agency, or insured State branch of a foreign bank), a commercial lending company owned or controlled by a foreign bank, and any organization operating under section 25 or 25A of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.]; and

(iii) any bank or Federal savings association insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System) and any insured State branch of a foreign bank;

(B) the Federal Credit Union Act (12 U.S.C. 1751 et seq.), by the Administrator of the National Credit Union Administration with respect to any Federal credit union;

(C) subtitle IV of title 49, by the Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board;

(D) part A of subtitle VII of title 49, by the Secretary of Transportation, with respect to any air carrier or foreign air carrier subject to that part;

(E) the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.) (except as provided in section 406 of that Act [7 U.S.C. 226, 227]), by the Secretary of Agriculture, with respect to any

activities subject to that Act;

(F) the Commodity Exchange Act [7 U.S.C. 1 et seq.], with respect to a person subject to the jurisdiction of the Commodity Futures Trading Commission;

(G) the Federal securities laws, and any other laws that are subject to the jurisdiction of the Securities and Exchange Commission, with respect to a person that is subject to the jurisdiction of the Securities and Exchange Commission; and

(H) subtitle E of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5561 et seq.], by the Bureau, with respect to any person subject to this subchapter.

(2) Incorporated definitions

The terms used in paragraph (1) that are not defined in this subchapter or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) have the same meanings as in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

(c) State action for violations

(1) Authority of States

In addition to such other remedies as are provided under State law, if the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating this subchapter, the State—

(A) may bring an action to enjoin such violation in any appropriate United States district court or in any other court of competent jurisdiction;

(B) subject to paragraph (5), may bring an action on behalf of the residents of the State to recover—

(i) damages for which the person is liable to such residents under sections 1681n and 1681o of this title as a result of the violation;

(ii) in the case of a violation described in any of paragraphs (1) through (3) of section 1681s–2(c) of this title, damages for which the person would, but for section 1681s–2(c) of this title, be liable to such residents as a result of the violation; or

(iii) damages of not more than $1,000 for each willful or negligent violation; and

(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorney fees as determined by the court.

(2) Rights of Federal regulators

The State shall serve prior written notice of any action under paragraph (1) upon the Bureau and the Federal Trade Commission or the appropriate Federal regulator determined under subsection (b) of this section and provide the Bureau and the Federal Trade Commission or appropriate Federal regulator with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Bureau and the Federal Trade Commission or appropriate Federal regulator shall have the right—

(A) to intervene in the action;

(B) upon so intervening, to be heard on all matters arising therein;

(C) to remove the action to the appropriate United States district court; and

(D) to file petitions for appeal.

(3) Investigatory powers

For purposes of bringing any action under this subsection, nothing in this subsection shall prevent the chief law enforcement officer, or an official or agency designated by a State, from exercising the powers conferred on the chief law enforcement officer or such official by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(4) Limitation on State action while Federal action pending

If the Bureau, the Federal Trade Commission, or the appropriate Federal regulator has instituted

a civil action or an administrative action under section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818] for a violation of this subchapter, no State may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Bureau, the Federal Trade Commission, or the appropriate Federal regulator for any violation of this subchapter that is alleged in that complaint.

(5) Limitations on State actions for certain violations

(A) Violation of injunction required

A State may not bring an action against a person under paragraph (1)(B) for a violation described in any of paragraphs (1) through (3) of section 1681s–2(c) of this title, unless—

(i) the person has been enjoined from committing the violation, in an action brought by the State under paragraph (1)(A); and

(ii) the person has violated the injunction.

(B) Limitation on damages recoverable

In an action against a person under paragraph (1)(B) for a violation described in any of paragraphs (1) through (3) of section 1681s–2(c) of this title, a State may not recover any damages incurred before the date of the violation of an injunction on which the action is based.

(d) Enforcement under other authority

For the purpose of the exercise by any agency referred to in subsection (b) of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this subchapter shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b) of this section, each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this subchapter any other authority conferred on it by law.

(e) Regulatory authority

(1) In general

The Bureau shall prescribe such regulations as are necessary to carry out the purposes of this subchapter, except with respect to sections 1681m(e) and 1681w of this title. The Bureau may prescribe regulations as may be necessary or appropriate to administer and carry out the purposes and objectives of this subchapter, and to prevent evasions thereof or to facilitate compliance therewith. Except as provided in section 1029(a) of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5519(a)], the regulations prescribed by the Bureau under this subchapter shall apply to any person that is subject to this subchapter, notwithstanding the enforcement authorities granted to other agencies under this section.

(2) Deference

Notwithstanding any power granted to any Federal agency under this subchapter, the deference that a court affords to a Federal agency with respect to a determination made by such agency relating to the meaning or interpretation of any provision of this subchapter that is subject to the jurisdiction of such agency shall be applied as if that agency were the only agency authorized to apply, enforce, interpret, or administer the provisions of this subchapter [2] The regulations prescribed by the Bureau under this subchapter shall apply to any person that is subject to this subchapter, notwithstanding the enforcement authorities granted to other agencies under this section.

(f) Coordination of consumer complaint investigations

(1) In general

Each consumer reporting agency described in section 1681a(p) of this title shall develop and maintain procedures for the referral to each other such agency of any consumer complaint received by the agency alleging identity theft, or requesting a fraud alert under section 1681c–1 of this title

or a block under section 1681c–2 of this title.

(2) Model form and procedure for reporting identity theft

The Commission,[3] in consultation with the Federal Trade Commission, the Federal banking agencies, and the National Credit Union Administration, shall develop a model form and model procedures to be used by consumers who are victims of identity theft for contacting and informing creditors and consumer reporting agencies of the fraud.

(3) Annual summary reports

Each consumer reporting agency described in section 1681a(p) of this title shall submit an annual summary report to the Bureau on consumer complaints received by the agency on identity theft or fraud alerts.

(g) Bureau regulation of coding of trade names

If the Bureau determines that a person described in paragraph (9) of section 1681s–2(a) of this title has not met the requirements of such paragraph, the Bureau shall take action to ensure the person's compliance with such paragraph, which may include issuing model guidance or prescribing reasonable policies and procedures, as necessary to ensure that such person complies with such paragraph.

(Pub. L. 90–321, title VI, §621, as added Pub. L. 91–508, title VI, §601, Oct. 26, 1970, 84 Stat. 1134; amended Pub. L. 98–443, §9(n), Oct. 4, 1984, 98 Stat. 1708; Pub. L. 101–73, title VII, §744(l), Aug. 9, 1989, 103 Stat. 439; Pub. L. 102–242, title II, §212(c), Dec. 19, 1991, 105 Stat. 2300; Pub. L. 102–550, title XVI, §1604(a)(6), Oct. 28, 1992, 106 Stat. 4082; Pub. L. 104–88, title III, §314, Dec. 29, 1995, 109 Stat. 948; Pub. L. 104–208, div. A, title II, §§2416–2418, Sept. 30, 1996, 110 Stat. 3009–450 to 3009–452; Pub. L. 105–347, §6(6), Nov. 2, 1998, 112 Stat. 3211; Pub. L. 106–102, title V, §506(a), (b), Nov. 12, 1999, 113 Stat. 1441, 1442; Pub. L. 108–159, title I, §153, title III, §312(e)(2), title IV, §412(e), title VIII, §811(f), Dec. 4, 2003, 117 Stat. 1966, 1993, 2003, 2012; Pub. L. 111–203, title X, §1088(a)(2)(A)–(C), (10), July 21, 2010, 124 Stat. 2087, 2088.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (a)(1), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

The Consumer Financial Protection Act of 2010, referred to in subsecs. (a) and (b)(1), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955. Subtitles B (§§1021–1029A) and E (§§1051–1058) of the Act are classified generally to parts B (§5511 et seq.) and E (§5561 et seq.), respectively, of subchapter V of chapter 53 of Title 12, Banks and Banking. For complete classification of subtitles B and E to the Code, see Tables.

Sections 25 and 25A of the Federal Reserve Act, referred to in subsec. (b)(1)(A)(ii), are classified to subchapters I (§601 et seq.) and II (§611 et seq.), respectively, of chapter 6 of Title 12, Banks and Banking.

The Federal Credit Union Act, referred to in subsec. (b)(1)(B), is act June 26, 1934, ch. 750, 48 Stat. 1216, which is classified generally to chapter 14 (§1751 et seq.) of Title 12. For complete classification of this Act to the Code, see section 1751 of Title 12 and Tables.

The Packers and Stockyards Act, 1921, referred to in subsec. (b)(1)(E), is act Aug. 15, 1921, ch. 64, 42 Stat. 159, which is classified to chapter 9 (§181 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 181 of Title 7 and Tables.

The Commodity Exchange Act, referred to in subsec. (b)(1)(F), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

CODIFICATION

In subsec. (b)(1)(D), "part A of subtitle VII of title 49" substituted for "the Federal Aviation Act of 1958 (49 App. U.S.C. 1301 et seq.)" and "that part" substituted for "that Act" on authority of Pub. L. 103–272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, §1088(a)(10)(A), added subsec. (a) and struck out former subsec. (a) which related to enforcement by Federal Trade Commission.

Subsec. (b). Pub. L. 111–203, §1088(a)(10)(B), added subsec. (b) and struck out former subsec. (b) which related to enforcement under section 8 of the Federal Deposit Insurance Act, the Federal Credit Union Act, subtitle IV of title 49, part A of subtitle VII of title 49, and the Packers and Stockyards Act, 1921.

Subsec. (c)(2). Pub. L. 111–203, §1088(a)(10)(C), in introductory provisions, inserted "and the Federal Trade Commission" before "or the appropriate" and before "or appropriate" in two places.

Pub. L. 111–203, §1088(a)(2)(C), in introductory provisions, substituted "provide the Bureau" for "provide the Commission".

Pub. L. 111–203, §1088(a)(2)(A), in introductory provisions, substituted "upon the Bureau" for "upon the Federal Trade Commission" and "The Bureau" for "The Federal Trade Commission".

Subsec. (c)(4). Pub. L. 111–203, §1088(a)(10)(D), inserted ", the Federal Trade Commission," before "or the appropriate" in two places.

Pub. L. 111–203, §1088(a)(2)(C), substituted "complaint of the Bureau" for "complaint of the Commission".

Pub. L. 111–203, §1088(a)(2)(A), substituted "If the Bureau" for "If the Federal Trade Commission".

Subsec. (e). Pub. L. 111–203, §1088(a)(10)(E), added subsec. (e) and struck out former subsec. (e) which related to prescription of regulations by certain Federal banking agencies, the Board of Governors of the Federal Reserve System, and the Board of the National Credit Union Administration.

Subsec. (f)(2). Pub. L. 111–203, §1088(a)(10)(F), substituted "the Federal Trade Commission, the Federal banking agencies," for "the Federal banking agencies".

Subsec. (f)(3). Pub. L. 111–203, §1088(a)(2)(C), substituted "the Bureau" for "the Commission".

Subsec. (g). Pub. L. 111–203, §1088(a)(2)(C), substituted "the Bureau" for "the Commission" in two places.

Pub. L. 111–203, §1088(a)(2)(B), substituted "Bureau" for "FTC" in heading.

2003—Subsec. (b)(1)(B). Pub. L. 108–159, §811(f), substituted "25A" for "25(a)".

Subsec. (c)(1)(B)(ii). Pub. L. 108–159, §312(e)(2)(A), substituted "described in any of paragraphs (1) through (3) of section 1681s–2(c)" for "of section 1681s–2(a)".

Subsec. (c)(5). Pub. L. 108–159, §312(e)(2)(B)(ii), substituted "certain violations" for "violation of section 1681s–2(a)(1)" in heading.

Subsec. (c)(5)(A), (B). Pub. L. 108–159, §312(e)(2)(B)(i), substituted "described in any of paragraphs (1) through (3) of section 1681s–2(c)" for "of section 1681s–2(a)(1)".

Subsec. (f). Pub. L. 108–159, §153, added subsec. (f).

Subsec. (g). Pub. L. 108–159, §412(e), added subsec. (g).

1999—Subsec. (a)(4). Pub. L. 106–102, §506(b), struck out par. (4) which read as follows: "Neither the Commission nor any other agency referred to in subsection (b) of this section may prescribe trade regulation rules or other regulations with respect to this subchapter."

Subsec. (d). Pub. L. 106–102, §506(a)(1), struck out at the end "Notwithstanding the preceding, no agency referred to in subsection (b) of this section may conduct an examination of a bank, savings association, or credit union regarding compliance with the provisions of this subchapter, except in response to a complaint (or if the agency otherwise has knowledge) that the bank, savings association, or credit union has violated a provision of this subchapter, in which case, the agency may conduct an examination as necessary to investigate the complaint. If an agency determines during an investigation in response to a complaint that a violation of this subchapter has occurred, the agency may, during its next 2 regularly scheduled examinations of the bank, savings association, or credit union, examine for compliance with this subchapter."

Subsec. (e). Pub. L. 106–102, §506(a)(2), added subsec. (e) and struck out heading and text of former subsec. (e). Text read as follows: "The Board of Governors of the Federal Reserve System may issue interpretations of any provision of this subchapter as such provision may apply to any persons identified under paragraph (1), (2), and (3) of subsection (b) of this section, or to the holding companies and affiliates of such persons, in consultation with Federal agencies identified in paragraphs (1), (2), and (3) of subsection (b) of this section."

1998—Subsec. (b). Pub. L. 105–347 struck out "or (e)" after "subject to subsection (d)" in introductory provisions.

1996—Subsec. (a). Pub. L. 104–208, §2416(b)(1), which directed the amendment of subsec. (a) by inserting heading "Enforcement by Federal Trade Commission" before "Compliance with the requirements", was executed by making the insertion after "(a)", to reflect the probable intent of Congress and the amendment by Pub. L. 104–208, §2416(a). See below.

Pub. L. 104–208, §2416(a), inserted "(1)" after "(a)" and added pars. (2) to (4).

Subsec. (b). Pub. L. 104–208, §2416(b)(2), inserted heading and in introductory provisions substituted "Compliance with the requirements imposed under this subchapter with respect to consumer reporting agencies, persons who use consumer reports from such agencies, persons who furnish information to such

agencies, and users of information that are subject to subsection (d) or (e) of section 1681m of this title shall be enforced under—" for "Compliance with the requirements imposed under this subchapter with respect to consumer reporting agencies and persons who use consumer reports from such agencies shall be enforced under—".

Subsec. (c). Pub. L. 104–208, §2417(2), added subsec. (c). Former subsec. (c) redesignated (d).

Pub. L. 104–208, §2416(c), inserted at end "Notwithstanding the preceding, no agency referred to in subsection (b) of this section may conduct an examination of a bank, savings association, or credit union regarding compliance with the provisions of this subchapter, except in response to a complaint (or if the agency otherwise has knowledge) that the bank, savings association, or credit union has violated a provision of this subchapter, in which case, the agency may conduct an examination as necessary to investigate the complaint. If an agency determines during an investigation in response to a complaint that a violation of this subchapter has occurred, the agency may, during its next 2 regularly scheduled examinations of the bank, savings association, or credit union, examine for compliance with this subchapter."

Subsec. (d). Pub. L. 104–208, §2417(1), redesignated subsec. (c) as (d).

Subsec. (e). Pub. L. 104–208, §2418, added subsec. (e).

1995—Subsec. (b)(4). Pub. L. 104–88 substituted "Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board" for "Interstate Commerce Commission with respect to any common carrier subject to those Acts".

1992—Subsec. (b)(1)(C). Pub. L. 102–550 substituted semicolon for period at end.

1991—Subsec. (b). Pub. L. 102–242, §212(c)(2), inserted at end "The terms used in paragraph (1) that are not defined in this subchapter or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101)."

Pub. L. 102–242, §212(c)(1), added par. (1) and struck out former par. (1) which read as follows: "section 8 of the Federal Deposit Insurance Act, in the case of:

"(A) national banks, by the Comptroller of the Currency;

"(B) member banks of the Federal Reserve System (other than national banks), by the Federal Reserve Board; and

"(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation."

1989—Subsec. (b)(2). Pub. L. 101–73 amended par. (2) generally. Prior to amendment, par. (2) read as follows: "section 5(d) of the Home Owners Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions;".

1984—Subsec. (b)(5). Pub. L. 98–443 substituted "Secretary of Transportation" for "Civil Aeronautics Board".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–159 subject to joint regulations establishing effective dates as prescribed by Federal Reserve Board and Federal Trade Commission, except as otherwise provided, see section 3 of Pub. L. 108–159, set out as a note under section 1681 of this title.

Amendment by section 412(e) of Pub. L. 108–159 effective at end of 15-month period beginning on Dec. 4, 2003, see section 412(g) of Pub. L. 108–159, set out as a note under section 1681b of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–347 deemed to have same effective date as amendments made by section 2403 of Pub. L. 104–208, see section 7 of Pub. L. 105–347, set out as a note under section 1681a of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective 365 days after Sept. 30, 1996, with special rule for early compliance, see section 2420 of Pub. L. 104–208, set out as a note under section 1681a of this title.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an

Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98–443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

Functions vested in Administrator of National Credit Union Administration transferred and vested in National Credit Union Administration Board pursuant to section 1752a of Title 12, Banks and Banking.

[1] So in original.

[2] So in original. Probably should be followed by a period.

[3] So in original. Probably should be "Bureau,".

§1681s–1. Information on overdue child support obligations

Notwithstanding any other provision of this subchapter, a consumer reporting agency shall include in any consumer report furnished by the agency in accordance with section 1681b of this title, any information on the failure of the consumer to pay overdue support which—

(1) is provided—

(A) to the consumer reporting agency by a State or local child support enforcement agency; or

(B) to the consumer reporting agency and verified by any local, State, or Federal Government agency; and

(2) antedates the report by 7 years or less.

(Pub. L. 90–321, title VI, §622, as added Pub. L. 102–537, §2(a), Oct. 27, 1992, 106 Stat. 3531.)

PRIOR PROVISIONS

A prior section 622 of Pub. L. 90–321 was renumbered section 625 and is classified to section 1681t of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1993, see section 2(d) of Pub. L. 102–537, set out as an Effective Date of 1992 Amendment note under section 1681a of this title.

§1681s–2. Responsibilities of furnishers of information to consumer reporting agencies

(a) Duty of furnishers of information to provide accurate information

(1) Prohibition

(A) Reporting information with actual knowledge of errors

A person shall not furnish any information relating to a consumer to any consumer reporting agency if the person knows or has reasonable cause to believe that the information is inaccurate.

(B) Reporting information after notice and confirmation of errors

A person shall not furnish information relating to a consumer to any consumer reporting agency if—

(i) the person has been notified by the consumer, at the address specified by the person for such notices, that specific information is inaccurate; and

(ii) the information is, in fact, inaccurate.

(C) No address requirement

A person who clearly and conspicuously specifies to the consumer an address for notices referred to in subparagraph (B) shall not be subject to subparagraph (A); however, nothing in subparagraph (B) shall require a person to specify such an address.

(D) Definition

For purposes of subparagraph (A), the term "reasonable cause to believe that the information is inaccurate" means having specific knowledge, other than solely allegations by the consumer, that would cause a reasonable person to have substantial doubts about the accuracy of the information.

(2) Duty to correct and update information

A person who—

(A) regularly and in the ordinary course of business furnishes information to one or more consumer reporting agencies about the person's transactions or experiences with any consumer; and

(B) has furnished to a consumer reporting agency information that the person determines is not complete or accurate,

shall promptly notify the consumer reporting agency of that determination and provide to the agency any corrections to that information, or any additional information, that is necessary to make the information provided by the person to the agency complete and accurate, and shall not thereafter furnish to the agency any of the information that remains not complete or accurate.

(3) Duty to provide notice of dispute

If the completeness or accuracy of any information furnished by any person to any consumer reporting agency is disputed to such person by a consumer, the person may not furnish the information to any consumer reporting agency without notice that such information is disputed by the consumer.

(4) Duty to provide notice of closed accounts

A person who regularly and in the ordinary course of business furnishes information to a consumer reporting agency regarding a consumer who has a credit account with that person shall notify the agency of the voluntary closure of the account by the consumer, in information regularly furnished for the period in which the account is closed.

(5) Duty to provide notice of delinquency of accounts

(A) In general

A person who furnishes information to a consumer reporting agency regarding a delinquent account being placed for collection, charged to profit or loss, or subjected to any similar action shall, not later than 90 days after furnishing the information, notify the agency of the date of delinquency on the account, which shall be the month and year of the commencement of the delinquency on the account that immediately preceded the action.

(B) Rule of construction

For purposes of this paragraph only, and provided that the consumer does not dispute the information, a person that furnishes information on a delinquent account that is placed for collection, charged for profit or loss, or subjected to any similar action, complies with this paragraph, if—

(i) the person reports the same date of delinquency as that provided by the creditor to

which the account was owed at the time at which the commencement of the delinquency occurred, if the creditor previously reported that date of delinquency to a consumer reporting agency;

(ii) the creditor did not previously report the date of delinquency to a consumer reporting agency, and the person establishes and follows reasonable procedures to obtain the date of delinquency from the creditor or another reliable source and reports that date to a consumer reporting agency as the date of delinquency; or

(iii) the creditor did not previously report the date of delinquency to a consumer reporting agency and the date of delinquency cannot be reasonably obtained as provided in clause (ii), the person establishes and follows reasonable procedures to ensure the date reported as the date of delinquency precedes the date on which the account is placed for collection, charged to profit or loss, or subjected to any similar action, and reports such date to the credit reporting agency.

(6) Duties of furnishers upon notice of identity theft-related information

(A) Reasonable procedures

A person that furnishes information to any consumer reporting agency shall have in place reasonable procedures to respond to any notification that it receives from a consumer reporting agency under section 1681c–2 of this title relating to information resulting from identity theft, to prevent that person from refurnishing such blocked information.

(B) Information alleged to result from identity theft

If a consumer submits an identity theft report to a person who furnishes information to a consumer reporting agency at the address specified by that person for receiving such reports stating that information maintained by such person that purports to relate to the consumer resulted from identity theft, the person may not furnish such information that purports to relate to the consumer to any consumer reporting agency, unless the person subsequently knows or is informed by the consumer that the information is correct.

(7) Negative information

(A) Notice to consumer required

(i) In general

If any financial institution that extends credit and regularly and in the ordinary course of business furnishes information to a consumer reporting agency described in section 1681a(p) of this title furnishes negative information to such an agency regarding credit extended to a customer, the financial institution shall provide a notice of such furnishing of negative information, in writing, to the customer.

(ii) Notice effective for subsequent submissions

After providing such notice, the financial institution may submit additional negative information to a consumer reporting agency described in section 1681a(p) of this title with respect to the same transaction, extension of credit, account, or customer without providing additional notice to the customer.

(B) Time of notice

(i) In general

The notice required under subparagraph (A) shall be provided to the customer prior to, or no later than 30 days after, furnishing the negative information to a consumer reporting agency described in section 1681a(p) of this title.

(ii) Coordination with new account disclosures

If the notice is provided to the customer prior to furnishing the negative information to a consumer reporting agency, the notice may not be included in the initial disclosures provided under section 1637(a) of this title.

(C) Coordination with other disclosures

The notice required under subparagraph (A)—

(i) may be included on or with any notice of default, any billing statement, or any other materials provided to the customer; and

(ii) must be clear and conspicuous.

(D) Model disclosure

(i) Duty of Bureau

The Bureau shall prescribe a brief model disclosure that a financial institution may use to comply with subparagraph (A), which shall not exceed 30 words.

(ii) Use of model not required

No provision of this paragraph may be construed to require a financial institution to use any such model form prescribed by the Bureau.

(iii) Compliance using model

A financial institution shall be deemed to be in compliance with subparagraph (A) if the financial institution uses any model form prescribed by the Bureau under this subparagraph, or the financial institution uses any such model form and rearranges its format.

(E) Use of notice without submitting negative information

No provision of this paragraph shall be construed as requiring a financial institution that has provided a customer with a notice described in subparagraph (A) to furnish negative information about the customer to a consumer reporting agency.

(F) Safe harbor

A financial institution shall not be liable for failure to perform the duties required by this paragraph if, at the time of the failure, the financial institution maintained reasonable policies and procedures to comply with this paragraph or the financial institution reasonably believed that the institution is prohibited, by law, from contacting the consumer.

(G) Definitions

For purposes of this paragraph, the following definitions shall apply:

(i) Negative information

The term "negative information" means information concerning a customer's delinquencies, late payments, insolvency, or any form of default.

(ii) Customer; financial institution

The terms "customer" and "financial institution" have the same meanings as in section 6809 of this title.

(8) Ability of consumer to dispute information directly with furnisher

(A) In general

The Bureau, in consultation with the Federal Trade Commission, the Federal banking agencies, and the National Credit Union Administration, shall prescribe regulations that shall identify the circumstances under which a furnisher shall be required to reinvestigate a dispute concerning the accuracy of information contained in a consumer report on the consumer, based on a direct request of a consumer.

(B) Considerations

In prescribing regulations under subparagraph (A), the agencies shall weigh—

(i) the benefits to consumers with the costs on furnishers and the credit reporting system;

(ii) the impact on the overall accuracy and integrity of consumer reports of any such requirements;

(iii) whether direct contact by the consumer with the furnisher would likely result in the

most expeditious resolution of any such dispute; and

(iv) the potential impact on the credit reporting process if credit repair organizations, as defined in section 1679a(3) of this title, including entities that would be a credit repair organization, but for section 1679a(3)(B)(i) of this title, are able to circumvent the prohibition in subparagraph (G).

(C) Applicability

Subparagraphs (D) through (G) shall apply in any circumstance identified under the regulations promulgated under subparagraph (A).

(D) Submitting a notice of dispute

A consumer who seeks to dispute the accuracy of information shall provide a dispute notice directly to such person at the address specified by the person for such notices that—

(i) identifies the specific information that is being disputed;

(ii) explains the basis for the dispute; and

(iii) includes all supporting documentation required by the furnisher to substantiate the basis of the dispute.

(E) Duty of person after receiving notice of dispute

After receiving a notice of dispute from a consumer pursuant to subparagraph (D), the person that provided the information in dispute to a consumer reporting agency shall—

(i) conduct an investigation with respect to the disputed information;

(ii) review all relevant information provided by the consumer with the notice;

(iii) complete such person's investigation of the dispute and report the results of the investigation to the consumer before the expiration of the period under section 1681i(a)(1) of this title within which a consumer reporting agency would be required to complete its action if the consumer had elected to dispute the information under that section; and

(iv) if the investigation finds that the information reported was inaccurate, promptly notify each consumer reporting agency to which the person furnished the inaccurate information of that determination and provide to the agency any correction to that information that is necessary to make the information provided by the person accurate.

(F) Frivolous or irrelevant dispute

(i) In general

This paragraph shall not apply if the person receiving a notice of a dispute from a consumer reasonably determines that the dispute is frivolous or irrelevant, including—

(I) by reason of the failure of a consumer to provide sufficient information to investigate the disputed information; or

(II) the submission by a consumer of a dispute that is substantially the same as a dispute previously submitted by or for the consumer, either directly to the person or through a consumer reporting agency under subsection (b) of this section, with respect to which the person has already performed the person's duties under this paragraph or subsection (b) of this section, as applicable.

(ii) Notice of determination

Upon making any determination under clause (i) that a dispute is frivolous or irrelevant, the person shall notify the consumer of such determination not later than 5 business days after making such determination, by mail or, if authorized by the consumer for that purpose, by any other means available to the person.

(iii) Contents of notice

A notice under clause (ii) shall include—

(I) the reasons for the determination under clause (i); and

(II) identification of any information required to investigate the disputed information, which may consist of a standardized form describing the general nature of such

information.

(G) Exclusion of credit repair organizations

This paragraph shall not apply if the notice of the dispute is submitted by, is prepared on behalf of the consumer by, or is submitted on a form supplied to the consumer by, a credit repair organization, as defined in section 1679a(3) of this title, or an entity that would be a credit repair organization, but for section 1679a(3)(B)(i) of this title.

(9) Duty to provide notice of status as medical information furnisher

A person whose primary business is providing medical services, products, or devices, or the person's agent or assignee, who furnishes information to a consumer reporting agency on a consumer shall be considered a medical information furnisher for purposes of this subchapter, and shall notify the agency of such status.

(b) Duties of furnishers of information upon notice of dispute

(1) In general

After receiving notice pursuant to section 1681i(a)(2) of this title of a dispute with regard to the completeness or accuracy of any information provided by a person to a consumer reporting agency, the person shall—

(A) conduct an investigation with respect to the disputed information;

(B) review all relevant information provided by the consumer reporting agency pursuant to section 1681i(a)(2) of this title;

(C) report the results of the investigation to the consumer reporting agency;

(D) if the investigation finds that the information is incomplete or inaccurate, report those results to all other consumer reporting agencies to which the person furnished the information and that compile and maintain files on consumers on a nationwide basis; and

(E) if an item of information disputed by a consumer is found to be inaccurate or incomplete or cannot be verified after any reinvestigation under paragraph (1), for purposes of reporting to a consumer reporting agency only, as appropriate, based on the results of the reinvestigation promptly—

(i) modify that item of information;

(ii) delete that item of information; or

(iii) permanently block the reporting of that item of information.

(2) Deadline

A person shall complete all investigations, reviews, and reports required under paragraph (1) regarding information provided by the person to a consumer reporting agency, before the expiration of the period under section 1681i(a)(1) of this title within which the consumer reporting agency is required to complete actions required by that section regarding that information.

(c) Limitation on liability

Except as provided in section 1681s(c)(1)(B) of this title, sections 1681n and 1681o of this title do not apply to any violation of—

(1) subsection (a) of this section, including any regulations issued thereunder;

(2) subsection (e) of this section, except that nothing in this paragraph shall limit, expand, or otherwise affect liability under section 1681n or 1681o of this title, as applicable, for violations of subsection (b) of this section; or

(3) subsection (e) of section 1681m of this title.

(d) Limitation on enforcement

The provisions of law described in paragraphs (1) through (3) of subsection (c) of this section (other than with respect to the exception described in paragraph (2) of subsection (c) of this section) shall be enforced exclusively as provided under section 1681s of this title by the Federal agencies and officials and the State officials identified in section 1681s of this title.

(e) Accuracy guidelines and regulations required

(1) Guidelines

The Bureau shall, with respect to persons or entities that are subject to the enforcement authority of the Bureau under section 1681s of this title—

(A) establish and maintain guidelines for use by each person that furnishes information to a consumer reporting agency regarding the accuracy and integrity of the information relating to consumers that such entities furnish to consumer reporting agencies, and update such guidelines as often as necessary; and

(B) prescribe regulations requiring each person that furnishes information to a consumer reporting agency to establish reasonable policies and procedures for implementing the guidelines established pursuant to subparagraph (A).

(2) Criteria

In developing the guidelines required by paragraph (1)(A), the Bureau shall—

(A) identify patterns, practices, and specific forms of activity that can compromise the accuracy and integrity of information furnished to consumer reporting agencies;

(B) review the methods (including technological means) used to furnish information relating to consumers to consumer reporting agencies;

(C) determine whether persons that furnish information to consumer reporting agencies maintain and enforce policies to ensure the accuracy and integrity of information furnished to consumer reporting agencies; and

(D) examine the policies and processes that persons that furnish information to consumer reporting agencies employ to conduct reinvestigations and correct inaccurate information relating to consumers that has been furnished to consumer reporting agencies.

(Pub. L. 90–321, title VI, §623, as added Pub. L. 104–208, div. A, title II, §2413(a)(2), Sept. 30, 1996, 110 Stat. 3009–447; amended Pub. L. 108–159, title I, §154(a), title II, §217(a), title III, §§312(a)–(e)(1), 314(b), title IV, §412(a), Dec. 4, 2003, 117 Stat. 1966, 1986, 1989–1993, 1995, 2002; Pub. L. 111–203, title X, §1088(a)(2)(D), (11), July 21, 2010, 124 Stat. 2087, 2090.)

PRIOR PROVISIONS

A prior section 623 of Pub. L. 90–321 was renumbered section 625 and is classified to section 1681t of this title.

AMENDMENTS

2010—Subsec. (a)(7)(D). Pub. L. 111–203, §1088(a)(11)(A), added subpar. (D) and struck out former subpar. (D) which related to duty of Board to prescribe a model disclosure.

Subsec. (a)(8)(A). Pub. L. 111–203, §1088(a)(11)(B), which directed amendment of subpar. (A) by inserting ", in consultation with the Federal Trade Commission, the Federal banking agencies, and the National Credit Union Administration," before "shall jointly", was executed by making the insertion before "shall prescribe", to reflect the probable intent of Congress and the amendment by Pub. L. 111–203, §1088(a)(2)(D). See below.

Pub. L. 111–203, §1088(a)(2)(D), substituted "The Bureau shall" for "The Federal banking agencies, the National Credit Union Administration, and the Commission shall jointly".

Subsec. (e). Pub. L. 111–203, §1088(a)(11)(C), added subsec. (e) and struck out former subsec. (e) which related to establishment and maintenance of accuracy guidelines and prescription of implementing regulations by the Federal banking agencies, the National Credit Union Administration, and the Commission.

2003—Subsec. (a)(1)(A). Pub. L. 108–159, §312(b)(1), substituted "knows or has reasonable cause to believe that the information is inaccurate" for "knows or consciously avoids knowing that the information is inaccurate".

Subsec. (a)(1)(D). Pub. L. 108–159, §312(b)(2), added subpar. (D).

Subsec. (a)(5). Pub. L. 108–159, §312(d), designated existing provisions as subpar. (A), inserted heading, inserted "date of delinquency on the account, which shall be the" before "month" and "on the account" before "that immediately preceded", and added subpar. (B).

Subsec. (a)(6). Pub. L. 108–159, §154(a), added par. (6).

Subsec. (a)(7). Pub. L. 108–159, §217(a), added par. (7).

Subsec. (a)(8). Pub. L. 108–159, §312(c), added par. (8).

Subsec. (a)(9). Pub. L. 108–159, §412(a), added par. (9).

Subsec. (b)(1)(E). Pub. L. 108–159, §314(b), added subpar. (E).

Subsec. (c). Pub. L. 108–159, §312(e)(1), added subsec. (c) and struck out heading and text of former subsec. (c). Text read as follows: "Sections 1681n and 1681o of this title do not apply to any failure to comply with subsection (a) of this section, except as provided in section 1681s(c)(1)(B) of this title."

Subsec. (d). Pub. L. 108–159, §312(e)(1), added subsec. (d) and struck out heading and text of former subsec. (d). Text read as follows: "Subsection (a) of this section shall be enforced exclusively under section 1681s of this title by the Federal agencies and officials and the State officials identified in that section."

Subsec. (e). Pub. L. 108–159, §312(a), added subsec. (e).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–159 subject to joint regulations establishing effective dates as prescribed by Federal Reserve Board and Federal Trade Commission, except as otherwise provided, see section 3 of Pub. L. 108–159, set out as a note under section 1681 of this title.

Amendment by section 412(a) of Pub. L. 108–159 effective at end of 15-month period beginning on Dec. 4, 2003, see section 412(g) of Pub. L. 108–159, set out as a note under section 1681b of this title.

EFFECTIVE DATE

Section effective 365 days after Sept. 30, 1996, with special rule for early compliance, see section 2420 of Pub. L. 104–208, set out as an Effective Date of 1996 Amendment note under section 1681a of this title.

MODEL DISCLOSURE FORM

Pub. L. 108–159, title II, §217(b), Dec. 4, 2003, 117 Stat. 1987, provided that: "Before the end of the 6-month period beginning on the date of enactment of this Act [Dec. 4, 2003], the Board shall adopt the model disclosure required under the amendment made by subsection (a) [amending this section] after notice duly given in the Federal Register and an opportunity for public comment in accordance with section 553 of title 5, United States Code."

[For definitions of terms used in section 217(b) of Pub. L. 108–159, set out above, see section 2 of Pub. L. 108–159, set out as a Definitions note under section 1681 of this title.]

§1681s–3. Affiliate sharing

(a) Special rule for solicitation for purposes of marketing

(1) Notice

Any person that receives from another person related to it by common ownership or affiliated by corporate control a communication of information that would be a consumer report, but for clauses (i), (ii), and (iii) of section 1681a(d)(2)(A) of this title, may not use the information to make a solicitation for marketing purposes to a consumer about its products or services, unless—

(A) it is clearly and conspicuously disclosed to the consumer that the information may be communicated among such persons for purposes of making such solicitations to the consumer; and

(B) the consumer is provided an opportunity and a simple method to prohibit the making of such solicitations to the consumer by such person.

(2) Consumer choice

(A) In general

The notice required under paragraph (1) shall allow the consumer the opportunity to prohibit all solicitations referred to in such paragraph, and may allow the consumer to choose from different options when electing to prohibit the sending of such solicitations, including options regarding the types of entities and information covered, and which methods of delivering solicitations the consumer elects to prohibit.

(B) Format

Notwithstanding subparagraph (A), the notice required under paragraph (1) shall be clear, conspicuous, and concise, and any method provided under paragraph (1)(B) shall be simple. The regulations prescribed to implement this section shall provide specific guidance regarding how to comply with such standards.

(3) Duration

(A) In general

The election of a consumer pursuant to paragraph (1)(B) to prohibit the making of solicitations shall be effective for at least 5 years, beginning on the date on which the person receives the election of the consumer, unless the consumer requests that such election be revoked.

(B) Notice upon expiration of effective period

At such time as the election of a consumer pursuant to paragraph (1)(B) is no longer effective, a person may not use information that the person receives in the manner described in paragraph (1) to make any solicitation for marketing purposes to the consumer, unless the consumer receives a notice and an opportunity, using a simple method, to extend the opt-out for another period of at least 5 years, pursuant to the procedures described in paragraph (1).

(4) Scope

This section shall not apply to a person—

(A) using information to make a solicitation for marketing purposes to a consumer with whom the person has a pre-existing business relationship;

(B) using information to facilitate communications to an individual for whose benefit the person provides employee benefit or other services pursuant to a contract with an employer related to and arising out of the current employment relationship or status of the individual as a participant or beneficiary of an employee benefit plan;

(C) using information to perform services on behalf of another person related by common ownership or affiliated by corporate control, except that this subparagraph shall not be construed as permitting a person to send solicitations on behalf of another person, if such other person would not be permitted to send the solicitation on its own behalf as a result of the election of the consumer to prohibit solicitations under paragraph (1)(B);

(D) using information in response to a communication initiated by the consumer;

(E) using information in response to solicitations authorized or requested by the consumer; or

(F) if compliance with this section by that person would prevent compliance by that person with any provision of State insurance laws pertaining to unfair discrimination in any State in which the person is lawfully doing business.

(5) No retroactivity

This subsection shall not prohibit the use of information to send a solicitation to a consumer if such information was received prior to the date on which persons are required to comply with regulations implementing this subsection.

(b) Notice for other purposes permissible

A notice or other disclosure under this section may be coordinated and consolidated with any other notice required to be issued under any other provision of law by a person that is subject to this section, and a notice or other disclosure that is equivalent to the notice required by subsection (a) of this section, and that is provided by a person described in subsection (a) of this section to a consumer together with disclosures required by any other provision of law, shall satisfy the requirements of subsection (a) of this section.

(c) User requirements

Requirements with respect to the use by a person of information received from another person related to it by common ownership or affiliated by corporate control, such as the requirements of this section, constitute requirements with respect to the exchange of information among persons affiliated

by common ownership or common corporate control, within the meaning of section 1681t(b)(2) of this title.

(d) Definitions

For purposes of this section, the following definitions shall apply:

(1) Pre-existing business relationship

The term "pre-existing business relationship" means a relationship between a person, or a person's licensed agent, and a consumer, based on—

(A) a financial contract between a person and a consumer which is in force;

(B) the purchase, rental, or lease by the consumer of that person's goods or services, or a financial transaction (including holding an active account or a policy in force or having another continuing relationship) between the consumer and that person during the 18-month period immediately preceding the date on which the consumer is sent a solicitation covered by this section;

(C) an inquiry or application by the consumer regarding a product or service offered by that person, during the 3-month period immediately preceding the date on which the consumer is sent a solicitation covered by this section; or

(D) any other pre-existing customer relationship defined in the regulations implementing this section.

(2) Solicitation

The term "solicitation" means the marketing of a product or service initiated by a person to a particular consumer that is based on an exchange of information described in subsection (a) of this section, and is intended to encourage the consumer to purchase such product or service, but does not include communications that are directed at the general public or determined not to be a solicitation by the regulations prescribed under this section.

(Pub. L. 90–321, title VI, §624, as added Pub. L. 108–159, title II, §214(a)(2), Dec. 4, 2003, 117 Stat. 1980.)

PRIOR PROVISIONS

A prior section 624 of Pub. L. 90–321 was renumbered section 625 and is classified to section 1681t of this title.

Another prior section 624 of Pub. L. 90–321 was renumbered section 626 and is classified to section 1681u of this title.

EFFECTIVE DATE

Section subject to joint regulations establishing effective dates as prescribed by Federal Reserve Board and Federal Trade Commission, except as otherwise provided, see section 3 of Pub. L. 108–159, set out as an Effective Date of 2003 Amendment note under section 1681 of this title.

REGULATIONS

Pub. L. 108–159, title II, §214(b), Dec. 4, 2003, 117 Stat. 1982, as amended by Pub. L. 111–203, title X, §1088(b)(3), July 21, 2010, 124 Stat. 2092, provided that:

"(1) IN GENERAL.—Regulations to carry out section 624 of the Fair Credit Reporting Act (15 U.S.C. 1681s–3), shall be prescribed, as described in paragraph (2), by—

"(A) the Commodity Futures Trading Commission, with respect to entities subject to its enforcement authorities;

"(B) the Securities and Exchange Commission, with respect to entities subject to its enforcement authorities; and

"(C) the Bureau, with respect to other entities subject to this Act [see Short Title of 2003 Amendment note set out under section 1601 of this title].

"(2) COORDINATION.—Each agency required to prescribe regulations under paragraph (1) shall consult and coordinate with each other such agency so that, to the extent possible, the regulations prescribed by each such entity are consistent and comparable with the regulations prescribed by each other such agency.

"(3) CONSIDERATIONS.—In promulgating regulations under this subsection, each agency referred to in paragraph (1) shall—

"(A) ensure that affiliate sharing notification methods provide a simple means for consumers to make determinations and choices under section 624 of the Fair Credit Reporting Act [15 U.S.C. 1681s–3], as added by this section;

"(B) consider the affiliate sharing notification practices employed on the date of enactment of this Act [Dec. 4, 2003] by persons that will be subject to that section 624; and

"(C) ensure that notices and disclosures may be coordinated and consolidated, as provided in subsection (b) of that section 624.

"(4) TIMING.—Regulations required by this subsection shall—

"(A) be issued in final form not later than 9 months after the date of enactment of this Act [Dec. 4, 2003]; and

"(B) become effective not later than 6 months after the date on which they are issued in final form."

[For definitions of terms used in section 214(b) of Pub. L. 108–159, set out above, see section 2 of Pub. L. 108–159, set out as a Definitions note under section 1681 of this title.]

STUDIES OF INFORMATION SHARING PRACTICES

Pub. L. 108–159, title II, §214(e), Dec. 4, 2003, 117 Stat. 1983, as amended by Pub. L. 111–203, title X, §1088(b)(4), July 21, 2010, 124 Stat. 2092, provided that:

"(1) IN GENERAL.—The Federal banking agencies, the National Credit Union Administration, and the Bureau shall jointly conduct regular studies of the consumer information sharing practices by financial institutions and other persons that are creditors or users of consumer reports with their affiliates.

"(2) MATTERS FOR STUDY.—In conducting the studies required by paragraph (1), the agencies described in paragraph (1) shall—

"(A) identify—

"(i) the purposes for which financial institutions and other creditors and users of consumer reports share consumer information;

"(ii) the types of information shared by such entities with their affiliates;

"(iii) the number of choices provided to consumers with respect to the control of such sharing, and the degree to and manner in which consumers exercise such choices, if at all; and

"(iv) whether such entities share or may share personally identifiable transaction or experience information with affiliates for purposes—

"(I) that are related to employment or hiring, including whether the person that is the subject of such information is given notice of such sharing, and the specific uses of such shared information; or

"(II) of general publication of such information; and

"(B) specifically examine the information sharing practices that financial institutions and other creditors and users of consumer reports and their affiliates employ for the purpose of making underwriting decisions or credit evaluations of consumers.

"(3) REPORTS.—

"(A) INITIAL REPORT.—Not later than 3 years after the date of enactment of this Act [Dec. 4, 2003], the Federal banking agencies, the National Credit Union Administration, and the Commission shall jointly submit a report to the Congress on the results of the initial study conducted in accordance with this subsection, together with any recommendations for legislative or regulatory action.

"(B) FOLLOWUP REPORTS.—The Federal banking agencies, the National Credit Union Administration, and the Commission shall, not less frequently than once every 3 years following the date of submission of the initial report under subparagraph (A), jointly submit a report to the Congress that, together with any recommendations for legislative or regulatory action—

"(i) documents any changes in the areas of study referred to in paragraph (2)(A) occurring since the date of submission of the previous report;

"(ii) identifies any changes in the practices of financial institutions and other creditors and users of consumer reports in sharing consumer information with their affiliates for the purpose of making underwriting decisions or credit evaluations of consumers occurring since the date of submission of the previous report; and

"(iii) examines the effects that changes described in clause (ii) have had, if any, on the degree to which such affiliate sharing practices reduce the need for financial institutions, creditors, and other users of consumer reports to rely on consumer reports for such decisions."

[For definitions of terms used in section 214(e) of Pub. L. 108–159, set out above, see section 2 of Pub. L. 108–159, set out as a Definitions note under section 1681 of this title.]

§1681t. Relation to State laws

(a) In general

Except as provided in subsections (b) and (c) of this section, this subchapter does not annul, alter, affect, or exempt any person subject to the provisions of this subchapter from complying with the laws of any State with respect to the collection, distribution, or use of any information on consumers, or for the prevention or mitigation of identity theft, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency.

(b) General exceptions

No requirement or prohibition may be imposed under the laws of any State—

(1) with respect to any subject matter regulated under—

(A) subsection (c) or (e) of section 1681b of this title, relating to the prescreening of consumer reports;

(B) section 1681i of this title, relating to the time by which a consumer reporting agency must take any action, including the provision of notification to a consumer or other person, in any procedure related to the disputed accuracy of information in a consumer's file, except that this subparagraph shall not apply to any State law in effect on September 30, 1996;

(C) subsections (a) and (b) of section 1681m of this title, relating to the duties of a person who takes any adverse action with respect to a consumer;

(D) section 1681m(d) of this title, relating to the duties of persons who use a consumer report of a consumer in connection with any credit or insurance transaction that is not initiated by the consumer and that consists of a firm offer of credit or insurance;

(E) section 1681c of this title, relating to information contained in consumer reports, except that this subparagraph shall not apply to any State law in effect on September 30, 1996;

(F) section 1681s–2 of this title, relating to the responsibilities of persons who furnish information to consumer reporting agencies, except that this paragraph shall not apply—

(i) with respect to section 54A(a) of chapter 93 of the Massachusetts Annotated Laws (as in effect on September 30, 1996); or

(ii) with respect to section 1785.25(a) of the California Civil Code (as in effect on September 30, 1996);

(G) section 1681g(e) of this title, relating to information available to victims under section 1681g(e) of this title;

(H) section 1681s–3 of this title, relating to the exchange and use of information to make a solicitation for marketing purposes; or

(I) section 1681m(h) of this title, relating to the duties of users of consumer reports to provide notice with respect to terms in certain credit transactions;

(2) with respect to the exchange of information among persons affiliated by common ownership or common corporate control, except that this paragraph shall not apply with respect to subsection (a) or (c)(1) of section 2480e of title 9, Vermont Statutes Annotated (as in effect on September 30, 1996);

(3) with respect to the disclosures required to be made under subsection (c), (d), (e), or (g) of section 1681g of this title, or subsection (f) of section 1681g of this title relating to the disclosure of credit scores for credit granting purposes, except that this paragraph—

(A) shall not apply with respect to sections 1785.10, 1785.16, and 1785.20.2 of the California Civil Code (as in effect on December 4, 2003) and section 1785.15 through section 1785.15.2 of such Code (as in effect on such date);

(B) shall not apply with respect to sections 5–3–106(2) and 212–14.3–104.3 of the Colorado Revised Statutes (as in effect on December 4, 2003); and

(C) shall not be construed as limiting, annulling, affecting, or superseding any provision of the laws of any State regulating the use in an insurance activity, or regulating disclosures

concerning such use, of a credit-based insurance score of a consumer by any person engaged in the business of insurance;

(4) with respect to the frequency of any disclosure under section 1681j(a) of this title, except that this paragraph shall not apply—

(A) with respect to section 12–14.3–105(1)(d) of the Colorado Revised Statutes (as in effect on December 4, 2003);

(B) with respect to section 10–1–393(29)(C) of the Georgia Code (as in effect on December 4, 2003);

(C) with respect to section 1316.2 of title 10 of the Maine Revised Statutes (as in effect on December 4, 2003);

(D) with respect to sections 14–1209(a)(1) and 14–1209(b)(1)(i) of the Commercial Law Article of the Code of Maryland (as in effect on December 4, 2003);

(E) with respect to section 59(d) and section 59(e) of chapter 93 of the General Laws of Massachusetts (as in effect on December 4, 2003);

(F) with respect to section 56:11–37.10(a)(1) of the New Jersey Revised Statutes (as in effect on December 4, 2003); or

(G) with respect to section 2480c(a)(1) of title 9 of the Vermont Statutes Annotated (as in effect on December 4, 2003); or

(5) with respect to the conduct required by the specific provisions of—

(A) section 1681c(g) of this title;

(B) section 1681c–1 of this title;

(C) section 1681c–2 of this title;

(D) section 1681g(a)(1)(A) of this title;

(E) section 1681j(a) of this title;

(F) subsections (e), (f), and (g) of section 1681m of this title;

(G) section 1681s(f) of this title;

(H) section 1681s–2(a)(6) of this title; or

(I) section 1681w of this title.

(c) "Firm offer of credit or insurance" defined

Notwithstanding any definition of the term "firm offer of credit or insurance" (or any equivalent term) under the laws of any State, the definition of that term contained in section 1681a(l) of this title shall be construed to apply in the enforcement and interpretation of the laws of any State governing consumer reports.

(d) Limitations

Subsections (b) and (c) of this section do not affect any settlement, agreement, or consent judgment between any State Attorney General and any consumer reporting agency in effect on September 30, 1996.

(Pub. L. 90–321, title VI, §625, formerly §622, as added Pub. L. 91–508, title VI, §601, Oct. 26, 1970, 84 Stat. 1136; renumbered §623, Pub. L. 102–537, §2(a), Oct. 27, 1992, 106 Stat. 3531; renumbered §624 and amended Pub. L. 104–208, div. A, title II, §§2413(a)(1), 2419, Sept. 30, 1996, 110 Stat. 3009–447, 3009–452; renumbered §625 and amended Pub. L. 108–159, title I, §151(a)(2), title II, §§212(e), 214(a)(1), (c)(2), title III, §311(b), title VII, §711, Dec. 4, 2003, 117 Stat. 1964, 1977, 1980, 1983, 1989, 2011.)

PRIOR PROVISIONS

A prior section 625 of Pub. L. 90–321 was renumbered section 626 and is classified to section 1681u of this title.

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–159, §711(1), inserted "or for the prevention or mitigation of identity theft," after "information on consumers,".

Subsec. (b)(1)(E). Pub. L. 108–159, §214(c)(2)(A), struck out "or" after semicolon at end.

Subsec. (b)(1)(G). Pub. L. 108–159, §151(a)(2), added subpar. (G).

Subsec. (b)(1)(H). Pub. L. 108–159, §214(c)(2)(B), added subpar. (H).

Subsec. (b)(1)(I). Pub. L. 108–159, §311(b), added subpar. (I).

Subsec. (b)(3), (4). Pub. L. 108–159, §212(e), added pars. (3) and (4) and struck out former par. (3) which read as follows: "with respect to the form and content of any disclosure required to be made under section 1681g(c) of this title."

Subsec. (b)(5). Pub. L. 108–159, §711(2), added par. (5).

Subsec. (d). Pub. L. 108–159, §711(3), substituted "(c) of this section" for "(c) of this section—", struck out par. (1) designation before "do not affect", substituted "1996." for "1996; and", and struck out par. (2) which read as follows:

"(2) do not apply to any provision of State law (including any provision of a State constitution) that—

"(A) is enacted after January 1, 2004;

"(B) states explicitly that the provision is intended to supplement this subchapter; and

"(C) gives greater protection to consumers than is provided under this subchapter."

1996—Subsec. (a). Pub. L. 104–208, §2419(1), designated existing provisions as subsec. (a), inserted heading, and substituted "Except as provided in subsections (b) and (c) of this section, this subchapter" for "This subchapter".

Subsecs. (b) to (d). Pub. L. 104–208, §2419(2), added subsecs. (b) to (d).

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–159 subject to joint regulations establishing effective dates as prescribed by Federal Reserve Board and Federal Trade Commission, except as otherwise provided, see section 3 of Pub. L. 108–159, set out as a note under section 1681 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective 365 days after Sept. 30, 1996, with special rule for early compliance, see section 2420 of Pub. L. 104–208, set out as a note under section 1681a of this title.

§1681u. Disclosures to FBI for counterintelligence purposes

(a) Identity of financial institutions

Notwithstanding section 1681b of this title or any other provision of this subchapter, a consumer reporting agency shall furnish to the Federal Bureau of Investigation the names and addresses of all financial institutions (as that term is defined in section 3401 of title 12) at which a consumer maintains or has maintained an account, to the extent that information is in the files of the agency, when presented with a written request for that information, signed by the Director of the Federal Bureau of Investigation, or the Director's designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge of a Bureau field office designated by the Director, which certifies compliance with this section. The Director or the Director's designee may make such a certification only if the Director or the Director's designee has determined in writing, that such information is sought for the conduct of an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

(b) Identifying information

Notwithstanding the provisions of section 1681b of this title or any other provision of this subchapter, a consumer reporting agency shall furnish identifying information respecting a consumer, limited to name, address, former addresses, places of employment, or former places of employment, to the Federal Bureau of Investigation when presented with a written request, signed by the Director or the Director's designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge of a Bureau field office designated by the Director, which certifies compliance with this subsection. The Director or the Director's designee may make such a certification only if the Director or the Director's designee has determined in

writing that such information is sought for the conduct of an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

(c) Court order for disclosure of consumer reports

Notwithstanding section 1681b of this title or any other provision of this subchapter, if requested in writing by the Director of the Federal Bureau of Investigation, or a designee of the Director in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director, a court may issue an order ex parte directing a consumer reporting agency to furnish a consumer report to the Federal Bureau of Investigation, upon a showing in camera that the consumer report is sought for the conduct of an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution of the United States. The terms of an order issued under this subsection shall not disclose that the order is issued for purposes of a counterintelligence investigation.

(d) Confidentiality

(1) If the Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director, certifies that otherwise there may result a danger to the national security of the United States, interference with a criminal, counterterrorism, or counterintelligence investigation, interference with diplomatic relations, or danger to the life or physical safety of any person, no consumer reporting agency or officer, employee, or agent of a consumer reporting agency shall disclose to any person (other than those to whom such disclosure is necessary to comply with the request or an attorney to obtain legal advice or legal assistance with respect to the request) that the Federal Bureau of Investigation has sought or obtained the identity of financial institutions or a consumer report respecting any consumer under subsection (a), (b), or (c), and no consumer reporting agency or officer, employee, or agent of a consumer reporting agency shall include in any consumer report any information that would indicate that the Federal Bureau of Investigation has sought or obtained such information on a consumer report.

(2) The request shall notify the person or entity to whom the request is directed of the nondisclosure requirement under paragraph (1).

(3) Any recipient disclosing to those persons necessary to comply with the request or to an attorney to obtain legal advice or legal assistance with respect to the request shall inform such persons of any applicable nondisclosure requirement. Any person who receives a disclosure under this subsection shall be subject to the same prohibitions on disclosure under paragraph (1).

(4) At the request of the Director of the Federal Bureau of Investigation or the designee of the Director, any person making or intending to make a disclosure under this section shall identify to the Director or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, except that nothing in this section shall require a person to inform the Director or such designee of the identity of an attorney to whom disclosure was made or will be made to obtain legal advice or legal assistance with respect to the request for the identity of financial institutions or a consumer report respecting any consumer under this section.

(e) Payment of fees

The Federal Bureau of Investigation shall, subject to the availability of appropriations, pay to the consumer reporting agency assembling or providing report or information in accordance with procedures established under this section a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching, reproducing, or transporting books, papers, records, or other data required or requested to be produced under this section.

(f) Limit on dissemination

The Federal Bureau of Investigation may not disseminate information obtained pursuant to this

section outside of the Federal Bureau of Investigation, except to other Federal agencies as may be necessary for the approval or conduct of a foreign counterintelligence investigation, or, where the information concerns a person subject to the Uniform Code of Military Justice, to appropriate investigative authorities within the military department concerned as may be necessary for the conduct of a joint foreign counterintelligence investigation.

(g) Rules of construction

Nothing in this section shall be construed to prohibit information from being furnished by the Federal Bureau of Investigation pursuant to a subpoena or court order, in connection with a judicial or administrative proceeding to enforce the provisions of this subchapter. Nothing in this section shall be construed to authorize or permit the withholding of information from the Congress.

(h) Reports to Congress

(1) On a semiannual basis, the Attorney General shall fully inform the Permanent Select Committee on Intelligence and the Committee on Banking, Finance and Urban Affairs of the House of Representatives, and the Select Committee on Intelligence and the Committee on Banking, Housing, and Urban Affairs of the Senate concerning all requests made pursuant to subsections (a), (b), and (c) of this section.

(2) In the case of the semiannual reports required to be submitted under paragraph (1) to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate, the submittal dates for such reports shall be as provided in section 3106 of title 50.

(i) Damages

Any agency or department of the United States obtaining or disclosing any consumer reports, records, or information contained therein in violation of this section is liable to the consumer to whom such consumer reports, records, or information relate in an amount equal to the sum of—

(1) $100, without regard to the volume of consumer reports, records, or information involved;

(2) any actual damages sustained by the consumer as a result of the disclosure;

(3) if the violation is found to have been willful or intentional, such punitive damages as a court may allow; and

(4) in the case of any successful action to enforce liability under this subsection, the costs of the action, together with reasonable attorney fees, as determined by the court.

(j) Disciplinary actions for violations

If a court determines that any agency or department of the United States has violated any provision of this section and the court finds that the circumstances surrounding the violation raise questions of whether or not an officer or employee of the agency or department acted willfully or intentionally with respect to the violation, the agency or department shall promptly initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or employee who was responsible for the violation.

(k) Good-faith exception

Notwithstanding any other provision of this subchapter, any consumer reporting agency or agent or employee thereof making disclosure of consumer reports or identifying information pursuant to this subsection in good-faith reliance upon a certification of the Federal Bureau of Investigation pursuant to provisions of this section shall not be liable to any person for such disclosure under this subchapter, the constitution of any State, or any law or regulation of any State or any political subdivision of any State.

(l) Limitation of remedies

Notwithstanding any other provision of this subchapter, the remedies and sanctions set forth in this section shall be the only judicial remedies and sanctions for violation of this section.

(m) Injunctive relief

In addition to any other remedy contained in this section, injunctive relief shall be available to

require compliance with the procedures of this section. In the event of any successful action under this subsection, costs together with reasonable attorney fees, as determined by the court, may be recovered.

(Pub. L. 90–321, title VI, §626, formerly §624, as added Pub. L. 104–93, title VI, §601(a), Jan. 6, 1996, 109 Stat. 974; renumbered §625 and amended Pub. L. 107–56, title III, §358(g)(1)(A), title V, §505(c), Oct. 26, 2001, 115 Stat. 327, 366; Pub. L. 107–306, title VIII, §811(b)(8)(B), Nov. 27, 2002, 116 Stat. 2426; renumbered §626, Pub. L. 108–159, title II, §214(a)(1), Dec. 4, 2003, 117 Stat. 1980; Pub. L. 109–177, title I, §116(b), Mar. 9, 2006, 120 Stat. 214; Pub. L. 109–178, §4(c)(1), Mar. 9, 2006, 120 Stat. 280.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (g), was in the original, "this Act" and was translated as reading "this title", meaning title VI of Pub. L. 90–321, known as the Fair Credit Reporting Act, to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 626 of Pub. L. 90–321 was renumbered section 627 and is classified to section 1681v of this title.

AMENDMENTS

2006—Subsec. (d). Pub. L. 109–177 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "No consumer reporting agency or officer, employee, or agent of a consumer reporting agency shall disclose to any person, other than those officers, employees, or agents of a consumer reporting agency necessary to fulfill the requirement to disclose information to the Federal Bureau of Investigation under this section, that the Federal Bureau of Investigation has sought or obtained the identity of financial institutions or a consumer report respecting any consumer under subsection (a), (b), or (c) of this section, and no consumer reporting agency or officer, employee, or agent of a consumer reporting agency shall include in any consumer report any information that would indicate that the Federal Bureau of Investigation has sought or obtained such information or a consumer report."

Subsec. (d)(4). Pub. L. 109–178 amended par. (4) generally. Prior to amendment, par. (4) read as follows: "At the request of the Director of the Federal Bureau of Investigation or the designee of the Director, any person making or intending to make a disclosure under this section shall identify to the Director or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, but in no circumstance shall a person be required to inform the Director or such designee that the person intends to consult an attorney to obtain legal advice or legal assistance."

2002—Subsec. (h). Pub. L. 107–306 designated existing provisions as par. (1) and added par. (2).

2001—Pub. L. 107–56, §505(c), which directed amendment of section 624 of the Fair Credit Reporting Act, was executed by making the amendment to this section to reflect the probable intent of Congress and the renumbering of section 624 as 625 by section 358(g)(1)(A) of Pub. L. 107–56. See below.

Subsec. (a). Pub. L. 107–56, §505(c)(1), inserted "in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge of a Bureau field office designated by the Director" after "Investigation, or the Director's designee" and substituted "in writing, that such information is sought for the conduct of an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution of the United States." for pars. (1) and (2) requiring determination in writing that the information requested is necessary for the conduct of an authorized foreign counterintelligence investigation and that there are specific and articulable facts giving reason to believe that the consumer is a foreign power or a person who is not a United States person and is an official of a foreign power, or that the consumer is an agent of a foreign power and is engaging or has engaged in an act of international terrorism or clandestine intelligence activities that involve or may involve a violation of criminal statutes of the United States.

Subsec. (b). Pub. L. 107–56, §505(c)(2), inserted "in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge of a Bureau field office designated by the Director" after "signed by the Director or the Director's designee" and substituted "in writing that such information is sought for the conduct of an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution of the United States." for pars.

(1) and (2) requiring determination in writing that the information requested is necessary to the conduct of an authorized counterintelligence investigation and that there is information giving reason to believe that the consumer has been, or is about to be, in contact with a foreign power or an agent of a foreign power.

Subsec. (c). Pub. L. 107–56, §505(c)(3), inserted "in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director" after "designee of the Director" and substituted "in camera that the consumer report is sought for the conduct of an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution of the United States." for pars. (1) and (2) requiring a showing in camera that the consumer report is necessary for the conduct of an authorized foreign counterintelligence investigation and there are specific and articulable facts giving reason to believe that the consumer whose consumer report is sought is an agent of a foreign power and is engaging or has engaged in an act of international terrorism or in clandestine intelligence activities that involve or may involve a violation of criminal statutes of the United States.

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 358(g)(1)(A) of Pub. L. 107–56 applicable with respect to reports filed or records maintained on, before, or after Oct. 26, 2001, see section 358(h) of Pub. L. 107–56, set out as a note under section 1829b of this Title 12, Banks and Banking.

§1681v. Disclosures to governmental agencies for counterterrorism purposes

(a) Disclosure

Notwithstanding section 1681b of this title or any other provision of this subchapter, a consumer reporting agency shall furnish a consumer report of a consumer and all other information in a consumer's file to a government agency authorized to conduct investigations of, or intelligence or counterintelligence activities or analysis related to, international terrorism when presented with a written certification by such government agency that such information is necessary for the agency's conduct or such investigation, activity or analysis.

(b) Form of certification

The certification described in subsection (a) of this section shall be signed by a supervisory official designated by the head of a Federal agency or an officer of a Federal agency whose appointment to office is required to be made by the President, by and with the advice and consent of the Senate.

(c) Confidentiality

(1) If the head of a government agency authorized to conduct investigations of intelligence or counterintelligence activities or analysis related to international terrorism, or his designee, certifies that otherwise there may result a danger to the national security of the United States, interference with a criminal, counterterrorism, or counterintelligence investigation, interference with diplomatic relations, or danger to the life or physical safety of any person, no consumer reporting agency or officer, employee, or agent of such consumer reporting agency, shall disclose to any person (other than those to whom such disclosure is necessary to comply with the request or an attorney to obtain legal advice or legal assistance with respect to the request), or specify in any consumer report, that a government agency has sought or obtained access to information under subsection (a).

(2) The request shall notify the person or entity to whom the request is directed of the

nondisclosure requirement under paragraph (1).

(3) Any recipient disclosing to those persons necessary to comply with the request or to any attorney to obtain legal advice or legal assistance with respect to the request shall inform such persons of any applicable nondisclosure requirement. Any person who receives a disclosure under this subsection shall be subject to the same prohibitions on disclosure under paragraph (1).

(4) At the request of the authorized government agency, any person making or intending to make a disclosure under this section shall identify to the requesting official of the authorized government agency the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, except that nothing in this section shall require a person to inform the requesting official of the identity of an attorney to whom disclosure was made or will be made to obtain legal advice or legal assistance with respect to the request for information under subsection (a).

(d) Rule of construction

Nothing in section 1681u of this title shall be construed to limit the authority of the Director of the Federal Bureau of Investigation under this section.

(e) Safe harbor

Notwithstanding any other provision of this subchapter, any consumer reporting agency or agent or employee thereof making disclosure of consumer reports or other information pursuant to this section in good-faith reliance upon a certification of a government agency pursuant to the provisions of this section shall not be liable to any person for such disclosure under this subchapter, the constitution of any State, or any law or regulation of any State or any political subdivision of any State.

(f) Reports to Congress

(1) On a semi-annual basis, the Attorney General shall fully inform the Committee on the Judiciary, the Committee on Financial Services, and the Permanent Select Committee on Intelligence of the House of Representatives and the Committee on the Judiciary, the Committee on Banking, Housing, and Urban Affairs, and the Select Committee on Intelligence of the Senate concerning all requests made pursuant to subsection (a).

(2) In the case of the semiannual reports required to be submitted under paragraph (1) to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate, the submittal dates for such reports shall be as provided in section 3106 of title 50.

(Pub. L. 90–321, title VI, §627, formerly §626, as added Pub. L. 107–56, title III, §358(g)(1)(B), Oct. 26, 2001, 115 Stat. 327; renumbered §627 and amended Pub. L. 108–159, title II, §214(a)(1), (c)(3), Dec. 4, 2003, 117 Stat. 1980, 1983; Pub. L. 108–458, title VI, §6203(l), Dec. 17, 2004, 118 Stat. 3747; Pub. L. 109–177, title I, §§116(c), 118(b), Mar. 9, 2006, 120 Stat. 214, 217; Pub. L. 109–178, §4(c)(2), Mar. 9, 2006, 120 Stat. 280.)

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–177, §116(c), amended subsec. (c) generally. Prior to amendment, text read as follows: "No consumer reporting agency, or officer, employee, or agent of such consumer reporting agency, shall disclose to any person, or specify in any consumer report, that a government agency has sought or obtained access to information under subsection (a) of this section."

Subsec. (c)(4). Pub. L. 109–178 amended par. (4) generally. Prior to amendment, par. (4) read as follows: "At the request of the authorized Government agency, any person making or intending to make a disclosure under this section shall identify to the requesting official of the authorized Government agency the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, but in no circumstance shall a person be required to inform such requesting official that the person intends to consult an attorney to obtain legal advice or legal assistance."

Subsec. (f). Pub. L. 109–177, §118(b), added subsec. (f).

2004—Subsec. (e). Pub. L. 108–458 substituted "government agency" for "governmental agency".

2003—Subsec. (d). Pub. L. 108–159, §214(c)(3), made technical amendment to reference in original act which appears in text as reference to section 1681u of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–458 effective as if included in Pub. L. 107–56, as of the date of enactment of such Act, see section 6205 of Pub. L. 108–458, set out as a note under section 1828 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–159 subject to joint regulations establishing effective dates as prescribed by Federal Reserve Board and Federal Trade Commission, except as otherwise provided, see section 3 of Pub. L. 108–159, set out as a note under section 1681 of this title.

EFFECTIVE DATE

Section applicable with respect to reports filed or records maintained on, before, or after Oct. 26, 2001, see section 358(h) of Pub. L. 107–56, set out as an Effective Date of 2001 Amendment note under section 1829b of this Title 12, Banks and Banking.

§1681w. Disposal of records

(a) Regulations

(1) In general

The Federal Trade Commission, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Federal banking agencies, and the National Credit Union Administration, with respect to the entities that are subject to their respective enforcement authority under section 1681s of this title, and in coordination as described in paragraph (2), shall issue final regulations requiring any person that maintains or otherwise possesses consumer information, or any compilation of consumer information, derived from consumer reports for a business purpose to properly dispose of any such information or compilation.

(2) Coordination

Each agency required to prescribe regulations under paragraph (1) shall—

(A) consult and coordinate with each other such agency so that, to the extent possible, the regulations prescribed by each such agency are consistent and comparable with the regulations by each such other agency; and

(B) ensure that such regulations are consistent with the requirements and regulations issued pursuant to Public Law 106–102 and other provisions of Federal law.

(3) Exemption authority

In issuing regulations under this section, the agencies identified in paragraph (1) may exempt any person or class of persons from application of those regulations, as such agency deems appropriate to carry out the purpose of this section.

(b) Rule of construction

Nothing in this section shall be construed—

(1) to require a person to maintain or destroy any record pertaining to a consumer that is not imposed under other law; or

(2) to alter or affect any requirement imposed under any other provision of law to maintain or destroy such a record.

(Pub. L. 90–321, title VI, §628, as added Pub. L. 108–159, title II, §216(a), Dec. 4, 2003, 117 Stat. 1985; amended Pub. L. 111–203, title X, §1088(a)(12), (13), July 21, 2010, 124 Stat. 2091, 2092.)

REFERENCES IN TEXT

Public Law 106–102, referred to in subsec. (a)(2)(B), is Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1338, as amended, known as the Gramm-Leach-Bliley Act. For complete classification of this Act to the Code, see Short Title of 1999 Amendment note set out under section 1811 of Title 12, Banks and Banking, and Tables.

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111–203, §1088(a)(12), substituted "The Federal Trade Commission, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Federal banking agencies, and the National Credit Union Administration, with respect to the entities that are subject to their respective enforcement authority under section 1681s of this title," for "Not later than 1 year after December 4, 2003, the Federal banking agencies, the National Credit Union Administration, and the Commission with respect to the entities that are subject to their respective enforcement authority under section 1681s of this title, and the Securities and Exchange Commission,".

Subsec. (a)(3). Pub. L. 111–203, §1088(a)(13), substituted "the agencies identified in paragraph (1)" for "the Federal banking agencies, the National Credit Union Administration, the Commission, and the Securities and Exchange Commission".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section subject to joint regulations establishing effective dates as prescribed by Federal Reserve Board and Federal Trade Commission, except as otherwise provided, see section 3 of Pub. L. 108–159, set out as an Effective Date of 2003 Amendment note under section 1681 of this title.

§1681x. Corporate and technological circumvention prohibited

The Commission shall prescribe regulations, to become effective not later than 90 days after December 4, 2003, to prevent a consumer reporting agency from circumventing or evading treatment as a consumer reporting agency described in section 1681a(p) of this title for purposes of this subchapter, including—

(1) by means of a corporate reorganization or restructuring, including a merger, acquisition, dissolution, divestiture, or asset sale of a consumer reporting agency; or

(2) by maintaining or merging public record and credit account information in a manner that is substantially equivalent to that described in paragraphs (1) and (2) of section 1681a(p) of this title, in the manner described in section 1681a(p) of this title.

(Pub. L. 90–321, title VI, §629, as added Pub. L. 108–159, title II, §211(b), Dec. 4, 2003, 117 Stat. 1970.)

EFFECTIVE DATE

Section subject to joint regulations establishing effective dates as prescribed by Federal Reserve Board and Federal Trade Commission, except as otherwise provided, see section 3 of Pub. L. 108–159, set out as an Effective Date of 2003 Amendment note under section 1681 of this title.

SUBCHAPTER IV—EQUAL CREDIT OPPORTUNITY

§1691. Scope of prohibition

(a) Activities constituting discrimination

It shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction—

(1) on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract);

(2) because all or part of the applicant's income derives from any public assistance program; or

(3) because the applicant has in good faith exercised any right under this chapter.

(b) Activities not constituting discrimination

It shall not constitute discrimination for purposes of this subchapter for a creditor—

(1) to make an inquiry of marital status if such inquiry is for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit and not to discriminate in a determination of credit-worthiness;

(2) to make an inquiry of the applicant's age or of whether the applicant's income derives from any public assistance program if such inquiry is for the purpose of determining the amount and probable continuance of income levels, credit history, or other pertinent element of credit-worthiness as provided in regulations of the Bureau;

(3) to use any empirically derived credit system which considers age if such system is demonstrably and statistically sound in accordance with regulations of the Bureau, except that in the operation of such system the age of an elderly applicant may not be assigned a negative factor or value;

(4) to make an inquiry or to consider the age of an elderly applicant when the age of such applicant is to be used by the creditor in the extension of credit in favor of such applicant; or

(5) to make an inquiry under section 1691c–2 of this title, in accordance with the requirements of that section.

(c) Additional activities not constituting discrimination

It is not a violation of this section for a creditor to refuse to extend credit offered pursuant to—

(1) any credit assistance program expressly authorized by law for an economically disadvantaged class of persons;

(2) any credit assistance program administered by a nonprofit organization for its members or an economically disadvantaged class of persons; or

(3) any special purpose credit program offered by a profit-making organization to meet special social needs which meets standards prescribed in regulations by the Bureau;

if such refusal is required by or made pursuant to such program.

(d) Reason for adverse action; procedure applicable; "adverse action" defined

(1) Within thirty days (or such longer reasonable time as specified in regulations of the Bureau for any class of credit transaction) after receipt of a completed application for credit, a creditor shall notify the applicant of its action on the application.

(2) Each applicant against whom adverse action is taken shall be entitled to a statement of reasons for such action from the creditor. A creditor satisfies this obligation by—

(A) providing statements of reasons in writing as a matter of course to applicants against whom adverse action is taken; or

(B) giving written notification of adverse action which discloses (i) the applicant's right to a statement of reasons within thirty days after receipt by the creditor of a request made within sixty days after such notification, and (ii) the identity of the person or office from which such statement may be obtained. Such statement may be given orally if the written notification advises the applicant of his right to have the statement of reasons confirmed in writing on written request.

(3) A statement of reasons meets the requirements of this section only if it contains the specific reasons for the adverse action taken.

(4) Where a creditor has been requested by a third party to make a specific extension of credit directly or indirectly to an applicant, the notification and statement of reasons required by this subsection may be made directly by such creditor, or indirectly through the third party, provided in either case that the identity of the creditor is disclosed.

(5) The requirements of paragraph (2), (3), or (4) may be satisfied by verbal statements or notifications in the case of any creditor who did not act on more than one hundred and fifty applications during the calendar year preceding the calendar year in which the adverse action is taken, as determined under regulations of the Bureau.

(6) For purposes of this subsection, the term "adverse action" means a denial or revocation of credit, a change in the terms of an existing credit arrangement, or a refusal to grant credit in

substantially the amount or on substantially the terms requested. Such term does not include a refusal to extend additional credit under an existing credit arrangement where the applicant is delinquent or otherwise in default, or where such additional credit would exceed a previously established credit limit.

(e) Copies furnished to applicants

(1) In general

Each creditor shall furnish to an applicant a copy of any and all written appraisals and valuations developed in connection with the applicant's application for a loan that is secured or would have been secured by a first lien on a dwelling promptly upon completion, but in no case later than 3 days prior to the closing of the loan, whether the creditor grants or denies the applicant's request for credit or the application is incomplete or withdrawn.

(2) Waiver

The applicant may waive the 3 day requirement provided for in paragraph (1), except where otherwise required in law.

(3) Reimbursement

The applicant may be required to pay a reasonable fee to reimburse the creditor for the cost of the appraisal, except where otherwise required in law.

(4) Free copy

Notwithstanding paragraph (3), the creditor shall provide a copy of each written appraisal or valuation at no additional cost to the applicant.

(5) Notification to applicants

At the time of application, the creditor shall notify an applicant in writing of the right to receive a copy of each written appraisal and valuation under this subsection.

(6) Valuation defined

For purposes of this subsection, the term "valuation" shall include any estimate of the value of a dwelling developed in connection with a creditor's decision to provide credit, including those values developed pursuant to a policy of a government sponsored enterprise or by an automated valuation model, a broker price opinion, or other methodology or mechanism.

(Pub. L. 90–321, title VII, §701, as added Pub. L. 93–495, title V, §503, Oct. 28, 1974, 88 Stat. 1521; amended Pub. L. 94–239, §2, Mar. 23, 1976, 90 Stat. 251; Pub. L. 102–242, title II, §223(d), Dec. 19, 1991, 105 Stat. 2306; Pub. L. 111–203, title X, §§1071(b), 1085(1), title XIV, §1474, July 21, 2010, 124 Stat. 2059, 2083, 2199.)

AMENDMENTS

2010—Pub. L. 111–203, §1085(1), substituted "Bureau" for "Board" wherever appearing.

Subsec. (b)(5). Pub. L. 111–203, §1071(b), added par. (5).

Subsec. (e). Pub. L. 111–203, §1474, amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: "Each creditor shall promptly furnish an applicant, upon written request by the applicant made within a reasonable period of time of the application, a copy of the appraisal report used in connection with the applicant's application for a loan that is or would have been secured by a lien on residential real property. The creditor may require the applicant to reimburse the creditor for the cost of the appraisal."

1991—Subsec. (e). Pub. L. 102–242 added subsec. (e).

1976—Subsec. (a). Pub. L. 94–239 designated existing provisions as cl. (1), expanded prohibition against discrimination to include race, color, religion, national origin and age, and added cls. (2) and (3).

Subsec. (b). Pub. L. 94–239 designated existing provisions as cl. (1) and added cls. (2) to (4).

Subsecs. (c), (d). Pub. L. 94–239 added subsecs. (c) and (d).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–203, title X, §1071(d), July 21, 2010, 124 Stat. 2059, provided that: "This section [enacting section 1691c–2 of this title and amending this section] shall become effective on the designated transfer date."

[The term "designated transfer date" is defined in section 5481(9) of Title 12, Banks and Banking, as the date established under section 5582 of Title 12.]

Amendment by section 1085(1) of Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

Amendment by section 1474 of Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of this title.

EFFECTIVE DATE

Section 708, formerly §707, of title VII of Pub. L. 90–321, as added by Pub. L. 93–495, title V, §503, Oct. 28, 1974, 88 Stat. 1525, renumbered and amended by Pub. L. 94–239, §§7, 8, Mar. 23, 1976, 90 Stat. 255, provided that: "This title [enacting this subchapter and provisions set out as notes under section 1691 of this title] takes effect upon the expiration of one year after the date of its enactment [Oct. 28, 1974]. The amendments made by the Equal Credit Opportunity Act Amendments of 1976 [enacting section 1691f of this title, amending this section and sections 1691b, 1691c, 1691d, and 1691e of this title, repealing section 1609 of this title, enacting provisions set out as notes under this section, and repealing provisions set out as a note under this section] shall take effect on the date of enactment thereof [Mar. 23, 1976] and shall apply to any violation occurring on or after such date, except that the amendments made to section 701 of the Equal Credit Opportunity Act [this section] shall take effect 12 months after the date of enactment [Mar. 23, 1976]."

SHORT TITLE

This subchapter known as the "Equal Credit Opportunity Act", see Short Title note set out under section 1601 of this title.

CONGRESSIONAL FINDINGS AND STATEMENT OF PURPOSE

Pub. L. 93–495, title V, §502, Oct. 28, 1974, 88 Stat. 1521, provided that: "The Congress finds that there is a need to insure that the various financial institutions and other firms engaged in the extensions of credit exercise their responsibility to make credit available with fairness, impartiality, and without discrimination on the basis of sex or marital status. Economic stabilization would be enhanced and competition among the various financial institutions and other firms engaged in the extension of credit would be strengthened by an absence of discrimination on the basis of sex or marital status, as well as by the informed use of credit which Congress has heretofore sought to promote. It is the purpose of this Act [see Short Title note set out under section 1601 of this title] to require that financial institutions and other firms engaged in the extension of credit make that credit equally available to all credit-worthy customers without regard to sex or marital status."

§1691a. Definitions; rules of construction

(a) The definitions and rules of construction set forth in this section are applicable for the purposes of this subchapter.

(b) The term "applicant" means any person who applies to a creditor directly for an extension, renewal, or continuation of credit, or applies to a creditor indirectly by use of an existing credit plan for an amount exceeding a previously established credit limit.

(c) The term "Bureau" means the Bureau of Consumer Financial Protection.

(d) The term "credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debts and defer its payment or to purchase property or services and defer payment therefor.

(e) The term "creditor" means any person who regularly extends, renews, or continues credit; any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who participates in the decision to extend, renew, or continue credit.

(f) The term "person" means a natural person, a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(g) Any reference to any requirement imposed under this subchapter or any provision thereof includes reference to the regulations of the Bureau under this subchapter or the provision thereof in question.

(Pub. L. 90–321, title VII, §702, as added Pub. L. 93–495, title V, §503, Oct. 28, 1974, 88 Stat. 1522; amended Pub. L. 111–203, title X, §1085(1), (2), July 21, 2010, 124 Stat. 2083.)

AMENDMENTS

2010—Subsec. (c). Pub. L. 111–203, §1085(2), added subsec. (c) and struck out former subsec. (c) which read as follows: "The term 'Board' refers to the Board of Governors of the Federal Reserve System."

Subsec. (g). Pub. L. 111–203, §1085(1), substituted "Bureau" for "Board".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§1691b. Promulgation of regulations by the Bureau

(a) In general

The Bureau shall prescribe regulations to carry out the purposes of this subchapter. These regulations may contain but are not limited to such classifications, differentiation, or other provision, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Bureau are necessary or proper to effectuate the purposes of this subchapter, to prevent circumvention or evasion thereof, or to facilitate or substantiate compliance therewith.

(b) Exempt transactions

Such regulations may exempt from the provisions of this subchapter any class of transactions that are not primarily for personal, family, or household purposes, or business or commercial loans made available by a financial institution, except that a particular type within a class of such transactions may be exempted if the Bureau determines, after making an express finding that the application of this subchapter or of any provision of this subchapter of such transaction would not contribute substantially to effecting the purposes of this subchapter.

(c) Limitation on exemptions

An exemption granted pursuant to subsection (b) shall be for no longer than five years and shall be extended only if the Bureau makes a subsequent determination, in the manner described by such paragraph,[1] that such exemption remains appropriate.

(d) Maintenance of records

Pursuant to Bureau regulations, entities making business or commercial loans shall maintain such records or other data relating to such loans as may be necessary to evidence compliance with this subsection [2] or enforce any action pursuant to the authority of this chapter. In no event shall such records or data be maintained for a period of less than one year. The Bureau shall promulgate regulations to implement this paragraph [3] in the manner prescribed by chapter 5 of title 5.

(e) Notice of denial of loan

The Bureau shall provide in regulations that an applicant for a business or commercial loan shall be provided a written notice of such applicant's right to receive a written statement of the reasons for the denial of such loan.

(f) Board authority

Notwithstanding subsection (a), the Board shall prescribe regulations to carry out the purposes of this subchapter with respect to a person described in section 5519(a) of title 12. These regulations may contain but are not limited to such classifications, differentiation, or other provision, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this subchapter, to prevent circumvention or evasion thereof, or to facilitate or substantiate compliance therewith.

(g) Deference

Notwithstanding any power granted to any Federal agency under this subchapter, the deference that a court affords to a Federal agency with respect to a determination made by such agency relating to the meaning or interpretation of any provision of this subchapter that is subject to the jurisdiction of such agency shall be applied as if that agency were the only agency authorized to apply, enforce, interpret, or administer the provisions of this subchapter [4]

(Pub. L. 90–321, title VII, §703, as added Pub. L. 93–495, title V, §503, Oct. 28, 1974, 88 Stat. 1522; amended Pub. L. 94–239, §3(a), Mar. 23, 1976, 90 Stat. 252; Pub. L. 100–533, title III, §301, Oct. 25, 1988, 102 Stat. 2692; Pub. L. 111–203, title X, §1085(1), (3), July 21, 2010, 124 Stat. 2083.)

AMENDMENTS

2010—Pub. L. 111–203, §1085(3)(A), substituted "Promulgation of regulations by the Bureau" for "Regulations" in section catchline.

Pub. L. 111–203, §1085(1), substituted "Bureau" for "Board" wherever appearing.

Subsecs. (a) to (e). Pub. L. 111–203, §1085(3)(B)–(E), in subsec. (a), struck out "(a)" designation before "(1)", redesignated subsec. (a) pars. (1) to (5) as subsecs. (a) to (e), respectively, in subsec. (c) substituted "subsection (b)" for "paragraph (2)", and struck out former subsec. (b), which related to establishment of a Consumer Advisory Council to advise and consult with the Board.

Subsecs. (f), (g). Pub. L. 111–203, §1085(3)(F), added subsecs. (f) and (g).

1988—Subsec. (a). Pub. L. 100–533 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "The Board shall prescribe regulations to carry out the purposes of this subchapter. These regulations may contain but are not limited to such classifications, differentiation, or other provision, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this subchapter, to prevent circumvention or evasion thereof, or to facilitate or substantiate compliance therewith. In particular, such regulations may exempt from one or more of the provisions of this subchapter any class of transactions not primarily for personal, family, or household purposes, if the Board makes an express finding that the application of such provision or provisions would not contribute substantially to carrying out the purposes of this subchapter. Such regulations shall be prescribed as soon as possible after the date of enactment of this Act, but in no event later than the effective date of this Act."

1976—Pub. L. 94–239 designated existing provisions as subsec. (a), inserted provisions exempting from regulations of this subchapter any class of transactions not primarily for personal, family, or household purposes to be determined by the Board, and added subsec. (b).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–239 effective Mar. 23, 1976, see section 708 of Pub. L. 90–321, set out as an Effective Date note under section 1691 of this title.

[1] So in original. Probably should be "subsection,".

[2] So in original.

[3] So in original. Probably should be "subsection".

[4] So in original. Probably should be followed by a period.

§1691c. Administrative enforcement

(a) Enforcing agencies

Subject to subtitle B of the Consumer Protection Financial Protection Act of 2010 [1] with [2] the

requirements imposed under this subchapter shall be enforced under:

(1) section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to—

(A) national banks, Federal savings associations, and Federal branches and Federal agencies of foreign banks;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.]; and

(C) banks and State savings associations insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), and insured State branches of foreign banks;

(2) The Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the Administrator of the National Credit Union Administration with respect to any Federal Credit Union.

(3) Subtitle IV of title 49, by the Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board.

(4) Part A of subtitle VII of title 49, by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that part.

(5) The Packers and Stockyards Act, 1921 [7 U.S.C. 181 et seq.] (except as provided in section 406 of that Act [7 U.S.C. 226, 227]), by the Secretary of Agriculture with respect to any activities subject to that Act.

(6) The Farm Credit Act of 1971 [12 U.S.C. 2001 et seq.], by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, and production credit association;

(7) The Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], by the Securities and Exchange Commission with respect to brokers and dealers;

(8) The Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.], by the Small Business Administration, with respect to small business investment companies; and

(9) Subtitle E of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5561 et seq.], by the Bureau, with respect to any person subject to this subchapter.

The terms used in paragraph (1) that are not defined in this subchapter or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

(b) Violations of subchapter deemed violations of preexisting statutory requirements; additional agency powers

For the purpose of the exercise by any agency referred to in subsection (a) of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this subchapter shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (a) of this section, each of the agencies referred to in that subsection may exercise for the purpose of enforcing compliance with any requirement imposed under this subchapter, any other authority conferred on it by law. The exercise of the authorities of any of the agencies referred to in subsection (a) of this section for the purpose of enforcing compliance with any requirement imposed under this subchapter shall in no way preclude the exercise of such authorities for the purpose of enforcing compliance with any other provision of law not relating to the prohibition of discrimination on the basis of sex or marital status with respect to any aspect of a credit transaction.

(c) Overall enforcement authority of Federal Trade Commission

Except to the extent that enforcement of the requirements imposed under this subchapter is

specifically committed to some other Government agency under any of paragraphs (1) through (8) of subsection (a), and subject to subtitle B of the Consumer Financial Protection Act of 2010, the Federal Trade Commission shall be authorized to enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), a violation of any requirement imposed under this subchapter [3] shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person with the requirements imposed under this subchapter, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act, including the power to enforce any rule prescribed by the Bureau under this subchapter in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.

(d) Rules and regulations by enforcing agencies

The authority of the Bureau to issue regulations under this subchapter does not impair the authority of any other agency designated in this section to make rules respecting its own procedures in enforcing compliance with requirements imposed under this subchapter.

(Pub. L. 90–321, title VII, §704, as added Pub. L. 93–495, title V, §503, Oct. 28, 1974, 88 Stat. 1522; amended Pub. L. 94–239, §4, Mar. 23, 1976, 90 Stat. 253; Pub. L. 98–443, §9(n), Oct. 4, 1984, 98 Stat. 1708; Pub. L. 101–73, title VII, §744(m), Aug. 9, 1989, 103 Stat. 439; Pub. L. 102–242, title II, §212(d), Dec. 19, 1991, 105 Stat. 2300; Pub. L. 102–550, title XVI, §1604(a)(7), Oct. 28, 1992, 106 Stat. 4082; Pub. L. 104–88, title III, §315, Dec. 29, 1995, 109 Stat. 948; Pub. L. 111–203, title X, §1085(4), July 21, 2010, 124 Stat. 2084.)

REFERENCES IN TEXT

The Consumer Financial Protection Act of 2010, referred to in subsecs. (a) and (c), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955. Subtitles B (§§1021–1029A) and E (§§1051–1058) of the Act are classified generally to parts B (§5511 et seq.) and E (§5561 et seq.), respectively, of subchapter V of chapter 53 of Title 12, Banks and Banking. For complete classification of subtitles B and E to the Code, see Tables.

Sections 25 and 25A of the Federal Reserve Act, referred to in subsec. (a)(1)(B), are classified to subchapters I (§601 et seq.) and II (§611 et seq.), respectively, of chapter 6 of Title 12, Banks and Banking.

The Federal Credit Union Act, referred to in subsec. (a)(2), is act June 26, 1934, ch. 750, 48 Stat. 1216, which is classified generally to chapter 14 (§1751 et seq.) of Title 12. For complete classification of this Act to the Code, see section 1751 of Title 12 and Tables.

The Packers and Stockyards Act, 1921, referred to in subsec. (a)(5), is act Aug. 15, 1921, ch. 64, 42 Stat. 159, which is classified to chapter 9 (§181 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 181 of Title 7 and Tables.

The Farm Credit Act of 1971, referred to in subsec. (a)(6), is Pub. L. 92–181, Dec. 10, 1971, 85 Stat. 583, which is classified generally to chapter 23 (§2001 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 12 and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (a)(7), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see Codification note set out under section 78a of this title and Tables.

The Small Business Investment Act of 1958, referred to in subsec. (a)(8), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, which is classified principally to chapter 14B (§661 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

The Federal Trade Commission Act, referred to in subsec. (c), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

This subchapter, referred to in subsec. (c) before "shall be deemed", probably should have been a reference to this title in the original, meaning title VII of Pub. L. 90–321 which is classified generally to this subchapter.

CODIFICATION

In subsec. (a)(3), "Subtitle IV of title 49" substituted for "The Acts to regulate commerce" on authority of Pub. L. 95–473, §3(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV of Title 49, Transportation.

In subsec. (a)(4), "Part A of subtitle VII of title 49" substituted for "The Federal Aviation Act of 1958 [49 App. U.S.C. 1301 et seq.]" and "that part" substituted for "that Act" on authority of Pub. L. 103–272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, §1085(4)(A)(i), substituted "Subject to subtitle B of the Consumer Protection Financial Protection Act of 2010" for "Compliance" in introductory provisions.

Subsec. (a)(1). Pub. L. 111–203, §1085(4)(A)(ii), added par. (1) and struck out former par. (1) which read as follows: "section 8 of the Federal Deposit Insurance Act, in the case of—

"(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

"(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act, by the Board; and

"(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;".

Subsec. (a)(2) to (9). Pub. L. 111–203, §1085(4)(A)(ii)–(vi), added par. (9), redesignated former pars. (3) to (9) as (2) to (8), respectively, and struck out former par. (2) which read as follows: "Section 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation."

Subsec. (c). Pub. L. 111–203, §1085(4)(B), added subsec. (c) and struck out former subsec. (c) which read as follows: "Except to the extent that enforcement of the requirements imposed under this subchapter is specifically committed to some other Government agency under subsection (a) of this section, the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this subchapter shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with the requirements imposed under this subchapter, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act, including the power to enforce any Federal Reserve Board regulation promulgated under this subchapter in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule."

Subsec. (d). Pub. L. 111–203, §1085(4)(C), substituted "Bureau" for "Board".

1995—Subsec. (a)(4). Pub. L. 104–88 substituted "Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board" for "Interstate Commerce Commission with respect to any common carrier subject to those Acts".

1992—Subsec. (a)(1)(C). Pub. L. 102–550 substituted semicolon for period at end.

1991—Subsec. (a). Pub. L. 102–242, §212(d)(2), inserted at end "The terms used in paragraph (1) that are not defined in this subchapter or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101)."

Pub. L. 102–242, §212(d)(1), added par. (1) and struck out former par. (1) which read as follows: "Section 8 of Federal Deposit Insurance Act, in the case of—

"(A) national banks, by the Comptroller of the Currency,

"(B) member banks of the Federal Reserve System (other than national banks), by the Federal Reserve Board,

"(C) banks the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation."

1989—Subsec. (a)(2). Pub. L. 101–73 amended par. (2) generally. Prior to amendment, par. (2) read as follows: "Section 5(d) of the Home Owners' Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions."

1984—Subsec. (a)(5). Pub. L. 98–443 substituted "Secretary of Transportation" for "Civil Aeronautics Board".

1976—Subsec. (c). Pub. L. 94–239 inserted provisions giving the Federal Trade Commission power to enforce any regulation of the Federal Reserve Board promulgated under this subchapter.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98–443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–239 effective Mar. 23, 1976, see section 708 of Pub. L. 90–321, set out as an Effective Date note under section 1691 of this title.

TRANSFER OF FUNCTIONS

Functions vested in Administrator of National Credit Union Administration transferred and vested in National Credit Union Administration Board pursuant to section 1752a of Title 12, Banks and Banking.

[1] *So in original. Probably should be "Consumer Financial Protection Act of 2010".*

[2] *So in original. Probably should be ", compliance with".*

[3] *See References in Text note below.*

§1691c–1. Incentives for self-testing and self-correction

(a) Privileged information

(1) Conditions for privilege

A report or result of a self-test (as that term is defined by regulations of the Bureau) shall be considered to be privileged under paragraph (2) if a creditor—

(A) conducts, or authorizes an independent third party to conduct, a self-test of any aspect of a credit transaction by a creditor, in order to determine the level or effectiveness of compliance with this subchapter by the creditor; and

(B) has identified any possible violation of this subchapter by the creditor and has taken, or is taking, appropriate corrective action to address any such possible violation.

(2) Privileged self-test

If a creditor meets the conditions specified in subparagraphs (A) and (B) of paragraph (1) with respect to a self-test described in that paragraph, any report or results of that self-test—

(A) shall be privileged; and

(B) may not be obtained or used by any applicant, department, or agency in any—

(i) proceeding or civil action in which one or more violations of this subchapter are alleged; or

(ii) examination or investigation relating to compliance with this subchapter.

(b) Results of self-testing

(1) In general

No provision of this section may be construed to prevent an applicant, department, or agency from obtaining or using a report or results of any self-test in any proceeding or civil action in which a violation of this subchapter is alleged, or in any examination or investigation of compliance with this subchapter if—

(A) the creditor or any person with lawful access to the report or results—

(i) voluntarily releases or discloses all, or any part of, the report or results to the applicant, department, or agency, or to the general public; or

(ii) refers to or describes the report or results as a defense to charges of violations of this subchapter against the creditor to whom the self-test relates; or

(B) the report or results are sought in conjunction with an adjudication or admission of a violation of this subchapter for the sole purpose of determining an appropriate penalty or remedy.

(2) Disclosure for determination of penalty or remedy

Any report or results of a self-test that are disclosed for the purpose specified in paragraph (1)(B)—

(A) shall be used only for the particular proceeding in which the adjudication or admission referred to in paragraph (1)(B) is made; and

(B) may not be used in any other action or proceeding.

(c) Adjudication

An applicant, department, or agency that challenges a privilege asserted under this section may seek a determination of the existence and application of that privilege in—

(1) a court of competent jurisdiction; or

(2) an administrative law proceeding with appropriate jurisdiction.

(Pub. L. 90–321, title VII, §704A, as added Pub. L. 104–208, div. A, title II, §2302(a)(1), Sept. 30, 1996, 110 Stat. 3009–420; amended Pub. L. 111–203, title X, §1085(1), July 21, 2010, 124 Stat. 2083.)

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111–203 substituted "Bureau" for "Board" in introductory provisions.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Pub. L. 104–208, div. A, title II, §2302(c), Sept. 30, 1996, 110 Stat. 3009–423, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the privilege provided for in section 704A of the Equal Credit Opportunity Act [15 U.S.C. 1691c–1] or section 814A of the Fair Housing Act [42 U.S.C. 3614–1] (as those sections are added by this section) shall apply to a self-test (as that term is defined pursuant to the regulations prescribed under subsection (a)(2) [set out below] or (b)(2) of this section [42 U.S.C. 3614–1 note], as appropriate) conducted before, on, or after the effective date of the regulations prescribed under subsection (a)(2) or (b)(2), as appropriate.

"(2) EXCEPTION.—The privilege referred to in paragraph (1) does not apply to such a self-test conducted before the effective date of the regulations prescribed under subsection (a) or (b), as appropriate, if—

"(A) before that effective date, a complaint against the creditor or person engaged in residential real estate related lending activities (as the case may be) was—

"(i) formally filed in any court of competent jurisdiction; or

"(ii) the subject of an ongoing administrative law proceeding;

"(B) in the case of section 704A of the Equal Credit Opportunity Act, the creditor has waived the privilege pursuant to subsection (b)(1)(A)(i) of that section; or

"(C) in the case of section 814A of the Fair Housing Act, the person engaged in residential real estate related lending activities has waived the privilege pursuant to subsection (b)(1)(A)(i) of that section."

REGULATIONS

Pub. L. 104–208, div. A, title II, §2302(a)(2), Sept. 30, 1996, 110 Stat. 3009–421, provided that:

"(A) IN GENERAL.—Not later than 6 months after the date of enactment of this Act [Sept. 30, 1996], in consultation with the Secretary of Housing and Urban Development and the agencies referred to in section 704 of the Equal Credit Opportunity Act [15 U.S.C. 1691c], and after providing notice and an opportunity for public comment, the Board shall prescribe final regulations to implement section 704A of the Equal Credit Opportunity Act [15 U.S.C. 1691c–1], as added by this section.

"(B) SELF-TEST.—

"(i) DEFINITION.—The regulations prescribed under subparagraph (A) shall include a definition of the term 'self-test' for purposes of section 704A of the Equal Credit Opportunity Act, as added by this section.

"(ii) REQUIREMENT FOR SELF-TEST.—The regulations prescribed under subparagraph (A) shall specify that a self-test shall be sufficiently extensive to constitute a determination of the level and effectiveness of compliance by a creditor with the Equal Credit Opportunity Act [15 U.S.C. 1691 et seq.].

"(iii) SUBSTANTIAL SIMILARITY TO CERTAIN FAIR HOUSING ACT REGULATIONS.—The regulations prescribed under subparagraph (A) shall be substantially similar to the regulations prescribed by the Secretary of Housing and Urban Development to carry out section 814A(d) of the Fair Housing Act [42 U.S.C. 3614–1(d)], as added by this section."

§1691c–2. Small business loan data collection

(a) Purpose

The purpose of this section is to facilitate enforcement of fair lending laws and enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses.

(b) Information gathering

Subject to the requirements of this section, in the case of any application to a financial institution for credit for women-owned, minority-owned, or small business, the financial institution shall—

(1) inquire whether the business is a women-owned, minority-owned, or small business, without regard to whether such application is received in person, by mail, by telephone, by electronic mail or other form of electronic transmission, or by any other means, and whether or not such application is in response to a solicitation by the financial institution; and

(2) maintain a record of the responses to such inquiry, separate from the application and accompanying information.

(c) Right to refuse

Any applicant for credit may refuse to provide any information requested pursuant to subsection (b) in connection with any application for credit.

(d) No access by underwriters

(1) Limitation

Where feasible, no loan underwriter or other officer or employee of a financial institution, or any affiliate of a financial institution, involved in making any determination concerning an application for credit shall have access to any information provided by the applicant pursuant to a request under subsection (b) in connection with such application.

(2) Limited access

If a financial institution determines that a loan underwriter or other officer or employee of a financial institution, or any affiliate of a financial institution, involved in making any determination concerning an application for credit should have access to any information provided by the applicant pursuant to a request under subsection (b), the financial institution shall provide notice to the applicant of the access of the underwriter to such information, along with notice that the financial institution may not discriminate on the basis of such information.

(e) Form and manner of information

(1) In general

Each financial institution shall compile and maintain, in accordance with regulations of the Bureau, a record of the information provided by any loan applicant pursuant to a request under subsection (b).

(2) Itemization

Information compiled and maintained under paragraph (1) shall be itemized in order to clearly and conspicuously disclose—

(A) the number of the application and the date on which the application was received;

(B) the type and purpose of the loan or other credit being applied for;

(C) the amount of the credit or credit limit applied for, and the amount of the credit transaction or the credit limit approved for such applicant;

(D) the type of action taken with respect to such application, and the date of such action;

(E) the census tract in which is located the principal place of business of the women-owned, minority-owned, or small business loan applicant;

(F) the gross annual revenue of the business in the last fiscal year of the women-owned, minority-owned, or small business loan applicant preceding the date of the application;

(G) the race, sex, and ethnicity of the principal owners of the business; and

(H) any additional data that the Bureau determines would aid in fulfilling the purposes of this section.

(3) No personally identifiable information

In compiling and maintaining any record of information under this section, a financial institution may not include in such record the name, specific address (other than the census tract required under paragraph (1)(E)),[1] telephone number, electronic mail address, or any other personally identifiable information concerning any individual who is, or is connected with, the women-owned, minority-owned, or small business loan applicant.

(4) Discretion to delete or modify publicly available data

The Bureau may, at its discretion, delete or modify data collected under this section which is or will be available to the public, if the Bureau determines that the deletion or modification of the data would advance a privacy interest.

(f) Availability of information

(1) Submission to Bureau

The data required to be compiled and maintained under this section by any financial institution shall be submitted annually to the Bureau.

(2) Availability of information

Information compiled and maintained under this section shall be—

(A) retained for not less than 3 years after the date of preparation;

(B) made available to any member of the public, upon request, in the form required under regulations prescribed by the Bureau;

(C) annually made available to the public generally by the Bureau, in such form and in such manner as is determined by the Bureau, by regulation.

(3) Compilation of aggregate data

The Bureau may, at its discretion—

(A) compile and aggregate data collected under this section for its own use; and

(B) make public such compilations of aggregate data.

(g) Bureau action

(1) In general

The Bureau shall prescribe such rules and issue such guidance as may be necessary to carry out, enforce, and compile data pursuant to this section.

(2) Exceptions

The Bureau, by rule or order, may adopt exceptions to any requirement of this section and may, conditionally or unconditionally, exempt any financial institution or class of financial institutions from the requirements of this section, as the Bureau deems necessary or appropriate to carry out the purposes of this section.

(3) Guidance

The Bureau shall issue guidance designed to facilitate compliance with the requirements of this section, including assisting financial institutions in working with applicants to determine whether the applicants are women-owned, minority-owned, or small businesses for purposes of this section.

(h) Definitions

For purposes of this section, the following definitions shall apply:

(1) Financial institution

The term "financial institution" means any partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity that engages in any financial activity.

(2) Small business

The term "small business" has the same meaning as the term "small business concern" in section 632 of this title.

(3) Small business loan

The term "small business loan" means a loan made to a small business.

(4) Minority

The term "minority" has the same meaning as in section 1204(c)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(5) Minority-owned business

The term "minority-owned business" means a business—

(A) more than 50 percent of the ownership or control of which is held by 1 or more minority individuals; and

(B) more than 50 percent of the net profit or loss of which accrues to 1 or more minority individuals.

(6) Women-owned business

The term "women-owned business" means a business—

(A) more than 50 percent of the ownership or control of which is held by 1 or more women; and

(B) more than 50 percent of the net profit or loss of which accrues to 1 or more women.

(Pub. L. 90–321, title VII, §704B, as added Pub. L. 111–203, title X, §1071(a), July 21, 2010, 124 Stat. 2056.)

REFERENCES IN TEXT

Section 1204(c)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, referred to in subsec. (h)(4), is section 1204(c)(3) of Pub. L. 101–73, which is set out as a note under section 1811 of Title 12, Banks and Banking.

EFFECTIVE DATE

Section effective on the designated transfer date, see section 1071(d) of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1691 of this title.

[1] *So in original. Probably should be "(2)(E)),".*

§1691d. Applicability of other laws

(a) Requests for signature of husband and wife for creation of valid lien, etc.

A request for the signature of both parties to a marriage for the purpose of creating a valid lien, passing clear title, waiving inchoate rights to property, or assigning earnings, shall not constitute discrimination under this subchapter: *Provided, however*, That this provision shall not be construed to permit a creditor to take sex or marital status into account in connection with the evaluation of creditworthiness of any applicant.

(b) State property laws affecting creditworthiness

Consideration or application of State property laws directly or indirectly affecting creditworthiness shall not constitute discrimination for purposes of this subchapter.

(c) State laws prohibiting separate extension of consumer credit to husband and wife

Any provision of State law which prohibits the separate extension of consumer credit to each party to a marriage shall not apply in any case where each party to a marriage voluntarily applies for separate credit from the same creditor: *Provided*, That in any case where such a State law is so preempted, each party to the marriage shall be solely responsible for the debt so contracted.

(d) Combining credit accounts of husband and wife with same creditor to determine permissible finance charges or loan ceilings under Federal or State laws

When each party to a marriage separately and voluntarily applies for and obtains separate credit accounts with the same creditor, those accounts shall not be aggregated or otherwise combined for purposes of determining permissible finance charges or permissible loan ceilings under the laws of any State or of the United States.

(e) Election of remedies under subchapter or State law; nature of relief determining applicability

Where the same act or omission constitutes a violation of this subchapter and of applicable State law, a person aggrieved by such conduct may bring a legal action to recover monetary damages either under this subchapter or under such State law, but not both. This election of remedies shall not apply to court actions in which the relief sought does not include monetary damages or to administrative actions.

(f) Compliance with inconsistent State laws; determination of inconsistency

This subchapter does not annul, alter, or affect, or exempt any person subject to the provisions of this subchapter from complying with, the laws of any State with respect to credit discrimination, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency. The Bureau is authorized to determine whether such inconsistencies exist. The Bureau may not determine that any State law is inconsistent with any provision of this subchapter if the Bureau determines that such law gives greater protection to the applicant.

(g) Exemption by regulation of credit transactions covered by State law; failure to comply with State law

The Bureau shall by regulation exempt from the requirements of sections 1691 and 1691a of this title any class of credit transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this subchapter or that such law gives greater protection to the applicant, and that there is adequate provision for enforcement. Failure to comply with any requirement of such State law in any transaction so exempted shall constitute a violation of this subchapter for the purposes of section 1691e of this title.

(Pub. L. 90–321, title VII, §705, as added Pub. L. 93–495, title V, §503, Oct. 28, 1974, 88 Stat. 1523; amended Pub. L. 94–239, §5, Mar. 23, 1976, 90 Stat. 253; Pub. L. 111–203, title X, §1085(1), July 21, 2010, 124 Stat. 2083.)

AMENDMENTS

2010—Subsecs. (f), (g). Pub. L. 111–203 substituted "Bureau" for "Board" wherever appearing.

1976—Subsec. (e). Pub. L. 94–239, §5(1), substituted provisions requiring an election of remedies in legal actions involving the recovery of monetary damages, for provisions specifying a general election of remedies.

Subsecs. (f), (g). Pub. L. 94–239, §5(2), added subsecs. (f) and (g).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–239 effective Mar. 23, 1976, see section 708 of Pub. L. 90–321, set out as an Effective Date note under section 1691 of this title.

§1691e. Civil liability

(a) Individual or class action for actual damages

Any creditor who fails to comply with any requirement imposed under this subchapter shall be liable to the aggrieved applicant for any actual damages sustained by such applicant acting either in an individual capacity or as a member of a class.

(b) Recovery of punitive damages in individual and class action for actual damages; exemptions; maximum amount of punitive damages in individual actions; limitation on total recovery in class actions; factors determining amount of award

Any creditor, other than a government or governmental subdivision or agency, who fails to comply with any requirement imposed under this subchapter shall be liable to the aggrieved applicant for punitive damages in an amount not greater than $10,000, in addition to any actual damages provided in subsection (a) of this section, except that in the case of a class action the total recovery under this subsection shall not exceed the lesser of $500,000 or 1 per centum of the net worth of the creditor. In determining the amount of such damages in any action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's failure of compliance was intentional.

(c) Action for equitable and declaratory relief

Upon application by an aggrieved applicant, the appropriate United States district court or any other court of competent jurisdiction may grant such equitable and declaratory relief as is necessary to enforce the requirements imposed under this subchapter.

(d) Recovery of costs and attorney fees

In the case of any successful action under subsection (a), (b), or (c) of this section, the costs of the action, together with a reasonable attorney's fee as determined by the court, shall be added to any damages awarded by the court under such subsection.

(e) Good faith compliance with rule, regulation, or interpretation of Bureau or interpretation or approval by an official or employee of Bureau of Consumer Financial Protection duly authorized by Bureau

No provision of this subchapter imposing liability shall apply to any act done or omitted in good faith in conformity with any official rule, regulation, or interpretation thereof by the Bureau or in conformity with any interpretation or approval by an official or employee of the Bureau of Consumer

Financial Protection duly authorized by the Bureau to issue such interpretations or approvals under such procedures as the Bureau may prescribe therefor, notwithstanding that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(f) Jurisdiction of courts; time for maintenance of action; exceptions

Any action under this section may be brought in the appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction. No such action shall be brought later than 5 years after the date of the occurrence of the violation, except that—

(1) whenever any agency having responsibility for administrative enforcement under section 1691c of this title commences an enforcement proceeding within 5 years after the date of the occurrence of the violation,

(2) whenever the Attorney General commences a civil action under this section within 5 years after the date of the occurrence of the violation,

then any applicant who has been a victim of the discrimination which is the subject of such proceeding or civil action may bring an action under this section not later than one year after the commencement of that proceeding or action.

(g) Request by responsible enforcement agency to Attorney General for civil action

The agencies having responsibility for administrative enforcement under section 1691c of this title, if unable to obtain compliance with section 1691 of this title, are authorized to refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted. Each agency referred to in paragraphs (1), (2), and (9) of section 1691c(a) of this title shall refer the matter to the Attorney General whenever the agency has reason to believe that 1 or more creditors has engaged in a pattern or practice of discouraging or denying applications for credit in violation of section 1691(a) of this title. Each such agency may refer the matter to the Attorney General whenever the agency has reason to believe that 1 or more creditors has violated section 1691(a) of this title.

(h) Authority for Attorney General to bring civil action; jurisdiction

When a matter is referred to the Attorney General pursuant to subsection (g) of this section, or whenever he has reason to believe that one or more creditors are engaged in a pattern or practice in violation of this subchapter, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including actual and punitive damages and injunctive relief.

(i) Recovery under both subchapter and fair housing enforcement provisions prohibited for violation based on same transaction

No person aggrieved by a violation of this subchapter and by a violation of section 3605 of title 42 shall recover under this subchapter and section 3612 [1] of title 42, if such violation is based on the same transaction.

(j) Discovery of creditor's granting standards

Nothing in this subchapter shall be construed to prohibit the discovery of a creditor's credit granting standards under appropriate discovery procedures in the court or agency in which an action or proceeding is brought.

(k) Notice to HUD of violations

Whenever an agency referred to in paragraph (1), (2), or (3) [1] of section 1691c(a) of this title—

(1) has reason to believe, as a result of receiving a consumer complaint, conducting a consumer compliance examination, or otherwise, that a violation of this subchapter has occurred;

(2) has reason to believe that the alleged violation would be a violation of the Fair Housing Act [42 U.S.C. 3601 et seq.]; and

(3) does not refer the matter to the Attorney General pursuant to subsection (g) of this section,

the agency shall notify the Secretary of Housing and Urban Development of the violation, and shall notify the applicant that the Secretary of Housing and Urban Development has been notified of the alleged violation and that remedies for the violation may be available under the Fair Housing Act.

(Pub. L. 90–321, title VII, §706, as added Pub. L. 93–495, title V, §503, Oct. 28, 1974, 88 Stat. 1524; amended Pub. L. 94–239, §6, Mar. 23, 1976, 90 Stat. 253; Pub. L. 102–242, title II, §223(a)–(c), Dec. 19, 1991, 105 Stat. 2306; Pub. L. 111–203, title X, §1085(1), (5)–(7), July 21, 2010, 124 Stat. 2083, 2085.)

REFERENCES IN TEXT

Section 3612 of title 42, referred to in subsec. (i), which related to enforcement of the Fair Housing Act (42 U.S.C. 3601 et seq.) by private persons, was repealed by Pub. L. 100–430, §8(2), Sept. 13, 1988, 102 Stat. 1625. See section 3613 of Title 42, The Public Health and Welfare.

Paragraph (1), (2), or (3) of section 1691c(a) of this title, referred to in subsec. (k), probably means par. (1), (2), or (3) of section 1691c(a) of this title prior to repeal of pars. (1) and (2), enactment of new pars. (1) and (9), and redesignation of par. (3) as (2) by Pub. L. 111–203, title X, §1085(4)(A)(ii)–(vi), July 21, 2010, 124 Stat. 2084.

The Fair Housing Act, referred to in subsec. (k), is title VIII of Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 81, which is classified principally to subchapter I (§3601 et seq.) of chapter 45 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of Title 42 and Tables.

AMENDMENTS

2010—Subsec. (e). Pub. L. 111–203, §1085(5)(B), substituted "Bureau of Consumer Financial Protection" for "Federal Reserve System" in text.

Pub. L. 111–203, §1085(5)(A), which directed amendment of "subsection heading" by substituting "Bureau" for "Board" wherever appearing and "Bureau of Consumer Financial Protection" for "Federal Reserve System", was executed by making the substitutions in heading that had been supplied editorially, to reflect the probable intent of Congress.

Pub. L. 111–203, §1085(1), substituted "Bureau" for "Board" wherever appearing.

Subsec. (f). Pub. L. 111–203, §1085(7), substituted "5 years after" for "two years from" wherever appearing.

Subsec. (g). Pub. L. 111–203, §1085(6), substituted "(9)" for "(3)".

1991—Subsec. (g). Pub. L. 102–242, §223(a), inserted at end "Each agency referred to in paragraphs (1), (2), and (3) of section 1691c(a) of this title shall refer the matter to the Attorney General whenever the agency has reason to believe that 1 or more creditors has engaged in a pattern or practice of discouraging or denying applications for credit in violation of section 1691(a) of this title. Each such agency may refer the matter to the Attorney General whenever the agency has reason to believe that 1 or more creditors has violated section 1691(a) of this title."

Subsec. (h). Pub. L. 102–242, §223(b), inserted "actual and punitive damages and" after "be appropriate, including".

Subsec. (k). Pub. L. 102–242, §223(c), added subsec. (k).

1976—Subsec. (a). Pub. L. 94–239 substituted reference to member for reference to representative.

Subsec. (b). Pub. L. 94–239 inserted provisions exempting government or governmental subdivision or agency from requirements of this subchapter, incorporated provisions contained in former subsec. (c) relating to recovery in class actions and, as incorporated, raised the total amount of recovery under a class action from $100,000 to $500,000.

Subsec. (c). Pub. L. 94–239 redesignated subsec. (d) as (c) and specified United States district court or other court of competent jurisdiction as court in which to bring action, and substituted provisions authorizing such court to grant equitable and declaratory relief, for provisions authorizing civil actions for preventive relief. Provisions of former subsec. (c) were incorporated into present subsec. (b) and amended.

Subsec. (d). Pub. L. 94–239 redesignated subsec. (e) as (d) and made minor changes in phraseology. Former subsec. (d) redesignated (c) and amended.

Subsec. (e). Pub. L. 94–239 redesignated subsec. (f) as (e) and inserted reference to officially promulgated rule, regulation, or interpretation and provisions relating to approval and interpretations by an official or employee of the Federal Reserve System duly authorized by the Board. Former subsec. (e) redesignated (d)

and amended.

Subsec. (f). Pub. L. 94–239 redesignated subsec. (g) as (f) and inserted provisions which substituted a two year limitation for one year limitation and provisions extending time in which to bring action under enumerated conditions. Former subsec. (f) redesignated (e) and amended.

Subsecs. (g) to (j). Pub. L. 94–239 added subsecs. (g) to (j). Former subsec. (g) redesignated (f) and amended.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–239 effective Mar. 23, 1976, see section 708 of Pub. L. 90–321, set out as an Effective Date note under section 1691 of this title.

[1] See References in Text note below.

§1691f. Annual reports to Congress; contents

Each year, the Bureau and the Attorney General shall, respectively, make reports to the Congress concerning the administration of their functions under this subchapter, including such recommendations as the Bureau and the Attorney General, respectively, deem necessary or appropriate. In addition, each report of the Bureau shall include its assessment of the extent to which compliance with the requirements of this subchapter is being achieved, and a summary of the enforcement actions taken by each of the agencies assigned administrative enforcement responsibilities under section 1691c of this title.

(Pub. L. 90–321, title VII, §707, as added Pub. L. 94–239, §7, Mar. 23, 1976, 90 Stat. 255; amended Pub. L. 96–221, title VI, §610(c), Mar. 31, 1980, 94 Stat. 174; Pub. L. 111–203, title X, §1085(1), July 21, 2010, 124 Stat. 2083.)

AMENDMENTS

2010—Pub. L. 111–203 substituted "Bureau" for "Board" wherever appearing.

1980—Pub. L. 96–221 substituted "Each year" for "Not later than February 1 of each year after 1976".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

EFFECTIVE DATE

Section effective Mar. 23, 1976, see section 708 of Pub. L. 90–321, set out as a note under section 1691 of this title.

SUBCHAPTER V—DEBT COLLECTION PRACTICES

§1692. Congressional findings and declaration of purpose

(a) Abusive practices

There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.

(b) Inadequacy of laws

Existing laws and procedures for redressing these injuries are inadequate to protect consumers.

(c) Available non-abusive collection methods

Means other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts.

(d) Interstate commerce

Abusive debt collection practices are carried on to a substantial extent in interstate commerce and through means and instrumentalities of such commerce. Even where abusive debt collection practices are purely intrastate in character, they nevertheless directly affect interstate commerce.

(e) Purposes

It is the purpose of this subchapter to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

(Pub. L. 90–321, title VIII, §802, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 874.)

EFFECTIVE DATE

Pub. L. 90–321, title VIII, §819, formerly §818, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 883, §818; renumbered §819, Pub. L. 109–351, title VIII, §801(a)(1), Oct. 13, 2006, 120 Stat. 2004, provided that: "This title [enacting this subchapter] takes effect upon the expiration of six months after the date of its enactment [Sept. 20, 1977], but section 809 [section 1692g of this title] shall apply only with respect to debts for which the initial attempt to collect occurs after such effective date."

SHORT TITLE

This subchapter known as the "Fair Debt Collection Practices Act", see Short Title note set out under section 1601 of this title.

§1692a. Definitions

As used in this subchapter—

(1) The term "Bureau" means the Bureau of Consumer Financial Protection.

(2) The term "communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium.

(3) The term "consumer" means any natural person obligated or allegedly obligated to pay any debt.

(4) The term "creditor" means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

(5) The term "debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

(6) The term "debt collector" means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (F) of the

last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of section 1692f(6) of this title, such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. The term does not include—

(A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(B) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;

(C) any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;

(D) any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(E) any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; and

(F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

(7) The term "location information" means a consumer's place of abode and his telephone number at such place, or his place of employment.

(8) The term "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

(Pub. L. 90–321, title VIII, §803, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 875; amended Pub. L. 99–361, July 9, 1986, 100 Stat. 768; Pub. L. 111–203, title X, §1089(2), July 21, 2010, 124 Stat. 2092.)

AMENDMENTS

2010—Par. (1). Pub. L. 111–203 added par. (1) and struck out former par. (1) which read as follows: "The term 'Commission' means the Federal Trade Commission."

1986—Par. (6). Pub. L. 99–361 in provision preceding cl. (A) substituted "clause (F)" for "clause (G)", struck out cl. (F) which excluded any attorney-at-law collecting a debt as an attorney on behalf of and in the name of a client from term "debt collector", and redesignated cl. (G) as (F).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§1692b. Acquisition of location information

Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall—

(1) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;

(2) not state that such consumer owes any debt;

(3) not communicate with any such person more than once unless requested to do so by such

person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;

(4) not communicate by post card;

(5) not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; and

(6) after the debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time to communication from the debt collector.

(Pub. L. 90–321, title VIII, §804, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 876.)

§1692c. Communication in connection with debt collection

(a) Communication with the consumer generally

Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt—

(1) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock antemeridian and before 9 o'clock postmeridian, local time at the consumer's location;

(2) if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; or

(3) at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

(b) Communication with third parties

Except as provided in section 1692b of this title, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

(c) Ceasing communication

If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except—

(1) to advise the consumer that the debt collector's further efforts are being terminated;

(2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or

(3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

If such notice from the consumer is made by mail, notification shall be complete upon receipt.

(d) "Consumer" defined

For the purpose of this section, the term "consumer" includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

(Pub. L. 90–321, title VIII, §805, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 876.)

§1692d. Harassment or abuse

A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.

(2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.

(3) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of section 1681a(f) or 1681b(3) [1] of this title.

(4) The advertisement for sale of any debt to coerce payment of the debt.

(5) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

(6) Except as provided in section 1692b of this title, the placement of telephone calls without meaningful disclosure of the caller's identity.

(Pub. L. 90–321, title VIII, §806, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 877.)

REFERENCES IN TEXT

Section 1681b(3) of this title, referred to in par. (3), was redesignated section 1681b(a)(3) of this title by Pub. L. 104–208, div. A, title II, §2403(a)(1), Sept. 30, 1996, 110 Stat. 3009–430.

[1] *See References in Text note below.*

§1692e. False or misleading representations

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.

(2) The false representation of—

(A) the character, amount, or legal status of any debt; or

(B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

(3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.

(4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

(6) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to—

(A) lose any claim or defense to payment of the debt; or

(B) become subject to any practice prohibited by this subchapter.

(7) The false representation or implication that the consumer committed any crime or other

conduct in order to disgrace the consumer.

(8) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.

(9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval.

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

(11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.

(12) The false representation or implication that accounts have been turned over to innocent purchasers for value.

(13) The false representation or implication that documents are legal process.

(14) The use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization.

(15) The false representation or implication that documents are not legal process forms or do not require action by the consumer.

(16) The false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by section 1681a(f) of this title.

(Pub. L. 90–321, title VIII, §807, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 877; amended Pub. L. 104–208, div. A, title II, §2305(a), Sept. 30, 1996, 110 Stat. 3009–425.)

AMENDMENTS

1996—Par. (11). Pub. L. 104–208 amended par. (11) generally. Prior to amendment, par. (11) read as follows: "Except as otherwise provided for communications to acquire location information under section 1692b of this title, the failure to disclose clearly in all communications made to collect a debt or to obtain information about a consumer, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–208, div. A, title II, §2305(b), Sept. 30, 1996, 110 Stat. 3009–425, provided that: "The amendment made by subsection (a) [amending this section] shall take effect 90 days after the date of enactment of this Act [Sept. 30, 1996] and shall apply to all communications made after that date of enactment."

§1692f. Unfair practices

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

(2) The acceptance by a debt collector from any person of a check or other payment instrument postdated by more than five days unless such person is notified in writing of the debt collector's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit.

(3) The solicitation by a debt collector of any postdated check or other postdated payment

instrument for the purpose of threatening or instituting criminal prosecution.

(4) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.

(5) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.

(6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if—

(A) there is no present right to possession of the property claimed as collateral through an enforceable security interest;

(B) there is no present intention to take possession of the property; or

(C) the property is exempt by law from such dispossession or disablement.

(7) Communicating with a consumer regarding a debt by post card.

(8) Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.

(Pub. L. 90–321, title VIII, §808, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 879.)

§1692g. Validation of debts

(a) Notice of debt; contents

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing—

(1) the amount of the debt;

(2) the name of the creditor to whom the debt is owed;

(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(b) Disputed debts

If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) of this section that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector. Collection activities and communications that do not otherwise violate this subchapter may continue during the 30-day period referred to in subsection (a) unless the consumer has notified the debt collector in writing that the debt, or any portion of the debt, is disputed or that the consumer requests the name and address of the original creditor. Any collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor.

(c) Admission of liability

The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.

(d) Legal pleadings

A communication in the form of a formal pleading in a civil action shall not be treated as an initial communication for purposes of subsection (a).

(e) Notice provisions

The sending or delivery of any form or notice which does not relate to the collection of a debt and is expressly required by title 26, title V of Gramm-Leach-Bliley Act [15 U.S.C. 6801 et seq.], or any provision of Federal or State law relating to notice of data security breach or privacy, or any regulation prescribed under any such provision of law, shall not be treated as an initial communication in connection with debt collection for purposes of this section.

(Pub. L. 90–321, title VIII, §809, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 879; amended Pub. L. 109–351, title VIII, §802, Oct. 13, 2006, 120 Stat. 2006.)

REFERENCES IN TEXT

The Gramm-Leach-Bliley Act, referred to in subsec. (e), is Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1338. Title V of the Act is classified principally to chapter 94 (§ 6801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title of 1999 Amendment note set out under section 1811 of Title 12, Banks and Banking, and Tables.

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–351, §802(c), inserted at end "Collection activities and communications that do not otherwise violate this subchapter may continue during the 30-day period referred to in subsection (a) unless the consumer has notified the debt collector in writing that the debt, or any portion of the debt, is disputed or that the consumer requests the name and address of the original creditor. Any collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor."

Subsec. (d). Pub. L. 109–351, §802(a), added subsec. (d).

Subsec. (e). Pub. L. 109–351, §802(b), added subsec. (e).

EFFECTIVE DATE

Section applicable only with respect to debts for which the initial attempt to collect occurs after the effective date of this subchapter, which takes effect upon the expiration of six months after Sept. 20, 1977, see section 819 of Pub. L. 90–321, set out as a note under section 1692 of this title.

§1692h. Multiple debts

If any consumer owes multiple debts and makes any single payment to any debt collector with respect to such debts, such debt collector may not apply such payment to any debt which is disputed by the consumer and, where applicable, shall apply such payment in accordance with the consumer's directions.

(Pub. L. 90–321, title VIII, §810, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 880.)

§1692i. Legal actions by debt collectors

(a) Venue

Any debt collector who brings any legal action on a debt against any consumer shall—

(1) in the case of an action to enforce an interest in real property securing the consumer's obligation, bring such action only in a judicial district or similar legal entity in which such real property is located; or

(2) in the case of an action not described in paragraph (1), bring such action only in the judicial

district or similar legal entity—

(A) in which such consumer signed the contract sued upon; or

(B) in which such consumer resides at the commencement of the action.

(b) Authorization of actions

Nothing in this subchapter shall be construed to authorize the bringing of legal actions by debt collectors.

(Pub. L. 90–321, title VIII, §811, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 880.)

§1692j. Furnishing certain deceptive forms

(a) It is unlawful to design, compile, and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the collection of or in an attempt to collect a debt such consumer allegedly owes such creditor, when in fact such person is not so participating.

(b) Any person who violates this section shall be liable to the same extent and in the same manner as a debt collector is liable under section 1692k of this title for failure to comply with a provision of this subchapter.

(Pub. L. 90–321, title VIII, §812, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 880.)

§1692k. Civil liability

(a) Amount of damages

Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this subchapter with respect to any person is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of such failure;

(2)(A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding $1,000; or

(B) in the case of a class action, (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of $500,000 or 1 per centum of the net worth of the debt collector; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs.

(b) Factors considered by court

In determining the amount of liability in any action under subsection (a) of this section, the court shall consider, among other relevant factors—

(1) in any individual action under subsection (a)(2)(A) of this section, the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, and the extent to which such noncompliance was intentional; or

(2) in any class action under subsection (a)(2)(B) of this section, the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, the resources of the debt collector, the number of persons adversely affected, and the extent to which the debt collector's noncompliance was intentional.

(c) Intent

A debt collector may not be held liable in any action brought under this subchapter if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted

from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(d) Jurisdiction

An action to enforce any liability created by this subchapter may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs.

(e) Advisory opinions of Bureau

No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any advisory opinion of the Bureau, notwithstanding that after such act or omission has occurred, such opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(Pub. L. 90–321, title VIII, §813, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 881; amended Pub. L. 111–203, title X, §1089(1), July 21, 2010, 124 Stat. 2092.)

AMENDMENTS

2010—Subsec. (e). Pub. L. 111–203 substituted "Bureau" for "Commission".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§1692*l*. Administrative enforcement

(a) Federal Trade Commission

The Federal Trade Commission shall be authorized to enforce compliance with this subchapter, except to the extent that enforcement of the requirements imposed under this subchapter is specifically committed to another Government agency under any of paragraphs (1) through (5) of subsection (b), subject to subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.]. For purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), a violation of this subchapter shall be deemed an unfair or deceptive act or practice in violation of that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person with this subchapter, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act, including the power to enforce the provisions of this subchapter, in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.

(b) Applicable provisions of law

Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance with any requirements imposed under this subchapter shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to—

(A) national banks, Federal savings associations, and Federal branches and Federal agencies of foreign banks;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.]; and

(C) banks and State savings associations insured by the Federal Deposit Insurance

Corporation (other than members of the Federal Reserve System), and insured State branches of foreign banks;

(2) the Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the Administrator of the National Credit Union Administration with respect to any Federal credit union;

(3) subtitle IV of title 49, by the Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board;

(4) part A of subtitle VII of title 49, by the Secretary of Transportation with respect to any air carrier or any foreign air carrier subject to that part;

(5) the Packers and Stockyards Act, 1921 [7 U.S.C. 181 et seq.] (except as provided in section 406 of that Act [7 U.S.C. 226, 227]), by the Secretary of Agriculture with respect to any activities subject to that Act; and

(6) subtitle E of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5561 et seq.], by the Bureau, with respect to any person subject to this subchapter.

The terms used in paragraph (1) that are not defined in this subchapter or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

(c) Agency powers

For the purpose of the exercise by any agency referred to in subsection (b) of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this subchapter shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b) of this section, each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this subchapter any other authority conferred on it by law, except as provided in subsection (d) of this section.

(d) Rules and regulations

Except as provided in section 1029(a) of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5519(a)], the Bureau may prescribe rules with respect to the collection of debts by debt collectors, as defined in this subchapter.

(Pub. L. 90–321, title VIII, §814, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 881; amended Pub. L. 98–443, §9(n), Oct. 4, 1984, 98 Stat. 1708; Pub. L. 101–73, title VII, §744(n), Aug. 9, 1989, 103 Stat. 440; Pub. L. 102–242, title II, §212(e), Dec. 19, 1991, 105 Stat. 2301; Pub. L. 102–550, title XVI, §1604(a)(8), Oct. 28, 1992, 106 Stat. 4082; Pub. L. 104–88, title III, §316, Dec. 29, 1995, 109 Stat. 949; Pub. L. 111–203, title X, §1089(3), (4), July 21, 2010, 124 Stat. 2092, 2093.)

REFERENCES IN TEXT

The Consumer Financial Protection Act of 2010, referred to in subsecs. (a) and (b), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955. Subtitles B (§§1021–1029A) and E (§§1051–1058) of the Act are classified generally to parts B (§5511 et seq.) and E (§5561 et seq.), respectively, of subchapter V of chapter 53 of Title 12, Banks and Banking. For complete classification of subtitles B and E to the Code, see Tables.

The Federal Trade Commission Act, referred to in subsec. (a), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

Sections 25 and 25A of the Federal Reserve Act, referred to in subsec. (b)(1)(B), are classified to subchapters I (§601 et seq.) and II (§611 et seq.), respectively, of chapter 6 of Title 12, Banks and Banking.

The Federal Credit Union Act, referred to in subsec. (b)(2), is act June 26, 1934, ch. 750, 48 Stat. 1216, which is classified generally to chapter 14 (§1751 et seq.) of Title 12. For complete classification of this Act to the Code, see section 1751 of Title 12 and Tables.

The Packers and Stockyards Act, 1921, referred to in subsec. (b)(5), is act Aug. 15, 1921, ch. 64, 42 Stat. 159, which is classified generally to chapter 9 (§181 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 181 of Title 7 and Tables.

CODIFICATION

In subsec. (b)(3), "subtitle IV of title 49" substituted for "the Acts to regulate commerce" on authority of Pub. L. 95–473, §3(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV of Title 49, Transportation.

In subsec. (b)(4), "part A of subtitle VII of title 49" substituted for "the Federal Aviation Act of 1958 [49 App. U.S.C. 1301 et seq.]" and "that part" substituted for "that Act" on authority of Pub. L. 103–272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49.

Section 1089(4) of Pub. L. 111–203, which directed amendment "in subsection (d)" of the Fair Debt Collection Practices Act, was executed in subsec. (d) of this section, which is section 814 of the Act, to reflect the probable intent of Congress. See 2010 Amendment note below.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, §1089(3)(A), added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: "Compliance with this subchapter shall be enforced by the Commission, except to the extent that enforcement of the requirements imposed under this subchapter is specifically committed to another agency under subsection (b) of this section. For purpose of the exercise by the Commission of its functions and powers under the Federal Trade Commission Act, a violation of this subchapter shall be deemed an unfair or deceptive act or practice in violation of that Act. All of the functions and powers of the Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with this subchapter, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act, including the power to enforce the provisions of this subchapter in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule."

Subsec. (b). Pub. L. 111–203, §1089(3)(B)(i), substituted "Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance" for "Compliance" in introductory provisions.

Subsec. (b)(1). Pub. L. 111–203, §1089(3)(B)(ii), added par. (1) and struck out former par. (1) which read as follows: "section 8 of the Federal Deposit Insurance Act, in the case of—

"(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

"(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act, by the Board of Governors of the Federal Reserve System; and

"(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;".

Subsec. (b)(2) to (6). Pub. L. 111–203, §1089(3)(B)(ii)–(vi), added par. (6), redesignated former pars. (3) to (6) as (2) to (5), respectively, and struck out former par. (2) which read as follows: "section 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;".

Subsec. (d). Pub. L. 111–203, §1089(4), substituted "Except as provided in section 1029(a) of the Consumer Financial Protection Act of 2010, the Bureau may prescribe rules with respect to the collection of debts by debt collectors, as defined in this subchapter" for "Neither the Commission nor any other agency referred to in subsection (b) of this section may promulgate trade regulation rules or other regulations with respect to the collection of debts by debt collectors as defined in this subchapter". See Codification note above.

1995—Subsec. (b)(4). Pub. L. 104–88 substituted "Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board" for "Interstate Commerce Commission with respect to any common carrier subject to those Acts".

1992—Subsec. (b)(1)(C). Pub. L. 102–550 substituted semicolon for period at end.

1991—Subsec. (b). Pub. L. 102–242, §212(e)(2), inserted at end "The terms used in paragraph (1) that are not defined in this subchapter or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101)."

Pub. L. 102–242, §212(e)(1), added par. (1) and struck out former par. (1) which read as follows: "section 8 of Federal Deposit Insurance Act, in the case of—

"(A) national banks, by the Comptroller of the Currency;

"(B) member banks of the Federal Reserve System (other than national banks), by the Federal Reserve

Board; and

"(C) banks the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation;".

1989—Subsec. (b)(2). Pub. L. 101–73 amended par. (2) generally. Prior to amendment, par. (2) read as follows: "section 5(d) of the Home Owners Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions;".

1984—Subsec. (b)(5). Pub. L. 98–443 substituted "Secretary of Transportation" for "Civil Aeronautics Board".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98–443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

Functions vested in Administrator of National Credit Union Administration transferred and vested in National Credit Union Administration Board pursuant to section 1752a of Title 12, Banks and Banking.

§1692m. Reports to Congress by the Bureau; views of other Federal agencies

(a) Not later than one year after the effective date of this subchapter and at one-year intervals thereafter, the Bureau shall make reports to the Congress concerning the administration of its functions under this subchapter, including such recommendations as the Bureau deems necessary or appropriate. In addition, each report of the Bureau shall include its assessment of the extent to which compliance with this subchapter is being achieved and a summary of the enforcement actions taken by the Bureau under section 1692l of this title.

(b) In the exercise of its functions under this subchapter, the Bureau may obtain upon request the views of any other Federal agency which exercises enforcement functions under section 1692l of this title.

(Pub. L. 90–321, title VIII, §815, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 882; amended Pub. L. 111–203, title X, §1089(1), July 21, 2010, 124 Stat. 2092.)

REFERENCES IN TEXT

The effective date of this subchapter, referred to in subsec. (a), is the date occurring on expiration of six months after Sept. 20, 1977. See section 819 of Pub. L. 90–321, set out as an Effective Date note under section 1692 of this title.

AMENDMENTS

2010—Pub. L. 111–203 substituted "Bureau" for "Commission" wherever appearing.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L.

111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§1692n. Relation to State laws

This subchapter does not annul, alter, or affect, or exempt any person subject to the provisions of this subchapter from complying with the laws of any State with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency. For purposes of this section, a State law is not inconsistent with this subchapter if the protection such law affords any consumer is greater than the protection provided by this subchapter.

(Pub. L. 90–321, title VIII, §816, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 883.)

§1692*o*. Exemption for State regulation

The Bureau shall by regulation exempt from the requirements of this subchapter any class of debt collection practices within any State if the Bureau determines that under the law of that State that class of debt collection practices is subject to requirements substantially similar to those imposed by this subchapter, and that there is adequate provision for enforcement.

(Pub. L. 90–321, title VIII, §817, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 883; amended Pub. L. 111–203, title X, §1089(1), July 21, 2010, 124 Stat. 2092.)

AMENDMENTS

2010—Pub. L. 111–203 substituted "Bureau" for "Commission" in two places.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§1692p. Exception for certain bad check enforcement programs operated by private entities

(a) In general

(1) Treatment of certain private entities

Subject to paragraph (2), a private entity shall be excluded from the definition of a debt collector, pursuant to the exception provided in section 1692a(6) of this title, with respect to the operation by the entity of a program described in paragraph (2)(A) under a contract described in paragraph (2)(B).

(2) Conditions of applicability

Paragraph (1) shall apply if—

(A) a State or district attorney establishes, within the jurisdiction of such State or district attorney and with respect to alleged bad check violations that do not involve a check described in subsection (b), a pretrial diversion program for alleged bad check offenders who agree to participate voluntarily in such program to avoid criminal prosecution;

(B) a private entity, that is subject to an administrative support services contract with a State or district attorney and operates under the direction, supervision, and control of such State or district attorney, operates the pretrial diversion program described in subparagraph (A); and

(C) in the course of performing duties delegated to it by a State or district attorney under the contract, the private entity referred to in subparagraph (B)—

(i) complies with the penal laws of the State;

(ii) conforms with the terms of the contract and directives of the State or district attorney;

(iii) does not exercise independent prosecutorial discretion;

(iv) contacts any alleged offender referred to in subparagraph (A) for purposes of participating in a program referred to in such paragraph—

(I) only as a result of any determination by the State or district attorney that probable cause of a bad check violation under State penal law exists, and that contact with the alleged offender for purposes of participation in the program is appropriate; and

(II) the alleged offender has failed to pay the bad check after demand for payment, pursuant to State law, is made for payment of the check amount;

(v) includes as part of an initial written communication with an alleged offender a clear and conspicuous statement that—

(I) the alleged offender may dispute the validity of any alleged bad check violation;

(II) where the alleged offender knows, or has reasonable cause to believe, that the alleged bad check violation is the result of theft or forgery of the check, identity theft, or other fraud that is not the result of the conduct of the alleged offender, the alleged offender may file a crime report with the appropriate law enforcement agency; and

(III) if the alleged offender notifies the private entity or the district attorney in writing, not later than 30 days after being contacted for the first time pursuant to clause (iv), that there is a dispute pursuant to this subsection, before further restitution efforts are pursued, the district attorney or an employee of the district attorney authorized to make such a determination makes a determination that there is probable cause to believe that a crime has been committed; and

(vi) charges only fees in connection with services under the contract that have been authorized by the contract with the State or district attorney.

(b) Certain checks excluded

A check is described in this subsection if the check involves, or is subsequently found to involve—

(1) a postdated check presented in connection with a payday loan, or other similar transaction, where the payee of the check knew that the issuer had insufficient funds at the time the check was made, drawn, or delivered;

(2) a stop payment order where the issuer acted in good faith and with reasonable cause in stopping payment on the check;

(3) a check dishonored because of an adjustment to the issuer's account by the financial institution holding such account without providing notice to the person at the time the check was made, drawn, or delivered;

(4) a check for partial payment of a debt where the payee had previously accepted partial payment for such debt;

(5) a check issued by a person who was not competent, or was not of legal age, to enter into a legal contractual obligation at the time the check was made, drawn, or delivered; or

(6) a check issued to pay an obligation arising from a transaction that was illegal in the jurisdiction of the State or district attorney at the time the check was made, drawn, or delivered.

(c) Definitions

For purposes of this section, the following definitions shall apply:

(1) State or district attorney

The term "State or district attorney" means the chief elected or appointed prosecuting attorney in a district, county (as defined in section 2 of title 1), municipality, or comparable jurisdiction, including State attorneys general who act as chief elected or appointed prosecuting attorneys in a district, county (as so defined), municipality or comparable jurisdiction, who may be referred to by

a variety of titles such as district attorneys, prosecuting attorneys, commonwealth's attorneys, solicitors, county attorneys, and state's attorneys, and who are responsible for the prosecution of State crimes and violations of jurisdiction-specific local ordinances.

(2) Check

The term "check" has the same meaning as in section 5002(6) of title 12.

(3) Bad check violation

The term "bad check violation" means a violation of the applicable State criminal law relating to the writing of dishonored checks.

(Pub. L. 90–321, title VIII, §818, as added Pub. L. 109–351, title VIII, §801(a)(2), Oct. 13, 2006, 120 Stat. 2004.)

SUBCHAPTER VI—ELECTRONIC FUND TRANSFERS

§1693. Congressional findings and declaration of purpose

(a) Rights and liabilities undefined

The Congress finds that the use of electronic systems to transfer funds provides the potential for substantial benefits to consumers. However, due to the unique characteristics of such systems, the application of existing consumer protection legislation is unclear, leaving the rights and liabilities of consumers, financial institutions, and intermediaries in electronic fund transfers undefined.

(b) Purposes

It is the purpose of this subchapter to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems. The primary objective of this subchapter, however, is the provision of individual consumer rights.

(Pub. L. 90–321, title IX, §902, as added Pub. L. 95–630, title XX, §2001, Nov. 10, 1978, 92 Stat. 3728; amended Pub. L. 111–203, title X, §1073(a)(1), July 21, 2010, 124 Stat. 2060.)

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–203 inserted "and remittance" after "electronic fund".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE

Pub. L. 90–321, title IX, §923, formerly §921, as added by Pub. L. 95–630, title XX, §2001, Nov. 10, 1978, 92 Stat. 3741, renumbered §922, Pub. L. 111–24, title IV, §401(1), May 22, 2009, 123 Stat. 1751; renumbered §923, Pub. L. 111–203, title X, §1073(a)(3), July 21, 2010, 124 Stat. 2060, provided that: "This title [enacting this subchapter] takes effect upon the expiration of eighteen months from the date of its enactment [Nov. 10, 1978], except that sections 909 and 911 [sections 1693g, 1693i of this title] take effect upon the expiration of ninety days after the date of enactment."

[Pub. L. 111–203, §1073(a)(3), which directed renumbering of section 922 of Pub. L. 90–321 as section 923 effective 1 day after July 21, 2010, was executed after the renumbering of section 921 of Pub. L. 90–321 as section 922 by Pub. L. 111–24, §401(1), effective 15 months after May 22, 2009, to reflect the probable intent of Congress.]

SHORT TITLE

This subchapter known as the "Electronic Fund Transfer Act", see Short Title note set out under section 1601 of this title.

§1693a. Definitions

As used in this subchapter—

(1) the term "accepted card or other means of access" means a card, code, or other means of access to a consumer's account for the purpose of initiating electronic fund transfers when the person to whom such card or other means of access was issued has requested and received or has signed or has used, or authorized another to use, such card or other means of access for the purpose of transferring money between accounts or obtaining money, property, labor, or services;

(2) the term "account" means a demand deposit, savings deposit, or other asset account (other than an occasional or incidental credit balance in an open end credit plan as defined in section 1602(i) [1] of this title), as described in regulations of the Bureau, established primarily for personal, family, or household purposes, but such term does not include an account held by a financial institution pursuant to a bona fide trust agreement;

(4) [2] the term "Board" means the Board of Governors of the Federal Reserve System;

(4) [2] the term "Bureau" means the Bureau of Consumer Financial Protection;

(5) the term "business day" means any day on which the offices of the consumer's financial institution involved in an electronic fund transfer are open to the public for carrying on substantially all of its business functions;

(6) the term "consumer" means a natural person;

(7) the term "electronic fund transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, direct deposits or withdrawals of funds, and transfers initiated by telephone. Such term does not include—

(A) any check guarantee or authorization service which does not directly result in a debit or credit to a consumer's account: [3]

(B) any transfer of funds, other than those processed by automated clearinghouse, made by a financial institution on behalf of a consumer by means of a service that transfers funds held at either Federal Reserve banks or other depository institutions and which is not designed primarily to transfer funds on behalf of a consumer;

(C) any transaction the primary purpose of which is the purchase or sale of securities or commodities through a broker-dealer registered with or regulated by the Securities and Exchange Commission;

(D) any automatic transfer from a savings account to a demand deposit account pursuant to an agreement between a consumer and a financial institution for the purpose of covering an overdraft or maintaining an agreed upon minimum balance in the consumer's demand deposit account; or

(E) any transfer of funds which is initiated by a telephone conversation between a consumer and an officer or employee of a financial institution which is not pursuant to a prearranged plan and under which periodic or recurring transfers are not contemplated;

as determined under regulations of the Bureau;

(8) the term "electronic terminal" means an electronic device, other than a telephone operated by a consumer, through which a consumer may initiate an electronic fund transfer. Such term includes, but is not limited to, point-of-sale terminals, automated teller machines, and cash dispensing machines;

(9) the term "financial institution" means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an account belonging to a consumer;

(10) the term "preauthorized electronic fund transfer" means an electronic fund transfer authorized in advance to recur at substantially regular intervals;

(11) the term "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing; and

(12) the term "unauthorized electronic fund transfer" means an electronic fund transfer from a consumer's account initiated by a person other than the consumer without actual authority to initiate such transfer and from which the consumer receives no benefit, but the term does not include any electronic fund transfer (A) initiated by a person other than the consumer who was furnished with the card, code, or other means of access to such consumer's account by such consumer, unless the consumer has notified the financial institution involved that transfers by such other person are no longer authorized, (B) initiated with fraudulent intent by the consumer or any person acting in concert with the consumer, or (C) which constitutes an error committed by a financial institution.

(Pub. L. 90–321, title IX, §903, as added Pub. L. 95–630, title XX, §2001, Nov. 10, 1978, 92 Stat. 3728; amended Pub. L. 111–203, title X, §1084(1), (2), July 21, 2010, 124 Stat. 2081.)

REFERENCES IN TEXT

Section 1602(i) of this title, referred to in par. (2), was redesignated section 1602(j) of this title by Pub. L. 111–203, title X, §1100A(1)(A), July 21, 2010, 124 Stat. 2107.

AMENDMENTS

2010—Pub. L. 111–203, §1084(1), which directed the substitution of "Bureau" for "Board" wherever appearing, was executed by making the substitution in pars. (2) and (6) but not in par. (3), to reflect the probable intent of Congress.

Par. (3). Pub. L. 111–203, §1084(2)(A), redesignated par. (3) as (4) defining the term "Board".

Par. (4). Pub. L. 111–203, §1084(2)(B), which directed addition of par. (4) defining the term "Bureau" after par. (3), was executed by making the addition after par. (4) defining the term "Board", to reflect the probable intent of Congress.

Pub. L. 111–203, §1084(2)(A), redesignated par. (3) as (4) defining the term "Board". Former par. (4) redesignated (5).

Pars. (5) to (12). Pub. L. 111–203, §1084(2)(A), redesignated pars. (4) to (11) as (5) to (12), respectively.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

[1] See References in Text note below.

[2] So in original. There are two pars. designated "(4)" and no par. (3).

[3] So in original. The colon probably should be a semicolon.

§1693b. Regulations

(a) Prescription by the Bureau and the Board

(1) In general

Except as provided in paragraph (2), the Bureau shall prescribe rules to carry out the purposes of this subchapter.

(2) Authority of the Board

The Board shall have sole authority to prescribe rules—

(A) to carry out the purposes of this subchapter with respect to a person described in section 5519(a) of title 12; and

(B) to carry out the purposes of section 1693o–2 of this title.

In prescribing such regulations, the Board shall:

(1) [1] consult with the other agencies referred to in section 1693o [2] of this title and take into account, and allow for, the continuing evolution of electronic banking services and the technology utilized in such services,

(2) [1] prepare an analysis of economic impact which considers the costs and benefits to financial institutions, consumers, and other users of electronic fund transfers, including the extent to which additional documentation, reports, records, or other paper work would be required, and the effects upon competition in the provision of electronic banking services among large and small financial institutions and the availability of such services to different classes of consumers, particularly low income consumers,

(3) [1] to the extent practicable, the Board shall demonstrate that the consumer protections of the proposed regulations outweigh the compliance costs imposed upon consumers and financial institutions, and

(4) [1] any proposed regulations and accompanying analyses shall be sent promptly to Congress by the Board.

(b) Issuance of model clauses

The Bureau shall issue model clauses for optional use by financial institutions to facilitate compliance with the disclosure requirements of section 1693c of this title and to aid consumers in understanding the rights and responsibilities of participants in electronic fund transfers by utilizing readily understandable language. Such model clauses shall be adopted after notice duly given in the Federal Register and opportunity for public comment in accordance with section 553 of title 5. With respect to the disclosures required by section 1693c(a)(3) and (4) of this title, the Bureau shall take account of variations in the services and charges under different electronic fund transfer systems and, as appropriate, shall issue alternative model clauses for disclosure of these differing account terms.

(c) Criteria; modification of requirements

Regulations prescribed hereunder may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of electronic fund transfers or remittance transfers, as in the judgment of the Bureau are necessary or proper to effectuate the purposes of this subchapter, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. The Bureau shall by regulation modify the requirements imposed by this subchapter on small financial institutions if the Bureau determines that such modifications are necessary to alleviate any undue compliance burden on small financial institutions and such modifications are consistent with the purpose and objective of this subchapter.

(d) Applicability to service providers other than certain financial institutions

(1) In general

If electronic fund transfer services are made available to consumers by a person other than a financial institution holding a consumer's account, the Bureau shall by regulation assure that the disclosures, protections, responsibilities, and remedies created by this subchapter are made applicable to such persons and services.

(2) State and local government electronic benefit transfer systems

(A) "Electronic benefit transfer system" defined

In this paragraph, the term "electronic benefit transfer system"—

(i) means a system under which a government agency distributes needs-tested benefits by establishing accounts that may be accessed by recipients electronically, such as through automated teller machines or point-of-sale terminals; and

(ii) does not include employment-related payments, including salaries and pension, retirement, or unemployment benefits established by a Federal, State, or local government agency.

(B) Exemption generally

The disclosures, protections, responsibilities, and remedies established under this subchapter, and any regulation prescribed or order issued by the Bureau in accordance with this subchapter, shall not apply to any electronic benefit transfer system established under State or local law or administered by a State or local government.

(C) Exception for direct deposit into recipient's account

Subparagraph (B) shall not apply with respect to any electronic funds transfer under an electronic benefit transfer system for a deposit directly into a consumer account held by the recipient of the benefit.

(D) Rule of construction

No provision of this paragraph—

(i) affects or alters the protections otherwise applicable with respect to benefits established by any other provision [3] Federal, State, or local law; or

(ii) otherwise supersedes the application of any State or local law.

(3) Fee disclosures at automated teller machines

(A) In general

The regulations prescribed under paragraph (1) shall require any automated teller machine operator who imposes a fee on any consumer for providing host transfer services to such consumer to provide notice in accordance with subparagraph (B) to the consumer (at the time the service is provided) of—

(i) the fact that a fee is imposed by such operator for providing the service; and

(ii) the amount of any such fee.

(B) Notice requirement

The notice required under clauses (i) and (ii) of subparagraph (A) with respect to any fee described in such subparagraph shall appear on the screen of the automated teller machine, or on a paper notice issued from such machine, after the transaction is initiated and before the consumer is irrevocably committed to completing the transaction.

(C) Prohibition on fees not properly disclosed and explicitly assumed by consumer

No fee may be imposed by any automated teller machine operator in connection with any electronic fund transfer initiated by a consumer for which a notice is required under subparagraph (A), unless—

(i) the consumer receives such notice in accordance with subparagraph (B); and

(ii) the consumer elects to continue in the manner necessary to effect the transaction after receiving such notice.

(D) Definitions

For purposes of this paragraph, the following definitions shall apply:

(i) Automated teller machine operator

The term "automated teller machine operator" means any person who—

(I) operates an automated teller machine at which consumers initiate electronic fund transfers; and

(II) is not the financial institution that holds the account of such consumer from which the transfer is made.

(ii) Electronic fund transfer

The term "electronic fund transfer" includes a transaction that involves a balance inquiry initiated by a consumer in the same manner as an electronic fund transfer, whether or not the consumer initiates a transfer of funds in the course of the transaction.

(iii) Host transfer services

The term "host transfer services" means any electronic fund transfer made by an automated

teller machine operator in connection with a transaction initiated by a consumer at an automated teller machine operated by such operator.

(e) Deference

No provision of this subchapter may be construed as altering, limiting, or otherwise affecting the deference that a court affords to—

(1) the Bureau in making determinations regarding the meaning or interpretation of any provision of this subchapter for which the Bureau has authority to prescribe regulations; or

(2) the Board in making determinations regarding the meaning or interpretation of section 1693o–2 of this title.

(Pub. L. 90–321, title IX, §904, as added Pub. L. 95–630, title XX, §2001, Nov. 10, 1978, 92 Stat. 3730; amended Pub. L. 104–193, title VIII, §891, title IX, §907, Aug. 22, 1996, 110 Stat. 2346, 2350; Pub. L. 106–102, title VII, §702, Nov. 12, 1999, 113 Stat. 1463; Pub. L. 111–203, title X, §§1073(a)(2), 1084(1), (3), July 21, 2010, 124 Stat. 2060, 2081; Pub. L. 112–216, §1, Dec. 20, 2012, 126 Stat. 1590.)

REFERENCES IN TEXT

Section 1693o of this title, referred to in subsec. (a)(1), was in the original "section 917", and was translated as meaning section 918 of Pub. L. 90–321 to reflect the probable intent of Congress and the renumbering of section 917 of Pub. L. 90–321 as section 918 by Pub. L. 111–24, title IV, §401, May 22, 2009, 123 Stat. 1751.

AMENDMENTS

2012—Subsec. (d)(3)(B). Pub. L. 112–216, in subpar. heading, substituted "requirement" for "requirements" and, in text, substituted "The notice required under clauses (i) and (ii)" for

"(i) ON THE MACHINE.—The notice required under clause (i) of subparagraph (A) with respect to any fee described in such subparagraph shall be posted in a prominent and conspicuous location on or at the automated teller machine at which the electronic fund transfer is initiated by the consumer.

"(ii) ON THE SCREEN.—The notice required under clauses (i) and (ii)"

and struck out ", except that during the period beginning on November 12, 1999, and ending on December 31, 2004, this clause shall not apply to any automated teller machine that lacks the technical capability to disclose the notice on the screen or to issue a paper notice after the transaction is initiated and before the consumer is irrevocably committed to completing the transaction" after "completing the transaction".

2010—Pub. L. 111–203, §1084(1), substituted "Bureau" for "Board" wherever appearing in subsecs. (b) to (d).

Subsec. (a). Pub. L. 111–203, §1084(3)(A), substituted "Prescription by the Bureau and the Board" for "Prescription by Board" in heading that had been supplied editorially and substituted initial pars. (1) and (2), relating to the Bureau's prescription of rules and authority of the Board, for first sentence of former introductory provisions which read as follows: "The Board shall prescribe regulations to carry out the purposes of this subchapter." Second sentence of former introductory provisions was redesignated as concluding provisions of par. (2) to reflect the probable intent of Congress.

Subsec. (c). Pub. L. 111–203, §1073(a)(2), inserted "or remittance transfers" after "electronic fund transfers".

Subsec. (e). Pub. L. 111–203, §1084(3)(B), added subsec. (e).

1999—Subsec. (d)(3). Pub. L. 106–102 added par. (3).

1996—Subsec. (d). Pub. L. 104–193, §907, which directed the amendment of subsec. (d), was not executed because of similar amendment by Pub. L. 104–193, §891. See below. Section 907 of Pub. L. 104–193 provided that subsec. (d) was to be amended by inserting subsec. (d) heading, by designating existing provisions as par. (1) and inserting heading, and by adding a new par. (2) reading as follows:

"(2) STATE AND LOCAL GOVERNMENT ELECTRONIC BENEFIT TRANSFER PROGRAMS.—

"(A) EXEMPTION GENERALLY.—The disclosures, protections, responsibilities, and remedies established under this subchapter, and any regulation prescribed or order issued by the Board in accordance with this subchapter, shall not apply to any electronic benefit transfer program established under State or local law or administered by a State or local government.

"(B) EXCEPTION FOR DIRECT DEPOSIT INTO RECIPIENT'S ACCOUNT.—Subparagraph (A) shall not apply with respect to any electronic funds transfer under an electronic benefit transfer program for deposits directly into a consumer account held by the recipient of the benefit.

"(C) RULE OF CONSTRUCTION.—No provision of this paragraph may be construed as—

"(i) affecting or altering the protections otherwise applicable with respect to benefits established by Federal, State, or local law; or

"(ii) otherwise superseding the application of any State or local law.

"(D) ELECTRONIC BENEFIT TRANSFER PROGRAM DEFINED.—For purposes of this paragraph, the term 'electronic benefit transfer program'—

"(i) means a program under which a government agency distributes needs-tested benefits by establishing accounts to be accessed by recipients electronically, such as through automated teller machines, or point-of-sale terminals; and

"(ii) does not include employment-related payments, including salaries and pension, retirement, or unemployment benefits established by Federal, State, or local governments."

Pub. L. 104–193, §891, designated existing provisions as par. (1), inserted subsec. heading and par. (2), and substituted "If" for "In the event that".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 1073(a)(2) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Amendment by section 1084(1), (3) of Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

[1] So in original. See 2010 Amendment note below.

[2] See References in Text note below.

[3] So in original. Probably should be followed by "of".

§1693c. Terms and conditions of transfers

(a) Disclosures; time; form; contents

The terms and conditions of electronic fund transfers involving a consumer's account shall be disclosed at the time the consumer contracts for an electronic fund transfer service, in accordance with regulations of the Bureau. Such disclosures shall be in readily understandable language and shall include, to the extent applicable—

(1) the consumer's liability for unauthorized electronic fund transfers and, at the financial institution's option, notice of the advisability of prompt reporting of any loss, theft, or unauthorized use of a card, code, or other means of access;

(2) the telephone number and address of the person or office to be notified in the event the consumer believes than [1] an unauthorized electronic fund transfer has been or may be effected;

(3) the type and nature of electronic fund transfers which the consumer may initiate, including any limitations on the frequency or dollar amount of such transfers, except that the details of such limitations need not be disclosed if their confidentiality is necessary to maintain the security of an electronic fund transfer system, as determined by the Bureau;

(4) any charges for electronic fund transfers or for the right to make such transfers;

(5) the consumer's right to stop payment of a preauthorized electronic fund transfer and the procedure to initiate such a stop payment order;

(6) the consumer's right to receive documentation of electronic fund transfers under section 1693d of this title;

(7) a summary, in a form prescribed by regulations of the Bureau, of the error resolution provisions of section 1693f of this title and the consumer's rights thereunder. The financial institution shall thereafter transmit such summary at least once per calendar year;

(8) the financial institution's liability to the consumer under section 1693h of this title;

(9) under what circumstances the financial institution will in the ordinary course of business

disclose information concerning the consumer's account to third persons; and

(10) a notice to the consumer that a fee may be imposed by—

(A) an automated teller machine operator (as defined in section 1693b(d)(3)(D)(i) of this title) if the consumer initiates a transfer from an automated teller machine that is not operated by the person issuing the card or other means of access; and

(B) any national, regional, or local network utilized to effect the transaction.

(b) Notification of changes to consumer

A financial institution shall notify a consumer in writing at least twenty-one days prior to the effective date of any change in any term or condition of the consumer's account required to be disclosed under subsection (a) of this section if such change would result in greater cost or liability for such consumer or decreased access to the consumer's account. A financial institution may, however, implement a change in the terms or conditions of an account without prior notice when such change is immediately necessary to maintain or restore the security of an electronic fund transfer system or a consumer's account. Subject to subsection (a)(3) of this section, the Bureau shall require subsequent notification if such a change is made permanent.

(c) Time for disclosures respecting accounts accessible prior to effective date of this subchapter

For any account of a consumer made accessible to electronic fund transfers prior to the effective date of this subchapter, the information required to be disclosed to the consumer under subsection (a) of this section shall be disclosed not later than the earlier of—

(1) the first periodic statement required by section 1693d(c) of this title after the effective date of this subchapter; or

(2) thirty days after the effective date of this subchapter.

(Pub. L. 90–321, title IX, §905, as added Pub. L. 95–630, title XX, §2001, Nov. 10, 1978, 92 Stat. 3730; amended Pub. L. 106–102, title VII, §703, Nov. 12, 1999, 113 Stat. 1464; Pub. L. 111–203, title X, §1084(1), July 21, 2010, 124 Stat. 2081.)

REFERENCES IN TEXT

For effective date of this subchapter, referred to in subsec. (c), see section 921 of Pub. L. 90–321, set out as an Effective Date note under section 1693 of this title.

AMENDMENTS

2010—Subsecs. (a), (b). Pub. L. 111–203 substituted "Bureau" for "Board" wherever appearing.

1999—Subsec. (a)(10). Pub. L. 106–102 added par. (10).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

[1] *So in original. Probably should be "that".*

§1693d. Documentation of transfers

(a) Availability of written documentation to consumer; contents

For each electronic fund transfer initiated by a consumer from an electronic terminal, the financial institution holding such consumer's account shall, directly or indirectly, at the time the transfer is initiated, make available to the consumer written documentation of such transfer. The documentation shall clearly set forth to the extent applicable—

(1) the amount involved and date the transfer is initiated;

(2) the type of transfer;

(3) the identity of the consumer's account with the financial institution from which or to which funds are transferred;

(4) the identity of any third party to whom or from whom funds are transferred; and

(5) the location or identification of the electronic terminal involved.

(b) Notice of credit to consumer

For a consumer's account which is scheduled to be credited by a preauthorized electronic fund transfer from the same payor at least once in each successive sixty-day period, except where the payor provides positive notice of the transfer to the consumer, the financial institution shall elect to provide promptly either positive notice to the consumer when the credit is made as scheduled, or negative notice to the consumer when the credit is not made as scheduled, in accordance with regulations of the Bureau. The means of notice elected shall be disclosed to the consumer in accordance with section 1693c of this title.

(c) Periodic statement; contents

A financial institution shall provide each consumer with a periodic statement for each account of such consumer that may be accessed by means of an electronic fund transfer. Except as provided in subsections (d) and (e) of this section, such statement shall be provided at least monthly for each monthly or shorter cycle in which an electronic fund transfer affecting the account has occurred, or every three months, whichever is more frequent. The statement, which may include information regarding transactions other than electronic fund transfers, shall clearly set forth—

(1) with regard to each electronic fund transfer during the period, the information described in subsection (a) of this section, which may be provided on an accompanying document;

(2) the amount of any fee or charge assessed by the financial institution during the period for electronic fund transfers or for account maintenance;

(3) the balances in the consumer's account at the beginning of the period and at the close of the period; and

(4) the address and telephone number to be used by the financial institution for the purpose of receiving any statement inquiry or notice of account error from the consumer. Such address and telephone number shall be preceded by the caption "Direct Inquiries To:" or other similar language indicating that the address and number are to be used for such inquiries or notices.

(d) Consumer passbook accounts

In the case of a consumer's passbook account which may not be accessed by electronic fund transfers other than preauthorized electronic fund transfers crediting the account, a financial institution may, in lieu of complying with the requirements of subsection (c) of this section, upon presentation of the passbook provide the consumer in writing with the amount and date of each such transfer involving the account since the passbook was last presented.

(e) Accounts other than passbook accounts

In the case of a consumer's account, other than a passbook account, which may not be accessed by electronic fund transfers other than preauthorized electronic fund transfers crediting the account, the financial institution may provide a periodic statement on a quarterly basis which otherwise complies with the requirements of subsection (c) of this section.

(f) Documentation as evidence

In any action involving a consumer, any documentation required by this section to be given to the consumer which indicates that an electronic fund transfer was made to another person shall be admissible as evidence of such transfer and shall constitute prima facie proof that such transfer was made.

(Pub. L. 90–321, title IX, §906, as added Pub. L. 95–630, title XX, §2001, Nov. 10, 1978, 92 Stat. 3731; amended Pub. L. 111–203, title X, §1084(1), July 21, 2010, 124 Stat. 2081.)

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–203 substituted "Bureau" for "Board".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§1693e. Preauthorized transfers

(a) A preauthorized electronic fund transfer from a consumer's account may be authorized by the consumer only in writing, and a copy of such authorization shall be provided to the consumer when made. A consumer may stop payment of a preauthorized electronic fund transfer by notifying the financial institution orally or in writing at any time up to three business days preceding the scheduled date of such transfer. The financial institution may require written confirmation to be provided to it within fourteen days of an oral notification if, when the oral notification is made, the consumer is advised of such requirement and the address to which such confirmation should be sent.

(b) In the case of preauthorized transfers from a consumer's account to the same person which may vary in amount, the financial institution or designated payee shall, prior to each transfer, provide reasonable advance notice to the consumer, in accordance with regulations of the Bureau, of the amount to be transferred and the scheduled date of the transfer.

(Pub. L. 90–321, title IX, §907, as added Pub. L. 95–630, title XX, §2001, Nov. 10, 1978, 92 Stat. 3733; amended Pub. L. 111–203, title X, §1084(1), July 21, 2010, 124 Stat. 2081.)

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–203 substituted "Bureau" for "Board".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§1693f. Error resolution

(a) Notification to financial institution of error

If a financial institution, within sixty days after having transmitted to a consumer documentation pursuant to section 1693d(a), (c), or (d) of this title or notification pursuant to section 1693d(b) of this title, receives oral or written notice in which the consumer—

(1) sets forth or otherwise enables the financial institution to identify the name and account number of the consumer;

(2) indicates the consumer's belief that the documentation, or, in the case of notification pursuant to section 1693d(b) of this title, the consumer's account, contains an error and the amount of such error; and

(3) sets forth the reasons for the consumer's belief (where applicable) that an error has occurred,

the financial institution shall investigate the alleged error, determine whether an error has occurred, and report or mail the results of such investigation and determination to the consumer within ten business days. The financial institution may require written confirmation to be provided to it within ten business days of an oral notification of error if, when the oral notification is made, the consumer is advised of such requirement and the address to which such confirmation should be sent. A financial institution which requires written confirmation in accordance with the previous sentence need not provisionally recredit a consumer's account in accordance with subsection (c) of this section, nor shall the financial institution be liable under subsection (e) of this section if the written confirmation is not received within the ten-day period referred to in the previous sentence.

(b) Correction of error; interest

If the financial institution determines that an error did occur, it shall promptly, but in no event more than one business day after such determination, correct the error, subject to section 1693g of this title, including the crediting of interest where applicable.

(c) Provisional recredit of consumer's account

If a financial institution receives notice of an error in the manner and within the time period

specified in subsection (a) of this section, it may, in lieu of the requirements of subsections (a) and (b) of this section, within ten business days after receiving such notice provisionally recredit the consumer's account for the amount alleged to be in error, subject to section 1693g of this title, including interest where applicable, pending the conclusion of its investigation and its determination of whether an error has occurred. Such investigation shall be concluded not later than forty-five days after receipt of notice of the error. During the pendency of the investigation, the consumer shall have full use of the funds provisionally recredited.

(d) Absence of error; finding; explanation

If the financial institution determines after its investigation pursuant to subsection (a) or (c) of this section that an error did not occur, it shall deliver or mail to the consumer an explanation of its findings within 3 business days after the conclusion of its investigation, and upon request of the consumer promptly deliver or mail to the consumer reproductions of all documents which the financial institution relied on to conclude that such error did not occur. The financial institution shall include notice of the right to request reproductions with the explanation of its findings.

(e) Treble damages

If in any action under section 1693m [1] of this title, the court finds that—

(1) the financial institution did not provisionally recredit a consumer's account within the ten-day period specified in subsection (c) of this section, and the financial institution (A) did not make a good faith investigation of the alleged error, or (B) did not have a reasonable basis for believing that the consumer's account was not in error; or

(2) the financial institution knowingly and willfully concluded that the consumer's account was not in error when such conclusion could not reasonably have been drawn from the evidence available to the financial institution at the time of its investigation,

then the consumer shall be entitled to treble damages determined under section 1693m(a)(1) [1] of this title.

(f) Acts constituting error

For the purpose of this section, an error consists of—

(1) an unauthorized electronic fund transfer;

(2) an incorrect electronic fund transfer from or to the consumer's account;

(3) the omission from a periodic statement of an electronic fund transfer affecting the consumer's account which should have been included;

(4) a computational error by the financial institution;

(5) the consumer's receipt of an incorrect amount of money from an electronic terminal;

(6) a consumer's request for additional information or clarification concerning an electronic fund transfer or any documentation required by this subchapter; or

(7) any other error described in regulations of the Bureau.

(Pub. L. 90–321, title IX, §908, as added Pub. L. 95–630, title XX, §2001, Nov. 10, 1978, 92 Stat. 3733; amended Pub. L. 111–203, title X, §1084(1), July 21, 2010, 124 Stat. 2081.)

REFERENCES IN TEXT

Section 1693m of this title, referred to in subsec. (e), was in the original a reference to section 915 of Pub. L. 90–321, and was translated as meaning section 916 of Pub. L. 90–321 to reflect the probable intent of Congress and the renumbering of section 915 of Pub. L. 90–321 as section 916 by Pub. L. 111–24, title IV, §401(1), May 22, 2009, 123 Stat. 1751.

AMENDMENTS

2010—Subsec. (f)(7). Pub. L. 111–203 substituted "Bureau" for "Board".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

[1] *See References in Text note below.*

§1693g. Consumer liability

(a) Unauthorized electronic fund transfers; limit

A consumer shall be liable for any unauthorized electronic fund transfer involving the account of such consumer only if the card or other means of access utilized for such transfer was an accepted card or other meanas [1] of access and if the issuer of such card, code, or other means of access has provided a means whereby the user of such card, code, or other means of access can be identified as the person authorized to use it, such as by signature, photograph, or fingerprint or by electronic or mechanical confirmation. In no event, however, shall a consumer's liability for an unauthorized transfer exceed the lesser of—

(1) $50; or

(2) the amount of money or value of property or services obtained in such unauthorized electronic fund transfer prior to the time the financial institution is notified of, or otherwise becomes aware of, circumstances which lead to the reasonable belief that an unauthorized electronic fund transfer involving the consumer's account has been or may be effected. Notice under this paragraph is sufficient when such steps have been taken as may be reasonably required in the ordinary course of business to provide the financial institution with the pertinent information, whether or not any particular officer, employee, or agent of the financial institution does in fact receive such information.

Notwithstanding the foregoing, reimbursement need not be made to the consumer for losses the financial institution establishes would not have occurred but for the failure of the consumer to report within sixty days of transmittal of the statement (or in extenuating circumstances such as extended travel or hospitalization, within a reasonable time under the circumstances) any unauthorized electronic fund transfer or account error which appears on the periodic statement provided to the consumer under section 1693d of this title. In addition, reimbursement need not be made to the consumer for losses which the financial institution establishes would not have occurred but for the failure of the consumer to report any loss or theft of a card or other means of access within two business days after the consumer learns of the loss or theft (or in extenuating circumstances such as extended travel or hospitalization, within a longer period which is reasonable under the circumstances), but the consumer's liability under this subsection in any such case may not exceed a total of $500, or the amount of unauthorized electronic fund transfers which occur following the close of two business days (or such longer period) after the consumer learns of the loss or theft but prior to notice to the financial institution under this subsection, whichever is less.

(b) Burden of proof

In any action which involves a consumer's liability for an unauthorized electronic fund transfer, the burden of proof is upon the financial institution to show that the electronic fund transfer was authorized or, if the electronic fund transfer was unauthorized, then the burden of proof is upon the financial institution to establish that the conditions of liability set forth in subsection (a) of this section have been met, and, if the transfer was initiated after the effective date of section 1693c of this title, that the disclosures required to be made to the consumer under section 1693c(a)(1) and (2) of this title were in fact made in accordance with such section.

(c) Determination of limitation on liability

In the event of a transaction which involves both an unauthorized electronic fund transfer and an extension of credit as defined in section 1602(e) [2] of this title pursuant to an agreement between the consumer and the financial institution to extend such credit to the consumer in the event the consumer's account is overdrawn, the limitation on the consumer's liability for such transaction shall be determined solely in accordance with this section.

(d) Restriction on liability

Nothing in this section imposes liability upon a consumer for an unauthorized electronic fund transfer in excess of his liability for such a transfer under other applicable law or under any agreement with the consumer's financial institution.

(e) Scope of liability

Except as provided in this section, a consumer incurs no liability from an unauthorized electronic fund transfer.

(Pub. L. 90–321, title IX, §909, as added Pub. L. 95–630, title XX, §2001, Nov. 10, 1978, 92 Stat. 3734.)

REFERENCES IN TEXT

Section 1602(e) of this title, referred to in subsec. (c), was redesignated section 1602(f) of this title by Pub. L. 111–203, title X, §1100A(1)(A), July 21, 2010, 124 Stat. 2107.

[1] *So in original. Probably should be "means".*

[2] *See References in Text note below.*

§1693h. Liability of financial institutions

(a) Action or failure to act proximately causing damages

Subject to subsections (b) and (c) of this section, a financial institution shall be liable to a consumer for all damages proximately caused by—

(1) the financial institution's failure to make an electronic fund transfer, in accordance with the terms and conditions of an account, in the correct amount or in a timely manner when properly instructed to do so by the consumer, except where—

(A) the consumer's account has insufficient funds;

(B) the funds are subject to legal process or other encumbrance restricting such transfer;

(C) such transfer would exceed an established credit limit;

(D) an electronic terminal has insufficient cash to complete the transaction; or

(E) as otherwise provided in regulations of the Bureau;

(2) the financial institution's failure to make an electronic fund transfer due to insufficient funds when the financal [1] institution failed to credit, in accordance with the terms and conditions of an account, a deposit of funds to the consumer's account which would have provided sufficient funds to make the transfer, and

(3) the financial institution's failure to stop payment of a preauthorized transfer from a consumer's account when instructed to do so in accordance with the terms and conditions of the account.

(b) Acts of God and technical malfunctions

A financial institution shall not be liable under subsection (a)(1) or (2) of this section if the financial institution shows by a preponderance of the evidence that its action or failure to act resulted from—

(1) an act of God or other circumstance beyond its control, that it exercised reasonable care to prevent such an occurrence, and that it exercised such diligence as the circumstances required; or

(2) a technical malfunction which was known to the consumer at the time he attempted to initiate an electronic fund transfer or, in the case of a preauthorized transfer, at the time such transfer should have occurred.

(c) Intent

In the case of a failure described in subsection (a) of this section which was not intentional and

which resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error, the financial institution shall be liable for actual damages proved.

(d) Exception for damaged notices

If the notice required to be posted pursuant to section 1693b(d)(3)(B)(i) of this title by an automated teller machine operator has been posted by such operator in compliance with such section and the notice is subsequently removed, damaged, or altered by any person other than the operator of the automated teller machine, the operator shall have no liability under this section for failure to comply with section 1693b(d)(3)(B)(i) of this title.

(Pub. L. 90–321, title IX, §910, as added Pub. L. 95–630, title XX, §2001, Nov. 10, 1978, 92 Stat. 3735; amended Pub. L. 106–102, title VII, §705, Nov. 12, 1999, 113 Stat. 1465; Pub. L. 111–203, title X, §1084(1), July 21, 2010, 124 Stat. 2081.)

AMENDMENTS

2010—Subsec. (a)(1)(E). Pub. L. 111–203 substituted "Bureau" for "Board".
1999—Subsec. (d). Pub. L. 106–102 added subsec. (d).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

[1] *So in original. Probably should be "financial".*

§1693i. Issuance of cards or other means of access

(a) Prohibition; proper issuance

No person may issue to a consumer any card, code, or other means of access to such consumer's account for the purpose of initiating an electronic fund transfer other than—

(1) in response to a request or application therefor; or

(2) as a renewal of, or in substitution for, an accepted card, code, or other means of access, whether issued by the initial issuer or a successor.

(b) Exceptions

Notwithstanding the provisions of subsection (a) of this section, a person may distribute to a consumer on an unsolicited basis a card, code, or other means of access for use in initiating an electronic fund transfer from such consumer's account, if—

(1) such card, code, or other means of access is not validated;

(2) such distribution is accompanied by a complete disclosure, in accordance with section 1693c of this title, of the consumer's rights and liabilities which will apply if such card, code, or other means of access is validated;

(3) such distribution is accompanied by a clear explanation, in accordance with regulations of the Bureau, that such card, code, or other means of access is not validated and how the consumer may dispose of such code, card, or other means of access if validation is not desired; and

(4) such card, code, or other means of access is validated only in response to a request or application from the consumer, upon verification of the consumer's identity.

(c) Validation

For the purpose of subsection (b) of this section, a card, code, or other means of access is validated when it may be used to initiate an electronic fund transfer.

(Pub. L. 90–321, title IX, §911, as added Pub. L. 95–630, title XX, §2001, Nov. 10, 1978, 92 Stat. 3736; amended Pub. L. 111–203, title X, §1084(1), July 21, 2010, 124 Stat. 2081.)

AMENDMENTS

2010—Subsec. (b)(3). Pub. L. 111–203 substituted "Bureau" for "Board".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§1693j. Suspension of obligations

If a system malfunction prevents the effectuation of an electronic fund transfer initiated by a consumer to another person, and such other person has agreed to accept payment by such means, the consumer's obligation to the other person shall be suspended until the malfunction is corrected and the electronic fund transfer may be completed, unless such other person has subsequently, by written request, demanded payment by means other than an electronic fund transfer.

(Pub. L. 90–321, title IX, §912, as added Pub. L. 95–630, title XX, §2001, Nov. 10, 1978, 92 Stat. 3737.)

§1693k. Compulsory use of electronic fund transfers

No person may—

(1) condition the extension of credit to a consumer on such consumer's repayment by means of preauthorized electronic fund transfers; or

(2) require a consumer to establish an account for receipt of electronic fund transfers with a particular financial institution as a condition of employment or receipt of a government benefit.

(Pub. L. 90–321, title IX, §913, as added Pub. L. 95–630, title XX, §2001, Nov. 10, 1978, 92 Stat. 3737.)

§1693*l*. Waiver of rights

No writing or other agreement between a consumer and any other person may contain any provision which constitutes a waiver of any right conferred or cause of action created by this subchapter. Nothing in this section prohibits, however, any writing or other agreement which grants to a consumer a more extensive right or remedy or greater protection than contained in this subchapter or a waiver given in settlement of a dispute or action.

(Pub. L. 90–321, title IX, §914, as added Pub. L. 95–630, title XX, §2001, Nov. 10, 1978, 92 Stat. 3737.)

§1693*l*–1. General-use prepaid cards, gift certificates, and store gift cards

(a) Definitions

In this section, the following definitions shall apply:

(1) Dormancy fee; inactivity charge or fee

The terms "dormancy fee" and "inactivity charge or fee" mean a fee, charge, or penalty for non-use or inactivity of a gift certificate, store gift card, or general-use prepaid card.

(2) General use [1] prepaid card, gift certificate, and store gift card

(A) General-use prepaid card

The term "general-use prepaid card" means a card or other payment code or device issued by any person that is—

(i) redeemable at multiple, unaffiliated merchants or service providers, or automated teller machines;

(ii) issued in a requested amount, whether or not that amount may, at the option of the

issuer, be increased in value or reloaded if requested by the holder;

(iii) purchased or loaded on a prepaid basis; and

(iv) honored, upon presentation, by merchants for goods or services, or at automated teller machines.

(B) Gift certificate

The term "gift certificate" means an electronic promise that is—

(i) redeemable at a single merchant or an affiliated group of merchants that share the same name, mark, or logo;

(ii) issued in a specified amount that may not be increased or reloaded;

(iii) purchased on a prepaid basis in exchange for payment; and

(iv) honored upon presentation by such single merchant or affiliated group of merchants for goods or services.

(C) Store gift card

The term "store gift card" means an electronic promise, plastic card, or other payment code or device that is—

(i) redeemable at a single merchant or an affiliated group of merchants that share the same name, mark, or logo;

(ii) issued in a specified amount, whether or not that amount may be increased in value or reloaded at the request of the holder;

(iii) purchased on a prepaid basis in exchange for payment; and

(iv) honored upon presentation by such single merchant or affiliated group of merchants for goods or services.

(D) Exclusions

The terms "general-use prepaid card", "gift certificate", and "store gift card" do not include an electronic promise, plastic card, or payment code or device that is—

(i) used solely for telephone services;

(ii) reloadable and not marketed or labeled as a gift card or gift certificate;

(iii) a loyalty, award, or promotional gift card, as defined by the Bureau;

(iv) not marketed to the general public;

(v) issued in paper form only (including for tickets and events); or

(vi) redeemable solely for admission to events or venues at a particular location or group of affiliated locations, which may also include services or goods obtainable—

(I) at the event or venue after admission; or

(II) in conjunction with admission to such events or venues, at specific locations affiliated with and in geographic proximity to the event or venue.

(3) Service fee

(A) In general

The term "service fee" means a periodic fee, charge, or penalty for holding or use of a gift certificate, store gift card, or general-use prepaid card.

(B) Exclusion

With respect to a general-use prepaid card, the term "service fee" does not include a one-time initial issuance fee.

(b) Prohibition on imposition of fees or charges

(1) In general

Except as provided under paragraphs (2) through (4), it shall be unlawful for any person to impose a dormancy fee, an inactivity charge or fee, or a service fee with respect to a gift certificate, store gift card, or general-use prepaid card.

(2) Exceptions

A dormancy fee, inactivity charge or fee, or service fee may be charged with respect to a gift certificate, store gift card, or general-use prepaid card, if—

(A) there has been no activity with respect to the certificate or card in the 12-month period ending on the date on which the charge or fee is imposed;

(B) the disclosure requirements of paragraph (3) have been met;

(C) not more than one fee may be charged in any given month; and

(D) any additional requirements that the Bureau may establish through rulemaking under subsection (d) have been met.

(3) Disclosure requirements

The disclosure requirements of this paragraph are met if—

(A) the gift certificate, store gift card, or general-use prepaid card clearly and conspicuously states—

(i) that a dormancy fee, inactivity charge or fee, or service fee may be charged;

(ii) the amount of such fee or charge;

(iii) how often such fee or charge may be assessed; and

(iv) that such fee or charge may be assessed for inactivity; and

(B) the issuer or vendor of such certificate or card informs the purchaser of such charge or fee before such certificate or card is purchased, regardless of whether the certificate or card is purchased in person, over the Internet, or by telephone.

(4) Exclusion

The prohibition under paragraph (1) shall not apply to any gift certificate—

(A) that is distributed pursuant to an award, loyalty, or promotional program, as defined by the Bureau; and

(B) with respect to which, there is no money or other value exchanged.

(c) Prohibition on sale of gift cards with expiration dates

(1) In general

Except as provided under paragraph (2), it shall be unlawful for any person to sell or issue a gift certificate, store gift card, or general-use prepaid card that is subject to an expiration date.

(2) Exceptions

A gift certificate, store gift card, or general-use prepaid card may contain an expiration date if—

(A) the expiration date is not earlier than 5 years after the date on which the gift certificate was issued, or the date on which card funds were last loaded to a store gift card or general-use prepaid card; and

(B) the terms of expiration are clearly and conspicuously stated.

(d) Additional rulemaking

(1) In general

The Bureau shall—

(A) prescribe regulations to carry out this section, in addition to any other rules or regulations required by this subchapter, including such additional requirements as appropriate relating to the amount of dormancy fees, inactivity charges or fees, or service fees that may be assessed and the amount of remaining value of a gift certificate, store gift card, or general-use prepaid card below which such charges or fees may be assessed; and

(B) shall [2] determine the extent to which the individual definitions and provisions of this subchapter or Regulation E should apply to general-use prepaid cards, gift certificates, and store gift cards.

(2) Consultation

In prescribing regulations under this subsection, the Bureau shall consult with the Federal Trade Commission.

(3) Timing; effective date

The regulations required by this subsection shall be issued in final form not later than 9 months after May 22, 2009.

(Pub. L. 90–321, title IX, §915, as added Pub. L. 111–24, title IV, §401(2), May 22, 2009, 123 Stat. 1751; amended Pub. L. 111–203, title X, §1084(1), July 21, 2010, 124 Stat. 2081.)

PRIOR PROVISIONS

A prior section 915 of Pub. L. 90–321 was renumbered section 916 and is classified to section 1693m of this title.

AMENDMENTS

2010—Pub. L. 111–203 substituted "Bureau" for "Board" wherever appearing.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Pub. L. 111–24, title IV, §403, as added by Pub. L. 111–209, §1, July 27, 2010, 124 Stat. 2254, provided that:

"(a) IN GENERAL.—Except as provided under subsection (b) of this section, this title [enacting this section and amending sections 1693m to 1693r of this title and provisions set out as a note under section 1693 of this title] and the amendments made by this title shall become effective 15 months after the date of enactment of this Act [May 22, 2009].

"(b) EXCEPTION.—

"(1) IN GENERAL.—In the case of a gift certificate, store gift card, or general-use prepaid card that was produced prior to April 1, 2010, the effective date of the disclosure requirements described in sections 915(b)(3) and (c)(2)(B) of the Electronic Funds [probably should be "Fund"] Transfer Act [15 U.S.C. 1693l–1(b)(3), (c)(2)(B)] shall be January 31, 2011, provided that an issuer of such a certificate or card shall—

"(A) comply with paragraphs (1) and (2) of section 915(b) of such Act [15 U.S.C. 1693l–1(b)(1), (2)];

"(B) consider any such certificate or card for which funds expire to have no expiration date with respect to the underlying funds;

"(C) at a consumer's request, replace such certificate or card that has funds remaining at no cost to the consumer; and

"(D) comply with the disclosure requirements of paragraph (2) of this subsection.

"(2) DISCLOSURE REQUIREMENTS.—The disclosure requirements of this subsection are met by providing notice to consumers, via in-store signage, messages during customer service calls, Web sites, and general advertising, that—

"(A) any such certificate or card for which funds expire shall be deemed to have no expiration date with respect to the underlying funds;

"(B) consumers holding such certificate or card shall have a right to a free replacement certificate or card that includes the packaging and materials, typically associated with such a certificate or card; and

"(C) any dormancy fee, inactivity fee, or service fee for such certificates or cards that might otherwise be charged shall not be charged if such fees do not comply with section 915 of the Electronic Funds [probably should be "Fund"] Transfer Act [15 U.S.C. 1693l–1].

"(3) PERIOD FOR DISCLOSURE REQUIREMENTS.—The notice requirements in paragraph (2) of this subsection shall continue until January 31, 2013."

Pub. L. 111–24, title IV, §403, May 22, 2009, 123 Stat. 1754, which provided that title IV of Pub. L. 111–24 was to become effective 15 months after May 22, 2009, was repealed by Pub. L. 111–209, §1, July 27, 2010, 124 Stat. 2254.

[1] *So in original. Probably should be "General-use".*

[2] *So in original. The word "shall" probably should not appear.*

§1693m. Civil liability

(a) Individual or class action for damages; amount of award

Except as otherwise provided by this section and section 1693h of this title, any person who fails to comply with any provision of this subchapter with respect to any consumer, except for an error resolved in accordance with section 1693f of this title, is liable to such consumer in an amount equal to the sum of—

(1) any actual damage sustained by such consumer as a result of such failure;

(2)(A) in the case of an individual action, an amount not less than $100 nor greater than $1,000; or

(B) in the case of a class action, such amount as the court may allow, except that (i) as to each member of the class no minimum recovery shall be applicable, and (ii) the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same person shall not be more than the lesser of $500,000 or 1 per centum of the net worth of the defendant; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.

(b) Factors determining amount of award

In determining the amount of liability in any action under subsection (a) of this section, the court shall consider, among other relevant factors—

(1) in any individual action under subsection (a)(2)(A) of this section, the frequency and persistence of noncompliance, the nature of such noncompliance, and the extent to which the noncompliance was intentional; or

(2) in any class action under subsection (a)(2)(B) of this section, the frequency and persistence of noncompliance, the nature of such noncompliance, the resources of the defendant, the number of persons adversely affected, and the extent to which the noncompliance was intentional.

(c) Unintentional violations; bona fide error

Except as provided in section 1693h of this title, a person may not be held liable in any action brought under this section for a violation of this subchapter if the person shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(d) Good faith compliance with rule, regulation, or interpretation

No provision of this section or section 1693n [1] of this title imposing any liability shall apply to—

(1) any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Bureau or the Board or in conformity with any interpretation or approval by an official or employee of the Bureau of Consumer Financial Protection or the Federal Reserve System duly authorized by the Bureau or the Board to issue such interpretations or approvals under such procedures as the Bureau or the Board may prescribe therefor; or

(2) any failure to make disclosure in proper form if a financial institution utilized an appropriate model clause issued by the Bureau or the Board,

notwithstanding that after such act, omission, or failure has occurred, such rule, regulation, approval, or model clause is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(e) Notification to consumer prior to action; adjustment of consumer's account

A person has no liability under this section for any failure to comply with any requirement under this subchapter if, prior to the institution of an action under this section, the person notifies the consumer concerned of the failure, complies with the requirements of this subchapter, and makes an appropriate adjustment to the consumer's account and pays actual damages or, where applicable, damages in accordance with section 1693h of this title.

(f) Action in bad faith or for harassment; attorney's fees

On a finding by the court that an unsuccessful action under this section was brought in bad faith or for purposes of harassment, the court shall award to the defendant attorney's fees reasonable in relation to the work expended and costs.

(g) Jurisdiction of courts; time for maintenance of action

Without regard to the amount in controversy, any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation.

(Pub. L. 90–321, title IX, §916, formerly §915, as added Pub. L. 95–630, title XX, §2001, Nov. 10, 1978, 92 Stat. 3737; renumbered §916, Pub. L. 111–24, title IV, §401(1), May 22, 2009, 123 Stat. 1751; amended Pub. L. 111–203, title X, §1084(1), (4), July 21, 2010, 124 Stat. 2081, 2082.)

REFERENCES IN TEXT

Section 1693n of this title, referred to in subsec. (d), was in the original a reference to section 916 of Pub. L. 90–321, and was translated as meaning section 917 of Pub. L. 90–321 to reflect the probable intent of Congress and the renumbering of section 916 of Pub. L. 90–321 as section 917 by Pub. L. 111–24, title IV, §401(1), May 22, 2009, 123 Stat. 1751.

PRIOR PROVISIONS

A prior section 916 of Pub. L. 90–321 was renumbered section 917 and is classified to section 1693n of this title.

AMENDMENTS

2010—Pub. L. 111–203, §1084(1), which directed the substitution of "Bureau" for "Board" wherever appearing in section, was not executed in subsec. (d), which was the only place such term appeared, to reflect the probable intent of Congress and the amendment by Pub. L. 111–203, §1084(4). See below.

Subsec. (d). Pub. L. 111–203, §1084(4), struck out "of Board or approval of duly authorized official or employee of Federal Reserve System" after "interpretation" in heading that had been supplied editorially and inserted "Bureau of Consumer Financial Protection or the" before "Federal Reserve System" in par. (1) and "Bureau or the" before "Board" wherever appearing.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

[1] *See References in Text note below.*

§1693n. Criminal liability

(a) Violations respecting giving of false or inaccurate information, failure to provide information, and failure to comply with provisions of this subchapter

Whoever knowingly and willfully—

(1) gives false or inaccurate information or fails to provide information which he is required to disclose by this subchapter or any regulation issued thereunder; or

(2) otherwise fails to comply with any provision of this subchapter;

shall be fined not more than $5,000 or imprisoned not more than one year, or both.

(b) Violations affecting interstate or foreign commerce

Whoever—

(1) knowingly, in a transaction affecting interstate or foreign commerce, uses or attempts or conspires to use any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument to obtain money, goods, services, or anything else of value which within any one-year period has a value aggregating $1,000 or more; or

(2) with unlawful or fraudulent intent, transports or attempts or conspires to transport in interstate or foreign commerce a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained; or

(3) with unlawful or fraudulent intent, uses any instrumentality of interstate or foreign commerce to sell or transport a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained; or

(4) knowingly receives, conceals, uses, or transports money, goods, services, or anything else of value (except tickets for interstate or foreign transportation) which (A) within any one-year period has a value aggregating $1,000 or more, (B) has moved in or is part of, or which constitutes interstate or foreign commerce, and (C) has been obtained with a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument; or

(5) knowingly receives, conceals, uses, sells, or transports in interstate or foreign commerce one or more tickets for interstate or foreign transportation, which (A) within any one-year period have a value aggregating $500 or more, and (B) have been purchased or obtained with one or more counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument; or

(6) in a transaction affecting interstate or foreign commerce, furnishes money, property, services, or anything else of value, which within any one-year period has a value aggregating $1,000 or more, through the use of any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained—

shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(c) "Debit instrument" defined

As used in this section, the term "debit instrument" means a card, code, or other device, other than a check, draft, or similar paper instrument, by the use of which a person may initiate an electronic fund transfer.

(Pub. L. 90–321, title IX, §917, formerly §916, as added Pub. L. 95–630, title XX, §2001, Nov. 10, 1978, 92 Stat. 3738; renumbered §917, Pub. L. 111–24, title IV, §401(1), May 22, 2009, 123 Stat. 1751.)

PRIOR PROVISIONS

A prior section 917 of Pub. L. 90–321 was renumbered section 918 and is classified to section 1693o of this title.

§1693*o*. Administrative enforcement

(a) Enforcing agencies

Subject to subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.], compliance with the requirements imposed under this subchapter shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to—

(A) national banks, Federal savings associations, and Federal branches and Federal agencies of foreign banks;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.]; and

(C) banks and State savings associations insured by the Federal Deposit Insurance

Corporation (other than members of the Federal Reserve System), and insured State branches of foreign banks;

(2) the Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the Administrator of the National Credit Union Administration with respect to any Federal credit union;

(3) part A of subtitle VII of title 49, by the Secretary of Transportation, with respect to any air carrier or foreign air carrier subject to that part;

(4) the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], by the Securities and Exchange Commission, with respect to any broker or dealer subject to that Act and [1]

(5) subtitle E of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5561 et seq.], by the Bureau, with respect to any person subject to this subchapter, except that the Bureau shall not have authority to enforce the requirements of section 1693o–2 of this title or any regulations prescribed by the Board under section 1693o–2 of this title.

The terms used in paragraph (1) that are not defined in this subchapter or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

(b) Violations of subchapter deemed violations of pre-existing statutory requirements; additional powers

For the purpose of the exercise by any agency referred to in any of paragraphs (1) through (4) of subsection (a) of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this subchapter shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in any of paragraphs (1) through (4) of subsection (a) of this section, each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this subchapter, any other authority conferred on it by law.

(c) Overall enforcement authority of the Federal Trade Commission

Except to the extent that enforcement of the requirements imposed under this subchapter is specifically committed to some other Government agency under any of paragraphs (1) through (4) of subsection (a), and subject to subtitle B of the Consumer Financial Protection Act of 2010, the Federal Trade Commission shall be authorized to enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act [15 U.S.C. 41 et seq.], a violation of any requirement imposed under this subchapter shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person subject to the jurisdiction of the Federal Trade Commission with the requirements imposed under this subchapter, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act.

(Pub. L. 90–321, title IX, §918, formerly §917, as added Pub. L. 95–630, title XX, §2001, Nov. 10, 1978, 92 Stat. 3739; amended Pub. L. 101–73, title VII, §744(o), Aug. 9, 1989, 103 Stat. 440; Pub. L. 102–242, title II, §212(f), Dec. 19, 1991, 105 Stat. 2301; Pub. L. 104–287, §6(h), Oct. 11, 1996, 110 Stat. 3399; renumbered §918, Pub. L. 111–24, title IV, §401(1), May 22, 2009, 123 Stat. 1751; Pub. L. 111–203, title X, §1084(5), July 21, 2010, 124 Stat. 2082.)

REFERENCES IN TEXT

The Consumer Financial Protection Act of 2010, referred to in subsecs. (a) and (c), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955. Subtitles B (§§1021–1029A) and E (§§1051–1058) of the Act are classified generally to parts B (§5511 et seq.) and E (§5561 et seq.), respectively, of subchapter V of chapter 53 of Title 12, Banks and Banking. For complete classification of subtitles B and E to the Code, see Tables.

Sections 25 and 25A of the Federal Reserve Act, referred to in subsec. (a)(1)(B), are classified to subchapters I (§601 et seq.) and II (§611 et seq.), respectively, of chapter 6 of Title 12, Banks and Banking.

The Federal Credit Union Act, referred to in subsec. (a)(2), is act June 26, 1934, ch. 750, 48 Stat. 1216, which is classified generally to chapter 14 (§1751 et seq.) of Title 12. For complete classification of this Act to the Code, see section 1751 of Title 12 and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (a)(4), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

The Federal Trade Commission Act, referred to in subsec. (c), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

CODIFICATION

In subsec. (a)(3), "part A of subtitle VII of title 49" substituted for "the Federal Aviation Act of 1958 [49 App. U.S.C. 1301 et seq.]" and "that part" substituted for "that Act" on authority of Pub. L. 103–272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

PRIOR PROVISIONS

A prior section 918 of Pub. L. 90–321 was renumbered section 921 and is classified to section 1693p of this title.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, §1084(5)(A)(i), substituted "Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance" for "Compliance" in introductory provisions.

Subsec. (a)(1). Pub. L. 111–203, §1084(5)(A)(ii), added par. (1) and struck out former par. (1) which read as follows: "section 8 of the Federal Deposit Insurance Act, in the case of—

"(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

"(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act, by the Board; and

"(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;".

Subsec. (a)(2) to (5). Pub. L. 111–203, §1084(5)(A)(ii)–(vii), added par. (5), redesignated former pars. (3) to (5) as (2) to (4), respectively, and struck out former par. (2) which read as follows: "section 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;".

Subsec. (b). Pub. L. 111–203, §1084(5)(B), inserted "any of paragraphs (1) through (4) of" before "subsection (a)" in two places.

Subsec. (c). Pub. L. 111–203, §1084(5)(C), added subsec. (c) and struck out former subsec. (c). Prior to amendment, text read as follows: "Except to the extent that enforcement of the requirements imposed under this subchapter is specifically committed to some other Government agency under subsection (a) of this section, the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this subchapter shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person subject to the jurisdiction of the Commission with the requirements imposed under this subchapter, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act."

1996—Subsec. (a)(4). Pub. L. 104–287 substituted "Secretary of Transportation" for "Civil Aeronautics Board".

1991—Subsec. (a). Pub. L. 102–242, §212(f)(2), inserted at end "The terms used in paragraph (1) that are not defined in this subchapter or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101)."

Pub. L. 102–242, §212(f)(1), added par. (1) and struck out former par. (1) which read as follows: "section 8 of the Federal Deposit Insurance Act, in the case of—

"(A) national banks, by the Comptroller of the Currency;

"(B) member banks of the Federal Reserve System (other than national banks), by the Board;

"(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation;".

1989—Subsec. (a)(2). Pub. L. 101–73 amended par. (2) generally. Prior to amendment, par. (2) read as follows: "section 5(d) of the Home Owners' Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions;".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

Functions vested in Administrator of National Credit Union Administration transferred and vested in National Credit Union Administration Board pursuant to section 1752a of Title 12, Banks and Banking.

[1] So in original. Probably should be "; and".

§1693*o*–1. Remittance transfers

(a) Disclosures required for remittance transfers

(1) In general

Each remittance transfer provider shall make disclosures as required under this section and in accordance with rules prescribed by the Bureau. Disclosures required under this section shall be in addition to any other disclosures applicable under this subchapter.

(2) Disclosures

Subject to rules prescribed by the Bureau, a remittance transfer provider shall provide, in writing and in a form that the sender may keep, to each sender requesting a remittance transfer, as applicable to the transaction—

(A) at the time at which the sender requests a remittance transfer to be initiated, and prior to the sender making any payment in connection with the remittance transfer, a disclosure describing—

(i) the amount of currency that will be received by the designated recipient, using the values of the currency into which the funds will be exchanged;

(ii) the amount of transfer and any other fees charged by the remittance transfer provider for the remittance transfer; and

(iii) any exchange rate to be used by the remittance transfer provider for the remittance transfer, to the nearest 1/100th of a point; and

(B) at the time at which the sender makes payment in connection with the remittance transfer—

(i) a receipt showing—

(I) the information described in subparagraph (A);

(II) the promised date of delivery to the designated recipient; and

(III) the name and either the telephone number or the address of the designated recipient, if either the telephone number or the address of the designated recipient is provided by the sender; and

(ii) a statement containing—

(I) information about the rights of the sender under this section regarding the resolution of errors; and

(II) appropriate contact information for—

(aa) the remittance transfer provider; and

(bb) the State agency that regulates the remittance transfer provider and the Bureau, including the toll-free telephone number established under section 5493 of title 12.

(3) Requirements relating to disclosures

With respect to each disclosure required to be provided under paragraph (2) a remittance transfer provider shall—

(A) provide an initial notice and receipt, as required by subparagraphs (A) and (B) of paragraph (2), and an error resolution statement, as required by subsection (d), that clearly and conspicuously describe the information required to be disclosed therein; and

(B) with respect to any transaction that a sender conducts electronically, comply with the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 et seq.).

(4) Exception for disclosures of amount received

(A) In general

Subject to the rules prescribed by the Bureau, and except as provided under subparagraph (B), the disclosures required regarding the amount of currency that will be received by the designated recipient shall be deemed to be accurate, so long as the disclosures provide a reasonably accurate estimate of the foreign currency to be received. This paragraph shall apply only to a remittance transfer provider who is an insured depository institution, as defined in section 1813 of title 12, or an insured credit union, as defined in section 1752 of title 12, and if—

(i) a remittance transfer is conducted through a demand deposit, savings deposit, or other asset account that the sender holds with such remittance transfer provider; and

(ii) at the time at which the sender requests the transaction, the remittance transfer provider is unable to know, for reasons beyond its control, the amount of currency that will be made available to the designated recipient.

(B) Deadline

The application of subparagraph (A) shall terminate 5 years after July 21, 2010, unless the Bureau determines that termination of such provision would negatively affect the ability of remittance transfer providers described in subparagraph (A) to send remittances to locations in foreign countries, in which case, the Bureau may, by rule, extend the application of subparagraph (A) to not longer than 10 years after July 21, 2010.

(5) Exemption authority

The Bureau may, by rule, permit a remittance transfer provider to satisfy the requirements of—

(A) paragraph (2)(A) orally, if the transaction is conducted entirely by telephone;

(B) paragraph (2)(B), in the case of a transaction conducted entirely by telephone, by mailing the disclosures required under such subparagraph to the sender, not later than 1 business day after the date on which the transaction is conducted, or by including such documents in the next periodic statement, if the telephone transaction is conducted through a demand deposit, savings deposit, or other asset account that the sender holds with the remittance transfer provider;

(C) subparagraphs (A) and (B) of paragraph (2) together in one written disclosure, but only to the extent that the information provided in accordance with paragraph (3)(A) is accurate at the time at which payment is made in connection with the subject remittance transfer; and

(D) paragraph (2)(A), without compliance with section 101(c) of the Electronic Signatures in Global Commerce Act [15 U.S.C. 7001(c)], if a sender initiates the transaction electronically and the information is displayed electronically in a manner that the sender can keep.

(6) Storefront and Internet notices

(A) In general

(i) Prominent posting

Subject to subparagraph (B), the Bureau may prescribe rules to require a remittance transfer provider to prominently post, and timely update, a notice describing a model remittance transfer for one or more amounts, as the Bureau may determine, which notice shall show the amount of currency that will be received by the designated recipient, using the values of the currency into which the funds will be exchanged.

(ii) Onsite displays

The Bureau may require the notice prescribed under this subparagraph to be displayed in every physical storefront location owned or controlled by the remittance transfer provider.

(iii) Internet notices

Subject to paragraph (3), the Bureau shall prescribe rules to require a remittance transfer provider that provides remittance transfers via the Internet to provide a notice, comparable to a storefront notice described in this subparagraph, located on the home page or landing page (with respect to such remittance transfer services) owned or controlled by the remittance transfer provider.

(iv) Rulemaking authority

In prescribing rules under this subparagraph, the Bureau may impose standards or requirements regarding the provision of the storefront and Internet notices required under this subparagraph and the provision of the disclosures required under paragraphs (2) and (3).

(B) Study and analysis

Prior to proposing rules under subparagraph (A), the Bureau shall undertake appropriate studies and analyses, which shall be consistent with section 1693b(a)(2) of this title, and may include an advanced notice of proposed rulemaking, to determine whether a storefront notice or Internet notice facilitates the ability of a consumer—

(i) to compare prices for remittance transfers; and

(ii) to understand the types and amounts of any fees or costs imposed on remittance transfers.

(b) Foreign language disclosures

The disclosures required under this section shall be made in English and in each of the foreign languages principally used by the remittance transfer provider, or any of its agents, to advertise, solicit, or market, either orally or in writing, at that office.

(c) Regulations regarding transfers to certain nations

If the Bureau determines that a recipient nation does not legally allow, or the method by which transactions are made in the recipient country do not allow, a remittance transfer provider to know the amount of currency that will be received by the designated recipient, the Bureau may prescribe rules (not later than 18 months after July 21, 2010) addressing the issue, which rules shall include standards for a remittance transfer provider to provide—

(1) a receipt that is consistent with subsections (a) and (b); and

(2) a reasonably accurate estimate of the foreign currency to be received, based on the rate provided to the sender by the remittance transfer provider at the time at which the transaction was initiated by the sender.

(d) Remittance transfer errors

(1) Error resolution

(A) In general

If a remittance transfer provider receives oral or written notice from the sender within 180 days of the promised date of delivery that an error occurred with respect to a remittance transfer, including the amount of currency designated in subsection (a)(3)(A) that was to be sent to the designated recipient of the remittance transfer, using the values of the currency into which the funds should have been exchanged, but was not made available to the designated

recipient in the foreign country, the remittance transfer provider shall resolve the error pursuant to this subsection and investigate the reason for the error.

(B) Remedies

Not later than 90 days after the date of receipt of a notice from the sender pursuant to subparagraph (A), the remittance transfer provider shall, as applicable to the error and as designated by the sender—

(i) refund to the sender the total amount of funds tendered by the sender in connection with the remittance transfer which was not properly transmitted;

(ii) make available to the designated recipient, without additional cost to the designated recipient or to the sender, the amount appropriate to resolve the error;

(iii) provide such other remedy, as determined appropriate by rule of the Bureau for the protection of senders; or

(iv) provide written notice to the sender that there was no error with an explanation responding to the specific complaint of the sender.

(2) Rules

The Bureau shall establish, by rule issued not later than 18 months after July 21, 2010, clear and appropriate standards for remittance transfer providers with respect to error resolution relating to remittance transfers, to protect senders from such errors. Standards prescribed under this paragraph shall include appropriate standards regarding record keeping, as required, including documentation—

(A) of the complaint of the sender;

(B) that the sender provides the remittance transfer provider with respect to the alleged error; and

(C) of the findings of the remittance transfer provider regarding the investigation of the alleged error that the sender brought to their attention.

(3) Cancellation and refund policy rules

Not later than 18 months after July 21, 2010, the Bureau shall issue final rules regarding appropriate remittance transfer cancellation and refund policies for consumers.

(e) Applicability of this subchapter

(1) In general

A remittance transfer that is not an electronic fund transfer, as defined in section 1693a of this title, shall not be subject to any of the provisions of sections 1693c through 1693k of this title. A remittance transfer that is an electronic fund transfer, as defined in section 1693a of this title, shall be subject to all provisions of this subchapter, except for section 1693f of this title, that are otherwise applicable to electronic fund transfers under this subchapter.

(2) Rule of construction

Nothing in this section shall be construed—

(A) to affect the application to any transaction, to any remittance provider, or to any other person of any of the provisions of subchapter II of chapter 53 of title 31, section 1829b of title 12, or chapter 2 of title I of Public Law 91–508 (12 U.S.C. 1951–1959), or any regulations promulgated thereunder; or

(B) to cause any fund transfer that would not otherwise be treated as such under paragraph (1) to be treated as an electronic fund transfer, or as otherwise subject to this subchapter, for the purposes of any of the provisions referred to in subparagraph (A) or any regulations promulgated thereunder.

(f) Acts of agents

(1) In general

A remittance transfer provider shall be liable for any violation of this section by any agent, authorized delegate, or person affiliated with such provider, when such agent, authorized delegate,

or affiliate acts for that remittance transfer provider.

(2) Obligations of remittance transfer providers

The Bureau shall prescribe rules to implement appropriate standards or conditions of, liability of a remittance transfer provider, including a provider who acts through an agent or authorized delegate. An agency charged with enforcing the requirements of this section, or rules prescribed by the Bureau under this section, may consider, in any action or other proceeding against a remittance transfer provider, the extent to which the provider had established and maintained policies or procedures for compliance, including policies, procedures, or other appropriate oversight measures designed to assure compliance by an agent or authorized delegate acting for such provider.

(g) Definitions

As used in this section—

(1) the term "designated recipient" means any person located in a foreign country and identified by the sender as the authorized recipient of a remittance transfer to be made by a remittance transfer provider, except that a designated recipient shall not be deemed to be a consumer for purposes of this chapter;

(2) the term "remittance transfer"—

(A) means the electronic (as defined in section 106(2) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7006(2))) transfer of funds requested by a sender located in any State to a designated recipient that is initiated by a remittance transfer provider, whether or not the sender holds an account with the remittance transfer provider or whether or not the remittance transfer is also an electronic fund transfer, as defined in section 1693a of this title; and

(B) does not include a transfer described in subparagraph (A) in an amount that is equal to or lesser than the amount of a small-value transaction determined, by rule, to be excluded from the requirements under section 1693d(a) of this title;

(3) the term "remittance transfer provider" means any person or financial institution that provides remittance transfers for a consumer in the normal course of its business, whether or not the consumer holds an account with such person or financial institution; and

(4) the term "sender" means a consumer who requests a remittance provider to send a remittance transfer for the consumer to a designated recipient.

(Pub. L. 90–321, title IX, §919, as added and amended Pub. L. 111–203, title X, §§1073(a)(4), 1084(1), July 21, 2010, 124 Stat. 2060, 2081.)

REFERENCES IN TEXT

The Electronic Signatures in Global and National Commerce Act, referred to in subsec. (a)(3)(B), is Pub. L. 106–229, June 30, 2000, 114 Stat. 464, which is classified principally to chapter 96 (§7001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7001 of this title and Tables.

Chapter 2 of title I of Public Law 91–508, referred to in subsec. (e)(2)(A), is chapter 2 (§§121–129) of title I of Pub. L. 91–508, Oct. 26, 1970, 84 Stat. 1116, which is classified generally to chapter 21 (§1951 et seq.) of Title 12, Banks and Banking. For complete classification of chapter 2 of title I of the Act to the Code, see Tables.

PRIOR PROVISIONS

A prior section 919 of Pub. L. 90–321 was renumbered section 921 and is classified to section 1693p of this title.

Another prior section 919 of Pub. L. 90–321 was renumbered section 922 and is classified to section 1693q of this title.

AMENDMENTS

2010—Pub. L. 111–203, §1084(1), substituted "Bureau" for "Board" wherever appearing.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 1084(1) of Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of Title 12, Banks and Banking.

§1693*o*–2. Reasonable fees and rules for payment card transactions

(a) Reasonable interchange transaction fees for electronic debit transactions

(1) Regulatory authority over interchange transaction fees

The Board may prescribe regulations, pursuant to section 553 of title 5, regarding any interchange transaction fee that an issuer may receive or charge with respect to an electronic debit transaction, to implement this subsection (including related definitions), and to prevent circumvention or evasion of this subsection.

(2) Reasonable interchange transaction fees

The amount of any interchange transaction fee that an issuer may receive or charge with respect to an electronic debit transaction shall be reasonable and proportional to the cost incurred by the issuer with respect to the transaction.

(3) Rulemaking required

(A) In general

The Board shall prescribe regulations in final form not later than 9 months after July 21, 2010, to establish standards for assessing whether the amount of any interchange transaction fee described in paragraph (2) is reasonable and proportional to the cost incurred by the issuer with respect to the transaction.

(B) Information collection

The Board may require any issuer (or agent of an issuer) or payment card network to provide the Board with such information as may be necessary to carry out the provisions of this subsection and the Board, in issuing rules under subparagraph (A) and on at least a bi-annual basis thereafter, shall disclose such aggregate or summary information concerning the costs incurred, and interchange transaction fees charged or received, by issuers or payment card networks in connection with the authorization, clearance or settlement of electronic debit transactions as the Board considers appropriate and in the public interest.

(4) Considerations; consultation

In prescribing regulations under paragraph (3)(A), the Board shall—

(A) consider the functional similarity between—

(i) electronic debit transactions; and

(ii) checking transactions that are required within the Federal Reserve bank system to clear at par;

(B) distinguish between—

(i) the incremental cost incurred by an issuer for the role of the issuer in the authorization, clearance, or settlement of a particular electronic debit transaction, which cost shall be considered under paragraph (2); and

(ii) other costs incurred by an issuer which are not specific to a particular electronic debit transaction, which costs shall not be considered under paragraph (2); and

(C) consult, as appropriate, with the Comptroller of the Currency, the Board of Directors of

the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, the National Credit Union Administration Board, the Administrator of the Small Business Administration, and the Director of the Bureau of Consumer Financial Protection.

(5) Adjustments to interchange transaction fees for fraud prevention costs

(A) Adjustments

The Board may allow for an adjustment to the fee amount received or charged by an issuer under paragraph (2), if—

(i) such adjustment is reasonably necessary to make allowance for costs incurred by the issuer in preventing fraud in relation to electronic debit transactions involving that issuer; and

(ii) the issuer complies with the fraud-related standards established by the Board under subparagraph (B), which standards shall—

(I) be designed to ensure that any fraud-related adjustment of the issuer is limited to the amount described in clause (i) and takes into account any fraud-related reimbursements (including amounts from charge-backs) received from consumers, merchants, or payment card networks in relation to electronic debit transactions involving the issuer; and

(II) require issuers to take effective steps to reduce the occurrence of, and costs from, fraud in relation to electronic debit transactions, including through the development and implementation of cost-effective fraud prevention technology.

(B) Rulemaking required

(i) In general

The Board shall prescribe regulations in final form not later than 9 months after July 21, 2010, to establish standards for making adjustments under this paragraph.

(ii) Factors for consideration

In issuing the standards and prescribing regulations under this paragraph, the Board shall consider—

(I) the nature, type, and occurrence of fraud in electronic debit transactions;

(II) the extent to which the occurrence of fraud depends on whether authorization in an electronic debit transaction is based on signature, PIN, or other means;

(III) the available and economical means by which fraud on electronic debit transactions may be reduced;

(IV) the fraud prevention and data security costs expended by each party involved in electronic debit transactions (including consumers, persons who accept debit cards as a form of payment, financial institutions, retailers and payment card networks);

(V) the costs of fraudulent transactions absorbed by each party involved in such transactions (including consumers, persons who accept debit cards as a form of payment, financial institutions, retailers and payment card networks);

(VI) the extent to which interchange transaction fees have in the past reduced or increased incentives for parties involved in electronic debit transactions to reduce fraud on such transactions; and

(VII) such other factors as the Board considers appropriate.

(6) Exemption for small issuers

(A) In general

This subsection shall not apply to any issuer that, together with its affiliates, has assets of less than $10,000,000,000, and the Board shall exempt such issuers from regulations prescribed under paragraph (3)(A).

(B) Definition

For purposes of this paragraph, the term "issuer" shall be limited to the person holding the asset account that is debited through an electronic debit transaction.

(7) Exemption for government-administered payment programs and reloadable prepaid

cards

(A) In general

This subsection shall not apply to an interchange transaction fee charged or received with respect to an electronic debit transaction in which a person uses—

(i) a debit card or general-use prepaid card that has been provided to a person pursuant to a Federal, State or local government-administered payment program, in which the person may only use the debit card or general-use prepaid card to transfer or debit funds, monetary value, or other assets that have been provided pursuant to such program; or

(ii) a plastic card, payment code, or device that is—

(I) linked to funds, monetary value, or assets which are purchased or loaded on a prepaid basis;

(II) not issued or approved for use to access or debit any account held by or for the benefit of the card holder (other than a subaccount or other method of recording or tracking funds purchased or loaded on the card on a prepaid basis);

(III) redeemable at multiple, unaffiliated merchants or service providers, or automated teller machines;

(IV) used to transfer or debit funds, monetary value, or other assets; and

(V) reloadable and not marketed or labeled as a gift card or gift certificate.

(B) Exception

Notwithstanding subparagraph (A), after the end of the 1-year period beginning on the effective date provided in paragraph (9), this subsection shall apply to an interchange transaction fee charged or received with respect to an electronic debit transaction described in subparagraph (A)(i) in which a person uses a general-use prepaid card, or an electronic debit transaction described in subparagraph (A)(ii), if any of the following fees may be charged to a person with respect to the card:

(i) A fee for an overdraft, including a shortage of funds or a transaction processed for an amount exceeding the account balance.

(ii) A fee imposed by the issuer for the first withdrawal per month from an automated teller machine that is part of the issuer's designated automated teller machine network.

(C) Definition

For purposes of subparagraph (B), the term "designated automated teller machine network" means either—

(i) all automated teller machines identified in the name of the issuer; or

(ii) any network of automated teller machines identified by the issuer that provides reasonable and convenient access to the issuer's customers.

(D) Reporting

Beginning 12 months after July 21, 2010, the Board shall annually provide a report to the Congress regarding —

(i) the prevalence of the use of general-use prepaid cards in Federal, State or local government-administered payment programs; and

(ii) the interchange transaction fees and cardholder fees charged with respect to the use of such general-use prepaid cards.

(8) Regulatory authority over network fees

(A) In general

The Board may prescribe regulations, pursuant to section 553 of title 5, regarding any network fee.

(B) Limitation

The authority under subparagraph (A) to prescribe regulations shall be limited to regulations to ensure that—

(i) a network fee is not used to directly or indirectly compensate an issuer with respect to an electronic debit transaction; and

(ii) a network fee is not used to circumvent or evade the restrictions of this subsection and regulations prescribed under such subsection.

(C) Rulemaking required

The Board shall prescribe regulations in final form before the end of the 9-month period beginning on July 21, 2010, to carry out the authorities provided under subparagraph (A).

(9) Effective date

This subsection shall take effect at the end of the 12-month period beginning on July 21, 2010.

(b) Limitation on payment card network restrictions

(1) Prohibitions against exclusivity arrangements

(A) No exclusive network

The Board shall, before the end of the 1-year period beginning on July 21, 2010, prescribe regulations providing that an issuer or payment card network shall not directly or through any agent, processor, or licensed member of a payment card network, by contract, requirement, condition, penalty, or otherwise, restrict the number of payment card networks on which an electronic debit transaction may be processed to—

(i) 1 such network; or

(ii) 2 or more such networks which are owned, controlled, or otherwise operated by —

(I) affiliated persons; or

(II) networks affiliated with such issuer.

(B) No routing restrictions

The Board shall, before the end of the 1-year period beginning on July 21, 2010, prescribe regulations providing that an issuer or payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person who accepts debit cards for payments to direct the routing of electronic debit transactions for processing over any payment card network that may process such transactions.

(2) Limitation on restrictions on offering discounts for use of a form of payment

(A) In general

A payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person to provide a discount or in-kind incentive for payment by the use of cash, checks, debit cards, or credit cards to the extent that—

(i) in the case of a discount or in-kind incentive for payment by the use of debit cards, the discount or in-kind incentive does not differentiate on the basis of the issuer or the payment card network;

(ii) in the case of a discount or in-kind incentive for payment by the use of credit cards, the discount or in-kind incentive does not differentiate on the basis of the issuer or the payment card network; and

(iii) to the extent required by Federal law and applicable State law, such discount or in-kind incentive is offered to all prospective buyers and disclosed clearly and conspicuously.

(B) Lawful discounts

For purposes of this paragraph, the network may not penalize any person for the providing of a discount that is in compliance with Federal law and applicable State law.

(3) Limitation on restrictions on setting transaction minimums or maximums

(A) In general

A payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability—

(i) of any person to set a minimum dollar value for the acceptance by that person of credit cards, to the extent that—

(I) such minimum dollar value does not differentiate between issuers or between payment card networks; and

(II) such minimum dollar value does not exceed $10.00; or

(ii) of any Federal agency or institution of higher education to set a maximum dollar value for the acceptance by that Federal agency or institution of higher education of credit cards, to the extent that such maximum dollar value does not differentiate between issuers or between payment card networks.

(B) Increase in minimum dollar amount

The Board may, by regulation prescribed pursuant to section 553 of title 5, increase the amount of the dollar value listed in subparagraph (A)(i)(II).

(4) Rule of construction

No provision of this subsection shall be construed to authorize any person—

(A) to discriminate between debit cards within a payment card network on the basis of the issuer that issued the debit card; or

(B) to discriminate between credit cards within a payment card network on the basis of the issuer that issued the credit card.

(c) Definitions

For purposes of this section, the following definitions shall apply:

(1) Affiliate

The term "affiliate" means any company that controls, is controlled by, or is under common control with another company.

(2) Debit card

The term "debit card"—

(A) means any card, or other payment code or device, issued or approved for use through a payment card network to debit an asset account (regardless of the purpose for which the account is established), whether authorization is based on signature, PIN, or other means;

(B) includes a general-use prepaid card, as that term is defined in section 1693l–1(a)(2)(A) of this title; and

(C) does not include paper checks.

(3) Credit card

The term "credit card" has the same meaning as in section 1602 of this title.

(4) Discount

The term "discount"—

(A) means a reduction made from the price that customers are informed is the regular price; and

(B) does not include any means of increasing the price that customers are informed is the regular price.

(5) Electronic debit transaction

The term "electronic debit transaction" means a transaction in which a person uses a debit card.

(6) Federal agency

The term "Federal agency" means—

(A) an agency (as defined in section 101 of title 31); and

(B) a Government corporation (as defined in section 103 of title 5).

(7) Institution of higher education

The term "institution of higher education" has the same meaning as in 1001 [1] and 1002 of title 20.

(8) Interchange transaction fee

The term "interchange transaction fee" means any fee established, charged or received by a payment card network for the purpose of compensating an issuer for its involvement in an electronic debit transaction.

(9) Issuer

The term "issuer" means any person who issues a debit card, or credit card, or the agent of such person with respect to such card.

(10) Network fee

The term "network fee" means any fee charged and received by a payment card network with respect to an electronic debit transaction, other than an interchange transaction fee.

(11) Payment card network

The term "payment card network" means an entity that directly, or through licensed members, processors, or agents, provides the proprietary services, infrastructure, and software that route information and data to conduct debit card or credit card transaction authorization, clearance, and settlement, and that a person uses in order to accept as a form of payment a brand of debit card, credit card or other device that may be used to carry out debit or credit transactions.

(d) Enforcement

(1) In general

Compliance with the requirements imposed under this section shall be enforced under section 1693o of this title.

(2) Exception

Sections 1693m and 1693n of this title shall not apply with respect to this section or the requirements imposed pursuant to this section.

(Pub. L. 90–321, title IX, §920, as added Pub. L. 111–203, title X, §1075(a)(2), July 21, 2010, 124 Stat. 2068.)

PRIOR PROVISIONS

A prior section 920 of Pub. L. 90–321 was renumbered section 921 and is classified to section 1693p of this title.

Two other prior sections 920 of Pub. L. 90–321 were renumbered section 922 and are classified to sections 1693q and 1693r of this title.

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of Title 12, Banks and Banking.

[1] So in original. Probably should be preceded by "sections".

§1693p. Reports to Congress

(a) Not later than twelve months after the effective date of this subchapter and at one-year intervals thereafter, the Bureau shall make reports to the Congress concerning the administration of its functions under this subchapter, including such recommendations as the Bureau deems necessary and appropriate. In addition, each report of the Bureau shall include its assessment of the extent to

which compliance with this subchapter is being achieved, and a summary of the enforcement actions taken under section 1693o [1] of this title. In such report, the Bureau shall particularly address the effects of this subchapter on the costs and benefits to financial institutions and consumers, on competition, on the introduction of new technology, on the operations of financial institutions, and on the adequacy of consumer protection.

(b) In the exercise of its functions under this subchapter, the Bureau may obtain upon request the views of any other Federal agency which, in the judgment of the Bureau, exercises regulatory or supervisory functions with respect to any class of persons subject to this subchapter.

(Pub. L. 90–321, title IX, §921, formerly §918, as added Pub. L. 95–630, title XX, §2001, Nov. 10, 1978, 92 Stat. 3740; amended Pub. L. 97–375, title II, §209(a), Dec. 21, 1982, 96 Stat. 1825; renumbered §919, Pub. L. 111–24, title IV, §401(1), May 22, 2009, 123 Stat. 1751; renumbered §920, renumbered §921, and amended Pub. L. 111–203, title X, §§1073(a)(3), 1075(a)(1), 1084(1), July 21, 2010, 124 Stat. 2060, 2068, 2081.)

REFERENCES IN TEXT

For effective date of this subchapter, referred to in subsec. (a), see section 921 of Pub. L. 90–321, set out as an Effective Date note under section 1693 of this title.

Section 1693o of this title, referred to in subsec. (a), was in the original "section 917 of this title", and was translated as meaning section 918 of title I of Pub. L. 90–321 to reflect the probable intent of Congress and the renumbering of section 917 of title I of Pub. L. 90–321 as section 918 by Pub. L. 111–24, title IV, §401(1), May 22, 2009, 123 Stat. 1751.

CODIFICATION

Renumbering of section 918 of Pub. L. 90–321 as section 919 by section 401(1) of Pub. L. 111–24 was executed prior to the renumberings of section 919 of Pub. L. 90–321 as section 920 and then as section 921 by sections 1073(a)(3) and 1075(a)(1) of Pub. L. 111–203 as the probable intent of Congress, notwithstanding section 403 of Pub. L. 111–24, set out as an Effective Date note under section 1693l–1 of this title and section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking, which provided that the renumbering by Pub. L. 111–24 was effective 15 months after May 22, 2009, and the renumberings by Pub. L. 111–203 were effective 1 day after July 21, 2010.

PRIOR PROVISIONS

Two prior sections 921 of Pub. L. 90–321 were renumbered section 922 and are classified to sections 1693q and 1693r of this title.

Another prior section 921 of Pub. L. 90–321 was renumbered section 923 and is classified as an Effective Date note under section 1693 of this title.

AMENDMENTS

2010—Pub. L. 111–203, §1084(1), substituted "Bureau" for "Board" wherever appearing.

1982—Subsec. (a). Pub. L. 97–375 struck out requirement that the Attorney General make a report on the same terms as the Board, and that such report also contain an analysis of the impact of this subchapter on the operation, workload, and efficiency of the Federal courts, and substituted "necessary and appropriate" for "necessary or appropriate".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 1084(1) of Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

[1] *See References in Text note below.*

§1693q. Relation to State laws

This subchapter does not annul, alter, or affect the laws of any State relating to electronic fund transfers, dormancy fees, inactivity charges or fees, service fees, or expiration dates of gift certificates, store gift cards, or general-use prepaid cards, except to the extent that those laws are

inconsistent with the provisions of this subchapter, and then only to the extent of the inconsistency. A State law is not inconsistent with this subchapter if the protection such law affords any consumer is greater than the protection afforded by this subchapter. The Bureau shall, upon its own motion or upon the request of any financial institution, State, or other interested party, submitted in accordance with procedures prescribed in regulations of the Bureau, determine whether a State requirement is inconsistent or affords greater protection. If the Bureau determines that a State requirement is inconsistent, financial institutions shall incur no liability under the law of that State for a good faith failure to comply with that law, notwithstanding that such determination is subsequently amended, rescinded, or determined by judicial or other authority to be invalid for any reason. This subchapter does not extend the applicability of any such law to any class of persons or transactions to which it would not otherwise apply.

(Pub. L. 90–321, title IX, §922, formerly §919, as added Pub. L. 95–630, title XX, §2001, Nov. 10, 1978, 92 Stat. 3741; renumbered §920 and amended Pub. L. 111–24, title IV, §§401(1), 402, May 22, 2009, 123 Stat. 1751, 1754; renumbered §921, renumbered §922, and amended Pub. L. 111–203, title X, §§1073(a)(3), 1075(a)(1), 1084(1), July 21, 2010, 124 Stat. 2060, 2068, 2081.)

CODIFICATION

Another section 922 of Pub. L. 90–321 is classified to section 1693r of this title.

Renumbering of section 919 of Pub. L. 90–321 as section 920 by section 401(1) of Pub. L. 111–24 was executed prior to the renumberings of section 920 of Pub. L. 90–321 as section 921 and then as section 922 by sections 1073(a)(3) and 1075(a)(1) of Pub. L. 111–203 as the probable intent of Congress, notwithstanding section 403 of Pub. L. 111–24, set out as an Effective Date note under section 1693l–1 of this title and section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking, which provided that the renumbering by Pub. L. 111–24 was effective 15 months after May 22, 2009, and the renumberings by Pub. L. 111–203 were effective 1 day after July 21, 2010.

PRIOR PROVISIONS

A prior section 922 of Pub. L. 90–321 was renumbered section 923 and is classified as an Effective Date note under section 1693 of this title.

AMENDMENTS

2010—Pub. L. 111–203, §1084(1), substituted "Bureau" for "Board" wherever appearing.

2009—Pub. L. 111–24, §402, inserted "dormancy fees, inactivity charges or fees, service fees, or expiration dates of gift certificates, store gift cards, or general-use prepaid cards," after "electronic fund transfers,".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 1084(1) of Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–24 effective 15 months after May 22, 2009, see section 403 of Pub. L. 111–24, set out as an Effective Date note under section 1693l–1 of this title.

§1693r. Exemption for State regulation

The Bureau shall by regulation exempt from the requirements of this subchapter any class of electronic fund transfers within any State if the Bureau determines that under the law of that State that class of electronic fund transfers is subject to requirements substantially similar to those imposed by this subchapter, and that there is adequate provision for enforcement.

(Pub. L. 90–321, title IX, §922, formerly §920, as added Pub. L. 95–630, title XX, §2001, Nov. 10, 1978, 92 Stat. 3741; renumbered §921, Pub. L. 111–24, title IV, §401(1), May 22, 2009, 123 Stat. 1751; renumbered §922 and amended Pub. L. 111–203, title X, §§1073(a)(3), 1084(1), July 21, 2010, 124 Stat. 2060, 2081.)

CODIFICATION

Another section 922 of Pub. L. 90–321 is classified to section 1693q of this title.

Renumbering of section 920 of Pub. L. 90–321 as section 921 by section 401(1) of Pub. L. 111–24 was executed prior to the renumbering of section 921 of Pub. L. 90–321 as section 922 by section 1073(a)(3) of Pub. L. 111–203 as the probable intent of Congress, notwithstanding section 403 of Pub. L. 111–24, set out as an Effective Date note under section 1693l–1 of this title and section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking, which provided that the renumbering by Pub. L. 111–24 was effective 15 months after May 22, 2009, and the renumbering by Pub. L. 111–203 was effective 1 day after July 21, 2010.

PRIOR PROVISIONS

A prior section 922 of Pub. L. 90–321 was renumbered section 923 and is classified as an Effective Date note under section 1693 of this title.

AMENDMENTS

2010—Pub. L. 111–203, §1084(1), substituted "Bureau" for "Board" in two places.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 1084(1) of Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

CHAPTER 42—INTERSTATE LAND SALES

Sec.

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§1701. Definitions

For the purposes of this chapter, the term—

(1) "Director" means the Director of the Bureau of Consumer Financial Protection;

(2) "person" means an individual, or an unincorporated organization, partnership, association, corporation, trust, or estate;

(3) "subdivision" means any land which is located in any State or in a foreign country and is

divided or is proposed to be divided into lots, whether contiguous or not, for the purpose of sale or lease as part of a common promotional plan;

(4) "common promotional plan" means a plan, undertaken by a single developer or a group of developers acting in concert, to offer lots for sale or lease; where such land is offered for sale by such a developer or group of developers acting in concert, and such land is contiguous or is known, designated, or advertised as a common unit or by a common name, such land shall be presumed, without regard to the number of lots covered by each individual offering, as being offered for sale or lease as part of a common promotional plan;

(5) "developer" means any person who, directly or indirectly, sells or leases, or offers to sell or lease, or advertises for sale or lease any lots in a subdivision;

(6) "agent" means any person who represents, or acts for or on behalf of, a developer in selling or leasing, or offering to sell or lease, any lot or lots in a subdivision; but shall not include an attorney at law whose representation of another person consists solely of rendering legal services;

(7) "blanket encumbrance" means a trust deed, mortgage, judgment, or any other lien or encumbrance, including an option or contract to sell or a trust agreement, affecting a subdivision or affecting more than one lot offered within a subdivision except that such term shall not include any lien or other encumbrance arising as the result of the imposition of any tax assessment by any public authority;

(8) "interstate commerce" means trade or commerce among the several States or between any foreign country and any State;

(9) "State" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States;

(10) "purchaser" means an actual or prospective purchaser or lessee of any lot in a subdivision;

(11) "offer" includes any inducement, solicitation, or attempt to encourage a person to acquire a lot in a subdivision; and

(12) "Bureau" means the Bureau of Consumer Financial Protection.

(Pub. L. 90–448, title XIV, §1402, Aug. 1, 1968, 82 Stat. 590; Pub. L. 93–383, title VIII, §812(a), Aug. 22, 1974, 88 Stat. 736; Pub. L. 96–153, title IV, §401, Dec. 21, 1979, 93 Stat. 1122; Pub. L. 100–628, title X, §1089(a), Nov. 7, 1988, 102 Stat. 3283; Pub. L. 111–203, title X, §1098A(4), July 21, 2010, 124 Stat. 2105.)

AMENDMENTS

2010—Par. (1). Pub. L. 111–203, §1098A(4)(A), added par. (1) and struck out former par. (1) which read as follows: " 'Secretary' means the Secretary of Housing and Urban Development;".

Par. (12). Pub. L. 111–203, §1098A(4)(B)–(D), added par. (12).

1988—Par. (10). Pub. L. 100–628 inserted "and" after semicolon.

1979—Par. (3). Pub. L. 96–153 substituted provisions defining "subdivision" as the division or proposed division of land into lots for the purpose of sale or lease as part of a common promotional plan, for provisions defining "subdivision" as the division or proposed division of land into fifty or more lots for the purpose of sale or lease as part of a common promotional plan and presumptions respecting activities as being deemed part of such common promotional plan.

Pars. (4) to (11). Pub. L. 96–153 added par. (4) and redesignated former pars. (4) to (10) as (5) to (11), respectively.

1974—Par. (3). Pub. L. 93–383, §812(a)(1), inserted ", located in any State or in a foreign country" after "any land".

Par. (7). Pub. L. 93–383, §812(a)(2), inserted "or between any foreign country and any State" after "States".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1979 AMENDMENT

Pub. L. 96–153, title IV, §410, Dec. 21, 1979, 93 Stat. 1132, provided that: "The amendments made by this title [enacting section 1719a of this title and amending this section and sections 1702, 1703, 1708, 1709, 1711, 1715, and 1717 of this title] shall become effective on the effective date of regulations implementing such amendments, but in no case later than six months following the date of enactment of this Act [Dec. 21, 1979],

except that section 1403(b)(7) of the Interstate Land Sales Full Disclosure Act [section 1702(b)(7) of this title], contained in the amendment made by section 402, shall become effective on the date of enactment."

EFFECTIVE DATE

Pub. L. 90–448, title XIV, §1423, formerly §1422, Aug. 1, 1968, 82 Stat. 599, as renumbered by Pub. L. 96–153, title IV, §409, Dec. 21, 1979, 93 Stat. 1132, provided that: "This title [enacting this chapter] shall take effect upon the expiration of two hundred and seventy days after the date of its enactment [Aug. 1, 1968]."

SHORT TITLE

Pub. L. 90–448, title XIV, §1401, Aug. 1, 1968, 82 Stat. 590, provided that: "This title [enacting this chapter] may be cited as the 'Interstate Land Sales Full Disclosure Act'."

§1702. Exemptions

(a) Sale or lease of lots generally

Unless the method of disposition is adopted for the purpose of evasion of this chapter, the provisions of this chapter shall not apply to—

(1) the sale or lease of lots in a subdivision containing less than twenty-five lots;

(2) the sale or lease of any improved land on which there is a residential, commercial, condominium, or industrial building, or the sale or lease of land under a contract obligating the seller or lessor to erect such a building thereon within a period of two years;

(3) the sale of evidence of indebtedness secured by a mortgage or deed of trust on real estate;

(4) the sale of securities issued by a real estate investment trust;

(5) the sale or lease of real estate by any government or government agency;

(6) the sale or lease of cemetery lots;

(7) the sale or lease of lots to any person who acquires such lots for the purpose of engaging in the business of constructing residential, commercial, or industrial buildings or for the purpose of resale or lease of such lots to persons engaged in such business; or

(8) the sale or lease of real estate which is zoned by the appropriate governmental authority for industrial or commercial development or which is restricted to such use by a declaration of covenants, conditions, and restrictions which has been recorded in the official records of the city or county in which such real estate is located, when—

(A) local authorities have approved access from such real estate to a public street or highway;

(B) the purchaser or lessee of such real estate is a duly organized corporation, partnership, trust, or business entity engaged in commercial or industrial business;

(C) the purchaser or lessee of such real estate is represented in the transaction of sale or lease by a representative of its own selection;

(D) the purchaser or lessee of such real estate affirms in writing to the seller or lessor that it either (i) is purchasing or leasing such real estate substantially for its own use, or (ii) has a binding commitment to sell, lease, or sublease such real estate to an entity which meets the requirements of subparagraph (B), is engaged in commercial or industrial business, and is not affiliated with the seller, lessor, or agent thereof; and

(E) a policy of title insurance or a title opinion is issued in connection with the transaction showing that title to the real estate purchased or leased is vested in the seller or lessor, subject only to such exceptions as may be approved in writing by such purchaser or the lessee prior to recordation of the instrument of conveyance or execution of the lease, but (i) nothing herein shall be construed as requiring the recordation of a lease, and (ii) any purchaser or lessee may waive, in writing in a separate document, the requirement of this subparagraph that a policy of title insurance or title opinion be issued in connection with the transaction.

(b) Sale or lease of lots subject to other statutory registration and disclosure requirements

Unless the method of disposition is adopted for the purpose of evasion of this chapter, the provisions requiring registration and disclosure (as specified in section 1703(a)(1) of this title and

sections 1704 through 1707 of this title) shall not apply to—

(1) the sale or lease of lots in a subdivision containing fewer than one hundred lots which are not exempt under subsection (a) of this section;

(2) the sale or lease of lots in a subdivision if, within the twelve-month period commencing on the date of the first sale or lease of a lot in such subdivision after the effective date of this subsection, or on such other date within that twelve-month period as the Director may prescribe, not more than twelve lots are sold or leased, and the sale or lease of the first twelve lots in such subdivision in any subsequent twelve-month period, if not more than twelve lots have been sold or leased in any preceding twelve-month period after the effective date of this subsection;

(3) the sale or lease of lots in a subdivision if each noncontiguous part of such subdivision contains not more than twenty lots, and if the purchaser or lessee (or spouse thereof) has made a personal, on-the-lot inspection of the lot purchased or leased, prior to signing of the contract or agreement to purchase or lease;

(4) the sale or lease of lots in a subdivision in which each of the lots is at least twenty acres (inclusive of easements for ingress and egress or public utilities);

(5) the sale or lease of a lot which is located within a municipality or county where a unit of local government specifies minimum standards for the development of subdivision lots taking place within its boundaries, when—

(A)(i) the subdivision meets all local codes and standards, and (ii) each lot is either zoned for single family residences or, in the absence of a zoning ordinance, is limited exclusively to single family residences;

(B)(i) the lot is situated on a paved street or highway which has been built to standards applicable to streets and highways maintained by the unit of local government in which the subdivision is located and is acceptable to such unit, or, where such street or highway is not complete, a bond or other surety acceptable to the municipality or county in the full amount of the cost of completing such street or highway has been posted to assure completion to such standards, and (ii) the unit of local government or a homeowners association has accepted or is obligated to accept the responsibility of maintaining such street or highway, except that, in any case in which a homeowners association has accepted or is obligated to accept such responsibility, a good faith written estimate of the cost of carrying out such responsibility over the first ten years of ownership or lease is provided to the purchaser or lessee prior to the signing of the contract or agreement to purchase or lease;

(C) at the time of closing, potable water, sanitary sewage disposal, and electricity have been extended to the lot or the unit of local government is obligated to install such facilities within one hundred and eighty days, and, for subdivisions which do not have a central water or sewage disposal system, rather than installation of water or sewer facilities, there must be assurances that an adequate potable water supply is available year-round and that the lot is approved for the installation of a septic tank;

(D) the contract of sale requires delivery of a warranty deed (or, where such deed is not commonly used in the jurisdiction where the lot is located, a deed or grant which warrants that the grantor has not conveyed the lot to another person and that the lot is free from encumbrances made by the grantor or any other person claiming by, through, or under him) to the purchaser within one hundred and eighty days after the signing of the sales contract;

(E) at the time of closing, a title insurance binder or a title opinion reflecting the condition of the title shall be in existence and issued or presented to the purchaser or lessee showing that, subject only to such exceptions as may be approved in writing by the purchaser or lessee at the time of closing, marketable title to the lot is vested in the seller or lessor;

(F) the purchaser or lessee (or spouse thereof) has made a personal, on-the-lot inspection of the lot purchased or leased, prior to signing of the contract or agreement to purchase or lease; and

(G) there are no offers, by direct mail or telephone solicitation, of gifts, trips, dinners, or other such promotional techniques to induce prospective purchasers or lessees to visit the subdivision or to purchase or lease a lot;

(6) the sale or lease of a lot, if a mobile home is to be erected or placed thereon as a residence, where the lot is sold as a homesite by one party and the home by another, under contracts that obligate such sellers to perform, contingent upon the other seller carrying out its obligations so that a completed mobile home will be erected or placed on the completed homesite within a period of two years, and provide for all funds received by the sellers to be deposited in escrow accounts (controlled by parties independent of the sellers) until the transactions are completed, and further provide that such funds shall be released to the buyer on demand without prejudice if the land with the mobile home erected or placed thereon is not conveyed within such two-year period. Such homesite must conform to all local codes and standards for mobile home subdivisions, if any, must provide potable water, sanitary sewage disposal, electricity, access by roads, the purchaser must receive marketable title to the lot, and where common facilities are to be provided, they must be completed or fully funded;

(7)(A) the sale or lease of real estate by a developer who is engaged in a sales operation which is intrastate in nature. For purposes of this exemption, a lot may be sold only if—

(i) the lot is free and clear of all liens, encumbrances, and adverse claims;

(ii) the purchaser or lessee (or spouse thereof) has made a personal on-the-lot inspection of the lot to be purchased or leased;

(iii) each purchase or lease agreement contains—

(I) a clear and specific statement describing a good faith estimate of the year of completion of, and the party responsible for, providing and maintaining the roads, water facilities, sewer facilities and any existing or promised amenities; and

(II) a nonwaivable provision specifying that the contract or agreement may be revoked at the option of the purchaser or lessee until midnight of the seventh day following the signing of such contract or agreement or until such later time as may be required pursuant to applicable State laws; and

(iv) the purchaser or lessee has, prior to the time the contract or lease is entered into, acknowledged in writing the receipt of a written statement by the developer containing good faith estimates of the cost of providing electric, water, sewer, gas, and telephone service to such lot.

(B) As used in subparagraph (A)(i) of this paragraph, the terms "liens", "encumbrances", and "adverse claims" do not include United States land patents and similar Federal grants or reservations, property reservations which land developers commonly convey or dedicate to local bodies or public utilities for the purpose of bringing public services to the land being developed, taxes and assessments imposed by a State, by any other public body having authority to assess and tax property, or by a property owners' association, which, under applicable State or local law, constitute liens on the property before they are due and payable or beneficial property restrictions which would be enforceable by other lot owners or lessees in the subdivision, if—

(i) the developer, prior to the time the contract of sale or lease is entered into, has furnished each purchaser or lessee with a statement setting forth in descriptive and concise terms all such liens, reservations, taxes, assessments and restrictions which are applicable to the lot to be purchased or leased; and

(ii) receipt of such statement has been acknowledged in writing by the purchaser or lessee.

(C) For the purpose of this paragraph, a sales operation is "intrastate in nature" if the developer is subject to the laws of the State in which the land is located, and each lot in the subdivision, other than those which are exempt under subsection (a), (b)(6), or (b)(8) of this section, is sold or leased to residents of the State in which the land is located;

(8) the sale or lease of a lot in a subdivision containing fewer than three hundred lots if—

(A) the principal residence of the purchaser or lessee is within the same standard metropolitan statistical area, as defined by the Office of Management and Budget, as the lot

purchased or leased;

(B) the lot is free and clear of liens (such as mortgages, deeds of trust, tax liens, mechanics liens, or judgments) at the time of the signing of the contract or agreement and until a deed is delivered to the purchaser or the lease expires. As used in this subparagraph, the term "liens" does not include (i) United States land patents and similar Federal grants or reservations, (ii) property reservations which land developers commonly convey or dedicate to local bodies or public utilities for the purpose of bringing public services to the land being developed, (iii) taxes and assessments imposed by a State, by any other public body having authority to assess and tax property, or by a property owners' association, which, under applicable State or local law, constitute liens on the property before they are due and payable or beneficial property restrictions which would be enforceable by other lot owners or lessees in the subdivision, or (iv) other interests described in regulations prescribed by the Director;

(C) the purchaser or lessee (or spouse thereof) has made a personal on-the-lot inspection of the lot to be purchased or leased;

(D) each purchase or lease agreement contains (i) a clear and specific statement describing a good faith estimate of the year of completion of and the party responsible for providing and maintaining the roads, water facilities, sewer facilities and any existing or promised amenities; and (ii) a nonwaivable provision specifying that the contract or agreement may be revoked at the option of the purchaser or lessee until midnight of the seventh day following the signing of such contract or agreement or until such later time as may be required pursuant to applicable State laws;

(E) the purchaser or lessee has, prior to the time the contract or lease is entered into, acknowledged in writing receipt of a written statement by the developer setting forth (i) in descriptive and concise terms all liens, reservations, taxes, assessments, beneficial property restrictions which would be enforceable by other lot owners or lessees in the subdivision, and adverse claims which are applicable to the lot to be purchased or leased, and (ii) good faith estimates of the cost of providing electric, water, sewer, gas, and telephone service to such lot;

(F) the developer executes and supplies to the purchaser a written instrument designating a person within the State of residence of the purchaser as his agent for service of process and acknowledging that the developer submits to the legal jurisdiction of the State in which the purchaser or lessee resides; and

(G) the developer executes a written affirmation to the effect that he has complied with the provisions of this paragraph, such affirmation to be given on a form provided by the Director, which shall include the following: the name and address of the developer; the name and address of the purchaser or lessee; a legal description of the lot; an affirmation that the provisions of this paragraph have been complied with; a statement that the developer submits to the jurisdiction of this title with regard to the sale or lease; and the signature of the developer; or

(9) the sale or lease of a condominium unit that is not exempt under subsection (a).

(c) Rules and regulations

The Director may from time to time, pursuant to rules and regulations issued by him, exempt from any of the provisions of this chapter any subdivision or any lots in a subdivision, if he finds that the enforcement of this chapter with respect to such subdivision or lots is not necessary in the public interest and for the protection of purchasers by reason or the small amount involved or the limited character of the public offering.

(d) "Condominium unit" defined

For purposes of subsection (b), the term "condominium unit" means a unit of residential or commercial property to be designated for separate ownership pursuant to a condominium plan or declaration provided that upon conveyance—

(1) the owner of such unit will have sole ownership of the unit and an undivided interest in the common elements appurtenant to the unit; and

(2) the unit will be an improved lot.

(Pub. L. 90–448, title XIV, §1403, Aug. 1, 1968, 82 Stat. 590; Pub. L. 91–152, title IV, §411, Dec. 24, 1969, 83 Stat. 398; Pub. L. 93–383, title VIII, §812(b), Aug. 22, 1974, 88 Stat. 736; Pub. L. 95–557, title IX, §907, Oct. 31, 1978, 92 Stat. 2127; Pub. L. 96–153, title IV, §402, Dec. 21, 1979, 93 Stat. 1123; Pub. L. 111–203, title X, §1098A(1), July 21, 2010, 124 Stat. 2105; Pub. L. 113–167, §1(a), Sept. 26, 2014, 128 Stat. 1882.)

REFERENCES IN TEXT

The effective date of this subsection, referred to in subsec. (b)(2), probably means the effective date of title IV of Pub. L. 96–153, section 402 of which amended subsec. (b) of this section generally. For the effective date of title IV, see section 410 of Pub. L. 96–153, set out as an Effective Date of 1979 Amendment note under section 1701 of this title.

AMENDMENTS

2014—Subsec. (b)(9). Pub. L. 113–167, §1(a)(1), added par. (9).

Subsec. (d). Pub. L. 113–167, §1(a)(2), added subsec. (d).

2010—Subsecs. (b)(2), (8)(B), (G), (c). Pub. L. 111–203 substituted "Director" for "Secretary".

1979—Subsec. (a). Pub. L. 96–153 revised existing provisions formerly set out as pars. (1) to (11) into pars. (1) to (8) and, as so revised, substituted provisions relating to sale or lease of lots in a subdivision containing less than twenty-five lots, etc., for provisions relating to sale or lease of real estate not pursuant to a common promotional plan to offer or sell fifty or more lots in a subdivision, etc.

Subsec. (b). Pub. L. 96–153 revised existing provisions formerly set out as pars. (1) to (7) into pars. (1) to (8) and, as so revised, substituted provisions setting forth criteria respecting sale or lease of lots subject to other statutory registration and disclosure requirements, for provisions setting forth criteria respecting sale or lease of lots in municipality or county with minimum standards.

1978—Subsec. (a)(3). Pub. L. 95–557, §907(a)(1), inserted "condominium" after "commercial".

Subsec. (a)(10). Pub. L. 95–557, §907(a)(2), inserted "United States land patents or Federal grants and reservations similar to United States land patents, nor to" after "do not refer to".

Subsec. (a)(11). Pub. L. 95–557, §907(a)(3), inserted "or which is restricted to such use by a declaration of covenants, conditions, and restrictions which has been recorded in the official records of the city or county in which such real estate is located" before "when".

Subsecs. (b), (c). Pub. L. 95–557, §907(b)(1), (2), added subsec. (b) and redesignated former subsec. (b) as (c).

1974—Subsec. (a)(11). Pub. L. 93–383 added par. (11).

1969—Subsec. (a)(10). Pub. L. 91–152 substituted provisions requiring a personal on-the-lot inspection of the real estate for provisions requiring a personal inspection of the lot and restricted definition of terms "liens", "encumbrances", and "adverse claims" so as not to include taxes and assessments imposed by a State, a public body having authority to assess and tax property, or a property owners' association, which, under the applicable law, constitute liens before they are due and payable, and so as not to include beneficial property restrictions enforceable by other lot owners or lessees in the subdivision under the specified conditions.

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–167, §2, Sept. 26, 2014, 128 Stat. 1882, provided that: "The amendments made by this Act [amending this section] shall take effect 180 days after the date of the enactment of this Act [Sept. 26, 2014]."

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–153 effective on effective date of regulations implementing such amendment, but in no case later than six months following Dec. 21, 1979, except that subsec. (b)(7) shall be effective on Dec. 21, 1979, see section 410 of Pub. L. 96–153, set out as a note under section 1701 of this title.

§1703. Requirements respecting sale or lease of lots

(a) Prohibited activities

It shall be unlawful for any developer or agent, directly or indirectly, to make use of any means or

instruments of transportation or communication in interstate commerce, or of the mails—

(1) with respect to the sale or lease of any lot not exempt under section 1702 of this title—

(A) to sell or lease any lot unless a statement of record with respect to such lot is in effect in accordance with section 1706 of this title;

(B) to sell or lease any lot unless a printed property report, meeting the requirements of section 1707 of this title, has been furnished to the purchaser or lessee in advance of the signing of any contract or agreement by such purchaser or lessee;

(C) to sell or lease any lot where any part of the statement of record or the property report contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein pursuant to sections 1704 through 1707 of this title or any regulations thereunder; or

(D) to display or deliver to prospective purchasers or lessees advertising and promotional material which is inconsistent with information required to be disclosed in the property report; or

(2) with respect to the sale or lease, or offer to sell or lease, any lot not exempt under section 1702(a) of this title—

(A) to employ any device, scheme, or artifice to defraud;

(B) to obtain money or property by means of any untrue statement of a material fact, or any omission to state a material fact necessary in order to make the statements made (in light of the circumstances in which they were made and within the context of the overall offer and sale or lease) not misleading, with respect to any information pertinent to the lot or subdivision;

(C) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser; or

(D) to represent that roads, sewers, water, gas, or electric service, or recreational amenities will be provided or completed by the developer without stipulating in the contract of sale or lease that such services or amenities will be provided or completed.

(b) Revocation of nonexempt contract or agreement at option of purchaser or lessee; time limit

Any contract or agreement for the sale or lease of a lot not exempt under section 1702 of this title may be revoked at the option of the purchaser or lessee until midnight of the seventh day following the signing of such contract or agreement or until such later time as may be required pursuant to applicable State laws, and such contract or agreement shall clearly provide this right.

(c) Revocation of contract or agreement at option of purchaser or lessee where required property report not supplied

In the case of any contract or agreement for the sale or lease of a lot for which a property report is required by this chapter and the property report has not been given to the purchaser or lessee in advance of his or her signing such contract or agreement, such contract or agreement may be revoked at the option of the purchaser or lessee within two years from the date of such signing, and such contract or agreement shall clearly provide this right.

(d) Additional authority for revocation of nonexempt contract or agreement at option of purchaser or lessee; time limit; applicability

Any contract or agreement which is for the sale or lease of a lot not exempt under section 1702 of this title and which does not provide—

(1) a description of the lot which makes such lot clearly identifiable and which is in a form acceptable for recording by the appropriate public official responsible for maintaining land records in the jurisdiction in which the lot is located;

(2) that, in the event of a default or breach of the contract or agreement by the purchaser or lessee, the seller or lessor (or successor thereof) will provide the purchaser or lessee with written notice of such default or breach and of the opportunity, which shall be given such purchaser or lessee, to remedy such default or breach within twenty days after the date of the receipt of such notice; and

(3) that, if the purchaser or lessee loses rights and interest in the lot as a result of a default or breach of the contract or agreement which occurs after the purchaser or lessee has paid 15 per centum of the purchase price of the lot, excluding any interest owed under the contract or agreement, the seller or lessor (or successor thereof) shall refund to such purchaser or lessee any amount which remains after subtracting (A) 15 per centum of the purchase price of the lot, excluding any interest owed under the contract or agreement, or the amount of damages incurred by the seller or lessor (or successor thereof) as a result of such breach, whichever is greater, from (B) the amount paid by the purchaser or lessee with respect to the purchase price of the lot, excluding any interest paid under the contract or agreement,

may be revoked at the option of the purchaser or lessee for two years from the date of the signing of such contract or agreement. This subsection shall not apply to the sale of a lot for which, within one hundred and eighty days after the signing of the sales contract, the purchaser receives a warranty deed (or, where such deed is not commonly used in the jurisdiction where the lot is located, a deed or grant that warrants at least that the grantor has not conveyed the lot to another person and that the lot is free from encumbrances made by the grantor or any other person claiming by, through, or under him or her).

(e) Repayment of purchaser or lessee upon revocation of all money paid under contract or agreement to seller or lessor

If a contract or agreement is revoked pursuant to subsection (b), (c), or (d) of this section, if the purchaser or lessee tenders to the seller or lessor (or successor thereof) an instrument conveying his or her rights and interests in the lot, and if the rights and interests and the lot are in a condition which is substantially similar to the condition in which they were conveyed or purported to be conveyed to the purchaser or lessee, such purchaser or lessee shall be entitled to all money paid by him or her under such contract or agreement.

(Pub. L. 90–448, title XIV, §1404, Aug. 1, 1968, 82 Stat. 591; Pub. L. 93–383, title VIII, §812(c)(1), Aug. 22, 1974, 88 Stat. 737; Pub. L. 96–153, title IV, §403, Dec. 21, 1979, 93 Stat. 1127.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96–153 substituted provisions setting forth criteria in par. (1) with respect to the sale or lease of any lot not exempt under section 1702 of this title, for provisions relating to the sale or lease of any lot in any subdivision with accompanying required statement of record and printed property report, and in par. (2) with respect to the sale or lease, or offer to sell or lease, any lot not exempt under section 1702(a) of this title, for provisions relating to the sale or lease, or offer to sell or lease, any lot in a subdivision through the use of specified prohibited activities.

Subsec. (b). Pub. L. 96–153 substituted provisions relating to revocation of contracts or agreements for the sale or lease of a lot not exempt under section 1702 of this title, for provisions relating to voidability of contracts or agreements for the purchase or lease of lots in subdivisions covered by this chapter.

Subsecs. (c) to (e). Pub. L. 96–153 added subsecs. (c) to (e).

1974—Subsec. (b). Pub. L. 383 substituted "until midnight of the third business day following the consummation of the transaction" for "within forty-eight hours" and struck out provisions relating to exceptions of contracts or agreements stipulating to the nonapplicability of the revocation authority to certain purchasers.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–153 effective on effective date of regulations implementing such amendment, but in no case later than six months following Dec. 21, 1979, see section 410 of Pub. L. 96–153, set out as a note under section 1701 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93–383, title VIII, §812(c)(2), Aug. 22, 1974, 88 Stat. 737, provided that: "The amendments made by paragraph (1) [amending this section] shall be effective sixty days after the date of the enactment of this Act [Aug. 22, 1974]."

§1704. Registration of subdivisions

(a) Filing of statement of record

A subdivision may be registered by filing with the Director a statement of record, meeting the requirements of this chapter and such rules and regulations as may be prescribed by the Director in furtherance of the provisions of this chapter. A statement of record shall be deemed effective only as to the lots specified therein.

(b) Payment of fees; use by Director

At the time of filing a statement of record, or any amendment thereto, the developer shall pay to the Director a fee, not in excess of $1,000, in accordance with a schedule to be fixed by the regulations of the Director, which fees may be used by the Director to cover all or part of the cost of rendering services under this chapter, and such expenses as are paid from such fees shall be considered nonadministrative.

(c) Filing deemed to have taken place upon receipt of statement of record accompanied by fee

The filing with the Director of a statement of record, or of an amendment thereto, shall be deemed to have taken place upon the receipt thereof, accompanied by payment of the fee required by subsection (b) of this section.

(d) Availability of information to public

The information contained in or filed with any statement of record shall be made available to the public under such regulations as the Director may prescribe and copies thereof shall be furnished to every applicant at such reasonable charge as the Director may prescribe.

(Pub. L. 90–448, title XIV, §1405, Aug. 1, 1968, 82 Stat. 592; Pub. L. 111–203, title X, §1098A(1), July 21, 2010, 124 Stat. 2105.)

AMENDMENTS

2010—Pub. L. 111–203 substituted "Director" for "Secretary" wherever appearing.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§1705. Information required in statement of record

The statement of record shall contain the information and be accompanied by the documents specified hereinafter in this section—

(1) the name and address of each person having an interest in the lots in the subdivision to be covered by the statement of record and the extent of such interest;

(2) a legal description of, and a statement of the total area included in, the subdivision and a statement of the topography thereof, together with a map showing the division proposed and the dimensions of the lots to be covered by the statement of record and their relation to existing streets and roads;

(3) a statement of the condition of the title to the land comprising the subdivision, including all encumbrances and deed restrictions and covenants applicable thereto;

(4) a statement of the general terms and conditions, including the range of selling prices or rents at which it is proposed to dispose of the lots in the subdivision;

(5) a statement of the present condition of access to the subdivision, the existence of any unusual conditions relating to noise or safety which affect the subdivision and are known to the developer, the availability of sewage disposal facilities and other public utilities (including water, electricity, gas, and telephone facilities) in the subdivision, the proximity in miles of the subdivision to nearby municipalities, and the nature of any improvements to be installed by the developer and his estimated schedule for completion;

(6) in the case of any subdivision or portion thereof against which there exists a blanket

encumbrance, a statement of the consequences for an individual purchaser of a failure, by the person or persons bound, to fulfill obligations under the instrument or instruments creating such encumbrance and the steps, if any, taken to protect the purchaser in such eventuality;

(7)(A) copy of its articles of incorporation, with all amendments thereto, if the developer is a corporation; (B) copies of all instruments by which the trust is created or declared, if the developer is a trust; (C) copies of its articles of partnership or association and all other papers pertaining to its organization, if the developer is a partnership, unincorporated association, joint stock company, or any other form of organization; and (D) if the purported holder of legal title is a person other than developer, copies of the above documents for such person;

(8) copies of the deed or other instrument establishing title to the subdivision in the developer or other person and copies of any instrument creating a lien or encumbrance upon the title of developer or other person or copies of the opinion or opinions of counsel in respect to the title to the subdivision in the developer or other person or copies of the title insurance policy guaranteeing such title;

(9) copies of all forms of conveyance to be used in selling or leasing lots to purchasers;

(10) copies of instruments creating easements or other restrictions;

(11) such certified and uncertified financial statements of the developer as the Director may require; and

(12) such other information and such other documents and certifications as the Director may require as being reasonably necessary or appropriate for the protection of purchasers.

(Pub. L. 90–448, title XIV, §1406, Aug. 1, 1968, 82 Stat. 592; Pub. L. 91–609, title IX, §909, Dec. 31, 1970, 84 Stat. 1811; Pub. L. 111–203, title X, §1098A(1), July 21, 2010, 124 Stat. 2105.)

AMENDMENTS

2010—Pars. (11), (12). Pub. L. 111–203 substituted "Director" for "Secretary".

1970—Par. (5). Pub. L. 91–609 required the statement of record to contain a statement of the existence of any unusual conditions relating to noise or safety which affect the subdivision and are known to the developer.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§1706. Effective date of statements of record and amendments thereto

(a) Thirtieth day after filing or such earlier date as determined by Director; consolidation of subsequent statement with earlier recording

Except as hereinafter provided, the effective date of a statement of record, or any amendment thereto, shall be the thirtieth day after the filing thereof or such earlier date as the Director may determine, having due regard to the public interest and the protection of purchasers. If any amendment to any such statement is filed prior to the effective date of the statement, the statement shall be deemed to have been filed when such amendment was filed; except that such an amendment filed with the consent of the Director, or filed pursuant to an order of the Director, shall be treated as being filed as of the date of the filing of the statement of record. When a developer records additional lands to be offered for disposition, he may consolidate the subsequent statement of record with any earlier recording offering subdivided land for disposition under the same promotional plan. At the time of consolidation the developer shall include in the consolidated statement of record any material changes in the information contained in the earlier statement.

(b) Incomplete or inaccurate statements of record

If it appears to the Director that a statement of record, or any amendment thereto, is on its face incomplete or inaccurate in any material respect, the Director shall so advise the developer within a reasonable time after the filing of the statement or the amendment, but prior to the date the statement or amendment would otherwise be effective. Such notification shall serve to suspend the effective

date of the statement or the amendment until thirty days after the developer files such additional information as the Director shall require. Any developer, upon receipt of such notice, may request a hearing, and such hearing shall be held within twenty days of receipt of such request by the Director.

(c) Amendment of statement of record

If, at any time subsequent to the effective date of a statement of record, a change shall occur affecting any material fact required to be contained in the statement, the developer shall promptly file an amendment thereto. Upon receipt of any such amendment, the Director may, if he determines such action to be necessary or appropriate in the public interest or for the protection of purchasers, suspend the statement of record until the amendment becomes effective.

(d) Suspension of statement of record containing untrue statement or omission to state material fact; notice and hearing; termination of order of suspension

If it appears to the Director at any time that a statement of record, which is in effect, includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, the Director may, after notice, and after opportunity for hearing (at a time fixed by the Director) within fifteen days after such notice, issue an order suspending the statement of record. When such statement has been amended in accordance with such order, the Director shall so declare and thereupon the order shall cease to be effective.

(e) Examination to determine issuance of order; access to records; order suspending statement of record upon failure to cooperate

The Director is hereby empowered to make an examination in any case to determine whether an order should issue under subsection (d) of this section. In making such examination, the Director or anyone designated by him shall have access to and may demand the production of any books and papers of, and may administer oaths and affirmations to and examine, the developer, any agents or any other person, in respect of any matter relevant to the examination. If the developer or any agents shall fail to cooperate, or shall obstruct or refuse to permit the making of an examination, such conduct shall be proper ground for the issuance of an order suspending the statement of record.

(f) Service of notices

Any notice required under this section shall be sent to or served on the developer or his authorized agent.

(Pub. L. 90–448, title XIV, §1407, Aug. 1, 1968, 82 Stat. 593; Pub. L. 111–203, title X, §1098A(1), July 21, 2010, 124 Stat. 2105.)

AMENDMENTS

2010—Pub. L. 111–203 substituted "Director" for "Secretary" wherever appearing.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§1707. Property report

(a) Contents of report

A property report relating to the lots in a subdivision shall contain such of the information contained in the statement of record, and any amendments thereto, as the Director may deem necessary, but need not include the documents referred to in paragraphs (7) to (11), inclusive, of section 1705 of this title. A property report shall also contain such other information as the Director may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of purchasers.

(b) Promotional use

The property report shall not be used for any promotional purposes before the statement of record

becomes effective and then only if it is used in its entirety. No person may advertise or represent that the Director approves or recommends the subdivision or the sale or lease of lots therein. No portion of the property report shall be underscored, italicized, or printed in larger or bolder type than the balance of the statement unless the Director requires or permits it.

(Pub. L. 90–448, title XIV, §1408, Aug. 1, 1968, 82 Stat. 594; Pub. L. 111–203, title X, §1098A(1), July 21, 2010, 124 Stat. 2105.)

AMENDMENTS

2010—Pub. L. 111–203 substituted "Director" for "Secretary" wherever appearing.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§1708. Certification of substantially equivalent State law

(a) Criteria; request by State

(1) A State shall be certified if the Director determines—

(A) that, when taken as a whole, the laws and regulations of the State applicable to the sale or lease of lots not exempt under section 1702 of this title require the seller or lessor of such lots to disclose information which is at least substantially equivalent to the information required to be disclosed by section 1707 of this title; and

(B) that the State's administration of such laws and regulations provides, to the maximum extent practicable, that such information is accurate.

(2) In the case of any State which is not certified under paragraph (1), such State shall be certified if the Director determines—

(A) that, when taken as a whole, the laws and regulations of the State applicable to the sale or lease of lots not exempt under section 1702 of this title provide sufficient protection for purchasers and lessees with respect to the matters for which information is required to be disclosed by section 1707 of this title but which is not required to be disclosed by such State's laws and regulations; and

(B) that the State's administration of such laws and regulations provides, to the maximum extent practicable, that (i) information required to be disclosed by such laws and regulations is accurate, and (ii) sufficient protection for purchasers and lessees is made available with respect to the matters for which information is not required to be disclosed.

(3) Any State requesting certification must agree to accept a property report covering land located in another certified State but offered for sale or lease in the State requesting certification if the property report has been approved by the other certified State. Such property report shall be the only property report required by the State with respect to the sale or lease of such land.

(b) Filing of State disclosure materials and related documentation for purposes of Federal statement of record and property report requirements; acceptance by Director

After the Director has certified a State under subsection (a) of this section, the Director shall accept for filing under sections 1704 through 1707 of this title (and declare effective as the Federal statement of record and property report which shall be used in all States in which the lots are offered for sale or lease) disclosure materials found acceptable, and any related documentation required, by State authorities in connection with the sale or lease of lots located within the State. The Director may accept for such filing, and declare effective as the Federal statement of record and property report, such materials and documentation found acceptable by the State in connection with the sale or lease of lots located outside that State. Nothing in this subsection shall preclude the Director from exercising the authority conferred by subsections (d) and (e) of section 1706 of this title.

(c) Notice to State upon failure to meet requirements and remedial action necessary for certification

If a State fails to meet the standards for certification pursuant to subsection (a) of this section, the Director shall notify the State in writing of the changes in State law, regulation, or administration that are needed in order to obtain certification.

(d) Periodic review of certified States' laws, regulations, and administration; withdrawal of certification

The Director shall periodically review the laws and regulations, and the administration thereof, of States certified under subsection (a) of this section, and may withdraw such certification upon a determination that such laws, regulations, and the administration thereof, taken as a whole, no longer meet the requirements of subsection (a) of this section.

(e) State and local governmental authorities affected; cooperation with State authorities

Nothing in this chapter may be construed to prevent or limit the authority of any State or local government to enact and enforce with regard to the sale of land any law, ordinance, or code not in conflict with this chapter. In administering this chapter, the Director shall cooperate with State authorities charged with the responsibility of regulating the sale or lease of lots which are subject to this chapter.

(Pub. L. 90–448, title XIV, §1409, Aug. 1, 1968, 82 Stat. 594; Pub. L. 96–153, title IV, §404, Dec. 21, 1979, 93 Stat. 1129; Pub. L. 111–203, title X, §1098A(1), July 21, 2010, 124 Stat. 2105.)

AMENDMENTS

2010—Pub. L. 111–203 substituted "Director" for "Secretary" wherever appearing.

1979—Subsec. (a). Pub. L. 96–153 substituted provisions setting forth criteria for determinations respecting certifications of substantially equivalent State law for purposes of disclosure requirements of this chapter, for provisions relating to cooperation with State authorities in administering this chapter.

Subsec. (b). Pub. L. 96–153 substituted provisions relating to filing requirements for State disclosure materials and related documentation for purposes of Federal statement of record and property report requirements, for provisions relating to the jurisdiction of the particular State real estate commission or similar body.

Subsecs. (c) to (e). Pub. L. 96–153 added subsecs. (c) to (e).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–153 effective on effective date of regulations implementing such amendment, but in no case later than six months following Dec. 21, 1979, see section 410 of Pub. L. 96–153, set out as a note under section 1701 of this title.

§1709. Civil liabilities

(a) Violations; relief recoverable

A purchaser or lessee may bring an action at law or in equity against a developer or agent if the sale or lease was made in violation of section 1703(a) of this title. In a suit authorized by this subsection, the court may order damages, specific performance, or such other relief as the court deems fair, just, and equitable. In determining such relief the court may take into account, but not be limited to, the following factors: the contract price of the lot or leasehold; the amount the purchaser or lessee actually paid; the cost of any improvements to the lot; the fair market value of the lot or leasehold at the time relief is determined; and the fair market value of the lot or leasehold at the time such lot was purchased or leased.

(b) Enforcement of rights by purchaser or lessee

A purchaser or lessee may bring an action at law or in equity against the seller or lessor (or successor thereof) to enforce any right under subsection (b), (c), (d), or (e) of section 1703 of this title.

(c) Amounts recoverable

The amount recoverable in a suit authorized by this section may include, in addition to matters specified in subsections (a) and (b) of this section, interest, court costs, and reasonable amounts for attorneys' fees, independent appraisers' fees, and travel to and from the lot.

(d) Contributions

Every person who becomes liable to make any payment under this section may recover contribution as in cases of contract from any person who, if sued separately, would have been liable to make the same payment.

(Pub. L. 90–448, title XIV, §1410, Aug. 1, 1968, 82 Stat. 595; Pub. L. 96–153, title IV, §405, Dec. 21, 1979, 93 Stat. 1130.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96–153 substituted provisions relating to violations of section 1703(a) of this title and scope of relief authorized in suits brought against such violations, for provisions relating to suits for untrue statements or omissions to state material fact in statement of record.

Subsec. (b). Pub. L. 96–153 substituted provisions relating to enforcement of rights by the purchaser or lessee against the seller or lessor, for provisions relating to suits by the purchaser against the developer or agent.

Subsec. (c). Pub. L. 96–153 substituted provisions authorizing interest, court costs, etc., to be recoverable in suits under this section, for provisions relating to enumeration of damages recoverable in suits under this section.

Subsec. (d). Pub. L. 96–153 reenacted provisions without change.

Subsec. (e). Pub. L. 96–153 struck out subsec. (e) which set forth limitation on amount recoverable under this section.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–153 effective on effective date of regulations implementing such amendment, but in no case later than six months following Dec. 21, 1979, see section 410 of Pub. L. 96–153, set out as a note under section 1701 of this title.

§1710. Court review of orders

(a) Petition; jurisdiction; findings of Director; additional evidence; finality

Any person, aggrieved by an order or determination of the Director issued after a hearing, may obtain a review of such order or determination in the court of appeals of the United States, within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order or determination, a written petition praying that the order or determination of the Director be modified or be set aside in whole or in part. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Director, and thereupon the Director shall file in the court the record upon which the order or determination complained of was entered, as provided in section 2112 of title 28. No objection to an order or determination of the Director shall be considered by the court unless such objection shall have been urged before the Director. The finding of the Director as to the facts, if supported by substantial evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the hearing before the Director, the court may order such additional evidence to be taken before the Director and to be adduced upon a hearing in such manner and upon such terms and conditions as to the court may seem proper. The Director may modify his findings as to the facts by reason of the additional evidence so taken, and shall file such modified or new findings, which, if

supported by substantial evidence, shall be conclusive, and his recommendation, if any, for the modification or setting aside of the original order. Upon the filing of such petition, the jurisdiction of the court shall be exclusive and its judgment and decree, affirming, modifying, or setting aside, in whole or in part, any order of the Director, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(b) Stay of order

The commencement of proceedings under subsection (a) of this section shall not, unless specifically ordered by the court, operate as a stay of the Secretary's [1] order.

(Pub. L. 90–448, title XIV, §1411, Aug. 1, 1968, 82 Stat. 595; Pub. L. 111–203, title X, §1098A(1), July 21, 2010, 124 Stat. 2105.)

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203 substituted "Director" for "Secretary" wherever appearing.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

[1] So in original. Probably should be "Director's".

§1711. Limitation of actions

(a) Section 1703(a) violations

No action shall be maintained under section 1709 of this title with respect to—

(1) a violation of subsection (a)(1) or (a)(2)(D) of section 1703 of this title more than three years after the date of signing of the contract of sale or lease; or

(2) a violation of subsection (a)(2)(A), (a)(2)(B), or (a)(2)(C) of section 1703 of this title more than three years after discovery of the violation or after discovery should have been made by the exercise of reasonable diligence.

(b) Section 1703(b) to (e) violations

No action shall be maintained under section 1709 of this title to enforce a right created under subsection (b), (c), (d), or (e) of section 1703 of this title unless brought within three years after the signing of the contract or lease, notwithstanding delivery of a deed to a purchaser.

(Pub. L. 90–448, title XIV, §1412, Aug. 1, 1968, 82 Stat. 596; Pub. L. 96–153, title IV, §406, Dec. 21, 1979, 93 Stat. 1131.)

AMENDMENTS

1979—Pub. L. 96–153 designated existing provisions as subsec. (a), substituted provisions setting forth limitations relating to any action maintained under section 1709 of this title, for provisions setting forth limitations relating to any action maintained to enforce any liability created under section 1709(a) or (b)(2) of this title, and added subsec. (b).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–153 effective on effective date of regulations implementing such amendment, but in no case later than six months following Dec. 21, 1979, see section 410 of Pub. L. 96–153, set out as a note under section 1701 of this title.

§1712. Contrary stipulations void

Any condition, stipulation, or provision binding any person acquiring any lot in a subdivision to waive compliance with any provision of this chapter or of the rules and regulations of the Director shall be void.

(Pub. L. 90–448, title XIV, §1413, Aug. 1, 1968, 82 Stat. 596; Pub. L. 111–203, title X, §1098A(1), July 21, 2010, 124 Stat. 2105.)

AMENDMENTS

2010—Pub. L. 111–203 substituted "Director" for "Secretary".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§1713. Additional remedies

The rights and remedies provided by this chapter shall be in addition to any and all other rights and remedies that may exist at law or in equity.

(Pub. L. 90–448, title XIV, §1414, Aug. 1, 1968, 82 Stat. 596.)

§1714. Investigations, injunctions, and prosecution of offenses

(a) Permanent or temporary injunction or restraining order; jurisdiction

Whenever it shall appear to the Director that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this chapter, or of any rule or regulation prescribed pursuant thereto, he may, in his discretion, bring an action in any district court of the United States, or the United States District Court for the District of Columbia to enjoin such acts or practices, and, upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond. The Director may transmit such evidence as may be available concerning such acts or practices to the Attorney General who may, in his discretion, institute the appropriate criminal proceedings under this chapter.

(b) Investigations; publication of information concerning violations

The Director may, in his discretion, make such investigations as he deems necessary to determine whether any person has violated or is about to violate any provision of this chapter or any rule or regulation prescribed pursuant thereto, and may require or permit any person to file with him a statement in writing, under oath or otherwise as the Director shall determine, as to all the facts and circumstances concerning the matter to be investigated. The Director is authorized, in his discretion, to publish information concerning any such violations, and to investigate any facts, conditions, practices, or matters which he may deem necessary or proper to aid in the enforcement of the provisions of this chapter, in the prescribing of rules and regulations thereunder, or in securing information to serve as a basis for recommending further legislation concerning the matters to which this chapter relates.

(c) Oaths and affirmations; subpena power

For the purpose of any such investigation, or any other proceeding under this chapter; the Director, or any officer designated by him, is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memorandums, or other records which the Director deems relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States or any State at any designated place of hearing.

(d) Contempt; court order requiring attendance and testimony of witnesses; jurisdiction

In case of contumacy by, or refusal to obey a subpena issued to, any person, the Director may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence,

memorandums, and other records and documents. And such court may issue an order requiring such person to appear before the Director or any officer designated by the Director, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found.

(Pub. L. 90–448, title XIV, §1415, Aug. 1, 1968, 82 Stat. 596; Pub. L. 91–452, title II, §220, Oct. 15, 1970, 84 Stat. 929; Pub. L. 111–203, title X, §1098A(1), July 21, 2010, 124 Stat. 2105.)

AMENDMENTS

2010—Pub. L. 111–203 substituted "Director" for "Secretary" wherever appearing.

1970—Subsec. (e). Pub. L. 91–452 struck out subsec. (e) which related to the immunity from prosecution of any individual compelled to testify or produce evidence, documentary or otherwise, after claiming his privilege against self-incrimination.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–452, and for amendment not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91–452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

§1715. Administration

(a) Delegation of functions, duties, and powers; scope of delegations; appointment, etc., of delegates; right of appeal

The authority and responsibility for administering this chapter shall be in the Director of the Bureau of Consumer Financial Protection who may delegate any of his functions, duties, and powers to employees of the Bureau of Consumer Financial Protection or to boards of such employees, including functions, duties, and powers with respect to investigating, hearing, determining, ordering, or otherwise acting as to any work, business, or matter under this chapter. The persons to whom such delegations are made with respect to hearing functions, duties, and powers shall be appointed and shall serve in the Bureau in compliance with sections 3105, 3344, 5372, and 7521 of title 5. The Director shall by rule prescribe such rights of appeal from the decisions of his administrative law judges to other administrative law judges or to other officers in the Bureau, to boards of officers or to himself, as shall be appropriate and in accordance with law.

(b) Hearings

All hearings shall be public and appropriate records thereof shall be kept, and any order issued after such hearing shall be based on the record made in such hearing which shall be conducted in accordance with the provisions of subchapter II of chapter 5, and chapter 7, of title 5.

(c) Procedures applicable

The Director shall conduct all actions with respect to rulemaking or adjudication under this chapter in accordance with the provisions of chapter 5 of title 5. Notice shall be given of any adverse action or final disposition and such notice and the entry of any order shall be accompanied by a written statement of supporting facts and legal authority.

(Pub. L. 90–448, title XIV, §1416, Aug. 1, 1968, 82 Stat. 597; Pub. L. 95–251, §2(a)(5), Mar. 27, 1978, 92 Stat. 183; Pub. L. 95–454, title VIII, §801(a)(3)(J), Oct. 13, 1978, 92 Stat. 1222; Pub. L. 96–153, title IV, §407, Dec. 21, 1979, 93 Stat. 1131; Pub. L. 98–479, title II, §202(d), Oct. 17, 1984, 98 Stat. 2228; Pub. L. 111–203, title X, §1098A(1)–(3), (5), July 21, 2010, 124 Stat. 2105.)

AMENDMENTS

2010—Pub. L. 111–203, §1098A(1), substituted "Director" for "Secretary" wherever appearing.

Subsec. (a). Pub. L. 111–203, §1098A(5), substituted "Director of the Bureau of Consumer Financial Protection" for "Secretary of Housing and Urban Development".

Pub. L. 111–203, §1098A(3), substituted "in the Bureau" for "in the Department" in two places.

Pub. L. 111–203, §1098A(2), substituted "Bureau of Consumer Financial Protection or" for "Department of Housing and Urban Development or".

1984—Subsec. (b). Pub. L. 98–479 substituted "subchapter II of chapter 5, and chapter 7, of title 5" for "the Administrative Procedure Act".

1979—Subsec. (c). Pub. L. 96–153 added subsec. (c).

1978—Subsec. (a). Pub. L. 95–454 substituted "5372" for "5362".

Pub. L. 95–251 substituted "administrative law judges" for "hearing examiners" wherever appearing.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–153 effective on effective date of regulations implementing such amendment, but in no case later than six months following Dec. 21, 1979, see section 410 of Pub. L. 96–153, set out as a note under section 1701 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective on first day of first applicable pay period beginning on or after 90th day after Oct. 13, 1978, see section 801(a)(4) of Pub. L. 95–454, set out as a note under section 5361 of Title 5, Government Organization and Employees.

§1716. Unlawful representations

The fact that a statement of record with respect to a subdivision has been filed or is in effect shall not be deemed a finding by the Director that the statement of record is true and accurate on its face, or be held to mean the Director has in any way passed upon the merits of, or given approval to, such subdivision. It shall be unlawful to make, or cause to be made, to any prospective purchaser any representation contrary to the foregoing.

(Pub. L. 90–448, title XIV, §1417, Aug. 1, 1968, 82 Stat. 598; Pub. L. 111–203, title X, §1098A(1), July 21, 2010, 124 Stat. 2105.)

AMENDMENTS

2010—Pub. L. 111–203 substituted "Director" for "Secretary" in two places.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§1717. Penalties for violations

Any person who willfully violates any of the provisions of this chapter, or the rules and regulations prescribed pursuant thereto, or any person who willfully, in a statement of record filed under, or in a property report issued pursuant to, this chapter, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein, shall upon conviction be fined not more than $10,000 or imprisoned not more than five years, or both.

(Pub. L. 90–448, title XIV, §1418, Aug. 1, 1968, 82 Stat. 598; Pub. L. 96–153, title IV, §408, Dec. 21, 1979, 93 Stat. 1132.)

AMENDMENTS

1979—Pub. L. 96–153 substituted "$10,000" for "$5,000".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–153 effective on effective date of regulations implementing such amendment, but in no case later than six months following Dec. 21, 1979, see section 410 of Pub. L. 96–153, set out as a note under section 1701 of this title.

§1717a. Civil money penalties

(a) In general

(1) Authority

Whenever any person knowingly and materially violates any of the provisions of this chapter or any rule, regulation, or order issued under this chapter, the Director may impose a civil money penalty on such person in accordance with the provisions of this section. The penalty shall be in addition to any other available civil remedy or any available criminal penalty, and may be imposed whether or not the Director imposes other administrative sanctions.

(2) Amount of penalty

The amount of the penalty, as determined by the Director, may not exceed $1,000 for each violation, except that the maximum penalty for all violations by a particular person during any 1-year period shall not exceed $1,000,000. Each violation of this chapter, or any rule, regulation, or order issued under this chapter, shall constitute a separate violation with respect to each sale or lease or offer to sell or lease. In the case of a continuing violation, as determined by the Director, each day shall constitute a separate violation.

(b) Agency procedures

(1) Establishment

The Director shall establish standards and procedures governing the imposition of civil money penalties under subsection (a) of this section. The standards and procedures—

(A) shall provide for the imposition of a penalty only after a person has been given an opportunity for a hearing on the record; and

(B) may provide for review by the Director of any determination or order, or interlocutory ruling, arising from a hearing.

(2) Final orders

If no hearing is requested within 15 days of receipt of the notice of opportunity for hearing, the imposition of the penalty shall constitute a final and unappealable determination. If the Director reviews the determination or order, the Director may affirm, modify, or reverse that determination or order. If the Director does not review the determination or order within 90 days of the issuance of the determination or order, the determination or order shall be final.

(3) Factors in determining amount of penalty

In determining the amount of a penalty under subsection (a) of this section, consideration shall be given to such factors as the gravity of the offense, any history of prior offenses (including offenses occurring before December 15, 1989), ability to pay the penalty, injury to the public, benefits received, deterrence of future violations, and such other factors as the Director may determine in regulations to be appropriate.

(4) Reviewability of imposition of penalty

The Secretary's [1] determination or order imposing a penalty under subsection (a) of this section shall not be subject to review, except as provided in subsection (c) of this section.

(c) Judicial review of agency determination

(1) In general

After exhausting all administrative remedies established by the Director under subsection (b)(1) of this section, a person aggrieved by a final order of the Director assessing a penalty under this section may seek judicial review pursuant to section 1710 of this title.

(2) Order to pay penalty

Notwithstanding any other provision of law, in any such review, the court shall have the power to order payment of the penalty imposed by the Director.

(d) Action to collect penalty

If any person fails to comply with the determination or order of the Director imposing a civil money penalty under subsection (a) of this section, after the determination or order is no longer subject to review as provided by subsections (b) and (c) of this section, the Director may request the Attorney General of the United States to bring an action in any appropriate United States district court to obtain a monetary judgment against the person and such other relief as may be available. The monetary judgment may, in the discretion of the court, include any attorneys fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the Secretary's [1] determination or order imposing the penalty shall not be subject to review.

(e) Settlement by Director

The Director may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

(f) "Knowingly" defined

The term "knowingly" means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section.

(g) Regulations

The Director shall issue such regulations as the Director deems appropriate to implement this section.

(h) Use of penalties for administration

Civil money penalties collected under this section shall be paid to the Director and, upon approval in an appropriation Act, may be used by the Director to cover all or part of the cost of rendering services under this chapter.

(Pub. L. 90–448, title XIV, §1418a, as added Pub. L. 101–235, title I, §111(a), Dec. 15, 1989, 103 Stat. 2014; amended Pub. L. 111–203, title X, §1098A(1), July 21, 2010, 124 Stat. 2105.)

AMENDMENTS

2010—Pub. L. 111–203 substituted "Director" for "Secretary" wherever appearing.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Pub. L. 101–235, title I, §111(b), Dec. 15, 1989, 103 Stat. 2016, provided that: "The amendment made by subsection (a) [enacting this section] shall apply only with respect to—

"(1) violations referred to in the amendment that occur on or after the effective date of this section [Dec. 15, 1989]; and

"(2) in the case of a continuing violation (as determined by the Secretary of Housing and Urban Development), any portion of violation referred to in the amendment that occurs on or after such date."

[1] *So in original. Probably should be "Director's".*

§1718. Rules, regulations, and orders

The Director shall have authority from time to time to make, issue, amend, and rescind such rules and regulations and such orders as are necessary or appropriate to the exercise of the functions and powers conferred upon him elsewhere in this chapter. For the purpose of his rules and regulations, the Director may classify persons and matters within his jurisdiction and prescribe different requirements for different classes of persons or matters.

(Pub. L. 90–448, title XIV, §1419, Aug. 1, 1968, 82 Stat. 598; Pub. L. 111–203, title X, §1098A(1), July 21, 2010, 124 Stat. 2105.)

AMENDMENTS

2010—Pub. L. 111–203 substituted "Director" for "Secretary" in two places.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§1719. Jurisdiction of offenses and suits

The district courts of the United States, the United States courts of any territory, and the United States District Court for the District of Columbia shall have jurisdiction of offenses and violations under this chapter and under the rules and regulations prescribed by the Director pursuant thereto, and concurrent with State courts, of all suits in equity and actions at law brought to enforce any liability or duty created by this chapter. Any such suit or action may be brought to enforce any liability or duty created by this chapter. Any such suit or action may be brought in the district wherein the defendant is found or is an inhabitant or transacts business, or in the district where the offer or sale took place, if the defendant participated therein, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 1254 and 1291 of title 28. No case arising under this chapter and brought in any State court of competent jurisdiction shall be removed to any court of the United States, except where the United States or any officer or employee of the United States in his official capacity is a party. No costs shall be assessed for or against the Director in any proceeding under this chapter brought by or against him in the Supreme Court or such other courts.

(Pub. L. 90–448, title XIV, §1420, Aug. 1, 1968, 82 Stat. 598; Pub. L. 100–628, title X, §1089(b), Nov. 7, 1988, 102 Stat. 3283; Pub. L. 111–203, title X, §1098A(1), July 21, 2010, 124 Stat. 2105.)

AMENDMENTS

2010—Pub. L. 111–203 substituted "Director" for "Secretary" in two places.
1988—Pub. L. 100–628 struck out "(a)" after section designation.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§1719a. Repealed. Pub. L. 104–66, title I, §1071(c), Dec. 21, 1995, 109 Stat. 720

Section, Pub. L. 90–448, title XIV, §1421, as added Pub. L. 96–153, title IV, §409, Dec. 21, 1979, 93 Stat. 1132, directed Secretary to submit to Congress biennial reports on administration of this chapter and its impact upon land development industry and purchasers and lessees of undeveloped land.

§1720. Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this chapter.

(Pub. L. 90–448, title XIV, §1422, formerly §1421, Aug. 1, 1968, 82 Stat. 599; renumbered §1422, Pub. L. 96–153, title IV, §409, Dec. 21, 1979, 93 Stat. 1132.)

CHAPTER 43—NEWSPAPER PRESERVATION

Sec.
1801. Congressional declaration of policy.
1802. Definitions.
1803. Antitrust exemptions.
1804. Reinstatement of joint operating arrangements previously adjudged unlawful under antitrust laws.

§1801. Congressional declaration of policy

In the public interest of maintaining a newspaper press editorially and reportorially independent and competitive in all parts of the United States, it is hereby declared to be the public policy of the United States to preserve the publication of newspapers in any city, community, or metropolitan area where a joint operating arrangement has been heretofore entered into because of economic distress or is hereafter effected in accordance with the provisions of this chapter.

(Pub. L. 91–353, §2, July 24, 1970, 84 Stat. 466.)

SHORT TITLE

Pub. L. 91–353, §1, July 24, 1970, 84 Stat. 466, provided that: "This Act [enacting this chapter] may be cited as the 'Newspaper Preservation Act'."

SEPARABILITY

Section 6 of Pub. L. 91–353 provided that: "If any provision of this Act [enacting this chapter] is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this Act, and the applicability of such provision to any other person or circumstance, shall not be affected thereby."

§1802. Definitions

As used in this chapter—

(1) The term "antitrust law" means the Federal Trade Commission Act [15 U.S.C. 41 et seq.] and each statute defined by section 4 thereof [15 U.S.C. 44] as "Antitrust Acts" and all amendments to such Act and such statutes and any other Acts in pari materia.

(2) The term "joint newspaper operating arrangement" means any contract, agreement, joint venture (whether or not incorporated), or other arrangement entered into by two or more newspaper owners for the publication of two or more newspaper publications, pursuant to which joint or common production facilities are established or operated and joint or unified action is taken or agreed to be taken with respect to any one or more of the following: printing; time, method, and field of publication; allocation of production facilities; distribution; advertising solicitation; circulation solicitation; business department; establishment of advertising rates; establishment of circulation rates and revenue distribution: *Provided*, That there is no merger, combination, or amalgamation of editorial or reportorial staffs, and that editorial policies be independently determined.

(3) The term "newspaper owner" means any person who owns or controls directly, or indirectly through separate or subsidiary corporations, one or more newspaper publications.

(4) The term "newspaper publication" means a publication produced on newsprint paper which is published in one or more issues weekly (including as one publication any daily newspaper and

any Sunday newspaper published by the same owner in the same city, community, or metropolitan area), and in which a substantial portion of the content is devoted to the dissemination of news and editorial opinion.

(5) The term "failing newspaper" means a newspaper publication which, regardless of its ownership or affiliations, is in probable danger of financial failure.

(6) The term "person" means any individual, and any partnership, corporation, association, or other legal entity existing under or authorized by the law of the United States, any State or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any foreign country.

(Pub. L. 91–353, §3, July 24, 1970, 84 Stat. 466.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in par. (1), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

§1803. Antitrust exemptions

(a) Joint operating arrangements entered into prior to July 24, 1970

It shall not be unlawful under any antitrust law for any person to perform, enforce, renew, or amend any joint newspaper operating arrangement entered into prior to July 24, 1970, if at the time at which such arrangement was first entered into, regardless of ownership or affiliations, not more than one of the newspaper publications involved in the performance of such arrangement was likely to remain or become a financially sound publication: *Provided,* That the terms of a renewal or amendment to a joint operating arrangement must be filed with the Department of Justice and that the amendment does not add a newspaper publication or newspaper publications to such arrangement.

(b) Written consent for future joint operating arrangements

It shall be unlawful for any person to enter into, perform, or enforce a joint operating arrangement, not already in effect, except with the prior written consent of the Attorney General of the United States. Prior to granting such approval, the Attorney General shall determine that not more than one of the newspaper publications involved in the arrangement is a publication other than a failing newspaper, and that approval of such arrangement would effectuate the policy and purpose of this chapter.

(c) Predatory practices not exempt

Nothing contained in the chapter shall be construed to exempt from any antitrust law any predatory pricing, any predatory practice, or any other conduct in the otherwise lawful operations of a joint newspaper operating arrangement which would be unlawful under any antitrust law if engaged in by a single entity. Except as provided in this chapter, no joint newspaper operating arrangement or any party thereto shall be exempt from any antitrust law.

(Pub. L. 91–353, §4, July 24, 1970, 84 Stat. 467.)

§1804. Reinstatement of joint operating arrangements previously adjudged unlawful under antitrust laws

(a) Notwithstanding any final judgment rendered in any action brought by the United States under which a joint operating arrangement has been held to be unlawful under any antitrust law, any party to such final judgment may reinstitute said joint newspaper operating arrangement to the extent permissible under section 1803(a) of this title.

(b) The provisions of section 1803 of this title shall apply to the determination of any civil or

criminal action pending in any district court of the United State [1] on July 24, 1970, in which it is alleged that any such joint operating agreement is unlawful under any antitrust law.

(Pub. L. 91–353, §5, July 24, 1970, 84 Stat. 467.)

[1] *So in original. Probably should be "States".*

CHAPTER 44—PROTECTION OF HORSES

Sec.

1821. Definitions.
1822. Congressional statement of findings.
1823. Horse shows and exhibitions.
1824. Unlawful acts.
1824a. Export of horses.
1825. Violations and penalties.
1826. Notice of violations to Attorney General.
1827. Utilization of personnel of Department of Agriculture and officers and employees of consenting States; technical and other nonfinancial assistance to State.
1828. Rules and regulations.
1829. Preemption of State laws; concurrent jurisdiction; prohibition on certain State action.
1830. Omitted.
1831. Authorization of appropriations.

§1821. Definitions

As used in this chapter unless the context otherwise requires:

(1) The term "management" means any person who organizes, exercises control over, or administers or who is responsible for organizing, directing, or administering.

(2) The term "Secretary" means the Secretary of Agriculture.

(3) The term "sore" when used to describe a horse means that—

(A) an irritating or blistering agent has been applied, internally or externally, by a person to any limb of a horse,

(B) any burn, cut, or laceration has been inflicted by a person on any limb of a horse,

(C) any tack, nail, screw, or chemical agent has been injected by a person into or used by a person on any limb of a horse, or

(D) any other substance or device has been used by a person on any limb of a horse or a person has engaged in a practice involving a horse,

and, as a result of such application, infliction, injection, use, or practice, such horse suffers, or can reasonably be expected to suffer, physical pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving, except that such term does not include such an application, infliction, injection, use, or practice in connection with the therapeutic treatment of a horse by or under the supervision of a person licensed to practice veterinary medicine in the State in which such treatment was given.

(4) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(Pub. L. 91–540, §2, Dec. 9, 1970, 84 Stat. 1404; Pub. L. 94–360, §3, July 13, 1976, 90 Stat. 915.)

AMENDMENTS

1976—Pub. L. 94–360 added pars. (1) and (2), redesignated subsec. (a), defining "sore" as meaning that certain substances or devices had been applied to any limb of a horse prior to Dec. 9, 1970, resulting in, or

reasonably likely to result in, such horse suffering physical pain or distress when walking or trotting, as par. (3) and, as so redesignated, struck out requirement that such substance or device had to have been applied prior to Dec. 9, 1970 in order for a horse to be considered "sored" for purposes of this chapter, and substituted par. (4) defining "State" for subsec. (b) defining "commerce" as between a point in any State or possession of the United States and any point outside thereof, or between points within the same State or possession of the United States but through any place outside thereof, or within the District of Columbia, or from any foreign country to any point within the United States.

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94–360, §1(a), July 13, 1976, 90 Stat. 915, provided that: "This Act [amending this section and sections 1822 to 1825, 1827, 1830, and 1831 of this title and enacting provisions set out as notes under this section and section 1831 of this title] may be cited as the 'Horse Protection Act Amendments of 1976'."

SHORT TITLE

Pub. L. 91–540, §1, Dec. 9, 1970, 84 Stat. 1404, as amended by Pub. L. 94–360, §2, July 13, 1976, 90 Stat. 915, provided: "That this Act [enacting this chapter] may be cited as the 'Horse Protection Act'."

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§1822. Congressional statement of findings

The Congress finds and declares that—

(1) the soring of horses is cruel and inhumane;

(2) horses shown or exhibited which are sore, where such soreness improves the performance of such horse, compete unfairly with horses which are not sore;

(3) the movement, showing, exhibition, or sale of sore horses in intrastate commerce adversely affects and burdens interstate and foreign commerce;

(4) all horses which are subject to regulation under this chapter are either in interstate or foreign commerce or substantially affect such commerce; and

(5) regulation under this chapter by the Secretary is appropriate to prevent and eliminate burdens upon commerce and to effectively regulate commerce.

(Pub. L. 91–540, §3, Dec. 9, 1970, 84 Stat. 1405; Pub. L. 94–360, §4, July 13, 1976, 90 Stat. 915.)

AMENDMENTS

1976—Pub. L. 94–360, among other changes, inserted findings stating that all horses subject to regulation under this chapter are either in interstate or foreign commerce or substantially affect interstate or foreign commerce, and that regulation by the Secretary is appropriate to eliminate burdens upon commerce.

§1823. Horse shows and exhibitions

(a) Disqualification of horses

The management of any horse show or horse exhibition shall disqualify any horse from being shown or exhibited (1) which is sore or (2) if the management has been notified by a person appointed in accordance with regulations under subsection (c) of this section or by the Secretary that the horse is sore.

(b) Prohibited activities

The management of any horse sale or auction shall prohibit the sale or auction or exhibition for the purpose of sale of any horse (1) which is sore or (2) if the management has been notified by a person appointed in accordance with regulations under subsection (c) of this section or by the Secretary that the horse is sore.

(c) Appointment of inspectors; manner of inspections

The Secretary shall prescribe by regulation requirements for the appointment by the management of any horse show, horse exhibition, or horse sale or auction of persons qualified to detect and diagnose a horse which is sore or to otherwise inspect horses for the purposes of enforcing this chapter. Such requirements shall prohibit the appointment of persons who, after notice and opportunity for a hearing, have been disqualified by the Secretary to make such detection, diagnosis, or inspection. Appointment of a person in accordance with the requirements prescribed under this subsection shall not be construed as authorizing such person to conduct inspections in a manner other than that prescribed for inspections by the Secretary (or the Secretary's representative) under subsection (e) of this section.

(d) Recordkeeping and reporting requirements; availability of records

The management of a horse show, horse exhibition, or horse sale or auction shall establish and maintain such records, make such reports, and provide such information as the Secretary may by regulation reasonably require for the purposes of implementing this chapter or to determine compliance with this chapter. Upon request of an officer or employee duly designated by the Secretary, such management shall permit entry at all reasonable times for the inspection and copying (on or off the premises) of records required to be maintained under this subsection.

(e) Inspection by Secretary or duly appointed representative

For purposes of enforcement of this chapter (including any regulation promulgated under this chapter) the Secretary, or any representative of the Secretary duly designated by the Secretary, may inspect any horse show, horse exhibition, or horse sale or auction or any horse at any such show, exhibition, sale, or auction. Such an inspection may only be made upon presenting appropriate credentials. Each such inspection shall be commenced and completed with reasonable promptness and shall be conducted within reasonable limits and in a reasonable manner. An inspection under this subsection shall extend to all things (including records) bearing on whether the requirements of this chapter have been complied with.

(Pub. L. 91–540, §4, Dec. 9, 1970, 84 Stat. 1405; Pub. L. 94–360, §5, July 13, 1976, 90 Stat. 916.)

AMENDMENTS

1976—Pub. L. 94–360 substituted provisions relating to the inspection and disqualification of horses participating in horse shows and exhibitions, the issuance of regulations by the Secretary, and the maintenance of records by horse show management, for provisions prohibiting as constituting unlawful acts the exhibition of sored horses, the transportation in commerce for purposes of exhibition of any horse that had been sored, and the conducting of any show or exhibition in which sored horses appear. Provisions now covering such unlawful acts are set out as section 1824 of this title.

§1824. Unlawful acts

The following conduct is prohibited:

(1) The shipping, transporting, moving, delivering, or receiving of any horse which is sore with reason to believe that such horse while it is sore may be shown, exhibited, entered for the purpose of being shown or exhibited, sold, auctioned, or offered for sale, in any horse show, horse exhibition, or horse sale or auction; except that this paragraph does not apply to the shipping, transporting, moving, delivering, or receiving of any horse by a common or contract carrier or an employee thereof in the usual course of the carrier's business or employee's employment unless the carrier or employee has reason to believe that such horse is sore.

(2) The (A) showing or exhibiting, in any horse show or horse exhibition, of any horse which is sore, (B) entering for the purpose of showing or exhibiting in any horse show or horse exhibition, any horse which is sore, (C) selling, auctioning, or offering for sale, in any horse sale or auction, any horse which is sore, and (D) allowing any activity described in clause (A), (B), or (C) respecting a horse which is sore by the owner of such horse.

(3) The failure by the management of any horse show or horse exhibition, which does not appoint and retain a person in accordance with section 1823(c) of this title, to disqualify from

being shown or exhibited any horse which is sore.

(4) The failure by the management of any horse sale or auction, which does not appoint and retain a qualified person in accordance with section 1823(c) of this title, to prohibit the sale, offering for sale, or auction of any horse which is sore.

(5) The failure by the management of any horse show or horse exhibition, which has appointed and retained a person in accordance with section 1823(c) of this title, to disqualify from being shown or exhibited any horse (A) which is sore, and (B) after having been notified by such person or the Secretary that the horse is sore or after otherwise having knowledge that the horse is sore.

(6) The failure by the management of any horse sale or auction which has appointed and retained a person in accordance with section 1823(c) of this title, to prohibit the sale, offering for sale, or auction of any horse (A) which is sore, and (B) after having been notified by such person or the Secretary or after otherwise having knowledge that the horse is sore.

(7) The showing or exhibiting at a horse show or horse exhibition; the selling or auctioning at a horse sale or auction; the allowing to be shown, exhibited, or sold at a horse show, horse exhibition, or horse sale or auction; the entering for the purpose of showing or exhibiting in any horse show or horse exhibition; or offering for sale at a horse sale or auction, any horse which is wearing or bearing any equipment, device, paraphernalia, or substance which the Secretary by regulation under section 1828 of this title prohibits to prevent the soring of horses.

(8) The failing to establish, maintain, or submit records, notices, reports, or other information required under section 1823 of this title.

(9) The failure or refusal to permit access to or copying of records, or the failure or refusal to permit entry or inspection, as required by section 1823 of this title.

(10) The removal of any marking required by the Secretary to identify a horse as being detained.

(11) The failure or refusal to provide the Secretary with adequate space or facilities, as the Secretary may by regulation under section 1828 of this title prescribe, in which to conduct inspections or any other activity authorized to be performed by the Secretary under this chapter.

(Pub. L. 91–540, §5, Dec. 9, 1970, 84 Stat. 1405; Pub. L. 94–360, §6, July 13, 1976, 90 Stat. 916.)

AMENDMENTS

1976—Pub. L. 94–360 substituted provisions prohibiting the transportation, receipt, exhibition, sale, or auction of a sored horse, and the showing, sale or auction of a horse bearing any device or substance prohibited by regulation of the Secretary, and making the management of a horse show, exhibition, or sale, responsible for failure to disqualify such horses from participating, and for interfering with the conducting of inspections by the Secretary of horses in the show or of the management records, for provisions authorizing the inspection of horses, transported in commerce, and requiring the management of shows and exhibitions to maintain such records as the Secretary prescribes. Provisions now covering the maintenance of records and the inspection of horses are set out as section 1823 of this title.

§1824a. Export of horses

(a) Restriction on export of horses

Notwithstanding any other provision of law, no horse may be exported by sea from the United States, or any of its territories or possessions, unless such horse is part of a consignment of horses with respect to which a waiver has been granted under subsection (b) of this section.

(b) Granting of waivers

The Secretary of Commerce, in consultation with the Secretary of Agriculture, may issue regulations providing for the granting of waivers permitting the export by sea of a specified consignment of horses, if the Secretary of Commerce, in consultation with the Secretary of Agriculture, determines that no horse in that consignment is being exported for purposes of slaughter.

(c) Penalties

(1) Criminal penalty

Any person who knowingly violates this section or any regulation, order, or license issued under this section shall be fined not more than 5 times the value of the consignment of horses involved or $50,000, whichever is greater, or imprisoned not more than 5 years, or both.

(2) Civil penalty

The Secretary of Commerce, after providing notice and an opportunity for an agency hearing on the record, may impose a civil penalty of not to exceed $10,000 for each violation of this section or any regulation, order, or license issued under this section, either in addition to or in lieu of any other liability or penalty which may be imposed.

(Mar. 3, 1891, ch. 521, §3, as added Pub. L. 99–64, title I, §125, July 12, 1985, 99 Stat. 156.)

CODIFICATION

Section was not enacted as part of the Horse Protection Act of 1970 which comprises this chapter.

Section was classified to section 466c of the former Appendix to Title 46, prior to the completion of the enactment of Title 46, Shipping, by Pub. L. 109–304, Oct. 6, 2006, 120 Stat. 1485.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 7(j) of the Export Administration Act of 1979, section 2406(j) of Title 50, Appendix, War and National Defense, prior to the amendment of that Act by the Export Administration Amendments Act of 1985, Pub. L. 99–64, which enacted this section.

§1825. Violations and penalties

(a) Criminal acts and penalties

(1) Except as provided in paragraph (2) of this subsection, any person who knowingly violates section 1824 of this title shall, upon conviction thereof, be fined not more than $3,000, or imprisoned for not more than one year, or both.

(2)(A) If any person knowingly violates section 1824 of this title, after one or more prior convictions of such person for such a violation have become final, such person shall, upon conviction thereof, be fined not more than $5,000, or imprisoned for not more than two years, or both.

(B) Any person who knowingly makes, or causes to be made, a false entry or statement in any report required under this chapter; who knowingly makes, or causes to be made, any false entry in any account, record, or memorandum required to be established and maintained by any person or in any notification or other information required to be submitted to the Secretary under section 1823 of this title; who knowingly neglects or fails to make or cause to be made, full, true, and correct entries in such accounts, records, memoranda, notification, or other materials; who knowingly removes any such documentary evidence out of the jurisdiction of the United States; who knowingly mutilates, alters, or by any other means falsifies any such documentary evidence; or who knowingly refuses to submit any such documentary evidence to the Secretary for inspection and copying shall be guilty of an offense against the United States, and upon conviction thereof shall be fined not more than $5,000, or imprisoned for not more than three years, or both.

(C) Any person who forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his official duties under this chapter shall be fined not more than $5,000, or imprisoned not more than three years, or both. Whoever, in the commission of such acts, uses a deadly or dangerous weapon shall be fined not more than $10,000, or imprisoned not more than ten years, or both. Whoever kills any person while engaged in or on account of the performance of his official duties under this chapter shall be punishable as provided under sections 1111 and 1112 of title 18.

(b) Civil penalties; review and enforcement

(1) Any person who violates section 1824 of this title shall be liable to the United States for a civil penalty of not more than $2,000 for each violation. No penalty shall be assessed unless such person

is given notice and opportunity for a hearing before the Secretary with respect to such violation. The amount of such civil penalty shall be assessed by the Secretary by written order. In determining the amount of such penalty, the Secretary shall take into account all factors relevant to such determination, including the nature, circumstances, extent, and gravity of the prohibited conduct and, with respect to the person found to have engaged in such conduct, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

(2) Any person against whom a violation is found and a civil penalty assessed under paragraph (1) of this subsection may obtain review in the court of appeals of the United States for the circuit in which such person resides or has his place of business or in the United States Court of Appeals for the District of Columbia Circuit by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found and such penalty assessed, as provided in section 2112 of title 28. The findings of the Secretary shall be set aside if found to be unsupported by substantial evidence.

(3) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court of appeals has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(4) The Secretary may, in his discretion, compromise, modify, or remit, with or without conditions, any civil penalty assessed under this subsection.

(c) Disqualification of offenders; orders; civil penalties applicable; enforcement procedures

In addition to any fine, imprisonment, or civil penalty authorized under this section, any person who was convicted under subsection (a) of this section or who paid a civil penalty assessed under subsection (b) of this section or is subject to a final order under such subsection assessing a civil penalty for any violation of any provision of this chapter or any regulation issued under this chapter may be disqualified by order of the Secretary, after notice and an opportunity for a hearing before the Secretary, from showing or exhibiting any horse, judging or managing any horse show, horse exhibition, or horse sale or auction for a period of not less than one year for the first violation and not less than five years for any subsequent violation. Any person who knowingly fails to obey an order of disqualification shall be subject to a civil penalty of not more than $3,000 for each violation. Any horse show, horse exhibition, or horse sale or auction, or the management thereof, collectively and severally, which knowingly allows any person who is under an order of disqualification to show or exhibit any horse, to enter for the purpose of showing or exhibiting any horse, to take part in managing or judging, or otherwise to participate in any horse show, horse exhibition, or horse sale or auction in violation of an order shall be subject to a civil penalty of not more than $3,000 for each violation. The provisions of subsection (b) of this section respecting the assessment, review, collection, and compromise, modification, and remission of a civil penalty apply with respect to civil penalties under this subsection.

(d) Production of witnesses and books, papers, and documents; depositions; fees; presumptions; jurisdiction

(1) The Secretary may require by subpena the attendance and testimony of witnesses and the production of books, papers, and documents relating to any matter under investigation or the subject of a proceeding. Witnesses summoned before the Secretary shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(2) The attendance of witnesses, and the production of books, papers, and documents, may be required at any designated place from any place in the United States. In case of disobedience to a subpena the Secretary, or any party to a proceeding before the Secretary, may invoke the aid of any appropriate district court of the United States in requiring attendance and testimony of witnesses and the production of such books, papers, and documents under the provisions of this chapter.

(3) The Secretary may order testimony to be taken by deposition under oath in any proceeding or

investigation pending before him, at any stage of the proceeding or investigation. Depositions may be taken before any person designated by the Secretary who has power to administer oaths. The Secretary may also require the production of books, papers, and documents at the taking of depositions.

(4) Witnesses whose depositions are taken and the persons taking them shall be entitled to the same fees as paid for like services in the courts of the United States or in other jurisdictions in which they may appear.

(5) In any civil or criminal action to enforce this chapter or any regulation under this chapter a horse shall be presumed to be a horse which is sore if it manifests abnormal sensitivity or inflammation in both of its forelimbs or both of its hindlimbs.

(6) The United States district courts, the District Court of Guam, the District Court of the Virgin Islands, the highest court of American Samoa, and the United States courts of the other territories, are vested with jurisdiction specifically to enforce, and to prevent and restrain violations of this chapter, and shall have jurisdiction in all other kinds of cases arising under this chapter, except as provided in subsection (b) of this section.

(e) Detention of horses; seizure and condemnation of equipment

(1) The Secretary may detain (for a period not to exceed twenty-four hours) for examination, testing, or the taking of evidence, any horse at any horse show, horse exhibition, or horse sale or auction which is sore or which the Secretary has probable cause to believe is sore. The Secretary may require the temporary marking of any horse during the period of its detention for the purpose of identifying the horse as detained. A horse which is detained subject to this paragraph shall not be moved by any person from the place it is so detained except as authorized by the Secretary or until the expiration of the detention period applicable to the horse.

(2) Any equipment, device, paraphernalia, or substance which was used in violation of any provision of this chapter or any regulation issued under this chapter or which contributed to the soring of any horse at or prior to any horse show, horse exhibition, or horse sale or auction, shall be liable to be proceeded against, by process of libel for the seizure and condemnation of such equipment, device, paraphernalia, or substance, in any United States district court within the jurisdiction of which such equipment, device, paraphernalia, or substance is found. Such proceedings shall conform as nearly as possible to proceedings in rem in admiralty.

(Pub. L. 91–540, §6, Dec. 9, 1970, 84 Stat. 1406; Pub. L. 94–360, §7, July 13, 1976, 90 Stat. 918.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–360 substituted provisions increasing the maximum amount of fine that can be imposed and the maximum length of imprisonment that can be ordered for knowingly performing enumerated activities prohibited under this chapter, for provisions authorizing a maximum civil penalty of $1,000 for each unintentional violation of this chapter, requiring notice to an alleged violator prior to assessment of any penalty and authorizing the institution of civil actions by the Attorney General to enforce such penalties.

Subsec. (b). Pub. L. 94–360 substituted provisions relating to imposition of civil penalties up to $2,000, criteria for imposition of particular amounts, and procedures for review and enforcement of civil penalties, for provisions authorizing fines up to $2,000 and/or imprisonment up to six months for intentional violations of provisions of this chapter or any regulation issued thereunder.

Subsecs. (c) to (e). Pub. L. 94–360 added subsecs. (c) to (e).

§1826. Notice of violations to Attorney General

Whenever the Secretary believes that a willful violation of this chapter has occurred and that prosecution is needed to obtain compliance with this chapter, he shall inform the Attorney General and the Attorney General shall take such action with respect to such matter as he deems appropriate.

(Pub. L. 91–540, §7, Dec. 9, 1970, 84 Stat. 1406.)

§1827. Utilization of personnel of Department of Agriculture and officers and employees of consenting States; technical and other nonfinancial assistance to State

(a) Assistance from Department of Agriculture and States

The Secretary, in carrying out the provisions of this chapter, shall utilize, to the maximum extent practicable, the existing personnel and facilities of the Department of Agriculture. The Secretary is further authorized to utilize the officers and employees of any State, with its consent, and with or without reimbursement, to assist him in carrying out the provisions of this chapter.

(b) Assistance to States

The Secretary may, upon request, provide technical and other nonfinancial assistance (including the lending of equipment on such terms and conditions as the Secretary determines is appropriate) to any State to assist it in administering and enforcing any law of such State designed to prohibit conduct described in section 1824 of this title.

(Pub. L. 91–540, §8, Dec. 9, 1970, 84 Stat. 1406; Pub. L. 94–360, §8, July 13, 1976, 90 Stat. 920.)

AMENDMENTS

1976—Pub. L. 94–360 designated existing provisions as subsec. (a) and added subsec. (b).

§1828. Rules and regulations

The Secretary is authorized to issue such rules and regulations as he deems necessary to carry out the provisions of this chapter.

(Pub. L. 91–540, §9, Dec. 9, 1970, 84 Stat. 1406.)

§1829. Preemption of State laws; concurrent jurisdiction; prohibition on certain State action

No provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together. Nor shall any provision of this chapter be construed to exclude the Federal Government from enforcing the provision of this chapter within any State, whether or not such State has enacted legislation on the same subject, it being the intent of the Congress to establish concurrent jurisdiction with the States over such subject matter. In no case shall any such State take any action pursuant to this section involving a violation of any such law of that State which would preclude the United States from enforcing the provisions of this chapter against any person.

(Pub. L. 91–540, §10, Dec. 9, 1970, 84 Stat. 1406.)

§1830. Omitted

CODIFICATION

Section, Pub. L. 91–540, §11, Dec. 9, 1970, 84 Stat. 1406; Pub. L. 94–360, §9, July 13, 1976, 90 Stat. 920; Pub. L. 104–66, title I, §1012(b), Dec. 21, 1995, 109 Stat. 711, which required the Secretary of Agriculture to include information on matters covered by this chapter, together with recommendations for legislative and other action, as part of the annual report submitted to Congress under section 2155 of title 7, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 44 of House Document No. 103–7.

§1831. Authorization of appropriations

There are authorized to be appropriated to carry out this chapter $125,000 for the period beginning July 1, 1976, and ending September 30, 1976; and for the fiscal year beginning October 1, 1976, and for each fiscal year thereafter there are authorized to be appropriated such sums, not to exceed $500,000, as may be necessary to carry out this chapter.

(Pub. L. 91–540, §12, Dec. 9, 1970, 84 Stat. 1407; Pub. L. 94–360, §10, July 13, 1976, 90 Stat. 921.)

AMENDMENTS

1976—Pub. L. 94–360 substituted provisions authorizing $125,000 to be appropriated for the period beginning July 1, 1976 and ending September 30, 1976, and $500,000 to be appropriated for the fiscal year beginning October 1, 1976, and each fiscal year thereafter, to carry out the purposes of this chapter, for provisions authorizing not more than $100,000 to be appropriated annually to carry out the provisions of this chapter.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 10 of Pub. L. 94–360 provided that the amendment made by that section is effective July 1, 1976.

CHAPTER 45—EMERGENCY LOAN GUARANTEES TO BUSINESS ENTERPRISES

Sec.

1841. Emergency Loan Guarantee Board; establishment; membership; voting.
1842. Authority for loan guarantees; terms and conditions.
1843. Limitations and conditions of loan guarantees.
1844. Security for loan guarantees.
1845. Requirements applicable to loan guarantees.
1846. Powers and duties.
1847. Maximum obligation.
1848. Emergency loan guarantee fund.
1849. Federal Reserve banks as fiscal agents.
1850. Protection of Government's interest.
1851. Reports to Congress; recommendations.
1852. Termination date.

§1841. Emergency Loan Guarantee Board; establishment; membership; voting

There is created an Emergency Loan Guarantee Board (referred to in this chapter as the "Board") composed of the Secretary of the Treasury, as Chairman, the Chairman of the Board of Governors of the Federal Reserve System, and the Chairman of the Securities and Exchange Commission. Decisions of the Board shall be made by majority vote.

(Pub. L. 92–70, §2, Aug. 9, 1971, 85 Stat. 178.)

SHORT TITLE

Pub. L. 92–70, §1, Aug. 9, 1971, 85 Stat. 178, provided that: "This Act [enacting this chapter] may be cited as the 'Emergency Loan Guarantee Act'."

EMERGENCY STEEL LOAN GUARANTEES AND EMERGENCY OIL AND GAS GUARANTEED LOANS

Pub. L. 106–51, Aug. 17, 1999, 113 Stat. 252, as amended by Pub. L. 106–102, title VII, §734, Nov. 12, 1999, 113 Stat. 1478; Pub. L. 107–63, title III, §336(a), Nov. 5, 2001, 115 Stat. 472; Pub. L. 108–199, div. B, title II, §211(a), Jan. 23, 2004, 118 Stat. 75; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814; Pub. L. 109–108, title II, §205, Nov. 22, 2005, 119 Stat. 2315; Pub. L. 110–161, div. B, title I, §105, Dec. 26, 2007, 121 Stat. 1892; Pub. L. 111–117, div. B, title I, §108, Dec. 16, 2009, 123 Stat. 3122, provided that:

"CHAPTER 1

"SEC. 101. EMERGENCY STEEL LOAN GUARANTEE PROGRAM. (a) SHORT TITLE.—This chapter may be cited as the 'Emergency Steel Loan Guarantee Act of 1999'.

"(b) CONGRESSIONAL FINDINGS.—Congress finds that—

"(1) the United States steel industry has been severely harmed by a record surge of more than 40,000,000 tons of steel imports into the United States since 1998, caused by the world financial crisis;

"(2) this surge in imports resulted in the loss of more than 10,000 steel worker jobs since 1998, and was the imminent cause of three bankruptcies by medium-sized steel companies, Acme Steel, Laclede Steel, and Geneva Steel;

"(3) the crisis also forced almost all United States steel companies into—

"(A) reduced volume, lower prices, and financial losses; and

"(B) an inability to obtain credit for continued operations and reinvestment in facilities;

"(4) the crisis also has affected the willingness of private banks and investment institutions to make loans to the United States steel industry for continued operation and reinvestment in facilities;

"(5) these steel bankruptcies, job losses, and financial losses are also having serious negative effects on the tax base of cities, counties, and States, and on the essential health, education, and municipal services that these government entities provide to their citizens; and

"(6) a strong steel industry is necessary to the adequate defense preparedness of the United States in order to have sufficient steel available to build the ships, tanks, planes, and armaments necessary for the national defense.

"(c) DEFINITIONS.—For purposes of this section:

"(1) BOARD.—The term 'Board' means the Loan Guarantee Board established under subsection (e).

"(2) PROGRAM.—The term 'Program' means the Emergency Steel Guarantee Loan Program established under subsection (d).

"(3) QUALIFIED STEEL COMPANY.—The term 'qualified steel company' means any company that—

"(A) is incorporated under the laws of any State;

"(B) is engaged in the production and manufacture of a product defined by the American Iron and Steel Institute as a basic steel mill product, including ingots, slab and billets, plates, flat-rolled steel, sections and structural products, bars, rail type products, pipe and tube, and wire rod; and

"(C) has experienced layoffs, production losses, or financial losses since the beginning of the steel import crisis in 1998, and thereafter, or that operates substantial assets of a company that meets these qualifications.

"(d) ESTABLISHMENT OF EMERGENCY STEEL GUARANTEE LOAN PROGRAM.—There is established the Emergency Steel Guarantee Loan Program, to be administered by the Board, the purpose of which is to provide loan guarantees to qualified steel companies in accordance with this section.

"(e) LOAN GUARANTEE BOARD MEMBERSHIP.—There is established a Loan Guarantee Board, which shall be composed of—

"(1) the Secretary of Commerce;

"(2) the Chairman of the Board of Governors of the Federal Reserve System, or a member of the Board of Governors of the Federal Reserve System designated by the Chairman, who shall serve as Chairman of the Board; and

"(3) the Chairman of the Securities and Exchange Commission, or a commissioner of the Securities and Exchange Commission designated by the Chairman.

"(f) LOAN GUARANTEE PROGRAM.—

"(1) AUTHORITY.—The Program may guarantee loans provided to qualified steel companies by private banking and investment institutions in accordance with the procedures, rules, and regulations established by the Board.

"(2) TOTAL GUARANTEE LIMIT.—The aggregate amount of loans guaranteed and outstanding at any one time under this section may not exceed $1,000,000,000.

"(3) INDIVIDUAL GUARANTEE LIMIT.—The aggregate amount of loans guaranteed under this section with respect to a single qualified steel company may not exceed $250,000,000.

"(4) TIMELINES.—The Board shall approve or deny each application for a guarantee under this section as soon as possible after receipt of such application.

"(5) ADDITIONAL COSTS.—For the additional cost of the loans guaranteed under this subsection, including the costs of modifying the loans as defined in section 502 of the Congressional Budget Act of 1974 (2 U.S.C. 661a), there is appropriated $140,000,000 to remain available until expended.

"(g) REQUIREMENTS FOR LOAN GUARANTEES.—A loan guarantee may be issued under this section

upon application to the Board by a qualified steel company pursuant to an agreement to provide a loan to that qualified steel company by a private bank or investment company, if the Board determines that—

"(1) credit is not otherwise available to that company under reasonable terms or conditions sufficient to meet its financing needs, as reflected in the financial and business plans of that company;

"(2) the prospective earning power of that company, together with the character and value of the security pledged, furnish reasonable assurance of repayment of the loan to be guaranteed in accordance with its terms;

"(3) the loan to be guaranteed bears interest at a rate determined by the Board to be reasonable, taking into account the current average yield on outstanding obligations of the United States with remaining periods of maturity comparable to the maturity of such loan;

"(4) the company has agreed to an audit by the Government Accountability Office prior to the issuance of the loan guarantee and annually thereafter while any such guaranteed loan is outstanding; and

"(5) in the case of a purchaser of substantial assets of a qualified steel company, the qualified steel company establishes that it is unable to reorganize itself.

"(h) TERMS AND CONDITIONS OF LOAN GUARANTEES.—

"(1) LOAN DURATION.—All loans guaranteed under this section shall be payable in full not later than December 31, 2015, and the terms and conditions of each such loan shall provide that the loan may not be amended, or any provision thereof waived, without the consent of the Board.

"(2) LOAN SECURITY.—Any commitment to issue a loan guarantee under this section shall contain such affirmative and negative covenants and other protective provisions that the Board determines are appropriate. The Board shall require security for the loans to be guaranteed under this section at the time at which the commitment is made.

"(3) FEES.—A qualified steel company receiving a guarantee under this section shall pay a fee to the Department of the Treasury to cover costs of the program, but in no event shall such fee exceed an amount equal to 0.5 percent of the outstanding principal balance of the guaranteed loan.

"(4) GUARANTEE LEVEL.—

"(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), any loan guarantee provided under this section shall not exceed 85 percent of the amount of principal of the loan.

"(B) INCREASED LEVEL ONE.—A loan guarantee may be provided under this section in excess of 85 percent, but not more than 90 percent, of the amount of principal of the loan, if—

"(i) the aggregate amount of loans guaranteed at such percentage and outstanding under this section at any one time does not exceed $100,000,000; and

"(ii) the aggregate amount of loans guaranteed at such percentage under this section with respect to a single qualified steel company does not exceed $50,000,000.

"(C) INCREASED LEVEL TWO.—A loan guarantee may be provided under this section in excess of 85 percent, but not more than 95 percent, of the amount of principal of the loan, if—

"(i) the aggregate amount of loans guaranteed at such percentage and outstanding under this section at any one time does not exceed $100,000,000; and

"(ii) the aggregate amount of loans guaranteed at such percentage under this section with respect to a single qualified steel company does not exceed $50,000,000.

"(i) REPORTS TO CONGRESS.—The Secretary of Commerce shall submit to Congress a full report of the activities of the Board under this section during each of fiscal years 1999 and 2000, and annually thereafter, during such period as any loan guaranteed under this section is outstanding.

"(j) SALARIES AND ADMINISTRATIVE EXPENSES.—For necessary expenses to administer the Program, $5,000,000 is appropriated to the Department of Commerce, to remain available until expended, which may be transferred to the Office of the Assistant Secretary for Trade Development of the International Trade Administration.

"(k) TERMINATION OF GUARANTEE AUTHORITY.—The authority of the Board to make commitments to guarantee any loan under this section shall terminate on December 31, 2011.

"(l) REGULATORY ACTION.—The Board shall issue such final procedures, rules, and regulations as may be necessary to carry out this section not later than 60 days after the date of the enactment of this Act [Aug. 17, 1999].

"(m) IRON ORE COMPANIES.—

"(1) IN GENERAL.—Subject to the requirements of this subsection, an iron ore company incorporated under the laws of any State shall be treated as a qualified steel company for purposes of the Program.

"(2) TOTAL GUARANTEE LIMIT FOR IRON ORE COMPANY.—Of the aggregate amount of loans authorized to be guaranteed and outstanding at any one time under subsection (f)(2), an amount not to exceed $30,000,000 shall be loans with respect to iron ore companies.

"FEDERAL ADMINISTRATIVE AND TRAVEL EXPENSES

"(RESCISSIONS)

"SEC. 102. (a) Of the funds available in the nondefense category to the agencies of the Federal Government, $145,000,000 are hereby rescinded: *Provided*, That rescissions pursuant to this subsection shall be taken only from administrative and travel accounts: *Provided further*, That rescissions shall be taken on a pro rata basis from funds available to every Federal agency, department, and office in the executive branch, including the Office of the President.

"(b) Within 30 days after the date of the enactment of this Act [Aug. 17, 1999], the Director of the Office of Management and Budget shall submit to the Committees on Appropriations of the House of Representatives and the Senate a listing of the amounts by account of the reductions made pursuant to the provisions of subsection (a) of this section.

"SEC. 103. SALARIES AND ADMINISTRATIVE EXPENSES.

"(a) In addition to funds made available under section 101(j) of the Emergency Steel Loan Guarantee Act of 1999 (15 U.S.C. 1841 note), up to $1,000,000 in funds made available under section 101(f) of such Act may be used for salaries and administrative expenses to administer the Emergency Steel Loan Guarantee Program.

"(b) Funds made available for salaries and administrative expenses to administer the Emergency Steel Loan Guarantee Program shall remain available until expended.

"CHAPTER 2

"SEC. 201. PETROLEUM DEVELOPMENT MANAGEMENT. (a) SHORT TITLE.—This chapter may be cited as the 'Emergency Oil and Gas Guaranteed Loan Program Act'.

"(b) FINDINGS.—Congress finds that—

"(1) consumption of foreign oil in the United States is estimated to equal 56 percent of all oil consumed, and that percentage could reach 68 percent by 2010 if current prices prevail;

"(2) the number of oil and gas rigs operating in the United States is at its lowest since 1944, when records of this tally began;

"(3) if prices do not increase soon, the United States could lose at least half its marginal wells, which in aggregate produce as much oil as the United States imports from Saudi Arabia;

"(4) oil and gas prices are unlikely to increase for at least several years;

"(5) declining production, well abandonment, and greatly reduced exploration and development are shrinking the domestic oil and gas industry;

"(6) the world's richest oil producing regions in the Middle East are experiencing increasingly greater political instability;

"(7) United Nations policy may make Iraq the swing oil producing nation, thereby granting Saddam Hussein tremendous power;

"(8) reliance on foreign oil for more than 60 percent of our daily oil and gas consumption is a national security threat;

"(9) the level of United States oil security is directly related to the level of domestic production of oil, natural gas liquids, and natural gas; and

"(10) a national security policy should be developed that ensures that adequate supplies of oil are available at all times free of the threat of embargo or other foreign hostile acts.

"(c) DEFINITIONS.—In this section:

"(1) BOARD.—The term 'Board' means the Loan Guarantee Board established by subsection (e).

"(2) PROGRAM.—The term 'Program' means the Emergency Oil and Gas Guaranteed Loan Program established by subsection (d).

"(3) QUALIFIED OIL AND GAS COMPANY.—The term 'qualified oil and gas company' means a company that—

"(A) is—

"(i) an independent oil and gas company (within the meaning of section 57(a)(2)(B)(i) of the Internal Revenue Code of 1986 [26 U.S.C. 57(a)(2)(B)(i)]); or

"(ii) a small business concern under section 3 of the Small Business Act (15 U.S.C. 632) (or a company based in Alaska, including an Alaska Native Corporation created pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)) that is an oil field service company whose main business is providing tools, products, personnel, and technical solutions on a contractual basis to exploration and production operators that drill, complete wells, and produce, transport, refine, and sell hydrocarbons and their byproducts as the main commercial business of the concern or company; and

"(B) has experienced layoffs, production losses, or financial losses since the beginning of the oil

import crisis, after January 1, 1997.

"(d) EMERGENCY OIL AND GAS GUARANTEED LOAN PROGRAM.—

"(1) IN GENERAL.—There is established the Emergency Oil and Gas Guaranteed Loan Program, the purpose of which shall be to provide loan guarantees to qualified oil and gas companies in accordance with this section.

"(2) LOAN GUARANTEE BOARD.—There is established to administer the Program a Loan Guarantee Board, to be composed of—

"(A) the Secretary of Commerce;

"(B) the Chairman of the Board of Governors of the Federal Reserve System, or a member of the Board of Governors of the Federal Reserve System designated by the Chairman, who shall serve as Chairman of the Board; and

"(C) the Chairman of the Securities and Exchange Commission, or a commissioner of the Securities and Exchange Commission designated by the Chairman.

"(e) AUTHORITY.—

"(1) IN GENERAL.—The Program may guarantee loans provided to qualified oil and gas companies by private banking and investment institutions in accordance with procedures, rules, and regulations established by the Board.

"(2) TOTAL GUARANTEE LIMIT.—The aggregate amount of loans guaranteed and outstanding at any one time under this section shall not exceed $500,000,000.

"(3) INDIVIDUAL GUARANTEE LIMIT.—The aggregate amount of loans guaranteed under this section with respect to a single qualified oil and gas company shall not exceed $10,000,000.

"(4) EXPEDITIOUS ACTION ON APPLICATIONS.—The Board shall approve or deny an application for a guarantee under this section as soon as practicable after receipt of an application.

"(5) ADDITIONAL COSTS.—For the additional cost of the loans guaranteed under this subsection, including the costs of modifying the loans as defined in section 502 of the Congressional Budget Act of 1974 (2 U.S.C. 661a), there is appropriated $122,500,000 to remain available until expended.

"(f) REQUIREMENTS FOR LOAN GUARANTEES.—The Board may issue a loan guarantee on application by a qualified oil and gas company under an agreement by a private bank or investment company to provide a loan to the qualified oil and gas company, if the Board determines that—

"(1) credit is not otherwise available to the company under reasonable terms or conditions sufficient to meet its financing needs, as reflected in the financial and business plans of the company;

"(2) the prospective earning power of the company, together with the character and value of the security pledged, provide a reasonable assurance of repayment of the loan to be guaranteed in accordance with its terms;

"(3) the loan to be guaranteed bears interest at a rate determined by the Board to be reasonable, taking into account the current average yield on outstanding obligations of the United States with remaining periods of maturity comparable to the maturity of the loan; and

"(4) the company has agreed to an audit by the Government Accountability Office before issuance of the loan guarantee and annually while the guaranteed loan is outstanding.

"(g) TERMS AND CONDITIONS OF LOAN GUARANTEES.—

"(1) LOAN DURATION.—All loans guaranteed under this section shall be repayable in full not later than December 31, 2010, and the terms and conditions of each such loan shall provide that the loan agreement may not be amended, or any provision of the loan agreement waived, without the consent of the Board.

"(2) LOAN SECURITY.—A commitment to issue a loan guarantee under this section shall contain such affirmative and negative covenants and other protective provisions as the Board determines are appropriate. The Board shall require security for the loans to be guaranteed under this section at the time at which the commitment is made.

"(3) FEES.—A qualified oil and gas company receiving a loan guarantee under this section shall pay a fee to the Department of the Treasury to cover costs of the program, but in no event shall such fee exceed an amount equal to 0.5 percent of the outstanding principal balance of the guaranteed loan.

"(4) GUARANTEE LEVEL.—No loan guarantee may be provided under this section if the guarantee exceeds 85 percent of the amount of principal of the loan.

"(h) REPORTS.—During fiscal year 1999 and each fiscal year thereafter until each guaranteed loan has been repaid in full, the Secretary of Commerce shall submit to Congress a report on the activities of the Board.

"(i) SALARIES AND ADMINISTRATIVE EXPENSES.—For necessary expenses to administer the Program, $2,500,000 is appropriated to the Department of Commerce, to remain available until expended, which may be transferred to the Office of the Assistant Secretary for Trade Development of the International

Trade Administration.

"(j) TERMINATION OF GUARANTEE AUTHORITY.—The authority of the Board to make commitments to guarantee any loan under this section shall terminate on December 31, 2001.

"(k) REGULATORY ACTION.—Not later than 60 days after the date of the enactment of this Act [Aug. 17, 1999], the Board shall issue such final procedures, rules, and regulations as are necessary to carry out this section.

"FEDERAL ADMINISTRATIVE AND TRAVEL EXPENSES

"(RESCISSIONS)

"SEC. 202. (a) Of the funds available in the nondefense category to the agencies of the Federal Government, $125,000,000 are hereby rescinded: *Provided*, That rescissions pursuant to this subsection shall be taken only from administrative and travel accounts: *Provided further*, That rescissions shall be taken on a pro rata basis from funds available to every Federal agency, department, and office in the executive branch, including the Office of the President.

"(b) Within 30 days after the date of the enactment of this Act [Aug. 17, 1999], the Director of the Office of Management and Budget shall submit to the Committees on Appropriations of the House of Representatives and the Senate a listing of the amounts by account of the reductions made pursuant to the provisions of subsection (a) of this section.

"CHAPTER 3

"GENERAL PROVISIONS

"SEC. 301. No part of any appropriation contained in the Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

"This Act may be cited as the 'Emergency Steel Loan Guarantee and Emergency Oil and Gas Guaranteed Loan Act of 1999'."

[Pub. L. 110–161, div. B, title I, §105(c), Dec. 26, 2007, 121 Stat. 1893, which directed amendment of section 101(c)(3)(C) of Pub. L. 106–51, set out above, by substituting "in 1998, and thereafter," for ", in 1998", was executed by making the substitution for ", in January 1998" to reflect the probable intent of Congress.]

[Pub. L. 107–63, title III, §336(b), Nov. 5, 2001, 115 Stat. 472, provided that: "The amendments made by this section [amending section 101 of Pub. L. 106–51, set out above] shall apply only with respect to any guarantee issued on or after the date of the enactment of this Act [Nov. 5, 2001]."]

§1842. Authority for loan guarantees; terms and conditions

The Board, on such terms and conditions as it deems appropriate, may guarantee, or make commitments to guarantee, lenders against loss of principal or interest on loans that meet the requirements of this chapter.

(Pub. L. 92–70, §3, Aug. 9, 1971, 85 Stat. 178.)

§1843. Limitations and conditions of loan guarantees

(a) Necessary findings

A guarantee of a loan may be made under this chapter only if—

(1) the Board finds that (A) the loan is needed to enable the borrower to continue to furnish goods or services and failure to meet this need would adversely and seriously affect the economy of or employment in the Nation or any region thereof, (B) credit is not otherwise available to the borrower under reasonable terms or conditions, and (C) the prospective earning power of the borrower, together with the character and value of the security pledged, furnish reasonable assurance that it will be able to repay the loan within the time fixed, and afford reasonable protection to the United States; and

(2) the lender certifies that it would not make the loan without such guarantee.

(b) Term of loans; renewal

Loans guaranteed under this chapter shall be payable in not more than five years, but may be renewable for not more than an additional three years.

(c) Interest rates, determination; guarantee fee

(1) Loans guaranteed under this chapter shall bear interest payable to the lending institutions at rates determined by the Board taking into account the reduction in risk afforded by the loan guarantee and rates charged by lending institutions on otherwise comparable loans.

(2) The Board shall prescribe and collect a guarantee fee in connection with each loan guaranteed under this chapter. Such fee shall reflect the Government's administrative expense in making the guarantee and the risk assumed by the Government and shall not be less than an amount which, when added to the amount of interest payable to the lender of such loan, produces a total charge appropriate for loan agreements of comparable risk and maturity if supplied by the normal capital markets.

(Pub. L. 92–70, §4, Aug. 9, 1971, 85 Stat. 178.)

§1844. Security for loan guarantees

In negotiating a loan guarantee under this chapter, the Board shall make every effort to arrange that the payment of the principal of and interest on any plan guaranteed shall be secured by sufficient property of the enterprise to collateralize fully the amount of the loan guarantee.

(Pub. L. 92–70, §5, Aug. 9, 1971, 85 Stat. 179.)

§1845. Requirements applicable to loan guarantees

(a) Stock dividends or other payments, prohibition; waiver

A guarantee agreement made under this chapter with respect to an enterprise shall require that while there is any principal or interest remaining unpaid on a guaranteed loan to that enterprise the enterprise may not—

(1) declare a dividend on its common stock; or

(2) make any payment on its other indebtedness to a lender whose loan has been guaranteed under this chapter.

The Board may waive either or both of the requirements set forth in this subsection, as specified in the guarantee agreement covering a loan to any particular enterprise, if it determines that such waiver is not inconsistent with the reasonable protection of the interests of the United States under the guarantee.

(b) Managerial changes

If the Board determines that the inability of an enterprise to obtain credit without a guarantee under this chapter is the result of a failure on the part of management to exercise reasonable business prudence in the conduct of the affairs of the enterprise, the Board shall require before guaranteeing any loan to the enterprise that the enterprise make such management changes as the Board deems necessary to give the enterprise a sound managerial base.

(c) Financial statement; access to documents

A guarantee of a loan to any enterprise shall not be made under this chapter unless—

(1) the Board has received an audited financial statement of the enterprise; and

(2) the enterprise permits the Board to have the same access to its books and other documents as the Board would have under section 1846 of this title in the event the loan is guaranteed.

(d) Exhaustion of remedies

No payment shall be made or become due under a guarantee entered into under this chapter unless the lender has exhausted any remedies which it may have under the guarantee agreement.

(e) Protective provisions; advances

(1) Prior to making any guarantee under this chapter, the Board shall satisfy itself that the underlying loan agreement on which the guarantee is sought contains all the affirmative and negative covenants and other protective provisions which are usual and customary in loan agreements of a similar kind, including previous loan agreements between the lender and the borrower, and that it cannot be amended, or any provisions waived, without the Board's prior consent.

(2) On each occasion when the borrower seeks an advance under the loan agreement, the guarantee authorized by this chapter shall be in force as to the funds advanced only if—

(A) the lender gives the Board at least ten days' notice in writing of its intent to provide the borrower with funds pursuant to the loan agreement;

(B) the lender certifies to the Board before an advance is made that, as of the date of the notice provided for in subparagraph (A), the borrower is not in default under the loan agreement: *Provided*, That if a default has occurred the lender shall report the facts and circumstances relating thereto to the Board and the Board may expressly and in writing waive such default in any case where it determines that such waiver is not inconsistent with the reasonable protection of the interests of the United States under the guarantee; and

(C) the borrower provides the Board with a plan setting forth the expenditures for which the advance will be used and the period during which the expenditures will be made, and, upon the expiration of such periods, reports to the Board any instances in which amounts advanced have not been expended in accordance with the plan.

(f) Loan security, priority; collateral

(1) A guarantee agreement made under this chapter shall contain a requirement that as between the Board and the lender, the Board shall have a priority with respect to, and to the extent of, the lender's interest in any collateral securing the loan and any earlier outstanding loans. The Board shall take all steps necessary to assure such priority against any other persons.

(2) As used in paragraph (1) of this subsection, the term "collateral" includes all assets pledged under loan agreements and, if appropriate in the opinion of the Board, all sums of the borrower on deposit with the lender and subject to offset under section 68 of the Bankruptcy Act.

(Pub. L. 92–70, §6, Aug. 9, 1971, 85 Stat. 179.)

REFERENCES IN TEXT

Section 68 of the Bankruptcy Act, referred to in subsec. (f)(2), was classified to section 108 of former Title 11, Bankruptcy. The Bankruptcy Act was repealed effective Oct. 1, 1979, by Pub. L. 95–598, §§401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11. See sections 502(b)(3) and 553 of Title 11.

§1846. Powers and duties

(a) Board; inspection of documents; disapproval of certain transactions

The Board is authorized to inspect and copy all accounts, books, records, memoranda, correspondence, and other documents of any enterprise which has received financial assistance under this chapter concerning any matter which may bear upon (1) the ability of such enterprise to repay the loan within the time fixed therefor; (2) the interests of the United States in the property of such enterprise; and (3) the assurance that there is reasonable protection to the United States. The Board is authorized to disapprove any transaction of such enterprise involving the disposition of its assets which may affect the repayment of a loan that has been guaranteed pursuant to the provisions of this chapter.

(b) Government Accountability Office; audit; report to Board and Congress

The Government Accountability Office shall make a detailed audit of all accounts, books, records, and transactions of any borrower with respect to which an application for a loan guarantee is made under this chapter. The Government Accountability Office shall report the results of such audit to the

Board and to the Congress.

(Pub. L. 92–70, §7, Aug. 9, 1971, 85 Stat. 180; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814.)

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–271 substituted "Government Accountability Office" for "General Accounting Office" in two places.

§1847. Maximum obligation

The maximum obligation of the Board under all outstanding loans guaranteed by it shall not exceed at any time $250,000,000.

(Pub. L. 92–70, §8, Aug. 9, 1971, 85 Stat. 181.)

§1848. Emergency loan guarantee fund

(a) Establishment; use; investment

There is established in the Treasury an emergency loan guarantee fund to be administered by the Board. The fund shall be used for the payment of the expenses of the Board and for the purpose of fulfilling the Board's obligations under this chapter. Moneys in the fund not needed for current operations may be invested in direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States or any agency thereof.

(b) Guarantee fee; deposits in fund

The Board shall prescribe and collect a guarantee fee in connection with each loan guaranteed by it under this chapter. Sums realized from such fees shall be deposited in the emergency loan guarantee fund.

(c) Payments; issuance of notes or other obligations when fund moneys insufficient: forms and denominations, maturities, terms and conditions, interest rate; public debt transaction

Payments required to be made as a consequence of any guarantee by the Board shall be made from the emergency loan guarantee fund. In the event that moneys in the fund are insufficient to make such payments, in order to discharge its responsibilities, the Board is authorized to issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Board with the approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31 and the purposes for which securities may be issued under that chapter are extended to include any purchase of such notes and obligations.

(Pub. L. 92–70, §9, Aug. 9, 1971, 85 Stat. 181.)

CODIFICATION

In subsec. (c), "chapter 31 of title 31" and "that chapter" substituted for "the Second Liberty Bond Act, as amended," and "that Act", respectively, on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

§1849. Federal Reserve banks as fiscal agents

Any Federal Reserve bank which is requested to do so shall act as fiscal agent for the Board. Each

such fiscal agent shall be reimbursed by the Board for all expenses and losses incurred by it in acting as agent on behalf of the Board.

(Pub. L. 92–70, §10, Aug. 9, 1971, 85 Stat. 181.)

§1850. Protection of Government's interest

(a) Attorney General, enforcement authority; payments into emergency loan guarantee fund

The Attorney General shall take such action as may be appropriate to enforce any right accruing to the United States or any officer or agency thereof as a result of the issuance of guarantees under this chapter. Any sums recovered pursuant to this section shall be paid into the emergency loan guarantee fund.

(b) Recovery rights; subrogation

The Board shall be entitled to recover from the borrower, or any other person liable therefor, the amount of any payments made pursuant to any guarantee agreement entered into under this chapter, and upon making any such payment, the Board shall be subrogated to all the rights of the recipient thereof.

(Pub. L. 92–70, §11, Aug. 9, 1971, 85 Stat. 181.)

§1851. Reports to Congress; recommendations

The Board shall submit to the Congress annually a full report of its operations under this chapter. In addition, the Board shall submit to the Congress a special report not later than June 30, 1973, which shall include a full report of the Board's operations together with its recommendations with respect to the need to continue the guarantee program beyond the termination date specified in section 1852 of this title. If the Board recommends that the program should be continued beyond such termination date, it shall state its recommendations with respect to the appropriate board, agency, or corporation which should administer the program.

(Pub. L. 92–70, §12, Aug. 9, 1971, 85 Stat. 182.)

§1852. Termination date

The authority of the Board to enter into any guarantee or to make any commitment to guarantee under this chapter terminates on December 31, 1973. Such termination does not affect the carrying out of any contract, guarantee, commitment, or other obligation entered into pursuant to this chapter prior to that date, or the taking of any action necessary to preserve or protect the interests of the United States in any amounts advanced or paid out in carrying on operations under this chapter.

(Pub. L. 92–70, §13, Aug. 9, 1971, 85 Stat. 182.)

CHAPTER 45A—CHRYSLER CORPORATION LOAN GUARANTEE

§§1861 to 1875. Omitted

CODIFICATION

Sections, Pub. L. 96–185, §§1–16, Jan. 7, 1980, 93 Stat. 1324, were omitted in view of the termination of authority to make commitments to guarantee or issue guarantees under this chapter on Dec. 31, 1983, pursuant to section 1875 of this title, and the total repayment of loans guaranteed under this chapter.

Section 1861 provided definitions for this chapter.

Section 1862 related to establishment and composition of Chrysler Corporation Loan Guarantee Board.
Section 1863 related to commitments for loan guarantees.
Section 1864 related to requirements of loan guarantees.
Section 1865 related to requirements applicable to employees.
Section 1866 related to employee stock ownership plan.
Section 1867 related to limitations on guarantee authority.
Section 1868 related to terms and conditions of loan guarantees.
Section 1869 related to inspection, audit, and investigation.
Section 1870 related to protection of Government's interest.
Section 1871 related to long-term planning study.
Section 1872 related to ineligibility of guaranteed loans for purchase by or sale or issuance to Federal Financing Bank or other Federal entity partly or wholly owned by United States.
Section 1873 related to reports to Congress.
Section 1874 related to authorization of appropriations.
Section 1875 provided that authority to make commitments to guarantee or to issue guarantees under this chapter expires on Dec. 31, 1983.

CHAPTER 46—MOTOR VEHICLE INFORMATION AND COST SAVINGS

§1901. Repealed. Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379

Section, Pub. L. 92–513, §2, Oct. 20, 1972, 86 Stat. 947; Pub. L. 94–163, title III, §301, Dec. 22, 1975, 89 Stat. 901; Pub. L. 96–425, §8(a)(2), Oct. 10, 1980, 94 Stat. 1828; Pub. L. 98–547, title I, §101(b), Oct. 25, 1984, 98 Stat. 2767, defined terms for purposes of this chapter, except subchapter V of this chapter. See sections 32101, 32301, and 32502 of Title 49, Transportation.

SHORT TITLE

Pub. L. 92–513, §1, Oct. 20, 1972, 86 Stat. 947, provided that Pub. L. 92–513 (enacting this chapter) could be cited as the "Motor Vehicle Information and Cost Savings Act", prior to repeal by Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379.

SUBCHAPTER I—BUMPER STANDARDS

§§1911 to 1922. Repealed. Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379

Section 1911, Pub. L. 92–513, title I, §101, Oct. 20, 1972, 86 Stat. 948, stated congressional findings and declaration of purpose of this subchapter. See section 32501 of Title 49, Transportation.
Section 1912, Pub. L. 92–513, title I, §102, Oct. 20, 1972, 86 Stat. 949, related to promulgation of bumper standards. See section 32502 of Title 49.
Section 1913, Pub. L. 92–513, title I, §103, Oct. 20, 1972, 86 Stat. 950, related to judicial review of rules establishing bumper standards. See section 32503 of Title 49.
Section 1914, Pub. L. 92–513, title I, §104, Oct. 20, 1972, 86 Stat. 950, related to powers of Secretary in carrying out this subchapter. See sections 32502, 32505, and 32509 of Title 49.
Section 1915, Pub. L. 92–513, title I, §105, Oct. 20, 1972, 86 Stat. 952, related to determination of compliance by manufacturer with bumper standards. See sections 32504 and 32505 of Title 49.
Section 1916, Pub. L. 92–513, title I, §106, Oct. 20, 1972, 86 Stat. 952, related to prohibited acts with respect to bumper standards and exemptions from compliance with such standards. See section 32506 of Title 49.
Section 1917, Pub. L. 92–513, title I, §107, Oct. 20, 1972, 86 Stat. 953, related to enforcement of this subchapter. See section 32507 of Title 49.
Section 1918, Pub. L. 92–513, title I, §108, Oct. 20, 1972, 86 Stat. 955, related to civil action against manufacturer for failure to comply with bumper standards. See section 32508 of Title 49.

Section 1919, Pub. L. 92–513, title I, §109, Oct. 20, 1972, 86 Stat. 955, related to public access to information sent or received by the Secretary in connection with this subchapter. See section 32505 of Title 49.

Section 1920, Pub. L. 92–513, title I, §110, Oct. 20, 1972, 86 Stat. 955, related to State and local bumper standards and bumper standards for vehicles owned by Federal, State, or local governments. See section 32511 of Title 49.

Section 1921, Pub. L. 92–513, title I, §111, Oct. 20, 1972, 86 Stat. 955; Pub. L. 94–364, title I, §101, July 14, 1976, 90 Stat. 981; Pub. L. 97–331, §2(b), Oct. 15, 1982, 96 Stat. 1619, authorized appropriations to carry out this subchapter for fiscal years 1983, 1984, and 1985.

Section 1922, Pub. L. 92–513, title I, §112, Oct. 20, 1972, 86 Stat. 955, directed Secretary to submit annual report to President and Congress on progress in carrying out this subchapter and specified contents of report. See section 32510 of Title 49.

SUBCHAPTER II—AUTOMOBILE CONSUMER INFORMATION STUDY

§§1941 to 1950. Repealed. Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379

Section 1941, Pub. L. 92–513, title II, §201, Oct. 20, 1972, 86 Stat. 956; Pub. L. 94–364, title II, §201, July 14, 1976, 90 Stat. 981, related to consumer information study to be conducted by Secretary. See section 32302 of Title 49, Transportation.

Section 1942, Pub. L. 92–513, title II, §202, Oct. 20, 1972, 86 Stat. 956, related to appointment and compensation of personnel by Secretary to carry out this subchapter. See section 32306 of Title 49.

Section 1943, Pub. L. 92–513, title II, §203, Oct. 20, 1972, 86 Stat. 957, related to provision of information and detailing of personnel from other Federal departments to Secretary to carry out this subchapter. See section 32305 of Title 49.

Section 1944, Pub. L. 92–513, title II, §204, Oct. 20, 1972, 86 Stat. 957, related to powers of Secretary to carry out this subchapter. See section 32307 of Title 49.

Section 1945, Pub. L. 92–513, title II, §205, Oct. 20, 1972, 86 Stat. 958, required insurers of passenger motor vehicles to make reports and provide information to Secretary to carry out this subchapter. See section 32303 of Title 49.

Section 1946, Pub. L. 92–513, title II, §206, Oct. 20, 1972, 86 Stat. 959, prohibited persons from failing or refusing to furnish information requested under this subchapter or to comply with rules prescribed under this subchapter. See section 32308 of Title 49.

Section 1947, Pub. L. 92–513, title II, §207, Oct. 20, 1972, 86 Stat. 959, related to injunctive relief to restrain violations of section 1946 of this title. See section 32308 of Title 49.

Section 1948, Pub. L. 92–513, title II, §208, Oct. 20, 1972, 86 Stat. 959, related to civil penalties for violations of section 1946 of this title. See section 32308 of Title 49.

Section 1949, Pub. L. 92–513, title II, §209, Oct. 20, 1972, 86 Stat. 959; Pub. L. 94–364, title II, §202, July 14, 1976, 90 Stat. 981; Pub. L. 97–331, §2(c), Oct. 15, 1982, 96 Stat. 1619, authorized appropriations to carry out this subchapter for fiscal years 1983, 1984, and 1985.

Section 1950, Pub. L. 92–513, title II, §210, as added Pub. L. 102–388, title III, §355, Oct. 6, 1992, 106 Stat. 1556, related to labeling requirements for automobiles. See sections 32304 and 32309 of Title 49.

SUBCHAPTER III—DIAGNOSTIC INSPECTION DEMONSTRATION PROJECTS

PART A—STATE PROGRAMS

§§1961 to 1963. Repealed. Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379

Section 1961, Pub. L. 92–513, title III, §301, Oct. 20, 1972, 86 Stat. 959; Pub. L. 93–492, title III, §301(a)(2), Oct. 27, 1974, 88 Stat. 1485, authorized Secretary to establish motor vehicle diagnostic inspection demonstration projects.

Section 1962, Pub. L. 92–513, title III, §302, Oct. 20, 1972, 86 Stat. 960; Pub. L. 93–492, title III, §301(a)(2), Oct. 27, 1974, 88 Stat. 1485, related to eligibility of States for grants or other assistance for demonstration projects and requirements for such projects.

Section 1963, Pub. L. 92–513, title III, §303, Oct. 20, 1972, 86 Stat. 961; Pub. L. 93–492, title III, §301(a)(2), Oct. 27, 1974, 88 Stat. 1485; Pub. L. 94–364, title III, §301, July 14, 1976, 90 Stat. 981, related to implementation of grants or other assistance to States for demonstration projects.

PART B—SPECIAL DEMONSTRATION PROJECTS

§1963a. Repealed. Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379

Section, Pub. L. 92–513, title III, §311, as added Pub. L. 93–492, title III, §301(a)(4) Oct. 27, 1974, 88 Stat. 1485; amended Pub. L. 94–364, title III, §302, July 14, 1976, 90 Stat. 982, directed Secretary to establish special motor vehicle diagnostic inspection demonstration project.

PART C—AUTHORIZATION OF APPROPRIATIONS

§1964. Repealed. Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379

Section, Pub. L. 92–513, title III, §321, formerly §304, Oct. 20, 1972, 86 Stat. 961; renumbered §321, Pub. L. 93–492, title III, §301(a)(3), Oct. 27, 1974, 88 Stat. 1485; amended Pub. L. 94–364, title III, §303, July 14, 1976, 90 Stat. 982, authorized appropriations to carry out this subchapter for fiscal years 1976, 1977, and 1978, and provided that funds were to remain available until expended.

SUBCHAPTER IV—ODOMETER REQUIREMENTS

§§1981 to 1991. Repealed. Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379

Section 1981, Pub. L. 92–513, title IV, §401, Oct. 20, 1972, 86 Stat. 961, stated congressional findings and declaration of purpose of this subchapter. See section 32701 of Title 49, Transportation.

Section 1982, Pub. L. 92–513, title IV, §402, Oct. 20, 1972, 86 Stat. 961; Pub. L. 94–364, title IV, §401, July 14, 1976, 90 Stat. 983; Pub. L. 99–579, §2(b), Oct. 28, 1986, 100 Stat. 3310, defined terms for purposes of this subchapter. See section 32702 of Title 49.

Section 1983, Pub. L. 92–513, title IV, §403, Oct. 20, 1972, 86 Stat. 962; Pub. L. 94–364, title IV, §402, July 14, 1976, 90 Stat. 983, prohibited devices causing odometer to register other than true mileage driven. See section 32703 of Title 49.

Section 1984, Pub. L. 92–513, title IV, §404, Oct. 20, 1972, 86 Stat. 962; Pub. L. 94–364, title IV, §403, July 14, 1976, 90 Stat. 983, prohibited change of mileage indicated on odometer. See section 32703 of Title 49.

Section 1985, Pub. L. 92–513, title IV, §405, Oct. 20, 1972, 86 Stat. 962; Pub. L. 94–364, title IV, §404, July 14, 1976, 90 Stat. 983, prohibited operation of motor vehicle, with intent to defraud, by person knowing of disconnected or nonfunctional odometer. See section 32703 of Title 49.

Section 1986, Pub. L. 92–513, title IV, §406, Oct. 20, 1972, 86 Stat. 962, prohibited any person from conspiring with any other person to violate sections 1983 to 1985, 1987, or 1988 of this title. See section

32703 of Title 49.

Section 1987, Pub. L. 92–513, title IV, §407, Oct. 20, 1972, 86 Stat. 962; Pub. L. 94–364, title IV, §405, July 14, 1976, 90 Stat. 983, related to lawful service, repair, or replacement of odometer, adjustment of mileage and notice of adjustment, failure to adjust mileage or affix notice of adjustment, and removal or alteration of notice with fraudulent intent. See section 32704 of Title 49.

Section 1988, Pub. L. 92–513, title IV, §408, Oct. 20, 1972, 86 Stat. 962; Pub. L. 94–364, title IV, §406, July 14, 1976, 90 Stat. 983; Pub. L. 99–579, §2(a), Oct. 28, 1986, 100 Stat. 3309; Pub. L. 100–561, title IV, §401, Oct. 31, 1988, 102 Stat. 2817; Pub. L. 101–641, §7(a), Nov. 28, 1990, 104 Stat. 4657, related to disclosure requirements upon transfer of ownership of motor vehicle. See sections 32705 and 32709 of Title 49.

Section 1989, Pub. L. 92–513, title IV, §409, Oct. 20, 1972, 86 Stat. 963, related to civil actions to enforce liability for violations of odometer requirements. See section 32710 of Title 49.

Section 1990, Pub. L. 92–513, title IV, §410, Oct. 20, 1972, 86 Stat. 963; Pub. L. 94–364, title IV, §407, July 14, 1976, 90 Stat. 984, related to injunctive relief to restrain violations of this subchapter. See section 32709 of Title 49.

Section 1990a, Pub. L. 92–513, title IV, §411, as added Pub. L. 94–364, title IV, §408(2), July 14, 1976, 90 Stat. 984, related to State action to restrain violation of this subchapter or recover damages therefor. See section 32709 of Title 49.

Section 1990b, Pub. L. 92–513, title IV, §412, as added Pub. L. 94–364, title IV, §408(2), July 14, 1976, 90 Stat. 984; amended Pub. L. 99–579, §3(a), Oct. 28, 1986, 100 Stat. 3311, related to civil penalty for violation of this subchapter. See section 32709 of Title 49.

Section 1990c, Pub. L. 92–513, title IV, §413, as added Pub. L. 94–364, title IV, §408(2), July 14, 1976, 90 Stat. 985; amended Pub. L. 99–579, §3(b), Oct. 28, 1986, 100 Stat. 3311, related to criminal penalties for violations of this subchapter. See section 32709 of Title 49.

Section 1990d, Pub. L. 92–513, title IV, §414, as added Pub. L. 94–364, title IV, §408(2), July 14, 1976, 90 Stat. 985, related to inspections and investigations to enforce this subchapter. See sections 32706 and 32708 of Title 49.

Section 1990e, Pub. L. 92–513, title IV, §415, as added Pub. L. 94–364, title IV, §408(2), July 14, 1976, 90 Stat. 987; Pub. L. 101–650, title III, §321, Dec. 1, 1990, 104 Stat. 5117, related to administrative warrant for entry or inspection under section 1990d of this title. See section 32707 of Title 49.

Section 1990f, Pub. L. 92–513, title IV, §416, as added Pub. L. 94–364, title IV, §408(2), July 14, 1976, 90 Stat. 988, related to compliance with inspection and investigation requirements under section 1990d of this title. See section 32706 of Title 49.

Section 1990g, Pub. L. 92–513, title IV, §417, as added Pub. L. 94–364, title IV, §408(2), July 14, 1976, 90 Stat. 989; amended Pub. L. 97–331, §2(d), Oct. 15, 1982, 96 Stat. 1619, authorized appropriations to carry out this subchapter for fiscal years 1983, 1984, and 1985.

Section 1991, Pub. L. 92–513, title IV, §418, formerly §411, Oct. 20, 1972, 86 Stat. 963, renumbered §418, Pub. L. 94–364, title IV, §408(1), July 14, 1976, 90 Stat. 984, related to State odometer requirements. See section 32711 of Title 49.

SUBCHAPTER V—IMPROVING AUTOMOTIVE EFFICIENCY

§§2001, 2002. Repealed. Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379

Section 2001, Pub. L. 92–513, title V, §501, as added Pub. L. 94–163, title III, §301, Dec. 22, 1975, 89 Stat. 901; amended Pub. L. 96–425, §§4(c)(1), 8(b), Oct. 10, 1980, 94 Stat. 1824, 1828; Pub. L. 100–494, §6(b), Oct. 14, 1988, 102 Stat. 2452; Pub. L. 102–486, title IV, §403(1), Oct. 24, 1992, 106 Stat. 2876, defined terms for purposes of this subchapter. See section 32901 of Title 49, Transportation.

Section 2002, Pub. L. 92–513, title V, §502, as added Pub. L. 94–163, title III, §301, Dec. 22, 1975, 89 Stat. 902; amended Pub. L. 95–91, title III, §305, Aug. 4, 1977, 91 Stat. 580; Pub. L. 96–425, §§3(a)(1), 5, 6(b), 7, 8(c), (d), Oct. 10, 1980, 94 Stat. 1821, 1825, 1826, 1828; Pub. L. 100–494, §6(c), Oct. 14, 1988, 102 Stat. 2452; Pub. L. 102–486, title IV, §403(2), Oct. 24, 1992, 106 Stat. 2876, related to average fuel economy standards. See sections 32902, 32903, and 32916 of Title 49.

§2003. Repealed. Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379; Pub. L. 103–429, §11(b), Oct. 31, 1994, 108 Stat. 4391

Section, Pub. L. 92–513, title V, §503, as added Pub. L. 94–163, title III, §301, Dec. 22, 1975, 89 Stat. 906; amended Pub. L. 96–185, §18, Jan. 7, 1980, 93 Stat. 1336; H. Res. 549, Mar. 25, 1980; Pub. L. 96–425, §§4(a)(1), (b), (c)(2), (3), 8(e), Oct. 10, 1980, 94 Stat. 1822, 1824, 1825, 1829; Pub. L. 98–620, title IV, §402(18), Nov. 8, 1984, 98 Stat. 3358; Pub. L. 103–182, title III, §371, Dec. 8, 1993, 107 Stat. 2127, related to calculation of average fuel economy. See sections 32901 and 32904 of Title 49, Transportation.

§§2004 to 2010. Repealed. Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379

Section 2004, Pub. L. 92–513, title V, §504, as added Pub. L. 94–163, title III, §301, Dec. 22, 1975, 89 Stat. 908, related to judicial review of rules prescribed under section 2001, 2002, 2003, or 2006 of this title. See section 32909 of Title 49, Transportation.

Section 2005, Pub. L. 92–513, title V, §505, as added Pub. L. 94–163, title III, §301, Dec. 22, 1975, 89 Stat. 908; amended Pub. L. 96–425, §3(b), Oct. 10, 1980, 94 Stat. 1822, related to fuel economy information and reports to be filed by manufacturers. See sections 32907 and 32910 of Title 49.

Section 2006, Pub. L. 92–513, title V, §506, as added Pub. L. 94–163, title III, §301, Dec. 22, 1975, 89 Stat. 910; amended Pub. L. 95–619, title IV, §§401(a), 403(a), (b), Nov. 9, 1978, 92 Stat. 3254, 3256, 3257; Pub. L. 100–494, §8(a), Oct. 14, 1988, 102 Stat. 2452; Pub. L. 102–486, title IV, §403(3), (4), Oct. 24, 1992, 106 Stat. 2876, related to fuel economy labeling. See section 32908 of Title 49.

Section 2007, Pub. L. 92–513, title V, §507, as added Pub. L. 94–163, title III, §301, Dec. 22, 1975, 89 Stat. 911; amended Pub. L. 96–425, §6(a), Oct. 10, 1980, 94 Stat. 1826, related to unlawful conduct under this subchapter. See section 32911 of Title 49.

Section 2008, Pub. L. 92–513, title V, §508, as added Pub. L. 94–163, title III, §301, Dec. 22, 1975, 89 Stat. 911; amended Pub. L. 95–619, title IV, §402, Nov. 9, 1978, 92 Stat. 3255; Pub. L. 96–425, §§6(c), 8(f), Oct. 10, 1980, 94 Stat. 1827, 1829, related to civil penalty for violation of section 2007 of this title. See sections 32909 and 32911 to 32915 of Title 49.

Section 2009, Pub. L. 92–513, title V, §509, as added Pub. L. 94–163, title III, §301, Dec. 22, 1975, 89 Stat. 914, prohibited any State or local government from making laws or regulations relating to fuel economy standards or disclosures, except for automobiles procured for its own use. See section 32919 of Title 49.

Section 2010, Pub. L. 92–513, title V, §510, as added Pub. L. 94–163, title III, §301, Dec. 22, 1975, 89 Stat. 915, related to use of fuel efficient passenger automobiles by Federal Government. See section 32917 of Title 49.

§2011. Repealed. Pub. L. 103–429, §11(b), Oct. 31, 1994, 108 Stat. 4392

Section, Pub. L. 92–513, title V, §511, as added Pub. L. 94–163, title III, §301, Dec. 22, 1975, 89 Stat. 915; amended Pub. L. 103–272, §4(c), July 5, 1994, 108 Stat. 1361, provided for establishment of program of examination of fuel economy representations in connection with installation of retrofit devices. See section 32918 of Title 49, Transportation.

§§2012, 2013. Repealed. Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379

Section 2012, Pub. L. 92–513, title V, §512, as added Pub. L. 94–163, title III, §301, Dec. 22, 1975, 89 Stat. 916; amended Pub. L. 96–425, §4(a)(2), Oct. 10, 1980, 94 Stat. 1823, related to reports to be submitted by Secretary to President and Congress regarding fuel flow instrument reading directly in miles per gallon, exemption from this subchapter for electric cars, and examination, by Secretary and Secretary of Labor, on exemption under section 2003(b) of this title. See section 32916 of Title 49, Transportation.

Section 2013, Pub. L. 92–513, title V, §513, as added Pub. L. 100–494, §6(a), Oct. 14, 1988, 102 Stat. 2448; amended Pub. L. 102–486, title IV, §403(5), Oct. 24, 1992, 106 Stat. 2876, related to incentives for manufacturing alternative-fuel automobiles. See sections 32901, 32902, 32905, and 32906 of Title 49.

SUBCHAPTER VI—THEFT PREVENTION

§§2021 to 2034. Repealed. Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379

Section 2021, Pub. L. 92–513, title VI, §601, as added Pub. L. 98–547, title I, §101(a), Oct. 25, 1984, 98 Stat. 2755; amended Pub. L. 102–519, title III, §301, Oct. 25, 1992, 106 Stat. 3393, defined terms for purposes of this subchapter. See section 33101 of Title 49, Transportation.

Section 2022, Pub. L. 92–513, title VI, §602, as added Pub. L. 98–547, title I, §101(a), Oct. 25, 1984, 98 Stat. 2756; amended Pub. L. 102–519, title III, §§302, 306(a), Oct. 25, 1992, 106 Stat. 3394, 3397, related to theft prevention standard. See sections 33102 to 33104 of Title 49.

Section 2023, Pub. L. 92–513, title VI, §603, as added Pub. L. 98–547, title I, §101(a), Oct. 25, 1984, 98 Stat. 2757; amended Pub. L. 102–519, title III, §303, Oct. 25, 1992, 106 Stat. 3395, related to designation of high theft vehicle lines and parts. See section 33104 of Title 49.

Section 2024, Pub. L. 92–513, title VI, §604, as added Pub. L. 98–547, title I, §101(a), Oct. 25, 1984, 98 Stat. 2758, prescribed limitation on cost to manufacturer for compliance with section 2022 of this title. See section 33105 of Title 49.

Section 2025, Pub. L. 92–513, title VI, §605, as added Pub. L. 98–547, title I, §101(a), Oct. 25, 1984, 98 Stat. 2759; amended Pub. L. 102–519, title III, §304, Oct. 25, 1992, 106 Stat. 3396, related to exemption from section 2022 of this title for vehicles equipped with antitheft devices. See section 33106 of Title 49.

Section 2026, Pub. L. 92–513, title VI, §606, as added Pub. L. 98–547, title I, §101(a), Oct. 25, 1984, 98 Stat. 2760, related to determination of compliance of manufacturer with section 2022 of this title. See section 33108 of Title 49.

Section 2026a, Pub. L. 92–513, title VI, §607, as added Pub. L. 102–519, title III, §306(a), Oct. 25, 1992, 106 Stat. 3397, related to verification of vehicle as legal salvage or junk vehicle. See section 33110 of Title 49.

Section 2026b, Pub. L. 92–513, title VI, §608, as added Pub. L. 102–519, title III, §306(c), Oct. 25, 1992, 106 Stat. 3397, related to determination and verification of passenger motor vehicle parts as not stolen. See section 33111 of Title 49.

Section 2026c, Pub. L. 92–513, title VI, §609, as added Pub. L. 102–519, title III, §306(e), Oct. 25, 1992, 106 Stat. 3398, related to National Stolen Auto Part Information System. See section 33109 of Title 49.

Section 2027, Pub. L. 92–513, title VI, §610, formerly §607, as added Pub. L. 98–547, title I, §101(a), Oct. 25, 1984, 98 Stat. 2761; renumbered §610 and amended Pub. L. 102–519, title III, §§305, 306(a), Oct. 25, 1992, 106 Stat. 3396, 3397, related to prohibited acts under this subchapter, persons exempt from such prohibitions, and chop shops. See sections 33114 and 33115 of Title 49.

Section 2028, Pub. L. 92–513, title VI, §611, formerly §608, as added Pub. L. 98–547, title I, §101(a), Oct. 25, 1984, 98 Stat. 2762; renumbered §611, Pub. L. 102–519, title III, §306(a), Oct. 25, 1992, 106 Stat. 3397, related to enforcement of this subchapter. See section 33115 of Title 49.

Section 2029, Pub. L. 92–513, title VI, §612, formerly §609, as added Pub. L. 98–547, title I, §101(a), Oct. 25, 1984, 98 Stat. 2763; renumbered §612, Pub. L. 102–519, title III, §306(a), Oct. 25, 1992, 106 Stat. 3397, related to confidentiality of information obtained by Secretary under this subchapter. See section 33116 of Title 49.

Section 2030, Pub. L. 92–513, title VI, §613, formerly §610, as added Pub. L. 98–547, title I, §101(a), Oct. 25, 1984, 98 Stat. 2763; renumbered §613, Pub. L. 102–519, title III, §306(a), Oct. 25, 1992, 106 Stat. 3397, related to judicial review for persons adversely affected by standards or other rules under this subchapter. See section 33117 of Title 49.

Section 2031, Pub. L. 92–513, title VI, §614, formerly §611, as added Pub. L. 98–547, title I, §101(a), Oct. 25, 1984, 98 Stat. 2763; renumbered §614, Pub. L. 102–519, title III, §306(a), Oct. 25, 1992, 106 Stat. 3397, prohibited State and local governments from establishing or continuing in effect a vehicle theft prevention standard not identical to that established under section 2022 of this title. See section 33118 of Title 49.

Section 2032, Pub. L. 92–513, title VI, §615, formerly §612, as added Pub. L. 98–547, title I, §101(a), Oct. 25, 1984, 98 Stat. 2763; renumbered §615, Pub. L. 102–519, title III, §306(a), Oct. 25, 1992, 106 Stat. 3397, related to insurance reports and information on theft of motor vehicles.

Section 2033, Pub. L. 92–513, title VI, §616, formerly §613, as added Pub. L. 98–547, title I, §101(a), Oct. 25, 1984, 98 Stat. 2765; renumbered §616, Pub. L. 102–519, title III, §306(a), Oct. 25, 1992, 106 Stat. 3397, related to voluntary vehicle identification standards. See section 33107 of Title 49.

Section 2034, Pub. L. 92–513, title VI, §617, formerly §614, as added Pub. L. 98–547, title I, §101(a), Oct. 25, 1984, 98 Stat. 2765; renumbered §617 and amended Pub. L. 102–519, title III, §306(a), (e)[(f)], Oct. 25, 1992, 106 Stat. 3397, 3400, related to three-year and five-year studies regarding motor vehicle theft. See

section 33113 of Title 49.

CHAPTER 46A—AUTOMOBILE TITLE FRAUD

§§2041 to 2044. Repealed. Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379

Section 2041, Pub. L. 102–519, title II, §201, Oct. 25, 1992, 106 Stat. 3389, defined terms for purposes of this chapter. See section 30501 of Title 49, Transportation.

Section 2042, Pub. L. 102–519, title II, §202, Oct. 25, 1992, 106 Stat. 3390, related to National Motor Vehicle Title Information System. See section 30502 of Title 49.

Section 2043, Pub. L. 102–519, title II, §203, Oct. 25, 1992, 106 Stat. 3391, related to State participation in National Motor Vehicle Title Information System. See section 30503 of Title 49.

Section 2044, Pub. L. 102–519, title II, §204, Oct. 25, 1992, 106 Stat. 3392, related to reporting requirements for operators of junk and salvage yards and insurance carriers. See sections 30504 and 30505 of Title 49.

CHAPTER 47—CONSUMER PRODUCT SAFETY

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§2051. Congressional findings and declaration of purpose

(a) The Congress finds that—

(1) an unacceptable number of consumer products which present unreasonable risks of injury are distributed in commerce;

(2) complexities of consumer products and the diverse nature and abilities of consumers using them frequently result in an inability of users to anticipate risks and to safeguard themselves adequately;

(3) the public should be protected against unreasonable risks of injury associated with consumer products;

(4) control by State and local governments of unreasonable risks of injury associated with consumer products is inadequate and may be burdensome to manufacturers;

(5) existing Federal authority to protect consumers from exposure to consumer products presenting unreasonable risks of injury is inadequate; and

(6) regulation of consumer products the distribution or use of which affects interstate or foreign commerce is necessary to carry out this chapter.

(b) The purposes of this chapter are—

(1) to protect the public against unreasonable risks of injury associated with consumer products;

(2) to assist consumers in evaluating the comparative safety of consumer products;

(3) to develop uniform safety standards for consumer products and to minimize conflicting State and local regulations; and

(4) to promote research and investigation into the causes and prevention of product-related deaths, illnesses, and injuries.

(Pub. L. 92–573, §2, Oct. 27, 1972, 86 Stat. 1207.)

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–314, title II, §239(a), Aug. 14, 2008, 122 Stat. 3076, provided that:

"(1) IN GENERAL.—Except as otherwise specifically provided in this Act [see Short Title of 2008 Amendment note below], this Act and the amendments made by this Act shall take effect on the date of enactment of this Act [Aug. 14, 2008].

"(2) CERTAIN DELAYED EFFECTIVE DATES.—The amendments made by sections 103(c) [amending section 2063 of this title] and 214(a)(2) [amending section 2064 of this title] shall take effect on the date that is 60 days after the date of enactment of this Act. Subsection (c) of section 42 of the Consumer Product Safety

Act [section 2089(c) of this title], as added by section 232 of this Act, and the amendments made by sections 216 [amending sections 2066 and 2068 of this title] and 223(b) [amending section 2066 of this title] shall take effect on the date that is 30 days after the date of enactment of this Act."

EFFECTIVE DATE

Pub. L. 92–573, §34, Oct. 27, 1972, 86 Stat. 1233, provided that: "This Act [enacting this chapter] shall take effect on the sixtieth day following the date of its enactment [Oct. 27, 1972], except—

"(1) sections 4 and 32 [sections 2053 and 2081 of this title] shall take effect on the date of enactment of this Act [Oct. 27, 1972], and

"(2) section 30 [section 2079 of this title] shall take effect on the later of (A) 150 days after the date of enactment of this Act [Oct. 27, 1972], or (B) the date on which at least three members of the Commission first take office."

SHORT TITLE OF 2013 AMENDMENT

Pub. L. 112–266, §1, Jan. 14, 2013, 126 Stat. 2437, provided that: "This Act [enacting section 2056c of this title and provisions set out as notes under section 2056c of this title] may be cited as the 'Drywall Safety Act of 2012'."

SHORT TITLE OF 2008 AMENDMENT

Pub. L. 110–314, §1(a), Aug. 14, 2008, 122 Stat. 3016, provided that: "This Act [enacting sections 1278a, 1477, 2053a, 2055a, 2056a, 2056b, 2057c, 2076b, 2086 to 2089, and 8008 of this title, amending sections 1191, 1193, 1194, 1196, 1201 to 1204, 1261 to 1266, 1269 to 1276, 1278, 1472, 2052, 2054, 2055, 2058, 2060, 2063 to 2070, 2073, 2076, 2077 to 2079, 2081, 2082, 8002, and 8003 of this title, enacting provisions set out as notes under this section and sections 1194, 2053, 2060, 2063, 2066, 2069, and 2076 of this title, amending provisions set out as notes under sections 401 and 1261 of this title and section 1113 of Title 31, Money and Finance, and repealing provisions set out as a note under section 2053 of this title] may be cited as the 'Consumer Product Safety Improvement Act of 2008'."

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–608, §1, Nov. 16, 1990, 104 Stat. 3110, provided that: "This Act [enacting sections 2076a and 2084 of this title, amending sections 1193, 1194, 1262, 1274, 2053, 2055, 2056, 2058, 2061, 2064, 2066, 2069, 2077, and 2081 of this title, and enacting provisions set out as notes under sections 2053, 2054, 2056, 2076, and 2084 of this title] may be cited as the 'Consumer Product Safety Improvement Act of 1990'."

SHORT TITLE OF 1981 AMENDMENT

Pub. L. 97–35, title XII, §1201(a), Aug. 13, 1981, 95 Stat. 703, provided that: "This subtitle [subtitle A (§§1201–1215) of title XII of Pub. L. 97–35, enacting sections 1204, 1276, 2077, and 2083 of this title, amending sections 1193, 1201, 1262, 1263, 1274, 2052, 2054 to 2058, 2060, 2061, 2064, 2069, 2072, 2073, 2076, 2080, and 2081 of this title, repealing sections 1204, 1475, 2059, 2062, and 2077 of this title, and enacting provisions set out as a note under section 2052 of this title] may be cited as the 'Consumer Product Safety Amendments of 1981'."

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95–319, §1, July 11, 1978, 92 Stat. 386, provided: "That this Act [enacting section 2082 of this title, amending section 2068 of this title, and enacting provision set out as a note under section 2082 of this title] may be cited as the 'Emergency Interim Consumer Product Safety Standard Act of 1978'."

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94–284, §1, May 11, 1976, 90 Stat. 503, provided that: "This Act [amending sections 1193, 1203, 1204, 1261, 1471, 1476, 2052, 2053, 2056, 2058 to 2060, 2064, 2068, 2069, 2071 to 2073, 2075, 2076, 2078, 2079, and 2081 of this title, and section 1114 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as notes under sections 1193, 1261, and 2080 of this title] may be cited as the 'Consumer Product Safety Commission Improvements Act of 1976'."

SHORT TITLE

Pub. L. 92–573, §1, Oct. 27, 1972, 86 Stat. 1207, provided that: "This Act [enacting this chapter, amending sections 5314 and 5315 of Title 5, Government Organization and Employees, and enacting provisions set out as notes under this section] may be cited as the 'Consumer Product Safety Act'."

AUTHORITY TO ISSUE IMPLEMENTING REGULATIONS

Pub. L. 110–314, §3, Aug. 14, 2008, 122 Stat. 3017, provided that: "The Commission may issue regulations, as necessary, to implement this Act [see Short Title of 2008 Amendment note above] and the amendments made by this Act."

SEVERABILITY

Pub. L. 110–314, title II, §239(b), Aug. 14, 2008, 122 Stat. 3076, provided that: "If any provision of this Act [see Short Title of 2008 Amendment note above] or the amendments made by this Act, or the application of such provision to any person or circumstance, is held invalid, the remainder of this Act and the amendments made by this Act, and the application of such provision to other persons not similarly situated or to other circumstances, shall not be affected by such invalidation."

Pub. L. 92–573, §33, Oct. 27, 1972, 86 Stat. 1233, provided that: "If any provision of this Act [see Short Title note above], or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provisions to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby."

PREEMPTION

Pub. L. 110–314, title II, §231, Aug. 14, 2008, 122 Stat. 3070, provided that:

"(a) RULE WITH REGARD TO PREEMPTION.—The provisions of sections 25 and 26 of the Consumer Product Safety Act (15 U.S.C. 2074 and 2075, respectively), section 18 of the Federal Hazardous Substances Act ([Pub. L. 86–613] 15 U.S.C. 1261 note), section 16 of the Flammable Fabrics Act (15 U.S.C. 1203), and section 7 of the Poison Packaging Prevention Act of 1970 [Poison Prevention Packaging Act of 1970] (15 U.S.C. 1476) establishing the extent to which those Acts preempt, limit, or otherwise affect any other Federal, State, or local law, any rule, procedure, or regulation, or any cause of action under State or local law may not be expanded or contracted in scope, or limited, modified or extended in application, by any rule or regulation thereunder, or by reference in any preamble, statement of policy, executive branch statements, or other matter associated with the publication of any such rule or regulation. In accordance with the provisions of those Acts, the Commission may not construe any such Act as preempting any cause of action under State or local common law or State statutory law regarding damage claims.

"(b) PRESERVATION OF CERTAIN STATE LAW.—Nothing in this Act [see Short Title of 2008 Amendment note above] or the Federal Hazardous Substances Act [15 U.S.C. 1261 et seq.] shall be construed to preempt or otherwise affect any warning requirement relating to consumer products or substances that is established pursuant to State law that was in effect on August 31, 2003."

DEFINITIONS

Pub. L. 110–314, §2(a), Aug. 14, 2008, 122 Stat. 3017, provided that:

"(a) DEFINED TERMS.—As used in this Act [see Short Title of 2008 Amendment note above]—

"(1) the term 'appropriate Congressional committees' means the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate; and

"(2) the term 'Commission' means the Consumer Product Safety Commission."

§2052. Definitions

(a) In general

In this chapter:

(1) Appropriate Congressional committees

The term "appropriate Congressional committees" means the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(2) Children's product

The term "children's product" means a consumer product designed or intended primarily for children 12 years of age or younger. In determining whether a consumer product is primarily intended for a child 12 years of age or younger, the following factors shall be considered:

(A) A statement by a manufacturer about the intended use of such product, including a label on such product if such statement is reasonable.

(B) Whether the product is represented in its packaging, display, promotion, or advertising as appropriate for use by children 12 years of age or younger.

(C) Whether the product is commonly recognized by consumers as being intended for use by a child 12 years of age or younger.

(D) The Age Determination Guidelines issued by the Commission staff in September 2002, and any successor to such guidelines.

(3) Commerce

The term "commerce" means trade, traffic, commerce, or transportation—

(A) between a place in a State and any place outside thereof, or

(B) which affects trade, traffic, commerce, or transportation described in subparagraph (A).

(4) Commission

The term "Commission" means the Consumer Product Safety Commission, established by section 2053 of this title.

(5) Consumer product

The term "consumer product" means any article, or component part thereof, produced or distributed (i) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or (ii) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise; but such term does not include—

(A) any article which is not customarily produced or distributed for sale to, or use or consumption by, or enjoyment of, a consumer,

(B) tobacco and tobacco products,

(C) motor vehicles or motor vehicle equipment (as defined by section 30102(a)(6) and (7) of title 49),

(D) pesticides (as defined by the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.]),

(E) any article which, if sold by the manufacturer, producer, or importer, would be subject to the tax imposed by section 4181 of the Internal Revenue Code of 1986 [26 U.S.C. 4181] (determined without regard to any exemptions from such tax provided by section 4182 or 4221, or any other provision of such Code), or any component of any such article,

(F) aircraft, aircraft engines, propellers, or appliances (as defined in section 40102(a) of title 49),

(G) boats which could be subjected to safety regulation under chapter 43 of title 46; vessels, and appurtenances to vessels (other than such boats), which could be subjected to safety regulation under title 52 of the Revised Statutes or other marine safety statutes administered by the department in which the Coast Guard is operating; and equipment (including associated equipment, as defined in section 2101(1) of title 46) to the extent that a risk of injury associated with the use of such equipment on boats or vessels could be eliminated or reduced by actions taken under any statute referred to in this subparagraph,

(H) drugs, devices, or cosmetics (as such terms are defined in sections 201(g), (h), and (i) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 321(g), (h), and (i)]), or

(I) food. The term "food", as used in this subparagraph means all "food", as defined in section 201(f) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 321(f)], including poultry and poultry products (as defined in sections 4(e) and (f) of the Poultry Products Inspection Act [21 U.S.C. 453(e) and (f)]), meat, meat food products (as defined in section 1(j) of the Federal Meat Inspection Act [21 U.S.C. 601(j)]), and eggs and egg products (as defined in section 4 of the Egg Products Inspection Act [21 U.S.C. 1033]).

Such term includes any mechanical device which carries or conveys passengers along, around, or over a fixed or restricted route or course or within a defined area for the purpose of giving its passengers amusement, which is customarily controlled or directed by an individual who is

employed for that purpose and who is not a consumer with respect to such device, and which is not permanently fixed to a site. Such term does not include such a device which is permanently fixed to a site. Except for the regulation under this chapter or the Federal Hazardous Substances Act [15 U.S.C. 1261 et seq.] of fireworks devices or any substance intended for use as a component of any such device, the Commission shall have no authority under the functions transferred pursuant to section 2079 of this title to regulate any product or article described in subparagraph (E) of this paragraph or described, without regard to quantity, in section 845(a)(5) of title 18. See sections 2079(d) [1] and 2080 of this title, for other limitations on Commission's authority to regulate certain consumer products.

(6) Consumer product safety rule

The term "consumer product safety rule" means a consumer products safety standard described in section 2056(a) of this title, or a rule under this chapter declaring a consumer product a banned hazardous product.

(7) Distribute in commerce; distribution in commerce

The terms "to distribute in commerce" and "distribution in commerce" mean to sell in commerce, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce.

(8) Distributor

The term "distributor" means a person to whom a consumer product is delivered or sold for purposes of distribution in commerce, except that such term does not include a manufacturer or retailer of such product.

(9) Import; importation

The terms "import" and "importation" include reimporting a consumer product manufactured or processed, in whole or in part, in the United States.

(10) Manufactured

The term "manufactured" means to manufacture, produce, or assemble.

(11) Manufacturer

The term "manufacturer" means any person who manufactures or imports a consumer product.

(12) Private labeler

(A) The term "private labeler" means an owner of a brand or trademark on the label of a consumer product which bears a private label.

(B) A consumer product bears a private label if (i) the product (or its container) is labeled with the brand or trademark of a person other than a manufacturer of the product, (ii) the person with whose brand or trademark the product (or container) is labeled has authorized or caused the product to be so labeled, and (iii) the brand or trademark of a manufacturer of such product does not appear on such label.

(13) Retailer

The term "retailer" means a person to whom a consumer product is delivered or sold for purposes of sale or distribution by such person to a consumer.

(14) Risk of injury

The term "risk of injury" means a risk of death, personal injury, or serious or frequent illness.

(15) State

The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, Wake Island, Midway Island, Kingman Reef, Johnston Island, the Canal Zone, American Samoa, or the Trust Territory of the Pacific Islands.

(16) Third-party logistics provider

The term "third-party logistics provider" means a person who solely receives, holds, or

otherwise transports a consumer product in the ordinary course of business but who does not take title to the product.

(17) United States

The term "United States", when used in the geographic sense, means all of the States (as defined in paragraph (10)).[2]

(b) Common carriers, contract carriers, third-party logistics provider, and freight forwarders

A common carrier, contract carrier, third-party logistics provider, or freight forwarder shall not, for purposes of this chapter, be deemed to be a manufacturer, distributor, or retailer of a consumer product solely by reason of receiving or transporting a consumer product in the ordinary course of its business as such a carrier or forwarder.

(Pub. L. 92–573, §3, Oct. 27, 1972, 86 Stat. 1208; Pub. L. 94–284, §3(b), (d), May 11, 1976, 90 Stat. 503; Pub. L. 97–35, title XII, §1213, Aug. 13, 1981, 95 Stat. 724; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 110–314, title II, §235(a)–(c)(1), Aug. 14, 2008, 122 Stat. 3074.)

REFERENCES IN TEXT

Section 2079(d) of this title, referred to in subsec. (a)(5), was repealed by Pub. L. 110–314, title II, §237, Aug. 14, 2008, 122 Stat. 3076.

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsec. (a)(5)(D), is act June 25, 1947, ch. 125, as amended generally by Pub. L. 92–516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (§136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables.

Title 52 of the Revised Statutes, referred to in subsec. (a)(5)(G), consisted of R.S. §§4399 to 4500, which were classified to sections 170, 214, 215, 222, 224, 224a, 226, 228, 229, 230 to 234, 239, 240, 361, 362, 364, 371 to 373, 375 to 382, 384, 385, 391, 391a, 392 to 394, 399 to 404, 405 to 416, 435 to 440, 451 to 453, 460, 461 to 463, 464, 466, 467 to 482, and 489 to 498 of former Title 46, Shipping. For complete classification of R.S. §§4399 to 4500 to the Code, see Tables. A majority of such sections of the Revised Statutes were repealed and various provisions thereof were reenacted in Title 46, Shipping, by Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 500. For disposition of sections of former Title 46 into revised Title 46, Shipping, see Disposition Table preceding section 101 of Title 46.

The Federal Hazardous Substances Act, referred to in the provisions following subsec. (a)(5)(I), is Pub. L. 86–613, July 12, 1960, 74 Stat. 372, which is classified generally to chapter 30 (§1261 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1261 of this title and Tables.

For definition of Canal Zone, referred to in subsec. (a)(15), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

CODIFICATION

In subsec. (a)(5)(C), (F), "section 30102(a)(6) and (7) of title 49" substituted for "sections 102(3) and (4) of the National Traffic and Motor Vehicle Safety Act of 1966 [15 U.S.C. 1391(3) and (4)]" and "section 40102(a) of title 49" substituted for "section 101 of the Federal Aviation Act of 1958 [49 App. U.S.C. 1301]" on authority of Pub. L. 103–272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

In subsec. (a)(5)(G), "chapter 43 of title 46" and "section 2101(1) of title 46" substituted for "the Federal Boat Safety Act of 1971 (46 U.S.C. 1451 et seq.)" and "section 3(8) of the Federal Boat Safety Act of 1971 [46 U.S.C. 1452(8)]", respectively, on authority of Pub. L. 98–89, §2(b), Aug. 26, 1983, 97 Stat. 598, section 1 of which enacted Title 46, Shipping.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–314, §235(b)(2)–(4), realigned margins, inserted par. headings, reordered pars. in alphabetical order based on headings of pars., and renumbered pars. as so reordered.

Pub. L. 110–314, §235(b)(1), which directed amendment of subsec. (a) by substituting subsec. heading and introductory provisions for "for purposes of this chapter:", was executed by making the substitution for "For purposes of this chapter:" to reflect the probable intent of Congress.

Subsec. (a)(15) to (17). Pub. L. 110–314, §235(a), added pars. (15) defining "appropriate Congressional committees", (16) defining "children's product", and (17) defining "third-party logistics providers".

Subsec. (b). Pub. L. 110–314, §235(b)(5), (c)(1), inserted heading and inserted "third-party logistics

provider," after "contract carrier," in text.

1986—Subsec. (a)(1)(E). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

1981—Subsec. (a)(1). Pub. L. 97–35 inserted provisions that term "consumer product" includes any mechanical device which carries or conveys passengers along, around, or over a fixed or restricted route or course or within a defined area for the purpose of giving its passengers amusement, which is customarily controlled or directed by an individual who is employed for that purpose and who is not a consumer with respect to such device, and which is not permanently fixed to a site and that such term does not include such a device which is permanently fixed to a site.

1976—Subsec. (a)(1). Pub. L. 94–284 substituted in subpar. (D) "pesticides" for "economic poisons", and in provision following subpar. (I) "other limitations" for "limitations", and inserted provision which limited the authority of the Commission to regulate any product or article described in subpar. (E).

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–35, title XII, §1215, Aug. 13, 1981, 95 Stat. 724, provided that:

"(a) Except as provided in subsection (b), the amendments made by this subtitle [see Short Title of 1981 Amendment note set out under section 2051 of this title] shall take effect on the date of the enactment of this Act [Aug. 13, 1981].

"(b) The amendments made by section 1207 [enacting sections 1204, 1276, and 2083 of this title and amending section 2076 of this title] shall apply with respect to consumer product safety rules under the Consumer Product Safety Act [this chapter] and regulations under the Federal Hazardous Substances Act [section 1261 et seq. of this title] and the Flammable Fabrics Act [section 1191 et seq. of this title] promulgated by the Consumer Product Safety Commission after the date of the enactment of this Act [Aug. 13, 1981]; and the amendments made by sections 1202, 1203, and 1206 of this subtitle [enacting section 2077 of this title and amending sections 1193, 1262, 2056, 2057, 2058, and 2080 of this title] shall apply with respect to regulations under the Consumer Product Safety Act, the Federal Hazardous Substances Act, and the Flammable Fabrics Act for which notices of proposed rulemaking are issued after August 14, 1981."

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

[1] See References in Text note below.

[2] So in original. Probably should refer to paragraph (15).

§2053. Consumer Product Safety Commission

(a) Establishment; Chairman

An independent regulatory commission is hereby established, to be known as the Consumer Product Safety Commission, consisting of five Commissioners who shall be appointed by the President, by and with the advice and consent of the Senate. In making such appointments, the President shall consider individuals who, by reason of their background and expertise in areas related to consumer products and protection of the public from risks to safety, are qualified to serve as members of the Commission. The Chairman shall be appointed by the President, by and with the advice and consent of the Senate, from among the members of the Commission. An individual may

be appointed as a member of the Commission and as Chairman at the same time. Any member of the Commission may be removed by the President for neglect of duty or malfeasance in office but for no other cause.

(b) Term; vacancies

(1) Except as provided in paragraph (2), (A) the Commissioners first appointed under this section shall be appointed for terms ending three, four, five, six, and seven years, respectively, after October 27, 1972, the term of each to be designated by the President at the time of nomination; and (B) each of their successors shall be appointed for a term of seven years from the date of the expiration of the term for which his predecessor was appointed.

(2) Any Commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A Commissioner may continue to serve after the expiration of this term until his successor has taken office, except that he may not so continue to serve more than one year after the date on which his term would otherwise expire under this subsection.

(c) Restrictions on Commissioner's outside activities

Not more than three of the Commissioners shall be affiliated with the same political party. No individual (1) in the employ of, or holding any official relation to, any person engaged in selling or manufacturing consumer products, or (2) owning stock or bonds of substantial value in a person so engaged, or (3) who is in any other manner pecuniarily interested in such a person, or in a substantial supplier of such a person, shall hold the office of Commissioner. A Commissioner may not engage in any other business, vocation, or employment.

(d) Quorum; seal; Vice Chairman

No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission, but three members of the Commission shall constitute a quorum for the transaction of business, except that if there are only three members serving on the Commission because of vacancies in the Commission, two members of the Commission shall constitute a quorum for the transaction of business, and if there are only two members serving on the Commission because of vacancies in the Commission, two members shall constitute a quorum for the six month period beginning on the date of the vacancy which caused the number of Commission members to decline to two. The Commission shall have an official seal of which judicial notice shall be taken. The Commission shall annually elect a Vice Chairman to act in the absence or disability of the Chairman or in case of a vacancy in the office of the Chairman.

(e) Offices

The Commission shall maintain a principal office and such field offices as it deems necessary and may meet and exercise any of its powers at any other place.

(f) Functions of Chairman; request for appropriations

(1) The Chairman of the Commission shall be the principal executive officer of the Commission, and he shall exercise all of the executive and administrative functions of the Commission, including functions of the Commission with respect to (A) the appointment and supervision of personnel employed under the Commission (other than personnel employed regularly and full time in the immediate offices of commissioners other than the Chairman), (B) the distribution of business among personnel appointed and supervised by the Chairman and among administrative units of the Commission, and (C) the use and expenditure of funds.

(2) In carrying out any of his functions under the provisions of this subsection the Chairman shall be governed by general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make.

(3) Requests or estimates for regular, supplemental, or deficiency appropriations on behalf of the Commission may not be submitted by the Chairman without the prior approval of the Commission.

(g) Executive Director; officers and employees

(1)(A) The Chairman, subject to the approval of the Commission, shall appoint as officers of the

Commission an Executive Director, a General Counsel, an Associate Executive Director for Engineering Sciences, an Associate Executive Director for Epidemiology, an Associate Executive Director for Compliance and Administrative Litigation, an Associate Executive Director for Health Sciences, an Associate Executive Director for Economic Analysis, an Associate Executive Director for Administration, an Associate Executive Director for Field Operations, a Director for Office of Program, Management, and Budget, and a Director for Office of Information and Public Affairs. Any other individual appointed to a position designated as an Associate Executive Director shall be appointed by the Chairman, subject to the approval of the Commission. The Chairman may only appoint an attorney to the position of Associate Executive Director of Compliance and Administrative Litigation except the position of acting Associate Executive Director of Compliance and Administrative Litigation.

(B)(i) No individual may be appointed to such a position on an acting basis for a period longer than 90 days unless such appointment is approved by the Commission.

(ii) The Chairman, with the approval of the Commission, may remove any individual serving in a position appointed under subparagraph (A).

(C) Subparagraph (A) shall not be construed to prohibit appropriate reorganizations or changes in classification.

(2) The Chairman, subject to subsection (f)(2) of this section, may employ such other officers and employees (including attorneys) as are necessary in the execution of the Commission's functions.

(3) In addition to the number of positions authorized by section 5108(a) of title 5, the Chairman, subject to the approval of the Commission, and subject to the standards and procedures prescribed by chapter 51 of title 5, may place a total of twelve positions in grades GS–16, GS–17, and GS–18.

(4) The appointment of any officer (other than a Commissioner) or employee of the Commission shall not be subject, directly or indirectly, to review or approval by any officer or entity within the Executive Office of the President.

(5) The Chairman may provide to officers and employees of the Commission who are appointed or assigned by the Commission to serve abroad (as defined in section 102 of the Foreign Service Act of 1980 (22 U.S.C. 3902)) travel benefits similar to those authorized for members of the Foreign Service of the United Service under chapter 9 [1] of such Act (22 U.S.C. 4081 et seq.).

(h) Omitted

(i) Civil action against United States

Subsections (a) and (h) of section 2680 of title 28 do not prohibit the bringing of a civil action on a claim against the United States which—

(1) is based upon—

(A) misrepresentation or deceit on the part of the Commission or any employee thereof, or

(B) any exercise or performance, or failure to exercise or perform, a discretionary function on the part of the Commission or any employee thereof, which exercise, performance, or failure was grossly negligent; and

(2) is not made with respect to any agency action (as defined in section 551(13) of title 5).

In the case of a civil action on a claim based upon the exercise or performance of, or failure to exercise or perform, a discretionary function, no judgment may be entered against the United States unless the court in which such action was brought determines (based upon consideration of all the relevant circumstances, including the statutory responsibility of the Commission and the public interest in encouraging rather than inhibiting the exercise of discretion) that such exercise, performance, or failure to exercise or perform was unreasonable.

(j) Agenda and priorities; establishment and comments

At least 30 days before the beginning of each fiscal year, the Commission shall establish an agenda for Commission action under the Acts under its jurisdiction and, to the extent feasible, shall establish priorities for such actions. Before establishing such agenda and priorities, the Commission

shall conduct a public hearing on the agenda and priorities and shall provide reasonable opportunity for the submission of comments.

(Pub. L. 92–573, §4, Oct. 27, 1972, 86 Stat. 1210; Pub. L. 94–284, §§4, 5(a), May 11, 1976, 90 Stat. 504; Pub. L. 95–631, §2, Nov. 10, 1978, 92 Stat. 3742; Pub. L. 96–373, Oct. 3, 1980, 94 Stat. 1366; Pub. L. 101–608, title I, §§102–105(a), Nov. 16, 1990, 104 Stat. 3110, 3111; Pub. L. 112–74, div. C, title V, §501, Dec. 23, 2011, 125 Stat. 907.)

REFERENCES IN TEXT

The Foreign Service Act of 1980, referred to in subsec. (g)(5), is Pub. L. 96–465, Oct. 17, 1980, 94 Stat. 2071. Chapter 9 of the Act probably means chapter 9 of title I of the Act which is classified generally to subchapter IX (§4081 et seq.) of chapter 52 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of Title 22 and Tables.

CODIFICATION

Subsec. (h) of this section amended sections 5314 and 5315 of Title 5, Government Organization and Employees.

AMENDMENTS

2011—Subsec. (g)(5). Pub. L. 112–74 added par. (5).

1990—Subsec. (a). Pub. L. 101–608, §102, inserted after first sentence "In making such appointments, the President shall consider individuals who, by reason of their background and expertise in areas related to consumer products and protection of the public from risks to safety, are qualified to serve as members of the Commission."

Subsec. (d). Pub. L. 101–608, §103, inserted before period at end of first sentence ", except that if there are only three members serving on the Commission because of vacancies in the Commission, two members of the Commission shall constitute a quorum for the transaction of business, and if there are only two members serving on the Commission because of vacancies in the Commission, two members shall constitute a quorum for the six month period beginning on the date of the vacancy which caused the number of Commission members to decline to two".

Subsec. (g)(1). Pub. L. 101–608, §104, amended par. (1) generally. Prior to amendment, par. (1) read as follows: "The Chairman, subject to the approval of the Commission, shall appoint an Executive Director, a General Counsel, a Director of Engineering Sciences, a Director of Epidemiology, and a Director of Information. No individual so appointed may receive pay in excess of the annual rate of basic pay in effect for grade GS–18 of the General Schedule."

Subsec. (j). Pub. L. 101–608, §105(a), added subsec. (j).

1980—Subsec. (g)(2). Pub. L. 96–373 struck out prohibition against regular personnel acceptance of employment or compensation from manufacturer subject to this chapter for period of twelve months following termination of employment with Commission when compensated within preceding period of twelve months at rate in excess of annual rate of basic pay in effect for grade GS–14 of the General Schedule.

1978—Subsec. (a). Pub. L. 95–631, §2(a), substituted "Senate. The Chairman shall be appointed by the President, by and with the advice and consent of the Senate, from among the members of the Commission. An individual may be appointed as a member of the Commission and as Chairman at the same time." for "Senate, one of whom shall be designated by the President as Chairman. The Chairman, when so designated shall act as Chairman until the expiration of his term of office as Commissioner."

Subsec. (i)(1)(A), (B). Pub. L. 95–631, §2(b), struck out "before January 1, 1978," after "deceit" in cl. (A) and "before January 1, 1978" after "employee thereof" in cl. (B).

1976—Subsec. (f)(3). Pub. L. 94–284, §4(a), added par. (3).

Subsec. (g). Pub. L. 94–284, §4(b), substituted "regular" for "full-time" before "officer or employee of the Commission" and added pars. (3) and (4).

Subsec (i). Pub. L. 94–284, §5, added subsec. (i).

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–608, title I, §105(b), Nov. 16, 1990, 104 Stat. 3111, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to fiscal years which begin more than 180 days after the date of the enactment of this Act [Nov. 16, 1990]."

EFFECTIVE DATE

Section effective Oct. 27, 1972, see section 34(1) of Pub. L. 92–573, set out as a note under section 2051 of

this title.

INTERIM QUORUM

Pub. L. 110–314, title II, §202(a), Aug. 14, 2008, 122 Stat. 3039, provided that: "Notwithstanding section 4(d) of the Consumer Product Safety Act (15 U.S.C. 2053(d)), 2 members of the [Consumer Product Safety] Commission, if they are not affiliated with the same political party, shall constitute a quorum for the transaction of business for the 1 year period beginning on the date of enactment of this Act [Aug. 14, 2008]."

UPGRADE OF COMMISSION INFORMATION TECHNOLOGY SYSTEMS

Pub. L. 110–314, title II, §212(b), Aug. 14, 2008, 122 Stat. 3052, provided that: "The [Consumer Product Safety] Commission shall expedite efforts to upgrade and improve the information technology systems in use by the Commission on the date of enactment of this Act [Aug. 14, 2008]."

REDUCTION IN NUMBER OF COMMISSIONERS

Pub. L. 102–389, title III, Oct. 6, 1992, 106 Stat. 1596, provided in part that funds would not be available for the personnel compensation and benefits of more than three Commissioners of the Consumer Product Safety Commission for fiscal year 1993 and thereafter, prior to repeal by Pub. L. 110–314, title II, §202(b)(1), Aug. 14, 2008, 122 Stat. 3040.

[Pub. L. 110–314, title II, §202(b)(2), Aug. 14, 2008, 122 Stat. 3040, provided that: "The amendment made by paragraph (1) [repealing provisions of title III of Pub. L. 102–389, formerly set out above] shall take effect 1 year after the date of enactment of this Act [Aug. 14, 2008]."]

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

[1] *See References in Text note below.*

§2053a. Employee training exchanges

(a) In general

The Commission may—

(1) retain or employ officers or employees of foreign government agencies on a temporary basis pursuant to section 2053 of this title or section 3101 or 3109 of title 5; and

(2) detail officers or employees of the Commission to work on a temporary basis for appropriate foreign government agencies for the purpose of providing or receiving training.

(b) Reciprocity and reimbursement

The Commission may execute the authority contained in subsection (a) with or without reimbursement in money or in kind, and with or without reciprocal arrangements by or on behalf of the foreign government agency involved. Any amounts received as reimbursement for expenses incurred by the Commission under this section shall be credited to the appropriations account from which such expenses were paid.

(c) Standards of conduct

An individual retained or employed under subsection (a)(1) shall be considered to be a Federal employee while so retained or employed, only for purposes of—

(1) injury compensation as provided in chapter 81 of title 5 and tort claims liability under chapter 171 of title 28;

(2) the Ethics in Government Act (5 U.S.C. App.) and the provisions of chapter 11 of title 18; and

(3) any other statute or regulation governing the conduct of Federal employees.

(Pub. L. 110–314, title II, §208, Aug. 14, 2008, 122 Stat. 3046.)

REFERENCES IN TEXT

The Ethics in Government Act, referred to in subsec. (c)(2), probably means the Ethics in Government Act of 1978, Pub. L. 95–521, Oct. 26, 1978, 92 Stat. 1824. For complete classification of this Act to the Code, see Short Title note set out under section 101 of Pub. L. 95–521 in the Appendix to Title 5, Government Organization and Employees, and Tables.

CODIFICATION

Section was enacted as part of the Consumer Product Safety Improvement Act of 2008, and not as part of the Consumer Product Safety Act which comprises this chapter.

DEFINITION

For definition of "Commission" used in this section, see section 2(a) of Pub. L. 110–314, set out as a note under section 2051 of this title.

§2054. Product safety information and research

(a) Injury Information Clearinghouse; duties

The Commission shall—

(1) maintain an Injury Information Clearinghouse to collect, investigate, analyze, and disseminate injury data, and information, relating to the causes and prevention of death, injury, and illness associated with consumer products;

(2) conduct such continuing studies and investigations of deaths, injuries, diseases, other health impairments, and economic losses resulting from accidents involving consumer products as it deems necessary;

(3) following publication of a notice of proposed rulemaking for a product safety rule under any rulemaking authority administered by the Commission, assist public and private organizations or groups of manufacturers, administratively and technically, in the development of safety standards addressing the risk of injury identified in such notice; and

(4) to the extent practicable and appropriate (taking into account the resources and priorities of the Commission), assist public and private organizations or groups of manufacturers, administratively and technically, in the development of product safety standards and test methods.

(b) Research, investigation and testing of consumer products

The Commission may—

(1) conduct research, studies, and investigations on the safety of consumer products and on improving the safety of such products;

(2) test consumer products and develop product safety test methods and testing devices; and

(3) offer training in product safety investigation and test methods.

(c) Grants and contracts for conduct of functions

In carrying out its functions under this section, the Commission may make grants or enter into contracts for the conduct of such functions with any person (including a governmental entity).

(d) Availability to public of information

Whenever the Federal contribution for any information, research, or development activity authorized by this chapter is more than minimal, the Commission shall include in any contract, grant, or other arrangement for such activity, provisions effective to insure that the rights to all information, uses, processes, patents, and other developments resulting from that activity will be made available to the public without charge on a nonexclusive basis. Nothing in this subsection shall be construed to deprive any person of any right which he may have had, prior to entering into any arrangement referred to in this subsection, to any patent, patent application, or invention.

(Pub. L. 92–573, §5, Oct. 27, 1972, 86 Stat. 1211; Pub. L. 97–35, title XII, §1209(a), (b), Aug. 13, 1981, 95 Stat. 720; Pub. L. 110–314, title II, §204(a)(2), Aug. 14, 2008, 122 Stat. 3041.)

AMENDMENTS

2008—Subsec. (a)(3). Pub. L. 110–314 struck out "an advance notice of proposed rulemaking or" after "following publication of".

1981—Subsec. (a)(3), (4). Pub. L. 97–35, §1209(a), added pars. (3) and (4).

Subsec. (b)(3). Pub. L. 97–35, §1209(b), struck out provision that the Commission may assist public and private organizations, administratively and technically, in the development of safety standards and test methods.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35, effective Aug. 13, 1981, see section 1215 of Pub. L. 97–35, set out as a note under section 2052 of this title.

STUDY OF AVERSIVE AGENTS

Pub. L. 101–608, title II, §204, Nov. 16, 1990, 104 Stat. 3124, provided that: "The Consumer Product Safety Commission shall conduct a study of requiring manufacturers of consumer products to include aversive agents, as appropriate, in products which present a hazard if ingested to determine the potential effectiveness of the aversive agents in deterring ingestion. In conducting the study, the Commission shall consult with appropriate consumer, health, and business organizations and appropriate government agencies. The Commission shall report to Congress the status of the study within one year of the date of the enactment of this Act [Nov. 16, 1990] and shall complete the study not later than 2 years after such date of enactment."

FIRE SAFE CIGARETTE ACT OF 1990

Pub. L. 101–352, Aug. 10, 1990, 104 Stat. 405, provided that:

"SECTION 1. SHORT TITLE; FINDINGS.

"(a) SHORT TITLE.—This Act may be cited as the 'Fire Safe Cigarette Act of 1990'.

"(b) FINDINGS.—The Congress finds that—

"(1) cigarette-ignited fires are the leading cause of fire deaths in the United States,

"(2) in 1987, there were 1,492 deaths from cigarette-ignited fires, 3,809 serious injuries, and $395,000,000 in property damage caused by such fires,

"(3) the final report of the Technical Study Group on Cigarette and Little Cigar Fire Safety under the Cigarette Safety Act of 1984 [set out below] determined that (A) it is technically feasible and may be commercially feasible to develop a cigarette that will have a significantly reduced propensity to ignite furniture and mattresses, and (B) the overall impact on other aspects of the United States society and economy may be minimal,

"(4) the final report of the Technical Study Group on Cigarette and Little Cigar Fire Safety under the Cigarette Safety Act of 1984 further determined that the value of a cigarette with less of a likelihood to ignite furniture and mattresses which would prevent property damage and personal injury and loss of life is economically incalculable,

"(5) it is appropriate for the Congress to require by law the completion of the research described in the final report of the Technical Study Group on Cigarette and Little Cigar Fire Safety and an assessment of the practicability of developing a performance standard to reduce cigarette ignition propensity, and

"(6) it is appropriate for the Consumer Product Safety Commission to utilize its expertise to complete the recommendations for further work and report to Congress in a timely fashion.

"SEC. 2. COMPLETION OF FIRE SAFETY RESEARCH.

"(a) CENTER FOR FIRE RESEARCH.—At the request of the Consumer Product Safety Commission, the National Institute for Standards and Technology's Center for Fire Research shall—

"(1) develop a standard test method to determine cigarette ignition propensity,

"(2) compile performance data for cigarettes using the standard test method developed under paragraph (1), and

"(3) conduct laboratory studies on and computer modeling of ignition physics to develop valid, user-friendly predictive capability.

The Commission shall make such request not later than the expiration of 30 days after the date of the enactment of this Act [Aug. 10, 1990].

"(b) COMMISSION.—The Consumer Product Safety Commission shall—

"(1) design and implement a study to collect baseline and followup data about the characteristics of cigarettes, products ignited, and smokers involved in fires, and

"(2) develop information on societal costs of cigarette-ignited fires.

"(c) HEALTH AND HUMAN SERVICES.—The Consumer Product Safety Commission, in consultation

with the Secretary of Health and Human Services, shall develop information on changes in the toxicity of smoke and resultant health effects from cigarette prototypes. The Commission shall not obligate more than $50,000 to develop such information.

"SEC. 3. ADVISORY GROUP.

"(a) ESTABLISHMENT.—There is established the Technical Advisory Group to advise and work with the Consumer Product Safety Commission and National Institute for Standards and Technology's Center for Fire Research on the implementation of this Act. The Technical Advisory Group may hold hearings to develop information to carry out its functions. The Technical Advisory Group shall terminate 1 month after the submission of the final report of the Chairman of the Consumer Product Safety Commission under section 4.

"(b) MEMBERS.—The Technical Advisory Group shall consist of the same individuals appointed to the Technical Study Group on Cigarette and Little Cigar Fire Safety under section 3(a) of the Cigarette Safety Act of 1984 [set out below]. If such an individual is unavailable to serve on the Technical Advisory Group, the entity which such individual represented on such Technical Study Group shall submit to the Chairman of the Consumer Product Safety Commission the name of another individual to be appointed by the Chairman to represent such group on the Technical Advisory Group.

"SEC. 4. REPORTS.

"The Chairman of the Consumer Product Safety Commission, in consultation with the Technical Advisory Group, shall submit to Congress three reports on the activities undertaken under section 2 as follows: The first such report shall be made not later than 13 months after the date of the enactment of this Act [Aug. 10, 1990], the second such report shall be made not later than 25 months after such date, and the final such report shall be made not later than 36 months after such date.

"SEC. 5. CONFIDENTIALITY.

"(a) IN GENERAL.—Any information provided to the National Institute for Standards and Technology's Center for Fire Research, to the Consumer Product Safety Commission, or to the Technical Advisory Group under section 2 which is designated as trade secret or confidential information shall be treated as trade secret or confidential information subject to section 552(b)(4) of title 5, United States Code, and section 1905 of title 18, United States Code, and shall not be revealed, except as provided under subsection (b). No member or employee of the Center for Fire Research, the Consumer Product Safety Commission, or the Technical Advisory Group and no person assigned to or consulting with the Center for Fire Research, the Consumer Product Safety Commission, or the Technical Advisory Group, shall disclose any such information to any person who is not a member or employee of, assigned to, or consulting with, the Center for Fire Research, Consumer Product Safety Commission, or the Technical Advisory Group unless the person submitting such information specifically and in writing authorizes such disclosure.

"(b) CONSTRUCTION.—Subsection (a) does not authorize the withholding of any information from any duly authorized subcommittee or committee of the Congress, except that if a subcommittee or committee of the Congress requests the Consumer Product Safety Commission, the National Institute for Standards and Technology's Center for Fire Research, or the Technical Advisory Group to provide such information, the Commission, the Center for Fire Research, or Technical Advisory Group shall notify the person who provided the information of such a request in writing."

ADDITIONAL REPORTING TIME

Pub. L. 99–500, §110, Oct. 18, 1986, 100 Stat. 1783–348, and Pub. L. 99–591, §110, Oct. 30, 1986, 100 Stat. 3341–348, provided that: "The Interagency Committee on Cigarette and Little Cigar Fire Safety, established pursuant to Public Law 98–567 [set out as a note below], shall have an additional six months to complete its final technical report and submit policy recommendations to the Congress."

CIGARETTE SAFETY ACT OF 1984

Pub. L. 98–567, Oct. 30, 1984, 98 Stat. 2925, as amended by Pub. L. 100–418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433, provided: "That this Act may be cited as the 'Cigarette Safety Act of 1984'.

"SEC. 2. (a) There is established the Interagency Committee on Cigarette and Little Cigar Fire Safety (hereinafter in this Act referred to as the 'Interagency Committee') which shall consist of—

"(1) the Chairman of the Consumer Product Safety Commission, who shall be the Chairman of the Interagency Committee;

"(2) the United States Fire Administrator in the Federal Emergency Management Agency, who shall be the Vice Chairman of the Interagency Committee; and

"(3) the Assistant Secretary of Health in the Department of Health and Human Services.

"(b) The Interagency Committee shall direct, oversee, and review the work of the Technical Study Group

on Cigarette and Little Cigar Fire Safety (established under section 3) conducted under section 4 and shall make such policy recommendations to the Congress as it deems appropriate. The Interagency Committee may retain and contract with such consultants as it deems necessary to assist the Study Group in carrying out its functions under section 4. The Interagency Committee may request the head of any Federal department or agency to detail any of the personnel of the department or agency to assist the Interagency Committee or the Study Group in carrying out its responsibilities. The authority of the Interagency Committee to enter into contracts shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

"(c) For the purpose of carrying out section 4, the Interagency Committee or the Study Group, with the advice and consent of the Interagency Committee, may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Interagency Committee or the Study Group considers appropriate.

"SEC. 3. (a) There is established the Technical Study Group on Cigarette and Little Cigar Fire Safety (hereinafter in this Act referred to as the 'Study Group') which shall consist of—

"(1) one scientific or technical representative each from the Consumer Product Safety Commission, the Center for Fire Research of the National Institute of Standards and Technology, the National Cancer Institute, the Federal Trade Commission, and the Federal Emergency Management Agency, the appointment of whom shall be made by the heads of those agencies;

"(2) four scientific or technical representatives appointed by the Chairman of the Interagency Committee, by and with the advice and consent of the Interagency Committee, from a list of individuals submitted by the Tobacco Institute;

"(3) two scientific or technical representatives appointed by the Chairman of the Interagency Committee, by and with the advice and consent of the Interagency Committee, who are selected from lists of individuals submitted by the following organizations: the American Burn Association, the American Public Health Association, and the American Medical Association;

"(4) two scientific or technical representatives appointed by the Chairman of the Interagency Committee, by and with the advice and consent of the Interagency Committee, who are selected from lists of individuals submitted by the following organizations: the National Fire Protection Association, the International Association of Fire Chiefs, the International Association of Fire Fighters, the International Society of Fire Service Instructors, and the National Volunteer Fire Council; and

"(5) one scientific or technical representative appointed by the Chairman of the Interagency Committee, by and with the advice and consent of the Interagency Committee, from lists of individuals submitted by the Business and Institutional Furniture Manufacturers Association and one scientific or technical representative appointed by the Chairman, by and with the advice and consent of the Interagency Committee, from lists of individuals submitted by the American Furniture Manufacturers Association.

"(b) The persons appointed to serve on the Study Group may designate, with the advice and consent of the Interagency Committee, from among their number such persons to serve as team leaders, coordinators, or chairpersons as they deem necessary or appropriate to carry out the Study Group's functions under section 4.

"SEC. 4. The Study Group shall undertake, subject to oversight and review by the Interagency Committee, such studies and other activities as it considers necessary and appropriate to determine the technical and commercial feasibility, economic impact, and other consequences of developing cigarettes and little cigars that will have a minimum propensity to ignite upholstered furniture or mattresses. Such activities include identification of the different physical characteristics of cigarettes and little cigars which have an impact on the ignition of upholstered furniture and mattresses, an analysis of the feasibility of altering any pertinent characteristics to reduce ignition propensity, and an analysis of the possible costs and benefits, both to the industry and the public, associated with any such product modification.

"SEC. 5. The Interagency Committee shall submit one year after the date of enactment of this Act [Oct. 30, 1984] a status report to the Senate and the House of Representatives describing the activities undertaken under section 4 during the preceding year. The Interagency Committee shall submit a final technical report, prepared by the Study Group, to the Senate and the House of Representatives not later than thirty months after the date of enactment of this Act [Oct. 30, 1984]. The Interagency Committee shall provide to the Congress, within sixty days after the submission of the final technical report, any policy recommendations the Interagency Committee deems appropriate. The Interagency Committee and the Study Group shall terminate one month after submission of the policy recommendations prescribed by this section.

"SEC. 6. (a) Any information provided to the Interagency Committee or to the Study Group under section 4 which is designated as trade secret or confidential information shall be treated as trade secret or confidential information subject to section 552(b)(4) of title 5, United States Code, and section 1905 of title 18, United States Code, and shall not be revealed, except as provided under subsection (b). No member of the Study

Group or Interagency Committee, and no person assigned to or consulting with the Study Group, shall disclose any such information to any person who is not a member of, assigned to, or consulting with, the Study Group or Interagency Committee unless the person submitting such information specifically and in writing authorizes such disclosure.

"(b) Subsection (a) does not authorize the withholding of any information from any duly authorized subcommittee or committee of the Congress, except that if a subcommittee or committee of the Congress requests the Interagency Committee to provide such information, the Chairman of the Interagency Committee shall notify the person who provided the information of such a request in writing.

"(c) The Interagency Committee shall, on the vote of a majority of its members, adopt reasonable procedures to protect the confidentiality of trade secret and confidential information, as defined in this section.

"SEC. 7. As used in this Act, the terms 'cigarettes' and 'little cigars' have the meanings given such terms by section 3 of the Federal Cigarette Labeling and Advertising Act [15 U.S.C. 1332]."

§2055. Public disclosure of information

(a) Disclosure requirements for manufacturers or private labelers; procedures applicable

(1) Nothing contained in this Act shall be construed to require the release of any information described by subsection (b) of section 552 of title 5 or which is otherwise protected by law from disclosure to the public.

(2) All information reported to or otherwise obtained by the Commission or its representative under this Act which information contains or relates to a trade secret or other matter referred to in section 1905 of title 18 or subject to section 552(b)(4) of title 5 shall be considered confidential and shall not be disclosed.

(3) The Commission shall, prior to the disclosure of any information which will permit the public to ascertain readily the identity of a manufacturer or private labeler of a consumer product, offer such manufacturer or private labeler an opportunity to mark such information as confidential and therefore barred from disclosure under paragraph (2). A manufacturer or private labeler shall submit any such mark within 15 calendar days after the date on which it receives the Commission's offer.

(4) All information that a manufacturer or private labeler has marked to be confidential and barred from disclosure under paragraph (2), either at the time of submission or pursuant to paragraph (3), shall not be disclosed, except in accordance with the procedures established in paragraphs (5) and (6).

(5) If the Commission determines that a document marked as confidential by a manufacturer or private labeler to be barred from disclosure under paragraph (2) may be disclosed because it is not confidential information as provided in paragraph (2), the Commission shall notify such person in writing that the Commission intends to disclose such document at a date not less than 10 days after the date of receipt of notification.

(6) Any person receiving such notification may, if he believes such disclosure is barred by paragraph (2), before the date set for release of the document, bring an action in the district court of the United States in the district in which the complainant resides, or has his principal place or business, or in which the documents are located, or in the United States District Court for the District of Columbia to restrain disclosure of the document. Any person receiving such notification may file with the appropriate district court or court of appeals of the United States, as appropriate, an application for a stay of disclosure. The documents shall not be disclosed until the court has ruled on the application for a stay.

(7) Nothing in this Act shall authorize the withholding of information by the Commission or any officer or employee under its control from the duly authorized committees or subcommittees of the Congress, and the provisions of paragraphs (2) through (6) shall not apply to such disclosures, except that the Commission shall immediately notify the manufacturer or private labeler of any such request for information designated as confidential by the manufacturer or private labeler.

(8) The provisions of paragraphs (2) through (6) shall not prohibit the disclosure of information to other officers, employees, or representatives of the Commission (including contractors) concerned with carrying out this Act or when relevant in any administrative proceeding under this Act or in

judicial proceedings to which the Commission is a party. Any disclosure of relevant information—

(A) in Commission administrative proceedings or in judicial proceedings to which the Commission is a party, or

(B) to representatives of the Commission (including contractors),

shall be governed by the rules of the Commission (including in camera review rules for confidential material) for such proceedings or for disclosures to such representatives or by court rules or orders, except that the rules of the Commission shall not be amended in a manner inconsistent with the purposes of this section.

(b) Additional disclosure requirements for manufacturers or private labelers; procedures applicable

(1) Except as provided by paragraph (4) of this subsection, not less than 15 days prior to its public disclosure of any information obtained under this Act, or to be disclosed to the public in connection therewith (unless the Commission publishes a finding that the public health and safety requires a lesser period of notice), the Commission shall, to the extent practicable, notify and provide a summary of the information to, each manufacturer or private labeler of any consumer product to which such information pertains, if the manner in which such consumer product is to be designated or described in such information will permit the public to ascertain readily the identity of such manufacturer or private labeler, and shall provide such manufacturer or private labeler with a reasonable opportunity to submit comments to the Commission in regard to such information. The Commission shall take reasonable steps to assure, prior to its public disclosure thereof, that information from which the identity of such manufacturer or private labeler may be readily ascertained is accurate, and that such disclosure is fair in the circumstances and reasonably related to effectuating the purposes of this Act. In disclosing any information under this subsection, the Commission may, and upon the request of the manufacturer or private labeler shall, include with the disclosure any comments or other information or a summary thereof submitted by such manufacturer or private labeler to the extent permitted by and subject to the requirements of this section.

(2) If the Commission determines that a document claimed to be inaccurate by a manufacturer or private labeler under paragraph (1) should be disclosed because the Commission believes it has complied with paragraph (1), the Commission shall notify the manufacturer or private labeler that the Commission intends to disclose such document at a date not less than 5 days after the date of the receipt of notification. The Commission may provide a lesser period of notice of intent to disclose if the Commission publishes a finding that the public health and safety requires a lesser period of notice.

(3)(A) Prior to the date set for release of the document, the manufacturer or private labeler receiving the notice described in paragraph (2) may bring an action in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the documents are located or in the United States District Court for the District of Columbia to enjoin disclosure of the document. The district court may enjoin such disclosure if the Commission has failed to take the reasonable steps prescribed in paragraph (1).

(B) If the Commission determines that the public health and safety requires expedited consideration of an action brought under subparagraph (A), the Commission may file a request with the District Court for such expedited consideration. If the Commission files such a request, the District Court shall—

(i) assign the matter for hearing at the earliest possible date;

(ii) give precedence to the matter, to the greatest extent practicable, over all other matters pending on the docket of the court at the time;

(iii) expedite consideration of the matter to the greatest extent practicable; and

(iv) grant or deny the requested injunction within 30 days after the date on which the Commission's request was filed with the court.

(4) Paragraphs (1) through (3) of this subsection shall not apply to the public disclosure of (A) information about any consumer product with respect to which product the Commission has filed an

action under section 2061 of this title (relating to imminently hazardous products), or which the Commission has reasonable cause to believe is in violation of any consumer product safety rule or provision of this Act or similar rule or provision of any other Act enforced by the Commission; or (B) information in the course of or concerning a rulemaking proceeding (which shall commence upon the publication of an advance notice of proposed rulemaking or a notice of proposed rulemaking), an adjudicatory proceeding (which shall commence upon the issuance of a complaint) or other administrative or judicial proceeding under this Act.

(5) In addition to the requirements of paragraph (1), the Commission shall not disclose to the public information submitted pursuant to section 2064(b) of this title respecting a consumer product unless—

(A) the Commission has issued a complaint under section 2064(c) or (d) of this title alleging that such product presents a substantial product hazard;

(B) in lieu of proceeding against such product under section 2064(c) or (d) of this title, the Commission has accepted in writing a remedial settlement agreement dealing with such product;

(C) the person who submitted the information under section 2064(b) of this title agrees to its public disclosure; or

(D) the Commission publishes a finding that the public health and safety requires public disclosure with a lesser period of notice than is required under paragraph (1).

The provisions of this paragraph shall not apply to the public disclosure of information with respect to a consumer product which is the subject of an action brought under section 2061 of this title, or which the Commission has reasonable cause to believe is in violation of any consumer product safety rule or provision under this Act or similar rule or provision of any other Act enforced by the Commission, or information in the course of or concerning a judicial proceeding.

(6) Where the Commission initiates the public disclosure of information that reflects on the safety of a consumer product or class of consumer products, whether or not such information would enable the public to ascertain readily the identity of a manufacturer or private labeler, the Commission shall establish procedures designed to ensure that such information is accurate and not misleading.

(7) If the Commission finds that, in the administration of this Act, it has made public disclosure of inaccurate or misleading information which reflects adversely upon the safety of any consumer product or class of consumer products, or the practices of any manufacturer, private labeler, distributor, or retailer of consumer products, it shall, in a manner equivalent to that in which such disclosure was made, take reasonable steps to publish a retraction of such inaccurate or misleading information.

(8) If, after the commencement of a rulemaking or the initiation of an adjudicatory proceeding, the Commission decides to terminate the proceeding before taking final action, the Commission shall, in a manner equivalent to that in which such commencement or initiation was publicized, take reasonable steps to make known the decision to terminate.

(c) Communications with manufacturers

The Commission shall communicate to each manufacturer of a consumer product, insofar as may be practicable, information as to any significant risk of injury associated with such product.

(d) "Act" defined; coverage

(1) For purposes of this section, the term "Act" means the Consumer Product Safety Act [15 U.S.C. 2051 et seq.], the Flammable Fabrics Act [15 U.S.C. 1191 et seq.], the Poison Prevention Packaging Act [15 U.S.C. 1471 et seq.], and the Federal Hazardous Substances Act [15 U.S.C. 1261 et seq.].

(2) The provisions of this section shall apply whenever information is to be disclosed by the Commission, any member of the Commission, or any employee, agent, or representative of the Commission in an official capacity.

(e) Disclosure of information regarding civil actions involving consumer product alleged to have caused death or injury

(1) Notwithstanding the provisions of section 552 of title 5, subsection (a)(7) of this section, or of any other law, except as provided in paragraphs (2), (3), and (4), no member of the Commission, no officer or employee of the Commission, and no officer or employee of the Department of Justice may—

(A) publicly disclose information furnished under subsection (c)(1) or (c)(2)(A) of section 2084 of this title;

(B) use such information for any purpose other than to carry out the Commission's responsibilities; or

(C) permit anyone (other than the members, officers, and employees of the Commission or officers or employees of the Department of Justice who require such information for an action filed on behalf of the Commission) to examine such information.

(2) Any report furnished under subsection (c)(1) or (c)(2)(A) of section 2084 of this title shall be immune from legal process and shall not be subject to subpoena or other discovery in any civil action in a State or Federal court or in any administrative proceeding, except in an action against such manufacturer under section 2069, 2070, or 2071 of this title for failure to furnish information required by section 2084 of this title.

(3) The Commission may, upon written request, furnish to any manufacturer or to the authorized agent of such manufacturer authenticated copies of reports furnished by or on behalf of such manufacturer in accordance with section 2084 of this title, upon payment of the actual or estimated cost of searching the records and furnishing such copies.

(4) Upon written request of the Chairman or Ranking Minority Member of either of the appropriate Congressional committees or any subcommittee thereof, the Commission shall provide to the Chairman or Ranking Minority Member any information furnished to the Commission under section 2084 of this title for purposes that are related to the jurisdiction of such committee or subcommittee.

(5) Any officer or employee of the Commission or other officer or employee of the Federal Government who receives information provided under section 2084 of this title, who willfully violates the requirements of this subsection shall be subject to dismissal or other appropriate disciplinary action consistent with procedures and requirements established by the Office of Personnel Management.

(Pub. L. 92–573, §6, Oct. 27, 1972, 86 Stat. 1212; Pub. L. 97–35, title XII, §1204, Aug. 13, 1981, 95 Stat. 713; Pub. L. 97–414, §9(j)(1), Jan. 4, 1983, 96 Stat. 2064; Pub. L. 101–608, title I, §§106, 112(c), Nov. 16, 1990, 104 Stat. 3111, 3116; Pub. L. 110–314, title II, §§211, 235(c)(2), Aug. 14, 2008, 122 Stat. 3047, 3074.)

REFERENCES IN TEXT

The Consumer Product Safety Act, referred to in subsec. (d)(1), is Pub. L. 92–573, Oct. 27, 1972, 86 Stat. 1207, as amended, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2051 of this title and Tables.

The Flammable Fabrics Act, referred to in subsec. (d)(1), is act June 30, 1953, ch. 164, 67 Stat. 111, as amended, which is classified generally to chapter 25 (§1191 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1191 of this title and Tables.

The Poison Prevention Packaging Act, referred to in subsec. (d)(1), probably means the Poison Prevention Packaging Act of 1970, Pub. L. 91–601, Dec. 30, 1970, 84 Stat. 1670, which is classified principally to chapter 39A (§1471 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1471 of this title and Tables.

The Federal Hazardous Substances Act, referred to in subsec. (d)(1), is Pub. L. 86–613, July 12, 1960, 74 Stat. 372, as amended, which is classified generally to chapter 30 (§1261 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1261 of this title and Tables.

AMENDMENTS

2008—Subsec. (a)(3). Pub. L. 110–314, §211(1), inserted "A manufacturer or private labeler shall submit any such mark within 15 calendar days after the date on which it receives the Commission's offer." after "paragraph (2)."

Subsec. (b)(1). Pub. L. 110–314, §211(2)–(4), substituted "15 days" for "30 days", "publishes a finding that the public" for "finds that the public", and "notice)," for "notice and publishes such a finding in the Federal Register),".

Subsec. (b)(2). Pub. L. 110–314, §211(5)–(7), substituted "5 days" for "10 days", "publishes a finding that the public" for "finds that the public", and "notice." for "notice and publishes such finding in the Federal Register."

Subsec. (b)(3). Pub. L. 110–314, §211(8), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (b)(4). Pub. L. 110–314, §211(9), which directed substitution of "any consumer product safety rule or provision of this Act or similar rule or provision of any other Act enforced by the Commission;" for "section 2068 of this title (related to prohibited acts);", was executed by making the substitution for "section 2068 of this title (relating to prohibited acts);" to reflect the probable intent of Congress.

Subsec. (b)(5). Pub. L. 110–314, §211(10)–(13), added subpar. (D) and substituted "any consumer product safety rule or provision under this Act or similar rule or provision of any other Act enforced by the Commission," for "section 2068(a) of this title," in concluding provisions.

Subsec. (e)(4). Pub. L. 110–314, §235(c)(2), substituted "either of the appropriate Congressional committees or any subcommittee thereof," for "the Committee on Commerce, Science, and Transportation of the Senate or the Committee on Energy and Commerce of the House of Representatives or any subcommittee of such committee,".

1990—Subsec. (a)(8). Pub. L. 101–608, §106, amended par. (8) generally. Prior to amendment, par. (8) read as follows: "The provisions of paragraphs (2) through (6) shall not prohibit the disclosure of information to other officers or employees concerned with carrying out this Act or when relevant in any administrative proceeding under this Act, or in judicial proceedings to which the Commission is a party. Any disclosure of relevant information in Commission administrative proceedings, or in judicial proceedings to which the Commission is a party, shall be governed by the rules of the Commission (including in camera review rules for confidential material) for such proceedings or by court rules or orders, except that the rules of the Commission shall not be amended in a manner inconsistent with the purposes of this section."

Subsec. (e). Pub. L. 101–608, §112(c), added subsec. (e).

1983—Subsec. (b)(1). Pub. L. 97–414 substituted "paragraph (4)" for "paragraph (2)".

1981—Subsec. (a)(1). Pub. L. 97–35 amended par. (1) generally, substituting "shall be construed" for "shall be deemed".

Subsec. (a)(2). Pub. L. 97–35 amended par. (2) generally, substituting "title 18, or subject to section 552(b)(4) of title 5, shall be considered confidential and shall not be disclosed" for "title 18 shall be considered confidential and shall not be disclosed, except that such information may be disclosed to other officers or employees concerned with carrying out this chapter or when relevant in any proceeding under this chapter. Nothing in this chapter shall authorize the withholding of information by the Commission or any officer or employee under its control from the duly authorized committees of the Congress".

Subsec. (a)(3) to (8). Pub. L. 97–35 added pars. (3) to (8).

Subsec. (b)(1). Pub. L. 97–35 amended par. (1) generally, substituting "notice and publishes such a finding in the Federal Register)," for "notice),", and "In disclosing any information under this subsection, the Commission may, and upon the request of the manufacturer or private labeler shall, include with the disclosure any comments or other information or a summary thereof submitted by such manufacturer or private labeler to the extent permitted by and subject to the requirements of this section" for "If the Commission finds that, in the administration of this chapter, it has made public disclosure of inaccurate or misleading information which reflects adversely upon the safety of any consumer product, or the practices of any manufacturer, private labeler, distributor, or retailer of consumer products, it shall, in a manner similar to that in which such disclosure was made, publish a retraction of such inaccurate or misleading information".

Subsec. (b)(2) to (4). Pub. L. 97–35 added pars. (2) and (3), redesignated former par. (2) as (4) and substituted "Paragraphs (1) through (3) of this subsection" for "Paragraph (1) (except for the last sentence thereof)" and "a rulemaking proceeding (which shall commence upon the publication of an advance notice of proposed rulemaking or a notice of proposed rulemaking), an adjudicatory proceeding (which shall commence upon the issuance of a complaint) or other administrative or judicial proceeding under this chapter" for "any administrative or judicial proceeding under this chapter".

Subsec. (b)(5) to (8). Pub. L. 97–35 added pars. (5) to (8).

Subsecs. (c), (d). Pub. L. 97–35 reenacted subsec. (c) without change and added subsec. (d).

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, see section 1215 of Pub. L. 97–35, set out as a note

under section 2052 of this title.

CONFIDENTIALITY PROTECTIONS FOR INFORMATION REPORTED ON INCIDENTS OF CHILDREN CHOKING

For purposes of subsection (b)(5) of this section, information reported to Consumer Product Safety Commission on incidents of children choking on a marble, small ball, latex balloon, or other small part contained in a toy or game, to be treated as information submitted pursuant to section 2064(b) of this title, see section 102 of Pub. L. 103–267, set out as a Reporting Requirements note under section 2064 of this title.

§2055a. Publicly available consumer product safety information database

(a) Database required

(1) In general

Subject to the availability of appropriations, the Commission shall, in accordance with the requirements of this section, establish and maintain a database on the safety of consumer products, and other products or substances regulated by the Commission, that is—

(A) publicly available;

(B) searchable; and

(C) accessible through the Internet website of the Commission.

(2) Submission of detailed implementation plan to Congress

Not later than 180 days after August 14, 2008, the Commission shall transmit to the appropriate Congressional committees a detailed plan for establishing and maintaining the database required by paragraph (1), including plans for the operation, content, maintenance, and functionality of the database. The plan shall detail the integration of the database into the Commission's overall information technology improvement objectives and plans. The plan submitted under this subsection shall include a detailed implementation schedule for the database, and plans for a public awareness campaign to be conducted by the Commission to increase consumer awareness of the database.

(3) Date of initial availability

Not later than 18 months after the date on which the Commission submits the plan required by paragraph (2), the Commission shall establish the database required by paragraph (1).

(b) Content and organization

(1) Contents

Except as provided in subsection (c)(4), the database shall include the following:

(A) Reports of harm relating to the use of consumer products, and other products or substances regulated by the Commission, that are received by the Commission from—

(i) consumers;

(ii) local, State, or Federal government agencies;

(iii) health care professionals;

(iv) child service providers; and

(v) public safety entities.

(B) Information derived by the Commission from notice under section 2064(c) of this title or any notice to the public relating to a voluntary corrective action taken by a manufacturer, in consultation with the Commission, of which action the Commission has notified the public.

(C) The comments received by the Commission under subsection (c)(2)(A) to the extent requested under subsection (c)(2)(B).

(2) Submission of information

In implementing the database, the Commission shall establish the following:

(A) Electronic, telephonic, and paper-based means of submitting, for inclusion in the

database, reports described in paragraph (1)(A) of this subsection.

(B) A requirement that any report described in paragraph (1)(A) submitted for inclusion in such database include, at a minimum—

(i) a description of the consumer product (or other product or substance regulated by the Commission) concerned;

(ii) identification of the manufacturer or private labeler of the consumer product (or other product or substance regulated by the Commission);

(iii) a description of the harm relating to the use of the consumer product (or other product or substance regulated by the Commission);

(iv) contact information for the person submitting the report; and

(v) a verification by the person submitting the information that the information submitted is true and accurate to the best of the person's knowledge and that the person consents that such information be included in the database.

(3) Additional information

In addition to the reports received under paragraph (1), the Commission shall include in the database, consistent with the requirements of section 2055(a) and (b) of this title, any additional information it determines to be in the public interest.

(4) Organization of database

The Commission shall categorize the information available on the database in a manner consistent with the public interest and in such manner as it determines to facilitate easy use by consumers and shall ensure, to the extent practicable, that the database is sortable and accessible by—

(A) the date on which information is submitted for inclusion in the database;

(B) the name of the consumer product (or other product or substance regulated by the Commission);

(C) the model name;

(D) the manufacturer's or private labeler's name; and

(E) such other elements as the Commission considers in the public interest.

(5) Notice requirements

The Commission shall provide clear and conspicuous notice to users of the database that the Commission does not guarantee the accuracy, completeness, or adequacy of the contents of the database.

(6) Availability of contact information

The Commission may not disclose, under this section, the name, address, or other contact information of any individual or entity that submits to the Commission a report described in paragraph (1)(A), except that the Commission may provide such information to the manufacturer or private labeler of the product with the express written consent of the person submitting the information. Consumer information provided to a manufacturer or private labeler under this section may not be used or disseminated to any other party for any purpose other than verifying a report submitted under paragraph (1)(A).

(c) Procedural requirements

(1) Transmission of reports to manufacturers and private labelers

Not later than 5 business days after the Commission receives a report described in subsection (b)(1)(A) which includes the information required by subsection (b)(2)(B), the Commission shall to the extent practicable transmit the report, subject to subsection (b)(6), to the manufacturer or private labeler identified in the report.

(2) Opportunity to comment

(A) In general

If the Commission transmits a report under paragraph (1) to a manufacturer or private labeler,

the Commission shall provide such manufacturer or private labeler an opportunity to submit comments to the Commission on the information contained in such report.

(B) Request for inclusion in database

A manufacturer or private labeler may request the Commission to include its comments in the database.

(C) Confidential matter

(i) In general

If the Commission transmits a report received under paragraph (1) to a manufacturer or private labeler, the manufacturer or private labeler may review the report for confidential information and request that portions of the report identified as confidential be so designated.

(ii) Redaction

If the Commission determines that the designated information contains, or relates to, a trade secret or other matter referred to in section 1905 of title 18, or that is subject to section 552(b)(4) of title 5, the Commission shall redact the designated information in the report before it is placed in the database.

(iii) Review

If the Commission determines that the designated information is not confidential under clause (ii), the Commission shall notify the manufacturer or private labeler and include the information in the database. The manufacturer or private labeler may bring an action in the district court of the United States in the district in which the complainant resides, or has its principal place of business, or in the United States District Court for the District of Columbia, to seek removal of the information from the database.

(3) Publication of reports and comments

(A) Reports

Except as provided in paragraph (4)(A) or paragraph (5), if the Commission receives a report described in subsection (b)(1)(A), the Commission shall make the report available in the database not later than the 10th business day after the date on which the Commission transmits the report under paragraph (1) of this subsection.

(B) Comments

Except as provided in paragraph (4)(A), if the Commission receives a comment under paragraph (2)(A) with respect to a report described in subsection (b)(1)(A) and a request with respect to such comment under paragraph (2)(B) of this subsection, the Commission shall make such comment available in the database at the same time as such report or as soon as practicable thereafter.

(4) Inaccurate information

(A) Inaccurate information in reports and comments received

If, prior to making a report described in subsection (b)(1)(A) or a comment described in paragraph (2) of this subsection available in the database, the Commission receives notice that the information in such report or comment is materially inaccurate, the Commission shall stay the publication of the report on the database as required under paragraph (3) for a period of no more than 5 additional days. If the Commission determines that the information in such report or comment is materially inaccurate, the Commission shall—

(i) decline to add the materially inaccurate information to the database;

(ii) correct the materially inaccurate information in the report or comment and add the report or comment to the database; or

(iii) add information to correct inaccurate information in the database.

(B) Inaccurate information in database

If the Commission determines, after investigation, that information previously made available in the database is materially inaccurate or duplicative of information in the database, the Commission shall, not later than 7 business days after such determination—

(i) remove such information from the database;

(ii) correct such information; or

(iii) add information to correct inaccurate information in the database.

(5) Obtaining certain product identification information

(A) In general

If the Commission receives a report described in subsection (b)(1)(A) that does not include the model or serial number of the consumer product concerned, the Commission shall seek from the individual or entity submitting the report such model or serial number or, if such model or serial number is not available, a photograph of the product. If the Commission obtains information relating to the serial or model number of the product or a photograph of the product, it shall immediately forward such information to the manufacturer of the product. The Commission shall make the report available in the database on the 15th business day after the date on which the Commission transmits the report under paragraph (1) and shall include in the database any additional information about the product obtained under this paragraph.

(B) Rule of construction

Nothing in this paragraph shall be construed to—

(i) permit the Commission to delay transmission of the report under paragraph (1) until the Commission has obtained the model or serial number or a photograph of the consumer product concerned; or

(ii) make inclusion in the database of a report described in subsection (b)(1)(A) contingent on the availability of the model or serial number or a photograph of the consumer product concerned.

(d) Annual report

The Commission shall submit to the appropriate Congressional committees an annual report on the database, including—

(1) the operation, content, maintenance, functionality, and cost of the database for the reporting year; and

(2) the number of reports and comments for the year—

(A) received by the Commission under this section;

(B) posted on the database; and

(C) corrected on or removed from the database.

(e) GAO study

Within 2 years after the date on which the Commission establishes the database under this section, the Comptroller General shall submit a report to the appropriate Congressional committees containing—

(1) an analysis of the general utility of the database, including—

(A) an assessment of the extent of use of the database by consumers, including whether the database is accessed by a broad range of the public and whether consumers find the database to be useful; and

(B) efforts by the Commission to inform the public about the database; and

(2) recommendations for measures to increase use of the database by consumers and to ensure use by a broad range of the public.

(f) Application of certain notice and disclosure requirements

(1) In general

The provisions of section 2055(a) and (b) of this title shall not apply to the disclosure under this

section of a report described in subsection (b)(1)(A) of this section.

(2) Construction

Paragraph (1) shall not be construed to exempt from the requirements of section 2055(a) and (b) of this title information received by the Commission under—

(A) section 2064(b) of this title; or

(B) any other mandatory or voluntary reporting program established between a retailer, manufacturer, or private labeler and the Commission.

(g) Harm defined

In this section, the term "harm" means—

(1) injury, illness, or death; or

(2) risk of injury, illness, or death, as determined by the Commission.

(Pub. L. 92–573, §6A, as added Pub. L. 110–314, title II, §212(a), Aug. 14, 2008, 122 Stat. 3048; amended Pub. L. 112–28, §7, Aug. 12, 2011, 125 Stat. 281.)

AMENDMENTS

2011—Subsec. (c)(3)(A). Pub. L. 112–28, §7(1), inserted "or paragraph (5)" after "paragraph (4)(A)".

Subsec. (c)(4)(A). Pub. L. 112–28, §7(2), substituted "receives notice that the information in such report or comment is materially inaccurate, the Commission shall stay the publication of the report on the database as required under paragraph (3) for a period of no more than 5 additional days. If the Commission determines that the information in such report or comment is materially inaccurate, the Commission shall—" for "determines that the information in such report or comment is materially inaccurate, the Commission shall—" in introductory provisions.

Subsec. (c)(5). Pub. L. 112–28, §7(3), added par. (5).

§2056. Consumer product safety standards

(a) Types of requirements

The Commission may promulgate consumer product safety standards in accordance with the provisions of section 2058 of this title. A consumer product safety standard shall consist of one or more of any of the following types of requirements:

(1) Requirements expressed in terms of performance requirements.

(2) Requirements that a consumer product be marked with or accompanied by clear and adequate warnings or instructions, or requirements respecting the form of warnings or instructions.

Any requirement of such a standard shall be reasonably necessary to prevent or reduce an unreasonable risk of injury associated with such product.

(b) Reliance of Commission upon voluntary standards

(1) The Commission shall rely upon voluntary consumer product safety standards rather than promulgate a consumer product safety standard prescribing requirements described in subsection (a) of this section whenever compliance with such voluntary standards would eliminate or adequately reduce the risk of injury addressed and it is likely that there will be substantial compliance with such voluntary standards.

(2) The Commission shall devise procedures to monitor compliance with any voluntary standards—

(A) upon which the Commission has relied under paragraph (1);

(B) which were developed with the participation of the Commission; or

(C) whose development the Commission has monitored.

(c) Contribution of Commission to development cost

If any person participates with the Commission in the development of a consumer product safety standard, the Commission may agree to contribute to the person's cost with respect to such participation, in any case in which the Commission determines that such contribution is likely to

result in a more satisfactory standard than would be developed without such contribution, and that the person is financially responsible. Regulations of the Commission shall set forth the items of cost in which it may participate, and shall exclude any contribution to the acquisition of land or buildings. Payments under agreements entered into under this subsection may be made without regard to section 3324(a) and (b) of title 31.

(Pub. L. 92–573, §7, Oct. 27, 1972, 86 Stat. 1212; Pub. L. 94–284, §§6, 7, 8(a), May 11, 1976, 90 Stat. 505, 506; Pub. L. 95–631, §§3, 4(a)–(c), 5, Nov. 10, 1978, 92 Stat. 3742–3744; Pub. L. 97–35, title XII, §1202, Aug. 13, 1981, 95 Stat. 703; Pub. L. 101–608, title I, §107(a), Nov. 16, 1990, 104 Stat. 3111.)

CODIFICATION

In subsec. (c), "section 3324(a) and (b) of title 31" substituted for "section 3648 of the Revised Statutes of the United States (31 U.S.C. 529)" on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–608 designated existing provisions as par. (1) and added par. (2).

1981—Subsec. (a). Pub. L. 97–35 amended subsec. (a) generally, and in the requirements for consumer product safety standards, struck out reference to composition, contents, design, construction, finish, or packaging of consumer products, and struck out provision that the requirements of the standards other than requirements relating to labeling, warnings, or instructions, shall, whenever, feasible, be expressed in terms of performance requirements.

Subsec. (b). Pub. L. 97–35 amended subsec. (b) generally, substituting provisions relating to the reliance by the Commission upon voluntary standards for provisions prescribing procedure for development of consumer product safety standards.

Subsec. (c). Pub. L. 97–35 amended subsec. (c) generally, substituting provisions relating to contribution by the Commission to the development cost of consumer safety standards for provisions relating to publication of proposed safety rules developed from existing standards.

Subsec. (d). Pub. L. 97–35 struck out subsec. (d) which related to the acceptance of offers to develop proposed standards and the Commission's contribution to development costs.

Subsec. (e). Pub. L. 97–35 struck out subsec. (e) which related to development of proposed safety rules by the Commission.

Subsec. (f). Pub. L. 97–35 struck out subsec. (f) which provided for termination of rule-making proceedings and a statement relating to the reasons therefor.

1978—Subsec. (b). Pub. L. 95–631, §3, designated existing provision as par. (1), and in par. (1) as so redesignated, redesignated pars. (1) to (4) as subpars. (A) and (D), in subpar. (D) as so redesignated, inserted provision including as a means of commencing a proceeding, a publication in the Federal Register of a statement that the Commission intends to develop the proposed consumer product safety standard, added subpar. (E), struck out provision that the period specified within which the offeror of an accepted offer develops the proposed standard be a period ending 150 days after the date the offer was accepted unless the Commission for good cause found, and included such finding in the notice that a different period was appropriate, and added par. (2).

Subsec. (c). Pub. L. 95–631, §5, amended subsec. (c) generally, inserting provisions relating to subsec. (b)(1)(D) and striking out provisions for publication of a proposed consumer product safety rule, in lieu of acceptance of an offer under subsec. (d), where a standard had been issued or adopted by any Federal agency or by any other qualified agency, organization, or institution and the standard if promulgated under the chapter would eliminate or reduce the unreasonable risk of injury associated with the product.

Subsec. (d)(1). Pub. L. 95–631, §4(a)(1), inserted "subsection (b)(2) and by" after "as provided by" and substituted references to subsec. (b)(1)(D)(ii)(I) for (b)(4)(B) of this section and subsec. (b)(1)(E) for (b) of this section.

Subsec. (d)(2). Pub. L. 95–631, §4(a)(2)(A)–(C), inserted in first sentence "or if any person participates with the Commission in the development of a consumer product safety standard under subsection (b)(2)(A) or subsection (e) of this section" after "under this subsection", "or the person's cost with respect to such participation" after "safety standards" and "or person" after "offeror".

Subsec. (d)(4). Pub. L. 95–631, §4(a)(3), added par. (4).

Subsec. (e). Pub. L. 95–631, §(4)(b), amended provisions generally, and among other changes, substituted references to subsec. (b)(1)(D)(ii)(I) of this section for prior references to subsec. (b) of this section, and

struck out par. (3) defining the development period, now covered in subsec. (b)(1)(E) of this section.

Subsec. (f). Pub. L. 95–631, §4(c), amended provisions generally, and among other changes, reduced the period within which to publish a proposed consumer product safety standard to forty-five days from 150 days and required the publication in the Federal Register of the reasons for not publishing the proposed standard, including a statement indicative of the taking of other approaches such as a voluntary consumer safety standard adopted by persons to be subject to the proposed standard.

1976—Subsec. (a). Pub. L. 94–284, §6, designated existing provision as par. (1), redesignated as subpars. (A) and (B) existing pars. (1) and (2), and added par. (2).

Subsec. (b). Pub. L. 94–284, §7(a), substituted "date the offer is accepted" for "publication of notice" in provision following par. (4)(B).

Subsec. (d)(2). Pub. L. 94–284, §8(a), inserted provision which permits the Commission to advance public moneys without the need of authorized appropriations as required by section 529 of title 31.

Subsec. (e). Pub. L. 94–284, §7(b), permitted the Commission to develop and publish a proposed consumer safety product rule if the development period as specified in par. (3) ends.

Subsec. (f). Pub. L. 94–284, §7(c), provided that if within 60 days after publication of notice for a proceeding for the development of a consumer product safety standard (or longer if the Commission so prescribe), no offer is submitted or none is acceptable, the Commission terminate the proceeding or develop proposals of its own, which proposals be published as a rule within 150 days after the expiration of the 60 day period or the proceeding then terminated, and that if an offer is accepted within the 60 day period, then within 210 days after acceptance, the Commission must publish the proposal as a rule or terminate the proceeding.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 applicable with respect to regulations under this chapter and chapters 25 and 30 of this title for which notices of proposed rulemaking are issued after Aug. 14, 1981, see section 1215 of Pub. L. 97–35, set out as a note under section 2052 of this title.

CHILDREN'S GASOLINE BURN PREVENTION

Pub. L. 110–278, July 17, 2008, 122 Stat. 2602, provided that:

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Children's Gasoline Burn Prevention Act'.

"SEC. 2. CHILD-RESISTANT PORTABLE GASOLINE CONTAINERS.

"(a) CONSUMER PRODUCT SAFETY RULE.—The provision of subsection (b) shall be considered to be a consumer product safety rule issued by the Consumer Product Safety Commission under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058).

"(b) REQUIREMENTS.—Effective 6 months after the date of enactment of this Act [July 17, 2008], each portable gasoline container manufactured on or after that date for sale in the United States shall conform to the child-resistance requirements for closures on portable gasoline containers specified in the standard ASTM F2517-05, issued by ASTM International.

"(c) DEFINITION.—As used in this Act, the term 'portable gasoline container' means any portable gasoline container intended for use by consumers.

"(d) REVISION OF RULE.—If, after the enactment of this Act, ASTM International proposes to revise the child resistance requirements of ASTM F2517-05, ASTM International shall notify the Consumer Product Safety Commission of the proposed revision and the proposed revision shall be incorporated in the consumer product safety rule under subsection (a) unless, within 60 days of such notice, the Commission notifies ASTM International that the Commission has determined that such revision does not carry out the purposes of subsection (b).

"(e) IMPLEMENTING REGULATIONS.—Section 553 of title 5, United States Code, shall apply with respect to the issuance of any regulations by the Consumer Product Safety Commission to implement the requirements of this section, and sections 7 and 9 of the Consumer Product Safety Act [15 U.S.C. 2056, 2058] shall not apply to such issuance.

"(f) REPORT.—Not later than 2 years after the date of enactment of this Act [July 17, 2008], the Consumer Product Safety Commission shall transmit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on—

"(1) the degree of industry compliance with the standard promulgated under subsection (a);

"(2) any enforcement actions brought by the Commission to enforce such standard; and

"(3) incidents involving children interacting with portable gasoline containers (including both those that are and are not in compliance with the standard promulgated under subsection (a))."

AUTOMATIC GARAGE DOOR OPENERS

Pub. L. 101–608, title II, §203, Nov. 16, 1990, 104 Stat. 3123, provided that:

"(a) CONSUMER PRODUCT SAFETY RULE.—The provisions of subsection (b) shall be considered to be a consumer product safety rule issued by the Consumer Product Safety Commission under section 9 of the Consumer Product Safety Act [15 U.S.C. 2058].

"(b) REQUIREMENTS.—

"(1) Effective on and after January 1, 1991, each automatic residential garage door opener manufactured on or after that date for sale in the United States shall conform to the entrapment protection requirements of the American National Standards Institute Underwriters Laboratories, Inc. Standards for Safety—UL 325, third edition, as revised May 4, 1988.

"(2)(A) Effective on and after January 1, 1993, all residential automatic garage door openers manufactured on and after such date for sale in the United States shall conform to any additional entrapment protection requirements of the American National Standards Institute Underwriters Laboratories, Inc. Standards for Safety—UL 325, third edition, which were issued after the date of the enactment of this Act [Nov. 16, 1990] to become effective on or before January 1, 1993.

"(B) If, by June 1, 1992, the Underwriters Laboratories, Inc., has not issued a revision to the May 4, 1988, Standards for Safety—UL 325, third edition, to require an entrapment protection feature or device in addition to that required by the May 4, 1988, Standard, the Consumer Product Safety Commission shall begin a rulemaking proceeding, to be completed no later than October 31, 1992, to require an additional such feature or device on all automatic residential garage door openers manufactured on or after January 1, 1993, for sale in the United States. If such a revision is issued by the Underwriters Laboratories, Inc. after the rulemaking has commenced, the rulemaking shall be terminated and the revision shall be incorporated in the consumer product safety rule under subsection (a) unless the Commission has determined under subsection (c) that such revision does not carry out the purposes of subsection (b).

"(c) REVISION OF RULE.—If, after June 1, 1992, or the date of a revision described in subsection (b)(2)(B) if later, the Underwriters Laboratories, Inc. proposes to further revise the entrapment protection requirements of the American National Standards Institute Underwriters Laboratories, Inc. Standards for Safety—UL 325, third edition, the Laboratories shall notify the Consumer Product Safety Commission of the proposed revision and the proposed revision shall be incorporated in the consumer product safety rule under subsection (a) unless, within 30 days of such notice, the Commission notifies the Laboratories that the Commission has determined that such revision does not carry out the purposes of subsection (b).

"(d) LABELING.—On and after January 1, 1991, a manufacturer selling or offering for sale in the United States an automatic residential garage door opener manufactured on or after January 1, 1991, shall clearly identify on any container of the system and on the system the month or week and year the system was manufactured and its conformance with the requirements of subsection (b). The display of the UL logo or listing mark, and compliance with the date marking requirements of UL 325, on both the container and the system, shall satisfy the requirements of this subsection.

"(e) NOTIFICATION.—Effective on and after July 1, 1991, all manufacturers of automatic residential garage door openers shall, in consultation with the Consumer Product Safety Commission, notify the public of the potential for entrapment by garage doors equipped with automatic garage door openers and advise the public to test their openers for the entrapment protection feature or device required by subsection (b).

"(f) PREEMPTION.—In applying section 26(a) of the Consumer Product Safety Act (15 U.S.C. 2075) [15 U.S.C. 2075(a)] with respect to the consumer product safety rule of the Consumer Product Safety Commission under subsection (a), only those provisions of laws of States or political subdivisions which relate to the labeling of automatic residential garage door openers and those provisions which do not provide at least the equivalent degree of protection from the risk of injury associated with automatic residential garage door openers as the consumer product safety rule provides shall be subject to such section.

"(g) REGULATIONS.—Section 553 of title 5, United States Code, shall apply with respect to the issuance of any regulations by the Consumer Product Safety Commission to implement the requirements of this section and sections 7 and 9 of the Consumer Product Safety Act [15 U.S.C. 2056, 2058] do not apply to such issuance. Any additional or revised requirement issued by the Commission shall provide an adequate degree of protection to the public.

"(h) CONSTRUCTION.—Nothing in this section shall affect or modify in any way the obligations or liabilities of any person under the common law or any Federal or State law."

§2056a. Standards and consumer registration of durable nursery products

(a) Short title

This section may be cited as the "Danny Keysar Child Product Safety Notification Act".

(b) Safety standards

(1) In general

The Commission shall—

(A) in consultation with representatives of consumer groups, juvenile product manufacturers, and independent child product engineers and experts, examine and assess the effectiveness of any voluntary consumer product safety standards for durable infant or toddler products; and

(B) in accordance with section 553 of title 5, promulgate consumer product safety standards that—

(i) are substantially the same as such voluntary standards; or

(ii) are more stringent than such voluntary standards, if the Commission determines that more stringent standards would further reduce the risk of injury associated with such products.

(2) Timetable for rulemaking

Not later than 1 year after August 14, 2008, the Commission shall commence the rulemaking required under paragraph (1) and shall promulgate standards for no fewer than 2 categories of durable infant or toddler products every 6 months thereafter, beginning with the product categories that the Commission determines to be of highest priority, until the Commission has promulgated standards for all such product categories. Thereafter, the Commission shall periodically review and revise the standards set forth under this subsection to ensure that such standards provide the highest level of safety for such products that is feasible.

(3) Judicial review

Any person adversely affected by such standards may file a petition for review under the procedures set forth in section 2060(g) of this title, as added by section 236 of this Act.

(4) Process for considering subsequent revisions to voluntary standard

(A) Notice of adoption of voluntary standard

When the Commission promulgates a consumer product safety standard under this subsection that is based, in whole or in part, on a voluntary standard, the Commission shall notify the organization that issued the voluntary standard of the Commission's action and shall provide a copy of the consumer product safety standard to the organization.

(B) Commission action on revised voluntary standard

If an organization revises a standard that has been adopted, in whole or in part, as a consumer product safety standard under this subsection, it shall notify the Commission. The revised voluntary standard shall be considered to be a consumer product safety standard issued by the Commission under section 2058 of this title, effective 180 days after the date on which the organization notifies the Commission (or such later date specified by the Commission in the Federal Register) unless, within 90 days after receiving that notice, the Commission notifies the organization that it has determined that the proposed revision does not improve the safety of the consumer product covered by the standard and that the Commission is retaining the existing consumer product safety standard.

(c) Cribs

(1) In general

It shall be a violation of section 2068(a)(1) of this title for any person to which this subsection applies to manufacture, sell, contract to sell or resell, lease, sublet, offer, provide for use, or otherwise place in the stream of commerce a crib that is not in compliance with a standard promulgated under subsection (b).

(2) Persons to which subsection applies

This subsection applies to any person that—

(A) manufactures, distributes in commerce, or contracts to sell cribs;

(B) based on the person's occupation, holds itself out as having knowledge or skill peculiar to cribs, including child care facilities and family child care homes;

(C) is in the business of contracting to sell or resell, lease, sublet, or otherwise place cribs in the stream of commerce; or

(D) owns or operates a place of public accommodation affecting commerce (as defined in section 2203 of this title applied without regard to the phrase "not owned by the Federal Government").

(3) Application of any revision

With respect to any revision of the standard promulgated under subsection (b)(1)(B) subsequent to the initial promulgation of a standard under such subsection, paragraph (1) shall apply only to a person that manufactures or imports cribs, unless the Commission determines that application to any other person described in paragraph (2) is necessary to protect against an unreasonable risk to health or safety. If the Commission determines that application to a person described in paragraph (2) is necessary, it shall provide not less than 12 months for such person to come into compliance.

(4) Crib defined

In this subsection, the term "crib" includes—

(A) new and used cribs;

(B) full-sized or nonfull-sized cribs; and

(C) portable cribs and crib-pens.

(d) Consumer registration requirement

(1) Rulemaking

Notwithstanding any provision of chapter 6 of title 5 or the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), not later than 1 year after August 14, 2008, the Commission shall, pursuant to its authority under section 2065(b) of this title, promulgate a final consumer product safety rule to require each manufacturer of a durable infant or toddler product—

(A) to provide consumers with a postage-paid consumer registration form with each such product;

(B) to maintain a record of the names, addresses, e-mail addresses, and other contact information of consumers who register their ownership of such products with the manufacturer in order to improve the effectiveness of manufacturer campaigns to recall such products; and

(C) to permanently place the manufacturer name and contact information, model name and number, and the date of manufacture on each durable infant or toddler product.

(2) Requirements for registration form

The registration form required to be provided to consumers under paragraph (1) shall—

(A) include spaces for a consumer to provide the consumer's name, address, telephone number, and e-mail address;

(B) include space sufficiently large to permit easy, legible recording of all desired information;

(C) be attached to the surface of each durable infant or toddler product so that, as a practical matter, the consumer must notice and handle the form after purchasing the product;

(D) include the manufacturer's name, model name and number for the product, and the date of manufacture;

(E) include a message explaining the purpose of the registration and designed to encourage consumers to complete the registration;

(F) include an option for consumers to register through the Internet; and

(G) include a statement that information provided by the consumer shall not be used for any purpose other than to facilitate a recall of or safety alert regarding that product.

In issuing regulations under this section, the Commission may prescribe the exact text and format of the required registration form.

(3) Record keeping and notification requirements

The rules required under this section shall require each manufacturer of a durable infant or toddler product to maintain a record of registrants for each product manufactured that includes all of the information provided by each consumer registered, and to use such information to notify such consumers in the event of a voluntary or involuntary recall of or safety alert regarding such product. Each manufacturer shall maintain such a record for a period of not less than 6 years after the date of manufacture of the product. Consumer information collected by a manufacturer under this Act may not be used by the manufacturer, nor disseminated by such manufacturer to any other party, for any purpose other than notification to such consumer in the event of a product recall or safety alert.

(4) Study

The Commission shall conduct a study at such time as it considers appropriate on the effectiveness of the consumer registration forms required by this section in facilitating product recalls and whether such registration forms should be required for other children's products. Not later than 4 years after August 14, 2008, the Commission shall report its findings to the appropriate Congressional committees.

(e) Use of alternative recall notification technology

(1) Technology assessment and report

The Commission shall—

(A) beginning 2 years after a rule is promulgated under subsection (d), regularly review recall notification technology and assess the effectiveness of such technology in facilitating recalls of durable infant or toddler products; and

(B) not later than 3 years after August 14, 2008, and periodically thereafter as the Commission considers appropriate, transmit a report on such assessments to the appropriate Congressional committees.

(2) Determination

If, based on the assessment required by paragraph (1), the Commission determines by rule that a recall notification technology is likely to be as effective or more effective in facilitating recalls of durable infant or toddler products as the registration forms required by subsection (d), the Commission—

(A) shall submit to the appropriate Congressional committees a report on such determination; and

(B) shall permit a manufacturer of durable infant or toddler products to use such technology in lieu of such registration forms to facilitate recalls of durable infant or toddler products.

(f) Definition of durable infant or toddler product

As used in this section, the term "durable infant or toddler product"—

(1) means a durable product intended for use, or that may be reasonably expected to be used, by children under the age of 5 years; and

(2) includes—

(A) full-size cribs and nonfull-size cribs;

(B) toddler beds;

(C) high chairs, booster chairs, and hook-on chairs;

(D) bath seats;

(E) gates and other enclosures for confining a child;

(F) play yards;

(G) stationary activity centers;

(H) infant carriers;

(I) strollers;

(J) walkers;
(K) swings; and
(L) bassinets and cradles.

(Pub. L. 110–314, title I, §104, Aug. 14, 2008, 122 Stat. 3028; Pub. L. 112–28, §3, Aug. 12, 2011, 125 Stat. 279.)

REFERENCES IN TEXT

Section 2060(g) of this title, as added by section 236 of this Act, referred to in subsec. (b)(3), is section 2060(g) of this title, as added by section 236 of Pub. L. 110–314.

The Paperwork Reduction Act of 1980, referred to in subsec. (d)(1), is Pub. L. 96–511, Dec. 11, 1980, 94 Stat. 2812, which was classified principally to chapter 35 (§3501 et seq.) of Title 44, Public Printing and Documents, prior to the general amendment of that chapter by Pub. L. 104–13, §2, May 22, 1995, 109 Stat. 163. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 101 of Title 44 and Tables.

This Act, referred to in subsec. (d)(3), is Pub. L. 110–314, Aug. 14, 2008, 122 Stat. 3016, known as the Consumer Product Safety Improvement Act of 2008. For complete classification of this Act to the Code, see Short Title of 2008 Amendment note set out under section 2051 of this title and Tables.

CODIFICATION

Section was enacted as part of the Consumer Product Safety Improvement Act of 2008, and not as part of the Consumer Product Safety Act which comprises this chapter.

AMENDMENTS

2011—Subsec. (b)(4). Pub. L. 112–28, §3(a), added par. (4).
Subsec. (c)(3), (4). Pub. L. 112–28, §3(b), added par. (3) and redesignated former par. (3) as (4).

DEFINITIONS

For definitions of "Commission" and "appropriate Congressional committees" used in this section, see section 2(a) of Pub. L. 110–314, set out as a note under section 2051 of this title.

§2056b. Mandatory toy safety standards

(a) In general

Beginning 180 days after August 14, 2008, the provisions of ASTM International Standard F963–07 Consumer Safety Specifications for Toy Safety (ASTM F963), as it exists on August 14, 2008 (except for section 4.2 and Annex 4 or any provision that restates or incorporates an existing mandatory standard or ban promulgated by the Commission or by statute or any provision that restates or incorporates a regulation promulgated by the Food and Drug Administration or any statute administered by the Food and Drug Administration) shall be considered to be consumer product safety standards issued by the Commission under section 2058 of this title.

(b) Rulemaking for specific toys, components and risks

(1) Evaluation

Not later than 1 year after August 14, 2008, the Commission, in consultation with representatives of consumer groups, juvenile product manufacturers, and independent child product engineers and experts, shall examine and assess the effectiveness of ASTM F963 or its successor standard (except for section 4.2 and Annex 4), as it relates to safety requirements, safety labeling requirements, and test methods related to—

(A) internal harm or injury hazards caused by the ingestion or inhalation of magnets in children's products;
(B) toxic substances;
(C) toys with spherical ends;
(D) hemispheric-shaped objects;
(E) cords, straps, and elastics; and
(F) battery-operated toys.

(2) Rulemaking

Within 1 year after the completion of the assessment required by paragraph (1), the Commission shall promulgate rules in accordance with section 553 of title 5 that—

(A) take into account other children's product safety rules; and

(B) are more stringent than such standards, if the Commission determines that more stringent standards would further reduce the risk of injury of such toys.

(c) Periodic review

The Commission shall periodically review and revise the rules set forth under this section to ensure that such rules provide the highest level of safety for such products that is feasible.

(d) Consideration of remaining ASTM standards

After promulgating the rules required by subsection (b), the Commission shall—

(1) in consultation with representatives of consumer groups, juvenile product manufacturers, and independent child product engineers and experts, examine and assess the effectiveness of ASTM F963 (and alternative health protective requirements to prevent or minimize flammability of children's products) or its successor standard, and shall assess the adequacy of such standards in protecting children from safety hazards; and

(2) in accordance with section 553 of title 5, promulgate consumer product safety rules that—

(A) take into account other children's product safety rules; and

(B) are more stringent than such standards, if the Commission determines that more stringent standards would further reduce the risk of injury associated with such toys.

(e) Prioritization

The Commission shall promulgate rules beginning with the product categories that the Commission determines to be of highest priority, until the Commission has promulgated standards for all such product categories.

(f) Treatment as consumer product safety standards

Rules issued under this section shall be considered consumer product safety standards issued by the Commission under section 2058 of this title.

(g) Revisions

If ASTM International (or its successor entity) proposes to revise ASTM F963–07, or a successor standard, it shall notify the Commission of the proposed revision. The Commission shall incorporate the revision or a section of the revision into the consumer product safety rule. The revised standard shall be considered to be a consumer product safety standard issued by the Consumer Product Safety Commission under section 2058 of this title, effective 180 days after the date on which ASTM International notifies the Commission of the revision unless, within 90 days after receiving that notice, the Commission notifies ASTM International that it has determined that the proposed revision does not improve the safety of the consumer product covered by the standard. If the Commission so notifies ASTM International with respect to a proposed revision of the standard, the existing standard shall continue to be considered to be a consumer product safety rule without regard to the proposed revision.

(h) Rulemaking to consider exemption from preemption

(1) Exemption of State law from preemption

Upon application of a State or political subdivision of a State, the Commission shall, after notice and opportunity for oral presentation of views, consider a rulemaking to exempt from the provisions of section 2075(a) of this title (under such conditions as it may impose in the rule) any proposed safety standard or regulation which is described in such application and which is designed to protect against a risk of injury associated with a children's product subject to the consumer product safety standards described in subsection (a) or any rule promulgated under this section. The Commission shall grant such an exemption if the State or political subdivision standard or regulation—

(A) provides a significantly higher degree of protection from such risk of injury than the consumer product safety standard or rule under this section; and

(B) does not unduly burden interstate commerce.

In determining the burden, if any, of a State or political subdivision standard or regulation on interstate commerce, the Commission shall consider and make appropriate (as determined by the Commission in its discretion) findings on the technological and economic feasibility of complying with such standard or regulation, the cost of complying with such standard or regulation, the geographic distribution of the consumer product to which the standard or regulation would apply, the probability of other States or political subdivisions applying for an exemption under this subsection for a similar standard or regulation, and the need for a national, uniform standard under this Act for such consumer product.

(2) Effect of standards on established State laws

Nothing in this section or in section 2075 of this title shall prevent a State or political subdivision of a State from continuing in effect a safety requirement applicable to a toy or other children's product that is designed to deal with the same risk of injury as the consumer product safety standards established by this section and that is in effect on the day before August 14, 2008, if such State or political subdivision has filed such requirement with the Commission within 90 days after August 14, 2008, in such form and in such manner as the Commission may require.

(i) Judicial review

The issuance of any rule under this section is subject to judicial review as provided in section 2060(g) of this title, as added by section 236 of this Act.

(Pub. L. 110–314, title I, §106, Aug. 14, 2008, 122 Stat. 3033; Pub. L. 112–28, §4, Aug. 12, 2011, 125 Stat. 280.)

REFERENCES IN TEXT

This Act, referred to in subsec. (h)(1), is Pub. L. 110–314, Aug. 14, 2008, 122 Stat. 3016, known as the Consumer Product Safety Improvement Act of 2008. For complete classification of this Act to the Code, see Short Title of 2008 Amendment note set out under section 2051 of this title and Tables.

Section 2060(g) of this title, as added by section 236 of this Act, referred to in subsec. (i), is section 2060(g) of this title, as added by section 236 of Pub. L. 110–314.

CODIFICATION

Section was enacted as part of the Consumer Product Safety Improvement Act of 2008, and not as part of the Consumer Product Safety Act which comprises this chapter.

AMENDMENTS

2011—Subsec. (a). Pub. L. 112–28 inserted "or any provision that restates or incorporates a regulation promulgated by the Food and Drug Administration or any statute administered by the Food and Drug Administration" after "or by statute".

DEFINITION

For definition of "Commission" used in this section, see section 2(a) of Pub. L. 110–314, set out as a note under section 2051 of this title.

§2056c. Sulfur content in drywall standard

(a) Rule on sulfur content in drywall required

Except as provided in subsection (c), not later than 2 years after January 14, 2013, the Consumer Product Safety Commission shall promulgate a final rule pertaining to drywall manufactured or imported for use in the United States that limits sulfur content to a level not associated with elevated rates of corrosion in the home.

(b) Rule making; consumer product safety standard

A rule under subsection (a)—

(1) shall be promulgated in accordance with section 553 of title 5; and

(2) shall be treated as a consumer product safety rule promulgated under section 2058 of this title.

(c) Exception

(1) Voluntary standard

Subsection (a) shall not apply if the Commission determines that—

(A) a voluntary standard pertaining to drywall manufactured or imported for use in the United States limits sulfur content to a level not associated with elevated rates of corrosion in the home;

(B) such voluntary standard is or will be in effect not later than two years after January 14, 2013; and

(C) such voluntary standard is developed by Subcommittee C11.01 on Specifications and Test Methods for Gypsum Products of ASTM International.

(2) Federal Register

Any determination made under paragraph (1) shall be published in the Federal Register.

(d) Treatment of voluntary standard for purposes of enforcement

If the Commission determines that a voluntary standard meets the conditions in subsection (c)(1), the sulfur content limit in such voluntary standard shall be treated as a consumer product safety rule promulgated under section 2058 of this title beginning on the date that is the later of—

(1) 180 days after publication of the Commission's determination under subsection (c); or

(2) the effective date contained in the voluntary standard.

(e) Revision of voluntary standard

If the sulfur content limit of a voluntary standard that met the conditions of subsection (c)(1) is subsequently revised, the organization responsible for the standard shall notify the Commission no later than 60 days after final approval of the revision. The sulfur content limit of the revised voluntary standard shall become enforceable as a Commission rule promulgated under section 2058 of this title, in lieu of the prior version, effective 180 days after the Commission is notified of the revision (or such later date as the Commission considers appropriate), unless within 90 days after receiving that notice the Commission determines that the sulfur content limit of the revised voluntary standard does not meet the requirements of subsection (c)(1)(A), in which case the Commission shall continue to enforce the prior version.

(f) Future rulemaking

The Commission, at any time subsequent to publication of the consumer product safety rule required by subsection (a) or a determination under subsection (c), may initiate a rulemaking in accordance with section 553 of title 5 to modify the sulfur content limit or to include any provision relating only to the composition or characteristics of drywall that the Commission determines is reasonably necessary to protect public health or safety. Any rule promulgated under this subsection shall be treated as a consumer product safety rule promulgated under section 2058 of this title.

(Pub. L. 112–266, §4, Jan. 14, 2013, 126 Stat. 2438.)

CODIFICATION

Section was enacted as part of the Drywall Safety Act of 2012, and not as part of the Consumer Product Safety Act which comprises this chapter.

DRYWALL LABELING REQUIREMENT

Pub. L. 112–266, §3, Jan. 14, 2013, 126 Stat. 2437, provided that:

"(a) LABELING REQUIREMENT.—Beginning 180 days after the date of the enactment of this Act [Jan. 14, 2013], the gypsum board labeling provisions of standard ASTM C1264–11 of ASTM International, as in

effect on the day before the date of the enactment of this Act, shall be treated as a rule promulgated by the Consumer Product Safety Commission under section 14(c) of the Consumer Product Safety Act (15 U.S.C. 2063(c)).

"(b) REVISION OF STANDARD.—If the gypsum board labeling provisions of the standard referred to in subsection (a) are revised on or after the date of the enactment of this Act, ASTM International shall notify the Commission of such revision no later than 60 days after final approval of the revision by ASTM International. The revised provisions shall be treated as a rule promulgated by the Commission under section 14(c) of such Act (15 U.S.C. 2063(c)), in lieu of the prior version, effective 180 days after the Commission is notified of the revision (or such later date as the Commission considers appropriate), unless within 90 days after receiving that notice the Commission determines that the revised provisions do not adequately identify gypsum board by manufacturer and month and year of manufacture, in which case the Commission shall continue to enforce the prior version."

REVISION OF REMEDIATION GUIDANCE FOR DRYWALL DISPOSAL REQUIRED

Pub. L. 112–266, §5, Jan. 14, 2013, 126 Stat. 2439, provided that: "Not later than 120 days after the date of the enactment of this Act [Jan. 14, 2013], the Consumer Product Safety Commission shall revise its guidance entitled 'Remediation Guidance for Homes with Corrosion from Problem Drywall' to specify that problematic drywall removed from homes pursuant to the guidance should not be reused or used as a component in production of new drywall."

§2057. Banned hazardous products

Whenever the Commission finds that—

(1) a consumer product is being, or will be, distributed in commerce and such consumer product presents an unreasonable risk of injury; and

(2) no feasible consumer product safety standard under this chapter would adequately protect the public from the unreasonable risk of injury associated with such product,

the Commission may, in accordance with section 2058 of this title, promulgate a rule declaring such product a banned hazardous product.

(Pub. L. 92–573, §8, Oct. 27, 1972, 86 Stat. 1215; Pub. L. 97–35, title XII, §1203(c), Aug. 13, 1981, 95 Stat. 713.)

AMENDMENTS

1981—Pub. L. 97–35 substituted "may, in accordance with" for "may propose and, in accordance with".

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 applicable with respect to regulations under this chapter and chapters 25 and 30 of this title for which notices of proposed rulemaking are issued after Aug. 14, 1981, see section 1215 of Pub. L. 97–35, set out as a note under section 2052 of this title.

§2057a. Banning of butyl nitrite

(a) In general

Except as provided in subsection (b) of this section, butyl nitrite shall be considered a banned hazardous product under section 2057 of this title.

(b) Lawful purposes

For the purposes of section 2057 of this title, it shall not be unlawful for any person to manufacture for sale, offer for sale, distribute in commerce, or import into the United States butyl nitrite for any commercial purpose or any other purpose approved under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.].

(c) Definitions

For purposes of this section:

(1) The term "butyl nitrite" includes n-butyl nitrite, isobutyl nitrite, secondary butyl nitrite, tertiary butyl nitrite, and mixtures containing these chemicals.

(2) The term "commercial purpose" means any commercial purpose other than for the production of consumer products containing butyl nitrite that may be used for inhaling or otherwise introducing butyl nitrite into the human body for euphoric or physical effects.

(d) Effective date

This section shall take effect 90 days after November 18, 1988.

(Pub. L. 100–690, title II, §2404, Nov. 18, 1988, 102 Stat. 4231.)

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (b), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

CODIFICATION

Section was enacted as part of the Anti-Drug Abuse Act of 1988 and also as part of the Comprehensive Alcohol Abuse, Drug Abuse, and Mental Health Amendments Act of 1988, and not as part of the Consumer Product Safety Act which comprises this chapter.

§2057b. Banning of isopropal nitrite and other nitrites

(a) In general

Except as provided in subsection (b) of this section, volatile alkyl nitrite shall be considered a banned hazardous product under section 2057 of this title.

(b) Lawful purposes

For the purposes of section 2057 of this title, it shall not be unlawful for any person to manufacture for sale, offer for sale, distribute in commerce, or import into the United States volatile alkyl nitrites for any commercial purpose or any other purpose approved under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.].

(c) "Commercial purpose" defined

For purposes of this section, the term "commercial purpose" means any commercial purpose other than for the production of consumer products containing volatile alkyl nitrites that may be used for inhaling or otherwise introducing volatile alkyl nitrites into the human body for euphoric or physical effects.

(d) Effective date

This section shall take effect 90 days after November 29, 1990.

(Pub. L. 101–647, title XXXII, §3202, Nov. 29, 1990, 104 Stat. 4917.)

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (b), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

CODIFICATION

Section was enacted as part of the Crime Control Act of 1990, and not as part of the Consumer Product Safety Act which comprises this chapter.

§2057c. Prohibition on sale of certain products containing specified phthalates

(a) Prohibition on the sale of certain products containing phthalates

Beginning on the date that is 180 days after August 14, 2008, it shall be unlawful for any person to

manufacture for sale, offer for sale, distribute in commerce, or import into the United States any children's toy or child care article that contains concentrations of more than 0.1 percent of di-(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), or benzyl butyl phthalate (BBP).

(b) Prohibition on the sale of additional products containing certain phthalates

(1) Interim prohibition

Beginning on the date that is 180 days after August 14, 2008, and until a final rule is promulgated under paragraph (3), it shall be unlawful for any person to manufacture for sale, offer for sale, distribute in commerce, or import into the United States any children's toy that can be placed in a child's mouth or child care article that contains concentrations of more than 0.1 percent of diisononyl phthalate (DINP), diisodecyl phthalate (DIDP), or di-n-octyl phthalate (DnOP).

(2) Chronic Hazard Advisory Panel

(A) Appointment

Not earlier than 180 days after August 14, 2008, the Commission shall begin the process of appointing a Chronic Hazard Advisory Panel pursuant to the procedures of section 28 of the Consumer Product Safety Act (15 U.S.C. 2077) to study the effects on children's health of all phthalates and phthalate alternatives as used in children's toys and child care articles.

(B) Examination

The panel shall, within 18 months after its appointment under subparagraph (A), complete an examination of the full range of phthalates that are used in products for children and shall—

(i) examine all of the potential health effects (including endocrine disrupting effects) of the full range of phthalates;

(ii) consider the potential health effects of each of these phthalates both in isolation and in combination with other phthalates;

(iii) examine the likely levels of children's, pregnant women's, and others' exposure to phthalates, based on a reasonable estimation of normal and foreseeable use and abuse of such products;

(iv) consider the cumulative effect of total exposure to phthalates, both from children's products and from other sources, such as personal care products;

(v) review all relevant data, including the most recent, best-available, peer-reviewed, scientific studies of these phthalates and phthalate alternatives that employ objective data collection practices or employ other objective methods;

(vi) consider the health effects of phthalates not only from ingestion but also as a result of dermal, hand-to-mouth, or other exposure;

(vii) consider the level at which there is a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals and their offspring, considering the best available science, and using sufficient safety factors to account for uncertainties regarding exposure and susceptibility of children, pregnant women, and other potentially susceptible individuals; and

(viii) consider possible similar health effects of phthalate alternatives used in children's toys and child care articles.

The panel's examinations pursuant to this paragraph shall be conducted *de novo*. The findings and conclusions of any previous Chronic Hazard Advisory Panel on this issue and other studies conducted by the Commission shall be reviewed by the panel but shall not be considered determinative.

(C) Report

Not later than 180 days after completing its examination, the panel appointed under subparagraph (A) shall report to the Commission the results of the examination conducted under

this section and shall make recommendations to the Commission regarding any phthalates (or combinations of phthalates) in addition to those identified in subsection (a) or phthalate alternatives that the panel determines should be declared banned hazardous substances.

(3) Permanent prohibition by rule

Not later than 180 days after receiving the report of the panel under paragraph (2)(C), the Commission shall, pursuant to section 553 of title 5, promulgate a final rule to—

(A) determine, based on such report, whether to continue in effect the prohibition under paragraph (1), in order to ensure a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals with an adequate margin of safety; and

(B) evaluate the findings and recommendations of the Chronic Hazard Advisory Panel and declare any children's product containing any phthalates to be a banned hazardous product under section 8 of the Consumer Product Safety Act (15 U.S.C. 2057), as the Commission determines necessary to protect the health of children.

(c) Application

Effective on August 12, 2011,[1] subsections (a) and (b)(1) and any rule promulgated under subsection (b)(3) shall apply to any plasticized component part of a children's toy or child care article or any other component part of a children's toy or child care article that is made of other materials that may contain phthalates.

(d) Exclusion for inaccessible component parts

(1) In general

The prohibitions established under subsections (a) and (b) shall not apply to any component part of a children's toy or child care article that is not accessible to a child through normal and reasonably foreseeable use and abuse of such product, as determined by the Commission. A component part is not accessible under this paragraph if such component part is not physically exposed by reason of a sealed covering or casing and does not become physically exposed through reasonably foreseeable use and abuse of the product. Reasonably foreseeable use and abuse shall include swallowing, mouthing, breaking, or other children's activities, and the aging of the product.

(2) Limitation

The Commission may revoke an exclusion or all exclusions granted under paragraph (1) at any time and require that any or all component parts manufactured after such exclusion is revoked comply with the prohibitions established under subsections (a) and (b) if the Commission finds, based on scientific evidence, that such compliance is necessary to protect the public health or safety.

(3) Inaccessibility proceeding

Within 1 year after August 12, 2011, the Commission shall—

(A) promulgate a rule providing guidance with respect to what product components, or classes of components, will be considered to be inaccessible for purposes of paragraph (1); or

(B) adopt the same guidance with respect to inaccessibility that was adopted by the Commission with regards to accessibility of lead under section 1278a(b)(2)(B) of this title, with additional consideration, as appropriate, of whether such component can be placed in a child's mouth.

(4) Application pending commission guidance

Until the Commission promulgates a rule pursuant to paragraph (3), the determination of whether a product component is inaccessible to a child shall be made in accordance with the requirements laid out in paragraph (1) for considering a component to be inaccessible to a child.

(e) Treatment of violation

A violation of subsection (a) or (b)(1) or any rule promulgated by the Commission under

subsection (b)(3) shall be treated as a violation of section 19(a)(1) of the Consumer Product Safety Act (15 U.S.C. 2068(a)(1)).

(f) Treatment as consumer product safety standards; effect on State laws

Subsections (a) and (b)(1) and any rule promulgated under subsection (b)(3) shall be considered consumer product safety standards under the Consumer Product Safety Act [15 U.S.C. 2051 et seq.]. Nothing in this section or the Consumer Product Safety Act (15 U.S.C. 2051 et seq.) shall be construed to preempt or otherwise affect any State requirement with respect to any phthalate alternative not specifically regulated in a consumer product safety standard under the Consumer Product Safety Act.

(g) Definitions

(1) Defined terms

As used in this section:

(A) The term "phthalate alternative" means any common substitute to a phthalate, alternative material to a phthalate, or alternative plasticizer.

(B) The term "children's toy" means a consumer product designed or intended by the manufacturer for a child 12 years of age or younger for use by the child when the child plays.

(C) The term "child care article" means a consumer product designed or intended by the manufacturer to facilitate sleep or the feeding of children age 3 and younger, or to help such children with sucking or teething.

(D) The term "consumer product" has the meaning given such term in section 3(a)(1) of the Consumer Product Safety Act (15 U.S.C. 2052(a)(1)).

(2) Determination guidelines

(A) Age

In determining whether products described in paragraph (1) are designed or intended for use by a child of the ages specified, the following factors shall be considered:

(i) A statement by a manufacturer about the intended use of such product, including a label on such product if such statement is reasonable.

(ii) Whether the product is represented in its packaging, display, promotion, or advertising as appropriate for use by children of the ages specified.

(iii) Whether the product is commonly recognized by consumers as being intended for use by a child of the ages specified.

(iv) The Age Determination guidelines issued by the Commission staff in September 2002 and any successor to such guidelines.

(B) Toy that can be placed in a child's mouth

For purposes of this section a toy can be placed in a child's mouth if any part of the toy can actually be brought to the mouth and kept in the mouth by a child so that it can be sucked and chewed. If the children's product can only be licked, it is not regarded as able to be placed in the mouth. If a toy or part of a toy in one dimension is smaller than 5 centimeters, it can be placed in the mouth.

(Pub. L. 110–314, title I, §108, Aug. 14, 2008, 122 Stat. 3036; Pub. L. 112–28, §5(a), Aug. 12, 2011, 125 Stat. 280.)

REFERENCES IN TEXT

August 12, 2011, referred to in subsec. (c), was in the original "the date of enactment of this Act", which was translated as meaning the date of enactment of Pub. L. 112–28, which enacted subsec. (c), to reflect the probable intent of Congress.

The Consumer Product Safety Act, referred to in subsec. (f), is Pub. L. 92–573, Oct. 27, 1972, 86 Stat. 1207, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2051 of this title and Tables.

CODIFICATION

Section was enacted as part of the Consumer Product Safety Improvement Act of 2008, and not as part of the Consumer Product Safety Act which comprises this chapter.

AMENDMENTS

2011—Subsecs. (c) to (g). Pub. L. 112–28 added subsecs. (c) and (d) and redesignated former subsecs. (c) to (e) as (e) to (g), respectively.

DEFINITION

For definition of "Commission" used in this section, see section 2(a) of Pub. L. 110–314, set out as a note under section 2051 of this title.

[1] *See References in Text note below.*

§2058. Procedure for consumer product safety rules

(a) Commencement of proceeding; publication of prescribed notice of proposed rulemaking; transmittal of notice

A proceeding for the development of a consumer product safety rule may be commenced by the publication in the Federal Register of an advance notice of proposed rulemaking which shall—

(1) identify the product and the nature of the risk of injury associated with the product;

(2) include a summary of each of the regulatory alternatives under consideration by the Commission (including voluntary consumer product safety standards);

(3) include information with respect to any existing standard known to the Commission which may be relevant to the proceedings, together with a summary of the reasons why the Commission believes preliminarily that such standard does not eliminate or adequately reduce the risk of injury identified in paragraph (1);

(4) invite interested persons to submit to the Commission, within such period as the Commission shall specify in the notice (which period shall not be less than 30 days or more than 60 days after the date of publication of the notice), comments with respect to the risk of injury identified by the Commission, the regulatory alternatives being considered, and other possible alternatives for addressing the risk;

(5) invite any person (other than the Commission) to submit to the Commission, within such period as the Commission shall specify in the notice (which period shall not be less than 30 days after the date of publication of the notice), an existing standard or a portion of a standard as a proposed consumer product safety standard; and

(6) invite any person (other than the Commission) to submit to the Commission, within such period as the Commission shall specify in the notice (which period shall not be less than 30 days after the date of publication of the notice), a statement of intention to modify or develop a voluntary consumer product safety standard to address the risk of injury identified in paragraph (1) together with a description of a plan to modify or develop the standard.

The Commission shall transmit such notice within 10 calendar days to the appropriate Congressional committees.

(b) Voluntary standard; publication as proposed rule; notice of reliance of Commission on standard

(1) If the Commission determines that any standard submitted to it in response to an invitation in a notice published under subsection (a)(5) of this section if promulgated (in whole, in part, or in combination with any other standard submitted to the Commission or any part of such a standard) as a consumer product safety standard, would eliminate or adequately reduce the risk of injury identified in a notice under subsection (a)(1) of this section, the Commission may publish such standard, in whole, in part, or in such combination and with nonmaterial modifications, as a proposed consumer product safety rule.

(2) If the Commission determines that—

(A) compliance with any standard submitted to it in response to an invitation in a notice published under subsection (a)(6) of this section is likely to result in the elimination or adequate reduction of the risk of injury identified in the notice, and

(B) it is likely that there will be substantial compliance with such standard,

the Commission shall terminate any proceeding to promulgate a consumer product safety rule respecting such risk of injury and shall publish in the Federal Register a notice which includes the determination of the Commission and which notifies the public that the Commission will rely on the voluntary standard to eliminate or reduce the risk of injury, except that the Commission shall terminate any such proceeding and rely on a voluntary standard only if such voluntary standard is in existence. For purposes of this section, a voluntary standard shall be considered to be in existence when it is finally approved by the organization or other person which developed such standard, irrespective of the effective date of the standard. Before relying upon any voluntary consumer product safety standard, the Commission shall afford interested persons (including manufacturers, consumers, and consumer organizations) a reasonable opportunity to submit written comments regarding such standard. The Commission shall consider such comments in making any determination regarding reliance on the involved voluntary standard under this subsection.

(c) Publication of proposed rule; preliminary regulatory analysis; contents; transmittal of notice

No consumer product safety rule may be proposed by the Commission unless the Commission publishes in the Federal Register the text of the proposed rule, including any alternatives, which the Commission proposes to promulgate, together with a preliminary regulatory analysis containing—

(1) a preliminary description of the potential benefits and potential costs of the proposed rule, including any benefits or costs that cannot be quantified in monetary terms, and an identification of those likely to receive the benefits and bear the costs;

(2) a discussion of the reasons any standard or portion of a standard submitted to the Commission under subsection (a)(5) of this section was not published by the Commission as the proposed rule or part of the proposed rule;

(3) a discussion of the reasons for the Commission's preliminary determination that efforts proposed under subsection (a)(6) of this section and assisted by the Commission as required by section 2054(a)(3) of this title would not, within a reasonable period of time, be likely to result in the development of a voluntary consumer product safety standard that would eliminate or adequately reduce the risk of injury addressed by the proposed rule; and

(4) a description of any reasonable alternatives to the proposed rule, together with a summary description of their potential costs and benefits, and a brief explanation of why such alternatives should not be published as a proposed rule.

The Commission shall transmit such notice within 10 calendar days to the appropriate Congressional committees. Any proposed consumer product safety rule shall be issued within twelve months after the date of publication of the notice, unless the Commission determines that such proposed rule is not reasonably necessary to eliminate or reduce the risk of injury associated with the product or is not in the public interest. The Commission may extend the twelve-month period for good cause. If the Commission extends such period, it shall immediately transmit notice of such extension to the appropriate Congressional committees. Such notice shall include an explanation of the reasons for such extension, together with an estimate of the date by which the Commission anticipates such rulemaking will be completed. The Commission shall publish notice of such extension and the information submitted to the Congress in the Federal Register. Nothing in this subsection shall preclude any person from submitting an existing standard or portion of a standard as a proposed consumer product safety standard.

(d) Promulgation of rule; time

(1) Within 60 days after the publication under subsection (c) of this section of a proposed

consumer product safety rule respecting a risk of injury associated with a consumer product, the Commission shall—

(A) promulgate a consumer product safety rule respecting the risk of injury associated with such product, if it makes the findings required under subsection (f) of this section, or

(B) withdraw the applicable notice of proposed rulemaking if it determines that such rule is not (i) reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product, or (ii) in the public interest;

except that the Commission may extend such 60-day period for good cause shown (if it publishes its reasons therefor in the Federal Register).

(2) Consumer product safety rules shall be promulgated in accordance with section 553 of title 5, except that the Commission shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions. A transcript shall be kept of any oral presentation.

(e) Expression of risk of injury; consideration of available product data; needs of elderly and handicapped

A consumer product safety rule shall express in the rule itself the risk of injury which the standard is designed to eliminate or reduce. In promulgating such a rule the Commission shall consider relevant available product data including the results of research, development, testing, and investigation activities conducted generally and pursuant to this chapter. In the promulgation of such a rule the Commission shall also consider and take into account the special needs of elderly and handicapped persons to determine the extent to which such persons may be adversely affected by such rule.

(f) Findings; final regulatory analysis; judicial review of rule

(1) Prior to promulgating a consumer product safety rule, the Commission shall consider, and shall make appropriate findings for inclusion in such rule with respect to—

(A) the degree and nature of the risk of injury the rule is designed to eliminate or reduce;

(B) the approximate number of consumer products, or types or classes thereof, subject to such rule;

(C) the need of the public for the consumer products subject to such rule, and the probable effect of such rule upon the utility, cost, or availability of such products to meet such need; and

(D) any means of achieving the objective of the order while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety.

(2) The Commission shall not promulgate a consumer product safety rule unless it has prepared, on the basis of the findings of the Commission under paragraph (1) and on other information before the Commission, a final regulatory analysis of the rule containing the following information:

(A) A description of the potential benefits and potential costs of the rule, including costs and benefits that cannot be quantified in monetary terms, and the identification of those likely to receive the benefits and bear the costs.

(B) A description of any alternatives to the final rule which were considered by the Commission, together with a summary description of their potential benefits and costs and a brief explanation of the reasons why these alternatives were not chosen.

(C) A summary of any significant issues raised by the comments submitted during the public comment period in response to the preliminary regulatory analysis, and a summary of the assessment by the Commission of such issues.

The Commission shall publish its final regulatory analysis with the rule.

(3) The Commission shall not promulgate a consumer product safety rule unless it finds (and includes such finding in the rule)—

(A) that the rule (including its effective date) is reasonably necessary to eliminate or reduce an

unreasonable risk of injury associated with such product;

(B) that the promulgation of the rule is in the public interest;

(C) in the case of a rule declaring the product a banned hazardous product, that no feasible consumer product safety standard under this chapter would adequately protect the public from the unreasonable risk of injury associated with such product;

(D) in the case of a rule which relates to a risk of injury with respect to which persons who would be subject to such rule have adopted and implemented a voluntary consumer product safety standard, that—

(i) compliance with such voluntary consumer product safety standard is not likely to result in the elimination or adequate reduction of such risk of injury; or

(ii) it is unlikely that there will be substantial compliance with such voluntary consumer product safety standard;

(E) that the benefits expected from the rule bear a reasonable relationship to its costs; and

(F) that the rule imposes the least burdensome requirement which prevents or adequately reduces the risk of injury for which the rule is being promulgated.

(4)(A) Any preliminary or final regulatory analysis prepared under subsection (c) or (f)(2) of this section shall not be subject to independent judicial review, except that when an action for judicial review of a rule is instituted, the contents of any such regulatory analysis shall constitute part of the whole rulemaking record of agency action in connection with such review.

(B) The provisions of subparagraph (A) shall not be construed to alter the substantive or procedural standards otherwise applicable to judicial review of any action by the Commission.

(g) Effective date of rule or standard; stockpiling of product

(1) Each consumer product safety rule shall specify the date such rule is to take effect not exceeding 180 days from the date promulgated, unless the Commission finds, for good cause shown, that a later effective date is in the public interest and publishes its reasons for such finding. The effective date of a consumer product safety standard under this chapter shall be set at a date at least 30 days after the date of promulgation unless the Commission for good cause shown determines that an earlier effective date is in the public interest. In no case may the effective date be set at a date which is earlier than the date of promulgation. A consumer product safety standard shall be applicable only to consumer products manufactured after the effective date.

(2) The Commission may by rule prohibit a manufacturer of a consumer product from stockpiling any product to which a consumer product safety rule applies, or to which a rule under this chapter or similar rule, regulation, standard, or ban under any other Act enforced by the Commission applies, so as to prevent such manufacturer from circumventing the purpose of such rule, regulation, standard, or ban. For purposes of this paragraph, the term "stockpiling" means manufacturing or importing a product between the date of promulgation of such rule, regulation, standard, or ban and its effective date at a rate which is significantly greater (as determined under the rule under this paragraph) than the rate at which such product was produced or imported during a base period (prescribed in the rule under this paragraph) ending before the date of promulgation of the rule, regulation, standard, or ban.

(h) Amendment or revocation of rule

The Commission may by rule amend or revoke any consumer product safety rule. Such amendment or revocation shall specify the date on which it is to take effect which shall not exceed 180 days from the date the amendment or revocation is published unless the Commission finds for good cause shown that a later effective date is in the public interest and publishes its reasons for such finding. Where an amendment involves a material change in a consumer product safety rule, sections 2056 and 2057 of this title, and subsections (a) through (g) of this section shall apply. In order to revoke a consumer product safety rule, the Commission shall publish a proposal to revoke such rule in the Federal Register, and allow oral and written presentations in accordance with subsection (d)(2) of this section. It may revoke such rule only if it determines that the rule is not reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product. Section 2060 of

this title shall apply to any amendment of a consumer product safety rule which involves a material change and to any revocation of a consumer product safety rule, in the same manner and to the same extent as such section applies to the Commission's action in promulgating such a rule.

(i) Petition to initiate rulemaking

The Commission shall grant, in whole or in part, or deny any petition under section 553(e) of title 5 requesting the Commission to initiate a rulemaking, within a reasonable time after the date on which such petition is filed. The Commission shall state the reasons for granting or denying such petition. The Commission may not deny any such petition on the basis of a voluntary standard unless the voluntary standard is in existence at the time of the denial of the petition, the Commission has determined that the voluntary standard is likely to result in the elimination or adequate reduction of the risk of injury identified in the petition, and it is likely that there will be substantial compliance with the standard.

(Pub. L. 92–573, §9, Oct. 27, 1972, 86 Stat. 1215; Pub. L. 94–284, §9, May 11, 1976, 90 Stat. 506; Pub. L. 95–631, §4(d), Nov. 10, 1978, 92 Stat. 3744; Pub. L. 97–35, title XII, §1203(a), Aug. 13, 1981, 95 Stat. 704; Pub. L. 101–608, title I, §§108(a), 109, 110(a), Nov. 16, 1990, 104 Stat. 3112, 3113; Pub. L. 110–314, title II, §§204(a)(1), 213, 235(c)(3), Aug. 14, 2008, 122 Stat. 3040, 3052, 3074.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–314, §§204(a)(1)(A), 235(c)(3), substituted "may be commenced" for "shall be commenced" in introductory provisions and "the appropriate Congressional committees" for "the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives" in concluding provisions.

Subsec. (b). Pub. L. 110–314, §204(a)(1)(B), which directed amendment of subsec. (b) by substituting "in a notice" for "in the notice", was executed by making the substitution the first place the words appeared in par. (1) after "risk of injury identified", to reflect the probable intent of Congress.

Subsec. (c). Pub. L. 110–314, §235(c)(3), substituted "the appropriate Congressional committees" for "the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives" in two places in concluding provisions.

Pub. L. 110–314, §204(a)(1)(C)–(E), in introductory provisions, substituted "unless the" for "unless, not less than 60 days after publication of the notice required in subsection (a) of this section, the" and in concluding provisions, substituted "the notice," for "an advance notice of proposed rulemaking under subsection (a) of this section relating to the product involved," and "Register. Nothing in this subsection shall preclude any person from submitting an existing standard or portion of a standard as a proposed consumer product safety standard." for "Register."

Subsec. (g)(2). Pub. L. 110–314, §213, inserted "or to which a rule under this chapter or similar rule, regulation, standard, or ban under any other Act enforced by the Commission applies," after "applies," and substituted "rule, regulation, standard, or ban" for "consumer product safety rule" the second, third, and fourth places it appeared.

1990—Subsec. (b)(2). Pub. L. 101–608, §108(a), struck out period at end and inserted ", except that the Commission shall terminate any such proceeding and rely on a voluntary standard only if such voluntary standard is in existence. For purposes of this section, a voluntary standard shall be considered to be in existence when it is finally approved by the organization or other person which developed such standard, irrespective of the effective date of the standard. Before relying upon any voluntary consumer product safety standard, the Commission shall afford interested persons (including manufacturers, consumers, and consumer organizations) a reasonable opportunity to submit written comments regarding such standard. The Commission shall consider such comments in making any determination regarding reliance on the involved voluntary standard under this subsection."

Subsec. (c). Pub. L. 101–608, §109, inserted at end "Any proposed consumer product safety rule shall be issued within twelve months after the date of publication of an advance notice of proposed rulemaking under subsection (a) relating to the product involved, unless the Commission determines that such proposed rule is not reasonably necessary to eliminate or reduce the risk of injury associated with the product or is not in the public interest. The Commission may extend the twelve-month period for good cause. If the Commission extends such period, it shall immediately transmit notice of such extension to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives. Such notice shall include an explanation of the reasons for such extension, together with an

estimate of the date by which the Commission anticipates such rulemaking will be completed. The Commission shall publish notice of such extension and the information submitted to the Congress in the Federal Register."

Subsec. (i). Pub. L. 101–608, §110(a), added subsec. (i).

1981—Subsec. (a). Pub. L. 97–35 amended subsec. (a) generally, substituting provisions for the commencement of rule-making proceedings by the publication of a notice of proposed rule-making for provisions for the promulgation of rule after publication of a notice according to specified provisions of law and to withdraw applicable notice of proceeding upon determination that such rule was not reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product or that it was in the public interest, and providing for certain other procedural safeguards.

Subsec. (b). Pub. L. 97–35 amended subsec. (b) generally, substituting provisions relating to the publication of a voluntary standard as a proposed consumer product safety rule and notice of reliance by the Commission on such standard for provisions that a consumer product safety rule shall express the risk of injury which the standard is designed to eliminate or reduce.

Subsec. (c). Pub. L. 97–35 amended subsec. (c) generally, substituting provisions relating to the publication in the Federal Register of the text of the proposed rule, including alternatives, with a preliminary regulatory analysis, and for the transmittal of such notice to certain committees of Congress for provisions relating to the requirement that the Commission make appropriate findings with respect to certain specified factors for inclusion in a consumer product safety rule.

Subsec. (d). Pub. L. 97–35 amended subsec. (d) generally, substituting provisions relating to the time for promulgation of the rule in accordance with section 553 of title 5 or withdrawal of the applicable notice for provisions relating to the effective dates for rules and standards and the authority of the Commission to prohibit stockpiling.

Subsec. (e). Pub. L. 97–35 amended subsec. (e) generally, substituting provisions relating to the requirement that the consumer product safety rule express the risk of injury which is to be eliminated or reduced and requiring, that in promulgating the rule, the Commission to consider available product data and the needs of the elderly and handicapped persons for provisions relating to the amendment and revocation of rules.

Subsecs. (f) to (h). Pub. L. 97–35 added subsecs. (f) to (h).

1978—Subsec. (a)(1), (2). Pub. L. 95–631 substituted in pars. (1) and (2) reference to section 2056 of this title for prior reference to section 2056(c), (e)(1), or (f) of this title.

1976—Subsec. (b). Pub. L. 94–284 inserted provision directing the Commission to take into consideration the special needs of the elderly and the handicapped in promulgating a consumer product safety rule.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 applicable with respect to regulations under this chapter and chapters 25 and 30 of this title for which notices of proposed rulemaking are issued after Aug. 14, 1981, see section 1215 of Pub. L. 97–35, set out as a note under section 2052 of this title.

§2059. Repealed. Pub. L. 97–35, title XII, §1210, Aug. 13, 1981, 95 Stat. 721

Section, Pub. L. 92–573, §10, Oct. 27, 1972, 86 Stat. 1217; Pub. L. 94–284, §10(a), May 11, 1976, 90 Stat. 506, related to filing of a petition by an interested person for issuance, amendment, or revocation of a consumer product safety rule.

EFFECTIVE DATE OF REPEAL

Repeal effective Aug. 14, 1981, see section 1215 of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 2052 of this title.

§2060. Judicial review of consumer product safety rules

(a) Petition by persons adversely affected, consumers, or consumer organizations

Not later than 60 days after a consumer product safety rule is promulgated by the Commission, any person adversely affected by such rule, or any consumer or consumer organization, may file a petition with the United States court of appeals for the District of Columbia, or for the circuit in which such person, consumer, or organization resides or has his principal place of business for

judicial review of such rule. Copies of the petition shall be forthwith transmitted by the clerk of the court to the Commission or other officer designated by it for that purpose and to the Attorney General. The record of the proceedings on which the Commission based its rule shall be filed in the court as provided for in section 2112 of title 28. For purposes of this section, the term "record" means such consumer product safety rule; any notice or proposal published pursuant to section 2056, 2057, or 2058 of this title; the transcript required by section 2058(d)(2) of this title of any oral presentation; any written submission of interested parties; and any other information which the Commission considers relevant to such rule.

(b) Additional data, views, or arguments

If the petitioner applies to the court for leave to adduce additional data, views, or arguments and shows to the satisfaction of the court that such additional data, views, or arguments are material and that there were reasonable grounds for the petitioner's failure to adduce such data, views, or arguments in the proceeding before the Commission, the court may order the Commission to provide additional opportunity for the oral presentation of data, views, or arguments and for written submissions. The Commission may modify its findings, or make new findings by reason of the additional data, views, or arguments so taken and shall file such modified or new findings, and its recommendation, if any, for the modification or setting aside of its original rule, with the return of such additional data, views, or arguments.

(c) Jurisdiction; costs and attorneys' fees; substantial evidence to support administrative findings

Upon the filing of the petition under subsection (a) of this section the court shall have jurisdiction to review the consumer product safety rule in accordance with chapter 7 of title 5, and to grant appropriate relief, including interim relief, as provided in such chapter. A court may in the interest of justice include in such relief an award of the costs of suit, including reasonable attorneys' fees (determined in accordance with subsection (f) of this section [1] and reasonable expert witnesses' fees. Attorneys' fees may be awarded against the United States (or any agency or official of the United States) without regard to section 2412 of title 28 or any other provision of law. The consumer product safety rule shall not be affirmed unless the Commission's findings under sections 2058(f)(1) and 2058(f)(3) of this title are supported by substantial evidence on the record taken as a whole.

(d) Supreme Court review

The judgment of the court affirming or setting aside, in whole or in part, any consumer product safety rule shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28.

(e) Other remedies

The remedies provided for in this section shall be in addition to and not in lieu of any other remedies provided by law.

(f) Computation of reasonable fee for attorney

For purposes of this section and sections 2072(a) and 2073 of this title, a reasonable attorney's fee is a fee (1) which is based upon (A) the actual time expended by an attorney in providing advice and other legal services in connection with representing a person in an action brought under this section, and (B) such reasonable expenses as may be incurred by the attorney in the provision of such services, and (2) which is computed at the rate prevailing for the provision of similar services with respect to actions brought in the court which is awarding such fee.

(g) Expedited judicial review

(1) Application

This subsection applies, in lieu of the preceding subsections of this section, to judicial review of—

(A) any consumer product safety rule promulgated by the Commission pursuant to section 2064(j) of this title (relating to identification of substantial hazards);

(B) any consumer product safety standard promulgated by the Commission pursuant to section 2089 of this title (relating to all-terrain vehicles);

(C) any standard promulgated by the Commission under section 2056a of this title (relating to durable infant and toddler products); and

(D) any consumer product safety standard promulgated by the Commission under section 2056b of this title (relating to mandatory toy safety standards).

(2) In general

Not later than 60 days after the promulgation, by the Commission, of a rule or standard to which this subsection applies, any person adversely affected by such rule or standard may file a petition with the United States Court of Appeals for the District of Columbia Circuit for judicial review of such rule. Copies of the petition shall be forthwith transmitted by the clerk of the court to the Commission or other officer designated by it for that purpose and to the Attorney General. The record of the proceedings on which the Commission based its rule shall be filed in the court as provided for in section 2112 of title 28.

(3) Review

Upon the filing of the petition under paragraph (2) of this subsection, the court shall have jurisdiction to review the rule in accordance with chapter 7 of title 5 and to grant appropriate relief, including interim relief, as provided in such chapter.

(4) Conclusiveness of judgment

The judgment of the court affirming or setting aside, in whole or in part, any final rule under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28.

(5) Further review

A rule or standard with respect to which this subsection applies shall not be subject to judicial review in proceedings under section 2066 of this title (relating to imported products) or in civil or criminal proceedings for enforcement.

(Pub. L. 92–573, §11, Oct. 27, 1972, 86 Stat. 1218; Pub. L. 94–284, §§10(b), 11(a), May 11, 1976, 90 Stat. 507; Pub. L. 97–35, title XII, §1211(h)(1)–(3)(A), Aug. 13, 1981, 95 Stat. 723; Pub. L. 97–414, §9(j)(2), Jan. 4, 1983, 96 Stat. 2064; Pub. L. 110–314, title II, §236(a), Aug. 14, 2008, 122 Stat. 3075.)

AMENDMENTS

2008—Subsec. (g). Pub. L. 110–314 added subsec. (g).

1983—Subsec. (c). Pub. L. 97–414 substituted "subsection (f) of this section" for "section 2059(e)(4) of this title".

1981—Subsec. (a). Pub. L. 97–35, §1211(h)(2), substituted reference to section 2058(d)(2) of this title for reference to section 2058(a)(2) of this title.

Subsec. (c). Pub. L. 97–35, §1211(h)(1), substituted reference to section 2058(f)(1) and (3) of this title for reference to section 2058(c) of this title.

Subsec. (f). Pub. L. 97–35, §1211(h)(3)(A), added subsec. (f).

1976—Subsec. (a). Pub. L. 94–284, §11(a), permitted the Commission to file the record of its proceedings on which its rule was based with the court in lieu of transmitting the record to the Attorney General.

Subsec. (c). Pub. L. 94–284, §10(b), inserted provision permitting the court to award costs, including reasonable attorneys' fees, in the interest of justice.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, see section 1215 of Pub. L. 97–35, set out as a note under section 2052 of this title.

PENDING ACTIONS UNAFFECTED

Pub. L. 110–314, title II, §236(b), Aug. 14, 2008, 122 Stat. 3076, provided that: "The amendment made by subsection (a) [amending this section] shall not apply to any petition filed before the date of enactment of this Act [Aug. 14, 2008] for judicial review of any action by the Consumer Product Safety Commission."

[1] *So in original. Probably should be followed by a closing parenthesis.*

§2061. Imminent hazards

(a) Filing of action

The Commission may file in a United States district court an action (1) against an imminently hazardous consumer product for seizure of such product under subsection (b)(2) of this section, or (2) against any person who is a manufacturer, distributor, or retailer of such product, or (3) against both. Such an action may be filed notwithstanding the existence of a consumer product safety rule applicable to such product, or the pendency of any administrative or judicial proceedings under any other provision of this chapter. As used in this section, and hereinafter in this chapter, the term "imminently hazardous consumer product" means a consumer product which presents imminent and unreasonable risk of death, serious illness, or severe personal injury.

(b) Relief; product condemnation and seizure

(1) The district court in which such action is filed shall have jurisdiction to declare such product an imminently hazardous consumer product, and (in the case of an action under subsection (a)(2) of this section) to grant (as ancillary to such declaration or in lieu thereof) such temporary or permanent relief as may be necessary to protect the public from such risk. Such relief may include a mandatory order requiring the notification of such risk to purchasers of such product known to the defendant, public notice, the recall, the repair or the replacement of, or refund for, such product.

(2) In the case of an action under subsection (a)(1) of this section, the consumer product may be proceeded against by process of libel for the seizure and condemnation of such product in any United States district court within the jurisdiction of which such consumer product is found. Proceedings and cases instituted under the authority of the preceding sentence shall conform as nearly as possible to proceedings in rem in admiralty.

(c) Consumer product safety rule

Where appropriate, concurrently with the filing of such action or as soon thereafter as may be practicable, the Commission shall initiate a proceeding to promulgate a consumer product safety rule applicable to the consumer product with respect to which such action is filed.

(d) Jurisdiction and venue; process; subpena

(1) An action under subsection (a)(2) of this section may be brought in the United States district court for the District of Columbia or in any judicial district in which any of the defendants is found, is an inhabitant or transacts business; and process in such an action may be served on a defendant in any other district in which such defendant resides or may be found. Subpenas requiring attendance of witnesses in such an action may run into any other district. In determining the judicial district in which an action may be brought under this section in instances in which such action may be brought in more than one judicial district, the Commission shall take into account the convenience of the parties.

(2) Whenever proceedings under this section involving substantially similar consumer products are pending in courts in two or more judicial districts, they shall be consolidated for trial by order of any such court upon application reasonably made by any party in interest, upon notice to all other parties in interest.

(e) Employment of attorneys by Commission

Notwithstanding any other provision of law, in any action under this section, the Commission may direct attorneys employed by it to appear and represent it.

(g) [1] Cost-benefit analysis of compliance with relief ordered in action for judicial review of consumer product safety rule not required

Nothing in this section shall be construed to require the Commission, in determining whether to

bring an action against a consumer product or a person under this section, to prepare a comparison of the costs that would be incurred in complying with the relief that may be ordered in such action with the benefits to the public from such relief.

(Pub. L. 92–573, §12, Oct. 27, 1972, 86 Stat. 1218; Pub. L. 97–35, title XII, §1205(a)(2), Aug. 13, 1981, 95 Stat. 716; Pub. L. 101–608, title I, §111(a)(1), Nov. 16, 1990, 104 Stat. 3114.)

AMENDMENTS

1990—Subsec. (g). Pub. L. 101–608 added subsec. (g).

1981—Subsecs. (d) to (f). Pub. L. 97–35 redesignated subsecs. (e) and (f) as (d) and (e), respectively. Former subsec. (d), which provided for consultation with the Product Safety Advisory Council by the Commission prior to commencing an action, was struck out.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, see section 1215 of Pub. L. 97–35, set out as a note under section 2052 of this title.

[1] *So in original. Probably should be "(f)".*

§2062. Repealed. Pub. L. 97–35, title XII, §1211(b), Aug. 13, 1981, 95 Stat. 721

Section, Pub. L. 92–573, §13, Oct. 27, 1972, 86 Stat. 1219, provided that Commission could prescribe procedures to insure that manufacturer of a new consumer product notify Commission of new product prior to its distribution.

EFFECTIVE DATE OF REPEAL

Repeal effective Aug. 13, 1981, see section 1215 of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 2052 of this title.

§2063. Product certification and labeling

(a) Certification accompanying product; products with more than one manufacturer

(1) GENERAL CONFORMITY CERTIFICATION.—Except as provided in paragraphs (2) and (3), every manufacturer of a product which is subject to a consumer product safety rule under this chapter or similar rule, ban, standard, or regulation under any other Act enforced by the Commission and which is imported for consumption or warehousing or distributed in commerce (and the private labeler of such product if such product bears a private label) shall issue a certificate which—

(A) shall certify, based on a test of each product or upon a reasonable testing program, that such product complies with all rules, bans, standards, or regulations applicable to the product under this chapter or any other Act enforced by the Commission; and

(B) shall specify each such rule, ban, standard, or regulation applicable to the product.

(2) THIRD PARTY TESTING REQUIREMENT.—Effective on the dates provided in paragraph (3), before importing for consumption or warehousing or distributing in commerce any children's product that is subject to a children's product safety rule, every manufacturer of such children's product (and the private labeler of such children's product if such children's product bears a private label) shall—

(A) submit sufficient samples of the children's product, or samples that are identical in all material respects to the product, to a third party conformity assessment body accredited under paragraph (3) to be tested for compliance with such children's product safety rule; and

(B) based on such testing, issue a certificate that certifies that such children's product complies with the children's product safety rule based on the assessment of a third party conformity assessment body accredited to conduct such tests.

A manufacturer or private labeler shall issue either a separate certificate for each children's product safety rule applicable to a product or a combined certificate that certifies compliance with all applicable children's product safety rules, in which case each such rule shall be specified.

(3) SCHEDULE FOR IMPLEMENTATION OF THIRD PARTY TESTING.—

(A) GENERAL APPLICATION.—Except as provided under subparagraph (F), the requirements of paragraph (2) shall apply to any children's product manufactured more than 90 days after the Commission has established and published notice of the requirements for accreditation of third party conformity assessment bodies to assess conformity with a children's product safety rule to which such children's product is subject.

(B) TIME LINE FOR ACCREDITATION.—

(i) LEAD PAINT.—Not later than 30 days after August 14, 2008, the Commission shall publish notice of the requirements for accreditation of third party conformity assessment bodies to assess conformity with part 1303 of title 16, Code of Federal Regulations.

(ii) FULL-SIZE CRIBS; NON FULL-SIZE CRIBS; PACIFIERS.—Not later than 60 days after August 14, 2008, the Commission shall publish notice of the requirements for accreditation of third party conformity assessment bodies to assess conformity with parts 1508, 1509, and 1511 of such title.

(iii) SMALL PARTS.—Not later than 90 days after August 14, 2008, the Commission shall publish notice of the requirements for accreditation of third party conformity assessment bodies to assess conformity with part 1501 of such title.

(iv) CHILDREN'S METAL JEWELRY.—Not later than 120 days after August 14, 2008, the Commission shall publish notice of the requirements for accreditation of third party conformity assessment bodies to assess conformity with the requirements of section 1278a(a)(2) of this title with respect to children's metal jewelry.

(v) BABY BOUNCERS, WALKERS, AND JUMPERS.—Not later than 210 days after August 14, 2008, the Commission shall publish notice of the requirements for accreditation of third party conformity assessment bodies to assess conformity with parts 1500.18(a)(6) and 1500.86(a) of such title.[1]

(vi) ALL OTHER CHILDREN'S PRODUCT SAFETY RULES.—The Commission shall publish notice of the requirements for accreditation of third party conformity assessment bodies to assess conformity with other children's product safety rules at the earliest practicable date, but in no case later than 10 months after August 14, 2008, or, in the case of children's product safety rules established or revised 1 year or more after such date, not later than 90 days before such rules or revisions take effect.

(C) ACCREDITATION.—Accreditation of third party conformity assessment bodies pursuant to the requirements established under subparagraph (B) may be conducted either by the Commission or by an independent accreditation organization designated by the Commission.

(D) PERIODIC REVIEW.—The Commission shall periodically review and revise the accreditation requirements established under subparagraph (B) to ensure that the requirements assure the highest conformity assessment body quality that is feasible.

(E) PUBLICATION OF ACCREDITED ENTITIES.—The Commission shall maintain on its Internet website an up-to-date list of entities that have been accredited to assess conformity with children's product safety rules in accordance with the requirements published by the Commission under this paragraph.

(F) EXTENSION.—If the Commission determines that an insufficient number of third party conformity assessment bodies have been accredited to permit certification for a children's product safety rule under the accelerated schedule required by this paragraph, the Commission may extend the deadline for certification to such rule by not more than 60 days.

(G) RULEMAKING.—Until the date that is 3 years after August 14, 2008, Commission proceedings under this paragraph shall be exempt from the requirements of sections 553 and 601 through 612 of title 5.

(4) In the case of a consumer product for which there is more than one manufacturer or more than one private labeler, the Commission may by rule designate one or more of such manufacturers or one or more of such private labelers (as the case may be) as the persons who shall issue the certificate required under paragraph (1), (2), or (3), and may exempt all other manufacturers of such product or all other private labelers of the product (as the case may be) from the requirement under paragraph (1), (2), or (3) to issue a certificate with respect to such product.

(5)(A) Effective 1 year after August 14, 2008, the manufacturer of a children's product shall place permanent, distinguishing marks on the product and its packaging, to the extent practicable, that will enable—

(i) the manufacturer to ascertain the location and date of production of the product, cohort information (including the batch, run number, or other identifying characteristic), and any other information determined by the manufacturer to facilitate ascertaining the specific source of the product by reference to those marks; and

(ii) the ultimate purchaser to ascertain the manufacturer or private labeler, location and date of production of the product, and cohort information (including the batch, run number, or other identifying characteristic).

(B) The Commission may, by regulation, exclude a specific product or class of products from the requirements in subparagraph (A) if the Commission determines that it is not practicable for such product or class of products to bear the marks required by such subparagraph. The Commission may establish alternative requirements for any product or class of products excluded under the preceding sentence consistent with the purposes described in clauses (i) and (ii) of subparagraph (A).

(b) Rules to establish reasonable testing programs

The Commission may by rule prescribe reasonable testing programs for any product which is subject to a consumer product safety rule under this chapter, or a similar rule, regulation, standard, or ban under any other Act enforced by the Commission, and for which a certificate is required under subsection (a) of this section. Any test or testing program on the basis of which a certificate is issued under subsection (a) of this section may, at the option of the person required to certify the product, be conducted by an independent third party qualified to perform such tests, unless the Commission, by rule, requires testing by an independent third party for a particular rule, regulation, standard, or ban, or for a particular class of products.

(c) Form and contents of labels

The Commission may by rule require the use and prescribe the form and content of labels which contain the following information (or that portion of it specified in the rule)—

(1) The date and place of manufacture of any consumer product.

(2) The cohort information (including the batch, run number, or other identifying characteristic) of the product.

(3) A suitable identification of the manufacturer of the consumer product, unless the product bears a private label in which case it shall identify the private labeler and shall also contain a code mark which will permit the seller of such product to identify the manufacturer thereof to the purchaser upon his request.

(4) In the case of a consumer product subject to a consumer product safety rule, a certification that the product meets all applicable consumer product safety standards and a specification of the standards which are applicable.

Such labels, where practicable, may be required by the Commission to be permanently marked on or affixed to any such consumer product. The Commission may, in appropriate cases, permit information required under paragraphs (1) and (2) of this subsection to be coded.

(d) Additional regulations for third party testing

(1) Audit

Not later than 10 months after August 14, 2008, the Commission shall by regulation establish

requirements for the periodic audit of third party conformity assessment bodies as a condition for the continuing accreditation of such conformity assessment bodies under subsection (a)(3)(C).

(2) Compliance; continuing testing

Not later than 15 months after August 14, 2008, the Commission shall by regulation—

(A) initiate a program by which a manufacturer or private labeler may label a consumer product as complying with the certification requirements of subsection (a); and

(B) establish protocols and standards—

(i) for ensuring that a children's product tested for compliance with an applicable children's product safety rule is subject to testing periodically and when there has been a material change in the product's design or manufacturing process, including the sourcing of component parts;

(ii) for the testing of representative samples to ensure continued compliance;

(iii) for verifying that a children's product tested by a conformity assessment body complies with applicable children's product safety rules; and

(iv) for safeguarding against the exercise of undue influence on a third party conformity assessment body by a manufacturer or private labeler.

(3) Reducing third party testing burdens

(A) Assessment

Not later than 60 days after August 12, 2011, the Commission shall seek public comment on opportunities to reduce the cost of third party testing requirements consistent with assuring compliance with any applicable consumer product safety rule, ban, standard, or regulation. The request for public comment shall include the following:

(i) The extent to which the use of materials subject to regulations of another government agency that requires third party testing of those materials may provide sufficient assurance of conformity with an applicable consumer product safety rule, ban, standard, or regulation without further third party testing.

(ii) The extent to which modification of the certification requirements may have the effect of reducing redundant third party testing by or on behalf of 2 or more importers of a product that is substantially similar or identical in all material respects.

(iii) The extent to which products with a substantial number of different components subject to third party testing may be evaluated to show compliance with an applicable rule, ban, standard, or regulation by third party testing of a subset of such components selected by a third party conformity assessment body.

(iv) The extent to which manufacturers with a substantial number of substantially similar products subject to third party testing may reasonably make use of sampling procedures that reduce the overall test burden without compromising the benefits of third party testing.

(v) The extent to which evidence of conformity with other national or international governmental standards may provide assurance of conformity to consumer product safety rules, bans, standards, or regulations applicable under this chapter.

(vi) The extent to which technology, other than the technology already approved by the Commission, exists for third party conformity assessment bodies to test or to screen for testing consumer products subject to a third party testing requirement.

(vii) Other techniques for lowering the cost of third party testing consistent with assuring compliance with the applicable consumer product safety rules, bans, standards, and regulations.

(B) Regulations

Following the public comment period described in subparagraph (A), but not later than 1 year after August 12, 2011, the Commission shall review the public comments and may prescribe new or revised third party testing regulations if it determines that such regulations will reduce third party testing costs consistent with assuring compliance with the applicable consumer product safety rules, bans, standards, and regulations.

(C) Report

If the Commission determines that it lacks authority to implement an opportunity for reducing the costs of third-party testing consistent with assuring compliance with the applicable consumer product safety rules, bans, standards, and regulations, it shall transmit a report to Congress reviewing those opportunities, along with any recommendations for any legislation to permit such implementation.

(4) Special rules for small batch manufacturers

(A) Special consideration; exemption

(i) Consideration; alternative requirements

Subject to subparagraph (C), in implementing third party testing requirements under this section, the Commission shall take into consideration any economic, administrative, or other limits on the ability of small batch manufacturers to comply with such requirements and shall, after notice and a hearing, provide alternative testing requirements for covered products manufactured by small batch manufacturers in lieu of those required under subsection (a) or (b). Any such alternative requirements shall provide for reasonable methods to assure compliance with any applicable consumer product safety rule, ban, standard, or regulation. The Commission may allow such alternative testing requirements for small batch manufacturers with respect to a specific product or product class or with respect to a specific safety rule, ban, standard, or regulation, or portion thereof.

(ii) Exemption

If the Commission determines that no alternative testing requirement is available or economically practicable, it shall exempt small batch manufacturers from third party testing requirements under subsections (a) and (b).

(iii) Certification

In lieu of or as part of any alternative testing requirements provided under clause (i), the Commission may allow certification of a product to an applicable consumer product safety rule, ban, standard, or regulation, or portion thereof, based on documentation that the product complies with another national or international governmental standard or safety requirement that the Commission determines is the same or more stringent than the consumer product safety rule, ban, standard, or regulation, or portion thereof. Any such certification shall only be allowed to the extent of the equivalency with a consumer product safety rule, ban, standard, or regulation and not to any other part of the consumer product safety rule, ban, standard, or regulation.

(iv) Restriction

Except as provided in subparagraph (C), and except where the Commission determines that the manufacturer does not meet the definition of a small batch manufacturer, for any small batch manufacturer registered pursuant to subparagraph (B), the Commission may not require third party testing of a covered product by a third party conformity assessment body until the Commission has provided either an alternative testing requirement or an exemption in accordance with clause (i) or (ii), respectively.

(B) Registration

Any small batch manufacturer that utilizes alternative requirements or an exemption under this paragraph shall register with the Commission prior to using such alternative requirements or exemptions pursuant to any guidelines issued by the Commission to carry out this requirement.

(C) Limitation

The Commission shall not provide or permit to continue in effect any alternative requirements or exemption from third party testing requirements under this paragraph where it determines, based on notice and a hearing, that full compliance with subsection (a) or (b) is

reasonably necessary to protect public health or safety. The Commission shall not provide any alternative requirements or exemption for—

(i) any of the third party testing requirements described in clauses (i) through (v) of subsection (a)(3)(B); or

(ii) durable infant or toddler products, as defined in section 2056a(f) of this title.

(D) Subsequent manufacturer

Nothing in this paragraph shall be construed to affect third party testing or any other requirements with respect to a subsequent manufacturer or other entity that uses components provided by one or more small batch manufacturers.

(E) Definitions

For purposes of this paragraph—

(i) the term "covered product" means a consumer product manufactured by a small batch manufacturer where no more than 7,500 units of the same product were manufactured in the previous calendar year; and

(ii) the term "small batch manufacturer" means a manufacturer that had no more than $1,000,000 in total gross revenue from sales of all consumer products in the previous calendar year. The dollar amount contained in this paragraph shall be adjusted annually by the percentage increase in the Consumer Price Index for all urban consumers published by the Department of Labor.

For purposes of determining the total gross revenue for all sales of all consumer products of a manufacturer under this subparagraph, such total gross revenue shall be considered to include all gross revenue from all sales of all consumer products of each entity that controls, is controlled by, or is under common control with such manufacturer. The Commission shall take steps to ensure that all relevant business affiliations are considered in determining whether or not a manufacturer meets this definition.

(5) Exclusion from third party testing

(A) Certain printed materials

(i) In general

The third party testing requirements established under subsection (a) shall not apply to ordinary books or ordinary paper-based printed materials.

(ii) Definitions

(I) Ordinary book

The term "ordinary book" means a book printed on paper or cardboard, printed with inks or toners, and bound and finished using a conventional method, and that is intended to be read or has educational value. Such term does not include books with inherent play value, books designed or intended for a child 3 years of age or younger, and does not include any toy or other article that is not a book that is sold or packaged with an ordinary book.

(II) Ordinary paper-based printed materials

The term "ordinary paper-based printed materials" means materials printed on paper or cardboard, such as magazines, posters, greeting cards, and similar products, that are printed with inks or toners and bound and finished using a conventional method.

(III) Exclusions

Such terms do not include books or printed materials that contain components that are printed on material other than paper or cardboard or contain nonpaper-based components such as metal or plastic parts or accessories that are not part of the binding and finishing materials used in a conventional method.

(B) Metal component parts of bicycles

The third party testing requirements established under subsection (a) shall not apply to metal component parts of bicycles with respect to compliance with the lead content limits in place pursuant to section 1278a(b)(6) of this title.

(e) Withdrawal of accreditation

(1) In general

The Commission may withdraw its accreditation or its acceptance of the accreditation of a third party conformity assessment body accredited under this section if the Commission finds, after notice and investigation, that—

(A) a manufacturer, private labeler, or governmental entity has exerted undue influence on such conformity assessment body or otherwise interfered with or compromised the integrity of the testing process with respect to the certification of a children's product under this section; or

(B) such conformity assessment body failed to comply with an applicable protocol, standard, or requirement established by the Commission under subsection (d).

(2) Procedure

In any proceeding to withdraw the accreditation of a conformity assessment body, the Commission—

(A) shall consider the gravity of the conformity assessment body's action or failure to act, including—

(i) whether the action or failure to act resulted in injury, death, or the risk of injury or death;

(ii) whether the action or failure to act constitutes an isolated incident or represents a pattern or practice; and

(iii) whether and when the conformity assessment body initiated remedial action; and

(B) may—

(i) withdraw its acceptance of the accreditation of the conformity assessment body on a permanent or temporary basis; and

(ii) establish requirements for reaccreditation of the conformity assessment body.

(3) Failure to cooperate

The Commission may suspend the accreditation of a conformity assessment body if it fails to cooperate with the Commission in an investigation under this section.

(f) Definitions

In this section:

(1) Children's product safety rule

The term "children's product safety rule" means a consumer product safety rule under this chapter or similar rule, regulation, standard, or ban under any other Act enforced by the Commission, including a rule declaring a consumer product to be a banned hazardous product or substance.

(2) Third party conformity assessment body

(A) In general

The term "third party conformity assessment body" means a conformity assessment body that, except as provided in subparagraph (D), is not owned, managed, or controlled by the manufacturer or private labeler of a product assessed by such conformity assessment body.

(B) Governmental participation

Such term may include an entity that is owned or controlled in whole or in part by a government if—

(i) to the extent practicable, manufacturers or private labelers located in any nation are permitted to choose conformity assessment bodies that are not owned or controlled by the

government of that nation;

(ii) the entity's testing results are not subject to undue influence by any other person, including another governmental entity;

(iii) the entity is not accorded more favorable treatment than other third party conformity assessment bodies in the same nation who have been accredited under this section;

(iv) the entity's testing results are accorded no greater weight by other governmental authorities than those of other third party conformity assessment bodies accredited under this section; and

(v) the entity does not exercise undue influence over other governmental authorities on matters affecting its operations or on decisions by other governmental authorities controlling distribution of products based on outcomes of the entity's conformity assessments.

(C) Testing and certification of art materials and products

A certifying organization (as defined in appendix A to section 1500.14(b)(8) of title 16, Code of Federal Regulations (or any successor regulation or ruling)) meets the requirements of subparagraph (A) with respect to the certification of art material and art products required under this section or by regulations prescribed under the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.).

(D) Firewalled conformity assessment bodies

Upon request, the Commission may accredit a conformity assessment body that is owned, managed, or controlled by a manufacturer or private labeler as a third party conformity assessment body if the Commission by order finds that—

(i) accreditation of the conformity assessment body would provide equal or greater consumer safety protection than the manufacturer's or private labeler's use of an independent third party conformity assessment body; and

(ii) the conformity assessment body has established procedures to ensure that—

(I) its test results are protected from undue influence by the manufacturer, private labeler or other interested party;

(II) the Commission is notified immediately of any attempt by the manufacturer, private labeler or other interested party to hide or exert undue influence over test results; and

(III) allegations of undue influence may be reported confidentially to the Commission.

(g) Requirements for certificates

(1) Identification of issuer and conformity assessment body

Every certificate required under this section shall identify the manufacturer or private labeler issuing the certificate and any third party conformity assessment body on whose testing the certificate depends. The certificate shall include, at a minimum, the date and place of manufacture, the date and place where the product was tested, each party's name, full mailing address, telephone number, and contact information for the individual responsible for maintaining records of test results.

(2) English language

Every certificate required under this section shall be legible and all content required by this section shall be in the English language. A certificate may also contain the same content in any other language.

(3) Availability of certificates

Every certificate required under this section shall accompany the applicable product or shipment of products covered by the same certificate and a copy of the certificate shall be furnished to each distributor or retailer of the product. Upon request, the manufacturer or private labeler issuing the certificate shall furnish a copy of the certificate to the Commission.

(4) Electronic filing of certificates for imported products

In consultation with the Commissioner of Customs, the Commission may, by rule, provide for

the electronic filing of certificates under this section up to 24 hours before arrival of an imported product. Upon request, the manufacturer or private labeler issuing the certificate shall furnish a copy to the Commission and to the Commissioner of Customs.

(h) Rule of construction

Compliance of any children's product with third party testing and certification or general conformity certification requirements under this section shall not be construed to exempt such children's product from any requirement that such product actually be in conformity with all applicable rules, regulation, standards, or ban under any Act enforced by the Commission.

(i) Requirement for advertisements

No advertisement for a consumer product or label or packaging of such product may contain a reference to a consumer product safety rule or a voluntary consumer product safety standard unless such product conforms with the applicable safety requirements of such rule or standard.

(Pub. L. 92–573, §14, Oct. 27, 1972, 86 Stat. 1220; Pub. L. 110–314, title I, §§102(a)(1)(A), (2), (3), (b), (d), 103, Aug. 14, 2008, 122 Stat. 3022, 3024, 3027, 3028; Pub. L. 112–28, §§2(a), 6, 10(a), Aug. 12, 2011, 125 Stat. 276, 281, 283.)

REFERENCES IN TEXT

The Federal Hazardous Substances Act, referred to in subsec. (f)(2)(C), is Pub. L. 86–613, July 12, 1960, 74 Stat. 372, which is classified generally to chapter 30 (§1261 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1261 of this title and Tables.

AMENDMENTS

2011—Subsec. (a)(5). Pub. L. 112–28, §6, designated existing provisions as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A), and added subpar. (B).

Subsec. (d). Pub. L. 112–28, §10(a), redesignated subsec. (d), relating to requirement for advertisements, as (i).

Subsec. (d)(2)(B)(ii). Pub. L. 112–28, §2(a)(1), substituted "representative" for "random".

Subsec. (d)(3) to (5). Pub. L. 112–28, §2(a)(2), added pars. (3) to (5).

Subsec. (i). Pub. L. 112–28, §10(a), redesignated subsec. (d), relating to requirement for advertisements, as (i).

2008—Subsec. (a)(1). Pub. L. 110–314, §102(a)(1)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "Every manufacturer of a product which is subject to a consumer product safety standard under this chapter and which is distributed in commerce (and the private labeler of such product if it bears a private label) shall issue a certificate which shall certify that such product conforms to all applicable consumer product safety standards, and shall specify any standard which is applicable. Such certificate shall accompany the product or shall otherwise be furnished to any distributor or retailer to whom the product is delivered. Any certificate under this subsection shall be based on a test of each product or upon a reasonable testing program; shall state the name of the manufacturer or private labeler issuing the certificate; and shall include the date and place of manufacture."

Subsec. (a)(2), (3). Pub. L. 110–314, §102(a)(2), which directed amendment of par. (2) of this section by adding pars. (2) and (3), was executed by adding pars. (2) and (3) to subsec. (a) of this section, to reflect the probable intent of Congress. Former par. (2) redesignated (4).

Subsec. (a)(4). Pub. L. 110–314, §102(a)(3), substituted "required under paragraph (1), (2), or (3)" for "required by paragraph (1) of this subsection" and "requirement under paragraph (1), (2), or (3)" for "requirement under paragraph (1)".

Pub. L. 110–314, §102(a)(2), which directed amendment of par. (2) of this section by redesignating par. (2) as (4), was executed to subsec. (a) of this section, to reflect the probable intent of Congress.

Subsec. (a)(5). Pub. L. 110–314, §103(a), added par. (5).

Subsec. (b). Pub. L. 110–314, §102(d), substituted "any product which is subject to a consumer product safety rule under this chapter, or a similar rule, regulation, standard, or ban under any other Act enforced by the Commission," for "consumer products which are subject to consumer product safety standards under this chapter" and ", unless the Commission, by rule, requires testing by an independent third party for a particular rule, regulation, standard, or ban, or for a particular class of products." for "or testing programs."

Subsec. (c)(2) to (4). Pub. L. 110–314, §103(b), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (d). Pub. L. 110–314, §103(c), added subsec (d) relating to requirement for advertisements.

Pub. L. 110–314, §102(b), added subsec. (d) relating to additional regulations for third party testing.
Subsecs. (e) to (h). Pub. L. 110–314, §102(b), added subsecs. (e) to (h).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–314, title I, §102(a)(1)(B), Aug. 14, 2008, 122 Stat. 3022, provided that: "The amendment made by subparagraph (A) [amending this section] shall take effect 90 days after the date of enactment of this Act [Aug. 14, 2008]."

Amendment by section 103(c) of Pub. L. 110–314 effective on the date that is 60 days after Aug. 14, 2008, see section 239(a) of Pub. L. 110–314, set out as a note under section 2051 of this title.

CPSC CONSIDERATION OF EXISTING REQUIREMENTS

Pub. L. 110–314, title I, §102(c), Aug. 14, 2008, 122 Stat. 3027, provided that: "In establishing standards for accreditation of a third party conformity assessment body under section 14(a)(3) of the Consumer Product Safety Act [15 U.S.C. 2063(a)(3)], as added by subsection (a), the [Consumer Product Safety] Commission may consider standards and protocols for accreditation of such conformity assessment bodies by independent accreditation organizations that are in effect on the date of enactment of this Act [Aug. 14, 2008], but shall ensure that the protocols, standards, and requirements prescribed under such section 14(a)(3) incorporate, as the standard for accreditation, the most current scientific and technological standards and techniques available."

[1] *So in original. Such title refers to title 16, Code of Federal Regulations.*

§2064. Substantial product hazards

(a) "Substantial product hazard" defined

For purposes of this section, the term "substantial product hazard" means—

(1) a failure to comply with an applicable consumer product safety rule under this chapter or a similar rule, regulation, standard, or ban under any other Act enforced by the Commission which creates a substantial risk of injury to the public, or

(2) a product defect which (because of the pattern of defect, the number of defective products distributed in commerce, the severity of the risk, or otherwise) creates a substantial risk of injury to the public.

(b) Noncompliance with applicable consumer product safety rules; product defects; notice to Commission by manufacturer, distributor, or retailer

Every manufacturer of a consumer product, or other product or substance over which the Commission has jurisdiction under any other Act enforced by the Commission (other than motor vehicle equipment as defined in section 30102(a)(7) of title 49), distributed in commerce, and every distributor and retailer of such product, who obtains information which reasonably supports the conclusion that such product—

(1) fails to comply with an applicable consumer product safety rule or with a voluntary consumer product safety standard upon which the Commission has relied under section 2058 of this title;

(2) fails to comply with any other rule, regulation, standard, or ban under this chapter or any other Act enforced by the Commission;

(3) contains a defect which could create a substantial product hazard described in subsection (a)(2) of this section; or

(4) creates an unreasonable risk of serious injury or death,

shall immediately inform the Commission of such failure to comply, of such defect, or of such risk, unless such manufacturer, distributor, or retailer has actual knowledge that the Commission has been adequately informed of such defect, failure to comply, or such risk. A report provided under paragraph (2) may not be used as the basis for criminal prosecution of the reporting person under section 1264 of this title, except for offenses which require a showing of intent to defraud or mislead.

(c) Notice of defect or failure to comply; mail notice

(1) If the Commission determines (after affording interested persons, including consumers and consumer organizations, an opportunity for a hearing in accordance with subsection (f) of this section) that a product distributed in commerce presents a substantial product hazard and that notification is required in order to adequately protect the public from such substantial product hazard, or if the Commission, after notifying the manufacturer, determines a product to be an imminently hazardous consumer product and has filed an action under section 2061 of this title, the Commission may order the manufacturer or any distributor or retailer of the product to take any one or more of the following actions:

(A) To cease distribution of the product.

(B) To notify all persons that transport, store, distribute, or otherwise handle the product, or to which the product has been transported, sold, distributed, or otherwise handled, to cease immediately distribution of the product.

(C) To notify appropriate State and local public health officials.

(D) To give public notice of the defect or failure to comply, including posting clear and conspicuous notice on its Internet website, providing notice to any third party Internet website on which such manufacturer, retailer, distributor, or licensor has placed the product for sale, and announcements in languages other than English and on radio and television where the Commission determines that a substantial number of consumers to whom the recall is directed may not be reached by other notice.

(E) To mail notice to each person who is a manufacturer, distributor, or retailer of such product.

(F) To mail notice to every person to whom the person required to give notice knows such product was delivered or sold.

Any such order shall specify the form and content of any notice required to be given under such order.

(2) The Commission may require a notice described in paragraph (1) to be distributed in a language other than English if the Commission determines that doing so is necessary to adequately protect the public.

(3) If a district court determines, in an action filed under section 2061 of this title, that the product that is the subject of such action is not an imminently hazardous consumer product, the Commission shall rescind any order issued under this subsection with respect to such product.

(d) Repair; replacement; refunds; action plan

(1) If the Commission determines (after affording interested parties, including consumers and consumer organizations, an opportunity for a hearing in accordance with subsection (f) of this section) that a product distributed in commerce presents a substantial product hazard and that action under this subsection is in the public interest, it may order the manufacturer or any distributor or retailer of such product to provide the notice required by subsection (c) and to take any one or more of the following actions it determines to be in the public interest:

(A) To bring such product into conformity with the requirements of the applicable rule, regulation, standard, or ban or to repair the defect in such product.

(B) To replace such product with a like or equivalent product which complies with the applicable rule, regulation, standard, or ban or which does not contain the defect.

(C) To refund the purchase price of such product (less a reasonable allowance for use, if such product has been in the possession of a consumer for one year or more (i) at the time of public notice under subsection (c) of this section, or (ii) at the time the consumer receives actual notice of the defect or noncompliance, whichever first occurs).

(2) An order under this subsection shall also require the person to whom it applies to submit a plan, for approval by the Commission, for taking action under whichever of the preceding subparagraphs under which such person has been ordered to act. The Commission shall specify in the order the persons to whom refunds must be made if the Commission orders the action described

in subparagraph (C)..[1] An order under this subsection may prohibit the person to whom it applies from manufacturing for sale, offering for sale, distributing in commerce, or importing into the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States), or from doing any combination of such actions, the product with respect to which the order was issued.

(3)(A) If the Commission approves an action plan, it shall indicate its approval in writing.

(B) If the Commission finds that an approved action plan is not effective or appropriate under the circumstances, or that the manufacturer, retailer, or distributor is not executing an approved action plan effectively, the Commission may, by order, amend, or require amendment of, the action plan. In determining whether an approved plan is effective or appropriate under the circumstances, the Commission shall consider whether a repair or replacement changes the intended functionality of the product.

(C) If the Commission determines, after notice and opportunity for comment, that a manufacturer, retailer, or distributor has failed to comply substantially with its obligations under its action plan, the Commission may revoke its approval of the action plan. The manufacturer, retailer, or distributor to which the action plan applies may not distribute in commerce the product to which the action plan relates after receipt of notice of a revocation of the action plan.

(e) Reimbursement

(1) No charge shall be made to any person (other than a manufacturer, distributor, or retailer) who avails himself of any remedy provided under an order issued under subsection (d) of this section, and the person subject to the order shall reimburse each person (other than a manufacturer, distributor, or retailer) who is entitled to such a remedy for any reasonable and foreseeable expenses incurred by such person in availing himself of such remedy.

(2) An order issued under subsection (c) or (d) of this section with respect to a product may require any person who is a manufacturer, distributor, or retailer of the product to reimburse any other person who is a manufacturer, distributor, or retailer of such product for such other person's expenses in connection with carrying out the order, if the Commission determines such reimbursement to be in the public interest.

(f) Hearing

(1) Except as provided in paragraph (2), an order under subsection (c) or (d) of this section may be issued only after an opportunity for a hearing in accordance with section 554 of title 5 except that, if the Commission determines that any person who wishes to participate in such hearing is a part of a class of participants who share an identity of interest, the Commission may limit such person's participation in such hearing to participation through a single representative designated by such class (or by the Commission if such class fails to designate such a representative). Any settlement offer which is submitted to the presiding officer at a hearing under this subsection shall be transmitted by the officer to the Commission for its consideration unless the settlement offer is clearly frivolous or duplicative of offers previously made.

(2) The requirement for a hearing in paragraph (1) shall not apply to an order issued under subsection (c) or (d) relating to an imminently hazardous consumer product with regard to which the Commission has filed an action under section 2061 of this title.

(g) Preliminary injunction

(1) If the Commission has initiated a proceeding under this section for the issuance of an order under subsection (d) of this section with respect to a product which the Commission has reason to believe presents a substantial product hazard, the Commission (without regard to section 2076(b)(7) of this title) or the Attorney General may, in accordance with 2061(d)(1) [2] of this title, apply to a district court of the United States for the issuance of a preliminary injunction to restrain the distribution in commerce of such product pending the completion of such proceeding. If such a preliminary injunction has been issued, the Commission (or the Attorney General if the preliminary injunction was issued upon an application of the Attorney General) may apply to the issuing court for extensions of such preliminary injunction.

(2) Any preliminary injunction, and any extension of a preliminary injunction, issued under this subsection with respect to a product shall be in effect for such period as the issuing court prescribes not to exceed a period which extends beyond the thirtieth day from the date of the issuance of the preliminary injunction (or, in the case of a preliminary injunction which has been extended, the date of its extension) or the date of the completion or termination of the proceeding under this section respecting such product, whichever date occurs first.

(3) The amount in controversy requirement of section 1331 of title 28 does not apply with respect to the jurisdiction of a district court of the United States to issue or exend [3] a preliminary injunction under this subsection.

(h) Cost-benefit analysis of notification or other action not required

Nothing in this section shall be construed to require the Commission, in determining that a product distributed in commerce presents a substantial product hazard and that notification or other action under this section should be taken, to prepare a comparison of the costs that would be incurred in providing notification or taking other action under this section with the benefits from such notification or action.

(i) Requirements for recall notices

(1) Guidelines

Not later than 180 days after August 14, 2008, the Commission shall, by rule, establish guidelines setting forth a uniform class of information to be included in any notice required under an order under subsection (c) or (d) of this section or under section 2061 of this title. Such guidelines shall include any information that the Commission determines would be helpful to consumers in—

(A) identifying the specific product that is subject to such an order;

(B) understanding the hazard that has been identified with such product (including information regarding incidents or injuries known to have occurred involving such product); and

(C) understanding what remedy, if any, is available to a consumer who has purchased the product.

(2) Content

Except to the extent that the Commission determines with respect to a particular product that one or more of the following items is unnecessary or inappropriate under the circumstances, the notice shall include the following:

(A) description of the product, including—

(i) the model number or stock keeping unit (SKU) number of the product;

(ii) the names by which the product is commonly known; and

(iii) a photograph of the product.

(B) A description of the action being taken with respect to the product.

(C) The number of units of the product with respect to which the action is being taken.

(D) A description of the substantial product hazard and the reasons for the action.

(E) An identification of the manufacturers and significant retailers of the product.

(F) The dates between which the product was manufactured and sold.

(G) The number and a description of any injuries or deaths associated with the product, the ages of any individuals injured or killed, and the dates on which the Commission received information about such injuries or deaths.

(H) A description of—

(i) any remedy available to a consumer;

(ii) any action a consumer must take to obtain a remedy; and

(iii) any information a consumer needs in order to obtain a remedy or information about a remedy, such as mailing addresses, telephone numbers, fax numbers, and email addresses.

(I) Other information the Commission deems appropriate.

(j) Substantial product hazard list

(1) In general

The Commission may specify, by rule, for any consumer product or class of consumer products, characteristics whose existence or absence shall be deemed a substantial product hazard under subsection (a)(2), if the Commission determines that—

(A) such characteristics are readily observable and have been addressed by voluntary standards; and

(B) such standards have been effective in reducing the risk of injury from consumer products and that there is substantial compliance with such standards.

(2) Judicial review

Not later than 60 days after promulgation of a rule under paragraph (1), any person adversely affected by such rule may file a petition for review under the procedures set forth in section 2060 of this title.

(Pub. L. 92–573, §15, Oct. 27, 1972, 86 Stat. 1221; Pub. L. 94–284, §12(a), May 11, 1976, 90 Stat. 508; Pub. L. 97–35, title XII, §1211(h)(4), Aug. 13, 1981, 95 Stat. 723; Pub. L. 97–414, §9(j)(3), (m), Jan. 4, 1983, 96 Stat. 2064, 2065; Pub. L. 100–418, title I, §1214(d), Aug. 23, 1988, 102 Stat. 1156; Pub. L. 101–608, title I, §§111(a)(2), 112(a), 113, Nov. 16, 1990, 104 Stat. 3114, 3115, 3117; Pub. L. 110–314, title II, §§214, 223(a), Aug. 14, 2008, 122 Stat. 3052, 3068.)

REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsec. (d)(2), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of Title 19, Customs Duties.

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–314, §214(a)(1), inserted "under this chapter or a similar rule, regulation, standard, or ban under any other Act enforced by the Commission" after "consumer product safety rule".

Subsec. (b). Pub. L. 110–314, §214(a)(2)(B)–(D), added par. (2), redesignated former pars. (2) and (3) as (3) and (4), respectively, and inserted "A report provided under paragraph (2) may not be used as the basis for criminal prosecution of the reporting person under section 1264 of this title, except for offenses which require a showing of intent to defraud or mislead." at end of concluding provisions.

Pub. L. 110–314, §214(a)(2)(A), substituted "consumer product, or other product or substance over which the Commission has jurisdiction under any other Act enforced by the Commission (other than motor vehicle equipment as defined in section 30102(a)(7) of title 49), distributed in commerce," for "consumer product distributed in commerce," in introductory provisions.

Subsec. (c). Pub. L. 110–314, §214(a)(3)(A), (C), (D), designated existing provisions as par. (1), added subpars. (A) to (C), and redesignated former pars. (1) to (3) as subpars. (D) to (F), respectively.

Subsec. (c)(1). Pub. L. 110–314, §214(a)(3)(B), inserted "or if the Commission, after notifying the manufacturer, determines a product to be an imminently hazardous consumer product and has filed an action under section 2061 of this title," after "such substantial product hazard," in introductory provisions.

Subsec. (c)(1)(D). Pub. L. 110–314, §214(a)(3)(E), substituted "comply, including posting clear and conspicuous notice on its Internet website, providing notice to any third party Internet website on which such manufacturer, retailer, distributor, or licensor has placed the product for sale, and announcements in languages other than English and on radio and television where the Commission determines that a substantial number of consumers to whom the recall is directed may not be reached by other notice." for "comply."

Subsec. (c)(2), (3). Pub. L. 110–314, §214(a)(3)(F), added pars. (2) and (3).

Subsec. (d). Pub. L. 110–314, §214(b)(1), (4), inserted par. (1) designation before "If the Commission" and redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively.

Subsec. (d)(1). Pub. L. 110–314, §214(b)(2), (3), in introductory provisions inserted "to provide the notice required by subsection (c) and" after "such product" and substituted "any one or more of the following actions it determines to be in the public interest:" for "whichever of the following actions the person to whom the order is directed elects:".

Subsec. (d)(1)(A), (B). Pub. L. 110–314, §214(b)(5), substituted "rule, regulation, standard, or ban" for

"consumer product safety rule".

Subsec. (d)(1)(C). Pub. L. 110–314, §214(b)(6), (7), substituted "more (i)" for "more (A)" and "or (ii)" for "or (B)".

Subsec. (d)(2). Pub. L. 110–314, §214(b)(13), which directed substitution of "described in paragraph (1)(C)." for "described in paragraph (3).", could not be executed because "paragraph (3)" did not appear subsequent to amendment by Pub. L. 110–314, §214(b)(11). See below.

Pub. L. 110–314, §214(b)(12), struck out "If an order under this subsection is directed to more than one person, the Commission shall specify which person has the election under this subsection" before ". An order under this subsection may prohibit".

Pub. L. 110–314, §214(b)(11), substituted "if the Commission orders the action described in subparagraph (C)" for "if the person to whom the order is directed elects to take the action described in paragraph (3)".

Pub. L. 110–314, §214(b)(9), (10), substituted "for approval by the Commission," for "satisfactory to the Commission," and "subparagraphs under which such person has been ordered to act" for "paragraphs of this subsection under which such person has elected to act".

Pub. L. 110–314, §214(b)(8), designated concluding provisions of subsec. (d) as par. (2) and substituted "shall also require" for "may also require". Former par. (2) redesignated (1)(B).

Subsec. (d)(3). Pub. L. 110–314, §214(b)(14), added par. (3). Former par. (3) redesignated (1)(C).

Subsec. (f). Pub. L. 110–314, §214(a)(4), designated existing provisions as par. (1), substituted "Except as provided in paragraph (2), an order" for "An order", and added par. (2).

Subsec. (i). Pub. L. 110–314, §214(c), added subsec. (i).

Subsec. (j). Pub. L. 110–314, §223(a), added subsec. (j).

1990—Subsec. (b). Pub. L. 101–608, §112(a)(4), (5), in concluding provisions substituted "comply, of such defect, or of such risk" for "comply or of such defect" and "defect, failure to comply, or such risk" for "defect or failure to comply".

Subsec. (b)(1). Pub. L. 101–608, §112(a)(1), inserted reference to voluntary consumer product safety standard upon which Commission has relied under section 2058 of this title.

Subsec. (b)(3). Pub. L. 101–608, §112(a)(2), (3), added par. (3).

Subsec. (f). Pub. L. 101–608, §113, inserted at end "Any settlement offer which is submitted to the presiding officer at a hearing under this subsection shall be transmitted by the officer to the Commission for its consideration unless the settlement offer is clearly frivolous or duplicative of offers previously made."

Subsec. (h). Pub. L. 101–608, §111(a)(2), added subsec. (h).

1988—Subsec. (d). Pub. L. 100–418 substituted "general note 2 of the Harmonized Tariff Schedule of the United States" for "general headnote 2 to the Tariff Schedules of the United States" in last sentence.

1983—Subsec. (g)(1). Pub. L. 97–414, §9(m), amended, in part, Pub. L. 97–35, §1211(h)(4). See 1981 Amendment note below.

Pub. L. 97–414, §9(j)(3), substituted "2061(d)(1)" for "section 2061(c)(1)".

1981—Subsec. (g)(1). Pub. L. 97–35, §1211(h)(4), substituted "section 2061(c)(1)" for "section 2061(e)(1)".

Pub. L. 97–35, §1211(h)(4), which directed insertion of ", Science and Transportation" after "on Commerce" and could not be executed because "on Commerce" did not appear in text, was amended by Pub. L. 97–414, §9(m), so as to strike out such directory language.

1976—Subsec. (d). Pub. L. 94–284, §12(a)(1), provided, in provision following par. (3), that an order issued under this subsection may prohibit the person to whom it applies from manufacturing for sale, offering for sale, distributing in commerce, or importing into the customs territory of the United States, the product for which the order was issued.

Subsec. (g). Pub. L. 94–284, §12(a)(2), added subsec. (g).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 214(a)(2) of Pub. L. 110–314 effective on the date that is 60 days after Aug. 14, 2008, see section 239(a) of Pub. L. 110–314, set out as a note under section 2051 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub. L. 100–418, set out as an Effective Date note under section 3001 of Title 19, Customs Duties.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, see section 1215 of Pub. L. 97–35, set out as a note under section 2052 of this title.

REPORTING REQUIREMENTS

Pub. L. 103–267, title I, §102, June 16, 1994, 108 Stat. 726, provided that:

"(a) REPORTS TO CONSUMER PRODUCT SAFETY COMMISSION.—

"(1) REQUIREMENT TO REPORT.—Each manufacturer, distributor, retailer, and importer of a marble, small ball, or latex balloon, or a toy or game that contains a marble, small ball, latex balloon, or other small part, shall report to the Commission any information obtained by such manufacturer, distributor, retailer, or importer which reasonably supports the conclusion that—

"(A) an incident occurred in which a child (regardless of age) choked on such a marble, small ball, or latex balloon or on a marble, small ball, latex balloon, or other small part contained in such toy or game; and

"(B) as a result of that incident the child died, suffered serious injury, ceased breathing for any length of time, or was treated by a medical professional.

"(2) TREATMENT UNDER CPSA.—For purposes of section 19(a)(3) of the Consumer Product Safety Act (15 U.S.C. 2068(a)(3)), the requirement to report information under this subsection is deemed to be a requirement under such Act [15 U.S.C. 2051 et seq.].

"(3) EFFECT ON LIABILITY.—A report by a manufacturer, distributor, retailer, or importer under paragraph (1) shall not be interpreted, for any purpose, as an admission of liability or of the truth of the information contained in the report.

"(b) CONFIDENTIALITY PROTECTIONS.—The confidentiality protections of section 6(b) of the Consumer Product Safety Act (15 U.S.C. 2055(b)) apply to any information reported to the Commission under subsection (a) of this section. For purposes of section 6(b)(5) of such Act, information so reported shall be treated as information submitted pursuant to section 15(b) of such Act [15 U.S.C. 2064(b)] respecting a consumer product."

[1] So in original. Probably should be "paragraph (1)(C)."

[2] So in original. Probably should be preceded by "section".

[3] So in original. Probably should be "extend".

§2065. Inspection and recordkeeping

(a) Inspection

For purposes of implementing this chapter, or rules or orders prescribed under this chapter, officers or employees duly designated by the Commission, upon presenting appropriate credentials and a written notice from the Commission to the owner, operator, or agent in charge, are authorized—

(1) to enter, at reasonable times, (A) any factory, warehouse, or establishment in which consumer products are manufactured or held, in connection with distribution in commerce, (B) any firewalled conformity assessment bodies accredited under section 2063(f)(2)(D) of this title, or (C) any conveyance being used to transport consumer products in connection with distribution in commerce; and

(2) to inspect, at reasonable times and in a reasonable manner such conveyance or those areas of such factory, firewalled conformity assessment body, warehouse, or establishment where such products are manufactured, held, or transported and which may relate to the safety of such products. Each such inspection shall be commenced and completed with reasonable promptness.

(b) Recordkeeping

Every person who is a manufacturer, private labeler, or distributor of a consumer product shall establish and maintain such records, make such reports, and provide such information as the Commission may, by rule, reasonably require for the purposes of implementing this chapter, or to determine compliance with rules or orders prescribed under this chapter. Upon request of an officer or employee duly designated by the Commission, every such manufacturer, private labeler, or

distributor shall permit the inspection of appropriate books, records, and papers relevant to determining whether such manufacturer, private labeler, or distributor has acted or is acting in compliance with this chapter and rules under this chapter.

(c) Identification of manufacturers, importers, retailers, and distributors

Upon request by an officer or employee duly designated by the Commission—

(1) every importer, retailer, or distributor of a consumer product (or other product or substance over which the Commission has jurisdiction under this chapter or any other Act) shall identify the manufacturer of that product by name, address, or such other identifying information as the officer or employee may request, to the extent that such information is known or can be readily determined by the importer, retailer, or distributor; and

(2) every manufacturer shall identify by name, address, or such other identifying information as the officer or employee may request—

(A) each retailer or distributor to which the manufacturer directly supplied a given consumer product (or other product or substance over which the Commission has jurisdiction under this chapter or any other Act);

(B) each subcontractor involved in the production or fabrication of such product or substance; and

(C) each subcontractor from which the manufacturer obtained a component thereof.

(d) Manufacturer's compliance

The Commission shall, by rule, condition the manufacturing for sale, offering for sale, distribution in commerce, or importation into the United States of any consumer product or other product on the manufacturer's compliance with the inspection and recordkeeping requirements of this chapter and the Commission's rules with respect to such requirements.

(Pub. L. 92–573, §16, Oct. 27, 1972, 86 Stat. 1222; Pub. L. 110–314, title II, §§215, 223(c)(2), Aug. 14, 2008, 122 Stat. 3056, 3069.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–314, §215(c)(1), inserted subsec. heading.

Subsec. (a)(1). Pub. L. 110–314, §215(a)(1), substituted "(B) any firewalled conformity assessment bodies accredited under section 2063(f)(2)(D) of this title, or (C)" for "or (B)".

Subsec. (a)(2). Pub. L. 110–314, §215(a)(2), inserted "firewalled conformity assessment body," after "factory,".

Subsec. (b). Pub. L. 110–314, §215(c)(2), inserted subsec. heading.

Subsec. (c). Pub. L. 110–314, §215(b), added subsec. (c).

Subsec. (d). Pub. L. 110–314, §223(c)(2), added subsec. (d).

§2066. Imported products

(a) Refusal of admission

Any consumer product offered for importation into the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States) shall be refused admission into such customs territory if such product—

(1) fails to comply with an applicable consumer product safety rule;

(2) is not accompanied by a certificate required by this chapter or any other Act enforced by the Commission, or is accompanied by a false certificate, if the manufacturer in the exercise of due care has reason to know that the certificate is false or misleading in any material respect, or is not accompanied by any label or certificate (including tracking labels) required under section 2063 of this title or any rule or regulation under such section;

(3) is or has been determined to be an imminently hazardous consumer product in a proceeding brought under section 2061 of this title;

(4) has a product defect which constitutes a substantial product hazard (within the meaning of section 2064(a)(2)) of this title; or

(5) is a product which was manufactured by a person who the Commission has informed the Secretary of the Treasury is in violation of subsection (g) of this section.

(b) Samples

The Secretary of the Treasury shall obtain without charge and deliver to the Commission, upon the latter's request, a reasonable number of samples of consumer products being offered for import. Except for those owners or consignees who are or have been afforded an opportunity for a hearing in a proceeding under section 2061 of this title with respect to an imminently hazardous product, the owner or consignee of the product shall be afforded an opportunity by the Commission for a hearing in accordance with section 554 of title 5 with respect to the importation of such products into the customs territory of the United States. If it appears from examination of such samples or otherwise that a product must be refused admission under the terms of subsection (a) of this section, such product shall be refused admission, unless subsection (c) of this section applies and is complied with.

(c) Modification

If it appears to the Commission that any consumer product which may be refused admission pursuant to subsection (a) of this section can be so modified that it need not (under the terms of paragraphs (1) through (4) of subsection (a) of this section) be refused admission, the Commission may defer final determination as to the admission of such product and, in accordance with such regulations as the Commission and the Secretary of the Treasury shall jointly agree to, permit such product to be delivered from customs custody under bond for the purpose of permitting the owner or consignee an opportunity to so modify such product.

(d) Supervision of modifications

All actions taken by an owner or consignee to modify such product under subsection (c) of this section shall be subject to the supervision of an officer or employee of the Commission and of the Department of the Treasury. If it appears to the Commission that the product cannot be so modified or that the owner or consignee is not proceeding satisfactorily to modify such product, it shall be refused admission into the customs territory of the United States, and the Commission may direct the Secretary to demand redelivery of the product into customs custody, and to seize the product in accordance with section 2071(b) of this title if it is not so redelivered.

(e) Product destruction

Products refused admission into the customs territory of the United States shall be destroyed unless, upon application by the owner, consignee, or importer of record, the Secretary of the Treasury permits the export of the product in lieu of destruction. If the owner, consignee, or importer of record does not export the product within 90 days of approval to export, such product shall be destroyed.

(f) Payment of expenses occasioned by refusal of admission

All expenses (including travel, per diem or subsistence, and salaries of officers or employees of the United States) in connection with the destruction provided for in this section (the amount of such expenses to be determined in accordance with regulations of the Secretary of the Treasury) and all expenses in connection with the storage, cartage, or labor with respect to any consumer product refused admission under this section, shall be paid by the owner or consignee and, in default of such payment, shall constitute a lien against any future importations made by such owner or consignee.

(g) Inspection and recordkeeping requirement

Manufacturers of imported products shall be in compliance with all inspection and recordkeeping requirements under section 2065 of this title applicable to such products, and the Commission shall advise the Secretary of the Treasury of any manufacturer who is not in compliance with all inspection and recordkeeping requirements under section 2065 of this title.

(h) Product surveillance program

(1) The Commission shall establish and maintain a permanent product surveillance program, in cooperation with other appropriate Federal agencies, for the purpose of carrying out the

Commission's responsibilities under this chapter and the other Acts administered by the Commission and preventing the entry of unsafe consumer products into the commerce of the United States.

(2) The Commission may provide to the agencies with which it is cooperating under paragraph (1) such information, data, violator lists, test results, and other support, guidance, and documents as may be necessary or helpful for such agencies to cooperate with the Commission to carry out the product surveillance program under paragraph (1).

(3) The Commission shall periodically report to the appropriate Congressional committees the results of the surveillance program under paragraph (1).

(Pub. L. 92–573, §17, Oct. 27, 1972, 86 Stat. 1223; Pub. L. 100–418, title I, §1214(d), Aug. 23, 1988, 102 Stat. 1156; Pub. L. 101–608, title I, §114, Nov. 16, 1990, 104 Stat. 3118; Pub. L. 110–314, title II, §§216(b), 223(b), (c)(1), 235(c)(6), Aug. 14, 2008, 122 Stat. 3058, 3068, 3069, 3075.)

REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsec. (a), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of Title 19, Customs Duties.

AMENDMENTS

2008—Subsec. (a)(2). Pub. L. 110–314, §216(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "is not accompanied by a certificate required by section 2063 of this title, or is not labeled in accordance with regulations under section 2063(c) of this title;".

Subsec. (e). Pub. L. 110–314, §223(b), amended subsec. (e) generally. Prior to amendment, text read as follows: "Products refused admission into the customs territory of the United States under this section must be exported, except that upon application, the Secretary of the Treasury may permit the destruction of the product in lieu of exportation. If the owner or consignee does not export the product within a reasonable time, the Department of the Treasury may destroy the product."

Subsec. (g). Pub. L. 110–314, §223(c)(1), amended subsec. (g) generally. Prior to amendment, text read as follows: "The Commission may, by rule, condition the importation of a consumer product on the manufacturer's compliance with the inspection and recordkeeping requirements of this chapter and the Commission's rules with respect to such requirements."

Subsec. (h)(3). Pub. L. 110–314, §235(c)(6), substituted "the appropriate Congressional committees" for "the Congress".

1990—Subsec. (h). Pub. L. 101–608 added subsec. (h).

1988—Subsec. (a). Pub. L. 100–418 substituted "general note 2 of the Harmonized Tariff Schedule of the United States" for "general headnote 2 to the Tariff Schedules of the United States".

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by sections 216(b) and 223(b) of Pub. L. 110–314 effective on the date that is 30 days after Aug. 14, 2008, see section 239(a) of Pub. L. 110–314, set out as a note under section 2051 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub. L. 100–418, set out as an Effective Date note under section 3001 of Title 19, Customs Duties.

IMPORT SAFETY MANAGEMENT AND INTERAGENCY COOPERATION

Pub. L. 110–314, title II, §222, Aug. 14, 2008, 122 Stat. 3066, provided that:

"(a) RISK ASSESSMENT METHODOLOGY.—Not later than 2 years after the date of enactment of this Act [Aug. 14, 2008], the Commission shall develop a risk assessment methodology for the identification of shipments of consumer products that are—

"(1) intended for import into the United States; and

"(2) likely to include consumer products in violation of section 17(a) of the Consumer Product Safety Act (15 U.S.C. 2066(a)) or other import provisions enforced by the Commission.

"(b) USE OF INTERNATIONAL TRADE DATA SYSTEM AND OTHER DATABASES.—In developing the methodology required under subsection (a), the Commission shall—

"(1) provide for the use of the International Trade Data System, insofar as is practicable, established under section 411(d) of the Tariff Act of 1930 (19 U.S.C. 1411(d)) to evaluate and assess information about shipments of consumer products intended for import into the customs territory of the United States;

"(2) incorporate the risk assessment methodology required under this section into its information

technology modernization plan;

"(3) examine, in consultation with U.S. Customs and Border Protection, how to share information collected and retained by the Commission, including information in the database required under section 6A of the Consumer Product Safety Act [15 U.S.C. 2055a], for the purpose of identifying shipments of consumer products in violation of section 17(a) of such Act (15 U.S.C. 2066(a)) or other import provisions enforced by the Commission; and

"(4) examine, in consultation with U.S. Customs and Border Protection, how to share information required by section 15(j) of the CPSA [15 U.S.C. 2064(j)] as added by section 223 of this Act for the purpose of identifying shipments of consumer products in violation of section 17(a) of the Consumer Product Safety Act (15 U.S.C. 2066(a)) or other import provisions enforced by the Commission.

"(c) COOPERATION WITH U.S. CUSTOMS AND BORDER PROTECTION.—Not later than 1 year after the date of enactment of this Act [Aug. 14, 2008], the Commission shall develop a plan for sharing information and coordinating with U.S. Customs and Border Protection that considers, at a minimum, the following:

"(1) The number of full-time equivalent personnel employed by the Commission that should be stationed at U.S. ports of entry for the purpose of identifying shipments of consumer products that are in violation of section 17(a) of the Consumer Product Safety Act (15 U.S.C. 2066(a)) or other import provisions enforced by the Commission.

"(2) The extent and nature of cooperation between the Commission and U.S. Customs and Border Protection personnel stationed at ports of entry in the identification of shipments of consumer product that are in violation of section 17(a) of the Consumer Product Safety Act (15 U.S.C. 2066(a)) or other import provisions enforced by the Commission under this Act [see Short Title of 2008 Amendment note set out under section 2051 of this title] or any other provision of law.

"(3) The number of full-time equivalent personnel employed by the Commission that should be stationed at the National Targeting Center (or its equivalent) of U.S. Customs and Border Protection, including—

"(A) the extent and nature of cooperation between Commission and U.S. Customs and Border Protection personnel stationed at the National Targeting Center (or its equivalent), as well as at United States ports of entry;

"(B) the responsibilities of Commission personnel assigned to the National Targeting Center (or its equivalent) under subsection (b)(3); and

"(C) whether the information available at the National Targeting Center (or its equivalent) would be useful to the Commission or U.S. Customs and Border Protection in identifying the consumer products described in subsection (a).

"(4) The development of rule sets for the Automated Targeting System and expedited access for the Commission to the Automated Targeting System.

"(5) The information and resources necessary for the development, updating, and effective implementation of the risk assessment methodology required in subsection (a).

"(d) REPORT TO CONGRESS.—Not later than 180 days after completion of the risk assessment methodology required under this section, the Commission shall submit a report to the appropriate Congressional committees concerning, at a minimum, the following:

"(1) The Commission's plan for implementing the risk assessment methodology required under this section.

"(2) The changes made or necessary to be made to the Commission's memorandum of understanding with U.S. Customs and Border Protection.

"(3) The status of—

"(A) the development of the Automated Targeting System rule set required under subsection (c)(4) of this section;

"(B) the Commission's access to the Automated Targeting System; and

"(C) the effectiveness of the International Trade Data System in enhancing cooperation between the Commission and U.S. Customs and Border Protection for the purpose of identifying shipments of consumer products in violation of section 17(a) of the Consumer Product Safety Act (15 U.S.C. 2066(a)) or other import provisions enforced by the Commission;

"(4) Whether the Commission requires additional statutory authority under the Consumer Product Safety Act [15 U.S.C. 2051 et seq.], the Federal Hazardous Substances Act [15 U.S.C. 1261 et seq.], the Flammable Fabrics Act [15 U.S.C. 1191 et seq.], or the Poison Prevention Packaging Act of 1970 [15 U.S.C. 1471 et seq.] in order to implement the risk assessment methodology required under this section.

"(5) The level of appropriations necessary to implement the risk assessment methodology required

under this section."

[For definitions of "Commission" and "appropriate Congressional committees" used in section 222 of Pub. L. 110–314, set out above, see section 2(a) of Pub. L. 110–314, set out as a note under section 2051 of this title.]

§2067. Exemption of exports

(a) Risk of injury to consumers within United States

This chapter shall not apply to any consumer product if (1) it can be shown that such product is manufactured, sold, or held for sale for export from the United States (or that such product was imported for export), unless (A) such consumer product is in fact distributed in commerce for use in the United States, or (B) the Commission determines that exportation of such product presents an unreasonable risk of injury to consumers within the United States, and (2) such consumer product when distributed in commerce, or any container in which it is enclosed when so distributed, bears a stamp or label stating that such consumer product is intended for export; except that this chapter shall apply to any consumer product manufactured for sale, offered for sale, or sold for shipment to any installation of the United States located outside of the United States.

(b) Statement of exportation: filing period, information; notification of foreign country; petition for minimum filing period: good cause

Not less than thirty days before any person exports to a foreign country any product which is not in conformity with an applicable consumer product safety rule in effect under this chapter, such person shall file a statement with the Commission notifying the Commission of such exportation, and the Commission, upon receipt of such statement, shall promptly notify the government of such country of such exportation and the basis for such safety standard or rule. Any statement filed with the Commission under the preceding sentence shall specify the anticipated date of shipment of such product, the country and port of destination of such product, and the quantity of such product that will be exported, and shall contain such other information as the Commission may by regulation require. Upon petition filed with the Commission by any person required to file a statement under this subsection respecting an exportation, the Commission may, for good cause shown, exempt such person from the requirement of this subsection that such a statement be filed no less than thirty days before the date of the exportation, except that in no case shall the Commission permit such a statement to be filed later than the tenth day before such date.

(c) Authority to prohibit exports

The Commission may prohibit a person from exporting from the United States for purpose of sale any consumer product that is not in conformity with an applicable consumer product safety rule under this chapter, unless the importing country has notified the Commission that such country accepts the importation of such consumer product, provided that if the importing country has not so notified the Commission within 30 days after the Commission has provided notice to the importing country of the impending shipment, the Commission may take such action as appropriate within its authority with respect to the disposition of the product under the circumstances.

(d) Export pursuant to section 2066(e)

Nothing in this section shall apply to any consumer product, the export of which is permitted by the Secretary of the Treasury pursuant to section 2066(e) of this title.

(Pub. L. 92–573, §18, Oct. 27, 1972, 86 Stat. 1224; Pub. L. 95–631, §6(a), Nov. 10, 1978, 92 Stat. 3745; Pub. L. 110–314, title II, §221(a), Aug. 14, 2008, 122 Stat. 3065.)

AMENDMENTS

2008—Subsec. (b). Pub. L. 110–314, §221(a)(1), substituted "any product which is not in conformity with an applicable consumer product safety rule in effect under this chapter," for "any product—

"(1) which is not in conformity with an applicable consumer product safety standard in effect under this chapter, or

"(2) which is declared to be a banned hazardous substance by a rule promulgated under section 2058 of this title,".

Subsecs. (c), (d). Pub. L. 110–314, §221(a)(2), added subsecs. (c) and (d).

1978—Subsec. (a). Pub. L. 95–631 designated existing text as subsec. (a) and cl. (A) and in subsec. (a), as so designated, added cl. (B), and added subsec. (b).

§2068. Prohibited acts

(a) Designation

It shall be unlawful for any person to—

(1) sell, offer for sale, manufacture for sale, distribute in commerce, or import into the United States any consumer product, or other product or substance that is regulated under this chapter or any other Act enforced by the Commission, that is not in conformity with an applicable consumer product safety rule under this chapter, or any similar rule, regulation, standard, or ban under any other Act enforced by the Commission;

(2) sell, offer for sale, manufacture for sale, distribute in commerce, or import into the United States any consumer product, or other product or substance that is—

(B) [1] subject to voluntary corrective action taken by the manufacturer, in consultation with the Commission, of which action the Commission has notified the public or if the seller, distributor, or manufacturer knew or should have known of such voluntary corrective action;

(C) subject to an order issued under section 2061 or 2064 of this title; or

(D) a banned hazardous substance within the meaning of section 1261(q)(1) of this title;

(3) fail or refuse to permit access to or copying of records, or fail or refuse to establish or maintain records, or fail or refuse to make reports or provide information, or fail or refuse to permit entry or inspection, as required under this chapter or rule thereunder;

(4) fail to furnish information required by section 2064(b) of this title;

(5) fail to comply with an order issued under section 2064(c) or (d) of this title (relating to notification, to repair, replacement, and refund, and to prohibited acts);

(6) fail to furnish a certificate required by this chapter or any other Act enforced by the Commission, or to issue a false certificate if such person in the exercise of due care has reason to know that the certificate is false or misleading in any material respect; or to fail to comply with any requirement of section 2063 of this title (including the requirement for tracking labels) or any rule or regulation under such section;

(7) fail to comply with any rule under section 2058(g)(2) of this title (relating to stockpiling);

(8) fail to comply with any rule under section 2076(e) of this title (relating to provision of performance and technical data);

(9) fail to comply with any rule or requirement under section 2082 of this title (relating to labeling and testing of cellulose insulation);

(10) fail to file a statement with the Commission pursuant to section 2067(b) of this title;

(11) fail to furnish information required by section 2084 of this title.[2]

(12) sell, offer for sale, distribute in commerce, or import into the United States any consumer product bearing a registered safety certification mark owned by an accredited conformity assessment body, which mark is known, or should have been known, by such person to be used in a manner unauthorized by the owner of that certification mark;

(13) misrepresent to any officer or employee of the Commission the scope of consumer products subject to an action required under section 2061 or 2064 of this title, or to make a material misrepresentation to such an officer or employee in the course of an investigation under this chapter or any other Act enforced by the Commission; or [3]

(14) exercise, or attempt to exercise, undue influence on a third party conformity assessment body (as defined in section 2063(f)(2) of this title) with respect to the testing, or reporting of the results of testing, of any product for compliance under this chapter or any other Act enforced by

the Commission, or to subdivide the production of any children's product into small quantities that have the effect of evading any third party testing requirements under section 2063(a)(2) of this title;

(15) export from the United States for purpose of sale any consumer product, or other product or substance regulated by the Commission (other than a consumer product or substance, the export of which is permitted by the Secretary of the Treasury pursuant to section 2066(e) of this title) that—

(A) is subject to an order issued under section 2061 or 2064 of this title or is a banned hazardous substance within the meaning of section 1261(q)(1) of this title; or

(B) is subject to a voluntary corrective action taken by the manufacturer, in consultation with the Commission, of which action the Commission has notified the public; or

(16) violate an order of the Commission issued under section 2067(c) of this title.

(b) Exception

Paragraphs (1) and (2) of subsection (a) of this section shall not apply to any person (1) who holds a certificate issued in accordance with section 2063(a) of this title to the effect that such consumer product conforms to all applicable consumer product safety rules, unless such person knows that such consumer product does not conform, or (2) who relies in good faith on the representation of the manufacturer or a distributor of such product that the product is not subject to an applicable product safety rule.

(Pub. L. 92–573, §19, Oct. 27, 1972, 86 Stat. 1224; Pub. L. 94–284, §§12(b), 13(a), May 11, 1976, 90 Stat. 508, 509; Pub. L. 95–319, §3(b), July 11, 1978, 92 Stat. 390; Pub. L. 95–631, §6(b), Nov. 10, 1978, 92 Stat. 3745; Pub. L. 97–414, §9(j)(4), Jan. 4, 1983, 96 Stat. 2064; Pub. L. 101–608, title I, §112(d), Nov. 16, 1990, 104 Stat. 3117; Pub. L. 110–314, title II, §216(a), Aug. 14, 2008, 122 Stat. 3056; Pub. L. 112–28, §2(b), Aug. 12, 2011, 125 Stat. 279.)

AMENDMENTS

2011—Subsec. (a)(14). Pub. L. 112–28 substituted ", or to subdivide the production of any children's product into small quantities that have the effect of evading any third party testing requirements under section 2063(a)(2) of this title;" for period at end.

2008—Subsec. (a)(1), (2). Pub. L. 110–314, §216(a)(1), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

"(1) manufacture for sale, offer for sale, distribute in commerce, or import into the United States any consumer product which is not in conformity with an applicable consumer product safety standard under this chapter;

"(2) manufacture for sale, offer for sale, distribute in commerce, or import into the United States any consumer product which has been declared a banned hazardous product by a rule under this chapter;".

Subsec. (a)(6). Pub. L. 110–314, §216(a)(2), amended par. (6) generally. Prior to amendment, par. (6) read as follows: "fail to furnish a certificate required by section 2063 of this title or issue a false certificate if such person in the exercise of due care has reason to know that such certificate is false or misleading in any material respect; or to fail to comply with any rule under section 2063(c) of this title (relating to labeling);".

Subsec. (a)(7) to (10). Pub. L. 110–314, §216(a)(3)–(6), struck out "or" at end of par. (7) and "and" at end of par. (8) and substituted semicolon for period at end of pars. (9) and (10).

Subsec. (a)(12) to (16). Pub. L. 110–314, §216(a)(7), added pars. (12) to (16).

1990—Subsec. (a)(11). Pub. L. 101–608 added par. (11).

1983—Subsec. (a)(7). Pub. L. 97–414, §9(j)(4)(A), substituted "section 2058(g)(2)" for "section 2058(d)(2)".

Subsec. (a)(8). Pub. L. 97–414, §9(j)(4)(B), redesignated par. (9) as (8) and struck out former par. (8) which made it unlawful for any person to fail to comply with any rule under section 2062 of this title (relating to prior notice and description of new consumer products).

Subsec. (a)(9), (10). Pub. L. 97–414, §9(j)(4)(B), redesignated par. (10), as added by Pub. L. 95–319, as (9). Former par. (9) redesignated (8).

1978—Subsec. (a)(10). Pub. L. 95–631 added par. (10), providing that it be unlawful to fail to file a statement with the Commission pursuant to section 2067(b) of this title.

Pub. L. 95–319 added par. (10), providing that it be unlawful to fail to comply with any rule or requirement

under section 2082 of this title.

1976—Subsec. (a). Pub. L. 94–284 substituted "to" for "and to" and inserted ", and to prohibited acts" after "refund" in par. (5), inserted "or fail or refuse to establish or maintain records," after "copying of records," in par. (3), and added pars. (8) and (9).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–314 effective on the date that is 30 days after Aug. 14, 2008, see section 239(a) of Pub. L. 110–314, set out as a note under section 2051 of this title.

DUTY TO REPORT CHOKING INCIDENTS CAUSED BY CHILDREN'S TOYS OR GAMES

For purposes of subsec. (a)(3) of this section, requirement to report information relating to choking incidents caused by children's toys or games to Consumer Product Safety Commission deemed a requirement under this chapter, see section 102 of Pub. L. 103–267, set out as a Reporting Requirements note under section 2064 of this title.

[1] *So in original. No subpar. (A) has been enacted.*

[2] *So in original. The period probably should be a semicolon.*

[3] *So in original. The word "or" probably should not appear.*

§2069. Civil penalties

(a) Amount of penalty

(1) Any person who knowingly violates section 2068 of this title shall be subject to a civil penalty not to exceed $100,000 for each such violation. Subject to paragraph (2), a violation of section 2068(a)(1), (2), (4), (5), (6), (7), (8), (9), (10), or (11) of this title shall constitute a separate offense with respect to each consumer product involved, except that the maximum civil penalty shall not exceed $15,000,000 for any related series of violations. A violation of section 2068(a)(3) of this title shall constitute a separate violation with respect to each failure or refusal to allow or perform an act required thereby; and, if such violation is a continuing one, each day of such violation shall constitute a separate offense, except that the maximum civil penalty shall not exceed $15,000,000 for any related series of violations.

(2) The second sentence of paragraph (1) of this subsection shall not apply to violations of paragraph (1) or (2) of section 2068(a) of this title—

(A) if the person who violated such paragraphs is not the manufacturer or private labeler or a distributor of the products involved, and

(B) if such person did not have either (i) actual knowledge that his distribution or sale of the product violated such paragraphs or (ii) notice from the Commission that such distribution or sale would be a violation of such paragraphs.

(3)(A) The maximum penalty amounts authorized in paragraph (1) shall be adjusted for inflation as provided in this paragraph.

(B) Not later than December 1, 2011, and December 1 of each fifth calendar year thereafter, the Commission shall prescribe and publish in the Federal Register a schedule of maximum authorized penalties that shall apply for violations that occur after January 1 of the year immediately following such publication.

(C) The schedule of maximum authorized penalties shall be prescribed by increasing each of the amounts referred to in paragraph (1) by the cost-of-living adjustment for the preceding five years. Any increase determined under the preceding sentence shall be rounded to—

(i) in the case of penalties greater than $1,000 but less than or equal to $10,000, the nearest multiple of $1,000;

(ii) in the case of penalties greater than $10,000 but less than or equal to $100,000, the nearest

multiple of $5,000;

(iii) in the case of penalties greater than $100,000 but less than or equal to $200,000, the nearest multiple of $10,000; and

(iv) in the case of penalties greater than $200,000, the nearest multiple of $25,000.

(D) For purposes of this subsection:

(i) The term "Consumer Price Index" means the Consumer Price Index for all-urban consumers published by the Department of Labor.

(ii) The term "cost-of-living adjustment for the preceding five years" means the percentage by which—

(I) the Consumer Price Index for the month of June of the calendar year preceding the adjustment; exceeds

(II) the Consumer Price Index for the month of June preceding the date on which the maximum authorized penalty was last adjusted.

(b) Relevant factors in determining amount of penalty

In determining the amount of any penalty to be sought upon commencing an action seeking to assess a penalty for a violation of section 2068(a) of this title, the Commission shall consider the nature, circumstances, extent, and gravity of the violation, including the nature of the product defect, the severity of the risk of injury, the occurrence or absence of injury, the number of defective products distributed, the appropriateness of such penalty in relation to the size of the business of the person charged, including how to mitigate undue adverse economic impacts on small businesses, and such other factors as appropriate.

(c) Compromise of penalty; deductions from penalty

Any civil penalty under this section may be compromised by the Commission. In determining the amount of such penalty or whether it should be remitted or mitigated and in what amount, the Commission shall consider the appropriateness of such penalty to the size of the business of the person charged, including how to mitigate undue adverse economic impacts on small businesses, the nature, circumstances, extent, and gravity of the violation, including,[1] the nature of the product defect, the severity of the risk of injury, the occurrence or absence of injury, and the number of defective products distributed, and such other factors as appropriate. The amount of such penalty when finally determined, or the amount agreed on compromise, may be deducted from any sums owing by the United States to the person charged.

(d) "Knowingly" defined

As used in the first sentence of subsection (a)(1) of this section, the term "knowingly" means (1) the having of actual knowledge, or (2) the presumed having of knowledge deemed to be possessed by a reasonable man who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations.

(Pub. L. 92–573, §20, Oct. 27, 1972, 86 Stat. 1225; Pub. L. 94–284, §13(b), May 11, 1976, 90 Stat. 509; Pub. L. 95–631, §6(c), Nov. 10, 1978, 92 Stat. 3745; Pub. L. 97–35, title XII, §1211(c), Aug. 13, 1981, 95 Stat. 721; Pub. L. 101–608, title I, §§112(e), 115(a), Nov. 16, 1990, 104 Stat. 3117, 3118; Pub. L. 110–314, title II, §217(a)(1), (b)(1)(A), Aug. 14, 2008, 122 Stat. 3058.)

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–314, §217(a)(1)(A), (B), substituted "$100,000" for "$5,000" and substituted "$15,000,000" for "$1,250,000" in two places.

Subsec. (a)(3)(B). Pub. L. 110–314, §217(a)(1)(C), which directed amendment of subsec. (a)(1) by substituting "December 1, 2011," for "December 1, 1994," in par. (3)(B), was executed by making the substitution in subsec. (a)(3)(B) to reflect the probable intent of Congress.

Subsec. (b). Pub. L. 110–314, §217(b)(1)(A)(i), inserted "the nature, circumstances, extent, and gravity of the violation, including" after "shall consider", substituted "products distributed," for "products distributed, and", and inserted ", including how to mitigate undue adverse economic impacts on small businesses, and such other factors as appropriate" before period at end.

Subsec. (c). Pub. L. 110–314, §217(b)(1)(A)(ii)(II), inserted ", and such other factors as appropriate" after "products distributed".

Pub. L. 110–314, §217(b)(1)(A)(ii)(I), which directed amendment of subsec. (c) by inserting ", including how to mitigate undue adverse economic impacts on small businesses, the nature, circumstances, extent, and gravity of the violation, including" after "person charged", was executed by making the insertion after "person charged" the first place appearing, to reflect the probable intent of Congress.

1990—Subsec. (a)(1). Pub. L. 101–608, §§112(e), 115(a)(1), (2), substituted "$5,000" for "$2,000", and "(10), or (11)" for "or (10)", and substituted "$1,250,000" for "$500,000" in two places.

Subsec. (a)(3). Pub. L. 101–608, §115(a)(3), added par. (3).

1981—Subsecs. (b) to (d). Pub. L. 97–35 added subsec. (b), redesignated former subsec. (b) as (c), substituted "the Commission shall consider the appropriateness of such penalty to the size of the business of the person charged, the nature of the product defect, the severity of the risk of injury, the occurrence or absence of injury, and the number of defective products distributed" for "the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered", and redesignated subsec. (c) as (d).

1978—Subsec. (a)(1). Pub. L. 95–631 made violation of section 2068(a)(10) of this title a separate offense.

1976—Subsec. (a)(1). Pub. L. 94–284 inserted reference to pars. (8) and (9).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 217(a)(1) of Pub. L. 110–314 effective on the date that is the earlier of the date on which final regulations are issued under section 217(b)(2) of Pub. L. 110–314, set out below, or 1 year after Aug. 14, 2008, see section 217(a)(4) of Pub. L. 110–314, set out as a note under section 1194 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, see section 1215 of Pub. L. 97–35, set out as a note under section 2052 of this title.

CIVIL PENALTY CRITERIA

Pub. L. 110–314, title II, §217(b)(2), Aug. 14, 2008, 122 Stat. 3059, provided that: "Not later than 1 year after the date of enactment of this Act [Aug. 14, 2008], and in accordance with the procedures of section 553 of title 5, United States Code, the [Consumer Product Safety] Commission shall issue a final regulation providing its interpretation of the penalty factors described in section 20(b) of the Consumer Product Safety Act (15 U.S.C. 2069(b)), section 5(c)(3) of the Federal Hazardous Substances Act (15 U.S.C. 1264(c)(3)), and section 5(e)(2) of the Flammable Fabrics Act (15 U.S.C. 1194(e)(2)), as amended by subsection (a)."

[1] So in original. The comma probably should not appear.

§2070. Criminal penalties

(a) Violation of section 2068 of this title is punishable by—

(1) imprisonment for not more than 5 years for a knowing and willful violation of that section;

(2) a fine determined under section 3571 of title 18; or

(3) both.

(b) Any individual director, officer, or agent of a corporation who knowingly and willfully authorizes, orders, or performs any of the acts or practices constituting in whole or in part a violation of section 2068 of this title shall be subject to penalties under this section without regard to any penalties to which that corporation may be subject under subsection (a) of this section.

(c)(1) In addition to the penalties provided by subsection (a), the penalty for a criminal violation of this chapter or any other Act enforced by the Commission may include the forfeiture of assets associated with the violation.

(2) In this subsection, the term "criminal violation" means a violation of this chapter or any other Act enforced by the Commission for which the violator is sentenced to pay a fine, be imprisoned, or both.

(Pub. L. 92–573, §21, Oct. 27, 1972, 86 Stat. 1225; Pub. L. 110–314, title II, §217(c)(1), (2), (d),

Aug. 14, 2008, 122 Stat. 3060.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–314, §217(c)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "Any person who knowingly and willfully violates section 2068 of this title after having received notice of noncompliance from the Commission shall be fined not more than $50,000 or be imprisoned not more than one year, or both."

Subsec. (b). Pub. L. 110–314, §217(c)(2), struck out ", and who has knowledge of notice of noncompliance received by the corporation from the Commission," after "section 2068 of this title".

Subsec. (c). Pub. L. 110–314, §217(d), added subsec. (c).

§2071. Injunctive enforcement and seizure

(a) Jurisdiction

The United States district courts shall have jurisdiction to take the following action:

(1) Restrain any violation of section 2068 of this title.

(2) Restrain any person from manufacturing for sale, offering for sale, distributing in commerce, or importing into the United States a product in violation of an order in effect under section 2064(d) of this title.

(3) Restrain any person from distributing in commerce a product which does not comply with a consumer product safety rule.

Such actions may be brought by the Commission (without regard to section 2076(b)(7)(A) of this title) or by the Attorney General in any United States district court for a district wherein any act, omission, or transaction constituting the violation occurred, or in such court for the district wherein the defendant is found or transacts business. In any action under this section process may be served on a defendant in any other district in which the defendant resides or may be found.

(b) Products liable to proceeding

Any consumer product—

(1) which fails to conform with an applicable consumer product safety rule, or

(2) the manufacture for sale, offering for sale, distribution in commerce, or the importation into the United States of which has been prohibited by an order in effect under section 2064(d) of this title,

when introduced into or while in commerce or while held for sale after shipment in commerce shall be liable to be proceeded against on libel of information and condemned in any district court of the United States within the jurisdiction of which such consumer product is found. Proceedings in cases instituted under the authority of this subsection shall conform as nearly as possible to proceedings in rem in admiralty. Whenever such proceedings involving substantially similar consumer products are pending in courts of two or more judicial districts they shall be consolidated for trial by order of any such court upon application reasonably made by any party in interest upon notice to all other parties in interest.

(Pub. L. 92–573, §22, Oct. 27, 1972, 86 Stat. 1225; Pub. L. 94–284, §§11(b), 12(c), May 11, 1976, 90 Stat. 507, 508.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–284, §§11(b), 12(c)(1), designated existing provision as par. (1) and (3), added par. (2), and in provision following par. (3) substituted "(without regard to section 2076(b)(7)(A) of this title)" for "(with the concurrence of the Attorney General)".

Subsec. (b). Pub. L. 94–284, §12(c)(2), amended subsec. (b) generally, inserting provision designated as par. (2) which included within consumer products liable to proceedings, a product of which the manufacture for sale, offering for sale, distribution in commerce, or importation into the United States has been prohibited.

§2072. Suits for damages

(a) Persons injured; costs; amount in controversy

Any person who shall sustain injury by reason of any knowing (including willful) violation of a consumer product safety rule, or any other rule or order issued by the Commission may sue any person who knowingly (including willfully) violated any such rule or order in any district court of the United States in the district in which the defendant resides or is found or has an agent, shall recover damages sustained and may, if the court determines it to be in the interest of justice, recover the costs of suit, including reasonable attorneys' fees (determined in accordance with section 2060(f) of this title) and reasonable expert witnesses' fees: *Provided*, That the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and cost, unless such action is brought against the United States, any agency thereof, or any officer or employee thereof in his official capacity.

(b) Denial and imposition of costs

Except when express provision is made in a statute of the United States, in any case in which the plaintiff is finally adjudged to be entitled to recover less than the sum or value of $10,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interests and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) Remedies available

The remedies provided for in this section shall be in addition to and not in lieu of any other remedies provided by common law or under Federal or State law.

(Pub. L. 92–573, §23, Oct. 27, 1972, 86 Stat. 1226; Pub. L. 94–284, §10(c), May 11, 1976, 90 Stat. 507; Pub. L. 96–486, §3, Dec. 1, 1980, 94 Stat. 2369; Pub. L. 97–35, title XII, §1211(h)(3)(B), Aug. 13, 1981, 95 Stat. 723.)

AMENDMENTS

1981—Subsec. (a). Pub. L. 97–35 substituted "section 2060(f) of this title" for "section 2059(e)(4) of this title".

1980—Subsec. (a). Pub. L. 96–486, §3(a), struck out provision subjecting actions under this section to section 1331 of title 28 as to the amount in controversy and inserted proviso establishing minimum amount in controversy and excepting actions brought against the United States, or agencies, officers, or employees thereof.

Subsecs. (b), (c). Pub. L. 96–486, §3(b), added subsec. (b) and redesignated former subsec. (b) as (c).

1976—Subsec. (a). Pub. L. 94–284 substituted "shall" for "and shall" and provision permitting the court to award costs in the interest of justice for a prior provision which permitted the court to award costs in its discretion.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, see section 1215 of Pub. L. 97–35, set out as a note under section 2052 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT; APPLICABILITY

For effective date and applicability of amendment by Pub. L. 96–486, see section 4 of Pub. L. 96–486, set out as an Effective Date of 1980 Amendment note under section 1331 of Title 28, Judiciary and Judicial Procedure.

§2073. Additional enforcement of product safety rules and section 2064 orders

(a) In general

Any interested person (including any individual or nonprofit, business, or other entity) may bring an action in any United States district court for the district in which the defendant is found or transacts business to enforce a consumer product safety rule or an order under section 2064 of this title, and to obtain appropriate injunctive relief. Not less than thirty days prior to the commencement

of such action, such interested person shall give notice by registered mail to the Commission, to the Attorney General, and to the person against whom such action is directed. Such notice shall state the nature of the alleged violation of any such standard or order, the relief to be requested, and the court in which the action will be brought. No separate suit shall be brought under this section if at the time the suit is brought the same alleged violation is the subject of a pending civil or criminal action by the United States under this chapter. In any action under this section the court may in the interest of justice award the costs of suit, including reasonable attorneys' fees (determined in accordance with section 2060(f) of this title) and reasonable expert witnesses' fees.

(b) State Attorney General enforcement

(1) Right of action

Except as provided in paragraph (5), the attorney general of a State, or other authorized State officer, alleging a violation of section 2068(a)(1), (2), (5), (6), (7), (9), or (12) of this title that affects or may affect such State or its residents may bring an action on behalf of the residents of the State in any United States district court for the district in which the defendant is found or transacts business to obtain appropriate injunctive relief.

(2) Initiation of civil action

(A) Notice to Commission required in all cases

A State shall provide written notice to the Commission regarding any civil action under paragraph (1). Except when proceeding under subparagraph (C), the State shall provide the notice at least 30 days before the date on which the State intends to initiate the civil action by filing a complaint.

(B) Filing of complaint

A State may initiate the civil action by filing a complaint—

(i) at any time after the date on which the 30-day period ends; or

(ii) earlier than such date if the Commission consents to an earlier initiation of the civil action by the State.

(C) Actions involving substantial product hazard

Notwithstanding subparagraph (B), a State may initiate a civil action under paragraph (1) by filing a complaint immediately after notifying the Commission of the State's determination that such immediate action is necessary to protect the residents of the State from a substantial product hazard (as defined in section 2064(a) of this title).

(D) Form of notice

The written notice required by this paragraph may be provided by electronic mail, facsimile machine, or any other means of communication accepted by the Commission.

(E) Copy of complaint

A State shall provide a copy of the complaint to the Commission upon filing the complaint or as soon as possible thereafter.

(3) Intervention by the Commission

The Commission may intervene in such civil action and upon intervening—

(A) be heard on all matters arising in such civil action; and

(B) file petitions for appeal of a decision in such civil action.

(4) Construction

Nothing in this section, section 1264(d) of this title, section 1477 of this title, or section 1194(a) of this title shall be construed—

(A) to prevent the attorney general of a State, or other authorized State officer, from exercising the powers conferred on the attorney general, or other authorized State officer, by the laws of such State; or

(B) to prohibit the attorney general of a State, or other authorized State officer, from

proceeding in State or Federal court on the basis of an alleged violation of any civil or criminal statute of that State.

(5) Limitation

No separate suit shall be brought under this subsection (other than a suit alleging a violation of paragraph (1) or (2) of section 2068(a) of this title) if, at the time the suit is brought, the same alleged violation is the subject of a pending civil or criminal action by the United States under this chapter.

(6) Restrictions on private counsel

If private counsel is retained to assist in any civil action under paragraph (1), the private counsel retained to assist the State may not—

(A) share with participants in other private civil actions that arise out of the same operative facts any information that is—

(i) subject to attorney-client or work product privilege; and

(ii) was obtained during discovery in the action under paragraph (1); or

(B) use any information that is subject to attorney-client or work product privilege that was obtained while assisting the State in the action under paragraph (1) in any other private civil actions that arise out of the same operative facts.

(Pub. L. 92–573, §24, Oct. 27, 1972, 86 Stat. 1226; Pub. L. 94–284, §10(d), May 11, 1976, 90 Stat. 507; Pub. L. 97–35, title XII, §1211(a), (h)(3)(C), Aug. 13, 1981, 95 Stat. 721, 723; Pub. L. 110–314, title II, §218(a), Aug. 14, 2008, 122 Stat. 3060.)

AMENDMENTS

2008—Pub. L. 110–314 substituted "Additional" for "Private" in section catchline, designated existing provisions as subsec. (a), inserted subsec. heading, and added subsec. (b).

1981—Pub. L. 97–35 substituted "Any interested person (including any individual or nonprofit, business, or other entity)" for "Any interested person", and "section 2060(f) of this title" for "2059(e)(4) of this title".

1976—Pub. L. 94–284 substituted provision permitting the court to award costs in the interest of justice for the provision which permitted costs to be demanded as part of the complaint and the court to award them to the prevailing party.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, see section 1215 of Pub. L. 97–35, set out as a note under section 2052 of this title.

§2074. Private remedies

(a) Liability at common law or under State statute not relieved by compliance

Compliance with consumer product safety rules or other rules or orders under this chapter shall not relieve any person from liability at common law or under State statutory law to any other person.

(b) Evidence of Commission's inaction inadmissible in actions relating to consumer products

The failure of the Commission to take any action or commence a proceeding with respect to the safety of a consumer product shall not be admissible in evidence in litigation at common law or under State statutory law relating to such consumer product.

(c) Public information

Subject to sections 2055(a)(2) and 2055(b) of this title but notwithstanding section 2055(a)(1) of this title, (1) any accident or investigation report made under this chapter by an officer or employee of the Commission shall be made available to the public in a manner which will not identify any injured person or any person treating him, without the consent of the person so identified, and (2) all reports on research projects, demonstration projects, and other related activities shall be public information.

(Pub. L. 92–573, §25, Oct. 27, 1972, 86 Stat. 1227.)

PREEMPTION

The provisions of this section establishing the extent to which the Consumer Product Safety Act [15 U.S.C. 2051 et seq.] preempts, limits, or otherwise affects any other Federal, State, or local law, any rule, procedure, or regulation, or any cause of action under State or local law not to be expanded or contracted in scope, or limited, modified or extended in application, by any rule or regulation under the Consumer Product Safety Act, or by reference in any preamble, statement of policy, executive branch statements, or other matter associated with the publication of any such rule or regulation, see section 231 of Pub. L. 110–314, set out as a note under section 2051 of this title.

§2075. State standards

(a) State compliance to Federal standards

Whenever a consumer product safety standard under this chapter is in effect and applies to a risk of injury associated with a consumer product, no State or political subdivision of a State shall have any authority either to establish or to continue in effect any provision of a safety standard or regulation which prescribes any requirements as to the performance, composition, contents, design, finish, construction, packaging, or labeling of such product which are designed to deal with the same risk of injury associated with such consumer product, unless such requirements are identical to the requirements of the Federal standard.

(b) Consumer product safety requirements which impose performance standards more stringent than Federal standards

Subsection (a) of this section does not prevent the Federal Government or the government of any State or political subdivision of a State from establishing or continuing in effect a safety requirement applicable to a consumer product for its own use which requirement is designed to protect against a risk of injury associated with the product and which is not identical to the consumer product safety standard applicable to the product under this chapter if the Federal, State, or political subdivision requirement provides a higher degree of protection from such risk of injury than the standard applicable under this chapter.

(c) Exemptions

Upon application of a State or political subdivision of a State, the Commission may by rule, after notice and opportunity for oral presentation of views, exempt from the provisions of subsection (a) of this section (under such conditions as it may impose in the rule) any proposed safety standard or regulation which is described in such application and which is designed to protect against a risk of injury associated with a consumer product subject to a consumer product safety standard under this chapter if the State or political subdivision standard or regulation—

(1) provides a significantly higher degree of protection from such risk of injury than the consumer product safety standard under this chapter, and

(2) does not unduly burden interstate commerce.

In determining the burden, if any, of a State or political subdivision standard or regulation on interstate commerce, the Commission shall consider and make appropriate (as determined by the Commission in its discretion) findings on the technological and economic feasibility of complying with such standard or regulation, the cost of complying with such standard or regulation, the geographic distribution of the consumer product to which the standard or regulation would apply, the probability of other States or political subdivisions applying for an exemption under this subsection for a similar standard or regulation, and the need for a national, uniform standard under this chapter for such consumer product.

(Pub. L. 92–573, §26, Oct. 27, 1972, 86 Stat. 1227; Pub. L. 94–284, §17(d), May 11, 1976, 90 Stat. 514.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94–284 substituted provision that a standard provide a significantly higher degree of protection from the risk of injury for the provision that the standard impose a higher level of performance.

Subsec. (c). Pub. L. 94–284 substituted requirement that a State standard provide a significantly higher degree of protection from the risk of injury than the standard under this chapter for the requirement that the State standard impose a higher level of performance, eliminated the requirement of a compelling local condition, and inserted the requirement that the Commission make specific findings in determining the burden on interstate commerce.

PREEMPTION

The provisions of this section establishing the extent to which the Consumer Product Safety Act [15 U.S.C. 2051 et seq.] preempts, limits, or otherwise affects any other Federal, State, or local law, any rule, procedure, or regulation, or any cause of action under State or local law not to be expanded or contracted in scope, or limited, modified or extended in application, by any rule or regulation under the Consumer Product Safety Act, or by reference in any preamble, statement of policy, executive branch statements, or other matter associated with the publication of any such rule or regulation, see section 231 of Pub. L. 110–314, set out as a note under section 2051 of this title.

§2076. Additional functions of Consumer Product Safety Commission

(a) Authority to conduct hearings or other inquiries

The Commission may, by one or more of its members or by such agents or agency as it may designate, conduct any hearing or other inquiry necessary or appropriate to its functions anywhere in the United States. A Commissioner who participates in such a hearing or other inquiry shall not be disqualified solely by reason of such participation from subsequently participating in a decision of the Commission in the same manner. The Commission shall publish notice of any proposed hearing in the Federal Register and shall afford a reasonable opportunity for interested persons to present relevant testimony and data.

(b) Commission powers; orders

The Commission shall also have the power—

(1) to require, by special or general orders, any person to submit in writing such reports and answers to questions as the Commission may prescribe to carry out a specific regulatory or enforcement function of the Commission; and such submission shall be made within such reasonable period and under oath or otherwise as the Commission may determine;

(2) to administer oaths;

(3) to require by subpena the attendance and testimony of witnesses and the production of all documentary and physical evidence relating to the execution of its duties;

(4) in any proceeding or investigation to order testimony to be taken by deposition before any person who is designated by the Commission and has the power to administer oaths and, in such instances, to compel testimony and the production of evidence in the same manner as authorized under paragraph (3) of this subsection;

(5) to pay witnesses the same fees and mileage as are paid in like circumstances in the courts of the United States;

(6) to accept gifts and voluntary and uncompensated services, notwithstanding the provisions of section 1342 of title 31;

(7) to—

(A) initiate, prosecute, defend, or appeal (other than to the Supreme Court of the United States), through its own legal representative and in the name of the Commission, any civil action if the Commission makes a written request to the Attorney General for representation in such civil action and the Attorney General does not within the 45-day period beginning on the date such request was made notify the Commission in writing that the Attorney General will represent the Commission in such civil action, and

(B) initiate, prosecute, or appeal, through its own legal representative, with the concurrence of the Attorney General or through the Attorney General, any criminal action,

for the purpose of enforcing the laws subject to its jurisdiction;

(8) to lease buildings or parts of buildings in the District of Columbia, without regard to section 8141 of title 40, for the use of the Commission;

(9) to delegate to the general counsel of the Commission the authority to issue subpoenas solely to Federal, State, or local government agencies for evidence described in paragraph (3); and

(10) to delegate any of its functions or powers, other than the power to issue subpenas under paragraph (3) (except as provided in paragraph (9)), to any officer or employee of the Commission.

An order issued under paragraph (1) shall contain a complete statement of the reason the Commission requires the report or answers specified in the order to carry out a specific regulatory or enforcement function of the Commission. Such an order shall be designed to place the least burden on the person subject to the order as is practicable taking into account the purpose for which the order was issued.

(c) Noncompliance with subpena or Commission order; contempt

Any United States district court within the jurisdiction of which any inquiry is carried on, may, upon petition by the Commission (subject to subsection (b)(7) of this section) or by the Attorney General, in case of refusal to obey a subpena or order of the Commission issued under subsection (b) of this section, issue an order requiring compliance therewith; and any failure to obey the order of the court may be punished by the court as a contempt thereof.

(d) Disclosure of information

No person shall be subject to civil liability to any person (other than the Commission or the United States) for disclosing information at the request of the Commission.

(e) Performance and technical data

The Commission may by rule require any manufacturer of consumer products to provide to the Commission such performance and technical data related to performance and safety as may be required to carry out the purposes of this chapter, and to give such notification of such performance and technical data at the time of original purchase to prospective purchasers and to the first purchaser of such product for purposes other than resale, as it determines necessary to carry out the purposes of this chapter.

(f) Purchase of consumer products by Commission

For purposes of carrying out this chapter, the Commission may purchase any consumer product and it may require any manufacturer, distributor, or retailer of a consumer product to sell the product to the Commission at manufacturer's, distributor's, or retailer's cost.

(g) Contract authority

The Commission is authorized to enter into contracts with governmental entities, private organizations, or individuals for the conduct of activities authorized by this chapter.

(h) Research, development, and testing facilities

The Commission may plan, construct, and operate a facility or facilities suitable for research, development, and testing of consumer products in order to carry out this chapter.

(i) Recordkeeping; audit

(1) Each recipient of assistance under this chapter pursuant to grants or contracts entered into under other than competitive bidding procedures shall keep such records as the Commission by rule shall prescribe, including records which fully disclose the amount and disposition by such recipient

of the proceeds of such assistance, the total cost of the project undertaken in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Commission and the Comptroller General of the United States, or their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients that are pertinent to the grants or contracts entered into under this chapter under other than competitive bidding procedures.

(j) Report to President and Congress

Notwithstanding section 3003 of the Federal Reports Elimination and Sunset Act of 1995 (31 U.S.C. 1113 note), the Commission shall prepare and submit to the President and the Congress at the beginning of each regular session of Congress a comprehensive report on the administration of this chapter for the preceding fiscal year. Such report shall include—

(1) a thorough appraisal, including statistical analyses, estimates, and long-term projections, of the incidence of injury and effects to the population resulting from consumer products, with a breakdown, insofar as practicable, among the various sources of such injury;

(2) a list of consumer product safety rules prescribed or in effect during such year;

(3) an evaluation of the degree of observance of consumer product safety rules, including a list of enforcement actions, court decisions, and compromises of alleged violations, by location and company name;

(4) a summary of outstanding problems confronting the administration of this chapter in order of priority;

(5) the number and a summary of recall orders issued under section 2061 or 2064 of this title during such year and a summary of voluntary corrective actions taken by manufacturers in consultation with the Commission of which the Commission has notified the public, and an assessment of such orders and actions;

(6) beginning not later than 1 year after August 14, 2008—

(A) progress reports and incident updates with respect to action plans implemented under section 2064(d) of this title;

(B) statistics with respect to injuries and deaths associated with products that the Commission determines present a substantial product hazard under section 2064(c) of this title; and

(C) the number and type of communication from consumers to the Commission with respect to each product with respect to which the Commission takes action under section 2064(d) of this title;

(7) an analysis and evaluation of public and private consumer product safety research activities;

(8) a list, with a brief statement of the issues, of completed or pending judicial actions under this chapter;

(9) the extent to which technical information was disseminated to the scientific and commercial communities and consumer information was made available to the public;

(10) the extent of cooperation between Commission officials and representatives of industry and other interested parties in the implementation of this chapter, including a log or summary of meetings held between Commission officials and representatives of industry and other interested parties;

(11) an appraisal of significant actions of State and local governments relating to the responsibilities of the Commission;

(12) with respect to voluntary consumer product safety standards for which the Commission has participated in the development through monitoring or offering of assistance and with respect to voluntary consumer product safety standards relating to risks of injury that are the subject or regulatory action by the Commission, a description of—

(A) the number of such standards adopted;

(B) the nature and number of the products which are the subject of such standards;

(C) the effectiveness of such standards in reducing potential harm from consumer products;

(D) the degree to which staff members of the Commission participate in the development of

such standards;

(E) the amount of resources of the Commission devoted to encouraging development of such standards; and

(F) such other information as the Commission determines appropriate or necessary to inform the Congress on the current status of the voluntary consumer product safety standard program; and

(13) such recommendations for additional legislation as the Commission deems necessary to carry out the purposes of this chapter.

(k) Budget estimates and requests; legislative recommendations; testimony; comments on legislation

(1) Whenever the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit a copy of that estimate or request to the Congress.

(2) Whenever the Commission submits any legislative recommendations, or testimony, or comments on legislation to the President or the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations, or testimony, or comments on legislation, to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.

(Pub. L. 92–573, §27, Oct. 27, 1972, 86 Stat. 1227; Pub. L. 94–273, §31, Apr. 21, 1976, 90 Stat. 380; Pub. L. 94–284, §§8(b), 11(c), (d), 14, May 11, 1976, 90 Stat. 506–509; Pub. L. 95–631, §11, Nov. 10, 1978, 92 Stat. 3748; Pub. L. 97–35, title XII, §§1207(b), 1208, 1209(c), 1211(d), Aug. 13, 1981, 95 Stat. 718, 720, 721; Pub. L. 110–314, title II, §209(a), Aug. 14, 2008, 122 Stat. 3046; Pub. L. 112–28, §8, Aug. 12, 2011, 125 Stat. 282.)

REFERENCES IN TEXT

Section 3003 of the Federal Reports Elimination and Sunset Act of 1995, referred to in subsec. (j), is section 3003 of Pub. L. 104–66, which is set out as a note under section 1113 of Title 31, Money and Finance.

CODIFICATION

In subsec. (b)(6), "section 1342 of title 31" substituted for "section 3679 of the Revised Statutes (31 U.S.C. 665(b))" on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

"Section 8141 of title 40" substituted in subsec. (b)(8) for "the Act of March 3, 1877 (40 U.S.C. 34)" on authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

2011—Subsec. (b)(3). Pub. L. 112–28, §8(1), inserted "and physical" after "documentary".

Subsec. (b)(9). Pub. L. 112–28, §8(2), (3), added par. (9). Former par. (9) redesignated (10).

Subsec. (b)(10). Pub. L. 112–28, §8(3), (4), redesignated par. (9) as (10) and inserted "(except as provided in paragraph (9))" after "paragraph (3)".

2008—Subsec. (j). Pub. L. 110–314, §209(a)(1), substituted "Notwithstanding section 3003 of the Federal Reports Elimination and Sunset Act of 1995 (31 U.S.C. 1113 note), the Commission" for "The Commission" in introductory provisions.

Subsec. (j)(5) to (13). Pub. L. 110–314, §209(a)(2), added pars. (5) and (6) and redesignated former pars. (5) to (11) as (7) to (13), respectively.

1981—Subsec. (b). Pub. L. 97–35, §1208, substituted in par. (1) "may prescribe to carry out a specific regulatory or enforcement function of the Commission" for "may prescribe" and in provision following par. (9) inserted requirement that an order issued under par. (1) shall contain a complete statement of the reason the Commission requires the report or answers specified in the order to carry out a specific regulatory or

enforcement function of the commission, and that such an order shall be designed to place the least burden on the person subject to the order as is practicable, taking into account the purposes for which the order was issued.

Subsec. (j)(10), (11). Pub. L. 97–35, §1209(c), added par. (10) and redesignated former par. (10) as (11).

Subsec. (l). Pub. L. 97–35, §1207(b), struck out subsec. (l) which provided for reports to the House of Representatives and the Senate of proposed consumer product safety rules and regulations.

Subsec. (m). Pub. L. 97–35, §1211(d), struck out subsec. (m) which defined "rule", provided for a study of all the rules in effect on Nov. 10, 1978, and required a report be made to Congress recommending deletion of particular rules or parts of particular rules and initiation of particular rulemaking proceedings.

1978—Subsec. (m). Pub. L. 95–631 added subsec. (m).

1976—Subsec. (b)(7). Pub. L. 94–284, §11(c), permitted the Commission to initiate, defend, prosecute, or appeal any civil action through its own legal representative provided that the Commission make a written request to the Attorney General for such representation and the Attorney General fail within a 45 day period to notify the Commission in writing that the Attorney General will represent the Commission, and with regard to criminal action, permitted the Commission to initiate, prosecute, or appeal with its own legal representative, with the concurrence of the Attorney General, or through the Attorney General.

Subsec. (b)(8), (9). Pub. L. 94–284, §8(b), added par. (8) and redesignated former par. (8) as par (9).

Subsec. (c). Pub. L. 94–284, §11(d), substituted "(subject to subsection (b)(7) of this section)" for "with the concurrence of the Attorney General".

Subsec. (j). Pub. L. 94–273 substituted "at the beginning of each regular session of Congress" for "on or before October 1 of each year".

Subsec. (l). Pub. L. 94–284, §14, added subsec. (l).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–314, title II, §209(b), Aug. 14, 2008, 122 Stat. 3047, provided that: "The amendments made by this section [amending this section] shall apply with respect to reports submitted for fiscal year 2009 and thereafter."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 1207(b) of Pub. L. 97–35 applicable with respect to consumer product safety rules under this chapter and regulations under chapters 25 and 30 of this title promulgated after Aug. 13, 1981, and amendment by sections 1208, 1209(c), and 1211(d) of Pub. L. 97–35 effective Aug. 13, 1981, see section 1215 of Pub. L. 97–35, set out as a note under section 2052 of this title.

SUBMISSION OF COPY OF CERTAIN DOCUMENTS TO CONGRESS

Pub. L. 110–314, title II, §203(a), Aug. 14, 2008, 122 Stat. 3040, provided that: "Notwithstanding any rule, regulation, or order to the contrary, the [Consumer Product Safety] Commission shall comply with the requirements of section 27(k) of the Consumer Product Safety Act (15 U.S.C. 2076(k)) with respect to budget recommendations, legislative recommendations, testimony, and comments on legislation submitted by the Commission to the President or the Office of Management and Budget after the date of enactment of this Act [Aug. 14, 2008]."

USER FEE STUDY

Pub. L. 101–608, title I, §119, Nov. 16, 1990, 104 Stat. 3122, directed Consumer Product Safety Commission to conduct a study of feasibility of requiring entities subject to Consumer Product Safety Act (15 U.S.C. 2051 et seq.) to pay to Commission amounts to defray reasonable costs of particular services provided by Commission to such entities, with Commission to complete study within one year of Nov. 16, 1990, and report results of study to Congress.

§2076a. Report on civil penalties

(1) Beginning 1 year after November 16, 1990, and every year thereafter, the Consumer Product Safety Commission shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives the information specified in paragraph (2). Such information may be included in the annual report to the Congress submitted by the Commission.

(2) The Commission shall submit information with respect to the imposition of civil penalties

under the statutes which it administers. The information shall include the number of civil penalties imposed, an identification of the violations that led to the imposition of such penalties, and the amount of revenue recovered from the imposition of such penalties.

(Pub. L. 101–608, title I, §115(d), Nov. 16, 1990, 104 Stat. 3121.)

CODIFICATION

Section was enacted as part of the Consumer Product Safety Improvement Act of 1990, and not as part of the Consumer Product Safety Act which comprises this chapter.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§2076b. Inspector General audits and reports

(a) Improvements by the Commission

The Inspector General of the Commission shall conduct reviews and audits to assess—

(1) the Commission's capital improvement efforts, including improvements and upgrades of the Commission's information technology architecture and systems and the development of the database of publicly available information on incidents involving injury or death required under section 2055a of this title, as added by section 212 of this Act; and

(2) the adequacy of procedures for accrediting conformity assessment bodies as authorized by section 2063(a)(3) of this title, as amended by this Act, and overseeing the third party testing required by such section.

(b) Employee complaints

Within 1 year after August 14, 2008, the Inspector General shall conduct a review of—

(1) complaints received by the Inspector General from employees of the Commission about failures of other employees to enforce the rules or regulations of the Consumer Product Safety Act [15 U.S.C. 2051 et seq.] or any other Act enforced by the Commission or otherwise carry out their responsibilities under such Acts if such alleged failures raise issues of conflicts of interest, ethical violations, or the absence of good faith; and

(2) actions taken by the Commission to address such failures and complaints, including an assessment of the timeliness and effectiveness of such actions.

(c) Public Internet website links

Not later than 30 days after August 14, 2008, the Commission shall establish and maintain—

(1) a direct link on the homepage of its Internet website to the Internet webpage of the Commission's Office of Inspector General; and

(2) a mechanism on the webpage of the Commission's Office of Inspector General by which individuals may anonymously report cases of waste, fraud, or abuse with respect to the Commission.

(d) Reports

(1) Activities and needs of Inspector General

Not later than 60 days after August 14, 2008, the Inspector General of the Commission shall transmit a report to the appropriate Congressional committees on the activities of the Inspector General, any structural barriers which prevent the Inspector General from providing robust oversight of the activities of the Commission, and any additional authority or resources that would facilitate more effective oversight.

(2) Reviews of improvements and employee complaints

Beginning for fiscal year 2010, the Inspector General of the Commission shall include in an annual report to the appropriate Congressional committees the Inspector General's findings, conclusions, and recommendations from the reviews and audits under subsections (a) and (b).

(Pub. L. 110–314, title II, §205, Aug. 14, 2008, 122 Stat. 3043.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 110–314, Aug. 14, 2008, 122 Stat. 3016, known as the Consumer Product Safety Improvement Act of 2008. For complete classification of this Act to the Code, see Short Title of 2008 Amendment note set out under section 2051 of this title and Tables.

The Consumer Product Safety Act, referred to in subsec. (b)(1), is Pub. L. 92–573, Oct. 27, 1972, 86 Stat. 1207, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2051 of this title and Tables.

CODIFICATION

Section was enacted as part of the Consumer Product Safety Improvement Act of 2008, and not as part of the Consumer Product Safety Act which comprises this chapter.

DEFINITIONS

For definitions of "Commission" and "appropriate Congressional committees" used in this section, see section 2(a) of Pub. L. 110–314, set out as a note under section 2051 of this title.

§2077. Chronic Hazard Advisory Panels

(a) Appointment; purposes

The Commission shall appoint Chronic Hazard Advisory Panels (hereinafter referred to as the Panel or Panels) to advise the Commission in accordance with the provisions of section 2080(b) of this title respecting the chronic hazards of cancer, birth defects, and gene mutations associated with consumer products.

(b) Composition; membership

Each Panel shall consist of 7 members appointed by the Commission from a list of nominees who shall be nominated by the President of the National Academy of Sciences from scientists—

(1) who are not officers or employees of the United States (other than employees of the National Institutes of Health, the National Toxicology Program, or the National Center for Toxicological Research), and who do not receive compensation from or have any substantial financial interest in any manufacturer, distributor, or retailer of a consumer product; and

(2) who have demonstrated the ability to critically assess chronic hazards and risks to human health presented by the exposure of humans to toxic substances or as demonstrated by the exposure of animals to such substances.

The President of the National Academy of Sciences shall nominate for each Panel a number of individuals equal to three times the number of members to be appointed to the Panel.

(c) Chairman and Vice Chairman; election; term

The Chairman and Vice Chairman of the Panel shall be elected from among the members and shall serve for the duration of the Panel.

(d) Majority vote

Decisions of the Panel shall be made by a majority of the Panel.

(e) Administrative support services

The Commission shall provide each Panel with such administrative support services as it may require to carry out its duties under section 2080 of this title.

(f) Compensation

A member of a Panel appointed under subsection (a) of this section shall be paid at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule for each day (including traveltime) during which the member is engaged in the actual performance of the duties of the Panel.

(g) Requests for and disclosures of information

Each Panel shall request information and disclose information to the public, as provided in subsection (h) of this section, only through the Commission.

(h) Information from other Federal departments and agencies

(1) Notwithstanding any statutory restriction on the authority of agencies and departments of the Federal Government to share information, such agencies and departments shall provide the Panel with such information and data as each Panel, through the Commission, may request to carry out its duties under section 2080 of this title. Each Panel may request information, through the Commission, from States, industry and other private sources as it may require to carry out its responsibilities.

(2) Section 2055 of this title shall apply to the disclosure of information by the Panel but shall not apply to the disclosure of information to the Panel.

(Pub. L. 92–573, §28, as added Pub. L. 97–35, title XII, §1206(a), Aug. 13, 1981, 95 Stat. 716; amended Pub. L. 101–608, title I, §116, Nov. 16, 1990, 104 Stat. 3121; Pub. L. 110–314, title II, §235(c)(6), Aug. 14, 2008, 122 Stat. 3075.)

PRIOR PROVISIONS

A prior section 2077, Pub. L. 92–573, §28, Oct. 27, 1972, 86 Stat. 1230, provided for establishment and membership of Product Safety Advisory Council, prior to repeal by Pub. L. 97–35, title XII, §1205(a)(1), Aug. 13, 1981, 95 Stat. 716.

AMENDMENTS

2008—Pub. L. 110–314, which directed amendment of this section by substituting "the appropriate Congressional committees" for "the Congress" in subsecs. (j)(10)(F) and (k)(1), (2), could not be executed because this section does not contain a subsec. (j) or (k).

1990—Subsec. (b)(1). Pub. L. 101–608 inserted "(other than employees of the National Institutes of Health, the National Toxicology Program, or the National Center for Toxicological Research)" after "States".

EFFECTIVE DATE

Section applicable with respect to regulations under this chapter and chapters 25 and 30 of this title for which notices of proposed rulemaking are issued after Aug. 14, 1981, see section 1215 of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 2052 of this title.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§2078. Cooperation with States and other Federal agencies

(a) Programs to promote Federal-State cooperation

The Commission shall establish a program to promote Federal-State cooperation for the purposes of carrying out this chapter. In implementing such program the Commission may—

(1) accept from any State or local authorities engaged in activities relating to health, safety, or consumer protection assistance in such functions as injury data collection, investigation, and educational programs, as well as other assistance in the administration and enforcement of this chapter which such States or localities may be able and willing to provide and, if so agreed, may pay in advance or otherwise for the reasonable cost of such assistance, and

(2) commission any qualified officer or employee of any State or local agency as an officer of

the Commission for the purpose of conducting examinations, investigations, and inspections.

(b) Appropriateness of State and local programs

In determining whether such proposed State and local programs are appropriate in implementing the purposes of this chapter, the Commission shall give favorable consideration to programs which establish separate State and local agencies to consolidate functions relating to product safety and other consumer protection activities.

(c) Cooperation of Federal departments and agencies

The Commission may obtain from any Federal department or agency such statistics, data, program reports, and other materials as it may deem necessary to carry out its functions under this chapter. Each such department or agency may cooperate with the Commission and, to the extent permitted by law, furnish such materials to it. The Commission and the heads of other departments and agencies engaged in administering programs related to product safety shall, to the maximum extent practicable, cooperate and consult in order to insure fully coordinated efforts.

(d) Utilization of National Institute of Standards and Technology

The Commission shall, to the maximum extent practicable, utilize the resources and facilities of the National Institute of Standards and Technology, on a reimbursable basis, to perform research and analyses related to risks of injury associated with consumer products (including fire and flammability risks), to develop test methods, to conduct studies and investigations, and to provide technical advice and assistance in connection with the functions of the Commission.

(e) Copies of accident or investigation reports to other agencies; conditions

Notwithstanding section 2055(a)(3) of this title, the Commission may provide to another Federal agency or a State or local agency or authority engaged in activities relating to health, safety, or consumer protection, copies of any accident or investigation report made under this chapter by any officer, employee, or agent of the Commission only if (1) information which under section 2055(a)(2) of this title is to be considered confidential is not included in any copy of such report which is provided under this subsection; and (2) each Federal agency and State and local agency and authority which is to receive under this subsection a copy of such report provides assurances satisfactory to the Commission that the identity of any injured person and any person who treated an injured person will not, without the consent of the person identified, be included in—

(A) any copy of any such report, or

(B) any information contained in any such report,

which the agency or authority makes available to any member of the public. No Federal agency or State or local agency or authority may disclose to the public any information contained in a report received by the agency or authority under this subsection unless with respect to such information the Commission has complied with the applicable requirements of section 2055(b) of this title.

(f) Sharing of information with Federal, State, local, and foreign government agencies

(1) Agreements and conditions

Notwithstanding the requirements of subsections (a)(3) and (b) of section 2055 of this title, relating to public disclosure of information, the Commission may make information obtained by the Commission available to any Federal, State, local, or foreign government agency upon the prior certification of an appropriate official of any such agency, either by a prior agreement or memorandum of understanding with the Commission or by other written certification, that such material will be maintained in confidence and will be used only for official law enforcement or consumer protection purposes, if—

(A) the agency has set forth a bona fide legal basis for its authority to maintain the material in confidence;

(B) the materials are to be used for purposes of investigating, or engaging in enforcement proceedings related to, possible violations of—

(i) laws regulating the manufacture, importation, distribution, or sale of defective or unsafe

consumer products, or other practices substantially similar to practices prohibited by any law administered by the Commission;

(ii) a law administered by the Commission, if disclosure of the material would further a Commission investigation or enforcement proceeding; or

(iii) with respect to a foreign law enforcement agency, with the approval of the Attorney General, other foreign criminal laws, if such foreign criminal laws are offenses defined in or covered by a criminal mutual legal assistance treaty in force between the government of the United States and the foreign law enforcement agency's government; and

(C) in the case of a foreign government agency, such agency is not from a foreign state that the Secretary of State has determined, in accordance with section 2405(j) of the Appendix to title 50, has repeatedly provided support for acts of international terrorism, unless and until such determination is rescinded pursuant to section 2405(j)(4) of the Appendix to title 50.

(2) Abrogation of agreements

The Commission may abrogate any agreement or memorandum of understanding with another agency if the Commission determines that the other agency has failed to maintain in confidence any information provided under such agreement or memorandum of understanding, or has used any such information for purposes other than those set forth in such agreement or memorandum of understanding.

(3) Additional rules against disclosure

Except as provided in paragraph (4), the Commission shall not be required to disclose under section 552 of title 5 or any other provision of law—

(A) any material obtained from a foreign government agency, if the foreign government agency has requested confidential treatment, or has precluded such disclosure under other use limitations, as a condition of providing the material;

(B) any material reflecting a consumer complaint obtained from any other foreign source, if that foreign source supplying the material has requested confidential treatment as a condition of providing the material; or

(C) any material reflecting a consumer complaint submitted to a Commission reporting mechanism sponsored in part by foreign government agencies.

(4) Limitation

Nothing in this subsection authorizes the Commission to withhold information from the Congress or prevent the Commission from complying with an order of a court of the United States in an action commenced by the United States or the Commission.

(5) Definition

In this subsection, the term "foreign government agency" means—

(A) any agency or judicial authority of a foreign government, including a foreign state, a political subdivision of a foreign state, or a multinational organization constituted by and comprised of foreign states, that is vested with law enforcement or investigative authority in civil, criminal, or administrative matters; and

(B) any multinational organization, to the extent that it is acting on behalf of an entity described in subparagraph (A).

(g) Notification to State health departments

Whenever the Commission is notified of any voluntary corrective action taken by a manufacturer (or a retailer in the case of a retailer selling a product under its own label) in consultation with the Commission, or issues an order under section 2064(c) or (d) of this title with respect to any product, the Commission shall notify each State's health department (or other agency designated by the State) of such voluntary corrective action or order.

(Pub. L. 92–573, §29, Oct. 27, 1972, 86 Stat. 1230; Pub. L. 94–284, §15, May 11, 1976, 90 Stat. 510; Pub. L. 100–418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 110–314, title II, §§207,

235(c)(7), Aug. 14, 2008, 122 Stat. 3044, 3075.)

AMENDMENTS

2008—Subsec. (e). Pub. L. 110–314, §235(c)(7), substituted "Notwithstanding section 2055(a)(3) of this title, the Commission" for "The Commission" in introductory provisions.

Subsecs. (f), (g). Pub. L. 110–314, §207, added subsecs. (f) and (g).

1988—Subsec. (d). Pub. L. 100–418 substituted "National Institute of Standards and Technology" for "National Bureau of Standards".

1976—Subsec. (e). Pub. L. 94–284 added subsec. (e).

§2079. Transfers of functions

(a) Hazardous substances and poisons

The functions of the Secretary of Health, Education, and Welfare under the Federal Hazardous Substances Act [15 U.S.C. 1261 et seq.] and the Poison Prevention Packaging Act of 1970 [15 U.S.C. 1471 et seq.] are transferred to the Commission. The functions of the Secretary of Health, Education, and Welfare under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.], to the extent such functions relate to the administration and enforcement of the Poison Prevention Packaging Act of 1970, are transferred to the Commission.

(b) Flammable fabrics

The functions of the Secretary of Health, Education, and Welfare, the Secretary of Commerce, and the Federal Trade Commission under the Flammable Fabrics Act [15 U.S.C. 1191 et seq.] are transferred to the Commission. The functions of the Federal Trade Commission under the Federal Trade Commission Act [15 U.S.C. 41 et seq.], to the extent such functions relate to the administration and enforcement of the Flammable Fabrics Act, are transferred to the Commission.

(c) Household refrigerators

The functions of the Secretary of Commerce and the Federal Trade Commission under the Act of August 2, 1956 [15 U.S.C. 1211 et seq.] are transferred to the Commission.

(d) Repealed. Pub. L. 110–314, title II, §237, Aug. 14, 2008, 122 Stat. 3076

(e) Transfer of personnel, property, records, etc.; continued application of orders, rules, etc.

(1)(A) All personnel, property, records, obligations, and commitments, which are used primarily with respect to any function transferred under the provisions of subsections (a), (b) and (c) of this section shall be transferred to the Commission, except those associated with fire and flammability research in the National Institute of Standards and Technology. The transfer of personnel pursuant to this paragraph shall be without reduction in classification or compensation for one year after such transfer, except that the Chairman of the Commission shall have full authority to assign personnel during such one-year period in order to efficiently carry out functions transferred to the Commission under this section.

(B) Any commissioned officer of the Public Health Service who upon the day before the effective date of this section, is serving as such officer primarily in the performance of functions transferred by this chapter to the Commission, may, if such officer so elects, acquire competitive status and be transferred to a competitive position in the Commission subject to subparagraph (A) of this paragraph, under the terms prescribed in paragraphs (3) through (8)(A) of section 15(b) of the Clean Air Amendments of 1970.

(2) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges (A) which have been issued, made, granted, or allowed to become effective in the exercise of functions which are transferred under this section by any department or agency, any functions of which are transferred by this section, and (B) which are in effect at the time this section takes effect, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Commission, by any court of competent jurisdiction, or by operation of law.

(3) The provisions of this section shall not affect any proceedings pending at the time this section

takes effect before any department or agency, functions of which are transferred by this section; except that such proceedings, to the extent that they relate to functions so transferred, shall be continued before the Commission. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this section had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or repealed by the Commission, by a court of competent jurisdiction, or by operation of law.

(4) The provisions of this section shall not affect suits commenced prior to the date this section takes effect and in all such suits proceedings shall be had, appeals taken, and judgments rendered, in the same manner and effect as if this section had not been enacted; except that if before the date on which this section takes effect, any department or agency (or officer thereof in his official capacity) is a party to a suit involving functions transferred to the Commission, then such suit shall be continued by the Commission. No cause of action, and no suit, action, or other proceeding, by or against any department or agency (or officer thereof in his official capacity) functions of which are transferred by this section, shall abate by reason of the enactment of this section. Causes of actions, suits, actions, or other proceedings may be asserted by or against the United States or the Commission as may be appropriate and, in any litigation pending when this section takes effect, the court may at any time, on its own motion or that of any party, enter an order which will give effect to the provisions of this paragraph.

(f) "Function" defined

For purposes of this section, (1) the term "function" includes power and duty, and (2) the transfer of a function, under any provision of law, of an agency or the head of a department shall also be a transfer of all functions under such law which are exercised by any office or officer of such agency, or department.

(Pub. L. 92–573, §30, Oct. 27, 1972, 86 Stat. 1231; Pub. L. 94–284, §§3(f), 16, May 11, 1976, 90 Stat. 504, 510; Pub. L. 100–418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 110–314, title II, §237, Aug. 14, 2008, 122 Stat. 3076.)

REFERENCES IN TEXT

The Federal Hazardous Substances Act, referred to in subsec. (a), is Pub. L. 86–613, July 12, 1960, 74 Stat. 372, which is classified generally to chapter 30 (§1261 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1261 of this title and Tables.

The Poison Prevention Packaging Act of 1970, referred to in subsec. (a), is Pub. L. 91–601, Dec. 30, 1970, 84 Stat. 1670, which is classified principally to chapter 39A (§1471 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1471 of this title and Tables.

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (a), is act June 25, 1938, ch. 675, 52 Stat. 1040, which is classified generally to chapter 9 (§301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

The Flammable Fabrics Act, referred to in subsec. (b), is act June 30, 1953, ch. 164, 67 Stat. 111, which is classified generally to chapter 25 (§1191 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1191 of this title and Tables.

The Federal Trade Commission Act, referred to in subsec. (b), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

Act of August 2, 1956, referred to in subsec. (c), is act Aug. 2, 1956, ch. 890, 70 Stat. 953, which is classified generally to chapter 26 (§1211 et seq.) of this title. For complete classification of this Act to the Code, see Tables.

For the effective date of this section or, alternatively, the time or date this section takes effect, referred to in subsec. (e)(1)(B), (2), (3), and (4), see section 34(2) of Pub. L. 92–573, set out as an Effective Date note under section 2051 of this title.

Paragraphs (3) through (8)(A) of section 15(b) of the Clean Air Amendments of 1970, referred to in subsec. (e)(1)(B), are pars. (3) through (8)(A) of section 15(b) of Pub. L. 91–604, Dec. 31, 1970, 84 Stat. 1710, which is set out as a note under section 215 of Title 42, The Public Health and Welfare.

AMENDMENTS

2008—Subsec. (d). Pub. L. 110–314 struck out subsec. (d). Prior to amendment, text read as follows: "A risk of injury which is associated with a consumer product and which could be eliminated or reduced to a sufficient extent by action under the Federal Hazardous Substances Act, the Poison Prevention Packaging Act of 1970, or the Flammable Fabrics Act may be regulated under this chapter only if the Commission by rule finds that it is in the public interest to regulate such risk of injury under this chapter. Such a rule shall identify the risk of injury proposed to be regulated under this chapter and shall be promulgated in accordance with section 553 of title 5; except that the period to be provided by the Commission pursuant to subsection (c) of such section for the submission of data, views, and arguments respecting the rule shall not exceed thirty days from the date of publication pursuant to subsection (b) of such section of a notice respecting the rule."

1988—Subsec. (e)(1)(A). Pub. L. 100–418 substituted "National Institute of Standards and Technology" for "National Bureau of Standards".

1976—Subsec. (a). Pub. L. 94–284, §3(f), struck out "of the Administrator of the Environmental Protection Agency and" before "of the Secretary of Health, Education, and Welfare" and substituted "Federal Food, Drug, and Cosmetic Act" for "Acts amended by subsections (b) through (f) of section 7 of the Poison Prevention Act of 1970".

Subsec. (d). Pub. L. 94–284, §16, inserted requirement that the Commission find by a rule, promulgated in accordance with section 553 of title 5, that it is within the public interest to regulate a risk of injury under this chapter which could be eliminated or reduced by action under the enumerated acts.

§2080. Limitations on jurisdiction of Consumer Product Safety Commission

(a) Authority to regulate

The Commission shall have no authority under this chapter to regulate any risk of injury associated with a consumer product if such risk could be eliminated or reduced to a sufficient extent by actions taken under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.]; the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.]; or the Clean Air Act [42 U.S.C. 7401 et seq.]. The Commission shall have no authority under this chapter to regulate any risk of injury associated with electronic product radiation emitted from an electronic product (as such terms are defined by sections 355(1) and (2) [1] of the Public Health Service Act) if such risk of injury may be subjected to regulation under subpart 3 [1] of part F of title III of the Public Health Service Act.

(b) Certain notices of proposed rulemaking; duties of Chronic Hazard Advisory Panel

(1) The Commission may not issue—

(A) an advance notice of proposed rulemaking for a consumer product safety rule,

(B) a notice of proposed rulemaking for a rule under section 2076(e) of this title, or

(C) an advance notice of proposed rulemaking for regulations under section 1261(q)(1) of this title,

relating to a risk of cancer, birth defects, or gene mutations from a consumer product unless a Chronic Hazard Advisory Panel, established under section 2077 of this title, has, in accordance with paragraph (2), submitted a report to the Commission with respect to whether a substance contained in such product is a carcinogen, mutagen, or teratogen.

(2)(A) Before the Commission issues an advance notice of proposed rulemaking for—

(i) a consumer product safety rule,

(ii) a rule under section 2076(e) of this title, or

(iii) a regulation under section 1261(q)(1) of this title,

relating to a risk of cancer, birth defects, or gene mutations from a consumer product, the Commission shall request the Panel to review the scientific data and other relevant information relating to such risk to determine if any substance in the product is a carcinogen, mutagen, or a teratogen and to report its determination to the Commission.

(B) When the Commission appoints a Panel, the Panel shall convene within 30 days after the date the final appointment is made to the Panel. The Panel shall report its determination to the Commission not later than 120 days after the date the Panel is convened or, if the Panel requests

additional time, within a time period specified by the Commission. If the determination reported to the Commission states that a substance in a product is a carcinogen, mutagen, or a teratogen, the Panel shall include in its report an estimate, if such an estimate is feasible, of the probable harm to human health that will result from exposure to the substance.

(C) A Panel appointed under section 2077 of this title shall terminate when it has submitted its report unless the Commission extends the existence of the Panel.

(D) The Federal Advisory Committee Act shall not apply with respect to any Panel established under this section.

(c) Panel report; incorporation into advance notice and final rule

Each Panel's report shall contain a complete statement of the basis for the Panel's determination. The Commission shall consider the report of the Panel and incorporate such report into the advance notice of proposed rulemaking and final rule.

(Pub. L. 92–573, §31, Oct. 27, 1972, 86 Stat. 1232; Pub. L. 97–35, title XII, §1206(b), Aug. 13, 1981, 95 Stat. 717; Pub. L. 97–414, §9(j)(5), Jan. 4, 1983, 96 Stat. 2064.)

REFERENCES IN TEXT

The Occupational Safety and Health Act of 1970, referred to in subsec. (a), is Pub. L. 91–596, Dec. 29, 1970, 84 Stat. 1590, as amended, which is classified principally to chapter 15 (§651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

The Atomic Energy Act of 1954, referred to in subsec. (b), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 919, which is classified principally to chapter 23 (§2011 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 42 and Tables.

The Clean Air Act, referred to in subsec. (a), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

The Public Health Service Act, referred to in subsec. (a), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Subpart 3 of part F of title III of the Public Health Service Act, which was classified to subpart 3 (§263b et seq.) of part F of subchapter II of chapter 6A of Title 42, was redesignated as subchapter C of chapter V of act June 25, 1938, ch. 675, the Federal Food, Drug, and Cosmetic Act, by Pub. L. 101–629, §19(a)(4), Nov. 28, 1990, 104 Stat. 4530, and was transferred to part C (21 U.S.C. 360hh et seq.) of subchapter V of chapter 9 of Title 21, Food and Drugs. Section 355 of the Public Health Service Act, which was classified to section 263c of Title 42, was renumbered as section 531 of act June 25, 1938, ch. 675, by Pub. L. 101–629, §19(a)(3), (4), 104 Stat. 4530, and transferred to section 360hh of Title 21. For complete classification of the Public Health Service Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

The Federal Advisory Committee Act, referred to in subsec. (b)(2)(D), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1983—Subsec. (b)(1). Pub. L. 97–414 struck out introductory text "an advance notice of proposed rulemaking for" after "issue", inserted in subpar. (A) "an advance notice of proposed rulemaking for" before "a consumer" and in subpar. (B) "a notice of proposed rulemaking for" before "a rule", and substituted in subpar. (C) "an advance notice of proposed rulemaking for regulations" for "a regulation".

1981—Pub. L. 97–35 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 applicable with respect to regulations under this chapter and chapters 25 and 30 of this title for which notices of proposed rulemaking are issued after Aug. 14, 1981, see section 1215 of Pub. L. 97–35, set out as a note under section 2052 of this title.

MANUFACTURE OR SALE OF FIREARMS OR FIREARMS AMMUNITION

Pub. L. 94–284, §3(e), May 11, 1976, 90 Stat. 504, provided that: "The Consumer Product Safety Commission shall make no ruling or order that restricts the manufacture or sale of firearms, firearms ammunition, or components of firearms ammunition, including black powder or gunpowder for firearms."

[1] *See References in Text note below.*

§2081. Authorization of appropriations

(a) General authorization of appropriations

(1) In general

There are authorized to be appropriated to the Commission for the purpose of carrying out the provisions of this chapter and any other provision of law the Commission is authorized or directed to carry out—

(A) $118,200,000 for fiscal year 2010;
(B) $115,640,000 for fiscal year 2011;
(C) $123,994,000 for fiscal year 2012;
(D) $131,783,000 for fiscal year 2013; and
(E) $136,409,000 for fiscal year 2014.

(2) Travel allowance

From amounts appropriated pursuant to paragraph (1), there shall be made available $1,200,000 for fiscal year 2010, $1,248,000 for fiscal year 2011, $1,297,000 for fiscal year 2012, $1,350,000 for fiscal year 2013, and $1,403,000 for fiscal year 2014, for travel, subsistence, and related expenses incurred in furtherance of the official duties of Commissioners and employees with respect to attendance at meetings or similar functions, which shall be used by the Commission for such purposes in lieu of acceptance of payment or reimbursement for such expenses from any person—

(A) seeking official action from, doing business with, or conducting activities regulated by, the Commission; or

(B) whose interests may be substantially affected by the performance or nonperformance of the Commissioner's or employee's official duties.

(b) Limitation

No funds appropriated under subsection (a) of this section may be used to pay any claim described in section 2053(i) of this title whether pursuant to a judgment of a court or under any award, compromise, or settlement of such claim made under section 2672 of title 28, or under any other provision of law.

(Pub. L. 92–573, §32, Oct. 27, 1972, 86 Stat. 1233; Pub. L. 94–284, §§2, 5(b), May 11, 1976, 90 Stat. 503, 505; Pub. L. 95–631, §1, Nov. 10, 1978, 92 Stat. 3742; Pub. L. 97–35, title XII, §1214, Aug. 13, 1981, 95 Stat. 724; Pub. L. 101–608, title I, §117, Nov. 16, 1990, 104 Stat. 3121; Pub. L. 103–437, §5(c)(1), Nov. 2, 1994, 108 Stat. 4582; Pub. L. 110–314, title II, §§201(a), (c), 235(c)(4), Aug. 14, 2008, 122 Stat. 3038, 3039, 3075.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–314, §201(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) authorized appropriations for fiscal years 1991 and 1992.

Subsec. (b). Pub. L. 110–314, §201(c), redesignated subsec. (c) as (b), inserted heading, and struck out former subsec. (b), which related to authorization of appropriations for the planning and construction of research, development and testing facilities described in section 2076(h) of this title.

Subsec. (b)(1). Pub. L. 110–314, §235(c)(4), which directed substitution of "the appropriate Congressional committees." for "the Committee on Energy and Commerce of the House of Representatives, and by the Committee on Commerce, Science, and Transportation of the Senate.", could not be executed because of the repeal of subsec. (b) by Pub. L. 110–314, §201(c). See above.

Subsec. (c). Pub. L. 110–314, §201(c), redesignated subsec. (c) as (b).

1994—Subsec. (b)(1). Pub. L. 103–437 in introductory provisions substituted "Committee on Energy and Commerce of the House of Representatives, and by the Committee on Commerce, Science, and Transportation of the Senate" for "Committee on Interstate and Foreign Commerce of the House of

Representatives, and by the Committee on Commerce of the Senate".

1990—Subsec. (a). Pub. L. 101–608 added pars. (1) and (2) and struck out former pars. (1) to (9) which specified maximum appropriations authorized for fiscal year ending June 30, 1976, to fiscal year ending Sept. 30, 1983.

1981—Subsec. (a). Pub. L. 97–35 added pars. (8) and (9) and provision following par. (9) relating to payment of accumulated or accrued leave, severance pay, and any other expenses related to a reduction in force in the Commission.

1978—Subsec. (a)(5) to (7). Pub. L. 95–631 added pars. (5) to (7).

1976—Subsec. (a). Pub. L. 94–284, §2, substituted "$51,000,000 for the fiscal year ending June 30, 1976, $14,000,000 for the period beginning July 1, 1976, and ending September 30, 1976, $60,000,000 for the fiscal year ending September 30, 1977, and $68,000,000 for the fiscal year ending September 30, 1978" for "$55,000,000 for the fiscal year ending June 30, 1973, $59,000,000 for the fiscal year ending June 30, 1974, and $64,000,000 for the fiscal year ending June 30, 1975".

Subsec. (c). Pub. L. 94–284, §5(b), added subsec. (c).

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, see section 1215 of Pub. L. 97–35, set out as a note under section 2052 of this title.

§2082. Interim cellulose insulation safety standard

(a) Applicability of specification of General Services Administration; authority and effect of interim standard; modifications; criteria; labeling requirements

(1) Subject to the provisions of paragraph (2), on and after the last day of the 60-day period beginning on July 11, 1978, the requirements for flame resistance and corrosiveness set forth in the General Services Administration's specification for cellulose insulation, HH–I–515C (as such specification was in effect on February 1, 1978), shall be deemed to be an interim consumer product safety standard which shall have all the authority and effect of any other consumer product safety standard promulgated by the Commission under this chapter. During the 45-day period beginning on July 11, 1978, the Commission may make, and shall publish in the Federal Register, such technical, nonsubstantive changes in such requirements as it deems appropriate to make such requirements suitable for promulgation as a consumer product safety standard. At the end of the 60-day period specified in the first sentence of this paragraph, the Commission shall publish in the Federal Register such interim consumer product safety standard, as altered by the Commission under this paragraph.

(2) The interim consumer product safety standard established in paragraph (1) shall provide that any cellulose insulation which is produced or distributed for sale or use as a consumer product shall have a flame spread rating of 0 to 25, as such rating is set forth in the General Services Administration's specification for cellulose insulation, HH–I–515C.

(3) During the period for which the interim consumer product safety standard established in subsection (a) of this section is in effect, in addition to complying with any labeling requirement established by the Commission under this chapter, each manufacturer or private labeler of cellulose insulation shall include the following statement on any container of such cellulose insulation: "ATTENTION: This material meets the applicable minimum Federal flammability standard. This standard is based upon laboratory tests only, which do not represent actual conditions which may occur in the home". Such statement shall be located in a conspicuous place on such container and shall appear in conspicuous and legible type in contrast by typography, layout, and color with other printed matter on such container.

(b) Scope of judicial review

Judicial review of the interim consumer product safety standard established in subsection (a) of this section, as such standard is in effect on and after the last day of the 60-day period specified in such subsection, shall be limited solely to the issue of whether any changes made by the Commission under paragraph (1) are technical, nonsubstantive changes. For purposes of such review, any change made by the Commission under paragraph (1) which requires that any test to determine the flame

spread rating of cellulose insulation shall include a correction for variations in test results caused by equipment used in the test shall be considered a technical, nonsubstantive change.

(c) Enforcement; violations; promulgation of final standard; procedures applicable to promulgation; revision of interim standard; procedures applicable to revision

(1)(A) Any interim consumer product safety standard established pursuant to this section shall be enforced in the same manner as any other consumer product safety standard until such time as there is in effect a final consumer product safety standard promulgated by the Commission, as provided in subparagraph (B), or until such time as it is revoked by the Commission under section 2058(e) of this title. A violation of the interim consumer product safety standard shall be deemed to be a violation of a consumer product safety standard promulgated by the Commission under section 2058 of this title.

(B) If the Commission determines that the interim consumer product safety standard does not adequately protect the public from the unreasonable risk of injury associated with flammable or corrosive cellulose insulation, it shall promulgate a final consumer product safety standard to protect against such risk. Such final standard shall be promulgated pursuant to section 553 of title 5, except that the Commission shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions. A transcript shall be kept of any oral presentation. The provisions of section 2058(b), (c), and (d) of this title shall apply to any proceeding to promulgate such final standard. In any judicial review of such final standard under section 2060 of this title, the court shall not require any demonstration that each particular finding made by the Commission under section 2058(c) of this title is supported by substantial evidence. The court shall affirm the action of the Commission unless the court determines that such action is not supported by substantial evidence on the record taken as a whole.

(2)(A) Until there is in effect such a final consumer product safety standard, the Commission shall incorporate into the interim consumer product safety standard, in accordance with the provisions of this paragraph, each revision superseding the requirements for flame resistance and corrosiveness referred to in subsection (a) of this section and promulgated by the General Services Administration.

(B) At least 45 days before any revision superseding such requirements is to become effective, the Administrator of the General Services Administration shall notify the Commission of such revision. In the case of any such revision which becomes effective during the period beginning on February 1, 1978, and ending on July 11, 1978, such notice from the Administrator of the General Services Administration shall be deemed to have been made on July 11, 1978.

(C)(i) No later than 45 days after receiving any notice under subparagraph (B), the Commission shall publish the revision, including such changes in the revision as it considers appropriate to make the revision suitable for promulgation as an amendment to the interim consumer product safety standard, in the Federal Register as a proposed amendment to the interim consumer product safety standard.

(ii) The Commission may extend the 45-day period specified in clause (i) for an additional period of not more than 150 days if the Commission determines that such extension is necessary to study the technical and scientific basis for the revision involved, or to study the safety and economic consequences of such revision.

(D)(i) Additional extensions of the 45-day period specified in subparagraph (C)(i) may be taken by the Commission if—

(I) the Commission makes the determination required in subparagraph (C)(ii) with respect to each such extension; and

(II) in the case of further extensions proposed by the Commission after an initial extension under this clause, such further extensions have not been disapproved under clause (iv).

(ii) Any extension made by the Commission under this subparagraph shall be for a period of not more than 45 days.

(iii) Prior notice of each extension made by the Commission under this subparagraph, together with a statement of the reasons for such extension and an estimate of the length of time required by the Commission to complete its action upon the revision involved, shall be published in the Federal Register and shall be submitted to the appropriate Congressional committees.

(iv) In any case in which the Commission takes an initial 45-day extension under clause (i), the Commission may not take any further extensions under clause (i) if each committee referred to in clause (iii) disapproves by committee resolution any such further extensions before the end of the 15-day period following notice of such initial extension made by the Commission in accordance with clause (iii).

(E) The Commission shall give interested persons an opportunity to comment upon any proposed amendment to the interim consumer product safety standard during the 30-day period following any publication by the Commission under subparagraph (C).

(F) No later than 90 days after the end of the period specified in subparagraph (E), the Commission shall promulgate the amendment to the interim consumer product safety standard unless the Commission determines, after consultation with the Secretary of Energy, that—

(i) such amendment is not necessary for the protection of consumers from the unreasonable risk of injury associated with flammable or corrosive cellulose insulation; or

(ii) implementation of such amendment will create an undue burden upon persons who are subject to the interim consumer product safety standard.

(G) The provisions of section 2060 of this title shall not apply to any judicial review of any amendment to the interim product safety standard promulgated under this paragraph.

(d) Reporting requirements of other Federal departments, agencies, etc., of violations

Any Federal department, agency, or instrumentality, or any Federal independent regulatory agency, which obtains information which reasonably indicates that cellulose insulation is being manufactured or distributed in violation of this chapter shall immediately inform the Commission of such information.

(e) Reporting requirements of Commission to Congressional committees; contents, time of submission, etc.

(1) The Commission, no later than 45 days after July 11, 1978, shall submit a report to the appropriate Congressional committees which shall contain a detailed statement of the manner in which the Commission intends to carry out the enforcement of this section.

(2)(A) The Commission, no later than 6 months after the date upon which the report required in paragraph (1) is due (and no later than the end of each 6-month period thereafter), shall submit a report to each committee referred to in paragraph (1) which shall describe the enforcement activities of the Commission with respect to this section during the most recent 6-month period.

(B) The first report which the Commission submits under subparagraph (A) shall include the results of tests of cellulose insulation manufactured by at least 25 manufacturers which the Commission shall conduct to determine whether such cellulose insulation complies with the interim consumer product safety standard. The second such report shall include the results of such tests with respect to 50 manufacturers who were not included in testing conducted by the Commission for inclusion in the first report.

(f) Compliance with certification requirements; implementation; waiver; rules and regulations

(1) The Commission shall have the authority to require that any person required to comply with the certification requirements of section 2063 of this title with respect to the manufacture of cellulose insulation shall provide for the performance of any test or testing program required for such certification through the use of an independent third party qualified to perform such test or testing program. The Commission may impose such requirement whether or not the Commission has established a testing program for cellulose insulation under section 2063(b) of this title.

(2) The Commission, upon petition by a manufacturer, may waive the requirements of paragraph (1) with respect to such manufacturer if the Commission determines that the use of an independent third party is not necessary in order for such manufacturer to comply with the certification requirements of section 2063 of this title.

(3) The Commission may prescribe such rules as it considers necessary to carry out the provisions of this subsection.

(g) Authorization of appropriations

There are authorized to be appropriated, for each of the fiscal years 1978, 1979, 1980, and 1981, such sums as may be necessary to carry out the provisions of this section.

(Pub. L. 92–573, §35, as added Pub. L. 95–319, §3(a), July 11, 1978, 92 Stat. 386; amended Pub. L. 103–437, §5(c)(2), Nov. 2, 1994, 108 Stat. 4582; Pub. L. 110–314, title II, §235(c)(3), (5), Aug. 14, 2008, 122 Stat. 3074, 3075.)

AMENDMENTS

2008—Subsec. (c)(2)(D)(iii). Pub. L. 110–314, §235(c)(3), substituted "the appropriate Congressional committees" for "the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives".

Subsec. (e)(1). Pub. L. 110–314, §235(c)(5), substituted "the appropriate Congressional committees" for "the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Energy and Commerce of the House of Representatives".

1994—Subsecs. (c)(2)(D)(iii), (e)(1). Pub. L. 103–437 substituted "Committee on Energy and Commerce" for "Committee on Interstate and Foreign Commerce".

CONGRESSIONAL STATEMENT OF FINDINGS AND PURPOSE

Pub. L. 95–319, §2, July 11, 1978, 92 Stat. 386, provided that:

"(a) The Congress finds that—

"(1) existing Federal, State, and local laws and regulations are insufficient to protect the consumer from improperly manufactured cellulose insulation;

"(2) an unreasonably large quantity of cellulose insulation is being distributed that does not meet minimum safety standards;

"(3) an urgent need exists for the expedited setting of interim mandatory Federal standards for the manufacture of cellulose insulation; and

"(4) such standards are reasonably necessary to eliminate or reduce an unreasonable risk of injury to consumers from flammable or corrosive cellulose insulation.

"(b) It is the purpose of the Congress in this Act [enacting this section, amending section 2068 of this title, and enacting provisions set out as notes under sections 2051 and 2082 of this title] to provide an interim mandatory safety standard for cellulose insulation manufactured for use as a consumer product."

§2083. Congressional veto of consumer product safety rules

(a) Transmission to Congress

The Commission shall transmit to the Secretary of the Senate and the Clerk of the House of Representatives a copy of any consumer product safety rule promulgated by the Commission under section 2058 of this title.

(b) Disapproval by concurrent resolution

Any rule specified in subsection (a) of this section shall not take effect if—

(1) within the 90 calendar days of continuous session of the Congress which occur after the date of the promulgation of such rule, both Houses of the Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows (with the blank spaces appropriately filled): "That the Congress disapproves the consumer product safety rule which was promulgated by the Consumer Product Safety Commission with respect to and which was transmitted to the Congress on and disapproves the rule for the following reasons: ."; or

(2) within the 60 calendar days of continuous session of the Congress which occur after the date of the promulgation of such rule, one House of the Congress adopts such concurrent resolution and transmits such resolution to the other House and such resolution is not disapproved by such other House within the 30 calendar days of continuous session of the Congress which occur after the date of such transmittal.

(c) Presumptions from Congressional action or inaction

Congressional inaction on, or rejection of, a concurrent resolution of disapproval under this

section shall not be construed as an expression of approval of the rule involved, and shall not be construed to create any presumption of validity with respect to such rule.

(d) Continuous session of Congress

For purposes of this section—

(1) continuity of session is broken only by an adjournment of the Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the periods of continuous session of the Congress specified in subsection (b) of this section.

(Pub. L. 92–573, §36, as added Pub. L. 97–35, title XII, §1207(a), Aug. 13, 1981, 95 Stat. 718.)

EFFECTIVE DATE

Section applicable with respect to consumer product safety rules under this chapter and regulations under chapters 25 and 30 of this title promulgated after Aug. 13, 1981, see section 1215 of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 2052 of this title.

§2084. Information reporting

(a) Notification of settlements or judgments

If a particular model of a consumer product is the subject of at least 3 civil actions that have been filed in Federal or State court for death or grievous bodily injury which in each of the 24-month periods defined in subsection (b) of this section result in either a final settlement involving the manufacturer or a court judgment in favor of the plaintiff, the manufacturer of such product shall, in accordance with subsection (c) of this section, report to the Commission each such civil action within 30 days after the final settlement or court judgment in the third of such civil actions, and, within 30 days after any subsequent settlement or judgment in that 24-month period, any other such action.

(b) Calculation of 24-month periods

The 24-month periods referred to in subsection (a) of this section are the 24-month period commencing on January 1, 1991, and subsequent 24-month periods beginning on January 1 of the calendar year that is two years following the beginning of the previous 24-month period.

(c) Information required to be reported

(1) The information required by subsection (a) of this section to be reported to the Commission, with respect to each civil action described in subsection (a) of this section, shall include and in addition to any voluntary information provided under paragraph (2) shall be limited to the following:

(A) The name and address of the manufacturer.

(B) The model and model number or designation of the consumer product subject to the civil action.

(C) A statement as to whether the civil action alleged death or grievous bodily injury, and in the case of an allegation of grievous bodily injury, a statement of the category of such injury.

(D) A statement as to whether the civil action resulted in a final settlement or a judgment in favor of the plaintiff.

(E) in [1] the case of a judgment in favor of the plaintiff, the name of the civil action, the number assigned the civil action, and the court in which the civil action was filed.

(2) A manufacturer furnishing the report required by paragraph (1) may include (A) a statement as to whether any judgment in favor of the plaintiff is under appeal or is expected to be appealed or (B) any other information which the manufacturer chooses to provide. A manufacturer reporting to the Commission under subsection (a) of this section need not admit or may specifically deny that the information it submits reasonably supports the conclusion that its consumer product caused a death or grievous bodily injury.

(3) No statement of the amount paid by the manufacturer in a final settlement shall be required as

part of the report furnished under subsection (a) of this section, nor shall such a statement of settlement amount be required under any other section of this chapter.

(d) Report not deemed an admission of liability

The reporting of a civil action described in subsection (a) of this section by a manufacturer shall not constitute an admission of—

(1) an unreasonable risk of injury,
(2) a defect in the consumer product which was the subject of such action,
(3) a substantial product hazard,
(4) an imminent hazard, or
(5) any other admission of liability under any statute or under any common law.

(e) Definitions

For purposes of this section:

(1) A grievous bodily injury includes any of the following categories of injury: mutilation, amputation, dismemberment, disfigurement, loss of important bodily functions, debilitating internal disorder, severe burn, severe electric shock, and injuries likely to require extended hospitalization.

(2) For purposes of this section,[2] a particular model of a consumer product is one that is distinctive in functional design, construction, warnings or instructions related to safety, function, user population, or other characteristics which could affect the product's safety related performance.

(Pub. L. 92–573, §37, as added Pub. L. 101–608, title I, §112(b), Nov. 16, 1990, 104 Stat. 3115.)

CONGRESSIONAL REPORTS

Pub. L. 101–608, title I, §112(f), Nov. 16, 1990, 104 Stat. 3117, provided that:

"(1) The Consumer Product Safety Commission shall report to the Congress on the extent to which reports made to the Commission under section 37 of the Consumer Product Safety Act [15 U.S.C. 2084] have assisted the Commission in carrying out its responsibilities under such Act [15 U.S.C. 2051 et seq.]. The report—

"(A) shall provide aggregate data and not the details and contents of individual reports filed with the Commission pursuant to such section 37,

"(B) shall not disclose the brand names of products included in reports under such section 15(b) or 37 [15 U.S.C. 2064(b), 2084] or the number of reports under such sections for particular models or classes of products, and

"(C) shall include—

"(i) a comparison of the number of reports received under such section 37 and the number of reports received under section 15(b) of such Act,

"(ii) a comparison of the number of reports filed with the Commission before the date of the enactment of this Act [Nov. 16, 1990] and after such date, and

"(iii) the total number of settlements and court judgments reported under such section 37 and the total number of rulemakings and enforcement actions undertaken in response to such reports,

"(iv) recommendations of the Commission for additional improvements in reporting under the Consumer Product Safety Act.

"(2) The first report under paragraph (1) shall be due February 1, 1992, and the second such report shall be due April 1, 1993."

[1] *So in original. Probably should be capitalized.*

[2] *So in original.*

§2085. Low-speed electric bicycles

(a) Construction

Notwithstanding any other provision of law, low-speed electric bicycles are consumer products

within the meaning of section 2052(a)(1) [1] of this title and shall be subject to the Commission regulations published at section 1500.18(a)(12) and part 1512 of title 16, Code of Federal Regulations.

(b) Definition

For the purpose of this section, the term "low-speed electric bicycle" means a two- or three-wheeled vehicle with fully operable pedals and an electric motor of less than 750 watts (1 h.p.), whose maximum speed on a paved level surface, when powered solely by such a motor while ridden by an operator who weighs 170 pounds, is less than 20 mph.

(c) Promulgation of requirements

To further protect the safety of consumers who ride low-speed electric bicycles, the Commission may promulgate new or amended requirements applicable to such vehicles as necessary and appropriate.

(d) Preemption

This section shall supersede any State law or requirement with respect to low-speed electric bicycles to the extent that such State law or requirement is more stringent than the Federal law or requirements referred to in subsection (a) of this section.

(Pub. L. 92–573, §38, as added Pub. L. 107–319, §1, Dec. 4, 2002, 116 Stat. 2776.)

REFERENCES IN TEXT

Section 2052(a)(1) of this title, referred to in subsec. (a), was redesignated section 2052(a)(5) of this title by Pub. L. 110–314, title II, §235(b)(4), Aug. 14, 2008, 122 Stat. 3074.

[1] *See References in Text note below.*

§2086. Prohibition on industry-sponsored travel

Notwithstanding section 1353 of title 31 and section 2076(b)(6) of this title, no Commissioner or employee of the Commission shall accept travel, subsistence, or related expenses with respect to attendance by a Commissioner or employee at any meeting or similar function relating to official duties of a Commissioner or an employee, from a person—

(1) seeking official action from, doing business with, or conducting activities regulated by, the Commission; or

(2) whose interests may be substantially affected by the performance or nonperformance of the Commissioner's or employee's official duties.

(Pub. L. 92–573, §39, as added Pub. L. 110–314, title II, §206(a), Aug. 14, 2008, 122 Stat. 3044.)

§2087. Whistleblower protection

(a) No manufacturer, private labeler, distributor, or retailer,[1] may discharge an employee or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee, whether at the employee's initiative or in the ordinary course of the employee's duties (or any person acting pursuant to a request of the employee)—

(1) provided, caused to be provided, or is about to provide or cause to be provided to the employer, the Federal Government, or the attorney general of a State information relating to any violation of, or any act or omission the employee reasonably believes to be a violation of any provision of this chapter or any other Act enforced by the Commission, or any order, rule, regulation, standard, or ban under any such Acts;

(2) testified or is about to testify in a proceeding concerning such violation;

(3) assisted or participated or is about to assist or participate in such a proceeding; or

(4) objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any provision of this chapter or any other Act enforced by the Commission, or any order, rule, regulation, standard, or ban under any such Acts.

(b)(1) A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, not later than 180 days after the date on which such violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor alleging such discharge or discrimination and identifying the person responsible for such act. Upon receipt of such a complaint, the Secretary shall notify, in writing, the person named in the complaint of the filing of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the opportunities that will be afforded to such person under paragraph (2).

(2)(A) Not later than 60 days after the date of receipt of a complaint filed under paragraph (1) and after affording the complainant and the person named in the complaint an opportunity to submit to the Secretary a written response to the complaint and an opportunity to meet with a representative of the Secretary to present statements from witnesses, the Secretary shall initiate an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify, in writing, the complainant and the person alleged to have committed a violation of subsection (a) of the Secretary's findings. If the Secretary concludes that there is reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary shall accompany the Secretary's findings with a preliminary order providing the relief prescribed by paragraph (3)(B). Not later than 30 days after the date of notification of findings under this paragraph, either the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Any such hearing shall be conducted expeditiously. If a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

(B)(i) The Secretary shall dismiss a complaint filed under this subsection and shall not conduct an investigation otherwise required under subparagraph (A) unless the complainant makes a prima facie showing that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(ii) Notwithstanding a finding by the Secretary that the complainant has made the showing required under clause (i), no investigation otherwise required under subparagraph (A) shall be conducted if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(iii) The Secretary may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(iv) Relief may not be ordered under subparagraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(3)(A) Not later than 120 days after the date of conclusion of any hearing under paragraph (2), the Secretary shall issue a final order providing the relief prescribed by this paragraph or denying the complaint. At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary, the complainant, and the person alleged to have committed the violation.

(B) If, in response to a complaint filed under paragraph (1), the Secretary determines that a violation of subsection (a) has occurred, the Secretary shall order the person who committed such violation—

(i) to take affirmative action to abate the violation;

(ii) to reinstate the complainant to his or her former position together with compensation (including back pay) and restore the terms, conditions, and privileges associated with his or her

employment; and

(iii) to provide compensatory damages to the complainant.

If such an order is issued under this paragraph, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(C) If the Secretary finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary may award to the prevailing employer a reasonable attorneys' fee, not exceeding $1,000, to be paid by the complainant.

(4) If the Secretary has not issued a final decision within 210 days after the filing of the complaint, or within 90 days after receiving a written determination, the complainant may bring an action at law or equity for *de novo* review in the appropriate district court of the United States with jurisdiction, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury. The proceedings shall be governed by the same legal burdens of proof specified in paragraph (2)(B). The court shall have jurisdiction to grant all relief necessary to make the employee whole, including injunctive relief and compensatory damages, including—

(A) reinstatement with the same seniority status that the employee would have had, but for the discharge or discrimination;

(B) the amount of back pay, with interest; and

(C) compensation for any special damages sustained as a result of the discharge or discrimination, including litigation costs, expert witness fees, and reasonable attorney's fees.

(5)(A) Unless the complainant brings an action under paragraph (4), any person adversely affected or aggrieved by a final order issued under paragraph (3) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation. The petition for review must be filed not later than 60 days after the date of the issuance of the final order of the Secretary. Review shall conform to chapter 7 of title 5. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order.

(B) An order of the Secretary with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

(6) Whenever any person has failed to comply with an order issued under paragraph (3), the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur, or in the United States district court for the District of Columbia, to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief and compensatory damages.

(7)(A) A person on whose behalf an order was issued under paragraph (3) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

(B) The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorneys' and expert witness fees) to any party whenever the court determines such award is appropriate.

(c) Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28.

(d) Subsection (a) shall not apply with respect to an employee of a manufacturer, private labeler, distributor, or retailer who, acting without direction from such manufacturer, private labeler, distributor, or retailer (or such person's agent), deliberately causes a violation of any requirement

relating to any violation or alleged violation of any order, regulation, or consumer product safety standard under this chapter or any other law enforced by the Commission.

(Pub. L. 92–573, §40, as added Pub. L. 110–314, title II, §219(a), Aug. 14, 2008, 122 Stat. 3062.)

[1] *So in original. The comma probably should not appear.*

§2088. Financial responsibility

(a) Identification and determination of bond

The Commission, in consultation with U.S. Customs and Border Protection and other relevant Federal agencies, shall identify any consumer product, or other product or substance that is regulated under this chapter or any other Act enforced by the Commission, for which the cost of destruction would normally exceed bond amounts determined under sections 1623 and 1624 of title 19 and shall recommend to U.S. Customs and Border Protection a bond amount sufficient to cover the cost of destruction of such products or substances.

(b) Study of requiring escrow for recalls and destruction of products

(1) Study

The Comptroller General shall conduct a study to determine the feasibility of requiring—

(A) the posting of an escrow, proof of insurance, or security sufficient in amount to cover the cost of destruction of a domestically-produced product or substance regulated under this chapter or any other Act enforced by the Commission; and

(B) the posting of an escrow, proof of insurance, or security sufficient in amount to cover the cost of an effective recall of a product or substance, domestic or imported, regulated under this chapter or any other Act enforced by the Commission.

(2) Report

Not later than 180 days after August 14, 2008, the Comptroller General shall transmit to the appropriate Congressional committees a report on the conclusions of the study required under paragraph (1), including an assessment of whether such an escrow requirement could be implemented and any recommendations for such implementation.

(Pub. L. 92–573, §41, as added Pub. L. 110–314, title II, §224(a), Aug. 14, 2008, 122 Stat. 3069.)

§2089. All-terrain vehicles

(a) In general

(1) Mandatory standard

Notwithstanding any other provision of law, within 90 days after August 14, 2008, the Commission shall publish in the Federal Register as a mandatory consumer product safety standard the American National Standard for Four Wheel All-Terrain Vehicles Equipment Configuration, and Performance Requirements developed by the Specialty Vehicle Institute of America (American National Standard ANSI/SVIA–1–2007). The standard shall take effect 150 days after it is published.

(2) Compliance with standard

After the standard takes effect, it shall be unlawful for any manufacturer or distributor to import into or distribute in commerce in the United States any new assembled or unassembled all-terrain vehicle unless—

(A) the all-terrain vehicle complies with each applicable provision of the standard;

(B) the ATV is subject to an ATV action plan filed with the Commission before August 14, 2008, or subsequently filed with and approved by the Commission, and bears a label certifying

such compliance and identifying the manufacturer, importer or private labeler and the ATV action plan to which it is subject; and

(C) the manufacturer or distributor is in compliance with all provisions of the applicable ATV action plan.

(3) Violation

The failure to comply with any requirement of paragraph (2) shall be deemed to be a failure to comply with a consumer product safety standard under this chapter and subject to all of the penalties and remedies available under this chapter.

(4) Compliant models with additional features

Paragraph (2) shall not be construed to prohibit the distribution in commerce of new all-terrain vehicles that comply with the requirements of that paragraph but also incorporate characteristics or components that are not covered by those requirements. Any such characteristics or components shall be subject to the requirements of section 2064 of this title.

(b) Modification of standard

(1) ANSI revisions

If the American National Standard ANSI/SVIA–1–2007 is revised through the applicable consensus standards development process after the date on which the product safety standard for all-terrain vehicles is published in the Federal Register, the American National Standards Institute shall notify the Commission of the revision.

(2) Commission action

Within 120 days after it receives notice of such a revision by the American National Standards Institute, the Commission shall issue a notice of proposed rulemaking in accordance with section 553 of title 5 to amend the product safety standard for all-terrain vehicles to include any such revision that the Commission determines is reasonably related to the safe performance of all-terrain vehicles, and notify the Institute of any provision it has determined not to be so related. The Commission shall promulgate an amendment to the standard for all-terrain vehicles within 180 days after the date on which the notice of proposed rulemaking for the amendment is published in the Federal Register.

(3) Unreasonable risk of injury

Notwithstanding any other provision of this chapter, the Commission may, pursuant to sections 2056 and 2058 of this title, amend the product safety standard for all-terrain vehicles to include any additional provision that the Commission determines is reasonably necessary to reduce an unreasonable risk of injury associated with the performance of all-terrain vehicles.

(4) Certain provisions not applicable

Sections 2056 and 2058 of this title shall not apply to promulgation of any amendment of the product safety standard under paragraph (2). Judicial review of any amendment of the standard under paragraph (2) shall be in accordance with chapter 7 of title 5.

(c) Requirements for 3-wheeled all-terrain vehicles

Until a mandatory consumer product safety standard applicable to 3-wheeled all-terrain vehicles promulgated pursuant to this chapter is in effect, new 3-wheeled all-terrain vehicles may not be imported into or distributed in commerce in the United States. Any violation of this subsection shall be considered to be a violation of section 2068(a)(1) of this title and may also be enforced under section 2066 of this title.

(d) Further proceedings

(1) Deadline

The Commission shall issue a final rule in its proceeding entitled "Standards for All Terrain Vehicles and Ban of Three-wheeled All Terrain Vehicles".

(2) Categories of youth ATVs

In the final rule, the Commission, in consultation with the National Highway Traffic Safety Administration, may provide for a multiple factor method of categorization that, at a minimum, takes into account—

(A) the weight of the ATV;

(B) the maximum speed of the ATV;

(C) the velocity at which an ATV of a given weight is traveling at the maximum speed of the ATV;

(D) the age of children for whose operation the ATV is designed or who may reasonably be expected to operate the ATV; and

(E) the average weight of children for whose operation the ATV is designed or who may reasonably be expected to operate the ATV.

(3) Additional safety standards

In the final rule, the Commission, in consultation with the National Highway Traffic Safety Administration, shall review the standard published under subsection (a)(1) and establish additional safety standards for all-terrain vehicles to the extent necessary to protect the public health and safety. As part of its review, the Commission shall consider, at a minimum, establishing or strengthening standards on—

(A) suspension;

(B) brake performance;

(C) speed governors;

(D) warning labels;

(E) marketing; and

(F) dynamic stability.

(e) Definitions

In this section:

(1) All-terrain vehicle or ATV

The term "all-terrain vehicle" or "ATV" means—

(A) any motorized, off-highway vehicle designed to travel on 3 or 4 wheels, having a seat designed to be straddled by the operator and handlebars for steering control; but

(B) does not include a prototype of a motorized, off-highway, all-terrain vehicle or other motorized, off-highway, all-terrain vehicle that is intended exclusively for research and development purposes unless the vehicle is offered for sale.

(2) ATV action plan

The term "ATV action plan" means a written plan or letter of undertaking that describes actions the manufacturer or distributor agrees to take to promote ATV safety, including rider training, dissemination of safety information, age recommendations, other policies governing marketing and sale of the ATVs, the monitoring of such sales, and other safety related measures, and that is substantially similar to the plans described under the heading "The Undertakings of the Companies in the Commission Notice" published in the Federal Register on September 9, 1998 (63 FR 48199–48204).

(Pub. L. 92–573, §42, as added Pub. L. 110–314, title II, §232(a), Aug. 14, 2008, 122 Stat. 3071.)

CODIFICATION

August 14, 2008, referred to in subsec. (a)(2)(B), was in the original "the date of enactment of the Act" and was translated as reading "the date of enactment of the Consumer Product Safety Improvement Act of 2008", which enacted this section, to reflect the probable intent of Congress.

EFFECTIVE DATE

Subsec. (c) of this section effective on the date that is 30 days after Aug. 14, 2008, see section 239(a) of Pub. L. 110–314, set out as an Effective Date of 2008 Amendment note under section 2051 of this title.

DEADLINE FOR RULE BY CONSUMER PRODUCT SAFETY COMMISSION ON STANDARDS FOR ALL TERRAIN VEHICLES

Pub. L. 112–28, §9, Aug. 12, 2011, 125 Stat. 282, provided that: "The Commission shall issue the final rule described in section 42(d) of the Consumer Product Safety Act (15 U.S.C. 2089(d)) not later than 1 year after the date of enactment of this Act [Aug. 12, 2011]."

CHAPTER 48—HOBBY PROTECTION

Sec.

2101. Marking requirements.
2102. Private enforcement.
2103. Enforcement by Federal Trade Commission.
2104. Imports.
2105. Application of other laws.
2106. Definitions.

§2101. Marking requirements

(a) Political items

The manufacture in the United States, or the importation into the United States, for introduction into or distribution in commerce of any imitation political item which is not plainly and permanently marked with the calendar year in which such item was manufactured, is unlawful and is an unfair or deceptive act or practice in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(b) Coins and other numismatic items

The manufacture in the United States, or the importation into the United States, for introduction into or distribution in commerce of any imitation numismatic item which is not plainly and permanently marked "copy", is unlawful and is an unfair or deceptive act or practice in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(c) Rules and regulations

The Federal Trade Commission shall prescribe rules for determining the manner and form in which items described in subsection (a) or (b) of this section shall be permanently marked.

(d) Exemption

Subsections (a) and (b), and regulations under subsection (c) of this section, shall not apply to any common carrier or contract carrier or freight forwarder with respect to an imitation political item or imitation numismatic item received, shipped, delivered, or handled by it for shipment in the ordinary course of its business.

(Pub. L. 93–167, §2, Nov. 29, 1973, 87 Stat. 686.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsecs. (a) and (b), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

EFFECTIVE DATE

Pub. L. 93–167, §8, Nov. 29, 1973, 87 Stat. 687, provided that: "This Act [enacting this chapter] shall apply only to imitation political items and imitation numismatic items manufactured after the date of enactment of this Act [Nov. 29, 1973]."

SHORT TITLE

Pub. L. 93–167, §1, Nov. 29, 1973, 87 Stat. 686, provided: "That this Act [enacting this chapter] may be cited as the 'Hobby Protection Act'."

§2102. Private enforcement

If any person violates section 2101(a) or (b) of this title or a rule under section 2101(c) of this title, any interested person may commence a civil action for injunctive relief restraining such violation, and for damages, in any United States District Court for a district in which the defendant resides or has an agent. In any such action, the court may award the costs of the suit, including reasonable attorneys' fees.

(Pub. L. 93–167, §3, Nov. 29, 1973, 87 Stat. 686.)

§2103. Enforcement by Federal Trade Commission

(a) Statutory authority

Except as provided in section 2102 of this title, this chapter shall be enforced by the Federal Trade Commission under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(b) Incorporation of Federal Trade Commission Act provisions

The Commission shall prevent any person from violating the provisions of this chapter in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act [15 U.S.C. 41 et seq.] were incorporated into and made a part of this chapter; and any such person violating the provisions of this chapter shall be subject to the penalties and entitled to the privileges and immunities provided in said Federal Trade Commission Act, in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though the applicable terms and provisions of the said Federal Trade Commission Act were incorporated into and made a part of this chapter.

(Pub. L. 93–167, §4, Nov. 29, 1973, 87 Stat. 686.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in text, is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

§2104. Imports

Any item imported into the United States in violation of section 2101(a) or (b) of this title or regulations under section 2101(c) of this title shall be subject to seizure and forfeiture under the customs laws.

(Pub. L. 93–167, §5, Nov. 29, 1973, 87 Stat. 687.)

§2105. Application of other laws

The provisions of this chapter are in addition to, and not in substitution for or limitation of, the provisions of any other law of the United States or of the law of any State.

(Pub. L. 93–167, §6, Nov. 29, 1973, 87 Stat. 687.)

§2106. Definitions

For purposes of this chapter:

(1) The term "original political item" means any political button, poster, literature, sticker, or any advertisement produced for use in any political cause.

(2) The term "imitation political item" means an item which purports to be, but in fact is not, an original political item, or which is a reproduction, copy, or counterfeit of an original political item.

(3) The term "original numismatic item" means anything which has been a part of a coinage or issue which has been used in exchange or has been used to commemorate a person or event. Such term includes coins, tokens, paper money, and commemorative medals.

(4) The term "imitation numismatic item" means an item which purports to be, but in fact is not, an original numismatic item or which is a reproduction, copy, or counterfeit of an original numismatic item.

(5) The term "commerce" has the same meaning as such term has under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(6) The term "Commission" means the Federal Trade Commission.

(7) The term "United States" means the States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Pub. L. 93–167, §7, Nov. 29, 1973, 87 Stat. 687.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in par. (5), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

CHAPTER 49—FIRE PREVENTION AND CONTROL

Sec.

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§2201. Congressional findings

The Congress finds that—

(1) The National Commission on Fire Prevention and Control, established pursuant to Public Law 90–259, has made an exhaustive and comprehensive examination of the Nation's fire problem, has made detailed findings as to the extent of this problem in terms of human suffering and loss of life and property, and has made ninety thoughtful recommendations.

(2) The United States today has the highest per capita rate of death and property loss from fire of all the major industrialized nations in the world.

(3) Fire is an undue burden affecting all Americans, and fire also constitutes a public health and safety problem of great dimensions. Fire kills 12,000 and scars and injures 300,000 Americans each year, including 50,000 individuals who require extended hospitalization. Almost $3 billion worth of property is destroyed annually by fire, and the total economic cost of destructive fire in the United States is estimated conservatively to be $11,000,000,000 per year. Firefighting is the Nation's most hazardous profession.

(4) Such losses of life and property from fire are unacceptable to the Congress.

(5) While fire prevention and control is and should remain a State and local responsibility, the Federal Government must help if a significant reduction in fire losses is to be achieved.

(6) The fire service and the civil defense program in each locality would both benefit from closer cooperation.

(7) The Nation's fire problem is exacerbated by (A) the indifference with which some Americans confront the subject; (B) the Nation's failure to undertake enough research and development into fire and fire-related problems; (C) the scarcity of reliable data and information; (D) the fact that designers and purchasers of buildings and products generally give insufficient attention to fire safety; (E) the fact that many communities lack adequate building and fire prevention codes; and (F) the fact that local fire departments spend about 95 cents of every dollar appropriated to the fire services on efforts to extinguish fires and only about 5 cents on fire prevention.

(8) There is a need for improved professional training and education oriented toward improving the effectiveness of the fire services, including an increased emphasis on preventing fires and on reducing injuries to firefighters.

(9) A national system for the collection, analysis, and dissemination of fire data is needed to help local fire services establish research and action priorities.

(10) The number of specialized medical centers which are properly equipped and staffed for the treatment of burns and the rehabilitation of victims of fires is inadequate.

(11) The unacceptably high rates of death, injury, and property loss from fire can be reduced if the Federal Government establishes a coordinated program to support and reinforce the fire prevention and control activities of State and local governments.

(Pub. L. 93–498, §2, Oct. 29, 1974, 88 Stat. 1535.)

REFERENCES IN TEXT

The National Commission on Fire Prevention and Control, established pursuant to Public Law 90–259, referred to in par. (1), refers to the Commission established pursuant to Pub. L. 90–259, title II, §§201–207, Mar. 1, 1968, 82 Stat. 36, which provisions were set out as a note under section 278f of this title. The Commission has expired pursuant to sections 203(c) and 207 of Pub. L. 90–259.

SHORT TITLE OF 2013 AMENDMENT

Pub. L. 112–239, div. A, title XVIII, §1801, Jan. 2, 2013, 126 Stat. 2099, provided that: "This subtitle [subtitle A (§§1801–1807) of title XVIII of div. A of Pub. L. 112–239, amending sections 2203, 2204, 2206, 2210, 2214, 2215, 2217, 2218, 2224, 2226, 2229, 2229a of this title and section 290a of Title 42, The Public Health and Welfare] may be cited as the 'Fire Grants Reauthorization Act of 2012'."

Pub. L. 112–239, div. A, title XVIII, §1811, Jan. 2, 2013, 126 Stat. 2117, provided that: "This subtitle [subtitle B (§§1811–1815) of title XVIII of div. A of Pub. L. 112–239, amending sections 2204, 2205, 2208, 2216 of this title] may be cited as the 'United States Fire Administration Reauthorization Act of 2012'."

SHORT TITLE OF 2008 AMENDMENT

Pub. L. 110–376, §1, Oct. 8, 2008, 122 Stat. 4056, provided that: "This subtitle [probably should be "This Act", enacting section 2234 of this title, amending sections 2203, 2206 to 2208, 2216, and 2218 of this title and section 321d of Title 6, Domestic Security, and enacting provisions set out as a note under this section] may be cited as the 'United States Fire Administration Reauthorization Act of 2008'."

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–375, div. C, title XXXVI, §3601, Oct. 28, 2004, 118 Stat. 2195, provided that: "This title [amending section 2229 of this title] may be cited as the 'Assistance to Firefighters Grant Program Reauthorization Act of 2004'."

SHORT TITLE OF 2003 AMENDMENT

Pub. L. 108–169, title I, §101, Dec. 6, 2003, 117 Stat. 2036, provided that: "This title [amending section 2216 of this title and enacting provisions set out as a note under section 2204 of this title] may be cited as the 'United States Fire Administration Reauthorization Act of 2003'."

Pub. L. 108–169, title II, §201, Dec. 6, 2003, 117 Stat. 2036, provided that: "This title [amending sections 2206, 2207, 2209, and 2229 of this title and sections 151303, 151304, and 151307 of Title 36, Patriotic and National Observances, Ceremonies, and Organizations, and enacting provisions set out as notes under section 2206 of this title] may be cited as the 'Firefighting Research and Coordination Act'."

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–503, title I, §101, Nov. 13, 2000, 114 Stat. 2298, provided that: "This title [enacting sections 2230 and 2231 of this title, amending sections 1511, 2203, 2204, 2206, 2209, 2210, 2214 to 2218 and 2220 of this title, sections 151302 to 151304 and 151307 of Title 36, Patriotic and National Observances, Ceremonies, and Organizations, and section 290a of Title 42, The Public Health and Welfare, and repealing sections 2222 and 2223 of this title] may be cited as the 'Fire Administration Authorization Act of 2000'."

SHORT TITLE OF 1997 AMENDMENT

Pub. L. 105–108, §1, Nov. 20, 1997, 111 Stat. 2264, provided that: "This Act [amending sections 2216, 2225, and 2227 of this title and enacting provisions set out as notes under sections 2204 and 2218 of this title] may be cited as the 'United States Fire Administration Authorization Act for Fiscal Years 1998 and 1999'."

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–254, §1, May 19, 1994, 108 Stat. 679, provided that: "This Act [enacting sections 2221 and 2228 of this title, amending sections 2216, 2220, and 2227 of this title, and enacting provisions set out as notes under this section and section 2216 of this title] may be cited as the 'Arson Prevention Act of 1994'."

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–391, §1, Sept. 25, 1990, 104 Stat. 747, provided that: "This Act [enacting sections 2224, 2225, 2225a and 2226 of this title and section 5707a of Title 5, Government Organization and Employees, amending section 2203 of this title and sections 5701 and 5707 of Title 5, and enacting provisions set out as notes under this section and sections 5707 and 5707a of Title 5] may be cited as the 'Hotel and Motel Fire Safety Act of 1990'."

SHORT TITLE

Pub. L. 93–498, §1, Oct. 29, 1974, 88 Stat. 1535, provided: "That this Act [enacting this chapter and section

290a of Title 42, The Public Health and Welfare, amending sections 278f and 1511 of this title, and repealing section 278g of this title] may be cited as the 'Federal Fire Prevention and Control Act of 1974'."

STUDY ON NEED FOR FEDERAL ASSISTANCE TO STATE AND LOCAL COMMUNITIES TO FUND FIREFIGHTING AND EMERGENCY RESPONSE ACTIVITIES

Pub. L. 106–398, §1 [[div. A], title XVII, §1701(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–363, required the Director of the Federal Emergency Management Agency to conduct a study in conjunction with the National Fire Protection Association related to the activities and needs of the fire services and submit a report on the results of the study to Congress within 18 months of Oct. 30, 2000.

LOCAL FIREFIGHTER AND EMERGENCY SERVICES TRAINING

Pub. L. 104–132, title VIII, §819, Apr. 24, 1996, 110 Stat. 1316, as amended by Pub. L. 109–295, title VI, §612(c), Oct. 4, 2006, 120 Stat. 1410, provided that:

"(a) GRANT AUTHORIZATION.—The Attorney General, in consultation with the Administrator of the Federal Emergency Management Agency, may make grants to provide specialized training and equipment to enhance the capability of metropolitan fire and emergency service departments to respond to terrorist attacks.

"(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for fiscal year 1997, $5,000,000 to carry out this section."

ARSON PREVENTION AND CONTROL; CONGRESSIONAL FINDINGS

Pub. L. 103–254, §2, May 19, 1994, 108 Stat. 679, provided that: "Congress finds that—

"(1) arson is a serious and costly problem, and is responsible for approximately 25 percent of all fires in the United States;

"(2) arson is a leading cause of fire deaths, accounting for approximately 700 deaths annually in the United States, and is the leading cause of property damage due to fire in the United States;

"(3) estimates of arson property losses are in the range of $2,000,000,000 annually, or approximately 1 of every 4 dollars lost to fire;

"(4) the incidence of arson in the United States is seriously underreported, in part because of the lack of adequate participation by local jurisdictions in the National Fire Incident Reporting System (NFIRS) and the Uniform Crime Reporting (UCR) program;

"(5) there is a need for expanded training programs for arson investigators;

"(6) there is a need for improved programs designed to enable volunteer firefighters to detect arson crimes and to preserve evidence vital to the investigation and prosecution of arson cases;

"(7) according to the National Fire Protection Association, of all the suspicious and incendiary fires estimated to occur, only 1/3 are confirmed as arson; and

"(8) improved training of arson investigators will increase the ability of fire departments to identify suspicious and incendiary fires, and will result in increased and more effective prosecution of arson offenses."

CONGRESSIONAL FINDINGS AND PURPOSE

Pub. L. 110–376, §2, Oct. 8, 2008, 122 Stat. 4056, provided that: "Congress makes the following findings:

"(1) The number of lives lost each year because of fire has dropped significantly over the last 25 years in the United States. However, the United States still has one of the highest fire death rates in the industrialized world. In 2006, the National Fire Protection Association reported 3,245 civilian fire deaths, 16,400 civilian fire injuries, and $11,307,000,000 in direct losses due to fire.

"(2) Every year, more than 100 firefighters die in the line of duty. The United States Fire Administration should continue its leadership to help local fire agencies dramatically reduce these fatalities.

"(3) The Federal Government should continue to work with State and local governments and the fire service community to further the promotion of national voluntary consensus standards that increase firefighter safety.

"(4) The United States Fire Administration provides crucial support to the 30,300 fire departments of the United States through training, emergency incident data collection, fire awareness and education, and support of research and development activities for fire prevention, control, and suppression technologies.

"(5) The collection of data on fire and other emergency incidents is a vital tool both for policy makers and emergency responders to identify and develop responses to emerging hazards. Improving the data collection capabilities of the United States Fire Administration is essential for accurately tracking and responding to the magnitude and nature of the fire problems of the United States.

"(6) The research and development performed by the National Institute of Standards and Technology, the United States Fire Administration, other government agencies, and nongovernmental organizations on

fire technologies, techniques, and tools advance the capabilities of the fire service of the United States to suppress and prevent fires.

"(7) Because of the essential role of the United States Fire Administration and the fire service community in preparing for and responding to national [probably should be "natural"] and man-made disasters, the United States Fire Administration should have a prominent place within the Federal Emergency Management Agency and the Department of Homeland Security."

Pub. L. 101–391, §2, Sept. 25, 1990, 104 Stat. 747, provided that:

"(a) FINDINGS.—Congress finds that—

"(1) more than 400 Americans have lost their lives in multistory hotel fires over the last 5 years;

"(2) when properly installed and maintained, automatic sprinklers and smoke detectors provide the most effective safeguards against the loss of life and property from fire;

"(3) automatic sprinklers and smoke detectors should supplement and not supplant other fire protection measures, including existing requirements for fire resistive walls and fire retardant furnishings;

"(4) some State and local governments and the hotel industry need to act more rapidly to require the installation and use of automatic sprinkler systems in hotels; and

"(5) through the United States Fire Administration and the Center for Fire Research, the Federal Government has helped to develop and promote the use of residential sprinkler systems and other means of fire prevention and control.

"(b) PURPOSE.—It is the purpose of this Act [see Short Title of 1990 Amendment note above] to save lives and protect property by promoting fire and life safety in hotels, motels, and all places of public accommodation affecting commerce."

WAIVER OF FEDERAL LIABILITY

Pub. L. 101–391, §7, Sept. 25, 1990, 104 Stat. 752, provided that: "In any action for damages resulting from a fire at a place of public accommodation, the Federal Government may not be found liable for the death of or injury to any person or damage to any property because an officer or employee of the Federal Government was negligent in carrying out any requirement under this Act [see Short Title of 1990 Amendment note above] or the amendments made by this Act."

EFFECT ON CERTAIN REQUIREMENTS

Pub. L. 101–391, §8, Sept. 25, 1990, 104 Stat. 752, provided that: "Nothing in this Act [see Short Title of 1990 Amendment note above] shall be construed to encourage model building code organizations, or State or local governments, to reduce requirements for fire resistive walls or other safety features."

REORGANIZATION PLAN NO. 3 OF 1978

43 F.R. 41943, 92 STAT. 3788

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, June 19, 1978, pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.

PART I. FEDERAL EMERGENCY MANAGEMENT AGENCY

SEC. 101. ESTABLISHMENT OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY

There is hereby established as an independent establishment in the Executive Branch, the Federal Emergency Management Agency (the "Agency").

SEC. 102. THE DIRECTOR

The Agency shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter prescribed by law for level II of the Executive Schedule [5 U.S.C. 5313].

SEC. 103. THE DEPUTY DIRECTOR

There shall be within the Agency a Deputy Director, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter prescribed by law for level IV of the Executive Schedule [5 U.S.C. 5315]. The Deputy Director shall perform such functions as the Director may from time to time prescribe and shall act as Director during the absence or disability of the Director or in the event of a vacancy in the Office of the Director.

SEC. 104. ASSOCIATE DIRECTORS

There shall be within the Agency not more than four Associate Directors, who shall be appointed by the

President, by and with the advice and consent of the Senate, two of whom shall be compensated at the rate now or hereafter prescribed by law for level IV of the Executive Schedule [5 U.S.C. 5315], one of whom shall be compensated at the rate now or hereafter prescribed by law for level V of the Executive Schedule [5 U.S.C. 5316] and one of whom shall be compensated at the rate now or hereafter prescribed by law for GS–18 of the General Schedule [set out under 5 U.S.C. 5332]. The Associate Directors shall perform such functions as the Director may from time to time prescribe.

SEC. 105. REGIONAL DIRECTORS

There shall be within the Agency ten regional directors who shall be appointed by the Director in the excepted service and shall be compensated at the rate now or hereafter prescribed by law for GS–16 of the General Schedule [set out under 5 U.S.C. 5332].

SEC. 106. PERFORMANCE OF FUNCTIONS

The Director may establish bureaus, offices, divisions, and other units within the Agency. The Director may from time to time make provision for the performance of any function of the Director by any officer, employee, or unit of the Agency.

PART II. TRANSFER OF FUNCTIONS

SEC. 201. FIRE PREVENTION

There are hereby transferred to the Director all functions vested in the Secretary of Commerce, the Administrator and Deputy Administrator of the National Fire Prevention and Control Administration, and the Superintendent of the National Academy for Fire Prevention and Control pursuant to the Federal Fire Prevention and Control Act of 1974, as amended, (15 U.S.C. 2201 through 2219); exclusive of the functions set forth at Sections 18 and 23 of the Federal Fire Prevention and Control Act (15 U.S.C. 278(f) and 1511).

SEC. 202. FLOOD AND OTHER MATTERS

There are hereby transferred to the Director all functions vested in the Secretary of Housing and Urban Development pursuant to the National Flood Insurance Act of 1968, as amended, and the Flood Disaster Protection Act of 1973, as amended, (42 U.S.C. 2414 and 42 U.S.C. 4001 through 4128), and Section 1 of the National Insurance Development Act of 1975, as amended, (89 Stat. 68) [set out as a note under 12 U.S.C. 1749bbb].

SEC. 203. EMERGENCY BROADCAST SYSTEM

There are hereby transferred to the Director all functions concerning the Emergency Broadcast System, which were transferred to the President and all such functions transferred to the Secretary of Commerce, by Reorganization Plan Number 1 [set out in the Appendix to Title 5, Government Organization and Employees].

PART III. GENERAL PROVISIONS

SEC. 301. TRANSFER AND ABOLISHMENT OF AGENCIES AND OFFICERS

The National Fire Prevention and Control Administration and the National Academy for Fire Prevention and Control and the positions of Administrator of said Administration and Superintendent of said Academy are hereby transferred to the Agency. The position of Deputy Administrator of said Administration (established by 15 U.S.C. 2204(c)) is hereby abolished.

SEC. 302. INCIDENTAL TRANSFERS

So much of the personnel, property, records, and unexpended balances of appropriations, allocations and other funds employed, used, held, available, or to be made available in connection with the functions transferred under this Plan, as the Director of the Office of Management and Budget shall determine, shall be transferred to the appropriate agency, or component at such time or times as the Director of the Office of Management and Budget shall provide, except that no such unexpended balances transferred shall be used for purposes other than those for which the appropriation was originally made. The Director of the Office of Management and Budget shall provide for terminating the affairs of any agencies abolished herein and for such further measures and dispositions as such Director deems necessary to effectuate the purposes of this Reorganization Plan.

SEC. 303. INTERIM OFFICERS

The President may authorize any persons who, immediately prior to the effective date of this Plan, held positions in the Executive Branch to which they were appointed by and with the advice and consent of the

Senate, to act as Director, Deputy Director, and Associate Directors of the Agency, until those offices are for the first time filled pursuant to the provisions of this Reorganization Plan or by recess appointment, as the case may be. The President may authorize any such person to receive the compensation attached to the Office in respect of which that person so serves, in lieu of other compensation from the United States.

SEC. 304. EFFECTIVE DATE

The provisions of this Reorganization Plan shall become effective at such time or times, on or before April 1, 1979, as the President shall specify, but not sooner than the earliest time allowable under Section 906 of Title 5, United States Code.

[Pursuant to Ex. Ord. 12127, Mar. 31, 1979, 44 F.R. 19367, this Reorg. Plan is effective Apr. 1, 1979]

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

Today I am transmitting Reorganization Plan No. 3 of 1978. The plan improves Federal emergency management and assistance. By consolidating emergency preparedness, mitigation and response activities, it cuts duplicative administrative costs and strengthens our ability to deal effectively with emergencies.

The plan, together with changes I will make through Executive action, would merge five agencies from the Departments of Defense, Commerce, HUD, and GSA into one new agency.

For the first time, key emergency management and assistance functions would be unified and made directly accountable to the President and Congress. This will reduce pressures for increased costs to serve similar goals.

The present situation has severely hampered Federal support of State and local emergency organizations and resources, which bear the primary responsibility for preserving life and property in times of calamity. This reorganization has been developed in close cooperation with State and local governments.

If approved by the Congress, the plan will establish the Federal Emergency Management Agency, whose Director shall report directly to the President. The National Fire Prevention and Control Administration (in the Department of Commerce), the Federal Insurance Administration (in the Department of Housing and Urban Development), and oversight responsibility for the Federal Emergency Broadcast System (now assigned in the Executive Office of the President) would be transferred to the Agency. The Agency's Director, its Deputy Director, and its five principal program managers would be appointed by the President with the advice and consent of the Senate.

If the plan takes effect, I will assign to the Federal Emergency Management Agency all authorities and functions vested by law in the President and presently delegated to the Defense Civil Preparedness Agency (in the Department of Defense). This will include certain engineering and communications support functions for civil defense now assigned to the U.S. Army.

I will also transfer to the new Agency all authorities and functions under the Disaster Relief Acts of 1970 and 1974 [sections 4401 et seq. and 5121 et seq. of Title 42, The Public Health and Welfare] now delegated to the Federal Disaster Assistance Administration in the Department of Housing and Urban Development.

I will also transfer all Presidential authorities and functions now delegated to the Federal Preparedness Agency in the General Services Administration, including the establishment of policy for the national stockpile. The stockpile disposal function, which is statutorily assigned to the General Services Administration, would remain there. Once these steps have been taken by Executive Order, these three agencies would be abolished.

Several additional transfers of emergency preparedness and mitigation functions would complete the consolidation. These include:

Oversight of the Earthquake Hazards Reduction Program, under Public Law 95–124 [section 7701 et seq. of Title 42], now carried out by the Office of Science and Technology Policy in the Executive Office of the President.

Coordination of Federal activities to promote dam safety, carried by the same Office.

Responsibility for assistance to communities in the development of readiness plans for severe weather-related emergencies, including floods, hurricanes, and tornadoes.

Coordination of natural and nuclear disaster warning systems.

Coordination of preparedness and planning to reduce the consequences of major terrorist incidents. This would not alter the present responsibility of the executive branch for reacting to the incidents themselves.

This reorganization rests on several fundamental principles:

First, Federal authorities to anticipate, prepare for, and respond to major civil emergencies should be supervised by one official responsible to the President and given attention by other officials at the highest levels.

The new Agency would be in this position. To increase White House oversight and involvement still further, I shall establish by Executive Order an Emergency Management Committee, to be chaired by the Federal Emergency Management Agency Director. Its membership shall be comprised of the Assistants to the President for National Security, Domestic Affairs and Policy and Intergovernmental Relations, and the Director, Office of Management and Budget. It will advise the President on ways to meet national civil emergencies. It will also oversee and provide guidance on the management of all Federal emergency authorities, advising the President on alternative approaches to improve performance and avoid excessive costs.

Second, an effective civil defense system requires the most efficient use of all available emergency resources. At the same time, civil defense systems, organization, and resources must be prepared to cope with any disasters which threaten our people. The Congress has clearly recognized this principle in recent changes in the civil defense legislation.

The communications, warning, evacuation, and public education processes involved in preparedness for a possible nuclear attack should be developed, tested, and used for major natural and accidental disasters as well. Consolidation of civil defense functions in the new Agency will assure that attack readiness programs are effectively integrated into the preparedness organizations and programs of State and local government, private industry, and volunteer organizations.

While serving an important "all hazards" readiness and response role, civil defense must continue to be fully compatible with and be ready to play an important role in our Nation's overall strategic policy. Accordingly, to maintain a link between our strategic nuclear planning and our nuclear attack preparedness planning, I will make the Secretary of Defense and the National Security Council responsible for oversight of civil defense related programs and policies of the new Agency. This will also include appropriate Department of Defense support in areas like program development, technical support, research, communications, intelligence and emergency operations.

Third, whenever possible, emergency responsibilities should be extensions of the regular missions of Federal agencies. The primary task of the Federal Emergency Management Agency will be to coordinate and plan for the emergency deployment of resources that have other routine uses. There is no need to develop a separate set of Federal skills and capabilities for those rare occasions when catastrophe occurs.

Fourth, Federal hazard mitigation activities should be closely linked with emergency preparedness and response functions. This reorganization would permit more rational decisions on the relative costs and benefits of alternative approaches to disasters by making the Federal Emergency Management Agency the focal point of all Federal hazard mitigation activities and by combining these with the key Federal preparedness and response functions.

The affected hazard mitigation activities include the Federal Insurance Administration which seeks to reduce flood losses by assisting states and local governments in developing appropriate land uses and building standards and several agencies that presently seek to reduce fire and earthquake losses through research and education.

Most State and local governments have consolidated emergency planning, preparedness and response functions on an "all hazard" basis to take advantage of the similarities in preparing for and responding to the full range of potential emergencies. The Federal Government can and should follow this lead.

Each of the changes set forth in the plan is necessary to accomplish one or more of the purposes set forth in section 901(a) of title 5 of the United States Code. The plan does not call for abolishing any functions now authorized by law. The provisions in the plan for the appointment and pay of any head or officer of the new agency have been found by me to be necessary.

I do not expect these actions to result in any significant changes in program expenditures for those authorities to be transferred. However, cost savings of between $10 to $15 million annually can be achieved by consolidating headquarters and regional facilities and staffs. The elimination (through attrition) of about 300 jobs is also anticipated.

The emergency planning and response authorities involved in this plan are vitally important to the security and well-being of our Nation. I urge the Congress to approve it.

JIMMY CARTER.

THE WHITE HOUSE, June 19, 1978

EX. ORD. NO. 12127. TRANSFER OF FUNCTIONS TO FEDERAL EMERGENCY MANAGEMENT AGENCY

Ex. Ord. No. 12127, Mar. 31, 1979, 44 F.R. 19367, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America,

including Section 304 of Reorganization Plan No. 3 of 1978 [set out as a note under this section], and in order to provide for the orderly activation of the Federal Emergency Management Agency, it is hereby ordered as follows:

1–101. Reorganization Plan No. 3 of 1978 (43 FR 41943), which establishes the Federal Emergency Management Agency, provides for the transfer of functions, and the transfer and abolition of agencies and offices, is hereby effective.

1–102. The Director of the Office of Management and Budget shall, in accord with Section 302 of the Reorganization Plan, provide for all the appropriate transfers, including those transfers related to all the functions transferred from the Department of Commerce, the Department of Housing and Urban Development, and the President.

1–103. (a) The functions transferred from the Department of Commerce are those vested in the Secretary of Commerce, the Administrator and Deputy Administrator of the National Fire Prevention and Control Administration (now the United States Fire Administration (Sec. 2(a) of Public Law 95–422)), and the Superintendent of the National Academy for Fire Prevention and Control pursuant to the Federal Fire Prevention and Control Act of 1974, as amended (15 U.S.C. 2201 et seq.) [this chapter] but not including any functions vested by the amendments made to other acts by Sections 18 and 23 of that Act (15 U.S.C. 278f and 1511). The functions vested in the Administrator by Sections 24 and 25 of that Act, as added by Sections 3 and 4 of Public Law 95–422 (15 U.S.C. 2220 and 2221), are not transferred to the Director of the Federal Emergency Management Agency. Those functions are transferred with the Administrator and remain vested in him. (Section 201 of the Plan.)

(b) There was also transferred from the Department of Commerce any function concerning the Emergency Broadcast System which was transferred to the Secretary of Commerce by Section 5B of Reorganization Plan No. 1 of 1977 (42 FR 56101; implemented by Executive Order No. 12046 of March 27, 1978) [set out in Title 5, Appendix, Government Organization and Employees; set out as a note under section 305 of Title 47, Telecommunications]. (Section 203 of the Plan.)

1–104. The functions transferred from the Department of Housing and Urban Development are those vested in the Secretary of Housing and Urban Development pursuant to Section 15(e) of the Federal Flood Insurance Act of 1956, as amended (42 U.S.C. 2414(e)), and the National Flood Insurance Act of 1968, as amended [42 U.S.C. 4001 et seq.] and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001 et seq.), and Section 520(b) of the National Housing Act, as amended (12 U.S.C. 1735d(b)), to the extent necessary to borrow from the Treasury to make payments for reinsured and directly insured losses, and Title XII of the National Housing Act, as amended ([formerly] 12 U.S.C. 1749bbb et seq., and as explained in Section 1 of the National Insurance Development Act of 1975 (Section 1 of Public Law 94–13 [formerly] at 12 U.S.C. 1749bbb note)). (Section 202 of the Plan.)

1–105. The functions transferred from the President are those concerning the Emergency Broadcast System which were transferred to the President by Section 5 of Reorganization Plan No. 1 of 1977 (42 FR 56101; implemented by Executive Order No. 12046 of March 27, 1978) [set out in Title 5, Appendix, Government Organization and Employees; set out as a note under section 305 of Title 47, Telecommunications]. (Section 203 of the Plan.)

1–106. This Order shall be effective Sunday, April 1, 1979.

JIMMY CARTER.

§2202. Declaration of purpose

It is declared to be the purpose of Congress in this chapter to—

(1) reduce the Nation's losses caused by fire through better fire prevention and control;

(2) supplement existing programs of research, training, and education, and to encourage new and improved programs and activities by State and local governments;

(3) establish the United States Fire Administration and the Fire Research Center within the Department of Commerce; and

(4) establish an intensified program of research into the treatment of burn and smoke injuries and the rehabilitation of victims of fires within the National Institutes of Health.

(Pub. L. 93–498, §3, Oct. 29, 1974, 88 Stat. 1536; Pub. L. 95–422, §2(a)(1), Oct. 5, 1978, 92 Stat. 932.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 93–498, Oct. 29, 1974, 88 Stat. 1535, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2201 of this title and Tables.

AMENDMENTS

1978—Par. (3). Pub. L. 95–422 substituted "United States Fire Administration" for "National Fire Prevention and Control Administration".

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

The National Fire Prevention and Control Administration [now United States Fire Administration] and the National Academy for Fire Prevention and Control and the positions of Administrator of the Administration and Superintendent of the Academy were transferred to an independent agency in the Executive Branch, to be known as the Federal Emergency Management Agency, and all functions vested in the Secretary of Commerce, the Administrator and Deputy Administrator of the National Fire Prevention and Control Administration, and the Superintendent of the National Academy for Fire Prevention and Control pursuant to the provisions of this chapter, with the exception of those functions under sections 2220 and 2221 of this title which remain vested in the Administrator of the United States Fire Administration, were transferred to the Director of the Federal Emergency Management Agency pursuant to Reorg. Plan No. 3 of 1978, §§201, 301, June 19, 1978, 43 F.R. 41944, 92 Stat. 3788, set out as a note under section 2201 of this title, effective Apr. 1, 1979, pursuant to Ex. Ord. No. 12127, §§1–101, 1–103(a), Mar. 31, 1979, 44 F.R. 19367.

§2203. Definitions

As used in this chapter, the term—

(1) "Academy" means the National Academy for Fire Prevention and Control;

(2) "Administration" means the United States Fire Administration established pursuant to section 2204 of this title;

(3) "Administrator" means, except as otherwise provided, the Administrator of the United States Fire Administration, within the Federal Emergency Management Agency;

(4) "Administrator of FEMA" means the Administrator of the Federal Emergency Management Agency;

(5) "fire service" means any organization in any State consisting of personnel, apparatus, and equipment which has as its purpose protecting property and maintaining the safety and welfare of the public from the dangers of fire, including a private firefighting brigade. The personnel of any such organization may be paid employees or unpaid volunteers or any combination thereof. The location of any such organization and its responsibility for extinguishment and suppression of fires may include, but need not be limited to, a Federal installation, a State, city, town, borough, parish, county, Indian tribe, fire district, fire protection district, rural fire district, or other special district. The terms "fire prevention", "firefighting", and "fire control" relate to activities conducted by a fire service;

(6) "Indian tribe" has the meaning given that term in section 450b of title 25 and "tribal" means of or pertaining to an Indian tribe;

(7) "local" means of or pertaining to any city, town, county, special purpose district, unincorporated territory, or other political subdivision of a State;

(8) "place of public accommodation affecting commerce" means any inn, hotel, or other establishment not owned by the Federal Government that provides lodging to transient guests,

except that such term does not include an establishment treated as an apartment building for purposes of any State or local law or regulation or an establishment located within a building that contains not more than 5 rooms for rent or hire and that is actually occupied as a residence by the proprietor of such establishment;

(9) "Secretary" means, except as otherwise provided, the Secretary of Homeland Security;

(10) "State" has the meaning given the term in section 101 of title 6.[1]

(11) "wildland-urban interface" has the meaning given such term in section 6511 of title 16.

(Pub. L. 93–498, §4, Oct. 29, 1974, 88 Stat. 1536; Pub. L. 95–422, §2(a)(1), Oct. 5, 1978, 92 Stat. 932; Pub. L. 101–391, §3(b), Sept. 25, 1990, 104 Stat. 749; Pub. L. 106–503, title I, §110(a)(2)(A), Nov. 13, 2000, 114 Stat. 2302; Pub. L. 110–376, §10, Oct. 8, 2008, 122 Stat. 4061; Pub. L. 112–239, div. A, title XVIII, §1802(a), Jan. 2, 2013, 126 Stat. 2099.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 93–498, Oct. 29, 1974, 88 Stat. 1535, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2201 of this title and Tables.

AMENDMENTS

2013—Par. (3). Pub. L. 112–239, §1802(a)(1), inserted ", except as otherwise provided," after "means".

Par. (4). Pub. L. 112–239, §1802(a)(2), substituted " 'Administrator of FEMA' means the Administrator of the Federal Emergency Management Agency;" for " 'Director' means the Director of the Federal Emergency Management Agency;".

Par. (5). Pub. L. 112–239, §1802(a)(3), inserted "Indian tribe," after "county," and substituted "and 'fire control' " for "and 'firecontrol' ".

Pars. (6) to (8). Pub. L. 112–239, §1802(a)(4), (5), added par. (6) and redesignated former pars. (6) and (7) as (7) and (8), respectively. Former par. (8) redesignated (9).

Par. (9). Pub. L. 112–239, §1802(a)(6), (7), added par. (9) and redesignated former par. (9) as (10). Former par. (10) redesignated (11).

Pub. L. 112–239, §1802(a)(4), redesignated par. (8) as (9). Former par. (9) redesignated (10).

Par. (10). Pub. L. 112–239, §1802(a)(8), amended par. (10) generally. Prior to amendment, par. (10) defined the term "State".

Pub. L. 112–239, §1802(a)(6), redesignated par. (9) as (10). Former par. (10) redesignated (11).

Pub. L. 112–239, §1802(a)(4), redesignated par. (9) as (10).

Par. (11). Pub. L. 112–239, §1802(a)(6), redesignated par. (10) as (11).

2008—Par. (3). Pub. L. 110–376, §10(1), substituted "Administration, within the Federal Emergency Management Agency" for "Administration".

Par. (9). Pub. L. 110–376, §10(2)–(4), added par. (9).

2000—Pars. (7) to (9). Pub. L. 106–503 inserted "and" after semicolon in par. (7), redesignated par. (9) as (8), and struck out former par. (8) which read as follows: " 'Secretary' means the Secretary of Commerce; and".

1990—Pars. (4) to (9). Pub. L. 101–391 added pars. (4) and (7) and redesignated former pars. (4), (5), (6), and (7) as (5), (6), (8), and (9), respectively.

1978—Pars. (2), (3). Pub. L. 95–422 substituted "United States Fire Administration" for "National Fire Prevention and Control Administration".

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of National Fire Prevention and Control Administration [now United States Fire Administration] and National Academy for Fire Prevention and Control generally transferred to Federal Emergency

Management Agency. For further details see Transfer of Functions note set out under section 2202 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

[1] *So in original. The period probably should be "; and".*

§2204. United States Fire Administration

(a) Establishment

There is hereby established in the Department of Commerce an agency which shall be known as the United States Fire Administration.

(b) Administrator

There shall be at the head of the Administration the Administrator of the United States Fire Administration. The Administrator shall be appointed by the President and shall be compensated at the rate now or hereafter provided for level IV of the Executive Schedule pay rates (5 U.S.C. 5315). The Administrator shall report and be responsible to the Administrator of FEMA.

(c) Deputy Administrator

The Administrator may appoint a Deputy Administrator, who shall—

(1) perform such functions as the Administrator shall from time to time assign or delegate; and

(2) act as Administrator during the absence or disability of the Administrator or in the event of a vacancy in the office of Administrator.

(Pub. L. 93–498, §5, Oct. 29, 1974, 88 Stat. 1536; Pub. L. 95–422, §2(a)(1), Oct. 5, 1978, 92 Stat. 932; Pub. L. 106–503, title I, §110(a)(2)(B)(i), Nov. 13, 2000, 114 Stat. 2302; Pub. L. 112–166, §2(f)(2), Aug. 10, 2012, 126 Stat. 1284; Pub. L. 112–239, div. A, title XVIII, §§1802(b)(1), 1812, Jan. 2, 2013, 126 Stat. 2100, 2117.)

AMENDMENTS

2013—Subsec. (b). Pub. L. 112–239, §1802(b)(1), substituted "Administrator of FEMA" for "Director".

Subsec. (c). Pub. L. 112–239, §1812, amended subsec. (c) generally. Prior to amendment, text read as follows: "There shall be in the Administration a Deputy Administrator of the United States Fire Administration who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate now or hereafter provided for level V of the Executive Schedule pay rates (5 U.S.C. 5316). The Deputy Administrator shall perform such functions as the Administrator shall from time to time assign or delegate, and shall act as Administrator during the absence or disability of the Administrator or in the event of a vacancy in the office of Administrator."

2012—Subsec. (b). Pub. L. 112–166 struck out ", by and with the advice and consent of the Senate," after "President".

2000—Subsec. (b). Pub. L. 106–503 substituted "Director" for "Secretary".

1978—Subsecs. (a) to (c). Pub. L. 95–422 substituted "United States Fire Administration" for "National Fire Prevention and Control Administration".

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–166 effective 60 days after Aug. 10, 2012, and applicable to appointments made on and after that effective date, including any nomination pending in the Senate on that date, see section 6(a) of Pub. L. 112–166, set out as a note under section 113 of Title 6, Domestic Security.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency,

including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of National Fire Prevention and Control Administration [now United States Fire Administration] and National Academy for Fire Prevention and Control generally transferred to Federal Emergency Management Agency. For further details see Transfer of Functions note set out under section 2202 of this title.

RE-ESTABLISHMENT OF POSITION OF UNITED STATES FIRE ADMINISTRATOR

Pub. L. 108–169, title I, §102, Dec. 6, 2003, 117 Stat. 2036, provided that: "Section 1513 of the Homeland Security Act of 2002 (6 U.S.C. 553) does not apply to the position or office of Administrator of the United States Fire Administration, who shall continue to be appointed and compensated as provided by section 5(b) of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2204(b))."

TERMINATION OR PRIVATIZATION OF FUNCTIONS

Pub. L. 105–108, §4, Nov. 20, 1997, 111 Stat. 2264, provided that:

"(a) IN GENERAL.—Not later than 60 days before the termination or transfer to a private sector person or entity of any significant function of the United States Fire Administration, as described in subsection (b), the Administrator of the United States Fire Administration shall transmit to Congress a report providing notice of that termination or transfer.

"(b) COVERED TERMINATIONS AND TRANSFERS.—For purposes of subsection (a), a termination or transfer to a person or entity described in that subsection shall be considered to be a termination or transfer of a significant function of the United States Fire Administration if the termination or transfer—

"(1) relates to a function of the Administration that requires the expenditure of more than 5 percent of the total amount of funds made available by appropriations to the Administration; or

"(2) involves the termination of more than 5 percent of the employees of the Administration."

NOTICE OF REPROGRAMMING OR REORGANIZATION

Pub. L. 105–108, §5, Nov. 20, 1997, 111 Stat. 2265, provided that:

"(a) MAJOR REORGANIZATION DEFINED.—With respect to the United States Fire Administration, the term 'major reorganization' means any reorganization of the Administration that involves the reassignment of more than 25 percent of the employees of the Administration.

"(b) NOTICE OF REPROGRAMMING.—If any funds appropriated pursuant to the amendments made by this Act [see Short Title of 1997 Amendment note set out under section 2201 of this title] are subject to a reprogramming action that requires notice to be provided to the Committees on Appropriations of the Senate and the House of Representatives, notice of that action shall concurrently be provided to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science [now Committee on Science, Space, and Technology] of the House of Representatives.

"(c) NOTICE OF REORGANIZATION.—Not later than 15 days before any major reorganization of any program, project, or activity of the United States Fire Administration, the Administrator of the United States Fire Administration shall provide notice to the Committees on Science [now Science, Space, and Technology] and Appropriations of the House of Representatives and the Committees on Commerce, Science, and Transportation and Appropriations of the Senate."

§2205. Public education

The Administrator is authorized to take such steps as the Administrator considers appropriate to educate the public and overcome public indifference as to fire, fire prevention, and individual preparedness. Such steps may include, but are not limited to, publications, audiovisual presentations, and demonstrations. Such public education efforts shall include programs to provide specialized information for those groups of individuals who are particularly vulnerable to fire hazards, such as the young and the elderly. The Administrator shall sponsor and encourage research, testing, and experimentation to determine the most effective means of such public education.

(Pub. L. 93–498, §6, Oct. 29, 1974, 88 Stat. 1537; Pub. L. 112–239, div. A, title XVIII, §1813, Jan. 2, 2013, 126 Stat. 2117.)

AMENDMENTS

2013—Pub. L. 112–239 substituted "to take such steps as the Administrator considers appropriate to educate the public and overcome public indifference as to fire, fire prevention, and individual preparedness." for "to take all steps necessary to educate the public and to overcome public indifference as to fire and fire prevention."

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of National Fire Prevention and Control Administration [now United States Fire Administration] and National Academy for Fire Prevention and Control generally transferred to Federal Emergency Management Agency. For further details see Transfer of Functions note set out under section 2202 of this title.

§2206. National Academy for Fire Prevention and Control

(a) Establishment

The Administrator of FEMA shall establish, at the earliest practicable date, a National Academy for Fire Prevention and Control. The purpose of the Academy shall be to advance the professional development of fire service personnel and of other persons engaged in fire prevention and control activities.

(b) Superintendent

The Academy shall be headed by a Superintendent, who shall be appointed by the Administrator of FEMA. In exercising the powers and authority contained in this section the Superintendent shall be subject to the direction of the Administrator.

(c) Powers of Superintendent

The Superintendent is authorized to—

(1) develop and revise curricula, standards for admission and performance, and criteria for the awarding of degrees and certifications;

(2) appoint such teaching staff and other personnel as he determines to be necessary or appropriate;

(3) conduct courses and programs of training and education, as defined in subsection (d) of this section;

(4) appoint faculty members and consultants without regard to the provisions of title 5, governing appointments in the competitive service, and, with respect to temporary and intermittent services, to make appointments to the same extent as is authorized by section 3109 of title 5;

(5) establish fees and other charges for attendance at, and subscription to, courses and programs offered by the Academy. Such fees may be modified or waived as determined by the Superintendent;

(6) conduct short courses, seminars, workshops, conferences, and similar education and training activities in all parts and localities of the United States, including on-site training;

(7) enter into such contracts and take such other actions as may be necessary in carrying out the purposes of the Academy; and

(8) consult with officials of the fire services and other interested persons in the exercise of the foregoing powers.

(d) Program of the Academy

The Superintendent is authorized to—

(1) train fire service personnel in such skills and knowledge as may be useful to advance their ability to prevent and control fires, including, but not limited to—

(A) techniques of fire prevention, fire inspection, firefighting, and fire and arson investigation;

(B) tactics and command of firefighting for present and future fire chiefs and commanders;

(C) administration and management of fire services;

(D) tactical training in the specialized field of aircraft fire control and crash rescue;

(E) tactical training in the specialized field of fire control and rescue aboard waterborne vessels;

(F) strategies for building collapse rescue;

(G) the use of technology in response to fires, including terrorist incidents and other national emergencies;

(H) tactics and strategies for dealing with natural disasters, acts of terrorism, and other man-made disasters;

(I) tactics and strategies for fighting large-scale fires or multiple fires in a general area that cross jurisdictional boundaries;

(J) tactics and strategies for fighting fires occurring at the wildland-urban interface;

(K) tactics and strategies for fighting fires involving hazardous materials;

(L) advanced emergency medical services training;

(M) use of and familiarity with the Federal Response Plan;

(N) leadership and strategic skills, including integrated management systems operations and integrated response;

(O) applying new technology and developing strategies and tactics for fighting wildland fires;

(P) integrating the activities of terrorism response agencies into national terrorism incident response systems;

(Q) tactics and strategies for fighting fires at United States ports, including fires on the water and aboard vessels; and

(R) the training of present and future instructors in the aforementioned subjects;

(2) develop model curricula, training programs and other educational materials suitable for use at other educational institutions, and to make such materials available without charge;

(3) develop and administer a program of correspondence courses to advance the knowledge and skills of fire service personnel;

(4) develop and distribute to appropriate officials model questions suitable for use in conducting entrance and promotional examinations for fire service personnel; and

(5) encourage the inclusion of fire prevention and detection technology and practices in the education and professional practice of architects, builders, city planners, and others engaged in design and planning affected by fire safety problems.

(e) Technical assistance

The Administrator is authorized, to the extent that he determines it necessary to meet the needs of the Nation, to encourage new programs and to strengthen existing programs of education and training by local fire services, units, and departments, State and local governments, and private institutions, by providing technical assistance and advice to—

(1) vocational training programs in techniques of fire prevention, fire inspection, firefighting, and fire and arson investigation;

(2) fire training courses and programs at junior colleges; and

(3) four-year degree programs in fire engineering at colleges and universities.

(f) Assistance to State and local fire service training programs

The Administrator is authorized to provide assistance to State and local fire service training programs through grants, contracts, or otherwise. Such assistance shall not exceed 7.5 percent of the amount authorized to be appropriated in each fiscal year pursuant to section 2216 of this title.

(g) Site selection

The Academy shall be located on such site as the Administrator of FEMA selects, subject to the following provisions:

(1) The Administrator of FEMA is authorized to appoint a Site Selection Board consisting of the Academy Superintendent and two other members to survey the most suitable sites for the location of the Academy and to make recommendations to the Administrator of FEMA.

(2) The Site Selection Board in making its recommendations and the Administrator of FEMA in making his final selection, shall give consideration to the training and facility needs of the Academy, environmental effects, the possibility of using a surplus Government facility, and such other factors as are deemed important and relevant. The Administrator of FEMA shall make a final site selection not later than 2 years after October 29, 1974.

(h) Construction costs

Of the sums authorized to be appropriated for the purpose of implementing the programs of the Administration, not more than $9,000,000 shall be available for the construction of facilities of the Academy on the site selected under subsection (g) of this section. Such sums for such construction shall remain available until expended.

(i) Educational and professional assistance

The Administrator is authorized to—

(1) provide stipends to students attending Academy courses and programs, in amounts up to 75 per centum of the expense of attendance, as established by the Superintendent;

(2) provide stipends to students attending courses and nondegree training programs approved by the Superintendent at universities, colleges, and junior colleges, in amounts up to 50 per centum of the cost of tuition;

(3) make or enter into contracts to make payments to institutions of higher education for loans, not to exceed $2,500 per academic year for any individual who is enrolled on a full-time basis in an undergraduate or graduate program of fire research or engineering which is certified by the Superintendent. Loans under this paragraph shall be made on such terms and subject to such conditions as the Superintendent and each institution involved may jointly determine; and

(4) establish and maintain a placement and promotion opportunities center in cooperation with the fire services, for firefighters who wish to learn and take advantage of different or better career opportunities. Such center shall not limit such assistance to students and graduates of the Academy, but shall undertake to assist all fire service personnel.

(j) Board of Visitors

Upon establishment of the Academy, the Administrator of FEMA shall establish a procedure for the selection of professionals in the field of fire safety, fire prevention, fire control, research and development in fire protection, treatment and rehabilitation of fire victims, or local government services management to serve as members of a Board of Visitors for the Academy. Pursuant to such procedure, the Administrator of FEMA shall select eight such persons to serve as members of such Board of Visitors to serve such terms as the Administrator of FEMA may prescribe. The function of such Board shall be to review annually the program of the Academy and to make comments and recommendations to the Administrator of FEMA regarding the operation of the Academy and any improvements therein which such Board deems appropriate. Each member of such Board shall be reimbursed for any expenses actually incurred by him in the performance of his duties as a member of such Board.

(k) Accreditation

The Superintendent is authorized to establish a Committee on Fire Training and Education which shall inquire into and make recommendations regarding the desirability of establishing a mechanism for accreditation of fire training and education programs and courses, and the role which the Academy should play if such a mechanism is recommended. The Committee shall consist of the Superintendent as Chairman and eighteen other members appointed by the Administrator from among individuals and organizations possessing special knowledge and experience in the field of fire training and education or related fields. The Committee shall submit to the Administrator within two

years after its appointment, a full and complete report of its findings and recommendations. Upon the submission of such report, the Committee shall cease to exist. Each appointed member of the Committee shall be reimbursed for expenses actually incurred in the performance of his duties as a member.

(l) Admission

The Superintendent is authorized to admit to the courses and programs of the Academy individuals who are members of the firefighting, rescue, and civil defense forces of the Nation and such other individuals, including candidates for membership in these forces, as he determines can benefit from attendance. Students shall be admitted from any State, with due regard to adequate representation in the student body of all geographic regions of the Nation. In selecting students, the Superintendent may seek nominations and advice from the fire services and other organizations which wish to send students to the Academy. The Superintendent shall offer, at the Academy and at other sites, courses and training assistance as necessary to accommodate all geographic regions and needs of career and volunteer firefighters.

(m) On-site training

(1) In general

Except as provided in paragraph (2), the Administrator may enter into a contract with nationally recognized organizations that have established on-site training programs that comply with national voluntary consensus standards for fire service personnel to facilitate the delivery of the education and training programs outlined in subsection (d)(1) directly to fire service personnel.

(2) Limitation

(A) In general

The Administrator may not enter into a contract with an organization described in paragraph (1) unless such organization provides training that—

(i) leads to certification by a program that is accredited by a nationally recognized accreditation organization; or

(ii) the Administrator determines is of equivalent quality to a fire service training program described by clause (i).

(B) Approval of unaccredited fire service training programs

The Administrator may consider the fact that an organization has provided a satisfactory fire service training program pursuant to a cooperative agreement with a Federal agency as evidence that such program is of equivalent quality to a fire service training program described by subparagraph (A)(i).

(3) Restriction on use of funds

The amounts expended by the Administrator to carry out this subsection in any fiscal year shall not exceed 7.5 per centum of the amount authorized to be appropriated in such fiscal year pursuant to section 2216 of this title.

(n) Triennial report

In the first annual report filed pursuant to section 2215 of this title for which the deadline for filing is after the expiration of the 18-month period that begins on October 8, 2008, and in every third annual report thereafter, the Administrator shall include information about changes made to the National Fire Academy curriculum, including—

(1) the basis for such changes, including a review of the incorporation of lessons learned by emergency response personnel after significant emergency events and emergency preparedness exercises performed under the National Exercise Program; and

(2) the desired training outcome of all such changes.

(Pub. L. 93–498, §7, Oct. 29, 1974, 88 Stat. 1537; Pub. L. 106–503, title I, §110(a)(2)(B)(ii), Nov. 13, 2000, 114 Stat. 2302; Pub. L. 108–169, title II, §204(a), (d), Dec. 6, 2003, 117 Stat. 2039; Pub. L. 110–376, §4(a)–(c), Oct. 8, 2008, 122 Stat. 4057, 4058; Pub. L. 112–239, div. A, title XVIII,

§1802(b)(1), Jan. 2, 2013, 126 Stat. 2100.)

AMENDMENTS

2013—Subsecs. (a), (b), (g), (j). Pub. L. 112–239 substituted "Administrator of FEMA" for "Director" wherever appearing.

2008—Subsec. (c)(6). Pub. L. 110–376, §4(b)(1), inserted ", including on-site training" after "United States".

Subsec. (d)(1)(H). Pub. L. 110–376, §4(a)(1), amended subpar. (H) generally. Prior to amendment, subpar. (H) read as follows: "response, tactics, and strategies for dealing with terrorist-caused national catastrophes;".

Subsec. (d)(1)(I), (J). Pub. L. 110–376, §4(a)(5), added subpars. (I) and (J). Former subpars. (I) and (J) redesignated (M) and (N), respectively.

Subsec. (d)(1)(K). Pub. L. 110–376, §4(a)(5), added subpar. (K). Former subpar. (K) redesignated (O).

Pub. L. 110–376, §4(a)(2), substituted "wildland" for "forest".

Subsec. (d)(1)(L). Pub. L. 110–376, §4(a)(5), added subpar. (L). Former subpar. (L) redesignated (P).

Subsec. (d)(1)(M). Pub. L. 110–376, §4(a)(4), redesignated subpar. (I) as (M). Former subpar. (M) redesignated (Q).

Pub. L. 110–376, §4(a)(3), struck out "response" before "tactics".

Subsec. (d)(1)(N) to (R). Pub. L. 110–376, §4(a)(4), redesignated subpars. (J) to (N) as (N) to (R), respectively.

Subsec. (f). Pub. L. 110–376, §4(b)(2), which directed substitution of "7.5 percent" for "4 percent", was executed by making the substitution for "4 per centum" to reflect the probable intent of Congress.

Subsecs. (m), (n). Pub. L. 110–376, §4(b)(3), (c), added subsecs. (m) and (n).

2003—Subsec. (d)(1)(F) to (N). Pub. L. 108–169, §204(a), added subpars. (F) to (M) and redesignated former subpar. (F) as (N).

Subsec. (l). Pub. L. 108–169, §204(d), inserted at end "The Superintendent shall offer, at the Academy and at other sites, courses and training assistance as necessary to accommodate all geographic regions and needs of career and volunteer firefighters."

2000—Subsecs. (a), (b), (g), (j). Pub. L. 106–503 substituted "Director" for "Secretary" wherever appearing.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of National Fire Prevention and Control Administration [now United States Fire Administration] and National Academy for Fire Prevention and Control generally transferred to Federal Emergency Management Agency. For further details see Transfer of Functions note set out under section 2202 of this title.

CONSULTATION ON FIRE ACADEMY CLASSES

Pub. L. 108–169, title II, §204(b), Dec. 6, 2003, 117 Stat. 2039, provided that: "The Superintendent of the National Fire Academy may consult with other Federal, State, and local agency officials in developing curricula for classes offered by the Academy."

COORDINATION WITH OTHER PROGRAMS TO AVOID DUPLICATION

Pub. L. 108–169, title II, §204(c), Dec. 6, 2003, 117 Stat. 2039, provided that: "The Administrator of the United States Fire Administration shall coordinate training provided under section 7(d)(1) of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2206(d)(1)) with the Attorney General, the Secretary of Health and Human Services, and the heads of other Federal agencies—

"(1) to ensure that such training does not duplicate existing courses available to fire service personnel; and

"(2) to establish a mechanism for eliminating duplicative training programs."

LIMITATIONS ON AUTHORITY OF SUPERINTENDENT OF FIRE ACADEMY; EXCLUSIVE

CONTROL AND DIRECTION OF UNITED STATES FIRE ADMINISTRATOR

Pub. L. 101–507, title III, Nov. 5, 1990, 104 Stat. 1377, provided that: "The Superintendent of the Fire Academy, in exercising the powers and authority provided by section 7 of the Federal Fire Prevention Control Act of 1974 [15 U.S.C. 2206], shall be subject to the exclusive direction of the Administrator, United States Fire Administration: *Provided*, That all funds appropriated by this or any other Act, with respect for any fiscal year, or otherwise made available, for the National Fire Academy in Emmitsburg, Maryland, or any Fire Academy field programs, shall be placed under the exclusive control of the United States Fire Administration."

§2207. Fire technology

(a) Development

The Administrator shall conduct a continuing program of development, testing, and evaluation of equipment for use by the Nation's fire, rescue, and civil defense services, with the aim of making available improved suppression, protective, auxiliary, and warning devices incorporating the latest technology. Attention shall be given to the standardization, compatibility, and interchangeability of such equipment. Such development, testing, and evaluation activities shall include, but need not be limited to—

(1) safer, less cumbersome articles of protective clothing, including helmets, boots, and coats;

(2) breathing apparatus with the necessary duration of service, reliability, low weight, and ease of operation for practical use;

(3) safe and reliable auxiliary equipment for use in fire prevention, detection, and control, such as fire location detectors, visual and audio communications equipment, and mobile equipment;

(4) special clothing and equipment needed for forest fires, brush fires, oil and gasoline fires, aircraft fires and crash rescue, fires occurring aboard waterborne vessels, and in other special firefighting situations;

(5) fire detectors and related equipment for residential use with high sensitivity and reliability, and which are sufficiently inexpensive to purchase, install, and maintain to insure wide acceptance and use;

(6) in-place fire prevention systems of low cost and of increased reliability and effectiveness;

(7) methods of testing fire alarms and fire protection devices and systems on a non-interference basis;

(8) the development of purchase specifications, standards, and acceptance and validation test procedures for all such equipment and devices; and

(9) operation tests, demonstration projects, and fire investigations in support of the activities set forth in this section.

(b) Limitation on manufacture and sale of equipment

The Administration shall not engage in the manufacture or sale of any equipment or device developed pursuant to this section, except to the extent that it deems it necessary to adequately develop, test, or evaluate such equipment or device.

(c) Management studies

(1) The Administrator is authorized to conduct, directly or through contracts or grants, studies of the operations and management aspects of fire services, utilizing quantitative techniques, such as operations research, management economics, cost effectiveness studies, and such other techniques and methods as may be applicable and useful. Such studies shall include, but need not be limited to, the allocation of resources, the optimum location of fire stations, the optimum geographical area for an integrated fire service, the manner of responding to alarms, the operation of citywide and regional fire dispatch centers, firefighting under conditions of civil disturbance, and the effectiveness, frequency, and methods of building inspections.

(2) The Administrator is authorized to conduct, directly or through contracts or grants, studies of the operations and management aspects of fire service-based emergency medical services and coordination between emergency medical services and fire services. Such studies may include the

optimum protocols for on-scene care, the allocation of resources, and the training requirements for fire service-based emergency medical services.

(3) The Administrator is authorized to conduct, directly or through contracts or grants, research concerning the productivity and efficiency of fire service personnel, the job categories and skills required by fire services under varying conditions, the reduction of injuries to fire service personnel, the most effective fire prevention programs and activities, and techniques for accuracy measuring and analyzing the foregoing.

(4) The Administrator is authorized to conduct, directly or through contracts, grants, or other forms of assistance, development, testing and demonstration projects to the extent deemed necessary to introduce and to encourage the acceptance of new technology, standards, operating methods, command techniques, and management systems for utilization by the fire services.

(5) The Administrator is authorized to assist the Nation's fire services, directly or through contracts, grants, or other forms of assistance, to measure and evaluate, on a cost-benefit basis, the effectiveness of the programs and activities of each fire service and the predictable consequences on the applicable local fire services of coordination or combination, in whole or in part, in a regional, metropolitan, or statewide fire service.

(d) Rural and wildland-urban interface assistance

The Administrator may, in coordination with the Secretary of Agriculture, the Secretary of the Interior, and the Wildland Fire Leadership Council, assist the fire services of the United States, directly or through contracts, grants, or other forms of assistance, in sponsoring and encouraging research into approaches, techniques, systems, equipment, and land-use policies to improve fire prevention and control in—

(1) the rural and remote areas of the United States; and

(2) the wildland-urban interface.

(e) Assistance to other Federal agencies

At the request of other Federal agencies, including the Department of Agriculture and the Department of the Interior, the Administrator may provide assistance in fire prevention and control technologies, including methods of containing insect-infested forest fires and limiting dispersal of resultant fire particle smoke, and methods of measuring and tracking the dispersal of fine particle smoke resulting from fires of insect-infested fuel.

(f) Technology evaluation and standards development

(1) In general

In addition to, or as part of, the program conducted under subsection (a) of this section, the Administrator, in consultation with the National Institute of Standards and Technology, the Inter-Agency Board for Equipment Standardization and Inter-Operability, the National Institute for Occupational Safety and Health, the Directorate of Science and Technology of the Department of Homeland Security, national voluntary consensus standards development organizations, interested Federal, State, and local agencies, and other interested parties, shall—

(A) develop new, and utilize existing, measurement techniques and testing methodologies for evaluating new firefighting technologies, including—

(i) personal protection equipment;

(ii) devices for advance warning of extreme hazard;

(iii) equipment for enhanced vision;

(iv) devices to locate victims, firefighters, and other rescue personnel in above-ground and below-ground structures;

(v) equipment and methods to provide information for incident command, including the monitoring and reporting of individual personnel welfare;

(vi) equipment and methods for training, especially for virtual reality training; and

(vii) robotics and other remote-controlled devices;

(B) evaluate the compatibility of new equipment and technology with existing firefighting

technology; and

(C) support the development of new voluntary consensus standards through national voluntary consensus standards organizations for new firefighting technologies based on techniques and methodologies described in subparagraph (A).

(2) Standards for new equipment

(A) The Administrator shall, by regulation, require that new equipment or systems purchased through the assistance program established by section 2229 of this title meet or exceed applicable voluntary consensus standards for such equipment or systems for which applicable voluntary consensus standards have been established. The Administrator may waive the requirement under this subparagraph with respect to specific standards.

(B) If an applicant for a grant under section 2229 of this title proposes to purchase, with assistance provided under the grant, new equipment or systems that do not meet or exceed applicable voluntary consensus standards, the applicant shall include in the application an explanation of why such equipment or systems will serve the needs of the applicant better than equipment or systems that do meet or exceed such standards.

(C) In making a determination whether or not to waive the requirement under subparagraph (A) with respect to a specific standard, the Administrator shall, to the greatest extent practicable—

(i) consult with grant applicants and other members of the fire services regarding the impact on fire departments of the requirement to meet or exceed the specific standard;

(ii) take into consideration the explanation provided by the applicant under subparagraph (B); and

(iii) seek to minimize the impact of the requirement to meet or exceed the specific standard on the applicant, particularly if meeting the standard would impose additional costs.

(D) Applicants that apply for a grant under the terms of subparagraph (B) may include a second grant request in the application to be considered by the Administrator in the event that the Administrator does not approve the primary grant request on the grounds of the equipment not meeting applicable voluntary consensus standards.

(g) Coordination

In establishing and conducting programs under this section, the Administrator shall take full advantage of applicable technological developments made by other departments and agencies of the Federal Government, by State and local governments, and by business, industry, and nonprofit associations.

(h) Publication of research results

(1) In general

For each fire-related research program funded by the Administration, the Administrator shall make available to the public on the Internet website of the Administration the following:

(A) A description of such research program, including the scope, methodology, and goals thereof.

(B) Information that identifies the individuals or institutions conducting the research program.

(C) The amount of funding provided by the Administration for such program.

(D) The results or findings of the research program.

(2) Deadlines

(A) In general

Except as provided in subparagraph (B), the information required by paragraph (1) shall be published with respect to a research program as follows:

(i) The information described in subparagraphs (A), (B), and (C) of paragraph (1) with respect to such research program shall be made available under paragraph (1) not later than 30 days after the Administrator has awarded the funding for such research program.

(ii) The information described in subparagraph (D) of paragraph (1) with respect to a research program shall be made available under paragraph (1) not later than 60 days after the date such research program has been completed.

(B) Exception

No information shall be required to be published under this subsection before the date that is 1 year after October 8, 2008.

(Pub. L. 93–498, §8, Oct. 29, 1974, 88 Stat. 1540; Pub. L. 108–169, title II, §202, Dec. 6, 2003, 117 Stat. 2037; Pub. L. 110–376, §§6, 9(b), Oct. 8, 2008, 122 Stat. 4059, 4061.)

AMENDMENTS

2008—Subsec. (c)(2) to (5). Pub. L. 110–376, §9(b), added par. (2) and redesignated former pars. (2) to (4) as (3) to (5), respectively.

Subsec. (d). Pub. L. 110–376, §6(a), amended subsec. (d) generally. Prior to amendment, text read as follows: "The Administrator is authorized to assist the Nation's fire services, directly or through contracts, grants, or other forms of assistance, to sponsor and encourage research into approaches, techniques, systems, and equipment to improve fire prevention and control in the rural and remote areas of the Nation."

Subsec. (h). Pub. L. 110–376, §6(b), added subsec. (h).

2003—Subsecs. (e) to (g). Pub. L. 108–169 added subsecs. (e) and (f) and redesignated former subsec. (e) as (g).

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of National Fire Prevention and Control Administration [now United States Fire Administration] and National Academy for Fire Prevention and Control generally transferred to Federal Emergency Management Agency. For further details see Transfer of Functions note set out under section 2202 of this title.

§2208. National Fire Data Center

(a) Functions

The Administrator shall operate, directly or through contracts or grants, an integrated, comprehensive National Fire Data Center for the selection, analysis, publication, and dissemination of information related to the prevention, occurrence, control, and results of fires of all types. The program of such Data Center shall be designed to (1) provide an accurate nationwide analysis of the fire problem, (2) identify major problem areas, (3) assist in setting priorities, (4) determine possible solutions to problems, and (5) monitor the progress of programs to reduce fire losses. To carry out these functions, the Data Center shall gather and analyze—

(1) information on the frequency, causes, spread, and extinguishment of fires;

(2) information on the number of injuries and deaths resulting from fires, including the maximum available information on the specific causes and nature of such injuries and deaths, and information on property losses;

(3) information on the occupational hazards faced by firefighters, including the causes of deaths and injuries arising, directly and indirectly, from firefighting activities;

(4) information on all types of firefighting activities, including inspection practices;

(5) technical information related to building construction, fire properties of materials, and similar information;

(6) information on fire prevention and control laws, systems, methods, techniques, and

administrative structures used in foreign nations;

(7) information on the causes, behavior, and best method of control of other types of fire, including, but not limited to, forest fires, brush fires, fire underground, oil blow-out fires, and water-borne fires; and

(8) such other information and data as is deemed useful and applicable.

(b) Methods

In carrying out the program of the Data Center, the Administrator is authorized to—

(1) develop standardized data reporting methods;

(2) encourage and assist Federal, State, local, and other agencies, public and private, in developing and reporting information; and

(3) make full use of existing data gathering and analysis organizations, both public and private.

(c) Dissemination of fire data

The Administrator shall insure dissemination to the maximum extent possible of fire data collected and developed by the Data Center, and shall make such data, information, and analysis available in appropriate form to Federal agencies, State and local governments, private organizations, industry, business, and other interested persons.

(d) National Fire Incident Reporting System update

The Administrator shall update the National Fire Incident Reporting System to ensure that the information in the system is available, and can be updated, through the Internet and in real time.

(Pub. L. 93–498, §9, Oct. 29, 1974, 88 Stat. 1541; Pub. L. 110–376, §5, Oct. 8, 2008, 122 Stat. 4059; Pub. L. 112–239, div. A, title XVIII, §1815, Jan. 2, 2013, 126 Stat. 2118.)

AMENDMENTS

2013—Subsec. (d). Pub. L. 112–239 struck out par. (1) designation and heading and par. (2). Prior to amendment, text of par. (2) read as follows: "Of the amounts made available pursuant to subparagraphs (E), (F), and (G) of section 2216(g)(1) of this title, the Administrator shall use not more than an aggregate amount of $5,000,000 during the 3-year period consisting of fiscal years 2009, 2010, and 2011 to carry out the activities required by paragraph (1)."

2008—Subsec. (b)(2). Pub. L. 110–376, §5(b), substituted "assist Federal, State," for "assist State,".

Subsec. (d). Pub. L. 110–376, §5(a), added subsec. (d).

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of National Fire Prevention and Control Administration [now United States Fire Administration] and National Academy for Fire Prevention and Control generally transferred to Federal Emergency Management Agency. For further details see Transfer of Functions note set out under section 2202 of this title.

§2209. Master plans

(a) Encouragement by Administrator

The establishment of master plans for fire prevention and control are the responsibility of the States and the political subdivisions thereof. The Administrator is authorized to encourage and assist such States and political subdivisions in such planning activities, consistent with his powers and duties under this chapter.

(b) Mutual aid systems

(1) In general

The Administrator shall provide technical assistance and training to State and local fire service officials to establish nationwide and State mutual aid systems for dealing with national emergencies that—

(A) include threat assessment and equipment deployment strategies;

(B) include means of collecting asset and resource information to provide accurate and timely data for regional deployment; and

(C) are consistent with the Federal Response Plan.

(2) Model mutual aid plans

The Administrator shall develop and make available to State and local fire service officials model mutual aid plans for both intrastate and interstate assistance.

(c) "Master plan" defined

For the purposes of this section, a "master plan" is one which will result in the planning and implementation in the area involved of a general program of action for fire prevention and control. Such master plan is reasonably expected to include (1) a survey of the resources and personnel of existing fire services and an analysis of the effectiveness of the fire and building codes in such area; (2) an analysis of short and long term fire prevention and control needs in such area; (3) a plan to meet the fire prevention and control needs in such area; and (4) an estimate of cost and realistic plans for financing the implementation of the plan and operation on a continuing basis and a summary of problems that are anticipated in implementing such master plan.

(Pub. L. 93–498, §10, Oct. 29, 1974, 88 Stat. 1542; Pub. L. 106–503, title I, §110(a)(1)(A), Nov. 13, 2000, 114 Stat. 2302; Pub. L. 108–169, title II, §203(a), Dec. 6, 2003, 117 Stat. 2038.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 93–498, Oct. 29, 1974, 88 Stat. 1535, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2201 of this title and Tables.

AMENDMENTS

2003—Subsecs. (b), (c). Pub. L. 108–169 added subsec. (b) and redesignated former subsec. (b) as (c).

2000—Subsecs. (b), (c). Pub. L. 106–503 redesignated subsec. (c) as (b) and struck out former subsec. (b) which required Secretary to submit to Congress a report on establishment and effectiveness of master plans four years after Oct. 29, 1974.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of National Fire Prevention and Control Administration [now United States Fire Administration] and National Academy for Fire Prevention and Control generally transferred to Federal Emergency Management Agency. For further details see Transfer of Functions note set out under section 2202 of this title.

§2210. Reimbursement for costs of firefighting on Federal property

(a) Filing of claims

Each fire service that engages in the fighting of a fire on property which is under the jurisdiction

of the United States may file a claim with the Administrator for the amount of direct expenses and direct losses incurred by such fire service as a result of fighting such fire. The claim shall include such supporting information as the Administrator may prescribe.

(b) Determination

Upon receipt of a claim filed under subsection (a) of this section, the Administrator shall determine—

(1) what payments, if any, to the fire service or its parent jurisdiction, including taxes or payments in lieu of taxes, the United States has made for the support of fire services on the property in question;

(2) the extent to which the fire service incurred additional firefighting costs, over and above its normal operating costs, in connection with the fire which is the subject of the claim; and

(3) the amount, if any, of the additional costs referred to in paragraph (2) of this subsection which were not adequately covered by the payments referred to in paragraph (1) of this subsection.

(c) Payment

The Administrator of FEMA shall forward the claim and a copy of the Administrator's determination under subsection (b)(3) of this section to the Secretary of the Treasury. The Secretary of the Treasury shall, upon receipt of the claim and determination, pay such fire service or its parent jurisdiction, from any moneys in the Treasury not otherwise appropriated but subject to reimbursement (from any appropriations which may be available or which may be made available for the purpose) by the Federal department or agency under whose jurisdiction the fire occurred, a sum no greater than the amount determined with respect to the claim under subsection (b)(3) of this section.

(d) Adjudication

In the case of a dispute arising in connection with a claim under this section, the United States Court of Federal Claims shall have jurisdiction to adjudicate the claim and enter judgment accordingly.

(Pub. L. 93–498, §11, Oct. 29, 1974, 88 Stat. 1543; Pub. L. 97–164, title I, §146, Apr. 2, 1982, 96 Stat. 45; Pub. L. 102–572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 106–503, title I, §110(a)(2)(B)(iii), Nov. 13, 2000, 114 Stat. 2302; Pub. L. 112–239, div. A, title XVIII, §1802(b)(1), Jan. 2, 2013, 126 Stat. 2100.)

AMENDMENTS

2013—Subsec. (c). Pub. L. 112–239 substituted "Administrator of FEMA" for "Director".

2000—Subsec. (c). Pub. L. 106–503 substituted "Director shall forward" for "Secretary shall forward".

1992—Subsec. (d). Pub. L. 102–572 substituted "United States Court of Federal Claims" for "United States Claims Court".

1982—Subsec. (d). Pub. L. 97–164 substituted "United States Claims Court" for "Court of Claims of the United States".

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the

Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of National Fire Prevention and Control Administration [now United States Fire Administration] and National Academy for Fire Prevention and Control generally transferred to Federal Emergency Management Agency. For further details see Transfer of Functions note set out under section 2202 of this title.

§2211. Review of fire prevention codes

The Administrator is authorized to review, evaluate, and suggest improvements in State and local fire prevention codes, building codes, and any relevant Federal or private codes and regulations. In evaluating any such code or codes, the Administrator shall consider the human impact of all code requirements, standards, or provisions in terms of comfort and habitability for residents or employees, as well as the fire prevention and control value or potential of each such requirement, standard, or provision.

(Pub. L. 93–498, §12, Oct. 29, 1974, 88 Stat. 1543.)

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of National Fire Prevention and Control Administration [now United States Fire Administration] and National Academy for Fire Prevention and Control generally transferred to Federal Emergency Management Agency. For further details see Transfer of Functions note set out under section 2202 of this title.

§2212. Fire safety effectiveness statements

The Administrator is authorized to encourage owners and managers of residential multiple-unit, commercial, industrial, and transportation structures to prepare Fire Safety Effectiveness Statements, pursuant to standards, forms, rules, and regulations to be developed and issued by the Administrator.

(Pub. L. 93–498, §13, Oct. 29, 1974, 88 Stat. 1544.)

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of National Fire Prevention and Control Administration [now United States Fire Administration] and National Academy for Fire Prevention and Control generally transferred to Federal Emergency Management Agency. For further details see Transfer of Functions note set out under section 2202 of this title.

§2213. Annual conference

The Administrator is authorized to organize, or to participate in organizing, an annual conference on fire prevention and control. He may pay, in whole or in part, the cost of such conference and the expenses of some or all of the participants. All of the Nation's fire services shall be eligible to send representatives to each such conference to discuss, exchange ideas on, and participate in educational programs on new techniques in fire prevention and control. Such conferences shall be open to the public.

(Pub. L. 93–498, §14, Oct. 29, 1974, 88 Stat. 1544.)

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of National Fire Prevention and Control Administration [now United States Fire Administration] and National Academy for Fire Prevention and Control generally transferred to Federal Emergency Management Agency. For further details see Transfer of Functions note set out under section 2202 of this title.

§2214. Public safety awards

(a) Establishment

There is hereby established an honorary award for the recognition of outstanding and distinguished service by public safety officers to be known as the Administrator's Award For Distinguished Public Safety Service ("Administrator's Award").

(b) Description

The Administrator's Award shall be presented by the Administrator of FEMA or by the Attorney General to public safety officers for distinguished service in the field of public safety.

(c) Award

Each Administrator's Award shall consist of an appropriate citation.

(d) Regulations

The Administrator of FEMA and the Attorney General are authorized and directed to issue jointly such regulations as may be necessary to carry out this section.

(e) "Public safety officer" defined

As used in this section, the term "public safety officer" means a person serving a public agency, with or without compensation, as—

(1) a firefighter;

(2) a law enforcement officer, including a corrections or court officer; or

(3) a civil defense officer.

(Pub. L. 93–498, §15, Oct. 29, 1974, 88 Stat. 1544; Pub. L. 98–241, title II, §202, Mar. 22, 1984, 98 Stat. 96; Pub. L. 106–503, title I, §110(a)(2)(B)(iv), (v), (C), Nov. 13, 2000, 114 Stat. 2302; Pub. L. 107–12, §8, May 30, 2001, 115 Stat. 22; Pub. L. 112–239, div. A, title XVIII, §1802(b), Jan. 2, 2013, 126 Stat. 2100.)

AMENDMENTS

2013—Pub. L. 112–239, §1802(b)(2), substituted "Administrator's Award" for "Director's Award" wherever appearing.

Pub. L. 112–239, §1802(b)(1), substituted "Administrator of FEMA" for "Director" in two places.

2001—Subsec. (a). Pub. L. 107–12, §8(1), added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: "There are hereby established two classes of honorary awards for the recognition of outstanding and distinguished service by public safety officers—

"(1) the President's Award For Outstanding Public Safety Service ('President's Award'); and

"(2) the Director's Award For Distinguished Public Safety Service ('Director's Award')."

Subsec. (b). Pub. L. 107–12, §8(2), struck out pars. (1) and (2) designations and text of par. (1) which read as follows: "The President's Award shall be presented by the President of the United States to public safety officers for extraordinary valor in the line of duty or for outstanding contribution to public safety."

Subsec. (c). Pub. L. 107–12, §8(3), (4), redesignated subsec. (e) as (c) and struck out pars. (1) and (2) designations and text of par. (1), which read as follows: "Each President's Award shall consist of—

"(A) a medal suitably inscribed, bearing such devices and emblems, and struck from such material as the Secretary of the Treasury, after consultation with the Director and the Attorney General deems appropriate. The Secretary of the Treasury shall cause the medal to be struck and furnished to the President; and

"(B) an appropriate citation."

Former subsec. (c) was struck out.

Pub. L. 107–12, §8(3), struck out heading and text of subsec. (c). Text read as follows: "The Director and the Attorney General shall advise and assist the President in the selection of individuals to whom the President's Award shall be tendered and in the course of performing such duties they shall seek and review nominations for such awards which are submitted to them by Federal, State, county, and local government officials. They shall annually transmit to the President the names of those individuals determined by them to merit the award, together with the reasons therefor. Recipients of the President's Award shall be selected by the President."

Subsec. (d). Pub. L. 107–12, §8(3), redesignated subsec. (f) as (d) and struck out heading and text of former subsec. (d). Text read as follows:

"(1) There shall not be presented in any one calendar year in excess of twelve President's Awards.

"(2) There shall be no limitation on the number of Director's Awards presented."

Subsecs. (e) to (g). Pub. L. 107–12, §8(3), redesignated subsecs. (e) to (g) as (c) to (e), respectively.

2000—Subsec. (a)(2). Pub. L. 106–503, §110(a)(2)(C), substituted "Director's" for "Secretary's" in two places.

Subsec. (b)(2). Pub. L. 106–503, §110(a)(2)(B)(iv), (C), substituted "Director's" for "Secretary's" and "Director" for "Secretary".

Subsec. (c). Pub. L. 106–503, §110(a)(2)(B)(iv), substituted "Director" for "Secretary".

Subsec. (d)(2). Pub. L. 106–503, §110(a)(2)(C), substituted "Director's" for "Secretary's".

Subsec. (e)(1)(A). Pub. L. 106–503, §110(a)(2)(B)(v), substituted "with the Director" for "with the Secretary".

Subsec. (e)(2). Pub. L. 106–503, §110(a)(2)(C), substituted "Director's" for "Secretary's".

Subsec. (f). Pub. L. 106–503, §110(a)(2)(B)(iv), substituted "Director" for "Secretary".

1984—Subsecs. (b)(2), (c), (e)(1)(A), (f). Pub. L. 98–241 struck out ", the Secretary of Defense," after "Secretary" wherever appearing.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of National Fire Prevention and Control Administration [now United States Fire Administration] and National Academy for Fire Prevention and Control generally transferred to Federal Emergency Management Agency. For further details see Transfer of Functions note set out under section 2202 of this title.

EX. ORD. NO. 13161. ESTABLISHMENT OF THE PRESIDENTIAL MEDAL OF VALOR FOR PUBLIC SAFETY OFFICERS

Ex. Ord. No. 13161, June 29, 2000, 65 F.R. 41543, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is ordered:

SECTION 1. The Presidential Medal of Valor for Public Safety Officers (Medal) is established for the purpose of recognizing those public safety officers adjudged to have shown extraordinary valor above and beyond the call of duty in the exercise of their official duties. As used in this section, the term "public safety officer" means a person serving a public agency with or without compensation:

(1) as a law enforcement officer, including police, correctional, probation, or parole officers;

(2) as a firefighter or emergency responder; and

(3) who is employed by the Government of the United States, any State of the United States, any officially recognized elective body within a State of the United States, or any Federally recognized tribal organization.

SEC. 2. Eligible recipients generally will be recommended to the President by the Attorney General by April 1 of each year. Pursuant to 36 U.S.C. 136–137, the President designates May 15 of each year as "Peace Officers Memorial Day" and the week in which it falls as "Police Week." Presentation of the Medal shall occur at an appropriate time during the commemoration of Police Week, as far as is practicable.

SEC. 3. The President may select for the Medal up to ten persons annually from among those persons recommended to the President by the Attorney General. In submitting recommendations to the President, the Attorney General may consult with experts representing all segments of the public safety sector, including representatives from law enforcement, firefighters, and emergency services.

SEC. 4. Those chosen for recognition shall receive a medal and a certificate, the designs of which shall be submitted by the Attorney General for the President's approval no later than December 1, 2000. The medal and certificate shall be prepared by the Department of Justice.

SEC. 5. The Medal may be given posthumously.

WILLIAM J. CLINTON.

§2215. Reports to Congress and President

The Administrator of FEMA shall report to the Congress and the President not later than ninety calendar days following the year ending September 30, 1980 and similarly each year thereafter on all activities relating to fire prevention and control, and all measures taken to implement and carry out this chapter during the preceding calendar year. Such report shall include, but need not be limited to—

(a) a thorough appraisal, including statistical analysis, estimates, and long-term projections of the human and economic losses due to fire;

(b) a survey and summary, in such detail as is deemed advisable, of the research and technology program undertaken or sponsored pursuant to this chapter;

(c) a summary of the activities of the Academy for the preceding 12 months, including, but not limited to—

(1) an explanation of the curriculum of study;

(2) a description of the standards of admission and performance;

(3) the criteria for the awarding of degrees and certificates; and

(4) a statistical compilation of the number of students attending the Academy and receiving degrees or certificates;

(d) a summary of the activities undertaken to assist the Nation's fire services;

(e) a summary of the public education programs undertaken;

(f) an analysis of the extent of participation in preparing and submitting Fire Safety Effectiveness Statements;

(g) a summary of outstanding problems confronting the administration of this chapter, in order of priority;

(h) such recommendations for additional legislation as are deemed necessary or appropriate; and

(i) a summary of reviews, evaluations, and suggested improvements in State and local fire prevention and building codes, fire services, and any relevant Federal or private codes, regulations, and fire services.

(Pub. L. 93–498, §16, Oct. 29, 1974, 88 Stat. 1545; Pub. L. 96–472, title II, §202, Oct. 19, 1980, 94 Stat. 2260; Pub. L. 106–503, title I, §110(a)(2)(B)(vi), Nov. 13, 2000, 114 Stat. 2302; Pub. L. 112–239, div. A, title XVIII, §1802(b)(1), Jan. 2, 2013, 126 Stat. 2100.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 93–498, Oct. 29, 1974, 88 Stat. 1535, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2201 of this title and Tables.

AMENDMENTS

2013—Pub. L. 112–239 substituted "Administrator of FEMA" for "Director" in introductory provisions.

2000—Pub. L. 106–503 substituted "Director" for "Secretary" in introductory provisions.

1980—Pub. L. 96–472 substituted "ninety calendar days following the year ending September 30, 1980 and similarly each year thereafter" for "June 30 of the year following October 29, 1974, and each year thereafter".

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of National Fire Prevention and Control Administration [now United States Fire Administration] and National Academy for Fire Prevention and Control generally transferred to Federal Emergency Management Agency. For further details see Transfer of Functions note set out under section 2202 of this title.

§2216. Authorization of appropriations

(a) There are authorized to be appropriated to carry out the foregoing provisions of this chapter, except as otherwise specifically provided, with respect to the payment of claims, under section 2210 of this title, an amount not to exceed $25,210,000 for the fiscal year ending September 30, 1980, which amount includes—

(1) $4,781,000 for programs which are recommended in the report submitted to the Congress by the Administrator pursuant to section 2220(b)(1) [1] of this title;

(2) $9,430,000 for the National Academy for Fire Prevention and Control;

(3) $307,000 for adjustments required by law in salaries, pay, retirement, and employee benefits;

(4) $500,000 for additional rural firefighting technical assistance and information activities;

(5) $500,000 for the study required by section 2222 [1] of this title; and

(6) $110,000 for the study required by section 2223 [1] of this title.

(b) There are authorized to be appropriated for the additional administrative expenses of the Federal Emergency Management Agency, which are related to this chapter and which result from Reorganization Plan Numbered 3 of 1978 (submitted June 19, 1978) and related Executive orders, an amount not to exceed $600,000 for the fiscal year ending September 30, 1980.

(c) There are authorized to be appropriated to carry out this chapter, except as otherwise specifically provided with respect to the payment of claims under section 2210 of this title, an amount not to exceed $23,814,000 for the fiscal year ending September 30, 1981, which amount includes—

(1) not less than $1,100,000 for the first year of a three-year concentrated demonstration program of fire prevention and control in two States with high fire death rates;

(2) not less than $2,575,000 for rural fire prevention and control; and

(3) not less than $4,255,000 for research and development for the activities under section 278f of this title at the Fire Research Center of the National Institute of Standards and Technology, of which not less than $250,000 shall be available for adjustments required by law in salaries, pay, retirement, and employee benefits.

The funds authorized in paragraph (3) shall be in addition to funds authorized in any other law for research and development at the Fire Research Center.

(d) Except as otherwise specifically provided with respect to the payment of claims under section 2210 of this title, to carry out the purposes of this chapter, there are authorized to be appropriated—

(1) $20,815,000 for the fiscal year ending September 30, 1982, and $23,312,800 for the fiscal year ending September 30, 1983, which amount shall include—

(A) such sums as may be necessary for the support of research and development at the Fire Research Center of the National Institute of Standards and Technology under section 278f of this title, which sums shall be in addition to those funds authorized to be appropriated under the National Bureau of Standards Authorization Act for fiscal years 1981 and 1982; and

(B) $654,000 for the fiscal year ending September 30, 1982, and $732,480 for the fiscal year ending September 30, 1983, for executive direction by the Federal Emergency Management Agency of program activities for which appropriations are authorized by this subsection; and

(2) such further sums as may be necessary in each of the fiscal years ending September 30, 1982, and September 30, 1983, for adjustments required by law in salaries, pay, retirement, and employee benefits incurred in the conduct of activities for which funds are authorized by paragraph (1) of this subsection.

The funds authorized under section 278f of this title shall be in addition to funds authorized in any other law for research and development at the Fire Research Center of the National Institute of Standards and Technology.

(e) Except as otherwise specifically provided with respect to the payment of claims under section 2210 of this title, to carry out the purposes of this chapter, there are authorized to be appropriated—

(1) $15,720,000 for the fiscal year ending September 30, 1984, and $20,983,000 for the fiscal year ending September 30, 1985; and

(2) such further sums as may be necessary in each of the fiscal years ending September 30, 1984, and September 30, 1985, for adjustments required by law in salaries, pay, retirement, and employee benefits incurred in the conduct of activities for which funds are authorized by paragraph (1) of this subsection.

The funds authorized under this subsection shall be in addition to funds authorized in any other law for research and development at the Fire Research Center of the National Institute of Standards and Technology.

(f) Except as otherwise specifically provided with respect to the payment of claims under section 2210 of this title, to carry out the purposes of this chapter, there are authorized to be appropriated $22,037,000 for the fiscal year ending September 30, 1986 and $18,300,000 for the fiscal year ending September 30, 1987.

(g)(1) Except as otherwise specifically provided with respect to the payment of claims under section 2210 of this title, there are authorized to be appropriated to carry out the purposes of this chapter—

(A) $63,000,000 for fiscal year 2005, of which $2,266,000 shall be used to carry out section 2207(f) of this title;

(B) $64,850,000 for fiscal year 2006, of which $2,334,000 shall be used to carry out section 2207(f) of this title;

(C) $66,796,000 for fiscal year 2007, of which $2,404,000 shall be used to carry out section 2207(f) of this title;

(D) $68,800,000 for fiscal year 2008, of which $2,476,000 shall be used to carry out section

2207(f) of this title;

(E) $70,000,000 for fiscal year 2009, of which $2,520,000 shall be used to carry out section 2207(f) of this title;

(F) $72,100,000 for fiscal year 2010, of which $2,595,600 shall be used to carry out section 2207(f) of this title;

(G) $74,263,000 for fiscal year 2011, of which $2,673,468 shall be used to carry out section 2207(f) of this title;

(H) $76,490,890 for fiscal year 2012, of which $2,753,672 shall be used to carry out section 2207(f) of this title;

(I) $76,490,890 for fiscal year 2013, of which $2,753,672 shall be used to carry out section 2207(f) of this title;

(J) $76,490,890 for fiscal year 2014, of which $2,753,672 shall be used to carry out section 2207(f) of this title;

(K) $76,490,890 for fiscal year 2015, of which $2,753,672 shall be used to carry out section 2207(f) of this title;

(L) $76,490,890 for fiscal year 2016, of which $2,753,672 shall be used to carry out section 2207(f) of this title; and

(M) $76,490,890 for fiscal year 2017, of which $2,753,672 shall be used to carry out section 2207(f) of this title.

(2) Of the amounts referred to in paragraph (1), not more than $4,150,000 is authorized to be appropriated for each fiscal year for National Emergency Training Center site administration.

(h) In addition to any other amounts that are authorized to be appropriated to carry out this chapter, there are authorized to be appropriated to carry out this chapter—

(1) $500,000 for fiscal year 1995 for basic research on the development of an advanced course on arson prevention;

(2) $2,000,000 for fiscal year 1996 for the expansion of arson investigator training programs at the Academy under section 2220 of this title and at the Federal Law Enforcement Training Center, or through regional delivery sites;

(3) $4,000,000 for each of fiscal years 1995 and 1996 for carrying out section 2221 of this title, except for salaries and expenses for carrying out section 2221 of this title; and

(4) $250,000 for each of the fiscal years 1995 and 1996 for salaries and expenses for carrying out section 2221 of this title.

(Pub. L. 93–498, §17, Oct. 29, 1974, 88 Stat. 1545; Pub. L. 94–411, §1(a), Sept. 13, 1976, 90 Stat. 1254; Pub. L. 95–422, §1(a), Oct. 5, 1978, 92 Stat. 932; Pub. L. 96–121, §1, Nov. 16, 1979, 93 Stat. 863; Pub. L. 96–472, title II, §201, Oct. 19, 1980, 94 Stat. 2260; Pub. L. 97–80, title II, §201, Nov. 20, 1981, 95 Stat. 1081; Pub. L. 98–241, title II, §201, Mar. 22, 1984, 98 Stat. 95; Pub. L. 99–97, Sept. 26, 1985, 99 Stat. 465; Pub. L. 99–359, §1, July 8, 1986, 100 Stat. 764; Pub. L. 100–418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 100–476, §1, Oct. 6, 1988, 102 Stat. 2304; Pub. L. 102–522, title I, §101, Oct. 26, 1992, 106 Stat. 3410; Pub. L. 103–254, §7, May 19, 1994, 108 Stat. 682; Pub. L. 105–108, §2, Nov. 20, 1997, 111 Stat. 2264; Pub. L. 106–503, title I, §102, Nov. 13, 2000, 114 Stat. 2298; Pub. L. 108–169, title I, §103, Dec. 6, 2003, 117 Stat. 2036; Pub. L. 110–376, §3, Oct. 8, 2008, 122 Stat. 4057; Pub. L. 112–239, div. A, title XVIII, §1814, Jan. 2, 2013, 126 Stat. 2118.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 93–498, Oct. 29, 1974, 88 Stat. 1535, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2201 of this title and Tables.

Section 2220(b)(1) of this title, referred to in subsec. (a)(1), was repealed by Pub. L. 106–503, title I, §110(a)(1)(D), Nov. 13, 2000, 114 Stat. 2302.

Sections 2222 and 2223 of this title, referred to in subsec. (a)(5), (6), respectively, were repealed by Pub. L. 106–503, title I, §110(a)(1)(B), Nov. 13, 2000, 114 Stat. 2302.

Reorganization Plan Numbered 3 of 1978, referred to in subsec. (b), is set out in the Appendix to Title 5,

Government Organization and Employees.

The National Bureau of Standards Authorization Act for fiscal years 1981 and 1982, referred to in subsec. (d)(1)(A), is Pub. L. 96–461, Oct. 15, 1980, 94 Stat. 2049, which enacted section 278g of this title, amended sections 278d and 278h of this title, and enacted provisions set out as notes under section 278g of this title. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2013—Subsec. (g)(1)(E) to (M). Pub. L. 112–239 added subpars. (I) to (M) and realigned margins in subpars. (E) to (H).

2008—Subsec. (g)(1)(E) to (H). Pub. L. 110–376 added subpars. (E) to (H).

2003—Subsec. (g)(1). Pub. L. 108–169 added subpars. (A) to (D) and struck out former subpars. (A) to (K) which authorized appropriations for fiscal years 1989 to 2003.

2000—Subsec. (g)(1)(I) to (K). Pub. L. 106–503 added subpars. (I) to (K).

1997—Subsec. (g)(1)(G), (H). Pub. L. 105–108 added subpars. (G) and (H).

1994—Subsec. (h). Pub. L. 103–254 added subsec. (h).

1992—Subsec. (g)(1)(D) to (F). Pub. L. 102–522 added subpars. (D) to (F).

1988—Subsecs. (c)(3), (d), (e). Pub. L. 100–418 substituted "National Institute of Standards and Technology" for "National Bureau of Standards" wherever appearing.

Subsec. (g). Pub. L. 100–476 added subsec. (g).

1986—Subsec. (f). Pub. L. 99–359 substituted "are" for "is" and inserted "and $18,300,000 for the fiscal year ending September 30, 1987".

1985—Subsec. (f). Pub. L. 99–97 added subsec. (f).

1984—Subsec. (e). Pub. L. 98–241 added subsec. (e).

1981—Subsec. (d). Pub. L. 97–80 added subsec. (d).

1980—Subsec. (c). Pub. L. 96–472 added subsec. (c).

1979—Subsec. (a). Pub. L. 96–121 designated existing provisions as subsec. (a), substituted provisions authorizing to be appropriated an amount not to exceed $25,210,000 for fiscal year ending Sept. 30, 1980, for provisions authorizing appropriations not to exceed $3,750,000 for the transitional fiscal quarter of July 1, 1976 through Sept. 30, 1976, not to exceed $15,000,000 for fiscal year ending Sept. 30, 1977, not to exceed $20,000,000 for fiscal year ending Sept. 30, 1978, and not to exceed $24,352,000 for fiscal year ending Sept. 30, 1979, and added pars. (1) to (6).

Subsec. (b). Pub. L. 96–121 added subsec. (b).

1978—Pub. L. 95–422 substituted "except as otherwise specifically provided, with respect to the payment of claims, under section 2210 of this title" for "except section 2210 of this title", struck out "and" after "September 30, 1977", and inserted provision authorizing appropriation of not to exceed $24,352,000 for fiscal year ending Sept. 30, 1979.

1976—Pub. L. 94–411 substituted provisions authorizing to be appropriated not to exceed $3,750,000 for the transitional fiscal quarter of July 1, 1976, through Sept. 30, 1976, not to exceed $15,000,000 for fiscal year ending Sept. 30, 1977, and not to exceed $20,000,000 for fiscal year ending Sept. 30, 1978, for provisions authorizing to be appropriated such sums as are necessary, not to exceed $10,000,000 for fiscal year ending June 30, 1975, and not to exceed $15,000,000 for fiscal year ending June 30, 1976.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Federal Law Enforcement Training Center of the Department of the Treasury to the Secretary of Homeland Security, and for treatment of related references, see sections 203(4), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of National Fire Prevention and Control Administration [now United States Fire Administration]

and National Academy for Fire Prevention and Control generally transferred to Federal Emergency Management Agency. For further details see Transfer of Functions note set out under section 2202 of this title.

ARSON PREVENTION GRANTS; TERMINATION OF APPROPRIATIONS

Pub. L. 103–254, §8, May 19, 1994, 108 Stat. 683, provided that: "Notwithstanding any other provision of this Act [see Short Title of 1994 Amendment note set out under section 2201 of this title], no funds are authorized to be appropriated for any fiscal year after fiscal year 1996 for carrying out the programs for which funds are authorized by this Act, or the amendments made by this Act."

[1] *See References in Text note below.*

§2217. Public access to information

Copies of any document, report, statement, or information received or sent by the Administrator of FEMA or the Administrator shall be made available to the public pursuant to the provisions of section 552 of title 5: *Provided*, That, notwithstanding the provisions of subsection (b) of such section and of section 1905 of title 18, the Administrator of FEMA may disclose information which concerns or relates to a trade secret—

(1) upon request, to other Federal Government departments and agencies for official use;

(2) upon request, to any committee of Congress having jurisdiction over the subject matter to which the information relates;

(3) in any judicial proceeding under a court order formulated to preserve the confidentiality of such information without impairing the proceedings; and

(4) to the public when he determines such disclosure to be necessary in order to protect health and safety after notice and opportunity for comment in writing or for discussion in closed session within fifteen days by the party to which the information pertains (if the delay resulting from such notice and opportunity for comment would not be detrimental to health and safety).

(Pub. L. 93–498, §20, Oct. 29, 1974, 88 Stat. 1547; Pub. L. 106–503, title I, §110(a)(2)(B)(viii), Nov. 13, 2000, 114 Stat. 2302; Pub. L. 112–239, div. A, title XVIII, §1802(b)(1), Jan. 2, 2013, 126 Stat. 2100.)

AMENDMENTS

2013—Pub. L. 112–239 substituted "Administrator of FEMA" for "Director" in two places in introductory provisions.

2000—Pub. L. 106–503 substituted "Director" for "Secretary" in two places in introductory provisions.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of National Fire Prevention and Control Administration [now United States Fire Administration] and National Academy for Fire Prevention and Control generally transferred to Federal Emergency Management Agency. For further details see Transfer of Functions note set out under section 2202 of this title.

§2218. Administrative provisions

(a) Assistance to Administrator

Each department, agency, and instrumentality of the executive branch of the Federal Government

and each independent regulatory agency of the United States is authorized and directed to furnish to the Administrator, upon written request, on a reimbursable basis or otherwise, such assistance as the Administrator deems necessary to carry out his functions and duties pursuant to this chapter, including, but not limited to, transfer of personnel with their consent and without prejudice to their position and ratings.

(b) Powers of Administrator

With respect to this chapter, the Administrator is authorized to—

(1) enter into, without regard to section 6101 of title 41 [1] such contracts, grants, leases, cooperative agreements, or other transactions as may be necessary to carry out the provisions of this chapter;

(2) accept gifts and voluntary and uncompensated services, notwithstanding the provisions of section 1342 of title 31;

(3) purchase, lease, or otherwise acquire, own, hold, improve, use, or deal in and with any property (real, personal, or mixed, tangible or intangible), or interest in property, wherever situated; and sell, convey, mortgage, pledge, lease, exchange, or otherwise dispose of property and assets;

(4) procure temporary and intermittent services to the same extent as is authorized under section 3109 of title 5, but at rates not to exceed the daily equivalent of the maximum annual rate of basic pay then in effect for grade GS–15 of the General Schedule (5 U.S.C. 5332(a)) for qualified experts; and

(5) establish such rules, regulations, and procedures as are necessary to carry out the provisions of this chapter.

(c) Audit

The Administrator of FEMA and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the recipients of contracts, grants, or other forms of assistance that are pertinent to its activities under this chapter for the purpose of audit or to determine if a proposed activity is in the public interest.

(d) Inventions and discoveries

All property rights with respect to inventions and discoveries, which are made in the course of or under contract with any government agency pursuant to this chapter, shall be subject to the basic policies set forth in the President's Statement of Government Patent Policy issued August 23, 1971, or such revisions of that statement of the policy as may subsequently be promulgated and published in the Federal Register.

(e) Coordination

(1) In general

To the extent practicable, the Administrator shall use existing programs, data, information, and facilities already available in other Federal Government departments and agencies and, where appropriate, existing research organizations, centers, and universities.

(2) Coordination of fire prevention and control programs

The Administrator shall provide liaison at an appropriate organizational level to assure coordination of the activities of the Administrator with Federal, State, and local government agencies and departments and nongovernmental organizations concerned with any matter related to programs of fire prevention and control.

(3) Coordination of emergency medical services programs

The Administrator shall provide liaison at an appropriate organizational level to assure coordination of the activities of the Administrator related to emergency medical services provided by fire service-based systems with Federal, State, and local government agencies and departments and nongovernmental organizations so concerned, as well as those entities concerned with emergency medical services generally.

(Pub. L. 93–498, §21, Oct. 29, 1974, 88 Stat. 1548; Pub. L. 96–121, §2, Nov. 16, 1979, 93 Stat. 863; Pub. L. 106–503, title I, §110(a)(2)(B)(ix), Nov. 13, 2000, 114 Stat. 2302; Pub. L. 110–376, §9(a), Oct. 8, 2008, 122 Stat. 4061; Pub. L. 112–239, div. A, title XVIII, §1802(b)(1), Jan. 2, 2013, 126 Stat. 2100.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 93–498, Oct. 29, 1974, 88 Stat. 1535, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2201 of this title and Tables.

CODIFICATION

In subsec. (b)(1), "section 6101 of title 41" substituted for "section 3709 of the Revised Statutes, as amended (41 U.S.C. 5)" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (b)(2), "section 1342 of title 31" substituted for "section 3679 of the Revised Statutes (31 U.S.C. 665(b))" on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

2013—Subsec. (c). Pub. L. 112–239 substituted "Administrator of FEMA" for "Director".

2008—Subsec. (e). Pub. L. 110–376 amended subsec. (e) generally. Prior to amendment, text read as follows: "To the extent practicable, the Administrator shall utilize existing programs, data, information, and facilities already available in other Federal Government departments and agencies and, where appropriate, existing research organizations, centers, and universities. The Administrator shall provide liaison at an appropriate organizational level to assure coordination of his activities with State and local government agencies, departments, bureaus, or offices concerned with any matter related to programs of fire prevention and control and with private and other Federal organizations and offices so concerned."

2000—Subsec. (c). Pub. L. 106–503 substituted "Director" for "Secretary".

1979—Subsec. (b)(4). Pub. L. 96–121 substituted "the daily equivalent of the maximum annual rate of basic pay then in effect for grade GS–15 of the General Schedule (5 U.S.C. 5332(a))" for "$100 a day".

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of National Fire Prevention and Control Administration [now United States Fire Administration] and National Academy for Fire Prevention and Control generally transferred to Federal Emergency Management Agency. For further details see Transfer of Functions note set out under section 2202 of this title.

ENHANCEMENT OF SCIENCE AND MATHEMATICS PROGRAMS

Pub. L. 105–108, §7, Nov. 20, 1997, 111 Stat. 2265, provided that:

"(a) DEFINITIONS.—In this section:

"(1) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the United States Fire Administration.

"(2) EDUCATIONALLY USEFUL FEDERAL EQUIPMENT.—The term 'educationally useful Federal equipment' means computers and related peripheral tools and research equipment that is appropriate for use in schools.

"(3) SCHOOL.—The term 'school' means a public or private educational institution that serves any of the grades of kindergarten through grade 12.

"(b) SENSE OF CONGRESS.—

"(1) IN GENERAL.—It is the sense of Congress that the Administrator should, to the greatest extent practicable and in a manner consistent with applicable Federal law (including Executive Order No. 12999 [40 U.S.C. 549 note]), donate educationally useful Federal equipment to schools in order to enhance the

science and mathematics programs of those schools.

"(2) REPORTS.—

"(A) IN GENERAL.—Not later than 1 year after the date of enactment of this Act [Nov. 20, 1997], and annually thereafter, the Administrator shall prepare and submit to the President a report that meets the requirements of this paragraph. The President shall submit that report to Congress at the same time as the President submits a budget request to Congress under section 1105(a) of title 31, United States Code.

"(B) CONTENTS OF REPORT.—The report prepared by the Administrator under this paragraph shall describe any donations of educationally useful Federal equipment to schools made during the period covered by the report."

[1] *So in original. Probably should be followed by a comma.*

§2219. Assistance to Consumer Product Safety Commission

Upon request, the Administrator shall assist the Consumer Product Safety Commission in the development of fire safety standards or codes for consumer products, as defined in the Consumer Product Safety Act (15 U.S.C. 2051 et seq.).

(Pub. L. 93–498, §22, Oct. 29, 1974, 88 Stat. 1549.)

REFERENCES IN TEXT

The Consumer Product Safety Act, referred to in text, is Pub. L. 92–573, Oct. 27, 1972, 86 Stat. 1207, as amended, which is classified generally to chapter 47 (§2051 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2051 of this title and Tables.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of National Fire Prevention and Control Administration [now United States Fire Administration] and National Academy for Fire Prevention and Control generally transferred to Federal Emergency Management Agency. For further details see Transfer of Functions note set out under section 2202 of this title.

§2220. Arson prevention, detection, and control

The Administrator shall—

(1) develop arson detection techniques to assist Federal agencies and States and local jurisdictions in improving arson prevention, detection, and control;

(2) provide training and instructional materials in the skills and knowledge necessary to assist Federal, State, and local fire service and law enforcement personnel in arson prevention, detection, and control, with particular emphasis on the needs of volunteer firefighters for improved and more widely available arson training courses;

(3) formulate methods for collection of arson data which would be compatible with methods of collection used for the uniform crime statistics of the Federal Bureau of Investigation;

(4) develop and implement programs for improved collection of nationwide arson statistics within the National Fire Incident Reporting System at the National Fire Data Center;

(5) develop programs for public education on the extent, causes, and prevention of arson; and

(6) develop handbooks to assist Federal, State, and local fire service and law enforcement

personnel in arson prevention and detection.

(Pub. L. 93–498, §24, as added Pub. L. 95–422, §3(a), Oct. 5, 1978, 92 Stat. 932; amended Pub. L. 103–254, §4, May 19, 1994, 108 Stat. 682; Pub. L. 106–503, title I, §110(a)(1)(C), (D), Nov. 13, 2000, 114 Stat. 2302.)

AMENDMENTS

2000—Pub. L. 106–503 struck out subsec. (a) designation and struck out subsec. (b) which required the Administrator to submit a report to Congress by Mar. 15, 1979, on ways to assist the States and local jurisdictions with arson control.

1994—Subsec. (a)(2). Pub. L. 103–254 inserted before semicolon at end ", with particular emphasis on the needs of volunteer firefighters for improved and more widely available arson training courses".

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of Administrator of United States Fire Administration under this section and section 2221 of this title to remain vested in Administrator and not to be transferred to Director of Federal Emergency Management Agency, pursuant to Reorg. Plan No. 3 of 1978, §§201, 301, June 19, 1978, 43 F.R. 41944, 92 Stat. 3788, set out as a note under section 2201 of this title, effective Apr. 1, 1979, pursuant to Ex. Ord. No. 12127, §1–103(a), Mar. 31, 1979, 44 F.R. 19367.

§2221. Arson prevention grants

(a) Definitions

As used in this section:

(1) Arson

The term "arson" includes all incendiary and suspicious fires.

(2) Office

The term "Office" means the Office of Fire Prevention and Arson Control of the United States Fire Administration.

(b) Grants

The Administrator, acting through the Office, shall carry out a demonstration program under which not more than 10 grant awards shall be made to States, or consortia of States, for programs relating to arson research, prevention, and control.

(c) Goals

In carrying out this section, the Administrator shall award 2-year grants on a competitive, merit basis to States, or consortia of States, for projects that promote one or more of the following goals:

(1) To improve the training by States leading to professional certification of arson investigators, in accordance with nationally recognized certification standards.

(2) To provide resources for the formation of arson task forces or interagency organizational arrangements involving police and fire departments and other relevant local agencies, such as a State arson bureau and the office of a fire marshal of a State.

(3) To combat fraud as a cause of arson and to advance research at the State and local levels on the significance and prevention of fraud as a motive for setting fires.

(4) To provide for the management of arson squads, including—

(A) training courses for fire departments in arson case management, including standardization of investigative techniques and reporting methodology;

(B) the preparation of arson unit management guides; and

(C) the development and dissemination of new public education materials relating to the arson problem.

(5) To combat civil unrest as a cause of arson and to advance research at the State and local levels on the prevention and control of arson linked to urban disorders.

(6) To combat juvenile arson, such as juvenile fire-setter counseling programs and similar intervention programs, and to advance research at the State and local levels on the prevention of juvenile arson.

(7) To combat drug-related arson and to advance research at the State and local levels on the causes and prevention of drug-related arson.

(8) To combat domestic violence as a cause of arson and to advance research at the State and local levels on the prevention of arson arising from domestic violence.

(9) To combat arson in rural areas and to improve the capability of firefighters to identify and prevent arson initiated fires in rural areas and public forests.

(10) To improve the capability of firefighters to identify and combat arson through expanded training programs, including—

(A) training courses at the State fire academies; and

(B) innovative courses developed with the Academy and made available to volunteer firefighters through regional delivery methods, including teleconferencing and satellite delivered television programs.

(d) Structuring of applications

The Administrator shall assist grant applicants in structuring their applications so as to ensure that at least one grant is awarded for each goal described in subsection (c) of this section.

(e) State qualification criteria

In order to qualify for a grant under this section, a State, or consortium of States, shall provide assurances adequate to the Administrator that the State or consortium—

(1) will obtain at least 25 percent of the cost of programs funded by the grant, in cash or in kind, from non-Federal sources;

(2) will not as a result of receiving the grant decrease the prior level of spending of funds of the State or consortium from non-Federal sources for arson research, prevention, and control programs;

(3) will use no more than 10 percent of funds provided under the grant for administrative costs of the programs; and

(4) is making efforts to ensure that all local jurisdictions will provide arson data to the National Fire Incident Reporting System or the Uniform Crime Reporting program.

(f) Extension

A grant awarded under this section may be extended for one or more additional periods, at the discretion of the Administrator, subject to the availability of appropriations.

(g) Technical assistance

The Administrator shall provide technical assistance to States in carrying out programs funded by grants under this section.

(h) Consultation and cooperation

In carrying out this section, the Administrator shall consult and cooperate with other Federal agencies to enhance program effectiveness and avoid duplication of effort, including the conduct of regular meetings initiated by the Administrator with representatives of other Federal agencies concerned with arson and concerned with efforts to develop a more comprehensive profile of the magnitude of the national arson problem.

(i) Assessment

Not later than 18 months after May 19, 1994, the Administrator shall submit a report to Congress that—

(1) identifies grants made under this section;

(2) specifies the identity of grantees;

(3) states the goals of each grant; and

(4) contains a preliminary assessment of the effectiveness of the grant program under this section.

(j) Regulations

Not later than 90 days after May 19, 1994, the Administrator shall issue regulations to implement this section, including procedures for grant applications.

(k) Administration

The Administrator shall directly administer the grant program required by this section, and shall not enter into any contract under which the grant program or any portion of the program will be administered by another party.

(l) Purchase of American made equipment and products

(1) Sense of Congress

It is the sense of Congress that any recipient of a grant under this section should purchase, when available and cost-effective, American made equipment and products when expending grant monies.

(2) Notice to recipients of assistance

In allocating grants under this section, the Administrator shall provide to each recipient a notice describing the statement made in paragraph (1) by the Congress.

(Pub. L. 93–498, §25, as added Pub. L. 103–254, §3, May 19, 1994, 108 Stat. 679.)

PRIOR PROVISIONS

A prior section 2221, Pub. L. 93–498, §25, as added Pub. L. 95–422, §4, Oct. 5, 1978, 92 Stat. 933, authorized sale by United States Fire Administrator of former Marjorie Webster Junior College facility, located in Washington, D.C., which had previously been purchased as site for National Academy for Fire Prevention and Control, prior to repeal by Pub. L. 97–80, title II, §202(b), Nov. 20, 1981, 95 Stat. 1083.

§§2222, 2223. Repealed. Pub. L. 106–503, title I, §110(a)(1)(B), Nov. 13, 2000, 114 Stat. 2302

Section 2222, Pub. L. 93–498, §26, as added Pub. L. 96–121, §4, Nov. 16, 1979, 93 Stat. 864, related to an effectiveness study concerning smoke detectors, heat detectors, and sprinkler suppression systems.

Section 2223, Pub. L. 93–498, §27, as added Pub. L. 96–121, §5, Nov. 16, 1979, 93 Stat. 865, related to a firefighter safety study.

§2223a. Review

The Administrator of the United States Fire Administration (hereafter in sections 2223a to 2223e of this title referred to as the "Administrator") shall conduct a review of existing response information used by emergency response personnel at the State and local levels to evaluate its accuracy and consistency, and to determine whether it is properly expressed. Such information should clearly communicate to emergency response personnel the probable hazards which they must contend with in an emergency situation involving hazardous materials, and the appropriate response to those hazards.

(Pub. L. 101–446, §2, Oct. 22, 1990, 104 Stat. 1045.)

CODIFICATION

Section was enacted as part of the Firefighters' Safety Study Act, and not as part of the Federal Fire Prevention and Control Act of 1974 which comprises this chapter.

SHORT TITLE

Pub. L. 101–446, §1, Oct. 22, 1990, 104 Stat. 1045, provided that: "This Act [enacting this section and sections 2223b to 2223e of this title] may be cited as the 'Firefighters' Safety Study Act'."

§2223b. Working group

For the purpose of carrying out section 2223a of this title, the Administrator shall establish a working group which shall, at a minimum, consist of—

(1) program officials from each of—

(A) the Environmental Protection Agency;

(B) the National Oceanic and Atmospheric Administration;

(C) the Department of Transportation;

(D) the Occupational Safety and Health Administration; and

(E) the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice,

who develop and disseminate hazardous materials identification and response data, and who collect, collate, analyze, and disseminate hazardous materials incident data;

(2) State and local operational officials with emergency response or relevant regulatory responsibilities; and

(3) representatives of companies engaged in the manufacture and processing of chemicals.

(Pub. L. 101–446, §3, Oct. 22, 1990, 104 Stat. 1045; Pub. L. 107–296, title XI, §1112(d), Nov. 25, 2002, 116 Stat. 2276.)

CODIFICATION

Section was enacted as part of the Firefighters' Safety Study Act, and not as part of the Federal Fire Prevention and Control Act of 1974 which comprises this chapter.

AMENDMENTS

2002—Par. (1)(E). Pub. L. 107–296 substituted "the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice," for "the Bureau of Alcohol, Tobacco, and Firearms,".

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

§2223c. Report and recommendations

The working group established under section 2223b of this title shall, within 1 year after October 22, 1990, submit a report to the Administrator and to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate presenting the results of the review carried out under sections 2223a to 2223e of this title, along with recommendations to ensure that response information disseminated to emergency response personnel is appropriate for operational personnel at the local level.

(Pub. L. 101–446, §4, Oct. 22, 1990, 104 Stat. 1045.)

CODIFICATION

Section was enacted as part of the Firefighters' Safety Study Act, and not as part of the Federal Fire Prevention and Control Act of 1974 which comprises this chapter.

§2223d. Annual revision of recommendations

After the submission of the report cited in section 2223c of this title, the working group established under section 2223b of this title shall meet as needed, but at least once every 12 months, to review and recommend changes and additions to the report cited in section 2223c of this title, that are necessary and appropriate for operational personnel at the local level.

(Pub. L. 101–446, §5, Oct. 22, 1990, 104 Stat. 1046.)

CODIFICATION

Section was enacted as part of the Firefighters' Safety Study Act, and not as part of the Federal Fire Prevention and Control Act of 1974 which comprises this chapter.

§2223e. "Emergency response personnel" defined

As used in sections 2223a to 2223e of this title, the term "emergency response personnel" means personnel responsible for mitigation activities in a medical emergency, fire emergency, hazardous material emergency, or natural disaster.

(Pub. L. 101–446, §6, Oct. 22, 1990, 104 Stat. 1046.)

CODIFICATION

Section was enacted as part of the Firefighters' Safety Study Act, and not as part of the Federal Fire Prevention and Control Act of 1974 which comprises this chapter.

§2224. Listings of places of public accommodation

(a) Submissions by States

(1) Not later than 2 years after September 25, 1990, each State (acting through its Governor or the Governor's designee) shall, under procedures formulated by the Administrator of FEMA, submit to the Administrator of FEMA a list of those places of public accommodation affecting commerce located in the State which meet the requirements of the guidelines described in section 2225 of this title.

(2) The Administrator of FEMA shall formulate procedures under which each State (acting through its Governor or the Governor's designee) shall periodically update the list submitted pursuant to paragraph (1).

(b) Compilation and distribution of master list

(1) Not later than 60 days after the expiration of the 2-year period referred to in subsection (a) of this section, the Administrator of FEMA shall compile and publish in the Federal Register a national master list of all of the places of public accommodation affecting commerce located in each State that meet the requirements of the guidelines described in section 2225 of this title, and shall distribute such list to each agency of the Federal Government and take steps to make the employees of such agencies aware of its existence and contents.

(2) The Administrator of FEMA shall periodically update the national master list compiled pursuant to paragraph (1) to reflect changes in the State lists submitted to the Administrator of FEMA pursuant to subsection (a) of this section, and shall periodically redistribute the updated master list to each agency of the Federal Government.

(3) For purposes of this subsection, the term "agency" has the meaning given to it under section 5701(1) of title 5.

(Pub. L. 93–498, §28, as added Pub. L. 101–391, §3(a), Sept. 25, 1990, 104 Stat. 747; amended Pub. L. 102–522, title I, §104, Oct. 26, 1992, 106 Stat. 3411; Pub. L. 112–239, div. A, title XVIII, §1802(b)(1), Jan. 2, 2013, 126 Stat. 2100.)

AMENDMENTS

Pub. L. 112–239 substituted "Administrator of FEMA" for "Director" wherever appearing.

1992—Pub. L. 102–522, §104(1), struck out "certified" before "places" in section catchline.

Subsec. (a). Pub. L. 102–522, §104(2), inserted "(acting through its Governor or the Governor's designee)" after "each State" in pars. (1) and (2) and struck out "the Governor of the State or his designee certifies" after "in the State which" in par. (1).

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§2225. Fire prevention and control guidelines for places of public accommodation

(a) Contents of guidelines

The guidelines referred to in sections 2224 and 2226 of this title consist of—

(1) a requirement that hard-wired, single-station smoke detectors be installed in accordance with National Fire Protection Association Standard 74 or any successor standard to that standard in each guest room in each place of public accommodation affecting commerce; and

(2) a requirement that an automatic sprinkler system be installed in accordance with National Fire Protection Association Standard 13 or 13–R, or any successor standard to that standard, whichever is appropriate, in each place of public accommodation affecting commerce except those places that are 3 stories or lower.

(b) Exceptions

(1) The requirement described in subsection (a)(2) of this section shall not apply to a place of public accommodation affecting commerce with an automatic sprinkler system installed before October 25, 1992, if the automatic sprinkler system is installed in compliance with an applicable standard (adopted by the governmental authority having jurisdiction, and in effect, at the time of installation) that required the placement of a sprinkler head in the sleeping area of each guest room.

(2) The requirement described in subsection (a)(2) of this section shall not apply to a place of public accommodation affecting commerce to the extent that such place of public accommodation affecting commerce is subject to a standard that includes a requirement or prohibition that prevents compliance with a provision of National Fire Protection Association Standard 13 or 13–R, or any successor standard to that standard. In such a case, the place of public accommodation affecting commerce is exempt only from that specific provision.

(c) Effect on State and local law

The provisions of this section shall not be construed to limit the power of any State or political subdivision thereof to implement or enforce any law, rule, regulation, or standard concerning fire prevention and control.

(d) Definitions

For purposes of this section, the following definitions shall apply:

(1) The term "smoke detector" means an alarm that is designed to respond to the presence of visible or invisible particles of combustion.

(2) The term "automatic sprinkler system" means an electronically supervised, integrated system of piping to which sprinklers are attached in a systematic pattern, and which, when activated by heat from a fire, will protect human lives by discharging water over the fire area, and

by providing appropriate warning signals (to the extent such signals are required by Federal, State, or local laws or regulations) through the building's fire alarm system.

(3) The term "governmental authority having jurisdiction" means the Federal, State, local, or other governmental entity with statutory or regulatory authority for the approval of fire safety systems, equipment, installations, or procedures within a specified locality.

(Pub. L. 93–498, §29, as added Pub. L. 101–391, §3(a), Sept. 25, 1990, 104 Stat. 748; amended Pub. L. 102–522, title I, §105, Oct. 26, 1992, 106 Stat. 3411; Pub. L. 105–108, §3(1)–(3), Nov. 20, 1997, 111 Stat. 2264.)

AMENDMENTS

1997—Subsec. (a)(1). Pub. L. 105–108, §3(1), inserted "or any successor standard to that standard" after "Association Standard 74".

Subsec. (a)(2). Pub. L. 105–108, §3(2), inserted ", or any successor standard to that standard" before ", whichever is appropriate,".

Subsec. (b)(2). Pub. L. 105–108, §3(3), inserted ", or any successor standard to that standard" after "Association Standard 13 or 13–R".

1992—Subsecs. (b) to (d). Pub. L. 102–522, §105(a), added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

Subsec. (d)(3). Pub. L. 102–522, §105(b), added par. (3).

§2225a. Prohibiting Federal funding of conferences held at non-certified places of public accommodation

(a) In general

No Federal funds may be used to sponsor or fund in whole or in part a meeting, convention, conference, or training seminar that is conducted in, or that otherwise uses the rooms, facilities, or services of, a place of public accommodation that does not meet the requirements of the fire prevention and control guidelines described in section 2225 of this title.

(b) Waiver

(1) In general

The head of an agency of the Federal Government sponsoring or funding a particular meeting, convention, conference, or training seminar may waive the prohibition described in subsection (a) of this section if the head of such agency determines that a waiver of such prohibition is necessary in the public interest in the case of such particular event.

(2) Delegation of authority

The head of an agency of the Federal Government may delegate the authority provided under paragraph (1) to waive the prohibition described in subsection (a) of this section and to determine whether such a waiver is necessary in the public interest to an officer or employee of the agency if such officer or employee is given such authority with respect to all meetings, conventions, conferences, and training seminars sponsored or funded by the agency.

(c) Notice requirements

(1) Advertisements and applications

(A) Any advertisement for or application for attendance at a meeting, convention, conference, or training seminar sponsored or funded in whole or in part by the Federal Government shall include a notice regarding the prohibition described in subsection (a) of this section.

(B) The requirement described in subparagraph (A) shall not apply in the case of an event for which a head of an agency of the Federal Government, pursuant to subsection (b) of this section, waives the prohibition described in subsection (a) of this section.

(2) Providing notice to recipients of funds

(A) Each Executive department, Government corporation, and independent establishment

providing Federal funds to non-Federal entities shall notify recipients of such funds of the prohibition described in subsection (a) of this section.

(B) In subparagraph (A), the terms "Executive department", "Government corporation", and "independent establishment" have the meanings given such terms in chapter 1 of title 5.

(d) Effective date

The provisions of this section shall take effect on the first day of the first fiscal year that begins after the expiration of the 425-day period that begins on the date of the publication in the Federal Register of the master list referred to in section 2224(b) of this title.

(Pub. L. 101–391, §6, Sept. 25, 1990, 104 Stat. 751.)

CODIFICATION

Section was enacted as part of the Hotel and Motel Fire Safety Act of 1990, and not as part of the Federal Fire Prevention and Control Act of 1974 which comprises this chapter.

§2226. Dissemination of fire prevention and control information

The Administrator of FEMA, acting through the Administrator, is authorized to take steps to encourage the States to promote the use of automatic sprinkler systems and automatic smoke detection systems, and to disseminate to the maximum extent possible information on the life safety value and use of such systems. Such steps may include, but need not be limited to, providing copies of the guidelines described in section 2225 of this title and of the master list compiled under section 2224(b) of this title to Federal agencies, State and local governments, and fire services throughout the United States, and making copies of the master list compiled under section 2224(b) of this title available upon request to interested private organizations and individuals.

(Pub. L. 93–498, §30, as added Pub. L. 101–391, §3(a), Sept. 25, 1990, 104 Stat. 748; amended Pub. L. 112–239, div. A, title XVIII, §1802(b)(1), Jan. 2, 2013, 126 Stat. 2100.)

AMENDMENTS

2013—Pub. L. 112–239 substituted "Administrator of FEMA" for "Director".

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§2227. Fire safety systems in federally assisted buildings

(a) Definitions

For purposes of this section, the following definitions apply:

(1) The term "affordable cost" means the cost to a Federal agency of leasing office space in a building that is protected by an automatic sprinkler system or equivalent level of safety, which cost is no more than 10 percent greater than the cost of leasing available comparable office space in a building that is not so protected.

(2) The term "automatic sprinkler system" means an electronically supervised, integrated system of piping to which sprinklers are attached in a systematic pattern, and which, when activated by heat from a fire—

(A) will protect human lives by discharging water over the fire area, in accordance with the

National Fire Protection Association Standard 13, 13D, or 13R, whichever is appropriate for the type of building and occupancy being protected, or any successor standard thereto; and

(B) includes an alarm signaling system with appropriate warning signals (to the extent such alarm systems and warning signals are required by Federal, State, or local laws or regulations) installed in accordance with the National Fire Protection Association Standard 72, or any successor standard thereto.

(3) The term "equivalent level of safety" means an alternative design or system (which may include automatic sprinkler systems), based upon fire protection engineering analysis, which achieves a level of safety equal to or greater than that provided by automatic sprinkler systems.

(4) The term "Federal employee office building" means any office building in the United States, whether owned or leased by the Federal Government, that is regularly occupied by more than 25 full-time Federal employees in the course of their employment.

(5) The term "housing assistance"—

(A) means assistance provided by the Federal Government to be used in connection with the provision of housing,[1] that is provided in the form of a grant, contract, loan, loan guarantee, cooperative agreement, interest subsidy, insurance, or direct appropriation; and

(B) does not include assistance provided by the Secretary of Veterans Affairs; the Federal Emergency Management Agency; the Secretary of Housing and Urban Development under the single family mortgage insurance programs under the National Housing Act [12 U.S.C. 1701 et seq.] or the homeownership assistance program under section 235 of such Act [12 U.S.C. 1715z]; the National Homeownership Trust; the Federal Deposit Insurance Corporation under the affordable housing program under section 1831q of title 12; or the Resolution Trust Corporation under the affordable housing program under section 1441a(c) [2] of title 12.

(6) The term "hazardous areas" means those areas in a building referred to as hazardous areas in National Fire Protection Association Standard 101, known as the Life Safety Code, or any successor standard thereto.

(7) The term "multifamily property" means—

(A) in the case of housing for Federal employees or their dependents, a residential building consisting of more than 2 residential units that are under one roof; and

(B) in any other case, a residential building consisting of more than 4 residential units that are under one roof.

(8) The term "prefire plan" means specific plans for fire fighting activities at a property or location.

(9) The term "rebuilding" means the repairing or reconstructing of portions of a multifamily property where the cost of the alterations is 70 percent or more of the replacement cost of the completed multifamily property, not including the value of the land on which the multifamily property is located.

(10) The term "renovated" means the repairing or reconstructing of 50 percent or more of the current value of a Federal employee office building, not including the value of the land on which the Federal employee office building is located.

(11) The term "smoke detectors" means single or multiple station, self-contained alarm devices designed to respond to the presence of visible or invisible particles of combustion, installed in accordance with the National Fire Protection Association Standard 74 or any successor standard thereto.

(12) The term "United States" means the States collectively.

(b) Federal employee office buildings

(1)(A) No Federal funds may be used for the construction or purchase of a Federal employee office building of 6 or more stories unless during the period of occupancy by Federal employees the building is protected by an automatic sprinkler system or equivalent level of safety. No Federal funds

may be used for the construction or purchase of any other Federal employee office building unless during the period of occupancy by Federal employees the hazardous areas of the building are protected by automatic sprinkler systems or an equivalent level of safety.

(B)(i) Except as provided in clause (ii), no Federal funds may be used for the lease of a Federal employee office building of 6 or more stories, where at least some portion of the federally leased space is on the sixth floor or above and at least 35,000 square feet of space is federally occupied, unless during the period of occupancy by Federal employees the entire Federal employee office building is protected by an automatic sprinkler system or equivalent level of safety. No Federal funds may be used for the lease of any other Federal employee office building unless during the period of occupancy by Federal employees the hazardous areas of the entire Federal employee office building are protected by automatic sprinkler systems or an equivalent level of safety.

(ii) The first sentence of clause (i) shall not apply to the lease of a building the construction of which is completed before October 26, 1992, if the leasing agency certifies that no suitable building with automatic sprinkler systems or an equivalent level of safety is available at an affordable cost.

(2) Paragraph (1) shall not apply to—

(A) a Federal employee office building that was owned by the Federal Government before October 26, 1992;

(B) space leased in a Federal employee office building if the space was leased by the Federal Government before October 26, 1992;

(C) space leased on a temporary basis for not longer than 6 months;

(D) a Federal employee office building that becomes a Federal employee office building pursuant to a commitment to move Federal employees into the building that is made prior to October 26, 1992; or

(E) a Federal employee office building that is owned or managed by the Resolution Trust Corporation.

Nothing in this subsection shall require the installation of an automatic sprinkler system or equivalent level of safety by reason of the leasing, after October 26, 1992, of space below the sixth floor in a Federal employee office building.

(3) No Federal funds may be used for the renovation of a Federal employee office building of 6 or more stories that is owned by the Federal Government unless after that renovation the Federal employee office building is protected by an automatic sprinkler system or equivalent level of safety. No Federal funds may be used for the renovation of any other Federal employee office building that is owned by the Federal Government unless after that renovation the hazardous areas of the Federal employee office building are protected by automatic sprinkler systems or an equivalent level of safety.

(4) No Federal funds may be used for entering into or renewing a lease of a Federal employee office building of 6 or more stories that is renovated after October 26, 1992, where at least some portion of the federally leased space is on the sixth floor or above and at least 35,000 square feet of space is federally occupied, unless after that renovation the Federal employee office building is protected by an automatic sprinkler system or equivalent level of safety. No Federal funds may be used for entering into or renewing a lease of any other Federal employee office building that is renovated after October 26, 1992, unless after that renovation the hazardous areas of the Federal employee office building are protected by automatic sprinkler systems or an equivalent level of safety.

(c) Housing

(1)(A) Except as otherwise provided in this paragraph, no Federal funds may be used for the construction, purchase, lease, or operation by the Federal Government of housing in the United States for Federal employees or their dependents unless—

(i) in the case of a multifamily property acquired or rebuilt by the Federal Government after October 26, 1992, the housing is protected, before occupancy by Federal employees or their dependents, by an automatic sprinkler system (or equivalent level of safety) and hard-wired smoke detectors; and

(ii) in the case of any other housing, the housing, before—

(I) occupancy by the first Federal employees (or their dependents) who do not occupy such housing as of October 26, 1992; or

(II) the expiration of 3 years after October 26, 1992,

whichever occurs first, is protected by hard-wired smoke detectors.

(B) Nothing in this paragraph shall be construed to supersede any guidelines or requirements applicable to housing for Federal employees that call for a higher level of fire safety protection than is required under this paragraph.

(C) Housing covered by this paragraph that does not have an adequate and reliable electrical system shall not be subject to the requirement under subparagraph (A) for protection by hard-wired smoke detectors, but shall be protected by battery operated smoke detectors.

(D) If funding has been programmed or designated for the demolition of housing covered by this paragraph, such housing shall not be subject to the fire protection requirements of subparagraph (A), but shall be protected by battery operated smoke detectors.

(2)(A)(i) Housing assistance may not be used in connection with any newly constructed multifamily property, unless after the new construction the multifamily property is protected by an automatic sprinkler system and hard-wired smoke detectors.

(ii) For purposes of clause (i), the term "newly constructed multifamily property" means a multifamily property of 4 or more stories above ground level—

(I) that is newly constructed after October 26, 1992; and

(II) for which (a) housing assistance is used for such new construction, or (b) a binding commitment is made, before commencement of such construction, to provide housing assistance for the newly constructed property.

(iii) Clause (i) shall not apply to any multifamily property for which, before October 26, 1992, a binding commitment is made to provide housing assistance for the new construction of the property or for the newly constructed property.

(B)(i) Except as provided in clause (ii), housing assistance may not be used in connection with any rebuilt multifamily property, unless after the rebuilding the multifamily property complies with the chapter on existing apartment buildings of National Fire Protection Association Standard 101 (known as the Life Safety Code) or any successor standard to that standard, as in effect at the earlier of (I) the time of any approval by the Department of Housing and Urban Development of the specific plan or budget for rebuilding, or (II) the time that a binding commitment is made to provide housing assistance for the rebuilt property.

(ii) If any rebuilt multifamily property is subject to, and in compliance with, any provision of a State or local fire safety standard or code that prevents compliance with a specific provision of National Fire Protection Association Standard 101 or any successor standard to that standard, the requirement under clause (i) shall not apply with respect to such specific provision.

(iii) For purposes of this subparagraph, the term "rebuilt multifamily property" means a multifamily property of 4 or more stories above ground level—

(I) that is rebuilt after the last day of the second fiscal year that ends after October 26, 1992; and

(II) for which (a) housing assistance is used for such rebuilding, or (b) a binding commitment is made, before commencement of such rebuilding, to provide housing assistance for the rebuilt property.

(C) After the expiration of the 180-day period beginning on October 26, 1992, housing assistance may not be used in connection with any other dwelling unit, unless the unit is protected by a hard-wired or battery-operated smoke detector. For purposes of this subparagraph, housing assistance shall be considered to be used in connection with a particular dwelling unit only if such

assistance is provided (i) for the particular unit, in the case of assistance provided on a unit-by-unit basis, or (ii) for the multifamily property in which the unit is located, in the case of assistance provided on a structure-by-structure basis.

(d) Regulations

The Administrator of General Services, in cooperation with the United States Fire Administration, the National Institute of Standards and Technology, and the Department of Defense, within 2 years after October 26, 1992, shall promulgate regulations to further define the term "equivalent level of safety", and shall, to the extent practicable, base those regulations on nationally recognized codes.

(e) State and local authority not limited

Nothing in this section shall be construed to limit the power of any State or political subdivision thereof to implement or enforce any law, rule, regulation, or standard that establishes requirements concerning fire prevention and control. Nothing in this section shall be construed to reduce fire resistance requirements which otherwise would have been required.

(f) Prefire plan

The head of any Federal agency that owns, leases, or operates a building or housing unit with Federal funds shall invite the local agency or voluntary organization having responsibility for fire protection in the jurisdiction where the building or housing unit is located to prepare, and biennially review, a prefire plan for the building or housing unit.

(g) Reports to Congress

(1) Within 3 years after October 26, 1992, and every 3 years thereafter, the Administrator of General Services shall transmit to Congress a report on the level of fire safety in Federal employee office buildings subject to fire safety requirements under this section. Such report shall contain a description of such buildings for each Federal agency.

(2) Within 10 years after October 26, 1992, each Federal agency providing housing to Federal employees or housing assistance shall submit a report to Congress on the progress of that agency in implementing subsection (c) of this section and on plans for continuing such implementation.

(3)(A) The National Institute of Standards and Technology shall conduct a study and submit a report to Congress on the use, in combination, of fire detection systems, fire suppression systems, and compartmentation. Such study shall—

(i) quantify performance and reliability for fire detection systems, fire suppression systems, and compartmentation, including a field assessment of performance and determination of conditions under which a reduction or elimination of 1 or more of those systems would result in an unacceptable risk of fire loss; and

(ii) include a comparative analysis and compartmentation using fire resistive materials and compartmentation using noncombustible materials.

(B) The National Institute of Standards and Technology shall obtain funding from non-Federal sources in an amount equal to 25 percent of the cost of the study required by subparagraph (A). Funding for the National Institute of Standards and Technology for carrying out such study shall be derived from amounts otherwise authorized to be appropriated, for the Building and Fire Research Center at the National Institute of Standards and Technology, not to exceed $750,000. The study shall commence until receipt of all matching funds from non-Federal sources. The scope and extent of the study shall be determined by the level of project funding. The Institute shall submit a report to Congress on the study within 30 months after October 26, 1992.

(h) Relation to other requirements

In the implementation of this section, the process for meeting space needs in urban areas shall continue to give first consideration to a centralized community business area and adjacent areas of similar character to the extent of any Federal requirement therefor.

(Pub. L. 93–498, §31, as added Pub. L. 102–522, title I, §106(a), Oct. 26, 1992, 106 Stat. 3412; amended Pub. L. 103–254, §6, May 19, 1994, 108 Stat. 682; Pub. L. 104–316, title I, §107, Oct. 19,

1996, 110 Stat. 3832; Pub. L. 105–108, §3(4), (5), Nov. 20, 1997, 111 Stat. 2264.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (a)(5)(B), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to chapter 13 (§1701 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see References in Text note set out under section 1701 of Title 12 and Tables.

Section 1441a(c) of title 12, referred to in subsec. (a)(5)(B), was repealed by Pub. L. 111–203, title III, §364(b), July 21, 2010, 124 Stat. 1555.

AMENDMENTS

1997—Subsec. (c)(2)(B)(i). Pub. L. 105–108, §3(4), inserted "or any successor standard to that standard" after "(known as the Life Safety Code)".

Subsec. (c)(2)(B)(ii). Pub. L. 105–108, §3(5), inserted "or any successor standard to that standard" after "Association Standard 101".

1996—Subsec. (b)(1)(B)(iii). Pub. L. 104–316 struck out cl. (iii) which read as follows: "Within 3 years after October 26, 1992, and periodically thereafter, the Comptroller General shall audit a selection of certifications made under clause (ii) and report to Congress on the results of such audit."

1994—Subsec. (c)(1)(A). Pub. L. 103–254, §6(1), substituted "Except as otherwise provided in this paragraph, no Federal" for "No Federal".

Subsec. (c)(1)(C), (D). Pub. L. 103–254, §6(2), added subpars. (C) and (D).

EFFECTIVE DATE

Pub. L. 102–522, title I, §106(b), Oct. 26, 1992, 106 Stat. 3417, provided that: "Subsection (b) of section 31 of the Federal Fire Prevention and Control Act of 1974 [15 U.S.C. 2227], as added by subsection (a) of this section, shall take effect 2 years after the date of enactment of this Act [Oct. 26, 1992]."

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

[1] So in original. The comma probably should not appear.

[2] See References in Text note below.

§2228. CPR training

No funds shall be made available to a State or local government under section 2221 of this title unless such government has a policy to actively promote the training of its firefighters in cardiopulmonary resuscitation.

(Pub. L. 93–498, §32, as added Pub. L. 103–254, §5, May 19, 1994, 108 Stat. 682.)

§2229. Firefighter assistance

(a) Definitions

In this section:

(1) Administrator of FEMA

The term "Administrator of FEMA" means the Administrator of FEMA, acting through the Administrator.

(2) Available grant funds

The term "available grant funds", with respect to a fiscal year, means those funds appropriated pursuant to the authorization of appropriations in subsection (q)(1) for such fiscal year less any funds used for administrative costs pursuant to subsection (q)(2) in such fiscal year.

(3) Career fire department

The term "career fire department" means a fire department that has an all-paid force of firefighting personnel other than paid-on-call firefighters.

(4) Combination fire department

The term "combination fire department" means a fire department that has—

(A) paid firefighting personnel; and

(B) volunteer firefighting personnel.

(5) Firefighting personnel

The term "firefighting personnel" means individuals, including volunteers, who are firefighters, officers of fire departments, or emergency medical service personnel of fire departments.

(6) Institution of higher education

The term "institution of higher education" has the meaning given such term in section 1001 of title 20.

(7) Nonaffiliated EMS organization

The term "nonaffiliated EMS organization" means a public or private nonprofit emergency medical services organization that is not affiliated with a hospital and does not serve a geographic area in which the Administrator of FEMA finds that emergency medical services are adequately provided by a fire department.

(8) Paid-on-call

The term "paid-on-call" with respect to firefighting personnel means firefighting personnel who are paid a stipend for each event to which they respond.

(9) Volunteer fire department

The term "volunteer fire department" means a fire department that has an all-volunteer force of firefighting personnel.

(b) Assistance program

(1) Authority

In accordance with this section, the Administrator of FEMA may award—

(A) assistance to firefighters grants under subsection (c); and

(B) fire prevention and safety grants and other assistance under subsection (d).

(2) Administrative assistance

The Administrator of FEMA shall—

(A) establish specific criteria for the selection of grant recipients under this section; and

(B) provide assistance with application preparation to applicants for such grants.

(c) Assistance to firefighters grants

(1) In general

The Administrator of FEMA may, in consultation with the chief executives of the States in which the recipients are located, award grants on a competitive basis directly to—

(A) fire departments, for the purpose of protecting the health and safety of the public and firefighting personnel throughout the United States against fire, fire-related, and other hazards;

(B) nonaffiliated EMS organizations to support the provision of emergency medical services;

and

(C) State fire training academies for the purposes described in subparagraphs (G), (H), and (I) of paragraph (3).

(2) Maximum grant amounts

(A) Population

The Administrator of FEMA may not award a grant under this subsection in excess of amounts as follows:

(i) In the case of a recipient that serves a jurisdiction with 100,000 people or fewer, the amount of the grant awarded to such recipient shall not exceed $1,000,000 in any fiscal year.

(ii) In the case of a recipient that serves a jurisdiction with more than 100,000 people but not more than 500,000 people, the amount of the grant awarded to such recipient shall not exceed $2,000,000 in any fiscal year.

(iii) In the case of a recipient that serves a jurisdiction with more than 500,000 but not more than 1,000,000 people, the amount of the grant awarded to such recipient shall not exceed $3,000,000 in any fiscal year.

(iv) In the case of a recipient that serves a jurisdiction with more than 1,000,000 people but not more than 2,500,000 people, the amount of the grant awarded to such recipient shall not exceed $6,000,000 for any fiscal year.

(v) In the case of a recipient that serves a jurisdiction with more than 2,500,000 people, the amount of the grant awarded to such recipient shall not exceed $9,000,000 in any fiscal year.

(B) Aggregate

(i) In general

Notwithstanding subparagraphs (A) and (B) and except as provided under clause (ii), the Administrator of FEMA may not award a grant under this subsection in a fiscal year in an amount that exceeds the amount that is one percent of the available grant funds in such fiscal year.

(ii) Exception

The Administrator of FEMA may waive the limitation in clause (i) with respect to a grant recipient if the Administrator of FEMA determines that such recipient has an extraordinary need for a grant in an amount that exceeds the limit under clause (i).

(3) Use of grant funds

Each entity receiving a grant under this subsection shall use the grant for one or more of the following purposes:

(A) To train firefighting personnel in—

(i) firefighting;

(ii) emergency medical services and other emergency response (including response to natural disasters, acts of terrorism, and other man-made disasters);

(iii) arson prevention and detection;

(iv) maritime firefighting; or

(v) the handling of hazardous materials.

(B) To train firefighting personnel to provide any of the training described under subparagraph (A).

(C) To fund the creation of rapid intervention teams to protect firefighting personnel at the scenes of fires and other emergencies.

(D) To certify—

(i) fire inspectors; and

(ii) building inspectors—

(I) whose responsibilities include fire safety inspections; and

(II) who are employed by or serving as volunteers with a fire department.

(E) To establish wellness and fitness programs for firefighting personnel to ensure that the firefighting personnel are able to carry out their duties as firefighters, including programs dedicated to raising awareness of, and prevention of, job-related mental health issues.

(F) To fund emergency medical services provided by fire departments and nonaffiliated EMS organizations.

(G) To acquire additional firefighting vehicles, including fire trucks and other apparatus.

(H) To acquire additional firefighting equipment, including equipment for—

(i) fighting fires with foam in remote areas without access to water; and

(ii) communications, monitoring, and response to a natural disaster, act of terrorism, or other man-made disaster, including the use of a weapon of mass destruction.

(I) To acquire personal protective equipment, including personal protective equipment—

(i) prescribed for firefighting personnel by the Occupational Safety and Health Administration of the Department of Labor; or

(ii) for responding to a natural disaster or act of terrorism or other man-made disaster, including the use of a weapon of mass destruction.

(J) To modify fire stations, fire training facilities, and other facilities to protect the health and safety of firefighting personnel.

(K) To educate the public about arson prevention and detection.

(L) To provide incentives for the recruitment and retention of volunteer firefighting personnel for volunteer firefighting departments and other firefighting departments that utilize volunteers.

(M) To support such other activities, consistent with the purposes of this subsection, as the Administrator of FEMA determines appropriate.

(d) Fire prevention and safety grants

(1) In general

For the purpose of assisting fire prevention programs and supporting firefighter health and safety research and development, the Administrator of FEMA may, on a competitive basis—

(A) award grants to fire departments;

(B) award grants to, or enter into contracts or cooperative agreements with, national, State, local, tribal, or nonprofit organizations that are not fire departments and that are recognized for their experience and expertise with respect to fire prevention or fire safety programs and activities and firefighter research and development programs, for the purpose of carrying out—

(i) fire prevention programs; and

(ii) research to improve firefighter health and life safety; and

(C) award grants to institutions of higher education, national fire service organizations, or national fire safety organizations to establish and operate fire safety research centers.

(2) Maximum grant amount

A grant awarded under this subsection may not exceed $1,500,000 for a fiscal year.

(3) Use of grant funds

Each entity receiving a grant under this subsection shall use the grant for one or more of the following purposes:

(A) To enforce fire codes and promote compliance with fire safety standards.

(B) To fund fire prevention programs, including programs that educate the public about arson prevention and detection.

(C) To fund wildland fire prevention programs, including education, awareness, and mitigation programs that protect lives, property, and natural resources from fire in the wildland-urban interface.

(D) In the case of a grant awarded under paragraph (1)(C), to fund the establishment or

operation of a fire safety research center for the purpose of significantly reducing the number of fire-related deaths and injuries among firefighters and the general public through research, development, and technology transfer activities.

(E) To support such other activities, consistent with the purposes of this subsection, as the Administrator of FEMA determines appropriate.

(4) Limitation

None of the funds made available under this subsection may be provided to the Association of Community Organizations for Reform Now (ACORN) or any of its affiliates, subsidiaries, or allied organizations.

(e) Applications for grants

(1) In general

An entity seeking a grant under this section shall submit to the Administrator of FEMA an application therefor in such form and in such manner as the Administrator of FEMA determines appropriate.

(2) Elements

Each application submitted under paragraph (1) shall include the following:

(A) A description of the financial need of the applicant for the grant.

(B) An analysis of the costs and benefits, with respect to public safety, of the use for which a grant is requested.

(C) An agreement to provide information to the national fire incident reporting system for the period covered by the grant.

(D) A list of other sources of funding received by the applicant—

(i) for the same purpose for which the application for a grant under this section was submitted; or

(ii) from the Federal Government for other fire-related purposes.

(E) Such other information as the Administrator of FEMA determines appropriate.

(3) Joint or regional applications

(A) In general

Two or more entities may submit an application under paragraph (1) for a grant under this section to fund a joint program or initiative, including acquisition of shared equipment or vehicles.

(B) Nonexclusivity

Applications under this paragraph may be submitted instead of or in addition to any other application submitted under paragraph (1).

(C) Guidance

The Administrator of FEMA shall—

(i) publish guidance on applying for and administering grants awarded for joint programs and initiatives described in subparagraph (A); and

(ii) encourage applicants to apply for grants for joint programs and initiatives described in subparagraph (A) as the Administrator of FEMA determines appropriate to achieve greater cost effectiveness and regional efficiency.

(f) Peer review of grant applications

(1) In general

The Administrator of FEMA shall, after consultation with national fire service and emergency medical services organizations, appoint fire service personnel to conduct peer reviews of applications received under subsection (e)(1).

(2) Applicability of Federal Advisory Committee Act

The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to activities carried out pursuant to this subsection.

(g) Prioritization of grant awards

In awarding grants under this section, the Administrator of FEMA shall consider the following:

(1) The findings and recommendations of the peer reviews carried out under subsection (f).

(2) The degree to which an award will reduce deaths, injuries, and property damage by reducing the risks associated with fire-related and other hazards.

(3) The extent of the need of an applicant for a grant under this section and the need to protect the United States as a whole.

(4) The number of calls requesting or requiring a fire fighting or emergency medical response received by an applicant.

(h) Allocation of grant awards

In awarding grants under this section, the Administrator of FEMA shall ensure that of the available grant funds in each fiscal year—

(1) not less than 25 percent are awarded under subsection (c) to career fire departments;

(2) not less than 25 percent are awarded under subsection (c) to volunteer fire departments;

(3) not less than 25 percent are awarded under subsection (c) to combination fire departments and fire departments using paid-on-call firefighting personnel;

(4) not less than 10 percent are available for open competition among career fire departments, volunteer fire departments, combination fire departments, and fire departments using paid-on-call firefighting personnel for grants awarded under subsection (c);

(5) not less than 10 percent are awarded under subsection (d); and

(6) not more than 2 percent are awarded under this section to nonaffiliated EMS organizations described in subsection (c)(1)(B).

(i) Additional requirements and limitations

(1) Funding for emergency medical services

Not less than 3.5 percent of the available grant funds for a fiscal year shall be awarded under this section for purposes described in subsection (c)(3)(F).

(2) State fire training academies

(A) Maximum share

Not more than 3 percent of the available grant funds for a fiscal year may be awarded under subsection (c)(1)(C).

(B) Maximum grant amount

The Administrator of FEMA may not award a grant under subsection (c)(1)(C) to a State fire training academy in an amount that exceeds $1,000,000 in any fiscal year.

(3) Amounts for purchasing firefighting vehicles

Not more than 25 percent of the available grant funds for a fiscal year may be used to assist grant recipients to purchase vehicles pursuant to subsection (c)(3)(G).

(j) Further considerations

(1) Assistance to firefighters grants to fire departments

In considering applications for grants under subsection (c)(1)(A), the Administrator of FEMA shall consider—

(A) the extent to which the grant would enhance the daily operations of the applicant and the impact of such a grant on the protection of lives and property; and

(B) a broad range of factors important to the applicant's ability to respond to fires and related hazards, such as the following:

(i) Population served.

(ii) Geographic response area.
(iii) Hazards vulnerability.
(iv) Call volume.
(v) Financial situation, including unemployment rate of the area being served.
(vi) Need for training or equipment.

(2) Applications from nonaffiliated EMS organizations

In the case of an application submitted under subsection (e)(1) by a nonaffiliated EMS organization, the Administrator of FEMA shall consider the extent to which other sources of Federal funding are available to the applicant to provide the assistance requested in such application.

(3) Awarding fire prevention and safety grants to certain organizations that are not fire departments

In the case of applicants for grants under this section who are described in subsection (d)(1)(B), the Administrator of FEMA shall give priority to applicants who focus on—

(A) prevention of injuries to high risk groups from fire; and
(B) research programs that demonstrate a potential to improve firefighter safety.

(4) Awarding grants for fire safety research centers

(A) Considerations

In awarding grants under subsection (d)(1)(C), the Administrator of FEMA shall—

(i) select each grant recipient on—

(I) the demonstrated research and extension resources available to the recipient to carry out the research, development, and technology transfer activities;

(II) the capability of the recipient to provide leadership in making national contributions to fire safety;

(III) the recipient's ability to disseminate the results of fire safety research; and

(IV) the strategic plan the recipient proposes to carry out under the grant;

(ii) give special consideration in selecting recipients under subparagraph (A) to an applicant for a grant that consists of a partnership between—

(I) a national fire service organization or a national fire safety organization; and

(II) an institution of higher education, including a minority-serving institution (as described in section 1067q(a) of title 20); and

(iii) consider the research needs identified and prioritized through the workshop required by subparagraph (B)(i).

(B) Research needs

(i) In general

Not later than 90 days after January 2, 2013, the Administrator of FEMA shall convene a workshop of the fire safety research community, fire service organizations, and other appropriate stakeholders to identify and prioritize fire safety research needs.

(ii) Publication

The Administrator of FEMA shall ensure that the results of the workshop are made available to the public.

(C) Limitations on grants for fire safety research centers

(i) In general

The Administrator of FEMA may award grants under subsection (d) to establish not more than 3 fire safety research centers.

(ii) Recipients

An institution of higher education, a national fire service organization, and a national fire safety organization may not directly receive a grant under subsection (d) for a fiscal year for more than 1 fire safety research center.

(5) Avoiding duplication

The Administrator of FEMA shall review lists submitted by applicants pursuant to subsection (e)(2)(D) and take such actions as the Administrator of FEMA considers necessary to prevent unnecessary duplication of grant awards.

(k) Matching and maintenance of expenditure requirements

(1) Matching requirement for assistance to firefighters grants

(A) In general

Except as provided in subparagraph (B), an applicant seeking a grant to carry out an activity under subsection (c) shall agree to make available non-Federal funds to carry out such activity in an amount equal to not less than 15 percent of the grant awarded to such applicant under such subsection.

(B) Exception for entities serving small communities

In the case that an applicant seeking a grant to carry out an activity under subsection (c) serves a jurisdiction of—

(i) more than 20,000 residents but not more than 1,000,000 residents, the application shall agree to make available non-Federal funds in an amount equal to not less than 10 percent of the grant awarded to such applicant under such subsection; and

(ii) 20,000 residents or fewer, the applicant shall agree to make available non-Federal funds in an amount equal to not less than 5 percent of the grant awarded to such applicant under such subsection.

(2) Matching requirement for fire prevention and safety grants

(A) In general

An applicant seeking a grant to carry out an activity under subsection (d) shall agree to make available non-Federal funds to carry out such activity in an amount equal to not less than 5 percent of the grant awarded to such applicant under such subsection.

(B) Means of matching

An applicant for a grant under subsection (d) may meet the matching requirement under subparagraph (A) through direct funding, funding of complementary activities, or the provision of staff, facilities, services, material, or equipment.

(3) Maintenance of expenditures

An applicant seeking a grant under subsection (c) or (d) shall agree to maintain during the term of the grant the applicant's aggregate expenditures relating to the uses described in subsections (c)(3) and (d)(3) at not less than 80 percent of the average amount of such expenditures in the 2 fiscal years preceding the fiscal year in which the grant amounts are received.

(4) Waiver

(A) In general

Except as provided in subparagraph (C)(ii), the Administrator of FEMA may waive or reduce the requirements of paragraphs (1), (2), and (3) in cases of demonstrated economic hardship.

(B) Guidelines

(i) In general

The Administrator of FEMA shall establish and publish guidelines for determining what constitutes economic hardship for purposes of this paragraph.

(ii) Consultation

In developing guidelines under clause (i), the Administrator of FEMA shall consult with individuals who are—

(I) recognized for expertise in firefighting, emergency medical services provided by fire services, or the economic affairs of State and local governments; and

(II) members of national fire service organizations or national organizations representing the interests of State and local governments.

(iii) Considerations

In developing guidelines under clause (i), the Administrator of FEMA shall consider, with respect to relevant communities, the following:

(I) Changes in rates of unemployment from previous years.

(II) Whether the rates of unemployment of the relevant communities are currently and have consistently exceeded the annual national average rates of unemployment.

(III) Changes in percentages of individuals eligible to receive food stamps from previous years.

(IV) Such other factors as the Administrator of FEMA considers appropriate.

(C) Certain applicants for fire prevention and safety grants

The authority under subparagraph (A) shall not apply with respect to a nonprofit organization that—

(i) is described in subsection (d)(1)(B); and

(ii) is not a fire department or emergency medical services organization.

(l) Grant guidelines

(1) Guidelines

For each fiscal year, prior to awarding any grants under this section, the Administrator of FEMA shall publish in the Federal Register—

(A) guidelines that describe—

(i) the process for applying for grants under this section; and

(ii) the criteria that will be used for selecting grant recipients; and

(B) an explanation of any differences between such guidelines and the recommendations obtained under paragraph (2).

(2) Annual meeting to obtain recommendations

(A) In general

For each fiscal year, the Administrator of FEMA shall convene a meeting of qualified members of national fire service organizations and, at the discretion of the Administrator of FEMA, qualified members of emergency medical service organizations to obtain recommendations regarding the following:

(i) Criteria for the awarding of grants under this section.

(ii) Administrative changes to the assistance program established under subsection (b).

(B) Qualified members

For purposes of this paragraph, a qualified member of an organization is a member who—

(i) is recognized for expertise in firefighting or emergency medical services;

(ii) is not an employee of the Federal Government; and

(iii) in the case of a member of an emergency medical service organization, is a member of an organization that represents—

(I) providers of emergency medical services that are affiliated with fire departments; or

(II) nonaffiliated EMS providers.

(3) Applicability of Federal Advisory Committee Act

The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to activities carried out under this subsection.

(m) Accounting determination

Notwithstanding any other provision of law, for purposes of this section, equipment costs shall include all costs attributable to any design, purchase of components, assembly, manufacture, and transportation of equipment not otherwise commercially available.

(n) Eligible grantee on behalf of Alaska Native villages

The Alaska Village Initiatives, a non-profit organization incorporated in the State of Alaska, shall be eligible to apply for and receive a grant or other assistance under this section on behalf of Alaska Native villages.

(o) Training standards

If an applicant for a grant under this section is applying for such grant to purchase training that does not meet or exceed any applicable national voluntary consensus standards, including those developed under section 747 of title 6, the applicant shall submit to the Administrator of FEMA an explanation of the reasons that the training proposed to be purchased will serve the needs of the applicant better than training that meets or exceeds such standards.

(p) Ensuring effective use of grants

(1) Audits

The Administrator of FEMA may audit a recipient of a grant awarded under this section to ensure that—

(A) the grant amounts are expended for the intended purposes; and

(B) the grant recipient complies with the requirements of subsection (k).

(2) Performance assessment

(A) In general

The Administrator of FEMA shall develop and implement a performance assessment system, including quantifiable performance metrics, to evaluate the extent to which grants awarded under this section are furthering the purposes of this section, including protecting the health and safety of the public and firefighting personnel against fire and fire-related hazards.

(B) Consultation

The Administrator of FEMA shall consult with fire service representatives and with the Comptroller General of the United States in developing the assessment system required by subparagraph (A).

(3) Annual reports to Administrator of FEMA

Not less frequently than once each year during the term of a grant awarded under this section, the recipient of the grant shall submit to the Administrator of FEMA an annual report describing how the recipient used the grant amounts.

(4) Annual reports to Congress

(A) In general

Not later than September 30, 2013, and each year thereafter through 2017, the Administrator of FEMA shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Science and Technology and the Committee on Transportation and Infrastructure of the House of Representatives a report that provides—

(i) information on the performance assessment system developed under paragraph (2); and

(ii) using the performance metrics developed under such paragraph, an evaluation of the effectiveness of the grants awarded under this section.

(B) Additional information

The report due under subparagraph (A) on September 30, 2016, shall also include recommendations for legislative changes to improve grants under this section.

(q) Authorization of appropriations

(1) In general

There is authorized to be appropriated to carry out this section—

(A) $750,000,000 for fiscal year 2013; and

(B) for each of fiscal years 2014 through 2017, an amount equal to the amount authorized for the previous fiscal year increased by the percentage by which—

(i) the Consumer Price Index (all items, United States city average) for the previous fiscal year, exceeds

(ii) the Consumer Price Index for the fiscal year preceding the fiscal year described in clause (i).

(2) Administrative expenses

Of the amounts appropriated pursuant to paragraph (1) for a fiscal year, the Administrator of FEMA may use not more than 5 percent of such amounts for salaries and expenses and other administrative costs incurred by the Administrator of FEMA in the course of awarding grants and providing assistance under this section.

(3) Congressionally directed spending

Consistent with the requirements in subsections (c)(1) and (d)(1) that grants under those subsections be awarded on a competitive basis, none of the funds appropriated pursuant to this subsection may be used for any congressionally directed spending item (as defined under the rules of the Senate and the House of Representatives).

(r) Sunset of authorities

The authority to award assistance and grants under this section shall expire on the date that is 5 years after January 2, 2013.

(Pub. L. 93–498, §33, as added Pub. L. 106–398, §1 [[div. A], title XVII, §1701(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–360; amended Pub. L. 107–107, div. A, title X, §1061, Dec. 28, 2001, 115 Stat. 1231; Pub. L. 108–7, div. K, title IV, §421, Feb. 20, 2003, 117 Stat. 526; Pub. L. 108–169, title II, §205, Dec. 6, 2003, 117 Stat. 2040; Pub. L. 108–375, div. C, title XXXVI, §3602, Oct. 28, 2004, 118 Stat. 2195; Pub. L. 112–239, div. A, title XVIII, §1803, Jan. 2, 2013, 126 Stat. 2100.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsecs. (f)(2) and (l)(3), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Another section 33 of Pub. L. 93–498 was renumbered section 35 and is classified to section 2230 of this title.

AMENDMENTS

2013—Pub. L. 112–239 amended section generally. Prior to amendment, section authorized grants for firefighter assistance.

2004—Subsec. (b)(1)(A). Pub. L. 108–375, §3602(1), inserted "throughout the Nation" after "personnel" and struck out "and" at end.

Subsec. (b)(1)(B). Pub. L. 108–375, §3602(2), inserted "and firefighter safety research and development" after "fire prevention" and substituted "; and" for period at end.

Subsec. (b)(1)(C). Pub. L. 108–375, §3602(3), added subpar. (C).

Subsec. (b)(3)(F). Pub. L. 108–375, §3602(4), inserted "and nonaffiliated EMS organizations" after "fire departments".

Subsec. (b)(4). Pub. L. 108–375, §3602(5)(A), inserted "and firefighter safety research and development" after "prevention" in heading.

Subsec. (b)(4)(A)(ii). Pub. L. 108–375, §3602(5)(B), inserted "that are not fire departments and" after "community organizations", "and firefighter research and development programs," after "fire safety programs and activities,", and "and research to improve firefighter health and life safety" after "fire prevention programs".

Subsec. (b)(4)(B). Pub. L. 108–375, §3602(5)(C), substituted "to high risk groups from fire, as well as

research programs that demonstrate the potential to improve firefighter safety" for "to children from fire".

Subsec. (b)(4)(C). Pub. L. 108–375, §3602(5)(D), added subpar. (C).

Subsec. (b)(5)(B)(iv), (v). Pub. L. 108–375, §3602(6), added cl. (iv) and redesignated former cl. (iv) as (v).

Subsec. (b)(6). Pub. L. 108–375, §3602(7), added subpars. (A) to (C) and struck out former subpars. (A) and (B) which read as follows:

"(A) IN GENERAL.—Subject to subparagraph (B), the Director may provide assistance under this subsection only if the applicant for the assistance agrees to match with an equal amount of non-Federal funds 30 percent of the assistance received under this subsection for any fiscal year.

"(B) REQUIREMENT FOR SMALL COMMUNITY ORGANIZATIONS.—In the case of an applicant whose personnel serve jurisdictions of 50,000 or fewer residents, the percent applied under the matching requirement of subparagraph (A) shall be 10 percent."

Subsec. (b)(10)(A). Pub. L. 108–375, §3602(8)(A), amended heading and text of subpar. (A) generally. Prior to amendment, text read as follows: "A grant recipient under this section may not receive more than $750,000 under this section for any fiscal year."

Subsec. (b)(10)(B) to (F). Pub. L. 108–375, §3602(8)(B)–(D), redesignated subpar. (B) as (C) and added new subpars. (B) and (D) to (F).

Subsec. (b)(13) to (17). Pub. L. 108–375, §3602(9), added pars. (13) to (17).

Subsec. (d). Pub. L. 108–375, §3602(10), amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows: "In this section, the term 'State' includes the District of Columbia and the Commonwealth of Puerto Rico."

Subsec. (e)(1). Pub. L. 108–375, §3602(11), substituted "There are authorized to be appropriated for the purposes of this section $900,000,000 for fiscal year 2005, $950,000,000 for fiscal year 2006, and $1,000,000,000 for each of the fiscal years 2007 through 2009." for "There are authorized to be appropriated $900,000,000 for each of the fiscal years 2002 through 2004 for the purposes of this section."

2003—Subsec. (b)(2). Pub. L. 108–169, §205(a)(1), added par. (2) and struck out heading and text of former par. (2). Text read as follows:

"(A) ESTABLISHMENT.—Before providing assistance under paragraph (1), the Director shall establish an office in the Federal Emergency Management Agency to administer the assistance under this section.

"(B) INCLUDED DUTIES.—The duties of the office shall include the following:

"(i) RECIPIENT SELECTION CRITERIA.—To establish specific criteria for the selection of recipients of the assistance under this section.

"(ii) GRANT-WRITING ASSISTANCE.—To provide grant-writing assistance to applicants."

Subsec. (b)(3)(B). Pub. L. 108–169, §205(b), inserted "maritime firefighting," after "arson prevention and detection,".

Subsec. (b)(3)(H). Pub. L. 108–169, §205(c)(1), inserted "equipment for fighting fires with foam in remote areas without access to water, and" after "including".

Subsec. (b)(12). Pub. L. 108–7 added par. (12).

Subsec. (e)(1). Pub. L. 108–169, §205(c)(2), inserted at end "Of the amounts authorized in this paragraph, $3,000,000 shall be made available each year through fiscal year 2008 for foam firefighting equipment."

Subsec. (e)(2). Pub. L. 108–169, §205(a)(2), struck out "operate the office established under subsection (b)(2) of this section and" before "make grants and provide assistance under this section."

2001—Subsec. (b)(3). Pub. L. 107–107, §1061(b), (c), substituted "the grant funds for one or more of the following purposes:" for "the grant funds—" in introductory provisions, capitalized the initial letter of the first word of each of subpars. (A) to (N), substituted a period for the semicolon at end of each of subpars. (A) to (L) and a period for "; or" at end of subpar. (M), inserted "(including response to a terrorism incident or use of a weapon of mass destruction)" after "emergency response" in subpar. (B), substituted ", monitoring, and response to a terrorism incident or use of a weapon of mass destruction" for "and monitoring" in subpar. (H), and inserted ", including protective equipment to respond to a terrorism incident or the use of a weapon of mass destruction" after "equipment for firefighting personnel" in subpar. (I).

Subsec. (e). Pub. L. 107–107, §1061(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "There are authorized to be appropriated for the purposes of this section amounts as follows:

"(1) $100,000,000 for fiscal year 2001.

"(2) $300,000,000 for fiscal year 2002."

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal

Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§2229a. Staffing for adequate fire and emergency response

(a) Expanded authority to make grants

(1) Hiring grants

(A) The Administrator of FEMA shall make grants directly to career fire departments, combination fire departments, and volunteer fire departments, in consultation with the chief executive of the State in which the applicant is located, for the purpose of increasing the number of firefighters to help communities meet industry minimum standards and attain 24-hour staffing to provide adequate protection from fire and fire-related hazards, and to fulfill traditional missions of fire departments that antedate the creation of the Department of Homeland Security.

(B) Grants made under this paragraph shall be for 3 years and be used for programs to hire new, additional firefighters.

(C) In awarding grants under this subsection, the Administrator of FEMA may give preferential consideration to applications that involve a non-Federal contribution exceeding the minimums under subparagraph (E).

(D) The Administrator of FEMA may provide technical assistance to States, units of local government, Indian tribal governments, and to other public entities, in furtherance of the purposes of this section.

(E) The portion of the costs of hiring firefighters provided by a grant under this paragraph may not exceed—

(i) 75 percent in the first year of the grant;

(ii) 75 percent in the second year of the grant; and

(iii) 35 percent in the third year of the grant.

(F) Notwithstanding any other provision of law, any firefighter hired with funds provided under this subsection shall not be discriminated against for, or be prohibited from, engaging in volunteer activities in another jurisdiction during off-duty hours.

(G) All grants made pursuant to this subsection shall be awarded on a competitive basis through a neutral peer review process.

(H) At the beginning of the fiscal year, the Administrator of FEMA shall set aside 10 percent of the funds appropriated for carrying out this paragraph for departments with majority volunteer or all volunteer personnel. After awards have been made, if less than 10 percent of the funds appropriated for carrying out this paragraph are not awarded to departments with majority volunteer or all volunteer personnel, the Administrator of FEMA shall transfer from funds appropriated for carrying out this paragraph to funds available for carrying out paragraph (2) an amount equal to the difference between the amount that is provided to such fire departments and 10 percent.

(2) Recruitment and retention grants

In addition to any amounts transferred under paragraph (1)(H), the Administrator of FEMA shall direct at least 10 percent of the total amount of funds appropriated pursuant to this section annually to a competitive grant program for the recruitment and retention of volunteer firefighters who are involved with or trained in the operations of firefighting and emergency response. Eligible entities shall include volunteer or combination fire departments, and national, State, local, or tribal organizations that represent the interests of volunteer firefighters.

(b) Applications

(1) No grant may be made under this section unless an application has been submitted to, and approved by, the Administrator of FEMA.

(2) An application for a grant under this section shall be submitted in such form, and contain such information, as the Administrator of FEMA may prescribe.

(3) At a minimum, each application for a grant under this section shall—

(A) explain the applicant's inability to address the need without Federal assistance;

(B) in the case of a grant under subsection (a)(1) of this section, explain how the applicant plans to meet the requirements of subsection (a)(1)(B)(ii) and (F) of this section;

(C) specify long-term plans for retaining firefighters following the conclusion of Federal support provided under this section; and

(D) provide assurances that the applicant will, to the extent practicable, seek, recruit, and hire members of racial and ethnic minority groups and women in order to increase their ranks within firefighting.

(c) Limitation on use of funds

(1) Funds made available under this section to fire departments for salaries and benefits to hire new, additional firefighters shall not be used to supplant State or local funds, or, in the case of Indian tribal governments, funds supplied by the Bureau of Indian Affairs, but shall be used to increase the amount of funds that would, in the absence of Federal funds received under this section, be made available from State or local sources, or in the case of Indian tribal governments, from funds supplied by the Bureau of Indian Affairs.

(2) No grant shall be awarded pursuant to this section to a municipality or other recipient whose annual budget at the time of the application for fire-related programs and emergency response has been reduced below 80 percent of the average funding level in the 3 years prior to November 24, 2003.

(3) Funds appropriated by the Congress for the activities of any agency of an Indian tribal government or the Bureau of Indian Affairs performing firefighting functions on any Indian lands may be used to provide the non-Federal share of the cost of programs or projects funded under this section.

(4) The amount of funding provided under this section to a recipient fire department for hiring a firefighter in any fiscal year may not exceed—

(A) in the first year of the grant, 75 percent of the usual annual cost of a first-year firefighter in that department at the time the grant application was submitted;

(B) in the second year of the grant, 75 percent of the usual annual cost of a first-year firefighter in that department at the time the grant application was submitted; and

(C) in the third year of the grant, 35 percent of the usual annual cost of a first-year firefighter in that department at the time the grant application was submitted.

(d) Waivers

(1) In general

In a case of demonstrated economic hardship, the Administrator of FEMA may—

(A) waive the requirements of subsection (c)(1); or

(B) waive or reduce the requirements in subsection (a)(1)(E) or subsection (c)(2).

(2) Guidelines

(A) In general

The Administrator of FEMA shall establish and publish guidelines for determining what constitutes economic hardship for purposes of paragraph (1).

(B) Consultation

In developing guidelines under subparagraph (A), the Administrator of FEMA shall consult with individuals who are—

(i) recognized for expertise in firefighting, emergency medical services provided by fire

services, or the economic affairs of State and local governments; and

(ii) members of national fire service organizations or national organizations representing the interests of State and local governments.

(C) Considerations

In developing guidelines under subparagraph (A), the Administrator of FEMA shall consider, with respect to relevant communities, the following:

(i) Changes in rates of unemployment from previous years.

(ii) Whether the rates of unemployment of the relevant communities are currently and have consistently exceeded the annual national average rates of unemployment.

(iii) Changes in percentages of individuals eligible to receive food stamps from previous years.

(iv) Such other factors as the Administrator of FEMA considers appropriate.

(e) Performance evaluation

(1) In general

The Administrator of FEMA shall establish a performance assessment system, including quantifiable performance metrics, to evaluate the extent to which grants awarded under this section are furthering the purposes of this section.

(2) Submittal of information

The Administrator of FEMA may require a grant recipient to submit any information the Administrator of FEMA considers reasonably necessary to evaluate the program.

(f) Report

Not later than September 30, 2014, the Administrator of FEMA shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Science and Technology and the Committee on Transportation and Infrastructure of the House of Representatives a report on the experience with, and effectiveness of, such grants in meeting the objectives of this section. The report may include any recommendations the Administrator of FEMA may have for amendments to this section and related provisions of law.

(g) Revocation or suspension of funding

If the Administrator of FEMA determines that a grant recipient under this section is not in substantial compliance with the terms and requirements of an approved grant application submitted under this section, the Administrator of FEMA may revoke or suspend funding of that grant, in whole or in part.

(h) Access to documents

(1) The Administrator of FEMA shall have access for the purpose of audit and examination to any pertinent books, documents, papers, or records of a grant recipient under this section and to the pertinent books, documents, papers, or records of State and local governments, persons, businesses, and other entities that are involved in programs, projects, or activities for which assistance is provided under this section.

(2) Paragraph (1) shall apply with respect to audits and examinations conducted by the Comptroller General of the United States or by an authorized representative of the Comptroller General.

(i) Definitions

In this section:

(1) The term "firefighter" has the meaning given the term "employee in fire protection activities" under section 203(y) of title 29.[1]

(2) The terms "Administrator of FEMA", "career fire department", "combination fire department", and "volunteer fire department" have the meanings given such terms in section 2229(a) of this title.

(j) Authorization of appropriations

(1) In general

There are authorized to be appropriated for the purposes of carrying out this section—

(A) $1,000,000,000 for fiscal year 2004;

(B) $1,030,000,000 for fiscal year 2005;

(C) $1,061,000,000 for fiscal year 2006;

(D) $1,093,000,000 for fiscal year 2007;

(E) $1,126,000,000 for fiscal year 2008;

(F) $1,159,000,000 for fiscal year 2009;

(G) $1,194,000,000 for fiscal year 2010;

(H) $750,000,000 for fiscal year 2013; and

(I) for each of fiscal years 2014 through 2017, an amount equal to the amount authorized for the previous fiscal year increased by the percentage by which—

(i) the Consumer Price Index (all items, United States city average) for the previous fiscal year, exceeds

(ii) the Consumer Price Index for the fiscal year preceding the fiscal year described in subparagraph (A).

(2) Administrative expenses

Of the amounts appropriated pursuant to paragraph (1) for a fiscal year, the Administrator of FEMA may use not more than 5 percent of such amounts to cover salaries and expenses and other administrative costs incurred by the Administrator of FEMA to make grants and provide assistance under this section.

(3) Congressionally directed spending

Consistent with the requirement in subsection (a) that grants under this section be awarded on a competitive basis, none of the funds appropriated pursuant to this subsection may be used for any congressionally direct spending item (as defined under the rules of the Senate and the House of Representatives).

(k) Sunset of authorities

The authority to award assistance and grants under this section shall expire on the date that is 5 years after January 2, 2013.

(Pub. L. 93–498, §34, as added Pub. L. 108–136, div. A, title X, §1057, Nov. 24, 2003, 117 Stat. 1616; amended Pub. L. 112–239, div. A, title XVIII, §1804, Jan. 2, 2013, 126 Stat. 2111; Pub. L. 113–66, div. A, title X, §1091(b)(9), Dec. 26, 2013, 127 Stat. 876.)

REFERENCES IN TEXT

Section 203(y) of title 29, referred to in subsec. (i)(1), was in the original "section 3(y) of the Fair Labor Standards Act" and has been translated as reading "section 3(y) of the Fair Labor Standards Act of 1938" to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 34 of Pub. L. 93–498 was renumbered section 36 and is classified to section 2231 of this title.

AMENDMENTS

2013—Pub. L. 112–239, §1804(j), substituted "Staffing for adequate fire and emergency response" for "Expansion of pre-September 11, 2001, fire grant program" in section catchline.

Pub. L. 112–239, §1804(i), as amended by Pub. L. 113–66, §1091(b)(9)(B), substituted "Administrator of FEMA" for "Administrator" wherever appearing, except in those places in which "Administrator of FEMA" already appeared.

Subsec. (a)(1)(A). Pub. L. 112–239, §1804(g)(2), substituted "career fire departments, combination fire departments, and volunteer fire departments" for "career, volunteer, and combination fire departments".

Subsec. (a)(1)(B). Pub. L. 112–239, §1804(a)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows:

"(B)(i) Grants made under this paragraph shall be for 4 years and be used for programs to hire new, additional firefighters.

"(ii) Grantees are required to commit to retaining for at least 1 year beyond the termination of their grants those firefighters hired under this paragraph."

Subsec. (a)(1)(E). Pub. L. 112–239, §1804(a)(2), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: "The portion of the costs of hiring firefighters provided by a grant under this paragraph may not exceed—

"(i) 90 percent in the first year of the grant;

"(ii) 80 percent in the second year of the grant;

"(iii) 50 percent in the third year of the grant; and

"(iv) 30 percent in the fourth year of the grant."

Subsec. (a)(2). Pub. L. 112–239, §1804(b), substituted "national, State, local, or tribal organizations" for "organizations on a local or statewide basis".

Subsec. (c)(4). Pub. L. 112–239, §1804(c), amended par. (4) generally. Prior to amendment, par. (4) read as follows:

"(4)(A) Total funding provided under this section over 4 years for hiring a firefighter may not exceed $100,000.

"(B) The $100,000 cap shall be adjusted annually for inflation beginning in fiscal year 2005."

Subsec. (d). Pub. L. 112–239, §1804(d)(2), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 112–239, §1804(e), added par. (1) and designated existing provisions as par. (2) and inserted heading.

Pub. L. 112–239, §1804(d)(1), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 112–239, §1804(f), substituted "Report" for "Sunset and reports" in heading and "Not later than September 30, 2014, the Administrator of FEMA shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Science and Technology and the Committee on Transportation and Infrastructure of the House of Representatives a report on" for "The authority under this section to make grants shall lapse at the conclusion of 10 years from November 24, 2003. Not later than 6 years after November 24, 2003, the Administrator shall submit a report to Congress concerning" in text.

Pub. L. 112–239, §1804(d)(1), redesignated subsec. (e) as (f). Former subsec. (f) redesignated (g).

Subsecs. (g), (h). Pub. L. 112–239, §1804(d)(1), redesignated subsecs. (f) and (g) as (g) and (h), respectively. Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 112–239, §1804(g)(1)(A), substituted "In this section:" for "In this section, the term—" in introductory provisions.

Pub. L. 112–239, §1804(d)(1), redesignated subsec. (h) as (i). Former subsec. (i) redesignated (j).

Subsec. (i)(1). Pub. L. 112–239, §1804(g)(1)(B), inserted "The term" before " 'firefighter' has" and substituted period for "; and".

Subsec. (i)(2). Pub. L. 112–239, §1804(g)(1)(C), (D), added par. (2) and struck out former par. (2) which read as follows: " 'Indian tribe' means a tribe, band, pueblo, nation, or other organized group or community of Indians, including an Alaska Native village (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians."

Subsec. (j). Pub. L. 112–239, §1804(h)(2), (3), designated existing provisions as par. (1), inserted heading, redesignated former pars. (1) to (9) as subpars. (A) to (I), respectively, of par. (1), redesignated subpars. (A) and (B) of former par. (9) as cls. (i) and (ii) of subpar. (I), and added pars. (2) and (3).

Pub. L. 112–239, §1804(d)(1), redesignated subsec. (i) as (j).

Subsec. (j)(8), (9). Pub. L. 112–239, §1804(h)(1), as amended by Pub. L. 113–66, §1091(b)(9)(A), added pars. (8) and (9).

Subsec. (k). Pub. L. 112–239, §1804(k), added subsec. (k).

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 113–66, div. A, title X, §1091(b), Dec. 26, 2013, 127 Stat. 876, provided in part that the amendment made by section 1091(b)(9) is effective as of Jan. 2, 2013, and as if included in Pub. L. 112–239 as enacted.

[1] *See References in Text note below.*

§2230. Surplus and excess Federal equipment

The Administrator shall make publicly available, including through the Internet, information on procedures for acquiring surplus and excess equipment or property that may be useful to State and local fire, emergency, and hazardous material handling service providers.

(Pub. L. 93–498, §35, formerly §33, as added Pub. L. 106–503, title I, §105, Nov. 13, 2000, 114 Stat. 2301; renumbered §35, Pub. L. 108–136, div. A, title X, §1057, Nov. 24, 2003, 117 Stat. 1616.)

§2231. Cooperative agreements with Federal facilities

The Administrator shall make publicly available, including through the Internet, information on procedures for establishing cooperative agreements between State and local fire and emergency services and Federal facilities in their region relating to the provision of fire and emergency services.

(Pub. L. 93–498, §36, formerly §34, as added Pub. L. 106–503, title I, §106, Nov. 13, 2000, 114 Stat. 2301; renumbered §36, Pub. L. 108–136, div. A, title X, §1057, Nov. 24, 2003, 117 Stat. 1616.)

§2232. Burn research

(a) Office

The Administrator of the Federal Emergency Management Agency shall establish an office in the Agency to establish specific criteria of grant recipients and to administer grants under this section.

(b) Safety organization grants

The Administrator may make grants, on a competitive basis, to safety organizations that have experience in conducting burn safety programs for the purpose of assisting those organizations in conducting burn prevention programs or augmenting existing burn prevention programs.

(c) Hospital grants

The Administrator may make grants, on a competitive basis, to hospitals that serve as regional burn centers to conduct acute burn care research.

(d) Other grants

The Administrator may make grants, on a competitive basis, to governmental and nongovernmental entities to provide after-burn treatment and counseling to individuals that are burn victims.

(e) Report

(1) In general

The Administrator of the Federal Emergency Management Agency shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives on the results of the grants provided under this section.

(2) Content

The report shall contain the following:

(A) A list of the organizations, hospitals, or other entities to which the grants were provided and the purpose for which those entities were provided grants.

(B) Efforts taken to ensure that potential grant applicants are provided with information necessary to develop an effective application.

(C) The Administrator's assessment regarding the appropriate level of funding that should be provided annually through the grant program.

(D) The Administrator's assessment regarding the appropriate purposes for such grants.

(E) Any other information the Administrator determines necessary.

(3) Submission date

The report shall be submitted not later than February 1, 2002.

(f) Authorization of appropriations

There are authorized to be appropriated for the purposes of this section amounts as follows:

(1) $10,000,000 for fiscal year 2001.

(2) $20,000,000 for fiscal year 2002.

(Pub. L. 106–398, §1 [[div. A], title XVII, §1703], Oct. 30, 2000, 114 Stat. 1654, 1654A–364; Pub. L. 109–295, title VI, §612(c), Oct. 4, 2006, 120 Stat. 1410.)

CODIFICATION

Section was enacted as part of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, and not as part of the Federal Fire Prevention and Control Act of 1974 which comprises this chapter.

CHANGE OF NAME

"Administrator" substituted for "Director" and "Administrator's" substituted for "Director's" on authority of section 612(c) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109–295, set out as a note under section 313 of Title 6.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§2233. Removal of civil liability barriers that discourage the donation of fire equipment to volunteer fire companies

(a) Liability protection

A person who donates qualified fire control or rescue equipment to a volunteer fire company shall not be liable for civil damages under any State or Federal law for personal injuries, property damage or loss, or death caused by the equipment after the donation.

(b) Exceptions

Subsection (a) does not apply to a person if—

(1) the person's act or omission causing the injury, damage, loss, or death constitutes gross negligence or intentional misconduct;

(2) the person is the manufacturer of the qualified fire control or rescue equipment; or

(3) the person or agency modified or altered the equipment after it had been recertified by an authorized technician as meeting the manufacturer's specifications.

(c) Preemption

This section preempts the laws of any State to the extent that such laws are inconsistent with this section, except that notwithstanding subsection (b) this section shall not preempt any State law that provides additional protection from liability for a person who donates fire control or fire rescue equipment to a volunteer fire company.

(d) Definitions

In this section:

(1) Person

The term "person" includes any governmental or other entity.

(2) Fire control or rescue equipment

The term "fire control or fire rescue equipment" includes any fire vehicle, fire fighting tool, communications equipment, protective gear, fire hose, or breathing apparatus.

(3) Qualified fire control or rescue equipment

The term "qualified fire control or rescue equipment" means fire control or fire rescue equipment that has been recertified by an authorized technician as meeting the manufacturer's specifications.

(4) State

The term "State" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands, any other territory or possession of the United States, and any political subdivision of any such State, territory, or possession.

(5) Volunteer fire company

The term "volunteer fire company" means an association of individuals who provide fire protection and other emergency services, where at least 30 percent of the individuals receive little or no compensation compared with an entry level full-time paid individual in that association or in the nearest such association with an entry level full-time paid individual.

(6) Authorized technician

The term "authorized technician" means a technician who has been certified by the manufacturer of fire control or fire rescue equipment to inspect such equipment. The technician need not be employed by the State or local agency administering the distribution of the fire control or fire rescue equipment.

(e) Effective date

This section applies only to liability for injury, damage, loss, or death caused by equipment that, for purposes of subsection (a), is donated on or after the date that is 30 days after March 9, 2006.

(Pub. L. 109–177, title I, §125, Mar. 9, 2006, 120 Stat. 226.)

CODIFICATION

Section was enacted as part of the USA PATRIOT Improvement and Reauthorization Act of 2005, and not as part of the Federal Fire Prevention and Control Act of 1974 which comprises this chapter.

§2234. Encouraging adoption of standards for firefighter health and safety

The Administrator shall promote adoption by fire services of national voluntary consensus standards for firefighter health and safety, including such standards for firefighter operations, training, staffing, and fitness, by—

(1) educating fire services about such standards;

(2) encouraging the adoption at all levels of government of such standards; and

(3) making recommendations on other ways in which the Federal Government can promote the adoption of such standards by fire services.

(Pub. L. 93–498, §37, as added Pub. L. 110–376, §7, Oct. 8, 2008, 122 Stat. 4060.)

CHAPTER 50—CONSUMER PRODUCT WARRANTIES

Sec.

2301. Definitions.
2302. Rules governing contents of warranties.
2303. Designation of written warranties.
2304. Federal minimum standards for warranties.
2305. Full and limited warranting of a consumer product.
2306. Service contracts; rules for full, clear and conspicuous disclosure of terms and conditions; addition to or in lieu of written warranty.
2307. Designation of representatives by warrantor to perform duties under written or implied warranty.
2308. Implied warranties.
2309. Procedures applicable to promulgation of rules by Commission.
2310. Remedies in consumer disputes.
2311. Applicability to other laws.
2312. Effective dates.

§2301. Definitions

For the purposes of this chapter:

(1) The term "consumer product" means any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes (including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed).

(2) The term "Commission" means the Federal Trade Commission.

(3) The term "consumer" means a buyer (other than for purposes of resale) of any consumer product, any person to whom such product is transferred during the duration of an implied or written warranty (or service contract) applicable to the product, and any other person who is entitled by the terms of such warranty (or service contract) or under applicable State law to enforce against the warrantor (or service contractor) the obligations of the warranty (or service contract).

(4) The term "supplier" means any person engaged in the business of making a consumer product directly or indirectly available to consumers.

(5) The term "warrantor" means any supplier or other person who gives or offers to give a written warranty or who is or may be obligated under an implied warranty.

(6) The term "written warranty" means—

(A) any written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time, or

(B) any undertaking in writing in connection with the sale by a supplier of a consumer product to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking,

which written affirmation, promise, or undertaking becomes part of the basis of the bargain between a supplier and a buyer for purposes other than resale of such product.

(7) The term "implied warranty" means an implied warranty arising under State law (as modified by sections 2308 and 2304(a) of this title) in connection with the sale by a supplier of a consumer product.

(8) The term "service contract" means a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance or repair (or both) of a consumer product.

(9) The term "reasonable and necessary maintenance" consists of those operations (A) which the consumer reasonably can be expected to perform or have performed and (B) which are necessary to keep any consumer product performing its intended function and operating at a

reasonable level of performance.

(10) The term "remedy" means whichever of the following actions the warrantor elects:

(A) repair,

(B) replacement, or

(C) refund;

except that the warrantor may not elect refund unless (i) the warrantor is unable to provide replacement and repair is not commercially practicable or cannot be timely made, or (ii) the consumer is willing to accept such refund.

(11) The term "replacement" means furnishing a new consumer product which is identical or reasonably equivalent to the warranted consumer product.

(12) The term "refund" means refunding the actual purchase price (less reasonable depreciation based on actual use where permitted by rules of the Commission).

(13) The term "distributed in commerce" means sold in commerce, introduced or delivered for introduction into commerce, or held for sale or distribution after introduction into commerce.

(14) The term "commerce" means trade, traffic, commerce, or transportation—

(A) between a place in a State and any place outside thereof, or

(B) which affects trade, traffic, commerce, or transportation described in subparagraph (A).

(15) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, or American Samoa. The term "State law" includes a law of the United States applicable only to the District of Columbia or only to a territory or possession of the United States; and the term "Federal law" excludes any State law.

(Pub. L. 93–637, title I, §101, Jan. 4, 1975, 88 Stat. 2183.)

REFERENCES IN TEXT

For definition of Canal Zone, referred to in par. (15), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

SHORT TITLE

Pub. L. 93–637, §1, Jan. 4, 1975, 88 Stat. 2183, provided: "That this act [enacting this chapter and sections 57a to 57c of this title, amending sections 45, 46, 49, 50, 52, 56, and 58 of this title, and enacting provisions set out as notes under sections 45, 56, 57a, and 57b of this title] may be cited as the 'Magnuson-Moss Warranty—Federal Trade Commission Improvement Act'."

§2302. Rules governing contents of warranties

(a) Full and conspicuous disclosure of terms and conditions; additional requirements for contents

In order to improve the adequacy of information available to consumers, prevent deception, and improve competition in the marketing of consumer products, any warrantor warranting a consumer product to a consumer by means of a written warranty shall, to the extent required by rules of the Commission, fully and conspicuously disclose in simple and readily understood language the terms and conditions of such warranty. Such rules may require inclusion in the written warranty of any of the following items among others:

(1) The clear identification of the names and addresses of the warrantors.

(2) The identity of the party or parties to whom the warranty is extended.

(3) The products or parts covered.

(4) A statement of what the warrantor will do in the event of a defect, malfunction, or failure to conform with such written warranty—at whose expense—and for what period of time.

(5) A statement of what the consumer must do and expenses he must bear.

(6) Exceptions and exclusions from the terms of the warranty.

(7) The step-by-step procedure which the consumer should take in order to obtain performance

of any obligation under the warranty, including the identification of any person or class of persons authorized to perform the obligations set forth in the warranty.

(8) Information respecting the availability of any informal dispute settlement procedure offered by the warrantor and a recital, where the warranty so provides, that the purchaser may be required to resort to such procedure before pursuing any legal remedies in the courts.

(9) A brief, general description of the legal remedies available to the consumer.

(10) The time at which the warrantor will perform any obligations under the warranty.

(11) The period of time within which, after notice of a defect, malfunction, or failure to conform with the warranty, the warrantor will perform any obligations under the warranty.

(12) The characteristics or properties of the products, or parts thereof, that are not covered by the warranty.

(13) The elements of the warranty in words or phrases which would not mislead a reasonable, average consumer as to the nature or scope of the warranty.

(b) Availability of terms to consumer; manner and form for presentation and display of information; duration; extension of period for written warranty or service contract

(1)(A) The Commission shall prescribe rules requiring that the terms of any written warranty on a consumer product be made available to the consumer (or prospective consumer) prior to the sale of the product to him.

(B) The Commission may prescribe rules for determining the manner and form in which information with respect to any written warranty of a consumer product shall be clearly and conspicuously presented or displayed so as not to mislead the reasonable, average consumer, when such information is contained in advertising, labeling, point-of-sale material, or other representations in writing.

(2) Nothing in this chapter (other than paragraph (3) of this subsection) shall be deemed to authorize the Commission to prescribe the duration of written warranties given or to require that a consumer product or any of its components be warranted.

(3) The Commission may prescribe rules for extending the period of time a written warranty or service contract is in effect to correspond with any period of time in excess of a reasonable period (not less than 10 days) during which the consumer is deprived of the use of such consumer product by reason of failure of the product to conform with the written warranty or by reason of the failure of the warrantor (or service contractor) to carry out such warranty (or service contract) within the period specified in the warranty (or service contract).

(c) Prohibition on conditions for written or implied warranty; waiver by Commission

No warrantor of a consumer product may condition his written or implied warranty of such product on the consumer's using, in connection with such product, any article or service (other than article or service provided without charge under the terms of the warranty) which is identified by brand, trade, or corporate name; except that the prohibition of this subsection may be waived by the Commission if—

(1) the warrantor satisfies the Commission that the warranted product will function properly only if the article or service so identified is used in connection with the warranted product, and

(2) the Commission finds that such a waiver is in the public interest.

The Commission shall identify in the Federal Register, and permit public comment on, all applications for waiver of the prohibition of this subsection, and shall publish in the Federal Register its disposition of any such application, including the reasons therefor.

(d) Incorporation by reference of detailed substantive warranty provisions

The Commission may by rule devise detailed substantive warranty provisions which warrantors may incorporate by reference in their warranties.

(e) Applicability to consumer products costing more than $5

The provisions of this section apply only to warranties which pertain to consumer products actually costing the consumer more than $5.

(Pub. L. 93–637, title I, §102, Jan. 4, 1975, 88 Stat. 2185.)

§2303. Designation of written warranties

(a) Full (statement of duration) or limited warranty

Any warrantor warranting a consumer product by means of a written warranty shall clearly and conspicuously designate such warranty in the following manner, unless exempted from doing so by the Commission pursuant to subsection (c) of this section:

(1) If the written warranty meets the Federal minimum standards for warranty set forth in section 2304 of this title, then it shall be conspicuously designated a "full (statement of duration) warranty".

(2) If the written warranty does not meet the Federal minimum standards for warranty set forth in section 2304 of this title, then it shall be conspicuously designated a "limited warranty".

(b) Applicability of requirements, standards, etc., to representations or statements of customer satisfaction

This section and sections 2302 and 2304 of this title shall not apply to statements or representations which are similar to expressions of general policy concerning customer satisfaction and which are not subject to any specific limitations.

(c) Exemptions by Commission

In addition to exercising the authority pertaining to disclosure granted in section 2302 of this title, the Commission may by rule determine when a written warranty does not have to be designated either "full (statement of duration)" or "limited" in accordance with this section.

(d) Applicability to consumer products costing more than $10 and not designated as full warranties

The provisions of subsections (a) and (c) of this section apply only to warranties which pertain to consumer products actually costing the consumer more than $10 and which are not designated "full (statement of duration) warranties".

(Pub. L. 93–637, title I, §103, Jan. 4, 1975, 88 Stat. 2187.)

§2304. Federal minimum standards for warranties

(a) Remedies under written warranty; duration of implied warranty; exclusion or limitation on consequential damages for breach of written or implied warranty; election of refund or replacement

In order for a warrantor warranting a consumer product by means of a written warranty to meet the Federal minimum standards for warranty—

(1) such warrantor must as a minimum remedy such consumer product within a reasonable time and without charge, in the case of a defect, malfunction, or failure to conform with such written warranty;

(2) notwithstanding section 2308(b) of this title, such warrantor may not impose any limitation on the duration of any implied warranty on the product;

(3) such warrantor may not exclude or limit consequential damages for breach of any written or implied warranty on such product, unless such exclusion or limitation conspicuously appears on the face of the warranty; and

(4) if the product (or a component part thereof) contains a defect or malfunction after a reasonable number of attempts by the warrantor to remedy defects or malfunctions in such product, such warrantor must permit the consumer to elect either a refund for, or replacement without charge of, such product or part (as the case may be). The Commission may by rule specify for purposes of this paragraph, what constitutes a reasonable number of attempts to remedy

particular kinds of defects or malfunctions under different circumstances. If the warrantor replaces a component part of a consumer product, such replacement shall include installing the part in the product without charge.

(b) Duties and conditions imposed on consumer by warrantor

(1) In fulfilling the duties under subsection (a) of this section respecting a written warranty, the warrantor shall not impose any duty other than notification upon any consumer as a condition of securing remedy of any consumer product which malfunctions, is defective, or does not conform to the written warranty, unless the warrantor has demonstrated in a rulemaking proceeding, or can demonstrate in an administrative or judicial enforcement proceeding (including private enforcement), or in an informal dispute settlement proceeding, that such a duty is reasonable.

(2) Notwithstanding paragraph (1), a warrantor may require, as a condition to replacement of, or refund for, any consumer product under subsection (a) of this section, that such consumer product shall be made available to the warrantor free and clear of liens and other encumbrances, except as otherwise provided by rule or order of the Commission in cases in which such a requirement would not be practicable.

(3) The Commission may, by rule define in detail the duties set forth in subsection (a) of this section and the applicability of such duties to warrantors of different categories of consumer products with "full (statement of duration)" warranties.

(4) The duties under subsection (a) of this section extend from the warrantor to each person who is a consumer with respect to the consumer product.

(c) Waiver of standards

The performance of the duties under subsection (a) of this section shall not be required of the warrantor if he can show that the defect, malfunction, or failure of any warranted consumer product to conform with a written warranty, was caused by damage (not resulting from defect or malfunction) while in the possession of the consumer, or unreasonable use (including failure to provide reasonable and necessary maintenance).

(d) Remedy without charge

For purposes of this section and of section 2302(c) of this title, the term "without charge" means that the warrantor may not assess the consumer for any costs the warrantor or his representatives incur in connection with the required remedy of a warranted consumer product. An obligation under subsection (a)(1)(A) of this section to remedy without charge does not necessarily require the warrantor to compensate the consumer for incidental expenses; however, if any incidental expenses are incurred because the remedy is not made within a reasonable time or because the warrantor imposed an unreasonable duty upon the consumer as a condition of securing remedy, then the consumer shall be entitled to recover reasonable incidental expenses which are so incurred in any action against the warrantor.

(e) Incorporation of standards to products designated with full warranty for purposes of judicial actions

If a supplier designates a warranty applicable to a consumer product as a "full (statement of duration)" warranty, then the warranty on such product shall, for purposes of any action under section 2310(d) of this title or under any State law, be deemed to incorporate at least the minimum requirements of this section and rules prescribed under this section.

(Pub. L. 93–637, title I, §104, Jan. 4, 1975, 88 Stat. 2187.)

§2305. Full and limited warranting of a consumer product

Nothing in this chapter shall prohibit the selling of a consumer product which has both full and limited warranties if such warranties are clearly and conspicuously differentiated.

(Pub. L. 93–637, title I, §105, Jan. 4, 1975, 88 Stat. 2188.)

§2306. Service contracts; rules for full, clear and conspicuous disclosure of terms and conditions; addition to or in lieu of written warranty

(a) The Commission may prescribe by rule the manner and form in which the terms and conditions of service contracts shall be fully, clearly, and conspicuously disclosed.

(b) Nothing in this chapter shall be construed to prevent a supplier or warrantor from entering into a service contract with the consumer in addition to or in lieu of a written warranty if such contract fully, clearly, and conspicuously discloses its terms and conditions in simple and readily understood language.

(Pub. L. 93–637, title I, §106, Jan. 4, 1975, 88 Stat. 2188.)

§2307. Designation of representatives by warrantor to perform duties under written or implied warranty

Nothing in this chapter shall be construed to prevent any warrantor from designating representatives to perform duties under the written or implied warranty: *Provided*, That such warrantor shall make reasonable arrangements for compensation of such designated representatives, but no such designation shall relieve the warrantor of his direct responsibilities to the consumer or make the representative a cowarrantor.

(Pub. L. 93–637, title I, §107, Jan. 4, 1975, 88 Stat. 2189.)

§2308. Implied warranties

(a) Restrictions on disclaimers or modifications

No supplier may disclaim or modify (except as provided in subsection (b) of this section) any implied warranty to a consumer with respect to such consumer product if (1) such supplier makes any written warranty to the consumer with respect to such consumer Product, or (2) at the time of sale, or within 90 days thereafter, such supplier enters into a service contract with the consumer which applies to such consumer product.

(b) Limitation on duration

For purposes of this chapter (other than section 2304(a)(2) of this title), implied warranties may be limited in duration to the duration of a written warranty of reasonable duration, if such limitation is conscionable and is set forth in clear and unmistakable language and prominently displayed on the face of the warranty.

(c) Effectiveness of disclaimers, modifications, or limitations

A disclaimer, modification, or limitation made in violation of this section shall be ineffective for purposes of this chapter and State law.

(Pub. L. 93–637, title I, §108, Jan. 4, 1975, 88 Stat. 2189.)

§2309. Procedures applicable to promulgation of rules by Commission

(a) Oral presentation

Any rule prescribed under this chapter shall be prescribed in accordance with section 553 of title 5; except that the Commission shall give interested persons an opportunity for oral presentations of data, views, and arguments, in addition to written submissions. A transcript shall be kept of any oral presentation. Any such rule shall be subject to judicial review under section 57a(e) of this title in the same manner as rules prescribed under section 57a(a)(1)(B) of this title, except that section 57a(e)(3)(B) of this title shall not apply.

(b) Warranties and warranty practices involved in sale of used motor vehicles

The Commission shall initiate within one year after January 4, 1975, a rulemaking proceeding dealing with warranties and warranty practices in connection with the sale of used motor vehicles; and, to the extent necessary to supplement the protections offered the consumer by this chapter, shall prescribe rules dealing with such warranties and practices. In prescribing rules under this subsection, the Commission may exercise any authority it may have under this chapter, or other law, and in addition it may require disclosure that a used motor vehicle is sold without any warranty and specify the form and content of such disclosure.

(Pub. L. 93–637, title I, §109, Jan. 4, 1975, 88 Stat. 2189.)

§2310. Remedies in consumer disputes

(a) Informal dispute settlement procedures; establishment; rules setting forth minimum requirements; effect of compliance by warrantor; review of informal procedures or implementation by Commission; application to existing informal procedures

(1) Congress hereby declares it to be its policy to encourage warrantors to establish procedures whereby consumer disputes are fairly and expeditiously settled through informal dispute settlement mechanisms.

(2) The Commission shall prescribe rules setting forth minimum requirements for any informal dispute settlement procedure which is incorporated into the terms of a written warranty to which any provision of this chapter applies. Such rules shall provide for participation in such procedure by independent or governmental entities.

(3) One or more warrantors may establish an informal dispute settlement procedure which meets the requirements of the Commission's rules under paragraph (2). If—

(A) a warrantor establishes such a procedure,

(B) such procedure, and its implementation, meets the requirements of such rules, and

(C) he incorporates in a written warranty a requirement that the consumer resort to such procedure before pursuing any legal remedy under this section respecting such warranty,

then (i) the consumer may not commence a civil action (other than a class action) under subsection (d) of this section unless he initially resorts to such procedure; and (ii) a class of consumers may not proceed in a class action under subsection (d) of this section except to the extent the court determines necessary to establish the representative capacity of the named plaintiffs, unless the named plaintiffs (upon notifying the defendant that they are named plaintiffs in a class action with respect to a warranty obligation) initially resort to such procedure. In the case of such a class action which is brought in a district court of the United States, the representative capacity of the named plaintiffs shall be established in the application of rule 23 of the Federal Rules of Civil Procedure. In any civil action arising out of a warranty obligation and relating to a matter considered in such a procedure, any decision in such procedure shall be admissible in evidence.

(4) The Commission on its own initiative may, or upon written complaint filed by any interested person shall, review the bona fide operation of any dispute settlement procedure resort to which is stated in a written warranty to be a prerequisite to pursuing a legal remedy under this section. If the Commission finds that such procedure or its implementation fails to comply with the requirements of the rules under paragraph (2), the Commission may take appropriate remedial action under any authority it may have under this chapter or any other provision of law.

(5) Until rules under paragraph (2) take effect, this subsection shall not affect the validity of any informal dispute settlement procedure respecting consumer warranties, but in any action under subsection (d) of this section, the court may invalidate any such procedure if it finds that such procedure is unfair.

(b) Prohibited acts

It shall be a violation of section 45(a)(1) of this title for any person to fail to comply with any

requirement imposed on such person by this chapter (or a rule thereunder) or to violate any prohibition contained in this chapter (or a rule thereunder).

(c) Injunction proceedings by Attorney General or Commission for deceptive warranty, noncompliance with requirements, or violating prohibitions; procedures; definitions

(1) The district courts of the United States shall have jurisdiction of any action brought by the Attorney General (in his capacity as such), or by the Commission by any of its attorneys designated by it for such purpose, to restrain (A) any warrantor from making a deceptive warranty with respect to a consumer product, or (B) any person from failing to comply with any requirement imposed on such person by or pursuant to this chapter or from violating any prohibition contained in this chapter. Upon proper showing that, weighing the equities and considering the Commission's or Attorney General's likelihood of ultimate success, such action would be in the public interest and after notice to the defendant, a temporary restraining order or preliminary injunction may be granted without bond. In the case of an action brought by the Commission, if a complaint under section 45 of this title is not filed within such period (not exceeding 10 days) as may be specified by the court after the issuance of the temporary restraining order or preliminary injunction, the order or injunction shall be dissolved by the court and be of no further force and effect. Any suit shall be brought in the district in which such person resides or transacts business. Whenever it appears to the court that the ends of justice require that other persons should be parties in the action, the court may cause them to be summoned whether or not they reside in the district in which the court is held, and to that end process may be served in any district.

(2) For the purposes of this subsection, the term "deceptive warranty" means (A) a written warranty which (i) contains an affirmation, promise, description, or representation which is either false or fraudulent, or which, in light of all of the circumstances, would mislead a reasonable individual exercising due care; or (ii) fails to contain information which is necessary in light of all of the circumstances, to make the warranty not misleading to a reasonable individual exercising due care; or (B) a written warranty created by the use of such terms as "guaranty" or "warranty", if the terms and conditions of such warranty so limit its scope and application as to deceive a reasonable individual.

(d) Civil action by consumer for damages, etc.; jurisdiction; recovery of costs and expenses; cognizable claims

(1) Subject to subsections (a)(3) and (e) of this section, a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this chapter, or under a written warranty, implied warranty, or service contract, may bring suit for damages and other legal and equitable relief—

(A) in any court of competent jurisdiction in any State or the District of Columbia; or

(B) in an appropriate district court of the United States, subject to paragraph (3) of this subsection.

(2) If a consumer finally prevails in any action brought under paragraph (1) of this subsection, he may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of cost and expenses (including attorneys' fees based on actual time expended) determined by the court to have been reasonably incurred by the plaintiff for or in connection with the commencement and prosecution of such action, unless the court in its discretion shall determine that such an award of attorneys' fees would be inappropriate.

(3) No claim shall be cognizable in a suit brought under paragraph (1)(B) of this subsection—

(A) if the amount in controversy of any individual claim is less than the sum or value of $25;

(B) if the amount in controversy is less than the sum or value of $50,000 (exclusive of interests and costs) computed on the basis of all claims to be determined in this suit; or

(C) if the action is brought as a class action, and the number of named plaintiffs is less than one hundred.

(e) Class actions; conditions; procedures applicable

No action (other than a class action or an action respecting a warranty to which subsection (a)(3) of this section applies) may be brought under subsection (d) of this section for failure to comply with any obligation under any written or implied warranty or service contract, and a class of consumers may not proceed in a class action under such subsection with respect to such a failure except to the extent the court determines necessary to establish the representative capacity of the named plaintiffs, unless the person obligated under the warranty or service contract is afforded a reasonable opportunity to cure such failure to comply. In the case of such a class action (other than a class action respecting a warranty to which subsection (a)(3) of this section applies) brought under subsection (d) of this section for breach of any written or implied warranty or service contract, such reasonable opportunity will be afforded by the named plaintiffs and they shall at that time notify the defendant that they are acting on behalf of the class. In the case of such a class action which is brought in a district court of the United States, the representative capacity of the named plaintiffs shall be established in the application of rule 23 of the Federal Rules of Civil Procedure.

(f) Warrantors subject to enforcement of remedies

For purposes of this section, only the warrantor actually making a written affirmation of fact, promise, or undertaking shall be deemed to have created a written warranty, and any rights arising thereunder may be enforced under this section only against such warrantor and no other person.

(Pub. L. 93–637, title I, §110, Jan. 4, 1975, 88 Stat. 2189.)

REFERENCES IN TEXT

Rule 23 of the Federal Rules of Civil Procedure, referred to in subsecs. (a)(3) and (e), is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§2311. Applicability to other laws

(a) Federal Trade Commission Act and Federal Seed Act

(1) Nothing contained in this chapter shall be construed to repeal, invalidate, or supersede the Federal Trade Commission Act [15 U.S.C. 41 et seq.] or any statute defined therein as an Antitrust Act.

(2) Nothing in this chapter shall be construed to repeal, invalidate, or supersede the Federal Seed Act [7 U.S.C. 1551 et seq.] and nothing in this chapter shall apply to seed for planting.

(b) Rights, remedies, and liabilities

(1) Nothing in this chapter shall invalidate or restrict any right or remedy of any consumer under State law or any other Federal law.

(2) Nothing in this chapter (other than sections 2308 and 2304(a)(2) and (4) of this title) shall (A) affect the liability of, or impose liability on, any person for personal injury, or (B) supersede any provision of State law regarding consequential damages for injury to the person or other injury.

(c) State warranty laws

(1) Except as provided in subsection (b) of this section and in paragraph (2) of this subsection, a State requirement—

(A) which relates to labeling or disclosure with respect to written warranties or performance thereunder;

(B) which is within the scope of an applicable requirement of sections 2302, 2303, and 2304 of this title (and rules implementing such sections), and

(C) which is not identical to a requirement of section 2302, 2303, or 2304 of this title (or a rule thereunder),

shall not be applicable to written warranties complying with such sections (or rules thereunder).

(2) If, upon application of an appropriate State agency, the Commission determines (pursuant to rules issued in accordance with section 2309 of this title) that any requirement of such State covering any transaction to which this chapter applies (A) affords protection to consumers greater than the

requirements of this chapter and (B) does not unduly burden interstate commerce, then such State requirement shall be applicable (notwithstanding the provisions of paragraph (1) of this subsection) to the extent specified in such determination for so long as the State administers and enforces effectively any such greater requirement.

(d) Other Federal warranty laws

This chapter (other than section 2302(c) of this title) shall be inapplicable to any written warranty the making or content of which is otherwise governed by Federal law. If only a portion of a written warranty is so governed by Federal law, the remaining portion shall be subject to this chapter.

(Pub. L. 93–637, title I, §111, Jan. 4, 1975, 88 Stat. 2192.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (a)(1), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

The Antitrust Acts, referred to in subsec. (a)(1), are defined in section 44 of this title.

The Federal Seed Act, referred to in subsec. (a)(2), is act Aug. 9, 1939, ch. 615, 53 Stat. 1275, as amended, which is classified generally to chapter 37 (§1551 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1551 of Title 7 and Tables.

§2312. Effective dates

(a) Effective date of chapter

Except as provided in subsection (b) of this section, this chapter shall take effect 6 months after January 4, 1975, but shall not apply to consumer products manufactured prior to such date.

(b) Effective date of section 2302(a)

Section 2302(a) of this title shall take effect 6 months after the final publication of rules respecting such section; except that the Commission, for good cause shown, may postpone the applicability of such sections until one year after such final publication in order to permit any designated classes of suppliers to bring their written warranties into compliance with rules promulgated pursuant to this chapter.

(c) Promulgation of rules

The Commission shall promulgate rules for initial implementation of this chapter as soon as possible after January 4, 1975, but in no event later than one year after such date.

(Pub. L. 93–637, title I, §112, Jan. 4, 1975, 88 Stat. 2192.)

CHAPTER 51—NATIONAL PRODUCTIVITY AND QUALITY OF WORKING LIFE

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SUBCHAPTER I—FINDINGS, PURPOSE, AND POLICY; DEFINITIONS

§2401. Congressional findings

The Congress finds that—

(1) the rate of productivity growth in the United States has declined during four of the past six years;

(2) the decline in the rate of productivity growth has contributed to inflation, to economic stagnation, and to increasing unemployment;

(3) since 1965, the rate of productivity growth of the United States has been consistently lower than that of many industrial nations in the world, adversely affecting the competitive position of the United States in world markets;

(4) growth in productivity of the economy of the United States is essential to the social and economic welfare of the American people, and to the health of the world economy;

(5) growth in the productivity of the Nation's economy is essential to maintain and increase employment, to stabilize the cost of living and to provide job security;

(6) mounting worldwide material shortages and their consequent inflationary results make increased efficiency in the utilization of these resources of urgent importance;

(7) sharing the fruits of productivity gains among labor, management, and owners may considerably influence productivity;

(8) the continued development of joint labor-management efforts to provide a healthy environment for collective bargaining can make a significant contribution to improve productivity and foster industrial peace;

(9) factors affecting the growth of productivity in the economy include not only the status of technology and the techniques of management but also the role of the worker in the production process and the conditions of his working life;

(10) there is a national need to identify and encourage appropriate application of capital in sectors of American economic activity in order to improve productivity;

(11) there is a national need to identify and encourage appropriate application of technology in all sectors of American economic activity in order to improve productivity;

(12) there is a national need to identify and encourage the development of social, economic,

scientific, business, labor, and governmental contributions to improve productivity growth, and increased economic effectiveness in the public and private sectors of the United States; which objectives can best be accomplished through maximizing private sector and State and local development of such contributions;

(13) there is a national need to identify, study, and revise or eliminate the laws, regulations, policies, and procedures which adversely affect productivity growth and the efficient functioning of the economy;

(14) there is a national need to increase employment security through such activities as manpower planning, skill-training and retraining of workers, internal work force adjustments to avoid worker displacement, assistance to workers facing or experiencing displacement, and all other public and private programs which seek to minimize the human costs of productivity improvement, thereby diminishing resistance to workplace change and improving productivity growth;

(15) there is a national need to develop new technologies for the more effective production of goods and services;

(16) there is a national need to encourage and support efforts by qualified institutions of higher learning to identify and inaugurate programs which will improve productivity;

(17) there is a national need to develop precise, standardized measurements of productivity; and

(18) there is a national need to gather and disseminate information about methods and techniques to improve productivity.

(Pub. L. 94–136, title I, §101, Nov. 28, 1975, 89 Stat. 733.)

SHORT TITLE

Pub. L. 94–136, §1, Nov. 28, 1975, 89 Stat. 733, provided: "That this Act [enacting this chapter, repealing section 1026 of this title, and enacting provisions set out as notes under this section] may be cited as the 'National Productivity And Quality of Working Life Act of 1975'."

WHITE HOUSE CONFERENCE ON PRODUCTIVITY

Pub. L. 97–367, Oct. 25, 1982, 96 Stat. 1761, required the President to conduct a White House Conference on Productivity not later than Oct. 25, 1983, prescribed the duties of the Conference, required the Conference to submit to the President a final report not later than 120 days after the date the Conference is called, and required the President (within 120 days after submission of the final report) to transmit to Congress his recommendations for the administrative action and legislation necessary to implement recommendations contained in the final report with which he concurs.

EXECUTIVE ORDER NO. 12089

Ex. Ord. No. 12089, Oct. 23, 1978, 43 F.R. 49773, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, which established the National Productivity Council and provided for its membership, functions, etc. was revoked by Ex. Ord. No. 12379, §16, Aug. 17, 1982, 47 F.R. 36099, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

EXECUTIVE ORDER NO. 12332

Ex. Ord. No. 12332, Nov. 10, 1981, 46 F.R. 55913, which established the National Productivity Advisory Committee, and provided for its membership, functions, etc. and was extended until Sept. 30, 1984, by Ex. Ord. No. 12399, Dec. 31, 1982, 48 F.R. 379, was revoked by Ex. Ord. No. 12534, Sept. 30, 1985, 50 F.R. 40319, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

§2402. Congressional statement of purpose

It is the purpose of this chapter—

(1) to establish a national policy which will encourage productivity growth consistent with needs of the economy, the natural environment, and the needs, rights, and best interests of management, the work force, and consumers; and

(2) to establish as an independent establishment of the executive branch a National Center for

Productivity and Quality of Working Life to focus, coordinate, and promote efforts to improve the rate of productivity growth.

(Pub. L. 94–136, title I, §102, Nov. 28, 1975, 89 Stat. 734.)

§2403. Congressional declaration of policy

(a) Stimulation of high rate of productivity growth

The Congress, recognizing the profound impact of productivity on the interrelations of all components of the national economy, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, to use all practicable means and measures, including financial and technical assistance, to stimulate a high rate of productivity growth.

(b) Improvement and coordination of Federal plans to carry out policy

It is the continuing responsibility of the Federal Government to use all practicable means to improve and coordinate Federal plans, functions, programs, and resources to carry out the policy set forth in this chapter.

(c) Interpretation of laws, rules, etc., to carry out policy

The laws, rules, regulations, and policies of the United States shall be so interpreted as to give full force and effect to this policy.

(Pub. L. 94–136, title I, §103, Nov. 28, 1975, 89 Stat. 734.)

§2404. Definitions

For the purposes of this chapter—

(1) the term "Center" means the National Center for Productivity and Quality of Working Life;

(2) the term "Board" means the Board of Directors of the Center;

(3) the terms "productivity growth" and "improved productivity" shall be interpreted to include, but not be limited to, improvements in technology, management techniques, and the quality of working life; and

(4) the term "quality of working life" shall be interpreted to mean the conditions of work relating to the role of the worker in the production process.

(Pub. L. 94–136, title I, §104, Nov. 28, 1975, 89 Stat. 735.)

SUBCHAPTER II—NATIONAL CENTER FOR PRODUCTIVITY AND QUALITY OF WORKING LIFE

§2411. Establishment

There is hereby established as an independent establishment of the executive branch of the Government the National Center for Productivity and Quality of Working Life.

(Pub. L. 94–136, title II, §201, Nov. 28, 1975, 89 Stat. 735.)

§2412. Board of Directors

(a) Membership

The Center shall have a Board of Directors, to be comprised of not more than twenty-seven

members, as follows:

(1) a Chairman, appointed by the President, by and with the advice and consent of the Senate;

(2) the Secretary of the Treasury;

(3) the Secretary of Commerce;

(4) the Secretary of Labor;

(5) the Director of the Federal Mediation and Conciliation Service;

(6) the Executive Director of the Center;

(7) not less than five members who shall be appointed by the President, by and with the advice and consent of the Senate, from among qualified private individuals in manufacturing and service industries;

(8) not less than five members who shall be appointed by the President, by and with the advice and consent of the Senate, from among qualified private individuals from labor organizations;

(9) not less than two members who shall be appointed by the President, by and with the advice and consent of the Senate, from among qualified individuals in State or local governments;

(10) not less than one member who shall be appointed by the President, by and with the advice and consent of the Senate, from among the general public;

(11) not less than one member who shall be appointed by the President, by and with the advice and consent of the Senate, from among qualified individuals associated with leading institutions of higher education; and

(12) such other qualified members from the public or private sectors whom the President may deem appropriate who shall be appointed by the President, by and with the advice and consent of the Senate.

When unable to attend a meeting of the Board, a member appointed under clauses (2), (3), (4), and (5) shall appoint an appropriate alternate from such member's Department or agency to represent such member at that meeting.

(b) Term

(1) The members of the Board appointed under clauses (7), (8), (9), (10), (11), and any private sector members appointed pursuant to clause (12) of subsection (a) of this section shall be appointed for a four-year term coterminous with the term of the President. Members other than members appointed under such clauses, with the exception of the Chairman, shall serve as long as such member is head of the department or agency represented on the Board. No person shall serve as an acting or temporary member in positions requiring Senate confirmation including that of Chairman, for a period in excess of three months.

(2) The President shall appoint a Chairman for a term of four years coterminous with the term of the President. In appointing a Chairman, the President may appoint an individual who is an officer of the United States. If that officer has been appointed to his current position, by and with the advice and consent of the Senate, or if such individual is the Vice President of the United States, such individual may be appointed chairman by the President without the requirement of confirmation by the Senate.

(c) Vacancies

Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of that term.

(d) Compensation, travel, subsistence, and other expense items

(1) Each member of the Board appointed under clauses (7), (8), (9), (10), (11), and any private sector members appointed pursuant to clause (12) of subsection (a) of this section may be compensated at the daily rate provided for GS–18 of the General Schedule under section 5332 of title 5, including traveltime, for each day such member is engaged in the performance of his duties as a member of the Board and shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred in carrying out the functions of the Board.

(2) Other members of the Board, with the exception of the Chairman, and the Executive Director

of the Center shall serve without additional compensation but shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in carrying out the functions of the Board.

(3) The Chairman shall be compensated as set forth in paragraph (1) of this subsection, except if the Chairman holds some other position in the Federal Government such individual shall be compensated as set forth in paragraph (2) of this subsection.

(e) Executive Committee of the Board

(1) The Chairman shall appoint an Executive Committee of the Board, not to exceed seven members, including the Executive Director of the Center.

(2) The Executive Committee of the Board shall meet at the call of the Chairman, but in no case less frequently than once every ninety days.

(Pub. L. 94–136, title II, §202, Nov. 28, 1975, 89 Stat. 735.)

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§2413. Executive Director and Deputy Director

(a) Appointment of Executive Director; term of temporary Executive Director

The Center shall have an Executive Director, who shall be appointed by the President by and with the advice and consent of the Senate, without regard to political affiliation and solely on the basis of fitness to perform the duties and functions of the office. No person shall serve as acting or temporary Executive Director for a period in excess of three months.

(b) Appointment of Deputy Director; functions

The Executive Director shall appoint a Deputy Director, who shall perform such functions as the Executive Director may prescribe. The Deputy Director shall act for and exercise the powers of the Executive Director during the absence of disability of the Executive Director.

(c) Powers and duties of Executive Director

The Executive Director shall be responsible for the exercise of all powers and the discharge of all duties of the Center. The Executive Director shall have authority over and control of all of the staff of the Center and their activities. The Executive Director shall maintain budgets and allocate available funds as appropriate in carrying out the provisions of this chapter.

(d) Compensation of Executive Director; dual employment

The Executive Director shall be compensated at a rate not to exceed that provided for Executive level IV under section 5315 of title 5 as determined by the President, and shall have no other employment, public or private, during the tenure of his appointment.

(Pub. L. 94–136, title II, §203, Nov. 28, 1975, 89 Stat. 736.)

§2414. Functions of the Center

The Center shall—

(1) develop and establish, in consultation with the appropriate committees of the Congress and with the appropriate departments and agencies of the executive branch, a national policy for productivity growth in the public and private sectors of the United States consistent with the purposes of this chapter;

(2) seek, stimulate, and encourage maximum active participation of—

(A) the private sector of the Nation's economy, including labor organizations, associations

and confederations, business enterprises and associations, institutions of higher education, foundations and other philanthropic organizations and research centers and institutes; and

(B) the public sector of the Nation's economy, including Federal, State, and local governments and agencies thereof, including institutions of higher education,

in efforts to improve the rate of productivity growth in all sectors of the Nation's economy;

(3) seek, stimulate, and encourage maximum active participation of the public agencies and private organizations identified in clause (2) of this section through identification and encouragement of selected research and demonstration programs implemented by public agencies and qualified private organizations which will—

(A) increase the rate of productivity growth in the public and private sectors of the national economy through improved and innovative utilization of technological and human resources; and

(B) develop, refine, and apply accurate and reliable measurement techniques to evaluate changes in productivity;

(4) to identify, study, and review—

(A) existing Federal, State, and local statutes, regulations, and fiscal policies which adversely affect productivity growth or the economic performance of the public and private sectors of the United States;

(B) incentives to encourage industry and labor initiatives in the development of methods, techniques, and systems for the improved utilization of technological and human resources in the public and private sectors;

(C) existing and new programs, plans, and other methods, including advanced warning systems, retraining programs, retirement and separation programs, designed to counteract threats to job security which may result from efforts to improve productivity;

(D) jointly, with the Director of the Office of Personnel Management, the impact of Federal personnel policies, statutes, and regulations affecting the productivity of Federal agencies and the quality of working life of Federal employees; and

(E) the need and feasibility of providing, directly to potential users, public or private, various Center services in return for payment to the Center, and methods by which charges for such services will be established;

(5) recommend to the President, the Congress, the appropriate agencies and departments of the Federal Government, and State and local governments, any legislation, revisions of regulations, policies, practices, and procedures which result from the activities carried out under clause (4) of this section;

(6) encourage, support, and initiate efforts in the public or private sector specifically designed to improve cooperation between labor and management in the achievement of continued productivity growth: *Provided, however,* That no activities of the Center involving consideration of issues included in a specific labor-management agreement shall be undertaken without the consent and cooperation of the parties to that agreement;

(7) encourage departments and agencies of the Federal Government to initiate, stimulate, and support efforts in both the public and private sectors of the United States to improve the rate of productivity growth;

(8) coordinate all activities referred to in subsection (7) of this section in order to eliminate interagency duplication of effort and cost, to insure that Center activities will not unnecessarily conflict or overlap with such other activities, and to maximize the effectiveness of all such Federal programs and activities;

(9) coordinate and consult with the departments and agencies of the Federal Government in the obligation and expenditure of funds for activities and projects in both the public and private sectors to improve productivity growth;

(10) identify, develop, and support activities, programs, systems, and techniques, in the various

departments and agencies of the Federal Government for measuring productivity growth within such departments and agencies;

(11) collect and disseminate relevant information obtained by the Center or other public agencies, institutions of higher education, or private organizations engaged in projects under this chapter, including information related to new or improved methods, systems, technological developments, equipment, and devices to improve and stimulate productivity growth, and to develop and implement a public information program designed to inform the public of the meaning and importance of productivity, and productivity growth;

(12) encourage and coordinate the efforts of State and local governments, and institutions of higher education, to improve productivity;

(13) maintain liaison with organizations, both domestic and foreign, involved in efforts to improve productivity;

(14) determine the Nation's needs for productivity-related management and analytical skills and to encourage and facilitate the development of training programs in such skills; and

(15) study the effects of materials availability upon productivity growth.

(Pub. L. 94–136, title II, §204, Nov. 28, 1975, 89 Stat. 737; 1978 Reorg. Plan No. 2, §102, 43 F.R. 36037, 92 Stat. 3783.)

TRANSFER OF FUNCTIONS

"Director of the Office of Personnel Management" substituted for "Civil Service Commission" in par. (4)(D) pursuant to Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in United States Civil Service Commission to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§2415. Powers of the Center

In carrying out its functions, the Center is authorized—

(1) to enter into contracts or other funding arrangements, or modifications thereof, in order to carry out the provisions of this chapter;

(2) to organize and conduct, directly by contract or other funding arrangements with other public agencies or private organizations, conferences, meetings, seminars, workshops, or other forums for the presentation and dissemination of relevant information generated or collected pursuant to the provisions of this chapter;

(3) to make such studies and recommendations to the President and to Congress as may be necessary to carry out the functions of the Center;

(4) to implement a program and secure necessary facilities for the collection, collation, analysis, and interpretation of data and information as required in order to carry out the public information functions under this chapter; and

(5) to undertake such other studies, reviews, activities, and to make such recommendations and reports as may be required to carry out the functions of the Center.

(Pub. L. 94–136, title II, §205, Nov. 28, 1975, 89 Stat. 739.)

§2416. Contracts and other funding arrangements

(a) Qualification of contracts or arrangements

No contracts or other funding arrangements may be entered into under this chapter unless—

(1) such contracts or other funding arrangements will be consistent with the policies and purposes of this chapter and of potential benefit to other users in the public or private sectors;

(2) provisions are made to evaluate the demonstration program and maintain improvement data, such evaluation either to be implemented by the participating parties in accordance with

specifications established by the Center, or to be implemented by or on behalf of the Center; and

(3) the participating parties agree that all information relating to any innovation or achievement generated in the course of any Center-funded demonstration program shall be public information.

(b) Duration of contracts or arrangements

No contract or other funding arrangement shall be made or entered into pursuant to the provisions of this chapter for a period of more than three years.

(c) Non-Federal share of project in cash or in kind

Any non-Federal share of a project may be in cash or in kind, fairly evaluated, including, but not limited to, plant, equipment, or services.

(Pub. L. 94–136, title II, §206, Nov. 28, 1975, 89 Stat. 739.)

§2417. Criteria for participating parties

(a) Establishment of criteria by regulation

The Center shall prescribe by regulation, after consultation with appropriate agencies and officials of Federal, State, and local governments, basic criteria for the participating parties under this chapter.

(b) Reallocation of funds

If the Center determines, on the basis of information available to it during any fiscal year, that a portion of the funds provided to a participating party for that fiscal year will not be required by the party or will become available by virtue of the application of regulations established by the Center to govern noncompliance by a participating party, that portion shall be available for reallocation under this section.

(c) Establishment of criteria for determination of noncompliance

The Center shall by regulation prescribe the basic criteria for determination of noncompliance by participating parties including appropriate provisions for notice and hearing with respect to such determination.

(Pub. L. 94–136, title II, §207, Nov. 28, 1975, 89 Stat. 739.)

§2418. Annual report

(a) Contents

Not later than December 31 of each year, the Center shall report to the President and to the Congress on activities pursuant to the provision of this subchapter during the preceding fiscal year; such reports shall include a detailed statement of all public and private funds received and expended together with such recommendations as the Center deems appropriate. Such report shall include an analysis of the extent to which each agency of the Federal Government which has significant responsibilities for assisting in the improvement of productivity is carrying out such responsibilities consistent with the provisions of this chapter, including (A) an accounting of all funds expended or obligated by such agencies for activities and projects to improve productivity growth, (B) an assessment of the extent to which such expenditures or obligations have furthered the policies of the Center, and (C) the Center's recommendations on how these expenditures and obligations can be better coordinated to accomplish the purposes of this chapter.

(b) Referral to appropriate committees

Each report required to be submitted to the Congress by this chapter shall be referred to the standing committee or committees having jurisdiction over any part of the subject matter of the report.

(Pub. L. 94–136, title II, §208, Nov. 28, 1975, 89 Stat. 740.)

SUBCHAPTER III—FEDERAL AGENCY COORDINATION AND LIAISON WITH CENTER

§2431. Liaison with Center

(a) Designee

Each department, agency, and independent establishment of the Federal Government shall designate a qualified individual to serve as liaison with the Center and to assist the Center in carrying out its functions pursuant to this chapter.

(b) Consultation with departments, agencies, and independent establishments of Federal Government

Each department, agency, and independent establishment of the Federal Government shall keep the Center currently informed of its programs, policies, and initiatives to improve productivity which relate to the responsibilities of the Center, and shall consult with the Center prior to the obligation or expenditure of funds for activities or projects to improve productivity growth.

(c) Access to information

Each Federal department, agency, and independent establishment of the Federal Government is authorized and directed to furnish or allow access to all relevant materials and information required by the Center to carry out its functions under this chapter.

(Pub. L. 94–136, title III, §301, Nov. 28, 1975, 89 Stat. 740.)

§2432. Internal review

Each department, agency, and independent establishment of the Federal Government, in coordination with the Center, shall study and review the promulgation and implementation of its statutory authority, policies, and regulations, and shall identify such statutes, policies, and regulations which adversely affect productivity growth in the public or private sectors of the United States, or those which impede the efficient functioning of the Nation's economy, and shall recommend to the President and the Congress, or implement where appropriate, alternative statutes, policies, and regulations which will contribute to the achievement of the purposes of this chapter.

(Pub. L. 94–136, title III, §302, Nov. 28, 1975, 89 Stat. 740.)

§2433. Support of external activities

Each department, agency, and independent establishment of the Federal Government, in coordination with the Center, shall, to the extent appropriate, make available to State and local governments, labor organizations, industry, public institutions, and other qualified organizations advice, information, and support, including financial and other assistance, designed to maintain, promote, and enhance sustained productivity growth in the public and private sectors of the United States.

(Pub. L. 94–136, title III, §303, Nov. 28, 1975, 89 Stat. 741.)

§2434. Internal productivity

Each department, agency, and independent establishment of the Federal Government shall identify, develop, initiate, and support appropriate programs, systems, procedures, policies, and techniques to improve the productivity of such departments and agencies, including the

implementation, where desirable, of specific programs recommended, supported, or implemented by the Center.

(Pub. L. 94–136, title III, §304, Nov. 28, 1975, 89 Stat. 741.)

§2435. Other statutory obligations

Nothing in this subchapter affects any specific statutory obligation of any Federal agency (1) to coordinate or consult with any other Federal or State agency or (2) to act, or to refrain from acting, contingent upon the recommendations or certification of any other Federal or State agency.

(Pub. L. 94–136, title III, §305, Nov. 28, 1975, 89 Stat. 741.)

SUBCHAPTER IV—ADMINISTRATIVE PROVISIONS

§2451. Authority of Executive Director

The Executive Director is authorized to—

(1) prescribe such regulations as are deemed necessary to carry out the purposes of this chapter;

(2) receive money and other property donated, bequeathed, or devised, or remitted in payment for services rendered, without condition or restriction other than that it be for the purposes of the Center;

(3) receive (and use, sell, or otherwise dispose of, in accordance with clause (2)) money or other property donated, bequeathed, or devised to the Center, except for such money and other property which includes a condition that the Center use other funds of the Center for the purpose of the gift, in which case two-thirds of the members of the Board of the Center must approve such donations;

(4) appoint and fix the compensation of such personnel as may be necessary to carry out the provisions of this chapter in accordance with the provisions of title 5, governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates;

(5) obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, at rates for individuals not to exceed the maximum daily rate prescribed for GS–18 under section 5332 of title 5;

(6) accept and utilize the services of voluntary and noncompensated personnel and reimburse them for travel expenses, including per diem as authorized by section 5703 of title 5;

(7) utilize, on a reimbursable or nonreimbursable basis the services, equipment, personnel, and facilities of any other department or agency of the United States;

(8) establish one or more task forces to assist and advise the Center, composed of individuals who, by reason of experience, are qualified for such service. Each member of any such task force who is not an officer or employee of the Federal Government may receive an amount not to exceed the maximum daily rate prescribed for GS–18 under section 5332 of title 5 for each day such individual is engaged in the actual performance of duties (including traveltime) as a member of such a task force. Members may be reimbursed for travel, subsistence, and necessary expenses incurred in the performance of their duties; and

(9) make advances, progress, and other payments deemed necessary under this chapter without regard to the provisions of section 3324(a) and (b) of title 31.

(Pub. L. 94–136, title IV, §401, Nov. 28, 1975, 89 Stat. 741.)

CODIFICATION

In par. (9), "section 3324(a) and (b) of title 31" substituted for "section 3648 of the Revised Statutes, as amended (21 [31] U.S.C. 529)" on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

SUBCHAPTER V—EVALUATION BY COMPTROLLER GENERAL

§2461. Audit, review, and evaluation

(a) Audit, etc., by Comptroller General

The Comptroller General of the United States shall audit, review, and evaluate the implementation of the provisions of this chapter by the Center.

(b) Report to Congress; contents

Not less than thirty months nor more than thirty-six months after November 28, 1975, the Comptroller General shall prepare and submit to the Congress a report on his audit conducted pursuant to subsection (a) of this section, which shall contain, but not be limited to, the following:

(1) an evaluation of the effectiveness of the Center's activities;

(2) an evaluation of the effect of the activities of the Center on the efficiency, and effectiveness, of affected Federal agencies in carrying out their assigned functions and duties under this chapter; and

(3) recommendations concerning any legislation he deems necessary, and the reasons therefor, for improving the implementation of the objectives of this chapter as set forth in section 2402 of this title.

(Pub. L. 94–136, title V, §501, Nov. 28, 1975, 89 Stat. 742.)

SUBCHAPTER VI—AUTHORIZATION OF APPROPRIATIONS

§2471. Authorization of appropriations

There are authorized to be appropriated to carry out the purposes of this chapter, not to exceed $6,250,000 for the fiscal year ending June 30, 1976, and the subsequent transition period ending September 30, 1976; not to exceed $5,000,000 for the fiscal year ending September 30, 1977; and not to exceed $5,000,000 for the fiscal year ending September 30, 1978. Funds appropriated for any fiscal year shall remain available for obligation until expended.

(Pub. L. 94–136, title VII, §701, Nov. 28, 1975, 89 Stat. 743.)

CHAPTER 52—ELECTRIC AND HYBRID VEHICLE RESEARCH, DEVELOPMENT, AND DEMONSTRATION

Sec.

2501. Congressional findings and policy.
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§2501. Congressional findings and policy

(a) The Congress finds and declares that—

(1) the Nation's dependence on foreign sources of petroleum must be reduced, as such dependence jeopardizes national security, inhibits foreign policy, and undermines economic well-being;

(2) the Nation's balance of payments is threatened by the need to import oil for the production of liquid fuel for gasoline-powered vehicles;

(3) the single largest use of petroleum supplies is in the field of transportation, for gasoline- and diesel-powered motor vehicles;

(4) the expeditious introduction of electric and hybrid vehicles into the Nation's transportation fleet would substantially reduce such use and dependence;

(5) such introduction is practicable and would be advantageous because—

(A) most urban driving consists of short trips, which are within the capability of electric and hybrid vehicles;

(B) much rural and agricultural driving of automobiles, tractors, and trucks is within the capability of such vehicles;

(C) electric and hybrid vehicles are more reliable and practical now than in the past because propulsion, control, and battery technologies have improved, and further significant improvements in such technologies are possible in the near term;

(D) electric and hybrid vehicles use little or no energy when stopped in traffic, in contrast to conventional automobiles and trucks;

(E) the power requirements of such vehicles could be satisfied by charging them during off-peak periods when existing electric generating plants are underutilized, thereby permitting more efficient use of existing generating capacity;

(F) such vehicles do not emit any significant pollutants or noise; and

(G) it is environmentally desirable for transportation systems to be powered from central sources, because pollutants emitted from stationary sources (such as electric generating plants) are potentially easier to control than pollutants emitted from moving vehicles; and

(6) the introduction of electric and hybrid vehicles would be facilitated by the establishment of a Federal program of research, development, and demonstration to explore electric and hybrid vehicle technologies.

(b) It is therefore declared to be the policy of the Congress in this chapter to—

(1) encourage and support accelerated research into, and development of, electric and hybrid vehicle technologies;

(2) demonstrate the economic and technological practicability of electric and hybrid vehicles for personal and commercial use in urban areas and for agricultural and personal use in rural areas;

(3) facilitate, and remove barriers to, the use of electric and hybrid vehicles in lieu of gasoline- and diesel-powered motor vehicles, where practicable; and

(4) promote the substitution of electric and hybrid vehicles for many gasoline- and diesel-powered vehicles currently used in routine short-haul, low-load applications, where such

substitution would be beneficial.

(Pub. L. 94–413, §2, Sept. 17, 1976, 90 Stat. 1260.)

SHORT TITLE

Pub. L. 94–413, §1, Sept. 17, 1976, 90 Stat. 1260, provided: "That this Act [enacting this chapter and amending sections 2451 and 2473 of Title 42, The Public Health and Welfare] may be cited as the 'Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976'."

§2502. Definitions

As used in this chapter, the term—

(1) Omitted

(2) "advanced electric or hybrid vehicle" means a vehicle which—

(A) minimizes the total amount of energy to be consumed with respect to its fabrication, operation, and disposal, and represents a substantial improvement over existing electric and hybrid vehicles with respect to the total amount of energy so consumed;

(B) is capable of being mass-produced and operated at a cost and in a manner which is sufficiently competitive to enable it to be produced and sold in numbers representing a reasonable portion of the market;

(C) is safe, damage-resistant, easy to repair, durable, and operates with sufficient performance with respect to acceleration, cold-weather starting, cruising speed, and other performance factors; and

(D) at a minimum, can be produced, distributed, operated, and disposed of in compliance with any applicable requirement of Federal law;

(3) "commercial electric or hybrid vehicle" includes any electric or hybrid vehicle which can be used (A) for business or agricultural production purposes on farms (e.g. tractors and trucks) or in rural areas, or (B) for commercial purposes in urban areas;

(4) "electric vehicle" means a vehicle which is powered by an electric motor drawing current from rechargeable storage batteries, fuel cells, or other portable sources of electrical current, and which may include a nonelectrical source of power designed to charge batteries and components thereof;

(5) "hybrid vehicle" means a vehicle propelled by a combination of an electric motor and an internal combustion engine or other power source and components thereof;

(6) "project" means the Electric and Hybrid Vehicle Research, Development, and Demonstration Project established under section 2503(a) of this title;

(7) Omitted

(8) "small business concern" shall have the meaning prescribed by the Secretary of Energy after consultation with the Small Business Administration.

(Pub. L. 94–413, §3, Sept. 17, 1976, 90 Stat. 1261; Pub. L. 95–91, title III, §301(a), Aug. 4, 1977, 91 Stat. 577.)

CODIFICATION

Par. (1), which read " 'Administrator' means the Administrator of the Energy Research and Development Administration", has been omitted from the Code in view of the termination of the Energy Research and Development Administration and the transfer of the functions of the Administration and the Administrator thereof to the Secretary of Energy pursuant to sections 301(a) and 703 of Pub. L. 95–91 which are classified to sections 7151(a) and 7293 of Title 42, The Public Health and Welfare. "Secretary of Energy" has been substituted for "Administrator" wherever appearing in this chapter.

Par. (7), which read " 'Secretary' means the Secretary of Transportation", has been omitted from the Code as unnecessary. In view of the substitution of "Secretary of Energy" for "Administrator" in this chapter, and for clarity, "Secretary of Transportation" has been substituted for "Secretary" wherever appearing in this chapter.

TRANSFER OF FUNCTIONS

In par. (8), "Secretary of Energy" substituted for "Administrator" pursuant to section 301(a) of Pub. L. 95–91, see Codification note set out above.

§2503. Duties of Secretary of Energy

(a) Establishment of project

The Secretary of Energy shall promptly establish, as an organizational entity within the Department of Energy, the Electric and Hybrid Vehicle Research, Development, and Demonstration Project.

(b) Management of project; arrangements with competent agencies

The Secretary of Energy shall have the responsibility for the overall management of the project. The Secretary of Energy may enter into any agreement or other arrangement with the National Aeronautics and Space Administration, the Department of Transportation, the National Science Foundation, the Environmental Protection Agency, the Department of Housing and Urban Development, the Department of Agriculture, or any other Federal agency, pursuant to which such agency shall conduct such specified parts or aspects of the project as the Secretary of Energy deems necessary or appropriate and within the particular competence of such agency, to the extent that such agency has capabilities which would enable it to contribute to the success of the project and the attainment of the purposes of this chapter.

(c) Promotion of research and development; demonstration projects; consumer needs; resulting changes

In providing for the effective management of this project, the Secretary of Energy shall have specific responsibility to—

(1) promote basic and applied research on electric and hybrid vehicle batteries, controls, and motors;

(2) determine optimum overall electric and hybrid vehicle design;

(3) conduct demonstration projects with respect to the feasibility of commercial electric and hybrid vehicles (A) by contracting for the purchase or lease of electric and hybrid vehicles for practical use, and (B) by entering into arrangements, with other governmental entities and with nongovernmental entities, for the operation of such vehicles;

(4) ascertain consumer needs and desires so as to match the design of electric and hybrid vehicles to their potential market; and

(5) ascertain the long-term changes in road design, urban planning, traffic management, maintenance facilities, utility rate structures, and tax policies which are needed to facilitate the manufacture and use of electric and hybrid vehicles in accordance with sections 2512 and 2513 [1] of this title.

(Pub. L. 94–413, §4, Sept. 17, 1976, 90 Stat. 1262; Pub. L. 95–91, title III, §301(a), Aug. 4, 1977, 91 Stat. 577.)

REFERENCES IN TEXT

Section 2513 of this title, referred to in subsec. (c)(5), was repealed by Pub. L. 104–66, title I, §1051(o), Dec. 21, 1995, 109 Stat. 717.

TRANSFER OF FUNCTIONS

"Department of Energy" substituted for "Energy Research and Development Administration" in subsec. (a), and "Secretary of Energy" substituted for "Administrator" wherever appearing, pursuant to section 301(a) of Pub. L. 95–91, see Codification note set out under section 2502 of this title.

[1] *See References in Text note below.*

§2504. Coordination between Secretary of Energy and other agencies

(a) Consultation with Secretary of Transportation

In carrying out the project established under section 2503 of this title, the Secretary of Energy shall, to the maximum extent practicable, consult and coordinate with the Secretary of Transportation, with respect to any functions of the Secretary of Energy under this chapter which relate to regulatory activities or other responsibilities of the Secretary of Transportation, including safety and damageability programs.

(b) Assistance from other agencies

Each department, agency, and instrumentality of the executive branch of the Federal Government shall carefully consider any written request from the Secretary of Energy, or the head of any agency to which the Secretary of Energy has delegated responsibility for specified parts or aspects of the project, to furnish such assistance, on a reimbursable basis, as the Secretary of Energy or such head deems necessary to carry out the project and to achieve the purposes of this chapter. Such assistance may include transfer of personnel with their consent and without prejudice to their position and rating.

(Pub. L. 94–413, §5, Sept. 17, 1976, 90 Stat. 1262; Pub. L. 95–91, title III, §301(a), Aug. 4, 1977, 91 Stat. 577.)

CODIFICATION

In subsec. (a), "Secretary of Transportation" substituted for "Secretary" for clarity, see Codification note set out under section 2502 of this title.

TRANSFER OF FUNCTIONS

"Secretary of Energy" substituted in text for "Administrator" pursuant to section 301(a) of Pub. L. 95–91, see Codification note set out under section 2502 of this title.

§2505. Research and development

The Secretary of Energy, acting through appropriate agencies and contractors, shall initiate and provide for the conduct of research and development in areas related to electric and hybrid vehicles, including—

(1) energy storage technology, including batteries and their potential for convenient recharging;

(2) vehicle control systems and overall design for energy conservation, including the use of regenerative braking;

(3) urban design and traffic management to promote maximum transportation-related energy conservation and minimum transportation-related degradation of the environment; and

(4) vehicle design which emphasizes durability, length of practical lifetime, ease of repair, and interchangeability and replaceability of parts.

(Pub. L. 94–413, §6, Sept. 17, 1976, 90 Stat. 1263; Pub. L. 95–91, title III, §301(a), Aug. 4, 1977, 91 Stat. 577.)

TRANSFER OF FUNCTIONS

"Secretary of Energy" substituted in text for "Administrator" pursuant to section 301(a) of Pub. L. 95–91, see Codification note set out under section 2502 of this title.

§2506. Demonstrations

(a) Data development; baseline data; acquisition of vehicles

Within 12 months after September 17, 1976, the Secretary of Energy shall develop data characterizing the present state-of-the-art with respect to electric and hybrid vehicles. The data so developed shall serve as baseline data to be utilized in order (1) to compare improvements in electric

and hybrid vehicle technologies; (2) to assist in establishing the performance standards under subsection (b)(1) of this section; and (3) to otherwise assist in carrying out the purposes of this section. In developing any such data, the Secretary of Energy shall purchase or lease a reasonable number of such vehicles or enter into such other arrangements as the Secretary of Energy deems necessary to carry out the purposes of this subsection.

(b) Performance standards; factors considered; vehicle uses; revision; transmission of standards to Congress

(1) Within 15 months after September 17, 1976, the Secretary of Energy shall promulgate rules establishing performance standards for electric and hybrid vehicles to be purchased or leased pursuant to subsection (c)(1) of this section. The standards so developed shall take into account the factors of energy conservation, urban traffic characteristics, patterns of use for "second" vehicles, consumer preferences, maintenance needs, battery recharging characteristics, agricultural requirements, materials demand and their ability to be recycled, vehicle safety and insurability, cost, and other relevant considerations, as such factors and considerations particularly apply to or affect vehicles with electric or hybrid propulsion systems. Such standards are to be developed taking into account (A) the best current state-of-the-art, and (B) reasonable estimates as to the future state-of-the-art, based on projections of results from the research and development conducted under section 2505 of this title. In developing such standards, the Secretary of Energy shall consult with appropriate experts concerning design needs for electric and hybrid vehicles which are compatible with long-range urban planning, traffic management, and vehicle safety.

(2) Separate performance standards shall be established under subsection (b)(1) of this section with respect to (A) electric or hybrid vehicles for personal use, and (B) commercial electric or hybrid vehicles. Such performance standards shall represent the minimum level of performance which is required with respect to any vehicles purchased or leased pursuant to subsection (c) of this section. Initial performance standards under subsection (b)(1) of this section shall be set at such levels as the Secretary of Energy determines are necessary to promote the acquisition and use of such vehicles for transportation purposes which are within the capability (as determined by the Secretary of Energy) of electric and hybrid vehicles.

(3) Such performance standards shall be revised, by rule, periodically as the state-of-the-art improves.

(4) The Secretary of Energy shall transmit to the Speaker of the House of Representatives and the President of the Senate, and to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, the performance standards developed under paragraph (1) and all revised performance standards established in connection with the demonstrations specified in subsection (c)(2) of this section.

(c) Contracts for vehicle purchase or lease; delivery requirements; demonstration criteria and duration; availability of information for leasing and procurements

(1) The Secretary of Energy shall, within 6 months after the date of promulgation of performance standards pursuant to subsection (b)(1) of this section, institute the first contracts for the purchase or lease of electric or hybrid vehicles which satisfy the performance standards set forth under subsection (b)(1) of this section. The delivery of such vehicles shall be completed according to the expedited best effort of the administering agency and the selected manufacturer. To the extent practicable, vehicles purchased or leased under such contracts shall represent a cross-section of the available technologies and of actual or potential vehicle use.

(2) Thereafter, according to a planned schedule, the Secretary of Energy shall contract for the purchase or lease of additional electric or hybrid vehicles which satisfy amended performance standards and represent continuing improvements in state-of-the-art. In conducting demonstrations, the Secretary of Energy shall consider—

(A) the need and intent of the Congress to stimulate and encourage private sector production as well as public knowledge, acceptance, and use of electric and hybrid vehicles; and

(B) demonstration of varying degrees of vehicle operations, management, and control for maximum widespread effectiveness and exposure to public use.

(3) The demonstration period shall extend through the fiscal year 1986, with purchase or leasing continuing through the fiscal year 1984. During the demonstration period the Secretary of Energy shall demonstrate 7,500 to 10,000 electric and hybrid vehicles. No more than 400 vehicles may be procured for this purpose during fiscal year 1978. In order to allow industry time for advanced planning, the size and nature of projected electric and hybrid vehicle leasing and procurements will be made public by the administering agency. Publications under the preceding sentence (each covering a period of two years) shall be released annually starting at an appropriate time in the fiscal year 1978.

(d) Arrangements for the demonstration of vehicles

The Secretary of Energy, in supervising the demonstration of vehicles acquired under subsection (c) of this section, shall make such arrangements as may be necessary or appropriate—

(1)(A) to make such vehicles available to Federal agencies and to State or local governments and other persons for individual or business use (including farms). The individuals and businesses involved shall be selected by an equitable process which assures that the Secretary of Energy will receive accurate and adequate data on vehicle performance, including representative geographical and climatological information and data on user reaction to the utilization of electric and hybrid vehicles. Such individuals and businesses shall be given the option of purchasing or leasing such vehicles under terms and conditions which will promote their widespread use;

(B) to pay the differential operating costs of such vehicles to the extent necessary to assure the adequate demonstration of such vehicles;

(2) for demonstration maintenance projects, including maintenance organization and equipment needs and model training projects for maintenance procedures; and

(3) for the dissemination of data on electric and hybrid vehicle safety and operating characteristics (including nontechnical descriptive data which shall be made available by the Government Printing Office) (A) to Federal, State, and local consumer affairs agencies and groups; (B) to Federal, State, and local agricultural and rural agencies and groups; and (C) to the public.

(e) Displacement of private procurement; reports to congressional committees; reduction of number purchased

(1) At least 60 days prior to entering into any contract for the purchase or lease of any electric or hybrid vehicle under subsection (c)(1) of this section or any advanced electric or hybrid vehicle under subsection (c)(2) of this section, the Secretary of Energy shall determine (A) if the purchase or lease of the number of such vehicles specified in such subsection (c)(1) or (c)(2) of this section will, with high probability, displace the normal level of private procurement of such vehicles which would conform to the applicable performance standards promulgated pursuant to subsection (b) of this section and which would be used in the United States, and (B) if such displacement will occur, the necessary extent of such displacement in order to carry out the purposes of this chapter.

(2) The Secretary of Energy shall reduce the number of vehicles for which he shall contract for the purchase or lease under subsection (c)(1) or (c)(2) of this section by the number determined under subsection (e)(1)(A) of this section as modified by subsection (e)(1)(B) of this section, except in no event shall he contract for the purchase or lease pursuant to subsection (c)(1) of this section of less than 1,000 electric or hybrid vehicles, and in no event shall he contract for the purchase or lease pursuant to subsection (c)(2) of this section of less than 2,500 advanced electric or hybrid vehicles unless he determines on the basis of responses to the solicitations for proposals for such contracts, under the provisions of subsections (c)(1) and (c)(2) of this section that lesser numbers of such vehicles which satisfy the applicable performance standards will be available within the delivery periods. All other provisions of subsection (c) of this section shall apply.

(Pub. L. 94–413, §7, Sept. 17, 1976, 90 Stat. 1263; Pub. L. 95–91, title III, §301(a), Aug. 4, 1977, 91 Stat. 577; Pub. L. 95–238, title VI, §601, Feb. 25, 1978, 92 Stat. 91; Pub. L. 96–470, title I, §105, Oct. 19, 1980, 94 Stat. 2238; Pub. L. 97–375, title I, §106(b), Dec. 21, 1982, 96 Stat. 1820; Pub. L. 103–437, §5(d)(1), Nov. 2, 1994, 108 Stat. 4582.)

AMENDMENTS

1994—Subsec. (b)(4). Pub. L. 103–437 substituted "Committee on Science, Space, and Technology" for "Committee on Science and Technology".

1982—Subsec. (e)(1). Pub. L. 97–375 struck out provision that at the time any determination on the displacement of private procurement of hybrid vehicles was made, that Secretary of Energy transmit such determination, with relevant supporting information, to the Committee on Science and Technology of the House and the Committee on Commerce, Science, and Transportation of the Senate.

1980—Subsec. (c)(4). Pub. L. 96–470 struck out par. (4) which provided that if the Administrator determines on the basis of his annual review of the program that at least 200 vehicles cannot be added to the project during fiscal year 1978, at least 600 during fiscal year 1979, at least 1,700 during fiscal year 1980, and at least 7,500 in the aggregate during the fiscal years 1981 through 1984, he immediately forward a detailed explanation to Congress.

1978—Subsec. (b)(3). Pub. L. 95–238, §601(a), struck out requirement that rules promulgated under par. (1) be amended not later than 6 months prior to the date for contracts specified in subsec. (c)(2) of this section.

Subsec. (b)(4). Pub. L. 95–238, §601(b), substituted provisions relating to transmission of standards developed under par. (1) and all revised standards established in connection with the demonstrations specified in subsec. (c)(2) of this section, for provisions relating to transmission of standards developed under par. (1) as revised and currently in effect prior to contracts for the production of vehicles under subsec. (c)(2) of this section.

Subsec. (c). Pub. L. 95–238, §601(c), in par. (1) substituted provisions relating to the first contracts for purchase or lease of vehicles and delivery of such vehicles, for provisions relating to contracts for the purchase or lease of 2,500 vehicles and delivery of such vehicles within 39 months after Sept. 17, 1976, in par. (2) substituted provisions relating to contracts for the purchase or lease of additional vehicles which satisfy amended performance standards and are improvements in the state-of-the-art and criteria for demonstrations, for provisions relating to contracts for the purchase or lease of 5,000 advanced vehicles and delivery of such vehicles within 72 months after Sept. 17, 1976, with an extention of the delivery period for 6 additional months, and added pars. (3) and (4).

TRANSFER OF FUNCTIONS

"Secretary of Energy" substituted for "Administrator" in subsecs. (a), (b)(1), (2), (d), and (e) pursuant to section 301(a) of Pub. L. 95–91, see Codification note set out under section 2502 of this title.

§2507. Contracts

(a) Research, development, and demonstration

The Secretary of Energy shall provide funds, by contract, to initiate, continue, supplement, and maintain research, development, and demonstration activities which are necessary to carry out the purposes of the project. The Secretary of Energy may enter into such contracts with any Federal agency, laboratory, university, nonprofit organization, industrial organization, public or private agency, institution, organization, corporation, partnership, or individual.

(b) Consultation

In addition to the requirements of sections 2503 and 2504 of this title, the Secretary of Energy, in the exercise of his duties and responsibilities under this section, shall consult with the Department of Transportation, the Environmental Protection Agency, the National Aeronautics and Space Administration, the Department of Agriculture, and representatives of other appropriate Federal agencies, and shall establish procedures for periodic consultation with representatives of science, industry, and such other groups as may have special expertise in electric and hybrid vehicle research, development, and demonstration.

(c) Rules of Secretary of Energy; funding applications; required advertising

Each contract under this section shall be entered into in accordance with such rules as the Secretary of Energy may prescribe in accordance with the provisions of this section. Each

application for funding shall be made in writing in such form and with such content and other submissions as the Secretary of Energy shall require. The Secretary of Energy may enter into contracts under this section without regard to section 6101 of title 41.

(d) Purchase or lease of demonstration vehicles pursuant to agreements and utilization of Federal forms of assistance and participation authorized under other statutory provisions

In addition to contracting for the purchase or lease of vehicles when conducting the demonstrations established under section 2506 of this title, the Secretary of Energy may acquire or secure use of such vehicles, or have such vehicles acquired or used by others, by making agreements and utilizing various forms of Federal assistance and participation which is authorized under the Energy Reorganization Act of 1974 (Public Law 93–438) [42 U.S.C. 5801 et seq.] and the Federal Nonnuclear Energy Research and Development Act of 1974 (Public Law 93–577) [42 U.S.C. 5901 et seq.].

(e) Cost-sharing and use of American materials for demonstrations

When contracting and otherwise using Federal funds to conduct demonstrations under this chapter, the Secretary of Energy shall seek cost-sharing with others to the maximum extent practical. During the first 2 years of demonstration activities the Secretary of Energy may enter into procurement or lease contracts for purposes of carrying out demonstrations under this chapter without regard to the provisions of chapter 83 of title 41.

(Pub. L. 94–413, §8, Sept. 17, 1976, 90 Stat. 1266; Pub. L. 95–91, title III, §301(a), Aug. 4, 1977, 91 Stat. 577; Pub. L. 95–238, title VI, §602, Feb. 25, 1978, 92 Stat. 92.)

REFERENCES IN TEXT

The Energy Reorganization Act of 1974 (Public Law 93–438), referred to in subsec. (d), is Pub. L. 93–438, Oct. 11, 1974, 88 Stat. 1233, as amended, which is classified principally to chapter 73 (§5801 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of Title 42 and Tables.

The Federal Nonnuclear Energy Research and Development Act of 1974 (Public Law 93–577), referred to in subsec. (d), is Pub. L. 93–577, Dec. 31, 1974, 88 Stat. 1878, as amended, which is classified generally to chapter 74 (§5901 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 5901 of Title 42 and Tables.

CODIFICATION

In subsec. (b), the words "the Federal Energy Administration," which followed "Environmental Protection Agency," have been omitted from the Code in view of the termination of the Federal Energy Administration and the transfer of the functions of the Administration to the Secretary of Energy pursuant to sections 301(a) and 703 of Pub. L. 95–91 which are classified to sections 7151(a) and 7293 of Title 42, The Public Health and Welfare. This transfer would result in this phrase being redundant in that it would provide for the Secretary of Energy to consult with the Secretary of Energy.

In subsec. (c), "section 6101 of title 41" substituted for "section 3709 of the Revised Statutes (41 U.S.C. 5)" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (e), "chapter 83 of title 41" substituted for "title III of the Act of March 3, 1933 (47 Stat. 1520; 41 U.S.C. 10a–10c)" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

AMENDMENTS

1978—Subsecs. (d), (e). Pub. L. 95–238 added subsecs. (d) and (e).

TRANSFER OF FUNCTIONS

"Secretary of Energy" substituted for "Administrator" in subsecs. (a) to (c) and the first time it appears in subsec. (e) pursuant to section 301(a) of Pub. L. 95–91, see Codification note set out under section 2502 of this title.

§2508. Encouragement and protection of small business

(a) Opportunity to participate

The Secretary of Energy shall take such steps as are feasible to assure that small business concerns have a realistic and adequate opportunity to participate in the project.

(b) Reservation of funds

To assist in accomplishing the objectives of subsection (a) of this section, the Secretary of Energy shall reserve, for contracts with small business concerns, a reasonable portion of the funds made available pursuant to this chapter for research, development, or demonstration of electric or hybrid vehicles.

(c) Contract terms and conditions; planning grants

The Secretary of Energy shall, in addition to the requirements set forth in subsections (a) and (b) of this section—

(1) include in all contracts for research, development, or demonstration of electric or hybrid vehicles such terms, conditions, and payment schedules as may assist in meeting the needs of small business concerns, and shall take steps to avoid the inclusion in such contracts of any terms, conditions, or penalties which would tend to prevent such concerns from participating in the program under this chapter; and

(2) make planning grants available to qualified small business concerns which require assistance in developing, submitting, and entering into such contracts.

(Pub. L. 94–413, §9, Sept. 17, 1976, 90 Stat. 1266; Pub. L. 95–91, title III, §301(a), Aug. 4, 1977, 91 Stat. 577.)

TRANSFER OF FUNCTIONS

"Secretary of Energy" substituted in text for "Administrator" pursuant to section 301(a) of Pub. L. 95–91, see Codification note set out under section 2502 of this title.

§2509. Loan guarantees

(a) Congressional policy

It is the policy of the Congress to assist in the introduction into the Nation's transportation fleet of electric and hybrid vehicles and to assure that qualified small business concerns and other qualified borrowers are not excluded from participation in such development due to lack of adequate capital. Accordingly, it is the policy of the Congress to provide guarantees of loans made for such purposes.

(b) Encouragement of commercial production; purpose of loans

In order to encourage the commercial production of electric and hybrid vehicles, the Secretary of Energy is authorized to guarantee, and to enter into commitments to guarantee, principal and interest on loans made by lenders to qualified borrowers, primarily small business concerns, for the purposes of—

(1) research and development related to electric and hybrid vehicle technology;

(2) prototype development for such vehicles and parts thereof;

(3) construction of capital equipment related to research on, and development and production of, electric and hybrid vehicles and components; or

(4) initial operating expenses associated with the development and production of electric and hybrid vehicles and components.

(c) Maximum amount of loan guarantee

Any guarantee under this section shall apply only to so much of the principal amount of the loan involved as does not exceed 90 percentum of the aggregate cost of the activity with respect to which the loan is made.

(d) Terms and conditions of guarantee

Loan guarantees under this section shall be on such terms and conditions as the Secretary of

Energy determines, except that a guarantee shall be made under this section only if—

(1) the loan bears interest at a rate not to exceed such annual percent on the principal obligation outstanding as the Secretary of Energy determines to be reasonable, taking into account the range of interest rates prevailing in the private sector for similar loans and risks by the United States;

(2) the terms of such loan require full repayment over a period not to exceed 15 years;

(3) in the judgment of the Secretary of Energy, the amount of the loan (when combined with amounts available to the qualified borrower from other sources) will be sufficient to carry out the activity with respect to which the loan is made;

(4) in the judgment of the Secretary of Energy, there is reasonable assurance of repayment of the loan by the qualified borrower; and

(5) no loan shall be guaranteed by the Secretary of Energy under subsection (b) of this section unless the Secretary of Energy finds that no other reasonable means of financing or refinancing is reasonably available to the applicant.

(e) Maximum guarantee per loan; maximum of aggregate guarantees; Electric and Hybrid Vehicle Development Fund; establishment, funding, etc.

(1) The amount of the guarantee of any loan shall not exceed $3,000,000, unless the Secretary of Energy finds that a higher guarantee level for specific loan guarantees is necessary in order to carry out the purposes of this chapter. If the Secretary of Energy makes such finding, he shall immediately report that finding to the Speaker of the House of Representatives, the President of the Senate, the Committee on Science, Space, and Technology of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate.

(2) The aggregate amount of guarantees outstanding under this section at any one time shall not exceed $60,000,000.

(3)(A) There is established in the Treasury of the United States an Electric and Hybrid Vehicle Development Fund (hereinafter in this paragraph referred to as the "fund"), which shall be available to the Secretary of Energy for carrying out the loan guarantee and principal and interest assistance program authorized by this chapter, including the payment of administrative expenses incurred in connection therewith. Moneys in the fund not needed for current operations may, with the approval of the Secretary of the Treasury, be invested in bonds or other obligations of, or guaranteed by, the United States.

(B) There shall be paid into the fund such part of the amounts appropriated pursuant to section 2514 of this title as the Secretary of Energy deems necessary to carry out the purposes of this chapter and such amounts as may be returned to the United States pursuant to subsection (g) of this section, and the amounts in the fund shall remain available until expended, except that after the expiration of the 7-year period established by subsection (h) of this section such amounts in the fund as are not required to secure outstanding guarantee obligations shall be paid into the general fund of the Treasury.

(C) If at any time the moneys available in the fund are insufficient to enable the Secretary of Energy to discharge his responsibilities under this section, he shall issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. This borrowing authority shall be effective only to such extent or in such amounts as are specified in appropriation Acts. Such authority shall be without fiscal year limitation. Redemption of such notes or obligations shall be made by the Secretary of Energy from appropriations or other moneys available under this chapter. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, which shall not be less than a rate determined by taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury shall purchase any notes or other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under that chapter are extended to include any purchase of such notes or obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this

subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

(D) Business-type financial reports covering the operations of the fund shall be submitted to the Congress by the Secretary of Energy annually upon the completion of the appropriate accounting period.

(f) Qualified borrower

As used in this section, the term "qualified borrower" means any partnership, corporation, or other legal entity which (as determined by the Secretary of Energy) has presented satisfactory evidence of an interest in electric or hybrid vehicle technology and is capable of performing research or completing the development and production of electric or hybrid vehicles or any components thereof in an acceptable manner.

(g) Payment of principal and interest; default; recovery of losses

(1) With respect to any loan guaranteed pursuant to this section, the Secretary of Energy is authorized to enter into a contract to pay, and to pay, the lender for and on behalf of the borrower the principal and interest charges which become due and payable on the unpaid balance of such loan if the Secretary of Energy finds—

(A) that the borrower is unable to meet principal and interest charges, that it is in the public interest to permit the borrower to continue to pursue the purposes of the project, and that the probable net cost to the Federal Government in paying such principal will be less than that which would result in the event of a default; and

(B) that the amount of such principal and interest charges which the Secretary of Energy is authorized to pay shall be no greater than the amount of principal and interest which the borrower is obligated to pay under the loan agreement.

(2) In the event of any default by a qualified borrower on a guaranteed loan, the Secretary of Energy is authorized to make payment in accordance with the guarantee, and the Attorney General shall take such action as may be appropriate to recover the amounts of such payments (including any payment of principal and interest under paragraph (1)) from such assets of the defaulting borrower as are associated with the activity with respect to which the loan was made or from any other surety included in the terms of the guarantee.

(h) Seven year limitation

No loan guarantee shall be made, or interest assistance contracts entered into, pursuant to this section, after the expiration of the 7-year period following September 17, 1976.

(i) Citizenship of applicant; corporations; waiver

An applicant seeking a guarantee under this section must be a citizen or national of the United States. A corporation, partnership, firm, or association shall not be deemed to be a citizen or national of the United States unless the Secretary of Energy determines that it satisfactorily meets all the requirements of section 50501 of title 46, for determining such citizenship, except that the provisions in subsections (a) and (b) of such section 50501 concerning (1) the citizenship of officers or directors of a corporation, and (2) the interest required to be owned in the case of a corporation, association, or partnership operating a vessel in the coastwise trade, shall not be applicable. The Secretary of Energy, in consultation with the Secretary of State, may waive such requirements in the case of a corporation, partnership, firm, or association, controlling interest in which is owned by citizens of countries which are participants in the International Energy Agreement.

(j) Pledge of full faith and credit of United States

The full faith and credit of the United States is pledged to the payment of all obligations incurred under this section.

(Pub. L. 94–413, §10, Sept. 17, 1976, 90 Stat. 1267; Pub. L. 95–91, title III, §301(a), Aug. 4, 1977, 91 Stat. 577; Pub. L. 95–238, title VI, §603, Feb. 25, 1978, 92 Stat. 93; Pub. L. 103–437, §5(d)(2), Nov. 2, 1994, 108 Stat. 4582.)

CODIFICATION

In subsec. (e)(3)(C), "chapter 31 of title 31" and "that chapter" substituted for "the Second Liberty Bond Act, as amended" and "that Act", respectively, on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

In subsec. (i), "section 50501 of title 46" substituted for "section 2 of the Shipping Act of 1916 (46 U.S.C. 802)" and "subsections (a) and (b) of such section 50501" substituted for "subsection (a) of such section 2" on authority of Pub. L. 109–304, §18(c), Oct. 6, 2006, 120 Stat. 1709, section 8(b) of which enacted parts A and B of subtitle V of Title 46, Shipping.

AMENDMENTS

1994—Subsec. (e)(1). Pub. L. 103–437 substituted "Committee on Science, Space, and Technology" for "Committee on Science and Technology" and "Committee on Commerce, Science, and Transportation" for "Committee on Commerce".

1978—Subsec. (e)(3). Pub. L. 95–238, §603(a)(1), added par. (3).

Subsec. (g). Pub. L. 95–238, §603(b), inserted provisions relating to payment of principal by the Administrator.

Subsec. (h). Pub. L. 95–238, §603(c), substituted "7" for "5".

Subsec. (j). Pub. L. 95–238, §603(a)(2), added subsec. (j).

TRANSFER OF FUNCTIONS

"Secretary of Energy" substituted for "Administrator" in subsecs. (b), (d), (e)(1), (f), and (i) pursuant to section 301(a) of Pub. L. 95–91, see Codification note set out under section 2502 of this title.

§2510. Use of electric and hybrid vehicles by Federal agencies

The Postmaster General of the United States Postal Service, the Administrator of the General Services Administration, the Secretary of Defense, and the heads of other Federal agencies shall—

(1) carry out a study of the practicability of using electric and hybrid vehicles in the performance of some or all of the functions of their agencies; and

(2) arrange for the introduction of electric and hybrid vehicles into their fleets as soon as possible.

For competitive procurement purposes in purchasing such vehicles, life-cycle costing and any beneficial air pollution control characteristics of electric and hybrid vehicles shall be fully taken into account. If the head of the agency involved determines that electric or hybrid vehicles are technologically practicable, but that they are not completely economically competitive with conventional vehicles, the Secretary of Energy may, for purposes of the demonstration program described in section 2506 of this title, pay to such agency the incremental costs of the electric or hybrid vehicles, including differential operating costs.

(Pub. L. 94–413, §11, Sept. 17, 1976, 90 Stat. 1268; Pub. L. 95–91, title III, §301(a), Aug. 4, 1977, 91 Stat. 577.)

TRANSFER OF FUNCTIONS

"Secretary of Energy" substituted in text for "Administrator" pursuant to section 301(a) of Pub. L. 95–91, see Codification note set out under section 2502 of this title.

§2511. Patents

Section 5908 of title 42 shall apply to any contract (including any assignment, substitution of parties, or subcontract thereunder), entered into, made, or issued by the Secretary of Energy pursuant to section 2507 of this title.

(Pub. L. 94–413, §12, Sept. 17, 1976, 90 Stat. 1269; Pub. L. 95–91, title III, §301(a), Aug. 4, 1977, 91 Stat. 577.)

TRANSFER OF FUNCTIONS

"Secretary of Energy" substituted in text for "Administrator" pursuant to section 301(a) of Pub. L. 95–91, see Codification note set out under section 2502 of this title.

§2512. Studies

(a) Bias of surface transportation systems; submission of report

The Secretary of Energy shall conduct a study to determine the existence of any tax, regulatory, traffic, urban design, rural electrical, or other institutional factor which tends or may tend to bias surface transportation systems toward vehicles of particular characteristics. The Secretary of Energy shall submit a report to the Congress on the findings and conclusions of such study, within 1 year after September 17, 1976. The report shall include any legislative or other recommendations of the Secretary of Energy.

(b) Material demand and pollution effect; impact statement

The Secretary of Energy shall conduct a continuing assessment of the long-range material demand and pollution effects which may result from or in connection with the electrification of urban traffic. Such assessment shall include a statement of the Secretary of Energy's current findings in each report submitted under section 2513 [1] of this title. Any environmental impact statement which may be filed under a Federal law with respect to research, development, or demonstration activities under this chapter shall include reference to the matters which are subject to assessment under this subsection.

(c) Incentives to encourage utilization; inclusion of electric vehicles in calculation of average fuel economy; evaluation program; annual report; final report and recommendations to Congress on January 1, 1987

The Secretary of Energy shall perform, or cause to be performed, studies and research on incentives to promote broader utilization and consumer acceptance of electric and hybrid vehicle technologies. A description and a statement of the findings of such studies and research activities shall be included in each report submitted under section 2513 [1] of this title.

(1) The Secretary of Energy in consultation with the Secretary of Transportation and the Administrator of the Environmental Protection Agency is authorized and directed to conduct a seven-year evaluation program of the inclusion of electric vehicles, as defined in section 512(b)(2) [1] of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2012(b)(2)), in the calculation of average fuel economy pursuant to section 32904(a)(1) of title 49 to determine the value and implications of such inclusion as an incentive for the early initiation of industrial engineering development and initial commercialization of electric vehicles in the United States. The evaluation program shall be conducted in parallel with the research and development activities of section 2505 of this title and demonstration activities of section 2506 of this title to provide all necessary information no later than January 1, 1987, for the private sector and Federal, State and local officials to make required decisions for the full commercialization of electric vehicles in the United States.

(2) The Administrator of the Environmental Protection Agency, in consultation with the Secretary of Energy and the Secretary of Transportation, shall implement immediately the evaluation program by promulgating, within sixty days of January 7, 1980, regulations to include electric vehicles in average fuel economy calculations under section 32904(a)(1) of title 49.

(3) The Secretary of Energy, in consultation with the Secretary of Transportation and the Administrator of the Environmental Protection Agency, shall include a full discussion of this evaluation program in the annual report required by section 2513 [1] of this title in each year after promulgation of the regulations under paragraph (2). The Secretary of Energy, in consultation with the Secretary of Transportation and the Administrator of the Environmental Protection Agency, shall submit to the Congress on January 1, 1987, a final report on the results of the evaluation program and any recommendations regarding the continued inclusion of electric vehicles in the average fuel economy calculations under part C of subtitle VI of title 49.

(d) Safety standards and regulations

The Secretary of Transportation shall conduct a study of the current and future applicability of safety standards and regulations to electric and hybrid vehicles. The Secretary of Transportation shall report the results of such study to the Secretary of Energy and the Congress within 1 year after September 17, 1976.

(e) Regenerative braking systems

The Secretary of Energy shall conduct a study to determine the overall effectiveness and feasibility of including regenerative braking systems on electric and other automobiles in order to recover energy. In such study the Secretary of Energy shall—

(1) review the history of regenerative braking devices;

(2) describe relevant experimental test data and theoretical calculations with respect to such devices;

(3) assess the net energy impacts and cost effectiveness of such devices;

(4) examine present patents and patent policy regarding such devices; and

(5) determine whether regenerative braking should be used on some of the advanced electric or hybrid vehicles to be purchased or leased pursuant to section 2506(c)(2) of this title.

The Secretary of Energy shall submit a report to the Congress on the findings and conclusions of such study within 1 year after September 17, 1976.

(Pub. L. 94–413, §13, Sept. 17, 1976, 90 Stat. 1269; Pub. L. 95–91, title III, §301(a), Aug. 4, 1977, 91 Stat. 577; Pub. L. 96–185, §18, Jan. 7, 1980, 93 Stat. 1336.)

REFERENCES IN TEXT

Section 2513 of this title, referred to in subsecs. (b) and (c), was repealed by Pub. L. 104–66, title I, §1051(o), Dec. 21, 1995, 109 Stat. 717.

Section 512(b)(2) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2012(b)(2)), referred to in subsec. (c)(1), was repealed by Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

CODIFICATION

In subsec. (c), "section 32904(a)(1) of title 49" substituted for "section 503(a)(1) and (2) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2003(a)(1) and (2))" and "section 503(a)(1) and (2) of the Motor Vehicle Information and Cost Savings Act", and "part C of subtitle VI of title 49" substituted for "the Motor Vehicle Information and Cost Savings Act [15 U.S.C. 1901 et seq.]" on authority of Pub. L. 103–272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation, and on authority of Pub. L. 103–429, §10(b), Oct. 31, 1994, 108 Stat. 4391, section 6(43)(B) of which enacted section 32918 as part of part C of subtitle VI of Title 49.

January 7, 1980, referred to in subsec. (c)(2), was in the original "enactment of the Act" which has been translated as meaning the date of enactment of Pub. L. 96–185 as the probable intent of Congress in view of the fact that section 18 of Pub. L. 96–185 enacted subsec. (c)(1) to (3) of this section.

A part of par. (2) of section 2512(c) of the Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976, as added by Pub. L. 96–185, has not been included in the text of subsec. (c)(2) of this section. The omitted provision consists of directory language for an amendment of section 2003 of this title and the indicated amendment has been executed to the text of that section as directed.

In subsec. (d), "Secretary of Transportation" substituted for "Secretary" in two places for clarity, see Codification note set out under section 2502 of this title.

AMENDMENTS

1980—Subsec. (c)(1) to (3). Pub. L. 96–185 added pars. (1) to (3).

TRANSFER OF FUNCTIONS

"Secretary of Energy" substituted for "Administrator" in subsecs. (a), (b), (d), and (e) pursuant to section 301(a) of Pub. L. 95–91, see Codification note set out under section 2502 of this title.

ELECTRIC VEHICLES

Pub. L. 100–494, §7, Oct. 14, 1988, 102 Stat. 2452, directed Secretary of Transportation to study whether

regulations should be amended or promulgated to stimulate production and introduction of electric and solar-powered vehicles into commerce and to report to Congress on results of study, prior to repeal by Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379.

[1] *See References in Text note below.*

§2513. Repealed. Pub. L. 104–66, title I, §1051(o), Dec. 21, 1995, 109 Stat. 717

Section, Pub. L. 94–413, §14, Sept. 17, 1976, 90 Stat. 1270; Pub. L. 95–91, title III, §301(a), Aug. 4, 1977, 91 Stat. 577, directed Secretary of Energy to submit to Congress annual reports on activities under this chapter.

§2514. Authorization for appropriations

(a) There are authorized to be appropriated to the Secretary of Energy, for purposes of carrying out this chapter, (1) not to exceed $30,000,000 for the fiscal year ending September 30, 1977, except that at least $10,000,000 of such authorization shall be allocated for battery research and development; (2) not to exceed $40,000,000 for the fiscal year ending September 30, 1978; (3) not to exceed $25,000,000 for the fiscal year ending September 30, 1979; (4) not to exceed $20,000,000 for the fiscal year ending September 30, 1980; and (5) not to exceed $45,000,000 for the fiscal year ending September 30, 1981. Any amount appropriated pursuant to this section shall remain available until expended, and any amount authorized for any fiscal year prior to the fiscal year ending September 30, 1981, but not appropriated, may be appropriated for any succeeding fiscal year through the fiscal year ending September 30, 1983.

(b) Any moneys received by the Secretary of Energy from vehicle sales or leases or other activities under this chapter may be retained and used for purposes of carrying out this chapter, notwithstanding the provisions of section 3302(b) of title 31, and may remain available until expended; but the amount authorized to be appropriated for any fiscal year under subsection (a) of this section shall be reduced by the amount of the moneys so received in that year.

(Pub. L. 94–413, §16, Sept. 17, 1976, 90 Stat. 1270; Pub. L. 95–91, title III, §301(a), Aug. 4, 1977, 91 Stat. 577.)

CODIFICATION

In subsec. (b), "section 3302(b) of title 31" substituted for "section 3617 of the Revised Statutes (31 U.S.C. 484)" on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

TRANSFER OF FUNCTIONS

"Secretary of Energy" substituted in text for "Administrator" pursuant to section 301(a) of Pub. L. 95–91, see Codification note set out under section 2502 of this title.

CHAPTER 53—TOXIC SUBSTANCES CONTROL

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SUBCHAPTER I—CONTROL OF TOXIC SUBSTANCES

§2601. Findings, policy, and intent

(a) Findings

The Congress finds that—

(1) human beings and the environment are being exposed each year to a large number of chemical substances and mixtures;

(2) among the many chemical substances and mixtures which are constantly being developed and produced, there are some whose manufacture, processing, distribution in commerce, use, or disposal may present an unreasonable risk of injury to health or the environment; and

(3) the effective regulation of interstate commerce in such chemical substances and mixtures also necessitates the regulation of intrastate commerce in such chemical substances and mixtures.

(b) Policy

It is the policy of the United States that—

(1) adequate data should be developed with respect to the effect of chemical substances and mixtures on health and the environment and that the development of such data should be the responsibility of those who manufacture and those who process such chemical substances and mixtures;

(2) adequate authority should exist to regulate chemical substances and mixtures which present an unreasonable risk of injury to health or the environment, and to take action with respect to chemical substances and mixtures which are imminent hazards; and

(3) authority over chemical substances and mixtures should be exercised in such a manner as not to impede unduly or create unnecessary economic barriers to technological innovation while fulfilling the primary purpose of this chapter to assure that such innovation and commerce in such chemical substances and mixtures do not present an unreasonable risk of injury to health or the environment.

(c) Intent of Congress

It is the intent of Congress that the Administrator shall carry out this chapter in a reasonable and prudent manner, and that the Administrator shall consider the environmental, economic, and social impact of any action the Administrator takes or proposes to take under this chapter.

(Pub. L. 94–469, title I, §2, Oct. 11, 1976, 90 Stat. 2003; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989.)

EFFECTIVE DATE

Section 31 of title I of Pub. L. 94–469; renumbered title I, Pub. L. 99–519, §3(c), Oct. 22, 1986, 100 Stat. 2989, provided that: "Except as provided in section 4(f) [section 2603(f) of this title], this Act [enacting this chapter] shall take effect on January 1, 1977."

SHORT TITLE OF 2010 AMENDMENT

Pub. L. 111–199, §1, July 7, 2010, 124 Stat. 1359, provided that: "This Act [enacting subchapter VI of this chapter and provisions set out as a note under section 2697 of this title] may be cited as the 'Formaldehyde Standards for Composite Wood Products Act'."

SHORT TITLE OF 2008 AMENDMENT

Pub. L. 110–414, §1, Oct. 14, 2008, 122 Stat. 4341, provided that: "This Act [enacting section 6939f of Title 42, The Public Health and Welfare, amending sections 2605 and 2611 of this title, and enacting provisions set out as a note under section 2611 of this title] may be cited as the 'Mercury Export Ban Act of 2008'."

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–550, title X, §1021(c), Oct. 28, 1992, 106 Stat. 3924, provided that: "This subtitle [subtitle B (§1021) of title X of Pub. L. 102–550, enacting sections 2681 to 2692 of this title and amending sections 2606, 2610, 2612, 2615, 2616, 2618, and 2619 of this title] may be cited as the 'Lead-Based Paint Exposure Reduction Act'."

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–519, §1, Oct. 22, 1986, 100 Stat. 2970, provided that: "This Act [enacting sections 2641 to 2654 of this title and section 4022 of Title 20, Education, amending sections 2614, 2618, and 2619 of this title and sections 4014 and 4021 of Title 20, and enacting provisions set out as a note under section 4014 of Title 20] may be cited as the 'Asbestos Hazard Emergency Response Act of 1986'."

SHORT TITLE

Pub. L. 94–469, §1, Oct. 11, 1976, 90 Stat. 2003; renumbered title I, Pub. L. 99–519, §3(c), Oct. 22, 1986, 100 Stat. 2989, provided that: "This Act [enacting this chapter and provisions set out as notes under this section] may be cited as the 'Toxic Substances Control Act'."

FEDERAL COMPLIANCE WITH POLLUTION CONTROL STANDARDS

For provisions relating to the responsibility of the head of each Executive agency for compliance with applicable pollution control standards, see Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of Title 42, The Public Health and Welfare.

§2602. Definitions

As used in this chapter:

(1) the [1] term "Administrator" means the Administrator of the Environmental Protection Agency.

(2)(A) Except as provided in subparagraph (B), the term "chemical substance" means any organic or inorganic substance of a particular molecular identity, including—

(i) any combination of such substances occurring in whole or in part as a result of a chemical reaction or occurring in nature, and

(ii) any element or uncombined radical.

(B) Such term does not include—

(i) any mixture,

(ii) any pesticide (as defined in the Federal Insecticide, Fungicide, and Rodenticide Act [7

U.S.C. 136 et seq.]) when manufactured, processed, or distributed in commerce for use as a pesticide,

(iii) tobacco or any tobacco product,

(iv) any source material, special nuclear material, or byproduct material (as such terms are defined in the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.] and regulations issued under such Act),

(v) any article the sale of which is subject to the tax imposed by section 4181 of the Internal Revenue Code of 1986 [26 U.S.C. 4181] (determined without regard to any exemptions from such tax provided by section 4182 or 4221 or any other provision of such Code), and

(vi) any food, food additive, drug, cosmetic, or device (as such terms are defined in section 201 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 321]) when manufactured, processed, or distributed in commerce for use as a food, food additive, drug, cosmetic, or device.

The term "food" as used in clause (vi) of this subparagraph includes poultry and poultry products (as defined in sections 4(e) and 4(f) of the Poultry Products Inspection Act [21 U.S.C. 453(e) and (f)]), meat and meat food products (as defined in section 1(j) of the Federal Meat Inspection Act [21 U.S.C. 601(j)]), and eggs and egg products (as defined in section 4 of the Egg Products Inspection Act [21 U.S.C. 1033]).

(3) The term "commerce" means trade, traffic, transportation, or other commerce (A) between a place in a State and any place outside of such State, or (B) which affects trade, traffic, transportation, or commerce described in clause (A).

(4) The terms "distribute in commerce" and "distribution in commerce" when used to describe an action taken with respect to a chemical substance or mixture or article containing a substance or mixture mean to sell, or the sale of, the substance, mixture, or article in commerce; to introduce or deliver for introduction into commerce, or the introduction or delivery for introduction into commerce of, the substance, mixture, or article; or to hold, or the holding of, the substance, mixture, or article after its introduction into commerce.

(5) The term "environment" includes water, air, and land and the interrelationship which exists among and between water, air, and land and all living things.

(6) The term "health and safety study" means any study of any effect of a chemical substance or mixture on health or the environment or on both, including underlying data and epidemiological studies, studies of occupational exposure to a chemical substance or mixture, toxicological, clinical, and ecological studies of a chemical substance or mixture, and any test performed pursuant to this chapter.

(7) The term "manufacture" means to import into the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States), produce, or manufacture.

(8) The term "mixture" means any combination of two or more chemical substances if the combination does not occur in nature and is not, in whole or in part, the result of a chemical reaction; except that such term does include any combination which occurs, in whole or in part, as a result of a chemical reaction if none of the chemical substances comprising the combination is a new chemical substance and if the combination could have been manufactured for commercial purposes without a chemical reaction at the time the chemical substances comprising the combination were combined.

(9) The term "new chemical substance" means any chemical substance which is not included in the chemical substance list compiled and published under section 2607(b) of this title.

(10) The term "process" means the preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce—

(A) in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such substance or mixture, or

(B) as part of an article containing the chemical substance or mixture.

(11) The term "processor" means any person who processes a chemical substance or mixture.

(12) The term "standards for the development of test data" means a prescription of—

(A) the—

(i) health and environmental effects, and

(ii) information relating to toxicity, persistence, and other characteristics which affect health and the environment,

for which test data for a chemical substance or mixture are to be developed and any analysis that is to be performed on such data, and

(B) to the extent necessary to assure that data respecting such effects and characteristics are reliable and adequate—

(i) the manner in which such data are to be developed,

(ii) the specification of any test protocol or methodology to be employed in the development of such data, and

(iii) such other requirements as are necessary to provide such assurance.

(13) The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, American Samoa, the Northern Mariana Islands, or any other territory or possession of the United States.

(14) The term "United States", when used in the geographic sense, means all of the States.

(Pub. L. 94–469, title I, §3, Oct. 11, 1976, 90 Stat. 2004; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989; Pub. L. 100–418, title I, §1214(e)(1), Aug. 23, 1988, 102 Stat. 1156.)

REFERENCES IN TEXT

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in par. (2)(B)(ii), is act June 25, 1947, ch. 125, as amended generally by Pub. L. 92–516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (§136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables.

The Atomic Energy Act of 1954, referred to in par. (2)(B)(iv), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 919, and amended, which is classified principally to chapter 23 (§2011 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 42 and Tables.

The Harmonized Tariff Schedule of the United States, referred to in par. (7), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of Title 19, Customs Duties.

For definition of Canal Zone, Governor of the Canal Zone, and Panama Canal Company, referred to in par. (13), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1988—Par. (7). Pub. L. 100–418 substituted "general note 2 of the Harmonized Tariff Schedule of the United States" for "general headnote 2 of the Tariff Schedules of the United States".

1986—Par. (2)(B)(v). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub. L. 100–418, set out as an Effective Date note under section 3001 of Title 19, Customs Duties.

[1] *So in original. Probably should be capitalized.*

§2603. Testing of chemical substances and mixtures

(a) Testing requirements

If the Administrator finds that—

(1)(A)(i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical

substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B)(i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; and

(2) in the case of a mixture, the effects which the mixture's manufacture, distribution in commerce, processing, use, or disposal or any combination of such activities may have on health or the environment may not be reasonably and more efficiently determined or predicted by testing the chemical substances which comprise the mixture;

the Administrator shall by rule require that testing be conducted on such substance or mixture to develop data with respect to the health and environmental effects for which there is an insufficiency of data and experience and which are relevant to a determination that the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture, or that any combination of such activities, does or does not present an unreasonable risk of injury to health or the environment.

(b) Testing requirement rule

(1) A rule under subsection (a) of this section shall include—

(A) identification of the chemical substance or mixture for which testing is required under the rule,

(B) standards for the development of test data for such substance or mixture, and

(C) with respect to chemical substances which are not new chemical substances and to mixtures, a specification of the period (which period may not be of unreasonable duration) within which the persons required to conduct the testing shall submit to the Administrator data developed in accordance with the standards referred to in subparagraph (B).

In determining the standards and period to be included, pursuant to subparagraphs (B) and (C), in a rule under subsection (a) of this section, the Administrator's considerations shall include the relative costs of the various test protocols and methodologies which may be required under the rule and the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule. Any such rule may require the submission to the Administrator of preliminary data during the period prescribed under subparagraph (C).

(2)(A) The health and environmental effects for which standards for the development of test data may be prescribed include carcinogenesis, mutagenesis, teratogenesis, behavioral disorders, cumulative or synergistic effects, and any other effect which may present an unreasonable risk of injury to health or the environment. The characteristics of chemical substances and mixtures for which such standards may be prescribed include persistence, acute toxicity, subacute toxicity, chronic toxicity, and any other characteristic which may present such a risk. The methodologies that may be prescribed in such standards include epidemiologic studies, serial or hierarchical tests, in vitro tests, and whole animal tests, except that before prescribing epidemiologic studies of employees, the Administrator shall consult with the Director of the National Institute for Occupational Safety and Health.

(B) From time to time, but not less than once each 12 months, the Administrator shall review the adequacy of the standards for development of data prescribed in rules under subsection (a) of this section and shall, if necessary, institute proceedings to make appropriate revisions of such standards.

(3)(A) A rule under subsection (a) of this section respecting a chemical substance or mixture shall require the persons described in subparagraph (B) to conduct tests and submit data to the Administrator on such substance or mixture, except that the Administrator may permit two or more of such persons to designate one such person or a qualified third party to conduct such tests and submit such data on behalf of the persons making the designation.

(B) The following persons shall be required to conduct tests and submit data on a chemical substance or mixture subject to a rule under subsection (a) of this section:

(i) Each person who manufactures or intends to manufacture such substance or mixture if the Administrator makes a finding described in subsection (a)(1)(A)(ii) or (a)(1)(B)(ii) of this section with respect to the manufacture of such substance or mixture.

(ii) Each person who processes or intends to process such substance or mixture if the Administrator makes a finding described in subsection (a)(1)(A)(ii) or (a)(1)(B)(ii) of this section with respect to the processing of such substance or mixture.

(iii) Each person who manufactures or processes or intends to manufacture or process such substance or mixture if the Administrator makes a finding described in subsection (a)(1)(A)(ii) or (a)(1)(B)(ii) of this section with respect to the distribution in commerce, use, or disposal of such substance or mixture.

(4) Any rule under subsection (a) of this section requiring the testing of and submission of data for a particular chemical substance or mixture shall expire at the end of the reimbursement period (as defined in subsection (c)(3)(B) of this section) which is applicable to test data for such substance or mixture unless the Administrator repeals the rule before such date; and a rule under subsection (a) of this section requiring the testing of and submission of data for a category of chemical substances or mixtures shall expire with respect to a chemical substance or mixture included in the category at the end of the reimbursement period (as so defined) which is applicable to test data for such substance or mixture unless the Administrator before such date repeals the application of the rule to such substance or mixture or repeals the rule.

(5) Rules issued under subsection (a) of this section (and any substantive amendment thereto or repeal thereof) shall be promulgated pursuant to section 553 of title 5 except that (A) the Administrator shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions; (B) a transcript shall be made of any oral presentation; and (C) the Administrator shall make and publish with the rule the findings described in paragraph (1)(A) or (1)(B) of subsection (a) of this section and, in the case of a rule respecting a mixture, the finding described in paragraph (2) of such subsection.

(c) Exemption

(1) Any person required by a rule under subsection (a) of this section to conduct tests and submit data on a chemical substance or mixture may apply to the Administrator (in such form and manner as the Administrator shall prescribe) for an exemption from such requirement.

(2) If, upon receipt of an application under paragraph (1), the Administrator determines that—

(A) the chemical substance or mixture with respect to which such application was submitted is equivalent to a chemical substance or mixture for which data has been submitted to the Administrator in accordance with a rule under subsection (a) of this section or for which data is being developed pursuant to such a rule, and

(B) submission of data by the applicant on such substance or mixture would be duplicative of data which has been submitted to the Administrator in accordance with such rule or which is being developed pursuant to such rule,

the Administrator shall exempt, in accordance with paragraph (3) or (4), the applicant from conducting tests and submitting data on such substance or mixture under the rule with respect to which such application was submitted.

(3)(A) If the exemption under paragraph (2) of any person from the requirement to conduct tests and submit test data on a chemical substance or mixture is granted on the basis of the existence of previously submitted test data and if such exemption is granted during the reimbursement period for such test data (as prescribed by subparagraph (B)), then (unless such person and the persons referred to in clauses (i) and (ii) agree on the amount and method of reimbursement) the Administrator shall order the person granted the exemption to provide fair and equitable reimbursement (in an amount determined under rules of the Administrator)—

(i) to the person who previously submitted such test data, for a portion of the costs incurred by such person in complying with the requirement to submit such data, and

(ii) to any other person who has been required under this subparagraph to contribute with respect to such costs, for a portion of the amount such person was required to contribute.

In promulgating rules for the determination of fair and equitable reimbursement to the persons described in clauses (i) and (ii) for costs incurred with respect to a chemical substance or mixture, the Administrator shall, after consultation with the Attorney General and the Federal Trade Commission, consider all relevant factors, including the effect on the competitive position of the person required to provide reimbursement in relation to the person to be reimbursed and the share of the market for such substance or mixture of the person required to provide reimbursement in relation to the share of such market of the persons to be reimbursed. An order under this subparagraph shall, for purposes of judicial review, be considered final agency action.

(B) For purposes of subparagraph (A), the reimbursement period for any test data for a chemical substance or mixture is a period—

(i) beginning on the date such data is submitted in accordance with a rule promulgated under subsection (a) of this section, and

(ii) ending—

(I) five years after the date referred to in clause (i), or

(II) at the expiration of a period which begins on the date referred to in clause (i) and which is equal to the period which the Administrator determines was necessary to develop such data,

whichever is later.

(4)(A) If the exemption under paragraph (2) of any person from the requirement to conduct tests and submit test data on a chemical substance or mixture is granted on the basis of the fact that test data is being developed by one or more persons pursuant to a rule promulgated under subsection (a) of this section, then (unless such person and the persons referred to in clauses (i) and (ii) agree on the amount and method of reimbursement) the Administrator shall order the person granted the exemption to provide fair and equitable reimbursement (in an amount determined under rules of the Administrator)—

(i) to each such person who is developing such test data, for a portion of the costs incurred by each such person in complying with such rule, and

(ii) to any other person who has been required under this subparagraph to contribute with respect to the costs of complying with such rule, for a portion of the amount such person was required to contribute.

In promulgating rules for the determination of fair and equitable reimbursement to the persons described in clauses (i) and (ii) for costs incurred with respect to a chemical substance or mixture, the Administrator shall, after consultation with the Attorney General and the Federal Trade Commission, consider the factors described in the second sentence of paragraph (3)(A). An order under this subparagraph shall, for purposes of judicial review, be considered final agency action.

(B) If any exemption is granted under paragraph (2) on the basis of the fact that one or more persons are developing test data pursuant to a rule promulgated under subsection (a) of this section and if after such exemption is granted the Administrator determines that no such person has complied with such rule, the Administrator shall (i) after providing written notice to the person who

holds such exemption and an opportunity for a hearing, by order terminate such exemption, and (ii) notify in writing such person of the requirements of the rule with respect to which such exemption was granted.

(d) Notice

Upon the receipt of any test data pursuant to a rule under subsection (a) of this section, the Administrator shall publish a notice of the receipt of such data in the Federal Register within 15 days of its receipt. Subject to section 2613 of this title, each such notice shall (1) identify the chemical substance or mixture for which data have been received; (2) list the uses or intended uses of such substance or mixture and the information required by the applicable standards for the development of test data; and (3) describe the nature of the test data developed. Except as otherwise provided in section 2613 of this title, such data shall be made available by the Administrator for examination by any person.

(e) Priority list

(1)(A) There is established a committee to make recommendations to the Administrator respecting the chemical substances and mixtures to which the Administrator should give priority consideration for the promulgation of a rule under subsection (a) of this section. In making such a recommendation with respect to any chemical substance or mixture, the committee shall consider all relevant factors, including—

(i) the quantities in which the substance or mixture is or will be manufactured,

(ii) the quantities in which the substance or mixture enters or will enter the environment,

(iii) the number of individuals who are or will be exposed to the substance or mixture in their places of employment and the duration of such exposure,

(iv) the extent to which human beings are or will be exposed to the substance or mixture,

(v) the extent to which the substance or mixture is closely related to a chemical substance or mixture which is known to present an unreasonable risk of injury to health or the environment,

(vi) the existence of data concerning the effects of the substance or mixture on health or the environment,

(vii) the extent to which testing of the substance or mixture may result in the development of data upon which the effects of the substance or mixture on health or the environment can reasonably be determined or predicted, and

(viii) the reasonably foreseeable availability of facilities and personnel for performing testing on the substance or mixture.

The recommendations of the committee shall be in the form of a list of chemical substances and mixtures which shall be set forth, either by individual substance or mixture or by groups of substances or mixtures, in the order in which the committee determines the Administrator should take action under subsection (a) of this section with respect to the substances and mixtures. In establishing such list, the committee shall give priority attention to those chemical substances and mixtures which are known to cause or contribute to or which are suspected of causing or contributing to cancer, gene mutations, or birth defects. The committee shall designate chemical substances and mixtures on the list with respect to which the committee determines the Administrator should, within 12 months of the date on which such substances and mixtures are first designated, initiate a proceeding under subsection (a) of this section. The total number of chemical substances and mixtures on the list which are designated under the preceding sentence may not, at any time, exceed 50.

(B) As soon as practicable but not later than nine months after January 1, 1977, the committee shall publish in the Federal Register and transmit to the Administrator the list and designations required by subparagraph (A) together with the reasons for the committee's inclusion of each chemical substance or mixture on the list. At least every six months after the date of the transmission to the Administrator of the list pursuant to the preceeding [1] sentence, the committee shall make such revisions in the list as it determines to be necessary and shall transmit them to the Administrator together with the committee's reasons for the revisions. Upon receipt of any such revision, the

Administrator shall publish in the Federal Register the list with such revision, the reasons for such revision, and the designations made under subparagraph (A). The Administrator shall provide reasonable opportunity to any interested person to file with the Administrator written comments on the committee's list, any revision of such list by the committee, and designations made by the committee, and shall make such comments available to the public. Within the 12-month period beginning on the date of the first inclusion on the list of a chemical substance or mixture designated by the committee under subparagraph (A) the Administrator shall with respect to such chemical substance or mixture either initiate a rulemaking proceeding under subsection (a) of this section or if such a proceeding is not initiated within such period, publish in the Federal Register the Administrator's reason for not initiating such a proceeding.

(2)(A) The committee established by paragraph (1)(A) shall consist of eight members as follows:

(i) One member appointed by the Administrator from the Environmental Protection Agency.

(ii) One member appointed by the Secretary of Labor from officers or employees of the Department of Labor engaged in the Secretary's activities under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.].

(iii) One member appointed by the Chairman of the Council on Environmental Quality from the Council or its officers or employees.

(iv) One member appointed by the Director of the National Institute for Occupational Safety and Health from officers or employees of the Institute.

(v) One member appointed by the Director of the National Institute of Environmental Health Sciences from officers or employees of the Institute.

(vi) One member appointed by the Director of the National Cancer Institute from officers or employees of the Institute.

(vii) One member appointed by the Director of the National Science Foundation from officers or employees of the Foundation.

(viii) One member appointed by the Secretary of Commerce from officers or employees of the Department of Commerce.

(B)(i) An appointed member may designate an individual to serve on the committee on the member's behalf. Such a designation may be made only with the approval of the applicable appointing authority and only if the individual is from the entity from which the member was appointed.

(ii) No individual may serve as a member of the committee for more than four years in the aggregate. If any member of the committee leaves the entity from which the member was appointed, such member may not continue as a member of the committee, and the member's position shall be considered to be vacant. A vacancy in the committee shall be filled in the same manner in which the original appointment was made.

(iii) Initial appointments to the committee shall be made not later than the 60th day after January 1, 1977. Not later than the 90th day after such date the members of the committee shall hold a meeting for the selection of a chairperson from among their number.

(C)(i) No member of the committee, or designee of such member, shall accept employment or compensation from any person subject to any requirement of this chapter or of any rule promulgated or order issued thereunder, for a period of at least 12 months after termination of service on the committee.

(ii) No person, while serving as a member of the committee, or designee of such member, may own any stocks or bonds, or have any pecuniary interest, of substantial value in any person engaged in the manufacture, processing, or distribution in commerce of any chemical substance or mixture subject to any requirement of this chapter or of any rule promulgated or order issued thereunder.

(iii) The Administrator, acting through attorneys of the Environmental Protection Agency, or the Attorney General may bring an action in the appropriate district court of the United States to restrain any violation of this subparagraph.

(D) The Administrator shall provide the committee such administrative support services as may be necessary to enable the committee to carry out its function under this subsection.

(f) Required actions

Upon the receipt of—

(1) any test data required to be submitted under this chapter, or

(2) any other information available to the Administrator,

which indicates to the Administrator that there may be a reasonable basis to conclude that a chemical substance or mixture presents or will present a significant risk of serious or widespread harm to human beings from cancer, gene mutations, or birth defects, the Administrator shall, within the 180-day period beginning on the date of the receipt of such data or information, initiate appropriate action under section 2604, 2605, or 2606 of this title to prevent or reduce to a sufficient extent such risk or publish in the Federal Register a finding that such risk is not unreasonable. For good cause shown the Administrator may extend such period for an additional period of not more than 90 days. The Administrator shall publish in the Federal Register notice of any such extension and the reasons therefor. A finding by the Administrator that a risk is not unreasonable shall be considered agency action for purposes of judicial review under chapter 7 of title 5. This subsection shall not take effect until two years after January 1, 1977.

(g) Petition for standards for the development of test data

A person intending to manufacture or process a chemical substance for which notice is required under section 2604(a) of this title and who is not required under a rule under subsection (a) of this section to conduct tests and submit data on such substance may petition the Administrator to prescribe standards for the development of test data for such substance. The Administrator shall by order either grant or deny any such petition within 60 days of its receipt. If the petition is granted, the Administrator shall prescribe such standards for such substance within 75 days of the date the petition is granted. If the petition is denied, the Administrator shall publish, subject to section 2613 of this title, in the Federal Register the reasons for such denial.

(Pub. L. 94–469, title I, §4, Oct. 11, 1976, 90 Stat. 2006; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989.)

REFERENCES IN TEXT

The Occupational Safety and Health Act of 1970, referred to in text, is Pub. L. 91–596, Dec. 29, 1970, 84 Stat. 1590, as amended, which is classified principally to chapter 15 (§651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

EFFECTIVE DATE

Section effective Jan. 1, 1977, except as provided in subsec. (f) of this section, see section 31 of Pub. L. 94–469, set out as a note under section 2601 of this title.

[1] So in original. Probably should be "preceding".

§2604. Manufacturing and processing notices

(a) In general

(1) Except as provided in subsection (h) of this section, no person may—

(A) manufacture a new chemical substance on or after the 30th day after the date on which the Administrator first publishes the list required by section 2607(b) of this title, or

(B) manufacture or process any chemical substance for a use which the Administrator has determined, in accordance with paragraph (2), is a significant new use,

unless such person submits to the Administrator, at least 90 days before such manufacture or processing, a notice, in accordance with subsection (d) of this section, of such person's intention to manufacture or process such substance and such person complies with any applicable requirement of

subsection (b) of this section.

(2) A determination by the Administrator that a use of a chemical substance is a significant new use with respect to which notification is required under paragraph (1) shall be made by a rule promulgated after a consideration of all relevant factors, including—

(A) the projected volume of manufacturing and processing of a chemical substance,

(B) the extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance,

(C) the extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance, and

(D) the reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

(b) Submission of test data

(1)(A) If (i) a person is required by subsection (a)(1) of this section to submit a notice to the Administrator before beginning the manufacture or processing of a chemical substance, and (ii) such person is required to submit test data for such substance pursuant to a rule promulgated under section 2603 of this title before the submission of such notice, such person shall submit to the Administrator such data in accordance with such rule at the time notice is submitted in accordance with subsection (a)(1) of this section.

(B) If—

(i) a person is required by subsection (a)(1) of this section to submit a notice to the Administrator, and

(ii) such person has been granted an exemption under section 2603(c) of this title from the requirements of a rule promulgated under section 2603 of this title before the submission of such notice,

such person may not, before the expiration of the 90 day period which begins on the date of the submission in accordance with such rule of the test data the submission or development of which was the basis for the exemption, manufacture such substance if such person is subject to subsection (a)(1)(A) of this section or manufacture or process such substance for a significant new use if the person is subject to subsection (a)(1)(B) of this section.

(2)(A) If a person—

(i) is required by subsection (a)(1) of this section to submit a notice to the Administrator before beginning the manufacture or processing of a chemical substance listed under paragraph (4), and

(ii) is not required by a rule promulgated under section 2603 of this title before the submission of such notice to submit test data for such substance,

such person shall submit to the Administrator data prescribed by subparagraph (B) at the time notice is submitted in accordance with subsection (a)(1) of this section.

(B) Data submitted pursuant to subparagraph (A) shall be data which the person submitting the data believes show that—

(i) in the case of a substance with respect to which notice is required under subsection (a)(1)(A) of this section, the manufacture, processing, distribution in commerce, use, and disposal of the chemical substance or any combination of such activities will not present an unreasonable risk of injury to health or the environment, or

(ii) in the case of a chemical substance with respect to which notice is required under subsection (a)(1)(B) of this section, the intended significant new use of the chemical substance will not present an unreasonable risk of injury to health or the environment.

(3) Data submitted under paragraph (1) or (2) shall be made available, subject to section 2613 of this title, for examination by interested persons.

(4)(A)(i) The Administrator may, by rule, compile and keep current a list of chemical substances with respect to which the Administrator finds that the manufacture, processing, distribution in commerce, use, or disposal, or any combination of such activities, presents or may present an

unreasonable risk of injury to health or the environment.

(ii) In making a finding under clause (i) that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or any combination of such activities presents or may present an unreasonable risk of injury to health or the environment, the Administrator shall consider all relevant factors, including—

(I) the effects of the chemical substance on health and the magnitude of human exposure to such substance; and

(II) the effects of the chemical substance on the environment and the magnitude of environmental exposure to such substance.

(B) The Administrator shall, in prescribing a rule under subparagraph (A) which lists any chemical substance, identify those uses, if any, which the Administrator determines, by rule under subsection (a)(2) of this section, would constitute a significant new use of such substance.

(C) Any rule under subparagraph (A), and any substantive amendment or repeal of such a rule, shall be promulgated pursuant to the procedures specified in section 553 of title 5, except that (i) the Administrator shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions, (ii) a transcript shall be kept of any oral presentation, and (iii) the Administrator shall make and publish with the rule the finding described in subparagraph (A).

(c) Extension of notice period

The Administrator may for good cause extend for additional periods (not to exceed in the aggregate 90 days) the period, prescribed by subsection (a) or (b) of this section before which the manufacturing or processing of a chemical substance subject to such subsection may begin. Subject to section 2613 of this title, such an extension and the reasons therefor shall be published in the Federal Register and shall constitute a final agency action subject to judicial review.

(d) Content of notice; publications in the Federal Register

(1) The notice required by subsection (a) of this section shall include—

(A) insofar as known to the person submitting the notice or insofar as reasonably ascertainable, the information described in subparagraphs (A), (B), (C), (D), (F), and (G) of section 2607(a)(2) of this title, and

(B) in such form and manner as the Administrator may prescribe, any test data in the possession or control of the person giving such notice which are related to the effect of any manufacture, processing, distribution in commerce, use, or disposal of such substance or any article containing such substance, or of any combination of such activities, on health or the environment, and

(C) a description of any other data concerning the environmental and health effects of such substance, insofar as known to the person making the notice or insofar as reasonably ascertainable.

Such a notice shall be made available, subject to section 2613 of this title, for examination by interested persons.

(2) Subject to section 2613 of this title, not later than five days (excluding Saturdays, Sundays and legal holidays) after the date of the receipt of a notice under subsection (a) of this section or of data under subsection (b) of this section, the Administrator shall publish in the Federal Register a notice which—

(A) identifies the chemical substance for which notice or data has been received;

(B) lists the uses or intended uses of such substance; and

(C) in the case of the receipt of data under subsection (b) of this section, describes the nature of the tests performed on such substance and any data which was developed pursuant to subsection (b) of this section or a rule under section 2603 of this title.

A notice under this paragraph respecting a chemical substance shall identify the chemical substance by generic class unless the Administrator determines that more specific identification is required in the public interest.

(3) At the beginning of each month the Administrator shall publish a list in the Federal Register of (A) each chemical substance for which notice has been received under subsection (a) of this section and for which the notification period prescribed by subsection (a), (b), or (c) of this section has not expired, and (B) each chemical substance for which such notification period has expired since the last publication in the Federal Register of such list.

(e) Regulation pending development of information

(1)(A) If the Administrator determines that—

(i) the information available to the Administrator is insufficient to permit a reasoned evaluation of the health and environmental effects of a chemical substance with respect to which notice is required by subsection (a) of this section; and

(ii)(I) in the absence of sufficient information to permit the Administrator to make such an evaluation, the manufacture, processing, distribution in commerce, use, or disposal of such substance, or any combination of such activities, may present an unreasonable risk of injury to health or the environment, or

(II) such substance is or will be produced in substantial quantities, and such substance either enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance,

the Administrator may issue a proposed order, to take effect on the expiration of the notification period applicable to the manufacturing or processing of such substance under subsection (a), (b), or (c) of this section, to prohibit or limit the manufacture, processing, distribution in commerce, use, or disposal of such substance or to prohibit or limit any combination of such activities.

(B) A proposed order may not be issued under subparagraph (A) respecting a chemical substance (i) later than 45 days before the expiration of the notification period applicable to the manufacture or processing of such substance under subsection (a), (b), or (c) of this section, and (ii) unless the Administrator has, on or before the issuance of the proposed order, notified, in writing, each manufacturer or processor, as the case may be, of such substance of the determination which underlies such order.

(C) If a manufacturer or processor of a chemical substance to be subject to a proposed order issued under subparagraph (A) files with the Administrator (within the 30-day period beginning on the date such manufacturer or processor received the notice required by subparagraph (B)(ii)) objections specifying with particularity the provisions of the order deemed objectionable and stating the grounds therefor, the proposed order shall not take effect.

(2)(A)(i) Except as provided in clause (ii), if with respect to a chemical substance with respect to which notice is required by subsection (a) of this section, the Administrator makes the determination described in paragraph (1)(A) and if—

(I) the Administrator does not issue a proposed order under paragraph (1) respecting such substance, or

(II) the Administrator issues such an order respecting such substance but such order does not take effect because objections were filed under paragraph (1)(C) with respect to it,

the Administrator, through attorneys of the Environmental Protection Agency, shall apply to the United States District Court for the District of Columbia or the United States district court for the judicial district in which the manufacturer or processor, as the case may be, of such substance is found, resides, or transacts business for an injunction to prohibit or limit the manufacture, processing, distribution in commerce, use, or disposal of such substance (or to prohibit or limit any combination of such activities).

(ii) If the Administrator issues a proposed order under paragraph (1)(A) respecting a chemical substance but such order does not take effect because objections have been filed under paragraph (1)(C) with respect to it, the Administrator is not required to apply for an injunction under clause (i) respecting such substance if the Administrator determines, on the basis of such objections, that the determinations under paragraph (1)(A) may not be made.

(B) A district court of the United States which receives an application under subparagraph (A)(i)

for an injunction respecting a chemical substance shall issue such injunction if the court finds that—

(i) the information available to the Administrator is insufficient to permit a reasoned evaluation of the health and environmental effects of a chemical substance with respect to which notice is required by subsection (a) of this section; and

(ii)(I) in the absence of sufficient information to permit the Administrator to make such an evaluation, the manufacture, processing, distribution in commerce, use, or disposal of such substance, or any combination of such activities, may present an unreasonable risk of injury to health or the environment, or

(II) such substance is or will be produced in substantial quantities, and such substance either enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance.

(C) Pending the completion of a proceeding for the issuance of an injunction under subparagraph (B) respecting a chemical substance, the court may, upon application of the Administrator made through attorneys of the Environmental Protection Agency, issue a temporary restraining order or a preliminary injunction to prohibit the manufacture, processing, distribution in commerce, use, or disposal of such a substance (or any combination of such activities) if the court finds that the notification period applicable under subsection (a), (b), or (c) of this section to the manufacturing or processing of such substance may expire before such proceeding can be completed.

(D) After the submission to the Administrator of test data sufficient to evaluate the health and environmental effects of a chemical substance subject to an injunction issued under subparagraph (B) and the evaluation of such data by the Administrator, the district court of the United States which issued such injunction shall, upon petition, dissolve the injunction unless the Administrator has initiated a proceeding for the issuance of a rule under section 2605(a) of this title respecting the substance. If such a proceeding has been initiated, such court shall continue the injunction in effect until the effective date of the rule promulgated in such proceeding or, if such proceeding is terminated without the promulgation of a rule, upon the termination of the proceeding, whichever occurs first.

(f) Protection against unreasonable risks

(1) If the Administrator finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance with respect to which notice is required by subsection (a) of this section, or that any combination of such activities, presents or will present an unreasonable risk of injury to health or environment before a rule promulgated under section 2605 of this title can protect against such risk, the Administrator shall, before the expiration of the notification period applicable under subsection (a), (b), or (c) of this section to the manufacturing or processing of such substance, take the action authorized by paragraph (2) or (3) to the extent necessary to protect against such risk.

(2) The Administrator may issue a proposed rule under section 2605(a) of this title to apply to a chemical substance with respect to which a finding was made under paragraph (1)—

(A) a requirement limiting the amount of such substance which may be manufactured, processed, or distributed in commerce,

(B) a requirement described in paragraph (2), (3), (4), (5), (6), or (7) of section 2605(a) of this title, or

(C) any combination of the requirements referred to in subparagraph (B).

Such a proposed rule shall be effective upon its publication in the Federal Register. Section 2605(d)(2)(B) of this title shall apply with respect to such rule.

(3)(A) The Administrator may—

(i) issue a proposed order to prohibit the manufacture, processing, or distribution in commerce of a substance with respect to which a finding was made under paragraph (1), or

(ii) apply, through attorneys of the Environmental Protection Agency, to the United States District Court for the District of Columbia or the United States district court for the judicial district in which the manufacturer, or processor, as the case may be, of such substance, is found,

resides, or transacts business for an injunction to prohibit the manufacture, processing, or distribution in commerce of such substance.

A proposed order issued under clause (i) respecting a chemical substance shall take effect on the expiration of the notification period applicable under subsection (a), (b), or (c) of this section to the manufacture or processing of such substance.

(B) If the district court of the United States to which an application has been made under subparagraph (A)(ii) finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance with respect to which such application was made, or that any combination of such activities, presents or will present an unreasonable risk of injury to health or the environment before a rule promulgated under section 2605 of this title can protect against such risk, the court shall issue an injunction to prohibit the manufacture, processing, or distribution in commerce of such substance or to prohibit any combination of such activities.

(C) The provisions of subparagraphs (B) and (C) of subsection (e)(1) of this section shall apply with respect to an order issued under clause (i) of subparagraph (A); and the provisions of subparagraph (C) of subsection (e)(2) of this section shall apply with respect to an injunction issued under subparagraph (B).

(D) If the Administrator issues an order pursuant to subparagraph (A)(i) respecting a chemical substance and objections are filed in accordance with subsection (e)(1)(C) of this section, the Administrator shall seek an injunction under subparagraph (A)(ii) respecting such substance unless the Administrator determines, on the basis of such objections, that such substance does not or will not present an unreasonable risk of injury to health or the environment.

(g) Statement of reasons for not taking action

If the Administrator has not initiated any action under this section or section 2605 or 2606 of this title to prohibit or limit the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance, with respect to which notification or data is required by subsection (a)(1)(B) or (b) of this section, before the expiration of the notification period applicable to the manufacturing or processing of such substance, the Administrator shall publish a statement of the Administrator's reasons for not initiating such action. Such a statement shall be published in the Federal Register before the expiration of such period. Publication of such statement in accordance with the preceding sentence is not a prerequisite to the manufacturing or processing of the substance with respect to which the statement is to be published.

(h) Exemptions

(1) The Administrator may, upon application, exempt any person from any requirement of subsection (a) or (b) of this section to permit such person to manufacture or process a chemical substance for test marketing purposes—

(A) upon a showing by such person satisfactory to the Administrator that the manufacture, processing, distribution in commerce, use, and disposal of such substance, and that any combination of such activities, for such purposes will not present any unreasonable risk of injury to health or the environment, and

(B) under such restrictions as the Administrator considers appropriate.

(2)(A) The Administrator may, upon application, exempt any person from the requirement of subsection (b)(2) of this section to submit data for a chemical substance. If, upon receipt of an application under the preceding sentence, the Administrator determines that—

(i) the chemical substance with respect to which such application was submitted is equivalent to a chemical substance for which data has been submitted to the Administrator as required by subsection (b)(2) of this section, and

(ii) submission of data by the applicant on such substance would be duplicative of data which has been submitted to the Administrator in accordance with such subsection,

the Administrator shall exempt the applicant from the requirement to submit such data on such substance. No exemption which is granted under this subparagraph with respect to the submission of data for a chemical substance may take effect before the beginning of the reimbursement period applicable to such data.

(B) If the Administrator exempts any person, under subparagraph (A), from submitting data required under subsection (b)(2) of this section for a chemical substance because of the existence of previously submitted data and if such exemption is granted during the reimbursement period for such data, then (unless such person and the persons referred to in clauses (i) and (ii) agree on the amount and method of reimbursement) the Administrator shall order the person granted the exemption to provide fair and equitable reimbursement (in an amount determined under rules of the Administrator)—

(i) to the person who previously submitted the data on which the exemption was based, for a portion of the costs incurred by such person in complying with the requirement under subsection (b)(2) of this section to submit such data, and

(ii) to any other person who has been required under this subparagraph to contribute with respect to such costs, for a portion of the amount such person was required to contribute.

In promulgating rules for the determination of fair and equitable reimbursement to the persons described in clauses (i) and (ii) for costs incurred with respect to a chemical substance, the Administrator shall, after consultation with the Attorney General and the Federal Trade Commission, consider all relevant factors, including the effect on the competitive position of the person required to provide reimbursement in relation to the persons to be reimbursed and the share of the market for such substance of the person required to provide reimbursement in relation to the share of such market of the persons to be reimbursed. For purposes of judicial review, an order under this subparagraph shall be considered final agency action.

(C) For purposes of this paragraph, the reimbursement period for any previously submitted data for a chemical substance is a period—

(i) beginning on the date of the termination of the prohibition, imposed under this section, on the manufacture or processing of such substance by the person who submitted such data to the Administrator, and

(ii) ending—

(I) five years after the date referred to in clause (i), or

(II) at the expiration of a period which begins on the date referred to in clause (i) and is equal to the period which the Administrator determines was necessary to develop such data,

whichever is later.

(3) The requirements of subsections (a) and (b) of this section do not apply with respect to the manufacturing or processing of any chemical substance which is manufactured or processed, or proposed to be manufactured or processed, only in small quantities (as defined by the Administrator by rule) solely for purposes of—

(A) scientific experimentation or analysis, or

(B) chemical research on, or analysis of such substance or another substance, including such research or analysis for the development of a product,

if all persons engaged in such experimentation, research, or analysis for a manufacturer or processor are notified (in such form and manner as the Administrator may prescribe) of any risk to health which the manufacturer, processor, or the Administrator has reason to believe may be associated with such chemical substance.

(4) The Administrator may, upon application and by rule, exempt the manufacturer of any new chemical substance from all or part of the requirements of this section if the Administrator determines that the manufacture, processing, distribution in commerce, use, or disposal of such chemical substance, or that any combination of such activities, will not present an unreasonable risk

of injury to health or the environment. A rule promulgated under this paragraph (and any substantive amendment to, or repeal of, such a rule) shall be promulgated in accordance with paragraphs (2) and (3) of section 2605(c) of this title.

(5) The Administrator may, upon application, make the requirements of subsections (a) and (b) of this section inapplicable with respect to the manufacturing or processing of any chemical substance (A) which exists temporarily as a result of a chemical reaction in the manufacturing or processing of a mixture or another chemical substance, and (B) to which there is no, and will not be, human or environmental exposure.

(6) Immediately upon receipt of an application under paragraph (1) or (5) the Administrator shall publish in the Federal Register notice of the receipt of such application. The Administrator shall give interested persons an opportunity to comment upon any such application and shall, within 45 days of its receipt, either approve or deny the application. The Administrator shall publish in the Federal Register notice of the approval or denial of such an application.

(i) "Manufacture" and "process" defined

For purposes of this section, the terms "manufacture" and "process" mean manufacturing or processing for commercial purposes.

(Pub. L. 94–469, title I, §5, Oct. 11, 1976, 90 Stat. 2012; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989.)

§2605. Regulation of hazardous chemical substances and mixtures

(a) Scope of regulation

If the Administrator finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or that any combination of such activities, presents or will present an unreasonable risk of injury to health or the environment, the Administrator shall by rule apply one or more of the following requirements to such substance or mixture to the extent necessary to protect adequately against such risk using the least burdensome requirements:

(1) A requirement (A) prohibiting the manufacturing, processing, or distribution in commerce of such substance or mixture, or (B) limiting the amount of such substance or mixture which may be manufactured, processed, or distributed in commerce.

(2) A requirement—

(A) prohibiting the manufacture, processing, or distribution in commerce of such substance or mixture for (i) a particular use or (ii) a particular use in a concentration in excess of a level specified by the Administrator in the rule imposing the requirement, or

(B) limiting the amount of such substance or mixture which may be manufactured, processed, or distributed in commerce for (i) a particular use or (ii) a particular use in a concentration in excess of a level specified by the Administrator in the rule imposing the requirement.

(3) A requirement that such substance or mixture or any article containing such substance or mixture be marked with or accompanied by clear and adequate warnings and instructions with respect to its use, distribution in commerce, or disposal or with respect to any combination of such activities. The form and content of such warnings and instructions shall be prescribed by the Administrator.

(4) A requirement that manufacturers and processors of such substance or mixture make and retain records of the processes used to manufacture or process such substance or mixture and monitor or conduct tests which are reasonable and necessary to assure compliance with the requirements of any rule applicable under this subsection.

(5) A requirement prohibiting or otherwise regulating any manner or method of commercial use of such substance or mixture.

(6)(A) A requirement prohibiting or otherwise regulating any manner or method of disposal of

such substance or mixture, or of any article containing such substance or mixture, by its manufacturer or processor or by any other person who uses, or disposes of, it for commercial purposes.

(B) A requirement under subparagraph (A) may not require any person to take any action which would be in violation of any law or requirement of, or in effect for, a State or political subdivision, and shall require each person subject to it to notify each State and political subdivision in which a required disposal may occur of such disposal.

(7) A requirement directing manufacturers or processors of such substance or mixture (A) to give notice of such unreasonable risk of injury to distributors in commerce of such substance or mixture and, to the extent reasonably ascertainable, to other persons in possession of such substance or mixture or exposed to such substance or mixture, (B) to give public notice of such risk of injury, and (C) to replace or repurchase such substance or mixture as elected by the person to which the requirement is directed.

Any requirement (or combination of requirements) imposed under this subsection may be limited in application to specified geographic areas.

(b) Quality control

If the Administrator has a reasonable basis to conclude that a particular manufacturer or processor is manufacturing or processing a chemical substance or mixture in a manner which unintentionally causes the chemical substance or mixture to present or which will cause it to present an unreasonable risk of injury to health or the environment—

(1) the Administrator may by order require such manufacturer or processor to submit a description of the relevant quality control procedures followed in the manufacturing or processing of such chemical substance or mixture; and

(2) if the Administrator determines—

(A) that such quality control procedures are inadequate to prevent the chemical substance or mixture from presenting such risk of injury, the Administrator may order the manufacturer or processor to revise such quality control procedures to the extent necessary to remedy such inadequacy; or

(B) that the use of such quality control procedures has resulted in the distribution in commerce of chemical substances or mixtures which present an unreasonable risk of injury to health or the environment, the Administrator may order the manufacturer or processor to (i) give notice of such risk to processors or distributors in commerce of any such substance or mixture, or to both, and, to the extent reasonably ascertainable, to any other person in possession of or exposed to any such substance, (ii) to give public notice of such risk, and (iii) to provide such replacement or repurchase of any such substance or mixture as is necessary to adequately protect health or the environment.

A determination under subparagraph (A) or (B) of paragraph (2) shall be made on the record after opportunity for hearing in accordance with section 554 of title 5. Any manufacturer or processor subject to a requirement to replace or repurchase a chemical substance or mixture may elect either to replace or repurchase the substance or mixture and shall take either such action in the manner prescribed by the Administrator.

(c) Promulgation of subsection (a) rules

(1) In promulgating any rule under subsection (a) of this section with respect to a chemical substance or mixture, the Administrator shall consider and publish a statement with respect to—

(A) the effects of such substance or mixture on health and the magnitude of the exposure of human beings to such substance or mixture,

(B) the effects of such substance or mixture on the environment and the magnitude of the exposure of the environment to such substance or mixture,

(C) the benefits of such substance or mixture for various uses and the availability of substitutes for such uses, and

(D) the reasonably ascertainable economic consequences of the rule, after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health.

If the Administrator determines that a risk of injury to health or the environment could be eliminated or reduced to a sufficient extent by actions taken under another Federal law (or laws) administered in whole or in part by the Administrator, the Administrator may not promulgate a rule under subsection (a) of this section to protect against such risk of injury unless the Administrator finds, in the Administrator's discretion, that it is in the public interest to protect against such risk under this chapter. In making such a finding the Administrator shall consider (i) all relevant aspects of the risk, as determined by the Administrator in the Administrator's discretion, (ii) a comparison of the estimated costs of complying with actions taken under this chapter and under such law (or laws), and (iii) the relative efficiency of actions under this chapter and under such law (or laws) to protect against such risk of injury.

(2) When prescribing a rule under subsection (a) the Administrator shall proceed in accordance with section 553 of title 5 (without regard to any reference in such section to sections 556 and 557 of such title), and shall also (A) publish a notice of proposed rulemaking stating with particularity the reason for the proposed rule; (B) allow interested persons to submit written data, views, and arguments, and make all such submissions publicly available; (C) provide an opportunity for an informal hearing in accordance with paragraph (3); (D) promulgate, if appropriate, a final rule based on the matter in the rulemaking record (as defined in section 2618(a) of this title), and (E) make and publish with the rule the finding described in subsection (a) of this section.

(3) Informal hearings required by paragraph (2)(C) shall be conducted by the Administrator in accordance with the following requirements:

(A) Subject to subparagraph (B), an interested person is entitled—

(i) to present such person's position orally or by documentary submissions (or both), and

(ii) if the Administrator determines that there are disputed issues of material fact it is necessary to resolve, to present such rebuttal submissions and to conduct (or have conducted under subparagraph (B)(ii)) such cross-examination of persons as the Administrator determines (I) to be appropriate, and (II) to be required for a full and true disclosure with respect to such issues.

(B) The Administrator may prescribe such rules and make such rulings concerning procedures in such hearings to avoid unnecessary costs or delay. Such rules or rulings may include (i) the imposition of reasonable time limits on each interested person's oral presentations, and (ii) requirements that any cross-examination to which a person may be entitled under subparagraph (A) be conducted by the Administrator on behalf of that person in such manner as the Administrator determines (I) to be appropriate, and (II) to be required for a full and true disclosure with respect to disputed issues of material fact.

(C)(i) Except as provided in clause (ii), if a group of persons each of whom under subparagraphs (A) and (B) would be entitled to conduct (or have conducted) cross-examination and who are determined by the Administrator to have the same or similar interests in the proceeding cannot agree upon a single representative of such interests for purposes of cross-examination, the Administrator may make rules and rulings (I) limiting the representation of such interest for such purposes, and (II) governing the manner in which such cross-examination shall be limited.

(ii) When any person who is a member of a group with respect to which the Administrator has made a determination under clause (i) is unable to agree upon group representation with the other members of the group, then such person shall not be denied under the authority of clause (i) the opportunity to conduct (or have conducted) cross-examination as to issues affecting the person's particular interests if (I) the person satisfies the Administrator that the person has made a

reasonable and good faith effort to reach agreement upon group representation with the other members of the group and (II) the Administrator determines that there are substantial and relevant issues which are not adequately presented by the group representative.

(D) A verbatim transcript shall be taken of any oral presentation made, and cross-examination conducted in any informal hearing under this subsection. Such transcript shall be available to the public.

(4)(A) The Administrator may, pursuant to rules prescribed by the Administrator, provide compensation for reasonable attorneys' fees, expert witness fees, and other costs of participating in a rulemaking proceeding for the promulgation of a rule under subsection (a) of this section to any person—

(i) who represents an interest which would substantially contribute to a fair determination of the issues to be resolved in the proceeding, and

(ii) if—

(I) the economic interest of such person is small in comparison to the costs of effective participation in the proceeding by such person, or

(II) such person demonstrates to the satisfaction of the Administrator that such person does not have sufficient resources adequately to participate in the proceeding without compensation under this subparagraph.

In determining for purposes of clause (i) if an interest will substantially contribute to a fair determination of the issues to be resolved in a proceeding, the Administrator shall take into account the number and complexity of such issues and the extent to which representation of such interest will contribute to widespread public participation in the proceeding and representation of a fair balance of interests for the resolution of such issues.

(B) In determining whether compensation should be provided to a person under subparagraph (A) and the amount of such compensation, the Administrator shall take into account the financial burden which will be incurred by such person in participating in the rulemaking proceeding. The Administrator shall take such action as may be necessary to ensure that the aggregate amount of compensation paid under this paragraph in any fiscal year to all persons who, in rulemaking proceedings in which they receive compensation, are persons who either—

(i) would be regulated by the proposed rule, or

(ii) represent persons who would be so regulated,

may not exceed 25 per centum of the aggregate amount paid as compensation under this paragraph to all persons in such fiscal year.

(5) Paragraph (1), (2), (3), and (4) of this subsection apply to the promulgation of a rule repealing, or making a substantive amendment to, a rule promulgated under subsection (a) of this section.

(d) Effective date

(1) The Administrator shall specify in any rule under subsection (a) of this section the date on which it shall take effect, which date shall be as soon as feasible.

(2)(A) The Administrator may declare a proposed rule under subsection (a) of this section to be effective upon its publication in the Federal Register and until the effective date of final action taken, in accordance with subparagraph (B), respecting such rule if—

(i) the Administrator determines that—

(I) the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance or mixture subject to such proposed rule or any combination of such activities is likely to result in an unreasonable risk of serious or widespread injury to health or the environment before such effective date; and

(II) making such proposed rule so effective is necessary to protect the public interest; and

(ii) in the case of a proposed rule to prohibit the manufacture, processing, or distribution of a chemical substance or mixture because of the risk determined under clause (i)(I), a court has in an

action under section 2606 of this title granted relief with respect to such risk associated with such substance or mixture.

Such a proposed rule which is made so effective shall not, for purposes of judicial review, be considered final agency action.

(B) If the Administrator makes a proposed rule effective upon its publication in the Federal Register, the Administrator shall, as expeditiously as possible, give interested persons prompt notice of such action, provide reasonable opportunity, in accordance with paragraphs (2) and (3) of subsection (c) of this section, for a hearing on such rule, and either promulgate such rule (as proposed or with modifications) or revoke it; and if such a hearing is requested, the Administrator shall commence the hearing within five days from the date such request is made unless the Administrator and the person making the request agree upon a later date for the hearing to begin, and after the hearing is concluded the Administrator shall, within ten days of the conclusion of the hearing, either promulgate such rule (as proposed or with modifications) or revoke it.

(e) Polychlorinated biphenyls

(1) Within six months after January 1, 1977, the Administrator shall promulgate rules to—

(A) prescribe methods for the disposal of polychlorinated biphenyls, and

(B) require polychlorinated biphenyls to be marked with clear and adequate warnings, and instructions with respect to their processing, distribution in commerce, use, or disposal or with respect to any combination of such activities.

Requirements prescribed by rules under this paragraph shall be consistent with the requirements of paragraphs (2) and (3).

(2)(A) Except as provided under subparagraph (B), effective one year after January 1, 1977, no person may manufacture, process, or distribute in commerce or use any polychlorinated biphenyl in any manner other than in a totally enclosed manner.

(B) The Administrator may by rule authorize the manufacture, processing, distribution in commerce or use (or any combination of such activities) of any polychlorinated biphenyl in a manner other than in a totally enclosed manner if the Administrator finds that such manufacture, processing, distribution in commerce, or use (or combination of such activities) will not present an unreasonable risk of injury to health or the environment.

(C) For the purposes of this paragraph, the term "totally enclosed manner" means any manner which will ensure that any exposure of human beings or the environment to a polychlorinated biphenyl will be insignificant as determined by the Administrator by rule.

(3)(A) Except as provided in subparagraphs (B) and (C)—

(i) no person may manufacture any polychlorinated biphenyl after two years after January 1, 1977, and

(ii) no person may process or distribute in commerce any polychlorinated biphenyl after two and one-half years after such date.

(B) Any person may petition the Administrator for an exemption from the requirements of subparagraph (A), and the Administrator may grant by rule such an exemption if the Administrator finds that—

(i) an unreasonable risk of injury to health or environment would not result, and

(ii) good faith efforts have been made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for such polychlorinated biphenyl.

An exemption granted under this subparagraph shall be subject to such terms and conditions as the Administrator may prescribe and shall be in effect for such period (but not more than one year from the date it is granted) as the Administrator may prescribe.

(C) Subparagraph (A) shall not apply to the distribution in commerce of any polychlorinated biphenyl if such polychlorinated biphenyl was sold for purposes other than resale before two and one

half years after October 11, 1976.

(4) Any rule under paragraph (1), (2)(B), or (3)(B) shall be promulgated in accordance with paragraphs (2), (3), and (4) of subsection (c) of this section.

(5) This subsection does not limit the authority of the Administrator, under any other provision of this chapter or any other Federal law, to take action respecting any polychlorinated biphenyl.

(f) Mercury

(1) Prohibition on sale, distribution, or transfer of elemental mercury by Federal agencies

Except as provided in paragraph (2), effective beginning on October 14, 2008, no Federal agency shall convey, sell, or distribute to any other Federal agency, any State or local government agency, or any private individual or entity any elemental mercury under the control or jurisdiction of the Federal agency.

(2) Exceptions

Paragraph (1) shall not apply to—

(A) a transfer between Federal agencies of elemental mercury for the sole purpose of facilitating storage of mercury to carry out this chapter; or

(B) a conveyance, sale, distribution, or transfer of coal.

(3) Leases of Federal coal

Nothing in this subsection prohibits the leasing of coal.

(Pub. L. 94–469, title I, §6, Oct. 11, 1976, 90 Stat. 2020; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989; amended Pub. L. 109–364, div. A, title III, §317(a), Oct. 17, 2006, 120 Stat. 2142; Pub. L. 110–414, §3, Oct. 14, 2008, 122 Stat. 4342.)

AMENDMENTS

2008—Subsec. (f). Pub. L. 110–414 added subsec. (f).

2006—Subsec. (e)(3)(A). Pub. L. 109–364, §317(a)(1), (b), temporarily substituted "subparagraphs (B), (C), and (D)" for "subparagraphs (B) and (C)" in introductory provisions. See Termination Date of 2006 Amendment note below.

Subsec. (e)(3)(B). Pub. L. 109–364, §317(a)(2), (b), temporarily substituted "but not more than 1 year from the date it is granted, except as provided in subparagraph (D)" for "but not more than one year from the date it is granted" in concluding provisions. See Termination Date of 2006 Amendment note below.

Subsec. (e)(3)(D). Pub. L. 109–364, §317(a)(3), (b), temporarily added subpar. (D) which read as follows: "The Administrator may extend an exemption granted pursuant to subparagraph (B) that has not yet expired for a period not to exceed 60 days for the purpose of authorizing the Secretary of Defense and the Secretaries of the military departments to provide for the transportation into the customs territory of the United States of polychlorinated biphenyls generated by or under the control of the Department of Defense for purposes of their disposal, treatment, or storage in the customs territory of the United States if those polychlorinated biphenyls are already in transit from their storage locations but the Administrator determines, in the sole discretion of the Administrator, they would not otherwise arrive in the customs territory of the United States within the period of the original exemption. The Administrator shall promptly publish notice of such extension in the Federal Register." See Termination Date of 2006 Amendment note below.

TERMINATION DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title III, §317(b), Oct. 17, 2006, 120 Stat. 2142, provided that: "The amendments made by subsection (a) [amending this section] shall cease to have effect on September 30, 2012. The termination of the authority to grant exemptions pursuant to such amendments shall not effect the validity of any exemption granted prior to such date."

§2606. Imminent hazards

(a) Actions authorized and required

(1) The Administrator may commence a civil action in an appropriate district court of the United States—

(A) for seizure of an imminently hazardous chemical substance or mixture or any article containing such a substance or mixture,

(B) for relief (as authorized by subsection (b) of this section) against any person who manufactures, processes, distributes in commerce, or uses, or disposes of, an imminently hazardous chemical substance or mixture or any article containing such a substance or mixture, or

(C) for both such seizure and relief.

A civil action may be commenced under this paragraph notwithstanding the existence of a rule under section 2603 of this title, 2604 of this title, 2605 of this title, or subchapter IV of this chapter or an order under section 2604 of this title or subchapter IV of this chapter, and notwithstanding the pendency of any administrative or judicial proceeding under any provision of this chapter.

(2) If the Administrator has not made a rule under section 2605(a) of this title immediately effective (as authorized by section 2605(d)(2)(A)(i) of this title) with respect to an imminently hazardous chemical substance or mixture, the Administrator shall commence in a district court of the United States with respect to such substance or mixture or article containing such substance or mixture a civil action described in subparagraph (A), (B), or (C) of paragraph (1).

(b) Relief authorized

(1) The district court of the United States in which an action under subsection (a) of this section is brought shall have jurisdiction to grant such temporary or permanent relief as may be necessary to protect health or the environment from the unreasonable risk associated with the chemical substance, mixture, or article involved in such action.

(2) In the case of an action under subsection (a) of this section brought against a person who manufactures, processes, or distributes in commerce a chemical substance or mixture or an article containing a chemical substance or mixture, the relief authorized by paragraph (1) may include the issuance of a mandatory order requiring (A) in the case of purchasers of such substance, mixture, or article known to the defendant, notification to such purchasers of the risk associated with it; (B) public notice of such risk; (C) recall; (D) the replacement or repurchase of such substance, mixture, or article; or (E) any combination of the actions described in the preceding clauses.

(3) In the case of an action under subsection (a) of this section against a chemical substance, mixture, or article, such substance, mixture, or article may be proceeded against by process of libel for its seizure and condemnation. Proceedings in such an action shall conform as nearly as possible to proceedings in rem in admiralty.

(c) Venue and consolidation

(1)(A) An action under subsection (a) of this section against a person who manufactures, processes, or distributes a chemical substance or mixture or an article containing a chemical substance or mixture may be brought in the United States District Court for the District of Columbia or for any judicial district in which any of the defendants is found, resides, or transacts business; and process in such an action may be served on a defendant in any other district in which such defendant resides or may be found. An action under subsection (a) of this section against a chemical substance, mixture, or article may be brought in any United States district court within the jurisdiction of which the substance, mixture, or article is found.

(B) In determining the judicial district in which an action may be brought under subsection (a) of this section in instances in which such action may be brought in more than one judicial district, the Administrator shall take into account the convenience of the parties.

(C) Subpeonas [1] requiring attendance of witnesses in an action brought under subsection (a) of this section may be served in any judicial district.

(2) Whenever proceedings under subsection (a) of this section involving identical chemical substances, mixtures, or articles are pending in courts in two or more judicial districts, they shall be consolidated for trial by order of any such court upon application reasonably made by any party in interest, upon notice to all parties in interest.

(d) Action under section 2605

Where appropriate, concurrently with the filing of an action under subsection (a) of this section or as soon thereafter as may be practicable, the Administrator shall initiate a proceeding for the promulgation of a rule under section 2605(a) of this title.

(e) Representation

Notwithstanding any other provision of law, in any action under subsection (a) of this section, the Administrator may direct attorneys of the Environmental Protection Agency to appear and represent the Administrator in such an action.

(f) "Imminently hazardous chemical substance or mixture" defined

For the purposes of subsection (a) of this section, the term "imminently hazardous chemical substance or mixture" means a chemical substance or mixture which presents an imminent and unreasonable risk of serious or widespread injury to health or the environment. Such a risk to health or the environment shall be considered imminent if it is shown that the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance or mixture, or that any combination of such activities, is likely to result in such injury to health or the environment before a final rule under section 2605 of this title can protect against such risk.

(Pub. L. 94–469, title I, §7, Oct. 11, 1976, 90 Stat. 2026; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989; amended Pub. L. 102–550, title X, §1021(b)(1), Oct. 28, 1992, 106 Stat. 3923.)

AMENDMENTS

1992—Subsec. (a)(1). Pub. L. 102–550 substituted "section 2603 of this title, 2604 of this title, 2605 of this title, or subchapter IV of this chapter" for "section 2603, 2604, or 2605 of this title" in last sentence.

Pub. L. 102–550, which directed the insertion of "or subchapter IV of this chapter" after "2604", was executed by making the insertion after "2604" the second time appearing in last sentence, to reflect the probable intent of Congress.

[1] *So in original. Probably should be "Subpoenas".*

§2607. Reporting and retention of information

(a) Reports

(1) The Administrator shall promulgate rules under which—

(A) each person (other than a small manufacturer or processor) who manufactures or processes or proposes to manufacture or process a chemical substance (other than a chemical substance described in subparagraph (B)(ii)) shall maintain such records, and shall submit to the Administrator such reports, as the Administrator may reasonably require, and

(B) each person (other than a small manufacturer or processor) who manufactures or processes or proposes to manufacture or process—

(i) a mixture, or

(ii) a chemical substance in small quantities (as defined by the Administrator by rule) solely for purposes of scientific experimentation or analysis or chemical research on, or analysis of, such substance or another substance, including any such research or analysis for the development of a product,

shall maintain records and submit to the Administrator reports but only to the extent the Administrator determines the maintenance of records or submission of reports, or both, is necessary for the effective enforcement of this chapter.

The Administrator may not require in a rule promulgated under this paragraph the maintenance of records or the submission of reports with respect to changes in the proportions of the components of a mixture unless the Administrator finds that the maintenance of such records or the submission of

such reports, or both, is necessary for the effective enforcement of this chapter. For purposes of the compilation of the list of chemical substances required under subsection (b) of this section, the Administrator shall promulgate rules pursuant to this subsection not later than 180 days after January 1, 1977.

(2) The Administrator may require under paragraph (1) maintenance of records and reporting with respect to the following insofar as known to the person making the report or insofar as reasonably ascertainable:

(A) The common or trade name, the chemical identity, and the molecular structure of each chemical substance or mixture for which such a report is required.

(B) The categories or proposed categories of use of each such substance or mixture.

(C) The total amount of each such substance and mixture manufactured or processed, reasonable estimates of the total amount to be manufactured or processed, the amount manufactured or processed for each of its categories of use, and reasonable estimates of the amount to be manufactured or processed for each of its categories of use or proposed categories of use.

(D) A description of the byproducts resulting from the manufacture, processing, use, or disposal of each such substance or mixture.

(E) All existing data concerning the environmental and health effects of such substance or mixture.

(F) The number of individuals exposed, and reasonable estimates of the number who will be exposed, to such substance or mixture in their places of employment and the duration of such exposure.

(G) In the initial report under paragraph (1) on such substance or mixture, the manner or method of its disposal, and in any subsequent report on such substance or mixture, any change in such manner or method.

To the extent feasible, the Administrator shall not require under paragraph (1), any reporting which is unnecessary or duplicative.

(3)(A)(i) The Administrator may by rule require a small manufacturer or processor of a chemical substance to submit to the Administrator such information respecting the chemical substance as the Administrator may require for publication of the first list of chemical substances required by subsection (b) of this section.

(ii) The Administrator may by rule require a small manufacturer or processor of a chemical substance or mixture—

(I) subject to a rule proposed or promulgated under section 2603, 2604(b)(4), or 2605 of this title, or an order in effect under section 2604(e) of this title, or

(II) with respect to which relief has been granted pursuant to a civil action brought under section 2604 or 2606 of this title,

to maintain such records on such substance or mixture, and to submit to the Administrator such reports on such substance or mixture, as the Administrator may reasonably require. A rule under this clause requiring reporting may require reporting with respect to the matters referred to in paragraph (2).

(B) The Administrator, after consultation with the Administrator of the Small Business Administration, shall by rule prescribe standards for determining the manufacturers and processors which qualify as small manufacturers and processors for purposes of this paragraph and paragraph (1).

(b) Inventory

(1) The Administrator shall compile, keep current, and publish a list of each chemical substance which is manufactured or processed in the United States. Such list shall at least include each chemical substance which any person reports, under section 2604 of this title or subsection (a) of this section, is manufactured or processed in the United States. Such list may not include any chemical substance which was not manufactured or processed in the United States within three years before

the effective date of the rules promulgated pursuant to the last sentence of subsection (a)(1) of this section. In the case of a chemical substance for which a notice is submitted in accordance with section 2604 of this title, such chemical substance shall be included in such list as of the earliest date (as determined by the Administrator) on which such substance was manufactured or processed in the United States. The Administrator shall first publish such a list not later than 315 days after January 1, 1977. The Administrator shall not include in such list any chemical substance which is manufactured or processed only in small quantities (as defined by the Administrator by rule) solely for purposes of scientific experimentation or analysis or chemical research on, or analysis of, such substance or another substance, including such research or analysis for the development of a product.

(2) To the extent consistent with the purposes of this chapter, the Administrator may, in lieu of listing, pursuant to paragraph (1), a chemical substance individually, list a category of chemical substances in which such substance is included.

(c) Records

Any person who manufactures, processes, or distributes in commerce any chemical substance or mixture shall maintain records of significant adverse reactions to health or the environment, as determined by the Administrator by rule, alleged to have been caused by the substance or mixture. Records of such adverse reactions to the health of employees shall be retained for a period of 30 years from the date such reactions were first reported to or known by the person maintaining such records. Any other record of such adverse reactions shall be retained for a period of five years from the date the information contained in the record was first reported to or known by the person maintaining the record. Records required to be maintained under this subsection shall include records of consumer allegations of personal injury or harm to health, reports of occupational disease or injury, and reports or complaints of injury to the environment submitted to the manufacturer, processor, or distributor in commerce from any source. Upon request of any duly designated representative of the Administrator, each person who is required to maintain records under this subsection shall permit the inspection of such records and shall submit copies of such records.

(d) Health and safety studies

The Administrator shall promulgate rules under which the Administrator shall require any person who manufactures, processes, or distributes in commerce or who proposes to manufacture, process, or distribute in commerce any chemical substance or mixture (or with respect to paragraph (2), any person who has possession of a study) to submit to the Administrator—

(1) lists of health and safety studies (A) conducted or initiated by or for such person with respect to such substance or mixture at any time, (B) known to such person, or (C) reasonably ascertainable by such person, except that the Administrator may exclude certain types or categories of studies from the requirements of this subsection if the Administrator finds that submission of lists of such studies are unnecessary to carry out the purposes of this chapter; and

(2) copies of any study contained on a list submitted pursuant to paragraph (1) or otherwise known by such person.

(e) Notice to Administrator of substantial risks

Any person who manufactures, processes, or distributes in commerce a chemical substance or mixture and who obtains information which reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment shall immediately inform the Administrator of such information unless such person has actual knowledge that the Administrator has been adequately informed of such information.

(f) "Manufacture" and "process" defined

For purposes of this section, the terms "manufacture" and "process" mean manufacture or process for commercial purposes.

(Pub. L. 94–469, title I, §8, Oct. 11, 1976, 90 Stat. 2027; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989.)

ASBESTOS INFORMATION

Pub. L. 100–577, Oct. 31, 1988, 102 Stat. 2901, provided that:

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Asbestos Information Act of 1988'.

"SEC. 2. SUBMISSION OF INFORMATION BY MANUFACTURERS.

"Within 90 days after the date of the enactment of this Act [Oct. 31, 1988], any person who manufactured or processed, before the date of the enactment of this Act, asbestos or asbestos-containing material that was prepared for sale for use as surfacing material, thermal system insulation, or miscellaneous material in buildings (or whose corporate predecessor manufactured or processed such asbestos or material) shall submit to the Administrator of the Environmental Protection Agency the years of manufacture, the types or classes of product, and, to the extent available, other identifying characteristics reasonably necessary to identify or distinguish the asbestos or asbestos-containing material. Such person also may submit to the Administrator protocols for samples of asbestos and asbestos-containing material.

"SEC. 3. PUBLICATION OF INFORMATION.

"Within 30 days after the date of the enactment of this Act [Oct. 31, 1988], the Administrator shall publish a notice in the Federal Register that explains how, when, and where the information specified in section 2 is to be submitted. The Administrator shall receive and organize the information submitted under section 2 and, within 180 days after the date of the enactment of this Act, shall publish the information. In carrying out this section, the Administrator may not—

"(1) review the information submitted under section 2 for accuracy, or

"(2) analyze such information to determine whether it is reasonably necessary to identify or distinguish the particular asbestos or asbestos-containing material.

"SEC. 4. DEFINITIONS.

"In this Act:

"(1) The term 'asbestos' means—

"(A) chrysotile, amosite, or crocidolite, or

"(B) in fibrous form, tremolite, anthophyllite, or actinolite.

"(2) The term 'asbestos-containing material' means any material containing more than one percent asbestos by weight.

"(3) The term 'identifying characteristics' means a description of asbestos or asbestos-containing material, including—

"(A) the mineral or chemical constituents (or both) of the asbestos or material by weight or volume (or both),

"(B) the types or classes of the product in which the asbestos or material is contained,

"(C) the designs, patterns, or textures of the product in which the asbestos or material is contained, and

"(D) the means by which the product in which the asbestos or material is contained may be distinguishable from other products containing asbestos or asbestos-containing material.

"(4) The term 'miscellaneous material' means building material on structural components, structural members, or fixtures, such as floor and ceiling tiles. The term does not include surfacing material or thermal system insulation.

"(5) The term 'protocol' means any procedure for taking, handling, and preserving samples of asbestos and asbestos-containing material and for testing and analyzing such samples for the purpose of determining the person who manufactured or processed for sale such samples and the identifying characteristics of such samples.

"(6) The term 'surfacing material' means material in a building that is sprayed on surfaces, troweled on surfaces, or otherwise applied to surfaces for acoustical, fireproofing, or other purposes, such as acoustical plaster on ceilings and fireproofing material on structural members.

"(7) The term 'thermal system insulation' means material in a building applied to pipes, fittings, boilers, breeching, tanks, ducts, or other structural components to prevent heat loss or gain or water condensation, or for other purposes."

§2608. Relationship to other Federal laws

(a) Laws not administered by the Administrator

(1) If the Administrator has reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or that any combination of such activities, presents or will present an unreasonable risk of injury to health or the environment and determines, in the Administrator's discretion, that such risk may be prevented or reduced to a sufficient extent by action taken under a Federal law not administered by the Administrator, the Administrator shall submit to the agency which administers such law a report which describes such risk and includes in such description a specification of the activity or combination of activities which the Administrator has reason to believe so presents such risk. Such report shall also request such agency—

(A)(i) to determine if the risk described in such report may be prevented or reduced to a sufficient extent by action taken under such law, and

(ii) if the agency determines that such risk may be so prevented or reduced, to issue an order declaring whether or not the activity or combination of activities specified in the description of such risk presents such risk; and

(B) to respond to the Administrator with respect to the matters described in subparagraph (A).

Any report of the Administrator shall include a detailed statement of the information on which it is based and shall be published in the Federal Register. The agency receiving a request under such a report shall make the requested determination, issue the requested order, and make the requested response within such time as the Administrator specifies in the request, but such time specified may not be less than 90 days from the date the request was made. The response of an agency shall be accompanied by a detailed statement of the findings and conclusions of the agency and shall be published in the Federal Register.

(2) If the Administrator makes a report under paragraph (1) with respect to a chemical substance or mixture and the agency to which such report was made either—

(A) issues an order declaring that the activity or combination of activities specified in the description of the risk described in the report does not present the risk described in the report, or

(B) initiates, within 90 days of the publication in the Federal Register of the response of the agency under paragraph (1), action under the law (or laws) administered by such agency to protect against such risk associated with such activity or combination of activities,

the Administrator may not take any action under section 2605 or 2606 of this title with respect to such risk.

(3) If the Administrator has initiated action under section 2605 or 2606 of this title with respect to a risk associated with a chemical substance or mixture which was the subject of a report made to an agency under paragraph (1), such agency shall before taking action under the law (or laws) administered by it to protect against such risk consult with the Administrator for the purpose of avoiding duplication of Federal action against such risk.

(b) Laws administered by the Administrator

The Administrator shall coordinate actions taken under this chapter with actions taken under other Federal laws administered in whole or in part by the Administrator. If the Administrator determines that a risk to health or the environment associated with a chemical substance or mixture could be eliminated or reduced to a sufficient extent by actions taken under the authorities contained in such other Federal laws, the Administrator shall use such authorities to protect against such risk unless the Administrator determines, in the Administrator's discretion, that it is in the public interest to protect against such risk by actions taken under this chapter. This subsection shall not be construed to relieve the Administrator of any requirement imposed on the Administrator by such other Federal laws.

(c) Occupational safety and health

In exercising any authority under this chapter, the Administrator shall not, for purposes of section 653(b)(1) of title 29, be deemed to be exercising statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.

(d) Coordination

In administering this chapter, the Administrator shall consult and coordinate with the Secretary of Health and Human Services and the heads of any other appropriate Federal executive department or agency, any relevant independent regulatory agency, and any other appropriate instrumentality of the Federal Government for the purpose of achieving the maximum enforcement of this chapter while imposing the least burdens of duplicative requirements on those subject to the chapter and for other purposes. The Administrator shall, in the report required by section 2629 of this title, report annually to the Congress on actions taken to coordinate with such other Federal departments, agencies, or instrumentalities, and on actions taken to coordinate the authority under this chapter with the authority granted under other Acts referred to in subsection (b) of this section.

(Pub. L. 94–469, title I, §9, Oct. 11, 1976, 90 Stat. 2030; Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989.)

CHANGE OF NAME

"Secretary of Health and Human Services" substituted for "Secretary of Health, Education, and Welfare" in subsec. (d), pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (d) of this section relating to reporting certain coordinating actions annually to Congress in the report required by section 2629 of this title, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 163 of House Document No. 103–7.

§2609. Research, development, collection, dissemination, and utilization of data

(a) Authority

The Administrator shall, in consultation and cooperation with the Secretary of Health and Human Services and with other heads of appropriate departments and agencies, conduct such research, development, and monitoring as is necessary to carry out the purposes of this chapter. The Administrator may enter into contracts and may make grants for research, development, and monitoring under this subsection. Contracts may be entered into under this subsection without regard to section 3324(a) and (b) of title 31 and section 6101 of title 41.

(b) Data systems

(1) The Administrator shall establish, administer, and be responsible for the continuing activities of an interagency committee which shall design, establish, and coordinate an efficient and effective system, within the Environmental Protection Agency, for the collection, dissemination to other Federal departments and agencies, and use of data submitted to the Administrator under this chapter.

(2)(A) The Administrator shall, in consultation and cooperation with the Secretary of Health and Human Services and other heads of appropriate departments and agencies design, establish, and coordinate an efficient and effective system for the retrieval of toxicological and other scientific data which could be useful to the Administrator in carrying out the purposes of this chapter. Systematized retrieval shall be developed for use by all Federal and other departments and agencies with responsibilities in the area of regulation or study of chemical substances and mixtures and their effect on health or the environment.

(B) The Administrator, in consultation and cooperation with the Secretary of Health and Human Services, may make grants and enter into contracts for the development of a data retrieval system described in subparagraph (A). Contracts may be entered into under this subparagraph without regard to section 3324(a) and (b) of title 31 and section 6101 of title 41.

(c) Screening techniques

The Administrator shall coordinate, with the Assistant Secretary for Health of the Department of Health and Human Services, research undertaken by the Administrator and directed toward the development of rapid, reliable, and economical screening techniques for carcinogenic, mutagenic,

teratogenic, and ecological effects of chemical substances and mixtures.

(d) Monitoring

The Administrator shall, in consultation and cooperation with the Secretary of Health and Human Services, establish and be responsible for research aimed at the development, in cooperation with local, State, and Federal agencies, of monitoring techniques and instruments which may be used in the detection of toxic chemical substances and mixtures and which are reliable, economical, and capable of being implemented under a wide variety of conditions.

(e) Basic research

The Administrator shall, in consultation and cooperation with the Secretary of Health and Human Services, establish research programs to develop the fundamental scientific basis of the screening and monitoring techniques described in subsections (c) and (d) of this section, the bounds of the reliability of such techniques, and the opportunities for their improvement.

(f) Training

The Administrator shall establish and promote programs and workshops to train or facilitate the training of Federal laboratory and technical personnel in existing or newly developed screening and monitoring techniques.

(g) Exchange of research and development results

The Administrator shall, in consultation with the Secretary of Health and Human Services and other heads of appropriate departments and agencies, establish and coordinate a system for exchange among Federal, State, and local authorities of research and development results respecting toxic chemical substances and mixtures, including a system to facilitate and promote the development of standard data format and analysis and consistent testing procedures.

(Pub. L. 94–469, title I, §10, Oct. 11, 1976, 90 Stat. 2031; Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989.)

CODIFICATION

In subsec. (a), "section 3324(a) and (b) of title 31 and section 6101 of title 41" substituted for "sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529, 14 U.S.C. 5)" on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, which Act enacted Title 31, Money and Finance, and Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (b)(2)(B), "section 3324(a) and (b) of title 31 and section 6101 of title 41" substituted for "sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529, 41 U.S.C. 5)" on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, which Act enacted Title 31, Money and Finance, and Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

CHANGE OF NAME

"Secretary of Health and Human Services" substituted for "Secretary of Health, Education, and Welfare" in subsecs. (a), (b)(2), (d), (e), and (g), and "Department of Health and Human Services" substituted for "Department of Health, Education, and Welfare" in subsec. (c), pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

AVAILABILITY OF GRANTS

Grants awarded under this section are available for research, development, monitoring, public education, training, demonstrations, and studies, beginning in fiscal year 2000 and thereafter, see provisions of title III of Pub. L. 106–74, set out as a note under section 136r of Title 7, Agriculture.

§2610. Inspections and subpoenas

(a) In general

For purposes of administering this chapter, the Administrator, and any duly designated representative of the Administrator, may inspect any establishment, facility, or other premises in which chemical substances, mixtures, or products subject to subchapter IV of this chapter are

manufactured, processed, stored, or held before or after their distribution in commerce and any conveyance being used to transport chemical substances, mixtures, such products, or such articles in connection with distribution in commerce. Such an inspection may only be made upon the presentation of appropriate credentials and of a written notice to the owner, operator, or agent in charge of the premises or conveyance to be inspected. A separate notice shall be given for each such inspection, but a notice shall not be required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable promptness and shall be conducted at reasonable times, within reasonable limits, and in a reasonable manner.

(b) Scope

(1) Except as provided in paragraph (2), an inspection conducted under subsection (a) of this section shall extend to all things within the premises or conveyance inspected (including records, files, papers, processes, controls, and facilities) bearing on whether the requirements of this chapter applicable to the chemical substances, mixtures, or products subject to subchapter IV of this chapter within such premises or conveyance have been complied with.

(2) No inspection under subsection (a) of this section shall extend to—

(A) financial data,

(B) sales data (other than shipment data),

(C) pricing data,

(D) personnel data, or

(E) research data (other than data required by this chapter or under a rule promulgated thereunder),

unless the nature and extent of such data are described with reasonable specificity in the written notice required by subsection (a) of this section for such inspection.

(c) Subpoenas

In carrying out this chapter, the Administrator may by subpoena require the attendance and testimony of witnesses and the production of reports, papers, documents, answers to questions, and other information that the Administrator deems necessary. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In the event of contumacy, failure, or refusal of any person to obey any such subpoena, any district court of the United States in which venue is proper shall have jurisdiction to order any such person to comply with such subpoena. Any failure to obey such an order of the court is punishable by the court as a contempt thereof.

(Pub. L. 94–469, title I, §11, Oct. 11, 1976, 90 Stat. 2032; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989; amended Pub. L. 102–550, title X, §1021(b)(2), (3), Oct. 28, 1992, 106 Stat. 3923.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–550, §1021(b)(2), in first sentence, substituted "substances, mixtures, or products subject to subchapter IV of this chapter" for "substances or mixtures" and inserted "such products," before "or such articles".

Subsec. (b)(1). Pub. L. 102–550, §1021(b)(3), substituted "chemical substances, mixtures, or products subject to subchapter IV of this chapter" for "chemical substances or mixtures".

§2611. Exports

(a) In general

(1) Except as provided in paragraph (2) and subsections (b) and (c) of this section, this chapter (other than section 2607 of this title) shall not apply to any chemical substance, mixture, or to an article containing a chemical substance or mixture, if—

(A) it can be shown that such substance, mixture, or article is being manufactured, processed, or distributed in commerce for export from the United States, unless such substance, mixture, or article was, in fact, manufactured, processed, or distributed in commerce, for use in the United

States, and

(B) such substance, mixture, or article (when distributed in commerce), or any container in which it is enclosed (when so distributed), bears a stamp or label stating that such substance, mixture, or article is intended for export.

(2) Paragraph (1) shall not apply to any chemical substance, mixture, or article if the Administrator finds that the substance, mixture, or article will present an unreasonable risk of injury to health within the United States or to the environment of the United States. The Administrator may require, under section 2603 of this title, testing of any chemical substance or mixture exempted from this chapter by paragraph (1) for the purpose of determining whether or not such substance or mixture presents an unreasonable risk of injury to health within the United States or to the environment of the United States.

(b) Notice

(1) If any person exports or intends to export to a foreign country a chemical substance or mixture for which the submission of data is required under section 2603 or 2604(b) of this title, such person shall notify the Administrator of such exportation or intent to export and the Administrator shall furnish to the government of such country notice of the availability of the data submitted to the Administrator under such section for such substance or mixture.

(2) If any person exports or intends to export to a foreign country a chemical substance or mixture for which an order has been issued under section 2604 of this title or a rule has been proposed or promulgated under section 2604 or 2605 of this title, or with respect to which an action is pending, or relief has been granted under section 2604 or 2606 of this title, such person shall notify the Administrator of such exportation or intent to export and the Administrator shall furnish to the government of such country notice of such rule, order, action, or relief.

(c) Prohibition on export of elemental mercury

(1) Prohibition

Effective January 1, 2013, the export of elemental mercury from the United States is prohibited.

(2) Inapplicability of subsection (a)

Subsection (a) shall not apply to this subsection.

(3) Report to Congress on mercury compounds

(A) Report

Not later than one year after October 14, 2008, the Administrator shall publish and submit to Congress a report on mercuric chloride, mercurous chloride or calomel, mercuric oxide, and other mercury compounds, if any, that may currently be used in significant quantities in products or processes. Such report shall include an analysis of—

(i) the sources and amounts of each of the mercury compounds imported into the United States or manufactured in the United States annually;

(ii) the purposes for which each of these compounds are used domestically, the amount of these compounds currently consumed annually for each purpose, and the estimated amounts to be consumed for each purpose in 2010 and beyond;

(iii) the sources and amounts of each mercury compound exported from the United States annually in each of the last three years;

(iv) the potential for these compounds to be processed into elemental mercury after export from the United States; and

(v) other relevant information that Congress should consider in determining whether to extend the export prohibition to include one or more of these mercury compounds.

(B) Procedure

For the purpose of preparing the report under this paragraph, the Administrator may utilize the information gathering authorities of this subchapter, including sections 2609 and 2610 of

this title.

(4) Essential use exemption

(A) Any person residing in the United States may petition the Administrator for an exemption from the prohibition in paragraph (1), and the Administrator may grant by rule, after notice and opportunity for comment, an exemption for a specified use at an identified foreign facility if the Administrator finds that—

(i) nonmercury alternatives for the specified use are not available in the country where the facility is located;

(ii) there is no other source of elemental mercury available from domestic supplies (not including new mercury mines) in the country where the elemental mercury will be used;

(iii) the country where the elemental mercury will be used certifies its support for the exemption;

(iv) the export will be conducted in such a manner as to ensure the elemental mercury will be used at the identified facility as described in the petition, and not otherwise diverted for other uses for any reason;

(v) the elemental mercury will be used in a manner that will protect human health and the environment, taking into account local, regional, and global human health and environmental impacts;

(vi) the elemental mercury will be handled and managed in a manner that will protect human health and the environment, taking into account local, regional, and global human health and environmental impacts; and

(vii) the export of elemental mercury for the specified use is consistent with international obligations of the United States intended to reduce global mercury supply, use, and pollution.

(B) Each exemption issued by the Administrator pursuant to this paragraph shall contain such terms and conditions as are necessary to minimize the export of elemental mercury and ensure that the conditions for granting the exemption will be fully met, and shall contain such other terms and conditions as the Administrator may prescribe. No exemption granted pursuant to this paragraph shall exceed three years in duration and no such exemption shall exceed 10 metric tons of elemental mercury.

(C) The Administrator may by order suspend or cancel an exemption under this paragraph in the case of a violation described in subparagraph (D).

(D) A violation of this subsection or the terms and conditions of an exemption, or the submission of false information in connection therewith, shall be considered a prohibited act under section 2614 of this title, and shall be subject to penalties under section 2615 of this title, injunctive relief under section 2616 of this title, and citizen suits under section 2619 of this title.

(5) Consistency with trade obligations

Nothing in this subsection affects, replaces, or amends prior law relating to the need for consistency with international trade obligations.

(6) Export of coal

Nothing in this subsection shall be construed to prohibit the export of coal.

(Pub. L. 94–469, title I, §12, Oct. 11, 1976, 90 Stat. 2033; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989; amended Pub. L. 110–414, §4, Oct. 14, 2008, 122 Stat. 4342.)

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–414, §4(1), substituted "subsections (b) and (c)" for "subsection (b)" in introductory provisions.

Subsec. (c). Pub. L. 110–414, §4(2), added subsec. (c).

FINDINGS

Pub. L. 110–414, §2, Oct. 14, 2008, 122 Stat. 4341, provided that: "Congress finds that—

"(1) mercury is highly toxic to humans, ecosystems, and wildlife;

"(2) as many as 10 percent of women in the United States of childbearing age have mercury in the blood at a level that could put a baby at risk;

"(3) as many as 630,000 children born annually in the United States are at risk of neurological problems related to mercury;

"(4) the most significant source of mercury exposure to people in the United States is ingestion of mercury-contaminated fish;

"(5) the Environmental Protection Agency reports that, as of 2004—

"(A) 44 States have fish advisories covering over 13,000,000 lake acres and over 750,000 river miles;

"(B) in 21 States the freshwater advisories are statewide; and

"(C) in 12 States the coastal advisories are statewide;

"(6) the long-term solution to mercury pollution is to minimize global mercury use and releases to eventually achieve reduced contamination levels in the environment, rather than reducing fish consumption since uncontaminated fish represents a critical and healthy source of nutrition worldwide;

"(7) mercury pollution is a transboundary pollutant, depositing locally, regionally, and globally, and affecting water bodies near industrial sources (including the Great Lakes) and remote areas (including the Arctic Circle);

"(8) the free trade of elemental mercury on the world market, at relatively low prices and in ready supply, encourages the continued use of elemental mercury outside of the United States, often involving highly dispersive activities such as artisinal [probably should be "artisanal"] gold mining;

"(9) the intentional use of mercury is declining in the United States as a consequence of process changes to manufactured products (including batteries, paints, switches, and measuring devices), but those uses remain substantial in the developing world where releases from the products are extremely likely due to the limited pollution control and waste management infrastructures in those countries;

"(10) the member countries of the European Union collectively are the largest source of elemental mercury exports globally;

"(11) the European Commission has proposed to the European Parliament and to the Council of the European Union a regulation to ban exports of elemental mercury from the European Union by 2011;

"(12) the United States is a net exporter of elemental mercury and, according to the United States Geological Survey, exported 506 metric tons of elemental mercury more than the United States imported during the period of 2000 through 2004; and

"(13) banning exports of elemental mercury from the United States will have a notable effect on the market availability of elemental mercury and switching to affordable mercury alternatives in the developing world."

§2612. Entry into customs territory of the United States

(a) In general

(1) The Secretary of the Treasury shall refuse entry into the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States) of any chemical substance, mixture, or article containing a chemical substance or mixture offered for such entry if—

(A) it fails to comply with any rule in effect under this chapter, or

(B) it is offered for entry in violation of section 2604 of this title, 2605 of this title, or subchapter IV of this chapter, a rule or order under section 2604 of this title, 2605 of this title, or subchapter IV of this chapter, or an order issued in a civil action brought under section 2604 of this title, 2606 of this title or subchapter IV of this chapter.

(2) If a chemical substance, mixture, or article is refused entry under paragraph (1), the Secretary of the Treasury shall notify the consignee of such entry refusal, shall not release it to the consignee, and shall cause its disposal or storage (under such rules as the Secretary of the Treasury may prescribe) if it has not been exported by the consignee within 90 days from the date of receipt of notice of such refusal, except that the Secretary of the Treasury may, pending a review by the Administrator of the entry refusal, release to the consignee such substance, mixture, or article on

execution of bond for the amount of the full invoice of such substance, mixture, or article (as such value is set forth in the customs entry), together with the duty thereon. On failure to return such substance, mixture, or article for any cause to the custody of the Secretary of the Treasury when demanded, such consignee shall be liable to the United States for liquidated damages equal to the full amount of such bond. All charges for storage, cartage, and labor on and for disposal of substances, mixtures, or articles which are refused entry or release under this section shall be paid by the owner or consignee, and in default of such payment shall constitute a lien against any future entry made by such owner or consignee.

(b) Rules

The Secretary of the Treasury, after consultation with the Administrator, shall issue rules for the administration of subsection (a) of this section.

(Pub. L. 94–469, title I, §13, Oct. 11, 1976, 90 Stat. 2034; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989; amended Pub. L. 100–418, title I, §1214(e)(2), Aug. 23, 1988, 102 Stat. 1156; Pub. L. 102–550, title X, §1021(b)(4), Oct. 28, 1992, 106 Stat. 3923.)

REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsec. (a), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of Title 19, Customs Duties.

AMENDMENTS

1992—Subsec. (a)(1)(B). Pub. L. 102–550 substituted "section 2604 of this title, 2605 of this title, or subchapter IV of this chapter" for "section 2604 or 2605 of this title" in two places and "section 2604 of this title, 2606 of this title or subchapter IV of this chapter" for "section 2604 or 2606 of this title".

1988—Subsec. (a)(1). Pub. L. 100–418 substituted "general note 2 of the Harmonized Tariff Schedule of the United States" for "general headnote 2 to the Tariff Schedules of the United States" in introductory text.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub. L. 100–418, set out as an Effective Date note under section 3001 of Title 19, Customs Duties.

§2613. Disclosure of data

(a) In general

Except as provided by subsection (b) of this section, any information reported to, or otherwise obtained by, the Administrator (or any representative of the Administrator) under this chapter, which is exempt from disclosure pursuant to subsection (a) of section 552 of title 5 by reason of subsection (b)(4) of such section, shall, notwithstanding the provisions of any other section of this chapter, not be disclosed by the Administrator or by any officer or employee of the United States, except that such information—

(1) shall be disclosed to any officer or employee of the United States—

(A) in connection with the official duties of such officer or employee under any law for the protection of health or the environment, or

(B) for specific law enforcement purposes;

(2) shall be disclosed to contractors with the United States and employees of such contractors if in the opinion of the Administrator such disclosure is necessary for the satisfactory performance by the contractor of a contract with the United States entered into on or after October 11, 1976, for the performance of work in connection with this chapter and under such conditions as the Administrator may specify;

(3) shall be disclosed if the Administrator determines it necessary to protect health or the environment against an unreasonable risk of injury to health or the environment; or

(4) may be disclosed when relevant in any proceeding under this chapter, except that disclosure

in such a proceeding shall be made in such manner as to preserve confidentiality to the extent practicable without impairing the proceeding.

In any proceeding under section 552(a) of title 5 to obtain information the disclosure of which has been denied because of the provisions of this subsection, the Administrator may not rely on section 552(b)(3) of such title to sustain the Administrator's action.

(b) Data from health and safety studies

(1) Subsection (a) does not prohibit the disclosure of—

(A) any health and safety study which is submitted under this chapter with respect to—

(i) any chemical substance or mixture which, on the date on which such study is to be disclosed has been offered for commercial distribution, or

(ii) any chemical substance or mixture for which testing is required under section 2603 of this title or for which notification is required under section 2604 of this title, and

(B) any data reported to, or otherwise obtained by, the Administrator from a health and safety study which relates to a chemical substance or mixture described in clause (i) or (ii) of subparagraph (A).

This paragraph does not authorize the release of any data which discloses processes used in the manufacturing or processing of a chemical substance or mixture or, in the case of a mixture, the release of data disclosing the portion of the mixture comprised by any of the chemical substances in the mixture.

(2) If a request is made to the Administrator under subsection (a) of section 552 of title 5 for information which is described in the first sentence of paragraph (1) and which is not information described in the second sentence of such paragraph, the Administrator may not deny such request on the basis of subsection (b)(4) of such section.

(c) Designation and release of confidential data

(1) In submitting data under this chapter, a manufacturer, processor, or distributor in commerce may (A) designate the data which such person believes is entitled to confidential treatment under subsection (a) of this section, and (B) submit such designated data separately from other data submitted under this chapter. A designation under this paragraph shall be made in writing and in such manner as the Administrator may prescribe.

(2)(A) Except as provided by subparagraph (B), if the Administrator proposes to release for inspection data which has been designated under paragraph (1)(A), the Administrator shall notify, in writing and by certified mail, the manufacturer, processor, or distributor in commerce who submitted such data of the intent to release such data. If the release of such data is to be made pursuant to a request made under section 552(a) of title 5, such notice shall be given immediately upon approval of such request by the Administrator. The Administrator may not release such data until the expiration of 30 days after the manufacturer, processor, or distributor in commerce submitting such data has received the notice required by this subparagraph.

(B)(i) Subparagraph (A) shall not apply to the release of information under paragraph (1), (2), (3), or (4) of subsection (a) of this section, except that the Administrator may not release data under paragraph (3) of subsection (a) of this section unless the Administrator has notified each manufacturer, processor, and distributor in commerce who submitted such data of such release. Such notice shall be made in writing by certified mail at least 15 days before the release of such data, except that if the Administrator determines that the release of such data is necessary to protect against an imminent, unreasonable risk of injury to health or the environment, such notice may be made by such means as the Administrator determines will provide notice at least 24 hours before such release is made.

(ii) Subparagraph (A) shall not apply to the release of information described in subsection (b)(1) of this section other than information described in the second sentence of such subsection.

(d) Criminal penalty for wrongful disclosure

(1) Any officer or employee of the United States or former officer or employee of the United States, who by virtue of such employment or official position has obtained possession of, or has access to, material the disclosure of which is prohibited by subsection (a) of this section, and who knowing that disclosure of such material is prohibited by such subsection, willfully discloses the material in any manner to any person not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000 or imprisoned for not more than one year, or both. Section 1905 of title 18 does not apply with respect to the publishing, divulging, disclosure, or making known of, or making available, information reported or otherwise obtained under this chapter.

(2) For the purposes of paragraph (1), any contractor with the United States who is furnished information as authorized by subsection (a)(2) of this section, and any employee of any such contractor, shall be considered to be an employee of the United States.

(e) Access by Congress

Notwithstanding any limitation contained in this section or any other provision of law, all information reported to or otherwise obtained by the Administrator (or any representative of the Administrator) under this chapter shall be made available, upon written request of any duly authorized committee of the Congress, to such committee.

(Pub. L. 94–469, title I, §14, Oct. 11, 1976, 90 Stat. 2034; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989.)

§2614. Prohibited acts

It shall be unlawful for any person to—

(1) fail or refuse to comply with (A) any rule promulgated or order issued under section 2603 of this title, (B) any requirement prescribed by section 2604 or 2605 of this title, (C) any rule promulgated or order issued under section 2604 or 2605 of this title, or (D) any requirement of subchapter II of this chapter or any rule promulgated or order issued under subchapter II of this chapter;

(2) use for commercial purposes a chemical substance or mixture which such person knew or had reason to know was manufactured, processed, or distributed in commerce in violation of section 2604 or 2605 of this title, a rule or order under section 2604 or 2605 of this title, or an order issued in action brought under section 2604 or 2606 of this title;

(3) fail or refuse to (A) establish or maintain records, (B) submit reports, notices, or other information, or (C) permit access to or copying of records, as required by this chapter or a rule thereunder; or

(4) fail or refuse to permit entry or inspection as required by section 2610 of this title.

(Pub. L. 94–469, title I, §15, Oct. 11, 1976, 90 Stat. 2036; renumbered title I and amended Pub. L. 99–519, §3(b)(1), (c)(1), Oct. 22, 1986, 100 Stat. 2988, 2989.)

AMENDMENTS

1986—Par. (1)(D). Pub. L. 99–519 added cl. (D).

§2615. Penalties

(a) Civil

(1) Any person who violates a provision of section 2614 or 2689 of this title shall be liable to the United States for a civil penalty in an amount not to exceed $25,000 for each such violation. Each day such a violation continues shall, for purposes of this subsection, constitute a separate violation of section 2614 or 2689 of this title.

(2)(A) A civil penalty for a violation of section section 2614 or 2689 of this title shall be assessed by the Administrator by an order made on the record after opportunity (provided in accordance with this subparagraph) for a hearing in accordance with section 554 of title 5. Before issuing such an

order, the Administrator shall give written notice to the person to be assessed a civil penalty under such order of the Administrator's proposal to issue such order and provide such person an opportunity to request, within 15 days of the date the notice is received by such person, such a hearing on the order.

(B) In determining the amount of a civil penalty, the Administrator shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

(C) The Administrator may compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed under this subsection. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

(3) Any person who requested in accordance with paragraph (2)(A) a hearing respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued.

(4) If any person fails to pay an assessment of a civil penalty—

(A) after the order making the assessment has become a final order and if such person does not file a petition for judicial review of the order in accordance with paragraph (3), or

(B) after a court in an action brought under paragraph (3) has entered a final judgment in favor of the Administrator,

the Attorney General shall recover the amount assessed (plus interest at currently prevailing rates from the date of the expiration of the 30-day period referred to in paragraph (3) or the date of such final judgment, as the case may be) in an action brought in any appropriate district court of the United States. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

(b) Criminal

Any person who knowingly or willfully violates any provision of section 2614 or 2689 of this title, shall, in addition to or in lieu of any civil penalty which may be imposed under subsection (a) of this section for such violation, be subject, upon conviction, to a fine of not more than $25,000 for each day of violation, or to imprisonment for not more than one year, or both.

(Pub. L. 94–469, title I, §16, Oct. 11, 1976, 90 Stat. 2037; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989; amended Pub. L. 102–550, title X, §1021(b)(5), Oct. 28, 1992, 106 Stat. 3923.)

AMENDMENTS

1992—Subsecs. (a)(1), (2)(A), (b). Pub. L. 102–550 substituted "section 2614 or 2689 of this title" for "section 2614 of this title" wherever appearing.

§2616. Specific enforcement and seizure

(a) Specific enforcement

(1) The district courts of the United States shall have jurisdiction over civil actions to—

(A) restrain any violation of section 2614 or 2689 of this title,

(B) restrain any person from taking any action prohibited by section 2604 of this title, 2605 of this title, or subchapter IV of this chapter, or by a rule or order under section 2604 of this title, 2605 of this title, or subchapter IV of this chapter,

(C) compel the taking of any action required by or under this chapter, or

(D) direct any manufacturer or processor of a chemical substance, mixture, or product subject to

subchapter IV of this chapter manufactured or processed in violation of section 2604 of this title, 2605 of this title, or subchapter IV of this chapter, or a rule or order under section 2604 of this title, 2605 of this title, or subchapter IV of this chapter, and distributed in commerce, (i) to give notice of such fact to distributors in commerce of such substance, mixture, or product and, to the extent reasonably ascertainable, to other persons in possession of such substance, mixture, or product or exposed to such substance, mixture, or product, (ii) to give public notice of such risk of injury, and (iii) to either replace or repurchase such substance, mixture, or product, whichever the person to which the requirement is directed elects.

(2) A civil action described in paragraph (1) may be brought—

(A) in the case of a civil action described in subparagraph (A) of such paragraph, in the United States district court for the judicial district wherein any act, omission, or transaction constituting a violation of section 2614 of this title occurred or wherein the defendant is found or transacts business, or

(B) in the case of any other civil action described in such paragraph, in the United States district court for the judicial district wherein the defendant is found or transacts business.

In any such civil action process may be served on a defendant in any judicial district in which a defendant resides or may be found. Subpoenas requiring attendance of witnesses in any such action may be served in any judicial district.

(b) Seizure

Any chemical substance, mixture, or product subject to subchapter IV of this chapter which was manufactured, processed, or distributed in commerce in violation of this chapter or any rule promulgated or order issued under this chapter or any article containing such a substance or mixture shall be liable to be proceeded against, by process of libel, for the seizure and condemnation of such substance, mixture, product, or article, in any district court of the United States within the jurisdiction of which such substance, mixture, product, or article is found. Such proceedings shall conform as nearly as possible to proceedings in rem in admiralty.

(Pub. L. 94–469, title I, §17, Oct. 11, 1976, 90 Stat. 2037; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989; amended Pub. L. 102–550, title X, §1021(b)(6), (7), Oct. 28, 1992, 106 Stat. 3923.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–550, §1021(b)(6), which directed that subsec. (a) be amended "to read as follows" and then set out the subsec. (a) designation and heading, followed by the par. (1) designation and text, without any restatement of par. (2), was executed as a general amendment of par. (1) only, to reflect the probable intent of Congress. Prior to amendment, par. (1) read as follows: "The district courts of the United States shall have jurisdiction over civil actions to—

"(A) restrain any violation of section 2614 of this title,

"(B) restrain any person from taking any action prohibited by section 2604 or 2605 of this title or by a rule or order under section 2604 or 2605 of this title,

"(C) compel the taking of any action required by or under this chapter, or

"(D) direct any manufacturer or processor of a chemical substance or mixture manufactured or processed in violation of section 2604 or 2605 of this title or a rule or order under section 2604 or 2605 of this title and distributed in commerce, (i) to give notice of such fact to distributors in commerce of such substance or mixture and, to the extent reasonably ascertainable, to other persons in possession of such substance or mixture or exposed to such substance or mixture, (ii) to give public notice of such risk of injury, and (iii) to either replace or repurchase such substance or mixture, whichever the person to which the requirement is directed elects."

Subsec. (b). Pub. L. 102–550, §1021(b)(7), in first sentence substituted "substance, mixture, or product subject to subchapter IV of this chapter" for "substance or mixture" and inserted "product," before "or article" in two places.

§2617. Preemption

(a) Effect on State law

(1) Except as provided in paragraph (2), nothing in this chapter shall affect the authority of any State or political subdivision of a State to establish or continue in effect regulation of any chemical substance, mixture, or article containing a chemical substance or mixture.

(2) Except as provided in subsection (b) of this section—

(A) if the Administrator requires by a rule promulgated under section 2603 of this title the testing of a chemical substance or mixture, no State or political subdivision may, after the effective date of such rule, establish or continue in effect a requirement for the testing of such substance or mixture for purposes similar to those for which testing is required under such rule; and

(B) if the Administrator prescribes a rule or order under section 2604 or 2605 of this title (other than a rule imposing a requirement described in subsection (a)(6) of section 2605 of this title) which is applicable to a chemical substance or mixture, and which is designed to protect against a risk of injury to health or the environment associated with such substance or mixture, no State or political subdivision of a State may, after the effective date of such requirement, establish or continue in effect, any requirement which is applicable to such substance or mixture, or an article containing such substance or mixture, and which is designed to protect against such risk unless such requirement (i) is identical to the requirement prescribed by the Administrator, (ii) is adopted under the authority of the Clean Air Act [42 U.S.C. 7401 et seq.] or any other Federal law, or (iii) prohibits the use of such substance or mixture in such State or political subdivision (other than its use in the manufacture or processing of other substances or mixtures).

(b) Exemption

Upon application of a State or political subdivision of a State the Administrator may by rule exempt from subsection (a)(2) of this section, under such conditions as may be prescribed in such rule, a requirement of such State or political subdivision designed to protect against a risk of injury to health or the environment associated with a chemical substance, mixture, or article containing a chemical substance or mixture if—

(1) compliance with the requirement would not cause the manufacturing, processing, distribution in commerce, or use of the substance, mixture, or article to be in violation of the applicable requirement under this chapter described in subsection (a)(2) of this section, and

(2) the State or political subdivision requirement (A) provides a significantly higher degree of protection from such risk than the requirement under this chapter described in subsection (a)(2) of this section and (B) does not, through difficulties in marketing, distribution, or other factors, unduly burden interstate commerce.

(Pub. L. 94–469, title I, §18, Oct. 11, 1976, 90 Stat. 2038; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (a)(2)(B), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

§2618. Judicial review

(a) In general

(1)(A) Not later than 60 days after the date of the promulgation of a rule under section 2603(a), 2604(a)(2), 2604(b)(4), 2605(a), 2605(e), or 2607 of this title, or under subchapter II or IV of this chapter, any person may file a petition for judicial review of such rule with the United States Court of Appeals for the District of Columbia Circuit or for the circuit in which such person resides or in

which such person's principal place of business is located. Courts of appeals of the United States shall have exclusive jurisdiction of any action to obtain judicial review (other than in an enforcement proceeding) of such a rule if any district court of the United States would have had jurisdiction of such action but for this subparagraph.

(B) Courts of appeals of the United States shall have exclusive jurisdiction of any action to obtain judicial review (other than in an enforcement proceeding) of an order issued under subparagraph (A) or (B) of section 2605(b)(1) of this title if any district court of the United States would have had jurisdiction of such action but for this subparagraph.

(2) Copies of any petition filed under paragraph (1)(A) shall be transmitted forthwith to the Administrator and to the Attorney General by the clerk of the court with which such petition was filed. The provisions of section 2112 of title 28 shall apply to the filing of the rulemaking record of proceedings on which the Administrator based the rule being reviewed under this section and to the transfer of proceedings between United States courts of appeals.

(3) For purposes of this section, the term "rulemaking record" means—

(A) the rule being reviewed under this section;

(B) in the case of a rule under section 2603(a) of this title, the finding required by such section, in the case of a rule under section 2604(b)(4) of this title, the finding required by such section, in the case of a rule under section 2605(a) of this title the finding required by section 2604(f) or 2605(a) of this title, as the case may be, in the case of a rule under section 2605(a) of this title, the statement required by section 2605(c)(1) of this title, and in the case of a rule under section 2605(e) of this title, the findings required by paragraph (2)(B) or (3)(B) of such section, as the case may be [1] and in the case of a rule under subchapter IV of this chapter, the finding required for the issuance of such a rule;

(C) any transcript required to be made of oral presentations made in proceedings for the promulgation of such rule;

(D) any written submission of interested parties respecting the promulgation of such rule; and

(E) any other information which the Administrator considers to be relevant to such rule and which the Administrator identified, on or before the date of the promulgation of such rule, in a notice published in the Federal Register.

(b) Additional submissions and presentations; modifications

If in an action under this section to review a rule the petitioner or the Administrator applies to the court for leave to make additional oral submissions or written presentations respecting such rule and shows to the satisfaction of the court that such submissions and presentations would be material and that there were reasonable grounds for the submissions and failure to make such submissions and presentations in the proceeding before the Administrator, the court may order the Administrator to provide additional opportunity to make such submissions and presentations. The Administrator may modify or set aside the rule being reviewed or make a new rule by reason of the additional submissions and presentations and shall file such modified or new rule with the return of such submissions and presentations. The court shall thereafter review such new or modified rule.

(c) Standard of review

(1)(A) Upon the filing of a petition under subsection (a)(1) of this section for judicial review of a rule, the court shall have jurisdiction (i) to grant appropriate relief, including interim relief, as provided in chapter 7 of title 5, and (ii) except as otherwise provided in subparagraph (B), to review such rule in accordance with chapter 7 of title 5.

(B) Section 706 of title 5 shall apply to review of a rule under this section, except that—

(i) in the case of review of a rule under section 2603(a), 2604(b)(4), 2605(a), or 2605(e) of this title, the standard for review prescribed by paragraph (2)(E) of such section 706 shall not apply and the court shall hold unlawful and set aside such rule if the court finds that the rule is not supported by substantial evidence in the rulemaking record (as defined in subsection (a)(3) of this section) taken as a whole;

(ii) in the case of review of a rule under section 2605(a) of this title, the court shall hold unlawful and set aside such rule if it finds that—

(I) a determination by the Administrator under section 2605(c)(3) of this title that the petitioner seeking review of such rule is not entitled to conduct (or have conducted) cross-examination or to present rebuttal submissions, or

(II) a rule of, or ruling by, the Administrator under section 2605(c)(3) of this title limiting such petitioner's cross-examination or oral presentations,

has precluded disclosure of disputed material facts which was necessary to a fair determination by the Administrator of the rulemaking proceeding taken as a whole; and section 706(2)(D) shall not apply with respect to a determination, rule, or ruling referred to in subclause (I) or (II); and

(iii) the court may not review the contents and adequacy of—

(I) any statement required to be made pursuant to section 2605(c)(1) of this title, or

(II) any statement of basis and purpose required by section 553(c) of title 5 to be incorporated in the rule

except as part of a review of the rulemaking record taken as a whole.

The term "evidence" as used in clause (i) means any matter in the rulemaking record.

(C) A determination, rule, or ruling of the Administrator described in subparagraph (B)(ii) may be reviewed only in an action under this section and only in accordance with such subparagraph.

(2) The judgment of the court affirming or setting aside, in whole or in part, any rule reviewed in accordance with this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28.

(d) Fees and costs

The decision of the court in an action commenced under subsection (a) of this section, or of the Supreme Court of the United States on review of such a decision, may include an award of costs of suit and reasonable fees for attorneys and expert witnesses if the court determines that such an award is appropriate.

(e) Other remedies

The remedies as provided in this section shall be in addition to and not in lieu of any other remedies provided by law.

(Pub. L. 94–469, title I, §19, Oct. 11, 1976, 90 Stat. 2039; renumbered title I and amended Pub. L. 99–519, §3(b)(2), (c)(1), Oct. 22, 1986, 100 Stat. 2989; Pub. L. 102–550, title X, §1021(b)(8), Oct. 28, 1992, 106 Stat. 3923.)

AMENDMENTS

1992—Subsec. (a)(1)(A). Pub. L. 102–550, §1021(b)(8)(A), substituted "subchapter II or IV of this chapter" for "subchapter II of this chapter".

Subsec. (a)(3)(B). Pub. L. 102–550, §1021(b)(8)(B), inserted before semicolon at end "and in the case of a rule under subchapter IV of this chapter, the finding required for the issuance of such a rule".

1986—Subsec. (a)(1)(A). Pub. L. 99–519 inserted reference to subchapter II of this chapter.

[1] So in original. Probably should be followed by a comma.

§2619. Citizens' civil actions

(a) In general

Except as provided in subsection (b) of this section, any person may commence a civil action—

(1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution)

who is alleged to be in violation of this chapter or any rule promulgated under section 2603, 2604, or 2605 of this title, or subchapter II or IV of this chapter, or order issued under section 2604 of this title or subchapter II or IV of this chapter to restrain such violation, or

(2) against the Administrator to compel the Administrator to perform any act or duty under this chapter which is not discretionary.

Any civil action under paragraph (1) shall be brought in the United States district court for the district in which the alleged violation occurred or in which the defendant resides or in which the defendant's principal place of business is located. Any action brought under paragraph (2) shall be brought in the United States District Court for the District of Columbia, or the United States district court for the judicial district in which the plaintiff is domiciled. The district courts of the United States shall have jurisdiction over suits brought under this section, without regard to the amount in controversy or the citizenship of the parties. In any civil action under this subsection process may be served on a defendant in any judicial district in which the defendant resides or may be found and subpoenas for witnesses may be served in any judicial district.

(b) Limitation

No civil action may be commenced—

(1) under subsection (a)(1) of this section to restrain a violation of this chapter or rule or order under this chapter—

(A) before the expiration of 60 days after the plaintiff has given notice of such violation (i) to the Administrator, and (ii) to the person who is alleged to have committed such violation, or

(B) if the Administrator has commenced and is diligently prosecuting a proceeding for the issuance of an order under section 2615(a)(2) of this title to require compliance with this chapter or with such rule or order or if the Attorney General has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with this chapter or with such rule or order, but if such proceeding or civil action is commenced after the giving of notice, any person giving such notice may intervene as a matter of right in such proceeding or action; or

(2) under subsection (a)(2) of this section before the expiration of 60 days after the plaintiff has given notice to the Administrator of the alleged failure of the Administrator to perform an act or duty which is the basis for such action or, in the case of an action under such subsection for the failure of the Administrator to file an action under section 2606 of this title, before the expiration of ten days after such notification.

Notice under this subsection shall be given in such manner as the Administrator shall prescribe by rule.

(c) General

(1) In any action under this section, the Administrator, if not a party, may intervene as a matter of right.

(2) The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of suit and reasonable fees for attorneys and expert witnesses if the court determines that such an award is appropriate. Any court, in issuing its decision in an action brought to review such an order, may award costs of suit and reasonable fees for attorneys if the court determines that such an award is appropriate.

(3) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of this chapter or any rule or order under this chapter or to seek any other relief.

(d) Consolidation

When two or more civil actions brought under subsection (a) of this section involving the same defendant and the same issues or violations are pending in two or more judicial districts, such

pending actions, upon application of such defendants to such actions which is made to a court in which any such action is brought, may, if such court in its discretion so decides, be consolidated for trial by order (issued after giving all parties reasonable notice and opportunity to be heard) of such court and tried in—

(1) any district which is selected by such defendant and in which one of such actions is pending,

(2) a district which is agreed upon by stipulation between all the parties to such actions and in which one of such actions is pending, or

(3) a district which is selected by the court and in which one of such actions is pending.

The court issuing such an order shall give prompt notification of the order to the other courts in which the civil actions consolidated under the order are pending.

(Pub. L. 94–469, title I, §20, Oct. 11, 1976, 90 Stat. 2041; renumbered title I and amended Pub. L. 99–519, §3(b)(3), (c)(1), Oct. 22, 1986, 100 Stat. 2989; Pub. L. 102–550, title X, §1021(b)(9), Oct. 28, 1992, 106 Stat. 3923.)

AMENDMENTS

1992—Subsec. (a)(1). Pub. L. 102–550 substituted "subchapter II or IV of this chapter" for "subchapter II of this chapter" in two places.

1986—Subsec. (a)(1). Pub. L. 99–519 inserted references to subchapter II of this chapter.

§2620. Citizens' petitions

(a) In general

Any person may petition the Administrator to initiate a proceeding for the issuance, amendment, or repeal of a rule under section 2603, 2605, or 2607 of this title or an order under section 2604(e) or 2605(b)(2) of this title.

(b) Procedures

(1) Such petition shall be filed in the principal office of the Administrator and shall set forth the facts which it is claimed establish that it is necessary to issue, amend, or repeal a rule under section 2603, 2605, or 2607 of this title or an order under section 2604(e), 2605(b)(1)(A), or 2605(b)(1)(B) of this title.

(2) The Administrator may hold a public hearing or may conduct such investigation or proceeding as the Administrator deems appropriate in order to determine whether or not such petition should be granted.

(3) Within 90 days after filing of a petition described in paragraph (1), the Administrator shall either grant or deny the petition. If the Administrator grants such petition, the Administrator shall promptly commence an appropriate proceeding in accordance with section 2603, 2604, 2605, or 2607 of this title. If the Administrator denies such petition, the Administrator shall publish in the Federal Register the Administrator's reasons for such denial.

(4)(A) If the Administrator denies a petition filed under this section (or if the Administrator fails to grant or deny such petition within the 90-day period) the petitioner may commence a civil action in a district court of the United States to compel the Administrator to initiate a rulemaking proceeding as requested in the petition. Any such action shall be filed within 60 days after the Administrator's denial of the petition or, if the Administrator fails to grant or deny the petition within 90 days after filing the petition, within 60 days after the expiration of the 90-day period.

(B) In an action under subparagraph (A) respecting a petition to initiate a proceeding to issue a rule under section 2603, 2605, or 2607 of this title or an order under section 2604(e) or 2605(b)(2) of this title, the petitioner shall be provided an opportunity to have such petition considered by the court in a de novo proceeding. If the petitioner demonstrates to the satisfaction of the court by a preponderance of the evidence that—

(i) in the case of a petition to initiate a proceeding for the issuance of a rule under section 2603 of this title or an order under section 2604(e) of this title—

(I) information available to the Administrator is insufficient to permit a reasoned evaluation of the health and environmental effects of the chemical substance to be subject to such rule or order; and

(II) in the absence of such information, the substance may present an unreasonable risk to health or the environment, or the substance is or will be produced in substantial quantities and it enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to it; or

(ii) in the case of a petition to initiate a proceeding for the issuance of a rule under section 2605 or 2607 of this title or an order under section 2605(b)(2) of this title, there is a reasonable basis to conclude that the issuance of such a rule or order is necessary to protect health or the environment against an unreasonable risk of injury to health or the environment.[1]

the court shall order the Administrator to initiate the action requested by the petitioner. If the court finds that the extent of the risk to health or the environment alleged by the petitioner is less than the extent of risks to health or the environment with respect to which the Administrator is taking action under this chapter and there are insufficient resources available to the Administrator to take the action requested by the petitioner, the court may permit the Administrator to defer initiating the action requested by the petitioner until such time as the court prescribes.

(C) The court in issuing any final order in any action brought pursuant to subparagraph (A) may award costs of suit and reasonable fees for attorneys and expert witnesses if the court determines that such an award is appropriate. Any court, in issuing its decision in an action brought to review such an order, may award costs of suit and reasonable fees for attorneys if the court determines that such an award is appropriate.

(5) The remedies under this section shall be in addition to, and not in lieu of, other remedies provided by law.

(Pub. L. 94–469, title I, §21, Oct. 11, 1976, 90 Stat. 2042; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989.)

[1] So in original. The period probably should be a semicolon.

§2621. National defense waiver

The Administrator shall waive compliance with any provision of this chapter upon a request and determination by the President that the requested waiver is necessary in the interest of national defense. The Administrator shall maintain a written record of the basis upon which such waiver was granted and make such record available for in camera examination when relevant in a judicial proceeding under this chapter. Upon the issuance of such a waiver, the Administrator shall publish in the Federal Register a notice that the waiver was granted for national defense purposes, unless, upon the request of the President, the Administrator determines to omit such publication because the publication itself would be contrary to the interests of national defense, in which event the Administrator shall submit notice thereof to the Armed Services Committees of the Senate and the House of Representatives.

(Pub. L. 94–469, title I, §22, Oct. 11, 1976, 90 Stat. 2044; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989.)

§2622. Employee protection

(a) In general

No employer may discharge any employee or otherwise discriminate against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the

employee (or any person acting pursuant to a request of the employee) has—

(1) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this chapter;

(2) testified or is about to testify in any such proceeding; or

(3) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of this chapter.

(b) Remedy

(1) Any employee who believes that the employee has been discharged or otherwise discriminated against by any person in violation of subsection (a) of this section may, within 30 days after such alleged violation occurs, file (or have any person file on the employee's behalf) a complaint with the Secretary of Labor (hereinafter in this section referred to as the "Secretary") alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint.

(2)(A) Upon receipt of a complaint filed under paragraph (1), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within 30 days of the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any person acting on behalf of the complainant) and the person alleged to have committed such violation of the results of the investigation conducted pursuant to this paragraph. Within ninety days of the receipt of such complaint the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by subparagraph (B) or denying the complaint. An order of the Secretary shall be made on the record after notice and opportunity for agency hearing. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

(B) If in response to a complaint filed under paragraph (1) the Secretary determines that a violation of subsection (a) of this section has occurred, the Secretary shall order (i) the person who committed such violation to take affirmative action to abate the violation, (ii) such person to reinstate the complainant to the complainant's former position together with the compensation (including back pay), terms, conditions, and privileges of the complainant's employment, (iii) compensatory damages, and (iv) where appropriate, exemplary damages. If such an order issued, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorney's fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(c) Review

(1) Any employee or employer adversely affected or aggrieved by an order issued under subsection (b) of this section may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within sixty days from the issuance of the Secretary's order. Review shall conform to chapter 7 of title 5.

(2) An order of the Secretary, with respect to which review could have been obtained under paragraph (1), shall not be subject to judicial review in any criminal or other civil proceeding.

(d) Enforcement

Whenever a person has failed to comply with an order issued under subsection (b)(2) of this section, the Secretary shall file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this subsection, the district courts shall have jurisdiction to grant all appropriate relief, including injunctive relief and compensatory and exemplary damages.

(e) Exclusion

Subsection (a) of this section shall not apply with respect to any employee who, acting without

direction from the employee's employer (or any agent of the employer), deliberately causes a violation of any requirement of this chapter.

(Pub. L. 94–469, title I, §23, Oct. 11, 1976, 90 Stat. 2044; Pub. L. 98–620, title IV, §402(19), Nov. 8, 1984, 98 Stat. 3358; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989.)

AMENDMENTS

1984—Subsec. (d). Pub. L. 98–620 struck out provision that civil actions brought under this subsection had to be heard and decided expeditiously.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§2623. Employment effects

(a) In general

The Administrator shall evaluate on a continuing basis the potential effects on employment (including reductions in employment or loss of employment from threatened plant closures) of—

(1) the issuance of a rule or order under section 2603, 2604, or 2605 of this title, or

(2) a requirement of section 2604 or 2605 of this title.

(b) Investigations

(1) Any employee (or any representative of an employee) may request the Administrator to make an investigation of—

(A) a discharge or layoff or threatened discharge or layoff of the employee, or

(B) adverse or threatened adverse effects on the employee's employment,

allegedly resulting from a rule or order under section 2603, 2604, or 2605 of this title or a requirement of section 2604 or 2605 of this title. Any such request shall be made in writing, shall set forth with reasonable particularity the grounds for the request, and shall be signed by the employee, or representative of such employee, making the request.

(2)(A) Upon receipt of a request made in accordance with paragraph (1) the Administrator shall (i) conduct the investigation requested, and (ii) if requested by any interested person, hold public hearings on any matter involved in the investigation unless the Administrator, by order issued within 45 days of the date such hearings are requested, denies the request for the hearings because the Administrator determines there are no reasonable grounds for holding such hearings. If the Administrator makes such a determination, the Administrator shall notify in writing the person requesting the hearing of the determination and the reasons therefor and shall publish the determination and the reasons therefor in the Federal Register.

(B) If public hearings are to be held on any matter involved in an investigation conducted under this subsection—

(i) at least five days' notice shall be provided the person making the request for the investigation and any person identified in such request,

(ii) such hearings shall be held in accordance with section 2605(c)(3) of this title, and

(iii) each employee who made or for whom was made a request for such hearings and the employer of such employee shall be required to present information respecting the applicable matter referred to in paragraph (1)(A) or (1)(B) together with the basis for such information.

(3) Upon completion of an investigation under paragraph (2), the Administrator shall make findings of fact, shall make such recommendations as the Administrator deems appropriate, and shall make available to the public such findings and recommendations.

(4) This section shall not be construed to require the Administrator to amend or repeal any rule or order in effect under this chapter.

(Pub. L. 94–469, title I, §24, Oct. 11, 1976, 90 Stat. 2045; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989.)

§2624. Studies

(a) Indemnification study

The Administrator shall conduct a study of all Federal laws administered by the Administrator for the purpose of determining whether and under what conditions, if any, indemnification should be accorded any person as a result of any action taken by the Administrator under any such law. The study shall—

(1) include an estimate of the probable cost of any indemnification programs which may be recommended;

(2) include an examination of all viable means of financing the cost of any recommended indemnification; and

(3) be completed and submitted to Congress within two years from the effective date of enactment of this chapter.

The General Accounting Office shall review the adequacy of the study submitted to Congress pursuant to paragraph (3) and shall report the results of its review to the Congress within six months of the date such study is submitted to Congress.

(b) Classification, storage, and retrieval study

The Council on Environmental Quality, in consultation with the Administrator, the Secretary of Health and Human Services, the Secretary of Commerce, and the heads of other appropriate Federal departments or agencies, shall coordinate a study of the feasibility of establishing (1) a standard classification system for chemical substances and related substances, and (2) a standard means for storing and for obtaining rapid access to information respecting such substances. A report on such study shall be completed and submitted to Congress not later than 18 months after the effective date of enactment of this chapter.

(Pub. L. 94–469, title I, §25, Oct. 11, 1976, 90 Stat. 2046; Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989.)

REFERENCES IN TEXT

The effective date of enactment of this chapter, referred to in subsecs. (a)(3) and (b), probably means January 1, 1977, the effective date of the chapter prescribed by sec. 31 of Pub. L. 94–469, which is set out as a note under section 2601 of this title, rather than October 11, 1976, the date of enactment.

CHANGE OF NAME

General Accounting Office redesignated Government Accountability Office by section 8 of Pub. L. 108–271, set out as a note under section 702 of Title 31, Money and Finance.

"Secretary of Health and Human Services" substituted for "Secretary of Health, Education, and Welfare" in subsec. (b), pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

§2625. Administration

(a) Cooperation of Federal agencies

Upon request by the Administrator, each Federal department and agency is authorized—

(1) to make its services, personnel, and facilities available (with or without reimbursement) to the Administrator to assist the Administrator in the administration of this chapter; and

(2) to furnish to the Administrator such information, data, estimates, and statistics, and to allow the Administrator access to all information in its possession as the Administrator may reasonably determine to be necessary for the administration of this chapter.

(b) Fees

(1) The Administrator may, by rule, require the payment of a reasonable fee from any person required to submit data under section 2603 or 2604 of this title to defray the cost of administering this chapter. Such rules shall not provide for any fee in excess of $2,500 or, in the case of a small business concern, any fee in excess of $100. In setting a fee under this paragraph, the Administrator shall take into account the ability to pay of the person required to submit the data and the cost to the Administrator of reviewing such data. Such rules may provide for sharing such a fee in any case in which the expenses of testing are shared under section 2603 or 2604 of this title.

(2) The Administrator, after consultation with the Administrator of the Small Business Administration, shall by rule prescribe standards for determining the persons which qualify as small business concerns for purposes of paragraph (1).

(c) Action with respect to categories

(1) Any action authorized or required to be taken by the Administrator under any provision of this chapter with respect to a chemical substance or mixture may be taken by the Administrator in accordance with that provision with respect to a category of chemical substances or mixtures. Whenever the Administrator takes action under a provision of this chapter with respect to a category of chemical substances or mixtures, any reference in this chapter to a chemical substance or mixture (insofar as it relates to such action) shall be deemed to be a reference to each chemical substance or mixture in such category.

(2) For purposes of paragraph (1):

(A) The term "category of chemical substances" means a group of chemical substances the members of which are similar in molecular structure, in physical, chemical, or biological properties, in use, or in mode of entrance into the human body or into the environment, or the members of which are in some other way suitable for classification as such for purposes of this chapter, except that such term does not mean a group of chemical substances which are grouped together solely on the basis of their being new chemical substances.

(B) The term "category of mixtures" means a group of mixtures the members of which are similar in molecular structure, in physical, chemical, or biological properties, in use, or in the mode of entrance into the human body or into the environment, or the members of which are in some other way suitable for classification as such for purposes of this chapter.

(d) Assistance office

The Administrator shall establish in the Environmental Protection Agency an identifiable office to provide technical and other nonfinancial assistance to manufacturers and processors of chemical substances and mixtures respecting the requirements of this chapter applicable to such manufacturers and processors, the policy of the Agency respecting the application of such requirements to such manufacturers and processors, and the means and methods by which such manufacturers and processors may comply with such requirements.

(e) Financial disclosures

(1) Except as provided under paragraph (3), each officer or employee of the Environmental Protection Agency and the Department of Health and Human Services who—

(A) performs any function or duty under this chapter, and

(B) has any known financial interest (i) in any person subject to this chapter or any rule or order in effect under this chapter, or (ii) in any person who applies for or receives any grant or contract under this chapter,

shall, on February 1, 1978, and on February 1 of each year thereafter, file with the Administrator or the Secretary of Health and Human Services (hereinafter in this subsection referred to as the "Secretary"), as appropriate, a written statement concerning all such interests held by such officer or employee during the preceding calendar year. Such statement shall be made available to the public.

(2) The Administrator and the Secretary shall—

(A) act within 90 days of January 1, 1977—

(i) to define the term "known financial interests" for purposes of paragraph (1), and

(ii) to establish the methods by which the requirement to file written statements specified in paragraph (1) will be monitored and enforced, including appropriate provisions for review by the Administrator and the Secretary of such statements; and

(B) report to the Congress on June 1, 1978, and on June 1 of each year thereafter with respect to such statements and the actions taken in regard thereto during the preceding calendar year.

(3) The Administrator may by rule identify specific positions with the Environmental Protection Agency, and the Secretary may by rule identify specific positions with the Department of Health and Human Services, which are of a nonregulatory or nonpolicymaking nature, and the Administrator and the Secretary may by rule provide that officers or employees occupying such positions shall be exempt from the requirements of paragraph (1).

(4) This subsection does not supersede any requirement of chapter 11 of title 18.

(5) Any officer or employee who is subject to, and knowingly violates, this subsection or any rule issued thereunder, shall be fined not more than $2,500 or imprisoned not more than one year, or both.

(f) Statement of basis and purpose

Any final order issued under this chapter shall be accompanied by a statement of its basis and purpose. The contents and adequacy of any such statement shall not be subject to judicial review in any respect.

(g) Assistant Administrator

(1) The President, by and with the advice and consent of the Senate, shall appoint an Assistant Administrator for Toxic Substances of the Environmental Protection Agency. Such Assistant Administrator shall be a qualified individual who is, by reason of background and experience, especially qualified to direct a program concerning the effects of chemicals on human health and the environment. Such Assistant Administrator shall be responsible for (A) the collection of data, (B) the preparation of studies, (C) the making of recommendations to the Administrator for regulatory and other actions to carry out the purposes and to facilitate the administration of this chapter, and (D) such other functions as the Administrator may assign or delegate.

(2) The Assistant Administrator to be appointed under paragraph (1) shall be in addition to the Assistant Administrators of the Environmental Protection Agency authorized by section 1(d) of Reorganization Plan No. 3 of 1970.

(Pub. L. 94–469, title I, §26, Oct. 11, 1976, 90 Stat. 2046; Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 98–80, §2(c)(2)(A), Aug. 23, 1983, 97 Stat. 485; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989.)

REFERENCES IN TEXT

Reorganization Plan No. 3 of 1970, referred to in text, is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1983—Subsec. (g)(2). Pub. L. 98–80 struck out "(A)" before "be in addition" and ", and (B) be compensated at the rate of pay authorized for such Assistant Administrators" after "No. 3 of 1970".

CHANGE OF NAME

"Department of Health and Human Services" substituted for "Department of Health, Education, and Welfare" in subsec. (e)(1), (3), and "Secretary of Health and Human Services" substituted for "Secretary of Health, Education, and Welfare" in subsec. (e)(1), pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (e)(2)(B) of this section relating to annual reports to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of

Title 31, Money and Finance, and pages 93 and 164 of House Document No. 103–7.

§2626. Development and evaluation of test methods

(a) In general

The Secretary of Health and Human Services, in consultation with the Administrator and acting through the Assistant Secretary for Health, may conduct, and make grants to public and nonprofit private entities and enter into contracts with public and private entities for, projects for the development and evaluation of inexpensive and efficient methods (1) for determining and evaluating the health and environmental effects of chemical substances and mixtures, and their toxicity, persistence, and other characteristics which affect health and the environment, and (2) which may be used for the development of test data to meet the requirements of rules promulgated under section 2603 of this title. The Administrator shall consider such methods in prescribing under section 2603 of this title standards for the development of test data.

(b) Approval by Secretary

No grant may be made or contract entered into under subsection (a) of this section unless an application therefor has been submitted to and approved by the Secretary. Such an application shall be submitted in such form and manner and contain such information as the Secretary may require. The Secretary may apply such conditions to grants and contracts under subsection (a) of this section as the Secretary determines are necessary to carry out the purposes of such subsection. Contracts may be entered into under such subsection without regard to section 3324(a) and (b) of title 31 and section 6101 of title 41.

(Pub. L. 94–469, title I, §27, Oct. 11, 1976, 90 Stat. 2049; Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989; Pub. L. 104–66, title I, §1061(a), Dec. 21, 1995, 109 Stat. 719.)

CODIFICATION

In subsec. (b), "section 3324(a) and (b) of title 31 and section 6101 of title 41" substituted for "sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5)" on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, which Act enacted Title 31, Money and Finance, and Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

AMENDMENTS

1995—Subsec. (c). Pub. L. 104–66 struck out heading and text of subsec. (c). Text read as follows:

"(1) The Secretary shall prepare and submit to the President and the Congress on or before January 1 of each year a report of the number of grants made and contracts entered into under this section and the results of such grants and contracts.

"(2) The Secretary shall periodically publish in the Federal Register reports describing the progress and results of any contract entered into or grant made under this section."

CHANGE OF NAME

"Secretary of Health and Human Services" substituted for "Secretary of Health, Education, and Welfare" in subsec. (a), pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

§2627. State programs

(a) In general

For the purpose of complementing (but not reducing) the authority of, or actions taken by, the Administrator under this chapter, the Administrator may make grants to States for the establishment and operation of programs to prevent or eliminate unreasonable risks within the States to health or the environment which are associated with a chemical substance or mixture and with respect to which the Administrator is unable or is not likely to take action under this chapter for their

prevention or elimination. The amount of a grant under this subsection shall be determined by the Administrator, except that no grant for any State program may exceed 75 per centum of the establishment and operation costs (as determined by the Administrator) of such program during the period for which the grant is made.

(b) Approval by Administrator

(1) No grant may be made under subsection (a) of this section unless an application therefor is submitted to and approved by the Administrator. Such an application shall be submitted in such form and manner as the Administrator may require and shall—

(A) set forth the need of the applicant for a grant under subsection (a) of this section,

(B) identify the agency or agencies of the State which shall establish or operate, or both, the program for which the application is submitted,

(C) describe the actions proposed to be taken under such program,

(D) contain or be supported by assurances satisfactory to the Administrator that such program shall, to the extent feasible, be integrated with other programs of the applicant for environmental and public health protection,

(E) provide for the making of such reports and evaluations as the Administrator may require, and

(F) contain such other information as the Administrator may prescribe.

(2) The Administrator may approve an application submitted in accordance with paragraph (1) only if the applicant has established to the satisfaction of the Administrator a priority need, as determined under rules of the Administrator, for the grant for which the application has been submitted. Such rules shall take into consideration the seriousness of the health effects in a State which are associated with chemical substances or mixtures, including cancer, birth defects, and gene mutations, the extent of the exposure in a State of human beings and the environment to chemical substances and mixtures, and the extent to which chemical substances and mixtures are manufactured, processed, used, and disposed of in a State.

(c) Annual reports

Not later than six months after the end of each of the fiscal years 1979, 1980, and 1981, the Administrator shall submit to the Congress a report respecting the programs assisted by grants under subsection (a) of this section in the preceding fiscal year and the extent to which the Administrator has disseminated information respecting such programs.

(d) Authorization

For the purpose of making grants under subsection (a) of this section, there are authorized to be appropriated $1,500,000 for each of the fiscal years 1982 and 1983. Sums appropriated under this subsection shall remain available until expended.

(Pub. L. 94–469, title I, §28, Oct. 11, 1976, 90 Stat. 2049; Pub. L. 97–129, §1(a), Dec. 29, 1981, 95 Stat. 1686; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989.)

AMENDMENTS

1981—Subsec. (d). Pub. L. 97–129 substituted provisions relating to authorization of appropriations of $1,500,000 for each of the fiscal years 1982 and 1983 for provisions relating to such authorization for fiscal years ending Sept. 30, 1977, Sept. 30, 1978, and Sept. 30, 1979.

§2628. Authorization of appropriations

There are authorized to be appropriated to the Administrator for purposes of carrying out this chapter (other than sections 2626 and 2627 of this title and subsections (a) and (c) through (g) of section 2609 of this title) $58,646,000 for the fiscal year 1982 and $62,000,000 for the fiscal year 1983. No part of the funds appropriated under this section may be used to construct any research laboratories.

(Pub. L. 94–469, title I, §29, Oct. 11, 1976, 90 Stat. 2050; Pub. L. 97–129, §1(b), Dec. 29, 1981, 95 Stat. 1686; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989.)

AMENDMENTS

1981—Pub. L. 97–129 substituted provisions relating to authorization of appropriation of $58,646,000 for fiscal year 1982, and $62,000,000 for fiscal year 1983, for provisions relating to such authorization of $10,100,000 for fiscal year ending Sept. 30, 1977, $12,625,000 for fiscal year ending Sept. 30, 1978, and $16,200,000 for fiscal year ending Sept. 30, 1979.

§2629. Annual report

The Administrator shall prepare and submit to the President and the Congress on or before January 1, 1978, and on or before January 1 of each succeeding year a comprehensive report on the administration of this chapter during the preceding fiscal year. Such reports shall include—

(1) a list of the testing required under section 2603 of this title during the year for which the report is made and an estimate of the costs incurred during such year by the persons required to perform such tests;

(2) the number of notices received during such year under section 2604 of this title, the number of such notices received during such year under such section for chemical substances subject to a section 2603 rule, and a summary of any action taken during such year under section 2604(g) of this title;

(3) a list of rules issued during such year under section 2605 of this title;

(4) a list, with a brief statement of the issues, of completed or pending judicial actions under this chapter and administrative actions under section 2615 of this title during such year;

(5) a summary of major problems encountered in the administration of this chapter; and

(6) such recommendations for additional legislation as the Administrator deems necessary to carry out the purposes of this chapter.

(Pub. L. 94–469, title I, §30, Oct. 11, 1976, 90 Stat. 2050; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in this section relating to submitting annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 163 of House Document No. 103–7.

SUBCHAPTER II—ASBESTOS HAZARD EMERGENCY RESPONSE

§2641. Congressional findings and purpose

(a) Findings

The Congress finds the following:

(1) The Environmental Protection Agency's rule on local educational agency inspection for, and notification of, the presence of friable asbestos-containing material in school buildings includes neither standards for the proper identification of asbestos-containing material and appropriate response actions with respect to friable asbestos-containing material, nor a requirement that response actions with respect to friable asbestos-containing material be carried out in a safe and complete manner once actions are found to be necessary. As a result of the lack of regulatory guidance from the Environmental Protection Agency, some schools have not undertaken response action while many others have undertaken expensive projects without knowing if their action is

necessary, adequate, or safe. Thus, the danger of exposure to asbestos continues to exist in schools, and some exposure actually may have increased due to the lack of Federal standards and improper response action.

(2) There is no uniform program for accrediting persons involved in asbestos identification and abatement, nor are local educational agencies required to use accredited contractors for asbestos work.

(3) The guidance provided by the Environmental Protection Agency in its "Guidance for Controlling Asbestos-Containing Material in Buildings" is insufficient in detail to ensure adequate responses. Such guidance is intended to be used only until the regulations required by this subchapter become effective.

(4) Because there are no Federal standards whatsoever regulating daily exposure to asbestos in other public and commercial buildings, persons in addition to those comprising the Nation's school population may be exposed daily to asbestos.

(b) Purpose

The purpose of this subchapter is—

(1) to provide for the establishment of Federal regulations which require inspection for asbestos-containing material and implementation of appropriate response actions with respect to asbestos-containing material in the Nation's schools in a safe and complete manner;

(2) to mandate safe and complete periodic reinspection of school buildings following response actions, where appropriate; and

(3) to require the Administrator to conduct a study to find out the extent of the danger to human health posed by asbestos in public and commercial buildings and the means to respond to any such danger.

(Pub. L. 94–469, title II, §201, as added Pub. L. 99–519, §2, Oct. 22, 1986, 100 Stat. 2970.)

§2642. Definitions

For purposes of this subchapter—

(1) Accredited asbestos contractor

The term "accredited asbestos contractor" means a person accredited pursuant to the provisions of section 2646 of this title.

(2) Administrator

The term "Administrator" means the Administrator of the Environmental Protection Agency.

(3) Asbestos

The term "asbestos" means asbestiform varieties of—

(A) chrysotile (serpentine),
(B) crocidolite (riebeckite),
(C) amosite (cummingtonite-grunerite),
(D) anthophyllite,
(E) tremolite, or
(F) actinolite.

(4) Asbestos-containing material

The term "asbestos-containing material" means any material which contains more than 1 percent asbestos by weight.

(5) EPA guidance document

The term "Guidance for Controlling Asbestos-Containing Material in Buildings", means the Environmental Protection Agency document with such title as in effect on March 31, 1986.

(6) Friable asbestos-containing material

The term "friable asbestos-containing material" means any asbestos-containing material applied on ceilings, walls, structural members, piping, duct work, or any other part of a building which when dry may be crumbled, pulverized, or reduced to powder by hand pressure. The term includes non-friable asbestos-containing material after such previously non-friable material becomes damaged to the extent that when dry it may be crumbled, pulverized, or reduced to powder by hand pressure.

(7) Local educational agency

The term "local educational agency" means—

(A) any local educational agency as defined in section 7801 of title 20,

(B) the owner of any private, nonprofit elementary or secondary school building, and

(C) the governing authority of any school operated under the defense dependents' education system provided for under the Defense Dependents' Education Act of 1978 (20 U.S.C. 921 et seq.).

(8) Most current guidance document

The term "most current guidance document" means the Environmental Protection Agency's "Guidance for Controlling Asbestos-Containing Material in Buildings" as modified by the Environmental Protection Agency after March 31, 1986.

(9) Non-profit elementary or secondary school

The term "non-profit elementary or secondary school" means any elementary or secondary school (as defined in section 7801 of title 20) owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(10) Public and commercial building

The term "public and commercial building" means any building which is not a school building, except that the term does not include any residential apartment building of fewer than 10 units.

(11) Response action

The term "response action" means methods that protect human health and the environment from asbestos-containing material. Such methods include methods described in chapters 3 and 5 of the Environmental Protection Agency's "Guidance for Controlling Asbestos-Containing Materials in Buildings".

(12) School

The term "school" means any elementary or secondary school as defined in section 7801 of title 20.

(13) School building

The term "school building" means—

(A) any structure suitable for use as a classroom, including a school facility such as a laboratory, library, school eating facility, or facility used for the preparation of food,

(B) any gymnasium or other facility which is specially designed for athletic or recreational activities for an academic course in physical education,

(C) any other facility used for the instruction of students or for the administration of educational or research programs, and

(D) any maintenance, storage, or utility facility, including any hallway, essential to the operation of any facility described in subparagraphs (A), (B), or (C).

(14) State

The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Marianas, the Trust Territory of the Pacific Islands, and the Virgin Islands.

(Pub. L. 94–469, title II, §202, as added Pub. L. 99–519, §2, Oct. 22, 1986, 100 Stat. 2971; amended

Pub. L. 103–382, title III, §391(c)(1)–(3), Oct. 20, 1994, 108 Stat. 4022; Pub. L. 107–110, title X, §1076(f)(1), Jan. 8, 2002, 115 Stat. 2091.)

REFERENCES IN TEXT

The Defense Dependents' Education Act of 1978, referred to in par. (7)(C), is title XIV of Pub. L. 95–561, Nov. 1, 1978, 92 Stat. 2365, as amended, which is classified principally to chapter 25A (§921 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 921 of Title 20 and Tables.

AMENDMENTS

2002—Pars. (7)(A), (9), (12). Pub. L. 107–110 substituted "7801" for "8801".

1994—Pars. (7)(A), (9), (12). Pub. L. 103–382 made technical amendment to reference to section 8801 of title 20 to reflect change in reference to corresponding section of original act.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of Title 20, Education.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§2643. EPA regulations

(a) In general

Within 360 days after October 22, 1986, the Administrator shall promulgate regulations as described in subsections (b) through (i) of this section. With respect to regulations described in subsections (b), (c), (d), (e), (f), (g), and (i) of this section, the Administrator shall issue an advanced notice of proposed rulemaking within 60 days after October 22, 1986, and shall propose regulations within 180 days after October 22, 1986. Any regulation promulgated under this section must protect human health and the environment.

(b) Inspection

The Administrator shall promulgate regulations which prescribe procedures, including the use of personnel accredited under section 2646(b) or (c) of this title and laboratories accredited under section 2646(d) of this title, for determining whether asbestos-containing material is present in a school building under the authority of a local educational agency. The regulations shall provide for the exclusion of any school building, or portion of a school building, if (1) an inspection of such school building (or portion) was completed before the effective date of the regulations, and (2) the inspection meets the procedures and other requirements of the regulations under this subchapter or of the "Guidance for Controlling Asbestos-Containing Materials in Buildings" (unless the Administrator determines that an inspection in accordance with the guidance document is inadequate). The regulations shall require inspection of any school building (or portion of a school building) that is not excluded by the preceding sentence.

(c) Circumstances requiring response actions

(1) The Administrator shall promulgate regulations which define the appropriate response action in a school building under the authority of a local educational agency in at least the following circumstances:

(A) Damage

Circumstances in which friable asbestos-containing material or its covering is damaged, deteriorated, or delaminated.

(B) Significant damage

Circumstances in which friable asbestos-containing material or its covering is significantly damaged, deteriorated, or delaminated.

(C) Potential damage

Circumstances in which—

(i) friable asbestos-containing material is in an area regularly used by building occupants, including maintenance personnel, in the course of their normal activities, and

(ii) there is a reasonable likelihood that the material or its covering will become damaged, deteriorated, or delaminated.

(D) Potential significant damage

Circumstances in which—

(i) friable asbestos-containing material is in an area regularly used by building occupants, including maintenance personnel, in the course of their normal activities, and

(ii) there is a reasonable likelihood that the material or its covering will become significantly damaged, deteriorated, or delaminated.

(2) In promulgating such regulations, the Administrator shall consider and assess the value of various technologies intended to improve the decisionmaking process regarding response actions and the quality of any work that is deemed necessary, including air monitoring and chemical encapsulants.

(d) Response actions

(1) In general

The Administrator shall promulgate regulations describing a response action in a school building under the authority of a local educational agency, using the least burdensome methods which protect human health and the environment. In determining the least burdensome methods, the Administrator shall take into account local circumstances, including occupancy and use patterns within the school building and short- and long-term costs.

(2) Response action for damaged asbestos

In the case of a response action for the circumstances described in subsection (c)(1)(A) of this section, methods for responding shall include methods identified in chapters 3 and 5 of the "Guidance for Controlling Asbestos-Containing Material in Buildings".

(3) Response action for significantly damaged asbestos

In the case of a response action for the circumstances described in subsection (c)(1)(B) of this section, methods for responding shall include methods identified in chapter 5 of the "Guidance for Controlling Asbestos-Containing Material in Buildings".

(4) Response action for potentially damaged asbestos

In the case of a response action for the circumstances described in subsection (c)(1)(C) of this section, methods for responding shall include methods identified in chapters 3 and 5 of the "Guidance for Controlling Asbestos-Containing Material in Buildings", unless preventive measures will eliminate the reasonable likelihood that the asbestos-containing material will become damaged, deteriorated, or delaminated.

(5) Response action for potentially significantly damaged asbestos

In the case of a response action for the circumstances described in subsection (c)(1)(D) of this section, methods for responding shall include methods identified in chapter 5 of the "Guidance for Controlling Asbestos-Containing Material in Buildings", unless preventive measures will eliminate the reasonable likelihood that the asbestos-containing material will become significantly damaged, deteriorated, or delaminated.

(6) "Preventive measures" defined

For purposes of this section, the term "preventive measures" means actions which eliminate the

reasonable likelihood of asbestos-containing material becoming damaged, deteriorated, or delaminated, or significantly damaged [1] deteriorated, or delaminated (as the case may be) or which protect human health and the environment.

(7) EPA information or advisory

The Administrator shall, not later than 30 days after November 28, 1990, publish and distribute to all local education agencies and State Governors information or an advisory to—

(A) facilitate public understanding of the comparative risks associated with in-place management of asbestos-containing building materials and removals;

(B) promote the least burdensome response actions necessary to protect human health, safety, and the environment; and

(C) describe the circumstances in which asbestos removal is necessary to protect human health.

Such information or advisory shall be based on the best available scientific evidence and shall be revised, republished, and redistributed as appropriate, to reflect new scientific findings.

(e) Implementation

The Administrator shall promulgate regulations requiring the implementation of response actions in school buildings under the authority of a local educational agency and, where appropriate, for the determination of when a response action is completed. Such regulations shall include standards for the education and protection of both workers and building occupants for the following phases of activity:

(1) Inspection.

(2) Response Action.[2]

(3) Post-response action, including any periodic reinspection of asbestos-containing material and long-term surveillance activity.

(f) Operations and maintenance

The Administrator shall promulgate regulations to require implementation of an operations and maintenance and repair program as described in chapter 3 of the "Guidance for Controlling Asbestos-Containing Materials in Buildings" for all friable asbestos-containing material in a school building under the authority of a local educational agency.

(g) Periodic surveillance

The Administrator shall promulgate regulations to require the following:

(1) An identification of the location of friable and non-friable asbestos in a school building under the authority of a local educational agency.

(2) Provisions for surveillance and periodic reinspection of such friable and non-friable asbestos.

(3) Provisions for education of school employees, including school service and maintenance personnel, about the location of and safety procedures with respect to such friable and non-friable asbestos.

(h) Transportation and disposal

The Administrator shall promulgate regulations which prescribe standards for transportation and disposal of asbestos-containing waste material to protect human health and the environment. Such regulations shall include such provisions related to the manner in which transportation vehicles are loaded and unloaded as will assure the physical integrity of containers of asbestos-containing waste material.

(i) Management plans

(1) In general

The Administrator shall promulgate regulations which require each local educational agency to develop an asbestos management plan for school buildings under its authority, to begin

implementation of such plan within 990 days after October 22, 1986, and to complete implementation of such plan in a timely fashion. The regulations shall require that each plan include the following elements, wherever relevant to the school building:

(A) An inspection statement describing inspection and response action activities carried out before October 22, 1986.

(B) A description of the results of the inspection conducted pursuant to regulations under subsection (b) of this section, including a description of the specific areas inspected.

(C) A detailed description of measures to be taken to respond to any friable asbestos-containing material pursuant to the regulations promulgated under subsections (c), (d), and (e) of this section, including the location or locations at which a response action will be taken, the method or methods of response action to be used, and a schedule for beginning and completing response actions.

(D) A detailed description of any asbestos-containing material which remains in the school building once response actions are undertaken pursuant to the regulations promulgated under subsections (c), (d), and (e) of this section.

(E) A plan for periodic reinspection and long-term surveillance activities developed pursuant to regulations promulgated under subsection (g) of this section, and a plan for operations and maintenance activities developed pursuant to regulations promulgated under subsection (f) of this section.

(F) With respect to the person or persons who inspected for asbestos-containing material and who will design or carry out response actions with respect to the friable asbestos-containing material, one of the following statements:

(i) If the State has adopted a contractor accreditation plan under section 2646(b) of this title, a statement that the person (or persons) is accredited under such plan.

(ii) A statement that the local educational agency used (or will use) persons who have been accredited by another State which has adopted a contractor accreditation plan under section 2646(b) of this title or is accredited pursuant to an Administrator-approved course under section 2646(c) of this title.

(G) A list of the laboratories that analyzed any bulk samples of asbestos-containing material found in the school building or air samples taken to detect asbestos in the school building and a statement that each laboratory has been accredited pursuant to the accreditation program under section 2646(d) of this title.

(H) With respect to each consultant who contributed to the management plan, the name of the consultant and one of the following statements:

(i) If the State has adopted a contractor accreditation plan under section 2646(b) of this title, a statement that the consultant is accredited under such plan.

(ii) A statement that the contractor is accredited by another State which has adopted a contractor accreditation plan under section 2646(b) of this title or is accredited pursuant to an Administrator-approved course under section 2646(c) of this title.

(I) An evaluation of resources needed to successfully complete response actions and carry out reinspection, surveillance, and operation and maintenance activities.

(2) Statement by contractor

A local educational agency may require each management plan to contain a statement signed by an accredited asbestos contractor that such contractor has prepared or assisted in the preparation of such plan, or has reviewed such plan, and that such plan is in compliance with the applicable regulations and standards promulgated or adopted pursuant to this section and other applicable provisions of law. Such a statement may not be signed by a contractor who, in addition to preparing or assisting in preparing the management plan, also implements (or will implement) the management plan.

(3) Warning labels

(A) The regulations shall require that each local educational agency which has inspected for and discovered any asbestos-containing material with respect to a school building shall attach a warning label to any asbestos-containing material still in routine maintenance areas (such as boiler rooms) of the school building, including—

(i) friable asbestos-containing material which was responded to by a means other than removal, and

(ii) asbestos-containing material for which no response action was carried out.

(B) The warning label shall read, in print which is readily visible because of large size or bright color, as follows: **"CAUTION: ASBESTOS. HAZARDOUS. DO NOT DISTURB WITHOUT PROPER TRAINING AND EQUIPMENT."**

(4) Plan may be submitted in stages

A local educational agency may submit a management plan in stages, with each submission of the agency covering only a portion of the school buildings under the agency's authority, if the agency determines that such action would expedite the identification and abatement of hazardous asbestos-containing material in the school buildings under the authority of the agency.

(5) Public availability

A copy of the management plan developed under the regulations shall be available in the administrative offices of the local educational agency for inspection by the public, including teachers, other school personnel, and parents. The local educational agency shall notify parent, teacher, and employee organizations of the availability of such plan.

(6) Submission to State Governor

Each plan developed under this subsection shall be submitted to the State Governor under section 2645 of this title.

(j) Changes in regulations

Changes may be made in the regulations promulgated under this section only by rule in accordance with section 553 of title 5. Any such change must protect human health and the environment.

(k) Changes in guidance document

Any change made in the "Guidance for Controlling Asbestos-Containing Material in Buildings" shall be made only by rule in accordance with section 553 of title 5, unless a regulation described in this section dealing with the same subject matter is in effect. Any such change must protect human health and the environment.

(l) Treatment of Department of Defense schools

(1) Secretary to act in lieu of Governor

In the administration of this subchapter, any function, duty, or other responsibility imposed on a Governor of a State shall be carried out by the Secretary of Defense with respect to any school operated under the defense dependents' education system provided for under the Defense Dependents' Education Act of 1978 (20 U.S.C. 921 et seq.).

(2) Regulations

The Secretary of Defense, in cooperation with the Administrator, shall, to the extent feasible and consistent with the national security, take such action as may be necessary to provide for the identification, inspection, and management (including abatement) of asbestos in any building used by the Department of Defense as an overseas school for dependents of members of the Armed Forces. Such identification, inspection, and management (including abatement) shall, subject to the preceding sentence, be carried out in a manner comparable to the manner in which a local educational agency is required to carry out such activities with respect to a school building under this subchapter.

(m) Waiver

The Administrator, upon request by a Governor and after notice and comment and opportunity for a public hearing in the affected State, may waive some or all of the requirements of this section and section 2644 of this title with respect to such State if it has established and is implementing a program of asbestos inspection and management that contains requirements that are at least as stringent as the requirements of this section and section 2644 of this title.

(Pub. L. 94–469, title II, §203, as added Pub. L. 99–519, §2, Oct. 22, 1986, 100 Stat. 2972; amended Pub. L. 101–637, §13, Nov. 28, 1990, 104 Stat. 4593.)

REFERENCES IN TEXT

The Defense Dependents' Education Act of 1978, referred to in subsec. (l)(1), is title XIV of Pub. L. 95–561, Nov. 1, 1978, 92 Stat. 2365, as amended, which is classified principally to chapter 25A (§921 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 921 of Title 20 and Tables.

AMENDMENTS

1990—Subsec. (d)(7). Pub. L. 101–637 added par. (7).

[1] So in original. Probably should be followed by a comma.

[2] So in original. Probably should not be capitalized.

§2644. Requirements if EPA fails to promulgate regulations

(a) In general

(1) Failure to promulgate

If the Administrator fails to promulgate within the prescribed period—

(A) regulations described in section 2643(b) of this title (relating to inspection);

(B) regulations described in section 2643(c), (d), (e), (f), (g), and (i) of this title (relating to responding to asbestos); or

(C) regulations described in section 2643(h) of this title (relating to transportation and disposal);

each local educational agency shall carry out the requirements described in this section in subsection (b); subsections (c), (d), and (e); or subsection (f); respectively, in accordance with the Environmental Protection Agency's most current guidance document.

(2) Stay by court

If the Administrator has promulgated regulations described in paragraph (1)(A), (B), or (C) within the prescribed period, but the effective date of such regulations has been stayed by a court for a period of more than 30 days, a local educational agency shall carry out the pertinent requirements described in this subsection in accordance with the Environmental Protection Agency's most current guidance document.

(3) Effective period

The requirements of this section shall be in effect until such time as the Administrator promulgates the pertinent regulations or until the stay is lifted (as the case may be).

(b) Inspection

(1) Except as provided in paragraph (2), the local educational agency, within 540 days after October 22, 1986, shall conduct an inspection for asbestos-containing material, using personnel accredited under section 2646(b) or (c) of this title and laboratories accredited under section 2646(d) of this title, in each school building under its authority.

(2) The local educational agency may exclude from the inspection requirement in paragraph (1) any school building, or portion of a school building, if (A) an inspection of such school building (or portion) was completed before the date on which this section goes into effect, and (B) the inspection meets the inspection requirements of this section.

(c) Operation and maintenance

The local educational agency shall, within 720 days after October 22, 1986, develop and begin implementation of an operation and maintenance plan with respect to friable asbestos-containing material in a school building under its authority. Such plan shall provide for the education of school service and maintenance personnel about safety procedures with respect to asbestos-containing material, including friable asbestos-containing material.

(d) Management plan

(1) In general

The local educational agency shall—

(A) develop a management plan for responding to asbestos-containing material in each school building under its authority and submit such plan to the Governor under section 2645 of this title within 810 days after October 22, 1986,

(B) begin implementation of such plan within 990 days after October 22, 1986, and

(C) complete implementation of such plan in a timely fashion.

(2) Plan requirements

The management plan shall—

(A) include the elements listed in section 2643(i)(1) of this title, including an inspection statement as described in paragraph (3) of this section,[1]

(B) provide for the attachment of warning labels as described in section 2643(i)(3) of this title,

(C) be prepared in accordance with the most current guidance document,

(D) meet the standard described in paragraph (4) for actions described in that paragraph, and

(E) be submitted to the State Governor under section 2645 of this title.

(3) Inspection statement

The local educational agency shall complete an inspection statement, covering activities carried out before October 22, 1986, which meets the following requirements:

(A) The statement shall include the following information:

(i) The dates of inspection.

(ii) The name, address, and qualifications of each inspector.

(iii) A description of the specific areas inspected.

(iv) A list of the laboratories that analyzed any bulk samples of asbestos-containing material or air samples of asbestos found in any school building and a statement describing the qualifications of each laboratory.

(v) The results of the inspection.

(B) The statement shall state whether any actions were taken with respect to any asbestos-containing material found to be present, including a specific reference to whether any actions were taken in the boiler room of the building. If any such action was taken, the following items of information shall be included in the statement:

(i) The location or locations at which the action was taken.

(ii) A description of the method of action.

(iii) The qualifications of the persons who conducted the action.

(4) Standard

The ambient interior concentration of asbestos after the completion of actions described in the most current guidance document, other than the type of action described in sections 2643(f) of this title and subsection (c) of this section, shall not exceed the ambient exterior concentration,

discounting any contribution from any local stationary source. Either a scanning electron microscope or a transmission electron microscope shall be used to determine the ambient interior concentration. In the absence of reliable measurements, the ambient exterior concentration shall be deemed to be—

(A) less than 0.003 fibers per cubic centimeter if a scanning electron microscope is used, and

(B) less than 0.005 fibers per cubic centimeter if a transmission electron microscope is used.

(5) Public availability

A copy of the management plan shall be available in the administrative offices of the local educational agency for inspection by the public, including teachers, other school personnel, and parents. The local educational agency shall notify parent, teacher, and employee organizations of the availability of such plan.

(e) Building occupant protection

The local educational agency shall provide for the protection of building occupants during each phase of activity described in this section.

(f) Transportation and disposal

The local educational agency shall provide for the transportation and disposal of asbestos in accordance with the most recent version of the Environmental Protection Agency's "Asbestos Waste Management Guidance" (or any successor to such document).

(Pub. L. 94–469, title II, §204, as added Pub. L. 99–519, §2, Oct. 22, 1986, 100 Stat. 2977.)

[1] *So in original. Probably should be "subsection,".*

§2645. Submission to State Governor

(a) Submission

Within 720 days after October 22, 1986 (or within 810 days if there are no regulations under section 2643(i) of this title), a local educational agency shall submit a management plan developed pursuant to regulations promulgated under section 2643(i) of this title (or under section 2644(d) of this title if there are no regulations) to the Governor of the State in which the local educational agency is located.

(b) Governor requirements

Within 360 days after October 22, 1986, the Governor of each State—

(1) shall notify local educational agencies in the State of where to submit their management plans under this section, and

(2) may establish administrative procedures for reviewing management plans submitted under this section.

If the Governor establishes procedures under paragraph (2), the Governor shall designate to carry out the reviews those State officials who are responsible for implementing environmental protection or other public health programs, or with authority over asbestos programs, in the State.

(c) Management plan review

(1) Review of plan

The Governor may disapprove a management plan within 90 days after the date of receipt of the plan if the plan—

(A) does not conform with the regulations under section 2643(i) of this title (or with section 2644(d) of this title if there are no regulations),

(B) does not assure that contractors who are accredited pursuant to this subchapter will be used to carry out the plan, or

(C) does not contain a response action schedule which is reasonable and timely, taking into account circumstances relevant to the speed at which the friable asbestos-containing material in the school buildings under the local educational agency's authority should be responded to, including human exposure to the asbestos while the friable asbestos-containing material remains in the school building, and the ability of the local educational agency to continue to provide educational services to the community.

(2) Revision of plan

If the State Governor disapproves a plan, the State Governor shall explain in writing to the local educational agency the reasons why the plan was disapproved and the changes that need to be made in the plan. Within 30 days after the date on which notice is received of disapproval of its plan, the local educational agency shall revise the plan to conform with the State Governor's suggested changes. The Governor may extend the 30-day period for not more than 90 days.

(d) Deferral of submission

(1) Request for deferral

A local educational agency may request a deferral, to May 9, 1989, of the deadline under subsection (a) of this section. Upon approval of such a request, the deadline under subsection (a) of this section is deferred until May 9, 1989, for the local educational agency which submitted the request. Such a request may cover one or more schools under the authority of the agency and shall include a list of all the schools covered by the request. A local educational agency shall file any such request with the State Governor by October 12, 1988, and shall include with the request either of the following statements:

(A) A statement—

(i) that the State in which the agency is located has requested from the Administrator, before June 1, 1988, a waiver under section 2643(m) of this title; and

(ii) that gives assurance that the local educational agency has carried out the notification and, in the case of a public school, public meeting required by paragraph (2).

(B) A statement, the accuracy of which is sworn to by a responsible official of the agency (by notarization or other means of certification), that includes the following with respect to each school for which a deferral is sought in the request:

(i) A statement that, in spite of the fact that the local educational agency has made a good faith effort to meet the deadline for submission of a management plan under subsection (a) of this section, the agency will not be able to meet the deadline. The statement shall include a brief explanation of the reasons why the deadline cannot be met.

(ii) A statement giving assurance that the local educational agency has made available for inspection by the public, at each school for which a deferral is sought in the request, at least one of the following documents:

(I) A solicitation by the local educational agency to contract with an accredited asbestos contractor for inspection or management plan development.

(II) A letter attesting to the enrollment of school district personnel in an Environmental Protection Agency-accredited training course for inspection and management plan development.

(III) Documentation showing that an analysis of suspected asbestos-containing material from the school is pending at an accredited laboratory.

(IV) Documentation showing that an inspection or management plan has been completed in at least one other school under the local educational agency's authority.

(iii) A statement giving assurance that the local educational agency has carried out the notification and, in the case of a public school, public meeting required by paragraph (2).

(iv) A proposed schedule outlining all significant activities leading up to submission of a management plan by May 9, 1989, including inspection of the school (if not completed at the time of the request) with a deadline of no later than December 22, 1988, for entering into a

signed contract with an accredited asbestos contractor for inspection (unless such inspections are to be performed by school personnel), laboratory analysis of material from the school suspected of containing asbestos, and development of the management plan.

(2) Notification and public meeting

Before filing a deferral request under paragraph (1), a local educational agency shall notify affected parent, teacher, and employee organizations of its intent to file such a request. In the case of a deferral request for a public school, the local educational agency shall discuss the request at a public meeting of the school board with jurisdiction over the school, and affected parent, teacher, and employee organizations shall be notified in advance of the time and place of such meeting.

(3) Response by Governor

(A) Not later than 30 days after the date on which a Governor receives a deferral request under paragraph (1) from a local educational agency, the Governor shall respond to the local educational agency in writing by acknowledging whether the request is complete or incomplete. If the request is incomplete, the Governor shall identify in the response the items that are missing from the request.

(B) A local educational agency may correct any deficiencies in an incomplete deferral request and refile the request with the Governor. In any case in which the local educational agency decides to refile the request, the agency shall refile the request, and the Governor shall respond to such refiled request in the manner described in subparagraph (A), no later than 15 days after the local educational agency has received a response from the Governor under subparagraph (A).

(C) Approval of a deferral request under this subsection occurs only upon the receipt by a local educational agency of a written acknowledgment from the Governor that the agency's deferral request is complete.

(4) Submission and review of plan

A local educational agency whose deferral request is approved shall submit a management plan to the Governor not later than May 9, 1989. Such management plan shall include a copy of the deferral request and the statement accompanying such request. Such management plan shall be reviewed in accordance with subsection (c) of this section, except that the Governor may extend the 30-day period for revision of the plan under subsection (c)(2) of this section for only an additional 30 days (for a total of 60 days).

(5) Implementation of plan

The approval of a deferral request from a local educational agency shall not be considered to be a waiver or exemption from the requirement under section 2643(i) of this title for the local educational agency to begin implementation of its management plan by July 9, 1989.

(6) EPA notice

(A) Not later than 15 days after July 18, 1988, the Administrator shall publish in the Federal Register the following:

(i) A notice describing the opportunity to file a request for deferral under this subsection.

(ii) A list of the State offices (including officials (if available) in each State as designated under subsection (b) of this section) with which deferral requests should be filed.

(B) As soon as practicable, but in no event later than 30 days, after July 18, 1988, the Administrator shall mail a notice describing the opportunity to file a request for deferral under this subsection to each local educational agency and to each State office in the list published under subparagraph (A).

(e) Status reports

(1) Not later than December 31, 1988, the Governor of each State shall submit to the Administrator a written statement on the status of management plan submissions and deferral requests by local educational agencies in the State. The statement shall be made available to local educational agencies in the State and shall contain the following:

(A) A list containing each local educational agency that submitted a management plan by October 12, 1988.

(B) A list containing each local educational agency whose deferral request was approved.

(C) A list containing each local educational agency that failed to submit a management plan by October 12, 1988, and whose deferral request was disapproved.

(D) A list containing each local educational agency that failed to submit a management plan by October 12, 1988, and did not submit a deferral request.

(2) Not later than December 31, 1989, the Governor of each State shall submit to the Administrator an updated version of the written statement submitted under paragraph (1). The statement shall be made available to local educational agencies in the State and shall contain the following:

(A) A list containing each local educational agency whose management plan was submitted and not disapproved as of October 9, 1989.

(B) A list containing each local educational agency whose management plan was submitted and disapproved, and which remains disapproved, as of October 9, 1989.

(C) A list containing each local educational agency that submitted a management plan after May 9, 1989, and before October 10, 1989.

(D) A list containing each local educational agency that failed to submit a management plan as of October 9, 1989.

(Pub. L. 94–469, title II, §205, as added Pub. L. 99–519, §2, Oct. 22, 1986, 100 Stat. 2979; amended Pub. L. 100–368, §§1(a), 2, July 18, 1988, 102 Stat. 829, 831.)

AMENDMENTS

1988—Subsec. (d). Pub. L. 100–368, §1(a), added subsec. (d).
Subsec. (e). Pub. L. 100–368, §2, added subsec. (e).

§2646. Contractor and laboratory accreditation

(a) Contractor accreditation

A person may not—

(1) inspect for asbestos-containing material in a school building under the authority of a local educational agency or in a public or commercial building,

(2) prepare a management plan for such a school, or

(3) design or conduct response actions, other than the type of action described in sections 2643(f) and 2644(c) of this title, with respect to friable asbestos-containing material in such a school or in a public or commercial building,

unless such person is accredited by a State under subsection (b) of this section or is accredited pursuant to an Administrator-approved course under subsection (c) of this section.

(b) Accreditation by State

(1) Model plan

(A) Persons to be accredited

Within 180 days after October 22, 1986, the Administrator, in consultation with affected organizations, shall develop a model contractor accreditation plan for States to give accreditation to persons in the following categories:

(i) Persons who inspect for asbestos-containing material in school buildings under the authority of a local educational agency or in public or commercial buildings.

(ii) Persons who prepare management plans for such schools.

(iii) Persons who design or carry out response actions, other than the type of action described in sections 2643(f) and 2644(c) of this title, with respect to friable

asbestos-containing material in such schools or in public or commercial buildings.

(B) Plan requirements

The plan shall include a requirement that any person in a category listed in paragraph (1) [1] achieve a passing grade on an examination and participate in continuing education to stay informed about current asbestos inspection and response action technology. The examination shall demonstrate the knowledge of the person in areas that the Administrator prescribes as necessary and appropriate in each of the categories. Such examinations may include requirements for knowledge in the following areas:

(i) Recognition of asbestos-containing material and its physical characteristics.

(ii) Health hazards of asbestos and the relationship between asbestos exposure and disease.

(iii) Assessing the risk of asbestos exposure through a knowledge of percentage weight of asbestos-containing material, friability, age, deterioration, location and accessibility of materials, and advantages and disadvantages of dry and wet response action methods.

(iv) Respirators and their use, care, selection, degree of protection afforded, fitting, testing, and maintenance and cleaning procedures.

(v) Appropriate work practices and control methods, including the use of high efficiency particle absolute vacuums, the use of amended water, and principles of negative air pressure equipment use and procedures.

(vi) Preparing a work area for response action work, including isolating work areas to prevent bystander or public exposure to asbestos, decontamination procedures, and procedures for dismantling work areas after completion of work.

(vii) Establishing emergency procedures to respond to sudden releases.

(viii) Air monitoring requirements and procedures.

(ix) Medical surveillance program requirements.

(x) Proper asbestos waste transportation and disposal procedures.

(xi) Housekeeping and personal hygiene practices, including the necessity of showers, and procedures to prevent asbestos exposure to an employee's family.

(2) State adoption of plan

Each State shall adopt a contractor accreditation plan at least as stringent as the model plan developed by the Administrator under paragraph (1), within 180 days after the commencement of the first regular session of the legislature of such State which is convened following the date on which the Administrator completes development of the model plan. In the case of a school operated under the defense dependents' education system provided for under the Defense Dependents' Education Act of 1978 (20 U.S.C. 921 et seq.), the Secretary of Defense shall adopt a contractor accreditation plan at least as stringent as that model.

(c) Accreditation by Administrator-approved course

(1) Course approval

Within 180 days after October 22, 1986, the Administrator shall ensure that any Environmental Protection Agency-approved asbestos training course is consistent with the model plan (including testing requirements) developed under subsection (b) of this section. A contractor may be accredited by taking and passing such a course.

(2) Treatment of persons with previous EPA asbestos training

A person who—

(A) completed an Environmental Protection Agency-approved asbestos training course before October 22, 1986, and

(B) passed (or passes) an asbestos test either before or after October 22, 1986,

may be accredited under paragraph (1) if the Administrator determines that the course and test are equivalent to the requirements of the model plan developed under subsection (b) of this section. If the Administrator so determines, the person shall be considered accredited for the purposes of this

subchapter until a date that is one year after the date on which the State in which such person is employed establishes an accreditation program pursuant to subsection (b) of this section.

(3) Lists of courses

The Administrator, in consultation with affected organizations, shall publish (and revise as necessary)—

(A) a list of asbestos courses and tests in effect before October 22, 1986, which qualify for equivalency treatment under paragraph (2), and

(B) a list of asbestos courses and tests which the Administrator determines under paragraph (1) are consistent with the model plan and which will qualify a contractor for accreditation under such paragraph.

(d) Laboratory accreditation

(1) The Administrator shall provide for the development of an accreditation program for laboratories by the National Institute of Standards and Technology in accordance with paragraph (2). The Administrator shall transfer such funds as are necessary to the National Institute of Standards and Technology to carry out such program.

(2) The National Institute of Standards and Technology, upon request by the Administrator, shall, in consultation with affected organizations—

(A) within 360 days after October 22, 1986, develop an accreditation program for laboratories which conduct qualitative and semi-quantitative analyses of bulk samples of asbestos-containing material, and

(B) within 720 days after October 22, 1986, develop an accreditation program for laboratories which conduct analyses of air samples of asbestos from school buildings under the authority of a local educational agency.

(3) A laboratory which plans to carry out any such analysis shall comply with the requirements of the accreditation program.

(e) Financial assistance contingent on use of accredited persons

(1) A school which is an applicant for financial assistance under section 505 of the Asbestos School Hazard Abatement Act of 1984 [20 U.S.C. 4014] is not eligible for such assistance unless the school, in carrying out the requirements of this subchapter—

(A) uses a person (or persons)—

(i) who is accredited by a State which has adopted an accreditation plan based on the model plan developed under subsection (b) of this section, or

(ii) who is accredited pursuant to an Administrator-approved course under subsection (c) of this section, and

(B) uses a laboratory (or laboratories) which is accredited under the program developed under subsection (d) of this section.

(2) This subsection shall apply to any financial assistance provided under the Asbestos School Hazard Abatement Act of 1984 [20 U.S.C. 4011 et seq.] for activities performed after the following dates:

(A) In the case of activities performed by persons, after the date which is one year after October 22, 1986.

(B) In the case of activities performed by laboratories, after the date which is 180 days after the date on which a laboratory accreditation program is completed under subsection (d) of this section.

(f) List of EPA-approved courses

Not later than August 31, 1988, and every three months thereafter until August 31, 1991, the Administrator shall publish in the Federal Register a list of all Environmental Protection Agency-approved asbestos training courses for persons to achieve accreditation in each category described in subsection (b)(1)(A) of this section and for laboratories to achieve accreditation. The

Administrator may continue publishing such a list after August 31, 1991, at such times as the Administrator considers it useful. The list shall include the name and address of each approved trainer and, to the extent available, a list of all the geographic sites where training courses will take place. The Administrator shall provide a copy of the list to each State official on the list published by the Administrator under section 2645(d)(6) of this title and to each regional office of the Environmental Protection Agency.

(Pub. L. 94–469, title II, §206, as added Pub. L. 99–519, §2, Oct. 22, 1986, 100 Stat. 2980; amended Pub. L. 100–368, §3, July 18, 1988, 102 Stat. 832; Pub. L. 100–418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 101–637, §15(a)(1), (2), Nov. 28, 1990, 104 Stat. 4596.)

REFERENCES IN TEXT

The Defense Dependents' Education Act of 1978, referred to in subsec. (b)(2), is title XIV of Pub. L. 95–561, Nov. 1, 1978, 92 Stat. 2365, as amended, which is classified principally to chapter 25A (§921 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 921 of Title 20 and Tables.

The Asbestos School Hazard Abatement Act of 1984, referred to in subsec. (e)(2), is title V of Pub. L. 98–377, Aug. 11, 1984, 98 Stat. 1287, as amended, which is classified generally to subchapter V (§4011 et seq.) of chapter 52 of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 4011 of Title 20 and Tables.

AMENDMENTS

1990—Subsec. (a)(1), (3). Pub. L. 101–637, §15(a)(1), inserted before comma at end "or in a public or commercial building".

Subsec. (b)(1)(A)(i), (iii). Pub. L. 101–637, §15(a)(2), inserted before period at end "or in public or commercial buildings".

1988—Subsec. (d)(1), (2). Pub. L. 100–418 substituted "National Institute of Standards and Technology" for "National Bureau of Standards" wherever appearing.

Subsec. (f). Pub. L. 100–368 added subsec. (f).

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–637, §15(c), Nov. 28, 1990, 104 Stat. 4597, provided that: "This section [amending this section and section 2647 of this title and enacting provisions set out as notes under this section] shall take effect upon the expiration of the 12-month period following the date of the enactment of this Act [Nov. 28, 1990]. The Administrator may extend the effective date for a period not to exceed one year if the Administrator determines that accredited asbestos contractors are needed to perform school-site abatement required under the Asbestos Hazard Emergency Response Act [of 1986] (15 U.S.C. 2641) and such an extension is necessary to ensure effective implementation of section 203 of the Toxic Substances Control Act [15 U.S.C. 2643]."

REVISION OF MODEL CONTRACTOR ACCREDITATION PROGRAM

Pub. L. 101–637, §15(a)(3), Nov. 28, 1990, 104 Stat. 4596, provided that: "Not later than one year after the date of the enactment of this Act [Nov. 28, 1990], the Administrator of the Environmental Protection Agency shall revise the model contractor accreditation plan promulgated under section 206(b)(1) of the Toxic Substances Control Act (15 U.S.C. 2646(b)(1)) to increase the minimum number of hours of training, including additional hours of hands-on health and safety training, required for asbestos abatement workers and to make such other changes as may be necessary to implement the amendments made by paragraphs (1) and (2) [amending this section]."

EPA ADMINISTRATOR NOT EXERCISING "STATUTORY AUTHORITY" UNDER OSHA LAW IN EXERCISING AUTHORITY UNDER THIS CHAPTER

Pub. L. 101–637, §15(b), Nov. 28, 1990, 104 Stat. 4596, provided that: "In exercising any authority under the Toxic Substances Control Act [15 U.S.C. 2601 et seq.] in connection with the amendment made by subsection (a) of this section [amending this section and section 2647 of this title], the Administrator of the Environmental Protection Agency shall not, for purposes of section 4(b)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653(b)(1)), be considered to be exercising statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health."

[1] *So in original. Probably should be "subparagraph (A)".*

§2647. Enforcement

(a) Penalties

Any local educational agency—

(1) which fails to conduct an inspection pursuant to regulations under section 2643(b) of this title or under section 2644(b) of this title,

(2) which knowingly submits false information to the Governor regarding any inspection pursuant to regulations under section 2643(i) of this title or knowingly includes false information in any inspection statement under section 2644(d)(3) of this title,

(3) which fails to develop a management plan pursuant to regulations under section 2643(i) of this title or under section 2644(d) of this title,

(4) which carries out any activity prohibited by section 2655 of this title, or

(5) which knowingly submits false information to the Governor regarding a deferral request under section 2645(d) of this title.[1]

is liable for a civil penalty of not more than $5,000 for each day during which the violation continues. Any civil penalty under this subsection shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected under section 2615 of this title. For purposes of this subsection, a "violation" means a failure to comply with respect to a single school building. The court shall order that any civil penalty collected under this subsection be used by the local educational agency for purposes of complying with this subchapter. Any portion of a civil penalty remaining unspent after compliance by a local educational agency is completed shall be deposited into the Asbestos Trust Fund established by section 4022 of title 20.

(b) Relationship to subchapter I of this chapter

A local educational agency is not liable for any civil penalty under subchapter I of this chapter for failing or refusing to comply with any rule promulgated or order issued under this subchapter.

(c) Enforcement considerations

(1) In determining the amount of a civil penalty to be assessed under subsection (a) of this section against a local educational agency, the Administrator shall consider—

(A) the significance of the violation;

(B) the culpability of the violator, including any history of previous violations under this chapter;

(C) the ability of the violator to pay the penalty; and

(D) the ability of the violator to continue to provide educational services to the community.

(2) Any action ordered by a court in fashioning relief under section 2619 of this title shall be consistent with regulations promulgated under section 2643 of this title (or with the requirements of section 2644 of this title if there are no regulations).

(d) Citizen complaints

Any person may file a complaint with the Administrator or with the Governor of the State in which the school building is located with respect to asbestos-containing material in a school building. If the Administrator or Governor receives a complaint under this subsection containing allegations which provide a reasonable basis to believe that a violation of this chapter has occurred, the Administrator or Governor shall investigate and respond (including taking enforcement action where appropriate) to the complaint within a reasonable period of time.

(e) Citizen petitions

(1) Any person may petition the Administrator to initiate a proceeding for the issuance, amendment, or repeal of a regulation or order under this subchapter.

(2) Such petition shall be filed in the principal office of the Administrator and shall set forth the facts which it is claimed establish that it is necessary to issue, amend, or repeal a regulation or order under this subchapter.

(3) The Administrator may hold a public hearing or may conduct such investigation or proceeding as the Administrator deems appropriate in order to determine whether or not such petition should be granted.

(4) Within 90 days after filing of a petition described in paragraph (1), the Administrator shall either grant or deny the petition. If the Administrator grants such petition, the Administrator shall promptly commence an appropriate proceeding in accordance with this subchapter. If the Administrator denies such petition, the Administrator shall publish in the Federal Register the Administrator's reasons for such denial. The granting or denial of a petition under this subsection shall not affect any deadline or other requirement of this subchapter.

(f) Citizen civil actions with respect to EPA regulations

(1) Any person may commence a civil action without prior notice against the Administrator to compel the Administrator to meet the deadlines in section 2643 of this title for issuing advanced notices of proposed rulemaking, proposing regulations, and promulgating regulations. Any such action shall be brought in the district court of the United States for the District of Columbia.

(2) In any action brought under paragraph (1) in which the court finds the Administrator to be in violation of any deadline in section 2643 of this title, the court shall set forth a schedule for promulgating the regulations required by section 2643 of this title and shall order the Administrator to comply with such schedule. The court may extend any deadline (which has not already occurred) in section 2644(b), (c), or (d) of this title for a period of not more than 6 months, if the court-ordered schedule will result in final promulgation of the pertinent regulations within the extended period. Such deadline extensions may not be granted by the court beginning 720 days after October 22, 1986.

(3) Section 2619 of this title shall apply to civil actions described in this subsection, except to the extent inconsistent with this subsection.

(g) Failure to attain accreditation; penalty

Any contractor who—

(1) inspects for asbestos-containing material in a school, public or commercial building;

(2) designs or conducts response actions with respect to friable asbestos-containing material in a school, public or commercial building; or

(3) employs individuals to conduct response actions with respect to friable asbestos-containing material in a school, public or commercial building;

and who fails to obtain the accreditation under section 2646 of this title, or in the case of employees to require or provide for the accreditation required, is liable for a civil penalty of not more than $5,000 for each day during which the violation continues, unless such contractor is a direct employee of the Federal Government.

(Pub. L. 94–469, title II, §207, as added Pub. L. 99–519, §2, Oct. 22, 1986, 100 Stat. 2983; amended Pub. L. 100–368, §5, July 18, 1988, 102 Stat. 833; Pub. L. 101–637, §15(a)(4), Nov. 28, 1990, 104 Stat. 4596.)

AMENDMENTS

1990—Subsec. (g). Pub. L. 101–637 added subsec. (g).

1988—Subsec. (a)(4), (5). Pub. L. 100–368 added pars. (4) and (5).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–637 effective upon expiration of 12-month period following Nov. 28, 1990, with provisions for extension, see section 15(c) of Pub. L. 101–637, set out as a note under section 2646 of this title.

EPA ADMINISTRATOR NOT EXERCISING "STATUTORY AUTHORITY" UNDER OSHA LAW

IN EXERCISING AUTHORITY UNDER THIS CHAPTER

In exercising any authority under this chapter in connection with amendment made by Pub. L. 101–637, Administrator of Environmental Protection Agency not, for purposes of section 653(b)(1) of Title 29, Labor, to be considered to be exercising statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health, see section 15(b) of Pub. L. 101–637, set out as a note under section 2646 of this title.

[1] *So in original. The period probably should be a comma.*

§2648. Emergency authority

(a) Emergency action

(1) Authority

Whenever—

(A) the presence of airborne asbestos or the condition of friable asbestos-containing material in a school building governed by a local educational agency poses an imminent and substantial endangerment to human health or the environment, and

(B) the local educational agency is not taking sufficient action (as determined by the Administrator or the Governor) to respond to the airborne asbestos or friable asbestos-containing material,

the Administrator or the Governor of a State is authorized to act to protect human health or the environment.

(2) Limitations on Governor action

The Governor of a State shall notify the Administrator within a reasonable period of time before the Governor plans to take an emergency action under this subsection. After such notification, if the Administrator takes an emergency action with respect to the same hazard, the Governor may not carry out (or continue to carry out, if the action has been started) the emergency action.

(3) Notification

The following notification shall be provided before an emergency action is taken under this subsection:

(A) In the case of a Governor taking the action, the Governor shall notify the local educational agency concerned.

(B) In the case of the Administrator taking the action, the Administrator shall notify both the local educational agency concerned and the Governor of the State in which such agency is located.

(4) Cost recovery

The Administrator or the Governor of a State may seek reimbursement for all costs of an emergency action taken under this subsection in the United States District Court for the District of Columbia or for the district in which the emergency action occurred. In any action seeking reimbursement from a local educational agency, the action shall be brought in the United States District Court for the district in which the local educational agency is located.

(b) Injunctive relief

Upon receipt of evidence that the presence of airborne asbestos or the condition of friable asbestos-containing material in a school building governed by a local educational agency poses an imminent and substantial endangerment to human health or the environment—

(1) the Administrator may request the Attorney General to bring suit, or

(2) the Governor of a State may bring suit,

to secure such relief as may be necessary to respond to the hazard. The district court of the United States in the district in which the response will be carried out shall have jurisdiction to grant such relief, including injunctive relief.

(Pub. L. 94–469, title II, §208, as added Pub. L. 99–519, §2, Oct. 22, 1986, 100 Stat. 2985.)

§2649. State and Federal law

(a) No preemption

Nothing in this subchapter shall be construed, interpreted, or applied to preempt, displace, or supplant any other State or Federal law, whether statutory or common.

(b) Cost and damage awards

Nothing in this subchapter or any standard, regulation, or requirement promulgated pursuant to this subchapter shall be construed or interpreted to preclude any court from awarding costs and damages associated with the abatement, including the removal, of asbestos-containing material, or a portion of such costs, at any time prior to the actual date on which such material is removed.

(c) State may establish more requirements

Nothing in this subchapter shall be construed or interpreted as preempting a State from establishing any additional liability or more stringent requirements with respect to asbestos in school buildings within such State.

(d) No Federal cause of action

Nothing in this subchapter creates a cause of action or in any other way increases or diminishes the liability of any person under any other law.

(e) Intent of Congress

It is not the intent of Congress that this subchapter or rules, regulations, or orders issued pursuant to this subchapter be interpreted as influencing, in either the plaintiff's or defendant's favor, the disposition of any civil action for damages relating to asbestos. This subsection does not affect the authority of any court to make a determination in an adjudicatory proceeding under applicable State law with respect to the admission into evidence or any other use of this subchapter or rules, regulations, or orders issued pursuant to this subchapter.

(Pub. L. 94–469, title II, §209, as added Pub. L. 99–519, §2, Oct. 22, 1986, 100 Stat. 2986.)

§2650. Asbestos contractors and local educational agencies

(a) Study

(1) General requirement

The Administrator shall conduct a study on the availability of liability insurance and other forms of assurance against financial loss which are available to local educational agencies and asbestos contractors with respect to actions required under this subchapter. Such study shall examine the following:

(A) The extent to which liability insurance and other forms of assurance against financial loss are available to local educational agencies and asbestos contractors.

(B) The extent to which the cost of insurance or other forms of assurance against financial loss has increased and the extent to which coverage has become less complete.

(C) The extent to which any limitation in the availability of insurance or other forms of assurance against financial loss is the result of factors other than standards of liability in applicable law.

(D) The extent to which the existence of the regulations required by subsections (c) and (d) of section 2643 of this title and the accreditation of contractors under section 2646 of this title has

affected the availability or cost of insurance or other forms of assurance against financial loss.

(E) The extent to which any limitation on the availability of insurance or other forms of assurance against financial loss is inhibiting inspections for asbestos-containing material or the development or implementation of management plans under this subchapter.

(F) Identification of any other impediments to the timely completion of inspections or the development and implementation of management plans under this subchapter.

(2) Interim report

Not later than April 1, 1988, the Administrator shall submit to the Congress an interim report on the progress of the study required by this subsection, along with preliminary findings based on information collected to that date.

(3) Final report

Not later than October 1, 1990, the Administrator shall submit to the Congress a final report on the study required by this subsection, including final findings based on the information collected.

(b) State action

On the basis of the interim report or the final report of the study required by subsection (a) of this section, a State may enact or amend State law to establish or modify a standard of liability for local educational agencies or asbestos contractors with respect to actions required under this subchapter.

(Pub. L. 94–469, title II, §210, as added Pub. L. 99–519, §2, Oct. 22, 1986, 100 Stat. 2986.)

§2651. Public protection

(a) Public protection

No State or local educational agency may discriminate against a person in any way, including firing a person who is an employee, because the person provided information relating to a potential violation of this subchapter to any other person, including a State or the Federal Government.

(b) Labor Department review

Any public or private employee or representative of employees who believes he or she has been fired or otherwise discriminated against in violation of subsection (a) of this section may within 90 days after the alleged violation occurs apply to the Secretary of Labor for a review of the firing or alleged discrimination. The review shall be conducted in accordance with section 660(c) of title 29.

(Pub. L. 94–469, title II, §211, as added Pub. L. 99–519, §2, Oct. 22, 1986, 100 Stat. 2987.)

§2652. Asbestos Ombudsman

(a) Appointment

The Administrator shall appoint an Asbestos Ombudsman, who shall carry out the duties described in subsection (b) of this section.

(b) Duties

The duties of the Asbestos Ombudsman are—

(1) to receive complaints, grievances, and requests for information submitted by any person with respect to any aspect of this subchapter,

(2) to render assistance with respect to the complaints, grievances, and requests received, and

(3) to make such recommendations to the Administrator as the Ombudsman considers appropriate.

(Pub. L. 94–469, title II, §212, as added Pub. L. 99–519, §2, Oct. 22, 1986, 100 Stat. 2987.)

§2653. EPA study of asbestos-containing material in public buildings

Within 360 days after October 22, 1986, the Administrator shall conduct and submit to the Congress the results of a study which shall—

(1) assess the extent to which asbestos-containing materials are present in public and commercial buildings;

(2) assess the condition of asbestos-containing material in commercial buildings and the likelihood that persons occupying such buildings, including service and maintenance personnel, are, or may be, exposed to asbestos fibers;

(3) consider and report on whether public and commercial buildings should be subject to the same inspection and response action requirements that apply to school buildings;

(4) assess whether existing Federal regulations adequately protect the general public, particularly abatement personnel, from exposure to asbestos during renovation and demolition of such buildings; and

(5) include recommendations that explicitly address whether there is a need to establish standards for, and regulate asbestos exposure in, public and commercial buildings.

(Pub. L. 94–469, title II, §213, as added Pub. L. 99–519, §2, Oct. 22, 1986, 100 Stat. 2987.)

§2654. Transitional rules

Any regulation of the Environmental Protection Agency under subchapter I of this chapter which is inconsistent with this subchapter shall not be in effect after October 22, 1986. Any advanced notice of proposed rulemaking, any proposed rule, and any regulation of the Environmental Protection Agency in effect before October 22, 1986, which is consistent with the regulations required under section 2643 of this title shall remain in effect and may be used to meet the requirements of section 2643 of this title, except that any such regulation shall be enforced under this chapter.

(Pub. L. 94–469, title II, §214, as added Pub. L. 99–519, §2, Oct. 22, 1986, 100 Stat. 2988.)

§2655. Worker protection

(a) Prohibition on certain activities

Until the local educational agency with authority over a school has submitted a management plan (for the school) which the State Governor has not disapproved as of the end of the period for review and revision of the plan under section 2645 of this title, the local educational agency may not do either of the following in the school:

(1) Perform, or direct an employee to perform, renovations or removal of building materials, except emergency repairs, in the school, unless—

(A) the school is carrying out work under a grant awarded under section 4014 of title 20; or

(B) an inspection that complies with the requirements of regulations promulgated under section 2643 of this title has been carried out in the school and the agency complies with the following sections of title 40 of the Code of Federal Regulations:

(i) Paragraphs (g), (h), and (i) of section 763.90 (response actions).

(ii) Appendix D to subpart E of part 763 (transport and disposal of asbestos waste).

(2) Perform, or direct an employee to perform, operations and maintenance activities in the school, unless the agency complies with the following sections of title 40 of the Code of Federal Regulations:

(A) Section 763.91 (operations and maintenance), including appendix B to subpart E of part 763.

(B) Paragraph (a)(2) of section 763.92 (training and periodic surveillance).

(b) Employee training and equipment

Any school employee who is directed to conduct emergency repairs involving any building material containing asbestos or suspected of containing asbestos, or to conduct operations and maintenance activities, in a school—

(1) shall be provided the proper training to safely conduct such work in order to prevent potential exposure to asbestos; and

(2) shall be provided the proper equipment and allowed to follow work practices that are necessary to safely conduct such work in order to prevent potential exposure to asbestos.

(c) "Emergency repair" defined

For purposes of this section, the term "emergency repair" means a repair in a school building that was not planned and was in response to a sudden, unexpected event that threatens either—

(1) the health or safety of building occupants; or

(2) the structural integrity of the building.

(Pub. L. 94–469, title II, §215, as added Pub. L. 100–368, §4(a), July 18, 1988, 102 Stat. 832.)

EFFECTIVE DATE

Pub. L. 100–368, §4(c), July 18, 1988, 102 Stat. 833, provided that: "Section 215 of the Toxic Substances Control Act [this section], as added by subsection (a), shall take effect on October 12, 1988."

§2656. Training grants

(a) Grants

The Administrator is authorized to award grants under this section to nonprofit organizations that demonstrate experience in implementing and operating health and safety asbestos training and education programs for workers who are or will be engaged in asbestos-related activities (including State and local governments, colleges and universities, joint labor-management trust funds, and nonprofit government employee organizations) to establish and, or, operate asbestos training programs on a not-for-profit basis. Applications for grants under this subsection shall be submitted in such form and manner, and contain such information, as the Administrator prescribes.

(b) Authorization

Of such sums as are authorized to be appropriated pursuant to section 4021(a) of title 20 for the fiscal years 1991, 1992, 1993, 1994, and 1995, not more than $5,000,000 are authorized to be appropriated to carry out this section in each such fiscal year.

(Pub. L. 94–469, title II, §216, as added Pub. L. 101–637, §16(a)(1), Nov. 28, 1990, 104 Stat. 4597.)

EFFECTIVE DATE

Pub. L. 101–637, §16(b), Nov. 28, 1990, 104 Stat. 4598, provided that: "Section 216 of the Toxic Substances Control Act [this section], as added by subsection (a), shall take effect on the date of the enactment of this Act [Nov. 28, 1990]."

SUBCHAPTER III—INDOOR RADON ABATEMENT

§2661. National goal

The national long-term goal of the United States with respect to radon levels in buildings is that the air within buildings in the United States should be as free of radon as the ambient air outside of buildings.

(Pub. L. 94–469, title III, §301, as added Pub. L. 100–551, §1(a), Oct. 28, 1988, 102 Stat. 2755.)

REPORT ON RECOMMENDED POLICY FOR DEALING WITH RADON IN ASSISTED HOUSING

Pub. L. 100–628, title X, §1091, Nov. 7, 1988, 102 Stat. 3283, provided that:

"(a) PURPOSES.—The purposes of this section are—

"(1) to require the Department of Housing and Urban Development to develop an effective departmental policy for dealing with radon contamination that utilizes any Environmental Protection Agency guidelines and standards to ensure that occupants of housing covered by this section are not exposed to hazardous levels of radon; and

"(2) to require the Department of Housing and Urban Development to assist the Environmental Protection Agency in reducing radon contamination.

"(b) PROGRAM.—

"(1) APPLICABILITY.—The housing covered by this section is—

"(A) multifamily housing owned by the Department of Housing and Urban Development;

"(B) public housing and Indian housing assisted under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.];

"(C) housing receiving project-based assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f];

"(D) housing assisted under section 236 of the National Housing Act [12 U.S.C. 1715z–1]; and

"(E) housing assisted under section 221(d)(3) of the National Housing Act [12 U.S.C. 1715l(d)(3)].

"(2) IN GENERAL.—The Secretary of Housing and Urban Development shall develop and recommend to the Congress a policy for dealing with radon contamination that specifies programs for education, research, testing, and mitigation of radon hazards in housing covered by this section.

"(3) STANDARDS.—In developing the policy, the Secretary shall utilize any guidelines, information, or standards established by the Environmental Protection Agency for—

"(A) testing residential and nonresidential structures for radon;

"(B) identifying elevated radon levels;

"(C) identifying when remedial actions should be taken; and

"(D) identifying geographical areas that are likely to have elevated levels of radon.

"(4) COORDINATION.—In developing the policy, the Secretary shall coordinate the efforts of the Department of Housing and Urban Development with the Environmental Protection Agency, and other appropriate Federal agencies, and shall consult with State and local governments, the housing industry, consumer groups, health organizations, appropriate professional organizations, and other appropriate experts.

"(5) REPORT.—The Secretary shall submit a report to the Congress within 1 year after the date of the enactment of this Act [Nov. 7, 1988] that describes the Secretary's recommended policy for dealing with radon contamination and the Secretary's reasons for recommending such policy. The report shall include an estimate of the housing covered by this section that is likely to have hazardous levels of radon.

"(c) COOPERATION WITH ENVIRONMENTAL PROTECTION AGENCY.—Within 6 months after the date of the enactment of this Act [Nov. 7, 1988], the Secretary and the Administrator of the Environmental Protection Agency shall enter into a memorandum of understanding describing the Secretary's plan to assist the Administrator in carrying out the Environmental Protection Agency's authority to assess the extent of radon contamination in the United States and assist in the development of measures to avoid and reduce radon contamination.

"(d) DEFINITIONS.—For purposes of this section:

"(1) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Environmental Protection Agency.

"(2) SECRETARY.—The term 'Secretary' means the Secretary of Housing and Urban Development.

"(e) AUTHORIZATION.—Funds available for housing covered by this section shall be available to carry out this section with respect to such housing."

§2662. Definitions

For purposes of this subchapter:

(1) The term "local educational agency" means—

(A) any local educational agency as defined in section 7801 of title 20;

(B) the owner of any nonprofit elementary or secondary school building; and

(C) the governing authority of any school operated pursuant to section 241 of title 20, as in

effect before enactment of the Improving America's Schools Act of 1994, or successor authority, relating to impact aid for children who reside on Federal property.

(2) The term "nonprofit elementary or secondary school" has the meaning given such term by section 2642(8) [1] of this title.

(3) The term "radon" means the radioactive gaseous element and its short-lived decay products produced by the disintegration of the element radium occurring in air, water, soil, or other media.

(4) The term "school building" has the meaning given such term by section 2642(13) of this title.

(Pub. L. 94–469, title III, §302, as added Pub. L. 100–551, §1(a), Oct. 28, 1988, 102 Stat. 2755; amended Pub. L. 103–382, title III, §391(c)(4), 392(b)(2), Oct. 20, 1994, 108 Stat. 4022, 4026; Pub. L. 107–110, title X, §1076(f)(2), Jan. 8, 2002, 115 Stat. 2091.)

REFERENCES IN TEXT

Section 241 of title 20, as in effect before enactment of the Improving America's Schools Act of 1994, referred to in par. (1)(C), means section 241 of Title 20, Education, prior to its repeal by Pub. L. 103–382, title III, §331(b), Oct. 20, 1994, 108 Stat. 3965.

AMENDMENTS

2002—Par. (1)(A). Pub. L. 107–110 substituted "7801" for "8801".

1994—Par. (1)(A). Pub. L. 103–382, §391(c)(4)(A), made technical amendment to reference to section 8801 of title 20 to reflect change in reference to corresponding section of original act.

Par. (1)(C). Pub. L. 103–382 directed two separate amendments of par. (1)(C), the first, by section 391(c)(4)(B) of Pub. L. 103–382, directed the insertion of "or successor authority" immediately after "section 241 of title 20", the second, by section 392(b)(2) of Pub. L. 103–382, directed the insertion (without reference to the first amendment) of "as in effect before enactment of the Improving America's Schools Act of 1994" immediately after "section 241 of title 20,". Literal execution of the second amendment was not possible, as "section 241 of title 20," was amended to read "section 241 of title 20 or successor authority," by the first amendment. Commas were editorially inserted before and after the phrase added by the second amendment and it was inserted immediately after "section 241 of title 20" to reflect the probable intent of Congress.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of Title 20, Education.

[1] So in original. Probably should be section "2642(9)".

§2663. EPA citizen's guide

(a) Publication

In order to make continuous progress toward the long-term goal established in section 2661 of this title, the Administrator of the Environmental Protection Agency shall, not later than June 1, 1989, publish and make available to the public an updated version of its document titled "A Citizen's Guide to Radon". The Administrator shall revise and republish the guide as necessary thereafter.

(b) Information included

(1) Action levels

The updated citizen's guide published as provided in subsection (a) of this section shall include a description of a series of action levels indicating the health risk associated with different levels of radon exposure.

(2) Other information

The updated citizen's guide shall also include information with respect to each of the following:

(A) The increased health risk associated with the exposure of potentially sensitive populations to different levels of radon.

(B) The increased health risk associated with the exposure to radon of persons engaged in potentially risk-increasing behavior.

(C) The cost and technological feasibility of reducing radon concentrations within existing and new buildings.

(D) The relationship between short-term and long-term testing techniques and the relationship between (i) measurements based on both such techniques, and (ii) the actions [1] levels set forth as provided in paragraph (1).

(E) Outdoor radon levels around the country.

(Pub. L. 94–469, title III, §303, as added Pub. L. 100–551, §1(a), Oct. 28, 1988, 102 Stat. 2755.)

[1] *So in original. Probably should be "action".*

§2664. Model construction standards and techniques

The Administrator of the Environmental Protection Agency shall develop model construction standards and techniques for controlling radon levels within new buildings. To the maximum extent possible, these standards and techniques should be developed with the assistance of organizations involved in establishing national building construction standards and techniques. The Administrator shall make a draft of the document containing the model standards and techniques available for public review and comment. The model standards and techniques shall provide for geographic differences in construction types and materials, geology, weather, and other variables that may affect radon levels in new buildings. The Administrator shall make final model standards and techniques available to the public by June 1, 1990. The Administrator shall work to ensure that organizations responsible for developing national model building codes, and authorities which regulate building construction within States or political subdivisions within States, adopt the Agency's model standards and techniques.

(Pub. L. 94–469, title III, §304, as added Pub. L. 100–551, §1(a), Oct. 28, 1988, 102 Stat. 2756.)

§2665. Technical assistance to States for radon programs

(a) Required activities

The Administrator (or another Federal department or agency designated by the Administrator) shall develop and implement activities designed to assist State radon programs. These activities may include, but are not limited to, the following:

(1) Establishment of a clearinghouse of radon related information, including mitigation studies, public information materials, surveys of radon levels, and other relevant information.

(2) Operation of a voluntary proficiency program for rating the effectiveness of radon measurement devices and methods, the effectiveness of radon mitigation devices and methods, and the effectiveness of private firms and individuals offering radon-related architecture, design, engineering, measurement, and mitigation services. The proficiency program under this subparagraph shall be in operation within one year after October 28, 1988.

(3) Design and implementation of training seminars for State and local officials and private and professional firms dealing with radon and addressing topics such as monitoring, analysis, mitigation, health effects, public information, and program design.

(4) Publication of public information materials concerning radon health risks and methods of radon mitigation.

(5) Operation of cooperative projects between the Environmental Protection Agency's Radon Action Program and the State's radon program. Such projects shall include the Home Evaluation Program, in which the Environmental Protection Agency evaluates homes and States demonstrate

mitigation methods in these homes. To the maximum extent practicable, consistent with the objectives of the evaluation and demonstration, homes of low-income persons should be selected for evaluation and demonstration.

(6) Demonstration of radon mitigation methods in various types of structures and in various geographic settings and publication of findings. In the case of demonstration of such methods in homes, the Administrator should select homes of low-income persons, to the maximum extent practicable and consistent with the objectives of the demonstration.

(7) Establishment of a national data base with data organized by State concerning the location and amounts of radon.

(8) Development and demonstration of methods of radon measurement and mitigation that take into account unique characteristics, if any, of nonresidential buildings housing child care facilities.

(b) Discretionary assistance

Upon request of a State, the Administrator (or another Federal department or agency designated by the Administrator) may provide technical assistance to such State in development or implementation of programs addressing radon. Such assistance may include, but is not limited to, the following:

(1) Design and implementation of surveys of the location and occurrence of radon within a State.

(2) Design and implementation of public information and education programs.

(3) Design and implementation of State programs to control radon in existing or new structures.

(4) Assessment of mitigation alternatives in unusual or unconventional structures.

(5) Design and implementation of methods for radon measurement and mitigation for nonresidential buildings housing child care facilities.

(c) Information provided to professional organizations

The Administrator, or another Federal department or agency designated by the Administrator, shall provide appropriate information concerning technology and methods of radon assessment and mitigation to professional organizations representing private firms involved in building design, engineering, and construction.

(d) Proficiency rating program and training seminar

(1) Authorization

There is authorized to be appropriated not more than $1,500,000 for the purposes of initially establishing the proficiency rating program under subsection (a)(2) of this section and the training seminars under subsection (a)(3) of this section.

(2) Charge imposed

To cover the operating costs of such proficiency rating program and training seminars, the Administrator shall impose on persons applying for a proficiency rating and on private and professional firms participating in training seminars such charges as may be necessary to defray the costs of the program or seminars. No such charge may be imposed on any State or local government.

(3) Special account

Funds derived from the charges imposed under paragraph (2) shall be deposited in a special account in the Treasury. Amounts in the special account are authorized to be appropriated only for purposes of administering such proficiency rating program or training seminars or for reimbursement of funds appropriated to the Administrator to initially establish such program or seminars.

(4) Reimbursement of general fund

During the first three years of the program and seminars, the Administrator shall make every effort, consistent with the goals and successful operation of the program and seminars, to set

charges imposed under paragraph (2) so that an amount in excess of operation costs is collected. Such excess amount shall be used to reimburse the General Fund of the Treasury for the full amount appropriated to initially establish the program and seminars.

(5) Research

The Administrator shall, in conjunction with other Federal agencies, conduct research to develop, test, and evaluate radon and radon progeny measurement methods and protocols. The purpose of such research shall be to assess the ability of those methods and protocols to accurately assess exposure to radon progeny. Such research shall include—

(A) conducting comparisons among radon and radon progeny measurement techniques;

(B) developing measurement protocols for different building types under varying operating conditions; and

(C) comparing the exposures estimated by stationary monitors and protocols to those measured by personal monitors, and issue guidance documents that—

(i) provide information on the results of research conducted under this paragraph; and

(ii) describe model State radon measurement and mitigation programs.

(6) Mandatory proficiency testing program study

(A) The Administrator shall conduct a study to determine the feasibility of establishing a mandatory proficiency testing program that would require that—

(i) any product offered for sale, or device used in connection with a service offered to the public, for the measurement of radon meets minimum performance criteria; and

(ii) any operator of a device, or person employing a technique, used in connection with a service offered to the public for the measurement of radon meets a minimum level of proficiency.

(B) The study shall also address procedures for—

(i) ordering the recall of any product sold for the measurement of radon which does not meet minimum performance criteria;

(ii) ordering the discontinuance of any service offered to the public for the measurement of radon which does not meet minimum performance criteria; and

(iii) establishing adequate quality assurance requirements for each company offering radon measurement services to the public to follow.

The study shall identify enforcement mechanisms necessary to the success of the program. The Administrator shall report the findings of the study with recommendations to Congress by March 1, 1991.

(7) User fee

In addition to any charge imposed pursuant to paragraph (2), the Administrator shall collect user fees from persons seeking certification under the radon proficiency program in an amount equal to $1,500,000 to cover the Environmental Protection Agency's cost of conducting research pursuant to paragraph (5) for each of the fiscal years 1991, 1992, 1993, 1994, and 1995. Such funds shall be deposited in the account established pursuant to paragraph (3).

(e) Authorization

(1) There is authorized to be appropriated for the purposes of carrying out sections 2663, 2664, and 2665 of this title an amount not to exceed $3,000,000 for each of fiscal years 1989, 1990, and 1991.

(2) No amount appropriated under this subsection may be used by the Environmental Protection Agency to administer the grant program under section 2666 of this title.

(3) No amount appropriated under this subsection may be used to cover the costs of the proficiency rating program under subsection (a)(2) of this section.

(Pub. L. 94–469, title III, §305, as added Pub. L. 100–551, §1(a), Oct. 28, 1988, 102 Stat. 2756; amended Pub. L. 101–508, title X, §10202, Nov. 5, 1990, 104 Stat. 1388–393; Pub. L. 104–66, title

II, §2021(l), Dec. 21, 1995, 109 Stat. 728.)

AMENDMENTS

1995—Subsecs. (d) to (f). Pub. L. 104–66 redesignated subsecs. (e) and (f) as (d) and (e), respectively, and struck out heading and text of former subsec. (d). Text read as follows: "Within 9 months after October 28, 1988, and annually thereafter, the Administrator shall submit to Congress a plan identifying assistance to be provided under this section and outlining personnel and financial resources necessary to implement this section. Prior to submission to Congress, this plan shall be reviewed by the advisory groups provided for in section 403(c) of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 7401 note)."

1990—Subsec. (e)(5) to (7). Pub. L. 101–508 added pars. (5) to (7).

§2666. Grant assistance to States for radon programs

(a) In general

For each fiscal year, upon application of the Governor of a State, the Administrator may make a grant, subject to such terms and conditions as the Administrator considers appropriate, under this section to the State for the purpose of assisting the State in the development and implementation of programs for the assessment and mitigation of radon.

(b) Application

An application for a grant under this section in any fiscal year shall contain such information as the Administrator shall require, including each of the following:

(1) A description of the seriousness and extent of radon exposure in the State.

(2) An identification of the State agency which has the primary responsibility for radon programs and which will receive the grant, a description of the roles and responsibilities of the lead State agency and any other State agencies involved in radon programs, and description of the roles and responsibilities of any municipal, district, or areawide organization involved in radon programs.

(3) A description of the activities and programs related to radon which the State proposes in such year.

(4) A budget specifying Federal and State funding of each element of activity of the grant application.

(5) A 3-year plan which outlines long range program goals and objectives, tasks necessary to achieve them, and resource requirements for the entire 3-year period, including anticipated State funding levels and desired Federal funding levels. This clause shall apply only for the initial year in which a grant application is made.

(c) Eligible activities

Activities eligible for grant assistance under this section are the following:

(1) Survey of radon levels, including special surveys of geographic areas or classes of buildings (such as, among others, public buildings, school buildings, high-risk residential construction types).

(2) Development of public information and educational materials concerning radon assessment, mitigation, and control programs.

(3) Implementation of programs to control radon in existing and new structures.

(4) Purchase by the State of radon measurement equipment or devices.

(5) Purchase and maintenance of analytical equipment connected to radon measurement and analysis, including costs of calibration of such equipment.

(6) Payment of costs of Environmental Protection Agency-approved training programs related to radon for permanent State or local employees.

(7) Payment of general overhead and program administration costs.

(8) Development of a data storage and management system for information concerning radon occurrence, levels, and programs.

(9) Payment of costs of demonstration of radon mitigation methods and technologies as

approved by the Administrator, including State participation in the Environmental Protection Agency Home Evaluation Program.

(10) A toll-free radon hotline to provide information and technical assistance.

(d) Preference to certain States

Beginning in fiscal year 1991, the Administrator shall give a preference for grant assistance under this section to States that have made reasonable efforts to ensure the adoption, by the authorities which regulate building construction within that State or political subdivisions within States, of the model construction standards and techniques for new buildings developed under section 2664 of this title.

(e) Priority activities and projects

The Administrator shall support eligible activities contained in State applications with the full amount of available funds. In the event that State applications for funds exceed the total funds available in a fiscal year, the Administrator shall give priority to activities or projects proposed by States based on each of the following criteria:

(1) The seriousness and extent of the radon contamination problem to be addressed.

(2) The potential for the activity or project to bring about reduction in radon levels.

(3) The potential for development of innovative radon assessment techniques, mitigation measures as approved by the Administrator, or program management approaches which may be of use to other States.

(4) Any other uniform criteria that the Administrator deems necessary to promote the goals of the grant program and that the Administrator provides to States before the application process.

(f) Federal share

The Federal share of the cost of radon program activities implemented with Federal assistance under this section in any fiscal year shall not exceed 75 percent of the costs incurred by the State in implementing such program in the first year of a grant to such State, 60 percent in the second year, and 50 percent in the third year. Federal assistance shall be made on the condition that the non-Federal share is provided from non-Federal funds.

(g) Assistance to local governments

States may, at the Governor's discretion, use funds from grants under this section to assist local governments in implementation of activities eligible for assistance under paragraphs (2), (3), and (6) of subsection (c) of this section.

(h) Information

(1) The Administrator may request such information, data, and reports developed by the State as he considers necessary to make the determination of continuing eligibility under this section.

(2) Any State receiving funds under this section shall provide to the Administrator all radon-related information generated in its activities, including the results of radon surveys, mitigation demonstration projects, and risk communication studies.

(3) Any State receiving funds under this section shall maintain, and make available to the public, a list of firms and individuals within the State that have received a passing rating under the Environmental Protection Agency proficiency rating program referred to in section 2665(a)(2) of this title. The list shall also include the address and phone number of such firms and individuals, together with the proficiency rating received by each. The Administrator shall make such list available to the public at appropriate locations in each State which does not receive funds under this section unless the State assumes such responsibility.

(i) Limitations

(1) No grant may be made under this section in any fiscal year to a State which in the preceding fiscal year received a grant under this section unless the Administrator determines that such State satisfactorily implemented the activities funded by the grant in such preceding fiscal year.

(2) The costs of implementing paragraphs (4) and (9) of subsection (c) of this section shall not in the aggregate exceed 50 percent of the amount of any grant awarded under this section to a State in a

fiscal year. In implementing such paragraphs, a State should make every effort, consistent with the goals and successful operation of the State radon program, to give a preference to low-income persons.

(3) The costs of general overhead and program administration under subsection (c)(7) of this section shall not exceed 25 percent of the amount of any grant awarded under this section to a State in a fiscal year.

(4) A State may use funds received under this section for financial assistance to persons only to the extent such assistance is related to demonstration projects or the purchase and analysis of radon measurement devices.

(j) Authorization

(1) There is authorized to be appropriated for grant assistance under this section an amount not to exceed $10,000,000 for each of fiscal years 1989, 1990, and 1991.

(2) There is authorized to be appropriated for the purpose of administering the grant program under this section such sums as may be necessary for each of such fiscal years.

(3) Notwithstanding any other provision of this section, not more than 10 percent of the amount appropriated to carry out this section may be used to make grants to any one State.

(4) Funds not obligated to States in the fiscal year for which funds are appropriated under this section shall remain available for obligation during the next fiscal year.

(5) No amount appropriated under this subsection may be used to cover the costs of the proficiency rating program under section 2665(a)(2) of this title.

(Pub. L. 94–469, title III, §306, as added Pub. L. 100–551, §1(a), Oct. 28, 1988, 102 Stat. 2758.)

FEDERAL SHARE OF COST

Pub. L. 109–54, title II, Aug. 2, 2005, 119 Stat. 531, provided in part that: "Beginning in fiscal year 2006 and thereafter, and notwithstanding section 306 of the Toxic Substances Control Act [15 U.S.C. 2666], the Federal share of the cost of radon program activities implemented with Federal assistance under section 306 shall not exceed 60 percent in the third and subsequent grant years."

§2667. Radon in schools

(a) Study of radon in schools

(1) Authority

The Administrator shall conduct a study for the purpose of determining the extent of radon contamination in the Nation's school buildings.

(2) List of high probability areas

In carrying out such study, the Administrator shall identify and compile a list of areas within the United States which the Administrator determines have a high probability of including schools which have elevated levels of radon.

(3) Basis of list

In compiling such list, the Administrator shall make such determinations on the basis of, among other things, each of the following:

(A) Geological data.

(B) Data on high radon levels in homes and other structures nearby any such school.

(C) Physical characteristics of the school buildings.

(4) Survey

In conducting such study the Administrator shall design a survey which when completed allows Congress to characterize the extent of radon contamination in schools in each State. The survey shall include testing from a representative sample of schools in each high-risk area identified in

paragraph (1) and shall include additional testing, to the extent resources are available for such testing. The survey also shall include any reliable testing data supplied by States, schools, or other parties.

(5) Assistance

(A) The Administrator shall make available to the appropriate agency of each State, as designated by the Governor of such State, a list of high risk areas within each State, including a delineation of such areas and any other data available to the Administrator for schools in that State. To assist such agencies, the Administrator also shall provide guidance and data detailing the risks associated with high radon levels, technical guidance and related information concerning testing for radon within schools, and methods of reducing radon levels.

(B) In addition to the assistance authorized by subparagraph (A), the Administrator is authorized to make available to the appropriate agency of each State, as designated by the Governor of such State, devices suitable for use by such agencies in conducting tests for radon within the schools under the jurisdiction of any such State agency. The Administrator is authorized to make available to such agencies the use of laboratories of the Environmental Protection Agency, or to recommend laboratories, to evaluate any such devices for the presence of radon levels.

(6) Diagnostic and remedial efforts

The Administrator is authorized to select, from high-risk areas identified in paragraph (2), school buildings for purposes of enabling the Administrator to undertake diagnostic and remedial efforts to reduce the levels of radon in such school buildings. Such diagnostic and remedial efforts shall be carried out with a view to developing technology and expertise for the purpose of making such technology and expertise available to any local educational agency and the several States.

(7) Status report

On or before October 1, 1989, the Administrator shall submit to the Congress a status report with respect to action taken by the Administrator in conducting the study required by this section, including the results of the Administrator's diagnostic and remedial work. On or before October 1, 1989, the Administrator shall submit a final report setting forth the results of the study conducted pursuant to this section, including the results of the Administrator's diagnostic and remedial work, and the recommendations of the Administrator.

(b) Authorization

For the purpose of carrying out the provisions of paragraph (6) of subsection (a) of this section, there are authorized to be appropriated such sums, not to exceed $500,000, as may be necessary. For the purpose of carrying out the provisions of this section other than such paragraph (6), there are authorized to be appropriated such sums, not to exceed $1,000,000, as may be necessary.

(Pub. L. 94–469, title III, §307, as added Pub. L. 100–551, §1(a), Oct. 28, 1988, 102 Stat. 2761.)

§2668. Regional radon training centers

(a) Funding program

Upon application of colleges, universities, institutions of higher learning, or consortia of such institutions, the Administrator may make a grant or cooperative agreement, subject to such terms and conditions as the Administrator considers appropriate, under this section to the applicant for the purpose of establishing and operating a regional radon training center.

(b) Purpose of centers

The purpose of a regional radon training center is to develop information and provide training to Federal and State officials, professional and private firms, and the public regarding the health risks posed by radon and demonstrated methods of radon measurement and mitigation.

(c) Applications

Any colleges, universities, institutions of higher learning or consortia of such institutions may submit an application for funding under this section. Such applications shall be submitted to the Administrator in such form and containing such information as the Administrator may require.

(d) Selection criteria

The Administrator shall support at least 3 eligible applications with the full amount of available funds. The Administrator shall select recipients of funding under this section to ensure that funds are equitably allocated among regions of the United States, and on the basis of each of the following criteria:

(1) The extent to which the applicant's program will promote the purpose described in subsection (b) of this section.

(2) The demonstrated expertise of the applicant regarding radon measurement and mitigation methods and other radon-related issues.

(3) The demonstrated expertise of the applicant in radon training and in activities relating to information development and dissemination.

(4) The seriousness of the radon problem in the region.

(5) The geographical coverage of the proposed center.

(6) Any other uniform criteria that the Administrator deems necessary to promote the purpose described in subsection (b) of this section and that the Administrator provides to potential applicants prior to the application process.

(e) Termination of funding

No funding may be given under this section in any fiscal year to an applicant which in the preceding fiscal year received funding under this section unless the Administrator determines that the recipient satisfactorily implemented the activities that were funded in the preceding year.

(f) Authorization

There is authorized to be appropriated to carry out the program under this section not to exceed $1,000,000 for each of fiscal years 1989, 1990, and 1991.

(Pub. L. 94–469, title III, §308, as added Pub. L. 100–551, §1(a), Oct. 28, 1988, 102 Stat. 2762.)

§2669. Study of radon in Federal buildings

(a) Study requirement

The head of each Federal department or agency that owns a Federal building shall conduct a study for the purpose of determining the extent of radon contamination in such buildings. Such study shall include, in the case of a Federal building using a nonpublic water source (such as a well or other groundwater), radon contamination of the water.

(b) High-risk Federal buildings

(1) The Administrator shall identify and compile a list of areas within the United States which the Administrator, in consultation with Federal departments and agencies, determines have a high probability of including Federal buildings which have elevated levels of radon.

(2) In compiling such list, the Administrator shall make such determinations on the basis of, among other things, the following:

(A) Geological data.

(B) Data on high radon levels in homes and other structures near any such Federal building.

(C) Physical characteristics of the Federal buildings.

(c) Study designs

Studies required under subsection (a) of this section shall be based on design criteria specified by the Administrator. The head of each Federal department or agency conducting such a study shall submit, not later than July 1, 1989, a study design to the Administrator for approval. The study design shall follow the most recent Environmental Protection Agency guidance documents,

including "A Citizen's Guide to Radon"; the "Interim Protocol for Screening and Follow Up: Radon and Radon Decay Products Measurements"; the "Interim Indoor Radon & Radon Decay Product Measurement Protocol"; and any other recent guidance documents. The study design shall include testing data from a representative sample of Federal buildings in each high-risk area identified in subsection (b) of this section. The study design also shall include additional testing data to the extent resources are available, including any reliable data supplied by Federal agencies, States, or other parties.

(d) Information on risks and testing

(1) The Administrator shall provide to the departments or agencies conducting studies under subsection (a) of this section the following:

(A) Guidance and data detailing the risks associated with high radon levels.

(B) Technical guidance and related information concerning testing for radon within Federal buildings and water supplies.

(C) Technical guidance and related information concerning methods for reducing radon levels.

(2) In addition to the assistance required by paragraph (1), the Administrator is authorized to make available, on a cost reimbursable basis, to the departments or agencies conducting studies under subsection (a) of this section devices suitable for use by such departments or agencies in conducting tests for radon within Federal buildings. For the purpose of assisting such departments or agencies in evaluating any such devices for the presence of radon levels, the Administrator is authorized to recommend laboratories or to make available to such departments or agencies, on a cost reimbursable basis, the use of laboratories of the Environmental Protection Agency.

(e) Study deadline

Not later than June 1, 1990, the head of each Federal department or agency conducting a study under subsection (a) of this section shall complete the study and provide the study to the Administrator.

(f) Report to Congress

Not later than October 1, 1990, the Administrator shall submit a report to the Congress describing the results of the studies conducted pursuant to subsection (a) of this section.

(Pub. L. 94–469, title III, §309, as added Pub. L. 100–551, §1(a), Oct. 28, 1988, 102 Stat. 2763.)

§2670. Regulations

The Administrator is authorized to issue such regulations as may be necessary to carry out the provisions of this subchapter.

(Pub. L. 94–469, title III, §310, as added Pub. L. 100–551, §1(a), Oct. 28, 1988, 102 Stat. 2764.)

§2671. Additional authorizations

Amounts authorized to be appropriated in this subchapter for purposes of carrying out the provisions of this subchapter are in addition to amounts authorized to be appropriated under other provisions of law for radon-related activities.

(Pub. L. 94–469, title III, §311, as added Pub. L. 100–551, §1(a), Oct. 28, 1988, 102 Stat. 2764.)

SUBCHAPTER IV—LEAD EXPOSURE REDUCTION

§2681. Definitions

For the purposes of this subchapter:

(1) Abatement

The term "abatement" means any set of measures designed to permanently eliminate lead-based paint hazards in accordance with standards established by the Administrator under this subchapter. Such term includes—

(A) the removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil; and

(B) all preparation, cleanup, disposal, and postabatement clearance testing activities associated with such measures.

(2) Accessible surface

The term "accessible surface" means an interior or exterior surface painted with lead-based paint that is accessible for a young child to mouth or chew.

(3) Deteriorated paint

The term "deteriorated paint" means any interior or exterior paint that is peeling, chipping, chalking or cracking or any paint located on an interior or exterior surface or fixture that is damaged or deteriorated.

(4) Evaluation

The term "evaluation" means risk assessment, inspection, or risk assessment and inspection.

(5) Friction surface

The term "friction surface" means an interior or exterior surface that is subject to abrasion or friction, including certain window, floor, and stair surfaces.

(6) Impact surface

The term "impact surface" means an interior or exterior surface that is subject to damage by repeated impacts, for example, certain parts of door frames.

(7) Inspection

The term "inspection" means (A) a surface-by-surface investigation to determine the presence of lead-based paint, as provided in section 4822(c) of title 42, and (B) the provision of a report explaining the results of the investigation.

(8) Interim controls

The term "interim controls" means a set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

(9) Lead-based paint

The term "lead-based paint" means paint or other surface coatings that contain lead in excess of 1.0 milligrams per centimeter squared or 0.5 percent by weight or (A) in the case of paint or other surface coatings on target housing, such lower level as may be established by the Secretary of Housing and Urban Development, as defined in section 4822(c) of title 42, or (B) in the case of any other paint or surface coatings, such other level as may be established by the Administrator.

(10) Lead-based paint hazard

The term "lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the Administrator under this subchapter.

(11) Lead-contaminated dust

The term "lead-contaminated dust" means surface dust in residential dwellings that contains an area or mass concentration of lead in excess of levels determined by the Administrator under this subchapter to pose a threat of adverse health effects in pregnant women or young children.

(12) Lead-contaminated soil

The term "lead-contaminated soil" means bare soil on residential real property that contains lead at or in excess of the levels determined to be hazardous to human health by the Administrator under this subchapter.

(13) Reduction

The term "reduction" means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

(14) Residential dwelling

The term "residential dwelling" means—

(A) a single-family dwelling, including attached structures such as porches and stoops; or

(B) a single-family dwelling unit in a structure that contains more than 1 separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of 1 or more persons.

(15) Residential real property

The term "residential real property" means real property on which there is situated 1 or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of 1 or more persons.

(16) Risk assessment

The term "risk assessment" means an on-site investigation to determine and report the existence, nature, severity and location of lead-based paint hazards in residential dwellings, including—

(A) information gathering regarding the age and history of the housing and occupancy by children under age 6;

(B) visual inspection;

(C) limited wipe sampling or other environmental sampling techniques;

(D) other activity as may be appropriate; and

(E) provision of a report explaining the results of the investigation.

(17) Target housing

The term "target housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing for the elderly or persons with disabilities) or any 0-bedroom dwelling. In the case of jurisdictions which banned the sale or use of lead-based paint prior to 1978, the Secretary of Housing and Urban Development, at the Secretary's discretion, may designate an earlier date.

(Pub. L. 94–469, title IV, §401, as added Pub. L. 102–550, title X, §1021(a), Oct. 28, 1992, 106 Stat. 3912.)

§2682. Lead-based paint activities training and certification

(a) Regulations

(1) In general

Not later than 18 months after October 28, 1992, the Administrator shall, in consultation with the Secretary of Labor, the Secretary of Housing and Urban Development, and the Secretary of Health and Human Services (acting through the Director of the National Institute for Occupational Safety and Health), promulgate final regulations governing lead-based paint activities to ensure

that individuals engaged in such activities are properly trained; that training programs are accredited; and that contractors engaged in such activities are certified. Such regulations shall contain standards for performing lead-based paint activities, taking into account reliability, effectiveness, and safety. Such regulations shall require that all risk assessment, inspection, and abatement activities performed in target housing shall be performed by certified contractors, as such term is defined in section 4851b of title 42. The provisions of this section shall supersede the provisions set forth under the heading "Lead Abatement Training and Certification" and under the heading "Training Grants" in title III of the Act entitled "An Act making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, commissions, corporations, and offices for the fiscal year ending September 30, 1992, and for other purposes", Public Law 102–139 [105 Stat. 765, 42 U.S.C. 4822 note], and upon October 28, 1992, the provisions set forth in such public law under such headings shall cease to have any force and effect.

(2) Accreditation of training programs

Final regulations promulgated under paragraph (1) shall contain specific requirements for the accreditation of lead-based paint activities training programs for workers, supervisors, inspectors and planners, and other individuals involved in lead-based paint activities, including, but not limited to, each of the following:

(A) Minimum requirements for the accreditation of training providers.
(B) Minimum training curriculum requirements.
(C) Minimum training hour requirements.
(D) Minimum hands-on training requirements.
(E) Minimum trainee competency and proficiency requirements.
(F) Minimum requirements for training program quality control.

(3) Accreditation and certification fees

The Administrator (or the State in the case of an authorized State program) shall impose a fee on—

(A) persons operating training programs accredited under this subchapter; and
(B) lead-based paint activities contractors certified in accordance with paragraph (1).

The fees shall be established at such level as is necessary to cover the costs of administering and enforcing the standards and regulations under this section which are applicable to such programs and contractors. The fee shall not be imposed on any State, local government, or nonprofit training program. The Administrator (or the State in the case of an authorized State program) may waive the fee for lead-based paint activities contractors under subparagraph (A) for the purpose of training their own employees.

(b) Lead-based paint activities

For purposes of this subchapter, the term "lead-based paint activities" means—

(1) in the case of target housing, risk assessment, inspection, and abatement; and

(2) in the case of any public building constructed before 1978, commercial building, bridge, or other structure or superstructure, identification of lead-based paint and materials containing lead-based paint, deleading, removal of lead from bridges, and demolition.

For purposes of paragraph (2), the term "deleading" means activities conducted by a person who offers to eliminate lead-based paint or lead-based paint hazards or to plan such activities.

(c) Renovation and remodeling

(1) Guidelines

In order to reduce the risk of exposure to lead in connection with renovation and remodeling of target housing, public buildings constructed before 1978, and commercial buildings, the Administrator shall, within 18 months after October 28, 1992, promulgate guidelines for the

conduct of such renovation and remodeling activities which may create a risk of exposure to dangerous levels of lead. The Administrator shall disseminate such guidelines to persons engaged in such renovation and remodeling through hardware and paint stores, employee organizations, trade groups, State and local agencies, and through other appropriate means.

(2) Study of certification

The Administrator shall conduct a study of the extent to which persons engaged in various types of renovation and remodeling activities in target housing, public buildings constructed before 1978, and commercial buildings are exposed to lead in the conduct of such activities or disturb lead and create a lead-based paint hazard on a regular or occasional basis. The Administrator shall complete such study and publish the results thereof within 30 months after October 28, 1992.

(3) Certification determination

Within 4 years after October 28, 1992, the Administrator shall revise the regulations under subsection (a) of this section to apply the regulations to renovation or remodeling activities in target housing, public buildings constructed before 1978, and commercial buildings that create lead-based paint hazards. In determining which contractors are engaged in such activities, the Administrator shall utilize the results of the study under paragraph (2) and consult with the representatives of labor organizations, lead-based paint activities contractors, persons engaged in remodeling and renovation, experts in lead health effects, and others. If the Administrator determines that any category of contractors engaged in renovation or remodeling does not require certification, the Administrator shall publish an explanation of the basis for that determination.

(Pub. L. 94–469, title IV, §402, as added Pub. L. 102–550, title X, §1021(a), Oct. 28, 1992, 106 Stat. 3914.)

§2683. Identification of dangerous levels of lead

Within 18 months after October 28, 1992, the Administrator shall promulgate regulations which shall identify, for purposes of this subchapter and the Residential Lead-Based Paint Hazard Reduction Act of 1992 [42 U.S.C. 4851 et seq.], lead-based paint hazards, lead-contaminated dust, and lead-contaminated soil.

(Pub. L. 94–469, title IV, §403, as added Pub. L. 102–550, title X, §1021(a), Oct. 28, 1992, 106 Stat. 3916.)

REFERENCES IN TEXT

The Residential Lead-Based Paint Hazard Reduction Act of 1992, referred to in text, is title X of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3897, which is classified principally to chapter 63A (§4851 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4851 of Title 42 and Tables.

§2684. Authorized State programs

(a) Approval

Any State which seeks to administer and enforce the standards, regulations, or other requirements established under section 2682 or 2686 of this title, or both, may, after notice and opportunity for public hearing, develop and submit to the Administrator an application, in such form as the Administrator shall require, for authorization of such a State program. Any such State may also certify to the Administrator at the time of submitting such program that the State program meets the requirements of paragraphs (1) and (2) of subsection (b) of this section. Upon submission of such certification, the State program shall be deemed to be authorized under this section, and shall apply in such State in lieu of the corresponding Federal program under section 2682 or 2686 of this title, or both, as the case may be, until such time as the Administrator disapproves the program or withdraws the authorization.

(b) Approval or disapproval

Within 180 days following submission of an application under subsection (a) of this section, the Administrator shall approve or disapprove the application. The Administrator may approve the application only if, after notice and after opportunity for public hearing, the Administrator finds that—

(1) the State program is at least as protective of human health and the environment as the Federal program under section 2682 or 2686 of this title, or both, as the case may be, and

(2) such State program provides adequate enforcement.

Upon authorization of a State program under this section, it shall be unlawful for any person to violate or fail or refuse to comply with any requirement of such program.

(c) Withdrawal of authorization

If a State is not administering and enforcing a program authorized under this section in compliance with standards, regulations, and other requirements of this subchapter, the Administrator shall so notify the State and, if corrective action is not completed within a reasonable time, not to exceed 180 days, the Administrator shall withdraw authorization of such program and establish a Federal program pursuant to this subchapter.

(d) Model State program

Within 18 months after October 28, 1992, the Administrator shall promulgate a model State program which may be adopted by any State which seeks to administer and enforce a State program under this subchapter. Such model program shall, to the extent practicable, encourage States to utilize existing State and local certification and accreditation programs and procedures. Such program shall encourage reciprocity among the States with respect to the certification under section 2682 of this title.

(e) Other State requirements

Nothing in this subchapter shall be construed to prohibit any State or political subdivision thereof from imposing any requirements which are more stringent than those imposed by this subchapter.

(f) State and local certification

The regulations under this subchapter shall, to the extent appropriate, encourage States to seek program authorization and to use existing State and local certification and accreditation procedures, except that a State or local government shall not require more than 1 certification under this section for any lead-based paint activities contractor to carry out lead-based paint activities in the State or political subdivision thereof.

(g) Grants to States

The Administrator is authorized to make grants to States to develop and carry out authorized State programs under this section. The grants shall be subject to such terms and conditions as the Administrator may establish to further the purposes of this subchapter.

(h) Enforcement by Administrator

If a State does not have a State program authorized under this section and in effect by the date which is 2 years after promulgation of the regulations under section 2682 or 2686 of this title, the Administrator shall, by such date, establish a Federal program for section 2682 or 2686 of this title (as the case may be) for such State and administer and enforce such program in such State.

(Pub. L. 94–469, title IV, §404, as added Pub. L. 102–550, title X, §1021(a), Oct. 28, 1992, 106 Stat. 3916.)

§2685. Lead abatement and measurement

(a) Program to promote lead exposure abatement

The Administrator, in cooperation with other appropriate Federal departments and agencies, shall conduct a comprehensive program to promote safe, effective, and affordable monitoring, detection, and abatement of lead-based paint and other lead exposure hazards.

(b) Standards for environmental sampling laboratories

(1) The Administrator shall establish protocols, criteria, and minimum performance standards for laboratory analysis of lead in paint films, soil, and dust. Within 2 years after October 28, 1992, the Administrator, in consultation with the Secretary of Health and Human Services, shall establish a program to certify laboratories as qualified to test substances for lead content unless the Administrator determines, by the date specified in this paragraph, that effective voluntary accreditation programs are in place and operating on a nationwide basis at the time of such determination. To be certified under such program, a laboratory shall, at a minimum, demonstrate an ability to test substances accurately for lead content.

(2) Not later than 24 months after October 28, 1992, and annually thereafter, the Administrator shall publish and make available to the public a list of certified or accredited environmental sampling laboratories.

(3) If the Administrator determines under paragraph (1) that effective voluntary accreditation programs are in place for environmental sampling laboratories, the Administrator shall review the performance and effectiveness of such programs within 3 years after such determination. If, upon such review, the Administrator determines that the voluntary accreditation programs are not effective in assuring the quality and consistency of laboratory analyses, the Administrator shall, not more than 12 months thereafter, establish a certification program that meets the requirements of paragraph (1).

(c) Exposure studies

(1) The Secretary of Health and Human Services (hereafter in this subsection referred to as the "Secretary"), acting through the Director of the Centers for Disease Control,[1] (CDC), and the Director of the National Institute of Environmental Health Sciences, shall jointly conduct a study of the sources of lead exposure in children who have elevated blood lead levels (or other indicators of elevated lead body burden), as defined by the Director of the Centers for Disease Control.

(2) The Secretary, in consultation with the Director of the National Institute for Occupational Safety and Health, shall conduct a comprehensive study of means to reduce hazardous occupational lead abatement exposures. This study shall include, at a minimum, each of the following—

(A) Surveillance and intervention capability in the States to identify and prevent hazardous exposures to lead abatement workers.

(B) Demonstration of lead abatement control methods and devices and work practices to identify and prevent hazardous lead exposures in the workplace.

(C) Evaluation, in consultation with the National Institute of Environmental Health Sciences, of health effects of low and high levels of occupational lead exposures on reproductive, neurological, renal, and cardiovascular health.

(D) Identification of high risk occupational settings to which prevention activities and resources should be targeted.

(E) A study assessing the potential exposures and risks from lead to janitorial and custodial workers.

(3) The studies described in paragraphs (1) and (2) shall, as appropriate, examine the relative contributions to elevated lead body burden from each of the following:

(A) Drinking water.

(B) Food.

(C) Lead-based paint and dust from lead-based paint.

(D) Exterior sources such as ambient air and lead in soil.

(E) Occupational exposures, and other exposures that the Secretary determines to be appropriate.

(4) Not later than 30 months after October 28, 1992, the Secretary shall submit a report to the

Congress concerning the studies described in paragraphs (1) and (2).

(d) Public education

(1) The Administrator, in conjunction with the Secretary of Health and Human Services, acting through the Director of the Agency for Toxic Substances and Disease Registry, and in conjunction with the Secretary of Housing and Urban Development, shall sponsor public education and outreach activities to increase public awareness of—

(A) the scope and severity of lead poisoning from household sources;
(B) potential exposure to sources of lead in schools and childhood day care centers;
(C) the implications of exposures for men and women, particularly those of childbearing age;
(D) the need for careful, quality, abatement and management actions;
(E) the need for universal screening of children;
(F) other components of a lead poisoning prevention program;
(G) the health consequences of lead exposure resulting from lead-based paint hazards;
(H) risk assessment and inspection methods for lead-based paint hazards; and
(I) measures to reduce the risk of lead exposure from lead-based paint.

(2) The activities described in paragraph (1) shall be designed to provide educational services and information to—

(A) health professionals;
(B) the general public, with emphasis on parents of young children;
(C) homeowners, landlords, and tenants;
(D) consumers of home improvement products;
(E) the residential real estate industry; and
(F) the home renovation industry.

(3) In implementing the activities described in paragraph (1), the Administrator shall assure coordination with the President's Commission on Environmental Quality's education and awareness campaign on lead poisoning.

(4) The Administrator, in consultation with the Chairman of the Consumer Product Safety Commission, shall develop information to be distributed by retailers of home improvement products to provide consumers with practical information related to the hazards of renovation and remodeling where lead-based paint may be present.

(e) Technical assistance

(1) Clearinghouse

Not later than 6 months after October 28, 1992, the Administrator shall establish, in consultation with the Secretary of Housing and Urban Development and the Director of the Centers for Disease Control, a National Clearinghouse on Childhood Lead Poisoning (hereinafter in this section referred to as "Clearinghouse"). The Clearinghouse shall—

(A) collect, evaluate, and disseminate current information on the assessment and reduction of lead-based paint hazards, adverse health effects, sources of exposure, detection and risk assessment methods, environmental hazards abatement, and clean-up standards;

(B) maintain a rapid-alert system to inform certified lead-based paint activities contractors of significant developments in research related to lead-based paint hazards; and

(C) perform any other duty that the Administrator determines necessary to achieve the purposes of this chapter.

(2) Hotline

Not later than 6 months after October 28, 1992, the Administrator, in cooperation with other Federal agencies and with State and local governments, shall establish a single lead-based paint hazard hotline to provide the public with answers to questions about lead poisoning prevention and referrals to the Clearinghouse for technical information.

(f) Products for lead-based paint activities

Not later than 30 months after October 28, 1992, the President shall, after notice and opportunity for comment, establish by rule appropriate criteria, testing protocols, and performance characteristics as are necessary to ensure, to the greatest extent possible and consistent with the purposes and policy of this subchapter, that lead-based paint hazard evaluation and reduction products introduced into commerce after a period specified in the rule are effective for the intended use described by the manufacturer. The rule shall identify the types or classes of products that are subject to such rule. The President, in implementation of the rule, shall, to the maximum extent possible, utilize independent testing laboratories, as appropriate, and consult with such entities and others in developing the rules. The President may delegate the authorities under this subsection to the Environmental Protection Agency or the Secretary of Commerce or such other appropriate agency.

(Pub. L. 94–469, title IV, §405, as added Pub. L. 102–550, title X, §1021(a), Oct. 28, 1992, 106 Stat. 3917.)

[1] *So in original. The comma probably should not appear.*

§2686. Lead hazard information pamphlet

(a) Lead hazard information pamphlet

Not later than 2 years after October 28, 1992, after notice and opportunity for comment, the Administrator of the Environmental Protection Agency, in consultation with the Secretary of Housing and Urban Development and with the Secretary of Health and Human Services, shall publish, and from time to time revise, a lead hazard information pamphlet to be used in connection with this subchapter and section 4852d of title 42. The pamphlet shall—

(1) contain information regarding the health risks associated with exposure to lead;

(2) provide information on the presence of lead-based paint hazards in federally assisted, federally owned, and target housing;

(3) describe the risks of lead exposure for children under 6 years of age, pregnant women, women of childbearing age, persons involved in home renovation, and others residing in a dwelling with lead-based paint hazards;

(4) describe the risks of renovation in a dwelling with lead-based paint hazards;

(5) provide information on approved methods for evaluating and reducing lead-based paint hazards and their effectiveness in identifying, reducing, eliminating, or preventing exposure to lead-based paint hazards;

(6) advise persons how to obtain a list of contractors certified pursuant to this subchapter in lead-based paint hazard evaluation and reduction in the area in which the pamphlet is to be used;

(7) state that a risk assessment or inspection for lead-based paint is recommended prior to the purchase, lease, or renovation of target housing;

(8) state that certain State and local laws impose additional requirements related to lead-based paint in housing and provide a listing of Federal, State, and local agencies in each State, including address and telephone number, that can provide information about applicable laws and available governmental and private assistance and financing; and

(9) provide such other information about environmental hazards associated with residential real property as the Administrator deems appropriate.

(b) Renovation of target housing

Within 2 years after October 28, 1992, the Administrator shall promulgate regulations under this subsection to require each person who performs for compensation a renovation of target housing to provide a lead hazard information pamphlet to the owner and occupant of such housing prior to commencing the renovation.

(Pub. L. 94–469, title IV, §406, as added Pub. L. 102–550, title X, §1021(a), Oct. 28, 1992, 106 Stat. 3920.)

§2687. Regulations

The regulations of the Administrator under this subchapter shall include such recordkeeping and reporting requirements as may be necessary to insure the effective implementation of this subchapter. The regulations may be amended from time to time as necessary.

(Pub. L. 94–469, title IV, §407, as added Pub. L. 102–550, title X, §1021(a), Oct. 28, 1992, 106 Stat. 3921.)

§2688. Control of lead-based paint hazards at Federal facilities

Each department, agency, and instrumentality of executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in a lead-based paint hazard, and each officer, agent, or employee thereof, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for certification, licensing, recordkeeping, or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief) respecting lead-based paint, lead-based paint activities, and lead-based paint hazards in the same manner, and to the same extent as any nongovernmental entity is subject to such requirements, including the payment of reasonable service charges. The Federal, State, interstate, and local substantive and procedural requirements referred to in this subsection include, but are not limited to, all administrative orders and all civil and administrative penalties and fines regardless of whether such penalties or fines are punitive or coercive in nature, or whether imposed for isolated, intermittent or continuing violations. The United States hereby expressly waives any immunity otherwise applicable to the United States with respect to any such substantive or procedural requirement (including, but not limited to, any injunctive relief, administrative order, or civil or administrative penalty or fine referred to in the preceding sentence, or reasonable service charge). The reasonable service charges referred to in this section include, but are not limited to, fees or charges assessed for certification and licensing, as well as any other nondiscriminatory charges that are assessed in connection with a Federal, State, interstate, or local lead-based paint, lead-based paint activities, or lead-based paint hazard activities program. No agent, employee, or officer of the United States shall be personally liable for any civil penalty under any Federal, State, interstate, or local law relating to lead-based paint, lead-based paint activities, or lead-based paint hazards with respect to any act or omission within the scope of his official duties.

(Pub. L. 94–469, title IV, §408, as added Pub. L. 102–550, title X, §1021(a), Oct. 28, 1992, 106 Stat. 3921.)

§2689. Prohibited acts

It shall be unlawful for any person to fail or refuse to comply with a provision of this subchapter or with any rule or order issued under this subchapter.

(Pub. L. 94–469, title IV, §409, as added Pub. L. 102–550, title X, §1021(a), Oct. 28, 1992, 106 Stat. 3921.)

§2690. Relationship to other Federal law

Nothing in this subchapter shall affect the authority of other appropriate Federal agencies to establish or enforce any requirements which are at least as stringent as those established pursuant to this subchapter.

(Pub. L. 94–469, title IV, §410, as added Pub. L. 102–550, title X, §1021(a), Oct. 28, 1992, 106 Stat. 3921.)

§2691. General provisions relating to administrative proceedings

(a) Applicability

This section applies to the promulgation or revision of any regulation issued under this subchapter.

(b) Rulemaking docket

Not later than the date of proposal of any action to which this section applies, the Administrator shall establish a rulemaking docket for such action (hereinafter in this subsection referred to as a "rule"). Whenever a rule applies only within a particular State, a second (identical) docket shall be established in the appropriate regional office of the Environmental Protection Agency.

(c) Inspection and copying

(1) The rulemaking docket required under subsection (b) of this section shall be open for inspection by the public at reasonable times specified in the notice of proposed rulemaking. Any person may copy documents contained in the docket. The Administrator shall provide copying facilities which may be used at the expense of the person seeking copies, but the Administrator may waive or reduce such expenses in such instances as the public interest requires. Any person may request copies by mail if the person pays the expenses, including personnel costs to do the copying.

(2)(A) Promptly upon receipt by the agency, all written comments and documentary information on the proposed rule received from any person for inclusion in the docket during the comment period shall be placed in the docket. The transcript of public hearings, if any, on the proposed rule shall also be included in the docket promptly upon receipt from the person who transcribed such hearings. All documents which become available after the proposed rule has been published and which the Administrator determines are of central relevance to the rulemaking shall be placed in the docket as soon as possible after their availability.

(B) The drafts of proposed rules submitted by the Administrator to the Office of Management and Budget for any interagency review process prior to proposal of any such rule, all documents accompanying such drafts, and all written comments thereon by other agencies and all written responses to such written comments by the Administrator shall be placed in the docket no later than the date of proposal of the rule. The drafts of the final rule submitted for such review process prior to promulgation and all such written comments thereon, all documents accompanying such drafts, and written responses thereto shall be placed in the docket no later than the date of promulgation.

(d) Explanation

(1) The promulgated rule shall be accompanied by an explanation of the reasons for any major changes in the promulgated rule from the proposed rule.

(2) The promulgated rule shall also be accompanied by a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations during the comment period.

(3) The promulgated rule may not be based (in part or whole) on any information or data which has not been placed in the docket as of the date of such promulgation.

(e) Judicial review

The material referred to in subsection (c)(2)(B) of this section shall not be included in the record for judicial review.

(f) Effective date

The requirements of this section shall take effect with respect to any rule the proposal of which occurs after 90 days after October 28, 1992.

(Pub. L. 94–469, title IV, §411, as added Pub. L. 102–550, title X, §1021(a), Oct. 28, 1992, 106 Stat. 3922.)

§2692. Authorization of appropriations

There are authorized to be appropriated to carry out the purposes of this subchapter such sums as may be necessary.

(Pub. L. 94–469, title IV, §412, as added Pub. L. 102–550, title X, §1021(a), Oct. 28, 1992, 106 Stat. 3923.)

SUBCHAPTER V—HEALTHY HIGH-PERFORMANCE SCHOOLS

§2695. Grants for healthy school environments

(a) In general

The Administrator, in consultation with the Secretary of Education, may provide grants to States for use in—

(1) providing technical assistance for programs of the Environmental Protection Agency (including the Tools for Schools Program and the Healthy School Environmental Assessment Tool) to schools for use in addressing environmental issues; and

(2) development and implementation of State school environmental health programs that include—

(A) standards for school building design, construction, and renovation; and

(B) identification of ongoing school building environmental problems, including contaminants, hazardous substances, and pollutant emissions, in the State and recommended solutions to address those problems, including assessment of information on the exposure of children to environmental hazards in school facilities.

(b) Sunset

The authority of the Administrator to carry out this section shall expire 5 years after December 19, 2007.

(Pub. L. 94–469, title V, §501, as added Pub. L. 110–140, title IV, §461(a), Dec. 19, 2007, 121 Stat. 1640.)

EFFECTIVE DATE

Subchapter effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as a note under section 1824 of Title 2, The Congress.

§2695a. Model guidelines for siting of school facilities

Not later than 18 months after December 19, 2007, the Administrator, in consultation with the Secretary of Education and the Secretary of Health and Human Services, shall issue voluntary school site selection guidelines that account for—

(1) the special vulnerability of children to hazardous substances or pollution exposures in any case in which the potential for contamination at a potential school site exists;

(2) modes of transportation available to students and staff;

(3) the efficient use of energy; and

(4) the potential use of a school at the site as an emergency shelter.

(Pub. L. 94–469, title V, §502, as added Pub. L. 110–140, title IV, §461(a), Dec. 19, 2007, 121 Stat. 1640.)

§2695b. Public outreach

(a) Reports

The Administrator shall publish and submit to Congress an annual report on all activities carried out under this subchapter, until the expiration of authority described in section 2695(b) of this title.

(b) Public outreach

The Federal Director appointed under section 17092(a) of title 42 (in this subchapter referred to as the "Federal Director") shall ensure, to the maximum extent practicable, that the public clearinghouse established under section 17083(1) of title 42 receives and makes available information on the exposure of children to environmental hazards in school facilities, as provided by the Administrator.

(Pub. L. 94–469, title V, §503, as added Pub. L. 110–140, title IV, §461(a), Dec. 19, 2007, 121 Stat. 1640.)

§2695c. Environmental health program

(a) In general

Not later than 2 years after December 19, 2007, the Administrator, in consultation with the Secretary of Education, the Secretary of Health and Human Services, and other relevant agencies, shall issue voluntary guidelines for use by the State in developing and implementing an environmental health program for schools that—

(1) takes into account the status and findings of Federal initiatives established under this subchapter or subtitle C of title IV of the Energy Independence and Security Act of 2007 [42 U.S.C. 17091 et seq.] and other relevant Federal law with respect to school facilities, including relevant updates on trends in the field, such as the impact of school facility environments on student and staff—

(A) health, safety, and productivity; and

(B) disabilities or special needs;

(2) takes into account studies using relevant tools identified or developed in accordance with section 492 of the Energy Independence and Security Act of 2007 [42 U.S.C. 17122];

(3) takes into account, with respect to school facilities, each of—

(A) environmental problems, contaminants, hazardous substances, and pollutant emissions, including—

(i) lead from drinking water;

(ii) lead from materials and products;

(iii) asbestos;

(iv) radon;

(v) the presence of elemental mercury releases from products and containers;

(vi) pollutant emissions from materials and products; and

(vii) any other environmental problem, contaminant, hazardous substance, or pollutant emission that present or may present a risk to the health of occupants of the school facilities or environment;

(B) natural day lighting;

(C) ventilation choices and technologies;

(D) heating and cooling choices and technologies;

(E) moisture control and mold;

(F) maintenance, cleaning, and pest control activities;

(G) acoustics; and

(H) other issues relating to the health, comfort, productivity, and performance of occupants of the school facilities;

(4) provides technical assistance on siting, design, management, and operation of school

facilities, including facilities used by students with disabilities or special needs;

(5) collaborates with federally funded pediatric environmental health centers to assist in on-site school environmental investigations;

(6) assists States and the public in better understanding and improving the environmental health of children; and

(7) takes into account the special vulnerability of children in low-income and minority communities to exposures from contaminants, hazardous substances, and pollutant emissions.

(b) Public outreach

The Federal Director and Commercial Director shall ensure, to the maximum extent practicable, that the public clearinghouse established under section 423 of the Energy Independence and Security Act of 2007 [42 U.S.C. 17083] receives and makes available—

(1) information from the Administrator that is contained in the report described in section 2695b(a) of this title; and

(2) information on the exposure of children to environmental hazards in school facilities, as provided by the Administrator.

(Pub. L. 94–469, title V, §504, as added Pub. L. 110–140, title IV, §461(a), Dec. 19, 2007, 121 Stat. 1641.)

REFERENCES IN TEXT

The Energy Independence and Security Act of 2007, referred to in subsec. (a)(1), is Pub. L. 110–140, Dec. 19, 2007, 121 Stat. 1492. Subtitle C of title IV of the Act enacted part C (§17091 et seq.) of subchapter III of chapter 152 of Title 42, The Public Health and Welfare, amended sections 6832, 6834, 8253, and 8254 of Title 42, and enacted provisions set out as a note under section 6834 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 17001 of Title 42 and Tables.

§2695d. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter $1,000,000 for fiscal year 2009, and $1,500,000 for each of fiscal years 2010 through 2013, to remain available until expended.

(Pub. L. 94–469, title V, §505, as added Pub. L. 110–140, title IV, §461(a), Dec. 19, 2007, 121 Stat. 1642.)

SUBCHAPTER VI—FORMALDEHYDE STANDARDS FOR COMPOSITE WOOD PRODUCTS

§2697. Formaldehyde standards

(a) Definitions

In this section:

(1) Finished good

(A) In general

The term "finished good" means any good or product (other than a panel) containing—

(i) hardwood plywood;

(ii) particleboard; or

(iii) medium-density fiberboard.

(B) Exclusions

The term "finished good" does not include—

(i) any component part or other part used in the assembly of a finished good; or

(ii) any finished good that has previously been sold or supplied to an individual or entity that purchased or acquired the finished good in good faith for purposes other than resale, such as—

(I) an antique; or

(II) secondhand furniture.

(2) Hardboard

The term "hardboard" has such meaning as the Administrator shall establish, by regulation, pursuant to subsection (d).

(3) Hardwood plywood

(A) In general

The term "hardwood plywood" means a hardwood or decorative panel that is—

(i) intended for interior use; and

(ii) composed of (as determined under the standard numbered ANSI/HPVA HP–1–2009) an assembly of layers or plies of veneer, joined by an adhesive with—

(I) lumber core;

(II) particleboard core;

(III) medium-density fiberboard core;

(IV) hardboard core; or

(V) any other special core or special back material.

(B) Exclusions

The term "hardwood plywood" does not include—

(i) military-specified plywood;

(ii) curved plywood; or

(iii) any other product specified in—

(I) the standard entitled "Voluntary Product Standard—Structural Plywood" and numbered PS 1–07; or

(II) the standard entitled "Voluntary Product Standard—Performance Standard for Wood-Based Structural-Use Panels" and numbered PS 2–04.

(C) Laminated products

(i) Rulemaking

(I) In general

The Administrator shall conduct a rulemaking process pursuant to subsection (d) that uses all available and relevant information from State authorities, industry, and other available sources of such information, and analyzes that information to determine, at the discretion of the Administrator, whether the definition of the term "hardwood plywood" should exempt engineered veneer or any laminated product.

(II) Modification

The Administrator may modify any aspect of the definition contained in clause (ii) before including that definition in the regulations promulgated pursuant to subclause (I).

(ii) Laminated product

The term "laminated product" means a product—

(I) in which a wood veneer is affixed to—

(aa) a particleboard platform;

(bb) a medium-density fiberboard platform; or

(cc) a veneer-core platform; and

(II) that is—

(aa) a component part;

(bb) used in the construction or assembly of a finished good; and

(cc) produced by the manufacturer or fabricator of the finished good in which the product is incorporated.

(4) Manufactured home

The term "manufactured home" has the meaning given the term in section 3280.2 of title 24, Code of Federal Regulations (as in effect on the date of promulgation of regulations pursuant to subsection (d)).

(5) Medium-density fiberboard

The term "medium-density fiberboard" means a panel composed of cellulosic fibers made by dry forming and pressing a resinated fiber mat (as determined under the standard numbered ANSI A208.2–2009).

(6) Modular home

The term "modular home" means a home that is constructed in a factory in 1 or more modules—

(A) each of which meet applicable State and local building codes of the area in which the home will be located; and

(B) that are transported to the home building site, installed on foundations, and completed.

(7) No-added formaldehyde-based resin

(A) In general

(i) The term "no-added formaldehyde-based resin" means a resin formulated with no added formaldehyde as part of the resin cross-linking structure in a composite wood product that meets the emission standards in subparagraph (C) as measured by—

(I) one test conducted pursuant to test method ASTM E–1333–96 (2002) or, subject to clause (ii), ASTM D–6007–02; and

(II) 3 months of routine quality control tests pursuant to ASTM D–6007–02 or ASTM D–5582 or such other routine quality control test methods as may be established by the Administrator through rulemaking.

(ii) Test results obtained under clause (i)(I) or (II) by any test method other than ASTM E–1333–96 (2002) must include a showing of equivalence by means established by the Administrator through rulemaking.

(B) Inclusions

The term "no-added formaldehyde-based resin" may include any resin made from—

(i) soy;

(ii) polyvinyl acetate; or

(iii) methylene diisocyanate.

(C) Emission standards

The following are the emission standards for composite wood products made with no-added formaldehyde-based resins under this paragraph:

(i) No higher than 0.04 parts per million of formaldehyde for 90 percent of the 3 months of routine quality control testing data required under subparagraph (A)(ii).

(ii) No test result higher than 0.05 parts per million of formaldehyde for hardwood plywood and 0.06 parts per million for particleboard, medium-density fiberboard, and thin medium-density fiberboard.

(8) Particleboard

(A) In general

The term "particleboard" means a panel composed of cellulosic material in the form of discrete particles (as distinguished from fibers, flakes, or strands) that are pressed together with

resin (as determined under the standard numbered ANSI A208.1–2009).

(B) Exclusions

The term "particleboard" does not include any product specified in the standard entitled "Voluntary Product Standard—Performance Standard for Wood-Based Structural-Use Panels" and numbered PS 2–04.

(9) Recreational vehicle

The term "recreational vehicle" has the meaning given the term in section 3282.8 of title 24, Code of Federal Regulations (as in effect on the date of promulgation of regulations pursuant to subsection (d)).

(10) Ultra low-emitting formaldehyde resin

(A) In general

(i) The term "ultra low-emitting formaldehyde resin" means a resin in a composite wood product that meets the emission standards in subparagraph (C) as measured by—

(I) 2 quarterly tests conducted pursuant to test method ASTM E–1333–96 (2002) or, subject to clause (ii), ASTM D–6007–02; and

(II) 6 months of routine quality control tests pursuant to ASTM D–6007–02 or ASTM D–5582 or such other routine quality control test methods as may be established by the Administrator through rulemaking.

(ii) Test results obtained under clause (i)(I) or (II) by any test method other than ASTM E–1333–96 (2002) must include a showing of equivalence by means established by the Administrator through rulemaking.

(B) Inclusions

The term "ultra low-emitting formaldehyde resin" may include—

(i) melamine-urea-formaldehyde resin;

(ii) phenol formaldehyde resin; and

(iii) resorcinol formaldehyde resin.

(C) Emission standards

(i) The Administrator may, pursuant to regulations issued under subsection (d), reduce the testing requirements for a manufacturer only if its product made with ultra low-emitting formaldehyde resin meets the following emission standards:

(I) For hardwood plywood, no higher than 0.05 parts per million of formaldehyde.

(II) For medium-density fiberboard—

(aa) no higher than 0.06 parts per million of formaldehyde for 90 percent of 6 months of routine quality control testing data required under subparagraph (A)(ii); and

(bb) no test result higher than 0.09 parts per million of formaldehyde.

(III) For particleboard—

(aa) no higher than 0.05 parts per million of formaldehyde for 90 percent of 6 months of routine quality control testing data required under subparagraph (A)(ii); and

(bb) no test result higher than 0.08 parts per million of formaldehyde.

(IV) For thin medium-density fiberboard—

(aa) no higher than 0.08 parts per million of formaldehyde for 90 percent of 6 months of routine quality control testing data required under subparagraph (A)(ii); and

(bb) no test result higher than 0.11 parts per million of formaldehyde.

(ii) The Administrator may not, pursuant to regulations issued under subsection (d), exempt a manufacturer from third party certification requirements unless its product made with ultra low-emitting formaldehyde resin meets the following emission standards:

(I) No higher than 0.04 parts per million of formaldehyde for 90 percent of 6 months of routine quality control testing data required under subparagraph (A)(ii).

(II) No test result higher than 0.05 parts per million of formaldehyde for hardwood plywood and 0.06 parts per million for particleboard, medium-density fiberboard, and thin medium-density fiberboard.

(b) Requirement

(1) In general

Except as provided in an applicable sell-through regulation promulgated pursuant to subsection (d), effective beginning on the date that is 180 days after the date of promulgation of those regulations, the emission standards described in paragraph (2), shall apply to hardwood plywood, medium-density fiberboard, and particleboard sold, supplied, offered for sale, or manufactured in the United States.

(2) Emission standards

The emission standards referred to in paragraph (1), based on test method ASTM E–1333–96 (2002), are as follows:

(A) For hardwood plywood with a veneer core, 0.05 parts per million of formaldehyde.

(B) For hardwood plywood with a composite core—

(i) 0.08 parts per million of formaldehyde for any period after the effective date described in paragraph (1) and before July 1, 2012; and

(ii) 0.05 parts per million of formaldehyde, effective on the later of the effective date described in paragraph (1) or July 1, 2012.

(C) For medium-density fiberboard—

(i) 0.21 parts per million of formaldehyde for any period after the effective date described in paragraph (1) and before July 1, 2011; and

(ii) 0.11 parts per million of formaldehyde, effective on the later of the effective date described in paragraph (1) or July 1, 2011.

(D) For thin medium-density fiberboard—

(i) 0.21 parts per million of formaldehyde for any period after the effective date described in paragraph (1) and before July 1, 2012; and

(ii) 0.13 parts per million of formaldehyde, effective on the later of the effective date described in paragraph (1) or July 1, 2012.

(E) For particleboard—

(i) 0.18 parts per million of formaldehyde for any period after the effective date described in paragraph (1) and before July 1, 2011; and

(ii) 0.09 parts per million of formaldehyde, effective on the later of the effective date described in paragraph (1) or July 1, 2011.

(3) Compliance with emission standards

(A) Compliance with the emission standards described in paragraph (2) shall be measured by—

(i) quarterly tests shall be [1] conducted pursuant to test method ASTM E–1333–96 (2002) or, subject to subparagraph (B), ASTM D–6007–02; and

(ii) quality control tests shall be [1] conducted pursuant to ASTM D–6007–02, ASTM D–5582, or such other test methods as may be established by the Administrator through rulemaking.

(B) Test results obtained under subparagraph (A)(i) or (ii) by any test method other than ASTM E–1333–96 (2002) must include a showing of equivalence by means established by the Administrator through rulemaking.

(C) Except where otherwise specified, the Administrator shall establish through rulemaking the number and frequency of tests required to demonstrate compliance with the emission standards.

(4) Applicability

The formaldehyde emission standard referred to in paragraph (1) shall apply regardless of whether an applicable hardwood plywood, medium-density fiberboard, or particleboard is—

(A) in the form of an unfinished panel; or

(B) incorporated into a finished good.

(c) Exemptions

The formaldehyde emission standard referred to in subsection (b)(1) shall not apply to—

(1) hardboard;

(2) structural plywood, as specified in the standard entitled "Voluntary Product Standard—Structural Plywood" and numbered PS 1–07;

(3) structural panels, as specified in the standard entitled "Voluntary Product Standard—Performance Standard for Wood-Based Structural-Use Panels" and numbered PS 2–04;

(4) structural composite lumber, as specified in the standard entitled "Standard Specification for Evaluation of Structural Composite Lumber Products" and numbered ASTM D 5456–06;

(5) oriented strand board;

(6) glued laminated lumber, as specified in the standard entitled "Structural Glued Laminated Timber" and numbered ANSI A190.1–2002;

(7) prefabricated wood I-joists, as specified in the standard entitled "Standard Specification for Establishing and Monitoring Structural Capacities of Prefabricated Wood I-Joists" and numbered ASTM D 5055–05;

(8) finger-jointed lumber;

(9) wood packaging (including pallets, crates, spools, and dunnage);

(10) composite wood products used inside a new—

(A) vehicle (other than a recreational vehicle) constructed entirely from new parts that has never been—

(i) the subject of a retail sale; or

(ii) registered with the appropriate State agency or authority responsible for motor vehicles or with any foreign state, province, or country;

(B) rail car;

(C) boat;

(D) aerospace craft; or

(E) aircraft;

(11) windows that contain composite wood products, if the window product contains less than 5 percent by volume of hardwood plywood, particleboard, or medium-density fiberboard, combined, in relation to the total volume of the finished window product; or

(12) exterior doors and garage doors that contain composite wood products, if—

(A) the doors are made from composite wood products manufactured with no-added formaldehyde-based resins or ultra low-emitting formaldehyde resins; or

(B) the doors contain less than 3 percent by volume of hardwood plywood, particleboard, or medium-density fiberboard, combined, in relation to the total volume of the finished exterior door or garage door.

(d) Regulations

(1) In general

Not later than January 1, 2013, the Administrator shall promulgate regulations to implement the standards required under subsection (b) in a manner that ensures compliance with the emission standards described in subsection (b)(2).

(2) Inclusions

The regulations promulgated pursuant to paragraph (1) shall include provisions relating to—

(A) labeling;

(B) chain of custody requirements;
(C) sell-through provisions;
(D) ultra low-emitting formaldehyde resins;
(E) no-added formaldehyde-based resins;
(F) finished goods;
(G) third-party testing and certification;
(H) auditing and reporting of third-party certifiers;
(I) recordkeeping;
(J) enforcement;
(K) laminated products; and
(L) exceptions from the requirements of regulations promulgated pursuant to this subsection for products and components containing de minimis amounts of composite wood products.

The Administrator shall not provide under subparagraph (L) exceptions to the formaldehyde emission standard requirements in subsection (b).

(3) Sell-through provisions

(A) In general

Sell-through provisions established by the Administrator under this subsection, with respect to composite wood products and finished goods containing regulated composite wood products (including recreational vehicles, manufactured homes, and modular homes), shall—

(i) be based on a designated date of manufacture (which shall be no earlier than the date 180 days following the promulgation of the regulations pursuant to this subsection) of the composite wood product or finished good, rather than date of sale of the composite wood product or finished good; and

(ii) provide that any inventory of composite wood products or finished goods containing regulated composite wood products, manufactured before the designated date of manufacture of the composite wood products or finished goods, shall not be subject to the formaldehyde emission standard requirements under subsection (b)(1).

(B) Implementing regulations

The regulations promulgated under this subsection shall—

(i) prohibit the stockpiling of inventory to be sold after the designated date of manufacture; and

(ii) not require any labeling or testing of composite wood products or finished goods containing regulated composite wood products manufactured before the designated date of manufacture.

(C) Definition

For purposes of this paragraph, the term "stockpiling" means manufacturing or purchasing a composite wood product or finished good containing a regulated composite wood product between July 7, 2010, and the date 180 days following the promulgation of the regulations pursuant to this subsection at a rate which is significantly greater (as determined by the Administrator) than the rate at which such product or good was manufactured or purchased during a base period (as determined by the Administrator) ending before July 7, 2010.

(4) Import regulations

Not later than July 1, 2013, the Administrator, in coordination with the Commissioner of Customs and Border Protection and other appropriate Federal departments and agencies, shall revise regulations promulgated pursuant to section 2612 of this title as the Administrator determines to be necessary to ensure compliance with this section.

(5) Successor standards and test methods

The Administrator may, after public notice and opportunity for comment, substitute an industry standard or test method referenced in this section with its successor version.

(e) Prohibited acts

An individual or entity that violates any requirement under this section (including any regulation promulgated pursuant to subsection (d)) shall be considered to have committed a prohibited act under section 2614 of this title.

(Pub. L. 94–469, title VI, §601, as added Pub. L. 111–199, §2(a), July 7, 2010, 124 Stat. 1359.)

MODIFICATION OF REGULATION

Pub. L. 111–199, §4, July 7, 2010, 124 Stat. 1367, provided that: "Not later than 180 days after the date of promulgation of regulations pursuant to section 601(d) of the Toxic Substances Control Act [15 U.S.C. 2697(d)] (as amended by section 2), the Secretary of Housing and Urban Development shall update the regulation contained in section 3280.308 of title 24, Code of Federal Regulations (as in effect on the date of enactment of this Act [July 7, 2010]), to ensure that the regulation reflects the standards established by section 601 of the Toxic Substances Control Act [15 U.S.C. 2697]."

[1] *So in original.*

CHAPTER 54—AUTOMOTIVE PROPULSION RESEARCH AND DEVELOPMENT

Sec.

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§2701. Congressional findings and purpose

(a) The Congress finds that—

(1) existing automobile propulsion systems, on the average, fall short of meeting the long-term goals of the Nation with respect to environmental protection, and energy conservation;

(2) advanced alternatives to existing automobile propulsion systems could, with sufficient research and development effort, meet these long-term goals, and have the potential to be mass produced at reasonable cost; and advanced automobile propulsion systems could operate with significantly less adverse environmental impact and fuel consumption than existing automobiles, while meeting all of the other requirements of Federal law;

(3) insufficient resources are being devoted to both research on and development of advanced automobile propulsion system technology;

(4) an expanded research and development effort with respect to advance automobile propulsion system technology would complement and stimulate corresponding efforts by the private sector and would encourage automobile manufacturers to consider seriously the incorporation of such advanced technology into automobiles and automobile components; and

(5) the Nation's energy and environmental problems are urgent, and therefore advanced automobile propulsion system technology should be developed, tested, demonstrated, and prepared for manufacture within the shortest practicable time.

(b) It is therefore the purpose of the Congress, in this chapter to—

(1)(A) direct the Department of Energy to make contracts and grants for research and development leading to the development of advanced automobile propulsion systems within 5 years of February 25, 1978, or within the shortest practicable time consistent with appropriate research and development techniques, and (B) evaluate and disseminate information with respect to advanced automobile propulsion system technology;

(2) preserve, enhance, and facilitate competition in research, development, and production with respect to existing and alternative automobile propulsion systems; and

(3) supplement, but neither supplant nor duplicate, the automotive propulsion system research and development efforts of private industry.

(Pub. L. 95–238, title III, §302, Feb. 25, 1978, 92 Stat. 78.)

SHORT TITLE

Pub. L. 95–238, title III, §301, Feb. 25, 1978, 92 Stat. 78, provided that: "This title [enacting this chapter and amending section 2451 of Title 42, The Public Health and Welfare] may be cited as the 'Automotive Propulsion Research and Development Act of 1978'."

§2702. Definitions

As used in this chapter, the term—

(1) "advanced automobile propulsion system" means an energy conversion system, including engine and drive train, which utilizes advanced technology and is suitable for use in an advanced automobile;

(2) "developer" means any person engaged in whole or in part in research or other efforts directed toward the development of advanced automobile technology;

(3) "fuel" means any energy source capable of propelling an automobile;

(4) "fuel economy" refers to the average distance traveled in representative driving conditions by an automobile per unit of fuel consumed, as determined by the Administrator of the Environmental Protection Agency in accordance with test procedures which shall be established by rule and shall require that fuel economy tests be conducted in conjunction with the exhaust emissions tests mandated by section 7525 of title 42;

(5) "intermodal adaptability" refers to any characteristics of an automobile which enable it to be operated or carried, or which facilitate its operation or carriage, by or on an alternative mode or other system of transportation;

(6) "reliability" refers to (A) the average time and distance over which normal automobile operation can be expected without significant repair or replacement of parts, and (B) the ease of diagnosis and repair of an automobile, its systems, and parts in the event of failure during use or damage from an accident;

(7) "safety" refers to the performance of an automobile propulsion system or equipment in such a manner that the public is protected against unreasonable risk of accident and against unreasonable risk of death or bodily injury in case of accident;

(8) "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or any other territory or possession of the United States.

(Pub. L. 95–238, title III, §303, Feb. 25, 1978, 92 Stat. 79.)

REFERENCES IN TEXT

Section 7525 of title 42, referred to in par. (4), was in the original "section 206 of the Clean Air Act (42 U.S.C. 1857f–5)", meaning act July 14, 1955, ch. 360, §206, as added Dec. 31, 1970, Pub. L. 91–604, §8(a), 84 Stat. 1694, which was formerly classified to section 1857f–5 of Title 42, The Public Health and Welfare, and which is classified to section 7525 of Title 42 pursuant to the general revision of the Clean Air Act by Pub. L. 95–95, Aug. 7, 1977, 91 Stat. 685.

§2703. Advanced systems program implementation by Secretary of Energy

(a) Establishment and conduct of program

The Secretary of Energy shall establish, within the Department of Energy, a program to insure the development of advanced automobile propulsion systems within 5 years after February 25, 1978, or within the shortest practicable time, consistent with appropriate research and development technique. In conducting such program, the Secretary of Energy shall—

(1) establish and conduct new projects and accelerate existing projects which may contribute to the development of advanced automobile propulsion systems;

(2) give priority attention to the development of advanced propulsion systems with appropriate attention to those advanced propulsion systems which are flexible in the type of fuel used; and

(3) insure that research and development under this chapter supplements, but neither supplants nor duplicates, the automotive research and development efforts of private industry.

(b) Contracts and grants with Federal agencies, laboratories, etc.

The Secretary of Energy shall, in fulfilling his responsibilities under this chapter, make contracts and grants with any Federal agency, laboratory, university, nonprofit organization, industrial organization, public or private agency, institution, organization, corporation, partnership, or individual for research and development leading to advanced automobile propulsion systems which are likely to help meet the Nation's long-term goals with respect to fuel economy, environmental protection, and other objectives.

(c) Federal laboratories; priority for financial assistance; functions

In providing financial assistance under this chapter, the Secretary of Energy shall give full consideration to the capabilities of Federal laboratories, except that not more than 60 per centum of the funds appropriated pursuant to the authorization under section 2710 of this title shall be directly expended in Federal laboratories. In accordance with section 2706 of this title, such laboratories shall be available for testing components and subsystems which, in the Secretary of Energy's judgment, is likely to contribute to the development of advanced automobile propulsion systems.

(d) Evaluations, testing, information dissemination, and reporting functions

The Secretary of Energy shall conduct evaluations, arrange for tests, and disseminate information pursuant to section 2706 of this title and submit reports required under section 2709 of this title.

(e) Intensification of research in basic areas by Department of Energy

The Department of Energy shall intensify research in key basic science areas in which the lack of knowledge limits development of advanced automobile propulsion systems.

(f) Program provisions and requirements; administrative and judicial procedures applicable to contracts, grants, or projects; additional information for reports and budget submissions; nonretroactivity of provisions and requirements

(1) The Secretary of Energy shall insure that the conduct of the program as defined in subsection (a) of this section—

(A) supplements the automotive propulsion system research and development efforts of industry;

(B) is not formulated in a manner that will supplant private industry research and development or displace or lessen industry's research and development; and

(C) avoids duplication of private research and development.

(2) To that end, the Secretary of Energy shall issue administrative regulations, within 60 days after February 25, 1978, which shall specify procedures, standards, and criteria for the timely review for compliance of each new contract, grant, Department of Energy project, or other agency project funded or to be funded under the authority of this Act. Such regulations shall require that the Secretary of Energy or his designee shall certify that each such contract, grant, or project satisfies the requirement of this subsection, and shall include in such certification a discussion of the relationship

of any related or comparable industry research and development, in terms of this subsection, to the proposed research and development under the authority of this Act. The discussion shall also address related issues, such as cost sharing and patent rights.

(3) Such certifications shall be available to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. The provisions of chapter 5 of title 5 shall not apply to such certifications and no court shall have any jurisdiction to review the preparation or adequacy of such certifications; but section 553 of title 5 and section 5916 of title 42 shall apply to public disclosure of such certifications.

(4) The Secretary of Energy also shall include in the report required by section 2709(a) of this title a detailed discussion of how each research and development contract, grant, or project funded under the authority of this Act satisfies the requirement of this subsection.

(5) Further, the Secretary of Energy in each annual budget submission to the Congress, or amendment thereto, for the programs authorized by this Act shall describe how each identified research and development effort in such submission satisfies the requirements of this subsection.

(6) The provisions and requirements of this subsection shall not apply with respect to any contract, grant, or project which was entered into, made, or formally approved and initiated prior to February 25, 1978, or with respect to any renewal or extension thereof.

(Pub. L. 95–238, title III, §304, Feb. 25, 1978, 92 Stat. 79; Pub. L. 103–437, §5(b)(4), Nov. 2, 1994, 108 Stat. 4582.)

REFERENCES IN TEXT

This Act, referred to in subsec. (f), is Pub. L. 95–238, Feb. 25, 1978, 92 Stat. 47, known as the Department of Energy Act of 1978—Civilian Applications. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1994—Subsec. (f)(3). Pub. L. 103–437 substituted "Committee on Science, Space, and Technology" for "Committee on Science and Technology".

§2704. Evaluation by Secretary of Transportation on utilization of advanced technology by automobile industry

The Secretary of Transportation, in furtherance of the purposes of this chapter, shall evaluate the extent to which the automobile industry utilizes advanced automotive technology which is or could be made available to it.

(Pub. L. 95–238, title III, §305, Feb. 25, 1978, 92 Stat. 81; Pub. L. 104–66, title I, §1121(i), Dec. 21, 1995, 109 Stat. 724.)

AMENDMENTS

1995—Pub. L. 104–66 struck out at end "The Secretary of Transportation shall submit a report to the Congress each year on the results of such evaluation including any appropriate recommendations which may encourage the utilization of advanced automobile technology by the automobile industry."

§2705. Coordinating and consulting requirements and authorities of Secretary of Energy

(a) Conduct of overall management responsibilities

The Secretary of Energy shall have overall management responsibility for carrying out the program under section 2703 of this title. In carrying out such program, the Secretary of Energy, consistent with such overall management responsibility—

(1) shall utilize the expertise of the Department of Transportation to the extent deemed appropriate by the Secretary of Energy; and

(2) may utilize any other Federal agency (except as provided in paragraph (1)) in accordance

with subsection (c) of this section in carrying out any activities under this chapter, to the extent that the Secretary of Energy determines that any such agency has capabilities which would allow such agency to contribute to the purposes of this chapter.

(b) Exercise of powers by Secretary of Transportation

The Secretary of Transportation, whenever the expertise of the Department of Transportation is utilized in accordance with subsection (a) of this section, may exercise the powers granted to the Secretary of Energy under subsection (c) of this section and shall enter into contracts and make grants for such purpose, subject to the overall management responsibility of the Secretary of Energy.

(c) Requests for assistance of Federal departments, etc.

The Secretary of Energy may, in accordance with subsection (a) of this section, obtain the assistance of any department, agency, or instrumentality of the executive branch of the Federal Government upon written request, on a reimbursable basis or otherwise and with the consent of such department, agency, or instrumentality. Each such request shall identify the assistance the Secretary of Energy deems necessary to carry out any duty under this chapter.

(d) Consultations with Administrator of Environmental Protection Agency and Secretary of Transportation; establishment of procedures for periodic consultation with interested groups; establishment and functions of advisory panels

The Secretary of Energy shall consult with the Administrator of the Environmental Protection Agency and the Secretary of Transportation, and shall establish procedures for periodic consultation with representatives of science, industry, and such other groups as may have special expertise in the area of automobile propulsion system research, development, and technology. The Secretary of Energy may establish such advisory panels as he deems appropriate to review and make recommendations with respect to applications for funding under this chapter.

(e) Responsibilities under other Federal automotive research, development, and demonstration provisions unaffected

Nothing contained in this chapter shall be construed to reduce in any way the responsibilities of the Secretary of Energy for automotive research, development, and demonstration under the Energy Reorganization Act of 1974 (42 U.S.C. 5801 et seq.) and the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5901 et seq.).

(Pub. L. 95–238, title III, §306, Feb. 25, 1978, 92 Stat. 81.)

REFERENCES IN TEXT

The Energy Reorganization Act of 1974 (42 U.S.C. 5801 et seq.), referred to in subsec. (e), is Pub. L. 93–438, Oct. 11, 1974, 88 Stat. 1233, as amended, which is classified principally to chapter 73 (§5801 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of Title 42 and Tables.

The Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5901 et seq.), referred to in subsec. (e), is Pub. L. 93–577, Dec. 31, 1974, 88 Stat. 1878, as amended, which is classified generally to chapter 74 (§5901 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 5901 of Title 42 and Tables.

§2706. Informational and testing functions of Secretary of Energy

(a) Evaluations of new or improved technologies pursuant to written submissions

The Secretary of Energy shall, for the purposes of performing his responsibilities under this chapter, consider any reasonable new or improved technology, a description of which is submitted to the Secretary of Energy in writing, which could lead or contribute to the development of advanced automobile propulsion system technology.

(b) Testing by Administrator of Environmental Protection Agency of systems developed under research and development program or submitted by Secretary; scope and purposes of tests;

submission of test data and results to Secretary

The Administrator of the Environmental Protection Agency shall test, or cause to be tested, in a facility subject to Environmental Protection Agency supervision, each advanced automobile propulsion system in an appropriately modified production vehicle equipped with such a system developed in whole or in part with Federal financial assistance under this chapter, or referred to the Administrator of the Environmental Protection Agency for such purpose by the Secretary of Energy, to determine whether such vehicle complies with any exhaust emission standards or any other requirements promulgated or reasonably expected to be promulgated under any provision of the Clean Air Act (42 U.S.C. 1857 et seq.) [42 U.S.C. 7401 et seq.], the Noise Control Act of 1972 (42 U.S.C. 4901 et seq.), or any other provision of Federal law administered by the Administrator of the Environmental Protection Agency. In conjunction with any test for compliance with exhaust emission standards under this section, the Administrator of the Environmental Protection Agency shall also conduct tests to determine the fuel economy of such vehicle. The Administrator of the Environmental Protection Agency shall submit all test data and the results of such tests to the Secretary of Energy.

(c) Collection, analysis, and dissemination of information, data, and materials to developers

The Secretary of Energy shall collect, analyze, and disseminate to developers information, data, and materials that may be relevant to the development of advanced automobile propulsion system technology.

(Pub. L. 95–238, title III, §307, Feb. 25, 1978, 92 Stat. 82.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (b), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

The Noise Control Act of 1972 (42 U.S.C. 4901 et seq.), referred to in subsec. (b), is Pub. L. 92–574, Oct. 27, 1972, 86 Stat. 1234, as amended, which is classified principally to chapter 65 (§4901 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 4901 of Title 42 and Tables.

§2707. Patents and inventions; statutory provisions applicable; contracts or grants covered

Section 5908 of title 42 shall apply to any contract (including any assignment, substitution of parties, or subcontract thereunder) or grant, entered into, made, or issued by the Secretary of Energy under this chapter.

(Pub. L. 95–238, title III, §308, Feb. 25, 1978, 92 Stat. 82.)

§2708. Comptroller General audit and examination of books, etc.; statutory provisions applicable; contracts or grants covered

Section 5876 of title 42 shall apply with respect to the authority of the Comptroller General to have access to and rights of examination of books, documents, papers, and records of recipients of financial assistance under this chapter; except that for the purposes of this chapter, the term "contract" (as used in section 2206 of title 42, insofar as it relates to such section 5876 of title 42) means "contract or grant".

(Pub. L. 95–238, title III, §309, Feb. 25, 1978, 92 Stat. 82.)

§2709. Reports to Congress by Secretary of Energy

(a) Comprehensive program, etc.

As a separate part of the annual report submitted under section 5914(a) [1] of title 42 with respect to the comprehensive plan and program then in effect under section 5905(a) and (b) of title 42, the Secretary of Energy shall submit to Congress an annual report of activities under this chapter. Such report shall include—

(1) a current comprehensive program definition for implementing this chapter;

(2) an evaluation of the state of automobile propulsion system research and development in the United States;

(3) the number and amount of contracts and grants made under this chapter;

(4) an analysis of the progress made in developing advanced automobile propulsion system technology; and

(5) suggestions for improvements in advanced automobile propulsion system research and development, including recommendations for legislation.

(b) Study on financial obligation guarantees

The Secretary of Energy shall conduct a survey of developers, lending institutions, and other appropriate persons or institutions and shall otherwise make a study for the purpose of determining whether, and under what conditions, research, development, demonstration, and commercial availability of advanced automobile propulsion system technology may be aided by the guarantee of financial obligations by the Federal Government. The Secretary of Energy shall report the results of such survey and study to the Congress within 1 year after February 25, 1978. Such report shall include an examination of those stages of advanced automobile propulsion system technology research, development, demonstration, and commercialization for which financial obligation guarantees may be useful or appropriate and shall contain such legislative recommendations as may be necessary.

(Pub. L. 95–238, title III, §310, Feb. 25, 1978, 92 Stat. 83.)

REFERENCES IN TEXT

Section 5914 of title 42, referred to in subsec. (a), was omitted from the Code.

[1] *See References in Text note below.*

§2710. Authorization of appropriations

There is authorized to be appropriated to carry out the purposes of this chapter, in addition to any amounts made available for such purposes pursuant to title I of this Act, the sum of $12,500,000 for the fiscal year ending September 30, 1978.

(Pub. L. 95–238, title III, §312, Feb. 25, 1978, 92 Stat. 83.)

REFERENCES IN TEXT

Title I of this Act, referred to in text, is title I (§§101–107) of Pub. L. 95–238, Feb. 25, 1978, 92 Stat. 47. For complete classification of this title to the Code, see Tables.

CHAPTER 55—PETROLEUM MARKETING PRACTICES

SUBCHAPTER I—FRANCHISE PROTECTION

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SUBCHAPTER I—FRANCHISE PROTECTION

§2801. Definitions

As used in this subchapter:

(1)(A) The term "franchise" means any contract—

(i) between a refiner and a distributor,

(ii) between a refiner and a retailer,

(iii) between a distributor and another distributor, or

(iv) between a distributor and a retailer,

under which a refiner or distributor (as the case may be) authorizes or permits a retailer or distributor to use, in connection with the sale, consignment, or distribution of motor fuel, a trademark which is owned or controlled by such refiner or by a refiner which supplies motor fuel to the distributor which authorizes or permits such use.

(B) The term "franchise" includes—

(i) any contract under which a retailer or distributor (as the case may be) is authorized or permitted to occupy leased marketing premises, which premises are to be employed in connection with the sale, consignment, or distribution of motor fuel under a trademark which is owned or controlled by such refiner or by a refiner which supplies motor fuel to the distributor which authorizes or permits such occupancy;

(ii) any contract pertaining to the supply of motor fuel which is to be sold, consigned or distributed—

(I) under a trademark owned or controlled by a refiner; or

(II) under a contract which has existed continuously since May 15, 1973, and pursuant to which, on May 15, 1973, motor fuel was sold, consigned or distributed under a trademark owned or controlled on such date by a refiner; and

(iii) the unexpired portion of any franchise, as defined by the preceding provisions of this paragraph, which is transferred or assigned as authorized by the provisions of such franchise or by any applicable provision of State law which permits such transfer or assignment without regard to any provision of the franchise.

(2) The term "franchise relationship" means the respective motor fuel marketing or distribution obligations and responsibilities of a franchisor and a franchisee which result from the marketing of motor fuel under a franchise.

(3) The term "franchisor" means a refiner or distributor (as the case may be) who authorizes or permits, under a franchise, a retailer or distributor to use a trademark in connection with the sale, consignment, or distribution of motor fuel.

(4) The term "franchisee" means a retailer or distributor (as the case may be) who is authorized or permitted, under a franchise, to use a trademark in connection with the sale, consignment, or distribution of motor fuel.

(5) The term "refiner" means any person engaged in the refining of crude oil to produce motor fuel, and includes any affiliate of such person.

(6) The term "distributor" means any person, including any affiliate of such person, who—

(A) purchases motor fuel for sale, consignment, or distribution to another; or

(B) receives motor fuel on consignment for consignment or distribution to his own motor fuel accounts or to accounts of his supplier, but shall not include a person who is an employee of, or merely serves as a common carrier providing transportation service for, such supplier.

(7) The term "retailer" means any person who purchases motor fuel for sale to the general public for ultimate consumption.

(8) The term "marketing premises" means, in the case of any franchise, premises which, under such franchise, are to be employed by the franchisee in connection with sale, consignment, or distribution of motor fuel.

(9) The term "leased marketing premises" means marketing premises owned, leased, or in any way controlled by a franchisor and which the franchisee is authorized or permitted, under the franchise, to employ in connection with the sale, consignment, or distribution of motor fuel.

(10) The term "contract" means any oral or written agreement. For supply purposes, delivery levels during the same month of the previous year shall be prima facie evidence of an agreement to deliver such levels.

(11) The term "trademark" means any trademark, trade name, service mark, or other identifying symbol or name.

(12) The term "motor fuel" means gasoline and diesel fuel of a type distributed for use as a fuel in self-propelled vehicles designed primarily for use on public streets, roads, and highways.

(13) The term "failure" does not include—

(A) any failure which is only technical or unimportant to the franchise relationship;

(B) any failure for a cause beyond the reasonable control of the franchisee; or

(C) any failure based on a provision of the franchise which is illegal or unenforceable under the law of any State (or subdivision thereof).

(14) The terms "fail to renew" and "nonrenewal" mean, with respect to any franchise relationship, a failure to reinstate, continue, or extend the franchise relationship—

(A) at the conclusion of the term, or on the expiration date, stated in the relevant franchise;

(B) at any time, in the case of the relevant franchise which does not state a term of duration or an expiration date; or

(C) following a termination (on or after June 19, 1978) of the relevant franchise which was entered into prior to June 19, 1978, and has not been renewed after such date.

(15) The term "affiliate" means any person who (other than by means of a franchise) controls, is controlled by, or is under common control with, any other person.

(16) The term "relevant geographic market area" includes a State or a standard metropolitan statistical area as periodically established by the Office of Management and Budget.

(17) The term "termination" includes cancellation.

(18) The term "commerce" means any trade, traffic, transportation, exchange, or other commerce—

(A) between any State and any place outside of such State; or

(B) which affects any trade, transportation, exchange, or other commerce described in subparagraph (A).

(19) The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and any other

commonwealth, territory, or possession of the United States.

(Pub. L. 95–297, title I, §101, June 19, 1978, 92 Stat. 322; Pub. L. 103–371, §6, Oct. 19, 1994, 108 Stat. 3486; Pub. L. 110–140, title II, §241(c)(1), Dec. 19, 2007, 121 Stat. 1540.)

AMENDMENTS

2007—Par. (13)(C). Pub. L. 110–140 aligned margins.
1994—Par. (13)(C). Pub. L. 103–371 added subpar. (C).

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–371, §1, Oct. 19, 1994, 108 Stat. 3484, provided that: "This Act [amending this section and sections 2802, 2805, and 2806 of this title] may be cited as the 'Petroleum Marketing Practices Act Amendments of 1994'."

SHORT TITLE

Pub. L. 95–297, §1, June 19, 1978, 92 Stat. 322, provided: "That this Act [enacting this chapter and provisions set out as a note under section 2822 of this title] may be cited as the 'Petroleum Marketing Practices Act'."

§2802. Franchise relationship

(a) General prohibition against termination or nonrenewal

Except as provided in subsection (b) of this section and section 2803 of this title, no franchisor engaged in the sale, consignment, or distribution of motor fuel in commerce may—

(1) terminate any franchise (entered into or renewed on or after June 19, 1978) prior to the conclusion of the term, or the expiration date, stated in the franchise; or

(2) fail to renew any franchise relationship (without regard to the date on which the relevant franchise was entered into or renewed).

(b) Precondition and grounds for termination or nonrenewal

(1) Any franchisor may terminate any franchise (entered into or renewed on or after June 19, 1978) or may fail to renew any franchise relationship, if—

(A) the notification requirements of section 2804 of this title are met; and

(B) such termination is based upon a ground described in paragraph (2) or such nonrenewal is based upon a ground described in paragraph (2) or (3).

(2) For purposes of this subsection, the following are grounds for termination of a franchise or nonrenewal of a franchise relationship:

(A) A failure by the franchisee to comply with any provision of the franchise, which provision is both reasonable and of material significance to the franchise relationship, if the franchisor first acquired actual or constructive knowledge of such failure—

(i) not more than 120 days prior to the date on which notification of termination or nonrenewal is given, if notification is given pursuant to section 2804(a) of this title; or

(ii) not more than 60 days prior to the date on which notification of termination or nonrenewal is given, if less than 90 days notification is given pursuant to section 2804(b)(1) of this title.

(B) A failure by the franchisee to exert good faith efforts to carry out the provisions of the franchise, if—

(i) the franchisee was apprised by the franchisor in writing of such failure and was afforded a reasonable opportunity to exert good faith efforts to carry out such provisions; and

(ii) such failure thereafter continued within the period which began not more than 180 days

before the date notification of termination or nonrenewal was given pursuant to section 2804 of this title.

(C) The occurrence of an event which is relevant to the franchise relationship and as a result of which termination of the franchise or nonrenewal of the franchise relationship is reasonable, if such event occurs during the period the franchise is in effect and the franchisor first acquired actual or constructive knowledge of such occurrence—

(i) not more than 120 days prior to the date on which notification of termination or nonrenewal is given, if notification is given pursuant to section 2804(a) of this title; or

(ii) not more than 60 days prior to the date on which notification of termination or nonrenewal is given, if less than 90 days notification is given pursuant to section 2804(b)(1) of this title.

(D) An agreement, in writing, between the franchisor and the franchisee to terminate the franchise or not to renew the franchise relationship, if—

(i) such agreement is entered into not more than 180 days prior to the date of such termination or, in the case of nonrenewal, not more than 180 days prior to the conclusion of the term, or the expiration date, stated in the franchise;

(ii) the franchisee is promptly provided with a copy of such agreement, together with the summary statement described in section 2804(d) of this title; and

(iii) within 7 days after the date on which the franchisee is provided a copy of such agreement, the franchisee has not posted by certified mail a written notice to the franchisor repudiating such agreement.

(E) In the case of any franchise entered into prior to June 19, 1978, and in the case of any franchise entered into or renewed on or after such date (the term of which is 3 years or longer, or with respect to which the franchisee was offered a term of 3 years or longer), a determination made by the franchisor in good faith and in the normal course of business to withdraw from the marketing of motor fuel through retail outlets in the relevant geographic market area in which the marketing premises are located, if—

(i) such determination—

(I) was made after the date such franchise was entered into or renewed, and

(II) was based upon the occurrence of changes in relevant facts and circumstances after such date;

(ii) the termination or nonrenewal is not for the purpose of converting the premises, which are the subject of the franchise, to operation by employees or agents of the franchisor for such franchisor's own account; and

(iii) in the case of leased marketing premises—

(I) the franchisor, during the 180-day period after notification was given pursuant to section 2804 of this title, either made a bona fide offer to sell, transfer, or assign to the franchisee such franchisor's interests in such premises, or, if applicable, offered the franchisee a right of first refusal of at least 45 days duration of an offer, made by another, to purchase such franchisor's interest in such premises; or

(II) in the case of the sale, transfer, or assignment to another person of the franchisor's interest in such premises in connection with the sale, transfer, or assignment to such other person of the franchisor's interest in one or more other marketing premises, if such other person offers, in good faith, a franchise to the franchisee on terms and conditions which are not discriminatory to the franchisee as compared to franchises then currently being offered by such other person or franchises then in effect and with respect to which such other person is the franchisor.

(3) For purposes of this subsection, the following are grounds for nonrenewal of a franchise

relationship:

(A) The failure of the franchisor and the franchisee to agree to changes or additions to the provisions of the franchise, if—

(i) such changes or additions are the result of determinations made by the franchisor in good faith and in the normal course of business; and

(ii) such failure is not the result of the franchisor's insistence upon such changes or additions for the purpose of converting the leased marketing premises to operation by employees or agents of the franchisor for the benefit of the franchisor or otherwise preventing the renewal of the franchise relationship.

(B) The receipt of numerous bona fide customer complaints by the franchisor concerning the franchisee's operation of the marketing premises, if—

(i) the franchisee was promptly apprised of the existence and nature of such complaints following receipt of such complaints by the franchisor; and

(ii) if such complaints related to the condition of such premises or to the conduct of any employee of such franchisee, the franchisee did not promptly take action to cure or correct the basis of such complaints.

(C) A failure by the franchisee to operate the marketing premises in a clean, safe, and healthful manner, if the franchisee failed to do so on two or more previous occasions and the franchisor notified the franchisee of such failures.

(D) In the case of any franchise entered into prior to June 19, 1978, (the unexpired term of which, on such date, is 3 years or longer) and, in the case of any franchise entered into or renewed on or after such date (the term of which was 3 years or longer, or with respect to which the franchisee was offered a term of 3 years or longer), a determination made by the franchisor in good faith and in the normal course of business, if—

(i) such determination is—

(I) to convert the leased marketing premises to a use other than the sale or distribution of motor fuel,

(II) to materially alter, add to, or replace such premises,

(III) to sell such premises, or

(IV) that renewal of the franchise relationship is likely to be uneconomical to the franchisor despite any reasonable changes or reasonable additions to the provisions of the franchise which may be acceptable to the franchisee;

(ii) with respect to a determination referred to in subclause (II) or (IV), such determination is not made for the purpose of converting the leased marketing premises to operation by employees or agents of the franchisor for such franchisor's own account; and

(iii) in the case of leased marketing premises such franchisor, during the 90-day period after notification was given pursuant to section 2804 of this title, either—

(I) made a bona fide offer to sell, transfer, or assign to the franchisee such franchisor's interests in such premises; or

(II) if applicable, offered the franchisee a right of first refusal of at least 45-days duration of an offer, made by another, to purchase such franchisor's interest in such premises.

(c) Definition

As used in subsection (b)(2)(C) of this section, the term "an event which is relevant to the franchise relationship and as a result of which termination of the franchise or nonrenewal of the franchise relationship is reasonable" includes events such as—

(1) fraud or criminal misconduct by the franchisee relevant to the operation of the marketing premises;

(2) declaration of bankruptcy or judicial determination of insolvency of the franchisee;

(3) continuing severe physical or mental disability of the franchisee of at least 3 months duration which renders the franchisee unable to provide for the continued proper operation of the

marketing premises;

(4) loss of the franchisor's right to grant possession of the leased marketing premises through expiration of an underlying lease, if—

(A) the franchisee was notified in writing, prior to the commencement of the term of the then existing franchise—

(i) of the duration of the underlying lease; and

(ii) of the fact that such underlying lease might expire and not be renewed during the term of such franchise (in the case of termination) or at the end of such term (in the case of nonrenewal);

(B) during the 90-day period after notification was given pursuant to section 2804 of this title, the franchisor offers to assign to the franchisee any option to extend the underlying lease or option to purchase the marketing premises that is held by the franchisor, except that the franchisor may condition the assignment upon receipt by the franchisor of—

(i) an unconditional release executed by both the landowner and the franchisee releasing the franchisor from any and all liability accruing after the date of the assignment for—

(I) financial obligations under the option (or the resulting extended lease or purchase agreement);

(II) environmental contamination to (or originating from) the marketing premises; or

(III) the operation or condition of the marketing premises; and

(ii) an instrument executed by both the landowner and the franchisee that ensures the franchisor and the contractors of the franchisor reasonable access to the marketing premises for the purpose of testing for and remediating any environmental contamination that may be present at the premises; and

(C) in a situation in which the franchisee acquires possession of the leased marketing premises effective immediately after the loss of the right of the franchisor to grant possession (through an assignment pursuant to subparagraph (B) or by obtaining a new lease or purchasing the marketing premises from the landowner), the franchisor (if requested in writing by the franchisee not later than 30 days after notification was given pursuant to section 2804 of this title), during the 90-day period after notification was given pursuant to section 2804 of this title—

(i) made a bona fide offer to sell, transfer, or assign to the franchisee the interest of the franchisor in any improvements or equipment located on the premises; or

(ii) if applicable, offered the franchisee a right of first refusal (for at least 45 days) of an offer, made by another person, to purchase the interest of the franchisor in the improvements and equipment.

(5) condemnation or other taking, in whole or in part, of the marketing premises pursuant to the power of eminent domain;

(6) loss of the franchisor's right to grant the right to use the trademark which is the subject of the franchise, unless such loss was due to trademark abuse, violation of Federal or State law, or other fault or negligence of the franchisor, which such abuse, violation, or other fault or negligence is related to action taken in bad faith by the franchisor;

(7) destruction (other than by the franchisor) of all or a substantial part of the marketing premises;

(8) failure by the franchisee to pay to the franchisor in a timely manner when due all sums to which the franchisor is legally entitled;

(9) failure by the franchisee to operate the marketing premises for—

(A) 7 consecutive days, or

(B) such lesser period which under the facts and circumstances constitutes an unreasonable period of time;

(10) willful adulteration, mislabeling or misbranding of motor fuels or other trademark violations by the franchisee;

(11) knowing failure of the franchisee to comply with Federal, State, or local laws or regulations relevant to the operation of the marketing premises; and

(12) conviction of the franchisee of any felony involving moral turpitude.

(d) Compensation, etc., for franchisee upon condemnation or destruction of marketing premises

In the case of any termination of a franchise (entered into or renewed on or after June 19, 1978), or in the case of any nonrenewal of a franchise relationship (without regard to the date on which such franchise relationship was entered into or renewed)—

(1) if such termination or nonrenewal is based upon an event described in subsection (c)(5) of this section, the franchisor shall fairly apportion between the franchisor and the franchisee compensation, if any, received by the franchisor based upon any loss of business opportunity or good will; and

(2) if such termination or nonrenewal is based upon an event described in subsection (c)(7) of this section and the leased marketing premises are subsequently rebuilt or replaced by the franchisor and operated under a franchise, the franchisor shall, within a reasonable period of time, grant to the franchisee a right of first refusal of the franchise under which such premises are to be operated.

(Pub. L. 95–297, title I, §102, June 19, 1978, 92 Stat. 324; Pub. L. 103–371, §§2, 3, Oct. 19, 1994, 108 Stat. 3484.)

AMENDMENTS

1994—Subsec. (b)(3)(A)(ii). Pub. L. 103–371, §2, inserted "converting the leased marketing premises to operation by employees or agents of the franchisor for the benefit of the franchisor or otherwise" after "purpose of".

Subsec. (c)(4). Pub. L. 103–371, §3, redesignated portion of introductory language of par. (4) as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A), and added subpars. (B) and (C).

§2803. Trial and interim franchises

(a) Nonapplicability of statutory nonrenewal provisions

The provisions of section 2802 of this title shall not apply to the nonrenewal of any franchise relationship—

(1) under a trial franchise; or

(2) under an interim franchise.

(b) Definitions

For purposes of this section—

(1) The term "trial franchise" means any franchise—

(A) which is entered into on or after June 19, 1978;

(B) the franchisee of which has not previously been a party to a franchise with the franchisor;

(C) the initial term of which is for a period of not more than 1 year; and

(D) which is in writing and states clearly and conspicuously—

(i) that the franchise is a trial franchise;

(ii) the duration of the initial term of the franchise;

(iii) that the franchisor may fail to renew the franchise relationship at the conclusion of the initial term stated in the franchise by notifying the franchisee, in accordance with the provisions of section 2804 of this title, of the franchisor's intention not to renew the franchise relationship; and

(iv) that the provisions of section 2802 of this title, limiting the right of a franchisor to fail

to renew a franchise relationship, are not applicable to such trial franchise.

(2) The term "trial franchise" does not include any unexpired period of any term of any franchise (other than a trial franchise, as defined by paragraph (1)) which was transferred or assigned by a franchisee to the extent authorized by the provisions of the franchise or any applicable provision of State law which permits such transfer or assignment, without regard to any provision of the franchise.

(3) The term "interim franchise" means any franchise—

(A) which is entered into on or after June 19, 1978;

(B) the term of which, when combined with the terms of all prior interim franchises between the franchisor and the franchisee, does not exceed 3 years;

(C) the effective date of which occurs immediately after the expiration of a prior franchise, applicable to the marketing premises, which was not renewed if such nonrenewal—

(i) was based upon a determination described in section 2802(b)(2)(E) of this title, and

(ii) the requirements of section 2802(b)(2)(E) of this title were satisfied; and

(D) which is in writing and states clearly and conspicuously—

(i) that the franchise is an interim franchise;

(ii) the duration of the franchise; and

(iii) that the franchisor may fail to renew the franchise at the conclusion of the term stated in the franchise based upon a determination made by the franchisor in good faith and in the normal course of business to withdraw from the marketing of motor fuel through retail outlets in the relevant geographic market area in which the marketing premises are located if the requirements of section 2802(b)(2)(E)(ii) and (iii) of this title are satisfied.

(c) Nonrenewal upon meeting statutory notification requirements

If the notification requirements of section 2804 of this title are met, any franchisor may fail to renew any franchise relationship—

(1) under any trial franchise, at the conclusion of the initial term of such trial franchise; and

(2) under any interim franchise, at the conclusion of the term of such interim franchise, if—

(A) such nonrenewal is based upon a determination described in section 2802(b)(2)(E) of this title; and

(B) the requirements of section 2802(b)(2)(E)(ii) and (iii) of this title are satisfied.

(Pub. L. 95–297, title I, §103, June 19, 1978, 92 Stat. 328.)

§2804. Notification of termination or nonrenewal of franchise relationship

(a) General requirements applicable to franchisor

Prior to termination of any franchise or nonrenewal of any franchise relationship, the franchisor shall furnish notification of such termination or such nonrenewal to the franchisee who is a party to such franchise or such franchise relationship—

(1) in the manner described in subsection (c) of this section; and

(2) except as provided in subsection (b) of this section, not less than 90 days prior to the date on which such termination or nonrenewal takes effect.

(b) Additional requirements applicable to franchisor

(1) In circumstances in which it would not be reasonable for the franchisor to furnish notification, not less than 90 days prior to the date on which termination or nonrenewal takes effect, as required by subsection (a)(2) of this section—

(A) such franchisor shall furnish notification to the franchisee affected thereby on the earliest date on which furnishing of such notification is reasonably practicable; and

(B) in the case of leased marketing premises, such franchisor—

(i) may not establish a new franchise relationship with respect to such premises before the

expiration of the 30-day period which begins—

(I) on the date notification was posted or personally delivered, or

(II) if later, on the date on which such termination or nonrenewal takes effect; and

(ii) may, if permitted to do so by the franchise agreement, repossess such premises and, in circumstances under which it would be reasonable to do so, operate such premises through employees or agents.

(2) In the case of any termination of any franchise or any nonrenewal of any franchise relationship pursuant to the provisions of section 2802(b)(2)(E) of this title or section 2803(c)(2) of this title, the franchisor shall—

(A) furnish notification to the franchisee not less than 180 days prior to the date on which such termination or nonrenewal takes effect; and

(B) promptly provide a copy of such notification, together with a plan describing the schedule and conditions under which the franchisor will withdraw from the marketing of motor fuel through retail outlets in the relevant geographic area, to the Governor of each State which contains a portion of such area.

(c) Manner and form of notification

Notification under this section—

(1) shall be in writing;

(2) shall be posted by certified mail or personally delivered to the franchisee; and

(3) shall contain—

(A) a statement of intention to terminate the franchise or not to renew the franchise relationship, together with the reasons therefor;

(B) the date on which such termination or nonrenewal takes effect; and

(C) the summary statement prepared under subsection (d) of this section.

(d) Preparation, publication, etc., of statutory summaries

(1) Not later than 30 days after June 19, 1978, the Secretary of Energy shall prepare and publish in the Federal Register a simple and concise summary of the provisions of this subchapter, including a statement of the respective responsibilities of, and the remedies and relief available to, any franchisor and franchisee under this subchapter.

(2) In the case of summaries required to be furnished under the provisions of section 2802(b)(2)(D) of this title or subsection (c)(3)(C) of this section before the date of publication of such summary in the Federal Register, such summary may be furnished not later than 5 days after it is so published rather than at the time required under such provisions.

(Pub. L. 95–297, title I, §104, June 19, 1978, 92 Stat. 329.)

§2805. Enforcement provisions

(a) Maintenance of civil action by franchisee against franchisor; jurisdiction and venue; time for commencement of action

If a franchisor fails to comply with the requirements of section 2802, 2803, or 2807 of this title, the franchisee may maintain a civil action against such franchisor. Such action may be brought, without regard to the amount in controversy, in the district court of the United States in any judicial district in which the principal place of business of such franchisor is located or in which such franchisee is doing business, except that no such action may be maintained unless commenced within 1 year after the later of—

(1) the date of termination of the franchise or nonrenewal of the franchise relationship; or

(2) the date the franchisor fails to comply with the requirements of section 2802, 2803, or 2807 of this title.

(b) Equitable relief by court; bond requirements; grounds for nonexercise of court's equitable powers

(1) In any action under subsection (a) of this section, the court shall grant such equitable relief as the court determines is necessary to remedy the effects of any failure to comply with the requirements of section 2802, 2803, or 2807 of this title, including declaratory judgment, mandatory or prohibitive injunctive relief, and interim equitable relief.

(2) Except as provided in paragraph (3), in any action under subsection (a) of this section, the court shall grant a preliminary injunction if—

(A) the franchisee shows—

(i) the franchise of which he is a party has been terminated or the franchise relationship of which he is a party has not been renewed, and

(ii) there exist sufficiently serious questions going to the merits to make such questions a fair ground for litigation; and

(B) the court determines that, on balance, the hardships imposed upon the franchisor by the issuance of such preliminary injunctive relief will be less than the hardship which would be imposed upon such franchisee if such preliminary injunctive relief were not granted.

(3) Nothing in this subsection prevents any court from requiring the franchisee in any action under subsection (a) of this section to post a bond, in an amount established by the court, prior to the issuance or continuation of any equitable relief.

(4) In any action under subsection (a) of this section, the court need not exercise its equity powers to compel continuation or renewal of the franchise relationship if such action was commenced—

(A) more than 90 days after the date on which notification pursuant to section 2804(a) of this title was posted or personally delivered to the franchisee;

(B) more than 180 days after the date on which notification pursuant to section 2804(b)(2) of this title was posted or personally delivered to the franchisee; or

(C) more than 30 days after the date on which the termination of such franchise or the nonrenewal of such franchise relationship takes effect if less than 90 days notification was provided pursuant to section 2804(b)(1) of this title.

(c) Burden of proof; burden of going forward with evidence

In any action under subsection (a) of this section, the franchisee shall have the burden of proving the termination of the franchise or the nonrenewal of the franchise relationship. The franchisor shall bear the burden of going forward with evidence to establish as an affirmative defense that such termination or nonrenewal was permitted under section 2802(b) or 2803 of this title, and, if applicable, that such franchisor complied with the requirements of section 2802(d) of this title.

(d) Actual and exemplary damages and attorney and expert witness fees to franchisee; determination by court of right to exemplary damages and amount; attorney and expert witness fees to franchisor for frivolous actions

(1) If the franchisee prevails in any action under subsection (a) of this section, such franchisee shall be entitled—

(A) consistent with the Federal Rules of Civil Procedure, to actual damages;

(B) in the case of any such action which is based upon conduct of the franchisor which was in willful disregard of the requirements of section 2802, 2803, or 2807 of this title, or the rights of the franchisee thereunder, to exemplary damages, where appropriate; and

(C) to reasonable attorney and expert witness fees to be paid by the franchisor, unless the court determines that only nominal damages are to be awarded to such franchisee, in which case the court, in its discretion, need not direct that such fees be paid by the franchisor.

(2) The question of whether to award exemplary damages and the amount of any such award shall be determined by the court and not by a jury.

(3) In any action under subsection (a) of this section, the court may, in its discretion, direct that

reasonable attorney and expert witness fees be paid by the franchisee if the court finds that such action is frivolous.

(e) Discretionary power of court to compel continuation or renewal of franchise relationship; grounds for noncompulsion; right of franchisee to actual damages and attorney and expert witness fees unaffected

(1) In any action under subsection (a) of this section with respect to a failure of a franchisor to renew a franchise relationship in compliance with the requirements of section 2802 of this title, the court may not compel a continuation or renewal of the franchise relationship if the franchisor demonstrates to the satisfaction of the court that—

(A) the basis for such nonrenewal is a determination made by the franchisor in good faith and in the normal course of business—

(i) to convert the leased marketing premises to a use other than the sale or distribution of motor fuel,

(ii) to materially alter, add to, or replace such premises,

(iii) to sell such premises,

(iv) to withdraw from the marketing of motor fuel through retail outlets in the relevant geographic market area in which the marketing premises are located, or

(v) that renewal of the franchise relationship is likely to be uneconomical to the franchisor despite any reasonable changes or reasonable additions to the provisions of the franchise which may be acceptable to the franchisee; and

(B) the requirements of section 2804 of this title have been complied with.

(2) The provisions of paragraph (1) shall not affect any right of any franchisee to recover actual damages and reasonable attorney and expert witness fees under subsection (d) of this section if such nonrenewal is prohibited by section 2802 of this title.

(f) Release or waiver of rights

(1) No franchisor shall require, as a condition of entering into or renewing the franchise relationship, a franchisee to release or waive—

(A) any right that the franchisee has under this subchapter or other Federal law; or

(B) any right that the franchisee may have under any valid and applicable State law.

(2) No provision of any franchise shall be valid or enforceable if the provision specifies that the interpretation or enforcement of the franchise shall be governed by the law of any State other than the State in which the franchisee has the principal place of business of the franchisee.

(Pub. L. 95–297, title I, §105, June 19, 1978, 92 Stat. 331; Pub. L. 103–371, §4, Oct. 19, 1994, 108 Stat. 3485; Pub. L. 110–140, title II, §241(b), Dec. 19, 2007, 121 Stat. 1540.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (d)(1), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

2007—Subsecs. (a), (b)(1), (d)(1)(B). Pub. L. 110–140 substituted "2802, 2803, or 2807" for "2802 or 2803" wherever appearing.

1994—Subsec. (f). Pub. L. 103–371 added subsec. (f).

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

§2806. Relationship of statutory provisions to State and local laws

(a) Termination or nonrenewal of franchise

(1) To the extent that any provision of this subchapter applies to the termination (or the furnishing of notification with respect thereto) of any franchise, or to the nonrenewal (or the furnishing of notification with respect thereto) of any franchise relationship, no State or any political subdivision thereof may adopt, enforce, or continue in effect any provision of any law or regulation (including any remedy or penalty applicable to any violation thereof) with respect to termination (or the furnishing of notification with respect thereto) of any such franchise or to the nonrenewal (or the furnishing of notification with respect thereto) of any such franchise relationship unless such provision of such law or regulation is the same as the applicable provision of this subchapter.

(2) No State or political subdivision of a State may adopt, enforce, or continue in effect any provision of law (including a regulation) that requires a payment for the goodwill of a franchisee on the termination of a franchise or nonrenewal of a franchise relationship authorized by this subchapter.

(b) Transfer or assignment of franchise

(1) Nothing in this subchapter authorizes any transfer or assignment of any franchise or prohibits any transfer or assignment of any franchise as authorized by the provisions of such franchise or by any applicable provision of State law which permits such transfer or assignment without regard to any provision of the franchise.

(2) Nothing in this subchapter shall prohibit any State from specifying the terms and conditions under which any franchise or franchise relationship may be transferred to the designated successor of a franchisee upon the death of the franchisee.

(Pub. L. 95–297, title I, §106, June 19, 1978, 92 Stat. 332; Pub. L. 103–371, §5, Oct. 19, 1994, 108 Stat. 3485.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–371, §5(1), redesignated existing provisions as par. (1) and added par. (2). Subsec. (b). Pub. L. 103–371, §5(2), redesignated existing provisions as par. (1) and added par. (2).

§2807. Prohibition on restriction of installation of renewable fuel pumps

(a) Definition

In this section:

(1) Renewable fuel

The term "renewable fuel" means any fuel—

(A) at least 85 percent of the volume of which consists of ethanol; or

(B) any mixture of biodiesel and diesel or renewable diesel (as defined in regulations adopted pursuant to section 7545(o) of title 42 (40 CFR, part 80)), determined without regard to any use of kerosene and containing at least 20 percent biodiesel or renewable diesel.

(2) Franchise-related document

The term "franchise-related document" means—

(A) a franchise under this chapter; and

(B) any other contract or directive of a franchisor relating to terms or conditions of the sale of fuel by a franchisee.

(b) Prohibitions

(1) In general

No franchise-related document entered into or renewed on or after December 19, 2007, shall contain any provision allowing a franchisor to restrict the franchisee or any affiliate of the franchisee from—

(A) installing on the marketing premises of the franchisee a renewable fuel pump or tank, except that the franchisee's franchisor may restrict the installation of a tank on leased marketing

premises of such franchisor;

(B) converting an existing tank or pump on the marketing premises of the franchisee for renewable fuel use, so long as such tank or pump and the piping connecting them are either warranted by the manufacturer or certified by a recognized standards setting organization to be suitable for use with such renewable fuel;

(C) advertising (including through the use of signage) the sale of any renewable fuel;

(D) selling renewable fuel in any specified area on the marketing premises of the franchisee (including any area in which a name or logo of a franchisor or any other entity appears);

(E) purchasing renewable fuel from sources other than the franchisor if the franchisor does not offer its own renewable fuel for sale by the franchisee;

(F) listing renewable fuel availability or prices, including on service station signs, fuel dispensers, or light poles; or

(G) allowing for payment of renewable fuel with a credit card,

so long as such activities described in subparagraphs (A) through (G) do not constitute mislabeling, misbranding, willful adulteration, or other trademark violations by the franchisee.

(2) Effect of provision

Nothing in this section shall be construed to preclude a franchisor from requiring the franchisee to obtain reasonable indemnification and insurance policies.

(c) Exception to 3-grade requirement

No franchise-related document that requires that 3 grades of gasoline be sold by the applicable franchisee shall prevent the franchisee from selling a renewable fuel in lieu of 1, and only 1, grade of gasoline.

(Pub. L. 95–297, title I, §107, as added Pub. L. 110–140, title II, §241(a), Dec. 19, 2007, 121 Stat. 1538.)

EFFECTIVE DATE

Section effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as a note under section 1824 of Title 2, The Congress.

SUBCHAPTER II—OCTANE DISCLOSURE

§2821. Definitions

As used in this subchapter:

(1) The term "octane rating" means the rating of the antiknock characteristics of a grade or type of automotive fuel as determined by dividing by 2 the sum of the research octane number plus the motor octane number, unless another procedure is prescribed under section 2823(c)(3) of this title, in which case such term means the rating of such characteristics as determined under the procedure so prescribed.

(2) The terms "research octane number" and "motor octane number" have the meanings given such terms in the specifications of the American Society for Testing and Materials (ASTM) entitled "Standard Specification for Automotive Spark-Ignition Engine Fuel" designated D4814 (as in effect on June 19, 1978) and, with respect to any grade or type of automotive gasoline, are determined in accordance with test methods set forth in ASTM standard test methods designated D 2699 and D 2700 (as in effect on such date).

(3) The term "knock" means the combustion of a fuel spontaneously in localized areas of a cylinder of a spark-ignition engine, instead of the combustion of such fuel progressing from the spark.

(4) The term "automotive fuel retailer" means any person who markets automotive fuel to the

general public for ultimate consumption.

(5) The term "refiner" means any person engaged in the production or importation of automotive fuel.

(6) The term "automotive fuel" means liquid fuel of a type distributed for use as a fuel in any motor vehicle.

(7) The term "motor vehicle" means any self-propelled four-wheeled vehicle, of less than 6,000 pounds gross vehicle weight, which is designed primarily for use on public streets, roads, and highways.

(8) The term "new motor vehicle" means any motor vehicle the equitable or legal title to which has not previously been transferred to an ultimate purchaser.

(9) The term "ultimate purchaser" means, with respect to any item, the first person who purchases such item for purposes other than resale.

(10) The term "manufacturer" means any person who imports, manufactures, or assembles motor vehicles for sale.

(11) The term "automotive fuel requirement" means, with respect to automotive fuel for use in a motor vehicle or a class thereof, imported, manufactured, or assembled by a manufacturer, the minimum automotive fuel rating of such automotive fuel which such manufacturer recommends for the efficient operation of such motor vehicle, or a substantial portion of such class, without knocking.

(12) The term "model year" means a manufacturer's annual production period (as determined by the Federal Trade Commission) for motor vehicles or a class of motor vehicles. If a manufacturer has no annual production period, the term "model year" means the calendar year.

(13) The term "commerce" means any trade, traffic, transportation, exchange, or other commerce—

(A) between any State and any place outside of such State; or

(B) which affects any trade, transportation, exchange, or other commerce described in subparagraph (A).

(14) The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and any other commonwealth, territory, or possession of the United States.

(15) the [1] term "person", for purposes of applying any provision of the Federal Trade Commission Act [15 U.S.C. 41 et seq.] with respect to any provision of the subchapter, includes a partnership and a corporation.

(16) The term "distributor" means any person who receives automotive fuel and distributes such automotive fuel to another person other than the ultimate purchaser.

(17) The term "automotive fuel rating" means—

(A) the octane rating of an automotive spark-ignition engine fuel; and

(B) if provided for by the Federal Trade Commission by rule, the cetane rating of diesel fuel oils; or

(C) another form of rating determined by the Federal Trade Commission, after consultation with the American Society for Testing and Materials, to be more appropriate to carry out the purposes of this subchapter with respect to the automotive fuel concerned.

(18)(A) The term "cetane rating" means a measure, as indicated by a cetane index or cetane number, of the ignition quality of diesel fuel oil and of the influence of the diesel fuel oil on combustion roughness.

(B) The term "cetane index" and the term "cetane number" have the meanings determined in accordance with the test methods set forth in the American Society for Testing and Materials standard test methods—

(i) designated D976 or D4737 in the case of cetane index; and

(ii) designated D613 in the case of cetane number,

(as in effect on October 24, 1992) and shall apply to any grade or type of diesel fuel oils defined in the specification of the American Society for Testing and Materials entitled "Standard Specification for Diesel Fuel Oils" designated D975 (as in effect on October 24, 1992).

(Pub. L. 95–297, title II, §201, June 19, 1978, 92 Stat. 333; Pub. L. 102–486, title XV, §1501(a)–(c)(1), Oct. 24, 1992, 106 Stat. 2996.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in par. (15), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

CODIFICATION

October 24, 1992, referred to in par. (18)(B), was in the original "the date of the enactment of this Act" and "such date", which were translated as meaning the date of enactment of Pub. L. 102–486, which enacted par. (18), to reflect the probable intent of Congress.

AMENDMENTS

1992—Par. (1). Pub. L. 102–486, §1501(c)(1)(A), substituted "fuel" for "gasoline".

Par. (2). Pub. L. 102–486, §1501(c)(1)(B), substituted "Standard Specification for Automotive Spark-Ignition Engine Fuel" for "Standard Specifications for Automotive Gasoline" and "D4814 for "D 439".

Par. (4). Pub. L. 102–486, §1501(c)(1)(C), substituted "automotive fuel" for first reference to "gasoline" and "fuel" for second reference to "gasoline".

Par. (5). Pub. L. 102–486, §1501(c)(1)(D), added par. (5) and struck out former par. (5) which read as follows: "The term 'refiner' means any person engaged in—

"(A) the refining of crude oil to produce automotive gasoline; or

"(B) the importation of automotive gasoline."

Par. (6). Pub. L. 102–486, §1501(a), amended par. (6) generally. Prior to amendment, par. (6) read as follows: "The term 'automotive gasoline' means gasoline of a type distributed for use as a fuel in any motor vehicle."

Par. (11). Pub. L. 102–486, §1501(c)(1)(E), substituted "automotive fuel" for "octane" before "requirement" and before "rating", and "fuel" for "gasoline" before "for use" and before "which such".

Par. (16). Pub. L. 102–486, §1501(c)(1)(F), substituted "automotive fuel" for "gasoline" in two places.

Pars. (17), (18). Pub. L. 102–486, §1501(b), added pars. (17) and (18).

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–486, title XV, §1501(d)(1), Oct. 24, 1992, 106 Stat. 2997, provided that: "The amendments made by this section [amending this section and sections 2822 and 2823 of this title] shall become effective at the end of the one-year period beginning on the date of the enactment of this Act [Oct. 24, 1992]."

REGULATIONS

Pub. L. 102–486, title XV, §1501(d)(2), Oct. 24, 1992, 106 Stat. 2997, provided that: "The Federal Trade Commission shall, within 270 days after the date of the enactment of this Act [Oct. 24, 1992], prescribe rules for the purpose of implementing the amendments made in this section [amending this section and sections 2822 and 2823 of this title]."

[1] *So in original. Probably should be capitalized.*

§2822. Automotive fuel rating testing and disclosure requirements

(a) Determination and certification of automotive fuel rating by refiner distributing automotive fuel

Each refiner who distributes automotive fuel in commerce shall—

(1) determine the automotive fuel rating of any such fuel; and

(2) if such refiner distributes such fuel to any person other than the ultimate purchaser, certify, consistent with the determination made under paragraph (1), the automotive fuel rating of such fuel.

(b) Certification of automotive fuel rating by distributor receiving and distributing automotive fuel with certified automotive fuel rating; use of automotive fuel rating for certification by distributor

Each distributor who receives automotive fuel, the automotive fuel rating of which is certified to him under this section, and distributes such fuel in commerce to another person other than the ultimate purchaser shall certify to such other person the automotive fuel rating of such fuel consistent with—

(1) the automotive fuel rating of such fuel certified to such distributor; or

(2) if such distributor elects (at such time and in such manner as the Federal Trade Commission may, by rule, prescribe), the automotive fuel rating of such fuel determined by such distributor.

(c) Display of automotive fuel rating by automotive fuel retailer; use of automotive fuel rating for display

Each automotive fuel retailer shall display in a clear and conspicuous manner, at the point of sale to ultimate purchasers of automotive fuel, the automotive fuel rating of such automotive fuel, which automotive fuel rating shall be consistent with—

(1) the automotive fuel rating of such automotive fuel certified to such retailer under subsection (a)(2) or (b) of this section;

(2) if such automotive fuel retailer elects (at such time and in such manner as the Federal Trade Commission may, by rule, prescribe), the automotive fuel rating of such automotive fuel determined by such retailer for such automotive fuel; or

(3) if such automotive fuel retailer is a refiner, the automotive fuel rating of such automotive fuel determined under subsection (a)(1) of this section.

(d) Display or representation of automotive fuel requirements for new motor vehicles by manufacturer of such vehicles; promulgation of rules by Federal Trade Commission

The Federal Trade Commission shall, by rule, prescribe requirements, applicable to any manufacturer of new motor vehicles, with respect to the display on each such motor vehicle (or representation in connection with the sale of each such motor vehicle) of the automotive fuel requirement of such motor vehicle.

(e) Representation of antiknock characteristics of automotive fuel by person distributing automotive fuel; use of automotive fuel rating in representation

No person who distributes automotive fuel in commerce may make any representation respecting the antiknock characteristics of such fuel unless such representation fairly discloses the automotive fuel rating of such fuel consistent with such fuel's automotive fuel rating as certified to or determined by such person under the foregoing provisions of this section.

(f) Additional statutory considerations respecting certification, display, or representation of automotive fuel rating of automotive fuel

For purposes of this section, the automotive fuel rating of any automotive fuel shall be considered to be certified, displayed, or represented by any person consistent with the rating certified to, or determined by, such person—

(1) in the case of automotive fuel which consists of a blend of two or more quantities of automotive fuel of differing automotive fuel ratings, only if the rating certified, displayed, or represented by such person is the average of the automotive fuel ratings of such quantities, weighted by volume; or

(2) in the case of fuel which does not consist of such a blend, only if the automotive fuel rating such person certifies, displays, or represents is the same as the automotive fuel rating of such fuel certified to, or determined by, such person.

(g) Nonapplicability of statutory requirements

The foregoing provisions of this section shall not apply—

(1) to any representation (by display at the point of sale or by other means) of any characteristics of any automotive fuel other than its automotive fuel rating; or

(2) to the identification of automotive fuel at the point of sale (or elsewhere) by the trademark, trade name, or other identifying symbol or mark used in connection with the sale of such fuel.

(h) Display or representation of automotive fuel requirement of motor vehicle not to create express or implied warranty under State or Federal law respecting knocking characteristics of automotive fuel

Any display or representation, with respect to the automotive fuel requirement of any motor vehicle, required to be made under any rule prescribed under subsection (d) of this section shall not create an express or implied warranty under State or Federal law that any automotive fuel the automotive fuel rating of which equals or exceeds such automotive fuel requirement—

(1) may be used as a fuel in all motor vehicles of the same class as that motor vehicle without knocking; or

(2) may be used as a fuel in such motor vehicle under all operating conditions without knocking.

(Pub. L. 95–297, title II, §202, June 19, 1978, 92 Stat. 334; Pub. L. 102–486, title XV, §1501(c)(2), Oct. 24, 1992, 106 Stat. 2997.)

AMENDMENTS

1992—Pub. L. 102–486 amended section as follows: substituted "Automotive fuel rating" for "Octane" in section catchline; substituted "automotive fuel rating" and "automotive fuel ratings" for "octane rating" and "octane ratings", respectively, wherever appearing; in subsecs. (a) and (b), substituted "fuel" for "gasoline" wherever appearing; in subsec. (c), substituted "automotive fuel" for "gasoline" wherever appearing except that "fuel" substituted for second reference to "gasoline"; in subsec. (d), substituted "automotive fuel" for "octane"; in subsec. (e), substituted "fuel" for "gasoline" wherever appearing and substituted "fuel's" for "gasoline's"; in subsecs. (f), (g), and (h), substituted "fuel" for "gasoline" wherever appearing; and in subsec. (h), substituted "automotive fuel requirement" for "octane requirement" wherever appearing.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–486 effective at end of one-year period beginning Oct. 24, 1992, see section 1501(d)(1) of Pub. L. 102–486, set out as a note under section 2821 of this title.

EFFECTIVE DATE

Pub. L. 95–297, title II, §205, June 19, 1978, 92 Stat. 337, provided that:

"(a) Sections 202(a)(1) [subsec. (a)(1) of this section] and 203(b) [section 2823(b) of this title] shall take effect on the first day of the first calendar month beginning more than 6 months after the date of the enactment of this Act [June 19, 1978].

"(b) Subsections (a)(2), (b), (c), and (e) of section 202 [subsecs. (a)(2), (b), (c), and (e) of this section] shall take effect on the first day of the first calendar month beginning more than 9 months after such date of enactment [June 19, 1978].

"(c) Rules under section 202(d) [subsec. (d) of this section] may not take effect earlier than the beginning of the first motor vehicle model year which begins more than 9 months after such date of enactment [June 19, 1978]."

STUDIES

Section 1503 of Pub. L. 102–486 directed Administrator of Environmental Protection Agency to carry out a study to determine whether the anti-knock characteristics of nonliquid fuels usable as a fuel for motor vehicles could be determined and further directed Federal Trade Commission to carry out a study to determine the need for a uniform national label on devices used to dispense automotive fuel to consumers that would consolidate all information required by Federal law to be posted on such devices, with reports of the results of the studies to be submitted to Congress within one year of Oct. 24, 1992, together with recommendations and a description of the administrative and legislative actions needed to implement the recommendations.

§2823. Administration and enforcement provisions

(a) Procedural, investigative, and enforcement powers of Federal Trade Commission

The Federal Trade Commission shall have procedural, investigative, and enforcement powers,

including the power to issue procedural rules in enforcing compliance with the requirements of this subchapter and rules prescribed pursuant to the requirements of this subchapter, to further define terms used in this subchapter, and to require the filing of reports, the production of documents, and the appearance of witnesses, as though the applicable terms and conditions of the Federal Trade Commission Act [15 U.S.C. 41 et seq.] were part of this subchapter.

(b) Testing, certification, and notice requirements of Environmental Protection Agency; interagency enforcement agreements between Federal Trade Commission and Environmental Protection Agency and other Federal agencies

(1) The Environmental Protection Agency—

(A) may conduct field testing of the automotive fuel rating of automotive fuel, comparing the tested automotive fuel rating of fuel at retail outlets with the automotive fuel rating posted at those outlets;

(B) shall certify the results of such tests and comparisons to the Federal Trade Commission; and

(C) shall notify the Federal Trade Commission of any failure to post the automotive fuel rating.

(2) The Federal Trade Commission may enter into interagency agreements with the Environmental Protection Agency and such other agencies of the United States as the Commission determines appropriate for the purpose of assuring enforcement of the provisions of this subchapter in a manner which is consistent with—

(A) minimizing the cost of field inspection and related compliance activities; and

(B) reducing duplication of similar or related field compliance activities performed by agencies of the United States.

(c) Promulgation of rules by Federal Trade Commission; contents; requirements for compliance with rules

(1) Not later than 6 months after June 19, 1978, the Federal Trade Commission shall, by rule, prescribe and make effective—

(A) a uniform method by which a person may certify to another the automotive fuel rating of automotive fuel; and

(B) a uniform method of displaying the automotive fuel rating of automotive fuel at the point of sale to ultimate purchasers.

(2) Effective on and after the effective date of the rule prescribed under paragraph (1), any person—

(A) shall be considered to satisfy the requirements of subsection (a) or (b) of section 2822 of this title, as the case may be, only if such person complies with the requirements established pursuant to paragraph (1)(A); and

(B) shall be considered to satisfy the requirements of section 2822(c) of this title only if such person complies with the requirements established pursuant to paragraph (1)(B).

(3) The Federal Trade Commission may, by rule, prescribe procedures for determination of the automotive fuel rating of automotive fuel which varies from that prescribed in section 2821 of this title. In prescribing such rule, the Commission—

(A) shall consider—

(i) ease of administration and enforcement, and

(ii) industry practices in the distribution and marketing of automotive fuel; and

(B) may permit adjustments in such automotive fuel rating to take into account the effects of altitude, temperature, and humidity.

(4) The Federal Trade Commission may, by rule, prescribe and make effective a method of determining the automotive fuel rating of automotive fuel which consists of a blend of two or more quantities of automotive fuel of different automotive fuel ratings if the Federal Trade Commission

finds that the method prescribed more accurately reflects the automotive fuel rating of such blend than the weighted-average method set forth in section 2822(f)(1) of this title. Effective on and after the effective date of such rule, any person shall be considered to satisfy the requirements of section 2822(f)(1) of this title only if such person utilizes the method prescribed in such rule (in lieu of the method set forth in section 2822(f)(1) of this title).

(d) Statutory provisions applicable for promulgation of rules

(1) Except as provided in paragraph (2), rules under this subchapter shall be prescribed in accordance with section 553 of title 5, except that interested persons shall be afforded an opportunity to present written and oral data, views, and arguments with respect to any proposed rule.

(2) Rules prescribed under subsection (c)(3) of this section and section 2822(d) of this title shall be prescribed on the record after opportunity for an agency hearing.

(3) Section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) shall not apply with respect to any rule prescribed under this subchapter.

(e) Acts or practices constituting violations

It shall be an unfair or deceptive act or practice in or affecting commerce (within the meaning of section 5(a)(1) of the Federal Trade Commission Act [15 U.S.C. 45(a)(1)]) for any person to violate subsection (a), (b), (c), or (e) of section 2822 of this title, or a rule prescribed under subsection (d) of section 2822 of this title. For purposes of the Federal Trade Commission Act [15 U.S.C. 41 et seq.] (including any remedy or penalty applicable to any violation thereof) such a violation shall be treated as a violation of a rule under such Act respecting unfair or deceptive acts or practices.

(Pub. L. 95–297, title II, §203, June 19, 1978, 92 Stat. 335; Pub. L. 102–486, title XV, §§1501(c)(3), 1502(b), (c), Oct. 24, 1992, 106 Stat. 2997, 2998.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsecs. (a) and (e), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

AMENDMENTS

1992—Subsec. (b)(1). Pub. L. 102–486, §1502(c), struck out "shall" after "Agency" in introductory provisions, inserted "may" before "conduct" in subpar. (A), inserted "shall" before "certify" in subpar. (B), and in subpar. (C) inserted "shall" before "notify" and struck out before period at end "discovered in the course of such field testing".

Pub. L. 102–486, §1501(c)(3)(A), (B), substituted "automotive fuel rating" for "octane rating" and "fuel" for "gasoline" wherever appearing.

Subsec. (c). Pub. L. 102–486, §1501(c)(3), substituted "automotive fuel rating" for "octane rating" and "fuel" for "gasoline" wherever appearing, "section 2821" for "section 2821(1)" in par. (3), and "automotive fuel ratings" for "octane ratings" in par. (4).

Subsec. (e). Pub. L. 102–586, §1502(b), struck out before end of second sentence "; except that for purposes of section 5(m)(1)(A) of such Act, the term 'or knowledge fairly implied on the basis of objective circumstances' shall not apply to any violation by any gasoline retailer of the requirements of section 2822(c) or (e) of this title".

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 1501(c)(3) of Pub. L. 102–486 effective at the end of the one-year period beginning Oct. 24, 1992, see section 1501(d)(1) of Pub. L. 102–486, set out as a note under section 2821 of this title.

EFFECTIVE DATE

Subsec. (b) of this section effective on first day of first calendar month beginning more than 6 months after June 19, 1978, see section 205(a) of Pub. L. 95–297, set out as a note under section 2822 of this title.

§2824. Relationship of statutory provisions to State and local laws

(a) To the extent that any provision of this subchapter applies to any act or omission, no State or

any political subdivision thereof may adopt or continue in effect, except as provided in subsection (b) of this section, any provision of law or regulation with respect to such act or omission, unless such provision of such law or regulation is the same as the applicable provision of this subchapter.

(b) A State or political subdivision thereof may provide for any investigative or enforcement action, remedy, or penalty (including procedural actions necessary to carry out such investigative or enforcement actions, remedies, or penalties) with respect to any provision of law or regulation permitted by subsection (a) of this section.

(Pub. L. 95–297, title II, §204, June 19, 1978, 92 Stat. 337; Pub. L. 102–486, title XV, §1502(a), Oct. 24, 1992, 106 Stat. 2997.)

AMENDMENTS

1992—Pub. L. 102–486 amended section generally. Prior to amendment, section read as follows: "To the extent that any provision of this subchapter applies to any act or omission, no State or any political subdivision thereof may adopt, enforce, or continue in effect any provision of any law or regulation (including any remedy or penalty applicable to any violation thereof) with respect to such act or omission, unless such provision of such law or regulation is the same as the applicable provision of this subchapter."

SUBCHAPTER III—SUBSIDIZATION OF MOTOR FUEL MARKETING

§2841. Study by Secretary of Energy

(a) Consultation with Chairman of Federal Trade Commission, Attorney General, and other agencies deemed appropriate by Secretary

The Secretary of Energy, in consultation with the Chairman of the Federal Trade Commission and the Attorney General and other agencies as the Secretary deems appropriate, shall conduct a study of the extent to which producers, refiners, and other suppliers of motor fuel subsidize the sale of such motor fuel at retail or wholesale with profits obtained from other operations.

(b) Scope

Such study shall examine—

(1) the role of vertically integrated operations in facilitating subsidization of sales of motor fuel at wholesale or retail;

(2) the extent to which such subsidization is predatory and presents a threat to competition;

(3) the profitability of various segments of the petroleum industry;

(4) the impact of prohibiting such subsidization on the competitive viability of various segments of the petroleum industry, on prices of motor fuel to consumers and on the health and structure of the petroleum industry as a whole; and

(5) such other matters as the Secretary considers appropriate.

(c) Notice to interested parties and opportunity to present written and oral data, views and arguments

In conducting the study required by this section, the Secretary shall give appropriate notice and afford interested persons an opportunity to present written and oral data, views and arguments concerning such study.

(d) Report to Congress; contents and time for submission; Presidential promulgation of rules establishing interim measures; submission date and duration of interim measures; Congressional approval of interim measures

(1) The Secretary shall report the results of the study required by this section, together with such recommendations for legislative action and such statistical evidence as he deems appropriate to the Congress on or before the expiration of the eighteenth month after June 19, 1978.

(2) If the President determines that interim measures are necessary and appropriate to maintain the

competitive viability of the marketing sector of the petroleum industry during Congressional consideration of the recommendations contained in the report submitted under paragraph (1), he shall prescribe, by rule, in accordance with the procedures set forth in section 6393(a) of title 42 such interim measures.

(3) No interim measure proposed by the President under this section may be submitted after January 1, 1980, and the effect of such measure if approved by the Congress under paragraph (4) may not extend beyond 18 months after such Congressional approval.

(4) Such interim measure shall not take effect unless approved by both Houses of Congress as if it were a contingency plan under section 6422 of title 42: *Provided*, That the 60-day period referred to in such section shall be extended to 90 days for purposes of this section.

(e) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

(Pub. L. 95–297, title III, §301, June 19, 1978, 92 Stat. 337.)

CHAPTER 56—NATIONAL CLIMATE PROGRAM

Sec.

2901. Findings.
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2905. Repealed.
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§2901. Findings

The Congress finds and declares the following:

(1) Weather and climate change affect food production, energy use, land use, water resources and other factors vital to national security and human welfare.

(2) An ability to anticipate natural and man-induced changes in climate would contribute to the soundness of policy decisions in the public and private sectors.

(3) Significant improvements in the ability to forecast climate on an intermediate and long-term basis are possible.

(4) Information regarding climate is not being fully disseminated or used, and Federal efforts have given insufficient attention to assessing and applying this information.

(5) Climate fluctuation and change occur on a global basis, and deficiencies exist in the system for monitoring global climate changes. International cooperation for the purpose of sharing the benefits and costs of a global effort to understand climate is essential.

(6) The United States lacks a well-defined and coordinated program in climate-related research, monitoring, assessment of effects, and information utilization.

(Pub. L. 95–367, §2, Sept. 17, 1978, 92 Stat. 601.)

SHORT TITLE

Pub. L. 95–367, §1, Sept. 17, 1978, 92 Stat. 601, provided: "That this Act [enacting this chapter, amending section 25 of former Title 31, Money and Finance, and enacting provisions set out as a note under section 25 of former Title 31] may be cited as the 'National Climate Program Act'."

GLOBAL CLIMATE PROTECTION

Pub. L. 100–204, title XI, Dec. 22, 1987, 101 Stat. 1407, as amended by Pub. L. 103–199, title VI, §603(1),

Dec. 17, 1993, 107 Stat. 2327, provided that:

"SEC. 1101. SHORT TITLE.

"This title [this note] may be cited as the 'Global Climate Protection Act of 1987'.

"SEC. 1102. FINDINGS.

"The Congress finds as follows:

"(1) There exists evidence that manmade pollution—the release of carbon dioxide, chlorofluorocarbons, methane, and other trace gases into the atmosphere—may be producing a long-term and substantial increase in the average temperature on Earth, a phenomenon known as global warming through the greenhouse effect.

"(2) By early in the next century, an increase in Earth temperature could—

"(A) so alter global weather patterns as to have an effect on existing agricultural production and on the habitability of large portions of the Earth; and

"(B) cause thermal expansion of the oceans and partial melting of the polar ice caps and glaciers, resulting in rising sea levels.

"(3) Important research into the problem of climate change is now being conducted by various United States Government and international agencies, and the continuation and intensification of those efforts will be crucial to the development of an effective United States response.

"(4) While the consequences of the greenhouse effect may not be fully manifest until the next century, ongoing pollution and deforestation may be contributing now to an irreversible process. Necessary actions must be identified and implemented in time to protect the climate.

"(5) The global nature of this problem will require vigorous efforts to achieve international cooperation aimed at minimizing and responding to adverse climate change; such international cooperation will be greatly enhanced by United States leadership. A key step in international cooperation will be the meeting of the Governing Council of the United Nations Environment Program, scheduled for June 1989, which will seek to determine a direction for worldwide efforts to control global climate change.

"(6) Effective United States leadership in the international arena will depend upon a coordinated national policy.

"SEC. 1103. MANDATE FOR ACTION ON THE GLOBAL CLIMATE.

"(a) GOALS OF UNITED STATES POLICY.—United States policy should seek to—

"(1) increase worldwide understanding of the greenhouse effect and its environmental and health consequences;

"(2) foster cooperation among nations to develop more extensive and coordinated scientific research efforts with respect to the greenhouse effect;

"(3) identify technologies and activities to limit mankind's adverse effect on the global climate by—

"(A) slowing the rate of increase of concentrations of greenhouse gases in the atmosphere in the near term; and

"(B) stabilizing or reducing atmospheric concentrations of greenhouse gases over the long term; and

"(4) work toward multilateral agreements.

"(b) FORMULATION OF UNITED STATES POLICY.—The President, through the Environmental Protection Agency, shall be responsible for developing and proposing to Congress a coordinated national policy on global climate change. Such policy formulation shall consider research findings of the Committee on Earth Sciences of the Federal Coordinating Council on Science and Engineering Technology, the National Academy of Sciences, the National Oceanic and Atmospheric Administration, the National Science Foundation, the National Aeronautic and Space Administration, the Department of Energy, the Environmental Protection Agency, and other organizations engaged in the conduct of scientific research.

"(c) COORDINATION OF UNITED STATES POLICY IN THE INTERNATIONAL ARENA.—The Secretary of State shall be responsible to coordinate those aspects of United States policy requiring action through the channels of multilateral diplomacy, including the United Nations Environment Program and other international organizations. In the formulation of these elements of United States policy, the Secretary of State shall, under the direction of the President, work jointly with the Administrator of the Environmental Protection Agency and other United States agencies concerned with environmental protection, consistent with applicable Federal law.

"SEC. 1104. REPORT TO CONGRESS.

"Not later than 24 months after the date of enactment of this Act [Dec. 22, 1987], the Secretary of State and the Administrator of the Environmental Protection Agency shall jointly submit to all committees of

jurisdiction in the Congress a report which shall include—

"(1) a summary analysis of current international scientific understanding of the greenhouse effect, including its environmental and health consequences;

"(2) an assessment of United States efforts to gain international cooperation in limiting global climate change; and

"(3) a description of the strategy by which the United States intends to seek further international cooperation to limit global climate change.

"SEC. 1105. INTERNATIONAL YEAR OF GLOBAL CLIMATE PROTECTION.

"In order to focus international attention and concern on the problem of global warming, and to foster further work on multilateral treaties aimed at protecting the global climate, the Secretary of State shall undertake all necessary steps to promote, within the United Nations system, the early designation of an International Year of Global Climate Protection.

"SEC. 1106. CLIMATE PROTECTION AND UNITED STATES RELATIONS WITH THE INDEPENDENT STATES OF THE FORMER SOVIET UNION.

"In recognition of the respective leadership roles of the United States and the independent states of the former Soviet Union in the international arena, and of the extent to which they are producers of atmospheric pollutants, the Congress urges that the President accord the problem of climate protection a high priority on the agenda of United States relations with the independent states."

§2902. Purpose

It is the purpose of the Congress in this chapter to establish a national climate program that will assist the Nation and the world to understand and respond to natural and man-induced climate processes and their implications.

(Pub. L. 95–367, §3, Sept. 17, 1978, 92 Stat. 601.)

§2903. Definitions

As used in this chapter, unless the context otherwise requires:

(1) The term "Board" means the Climate Program Policy Board.

(2) The term "Office" means the National Climate Program Office.

(3) The term "Program" means the National Climate Program.

(4) The term "Secretary" means the Secretary of Commerce.

(Pub. L. 95–367, §4, Sept. 17, 1978, 92 Stat. 601; Pub. L. 99–272, title VI, §6084(a), Apr. 7, 1986, 100 Stat. 136.)

AMENDMENTS

1986—Pub. L. 99–272 added par. (1) and redesignated former pars. (1) to (3) as (2) to (4), respectively.

§2904. National Climate Program

(a) Establishment

The President shall establish a National Climate Program in accordance with the provisions, findings and purposes of this chapter.

(b) Duties

The President shall—

(1) promulgate the 5-year plans described in subsection (d)(9) of this section;

(2) define the roles in the Program of Federal officers, departments, and agencies, including the Departments of Agriculture, Commerce, Defense, Energy, Interior, State, and Transportation; the

Environmental Protection Agency; the National Aeronautics and Space Administration; the Council on Environmental Quality; the National Science Foundation; and the Office of Science and Technology Policy; and

(3) provide for Program coordination.

(c) National Climate Program Office

(1) The Secretary shall establish within the Department of Commerce a National Climate Program Office not later than 30 days after September 17, 1978.

(2) The Office shall—

(A) serve as the lead entity responsible for administering the program;

(B) be headed by a Director who shall represent the Climate Program Policy Board and shall be spokesperson for the program;

(C) serve as the staff for the Board and its supporting committees and working groups;

(D) review each agency budget request transmitted under subsection (g)(1) of this section and submit an analysis of the requests to the Board for its review;

(E) be responsible for coordinating interagency participation in international climate-related activities; and

(F) work with the National Academy of Sciences and other private, academic, State, and local groups in preparing and implementing the 5-year plan (described in subsection (d)(9) of this section) and the program.

The analysis described in subparagraph (D) shall include an analysis of how each agency's budget request relates to the priorities and goals of the program established pursuant to this chapter.

(3) The Secretary may provide, through the Office, financial assistance, in the form of contracts or grants or cooperative agreements, for climate-related activities which are needed to meet the goals and priorities of the program set forth in the 5-year plan pursuant to subsection (d)(9) of this section, if such goals and priorities are not being adequately addressed by any Federal department, agency, or instrumentality.

(4) Each Federal officer, employee, department and agency involved in the Program shall cooperate with the Secretary in carrying out the provisions of this chapter.

(d) Program elements

The Program shall include, but not be limited to, the following elements:

(1) assessments of the effect of climate on the natural environment, agricultural production, energy supply and demand, land and water resources, transportation, human health and national security. Such assessments shall be conducted to the maximum extent possible by those Federal agencies having national programs in food, fiber, raw materials, energy, transportation, land and water management, and other such responsibilities, in accordance with existing laws and regulations. Where appropriate such assessments may include recommendations for action;

(2) basic and applied research to improve the understanding of climate processes, natural and man induced, and the social, economic, and political implications of climate change;

(3) methods for improving climate forecasts on a monthly, seasonal, yearly, and longer basis;

(4) global data collection, and monitoring and analysis activities to provide reliable, useful and readily available information on a continuing basis;

(5) systems for the management and active dissemination of climatological data, information and assessments, including mechanisms for consultation with current and potential users;

(6) measures for increasing international cooperation in climate research, monitoring, analysis and data dissemination;

(7) mechanisms for intergovernmental climate-related studies and services including participation by universities, the private sector and others concerned with applied research and advisory services. Such mechanisms may provide, among others, for the following State and regional services and functions: (A) studies relating to and analyses of climatic effects on agricultural production, water resources, energy needs, and other critical sectors of the economy; (B) atmospheric data collection and monitoring on a statewide and regional basis; (C) advice to

regional, State, and local government agencies regarding climate-related issues; (D) information to users within the State regarding climate and climatic effects; and (E) information to the Secretary regarding the needs of persons within the States for climate-related services, information, and data. The Secretary may make annual grants to any State or group of States, which grants shall be made available to public or private educational institutions, to State agencies, and to other persons or institutions qualified to conduct climate-related studies or provide climate-related services;

(8) experimental climate forecast centers, which shall (A) be responsible for making and routinely updating experimental climate forecasts of a monthly, seasonal, annual, and longer nature, based on a variety of experimental techniques; (B) establish procedures to have forecasts reviewed and their accuracy evaluated; and (C) protect against premature reliance on such experimental forecasts; and

(9) a preliminary 5-year plan, to be submitted to the Congress for review and comment, not later than 180 days after September 17, 1978, and a final 5-year plan to be submitted to the Congress not later than 1 year after September 17, 1978, that shall be revised and extended at least once every four years. Each plan shall establish the goals and priorities for the Program, including the intergovernmental program described in paragraph (7), over the subsequent 5-year period, and shall contain details regarding (A) the role of Federal agencies in the programs, (B) Federal funding required to enable the Program to achieve such goals, and (C) Program accomplishments that must be achieved to ensure that Program goals are met within the time frame established by the plan.

(e) Climate Program Policy Board

(1) The Secretary shall establish and maintain an interagency Climate Program Policy Board, consisting of representatives of the Federal agencies specified in subsection (b)(2) of this section and any other agency which the Secretary determines should participate in the Program.

(2) The Board shall—

(A) be responsible for coordinated planning and progress review for the Program;

(B) review all agency and department budget requests related to climate transmitted under subsection (g)(1) of this section and submit a report to the Office of Management and Budget concerning such budget requests;

(C) establish and maintain such interagency groups as the Board determines to be necessary to carry out its activities; and

(D) consult with and seek the advice of users and producers of climate data, information, and services to guide the Board's efforts, keeping the Director and the Congress advised of such contacts.

(3) The Board biennially shall select a Chair from among its members. A Board member who is a representative of an agency may not serve as Chair of the Board for a term if an individual who represented that same agency on the Board served as the Board's Chair for the previous term.

(f) Cooperation

(1) The Program shall be conducted so as to encourage cooperation with, and participation in the Program by, other organizations or agencies involved in related activities. For this purpose the Secretary shall cooperate and participate with other Federal agencies, and foreign, international, and domestic organizations and agencies involved in international or domestic climate-related programs.

(2) The Secretary and the Secretary of State shall cooperate with the Office in (A) providing representation at climate-related international meetings and conferences in which the United States participates, and (B) coordinating the activities of the Program with the climate programs of other nations and international agencies and organizations, including the World Meteorological Organization, the International Council of Scientific Unions, the United Nations Environmental Program, the United Nations Educational, Scientific, and Cultural Organization, the World Health Organization, and Food and Agriculture Organization.

(g) Budgeting

Each Federal agency and department participating in the Program, shall prepare and submit to the Office of Management and Budget, on or before the date of submission of departmental requests for appropriations to the Office of Management and Budget, an annual request for appropriations for the Program for the subsequent fiscal year and shall transmit a copy of such request to the National Climate Program Office. The Office of Management and Budget shall review the request for appropriations as an integrated, coherent, multiagency request.

(Pub. L. 95–367, §5(a)–(g)(1), Sept. 17, 1978, 92 Stat. 601–603; Pub. L. 99–272, title VI, §6084(b)–(f), Apr. 7, 1986, 100 Stat. 136, 137.)

CODIFICATION

Subsec. (g) of this section in the original was par. (1) of section 5(g) of Pub. L. 95–367 and has been set out without such par. (1) designation for purposes of codification. For classification of par. (2) of section 5(g) to the Code, see Tables.

AMENDMENTS

1986—Subsec. (c). Pub. L. 99–272, §6084(b), designated first sentence as par. (1), substituted pars. (2) and (3) for second sentence which provided that "The Office shall be the lead entity responsible for administering the Program", and designated third sentence as par. (4).

Subsec. (d)(7). Pub. L. 99–272, §6084(c)(1), inserted provision that such mechanisms may provide, among others, for certain enumerated State and regional services and functions.

Subsec. (d)(9). Pub. L. 99–272, §6084(c)(2), (3), substituted "at least once every four years" for "biennially" and "described in paragraph (7)" for "under section 2905 of this title".

Subsec. (e). Pub. L. 99–272, §6084(d), substituted provisions relating to the establishment and maintenance of the Climate Program Policy Board for provisions relating to the establishment and maintenance of an advisory committee and interagency groups.

Subsec. (f)(2). Pub. L. 99–272, §6084(e), substituted "shall cooperate with the Office in" for "shall cooperate in".

Subsec. (g). Pub. L. 99–272, §6084(f), inserted provision requiring each Federal agency and department participating in the Program to transmit a copy of such request to the National Climate Program Office.

§2905. Repealed. Pub. L. 99–272, title VI, §6084(g), Apr. 7, 1986, 100 Stat. 137

Section, Pub. L. 95–367, §6, Sept. 17, 1978, 92 Stat. 603, related to establishment and requirements of intergovernmental climate programs.

§2906. Annual report

The Secretary shall prepare and submit to the President and the authorizing committees of the Congress, not later than March 31 of each year, a report on the activities conducted pursuant to this chapter during the preceding fiscal year, including—

(a) a summary of the achievements of the Program during the previous fiscal year;

(b) an analysis of the progress made toward achieving the goals and objectives of the Program;

(c) a copy of the 5-year plan and any changes made in such plan;

(d) a summary of the multiagency budget request for the Program of section 2904(g) of this title; and

(e) any recommendations for additional legislation which may be required to assist in achieving the purposes of this chapter.

(Pub. L. 95–367, §7, Sept. 17, 1978, 92 Stat. 604; Pub. L. 97–375, title II, §202(b), Dec. 21, 1982, 96 Stat. 1822.)

AMENDMENTS

1982—Pub. L. 97–375 substituted "March 31" for "January 30".

§2907. Contract and grant authority; records and audits

(a) Functions vested in any Federal officer or agency by this chapter or under the Program may be exercised through the facilities and personnel of the agency involved or, to the extent provided or approved in advance in appropriation Acts, by other persons or entities under contracts or grant arrangements entered into by such officer or agency.

(b)(1) Each person or entity to which Federal funds are made available under a contract or grant arrangement as authorized by this chapter shall keep such records as the Director of the Office shall prescribe, including records which fully disclose the amount and disposition by such person or entity of such funds, the total cost of the activities for which such funds were so made available, the amount of that portion of such cost supplied from other sources, and such other records as will facilitate an effective audit.

(2) The Director of the Office and the Comptroller General of the United States, or any of their duly authorized representatives, shall, until the expiration of 3 years after the completion of the activities (referred to in paragraph (1)) of any person or entity pursuant to any contract or grant arrangement referred to in subsection (a) of this section, have access for the purpose of audit and examination to any books, documents, papers, and records of such person or entity which, in the judgment of the Director or the Comptroller General, may be related or pertinent to such contract or grant arrangement.

(Pub. L. 95–367, §8, Sept. 17, 1978, 92 Stat. 604.)

§2908. Authorization of appropriations

In addition to any other funds otherwise authorized to be appropriated for the purpose of conducting climate-related programs, there are authorized to be appropriated to the Secretary, for the purpose of carrying out the provisions of this chapter, not to exceed $50,000,000 for the fiscal year ending September 30, 1979, not to exceed $65,000,000 for the fiscal year ending September 30, 1980, and not to exceed $25,500,000 for the fiscal year ending September 30, 1981, of which amount not less than $2,653,000 shall be made directly available to the National Climate Program Office in the form of a budget item separate from the activities of the National Oceanic and Atmospheric Administration.

(Pub. L. 95–367, §9, Sept. 17, 1978, 92 Stat. 605; Pub. L. 96–547, §1, Dec. 18, 1980, 94 Stat. 3217.)

AMENDMENTS

1980—Pub. L. 96–547 revised former subsec. (a) into entire section with additional provisions relating to fiscal year ending Sept. 30, 1981, and struck out subsec. (b) setting forth authorization of appropriations for grants.

CHAPTER 56A—GLOBAL CHANGE RESEARCH

Sec.

2921. Definitions.

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2933. United States Global Change Research Program.
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2951. Findings and purposes.
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2961. Study and decision aid.

§2921. Definitions

As used in this chapter, the term—

(1) "Committee" means the Committee on Earth and Environmental Sciences established under section 2932 of this title;

(2) "Council" means the Federal Coordinating Council on Science, Engineering, and Technology;

(3) "global change" means changes in the global environment (including alterations in climate, land productivity, oceans or other water resources, atmospheric chemistry, and ecological systems) that may alter the capacity of the Earth to sustain life;

(4) "global change research" means study, monitoring, assessment, prediction, and information management activities to describe and understand—

(A) the interactive physical, chemical, and biological processes that regulate the total Earth system;

(B) the unique environment that the Earth provides for life;

(C) changes that are occurring in the Earth system; and

(D) the manner in which such system, environment, and changes are influenced by human actions;

(5) "Plan" means the National Global Change Research Plan developed under section 2934 of this title, or any revision thereof; and

(6) "Program" means the United States Global Change Research Program established under section 2933 of this title.

(Pub. L. 101–606, §2, Nov. 16, 1990, 104 Stat. 3096.)

SHORT TITLE

Pub. L. 101–606, §1, Nov. 16, 1990, 104 Stat. 3096, provided that: "This Act [enacting this chapter] may be cited as the 'Global Change Research Act of 1990'."

Pub. L. 101–606, title II, §201, Nov. 16, 1990, 104 Stat. 3102, provided that: "This title [enacting subchapter II of this chapter] may be cited as the 'International Cooperation in Global Change Research Act of 1990'."

SUBCHAPTER I—UNITED STATES GLOBAL CHANGE RESEARCH PROGRAM

§2931. Findings and purpose

(a) Findings

The Congress makes the following findings:

(1) Industrial, agricultural, and other human activities, coupled with an expanding world population, are contributing to processes of global change that may significantly alter the Earth habitat within a few human generations.

(2) Such human-induced changes, in conjunction with natural fluctuations, may lead to significant global warming and thus alter world climate patterns and increase global sea levels.

Over the next century, these consequences could adversely affect world agricultural and marine production, coastal habitability, biological diversity, human health, and global economic and social well-being.

(3) The release of chlorofluorocarbons and other stratospheric ozone-depleting substances is rapidly reducing the ability of the atmosphere to screen out harmful ultraviolet radiation, which could adversely affect human health and ecological systems.

(4) Development of effective policies to abate, mitigate, and cope with global change will rely on greatly improved scientific understanding of global environmental processes and on our ability to distinguish human-induced from natural global change.

(5) New developments in interdisciplinary Earth sciences, global observing systems, and computing technology make possible significant advances in the scientific understanding and prediction of these global changes and their effects.

(6) Although significant Federal global change research efforts are underway, an effective Federal research program will require efficient interagency coordination, and coordination with the research activities of State, private, and international entities.

(b) Purpose

The purpose of this subchapter is to provide for development and coordination of a comprehensive and integrated United States research program which will assist the Nation and the world to understand, assess, predict, and respond to human-induced and natural processes of global change.

(Pub. L. 101–606, title I, §101, Nov. 16, 1990, 104 Stat. 3096.)

§2932. Committee on Earth and Environmental Sciences

(a) Establishment

The President, through the Council, shall establish a Committee on Earth and Environmental Sciences. The Committee shall carry out Council functions under section 6651 of title 42 relating to global change research, for the purpose of increasing the overall effectiveness and productivity of Federal global change research efforts.

(b) Membership

The Committee shall consist of at least one representative from—

(1) the National Science Foundation;

(2) the National Aeronautics and Space Administration;

(3) the National Oceanic and Atmospheric Administration of the Department of Commerce;

(4) the Environmental Protection Agency;

(5) the Department of Energy;

(6) the Department of State;

(7) the Department of Defense;

(8) the Department of the Interior;

(9) the Department of Agriculture;

(10) the Department of Transportation;

(11) the Office of Management and Budget;

(12) the Office of Science and Technology Policy;

(13) the Council on Environmental Quality;

(14) the National Institute of Environmental Health Sciences of the National Institutes of Health; and

(15) such other agencies and departments of the United States as the President or the Chairman of the Council considers appropriate.

Such representatives shall be high ranking officials of their agency or department, wherever possible the head of the portion of that agency or department that is most revelant [1] to the purpose of the subchapter described in section 2931(b) of this title.

(c) Chairperson

The Chairman of the Council, in consultation with the Committee, biennially shall select one of the Committee members to serve as Chairperson. The Chairperson shall be knowledgeable and experienced with regard to the administration of scientific research programs, and shall be a representative of an agency that contributes substantially, in terms of scientific research capability and budget, to the Program.

(d) Support personnel

An Executive Secretary shall be appointed by the Chairperson of the Committee, with the approval of the Committee. The Executive Secretary shall be a permanent employee of one of the agencies or departments represented on the Committee, and shall remain in the employ of such agency or department. The Chairman of the Council shall have the authority to make personnel decisions regarding any employees detailed to the Council for purposes of working on business of the Committee pursuant to section 6651 of title 42.

(e) Functions relative to global change

The Council, through the Committee, shall be responsible for planning and coordinating the Program. In carrying out this responsibility, the Committee shall—

(1) serve as the forum for developing the Plan and for overseeing its implementation;

(2) improve cooperation among Federal agencies and departments with respect to global change research activities;

(3) provide budgetary advice as specified in section 2935 of this title;

(4) work with academic, State, industry, and other groups conducting global change research, to provide for periodic public and peer review of the Program;

(5) cooperate with the Secretary of State in—

(A) providing representation at international meetings and conferences on global change research in which the United States participates; and

(B) coordinating the Federal activities of the United States with programs of other nations and with international global change research activities such as the International Geosphere-Biosphere Program;

(6) consult with actual and potential users of the results of the Program to ensure that such results are useful in developing national and international policy responses to global change; and

(7) report at least annually to the President and the Congress, through the Chairman of the Council, on Federal global change research priorities, policies, and programs.

(Pub. L. 101–606, title I, §102, Nov. 16, 1990, 104 Stat. 3097.)

[1] *So in original. Probably should be "relevant".*

§2933. United States Global Change Research Program

The President shall establish an interagency United States Global Change Research Program to improve understanding of global change. The Program shall be implemented by the Plan developed under section 2934 of this title.

(Pub. L. 101–606, title I, §103, Nov. 16, 1990, 104 Stat. 3098.)

§2934. National Global Change Research Plan

(a) In general

The Chairman of the Council, through the Committee, shall develop a National Global Change Research Plan for implementation of the Program. The Plan shall contain recommendations for

national global change research. The Chairman of the Council shall submit the Plan to the Congress within one year after November 16, 1990, and a revised Plan shall be submitted at least once every three years thereafter.

(b) Contents of Plan

The Plan shall—

(1) establish, for the 10-year period beginning in the year the Plan is submitted, the goals and priorities for Federal global change research which most effectively advance scientific understanding of global change and provide usable information on which to base policy decisions relating to global change;

(2) describe specific activities, including research activities, data collection and data analysis requirements, predictive modeling, participation in international research efforts, and information management, required to achieve such goals and priorities;

(3) identify and address, as appropriate, relevant programs and activities of the Federal agencies and departments represented on the Committee that contribute to the Program;

(4) set forth the role of each Federal agency and department in implementing the Plan;

(5) consider and utilize, as appropriate, reports and studies conducted by Federal agencies and departments, the National Research Council, or other entities;

(6) make recommendations for the coordination of the global change research activities of the United States with such activities of other nations and international organizations, including—

(A) a description of the extent and nature of necessary international cooperation;

(B) the development by the Committee, in consultation when appropriate with the National Space Council, of proposals for cooperation on major capital projects;

(C) bilateral and multilateral proposals for improving worldwide access to scientific data and information; and

(D) methods for improving participation in international global change research by developing nations; and

(7) estimate, to the extent practicable, Federal funding for global change research activities to be conducted under the Plan.

(c) Research elements

The Plan shall provide for, but not be limited to, the following research elements:

(1) Global measurements, establishing worldwide observations necessary to understand the physical, chemical, and biological processes responsible for changes in the Earth system on all relevant spatial and time scales.

(2) Documentation of global change, including the development of mechanisms for recording changes that will actually occur in the Earth system over the coming decades.

(3) Studies of earlier changes in the Earth system, using evidence from the geological and fossil record.

(4) Predictions, using quantitative models of the Earth system to identify and simulate global environmental processes and trends, and the regional implications of such processes and trends.

(5) Focused research initiatives to understand the nature of and interaction among physical, chemical, biological, and social processes related to global change.

(d) Information management

The Plan shall provide recommendations for collaboration within the Federal Government and among nations to—

(1) establish, develop, and maintain information bases, including necessary management systems which will promote consistent, efficient, and compatible transfer and use of data;

(2) create globally accessible formats for data collected by various international sources; and

(3) combine and interpret data from various sources to produce information readily usable by policymakers attempting to formulate effective strategies for preventing, mitigating, and adapting to the effects of global change.

(e) National Research Council evaluation

The Chairman of the Council shall enter into an agreement with the National Research Council under which the National Research Council shall—

(1) evaluate the scientific content of the Plan; and

(2) provide information and advice obtained from United States and international sources, and recommended priorities for future global change research.

(f) Public participation

In developing the Plan, the Committee shall consult with academic, State, industry, and environmental groups and representatives. Not later than 90 days before the Chairman of the Council submits the Plan, or any revision thereof, to the Congress, a summary of the proposed Plan shall be published in the Federal Register for a public comment period of not less than 60 days.

(Pub. L. 101–606, title I, §104, Nov. 16, 1990, 104 Stat. 3099.)

§2935. Budget coordination

(a) Committee guidance

The Committee shall each year provide general guidance to each Federal agency or department participating in the Program with respect to the preparation of requests for appropriations for activities related to the Program.

(b) Submission of reports with agency appropriations requests

(1) Working in conjunction with the Committee, each Federal agency or department involved in global change research shall include with its annual request for appropriations submitted to the President under section 1108 of title 31 a report which—

(A) identifies each element of the proposed global change research activities of the agency or department;

(B) specifies whether each element (i) contributes directly to the Program or (ii) contributes indirectly but in important ways to the Program; and

(C) states the portion of its request for appropriations allocated to each element of the Program.

(2) Each agency or department that submits a report under paragraph (1) shall submit such report simultaneously to the Committee.

(c) Consideration in President's budget

(1) The President shall, in a timely fashion, provide the Committee with an opportunity to review and comment on the budget estimate of each agency and department involved in global change research in the context of the Plan.

(2) The President shall identify in each annual budget submitted to the Congress under section 1105 of title 31 those items in each agency's or department's annual budget which are elements of the Program.

(Pub. L. 101–606, title I, §105, Nov. 16, 1990, 104 Stat. 3100.)

§2936. Scientific assessment

On a periodic basis (not less frequently than every 4 years), the Council, through the Committee, shall prepare and submit to the President and the Congress an assessment which—

(1) integrates, evaluates, and interprets the findings of the Program and discusses the scientific uncertainties associated with such findings;

(2) analyzes the effects of global change on the natural environment, agriculture, energy production and use, land and water resources, transportation, human health and welfare, human social systems, and biological diversity; and

(3) analyzes current trends in global change, both human-inducted [1] and natural, and projects major trends for the subsequent 25 to 100 years.

(Pub. L. 101–606, title I, §106, Nov. 16, 1990, 104 Stat. 3101.)

[1] *So in original. Probably should be "human-induced".*

§2937. Omitted

CODIFICATION

Section, Pub. L. 101–606, title I, §107, Nov. 16, 1990, 104 Stat. 3101, which required the Chairman of the Federal Coordinating Council on Science, Engineering, and Technology to submit an annual report to Congress on the activities conducted by the Committee on Earth and Environmental Sciences pursuant to this subchapter, terminated effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 157 of House Document No. 103–7.

§2938. Relation to other authorities

(a) National Climate Program research activities

The President, the Chairman of the Council, and the Secretary of Commerce shall ensure that relevant research activities of the National Climate Program, established by the National Climate Program Act (15 U.S.C. 2901 et seq.), are considered in developing national global change research efforts.

(b) Availability of research findings

The President, the Chairman of the Council, and the heads of the agencies and departments represented on the Committee, shall ensure that the research findings of the Committee, and of Federal agencies and departments, are available to—

(1) the Environmental Protection Agency for use in the formulation of a coordinated national policy on global climate change pursuant to section 1103 of the Global Climate Protection Act of 1987 (15 U.S.C. 2901 note); and

(2) all Federal agencies and departments for use in the formulation of coordinated national policies for responding to human-induced and natural processes of global change pursuant to other statutory responsibilities and obligations.

(c) Effect on Federal response actions

Nothing in this subchapter shall be construed, interpreted, or applied to preclude or delay the planning or implementation of any Federal action designed, in whole or in part, to address the threats of stratospheric ozone depletion or global climate change.

(Pub. L. 101–606, title I, §108, Nov. 16, 1990, 104 Stat. 3101.)

REFERENCES IN TEXT

The National Climate Program Act, referred to in subsec. (a), is Pub. L. 95–367, Sept. 17, 1978, 92 Stat. 601, as amended, which is classified principally to chapter 56 (§2901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2901 of this title and Tables.

SUBCHAPTER II—INTERNATIONAL COOPERATION IN GLOBAL CHANGE RESEARCH

§2951. Findings and purposes

(a) Findings

The Congress makes the following findings:

(1) Pooling of international resources and scientific capabilities will be essential to a successful international global change program.

(2) While international scientific planning is already underway, there is currently no comprehensive intergovernmental mechanism for planning, coordinating, or implementing research to understand global change and to mitigate possible adverse effects.

(3) An international global change research program will be important in building future consensus on methods for reducing global environmental degradation.

(4) The United States, as a world leader in environmental and Earth sciences, should help provide leadership in developing and implementing an international global change research program.

(b) Purposes

The purposes of this subchapter are to—

(1) promote international, intergovernmental cooperation on global change research;

(2) involve scientists and policymakers from developing nations in such cooperative global change research programs; and

(3) promote international efforts to provide technical and other assistance to developing nations which will facilitate improvements in their domestic standard of living while minimizing damage to the global or regional environment.

(Pub. L. 101–606, title II, §202, Nov. 16, 1990, 104 Stat. 3102.)

§2952. International discussions

(a) Global change research

The President should direct the Secretary of State, in cooperation with the Committee, to initiate discussions with other nations leading toward international protocols and other agreements to coordinate global change research activities. Such discussions should include the following issues:

(1) Allocation of costs in global change research programs, especially with respect to major capital projects.

(2) Coordination of global change research plans with those developed by international organizations such as the International Council on Scientific Unions, the World Meteorological Organization, and the United Nations Environment Program.

(3) Establishment of global change research centers and training programs for scientists, especially those from developing nations.

(4) Development of innovative methods for management of international global change research, including—

(A) use of new or existing intergovernmental organizations for the coordination or funding of global change research; and

(B) creation of a limited foundation for global change research.

(5) The prompt establishment of international projects to—

(A) create globally accessible formats for data collected by various international sources; and

(B) combine and interpret data from various sources to produce information readily usable by policymakers attempting to formulate effective strategies for preventing, mitigating, and adapting to possible adverse effects of global change.

(6) Establishment of international offices to disseminate information useful in identifying, preventing, mitigating, or adapting to the possible effects of global change.

(b) Energy research

The President should direct the Secretary of State (in cooperation with the Secretary of Energy, the Secretary of Commerce, the United States Trade Representative, and other appropriate members of the Committee) to initiate discussions with other nations leading toward an international research protocol for cooperation on the development of energy technologies which have minimally adverse effects on the environment. Such discussions should include, but not be limited to, the following issues:

(1) Creation of an international cooperative program to fund research related to energy efficiency, solar and other renewable energy sources, and passively safe and diversion-resistant nuclear reactors.

(2) Creation of an international cooperative program to develop low cost energy technologies which are appropriate to the environmental, economic, and social needs of developing nations.

(3) Exchange of information concerning environmentally safe energy technologies and practices, including those described in paragraphs (1) and (2).

(Pub. L. 101–606, title II, §203, Nov. 16, 1990, 104 Stat. 3102.)

§2953. Global Change Research Information Office

Not more than 180 days after November 16, 1990, the President shall, in consultation with the Committee and all relevant Federal agencies, establish an Office of Global Change Research Information. The purpose of the Office shall be to disseminate to foreign governments, businesses, and institutions, as well as the citizens of foreign countries, scientific research information available in the United States which would be useful in preventing, mitigating, or adapting to the effects of global change. Such information shall include, but need not be limited to, results of scientific research and development on technologies useful for—

(1) reducing energy consumption through conservation and energy efficiency;

(2) promoting the use of solar and renewable energy sources which reduce the amount of greenhouse gases released into the atmosphere;

(3) developing replacements for chlorofluorocarbons, halons, and other ozone-depleting substances which exhibit a significantly reduced potential for depleting stratospheric ozone;

(4) promoting the conservation of forest resources which help reduce the amount of carbon dioxide in the atmosphere;

(5) assisting developing countries in ecological pest management practices and in the proper use of agricultural, and industrial chemicals; and

(6) promoting recycling and source reduction of pollutants in order to reduce the volume of waste which must be disposed of, thus decreasing energy use and greenhouse gas emissions.

(Pub. L. 101–606, title II, §204, Nov. 16, 1990, 104 Stat. 3103.)

SUBCHAPTER III—GROWTH DECISION AID

§2961. Study and decision aid

(a) Study of consequences of community growth and development; decision aid to assist State and local authorities in managing development

The Secretary of Commerce shall conduct a study of the implications and potential consequences of growth and development on urban, suburban, and rural communities. Based upon the findings of the study, the Secretary shall produce a decision aid to assist State and local authorities in planning and managing urban, suburban, and rural growth and development while preserving community character.

(b) Consultation with appropriate Federal departments and agencies

The Secretary of Commerce shall consult with other appropriate Federal departments and agencies as necessary in carrying out this section.

(c) Report

The Secretary of Commerce shall submit to the Congress a report containing the decision aid produced under subsection (a) of this section no later than January 30, 1992. The Secretary shall notify appropriate State and local authorities that such decision aid is available on request.

(Pub. L. 101–606, title III, §301, Nov. 16, 1990, 104 Stat. 3104.)

CHAPTER 57—INTERSTATE HORSERACING

Sec.

3001. Congressional findings and policy.
3002. Definitions.
3003. Acceptance of interstate off-track wager.
3004. Regulation of interstate off-track wagering.
3005. Liability and damages.
3006. Civil action.
3007. Jurisdiction and venue.

§3001. Congressional findings and policy

(a) The Congress finds that—

(1) the States should have the primary responsibility for determining what forms of gambling may legally take place within their borders;

(2) the Federal Government should prevent interference by one State with the gambling policies of another, and should act to protect identifiable national interests; and

(3) in the limited area of interstate off-track wagering on horseraces, there is a need for Federal action to ensure States will continue to cooperate with one another in the acceptance of legal interstate wagers.

(b) It is the policy of the Congress in this chapter to regulate interstate commerce with respect to wagering on horseracing, in order to further the horseracing and legal off-track betting industries in the United States.

(Pub. L. 95–515, §2, Oct. 25, 1978, 92 Stat. 1811.)

EFFECTIVE DATE

Pub. L. 95–515, §9, Oct. 25, 1978, 92 Stat. 1815, provided that:

"(a) The provisions of this Act [this chapter] shall take effect on the date of enactment of this Act [Oct. 25, 1978], and, except as provided in subsection (b) of this section, shall apply to any interstate off-track wager accepted on or after such date of enactment.

"(b)(1) The provisions of this Act [this chapter] shall not apply to any interstate off-track wager which is accepted pursuant to a contract existing on May 1, 1978.

"(2) The provisions of this Act shall not apply to any form of legal non-parimutuel off-track betting existing in a State on May 1, 1978.

"(3) The provisions of subsection (b) of section 5 of this Act [section 3004(b) of this title] shall not apply to any parimutuel off-track betting system existing on May 1, 1978, in a State which does not conduct parimutuel horseracing on the date of enactment of this Act [Oct. 25, 1978]."

SHORT TITLE

Pub. L. 95–515, §1, Oct. 25, 1978, 92 Stat. 1811, provided that: "This Act [enacting this chapter] may be cited as the 'Interstate Horseracing Act of 1978'."

§3002. Definitions

For the purposes of this chapter the term—

(1) "person" means any individual, association, partnership, joint venture, corporation, State or political subdivision thereof, department, agency, or instrumentality of a State or political subdivision thereof, or any other organization or entity;

(2) "State" means each State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States;

(3) "interstate off-track wager" means a legal wager placed or accepted in one State with respect to the outcome of a horserace taking place in another State and includes pari-mutuel wagers, where lawful in each State involved, placed or transmitted by an individual in one State via telephone or other electronic media and accepted by an off-track betting system in the same or another State, as well as the combination of any pari-mutuel wagering pools;

(4) "on-track wager" means a wager with respect to the outcome of a horserace which is placed at the racetrack at which such horse- race takes place;

(5) "host State" means the State in which the horserace subject to the interstate wager takes place;

(6) "off-track State" means the State in which an interstate off-track wager is accepted;

(7) "off-track betting system" means any group which is in the business of accepting wagers on horseraces at locations other than the place where the horserace is run, which business is conducted by the State or licensed or otherwise permitted by State law;

(8) "off-track betting office" means any location within an off-track State at which off-track wagers are accepted;

(9) "host racing association" means any person who, pursuant to a license or other permission granted by the host State, conducts the horserace subject to the interstate wager;

(10) "host racing commission" means that person designated by State statute or, in the absence of statute, by regulation, with jurisdiction to regulate the conduct of racing within the host State;

(11) "off-track racing commission" means that person designated by State statute or, in the absence of statute, by regulation, with jurisdiction to regulate off-track betting in that State;

(12) "horsemen's group" means, with reference to the applicable host racing association, the group which represents the majority of owners and trainers racing there, for the races subject to the interstate off-track wager on any racing day;

(13) "parimutuel" means any system whereby wagers with respect to the outcome of a horserace are placed with, or in, a wagering pool conducted by a person licensed or otherwise permitted to do so under State law, and in which the participants are wagering with each other and not against the operator;

(14) "currently operating tracks" means racing associations conducting parimutuel horseracing at the same time of day (afternoon against afternoon; nighttime against nighttime) as the racing association conducting the horseracing which is the subject of the interstate off-track wager;

(15) "race meeting" means those scheduled days during the year a racing association is granted permission by the appropriate State racing commission to conduct horseracing;

(16) "racing day" means a full program of races at a specified racing association on a specified day;

(17) "special event" means the specific individual horserace which is deemed by the off-track betting system to be of sufficient national significance and interest to warrant interstate off-track wagering on that event or events;

(18) "dark days" means those days when racing of the same type does not occur in an off-track State within 60 miles of an off-track betting office during a race meeting, including, but not limited to, a dark weekday when such racing association or associations run on Sunday, and days when a racing program is scheduled but does not take place, or cannot be completed due to weather, strikes and other factors not within the control of the off-track betting system;

(19) "year" means calendar year;

(20) "takeout" means that portion of a wager which is deducted from or not included in the

parimutuel pool, and which is distributed to persons other than those placing wagers;

(21) "regular contractual process" means those negotiations by which the applicable horsemen's group and host racing association reach agreements on issues regarding the conduct of horseracing by the horsemen's group at that racing association;

(22) "terms and conditions" includes, but is not limited to, the percentage which is paid by the off-track betting system to the host racing association, the percentage which is paid by the host racing association to the horsemen's group, as well as any arrangements as to the exclusivity between the host racing association and the off-track betting system.

(Pub. L. 95–515, §3, Oct. 25, 1978, 92 Stat. 1811; Pub. L. 106–553, §1(a)(2) [title VI, §629], Dec. 21, 2000, 114 Stat. 2762, 2762A–108.)

AMENDMENTS

2000—Par. (3). Pub. L. 106–553 inserted "and includes pari-mutuel wagers, where lawful in each State involved, placed or transmitted by an individual in one State via telephone or other electronic media and accepted by an off-track betting system in the same or another State, as well as the combination of any pari-mutuel wagering pools" after "another State".

§3003. Acceptance of interstate off-track wager

No person may accept an interstate off-track wager except as provided in this chapter.

(Pub. L. 95–515, §4, Oct. 25, 1978, 92 Stat. 1813.)

§3004. Regulation of interstate off-track wagering

(a) Consent of host racing association, host racing commission, and off-track racing commission as prerequisite to acceptance of wager

An interstate off-track wager may be accepted by an off-track betting system only if consent is obtained from—

(1) the host racing association, except that—

(A) as a condition precedent to such consent, said racing association (except a not-for-profit racing association in a State where the distribution of off-track betting revenues in that State is set forth by law) must have a written agreement with the horsemen's group, under which said racing association may give such consent, setting forth the terms and conditions relating thereto; provided,

(B) that where the host racing association has a contract with a horsemen's group at the time of enactment of this chapter which contains no provisions referring to interstate off-track betting, the terms and conditions of said then-existing contract shall be deemed to apply to the interstate off-track wagers and no additional written agreement need be entered into unless the parties to such then-existing contract agree otherwise. Where such provisions exist in such existing contract, such contract shall govern. Where written consents exist at the time of enactment of this chapter between an off-track betting system and the host racing association providing for interstate off-track wagers, or such written consents are executed by these parties prior to the expiration of such then-existing contract, upon the expiration of such then-existing contract the written agreement of such horsemen's group shall thereafter be required as such condition precedent and as a part of the regular contractual process, and may not be withdrawn or varied except in the regular contractual process. Where no such written consent exists, and where such written agreement occurs at a racing association which has a regular contractual process with such horsemen's group, said agreement by the horsemen's group may not be withdrawn or varied except in the regular contractual process;

(2) the host racing commission;

(3) the off-track racing commission.

(b) Approval of tracks as prerequisite to acceptance of wager; exceptions

(1) In addition to the requirement of subsection (a) of this section, any off-track betting office shall obtain the approval of—

(A) all currently operating tracks within 60 miles of such off-track betting office; and

(B) if there are no currently operating tracks within 60 miles then the closest currently operating track in an adjoining State.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, any off-track betting office in a State with at least 250 days of on-track parimutuel horseracing a year, may accept interstate off-track wagers for a total of 60 racing days and 25 special events a year without the approval required by paragraph (1), if with respect to such 60 racing days, there is no racing of the same type at the same time of day being conducted within the off-track betting State within 60 miles of the off-track betting office accepting the wager, or such racing program cannot be completed. Excluded from such 60 days and from the consent required by subsection (b)(1) of this section may be dark days which occur during a regularly scheduled race meeting in said off-track betting State. In order to accept any interstate off-track wager under the terms of the preceding sentence the off-track betting office shall make identical offers to any racing association described in subparagraph (A) of subsection (b)(1) of this section. Nothing in this subparagraph shall be construed to reduce or eliminate the necessity of obtaining all the approvals required by subsection (a) of this section.

(c) Takeout amount

No parimutuel off-track betting system may employ a takeout for an interstate wager which is greater than the takeout for corresponding wagering pools of off-track wagers on races run within the off-track State except where such greater takeout is authorized by State law in the off-track State.

(Pub. L. 95–515, §5, Oct. 25, 1978, 92 Stat. 1813.)

§3005. Liability and damages

Any person accepting any interstate off-track wager in violation of this chapter shall be civilly liable for damages to the host State, the host racing association and the horsemen's group. Damages for each violation shall be based on the total of off-track wagers as follows:

(1) If the interstate off-track wager was of a type accepted at the host racing association, damages shall be in an amount equal to that portion of the takeout which would have been distributed to the host State, host racing association and the horsemen's group, as if each such interstate off-track wager had been placed at the host racing association.

(2) If such interstate off-track wager was of a type not accepted at the host racing association, the amount of damages shall be determined at the rate of takeout prevailing at the off-track betting system for that type of wager and shall be distributed according to the same formulas as in paragraph (1) above.

(Pub. L. 95–515, §6, Oct. 25, 1978, 92 Stat. 1814.)

§3006. Civil action

(a) Parties; remedies

The host State, the host racing association, or the horsemen's group may commence a civil action against any person alleged to be in violation of this chapter, for injunctive relief to restrain violations and for damages in accordance with section 3005 of this title.

(b) Intervention

In any civil action under this section, the host State, the host racing association and horsemen's group, if not a party, shall be permitted to intervene as a matter of right.

(c) Limitations

A civil action may not be commenced pursuant to this section more than 3 years after the discovery of the alleged violation upon which such civil action is based.

(d) State as defendant

Nothing in this chapter shall be construed to permit a State to be sued under this section other than in accordance with its applicable laws.

(Pub. L. 95–515, §7, Oct. 25, 1978, 92 Stat. 1814.)

§3007. Jurisdiction and venue

(a) District court jurisdiction

Notwithstanding any other provision of law, the district courts of the United States shall have jurisdiction over any civil action under this chapter, without regard to the citizenship of the parties or the amount in controversy.

(b) Venue; service of process

A civil action under this chapter may be brought in any district court of the United States for a district located in the host State or the off-track State, and all process in any such civil action may be served in any judicial district of the United States.

(c) Concurrent State court jurisdiction

The jurisdiction of the district courts of the United States pursuant to this section shall be concurrent with that of any State court of competent jurisdiction located in the host State or the off-track State.

(Pub. L. 95–515, §8, Oct. 25, 1978, 92 Stat. 1814.)

CHAPTER 58—FULL EMPLOYMENT AND BALANCED GROWTH

Sec.

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§3101. Congressional findings

(a) The Congress finds that the Nation has suffered substantial unemployment and underemployment, idleness of other productive resources, high rates of inflation, and inadequate productivity growth, over prolonged periods of time, imposing numerous economic and social costs on the Nation. Such costs include the following:

(1) The Nation is deprived of the full supply of goods and services, the full utilization of labor and capital resources, and the related increases in economic well-being that would occur under conditions of genuine full employment, production, and real income, balanced growth, a balanced Federal budget, and the effective control of inflation.

(2) The output of goods and services is insufficient to meet pressing national priorities.

(3) Workers are deprived of the job security, income, skill development, and productivity necessary to maintain and advance their standards of living.

(4) Business and industry are deprived of the production, sales, capital flow, and productivity necessary to maintain adequate profits, undertake new investment, create jobs, compete internationally, and contribute to meeting society's economic needs. These problems are especially acute for smaller businesses. Variations in the business cycle and low-level operations of the economy are far more damaging to smaller businesses than to larger business concerns because smaller businesses have fewer available resources, and less access to resources, to withstand nationwide economic adversity. A decline in small business enterprises contributes to unemployment by reducing employment opportunities and contributes to inflation by reducing competition.

(5) Unemployment exposes many families to social, psychological, and physiological costs, including disruption of family life, loss of individual dignity and self-respect, and the aggravation of physical and psychological illnesses, alcoholism and drug abuse, crime, and social conflicts.

(6) Federal, State, and local government budgets are undermined by deficits due to shortfalls in tax revenues and in increases in expenditures for unemployment compensation, public assistance, and other recession-related services in the areas of criminal justice, alcoholism and drug abuse, and physical and mental health.

(b) The Congress further finds that:

(1) High unemployment may contribute to inflation by diminishing labor training and skills, underutilizing capital resources, reducing the rate of productivity advance, increasing unit labor costs, and reducing the general supply of goods and services.

(2) Aggregate monetary and fiscal policies alone have been unable to achieve full employment and production, increased real income, balanced growth, a balanced Federal budget, adequate productivity growth, proper attention to national priorities, achievement of an improved trade balance, and reasonable price stability, and therefore must be supplemented by other measures designed to serve these ends.

(3) Attainment of these objectives should be facilitated by setting explicit short-term and medium-term economic goals, and by improved coordination among the President, the Congress, and the Board of Governors of the Federal Reserve System.

(4) Increasing job opportunities and full employment would greatly contribute to the elimination of discrimination based upon sex, age, race, color, religion, national origin, handicap, or other improper factors.

(c) The Congress further finds that an effective policy to promote full employment and production, increased real income, balanced growth, a balanced Federal budget, adequate productivity growth, proper attention to national priorities, achievement of an improved trade balance, and reasonable price stability should (1) be based on the development of explicit economic goals and policies involving the President, the Congress, and the Board of Governors of the Federal Reserve System, with maximum reliance on the resources and ingenuity of the private sector of the economy, (2) include programs specifically designed to reduce high unemployment due to recessions, and to reduce structural unemployment within regional areas and among particular labor force groups, and (3) give proper attention to the role of increased exports and improvement in the international

competitiveness of agriculture, business, and industry in providing productive employment opportunities and achieving an improved trade balance.

(d) The Congress further finds that full employment and production, increased real income, balanced growth, a balanced Federal budget, adequate productivity growth, proper attention to national priorities, achievement of an improved trade balance through increased exports and improvement in the international competitiveness of agriculture, business, and industry, and reasonable price stability are important national requirements and will promote the economic security and well-being of all citizens of the Nation.

(e) The Congress further finds that the United States is part of an interdependent world trading and monetary system and that attainment of the requirements specified in subsection (d) of this section is dependent upon policies promoting a free and fair international trading system and a sound and stable international monetary system.

(Pub. L. 95–523, §2, Oct. 27, 1978, 92 Stat. 1888.)

SHORT TITLE

Pub. L. 95–523, §1, Oct. 27, 1978, 92 Stat. 1887, provided in part that this Act [enacting this chapter and sections 1022a to 1022f of this title, amending sections 1021, 1022, 1023, and 1024 of this title, sections 632 and 636 of Title 2, The Congress, and section 225a of Title 12, Banks and Banking, and enacting provisions set out as notes under section 1021 of title and section 225a of Title 12] may be cited as the "Full Employment and Balanced Growth Act of 1978".

§3102. Report to Congressional committees

Not later than one year after October 27, 1978, the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives each shall conduct a study and submit a report, including findings and recommendations, to the Committee on Rules and Administration of the Senate and the Committee on Rules of the House, respectively, on the subject of establishing a full employment goal in connection with the provisions of this chapter.

(Pub. L. 95–523, §3, Oct. 27, 1978, 92 Stat. 1889; S. Res. 30, Mar. 7, 1979.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 95–523, Oct. 27, 1978, 92 Stat. 1887, known as the Full Employment and Balanced Growth Act of 1978, which enacted this chapter and sections 1022a to 1022f of this title, amended sections 1021, 1022, and 1023 of this title, sections 632 and 636 of Title 2, The Congress, and section 225a of Title 12, Banks and Banking, and enacted provisions set out as notes under sections 1021 and 3101 of this title and section 225a of Title 12. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999. Previously, Committee on Human Resources of the Senate changed to Committee on Labor and Human Resources effective Mar. 7, 1979, by Senate Resolution No. 30, 96th Congress. See, also, Rule XXV of Standing Rules of the Senate adopted Nov. 14, 1979.

Committee on Education and Labor of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

§3103. National Employment Conference

(a) Organization and implementation

A National Employment Conference may be convened in the District of Columbia within a reasonable period of time after October 27, 1978. Responsibility for the organization and implementation of this conference shall rest with the President or the appropriate department or

agency of the Federal Government, and the conference shall bring together leaders of small and larger business, labor, government, and all other interested parties.

(b) Subject matter

The subject of the conference shall be employment, with particular attention to structural unemployment and the plight of disadvantaged youth. The conference shall also focus on issues such as implementation of adequate and effective incentives for private sector employers to hire the hard-core unemployed. Special attention shall be given to the creation of jobs through the use of targeted employment tax credits, wage vouchers, and other incentives to private sector businesses.

(Pub. L. 95–523, §4, Oct. 27, 1978, 92 Stat. 1889.)

SUBCHAPTER I—STRUCTURAL ECONOMIC POLICIES AND PROGRAMS INCLUDING TREATMENT OF RESOURCE RESTRAINTS

§3111. Congressional statement of purpose

The Congress recognizes that general economic policies alone have been unable to achieve the goals set forth in this chapter related to full employment, production, and real income, balanced growth, adequate growth in productivity, proper attention to national priorities, achievement of an improved trade balance through increased exports and improvement in the international competitiveness of agriculture, business, and industry, and achievement of reasonable price stability as provided for in section 1022b(b) of this title. It is, therefore, the purpose of this subchapter to require the President to initiate, as the President deems appropriate, with recommendations to the Congress where necessary, supplementary programs and policies to the extent that the President finds such action necessary to help achieve these goals, including the goals and timetable for the reduction of unemployment. Insofar as feasible without undue delay, any policies and programs so recommended shall be included in the Economic Report.

(Pub. L. 95–523, title II, §201, Oct. 27, 1978, 92 Stat. 1899.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in text, see References in Text note set out under section 3102 of this title.

§3112. Countercyclical employment policies

(a) Programmatic entities

Any countercyclical efforts undertaken to aid in achieving the purposes of section 3111 of this title shall consider for inclusion the following programmatic entities:

(1) accelerated public works, including the development of standby public works projects;

(2) public service employment;

(3) State and local grant programs;

(4) the levels and duration of unemployment insurance;

(5) skill training in both the private and public sectors, both as a general remedy and as a supplement to unemployment insurance;

(6) youth employment programs as specified in section 3115 of this title;

(7) community development programs to provide employment in activities of value to the States, local communities (including rural areas), and the Nation;

(8) Federal procurement programs which are targeted on labor surplus areas; and

(9) augmentation of other employment and training programs which would help to reduce high levels of unemployment arising from cyclical causes.

(b) Triggering mechanism

In any countercyclical efforts undertaken, the President shall consider a triggering mechanism which will implement the program during a period of rising unemployment and phase out the program when unemployment is appropriately reduced, and incorporate effective means to facilitate individuals assisted under programs developed pursuant to this section to return promptly to regular private and public employment as the economy recovers.

(Pub. L. 95–523, title II, §202, Oct. 27, 1978, 92 Stat. 1900.)

§3113. Economic activity coordination

(a) Federal, regional, State, local, and private sector

As an integral part of any countercyclical employment policies undertaken in accord with section 3112 of this title, the President shall, to the extent the President deems necessary, set forth programs and policies, including recommended legislation where needed, to coordinate economic action among the Federal Government, regions, States and localities, and the private sector to promote achievement of the purposes of this chapter and the Employment Act of 1946 [15 U.S.C. 1021 et seq.] and an economic environment in which State and local governments and private sector economic activity and employment will prosper. In considering programs and policies related to the private sector, full consideration shall be given to promoting the growth and well-being of small businesses and employment training programs through private sector incentives.

(b) Fiscal needs and budget conditions

In any efforts under this section, the President shall endeavor to meet criteria that establish programs which are funded to take account of the fiscal needs and budget conditions of the respective States and localities and their own efforts, with special attention to the rates of unemployment in such States and localities.

(Pub. L. 95–523, title II, §203, Oct. 27, 1978, 92 Stat. 1900.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (a), see References in Text note set out under section 3102 of this title.

The Employment Act of 1946, referred to in subsec. (a), is act Feb. 20, 1946, ch. 33, 60 Stat. 23, as amended, which is classified generally to chapter 21 (§1021 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1021 of this title and Tables.

EXECUTIVE ORDER NO. 12329

Ex. Ord. No. 12329, Oct. 14, 1981, 46 F.R. 50919, which established the President's Task Force on Private Sector Initiatives and provided for its membership, functions, etc., was revoked by Ex. Ord. No. 12399, §4(i), Dec. 31, 1982, 48 F.R. 380, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

§3114. Regional and structural employment policies and programs

(a) Recommendation of legislation

To the extent deemed appropriate by the President in fulfillment of the purposes of section 3111 of this title, the President shall recommend legislation to the Congress if necessary, regional and structural employment policies and programs.

(b) Private sector production and employment; effect of Federal policies

In formulating the regional components of any such programs, the President shall encourage to the extent the President deems necessary, new private sector production and employment to locate within depressed localities and regions with substantial unemployment and to aid in stabilizing their economic base. To the extent feasible, such policies and programs shall foster the establishment and

growth of smaller businesses in such localities and regions. Any regional employment proposal of the President shall also include an analysis of the extent to which Federal tax, expenditure (including procurement of goods and services), defense, transportation, energy, natural resources and employment policies have influenced the movement of people, jobs, and small and larger business and industries from chronic high unemployment regions and areas, and proposals designed to correct Federal policies that have an adverse economic impact upon such regions and areas.

(Pub. L. 95–523, title II, §204, Oct. 27, 1978, 92 Stat. 1901.)

§3115. Youth employment policies and programs

(a) Congressional findings

The Congress finds and declares—

(1) That [1] serious unemployment and economic disadvantage of a unique nature exist among youths even under generally favorable economic conditions;

(2) that this group constitutes a substantial portion of the Nation's unemployment, and that this significantly contributes to crime, alcoholism and drug abuse, and other social and economic problems; and

(3) that many youths have special employment needs and problems which, if not promptly addressed, will substantially contribute to more severe unemployment problems in the long run.

(b) Improvement and expansion

To the extent deemed necessary in fulfillment of the purposes of this chapter, the President shall improve and expand existing youth employment programs, recommending legislation where required. In formulating any such program, the President shall—

(1) include provisions designed to fully coordinate youth employment activities with other employment and training programs;

(2) develop a smoother transition from school to work;

(3) prepare disadvantaged and other youths with employability handicaps for regular self-sustaining employment;

(4) develop realistic methods for combining training with work; and

(5) develop provisions designed to attract structurally unemployed youth into productive full-time employment through incentives to private and independent sector businesses; [2]

(Pub. L. 95–523, title II, §205, Oct. 27, 1978, 92 Stat. 1901.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (b), see References in Text note set out under section 3102 of this title.

[1] So in original. Probably should not be capitalized.

[2] So in original. The semicolon probably should be a period.

§3116. Job training, counseling and reservoirs of employment projects

(a) Policies, procedures and recommendations

Further to promote achievement of full employment under this chapter and the Employment Act of 1946 [15 U.S.C. 1021 et seq.], the President, through the Secretary of Labor, shall develop policies and procedures and, as necessary, recommend programs for providing employment opportunities to individuals aged 16 and over in the civilian labor force who are able, willing, and seeking to work but who, despite serious efforts to obtain employment, remain unemployed.

(b) Utilization of authority under other laws

In meeting the responsibilities under subsection (a) of this section, the Secretary of Labor shall, as appropriate, fully utilize the authority provided under the Job Training Partnership Act and title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.] and other relevant provisions of law to—

(1) assure the availability of counseling, training, and other support activities necessary to prepare persons willing and seeking work for employment;

(2) refer persons able, willing, and seeking to work to job opportunities in the private and public sectors through the existing public employment placement facilities and through the United States Employment Service of the Department of Labor, including job opportunities in any positions created under programs established pursuant to sections 3112, 3114, and 3115 of this title; and

(3) encourage flexi-time and part-time jobs for persons who are able, willing, and seeking employment but who are unable to work a standard workweek.

(c) Establishment of project reservoirs; restrictions and requirements of new programs

(1) To the extent that individuals aged sixteen and over and able, willing, and seeking to work are not and in the judgment of the President cannot be provided with private job opportunities or job opportunities under other programs and actions in existence, in accord with the goals and timetables set forth in the Employment Act of 1946 [15 U.S.C. 1021 et seq.], the President shall, as may be authorized by law, establish reservoirs of public employment and private nonprofit employment projects, to be approved by the Secretary of Labor, through expansion of title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.] and other existing employment and training projects or through such new programs as are determined necessary by the President or through both such projects and such programs.

(2) New programs as may be authorized by law after October 27, 1978, referred to in paragraph (c)(1)—

(A) shall not be put into operation earlier than two years after October 27, 1978, nor without a finding by the President, transmitted to the Congress, that other means of employment are not yielding enough jobs to be consistent with attainment of the goals and timetables for the reduction of unemployment set forth in the Employment Act of 1946 [15 U.S.C. 1021 et seq.];

(B) shall be designed so that no workers from private employment are drawn into the reservoir projects thereunder;

(C) shall be useful and productive jobs;

(D) shall be mainly in the lower ranges of skills and pay, and toward this end the number of reservoir jobs under such new programs shall, to the extent practicable, be maximized in relationship to the appropriations provided for such jobs;

(E) shall be targeted on areas of high unemployment and on individuals who are structurally unemployed;

(F) shall be phased in by the President as necessary, in conjunction with the employment goals under sections 3(a)(2) and 4(b) of the Employment Act of 1946 [15 U.S.C. 1022(a)(2), 1022a(b)].

(d) Regulations

The Secretary, in carrying out the provisions of this section, shall establish regulations providing for—

(1) an initial determination of the job seeker's ability to be employed at certain types and duration of work, so that such individual may be appropriately referred to jobs, training, counseling, and other supportive services;

(2) compliance with the nondiscrimination provisions of this chapter in accordance with section 3151 of this title;

(3) appropriate eligibility criteria to determine the order of priority of access of any person to any new programs under subsection (c) of this section as may be authorized by law including but not necessarily limited to (A) household income, duration of unemployment (not less than five weeks), and the number of people economically dependent upon such person; and (B) denial of access to any person refusing to accept or hold a job except for good cause, as determined by the

Secretary of Labor, including refusal to accept or hold a job subject to reference under subsection (b) paragraph (2) of this section, in order to seek a reservoir project job under subsection (c) of this section; and

(4) such administrative appeal procedures as may be appropriate to review the initial determination of the abilities of persons willing, able, and seeking to work under paragraph (1) of this subsection and the employment need and eligibility under paragraph (3) of this subsection.

(Pub. L. 95–523, title II, §206, Oct. 27, 1978, 92 Stat. 1902; Pub. L. 105–277, div. A, §101(f) [title VIII, §405(d)(12)(A), (f)(10)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–420, 2681–431; Pub. L. 113–128, title V, §512(m), July 22, 2014, 128 Stat. 1710.)

AMENDMENT OF SECTION

Pub. L. 113–128, title V, §§506, 512(m), July 22, 2014, 128 Stat. 1703, 1710, provided that, effective on the first day of the first full program year after July 22, 2014 [probably July 1, 2015], this section is amended:

(1) in subsection (b), in the matter preceding paragraph (1), by striking "the Secretary of Labor shall, as appropriate, fully utilize the authority provided under the Job Training Partnership Act and title I of the Workforce Investment Act of 1998" and inserting "the Secretary of Labor shall, as appropriate, fully utilize the authority provided under title I of the Workforce Innovation and Opportunity Act"; and

(2) in subsection (c)(1), by striking "the President shall, as may be authorized by law, establish reservoirs of public employment and private nonprofit employment projects, to be approved by the Secretary of Labor, through expansion of title I of the Workforce Investment Act of 1998" and inserting "the President shall, as may be authorized by law, establish reservoirs of public employment and private nonprofit employment projects, to be approved by the Secretary of Labor, through expansion of activities under title I of the Workforce Innovation and Opportunity Act".

See 2014 Amendment notes below.

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsecs. (a) and (d)(2), see References in Text note set out under section 3102 of this title.

The Employment Act of 1946, referred to in subsecs. (a) and (c), is act Feb. 20, 1946, ch. 33, 60 Stat. 23, as amended, which is classified generally to chapter 21 (§1021 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1021 of this title and Tables.

The Job Training Partnership Act, referred to in subsec. (b), is Pub. L. 97–300, Oct. 13, 1982, 96 Stat. 1322, as amended, which was classified generally to chapter 19 (§1501 et seq.) of Title 29, Labor, prior to repeal by Pub. L. 105–220, title I, §199(b)(2), (c)(2)(B), Aug. 7, 1998, 112 Stat. 1059, effective July 1, 2000. For complete classification of this Act to the Code, see Tables.

The Workforce Investment Act of 1998, referred to in subsecs. (b) and (c)(1), is Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, as amended. Title I of the Act is classified principally to chapter 30 (§2801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

AMENDMENTS

2014—Subsec. (b). Pub. L. 113–128, §512(m)(1), substituted "the Secretary of Labor shall, as appropriate, fully utilize the authority provided under title I of the Workforce Innovation and Opportunity Act" for "the Secretary of Labor shall, as appropriate, fully utilize the authority provided under the Job Training Partnership Act and title I of the Workforce Investment Act of 1998" in introductory provisions.

Subsec. (c)(1). Pub. L. 113–128, §512(m)(2), substituted "the President shall, as may be authorized by law, establish reservoirs of public employment and private nonprofit employment projects, to be approved by the Secretary of Labor, through expansion of activities under title I of the Workforce Innovation and Opportunity Act" for "the President shall, as may be authorized by law, establish reservoirs of public employment and private nonprofit employment projects, to be approved by the Secretary of Labor, through expansion of title I of the Workforce Investment Act of 1998".

1998—Subsec. (b). Pub. L. 105–277, §101(f) [title VIII, §405(f)(10)(A)], which directed the amendment of subsec. (b) by substituting "the Job Training Partnership Act and" for "CETA" in introductory provisions, could not be executed because "CETA" did not appear in introductory provisions subsequent to amendment by

Pub. L. 105–277, §101(f) [title VIII, §405(d)(12)(A)(i)(I)]. See below.

Pub. L. 105–277, §101(f) [title VIII, §405(d)(12)(A)(i)(I)], substituted "the Job Training Partnership Act and title I of the Workforce Investment Act of 1998" for "CETA" in introductory provisions.

Subsec. (b)(1). Pub. L. 105–277, §101(f) [title VIII, §405(d)(12)(A)(i)(II)], struck out "(including use of section 110 of CETA when necessary)" before semicolon at end.

Subsec. (c)(1). Pub. L. 105–277, §101(f) [title VIII, §405(f)(10)(B)], struck out "activities carried out under the Job Training Partnership Act or" before "title I of the Workforce Investment Act of 1998".

Pub. L. 105–277, §101(f) [title VIII, §405(d)(12)(A)(ii)], substituted "activities carried out under the Job Training Partnership Act or title I of the Workforce Investment Act of 1998" for "CETA".

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–128 effective on the first day of the first full program year after July 22, 2014 [probably July 1, 2015], see section 506 of Pub. L. 113–128, set out as an Effective Date note under section 3101 of Title 29, Labor.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(f) [title VIII, §405(d)(12)(A)] of Pub. L. 105–277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, §405(f)(10)] of Pub. L. 105–277 effective July 1, 2000, see section 101(f) [title VIII, §405(g)(1), (2)(B)] of Pub. L. 105–277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

§3117. Capital formation

(a) Congressional findings

The Congress finds that—

(1) promotion of full employment and balanced growth is in itself a principal avenue to high and sustained rates of capital formation;

(2) high rates of capital formation are necessary to ensure adequate rates of capacity expansion and productivity growth, compliance with governmental health, safety and environmental standards, and the replacement of obsolete production equipment;

(3) the ability of our economy to compete successfully in international markets, the development of new technology, improved working conditions, expanding job opportunities, and an increasing standard of living depend on the availability of adequate capital at reasonable cost to commerce and industry;

(4) an important goal of national policy shall be to remove obstacles to the free flow of resources into new investment, particularly those obstacles that hinder the creation and growth of smaller businesses because general national programs and policies to aid and stimulate private enterprise are not sufficient to deal with the special problems and needs of smaller businesses; and

(5) while private business firms are, and should continue to be, the major source of investment, the investment activities of the Federal, State, and local governments play an important role in affecting the level of output, employment, and productivity and in achieving other national purposes.

(b) Investment Policy Report; recommendations in President's Budget; referral to Joint Economic Committee

The Economic Report shall include an Investment Policy Report which shall, as appropriate, (1) review and assess existing Federal Government programs and policies which affect business investment decisions, including, but not limited to, the relevant aspects of the tax code, Federal expenditure policy, Federal regulatory policy, international trade policy, and Federal support for research, development, and diffusion of new technologies; (2) provide an assessment of the levels of investment capital available, required by, and applied to small, medium and large business entities; (3) provide an analysis of current foreseeable trends in the level of investment capital available to such entities; and (4) provide a description of programs and proposals for carrying out the policy set forth in section 1021(i) of this title. In addition, the Economic Report shall include an assessment of the effect of the overall economic policy environment and the rate of inflation on business

investment. The President shall recommend in the President's Budget, as appropriate, new programs or modifications to improve existing programs concerned with private capital formation. The President shall also transmit to the Congress as part of the President's Budget such other recommendations as the President may deem necessary or desirable to achieve the policy as set forth in section 1021(i) of this title. The Investment Policy Report, when transmitted to the Congress, shall be referred to the Joint Economic Committee.

(c) Review in Economic Report of Federal policies and programs which affect public investments; recommendations respecting new policies or programs

The Economic Report referred to in subsection (b) of this section shall review and assess Federal policies and programs which directly, or through grants-in-aid to State and local governments, or indirectly through other means, affect the adequacy, composition and effectiveness of public investments, as a means of achieving the goals of this chapter and the Employment Act of 1946 [15 U.S.C. 1021 et seq.]. The President shall recommend, as appropriate, new programs and policies or modifications to improve existing Federal programs affecting public investment.

(Pub. L. 95–523, title II, §207, Oct. 27, 1978, 92 Stat. 1903.)

REFERENCES IN TEXT

The tax code, referred to in subsec. (b)(1), means Title 26, Internal Revenue Code.

Section 1021(i) of this title, referred to in subsec. (b), was in the original "section 102(i)" probably meaning section 102 of Pub. L. 95–523 which amended section 2 of the Employment Act of 1946, classified to section 1021 of this title. Subsec. (i) of section 1021 of this title sets out the congressional declaration of policy for private enterprise investments.

For definition of "this chapter", referred to in subsec. (c), see References in Text note set out under section 3102 of this title.

The Employment Act of 1946, referred to in subsec. (c), is act Feb. 20, 1946, ch. 33, 60 Stat. 23, as amended, which is classified generally to chapter 21 (§1021 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1021 of this title and Tables.

SUBCHAPTER II—POLICIES AND PROCEDURES FOR CONGRESSIONAL REVIEW

§3131. Congressional statement of purpose

(a) Establishment of procedures for review and action

The purposes of this subchapter are to establish procedures for congressional review and action with respect to the Economic Report of the President (hereafter in this subchapter referred to as the "Economic Report"), the report of the Board of Governors of the Federal Reserve System, and the other policies and provisions of this chapter and the Employment Act of 1946 [15 U.S.C. 1021 et seq.].

(b) Legislative action

The Congress shall initiate or develop such legislation as it deems necessary to implement proposals and objectives pursuant to this chapter and the Employment Act of 1946 [15 U.S.C. 1021 et seq.] after such modification in such proposals as it deems desirable. Nothing in this subchapter shall be construed to prevent the Congress or any of its committees from considering or initiating at any time legislative action in furtherance of the goals and purposes of this chapter.

(Pub. L. 95–523, title III, §301, Oct. 27, 1978, 92 Stat. 1904.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original "this title", meaning title III of Pub. L. 95–523, Oct. 27, 1978, 92 Stat. 1904, which enacted this subchapter and amended sections 632 and 636 of Title 2, The

Congress. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

For definition of "this chapter", referred to in text, see References in Text note set out under section 3102 of this title.

The Employment Act of 1946, referred to in subsecs. (a) and (b), is act Feb. 20, 1946, ch. 33, 60 Stat. 23, as amended, which is classified generally to chapter 21 (§1021 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1021 of this title and Tables.

§3132. Committee review

(a) Short-term and medium-term goals

In conjunction with its review of the Economic Report, and the holding of hearings on the Economic Report under the Employment Act of 1946 [15 U.S.C. 1021 et seq.], the Joint Economic Committee shall review and analyze the short-term and medium-term goals set forth in the Economic Report pursuant to section 3(a)(2) and 4(b) of the Employment Act of 1946 [15 U.S.C. 1022(a)(2), 1022a(b)].

(b) Hearings

The Joint Economic Committee shall hold hearings on the Economic Report for the purpose of receiving testimony from Members of the Congress, and such appropriate representatives of Federal departments and agencies, the general public, and interested groups as the joint committee deems advisable. The joint committee shall also consider the comments and views on the Economic Report which are received from State and local officials.

(c) Report of standing and joint committees and committees with legislative jurisdiction

Within thirty days after receipt by the Congress of the Economic Report, each standing committee of the Senate and the House of Representatives, each other committee of the Senate and the House of Representatives which has legislative jurisdiction, and each joint committee of the Congress may submit to the Joint Economic Committee, for use by the Joint Economic Committee in conducting its review and analysis under subsection (a) of this section, a report containing the views and recommendations of the submitting committee with respect to aspects of the Economic Report which relate to its jurisdiction.

(d) Report of Joint Economic Committee

On or before March 15 of each year, a majority of the members of the Joint Economic Committee shall submit a report to the Committees on the Budget of the Senate and the House of Representatives. Such report shall include findings, recommendations, and any appropriate analyses with respect and in direct comparison to each of the short-term and medium-term goals set forth in the Economic Report.

(Pub. L. 95–523, title III, §302, Oct. 27, 1978, 92 Stat. 1904.)

REFERENCES IN TEXT

The Employment Act of 1946, referred to in subsec. (a), is act Feb. 20, 1946, ch. 33, 60 Stat. 23, as amended, which is classified generally to chapter 21 (§1021 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1021 of this title and Tables.

§3133. Exercise of rulemaking powers

(a) [1] The Provisions of this subchapter and the amendments made by such provisions are enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House), at any time, in the same manner and to the same extent as in the case of any other rule of such House.

(Pub. L. 95–523, title III, §305, Oct. 27, 1978, 92 Stat. 1907.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original "this title", meaning title III of Pub. L. 95–523, Oct. 27, 1978, 92 Stat. 1904, which enacted this subchapter and amended sections 632 and 636 of Title 2, The Congress. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

[1] So in original. No subsec. (b) has been enacted.

SUBCHAPTER III—GENERAL PROVISIONS

§3151. Nondiscrimination

(a) Exclusion from participation or denial of benefits

No person in the United States shall on the ground of sex, age, race, color, religion, national origin or handicap be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded pursuant to the implementation of this chapter, including membership in any structure created by this chapter.

(b) Noncompliance notification; remedies of Secretary of Labor

Whenever the Secretary of Labor determines that a recipient of funds made available pursuant to this chapter has failed to comply with subsection (a) of this section, or an applicable regulation, the Secretary shall notify the recipient of the noncompliance and shall request such recipient to secure compliance. If within a reasonable period of time, not to exceed sixty days, the recipient fails or refuses to secure compliance, the Secretary of Labor may—

(1) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(2) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) [1] or

(3) take such other action as may be provided by law.

(c) Civil action by Attorney General

When a matter is referred to the Attorney General pursuant to subsection (b) of this section, or whenever the Attorney General has reason to believe that a recipient is engaged in a pattern or practice in violation of the provisions of this section, the Attorney General may bring a civil action in the appropriate United States district court for any and all appropriate relief.

(d) Enforcement analysis in Report of President

To assist and evaluate the enforcement of this section, and the broader equal employment opportunity policies of this chapter the Secretary of Labor shall include, in the annual report referred to in section 1022a(f)(2)(B) of this title, a detailed analysis of the extent to which the enforcement of this section achieves positive results in both the quantity and quality of jobs, and for employment opportunities generally.

(Pub. L. 95–523, title IV, §401, Oct. 27, 1978, 92 Stat. 1907; Pub. L. 105–277, div. A, §101(f) [title VIII, §405(d)(12)(B)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–421.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsecs. (a), (b), and (d), see References in Text note set out

under section 3102 of this title.

The Civil Rights Act of 1964, referred to in subsec. (b)(2), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§2000d et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

AMENDMENTS

1998—Subsec. (d). Pub. L. 105–277 substituted "include, in the annual report referred to in section 1022a(f)(2)(B) of this title," for "include, in the annual Employment and Training Report of the President provided under section 705(a) of CETA,".

[1] *So in original. Probably should be followed by a semicolon.*

§3152. Labor standards

(a) Equal wages; increase in employment

Any new program enacted and funded pursuant to the implementation of this chapter shall, subject to any limitations on maximum annual compensation as may be provided in the law authorizing such programs, provide that persons employed are paid equal wages for equal work, and that such policies and programs create a net increase in employment through work that would not otherwise be done or are essential to fulfill national priority purposes.

(b) Wage rates; work limitations of reservoir projects employees

Any person employed in any reservoir project enacted and funded pursuant to the implementation of section 3116(c)(1) of this title, or in any other job created pursuant to implementation of this chapter, shall, subject to any limitations on maximum annual compensation as may be provided in the law authorizing such programs, be paid not less than the pay received by others performing the same type of work for the same employer, and in no case less than the minimum wage under the Fair Labor Standards Act of 1938 [29 U.S.C. 201 et seq.]. No person employed in any reservoir project enacted and funded pursuant to implementation of section 3116(c)(1) of this title shall perform work of the type to which sections 3141–3144, 3146, and 3147 of title 40 apply, except as otherwise may be specifically authorized by law.

(c) Recommendations of President

Any recommendation by the President for legislation to implement any program enacted pursuant to the provisions of this chapter, requiring the use of funds under this chapter, and submitted pursuant to the requirements of this chapter, shall contain appropriate wage provisions based upon existing wage standard legislation.

(Pub. L. 95–523, title IV, §402, Oct. 27, 1978, 92 Stat. 1908.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in text, see References in Text note set out under section 3102 of this title.

The Fair Labor Standards Act, referred to in subsec. (b), is act June 25, 1938, ch. 676. 52 Stat. 1060, as amended, which is classified generally to chapter 8 (§201 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see section 201 of Title 29, and Tables.

CODIFICATION

"Sections 3141–3144, 3146, and 3147 of title 40 apply" substituted in subsec. (b) for "the Davis-Bacon Act (40 U.S.C. 276a—276a–5) applies" on authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

CHAPTER 59—RETAIL POLICIES FOR NATURAL GAS UTILITIES

Sec.
3201. Purposes; coverage.
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3205. Federal participation.
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§3201. Purposes; coverage

(a) Purposes

The purposes of this chapter are to encourage—

(1) conservation of energy supplied by gas utilities;

(2) the optimization of the efficiency of use of facilities and resources by gas utility systems; and

(3) equitable rates to gas consumers of natural gas.

(b) Volume of total retail sales

This chapter applies to each gas utility in any calendar year, and to each proceeding relating to each gas utility in such year, if the total sales of natural gas by such utility for purposes other than resale exceeded 10 billion cubic feet during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year.

(c) Exclusion of wholesale sales

The requirements of this chapter do not apply to the operations of a gas utility, or to proceedings respecting such operations, to the extent that such operations or proceedings relate to sales of natural gas for purposes of resale.

(d) List of covered utilities

Before the beginning of each calendar year, the Secretary shall publish a list identifying each gas utility to which this chapter applies during such calendar year. Promptly after publication of such list, each State regulatory authority shall notify the Secretary of each gas utility on the list for which such State regulatory authority has ratemaking authority.

(Pub. L. 95–617, title III, §301, Nov. 9, 1978, 92 Stat. 3149.)

DEFINITIONS

The definition of Secretary in section 2602 of Title 16, Conservation, applies to this section.

§3202. Definitions

For purposes of this chapter—

(1) The term "gas consumer" means any person, State agency, or Federal agency, to which natural gas is sold other than for purposes of resale.

(2) The term "gas utility" means any person, State agency, or Federal agency, engaged in the local distribution of natural gas, and the sale of natural gas to any ultimate consumer of natural gas.

(3) The term "State regulated gas utility" means any gas utility with respect to which a State regulatory authority has ratemaking authority.

(4) The term "nonregulated gas utility" means any gas utility other than a State regulated gas

utility.

(5) The term "rate" means any (A) price, rate, charge, or classification made, demanded, observed, or received with respect to sale of natural gas to a gas consumer, (B) any rule, regulation, or practice respecting any such rate, charge, or classification, and (C) any contract pertaining to the sale of natural gas to a gas consumer.

(6) The term "ratemaking authority" means authority to fix, modify, approve, or disapprove rates.

(7) The term "sale" when used with respect to natural gas, includes an exchange of natural gas.

(8) The term "State regulatory authority" means any State agency which has ratemaking authority with respect to the sale of natural gas by any gas utility (other than by such State agency).

(9) The term "integrated resource planning" means, in the case of a gas utility, planning by the use of any standard, regulation, practice, or policy to undertake a systematic comparison between demand-side management measures and the supply of gas by a gas utility to minimize life-cycle costs of adequate and reliable utility services to gas consumers. Integrated resource planning shall take into account necessary features for system operation such as diversity, reliability, dispatchability, and other factors of risk and shall treat demand and supply to gas consumers on a consistent and integrated basis.

(10) The term "demand-side management" includes energy conservation, energy efficiency, and load management techniques.

(Pub. L. 95–617, title III, §302, Nov. 9, 1978, 92 Stat. 3150; Pub. L. 102–486, title I, §115(a), Oct. 24, 1992, 106 Stat. 2803.)

AMENDMENTS

1992—Pars. (9), (10). Pub. L. 102–486 added pars. (9) and (10).

ADDITIONAL DEFINITIONS

Except as otherwise specifically provided, the definitions in section 2602 of Title 16, Conservation, apply to this chapter.

§3203. Adoption of certain standards

(a) Adoption of standards

Not later than 2 years after November 9, 1978 (or after October 24, 1992, in the case of standards under paragraphs (3),[1] and (4) of subsection (b) of this section), each State regulatory authority (with respect to each gas utility for which it has ratemaking authority) and each nonregulated gas utility shall provide public notice and conduct a hearing respecting the standards established by subsection (b) of this section, and, on the basis of such hearing, shall—

(1) adopt the standard established by subsection (b)(1) of this section, if, and to the extent, such authority or nonregulated utility determines that such adoption is appropriate and is consistent with otherwise applicable State law, and

(2) adopt the standards established by paragraphs (2), (3) [2] (4), (5), and (6) of subsection (b) of this section, if, and to the extent, such authority or nonregulated utility determines that such adoption is appropriate to carry out the purposes of this chapter, is otherwise appropriate, and is consistent with otherwise applicable State law.

For purposes of any determination under paragraphs (1) and (2) and any review of such determination in any court under section 3207 of this title, the purposes of this chapter supplement State law. Nothing in this subsection prohibits any State regulatory authority or nonregulated utility from making any determination that it is not appropriate to implement any such standard, pursuant to its authority under otherwise applicable State law.

(b) Establishment

The following Federal standards are hereby established:

(1) Procedures for termination of natural gas service

No gas utility may terminate natural gas service to any gas consumer except pursuant to procedures described in section 3204(a) of this title.

(2) Advertising

No gas utility may recover from any person other than the shareholders (or other owners) of such utility any direct or indirect expenditure by such utility for promotional or political advertising as defined in section 3204(b) of this title.

(3) Integrated resource planning

Each gas utility shall employ, in order to provide adequate and reliable service to its gas customers at the lowest system cost. All plans or filings of a State regulated gas utility before a State regulatory authority to meet the requirements of this paragraph shall (A) be updated on a regular basis, (B) provide the opportunity for public participation and comment, (C) provide for methods of validating predicted performance, and (D) contain a requirement that the plan be implemented after approval of the State regulatory authority. Subsection (c) of this section shall not apply to this paragraph to the extent that it could be construed to require the State regulatory authority to extend the record of a State proceeding in submitting reports to the Federal Government.

(4) Investments in conservation and demand management

The rates charged by any State regulated gas utility shall be such that the utility's prudent investments in, and expenditures for, energy conservation and load shifting programs and for other demand-side management measures which are consistent with the findings and purposes of the Energy Policy Act of 1992 are at least as profitable (taking into account the income lost due to reduced sales resulting from such programs) as prudent investments in, and expenditures for, the acquisition or construction of supplies and facilities. This objective requires that (A) regulators link the utility's net revenues, at least in part, to the utility's performance in implementing cost-effective programs promoted by this section; and (B) regulators ensure that, for purposes of recovering fixed costs, including its authorized return, the utility's performance is not affected by reductions in its retail sales volumes.

(5) Energy efficiency

Each natural gas utility shall—

(A) integrate energy efficiency resources into the plans and planning processes of the natural gas utility; and

(B) adopt policies that establish energy efficiency as a priority resource in the plans and planning processes of the natural gas utility.

(6) Rate design modifications to promote energy efficiency investments

(A) In general

The rates allowed to be charged by a natural gas utility shall align utility incentives with the deployment of cost-effective energy efficiency.

(B) Policy options

In complying with subparagraph (A), each State regulatory authority and each nonregulated utility shall consider—

(i) separating fixed-cost revenue recovery from the volume of transportation or sales service provided to the customer;

(ii) providing to utilities incentives for the successful management of energy efficiency programs, such as allowing utilities to retain a portion of the cost-reducing benefits accruing from the programs;

(iii) promoting the impact on adoption of energy efficiency as 1 of the goals of retail rate design, recognizing that energy efficiency must be balanced with other objectives; and

(iv) adopting rate designs that encourage energy efficiency for each customer class.

For purposes of applying the provisions of this chapter [3] to this paragraph, any reference in this chapter [3] to November 9, 1978, shall be treated as a reference to December 19, 2007.

(c) Procedural requirements

Each State regulatory authority (with respect to each gas utility for which it has ratemaking authority) and each nonregulated gas utility, within the 2-year period specified in subsection (a) of this section, shall adopt, pursuant to subsection (a) of this section, each of the standards established by subsection (b) of this section, or, with respect to any such standard which is not adopted, such authority or nonregulated gas utility shall state in writing that it has determined not to adopt such standard, together with the reasons for such determination. Such statement of reasons shall be available to the public.

(d) Small business impacts

If a State regulatory authority implements a standard established by subsection (b)(3) or (4) of this section, such authority shall—

(1) consider the impact that implementation of such standard would have on small businesses engaged in the design, sale, supply, installation, or servicing of energy conservation, energy efficiency, or other demand-side management measures, and

(2) implement such standard so as to assure that utility actions would not provide such utilities with unfair competitive advantages over such small businesses.

(Pub. L. 95–617, title III, §303, Nov. 9, 1978, 92 Stat. 3150; Pub. L. 102–486, title I, §115(b)–(d), Oct. 24, 1992, 106 Stat. 2803, 2804; Pub. L. 110–140, title V, §532(b), (c), Dec. 19, 2007, 121 Stat. 1666, 1667.)

REFERENCES IN TEXT

The Energy Policy Act of 1992, referred to in subsec. (b)(4), is Pub. L. 102–486, Oct. 24, 1992, 106 Stat. 2776. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of Title 42, The Public Health and Welfare and Tables.

CODIFICATION

This chapter, referred to in subsec. (b)(6), was in the original "this subtitle", which was translated as meaning title III of Pub. L. 95–617 to reflect the probable intent of Congress.

AMENDMENTS

2007—Subsec. (a)(2). Pub. L. 110–140, §532(c), which directed substitution of "(4), (5), and (6)" for "and (4)" in subsec. (a), was executed by making the substitution in subsec. (a)(2) to reflect the probable intent of Congress.

Subsec. (b)(5), (6). Pub. L. 110–140, §532(b), added pars. (5) and (6).

1992—Subsec. (a). Pub. L. 102–486, §115(d), in introductory provisions inserted "(or after October 24, 1992, in the case of standards under paragraphs (3), and (4) of subsection (b) of this section)" and in par. (2) substituted "standards established by paragraphs (2), (3) and (4) of subsection (b)" for "standard established by subsection (b)(2)".

Subsec. (b)(3), (4). Pub. L. 102–486, §115(b), added pars. (3) and (4).

Subsec. (d). Pub. L. 102–486, §115(c), added subsec. (d).

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

REPORT TO PRESIDENT AND CONGRESS ON ENCOURAGEMENT OF INTEGRATED RESOURCE PLANNING AND INVESTMENTS IN CONSERVATION AND ENERGY EFFICIENCY BY ELECTRIC UTILITIES

Pub. L. 102–486, title I, §115(e), Oct. 24, 1992, 106 Stat. 2804, provided that: "The report under section 111(e) of this Act [16 U.S.C. 2621 note] transmitted by the Secretary of Energy to the President and to the Congress shall contain a survey of all State laws, regulations, practices, and policies under which State

regulatory authorities implement the provisions of paragraphs (3) and (4) of section 303(b) of the Public Utility Regulatory Policies Act of 1978 [15 U.S.C. 3203(b)(3) and (4)]. The report shall include an analysis, prepared in conjunction with the Federal Trade Commission, of the competitive impact of implementation of energy conservation, energy efficiency, and other demand side management programs by gas utilities on small businesses engaged in the design, sale, supply, installation, or servicing of similar energy conservation, energy efficiency, or other demand-side management measures and whether any unfair, deceptive, or predatory acts or practices exist, or are likely to exist, from implementation of such programs."

DEFINITIONS

The definitions of State and system cost in section 2602 of Title 16, Conservation, apply to this section.

[1] *So in original. The comma probably should not appear.*

[2] *So in original. A comma probably should appear.*

[3] *See Codification note below.*

§3204. Special rules for standards

(a) Procedures for termination of gas service

The procedures for termination of service referred to in section 3203(b)(1) of this title are procedures prescribed by the State regulatory authority (with respect to gas utilities for which it has ratemaking authority) or the nonregulated gas utility which provide that—

(1) no gas service to a gas consumer may be terminated unless reasonable prior notice (including notice of rights and remedies) is given to such consumer and such consumer has a reasonable opportunity to dispute the reasons for such termination, and

(2) during any period when termination of service to a gas consumer would be especially dangerous to health, as determined by the State regulatory authority (with respect to each gas utility for which it has ratemaking authority) or nonregulated gas utility, and such consumer establishes that—

(A) he is unable to pay for such service in accordance with the requirements of the utility's billing, or

(B) he is able to pay for such service but only in installments,

such service may not be terminated.

Such procedures shall take into account the need to include reasonable provisions for elderly and handicapped consumers.

(b) Advertising

(1) For purposes of this section and section 3203 of this title—

(A) The term "advertising" means the commercial use, by a gas utility, of any media, including newspaper, printed matter, radio, and television, in order to transmit a message to a substantial number of members of the public or to such utility's gas consumers.

(B) The term "political advertising" means any advertising for the purpose of influencing public opinion with respect to legislative, administrative, or electoral matters, or with respect to any controversial issue of public importance.

(C) The term "promotional advertising" means any advertising for the purpose of encouraging any person to select or use the service or additional service of a gas utility or the selection or installation of any appliance or equipment designed to use such utility's service.

(2) For purposes of this section and section 3203 of this title, the terms "political advertising" and "promotional advertising" do not include—

(A) advertising which informs natural gas consumers how they can conserve natural gas or can reduce peak demand for natural gas,

(B) advertising required by law or regulation, including advertising required under part 1 of title II of the National Energy Conservation Policy Act [42 U.S.C. 8211 et seq.],

(C) advertising regarding service interruptions, safety measures, or emergency conditions,

(D) advertising concerning employment opportunities with such utility,

(E) advertising which promotes the use of energy efficient appliances, equipment or services, or

(F) any explanation or justification of existing or proposed rate schedules, or notification of hearings thereon.

(Pub. L. 95–617, title III, §304, Nov. 9, 1978, 92 Stat. 3151.)

REFERENCES IN TEXT

The National Energy Conservation Policy Act, referred to in subsec. (b)(2)(B), is Pub. L. 95–619, Nov. 9, 1978, 92 Stat. 3208. Part 1 of title II of the National Energy Conservation Policy Act was classified generally to part A (§8211 et seq.) of subchapter II of chapter 91 of Title 42, The Public Health and Welfare, and was omitted from the Code pursuant to section 8229 of Title 42 which terminated authority under that part June 30, 1989. For complete classification of this Act to the Code, see Short Title note set out under section 8201 of Title 42 and Tables.

§3205. Federal participation

(a) Intervention

In addition to the authorities vested in the Secretary pursuant to any other provision of law, the Secretary, on his own motion, may intervene as a matter of right in any proceeding before a State regulatory authority which relates to gas utility rates or rate design. Such intervention shall be solely for the purpose of advocating policies or methods which carry out the purposes set forth in section 3201 of this title.

(b) Rights

The Secretary shall have the same rights as any other party to a proceeding before a State regulatory authority which relates to gas utility rates or rate design.

(c) Nonregulated gas utilities

The Secretary, on his own motion, may, to the same extent as provided in subsections (a) through (b) of this section, intervene as a matter of right in any proceeding which relates to rates or rate design of nonregulated gas utilities.

(Pub. L. 95–617, title III, §305, Nov. 9, 1978, 92 Stat. 3152.)

DEFINITIONS

The definition of Secretary in section 2602 of Title 16, Conservation, applies to this section.

§3206. Gas utility rate design proposals

(a) Study

(1) The Secretary, in consultation with the Commission and, after affording an opportunity for consultation and comment by representatives of the State regulatory commissions, gas utilities, and gas consumers, shall study and report to Congress on gas utility rate design within 18 months after November 9, 1978. Such study shall address the effect (both separately and in combination) of the following factors upon the items listed in paragraph (2): incremental pricing; marginal cost pricing; end user gas consumption taxes; wellhead natural gas pricing policies; demand-commodity rate design; declining block rates; interruptible service; seasonal rate differentials; and end user rate schedules.

(2) The items referred to in paragraph (1) are as follows:

(A) natural gas pipeline and local distribution company load factors;
(B) rates to each class of user, including residential, commercial, and industrial users;
(C) the change in total costs resulting from gas utility designs (including capital and operating costs) to gas consumers or classes thereof;
(D) demand for, and consumption of, natural gas;
(E) end use profiles of natural gas pipelines and local distribution companies; and
(F) competition with alternative fuels.

(b) Proposals

Based upon the study prepared pursuant to subsection (a) of this section, the Secretary shall develop proposals to improve gas utility rate design and to encourage conservation of natural gas. Such proposals shall include any comments and recommendations of the Commission.

(c) Transmission to Congress

The proposals prepared under subsection (b) of this section, shall be transmitted, together with any legislative recommendations, to each House of Congress not later than 6 months after the date of submission of the study under subsection (a) of this section. Such proposals shall be accompanied by an analyses [1] of—

(1) the projected savings (if any) in consumption of natural gas, and other energy resources,
(2) changes (if any) in the cost of natural gas to consumers, which are likely to result from the implementation nationally of each of such proposals, and
(3) the effects of the proposals on other provisions of this Act on gas utility rate structures.

(d) Public participation

The Secretary shall provide for public participation in the conduct of the study under subsection (a) of this section, and the preparation of proposals under subsection (b) of this section.

(Pub. L. 95–617, title III, §306, Nov. 9, 1978, 92 Stat. 3152.)

REFERENCES IN TEXT

This Act, referred to in subsec. (c)(3), is Pub. L. 95–617, Nov. 9, 1978, 92 Stat. 3117, known as the Public Utility Regulatory Policies Act of 1978. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 16, Conservation, and Tables.

DEFINITIONS

The definitions of Secretary and Commission in section 2602 of Title 16, Conservation, apply to this section.

[1] *So in original. Probably should be "analysis".*

§3207. Judicial review and enforcement

(a) Limitation of Federal jurisdiction

(1) Notwithstanding any other provision of law, no court of the United States shall have jurisdiction over any action arising under any provision of this chapter except for—
(A) an action over which a court of the United States has jurisdiction under paragraph (2), or
(B) review in the Supreme Court of the United States in accordance with sections 1257 and 1258 of title 28.

(2) The Secretary may bring an action in any appropriate court of the United States to enforce his right to intervene under section 3205 of this title, and such court shall have jurisdiction to grant appropriate relief.

(b) Enforcement

(1) Any person may bring an action to enforce the requirements of this chapter in the appropriate

State court. Such action in a State court shall be pursuant to applicable State procedures.

(2) Nothing in this chapter shall authorize the Secretary to appeal or otherwise seek judicial review of the decisions of a State regulatory authority or nonregulated gas utility or to become a party to any action to obtain such review or appeal. The Secretary may participate as an amicus curiae in any judicial review of an action arising under the provisions of this chapter.

(Pub. L. 95–617, title III, §307, Nov. 9, 1978, 92 Stat. 3153.)

DEFINITIONS

The definitions of Secretary and State in section 2602 of Title 16, Conservation, apply to this section.

§3208. Relationship to other applicable law

Nothing in this chapter prohibits any State regulatory authority or nonregulated gas utility from adopting, pursuant to State law, any standard or rule affecting gas utilities which is different from any standard established by this chapter.

(Pub. L. 95–617, title III, §308, Nov. 9, 1978, 92 Stat. 3153.)

DEFINITIONS

The definition of State in section 2602 of Title 16, Conservation, applies to this section.

§3209. Reports respecting standards

(a) State authorities and nonregulated utilities

Not later than 1 year after November 9, 1978, and annually thereafter for 10 years, each State regulatory authority (with respect to each gas utility for which it has ratemaking authority), and each nonregulated gas utility, shall report to the Secretary, in such manner as the Secretary shall prescribe, respecting its consideration of the standards established by this chapter. Such report shall include a summary of the determinations made and actions taken with respect to each of such standards on a utility-by-utility basis.

(b) Secretary

Not later than 18 months after November 9, 1978, and annually thereafter for 10 years, the Secretary shall submit a report to the President and the Congress containing—

(1) a summary of the reports submitted under subsection (a) of this section,

(2) his analysis of such reports, and

(3) his actions under this chapter, and his recommendations for such further Federal actions, including any legislation, regarding retail gas utility rates (and other practices) as may be necessary to carry out the purposes of this chapter.

(Pub. L. 95–617, title III, §309, Nov. 9, 1978, 92 Stat. 3153.)

DEFINITIONS

The definition of Secretary in section 2602 of Title 16, Conservation, applies to this section.

§3210. Prior and pending proceedings

For purposes of this chapter, proceedings commenced by any State regulatory authority (with respect to gas utilities for which it has ratemaking authority) and any nonregulated gas utility before November 9, 1978, and actions taken before such date in such proceedings shall be treated as complying with the requirements of this chapter if such proceedings and actions substantially conform to such requirements. For purposes of this chapter, any such proceeding or action

commenced before November 9, 1978, but not completed before such date shall comply with the requirements of this chapter, to the maximum extent practicable, with respect to so much of such proceeding or action as takes place after such date.

(Pub. L. 95–617, title III, §310, Nov. 9, 1978, 92 Stat. 3154.)

§3211. Relationship to other authority

Nothing in this chapter shall be construed to limit or affect any authority of the Secretary or the Commission under any other provision of law.

(Pub. L. 95–617, title III, §311, Nov. 9, 1978, 92 Stat. 3154.)

DEFINITIONS

The definitions of Secretary and Commission in section 2602 of Title 16, Conservation, apply to this section.

CHAPTER 60—NATURAL GAS POLICY

Sec.

3301. Definitions.

SUBCHAPTER I—WELLHEAD PRICING

3311 to 3320, 3331 to 3333. Repealed.

SUBCHAPTER II—INCREMENTAL PRICING

3341 to 3348. Repealed.

SUBCHAPTER III—ADDITIONAL AUTHORITIES AND REQUIREMENTS

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SUBCHAPTER VI—COORDINATION WITH NATURAL GAS ACT; MISCELLANEOUS PROVISIONS
3431. Coordination with the Natural Gas Act.
3432. Effect on State laws.

§3301. Definitions

For purposes of this chapter—

(1) Natural gas

The term "natural gas" means either natural gas unmixed, or any mixture of natural and artificial gas.

(2) Well

The term "well" means any well for the discovery or production of natural gas, crude oil, or both.

(3) New well

The term "new well" means any well—

(A) the surface drilling of which began on or after February 19, 1977; or

(B) the depth of which was increased, by means of drilling on or after February 19, 1977, to a completion location which is located at least 1,000 feet below the depth of the deepest completion location of such well attained before February 19, 1977.

(4) Old well

The term "old well" means any well other than a new well.

(5) Marker well

(A) General rule

The term "marker well" means any well from which natural gas was produced in commercial quantities at any time after January 1, 1970, and before April 20, 1977.

(B) New wells

The term "marker well" does not include any new well under paragraph (3)(A) but includes any new well under paragraph (3)(B) if such well qualifies as a marker well under subparagraph (A) of this paragraph.

(6) Reservoir

The term "reservoir" means any producible natural accumulation of natural gas, crude oil, or both, confined—

(A) by impermeable rock or water barriers and characterized by a single natural pressure system; or

(B) by lithologic or structural barriers which prevent pressure communication.

(7) Completion location

(A) General rule

The term "completion location" means any subsurface location from which natural gas is being or has been produced in commercial quantities.

(B) Marker well

The term "completion location", when used with reference to any marker well, means any subsurface location from which natural gas was produced from such well in commercial quantities after January 1, 1970, and before April 20, 1977.

(8) Proration unit

The term "proration unit" means—

(A) any portion of a reservoir, as designated by the State or Federal agency having regulatory jurisdiction with respect to production from such reservoir, which will be effectively and efficiently drained by a single well;

(B) any drilling unit, production unit, or comparable arrangement, designated or recognized by the State or Federal agency having jurisdiction with respect to production from the reservoir, to describe that portion of such reservoir which will be effectively and efficiently drained by a single well; or

(C) if such portion of a reservoir, unit, or comparable arrangement is not specifically provided for by State law or by any action of any State or Federal agency having regulatory jurisdiction with respect to production from such reservoir, any voluntary unit agreement or other comparable arrangement applied, under local custom or practice within the locale in which such reservoir is situated, for the purpose of describing the portion of a reservoir which may be effectively and efficiently drained by a single well.

(9) New lease

The term "new lease", when used with respect to the Outer Continental Shelf, means a lease, entered into on or after April 20, 1977, of submerged acreage.

(10) Old lease

The term "old lease", when used with respect to the Outer Continental Shelf, means any lease other than a new lease.

(11) New contract

The term "new contract" means any contract, entered into on or after November 9, 1978, for the first sale of natural gas which was not previously subject to an existing contract.

(12) Rollover contract

The term "rollover contract" means any contract, entered into on or after November 9, 1978, for the first sale of natural gas that was previously subject to an existing contract which expired at the end of a fixed term (not including any extension thereof taking effect on or after November 9, 1978) specified by the provisions of such existing contract, as such contract was in effect on November 9, 1978, whether or not there is an identity of parties or terms with those of such existing contract.

(13) Existing contract

The term "existing contract" means any contract for the first sale of natural gas in effect on November 8, 1978.

(14) Successor to an existing contract

The term "successor to an existing contract" means any contract, other than a rollover contract, entered into on or after November 9, 1978, for the first sale of natural gas which was previously subject to an existing contract, whether or not there is an identity of parties or terms with those of such existing contract.

(15) Interstate pipeline

The term "interstate pipeline" means any person engaged in natural gas transportation subject to the jurisdiction of the Commission under the Natural Gas Act [15 U.S.C. 717 et seq.].

(16) Intrastate pipeline

The term "intrastate pipeline" means any person engaged in natural gas transportation (not including gathering) which is not subject to the jurisdiction of the Commission under the Natural Gas Act [15 U.S.C. 717 et seq.] (other than any such pipeline which is not subject to the jurisdiction of the Commission solely by reason of section 1(c) of the Natural Gas Act [15 U.S.C. 717(c)]).

(17) Local distribution company

The term "local distribution company" means any person, other than any interstate pipeline or any intrastate pipeline, engaged in the transportation, or local distribution, of natural gas and the sale of natural gas for ultimate consumption.

(18) Committed or dedicated to interstate commerce

(A) General rule

The term "committed or dedicated to interstate commerce", when used with respect to natural gas, means—

(i) natural gas which is from the Outer Continental Shelf; and

(ii) natural gas which, if sold, would be required to be sold in interstate commerce (within the meaning of the Natural Gas Act [15 U.S.C. 717 et seq.]) under the terms of any contract, any certificate under the Natural Gas Act, or any provision of such Act.

(B) Exclusion

Such term does not apply with respect to—

(i) natural gas sold in interstate commerce (within the meaning of the Natural Gas Act [15 U.S.C. 717 et seq.])—

(I) under section 6 of the Emergency Natural Gas Act of 1977;

(II) under any limited term certificate, granted pursuant to section 7 of the Natural Gas Act [15 U.S.C. 717f], which contains a pregrant of abandonment of service for such natural gas;

(III) under any emergency regulation under the second proviso of section 7(c) of the Natural Gas Act [15 U.S.C. 717f(c)]; or

(IV) to the user by the producer and transported under any certificate, granted pursuant to section 7(c) of the Natural Gas Act [15 U.S.C. 717f(c)], if such certificate was specifically granted for the transportation of that natural gas for such user;

(ii) natural gas for which abandonment of service was granted before November 9, 1978, under section 7 of the Natural Gas Act [15 U.S.C. 717f]; and

(iii) natural gas which, but for this clause, would be committed or dedicated to interstate commerce under subparagraph (A)(ii) by reason of the action of any person (including any successor in interest thereof, other than by means of any reversion of a leasehold interest), if on May 31, 1978—

(I) neither that person, nor any affiliate thereof, had any right to explore for, develop, produce, or sell such natural gas; and

(II) such natural gas was not being sold in interstate commerce (within the meaning of the Natural Gas Act [15 U.S.C. 717 et seq.]) for resale (other than any sale described in clause (i)(I), (II), or (III)).

(19) Certificated natural gas

The term "certificated natural gas" means natural gas transported by any interstate pipeline in a facility for which there is in effect a certificate issued under section 7(c) of the Natural Gas Act [15 U.S.C. 717f(c)]. Such term does not include natural gas sold to the user by the producer and transported pursuant to a certificate which is specifically issued under section 7(c) of the Natural Gas Act for the transportation of that natural gas, for such user unless such natural gas is used for the generation of electricity.

(20) Sale

The term "sale" means any sale, exchange, or other transfer for value.

(21) First sale

(A) General rule

The term "first sale" means any sale of any volume of natural gas—

(i) to any interstate pipeline or intrastate pipeline;

(ii) to any local distribution company;
(iii) to any person for use by such person;
(iv) which precedes any sale described in clauses (i), (ii), or (iii); and
(v) which precedes or follows any sale described in clauses (i), (ii), (iii), or (iv) and is defined by the Commission as a first sale in order to prevent circumvention of any maximum lawful price established under this chapter.

(B) Certain sales not included

Clauses (i), (ii), (iii), or (iv) of subparagraph (A) shall not include the sale of any volume of natural gas by any interstate pipeline, intrastate pipeline, or local distribution company, or any affiliate thereof, unless such sale is attributable to volumes of natural gas produced by such interstate pipeline, intrastate pipeline, or local distribution company, or any affiliate thereof.

(22) Deliver

The term "deliver", when used with respect to any first sale of natural gas, means the physical delivery from the seller; except that in the case of the sale of proven reserves in place to any interstate pipeline, any intrastate pipeline, any local distribution company, or any user of such natural gas, such term means the transfer of title to such reserves.

(23) Certificate

The term "certificate", when used with respect to the Natural Gas Act [15 U.S.C. 717 et seq.], means a certificate of public convenience and necessity issued under such Act.

(24) Commission

The term "Commission" means the Federal Energy Regulatory Commission.

(25) Federal agency

The term "Federal agency" has the same meaning as given such term in section 105 of title 5.

(26) Person

The term "person" includes the United States, any State, and any political subdivision, agency, or instrumentality of the foregoing.

(27) Affiliate

The term "affiliate", when used in relation to any person, means another person which controls, is controlled by, or is under common control with, such person.

(28) Electric utility

The term "electric utility" means any person to the extent such person is engaged in the business of the generation of electricity and sale, directly or indirectly, of electricity to the public.

(29) Mcf

The term "Mcf", when used with respect to natural gas, means 1,000 cubic feet of natural gas measured at a pressure of 14.73 pounds per square inch (absolute) and a temperature of 60 degrees Fahrenheit.

(30) Btu

The term "Btu" means British thermal unit.

(31) Month

The term "month" means a calendar month.

(32) Mile

The term "mile" means a statute mile of 5,280 feet.

(33) United States

The term "United States" means the several States and includes the Outer Continental Shelf.

(34) State

The term "State" means each of the several States and the District of Columbia.

(35) Outer Continental Shelf

The term "Outer Continental Shelf" has the same meaning as such term has under section 1331(a) of title 43.

(36) Prudhoe Bay Unit of Alaska

The term "Prudhoe Bay Unit of Alaska" means the geographic area subject to the voluntary unit agreement approved by the Commissioner of the Department of Natural Resources of the State of Alaska on June 2, 1977, and referred to as the "affected area" in Conservation Order No. 145 of the Alaska Oil and Gas Conservation Committee, Division of Oil and Gas Conservation, Department of Natural Resources of the State of Alaska, as such order was in effect on June 1, 1977, and determined without regard to any adjustments in the description of the affected area permitted to be made under such order.

(37) Antitrust laws

The term "Federal antitrust laws" means the Sherman Act (15 U.S.C. 1 et seq.), the Clayton Act (15 U.S.C. 12, 13, 14–19, 20, 21, 22–27), the Federal Trade Commission Act (15 U.S.C. 41 et seq.), sections 73 and 74 of the Wilson Tariff Act (15 U.S.C. 8–9), and the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a).

(Pub. L. 95–621, §2, Nov. 9, 1978, 92 Stat. 3352.)

REFERENCES IN TEXT

The Natural Gas Act, and such Act, referred to in pars. (15), (16), (18)(A)(ii), (B)(i), (iii)(II), (23), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§717 et seq.) of this title. For complete classification of this Act to the Code, see section 717w of this title and Tables.

Section 6 of the Emergency Natural Gas Act of 1977, referred to in par. (18)(B)(i)(I), is Pub. L. 95–2, §6, Feb. 2, 1977, 91 Stat. 7, which was formerly set out in a note under section 717 of this title.

The Sherman Act (15 U.S.C. 1 et seq.), referred to in par. (37), is act July 2, 1890, ch. 647, 26 Stat. 209, as amended, which is classified to sections 1 to 7 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1 of this title and Tables.

The Clayton Act (15 U.S.C. 12, 13, 14–19, 20, 21, 22–27), referred to in par. (37), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of this title, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of this title and Tables.

The Federal Trade Commission Act (15 U.S.C. 41 et seq.), referred to in par. (37), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

Act of June 19, 1936, chapter 592, referred to in par. (37), means act June 19, 1936, ch. 592, 49 Stat. 1526, popularly known as the Robinson-Patman Antidiscrimination Act and also as the Robinson-Patman Price Discrimination Act, which enacted sections 13a, 13b, and 21a of this title and amended section 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 13 of this title and Tables.

SHORT TITLE OF 1989 AMENDMENT

Pub. L. 101–60, §1, July 26, 1989, 103 Stat. 157, provided that: "This Act [amending sections 3331, 3372, 3373, 3375, 3411, 3412, 3414, 3416, 3431, and 3432 of this title, repealing sections 3311 to 3320, 3331 to 3333, 3413, and 3417 of this title, and enacting provisions set out as notes under sections 3311 and 3372 of this title] may be cited as the 'Natural Gas Wellhead Decontrol Act of 1989'."

SHORT TITLE

Pub. L. 95–621, §1, Nov. 9, 1978, 92 Stat. 3351, provided that: "This Act [enacting this chapter and amending section 7255 of Title 42, The Public Health and Welfare] may be cited as the 'Natural Gas Policy Act of 1978'."

SUBCHAPTER I—WELLHEAD PRICING

§§3311 to 3320, 3331 to 3333. Repealed. Pub. L. 101–60, §2(b), July 26, 1989, 103 Stat. 158

Section 3311, Pub. L. 95–621, title I, §101, Nov. 9, 1978, 92 Stat. 3356, related to inflation adjustments and other general price ceiling rules to be applied in establishing wellhead price controls.

Section 3312, Pub. L. 95–621, title I, §102, Nov. 9, 1978, 92 Stat. 3358; Pub. L. 102–154, title I, Nov. 13, 1991, 105 Stat. 1000, related to ceiling price for new natural gas and certain gas produced from Outer Continental Shelf.

Section 3313, Pub. L. 95–621, title I, §103, Nov. 9, 1978, 92 Stat. 3361, related to ceiling price for new, onshore production wells.

Section 3314, Pub. L. 95–621, title I, §104, Nov. 9, 1978, 92 Stat. 3362, related to a ceiling price for sales of natural gas dedicated to interstate commerce.

Section 3315, Pub. L. 95–621, title I, §105, Nov. 9, 1978, 92 Stat. 3363, related to ceiling price for sales under intrastate contracts existing on Nov. 8, 1978.

Section 3316, Pub. L. 95–621, title I, §106, Nov. 9, 1978, 92 Stat. 3365, related to ceiling price for sales under rollover contracts.

Section 3317, Pub. L. 95–621, title I, §107, Nov. 9, 1978, 92 Stat. 3366, related to ceiling price for high-cost natural gas.

Section 3318, Pub. L. 95–621, title I, §108, Nov. 9, 1978, 92 Stat. 3367, related to ceiling price for stripper well natural gas.

Section 3319, Pub. L. 95–621, title I, §109, Nov. 9, 1978, 92 Stat. 3368, related to ceiling price for other categories of natural gas.

Section 3320, Pub. L. 95–621, title I, §110, Nov. 9, 1978, 92 Stat. 3368, related to treatment of State severance taxes and certain production-related costs.

Section 3331, Pub. L. 95–621, title I, §121, Nov. 9, 1978, 92 Stat. 3369; Pub. L. 101–60, §2(a), July 26, 1989, 103 Stat. 157, provided for elimination of price controls for certain natural gas sales.

Section 3332, Pub. L. 95–621, title I, §122, Nov. 9, 1978, 92 Stat. 3370, related to standby price control authority.

Section 3333, Pub. L. 95–621, title I, §123, Nov. 9, 1978, 92 Stat. 3371, related to reports to Congress by Department of Energy.

EFFECTIVE DATE OF REPEAL

Section 2(b) of Pub. L. 101–60 provided that the repeal of sections 3311 to 3320 and 3331 to 3333 is effective Jan. 1, 1993.

SUBCHAPTER II—INCREMENTAL PRICING

§§3341 to 3348. Repealed. Pub. L. 100–42, §2(a), May 21, 1987, 101 Stat. 314

Section 3341, Pub. L. 95–621, title II, §201, Nov. 9, 1978, 92 Stat. 3371, required Commission to prescribe and make effective a rule designed to provide for passthrough of costs of natural gas, with respect to boiler fuel use of natural gas by industrial boiler fuel facilities, not later than 12 months after Nov. 9, 1978.

Section 3342, Pub. L. 95–621, title II, §202, Nov. 9, 1978, 92 Stat. 3372, required Commission to prescribe an amendment to rule required under section 3341 of this title, which would expand its application to other industrial uses, not later than 18 months after Nov. 9, 1978.

Section 3343, Pub. L. 95–621, title II, §203, Nov. 9, 1978, 92 Stat. 3373, enumerated acquisition costs subject to passthrough requirements of rule prescribed under section 3341 of this title.

Section 3344, Pub. L. 95–621, title II, §204, Nov. 9, 1978, 92 Stat. 3375, related to method of passthrough.

Section 3345, Pub. L. 95–621, title II, §205, Nov. 9, 1978, 92 Stat. 3378, related to direct passthrough of surcharges paid by local distributors on natural gas delivered by interstate pipelines to industrial facilities served by such local distributors.

Section 3346, Pub. L. 95–621, title II, §206, Nov. 9, 1978, 92 Stat. 3379, enumerated exemptions from

application of rule required under section 3341 of this title.

Section 3347, Pub. L. 95–621, title II, §207, Nov. 9, 1978, 92 Stat. 3380, related to application of section 3343 to certain natural gas and liquefied natural gas imports.

Section 3348, Pub. L. 95–621, title II, §208, Nov. 9, 1978, 92 Stat. 3381, directed that Alaska natural gas be allocated to rates and charges of interstate pipelines in accordance with certain general principles applicable on Nov. 9, 1978, for establishing rates.

REPEAL OF INCREMENTAL PRICING REQUIREMENTS

Pub. L. 100–42, §2, May 21, 1987, 101 Stat. 314, provided that:

"(a) REPEAL.—Subject to subsections (b) and (c) of this section, title II of the Natural Gas Policy Act of 1978 (15 U.S.C. 3341–3348) is repealed, and the items relating to title II are stricken from the table of contents of that Act.

"(b) LIMITED CONTINUING EFFECT OF RULES.—A rule promulgated by the Federal Energy Regulatory Commission, under title II of the Natural Gas Policy Act of 1978 shall continue in effect only with respect to the flowthrough of costs incurred before the enactment of this section [May 21, 1987], including any surcharges based on such costs.

"(c) IMPLEMENTATION.—The Federal Energy Regulatory Commission may take appropriate action to implement this section."

SUBCHAPTER III—ADDITIONAL AUTHORITIES AND REQUIREMENTS

PART A—EMERGENCY AUTHORITY

§3361. Declaration of emergency

(a) Presidential declaration

The President may declare a natural gas supply emergency (or extend a previously declared emergency) if he finds that—

(1) a severe natural gas shortage, endangering the supply of natural gas for high-priority uses, exists or is imminent in the United States or in any region thereof; and

(2) the exercise of authorities under section 3362 or section 3363 of this title is reasonably necessary, having exhausted other alternatives to the maximum extent practicable, to assist in meeting natural gas requirements for such high-priority uses.

(b) Limitation

(1) Expiration

Any declaration of a natural gas supply emergency (or extension thereof) under subsection (a) of this section, shall terminate at the earlier of—

(A) the date on which the President finds that any shortage described in subsection (a) of this section does not exist or is not imminent; or

(B) 120 days after the date of such declaration of emergency (or extension thereof).

(2) Extensions

Nothing in this subsection shall prohibit the President from extending, under subsection (a) of this section, any emergency (or extension thereof), previously declared under subsection (a) of this section, upon the expiration of such declaration of emergency (or extension thereof) under paragraph (1)(B).

(Pub. L. 95–621, title III, §301, Nov. 9, 1978, 92 Stat. 3381.)

DELEGATION OF FUNCTIONS

Functions of President under this subchapter, except for authority to declare, extend, and terminate a

national gas supply emergency pursuant to this section, delegated to Secretary of Energy, see section 1–101 of Ex. Ord. No. 12235, Sept. 3, 1980, 45 F.R. 58803, set out as a note under section 3364 of this title.

§3362. Emergency purchase authority

(a) Presidential authorization

During any natural gas supply emergency declared under section 3361 of this title, the President may, by rule or order, authorize any interstate pipeline or local distribution company served by any interstate pipeline to contract, upon such terms and conditions as the President determines to be appropriate (including provisions respecting fair and equitable prices), for the purchase of emergency supplies of natural gas—

(1) from any producer of natural gas (other than a producer who is affiliated with the purchaser, as determined by the President) if—

(A) such natural gas is not produced from the Outer Continental Shelf; and

(B) the sale or transportation of such natural gas was not pursuant to a certificate issued under the Natural Gas Act [15 U.S.C. 717 et seq.] immediately before the date on which such contract was entered into; or

(2) from any intrastate pipeline, local distribution company, or other person (other than an interstate pipeline or a producer of natural gas).

(b) Contract duration

The duration of any contract authorized under subsection (a) of this section may not exceed 4 months. The preceding sentence shall not prohibit the President from authorizing under subsection (a) of this section a renewal of any contract, previously authorized under such subsection, following the expiration of such contract.

(c) Related transportation and facilities

The President may, by order, require any pipeline to transport natural gas, and to construct and operate such facilities for the transportation of natural gas, as he determines necessary to carry out any contract authorized under subsection (a) of this section. The costs of any construction or transportation ordered under this subsection shall be paid by the purchaser of natural gas under the contract with respect to which such order is issued. No order to transport natural gas under this subsection shall require any pipeline to transport natural gas in excess of such pipeline's available capacity.

(d) Maintenance of adequate records

The Commission shall require any interstate pipeline or local distribution company contracting under the authority of this section for natural gas to maintain and make available full and adequate records concerning transactions under this section, including records of the volumes of natural gas purchased under the authority of this section and the rates and charges for purchase and receipt of such natural gas.

(e) Special limitation

No sale under any emergency purchase contract under this section for emergency supplies of natural gas for sale and delivery from any intrastate pipeline which is operating under court supervision as of January 1, 1977, may take effect unless the court approves.

(Pub. L. 95–621, title III, §302, Nov. 9, 1978, 92 Stat. 3382.)

REFERENCES IN TEXT

The Natural Gas Act, referred to in subsec. (a)(1)(B), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§717 et seq.) of this title. For complete classification of this act to the Code, see section 717w of this title and Tables.

§3363. Emergency allocation authority

(a) In general

In order to assist in meeting natural gas requirements for high-priority uses of natural gas during any natural gas supply emergency declared under section 3361 of this title, the President may, by order, allocate supplies of natural gas under subsections (b), (c), and (d) of this section to—

(1) any interstate pipeline;

(2) any local distribution company—

(A) which is served by any interstate pipeline;

(B) which is providing natural gas only for high-priority uses; and

(C) which is in need of deliveries of natural gas to assist in meeting natural gas requirements for high-priority uses of natural gas; and

(3) any person for meeting requirements of high-priority uses of natural gas.

(b) Allocation of certain boiler fuel gas

(1) Required finding

The President shall not allocate supplies of natural gas under this subsection unless he finds that—

(A) to the maximum extent practicable, emergency purchase authority under section 3362 of this title has been utilized to assist in meeting natural gas requirements for high-priority uses of natural gas;

(B) emergency purchases of natural gas supplies under section 3362 of this title are not likely to satisfy the natural gas requirements for such high-priority uses;

(C) the exercise of authority under this subsection is reasonably necessary to assist in meeting natural gas requirements for such high-priority uses; and

(D) any interstate pipeline or local distribution company receiving such natural gas has ordered the termination of all deliveries of natural gas for other than high-priority uses and attempted to to [1] the maximum extent practicable to terminate such deliveries.

(2) Allocation authority

Subject to paragraph (1), in order to assist in meeting natural gas requirements for high-priority uses of natural gas, the President may, by order, allocate supplies of natural gas the use of which has been prohibited by the President pursuant to authority under section 717z of this title (relating to the use of natural gas as a boiler fuel during any natural gas supply emergency).

(c) Allocation of general pipeline supply

(1) Required findings

The President shall not allocate supplies of natural gas under this subsection unless he finds that—

(A) to the maximum extent practicable, allocation of supplies of natural gas under subsection (b) of this section has been utilized to assist in meeting natural gas requirements for high-priority uses of natural gas;

(B) the exercise of such authority is not likely to satisfy the natural gas requirements for such high-priority uses;

(C) the exercise of authority under this subsection is reasonably necessary to assist in meeting natural gas requirements for such high-priority uses;

(D) any interstate pipeline or local distribution company receiving such natural gas has ordered the termination of all deliveries of natural gas for other than high-priority uses and attempted to the maximum extent practicable to terminate such deliveries;

(E) such allocation will not create, for the interstate pipeline delivering certificated natural gas, a supply shortage which will cause such pipeline to be unable to meet the natural gas requirements for high-priority uses of natural gas served, directly or indirectly, by such pipeline;

and

(F) such allocation will not result in a disproportionate share of deliveries and resulting curtailments of natural gas being experienced by such interstate pipeline when compared to deliveries and resulting curtailments which are experienced as a result of orders issued under this subsection applicable to other interstate pipelines (as determined by the President).

(2) Required notification from State

(A) [2] Notification

The President shall not allocate supplies of natural gas under this subsection unless he is notified by the Governor of any State that—

(i) a shortage of natural gas supplies available to such State exists or is imminent;

(ii) such shortage or imminent shortage endangers the supply of natural gas for high-priority uses in such State; and

(iii) the exercise of authority under State law is inadequate to protect high-priority uses of natural gas in such State from an interruption in natural gas supplies.

(3) Basis of finding

To the maximum extent practicable, the Governor shall submit, together with any notification under subparagraph (A), information upon which he has based his finding under such subparagraph, including—

(i) volumes of natural gas required to meet the natural gas requirements for high-priority uses of natural gas in such State;

(ii) information received from persons in the business of producing, selling, transporting, or delivering natural gas in such State as to the volumes of natural gas supplies available to such State;

(iii) information on the authority under State law which will be exercised to protect high-priority uses; and

(iv) such other information which the President requests or which the Governor determines appropriate to apprise the President of emergency deliveries and transportation of interstate natural gas needed by such State.

(4) Allocation authority

Subject to paragraphs (1), (2), and (5), in order to assist in meeting natural gas requirements for high-priority uses of natural gas, the President may, by order, allocate supplies of certificated natural gas from any interstate pipeline.

(5) Consideration of alternative fuel availability

In issuing any order under this subsection the President shall consider the relative availability of alternative fuel to natural gas users supplied by the interstate pipeline ordered to make deliveries pursuant to this subsection.

(d) Allocation of user-owned gas

(1) Required finding

The President shall not allocate supplies of natural gas under this subsection unless he finds that—

(A) to the maximum extent practicable, allocation of supplies of natural gas under subsection (c) of this section has been utilized to assist in meeting natural gas requirements for high-priority uses of natural gas;

(B) the exercise of such authority is not likely to satisfy the natural gas requirements for such high-priority uses;

(C) the exercise of authority under this subsection is reasonably necessary to assist in meeting natural gas requirements for such high-priority uses;

(D) any interstate pipeline or local distribution company receiving such natural gas has ordered the termination of all deliveries of natural gas for other than high-priority uses and

attempted to the maximum extent practicable to terminate such deliveries; and

(E) such allocation will not create, for the person who owns and would otherwise use such natural gas, a supply shortage which will cause such person to be unable to satisfy such person's natural gas requirements for high-priority uses.

(2) Allocation authority

Subject to paragraphs (1) and (3), in order to assist in meeting natural gas requirements for high-priority uses of natural gas, the President may, by order, allocate supplies of natural gas which would be certificated natural gas but for the second sentence of section 3301(19) of this title.

(3) Consideration of economic feasibility of alternative fuels

In issuing any order under this subsection, the President shall consider the economic feasibility of alternative fuels available to the user which owned the natural gas subject to an order under this subsection.

(e) Limitation

No order may be issued under this section unless the President determines that such order will not require transportation of natural gas by any pipeline in excess of its available transportation capacity.

(f) Industry assistance

The President may request that representatives of pipelines, local distribution companies, and other persons meet and provide assistance to the President in carrying out his authority under this section.

(g) Compensation

(1) In general

If the parties to any order issued under subsection (b), (c), (d), or (h) of this section fail to agree upon the terms of compensation for natural gas deliveries or transportation required pursuant to such order, the President, after a hearing held either before or after such order takes effect, shall, by supplemental order, prescribe the amount of compensation to be paid for such deliveries or transportation and for any other expenses incurred in delivering or transporting natural gas.

(2) Calculation of compensation for certain boiler fuel natural gas

For purposes of any supplemental order under paragraph (1) with respect to emergency deliveries pursuant to subsection (b) of this section, the President shall calculate the amount of compensation—

(A) for supplies of natural gas based upon the amount required to make whole the user subject to the prohibition order, but in no event may such compensation exceed just compensation prescribed in section 717z of this title; and

(B) for transportation, storage, delivery, and other services, based upon reasonable costs, as determined by the President.

(3) Compensation for other natural gas allocated

For the purpose of any supplemental order under paragraph (1), if the party making emergency deliveries pursuant to subsection (c) or (d) of this section—

(A) indicates a preference for compensation in kind, the President shall direct that compensation in kind be provided as expeditiously as practicable;

(B) indicates a preference for compensation, or the President determines that, notwithstanding paragraph (A) of this subsection, any portion thereof cannot practicably be compensated in kind, the President shall calculate the amount of compensation—

(i) for supplies of natural gas, based upon the amount required to make the pipeline and its local distribution companies whole, in the case of any order under subsection (c) of this section, or to make the user from whom natural gas is allocated whole, in the case of any order under subsection (d) of this section including any amount actually paid by such pipeline and its local distribution companies or such user for volumes of natural gas or higher cost

synthetic gas acquired to replace natural gas subject to an order under subsection (c) or (d) of this section; and

(ii) for transportation, storage, delivery, and other services, based upon reasonable costs, as determined by the President. Compensation received by an interstate pipeline under this subsection shall be credited to the account of any local distribution company served by that pipeline to the extent ordered by the President to make such local distribution company whole.

(h) Related transportation and facilities

The President may, by order, require any pipeline to transport natural gas, and to construct and operate such facilities for the transportation of natural gas, as he determines necessary to carry out any order under subsection (b), (c), or (d) of this section. Compensation for the costs of any construction or transportation ordered under this subsection shall be determined under subsection (g) of this section and shall be paid by the person to whom supplies of natural gas are ordered allocated under this section.

(i) Monitoring

In order to effect the purposes of this part, the President shall monitor the operation of any order made pursuant to this section to assure that natural gas delivered pursuant to this section is applied to high-priority uses only.

(j) Commission study

Not later than June 1, 1979, the Commission shall prepare and submit to the Congress a report regarding whether authority to allocate natural gas, which is not otherwise subject to allocation under this part, is likely to be necessary to meet high-priority uses.

(k) "High-priority use" defined

For purposes of this section, the term "high-priority use" means any—

(1) use of natural gas in a residence;

(2) use of natural gas in a commercial establishment in amounts less than 50 Mcf on a peak day; or

(3) any use of natural gas the curtailment of which the President determines would endanger life, health, or maintenance of physical property.

(Pub. L. 95–621, title III, §303, Nov. 9, 1978, 92 Stat. 3383.)

[1] *So in original.*

[2] *So in original. Par. (2) enacted without a subpar. (B).*

§3364. Miscellaneous provisions

(a) Information

(1) Obtaining of information

In order to obtain information to carry out his authority under this part, the President may—

(A) sign and issue subpenas for the attendance and testimony of witnesses and the production of books, records, papers, and other documents;

(B) require any person, by general or special order, to submit answers in writing to interrogatories, requests for reports or for other information, and such answers shall be made within such reasonable period, and under oath or otherwise as the President may determine; and

(c) [1] secure, upon request, any information from any Federal agency.

(2) Enforcement of subpenas and orders

The appropriate United States district court may, upon petition of the Attorney General at the

request of the President, in the case of refusal to obey a subpena or order of the President issued under this subsection, issue an order requiring compliance therewith, and any failure to obey an order of the court may be punished by the court as a contempt thereof.

(b) Reporting of prices and volumes

In issuing any order under section 3362 or 3363 of this title, the President shall require that the prices and volumes of natural gas delivered, transported, or contracted for pursuant to such order shall be reported to him on a weekly basis. Such reports shall be made available to the Congress.

(c) Presidential reports to Congress

The President shall report to the Congress, not later than 90 days following the termination under section 3361(b) of this title of any declaration of a natural gas supply emergency (or extension thereof) under section 3361(a) of this title, respecting the exercise of authority under section 3361, 3362, 3363 of this title, or this section.

(d) Delegation of authorities

The President may delegate all or any portion of the authority granted to him under section 3361, 3362, 3363 of this title, or this section to such Federal officers or agencies as he determines appropriate, and may authorize such redelegation as may be appropriate. Except with respect to section 552 of title 5, any Federal officer or agency to which authority is delegated or redelegated under this subsection shall be subject only to such procedural requirements respecting the exercise of such authority as the President would be subject to if such authority were not so delegated.

(e) Antitrust protections

(1) Defenses

There shall be available as a defense for any person to civil or criminal action brought for violation of the Federal antitrust laws (or any similar law of any State) with respect to any action taken, or meeting held, pursuant to any order of the President under section 3363(b), (c), (d), or (i) of this title, or any meeting held pursuant to a request of the President under section 3363(g) of this title, if—

(A) such action was taken or meeting held solely for the purpose of complying with the President's request or order;

(B) such action was not taken for the purpose of injuring competition; and

(C) any such meeting complied with the requirements of paragraph (2).

Persons interposing the defense provided by this subsection shall have the burden of proof, except that the burden shall be on the person against whom the defense is asserted with respect to whether the actions were taken for the purpose of injuring competition.

(2) Requirements of meetings

With respect to any meeting held pursuant to a request by the President under section 3363(g) of this title or pursuant to an order under section 3363 of this title—

(A) there shall be present at such meeting a full-time Federal employee designated for such purposes by the Attorney General;

(B) a full and complete record of such meeting shall be taken and deposited, together with any agreements resulting therefrom, with the Attorney General, who shall make it available for public inspection and copying;

(C) the Attorney General and the Federal Trade Commission shall have the opportunity to participate from the beginning in the development and carrying out of agreements and actions under section 3363 of this title, in order to propose any alternative which would avoid or overcome, to the greatest extent practicable, possible anticompetitive effects while achieving substantially the purposes of section 3363 of this title and any order thereunder; and

(D) such other procedures as may be specified by the President in such request or order shall be complied with.

(f) Effect on certain contractual obligations

There shall be available as a defense to any action brought for breach of contract under Federal or State Law arising out of any act or omission that such act was taken or that such omission occurred for purposes of complying with any order issued under section 3363 of this title.

(g) Preemption

Any order issued pursuant to this subchapter shall preempt any provision of any program for the allocation, emergency delivery, transportation, or purchase of natural gas established by any State or local government if such program is in conflict with any such order.

(Pub. L. 95–621, title III, §304, Nov. 9, 1978, 92 Stat. 3387.)

EX. ORD. NO. 12235. ASSIGNMENT OF MANAGEMENT RESPONSIBILITY IN CASES OF NATURAL GAS EMERGENCIES

Ex. Ord. No. 12235, Sept. 3, 1980, 45 F.R. 58803, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 304(d) of the Natural Gas Policy Act of 1978 (92 Stat. 3387; 15 U.S.C. 3364(d)) and Section 301 of Title 3 of the United States Code, and in order to assign management responsibility in case of a natural gas supply emergency, it is hereby ordered as follows:

1–101. The functions vested in the President by Sections 301 through 304(c) of the Natural Gas Policy Act of 1978 (92 Stat. 3381–3387; 15 U.S.C. 3361–3364(c)) are delegated to the Secretary of Energy; except for the authority to declare, extend, and terminate a natural gas supply emergency pursuant to Section 301 thereof (15 U.S.C. 3361).

1–102. The functions vested in the President by Section 607 of the Public Utility Regulatory Policies Act of 1978 (92 Stat. 3171; 15 U.S.C. 717z) are delegated to the Secretary of Energy; except for the authority to declare, extend, and terminate a natural gas supply emergency pursuant to Section 607(a) and (b) thereof (15 U.S.C. 717z(a) and (b)).

1–103. The Secretary shall consult with the Administrator of the Environmental Protection Agency, the Director [now Administrator] of the Federal Emergency Management Agency, and the heads of other executive agencies in exercising the functions delegated to him by this Order.

1–104. All functions delegated to the Secretary by this Order may be redelegated, in whole or in part, to the head of any other agency.

1–105. All Executive agencies shall, to the extent permitted by law, cooperate with and assist the Secretary in carrying out the functions delegated to him by this Order.

JIMMY CARTER.

[1] *So in original. Probably should be "(C)".*

PART B—OTHER AUTHORITIES AND REQUIREMENTS

§3371. Authorization of certain sales and transportation

(a) Commission approval of transportation

(1) Interstate pipelines

(A) In general

The Commission may, by rule or order, authorize any interstate pipeline to transport natural gas on behalf of—

(i) any intrastate pipeline; and

(ii) any local distribution company.

(B) Just and reasonable rates

The rates and charges of any interstate pipeline with respect to any transportation authorized under subparagraph (A) shall be just and reasonable (within the meaning of the Natural Gas Act

[15 U.S.C. 717 et seq.]).

(2) Intrastate pipelines

(A) In general

The Commission may, by rule or order, authorize any intrastate pipeline to transport natural gas on behalf of—

(i) any interstate pipeline; and

(ii) any local distribution company served by any interstate pipeline.

(B) Rates and charges

(i) Maximum fair and equitable price

The rates and charges of any intrastate pipeline with respect to any transportation authorized under subparagraph (A), including any amount computed in accordance with the rule prescribed under clause (ii), shall be fair and equitable and may not exceed an amount which is reasonably comparable to the rates and charges which interstate pipelines would be permitted to charge for providing similar transportation service.

(ii) Commission rule

The Commission shall, by rule, establish the method for calculating an amount necessary to—

(I) reasonably compensate any intrastate pipeline for expenses incurred by the pipeline and associated with the providing of any gathering, treatment, processing, transportation, delivery, or similar service provided by such pipeline in connection with any transportation of natural gas authorized under subparagraph (A); and

(II) provide an opportunity for such pipeline to earn a reasonable profit on such services.

(b) Commission approval of sales

(1) In general

The Commission may, by rule or order, authorize any intrastate pipeline to sell natural gas to—

(A) any interstate pipeline; and

(B) any local distribution company served by any interstate pipeline.

(2) Rates and charges

(A) Maximum fair and equitable price

The rates and charges of any intrastate pipeline with respect to any sale of natural gas authorized under paragraph (1) shall be fair and equitable and may not exceed the sum of—

(i) such intrastate pipeline's weighted average acquisition cost of natural gas;

(ii) an amount, computed in accordance with the rule prescribed under subparagraph (B); and

(iii) any adjustment permitted under subparagraph (C).

(B) Commission rule

The Commission shall, by rule, establish the method for calculating an amount necessary to—

(i) reasonably compensate any intrastate pipeline for expenses incurred by the pipeline and associated with the providing of any gathering, treatment, processing, transportation, or delivery service provided by such pipeline in connection with any sale of natural gas authorized under paragraph (1); and

(ii) provide an opportunity for such pipeline to earn a reasonable profit on such services.

(C) Adjustment

(i) Application

This subparagraph shall apply in any case in which, in order to deliver any volume of natural gas pursuant to any sale authorized under paragraph (1), any intrastate pipeline

acquires quantities of natural gas under any existing contract, if—

(I) such intrastate pipeline acquires any volume of natural gas under such contract in excess of that which such pipeline would otherwise have acquired; and

(II) the price paid for such additional volume of natural gas acquired under such contract is greater than such pipeline's weighted average acquisition cost of natural gas, computed without regard to the acquisition of such additional volume of natural gas.

(ii) Commission adjustment

In any case to which this subparagraph applies, the Commission shall permit an adjustment to the maximum fair and equitable price provided under subparagraph (A) to increase the revenue to the intrastate pipeline under such sale by an amount determined by the Commission to be adequate to offset the additional cost incurred by such pipeline due to any increase in such pipeline's weighted average acquisition cost of natural gas.

(3) Limitation

(A) Two-year duration

No authorization of any sale (or any extension thereof) under paragraph (1) may be for a period exceeding two years.

(B) Extension

Any authorization of any sale under paragraph (1), and any extension of any such authorization under this subparagraph, may be extended by the Commission if such extension satisfies the requirements of this subsection.

(4) Adequacy of service to intrastate customers

Any sale authorized under paragraph (1) shall be subject to interruption to the extent that natural gas subject to such sale is required to enable the intrastate pipeline involved to provide adequate service to such pipeline's customers at the time of such sale.

(5) Procedural requirements

(A) Affidavit

Any application for authorization of any sale under paragraph (1) shall be accompanied by an affidavit filed by the intrastate pipeline involved and setting forth—

(i) the identity of the interstate pipeline or local distribution company involved;

(ii) each point of delivery of the natural gas from the intrastate pipeline;

(iii) the estimated total and daily volumes of natural gas subject to such sale;

(iv) the price or prices of such volumes; and

(v) such other information as the Commission may, by rule, require.

(B) Verification of compliance

Any application for authorization of any sale under paragraph (1) shall be accompanied by a statement by the intrastate pipeline involved verifying by oath or affirmation that such sale, if authorized, would comply with all requirements applicable to such sale under this subsection and all terms and conditions established, by rule or order, by the Commission and applicable to such sale.

(6) Termination of sales

(A) Hearing

Upon complaint of any interested person, or upon the Commission's own motion, the Commission shall, after affording an opportunity for oral presentation of views and arguments, terminate any sale authorized under paragraph (1) if the Commission determines—

(i) such termination is required to enable the intrastate pipeline involved to provide adequate service to the customers of such pipeline at the time of such sale;

(ii) such sale involves the sale of natural gas acquired by the intrastate pipeline involved solely or primarily for the purpose of resale of such natural gas pursuant to a sale authorized

under paragraph (1);

(iii) such sale violates any requirement of this subsection or any term or condition established, by rule or order, by the Commission and applicable to such sale; or

(iv) such sale circumvents or violates any provision of this chapter.

(B) Suspension pending hearing

Prior to any hearing or determination required under subparagraph (A), upon complaint of any interested person or upon the Commission's own motion, the Commission may suspend any sale authorized under paragraph (1) if the Commission finds that it is likely that the determinations described in subparagraph (A) will be made following the hearing required under subparagraph (A).

(C) Determination

The determination of whether any interruption of any sale authorized under paragraph (1) is required under subparagraph (A)(i) shall be made by the Commission without regard to the character of the use of natural gas by any customer of the intrastate pipeline involved.

(D) State intervention

Any interested State may intervene as a matter of right in any proceeding before the Commission relating to any determination under this section.

(7) Disapproval of application

The Commission shall disapprove any application for authorization of any sale under paragraph (1) if the Commission determines—

(A) such sale would impair the ability of the intrastate pipeline involved to provide adequate service to its customers at the time of such sale (without regard to the character of the use of natural gas by such customer);

(B) such sale would involve the sale of natural gas acquired by the intrastate pipeline involved solely or primarily for the purpose of resale of such natural gas pursuant to a sale authorized under paragraph (1);

(C) such sale would violate any requirement of this subsection or any term or condition established, by rule or order, by the Commission and applicable to such sale; or

(D) such sale would circumvent or violate any provision of this chapter.

(c) Terms and conditions

Any authorization granted under this section shall be under such terms and conditions as the Commission may prescribe.

(Pub. L. 95–621, title III, §311, Nov. 9, 1978, 92 Stat. 3388.)

REFERENCES IN TEXT

The Natural Gas Act, referred to in subsec. (a)(1)(B), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§717 et seq.) of this title. For complete classification of this act to the Code, see section 717w of this title and Tables.

§3372. Assignment of contractual rights to receive surplus natural gas

(a) Authorization of assignments

The Commission may, by rule or order, authorize any intrastate pipeline to assign, without compensation, to any interstate pipeline or local distribution company all or any portion of such intrastate pipeline's right to receive surplus natural gas at any first sale, upon such terms and conditions as the Commission determines appropriate.

(b) Effect of authorization under subsection (a)

For the effect of an authorization under subsection (a) of this section, see section 3431 of this title (relating to the coordination of this chapter with the Natural Gas Act [15 U.S.C. 717 et seq.]).

(c) Surplus natural gas

For purposes of this section, the term "surplus natural gas" means any natural gas which is determined, by the State agency having regulatory jurisdiction over the intrastate pipeline which would be entitled to receive such natural gas in the absence of any assignment to exceed the then current demands on such pipeline for natural gas.

(Pub. L. 95–621, title III, §312, Nov. 9, 1978, 92 Stat. 3392; Pub. L. 101–60, §3(b)(2), July 26, 1989, 103 Stat. 158.)

REFERENCES IN TEXT

The Natural Gas Act, referred to in subsec. (b), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§717 et seq.) of this title. For complete classification of this act to the Code, see section 717w of this title and Tables.

AMENDMENTS

1989—Subsec. (c). Pub. L. 101–60 substituted "any natural gas" for "any natural gas—

"(1) which is not committed or dedicated to interstate commerce on November 8, 1978;

"(2) the first sale of which is subject to a maximum lawful price established under subchapter I of this chapter; and

"(3)".

EFFECTIVE DATE OF 1989 AMENDMENT

Section 3(b) of Pub. L. 101–60 provided in part that the amendment by section 3(b)(2) of Pub. L. 101–60 is effective Jan. 1, 1993.

§3373. Effect of certain natural gas prices on indefinite price escalator clauses

(a) High-cost natural gas

No price paid in any first sale of high-cost natural gas (as defined in section 3317(c) [1] of this title, as such section was in effect on January 1, 1989) may be taken into account in applying any indefinite price escalator clause (as defined in section 3315(b)(3)(B) [1] of this title, as such section was in effect on January 1, 1989) with respect to any first sale of any natural gas other than high-cost natural gas (as defined in section 3317(c) [1] of this title, as such section was in effect on January 1, 1989).

(b) Other transactions

No price paid—

(1) in any sale authorized under section 3362(a) of this title, or

(2) pursuant to any order issued under section 3363(b), (c), (d), or (g) of this title,

may be taken into account in applying any indefinite price escalator clause (as defined in section 3315(b)(3)(B) [1] of this title, as such section was in effect on January 1, 1989).

(Pub. L. 95–621, title III, §313, Nov. 9, 1978, 92 Stat. 3392; Pub. L. 101–60, §3(b)(3), July 26, 1989, 103 Stat. 159.)

REFERENCES IN TEXT

Sections 3315 and 3317 of this title, referred to in text, were repealed effective Jan. 1, 1993, by Pub. L. 101–60, §2(b), July 26, 1989, 103 Stat. 158.

AMENDMENTS

1989—Pub. L. 101–60 inserted ", as such section was in effect on January 1, 1989" in four places.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–60 effective Jan. 1, 1993, see section 3(b) of Pub. L. 101–60, set out as a note under section 3372 of this title.

[1] *See References in Text note below.*

§3374. Clauses prohibiting certain sales, transportation, and commingling

(a) General rule

Any provision of any contract for the first sale of natural gas is hereby declared against public policy and unenforceable with respect to any natural gas covered by this chapter if such provision—

(1) prohibits the commingling of natural gas subject to such contract with natural gas subject to the jurisdiction of the Commission under the provisions of the Natural Gas Act [15 U.S.C. 717 et seq.];

(2) prohibits the sale of any natural gas subject to such contract to, or transportation of any such natural gas by, any person subject to the jurisdiction of the Commission under the Natural Gas Act [15 U.S.C. 717 et seq.], or otherwise prohibits the sale or transportation in interstate commerce (within the meaning of the Natural Gas Act) of natural gas subject to such contract; or

(3) terminates, or grants any party the option to terminate, any obligation under any such contract as a result of such commingling, sale, or transportation.

(b) Natural gas covered by this chapter

For purposes of subsection (a) of this section, the term "natural gas covered by this chapter" means—

(1) natural gas which is not committed or dedicated to interstate commerce as of November 8, 1978;

(2) natural gas, the sale in interstate commerce of which—

(A) is authorized under section 3362(a) or 3371(b) of this title; or

(B) is pursuant to an assignment under section 3372(a) of this title; and,

(3) natural gas, the transportation in interstate commerce of which is—

(A) pursuant to any order under section 3362(c) or section 3363(b), (c), (d), or (h) of this title; or

(B) authorized by the Commission under section 3371(a) of this title.

(Pub. L. 95–621, title III, §314, Nov. 9, 1978, 92 Stat. 3392.)

REFERENCES IN TEXT

The Natural Gas Act, referred to in subsec. (a)(1), (2), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§717 et seq.) of this title. For complete classification of this act to the Code, see section 717w of this title and Tables.

§3375. Filing of contracts and agreements

The Commission may, by rule or order, require any first sale purchaser of natural gas under a new contract, a successor to an existing contract, or a rollover contract to file with the Commission a copy of such contract, together with all ancillary agreements and any existing contract applicable to such natural gas.

(Pub. L. 95–621, title III, §315, Nov. 9, 1978, 92 Stat. 3393; Pub. L. 100–439, §§1, 2(a), (b)(1), Sept. 22, 1988, 102 Stat. 1720; Pub. L. 101–60, §3(a)(2), July 26, 1989, 103 Stat. 158.)

AMENDMENTS

1989—Pub. L. 101–60, in section catchline, substituted "Filing of contracts and agreements" for "Contract duration; filing of contracts and agreements", and in text, struck out subsec. (a) designation, heading "Contract duration", and text relating to power of Commissioner to specify minimum duration of contracts for purchase of natural gas and requiring nondiscriminatory exercise of such authority, and struck out subsec. (b) designation and heading "Filing of contracts and ancillary agreements".

1988—Pub. L. 100–439, §2(b)(1), struck out "right of first refusal;" after "Contract duration;" in section catchline.

Subsec. (a)(1). Pub. L. 100–439, §1, struck out last sentence which directed that provisions of par. (1) did not apply to contracts of natural gas subject to requirements of par. (3).

Subsec. (a)(3). Pub. L. 100–439, §1, struck out par. (3) which related to contracts for purchase of natural gas produced from reservoirs on Outer Continental Shelf.

Subsecs. (b), (c). Pub. L. 100–439, §2(a), redesignated subsec. (c) as (b) and struck out former subsec. (b) which related to certain rights of first refusal with respect to certain natural gas committed or dedicated to interstate commerce on November 8, 1978.

SUBCHAPTER IV—NATURAL GAS CURTAILMENT POLICIES

§3391. Natural gas for essential agricultural uses

(a) General rule

Not later than 120 days after November 9, 1978, the Secretary of Energy shall prescribe and make effective a rule, which may be amended from time to time, which provides that, notwithstanding any other provision of law (other than subsection (b) of this section) and to the maximum extent practicable, no curtailment plan of an interstate pipeline may provide for curtailment of deliveries of natural gas for any essential agricultural use, unless such curtailment—

(1) does not reduce the quantity of natural gas delivered for such use below the use requirement specified in subsection (c) of this section; or

(2) is necessary in order to meet the requirements of high-priority users.

(b) Curtailment priority not applicable if alternative fuel available

If the Commission, in consultation with the Secretary of Agriculture, determines, by rule or order, that use of a fuel (other than natural gas) is economically practicable and that the fuel is reasonably available as an alternative for any agricultural use of natural gas, the provisions of subsection (a) of this section shall not apply with respect to any curtailment of deliveries for such use.

(c) Determination of essential agricultural use requirements

The Secretary of Agriculture shall certify to the Secretary of Energy and the Commission the natural gas requirements (expressed either as volumes or percentages of use) of persons (or classes thereof) for essential agricultural uses in order to meet the requirements of full food and fiber production.

(d) Authority of Secretary of Agriculture to intervene

The Secretary of Agriculture may intervene as a matter of right in any proceeding before the Commission which is conducted in connection with implementing the requirements of the rule prescribed under subsection (a) of this section.

(e) Limitation

The Secretary of Agriculture may not exercise any authority under this section for the purpose of restricting the production of any crop.

(f) Definitions

For purposes of this section—

(1) Essential agricultural use

The term "essential agricultural use", when used with respect to natural gas, means any use of natural gas—

(A) for agricultural production, natural fiber production, natural fiber processing, food processing, food quality maintenance, irrigation pumping, crop drying, or

(B) as a process fuel or feedstock in the production of fertilizer, agricultural chemicals, animal feed, or food,

which the Secretary of Agriculture determines is necessary for full food and fiber production.

(2) High-priority user

The term "high-priority user" means any person who—

(A) uses natural gas in a residence;

(B) uses natural gas in a commercial establishment in amounts of less than 50 Mcf on a peak day;

(C) uses natural gas in any school, hospital, or similar institution; or

(D) uses natural gas in any other use the curtailment of which the Secretary of Energy determines would endanger life, health, or maintenance of physical property.

(Pub. L. 95–621, title IV, §401, Nov. 9, 1978, 92 Stat. 3394.)

§3391a. "Essential agricultural use" defined

For the purposes of section 3391 of this title, the term "essential agricultural use" shall—

(1) include use of natural gas in sugar refining for production of alcohol;

(2) include use of natural gas for agricultural production on set-aside acreage or acreage diverted from the production of a commodity (as provided under the Agricultural Act of 1949 [7 U.S.C. 1421 et seq.]) to be devoted to the production of any commodity for conversion into alcohol or hydrocarbons for use as motor fuel or other fuels; and

(3) for the 5-year period beginning on June 30, 1980, include use of natural gas in the distillation of fuel-grade alcohol from food grains or other biomass by facilities in existence on June 30, 1980, which do not have the installed capability to burn coal lawfully.

(Pub. L. 96–294, title II, §273, June 30, 1980, 94 Stat. 711.)

REFERENCES IN TEXT

The Agricultural Act of 1949, referred to in par. (2), is act Oct. 31, 1949, ch. 792, 63 Stat. 1051, as amended, which is classified principally to chapter 35A (§1421 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1421 of Title 7 and Tables.

CODIFICATION

Section was enacted as part of the Biomass Energy and Alcohol Fuels Act of 1980 which is title II of the Energy Security Act, and not as part of the Natural Gas Policy Act of 1978 which comprises this chapter.

§3392. Natural gas for essential industrial process and feedstock uses

(a) General rule

The Secretary of Energy shall prescribe and make effective a rule which provides that, notwithstanding any other provision of law (other than subsection (b) of this section) and to the maximum extent practicable, no interstate pipeline may curtail deliveries of natural gas for any essential industrial process or feedstock use, unless such curtailment—

(1) does not reduce the quantity of natural gas delivered for such use below the use requirement specified in subsection (c) of this section;

(2) is necessary in order to meet the requirements of high-priority users; or

(3) is necessary in order to meet the requirements for essential agricultural uses of natural gas for which curtailment priority is established under section 3391 of this title.

(b) Curtailment priority applicable only if alternative fuel not available

The provisions of subsection (a) of this section shall apply with respect to any curtailment of deliveries for any essential industrial process or feedstock use only if the Commission determines

that use of a fuel (other than natural gas) is not economically practicable and that no fuel is reasonably available as an alternative for such use.

(c) Determination of essential industrial use requirements

The Secretary of Energy shall determine and certify to the Commission the natural gas requirements (expressed either as volumes or percentages of use) of persons (or classes thereof) for essential industrial process and feedstock uses (other than those referred to in section 3391(f)(1)(B) of this title).

(d) Definitions

For purposes of this section—

(1) Essential industrial process or feedstock use

The term "essential industrial process or feedstock use" means any use of natural gas in an industrial process or as a feedstock which the Secretary determines is essential.

(2) High-priority user

The term "high-priority user" has the same meaning as given such term in section 3391(f)(2) of this title.

(Pub. L. 95–621, title IV, §402, Nov. 9, 1978, 92 Stat. 3395.)

§3393. Establishment and implementation of priorities

(a) Establishment of priorities

The Secretary of Energy shall prescribe the rules under sections 3391 and 3392 of this title pursuant to his authority under the Department of Energy Organization Act [42 U.S.C 7101 et seq.] to establish and review priorities for curtailments under the Natural Gas Act [15 U.S.C. 717 et seq.].

(b) Implementation of priorities

The Commission shall implement the rules prescribed under sections 3391 and 3392 of this title pursuant to its authority under the Department of Energy Organization Act [42 U.S.C. 7101 et seq.] to establish, review, and enforce curtailments under the Natural Gas Act [15 U.S.C. 717 et seq.].

(Pub. L. 95–621, title IV, §403, Nov. 9, 1978, 92 Stat. 3396.)

REFERENCES IN TEXT

The Department of Energy Organization Act, referred to in subsecs. (a) and (b), is Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, as amended, which is classified principally to chapter 84 (§7101 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of Title 42 and Tables.

The Natural Gas Act, referred to in subsecs. (a) and (b), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§717 et seq.) of this title. For complete classification of this act to the Code, see section 717w of this title and Tables.

§3394. Limitation on revoking or amending certain pre-1969 certificates of public convenience and necessity

(a) General rule

The Commission may not, during the 10-year period beginning on November 9, 1978, revoke or amend any certificate of public convenience and necessity issued before January 1, 1969, under section 7 of the Natural Gas Act [15 U.S.C. 717f] for the transportation of natural gas owned by any electric utility except upon the application of the person to whom such certificate was issued.

(b) Commission curtailment authority

The limitation under subsection (a) of this section shall not affect the authority of the Commission

to enforce any curtailment of deliveries of natural gas under the Natural Gas Act [15 U.S.C. 717 et seq.].

(Pub. L. 95–621, title IV, §404, Nov. 9, 1978, 92 Stat. 3396.)

REFERENCES IN TEXT

The Natural Gas Act, referred to in subsec. (b), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§717 et seq.) of this title. For complete classification of this act to the Code, see section 717w of this title and Tables.

SUBCHAPTER V—ADMINISTRATION, ENFORCEMENT, AND REVIEW

§3411. General rulemaking authority

(a) In general

Except where expressly provided otherwise, the Commission shall administer this chapter. The Commission, or any other Federal officer or agency in which any function under this chapter is vested or delegated, is authorized to perform any and all acts (including any appropriate enforcement activity), and to prescribe, issue, amend, and rescind such rules and orders as it may find necessary or appropriate to carry out its functions under this chapter.

(b) Authority to define terms

Except where otherwise expressly provided, the Commission is authorized to define, by rule, accounting, technical, and trade terms used in this chapter. Any such definition shall be consistent with the definitions set forth in this chapter.

(Pub. L. 95–621, title V, §501, Nov. 9, 1978, 92 Stat. 3396; Pub. L. 101–60, §3(b)(4), July 26, 1989, 103 Stat. 159.)

AMENDMENTS

1989—Subsec. (c). Pub. L. 101–60 struck out subsec. (c) which authorized Commission to delegate to any State agency (with consent of such agency) any of its functions with respect to sections 3315, 3316(b), and 3319(a)(1) and (3) of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–60 effective Jan. 1, 1993, see section 3(b) of Pub. L. 101–60, set out as a note under section 3372 of this title.

§3412. Administrative procedure

(a) Administrative Procedure Act

Subject to subsection (b) of this section, the provisions of subchapter II of chapter 5 of title 5 shall apply to any rule or order issued under this chapter having the applicability and effect of a rule as defined in section 551(4) of title 5; except that sections 554, 556, and 557 of such title 5 shall not apply to any order under such section 3361, 3362, or 3363 of this title.

(b) Opportunity for oral presentations

To the maximum extent practicable, an opportunity for oral presentation of data, views, and arguments shall be afforded with respect to any proposed rule or order described in subsection (a) of this section (other than an order under section 3361, 3362, or 3363 of this title). To the maximum extent practicable, such opportunity shall be afforded before the effective date of such rule or order.

Such opportunity shall be afforded no later than 30 days after such date in the case of a waiver of the entire comment period under section 553(d)(3) of title 5, and no later than 45 days after such date in all other cases. A transcript shall be made of any such oral presentation.

(c) Adjustments

The Commission or any other Federal officer or agency authorized to issue rules or orders described in subsection (a) of this section (other than an order under section 3361, 3362, or 3363 of this title) shall, by rule, provide for the making of such adjustments, consistent with the other purposes of this chapter, as may be necessary to prevent special hardship, inequity, or an unfair distribution of burdens. Such rule shall establish procedures which are available to any person for the purpose of seeking an interpretation, modification, or rescission of, exception to, or exemption from, such applicable rules or orders. If any person is aggrieved or adversely affected by the denial of a request for adjustment under the preceding sentence, such person may request a review of such denial by the officer or agency and may obtain judicial review in accordance with section 3416 of this title when such denial becomes final. The officer or agency shall, by rule, establish procedures, including an opportunity for oral presentation of data, views, and arguments, for considering requests for adjustment under this subsection.

(Pub. L. 95–621, title V, §502, Nov. 9, 1978, 92 Stat. 3397; Pub. L. 101–60, §3(a)(3), July 26, 1989, 103 Stat. 158.)

AMENDMENTS

1989—Subsec. (d). Pub. L. 101–60 struck out subsec. (d) which directed that any determination made under section 3347(c) of this title be made in accordance with procedures applicable to the granting of any authority under the Natural Gas Act to import natural gas or liquefied natural gas (as the case might be).

§3413. Repealed. Pub. L. 101–60, §3(b)(5), July 26, 1989, 103 Stat. 159

Section, Pub. L. 95–621, title V, §503, Nov. 9, 1978, 92 Stat. 3397, related to various determinations to be made by State or Federal agencies for qualifying under certain categories of natural gas.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1993, see section 3(b) of Pub. L. 101–60, set out as an Effective Date of 1989 Amendment note under section 3372 of this title.

§3414. Enforcement

(a) General rule

It shall be unlawful for any person to violate any provision of this chapter or any rule or order under this chapter.

(b) Civil enforcement

(1) In general

Except as provided in paragraph (2), whenever it appears to the Commission that any person is engaged or about to engage in any act or practice which constitutes or will constitute a violation of any provision of this chapter, or of any rule or order thereunder, the Commission may bring an action in the District Court of the United States for the District of Columbia or any other appropriate district court of the United States to enjoin such act or practice and to enforce compliance with this chapter, or any rule or order thereunder.

(2) Enforcement of emergency orders

Whenever it appears to the President that any person has engaged, is engaged, or is about to engage in acts or practices constituting a violation of any order under section 3362 of this title or any order or supplemental order issued under section 3363 of this title, the President may bring a civil action in any appropriate district court of the United States to enjoin such acts or practices.

(3) Repealed. Pub. L. 101–60, §3(a)(4)(B), July 26, 1989, 103 Stat. 158

(4) Relief available

In any action under paragraph (1) or (2), the court shall, upon a proper showing, issue a temporary restraining order or preliminary or permanent injunction without bond. In any such action, the court may also issue a mandatory injunction commanding any person to comply with any applicable provision of law, rule, or order, or ordering such other legal or equitable relief as the court determines appropriate, including refund or restitution.

(5) Criminal referral

The Commission may transmit such evidence as may be available concerning any acts or practices constituting any possible violations of the Federal antitrust laws to the Attorney General who may institute appropriate criminal proceedings.

(6) Civil penalties

(A) In general

Any person who knowingly violates any provision of this chapter, or any provision of any rule or order under this chapter, shall be subject to—

(i) except as provided in clause (ii) a civil penalty, which the Commission may assess, of not more than $1,000,000 for any one violation; and

(ii) a civil penalty, which the President may assess, of not more than $1,000,000, in the case of any violation of an order under section 3362 of this title or an order or supplemental order under section 3363 of this title.

(B) "Knowing" defined

For purposes of subparagraph (A) the term "knowing" means the having of—

(i) actual knowledge; or

(ii) the constructive knowledge deemed to be possessed by a reasonable individual who acts under similar circumstances.

(C) Each day separate violation

For purposes of this paragraph, in the case of a continuing violation, each day of violation shall constitute a separate violation.

(D) Statute of limitations

No person shall be subject to any civil penalty under this paragraph with respect to any violation occurring more than 3 years before the date on which such person is provided notice of the proposed penalty under subparagraph (E). The preceding sentence shall not apply in any case in which an untrue statement of material fact was made to the Commission or a State or Federal agency by, or acquiesced to by, the violator with respect to the acts or omissions constituting such violation, or if there was omitted a material fact necessary in order to make any statement made by, or acquiesced to by, the violator with respect to such acts or omissions not misleading in light of circumstances under such statement was made.

(E) Assessed by Commission

Before assessing any civil penalty under this paragraph, the Commission shall provide to such person notice of the proposed penalty. Following receipt of notice of the proposed penalty by such person, the Commission shall, by order, asssess [1] such penalty.

(F) Judicial review

If the civil penalty has not been paid within 60 calendar days after the assessment order has been made under subparagraph (E), the Commission shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(c) Criminal penalties

(1) Violations of chapter

Except in the case of violations covered under paragraph (3), any person who knowingly and willfully violates any provision of this chapter shall be subject to—

(A) a fine of not more than $1,000,000; or

(B) imprisonment for not more than 5 years; or

(C) both such fine and such imprisonment.

(2) Violation of rules or orders generally

Except in the case of violations covered under paragraph (3), any person who knowingly and willfully violates any rule or order under this chapter (other than an order of the Commission assessing a civil penalty under subsection (b)(4)(E) of this section), shall be subject to a fine of not more than $50,000 for each day on which the offense occurs.

(3) Violations of emergency orders

Any person who knowingly and willfully violates an order under section 3362 of this title or an order or supplemental order under section 3363 of this title shall be fined not more than $50,000 for each violation.

(4) Each day separate violation

For purposes of this subsection, each day of violation shall constitute a separate violation.

(5) "Knowingly" defined

For purposes of this subsection, the term "knowingly", when used with respect to any act or omission by any person, means such person—

(A) had actual knowledge; or

(B) had constructive knowledge deemed to be possessed by a reasonable individual who acts under similar circumstances.

(Pub. L. 95–621, title V, §504, Nov. 9, 1978, 92 Stat. 3401; Pub. L. 101–60, §3(a)(4), (b)(6), July 26, 1989, 103 Stat. 158, 159; Pub. L. 109–58, title III, §314(a)(2), (b)(2), Aug. 8, 2005, 119 Stat. 690, 691.)

AMENDMENTS

2005—Subsec. (b)(6)(A). Pub. L. 109–58, §314(b)(2), substituted "$1,000,000" for "$5,000" in cl. (i) and "$1,000,000" for "$25,000" in cl. (ii).

Subsec. (c)(1). Pub. L. 109–58, §314(a)(2)(A), substituted "$1,000,000" for "$5,000" in subpar. (A) and "5 years" for "two years" in subpar. (B).

Subsec. (c)(2). Pub. L. 109–58, §314(a)(2)(B), substituted "$50,000 for each day on which the offense occurs" for "$500 for each violation".

1989—Subsec. (a). Pub. L. 101–60, §3(b)(6), struck out par. (2) designation and par. (1) making it unlawful to sell natural gas at a first sale price in excess of any applicable maximum lawful price under this chapter.

Subsec. (b). Pub. L. 101–60, §3(a)(4), substituted "paragraph (2)" for "paragraphs (2) and (3)" in par. (1), struck out par. (3) which related to enforcement of incremental pricing, and substituted "paragraph (1) or (2)" for "paragraph (1), (2), or (3)" in par. (4).

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 3(b)(6) of Pub. L. 101–60 effective Jan. 1, 1993, see section 3(b) of Pub. L. 101–60, set out as a note under section 3372 of this title.

[1] So in original. Probably should be "assess".

§3415. Intervention

(a) Authority to intervene

(1) Intervention as matter of right

The Secretary of Energy may intervene as a matter of right in any proceeding relating to the prorationing of, or other limitations upon, natural gas production which is conducted by any State agency having regulatory jurisdiction over the production of natural gas.

(2) Enforcement of right to intervene

The Secretary may bring an action in any appropriate court of the United States to enforce his right to intervene under paragraph (1).

(3) Access to information

As an intervenor in a proceeding described in subsection (a) of this section, the Secretary shall have access to information available to other parties to the proceeding if such information is relevant to the issues to which his participation in such proceeding relates. Such information may be obtained through reasonable rules relating to discovery of information prescribed by the State agency.

(b) Access to State courts

(1) Review in State courts

The Secretary may obtain review of any determination made in any proceeding described in subsection (a)(1) of this section in the appropriate State court if the Secretary intervened or otherwise participated in the original proceeding or if State law otherwise permits such review.

(2) Participation as amicus curiae

In addition to his authority to obtain review under paragraph (1), the Secretary may also participate an [1] amicus curiae in any judicial review of any proceeding described in subsection (a)(1) of this section.

(Pub. L. 95–621, title V, §505, Nov. 9, 1978, 92 Stat. 3403.)

[1] So in original. Probably should be "as".

§3416. Judicial review

(a) Orders

(1) In general

The provisions of this subsection shall apply to judicial review of any order, within the meaning of section 551(6) of title 5 (other than an order assessing a civil penalty under section 3414(b)(4) of this title or any order under section 3362 of this title or any order under section 3363 of this title), issued under this chapter and to any final agency action under this chapter required to be made on the record after an opportunity for an agency hearing.

(2) Rehearing

Any person aggrieved by any order issued by the Commission in a proceeding under this chapter to which such person is a party may apply for a rehearing within 30 days after the issuance of such order. Any application for rehearing shall set forth the specific ground upon which such application is based. Upon the filing of such application, the Commission may grant or deny the requested rehearing or modify the original order without further hearing. Unless the Commission acts upon such application for rehearing within 30 days after it is filed, such application shall be deemed to have been denied. No person may bring an action under this section to obtain judicial review of any order of the Commission unless—

(A) such person shall have made application to the Commission for rehearing under this subsection; and

(B) the Commission shall have finally acted with respect to such application.

For purposes of this section, if the Commission fails to act within 30 days after the filing of such application, such failure to act shall be deemed final agency action with respect to such application.

(3) Authority to modify orders

At any time before the filing of the record of a proceeding in a United States Court of Appeals, pursuant to paragraph (4), the Commission may, after providing notice it determines reasonable and proper, modify or set aside, in whole or in part, any order issued under the provisions of this chapter.

(4) Judicial review

Any person who is a party to a proceeding under this chapter aggrieved by any final order issued by the Commission in such proceeding may obtain review of such order in the United States Court of Appeals for any circuit in which the party to which such order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia circuit. Review shall be obtained by filing a written petition, requesting that such order be modified or set aside in whole or in part, in such Court of Appeals within 60 days after the final action of the Commission on the application for rehearing required under paragraph (2). A copy of such petition shall forthwith be transmitted by the clerk of such court to any member of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part. No objection to such order of the Commission shall be considered by the court if such objection was not urged before the Commission in the application for rehearing unless there was reasonable ground for the failure to do so. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as the court deems proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and shall file with the court such modified or new findings, which if supported by substantial evidence, shall be conclusive. The Commission shall also file with the court its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(5) Orders remain effective

The filing of an application for rehearing under paragraph (2) shall not, unless specifically ordered by the Commission, operate as a stay of the Commission's order. The commencement of proceedings under paragraph (4) shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(b) Review of rules and orders

Except as provided in subsections (a) and (c) of this section, judicial review of any rule or order, within the meaning of section 551(4) of title 5, issued under this chapter may be obtained in the United States Court of Appeals for any appropriate circuit pursuant to the provisions of chapter 7 of title 5, except that the second sentence of section 705 thereof shall not apply.

(c) Judicial review of emergency orders

Except with respect to enforcement of orders or subpenas under section 3364(a) of this title, the United States Court of Appeals for the Federal Circuit shall have exclusive original jurisdiction to

review all civil cases and controversies under section 3361, 3362 or 3363 of this title, including any order issued, or other action taken, under such section. The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction of all appeals from the district courts of the United States in cases and controversies arising under section 3364(a)(2) of this title; such appeals shall be taken by the filing of a notice of appeal with the United States Court of Appeals for the Federal Circuit within thirty days after the entry of judgment by the district court. Prior to a final judgment, no court shall have jurisdiction to grant any injunctive relief to stay or defer the implementation of any order issued, or action taken, under section 3361, 3362, or 3363 of this title.

(Pub. L. 95–621, title V, §506, Nov. 9, 1978, 92 Stat. 3404; Pub. L. 101–60, §3(a)(5), July 26, 1989, 103 Stat. 158; Pub. L. 102–572, title I, §102(b), Oct. 29, 1992, 106 Stat. 4506.)

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–572 substituted "the United States Court of Appeals for the Federal Circuit" for "the Temporary Emergency Court of Appeals, established pursuant to section 211(b) of the Economic Stabilization Act of 1970, as amended," before "shall have exclusive original jurisdiction" and substituted "United States Court of Appeals for the Federal Circuit" for "Temporary Emergency Court of Appeals" in two places.

1989—Subsec. (d). Pub. L. 101–60 struck out subsec. (d) which related to judicial review of certain incremental pricing determinations.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Jan. 1, 1993, see section 1101 of Pub. L. 102–572, set out as a note under section 905 of Title 2, The Congress.

§3417. Repealed. Pub. L. 101–60, §3(a)(6), July 26, 1989, 103 Stat. 158

Section, Pub. L. 95–621, title V, §507, Nov. 9, 1978, 92 Stat. 3406, related to congressional review of Presidential reimposition of maximum lawful prices under section 3332 of this title, congressional reimposition of maximum lawful prices under section 3332 of this title, and congressional disapproval of incremental pricing under section 3342(c) or 3346(d)(2) of this title.

§3418. Applicability of other Federal statutory provisions relating to information-gathering

In order to obtain information for the purpose of carrying out its functions under this chapter, the Commission shall have the same authority as is vested in the Secretary under 7151(a) of title 42 with respect to the exercise of authority under section 796(b) of this title and section 772(b), (c), and (d) of this title.

(Pub. L. 95–621, title V, §508(b), Nov. 9, 1978, 92 Stat. 3408.)

SUBCHAPTER VI—COORDINATION WITH NATURAL GAS ACT; MISCELLANEOUS PROVISIONS

§3431. Coordination with the Natural Gas Act

(a) Jurisdiction of the Commission under the Natural Gas Act

(1) Sales

(A) Application to first sales

For purposes of section 1(b) of the Natural Gas Act [15 U.S.C. 717(b)], the provisions of the

Natural Gas Act [15 U.S.C. 717 et seq.], and the jurisdiction of the Commission under such Act shall not apply to any natural gas solely by reason of any first sale of such natural gas.

(B) Authorized sales or assignments

For purposes of section 1(b) of the Natural Gas Act [15 U.S.C. 717(b)], the provisions of the Natural Gas Act [15 U.S.C. 717 et seq.] and the jurisdiction of the Commission under such Act shall not apply by reason of any sale of natural gas—

(i) authorized under section 3362(a) or 3371(b) of this title; or

(ii) pursuant to any assigned [1] authorized under section 3372(a) of this title.

(C) Natural-gas company

For purposes of the Natural Gas Act [15 U.S.C. 717 et seq.], the term "natural-gas company" (as defined in section 2(6) of such Act [15 U.S.C. 717a(6) et seq.]) shall not include any person by reason of, or with respect to, any sale of natural gas if the provisions of the Natural Gas Act and the jurisdiction of the Commission do not apply to such sale solely by reason of subparagraph (A) or (B) of this paragraph.

(2) Transportation

(A) Jurisdiction of the Commission

For purposes of section 1(b) of the Natural Gas Act [15 U.S.C. 717(b)] the provisions of such Act [15 U.S.C. 717 et seq.] and the jurisdiction of the Commission under such Act shall not apply to any transportation in interstate commerce of natural gas if such transportation is—

(i) pursuant to any order under section 3362(c) or section 3363(b), (c), (d), or (h) of this title; or

(ii) authorized by the Commission under section 3371(a) of this title.

(B) Natural-gas company

For purposes of the Natural Gas Act [15 U.S.C. 717 et seq.], the term "natural-gas company" (as defined in section 2(6) of such Act [15 U.S.C. 717a(6)]) shall not include any person by reason of, or with respect to, any transportation of natural gas if the provisions of the Natural Gas Act and the jurisdiction of the Commission under the Natural Gas Act do not apply to such transportation by reason of subparagraph (A) of this paragraph.

(b) Charges deemed just and reasonable

(1) Sales

(A) First sales

Except as otherwise provided in this subsection, for purposes of sections 4 and 5 of the Natural Gas Act, any amount paid in any first sale of natural gas shall be deemed to be just and reasonable.

(B) Emergency sales

For purposes of sections 4 and 5 of the Natural Gas Act [15 U.S.C. 717c, 717d], any amount paid in any sale authorized under section 3362(a) of this title shall be deemed to be just and reasonable if such amount does not exceed the fair and equitable price established under such section and applicable to such sale.

(C) Sales by intrastate pipelines

For purposes of sections 4 and 5 of the Natural Gas Act [15 U.S.C. 717c, 717d] any amount paid in any sale authorized by the Commission under section 3371(b) of this title shall be deemed to be just and reasonable if such amount does not exceed the fair and equitable price established by the Commission and applicable to such sale.

(D) Assignments

For purposes of sections 4 and 5 of the Natural Gas Act [15 U.S.C. 717c, 717d], any amount paid pursuant to the terms of any contract with respect to that portion of which the Commission

has authorized an assignment authorized under section 3372(a) of this title shall be deemed to be just and reasonable.

(E) Affiliated entities limitation

For purposes of paragraph (1), in the case of any first sale between any interstate pipeline and any affiliate of such pipeline, any amount paid in any first sale shall be deemed to be just and reasonable if, in addition to satisfying the requirements of such paragraph, such amount does not exceed the amount paid in comparable first sales between persons not affiliated with such interstate pipeline.

(2) Other charges

(A) Allocation

For purposes of sections 4 and 5 of the Natural Gas Act [15 U.S.C. 717c, 717d], any amount paid by any interstate pipeline for transportation, storage, delivery or other services provided pursuant to any order under section 3363(b), (c), or (d) of this title shall be deemed to be just and reasonable if such amount is prescribed by the President under section 3363(h)(1) of this title.

(B) Transportation

For purposes of sections 4 and 5 of the Natural Gas Act [15 U.S.C. 717c, 717d], any amount paid by any interstate pipeline for any transportation authorized by the Commission under section 3371(a) of this title shall be deemed to be just and reasonable if such amount does not exceed that approved by the Commission under such section.

(c) Guaranteed passthrough

(1) Certificate may not be denied based upon price

The Commission may not deny, or condition the grant of, any certificate under section 7 of the Natural Gas Act [15 U.S.C. 717f] based upon the amount paid in any sale of natural gas, if such amount is deemed to be just and reasonable under subsection (b) of this section.

(2) Recovery of just and reasonable prices paid

For purposes of sections 4 and 5 of the Natural Gas Act [15 U.S.C. 717c, 717d], the Commission may not deny any interstate pipeline recovery of any amount paid with respect to any purchase of natural gas if, under subsection (b) of this section, such amount is deemed to be just and reasonable for purposes of sections 4 and 5 of such Act, except to the extent the Commission determines that the amount paid was excessive due to fraud, abuse, or similar grounds.

(Pub. L. 95–621, title VI, §601, Nov. 9, 1978, 92 Stat. 3409; Pub. L. 101–60, §3(a)(7), (b)(7), July 26, 1989, 103 Stat. 158, 159.)

REFERENCES IN TEXT

The Natural Gas Act, referred to in subsec. (a)(1), (2)(A), (B), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§717 et seq.) of this title. For complete classification of this act to the Code, see section 717w of this title and Tables.

AMENDMENTS

1989—Subsec. (a)(1)(A). Pub. L. 101–60, §3(b)(7)(A), in heading substituted "Application to first sales" for "Natural gas not committed or dedicated" and amended text generally. Prior to amendment, text read as follows: "For purposes of section 1(b) of the Natural Gas Act, effective on the first day of the first month beginning after November 9, 1978, the provisions of the Natural Gas Act and the jurisdiction of the Commission under such Act shall not apply to natural gas which was not committed or dedicated to interstate commerce as of November 8, 1978, solely by reason of any first sale of such natural gas."

Subsec. (a)(1)(B). Pub. L. 101–60, §3(b)(7)(B), (C), redesignated subpar. (C) as (B) and struck out former subpar. (B) which related to committed or dedicated natural gas which was high-cost natural gas, new natural gas, or natural gas produced from any new, onshore production well.

Subsec. (a)(1)(C). Pub. L. 101–60, §3(b)(7)(C), (D), redesignated subpar. (D) as (C) and substituted "subparagraph (A) or (B)" for "subparagraph (A), (B), or (C)". Former subpar. (C) redesignated (B).

Subsec. (a)(1)(D). Pub. L. 101–60, §3(b)(7)(C), redesignated subpar. (D) as (C).

Subsec. (a)(1)(E). Pub. L. 101–60, §3(b)(7)(B), struck out subpar. (E), "Certain additional natural gas", which read as follows: "For purposes of section 1(b) of the Natural Gas Act, the provisions of the Natural Gas Act and the jurisdiction of the Commission under such Act shall not apply solely by reason of any first sale of natural gas which is committed or dedicated to interstate commerce as of July 25, 1989, and which is not subject to a maximum lawful price under part A of subchapter I of this chapter by reason of section 3331(f) of this title, effective as of the date such gas ceases to be subject to such maximum lawful price."

Pub. L. 101–60, §3(a)(7)(A), substituted "Certain additional natural gas" for "Alaskan natural gas" in heading and amended text generally. Prior to amendment, text read as follows: "Subparagraph (B)(ii) and (iii) shall not apply with respect to natural gas produced from the Prudhoe Bay unit of Alaska and transported through the transportation system approved under the Alaska Natural Gas Transportation Act of 1976."

Subsec. (b)(1)(A). Pub. L. 101–60, §3(b)(7)(E), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "Subject to paragraph (4), for purposes of sections 4 and 5 of the Natural Gas Act, any amount paid in any first sale of natural gas shall be deemed to be just and reasonable if—

"(i) such amount does not exceed the applicable maximum lawful price established under subchapter I of this chapter; or

"(ii) there is no applicable maximum lawful price solely by reason of the elimination of price controls pursuant to part B of subchapter I of this chapter."

Subsec. (b)(1)(D). Pub. L. 101–60, §3(b)(7)(F), struck out before period at end "if such amount does not exceed the applicable maximum lawful price established under subchapter I of this chapter".

Subsec. (c)(2). Pub. L. 101–60, §3(a)(7)(B), substituted "purchase of natural gas if, under subsection (b) of this section, such amount is deemed to be just and reasonable for purposes of sections 4 and 5 of such Act," for "purchase of natural gas if—

"(A) under subsection (b) of this section, such amount is deemed to be just and reasonable for purposes of sections 4 and 5 of such Act, and

"(B) such recovery is not inconsistent with any requirement of any rule under section 3341 of this title (including any amendment under section 3342 of this title),".

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 3(b)(7) of Pub. L. 101–60 effective Jan. 1, 1993, see section 3(b) of Pub. L. 101–60, set out as a note under section 3372 of this title.

[1] *So in original. Probably should be "assignment".*

§3432. Effect on State laws

(a) Authority to prescribe maximum lawful prices

Nothing in this chapter shall affect the authority of any State to establish or enforce any maximum lawful price for the first sale of natural gas produced in such State.

(b) Common carriers

No person shall be subject to regulation as a common carrier under any provision of Federal or State law by reason of any transportation—

(1) pursuant to any order under section 3362(c) or section 3363(b), (c), (d), or (i) of this title; or

(2) authorized by the Commission under section 3371(a) of this title.

(Pub. L. 95–621, title VI, §602, Nov. 9, 1978, 92 Stat. 3411; Pub. L. 101–60, §3(b)(8), July 26, 1989, 103 Stat. 159.)

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–60 struck out "lower" after "prescribe" in heading and struck out before period at end "which does not exceed the applicable maximum lawful price, if any, under subchapter I of this chapter".

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–60 effective Jan. 1, 1993, see section 3(b) of Pub. L. 101–60, set out as a note under section 3372 of this title.

CHAPTER 61—SOFT DRINK INTERBRAND COMPETITION

Sec.

3501. Exclusive territorial licenses to manufacture, distribute, and sell trademarked soft drink products; ultimate resale to consumers; substantial and effective competition.
3502. Price fixing agreements, horizontal restraints of trade, or group boycotts.
3503. "Antitrust law" defined.

§3501. Exclusive territorial licenses to manufacture, distribute, and sell trademarked soft drink products; ultimate resale to consumers; substantial and effective competition

Nothing contained in any antitrust law shall render unlawful the inclusion and enforcement in any trademark licensing contract or agreement, pursuant to which the licensee engages in the manufacture (including manufacture by a sublicensee, agent, or subcontractor), distribution, and sale of a trademarked soft drink product, of provisions granting the licensee the sole and exclusive right to manufacture, distribute, and sell such product in a defined geographic area or limiting the licensee, directly or indirectly, to the manufacture, distribution, and sale of such product only for ultimate resale to consumers within a defined geographic area: *Provided*, That such product is in substantial and effective competition with other products of the same general class in the relevant market or markets.

(Pub. L. 96–308, §2, July 9, 1980, 94 Stat. 939.)

SHORT TITLE

Pub. L. 96–308, §1, July 9, 1980, 94 Stat. 939, provided that: "This Act [enacting this chapter] may be cited as the 'Soft Drink Interbrand Competition Act'."

SUSPENSION OF STATUTE OF LIMITATIONS ON INSTITUTION OF ANTITRUST PROCEEDINGS BY UNITED STATES; ENFORCEMENT OF TRADEMARK LICENSING AGREEMENT PROVISIONS CONCERNING SOFT DRINK PRODUCTS

Pub. L. 96–308, §4, July 9, 1980, 94 Stat. 939, provided that: "In the case of any proceeding instituted by the United States described in subsection (i) of section 5 of the Clayton Act (relating to suspension of the statute of limitations on the institution of proceedings by the United States) (15 U.S.C. 16(i)) which is pending on the date of the enactment of this Act [July 9, 1980], that subsection shall not apply with respect to any right of action referred to in that subsection based in whole or in part on any matter complained of in that proceeding consisting of the existence or enforcement of any provision described in section 2 of this Act [this section] in any trademark licensing contract or agreement described in that section."

§3502. Price fixing agreements, horizontal restraints of trade, or group boycotts

Nothing in this chapter shall be construed to legalize the enforcement of provisions described in section 3501 of this title in trademark licensing contracts or agreements described in that section by means of price fixing agreements, horizontal restraints of trade, or group boycotts, if such agreements, restraints, or boycotts would otherwise be unlawful.

(Pub. L. 96–308, §3, July 9, 1980, 94 Stat. 939.)

§3503. "Antitrust law" defined

As used in this chapter, the term "antitrust law" means the Sherman Act (15 U.S.C. 1 et seq.), the Clayton Act (15 U.S.C. 12 et seq.), and the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(Pub. L. 96–308, §5, July 9, 1980, 94 Stat. 939.)

REFERENCES IN TEXT

The Sherman Act (15 U.S.C. 1 et seq.), referred to in text, is act July 2, 1890, ch. 647, 26 Stat. 209, which is classified to sections 1 to 7 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1 of this title and Tables.

The Clayton Act (15 U.S.C. 12 et seq.), referred to in text, is act Oct. 15, 1914, ch. 323, 38 Stat. 730, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of this title, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of this title and Tables.

The Federal Trade Commission Act (15 U.S.C. 41 et seq.), referred to in text, is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

CHAPTER 62—CONDOMINIUM AND COOPERATIVE CONVERSION PROTECTION AND ABUSE RELIEF

Sec.

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§3601. Congressional findings and purpose

(a) The Congress finds and declares that—

(1) there is a shortage of adequate and affordable housing throughout the Nation, especially for low- and moderate-income and elderly and handicapped persons;

(2) the number of conversions of rental housing to condominiums and cooperatives is accelerating, which in some communities may restrict the shelter options of low- and moderate-income and elderly and handicapped persons;

(3) certain long-term leasing arrangements for recreation and other condominium- or cooperative-related facilities which have been used in the formation of cooperative and condominium projects may be unconscionable; in certain situations State governments are unable to provide appropriate relief; as a result of these leases, economic and social hardships may have been imposed upon cooperative and condominium owners, which may threaten the continued use and acceptability of these forms of ownership and interfere with the interstate sale of cooperatives and condominiums; appropriate relief from these abuses requires Federal action; and

(4) there is a Federal involvement with the cooperative and condominium housing markets through the operation of Federal tax, housing, and community development laws, through the operation of federally chartered and insured financial institutions, and through other Federal

activities; that the creation of many condominiums and cooperatives is undertaken by entities operating on an interstate basis.

(b) The purposes of this chapter are to seek to minimize the adverse impacts of condominium and cooperative conversions particularly on the housing opportunities of low- and moderate-income and elderly and handicapped persons, to assure fair and equitable principles are followed in the establishment of condominium and cooperative opportunities, and to provide appropriate relief where long-term leases of recreation and other cooperative- and condominium-related facilities are determined to be unconscionable.

(Pub. L. 96–399, title VI, §602, Oct. 8, 1980, 94 Stat. 1672.)

EFFECTIVE DATE

Pub. L. 96–399, title VI, §618, Oct. 8, 1980, 94 Stat. 1680, provided that: "The provisions of this title [enacting this chapter] shall become effective upon enactment [Oct. 8, 1980], except that section 609 [section 3608 of this title], and the prohibition included in section 610 [section 3609 of this title] as it relates to a lease with respect to which a cause of action may be established under section 609, shall become effective one year after enactment."

SHORT TITLE

Pub. L. 96–399, title VI, §601, Oct. 8, 1980, 94 Stat. 1672, provided that: "This title [enacting this chapter] may be cited as the 'Condominium and Cooperative Abuse Relief Act of 1980'."

§3602. Conversion lending

It is the sense of the Congress that lending by federally insured lending institutions for the conversion of rental housing to condominiums and cooperative housing should be discouraged where there are adverse impacts on housing opportunities of the low- and moderate-income and elderly and handicapped tenants involved.

(Pub. L. 96–399, title VI, §603, Oct. 8, 1980, 94 Stat. 1673.)

§3603. Definitions

For the purpose of this chapter—

(1) "affiliate of a developer" means any person who controls, is controlled by, or is under common control with a developer. A person "controls" a developer if the person (A) is a general partner, officer, director, or employer of the developer, (B) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more then 20 per centum of the voting interests of the developer, (C) controls in any manner the election of a majority of the directors of the developer, or (D) has contributed more than 20 per centum of the capital of the developer. A person "is controlled by" a developer if the developer (i) is a general partner, officer, director or employer of the person, (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than 20 per centum of the voting interests of the person, (iii) controls in any manner the election of a majority of the directors, or (iv) has contributed more than 20 per centum of the capital of the person;

(2) "automatic rent increase clause" means a provision in a lease permitting periodic increases in the fee under the lease which is effective automatically or at the sole option of the lessor, and which provides that the fee shall increase at the rate of an economic, commodity, or consumer price index or at a percentage rate such that the actual increases in the rental payment over the lease term cannot be established with specificity at the time the lease is entered into;

(3) "common elements" means all portions of the cooperative or condominium project, other than the units designated for separate ownership or for exclusive possession or use;

(4) "condominium association" means the organization, whose membership consists exclusively of all the unit owners in the condominium project, which is, or will be responsible for the operation, administration, and management of the condominium project;

(5) "condominium project" means real estate (A) which has five or more residential condominium units, in each residential structure, and the remaining portions of the real estate are designated for common ownership solely by the owners of those units, each owner having an undivided interest in the common elements, and (B) where such units are or have been offered for sale or sold, directly or indirectly, through the use of any means or instruments of transportation or communication of interstate commerce, or the mails;

(6) "condominium unit" means a portion of a condominium project designated for separate ownership;

(7) "conversion project" means a project, which has five or more residential units, which was used primarily for residential rental purposes immediately prior to being converted to a condominium or cooperative project;

(8) "convey or conveyance" means (A) a transfer to a purchaser of legal title in a unit at settlement, other than as security for an obligation, or (B) the acquisition by a purchaser of a leasehold interest for more than five years;

(9) "cooperative association" means an organization that owns the record interest in the residential cooperative property; or a leasehold of the residential property of a cooperative project and that is responsible for the operation of the cooperative project;

(10) "cooperative project" means real estate (A) which has five or more residential cooperative units, in each residential structure, subject to separate use and possession by one or more individual cooperative unit owners whose interest in such units and in the undivided assets of the cooperative association which are appurtenant to the unit are evidenced by a membership or share interest in a cooperative association and a lease or other muniment of title or possession granted by the cooperative association as the owner of all the cooperative property, and (B) an interest in which is or has been offered for sale or lease or sold, or leased directly or indirectly, through use of any means or instruments of transportation or communication in interstate commerce or of the mails;

(11) "cooperative property" means the real estate and personal property subject to cooperative ownership and all other property owned by the cooperative association;

(12) "cooperative unit" means a part of the cooperative property which is subject to exclusive use and possession by a cooperative unit owner. A unit may be improvements, land, or land and improvements together, as specified in the cooperative documents;

(13) "cooperative unit owner" means the person having a membership or share interest in the cooperative association and holding a lease, or other muniment of title or possession, of a cooperative unit that is granted by the cooperative association as the owner of the cooperative property;

(14) "developer" means (A) any person who offers to sell or sells his interest in a cooperative or condominium unit not previously conveyed, or (B) any successor of such person who offers to sell or sells his interests in units in a cooperative or condominium project and who has the authority to exercise special developer control in the project including the right to: add, convert, or withdraw real estate from the cooperative or condominium project, and maintain sales offices, management offices and rental units; exercise easements through common elements for the purpose of making improvements within the cooperative or condominium; or exercise control of the owners' association;

(15) "interstate commerce" means trade, traffic, transportation, communication, or exchange among the States, or between any foreign country and a State, or any transaction which affects such trade, traffic, transportation, communication, or exchange;

(16) "lease" includes any agreement or arrangement containing a condominium or cooperative unit owner's obligation, individually, collectively, or through an association to make payments for a leasehold interest or for other rights to use or possess real estate, or personal property (which rights may include the right to receive services with respect to such real estate or personal

property), except a lease does not include mortgages or other such agreements for the purchase of real estate;

(17) "person" means a natural person, corporation, partnership, association, trust or other entity, or any combination thereof;

(18) "purchaser" means any person, other than a developer, who by means of a voluntary transfer acquires a legal or equitable interest in a unit other than (A) a leasehold interest (including renewal options) of less than five years, or (B) as security for an obligation;

(19) "real estate" means any leasehold or other estate or interest in, over or under land, including structures, fixtures, and other improvements and interests which by custom, usage, or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real estate" includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water;

(20) "residential" means used as a dwelling;

(21) "sale", "sale of a cooperative unit" or "sale of a condominium unit" means any obligation or arrangement for consideration for conveyance to a purchaser of a cooperative or condominium unit, excluding options or reservations not binding on the purchaser;

(22) "special developer control" means any right arising under State law, cooperative or condominium instruments, the association's bylaws, charter or articles of association or incorporation, or power of attorney or similar agreement, through which the developer may control or direct the unit owners' association or its executive board. A developer's right to exercise the voting share allocated to any condominium or cooperative unit which he owns is not deemed a right of special developer control if the voting share allocated to that condominium or cooperative unit is the same voting share as would be allocated to the same condominium or cooperative unit were that unit owned by any other unit owner at that time;

(23) "State" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States; and

(24) "tenants' organization" means a bona fide organization of tenants who represent a majority of the occupied rental units in a rental housing project.

(Pub. L. 96–399, title VI, §604, Oct. 8, 1980, 94 Stat. 1673.)

§3604. Exemptions

The provisions of this chapter shall not apply to—

(1) a cooperative or condominium unit sold or offered for sale by the Federal Government, by any State or local government, by any corporate instrumentality of the United States, or by any agency thereof;

(2) a cooperative or condominium project in which all units are restricted to nonresidential purposes or uses; or

(3) any lease or portion thereof—

(A) which establishes any leasehold or other estate or interest in, over or under land on or in which one or more residential condominium or cooperative units are located, the termination of which will terminate the condominium or cooperative project, or reduce the number of units in such project, or

(B) which establishes a leasehold interest in, or other rights to use, possess, or gain access to, a condominium or cooperative unit.

(Pub. L. 96–399, title VI, §605, Oct. 8, 1980, 94 Stat. 1675.)

§3605. Notice of conversion and opportunity to purchase; responsibility of State and local governments

It is the sense of the Congress that, when multifamily rental housing projects are converted to

condominium or cooperative use, tenants in those projects are entitled to adequate notice of the pending conversion and to receive the first opportunity to purchase units in the converted projects and that State and local governments which have not already provided for such notice and opportunity for purchase should move toward that end. The Congress believes it is the responsibility of State and local governments to provide for such notice and opportunity to purchase in a prompt manner. The Congress has decided not to intervene and therefore leaves this responsibility to State and local governments to be carried out.

(Pub. L. 96–399, title VI, §606, Oct. 8, 1980, 94 Stat. 1676.)

§3606. Federal Housing Administration mortgage or loan insurance; expedition of application process and decision

Where an application for mortgage or loan insurance in connection with a conversion or purchase of a rental housing project being undertaken by a tenants' organization is submitted, the Secretary of Housing and Urban Development shall expedite the processing of the application in every way and shall make a final decision on such application at the earliest practicable time.

(Pub. L. 96–399, title VI, §607, Oct. 8, 1980, 94 Stat. 1676.)

§3607. Termination of self-dealing contracts

(a) Operation, maintenance, and management contracts; penalty

Any contract or portion thereof which is entered into after October 8, 1980, and which—

(1) provides for operation, maintenance, or management of a condominium or cooperative association in a conversion project, or of property serving the condominium or cooperative unit owners in such project;

(2) is between such unit owners or such association and the developer or an affiliate of the developer;

(3) was entered into while such association was controlled by the developer through special developer control or because the developer held a majority of the votes in such association; and

(4) is for a period of more than three years, including any automatic renewal provisions which are exercisable at the sole option of the developer or an affiliate of the developer,

may be terminated without penalty by such unit owners or such association.

(b) Time of termination

Any termination under this section may occur only during the two-year period beginning on the date on which—

(1) special developer control over the association is terminated; or

(2) the developer owns 25 per centum or less of the units in the conversion project,

whichever occurs first.

(c) Vote of owners of units

A termination under this section shall be by a vote of owners of not less than two-thirds of the units other than the units owned by the developer or an affiliate of the developer.

(d) Effective date of termination

Following the unit owners' vote, the termination shall be effective ninety days after hand delivering notice or mailing notice by prepaid United States mail to the parties to the contract.

(Pub. L. 96–399, title VI, §608, Oct. 8, 1980, 94 Stat. 1676.)

CODIFICATION

In subsec. (a), "October 8, 1980" was substituted for "the effective date of this title". See Effective Date note set out under section 3601 of this title.

§3608. Judicial determinations respecting unconscionable leases

(a) Lease characteristics; authorization by unit owners; conditions precedent to action

Cooperative and condominium unit owners through the unit owners' association may bring an action seeking a judicial determination that a lease or leases, or portions thereof, were unconscionable at the time they were made. An action may be brought under this section if each such lease has all of the following characteristics:

(1) it was made in connection with a cooperative or condominium project;

(2) it was entered into while the cooperative or condominium owners' association was controlled by the developer either through special developer control or because the developer held a majority of the votes in the owners' association;

(3) it had to be accepted or ratified by purchasers or through the unit owners' association as a condition of purchase of a unit in the cooperative or condominium project;

(4) it is for a period of more than twenty-one years or is for a period of less than twenty-one years but contains automatic renewal provisions for a period of more than twenty-one years;

(5) it contains an automatic rent increase clause; and

(6) it was entered into prior to June 4, 1975.

Such action must be authorized by the cooperative or condominium unit owners through a vote of not less than two-thirds of the owners of the units other than units owned by the developer or an affiliate of the developer, and may be brought by the cooperative or condominium unit owners through the units owners' association. Prior to instituting such action, the cooperative or condominium unit owners must, through a vote of not less than two-thirds of the owners of the units other than units owned by the developer or an affiliate of the developer, agree to enter into negotiation with the lessor and must seek through such negotiation to eliminate or modify any lease terms that are alleged to be unconscionable; if an agreement is not reached in ninety days from the date on which the authorizing vote was taken, the unit owners may authorize an action after following the procedure specified in the preceding sentence.

(b) Presumption of unconscionability; rebuttal

A rebuttal presumption of unconscionability exists if it is established that, in addition to the characteristics set forth in subsection (a) of this section, the lease—

(1) creates a lien subjecting any unit to foreclosure for failure to make payments;

(2) contains provisions requiring either the cooperative or condominium unit owners or the cooperative or condominium association as lessees to assume all or substantially all obligations and liabilities associated with the maintenance, management and use of the leased property, in addition to the obligation to make lease payments;

(3) contains an automatic rent increase clause without establishing a specific maximum lease payment; and

(4) requires an annual rental which exceeds 25 per centum of the appraised value of the leased property as improved: *Provided*, That, for purposes of this paragraph "annual rental" means the amount due during the first twelve months of the lease for all units, regardless of whether such units were occupied or sold during that period, and "appraised value" means the appraised value placed upon the leased property the first tax year after the sale of a unit in the condominium or after the sale of a membership or share interest in the cooperative association to a party who is not an affiliate of the developer.

Once the rebuttable presumption is established, the court, in making its finding, shall consider the lease or portion of the lease to be unconscionable unless proven otherwise by the preponderance of the evidence to the contrary.

(c) Presentation of evidence after finding of unconscionability

Whenever it is claimed, or appears to the court, that a lease or any portion thereof is, or may have been, unconscionable at the time it was made, the parties shall be afforded a reasonable opportunity to present evidence at least as to–

(1) the commercial setting of the negotiations;

(2) whether a party has knowingly taken advantage of the inability of the other party reasonably to protect his interests;

(3) the effect and purpose of the lease or portion of the lease or portion thereof, including its relationship to other contracts between the association, the unit owners and the developer or an affiliate of the developer; and

(4) the disparity between the amount charged under the lease and the value of the real estate subject to the lease measured by the price at which similar real estate was readily obtainable in similar transactions.

(d) Remedial relief; matters considered; attorneys' fees

Upon finding that any lease, or portion thereof, is unconscionable, the court shall exercise its authority to grant remedial relief as necessary to avoid an unconscionable result, taking into consideration the economic value of the lease. Such relief may include, but shall not be limited to rescission, reformation, restitution, the award of damages and reasonable attorney fees and court costs. A defendant may recover reasonable attorneys' fees if the court determines that the cause of action filed by the plantiff [1] is frivolous, malicious, or lacking in substantial merit.

(e) Actions allowed after termination of special developer control

Nothing in this section may be construed to authorize the bringing of an action by cooperative and condominium unit owners' association, seeking a judicial determination that a lease or leases, or portions thereof, are unconscionable, where such unit owners or a unit owners' association representing them has, after the termination of special developer control, reached an agreement with a holder of such lease or leases which either—

(1) sets forth the terms and conditions under which such lease or leases is or shall be purchased by such unit owners or associations; or

(2) reforms any clause in the lease which contained an automatic rent increase clause, unless such agreement was entered into when the leaseholder or his affiliate held a majority of the votes in the owners' association.

(Pub. L. 96–399, title VI, §609, Oct. 8, 1980, 94 Stat. 1677.)

EFFECTIVE DATE

Section effective one year after Oct. 8, 1980, see section 618 of Pub. L. 96–399, set out as a note under section 3601 of this title.

[1] So in original. Probably should be "plaintiff".

§3609. Void lease or contract provisions

Any provision in any lease or contract requiring unit owners or the owners' association, in any conversion project involving a contract meeting the requirements of section 3607 of this title of in any project involving a lease meeting the requirements of section 3608 of this title, to reimburse, regardless of outcome, the developer, his successor, or affiliate of the developer for attorneys' fees or money judgments, in a suit between unit owners or the owners' association and the developer arising under the lease or agreement, is against public policy and void.

(Pub. L. 96–399, title VI, §610, Oct. 8, 1980, 94 Stat. 1678.)

EFFECTIVE DATE

Section effective Oct. 8, 1980, except that prohibition included in this section as it relates to a lease with

respect to which a cause of action may be established under section 3608 of this title, shall be effective one year after Oct. 8, 1980, see section 618 of Pub. L. 96–399, set out as a note under section 3601 of this title.

§3610. Relationship of statutory provisions to State and local laws

Nothing in this chapter may be construed to prevent or limit the authority of any State or local government to enact and enforce any law, ordinance, or code with regard to any condominium, cooperative, or conversion project, if such law, ordinance, or code does not abridge, deny, or contravene any standard for consumer protection established under this chapter. Notwithstanding the preceding sentence, the provisions of this chapter, except for the application of section 3608 of this title and the prohibition included in section 3609 of this title as it relates to a lease with respect to which a cause of action may be established under section 3608 of this title, shall not apply in the case of any State or local government which has the authority to enact and enforce such a law, ordinance, or code, if, during the three-year period following October 8, 1980, such State or local government enacts a law, ordinance, or code, or amendments thereto, stating in substance that such provisions of this chapter shall not apply in that State or local government jurisdiction.

(Pub. L. 96–399, title VI, §611, Oct. 8, 1980, 94 Stat. 1679.)

§3611. Additional remedies

(a) Suits at law or equity

Unless otherwise limited as in section 3607 or 3608 of this title, any person aggrieved by a violation of this chapter may sue at law or in equity.

(b) Recovery of actual damages

In any action authorized by this section for a violation of section 3607 or 3609 of this title where actual damages have been suffered, such damages may be awarded or such other relief granted as deemed fair, just, and equitable.

(c) Contribution

Every person who becomes liable to make any payment under this section may recover contributions from any person who if sued separately, would have been liable to make the same payment.

(d) Amounts recoverable; defendant's attorneys' fees

The amounts recoverable under this section may include interest paid, reasonable attorneys' fees, independent engineer and appraisers' fees, and court costs. A defendant may recover reasonable attorneys' fees if the court determines that the cause of action filed by the plaintiff is frivolous, malicious, or lacking in substantial merit.

(Pub. L. 96–399, title VI, §612, Oct. 8, 1980, 94 Stat. 1679.)

§3612. Concurrent State and Federal jurisdiction; venue; removal of cases

The district courts of the United States, the United States courts of any territory, and the United States District Court for the District of Columbia shall have jurisdiction under this chapter and, concurrent with State courts, of actions at law or in equity brought under this chapter without regard to the amount in controversy. Any such action may be brought in the district wherein the defendant is found or is an inhabitant or transacts business, or in the district where the sale took place, and process in such cases may be served in other districts of which the defendant is an inhabitant or wherever the defendant may be found. No case arising under this chapter and brought in any State court of competent jurisdiction shall be removed to any court of the United States, except where any officer or employee of the United States in his official capacity is a party.

(Pub. L. 96–399, title VI, §613, Oct. 8, 1980, 94 Stat. 1679.)

§3613. Limitation of actions

No action shall be maintained to enforce any right or liability created by this chapter unless brought within six years after such cause of action accrued, except that an action pursuant to section 3608 of this title must be brought within four years after October 8, 1980.

(Pub. L. 96–399, title VI, §614, Oct. 8, 1980, 94 Stat. 1680.)

§3614. Waiver of rights as void

Any condition, stipulation, or provision binding any person to waive compliance with any provisions of this chapter shall be void.

(Pub. L. 96–399, title VI, §615, Oct. 8, 1980, 94 Stat. 1680.)

§3615. Nonexclusion of other statutory rights and remedies

The rights and remedies provided by this chapter shall be in addition to any and all other rights and remedies that may exist under Federal or State law.

(Pub. L. 96–399, title VI, §616, Oct. 8, 1980, 94 Stat. 1680.)

§3616. Separability

If any provisions of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of this chapter shall not be affected thereby.

(Pub. L. 96–399, title VI, §617, Oct. 8, 1980, 94 Stat. 1680.)

CHAPTER 63—TECHNOLOGY INNOVATION

Sec.

3701. Findings.
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3710b. Rewards for scientific, engineering, and technical personnel of Federal agencies.
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3711c. Advanced motor vehicle research award.
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3713. Authorization of appropriations.
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3715. Use of partnership intermediaries.
3716. Critical industries.
3717. National Quality Council.
3718. President's Council on Innovation and Competitiveness.
3719. Prize competitions.
3720. Office of Innovation and Entrepreneurship.
3721. Federal loan guarantees for innovative technologies in manufacturing.
3722. Regional innovation program.

§3701. Findings

The Congress finds and declares that:

(1) Technology and industrial innovation are central to the economic, environmental, and social well-being of citizens of the United States.

(2) Technology and industrial innovation offer an improved standard of living, increased public and private sector productivity, creation of new industries and employment opportunities, improved public services and enhanced competitiveness of United States products in world markets.

(3) Many new discoveries and advances in science occur in universities and Federal laboratories, while the application of this new knowledge to commercial and useful public purposes depends largely upon actions by business and labor. Cooperation among academia, Federal laboratories, labor, and industry, in such forms as technology transfer, personnel exchange, joint research projects, and others, should be renewed, expanded, and strengthened.

(4) Small businesses have performed an important role in advancing industrial and technological innovation.

(5) Industrial and technological innovation in the United States may be lagging when compared to historical patterns and other industrialized nations.

(6) Increased industrial and technological innovation would reduce trade deficits, stabilize the dollar, increase productivity gains, increase employment, and stabilize prices.

(7) Government antitrust, economic, trade, patent, procurement, regulatory, research and development, and tax policies have significant impacts upon industrial innovation and development of technology, but there is insufficient knowledge of their effects in particular sectors of the economy.

(8) No comprehensive national policy exists to enhance technological innovation for commercial and public purposes. There is a need for such a policy, including a strong national policy supporting domestic technology transfer and utilization of the science and technology resources of the Federal Government.

(9) It is in the national interest to promote the adaptation of technological innovations to State and local government uses. Technological innovations can improve services, reduce their costs, and increase productivity in State and local governments.

(10) The Federal laboratories and other performers of federally funded research and development frequently provide scientific and technological developments of potential use to State and local governments and private industry. These developments, which include inventions, computer software, and training technologies, should be made accessible to those governments and industry. There is a need to provide means of access and to give adequate personnel and funding support to these means.

(11) The Nation should give fuller recognition to individuals and companies which have made outstanding contributions to the promotion of technology or technological manpower for the improvement of the economic, environmental, or social well-being of the United States.

(Pub. L. 96–480, §2, Oct. 21, 1980, 94 Stat. 2311; Pub. L. 99–502, §9(f)(1), Oct. 20, 1986, 100 Stat. 1797.)

AMENDMENTS

1986—Par. (10). Pub. L. 99–502 inserted ", which include inventions, computer software, and training technologies,".

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–404, §1, Nov. 1, 2000, 114 Stat. 1742, provided that: "This Act [enacting section 7261c of Title 42, The Public Health and Welfare, amending sections 3703, 3704, 3707, 3710, 3710a, 3710c, 3714, and 3715 of this title and sections 200, 202, 207, and 209 of Title 35, Patents, and enacting provisions set out as notes under this section and section 3710a of this title] may be cited as the 'Technology Transfer Commercialization Act of 2000'."

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–113, §1, Mar. 7, 1996, 110 Stat. 775, provided that: "This Act [amending sections 272, 278, 278e, 278g–2, 3710, 3710a, 3710c, 3710d, 5401, 5402, 5404 to 5406, 5408, 5409, and 5412 of this title and section 210 of Title 35, Patents, repealing sections 5403 and 5413 of this title, and enacting provisions set out as notes under this section and sections 272 and 275 of this title] may be cited as the 'National Technology Transfer and Advancement Act of 1995'."

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–245, §1, Feb. 14, 1992, 106 Stat. 7, provided that: "This Act [enacting sections 1536, 3704b–1, 3704b–2, 3716, and 3717 of this title and section 6618 of Title 42, The Public Health and Welfare, amending sections 272, 278d, 278g, 278g–1, 278k, 278n, 1453, 1454, 3703, 3704, 3704b, 3710, 3710a, 3711a, 4603, 4603a, and 4632 of this title and section 6683 of Title 42, enacting provisions set out as notes under this section, sections 271, 278f, 278n, and 1453 of this title, and section 6611 of Title 42, and amending provisions set out as a note under section 278l of this title] may be cited as the 'American Technology Preeminence Act of 1991'."

Pub. L. 102–245, title I, §101, Feb. 14, 1992, 106 Stat. 7, provided that: "This title [enacting sections 1536, 3704b–1, and 3704b–2 of this title, amending sections 278d, 278g, 278g–1, 278k, 1453, 1454, 4603, 4603a, and 4632 of this title, enacting provisions set out as notes under this section and sections 278f and 1453 of this title, and amending provisions set out as a note under section 278l of this title] may be cited as the 'Technology Administration Authorization Act of 1991'."

SHORT TITLE OF 1989 AMENDMENT

Pub. L. 101–189, div. C, title XXXI, §3131, Nov. 29, 1989, 103 Stat. 1674, provided that: "This part [part C (§§3131–3133) of title XXXI of div. C of Pub. L. 101–189, amending sections 3710, 3710a, and 3710c of this title and enacting provisions set out as notes under this section and section 3710a of this title] may be cited as the 'National Competitiveness Technology Transfer Act of 1989'."

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–519, title II, §211, Oct. 24, 1988, 102 Stat. 2594, provided that: "This subtitle [subtitle B (§§211, 212) of title II of Pub. L. 100–519, enacting section 3704b of this title and amending section 3710 of this title] may be cited as the 'National Technical Information Act of 1988'."

SHORT TITLE OF 1987 AMENDMENT

Pub. L. 100–107, §1, Aug. 20, 1987, 101 Stat. 724, provided that: "This Act [enacting section 3711a of this title, amending section 3708 of this title, and enacting provisions set out as a note under section 3711a of this title] may be cited as the 'Malcolm Baldrige National Quality Improvement Act of 1987'."

SHORT TITLE OF 1986 AMENDMENTS

Pub. L. 99–502, §1, Oct. 20, 1986, 100 Stat. 1785, provided that: "This Act [enacting sections 3710a to 3710d of this title, amending this section, sections 3702 to 3705, 3707, 3708, 3710 to 3710d, and 3711 to 3714 of this title, and section 210 of Title 35, Patents, and repealing section 3709 of this title] may be cited as the 'Federal Technology Transfer Act of 1986'. "

Pub. L. 99–382, §1, Aug. 14, 1986, 100 Stat. 811, provided: "That this Act [amending section 3704 of this title] may be cited as the 'Japanese Technical Literature Act of 1986'."

SHORT TITLE

Pub. L. 96–480, §1, Oct. 21, 1980, 94 Stat. 2311, provided: "That this Act [enacting this chapter] may be cited as the 'Stevenson-Wydler Technology Innovation Act of 1980'."

STUDY ON ECONOMIC COMPETITIVENESS AND INNOVATIVE CAPACITY OF UNITED STATES AND DEVELOPMENT OF NATIONAL ECONOMIC COMPETITIVENESS STRATEGY

Pub. L. 111–358, title VI, §604, Jan. 4, 2011, 124 Stat. 4037, provided that:

"(a) STUDY.—

"(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act [Jan. 4, 2011], the Secretary of Commerce shall complete a comprehensive study of the economic competitiveness and innovative capacity of the United States.

"(2) MATTERS COVERED.—The study required by paragraph (1) shall include the following:

"(A) An analysis of the United States economy and innovation infrastructure.

"(B) An assessment of the following:

"(i) The current competitive and innovation performance of the United States economy relative to other countries that compete economically with the United States.

"(ii) Economic competitiveness and domestic innovation in the current business climate, including tax and Federal regulatory policy.

"(iii) The business climate of the United States and those of other countries that compete economically with the United States.

"(iv) Regional issues that influence the economic competitiveness and innovation capacity of the United States, including—

"(I) the roles of State and local governments and institutions of higher education; and

"(II) regional factors that contribute positively to innovation.

"(v) The effectiveness of the Federal Government in supporting and promoting economic competitiveness and innovation, including any duplicative efforts of, or gaps in coverage between, Federal agencies and departments.

"(vi) Barriers to competitiveness in newly emerging business or technology sectors, factors influencing underperforming economic sectors, unique issues facing small and medium enterprises, and barriers to the development and evolution of start-ups, firms, and industries.

"(vii) The effects of domestic and international trade policy on the competitiveness of the United States and the United States economy.

"(viii) United States export promotion and export finance programs relative to export promotion and export finance programs of other countries that compete economically with the United States, including Canada, France, Germany, Italy, Japan, Korea, and the United Kingdom, with noting of export promotion and export finance programs carried out by such countries that are not analogous to any programs carried out by the United States.

"(ix) The effectiveness of current policies and programs affecting exports, including an assessment of Federal trade restrictions and State and Federal export promotion activities.

"(x) The effectiveness of the Federal Government and Federally funded research and development centers in supporting and promoting technology commercialization and technology transfer.

"(xi) Domestic and international intellectual property policies and practices.

"(xii) Manufacturing capacity, logistics, and supply chain dynamics of major export sectors, including access to a skilled workforce, physical infrastructure, and broadband network infrastructure.

"(xiii) Federal and State policies relating to science, technology, and education and other relevant Federal and State policies designed to promote commercial innovation, including immigration policies.

"(C) Development of recommendations on the following:

"(i) How the United States should invest in human capital.

"(ii) How the United States should facilitate entrepreneurship and innovation.

"(iii) How best to develop opportunities for locally and regionally driven innovation by providing Federal support.

"(iv) How best to strengthen the economic infrastructure and industrial base of the United

States.

"(v) How to improve the international competitiveness of the United States.

"(3) CONSULTATION.—

"(A) IN GENERAL.—The study required by paragraph (1) shall be conducted in consultation with the National Economic Council of the Office of Policy Development, such Federal agencies as the Secretary considers appropriate, and the Innovation Advisory Board established under subparagraph (B). The Secretary shall also establish a process for obtaining comments from the public.

"(B) INNOVATION ADVISORY BOARD.—

"(i) IN GENERAL.—The Secretary shall establish an Innovation Advisory Board for purposes of obtaining advice with respect to the conduct of the study required by paragraph (1).

"(ii) COMPOSITION.—The Advisory Board established under clause (i) shall be comprised of 15 members, appointed by the Secretary—

"(I) who shall represent all major industry sectors;

"(II) a majority of whom should be from private industry, including large and small firms, representing advanced technology sectors and more traditional sectors that use technology; and

"(III) who may include economic or innovation policy experts, State and local government officials active in technology-based economic development, and representatives from higher education.

"(iii) EXEMPTION FROM FACA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the advisory board established under clause (i).

"(b) STRATEGY.—

"(1) IN GENERAL.—Not later than 1 year after the completion of the study required by subsection (a), the Secretary shall develop, based on the study required by subsection (a)(1), a national 10-year strategy to strengthen the innovative and competitive capacity of the Federal Government, State and local governments, United States institutions of higher education, and the private sector of the United States.

"(2) ELEMENTS.—The strategy required by paragraph (1) shall include the following:

"(A) Actions to be taken by individual Federal agencies and departments to improve competitiveness.

"(B) Proposed legislative actions for consideration by Congress.

"(C) Annual goals and milestones for the 10-year period of the strategy.

"(D) A plan for monitoring the progress of the Federal Government with respect to improving conditions for innovation and the competitiveness of the United States.

"(c) REPORT.—

"(1) IN GENERAL.—Upon the completion of the strategy required by subsection (b), the Secretary of Commerce shall submit to Congress and the President a report on the study conducted under subsection (a) and the strategy developed under subsection (b).

"(2) ELEMENTS.—The report required by paragraph (1) shall include the following:

"(A) The findings of the Secretary with respect to the study conducted under subsection (a).

"(B) The strategy required by subsection (b)."

PROMOTING USE OF HIGH-END COMPUTING SIMULATION AND MODELING BY SMALL- AND MEDIUM-SIZED MANUFACTURERS

Pub. L. 111–358, title VI, §605, Jan. 4, 2011, 124 Stat. 4040, provided that:

"(a) FINDINGS.—Congress finds that—

"(1) the utilization of high-end computing simulation and modeling by large-scale government contractors and Federal research entities has resulted in substantial improvements in the development of advanced manufacturing technologies; and

"(2) such simulation and modeling would also benefit small- and medium-sized manufacturers in the United States if such manufacturers were to deploy such simulation and modeling throughout their manufacturing chains.

"(b) POLICY.—It is the policy of the United States to take all effective measures practicable to ensure that Federal programs and policies encourage and contribute to the use of high-end computing simulation and modeling in the United States manufacturing sector.

"(c) STUDY.—

"(1) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act [Jan. 4, 2011], the Secretary of Commerce, in consultation with the Secretary of Energy and the Director of the Office of Science and Technology Policy, shall carry out, through an interagency consulting process, a study of the barriers to the use of high-end computing simulation and modeling by small- and medium-sized manufacturers in the United States.

"(2) FACTORS.—In carrying out the study required by paragraph (1), the Secretary of Commerce, in consultation with the Secretary of Energy and the Director of the Office of Science and Technology Policy, shall consider the following:

"(A) The access of small- and medium-sized manufacturers in the United States to high-performance computing facilities and resources.

"(B) The availability of software and other applications tailored to meet the needs of such manufacturers.

"(C) Whether such manufacturers employ or have access to individuals with appropriate expertise for the use of such facilities and resources.

"(D) Whether such manufacturers have access to training to develop such expertise.

"(E) The availability of tools and other methods to such manufacturers to understand and manage the costs and risks associated with transitioning to the use of such facilities and resources.

"(3) REPORT.—Not later than 270 days after the commencement of the study required by paragraph (1), the Secretary of Commerce shall, in consultation with the Secretary of Energy and the Director of the Office of Science and Technology Policy, submit to Congress a report on such study. Such report shall include such recommendations for such legislative or administrative action as the Secretary of Commerce considers appropriate in light of the study to increase the utilization of high-end computing simulation and modeling by small- and medium-sized manufacturers in the United States.

"(d) AUTHORIZATION OF DEMONSTRATION AND PILOT PROGRAMS.—As part of the study required by subsection (c)(1), the Secretary of Commerce, the Secretary of Energy, and the Director of the Office of Science and Technology Policy may carry out such demonstration or pilot programs as either [the] Secretary or the Director considers appropriate to gather experiential data to evaluate the feasibility and advisability of a specific program or policy initiative to reduce barriers to the utilization of high-end computer modeling and simulation by small- and medium-sized manufacturers in the United States."

CONGRESSIONAL FINDINGS; 2000 AMENDMENT

Pub. L. 106–404, §2, Nov. 1, 2000, 114 Stat. 1742, provided that: "The Congress finds that—

"(1) the importance of linking our unparalleled network of over 700 Federal laboratories and our Nation's universities with United States industry continues to hold great promise for our future economic prosperity;

"(2) the enactment of the Bayh-Dole Act [35 U.S.C. 200 et seq.] in 1980 was a landmark change in United States technology policy, and its success provides a framework for removing bureaucratic barriers and for simplifying the granting of licenses for inventions that are now in the Federal Government's patent portfolio;

"(3) Congress has demonstrated a commitment over the past 2 decades to fostering technology transfer from our Federal laboratories and to promoting public/private sector partnerships to enhance our international competitiveness;

"(4) Federal technology transfer activities have strengthened the ability of United States industry to compete in the global marketplace; developed a new paradigm for greater collaboration among the scientific enterprises that conduct our Nation's research and development—government, industry, and universities; and improved the quality of life for the American people, from medicine to materials;

"(5) the technology transfer process must be made 'industry friendly' for companies to be willing to invest the significant time and resources needed to develop new products, processes, and jobs using federally funded inventions; and

"(6) Federal technology licensing procedures should balance the public policy needs of adequately protecting the rights of the public, encouraging companies to develop existing government inventions, and making the entire system of licensing government technologies more consistent and simple."

CONGRESSIONAL FINDINGS; 1996 AMENDMENT

Pub. L. 104–113, §2, Mar. 7, 1996, 110 Stat. 775, provided that: "The Congress finds the following:

"(1) Bringing technology and industrial innovation to the marketplace is central to the economic, environmental, and social well-being of the people of the United States.

"(2) The Federal Government can help United States business to speed the development of new products and processes by entering into cooperative research and development agreements which make available the assistance of Federal laboratories to the private sector, but the commercialization of technology and industrial innovation in the United States depends upon actions by business.

"(3) The commercialization of technology and industrial innovation in the United States will be enhanced if companies, in return for reasonable compensation to the Federal Government, can more easily obtain exclusive licenses to inventions which develop as a result of cooperative research with scientists

employed by Federal laboratories."

DEFINITIONS OF TERMS; 1992 AMENDMENT

Pub. L. 102–245, §2, Feb. 14, 1992, 106 Stat. 7, provided that: "As used in this Act [see Short Title of 1992 Amendment note above]—

"(1) the term 'high-resolution information systems' means equipment and techniques required to create, store, recover, and play back high-resolution images and accompanying sound;

"(2) the term 'advanced manufacturing technology' means numerically-controlled machine tools, robots, automated process control equipment, computerized flexible manufacturing systems, associated computer software, and other technology for improving manufacturing and industrial processes;

"(3) the term 'advanced materials' means a field of research including the study of composites, ceramics, metals, polymers, superconducting materials, materials produced through biotechnology, and materials production technologies, including coated systems, that provide the potential for significant advantages over existing materials;

"(4) the term 'Institute' means the National Institute of Standards and Technology;

"(5) the term 'Secretary' means the Secretary of Commerce; and

"(6) the term 'Under Secretary' means the Under Secretary of Commerce for Technology."

CONGRESSIONAL STATEMENT OF POLICY; 1992 AMENDMENT

Pub. L. 102–245, title I, §102, Feb. 14, 1992, 106 Stat. 7, provided that: "Congress finds that in order to help United States industries to speed the development of new products and processes so as to maintain the economic competitiveness of the Nation, it is necessary to strengthen the programs and activities of the Department of Commerce's Technology Administration and National Institute of Standards and Technology."

NATIONAL COMMISSION ON REDUCING CAPITAL COSTS FOR EMERGING TECHNOLOGY

Pub. L. 102–245, title IV, §401, Feb. 14, 1992, 106 Stat. 21, provided that:

"(a) ESTABLISHMENT AND PURPOSE.—There is established a National Commission on Reducing Capital Costs for Emerging Technology (hereafter in this section referred to as the 'Commission'), for the purpose of developing recommendations to increase the competitiveness of United States industry by encouraging investments in research, the development of new process and product technologies, and the production of those technologies.

"(b) ISSUES.—The function of the Commission shall be to address the following issues:

"(1) How has the overall cost of capital paid by United States companies differed during the past decade from that paid by companies in other industrial economies such as Germany, Japan, and the United Kingdom?

"(2) To what extent has the cost of capital faced by technology companies differed from the overall cost of capital in each of these nations during the same period?

"(3) To what extent do high capital costs in general inhibit investment in projects with long-term payoffs, such as the development and commercialization of new technology?

"(4) To what extent does the structure of the financial services industry in the United States affect the flow of capital to advanced technology investment, and to what extent do current practices in the equity markets raise the cost of capital and inhibit the availability of capital to fund research and development, purchase advanced manufacturing equipment, and fund other investments necessary to commercialize advanced technology?

"(5) In what ways do Government regulations influence the cost of capital in the United States?

"(6) To what extent have national differences in capital costs facilitated the foreign acquisition of technology-based United States companies?

"(7) What macroeconomic and other policies would promote greater investment in advanced manufacturing techniques, in research and development, and in other activities necessary to commercialize and produce new technologies?

"(8) What specific policies should the Federal Government follow in order to reduce the cost of capital for United States companies to levels that are near parity with those faced by the Nation's principal trading partners?

"(c) MEMBERSHIP.—(1) The Commission shall be composed of 9 members who are eminent in such fields as advanced technology, manufacturing, finance, and international economics and who are appointed as follows:

"(A) 3 individuals appointed by the President, one of whom shall chair the Commission.

"(B) 3 individuals appointed by the Speaker of the House of Representatives, 1 of whom shall be appointed upon the recommendation of the minority leader of the House of Representatives.

"(C) 3 individuals appointed by the President pro tempore of the Senate, 2 of whom shall be appointed upon the recommendation of the majority leader of the Senate and 1 of whom shall be appointed upon the recommendation of the minority leader of the Senate.

"(2) Each member shall be appointed for the life of the Commission. A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

"(d) PROCEDURES.—(1) The chairman shall call the first meeting of the Commission within 90 days after the date of enactment of this Act [Feb. 14, 1992].

"(2) Recommendations of the Commission shall require the approval of three-quarters of the members of the Commission.

"(3) The Commission may use such personnel detailed from Federal agencies as may be necessary to enable it to carry out its duties.

"(4) Members of the Commission, other than full-time employees of the Federal Government, while attending meetings of the Commission while away from their homes or regular places of business, shall be allowed travel expenses in accordance with subchapter I of chapter 57 of title 5, United States Code.

"(e) REPORTS.—The Commission shall, within 1 year after the date of enactment of this Act [Feb. 14, 1992], submit to the President and Congress a report containing legislative and other recommendations with respect to the issues addressed under subsection (b).

"(f) CONSULTATION.—The Commission shall consult, as appropriate, with the Commission on Technology and Procurement established by section 505 of this Act [set out below].

"(g) TERMINATION.—The Commission shall terminate 6 months after the submission of its report under subsection (e).

"(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for the fiscal years 1992 and 1993."

RESEARCH, DEVELOPMENT, TECHNOLOGY UTILIZATION, AND GOVERNMENT PROCUREMENT POLICY

Pub. L. 102–245, title V, §505, Feb. 14, 1992, 106 Stat. 25, provided that:

"(a) ESTABLISHMENT OF COMMISSION.—The Secretary, in consultation with the Administrator of the Office of Federal Procurement Policy, shall establish a Commission on Technology and Procurement (hereafter in this section referred to as the 'Commission'), for the purposes of analyzing the effect of Federal Government procurement laws, procedures, and policies on the development of advanced technologies within the United States and making recommendations on how Federal policy could be changed to promote further the development of advanced technologies.

"(b) ISSUES.—The Commission shall address the following issues:

"(1) To what extent, if any, should Federal Government technology purchase strategies be used to give domestic suppliers a competitive advantage in new generations of existing technologies and in initial market penetration for new technologies?

"(2) Under what conditions can Federal Government purchases of advanced technology-based products be based on performance specifications rather than on product specifications? Should Federal Government procurement first look to the commercial markets for products that will meet performance specifications before purchasing a unique product that has to be developed?

"(3) How can the Federal Government procurement laws, practices, and procedures be used as a strategic tool to foster the use of emerging technologies?

"(4) How can the Federal Government ensure that its suppliers adopt the principles embodied in the Malcolm Baldrige National Quality Award?

"(5) Should Federal Government procurement practices include cooperative efforts between the supplier and the Federal entity to develop products so as to be more easily marketed on a commercial basis? Should a program for the exchange of technical personnel to foster innovation in product development be part of such practices?

"(6) To what extent, if any, should Federal Government documents specify standards that are beneficial to domestic suppliers, aid the compatibility of advanced technologies, and speed the commercial acceptance of those technologies, and what would be the role of the Institute in such an effort?

"(7) Should Federal Government procurement be linked to the Advanced Technology Program and to technology transfer activities so that specification development can incorporate the latest technical advances available?

"(8) To what extent should worldwide, state of the art technology be required in Federal Government procurement?

"(c) MEMBERSHIP AND PROCEDURES.—(1) The Commission shall be composed of 15 members, 8 of

whom shall constitute a quorum.

"(2) The Secretary, the Administrator of the Office of Federal Procurement Policy, the Director of the Office of Science and Technology Policy, the Secretary of Defense, and the Administrator of General Services, or their designees who serve in executive level positions, shall serve as members of the Commission.

"(3) The Secretary shall appoint as members of the Commission, from among individuals not employed by the Federal Government—

"(A) 4 members who are eminent in advanced technology businesses representing manufacturing and services industries, including at least 1 member representing labor;

"(B) 3 members who are eminent in the fields of technology and international economic development; and

"(C) with the concurrence of the Administrator of the Office of Federal Procurement Policy, 3 members who are eminent in the field of Federal Government procurement.

"(4) The Secretary shall appoint a Commission chairman from among the members of the Commission. The chairman shall call the first meeting of the Commission within 90 days after the date of enactment of this Act [Feb. 14, 1992].

"(5) The Secretary and the Administrator of the Office of Federal Procurement Policy shall provide such staff as may be required by the Commission to carry out its responsibilities.

"(6) Members of the Commission, other than full-time employees of the Federal Government, while attending meetings of the Commission or otherwise performing duties of the Commission while away from their homes or regular places of business, shall be allowed travel expenses in accordance with subchapter I of chapter 57 of title 5, United States Code.

"(d) REPORTS.—(1) The Commission shall, within 1 year after the date of enactment of this Act [Feb. 14, 1992], submit to the Secretary, the Administrator of the Office of Federal Procurement Policy, the President, and Congress a report containing preliminary recommendations with respect to the issues addressed under subsection (b).

"(2) The Commission shall, within 2 years after the date of enactment of this Act, submit to the Secretary and Congress a final report containing final recommendations with respect to the issues addressed under subsection (b).

"(e) CONSULTATION.—The Commission shall consult, as appropriate, with the National Commission on Reducing Capital Costs for Emerging Technology.

"(f) TERMINATION.—The Commission shall terminate 6 months after the submission of its final report under subsection (d)(2).

"(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for the fiscal years 1992, 1993, and 1994."

STUDY OF TESTING AND CERTIFICATION

Pub. L. 102–245, title V, §508, Feb. 14, 1992, 106 Stat. 29, provided that:

"(a) CONTRACT WITH NATIONAL RESEARCH COUNCIL.—Within 90 days after the date of enactment of this Act [Feb. 14, 1992] and within available appropriations, the Secretary shall enter into a contract with the National Research Council for a thorough review of international product testing and certification issues. The National Research Council will be asked to address the following issues and make recommendations as appropriate:

"(1) The impact on United States manufacturers, testing and certification laboratories, certification organizations, and other affected bodies of the European Community's plans for testing and certification of regulated and nonregulated products of non-European origin.

"(2) Ways for United States manufacturers to gain acceptance of their products in the European Community and in other foreign countries and regions.

"(3) The feasibility and consequences of having mutual recognition agreements between testing and certification organizations in the United States and those of major trading partners on the accreditation of testing and certification laboratories and on quality control requirements.

"(4) Information coordination regarding product acceptance and conformity assessment mechanisms between the United States and foreign governments.

"(5) The appropriate Federal, State, and private roles in coordination and oversight of testing, certification, accreditation, and quality control to support national and international trade.

"(b) MEMBERSHIP.—In selecting the members of the review panel, the National Research Council shall consult with and draw from, among others, laboratory accreditation organizations, Federal and State government agencies involved in testing and certification, professional societies, trade associations, small business, and labor organizations.

"(c) REPORT.—A report based on the findings and recommendations of the review panel shall be submitted to the Secretary, the President, and Congress within 18 months after the Secretary signs the contract with the National Research Council."

CONGRESSIONAL FINDINGS AND PURPOSES; 1989 AMENDMENT

Pub. L. 101–189, div. C, title XXXI, §3132, Nov. 29, 1989, 103 Stat. 1674, provided that:

"(a) FINDINGS.—Congress finds that—

"(1) technology advancement is a key component in the growth of the United States industrial economy, and a strong industrial base is an essential element of the security of this country;

"(2) there is a need to enhance United States competitiveness in both domestic and international markets;

"(3) innovation and the rapid application of commercially valuable technology are assuming a more significant role in near-term marketplace success;

"(4) the Federal laboratories and other facilities have outstanding capabilities in a variety of advanced technologies and skilled scientists, engineers, and technicians who could contribute substantially to the posture of United States industry in international competition;

"(5) improved opportunities for cooperative research and development agreements between contractor-managers of certain Federal laboratories and the private sector in the United States, consistent with the program missions at those facilities, particularly the national security functions involved in atomic energy defense activities, would contribute to our national well-being; and

"(6) more effective cooperation between those laboratories and the private sector in the United States is required to provide speed and certainty in the technology transfer process.

"(b) PURPOSES.—The purposes of this part [part C (§§3131–3133) of title XXXI of div. C of Pub. L. 101–189, see Short Title of 1989 Amendment note above] are to—

"(1) enhance United States national security by promoting technology transfer between Government-owned, contractor-operated laboratories and the private sector in the United States; and

"(2) enhance collaboration between universities, the private sector, and Government-owned, contractor-operated laboratories in order to foster the development of technologies in areas of significant economic potential."

EX. ORD. NO. 13185. TO STRENGTHEN THE FEDERAL GOVERNMENT-UNIVERSITY RESEARCH PARTNERSHIP

Ex. Ord. No. 13185, Dec. 28, 2000, 66 F.R. 701, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to keep the Federal Government-University research partnership strong, it is hereby ordered as follows:

SECTION 1. *Principles of the Government-University Partnership*. The partnership in science and technology that has evolved between the Federal Government and American universities has yielded benefits that are vital to each. It continues to prove exceptionally productive, successfully promoting the discovery of knowledge, stimulating technological innovation, improving the quality of life, educating and training the next generation of scientists and engineers, and contributing to America's economic prosperity and national security. In order to reaffirm and strengthen this partnership, this order sets forth the following guiding and operating principles that are fully described in the April 1999 National Science and Technology Council report, "Renewing the Government-University Partnership." These principles shall provide the framework for the development and analysis of all future Federal policies, rules, and regulations for the Federal Government-University research partnership.

(a) The guiding principles that shall govern interactions between the Federal Government and universities that perform research are:

(1) Research is an investment in the future;

(2) The integration of research and education is vital;

(3) Excellence is promoted when investments are guided by merit review; and

(4) Research must be conducted with integrity.

(b) The operating principles that shall assist agencies, universities, individual researchers, and auditing and regulatory bodies in implementing the guiding principles are:

(1) Agency cost-sharing policies and practices must be transparent;

(2) Partners should respect the merit review process;

(3) Agencies and universities should manage research in a cost-efficient manner;

(4) Accountability and accounting are not the same;

(5) The benefits of simplicity in policies and practices should be weighed against the costs;

(6) Change should be justified by need and the process made transparent.

(c) Each executive branch department or agency that supports research at universities shall regularly review its existing policies and procedures to ensure that they meet the spirit and intent of the guiding and operating principles stated above.

SEC. 2. *Office of Science and Technology (OSTP) Review of the Government-University Research Partnership*. (a) The OSTP, in conjunction with the National Science and Technology Council, shall conduct a regular review of the Government-University research partnership and prepare a report on the status of the partnership. The OSTP should receive input from all departments or agencies that have a major impact on the Government-University partnership through their support of research and education, policy making, regulatory activities, and research administration. In addition, OSTP may seek the input of the National Science Board and the President's Committee of Advisors for Science and Technology, as well as other stakeholders, such as State and local governments, industry, the National Academy of Sciences, and the Federal Demonstration Partnership.

(b) The purpose of the review and the report is to determine the overall health of the Government-University research partnership, being mindful of the guiding and operating principles stated above. The report should include recommendations on how to improve the Government-University partnership.

(c) The Director of OSTP shall deliver the report to the President.

SEC. 3. *Judicial Review*. This order does not create any enforceable rights against the United States, its agencies, its officers, or any person.

WILLIAM J. CLINTON.

§3702. Purpose

It is the purpose of this chapter to improve the economic, environmental, and social well-being of the United States by—

(1) establishing organizations in the executive branch to study and stimulate technology;

(2) promoting technology development through the establishment of cooperative research centers;

(3) stimulating improved utilization of federally funded technology developments, including inventions, software, and training technologies, by State and local governments and the private sector;

(4) providing encouragement for the development of technology through the recognition of individuals and companies which have made outstanding contributions in technology; and

(5) encouraging the exchange of scientific and technical personnel among academia, industry, and Federal laboratories.

(Pub. L. 96–480, §3, Oct. 21, 1980, 94 Stat. 2312; Pub. L. 99–502, §9(b)(1), (f)(2), Oct. 20, 1986, 100 Stat. 1795, 1797.)

AMENDMENTS

1986—Par. (2). Pub. L. 99–502, §9(b)(1), substituted "cooperative research centers" for "centers for industrial technology".

Par. (3). Pub. L. 99–502, §9(f)(2), inserted ", including inventions, software, and training technologies,".

§3703. Definitions

As used in this chapter, unless the context otherwise requires, the term—

(1) "Secretary" means the Secretary of Commerce.

(2) "Centers" means the Cooperative Research Centers established under section 3705 or 3707 of this title.

(3) "Nonprofit institution" means an organization owned and operated exclusively for scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(4) "Federal laboratory" means any laboratory, any federally funded research and development

center, or any center established under section 3705 or 3707 of this title that is owned, leased, or otherwise used by a Federal agency and funded by the Federal Government, whether operated by the Government or by a contractor.

(5) "Supporting agency" means either the Department of Commerce or the National Science Foundation, as appropriate.

(6) "Federal agency" means any executive agency as defined in section 105 of title 5 and the military departments as defined in section 102 of such title, as well as any agency of the legislative branch of the Federal Government.

(7) "Invention" means any invention or discovery which is or may be patentable or otherwise protected under title 35 or any novel variety of plant which is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

(8) "Made" when used in conjunction with any invention means the conception or first actual reduction to practice of such invention.

(9) "Small business firm" means a small business concern as defined in section 632 of this title and implementing regulations of the Administrator of the Small Business Administration.

(10) "Training technology" means computer software and related materials which are developed by a Federal agency to train employees of such agency, including but not limited to software for computer-based instructional systems and for interactive video disc systems.

(11) "Clearinghouse" means the Clearinghouse for State and Local Initiatives on Productivity, Technology, and Innovation established by section 3704a of this title.

(Pub. L. 96–480, §4, Oct. 21, 1980, 94 Stat. 2312; Pub. L. 99–502, §9(b)(2), (d), Oct. 20, 1986, 100 Stat. 1795, 1796; Pub. L. 100–418, title V, §5122(b), Aug. 23, 1988, 102 Stat. 1439; Pub. L. 100–519, title II, §201(d)(1), Oct. 24, 1988, 102 Stat. 2594; Pub. L. 102–245, title III, §304, Feb. 14, 1992, 106 Stat. 20; Pub. L. 106–404, §7(1), (2), Nov. 1, 2000, 114 Stat. 1745; Pub. L. 110–69, title III, §3002(c)(3), Aug. 9, 2007, 121 Stat. 586.)

REFERENCES IN TEXT

The Plant Variety Protection Act, referred to in par. (7), is Pub. L. 91–577, Dec. 24, 1970, 84 Stat. 1542, as amended, which is classified principally to chapter 57 (§2321 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2321 of Title 7 and Tables.

AMENDMENTS

2007—Pub. L. 110–69 redesignated pars. (2) and (4) to (13) as (1) and (2) to (11), respectively, and struck out pars. (1) and (3) which defined "Office" and "Under Secretary", respectively.

2000—Pars. (4), (6). Pub. L. 106–404 made technical amendments to references in original act which appear in text as references to sections 3705 and 3707 of this title.

1992—Par. (8). Pub. L. 102–245 inserted before period at end ", as well as any agency of the legislative branch of the Federal Government".

1988—Par. (1). Pub. L. 100–519, §201(d)(1)(A), substituted "Technology Policy" for "Productivity, Technology, and Innovation".

Par. (3). Pub. L. 100–519, §201(d)(1)(B), amended par. (3) generally, substituting provisions defining "Under Secretary" for provisions defining "Assistant Secretary".

Par. (13). Pub. L. 100–418 added par. (13).

1986—Par. (1). Pub. L. 99–502, §9(b)(2)(A), substituted "Productivity, Technology, and Innovation" for "Industrial Technology".

Par. (3). Pub. L. 99–502, §9(b)(2)(B), substituted " 'Assistant Secretary' means the Assistant Secretary for Productivity, Technology, and Innovation" for " 'Director' means the Director of the Office of Industrial Technology".

Par. (4). Pub. L. 99–502, §9(b)(2)(C), substituted "Cooperative Research Centers" for "Centers for Industrial Technology".

Par. (6). Pub. L. 99–502, §9(b)(2)(D), (E), redesignated par. (7) as (6), substituted "owned, leased, or otherwise used by a Federal agency and funded" for "owned and funded", and struck out former par. (6) which defined "Board" to mean the National Industrial Technology Board established pursuant to section 3709 of this title.

Pars. (7) to (12). Pub. L. 99–502, §9(b)(2)(D), (d), redesignated pars. (7) and (8) as (6) and (7), respectively, and added pars. (8) to (12).

§3704. Experimental Program to Stimulate Competitive Technology

(a) Program establishment

(1) In general

Beginning in fiscal year 1999, the Secretary shall establish a program to be known as the Experimental Program to Stimulate Competitive Technology (referred to in this subsection as the "program"). The purpose of the program shall be to strengthen the technological competitiveness of those States that have historically received less Federal research and development funds than those received by a majority of the States.

(2) Arrangements

In carrying out the program, the Secretary shall—

(A) enter into such arrangements as may be necessary to provide for the coordination of the program through the State committees established under the Experimental Program to Stimulate Competitive Research of the National Science Foundation; and

(B) cooperate with—

(i) any State science and technology council established under the program under subparagraph (A); and

(ii) representatives of small business firms and other appropriate technology-based businesses.

(3) Grants and cooperative agreements

In carrying out the program, the Secretary may make grants or enter into cooperative agreements to provide for—

(A) technology research and development;

(B) technology transfer from university research;

(C) technology deployment and diffusion; and

(D) the strengthening of technological capabilities through consortia comprised of—

(i) technology-based small business firms;

(ii) industries and emerging companies;

(iii) universities; and

(iv) State and local development agencies and entities.

(4) Requirements for making awards

(A) In general

In making awards under this subsection, the Secretary shall ensure that the awards are awarded on a competitive basis that includes a review of the merits of the activities that are the subject of the award.

(B) Matching requirement

The non-Federal share of the activities (other than planning activities) carried out under an award under this subsection shall be not less than 25 percent of the cost of those activities.

(5) Criteria for States

The Secretary shall establish criteria for achievement by each State that participates in the program. Upon the achievement of all such criteria, a State shall cease to be eligible to participate in the program.

(b) Coordination

To the extent practicable, in carrying out subsection (a), the Secretary shall coordinate the program with other programs of the Department of Commerce.

(c) Minority Serving Institution Digital and Wireless Technology Opportunity Program

(1) In general

The Secretary shall establish a Minority Serving Institution Digital and Wireless Technology Opportunity Program that awards grants, cooperative agreements, and contracts to eligible institutions to enable the eligible institutions in acquiring, and augmenting the institutions' use of, digital and wireless networking technologies to improve the quality and delivery of educational services at eligible institutions.

(2) Application and review procedures

(A) In general

To be eligible to receive a grant, cooperative agreement, or contract under this subsection, an eligible institution shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require. Such application, at a minimum, shall include a description of how the funds will be used, including a description of any digital and wireless networking technology to be acquired, and a description of how the institution will ensure that digital and wireless networking technology will be made accessible to, and employed by, students, faculty, and administrators. The Secretary, consistent with subparagraph (C) and in consultation with the advisory council established under subparagraph (B), shall establish procedures to review such applications. The Secretary shall publish the application requirements and review criteria in the Federal Register, along with a statement describing the availability of funds.

(B) Advisory council

The Secretary shall establish an advisory council to advise the Secretary on the best approaches to encourage maximum participation by eligible institutions in the program established under paragraph (1), and on the procedures to review applications submitted to the program. In selecting the members of the advisory council, the Secretary shall consult with representatives of appropriate organizations, including representatives of eligible institutions, to ensure that the membership of the advisory council includes representatives of minority businesses and eligible institution communities. The Secretary shall also consult with experts in digital and wireless networking technology to ensure that such expertise is represented on the advisory council.

(C) Review panels

Each application submitted under this subsection by an eligible institution shall be reviewed by a panel of individuals selected by the Secretary to judge the quality and merit of the proposal, including the extent to which the eligible institution can effectively and successfully utilize the proposed grant, cooperative agreement, or contract to carry out the program described in paragraph (1). The Secretary shall ensure that the review panels include representatives of minority serving institutions and others who are knowledgeable about eligible institutions and technology issues. The Secretary shall ensure that no individual assigned under this subsection to review any application has a conflict of interest with regard to that application. The Secretary shall take into consideration the recommendations of the review panel in determining whether to award a grant, cooperative agreement, or contract to an eligible institution.

(3) Awards

(A) Limitation

An eligible institution that receives a grant, cooperative agreement, or contract under this subsection that exceeds $2,500,000 shall not be eligible to receive another grant, cooperative agreement, or contract under this subsection.

(B) Consortia

Grants, cooperative agreements, and contracts may only be awarded to eligible institutions. Eligible institutions may seek funding under this subsection for consortia, which may include

other eligible institutions, a State or a State educational agency, local educational agencies, institutions of higher education, community-based organizations, national nonprofit organizations, or businesses, including minority businesses.

(C) Planning grants

The Secretary may provide funds to develop strategic plans to implement grants, cooperative agreements, or contracts awarded under this subsection.

(D) Institutional diversity

In awarding grants, cooperative agreements, and contracts to eligible institutions, the Secretary shall ensure, to the extent practicable, that awards are made to all types of institutions eligible for assistance under this subsection.

(E) Need

In awarding funds under this subsection, the Secretary shall give priority to the eligible institution with the greatest demonstrated need for assistance.

(4) Authorized activities

An eligible institution may use a grant, cooperative agreement, or contract awarded under this subsection—

(A) to acquire equipment, instrumentation, networking capability, hardware and software, digital network technology, wireless technology, and infrastructure to further the objective of the program described in paragraph (1);

(B) to develop and provide training, education, and professional development programs, including faculty development, to increase the use of, and usefulness of, digital and wireless networking technology;

(C) to provide teacher education, including the provision of preservice teacher training and in-service professional development at eligible institutions, library and media specialist training, and preschool and teacher aid certification to individuals who seek to acquire or enhance technology skills in order to use digital and wireless networking technology in the classroom or instructional process, including instruction in science, mathematics, engineering, and technology subjects;

(D) to obtain capacity-building technical assistance, including through remote technical support, technical assistance workshops, and distance learning services; or

(E) to foster the use of digital and wireless networking technology to improve research and education, including scientific, mathematics, engineering, and technology instruction.

(5) Information dissemination

The Secretary shall convene an annual meeting of eligible institutions receiving grants, cooperative agreements, or contracts under this subsection to foster collaboration and capacity-building activities among eligible institutions.

(6) Matching requirement

The Secretary may not award a grant, cooperative agreement, or contract to an eligible institution under this subsection unless such institution agrees that, with respect to the costs incurred by the institution in carrying out the program for which the grant, cooperative agreement, or contract was awarded, such institution shall make available, directly, or through donations from public or private entities, non-Federal contributions in an amount equal to 25 percent of the grant, cooperative agreement, or contract awarded by the Secretary, or $500,000, whichever is the lesser amount. The Secretary shall waive the matching requirement for any institution or consortium with no endowment, or an endowment that has a current dollar value lower than $50,000,000.

(7) Annual report and assessments

(A) Annual report required from recipients

Each eligible institution that receives a grant, cooperative agreement, or contract awarded under this subsection shall provide an annual report to the Secretary on its use of the grant,

cooperative agreement, or contract.

(B) Independent assessments

(i) Contract to conduct assessments

Not later than 6 months after August 14, 2008, the Secretary shall enter into a contract with the National Academy of Public Administration to conduct periodic assessments of the program established under paragraph (1). The assessments shall be conducted once every 3 years during the 10-year period following August 14, 2008.

(ii) Evaluations and recommendations

The assessments described in clause (i) shall include—

(I) an evaluation of the effectiveness of the program established under paragraph (1) in improving the education and training of students, faculty, and staff at eligible institutions that have been awarded grants, cooperative agreements, or contracts under the program;

(II) an evaluation of the effectiveness of the program in improving access to, and familiarity with, digital and wireless networking technology for students, faculty, and staff at all eligible institutions;

(III) an evaluation of the procedures established under paragraph (2)(A); and

(IV) recommendations for improving the program, including recommendations concerning the continuing need for Federal support.

(iii) Review of reports

In carrying out the assessments under this subparagraph, the National Academy of Public Administration shall review the reports submitted to the Secretary under subparagraph (A).

(iv) Report to Congress

Upon completion of each assessment under this subparagraph, the Secretary shall transmit the assessment to Congress along with a summary of the Secretary's plans, if any, to implement the recommendations of the National Academy of Public Administration.

(8) Definitions

In this subsection:

(A) Digital and wireless networking technology

The term "digital and wireless networking technology" means computer and communications equipment and software that facilitates the transmission of information in a digital format.

(B) Eligible institution

The term "eligible institution" means an institution that is—

(i) a part B institution, as defined in section 1061(2) of title 20, an institution identified in subparagraph (A), (B), or (C) of section 1063b(e)(1) of title 20, or a consortium of institutions described in this clause;

(ii) a Hispanic-serving institution, as defined in section 1101a(a)(5) of title 20;

(iii) a Tribal College or University, as defined in section 1059c(b)(3) of title 20;

(iv) an Alaska Native-serving institution, as defined in section 1059d(b) of title 20;

(v) a Native Hawaiian-serving institution, as defined in section 1059d(b) of title 20;

(vi) a Predominately Black Institution, as defined in section 1059e of title 20;

(vii) a Native American-serving, nontribal institution, as defined in section 1059f of title 20;

(viii) an Asian American and Native American Pacific Islander-serving institution, as defined in section 1059g of title 20; or

(ix) a minority institution, as defined in section 1067k of title 20, with an enrollment of needy students, as defined in section 1058(d) of title 20.

(C) Institution of higher education

The term "institution of higher education" has the meaning given the term in section 1001 of

title 20.

(D) Local educational agency

The term "local educational agency" has the meaning given the term in section 7801 of title 20.

(E) Minority business

The term "minority business" includes HUBZone small business concerns (as defined in section 632(p) of this title).

(F) Minority individual

The term "minority individual" means an American Indian, Alaskan Native, Black (not of Hispanic origin), Hispanic (including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin), or Pacific Islander individual.

(G) State

The term "State" has the meaning given the term in section 7801 of title 20.

(H) State educational agency

The term "State educational agency" has the meaning given the term in section 7801 of title 20.

(Pub. L. 96–480, §5, Oct. 21, 1980, 94 Stat. 2312; Pub. L. 99–382, §2, Aug. 14, 1986, 100 Stat. 811; Pub. L. 99–502, §9(b)(3)–(5), (e)(2)(A), Oct. 20, 1986, 100 Stat. 1795, 1797; Pub. L. 100–519, title II, §201(a)–(c), (d)(2), Oct. 24, 1988, 102 Stat. 2593, 2594; Pub. L. 102–245, title III, §306, Feb. 14, 1992, 106 Stat. 20; Pub. L. 105–309, §9, Oct. 30, 1998, 112 Stat. 2938; Pub. L. 106–404, §7(3), Nov. 1, 2000, 114 Stat. 1745; Pub. L. 110–69, title III, §3002(a), Aug. 9, 2007, 121 Stat. 586; Pub. L. 110–315, title IX, §971, Aug. 14, 2008, 122 Stat. 3473.)

AMENDMENTS

2008—Subsec. (c). Pub. L. 110–315 added subsec. (c).

2007—Pub. L. 110–69, §3002(a)(5), substituted "Experimental program to stimulate competitive technology" for "Commerce and technological innovation" in section catchline.

Subsec. (a). Pub. L. 110–69, §3002(a)(3)(B), (E), substituted "Program establishment" for "Experimental Program to Stimulate Competitive Technology" in heading and struck out ", acting through the Under Secretary," after "Secretary" wherever appearing in text.

Pub. L. 110–69, §3002(a)(1), (2), redesignated subsec. (f) as (a) and struck out former subsec. (a) which related to the establishment of a Technology Administration within the Department of Commerce.

Subsec. (a)(1). Pub. L. 110–69, §3002(a)(3)(A), substituted "Beginning in fiscal year 1999, the Secretary shall establish" for "The Secretary, acting through the Under Secretary, shall establish for fiscal year 1999".

Subsec. (a)(6). Pub. L. 110–69, §3002(a)(3)(C), redesignated par. (6) as subsec. (b).

Subsec. (a)(7). Pub. L. 110–69, §3002(a)(3)(D), struck out par. (7) which required the Under Secretary of Commerce for Technology to submit a report on the Experimental Program to Stimulate Competitive Technology no later than 90 days after Oct. 30, 1998.

Subsec. (b). Pub. L. 110–69, §3002(a)(1), (3)(C), (4), redesignated subsec. (a)(6) as (b), substituted "subsection (a)" for "this subsection", and struck out former subsec. (b) which related to appointment of Under Secretary of Commerce for Technology and Assistant Secretary of Commerce for Technology Policy.

Subsecs. (c) to (e). Pub. L. 110–69, §3002(a)(1), struck out subsecs. (c) to (e) which related, respectively, to duties of the Secretary, Japanese technical literature, and a progress report required within 3 years after Oct. 21, 1980.

Subsec. (f). Pub. L. 110–69, §3002(a)(2), redesignated subsec. (f) as (a).

2000—Subsec. (c)(11). Pub. L. 106–404 substituted "State or local governments" for "State of local governments".

1998—Subsec. (f). Pub. L. 105–309 added subsec. (f).

1992—Subsec. (c)(13) to (15). Pub. L. 102–245 added par. (13) and redesignated former pars. (13) and (14) as (14) and (15), respectively.

1988—Subsec. (a). Pub. L. 100–519, §201(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "The Secretary shall establish and maintain an Office of Productivity, Technology, and Innovation in accordance with the provisions, findings, and purposes of this chapter."

Subsec. (b). Pub. L. 100–519, §201(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "The President shall appoint, by and with the advice and consent of the Senate, an Assistant Secretary for Productivity, Technology, and Innovation."

Subsec. (c). Pub. L. 100–519, §201(c)(2), substituted "Under Secretary, as appropriate," for "Assistant Secretary, on a continuing basis," in introductory provisions.

Subsec. (c)(1) to (9). Pub. L. 100–519, §201(c)(1), (2), added pars. (1) to (4) and redesignated former pars. (1) to (5) as (5) to (9), respectively. Former pars. (6) to (9) redesignated (10) to (13), respectively.

Subsec. (c)(10). Pub. L. 100–519, §201(c)(1), (3), redesignated former par. (6) as (10) and substituted "Under Secretary" for "Assistant Secretary". Former par. (10) redesignated (14).

Subsec. (c)(11) to (14). Pub. L. 100–519, §201(c)(1), redesignated former pars. (7) to (10) as (11) to (14), respectively.

Subsec. (d)(1). Pub. L. 100–519, §201(d)(2), substituted "and the Under Secretary shall establish, and through the National Technical Information Service and with the cooperation of" for "shall establish and, through the National Technical Information Service and".

1986—Subsec. (a). Pub. L. 99–502, §9(b)(3), substituted "Office of Productivity, Technology, and Innovation" for "Office of Industrial Technology".

Subsec. (b). Pub. L. 99–502, §9(b)(4), substituted "an Assistant Secretary for Productivity, Technology, and Innovation" for "a Director of the Office, who shall be compensated at the rate provided for level V of the Executive Schedule in section 5316 of title 5".

Subsec. (c). Pub. L. 99–502, §9(b)(5)(A), substituted "the Assistant Secretary" for "the Director" in provisions preceding par. (1).

Subsec. (c)(6). Pub. L. 99–502, §9(b)(5)(A), substituted "the Assistant Secretary" for "the Director".

Subsec. (c)(7) to (10). Pub. L. 99–502, §9(b)(5)(B), (C), added pars. (7) and (8) and redesignated former pars. (7) and (8) as (9) and (10), respectively.

Subsec. (d). Pub. L. 99–382, §2(2), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 99–502, §9(e)(2)(A), which directed the insertion of "(as then in effect)" in subsec. (d), was executed to subsec. (e) to reflect the probable intent of Congress in view of the redesignation of subsec. (d) as (e) by Pub. L. 99–382.

Pub. L. 99–382, §2(1), redesignated subsec. (d) as (e).

CONSTRUCTION

Pub. L. 110–69, title III, §3002(b), Aug. 9, 2007, 121 Stat. 586, provided that: "The amendments made by subsection (a) [amending this section] shall not be construed to eliminate the National Institute of Standards and Technology or the National Technical Information Service."

TRANSITION PROVISION

Pub. L. 100–519, title II, §201(e), Oct. 24, 1988, 102 Stat. 2594, provided that: "The individual serving as the Assistant Secretary of Commerce for Productivity, Technology, and Innovation immediately before the date of enactment of this Act [Oct. 24, 1988] shall serve as Acting Assistant Secretary of Commerce for Technology Policy until the Assistant Secretary takes office."

COMMERCIAL SPACE PROGRAMS

Pub. L. 100–519, title II, §201(f), as added by Pub. L. 100–685, title II, §219, Nov. 17, 1988, 102 Stat. 4095, provided that: "Nothing in this section [amending this section, sections 3703 and 3710 of this title, and section 5314 of Title 5, Government Organization and Employees, and enacting provisions formerly set out as a note above] authorizes the Department to establish an Office of Commercial Space Programs or to place such an office into the Technology Administration without prior authorization of the Congress."

§3704a. Clearinghouse for State and Local Initiatives on Productivity, Technology, and Innovation

(a) Establishment

There is established within the Office of Productivity, Technology, and Innovation a Clearinghouse for State and Local Initiatives on Productivity, Technology, and Innovation. The Clearinghouse shall serve as a central repository of information on initiatives by State and local

governments to enhance the competitiveness of American business through the stimulation of productivity, technology, and innovation and Federal efforts to assist State and local governments to enhance competitiveness.

(b) Responsibilities

The Clearinghouse may—

(1) establish relationships with State and local governments, and regional and multistate organizations of such governments, which carry out such initiatives;

(2) collect information on the nature, extent, and effects of such initiatives, particularly information useful to the Congress, Federal agencies, State and local governments, regional and multistate organizations of such governments, businesses, and the public throughout the United States;

(3) disseminate information collected under paragraph (2) through reports, directories, handbooks, conferences, and seminars;

(4) provide technical assistance and advice to such governments with respect to such initiatives, including assistance in determining sources of assistance from Federal agencies which may be available to support such initiatives;

(5) study ways in which Federal agencies, including Federal laboratories, are able to use their existing policies and programs to assist State and local governments, and regional and multistate organizations of such governments, to enhance the competitiveness of American business;

(6) make periodic recommendations to the Secretary, and to other Federal agencies upon their request, concerning modifications in Federal policies and programs which would improve Federal assistance to State and local technology and business assistance programs;

(7) develop methodologies to evaluate State and local programs, and, when requested, advise State and local governments, and regional and multistate organizations of such governments, as to which programs are most effective in enhancing the competitiveness of American business through the stimulation of productivity, technology, and innovation; and

(8) make use of, and disseminate, the nationwide study of State industrial extension programs conducted by the Secretary.

(c) Contracts

In carrying out subsection (b) of this section, the Secretary may enter into contracts for the purpose of collecting information on the nature, extent, and effects of initiatives.

(Pub. L. 96–480, §6, as added Pub. L. 100–418, title V, §5122(a)(2), Aug. 23, 1988, 102 Stat. 1438.)

CODIFICATION

Subsec. (d) of this section, which required the Secretary to prepare and transmit a triennial report to Congress, including recommendations to the President, Congress, and Federal agencies, on initiatives by State and local governments to enhance the competitiveness of American businesses through the stimulation of productivity, technology, and innovation, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 50 of House Document No. 103–7.

§3704b. National Technical Information Service

(a) Powers

(1) The Secretary of Commerce, acting through the Director of the National Technical Information Service (hereafter in this section referred to as the "Director") is authorized to do the following:

(A) Enter into such contracts, cooperative agreements, joint ventures, and other transactions, in accordance with all relevant provisions of Federal law applicable to such contracts and agreements, and under reasonable terms and conditions, as may be necessary in the conduct of the business of the National Technical Information Service (hereafter in this section referred to as the "Service").

(B) In addition to the authority regarding fees contained in section 2 of the Act entitled "An Act

to provide for the dissemination of technological, scientific, and engineering information to American business and industry, and for other purposes" enacted September 9, 1950 (15 U.S.C. 1152), retain and, subject to appropriations Acts, utilize its net revenues to the extent necessary to implement the plan submitted under subsection (f)(3)(D) of this section.

(C) Enter into contracts for the performance of part or all of the functions performed by the Promotion Division of the Service prior to October 24, 1988. The details of any such contract, and a statement of its effect on the operations and personnel of the Service, shall be provided to the appropriate committees of the Congress 30 days in advance of the execution of such contract.

(D) Employ such personnel as may be necessary to conduct the business of the Service.

(E) For the period of October 1, 1991 through September 30, 1992, only, retain and use all earned and unearned monies heretofore or hereafter received, including receipts, revenues, and advanced payments and deposits, to fund all obligations and expenses, including inventories and capital equipment.

An increase or decrease in the personnel of the Service shall not affect or be affected by any ceilings on the number or grade of personnel.

(2) The functions and activities of the Service specified in subsection (e)(1) through (6) of this section are permanent Federal functions to be carried out by the Secretary through the Service and its employees, and shall not be transferred from the Service, by contract or otherwise, to the private sector on a permanent or temporary basis without express approval of the Congress. Functions or activities—

(A) for the procurement of supplies, materials, and equipment by the Service;

(B) referred to in paragraph (1)(C); or

(C) to be performed through joint ventures or cooperative agreements which do not result in a reduction in the Federal workforce of the affected programs of the service,[1]

shall not be considered functions or activities for purposes of this paragraph.

(3) For the purposes of this subsection, the term "net revenues" means the excess of revenues and receipts from any source, other than royalties and other income described in section 3710c(a)(4) [2] of this title, over operating expenses.

(4) Omitted.

(b) Director of the Service

The management of the Service shall be vested in a Director who shall report to the Director of the National Institute of Standards and Technology and the Secretary of Commerce.

(c) Advisory Board

(1) There is established the Advisory Board of the National Technical Information Service, which shall be composed of a chairman and four other members appointed by the Secretary.

(2) In appointing members of the Advisory Board the Secretary shall solicit recommendations from the major users and beneficiaries of the Service's activities and shall select individuals experienced in providing or utilizing technical information.

(3) The Advisory Board shall review the general policies and operations of the Service, including policies in connection with fees and charges for its services, and shall advise the Secretary and the Director with respect thereto.

(4) The Advisory Board shall meet at the call of the Secretary, but not less often than once each six months.

(d) Audits

The Secretary of Commerce shall provide for annual independent audits of the Service's financial statements beginning with fiscal year 1988, to be conducted in accordance with generally accepted accounting principles.

(e) Functions

The Secretary of Commerce, acting through the Service, shall—

(1) establish and maintain a permanent repository of nonclassified scientific, technical, and engineering information;

(2) cooperate and coordinate its operations with other Government scientific, technical, and engineering information programs;

(3) make selected bibliographic information products available in a timely manner to depository libraries as part of the Depository Library Program of the Government Printing Office;

(4) in conjunction with the private sector as appropriate, collect, translate into English, and disseminate unclassified foreign scientific, technical, and engineering information;

(5) implement new methods or media for the dissemination of scientific, technical, and engineering information, including producing and disseminating information products in electronic format; and

(6) carry out the functions and activities of the Secretary under the Act entitled "An Act to provide for the dissemination of technological, scientific, and engineering information to American business and industry, and for other purposes" enacted September 9, 1950 [15 U.S.C. 1151 et seq.], and the functions and activities of the Secretary performed through the National Technical Information Service as of October 24, 1988, under this chapter.

(f) Notification of Congress

(1) The Secretary of Commerce and the Director shall keep the appropriate committees of Congress fully and currently informed about all activities related to the carrying out of the functions of the Service, including changes in fee policies.

(2) Within 90 days after October 24, 1988, the Secretary of Commerce shall submit to the Congress a report on the current fee structure of the Service, including an explanation of the basis for the fees, taking into consideration all applicable costs, and the adequacy of the fees, along with reasons for the declining sales at the Service of scientific, technical, and engineering publications. Such report shall explain any actions planned or taken to increase such sales at reasonable fees.

(3) The Secretary shall submit an annual report to the Congress which shall—

(A) summarize the operations of the Service during the preceding year, including financial details and staff levels broken down by major activities;

(B) detail the operating plan of the Service, including specific expense and staff needs, for the upcoming year;

(C) set forth details of modernization progress made in the preceding year;

(D) describe the long-term modernization plans of the Service; and

(E) include the results of the most recent annual audit carried out under subsection (d) of this section.

(4) The Secretary shall also give the Congress detailed advance notice of not less than 30 calendar days of—

(A) any proposed reduction-in-force;

(B) any joint venture or cooperative agreement which involves a financial incentive to the joint venturer or contractor; and

(C) any change in the operating plan submitted under paragraph (3)(B) which would result in a variation from such plan with respect to expense levels of more than 10 percent.

(Pub. L. 100–519, title II, §212, Oct. 24, 1988, 102 Stat. 2594; Pub. L. 102–140, title II, Oct. 28, 1991, 105 Stat. 804; Pub. L. 102–245, title V, §506(c), Feb. 14, 1992, 106 Stat. 27; Pub. L. 110–161, div. B, title I, §109, Dec. 26, 2007, 121 Stat. 1893.)

REFERENCES IN TEXT

This section, referred to in subsec. (a)(1), was in the original "this subtitle", meaning subtitle B (§§211, 212) of title II of Pub. L. 100–519, Oct. 24, 1988, 102 Stat. 2594, which enacted section 3704b of this title and amended section 3710 of this title. For complete classification of this subtitle to the Code, see Short Title of 1988 Amendment note set out under section 3701 of this title and Tables.

Section 3710c(a)(4) of this title, referred to in subsec. (a)(3), was in the original a reference to section 13(a)(4) of the Stevenson-Wydler Technology Innovation Act of 1980 which was translated as reading section

14(a)(4) of the Act to reflect the probable intent of Congress and the renumbering of section 13 of the Act as section 14 by section 5122(a)(1) of Pub. L. 100–418.

The Act entitled "An Act to provide for the dissemination of technological, scientific, and engineering information to American business and industry, and for other purposes" enacted September 9, 1950, referred to in subsec. (e)(6), is act Sept. 9, 1950, ch. 936, 64 Stat. 823, as amended, which is classified generally to chapter 23 (§1151 et seq.) of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was enacted as part of the National Technical Information Act of 1988, and not as part of the Stevenson-Wydler Technology Innovation Act of 1980 which comprises this chapter.

Subsec. (a)(4) of this section repealed subsec. (h) of section 3710 of this title.

AMENDMENTS

2007—Subsec. (b). Pub. L. 110–161 substituted "Director of the National Institute of Standards and Technology" for "Under Secretary of Commerce for Technology".

1992—Subsec. (e)(5). Pub. L. 102–245 inserted ", including producing and disseminating information products in electronic format" after "engineering information".

1991—Subsec. (a)(1)(E). Pub. L. 102–140 added subpar. (E).

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

NATIONAL TECHNICAL INFORMATION SERVICE REVOLVING FUND

Pub. L. 102–395, title II, Oct. 6, 1992, 106 Stat. 1853, provided that: "For establishment of a National Technical Information Service Revolving Fund, $8,000,000 without fiscal year limitation: *Provided*, That unexpended balances in Information Products and Services shall be transferred to and merged with this account, to remain available until expended. Notwithstanding 15 U.S.C. 1525 and 1526, all payments collected by the National Technical Information Service in performing its activities authorized by chapters 23 and 63 of title 15 of the United States Code shall be credited to this Revolving Fund. Without further appropriations action, all expenses incurred in performing the activities of the National Technical Information Service, including modernization, capital equipment and inventory, shall be paid from the fund. A business-type budget for the fund shall be prepared in the manner prescribed by 31 U.S.C. 9103."

[1] So in original. Probably should be capitalized.

[2] See References in Text note below.

§3704b–1. Recovery of operating costs through fee collections

Operating costs for the National Technical Information Service associated with the acquisition, processing, storage, bibliographic control, and archiving of information and documents shall be recovered primarily through the collection of fees.

(Pub. L. 102–245, title I, §103(c), Feb. 14, 1992, 106 Stat. 8.)

CODIFICATION

Section was enacted as part of the American Technology Preeminence Act of 1991, and not as part of the Stevenson-Wydler Technology Innovation Act of 1980 which comprises this chapter.

§3704b–2. Transfer of Federal scientific and technical information

(a) Transfer

The head of each Federal executive department or agency shall transfer in a timely manner to the National Technical Information Service unclassified scientific, technical, and engineering information which results from federally funded research and development activities for dissemination to the private sector, academia, State and local governments, and Federal agencies. Only information which would otherwise be available for public dissemination shall be transferred under this subsection. Such information shall include technical reports and information, computer software, application assessments generated pursuant to section 3710(c) of this title, and information regarding training technology and other federally owned or originated technologies. The Secretary shall issue regulations within one year after February 14, 1992, outlining procedures for the ongoing transfer of such information to the National Technical Information Service.

(b) Annual report to Congress

As part of the annual report required under section 3704b(f)(3) of this title, the Secretary shall report to Congress on the status of efforts under this section to ensure access to Federal scientific and technical information by the public. Such report shall include—

(1) an evaluation of the comprehensiveness of transfers of information by each Federal executive department or agency under subsection (a) of this section;

(2) a description of the use of Federal scientific and technical information;

(3) plans for improving public access to Federal scientific and technical information; and

(4) recommendations for legislation necessary to improve public access to Federal scientific and technical information.

(Pub. L. 102–245, title I, §108, Feb. 14, 1992, 106 Stat. 13.)

CODIFICATION

Section was enacted as part of the American Technology Preeminence Act of 1991, and not as part of the Stevenson-Wydler Technology Innovation Act of 1980 which comprises this chapter.

§3705. Cooperative Research Centers

(a) Establishment

The Secretary shall provide assistance for the establishment of Cooperative Research Centers. Such Centers shall be affiliated with any university, or other nonprofit institution, or group thereof, that applies for and is awarded a grant or enters into a cooperative agreement under this section. The objective of the Centers is to enhance technological innovation through—

(1) the participation of individuals from industry and universities in cooperative technological innovation activities;

(2) the development of the generic research base, important for technological advance and innovative activity, in which individual firms have little incentive to invest, but which may have significant economic or strategic importance, such as manufacturing technology;

(3) the education and training of individuals in the technological innovation process;

(4) the improvement of mechanisms for the dissemination of scientific, engineering, and technical information among universities and industry;

(5) the utilization of the capability and expertise, where appropriate, that exists in Federal laboratories; and

(6) the development of continuing financial support from other mission agencies, from State and local government, and from industry and universities through, among other means, fees, licenses, and royalties.

(b) Activities

The activities of the Centers shall include, but need not be limited to—

(1) research supportive of technological and industrial innovation including cooperative industry-university research;

(2) assistance to individuals and small businesses in the generation, evaluation, and development of technological ideas supportive of industrial innovation and new business ventures;

(3) technical assistance and advisory services to industry, particularly small businesses; and

(4) curriculum development, training, and instruction in invention, entrepreneurship, and industrial innovation.

Each Center need not undertake all of the activities under this subsection.

(c) Requirements

Prior to establishing a Center, the Secretary shall find that—

(1) consideration has been given to the potential contribution of the activities proposed under the Center to productivity, employment, and economic competitiveness of the United States;

(2) a high likelihood exists of continuing participation, advice, financial support, and other contributions from the private sector;

(3) the host university or other nonprofit institution has a plan for the management and evaluation of the activities proposed within the particular Center, including:

(A) the agreement between the parties as to the allocation of patent rights on a nonexclusive, partially exclusive, or exclusive license basis to and inventions conceived or made under the auspices of the Center; and

(B) the consideration of means to place the Center, to the maximum extent feasible, on a self-sustaining basis;

(4) suitable consideration has been given to the university's or other nonprofit institution's capabilities and geographical location; and

(5) consideration has been given to any effects upon competition of the activities proposed under the Center.

(d) Planning grants

The Secretary is authorized to make available nonrenewable planning grants to universities or nonprofit institutions for the purpose of developing a plan required under subsection (c)(3) of this section.

(e) Research and development utilization

In the promotion of technology from research and development efforts by Centers under this section, chapter 18 of title 35 shall apply to the extent not inconsistent with this section.

(Pub. L. 96–480, §7, formerly §6, Oct. 21, 1980, 94 Stat. 2313; Pub. L. 99–502, §9(b)(6)–(10), Oct. 20, 1986, 100 Stat. 1796; renumbered §7, Pub. L. 100–418, title V, §5122(a)(1), Aug. 23, 1988, 102 Stat. 1438.)

PRIOR PROVISIONS

A prior section 7 of Pub. L. 96–480 was renumbered section 8 and is classified to section 3706 of this title.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–502, §9(b)(7), substituted "Cooperative Research Centers" for "Centers for Industrial Technology".

Subsec. (b)(1). Pub. L. 99–502, §9(b)(8), struck out "basic and applied" after "industry-university".

Subsec. (e). Pub. L. 99–502, §9(b)(9), amended subsec. (e) generally. Prior to amendment, subsec. (e) provided that a Center of Industrial Technology had the option to acquire title to an invention conceived or made under its auspices and supported by Federal funds, authorized supporting agency to require the Center to grant licenses to the invention to responsible applicants in certain cases, and provided for judicial review of licensing determinations by the supporting agency.

Subsec. (f). Pub. L. 99–502, §9(b)(10), struck out subsec. (f) which read as follows: "The supporting agency may request the Attorney General's opinion whether the proposed joint research activities of a Center would violate any of the antitrust laws. The Attorney General shall advise the supporting agency of his determination and the reasons for it within 120 days after receipt of such request."

MODEL PROGRAM

Pub. L. 101–510, div. A, title VIII, §827(b), Nov. 5, 1990, 104 Stat. 1607, as amended by Pub. L. 102–190, div. A, title X, §1062(a)(2), Dec. 5, 1991, 105 Stat. 1475, provided that:

"(1) In the administration of applicable provisions of the Stevenson-Wydler Technology Innovation Act of 1980 [15 U.S.C. 3701 et seq.] or section 5121(b) of the Omnibus Trade and Competitiveness Act of 1988 [Pub. L. 100–418, 15 U.S.C. 278l note], the Secretary of Commerce shall develop, in consultation with the Secretary of Defense and the Secretary of Energy, model programs for national defense laboratories.

"(2) Model programs under this subsection shall involve Federal laboratories, small businesses, and partnership intermediaries. The purpose of the model programs is to demonstrate successful relationships between the Federal Government, State and local governments, and small businesses which encourage economic growth through the commercial application of technology resulting from federally funded research.

"(3) In this subsection, the term 'national defense laboratory' means any laboratory, federally funded research and development center (FFRDC), or other center established under section 7 or 9 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3705, 3707) that is owned by the Federal Government, whether operated by the Federal Government or by a contractor, and—

"(A) is under the jurisdiction of the Secretary of Defense; or

"(B) is under the jurisdiction of the Secretary of Energy, but only if the primary function of the laboratory, FFRDC, or other center under the Secretary's jurisdiction is to support the national defense activities of the Department of Defense or the Department of Energy."

§3706. Grants and cooperative agreements

(a) In general

The Secretary may make grants and enter into cooperative agreements according to the provisions of this section in order to assist any activity consistent with this chapter, including activities performed by individuals. The total amount of any such grant or cooperative agreement may not exceed 75 percent of the total cost of the program.

(b) Eligibility and procedure

Any person or institution may apply to the Secretary for a grant or cooperative agreement available under this section. Application shall be made in such form and manner, and with such content and other submissions, as the Assistant Secretary shall prescribe. The Secretary shall act upon each such application within 90 days after the date on which all required information is received.

(c) Terms and conditions

(1) Any grant made, or cooperative agreement entered into, under this section shall be subject to the limitations and provisions set forth in paragraph (2) of this subsection, and to such other terms, conditions, and requirements as the Secretary deems necessary or appropriate.

(2) Any person who receives or utilizes any proceeds of any grant made or cooperative agreement entered into under this section shall keep such records as the Secretary shall by regulation prescribe as being necessary and appropriate to facilitate effective audit and evaluation, including records which fully disclose the amount and disposition by such recipient of such proceeds, the total cost of the program or project in connection with which such proceeds were used, and the amount, if any, of such costs which was provided through other sources.

(Pub. L. 96–480, §8, formerly §7, Oct. 21, 1980, 94 Stat. 2315; renumbered §8 and amended Pub. L. 100–418, title V, §§5115(b)(1), 5122(a)(1), Aug. 23, 1988, 102 Stat. 1433, 1438.)

PRIOR PROVISIONS

A prior section 8 of Pub. L. 96–480 was renumbered section 9 and is classified to section 3707 of this title.

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–418, §5115(b)(1), substituted "Assistant Secretary" for "Director".

§3707. National Science Foundation Cooperative Research Centers

(a) Establishment and provisions

The National Science Foundation shall provide assistance for the establishment of Cooperative Research Centers. Such Centers shall be affiliated with a university, or other nonprofit institution, or a group thereof. The objective of the Centers is to enhance technological innovation as provided in section 3705(a) of this title through the conduct of activities as provided in section 3705(b) of this title.

(b) Planning grants

The National Science Foundation is authorized to make available nonrenewable planning grants to universities of nonprofit institutions for the purpose of developing the plan, as described under section 3705(c)(3) of this title.

(c) Terms and conditions

Grants, contracts, and cooperative agreements entered into by the National Science Foundation in execution of the powers and duties of the National Science Foundation under this chapter shall be governed by the National Science Foundation Act of 1950 [42 U.S.C. 1861 et seq.] and other pertinent Acts.

(Pub. L. 96–480, §9, formerly §8, Oct. 21, 1980, 94 Stat. 2316; Pub. L. 99–502, §9(b)(11), (12), (e)(2)(B), Oct. 20, 1986, 100 Stat. 1796, 1797; renumbered §9, Pub. L. 100–418, title V, §5122(a)(1), Aug. 23, 1988, 102 Stat. 1438; Pub. L. 106–404, §7(4), Nov. 1, 2000, 114 Stat. 1745.)

REFERENCES IN TEXT

The National Science Foundation Act of 1950, referred to in subsec. (c), is act May 10, 1950, ch. 171, 64 Stat. 149, as amended, which is classified generally to chapter 16 (§1861 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1861 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 9 of Pub. L. 96–480 was renumbered section 10 and is classified to section 3708 of this title.

AMENDMENTS

2000—Subsecs. (a), (b). Pub. L. 106–404 made technical amendments to references in original act which appear in text as references to section 3705 of this title.

1986—Subsec. (a). Pub. L. 99–502 substituted "Cooperative Research Centers" for "Centers for Industrial Technology" and struck out last sentence which read as follows: "The provisions of sections 3705(e) and 3705(f) of this title shall apply to Centers established under this section."

§3708. Administrative arrangements

(a) Coordination

The Secretary and the National Science Foundation shall, on a continuing basis, obtain the advice and cooperation of departments and agencies whose missions contribute to or are affected by the programs established under this chapter, including the development of an agenda for research and policy experimentation. These departments and agencies shall include but not be limited to the Departments of Defense, Energy, Education, Health and Human Services, Housing and Urban Development, the Environmental Protection Agency, National Aeronautics and Space Administration, Small Business Administration, Council of Economic Advisers, Council on Environmental Quality, and Office of Science and Technology Policy.

(b) Cooperation

It is the sense of the Congress that departments and agencies, including the Federal laboratories, whose missions are affected by, or could contribute to, the programs established under this chapter, should, within the limits of budgetary authorizations and appropriations, support or participate in

activities or projects authorized by this chapter.

(c) Administrative authorization

(1) Departments and agencies described in subsection (b) of this section are authorized to participate in, contribute to, and serve as resources for the Centers and for any other activities authorized under this chapter.

(2) The Secretary and the National Science Foundation are authorized to receive moneys and to receive other forms of assistance from other departments or agencies to support activities of the Centers and any other activities authorized under this chapter.

(d) Cooperative efforts

The Secretary and the National Science Foundation shall, on a continuing basis, provide each other the opportunity to comment on any proposed program of activity under section 3705, 3707, 3710, 3710d, 3711a, or 3712 of this title before funds are committed to such program in order to mount complementary efforts and avoid duplication.

(Pub. L. 96–480, §10, formerly §9, Oct. 21, 1980, 94 Stat. 2316; Pub. L. 99–502, §9(e)(2)(C), Oct. 20, 1986, 100 Stat. 1797; Pub. L. 100–107, §3(b), Aug. 20, 1987, 101 Stat. 727; renumbered §10 and amended Pub. L. 100–418, title V, §5122(a)(1), (c), Aug. 23, 1988, 102 Stat. 1438, 1439; Pub. L. 102–240, title VI, §6019, Dec. 18, 1991, 105 Stat. 2183.)

PRIOR PROVISIONS

A prior section 10 of Pub. L. 96–480 was renumbered section 11 and is classified to section 3710 of this title.

Another prior section 10 of Pub. L. 96–480 related to National Industrial Technology Board and was classified to section 3709 of this title, prior to repeal by section 9(a) of Pub. L. 99–502.

AMENDMENTS

1991—Subsec. (d). Pub. L. 102–240 made technical amendment to reference to section 3712 of this title to reflect renumbering of corresponding section of original act.

1988—Subsec. (d). Pub. L. 100–418, §5122(c), made technical amendment to references to sections 3705, 3707, 3710, 3710d, 3711a, and 3712 of this title to reflect renumbering of corresponding sections of original act.

1987—Subsec. (d). Pub. L. 100–107 inserted reference to section 3711a of this title.

1986—Subsec. (d). Pub. L. 99–502 inserted references to sections 3710 and 3710d of this title.

§3709. Repealed. Pub. L. 99–502, §9(a), Oct. 20, 1986, 100 Stat. 1795

Section, Pub. L. 96–480, §10, Oct. 21, 1980, 94 Stat. 2317, related to establishment, duties, membership, and terms of National Industrial Technology Board.

§3710. Utilization of Federal technology

(a) Policy

(1) It is the continuing responsibility of the Federal Government to ensure the full use of the results of the Nation's Federal investment in research and development. To this end the Federal Government shall strive where appropriate to transfer federally owned or originated technology to State and local governments and to the private sector.

(2) Technology transfer, consistent with mission responsibilities, is a responsibility of each laboratory science and engineering professional.

(3) Each laboratory director shall ensure that efforts to transfer technology are considered positively in laboratory job descriptions, employee promotion policies, and evaluation of the job performance of scientists and engineers in the laboratory.

(b) Establishment of Research and Technology Applications Offices

Each Federal laboratory shall establish an Office of Research and technology Applications. Laboratories having existing organizational structures which perform the functions of this section may elect to combine the Office of Research and Technology Applications within the existing organization. The staffing and funding levels for these offices shall be determined between each Federal laboratory and the Federal agency operating or directing the laboratory, except that (1) each laboratory having 200 or more full-time equivalent scientific, engineering, and related technical positions shall provide one or more full-time equivalent positions as staff for its Office of Research and Technology Applications, and (2) each Federal agency which operates or directs one or more Federal laboratories shall make available sufficient funding, either as a separate line item or from the agency's research and development budget, to support the technology transfer function at the agency and at its laboratories, including support of the Offices of Research and Technology Applications. Furthermore, individuals filling positions in an Office of Research and Technology Applications shall be included in the overall laboratory/agency management development program so as to ensure that highly competent technical managers are full participants in the technology transfer process.

(c) Functions of Research and Technology Applications Offices

It shall be the function of each Office of Research and Technology Applications—

(1) to prepare application assessments for selected research and development projects in which that laboratory is engaged and which in the opinion of the laboratory may have potential commercial applications;

(2) to provide and disseminate information on federally owned or originated products, processes, and services having potential application to State and local governments and to private industry;

(3) to cooperate with and assist the National Technical Information Service, the Federal Laboratory Consortium for Technology Transfer, and other organizations which link the research and development resources of that laboratory and the Federal Government as a whole to potential users in State and local government and private industry;

(4) to provide technical assistance to State and local government officials; and

(5) to participate, where feasible, in regional, State, and local programs designed to facilitate or stimulate the transfer of technology for the benefit of the region, State, or local jurisdiction in which the Federal laboratory is located.

Agencies which have established organizational structures outside their Federal laboratories which have as their principal purpose the transfer of federally owned or originated technology to State and local government and to the private sector may elect to perform the functions of this subsection in such organizational structures. No Office of Research and Technology Applications or other organizational structures performing the functions of this subsection shall substantially compete with similar services available in the private sector.

(d) Dissemination of technical information

The National Technical Information Service shall—

(1) serve as a central clearinghouse for the collection, dissemination and transfer of information on federally owned or originated technologies having potential application to State and local governments and to private industry;

(2) utilize the expertise and services of the National Science Foundation and the Federal Laboratory Consortium for Technology Transfer; particularly in dealing with State and local governments;

(3) receive requests for technical assistance from State and local governments, respond to such requests with published information available to the Service, and refer such requests to the Federal Laboratory Consortium for Technology Transfer to the extent that such requests require a response involving more than the published information available to the Service;

(4) provide funding, at the discretion of the Secretary, for Federal laboratories to provide the assistance specified in subsection (c)(3) of this section;

(5) use appropriate technology transfer mechanisms such as personnel exchanges and

computer-based systems; and

(6) maintain a permanent archival repository and clearinghouse for the collection and dissemination of nonclassified scientific, technical, and engineering information.

(e) Establishment of Federal Laboratory Consortium for Technology Transfer

(1) There is hereby established the Federal Laboratory Consortium for Technology Transfer (hereinafter referred to as the "Consortium") which, in cooperation with Federal laboratories and the private sector, shall—

(A) develop and (with the consent of the Federal laboratory concerned) administer techniques, training courses, and materials concerning technology transfer to increase the awareness of Federal laboratory employees regarding the commercial potential of laboratory technology and innovations;

(B) furnish advice and assistance requested by Federal agencies and laboratories for use in their technology transfer programs (including the planning of seminars for small business and other industry);

(C) provide a clearinghouse for requests, received at the laboratory level, for technical assistance from States and units of local governments, businesses, industrial development organizations, not-for-profit organizations including universities, Federal agencies and laboratories, and other persons, and—

(i) to the extent that such requests can be responded to with published information available to the National Technical Information Service, refer such requests to that Service, and

(ii) otherwise refer these requests to the appropriate Federal laboratories and agencies;

(D) facilitate communication and coordination between Offices of Research and Technology Applications of Federal laboratories;

(E) utilize (with the consent of the agency involved) the expertise and services of the National Science Foundation, the Department of Commerce, the National Aeronautics and Space Administration, and other Federal agencies, as necessary;

(F) with the consent of any Federal laboratory, facilitate the use by such laboratory of appropriate technology transfer mechanisms such as personnel exchanges and computer-based systems;

(G) with the consent of any Federal laboratory, assist such laboratory to establish programs using technical volunteers to provide technical assistance to communities related to such laboratory;

(H) facilitate communication and cooperation between Offices of Research and Technology Applications of Federal laboratories and regional, State, and local technology transfer organizations;

(I) when requested, assist colleges or universities, businesses, nonprofit organizations, State or local governments, or regional organizations to establish programs to stimulate research and to encourage technology transfer in such areas as technology program development, curriculum design, long-term research planning, personnel needs projections, and productivity assessments;

(J) seek advice in each Federal laboratory consortium region from representatives of State and local governments, large and small business, universities, and other appropriate persons on the effectiveness of the program (and any such advice shall be provided at no expense to the Government); and

(K) work with the Director of the National Institute on Disability and Rehabilitation Research to compile a compendium of current and projected Federal Laboratory technologies and projects that have or will have an intended or recognized impact on the available range of assistive technology for individuals with disabilities (as defined in section 3002 of title 29), including technologies and projects that incorporate the principles of universal design (as defined in section 3002 of title 29), as appropriate.

(2) The membership of the Consortium shall consist of the Federal laboratories described in clause (1) of subsection (b) of this section and such other laboratories as may choose to join the

Consortium. The representatives to the Consortium shall include a senior staff member of each Federal laboratory which is a member of the Consortium and a senior representative appointed from each Federal agency with one or more member laboratories.

(3) The representatives to the Consortium shall elect a Chairman of the Consortium.

(4) The Director of the National Institute of Standards and Technology shall provide the Consortium, on a reimbursable basis, with administrative services, such as office space, personnel, and support services of the Institute, as requested by the Consortium and approved by such Director.

(5) Each Federal laboratory or agency shall transfer technology directly to users or representatives of users, and shall not transfer technology directly to the Consortium. Each Federal laboratory shall conduct and transfer technology only in accordance with the practices and policies of the Federal agency which owns, leases, or otherwise uses such Federal laboratory.

(6) Not later than one year after October 20, 1986, and every year thereafter, the Chairman of the Consortium shall submit a report to the President, to the appropriate authorization and appropriation committees of both Houses of the Congress, and to each agency with respect to which a transfer of funding is made (for the fiscal year or years involved) under paragraph (7), concerning the activities of the Consortium and the expenditures made by it under this subsection during the year for which the report is made. Such report shall include an annual independent audit of the financial statements of the Consortium, conducted in accordance with generally accepted accounting principles.

(7)(A) Subject to subparagraph (B), an amount equal to 0.008 percent of the budget of each Federal agency from any Federal source, including related overhead, that is to be utilized by or on behalf of the laboratories of such agency for a fiscal year referred to in subparagraph (B)(ii) shall be transferred by such agency to the National Institute of Standards and Technology at the beginning of the fiscal year involved. Amounts so transferred shall be provided by the Institute to the Consortium for the purpose of carrying out activities of the Consortium under this subsection.

(B) A transfer shall be made by any Federal agency under subparagraph (A), for any fiscal year, only if the amount so transferred by that agency (as determined under such subparagraph) would exceed $10,000.

(C) The heads of Federal agencies and their designees, and the directors of Federal laboratories, may provide such additional support for operations of the Consortium as they deem appropriate.

(f) Agency reports on utilization

(1) In general

Each Federal agency which operates or directs one or more Federal laboratories or which conducts activities under sections 207 and 209 of title 35 shall report annually to the Office of Management and Budget, as part of the agency's annual budget submission, on the activities performed by that agency and its Federal laboratories under the provisions of this section and of sections 207 and 209 of title 35.

(2) Contents

The report shall include—

(A) an explanation of the agency's technology transfer program for the preceding fiscal year and the agency's plans for conducting its technology transfer function, including its plans for securing intellectual property rights in laboratory innovations with commercial promise and plans for managing its intellectual property so as to advance the agency's mission and benefit the competitiveness of United States industry; and

(B) information on technology transfer activities for the preceding fiscal year, including—

(i) the number of patent applications filed;

(ii) the number of patents received;

(iii) the number of fully-executed licenses which received royalty income in the preceding fiscal year, categorized by whether they are exclusive, partially-exclusive, or non-exclusive, and the time elapsed from the date on which the license was requested by the licensee in writing to the date the license was executed;

(iv) the total earned royalty income including such statistical information as the total earned royalty income, of the top 1 percent, 5 percent, and 20 percent of the licenses, the

range of royalty income, and the median, except where disclosure of such information would reveal the amount of royalty income associated with an individual license or licensee;

(v) what disposition was made of the income described in clause (iv);

(vi) the number of licenses terminated for cause; and

(vii) any other parameters or discussion that the agency deems relevant or unique to its practice of technology transfer.

(3) Copy to Secretary; Attorney General; Congress

The agency shall transmit a copy of the report to the Secretary of Commerce and the Attorney General for inclusion in the annual report to Congress and the President required by subsection (g)(2) of this section.

(4) Public availability

Each Federal agency reporting under this subsection is also strongly encouraged to make the information contained in such report available to the public through Internet sites or other electronic means.

(g) Functions of Secretary

(1) The Secretary, in consultation with other Federal agencies, may—

(A) make available to interested agencies the expertise of the Department of Commerce regarding the commercial potential of inventions and methods and options for commercialization which are available to the Federal laboratories, including research and development limited partnerships;

(B) develop and disseminate to appropriate agency and laboratory personnel model provisions for use on a voluntary basis in cooperative research and development arrangements; and

(C) furnish advice and assistance, upon request, to Federal agencies concerning their cooperative research and development programs and projects.

(2) REPORTS.—

(A) ANNUAL REPORT REQUIRED.—The Secretary, in consultation with the Attorney General and the Commissioner of Patents and Trademarks, shall submit each fiscal year, beginning 1 year after November 1, 2000, a summary report to the President, the United States Trade Representative, and the Congress on the use by Federal agencies and the Secretary of the technology transfer authorities specified in this chapter and in sections 207 and 209 of title 35.

(B) CONTENT.—The report shall—

(i) draw upon the reports prepared by the agencies under subsection (f) of this section;

(ii) discuss technology transfer best practices and effective approaches in the licensing and transfer of technology in the context of the agencies' missions; and

(iii) discuss the progress made toward development of additional useful measures of the outcomes of technology transfer programs of Federal agencies.

(C) PUBLIC AVAILABILITY.—The Secretary shall make the report available to the public through Internet sites or other electronic means.

(3) Not later than one year after October 20, 1986, the Secretary shall submit to the President and the Congress a report regarding—

(A) any copyright provisions or other types of barriers which tend to restrict or limit the transfer of federally funded computer software to the private sector and to State and local governments, and agencies of such State and local governments; and

(B) the feasibility and cost of compiling and maintaining a current and comprehensive inventory of all federally funded training software.

(h) Duplication of reporting

The reporting obligations imposed by this section—

(1) are not intended to impose requirements that duplicate requirements imposed by the

Government Performance and Results Act of 1993 (31 U.S.C. 1101 note);

(2) are to be implemented in coordination with the implementation of that Act; and

(3) are satisfied if an agency provided the information concerning technology transfer activities described in this section in its annual submission under the Government Performance and Results Act of 1993 (31 U.S.C. 1101 note).

(i) Research equipment

The Director of a laboratory, or the head of any Federal agency or department, may loan, lease, or give research equipment that is excess to the needs of the laboratory, agency, or department to an educational institution or nonprofit organization for the conduct of technical and scientific education and research activities. Title of ownership shall transfer with a gift under this section.

(Pub. L. 96–480, §11, Oct. 21, 1980, 94 Stat. 2318; renumbered §10 and amended Pub. L. 99–502, §§3–5, 9(e)(1), Oct. 20, 1986, 100 Stat. 1787, 1789, 1791, 1797; renumbered §11 and amended Pub. L. 100–418, title V, §§5115(b)(2), 5122(a)(1), 5162(b), 5163(c)(1), (3), Aug. 23, 1988, 102 Stat. 1433, 1438, 1450, 1451; Pub. L. 100–519, title II, §§201(d)(3), 212(a)(4), Oct. 24, 1988, 102 Stat. 2594, 2595; Pub. L. 101–189, div. C, title XXXI, §3133(e), Nov. 29, 1989, 103 Stat. 1679; Pub. L. 102–245, title III, §§301, 303, Feb. 14, 1992, 106 Stat. 19, 20; Pub. L. 104–66, title III, §3001(f), Dec. 21, 1995, 109 Stat. 734; Pub. L. 104–113, §§3, 9, Mar. 7, 1996, 110 Stat. 775, 779; Pub. L. 105–394, title II, §212(d), Nov. 13, 1998, 112 Stat. 3655; Pub. L. 106–404, §§7(5), (6), 10(a), Nov. 1, 2000, 114 Stat. 1745–1747; Pub. L. 110–69, title III, §3002(c)(4), Aug. 9, 2007, 121 Stat. 586.)

REFERENCES IN TEXT

The Government Performance and Results Act of 1993, referred to in subsec. (h), is Pub. L. 103–62, Aug. 3, 1993, 107 Stat. 285, which enacted section 306 of Title 5, Government Organization and Employees, sections 1115 to 1119, 9703, and 9704 of Title 31, Money and Finance, and sections 2801 to 2805 of Title 39, Postal Service, amended section 1105 of Title 31, and enacted provisions set out as notes under sections 1101 and 1115 of Title 31. For complete classification of this Act to the Code, see Short Title of 1993 Amendment note set out under section 1101 of Title 31 and Tables.

AMENDMENTS

2007—Subsec. (g)(1). Pub. L. 110–69 struck out "through the Under Secretary, and" after "The Secretary," in introductory provisions.

2000—Subsec. (b). Pub. L. 106–404, §10(a)(1), struck out at end "The agency head shall submit to Congress at the time the President submits the budget to Congress an explanation of the agency's technology transfer program for the preceding year and the agency's plans for conducting its technology transfer function for the upcoming year, including plans for securing intellectual property rights in laboratory innovations with commercial promise and plans for managing such innovations so as to benefit the competitiveness of United States industry."

Subsec. (e)(1). Pub. L. 106–404, §7(5), substituted "in cooperation with Federal laboratories" for "in cooperation with Federal Laboratories" in introductory provisions.

Subsec. (f). Pub. L. 106–404, §10(a)(2), added subsec. (f).

Subsec. (g)(2). Pub. L. 106–404, §10(a)(3), added par. (2) and struck out former par. (2) which read as follows: "Two years after October 20, 1986, and every two years thereafter, the Secretary shall submit a summary report to the President and the Congress on the use by the agencies and the Secretary of the authorities specified in this chapter. Other Federal agencies shall cooperate in the report's preparation."

Subsec. (h). Pub. L. 106–404, §10(a)(4), added subsec. (h).

Subsec. (i). Pub. L. 106–404, §7(6), substituted "a gift under this section" for "a gift under the section".

1998—Subsec. (e)(1)(K). Pub. L. 105–394 added subpar. (K).

1996—Subsec. (e)(7)(B). Pub. L. 104–113, §3, amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "A transfer shall be made by any Federal agency under subparagraph (A), for any fiscal year, only if—

"(i) the amount so transferred by that agency (as determined under such subparagraph) would exceed $10,000; and

"(ii) such transfer is made with respect to the fiscal year 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, or 1996."

Subsec. (i). Pub. L. 104–113, §9, inserted "loan, lease, or" before "give".

1995—Subsec. (f). Pub. L. 104–66 struck out heading and text of subsec. (f). Text read as follows: "Each

Federal agency which operates or directs one or more Federal laboratories shall report annually to the Congress, as part of the agency's annual budget submission, on the activities performed by that agency and its Federal laboratories pursuant to the provisions of this section."

1992—Subsec. (e)(2). Pub. L. 102–245, §301(a), inserted "senior" before "representative".

Subsec. (e)(6). Pub. L. 102–245, §301(b), inserted at end "Such report shall include an annual independent audit of the financial statements of the Consortium, conducted in accordance with generally accepted accounting principles."

Subsec. (e)(7)(B)(ii). Pub. L. 102–245, §301(c), substituted "1991, 1992, 1993, 1994, 1995, or 1996" for "or 1991".

Subsec. (e)(8). Pub. L. 102–245, §301(d), struck out former par. (8) which read as follows:

"(A) The Consortium shall use 5 percent of the funds provided in paragraph (7)(A) to establish demonstration projects in technology transfer. To carry out such projects, the Consortium may arrange for grants or awards to, or enter into agreements with, nonprofit State, local, or private organizations or entities whose primary purposes are to facilitate cooperative research between the Federal laboratories and organizations not associated with the Federal laboratories, to transfer technology from the Federal laboratories, and to advance State and local economic activity.

"(B) The demonstration projects established under subparagraph (A) shall serve as model programs. Such projects shall be designed to develop programs and mechanisms for technology transfer from the Federal laboratories which may be utilized by the States and which will enhance Federal, State, and local programs for the transfer of technology.

"(C) Application for such grants, awards, or agreements shall be in such form and contain such information as the Consortium or its designee shall specify.

"(D) Any person who receives or utilizes any proceeds of a grant or award made, or agreement entered into, under this paragraph shall keep such records as the Consortium or its designee shall determine are necessary and appropriate to facilitate effective audit and evaluation, including records which fully disclose the amount and disposition of such proceeds and the total cost of the project in connection with which such proceeds were used."

Subsec. (i). Pub. L. 102–245, §303, added subsec. (i).

1989—Subsec. (b). Pub. L. 101–189 struck out "after September 30, 1981," after "(2)", substituted "sufficient funding, either as a separate line item or from the agency's research and development budget," for "not less than 0.5 percent of the agency's research and development budget", struck out "agency head may waive the requirement set forth in clause (2) of the preceding sentence. If the agency head waives such requirement, the" after "transfer process. The", and substituted "agency's technology transfer program for the preceding year and the agency's plans for conducting its technology transfer function for the upcoming year, including plans for securing intellectual property rights in laboratory innovations with commercial promise and plans for managing such innovations so as to benefit the competitiveness of United States industry" for "reasons for the waiver and alternate plans for conducting the technology transfer function at the agency".

1988—Subsec. (d)(6). Pub. L. 100–418, §5163(c)(3), added par. (6).

Subsec. (e)(4). Pub. L. 100–418, §5115(b)(2), substituted "National Institute of Standards and Technology" for "National Bureau of Standards" and "Institute" for "Bureau".

Subsec. (e)(7)(A). Pub. L. 100–418, §5162(b), substituted "0.008 percent of the budget of each Federal agency from any Federal source, including related overhead, that is to be utilized by or on behalf of" for "0.005 percent of that portion of the research and development budget of each Federal agency that is to be utilized by".

Pub. L. 100–418, §5115(b)(2), substituted "National Institute of Standards and Technology" for "National Bureau of Standards" and "Institute" for "Bureau".

Subsec. (g)(1). Pub. L. 100–519, §201(d)(3), inserted reference to the Under Secretary.

Subsec. (h). Pub. L. 100–519, §212(a)(4), struck out subsec. (h) which read as follows: "None of the activities or functions of the National Technical Information Service which are not performed by contractors as of September 30, 1987, shall be contracted out or otherwise transferred from the Federal Government unless such transfer is expressly authorized by statute, or unless the value of all work performed under the contract and related contracts in each fiscal year does not exceed $250,000."

Pub. L. 100–418, §5163(c)(1), added subsec. (h).

1986—Subsec. (a). Pub. L. 99–502, §4(a), designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (b). Pub. L. 99–502, §4(b)(1), substituted "200 or more full-time equivalent scientific, engineering, and related technical positions shall provide one or more full-time equivalent positions" for "a total annual budget exceeding $20,000,000 shall provide at least one professional individual full-time", inserted

"Furthermore, individuals filling positions in an Office of Research and Technology Applications shall be included in the overall laboratory/agency management development program so as to ensure that highly competent technical managers are full participants in the technology transfer process.", substituted "requirement set forth in clause (2) of the preceding sentence" for "requirements set forth in (1) and/or (2) of this subsection", and substituted "such requirement" for "either requirement (1) or (2)".

Subsec. (c)(1). Pub. L. 99–502, §4(b)(2)(A), added par. (1) and struck out former par. (1) which read as follows: "to prepare an application assessment of each research and development project in which that laboratory is engaged which has potential for successful application in State or local government or in private industry;".

Subsec. (c)(3). Pub. L. 99–502, §4(b)(2)(B), substituted "the National Technical Information Service, the Federal Laboratory Consortium for Technology Transfer," for "the Center for the Utilization of Federal Technology" and struck out "and" after the semicolon.

Subsec. (c)(4). Pub. L. 99–502, §4(b)(2)(C), substituted "to State and local government officials; and" for "in response to requests from State and local government officials.".

Subsec. (c)(5). Pub. L. 99–502, §4(b)(2)(D), added par. (5).

Subsec. (d). Pub. L. 99–502, §4(c)(1), substituted "The National Technical Information Service shall" for "There is hereby established in the Department of Commerce a Center for the Utilization of Federal Technology. The Center for the Utilization of Federal Technology shall" in introductory par.

Subsec. (d)(2). Pub. L. 99–502, §4(c)(2), (3), redesignated par. (3) as (2) and struck out "existing" before "Federal Laboratory". Former par. (2), which required the Center for the Utilization of Federal Technology to coordinate the activities of the Offices of Research and Technology Applications of the Federal laboratories, was struck out.

Subsec. (d)(3). Pub. L. 99–502, §4(c)(4), added par. (3). Former par. (3) redesignated (2).

Subsec. (d)(4). Pub. L. 99–502, §4(c)(4)–(6), redesignated par. (5) as (4) and substituted "subsection (c)(3)" for "subsection (c)(4)". Former par. (4), which required the Center for the Utilization of Federal Technology to receive requests for technical assistance from State and local governments and refer those requests to the appropriate Federal laboratories, was struck out.

Subsec. (d)(5), (6). Pub. L. 99–502, §4(c)(5), redesignated pars. (5) and (6) as (4) and (5), respectively.

Subsecs. (e), (f). Pub. L. 99–502, §§3, 4(d), added subsec. (e), redesignated former subsec. (e) as (f), substituted "report annually to the Congress, as part of the agency's annual budget submission, on the activities" for "prepare biennially a report summarizing the activities", and struck out "The report shall be transmitted to the Center for the Utilization of Federal Technology by November 1 of each year in which it is due.".

Subsec. (g). Pub. L. 99–502, §5, added subsec. (g).

TRANSFER OF FUNCTIONS

Functions which the Director of the National Institute on Disability and Rehabilitation Research exercised before July 22, 2014 (including all related functions of any officer or employee of the National Institute on Disability and Rehabilitation Research), transferred to the National Institute on Disability, Independent Living, and Rehabilitation Research, see subsection (n) of section 3515e of Title 42, The Public Health and Welfare.

EX. ORD. NO. 12591. FACILITATING ACCESS TO SCIENCE AND TECHNOLOGY

Ex. Ord. No. 12591, Apr. 10, 1987, 52 F.R. 13414, as amended by Ex. Ord. No. 12618, Dec. 22, 1987, 52 F.R. 48661, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Technology Transfer Act of 1986 (Public Law 99–502) [see Short Title of 1986 Amendments note set out under section 3701 of this title], the Trademark Clarification Act of 1984 (Public Law 98–620) [see Short Title of 1984 Amendment note set out under section 1051 of this title], and the University and Small Business Patent Procedure Act of 1980 (Public Law 96–517) [see Tables for classification], and in order to ensure that Federal agencies and laboratories assist universities and the private sector in broadening our technology base by moving new knowledge from the research laboratory into the development of new products and processes, it is hereby ordered as follows:

SECTION 1. *Transfer of Federally Funded Technology.*

(a) The head of each Executive department and agency, to the extent permitted by law, shall encourage and facilitate collaboration among Federal laboratories, State and local governments, universities, and the private sector, particularly small business, in order to assist in the transfer of technology to the marketplace.

(b) The head of each Executive department and agency shall, within overall funding allocations and to the extent permitted by law:

(1) delegate authority to its government-owned, government-operated Federal laboratories:

(A) to enter into cooperative research and development agreements with other Federal laboratories, State and local governments, universities, and the private sector; and

(B) to license, assign, or waive rights to intellectual property developed by the laboratory either under such cooperative research or development agreements and from within individual laboratories.

(2) identify and encourage persons to act as conduits between and among Federal laboratories, universities, and the private sector for the transfer of technology developed from federally funded research and development efforts;

(3) ensure that State and local governments, universities, and the private sector are provided with information on the technology, expertise, and facilities available in Federal laboratories;

(4) promote the commercialization, in accord with my Memorandum to the Heads of Executive Departments and Agencies of February 18, 1983, of patentable results of federally funded research by granting to all contractors, regardless of size, the title to patents made in whole or in part with Federal funds, in exchange for royalty-free use by or on behalf of the government;

(5) administer all patents and licenses to inventions made with federal assistance, which are owned by the non-profit contractor or grantee, in accordance with Section 202(c)(7) of Title 35 of the United States Code as amended by Public Law 98–620, without regard to limitations on licensing found in that section prior to amendment or in Institutional Patent Agreements now in effect that were entered into before that law was enacted on November 8, 1984, unless, in the case of an invention that has not been marketed, the funding agency determines, based on information in its files, that the contractor or grantee has not taken adequate steps to market the inventions, in accordance with applicable law or an Institutional Patent Agreement;

(6) implement, as expeditiously as practicable, royalty-sharing programs with inventors who were employees of the agency at the time their inventions were made, and cash award programs; and

(7) cooperate, under policy guidance provided by the Office of Federal Procurement Policy, with the heads of other affected departments and agencies in the development of a uniform policy permitting Federal contractors to retain rights to software, engineering drawings, and other technical data generated by Federal grants and contracts, in exchange for royalty-free use by or on behalf of the government.

SEC. 2. *Establishment of the Technology Share Program*. The Secretaries of Agriculture, Commerce, Energy, and Health and Human Services and the Administrator of the National Aeronautics and Space Administration shall select one or more of their Federal laboratories to participate in the Technology Share Program. Consistent with its mission and policies and within its overall funding allocation in any year, each Federal laboratory so selected shall:

(a) Identify areas of research and technology of potential importance to long-term national economic competitiveness and in which the laboratory possesses special competence and/or unique facilities;

(b) Establish a mechanism through which the laboratory performs research in areas identified in Section 2(a) as a participant of a consortium composed of United States industries and universities. All consortia so established shall have, at a minimum, three individual companies that conduct the majority of their business in the United States; and

(c) Limit its participation in any consortium so established to the use of laboratory personnel and facilities. However, each laboratory may also provide financial support generally not to exceed 25 percent of the total budget for the activities of the consortium. Such financial support by any laboratory in all such consortia shall be limited to a maximum of $5 million per annum.

SEC. 3. *Technology Exchange—Scientists and Engineers*. The Executive Director of the President's Commission on Executive Exchange shall assist Federal agencies, where appropriate, by developing and implementing an exchange program whereby scientists and engineers in the private sector may take temporary assignments in Federal laboratories, and scientists and engineers in Federal laboratories may take temporary assignments in the private sector.

SEC. 4. *International Science and Technology*. In order to ensure that the United States benefits from and fully exploits scientific research and technology developed abroad,

(a) The head of each Executive department and agency, when negotiating or entering into cooperative research and development agreements and licensing arrangements with foreign persons or industrial organizations (where these entities are directly or indirectly controlled by a foreign company or government), shall, in consultation with the United States Trade Representative, give appropriate consideration:

(1) to whether such foreign companies or governments permit and encourage United States agencies, organizations, or persons to enter into cooperative research and development agreements and licensing arrangements on a comparable basis;

(2) to whether those foreign governments have policies to protect the United States intellectual property rights; and

(3) where cooperative research will involve data, technologies, or products subject to national security export controls under the laws of the United States, to whether those foreign governments have adopted adequate measures to prevent the transfer of strategic technology to destinations prohibited under such national security export controls, either through participation in the Coordinating Committee for Multilateral Export Controls (COCOM) or through other international agreements to which the United States and such foreign governments are signatories.

(b) The Secretary of State shall develop a recruitment policy that encourages scientists and engineers from other Federal agencies, academic institutions, and industry to apply for assignments in embassies of the United States; and

(c) The Secretaries of State and Commerce and the Director of the National Science Foundation shall develop a central mechanism for the prompt and efficient dissemination of science and technology information developed abroad to users in Federal laboratories, academic institutions, and the private sector on a fee-for-service basis.

SEC. 5. *Technology Transfer from the Department of Defense*. Within 6 months of the date of this Order [Apr. 10, 1987], the Secretary of Defense shall identify a list of funded technologies that would be potentially useful to United States industries and universities. The Secretary shall then accelerate efforts to make these technologies more readily available to United States industries and universities.

SEC. 6. *Basic Science and Technology Centers*. The head of each Executive department and agency shall examine the potential for including the establishment of university research centers in engineering, science, or technology in the strategy and planning for any future research and development programs. Such university centers shall be jointly funded by the Federal Government, the private sector, and, where appropriate, the States and shall focus on areas of fundamental research and technology that are both scientifically promising and have the potential to contribute to the Nation's long-term economic competitiveness.

SEC. 7. *Reporting Requirements*. (a) Within 1 year from the date of this Order [Apr. 10, 1987], the Director of the Office of Science and Technology Policy shall convene an interagency task force comprised of the heads of representative agencies and the directors of representative Federal laboratories, or their designees, in order to identify and disseminate creative approaches to technology transfer from Federal laboratories. The task force will report to the President on the progress of and problems with technology transfer from Federal laboratories.

(b) Specifically, the report shall include:

(1) a listing of current technology transfer programs and an assessment of the effectiveness of these programs;

(2) identification of new or creative approaches to technology transfer that might serve as model programs for Federal laboratories;

(3) criteria to assess the effectiveness and impact on the Nation's economy of planned or future technology transfer efforts; and

(4) a compilation and assessment of the Technology Share Program established in Section 2 and, where appropriate, related cooperative research and development venture programs.

SEC. 8. *Relation to Existing Law*. Nothing in this Order shall affect the continued applicability of any existing laws or regulations relating to the transfer of United States technology to other nations. The head of any Executive department or agency may exclude from consideration, under this Order, any technology that would be, if transferred, detrimental to the interests of national security.

RONALD REAGAN.

§3710a. Cooperative research and development agreements

(a) General authority

Each Federal agency may permit the director of any of its Government-operated Federal laboratories, and, to the extent provided in an agency-approved joint work statement or, if permitted by the agency, in an agency-approved annual strategic plan, the director of any of its Government-owned, contractor-operated laboratories—

(1) to enter into cooperative research and development agreements on behalf of such agency (subject to subsection (c) of this section) with other Federal agencies; units of State or local government; industrial organizations (including corporations, partnerships, and limited

partnerships, and industrial development organizations); public and private foundations; nonprofit organizations (including universities); or other persons (including licensees of inventions owned by the Federal agency); and

(2) to negotiate licensing agreements under section 207 of title 35, or under other authorities (in the case of a Government-owned, contractor-operated laboratory, subject to subsection (c) of this section) for inventions made or other intellectual property developed at the laboratory and other inventions or other intellectual property that may be voluntarily assigned to the Government.

(b) Enumerated authority

(1) Under an agreement entered into pursuant to subsection (a)(1) of this section, the laboratory may grant, or agree to grant in advance, to a collaborating party patent licenses or assignments, or options thereto, in any invention made in whole or in part by a laboratory employee under the agreement, or, subject to section 209 of title 35, may grant a license to an invention which is federally owned, for which a patent application was filed before the signing of the agreement, and directly within the scope of the work under the agreement, for reasonable compensation when appropriate. The laboratory shall ensure, through such agreement, that the collaborating party has the option to choose an exclusive license for a pre-negotiated field of use for any such invention under the agreement or, if there is more than one collaborating party, that the collaborating parties are offered the option to hold licensing rights that collectively encompass the rights that would be held under such an exclusive license by one party. In consideration for the Government's contribution under the agreement, grants under this paragraph shall be subject to the following explicit conditions:

(A) A nonexclusive, nontransferable, irrevocable, paid-up license from the collaborating party to the laboratory to practice the invention or have the invention practiced throughout the world by or on behalf of the Government. In the exercise of such license, the Government shall not publicly disclose trade secrets or commercial or financial information that is privileged or confidential within the meaning of section 552(b)(4) of title 5 or which would be considered as such if it had been obtained from a non-Federal party.

(B) If a laboratory assigns title or grants an exclusive license to such an invention, the Government shall retain the right—

(i) to require the collaborating party to grant to a responsible applicant a nonexclusive, partially exclusive, or exclusive license to use the invention in the applicant's licensed field of use, on terms that are reasonable under the circumstances; or

(ii) if the collaborating party fails to grant such a license, to grant the license itself.

(C) The Government may exercise its right retained under subparagraph (B) only in exceptional circumstances and only if the Government determines that—

(i) the action is necessary to meet health or safety needs that are not reasonably satisfied by the collaborating party;

(ii) the action is necessary to meet requirements for public use specified by Federal regulations, and such requirements are not reasonably satisfied by the collaborating party; or

(iii) the collaborating party has failed to comply with an agreement containing provisions described in subsection (c)(4)(B) of this section.

This determination is subject to administrative appeal and judicial review under section 203(2) [1] of title 35.

(2) Under agreements entered into pursuant to subsection (a)(1) of this section, the laboratory shall ensure that a collaborating party may retain title to any invention made solely by its employee in exchange for normally granting the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention or have the invention practiced throughout the world by or on behalf of the Government for research or other Government purposes.

(3) Under an agreement entered into pursuant to subsection (a)(1) of this section, a laboratory may—

(A) accept, retain, and use funds, personnel, services, and property from a collaborating party and provide personnel, services, and property to a collaborating party;

(B) use funds received from a collaborating party in accordance with subparagraph (A) to hire personnel to carry out the agreement who will not be subject to full-time-equivalent restrictions of the agency;

(C) to the extent consistent with any applicable agency requirements or standards of conduct, permit an employee or former employee of the laboratory to participate in an effort to commercialize an invention made by the employee or former employee while in the employment or service of the Government; and

(D) waive, subject to reservation by the Government of a nonexclusive, irrevocable, paid-up license to practice the invention or have the invention practiced throughout the world by or on behalf of the Government, in advance, in whole or in part, any right of ownership which the Federal Government may have to any subject invention made under the agreement by a collaborating party or employee of a collaborating party.

(4) A collaborating party in an exclusive license in any invention made under an agreement entered into pursuant to subsection (a)(1) of this section shall have the right of enforcement under chapter 29 of title 35.

(5) A Government-owned, contractor-operated laboratory that enters into a cooperative research and development agreement pursuant to subsection (a)(1) of this section may use or obligate royalties or other income accruing to the laboratory under such agreement with respect to any invention only—

(A) for payments to inventors;

(B) for purposes described in clauses (i), (ii), (iii), and (iv) of section 3710c(a)(1)(B) of this title; and

(C) for scientific research and development consistent with the research and development missions and objectives of the laboratory.

(6)(A) In the case of a laboratory that is part of the National Nuclear Security Administration, a designated official of that Administration may waive any license retained by the Government under paragraph (1)(A), (2), or (3)(D), in whole or in part and according to negotiated terms and conditions, if the designated official finds that the retention of the license by the Government would substantially inhibit the commercialization of an invention that would otherwise serve an important national security mission.

(B) The authority to grant a waiver under subparagraph (A) shall expire on the date that is five years after October 30, 2000. The expiration under the preceding sentence of authority to grant a waiver under subparagraph (A) shall not affect any waiver granted under that subparagraph before the expiration of such authority.

(C) Not later than February 15 of each year, the Administrator for Nuclear Security shall submit to Congress a report on any waivers granted under this paragraph during the preceding year.

(c) Contract considerations

(1) A Federal agency may issue regulations on suitable procedures for implementing the provisions of this section; however, implementation of this section shall not be delayed until issuance of such regulations.

(2) The agency in permitting a Federal laboratory to enter into agreements under this section shall be guided by the purposes of this chapter.

(3)(A) Any agency using the authority given it under subsection (a) of this section shall review standards of conduct for its employees for resolving potential conflicts of interest to make sure they adequately establish guidelines for situations likely to arise through the use of this authority, including but not limited to cases where present or former employees or their partners negotiate licenses or assignments of titles to inventions or negotiate cooperative research and development agreements with Federal agencies (including the agency with which the employee involved is or was formerly employed).

(B) If, in implementing subparagraph (A), an agency is unable to resolve potential conflicts of interest within its current statutory framework, it shall propose necessary statutory changes to be forwarded to its authorizing committees in Congress.

(4) The laboratory director in deciding what cooperative research and development agreements to enter into shall—

(A) give special consideration to small business firms, and consortia involving small business firms; and

(B) give preference to business units located in the United States which agree that products embodying inventions made under the cooperative research and development agreement or produced through the use of such inventions will be manufactured substantially in the United States and, in the case of any industrial organization or other person subject to the control of a foreign company or government, as appropriate, take into consideration whether or not such foreign government permits United States agencies, organizations, or other persons to enter into cooperative research and development agreements and licensing agreements.

(5)(A) If the head of the agency or his designee desires an opportunity to disapprove or require the modification of any such agreement presented by the director of a Government-operated laboratory, the agreement shall provide a 30-day period within which such action must be taken beginning on the date the agreement is presented to him or her by the head of the laboratory concerned.

(B) In any case in which the head of an agency or his designee disapproves or requires the modification of an agreement presented by the director of a Government-operated laboratory under this section, the head of the agency or such designee shall transmit a written explanation of such disapproval or modification to the head of the laboratory concerned.

(C)(i) Any non-Federal entity that operates a laboratory pursuant to a contract with a Federal agency shall submit to the agency any cooperative research and development agreement that the entity proposes to enter into and the joint work statement if required with respect to that agreement.

(ii) A Federal agency that receives a proposed agreement and joint work statement under clause (i) shall review and approve, request specific modifications to, or disapprove the proposed agreement and joint work statement within 30 days after such submission. No agreement may be entered into by a Government-owned, contractor-operated laboratory under this section before both approval of the agreement and approval of a joint work statement under this clause.

(iii) In any case in which an agency which has contracted with an entity referred to in clause (i) disapproves or requests the modification of a cooperative research and development agreement or joint work statement submitted under that clause, the agency shall transmit a written explanation of such disapproval or modification to the head of the laboratory concerned.

(iv) Any agency that has contracted with a non-Federal entity to operate a laboratory may develop and provide to such laboratory one or more model cooperative research and development agreements for purposes of standardizing practices and procedures, resolving common legal issues, and enabling review of cooperative research and development agreements to be carried out in a routine and prompt manner.

(v) A Federal agency may waive the requirements of clause (i) or (ii) under such circumstances as the agency considers appropriate.

(6) Each agency shall maintain a record of all agreements entered into under this section.

(7)(A) No trade secrets or commercial or financial information that is privileged or confidential, under the meaning of section 552(b)(4) of title 5, which is obtained in the conduct of research or as a result of activities under this chapter from a non-Federal party participating in a cooperative research and development agreement shall be disclosed.

(B) The director, or in the case of a contractor-operated laboratory, the agency, for a period of up to 5 years after development of information that results from research and development activities conducted under this chapter and that would be a trade secret or commercial or financial information that is privileged or confidential if the information had been obtained from a non-Federal party

participating in a cooperative research and development agreement, may provide appropriate protections against the dissemination of such information, including exemption from subchapter II of chapter 5 of title 5.

(d) Definitions

As used in this section—

(1) the term "cooperative research and development agreement" means any agreement between one or more Federal laboratories and one or more non-Federal parties under which the Government, through its laboratories, provides personnel, services, facilities, equipment, intellectual property, or other resources with or without reimbursement (but not funds to non-Federal parties) and the non-Federal parties provide funds, personnel, services, facilities, equipment, intellectual property, or other resources toward the conduct of specified research or development efforts which are consistent with the missions of the laboratory; except that such term does not include a procurement contract or cooperative agreement as those terms are used in sections 6303, 6304, and 6305 of title 31;

(2) the term "laboratory" means—

(A) a facility or group of facilities owned, leased, or otherwise used by a Federal agency, a substantial purpose of which is the performance of research, development, or engineering by employees of the Federal Government;

(B) a group of Government-owned, contractor-operated facilities (including a weapon production facility of the Department of Energy) under a common contract, when a substantial purpose of the contract is the performance of research and development, or the production, maintenance, testing, or dismantlement of a nuclear weapon or its components, for the Federal Government; and

(C) a Government-owned, contractor-operated facility (including a weapon production facility of the Department of Energy) that is not under a common contract described in subparagraph (B), and the primary purpose of which is the performance of research and development, or the production, maintenance, testing, or dismantlement of a nuclear weapon or its components, for the Federal Government,

but such term does not include any facility covered by Executive Order No. 12344, dated February 1, 1982, pertaining to the naval nuclear propulsion program;

(3) the term "joint work statement" means a proposal prepared for a Federal agency by the director of a Government-owned, contractor-operated laboratory describing the purpose and scope of a proposed cooperative research and development agreement, and assigning rights and responsibilities among the agency, the laboratory, and any other party or parties to the proposed agreement; and

(4) the term "weapon production facility of the Department of Energy" means a facility under the control or jurisdiction of the Secretary of Energy that is operated for national security purposes and is engaged in the production, maintenance, testing, or dismantlement of a nuclear weapon or its components.

(e) Determination of laboratory missions

For purposes of this section, an agency shall make separate determinations of the mission or missions of each of its laboratories.

(f) Relationship to other laws

Nothing in this section is intended to limit or diminish existing authorities of any agency.

(g) Principles

In implementing this section, each agency which has contracted with a non-Federal entity to operate a laboratory shall be guided by the following principles:

(1) The implementation shall advance program missions at the laboratory, including any national security mission.

(2) Classified information and unclassified sensitive information protected by law, regulation,

or Executive order shall be appropriately safeguarded.

(Pub. L. 96–480, §12, as added and renumbered §11, Pub. L. 99–502, §§2, 9(e)(1), Oct. 20, 1986, 100 Stat. 1785, 1797; renumbered §12, Pub. L. 100–418, title V, §5122(a)(1), Aug. 23, 1988, 102 Stat. 1438; amended Pub. L. 100–519, title III, §301, Oct. 24, 1988, 102 Stat. 2597; Pub. L. 101–189, div. C, title XXXI, §3133(a), (b), Nov. 29, 1989, 103 Stat. 1675, 1677; Pub. L. 102–25, title VII, §705(g), Apr. 6, 1991, 105 Stat. 121; Pub. L. 102–245, title III, §302(a), Feb. 14, 1992, 106 Stat. 20; Pub. L. 102–484, div. C, title XXXI, §3135(a), Oct. 23, 1992, 106 Stat. 2640; Pub. L. 103–160, div. C, title XXXI, §3160, Nov. 30, 1993, 107 Stat. 1957; Pub. L. 104–113, §4, Mar. 7, 1996, 110 Stat. 775; Pub. L. 106–398, §1 [div. C, title XXXI, §3196], Oct. 30, 2000, 114 Stat. 1654, 1654A–481; Pub. L. 106–404, §3, Nov. 1, 2000, 114 Stat. 1742.)

REFERENCES IN TEXT

Section 203(2) of title 35, referred to in subsec. (b)(1)(C), was redesignated section 203(b) of title 35 by Pub. L. 107–273, div. C, title III, §13206(a)(14)(A)(i), Nov. 2, 2002, 116 Stat. 1905.

Executive Order No. 12344, referred to in subsec. (d)(2), is set out as a note under section 2511 of Title 50, War and National Defense.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–398, §1 [div. C, title XXXI, §3196(a)], substituted "joint work statement or, if permitted by the agency, in an agency-approved annual strategic plan," for "joint work statement," in introductory provisions.

Subsec. (b)(1). Pub. L. 106–404, in first sentence, inserted "or, subject to section 209 of title 35, may grant a license to an invention which is federally owned, for which a patent application was filed before the signing of the agreement, and directly within the scope of the work under the agreement," after "under the agreement,".

Subsec. (b)(6). Pub. L. 106–398, §1 [div. C, title XXXI, §3196(b)], added par. (6).

Subsec. (c)(5)(C), (D). Pub. L. 106–398, §1 [div. C, title XXXI, §3196(c)], redesignated subpar. (D) as (C), struck out "with a small business firm" after "enter into" and inserted "if" after "statement" in cl. (i), added cls. (iv) and (v), and struck out former subpar. (C) which related to the duties of an agency which has contracted with a non-Federal entity to operate a laboratory with respect to review and approval of joint work statements and agreements under this section and with respect to providing the entity with model cooperative research and development agreements.

1996—Subsec. (b). Pub. L. 104–113 amended subsec. (b) generally, to require that laboratory ensure that collaborating party be provided option of choosing exclusive license for pre-negotiated field of use for any invention under agreement or that collaborating party be offered option of holding licensing rights that collectively encompass rights that would be held under such exclusive license by one party, to set forth explicit conditions that grants under par. (1) were to be subject to, and to require laboratory to ensure that collaborating party might retain title to any invention made solely by its employee in exchange for normally granting Government nonexclusive, nontransferable, irrevocable, paid-up license to practice invention by or on behalf of Government for research or for other Government purposes.

1993—Subsec. (d)(2)(B). Pub. L. 103–160, §3160(1), inserted "(including a weapon production facility of the Department of Energy)" after "facilities" and ", or the production, maintenance, testing, or dismantlement of a nuclear weapon or its components," after "research and development".

Subsec. (d)(2)(C). Pub. L. 103–160, §3160(2), inserted "(including a weapon production facility of the Department of Energy)" after "facility" and ", or the production, maintenance, testing, or dismantlement of a nuclear weapon or its components," after "research and development".

Subsec. (d)(4). Pub. L. 103–160, §3160(3)–(5), added par. (4).

1992—Subsec. (c)(5)(C)(i). Pub. L. 102–484, §3135(a)(1), substituted "Except as provided in subparagraph (D), any agency" for "Any agency".

Subsec. (c)(5)(D). Pub. L. 102–484, §3135(a)(2), added subpar. (D).

Subsec. (d)(1). Pub. L. 102–245 inserted "intellectual property," after "equipment," in two places.

1991—Subsec. (d)(2). Pub. L. 102–25 substituted "naval" for "Naval" in concluding provisions.

1989—Subsec. (a). Pub. L. 101–189, §3133(a)(1)(A), inserted ", and, to the extent provided in an agency-approved joint work statement, the director of any of its Government-owned, contractor-operated laboratories" after "Government-operated Federal laboratories" in introductory provisions.

Subsec. (a)(2). Pub. L. 101–189, §3133(a)(1)(B), (C), substituted "(in the case of a Government-owned, contractor-operated laboratory, subject to subsection (c) of this section) for" for "for Government-owned" and

struck out "of Federal employees" before "that may be voluntarily".

Subsec. (b). Pub. L. 101–189, §3133(a)(2)(A), (C), inserted ", and, to the extent provided in an agency-approved joint work statement, a Government-owned, contractor-operated laboratory," after "Government-operated Federal laboratory" in introductory provisions and inserted concluding provisions "A Government-owned, contractor-operated laboratory that enters into a cooperative research and development agreement under subsection (a)(1) of this section may use or obligate royalties or other income accruing to such laboratory under such agreement with respect to any invention only (i) for payments to inventors; (ii) for the purposes described in section 3710c(a)(1)(B)(i), (ii), and (iv) of this title; and (iii) for scientific research and development consistent with the research and development mission and objectives of the laboratory."

Subsec. (b)(2). Pub. L. 101–189, §3133(a)(2)(B), substituted "a laboratory employee" for "a Federal employee".

Subsec. (c)(3)(A). Pub. L. 101–189, §3133(a)(3), substituted "standards of conduct for its employees" for "employee standards of conduct".

Subsec. (c)(5)(A). Pub. L. 101–189, §3133(a)(4), inserted "presented by the director of a Government-operated laboratory" after "any such agreement".

Subsec. (c)(5)(B). Pub. L. 101–189, §3133(a)(5), inserted "by the director of a Government-operated laboratory" after "an agreement presented".

Subsec. (c)(5)(C). Pub. L. 101–189, §3133(a)(6), added subpar. (C).

Subsec. (c)(7). Pub. L. 101–189, §3133(a)(7), added par. (7).

Subsec. (d)(2). Pub. L. 101–189, §3133(a)(8)(B), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "the term 'laboratory' means a facility or group of facilities owned, leased, or otherwise used by a Federal agency, a substantial purpose of which is the performance of research, development, or engineering by employees of the Federal Government."

Subsec. (d)(3). Pub. L. 101–189, §3133(a)(8)(A), (C), added par. (3).

Subsec. (g). Pub. L. 101–189, §3133(b), added subsec. (g).

1988—Subsec. (a)(2). Pub. L. 100–519, §301(1), substituted "or other intellectual property developed at the laboratory and other inventions or other intellectual property" for "at the laboratory and other inventions".

Subsec. (b)(4), (5). Pub. L. 100–519, §301(2), added par. (4) and redesignated former par. (4) as (5).

REVIEW OF COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT PROCEDURES

Pub. L. 106–404, §8, Nov. 1, 2000, 114 Stat. 1746, provided that:

"(a) REVIEW.—Within 90 days after the date of the enactment of this Act [Nov. 1, 2000], each Federal agency with a federally funded laboratory that has in effect on that date of the enactment one or more cooperative research and development agreements under section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a) shall report to the Committee on National Security of the National Science and Technology Council and the Congress on the general policies and procedures used by that agency to gather and consider the views of other agencies on—

"(1) joint work statements under section 12(c)(5)(C) or (D) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(c)(5)(C) or (D)); or

"(2) in the case of laboratories described in section 12(d)(2)(A) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(d)(2)(A)), cooperative research and development agreements under such section 12,

with respect to major proposed cooperative research and development agreements that involve critical national security technology or may have a significant impact on domestic or international competitiveness.

"(b) PROCEDURES.—Within 1 year after the date of the enactment of this Act [Nov. 1, 2000], the Committee on National Security of the National Science and Technology Council, in conjunction with relevant Federal agencies and national laboratories, shall—

"(1) determine the adequacy of existing procedures and methods for interagency coordination and awareness with respect to cooperative research and development agreements described in subsection (a); and

"(2) establish and distribute to appropriate Federal agencies—

"(A) specific criteria to indicate the necessity for gathering and considering the views of other agencies on joint work statements or cooperative research and development agreements as described in subsection (a); and

"(B) additional procedures, if any, for carrying out such gathering and considering of agency views with respect to cooperative research and development agreements described in subsection (a).

Procedures established under this subsection shall be designed to the extent possible to use or modify existing procedures, to minimize burdens on Federal agencies, to encourage industrial partnerships with national

laboratories, and to minimize delay in the approval or disapproval of joint work statements and cooperative research and development agreements.

"(c) LIMITATION.—Nothing in this Act [see Short Title of 2000 Amendment note set out under section 3701 of this title], nor any procedures established under this section shall provide to the Office of Science and Technology Policy, the National Science and Technology Council, or any Federal agency the authority to disapprove a cooperative research and development agreement or joint work statement, under section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a), of another Federal agency."

MAGNETIC LEVITATION TECHNOLOGY

The Secretary of the Army, in cooperation with the Secretary of Transportation, authorized to conduct research and development activities on magnetic levitation technology using contracts or cooperative research and development agreements under this section, see section 417 of Pub. L. 101–640, set out as a note under section 2313 of Title 33, Navigation and Navigable Waters.

CONTRACT PROVISIONS

Section 3133(d) of Pub. L. 101–189, as amended by Pub. L. 101–510, div. A, title VIII, §828(a), Nov. 5, 1990, 104 Stat. 1607, provided that:

"(1) Not later than 150 days after the date of enactment of this Act [Nov. 29, 1989], each agency which has contracted with a non-Federal entity to operate a Government-owned laboratory shall propose for inclusion in that laboratory's operating contract, to the extent not already included and subject to paragraph (6), appropriate contract provisions that—

"(A) establish technology transfer, including cooperative research and development agreements, as a mission for the laboratory under section 11(a)(1) of the Stevenson-Wydler Technology Innovation Act of 1980 [15 U.S.C. 3710(a)(1)];

"(B) describe the respective obligations and responsibilities of the agency and the laboratory with respect to this part [part C (§§3131–3133) of title XXXI of div. C of Pub. L. 101–189, see Short Title of 1989 Amendment note under section 3701 of this title] and section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 [15 U.S.C. 3710a];

"(C) require that, except as provided in paragraph (2), no employee of the laboratory shall have a substantial role (including an advisory role) in the preparation, negotiation, or approval of a cooperative research and development agreement if, to such employee's knowledge—

"(i) such employee, or the spouse, child, parent, sibling, or partner of such employee, or an organization (other than the laboratory) in which such employee serves as an officer, director, trustee, partner, or employee—

"(I) holds a financial interest in any entity, other than the laboratory, that has a substantial interest in the preparation, negotiation, or approval of the cooperative research and development agreement; or

"(II) receives a gift or gratuity from any entity, other than the laboratory, that has a substantial interest in the preparation, negotiation, or approval of the cooperative research and development agreement; or

"(ii) a financial interest in any entity, other than the laboratory, that has a substantial interest in the preparation, negotiation, or approval of the cooperative research and development agreement, is held by any person or organization with whom such employee is negotiating or has any arrangement concerning prospective employment;

"(D) require that each employee of the laboratory who negotiates or approves a cooperative research and development agreement shall certify to the agency that the circumstances described in subparagraph (C)(i) and (ii) do not apply to such employee;

"(E) require the laboratory to widely disseminate information on opportunities to participate with the laboratory in technology transfer, including cooperative research and development agreements; and

"(F) provides for an accounting of all royalty or other income received under cooperative research and development agreements.

"(2) The requirements described in paragraph (1)(C) and (D) shall not apply in a case where the negotiating or approving employee advises the agency that reviewed the applicable joint work statement under section 12(c)(5)(C)(i) of the Stevenson-Wydler Technology Innovation Act of 1980 [15 U.S.C. 3710a(c)(5)(C)(i)] in advance of the matter in which he is to participate and the nature of any financial interest described in paragraph (1)(C), and where the agency employee determines that such financial interest is not so substantial as to be considered likely to affect the integrity of the laboratory employee's service in that matter.

"(3) Not later than 180 days after the date of enactment of this Act [Nov. 29, 1989], each agency which has contracted with a non-Federal entity to operate a Government-owned laboratory shall submit a report to the

Congress which includes a copy of each contract provision amended pursuant to this subsection.

"(4) No Government-owned, contractor-operated laboratory may enter into a cooperative research and development agreement under section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 [15 U.S.C. 3710a] unless—

"(A) that laboratory's operating contract contains the provisions described in paragraph (1)(A) through (F); or

"(B) such laboratory agrees in a separate writing to be bound by the provisions described in paragraph (1)(A) through (F).

"(5) Any contract for a Government-owned, contractor-operated laboratory entered into after the expiration of 150 days after the date of enactment of this Act [Nov. 29, 1989] shall contain the provisions described in paragraph (1)(A) through (F).

"(6) Contract provisions referred to in paragraph (1) shall include only such provisions as are necessary to carry out paragraphs (1) and (2) of this subsection."

[Pub. L. 101–510, div. A, title VIII, §828(b), Nov. 5, 1990, 104 Stat. 1607, provided that: "Paragraph (6) of 3133(d) of such Act [Pub. L. 101–189, set out above], as added by subsection (a), shall apply only to contracts entered into after the date of enactment of this Act [Nov. 5, 1990]."]

[1] *See References in Text note below.*

§3710b. Rewards for scientific, engineering, and technical personnel of Federal agencies

The head of each Federal agency that is making expenditures at a rate of more than $50,000,000 per fiscal year for research and development in its Government-operated laboratories shall use the appropriate statutory authority to develop and implement a cash awards program to reward its scientific, engineering, and technical personnel for—

(1) inventions, innovations, computer software, or other outstanding scientific or technological contributions of value to the United States due to commercial application or due to contributions to missions of the Federal agency or the Federal government,[1] or

(2) exemplary activities that promote the domestic transfer of science and technology development within the Federal Government and result in utilization of such science and technology by American industry or business, universities, State or local governments, or other non-Federal parties.

(Pub. L. 96–480, §13, as added and renumbered §12, Pub. L. 99–502, §§6, 9(e)(1), Oct. 20, 1986, 100 Stat. 1792, 1797; renumbered §13, Pub. L. 100–418, title V, §5122(a)(1), Aug. 23, 1988, 102 Stat. 1438; amended Pub. L. 100–519, title III, §302, Oct. 24, 1988, 102 Stat. 2597.)

AMENDMENTS

1988—Par. (1). Pub. L. 100–519 inserted "computer software," after "inventions, innovations,".

[1] *So in original. Probably should be capitalized.*

§3710c. Distribution of royalties received by Federal agencies

(a) In general

(1) Except as provided in paragraphs (2) and (4), any royalties or other payments received by a Federal agency from the licensing and assignment of inventions under agreements entered into by Federal laboratories under section 3710a of this title, and from the licensing of inventions of Federal laboratories under section 207 of title 35 or under any other provision of law, shall be retained by the laboratory which produced the invention and shall be disposed of as follows:

(A)(i) The head of the agency or laboratory, or such individual's designee, shall pay each year the first $2,000, and thereafter at least 15 percent, of the royalties or other payments, other than

payments of patent costs as delineated by a license or assignment agreement, to the inventor or coinventors, if the inventor's or coinventor's rights are assigned to the United States.

(ii) An agency or laboratory may provide appropriate incentives, from royalties, or other payments, to laboratory employees who are not an inventor of such inventions but who substantially increased the technical value of such inventions.

(iii) The agency or laboratory shall retain the royalties and other payments received from an invention until the agency or laboratory makes payments to employees of a laboratory under clause (i) or (ii).

(B) The balance of the royalties or other payments shall be transferred by the agency to its laboratories, with the majority share of the royalties or other payments from any invention going to the laboratory where the invention occurred. The royalties or other payments so transferred to any laboratory may be used or obligated by that laboratory during the fiscal year in which they are received or during the 2 succeeding fiscal years—

(i) to reward scientific, engineering, and technical employees of the laboratory, including developers of sensitive or classified technology, regardless of whether the technology has commercial applications;

(ii) to further scientific exchange among the laboratories of the agency;

(iii) for education and training of employees consistent with the research and development missions and objectives of the agency or laboratory, and for other activities that increase the potential for transfer of the technology of the laboratories of the agency;

(iv) for payment of expenses incidental to the administration and licensing of intellectual property by the agency or laboratory with respect to inventions made at that laboratory, including the fees or other costs for the services of other agencies, persons, or organizations for intellectual property management and licensing services; or

(v) for scientific research and development consistent with the research and development missions and objectives of the laboratory.

(C) All royalties or other payments retained by the agency or laboratory after payments have been made pursuant to subparagraphs (A) and (B) that is unobligated and unexpended at the end of the second fiscal year succeeding the fiscal year in which the royalties and other payments were received shall be paid into the Treasury.

(2) If, after payments to inventors under paragraph (1), the royalties or other payments received by an agency in any fiscal year exceed 5 percent of the budget of the agency for that year, 75 percent of such excess shall be paid to the Treasury of the United States and the remaining 25 percent may be used or obligated under paragraph (1)(B). Any funds not so used or obligated shall be paid into the Treasury of the United States.

(3) Any payment made to an employee under this section shall be in addition to the regular pay of the employee and to any other awards made to the employee, and shall not affect the entitlement of the employee to any regular pay, annuity, or award to which he is otherwise entitled or for which he is otherwise eligible or limit the amount thereof. Any payment made to an inventor as such shall continue after the inventor leaves the laboratory or agency. Payments made under this section shall not exceed $150,000 per year to any one person, unless the President approves a larger award (with the excess over $150,000 being treated as a Presidential award under section 4504 of title 5).

(4) A Federal agency receiving royalties or other payments as a result of invention management services performed for another Federal agency or laboratory under section 207 of title 35, may retain such royalties or payments to the extent required to offset payments to inventors under clause (i) of paragraph (1)(A), costs and expenses incurred under clause (iv) of paragraph (1)(B), and the cost of foreign patenting and maintenance for any invention of the other agency. All royalties and other payments remaining after offsetting the payments to inventors, costs, and expenses described in the preceding sentence shall be transferred to the agency for which the services were performed, for distribution in accordance with paragraph (1)(B).

(b) Certain assignments

If the invention involved was one assigned to the Federal agency—

(1) by a contractor, grantee, or participant, or an employee of a contractor, grantee, or participant, in an agreement or other arrangement with the agency, or

(2) by an employee of the agency who was not working in the laboratory at the time the invention was made,

the agency unit that was involved in such assignment shall be considered to be a laboratory for purposes of this section.

(c) Reports

The Comptroller General shall transmit a report to the appropriate committees of the Senate and House of Representatives on the effectiveness of Federal technology transfer programs, including findings, conclusions, and recommendations for improvements in such programs. The report shall be integrated with, and submitted at the same time as, the report required by section 202(b)(3) [1] of title 35.

(Pub. L. 96–480, §14, as added, renumbered §13, and amended Pub. L. 99–502, §§7, 9(e)(1), (3), Oct. 20, 1986, 100 Stat. 1792, 1797; renumbered §14 and amended Pub. L. 100–418, title V, §§5122(a)(1), 5162(a), Aug. 23, 1988, 102 Stat. 1438, 1450; Pub. L. 100–519, title III, §303(a), Oct. 24, 1988, 102 Stat. 2597; Pub. L. 101–189, div. C, title XXXI, §3133(c), Nov. 29, 1989, 103 Stat. 1677; Pub. L. 104–113, §5, Mar. 7, 1996, 110 Stat. 777; Pub. L. 106–404, §§7(7), 10(b), Nov. 1, 2000, 114 Stat. 1746, 1749.)

REFERENCES IN TEXT

Section 202(b)(3) of title 35, referred to in subsec. (c), was struck out and section 202(b)(4) was redesignated section 202(b)(3) by Pub. L. 111–8, div. G, title I, §1301(h), Mar. 11, 2009, 123 Stat. 829.

AMENDMENTS

2000—Subsec. (a)(1)(A)(i). Pub. L. 106–404, §7(7)(A), (B), inserted ", other than payments of patent costs as delineated by a license or assignment agreement," after "or other payments" and ", if the inventor's or coinventor's rights are assigned to the United States" before period at end.

Subsec. (a)(1)(B). Pub. L. 106–404, §7(7)(C), substituted "2 succeeding fiscal years" for "succeeding fiscal year" in introductory provisions.

Subsec. (a)(2). Pub. L. 106–404, §7(7)(D), struck out "Government-operated laboratories of the" before "agency for that year,".

Subsec. (b)(2). Pub. L. 106–404, §7(7)(E), substituted "invention" for "inventon".

Subsec. (c). Pub. L. 106–404, §10(b), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows:

"(1) In making their annual budget submissions Federal agencies shall submit, to the appropriate authorization and appropriation committees of both Houses of the Congress, summaries of the amount of royalties or other income received and expenditures made (including inventor awards) under this section.

"(2) The Comptroller General, five years after October 20, 1986, shall review the effectiveness of the various royalty-sharing programs established under this section and report to the appropriate committees of the House of Representatives and the Senate, in a timely manner, his findings, conclusions, and recommendations for improvements in such programs."

1996—Subsec. (a)(1). Pub. L. 104–113, §5(1), amended par. (1) generally, restructuring subpar. (A) to require head of agency or his designee to pay each year first $2,000, and thereafter at least 15 percent of royalties or other income received by agency on account of any invention to inventor or coinventors if they had assigned their rights in invention to United States and to authorize agencies to provide incentives to laboratory employees who substantially increase technical value of inventions, restructuring subpar. (B) to reorder cls. (i) to (iv), to add cl. (v), and to strike out closing provisions which required unobligated or unused funds to be paid into Treasury, and adding subpar. (C).

Subsec. (a)(2). Pub. L. 104–113, §5(2), in first sentence, inserted "or other payments" after "royalties" and substituted "under paragraph (1)(B)" for "for the purposes described in clauses (i) through (iv) of paragraph (1)(B) during that fiscal year or the succeeding fiscal year".

Subsec. (a)(3). Pub. L. 104–113, §5(3), substituted "$150,000" for "$100,000" in two places.

Subsec. (a)(4). Pub. L. 104–113, §5(4), in first sentence, substituted "other payments" for "other income",

"such royalties or payments" for "such royalties or income", "offset payments to inventors" for "offset the payment of royalties to inventors", and "clause (iv) of paragraph (1)(B)" for "clause (i) of paragraph (1)(B)" and, in second sentence, substituted "other payments" for "other income", substituted "offsetting the payments to inventors" for "payment of the royalties", and struck out "clauses (i) through (iv) of" before "paragraph (1)(B)".

Subsec. (b)(1). Pub. L. 104–113, §5(5), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "by a contractor, grantee, or participant in a cooperative agreement with the agency, or".

1989—Subsec. (a)(1). Pub. L. 101–189, §3133(c)(1), in introductory provisions, inserted "by Government-operated Federal laboratories" after "entered into" and made technical amendment to reference to section 3710a of this title to correct reference to corresponding section of original Act, requiring no change in text.

Subsec. (a)(1)(B)(ii). Pub. L. 101–189, §3133(c)(2), inserted ", including payments to inventors and developers of sensitive or classified technology, regardless of whether the technology has commercial applications" after "that laboratory".

Subsec. (a)(1)(B)(iv). Pub. L. 101–189, §3133(c)(3), substituted "technology of the laboratories" for "technology of the Government-operated laboratories".

1988—Subsec. (a)(1)(A)(i). Pub. L. 100–519, §303(a)(1), substituted "has assigned his or her rights in the invention to the United States" for "was an employee of the agency at the time the invention was made".

Subsec. (a)(1)(A)(ii). Pub. L. 100–519, §303(a)(2), substituted "under clause (i)" for "who were employed by the agency at the time the invention was made and whose names appear on licensed inventions".

Subsec. (a)(4). Pub. L. 100–418, §5162(a), substituted "may" for "shall" and "any invention of the other agency" for "such invention performed at the request of the other agency or laboratory" in first sentence.

1986—Subsec. (a)(1). Pub. L. 99–502, §9(e)(3), in introductory par. made technical amendment to reference to section 3710a of this title to reflect renumbering of corresponding section of original act.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–519, title III, §303(b), Oct. 24, 1988, 102 Stat. 2597, provided that: "This section [amending this section] shall be effective as of October 20, 1986."

[1] *See References in Text note below.*

§3710d. Employee activities

(a) In general

If a Federal agency which has ownership of or the right of ownership to an invention made by a Federal employee does not intend to file for a patent application or otherwise to promote commercialization of such invention, the agency shall allow the inventor, if the inventor is a Government employee or former employee who made the invention during the course of employment with the Government, to obtain or retain title to the invention (subject to reservation by the Government of a nonexclusive, nontransferrable, irrevocable, paid-up license to practice the invention or have the invention practiced throughout the world by or on behalf of the Government). In addition, the agency may condition the inventor's right to title on the timely filing of a patent application in cases when the Government determines that it has or may have a need to practice the invention.

(b) "Special Government employees" defined

For purposes of this section, Federal employees include "special Government employees" as defined in section 202 of title 18.

(c) Relationship to other laws

Nothing in this section is intended to limit or diminish existing authorities of any agency.

(Pub. L. 96–480, §15, as added and renumbered §14, Pub. L. 99–502, §§8, 9(e)(1), Oct. 20, 1986, 100 Stat. 1794, 1797; renumbered §15, Pub. L. 100–418, title V, §5122(a)(1), Aug. 23, 1988, 102 Stat. 1438; amended Pub. L. 104–113, §6, Mar. 7, 1996, 110 Stat. 779.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–113 substituted "ownership of or the right of ownership to an invention made by a Federal employee" for "the right of ownership to an invention under this chapter" and inserted "obtain or" before "retain title to the invention".

§3711. National Technology and Innovation Medal

(a) Establishment

There is hereby established a National Technology and Innovation Medal, which shall be of such design and materials and bear such inscriptions as the President, on the basis of recommendations submitted by the Office of Science and Technology Policy, may prescribe.

(b) Award

The President shall periodically award the medal, on the basis of recommendations received from the Secretary or on the basis of such other information and evidence as he deems appropriate, to individuals or companies, which in his judgment are deserving of special recognition by reason of their outstanding contributions to the promotion of technology or technological manpower for the improvement of the economic, environmental, or social well-being of the United States.

(c) Presentation

The presentation of the award shall be made by the President with such ceremonies as he may deem proper.

(Pub. L. 96–480, §16, formerly §12, Oct. 21, 1980, 94 Stat. 2319; renumbered §16, Pub. L. 99–502, §2, Oct. 20, 1986, 100 Stat. 1785; renumbered §15, Pub. L. 99–502, §9(e)(1), Oct. 20, 1986, 100 Stat. 1797; renumbered §16, Pub. L. 100–418, title V, §5122(a)(1), Aug. 23, 1988, 102 Stat. 1438; Pub. L. 110–69, title I, §1003, Aug. 9, 2007, 121 Stat. 576.)

AMENDMENTS

2007—Pub. L. 110–69, §1003(1), which directed substitution of "National Technology and Innovation Medal" for "National Medal" in section catchline, was executed by making the substitution for "National Technology Medal" to reflect the probable intent of Congress.

Subsec. (a). Pub. L. 110–69, §1003(2), substituted "Technology and Innovation Medal" for "Technology Medal".

NATIONAL TECHNOLOGY MEDAL FOR ENVIRONMENTAL TECHNOLOGY

Pub. L. 105–309, §10, Oct. 30, 1998, 112 Stat. 2939, provided that: "In the administration of section 16 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3711), Environmental Technology shall be established as a separate nomination category with appropriate unique criteria for that category."

§3711a. Malcolm Baldrige National Quality Award

(a) Establishment

There is hereby established the Malcolm Baldrige National Quality Award, which shall be evidenced by a medal bearing the inscriptions "Malcolm Baldrige National Quality Award" and "The Quest for Excellence". The medal shall be of such design and materials and bear such additional inscriptions as the Secretary may prescribe.

(b) Making and presentation of award

(1) The President (on the basis of recommendations received from the Secretary), or the Secretary, shall periodically make the award to companies and other organizations which in the judgment of the President or the Secretary have substantially benefited the economic or social well-being of the United States through improvements in the quality of their goods or services resulting from the effective practice of quality management, and which as a consequence are deserving of special recognition.

(2) The presentation of the award shall be made by the President or the Secretary with such ceremonies as the President or the Secretary may deem proper.

(3) An organization to which an award is made under this section, and which agrees to help other American organizations improve their quality management, may publicize its receipt of such award and use the award in its advertising, but it shall be ineligible to receive another such award in the same category for a period of 5 years.

(c) Categories in which award may be given

(1) Subject to paragraph (2), separate awards shall be made to qualifying organizations in each of the following categories—

(A) Small businesses.

(B) Companies or their subsidiaries.

(C) Companies which primarily provide services.

(D) Health care providers.

(E) Education providers.

(F) Nonprofit organizations.

(2) The Secretary may at any time expand, subdivide, or otherwise modify the list of categories within which awards may be made as initially in effect under paragraph (1), and may establish separate awards for other organizations including units of government, upon a determination that the objectives of this section would be better served thereby; except that any such expansion, subdivision, modification, or establishment shall not be effective unless and until the Secretary has submitted a detailed description thereof to the Congress and a period of 30 days has elapsed since that submission.

(3) In any year, not more than 18 awards may be made under this section to recipients who have not previously received an award under this section, and no award shall be made within any category described in paragraph (1) if there are no qualifying enterprises in that category.

(d) Criteria for qualification

(1) An organization may qualify for an award under this section only if it—

(A) applies to the Director of the National Institute of Standards and Technology in writing, for the award,

(B) permits a rigorous evaluation of the way in which its business and other operations have contributed to improvements in the quality of goods and services, and

(C) meets such requirements and specifications as the Secretary, after receiving recommendations from the Board of Overseers established under paragraph (2)(B) and the Director of the National Institute of Standards and Technology, determines to be appropriate to achieve the objectives of this section.

In applying the provisions of subparagraph (C) with respect to any organization, the Director of the National Institute of Standards and Technology shall rely upon an intensive evaluation by a competent board of examiners which shall review the evidence submitted by the organization and, through a site visit, verify the accuracy of the quality improvements claimed. The examination should encompass all aspects of the organization's current practice of quality management, as well as the organization's provision for quality management in its future goals. The award shall be given only to organizations which have made outstanding improvements in the quality of their goods or services (or both) and which demonstrate effective quality management through the training and involvement of all levels of personnel in quality improvement.

(2)(A) The Director of the National Institute of Standards and Technology shall, under appropriate contractual arrangements, carry out the Director's responsibilities under subparagraphs (A) and (B) of paragraph (1) through one or more broad-based nonprofit entities which are leaders in the field of quality management and which have a history of service to society.

(B) The Secretary shall appoint a board of overseers for the award, consisting of at least five persons selected for their preeminence in the field of quality management. This board shall meet

annually to review the work of the contractor or contractors and make such suggestions for the improvement of the award process as they deem necessary. The board shall report the results of the award activities to the Director of the National Institute of Standards and Technology each year, along with its recommendations for improvement of the process.

(e) Information and technology transfer program

The Director of the National Institute of Standards and Technology shall ensure that all program participants receive the complete results of their audits as well as detailed explanations of all suggestions for improvements. The Director shall also provide information about the awards and the successful quality improvement strategies and programs of the award-winning participants to all participants and other appropriate groups.

(f) Funding

The Secretary is authorized to seek and accept gifts from public and private sources to carry out the program under this section. If additional sums are needed to cover the full cost of the program, the Secretary shall impose fees upon the organizations applying for the award in amounts sufficient to provide such additional sums. The Director is authorized to use appropriated funds to carry out responsibilities under this chapter.

(g) Report

The Secretary shall prepare and submit to the President and the Congress, within 3 years after August 20, 1987, a report on the progress, findings, and conclusions of activities conducted pursuant to this section along with recommendations for possible modifications thereof.

(Pub. L. 96–480, §17, formerly §16, as added Pub. L. 100–107, §3(a), Aug. 20, 1987, 101 Stat. 725; renumbered §17 and amended Pub. L. 100–418, title V, §§5115(b)(2)(A), 5122(a)(1), Aug. 23, 1988, 102 Stat. 1433, 1438; Pub. L. 102–245, title III, §305, Feb. 14, 1992, 106 Stat. 20; Pub. L. 105–309, §3, Oct. 30, 1998, 112 Stat. 2935; Pub. L. 108–320, §1, Oct. 5, 2004, 118 Stat. 1213; Pub. L. 110–69, title III, §3010, Aug. 9, 2007, 121 Stat. 592.)

AMENDMENTS

2007—Subsec. (c)(3). Pub. L. 110–69 amended par. (3) generally. Prior to amendment, par. (3) read as follows: "Not more than two awards may be made within any subcategory in any year, unless the Secretary determines that a third award is merited and can be given at no additional cost to the Federal Government (and no award shall be made within any category or subcategory if there are no qualifying enterprises in that category or subcategory)."

2004—Subsec. (c)(1)(F). Pub. L. 108–320 added subpar. (F).

1998—Subsec. (c)(1)(D), (E). Pub. L. 105–309, §3(b), added subpars. (D) and (E).

Subsec. (c)(3). Pub. L. 105–309, §3(a), inserted ", unless the Secretary determines that a third award is merited and can be given at no additional cost to the Federal Government" after "in any year".

1992—Subsec. (f). Pub. L. 102–245 inserted at end "The Director is authorized to use appropriated funds to carry out responsibilities under this chapter."

1988—Subsecs. (d), (e). Pub. L. 100–418, §5115(b)(2)(A), substituted "National Institute of Standards and Technology" for "National Bureau of Standards" wherever appearing.

FINDINGS AND PURPOSES

Pub. L. 100–107, §2, Aug. 20, 1987, 101 Stat. 724, provided that:

"(a) FINDINGS.—The Congress finds and declares that—

"(1) the leadership of the United States in product and process quality has been challenged strongly (and sometimes successfully) by foreign competition, and our Nation's productivity growth has improved less than our competitors over the last two decades;

"(2) American business and industry are beginning to understand that poor quality costs companies as much as 20 percent of sales revenues nationally, and that improved quality of goods and services goes hand in hand with improved productivity, lower costs, and increased profitability;

"(3) strategic planning for quality and quality improvement programs, through a commitment to excellence in manufacturing and services, are becoming more and more essential to the well-being of our Nation's economy and our ability to compete effectively in the global marketplace;

"(4) improved management understanding of the factory floor, worker involvement in quality, and

greater emphasis on statistical process control can lead to dramatic improvements in the cost and quality of manufactured products;

"(5) the concept of quality improvement is directly applicable to small companies as well as large, to service industries as well as manufacturing, and to the public sector as well as private enterprise;

"(6) in order to be successful, quality improvement programs must be management-led and customer-oriented and this may require fundamental changes in the way companies and agencies do business;

"(7) several major industrial nations have successfully coupled rigorous private sector quality audits with national awards giving special recognition to those enterprises the audits identify as the very best; and

"(8) a national quality award program of this kind in the United States would help improve quality and productivity by—

"(A) helping to stimulate American companies to improve quality and productivity for the pride of recognition while obtaining a competitive edge through increased profits,

"(B) recognizing the achievements of those companies which improve the quality of their goods and services and providing an example to others,

"(C) establishing guidelines and criteria that can be used by business, industrial, governmental, and other organizations in evaluating their own quality improvement efforts, and

"(D) providing specific guidance for other American organizations that wish to learn how to manage for high quality by making available detailed information on how winning organizations were able to change their cultures and achieve eminence.

"(b) PURPOSE.—It is the purpose of this Act [enacting this section, amending section 3708 of this title, and enacting provisions set out as a note under section 3701 of this title] to provide for the establishment and conduct of a national quality improvement program under which (1) awards are given to selected companies and other organizations in the United States that practice effective quality management and as a result make significant improvements in the quality of their goods and services, and (2) information is disseminated about the successful strategies and programs."

§3711b. Conference on advanced automotive technologies

Not later than 180 days after December 18, 1991, the Secretary of Commerce, through the Under Secretary of Commerce for Technology, in consultation with other appropriate officials, shall convene a conference of domestic motor vehicle manufacturers, parts suppliers, Federal laboratories, and motor vehicle users to explore ways in which cooperatively they can improve the competitiveness of the United States motor vehicle industry by developing new technologies which will enhance the safety and energy savings, and lessen the environmental impact of domestic motor vehicles, and the results of such conference shall be published and then submitted to the President and to the Committees on Science, Space, and Technology and Public Works and Transportation of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(Pub. L. 96–480, §18, as added Pub. L. 102–240, title VI, §6019, Dec. 18, 1991, 105 Stat. 2183.)

CHANGE OF NAME

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2.

§3711c. Advanced motor vehicle research award

(a) Establishment

There is established a National Award for the Advancement of Motor Vehicle Research and Development. The award shall consist of a medal, and a cash prize if funding is available for the prize under subsection (c) of this section. The medal shall be of such design and materials and bear inscriptions as is determined by the Secretary of Transportation.

(b) Making and presenting award

The Secretary of Transportation shall periodically make and present the award to domestic motor vehicle manufacturers, suppliers, or Federal laboratory personnel who, in the opinion of the Secretary of Transportation, have substantially improved domestic motor vehicle research and development in safety, energy savings, or environmental impact. No person may receive the award more than once every 5 years.

(c) Funding for award

The Secretary of Transportation may seek and accept gifts of money from private sources for the purpose of making cash prize awards under this section. Such money may be used only for that purpose, and only such money may be used for that purpose.

(Pub. L. 96–480, §19, as added Pub. L. 102–240, title VI, §6019, Dec. 18, 1991, 105 Stat. 2184.)

§3712. Personnel exchanges

The Secretary, the Secretary of Energy, and the Director of the National Science Foundation, jointly, shall establish a program to foster the exchange of scientific and technical personnel among academia, industry, and Federal laboratories. Such program shall include both (1) federally supported exchanges and (2) efforts to stimulate exchanges without Federal funding.

(Pub. L. 96–480, §20, formerly §13, Oct. 21, 1980, 94 Stat. 2320; renumbered §17, Pub. L. 99–502, §2, Oct. 20, 1986, 100 Stat. 1785; renumbered §16, Pub. L. 99–502, §9(e)(1), Oct. 20, 1986, 100 Stat. 1797; renumbered §17, Pub. L. 100–107, §3(a), Aug. 20, 1987, 101 Stat. 725; renumbered §18, Pub. L. 100–418, title V, §5122(a)(1), Aug. 23, 1988, 102 Stat. 1438; renumbered §20, Pub. L. 102–240, title VI, §6019, Dec. 18, 1991, 105 Stat. 2183; Pub. L. 109–58, title X, §1009(c), Aug. 8, 2005, 119 Stat. 936.)

AMENDMENTS

2005—Pub. L. 109–58 substituted ", the Secretary of Energy, and the Director of the National Science Foundation" for "and the National Science Foundation".

§3713. Authorization of appropriations

(a)(1) There is authorized to be appropriated to the Secretary for the purposes of carrying out sections 3710(g) and 3711 of this title not to exceed $3,400,000 for the fiscal year ending September 30, 1988.

(2) Of the amount authorized under paragraph (1) of this subsection, $2,400,000 is authorized only for the Office of Productivity, Technology, and Innovation; and $500,000 is authorized only for the patent licensing activities of the National Technical Information Service.

(b) In addition to the authorization of appropriations provided under subsection (a) of this section, there is authorized to be appropriated to the Secretary for the purposes of carrying out section 3704a of this title not to exceed $500,000 for the fiscal year ending September 30, 1988, $1,000,000 for the fiscal year ending September 30, 1989, and $1,500,000 for the fiscal year ending September 30, 1990.

(c) Such sums as may be appropriated under subsections (a) and (b) of this section shall remain available until expended.

(d) To enable the National Science Foundation to carry out its powers and duties under this chapter only such sums may be appropriated as the Congress may authorize by law.

(Pub. L. 96–480, §21, formerly §14, Oct. 21, 1980, 94 Stat. 2320; renumbered §18, Pub. L. 99–502, §2, Oct. 20, 1986, 100 Stat. 1785; renumbered §17, Pub. L. 99–502, §9(e)(1), Oct. 20, 1986, 100 Stat. 1797; renumbered §18, Pub. L. 100–107, §3(a), Aug. 20, 1987, 101 Stat. 725; renumbered §19 and amended Pub. L. 100–418, title V, §§5122(a)(1), 5152, Aug. 23, 1988, 102 Stat. 1438, 1449; renumbered §21, Pub. L. 102–240, title VI, §6019, Dec. 18, 1991, 105 Stat. 2183; Pub. L. 110–69, title III, §3002(c)(5), Aug. 9, 2007, 121 Stat. 586.)

AMENDMENTS

2007—Subsec. (a)(1). Pub. L. 110–69, §3002(c)(5)(A), substituted "sections 3710(g) and 3711" for "sections 3704, 3710(g), and 3711".

Subsec. (a)(2). Pub. L. 110–69, §3002(c)(5)(B), struck out "$500,000 is authorized only for the purpose of carrying out the requirements of the Japanese technical literature program established under section 3704(d) of this title;" after "Innovation;".

1988—Subsec. (a). Pub. L. 100–418, §5152, amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "There is authorized to be appropriated to the Secretary for purposes of carrying out section 3705 of this title, not to exceed $19,000,000 for the fiscal year ending September 30, 1981, $40,000,000 for fiscal year ending September 30, 1982, $50,000,000 for the fiscal year ending September 30, 1983, and $60,000,000 for each of the fiscal years ending September 30, 1984, and 1985."

Subsec. (b). Pub. L. 100–418, §5152, amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "In addition to authorizations of appropriations under subsection (a) of this section, there is authorized to be appropriated to the Secretary for purposes of carrying out the provisions of this chapter, not to exceed $5,000,000 for the fiscal year ending September 30, 1981, $9,000,000 for the fiscal year ending September 30, 1982, and $14,000,000 for each of the fiscal years ending September 30, 1983, 1984, and 1985."

§3714. Spending authority

No payments shall be made or contracts shall be entered into pursuant to the provisions of this chapter (other than sections 3710a, 3710b, and 3710c of this title) except to such extent or in such amounts as are provided in advance in appropriation Acts.

(Pub. L. 96–480, §22, formerly §15, Oct. 21, 1980, 94 Stat. 2320; renumbered §19, Pub. L. 99–502, §2, Oct. 20, 1986, 100 Stat. 1785; renumbered §18, and amended Pub. L. 99–502, §9(b)(13), (e)(1), (4), Oct. 20, 1986, 100 Stat. 1796, 1797; renumbered §19, Pub. L. 100–107, §3(a), Aug. 20, 1987, 101 Stat. 725; renumbered §20, Pub. L. 100–418, title V, §5122(a)(1), Aug. 23, 1988, 102 Stat. 1438; renumbered §22, Pub. L. 102–240, title VI, §6019, Dec. 18, 1991, 105 Stat. 2183; Pub. L. 106–404, §7(8), Nov. 1, 2000, 114 Stat. 1746.)

AMENDMENTS

2000—Pub. L. 106–404 made technical amendments to references in original act which appear in text as references to sections 3710a, 3710b, and 3710c of this title.

1986—Pub. L. 99–502, §9(e)(4), made technical amendment to references to sections 3710a, 3710b, and 3710c of this title to reflect renumbering of corresponding sections of original act.

Pub. L. 99–502, §9(b)(13), inserted exception relating to sections 3710a, 3710b, and 3710c of this title.

§3715. Use of partnership intermediaries

(a) Authority

Subject to the approval of the Secretary or head of the affected department or agency, the Director of a Federal laboratory, or in the case of a federally funded research and development center that is not a laboratory (as defined in section 3710a(d)(2) of this title), the Federal employee who is the contract officer, may—

(1) enter into a contract or memorandum of understanding with a partnership intermediary that provides for the partnership intermediary to perform services for the Federal laboratory that increase the likelihood of success in the conduct of cooperative or joint activities of such Federal laboratory with small business firms, institutions of higher education as defined in section 1141(a) [1] of title 20, or educational institutions within the meaning of section 2194 of title 10; and

(2) pay the Federal costs of such contract or memorandum of understanding out of funds available for the support of the technology transfer function pursuant to section 3710(b) of this title.

(b) Omitted

(c) "Partnership intermediary" defined

For purposes of this section, the term "partnership intermediary" means an agency of a State or local government, or a nonprofit entity owned in whole or in part by, chartered by, funded in whole or in part by, or operated in whole or in part by or on behalf of a State or local government, that assists, counsels, advises, evaluates, or otherwise cooperates with small business firms, institutions of higher education as defined in section 1141(a) [1] of title 20, or educational institutions within the meaning of section 2194 of title 10, that need or can make demonstrably productive use of technology-related assistance from a Federal laboratory, including State programs receiving funds under cooperative agreements entered into under section 5121(b) of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 278l note).

(Pub. L. 96–480, §23, formerly §21, as added Pub. L. 101–510, div. A, title VIII, §827(a), Nov. 5, 1990, 104 Stat. 1606; amended Pub. L. 102–190, div. A, title VIII, §836, Dec. 5, 1991, 105 Stat. 1448; renumbered §23, Pub. L. 102–240, title VI, §6019, Dec. 18, 1991, 105 Stat. 2183; Pub. L. 106–404, §9, Nov. 1, 2000, 114 Stat. 1747.)

REFERENCES IN TEXT

Section 1141(a) of title 20, referred to in subsecs. (a)(1) and (c), was repealed by Pub. L. 105–244, §3, title I, §101(b), title VII, §702, Oct. 7, 1998, 112 Stat. 1585, 1616, 1803, effective Oct. 1, 1998. However, the term "institution of higher education" is defined in section 1001 of Title 20, Education.

CODIFICATION

Subsec. (b) of this section, which required the Secretary to include in each triennial report required under section 3704d of this title a discussion and evaluation of activities carried out pursuant to this section, was omitted because of the termination of the triennial reporting requirement. See Codification note set out after section 3704a of this title.

AMENDMENTS

2000—Subsec. (a)(1). Pub. L. 106–404, §9(1), inserted ", institutions of higher education as defined in section 1141(a) of title 20, or educational institutions within the meaning of section 2194 of title 10" after "small business firms".

Subsec. (c). Pub. L. 106–404, §9(2), inserted ", institutions of higher education as defined in section 1141(a) of title 20, or educational institutions within the meaning of section 2194 of title 10," after "small business firms".

1991—Subsec. (a). Pub. L. 102–190 inserted "that is not a laboratory (as defined in section 3710a(d)(2) of this title)" after "center" in introductory provisions.

PARTICIPATION IN PROGRAMS PROMOTING RESEARCH, DEVELOPMENT, DEMONSTRATION, OR TRANSFER OF TECHNOLOGY

Pub. L. 103–337, div. A, title II, §217(f), Oct. 5, 1994, 108 Stat. 2695, as amended by Pub. L. 105–261, div. C, title XXXI, §3136, Oct. 17, 1998, 112 Stat. 2248; Pub. L. 111–84, div. A, title II, §254, Oct. 28, 2009, 123 Stat. 2243, provided that:

"(1)(A) A federally funded research and development center of the Department of Defense, of the National Aeronautics and Space Administration, or of the Department of Energy that functions primarily as a research laboratory may respond to solicitations and announcements under programs authorized by the Federal Government for the purpose of promoting the research, development, demonstration, or transfer of technology in a manner consistent with the terms and conditions of such program.

"(B) A federally funded research and development center of the Department of Energy described in subparagraph (A) may respond to solicitations and announcements described in that subparagraph only for activities conducted by the center under contract with or on behalf of the Department of Defense.

"(C) A federally funded research and development center of the National Aeronautics and Space Administration that functions primarily as a research laboratory may respond to broad agency announcements under programs authorized by the Federal Government for the purpose of promoting the research, development, demonstration, or transfer of technology in a manner consistent with the terms and conditions of such program.

"(2) A federally funded research and development center described in paragraph (1)(A) that responds to a solicitation or announcement described in such paragraph shall not be considered to be engaging in a

competitive procedure and may use, among other authorities, cooperative research and development agreements provided for under section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a)) [sic] as the instruments of participation in the solicitation or announcement."

[1] *See References in Text note below.*

§3716. Critical industries

(a) Identification of industries and development of plan

The Secretary shall—

(1) identify those civilian industries in the United States that are necessary to support a robust manufacturing infrastructure and critical to the economic security of the United States; and

(2) list the major research and development initiatives being undertaken, and the substantial investments being made, by the Federal Government, including its research laboratories, in each of the critical industries identified under paragraph (1).

(b) Initial report

The Secretary shall submit a report to the Congress within 1 year after February 14, 1992, on the actions taken under subsection (a) of this section.

(Pub. L. 102–245, title V, §504, Feb. 14, 1992, 106 Stat. 24.)

CODIFICATION

Subsec. (c) of this section, which required the Secretary to annually submit to Congress an update of the report submitted under subsec. (b) of this section, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 52 of House Document No. 103–7.

Section was enacted as part of the American Technology Preeminence Act of 1991, and not as part of the Stevenson-Wydler Technology Innovation Act of 1980 which comprises this chapter.

§3717. National Quality Council

(a) Establishment and functions

There is established a National Quality Council (hereafter in this section referred to as the "Council"). The functions of the Council shall be—

(1) to establish national goals and priorities for Quality performance in business, education, government, and all other sectors of the Nation;

(2) to encourage and support the voluntary adoption of these goals and priorities by companies, unions, professional and business associations, coalition groups, and units of government, as well as private and nonprofit organizations;

(3) to arouse and maintain the interest of the people of the United States in Quality performance, and to encourage the adoption and institution of Quality performance methods by all corporations, government agencies, and other organizations; and

(4) to conduct a White House Conference on Quality Performance in the American Workplace that would bring together in a single forum national leaders in business, labor, education, professional societies, the media, government, and politics to address Quality performance as a means of improving United States competitiveness.

(b) Membership

The Council shall consist of not less than 17 or more than 20 members, appointed by the Secretary. Members shall include—

(1) at least 2 but not more than 3 representatives from manufacturing industry;

(2) at least 2 but not more than 3 representatives from service industry;

(3) at least 2 but not more than 3 representatives from national Quality not-for-profit

organizations;

(4) two representatives from education, one with expertise in elementary and secondary education, and one with expertise in post-secondary education;

(5) one representative from labor;

(6) one representative from professional societies;

(7) one representative each from local and State government;

(8) one representative from the Federal Quality Institute;

(9) one representative from the National Institute of Standards and Technology;

(10) one representative from the Department of Defense;

(11) one representative from a civilian Federal agency not otherwise represented on the Council, to be rotated among such agencies every 2 years; and

(12) one representative from the Foundation for the Malcolm Baldrige National Quality Award.

(c) Terms

The term of office of each member of the Council appointed under paragraphs (1) through (7) of subsection (b) of this section shall be 2 years, except that when making the initial appointments under such paragraphs; the Secretary shall appoint not more than 50 percent of the members to 1 year terms. No member appointed under such paragraphs shall serve on the Council for more than 2 consecutive terms.

(d) Chairman and Vice Chairman

The Secretary shall designate one of the members initially appointed to the Council as Chairman. Thereafter, the members of the Council shall annually elect one of their number as Chairman. The members of the Council shall also annually elect one of their members as Vice Chairman. No individual shall serve as Chairman or Vice Chairman for more than 2 consecutive years.

(e) Executive Director and employees

The Council shall appoint and fix the compensation of an Executive Director, who shall hire and fix the compensation of such additional employees as may be necessary to assist the Council in carrying out its functions. In hiring such additional employees, the Executive Director shall ensure that no individual hired has a conflict of interest with the responsibilities of the Council.

(f) Funding

There is established in the Treasury of the United States a National Quality Performance Trust Fund, into which all funds received by the Council, through private donations or otherwise, shall be deposited. Amounts in such Trust Fund shall be available to the Council, to the extent provided in advance in appropriations Acts, for the purpose of carrying out the functions of the Council under this Act.

(g) Contributions

The Council may not accept private donations from a single source in excess of $25,000 per year. Private donations from a single source in excess of $10,000 per year may be accepted by the Council only on approval of two-thirds of the Council.

(h) Annual report

The Council shall annually submit to the President and the Congress a comprehensive and detailed report on—

(1) the progress in meeting the goals and priorities established by the Council;

(2) the Council's operations, activities, and financial condition;

(3) contributions to the Council from non-Federal sources;

(4) plans for the Council's operations and activities for the future; and

(5) any other information or recommendations the Council considers appropriate.

(Pub. L. 102–245, title V, §507, Feb. 14, 1992, 106 Stat. 27.)

REFERENCES IN TEXT

This Act, referred to in subsec. (f), is Pub. L. 102–245, Feb. 14, 1992, 106 Stat. 7, known as the American

Technology Preeminence Act of 1991. For complete classification of this Act to the Code, see Short Title of 1992 Amendment note set out under section 3701 of this title and Tables.

CODIFICATION

Section was enacted as part of the American Technology Preeminence Act of 1991, and not as part of the Stevenson-Wydler Technology Innovation Act of 1980 which comprises this chapter.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (h) of this section relating to annually submitting a report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 184 of House Document No. 103–7.

§3718. President's Council on Innovation and Competitiveness

(a) In general

The President shall establish a President's Council on Innovation and Competitiveness.

(b) Duties

The duties of the Council shall include—

(1) monitoring implementation of public laws and initiatives for promoting innovation, including policies related to research funding, taxation, immigration, trade, and education that are proposed in this Act or in any other Act;

(2) providing advice to the President with respect to global trends in competitiveness and innovation and allocation of Federal resources in education, job training, and technology research and development considering such global trends in competitiveness and innovation;

(3) in consultation with the Director of the Office of Management and Budget, developing a process for using metrics to assess the impact of existing and proposed policies and rules that affect innovation capabilities in the United States;

(4) identifying opportunities and making recommendations for the heads of executive agencies to improve innovation, monitoring, and reporting on the implementation of such recommendations;

(5) developing metrics for measuring the progress of the Federal Government with respect to improving conditions for innovation, including through talent development, investment, and infrastructure improvements; and

(6) submitting to the President and Congress an annual report on such progress.

(c) Membership and coordination

(1) Membership

The Council shall be composed of the Secretary or head of each of the following:

(A) The Department of Commerce.
(B) The Department of Defense.
(C) The Department of Education.
(D) The Department of Energy.
(E) The Department of Health and Human Services.
(F) The Department of Homeland Security.
(G) The Department of Labor.
(H) The Department of the Treasury.
(I) The National Aeronautics and Space Administration.
(J) The Securities and Exchange Commission.
(K) The National Science Foundation.
(L) The Office of the United States Trade Representative.
(M) The Office of Management and Budget.
(N) The Office of Science and Technology Policy.
(O) The Environmental Protection Agency.

(P) The Small Business Administration.
(Q) Any other department or agency designated by the President.

(2) Chairperson

The Secretary of Commerce shall serve as Chairperson of the Council.

(3) Coordination

The Chairperson of the Council shall ensure appropriate coordination between the Council and the National Economic Council, the National Security Council, and the National Science and Technology Council.

(4) Meetings

The Council shall meet on a semi-annual basis at the call of the Chairperson and the initial meeting of the Council shall occur not later than 6 months after August 9, 2007.

(d) Development of innovation agenda

(1) In general

The Council shall develop a comprehensive agenda for strengthening the innovation and competitiveness capabilities of the Federal Government, State governments, academia, and the private sector in the United States.

(2) Contents

The comprehensive agenda required by paragraph (1) shall include the following:

(A) An assessment of current strengths and weaknesses of the United States investment in research and development.

(B) Recommendations for addressing weaknesses and maintaining the United States as a world leader in research and development and technological innovation, including strategies for increasing the participation of individuals identified in section 1885a or 1885b of title 42 in science, technology, engineering, and mathematics fields.

(C) Recommendations for strengthening the innovation and competitiveness capabilities of the Federal Government, State governments, academia, and the private sector in the United States.

(3) Advisors

(A) Recommendation

Not later than 30 days after August 9, 2007, the National Academy of Sciences, in consultation with the National Academy of Engineering, the Institute of Medicine, and the National Research Council, shall develop and submit to the President a list of 50 individuals that are recommended to serve as advisors to the Council during the development of the comprehensive agenda required by paragraph (1). The list of advisors shall include appropriate representatives from the following:

(i) The private sector of the economy.

(ii) Labor.

(iii) Various fields including information technology, energy, engineering, high-technology manufacturing, health care, and education.

(iv) Scientific organizations.

(v) Academic organizations and other nongovernmental organizations working in the area of science or technology.

(vi) Nongovernmental organizations, such as professional organizations, that represent individuals identified in section 1885a or 1885b of title 42 in the areas of science, engineering, technology, and mathematics.

(B) Designation

Not later than 30 days after the date that the National Academy of Sciences submits the list of recommended individuals to serve as advisors, the President shall designate 50 individuals to

serve as advisors to the Council.

(C) Requirement to consult

The Council shall develop the comprehensive agenda required by paragraph (1) in consultation with the advisors.

(4) Initial submission and updates

(A) Initial submission

Not later than 1 year after August 9, 2007, the Council shall submit to Congress and the President the comprehensive agenda required by paragraph (1).

(B) Updates

At least once every 2 years, the Council shall update the comprehensive agenda required by paragraph (1) and submit each such update to Congress and the President.

(e) Optional assignment

Notwithstanding subsection (a) and paragraphs (1) and (2) of subsection (c), the President may designate an existing council to carry out the requirements of this section.

(Pub. L. 110–69, title I, §1006, Aug. 9, 2007, 121 Stat. 578.)

CODIFICATION

Section was enacted as part of the America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science Act, also known as the America COMPETES Act, and not as part of the Stevenson-Wydler Technology Innovation Act of 1980 which comprises this chapter.

DESIGNATION OF THE COMMITTEE ON TECHNOLOGY OF THE NATIONAL SCIENCE AND TECHNOLOGY COUNCIL TO CARRY OUT CERTAIN REQUIREMENTS OF THE AMERICA COMPETES ACT

Memorandum of the President of the United States, Apr. 10, 2008, 73 F.R. 20523, provided:

Memorandum for the Director of the Office of Science and Technology Policy

By the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, including section 1006(e) of the America COMPETES Act (Public Law 110–69) (the "Act"), I hereby designate the Committee on Technology of the National Science and Technology Council to carry out the responsibilities assigned to the Council on Innovation and Competitiveness in section 1006 of the Act.

The Director of the Office of Science and Technology Policy is authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

§3719. Prize competitions

(a) Definitions

In this section:

(1) Agency

The term "agency" means a Federal agency.

(2) Director

The term "Director" means the Director of the Office of Science and Technology Policy.

(3) Federal agency

The term "Federal agency" has the meaning given under section 3703 of this title, except that term shall not include any agency of the legislative branch of the Federal Government.

(4) Head of an agency

The term "head of an agency" means the head of a Federal agency.

(b) In general

Each head of an agency, or the heads of multiple agencies in cooperation, may carry out a program to award prizes competitively to stimulate innovation that has the potential to advance the mission of the respective agency.

(c) Prizes

For purposes of this section, a prize may be one or more of the following:

(1) A point solution prize that rewards and spurs the development of solutions for a particular, well-defined problem.

(2) An exposition prize that helps identify and promote a broad range of ideas and practices that may not otherwise attract attention, facilitating further development of the idea or practice by third parties.

(3) Participation prizes that create value during and after the competition by encouraging contestants to change their behavior or develop new skills that may have beneficial effects during and after the competition.

(4) Such other types of prizes as each head of an agency considers appropriate to stimulate innovation that has the potential to advance the mission of the respective agency.

(d) Topics

In selecting topics for prize competitions, the head of an agency shall consult widely both within and outside the Federal Government, and may empanel advisory committees.

(e) Advertising

The head of an agency shall widely advertise each prize competition to encourage broad participation.

(f) Requirements and registration

For each prize competition, the head of an agency shall publish a notice in the Federal Register announcing—

(1) the subject of the competition;

(2) the rules for being eligible to participate in the competition;

(3) the process for participants to register for the competition;

(4) the amount of the prize; and

(5) the basis on which a winner will be selected.

(g) Eligibility

To be eligible to win a prize under this section, an individual or entity—

(1) shall have registered to participate in the competition under any rules promulgated by the head of an agency under subsection (f);

(2) shall have complied with all the requirements under this section;

(3) in the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States; and

(4) may not be a Federal entity or Federal employee acting within the scope of their employment.

(h) Consultation with Federal employees

An individual or entity shall not be deemed ineligible under subsection (g) because the individual or entity used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.

(i) Liability

(1) In general

(A) Definition

In this paragraph, the term "related entity" means a contractor or subcontractor at any tier, and a supplier, user, customer, cooperating party, grantee, investigator, or detailee.

(B) Liability

Registered participants shall be required to agree to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from their participation in a competition, whether the injury, death, damage, or loss arises through negligence or otherwise.

(2) Insurance

Participants shall be required to obtain liability insurance or demonstrate financial responsibility, in amounts determined by the head of an agency, for claims by—

(A) a third party for death, bodily injury, or property damage, or loss resulting from an activity carried out in connection with participation in a competition, with the Federal Government named as an additional insured under the registered participant's insurance policy and registered participants agreeing to indemnify the Federal Government against third party claims for damages arising from or related to competition activities; and

(B) the Federal Government for damage or loss to Government property resulting from such an activity.

(3) Exception

The head of an agency may not require a participant to waive claims against the administering entity arising out of the unauthorized use or disclosure by the agency of the intellectual property, trade secrets, or confidential business information of the participant.

(j) Intellectual property

(1) Prohibition on the government acquiring intellectual property rights

The Federal Government may not gain an interest in intellectual property developed by a participant in a competition without the written consent of the participant.

(2) Licenses

The Federal Government may negotiate a license for the use of intellectual property developed by a participant for a competition.

(k) Judges

(1) In general

For each competition, the head of an agency, either directly or through an agreement under subsection (l), shall appoint one or more qualified judges to select the winner or winners of the prize competition on the basis described under subsection (f). Judges for each competition may include individuals from outside the agency, including from the private sector.

(2) Restrictions

A judge may not—

(A) have personal or financial interests in, or be an employee, officer, director, or agent of any entity that is a registered participant in a competition; or

(B) have a familial or financial relationship with an individual who is a registered participant.

(3) Guidelines

The heads of agencies who carry out competitions under this section shall develop guidelines to ensure that the judges appointed for such competitions are fairly balanced and operate in a transparent manner.

(4) Exemption from FACA

The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to any committee, board, commission, panel, task force, or similar entity, created solely for the purpose of judging prize

competitions under this section.

(l) Administering the competition

The head of an agency may enter into an agreement with a private, nonprofit entity to administer a prize competition, subject to the provisions of this section.

(m) Funding

(1) In general

Support for a prize competition under this section, including financial support for the design and administration of a prize or funds for a monetary prize purse, may consist of Federal appropriated funds and funds provided by the private sector for such cash prizes. The head of an agency may accept funds from other Federal agencies to support such competitions. The head of an agency may not give any special consideration to any private sector entity in return for a donation.

(2) Availability of funds

Notwithstanding any other provision of law, funds appropriated for prize awards under this section shall remain available until expended. No provision in this section permits obligation or payment of funds in violation of section 1341 of title 31.

(3) Amount of prize

(A) Announcement

No prize may be announced under subsection (f) until all the funds needed to pay out the announced amount of the prize have been appropriated or committed in writing by a private source.

(B) Increase in amount

The head of an agency may increase the amount of a prize after an initial announcement is made under subsection (f) only if—

(i) notice of the increase is provided in the same manner as the initial notice of the prize; and

(ii) the funds needed to pay out the announced amount of the increase have been appropriated or committed in writing by a private source.

(4) Limitation on amount

(A) Notice to Congress

No prize competition under this section may offer a prize in an amount greater than $50,000,000 unless 30 days have elapsed after written notice has been transmitted to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science and Technology of the House of Representatives.

(B) Approval of head of agency

No prize competition under this section may result in the award of more than $1,000,000 in cash prizes without the approval of the head of an agency.

(n) General Service [1] Administration assistance

Not later than 180 days after January 4, 2011, the General Services Administration shall provide government wide services to share best practices and assist agencies in developing guidelines for issuing prize competitions. The General Services Administration shall develop a contract vehicle to provide agencies access to relevant products and services, including technical assistance in structuring and conducting prize competitions to take maximum benefit of the marketplace as they identify and pursue prize competitions to further the policy objectives of the Federal Government.

(o) Compliance with existing law

(1) In general

The Federal Government shall not, by virtue of offering or providing a prize under this section,

be responsible for compliance by registered participants in a prize competition with Federal law, including licensing, export control, and nonproliferation laws, and related regulations.

(2) Other prize authority

Nothing in this section affects the prize authority authorized by any other provision of law.

(p) Annual report

(1) In general

Not later than March 1 of each year, the Director shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science and Technology of the House of Representatives a report on the activities carried out during the preceding fiscal year under the authority in subsection (b).

(2) Information included

The report for a fiscal year under this subsection shall include, for each prize competition under subsection (b), the following:

(A) Proposed goals

A description of the proposed goals of each prize competition.

(B) Preferable method

An analysis of why the utilization of the authority in subsection (b) was the preferable method of achieving the goals described in subparagraph (A) as opposed to other authorities available to the agency, such as contracts, grants, and cooperative agreements.

(C) Amount of cash prizes

The total amount of cash prizes awarded for each prize competition, including a description of amount of private funds contributed to the program, the sources of such funds, and the manner in which the amounts of cash prizes awarded and claimed were allocated among the accounts of the agency for recording as obligations and expenditures.

(D) Solicitations and evaluation of submissions

The methods used for the solicitation and evaluation of submissions under each prize competition, together with an assessment of the effectiveness of such methods and lessons learned for future prize competitions.

(E) Resources

A description of the resources, including personnel and funding, used in the execution of each prize competition together with a detailed description of the activities for which such resources were used and an accounting of how funding for execution was allocated among the accounts of the agency for recording as obligations and expenditures.

(F) Results

A description of how each prize competition advanced the mission of the agency concerned.

(Pub. L. 96–480, §24, as added Pub. L. 111–358, title I, §105(a), Jan. 4, 2011, 124 Stat. 3989.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (k)(4), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

[1] *So in original. Probably should be "Services".*

§3720. Office of Innovation and Entrepreneurship

(a) In general

The Secretary shall establish an Office of Innovation and Entrepreneurship to foster innovation and the commercialization of new technologies, products, processes, and services with the goal of promoting productivity and economic growth in the United States.

(b) Duties

The Office of Innovation and Entrepreneurship shall be responsible for—

(1) developing policies to accelerate innovation and advance the commercialization of research and development, including federally funded research and development;

(2) identifying existing barriers to innovation and commercialization, including access to capital and other resources, and ways to overcome those barriers, particularly in States participating in the Experimental Program to Stimulate Competitive Research;

(3) providing access to relevant data, research, and technical assistance on innovation and commercialization;

(4) strengthening collaboration on and coordination of policies relating to innovation and commercialization, including those focused on the needs of small businesses and rural communities, within the Department of Commerce, between the Department of Commerce and other Federal agencies, and between the Department of Commerce and appropriate State government agencies and institutions, as appropriate; and

(5) any other duties as determined by the Secretary.

(c) Advisory committee

The Secretary shall establish an Advisory Council on Innovation and Entrepreneurship to provide advice to the Secretary on carrying out subsection (b).

(Pub. L. 96–480, §25, as added Pub. L. 111–358, title VI, §601, Jan. 4, 2011, 124 Stat. 4026.)

§3721. Federal loan guarantees for innovative technologies in manufacturing

(a) Establishment

The Secretary shall establish a program to provide loan guarantees for obligations to small- or medium-sized manufacturers for the use or production of innovative technologies.

(b) Eligible projects

A loan guarantee may be made under the program only for a project that re-equips, expands, or establishes a manufacturing facility in the United States—

(1) to use an innovative technology or an innovative process in manufacturing;

(2) to manufacture an innovative technology product or an integral component of such a product; or

(3) to commercialize an innovative product, process, or idea that was developed by research funded in whole or in part by a grant from the Federal government.

(c) Eligible borrower

A loan guarantee may be made under the program only for a borrower who is a small- or medium-sized manufacturer, as determined by the Secretary under the criteria established pursuant to subsection (l).

(d) Limitation on amount

A loan guarantee shall not exceed an amount equal to 80 percent of the obligation, as estimated at the time at which the loan guarantee is issued.

(e) Limitations on loan guarantee

No loan guarantee shall be made unless the Secretary determines that—

(1) there is a reasonable prospect of repayment of the principal and interest on the obligation by the borrower;

(2) the amount of the obligation (when combined with amounts available to the borrower from other sources) is sufficient to carry out the project;

(3) the obligation is not subordinate to other financing;

(4) the obligation bears interest at a rate that does not exceed a level that the Secretary determines appropriate, taking into account the prevailing rate of interest in the private sector for similar loans and risks; and

(5) the term of an obligation requires full repayment over a period not to exceed the lesser of—

(A) 30 years; or

(B) 90 percent of the projected useful life, as determined by the Secretary, of the physical asset to be financed by the obligation.

(f) Defaults

(1) Payment by Secretary

(A) In general

If a borrower defaults (as defined in regulations promulgated by the Secretary and specified in the loan guarantee) on the obligation, the holder of the loan guarantee shall have the right to demand payment of the unpaid amount from the Secretary.

(B) Payment required

Within such period as may be specified in the loan guarantee or related agreements, the Secretary shall pay to the holder of the loan guarantee the unpaid interest on and unpaid principal of the obligation as to which the borrower has defaulted, unless the Secretary finds that there was no default by the borrower in the payment of interest or principal or that the default has been remedied.

(C) Forbearance

Nothing in this subsection precludes any forbearance by the holder of the obligation for the benefit of the borrower which may be agreed upon by the parties to the obligation and approved by the Secretary.

(2) Subrogation

(A) In general

If the Secretary makes a payment under paragraph (1), the Secretary shall be subrogated to the rights, as specified in the loan guarantee, of the recipient of the payment or related agreements including, if appropriate, the authority (notwithstanding any other provision of law)—

(i) to complete, maintain, operate, lease, or otherwise dispose of any property acquired pursuant to such loan guarantee or related agreement; or

(ii) to permit the borrower, pursuant to an agreement with the Secretary, to continue to pursue the purposes of the project if the Secretary determines that such an agreement is in the public interest.

(B) Superiority of rights

The rights of the Secretary, with respect to any property acquired pursuant to a loan guarantee or related agreements, shall be superior to the rights of any other person with respect to the property.

(3) Notification

If the borrower defaults on an obligation, the Secretary shall notify the Attorney General of the default.

(g) Terms and conditions

A loan guarantee under this section shall include such detailed terms and conditions as the

Secretary determines appropriate—

(1) to protect the interests of the United States in the case of default; and

(2) to have available all the patents and technology necessary for any person selected, including the Secretary, to complete and operate the project.

(h) Consultation

In establishing the terms and conditions of a loan guarantee under this section, the Secretary shall consult with the Secretary of the Treasury.

(i) Fees

(1) In general

The Secretary shall charge and collect fees for loan guarantees in amounts the Secretary determines are sufficient to cover applicable administrative expenses.

(2) Availability

Fees collected under this subsection shall—

(A) be deposited by the Secretary into the Treasury of the United States; and

(B) remain available until expended, subject to such other conditions as are contained in annual appropriations Acts.

(3) Limitation

In charging and collecting fees under paragraph (1), the Secretary shall take into consideration the amount of the obligation.

(j) Records

(1) In general

With respect to a loan guarantee under this section, the borrower, the lender, and any other appropriate party shall keep such records and other pertinent documents as the Secretary shall prescribe by regulation, including such records as the Secretary may require to facilitate an effective audit.

(2) Access

The Secretary and the Comptroller General of the United States, or their duly authorized representatives, shall have access to records and other pertinent documents for the purpose of conducting an audit.

(k) Full faith and credit

The full faith and credit of the United States is pledged to the payment of all loan guarantees issued under this section with respect to principal and interest.

(l) Regulations

The Secretary shall issue final regulations before making any loan guarantees under the program. The regulations shall include—

(1) criteria that the Secretary shall use to determine eligibility for loan guarantees under this section, including—

(A) whether a borrower is a small- or medium-sized manufacturer; and

(B) whether a borrower demonstrates that a market exists for the innovative technology product, or the integral component of such a product, to be manufactured, as evidenced by written statements of interest from potential purchasers;

(2) criteria that the Secretary shall use to determine the amount of any fees charged under subsection (i), including criteria related to the amount of the obligation;

(3) policies and procedures for selecting and monitoring lenders and loan performance; and

(4) any other policies, procedures, or information necessary to implement this section.

(m) Audit

(1) Annual independent audits

The Secretary shall enter into an arrangement with an independent auditor for annual evaluations of the program under this section.

(2) Comptroller general review

The Comptroller General of the United States shall conduct a biennial review of the Secretary's execution of the program under this section.

(3) Report

The results of the independent audit under paragraph (1) and the Comptroller General's review under paragraph (2) shall be provided directly to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(n) Report to Congress

Concurrent with the submission to Congress of the President's annual budget request in each year after January 4, 2011, the Secretary shall transmit to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing a summary of all activities carried out under this section.

(o) Coordination and nonduplication

To the maximum extent practicable, the Secretary shall ensure that the activities carried out under this section are coordinated with, and do not duplicate the efforts of, other loan guarantee programs within the Federal Government.

(p) MEP centers

The Secretary may use centers established under section 278k of this title to provide information about the program established under this section and to conduct outreach to potential borrowers, as appropriate.

(q) Minimizing risk

The Secretary shall promulgate regulations and policies to carry out this section in accordance with Office of Management and Budget Circular No. A–129, entitled "Policies for Federal Credit Programs and Non-Tax Receivables", as in effect on January 4, 2011.

(r) Sense of Congress

It is the sense of Congress that no loan guarantee shall be made under this section unless the borrower agrees to use a federally-approved electronic employment eligibility verification system to verify the employment eligibility of—

(1) all persons hired during the contract term by the borrower to perform employment duties within the United States; and

(2) all persons assigned by the borrower to perform work within the United States on the project.

(s) Definitions

In this section:

(1) Cost

The term "cost" has the meaning given such term under section 661a of title 2.

(2) Innovative process

The term "innovative process" means a process that is significantly improved as compared to the process in general use in the commercial marketplace in the United States at the time the loan guarantee is issued.

(3) Innovative technology

The term "innovative technology" means a technology that is significantly improved as compared to the technology in general use in the commercial marketplace in the United States at

the time the loan guarantee is issued.

(4) Loan guarantee

The term "loan guarantee" has the meaning given such term in section 661a of title 2. The term includes a loan guarantee commitment (as defined in section 661a of title 2).

(5) Obligation

The term "obligation" means the loan or other debt obligation that is guaranteed under this section.

(6) Program

The term "program" means the loan guarantee program established in subsection (a).

(t) Authorization of appropriations

There are authorized to be appropriated $20,000,000 for each of fiscal years 2011 through 2013 to provide the cost of loan guarantees under this section.

(Pub. L. 96–480, §26, as added Pub. L. 111–358, title VI, §602, Jan. 4, 2011, 124 Stat. 4026.)

CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

§3722. Regional innovation program

(a) Establishment

The Secretary shall establish a regional innovation program to encourage and support the development of regional innovation strategies, including regional innovation clusters and science and research parks.

(b) Cluster grants

(1) In general

As part of the program established under subsection (a), the Secretary may award grants on a competitive basis to eligible recipients for activities relating to the formation and development of regional innovation clusters.

(2) Permissible activities

Grants awarded under this subsection may be used for activities determined appropriate by the Secretary, including the following:

(A) Feasibility studies.

(B) Planning activities.

(C) Technical assistance.

(D) Developing or strengthening communication and collaboration between and among participants of a regional innovation cluster.

(E) Attracting additional participants to a regional innovation cluster.

(F) Facilitating market development of products and services developed by a regional innovation cluster, including through demonstration, deployment, technology transfer, and commercialization activities.

(G) Developing relationships between a regional innovation cluster and entities or clusters in other regions.

(H) Interacting with the public and State and local governments to meet the goals of the cluster.

(3) Eligible recipient defined

In this subsection, the term "eligible recipient" means—

(A) a State;
(B) an Indian tribe;
(C) a city or other political subdivision of a State;
(D) an entity that—
(i) is a nonprofit organization, an institution of higher education, a public-private partnership, a science or research park, a Federal laboratory, or an economic development organization or similar entity; and
(ii) has an application that is supported by a State or a political subdivision of a State; or

(E) a consortium of any of the entities described in subparagraphs (A) through (D).

(4) Application

(A) In general

An eligible recipient shall submit an application to the Secretary at such time, in such manner, and containing such information and assurances as the Secretary may require.

(B) Components

The application shall include, at a minimum, a description of the regional innovation cluster supported by the proposed activity, including a description of—
(i) whether the regional innovation cluster is supported by the private sector, State and local governments, and other relevant stakeholders;
(ii) how the existing participants in the regional innovation cluster will encourage and solicit participation by all types of entities that might benefit from participation, including newly formed entities and those rival existing participants;
(iii) the extent to which the regional innovation cluster is likely to stimulate innovation and have a positive impact on regional economic growth and development;
(iv) whether the participants in the regional innovation cluster have access to, or contribute to, a well-trained workforce;
(v) whether the participants in the regional innovation cluster are capable of attracting additional funds from non-Federal sources; and
(vi) the likelihood that the participants in the regional innovation cluster will be able to sustain activities once grant funds under this subsection have been expended.

(C) Special consideration

The Secretary shall give special consideration to applications from regions that contain communities negatively impacted by trade.

(5) Special consideration

The Secretary shall give special consideration to an eligible recipient who agrees to collaborate with local workforce investment area boards.

(6) Cost share

The Secretary may not provide more than 50 percent of the total cost of any activity funded under this subsection.

(7) Use and application of research and information program

To the maximum extent practicable, the Secretary shall ensure that activities funded under this subsection use and apply any relevant research, best practices, and metrics developed under the program established in subsection (c).

(c) Science and research park development grants

(1) In general

As part of the program established under subsection (a), the Secretary may award grants for the development of feasibility studies and plans for the construction of new science parks or the

renovation or expansion of existing science parks.

(2) Limitation on amount of grants

The amount of a grant awarded under this subsection may not exceed $750,000.

(3) Award

(A) Competition required

The Secretary shall award grants under this subsection pursuant to a full and open competition.

(B) Geographic dispersion

In conducting a competitive process, the Secretary shall consider the need to avoid undue geographic concentration among any one category of States based on their predominant rural or urban character as indicated by population density.

(C) Selection criteria

The Secretary shall publish the criteria to be utilized in any competition for the selection of recipients of grants under this subsection, which shall include requirements relating to the—

(i) effect the science park will have on regional economic growth and development;

(ii) number of jobs to be created at the science park and the surrounding regional community each year during its first 3 years;

(iii) funding to be required to construct, renovate or expand the science park during its first 3 years;

(iv) amount and type of financing and access to capital available to the applicant;

(v) types of businesses and research entities expected in the science park and surrounding regional community;

(vi) letters of intent by businesses and research entities to locate in the science park;

(vii) capability to attract a well trained workforce to the science park;

(viii) the management of the science park during its first 5 years;

(ix) expected financial risks in the construction and operation of the science park and the risk mitigation strategy;

(x) physical infrastructure available to the science park, including roads, utilities, and telecommunications;

(xi) utilization of energy-efficient building technology including nationally recognized green building design practices, renewable energy, cogeneration, and other methods that increase energy efficiency and conservation;

(xii) consideration to the transformation of military bases affected by the base realignment and closure process or the redevelopment of existing buildings, structures, or brownfield sites that are abandoned, idled, or underused into single or multiple building facilities for science and technology companies and institutions;

(xiii) ability to collaborate with other science parks throughout the world;

(xiv) consideration of sustainable development practices and the quality of life at the science park; and

(xv) other such criteria as the Secretary shall prescribe.

(4) Allocation constraints

The Secretary may not allocate less than one-third of the total grant funding allocated under this section for any fiscal year to grants under subsection (b) or this subsection without written notification to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committees on Science and Technology and on Energy and Commerce.

(d) Loan guarantees for science park infrastructure

(1) In general

Subject to paragraph (2), the Secretary may guarantee up to 80 percent of the loan amount for projects for the construction or expansion, including renovation and modernization, of science

park infrastructure.

(2) Limitations on guarantee amounts

The maximum amount of loan principal guaranteed under this subsection may not exceed—

(A) $50,000,000 with respect to any single project; and

(B) $300,000,000 with respect to all projects.

(3) Selection of guarantee recipients

The Secretary shall select recipients of loan guarantees under this subsection based upon the ability of the recipient to collateralize the loan amount through bonds, equity, property, and such other things of values as the Secretary shall deem necessary. Recipients of grants under subsection (c) are not eligible for a loan guarantee during the period of the grant. To the extent that the Secretary determines it to be feasible, the Secretary may select recipients of guarantee assistance in accord with a competitive process that takes into account the factors set out in subsection (c)(3)(C) of this section.

(4) Terms and conditions for loan guarantees

The loans guaranteed under this subsection shall be subject to such terms and conditions as the Secretary may prescribe, except that—

(A) the final maturity of such loans made or guaranteed may not exceed the lesser of—

(i) 30 years; or

(ii) 90 percent of the useful life of any physical asset to be financed by the loan;

(B) a loan guaranteed under this subsection may not be subordinated to another debt contracted by the borrower or to any other claims against the borrowers in the case of default;

(C) a loan may not be guaranteed under this subsection unless the Secretary determines that the lender is responsible and that provision is made for servicing the loan on reasonable terms and in a manner that adequately protects the financial interest of the United States;

(D) a loan may not be guaranteed under this subsection if—

(i) the income from the loan is excluded from gross income for purposes of chapter 1 of title 26; or

(ii) the guarantee provides significant collateral or security, as determined by the Secretary in coordination with the Secretary of the Treasury, for other obligations the income from which is so excluded;

(E) any guarantee provided under this subsection shall be conclusive evidence that—

(i) the guarantee has been properly obtained;

(ii) the underlying loan qualified for the guarantee; and

(iii) absent fraud or material misrepresentation by the holder, the guarantee is presumed to be valid, legal, and enforceable;

(F) the Secretary may not extend credit assistance unless the Secretary has determined that there is a reasonable assurance of repayment; and

(G) new loan guarantees may not be committed except to the extent that appropriations of budget authority to cover their costs are made in advance, as required under section 661c of title 2.

(5) Payment of losses

(A) In general

If, as a result of a default by a borrower under a loan guaranteed under this subsection, after the holder has made such further collection efforts and instituted such enforcement proceedings as the Secretary may require, the Secretary determines that the holder has suffered a loss, the Secretary shall pay to the holder the percentage of the loss specified in the guarantee contract. Upon making any such payment, the Secretary shall be subrogated to all the rights of the

recipient of the payment. The Secretary shall be entitled to recover from the borrower the amount of any payments made pursuant to any guarantee entered into under this section.

(B) Enforcement of rights

The Attorney General shall take such action as may be appropriate to enforce any right accruing to the United States as a result of the issuance of any guarantee under this section.

(C) Forbearance

Nothing in this section may be construed to preclude any forbearance for the benefit of the borrower which may be agreed upon by the parties to the guaranteed loan and approved by the Secretary, if budget authority for any resulting subsidy costs (as defined in section 661a(5) of title 2) is available.

(6) Evaluation of credit risk

(A) The Secretary shall periodically assess the credit risk of new and existing direct loans or guaranteed loans.

(B) Not later than 2 years after January 4, 2011, the Comptroller General of the United States shall—

(i) conduct a review of the subsidy estimates for the loan guarantees under this section; and

(ii) submit to Congress a report on the review conducted under this paragraph.

(7) Termination

A loan may not be guaranteed under this section after September 30, 2013.

(8) Authorization of appropriations

There are authorized to be appropriated $7,000,000 for each of fiscal years 2011 through 2013 for the cost (as defined in section 661a(5) of title 2) of guaranteeing $300,000,000 in loans under this section, such sums to remain available until expended.

(e) Regional innovation research and information program

(1) In general

As part of the program established under subsection (a), the Secretary shall establish a regional innovation research and information program—

(A) to gather, analyze, and disseminate information on best practices for regional innovation strategies (including regional innovation clusters), including information relating to how innovation, productivity, and economic development can be maximized through such strategies;

(B) to provide technical assistance, including through the development of technical assistance guides, for the development and implementation of regional innovation strategies (including regional innovation clusters);

(C) to support the development of relevant metrics and measurement standards to evaluate regional innovation strategies (including regional innovation clusters), including the extent to which such strategies stimulate innovation, productivity, and economic development; and

(D) to collect and make available data on regional innovation cluster activity in the United States, including data on—

(i) the size, specialization, and competitiveness of regional innovation clusters;

(ii) the regional domestic product contribution, total jobs and earnings by key occupations, establishment size, nature of specialization, patents, Federal research and development spending, and other relevant information for regional innovation clusters; and

(iii) supply chain product and service flows within and between regional innovation clusters.

(2) Research grants

The Secretary may award research grants on a competitive basis to support and further the goals of the program established under this subsection.

(3) Dissemination of information

Data and analysis compiled by the Secretary under the program established in this subsection shall be made available to other Federal agencies, State and local governments, and nonprofit and for-profit entities.

(4) Regional innovation grant program

The Secretary shall incorporate data and analysis relating to any grant under subsection (b) or (c) and any loan guarantee under subsection (d) into the program established under this subsection.

(f) Interagency coordination

(1) In general

To the maximum extent practicable, the Secretary shall ensure that the activities carried out under this section are coordinated with, and do not duplicate the efforts of, other programs at the Department of Commerce or other Federal agencies.

(2) Collaboration

(A) In general

The Secretary shall explore and pursue collaboration with other Federal agencies, including through multiagency funding opportunities, on regional innovation strategies.

(B) Small businesses

The Secretary shall ensure that such collaboration with Federal agencies prioritizes the needs and challenges of small businesses.

(g) Evaluation

(1) In general

Not later than 3 years after January 4, 2011, the Secretary shall enter into a contract with an independent entity, such as the National Academy of Sciences, to conduct an evaluation of the program established under subsection (a).

(2) Requirements

The evaluation shall include—

(A) whether the program is achieving its goals;

(B) any recommendations for how the program may be improved; and

(C) a recommendation as to whether the program should be continued or terminated.

(h) Definitions

In this section:

(1) Regional innovation cluster

The term "regional innovation cluster" means a geographically bounded network of similar, synergistic, or complementary entities that—

(A) are engaged in or with a particular industry sector;

(B) have active channels for business transactions and communication;

(C) share specialized infrastructure, labor markets, and services; and

(D) leverage the region's unique competitive strengths to stimulate innovation and create jobs.

(2) Science park

The term "Science [1] park" means a property-based venture, which has—

(A) master-planned property and buildings designed primarily for private-public research and development activities, high technology and science-based companies, and research and development support services;

(B) a contractual or operational relationship with one or more science- or research-related institution of higher education or governmental or non-profit research laboratories;

(C) a primary mission to promote research and development through industry partnerships,

assisting in the growth of new ventures and promoting innovation-driven economic development;

(D) a role in facilitating the transfer of technology and business skills between researchers and industry teams; and

(E) a role in promoting technology-led economic development for the community or region in which the science park is located. A science park may be owned by a governmental or not-for-profit entity, but it may enter into partnerships or joint ventures with for-profit entities for development or management of specific components of the park.

(3) State

The term "State" means one of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or any other territory or possession of the United States.

(i) Authorization of appropriations

Except as provided in subsection (d)(8), there are authorized to be appropriated $100,000,000 for each of fiscal years 2011 through 2013 to carry out this section (other than for loan guarantees under subsection (d)).

(Pub. L. 96–480, §27, as added Pub. L. 111–358, title VI, §603, Jan. 4, 2011, 124 Stat. 4030.)

CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

[1] *So in original. Probably should not be capitalized.*

CHAPTER 64—METHANE TRANSPORTATION RESEARCH, DEVELOPMENT, AND DEMONSTRATION

Sec.

3801. Congressional statement of findings and declaration of policy.
3802. Definitions.
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§3801. Congressional statement of findings and declaration of policy

(a) The Congress finds and declares that—

(1) gasoline and diesel fuel for vehicular use are in short supply and constitute a sizable portion of domestic petroleum consumption;

(2) methane use in fleet-operated vehicles would result in substantial reduction in oil imports;

(3) methane is in more abundant domestic supply than petroleum products, is the primary component of natural gas and can be derived in increased quantities from coal, biomass, waste products, and other renewable resources;

(4) recoverable methane presently available in the United States is not fully utilized;

(5) test results to date indicate that methane use as a substitute for gasoline as a motor fuel can

result in emission reductions;

(6) experience to date has shown methane to be a safe motor fuel in properly modified vehicles and is therefore particularly suitable as fuel for fleet vehicles; and

(7) the introduction into commerce of methane-fueled vehicles would be expedited and facilitated by the establishment of a Federal program of research, development, and demonstration to explore and refine technologies related to methane use as a vehicular fuel.

(b) It is therefore declared to be the policy of the Congress in this chapter to—

(1) provide for and support advanced and accelerated research into, and development of, methane vehicle design, and related technologies;

(2) demonstrate the economic and technological practicalities of methane-fueled vehicles for fleet use and of methane-fueled farm equipment;

(3) facilitate, and remove barriers to, the use of methane-fueled vehicles in lieu of gasoline- or diesel-powered motor vehicles where practicable;

(4) promote the substitution of methane-fueled vehicles for gasoline- and diesel-powered vehicles currently used on farms and in fleet operations, particularly in areas where such substitution would facilitate plans to meet air quality standards set under the Clean Air Act, as amended [42 U.S.C. 7401 et seq.]; and

(5) supplement, but neither supplant nor duplicate, the automotive propulsion system research and development efforts of private industry.

(Pub. L. 96–512, §2, Dec. 12, 1980, 94 Stat. 2827.)

REFERENCES IN TEXT

The Clean Air Act, as amended, referred to in subsec. (b)(4), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

SHORT TITLE

Pub. L. 96–512, §1, Dec. 12, 1980, 94 Stat. 2827, provided: "That this Act [enacting this chapter] may be cited as the 'Methane Transportation Research, Development, and Demonstration Act of 1980'."

§3802. Definitions

For purposes of this chapter—

(a) the term "methane" means either natural gas (as defined in section 3301(1) of this title), gas derived from coal, liquefied natural gas, or any gaseous transportation fuel produced from biomass, waste products, and other renewable resources;

(b) the term "Secretary" means the Secretary of Energy;

(c) the term "public entities" means any unit or units of State and/or local governments;

(d) the term "private entities" means any person, such as any organization incorporated under State law, for profit or not-for-profit, or a consortium of such organizations, but does not include public entities;

(e) the term "vehicle" means any truck, van, station wagon, bus, or car used on public roads or highways as well as off-road agricultural equipment, such as tractors, harvesters, and so forth, which presently burn gasoline or diesel fuel; and

(f) the terms "facilities for the transmission and storage of methane", "methane transmission, storage and dispensing facilities", and any variant thereof means such facilities which are (1) directly necessary for the conduct of a demonstration, (2) for the exclusive use of a demonstration and (3) reasonably incidental to a demonstration.

(Pub. L. 96–512, §3, Dec. 12, 1980, 94 Stat. 2828.)

§3803. Duties of Secretary of Energy

(a) Designation of management entity for program

The Secretary shall designate prior to February 1, 1981, an appropriate organizational entity within the Department of Energy to manage the methane vehicle research, development, and demonstration program.

(b) Monitoring and management of program; agreements with other Federal departments and agencies

The Secretary shall have the responsibility for monitoring and assuring proper management of the program. The Secretary may enter into agreements or arrangements with the National Aeronautics and Space Administration, the Department of Transportation, the Environmental Protection Agency, or any other Federal department or agency, pursuant to which such department or agency shall conduct specified parts or aspects of the program as the Secretary deems necessary or appropriate and within the particular competence of such agency, to the extent that such agency has capabilities which would enable it to contribute to the success of the program and attainment of the purposes of this chapter.

(c) Assurances respecting scope of program activities

In assuring the effective management of this program, the Secretary shall have specific responsibility to ascertain that the program includes activities to—

(1) promote basic and applied research on methane-fueled vehicle construction, modification, and safety;

(2) conduct research and development on optimum overall specifications for methane-fueled vehicles;

(3) determine appropriate means and facilities for safely and economically storing, transporting, and dispensing methane for use as a vehicular fuel;

(4) conduct demonstration projects with respect to the feasibility of methane-fueled vehicles and methane transmission, storage and dispensing facilities (A) by providing necessary financial or technical assistance for the construction, modification, or operation of motor vehicles to be methane-fueled for practical use or of methane transmission, storage and dispensing facilities, and (B) by entering into agreements or arrangements with other entities, governmental and nongovernmental, for the demonstration of such vehicles and facilities;

(5) gather performance data, including but not limited to emissions data, on methane-fueled vehicles and related transmission and storage facilities;

(6) determine that the participants in each demonstration assisted under this chapter have made satisfactory arrangements to obtain an adequate supply of methane for vehicular use in the project;

(7) ascertain the need for modifications in available methane-fueled vehicles to improve their efficiency and performance and to facilitate their widespread use by fleet owners; and

(8) ascertain any changes in fuel supply patterns, tax policies, and standards governing the manufacture of vehicles which are needed to facilitate the manufacture and use of methane-fueled vehicles.

(d) Implementation of program; administrative procedures, etc., applicable

(1) The Secretary of Energy shall insure that the conduct of the research and development program of this chapter—

(A) supplements the automotive propulsion system research and development efforts of industry;

(B) is not formulated in a manner that will supplant private industry research and development or displace or lessen industry's research and development; and

(C) avoids duplication of private research and development.

(2) To that end, the Secretary of Energy shall issue administrative regulations, within 60 days after December 12, 1980, which shall specify procedures, standards, and criteria for the timely review for compliance of each new contract, grant, Department of Energy project, or other agency project

funded or to be funded under the authority of this chapter. Such regulations shall require that the Secretary of Energy or his designee shall certify that each such contract, grant, or project satisfies the requirement of this subsection, and shall include in such certification a discussion of the relationship of any related or comparable industry research and development, in terms of this subsection, to the proposed research and development under the authority of this chapter. The discussion shall also address related issues, such as cost sharing and patent rights.

(3) Such certifications shall be available to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. The provisions of chapter 5 of title 5 shall not apply to such certifications and no court shall have any jurisdiction to review the preparation or adequacy of such certifications; but section 553 of title 5 and section 5916 of title 42 shall apply to public disclosure of such certifications.

(4) The Secretary of Energy also shall include in the report required by section 3808 [1] of this title a detailed discussion of how each research and development contract, grant, or project funded under the authority of this chapter satisfies the requirement of this subsection.

(5) Further, the Secretary of Energy in each annual budget submission to the Congress, or amendment thereto, for the programs authorized by this chapter shall describe how each identified research and development effort in such submission satisfies the requirements of this subsection.

(6) The provisions and requirements of this subsection shall not apply with respect to any contract, grant, or project which was entered into, made, or formally approved and initiated prior to the enactment of this chapter, or with respect to any renewal or extension thereof.

(Pub. L. 96–512, §4, Dec. 12, 1980, 94 Stat. 2828; Pub. L. 97–375, title I, §106(c), Dec. 21, 1982, 96 Stat. 1820; Pub. L. 103–437, §5(b)(5), Nov. 2, 1994, 108 Stat. 4582.)

REFERENCES IN TEXT

Section 3808 of this title, referred to in subsec. (d)(4), was repealed by Pub. L. 104–66, title I, §1051(p), Dec. 21, 1995, 109 Stat. 717.

AMENDMENTS

1994—Subsec. (d)(3). Pub. L. 103–437 substituted "Committee on Science, Space, and Technology" for "Committee on Science and Technology".

1982—Subsec. (c)(8). Pub. L. 97–375 struck out "and report to the Congress on" after "ascertain".

[1] *See References in Text note below.*

§3804. Coordination with other Federal departments and agencies

(a) Related responsibilities and regulatory activities

In carrying out the programs established under sections 3803 and 3806 of this title, the Secretary shall assure, to the maximum extent practicable, that the functions of this program are coordinated with related regulatory activities and other responsibilities of the Department of Energy and any other Federal departments of agencies.

(b) Scope of assistance

Each department, agency, and instrumentality of the executive branch of the Federal Government shall carefully consider any written request from the Secretary, the head of any organizational entity designated by the Secretary pursuant to section 3803(a) of this title, or the head of any agency which is party to an agreement or arrangement pursuant to section 3803(b) of this title, to furnish such assistance, on a reimbursable basis, as the Secretary or such head deems necessary to carry out the program and to achieve the purposes of this chapter. Such assistance may include transfer of personnel with their consent and without prejudice to their position and rating.

(Pub. L. 96–512, §5, Dec. 12, 1980, 94 Stat. 2830.)

§3805. Research and development activities

The Secretary, acting through appropriate agencies and contractors, shall initiate and provide for the conduct of research and development in areas relating to methane-fueled vehicles, including but not limited to—

(1) flammability and combustibility of methane under conditions likely to develop in storage or during vehicular use;

(2) handling, storage, and distribution of methane for vehicular propulsion purposes;

(3) comprehensive assessment of the relative hazards under identical circumstances of methane, propane, gasoline, and diesel fuel;

(4) feasibility, economy, and efficiency of technologies for the production and recovery of methane from unconventional and supplemental sources, as provided for in other authorization Acts;

(5) engine and fuel tank design including, but not limited to, optimum design for dual fuel capacity vehicles;

(6) total vehicle construction and design;

(7) the nature and quantities of emissions, and alterations in or alternatives to emission control systems presently in use; and

(8) overcoming institutional barriers to widespread use including but not limited to restrictions on the transportation of methane for vehicular use through tunnels, and the potential expansion of the distribution of methane for vehicular purposes.

(Pub. L. 96–512, §6, Dec. 12, 1980, 94 Stat. 2830.)

§3806. Demonstrations

(a) Development of data assessing current state-of-the-art

Not later than January 1, 1982, the Secretary shall develop data assessing the current state-of-the-art with respect to vehicles fueled by methane to serve as baseline data to be utilized in evaluating improvements in methane-fueled vehicle technologies.

(b) Guidelines; promulgation, criteria, scope, etc.

Not later than April 1, 1982, the Secretary shall have promulgated necessary and appropriate guidelines for demonstrations and issued an initial request for proposals for technical and financial assistance to support public and private entities in developing and implementing demonstration projects to gather data on the operation of methane-fueled vehicles and methane transmission, storage, and dispensing facilities, under differing climatic, atmospheric, and operating conditions and on design and technical modifications of those vehicles and facilities:

(1) In the case of public entities, the Secretary is authorized to provide—

(A) technical assistance reasonably associated with the modification or acquisition of vehicles to be fueled by methane or with dual fuel capacity, the installation of methane transmission, storage and dispensing facilities, and compliance with data acquisition and reporting requirements under this chapter; and

(B) grants to cover up to 50 per centum of reasonable and necessary costs associated with the installation of methane transmission, storage and dispensing facilities: *Provided*, That the Secretary shall be authorized to direct and require recipients of assistance under this section to enter into cooperative agreements for the planning and use of such facilities with other recipients of assistance under this section, under a cost-sharing agreement where appropriate and economical.

(2)(A) In the case of private entities, the Secretary is authorized to provide—

(i) technical assistance reasonably associated with the modification or acquisition of vehicles to be fueled by methane or with dual fuel capacity, the installation of methane transmission, storage and dispensing facilities, and compliance with data acquisition and reporting

requirements under this chapter; and

(ii) loans to cover up to 50 per centum of reasonable and necessary costs associated with the installation of methane transmission, storage and dispensing facilities: *Provided*, That the Secretary shall be authorized to direct and require recipients of assistance under this section to enter into cooperative agreements for the planning and use of such facilities with other recipients of assistance under this section, under a cost-sharing agreement where appropriate and economical.

(B) Loans issued under this section shall bear interest at such rate as the Secretary may determine, giving consideration to the needs and capacities of the recipient and the prevailing rates of interest (public and private), except that such rate shall not be less than a rate determined by the Secretary of the Treasury, taking into consideration the current average yield on outstanding marketable obligations of the United States with remaining periods of maturity comparable to the average maturities of such loans. No loan shall be made unless the Secretary shall have determined that there is reasonable prospect of repayment.

(C) The terms and conditions of loans issued under this section shall take into account the scope of the particular demonstration and any particular conditions which might reasonably be expected to result in additional costs to the recipient, and shall reflect the relative costs of gasoline and diesel fuel and methane and the projected savings in fuel costs to the recipient as a result of participating in the demonstration. In no instance shall a loan issued under this section be for a period in excess of five years.

(3) The Secretary shall provide for appropriate assistance to defray costs associated with complying with data acquisition and reporting requirements under this chapter.

(4) In the case of an organization comprised of both public and private entities, a package of technical and financial assistance shall be designed to the maximum extent feasible, in such a manner as to assist its public components as provided for in paragraph (1) and to assist its private components as provided for in paragraph (2) of this section.

(c) Fiscal year limitations

Not fewer than fifty demonstrations shall be assisted under this section with not fewer than ten being initiated in the fiscal year ending September 30, 1982, and not fewer than twenty being initiated in each of the fiscal years ending September 30, 1983, and September 30, 1984. In the case of demonstrations initiated under this chapter after the first fiscal year in which demonstrations are funded, the Secretary shall ascertain that plans for such demonstrations take into consideration information and findings included in reports filed on other demonstrations assisted under this chapter.

(d) Duration; recordkeeping requirements

Each demonstration shall have a duration of at least three years during which time records including, but not limited to, fuel efficiency indicators, emissions data, repair statistics, and detailed reports of any accidents, shall be maintained and reports made to the Secretary in accordance with guidelines promulgated by the Secretary prior to issuance of the first loan or grant under this section and amended no more often than twice annually.

(e) Selection of proposed demonstrations; discretionary and mandatory criteria

In selecting proposed demonstrations to be supported under this section, the Secretary shall, to the maximum extent practicable, assure representation of diverse operating conditions and vehicle types including, but not limited to—

(1) altitude and topography,
(2) climatic conditions,
(3) air quality conditions,
(4) industrial, commercial, and agricultural uses,
(5) varying vehicular structures, and
(6) average trip lengths:

Provided, however, That not fewer than two demonstrations initiated in each year shall be located in a county or standard metropolitan statistical area designated by the Secretary upon recommendation of the Administrator of the Environmental Protection Agency based on severity or uniqueness of air quality conditions: *And provided further*, That the fleet or portions of fleets participating in each demonstration with funding under this chapter shall consist of not fewer than fifty vehicles except in the case of one demonstration each year involving methane-fueled off-road agricultural equipment.

(Pub. L. 96–512, §7, Dec. 12, 1980, 94 Stat. 2830.)

§3807. Use of methane-fueled vehicles by Federal agencies and departments

The Secretary shall consult with the Postmaster General of the United States Postal Service, the Administrator of the General Services Administration, the Secretary of Defense, and the heads of other Federal agencies where appropriate to—

(a) determine the practicability of using methane vehicles in the performance of certain or all of the functions of their agencies based in counties and standard metropolitan statistical areas in which demonstrations under section 3806 of this title are being conducted; and

(b) arrange for appropriate use of methane-fueled vehicles at the earliest practicable date.

(Pub. L. 96–512, §8, Dec. 12, 1980, 94 Stat. 2832.)

§3808. Repealed. Pub. L. 104–66, title I, §1051(p), Dec. 21, 1995, 109 Stat. 717

Section, Pub. L. 96–512, §9, Dec. 12, 1980, 94 Stat. 2833, directed Secretary of Energy to submit such reports to Congress as Secretary deemed appropriate, including annual report on all activities under this chapter.

§3809. Authorization of appropriations; required funding

There are authorized to be appropriated to the Secretary for purposes of carrying out this chapter, not to exceed $3,000,000 for the fiscal year ending September 30, 1982, not less than one-half of which shall be for the purpose of making loans under section 3806(b) of this title; not to exceed $5,000,000 for the fiscal year ending September 30, 1983, not less than one-half of which shall be for the purpose of making loans under section 3806(b) of this title; not to exceed $5,000,000 for the fiscal year ending September 30, 1984, not less than one-half of which shall be for the purpose of making loans under section 3806(b) of this title; and such sums as may be necessary for the fiscal years ending September 30, 1985, and September 30, 1986. Any amount appropriated pursuant to this section shall remain available until expended.

(Pub. L. 96–512, §10, Dec. 12, 1980, 94 Stat. 2833.)

§3810. Relationship to other laws

(a) Modification or waiver

Nothing in this chapter shall be construed as authorizing the Secretary or any other official with respect to any activity pursuant to this chapter to modify or waive the application of any Federal, State or local laws dealing with the production, transportation, storage, safety, use or pricing of methane.

(b) Promulgation of rules

Nothing in this chapter shall be construed as granting the Secretary or any other Federal official any authority to promulgate rules of general application to regulate the production, transportation,

storage, safety, use or pricing of methane as a transportation fuel or vehicles which use methane as a transportation fuel.

(Pub. L. 96–512, §11, Dec. 12, 1980, 94 Stat. 2833.)

CHAPTER 65—LIABILITY RISK RETENTION

Sec.

3901. Definitions.
3902. Risk retention groups.
3903. Purchasing groups.
3904. Securities laws.
3905. Clarification concerning permissible State authority.
3906. Injunctive orders issued by United States district courts.

§3901. Definitions

(a) As used in this chapter—

(1) "insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under applicable State or Federal law;

(2) "liability"—

(A) means legal liability for damages (including costs of defense, legal costs and fees, and other claims expenses) because of injuries to other persons, damage to their property, or other damage or loss to such other persons resulting from or arising out of—

(i) any business (whether profit or nonprofit), trade, product, services (including professional services), premises, or operations, or

(ii) any activity of any State or local government, or any agency or political subdivision thereof; and

(B) does not include personal risk liability and an employer's liability with respect to its employees other than legal liability under the Federal Employers' Liability Act (45 U.S.C. 51 et seq.);

(3) "personal risk liability" means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from any personal, familial, or household responsibilities or activities, rather than from responsibilities or activities referred to in paragraphs (2)(A) and (2)(B);

(4) "risk retention group" means any corporation or other limited liability association—

(A) whose primary activity consists of assuming, and spreading all, or any portion, of the liability exposure of its group members;

(B) which is organized for the primary purpose of conducting the activity described under subparagraph (A);

(C) which—

(i) is chartered or licensed as a liability insurance company under the laws of a State and authorized to engage in the business of insurance under the laws of such State; or

(ii) before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before such date, had certified to the insurance commissioner of at least one State that it satisfied the capitalization requirements of such State, except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since such date

and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability (as such terms were defined in this section before October 27, 1986);

(D) which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person;

(E) which—

(i) has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group; or

(ii) has as its sole owner an organization which has as—

(I) its members only persons who comprise the membership of the risk retention group; and

(II) its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group;

(F) whose members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations;

(G) whose activities do not include the provision of insurance other than—

(i) liability insurance for assuming and spreading all or any portion of the similar or related liability exposure of its group members; and

(ii) reinsurance with respect to the similar or related liability exposure of any other risk retention group (or any member of such other group) which is engaged in businesses or activities so that such group (or member) meets the requirement described in subparagraph (F) for membership in the risk retention group which provides such reinsurance; and

(H) the name of which includes the phrase "Risk Retention Group".[1]

(5) "purchasing group" means any group which—

(A) has as one of its purposes the purchase of liability insurance on a group basis;

(B) purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in subparagraph (C);

(C) is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations; and

(D) is domiciled in any State;

(6) "State" means any State of the United States or the District of Columbia; and

(7) "hazardous financial condition" means that, based on its present or reasonably anticipated financial condition, a risk retention group is unlikely to be able—

(A) to meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or

(B) to pay other obligations in the normal course of business.

(b) Nothing in this chapter shall be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State, and the definitions of liability, personal risk liability, and insurance under any State law shall not be applied for the purposes of this chapter, including recognition or qualification of risk retention groups or purchasing groups.

(Pub. L. 97–45, §2, Sept. 25, 1981, 95 Stat. 949; Pub. L. 98–193, Dec. 1, 1983, 97 Stat. 1344; Pub. L. 99–563, §§3, 4, 12(b), Oct. 27, 1986, 100 Stat. 3170, 3171, 3177.)

REFERENCES IN TEXT

The Federal Employers' Liability Act (45 U.S.C. 51 et seq.), referred to in subsec. (a)(2)(B), is act Apr. 22,

1908, ch. 149, 35 Stat. 65, as amended, which is classified generally to chapter 2 (§51 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see Short Title note set out under section 51 of Title 45 and Tables.

CODIFICATION

October 27, 1986, referred to in subsec. (a)(4)(C)(ii), was in the original "the date of the enactment of the Risk Retention Act of 1986", which was translated as meaning the date of enactment of the Risk Retention Amendments of 1986 to reflect the probable intent of Congress.

AMENDMENTS

1986—Subsec. (a)(1) to (3). Pub. L. 99–563, §3(a), redesignated par. (2) as (1), added pars. (2) and (3), and struck out former par. (1) defining completed operations liability, and former par. (3) defining product liability.

Subsec. (a)(4). Pub. L. 99–563, §4(a)(1), struck out "taxable as a corporation, or as an insurance company, formed under the laws of any State, Bermuda, or the Cayman Islands" after "association" in introductory provisions.

Subsec. (a)(4)(A). Pub. L. 99–563, §4(a)(2), substituted "liability exposure" for "product liability or completed operations liability risk exposure".

Subsec. (a)(4)(C). Pub. L. 99–563, §4(a)(3), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "which is chartered or licensed as an insurance company and authorized to engage in the business of insurance under the laws of any State, or which is so chartered or licensed and authorized before January 1, 1985, under the laws of Bermuda or the Cayman Islands, except that any group so chartered or licensed and authorized under the laws of Bermuda or the Cayman Islands shall be considered to be a risk retention group only after it has certified to the insurance commissioner of at least one State that it satisfies the capitalization requirements of such State;".

Subsec. (a)(4)(E) to (H). Pub. L. 99–563, §4(a)(4), added subpars. (E) to (H), and struck out former subpar. (E) which read as follows: "which is composed of member each of whose principal activity consists of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product or products;".

Subsec. (a)(5). Pub. L. 99–563, §4(b), amended par. (5) generally. Prior to amendment, par. (5) read as follows: " 'purchasing group' means any group of persons which has as one of its purposes the purchase of product liability or completed operations liability insurance on a group basis;".

Subsec. (a)(7). Pub. L. 99–563, §3(b), added par. (7).

Subsec. (b). Pub. L. 99–563, §12(b), substituted "liability, personal risk liability, and insurance" for "product liability and product liability insurance".

1983—Subsec. (b). Pub. L. 98–193 substituted provision that nothing in this chapter would be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State, and that the definitions of product liability and product liability insurance under any State law would not be applied for the purposes of this chapter, including recognition or qualification of risk retention groups or purchasing groups for provision that the definition of product liability in this section would not be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State.

EFFECTIVE DATE OF 1986 AMENDMENT; APPLICABILITY

Pub. L. 99–563, §11(a), (b), and (c)(2), Oct. 27, 1986, 100 Stat. 3177, provided that:

"(a) GENERAL RULE.—Subject to subsection (b), this Act [see Short Title of 1986 Amendment note below] shall take effect on the date of its enactment [Oct. 27, 1986].

"(b) SPECIAL RULE REGARDING FEASIBILITY STUDY.—The provisions of section 3(d) of the Liability Risk Retention Act of 1986 (as added by section 5(b) of this Act) [15 U.S.C. 3902(d)], relating to the submission of a feasibility study, shall not apply with respect to any line or classification of liability insurance which—

"(1) was defined in the Product Liability Risk Retention Act of 1981 [Pub. L. 97–45, which enacted this chapter] before the date of the enactment of this Act [Oct. 27, 1986]; and

"(2) was offered before such date of enactment by any risk retention group which has been chartered and operating for not less than 3 years before such date of enactment.

"(c) RULE REGARDING POLLUTION LIABILITY.—

"(2) Nothing in this Act shall be construed, interpreted or applied to diminish the obligations of any person to establish or maintain evidence of financial responsibility or otherwise comply with any of the requirements of Federal environmental laws, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C. 9601 et seq.] and the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.]."

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–563, §1, Oct. 27, 1986, 100 Stat. 3170, provided that: "This Act [enacting sections 3905 and 3906 of this title, amending this section, sections 3902 and 3903 of this title, and sections 9671 to 9675 of Title 42, The Public Health and Welfare, enacting provisions set out as notes under this section and section 9671 of Title 42, and amending provisions set out as a note under this section] may be cited as the 'Risk Retention Amendments of 1986'."

SHORT TITLE

Pub. L. 97–45, §1, Sept. 25, 1981, 95 Stat. 949, as amended by Pub. L. 99–563, §12(a), Oct. 27, 1986, 100 Stat. 3177, provided that: "This Act [enacting this chapter] may be cited as the 'Liability Risk Retention Act of 1986'."

OVERSIGHT OF IMPLEMENTATION; REPORT TO CONGRESS

Pub. L. 99–563, §10, Oct. 27, 1986, 100 Stat. 3176, provided that:

"(a) IN GENERAL.—(1) Not later than September 1, 1987, and not later than September 1, 1989, the Secretary of Commerce shall submit reports to the Congress concerning implementation of this Act [see Short Title of 1986 Amendment note above].

"(2) Such report shall be based on—

"(A) the Secretary's consultation with State insurance commissioners, risk retention groups, purchasing groups, and other interested parties; and

"(B) the Secretary's analysis of other information available to the Secretary.

"(b) CONTENTS OF THE REPORT.—The report shall describe the Secretary's views concerning—

"(1) the contribution of this Act [see Short Title of 1986 Amendment note above] toward resolution of problems relating to the unavailability and unaffordability of liability insurance;

"(2) the extent to which the structure of regulation and preemption established by this Act is satisfactory;

"(3) the extent to which, in the implementation of this Act, the public is protected from unsound financial practices and other commercial abuses involving risk retention groups and purchasing groups;

"(4) the causes of any financial difficulties of risk retention groups and purchasing groups;

"(5) the extent to which risk retention groups and purchasing groups have been discriminated against under State laws, practices, and procedures contrary to the provisions and underlying policy of this Act and the Product Liability Risk Retention Act (as amended by this Act) [Pub. L. 97–45, which enacted this chapter]; and

"(6) such other comments and conclusions as the Secretary deems relevant to assessment of the implementation of this Act."

[1] *So in original. The period probably should be a semicolon.*

§3902. Risk retention groups

(a) Exemptions from State laws, rules, regulations, or orders

Except as provided in this section, a risk retention group is exempt from any State law, rule, regulation, or order to the extent that such law, rule, regulation, or order would—

(1) make unlawful, or regulate, directly or indirectly, the operation of a risk retention group except that the jurisdiction in which it is chartered may regulate the formation and operation of such a group and any State may require such a group to—

(A) comply with the unfair claim settlement practices law of the State;

(B) pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on admitted insurers and surplus lines insurers, brokers, or policyholders under the laws of the State;

(C) participate, on a nondiscriminatory basis, in any mechanism established or authorized under the law of the State for the equitable apportionment among insurers of liability insurance losses and expenses incurred on policies written through such mechanism;

(D) register with and designate the State insurance commissioner as its agent solely for the purpose of receiving service of legal documents or process;

(E) submit to an examination by the State insurance commissioners in any State in which the group is doing business to determine the group's financial condition, if—

(i) the commissioner of the jurisdiction in which the group is chartered has not begun or has refused to initiate an examination of the group; and

(ii) any such examination shall be coordinated to avoid unjustified duplication and unjustified repetition;

(F) comply with a lawful order issued—

(i) in a delinquency proceeding commenced by the State insurance commissioner if there has been a finding of financial impairment under subparagraph (E); or

(ii) in a voluntary dissolution proceeding;

(G) comply with any State law regarding deceptive, false, or fraudulent acts or practices, except that if the State seeks an injunction regarding the conduct described in this subparagraph, such injunction must be obtained from a court of competent jurisdiction;

(H) comply with an injunction issued by a court of competent jurisdiction, upon a petition by the State insurance commissioner alleging that the group is in hazardous financial condition or is financially impaired; and

(I) provide the following notice, in 10-point type, in any insurance policy issued by such group:

"NOTICE

"This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your State. State insurance insolvency guaranty funds are not available for your risk retention group."

(2) require or permit a risk retention group to participate in any insurance insolvency guaranty association to which an insurer licensed in the State is required to belong;

(3) require any insurance policy issued to a risk retention group or any member of the group to be countersigned by an insurance agent or broker residing in that State; or

(4) otherwise, discriminate against a risk retention group or any of its members, except that nothing in this section shall be construed to affect the applicability of State laws generally applicable to persons or corporations.

(b) Scope of exemptions

The exemptions specified in subsection (a) of this section apply to laws governing the insurance business pertaining to—

(1) liability insurance coverage provided by a risk retention group for—

(A) such group; or

(B) any person who is a member of such group;

(2) the sale of liability insurance coverage for a risk retention group; and

(3) the provision of—

(A) insurance related services;

(B) management, operations, and investment activities; or

(C) loss control and claims administration (including loss control and claims administration services for uninsured risks retained by any member of such group);

for a risk retention group or any member of such group with respect to liability for which the group provides insurance.

(c) Licensing of agents or brokers for risk retention groups

A State may require that a person acting, or offering to act, as an agent or broker for a risk retention group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

(d) Documents for submission to State insurance commissioners

Each risk retention group shall submit—

(1) to the insurance commissioner of the State in which it is chartered—

(A) before it may offer insurance in any State, a plan of operation or a feasibility study which includes the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer; and

(B) revisions of such plan or study if the group intends to offer any additional lines of liability insurance;

(2) to the insurance commissioner of each State in which it intends to do business, before it may offer insurance in such State—

(A) a copy of such plan or study (which shall include the name of the State in which it is chartered and its principal place of business); and

(B) a copy of any revisions to such plan or study, as provided in paragraph (1)(B) (which shall include any change in the designation of the State in which it is chartered); and

(3) to the insurance commissioner of each State in which it is doing business, a copy of the group's annual financial statement submitted to the State in which the group is chartered as an insurance company, which statement shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by—

(A) a member of the American Academy of Actuaries, or

(B) a qualified loss reserve specialist.

(e) Power of courts to enjoin conduct

Nothing in this section shall be construed to affect the authority of any Federal or State court to enjoin—

(1) the solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in such group; or

(2) the solicitation or sale of insurance by, or operation of, a risk retention group that is in hazardous financial condition or is financially impaired.

(f) State powers to enforce State laws

(1) Subject to the provisions of subsection (a)(1)(G) of this section (relating to injunctions) and paragraph (2), nothing in this chapter shall be construed to affect the authority of any State to make use of any of its powers to enforce the laws of such State with respect to which a risk retention group is not exempt under this chapter.

(2) If a State seeks an injunction regarding the conduct described in paragraphs (1) and (2) of subsection (e) of this section, such injunction must be obtained from a Federal or State court of competent jurisdiction.

(g) States' authority to sue

Nothing in this chapter shall affect the authority of any State to bring an action in any Federal or State court.

(h) State authority to regulate or prohibit ownership interests in risk retention groups

Nothing in this chapter shall be construed to affect the authority of any State to regulate or prohibit the ownership interest in a risk retention group by an insurance company in that State, other than in the case of ownership interest in a risk retention group whose members are insurance companies.

(Pub. L. 97–45, §3, Sept. 25, 1981, 95 Stat. 950; Pub. L. 99–563, §§5, 7, 8(a), 12(c), Oct. 27, 1986, 100 Stat. 3172, 3175, 3178.)

AMENDMENTS

1986—Subsec. (a)(1)(C). Pub. L. 99–563, §12(c), struck out "product liability or completed operations" before "liability insurance losses".

Subsec. (a)(1)(D). Pub. L. 99–563, §5(b)(1), redesignated subpar. (E) as (D), substituted a semicolon for ", and, upon request, furnish such commissioner a copy of any financial report submitted by the risk retention group to the commissioners of the chartering or licensing jurisdiction;", and struck out former subpar. (D) which read as follows: "submit to the appropriate authority reports and other information required of licensed insurers under the laws of a State relating solely to product liability or completed operations liability insurance losses and expenses;".

Subsec. (a)(1)(E). Pub. L. 99–563, §5(b)(1)(A), (c), redesignated subpar. (F) as (E), further redesignated cl. (ii) as (i), added cl. (ii), and struck out former cl. (i) which read as follows: "the commissioner has reason to believe the risk retention group is in a financially impaired condition; and". Former subpar. (E) redesignated (D).

Subsec. (a)(1)(F). Pub. L. 99–563, §5(b)(1)(A), (d), redesignated subpar. (G) as (F) and amended it generally. Prior to amendment, subpar. (F) read as follows: "comply with a lawful order issued in a delinquency proceeding commenced by the State insurance commissioner if the commissioner of the jurisdiction in which the group is chartered has failed to initiate such a proceeding after notice of a finding of financial impairment under subparagraph (F) of this paragraph;". Former subpar. (F) redesignated (E).

Subsec. (a)(1)(G) to (I). Pub. L. 99–563, §5(b)(1)(A), (e), added subpars. (G) to (I). Former subpar. (G) redesignated (F).

Subsec. (b). Pub. L. 99–563, §5(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "The exemptions specified in subsection (a) of this section apply to—

"(1) product liability or completed operations liability insurance coverage provided by a risk retention group for—

"(A) such group; or

"(B) any person who is a member of such group;

"(2) the sale of product liability or completed operations liability insurance coverage for a risk retention group; and

"(3) the provision of insurance related services or management services for a risk retention group or any member of such group."

Subsecs. (d) to (h). Pub. L. 99–563, §§5(b)(2), 7, 8(a), added subsecs. (d) to (h).

SPECIAL RULE REGARDING FEASIBILITY STUDY

The provisions of subsec. (d) of this section, relating to the submission of a feasibility study, not applicable with respect to any line or classification of liability insurance which was defined in this chapter before Oct. 27, 1986, and was offered before such date by any risk retention group chartered and operating for not less than 3 years before such date, see section 11(b) of Pub. L. 99–563, set out as an Effective Date of 1986 Amendment; Applicability note under section 3901 of this title.

§3903. Purchasing groups

(a) Exemptions from State laws, rules, regulations, or orders

Except as provided in this section and section 3905 of this title, a purchasing group is exempt from any State law, rule, regulation, or order to the extent that such law, rule, regulation, or order would—

(1) prohibit the establishment of a purchasing group;

(2) make it unlawful for an insurer to provide or offer to provide insurance on a basis providing, to a purchasing group or its members, advantages, based on their loss and expense experience, not afforded to other persons with respect to rates, policy forms, coverages, or other matters;

(3) prohibit a purchasing group or its members from purchasing insurance on the group basis described in paragraph (2) of this subsection;

(4) prohibit a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time;

(5) require that a purchasing group must have a minimum number of members, common ownership or affiliation, or a certain legal form;

(6) require that a certain percentage of a purchasing group must obtain insurance on a group

basis;

(7) require that any insurance policy issued to a purchasing group or any members of the group be countersigned by an insurance agent or broker residing in that State; or

(8) otherwise discriminate against a purchasing group or any of its members.

(b) Scope of exemptions

The exemptions specified in subsection (a) of this section apply to—

(1) liability insurance provided to—

(A) a purchasing group; or

(B) any person who is a member of a purchasing group; and

(2) the provision of—

(A) liability coverage;

(B) insurance related services; or

(C) management services;

to a purchasing group or member of the group.

(c) Licensing of agents or brokers for purchasing groups

A State may require that a person acting, or offering to act, as an agent or broker for a purchasing group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

(d) Notice to State insurance commissioners of intent to do business

(1) A purchasing group which intends to do business in any State shall furnish notice of such intention to the insurance commissioner of such State. Such notice—

(A) shall identify the State in which such group is domiciled;

(B) shall specify the lines and classifications of liability insurance which the purchasing group intends to purchase;

(C) shall identify the insurance company from which the group intends to purchase insurance and the domicile of such company; and

(D) shall identify the principal place of business of the group.

(2) Such purchasing group shall notify the commissioner of any such State as to any subsequent changes in any of the items provided in such notice.

(e) Designation of agent for service of documents and process

A purchasing group shall register with and designate the State insurance commissioner of each State in which it does business as its agent solely for the purpose of receiving service of legal documents or process, except that such requirement shall not apply in the case of a purchasing group—

(1) which—

(A) was domiciled before April 1, 1986; and

(B) is domiciled on and after October 27, 1986; [1]

in any State of the United States;

(2) which—

(A) before September 25, 1981, purchased insurance from an insurance carrier licensed in any State; and

(B) since September 25, 1981, purchases its insurance from an insurance carrier licensed in any State;

(3) which was a purchasing group under the requirements of this chapter before October 27, 1986; and

(4) as long as such group does not purchase insurance that was not authorized for purposes of an

exemption under this chapter as in effect before October 27, 1986.

(f) Purchases of insurance through licensed agents or brokers acting pursuant to surplus lines laws

A purchasing group may not purchase insurance from a risk retention group that is not chartered in a State or from an insurer not admitted in the State in which the purchasing group is located, unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws and regulations of such State.

(g) State powers to enforce State laws

Nothing in this chapter shall be construed to affect the authority of any State to make use of any of its powers to enforce the laws of such State with respect to which a purchasing group is not exempt under this chapter.

(h) States' authority to sue

Nothing in this chapter shall affect the authority of any State to bring an action in any Federal or State court.

(Pub. L. 97–45, §4, Sept. 25, 1981, 95 Stat. 951; Pub. L. 99–563, §§6, 8(b), 12(d), Oct. 27, 1986, 100 Stat. 3174, 3175, 3178.)

CODIFICATION

October 27, 1986, referred to in subsec. (e)(1)(B), was in the original "the date of the enactment of this Act" which was translated as meaning the date of the enactment of Pub. L. 99–563, which enacted subsec. (e), to reflect the probable intent of Congress.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–563, §8(b)(1), inserted reference to section 3905 of this title.

Subsec. (b)(1). Pub. L. 99–563, §12(d)(1), substituted "liability insurance" for "product liability or completed operations liability insurance, and comprehensive general liability insurance which includes either of these coverages,".

Subsec. (b)(2)(A). Pub. L. 99–563, §12(d)(2), struck out "product liability or completed operations insurance, and comprehensive general" before "liability coverage".

Subsecs. (d) to (h). Pub. L. 99–563, §§6, 8(b)(2), added subsecs. (d) to (h).

[1] *See Codification note below.*

§3904. Securities laws

(a) Ownership interest of members in risk retention groups

The ownership interests of members in a risk retention group shall be—

(1) considered to be exempted securities for purposes of section 5 of the Securities Act of 1933 [15 U.S.C. 77e] and for purposes of section 12 of the Securities Exchange Act of 1934 [15 U.S.C. 78l]; and

(2) considered to be securities for purposes of the provisions of section 17 of the Securities Act of 1933 [15 U.S.C. 77q] and the provisions of section 10 of the Securities Exchange Act of 1934 [15 U.S.C. 78j].

(b) Investment companies

A risk retention group shall not be considered to be an investment company for purposes of the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.).

(c) State blue sky laws

The ownership interests of members in a risk retention group shall not be considered securities for purposes of any State blue sky law.

(Pub. L. 97–45, §5, Sept. 25, 1981, 95 Stat. 952.)

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (b), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a–51 of this title and Tables.

§3905. Clarification concerning permissible State authority

(a) No exemption from State motor vehicle no-fault and motor vehicle financial responsibility laws

Nothing in this chapter shall be construed to exempt a risk retention group or purchasing group authorized under this chapter from the policy form or coverage requirements of any State motor vehicle no-fault or motor vehicle financial responsibility insurance law.

(b) Applicability of exemptions

The exemptions provided under this chapter shall apply only to the provision of liability insurance by a risk retention group or the purchase of liability insurance by a purchasing group, and nothing in this chapter shall be construed to permit the provision or purchase of any other line of insurance by any such group.

(c) Prohibited insurance policy coverage

The terms of any insurance policy provided by a risk retention group or purchased by a purchasing group shall not provide or be construed to provide insurance policy coverage prohibited generally by State statute or declared unlawful by the highest court of the State whose law applies to such policy.

(d) State authority to specify acceptable means of demonstrating financial responsibility

Subject to the provisions of section 3902(a)(4) of this title relating to discrimination, nothing in this chapter shall be construed to preempt the authority of a State to specify acceptable means of demonstrating financial responsibility where the State has required a demonstration of financial responsibility as a condition for obtaining a license or permit to undertake specified activities. Such means may include or exclude insurance coverage obtained from an admitted insurance company, an excess lines company, a risk retention group, or any other source regardless of whether coverage is obtained directly from an insurance company or through a broker, agent, purchasing group, or any other person.

(Pub. L. 97–45, §6, as added Pub. L. 99–563, §8(c), Oct. 27, 1986, 100 Stat. 3175.)

§3906. Injunctive orders issued by United States district courts

Any district court of the United States may issue an order enjoining a risk retention group from soliciting or selling insurance, or operating, in any State (or in all States) or in any territory or possession of the United States upon a finding of such court that such group is in hazardous financial condition. Such order shall be binding on such group, its officers, agents, and employees, and on any other person acting in active concert with any such officer, agent, or employee, if such other person has actual notice of such order.

(Pub. L. 97–45, §7, as added Pub. L. 99–563, §9, Oct. 27, 1986, 100 Stat. 3176.)

CHAPTER 66—PROMOTION OF EXPORT TRADE

SUBCHAPTER I—EXPORT TRADING COMPANIES AND TRADE ASSOCIATIONS

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SUBCHAPTER I—EXPORT TRADING COMPANIES AND TRADE ASSOCIATIONS

§4001. Congressional findings and declaration of purpose

(a) The Congress finds that—

(1) United States exports are responsible for creating and maintaining one out of every nine manufacturing jobs in the United States and for generating one out of every seven dollars of total United States goods produced;

(2) the rapidly growing service-related industries are vital to the well-being of the United States economy inasmuch as they create jobs for seven out of every ten Americans, provide 65 per centum of the Nation's gross national product, and offer the greatest potential for significantly increased industrial trade involving finished products;

(3) trade deficits contribute to the decline of the dollar on international currency markets and have an inflationary impact on the United States economy;

(4) tens of thousands of small- and medium-sized United States businesses produce exportable goods or services but do not engage in exporting;

(5) although the United States is the world's leading agricultural exporting nation, many farm products are not marketed as widely and effectively abroad as they could be through export trading companies;

(6) export trade services in the United States are fragmented into a multitude of separate functions, and companies attempting to offer export trade services lack financial leverage to reach a significant number of potential United States exporters;

(7) the United States needs well-developed export trade intermediaries which can achieve economies of scale and acquire expertise enabling them to export goods and services profitably, at low per unit cost to producers;

(8) the development of export trading companies in the United States has been hampered by business attitudes and by Government regulations;

(9) those activities of State and local governmental authorities which initiate, facilitate, or expand exports of goods and services can be an important source for expansion of total United States exports, as well as for experimentation in the development of innovative export programs keyed to local, State, and regional economic needs;

(10) if United States trading companies are to be successful in promoting United States exports and in competing with foreign trading companies, they should be able to draw on the resources,

expertise, and knowledge of the United States banking system, both in the United States and abroad; and

(11) the Department of Commerce is responsible for the development and promotion of United States exports, and especially for facilitating the export of finished products by United States manufacturers.

(b) It is the purpose of this chapter to increase United States exports of products and services by encouraging more efficient provision of export trade services to United States producers and suppliers, in particular by establishing an office within the Department of Commerce to promote the formation of export trade associations and export trading companies, by permitting bank holding companies, bankers' banks, and Edge Act corporations and agreement corporations that are subsidiaries of bank holding companies to invest in export trading companies, by reducing restrictions on trade financing provided by financial institutions, and by modifying the application of the antitrust laws to certain export trade.

(Pub. L. 97–290, title I, §102, Oct. 8, 1982, 96 Stat. 1233.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in original "this Act", meaning Pub. L. 97–290, Oct. 8, 1982, 96 Stat. 1233, which enacted this chapter and section 6a of this title and section 635a–4 of Title 12, Banks and Banking, amended section 45 of this title and sections 372 and 1843 of Title 12, and enacted provisions set out as notes under sections 1, 4001, and 4011 of this title and sections 1841 and 1843 of Title 12. For complete classification of this Act to the Code, see Tables.

Edge Act corporation, referred to in subsec. (b), is a corporation organized under section 25A of the Federal Reserve Act, as added by act Dec. 24, 1919, ch. 18, 41 Stat. 378, and amended, popularly known as the Edge Act, which is classified to subchapter II (§611 et seq.) of chapter 6 of Title 12. For complete classification of this Act to the Code, see Short Title note set out under section 611 of Title 12 and Tables.

SHORT TITLE

Pub. L. 97–290, title I, §101, Oct. 8, 1982, 96 Stat. 1233, provided that: "This title [enacting this subchapter] may be cited as the 'Export Trading Company Act of 1982'."

§4002. Definitions

(a) For purposes of this subchapter—

(1) the term "export trade" means trade or commerce in goods or services produced in the United States which are exported, or in the course of being exported, from the United States to any other country;

(2) the term "services" includes, but is not limited to, accounting, amusement, architectural, automatic data processing, business, communications, construction franchising and licensing, consulting, engineering, financial, insurance, legal, management, repair, tourism, training, and transportation services;

(3) the term "export trade services" includes, but is not limited to, consulting, international market research, advertising, marketing, insurance, product research and design, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, financing, and taking title to goods, when provided in order to facilitate the export of goods or services produced in the United States;

(4) the term "export trading company" means a person, partnership, association, or similar organization, whether operated for profit or as a nonprofit organization, which does business under the laws of the United States or any State and which is organized and operated principally for purposes of—

(A) exporting goods or services produced in the United States; or

(B) facilitating the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services;

(5) the term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;

(6) the term "United States" means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands; and

(7) the term "antitrust laws" means the antitrust laws as defined in section 12(a) of this title, section 45 of this title to the extent that section 45 of this title applies to unfair methods of competition, and any State antitrust or unfair competition law.

(b) The Secretary of Commerce may by regulation further define any term defined in subsection (a) of this section, in order to carry out this subchapter.

(Pub. L. 97–290, title I, §103, Oct. 8, 1982, 96 Stat. 1234.)

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§4003. Office of Export Trade in Department of Commerce

The Secretary of Commerce shall establish within the Department of Commerce an office to promote and encourage to the greatest extent feasible the formation of export trade associations and export trading companies. Such office shall provide information and advice to interested persons and shall provide a referral service to facilitate contact between producers of exportable goods and services and firms offering export trade services. The office shall establish a program to encourage and assist the operation of other export intermediaries, including existing and newly formed export management companies.

(Pub. L. 97–290, title I, §104, Oct. 8, 1982, 96 Stat. 1235; Pub. L. 100–418, title II, §2310, Aug. 23, 1988, 102 Stat. 1346.)

AMENDMENTS

1988—Pub. L. 100–418 inserted requirement that the office establish a program to encourage and assist operation of other export intermediaries, including existing and newly formed export management companies.

SUBCHAPTER II—EXPORT TRADE CERTIFICATES OF REVIEW

§4011. Export trade promotion duties of Secretary of Commerce

To promote and encourage export trade, the Secretary may issue certificates of review and advise and assist any person with respect to applying for certificates of review.

(Pub. L. 97–290, title III, §301, Oct. 8, 1982, 96 Stat. 1240.)

EFFECTIVE DATE

Pub. L. 97–290, title III, §312, Oct. 8, 1982, 96 Stat. 1245, provided that:

"(a) Except as provided in subsection (b), this title [enacting this subchapter] shall take effect on the date of the enactment of this Act [Oct. 8, 1982].

"(b) Section 302 and section 303 [enacting sections 4012 and 4013 of this title] shall take effect 90 days after the effective date of the rules and regulations first promulgated under section 310 [enacting section 4020 of this title]."

REPORT ON EXPORT TRADING COMPANIES

Pub. L. 100–418, title II, §2311, Aug. 23, 1988, 102 Stat. 1346, directed Secretary of Commerce to submit a report, not later than 18 months after Aug. 23, 1988, to Committee on Banking, Housing, and Urban Affairs of Senate, and to Committee on Banking, Finance and Urban Affairs, Committee on Foreign Affairs, and Committee on the Judiciary of House of Representatives, on activities of Department of Commerce to promote and encourage formation of new and operation of existing and new export promotion intermediaries, including export management companies, export trade associations, bank export trading companies, and export trading companies, with report to include a survey of activities of export management companies, export trade associations, and those bank export trading companies and export trading companies established pursuant to amendments made by title II of the Export Trading Company Act of 1982 and pursuant to title III of that Act, but not to contain any information subject to the protections from disclosure provided in that Act.

FEDERAL COAL EXPORT COMMISSION

Pub. L. 99–83, title XIII, §1304, Aug. 8, 1985, 99 Stat. 282, provided for establishment, membership, etc., of Federal Coal Export Commission, required Commission to convene at least four times a year for consultation on activities leading to increased cooperation among entities involved in United States coal exports, with goal of expanding the United States share of international market, specified activities of Commission, including examination of potential for small- and medium-sized companies to enter export coal trade through exporting trading companies, directed Commission to report its finding and recommendations to President and Congress within two years after its first meeting, and terminated Commission upon submission of its report.

§4012. Application for issuance of certificate of review

(a) Written form; limitation to export trade; compliance with regulations

To apply for a certificate of review, a person shall submit to the Secretary a written application which—

(1) specifies conduct limited to export trade, and

(2) is in a form and contains any information, including information pertaining to the overall market in which the applicant operates, required by rule or regulation promulgated under section 4020 of this title.

(b) Publication of notice of application; transmittal to Attorney General

(1) Within ten days after an application submitted under subsection (a) of this section is received by the Secretary, the Secretary shall publish in the Federal Register a notice that announces that an application for a certificate of review has been submitted, identifies each person submitting the application, and describes the conduct for which the application is submitted.

(2) Not later than seven days after an application submitted under subsection (a) of this section is received by the Secretary, the Secretary shall transmit to the Attorney General—

(A) a copy of the application,

(B) any information submitted to the Secretary in connection with the application, and

(C) any other relevant information (as determined by the Secretary) in the possession of the Secretary, including information regarding the market share of the applicant in the line of commerce to which the conduct specified in the application relates.

(Pub. L. 97–290, title III, §302, Oct. 8, 1982, 96 Stat. 1240.)

EFFECTIVE DATE

Section effective 90 days after effective date of rules and regulations first promulgated under section 4020 of this title, see section 312(b) of Pub. L. 97–290 set out as a note under section 4011 of this title.

§4013. Issuance of certificate

(a) Requirements

A certificate of review shall be issued to any applicant that establishes that its specified export

trade, export trade activities, and methods of operation will—

(1) result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant,

(2) not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by the applicant,

(3) not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise, or services of the class exported by the applicant, and

(4) not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

(b) Time for determination; specification in certificate

Within ninety days after the Secretary receives an application for a certificate of review, the Secretary shall determine whether the applicant's export trade, export trade activities, and methods of operation meet the standards of subsection (a) of this section. If the Secretary, with the concurrence of the Attorney General, determines that such standards are met, the Secretary shall issue to the applicant a certificate of review. The certificate of review shall specify—

(1) the export trade, export trade activities, and methods of operation to which the certificate applies,

(2) the person to whom the certificate of review is issued, and

(3) any terms and conditions the Secretary or the Attorney General deems necessary to assure compliance with the standards of subsection (a) of this section.

(c) Expedited action

If the applicant indicates a special need for prompt disposition, the Secretary and the Attorney General may expedite action on the application, except that no certificate of review may be issued within thirty days of publication of notice in the Federal Register under section 4012(b)(1) of this title.

(d) Notification of denial; request for reconsideration

(1) If the Secretary denies in whole or in part an application for a certificate, he shall notify the applicant of his determination and the reasons for it.

(2) An applicant may, within thirty days of receipt of notification that the application has been denied in whole or in part, request the Secretary to reconsider the determination. The Secretary, with the concurrence of the Attorney General, shall notify the applicant of the determination upon reconsideration within thirty days of receipt of the request.

(e) Return of documents upon request after denial

If the Secretary denies an application for the issuance of a certificate of review and thereafter receives from the applicant a request for the return of documents submitted by the applicant in connection with the application for the certificate, the Secretary and the Attorney General shall return to the applicant, not later than thirty days after receipt of the request, the documents and all copies of the documents available to the Secretary and the Attorney General, except to the extent that the information contained in a document has been made available to the public.

(f) Fraudulent procurement of certificate

A certificate shall be void ab initio with respect to any export trade, export trade activities, or methods of operation for which a certificate was procured by fraud.

(Pub. L. 97–290, title III, §303, Oct. 8, 1982, 96 Stat. 1241.)

EFFECTIVE DATE

Section effective 90 days after effective date of rules and regulations first promulgated under section 4020 of this title, see section 312(b) of Pub. L. 97–290 set out as a note under section 4011 of this title.

§4014. Reporting requirement; amendment of certificate; revocation

(a) Report of changes in matters specified; application to amend; treatment as application for issuance

(1) Any applicant who receives a certificate of review—

(A) shall promptly report to the Secretary any change relevant to the matters specified in the certificate, and

(B) may submit to the Secretary an application to amend the certificate to reflect the effect of the change on the conduct specified in the certificate.

(2) An application for an amendment to a certificate of review shall be treated as an application for the issuance of a certificate. The effective date of an amendment shall be the date on which the application for the amendment is submitted to the Secretary.

(b) Request for compliance information; failure to provide; notice of noncompliance; revocation or modification; antitrust investigation; no civil investigative demand

(1) If the Secretary or the Attorney General has reason to believe that the export trade, export trade activities, or methods of operation of a person holding a certificate of review no longer comply with the standards of section 4013(a) of this title, the Secretary shall request such information from such person as the Secretary or the Attorney General deems necessary to resolve the matter of compliance. Failure to comply with such request shall be grounds for revocation of the certificate under paragraph (2).

(2) If the Secretary or the Attorney General determines that the export trade, export trade activities, or methods of operation of a person holding a certificate no longer comply with the standards of section 4013(a) of this title, or that such person has failed to comply with a request made under paragraph (1), the Secretary shall give written notice of the determination to such person. The notice shall include a statement of the circumstances underlying, and the reasons in support of, the determination. In the 60-day period beginning 30 days after the notice is given, the Secretary shall revoke the certificate or modify it as the Secretary or the Attorney General deems necessary to cause the certificate to apply only to the export trade, export trade activities, or methods of operation which are in compliance with the standards of section 4013(a) of this title.

(3) For purposes of carrying out this subsection, the Attorney General, and the Assistant Attorney General in charge of the antitrust division of the Department of Justice, may conduct investigations in the same manner as the Attorney General and the Assistant Attorney General conduct investigations under section 1312 of this title, except that no civil investigative demand may be issued to a person to whom a certificate of review is issued if such person is the target of such investigation.

(Pub. L. 97–290, title III, §304, Oct. 8, 1982, 96 Stat. 1242.)

EFFECTIVE DATE

Section effective Oct. 8, 1982, see section 312 of Pub. L. 97–290, set out as a note under section 4011 of this title.

§4015. Judicial review; admissibility

(a) District court review of grants or denials; erroneous determination

If the Secretary grants or denies, in whole or in part, an application for a certificate of review or for an amendment to a certificate, or revokes or modifies a certificate pursuant to section 4014(b) of this title, any person aggrieved by such determination may, within 30 days of the determination, bring an action in any appropriate district court of the United States to set aside the determination on the ground that such determination is erroneous.

(b) Exclusive provision for review

Except as provided in subsection (a) of this section, no action by the Secretary or the Attorney General pursuant to this subchapter shall be subject to judicial review.

(c) Inadmissibility in antitrust proceedings

If the Secretary denies, in whole or in part, an application for a certificate of review or for an amendment to a certificate, or revokes or amends a certificate, neither the negative determination nor the statement of reasons therefor shall be admissible in evidence, in any administrative or judicial proceeding, in support of any claim under the antitrust laws.

(Pub. L. 97–290, title III, §305, Oct. 8, 1982, 96 Stat. 1243.)

EFFECTIVE DATE

Section effective Oct. 8, 1982, see section 312 of Pub. L. 97–290, set out as a note under section 4011 of this title.

§4016. Protection conferred by certificate of review

(a) Protection from civil or criminal antitrust actions

Except as provided in subsection (b) of this section, no criminal or civil action may be brought under the antitrust laws against a person to whom a certificate of review is issued which is based on conduct which is specified in, and complies with the terms of, a certificate issued under section 4013 of this title which certificate was in effect when the conduct occurred.

(b) Special restraint of trade civil actions; time limitations; certificate governed conduct presumed in compliance; award of costs to successful defendant; suit by Attorney General

(1) Any person who has been injured as a result of conduct engaged in under a certificate of review may bring a civil action for injunctive relief, actual damages, the loss of interest on actual damages, and the cost of suit (including a reasonable attorney's fee) for the failure to comply with the standards of section 4013(a) of this title. Any action commenced under this subchapter shall proceed as if it were an action commenced under section 15 or section 26 of this title, except that the standards of section 4013(a) of this title and the remedies provided in this paragraph shall be the exclusive standards and remedies applicable to such action.

(2) Any action brought under paragraph (1) shall be filed within two years of the date the plaintiff has notice of the failure to comply with the standards of section 4013(a) of this title but in any event within four years after the cause of action accrues.

(3) In any action brought under paragraph (1), there shall be a presumption that conduct which is specified in and complies with a certificate of review does comply with the standards of section 4013(a) of this title.

(4) In any action brought under paragraph (1), if the court finds that the conduct does comply with the standards of section 4013(a) of this title, the court shall award to the person against whom the claim is brought the cost of suit attributable to defending against the claim (including a reasonable attorney's fee).

(5) The Attorney General may file suit pursuant to section 25 of this title to enjoin conduct threatening clear and irreparable harm to the national interest.

(Pub. L. 97–290, title III, §306, Oct. 8, 1982, 96 Stat. 1243.)

EFFECTIVE DATE

Section effective Oct. 8, 1982, see section 312 of Pub. L. 97–290, set out as a note under section 4011 of this title.

§4017. Guidelines

(a) Issuance; content

To promote greater certainty regarding the application of the antitrust laws to export trade, the

Secretary, with the concurrence of the Attorney General, may issue guidelines—

(1) describing specific types of conduct with respect to which the Secretary, with the concurrence of the Attorney General, has made or would make, determinations under sections 4013 and 4014 of this title, and

(2) summarizing the factual and legal bases in support of the determinations.

(b) Administrative rulemaking requirements not applicable

Section 553 of title 5 shall not apply to the issuance of guidelines under subsection (a) of this section.

(Pub. L. 97–290, title III, §307, Oct. 8, 1982, 96 Stat. 1244.)

EFFECTIVE DATE

Section effective Oct. 8, 1982, see section 312 of Pub. L. 97–290, set out as a note under section 4011 of this title.

§4018. Annual reports

Every person to whom a certificate of review is issued shall submit to the Secretary an annual report, in such form and at such time as the Secretary may require, that updates where necessary the information required by section 4012(a) of this title.

(Pub. L. 97–290, title III, §308, Oct. 8, 1982, 96 Stat. 1244.)

EFFECTIVE DATE

Section effective Oct. 8, 1982, see section 312 of Pub. L. 97–290, set out as a note under section 4011 of this title.

§4019. Disclosure of information

(a) Exemption

Information submitted by any person in connection with the issuance, amendment, or revocation of a certificate of review shall be exempt from disclosure under section 552 of title 5.

(b) Protection of potentially harmful confidential information; exceptions: Congress; judicial or administrative proceedings; consent; necessity for determination; Federal law; regulations

(1) Except as provided in paragraph (2), no officer or employee of the United States shall disclose commercial or financial information submitted in connection with the issuance, amendment, or revocation of a certificate of review if the information is privileged or confidential and if disclosure of the information would cause harm to the person who submitted the information.

(2) Paragraph (1) shall not apply with respect to information disclosed—

(A) upon a request made by the Congress or any committee of the Congress,

(B) in a judicial or administrative proceeding, subject to appropriate protective orders,

(C) with the consent of the person who submitted the information,

(D) in the course of making a determination with respect to the issuance, amendment, or revocation of a certificate of review, if the Secretary deems disclosure of the information to be necessary in connection with making the determination,

(E) in accordance with any requirement imposed by a statute of the United States, or

(F) in accordance with any rule or regulation promulgated under section 4020 of this title permitting the disclosure of the information to an agency of the United States or of a State on the condition that the agency will disclose the information only under the circumstances specified in subparagraphs (A) through (E).

(Pub. L. 97–290, title III, §309, Oct. 8, 1982, 96 Stat. 1244.)

EFFECTIVE DATE

Section effective Oct. 8, 1982, see section 312 of Pub. L. 97–290, set out as a note under section 4011 of this title.

§4020. Rules and regulations

The Secretary, with the concurrence of the Attorney General, shall promulgate such rules and regulations as are necessary to carry out the purposes of this chapter.

(Pub. L. 97–290, title III, §310, Oct. 8, 1982, 96 Stat. 1245.)

REFERENCES IN TEXT

This chapter, referred to in text, was in original "this Act", meaning Pub. L. 97–290, Oct. 8, 1982, 96 Stat. 1233, which enacted this chapter and section 6a of this title and section 635a–4 of Title 12, Banks and Banking, amended section 45 of this title and sections 372 and 1843 of Title 12, and enacted provisions set out as notes under sections 1, 4001, and 4011 of this title and sections 1841 and 1843 of Title 12. For complete classification of this Act to the Code, see Tables.

EFFECTIVE DATE

Section effective Oct. 8, 1982, see section 312 of Pub. L. 97–290, set out as a note under section 4011 of this title.

§4021. Definitions

As used in this subchapter—

(1) the term "export trade" means trade or commerce in goods, wares, merchandise, or services exported, or in the course of being exported, from the United States or any territory thereof to any foreign nation,

(2) the term "service" means intangible economic output, including, but not limited to—

(A) business, repair, and amusement services,

(B) management, legal, engineering, architectural, and other professional services, and

(C) financial, insurance, transportation, informational and any other data-based services, and communication services,

(3) the term "export trade activities" means activities or agreements in the course of export trade,

(4) the term "methods of operation" means any method by which a person conducts or proposes to conduct export trade,

(5) the term "person" means an individual who is a resident of the United States; a partnership that is created under and exists pursuant to the laws of any State or of the United States; a State or local government entity; a corporation, whether organized as a profit or nonprofit corporation, that is created under and exists pursuant to the laws of any State or of the United States; or any association or combination, by contract or other arrangement, between or among such persons,

(6) the term "antitrust laws" means the antitrust laws, as such term is defined in section 12 of this title, and section 45 of this title (to the extent that section 45 of this title prohibits unfair methods of competition), and any State antitrust or unfair competition law,

(7) the term "Secretary" means the Secretary of Commerce or his designee, and

(8) the term "Attorney General" means the Attorney General of the United States or his designee.

(Pub. L. 97–290, title III, §311, Oct. 8, 1982, 96 Stat. 1245.)

EFFECTIVE DATE

Section effective Oct. 8, 1982, see section 312 of Pub. L. 97–290, set out as a note under section 4011 of this title.

SUBCHAPTER III—EXPORT PROMOTION PROGRAMS

§4051. Requirement of prior authorization

(a) General rule

Notwithstanding any other provision of law, money appropriated to the Department of Commerce for expenses to carry out any export promotion program may be obligated or expended only if—

(1) the appropriation thereof has been previously authorized by law enacted on or after July 12, 1985; or

(2) the amount of all such obligations and expenditures does not exceed an amount previously prescribed by law enacted on or after such date.

(b) Exception for later legislation authorizing obligations or expenditures

To the extent that legislation enacted after the making of an appropriation to carry out any export promotion program authorizes the obligation or expenditure thereof, the limitation contained in subsection (a) of this section shall have no effect.

(c) Provisions must be specifically superseded

The provisions of this section shall not be superseded except by a provision of law enacted after July 12, 1985, which specifically repeals, modifies, or supersedes the provisions of this section.

(d) "Export promotion program" defined

For purposes of this subchapter, the term "export promotion program" means any activity of the Department of Commerce designed to stimulate or assist United States businesses in marketing their goods and services abroad competitively with businesses from other countries, including, but not limited to—

(1) trade development (except for the trade adjustment assistance program) and dissemination of foreign marketing opportunities and other marketing information to United States producers of goods and services, including the expansion of foreign markets for United States textiles and apparel and any other United States products;

(2) the development of regional and multilateral economic policies which enhance United States trade and investment interests, and the provision of marketing services with respect to foreign countries and regions;

(3) the exhibition of United States goods in other countries;

(4) the operations of the United States and Foreign Commercial Service, or any successor agency; and

(5) the Market Development Cooperator Program established under section 4723 of this title, and assistance for trade shows provided under section 4724 of this title.

(e) Printing outside United States

(1) Notwithstanding the provisions of section 501 of title 44, and consistent with other applicable law, the Secretary of Commerce, in carrying out any export promotion program, may authorize—

(A) the printing, distribution, and sale of documents outside the contiguous United States, if the Secretary finds that the implementation of such export promotion program would be more efficient, and if such documents will be distributed primarily and sold exclusively outside the United States; and

(B) the acceptance of private notices and advertisements in connection with the printing and distribution of such documents.

(2) Any fees received by the Secretary pursuant to paragraph (1) shall be deposited in a separate account or accounts which may be used to defray directly the costs incurred in conducting activities authorized by paragraph (1) or to repay or make advances to appropriations or other funds available

for such activities.

(Pub. L. 99–64, title II, §201, July 12, 1985, 99 Stat. 157; Pub. L. 100–418, title II, §§2305(a), 2308(a), Aug. 23, 1988, 102 Stat. 1344, 1346.)

CODIFICATION

Section was enacted as part of the Export Administration Amendments Act of 1985, and not as part of Pub. L. 97–290 which enacted this chapter.

AMENDMENTS

1988—Subsec. (d)(5). Pub. L. 100–418, §2305(a), added par. (5).
Subsec. (e). Pub. L. 100–418, §2308(a), added subsec. (e).

§4052. Authorization of appropriations

There are authorized to be appropriated to the Department of Commerce to carry out export promotion programs such sums as are necessary for fiscal years 1995 and 1996.

(Pub. L. 99–64, title II, §202, July 12, 1985, 99 Stat. 158; Pub. L. 99–633, §2, Nov. 7, 1986, 100 Stat. 3522; Pub. L. 100–418, title II, §2305(b)(1), Aug. 23, 1988, 102 Stat. 1344; Pub. L. 102–429, title II, §208, Oct. 21, 1992, 106 Stat. 2205; Pub. L. 103–392, title III, §301, Oct. 22, 1994, 108 Stat. 4099.)

CODIFICATION

Section was enacted as part of the Export Administration Amendments Act of 1985, and not as part of Pub. L. 97–290 which enacted this chapter.

AMENDMENTS

1994—Pub. L. 103–392 amended section generally. Prior to amendment, section read as follows: "There are authorized to be appropriated to the Department of Commerce—

"(1) to carry out export promotion programs—

"(A) $190,000,000 for fiscal year 1993; and

"(B) $200,000,000 for fiscal year 1994; and

"(2) to carry out section 4723 of this title, $5,500,000 for each of fiscal years 1993 and 1994."

1992—Pub. L. 102–429 amended section generally. Prior to amendment, section read as follows: "There are authorized to be appropriated to the Department of Commerce to carry out export promotion programs $123,922,000 for the fiscal year 1988, and $146,400,000 for each of the fiscal years 1989 and 1990."

1988—Pub. L. 100–418 amended section generally. Prior to amendment, section read as follows: "There is authorized to be appropriated $123,922,000 for each of the fiscal years 1987 and 1988 to the Department of Commerce to carry out export promotion programs."

1986—Pub. L. 99–633 substituted provisions authorizing appropriations of $123,922,000 for each of the fiscal years 1987 and 1988 for provisions authorizing appropriations of $113,273,000 for each of the fiscal years 1985 and 1986.

§4053. Barter arrangements

(a) Report on status of Federal barter programs

The Secretary of Agriculture and the Secretary of Energy shall, not later than 90 days after July 12, 1985, submit to the Congress a report on the status of Federal programs relating to the barter or exchange of commodities owned by the Commodity Credit Corporation for materials and products produced in foreign countries. Such report shall include details of any changes necessary in existing law to allow the Department of Agriculture and, in the case of petroleum resources, the Department of Energy, to implement fully any barter program.

(b) Authorities of President

The President is authorized—

(1) to barter stocks of agricultural commodities acquired by the Government for petroleum and

petroleum products, and for other materials vital to the national interest, which are produced abroad, in situations in which sales would otherwise not occur; and

(2) to purchase petroleum and petroleum products, and other materials vital to the national interest, which are produced abroad and acquired by persons in the United States through barter for agricultural commodities produced in and exported from the United States through normal commercial trade channels.

(c) Other provisions of law not affected

In the case of any petroleum, petroleum products, or other materials vital to the national interest, which are acquired under subsection (b) of this section, nothing in this section shall be construed to render inapplicable the provisions of any law then in effect which apply to the storage, distribution, or use of such petroleum, petroleum products, or other materials vital to the national interest.

(d) Conventional markets not to be displaced by barters

The President shall take steps to ensure that, in making any barter described in subsection (a) or (b)(1) of this section or any purchase authorized by subsection (b)(2) of this section, existing export markets for agricultural commodities operating on conventional business terms are safeguarded from displacement by the barter described in subsection (a), (b)(1), or (b)(2) of this section, as the case may be. In addition, the President shall ensure that any such barter is consistent with the international obligations of the United States, including the General Agreement on Tariffs and Trade.

(e) Report to Congress

The Secretary of Energy shall report to the Congress on the effect on energy security and on domestic energy supplies of any action taken under this section which results in the acquisition by the Government of petroleum or petroleum products. Such report shall be submitted to the Congress not later than 90 days after such acquisition.

(Pub. L. 99–64, title II, §203, July 12, 1985, 99 Stat. 158.)

CODIFICATION

Section was enacted as part of the Export Administration Amendments Act of 1985, and not as part of Pub. L. 97–290 which enacted this chapter.

CHAPTER 67—ARCTIC RESEARCH AND POLICY

Sec.

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§4101. Congressional findings and declaration of purposes

(a) The Congress finds and declares that—

(1) the Arctic, onshore and offshore, contains vital energy resources that can reduce the Nation's dependence on foreign oil and improve the national balance of payments;

(2) the Arctic is critical to national defense;

(3) the renewable resources of the Arctic, specifically fish and other seafood, represent one of the Nation's greatest commercial assets;

(4) Arctic conditions directly affect global weather patterns and must be understood in order to promote better agricultural management throughout the United States;

(5) industrial pollution not originating in the Arctic region collects in the polar air mass, has the potential to disrupt global weather patterns, and must be controlled through international cooperation and consultation;

(6) the Arctic is a natural laboratory for research into human health and adaptation, physical and psychological, to climates of extreme cold and isolation and may provide information crucial for future defense needs;

(7) atmospheric conditions peculiar to the Arctic make the Arctic a unique testing ground for research into high latitude communications, which is likely to be crucial for future defense needs;

(8) Arctic marine technology is critical to cost-effective recovery and transportation of energy resources and to the national defense;

(9) the United States has important security, economic, and environmental interests in developing and maintaining a fleet of icebreaking vessels capable of operating effectively in the heavy ice regions of the Arctic;

(10) most Arctic-rim countries possess Arctic technologies far more advanced than those currently available in the United States;

(11) Federal Arctic research is fragmented and uncoordinated at the present time, leading to the neglect of certain areas of research and to unnecessary duplication of effort in other areas of research;

(12) improved logistical coordination and support for Arctic research and better dissemination of research data and information is necessary to increase the efficiency and utility of national Arctic research efforts;

(13) a comprehensive national policy and program plan to organize and fund currently neglected scientific research with respect to the Arctic is necessary to fulfill national objectives in Arctic research;

(14) the Federal Government, in cooperation with State and local governments, should focus its efforts on the collection and characterization of basic data related to biological, materials, geophysical, social, and behavioral phenomena in the Arctic;

(15) research into the long-range health, environmental, and social effects of development in the Arctic is necessary to mitigate the adverse consequences of that development to the land and its residents;

(16) Arctic research expands knowledge of the Arctic, which can enhance the lives of Arctic residents, increase opportunities for international cooperation among Arctic-rim countries, and facilitate the formulation of national policy for the Arctic; and

(17) the Alaskan Arctic provides an essential habitat for marine mammals, migratory waterfowl, and other forms of wildlife which are important to the Nation and which are essential to Arctic residents.

(b) The purposes of this chapter are—

(1) to establish national policy, priorities, and goals and to provide a Federal program plan for basic and applied scientific research with respect to the Arctic, including natural resources and materials, physical, biological and health sciences, and social and behavioral sciences;

(2) to establish an Arctic Research Commission to promote Arctic research and to recommend Arctic research policy;

(3) to designate the National Science Foundation as the lead agency responsible for implementing Arctic research policy; and

(4) to establish an Interagency Arctic Research Policy Committee to develop a national Arctic research policy and a five year plan to implement that policy.

(Pub. L. 98–373, title I, §102, July 31, 1984, 98 Stat. 1242; Pub. L. 103–199, title VI, §601, Dec. 17, 1993, 107 Stat. 2327.)

AMENDMENTS

1993—Subsec. (a)(2). Pub. L. 103–199, §601(1), struck out "as the Nation's only common border with the Soviet Union," before "the Arctic".

Subsec. (a)(10). Pub. L. 103–199, §601(2), struck out ", particularly the Soviet Union," after "countries".

SHORT TITLE

Pub. L. 98–373, title I, §102, July 31, 1984, 98 Stat. 1242, provided that: "This title [enacting this chapter] may be cited as the 'Arctic Research and Policy Act of 1984'."

EX. ORD. NO. 12501. ARCTIC RESEARCH

Ex. Ord. No. 12501, Jan. 28, 1985, 50 F.R. 4191, as amended by Ex. Ord. No. 13286, §45, Feb. 28, 2003, 68 F.R. 10627, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Arctic Research and Policy Act of 1984 (Title I of Public Law 98–373) ("the Act") [15 U.S.C. 4101 et seq.], it is hereby ordered as follows:

SECTION 1. *Establishment of Arctic Research Commission*. There is established the Arctic Research Commission.

SEC. 2. *Membership of the Commission*. (a) The Commission shall be composed of five members appointed by the President, as follows:

(1) three members appointed from among individuals from academic or other research institutions with expertise in areas of research relating to the Arctic, including the physical, biological, health, environmental, social, and behavioral sciences;

(2) one member appointed from among indigenous residents of the Arctic who are representative of the needs and interests of Arctic residents and who live in areas directly affected by Arctic resources development; and

(3) one member appointed from individuals familiar with the Arctic and representative of the needs and interests of private industry undertaking resource development in the Arctic.

The Director of the National Science Foundation shall serve as a nonvoting *ex officio* member of the Commission. The President shall designate a Chairperson from among the five voting members of the Commission.

(b) In making initial appointments to the Commission, the President shall designate one member to serve for a term of two years, two members to serve for terms of three years, and two members to serve for terms of four years as provided by Section 103(c) of the Act [15 U.S.C. 4102(c)]. Upon the expiration of these initial terms of office, the term of office of each member of the Commission shall be four years.

(c) Each of the Federal agencies represented on the Interagency Committee established by Section 7 of this Order may designate a representative to participate as an observer with the Commission. These representatives shall report to and advise the Commission on the activities of their agencies relating to Arctic research.

SEC. 3. *Meetings of the Commission*. The Commission shall meet at the call of the Chairman or a majority of its members. The Commission annually shall conduct at least one public meeting in the State of Alaska.

SEC. 4. *Functions of the Commission*. (a) The Commission shall:

(1) develop and recommend an integrated national Arctic research policy;

(2) assist, in cooperation with the Interagency Arctic Research Policy Committee established by Section 7 of this Order, in establishing a national Arctic research program plan to implement the Arctic research policy;

(3) facilitate cooperation between the Federal government and State and local governments with respect to Arctic research;

(4) review Federal research programs in the Arctic and suggest improvements in coordination among programs;

(5) recommend methods to improve logistical planning and support for Arctic research as may be appropriate;

(6) suggest methods for improving efficient sharing and dissemination of data and information on the Arctic among interested public and private institutions;

(7) offer other recommendations and advice to the Interagency Arctic Research Policy Committee as it may find appropriate; and

(8) cooperate with the Governor of the State of Alaska, and with agencies and organizations of that State which the Governor may designate, with respect to the formulation of Arctic research policy.

(b) Not later than January 31 of each year, the Commission shall:

(1) submit to the President and Congress a report describing the activities and accomplishments of the Commission during the immediately preceding fiscal year; and

(2) publish a statement of goals and objectives with respect to Arctic research to guide the Interagency Arctic Research Policy Committee in the performance of its duties.

SEC. 5. *Responsibilities of Federal Agencies*. (a) The heads of Executive agencies shall, to the extent permitted by law, and in accordance with Section 105 of the Act [15 U.S.C. 4104], provide the Commission such information as it may require for purposes of carrying out its functions.

(b) The heads of Executive agencies shall, upon reimbursement to be agreed upon by the Commission and the agency head, permit the Commission to utilize their facilities and services to the extent that the facilities and services are needed for the establishment and development of an Arctic research policy. The Commission shall take every feasible step to avoid duplication of effort.

(c) All Federal agencies shall consult with the Commission before undertaking major Federal actions relating to Arctic research.

SEC. 6. *Administration of the Commission*. Members of the Commission who are otherwise employed for compensation shall serve without compensation for their work on the Commission, but may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service. Members of the Commission who are not otherwise employed for compensation shall be compensated for each day the member is engaged in actual performance of duties as a member, not to exceed 90 days of service each calendar year, at a rate equal to the daily equivalent of the rate for GS–16 of the General Schedule.

SEC. 7. *Establishment of Interagency Arctic Research Policy Committee*. There is established the Interagency Arctic Research Policy Committee (the "Interagency Committee"). The National Science Foundation shall serve as lead agency on the Interagency Committee and shall be responsible for implementing Arctic research policy.

SEC. 8. *Membership of the Interagency Committee*. The Interagency Committee shall be composed of representatives of the following Federal agencies or their designees:

(a) National Science Foundation;

(b) Department of Commerce;

(c) Department of Defense;

(d) Department of Energy;

(e) Department of the Interior;

(f) Department of State;

(g) Department of Transportation;

(h) Department of Health and Human Services;

(i) Department of Homeland Security;

(j) National Aeronautics and Space Administration;

(k) Environmental Protection Agency;

(l) Office of Science and Technology Policy; and

(m) any other Executive agency that the Director of the National Science Foundation shall deem appropriate. The Director of the National Science Foundation or his designee shall serve as Chairperson of the Interagency Committee.

SEC. 9. *Functions of the Interagency Committee*. (a) The Interagency Committee shall:

(1) survey Arctic research conducted by Federal, State, and local agencies, universities, and other public and private institutions to help determine priorities for future Arctic research, including natural resources and materials, physical and biological sciences, and social and behavioral sciences;

(2) work with the Commission to develop and establish an integrated national Arctic research policy that will guide Federal agencies in developing and implementing their research programs in the Arctic;

(3) consult with the Commission on:

(a) the development of the national Arctic research policy and the 5-year plan implementing the policy;

(b) Arctic research programs of Federal agencies;

(c) recommendations of the Commission on future Arctic research; and

(d) guidelines for Federal agencies for awarding and administering Arctic research grants;

(4) develop a 5-year plan to implement the national policy, as provided in section 109 of the Act [15 U.S.C. 4108];

(5) provide the necessary coordination, data, and assistance for the preparation of a single integrated, coherent, and multi-agency budget request for Arctic research, as provided in section 110 of the Act [15 U.S.C. 4109];

(6) facilitate cooperation between the Federal government and State and local governments in Arctic research, and recommend the undertaking of neglected areas of research;

(7) coordinate and promote cooperative Arctic scientific research programs with other nations, subject to the foreign policy guidance of the Secretary of State;

(8) cooperate with the Governor of the State of Alaska in fulfilling its responsibilities under the Act; and

(9) promote Federal interagency coordination of all Arctic research activities, including:

(a) logistical planning and coordination; and

(b) the sharing of data and information associated with Arctic research, subject to section 552 of title 5, United States Code.

(b) Not later than January 31, 1986, and biennially thereafter, the Interagency Committee shall submit to the Congress through the President a report concerning:

(1) its activities and accomplishments since its last report; and

(2) the activities of the Commission, detailing with particularity the recommendations of the Commission with respect to Federal activities in Arctic research.

SEC. 10. *Public Participation*. The Interagency Committee will provide public notice of its meetings and an opportunity for the public to participate in the development and implementation of national Arctic research policy.

SEC. 11. *Administration of Interagency Committee*. Each agency represented on the Committee shall, to the extent permitted by law and subject to the availability of funds, provide the Committee with such administrative services, facilities, staff, and other support services as may be necessary for effective performance of its functions.

§4102. Arctic Research Commission

(a) Establishment

The President shall establish an Arctic Research Commission (hereafter referred to as the "Commission").

(b) Membership

(1) The Commission shall be composed of seven members appointed by the President, with the Director of the National Science Foundation serving as a nonvoting, ex officio member. The members appointed by the President shall include—

(A) four members appointed from among individuals from academic or other research institutions with expertise in areas of research relating to the Arctic, including the physical, biological, health, environmental, social, and behavioral sciences;

(B) one member appointed from among indigenous residents of the Arctic who are representative of the needs and interests of Arctic residents and who live in areas directly affected by Arctic resource development; and

(C) two members appointed from among individuals familiar with the Arctic and representative of the needs and interests of private industry undertaking resource development in the Arctic.

(2) The President shall designate one of the appointed members of the Commission to be chairperson of the Commission.

(c) Terms of office; vacancies; hold-over status

(1) Except as provided in paragraph (2) of this subsection, the term of office of each member of the Commission appointed under subsection (b)(1) of this section shall be four years.

(2) Of the members of the Commission originally appointed under subsection (b)(1) of this section—

(A) one shall be appointed for a term of two years;

(B) two shall be appointed for a term of three years; and

(C) two shall be appointed for a term of four years.

(3) Any vacancy occurring in the membership of the Commission shall be filled, after notice of the vacancy is published in the Federal Register, in the manner provided by the preceding provisions of this section, for the remainder of the unexpired term.

(4) A member may serve after the expiration of the member's term of office until the President

appoints a successor.

(5) A member may serve consecutive terms beyond the member's original appointment.

(d) Compensation and travel expenses; Federal employee status; meetings; observer-designees

(1) Members of the Commission may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5. A member of the Commission not presently employed for compensation shall be compensated at a rate equal to the daily equivalent of the rate for GS–18 of the General Schedule under section 5332 of title 5 for each day the member is engaged in the actual performance of his duties as a member of the Commission, not to exceed 90 days of service each year. Except for the purposes of chapter 81 of title 5 (relating to compensation for work injuries) and chapter 171 of title 28 (relating to tort claims), a member of the Commission shall not be considered an employee of the United States for any purpose.

(2) The Commission shall meet at the call of its Chairman or a majority of its members.

(3) Each Federal agency referred to in section 4106(b) of this title may designate a representative to participate as an observer with the Commission. These representatives shall report to and advise the Commission on the activities relating to Arctic research of their agencies.

(4) The Commission shall conduct at least one public meeting in the State of Alaska annually.

(Pub. L. 98–373, title I, §103, July 31, 1984, 98 Stat. 1243; Pub. L. 101–609, §§2, 3, Nov. 16, 1990, 104 Stat. 3125.)

AMENDMENTS

1990—Subsec. (b)(1). Pub. L. 101–609, §2, in introductory provisions, substituted "seven" for "five", in subpar. (A), substituted "four" for "three", and in subpar. (C), substituted "two members" for "one member".

Subsec. (d)(1). Pub. L. 101–609, §3, substituted "GS–18" for "GS–16".

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§4103. Duties of Commission; publication of guidelines; report to Congress

(a) The Commission shall—

(1) develop and recommend an integrated national Arctic research policy;

(2) in cooperation with the Interagency Arctic Research Policy Committee established under section 4106 of this title, assist in establishing a national Arctic research program plan to implement the Arctic research policy;

(3) facilitate cooperation between the Federal Government and State and local governments with respect to Arctic research;

(4) review Federal research programs in the Arctic and recommend improvements in coordination among programs;

(5) recommend methods to improve logistical planning and support for Arctic research as may be appropriate and in accordance with the findings and purposes of this chapter;

(6) recommend methods for improving efficient sharing and dissemination of data and information on the Arctic among interested public and private institutions;

(7) offer other recommendations and advice to the Interagency Committee established under section 4106 of this title as it may find appropriate;

(8) cooperate with the Governor of the State of Alaska and with agencies and organizations of that State which the Governor may designate with respect to the formulation of Arctic research policy;

(9) recommend to the Interagency Committee the means for developing international scientific cooperation in the Arctic; and

(10) not later than January 31, 1991, and every 2 years thereafter, publish a statement of goals

and objectives with respect to Arctic research to guide the Interagency Committee established under section 4106 of this title in the performance of its duties.

(b) Not later than January 31 of each year, the Commission shall submit to the President and to the Congress a report describing the activities and accomplishments of the Commission during the immediately preceding fiscal year.

(Pub. L. 98–373, title I, §104, July 31, 1984, 98 Stat. 1244; Pub. L. 101–609, §4, Nov. 16, 1990, 104 Stat. 3125.)

AMENDMENTS

1990—Subsec. (a)(4), (6). Pub. L. 101–609, §4(a)(1), (2), substituted "recommend" for "suggest".
Subsec. (a)(9), (10). Pub. L. 101–609, §4(a)(3)–(5), added pars. (9) and (10).
Subsec. (b). Pub. L. 101–609, §4(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "Not later than January 31 of each year, the Commission shall—

"(1) publish a statement of goals and objectives with respect to Arctic research to guide the Interagency Committee established under section 4106 of this title in the performance of its duties; and

"(2) submit to the President and to the Congress a report describing the activities and accomplishments of the Commission during the immediately preceding fiscal year."

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (b) of this section relating to submitting annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 155 of House Document No. 103–7.

§4104. Cooperation with Commission

(a) Acquisition of information from Federal agencies; withholding authorization

(1) The Commission may acquire from the head of any Federal agency unclassified data, reports, and other nonproprietary information with respect to Arctic research in the possession of the agency which the Commission considers useful in the discharge of its duties.

(2) Each agency shall cooperate with the Commission and furnish all data, reports, and other information requested by the Commission to the extent permitted by law; except that no agency need furnish any information which it is permitted to withhold under section 552 of title 5.

(b) Utilization of facilities and services; reimbursement; avoidance of duplication

With the consent of the appropriate agency head, the Commission may utilize the facilities and services of any Federal agency to the extent that the facilities and services are needed for the establishment and development of an Arctic research policy, upon reimbursement to be agreed upon by the Commission and the agency head and taking every feasible step to avoid duplication of effort.

(c) Consultations with Commission prior to major Federal actions

All Federal agencies shall consult with the Commission before undertaking major Federal actions relating to Arctic research.

(Pub. L. 98–373, title I, §105, July 31, 1984, 98 Stat. 1245.)

§4105. Administration

The Commission may—

(1) in accordance with the civil service laws and subchapter III of chapter 53 of title 5, appoint and fix the compensation of an Executive Director and necessary additional staff personnel, but not to exceed a total of seven compensated personnel;

(2) procure temporary and intermittent services as authorized by section 3109 of title 5;

(3) enter into contracts and procure supplies, services, and personal property;

(4) enter into agreements with the General Services Administration for the procurement of

necessary financial and administrative services, for which payment shall be made by reimbursement from funds of the Commission in amounts to be agreed upon by the Commission and the Administrator of the General Services Administration; and

(5) appoint, and accept without compensation the services of, scientists and engineering specialists to be advisors to the Commission. Each advisor may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5. Except for the purposes of chapter 81 of title 5 (relating to compensation for work injuries) and chapter 171 of title 28 (relating to tort claims), an advisor appointed under this paragraph shall not be considered an employee of the United States for any purpose.

(Pub. L. 98–373, title I, §106, July 31, 1984, 98 Stat. 1245; Pub. L. 101–609, §5, Nov. 16, 1990, 104 Stat. 3125.)

AMENDMENTS

1990—Par. (5). Pub. L. 101–609 added par. (5).

§4106. Implementation of Arctic research policy

(a) National Science Foundation and Director; functions

The National Science Foundation is designated as the lead agency responsible for implementing Arctic research policy, and the Director of the National Science Foundation shall insure that the requirements of section 4107 of this title are fulfilled.

(b) Interagency Arctic Research Policy Committee; establishment; represented agencies; Chairperson

(1) The President shall establish an Interagency Arctic Research Policy Committee (hereinafter referred to as the "Interagency Committee").

(2) The Interagency Committee shall be composed of representatives of the following Federal agencies or offices:

(A) the National Science Foundation;
(B) the Department of Commerce;
(C) the Department of Defense;
(D) the Department of Energy;
(E) the Department of the Interior;
(F) the Department of State;
(G) the Department of Transportation;
(H) the Department of Health and Human Services;
(I) the Department of Homeland Security;
(J) the National Aeronautics and Space Administration;
(K) the Environmental Protection Agency; and
(L) any other agency or office deemed appropriate.

(3) The representative of the National Science Foundation shall serve as the Chairperson of the Interagency Committee.

(Pub. L. 98–373, title I, §107, July 31, 1984, 98 Stat. 1246; Pub. L. 109–241, title IX, §902(g), July 11, 2006, 120 Stat. 567.)

AMENDMENTS

2006—Subsec. (b)(2)(I) to (L). Pub. L. 109–241 added subpar. (I) and redesignated former subpars. (I) to (K) as (J) to (L), respectively.

DESIGNATION OF THE NATIONAL SCIENCE AND TECHNOLOGY COUNCIL TO COORDINATE CERTAIN ACTIVITIES UNDER THE ARCTIC RESEARCH AND POLICY ACT OF 1984

Memorandum of President of the United States, July 22, 2010, 75 F.R. 44063, provided:

Memorandum for the Director of the Office of Science and Technology Policy

By the authority vested in me as President by the Constitution and the laws of the United States, including the Arctic Research and Policy Act of 1984 (Title I of Public Law 98–373) (the "Act"), I hereby assign to the National Science and Technology Council (NSTC) responsibility to coordinate activities assigned in sections 107 and 108 of the Act to the Interagency Arctic Research Policy Committee, including through committees of the NSTC.

The Director of the Office of Science and Technology Policy is authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

§4107. Duties of Interagency Committee; report to Congress

(a) The Interagency Committee shall—

(1) survey Arctic research conducted by Federal, State, and local agencies, universities, and other public and private institutions to help determine priorities for future Arctic research, including natural resources and materials, physical and biological sciences, and social and behavioral sciences;

(2) work with the Commission to develop and establish an integrated national Arctic research policy that will guide Federal agencies in developing and implementing their research programs in the Arctic;

(3) consult with the Commission on—

(A) the development of the national Arctic research policy and the 5-year plan implementing the policy;

(B) Arctic research programs of Federal agencies;

(C) recommendations of the Commission on future Arctic research; and

(D) guidelines for Federal agencies for awarding and administering Arctic research grants;

(4) develop a 5-year plan to implement the national policy, as provided for in section 4108 of this title;

(5) provide the necessary coordination, data, and assistance for the preparation of a single integrated, coherent, and multiagency budget request for Arctic research as provided for in section 4109 of this title;

(6) facilitate cooperation between the Federal Government and State and local governments in Arctic research, and recommend the undertaking of neglected areas of research in accordance with the findings and purposes of this chapter;

(7) coordinate and promote cooperative Arctic scientific research programs with other nations, subject to the foreign policy guidance of the Secretary of State;

(8) cooperate with the Governor of the State of Alaska in fulfilling its responsibilities under this chapter;

(9) promote Federal interagency coordination of all Arctic research activities, including—

(A) logistical planning and coordination; and

(B) the sharing of data and information associated with Arctic research, subject to section 552 of title 5; and

(10) provide public notice of its meetings and an opportunity for the public to participate in the development and implementation of national Arctic research policy.

(b) Not later than January 31, 1986, and biennially thereafter, the Interagency Committee shall submit to the Congress through the President, a brief, concise report containing—

(1) a statement of the activities and accomplishments of the Interagency Committee since its last report; and

(2) a statement detailing with particularity the recommendations of the Commission with respect to Federal interagency activities in Arctic research and the disposition and responses to

those recommendations.

(Pub. L. 98–373, title I, §108, July 31, 1984, 98 Stat. 1246; Pub. L. 101–609, §6, Nov. 16, 1990, 104 Stat. 3126.)

AMENDMENTS

1990—Subsec. (b)(2). Pub. L. 101–609 amended par. (2) generally. Prior to amendment, par. (2) read as follows: "a description of the activities of the Commission, detailing with particularity the recommendations of the Commission with respect to Federal activities in Arctic research."

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which the requirement, under subsec. (b) of this section, to submit a biennial report to Congress is listed on page 174), see section 3003 of Pub. L. 104–66, as amended, and section 1(a)(4) [div. A, §1402] of Pub. L. 106–554, set out as notes under section 1113 of Title 31, Money and Finance.

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to the National Science and Technology Council, see Memorandum of President of the United States, July 22, 2010, 75 F.R. 44063, set out as a note under section 4106 of this title.

DELEGATION OF REPORTING AUTHORITY

Memorandum of President of the United States, Feb. 17, 2005, 70 F.R. 9841, provided:

Memorandum for the Director of the National Science Foundation

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby delegate to you the functions and authority conferred upon the President by Public Law 98–373 (15 U.S.C. 4107(b) and 4108(a)), to provide the specified report and plan to the Congress.

You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

§4108. Arctic research plan

(a) The Interagency Committee, in consultation with the Commission, the Governor of the State of Alaska, the residents of the Arctic, the private sector, and public interest groups, shall prepare a comprehensive 5-year program plan (hereinafter referred to as the "Plan") for the overall Federal effort in Arctic research. The Plan shall be prepared and submitted to the President for transmittal to the Congress within one year after July 31, 1984, and shall be revised biennially thereafter.

(b) The Plan shall contain but need not be limited to the following elements:

(1) an assessment of national needs and problems regarding the Arctic and the research necessary to address those needs or problems;

(2) a statement of the goals and objectives of the Interagency Committee for national Arctic research;

(3) a detailed listing of all existing Federal programs relating to Arctic research, including the existing goals, funding levels for each of the 5 following fiscal years, and the funds currently being expended to conduct the programs;

(4) recommendations for necessary program changes and other proposals to meet the requirements of the policy and goals as set forth by the Commission and in the Plan as currently in effect; and

(5) a description of the actions taken by the Interagency Committee to coordinate the budget review process in order to ensure interagency coordination and cooperation in (A) carrying out Federal Arctic research programs, and (B) eliminating unnecessary duplication of effort among these programs.

(Pub. L. 98–373, title I, §109, July 31, 1984, 98 Stat. 1247.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which the biennial revision required under subsec. (a) of this section is listed on page 174), see section 3003 of Pub. L. 104–66, as amended, and section 1(a)(4) [div. A, §1402] of Pub. L. 106–554, set out as notes under section 1113 of Title 31, Money and Finance.

DELEGATION OF FUNCTIONS

Functions of President under subsec. (a) delegated to Director of the National Science Foundation, see Memorandum of President of the United States, Feb. 17, 2005, 70 F.R. 9841, set out as a note under section 4107 of this title.

§4109. Coordination and review of budget requests; Office of Science and Technology Policy; Office of Management and Budget

(a) The Office of Science and Technology Policy shall—

(1) review all agency and department budget requests related to the Arctic transmitted pursuant to section 4107(a)(5) of this title, in accordance with the national Arctic research policy and the 5-year program under section 4107(a)(2) and section 4108 of this title, respectively; and

(2) consult closely with the Interagency Committee and the Commission to guide the Office of Science and Technology Policy's efforts.

(b)(1) The Office of Management and Budget shall consider all Federal agency requests for research related to the Arctic as one integrated, coherent, and multiagency request which shall be reviewed by the Office of Management and Budget prior to submission of the President's annual budget request for its adherence to the Plan. The Commission shall, after submission of the President's annual budget request, review the request and report to Congress on adherence to the Plan.

(2) The Office of Management and Budget shall seek to facilitate planning for the design, procurement, maintenance, deployment, and operations of icebreakers needed to provide a platform for Arctic research by allocating all funds necessary to support icebreaking operations, except for recurring incremental costs associated with specific projects, to the Coast Guard.

(Pub. L. 98–373, title I, §110, July 31, 1984, 98 Stat. 1248.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which the review of the President's annual budget request and report to Congress under subsec. (b)(1) of this section is listed on page 155), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§4110. Authorization of appropriations; new spending authority

(a) There are authorized to be appropriated such sums as may be necessary for carrying out this chapter.

(b) Any new spending authority (within the meaning of section 651 of title 2) which is provided under this chapter shall be effective for any fiscal year only to such extent or in such amounts as may

be provided in appropriation Acts.

(Pub. L. 98–373, title I, §111, July 31, 1984, 98 Stat. 1248.)

§4111. "Arctic" defined

As used in this chapter, the term "Arctic" means all United States and foreign territory north of the Arctic Circle and all United States territory north and west of the boundary formed by the Porcupine, Yukon, and Kuskokwim Rivers; all contiguous seas, including the Arctic Ocean and the Beaufort, Bering, and Chukchi Seas; and the Aleutian chain.

(Pub. L. 98–373, title I, §112, July 31, 1984, 98 Stat. 1248.)

CHAPTER 68—LAND REMOTE-SENSING COMMERCIALIZATION

SUBCHAPTER I—DECLARATION OF FINDINGS, PURPOSES, AND POLICIES

§§4201 to 4204. Repealed. Pub. L. 102–555, §4, Oct. 28, 1992, 106 Stat. 4166

Section 4201, Pub. L. 98–365, title I, §101, July 17, 1984, 98 Stat. 451, related to Congressional findings for chapter.

Section 4202, Pub. L. 98–365, title I, §102, July 17, 1984, 98 Stat. 452, related to Congressional declaration of purpose of chapter.

Section 4203, Pub. L. 98–365, title I, §103, July 17, 1984, 98 Stat. 452, related to Federal policy concerning acquisition and dissemination of remote-sensing data, availability of civilian unenhanced remote-sensing data, and commercialization of remote-sensing space systems with governmental retention of essentially public service functions.

Section 4204, Pub. L. 98–365, title I, §104, July 17, 1984, 98 Stat. 452, related to definitions for chapter.

SHORT TITLE

Pub. L. 98–365, §1, July 17, 1984, 98 Stat. 451, which provided that such Act was to be cited as the "Land Remote-Sensing Commercialization Act of 1984", was repealed by Pub. L. 102–555, §4, Oct. 28, 1992, 106 Stat. 4166.

SUBCHAPTER II—OPERATION AND DATA MARKETING OF LANDSAT SYSTEM

§§4211 to 4215. Repealed. Pub. L. 102–555, §4, Oct. 28, 1992, 106 Stat. 4166

Section 4211, Pub. L. 98–365, title II, §201, July 17, 1984, 98 Stat. 453, related to operation and data marketing of Landsat system by Secretary of Commerce and provided for Secretary's authority to contract.

Section 4212, Pub. L. 98–365, title II, §202, July 17, 1984, 98 Stat. 454; Pub. L. 100–147, title III, §304, Oct. 30, 1987, 101 Stat. 876, related to Secretary's authority to contract for marketing of unenhanced data.

Section 4213, Pub. L. 98–365, title II, §203, July 17, 1984, 98 Stat. 454, related to conditions of competition for contract to market unenhanced data.

Section 4214, Pub. L. 98–365, title II, §204, July 17, 1984, 98 Stat. 455, related to sale of unenhanced data, entitlement to revenues from such sales, and the permissibility of marketing such data after end of Landsat system space segment.

Section 4215, Pub. L. 98–365, title II, §205, July 17, 1984, 98 Stat. 455, related to supply of unenhanced data to foreign ground stations and contract provisions relating thereto.

SUBCHAPTER III—PROVISION OF DATA CONTINUITY AFTER THE LANDSAT SYSTEM

§§4221 to 4228. Repealed. Pub. L. 102–555, §4, Oct. 28, 1992, 106 Stat. 4166

Section 4221, Pub. L. 98–365, title III, §301, July 17, 1984, 98 Stat. 456, related to purposes and definition for subchapter.

Section 4222, Pub. L. 98–365, title III, §302, July 17, 1984, 98 Stat. 456, related to data continuity and availability.

Section 4223, Pub. L. 98–365, title III, §303, July 17, 1984, 98 Stat. 456, related to awarding of contract for provision of data continuity.

Section 4224, Pub. L. 98–365, title III, §304, July 17, 1984, 98 Stat. 458, related to terms of data continuity contract and determination by Secretary of Commerce as to whether contract meets purposes of subchapter.

Section 4225, Pub. L. 98–365, title III, §305, July 17, 1984, 98 Stat. 458, related to marketing of land remote-sensing data, incentive provisions for such activity, and continuation by contractor of data sales or operation of civil remote-sensing systems.

Section 4226, Pub. L. 98–365, title III, §306, July 17, 1984, 98 Stat. 459, related to Secretary's report on progress towards privitization of remote-sensing space systems.

Section 4227, Pub. L. 98–365, title III, §307, July 17, 1984, 98 Stat. 459, related to termination of chapter.

Section 4228, Pub. L. 98–365, title III, §308, as added Pub. L. 100–147, title III, §305, Oct. 30, 1987, 101 Stat. 876, related to disposition of government assets following completion of contract made pursuant to subchapter.

SUBCHAPTER IV—LICENSING OF PRIVATE REMOTE-SENSING SPACE SYSTEMS

§§4241 to 4246. Repealed. Pub. L. 102–555, §4, Oct. 28, 1992, 106 Stat. 4166

Section 4241, Pub. L. 98–365, title IV, §401, July 17, 1984, 98 Stat. 459, related to authority of Secretary of Commerce to license private sector parties, conditions for grant of license, review of applications by Secretary, and provisions relating to denial of licenses.

Section 4242, Pub. L. 98–365, title IV, §402, July 17, 1984, 98 Stat. 459; Pub. L. 102–567, title I, §114(b), Oct. 29, 1992, 106 Stat. 4279, provided licensing requirements for operation of private remote-sensing space system.

Section 4243, Pub. L. 98–365, title IV, §403, July 17, 1984, 98 Stat. 460, related to administrative authority of Secretary of Commerce, review of adverse action on license application, and judicial review of final actions.

Section 4244, Pub. L. 98–365, title IV, §404, July 17, 1984, 98 Stat. 461, related to regulatory authority of Secretary of Commerce.

Section 4245, Pub. L. 98–365, title IV, §405, July 17, 1984, 98 Stat. 461, related to licensing of private remote-sensing space systems which utilize civilian government satellites or vehicles, assistance by Secretary of Commerce in finding opportunities for such utilization, utilization agreements by Federal agencies, research and development, and subchapter's effect on authority of Federal Communications Commission.

Section 4246, Pub. L. 98–365, title IV, §406, July 17, 1984, 98 Stat. 461, related to termination of subchapter.

SUBCHAPTER V—RESEARCH AND DEVELOPMENT

§§4261 to 4264. Repealed. Pub. L. 102–555, §4, Oct. 28, 1992, 106 Stat. 4166

Section 4261, Pub. L. 98–365, title V, §501, July 17, 1984, 98 Stat. 461, related to continued Federal remote-sensing research and development.

Section 4262, Pub. L. 98–365, title V, §502, July 17, 1984, 98 Stat. 462; Pub. L. 100–147, title III, §306, Oct. 30, 1987, 101 Stat. 876, related to remote-sensing research and development activities of Federal agencies.

Section 4263, Pub. L. 98–365, title V, §503, July 17, 1984, 98 Stat. 463, related to sale of experimental data.

Section 4264, Pub. L. 98–365, title V, §504, as added Pub. L. 100–147, title III, §307, Oct. 30, 1987, 101 Stat. 877, related to remote-sensing research and development activities of system operators.

SUBCHAPTER VI—GENERAL PROVISIONS

§§4271 to 4278. Repealed. Pub. L. 102–555, §4, Oct. 28, 1992, 106 Stat. 4166

Section 4271, Pub. L. 98–365, title VI, §601, July 17, 1984, 98 Stat. 463, related to nondiscriminatory availability of unenhanced data and public availability of terms and conditions for data sales.

Section 4272, Pub. L. 98–365, title VI, §602, July 17, 1984, 98 Stat. 463; Pub. L. 102–567, title I, §114(c), Oct. 29, 1992, 106 Stat. 4279, provided for archiving of land remote-sensing data.

Section 4273, Pub. L. 98–365, title VI, §603, July 17, 1984, 98 Stat. 464; Pub. L. 100–147, title III, §308, Oct. 30, 1987, 101 Stat. 877, related to nonreproduction of unenhanced data.

Section 4274, Pub. L. 98–365, title VI, §604, July 17, 1984, 98 Stat. 464, related to reimbursement of Federal agencies for assistance to remote-sensing system operators.

Section 4275, Pub. L. 98–365, title VI, §605, July 17, 1984, 98 Stat. 464, related to acquisition of equipment from Landsat system.

Section 4276, Pub. L. 98–365, title VI, §606, July 17, 1984, 98 Stat. 465, related to radio frequency allocation.

Section 4277, Pub. L. 98–365, title VI, §607, July 17, 1984, 98 Stat. 465, directed Secretary of Commerce to consult with Secretary of Defense on chapter's effect on national security matters, with Secretary of State on chapter's effect on international obligations, and provided for reimbursement of system operators for certain costs.

Section 4278, Pub. L. 98–365, title VI, §609, July 17, 1984, 98 Stat. 466; Pub. L. 99–62, July 11, 1985, 99 Stat. 118, authorized appropriations for chapter.

SUBCHAPTER VII—PROHIBITION OF COMMERCIALIZATION OF WEATHER SATELLITES

§§4291, 4292. Repealed. Pub. L. 102–555, §4, Oct. 28, 1992, 106 Stat. 4166

Section 4291, Pub. L. 98–365, title VII, §701, July 17, 1984, 98 Stat. 466, related to prohibition of commercialization of weather satellites.

Section 4292, Pub. L. 98–365, title VII, §702, July 17, 1984, 98 Stat. 467, required repeal of chapter prior to any action with respect to the commercialization of weather satellites.

CHAPTER 69—COOPERATIVE RESEARCH

Sec.
4301. Definitions.
4302. Rule of reason standard.
4303. Limitation on recovery.
4304. Award of costs, including attorney's fees, to substantially prevailing party; offset.
4305. Disclosure of joint venture.
4306. Application of section 4303 protections to production of products, processes, and services.

§4301. Definitions

(a) For purposes of this chapter:

(1) The term "antitrust laws" has the meaning given it in subsection (a) of section 12 of this title, except that such term includes section 45 of this title to the extent that such section 45 of this title applies to unfair methods of competition.

(2) The term "Attorney General" means the Attorney General of the United States.

(3) The term "Commission" means the Federal Trade Commission.

(4) The term "person" has the meaning given it in subsection (a) of section 12 of this title.

(5) The term "State" has the meaning given it in section 15g(2) of this title.

(6) The term "joint venture" means any group of activities, including attempting to make, making, or performing a contract, by two or more persons for the purpose of—

(A) theoretical analysis, experimentation, or systematic study of phenomena or observable facts,

(B) the development or testing of basic engineering techniques,

(C) the extension of investigative findings or theory of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, prototypes, equipment, materials, and processes,

(D) the production of a product, process, or service,

(E) the testing in connection with the production of a product, process, or service by such venture,

(F) the collection, exchange, and analysis of research or production information, or

(G) any combination of the purposes specified in subparagraphs (A), (B), (C), (D), (E), and (F),

and may include the establishment and operation of facilities for the conducting of such venture, the conducting of such venture on a protected and proprietary basis, and the prosecuting of applications for patents and the granting of licenses for the results of such venture, but does not include any activity specified in subsection (b) of this section.

(7) The term "standards development activity" means any action taken by a standards development organization for the purpose of developing, promulgating, revising, amending, reissuing, interpreting, or otherwise maintaining a voluntary consensus standard, or using such standard in conformity assessment activities, including actions relating to the intellectual property policies of the standards development organization.

(8) The term "standards development organization" means a domestic or international organization that plans, develops, establishes, or coordinates voluntary consensus standards using procedures that incorporate the attributes of openness, balance of interests, due process, an appeals process, and consensus in a manner consistent with the Office of Management and Budget Circular Number A–119, as revised February 10, 1998. The term "standards development organization" shall not, for purposes of this chapter, include the parties participating in the standards development organization.

(9) The term "technical standard" has the meaning given such term in section 12(d)(4) [1] of the National Technology Transfer and Advancement Act of 1995.

(10) The term "voluntary consensus standard" has the meaning given such term in Office of

Management and Budget Circular Number A–119, as revised February 10, 1998.

(b) The term "joint venture" excludes the following activities involving two or more persons:

(1) exchanging information among competitors relating to costs, sales, profitability, prices, marketing, or distribution of any product, process, or service if such information is not reasonably required to carry out the purpose of such venture,

(2) entering into any agreement or engaging in any other conduct restricting, requiring, or otherwise involving the marketing, distribution, or provision by any person who is a party to such venture of any product, process, or service, other than—

(A) the distribution among the parties to such venture, in accordance with such venture, of a product, process, or service produced by such venture,

(B) the marketing of proprietary information, such as patents and trade secrets, developed through such venture formed under a written agreement entered into before June 10, 1993, or

(C) the licensing, conveying, or transferring of intellectual property, such as patents and trade secrets, developed through such venture formed under a written agreement entered into on or after June 10, 1993,

(3) entering into any agreement or engaging in any other conduct—

(A) to restrict or require the sale, licensing, or sharing of inventions, developments, products, processes, or services not developed through, or produced by, such venture, or

(B) to restrict or require participation by any person who is a party to such venture in other research and development activities,

that is not reasonably required to prevent misappropriation of proprietary information contributed by any person who is a party to such venture or of the results of such venture,

(4) entering into any agreement or engaging in any other conduct allocating a market with a competitor,

(5) exchanging information among competitors relating to production (other than production by such venture) of a product, process, or service if such information is not reasonably required to carry out the purpose of such venture,

(6) entering into any agreement or engaging in any other conduct restricting, requiring, or otherwise involving the production (other than the production by such venture) of a product, process, or service,

(7) using existing facilities for the production of a product, process, or service by such venture unless such use involves the production of a new product or technology, and

(8) except as provided in paragraphs (2), (3), and (6), entering into any agreement or engaging in any other conduct to restrict or require participation by any person who is a party to such venture, in any unilateral or joint activity that is not reasonably required to carry out the purpose of such venture.

(c) The term "standards development activity" excludes the following activities:

(1) Exchanging information among competitors relating to cost, sales, profitability, prices, marketing, or distribution of any product, process, or service that is not reasonably required for the purpose of developing or promulgating a voluntary consensus standard, or using such standard in conformity assessment activities.

(2) Entering into any agreement or engaging in any other conduct that would allocate a market with a competitor.

(3) Entering into any agreement or conspiracy that would set or restrain prices of any good or service.

(Pub. L. 98–462, §2, Oct. 11, 1984, 98 Stat. 1815; Pub. L. 103–42, §3(b), (c), June 10, 1993, 107 Stat. 117, 118; Pub. L. 108–237, title I, §103, June 22, 2004, 118 Stat. 663.)

REFERENCES IN TEXT

Section 12(d) of the National Technology Transfer and Advancement Act of 1995, referred to in subsec. (a)(9), is section 12(d) of Pub. L. 104–113, which is set out as a note under section 272 of this title.

AMENDMENTS

2004—Subsec. (a)(7) to (10). Pub. L. 108–237, §103(1), added pars. (7) to (10).

Subsec. (c). Pub. L. 108–237, §103(2), added subsec. (c).

1993—Subsec. (a)(6). Pub. L. 103–42, §3(b), struck out "research and development" after "joint" in introductory provisions, inserted subpars. (D) and (E), redesignated former subpars. (D) and (E) as (F) and (G), respectively, inserted "or production" after "research" in subpar. (F), substituted "(D), (E), and (F)" for "and (D)" in subpar. (G), and substituted "such venture" for "research" after "facilities for the conducting of" in concluding provisions.

Subsec. (b). Pub. L. 103–42, §3(c)(1), struck out "research and development" before "venture" in introductory provisions.

Subsec. (b)(1). Pub. L. 103–42, §3(c)(2), substituted "if such information is not reasonably required to carry out" for "that is not reasonably required to conduct the research and development that is".

Subsec. (b)(2). Pub. L. 103–42, §3(c)(3), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "entering into any agreement or engaging in any other conduct restricting, requiring, or otherwise involving the production or marketing by any person who is a party to such venture of any product, process, or service, other than the production or marketing of proprietary information developed through such venture, such as patents and trade secrets, and".

Subsec. (b)(3). Pub. L. 103–42, §3(c)(4), in subpar. (A) substituted ", developments, products, processes, or services not developed through, or produced by," for "or developments not developed through", in subpar. (B) substituted "any person who is a party to such venture" for "such party", and at end of concluding provisions substituted comma for period.

Subsec. (b)(4) to (8). Pub. L. 103–42, §3(c)(5), added pars. (4) to (8).

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–237, title I, §101, June 22, 2004, 118 Stat. 661, provided that: "This title [amending this section and sections 4302 to 4305 of this title and enacting provisions set out as notes under this section] may be cited as the 'Standards Development Organization Advancement Act of 2004'."

SHORT TITLE OF 1993 AMENDMENT

Pub. L. 103–42, §1, June 10, 1993, 107 Stat. 117, provided that: "This Act [enacting section 4306 of this title, amending this section and sections 4302 to 4305 of this title, enacting provisions set out as notes under this section and section 4305 of this title, and amending a provision set out as a note under this section] may be cited as the 'National Cooperative Production Amendments of 1993'."

SHORT TITLE

Pub. L. 98–462, §1, Oct. 11, 1984, 98 Stat. 1815, as amended by Pub. L. 103–42, §3(a), June 10, 1993, 107 Stat. 117, provided that: "This Act [enacting this chapter] may be cited as the 'National Cooperative Research and Production Act of 1993'."

CONSTRUCTION OF 2004 AMENDMENT

Pub. L. 108–237, title I, §108, June 22, 2004, 118 Stat. 665, provided that: "Nothing in this title [amending this section and sections 4302 to 4305 of this title and enacting provisions set out as notes under this section] shall be construed to alter or modify the antitrust treatment under existing law of—

"(1) parties participating in standards development activity of standards development organizations within the scope of this title, including the existing standard under which the conduct of the parties is reviewed, regardless of the standard under which the conduct of the standards development organizations in which they participate are reviewed, or

"(2) other organizations and parties engaged in standard-setting processes not within the scope of this amendment to the title."

FINDINGS AND PURPOSE

Pub. L. 108–237, title I, §102, June 22, 2004, 118 Stat. 661, provided that: "The Congress finds the following:

"(1) In 1993, the Congress amended and renamed the National Cooperative Research Act of 1984 (now known as the National Cooperative Research and Production Act of 1993 (15 U.S.C. 4301 et seq.)) by enacting the National Cooperative Production Amendments of 1993 (Public Law 103–42 [see Short Title of

1993 Amendment note set out above]) to encourage the use of collaborative, procompetitive activity in the form of research and production joint ventures that provide adequate disclosure to the antitrust enforcement agencies about the nature and scope of the activity involved.

"(2) Subsequently, in 1995, the Congress in enacting the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) [Pub. L. 104–113; see Short Title of 1996 Amendment note set out under section 3701 of this title] recognized the importance of technical standards developed by voluntary consensus standards bodies to our national economy by requiring the use of such standards to the extent practicable by Federal agencies and by encouraging Federal agency representatives to participate in ongoing standards development activities. The Office of Management and Budget on February 18, 1998, revised Circular A–119 to reflect these changes made in law.

"(3) Following enactment of the National Technology Transfer and Advancement Act of 1995, technical standards developed or adopted by voluntary consensus standards bodies have replaced thousands of unique Government standards and specifications allowing the national economy to operate in a more unified fashion.

"(4) Having the same technical standards used by Federal agencies and by the private sector permits the Government to avoid the cost of developing duplicative Government standards and to more readily use products and components designed for the commercial marketplace, thereby enhancing quality and safety and reducing costs.

"(5) Technical standards are written by hundreds of nonprofit voluntary consensus standards bodies in a nonexclusionary fashion, using thousands of volunteers from the private and public sectors, and are developed under the standards development principles set out in Circular Number A–119, as revised February 18, 1998, of the Office of Management and Budget, including principles that require openness, balance, transparency, consensus, and due process. Such principles provide for—

"(A) notice to all parties known to be affected by the particular standards development activity,

"(B) the opportunity to participate in standards development or modification,

"(C) balancing interests so that standards development activities are not dominated by any single group of interested persons,

"(D) readily available access to essential information regarding proposed and final standards,

"(E) the requirement that substantial agreement be reached on all material points after the consideration of all views and objections, and

"(F) the right to express a position, to have it considered, and to appeal an adverse decision.

"(6) There are tens of thousands of voluntary consensus standards available for government use. Most of these standards are kept current through interim amendments and interpretations, issuance of addenda, and periodic reaffirmation, revision, or reissuance every 3 to 5 years.

"(7) Standards developed by government entities generally are not subject to challenge under the antitrust laws.

"(8) Private developers of the technical standards that are used as Government standards are often not similarly protected, leaving such developers vulnerable to being named as codefendants in lawsuits even though the likelihood of their being held liable is remote in most cases, and they generally have limited resources to defend themselves in such lawsuits.

"(9) Standards development organizations do not stand to benefit from any antitrust violations that might occur in the voluntary consensus standards development process.

"(10) As was the case with respect to research and production joint ventures before the passage of the National Cooperative Research and Production Act of 1993, if relief from the threat of liability under the antitrust laws is not granted to voluntary consensus standards bodies, both regarding the development of new standards and efforts to keep existing standards current, such bodies could be forced to cut back on standards development activities at great financial cost both to the Government and to the national economy."

Pub. L. 103–42, §2, June 10, 1993, 107 Stat. 117, provided that:

"(a) FINDINGS.—The Congress finds that—

"(1) technological innovation and its profitable commercialization are critical components of the ability of the United States to raise the living standards of Americans and to compete in world markets;

"(2) cooperative arrangements among nonaffiliated businesses in the private sector are often essential for successful technological innovation; and

"(3) the antitrust laws may have been mistakenly perceived to inhibit procompetitive cooperative innovation arrangements, and so clarification serves a useful purpose in helping to promote such arrangements.

"(b) PURPOSE.—It is the purpose of this Act [see Short Title of 1993 Amendment note above] to promote

innovation, facilitate trade, and strengthen the competitiveness of the United States in world markets by clarifying the applicability of the rule of reason standard and establishing a procedure under which businesses may notify the Department of Justice and Federal Trade Commission of their cooperative ventures and thereby qualify for a single-damages limitation on civil antitrust liability."

[1] *So in original. Probably should be section "12(d)(5)".*

§4302. Rule of reason standard

In any action under the antitrust laws, or under any State law similar to the antitrust laws, the conduct of—

(1) any person in making or performing a contract to carry out a joint venture, or

(2) a standards development organization while engaged in a standards development activity,

shall not be deemed illegal per se; such conduct shall be judged on the basis of its reasonableness, taking into account all relevant factors affecting competition, including, but not limited to, effects on competition in properly defined, relevant research, development, product, process, and service markets. For the purpose of determining a properly defined, relevant market, worldwide capacity shall be considered to the extent that it may be appropriate in the circumstances.

(Pub. L. 98–462, §3, Oct. 11, 1984, 98 Stat. 1816; Pub. L. 103–42, §3(d), June 10, 1993, 107 Stat. 119; Pub. L. 108–237, title I, §104, June 22, 2004, 118 Stat. 663.)

AMENDMENTS

2004—Pub. L. 108–237 substituted "of—

"(1) any person in making or performing a contract to carry out a joint venture, or

"(2) a standards development organization while engaged in a standards development activity,

shall" for "of any person in making or performing a contract to carry out a joint venture shall".

1993—Pub. L. 103–42 substituted "joint venture" for "joint research and development venture" and ", development, product, process, and service" for "and development" and inserted at end "For the purpose of determining a properly defined, relevant market, worldwide capacity shall be considered to the extent that it may be appropriate in the circumstances."

§4303. Limitation on recovery

(a) Amount recoverable

Notwithstanding section 15 of this title and in lieu of the relief specified in such section, any person who is entitled to recovery on a claim under such section shall recover the actual damages sustained by such person, interest calculated at the rate specified in section 1961 of title 28 on such actual damages as specified in subsection (d) of this section, and the cost of suit attributable to such claim, including a reasonable attorney's fee pursuant to section 4304 of this title if such claim—

(1) results from conduct that is within the scope of a notification that has been filed under section 4305(a) of this title for a joint venture, or for a standards development activity engaged in by a standards development organization against which such claim is made, and

(2) is filed after such notification becomes effective pursuant to section 4305(c) of this title.

(b) Recovery by States

Notwithstanding section 15c of this title, and in lieu of the relief specified in such section, any State that is entitled to monetary relief on a claim under such section shall recover the total damage sustained as described in subsection (a)(1) of such section, interest calculated at the rate specified in section 1961 of title 28 on such total damage as specified in subsection (d) of this section, and the cost of suit attributable to such claim, including a reasonable attorney's fee pursuant to section 15c of this title if such claim—

(1) results from conduct that is within the scope of a notification that has been filed under

section 4305(a) of this title for a joint venture, or for a standards development activity engaged in by a standards development organization against which such claim is made, and

(2) is filed after such notification becomes effective pursuant to section 4305(c) of this title.

(c) Conduct similar under State law

Notwithstanding any provision of any State law providing damages for conduct similar to that forbidden by the antitrust laws, any person who is entitled to recovery on a claim under such provision shall not recover in excess of the actual damages sustained by such person, interest calculated at the rate specified in section 1961 of title 28 on such actual damages as specified in subsection (d) of this section, and the cost of suit attributable to such claim, including a reasonable attorney's fee pursuant to section 4304 of this title if such claim—

(1) results from conduct that is within the scope of a notification that has been filed under section 4305(a) of this title for a joint venture, or for a standards development activity engaged in by a standards development organization against which such claim is made, and

(2) is filed after notification has become effective pursuant to section 4305(c) of this title.

(d) Interest

Interest shall be awarded on the damages involved for the period beginning on the earliest date for which injury can be established and ending on the date of judgment, unless the court finds that the award of all or part of such interest is unjust in the circumstances.

(e) Rule of construction

Subsections (a), (b), and (c) of this section shall not be construed to modify the liability under the antitrust laws of any person (other than a standards development organization) who—

(1) directly (or through an employee or agent) participates in a standards development activity with respect to which a violation of any of the antitrust laws is found,

(2) is not a fulltime employee of the standards development organization that engaged in such activity, and

(3) is, or is an employee or agent of a person who is, engaged in a line of commerce that is likely to benefit directly from the operation of the standards development activity with respect to which such violation is found.

(f) Applicability

This section shall be applicable only if the challenged conduct of a person defending against a claim is not in violation of any decree or order, entered or issued after October 11, 1984, in any case or proceeding under the antitrust laws or any State law similar to the antitrust laws challenging such conduct as part of a joint venture, or of a standards development activity engaged in by a standards development organization.

(Pub. L. 98–462, §4, Oct. 11, 1984, 98 Stat. 1816; Pub. L. 103–42, §3(e)(1), June 10, 1993, 107 Stat. 119; Pub. L. 108–237, title I, §105, June 22, 2004, 118 Stat. 663.)

AMENDMENTS

2004—Subsecs. (a)(1), (b)(1), (c)(1). Pub. L. 108–237, §105(1), inserted ", or for a standards development activity engaged in by a standards development organization against which such claim is made" after "joint venture".

Subsec. (e). Pub. L. 108–237, §105(3), added subsec. (e). Former subsec. (e) redesignated (f).

Pub. L. 108–237, §105(2)(A), inserted ", or of a standards development activity engaged in by a standards development organization" before period at end.

Subsec. (f). Pub. L. 108–237, §105(2)(B), redesignated subsec. (e) as (f).

1993—Subsecs. (a) to (c). Pub. L. 103–42, §3(e)(1)(A), (B), in introductory provisions inserted "of this section" after "subsection (d)" and in par. (1) substituted "joint venture" for "joint research and development venture".

Subsec. (e). Pub. L. 103–42, §3(e)(1)(A), (C), substituted "October 11, 1984," for "the effective date of this Act" and substituted "joint venture" for "joint research and development venture".

§4304. Award of costs, including attorney's fees, to substantially prevailing party; offset

(a) Notwithstanding sections 15 and 26 of this title, in any claim under the antitrust laws, or any State law similar to the antitrust laws, based on the conducting of a joint venture, or of a standards development activity engaged in by a standards development organization, the court shall, at the conclusion of the action—

(1) award to a substantially prevailing claimant the cost of suit attributable to such claim, including a reasonable attorney's fee, or

(2) award to a substantially prevailing party defending against any such claim the cost of suit attributable to such claim, including a reasonable attorney's fee, if the claim, or the claimant's conduct during the litigation of the claim, was frivolous, unreasonable, without foundation, or in bad faith.

(b) The award made under subsection (a) of this section may be offset in whole or in part by an award in favor of any other party for any part of the cost of suit, including a reasonable attorney's fee, attributable to conduct during the litigation by any prevailing party that the court finds to be frivolous, unreasonable, without foundation, or in bad faith.

(c) Subsections (a) and (b) of this section shall not apply with respect to any person who—

(1) directly participates in a standards development activity with respect to which a violation of any of the antitrust laws is found,

(2) is not a fulltime employee of a standards development organization that engaged in such activity, and

(3) is, or is an employee or agent of a person who is, engaged in a line of commerce that is likely to benefit directly from the operation of the standards development activity with respect to which such violation is found.

(Pub. L. 98–462, §5, Oct. 11, 1984, 98 Stat. 1817; Pub. L. 103–42, §3(e)(2), June 10, 1993, 107 Stat. 119; Pub. L. 108–237, title I, §106, June 22, 2004, 118 Stat. 664.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–237, §106(1), inserted ", or of a standards development activity engaged in by a standards development organization" after "joint venture" in introductory provisions.

Subsec. (c). Pub. L. 108–237, §106(2), added subsec. (c).

1993—Subsec. (a). Pub. L. 103–42 substituted "joint venture" for "joint research and development venture" in introductory provisions.

§4305. Disclosure of joint venture

(a) Written notifications; filing

(1) Any party to a joint venture, acting on such venture's behalf, may, not later than 90 days after entering into a written agreement to form such venture or not later than 90 days after October 11, 1984, whichever is later, file simultaneously with the Attorney General and the Commission a written notification disclosing—

(A) the identities of the parties to such venture,

(B) the nature and objectives of such venture, and

(C) if a purpose of such venture is the production of a product, process, or service, as referred to in section 4301(a)(6)(D) of this title, the identity and nationality of any person who is a party to such venture, or who controls any party to such venture whether separately or with one or more other persons acting as a group for the purpose of controlling such party.

Any party to such venture, acting on such venture's behalf, may file additional disclosure notifications pursuant to this section as are appropriate to extend the protections of section 4303 of this title. In order to maintain the protections of section 4303 of this title, such venture shall, not later

than 90 days after a change in its membership, file simultaneously with the Attorney General and the Commission a written notification disclosing such change.

(2) A standards development organization may, not later than 90 days after commencing a standards development activity engaged in for the purpose of developing or promulgating a [1] voluntary consensus standards or not later than 90 days after June 22, 2004, whichever is later, file simultaneously with the Attorney General and the Commission, a written notification disclosing—

(A) the name and principal place of business of the standards development organization, and

(B) documents showing the nature and scope of such activity.

Any standards development organization may file additional disclosure notifications pursuant to this section as are appropriate to extend the protections of section 4303 of this title to standards development activities that are not covered by the initial filing or that have changed significantly since the initial filing.

(b) Publication; Federal Register; notice

Except as provided in subsection (e) of this section, not later than 30 days after receiving a notification filed under subsection (a) of this section, the Attorney General or the Commission shall publish in the Federal Register a notice with respect to such venture that identifies the parties to such venture and that describes in general terms the area of planned activity of such venture, or a notice with respect to such standards development activity that identifies the standards development organization engaged in such activity and that describes such activity in general terms. Prior to its publication, the contents of such notice shall be made available to the parties to such venture or available to such organization, as the case may be.

(c) Effect of notice

If with respect to a notification filed under subsection (a) of this section, notice is published in the Federal Register, then such notification shall operate to convey the protections of section 4303 of this title as of the earlier of—

(1) the date of publication of notice under subsection (b) of this section, or

(2) if such notice is not so published within the time required by subsection (b) of this section, after the expiration of the 30-day period beginning on the date the Attorney General or the Commission receives the applicable information described in subsection (a) of this section.

(d) Exemption; disclosure; information

Except with respect to the information published pursuant to subsection (b) of this section—

(1) all information and documentary material submitted as part of a notification filed pursuant to this section, and

(2) all other information obtained by the Attorney General or the Commission in the course of any investigation, administrative proceeding, or case, with respect to a potential violation of the antitrust laws by the joint venture, or the standards development activity, with respect to which such notification was filed,

shall be exempt from disclosure under section 552 of title 5, and shall not be made publicly available by any agency of the United States to which such section applies except in a judicial or administrative proceeding in which such information and material is subject to any protective order.

(e) Withdrawal of notification

Any person or standards development organization that files a notification pursuant to this section may withdraw such notification before notice of the joint venture involved is published under subsection (b) of this section. Any notification so withdrawn shall not be subject to subsection (b) of this section and shall not confer the protections of section 4303 of this title on any person or any standards development organization with respect to whom such notification was filed.

(f) Judicial review; inapplicable with respect to notifications

Any action taken or not taken by the Attorney General or the Commission with respect to

notifications filed pursuant to this section shall not be subject to judicial review.

(g) Admissibility into evidence; disclosure of conduct; publication of notice; supporting or answering claims under antitrust laws

(1) Except as provided in paragraph (2), for the sole purpose of establishing that a person or standards development organization is entitled to the protections of section 4303 of this title, the fact of disclosure of conduct under subsection (a) of this section and the fact of publication of a notice under subsection (b) of this section shall be admissible into evidence in any judicial or administrative proceeding.

(2) No action by the Attorney General or the Commission taken pursuant to this section shall be admissible into evidence in any such proceeding for the purpose of supporting or answering any claim under the antitrust laws or under any State law similar to the antitrust laws.

(Pub. L. 98–462, §6, Oct. 11, 1984, 98 Stat. 1818; Pub. L. 103–42, §3(f), June 10, 1993, 107 Stat. 119; Pub. L. 108–237, title I, §107, June 22, 2004, 118 Stat. 664.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–237, §107(1), designated existing provisions as par. (1), redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, of par. (1), and added par. (2).

Subsec. (b). Pub. L. 108–237, §107(2), inserted ", or a notice with respect to such standards development activity that identifies the standards development organization engaged in such activity and that describes such activity in general terms" before period at end of first sentence and "or available to such organization, as the case may be" before period at end of last sentence.

Subsec. (d)(2). Pub. L. 108–237, §107(3), inserted ", or the standards development activity," after "venture".

Subsec. (e). Pub. L. 108–237, §107(4), substituted "person or standards development organization that" for "person who" and inserted "or any standards development organization" after "on any person".

Subsec. (g)(1). Pub. L. 108–237, §107(5), inserted "or standards development organization" after "person".

1993—Pub. L. 103–42, §3(f)(1), substituted "joint venture" for "joint research and development venture" in section catchline.

Subsec. (a). Pub. L. 103–42, §3(f)(2), (3), substituted "joint venture" for "joint research and development venture" and "October 11, 1984" for "the date of the enactment of this Act" and added par. (3).

Subsecs. (d)(2), (e). Pub. L. 103–42, §3(f)(3), substituted "joint venture" for "joint research and development venture".

REPORTS ON JOINT VENTURES AND UNITED STATES COMPETITIVENESS

Pub. L. 103–42, §4, June 10, 1993, 107 Stat. 120, provided that:

"(a) PURPOSE.—The purpose of the reports required by this section is to inform Congress and the American people of the effect of the National Cooperative Research and Production Act of 1993 [15 U.S.C. 4301 et seq.] on the competitiveness of the United States in key technological areas of research, development, and production.

"(b) ANNUAL REPORT BY THE ATTORNEY GENERAL.—In the 30-day period beginning at each 1-year interval in the 6-year period beginning on the date of the enactment of this Act [June 10, 1993], the Attorney General shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate—

"(1) a list of joint ventures for which notice was filed under section 6(a) of the National Cooperative Research and Production Act of 1993 [15 U.S.C. 4305(a)] during the 12-month period for which such report is made, including—

"(A) the purpose of each joint venture;

"(B) the identity of each party described in section 6(a)(1) of such Act; and

"(C) the identity and nationality of each person described in section 6(a)(3) of such Act; and

"(2) a list of cases and proceedings, if any, brought during such period under the antitrust laws by the Department of Justice, and by the Federal Trade Commission, with respect to joint ventures for which notice was filed under such section at any time.

"(c) TRIENNIAL REPORT BY THE ATTORNEY GENERAL.—In the 30-day period beginning at each 3-year interval in the 6-year period beginning on the date of the enactment of this Act [June 10, 1993], the Attorney General, after consultation with such other agencies as the Attorney General considers to be appropriate, shall submit to the Committee on the Judiciary of the House of Representatives and the

Committee on the Judiciary of the Senate a description of the technological areas most commonly pursued by joint ventures for production for which notice was filed under section 6(a) of the National Cooperative Research and Production Act of 1993 [15 U.S.C. 4305(a)] during the 3-year period for which such report is made, and an analysis of the trends in the competitiveness of United States industry in such areas.

"(d) REVIEW OF ANTITRUST TREATMENT UNDER FOREIGN LAWS.—In the three 30-day periods beginning 1 year, 3 years, and 6 years after the date of the enactment of this Act [June 10, 1993], the Attorney General, after consultation with such other agencies as the Attorney General considers to be appropriate, shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report on the antitrust treatment of United States businesses with respect to participation in joint ventures for production, under the law of each foreign nation any of whose domestic businesses disclosed its nationality under section 6(a)(3) of the National Cooperative Research and Production Act of 1993 [15 U.S.C. 4305(a)(3)] at any time."

[1] *So in original.*

§4306. Application of section 4303 protections to production of products, processes, and services

Notwithstanding sections 4303 and 4305 of this title, the protections of section 4303 of this title shall not apply with respect to a joint venture's production of a product, process, or service, as referred to in section 4301(a)(6)(D) of this title, unless—

(1) the principal facilities for such production are located in the United States or its territories, and

(2) each person who controls any party to such venture (including such party itself) is a United States person, or a foreign person from a country whose law accords antitrust treatment no less favorable to United States persons than to such country's domestic persons with respect to participation in joint ventures for production.

(Pub. L. 98–462, §7, as added Pub. L. 103–42, §3(g), June 10, 1993, 107 Stat. 119.)

CHAPTER 70—COMPREHENSIVE SMOKELESS TOBACCO HEALTH EDUCATION

Sec.

4401. Public education.
4402. Smokeless tobacco warning.
4403. Ingredient reporting.
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§4401. Public education

(a) Development

(1) The Secretary of Health and Human Services shall establish and carry out a program to inform the public of any dangers to human health resulting from the use of smokeless tobacco products. In carrying out such program the Secretary shall—

(A) develop educational programs and materials and public service announcements respecting the dangers to human health from the use of smokeless tobacco;

(B) make such programs, materials, and announcements available to States, local governments,

school systems, the media, and such other entities as the Secretary determines appropriate to further the purposes of this chapter;

(C) conduct and support research on the effect of smokeless tobacco on human health; and

(D) collect, analyze, and disseminate information and studies on smokeless tobacco and health.

(2) In developing programs, materials, and announcements under paragraph (1) the Secretary shall consult with the Secretary of Education, medical and public health entities, consumer groups, representatives of manufacturers of smokeless tobacco products, and other appropriate entities.

(b) Assistance

The Secretary of Health and Human Services may provide technical assistance and may make grants to States—

(1) to assist in the development of educational programs and materials and public service announcements respecting the dangers to human health from the use of smokeless tobacco,

(2) to assist in the distribution of such programs, materials, and announcements throughout the States, and

(3) to establish 18 as the minimum age for the purchase of smokeless tobacco.

(Pub. L. 99–252, §2, Feb. 27, 1986, 100 Stat. 30.)

EFFECTIVE DATE

Pub. L. 99–252, §11, Feb. 27, 1986, 100 Stat. 35, provided that:

"(a) IN GENERAL.—Except as provided in sections 3(f) and 5(b) [sections 4402(f) and 4404(b) of this title] and subsection (b), this Act [enacting this chapter and amending section 342 of Title 21, Food and Drugs] shall take effect one year after the date of enactment of this Act [Feb. 27, 1986].

"(b) EXCEPTION.—Sections 2, 3(b), 3(c), 3(d), 3(e), 4(b), 7, 8, 9 [sections 4401, 4402(b) to (e), 4403(b), and 4406 to 4408 of this title], and 10 [amending section 342 of Title 21] shall take effect on the date of the enactment of this Act [Feb. 27, 1986]."

SHORT TITLE

Pub. L. 99–252, §1, Feb. 27, 1986, 100 Stat. 30, provided that: "This Act [enacting this chapter and amending section 342 of Title 21, Food and Drugs] may be cited as the 'Comprehensive Smokeless Tobacco Health Education Act of 1986'."

§4402. Smokeless tobacco warning

(a) General rule

(1) It shall be unlawful for any person to manufacture, package, sell, offer to sell, distribute, or import for sale or distribution within the United States any smokeless tobacco product unless the product package bears, in accordance with the requirements of this chapter, one of the following labels:

WARNING: This product can cause mouth cancer.

WARNING: This product can cause gum disease and tooth loss.

WARNING: This product is not a safe alternative to cigarettes.

WARNING: Smokeless tobacco is addictive.

(2) Each label statement required by paragraph (1) shall be—

(A) located on the 2 principal display panels of the package, and each label statement shall comprise at least 30 percent of each such display panel; and

(B) in 17-point conspicuous and legible type and in black text on a white background, or white text on a black background, in a manner that contrasts by typography, layout, or color, with all other printed material on the package, in an alternating fashion under the plan submitted under subsection (b)(3), except that if the text of a label statement would occupy more than 70 percent of the area specified by subparagraph (A), such text may appear in a smaller type size, so long as at least 60 percent of such warning area is occupied by the label statement.

(3) The label statements required by paragraph (1) shall be introduced by each tobacco product manufacturer, packager, importer, distributor, or retailer of smokeless tobacco products concurrently into the distribution chain of such products.

(4) The provisions of this subsection do not apply to a tobacco product manufacturer or distributor of any smokeless tobacco product that does not manufacture, package, or import smokeless tobacco products for sale or distribution within the United States.

(5) A retailer of smokeless tobacco products shall not be in violation of this subsection for packaging that—

(A) contains a warning label;

(B) is supplied to the retailer by a license- or permit-holding tobacco product manufacturer, importer, or distributor; and

(C) is not altered by the retailer in a way that is material to the requirements of this subsection.

(b) Required labels

(1) It shall be unlawful for any tobacco product manufacturer, packager, importer, distributor, or retailer of smokeless tobacco products to advertise or cause to be advertised within the United States any smokeless tobacco product unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a).

(2)(A) Each label statement required by subsection (a) in smokeless tobacco advertising shall comply with the standards set forth in this paragraph.

(B) For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent yield shall comprise at least 20 percent of the area of the advertisement.

(C) The word "WARNING" shall appear in capital letters, and each label statement shall appear in conspicuous and legible type.

(D) The text of the label statement shall be black on a white background, or white on a black background, in an alternating fashion under the plan submitted under paragraph (3).

(E) The label statements shall be enclosed by a rectangular border that is the same color as the letters of the statements and that is the width of the first downstroke of the capital "W" of the word "WARNING" in the label statements.

(F) The text of such label statements shall be in a typeface pro rata to the following requirements: 45-point type for a whole-page broadsheet newspaper advertisement; 39-point type for a half-page broadsheet newspaper advertisement; 39-point type for a whole-page tabloid newspaper advertisement; 27-point type for a half-page tabloid newspaper advertisement; 31.5-point type for a double page spread magazine or whole-page magazine advertisement; 22.5-point type for a 28 centimeter by 3 column advertisement; and 15-point type for a 20 centimeter by 2 column advertisement.

(G) The label statements shall be in English, except that—

(i) in the case of an advertisement that appears in a newspaper, magazine, periodical, or other publication that is not in English, the statements shall appear in the predominant language of the publication; and

(ii) in the case of any other advertisement that is not in English, the statements shall appear in the same language as that principally used in the advertisement.

(3)(A) The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

(B) The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of smokeless tobacco product in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

(C) The Secretary shall review each plan submitted under subparagraphs (A) and (B) and approve it if the plan—

(i) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

(ii) assures that all of the labels required under this section will be displayed by the tobacco product manufacturer, importer, distributor, or retailer at the same time.

(D) This paragraph applies to a retailer only if that retailer is responsible for or directs the label statements under this section, unless the retailer displays, in a location open to the public, an advertisement that does not contain a warning label or has been altered by the retailer in a way that is material to the requirements of this subsection.

(4) The Secretary may, through a rulemaking under section 553 of title 5, adjust the format and type sizes for the label statements required by this section; the text, format, and type sizes of any required tar, nicotine yield, or other constituent disclosures; or the text, format, and type sizes for any other disclosures required under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.]. The text of any such label statements or disclosures shall be required to appear only within the 20 percent area of advertisements provided by paragraph (2). The Secretary shall promulgate regulations which provide for adjustments in the format and type sizes of any text required to appear in such area to ensure that the total text required to appear by law will fit within such area.

(c) Television and radio advertising

It is unlawful to advertise smokeless tobacco on any medium of electronic communications subject to the jurisdiction of the Federal Communications Commission.

(d) Authority to revise warning label statements

The Secretary may, by a rulemaking conducted under section 553 of title 5, adjust the format, type size, and text of any of the label requirements, require color graphics to accompany the text, increase the required label area from 30 percent up to 50 percent of the front and rear panels of the package, or establish the format, type size, and text of any other disclosures required under the Federal Food, Drug, and Cosmetic Act, if the Secretary finds that such a change would promote greater public understanding of the risks associated with the use of smokeless tobacco products.

(Pub. L. 99–252, §3, Feb. 27, 1986, 100 Stat. 30; Pub. L. 111–31, div. A, title II, §§204(a), 205(a), June 22, 2009, 123 Stat. 1846, 1848.)

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsecs. (b)(4) and (d), is act June 25, 1938, ch. 675, 52 Stat. 1040, which is classified generally to chapter 9 (§301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

AMENDMENTS

2009—Pub. L. 111–31, §204(a), amended section generally. Prior to amendment, section consisted of subsecs. (a) to (f) relating to smokeless tobacco warning labels and television and radio advertising.

Subsec. (d). Pub. L. 111–31, §205(a), amended section as amended by Pub. L. 111–31, §204, by adding subsec. (d).

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–31, div. A, title II, §204(b), June 22, 2009, 123 Stat. 1848, provided that: "The amendment made by subsection (a) [amending this section] shall take effect 12 months after the date of enactment of this Act [June 22, 2009]. Such effective date shall be with respect to the date of manufacture, provided that, in any case, beginning 30 days after such effective date, a manufacturer shall not introduce into the domestic commerce of the United States any product, irrespective of the date of manufacture, that is not in conformance with section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402), as amended by subsection (a)."

EFFECTIVE DATE

Subsec. (a) effective one year after Feb. 27, 1986, and subsecs. (b) to (e) effective Feb. 27, 1986, see

section 11 of Pub. L. 99–252, set out as a note under section 4401 of this title.

§4403. Ingredient reporting

(a) In general

(1) Each person who manufactures, packages, or imports smokeless tobacco products shall annually provide the Secretary with—

(A) a list of the ingredients added to tobacco in the manufacture of smokeless tobacco products which does not identify the company which uses the ingredients or the brand of smokeless tobacco which contains the ingredients; and

(B) a specification of the quantity of nicotine contained in each such product.

(2) A person or group of persons required to provide information by this subsection may designate an individual or entity to provide the information required by this subsection.

(b) Report

(1) At such times as the Secretary considers appropriate, the Secretary shall transmit to the Congress a report, based on the information provided under subsection (a) of this section, respecting—

(A) a summary of research activities and proposed research activities on the health effects of ingredients added to tobacco in the manufacture of smokeless tobacco products and the findings of such research;

(B) information pertaining to any such ingredient which in the judgment of the Secretary poses a health risk to users of smokeless tobacco; and

(C) any other information which the Secretary determines to be in the public interest.

(2)(A) Any information provided to the Secretary under subsection (a) of this section shall be treated as a trade secret or confidential information subject to section 552(b)(4) of title 5 and shall not be revealed, except as provided in paragraph (1), to any person other than those authorized by the Secretary in carrying out their official duties under this section.

(B) Subparagraph (A) does not authorize the withholding of information provided under subsection (a) of this section from any duly authorized subcommittee or committee of the Congress. If a subcommittee or committee of the Congress requests the Secretary to provide it such information, the Secretary shall make the information available to the subcommittee or committee and shall, at the same time, notify in writing the person who provided the information of such request.

(C) The Secretary shall establish written procedures to assure the confidentiality of information provided under subsection (a) of this section. Such procedures shall include the designation of a duly authorized agent to serve as custodian of such information. The agent—

(i) shall take physical possession of the information and, when not in use by any person authorized to have access to such information, shall store it in a locked cabinet or file; and

(ii) shall maintain a complete record of any person who inspects or uses the information.

Such procedures shall require that any person permitted access to the information shall be instructed in writing not to disclose the information to anyone who is not entitled to have access to the information.

(Pub. L. 99–252, §4, Feb. 27, 1986, 100 Stat. 32.)

EFFECTIVE DATE

Subsec. (a) effective one year after Feb. 27, 1986, and subsec. (b) effective Feb. 27, 1986, see section 11 of Pub. L. 99–252, set out as a note under section 4401 of this title.

§4404. Enforcement, regulations, and construction

(a) Enforcement

(1) A violation of section 4402 of this title or the regulations promulgated pursuant to this chapter shall be considered a violation of section 45 of this title.

(2) Any person who is found to violate any provision of section 4402 or 4403(a) of this title shall be guilty of a misdemeanor and shall on conviction thereof be subject to a fine of not more than $10,000.

(b) Regulations under section 4402 of this title

(1) Regulations issued by the Federal Trade Commission under section 4402 of this title shall be issued in accordance with section 553 of title 5.

(2) Not later than 180 days after February 27, 1986, the Federal Trade Commission shall promulgate such regulations as it may require to implement section 4402 of this title.

(c) Construction

Nothing in this chapter (other than the requirements of sections 4402 and 4403 of this title) shall be construed to limit, restrict, or expand the authority of the Federal Trade Commission with respect to unfair or deceptive acts or practices in the advertising of smokeless tobacco products.

(Pub. L. 99–252, §5, Feb. 27, 1986, 100 Stat. 33.)

EFFECTIVE DATE

Subsecs. (a) and (c) effective one year after Feb. 27, 1986, see section 11(a) of Pub. L. 99–252, set out as a note under section 4401 of this title.

§4405. Injunctions

The several district courts of the United States are vested with jurisdiction, for cause shown, to prevent and restrain violations of sections 4402 and 4403 of this title upon application of the Federal Trade Commission in the case of a violation of section 4402 of this title or upon application of the Attorney General of the United States acting through the several United States attorneys in their several districts in the case of a violation of section 4402 or 4403 of this title.

(Pub. L. 99–252, §6, Feb. 27, 1986, 100 Stat. 33.)

EFFECTIVE DATE

Section effective one year after Feb. 27, 1986, see section 11(a) of Pub. L. 99–252, set out as a note under section 4401 of this title.

§4406. Preemption

(a) Federal action

Except as provided in the Family Smoking Prevention and Tobacco Control Act (and the amendments made by that Act), no statement relating to the use of smokeless tobacco products and health, other than the statements required by section 4402 of this title, shall be required by any Federal agency to appear on any package or in any advertisement (unless the advertisement is an outdoor billboard advertisement) of a smokeless tobacco product.

(b) State and local action

No statement relating to the use of smokeless tobacco products and health, other than the statements required by section 4402 of this title, shall be required by any State or local statute or regulation to be included on any package or in any advertisement (unless the advertisement is an outdoor billboard advertisement) of a smokeless tobacco product.

(c) Effect on liability law

Nothing in this chapter shall relieve any person from liability at common law or under State statutory law to any other person.

(Pub. L. 99–252, §7, Feb. 27, 1986, 100 Stat. 34; Pub. L. 111–31, div. A, title II, §205(b), June 22, 2009, 123 Stat. 1849.)

REFERENCES IN TEXT

The Family Smoking Prevention and Tobacco Control Act, referred to in subsec. (a), is div. A of Pub. L. 111–31, June 22, 2009, 123 Stat. 1776. For complete classification of this Act to the Code, see Short Title of 2009 Amendment note set out under section 301 of Title 21, Food and Drugs, and Tables.

AMENDMENTS

2009—Subsec. (a). Pub. L. 111–31 substituted "Except as provided in the Family Smoking Prevention and Tobacco Control Act (and the amendments made by that Act), no" for "No".

§4407. Omitted

CODIFICATION

Section, Pub. L. 99–252, §8, Feb. 27, 1986, 100 Stat. 34, which required the Secretary of Health and Human Services and the Federal Trade Commission to transmit biennial reports to Congress on smokeless tobacco products, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, pages 95 and 173 of House Document No. 103–7.

§4408. Definitions

For purposes of this chapter:

(1) The term "smokeless tobacco" has the meaning given such term by section 387(18) of title 21.

(2) The term "commerce" means (A) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island and any place outside thereof; (B) commerce between points in any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island, but through any place outside thereof; or (C) commerce wholly within the District of Columbia, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island.

(3) The term "United States", when used in a geographical sense, includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, and installations of the Armed Forces.

(4) The term "package" means a pack, box, carton, pouch, or container of any kind in which smokeless tobacco products are offered for sale, sold, or otherwise distributed to consumers.

(5) The term "sale or distribution" includes sampling or any other distribution not for sale.

(6) The term "Secretary" means the Secretary of Health and Human Services.

(Pub. L. 99–252, §9, Feb. 27, 1986, 100 Stat. 34; Pub. L. 111–31, div. A, title I, §101(c), June 22, 2009, 123 Stat. 1830.)

AMENDMENTS

2009—Par. (1). Pub. L. 111–31 amended par. (1) generally. Prior to amendment, par. (1) read as follows: "The term 'smokeless tobacco' means any finely cut, ground, powdered, or leaf tobacco that is intended to be placed in the oral cavity."

CHAPTER 71—PETROLEUM OVERCHARGE DISTRIBUTION AND RESTITUTION

Sec.

4501. Restitutionary amounts covered.
4502. Identification and disbursement of restitutionary amounts.
4503. Deposit of remainder of excess amount into Treasury as indirect restitution.
4504. Statute of limitation.
4505. Reports.
4506. Termination.
4507. Definitions.

§4501. Restitutionary amounts covered

(a) In general

This chapter (other than section 4504 of this title)—

(1) specifies the procedure for the disbursement of funds collected, including interest thereon, by the Secretary or the courts pursuant to the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 751 et seq.] or the Economic Stabilization Act of 1970 (and the regulations issued thereunder) as restitution for actual or alleged violations of such Acts or regulations; and

(2) subject to subsection (c) of this section, applies to—

(A) any amount of such funds held in escrow by the Secretary through accounts administered by the Secretary of the Treasury on or after October 21, 1986; and

(B) any amount of such funds determined at any time, pursuant to judicial or administrative proceedings (including any settlement agreement or declaratory judgment) instituted by the Secretary to enforce such Acts and regulations, to be amounts paid for such actual or alleged violations, including any such amounts held in escrow by any court.

(b) Special rule

Amounts described in subsection (a)(2) of this section and held in an escrow account by a court before October 21, 1986, may continue to be held by such court but shall be disbursed, together with any interest thereon, by the Secretary or, as appropriate, by the court only in accordance with the provisions of this chapter.

(c) Exclusions

Subsection (a)(2) of this section does not apply to—

(1) any amount actually disbursed before October 21, 1986, to any person or class of persons pursuant to section 155 of Public Law 97–377 or any final judicial or administrative order or judgment (including any settlement agreement or declaratory judgment);

(2) any amount to which any person or class of persons has an enforceable right, created or vested, or governed by the terms and conditions of the settlement approved on July 7, 1986, in In Re: the Department of Energy Stripper Well Exemption Litigation, M.D.L. No. 378, in the United States District Court for the District of Kansas; and

(3) any amount designated by judicial or administrative order or judgment (including any settlement agreement or declaratory judgment) for disbursement at any time to any specific person or class of persons—

(A) identified in such order or judgment as injured by the violation or alleged violation of the Acts described in subsection (a)(1) of this section (including the regulations thereunder); or

(B) identified in such order or judgment issued before October 21, 1986, for indirect restitution.

(d) Escrow accounts

Subject to subsections (b) and (c) of this section, the amounts covered by subsection (a) of this section shall be held in appropriate escrow accounts administered for the Secretary by the Secretary of the Treasury.

(e) Interest

Consistent with the disbursement requirements of this chapter, the Secretary of the Treasury shall provide that amounts described in subsection (a) of this section shall earn interest at the maximum rate earned on investments of Federal trust funds by the Secretary of the Treasury in short-term and long-term securities issued by the Federal Government (including minority bank investments).

(Pub. L. 99–509, title III, §3002, Oct. 21, 1986, 100 Stat. 1881.)

REFERENCES IN TEXT

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (a)(1), is Pub. L. 93–159, Nov. 27, 1973, 87 Stat. 628, as amended, which was classified generally to chapter 16A (§751 et seq.) of this title, was omitted from the Code pursuant to section 760g of this title, which provided for the expiration of the President's authority under that chapter on Sept. 30, 1981.

The Economic Stabilization Act of 1970, referred to in subsec. (a)(1), is title II of Pub. L. 91–379, Aug. 15, 1970, 84 Stat. 799, as amended, formerly set out as an Economic Stabilization Provisions note under section 1904 of Title 12, Banks and Banking.

Section 155 of Public Law 97–377, referred to in subsec. (c)(1), is section 155 of Pub. L. 97–377, title I, Dec. 21, 1982, 96 Stat. 1919, which is not classified to the Code.

SHORT TITLE

Pub. L. 99–509, title III, §3001, Oct. 21, 1986, 100 Stat. 1881, provided that: "This subtitle [subtitle A (§§3001–3008) of title III of Pub. L. 99–509, enacting this chapter] may be cited as the 'Petroleum Overcharge Distribution and Restitution Act of 1986'."

§4502. Identification and disbursement of restitutionary amounts

(a) In general

(1) Subject to paragraph (2)—

(A) all rulings, policies, or other statements (including any administrative order or settlement agreement) issued after October 21, 1986, by any office, official, or employee of the Department of Energy; and

(B) all orders, including declaratory judgments, issued by any court after October 21, 1986,

shall be consistent with the provisions of this chapter.

(2) Nothing in this section shall affect the settlement approved on July 7, 1986, in In Re: the Department of Energy Stripper Well Exemption Litigation, M.D.L. No. 378, in the United States District Court for the District of Kansas.

(b) to (d) Repealed. Pub. L. 99–509, title III, §3003(e), as added Pub. L. 105–277, div. A, §101(e) [title III, §337], Oct. 21, 1998, 112 Stat. 2681–231, 2681–295

(e) Repeal of subsections (b) to (d); equitable distribution of escrow remainder to claimants

Subsections (b), (c), and (d) of this section are repealed, and any rights that may have arisen are extinguished, on the date of the enactment of the Department of the Interior and Related Agencies Appropriations Act, 1999. After that date, the amount available for direct restitution to current and future refined petroleum product claimants under this chapter is reduced by the amounts specified in title II of that Act as being derived from amounts held in escrow under section 4501(d) of this title. The Secretary shall assure that the amount remaining in escrow to satisfy refined petroleum product claims for direct restitution is allocated equitably among the claimants.

(Pub. L. 99–509, title III, §3003, Oct. 21, 1986, 100 Stat. 1882; Pub. L. 105–277, div. A, §101(e) [title III, §337], Oct. 21, 1998, 112 Stat. 2681–231, 2681–295.)

REFERENCES IN TEXT

The Department of the Interior and Related Agencies Appropriations Act, 1999, referred to in subsec. (e), is section 101(e) of div. A of Pub. L. 105–277, Oct. 21, 1998, 112 Stat. 2681–231. Provisions of title II of the Act relating to amounts held in escrow under section 4501(d) of this title (112 Stat. 2681–276) are not

classified to the Code. For complete classification of this Act to the Code, see Tables.

This chapter, referred to in subsec. (e), was in the original "this Act", which was translated as meaning this subtitle, which enacted this chapter, to reflect the probable intent of Congress.

AMENDMENTS

1998—Subsecs. (b) to (e). Pub. L. 105–277 added subsec. (e) which struck out subsec. (b) relating to disbursement of restitutionary amounts as direct restitution to injured persons, subsec. (c) relating to determination of excess amount to be used for indirect restitution, and subsec. (d) relating to disbursement of excess amount as indirect restitution for energy conservation programs.

§4503. Deposit of remainder of excess amount into Treasury as indirect restitution

The amount that remains from the excess amount described in section 4502(c) [1] of this title after all disbursements have been made for a fiscal year under section 4502(d) [1] of this title shall be deposited by the Secretary of the Treasury into the general fund of the Treasury.

(Pub. L. 99–509, title III, §3004, Oct. 21, 1986, 100 Stat. 1884.)

REFERENCES IN TEXT

Section 4502(c) and (d) of this title, referred to in text, was repealed by section 4502(e) of this title.

[1] *See References in Text note below.*

§4504. Statute of limitation

(a) In general

(1) Except as provided in subsection (b) of this section, the commencement of a civil enforcement action shall be barred unless such action is commenced before the later of—

(A) September 30, 1988; or

(B) six years after the date of the violation upon which the action is based.

(2) For purposes of paragraph (1), the term "commencement of a civil enforcement action" means—

(A) the signing and issuance of a proposed remedial order against any person for filing with the Office of Hearings and Appeals of the Department of Energy; or

(B) the filing of a complaint with the appropriate district court of the United States.

(3) For purposes of this section, the term "civil enforcement action" means an administrative or judicial civil action by the Secretary under the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 751 et seq.] or the Economic Stabilization Act of 1970 (or the regulations issued thereunder) for the enforcement of any violation of such Acts or regulations.

(b) Exceptions

(1) In computing the periods established in subparagraphs (A) and (B) of subsection (a)(1) of this section, there shall be excluded any period—

(A) during which any person who is or may become the subject of a civil enforcement action is outside the United States, has absconded or concealed himself, or is not subject to legal process;

(B) during which facts material to the establishment and maintenance of a civil enforcement action could not be known;

(C) occurring before full compliance with any subpoena or special report order issued to any person under section 772 of this title, and such additional period (not to exceed 12 calendar months) after such compliance for the Secretary to consider the results thereof and commence a

civil enforcement action;

(D) during the pendency of any relevant criminal action under the Acts or regulations described in subsection (a)(1) of this section during which a civil enforcement action is held in abeyance as a result of prosecutorial discretion and with or without a stay, and such additional period (not to exceed 12 calendar months) after a final judicial order or dismissal of such criminal action to commence a civil enforcement action;

(E) before the issuance of an order that constitutes final agency action on a request for adjustment from any rule, regulation, or order under section 7194 of title 42, and such additional period (not to exceed 12 calendar months) to commence a civil enforcement action; or

(F) of extension, to which the Secretary and the defendant have consented in writing, before the expiration of the time periods prescribed in subsection (a)(1) of this section.

(2) The provisions of subsection (a) of this section shall not affect or apply to any civil enforcement action commenced before, on, or after October 21, 1986, and remanded by the Office of Hearings and Appeals, the Federal Energy Regulatory Commission, or the court for further action of any kind.

(3) The provisions of subsection (a) of this section shall not apply to any agency orders issued under the Acts or regulations described in subsection (a)(1) of this section or to regulations issued under this chapter, other than a proposed remedial order subject to this section.

(c) Expression of intent

(1) It is the intent of the Congress that—

(A) the Secretary and the Administrator of the Economic Regulatory Administration shall, to the greatest extent possible and within the time frames specified on September 12, 1986, by such Administrator to the Committee on Energy and Commerce of the House of Representatives, commence civil enforcement actions with respect to all cases known by such Administrator as of October 21, 1986, and designated by such Administrator as "prelitigation cases", unless such an action is found not to be warranted;

(B) the Secretary and such Administrator not delay civil enforcement actions so as to cause the limitation in subsection (a)(1) of this section to apply to any such case;

(C) any negotiations for the purpose of settlement of alleged violations not delay the commencement of a civil enforcement action; and

(D) the Department of Justice cooperate in ensuring that activities necessary, including the enforcement of subpoenas, to commence civil enforcement actions are carried out in a timely manner.

(2) Any failure to comply with the time frames described in paragraph (1)(A) shall not be considered for any purpose in any administrative or judicial proceeding subsequently commenced.

(d) End of investigations and audits

Notwithstanding any other provision of law, the Secretary shall not initiate, after January 1, 1987, any audit or investigation of alleged civil violations of the Acts or regulations described in subsection (a)(1) of this section for the purpose of commencement of any civil enforcement action. Nothing in this subsection shall affect or apply to any audit or investigation conducted with respect to any civil enforcement action commenced (within the limitation established by subsection (a)(1) of this section) before, on, or after October 21, 1986. Nothing in this subsection shall limit the authority of the Secretary to continue any audit or investigation initiated before January 1, 1987.

(e) Limitation on review

Any review of a final agency action determined under section 7193 or 7194 of title 42 may not be initiated in any court by any person subject to such action after—

(1) 60 days after the effective date of that action; or

(2) 90 days after October 21, 1986,

whichever occurs later.

(f) Oversight

(1) In order to ensure the expeditious, effective, and efficient resolution of all civil enforcement actions (whether or not in administrative or judicial litigation) and all cases pending at the Office of Hearings and Appeals under subpart V regulations, the Secretary shall—

(A) maintain a personnel level for the compliance program of the Economic Regulatory Administration of 170 full-time equivalents for fiscal year 1987, subject to normal attrition and subject to the provisions of any appropriation Act enacted for such fiscal year concerning such program; and

(B) maintain for the remainder of the program an adequate mix of lawyers, auditors, technical, clerical, and administrative personnel.

(2) By July 1, 1987, and by July 1 of each year thereafter, the Administrator of the Economic Regulatory Administration shall provide to the Committee on Energy and Commerce of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate the full-time equivalent level necessary for such compliance program for the next fiscal year and the basis for that level.

(3) The Secretary shall, in any fiscal year, provide a notice of at least 30 days to such Committees before initiating any reduction of force at the Economic Regulatory Administration. Such notice shall provide at least—

(A) the reasons for such reduction;

(B) the impact on the mix of personnel and on all cases, whether or not in litigation, including the subpart V regulation proceedings; and

(C) the expected costs and savings for the applicable fiscal year.

(4) The Administrator of the Economic Regulatory Administration shall keep such Committees fully and currently informed about the status (including delays, settlement negotiations, and other pertinent matters) of all enforcement cases (whether or not in litigation) and subpart V regulation proceedings.

(Pub. L. 99–509, title III, §3005, Oct. 21, 1986, 100 Stat. 1884.)

REFERENCES IN TEXT

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (a)(3), is Pub. L. 93–159, Nov. 27, 1973, 87 Stat. 628, as amended, which was classified generally to chapter 16A (§751 et seq.) of this title, was omitted from the Code pursuant to section 760g of this title, which provided for the expiration of the President's authority under that chapter on Sept. 30, 1981.

The Economic Stabilization Act of 1970, referred to in subsec. (a)(3), is title II of Pub. L. 91–379, Aug. 15, 1970, 84 Stat. 799, as amended, formerly set out as an Economic Stabilization Provisions note under section 1904 of Title 12, Banks and Banking.

This chapter, referred to in subsec. (b)(3), was in the original "this Act", which was translated as meaning this subtitle, which enacted this chapter, to reflect the probable intent of Congress.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§4505. Reports

(a) Report on receipts and disbursements

The Secretary shall transmit, not later than 60 days after October 21, 1986, a report to the committees referred to in subsection (d) of this section containing a clear and complete statement of all receipts, disbursements, and commitments of restitutionary amounts, as of October 21, 1986, by the Secretary pursuant to—

(1) any judicial or administrative proceeding (including any settlement agreement or declaratory judgment) instituted at any time by the Secretary to enforce the crude oil and petroleum product pricing and allocation regulations issued under the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 751 et seq.] or the Economic Stabilization Act of 1970; or

(2) section 155 of Public Law 97–377.

(b) Report on collection of certain deficiency funds

The Secretary shall transmit a report each fiscal year, beginning in fiscal year 1987, to such committees on the status of collections by the Secretary of deficiency funds to be deposited into the M.D.L. No. 378 escrow account established by the United States District Court for the District of Kansas until all such deficiency funds have been paid. The Secretary shall, in a manner substantially similar to that required by section 155 of Public Law 97–377 with respect to amounts disbursed under such section, monitor the disposition by the States of any funds disbursed to the States by the court pursuant to the opinion and order of such District Court, dated July 7, 1986, with respect to In Re: the Department of Energy Stripper Well Exemption Litigation, M.D.L. No. 378, including the use of such funds for administrative costs and attorneys fees.

(c) Report on amount estimated to be available for indirect restitution

The Secretary shall transmit, on March 1 of each year beginning with 1987 and continuing until all the restitutionary amounts to which section 4501(a) of this title applies have been collected and disbursed as provided in this chapter, a report to such committees containing an estimate of the amount that will be determined under section 4502(c) [1] of this title to be the excess amount for purposes of section 4502(d)(1)(B) [1] of this title for the fiscal year beginning the next October 1.

(d) Receipt by committees

The reports required by this chapter shall be transmitted to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(Pub. L. 99–509, title III, §3006, Oct. 21, 1986, 100 Stat. 1886.)

REFERENCES IN TEXT

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (a)(1), is Pub. L. 93–159, Nov. 27, 1973, 87 Stat. 628, as amended, which was classified generally to chapter 16A (§751 et seq.) of this title, was omitted from the Code pursuant to section 760g of this title, which provided for the expiration of the President's authority under that chapter on Sept. 30, 1981.

The Economic Stabilization Act of 1970, referred to in subsec. (a)(1), is title II of Pub. L. 91–379, Aug. 15, 1970, 84 Stat. 799, as amended, formerly set out as an Economic Stabilization Provisions note under section 1904 of Title 12, Banks and Banking.

Section 155 of Public Law 97–377, referred to in subsecs. (a)(2), (b), is section 155 of Pub. L. 97–377, title I, Dec. 21, 1982, 96 Stat. 1919, which is not classified to the Code.

Section 4502(c) and (d) of this title, referred to in subsec. (c), was repealed by section 4502(e) of this title.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

[1] *See References in Text note below.*

§4506. Termination

(a) In general

(1) Except as provided in subsection (b) of this section, the provisions of this chapter (other than section 4504 of this title) shall terminate 90 days after the Secretary—

(A) determines that all of the restitutionary amounts to which section 4501(a) of this title applies have been collected and disbursed as provided in this chapter; and

(B) submits to Congress the final report required by section 4505 of this title.

(2) Such final report shall include the determination (and the justification thereof) described in paragraph (1)(A). Such report shall also be published in the Federal Register.

(b) Exception

The requirements of section 4502(d) [1] of this title shall continue to be applicable to the use of restitutionary amounts received under this chapter as long as such funds remain available.

(Pub. L. 99–509, title III, §3007, Oct. 21, 1986, 100 Stat. 1887.)

REFERENCES IN TEXT

Section 4502(d) of this title, referred to in subsec. (b), was repealed by section 4502(e) of this title.

[1] *See References in Text note below.*

§4507. Definitions

For purposes of this chapter:

(1) The term "Secretary" means the Secretary of Energy.

(2) The term "subpart V regulations" means the provisions of Subpart V—Special Procedures for Distribution of Refunds (10 CFR 205.280–205.288) and any amendment made after October 21, 1986, and all precedents and decisions under such regulations, but only to the extent that such provisions, precedents, decisions, and amendments are consistent with the provisions of this chapter.

(3) The term "energy conservation programs" means—

(A) the program under part A of the Energy Conservation and Existing Buildings Act of 1976 (42 U.S.C. 6861 and following);

(B) the programs under part D of title III of the Energy Policy and Conservation Act (relating to primary and supplemental State energy conservation programs; 42 U.S.C. 6321 and following);

(C) the program under part G of title III of the Energy Policy and Conservation Act (relating to energy conservation for schools and hospitals; 42 U.S.C. 6371 and following); and

(D) the program under the National Energy Extension Service Act (42 U.S.C. 7001 and following).

(4) The term "person" includes refiners, retailers, resellers, farmer cooperatives, transportation entities, public and private utilities, school districts, Federal, State, and local governmental entities, farmers, and other individuals and their successors.

(5) The term "State" means each of the several States, the District of Columbia, the commonwealth of Puerto Rico, and any territory or possession of the United States.

(Pub. L. 99–509, title III, §3008, Oct. 21, 1986, 100 Stat. 1887.)

REFERENCES IN TEXT

The Energy Conservation and Existing Buildings Act of 1976, referred to in par. (3)(A), probably means the Energy Conservation and Existing Buildings Act of 1976, which is title IV of Pub. L. 94–385, Aug. 14,

1976, 90 Stat. 1150, as amended. Part A of the Energy Conservation and Existing Buildings Act of 1976, is classified generally to part A (§6861 et seq.) of subchapter III of chapter 81 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 6801 of Title 42 and Tables.

The Energy Policy and Conservation Act, referred to in par. (3)(B), (C), is Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, as amended. Parts D and G of title III of the Energy Policy and Conservation Act are classified generally to parts B (§6321 et seq.) and E (§6371 et seq.), respectively, of subchapter III of chapter 77 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of Title 42 and Tables.

The National Energy Extension Service Act, referred to in par. (3)(D), is title V of Pub. L. 95–39, June 3, 1977, 91 Stat. 191, as amended, which was classified principally to chapter 83 (§7001 et seq.) of Title 42 and was repealed by Pub. L. 102–486, title I, §143(a), Oct. 24, 1992, 106 Stat. 2843. For complete classification of this Act to the Code, see Short Title note set out under section 7001 of Title 42 and Tables.

CHAPTER 72—SEMICONDUCTOR RESEARCH

SUBCHAPTER I—COOPERATIVE RESEARCH PROGRAM

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SUBCHAPTER I—COOPERATIVE RESEARCH PROGRAM

§4601. Findings, purposes, and definitions

(a) Findings

The Congress finds that it is in the national economic and security interests of the United States for the Department of Defense to provide financial assistance to the industry consortium known as Sematech for research and development activities in the field of semiconductor manufacturing technology.

(b) Purposes

The purposes of this subchapter are—

(1) to encourage the semiconductor industry in the United States—

(A) to conduct research on advanced semiconductor manufacturing techniques; and

(B) to develop techniques to use manufacturing expertise for the manufacture of a variety of semiconductor products; and

(2) in order to achieve the purpose set out in paragraph (1), to provide a grant program for the financial support of semiconductor research activities conducted by Sematech.

(c) Definitions

In this subchapter:

(1) The terms "Semiconductor Technology Council" and "Council" mean the advisory council established by section 4603 of this title.

(2) The term "Sematech" means a consortium of firms in the United States semiconductor industry established for the purposes of (A) conducting research concerning advanced semiconductor manufacturing techniques, and (B) developing techniques to adapt manufacturing expertise to a variety of semiconductor products.

(Pub. L. 100–180, div. A, title II, §271, Dec. 4, 1987, 101 Stat. 1068; Pub. L. 103–160, div. A, title II, §263(c)(1), Nov. 30, 1993, 107 Stat. 1610.)

AMENDMENTS

1993—Subsec. (c)(1). Pub. L. 103–160 substituted "Semiconductor Technology Council" for "Advisory Council on Federal Participation in Sematech".

§4602. Grants to Sematech

(a) Authority to make grants

The Secretary of Defense shall make grants, in accordance with section 6304 of title 31, to Sematech in order to defray expenses incurred by Sematech in conducting research on and development of semiconductor manufacturing technology. The grants shall be made in accordance with a memorandum of understanding entered into under subsection (b) of this section.

(b) Memorandum of understanding

The Secretary of Defense shall enter into a memorandum of understanding with Sematech for the purposes of this subchapter. The memorandum of understanding shall require the following:

(1) That Sematech have—

(A) a charter agreed to by all representatives of the semiconductor industry that are participating members of Sematech; and

(B) an annual operating plan that is developed in consultation with the Secretary of Defense and the Semiconductor Technology Council.

(2) That the total amount of funds made available to Sematech by Federal, State, and local government agencies for any fiscal year for the support of research and development activities of Sematech under this section may not exceed 50 percent of the total cost of such activities.

(3) That Sematech, in conducting research and development activities pursuant to the memorandum of understanding, cooperate with and draw on the expertise of the national laboratories of the Department of Energy and of colleges and universities in the United States in the field of semiconductor manufacturing technology.

(4) That an independent, commercial auditor be retained (A) to determine the extent to which the funds made available to Sematech by the United States for the research and development activities of Sematech have been expended in a manner that is consistent with the purposes of this subchapter, the charter of Sematech, and the annual operating plan of Sematech, and (B) to submit to the Secretary of Defense, Sematech, and the Comptroller General of the United States an annual report containing the findings and determinations of such auditor.

(5) That (A) the Secretary of Defense be permitted to use intellectual property, trade secrets,

and technical data owned and developed by Sematech in the same manner as a participant in Sematech and to transfer such intellectual property, trade secrets, and technical data to Department of Defense contractors for use in connection with Department of Defense requirements, and (B) the Secretary not be permitted to transfer such property to any person for commercial use.

(6) That Sematech take all steps necessary to maximize the expeditious and timely transfer of technology developed and owned by Sematech to the participants in Sematech in accordance with the agreement between Sematech and those participants and for the purpose of improving manufacturing productivity of United States semiconductor firms.

(c) Construction of memorandum of understanding

The memorandum of understanding entered into under subsection (b) of this section shall not be considered to be a contract for the purpose of any law or regulation relating to the formation, content, and administration of contracts awarded by the Federal Government and subcontracts under such contracts, including section 2306a of title 10, section 2168 of the Appendix to title 50, and the Federal Acquisition Regulations, and such provisions of law and regulation shall not apply with respect to the memorandum of understanding.

(d) Funding for FY88

Of the amounts appropriated to the Defense Agencies for fiscal year 1988 for research, development, test, and evaluation, $100,000,000 may be obligated only to make grants under this section.

(Pub. L. 100–180, div. A, title II, §272, Dec. 4, 1987, 101 Stat. 1068; Pub. L. 103–160, div. A, title II, §263(c)(2), Nov. 30, 1993, 107 Stat. 1610.)

AMENDMENTS

1993—Subsec. (b)(1)(B). Pub. L. 103–160 substituted "Semiconductor Technology Council" for "Advisory Council on Federal Participation in Sematech".

§4603. Semiconductor Technology Council

(a) Establishment

There is established the Semiconductor Technology Council.

(b) Purposes and functions

(1) The purposes of the Council are the following:

(A) To link assessment by the semiconductor industry of future market and national security needs to opportunities for technology development through cooperative public and private investment.

(B) To seek ways to respond to the technology challenges for semiconductors by fostering precompetitive cooperation among industry, the Federal Government, and institutions of higher education.

(C) To make available judgments, assessments, insights, and recommendations that relate to the opportunities for new research and development efforts and the potential to better rationalize and align industry and government contributions to semiconductor research and development.

(2) The Council shall carry out the following functions:

(A) Advise Sematech and the Secretary of Defense on appropriate technology goals and appropriate level of effort for the research and development activities of Sematech.

(B) Review the emerging markets, technology developments, and core technology challenges for semiconductor research and development and semiconductor manufacturing and explore opportunities for improved coordination among industry, the Federal Government, and institutions of higher education regarding such developments and challenges.

(C) Assess the effect on the appropriate role of Sematech of public and private sector international agreements in semiconductor research and development.

(D) Exchange views regarding the competitiveness of United States semiconductor technology and new or emerging semiconductor technologies that could affect national economic and security interests.

(E) Exchange and update information and identify overlaps and gaps regarding the efforts of industry, the Federal Government, and institutions of higher education in semiconductor research and development.

(F) Assess technology progress relative to industry requirements and Federal Government requirements, responding as appropriate to the challenges in the national semiconductor technology roadmap developed by representatives of industry, the Federal Government, and institutions of higher education.

(G) Make recommendations regarding the semiconductor technology development efforts that should be supported by Federal agencies and industry.

(H) Appoint subgroups as appropriate in connection with the updating of the semiconductor technology roadmap.

(I) Publish and submit to Congress by March 31 of each year an annual report addressing the semiconductor technology challenges and developments for industry, government, and institutions of higher education and the relationship among the challenges and developments for each, including an evaluation of the role of Sematech.

(c) Membership

The Council shall be composed of 16 members as follows:

(1) The Under Secretary of Defense for Acquisition, Technology, and Logistics who shall be Cochairman of the Council.

(2) The Under Secretary of Energy responsible for science and technology matters.

(3) The Under Secretary of Commerce for Technology.

(4) The Director of the Office of Science and Technology Policy.

(5) The Assistant to the President for Economic Policy.

(6) The Director of the National Science Foundation.

(7) Ten members appointed by the President as follows:

(A) Four individuals who are eminent in the semiconductor device industry, one of whom shall be Cochairman of the Council.

(B) Two individuals who are eminent in the semiconductor equipment and materials industry.

(C) Three individuals who are eminent in the semiconductor user industry, including representatives from the telecommunications and computer industries.

(D) One individual who is eminent in an academic institution.

(d) Terms of membership

Each member of the Council appointed under subsection (c)(7) of this section shall be appointed for a term of three years, except that of the members first appointed, two shall be appointed for a term of one year, five shall be appointed for a term of two years, and three shall be appointed for a term of three years, as designated by the President at the time of appointment. A member of the Council may serve after the expiration of the member's term until a successor has taken office.

(e) Vacancies

A vacancy in the Council shall not affect its powers but, in the case of a member appointed under subsection (c)(7) of this section, shall be filled in the same manner as the original appointment was made. Any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term.

(f) Quorum

Eleven members of the Council shall constitute a quorum.

(g) Meetings

The Council shall meet at the call of a Cochairman.

(h) Compensation

(1) Each member of the Council shall serve without compensation.

(2) While away from their homes or regular places of business in the performance of duties for the Council, members of the Council shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under sections 5702 and 5703 of title 5.

(i) Federal Advisory Committee Act

Section 14 of the Federal Advisory Committee Act shall not apply to the Council.

(j) Support for Council

The Council shall use Federal funds made available to Sematech as needed for general and administrative support in accomplishing the Council's purposes.

(Pub. L. 100–180, div. A, title II, §273, Dec. 4, 1987, 101 Stat. 1070; Pub. L. 102–245, title I, §103(e), Feb. 14, 1992, 106 Stat. 9; Pub. L. 103–160, div. A, title II, §263(b), (c)(3)–(e), Nov. 30, 1993, 107 Stat. 1608, 1610; Pub. L. 103–337, div. A, title II, §251, Oct. 5, 1994, 108 Stat. 2702; Pub. L. 106–65, div. A, title IX, §911(a)(1), Oct. 5, 1999, 113 Stat. 717.)

REFERENCES IN TEXT

Section 14 of the Federal Advisory Committee Act, referred to in subsec. (i), is section 14 of Pub. L. 92–463, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1999—Subsec. (c)(1). Pub. L. 106–65 substituted "Under Secretary of Defense for Acquisition, Technology, and Logistics" for "Under Secretary of Defense for Acquisition and Technology".

1994—Subsec. (b)(2)(I). Pub. L. 103–337 inserted "and submit to Congress by March 31 of each year" after "Publish".

1993—Pub. L. 103–160, §263(b), substituted "Semiconductor Technology Council" for "Advisory Council" in section catchline.

Subsec. (a). Pub. L. 103–160, §263(b), added subsec. (a) and struck out former subsec. (a) which read as follows: "There is established the Advisory Council on Federal Participation in Sematech."

Subsec. (b). Pub. L. 103–160, §263(b), added subsec. (b) and struck out former subsec. (b) which related to the functions of the Advisory Council of Federal Participation in Sematech.

Subsec. (c). Pub. L. 103–160, §263(b), added subsec. (c) and struck out former subsec. (c) which related to the membership of the Advisory Council on Federal Participation in Sematech.

Subsec. (d). Pub. L. 103–160, §263(c)(3)(A), substituted "subsection (c)(7)" for "subsection (c)(6)" and "five shall be appointed for a term of two years" for "two shall be appointed for a term of two years".

Subsec. (e). Pub. L. 103–160, §263(c)(3)(B), substituted "subsection (c)(7)" for "subsection (c)(6)".

Subsec. (f). Pub. L. 103–160, §263(c)(3)(C), substituted "Eleven members" for "Seven members".

Subsec. (g). Pub. L. 103–160, §263(d), substituted "a Cochairman" for "the Chairman or a majority of its members".

Subsec. (j). Pub. L. 103–160, §263(e), added subsec. (j).

1992—Subsec. (c)(4). Pub. L. 102–245 substituted "Technology" for "Economic Affairs".

TERMINATION OF ADVISORY COUNCIL ON FEDERAL PARTICIPATION IN SEMATECH

Pub. L. 103–160, div. A, title II, §263(a), Nov. 30, 1993, 107 Stat. 1608, provided that: "The advisory council known as the Advisory Council on Federal Participation in Sematech, established by section 273 of the National Defense Authorization Act for Fiscal Years 1988 and 1989 (15 U.S.C. 4603), is hereby terminated."

FIRST MEETING OF SEMICONDUCTOR TECHNOLOGY COUNCIL

Pub. L. 103–160, div. A, title II, §263(f), Nov. 30, 1993, 107 Stat. 1610, provided that: "The first meeting of the Semiconductor Technology Council shall be held not later than 45 days after the date of the enactment of this Act [Nov. 30, 1993]."

REFERENCES TO TERMINATED COUNCIL

Pub. L. 103–160, div. A, title II, §263(g), Nov. 30, 1993, 107 Stat. 1610, provided that: "A reference in any provision of law to the Advisory Council on Federal Participation in Sematech shall be deemed to refer to the Semiconductor Technology Council established by section 273 of the National Defense Authorization Act for Fiscal Years 1988 and 1989 [15 U.S.C. 4603], as amended by subsection (b)."

§4603a. Study and report by Semiconductor Technology Council

(a) Study and report

Not later than February 1, 1989, and annually thereafter for each fiscal year in which appropriated funds are expended for Sematech the Semiconductor Technology Council established under section 4603(a) of this title shall conduct a study and submit a report to the Governmental Affairs Committee and the Armed Services Committee of the Senate and to appropriate committees of the House of Representatives concerning Federal participation in Sematech. The study and report shall be conducted under the direction of the Under Secretary of Commerce for Technology.

(b) Council recommendations and report

The Council shall include in the report submitted under subsection (a) of this section the following:

(1) identification of potential sources of Federal funding from department and agency budgets for Sematech and recommendations concerning methods and terms of Federal financial participation in Sematech, including grants, loans, loan guarantees, and contributions in kind. The feasibility of methods of Federal recoupment shall also be considered;

(2) definition and assessment of continued Federal participation in Sematech including, but not limited to, issues of technology research and development, civilian and defense industrial base objectives and initiatives, and commercialization. The report shall include a summary of the most recent plans, milestones, and cost estimates for Sematech, including any changes and alterations, and shall comment on Sematech's accomplishments and shortfalls in the preceding fiscal year;

(3) coordination of inter-agency participation, including all matters pertaining to Federal funding and decisionmaking, and other issues regarding Federal participation in Sematech; and

(4) any other issues and questions the Council deems appropriate shall be considered.

(Pub. L. 100–418, title V, §5422, Aug. 23, 1988, 102 Stat. 1468; Pub. L. 102–245, title I, §103(e), Feb. 14, 1992, 106 Stat. 9; Pub. L. 103–160, div. A, title II, §263(g), Nov. 30, 1993, 107 Stat. 1610.)

CODIFICATION

Section was enacted as part of the Omnibus Trade and Competitiveness Act of 1988, and not as part of part F of title II of division A of Pub. L. 100–180 which comprises this subchapter.

AMENDMENTS

1993—Pub. L. 103–160 substituted "Semiconductor Technology Council" for "Advisory Council on Federal Participation in Sematech" in section catchline and subsec. (a).

1992—Subsec. (a). Pub. L. 102–245 substituted "Technology" for "Economic Affairs".

CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

§4604. Repealed. Pub. L. 104–66, title I, §1031(a)(2), Dec. 21, 1995, 109 Stat. 714

Section, Pub. L. 100–180, div. A, title II, §274, Dec. 4, 1987, 101 Stat. 1071, directed Comptroller General to review annual reports submitted by auditor on Sematech funding and transmit comments to Congress.

§4605. Export of semiconductor manufacturing

Any export of materials, equipment, and technology developed by Sematech in whole or in part with financial assistance provided under section 4602(a) of this title shall be subject to the Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.) and shall not be subject to the Arms Export Control Act [22 U.S.C. 2751 et seq.].

(Pub. L. 100–180, div. A, title II, §275, Dec. 4, 1987, 101 Stat. 1071.)

REFERENCES IN TEXT

The Export Administration Act of 1979, referred to in text, is Pub. L. 96–72, Sept. 29, 1979, 93 Stat. 503, as amended, which is classified principally to section 2401 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 2401 of Title 50, Appendix, and Tables.

The Arms Export Control Act, referred to in text, is Pub. L. 90–629, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (§2751 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

§4606. Protection of information

(a) Freedom of Information Act

Section 552 of title 5 shall not apply to information obtained by the Federal Government on a confidential basis under section 4602(b)(5) of this title.

(b) Intellectual property

Notwithstanding any other provision of law, intellectual property, trade secrets, and technical data owned and developed by Sematech or any of the participants in Sematech may not be disclosed by any officer or employee of the Department of Defense except as provided in the provision included in the memorandum of understanding pursuant to section 4602(b)(5) of this title.

(Pub. L. 100–180, div. A, title II, §276, Dec. 4, 1987, 101 Stat. 1071.)

SUBCHAPTER II—DEPARTMENT OF ENERGY SEMICONDUCTOR TECHNOLOGY RESEARCH EXCELLENCE INITIATIVE

§4621. Findings

Congress makes the following findings:

(1) Semiconductors and related microelectronic devices are key components in computers, telecommunications equipment, advanced defense systems, and other equipment.

(2) Aggregate sales of such equipment, in excess of $230,000,000,000 annually, comprise a significant portion of the gross national product of the United States.

(3) The leadership position of the United States in advanced technology is threatened by (A) competition from foreign businesses which is promoted and facilitated by the increasingly active involvement of foreign governments, and (B) other changes in the nature of foreign competition.

(4) The principal cause of the relative shift in strength of the United States and its semiconductor competitors is the establishment of a long-term goal by a major foreign competitor to achieve world superiority in semiconductor research and manufacturing technology and the pursuit of such goal by that competitor by effectively marshalling all of the government, industry, and academic resources needed to achieve that goal.

(5) Although the United States semiconductor industry leads all other principal United States industries in terms of its reinvestment in research and development, that has been insufficient by worldwide standards.

(6) Electronic equipment is essential to protect the national security of the United States, as is evidenced by the allocation of approximately 35 percent of the total research, development, and procurement budgets of the Department of Defense to electronics research.

(7) The Armed Forces of the United States will eventually depend extensively on foreign semiconductor technology unless significant steps are taken, and taken at an early date, to retain

United States leadership in semiconductor technology research.

(8) It is in the interests of the national security and national economy of the United States for the United States to regain its traditional world leadership in the field of semiconductors.

(9) The most effective means of regaining that leadership is through a joint research effort of the Federal Government and private industry of the United States to improve semiconductor manufacturing technology and to develop practical uses for such technology.

(10) In order to meet the national defense needs of the United States and to insure the continued vitality of a commercial manufacturing base in the United States, it is essential that priority be given to the development, demonstration, and advancement of the semiconductor technology base in the United States.

(11) The national laboratories of the Department of Energy are a major national research resource, and the extensive involvement of such laboratories in the semiconductor research initiatives of the Federal Government and private industry would be an effective use of such laboratories and would help insure the success of such initiatives.

(Pub. L. 100–180, div. C, title I, §3141, Dec. 4, 1987, 101 Stat. 1241.)

§4622. Establishment of semiconductor manufacturing technology research initiative

The Secretary of Energy shall initiate and carry out a program (hereinafter in this subchapter referred to as the "Initiative") of research on semiconductor manufacturing technology and on the practical applications of such technology. The Secretary may carry out the Initiative in a way that complements the activities of a consortium of United States semiconductor manufacturers, materials manufacturers, and equipment manufacturers, established for the purpose of conducting research concerning advanced semiconductor manufacturing techniques and developing techniques to adopt manufacturing expertise to a variety of semiconductor products.

(Pub. L. 100–180, div. C, title I, §3142, Dec. 4, 1987, 101 Stat. 1242.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original "this subtitle" and was translated as reading "this part" meaning part D of title I of division C of Pub. L. 100–180 which enacted this subchapter, to reflect the probable intent of Congress because title I did not contain subtitles.

§4623. Participation of national laboratories of Department of Energy

(a) Mission of national laboratories

Each national laboratory of the Department of Energy may participate in research and development projects under the Initiative in conjunction with the Department of Defense or with any consortium, college, or university carrying out any project for or in cooperation with any consortium referred to in section 4622 of this title, to the extent that such participation is consistent with the missions of the national laboratory.

(b) Agreements

The Secretary of Energy may enter into such agreements with the Secretary of Defense, with any consortium referred to in section 4622 of this title, and with any college or university as may be necessary to provide for the active participation of the national laboratories of the Department of Energy in the Initiative.

(c) Research and development

One or more national laboratories of the Department of Energy shall participate in the Initiative by conducting research and development activities relating to research on the development of semiconductor manufacturing technologies. Such activities may include research and development

relating to materials fabrication, materials characterization, design and modeling of devices, and new processing equipment.

(Pub. L. 100–180, div. C, title I, §3143, Dec. 4, 1987, 101 Stat. 1243.)

§4624. Personnel exchanges

The Secretary of Energy may authorize temporary exchanges of personnel between the national laboratories of the Department of Energy and any domestic firm or any consortium referred to in section 4622 of this title that is participating in the Initiative. The exchange of personnel shall be subject to such restrictions, limitations, terms, and conditions that the Secretary of Energy considers necessary in the interest of national security.

(Pub. L. 100–180, div. C, title I, §3144, Dec. 4, 1987, 101 Stat. 1243.)

§4625. Other Department of Energy resources

(a) Availability of resources

Subject to subsection (b) of this section, the Secretary of Energy may make available to the Department of Defense, to any other department or agency of the Federal Government, and to any consortium that has entered into an agreement in furtherance of the Initiative any facilities, personnel, equipment, services, and other resources of the Department of Energy for the purpose of conducting research and development projects under the Initiative consistent with section 4623(a) of this title.

(b) Reimbursement

The Secretary may make facilities available under this section only to the extent that the cost of the use of such facilities is reimbursed by the user.

(Pub. L. 100–180, div. C, title I, §3145, Dec. 4, 1987, 101 Stat. 1243.)

§4626. Budgeting for semiconductor manufacturing technology research

(a) Budget submission

To the extent the Secretary considers appropriate and necessary, the Secretary of Energy, in preparing the research and development budget of the Department of Energy to be included in the annual budget submitted to the Congress by the President under section 1105(a) of title 31, shall provide for programs, projects, and activities that encourage the development of new technology in the field of semiconductors.

(b) Budget categories

The programs, projects, and activities described in subsection (a) of this section shall be included in the budget for general science and research activities of the Department of Energy, except that any programs, projects, and activities that directly support and directly benefit the defense activities of the Department shall be included in the budget for atomic energy defense activities of the Department of Energy.

(Pub. L. 100–180, div. C, title I, §3146, Dec. 4, 1987, 101 Stat. 1243.)

§4627. Cost-sharing agreements

(a) Permitted provisions

The director of each national laboratory of the Department of Energy that is participating in the Initiative or the contractor operating any such national laboratory, in carrying out programs under a

contract with the Department of Energy, may include in any research and development agreement entered into with a domestic firm in connection with such Initiative a cooperative provision for the domestic firm to pay a portion of the cost of the research and development activities.

(b) Limitations

(1) Not more than an amount equal to 1 percent of any national laboratory's annual budget shall be received from nonappropriated funds derived from contracts entered into under the Initiative in any fiscal year, except to the extent approved in advance by the Secretary of Energy.

(2) No Department of Energy national laboratory may receive more than $10,000,000 of nonappropriated funds under any cooperative research and development agreement entered into under this subsection in connection with the Initiative, except to the extent approved in advance by the Secretary of Energy.

(Pub. L. 100–180, div. C, title I, §3147, Dec. 4, 1987, 101 Stat. 1244.)

§4628. Department of Energy oversight of cooperative agreements relating to Initiative

(a) Provisions relating to disapproval and modification of agreements

If the Secretary of Energy desires an opportunity to disapprove or require the modification of any agreement under section 4627 of this title, the agreement shall provide a 90-day period within which such action may be taken, beginning on the date the agreement is submitted to the Secretary.

(b) Record of agreements

Each national laboratory shall maintain a record of all agreements entered into under this section.

(Pub. L. 100–180, div. C, title I, §3148, Dec. 4, 1987, 101 Stat. 1244.)

§4629. Avoidance of duplication

In carrying out the Initiative, the Secretary of Energy shall ensure that unnecessary duplicative research is not performed at the research facilities (including the national laboratories of the Department of Energy) that are participating in the Initiative.

(Pub. L. 100–180, div. C, title I, §3149, Dec. 4, 1987, 101 Stat. 1244.)

§4630. Authorization of appropriations

There is authorized to be appropriated to the Department of Energy for fiscal year 1988 the sum of $25,000,000 for general science and research activities of the Department of Energy under the Initiative.

(Pub. L. 100–180, div. C, title I, §3150, Dec. 4, 1987, 101 Stat. 1244.)

§4631. Technology transfer

(a) In general

The Secretary of Energy shall adopt procedures to provide for timely and efficient transfer of semiconductor technology developed under the Initiative pursuant to applicable laws, Executive orders, and regulations.

(b) Plan for commercialization enhancement

(1) Not later than one year after the date on which funds are first appropriated to conduct the Initiative, the Secretary of Energy shall transmit to the committees of Congress named in paragraph

(2) a plan for the transfer of semiconductor technology and information generated by the Initiative.

(2) The committees of Congress referred to in paragraph (1) are the Committees on Armed Services of the Senate and House of Representatives, the Committee on Energy and Natural Resources of the Senate, and the Committee on Science, Space, and Technology of the House of Representatives.

(Pub. L. 100–180, div. C, title I, §3151, Dec. 4, 1987, 101 Stat. 1244; Pub. L. 103–437, §5(b)(6), Nov. 2, 1994, 108 Stat. 4582.)

AMENDMENTS

1994—Subsec. (b)(2). Pub. L. 103–437 substituted "Committee on Science, Space, and Technology" for "Committee on Science and Technology".

§4632. Semiconductor research and development

(a) Short title

This section may be cited as the "National Advisory Committee on Semiconductor Research and Development Act of 1988".

(b) Findings and purposes

(1) The Congress finds and declares that—

(A) semiconductor technology is playing an ever-increasing role in United States industrial and commercial products and processes, making secure domestic sources of state-of-the-art semiconductors highly desirable;

(B) modern weapons systems are highly dependent on leading edge semiconductor devices, and it is counter to the national security interest to be heavily dependent upon foreign sources for this technology;

(C) governmental responsibilities related to the semiconductor industry are divided among many Federal departments and agencies; and

(D) joint industry-government consideration of semiconductor industry problems is needed at this time.

(2) The purposes of this section are—

(A) to establish the National Advisory Committee on Semiconductors; and

(B) to assign to such Committee the responsibility for devising and promulgating a national semiconductor strategy, including research and development, the implementation of which will assure the continued leadership of the United States in semiconductor technology.

(c) Creation of Committee

There is hereby created in the executive branch of the Government an independent advisory body to be known as the National Advisory Committee on Semiconductors (hereafter in this section referred to as the "Committee").

(d) Functions

(1) The Committee shall—

(A) collect and analyze information on the needs and capabilities of industry, the Federal Government, and the scientific and research communities related to semiconductor technology;

(B) identify the components of a successful national semiconductor strategy in accordance with subsection (b)(2)(B) of this section;

(C) analyze options, establish priorities, and recommend roles for participants in the national strategy;

(D) assess the roles for government and national laboratories and other laboratories supported largely for government purposes in contributing to the semiconductor technology base of the Nation, as well as to access the effective use of the resources of United States private industry, United States universities, and private-public research and development efforts; and

(E) provide results and recommendations to agencies of the Federal Government involved in legislative, policymaking, administrative, management, planning, and technology activities that affect or are part of a national semiconductor strategy, and to the industry and other nongovernmental groups or organizations affected by or contributing to that strategy.

(2) In fulfilling this responsibility, the Committee shall—

(A) monitor the competitiveness of the United States semiconductor technology base;

(B) determine technical areas where United States semiconductor technology is deficient relative to international competition;

(C) identify new or emerging semiconductor technologies that will impact the national defense or United States competitiveness or both;

(D) develop research and development strategies, tactics, and plans whose execution will assure United States semiconductor competitiveness; and

(E) recommend appropriate actions that support the national semiconductor strategy.

(e) Membership and procedures

(1)(A) The Committee shall be composed of 13 members, 7 of whom shall constitute a quorum.

(B) The Secretary of Defense, the Secretary of Commerce, the Secretary of Energy, the Director of the Office of Science and Technology Policy, and the Director of the National Science Foundation, or their designees, shall serve as members of the Committee.

(C) The President, acting through the Director of the Office of Science and Technology Policy, shall appoint, as additional members of the Committee, 4 members from outside the Federal Government who are eminent in the semiconductor industry, and 4 members from outside the Federal Government who are eminent in the fields of technology, defense, and economic development.

(D) One of the members appointed under subparagraph (C), as designated by the President at the time of appointment, shall be chairman of the Committee.

(2) Funding and administrative support for the Committee shall be provided to the Office of Science and Technology Policy through an arrangement with an appropriate agency or organization designated by the Committee, in accordance with a memorandum of understanding entered into between them.

(3) Members of the Committee, other than full-time employees of the Federal Government, while attending meetings of the Committee or otherwise performing duties at the request of the Chairman while away from their homes or regular places of business, shall be allowed travel expenses in accordance with subchapter I of chapter 57 of title 5.

(4) The Chairman shall call the first meeting of the Committee not later than 90 days after August 23, 1988.

(5) At the close of each fiscal year the Committee shall submit to the President and the Congress a report on its activities conducted during such year and its planned activities for the coming year, including specific findings and recommendations with respect to the national semiconductor strategy devised and promulgated under subsection (b)(2)(B) of this section. The first report shall include an analysis of those technical areas, including manufacturing, which are of importance to the United States semiconductor industry, and shall make specific recommendations regarding the appropriate Federal role in correcting any deficiencies identified by the analysis. Each report shall include an estimate of the length of time the Committee must continue before the achievement of its purposes and the issuance of its final report.

(f) Authorization of appropriations

There are authorized to be appropriated to carry out the purposes of this section such sums as may be necessary for the fiscal years 1988, 1989, 1990, 1991, 1992, and 1993.

(Pub. L. 100–418, title V, §5142, Aug. 23, 1988, 102 Stat. 1444; Pub. L. 102–245, title I, §105(f), Feb. 14, 1992, 106 Stat. 12.)

CODIFICATION

Section was enacted as part of the Technology Competitiveness Act and as part of the Omnibus Trade and Competitiveness Act of 1988, and not as part of part D of title I of division C of Pub. L. 100–180 which comprises this subchapter.

AMENDMENTS

1992—Subsec. (f). Pub. L. 102–245 substituted "1990, 1991, 1992, and 1993" for "and 1990".

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (e)(5) of this section relating to submitting annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 178 of House Document No. 103–7.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

CHAPTER 73—EXPORT ENHANCEMENT

SUBCHAPTER I—FAIR TRADE IN AUTO PARTS

Sec.

4701 to 4704. Omitted.

SUBCHAPTER I–A—FAIR TRADE IN AUTOMOTIVE PARTS

4705 to 4705c. Omitted.

SUBCHAPTER II—GENERAL PROVISIONS

4711. Repealed.
4712. Barter and countertrade.

SUBCHAPTER III—EXPORT PROMOTION

4721. United States and Foreign Commercial Service.
4722. Transferred.
4723. Market Development Cooperator Program.
4723a. United States Commercial Centers.
4724. Trade shows.
4725. United States and Foreign Commercial Service Pacific Rim initiative.
4726. Indian tribes export promotion.
4727. Trade Promotion Coordinating Committee.
4727a. Implementation of primary objectives of TPCC.
4728. Environmental trade promotion.
4729. Report on export policy.

SUBCHAPTER I—FAIR TRADE IN AUTO PARTS

§§4701 to 4704. Omitted

CODIFICATION

Sections 4701 to 4704 were omitted pursuant to section 4704 which provided that the authorities under this subchapter expired on Dec. 31, 1998.

Section 4701, Pub. L. 100–418, title II, §2122, Aug. 23, 1988, 102 Stat. 1325, defined "Japanese markets".

Section 4702, Pub. L. 100–418, title II, §2123, Aug. 23, 1988, 102 Stat. 1326, established initiative on auto parts sales to Japan.

Section 4703, Pub. L. 100–418, title II, §2124, Aug. 23, 1988, 102 Stat. 1326, established Special Advisory Committee on auto parts sales in Japan.

Section 4704, Pub. L. 100–418, title II, §2125, Aug. 23, 1988, 102 Stat. 1327; Pub. L. 103–236, title V, §510(a), Apr. 30, 1994, 108 Stat. 465, provided that the authorities under this subchapter expire on Dec. 31, 1998.

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–261, div. C, title XXXVIII, §3801, Oct. 17, 1998, 112 Stat. 2275, provided that title XXXVIII of div. C of Pub. L. 105–261, enacting former subchapter I–A of this chapter, could be cited as the "Fair Trade in Automotive Parts Act of 1998".

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–392, title IV, §401, Oct. 22, 1994, 108 Stat. 4099, provided that: "This title [amending section 4728 of this title] may be cited as the 'Environmental Export Promotion Act of 1994'."

SHORT TITLE

Pub. L. 100–418, title II, §2001, Aug. 23, 1988, 102 Stat. 1325, provided that: "This title [enacting this chapter, section 3310a of Title 22, Foreign Relations and Intercourse, and section 2410a of Title 50, Appendix, War and National Defense, amending sections 4003, 4051, and 4052 of this title, sections 5314 and 5315 of Title 5, Government Organization and Employees, sections 1431 and 1708 of Title 7, Agriculture, sections 635q to 635s of Title 12, Banks and Banking, section 1864 of Title 19, Customs Duties, sections 2151f, 2191a, 2195, and 2421 of Title 22, section 1702 of Title 50, and sections 5, 6, 39, 2403 to 2406, 2409 to 2414, 2417, and 2419 of Title 50, Appendix, and enacting provisions set out as notes under sections 4011 and 4701 of this title, sections 1421 and 1431 of Title 7, section 635q of Title 12, sections 2191 and 2421 of Title 22, section 1702 of Title 50, and sections 5, 2401, 2404, 2406, and 2410a of Title 50, Appendix] may be referred to as the 'Export Enhancement Act of 1988'."

Pub. L. 100–418, title II, §2121, Aug. 23, 1988, 102 Stat. 1325, provided that this subchapter could be referred to as the "Fair Trade in Auto Parts Act of 1988".

SUBCHAPTER I–A—FAIR TRADE IN AUTOMOTIVE PARTS

§§4705 to 4705c. Omitted

CODIFICATION

Sections 4705 to 4705c were omitted pursuant to section 4705c which provided that the authority under this subchapter expired on Dec. 31, 2003.

Section 4705, Pub. L. 105–261, div. C, title XXXVIII, §3802, Oct. 17, 1998, 112 Stat. 2275, contained definitions.

Section 4705a, Pub. L. 105–261, div. C, title XXXVIII, §3803, Oct. 17, 1998, 112 Stat. 2276, related to re-establishment of initiative on automotive parts sales to Japan.

Section 4705b, Pub. L. 105–261, div. C, title XXXVIII, §3804, Oct. 17, 1998, 112 Stat. 2276, established Special Advisory Committee on automotive parts sales in Japanese and other Asian markets.

Section 4705c, Pub. L. 105–261, div. C, title XXXVIII, §3805, Oct. 17, 1998, 112 Stat. 2277, provided that the authority under this subchapter expire on Dec. 31, 2003.

SUBCHAPTER II—GENERAL PROVISIONS

§4711. Repealed. Pub. L. 107–228, div. A, title VI, §671(1), Sept. 30, 2002, 116 Stat. 1407

Section, Pub. L. 100–418, title II, §2202, Aug. 23, 1988, 102 Stat. 1327; Pub. L. 104–188, title I,

§1954(b)(2), Aug. 20, 1996, 110 Stat. 1928, required the Secretary of State to report annually on the economic policy and trade practices of each country with which the United States has an economic or trade relationship.

§4712. Barter and countertrade

(a) Interagency group

(1) Establishment

The President shall establish an interagency group on countertrade, to be composed of representatives of such departments and agencies of the United States as the President considers appropriate. The Secretary of Commerce shall be the chairman of the interagency group.

(2) Functions

It shall be the function of the interagency group to—

(A) review and evaluate—

(i) United States policy on countertrade and offsets, in light of current trends in international countertrade and offsets and the impact of those trends on the United States economy;

(ii) the use of countertrade and offsets in United States exports and bilateral United States foreign economic assistance programs; and

(iii) the need for and the feasibility of negotiating with other countries, through the Organization for Economic Cooperation and Development and other appropriate international organizations, to reach agreements on the use of countertrade and offsets; and

(B) make recommendations to the President and the Congress on the basis of the review and evaluation referred to in subparagraph (A).

(3) Sharing of information

Other departments and agencies of the United States shall provide to the interagency group such information available to such departments and agencies as the interagency group may request, except that the requirements, including penalties for violation thereof, for preserving the confidentiality of such information which are applicable to the officials, employees, experts, or consultants of such departments and agencies shall apply in the same manner to each member of the interagency group and to any other person performing any function under this subsection.

(b) Office of Barter

(1) Establishment

There is established, within the International Trade Administration of the Department of Commerce, the Office of Barter (hereafter in this section referred to as the "Office").

(2) Director

There shall be at the head of the Office a Director, who shall be appointed by the Secretary of Commerce.

(3) Staff

The Secretary of Commerce shall transfer such staff to the Office as the Secretary determines is necessary to enable the Office to carry out its functions under this section.

(4) Functions

It shall be the function of the Office to—

(A) monitor information relating to trends in international barter;

(B) organize and disseminate information relating to international barter in a manner useful to business firms, educational institutions, export-related Federal, State, and local government agencies, and other interested persons, including publishing periodic lists of known commercial opportunities for barter transactions beneficial to United States enterprises;

(C) notify Federal agencies with operations abroad of instances where it would be beneficial to the United States for the Federal Government to barter Government-owned surplus commodities for goods and services purchased abroad by the Federal Government; and

(D) provide assistance to enterprises seeking barter and countertrade opportunities.

(Pub. L. 100–418, title II, §2205, Aug. 23, 1988, 102 Stat. 1332.)

COMPOSITION OF INTERAGENCY GROUP

For composition of Interagency Group on Countertrade, see section 2–101 of Ex. Ord. No. 12661, Dec. 27, 1988, 54 F.R. 779, set out as a note under section 2901 of Title 19, Customs Duties.

SUBCHAPTER III—EXPORT PROMOTION

§4721. United States and Foreign Commercial Service

(a) Establishment

(1) In general

The Secretary of Commerce shall establish, within the International Trade Administration, the United States and Foreign Commercial Service. The Secretary shall, to the greatest extent practicable, transfer to the Commercial Service the functions and personnel of the United States and Foreign Commercial Services.

(2) Assistant Secretary of Commerce and Director General; other personnel

The head of the Commercial Service shall be the Assistant Secretary of Commerce and Director General of the Commercial Service, who shall be appointed by the President, by and with the advice and consent of the Senate. The Assistant Secretary of Commerce and Director General of the Commercial Service may appoint Commercial Service Officers and such other personnel as may be necessary to carry out the activities of the Commercial Service.

(3) Coordination with foreign policy objectives

The Secretary shall take the necessary steps to ensure that the activities of the Commercial Service are carried out in a manner consistent with United States foreign policy objectives, and the Secretary shall consult regularly with the Secretary of State in order to comply with this paragraph.

(4) Authority of chief of mission

All activities of the Commercial Service shall be subject to section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927).

(b) Statement of purpose

The Commercial Service shall place primary emphasis on the promotion of exports of goods and services from the United States, particularly by small businesses and medium-sized businesses, and on the protection of United States business interests abroad by carrying out activities such as—

(1) identifying United States businesses with the potential to export goods and services and providing such businesses with advice and information on establishing export businesses;

(2) providing United States exporters with information on economic conditions, market opportunities, the status of the intellectual property system in such country, and the legal and regulatory environment within foreign countries;

(3) providing United States exporters with information and advice on the necessary adaptation of product design and marketing strategy to meet the differing cultural and technical requirements of foreign countries;

(4) providing United States exporters with actual leads and an introduction to contacts within foreign countries;

(5) assisting United States exporters in locating reliable sources of business services in foreign countries;

(6) assisting United States exporters in their dealings with foreign governments and enterprises owned by foreign governments;

(7) assisting the coordination of the efforts of State and local agencies and private organizations which seek to promote United States business interests abroad so as to maximize their effectiveness and minimize the duplication of efforts;

(8) utilizing district and foreign offices as one-stop shops for United States exporters by providing exporters with information on all export promotion and export finance activities of the Federal Government, assisting exporters in identifying which Federal programs may be of greatest assistance, and assisting exporters in making contact with the Federal programs identified; and

(9) providing United States exporters and export finance institutions with information on all financing and insurance programs of the Export-Import Bank of the United States, the Overseas Private Investment Corporation, the Trade and Development Program, and the Small Business Administration, including providing assistance in completing applications for such programs and working with exporters and export finance institutions to address any deficiencies in such applications that have been submitted.

(c) Offices

(1) In general

The Commercial Service shall conduct its activities at a headquarters office, district offices located in major United States cities, and foreign offices located in major foreign cities.

(2) Headquarters

The headquarters of the Commercial Service shall provide such managerial, administrative, research, and other services as the Secretary considers necessary to carry out the purposes of the Commercial Service.

(3) District offices

The Secretary shall establish district offices of the Commercial Service in any United States city in a region in which the Secretary determines that there is a need for Federal Government export assistance.

(4) Foreign offices

(A) The Secretary may, after consultation with the Secretary of State, establish foreign offices of the Commercial Service. These offices shall be located in foreign cities in regions in which the Secretary determines there are significant business opportunities for United States exporters.

(B) The Secretary may, in consultation with the Secretary of State, assign to the foreign offices Commercial Service Officers and such other personnel as the Secretary considers necessary. In employing Commercial Service Officers and such other personnel, the Secretary shall use the Foreign Service personnel system in accordance with the Foreign Service Act of 1980 [22 U.S.C. 3901 et seq.]. The Secretary shall designate a Commercial Officer [1] as head of each foreign office.

(C) Upon the request of the Secretary, the Secretary of State shall attach the Commercial Service Officers and other employees of each foreign office to the diplomatic mission of the United States in the country in which that foreign office is located, and shall obtain for them diplomatic privileges and immunities equivalent to those enjoyed by Foreign Service personnel of comparable rank and salary.

(D) For purposes of official representation, the senior Commercial Service Officer in each country shall be considered to be the senior commercial representative of the United States in that country, and the United States chief of mission in that country shall accord that officer all privileges and responsibilities appropriate to the position of senior commercial representative of other countries.

(E) The Secretary of State is authorized, upon the request of the Secretary, to provide office space, equipment, facilities, and such other administrative and clerical services as may be required

for the operation of the foreign offices. The Secretary is authorized to reimburse or advance funds to the Secretary of State for such services.

(F) The authority of the Secretary under this paragraph shall be subject to section 4802 of title 22.

(d) Rank of Commercial Service Officers in foreign missions

(1) Minister-Counselor

Notwithstanding any other provision of law, the Secretary is authorized to designate up to 16 United States missions abroad at which the senior Commercial Service Officer will be able to use the diplomatic title of Minister-Counselor. The Secretary of State shall accord the diplomatic title of Minister-Counselor to the senior Commercial Service Officer assigned to a United States mission so designated.

(2) Consul General

In any United States consulate in which a vacancy occurs in the position of Consul General, the Secretary of State, in consultation with the Secretary, shall consider filling that vacancy with a Commercial Service Officer if the primary functions of the consulate are of a commercial nature and if there are significant business opportunities for United States exporters in the region in which the consulate is located.

(e) Information dissemination

In order to carry out subsection (b)(7) of this section, to lessen the cost of distribution of information produced by the Commercial Service, and to make that information more readily available, the Secretary should establish a system for distributing that information in those areas where no district offices of the Commercial Service are located. Distributors of the information should be State export promotion agencies or private export and trade promotion associations. The distribution system should be consistent with cost recovery objectives of the Department of Commerce.

(f) Cooperation in Federal financing and insurance programs

To assist the Commercial Service in carrying out subsection (b)(9) of this section, and consistent with the provisions of section 635i–7 of title 12, the Export-Import Bank of the United States, the Overseas Private Investment Corporation, the Trade and Development Program, and the Small Business Administration shall each—

(1) provide to the Commercial Service complete and current information on all of its programs and financing practices; and

(2) undertake a training program regarding such programs and practices for Commercial Service Officers who are designated by the Assistant Secretary of Commerce and Director General of the Commercial Service.

(g) Audits

The Inspector General of the Department of Commerce shall perform periodic audits of the operations of the Commercial Service, but at least once every 3 years. The Inspector General shall report to the Congress the results of each such audit. In addition to an overview of the activities and effectiveness of Commercial Service operations, the audit shall include—

(1) an evaluation of the current placement of domestic personnel and recommendations for transferring personnel among district offices;

(2) an evaluation of the current placement of foreign-based personnel and recommendations for transferring such personnel in response to newly emerging business opportunities for United States exporters; and

(3) an evaluation of the personnel system and its management, including the recruitment, assignment, promotion, and performance appraisal of personnel, the use of limited appointees, and the "time-in-class" system.

(h) Report by Secretary

Not later than 1 year after August 23, 1988, the Secretary shall submit a report to the Congress on the feasibility and desirability, the progress to date, the present status, and the 5-year outlook, of the comprehensive integration of the functions and personnel of the foreign and domestic export promotion operations within the International Trade Administration of the Department of Commerce.

(i) Omitted

(j) Definitions

For purposes of this section—

(1) the term "Secretary" means the Secretary of Commerce;

(2) the term "Commercial Service" means the United States and Foreign Commercial Service;

(3) the term "United States exporter" means—

(A) a United States citizen;

(B) a corporation, partnership, or other association created under the laws of the United States or of any State; or

(C) a foreign corporation, partnership, or other association, more than 95 percent of which is owned by persons described in subparagraphs (A) and (B),

that exports, or seeks to export, goods or services produced in the United States;

(4) the term "small business" means any small business concern as defined under section 632 of this title;

(5) the term "State" means any of the several States, the District of Columbia, or any commonwealth, territory, or possession of the United States; and

(6) the term "United States" means the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(Pub. L. 100–418, title II, §2301, Aug. 23, 1988, 102 Stat. 1338; Pub. L. 102–429, title II, §§202, 203, 205, Oct. 21, 1992, 106 Stat. 2201, 2204.)

REFERENCES IN TEXT

The Foreign Service Act of 1980, referred to in subsec. (c)(4)(B), is Pub. L. 96–465, Oct. 17, 1980, 94 Stat. 2071, as amended, which is classified principally to chapter 52 (§3901 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of Title 22 and Tables.

CODIFICATION

Section is comprised of section 2301 of Pub. L. 100–418. Subsec. (i) of section 2301 of Pub. L. 100–418 amended section 5315 of Title 5, Government Organization and Employees.

AMENDMENTS

1992—Subsec. (b)(8), (9). Pub. L. 102–429, §§202, 203(a), added pars. (8) and (9).

Subsec. (d)(1). Pub. L. 102–429, §205, substituted "16" for "8".

Subsecs. (f) to (j). Pub. L. 102–429, §203(b), added subsec. (f) and redesignated former subsecs. (f) to (i) as (g) to (j), respectively.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (g) of this section relating to reporting results of audits to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 53 of House Document No. 103–7.

[1] So in original. Probably should be "Commercial Service Officer".

§4722. Transferred

CODIFICATION

Section, Pub. L. 100–418, title II, §2302, Aug. 23, 1988, 102 Stat. 1341, which related to Commercial Service Officers and multilateral development bank procurement, was renumbered §1803 of title XVIII of Pub. L. 95–118, by Pub. L. 101–240, title V, §541(b)(2), Dec. 19, 1989, 103 Stat. 2517, and was transferred to section 262s–2 of Title 22, Foreign Relations and Intercourse.

§4723. Market Development Cooperator Program

(a) Authority of Secretary of Commerce

In order to promote further the exportation of goods and services from the United States, the Secretary of Commerce is authorized to establish, in the International Trade Administration of the Department of Commerce, a Market Development Cooperator Program. The purpose of the program is to develop, maintain, and expand foreign markets for nonagricultural goods and services produced in the United States.

(b) Implementation of Program

The Secretary of Commerce shall carry out the Market Development Cooperator Program by entering into contracts with—

(1) nonprofit industry organizations,

(2) trade associations,

(3) State departments of trade and their regional associations, including centers for international trade development, and

(4) private industry firms or groups of firms in cases where no entity described in paragraph (1), (2), or (3) represents that industry,

(in this section referred to as "cooperators") to engage in activities in order to carry out the purpose of the Market Development Cooperator Program set forth in subsection (a) of this section. The costs of activities under such a contract shall be shared equitably among the Department of Commerce, the cooperator involved, and, whenever appropriate, foreign businesses. The Department of Commerce shall undertake to support direct costs of activities under such a contract, and the cooperator shall undertake to support indirect costs of such activities. Activities under such a contract shall be carried out by the cooperator with the approval and assistance of the Secretary.

(c) Cooperator partnership program

(1) In general

(A) As part of the Market Development Cooperator Program established under subsection (a) of this section, the Secretary of Commerce shall establish a partnership program with cooperators under which a cooperator may detail individuals, subject to the approval of the Secretary, to the United States and Foreign Commercial Service for a period of not less than 1 year or more than 2 years to supplement the Commercial Service.

(B) Any individual detailed to the United States and Foreign Commercial Service under this subsection shall be responsible for such duties as the Secretary may prescribe in order to carry out the purpose of the Market Development Cooperator Program set forth in subsection (a) of this section.

(C) Individuals detailed to the United States and Foreign Commercial Service under this subsection shall not be considered to be employees of the United States for the purposes of any law administered by the Office of Personnel Management, except that the Secretary of State may determine the applicability to such individuals of section 2669(f) of title 22 and of any other law administered by the Secretary of State concerning the detail of such individuals abroad.

(2) Qualifications of participants

In order to qualify for the program established under this subsection, individuals shall have demonstrated expertise in the international business arena in at least 2 of the following areas: marketing, market research, and computer data bases.

(3) Expenses of the program

(A) The cooperator who details an individual to the United States and Foreign Commercial Service under this subsection shall be responsible for that individual's salary and related expenses, including health care, life insurance, and other noncash benefits, if any, normally paid by such cooperator.

(B) The Secretary of Commerce shall pay transportation and housing costs for each individual participating in the program established under this subsection.

(d) Budget Act

Contracts may be entered into under this section in a fiscal year only to such extent or in such amounts as are provided in appropriations Acts.

(Pub. L. 100–418, title II, §2303, Aug. 23, 1988, 102 Stat. 1342.)

§4723a. United States Commercial Centers

(a) Establishment

The Secretary of Commerce, in his or her role as chairperson of the Trade Promotion Coordinating Committee, is authorized and encouraged to establish United States Commercial Centers (hereinafter in this section referred to as "Centers") in Asia, in Latin America, and in Africa.

(b) Purpose of Centers

The purpose of the Centers shall be to provide additional resources for the promotion of exports of United States goods and services to the host countries, by familiarizing United States exporters with the industries, markets, and customs of the host countries, thus facilitating commercial ties and trade.

(c) Functions of Centers

Each Center shall—

(1) collect and publish economic and market data with respect to the host country;

(2) provide, on a user-fee basis, preliminary technical and clerical assistance, language translation, and administrative assistance, and information regarding the legal systems, laws, regulations, and procedures of the host country, to United States exporters seeking to do business in the host country; and

(3) in other ways promote exports of United States goods and services to the host country.

(d) Specific services to be provided

To carry out its objectives, each Center shall make available the following (on a user-fee basis):

(1) Business facilities

Business facilities, including exhibition space, conference rooms, office space (including telephones and other basic office equipment), and, where warranted by impeding deficiencies in the public system, high quality international telecommunications facilities.

(2) Business services

Business support services, including language translation services, clerical services, and a commercial library containing a comprehensive collection of reference materials covering United States and host country industries and markets.

(3) Commercial law information services

Commercial law information services, including—

(A) a clearinghouse for information regarding the relevant commercial laws, practices, and regulations of the host country;

(B) publications to assist United States businesses;

(C) legal referral services; and

(D) lists of local agents and distributors.

(e) Other trade promotion activities

Each Center shall also promote United States export trade by—

(1) facilitating contacts between buyers, sellers, bankers, traders, distributors, agents, and necessary government officials from the United States and the host country;

(2) coordinating trade missions; and

(3) assisting with applications, contracts, and clearances for imports into the host country and exports from the United States.

(f) Staffing of Centers

Each Center shall be staffed by members of the United States and Foreign Commercial Service, participants in the Market Development Cooperator Program established under section 4723 of this title, other employees of the Department of Commerce, and employees of appropriate executive branch departments and agencies which are members of the Trade Promotion Coordinating Committee.

(g) Center facilities and their relationship to United States Department of Commerce operations in host countries

(1) Physical accommodations for the Centers

The Secretary of Commerce shall locate each Center in the primary commercial city of the host country. The Secretary shall acquire office space, exhibition space, and other facilities and equipment that are necessary for each Center to perform its functions. To the extent feasible, each Center shall be located in the central commercial district of the host city.

(2) Consolidation of Department of Commerce operations in host countries

For the purpose of obtaining maximum effectiveness and efficiency and to the extent consistent with the purposes of the Centers, the Secretary of Commerce is encouraged to place all personnel of the Department of Commerce who are assigned to the city in which a Center is located in the same facilities as those in which the Center conducts its activities.

(h) Use of Market Development Cooperator Program

The Secretary of Commerce shall, to the greatest extent feasible, use the Market Development Cooperator Program established under section 4723 of this title to assist in carrying out the purposes of the Centers established under this section.

(i) Authorization of appropriations

There are authorized to be appropriated to the Secretary of Commerce to carry out this section $8,000,000 for fiscal year 1993, and $5,500,000 for fiscal year 1994. Funds made available under this subsection may be used for the acquisition of real property.

(j) Repealed. Pub. L. 104–66, title I, §1021(b), Dec. 21, 1995, 109 Stat. 712

(k) Definitions

For purposes of this section—

(1) the term "United States exporter" means—

(A) a United States citizen,

(B) a corporation, partnership, or other association created under the laws of the United States or of any State, or

(C) a foreign corporation, partnership, or other association, more than 95 percent of which is owned by persons described in subparagraphs (A) and (B),

that exports, or seeks to export, goods or services produced in the United States;

(2) the term "State" means any of the several States, the District of Columbia, or any commonwealth, territory, or possession of the United States; and

(3) the term "United States" means the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(Pub. L. 102–549, title IV, §401, Oct. 28, 1992, 106 Stat. 3661; Pub. L. 104–66, title I, §1021(b), Dec. 21, 1995, 109 Stat. 712.)

CODIFICATION

Section was enacted as part of the Jobs Through Exports Act of 1992, and not as part of the Export Enhancement Act of 1988 which enacted this chapter.

AMENDMENTS

1995—Subsec. (j). Pub. L. 104–66 struck out heading and text of subsec. (j). Text read as follows: "The Secretary of Commerce shall submit to the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, not later than 1 year after October 28, 1992, and not later than the end of each 1-year period occurring thereafter, a report on the status, activities, and effectiveness of the Centers. Each such report shall include any recommendations with respect to the program established under this section."

§4724. Trade shows

(a) Authority of Secretary of Commerce

In order to facilitate exporting by United States businesses, the Secretary of Commerce shall provide assistance for trade shows in the United States which bring together representatives of United States businesses seeking to export goods or services produced in the United States and representatives of foreign companies or governments seeking to buy such goods or services from these United States businesses.

(b) Recipients of assistance

Assistance under subsection (a) of this section may be provided to—

(1) nonprofit industry organizations,

(2) trade associations,

(3) foreign trade zones, and

(4) private industry firms or groups of firms in cases where no entity described in paragraph (1), (2), or (3) represents that industry,

to provide the services necessary to operate trade shows described in subsection (a) of this section.

(c) Assistance to small businesses

In providing assistance under this section, the Secretary of Commerce shall, in consultation with the Administrator of the Small Business Administration, make special efforts to facilitate participation by small businesses and companies new to export.

(d) Uses of assistance

Funds appropriated to carry out this section shall be used to—

(1) identify potential participants for trade show organizers,

(2) provide information on trade shows to potential participants,

(3) supply language services for participants, and

(4) provide information on trade shows to small businesses and companies new to export.

(e) Definitions

As used in this section—

(1) the term "United States business" means—

(A) a United States citizen;

(B) a corporation, partnership, or other association created under the laws of the United States or of any State (including the District of Columbia or any commonwealth, territory, or possession of the United States); or

(C) a foreign corporation, partnership, or other association, more than 95 percent of which is owned by persons described in subparagraphs (A) and (B); and

(2) the term "small business" means any small business concern as defined under section 632 of this title.

(Pub. L. 100–418, title II, §2304, Aug. 23, 1988, 102 Stat. 1343.)

§4725. United States and Foreign Commercial Service Pacific Rim initiative

(a) In general

In order to encourage the export of United States goods and services to Japan, South Korea, and Taiwan, the United States and Foreign Commercial Service shall make a special effort to—

(1) identify United States goods and services which are not being exported to the markets of Japan, South Korea, and Taiwan but which could be exported to these markets under competitive market conditions;

(2) identify and notify United States persons who sell or provide such goods or services of potential opportunities identified under paragraph (1);

(3) present, periodically, a list of the goods and services identified under paragraph (1), together with a list of any impediments to the export of such goods and services, to appropriate authorities in Japan, South Korea, and Taiwan, with a view toward liberalizing markets to such goods and services;

(4) facilitate the entrance into such markets by United States persons identified and notified under paragraph (2); and

(5) monitor and evaluate the results of efforts to increase the sale of goods and services in such markets.

(b) Reports to Congress

The Secretary of Commerce shall report periodically to the Congress on activities carried out under subsection (a) of this section.

(c) "United States person" defined

As used in this section, the term "United States person" means—

(1) a United States citizen; or

(2) a corporation, partnership, or other association created under the laws of the United States or any State (including the District of Columbia or any commonwealth, territory, or possession of the United States).

(Pub. L. 100–418, title II, §2306, Aug. 23, 1988, 102 Stat. 1344.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which a report required under subsec. (b) of this section is listed on page 51), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

§4726. Indian tribes export promotion

(a) Assistance authorized

The Secretary of Commerce is authorized to provide assistance to eligible entities for the development of foreign markets for authentic American Indian arts and crafts. Eligible entities under this section include Indian tribes, tribal organizations, tribal enterprises, craft guilds, marketing cooperatives, and individual Indian-owned businesses.

(b) Activities eligible for assistance

Activities eligible for assistance under this section include, but are not limited to, conduct of market surveys, development of promotional materials, financing of trade missions, participation in

international trade fairs, direct marketing, and other market development activities.

(c) Administration of assistance

Assistance under this section shall be administered by the Secretary of Commerce under guidelines developed by the Secretary. Priority shall be given to projects which support the establishment of long term, stable international markets for American Indian arts and crafts and which are designed to provide the greatest economic benefit to American Indian artisans.

(d) Technical and other assistance

The Secretary of Commerce shall provide technical assistance and support services to applicants eligible for and entities receiving assistance under this section for the purpose of helping them in identifying and entering appropriate foreign markets, complying with foreign and domestic legal and banking requirements regarding the export and import of arts and crafts, and utilizing import and export financial arrangements, and shall provide such other assistance as may be necessary to support the development of export markets for American Indian arts and crafts.

(e) Limitation on assistance

No assistance shall be provided under this section in support of any activity which includes the sale or marketing of any craft items other than authentic arts and crafts hand made or hand crafted by American Indian artisans.

(Pub. L. 100–418, title II, §2307, Aug. 23, 1988, 102 Stat. 1345.)

§4727. Trade Promotion Coordinating Committee

(a) Establishment and purpose

The President shall establish the Trade Promotion Coordinating Committee (hereafter in this section referred to as the "TPCC"). The purpose of the TPCC shall be—

(1) to provide a unifying framework to coordinate the export promotion and export financing activities of the United States Government; and

(2) to develop a governmentwide strategic plan for carrying out Federal export promotion and export financing programs.

(b) Duties

The TPCC shall—

(1) coordinate the development of the trade promotion policies and programs of the United States Government;

(2) provide a central source of information for the business community on Federal export promotion and export financing programs;

(3) coordinate official trade promotion efforts to ensure better delivery of services to United States businesses, including—

(A) information and counseling on United States export promotion and export financing programs and opportunities in foreign markets;

(B) representation of United States business interests abroad; and

(C) assistance with foreign business contacts and projects;

(4) prevent unnecessary duplication in Federal export promotion and export financing activities;

(5) assess the appropriate levels and allocation of resources among agencies in support of export promotion and export financing and provide recommendations to the President based on its assessment; and

(6) carry out such other duties as are deemed to be appropriate, consistent with the purpose of the TPCC.

(c) Strategic plan

To carry out subsection (b) of this section, the TPCC shall develop and implement a

governmentwide strategic plan for Federal trade promotion efforts. Such plan shall—

(1) establish a set of priorities for Federal activities in support of United States exports and explain the rationale for the priorities;

(2) review current Federal programs designed to promote the sale of United States exports in light of the priorities established under paragraph (1) and develop a plan to bring such activities into line with the priorities and to improve coordination of such activities;

(3) identify areas of overlap and duplication among Federal export promotion activities and propose means of eliminating them;

(4) propose to the President an annual unified Federal trade promotion budget that supports the plan for priority activities and improved coordination established under paragraph (2) and eliminates funding for the areas of overlap and duplication identified under paragraph (3);

(5) review efforts by the States (as defined in section 4721(i) of this title) to promote United States exports and propose means of developing cooperation between State and Federal efforts, including co-location, cost-sharing between Federal and State export promotion programs, and sharing of market research data; and

(6) reflect the recommendations of the United States National Tourism Organization to the degree considered appropriate by the TPCC.

(d) Membership

(1) In general

Members of the TPCC shall include representatives from—

(A) the Department of Commerce;
(B) the Department of State;
(C) the Department of the Treasury;
(D) the Department of Agriculture;
(E) the Department of Energy;
(F) the Department of Transportation;
(G) the Office of the United States Trade Representative;
(H) the Small Business Administration;
(I) the Agency for International Development;
(J) the Trade and Development Program;
(K) the Overseas Private Investment Corporation;
(L) the Export-Import Bank of the United States; and
(M) at the discretion of the President, such other departments or agencies as may be necessary.

(2) Chairperson

The Secretary of Commerce shall serve as the chairperson of the TPCC.

(e) Member qualifications

Members of the TPCC shall be appointed by the heads of their respective departments or agencies. Such members, as well as alternates designated by any members unable to attend a meeting of the TPCC, shall be individuals who exercise significant decisionmaking authority in their respective departments or agencies.

(f) Report to Congress

The chairperson of the TPCC shall prepare and submit to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on International Relations of the House of Representatives, not later than March 30 of each year, a report describing—

(1) the strategic plan developed by the TPCC pursuant to subsection (c) of this section, the implementation of such plan, and any revisions thereto; and

(2) the implementation of sections 5823 and 5824 of title 22 [1] concerning funding for export promotion activities and the interagency working groups on energy of the TPCC.

(Pub. L. 100–418, title II, §2312, as added Pub. L. 102–429, title II, §201, Oct. 21, 1992, 106 Stat.

2199; amended Pub. L. 104–66, title I, §1022(a), Dec. 21, 1995, 109 Stat. 713; Pub. L. 104–288, §8, Oct. 11, 1996, 110 Stat. 3407; Pub. L. 106–158, §7, Dec. 9, 1999, 113 Stat. 1747.)

REFERENCES IN TEXT

Sections 5823 and 5824 of title 22, referred to in subsec. (f)(2), was, in the original, "sections 303 and 304 of the Freedom for Russia and Emerging Democracies and Open Markets Support Act of 1992 (22 U.S.C. 5823 and 5824)", and was translated as meaning sections 303 and 304 of the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992, Pub. L. 102–511, to reflect the probable intent of Congress.

AMENDMENTS

1999—Subsec. (f). Pub. L. 106–158 substituted "March 30 of each year," for "September 30, 1995, and annually thereafter," in introductory provisions.

1996—Subsec. (c)(6). Pub. L. 104–288 added par. (6).

1995—Subsec. (f). Pub. L. 104–66 amended heading and text of subsec. (f) generally. Prior to amendment, text read as follows: "The chairperson of the TPCC shall prepare and submit to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Foreign Affairs of the House of Representatives, not later than September 30, 1993, and annually thereafter, a report describing the strategic plan developed by the TPCC pursuant to subsection (c) of this section, the implementation of such plan, and any revisions thereto."

CHANGE OF NAME

Committee on International Relations of House of Representatives changed to Committee on Foreign Affairs of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

EX. ORD. NO. 12870. TRADE PROMOTION COORDINATING COMMITTEE

Ex. Ord. No. 12870, Sept. 30, 1993, 58 F.R. 51753, as amended by Ex. Ord. No. 13286, §26, Feb. 28, 2003, 68 F.R. 10625, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Export Enhancement Act of 1992 (Public Law 102–429, 106 Stat. 2186) [see Short Title of 1992 Amendment note set out under section 635 of Title 12, Banks and Banking], and section 301 of title 3, United States Code, it is hereby ordered as follows:

SECTION 1. *Establishment.* There is established the "Trade Promotion Coordinating Committee" ("TPCC"). The Committee shall comprise representatives of each of the following:

(a) Department of Commerce;
(b) Department of State;
(c) Department of the Treasury;
(d) Department of Agriculture;
(e) Department of Energy;
(f) Department of Transportation;
(g) Department of Defense;
(h) Department of Labor;
(i) Department of the Interior;
(j) Department of Homeland Security;
(k) Agency for International Development;
(l) Trade and Development Agency;
(m) Environmental Protection Agency;
(n) United States Information Agency;
(o) Small Business Administration;
(p) Overseas Private Investment Corporation;
(q) Export-Import Bank of the United States;
(r) Office of the United States Trade Representative;
(s) Council of Economic Advisers;
(t) Office of Management and Budget;
(u) National Economic Council;
(v) National Security Council; and
(w) at the discretion of the President, such other departments or agencies as may be necessary.

Members of the TPCC shall be appointed by the heads of their respective departments or agencies. Such members, as well as their designated alternatives, shall be individuals who exercise significant

decision-making authority in their respective departments or agencies.

SEC. 2. *Chairperson*. The Secretary of Commerce shall be the chairperson of the TPCC.

SEC. 3. *Purpose*. The purpose of the TPCC shall be to provide a unifying framework to coordinate the export promotion and export financing activities of the United States Government and to develop a governmentwide strategic plan for carrying out such programs.

SEC. 4. *Duties*. The TPCC shall:

(a) coordinate the development of the trade promotion policies and programs of the United States Government;

(b) provide a central source of information for the business community on Federal export promotion and export financing programs;

(c) coordinate official trade promotion efforts to ensure better delivery of services to U.S. businesses, including:

(1) information and counseling on U.S. export promotion and export financing programs and opportunities in foreign markets;

(2) representation of U.S. business interests abroad; and

(3) assistance with foreign business contacts and projects;

(d) prevent unnecessary duplication in Federal export promotion and export financing activities;

(e) assess the appropriate levels and allocation of resources among agencies in support of export promotion and export financing and provide recommendations, through the Director of the Office of Management and Budget to the President, based on its assessment; and

(f) carry out such other duties as are deemed to be appropriate, consistent with the purpose of the TPCC.

SEC. 5. *Strategic Plan*. To carry out section 4 of this order, the TPCC shall develop and implement a governmentwide strategic plan for Federal trade promotion efforts. Such plan shall:

(a) establish a set of priorities for Federal activities in support of U.S. exports and explain the rationale for the priorities;

(b) review current Federal programs designed to promote the sale of U.S. exports in light of the priorities established under paragraph (a) of this section and develop a plan to bring such activities into line with those priorities and to improve coordination of such activities;

(c) identify areas of overlap and duplication among Federal export promotion activities and propose means of eliminating them;

(d) propose, through the Director of the Office of Management and Budget, to the President an annual unified Federal trade promotion budget that supports the plan for priority activities and improved coordination established under paragraph (b) of this section and eliminates funding for the areas of overlap and duplication identified under paragraph (c) of this section; and

(e) review efforts by the States to promote U.S. exports and propose means of developing cooperation between State and Federal efforts, including co-location, cost-sharing between Federal and State export promotion programs, and sharing of market research data.

SEC. 6. *Report*. The chairperson of the TPCC, with the approval of the President, shall prepare and submit to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Foreign Affairs of the House of Representatives, not later than September 30, 1993, and annually thereafter, a report describing the strategic plan developed by the TPCC pursuant to section 5 of this order, the implementation of such a plan, and any revisions to the plan.

[For abolition of United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau), transfer of functions, and treatment of references thereto, see sections 6531, 6532, and 6551 of Title 22, Foreign Relations and Intercourse.]

EX. ORD. NO. 13534. NATIONAL EXPORT INITIATIVE

Ex. Ord. No. 13534, Mar. 11, 2010, 75 F.R. 12433, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Export Enhancement Act of 1992, Public Law 102–429, 106 Stat. 2186, and section 301 of title 3, United States Code, in order to enhance and coordinate Federal efforts to facilitate the creation of jobs in the United States through the promotion of exports, and to ensure the effective use of Federal resources in support of these goals, it is hereby ordered as follows:

SECTION 1. *Policy*. The economic and financial crisis has led to the loss of millions of U.S. jobs, and while the economy is beginning to show signs of recovery, millions of Americans remain unemployed or underemployed. Creating jobs in the United States and ensuring a return to sustainable economic growth is the top priority for my Administration. A critical component of stimulating economic growth in the United States

is ensuring that U.S. businesses can actively participate in international markets by increasing their exports of goods, services, and agricultural products. Improved export performance will, in turn, create good high-paying jobs.

The National Export Initiative (NEI) shall be an Administration initiative to improve conditions that directly affect the private sector's ability to export. The NEI will help meet my Administration's goal of doubling exports over the next 5 years by working to remove trade barriers abroad, by helping firms—especially small businesses—overcome the hurdles to entering new export markets, by assisting with financing, and in general by pursuing a Government-wide approach to export advocacy abroad, among other steps.

SEC. 2. *Export Promotion Cabinet*. There is established an Export Promotion Cabinet to develop and coordinate the implementation of the NEI. The Export Promotion Cabinet shall consist of:

(a) the Secretary of State;

(b) the Secretary of the Treasury;

(c) the Secretary of Agriculture;

(d) the Secretary of Commerce;

(e) the Secretary of Labor;

(f) the Director of the Office of Management and Budget;

(g) the United States Trade Representative;

(h) the Assistant to the President for Economic Policy;

(i) the National Security Advisor;

(j) the Chair of the Council of Economic Advisers;

(k) the President of the Export-Import Bank of the United States;

(l) the Administrator of the Small Business Administration;

(m) the President of the Overseas Private Investment Corporation;

(n) the Director of the United States Trade and Development Agency; and

(o) the heads of other executive branch departments, agencies, and offices as the President may, from time to time, designate.

The Export Promotion Cabinet shall meet periodically and report to the President on the progress of the NEI. A member of the Export Promotion Cabinet may designate, to perform the NEI-related functions of that member, a senior official from the member's department or agency who is a full-time officer or employee. The Export Promotion Cabinet may also establish subgroups consisting of its members or their designees, and, as appropriate, representatives of other departments and agencies. The Export Promotion Cabinet shall coordinate with the Trade Promotion Coordinating Committee (TPCC), established by Executive Order 12870 of September 30, 1993.

SEC. 3. *National Export Initiative*. The NEI shall address the following:

(a) *Exports by Small and Medium-Sized Enterprises (SMEs)*. Members of the Export Promotion Cabinet shall develop programs, in consultation with the TPCC, designed to enhance export assistance to SMEs, including programs that improve information and other technical assistance to first-time exporters and assist current exporters in identifying new export opportunities in international markets.

(b) *Federal Export Assistance*. Members of the Export Promotion Cabinet, in consultation with the TPCC, shall promote Federal resources currently available to assist exports by U.S. companies.

(c) *Trade Missions*. The Secretary of Commerce, in consultation with the TPCC and, to the extent possible, with State and local government officials and the private sector, shall ensure that U.S. Government-led trade missions effectively promote exports by U.S. companies.

(d) *Commercial Advocacy*. Members of the Export Promotion Cabinet, in consultation with other departments and agencies and in coordination with the Advocacy Center at the Department of Commerce, shall take steps to ensure that the Federal Government's commercial advocacy effectively promotes exports by U.S. companies.

(e) *Increasing Export Credit*. The President of the Export-Import Bank, in consultation with other members of the Export Promotion Cabinet, shall take steps to increase the availability of credit to SMEs.

(f) *Macroeconomic Rebalancing*. The Secretary of the Treasury, in consultation with other members of the Export Promotion Cabinet, shall promote balanced and strong growth in the global economy through the G20 Financial Ministers' process or other appropriate mechanisms.

(g) *Reducing Barriers to Trade*. The United States Trade Representative, in consultation with other members of the Export Promotion Cabinet, shall take steps to improve market access overseas for our manufacturers, farmers, and service providers by actively opening new markets, reducing significant trade barriers, and robustly enforcing our trade agreements.

(h) *Export Promotion of Services*. Members of the Export Promotion Cabinet shall develop a framework for

promoting services trade, including the necessary policy and export promotion tools.

SEC. 4. *Report to the President*. Not later than 180 days after the date of this order, the Export Promotion Cabinet, through the TPCC, shall provide the President a comprehensive plan to carry out the goals of the NEI. The Chairman of the TPCC shall set forth the steps taken to implement this plan in the annual report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives required by the Export Enhancement Act of 1992, Public Law 102–249 [102–429], 106 Stat. 2186, and Executive Order 12870, as amended.

SEC. 5. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to an executive department, agency, or the head thereof, or the status of that department or agency within the Federal Government; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

EX. ORD. NO. 13630. ESTABLISHMENT OF AN INTERAGENCY TASK FORCE ON COMMERCIAL ADVOCACY

Ex. Ord. No. 13630, Dec. 6, 2012, 77 F.R. 73893, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to help level the playing field on behalf of U.S. businesses and workers competing for international contracts against foreign firms and to facilitate the growth of sales of U.S. goods and services around the world in support of the National Export Initiative, it is hereby ordered as follows:

SECTION 1. *Policy*. Executive Order 13534 of March 11, 2010, created the National Export Initiative (NEI), which provides unprecedented Federal support for exports of goods and services by American businesses. Executive Order 13534 also established the Export Promotion Cabinet to develop and coordinate the implementation of the eight priorities of the NEI, which include, but are not limited to, improving advocacy and trade promotion efforts on behalf of U.S. exporters, increasing access to export financing, and removing barriers to trade and enforcing U.S. trade laws and agreements. As part of these responsibilities, the Export Promotion Cabinet, in coordination with the Advocacy Center at the Department of Commerce, is focused on ensuring that the Federal Government's commercial advocacy effectively promotes exports by U.S. businesses, particularly by those firms competing for international contracts against foreign firms that may benefit from strong home government support. The creation of a new whole-of-government commercial advocacy task force that will provide enhanced Federal support for U.S. businesses competing for international contracts, coordinate the efforts of executive branch leadership in engaging their foreign counterparts on commercial advocacy issues, and increase the availability of information to the U.S. business community about these kinds of export opportunities, will ensure that U.S. exporters have more support for selling their goods and services in global markets.

SEC. 2. *Establishment and Membership*. There is hereby established an Interagency Task Force on Commercial Advocacy (Task Force).

(a) The Task Force shall be chaired by the Secretary of Commerce (Chair) and consist of senior-level officials from the following executive departments and agencies (agencies) designated by the heads of those agencies:

(i) Department of State;

(ii) Department of the Treasury;

(iii) Department of Defense;

(iv) Department of Agriculture;

(v) Department of Health and Human Services;

(vi) Department of Transportation;

(vii) Department of Energy;

(viii) Department of Homeland Security;

(ix) United States Agency for International Development;

(x) Export-Import Bank of the United States;

(xi) Millennium Challenge Corporation;

(xii) Overseas Private Investment Corporation;

(xiii) Small Business Administration;

(xiv) United States Trade and Development Agency; and

(xv) such other agencies as the President, or the Chair, may designate.

(b) The Chair shall designate a senior-level official of the Department of Commerce as the Executive Director of the Task Force, who shall be responsible for regularly convening and presiding over the meetings of the Task Force, determining its agenda, and guiding its work in fulfilling its functions under this order in coordination with the Advocacy Center at the Department of Commerce.

SEC. 3. *Functions*. The Task Force shall perform the following functions:

(a) review and prioritize commercial advocacy cases in which the Advocacy Center at the Department of Commerce has approved the provision of commercial advocacy services, and coordinate the activities of relevant agencies to enhance Federal support for such cases, in order to increase the success of U.S. exporters competing for foreign procurements;

(b) coordinate the engagement of agency leadership with their foreign counterparts regarding commercial advocacy issues, particularly with respect to their foreign travel and other occasions for engagement with foreign officials, and evaluate reports on the outcomes of such engagement, in order to increase the number of senior-level agency officials regularly and effectively advocating on behalf of U.S. exporters;

(c) develop strategies to raise the awareness of commercial advocacy assistance within the U.S. business community in order to increase the number of U.S. businesses utilizing commercial advocacy services;

(d) institute processes to obtain and distribute information about foreign procurement opportunities that may be of interest to U.S. businesses in order to expand awareness of opportunities for U.S. businesses to sell their goods and services to foreign governments;

(e) facilitate voluntary short-term personnel exchanges, not to exceed 120 days, between the Department of Commerce and other Task Force agencies, in order to cross-train Federal personnel to better serve U.S. exporters; and

(f) submit a progress report to the Export Promotion Cabinet every 180 days, which should include, but not be limited to, the number of commercial advocacy cases opened and successfully concluded, the number of commercial advocacy engagements by senior-level agency officials, and the number of U.S. businesses utilizing commercial advocacy services. The Advocacy Center at the Department of Commerce will be responsible for managing and tracking all commercial advocacy reporting for the Task Force.

SEC. 4. *Definitions*. For the purposes of this order:

(a) the term "commercial advocacy" shall mean Federal support for U.S. firms competing for foreign project or procurement opportunities; and

(b) the term "foreign project or procurement opportunities" shall mean export opportunities, including defense export opportunities, for U.S. businesses that involve foreign government decisionmakers, including foreign government-owned corporations.

SEC. 5. *General Provisions*. (a) The Commerce Department shall provide funding and administrative support for the Task Force to the extent permitted by law and consistent with existing appropriations.

(b) Nothing in this order shall be construed to impair or otherwise effect [sic]:

(i) the authority granted by law, regulation, Executive Order, or Presidential Directive to an executive department, agency, or the head thereof; and

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

EX. ORD. NO. 13675. ESTABLISHING THE PRESIDENT'S ADVISORY COUNCIL ON DOING BUSINESS IN AFRICA

Ex. Ord. No. 13675, Aug. 5, 2014, 79 F.R. 46661, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to promote broad-based economic growth and job creation in the United States and Africa by encouraging U.S. companies to trade with and invest in Africa, it is hereby ordered as follows:

SECTION 1. *Policy*. The United States recognizes that Africa is a region of growing economic opportunity and innovation and aims to expand a trade and investment partnership that is grounded in shared interests and mutual responsibility. Africa offers a diverse and broad range of trade and investment opportunities in national

and regional markets. The U.S. Government will encourage U.S. companies to seize the trade and investment opportunities offered by Africa's national and regional markets and help drive inclusive and sustained economic growth and the region's economic expansion, while also creating jobs here in the United States.

SEC. 2. *Establishment*. Not later than 180 days after the date of this order, the Secretary of Commerce shall establish the President's Advisory Council on Doing Business in Africa (Advisory Council).

SEC. 3. *Membership*. (a) The Advisory Council shall consist of not more than 15 private sector corporate members, including small businesses and representatives from infrastructure, agriculture, consumer goods, banking, services, and other industries. The Advisory Council shall be broadly representative of the key industries with business interests in the functions of the Advisory Council as set forth in section 4 of this order. Appointments to the Advisory Council shall be made without regard to political affiliation.

(b) Members of the Advisory Council shall be appointed by the Secretary of Commerce, in consultation with the Trade Promotion Coordinating Committee (TPCC), which was authorized by statute in 1992 (15 U.S.C. 4727) and established by Executive Order 12870 of September 30, 1993.

SEC. 4. *Functions*. (a) The Advisory Council shall advise the President, through the Secretary of Commerce, on strengthening commercial engagement between the United States and Africa, with a focus on advancing the President's Doing Business in Africa Campaign as described in the U.S. Strategy Toward Sub-Saharan Africa of June 14, 2012.

(b) In providing the advice described in subsection (a) of this section, the Advisory Council shall provide information, analysis, and recommendations to the President that address the following, in addition to other topics deemed relevant by the President, the Secretary of Commerce, or the Advisory Council:

(i) creating jobs in the United States and Africa through trade and investment;

(ii) developing strategies by which the U.S. private sector can identify and take advantage of trade and investment opportunities in Africa;

(iii) building lasting commercial partnerships between the U.S. and African private sectors;

(iv) facilitating U.S. business participation in Africa's infrastructure development;

(v) contributing to the growth and improvement of Africa's agricultural sector by encouraging partnerships between U.S. and African companies to bring innovative agricultural technologies to Africa;

(vi) making available to the U.S. private sector an accurate understanding of the opportunities presented for increasing trade with and investment in Africa;

(vii) developing and strengthening partnerships and other mechanisms to increase U.S. public and private sector financing of trade with and investment in Africa;

(viii) analyzing the effect of policies in the United States and Africa on U.S. trade and investment interests in Africa;

(ix) identifying other means to expand commercial ties between the United States and Africa; and

(x) building the capacity of Africa's young entrepreneurs to develop trade and investment ties with U.S. partners.

SEC. 5. *Administration*. (a) The Department of Commerce shall provide funding and administrative support for the Advisory Council to the extent permitted by law and within existing appropriations.

(b) Members of the Advisory Council shall serve without either compensation or reimbursement of expenses.

(c) The Secretary of Commerce shall designate a senior officer or employee of the Department of Commerce to serve as the Executive Director for the Advisory Council.

(d) The Secretary of Commerce shall consult with the TPCC on matters and activities pertaining to the Advisory Council, including on activities related to implementation of the advice of the Advisory Council. The Secretary of Commerce shall invite representatives of TPCC agencies to attend meetings of the Advisory Council when issues relevant to their responsibilities are to be considered.

SEC. 6. *Termination*. The Advisory Council shall function for such period as may be necessary but shall terminate 2 years after the date of this order, unless extended by the President.

SEC. 7. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) Insofar as the Federal Advisory Committee Act (5 U.S.C. App.) (the "Act") may apply to the Advisory

Council, any functions of the President under the Act, except for those in section 6 of the Act, shall be performed by the Secretary of Commerce in accordance with the guidelines that have been issued by the Administrator of General Services.

BARACK OBAMA.

MAXIMIZING THE EFFECTIVENESS OF FEDERAL PROGRAMS AND FUNCTIONS SUPPORTING TRADE AND INVESTMENT

Memorandum of President of the United States, Feb. 17, 2012, 77 F.R. 10935, provided:

Memorandum for the Heads of Executive Departments and Agencies

Winning the future and creating an economy that's built to last will require the Federal Government to wisely allocate scarce resources to maximize efficiency and effectiveness so that it can best support American competitiveness, innovation, and job growth. Creating good, high-paying jobs in the United States and ensuring sustainable economic growth are the top priorities of my Administration. To accomplish these goals, we must ensure that U.S. businesses increase their exports of goods, services, and agricultural products, and that foreign companies recognize the United States as an attractive place to invest and to open businesses. While this growth will be fueled by the private sector, the Federal Government must do its part to facilitate trade and investment.

Executive Order 13534 of March 11, 2010, established the Export Promotion Cabinet to coordinate the development and implementation of the National Export Initiative (NEI) to improve conditions that directly affect the private sector's ability to export and to help meet my Administration's goal of doubling exports over 5 years. Pursuant to the terms of the Executive Order, the Export Promotion Cabinet conducts its work in coordination with the Trade Promotion Coordinating Committee (TPCC). The TPCC, chaired by the Secretary of Commerce, was authorized by statute in 1992 (15 U.S.C. 4727) and established by Executive Order 12870 of September 30, 1993. The NEI has used Government resources and policies to increase exports at a pace consistent with the goal of doubling exports by the end of 2014. The NEI has accomplished this by opening up foreign markets for U.S. exports, enhancing enforcement of our trade laws, providing needed export financing, advocating on behalf of U.S. firms, and otherwise facilitating U.S. exports. But we must do more.

On January 13, 2012, I announced that I would submit a legislative proposal seeking the authority to reorganize the Federal Government in order to reduce costs and consolidate agencies (Consolidation Authority), and outlined the first use I would make of such authority: to streamline functions currently dispersed across numerous agencies into a single new department to promote competitiveness, exports, and American business. The new department would integrate and streamline trade negotiation, financing, promotion, and enforcement functions currently housed at half a dozen executive departments and agencies, and would include an office dedicated to expanding foreign investment and assisting businesses that are considering investing in the United States. In addition to the trade and investment functions, the new department would include integrated small business, technology, innovation, and statistics programs and services from a number of departments and agencies, thereby creating a one-stop shop for businesses that want to grow and export. We cannot afford to wait until the Congress acts, however, and must do all we can administratively to make the most efficient and effective use of the Federal Government's trade, foreign investment, export, and business programs and functions.

Accordingly, to further enhance and coordinate Federal efforts to facilitate the creation of jobs in the United States and ensure sustainable economic growth through trade and foreign investment, and to ensure the effective and efficient use of Federal resources in support of these goals, I hereby direct the following:

(1) *Program Coordination*. In coordination with the TPCC, the Export Promotion Cabinet shall develop strategies and initiatives in support of my Administration's strategic trade and investment goals and priorities, including the specific measures outlined in this memorandum. The Assistant to the President and Deputy National Security Advisor for International Economics shall coordinate the activities of the Export Promotion Cabinet pursuant to this memorandum. Measures and progress shall continue to be reported in the annual National Export Strategy report of the TPCC. The TPCC will continue to function as it has, consistent with its statutorily mandated duties.

(2) *Improving Customer Service for Exporters*. Consistent with my memorandum of October 28, 2011 (Making it Easier for America's Small Businesses and America's Exporters to Access Government Services to Help Them Grow and Hire), the Export Promotion Cabinet shall support the Steering Committee established pursuant to that memorandum in its efforts to create BusinessUSA, a common, open, online platform and web service that will, among other things, enable exporters to seamlessly access information about export-related Government programs, resources, and services regardless of which agency provides them.

(3) *Trade Budget*. The Export Promotion Cabinet shall, in consultation with the TPCC:

(a) evaluate the allocation of Federal Government resources to assist with trade financing, negotiation,

enforcement, and promotion, as well as the encouragement of foreign investment in the United States, and identify potential savings from streamlining overlapping or duplicative programs, as well as areas in need of additional resources;

(b) make recommendations to the Director of the Office of Management and Budget (OMB) for more effective resource allocation to these functions, consistent with my Administration's strategic trade and investment goals and priorities, including recommendations to streamline overlapping and duplicative programs and reallocate those resources; and

(c) present to the Director of OMB for consideration in the annual process for developing the President's Budget, a proposed unified Federal trade budget, consistent with my Administration's strategic trade and investment goals and priorities.

(4) *Coordination of Offices and Staff*. The Export Promotion Cabinet, in consultation with the TPCC, shall take steps to ensure the most efficient use of its members' domestic and foreign offices and distribution networks, including: co-locating offices wherever appropriate; cross-training staff to better serve business customers at home and abroad by promoting exports to foreign countries and foreign investment in the United States; and considering the effectiveness of commercial diplomacy, cross-training, and referrals, as appropriate, when evaluating employee performance.

(5) *Enhancing Business Competitiveness*. Pending passage of legislation providing Consolidation Authority, the Export Promotion Cabinet shall work with the National Economic Council to develop and coordinate administrative initiatives to align and enhance programs that enable and support efforts by American businesses, particularly small businesses, to innovate, grow, and increase exports.

(6) *General Provisions*[.] (a) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(b) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency, or the head thereof; or

(ii) functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Director of OMB is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

[1] *See References in Text note below.*

§4727a. Implementation of primary objectives of TPCC

The Trade Promotion Coordinating Committee shall—

(1) report on the actions taken or efforts currently underway to eliminate the areas of overlap and duplication identified among Federal export promotion activities;

(2) coordinate efforts to sponsor or promote any trade show or trade fair;

(3) work with all relevant State and national organizations, including the National Governors' Association, that have established trade promotion offices;

(4) report on actions taken or efforts currently underway to promote better coordination between State, Federal, and private sector export promotion activities, including co-location, cost sharing between Federal, State, and private sector export promotion programs, and sharing of market research data; and

(5) by not later than March 30, 2000, and annually thereafter, include the matters addressed in paragraphs (1), (2), (3), and (4) in the annual report required to be submitted under section 4727(f) of this title.

(Pub. L. 106–158, §6, Dec. 6, 1999, 113 Stat. 1746.)

CODIFICATION

Section was enacted as part of the Export Enhancement Act of 1999, and not as part of the Export Enhancement Act of 1988 which enacted this chapter.

§4728. Environmental trade promotion

(a) Statement of policy

It is the policy of the United States to foster the export of United States environmental technologies, goods, and services. In exercising their powers and functions, all appropriate departments and agencies of the United States Government shall encourage and support sales of such technologies, goods, and services.

(b) Environmental Trade Working Group of Trade Promotion Coordination Committee

(1) Establishment and purpose

The President shall establish the Environmental Trade Promotion Working Group (hereafter in this section referred to as the "Working Group") as a subcommittee of the Trade Promotion Coordination Committee (hereafter in this section referred to as the "TPCC"), established under section 4727 of this title. The purpose of the Working Group shall be—

(A) to address all issues with respect to the export promotion and export financing of United States environmental technologies, goods, and services; and

(B) to develop a strategy for expanding United States exports of environmental technologies, goods, and services.

(2) Membership

The members of the Working Group shall be—

(A) representatives of the departments and agencies that are represented on the TPCC, who are designated by the head of their respective departments or agencies to advise the head of such department or agency on ways of promoting the export of United States environmental technologies, goods, and services; and

(B) a representative of the Environmental Protection Agency.

(3) Chairperson

The Secretary of Commerce (hereafter in this section referred to as the "Secretary") shall designate the chairperson of the Working Group from among senior employees of the Department of Commerce. The chairperson shall—

(A) assess the effectiveness of United States Government programs for the promotion of exports of environmental technologies, goods, and services;

(B) recommend improvements to such programs, including regulatory changes or additional authority that may be necessary to improve the promotion of exports of environmental technologies, goods, and services;

(C) ensure that the members of the Working Group coordinate their environmental trade promotion programs, including feasibility studies, technical assistance, training programs, business information services, and export financing; and

(D) assess, jointly with the Working Group representative of the Environmental Protection Agency, the extent to which the environmental trade promotion programs of the Working Group advance the environmental goals established in "Agenda 21" by the United Nations Conference on Environment and Development held at Rio de Janeiro, and in other international environmental agreements.

(4) Report to Congress

The chairperson of the TPCC shall include a report on the activities of the Working Group as a part of the annual report submitted to the Congress by the TPCC.

(c) Environmental Technologies Trade Advisory Committee

(1) Establishment and purpose

The Secretary, in carrying out the duties of the chairperson of the TPCC, shall establish the Environmental Technologies Trade Advisory Committee (hereafter in this section referred to as the "Committee"). The purpose of the Committee shall be to provide advice and guidance to the

Working Group in the development and administration of programs to expand United States exports of environmental technologies, goods, and services and products that comply with United States environmental, safety, and related requirements.

(2) Membership

The members of the Committee shall be drawn from representatives of—

(A) environmental businesses, including small businesses;

(B) trade associations in the environmental sector;

(C) private sector organizations involved in the promotion of environmental exports, including products that comply with United States environmental, safety, and related requirements;

(D) States (as defined in section 4721(i)(5) [1] of this title) and associations representing the States; and

(E) other appropriate interested members of the public, including labor representatives.

The Secretary shall appoint as members of the Committee at least 1 individual under each of subparagraphs (A) through (E).

(d) Export plans for priority countries

(1) Priority country identification

The Working Group, in consultation with the Committee, shall annually assess which foreign countries have markets with the greatest potential for the export of United States environmental technologies, goods, and services. Of these countries the Working Group shall select as priority countries 5 with the greatest potential for the application of United States Government export promotion resources related to environmental exports.

(2) Export plans

The Working Group, in consultation with the Committee, shall annually create a plan for each priority country selected under paragraph (1), setting forth in detail ways to increase United States environmental exports to such country. Each such plan shall—

(A) identify the primary public and private sector opportunities for United States exporters of environmental technologies, goods, and services in the priority country;

(B) analyze the financing and other requirements for major projects in the priority country which will use environmental technologies, goods, and services, and analyze whether such projects are dependent upon financial assistance from foreign countries or multilateral institutions; and

(C) list specific actions to be taken by the member agencies of the Working Group to increase United States exports to the priority country.

(e) Trade information

In support of the work of the Working Group, the Secretary shall, as part of the regular market survey and information services activities of the Department of Commerce, make available—

(1) information on existing and emerging markets and market trends for environmental technologies, goods, and services; and

(2) a description of the export promotion programs for environmental technologies, goods, and services of the agencies that are represented on the Working Group.

(f) Environmental technologies specialists in United States and Foreign Commercial Service

(1) Assignment of environmental technologies specialists

The Secretary shall assign a specialist in environmental technologies to the office of the United States and Foreign Commercial Service in each of the 5 priority countries selected under subsection (d)(1) of this section, and the Secretary is authorized to assign such a specialist to the office of the United States and Foreign Commercial Service in any country that is a promising market for United States exports of environmental technologies, goods, and services. Such

specialist may be an employee of the Department, an employee of any relevant United States Government department or agency assigned on a temporary or limited term basis to the Commerce Department, or a representative of the private sector assigned to the Department of Commerce.

(2) Duties of environmental technologies specialists

Each specialist assigned under paragraph (1) shall provide export promotion assistance to United States environmental businesses, including, but not limited to—

(A) identifying factors in the country to which the specialist is assigned that affect the United States share of the domestic market for environmental technologies, goods, and services, including market barriers, standards-setting activities, and financing issues;

(B) providing assessments of assistance by foreign governments that is provided to producers of environmental technologies, goods, and services in such countries in order to enhance exports to the country to which the specialist is assigned, the effectiveness of such assistance on the competitiveness of United States products, and whether comparable United States assistance exists;

(C) training Foreign Commercial Service Officers in the country to which the specialist is assigned, other countries in the region, and United States and Foreign Commercial Service offices in the United States, in environmental technologies and the international environmental market;

(D) providing assistance in identifying potential customers and market opportunities in the country to which the specialist is assigned;

(E) providing assistance in obtaining necessary business services in the country to which the specialist is assigned;

(F) providing information on environmental standards and regulations in the country to which the specialist is assigned;

(G) providing information on all United States Government programs that could assist the promotion, financing, and sale of United States environmental technologies, goods, and services in the country to which the specialist is assigned; and

(H) promoting the equal treatment of United States environmental, safety, and related requirements, with those of other exporting countries, in order to promote exports of United States-made products.

(g) Environmental training in one-stop shops

In addition to the training provided under subsection (f)(2)(C) of this section, the Secretary shall establish a mechanism to train—

(1) Commercial Service Officers assigned to the one-stop shops provided for in section 4721(b)(8) of this title, and

(2) Commercial Service Officers assigned to district offices in districts having large numbers of environmental businesses,

in environmental technologies and in the international environmental marketplace, and ensure that such officers receive appropriate training under such mechanism. Such training may be provided by officers or employees of the Department of Commerce, and other United States Government departments and agencies, with appropriate expertise in environmental technologies and the international environmental workplace, and by appropriate representatives of the private sector.

(h) International regional environmental initiatives

(1) Establishment of initiatives

The TPCC may establish one or more international regional environmental initiatives the purpose of which shall be to coordinate the activities of Federal departments and agencies in order to build environmental partnerships between the United States and the geographic region outside the United States for which such initiative is established. Such partnerships shall enhance environmental protection and promote sustainable development by using in the region technical expertise and financial resources of United States departments and agencies that provide foreign

assistance and by expanding United States exports of environmental technologies, goods, and services to that region.

(2) Activities

In carrying out each international regional environmental initiative, the TPCC shall—

(A) support, through the provision of foreign assistance, the development of sound environmental policies and practices in countries in the geographic region for which the initiative is established, including the development of environmentally sound regulatory regimes and enforcement mechanisms;

(B) identify and disseminate to United States environmental businesses information regarding specific environmental business opportunities in that geographic region;

(C) coordinate existing Federal efforts to promote environmental exports to that geographic region, and ensure that such efforts are fully coordinated with environmental export promotion efforts undertaken by the States and the private sector;

(D) increase assistance provided by the Federal Government to promote exports from the United States of environmental technologies, goods, and services to that geographic region, such as trade missions, reverse trade missions, trade fairs, and programs in the United States to train foreign nationals in United States environmental technologies; and

(E) increase high-level advocacy by United States Government officials (including the United States ambassadors to the countries in that geographic region) for United States environmental businesses seeking market opportunities in that geographic region.

(i) Environmental technologies project advocacy calendar and information dissemination program

The Working Group shall—

(1) maintain a calendar, updated at the end of each calendar quarter, of significant opportunities for United States environmental businesses in foreign markets and trade promotion events, which shall—

(A) be made available to the public;

(B) identify the 50 to 100 environmental infrastructure and procurement projects in foreign markets that have the greatest potential in the calendar quarter for United States exports of environmental technologies, goods, and services; and

(C) include trade promotion events, such as trade missions and trade fairs, in the environmental sector; and

(2) provide, through the National Trade Data Bank and other information dissemination channels, information on opportunities for environmental businesses in foreign markets and information on Federal export promotion programs.

(j) Environmental technology export alliances

Subject to the availability of appropriations for such purpose, the Secretary is authorized to use the Market Development Cooperator Program to support the creation on a regional basis of alliances of private sector entities, nonprofit organizations, and universities, that support the export of environmental technologies, goods, and services and promote the export of products complying with United States environmental, safety, and related requirements.

(k) "Environmental business" defined

For purposes of this section, the term "environmental business" means a business that produces environmental technologies, goods, or services.

(Pub. L. 100–418, title II, §2313, as added Pub. L. 102–429, title II, §204(a), Oct. 21, 1992, 106 Stat. 2202; amended Pub. L. 103–392, title IV, §402, Oct. 22, 1994, 108 Stat. 4099.)

REFERENCES IN TEXT

Section 4721 of this title, referred to in subsec. (c)(2)(D), was amended, and section 4721(i)(5) does not define "States". However, such term is defined elsewhere in that section.

AMENDMENTS

1994—Subsecs. (c) to (e). Pub. L. 103–392, §402(a), added subsecs. (c) and (d), redesignated former subsec. (c) as (e), and struck out former subsec. (d) which related to overseas services for exporters.

Subsecs. (f) to (k). Pub. L. 103–392, §402(b), added subsecs. (f) to (k).

REPORT ON INSURANCE FEASIBILITY

Section 204(b) of Pub. L. 102–429 directed that, not later than 1 year after Oct. 21, 1992, chairperson of Trade Promotion Coordinating Committee, after consultation with appropriate departments and agencies of the United States Government, submit a report to Congress that analyzes (1) the extent to which Federal investment insurance and export financing programs sufficiently protect against business failures or default on obligations arising from changes by a foreign government in its environmental laws or regulations, and (2) the advisability and feasibility of expanding coverage of such programs, or creating new programs, to address such risks.

[1] *See References in Text note below.*

§4729. Report on export policy

(a) In general

Not later than May 31 of each year, the Secretary of Commerce shall submit to the Congress a report on the international economic position of the United States and, not later than June 30 of each year, shall appear before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives to testify on issues addressed in that report.

(b) Contents

(1) In general

Each report required under subsection (a) of this section shall address—

(A) the state of United States international economic competitiveness, focusing, in particular, on the efforts of the Department of Commerce—

(i) to encourage research and development of technologies and products deemed critical for industrial leadership;

(ii) to promote investment in and improved manufacturing processes for such technologies and products; and

(iii) to increase United States industrial exports of products using the technologies described in clause (i) to those markets where the United States Government has sought to reduce barriers to exports;

(B) the report on the Trade Promotion Coordinating Committee strategic plan submitted to the Congress in accordance with section 4727(f) of this title;

(C) other specific recommendations of the Department of Commerce to improve the United States balance of trade;

(D) the effects on the international economic competitiveness of the United States of—

(i) formal and informal trade barriers; and

(ii) subsidies by foreign countries to their domestic industries;

(E) the efforts of the Department of Commerce to reduce trade barriers;

(F) the adequacy of export financing programs of the United States Government and recommendations for improving such programs;

(G) the status, activities, and effectiveness of the United States commercial centers established under section 4723a of this title;

(H) the implementation of sections 5821 and 5822 of title 22 [1] concerning American Business Centers and the Independent States Business and Agriculture Advisory Council;

(I) the programs of other industrialized nations to assist their companies with their efforts to transact business in the independent states of the former Soviet Union; and

(J) the trading practices of other Organization for Economic Cooperation and Development nations, as well as the pricing practices of transitional economies in the independent states, that may disadvantage United States companies.

(2) Policy basis for reports

Portions of each report under this section may incorporate or be based upon relevant reports and testimony produced by the Department of Commerce or other agencies, but the policy views shall be those of the Secretary of Commerce.

(Pub. L. 100–418, title II, §2314, as added Pub. L. 102–429, title II, §206, Oct. 21, 1992, 106 Stat. 2204; amended Pub. L. 104–66, title I, §1022(b), Dec. 21, 1995, 109 Stat. 713.)

REFERENCES IN TEXT

Sections 5821 and 5822 of title 22, referred to in subsec. (b)(1)(H), was, in the original, "sections 301 and 302 of the Freedom for Russia and Emerging Democracies and Open Markets Support Act of 1992 (22 U.S.C. 5821 and 5822)", and was translated as meaning sections 301 and 302 of the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992, Pub. L. 102–511, to reflect the probable intent of Congress.

AMENDMENTS

1995—Subsec. (b)(1)(G) to (J). Pub. L. 104–66 added subpars. (G) to (J).

[1] *See References in Text note below.*

CHAPTER 74—COMPETITIVENESS POLICY COUNCIL

Sec.

4801. Findings and purpose.
4802. Council established.
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4804. Membership.
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4809. Definitions.

§4801. Findings and purpose

(a) Findings

The Congress finds that—

(1) efforts to reverse the decline of United States industry has been hindered by—

(A) a serious erosion in the institutions and policies which foster United States competitiveness including a lack of high quality domestic and international economic and scientific data needed to—

(i) reveal sectoral strengths and weaknesses;

(ii) identify potential new markets and future technological and economic trends; and

(iii) provide necessary information regarding the competitive strategies of foreign competitors;

(B) the lack of a coherent and consistent government competitiveness policy, including policies with respect to—

(i) international trade, finance, and investment,
(ii) research, science, and technology,
(iii) education, labor retraining, and adjustment,
(iv) macroeconomic and budgetary issues,
(v) antitrust and regulation, and
(vi) government procurement;

(2) the United States economy benefits when business, labor, government, academia, and public interest groups work together cooperatively;

(3) the decline of United States economic competitiveness endangers the ability of the United States to maintain the defense industrial base which is necessary to the national security of the United States;

(4) the world is moving rapidly toward the creation of an integrated and interdependent economy, a world economy in which the policies of one nation have a major impact on other nations;

(5) integrated solutions to such issues as trade and investment research, science, and technology, education, and labor retraining and adjustments help the United States compete more effectively in the world economy; and

(6) government, business, labor, academia, and public interest groups shall cooperate to develop and coordinate long-range strategies to help assure the international competitiveness of the United States economy.

(b) Purpose

It is the purpose of this chapter—

(1) to develop recommendations for long-range strategies for promoting the international competitiveness of the United States industries; and

(2) to establish the Competitiveness Policy Council which shall—

(A) analyze information regarding the competitiveness of United States industries and business and trade policy;

(B) create an institutional forum where national leaders with experience and background in business, labor, government, academia, and public interest activities shall—

(i) identify economic problems inhibiting the competitiveness of United States agriculture, business, and industry;

(ii) develop long-term strategies to address such problem; and

(C) make recommendations on issues crucial to the development of coordinated competitiveness strategies;

(D) publish analysis in the form of periodic reports and recommendations concerning the United States business and trade policy.

(Pub. L. 100–418, title V, §5202, Aug. 23, 1988, 102 Stat. 1455.)

SHORT TITLE

Pub. L. 100–418, title V, §5201, Aug. 23, 1988, 102 Stat. 1454, provided that: "This subtitle [subtitle C (§§5201–5210) of title V of Pub. L. 100–418, enacting this chapter] may be cited as the 'Competitiveness Policy Council Act'."

§4802. Council established

There is established the Competitiveness Policy Council (hereafter in this chapter referred to as the "Council"), an advisory committee under the provisions of the Federal Advisory Committee Act (5 U.S.C. App.).

(Pub. L. 100–418, title V, §5203, Aug. 23, 1988, 102 Stat. 1456.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in text, is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§4803. Duties of Council

The Council shall—

(1) develop recommendations for national strategies and on specific policies intended to enhance the productivity and international competitiveness of United States industries;

(2) provide comments, when appropriate, and through any existing comment procedure, on—

(A) private sector requests for governmental assistance or relief, specifically as to whether the applicant is likely, by receiving the assistance or relief, to become internationally competitive; and

(B) what actions should be taken by the applicant as a condition of such assistance or relief to ensure that the applicant is likely to become internationally competitive;

(3) analyze information concerning current and future United States economic competitiveness useful to decision making in government and industry;

(4) create a forum where national leaders with experience and background in business, labor, academia, public interest activities, and government shall identify and develop recommendations to address problems affecting the economic competitiveness of the United States;

(5) evaluate Federal policies, regulations, and unclassified international agreement on trade, science, and technology to which the United States is a party with respect to the impact on United States competitiveness;

(6) provide policy recommendations to the Congress, the President, and the Federal departments and agencies regarding specific issues concerning competitiveness strategies;

(7) monitor the changing nature of research, science, and technology in the United States and the changing nature of the United States economy and its capacity—

(A) to provide marketable, high quality goods and services in domestic and international markets; and

(B) to respond to international competition;

(8) identify—

(A) Federal and private sector resources devoted to increased competitiveness; and

(B) State and local government programs devised to enhance competitiveness, including joint ventures between universities and corporations;

(9) establish, when appropriate, subcouncils of public and private leaders to develop recommendations on long-term strategies for sectors of the economy and for specific competitiveness issues;

(10) review policy recommendations developed by the subcouncils and transmit such recommendations to the Federal agencies responsible for the implementation of such recommendations;

(11) prepare, publish, and distribute reports containing the recommendations of the Council; and

(12) publish their analysis and recommendations in the form of an annual report to the President and the Congress which also comments on the overall competitiveness of the American economy.

(Pub. L. 100–418, title V, §5204, Aug. 23, 1988, 102 Stat. 1456.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which a report required under par. (12) of this section is listed on page 158), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

§4804. Membership

(a) Composition and representation

(1) The Council shall consist of 12 members, of whom—

(A) four members shall be appointed by the President, of whom—

(i) one shall be a national leader with experience and background in business;

(ii) one shall be a national leader with experience and background in the labor community;

(iii) one shall be a national leader who has been active in public interest activities; and

(iv) one shall be a head of a Federal department or agency;

(B) four members shall be appointed by the majority leader and the minority leader of the Senate, acting jointly, of whom—

(i) one shall be a national leader with experience or background in business;

(ii) one shall be a national leader with experience and background in the labor community;

(iii) one shall be a national leader with experience and background in the academic community; and

(iv) one shall be a representative of State or local government; and

(C) four members shall be appointed by the Speaker, the minority leader of the House of Representatives, acting jointly, of whom—

(i) one shall be a national leader with experience and background in business;

(ii) one shall be a national leader with experience and background in the labor community;

(iii) one shall be a national leader with experience and background in the academic community; and

(iv) one shall be a representative of State or local government.

(2) In addition to the head of a Federal department or agency appointed in accordance with subsection (a)(1)(A)(iv) of this section, other Federal officials may participate on an ex-officio basis as requested by the Council.

(3) All members of the Council shall be individuals who have a broad understanding of the United States economy and the United States competitive position internationally.

(4) Not more than 6 members of the Council shall be members of the same political party.

(b) Initial appointments

The initial members of the Council shall be appointed within 30 days after August 20, 1990.

(c) Vacancies

(1) A vacancy on the Council shall be filled in the same manner in which the original appointment was made.

(2) Any member appointed to fill a vacancy on the Council occurring before the expiration of the term for which the predecessor of such member was appointed shall be appointed only for the remainder of such term.

(3) A member of the Council may serve after the expiration of the term of such member until the successor of such member has taken office.

(d) Removal

Members of the Council may be removed only for malfeasance in office.

(e) Conflict of interest

A member of the Council shall not serve as an agent for a foreign principal or a lobbyist for a foreign entity (as the terms "lobbyist" and "foreign entity" are defined under section 1602 of title 2).

(f) Expenses

Each member of the Council, while engaged in duties as a member of the Council, shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from the usual place of residence of such member, in accordance with subchapter I of chapter 57 of title 5.

(g) Quorum

(1) In general

Seven members of the Council constitute a quorum, except that a lesser number may hold hearings if such action is approved by a two-thirds vote of the entire Council.

(2) Initial organization

The Council shall not commence its duties until all the nongovernmental members have been appointed and have qualified.

(h) Chairperson

The Council shall elect, by a two-thirds vote of the entire Council, a chairperson from among the nongovernmental members.

(i) Meetings

The Council shall meet at the call of the chairperson or a majority of the members.

(j) Policy actions

Except as provided in subsection (g) of this section, no action establishing policy shall be taken by the Council unless approved by two-thirds of the entire membership of the Council.

(k) Alternate members

(1) Each member of the Council shall designate one alternate representative to attend any meeting that such member is unable to attend.

(2) In the course of attending any such meeting, an alternate representative shall be considered a member of the Council for all purposes, except for voting.

(Pub. L. 100–418, title V, §5205, Aug. 23, 1988, 102 Stat. 1457; Pub. L. 101–382, title I, §133(a), Aug. 20, 1990, 104 Stat. 648; Pub. L. 104–65, §12(a), Dec. 19, 1995, 109 Stat. 701.)

AMENDMENTS

1995—Subsec. (e). Pub. L. 104–65, which directed amendment of section "5206(e) of the Competitiveness Policy Council Act (15 U.S.C. 4804(e))" by inserting "or a lobbyist for a foreign entity (as the terms 'lobbyist' and 'foreign entity' are defined under section 1602 of title 2)" after "an agent for a foreign principal", was executed to section 5205(e) of such Act, which is subsec. (e) of this section, to reflect the probable intent of Congress.

1990—Subsec. (b). Pub. L. 101–382, §133(a)(1), substituted reference to Aug. 20, 1990, for reference to Jan. 21, 1989.

Subsec. (e). Pub. L. 101–382, §133(a)(2), added subsec. (e) and struck out former subsec. (e) which read as follows:

"(1) A member of the Council may not serve as an agent for a foreign principal.

"(2) Members of the Council shall be required to file a financial disclosure report under title II of the Ethics in Government Act of 1978 (Public Law 95–521), except that such reports shall be held confidential and exempt from any law otherwise requiring their public disclosure.

"(3) Members of the Council shall be deemed to be special Government employees, as defined in section 202 of title 18, for purposes of sections 201, 202, 203, 205, and 208 of such title."

Subsec. (f). Pub. L. 101–382, §133(a)(2), added subsec. (f) and struck out former subsec. (f) "Compensation" which read as follows:

"(1) Each member of the Council who is not employed by the Federal Government or any State or local

government—

"(A) shall be compensated at a rate equal to the daily equivalent of the rate for GS–18 of the General Schedule pursuant to section 5332 of title 5 for each day such member is engaged in duties as a member of the Council; and

"(B) shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from the usual place of residence of such member, in accordance with section 5703 of such title.

"(2) Each member of the Council who is employed by the Federal Government or any State or local government shall serve on the Council without additional compensation, but while engaged in duties as a member of the Council shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from the usual place of residence of such member, in accordance with subchapter I of chapter 57 of title 5."

Subsec. (l). Pub. L. 101–382, §133(a)(3), struck out subsec. (l) which read as follows: "The Council may procure temporary and intermittent services under section 3109(b) of title 5, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay for GS–16 of the General Schedule."

Subsec. (m). Pub. L. 101–382, §133(a)(3), struck out subsec. (m) which read as follows: "Upon request of the Council, the head of any other Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Council to assist the Council in carrying out its duties under this chapter."

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–65 effective Jan. 1, 1996, except as otherwise provided, see section 24 of Pub. L. 104–65, set out as an Effective Date note under section 1601 of Title 2, The Congress.

§4805. Executive Director and staff

(a) Executive Director

(1) The principal administrative officer of the Council shall be an Executive Director, who shall be appointed by the Council and who shall be paid at a rate not to exceed GS–18 of the General Schedule.

(2) The Executive Director shall serve on a full-time basis.

(b) Staff

(1) Within the limitations of appropriations to the Council, the Executive Director may appoint a staff for the Council in accordance with the Federal civil service and classification laws.

(2) The staff of the Council shall be deemed to be special government employees as defined in section 202 of title 18 for purposes of title II of the Ethics in Government Act of 1978 and sections 201, 202, 203, 205, 207, and 208 of title 18.

(c) Experts and consultants

The Council may procure temporary and intermittent services under section 3109(b) of title 5, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay for GS–16 of the General Schedule.

(d) Details

Upon request of the Council, the head of any other Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Council to assist the Council in carrying out its duties under this chapter.

(Pub. L. 100–418, title V, §5206, Aug. 23, 1988, 102 Stat. 1459; Pub. L. 101–382, title I, §133(b), Aug. 20, 1990, 104 Stat. 648.)

REFERENCES IN TEXT

The Ethics in Government Act of 1978, referred to in subsec. (b)(2), is Pub. L. 95–521, Oct. 26, 1978, 92 Stat. 1824, as amended. Title II of the Ethics in Government Act of 1978 was set out in the Appendix to Title 5, prior to repeal by Pub. L. 101–194, title II, §201, Nov. 30, 1989, 103 Stat. 1724. For complete classification of this Act to the Code, see Short Title note set out under section 101 of Pub. L. 95–521 in the Appendix to Title 5 and Tables.

AMENDMENTS

1990—Subsecs. (c), (d). Pub. L. 101–382 added subsecs. (c) and (d).

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§4806. Powers of Council

(a) Hearings

The Council may, for the purpose of carrying out the provisions of this chapter, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Council considers appropriate. The Council may administer oaths or affirmations to witnesses appearing before the Council.

(b) Information

(1)(A) Except as provided in subparagraph (B), the Council may secure directly from any Federal agency information necessary to enable the Council to carry out the provisions of this chapter. Upon request of the chairman of the Council, the head of such agency shall promptly furnish such information to the Council.

(B) Subparagraph (A) does not apply to matters that are specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order.

(2) In any case in which the Council receives any information from a Federal agency, the Council shall not disclose such information to the public unless such agency is authorized to disclose such information pursuant to Federal law.

(c) Consultation with President and Congress

No later than 120 days after the initial members are appointed to the Council, the Council shall submit a report to the President, the Senate Governmental Affairs Committee, and the appropriate committees of the House of Representatives and of the Senate, that proposes the type and scope of activities the Council shall undertake, including the extent to which the Council will coordinate activities with other advisory committees relating to trade and competitiveness in order to maximize the effectiveness of the Council.

(d) Gifts

The Council may accept, use, and dispose of gifts or donations of services or property.

(e) Use of mails

The Council may use the United States mails in the same manner and under the same conditions as other Federal agencies.

(f) Administrative and support services

The Administrator of General Services shall provide to the Council, on a reimbursable basis, such administrative and support services as the Council may request.

(g) Subcouncils

(1) The Council may establish, for such period of time as the Council determines appropriate, subcouncils of public and private leaders to analyze specific competitive issues.

(2) Any such subcouncil shall include representatives of business, labor, government, and other individuals or representatives of groups whose participation is considered by the Council to be important to developing a full understanding of the subject with which the subcouncil is concerned.

(3) Any such subcouncil shall include a representative of the Federal Government.

(4) Any such subcouncil shall assess the actual or potential competitiveness problems facing the industry or the specific policy issues with which the subcouncil is concerned and shall formulate specific recommendations for responses by business, government, and labor—

(A) to encourage adjustment and modernization of the industry involved;

(B) to monitor and facilitate industry responsiveness to opportunities identified under section 4807(b)(1)(B) of this title;

(C) to encourage the ability of the industry involved to compete in markets identified under section 4807(b)(1)(C) of this title; or

(D) to alleviate the problems in a specific policy area facing more than one industry.

(5) Any discussion held by any subcouncil shall not be considered to violate any Federal or State antitrust law.

(6) Any discussion held by any subcouncil shall not be subject to the provisions of the Federal Advisory Committee Act, except that a Federal representative shall attend all subcouncil meetings.

(7) Any subcouncil shall terminate 30 days after making recommendations, unless the Council specifically requests that the subcouncil continue in operation.

(h) Applicability of Advisory Committee Act

The provisions of subsections (e) and (f) of section 10,[1] of the Federal Advisory Committee Act shall not apply to the Council.

(Pub. L. 100–418, title V, §5207, Aug. 23, 1988, 102 Stat. 1459; Pub. L. 101–382, title I, §133(c), Aug. 20, 1990, 104 Stat. 649.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsecs. (g)(6) and (h), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1990—Subsec. (c). Pub. L. 101–382 redesignated subsec. (d) as (c), and substituted "120" for "60".

Subsecs. (d) to (i). Pub. L. 101–382, §133(c)(1), redesignated subsecs. (e) to (i) as (d) to (h), respectively. Former subsec. (d) redesignated (c).

CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

[1] So in original. The comma probably should not appear.

§4807. Annual report

(a) Submission of report

The Council shall annually on March 1 submit to the President, the Senate Governmental Affairs Committee, and the appropriate Committees of the House of Representatives and the Senate a report setting forth—

(1) the goals to achieve a more competitive United States economy;

(2) the policies needed to meet such goals;

(3) a summary of existing policies of the Federal Government or State and local governments significantly affecting the competitiveness of the United States economy; and

(4) a summary of significant economic and technological developments, in the United States and abroad, affecting the competitive position of United States industries.

(b) Contents of report

The report submitted under subsection (a) of this section shall—

(1) identify and describe actual or foreseeable developments, in the United States and abroad, which—

(A) create a significant likelihood of a competitive challenge to, or of substantial dislocation in, an established United States industry;

(B) present significant opportunities for United States industries to compete in new geographical markets or product markets, or to expand the position of such industries in established markets; or

(C) create a significant risk that United States industries shall be unable to compete successfully in significant markets;

(2) specify the industry sectors affected by the developments described in the report under paragraph (1); and

(3) contain a statement of the findings and recommendations of the Council during the previous fiscal year, including any recommendations of the Council for (a) such legislative or administrative actions as the Council considers appropriate, and (b) including the elimination, consolidation, reorganization of government agencies especially such agencies that specifically deal with research, science, technology, and international trade.

(c) Report by Congressional committees

The Council shall consult with each committee to which a report is submitted under this section and after such consultation, each such committee shall submit to its respective House a report setting forth the views and recommendations of such committee with respect to the report of the Council.

(Pub. L. 100–418, title V, §5208, Aug. 23, 1988, 102 Stat. 1461; Pub. L. 101–382, title I, §133(d), Aug. 20, 1990, 104 Stat. 649.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–382 substituted "on March 1" for "prepare and".

CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

§4808. Authorization of appropriations

There are authorized to be appropriated for each of the fiscal years 1991 and 1992 such sums as may be necessary not to exceed $5,000,000 to carry out the provisions of this chapter.

(Pub. L. 100–418, title V, §5209, Aug. 23, 1988, 102 Stat. 1461; Pub. L. 101–382, title I, §133(e), Aug. 20, 1990, 104 Stat. 649.)

AMENDMENTS

1990—Pub. L. 101–382 substituted "1991 and 1992" for "1989 and 1990".

§4809. Definitions

For purposes of this chapter—

(1) the term "Council" means the Competitiveness Policy Council established under section 4802 of this title;

(2) the term "member" means a member of the Competitiveness Policy Council;

(3) the term "United States" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, and any other territory or possession of the United States; and

(4) the term "agent of a foreign principal" is defined as such term is defined under subsection (d) of section 611 of title 22 subject to the provisions of section 613 of title 22.

(Pub. L. 100–418, title V, §5210, Aug. 23, 1988, 102 Stat. 1461.)

CHAPTER 75—NATIONAL TRADE DATA BANK

Sec.
4901. Definitions.
4902. Interagency Trade Data Advisory Committee.
4903. Functions of Committee.
4904. Consultation with private sector and government officials.
4905. Cooperation among executive agencies.
4906. Establishment of Data Bank.
4907. Operation of Data Bank.
4908. Information on service sector.
4909. Exclusion of information.
4910. Nonduplication.
4911 Collection of data.
4912. Fees and access.
4913. Omitted.

§4901. Definitions

For purposes of this chapter—

(1) the term "Committee" means the Interagency Trade Data Advisory Committee;

(2) the term "Data Bank" means the National Trade Data Bank;

(3) the term "Executive agency" has the same meaning as in section 105 of title 5;

(4) the term "export promotion data system" means the data system known as the Commercial Information Management System which is maintained and operated by the United States and Foreign Commercial Service and is established as part of the Data Bank under section 4906 [1] of this title;

(5) the term "international economic data system" means the data system established as part of the Data Bank under section 4906 of this title which contains data useful to policymakers and analysis concerned with international economics; and

(6) the term "Secretary" means the Secretary of Commerce.

(Pub. L. 100–418, title V, §5401, Aug. 23, 1988, 102 Stat. 1463.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this subtitle", meaning subtitle E (§§5401 to 5413, 5421 to 5423) of title V of Pub. L. 100–418 which, in addition to enacting this chapter, enacted section 4603a of this title and section 194b of Title 2, The Congress. For complete classification of subtitle E to the Code, see Tables.

Section 4906 of this title, referred to in par. (4), was in the original "section 3816", meaning section 3816 of Pub. L. 100–418, and was translated as if it read section 5406 of Pub. L. 100–418, to reflect the probable intent of Congress, because section 3816 was the provision which established the Data Bank in a predecessor version of H.R. 4848 (which became Pub. L. 100–418), Pub. L. 100–418 does not contain a section 3816, and section 5406 of Pub. L. 100–418 is the provision establishing the Data Bank.

[1] *See References in Text note below.*

§4902. Interagency Trade Data Advisory Committee

(a) Establishment

There is established the Interagency Trade Data Advisory Committee.

(b) Membership

The Committee shall consist of—

(1) the United States Trade Representative;
(2) the Secretary of Agriculture;
(3) the Secretary of Defense;
(4) the Secretary of Commerce;
(5) the Secretary of Labor;
(6) the Secretary of the Treasury;
(7) the Secretary of State;
(8) the Director of the Office of Management and Budget;
(9) the Director of Central Intelligence;
(10) the Chairman of the Federal Reserve Board;
(11) the Chairman of the International Trade Commission;
(12) the President of the Export-Import Bank;
(13) the President of the Overseas Private Investment Corporation; and
(14) such other members as may be appointed by the President from full-time officers or employees of the Federal Government.

(c) Chairman

The Secretary of Commerce shall be Chairman of the Committee.

(d) Designees

Any member of the Committee may appoint a designee to serve in place of such member on the Committee.

(Pub. L. 100–418, title V, §5402, Aug. 23, 1988, 102 Stat. 1463.)

CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108–458, set out as a note under section 3001 of Title 50, War and National Defense.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§4903. Functions of Committee

The Committee shall advise the Secretary of Commerce, as appropriate, on the establishment, structure, contents, and operation of a National Trade Data Bank in accordance with section 4906 of this title in order to assure the timely collection of accurate data and to provide the private sector and government officials efficient access to economic and trade data collected by the Federal Government for purposes of policymaking and export promotion.

(Pub. L. 100–418, title V, §5403, Aug. 23, 1988, 102 Stat. 1464.)

§4904. Consultation with private sector and government officials

The Secretary shall regularly consult with representatives of the private sector and officials of State and local governments to assess the adequacy of United States trade information. The Secretary shall seek recommendations on how trade information can be made more accessible, understandable, and relevant. The Secretary shall seek recommendations as to what data should be included in the export promotion data system in the Data Bank.

(Pub. L. 100–418, title V, §5404, Aug. 23, 1988, 102 Stat. 1464.)

§4905. Cooperation among executive agencies

Each executive agency shall furnish to the Secretary such information for inclusion in the National Trade Data Bank as the Secretary, in consultation with the Advisory Committee, considers necessary to the operation of the Data Bank.

(Pub. L. 100–418, title V, §5405, Aug. 23, 1988, 102 Stat. 1464.)

§4906. Establishment of Data Bank

(a) Establishment

Within 2 years after August 23, 1988, the Secretary of Commerce shall establish the Data Bank. The Secretary shall manage the Data Bank. The Data Bank shall consist of two data systems, to be designated the International Economic Data System, as described in subsection (b) of this section and the Export Promotion Data System, as described in subsection (c) of this section.

(b) International Economic Data System

The International Economic Data System shall include current and historical information determined by the Secretary to be useful (after the consultation required by section 4904 of this title) to policymakers and analysts concerned with international economics and trade and which shall include data compiled or obtained by appropriate executive agencies. Such information shall not identify parties to transactions. Such information may include data for the United States and countries with which the United States has important economic relations including—

(1) data on imports and exports, including—
  (A) aggregate import and export data for the United States and for each foreign country;
  (B) industry-specific import and export data for each foreign country;
  (C) product and service specific import and export data for the United States;
  (D) market penetration information; and
  (E) foreign destinations for exports of the United States;

(2) data on international service transactions;

(3) information on international capital markets, including—
  (A) interest rates; and
  (B) average exchange rates;

(4) information on foreign direct investment in the United States economy;

(5) international labor market information, including—
  (A) wage rates for major industries;
  (B) international unemployment rates; and
  (C) trends in international labor productivity;

(6) information on foreign government policies affecting trade, including—
  (A) trade barriers; and
  (B) export financing policies;

(7) import and export data for the United States on a State-by-State basis aggregated at the product level including—

(A) data concerning the country shipping the import, the State of first destination, and the original part [1] of entry for imports of goods and, to the extent possible, services; and

(B) data concerning the State of the exporter, the port of departure, and the country of first destination for export of goods and, to the extent possible, services; and

(8) any other economic and trade data collected by the Federal Government that the Secretary determines to be useful in carrying out the purposes of this chapter.

(c) Export Promotion Data System

The export promotion data system shall include data and information collected by the Federal Government on the industrial sectors and markets of foreign countries which are determined by the Secretary (after consultation required by section 4904 of this title) to be of the greatest interest to United States business firms that are engaged in export-related activities and to Federal and State agencies that promote exports, while providing for the confidentiality of proprietary business information, and shall be designed to use the most effective means of disseminating data and information electronically through the Department, or Department-designated offices, or through other available data bases in an accurate and timely manner. Such data system shall monitor, organize, and disseminate selected information on—

(1) specific business opportunities in foreign countries;

(2) specific industrial sectors within foreign countries with high export potential such as—

(A) size of the market;

(B) distribution of products;

(C) competition;

(D) significant applicable laws, regulations, specifications, and standards;

(E) appropriate government officials; and

(F) trade associations and other contact points; and

(3) foreign countries generally, such as—

(A) the general economic conditions;

(B) common business practices;

(C) significant tariff and trade barriers; and

(D) other significant laws and regulations regarding imports, licensing, and the protection of intellectual property;

(4) export financing information, including the availability, through public sources of funds for United States exporters and foreign competitors;

(5) transactions involving barter and countertrade; and

(6) any other similar information, that the Secretary determines to be useful in carrying out the purposes of this chapter.

(Pub. L. 100–418, title V, §5406, Aug. 23, 1988, 102 Stat. 1464.)

[1] So in original. Probably should be "port".

§4907. Operation of Data Bank

The Secretary shall manage the Data Bank to provide the most appropriate data retrieval system or systems possible. Such system or systems shall—

(1) be designed to utilize data processing and retrieval technology in monitoring, organizing, analyzing, and disseminating the data and information contained in the Data Bank;

(2) use the most effective and meaningful means of organizing and making such information available to—

(A) United States Government policymakers;
(B) United States business firms;
(C) United States workers;
(D) United States industry associations;
(E) United States agricultural interests;
(F) State and local economic development agencies; and
(G) other interested United States persons who could benefit from such information;

(3) be of such quality and timeliness and in such form as to assist coordinated trade strategies for the United States; and

(4) facilitate dissemination of information through nonprofit organizations with significant outreach programs which complement the regional outreach programs of the United States and Foreign Commercial Service.

(Pub. L. 100–418, title V, §5407, Aug. 23, 1988, 102 Stat. 1466.)

§4908. Information on service sector

(a) Service sector information

The Secretary shall ensure that, to the extent possible, there is included in the Data Bank information on service sector economic activity that is as complete and timely as information on economic activity in the merchandise sector.

(b) Survey

The Secretary shall undertake a new benchmark survey of service transactions, including transactions with respect to—

(1) banking services;
(2) information services, including computer software services;
(3) brokerage services;
(4) transportation services;
(5) travel services;
(6) engineering services;
(7) construction services; and
(8) health services.

(c) General information and index of leading indicators

The Secretary shall provide—

(1) not less than once a year, comprehensive information on the service sector of the economy; and

(2) an index of leading indicators which includes the measurement of service sector activity in direct proportion to the contribution of the service sector to the gross national product of the United States.

(Pub. L. 100–418, title V, §5408, Aug. 23, 1988, 102 Stat. 1466.)

§4909. Exclusion of information

The Data Bank shall not include any information—

(1) the disclosure of which to the public is prohibited under any other provision of law or otherwise authorized to be withheld under other provision of law; or

(2) that is specifically authorized under criteria established by statute or an Executive order not to be disclosed in the interest of national defense or foreign policy and are in fact properly

classified pursuant to such Executive order.

(Pub. L. 100–418, title V, §5409, Aug. 23, 1988, 102 Stat. 1467.)

§4910. Nonduplication

The Secretary shall ensure that information systems created or developed pursuant to this chapter do not unnecessarily duplicate information systems available from other Federal agencies or from the private sector.

(Pub. L. 100–418, title V, §5410, Aug. 23, 1988, 102 Stat. 1467.)

§4911. Collection of data

Except as provided in section 4908 of this title, nothing in this chapter shall be considered to grant independent authority to the Federal Government to collect any data or information from individuals or entities outside of the Federal Government.

(Pub. L. 100–418, title V, §5411, Aug. 23, 1988, 102 Stat. 1467.)

§4912. Fees and access

The Secretary shall provide reasonable public services and access (including electronic access) to any information maintained as part of the Data Bank and may charge reasonable fees consistent with section 552 of title 5.

(Pub. L. 100–418, title V, §5412, Aug. 23, 1988, 102 Stat. 1467.)

§4913. Omitted

CODIFICATION

Section, Pub. L. 100–418, title V, §5413, Aug. 23, 1988, 102 Stat. 1467, required the Secretary to submit to committees of Congress, not more than 1 year after Aug. 23, 1988, a report describing actions taken pursuant to this chapter, and to submit to committees of Congress, not more than 3 years after Aug. 23, 1988, a report assessing the current quality and comprehensiveness of, and the ability of the public and of private entities to obtain access to trade data, describing all other actions taken and planned to be taken pursuant to this chapter, including comments by the private sector and by State agencies that promote exports on the implementation of the Data Bank, describing the extent to which the systems within the Data Bank are being used and any recommendations with regard to the operation of the system, and describing the extent to which United States citizens and firms have access to the data banks of foreign countries that is similar to the access provided to foreign citizens and firms.

CHAPTER 76—IMITATION FIREARMS

Sec.
5001. Penalties for entering into commerce of imitation firearms.

§5001. Penalties for entering into commerce of imitation firearms

(a) Acts prohibited

It shall be unlawful for any person to manufacture, enter into commerce, ship, transport, or receive any toy, look-alike, or imitation firearm unless such firearm contains, or has affixed to it, a marking approved by the Secretary of Commerce, as provided in subsection (b) of this section.

(b) Distinctive marking or device; exception; waiver; adjustments and changes

(1) Except as provided in paragraph (2) or (3), each toy, look-alike, or imitation firearm shall have as an integral part, permanently affixed, a blaze orange plug inserted in the barrel of such toy, look-alike, or imitation firearm. Such plug shall be recessed no more than 6 millimeters from the muzzle end of the barrel of such firearm.

(2) The Secretary of Commerce may provide for an alternate marking or device for any toy, look-alike, or imitation firearm not capable of being marked as provided in paragraph (1) and may waive the requirement of any such marking or device for any toy, look-alike, or imitation firearm that will only be used in the theatrical, movie or television industry.

(3) The Secretary is authorized to make adjustments and changes in the marking system provided for by this section, after consulting with interested persons.

(c) "Look-alike firearm" defined

For purposes of this section, the term "look-alike firearm" means any imitation of any original firearm which was manufactured, designed, and produced since 1898, including and limited to toy guns, water guns, replica nonguns, and air-soft guns firing nonmetallic projectiles. Such term does not include any look-alike, nonfiring, collector replica of an antique firearm developed prior to 1898, or traditional B–B, paint-ball, or pellet-firing air guns that expel a projectile through the force of air pressure.

(d) Study and report

The Director of the Bureau of Justice Statistics is authorized and directed to conduct a study of the criminal misuse of toy, look-alike and imitation firearms, including studying police reports of such incidences and shall report on such incidences relative to marked and unmarked firearms.

(c) [1] Technical evaluation of marking systems

The Director of [2] National Institute of Justice is authorized and directed to conduct a technical evaluation of the marking systems provided for in subsection (b) of this section to determine their effectiveness in police combat situations. The Director shall begin the study within 3 months after November 5, 1988, and such study shall be completed within 9 months after November 5, 1988.

(f) Effective date

This section shall become effective on the date 6 months after November 5, 1988, and shall apply to toy, look-alike, and imitation firearms manufactured or entered into commerce after November 5, 1988.

(g) Preemption of State or local laws or ordinances; exceptions

The provisions of this section shall supersede any provision of State or local laws or ordinances which provide for markings or identification inconsistent with provisions of this section provided that no State shall—

(i) prohibit the sale or manufacture of any look-alike, nonfiring, collector replica of an antique firearm developed prior to 1898, or

(ii) prohibit the sale (other than prohibiting the sale to minors) of traditional B–B, paint ball, or pellet-firing air guns that expel a projectile through the force of air pressure.

(Pub. L. 100–615, §4, Nov. 5, 1988, 102 Stat. 3190.)

[1] So in original. Probably should be "(e)".

[2] So in original. Probably should be "of the".

CHAPTER 77—STEEL AND ALUMINUM ENERGY CONSERVATION AND TECHNOLOGY COMPETITIVENESS

Sec.
5101. Findings and purposes.
5102. Definitions.
5103. Establishment of scientific research and development program to develop competitive manufacturing technologies and increase energy efficiency in steel and aluminum industries.
5104. Protection of proprietary rights.
5105. Coordination.
5106. Repealed.
5107. Reports.
5108. Authorization of appropriations.
5109. Relation of existing program.
5110. Drug-free workplace.

§5101. Findings and purposes

(a) Findings

The Congress finds that—

(1) maintaining viable domestic steel, aluminum, copper, and other metals industries is vital to the national security and economic well being of the United States; and

(2) the promotion of technology competitiveness and energy conservation in the American steel and aluminum industries by the Federal Government through a program of joint research and development will help maintain viable domestic steel and aluminum industries.

(b) Purposes

The purposes of this chapter are to—

(1) increase the energy efficiency and enhance the competitiveness of American steel, aluminum, and copper industries by providing Federal incentives for the establishment of public-private sector research and development partnerships to undertake scientific research and development to develop advanced technologies utilizing the expertise of the steel, aluminum, copper, and other metals industries, Government-owned laboratories of the Department of Energy and the National Institute of Standards and Technology, universities, State development agencies, and others; and

(2) continue steel research and development initiative efforts begun under title II of the Interior and Related Agencies portion of the joint resolution entitled "Joint Resolution making further continuing appropriations for the fiscal year 1986, and for other purposes", approved December 19, 1985 (Public Law 99–190).

(Pub. L. 100–680, §2, Nov. 17, 1988, 102 Stat. 4073.)

REFERENCES IN TEXT

Title II of the Interior and Related Agencies portion of the joint resolution entitled "Joint Resolution making further continuing appropriations for the fiscal year 1986, and for other purposes", approved December 19, 1985 (Public Law 99–190), referred to in subsec. (b)(2), is Pub. L. 99–190, §101(d) [title II], Dec. 19, 1985, 99 Stat. 1224, 1244. The provisions relating to steel research and development are not classified to the Code.

SHORT TITLE

Pub. L. 100–680, §1, Nov. 17, 1988, 102 Stat. 4073, provided that: "This Act [enacting this chapter] may be cited as the 'Steel and Aluminum Energy Conservation and Technology Competitiveness Act of 1988'."

§5102. Definitions

As used in this chapter—

(1) the term "Secretary" means the Secretary of Energy;

(2) the term "domestic company" means a company which is substantially involved in the

United States domestic production, processing, or use of steel, aluminum, copper, or other metals and has a substantial percentage of its operations located within the United States;

(3) the terms "management plan" and "plan" mean the Steel Initiative Management Plan issued on April 1, 1987, by the Department of Energy, which establishes the management framework for the steel research and development initiative, and updates to that plan; and

(4) the term "research plan" means the Steel Initiative Research Plan issued in April 1988 by the Department of Energy, and updates to that plan.

(Pub. L. 100–680, §3, Nov. 17, 1988, 102 Stat. 4073.)

§5103. Establishment of scientific research and development program to develop competitive manufacturing technologies and increase energy efficiency in steel and aluminum industries

(a) General authority

The Secretary, pursuant to the authority provided under provisions of the Federal Nonnuclear Research and Development Act of 1974 (42 U.S.C. 5901, et seq.), shall reestablish an industrial energy conservation and competitive technology program to conduct scientific research and development of steel and aluminum technologies to carry out the purposes of this chapter. Such program shall provide the financial and technical assistance and other incentives which, in the judgment of the Secretary, are necessary to carry out the purposes of this chapter.

(b) Management plan

Within 6 months after November 17, 1988, the Secretary shall publish an update of the management plan to expand the steel research and development initiative to include aluminum and to carry out the purposes of this chapter. The Secretary, from time to time, may further update the management plan. The management plan shall be subject to the following conditions:

(1) For newly initiated research and development proposals submitted under the revised management plan, the non-Federal financial share shall equal at least 30 percent of the total cost of any project.

(2) Existing facilities, equipment, supplies, and other property may be included in the non-Federal share under this section only when they are directly relevant to the project.

(3) The knowledge resulting from research and development activities conducted under this chapter shall be developed for the benefit of the domestic companies who provide financial resources to the program.

(4) The Secretary, for a period of up to 5 years after the development of information that—

(A) results from research and development activities conducted under this chapter; and

(B) would be a trade secret or commercial or financial information that is privileged or confidential, as described in section 5104(a) of this title, if the information had been obtained from a domestic company,

may provide appropriate protections against the dissemination of such information, including exemption from subchapter II of chapter 5 of title 5.

(5) The plan shall assure basic research support, for the research carried out under the research plan, from independent laboratories, universities, and nonprofit organizations, by coordinating activities under the research plan with the basic research efforts of the Department of Energy, such as the Energy Conversion and Utilization Technologies Program and the Materials Processing and Sensor and Controls programs within the Office of Industrial Technologies.

(c) Priorities

Within 6 months after November 17, 1988, the Secretary shall publish an update of the research plan. In reviewing research and development activities for possible inclusion in the research plan, the Secretary shall consider the following:

(1) Steel projects

(A) The direct production of liquid steel from domestic materials.

(B) The production of near-net shape forms from liquid, powder, or solid steel.

(C) The development of universal grades of steel.

(D) The application of automatic processing technology.

(E) The removal of residual elements from steel scrap.

(F) The treatment and storage of waste materials and other byproducts from steel production and processing.

(G) The development of super-plastic steel processing.

(H) The development of advanced sheet and bar steels.

(I) The development of technologies and equipment related to the production of steel that enhance the protection of the environment and the safety and health of workers.

(J) Other steel technologies which, in the judgment of the Secretary, further the purposes of this chapter.

(K) The development of technologies which reduce greenhouse gas emissions.

(2) Aluminum and other projects

(A) The production of aluminum.

(B) The application of automatic processing technology.

(C) The treatment and storage of waste materials and other byproducts from aluminum production and processing.

(D) The manufacture of aluminum mill products.

(E) Aluminum recycling technologies.

(F) The development of technologies and equipment related to the production of aluminum that enhance the protection of the environment and the safety and health of workers.

(G) Aluminum, copper, and other metals technologies which, in the judgment of the Secretary, further the purposes of this chapter.

(d) Industry participation and review

The Secretary shall arrange for participation and review by representatives of each affected industry and by labor in the updating of the management and research plans and in the evaluation of the progress of research and development activities for their industry conducted under this chapter.

(Pub. L. 100–680, §4, Nov. 17, 1988, 102 Stat. 4074; Pub. L. 102–486, title XXI, §2106(a)(1), Oct. 24, 1992, 106 Stat. 3070; Pub. L. 110–229, title VI, §602(b), May 8, 2008, 122 Stat. 853.)

REFERENCES IN TEXT

The Federal Nonnuclear Research and Development Act of 1974, referred to in subsec. (a), probably means the Federal Nonnuclear Energy Research and Development Act of 1974, Pub. L. 93–577, Dec. 31, 1974, 88 Stat. 1878, as amended, which is classified generally to chapter 74 (§5901 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5901 of Title 42 and Tables.

AMENDMENTS

2008—Subsec. (c)(1)(H). Pub. L. 110–229, §602(b)(1), substituted "sheet and bar steels" for "coatings for sheet steels".

Subsec. (c)(1)(K). Pub. L. 110–229, §602(b)(2), added subpar. (K).

1992—Subsec. (b)(5). Pub. L. 102–486 substituted "Industrial Technologies" for "Industrial Programs".

§5104. Protection of proprietary rights

(a) Proprietary rights

No trade secrets or commercial or financial information that is privileged or confidential, under the meaning of section 552(b)(4) of title 5 which is obtained from a domestic company shall be disclosed in the conduct of the management plan or research plan, or as a result of activities under

this chapter.

(b) Patent rights vested in United States

All patent rights from inventions developed under the management plan or the research plan implemented pursuant to this chapter shall be vested in accordance with section 5908 of title 42.

(Pub. L. 100–680, §5, Nov. 17, 1988, 102 Stat. 4075.)

§5105. Coordination

The Secretary shall coordinate the research and development conducted under this chapter with other research and development being conducted by the Department of Energy and other Federal agencies in order to increase efficiency and avoid duplication of effort.

(Pub. L. 100–680, §6, Nov. 17, 1988, 102 Stat. 4076.)

§5106. Repealed. Pub. L. 110–229, title VI, §602(c)(1), May 8, 2008, 122 Stat. 853

Section, Pub. L. 100–680, §7, Nov. 17, 1988, 102 Stat. 4076, related to expanded steel and aluminum research program in the National Institute of Standards and Technology.

§5107. Reports

The Secretary shall prepare and submit annually to the President and the Congress at the close of each fiscal year, beginning with fiscal year 2008, a complete report of the research and development activities carried out under this chapter during the fiscal year involved, including the actual and anticipated obligation of funds, for such activities, together with such recommendations as the Secretary may consider appropriate for further legislative, administrative, and other actions, including actions by the American steel, aluminum, copper, and other metals industries, which should be taken in order to achieve the purposes of this chapter. The report submitted at the close of fiscal year 1991 shall also contain a complete summary of activities under the management plan and the research plan from the first year of their operation, along with an analysis of the extent to which they have succeeded in accomplishing the purposes of this chapter. The reports submitted at the close of fiscal years 1993, 1995, and 1997 shall also contain a complete summary of activities under the management plan and the research plan from the first year of their operation, along with an analysis of the extent to which they have succeeded in accomplishing the purposes of this chapter.

(Pub. L. 100–680, §8, Nov. 17, 1988, 102 Stat. 4076; Pub. L. 102–486, title XXI, §2106(a)(2), Oct. 24, 1992, 106 Stat. 3070; Pub. L. 110–229, title VI, §602(c)(2), May 8, 2008, 122 Stat. 853.)

AMENDMENTS

2008—Pub. L. 110–229 inserted ", beginning with fiscal year 2008," after "close of each fiscal year".

1992—Pub. L. 102–486 inserted sentence at end relating to reports submitted at the close of fiscal years 1993, 1995, and 1997.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in this section relating to submitting annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 90 of House Document No. 103–7.

§5108. Authorization of appropriations

There are authorized to be appropriated to the Secretary to carry out this chapter $12,000,000 for each of the fiscal years 2008 through 2012.

(Pub. L. 100–680, §9, Nov. 17, 1988, 102 Stat. 4076; Pub. L. 102–486, title XXI, §2106(a)(3), (4),

Oct. 24, 1992, 106 Stat. 3070; Pub. L. 110–229, title VI, §602(a), May 8, 2008, 122 Stat. 853.)

AMENDMENTS

2008—Pub. L. 110–229 amended section generally. Prior to amendment, section authorized appropriations to the Secretary and to the Director of the National Institute of Standards and Technology to carry out functions under this chapter.

1992—Subsec. (a)(1). Pub. L. 102–486, §2106(3), substituted "$25,000,000 for fiscal year 1991, $17,968,000 for fiscal year 1992, and $18,091,000 for each of the fiscal years 1993 through 1997, to be derived from sums authorized under section 13451(e) of title 42" for "and $25,000,000 for fiscal year 1991".

Subsec. (b). Pub. L. 102–486, §2106(4), substituted "1991, 1992, 1993, 1994, 1995, 1996, and 1997, to be derived from sums otherwise authorized to be appropriated to the Institute" for "and 1991".

§5109. Relation of existing program

Proposals received by the Department of Energy before November 17, 1988, may be carried out without regard to changes in the management plan and research plan required by this chapter.

(Pub. L. 100–680, §10, Nov. 17, 1988, 102 Stat. 4076.)

§5110. Drug-free workplace

(a) No department, agency, or instrumentality of the United States receiving funds authorized to be appropriated under this chapter for fiscal year 1989, fiscal year 1990, fiscal year 1991, fiscal year 1992, fiscal year 1993, fiscal year 1994, fiscal year 1995, fiscal year 1996, and fiscal year 1997, or under any other Act authorizing appropriations for fiscal year 1989, fiscal year 1990, fiscal year 1991, fiscal year 1992, fiscal year 1993, fiscal year 1994, fiscal year 1995, fiscal year 1996, and fiscal year 1997, shall obligate or spend any such funds, unless such department, agency, or instrumentality has in place, and will continue to administer in good faith, a written policy designed to ensure that all of its work places are free from the illegal use, possession, or distribution of controlled substances (as defined in the Controlled Substances Act [21 U.S.C. 801 et seq.]) by the officers and employees of such department, agency, or instrumentality.

(b) No funds so authorized to be appropriated to any such department, agency, or instrumentality shall be available for payment in connection with any grant, contract, or other agreement, unless the recipient of such grant, contract, or party to such agreement, as the case may be, has in place and will continue to administer in good faith a written policy, adopted by such recipient, contractor, or party's board of directors or other governing authority, satisfactory to the head of the department, agency, or instrumentality making such payment, designed to ensure that all of the workplace of such recipient, contractor, or party are free from the illegal use, possession, or distribution of controlled substances (as defined in the Controlled Substances Act [21 U.S.C. 801 et seq.]) by the officers and employees of such recipient, contractor, or party.

(Pub. L. 100–680, §11, Nov. 17, 1988, 102 Stat. 4077; Pub. L. 102–486, title XXI, §2106(a)(5), Oct. 24, 1992, 106 Stat. 3070.)

REFERENCES IN TEXT

The Controlled Substances Act, referred to in text, is title II of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (§801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–486 substituted "fiscal year 1991, fiscal year 1992, fiscal year 1993, fiscal year 1994, fiscal year 1995, fiscal year 1996, and fiscal year 1997" for "or fiscal year 1991" in two places.

EFFECTIVE DATE

Pub. L. 100–685, title II, §215, Nov. 17, 1988, 102 Stat. 4093, provided that:

"(a) No funds authorized to be appropriated under this Act, or under any other Act authorizing appropriations for fiscal year 1989 through 1993 for the [National Aeronautics and Space] Administration, shall be obligated or expended unless the Administration has in place, and will continue to administer in good faith, a written policy designed to ensure that all of its workplaces are free from the illegal use, possession, or distribution of controlled substances (as defined in the Controlled Substances Act [21 U.S.C. 801 et seq.]) by the officers and employees of the Administration.

"(b) No funds authorized to be appropriated to the Administration for fiscal years 1989 through 1993 shall be available for payment in connection with any grant, contract, or other agreement, unless the recipient of such grant, contractor, or party to such agreement, as the case may be, has in place and will continue to administer in good faith a written policy, adopted by the board of directors or other government authority of such recipient, contractor, or party, satisfactory to the Administrator of the [National Aeronautics and Space] Administration, designed to ensure that all of the workplaces of such recipient, contractor, or party are free from the illegal use, possession, or distribution of controlled substances (as defined in the Controlled Substances Act) by the officers and employees of such recipient, contractor, or party.

"(c) The provisions of this section, and the provisions of the Steel and Aluminum Energy Conservation and Technology Competitiveness Act of 1988 [15 U.S.C. 5101 et seq.], the National Institute of Standards and Technology Authorization Act for Fiscal Year 1989 [Pub. L. 100–519, title I, Oct. 24, 1988, 102 Stat. 2589], the National Science Foundation Authorization Act for Fiscal Years 1989 and 1990 [probably means Pub. L. 100–570, Oct. 31, 1988, 102 Stat. 2865], and the National Nutrition Monitoring and Related Research Act of 1988 [probably means S. 1081, One Hundredth Congress, which was pocket vetoed], relating to a drug-free workplace, shall not be effective until January 16, 1989."

CHAPTER 78—SUPERCONDUCTIVITY AND COMPETITIVENESS

Sec.

5201. Findings and purposes.
5202. National Action Plan on Advanced Superconductivity Research and Development.
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5204. National Institute of Standards and Technology.
5205. National Science Foundation.
5206. National Aeronautics and Space Administration.
5207. Department of Defense.
5208. International cooperation.
5209. Technology transfer.

§5201. Findings and purposes

(a) Findings

The Congress finds that—

(1) recent discoveries of high-temperature superconducting materials could result in significant new applications of these materials in such areas as microelectronics, computers, power systems, transportation, medical imaging, and nuclear fusion, yet most potential applications may well lie beyond our ability to predict them;

(2) full application of the new superconductors is expected to require 10 to 20 years, thus calling for long-term commitments by the public and private sector to appropriate research and development programs;

(3) the Nation's economic competitiveness and strategic well-being depend greatly on the development and application of critical advanced technologies such as those anticipated to evolve from the new superconducting materials;

(4) the United States manufacturing industries confront strong competition in both domestic and world markets as other countries are increasingly taking advantage of modern technology and production techniques and innovative management focused on quality;

(5) whereas we have as a Nation been highly successful in the conduct of basic research in a variety of scientific areas, including superconductivity, other nations have been highly successful

in the commercial and military application of the results of such fundamental research;

(6) if the United States is to begin its competitive advantage, it must commit sufficient long-term resources to solving processing and manufacturing problems in parallel with basic research and development;

(7) Federal agencies have responded aggressively to this exciting challenge by reprogramming funds to basic superconductivity research while informally coordinating their efforts to avoid unnecessary duplication; and further commitment of Federal funding and efforts directed to developing manufacturing, materials processing, and fabrication technologies is essential so that these activities may be conducted in parallel;

(8) successful development and application of the new superconducting materials will require close collaboration between the Federal Government and the industrial and academic components of the private sector, as well as coordinating among the Federal departments and agencies involved in research and development on superconductors;

(9) a committed Federal program effort with appropriate long-term goals, priorities, and adequate resources is necessary for the rapid development and application of the new superconducting materials; and

(10) a national program should serve as a test of new agency authorities directed at technological competitiveness such as those provided to the Department of Energy.

(b) Purposes

The purposes of this chapter are—

(1) to establish a 5-year national action plan to research and develop new high-temperature superconducting materials with appropriate goals and priorities; [1]

(2) to designate the appropriate roles, mechanisms, and responsibilities of various Federal departments and agencies in implementing such a national research and development action plan.

(Pub. L. 100–697, §2, Nov. 19, 1988, 102 Stat. 4613.)

SHORT TITLE

Pub. L. 100–697, §1, Nov. 19, 1988, 102 Stat. 4613, provided that: "This Act [enacting this chapter] may be cited as the 'National Superconductivity and Competitiveness Act of 1988'."

[1] So in original. Probably should be followed by "and".

§5202. National Action Plan on Advanced Superconductivity Research and Development

(a) Establishment

(1) The Director of the Office of Science and Technology Policy shall establish a 5-year National Action Plan on Advanced Superconductivity Research and Development (hereinafter in this chapter referred to as the "Superconductivity Action Plan").

(2) The Office of Science and Technology Policy shall coordinate the development of the Superconductivity Action Plan and any recommendations required by this chapter with the National Critical Materials Council and the National Commission on Superconductivity.

(b) Content and scope

The Superconductivity Action Plan shall include—

(1) goals and priorities for advanced superconductivity research and development to be carried out by individual departments and agencies and organizational elements therein;

(2) the assignment of responsibility for the conduct of advanced superconductivity research and development among the departments, agencies, and organization elements therein;

(3) recommendation of proposed funding levels for activities relating to superconductivity of the 5 years following November 19, 1988, for each of the participating departments, agencies, and organizational elements therein; and

(4) proposals for the participation by industry and academia in the planning and implementation of the Superconductivity Action Plan.

(c) Action Plan report

The Office of Science and Technology Policy, in conjunction with the National Critical Materials Council, shall submit a report detailing the Superconductivity Action Plan to the Committee on Science, Space, and Technology of the House of Representatives, and to the Committees on Energy and Natural Resources, and Commerce, Science, and Transportation of the Senate, within 9 months after November 19, 1988.

(d) Update reports

The Office of Science and Technology Policy, with the assistance of the National Critical Materials Council as specified in the National Critical Materials Act of 1984 (30 U.S.C. 1801 et seq.), shall prepare an annual report setting forth and evaluating the progress of the Superconductivity Action Plan. This report shall include a description of the amount of funds expended in the previous year by all Federal departments and agencies involved with superconductivity. This report shall be submitted with the President's annual budget request to the Committee on Science, Space, and Technology of the House of Representatives, and to the Committees on Energy and Natural Resources, and Commerce, Science, and Transportation of the Senate.

(Pub. L. 100–697, §3, Nov. 19, 1988, 102 Stat. 4614.)

REFERENCES IN TEXT

The National Critical Materials Act of 1984, referred to in subsec. (d), is title II of Pub. L. 98–373, July 31, 1984, 98 Stat. 1248, as amended, which is classified generally to chapter 30 (§1801 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of Title 30 and Tables.

§5203. Department of Energy

The Secretary of Energy shall conduct a program in superconductivity research and development. Within 180 days after November 19, 1988, and for the two succeeding years thereafter, the Secretary shall submit annual reports on the implementation of technology transfer activities under the Stevenson-Wydler Technology Innovation Act of 1980 [15 U.S.C. 3701 et seq.] and related legislation with respect to superconductivity research and development to the Committee on Science, Space, and Technology of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate. Such report shall include recommendations for improvements in the technology transfer between government and industry, and in the management of property developed or made at the National Laboratories.

(Pub. L. 100–697, §4, Nov. 19, 1988, 102 Stat. 4615.)

REFERENCES IN TEXT

The Stevenson-Wydler Technology Innovation Act of 1980, referred to in text, is Pub. L. 96–480, Oct. 21, 1980, 94 Stat. 2311, as amended, which is classified generally to chapter 63 (§3701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3701 of this title and Tables.

§5204. National Institute of Standards and Technology

In pursuance of the goals of this chapter, the National Institute of Standards and Technology shall promote fundamental research and materials standards to accelerate the use and application of the new superconducting materials, and shall utilize the Superconductivity Center Focusing on Electronic Applications at the National Institute of Standards and Technology in Boulder, Colorado.

(Pub. L. 100–697, §5, Nov. 19, 1988, 102 Stat. 4615.)

§5205. National Science Foundation

The National Science Foundation shall promote fundamental research in pursuance of the goals of this chapter.

(Pub. L. 100–697, §6, Nov. 19, 1988, 102 Stat. 4615.)

§5206. National Aeronautics and Space Administration

The National Aeronautics and Space Administration shall utilize existing programs in technology transfer, aeronautics and space technology, and space commercialization to promote the commercial applications of high-temperature superconductors, including applications relating to thin film technology, communications technology, sensors, space power, and propulsion.

(Pub. L. 100–697, §7, Nov. 19, 1988, 102 Stat. 4615.)

§5207. Department of Defense

(a) Focus of research

In conformance with the Superconductivity Action Plan, the Secretary of Defense, in the superconductivity research and development activities of the Department of Defense, shall give emphasis to fundamental research, materials processing, and applications of new superconducting materials.

(b) Additional activities

In conducting research under subsection (a) of this section, the Secretary of Defense shall—

(1) systematically define the engineering parameters for high-temperature superconducting materials; and

(2) conduct the necessary development, engineering, and operational prototype testing considered appropriate to the overall mission of the Department of Defense. Such operational prototype testing shall, where appropriate, utilize criteria developed by the Defense Advanced Research Projects Agency.

(c) Defense Advanced Research Projects Agency

The Director of the Defense Advanced Research Projects Agency shall, in conformance with the Superconductivity Action Plan, conduct activities to—

(1) augment, as appropriate, basic and applied superconductivity research conducted in other Federal agencies and industry; and

(2) develop criteria for operational prototype testing within the Department of Defense.

(Pub. L. 100–697, §8, Nov. 19, 1988, 102 Stat. 4615.)

§5208. International cooperation

The President, as part of the Superconductivity Action Plan, shall establish a program of international cooperation in the conduct of fundamental and basic research on superconducting materials. Such program of international cooperation shall include the exchange of basic information and data, as well as the development of international standards for the use and application of superconducting materials.

(Pub. L. 100–697, §9, Nov. 19, 1988, 102 Stat. 4616.)

§5209. Technology transfer

(a) Promotion

In pursuance of the goals of this chapter, all Federal departments and agencies shall conduct technology transfer activities as appropriate to the overall mission of each department or agency to—

(1) complement basic superconductivity research by promoting the rapid development of manufacturing and processing technologies necessary for the commercialization of high-temperature superconductors; and

(2) promote collaborative arrangements and consortia of industry (which shall include small business) in order to lower the barriers to deployment of advanced high-temperature superconductor technology; such consortia to also include, as appropriate, universities and independent research organizations.

(b) Impediments to commercialization

The Director of the Office of Science and Technology Policy, in collaboration with the Secretary of Commerce and the Secretary of Energy, shall identify those Federal policies and regulations which impede the ability of the private sector to undertake long-term investment programs to commercialize superconductivity applications.

(Pub. L. 100–697, §10, Nov. 19, 1988, 102 Stat. 4616.)

CHAPTER 79—METAL CASTING COMPETITIVENESS RESEARCH PROGRAM

Sec.

5301. Findings.
5302. Definitions.
5303. Establishment of program.
5304. Operation of program.
5305. Review.
5306. Industrial Advisory Board.
5307. Authorization of appropriations.
5308. Protection of proprietary rights.
5309. Omitted.

§5301. Findings

The Congress finds that—

(1) metal casting is an important process for manufacturing many items imported into or exported from the United States;

(2) the encouragement and maintenance of a technically advanced United States metal casting industry is essential to the competitiveness of many American industries;

(3) maintaining a viable metal casting industry is vital to the national security and economic well being of the United States;

(4) the promotion of technology competitiveness and energy efficiency in the United States metal casting industry by the Federal Government is necessary to maintain a viable metal casting industry;

(5) many metal casting companies lack the resources to conduct metal casting research alone, placing them at a serious competitive disadvantage;

(6) the support of university-based research in metal casting is important in promoting technology development and providing industry with qualified engineers; and

(7) by combining the resources of the Federal Government, universities, industry, and private organizations, to conduct research and development activities, substantial technological benefits

will result to the metal casting industry.

(Pub. L. 101–425, §2, Oct. 15, 1990, 104 Stat. 915.)

SHORT TITLE

Pub. L. 101–425, §1, Oct. 15, 1990, 104 Stat. 915, provided that: "This Act [enacting this chapter] may be cited as the 'Department of Energy Metal Casting Competitiveness Research Act of 1990'."

§5302. Definitions

As used in this chapter, the term—

(1) "applicant" means:

(A) an educational institution;

(B) a consortium of educational institutions;

(C) a consortium of an educational institution or educational institutions with one or more of the following: Government-owned laboratories, private research organizations, nonprofit institutions, or private firms;

that is located in a region where the metal casting industry is concentrated;

(2) "census region" means one of the four census regions (Northeast, South, Midwest, and West) that are designated as census regions by the Bureau of the Census as of October 15, 1990;

(3) "Department" means the Department of Energy;

(4) "educational institution" means a degree granting institution of at least a baccalaureate level;

(5) "non-Federal source" means the United States metal casting industry, related industries, industry-related associations, individuals, organizations, universities, State agencies, or other entities supporting the metal casting industry;

(6) "metal casting industry" or "industry" means the industries identified by codes numbered 3321, 3322, 3324, 3325, 3363, 3364, 3365, 3366, and 3369, in the Standard Industrial Classification manual [1] published by the Office of Management and Budget in 1987;

(7) "Secretary" means the Secretary of Energy.

(Pub. L. 101–425, §3, Oct. 15, 1990, 104 Stat. 915.)

[1] *So in original. Probably should be capitalized.*

§5303. Establishment of program

The Secretary, acting in accordance with authority provided in the Federal Non-Nuclear Research and Development Act of 1974 (42 U.S.C. 5901 et seq.), except as otherwise provided in this chapter, shall establish a Metal Casting Competitiveness Research Program (hereafter in this chapter referred to as the "Program") for the purpose of performing and promoting the performance of research and development on issues related to the technology competitiveness and energy efficiency of the United States metal casting industry.

(Pub. L. 101–425, §4, Oct. 15, 1990, 104 Stat. 916.)

REFERENCES IN TEXT

The Federal Non-Nuclear Research and Development Act of 1974, referred to in text, probably means the Federal Nonnuclear Energy Research and Development Act of 1974, Pub. L. 93–577, Dec. 31, 1974, 88 Stat. 1878, as amended, which is classified generally to chapter 74 (§5901 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5901 of Title 42 and Tables.

§5304. Operation of program

(a) Solicitation of proposals

Within one year after October 15, 1990, the Secretary shall solicit and, subject to available appropriations, select proposals on a competitive basis from applicants to carry out the program under section 5303 of this title. In order for a proposal to be considered by the Secretary, the applicant shall have in existence at the time the proposal is submitted the following qualifications:

(1) the technical capability to enable it to make use of existing research support and facilities in carrying out its research objectives;

(2) a multidisciplinary research staff experienced in metal casting or other directly related technologies; and

(3) the facilities and equipment capable of conducting at least laboratory scale testing or demonstration of metal casting or related processes.

(b) Proposal criteria

Each proposal shall—

(1) demonstrate the support of the metal casting industry by describing—

(A) how industry has participated in deciding what research activities will be undertaken;

(B) how industry will participate in the evaluation of the applicant's progress in research and development activities; and

(C) the extent to which industry funds are committed to the applicant's proposal;

(2) have a commitment for matching funds from non-Federal sources, which shall consist of:

(A) cash, or

(B) as determined by the Secretary, the fair market value of equipment, services, materials, appropriate technology transfer activities, and other assets directly related to the proposal's cost;

(3) include a single or multiyear management plan that outlines how the research and development activities will be administered and carried out;

(4) state the annual cost of the proposal and a breakdown of those costs; and

(5) describe the technology transfer mechanisms the applicant will use to make available research results to industry and to other researchers.

(c) Content of management plan

The management plan set forth in subsection (b)(3) of this section shall—

(1) outline the basic research and development activities expected to be performed;

(2) outline who will conduct those research activities;

(3) establish the time frame over which the research activities will take place; and

(4) define the overall program management and direction by—

(A) identifying managerial, organizational and administrative procedures and responsibilities;

(B) outlining how the coordination of research and development between the individuals and organizations involved will be achieved;

(C) demonstrating how implementation and monitoring of the progress of research projects after receipt of funding from the Secretary will be achieved;

(D) demonstrating how recommendations and implementations on modifications to the plan will be achieved; and

(E) providing sufficient rationale to support the plan's costs.

(d) Selection of proposals

From the proposals submitted, the Secretary shall select proposals for funding. The Secretary shall attempt to select at least four proposals. The Secretary shall select the proposals that—

(1) will best result in carrying out needed metal casting research and development in one or more of the following general areas—

(A) solidification and casting technologies;

(B) computational modeling and design;

(C) processing technologies and design for energy efficiency, material conservation,

environmental protection, or industrial productivity; and

(D) other areas of research, which in the judgment of the Secretary, after consulting with the Board established in section 5306 of this title, further the purposes of this chapter;

(2) represent research and development in specific areas identified in the "Metal Casting Research Priorities" developed annually by the Board pursuant to section 5306(b)(1) of this title;

(3) to the greatest extent possible and subject to available appropriations, ensure that at least one applicant is selected from each of the four census regions of the country where the metal casting industry is concentrated;

(4) demonstrate strong industry support;

(5) ensure the timely transfer of technology to industry; and

(6) otherwise best carry out the purposes of this chapter.

(e) Funding of program

From amounts made available in separate appropriation Acts, the Secretary shall provide to each applicant selected the financial and technical assistance and other incentives that are necessary and appropriate to carry out the purposes of this chapter.

(f) National Metal Casting Research Institute

Each recipient of financial assistance under subsection (d) of this section shall be known as a "National Metal Casting Research Institute".

(Pub. L. 101–425, §5, Oct. 15, 1990, 104 Stat. 916.)

§5305. Review

(a) Evaluation of research activities

The Secretary shall regularly monitor and evaluate the research activities of the applicants selected. After considering the reports of the Board provided for in section 5306(b)(2) of this title, the Secretary shall determine whether each applicant selected has complied with the management plan submitted in the original proposal and any modifications made since.

(b) Annual report

Each selected applicant in the program shall provide an annual report to the Secretary that explains the progress made, compliance with the management plan, whether changes are needed and are being made to the management plan, and what new research is planned.

(c) Discontinuation of funding

In the event a selected applicant has substantially failed in the implementation of the management plan and research activities, the Secretary shall discontinue funding.

(d) Solicitation of new proposals

Upon completion or discontinuance of any research activity authorized in section 5304 of this title, the Secretary shall, using available funds appropriated pursuant to this chapter, solicit new research proposals as set forth under the terms of this chapter.

(Pub. L. 101–425, §6, Oct. 15, 1990, 104 Stat. 918.)

§5306. Industrial Advisory Board

(a) Establishment of Board

Within 120 days after October 15, 1990, the Secretary, after consulting with representatives of trade and technical associations of the metal casting industry, shall establish an Industrial Advisory Board (hereafter in this chapter referred to as the "Board") to provide guidance and oversight in implementing the selection criteria and operation of the program. The Board shall be composed of

nine members who are selected by the Secretary, a majority of whom shall be individuals from the metal casting industry or individuals affiliated with the industry. At least one member of the Board shall be chosen from each of the four census regions of the country. Each Board member shall serve for a term not to exceed five years, but may be reappointed for successive terms.

(b) Review and recommendations

(1) Within 180 days after October 15, 1990, and annually thereafter, the Board shall develop from the general research areas identified in section 5304(d) of this title and submit to the Secretary a list of Metal Casting Research Priorities. Such list shall, to the greatest extent possible, identify specific areas of research that would be considered of a priority nature to the United States metal casting industry.

(2) On an annual basis the Board shall—

(A) review the Secretary's solicitation and selection of research proposals and make recommendations as to how each such activity can be altered so as to better achieve the purposes of this chapter; and

(B) review the research activities of each selected applicant, and the selected applicant's management plan, and report its findings and recommendations to the Secretary.

(Pub. L. 101–425, §7, Oct. 15, 1990, 104 Stat. 918.)

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§5307. Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this chapter $5,000,000 for each of the fiscal years 1991, 1992, 1993, 1994, 1995, 1996, and 1997, to be derived from such sums as are otherwise authorized under section 13451(e) of title 42.

(Pub. L. 101–425, §8, Oct. 15, 1990, 104 Stat. 919; Pub. L. 102–486, title XXI, §2106(b), Oct. 24, 1992, 106 Stat. 3070.)

AMENDMENTS

1992—Pub. L. 102–486 substituted "1993, 1994, 1995, 1996, and 1997, to be derived from such sums as are otherwise authorized under section 13451(e) of title 42" for "and 1993".

§5308. Protection of proprietary rights

(a) Proprietary rights

No trade secrets or commercial or financial information that is privileged or confidential, under the meaning of section 552(b)(4) of title 5, which is obtained from a company as a result of activities under this chapter shall be disclosed.

(b) Commercial information

The Secretary, for a period of up to 5 years after the development of information that—

(1) results from research and development activities conducted under this chapter; and

(2) would be a trade secret or commercial or financial information that is privileged or confidential, under the meaning of section 552(b)(4) of title 5, if the information had been obtained from a company,

may provide appropriate protection against the dissemination of such information, including exemption from subchapter II of chapter 5 of title 5.

(c) Patent rights

With respect to patent rights, the Institutes shall be treated in the same manner as are nonprofit organizations and small business firms under chapter 18 of title 35, notwithstanding any provisions to the contrary contained in that chapter.

(Pub. L. 101–425, §9, Oct. 15, 1990, 104 Stat. 919.)

§5309. Omitted

CODIFICATION

Section, Pub. L. 101–425, §10, Oct. 15, 1990, 104 Stat. 919, which required, at the time the President's annual budget request for the Department is submitted, that the Secretary provide to Congress a detailed review of the progress of the research and development activities authorized under this chapter, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 84 of House Document No. 103–7.

CHAPTER 80—FASTENERS

Sec.

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§5401. Findings

The Congress finds that—

(1) the United States fastener industry is a significant contributor to the global economy, employing thousands of workers in hundreds of communities;

(2) the American economy uses billions of fasteners each year;

(3) state-of-the-art manufacturing and improved quality assurance systems have dramatically improved fastener quality, so virtually all fasteners sold in commerce meet or exceed the consensus standards for the uses to which they are applied;

(4) a small number of mismarked, misrepresented, and counterfeit fasteners do enter commerce in the United States; and

(5) multiple criteria for the identification of fasteners exist, including grade identification markings and manufacturer's insignia, to enable purchasers and users of fasteners to accurately evaluate the characteristics of individual fasteners.

(Pub. L. 101–592, §2, Nov. 16, 1990, 104 Stat. 2943; Pub. L. 104–113, §11(a), Mar. 7, 1996, 110 Stat. 780; Pub. L. 106–34, §2, June 8, 1999, 113 Stat. 118.)

AMENDMENTS

1999—Pub. L. 106–34 amended section generally. Prior to amendment, section consisted of subsecs. (a) and (b) stating findings of Congress and purpose of this chapter.

1996—Subsec. (a)(4) to (6). Pub. L. 104–113, §11(a)(1), redesignated pars. (5) to (7) as (4) to (6), respectively, and struck out former par. (4) which read as follows: "the sale in commerce of nonconforming fasteners and the use of nonconforming fasteners in numerous critical applications have reduced the combat readiness of the Nation's military forces, endangered the safety of other Federal projects and activities, and cost both the public and private sectors large sums in connection with the retesting and purging of fastener inventories;".

Subsec. (a)(7). Pub. L. 104–113, §11(a)(2), struck out "by lot number" after "traceability".

Pub. L. 104–113, §11(a)(1), redesignated par. (8) as (7). Former par. (7) redesignated (6).

Subsec. (a)(8), (9). Pub. L. 104–113, §11(a)(1), redesignated par. (9) as (8). Former par. (8) redesignated (7).

Subsec. (b). Pub. L. 104–113, §11(a)(3), substituted "in commerce" for "used in critical applications".

SHORT TITLE OF 1999 AMENDMENT

Pub. L. 106–34, §1, June 8, 1999, 113 Stat. 118, provided that: "This Act [enacting sections 5403, 5411a, and 5411b of this title, amending this section and sections 5402 and 5407 to 5411 of this title, repealing sections 5404 to 5406, 5412, and 5414 of this title, and enacting provisions set out as notes under sections 5402 and 5403 of this title] may be cited as the 'Fastener Quality Act Amendments Act of 1999'."

SHORT TITLE

Pub. L. 101–592, §1, Nov. 16, 1990, 104 Stat. 2943, provided that: "This Act [enacting this chapter] may be cited as the 'Fastener Quality Act'."

§5402. Definitions

As used in this chapter, the term—

(1) "accredited laboratory" means a fastener testing facility used to perform end-of-line testing required by a consensus standard or standards to verify that a lot of fasteners conforms to the grade identification marking called for in the consensus standard or standards to which the lot of fasteners has been manufactured, and which—

(A) meets the requirements of ISO/IEC Guide 25 (or another document approved by the Director under section 5411a(c) of this title), including revisions from time-to-time; and

(B) has been accredited by a laboratory accreditation body that meets the requirements of ISO/IEC Guide 58 (or another document approved by the Director under section 5411a(d) of this title), including revisions from time-to-time;

(2) "consensus standard" means the provisions of a document that describes fastener characteristics published by a consensus standards organization or a Federal agency, and does not include a proprietary standard;

(3) "consensus standards organization" means the American Society for Testing and Materials, the American National Standards Institute, the American Society of Mechanical Engineers, the Society of Automotive Engineers, the International Organization for Standardization, any other organization identified as a United States consensus standards organization or a foreign and international consensus standards organization in the Federal Register at 61 Fed. Reg. 50582–83 (September 26, 1996), and any successor organizations thereto;

(4) "Director" means the Director of the National Institute of Standards and Technology;

(5) "distributor" means a person who purchases fasteners for the purpose of reselling them at wholesale to unaffiliated persons within the United States (an original equipment manufacturer and its dealers shall be considered affiliated persons for purposes of this chapter);

(6) "fastener" means a metallic screw, nut, bolt, or stud having internal or external threads, with a nominal diameter of 6 millimeters or greater, in the case of such items described in metric terms, or ¼ inch or greater, in the case of such items described in terms of the English system of measurement, or a load-indicating washer, that is through-hardened or represented as meeting a consensus standard that calls for through-hardening, and that is grade identification marked or

represented as meeting a consensus standard that requires grade identification marking, except that such term does not include any screw, nut, bolt, stud, or load-indicating washer that is—

(A) part of an assembly;

(B) a part that is ordered for use as a spare, substitute, service, or replacement part, unless that part is in a package containing more than 75 of any such part at the time of sale, or a part that is contained in an assembly kit;

(C) produced and marked as ASTM A 307 Grade A, or a successor standard thereto;

(D) produced in accordance with ASTM F 432, or a successor standard thereto;

(E) specifically manufactured for use on an aircraft if the quality and suitability of those fasteners for that use has been approved—

(i) by the Federal Aviation Administration; or

(ii) by a foreign airworthiness authority as described in part 21.29, 21.500, 21.502, or 21.617 of title 14 of the Code of Federal Regulations;

(F) manufactured in accordance with a fastener quality assurance system; or

(G) manufactured to a proprietary standard, whether or not such proprietary standard directly or indirectly references a consensus standard or any portion thereof;

(7) "fastener quality assurance system" means—

(A) a system that meets the requirements, including revisions from time-to-time, of—

(i) International Organization for Standardization (ISO) Standard 9000, 9001, 9002, or TS16949;

(ii) Quality System (QS) 9000 Standard;

(iii) Verband der Automobilindustrie e. V. (VDA) 6.1 Standard; or

(iv) Aerospace Basic Quality System Standard AS9000; or

(B) any fastener manufacturing system—

(i) that has as a stated goal the prevention of defects through continuous improvement;

(ii) that seeks to attain the goal stated in clause (i) by incorporating—

(I) advanced quality planning;

(II) monitoring and control of the manufacturing process;

(III) product verification embodied in a comprehensive written control plan for product and process characteristics, and process controls (including process influence factors and statistical process control), tests, and measurement systems to be used in production; and

(IV) the creation, maintenance, and retention of electronic, photographic, or paper records required by the control plan regarding the inspections, tests, and measurements performed pursuant to the control plan; and

(iii) that—

(I) is subject to certification in accordance with the requirements of ISO/IEC Guide 62 (or another document approved by the Director under section 5411a(a) of this title), including revisions from time-to-time, by a third party who is accredited by an accreditation body in accordance with the requirements of ISO/IEC Guide 61 (or another document approved by the Director under section 5411a(b) of this title), including revisions from time-to-time; or

(II) undergoes regular or random evaluation and assessment by the end user or end users of the screws, nuts, bolts, studs, or load-indicating washers produced under such fastener manufacturing system to ensure that such system meets the requirements of clauses (i) and (ii);

(8) "grade identification marking" means any grade-mark or property class symbol appearing on a fastener purporting to indicate that the lot of fasteners conforms to a specific consensus standard, but such term does not include a manufacturer's insignia or part number;

(9) "importer" means a distributor located within the United States who contracts for the initial purchase of fasteners manufactured outside the United States;

(10) "lot" means a quantity of fasteners of one part number fabricated by the same production process from the same coil or heat number of metal as provided by the metal manufacturer;

(11) "manufacturer" means a person who fabricates fasteners for sale in commerce;

(12) "proprietary standard" means the provisions of a document that describes characteristics of a screw, nut, bolt, stud, or load-indicating washer and is issued by a person who—

(A) uses screws, nuts, bolts, studs, or load-indicating washers in the manufacture, assembly, or servicing of its products; and

(B) with respect to such screws, nuts, bolts, studs, or washers, is a developer and issuer of descriptions that have characteristics similar to consensus standards and that bear such user's identification;

(13) "record of conformance" means a record or records for each lot of fasteners sold or offered for sale that contains—

(A) the name and address of the manufacturer;

(B) a description of the type of fastener;

(C) the lot number;

(D) the nominal dimensions of the fastener (including diameter and length of bolts or screws), thread form, and class of fit;

(E) the consensus standard or specifications to which the lot of fasteners has been manufactured, including the date, number, revision, and other information sufficient to identify the particular consensus standard or specifications being referenced;

(F) the chemistry and grade of material;

(G) the coating material and characteristics and the applicable consensus standard or specifications for such coating; and

(H) the results or a summary of results of any tests performed for the purpose of verifying that a lot of fasteners conforms to its grade identification marking or to the grade identification marking the lot of fasteners is represented to meet;

(14) "represent" means to describe one or more of a fastener's purported characteristics in a document or statement that is transmitted to a purchaser through any medium;

(15) "Secretary" means the Secretary of Commerce;

(16) "specifications" means the required characteristics identified in the contractual agreement with the manufacturer or to which a fastener is otherwise produced, except that the term does not include proprietary standards; and

(17) "through-harden" means heating above the transformation temperature followed by quenching and tempering for the purpose of achieving uniform hardness.

(Pub. L. 101–592, §3, Nov. 16, 1990, 104 Stat. 2944; Pub. L. 104–113, §11(b), Mar. 7, 1996, 110 Stat. 780; Pub. L. 106–34, §3, June 8, 1999, 113 Stat. 118.)

AMENDMENTS

1999—Pub. L. 106–34 amended section catchline and text generally, restating certain definitions, adding new definitions, and striking out definitions of "alter", "container", "institute", "original equipment manufacturer", "private label distributor", and "standards and specifications".

1996—Par. (1)(B). Pub. L. 104–113, §11(b)(1), struck out "having a minimum tensile strength of 150,000 pounds per square inch" after "fasteners".

Par. (2). Pub. L. 104–113, §11(b)(2), inserted "consensus" after "or any other".

Par. (5). Pub. L. 104–113, §11(b)(3), inserted "or produced in accordance with ASTM F 432" after "307 Grade A" in closing provisions, inserted "or" at end of subpar. (B), struck out "or" at end of subpar. (C), and struck out subpar. (D) which read as follows: "any item within a category added by the Secretary in accordance with section 5403(b) of this title,".

Par. (6). Pub. L. 104–113, §11(b)(4), substituted "government agency" for "other person".

Par. (8). Pub. L. 104–113, §11(b)(5), substituted "Standards" for "Standard".

Pars. (11), (12). Pub. L. 104–113, §11(b)(6), redesignated pars. (12) and (13) as (11) and (12), respectively, and struck out former par. (11) which read as follows: " 'original equipment manufacturer' means a person who uses fasteners in the manufacture or assembly of its products and sells fasteners to authorized dealers as replacement or service parts for its products;".

Par. (13). Pub. L. 104–113, §11(b)(7), substituted "or a government agency" for ", a government agency, or a major end-user of fasteners which defines or describes dimensional characteristics, limits of size, acceptable materials, processing, functional behavior, plating, baking, inspecting, testing, packaging, and required markings of any fastener".

Pub. L. 104–113, §11(b)(6), redesignated par. (14) as (13). Former par. (13) redesignated (12).

Par. (14). Pub. L. 104–113, §11(b)(8), inserted "for the purpose of achieving a uniform hardness" after "quenching and tempering".

Pub. L. 104–113, §11(b)(6), redesignated par. (15) as (14). Former par. (14) redesignated (13).

Par. (15). Pub. L. 104–113, §11(b)(6), redesignated par. (15) as (14).

COMPTROLLER GENERAL REPORT

Pub. L. 106–34, §12, June 8, 1999, 113 Stat. 125, provided that: "Not later than 2 years after the date of the enactment of this Act [June 8, 1999], the Comptroller General shall transmit to the Congress a report describing any changes in industry practice resulting from or apparently resulting from the enactment of section 3(6)(B) of the Fastener Quality Act [15 U.S.C. §5402(6)(B)], as added by section 3 of this Act."

§5403. Sale of fasteners

(a) General rule

It shall be unlawful for a manufacturer or distributor, in conjunction with the sale or offer for sale of fasteners from a single lot, to knowingly misrepresent or falsify—

(1) the record of conformance for the lot of fasteners;

(2) the identification, characteristics, properties, mechanical or performance marks, chemistry, or strength of the lot of fasteners; or

(3) the manufacturer's insignia.

(b) Representations

A direct or indirect reference to a consensus standard to represent that a fastener conforms to particular requirements of the consensus standard shall not be construed as a representation that the fastener meets all the requirements of the consensus standard.

(c) Specifications

A direct or indirect contractual reference to a consensus standard for the purpose of identifying particular requirements of the consensus standard that serve as specifications shall not be construed to require that the fastener meet all the requirements of the consensus standard.

(d) Use of accredited laboratories

In the case of fasteners manufactured solely to a consensus standard or standards, end-of-line testing required by the consensus standard or standards, if any, for the purpose of verifying that a lot of fasteners conforms with the grade identification marking called for in the consensus standard or standards to which the lot of fasteners has been manufactured shall be conducted by an accredited laboratory.

(Pub. L. 101–592, §4, as added Pub. L. 106–34, §4(a), June 8, 1999, 113 Stat. 121.)

PRIOR PROVISIONS

A prior section 5403, Pub. L. 101–592, §4, Nov. 16, 1990, 104 Stat. 2945, set out special rule under which Secretary could waive requirements of this chapter on determination that category of fasteners was not used in critical applications, but that Secretary could also determine in given case that fastener was used in critical applications and was governed accordingly, prior to repeal by Pub. L. 104–113, §11(c), Mar. 7, 1996, 110 Stat. 780.

EFFECTIVE DATE

Pub. L. 106–34, §4(b), June 8, 1999, 113 Stat. 122, provided that: "Subsection (d) of section 4 of the Fastener Quality Act [15 U.S.C. §5403(d)], as added by subsection (a) of this section, shall take effect 2 years after the date of the enactment of this Act [June 8, 1999]."

§§5404 to 5406. Repealed. Pub. L. 106–34, §4(a), June 8, 1999, 113 Stat. 121

Section 5404, Pub. L. 101–592, §5, Nov. 16, 1990, 104 Stat. 2945; Pub. L. 104–113, §11(d), Mar. 7, 1996, 110 Stat. 780, required testing and certification of fasteners.

Section 5405, Pub. L. 101–592, §6, Nov. 16, 1990, 104 Stat. 2947; Pub. L. 104–113, §11(e), Mar. 7, 1996, 110 Stat. 781, provided for laboratory accreditation.

Section 5406, Pub. L. 101–592, §7, Nov. 16, 1990, 104 Stat. 2948; Pub. L. 104–113, §11(f), Mar. 7, 1996, 110 Stat. 781, related to sale of domestic and imported fasteners subsequent to manufacture.

§5407. Manufacturers' insignias

(a) General rule

Unless the specifications provide otherwise, fasteners that are required by the applicable consensus standard or standards to bear an insignia identifying their manufacturer shall not be offered for sale or sold in commerce unless—

(1) the fasteners bear such insignia; and

(2) the manufacturer has complied with the insignia recordation requirements established under subsection (b) of this section.

(b) Recordation

The Secretary shall establish, by regulation, a program to provide for the recordation of the insignias of manufacturers described in subsection (a) of this section.

(Pub. L. 101–592, §5, formerly §8, Nov. 16, 1990, 104 Stat. 2950; renumbered §5 and amended Pub. L. 106–34, §5, June 8, 1999, 113 Stat. 122.)

PRIOR PROVISIONS

A prior section 5 of Pub. L. 101–592 was classified to section 5404 of this title, prior to repeal by Pub. L. 106–34.

AMENDMENTS

1999—Subsec. (a). Pub. L. 106–34, §5(1), reenacted subsec. heading without change and amended text generally. Prior to amendment, text read as follows: "No fastener which is required by the standards and specifications to which it was manufactured to bear a raised or depressed insignia identifying its manufacturer or private label distributor shall be offered for sale or sold in commerce unless the manufacturer or private label distributor of such fastener has complied with the requirements prescribed by the Secretary in connection with the program established under subsection (b) of this section."

Subsec. (b). Pub. L. 106–34, §5(2), substituted "described in subsection (a) of this section" for "and private label distributors described in subsection (a) of this section, to ensure the traceability of a fastener to its manufacturer or private label distributor".

§5408. Remedies and penalties

(a) Civil remedies

(1) The Attorney General may bring an action in an appropriate United States district court for appropriate declaratory and injunctive relief against any person who violates this chapter or any regulation under this chapter.

(2) An action under paragraph (1) may not be brought more than 10 years after the date on which the cause of action accrues.

(b) Civil penalties

(1) Any person who is determined by the Secretary, after notice and an opportunity for a hearing, to have violated this chapter or any regulation under this chapter shall be liable to the United States for a civil penalty of not more than $25,000 for each violation.

(2) The amount of the penalty shall be assessed by the Secretary by written notice. In determining the amount of the penalty, the Secretary shall consider the nature, circumstances, and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability, any history of prior violations, the effect on ability to continue to do business, any good faith attempt to achieve compliance, ability to pay the penalty, and such other matters as justice may require.

(3) Any person against whom a civil penalty is assessed under paragraph (2) of this subsection may obtain review thereof in the appropriate court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary. The findings and order of the Secretary shall be set aside by such court if they are found to be unsupported by substantial evidence, as provided in section 706(2) of title 5.

(4) The Secretary may arbitrate, compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section prior to referral to the Attorney General under paragraph (5).

(5) A civil penalty assessed under this subsection may be recovered in an action brought by the Attorney General on behalf of the United States in the appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(6) For the purpose of conducting any hearing under this section, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(c) Criminal penalties

(1) Whoever knowingly certifies, marks, offers for sale, or sells a fastener in violation of this chapter or a regulation under this chapter shall be fined under title 18, or imprisoned not more than 5 years, or both.

(2) Whoever intentionally fails to maintain records relating to a fastener in violation of this chapter or a regulation under this chapter shall be fined under title 18, or imprisoned not more than 5 years, or both.

(3) Whoever negligently fails to maintain records relating to a fastener in violation of this chapter or a regulation under this chapter shall be fined under title 18, or imprisoned not more than 2 years, or both.

(d) Enforcement

(1) The Secretary may designate officers or employees of the Department of Commerce to conduct investigations pursuant to this chapter. In conducting such investigations, those officers or employees may, to the extent necessary or appropriate to the enforcement of this chapter, exercise such authorities as are conferred upon them by other laws of the United States, subject to policies and procedures approved by the Attorney General.

(2) The Secretary shall establish and maintain a hotline system to facilitate the reporting of alleged violations of this chapter, and the Secretary shall evaluate allegations reported through that system and report any credible allegations to the Attorney General.

(Pub. L. 101–592, §6, formerly §9, Nov. 16, 1990, 104 Stat. 2950; Pub. L. 104–113, §11(g), Mar. 7,

1996, 110 Stat. 782; renumbered §6 and amended Pub. L. 106–34, §6, June 8, 1999, 113 Stat. 122.)

PRIOR PROVISIONS

A prior section 6 of Pub. L. 101–592 was classified to section 5405 of this title, prior to repeal by Pub. L. 106–34.

AMENDMENTS

1999—Subsec. (b)(3). Pub. L. 106–34, §6(1), substituted "of this subsection" for "of this section".
Subsec. (b)(4). Pub. L. 106–34, §6(2), inserted "arbitrate," after "Secretary may".
Subsec. (d). Pub. L. 106–34, §6(3), designated existing provisions as par. (1) and added par. (2).
1996—Subsec. (d). Pub. L. 104–113 added subsec. (d).

§5409. Recordkeeping requirements

Manufacturers and importers shall retain the record of conformance for fasteners for 5 years, on paper or in photographic or electronic format in a manner that allows for verification of authenticity. Upon request of a distributor who has purchased a fastener, or a person who has purchased a fastener for use in the production of a commercial product, the manufacturer or importer of the fastener shall make available information in the record of conformance to the requester.

(Pub. L. 101–592, §7, formerly §10, Nov. 16, 1990, 104 Stat. 2951; Pub. L. 104–113, §11(h), Mar. 7, 1996, 110 Stat. 782; renumbered §7 and amended Pub. L. 106–34, §7, June 8, 1999, 113 Stat. 123.)

PRIOR PROVISIONS

A prior section 7 of Pub. L. 101–592 was classified to section 5406 of this title, prior to repeal by Pub. L. 106–34.

AMENDMENTS

1999—Pub. L. 106–34 substituted present provisions for former provisions which consisted of subsecs. (a) and (b) relating to retention and availability of records concerning inspections, testing, and certifications of fasteners under section 5404 of this title by laboratories, manufacturers, importers, private label distributors and persons who make significant alterations.
1996—Subsec. (a). Pub. L. 104–113, §11(h)(1), substituted "5 years" for "10 years".
Subsec. (b). Pub. L. 104–113, §11(h), substituted "5 years" for "10 years" and "the subsequent purchaser" for "any subsequent purchaser".

§5410. Relationship to State laws

Nothing in this chapter shall be construed to preempt any rights or causes of action that any buyer may have with respect to any seller of fasteners under the law of any State, except to the extent that the provisions of this chapter are in conflict with such State law.

(Pub. L. 101–592, §8, formerly §11, Nov. 16, 1990, 104 Stat. 2952; renumbered §8, Pub. L. 106–34, §8, June 8, 1999, 113 Stat. 123.)

PRIOR PROVISIONS

A prior section 8 of Pub. L. 101–592 was renumbered section 5 and is classified to section 5407 of this title.

§5411. Construction

Nothing in this chapter shall be construed to limit or otherwise affect the authority of any consensus standards organization to establish, modify, or withdraw any standards and specifications under any other law or authority.

(Pub. L. 101–592, §9, formerly §12, Nov. 16, 1990, 104 Stat. 2952; renumbered §9 and amended Pub. L. 106–34, §9, June 8, 1999, 113 Stat. 123.)

PRIOR PROVISIONS

A prior section 9 of Pub. L. 101–592 was renumbered section 6 and is classified to section 5408 of this title.

AMENDMENTS

1999—Pub. L. 106–34 struck out "in effect on November 16, 1990" after "law or authority".

§5411a. Certification and accreditation

(a) Certification

A person publishing a document setting forth guidance or requirements for the certification of manufacturing systems as fastener quality assurance systems by an accredited third party may petition the Director to approve such document for use as described in section 5402(7)(B)(iii)(I) of this title. The Director shall act upon a petition within 180 days after its filing, and shall approve such petition if the document provides equal or greater rigor and reliability as compared to ISO/IEC Guide 62.

(b) Accreditation

A person publishing a document setting forth guidance or requirements for the approval of accreditation bodies to accredit third parties described in subsection (a) of this section may petition the Director to approve such document for use as described in section 5402(7)(B)(iii)(I) of this title. The Director shall act upon a petition within 180 days after its filing, and shall approve such petition if the document provides equal or greater rigor and reliability as compared to ISO/IEC Guide 61.

(c) Laboratory accreditation

A person publishing a document setting forth guidance or requirements for the accreditation of laboratories may petition the Director to approve such document for use as described in section 5402(1)(A) of this title. The Director shall act upon a petition within 180 days after its filing, and shall approve such petition if the document provides equal or greater rigor and reliability as compared to ISO/IEC Guide 25.

(d) Approval of accreditation bodies

A person publishing a document setting forth guidance or requirements for the approval of accreditation bodies to accredit laboratories may petition the Director to approve such document for use as described in section 5402(1)(B) of this title. The Director shall act upon a petition within 180 days after its filing, and shall approve such petition if the document provides equal or greater rigor and reliability as compared to ISO/IEC Guide 58. In addition to any other voluntary laboratory accreditation programs that may be established by private sector persons, the Director shall establish a National Voluntary Laboratory Accreditation Program, for the accreditation of laboratories as described in section 5402(1)(B) of this title, that meets the requirements of ISO/IEC Guide 58 (or another document approved by the Director under this subsection), including revisions from time-to-time.

(e) Affirmation

(1) An accreditation body accrediting third parties who certify manufacturing systems as fastener quality assurance systems as described in section 5402(7)(B)(iii)(I) of this title shall affirm to the Director that it meets the requirements of ISO/IEC Guide 61 (or another document approved by the Director under subsection (b) of this section), including revisions from time-to-time.

(2) An accreditation body accrediting laboratories as described in section 5402(1)(B) of this title shall affirm to the Director that it meets the requirements of ISO/IEC Guide 58 (or another document approved by the Director under subsection (d) of this section), including revisions from time-to-time.

(3) An affirmation required under paragraph (1) or (2) shall take the form of a self-declaration that the accreditation body meets the requirements of the applicable Guide, signed by an authorized representative of the accreditation body, without requirement for accompanying documentation. Any such affirmation shall be considered to be a continuous affirmation that the accreditation body meets

the requirements of the applicable Guide, unless and until the affirmation is withdrawn by the accreditation body.

(Pub. L. 101–592, §10, as added Pub. L. 106–34, §10, June 8, 1999, 113 Stat. 123.)

PRIOR PROVISIONS

A prior section 10 of Pub. L. 101–592 was renumbered section 7 and is classified to section 5409 of this title.

§5411b. Applicability

The requirements of this chapter shall be applicable only to fasteners fabricated 180 days or more after June 8, 1999, except that if a manufacturer or distributor of fasteners fabricated before June 8, 1999, prepares a record of conformance for such fasteners, representations about such fasteners shall be subject to the requirements of this chapter.

(Pub. L. 101–592, §11, as added Pub. L. 106–34, §11, June 8, 1999, 113 Stat. 124.)

PRIOR PROVISIONS

A prior section 11 of Pub. L. 101–592 was renumbered section 8 and is classified to section 5410 of this title.

§5412. Repealed. Pub. L. 106–34, §10, June 8, 1999, 113 Stat. 123

Section, Pub. L. 101–592, §13, Nov. 16, 1990, 104 Stat. 2952; Pub. L. 104–113, §11(i), Mar. 7, 1996, 110 Stat. 782, required the Secretary to issue regulations necessary to implement chapter.

§5413. Repealed. Pub. L. 104–113, §11(j), Mar. 7, 1996, 110 Stat. 782

Section, Pub. L. 101–592, §14, Nov. 16, 1990, 104 Stat. 2952, related to appointment of an advisory committee to be available for consultation with Secretary on matters related to fasteners.

§5414. Repealed. Pub. L. 106–34, §10, June 8, 1999, 113 Stat. 123

Section, Pub. L. 101–592, §15, Nov. 16, 1990, 104 Stat. 2952; Pub. L. 105–234, §1, Aug. 14, 1998, 112 Stat. 1536, related to applicability of this chapter.

CHAPTER 81—HIGH-PERFORMANCE COMPUTING

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§5501. Findings

The Congress finds the following:

(1) Advances in computer science and technology are vital to the Nation's prosperity, national and economic security, industrial production, engineering, and scientific advancement.

(2) The United States currently leads the world in the development and use of high-performance computing for national security, industrial productivity, science, and engineering, but that lead is being challenged by foreign competitors.

(3) Further research and development, expanded educational programs, improved computer research networks, and more effective technology transfer from government to industry are necessary for the United States to reap fully the benefits of high-performance computing.

(4) A high-capacity, flexible, high-speed national research and education computer network is needed to provide researchers and educators with access to computational and information resources, act as a test bed for further research and development for high-capacity and high-speed computer networks, and provide researchers the necessary vehicle for continued network technology improvement through research.

(5) Several Federal agencies have ongoing high-performance computing programs, but improved long-term interagency coordination, cooperation, and planning would enhance the effectiveness of these programs.

(6) A 1991 report entitled "Grand Challenges: High-Performance Computing and Communications" by the Office of Science and Technology Policy, outlining a research and development strategy for high-performance computing, provides a framework for a multiagency high-performance computing program. Such a program would provide American researchers and educators with the computer and information resources they need, and demonstrate how advanced computers, high-capacity and high-speed networks, and electronic data bases can improve the national information infrastructure for use by all Americans.

(7) Additional research must be undertaken to lay the foundation for the development of new applications that can result in economic growth, improved health care, and improved educational opportunities.

(8) Research in new networking technologies holds the promise of easing the economic burdens of information access disproportionately borne by rural users of the Internet.

(9) Information security is an important part of computing, information, and communications systems and applications, and research into security architectures is a critical aspect of computing, information, and communications research programs.

(Pub. L. 102–194, §2, Dec. 9, 1991, 105 Stat. 1594; Pub. L. 105–305, §2(b), Oct. 28, 1998, 112 Stat. 2919.)

AMENDMENTS

1998—Par. (4). Pub. L. 105–305, §2(b)(1), added par. (4) and struck out former par. (4) which read as follows: "A high-capacity and high-speed national research and education computer network would provide researchers and educators with access to computer and information resources and act as a test bed for further research and development of high-capacity and high-speed computer networks."

Pars. (7) to (9). Pub. L. 105–305, §2(b)(2), added pars. (7) to (9).

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–305, §1, Oct. 28, 1998, 112 Stat. 2919, provided that: "This Act [enacting section 5513 of this title, amending this section and sections 5502, 5503, and 5511 of this title, and enacting provisions set out as notes under this section] may be cited as the 'Next Generation Internet Research Act of 1998'."

SHORT TITLE

Pub. L. 102–194, §1, Dec. 9, 1991, 105 Stat. 1594, provided that: "This Act [enacting this chapter] may be cited as the 'High-Performance Computing Act of 1991'."

Pub. L. 108–423, §1, Nov. 30, 2004, 118 Stat. 2400, provided that: "This Act [enacting subchapter III of this chapter, amending sections 205l of this title and 1862n–9 of Title 42, The Public Health and Welfare, and enacting provisions set out as a note under section 1862n–9 of Title 42] may be cited as the 'Department of Energy High-End Computing Revitalization Act of 2004'."

CONGRESSIONAL FINDINGS

Pub. L. 105–305, §2(a), Oct. 28, 1998, 112 Stat. 2919, provided that: "The Congress finds that—

"(1) United States leadership in science and technology has been vital to the Nation's prosperity, national and economic security, and international competitiveness, and there is every reason to believe that maintaining this tradition will lead to long-term continuation of United States strategic advantages in information technology;

"(2) the United States investment in science and technology has yielded a scientific and engineering enterprise without peer, and that Federal investment in research is critical to the maintenance of United States leadership;

"(3) previous Federal investment in computer networking technology and related fields has resulted in the creation of new industries and new jobs in the United States;

"(4) the Internet is playing an increasingly important role in keeping citizens informed of the actions of their government; and

"(5) continued inter-agency cooperation is necessary to avoid wasteful duplication in Federal networking research and development programs."

PURPOSES

Pub. L. 105–305, §3(a), Oct. 28, 1998, 112 Stat. 2920, provided that: "The purposes of this Act [see Short Title of 1998 Amendment note above] are—

"(1) to authorize, through the High-Performance Computing Act of 1991 (15 U.S.C. 5501 et seq.), research programs related to—

"(A) high-end computing and computation;

"(B) human-centered systems;

"(C) high confidence systems; and

"(D) education, training, and human resources; and

"(2) to provide, through the High-Performance Computing Act of 1991 (15 U.S.C. 5501 et seq.), for the development and coordination of a comprehensive and integrated United States research program which will—

"(A) focus on the research and development of a coordinated set of technologies that seeks to create a network infrastructure that can support greater speed, robustness, and flexibility than is currently available and promote connectivity and interoperability among advanced computer networks of Federal agencies and departments;

"(B) focus on research in technology that may result in high-speed data access for users that is both economically viable and does not impose a geographic penalty; and

"(C) encourage researchers to pursue approaches to networking technology that lead to maximally flexible and extensible solutions wherever feasible."

DEFINITIONS

Pub. L. 105–305, §7(a), Oct. 28, 1998, 112 Stat. 2924, provided that: "For purposes of this Act [see Short Title of 1998 Amendment note above]—

"(1) GEOGRAPHIC PENALTY.—The term 'geographic penalty' means the imposition of costs on users of the Internet in rural or other locations, attributable to the distance of the user from network facilities, the low population density of the area in which the user is located, or other factors, that are disproportionately greater than the costs imposed on users in locations closer to such facilities or on users in locations with significantly greater population density.

"(2) INTERNET.—The term 'Internet' means the international computer network of both Federal and

non-Federal interoperable packet switched data networks."

§5502. Purposes

The purposes of this chapter are to help ensure the continued leadership of the United States in high-performance computing and its applications by—

(1) expanding Federal support for research, development, and application of high-performance computing in order to—

(A) expand the number of researchers, educators, and students with training in high-performance computing and access to high-performance computing resources;

(B) promote the further development of an information infrastructure of data bases, services, access mechanisms, and research facilities available for use through the Internet;

(C) stimulate research on software technology;

(D) promote the more rapid development and wider distribution of computing software tools and applications software;

(E) accelerate the development of computing systems and subsystems;

(F) provide for the application of high-performance computing to Grand Challenges;

(G) invest in basic research and education, and promote the inclusion of high-performance computing into educational institutions at all levels; and

(H) promote greater collaboration among government, Federal laboratories, industry, high-performance computing centers, and universities;

(2) improving the interagency planning and coordination of Federal research and development on high-performance computing and maximizing the effectiveness of the Federal Government's high-performance computing network research and development programs;

(3) promoting the more rapid development and wider distribution of networking management and development tools; and

(4) promoting the rapid adoption of open network standards.

(Pub. L. 102–194, §3, Dec. 9, 1991, 105 Stat. 1594; Pub. L. 105–305, §3(b), Oct. 28, 1998, 112 Stat. 2920.)

AMENDMENTS

1998—Pub. L. 105–305, §3(b)(1), substituted "Purposes" for "Purpose" as section catchline.

Pub. L. 105–305, §3(b)(2), substituted "purposes of this chapter are" for "purpose of this chapter is" in introductory provisions.

Par. (1)(A). Pub. L. 105–305, §3(b)(3), redesignated subpar. (B) as (A) and struck out former subpar. (A) which read as follows: "establish a high-capacity and high-speed National Research and Education Network;".

Par. (1)(B). Pub. L. 105–305, §3(b)(3), (4), redesignated subpar. (C) as (B) and substituted "Internet" for "Network". Former subpar. (B) redesignated (A).

Par. (1)(C) to (I). Pub. L. 105–305, §3(b)(3), (5), redesignated subpars. (D) to (I) as (C) to (H), respectively, and struck out "and" at end of par. (H).

Par. (2). Pub. L. 105–305, §3(b)(6), substituted "network research and development programs;" for "efforts."

Pars. (3), (4). Pub. L. 105–305, §3(b)(7), added pars. (3) and (4).

§5503. Definitions

As used in this chapter, the term—

(1) "Director" means the Director of the Office of Science and Technology Policy;

(2) "Grand Challenge" means a fundamental problem in science or engineering, with broad economic and scientific impact, whose solution will require the application of high-performance computing resources and multidisciplinary teams of researchers;

(3) "high-performance computing" means advanced computing, communications, and

information technologies, including supercomputer systems, high-capacity and high-speed networks, special purpose and experimental systems, applications and systems software, and the management of large data sets;

(4) "Internet" means the international computer network of both Federal and non-Federal interoperable data networks;

(5) "Network" means a computer network referred to as the National Research and Education Network established under section 5512 of this title;

(6) "Program" means the National High-Performance Computing Program described in section 5511 of this title; and

(7) "Program Component Areas" means the major subject areas under which related individual projects and activities carried out under the Program are grouped.

(Pub. L. 102–194, §4, Dec. 9, 1991, 105 Stat. 1595; Pub. L. 105–305, §7(b), Oct. 28, 1998, 112 Stat. 2924; Pub. L. 110–69, title VII, §7024(a)(2), Aug. 9, 2007, 121 Stat. 689.)

AMENDMENTS

2007—Par. (2). Pub. L. 110–69, §7024(a)(2)(A), inserted "and multidisciplinary teams of researchers" after "high-performance computing resources".

Par. (3). Pub. L. 110–69, §7024(a)(2)(B), struck out "scientific workstations," after "technologies, including" and "(including vector supercomputers and large scale parallel systems)" after "supercomputer systems", substituted "applications" for "and applications", and inserted ", and the management of large data sets" after "systems software".

Par. (4). Pub. L. 110–69, §7024(a)(2)(C), struck out "packet switched" before "data networks".

Par. (7). Pub. L. 110–69, §7024(a)(2)(D)–(F), added par. (7).

1998—Pars. (4) to (6). Pub. L. 105–305 added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

SUBCHAPTER I—HIGH-PERFORMANCE COMPUTING RESEARCH AND DEVELOPMENT

§5511. National High-Performance Computing Program

(a) National High-Performance Computing Program

(1) The President shall implement a National High-Performance Computing Program, which shall—

(A) provide for long-term basic and applied research on high-performance computing, including networking;

(B) provide for research and development on, and demonstration of, technologies to advance the capacity and capabilities of high-performance computing and networking systems, and related software;

(C) provide for sustained access by the research community throughout the United States to high-performance computing and networking systems that are among the most advanced in the world in terms of performance in solving scientific and engineering problems, including provision for technical support for users of such systems;

(D) provide for widely dispersed efforts to increase software availability, productivity, capability, security, portability, and reliability;

(E) provide for high-performance networks, including experimental testbed networks, to enable research and development on, and demonstration of, advanced applications enabled by such networks;

(F) provide for computational science and engineering research on mathematical modeling and algorithms for applications in all fields of science and engineering;

(G) provide for the technical support of, and research and development on, high-performance

computing systems and software required to address Grand Challenges;

(H) provide for educating and training additional undergraduate and graduate students in software engineering, computer science, computer and network security, applied mathematics, library and information science, and computational science; and

(I) provide for improving the security of computing and networking systems, including Federal systems, including providing for research required to establish security standards and practices for these systems.

(2) The Director shall—

(A) establish the goals and priorities for Federal high-performance computing research, development, networking, and other activities;

(B) establish Program Component Areas that implement the goals established under subparagraph (A), and identify the Grand Challenges that the Program should address;

(C) provide for interagency coordination of Federal high-performance computing research, development, networking, and other activities undertaken pursuant to the Program;

(D) submit to the Congress an annual report, along with the President's annual budget request, describing the implementation of the Program;

(E) develop and maintain a research, development, and deployment roadmap covering all States and regions for the provision of high-performance computing and networking systems under paragraph (1)(C); and

(F) consult with academic, State, industry, and other appropriate groups conducting research on and using high-performance computing.

(3) The annual report submitted under paragraph (2)(D) shall—

(A) provide a detailed description of the Program Component Areas, including a description of any changes in the definition of or activities under the Program Component Areas from the preceding report, and the reasons for such changes, and a description of Grand Challenges addressed under the Program;

(B) set forth the relevant programs and activities, for the fiscal year with respect to which the budget submission applies, of each Federal agency and department, including—

(i) the Department of Agriculture;

(ii) the Department of Commerce;

(iii) the Department of Defense;

(iv) the Department of Education;

(v) the Department of Energy;

(vi) the Department of Health and Human Services;

(vii) the Department of the Interior;

(viii) the Environmental Protection Agency;

(ix) the National Aeronautics and Space Administration;

(x) the National Science Foundation; and

(xi) such other agencies and departments as the President or the Director considers appropriate;

(C) describe the levels of Federal funding for the fiscal year during which such report is submitted, and the levels proposed for the fiscal year with respect to which the budget submission applies, for each Program Component Area;

(D) describe the levels of Federal funding for each agency and department participating in the Program, and for each Program Component Area, for the fiscal year during which such report is submitted, and the levels proposed for the fiscal year with respect to which the budget submission applies; and

(E) include an analysis of the progress made toward achieving the goals and priorities established for the Program and the extent to which the Program incorporates the recommendations of the advisory committee established under subsection (b).

(b) Advisory committee

(1) The President shall establish an advisory committee on high-performance computing, consisting of geographically dispersed non-Federal members, including representatives of the research, education, and library communities, network and related software providers, and industry representatives in the Program Component Areas, who are specially qualified to provide the Director with advice and information on high-performance computing. The recommendations of the advisory committee shall be considered in reviewing and revising the Program. The advisory committee shall provide the Director with an independent assessment of—

(A) progress made in implementing the Program;

(B) the need to revise the Program;

(C) the balance between the components of the Program, including funding levels for the Program Component Areas;

(D) whether the research and development undertaken pursuant to the Program is helping to maintain United States leadership in high-performance computing, networking technology, and related software; and

(E) other issues identified by the Director.

(2) In addition to the duties outlined in paragraph (1), the advisory committee shall conduct periodic evaluations of the funding, management, coordination, implementation, and activities of the Program. The advisory committee shall report not less frequently than once every 2 fiscal years to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on its findings and recommendations. The first report shall be due within 1 year after August 9, 2007.

(3) Section 14 of the Federal Advisory Committee Act shall not apply to the advisory committee established under this subsection.

(c) Office of Management and Budget

(1) Each Federal agency and department participating in the Program shall, as part of its annual request for appropriations to the Office of Management and Budget, submit a report to the Office of Management and Budget which—

(A) identifies each element of its high-performance computing activities which contributes directly to the Program Component Areas or benefits from the Program; and

(B) states the portion of its request for appropriations that is allocated to each such element.

(2) The Office of Management and Budget shall review each such report in light of the goals, priorities, and agency and departmental responsibilities set forth in the annual report submitted under subsection (a)(2)(D) of this section, and shall include, in the President's annual budget estimate, a statement of the portion of each appropriate agency's or department's annual budget estimate relating to its activities undertaken pursuant to the Program.

(Pub. L. 102–194, title I, §101, Dec. 9, 1991, 105 Stat. 1595; Pub. L. 104–66, title I, §1052(k), Dec. 21, 1995, 109 Stat. 719; Pub. L. 105–305, §4, Oct. 28, 1998, 112 Stat. 2921; Pub. L. 110–69, title VII, §7024(a)(1)(B)–(D), Aug. 9, 2007, 121 Stat. 686–689.)

REFERENCES IN TEXT

Section 14 of the Federal Advisory Committee Act, referred to in subsec. (b)(3), is section 14 of Pub. L. 92–463, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2007—Subsec. (a)(1)(A) to (I). Pub. L. 110–69, §7024(a)(1)(B)(i), added subpars. (A) to (I) and struck out former subpars. (A) and (B) which read as follows:

"(A) establish the goals and priorities for Federal high-performance computing research, development, networking, and other activities; and

"(B) provide for interagency coordination of Federal high-performance computing research, development, networking, and other activities undertaken pursuant to the Program."

Subsec. (a)(2). Pub. L. 110–69, §7024(a)(1)(B)(ii), redesignated par. (3) as (2) and struck out former par.

(2) which provided additional requirements for the National High-Performance Computing Program.

Subsec. (a)(2)(A) to (F). Pub. L. 110–69, §7024(a)(1)(B)(iii), added subpars. (A) to (C) and (E), redesignated former subpars. (A) and (C) as (D) and (F), respectively, and struck out former subpar. (B) which read as follows: "provide for interagency coordination of the Program; and".

Subsec. (a)(3). Pub. L. 110–69, §7024(a)(1)(B)(iv)(I), substituted "paragraph (2)(D)" for "paragraph (3)(A)" in introductory provisions.

Pub. L. 110–69, §7024(a)(1)(B)(ii), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (a)(3)(A). Pub. L. 110–69, §7024(a)(1)(B)(iv)(II), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "include a detailed description of the goals and priorities established by the President for the Program;".

Subsec. (a)(3)(C). Pub. L. 110–69, §7024(a)(1)(B)(iv)(III), substituted "each Program Component Area" for "specific activities, including education, research, hardware and software development, and support for the establishment of the Network".

Subsec. (a)(3)(D). Pub. L. 110–69, §7024(a)(1)(B)(iv)(IV), (V), inserted ", and for each Program Component Area," after "participating in the Program" and "and" after "applies;".

Subsec. (a)(3)(E), (F). Pub. L. 110–69, §7024(a)(1)(B)(iv)(VI), (VII), redesignated subpar. (F) as (E), inserted "and the extent to which the Program incorporates the recommendations of the advisory committee established under subsection (b)" after "for the Program", and struck out former subpar. (E) which read as follows: "include the report of the Secretary of Energy required by section 5523(d) of this title; and".

Subsec. (b). Pub. L. 110–69, §7024(a)(1)(C), added subsec. (b) and struck out heading and text of former subsec. (b). Text consisted of pars. (1) to (5) which contained provisions similar to those now contained in par. (1).

Subsec. (c)(1)(A). Pub. L. 110–69, §7024(a)(1)(D)(i), substituted "Program Component Areas or" for "Program or".

Subsec. (c)(2). Pub. L. 110–69, §7024(a)(1)(D)(ii), substituted "subsection (a)(2)(D)" for "subsection (a)(3)(A)".

1998—Subsec. (a)(2)(A), (B). Pub. L. 105–305, §4(a), amended subpars. (A) and (B) generally. Prior to amendment, subpars. read as follows:

"(A) provide for the establishment of policies for management and access to the Network;

"(B) provide for oversight of the operation and evolution of the Network;".

Subsec. (b). Pub. L. 105–305, §4(b), struck out "High-performance computing" before "advisory committee" in heading.

1995—Subsec. (a)(4)(D) to (F). Pub. L. 104–66 struck out "and" at end of subpar. (D), added subpar. (E), and redesignated former subpar. (E) as (F).

CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

DELEGATION OF FUNCTIONS

President's Council of Advisors on Science and Technology to serve as the advisory committee identified in sections 5511(b) and 5513(b) of this title and to be known as the President's Innovation and Technology Advisory Committee when so serving, see section 2(a)(iii) of Ex. Ord. No. 13539, set out as a note under section 6601 of Title 42, The Public Health and Welfare.

EX. ORD. NO. 13035. PRESIDENT'S INFORMATION TECHNOLOGY ADVISORY COMMITTEE

Ex. Ord. No. 13035, Feb. 11, 1997, 62 F.R. 7131, as amended by Ex. Ord. No. 13092, July 24, 1998, 63 F.R. 40167; Ex. Ord. No. 13113, Feb. 10, 1999, 64 F.R. 7489; Ex. Ord. No. 13200, Feb. 11, 2001, 66 F.R. 10183; Ex. Ord. No. 13215, May 31, 2001, 66 F.R. 30285; Ex. Ord. No. 13305, May 28, 2003, 68 F.R. 32323, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the High-Performance Computing Act of 1991 (Public Law 102–194) ("Act") [15 U.S.C. 5501 et seq.], as amended by the Next Generation Internet Research Act of 1998 (Public Law 105–305) ("Research Act") [see Short Title of 1998 Amendment note set out under section 5501 of this title], and in order to establish an advisory committee on high-performance computing and communications, Information Technology [sic], and the Next Generation Internet, it is hereby ordered as follows:

SECTION 1. *Establishment.* There is established the "President's Information Technology Advisory Committee" ("Committee"). The Committee shall consist of not more than 30 nonfederal members appointed by the President, including representatives of the research, education, and library communities, network providers, and representatives from critical industries. Members appointed prior to June 1, 2001, shall serve until December 1, 2001, unless reappointed by the President. Members appointed or reappointed on or after June 1, 2001, shall serve for no more than 2 years from the date of their appointment, unless their period of service is extended by the President. The President shall designate two co-chairs from among the members of the Committee. A co-chair may serve for a term of 2 years or until the end of his or her service as a member of the Committee, whichever is the shorter period.

SEC. 2. *Functions.* (a) The Committee shall provide the National Science and Technology Council (NSTC), through the Director of the Office of Science and Technology Policy ("Director"), with advice and information on high-performance computing and communications, information technology, and the Next Generation Internet. The Committee shall provide an independent assessment of:

(1) progress made in implementing the High-Performance Computing and Communications (HPCC) Program;

(2) progress in designing and implementing the Next Generation Internet initiative;

(3) the need to revise the HPCC Program;

(4) balance among components of the HPCC Program;

(5) whether the research and development undertaken pursuant to the HPCC Program is helping to maintain United States leadership in advanced computing and communications technologies and their applications; and

(6) other issues as specified by the Director.

(b) The Committee shall carry out its responsibilities under the Research Act in the manner described in the Research Act.

SEC. 3. *Administration.* To the extent permitted by law and subject to the availability of appropriations, the Department of Defense shall provide the financial and administrative support for the Committee. Further, the Director of the National Coordination Office for Computing Information, and Communications ("Director of the NCO") shall provide such coordination and technical assistance to the Committee as the co-chairs of the Committee may request.

(a) The heads of executive agencies shall, to the extent permitted by law, provide to the Committee such information as it may require for the purpose of carrying out its functions.

(b) The co-chairs may, from time to time, invite experts to submit information to the Committee and may form subcommittees or working groups within the Committee to review specific issues.

(c) Members of the Committee shall serve without compensation but shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707).

SEC. 4. *General.* (a) Notwithstanding any other Executive order, the functions of the President under the Federal Advisory Committee Act, as amended [5 U.S.C. App.], except that of reporting to the Congress, that are applicable to the Committee shall be performed by the Director of the NCO in accordance with guidelines that have been issued by the Administrator of General Services.

(b) The Committee shall terminate June 1, 2005, unless extended by the President prior to such date.

§5512. National Research and Education Network

(a) Establishment

As part of the Program, the National Science Foundation, the Department of Defense, the Department of Energy, the Department of Commerce, the National Aeronautics and Space Administration, and other agencies participating in the Program shall support the establishment of the National Research and Education Network, portions of which shall, to the extent technically

feasible, be capable of transmitting data at one gigabit per second or greater by 1996. The Network shall provide for the linkage of research institutions and educational institutions, government, and industry in every State.

(b) Access

Federal agencies and departments shall work with private network service providers, State and local agencies, libraries, educational institutions and organizations, and others, as appropriate, in order to ensure that the researchers, educators, and students have access, as appropriate, to the Network. The Network is to provide users with appropriate access to high-performance computing systems, electronic information resources, other research facilities, and libraries. The Network shall provide access, to the extent practicable, to electronic information resources maintained by libraries, research facilities, publishers, and affiliated organizations.

(c) Network characteristics

The Network shall—

(1) be developed and deployed with the computer, telecommunications, and information industries;

(2) be designed, developed, and operated in collaboration with potential users in government, industry, and research institutions and educational institutions;

(3) be designed, developed, and operated in a manner which fosters and maintains competition and private sector investment in high-speed data networking within the telecommunications industry;

(4) be designed, developed, and operated in a manner which promotes research and development leading to development of commercial data communications and telecommunications standards, whose development will encourage the establishment of privately operated high-speed commercial networks;

(5) be designed and operated so as to ensure the continued application of laws that provide network and information resources security measures, including those that protect copyright and other intellectual property rights, and those that control access to data bases and protect national security;

(6) have accounting mechanisms which allow users or groups of users to be charged for their usage of copyrighted materials available over the Network and, where appropriate and technically feasible, for their usage of the Network;

(7) ensure the interoperability of Federal and non-Federal computer networks, to the extent appropriate, in a way that allows autonomy for each component network;

(8) be developed by purchasing standard commercial transmission and network services from vendors whenever feasible, and by contracting for customized services when not feasible, in order to minimize Federal investment in network hardware;

(9) support research and development of networking software and hardware; and

(10) serve as a test bed for further research and development of high-capacity and high-speed computing networks and demonstrate how advanced computers, high-capacity and high-speed computing networks, and data bases can improve the national information infrastructure.

(d) Defense Advanced Research Projects Agency responsibility

As part of the Program, the Department of Defense, through the Defense Advanced Research Projects Agency, shall support research and development of advanced fiber optics technology, switches, and protocols needed to develop the Network.

(e) Information services

The Director shall assist the President in coordinating the activities of appropriate agencies and departments to promote the development of information services that could be provided over the Network. These services may include the provision of directories of the users and services on computer networks, data bases of unclassified Federal scientific data, training of users of data bases

and computer networks, access to commercial information services for users of the Network, and technology to support computer-based collaboration that allows researchers and educators around the Nation to share information and instrumentation.

(f) Use of grant funds

All Federal agencies and departments are authorized to allow recipients of Federal research grants to use grant moneys to pay for computer networking expenses.

(g) Report to Congress

Within one year after December 9, 1991, the Director shall report to the Congress on—

(1) effective mechanisms for providing operating funds for the maintenance and use of the Network, including user fees, industry support, and continued Federal investment;

(2) the future operation and evolution of the Network;

(3) how commercial information service providers could be charged for access to the Network, and how Network users could be charged for such commercial information services;

(4) the technological feasibility of allowing commercial information service providers to use the Network and other federally funded research networks;

(5) how to protect the copyrights of material distributed over the Network; and

(6) appropriate policies to ensure the security of resources available on the Network and to protect the privacy of users of networks.

(Pub. L. 102–194, title I, §102, Dec. 9, 1991, 105 Stat. 1598.)

§5513. Next Generation Internet

(a) Establishment

The National Science Foundation, the Department of Energy, the National Institutes of Health, the National Aeronautics and Space Administration, and the National Institute of Standards and Technology may support the Next Generation Internet program. The objectives of the Next Generation Internet program shall be to—

(1) support research, development, and demonstration of advanced networking technologies to increase the capabilities and improve the performance of the Internet;

(2) develop an advanced testbed network connecting a significant number of research sites, including universities, Federal research institutions, and other appropriate research partner institutions, to support networking research and to demonstrate new networking technologies; and

(3) develop and demonstrate advanced Internet applications that meet important national goals or agency mission needs, and that are supported by the activities described in paragraphs (1) and (2).

(b) Duties of Advisory Committee

The President's Information Technology Advisory Committee (established pursuant to section 5511(b) of this title by Executive Order No. 13035 of February 11, 1997 (62 F.R. 7131), as amended by Executive Order No. 13092 of July 24, 1998), in addition to its functions under section 5511(b) of this title, shall—

(1) assess the extent to which the Next Generation Internet program—

(A) carries out the purposes of this chapter; and

(B) addresses concerns relating to, among other matters—

(i) geographic penalties (as defined in section 7(1) of the Next Generation Internet Research Act of 1998); [1]

(ii) the adequacy of access to the Internet by Historically Black Colleges and Universities, Hispanic Serving Institutions, and small colleges and universities (whose enrollment is less than 5,000) and the degree of participation of those institutions in activities described in subsection (a) of this section; and

(iii) technology transfer to and from the private sector;

(2) review the extent to which the role of each Federal agency and department involved in implementing the Next Generation Internet program is clear and complementary to, and non-duplicative of, the roles of other participating agencies and departments;

(3) assess the extent to which Federal support of fundamental research in computing is sufficient to maintain the Nation's critical leadership in this field; and

(4) make recommendations relating to its findings under paragraphs (1), (2), and (3).

(c) Reports

The Advisory Committee shall review implementation of the Next Generation Internet program and shall report, not less frequently than annually, to the President, the Committee on Commerce, Science, and Transportation, the Committee on Appropriations, and the Committee on Armed Services of the Senate, and the Committee on Science, the Committee on Appropriations, and the Committee on Armed Services of the House of Representatives on its findings and recommendations for the preceding fiscal year. The first such report shall be submitted 6 months after October 28, 1998, and the last report shall be submitted by September 30, 2000.

(d) Authorization of appropriations

There are authorized to be appropriated for the purposes of this section—

(1) for the Department of Energy, $22,000,000 for fiscal year 1999 and $25,000,000 for fiscal year 2000;

(2) for the National Science Foundation, $25,000,000 for fiscal year 1999 and $25,000,000 for fiscal year 2000, as authorized in the National Science Foundation Authorization Act of 1998;

(3) for the National Institutes of Health, $5,000,000 for fiscal year 1999 and $7,500,000 for fiscal year 2000;

(4) for the National Aeronautics and Space Administration, $10,000,000 for fiscal year 1999 and $10,000,000 for fiscal year 2000; and

(5) for the National Institute of Standards and Technology, $5,000,000 for fiscal year 1999 and $7,500,000 for fiscal year 2000.

Such funds may not be used for routine upgrades to existing federally funded communication networks.

(Pub. L. 102–194, title I, §103, as added Pub. L. 105–305, §5, Oct. 28, 1998, 112 Stat. 2921; amended Pub. L. 106–65, div. A, title X, §1067(20), Oct. 5, 1999, 113 Stat. 775.)

REFERENCES IN TEXT

Executive Order No. 13035, referred to in subsec. (b), is set out as a note under section 5511 of this title.

Section 7(1) of the Next Generation Internet Research Act of 1998, referred to in subsec. (b)(1)(B)(i), probably means section 7(a)(1) of Pub. L. 105–305, which is set out as a note under section 5501 of this title.

The National Science Foundation Authorization Act of 1998, referred to in subsec. (d)(2), is Pub. L. 105–207, July 29, 1998, 112 Stat. 869. For complete classification of this Act to the Code, see Short Title of 1998 Amendment note set out under section 1861 of Title 42, The Public Health and Welfare, and Tables.

AMENDMENTS

1999—Subsec. (c). Pub. L. 106–65 substituted "Committee on Armed Services of the House" for "Committee on National Security of the House".

CHANGE OF NAME

Committee on Science of House of Representatives changed to Committee on Science and Technology of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

[1] *See References in Text note below.*

SUBCHAPTER II—AGENCY ACTIVITIES

§5521. National Science Foundation activities

(a) General responsibilities

As part of the Program described in subchapter I of this chapter—

(1) the National Science Foundation shall provide computing and networking infrastructure support for all science and engineering disciplines, and support basic research and human resource development in all aspects of high-performance computing and advanced high-speed computer networking;

(2) to the extent that colleges, universities, and libraries cannot connect to the Network with the assistance of the private sector, the National Science Foundation shall have primary responsibility for assisting colleges, universities, and libraries to connect to the Network;

(3) the National Science Foundation shall serve as the primary source of information on access to and use of the Network; and

(4) the National Science Foundation shall upgrade the National Science Foundation funded network, assist regional networks to upgrade their capabilities, and provide other Federal departments and agencies the opportunity to connect to the National Science Foundation funded network.

(b) Authorization of appropriations

From sums otherwise authorized to be appropriated, there are authorized to be appropriated to the National Science Foundation for the purposes of the Program $213,000,000 for fiscal year 1992; $262,000,000 for fiscal year 1993; $305,000,000 for fiscal year 1994; $354,000,000 for fiscal year 1995; and $413,000,000 for fiscal year 1996.

(Pub. L. 102–194, title II, §201, Dec. 9, 1991, 105 Stat. 1599.)

§5522. National Aeronautics and Space Administration activities

(a) General responsibilities

As part of the Program described in subchapter I of this chapter, the National Aeronautics and Space Administration shall conduct basic and applied research in high-performance computing, particularly in the field of computational science, with emphasis on aerospace sciences, earth and space sciences, and remote exploration and experimentation.

(b) Authorization of appropriations

From sums otherwise authorized to be appropriated, there are authorized to be appropriated to the National Aeronautics and Space Administration for the purposes of the Program $72,000,000 for fiscal year 1992; $107,000,000 for fiscal year 1993; $134,000,000 for fiscal year 1994; $151,000,000 for fiscal year 1995; and $145,000,000 for fiscal year 1996.

(Pub. L. 102–194, title II, §202, Dec. 9, 1991, 105 Stat. 1600.)

§5523. Department of Energy activities

(a) General responsibilities

As part of the Program described in subchapter I of this chapter, the Secretary of Energy shall—

(1) conduct and support basic and applied research in high-performance computing and networking to support fundamental research in science and engineering disciplines related to energy applications; and

(2) provide computing and networking infrastructure support, including—

(A) the provision of high-performance computing systems that are among the most advanced in the world in terms of performance in solving scientific and engineering problems; and

(B) support for advanced software and applications development for science and engineering disciplines related to energy applications.

(b) Authorization of appropriations

There are authorized to be appropriated to the Secretary of Energy such sums as are necessary to carry out this section.

(Pub. L. 102–194, title II, §203, Dec. 9, 1991, 105 Stat. 1600; Pub. L. 104–66, title I, §1052(j), Dec. 21, 1995, 109 Stat. 719; Pub. L. 109–58, title IX, §976(b), Aug. 8, 2005, 119 Stat. 903.)

AMENDMENTS

2005—Pub. L. 109–58 reenacted section catchline without change and amended text generally, substituting provisions relating to general responsibilities and authorization of appropriations for provisions relating to general responsibilities, establishment of High-Performance Computing Research and Development Collaborative Consortia, transfer of technology to private sector and others, reports on activities, and authorization of appropriations.

1995—Subsec. (d). Pub. L. 104–66 amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows: "Within one year after December 9, 1991, and every year thereafter, the Secretary of Energy shall transmit to the Congress a report on activities taken to carry out this chapter."

§5524. Department of Commerce activities

(a) General responsibilities

As part of the Program described in subchapter I of this chapter—

(1) the National Institute of Standards and Technology shall—

(A) conduct basic and applied measurement research needed to support various high-performance computing systems and networks;

(B) develop and propose standards and guidelines, and develop measurement techniques and test methods, for the interoperability of high-performance computing systems in networks and for common user interfaces to systems; and

(C) be responsible for developing benchmark tests and standards for high-performance computing systems and software; and

(2) the National Oceanic and Atmospheric Administration shall conduct basic and applied research in weather prediction and ocean sciences, particularly in development of new forecast models, in computational fluid dynamics, and in the incorporation of evolving computer architectures and networks into the systems that carry out agency missions.

(b) High-performance computing and network security

Pursuant to the Computer Security Act of 1987 (Public Law 100–235; 101 Stat. 1724), the National Institute of Standards and Technology shall be responsible for developing and proposing standards and guidelines needed to assure the cost-effective security and privacy of sensitive information in Federal computer systems.

(c) Study of impact of Federal procurement regulations

(1) The Secretary of Commerce shall conduct a study to—

(A) evaluate the impact of Federal procurement regulations that require that contractors providing software to the Federal Government share the rights to proprietary software development tools that the contractors use to develop the software; and

(B) determine whether such regulations discourage development of improved software development tools and techniques.

(2) The Secretary of Commerce shall, within one year after December 9, 1991, report to the Congress regarding the results of the study conducted under paragraph (1).

(d) Authorization of appropriations

From sums otherwise authorized to be appropriated, there are authorized to be appropriated—

(1) to the National Institute of Standards and Technology for the purposes of the Program $3,000,000 for fiscal year 1992; $4,000,000 for fiscal year 1993; $5,000,000 for fiscal year 1994; $6,000,000 for fiscal year 1995; and $7,000,000 for fiscal year 1996; and

(2) to the National Oceanic and Atmospheric Administration for the purposes of the Program $2,500,000 for fiscal year 1992; $3,000,000 for fiscal year 1993; $3,500,000 for fiscal year 1994; $4,000,000 for fiscal year 1995; and $4,500,000 for fiscal year 1996.

(Pub. L. 102–194, title II, §204, Dec. 9, 1991, 105 Stat. 1601.)

REFERENCES IN TEXT

The Computer Security Act of 1987, referred to in subsec. (b), is Pub. L. 100–235, Jan. 8, 1988, 101 Stat. 1724, which enacted sections 278g–3 and 278g–4 of this title, amended section 272 of this title and section 759 of former Title 40, Public Buildings, Property, and Works, and enacted provisions set out as notes under section 271 of this title and section 1441 of former Title 40. For complete classification of this Act to the Code, see Tables.

§5525. Environmental Protection Agency activities

(a) General responsibilities

As part of the Program described in subchapter I of this chapter, the Environmental Protection Agency shall conduct basic and applied research directed toward the advancement and dissemination of computational techniques and software tools which form the core of ecosystem, atmospheric chemistry, and atmospheric dynamics models.

(b) Authorization of appropriations

From sums otherwise authorized to be appropriated, there are authorized to be appropriated to the Environmental Protection Agency for the purposes of the Program $5,000,000 for fiscal year 1992; $5,500,000 for fiscal year 1993; $6,000,000 for fiscal year 1994; $6,500,000 for fiscal year 1995; and $7,000,000 for fiscal year 1996.

(Pub. L. 102–194, title II, §205, Dec. 9, 1991, 105 Stat. 1602.)

§5526. Role of Department of Education

(a) General responsibilities

As part of the Program described in subchapter I of this chapter, the Secretary of Education is authorized to conduct basic and applied research in computational research with an emphasis on the coordination of activities with libraries, school facilities, and education research groups with respect to the advancement and dissemination of computational science and the development, evaluation and application of software capabilities.

(b) Authorization of appropriations

From sums otherwise authorized to be appropriated, there are authorized to be appropriated to the Department of Education for the purposes of this section $1,500,000 for fiscal year 1992; $1,700,000 for fiscal year 1993; $1,900,000 for fiscal year 1994; $2,100,000 for fiscal year 1995; and $2,300,000 for fiscal year 1996.

(Pub. L. 102–194, title II, §206, Dec. 9, 1991, 105 Stat. 1602.)

§5527. Miscellaneous provisions

(a) Nonapplicability

Except to the extent the appropriate Federal agency or department head determines, the provisions of this chapter shall not apply to—

(1) programs or activities regarding computer systems that process classified information; or

(2) computer systems the function, operation, or use of which are those delineated in paragraphs (1) through (5) of section 2315(a) of title 10.[1]

(b) Acquisition of prototype and early production models

In accordance with Federal contracting law, Federal agencies and departments participating in the Program may acquire prototype or early production models of new high-performance computing systems and subsystems to stimulate hardware and software development. Items of computing equipment acquired under this subsection shall be considered research computers for purposes of applicable acquisition regulations.

(Pub. L. 102–194, title II, §207, Dec. 9, 1991, 105 Stat. 1602.)

[1] *So in original. Section 2315 of title 10 does not contain a subsec. (a).*

§5528. Fostering United States competitiveness in high-performance computing and related activities

(a) Findings

The Congress finds the following:

(1) High-performance computing and associated technologies are critical to the United States economy.

(2) While the United States has led the development of high-performance computing, United States industry is facing increasing global competition.

(3) Despite existing international agreements on fair competition and nondiscrimination in government procurements, there is increasing concern that such agreements are not being honored, that more aggressive enforcement of such agreements is needed, and that additional steps may be required to ensure fair global competition, particularly in high-technology fields such as high-performance computing and associated technologies.

(4) It is appropriate for Federal agencies and departments to use the funds authorized for the Program in a manner which most effectively fosters the maintenance and development of United States leadership in high-performance computers and associated technologies in and for the benefit of the United States.

(5) It is appropriate for Federal agencies and departments to use the funds authorized for the Program in a manner, consistent with the Trade Agreements Act of 1979 (19 U.S.C. 2501 et seq.), which most effectively fosters reciprocal competitive procurement treatment by foreign governments for United States high-performance computing and associated technology products and suppliers.

(b) Annual report

(1) Report

The Director shall submit an annual report to Congress that identifies—

(A) any grant, contract, cooperative agreement, or cooperative research and development agreement (as defined under section 3710a(d)(1) of this title) made or entered into by any Federal agency or department for research and development under the Program with—

(i) any company other than a company that is either incorporated or located in the United States, and that has majority ownership by individuals who are citizens of the United States; or

(ii) any educational institution or nonprofit institution located outside the United States; and

(B) any procurement exceeding $1,000,000 by any Federal agency or department under the Program for—

(i) unmanufactured articles, materials, or supplies mined or produced outside the United States; or

(ii) manufactured articles, materials, or supplies other than those manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States,

under the meaning of chapter 83 of title 41.

(2) Consolidation of reports

The report required by this subsection may be included with the report required by section 5511(a)(3)(A) [1] of this title.

(c) Application of Buy American Act

This chapter does not affect the applicability of chapter 83 of title 41 to procurements by Federal agencies and departments undertaken as a part of the Program.

(Pub. L. 102–194, title II, §208, Dec. 9, 1991, 105 Stat. 1603; Pub. L. 110–69, title III, §3002(c)(6), Aug. 9, 2007, 121 Stat. 587.)

REFERENCES IN TEXT

The Trade Agreements Act of 1979, referred to in subsec. (a)(5), is Pub. L. 96–39, July 26, 1979, 93 Stat. 144, as amended. For complete classification of this Act to the Code, see References in Text note set out under section 2501 of Title 19, Customs Duties, and Tables.

Section 5511(a)(3)(A) of this title, referred to in subsec. (b)(2), was redesignated section 5511(a)(2)(D) of this title by Pub. L. 110–69, title VII, §7024(a)(1)(B)(ii), (iii)(II), Aug. 9, 2007, 121 Stat. 687.

CODIFICATION

In subsec. (b)(1)(B), "chapter 83 of title 41" substituted for "title III of the Act of March 3, 1933 (41 U.S.C. 10a–10d; popularly known as the Buy American Act) as amended by the Buy American Act of 1988" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (c), "chapter 83 of title 41" substituted for "title III of the Act of March 3, 1933 (41 U.S.C. 10a–10d; popularly known as the Buy American Act), as amended by the Buy American Act of 1988," on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

AMENDMENTS

2007—Subsecs. (c), (d). Pub. L. 110–69 redesignated subsec. (d) as (c) and struck out former subsec. (c) which related to review of Supercomputer Agreement.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which a report required under subsec. (b)(1) of this section is listed on page 185), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

[1] *See References in Text note below.*

SUBCHAPTER III—DEPARTMENT OF ENERGY HIGH-END COMPUTING REVITALIZATION

§5541. Definitions

In this subchapter:

(1) Center

The term "Center" means a High-End Software Development Center established under section 5542(d) of this title.

(2) High-end computing system

The term "high-end computing system" means a computing system with performance that substantially exceeds that of systems that are commonly available for advanced scientific and engineering applications.

(3) Leadership System

The term "Leadership System" means a high-end computing system that is among the most advanced in the world in terms of performance in solving scientific and engineering problems.

(4) Institution of higher education

The term "institution of higher education" has the meaning given the term in section 1001(a) of title 20.

(5) Secretary

The term "Secretary" means the Secretary of Energy, acting through the Director of the Office of Science of the Department of Energy.

(Pub. L. 108–423, §2, Nov. 30, 2004, 118 Stat. 2400.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original "this Act", meaning Pub. L. 108–423, Nov. 30, 2004, 118 Stat. 2400, which is classified principally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 5501 of this title and Tables.

CODIFICATION

This section was enacted as part of the Department of Energy High-End Computing Revitalization Act of 2004 which comprises this subchapter, and not as part of the High-Performance Computing Act of 1991 which comprises this chapter.

SHORT TITLE

This subchapter known as the "Department of Energy High-End Computing Revitalization Act of 2004", see Short Title note set out under section 5501 of this title.

§5542. Department of Energy high-end computing research and development program

(a) In general

The Secretary shall—

(1) carry out a program of research and development (including development of software and hardware) to advance high-end computing systems; and

(2) develop and deploy high-end computing systems for advanced scientific and engineering applications.

(b) Program

The program shall—

(1) support both individual investigators and multidisciplinary teams of investigators;

(2) conduct research in multiple architectures, which may include vector, reconfigurable logic, streaming, processor-in-memory, and multithreading architectures;

(3) conduct research on software for high-end computing systems, including research on algorithms, programming environments, tools, languages, and operating systems for high-end computing systems, in collaboration with architecture development efforts;

(4) provide for sustained access by the research community in the United States to high-end computing systems and to Leadership Systems, including provision of technical support for users of such systems;

(5) support technology transfer to the private sector and others in accordance with applicable law; and

(6) ensure that the high-end computing activities of the Department of Energy are coordinated with relevant activities in industry and with other Federal agencies, including the National Science Foundation, the Defense Advanced Research Projects Agency, the National Nuclear Security Administration, the National Security Agency, the National Institutes of Health, the National Aeronautics and Space Administration, the National Oceanic and Atmospheric Administration, the National Institutes of Standards and Technology, and the Environmental Protection Agency.

(c) Leadership Systems facilities

(1) In general

As part of the program carried out under this subchapter, the Secretary shall establish and operate 1 or more Leadership Systems facilities to—

(A) conduct advanced scientific and engineering research and development using Leadership Systems; and

(B) develop potential advancements in high-end computing system hardware and software.

(2) Administration

In carrying out this subsection, the Secretary shall provide to Leadership Systems, on a competitive, merit-reviewed basis, access to researchers in United States industry, institutions of higher education, national laboratories, and other Federal agencies.

(d) High-End Software Development Center

(1) In general

As part of the program carried out under this subchapter, the Secretary shall establish at least 1 High-End Software Development Center.

(2) Duties

A Center shall concentrate efforts to develop, test, maintain, and support optimal algorithms, programming environments, tools, languages, and operating systems for high-end computing systems.

(3) Proposals

In soliciting proposals for the Center, the Secretary shall encourage staffing arrangements that include both permanent staff and a rotating staff of researchers from other institutions and industry to assist in coordination of research efforts and promote technology transfer to the private sector.

(4) Use of expertise

The Secretary shall use the expertise of a Center to assess research and development in high-end computing system architecture.

(5) Selection

The selection of a Center shall be determined by a competitive proposal process administered by the Secretary.

(Pub. L. 108–423, §3, Nov. 30, 2004, 118 Stat. 2400.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (c)(1) and (d)(1), was in the original "this Act", meaning Pub. L. 108–423, Nov. 30, 2004, 118 Stat. 2400, which is classified principally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 5501 of this title and Tables.

CODIFICATION

This section was enacted as part of the Department of Energy High-End Computing Revitalization Act of 2004 which comprises this subchapter, and not as part of the High-Performance Computing Act of 1991 which comprises this chapter.

§5543. Authorization of appropriations

In addition to amounts otherwise made available for high-end computing, there are authorized to be appropriated to the Secretary to carry out this subchapter—

(1) $50,000,000 for fiscal year 2005;

(2) $55,000,000 for fiscal year 2006; and

(3) $60,000,000 for fiscal year 2007.

(Pub. L. 108–423, §4, Nov. 30, 2004, 118 Stat. 2402.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original "this Act", meaning Pub. L. 108–423, Nov. 30, 2004, 118 Stat. 2400, which is classified principally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 5501 of this title and Tables.

CODIFICATION

This section was enacted as part of the Department of Energy High-End Computing Revitalization Act of 2004 which comprises this subchapter, and not as part of the High-Performance Computing Act of 1991 which comprises this chapter.

CHAPTER 82—LAND REMOTE SENSING POLICY

§5601. Transferred

CODIFICATION

Section, Pub. L. 102–555, §2, Oct. 28, 1992, 106 Stat. 4163, which related to findings, was transferred and is set out as a note under section 60101 of Title 51, National and Commercial Space Programs.

§5602. Repealed. Pub. L. 111–314, §6, Dec. 18, 2010, 124 Stat. 3444

Section, Pub. L. 102–555, §3, Oct. 28, 1992, 106 Stat. 4164, provided definitions for this chapter. See section 60101 of Title 51, National and Commercial Space Programs.

SUBCHAPTER I—LANDSAT

§§5611 to 5615. Repealed. Pub. L. 111–314, §6, Dec. 18, 2010, 124 Stat. 3444

Section 5611, Pub. L. 102–555, title I, §101, Oct. 28, 1992, 106 Stat. 4166, related to management of the Landsat Program. See section 60111 of Title 51, National and Commercial Space Programs.

Section 5612, Pub. L. 102–555, title I, §102, Oct. 28, 1992, 106 Stat. 4168, related to procurement of Landsat 7.

Section 5613, Pub. L. 102–555, title I, §103, Oct. 28, 1992, 106 Stat. 4168, related to data policy for Landsat 4 through 6.

Section 5614, Pub. L. 102–555, title I, §104, Oct. 28, 1992, 106 Stat. 4170, related to transfer of Landsat 6

program responsibilities. See section 60112 of Title 51.

Section 5615, Pub. L. 102–555, title I, §105, Oct. 28, 1992, 106 Stat. 4170, related to data policy for Landsat 7. See section 60113 of Title 51.

SUBCHAPTER II—LICENSING OF PRIVATE REMOTE SENSING SPACE SYSTEMS

§§5621 to 5625. Repealed. Pub. L. 111–314, §6, Dec. 18, 2010, 124 Stat. 3444

Section 5621, Pub. L. 102–555, title II, §201, Oct. 28, 1992, 106 Stat. 4171; Pub. L. 105–303, title I, §107(f)(1), Oct. 28, 1998, 112 Stat. 2854, related to general licensing authority. See section 60121 of Title 51, National and Commercial Space Programs.

Section 5622, Pub. L. 102–555, title II, §202, Oct. 28, 1992, 106 Stat. 4172; Pub. L. 105–303, title I, §107(f)(2), Oct. 28, 1998, 112 Stat. 2854, related to conditions for operation. See section 60122 of Title 51.

Section 5623, Pub. L. 102–555, title II, §203, Oct. 28, 1992, 106 Stat. 4172, related to administrative authority of Secretary. See section 60123 of Title 51.

Section 5624, Pub. L. 102–555, title II, §204, Oct. 28, 1992, 106 Stat. 4173, related to regulatory authority of Secretary. See section 60124 of Title 51.

Section 5625, Pub. L. 102–555, title II, §205, Oct. 28, 1992, 106 Stat. 4173, related to agency activities. See section 60125 of Title 51.

SUBCHAPTER III—RESEARCH, DEVELOPMENT, AND DEMONSTRATION

§§5631 to 5633. Repealed. Pub. L. 111–314, §6, Dec. 18, 2010, 124 Stat. 3444

Section 5631, Pub. L. 102–555, title III, §301, Oct. 28, 1992, 106 Stat. 4174, related to continued Federal research and development. See section 60131 of Title 51, National and Commercial Space Programs.

Section 5632, Pub. L. 102–555, title III, §302, Oct. 28, 1992, 106 Stat. 4174, related to availability of federally gathered unenhanced data. See section 60132 of Title 51.

Section 5633, Pub. L. 102–555, title III, §303, Oct. 28, 1992, 106 Stat. 4174, related to technology demonstration program. See section 60133 of Title 51.

SUBCHAPTER IV—ASSESSING OPTIONS FOR SUCCESSOR LAND REMOTE SENSING SYSTEM

§5641. Repealed. Pub. L. 111–314, §6, Dec. 18, 2010, 124 Stat. 3444

Section, Pub. L. 102–555, title IV, §401, Oct. 28, 1992, 106 Stat. 4175, related to assessing options for successor land remote sensing system. See section 60134 of Title 51, National and Commercial Space Programs.

SUBCHAPTER V—GENERAL PROVISIONS

§§5651 to 5658. Repealed. Pub. L. 111–314, §6, Dec. 18, 2010, 124 Stat. 3444

Section 5651, Pub. L. 102–555, title V, §501, Oct. 28, 1992, 106 Stat. 4176, related to nondiscriminatory data availability. See section 60141 of Title 51, National and Commercial Space Programs.

Section 5652, Pub. L. 102–555, title V, §502, Oct. 28, 1992, 106 Stat. 4176, related to archiving of data. See section 60142 of Title 51.

Section 5653, Pub. L. 102–555, title V, §503, Oct. 28, 1992, 106 Stat. 4177, related to nonreproduction of unenhanced data. See section 60143 of Title 51.

Section 5654, Pub. L. 102–555, title V, §504, Oct. 28, 1992, 106 Stat. 4177, related to reimbursement for assistance. See section 60144 of Title 51.

Section 5655, Pub. L. 102–555, title V, §505, Oct. 28, 1992, 106 Stat. 4177, related to acquisition of equipment. See section 60145 of Title 51.

Section 5656, Pub. L. 102–555, title V, §506, Oct. 28, 1992, 106 Stat. 4177, related to radio frequency allocation. See section 60146 of Title 51.

Section 5657, Pub. L. 102–555, title V, §507, Oct. 28, 1992, 106 Stat. 4178, related to consultation regarding national security, international obligations, status reports, and certain reimbursements. See section 60147 of Title 51.

Section 5658, Pub. L. 102–555, title V, §508, Oct. 28, 1992, 106 Stat. 4179, related to enforcement of prohibition of data use for commercial purposes. See section 60148 of Title 51.

SUBCHAPTER VI—PROHIBITION OF COMMERCIALIZATION OF WEATHER SATELLITES

§§5671, 5672. Repealed. Pub. L. 111–314, §6, Dec. 18, 2010, 124 Stat. 3444

Section 5671, Pub. L. 102–555, title VI, §601, Oct. 28, 1992, 106 Stat. 4179, prohibited commercialization of weather satellite systems. See section 60161 of Title 51, National and Commercial Space Programs.

Section 5672, Pub. L. 102–555, title VI, §602, Oct. 28, 1992, 106 Stat. 4180, related to future considerations. See section 60162 of Title 51.

CHAPTER 83—TELEPHONE DISCLOSURE AND DISPUTE RESOLUTION

Sec.

5701. Short title; findings.

SUBCHAPTER I—REGULATION OF UNFAIR AND DECEPTIVE ACTS AND PRACTICES IN CONNECTION WITH PAY-PER-CALL SERVICES

5711. Federal Trade Commission regulations.
5712. Actions by States.
5713. Administration and applicability of subchapter.
5714. Definitions.

SUBCHAPTER II—BILLING AND COLLECTION

5721. Regulations.
5722. Relation to State laws.
5723. Enforcement.
5724. Definitions.

§5701. Short title; findings

(a) Short title

This chapter may be cited as the "Telephone Disclosure and Dispute Resolution Act".

(b) Findings

The Congress finds the following:

(1) The use of pay-per-call services, most commonly through the use of 900 telephone numbers, has grown exponentially in the past few years into a national, billion-dollar industry as a result of recent technological innovations. Such services are convenient to consumers, cost-effective to vendors, and profitable to communications common carriers.

(2) Many pay-per-call businesses provide valuable information, increase consumer choices, and stimulate innovative and responsive services that benefit the public.

(3) The interstate nature of the pay-per-call industry means that its activities are beyond the reach of individual States and therefore requires Federal regulatory treatment to protect the public interest.

(4) The lack of nationally uniform regulatory guidelines has led to confusion for callers, subscribers, industry participants, and regulatory agencies as to the rights of callers and the oversight responsibilities of regulatory authorities, and has allowed some pay-per-call businesses to engage in practices that abuse the rights of consumers.

(5) Some interstate pay-per-call businesses have engaged in practices which are misleading to the consumer, harmful to the public interest, or contrary to accepted standards of business practices and thus cause harm to the many reputable businesses that are serving the public.

(6) Because the consumer most often incurs a financial obligation as soon as a pay-per-call transaction is completed, the accuracy and descriptiveness of vendor advertisements become crucial in avoiding consumer abuse. The obligation for accuracy should include price-per-call and duration-of-call information, odds disclosure for lotteries, games, and sweepstakes, and obligations for obtaining parental consent from callers under 18.

(7) The continued growth of the legitimate pay-per-call industry is dependent upon consumer confidence that unfair and deceptive behavior will be effectively curtailed and that consumers will have adequate rights of redress.

(8) Vendors of telephone-billed goods and services must also feel confident in their rights and obligations for resolving billing disputes if they are to use this new marketplace for the sale of products of more than nominal value.

(Pub. L. 102–556, §1, Oct. 28, 1992, 106 Stat. 4181.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 102–556, Oct. 28, 1992, 106 Stat. 4181, which enacted this chapter and section 228 of Title 47, Telecommunications, amended sections 227 and 302a of Title 47, enacted provisions set out as a note under section 302a of Title 47, and amended provisions set out as a note under section 227 of Title 47. For complete classification of this Act to the Code, see Tables.

SUBCHAPTER I—REGULATION OF UNFAIR AND DECEPTIVE ACTS AND PRACTICES IN CONNECTION WITH PAY-PER-CALL SERVICES

§5711. Federal Trade Commission regulations

(a) In general

(1) Advertising regulations

The Commission shall prescribe rules in accordance with this subsection to prohibit unfair and deceptive acts and practices in any advertisement for pay-per-call services. Such rules shall require that the person offering such pay-per-call services—

(A) clearly and conspicuously disclose in any advertising the cost of the use of such telephone number, including the total cost or the cost per minute and any other fees for that

service and for any other pay-per-call service to which the caller may be transferred;

(B) in the case of an advertisement which offers a prize or award or a service or product at no cost or for a reduced cost, clearly and conspicuously disclose the odds of being able to receive such prize, award, service, or product at no cost or reduced cost, or, if such odds are not calculable in advance, disclose the factors determining such odds;

(C) in the case of an advertisement that promotes a service that is not operated or expressly authorized by a Federal agency but that provides information on a Federal program, include at the beginning of such advertisement a clear disclosure that the service is not authorized, endorsed, or approved by any Federal agency;

(D) shall not direct such advertisement at children under the age of 12, unless such service is a bona fide educational service;

(E) in the case of advertising directed primarily to individuals under the age of 18, clearly and conspicuously state in such advertising that such individual must have the consent of such individual's parent or legal guardian for the use of such services;

(F) be prohibited from using advertisements that emit electronic tones which can automatically dial a pay-per-call telephone number;

(G) ensure that, whenever the number to be called is shown in television and print media advertisements, the charges for the call are clear and conspicuous and (when shown in television advertisements) displayed for the same duration as that number is displayed;

(H) in delivering any telephone message soliciting calls to a pay-per-call service, specify clearly, and at no less than the audible volume of the solicitation, the total cost and the cost per minute and any other fees for that service and for any other pay-per-call service to which the caller may be transferred; and

(I) not advertise an 800 telephone number, or any other telephone number advertised or widely understood to be toll free, from which callers are connected to an access number for a pay-per-call service.

(2) Pay-per-call service standards

The Commission shall prescribe rules to require that each provider of pay-per-call services—

(A) include in each pay-per-call message an introductory disclosure message that—

(i) describes the service being provided;

(ii) specifies clearly and at a reasonably understandable volume the total cost or the cost per minute and any other fees for that service and for any other pay-per-call service to which the caller may be transferred;

(iii) informs the caller that charges for the call begin at the end of the introductory message;

(iv) informs the caller that parental consent is required for calls made by children; and

(v) in the case of a pay-per-call service that is not operated or expressly authorized by a Federal agency but that provides information on any Federal program, a statement that clearly states that the service is not authorized, endorsed, or approved by any Federal agency;

(B) enable the caller to hang up at or before the end of the introductory message without incurring any charge whatsoever;

(C) not direct such services at children under the age of 12, unless such service is a bona fide educational service;

(D) stop the assessment of time-based charges immediately upon disconnection by the caller;

(E) disable any bypass mechanism which allows frequent callers to avoid listening to the disclosure message described in subparagraph (A) after the institution of any price increase and for a period of time sufficient to give such frequent callers adequate and sufficient notice of the price change;

(F) be prohibited from providing pay-per-call services through an 800 number or other telephone number advertised or widely understood to be toll free;

(G) be prohibited from billing consumers in excess of the amounts described in the introductory message and from billing for services provided in violation of the rules prescribed

by the Commission pursuant to this section;

(H) ensure that any billing statement for such provider's charges shall—

(i) display any charges for pay-per-call services in a part of the consumer's bill that is identified as not being related to local and long distance telephone charges; and

(ii) for each charge so displayed, specify, at a minimum, the type of service, the amount of the charge, and the date, time, and duration of the call;

(I) be liable for refunds to consumers who have been billed for pay-per-call services pursuant to programs that have been found to have violated the regulations prescribed pursuant to this section or subchapter II of this chapter or any other Federal law; and

(J) comply with such additional standards as the Commission may prescribe to prevent abusive practices.

(3) Access to information

The Commission shall by rule require a common carrier that provides telephone services to a provider of pay-per-call services to make available to the Commission any records and financial information maintained by such carrier relating to the arrangements (other than for the provision of local exchange service) between such carrier and any provider of pay-per-call services.

(4) Evasions

The rules issued by the Commission under this section shall include provisions to prohibit unfair or deceptive acts or practices that evade such rules or undermine the rights provided to customers under this subchapter, including through the use of alternative billing or other procedures.

(5) Exemptions

The regulations prescribed by the Commission pursuant to paragraph (2)(A) may exempt from the requirements of such paragraph—

(A) calls from frequent callers or regular subscribers using a bypass mechanism to avoid listening to the disclosure message required by such regulations, subject to the requirements of paragraph (2)(E); or

(B) pay-per-call services provided at nominal charges, as defined by the Commission in such regulations.

(6) Consideration of other rules required

In conducting a proceeding under this section, the Commission shall consider requiring, by rule or regulation, that providers of pay-per-call services—

(A) automatically disconnect a call after one full cycle of the program; and

(B) include a beep tone or other appropriate and clear signal during a live interactive group program so that callers will be alerted to the passage of time.

(7) Special rule for infrequent publications

The rules prescribed by the Commission under subparagraphs (A) and (G) of paragraph (1) may permit, in the case of publications that are widely distributed, that are printed annually or less frequently, and that have an established policy of not publishing specific prices, advertising that in lieu of the cost disclosures required by such subparagraphs, clearly and conspicuously disclose that use of the telephone number may result in a substantial charge.

(8) Treatment of rules

A rule issued under this subsection shall be treated as a rule issued under section 57a(a)(1)(B) of this title.

(b) Rulemaking

The Commission shall prescribe the rules under subsection (a) of this section within 270 days after October 28, 1992. Such rules shall be prescribed in accordance with section 553 of title 5.

(c) Enforcement

Any violation of any rule prescribed under subsection (a) of this section shall be treated as a violation of a rule respecting unfair or deceptive acts or practices under section 45 of this title. Notwithstanding section 45(a)(2) of this title, communications common carriers shall be subject to the jurisdiction of the Commission for purposes of this subchapter.

(Pub. L. 102–556, title II, §201, Oct. 28, 1992, 106 Stat. 4187.)

§5712. Actions by States

(a) In general

Whenever an attorney general of any State has reason to believe that the interests of the residents of that State have been or are being threatened or adversely affected because any person has engaged or is engaging in a pattern or practice which violates any rule of the Commission under section 5711(a) of this title, the State may bring a civil action on behalf of its residents in an appropriate district court of the United States to enjoin such pattern or practice, to enforce compliance with such rule of the Commission, to obtain damages on behalf of their residents, or to obtain such further and other relief as the court may deem appropriate.

(b) Notice

The State shall serve prior written notice of any civil action under subsection (a) of this section upon the Commission and provide the Commission with a copy of its complaint, except that if it is not feasible for the State to provide such prior notice, the State shall serve such notice immediately upon instituting such action. Upon receiving a notice respecting a civil action, the Commission shall have the right (1) to intervene in such action, (2) upon so intervening, to be heard on all matters arising therein, and (3) to file petitions for appeal.

(c) Venue

Any civil action brought under this section in a district court of the United States may be brought in the district wherein the defendant is found or is an inhabitant or transacts business or wherein the violation occurred or is occurring, and process in such cases may be served in any district in which the defendant is an inhabitant or wherever the defendant may be found.

(d) Investigatory powers

For purposes of bringing any civil action under this section, nothing in this chapter shall prevent the attorney general from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(e) Effect on State court proceedings

Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal antifraud statute of such State.

(f) Limitation

Whenever the Commission has instituted a civil action for violation of any rule or regulation under this chapter, no State may, during the pendency of such action instituted by the Commission, subsequently institute a civil action against any defendant named in the Commission's complaint for violation of any rule as alleged in the Commission's complaint.

(g) Actions by other State officials

(1) Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal statute of such State.

(2) In addition to actions brought by an attorney general of a State under subsection (a) of this section, such an action may be brought by officers of such State who are authorized by the State to bring actions in such State for protection of consumers and who are designated by the Commission to bring an action under subsection (a) of this section against persons that the Commission has

determined have or are engaged in a pattern or practice which violates a rule of the Commission under section 5711(a) of this title.

(Pub. L. 102–556, title II, §202, Oct. 28, 1992, 106 Stat. 4190.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (d) and (f), was in the original "this Act", meaning Pub. L. 102–556, Oct. 28, 1992, 106 Stat. 4181, known as the Telephone Disclosure and Dispute Resolution Act. For complete classification of this Act to the Code, see References in Text note set out under section 5701 of this title and Tables.

§5713. Administration and applicability of subchapter

(a) In general

Except as otherwise provided in section 5712 of this title, this subchapter shall be enforced by the Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.). Consequently, no activity which is outside the jurisdiction of that Act shall be affected by this chapter, except for purposes of this subchapter.

(b) Actions by Commission

The Commission shall prevent any person from violating a rule of the Commission under section 5711 of this title in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this subchapter. Any person who violates such rule shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this subchapter.

(Pub. L. 102–556, title II, §203, Oct. 28, 1992, 106 Stat. 4191.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in text, is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

§5714. Definitions

For purposes of this subchapter:

(1) The term "pay-per-call services" has the meaning provided in section 228(i) of title 47, except that the Commission by rule may, notwithstanding subparagraphs (B) and (C) of section 228(i)(1) of title 47, extend such definition to other similar services providing audio information or audio entertainment if the Commission determines that such services are susceptible to the unfair and deceptive practices that are prohibited by the rules prescribed pursuant to section 5711(a) of this title.

(2) The term "attorney general" means the chief legal officer of a State.

(3) The term "State" means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(4) The term "Commission" means the Federal Trade Commission.

(Pub. L. 102–556, title II, §204, Oct. 28, 1992, 106 Stat. 4191; Pub. L. 104–104, title VII, §701(b)(1), Feb. 8, 1996, 110 Stat. 147.)

AMENDMENTS

1996—Par. (1). Pub. L. 104–104 amended par. (1) generally. Prior to amendment, par. (1) read as follows: "The term 'pay-per-call services' has the meaning provided in section 228 of title 47."

SUBCHAPTER II—BILLING AND COLLECTION

§5721. Regulations

(a) In general

(1) Rules required

The Commission shall, in accordance with the requirements of this section, prescribe rules establishing procedures for the correction of billing errors with respect to telephone-billed purchases. The rules prescribed by the Commission shall also include provisions to prohibit unfair or deceptive acts or practices that evade such rules or undermine the rights provided to customers under this subchapter.

(2) Substantial similarity to credit billing

The Commission shall promulgate rules under this section that impose requirements that are substantially similar to the requirements imposed, with respect to the resolution of credit disputes, under the Truth in Lending and Fair Credit Billing Acts [15 U.S.C. 1601 et seq., 1666 et seq.].

(3) Treatment of rule

A rule issued under paragraph (1) shall be treated as a rule issued under section 57a(a)(1)(B) of this title.

(b) Rulemaking schedule and procedure

The Commission shall prescribe the rules under subsection (a) of this section within 270 days after October 28, 1992. Such rules shall be prescribed in accordance with section 553 of title 5.

(c) Enforcement

Any violation of any rule prescribed under subsection (a) of this section shall be treated as a violation of a rule under section 45 of this title regarding unfair or deceptive acts or practices. Notwithstanding section 45(a)(2) of this title, communications common carriers shall be subject to the jurisdiction of the Commission for purposes of this subchapter.

(d) Correction of billing errors and correction of credit reports

In prescribing rules under this section, the Commission shall consider, with respect to telephone-billed purchases, the following:

(1) The initiation of a billing review by a customer.

(2) Responses by billing entities and providing carriers to the initiation of a billing review.

(3) Investigations concerning delivery of telephone-billed purchases.

(4) Limitations upon providing carrier responsibilities, including limitations on a carrier's responsibility to verify delivery of audio information or entertainment.

(5) Requirements on actions by billing entities to set aside charges from a customer's billing statement.

(6) Limitations on collection actions by billing entities and vendors.

(7) The regulation of credit reports on billing disputes.

(8) The prompt notification of credit to an account.

(9) Rights of customers and telephone common carriers regarding claims and defenses.

(10) The extent to which the regulations should diverge from requirements under the Truth in Lending and Fair Credit Billing Acts [15 U.S.C. 1601 et seq., 1666 et seq.] in order to protect customers, and in order to be cost effective to billing entities.

(Pub. L. 102–556, title III, §301, Oct. 28, 1992, 106 Stat. 4191.)

REFERENCES IN TEXT

The Truth in Lending Act, referred to in subsecs. (a)(2) and (d)(10), is title I of Pub. L. 90–321, May 29,

1968, 82 Stat. 146, as amended, which is classified generally to subchapter I (§1601 et seq.) of chapter 41 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

The Fair Credit Billing Act, referred to in subsecs. (a)(2) and (d)(10), is title III of Pub. L. 93–495, Oct. 28, 1974, 88 Stat. 1511, which is classified principally to part D (§1666 et seq.) of subchapter I of chapter 41 of this title. For complete classification of this Act to the Code, see Short Title of 1974 Amendment note set out under section 1601 of this title and Tables.

§5722. Relation to State laws

(a) State law applicable unless inconsistent

This subchapter does not annul, alter, or affect, or exempt any person subject to the provisions of this subchapter from complying with, the laws of any State with respect to telephone billing practices, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency. The Commission is authorized to determine whether such inconsistencies exist. The Commission may not determine that any State law is inconsistent with any provision of this subchapter [1] if the Commission determines that such law gives greater protection to the consumer.

(b) Regulatory exemptions

The Commission shall by regulation exempt from the requirements of this subchapter any class of telephone-billed purchase transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this subchapter [1] or that such law gives greater protection to the consumer, and that there is adequate provision for enforcement.

(Pub. L. 102–556, title III, §302, Oct. 28, 1992, 106 Stat. 4192.)

REFERENCES IN TEXT

This subchapter, referred to the last time in subsecs. (a) and (b), was in the original "this chapter" and was translated as reading "this title" meaning title III of Pub. L. 102–556, to reflect the probable intent of Congress because Pub. L. 102–556 does not contain chapters.

[1] *See References in Text note below.*

§5723. Enforcement

The Commission shall enforce the requirements of this subchapter. For the purpose of the exercise by the Commission of its functions and powers under the Federal Trade Commission Act [15 U.S.C. 41 et seq.], a violation of any requirement imposed under this subchapter shall be deemed a violation of a requirement imposed under that Act. All the functions and powers of the Commission under that Act are available to the Commission to enforce compliance by any person with the requirements imposed under this subchapter, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in that Act. The Commission may prescribe such regulations as are necessary or appropriate to implement the provisions of this subchapter.

(Pub. L. 102–556, title III, §303, Oct. 28, 1992, 106 Stat. 4192.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in text, is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

§5724. Definitions

As used in this subchapter—

(1) The term "telephone-billed purchase" means any purchase that is completed solely as a consequence of the completion of the call or a subsequent dialing, touch tone entry, or comparable action of the caller. Such term does not include—

(A) a purchase by a caller pursuant to a preexisting agreement with the vendor;

(B) local exchange telephone services or interexchange telephone services or any service that the Federal Communications Commission determines, by rule—

(i) is closely related to the provision of local exchange telephone services or interexchange telephone services; and

(ii) is subject to billing dispute resolution procedures required by Federal or State statute or regulation; or

(C) the purchase of goods or services which is otherwise subject to billing dispute resolution procedures required by Federal statute or regulation.

(2) A "billing error" consists of any of the following:

(A) A reflection on a billing statement for a telephone-billed purchase which was not made by the customer or, if made, was not in the amount reflected on such statement.

(B) A reflection on a billing statement of a telephone-billed purchase for which the customer requests additional clarification, including documentary evidence thereof.

(C) A reflection on a billing statement of a telephone-billed purchase that was not accepted by the customer or not provided to the customer in accordance with the stated terms of the transaction.

(D) A reflection on a billing statement of a telephone-billed purchase for a call made to an 800 or other toll free telephone number.

(E) The failure to reflect properly on a billing statement a payment made by the customer or a credit issued to the customer with respect to a telephone-billed purchase.

(F) A computation error or similar error of an accounting nature on a statement.

(G) Failure to transmit the billing statement to the last known address of the customer, unless that address was furnished less than twenty days before the end of the billing cycle for which the statement is required.

(H) Any other error described in regulations prescribed by the Commission pursuant to section 553 of title 5.

(3) The term "Commission" means the Federal Trade Commission.

(4) The term "providing carrier" means a local exchange or interexchange common carrier providing telephone services (other than local exchange services) to a vendor for a telephone-billed purchase that is the subject of a billing error complaint.

(5) The term "vendor" means any person who, through the use of the telephone, offers goods or services for a telephone-billed purchase.

(6) The term "customer" means any person who acquires or attempts to acquire goods or services in a telephone-billed purchase.

(Pub. L. 102–556, title III, §304, Oct. 28, 1992, 106 Stat. 4193.)

CHAPTER 84—COMMERCIAL SPACE COMPETITIVENESS

§5801. Transferred

CODIFICATION

Section, Pub. L. 102–588, title V, §501, Nov. 4, 1992, 106 Stat. 5122, which related to findings, was transferred and is set out as a note under section 50501 of Title 51, National and Commercial Space Programs.

§§5802, 5803. Repealed. Pub. L. 111–314, §6, Dec. 18, 2010, 124 Stat. 3444

Section 5802, Pub. L. 102–588, title V, §502, Nov. 4, 1992, 106 Stat. 5123, provided definitions for this chapter. See section 50501 of Title 51, National and Commercial Space Programs.

Section 5803, Pub. L. 102–588, title V, §504, Nov. 4, 1992, 106 Stat. 5124; Pub. L. 105–303, title I, §103, Oct. 28, 1998, 112 Stat. 2851, related to launch voucher demonstration program. See section 50502 of Title 51.

§5804. Repealed. Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379

Section, Pub. L. 102–588, title V, §505, Nov. 4, 1992, 106 Stat. 5124, related to space transportation infrastructure matching grants.

§§5805 to 5808. Repealed. Pub. L. 111–314, §6, Dec. 18, 2010, 124 Stat. 3444

Section 5805, Pub. L. 102–588, title V, §506, Nov. 4, 1992, 106 Stat. 5127, related to identification of launch support facilities.

Section 5806, Pub. L. 102–588, title V, §507, Nov. 4, 1992, 106 Stat. 5127, related to anchor tenancy and termination liability. See section 50503 of Title 51, National and Commercial Space Programs.

Section 5807, Pub. L. 102–588, title V, §508, Nov. 4, 1992, 106 Stat. 5128, related to use of Government facilities. See section 50504 of Title 51.

Section 5808, Pub. L. 102–588, title V, §510, Nov. 4, 1992, 106 Stat. 5129, related to Commercial Space Achievement Award. See section 50506 of Title 51.

CHAPTER 85—ARMORED CAR INDUSTRY RECIPROCITY

Sec.

5901. Findings.
5902. State reciprocity of weapons licenses issued to armored car company crew members.
5903. Relation to other laws.
5904. Definitions.

§5901. Findings

Congress finds that—

(1) the distribution of goods and services to consumers in the United States requires the free flow of currency, bullion, securities, supplemental nutrition assistance program benefits, and other items of unusual value in interstate commerce;

(2) the armored car industry transports and protects such items in interstate commerce, including daily transportation of currency and supplemental nutrition assistance program benefits valued at more than $1,000,000,000;

(3) armored car crew members are often subject to armed attack by individuals attempting to steal such items;

(4) to protect themselves and the items they transport, such crew members are armed with weapons;

(5) various States require both weapons training and a criminal record background check before licensing a crew member to carry a weapon; and

(6) there is a need for each State to reciprocally accept weapons licenses of other States for armored car crew members to assure the free and safe transport of valuable items in interstate

commerce.

(Pub. L. 103–55, §2, July 28, 1993, 107 Stat. 276; Pub. L. 110–234, title IV, §4002(b)(1)(E), (2)(L), May 22, 2008, 122 Stat. 1096, 1097; Pub. L. 110–246, §4(a), title IV, §4002(b)(1)(E), (2)(L), June 18, 2008, 122 Stat. 1664, 1857, 1858.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2008—Pars. (1), (2). Pub. L. 110–246, §4002(b)(1)(E), (2)(L), substituted "supplemental nutrition assistance program benefits" for "food stamps".

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 4002(b)(1)(E), (2)(L) of Pub. L. 110–246 effective Oct. 1, 2008, see section 4407 of Pub. L. 110–246, set out as a note under section 1161 of Title 2, The Congress.

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–287, §1, Oct. 27, 1998, 112 Stat. 2776, provided that: "This Act [amending section 5902 of this title and enacting provisions set out as a note under section 5902 of this title] may be cited as the 'Armored Car Reciprocity Amendments of 1998'."

SHORT TITLE

Pub. L. 103–55, §1, July 28, 1993, 107 Stat. 276, provided that: "This Act [enacting this chapter] may be cited as the 'Armored Car Industry Reciprocity Act of 1993'."

§5902. State reciprocity of weapons licenses issued to armored car company crew members

(a) In general

If an armored car crew member employed by an armored car company—

(1) has in effect a license issued by the appropriate State agency (in the State in which such member is primarily employed by such company) to carry a weapon while acting in the services of such company in that State, and such State agency meets the minimum requirements under subsection (b) of this section; and

(2) has met all other applicable requirements to act as an armored car crew member in the State in which such member is primarily employed by such company,

then such crew member shall be entitled to lawfully carry any weapon to which such license relates and function as an armored car crew member in any State while such member is acting in the service of such company.

(b) Minimum State requirements

A State agency meets the minimum State requirements of this subsection if—

(1) in issuing an initial weapons license to an armored car crew member described in subsection (a) of this section, the agency determines to its satisfaction that—

(A) the crew member has received classroom and range training in weapons safety and marksmanship during the current year from a qualified instructor for each weapon that the crew member will be licensed to carry; and

(B) the receipt or possession of a weapon by the crew member would not violate Federal law, determined on the basis of a criminal record background check conducted during the current year;

(2) in issuing a renewal of a weapons license to an armored car crew member described in subsection (a) of this section, the agency determines to its satisfaction that—

(A) the crew member has received continuing training in weapons safety and marksmanship from a qualified instructor for each weapon that the crew member is licensed to carry; and

(B) the receipt or possession of a weapon by the crew member would not violate Federal law, as determined by the agency; and

(3) in issuing a weapons license under paragraph (1) or paragraph (2), as the case may be—

(A) the agency issues such license for a period not to exceed 2 years; or

(B) the agency issues such license for a period not to exceed 5 years in the case of a State that enacted a State law before October 1, 1996, that provides for the issuance of an initial weapons license or a renewal of a weapons license, as the case may be, for a period not to exceed 5 years.

(Pub. L. 103–55, §3, July 28, 1993, 107 Stat. 276; Pub. L. 105–287, §2, Oct. 27, 1998, 112 Stat. 2776.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–287, §2(a), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: "If an armored car crew member employed by an armored car company has in effect a license issued by the appropriate State agency (in the State in which such member is primarily employed by such company) to carry a weapon while acting in the services of such company in that State, and such State agency meets the minimum State requirements under subsection (b) of this section, then such crew member shall be entitled to lawfully carry any weapon to which such license relates in any State while such crew member is acting in the service of such company."

Subsec. (b). Pub. L. 105–287, §2(b), amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: "A State agency meets the minimum State requirements of this subsection if in issuing a weapons license to an armored car crew member described in subsection (a) of this section, the agency requires the crew member to provide information on an annual basis to the satisfaction of the agency that—

"(1) the crew member has received classroom and range training in weapons safety and marksmanship during the current year by a qualified instructor for each weapon that the crew member is licensed to carry; and

"(2) the receipt or possession of a weapon by the crew member would not violate Federal law, determined on the basis of a criminal record background check conducted during the current year."

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–287, §3, Oct. 27, 1998, 112 Stat. 2777, provided that: "The amendments made by section 2 [amending this section] shall take effect 30 days after the date of the enactment of this Act [Oct. 27, 1998]."

§5903. Relation to other laws

This chapter shall supersede any provision of State law (or the law of any political subdivision of a State) that is inconsistent with this chapter.

(Pub. L. 103–55, §4, July 28, 1993, 107 Stat. 277.)

§5904. Definitions

As used in this chapter:

(1) The term "armored car crew member" means an individual who provides protection for goods transported by an armored car company.

(2) The term "armored car company" means a company—

(A) subject to regulation under subchapter I of chapter 135 of title 49; and

(B) is [1] registered under chapter 139 of such title, in order to engage in the business of transporting and protecting currency, bullion, securities, precious metals, supplemental nutrition

assistance program benefits, and other articles of unusual value in interstate commerce.

(3) The term "State" means any State of the United States or the District of Columbia.

(Pub. L. 103–55, §5, July 28, 1993, 107 Stat. 277; Pub. L. 104–88, title III, §336, Dec. 29, 1995, 109 Stat. 954; Pub. L. 110–234, title IV, §4002(b)(1)(E), (2)(L), May 22, 2008, 122 Stat. 1096, 1097; Pub. L. 110–246, §4(a), title IV, §4002(b)(1)(E), (2)(L), June 18, 2008, 122 Stat. 1664, 1857, 1858.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2008—Par. (2)(B). Pub. L. 110–246, §4002(b)(1)(E), (2)(L), substituted "supplemental nutrition assistance program benefits" for "food stamps".

1995—Par. (2). Pub. L. 104–88 substituted "subchapter I of chapter 135" for "subchapter II of chapter 105" in subpar. (A) and "is registered under chapter 139" for "holding the appropriate certificate, permit, or license issued under subchapter II of chapter 109" in subpar. (B).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 4002(b)(1)(E), (2)(L) of Pub. L. 110–246 effective Oct. 1, 2008, see section 4407 of Pub. L. 110–246, set out as a note under section 1161 of Title 2, The Congress.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

[1] So in original. The word "is" probably should not appear.

CHAPTER 86—CHILDREN'S BICYCLE HELMET SAFETY

Sec.

6001. Establishment of program.
6002. Purposes for grants.
6003. Report to Congress.
6004. Standards.
6005. Authorization of appropriations.
6006. "Approved bicycle helmet" defined.

§6001. Establishment of program

(a) In general

The Administrator of the National Highway Traffic Safety Administration may, in accordance with section 6002 of this title, make grants to States, political subdivisions of States, and nonprofit organizations for programs that require or encourage individuals under the age of 16 to wear approved bicycle helmets. In making those grants, the Administrator shall allow grantees to use wide discretion in designing programs that effectively promote increased bicycle helmet use.

(b) Federal share

The amount provided by a grant under this section shall not exceed 80 percent of the cost of the program for which the grant is made. In crediting the recipient State, political subdivision, or nonprofit organization for the non-Federal share of the cost of such a program (other than planning

and administration), the aggregate of all expenditures made by such State, political subdivision, or nonprofit organization (exclusive of Federal funds) for the purposes described in section 6002 of this title (other than expenditures for planning and administration) shall be available for such crediting, without regard to whether such expenditures were actually made in connection with such program.

(Pub. L. 103–267, title II, §202, June 16, 1994, 108 Stat. 726.)

SHORT TITLE

Pub. L. 103–267, title II, §201, June 16, 1994, 108 Stat. 726, provided that: "This title [enacting this chapter] may be cited as the 'Children's Bicycle Helmet Safety Act of 1994'."

§6002. Purposes for grants

A grant made under section 6001 of this title may be used by a grantee to—

(1) enforce a law that requires individuals under the age of 16 to wear approved bicycle helmets on their heads while riding on bicycles;

(2) provide assistance, to individuals under the age of 16 who may not be able to afford approved bicycle helmets, to enable such individuals to acquire such helmets;

(3) develop and administer a program to educate individuals under the age of 16 and their families on the importance of wearing such helmets in order to improve bicycle safety; or

(4) carry out any combination of the activities described in paragraphs (1), (2), and (3).

The Administrator shall review grant applications for compliance with this section prior to awarding grants.

(Pub. L. 103–267, title II, §203, June 16, 1994, 108 Stat. 727.)

§6003. Report to Congress

Not later than May 1, 1997, the Administrator of the National Highway Traffic Safety Administration shall report to Congress on the effectiveness of the grant program established by section 6001 of this title. The report shall include a list of grant recipients, a summary of the types of programs implemented by the grantees, and any recommendation by the Administrator regarding how the program should be changed in the future.

(Pub. L. 103–267, title II, §204, June 16, 1994, 108 Stat. 727.)

§6004. Standards

(a) In general

Bicycle helmets manufactured 9 months or more after June 16, 1994, shall conform to—

(1) any interim standard described under subsection (b) of this section, pending the establishment of a final standard pursuant to subsection (c) of this section; and

(2) the final standard, once it has been established under subsection (c) of this section.

(b) Interim standards

The interim standards are as follows:

(1) The American National Standards Institute standard designated as "Z90.4–1984".

(2) The Snell Memorial Foundation standard designated as "B–90".

(3) The American Society for Testing and Materials (ASTM) standard designated as "F 1447".

(4) Any other standard that the Commission determines is appropriate.

(c) Final standard

Not later than 60 days after June 16, 1994, the Commission shall begin a proceeding under section 553 of title 5 to—

(1) review the requirements of the interim standards set forth in subsection (a) of this section and establish a final standard based on such requirements;

(2) include in the final standard a provision to protect against the risk of helmets coming off the heads of bicycle riders;

(3) include in the final standard provisions that address the risk of injury to children; and

(4) include additional provisions as appropriate.

Sections 7, 9, and 30(d) [1] of the Consumer Product Safety Act (15 U.S.C. 2056, 2058, 2079(d)) shall not apply to the proceeding under this subsection and section 11 of such Act (15 U.S.C. 2060) shall not apply with respect to any standard issued under such proceeding. The final standard shall take effect 1 year from the date it is issued.

(d) Failure to meet standards

(1) Failure to meet interim standard

Until the final standard takes effect, a bicycle helmet that does not conform to an interim standard as required under subsection (a)(1) of this section shall be considered in violation of a consumer product safety standard promulgated under the Consumer Product Safety Act [15 U.S.C. 2051 et seq.].

(2) Status of final standard

The final standard developed under subsection (c) of this section shall be considered a consumer product safety standard promulgated under the Consumer Product Safety Act.

(Pub. L. 103–267, title II, §205, June 16, 1994, 108 Stat. 727.)

REFERENCES IN TEXT

Section 30(d) of the Consumer Product Safety Act, referred to in subsec. (c), was classified to section 2079(d) of this title prior to repeal by Pub. L. 110–314, title II, §237, Aug. 14, 2008, 122 Stat. 3076.

The Consumer Product Safety Act, referred to in subsec. (d), is Pub. L. 92–573, Oct. 27, 1972, 86 Stat. 1207, as amended, which is classified generally to chapter 47 (§2051 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2051 of this title and Tables.

[1] *See References in Text note below.*

§6005. Authorization of appropriations

For the National Highway Traffic Safety Administration to carry out the grant program authorized by this chapter, there are authorized to be appropriated $2,000,000 for fiscal year 1995, $3,000,000 for fiscal year 1996, and $4,000,000 for fiscal year 1997.

(Pub. L. 103–267, title II, §206, June 16, 1994, 108 Stat. 728.)

§6006. "Approved bicycle helmet" defined

In this chapter, the term "approved bicycle helmet" means a bicycle helmet that meets—

(1) any interim standard described in section 6004(b) of this title, pending establishment of a final standard under section 6004(c) of this title; and

(2) the final standard, once it is established under section 6004(c) of this title.

(Pub. L. 103–267, title II, §207, June 16, 1994, 108 Stat. 728.)

CHAPTER 87—TELEMARKETING AND CONSUMER FRAUD AND ABUSE PREVENTION

Sec.
6101. Findings.
6102. Telemarketing rules.
6103. Actions by States.
6104. Actions by private persons.
6105. Administration and applicability of chapter.
6106. Definitions.
6107. Enforcement of orders.
6108. Review.

§6101. Findings

The Congress makes the following findings:

(1) Telemarketing differs from other sales activities in that it can be carried out by sellers across State lines without direct contact with the consumer. Telemarketers also can be very mobile, easily moving from State to State.

(2) Interstate telemarketing fraud has become a problem of such magnitude that the resources of the Federal Trade Commission are not sufficient to ensure adequate consumer protection from such fraud.

(3) Consumers and others are estimated to lose $40 billion a year in telemarketing fraud.

(4) Consumers are victimized by other forms of telemarketing deception and abuse.

(5) Consequently, Congress should enact legislation that will offer consumers necessary protection from telemarketing deception and abuse.

(Pub. L. 103–297, §2, Aug. 16, 1994, 108 Stat. 1545.)

SHORT TITLE OF 2001 AMENDMENT

Pub. L. 107–56, title X, §1011(a), Oct. 26, 2001, 115 Stat. 396, provided that: "This section [amending sections 6102 and 6106 of this title and sections 917 and 2325 of Title 18, Crimes and Criminal Procedure] may be cited as the 'Crimes Against Charitable Americans Act of 2001'."

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–534, §1, Nov. 22, 2000, 114 Stat. 2555, provided that: "This Act [enacting provisions set out as notes under this section and section 3732 of Title 42, The Public Health and Welfare] may be cited as the 'Protecting Seniors From Fraud Act'."

SHORT TITLE

Pub. L. 103–297, §1, Aug. 16, 1994, 108 Stat. 1545, provided that: "This Act [enacting this chapter and section 9b of Title 7, Agriculture, and amending section 52 of this title] may be cited as the 'Telemarketing and Consumer Fraud and Abuse Prevention Act'."

CONGRESSIONAL FINDINGS

Pub. L. 106–534, §2, Nov. 22, 2000, 114 Stat. 2555, provided that: "Congress makes the following findings:

"(1) Older Americans are among the most rapidly growing segments of our society.

"(2) Our Nation's elderly are too frequently the victims of violent crime, property crime, and consumer and telemarketing fraud.

"(3) The elderly are often targeted and retargeted in a range of fraudulent schemes.

"(4) The TRIAD program, originally sponsored by the National Sheriffs' Association, International Association of Chiefs of Police, and the American Association of Retired Persons unites sheriffs, police chiefs, senior volunteers, elder care providers, families, and seniors to reduce the criminal victimization of the elderly.

"(5) Congress should continue to support TRIAD and similar community partnerships that improve the safety and quality of life for millions of senior citizens.

"(6) There are few other community-based efforts that forge partnerships to coordinate criminal justice and social service resources to improve the safety and security of the elderly.

"(7) According to the National Consumers League, telemarketing fraud costs consumers nearly $40,000,000,000 each year.

"(8) Senior citizens are often the target of telemarketing fraud.

"(9) Fraudulent telemarketers compile the names of consumers who are potentially vulnerable to telemarketing fraud into the so-called 'mooch lists'.

"(10) It is estimated that 56 percent of the names on such 'mooch lists' are individuals age 50 or older.

"(11) The Federal Bureau of Investigation and the Federal Trade Commission have provided resources to assist private-sector organizations to operate outreach programs to warn senior citizens whose names appear on confiscated 'mooch lists'.

"(12) The Administration on Aging was formed, in part, to provide senior citizens with the resources, information, and assistance their special circumstances require.

"(13) The Administration on Aging has a system in place to inform senior citizens of the dangers of telemarketing fraud.

"(14) Senior citizens need to be warned of the dangers of telemarketing fraud before they become victims of such fraud."

SENIOR FRAUD PREVENTION PROGRAM

Pub. L. 106–534, §3, Nov. 22, 2000, 114 Stat. 2556, provided that:

"(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Attorney General $1,000,000 for each of the fiscal years 2001 through 2005 for programs for the National Association of TRIAD.

"(b) COMPTROLLER GENERAL.—The Comptroller General of the United States shall submit to Congress a report on the effectiveness of the TRIAD program 180 days prior to the expiration of the authorization under this Act [see Short Title of 2000 Amendment note above], including an analysis of TRIAD programs and activities; identification of impediments to the establishment of TRIADs across the Nation; and recommendations to improve the effectiveness of the TRIAD program."

DISSEMINATION OF INFORMATION

Pub. L. 106–534, §4, Nov. 22, 2000, 114 Stat. 2556, provided that:

"(a) IN GENERAL.—The Secretary of Health and Human Services, acting through the Assistant Secretary of Health and Human Services for Aging, shall provide to the Attorney General of each State and publicly disseminate in each State, including dissemination to area agencies on aging, information designed to educate senior citizens and raise awareness about the dangers of fraud, including telemarketing and sweepstakes fraud.

"(b) INFORMATION.—In carrying out subsection (a), the Secretary shall—

"(1) inform senior citizens of the prevalence of telemarketing and sweepstakes fraud targeted against them;

"(2) inform senior citizens how telemarketing and sweepstakes fraud work;

"(3) inform senior citizens how to identify telemarketing and sweepstakes fraud;

"(4) inform senior citizens how to protect themselves against telemarketing and sweepstakes fraud, including an explanation of the dangers of providing bank account, credit card, or other financial or personal information over the telephone to unsolicited callers;

"(5) inform senior citizens how to report suspected attempts at or acts of fraud;

"(6) inform senior citizens of their consumer protection rights under Federal law; and

"(7) provide such other information as the Secretary considers necessary to protect senior citizens against fraudulent telemarketing and sweepstakes promotions.

"(c) MEANS OF DISSEMINATION.—The Secretary shall determine the means to disseminate information under this section. In making such determination, the Secretary shall consider—

"(1) public service announcements;

"(2) a printed manual or pamphlet;

"(3) an Internet website;

"(4) direct mailings; and

"(5) telephone outreach to individuals whose names appear on so-called 'mooch lists' confiscated from fraudulent marketers.

"(d) PRIORITY.—In disseminating information under this section, the Secretary shall give priority to areas with high incidents of fraud against senior citizens."

§6102. Telemarketing rules

(a) In general

(1) The Commission shall prescribe rules prohibiting deceptive telemarketing acts or practices and other abusive telemarketing acts or practices.

(2) The Commission shall include in such rules respecting deceptive telemarketing acts or practices a definition of deceptive telemarketing acts or practices which shall include fraudulent charitable solicitations, and which may include acts or practices of entities or individuals that assist or facilitate deceptive telemarketing, including credit card laundering.

(3) The Commission shall include in such rules respecting other abusive telemarketing acts or practices—

(A) a requirement that telemarketers may not undertake a pattern of unsolicited telephone calls which the reasonable consumer would consider coercive or abusive of such consumer's right to privacy,

(B) restrictions on the hours of the day and night when unsolicited telephone calls can be made to consumers,

(C) a requirement that any person engaged in telemarketing for the sale of goods or services shall promptly and clearly disclose to the person receiving the call that the purpose of the call is to sell goods or services and make such other disclosures as the Commission deems appropriate, including the nature and price of the goods and services; [1] and

(D) a requirement that any person engaged in telemarketing for the solicitation of charitable contributions, donations, or gifts of money or any other thing of value, shall promptly and clearly disclose to the person receiving the call that the purpose of the call is to solicit charitable contributions, donations, or gifts, and make such other disclosures as the Commission considers appropriate, including the name and mailing address of the charitable organization on behalf of which the solicitation is made.

In prescribing the rules described in this paragraph, the Commission shall also consider recordkeeping requirements.

(b) Rulemaking authority

The Commission shall have authority to prescribe rules under subsection (a), in accordance with section 553 of title 5. In prescribing a rule under this section that relates to the provision of a consumer financial product or service that is subject to the Consumer Financial Protection Act of 2010, including any enumerated consumer law thereunder, the Commission shall consult with the Bureau of Consumer Financial Protection regarding the consistency of a proposed rule with standards, purposes, or objectives administered by the Bureau of Consumer Financial Protection.

(c) Violations

Any violation of any rule prescribed under subsection (a)—

(1) shall be treated as a violation of a rule under section 57a of this title regarding unfair or deceptive acts or practices; and

(2) that is committed by a person subject to the Consumer Financial Protection Act of 2010 shall be treated as a violation of a rule under section 1031 of that Act [12 U.S.C. 5531] regarding unfair, deceptive, or abusive acts or practices.

(d) Securities and Exchange Commission rules

(1) Promulgation

(A) In general

Except as provided in subparagraph (B), not later than 6 months after the effective date of rules promulgated by the Federal Trade Commission under subsection (a) of this section, the Securities and Exchange Commission shall promulgate, or require any national securities exchange or registered securities association to promulgate, rules substantially similar to such rules to prohibit deceptive and other abusive telemarketing acts or practices by persons described in paragraph (2).

(B) Exception

The Securities and Exchange Commission is not required to promulgate a rule under subparagraph (A) if it determines that—

(i) Federal securities laws or rules adopted by the Securities and Exchange Commission thereunder provide protection from deceptive and other abusive telemarketing by persons described in paragraph (2) substantially similar to that provided by rules promulgated by the Federal Trade Commission under subsection (a) of this section; or

(ii) such a rule promulgated by the Securities and Exchange Commission is not necessary or appropriate in the public interest, or for the protection of investors, or would be inconsistent with the maintenance of fair and orderly markets.

If the Securities and Exchange Commission determines that an exception described in clause (i) or (ii) applies, the Securities and Exchange Commission shall publish in the Federal Register its determination with the reasons for it.

(2) Application

(A) In general

The rules promulgated by the Securities and Exchange Commission under paragraph (1)(A) shall apply to a broker, dealer, transfer agent, municipal securities dealer, municipal securities broker, government securities broker, government securities dealer, investment adviser or investment company, or any individual associated with a broker, dealer, transfer agent, municipal securities dealer, municipal securities broker, government securities broker, government securities dealer, investment adviser or investment company. The rules promulgated by the Federal Trade Commission under subsection (a) of this section shall not apply to persons described in the preceding sentence.

(B) Definitions

For purposes of subparagraph (A)—

(i) the terms "broker", "dealer", "transfer agent", "municipal securities dealer", "municipal securities broker", "government securities broker", and "government securities dealer" have the meanings given such terms by paragraphs (4), (5), (25), (30), (31), (43), and (44) of section 78c(a) of this title;

(ii) the term "investment adviser" has the meaning given such term by section 80b–2(a)(11) of this title; and

(iii) the term "investment company" has the meaning given such term by section 80a–3(a) of this title.

(e) Commodity Futures Trading Commission rules

(1) Application

The rules promulgated by the Federal Trade Commission under subsection (a) of this section shall not apply to persons described in section 9b(1) of title 7.

(2) Omitted

(Pub. L. 103–297, §3, Aug. 16, 1994, 108 Stat. 1545; Pub. L. 107–56, title X, §1011(b)(1), (2), Oct. 26, 2001, 115 Stat. 396; Pub. L. 111–203, title X, §1100C(a), July 21, 2010, 124 Stat. 2110.)

REFERENCES IN TEXT

The Consumer Financial Protection Act of 2010, referred to in subsecs. (b) and (c)(2), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955, which enacted subchapter V (§5481 et seq.) of chapter 53 of Title 12, Banks and Banking, and enacted and amended numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 12 and Tables.

CODIFICATION

Section is comprised of section 3 of Pub. L. 103–297. Subsec. (e)(2) of section 3 of Pub. L. 103–297 enacted section 9b of Title 7, Agriculture.

AMENDMENTS

2010—Subsecs. (b), (c). Pub. L. 111–203 added subsecs. (b) and (c) and struck out former subsecs. (b) and (c) which read as follows:

"(b) RULEMAKING.—The Commission shall prescribe the rules under subsection (a) of this section within 365 days after August 16, 1994. Such rules shall be prescribed in accordance with section 553 of title 5.

"(c) ENFORCEMENT.—Any violation of any rule prescribed under subsection (a) of this section shall be treated as a violation of a rule under section 57a of this title regarding unfair or deceptive acts or practices."

2001—Subsec. (a)(2). Pub. L. 107–56, §1011(b)(1), inserted "which shall include fraudulent charitable solicitations, and" before "which may include".

Subsec. (a)(3)(D). Pub. L. 107–56, §1011(b)(2), added subpar. (D).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

[1] *So in original. The semicolon probably should be a comma.*

§6103. Actions by States

(a) In general

Whenever an attorney general of any State has reason to believe that the interests of the residents of that State have been or are being threatened or adversely affected because any person has engaged or is engaging in a pattern or practice of telemarketing which violates any rule of the Commission under section 6102 of this title, the State, as parens patriae, may bring a civil action on behalf of its residents in an appropriate district court of the United States to enjoin such telemarketing, to enforce compliance with such rule of the Commission, to obtain damages, restitution, or other compensation on behalf of residents of such State, or to obtain such further and other relief as the court may deem appropriate.

(b) Notice

The State shall serve prior written notice of any civil action under subsection (a) or (f)(2) of this section upon the Commission and provide the Commission with a copy of its complaint, except that if it is not feasible for the State to provide such prior notice, the State shall serve such notice immediately upon instituting such action. Upon receiving a notice respecting a civil action, the Commission shall have the right (1) to intervene in such action, (2) upon so intervening, to be heard on all matters arising therein, and (3) to file petitions for appeal.

(c) Construction

For purposes of bringing any civil action under subsection (a) of this section, nothing in this chapter shall prevent an attorney general from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(d) Actions by Commission or the Bureau of Consumer Financial Protection

Whenever a civil action has been instituted by or on behalf of the Commission or the Bureau of Consumer Financial Protection for violation of any rule prescribed under section 6102 of this title, no State may, during the pendency of such action instituted by or on behalf of the Commission or the Bureau of Consumer Financial Protection, institute a civil action under subsection (a) or (f)(2) of this section against any defendant named in the complaint in such action for violation of any rule as alleged in such complaint.

(e) Venue; service of process

Any civil action brought under subsection (a) of this section in a district court of the United States may be brought in the district in which the defendant is found, is an inhabitant, or transacts business or wherever venue is proper under section 1391 of title 28. Process in such an action may be served in any district in which the defendant is an inhabitant or in which the defendant may be found.

(f) Actions by other State officials

(1) Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any civil or criminal statute of such State.

(2) In addition to actions brought by an attorney general of a State under subsection (a) of this section, such an action may be brought by officers of such State who are authorized by the State to bring actions in such State on behalf of its residents.

(Pub. L. 103–297, §4, Aug. 16, 1994, 108 Stat. 1548; Pub. L. 111–203, title X, §1100C(b), July 21, 2010, 124 Stat. 2111.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original "this Act", meaning Pub. L. 103–297, Aug. 16, 1994, 108 Stat. 1545, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

AMENDMENTS

2010—Subsec. (d). Pub. L. 111–203 inserted "or the Bureau of Consumer Financial Protection" after "Commission" wherever appearing.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§6104. Actions by private persons

(a) In general

Any person adversely affected by any pattern or practice of telemarketing which violates any rule of the Commission under section 6102 of this title, or an authorized person acting on such person's behalf, may, within 3 years after discovery of the violation, bring a civil action in an appropriate district court of the United States against a person who has engaged or is engaging in such pattern or practice of telemarketing if the amount in controversy exceeds the sum or value of $50,000 in actual damages for each person adversely affected by such telemarketing. Such an action may be brought to enjoin such telemarketing, to enforce compliance with any rule of the Commission under section 6102 of this title, to obtain damages, or to obtain such further and other relief as the court may deem appropriate.

(b) Notice

The plaintiff shall serve prior written notice of the action upon the Commission and provide the Commission with a copy of its complaint, except in any case where such prior notice is not feasible, in which case the person shall serve such notice immediately upon instituting such action. The Commission shall have the right (A) to intervene in the action, (B) upon so intervening, to be heard on all matters arising therein, and (C) to file petitions for appeal.

(c) Action by Commission or the Bureau of Consumer Financial Protection

Whenever a civil action has been instituted by or on behalf of the Commission or the Bureau of Consumer Financial Protection for violation of any rule prescribed under section 6102 of this title, no person may, during the pendency of such action instituted by or on behalf of the Commission or the Bureau of Consumer Financial Protection, institute a civil action against any defendant named in the complaint in such action for violation of any rule as alleged in such complaint.

(d) Cost and fees

The court, in issuing any final order in any action brought under subsection (a) of this section, may award costs of suit and reasonable fees for attorneys and expert witnesses to the prevailing party.

(e) Construction

Nothing in this section shall restrict any right which any person may have under any statute or

common law.

(f) Venue; service of process

Any civil action brought under subsection (a) of this section in a district court of the United States may be brought in the district in which the defendant is found, is an inhabitant, or transacts business or wherever venue is proper under section 1391 of title 28. Process in such an action may be served in any district in which the defendant is an inhabitant or in which the defendant may be found.

(Pub. L. 103–297, §5, Aug. 16, 1994, 108 Stat. 1549; Pub. L. 111–203, title X, §1100C(c), July 21, 2010, 124 Stat. 2111.)

AMENDMENTS

2010—Subsec. (c). Pub. L. 111–203 inserted "or the Bureau of Consumer Financial Protection" after "Commission" wherever appearing.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§6105. Administration and applicability of chapter

(a) In general

Except as otherwise provided in sections 6102(d), 6102(e), 6103, and 6104 of this title, this chapter shall be enforced by the Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.). Consequently, no activity which is outside the jurisdiction of that Act shall be affected by this chapter.

(b) Actions by Commission

The Commission shall prevent any person from violating a rule of the Commission under section 6102 of this title in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this chapter. Any person who violates such rule shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this chapter.

(c) Effect on other laws

Nothing contained in this chapter shall be construed to limit the authority of the Commission under any other provision of law.

(d) Enforcement by Bureau of Consumer Financial Protection

Except as otherwise provided in sections 6102(d), 6102(e), 6103, and 6104 of this title, and subject to subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.], this chapter shall be enforced by the Bureau of Consumer Financial Protection under subtitle E of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5561 et seq.], with respect to the offering or provision of a consumer financial product or service subject to that Act.

(Pub. L. 103–297, §6, Aug. 16, 1994, 108 Stat. 1549; Pub. L. 111–203, title X, §1100C(d), July 21, 2010, 124 Stat. 2111.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsecs. (a) and (b), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

This chapter, referred to in subsecs. (c) and (d), was in the original "this Act", meaning Pub. L. 103–297, Aug. 16, 1994, 108 Stat. 1545, which is classified principally to this chapter. For complete classification of

this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Consumer Financial Protection Act of 2010, referred to in subsec. (d), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955. Subtitles B (§§1021–1029A) and E (§§1051–1058) of the Act are classified generally to parts B (§5511 et seq.) and E (§5561 et seq.), respectively, of subchapter V of chapter 53 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2010—Subsec. (d). Pub. L. 111–203 added subsec. (d).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§6106. Definitions

For purposes of this chapter:

(1) The term "attorney general" means the chief legal officer of a State.

(2) The term "Commission" means the Federal Trade Commission.

(3) The term "State" means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(4) The term "telemarketing" means a plan, program, or campaign which is conducted to induce purchases of goods or services, or a charitable contribution, donation, or gift of money or any other thing of value, by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which—

(A) contains a written description, or illustration of the goods or services offered for sale,

(B) includes the business address of the seller,

(C) includes multiple pages of written material or illustrations, and

(D) has been issued not less frequently than once a year,

where the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation.

(Pub. L. 103–297, §7, Aug. 16, 1994, 108 Stat. 1550; Pub. L. 107–56, title X, §1011(b)(3), Oct. 26, 2001, 115 Stat. 396.)

AMENDMENTS

2001—Par. (4). Pub. L. 107–56 inserted ", or a charitable contribution, donation, or gift of money or any other thing of value," after "services" in introductory provisions.

§6107. Enforcement of orders

(a) General authority

Subject to subsections (b) and (c) of this section, the Federal Trade Commission may bring a criminal contempt action for violations of orders of the Commission obtained in cases brought under section 53(b) of this title.

(b) Appointment

An action authorized by subsection (a) of this section may be brought by the Federal Trade Commission only after, and pursuant to, the appointment by the Attorney General of an attorney employed by the Commission, as a special assistant United States Attorney.

(c) Request for appointment

(1) Appointment upon request or motion

A special assistant United States Attorney may be appointed under subsection (b) of this section upon the request of the Federal Trade Commission or the court which has entered the order for which contempt is sought or upon the Attorney General's own motion.

(2) Timing

The Attorney General shall act upon any request made under paragraph (1) within 45 days of the receipt of the request.

(d) Termination of authority

The authority of the Federal Trade Commission to bring a criminal contempt action under subsection (a) of this section expires 2 years after the date of the first promulgation of rules under section 6102 of this title. The expiration of such authority shall have no effect on an action brought before the expiration date.

(Pub. L. 103–297, §9, Aug. 16, 1994, 108 Stat. 1550.)

§6108. Review

Upon the expiration of 5 years following the date of the first promulgation of rules under section 6102 of this title, the Commission shall review the implementation of this chapter and its effect on deceptive telemarketing acts or practices and report the results of the review to the Congress.

(Pub. L. 103–297, §10, Aug. 16, 1994, 108 Stat. 1551.)

CHAPTER 87A—NATIONAL DO-NOT-CALL REGISTRY

Sec.

6151. National do-not-call registry.
6152. Telemarketing Sales Rule; do-not-call registry fees.
6153. Federal Communications Commission do-not-call regulations.
6154. Reporting requirements.
6155. Prohibition of expiration date.

CODIFICATION

This chapter is comprised principally of Pub. L. 108–10, Mar. 11, 2003, 117 Stat. 557, which was formerly set out as a note under section 6101 of this title.

§6151. National Do-Not-Call Registry

(a) Authority

The Federal Trade Commission is authorized under section 6102(a)(3)(A) of this title to implement and enforce a national do-not-call registry.

(b) Ratification

The do-not-call registry provision of the Telemarketing Sales Rule (16 C.F.R. 310.4(b)(1)(iii)), which was promulgated by the Federal Trade Commission, effective March 31, 2003, is ratified.

(Pub. L. 108–82, §1, Sept. 29, 2003, 117 Stat. 1006.)

CODIFICATION

Section was formerly set out as a note under section 6102 of this title.

Section was enacted as part of Pub. L. 108–82, and not as part of the Do-Not-Call Implementation Act which comprises this chapter.

SHORT TITLE OF 2008 AMENDMENT

Pub. L. 110–188, §1, Feb. 15, 2008, 122 Stat. 635, provided that: "This Act [amending sections 6152 and

6154 of this title and enacting provisions set out as a note under section 6152 of this title] may be cited as the 'Do-Not-Call Registry Fee Extension Act of 2007'."

Pub. L. 110–187, §1, Feb. 15, 2008, 122 Stat. 633, provided that: "This Act [enacting section 6155 of this title] may be cited as the 'Do-Not-Call Improvement Act of 2007'."

SHORT TITLE

Pub. L. 108–10, §1, Mar. 11, 2003, 117 Stat. 557, provided that: "This Act [enacting this chapter] may be cited as the 'Do-Not-Call Implementation Act'."

§6152. Telemarketing Sales Rule; do-not-call registry fees

(a) In general

The Federal Trade Commission shall assess and collect an annual fee pursuant to this section in order to implement and enforce the "do-not-call" registry as provided for in section 310.4(b)(1)(iii) of title 16, Code of Federal Regulations, or any other regulation issued by the Commission under section 6102 of this title.

(b) Annual fees

(1) In general

The Commission shall charge each person who accesses the "do-not-call" registry an annual fee that is equal to the lesser of—

(A) $54 for each area code of data accessed from the registry; or

(B) $14,850 for access to every area code of data contained in the registry.

(2) Exception

The Commission shall not charge a fee to any person—

(A) for accessing the first 5 area codes of data; or

(B) for accessing area codes of data in the registry if the person is permitted to access, but is not required to access, the "do-not-call" registry under section [1] 310 of title 16, Code of Federal Regulations, section 64.1200 of title 47, Code of Federal Regulations, or any other Federal regulation or law.

(3) Duration of access

(A) In general

The Commission shall allow each person who pays the annual fee described in paragraph (1), each person excepted under paragraph (2) from paying the annual fee, and each person excepted from paying an annual fee under section 310.4(b)(1)(iii)(B) of title 16, Code of Federal Regulations, to access the area codes of data in the "do-not-call" registry for which the person has paid during that person's annual period.

(B) Annual period

In this paragraph, the term "annual period" means the 12-month period beginning on the first day of the month in which a person pays the fee described in paragraph (1).

(c) Additional fees

(1) In general

The Commission shall charge a person required to pay an annual fee under subsection (b) an additional fee for each additional area code of data the person wishes to access during that person's annual period.

(2) Rates

For each additional area code of data to be accessed during the person's annual period, the Commission shall charge—

(A) $54 for access to such data if access to the area code of data is first requested during the

first 6 months of the person's annual period; or

(B) $27 for access to such data if access to the area code of data is first requested after the first 6 months of the person's annual period.

(d) Adjustment of fees

(1) In general

(A) Fiscal year 2009

The dollar amount described in subsection (b) or (c) is the amount to be charged for fiscal year 2009.

(B) Fiscal years after 2009

For each fiscal year beginning after fiscal year 2009, each dollar amount in subsection (b)(1) and (c)(2) shall be increased by an amount equal to—

(i) the dollar amount in paragraph (b)(1) or (c)(2), whichever is applicable, multiplied by

(ii) the percentage (if any) by which the CPI for the most recently ended 12-month period ending on June 30 exceeds the baseline CPI.

(2) Rounding

Any increase under subparagraph (B) shall be rounded to the nearest dollar.

(3) Changes less than 1 percent

The Commission shall not adjust the fees under this section if the change in the CPI is less than 1 percent.

(4) Publication

Not later than September 1 of each year the Commission shall publish in the Federal Register the adjustments to the applicable fees, if any, made under this subsection.

(5) Definitions

In this subsection:

(A) CPI

The term "CPI" means the average of the monthly consumer price index (for all urban consumers published by the Department of Labor).

(B) Baseline CPI

The term "baseline CPI" means the CPI for the 12-month period ending June 30, 2008.

(e) Prohibition against fee sharing

No person may enter into or participate in an arrangement (as such term is used in section 310.8(c) of the Commission's regulations (16 C.F.R. 310.8(c))) to share any fee required by subsection (b) or (c), including any arrangement to divide the costs to access the registry among various clients of a telemarketer or service provider.

(f) Handling of fees

(1) In general

The Commission shall deposit and credit as offsetting collections any fee collected under this section in the account "Federal Trade Commission—Salaries and Expenses", and such sums shall remain available until expended.

(2) Limitation

No amount shall be collected as a fee under this section for any fiscal year except to the extent provided in advance by appropriations Acts.

(Pub. L. 108–10, §2, Mar. 11, 2003, 117 Stat. 557; Pub. L. 110–188, §2, Feb. 15, 2008, 122 Stat. 635.)

AMENDMENTS

2008—Pub. L. 110–188 amended section generally. Prior to amendment, text read as follows: "The Federal Trade Commission may promulgate regulations establishing fees sufficient to implement and enforce the provisions relating to the 'do-not-call' registry of the Telemarketing Sales Rule (16 CFR 310.4(b)(1)(iii)), promulgated under the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6101 et seq.). Such regulations shall be promulgated in accordance with section 553 of title 5, United States Code. Fees may be collected pursuant to this section for fiscal years 2003 through 2007, and shall be deposited and credited as offsetting collections to the account, Federal Trade Commission—Salaries and Expenses, and shall remain available until expended. No amounts shall be collected as fees pursuant to this section for such fiscal years except to the extent provided in advance in appropriations Acts. Such amounts shall be available for expenditure only to offset the costs of activities and services related to the implementation and enforcement of the Telemarketing Sales Rule, and other activities resulting from such implementation and enforcement."

RULEMAKING

Pub. L. 110–188, §4, Feb. 15, 2008, 122 Stat. 637, provided that: "The Federal Trade Commission may issue rules, in accordance with section 553 of title 5, United States Code, as necessary and appropriate to carry out the amendments to the Do-Not-Call Implementation Act (15 U.S.C. 6101 note) [now this chapter] made by this Act [amending this section and section 6154 of this title]."

[1] *So in original. Probably should be "part".*

§6153. Federal Communications Commission do-not-call regulations

Not later than 180 days after March 11, 2003, the Federal Communications Commission shall issue a final rule pursuant to the rulemaking proceeding that it began on September 18, 2002, under the Telephone Consumer Protection Act (47 U.S.C. 227 et seq.). In issuing such rule, the Federal Communications Commission shall consult and coordinate with the Federal Trade Commission to maximize consistency with the rule promulgated by the Federal Trade Commission (16 CFR 310.4(b)).

(Pub. L. 108–10, §3, Mar. 11, 2003, 117 Stat. 557.)

REFERENCES IN TEXT

The Telephone Consumer Protection Act, referred to in text, probably means the Telephone Consumer Protection Act of 1991, Pub. L. 102–243, Dec. 20, 1991, 105 Stat. 2394, which enacted section 227 of Title 47, Telecommunications, amended sections 152 and 331 of Title 47, and enacted provisions set out as notes under sections 227 and 609 of Title 47. For complete classification of this Act to the Code, see Short Title of 1991 Amendment note set out under section 609 of Title 47 and Tables.

§6154. Reporting requirements

(a) Biennial reports

Not later than December 31, 2009, and biennially thereafter, the Federal Trade Commission, in consultation with the Federal Communications Commission, shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce that includes—

(1) the number of consumers who have placed their telephone numbers on the registry;

(2) the number of persons paying fees for access to the registry and the amount of such fees;

(3) the impact on the "do-not-call" registry of—

(A) the 5-year reregistration requirement;

(B) new telecommunications technology; and

(C) number portability and abandoned telephone numbers; and

(4) the impact of the established business relationship exception on businesses and consumers.

(b) Additional report

Not later than December 31, 2009, the Federal Trade Commission, in consultation with the Federal Communications Commission, shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce that includes—

(1) the effectiveness of do-not-call outreach and enforcement efforts with regard to senior citizens and immigrant communities;

(2) the impact of the exceptions to the do-not-call registry on businesses and consumers, including an analysis of the effectiveness of the registry and consumer perceptions of the registry's effectiveness; and

(3) the impact of abandoned calls made by predictive dialing devices on do-not-call enforcement.

(Pub. L. 108–10, §4, Mar. 11, 2003, 117 Stat. 557; Pub. L. 110–188, §3, Feb. 15, 2008, 122 Stat. 637.)

AMENDMENTS

2008—Pub. L. 110–188 amended section generally. Prior to amendment, section related to reports on regulatory coordination between Federal Trade Commission and Federal Communications Commission and reports on "do-not-call" registry for fiscal years 2003 through 2007.

§6155. Prohibition of expiration date

(a) No automatic removal of numbers

Telephone numbers registered on the national "do-not-call" registry of the Telemarketing Sales Rule (16 CFR 310.4(b)(1)(iii)) since the establishment of the registry and telephone numbers registered on such registry after March 11, 2003, shall not be removed from such registry except as provided for in subsection (b) or upon the request of the individual to whom the telephone number is assigned.

(b) Removal of invalid, disconnected, and reassigned telephone numbers

The Federal Trade Commission shall periodically check telephone numbers registered on the national "do-not-call" registry against national or other appropriate databases and shall remove from such registry those telephone numbers that have been disconnected and reassigned. Nothing in this section prohibits the Federal Trade Commission from removing invalid telephone numbers from the registry at any time.

(Pub. L. 108–10, §5, as added Pub. L. 110–187, §2, Feb. 15, 2008, 122 Stat. 633.)

CHAPTER 88—INTERNATIONAL ANTITRUST ENFORCEMENT ASSISTANCE

Sec.

6201. Disclosure to foreign antitrust authority of antitrust evidence.
6202. Investigations to assist foreign antitrust authority in obtaining antitrust evidence.
6203. Jurisdiction of district courts of United States.
6204. Limitations on authority.
6205. Exception to certain disclosure restrictions.
6206. Publication requirements applicable to antitrust mutual assistance agreements.
6207. Conditions on use of antitrust mutual assistance agreements.
6208. Limitations on judicial review.
6209. Preservation of existing authority.
6210. Report to Congress.
6211. Definitions.
6212. Authority to receive reimbursement.

§6201. Disclosure to foreign antitrust authority of antitrust evidence

In accordance with an antitrust mutual assistance agreement in effect under this chapter, subject to section 6207 of this title, and except as provided in section 6204 of this title, the Attorney General of the United States and the Federal Trade Commission may provide to a foreign antitrust authority with respect to which such agreement is in effect under this chapter, antitrust evidence to assist the foreign antitrust authority—

(1) in determining whether a person has violated or is about to violate any of the foreign antitrust laws administered or enforced by the foreign antitrust authority, or

(2) in enforcing any of such foreign antitrust laws.

(Pub. L. 103–438, §2, Nov. 2, 1994, 108 Stat. 4597.)

REFERENCES IN TEXT

This chapter, referred to in text, was in original "this Act", meaning Pub. L. 103–438, Nov. 2, 1994, 108 Stat. 4597, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note below and Tables.

SHORT TITLE

Pub. L. 103–438, §1, Nov. 2, 1994, 108 Stat. 4597, provided that: "This Act [enacting this chapter and amending sections 46, 57b–1, 1311, and 1312 of this title] may be cited as the 'International Antitrust Enforcement Assistance Act of 1994'."

§6202. Investigations to assist foreign antitrust authority in obtaining antitrust evidence

(a) Request for investigative assistance

A request by a foreign antitrust authority for investigative assistance under this section shall be made to the Attorney General, who may deny the request in whole or in part. No further action shall be taken under this section with respect to any part of a request that has been denied by the Attorney General.

(b) Authority to investigate

In accordance with an antitrust mutual assistance agreement in effect under this chapter, subject to section 6207 of this title, and except as provided in section 6204 of this title, the Attorney General and the Commission may, using their respective authority to investigate possible violations of the Federal antitrust laws, conduct investigations to obtain antitrust evidence relating to a possible violation of the foreign antitrust laws administered or enforced by the foreign antitrust authority with respect to which such agreement is in effect under this chapter, and may provide such antitrust evidence to the foreign antitrust authority, to assist the foreign antitrust authority—

(1) in determining whether a person has violated or is about to violate any of such foreign antitrust laws, or

(2) in enforcing any of such foreign antitrust laws.

(c) Special scope of authority

An investigation may be conducted under subsection (b) of this section, and antitrust evidence obtained through such investigation may be provided, without regard to whether the conduct investigated violates any of the Federal antitrust laws.

(d) Rights and privileges preserved

A person may not be compelled in connection with an investigation under this section to give testimony or a statement, or to produce a document or other thing, in violation of any legally applicable right or privilege.

(Pub. L. 103–438, §3, Nov. 2, 1994, 108 Stat. 4597.)

CODIFICATION

Section is comprised of section 3 of Pub. L. 103–438. Subsec. (e) of section 3 of Pub. L. 103–438 amended sections 46, 57b–1, 1311, and 1312 of this title.

§6203. Jurisdiction of district courts of United States

(a) Authority of district courts

On the application of the Attorney General made in accordance with an antitrust mutual assistance agreement in effect under this chapter, the United States district court for the district in which a person resides, is found, or transacts business may order such person to give testimony or a statement, or to produce a document or other thing, to the Attorney General to assist a foreign antitrust authority with respect to which such agreement is in effect under this chapter—

(1) in determining whether a person has violated or is about to violate any of the foreign antitrust laws administered or enforced by the foreign antitrust authority, or

(2) in enforcing any of such foreign antitrust laws.

(b) Contents of order

(1) Use of appointee to receive evidence

(A) An order issued under subsection (a) of this section may direct that testimony or a statement be given, or a document or other thing be produced, to a person who shall be recommended by the Attorney General and appointed by the court.

(B) A person appointed under subparagraph (A) shall have power to administer any necessary oath and to take such testimony or such statement.

(2) Practice and procedure

(A) An order issued under subsection (a) of this section may prescribe the practice and procedure for taking testimony and statements and for producing documents and other things.

(B) Such practice and procedure may be in whole or in part the practice and procedure of the foreign state, or the regional economic integration organization, represented by the foreign antitrust authority with respect to which the Attorney General requests such order.

(C) To the extent such order does not prescribe otherwise, any testimony and statements required to be taken shall be taken, and any documents and other things required to be produced shall be produced, in accordance with the Federal Rules of Civil Procedure.

(c) Rights and privileges preserved

A person may not be compelled under an order issued under subsection (a) of this section to give testimony or a statement, or to produce a document or other thing, in violation of any legally applicable right or privilege.

(d) Voluntary conduct

This section does not preclude a person in the United States from voluntarily giving testimony or a statement, or producing a document or other thing, in any manner acceptable to such person for use in an investigation by a foreign antitrust authority.

(Pub. L. 103–438, §4, Nov. 2, 1994, 108 Stat. 4599.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (b)(2)(C), are classified to Title 28, Appendix, Judiciary and Judicial Procedure.

§6204. Limitations on authority

Sections 6201, 6202, and 6203 of this title shall not apply with respect to the following antitrust evidence:

(1) Antitrust evidence that is received by the Attorney General or the Commission under section 18a of this title. Nothing in this paragraph shall affect the ability of the Attorney General or the Commission to disclose to a foreign antitrust authority antitrust evidence that is obtained otherwise than under section 18a of this title.

(2) Antitrust evidence that is matter occurring before a grand jury and with respect to which disclosure is prevented by Federal law, except that for the purpose of applying Rule 6(e)(3)(C)(iv) of the Federal Rules of Criminal Procedure with respect to this section—

(A) a foreign antitrust authority with respect to which a particularized need for such antitrust evidence is shown shall be considered to be an appropriate official of any of the several States, and

(B) a foreign antitrust law administered or enforced by the foreign antitrust authority shall be considered to be a State criminal law.

(3) Antitrust evidence that is specifically authorized under criteria established by Executive Order 12356, or any successor to such order, to be kept secret in the interest of national defense or foreign policy, and—

(A) that is classified pursuant to such order or such successor, or

(B) with respect to which a determination of classification is pending under such order or such successor.

(4) Antitrust evidence that is classified under section 2162 of title 42.

(Pub. L. 103–438, §5, Nov. 2, 1994, 108 Stat. 4599.)

REFERENCES IN TEXT

Rule 6(e)(3)(C)(iv) of the Federal Rules of Criminal Procedure, referred to in par. (2), is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

Executive Order 12356, referred to in par. (3), is Ex. Ord. No. 12356, Apr. 2, 1982, 47 F.R. 14874, 15557, which was formerly set out as a note under section 435 (now section 3161) of Title 50, War and National Defense, was revoked by Ex. Ord. No. 12958, §6.1(d), Apr. 17, 1995, 60 F.R. 19843.

§6205. Exception to certain disclosure restrictions

Section 1313 of this title, and sections 46(f) and 57b–2 of this title, shall not apply to prevent the Attorney General or the Commission from providing to a foreign antitrust authority antitrust evidence in accordance with an antitrust mutual assistance agreement in effect under this chapter and in accordance with the other requirements of this chapter.

(Pub. L. 103–438, §6, Nov. 2, 1994, 108 Stat. 4600.)

§6206. Publication requirements applicable to antitrust mutual assistance agreements

(a) Publication of proposed antitrust mutual assistance agreements

Not less than 45 days before an antitrust mutual assistance agreement is entered into, the Attorney General, with the concurrence of the Commission, shall publish in the Federal Register—

(1) the proposed text of such agreement and any modification to such proposed text, and

(2) a request for public comment with respect to such text or such modification, as the case may be.

(b) Publication of proposed amendments to antitrust mutual assistance agreements in effect

Not less than 45 days before an agreement is entered into that makes an amendment to an antitrust mutual assistance agreement, the Attorney General, with the concurrence of the Commission, shall publish in the Federal Register—

(1) the proposed text of such amendment, and
(2) a request for public comment with respect to such amendment.

(c) Publication of antitrust mutual assistance agreements, amendments, and terminations

Not later than 45 days after an antitrust mutual assistance agreement is entered into or terminated, or an agreement that makes an amendment to an antitrust mutual assistance agreement is entered into, the Attorney General, with the concurrence of the Commission, shall publish in the Federal Register—

(1) the text of the antitrust mutual assistance agreement or amendment, or the terms of the termination, as the case may be, and

(2) in the case of an agreement that makes an amendment to an antitrust mutual assistance agreement, a notice containing—

(A) citations to the locations in the Federal Register at which the text of the antitrust mutual assistance agreement that is so amended, and of any previous amendments to such agreement, are published, and

(B) a description of the manner in which a copy of the antitrust mutual assistance agreement, as so amended, may be obtained from the Attorney General and the Commission.

(d) Condition for validity

An antitrust mutual assistance agreement, or an agreement that makes an amendment to an antitrust mutual assistance agreement, with respect to which publication does not occur in accordance with subsections (a), (b), and (c) of this section shall not be considered to be in effect under this chapter.

(Pub. L. 103–438, §7, Nov. 2, 1994, 108 Stat. 4600.)

§6207. Conditions on use of antitrust mutual assistance agreements

(a) Determinations

Neither the Attorney General nor the Commission may conduct an investigation under section 6202 of this title, apply for an order under section 6203 of this title, or provide antitrust evidence to a foreign antitrust authority under an antitrust mutual assistance agreement, unless the Attorney General or the Commission, as the case may be, determines in the particular instance in which the investigation, application, or antitrust evidence is requested that—

(1) the foreign antitrust authority—

(A) will satisfy the assurances, terms, and conditions described in subparagraphs (A), (B), and (E) of section 6211(2) of this title, and

(B) is capable of complying with and will comply with the confidentiality requirements applicable under such agreement to the requested antitrust evidence,

(2) providing the requested antitrust evidence will not violate section 6204 of this title, and

(3) conducting such investigation, applying for such order, or providing the requested antitrust evidence, as the case may be, is consistent with the public interest of the United States, taking into consideration, among other factors, whether the foreign state or regional economic integration organization represented by the foreign antitrust authority holds any proprietary interest that could benefit or otherwise be affected by such investigation, by the granting of such order, or by the provision of such antitrust evidence.

(b) Limitation on disclosure of certain antitrust evidence

Neither the Attorney General nor the Commission may disclose in violation of an antitrust mutual assistance agreement any antitrust evidence received under such agreement, except that such agreement may not prevent the disclosure of such antitrust evidence to a defendant in an action or proceeding brought by the Attorney General or the Commission for a violation of any of the Federal laws if such disclosure would otherwise be required by Federal law.

(c) Required disclosure of notice received

If the Attorney General or the Commission receives a notice described in section 6211(2)(H) of this title, the Attorney General or the Commission, as the case may be, shall transmit such notice to the person that provided the evidence with respect to which such notice is received.

(Pub. L. 103–438, §8, Nov. 2, 1994, 108 Stat. 4601.)

§6208. Limitations on judicial review

(a) Determinations

Determinations made under paragraphs (1) and (3) of section 6207(a) of this title shall not be subject to judicial review.

(b) Citations to and descriptions of confidentiality laws

Whether an antitrust mutual assistance agreement satisfies section 6211(2)(C) of this title shall not be subject to judicial review.

(c) Rules of construction

(1) Administrative Procedure Act

The requirements in section 6206 of this title with respect to publication and request for public comment shall not be construed to create any availability of judicial review under chapter 7 of title 5.

(2) Laws referenced in section 6204 of this title

Nothing in this section shall be construed to affect the availability of judicial review under laws referred to in section 6204 of this title.

(Pub. L. 103–438, §9, Nov. 2, 1994, 108 Stat. 4602.)

§6209. Preservation of existing authority

(a) In general

The authority provided by this chapter is in addition to, and not in lieu of, any other authority vested in the Attorney General, the Commission, or any other officer of the United States.

(b) Attorney General and Commission

This chapter shall not be construed to modify or affect the allocation of responsibility between the Attorney General and the Commission for the enforcement of the Federal antitrust laws.

(Pub. L. 103–438, §10, Nov. 2, 1994, 108 Stat. 4602.)

§6210. Report to Congress

In the 30-day period beginning 3 years after November 2, 1994, and with the concurrence of the Commission, the Attorney General shall submit, to the Speaker of the House of Representatives and the President pro tempore of the Senate, a report—

(1) describing how the operation of this chapter has affected the enforcement of the Federal antitrust laws,

(2) describing the extent to which foreign antitrust authorities have complied with the confidentiality requirements applicable under antitrust mutual assistance agreements in effect under this chapter,

(3) specifying separately the identities of the foreign states, regional economic integration organizations, and foreign antitrust authorities that have entered into such agreements and the identities of the foreign antitrust authorities with respect to which such foreign states and such

organizations have entered into such agreements,

(4) specifying the identity of each foreign state, and each regional economic integration organization, that has in effect a law similar to this chapter,

(5) giving the approximate number of requests made by the Attorney General and the Commission under such agreements to foreign antitrust authorities for antitrust investigations and for antitrust evidence,

(6) giving the approximate number of requests made by foreign antitrust authorities under such agreements to the Attorney General and the Commission for investigations under section 6202 of this title, for orders under section 6203 of this title, and for antitrust evidence, and

(7) describing any significant problems or concerns of which the Attorney General is aware with respect to the operation of this chapter.

(Pub. L. 103–438, §11, Nov. 2, 1994, 108 Stat. 4602.)

§6211. Definitions

For purposes of this chapter:

(1) The term "antitrust evidence" means information, testimony, statements, documents, or other things that are obtained in anticipation of, or during the course of, an investigation or proceeding under any of the Federal antitrust laws or any of the foreign antitrust laws.

(2) The term "antitrust mutual assistance agreement" means a written agreement, or written memorandum of understanding, that is entered into by the United States and a foreign state or regional economic integration organization (with respect to the foreign antitrust authorities of such foreign state or such organization, and such other governmental entities of such foreign state or such organization as the Attorney General and the Commission jointly determine may be necessary in order to provide the assistance described in subparagraph (A)), or jointly by the Attorney General and the Commission and a foreign antitrust authority, for the purpose of conducting investigations under section 6202 of this title, applying for orders under section 6203 of this title, or providing antitrust evidence, on a reciprocal basis and that includes the following:

(A) An assurance that the foreign antitrust authority will provide to the Attorney General and the Commission assistance that is comparable in scope to the assistance the Attorney General and the Commission provide under such agreement or such memorandum.

(B) An assurance that the foreign antitrust authority is subject to laws and procedures that are adequate to maintain securely the confidentiality of antitrust evidence that may be received under section 6201, 6202, or 6203 of this title and will give protection to antitrust evidence received under such section that is not less than the protection provided under the laws of the United States to such antitrust evidence.

(C) Citations to and brief descriptions of the laws of the United States, and the laws of the foreign state or regional economic integration organization represented by the foreign antitrust authority, that protect the confidentiality of antitrust evidence that may be provided under such agreement or such memorandum. Such citations and such descriptions shall include the enforcement mechanisms and penalties applicable under such laws and, with respect to a regional economic integration organization, the applicability of such laws, enforcement mechanisms, and penalties to the foreign states composing such organization.

(D) Citations to the Federal antitrust laws, and the foreign antitrust laws, with respect to which such agreement or such memorandum applies.

(E) Terms and conditions that specifically require using, disclosing, or permitting the use or disclosure of, antitrust evidence received under such agreement or such memorandum only—

(i) for the purpose of administering or enforcing the foreign antitrust laws involved, or

(ii) with respect to a specified disclosure or use requested by a foreign antitrust authority and essential to a significant law enforcement objective, in accordance with the prior written consent that the Attorney General or the Commission, as the case may be, gives after—

(I) determining that such antitrust evidence is not otherwise readily available with

respect to such objective,

(II) making the determinations described in paragraphs (2) and (3) of section 6207(a) of this title, with respect to such disclosure or use, and

(III) making the determinations applicable to a foreign antitrust authority under section 6207(a)(1) of this title (other than the determination regarding the assurance described in subparagraph (A) of this paragraph), with respect to each additional governmental entity, if any, to be provided such antitrust evidence in the course of such disclosure or use, after having received adequate written assurances applicable to each such governmental entity.

(F) An assurance that antitrust evidence received under section 6201, 6202, or 6203 of this title from the Attorney General or the Commission, and all copies of such evidence, in the possession or control of the foreign antitrust authority will be returned to the Attorney General or the Commission, respectively, at the conclusion of the foreign investigation or proceeding with respect to which such evidence was so received.

(G) Terms and conditions that specifically provide that such agreement or such memorandum will be terminated if—

(i) the confidentiality required under such agreement or such memorandum is violated with respect to antitrust evidence, and

(ii) adequate action is not taken both to minimize any harm resulting from the violation and to ensure that the confidentiality required under such agreement or such memorandum is not violated again.

(H) Terms and conditions that specifically provide that if the confidentiality required under such agreement or such memorandum is violated with respect to antitrust evidence, notice of the violation will be given—

(i) by the foreign antitrust authority promptly to the Attorney General or the Commission with respect to antitrust evidence provided by the Attorney General or the Commission, respectively, and

(ii) by the Attorney General or the Commission to the person (if any) that provided such evidence to the Attorney General or the Commission.

(3) The term "Attorney General" means the Attorney General of the United States.

(4) The term "Commission" means the Federal Trade Commission.

(5) The term "Federal antitrust laws" has the meaning given the term "antitrust laws" in subsection (a) of section 12 of this title but also includes section 45 of this title to the extent that such section 45 applies to unfair methods of competition.

(6) The term "foreign antitrust authority" means a governmental entity of a foreign state or of a regional economic integration organization that is vested by such state or such organization with authority to enforce the foreign antitrust laws of such state or such organization.

(7) The term "foreign antitrust laws" means the laws of a foreign state, or of a regional economic integration organization, that are substantially similar to any of the Federal antitrust laws and that prohibit conduct similar to conduct prohibited under the Federal antitrust laws.

(8) The term "person" has the meaning given such term in subsection (a) of section 12 of this title.

(9) The term "regional economic integration organization" means an organization that is constituted by, and composed of, foreign states, and on which such foreign states have conferred sovereign authority to make decisions that are binding on such foreign states, and that are directly applicable to and binding on persons within such foreign states, including the decisions with respect to—

(A) administering or enforcing the foreign antitrust laws of such organization, and

(B) prohibiting and regulating disclosure of information that is obtained by such organization in the course of administering or enforcing such laws.

(Pub. L. 103–438, §12, Nov. 2, 1994, 108 Stat. 4603.)

§6212. Authority to receive reimbursement

The Attorney General and the Commission are authorized to receive from a foreign antitrust authority, or from the foreign state or regional economic integration organization represented by such foreign antitrust authority, reimbursement for the costs incurred by the Attorney General or the Commission, respectively, in conducting an investigation under section 6202 of this title requested by such foreign antitrust authority, applying for an order under section 6203 of this title to assist such foreign antitrust authority, or providing antitrust evidence to such foreign antitrust authority under an antitrust mutual assistance agreement in effect under this chapter with respect to such foreign antitrust authority.

(Pub. L. 103–438, §13, Nov. 2, 1994, 108 Stat. 4605.)

CHAPTER 89—PROFESSIONAL BOXING SAFETY

Sec.

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§6301. Definitions

For purposes of this chapter:

(1) Boxer

The term "boxer" means an individual who fights in a professional boxing match.

(2) Boxing commission

(A) [1] The term "boxing commission" means an entity authorized under State law to regulate professional boxing matches.

(3) Boxer registry

The term "boxer registry" means any entity certified by the Association of Boxing Commissions for the purposes of maintaining records and identification of boxers.

(4) Licensee

The term "licensee" means an individual who serves as a trainer, second, or cut man for a boxer.

(5) Manager

The term "manager" means a person who receives compensation for service as an agent or representative of a boxer.

(6) Matchmaker

The term "matchmaker" means a person that proposes, selects, and arranges the boxers to participate in a professional boxing match.

(7) Physician

The term "physician" means a doctor of medicine legally authorized to practice medicine by the State in which the physician performs such function or action.

(8) Professional boxing match

The term "professional boxing match" means a boxing contest held in the United States between individuals for financial compensation. Such term does not include a boxing contest that is regulated by an amateur sports organization.

(9) Promoter

The term "promoter" means the person primarily responsible for organizing, promoting, and producing a professional boxing match. The term "promoter" does not include a hotel, casino, resort, or other commercial establishment hosting or sponsoring a professional boxing match unless—

(A) the hotel, casino, resort, or other commercial establishment is primarily responsible for organizing, promoting, and producing the match; and

(B) there is no other person primarily responsible for organizing, promoting, and producing the match.

(10) State

The term "State" means each of the 50 States, Puerto Rico, the District of Columbia, and any territory or possession of the United States, including the Virgin Islands.

(11) Effective date of the contract

The term "effective date of the contract" means the day upon which a boxer becomes legally bound by the contract.

(12) Boxing service provider

The term "boxing service provider" means a promoter, manager, sanctioning body, licensee, or matchmaker.

(13) Contract provision

The term "contract provision" means any legal obligation between a boxer and a boxing service provider.

(14) Sanctioning organization

The term "sanctioning organization" means an organization that sanctions professional boxing matches in the United States—

(A) between boxers who are residents of different States; or

(B) that are advertised, otherwise promoted, or broadcast (including closed circuit television) in interstate commerce.

(15) Suspension

The term "suspension" includes within its meaning the revocation of a boxing license.

(Pub. L. 104–272, §2, Oct. 9, 1996, 110 Stat. 3309; Pub. L. 106–210, §7(a), May 26, 2000, 114 Stat. 327.)

CODIFICATION

Pub. L. 106–210, §7(a), which directed amendments to subsec. (a) of this section, was executed as if it directed amendments to this section rather than to subsec. (a) of this section to reflect the probable intent of Congress because this section does not contain a subsec. (a). See 2000 Amendment notes below.

AMENDMENTS

2000—Par. (9). Pub. L. 106–210, §7(a)(1), inserted last sentence. See Codification note above.

Par. (10). Pub. L. 106–210, §7(a)(2), inserted ", including the Virgin Islands" before the period at end. See Codification note above.

Pars. (11) to (15). Pub. L. 106–210, §7(a)(3), added pars. (11) to (15). See Codification note above.

EFFECTIVE DATE

Pub. L. 104–272, §23, formerly §15, Oct. 9, 1996, 110 Stat. 3314, as renumbered §23 by Pub. L. 106–210, §4(1), May 26, 2000, 114 Stat. 322, provided that: "The provisions of this Act [enacting this chapter] shall take effect on January 1, 1997, except as follows:

"(1) Section 9 [now section 17, enacting section 6308 of this title] shall not apply to an otherwise authorized boxing commission in the Commonwealth of Virginia until July 1, 1998.

"(2) Sections 5 through 9 [enacting sections 6304 to 6308 of this title] shall take effect on July 1, 1997."

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–210, §1, May 26, 2000, 114 Stat. 321, provided that: "This Act [enacting sections 6307a to 6307h of this title, amending this section and sections 6303, 6305, 6306, and 6308 to 6313 of this title, and enacting and amending provisions set out as notes under this section] may be cited as the 'Muhammad Ali Boxing Reform Act'."

SHORT TITLE

Pub. L. 104–272, §1, Oct. 9, 1996, 110 Stat. 3309, provided that: "This Act [enacting this chapter] may be cited as the 'Professional Boxing Safety Act of 1996'."

FINDINGS

Pub. L. 106–210, §2, May 26, 2000, 114 Stat. 321, provided that: "The Congress makes the following findings:

"(1) Professional boxing differs from other major, interstate professional sports industries in the United States in that it operates without any private sector association, league, or centralized industry organization to establish uniform and appropriate business practices and ethical standards. This has led to repeated occurrences of disreputable and coercive business practices in the boxing industry, to the detriment of professional boxers nationwide.

"(2) State officials are the proper regulators of professional boxing events, and must protect the welfare of professional boxers and serve the public interest by closely supervising boxing activity in their jurisdiction. State boxing commissions do not currently receive adequate information to determine whether boxers competing in their jurisdiction are being subjected to contract terms and business practices which may violate State regulations, or are onerous and confiscatory.

"(3) Promoters who engage in illegal, coercive, or unethical business practices can take advantage of the lack of equitable business standards in the sport by holding boxing events in States with weaker regulatory oversight.

"(4) The sanctioning organizations which have proliferated in the boxing industry have not established credible and objective criteria to rate professional boxers, and operate with virtually no industry or public oversight. Their ratings are susceptible to manipulation, have deprived boxers of fair opportunities for advancement, and have undermined public confidence in the integrity of the sport.

"(5) Open competition in the professional boxing industry has been significantly interfered with by restrictive and anticompetitive business practices of certain promoters and sanctioning bodies, to the detriment of the athletes and the ticket-buying public. Common practices of promoters and sanctioning organizations represent restraints of interstate trade in the United States.

"(6) It is necessary and appropriate to establish national contracting reforms to protect professional boxers and prevent exploitive business practices, and to require enhanced financial disclosures to State athletic commissions to improve the public oversight of the sport."

PURPOSES OF 2000 AMENDMENT

Pub. L. 106–210, §3, May 26, 2000, 114 Stat. 322, provided that: "The purposes of this Act [see Short Title

of 2000 Amendment note above] are—

"(1) to protect the rights and welfare of professional boxers on an interstate basis by preventing certain exploitive, oppressive, and unethical business practices;

"(2) to assist State boxing commissions in their efforts to provide more effective public oversight of the sport; and

"(3) to promote honorable competition in professional boxing and enhance the overall integrity of the industry."

[1] *So in original. No subpar. (B) has been enacted.*

§6302. Purposes

The purposes of this chapter are—

(1) to improve and expand the system of safety precautions that protects the welfare of professional boxers; and

(2) to assist State boxing commissions to provide proper oversight for the professional boxing industry in the United States.

(Pub. L. 104–272, §3, Oct. 9, 1996, 110 Stat. 3310.)

§6303. Boxing matches in States without boxing commissions

(a) No person may arrange, promote, organize, produce, or fight in a professional boxing match held in a State that does not have a boxing commission unless the match is supervised by a boxing commission from another State and subject to the most recent version of the recommended regulatory guidelines certified and published by the Association of Boxing Commissions as well as any additional relevant professional boxing regulations and requirements of such other State.

(b) For the purpose of this chapter, if no State commission is available to supervise a boxing match according to subsection (a) of this section, then—

(1) the match may not be held unless it is supervised by an association of boxing commissions to which at least a majority of the States belong; and

(2) any reporting or other requirement relating to a supervising commission allowed under this section shall be deemed to refer to the entity described in paragraph (1).

(Pub. L. 104–272, §4, Oct. 9, 1996, 110 Stat. 3310; Pub. L. 106–210, §7(e), May 26, 2000, 114 Stat. 328.)

AMENDMENTS

2000—Pub. L. 106–210 designated existing provisions as subsec. (a) and added subsec. (b).

§6304. Safety standards

No person may arrange, promote, organize, produce, or fight in a professional boxing match without meeting each of the following requirements or an alternative requirement in effect under regulations of a boxing commission that provides equivalent protection of the health and safety of boxers:

(1) A physical examination of each boxer by a physician certifying whether or not the boxer is physically fit to safely compete, copies of which must be provided to the boxing commission.

(2) Except as otherwise expressly provided under regulation of a boxing commission promulgated subsequent to October 9, 1996, an ambulance or medical personnel with appropriate resuscitation equipment continuously present on site.

(3) A physician continuously present at ringside.

(4) Health insurance for each boxer to provide medical coverage for any injuries sustained in the match.

(Pub. L. 104–272, §5, Oct. 9, 1996, 110 Stat. 3310.)

§6305. Registration

(a) Requirements

Each boxer shall register with—

(1) the boxing commission of the State in which such boxer resides; or

(2) in the case of a boxer who is a resident of a foreign country, or a State in which there is no boxing commission, the boxing commission of any State that has such a commission.

(b) Identification card

(1) Issuance

A boxing commission shall issue to each professional boxer who registers in accordance with subsection (a) of this section, an identification card that contains each of the following:

(A) A recent photograph of the boxer.

(B) The social security number of the boxer (or, in the case of a foreign boxer, any similar citizen identification number or professional boxer number from the country of residence of the boxer).

(C) A personal identification number assigned to the boxer by a boxing registry.

(2) Renewal

Each professional boxer shall renew his or her identification card at least once every 4 years.

(3) Presentation

Each professional boxer shall present his or her identification card to the appropriate boxing commission not later than the time of the weigh-in for a professional boxing match.

(c) Health and safety disclosures

It is the sense of the Congress that a boxing commission should, upon issuing an identification card to a boxer under subsection (b)(1) of this section, make a health and safety disclosure to that boxer as that commission considers appropriate. The health and safety disclosure should include the health and safety risks associated with boxing, and, in particular, the risk and frequency of brain injury and the advisability that a boxer periodically undergo medical procedures designed to detect brain injury.

(Pub. L. 104–272, §6, Oct. 9, 1996, 110 Stat. 3310; Pub. L. 106–210, §7(c), (f), May 26, 2000, 114 Stat. 328.)

AMENDMENTS

2000—Subsec. (b)(2). Pub. L. 106–210, §7(c), substituted "4 years" for "2 years".
Subsec. (c). Pub. L. 106–210, §7(f), added subsec. (c).

§6306. Review

(a) Procedures

Each boxing commission shall establish each of the following procedures:

(1) Procedures to evaluate the professional records and physician's certification of each boxer participating in a professional boxing match in the State, and to deny authorization for a boxer to fight where appropriate.

(2) Procedures to ensure that, except as provided in subsection (b) of this section, no boxer is permitted to box while under suspension from any boxing commission due to—

(A) a recent knockout or series of consecutive losses;

(B) an injury, requirement for a medical procedure, or physician denial of certification;

(C) failure of a drug test;

(D) the use of false aliases, or falsifying, or attempting to falsify, official identification cards or documents; or

(E) unsportsmanlike conduct or other inappropriate behavior inconsistent with generally accepted methods of competition in a professional boxing match.

(3) Procedures to review a suspension where appealed by a boxer, licensee, manager, matchmaker, promoter, or other boxing service provider, including an opportunity for a boxer to present contradictory evidence.

(4) Procedures to revoke a suspension where a boxer—

(A) was suspended under subparagraph (A) or (B) of paragraph (2) of this subsection, and has furnished further proof of a sufficiently improved medical or physical condition; or

(B) furnishes proof under subparagraph (C) or (D) of paragraph (2) that a suspension was not, or is no longer, merited by the facts.

(b) Suspension in another State

A boxing commission may allow a boxer who is under suspension in any State to participate in a professional boxing match—

(1) for any reason other than those listed in subsection (a) of this section if such commission notifies in writing and consults with the designated official of the suspending State's boxing commission prior to the grant of approval for such individual to participate in that professional boxing match; or

(2) if the boxer appeals to the Association of Boxing Commissions, and the Association of Boxing Commissions determines that the suspension of such boxer was without sufficient grounds, for an improper purpose, or not related to the health and safety of the boxer or the purposes of this chapter.

(Pub. L. 104–272, §7, Oct. 9, 1996, 110 Stat. 3311; Pub. L. 106–210, §7(b), (d), May 26, 2000, 114 Stat. 328.)

AMENDMENTS

2000—Subsec. (a)(2)(E). Pub. L. 106–210, §7(b), added subpar. (E).

Subsec. (a)(3). Pub. L. 106–210, §7(d), substituted "boxer, licensee, manager, matchmaker, promoter, or other boxing service provider" for "boxer" the first place appearing.

§6307. Reporting

Not later than 48 business hours after the conclusion of a professional boxing match, the supervising boxing commission shall report the results of such boxing match and any related suspensions to each boxer registry.

(Pub. L. 104–272, §8, Oct. 9, 1996, 110 Stat. 3311.)

§6307a. Contract requirements

Within 2 years after May 26, 2000, the Association of Boxing Commissions (ABC) shall develop and shall approve by a vote of no less than a majority of its member State boxing commissioners, guidelines for minimum contractual provisions that should be included in bout agreements and boxing contracts. It is the sense of the Congress that State boxing commissions should follow these ABC guidelines.

(Pub. L. 104–272, §9, as added Pub. L. 106–210, §4(2), May 26, 2000, 114 Stat. 322.)

PRIOR PROVISIONS

A prior section 9 of Pub. L. 104–272 was renumbered section 17 and is classified to section 6308 of this title.

§6307b. Protection from coercive contracts

(a) General rule

(1)(A) A contract provision shall be considered to be in restraint of trade, contrary to public policy, and unenforceable against any boxer to the extent that it—

(i) is a coercive provision described in subparagraph (B) and is for a period greater than 12 months; or

(ii) is a coercive provision described in subparagraph (B) and the other boxer under contract to the promoter came under that contract pursuant to a coercive provision described in subparagraph (B).

(B) A coercive provision described in this subparagraph is a contract provision that grants any rights between a boxer and a promoter, or between promoters with respect to a boxer, if the boxer is required to grant such rights, or a boxer's promoter is required to grant such rights with respect to a boxer to another promoter, as a condition precedent to the boxer's participation in a professional boxing match against another boxer who is under contract to the promoter.

(2) This subsection shall only apply to contracts entered into after May 26, 2000.

(3) No subsequent contract provision extending any rights or compensation covered in paragraph (1) shall be enforceable against a boxer if the effective date of the contract containing such provision is earlier than 3 months before the expiration of the relevant time period set forth in paragraph (1).

(b) Promotional rights under mandatory bout contracts

No boxing service provider may require a boxer to grant any future promotional rights as a requirement of competing in a professional boxing match that is a mandatory bout under the rules of a sanctioning organization.

(c) Protection from coercive contracts with broadcasters

Subsection (a) of this section applies to any contract between a commercial broadcaster and a boxer, or granting any rights with respect to that boxer, involving a broadcast in or affecting interstate commerce, regardless of the broadcast medium. For the purpose of this subsection, any reference in subsection (a)(1)(B) of this section to "promoter" shall be considered a reference to "commercial broadcaster".

(Pub. L. 104–272, §10, as added Pub. L. 106–210, §4(2), May 26, 2000, 114 Stat. 322.)

PRIOR PROVISIONS

A prior section 10 of Pub. L. 104–272 was renumbered section 18 and is classified to section 6309 of this title.

§6307c. Sanctioning organizations

(a) Objective criteria

Within 2 years after May 26, 2000, the Association of Boxing Commissions shall develop and shall approve by a vote of no less than a majority of its member State boxing commissioners, guidelines for objective and consistent written criteria for the ratings of professional boxers. It is the sense of the Congress that sanctioning bodies and State boxing commissions should follow these ABC guidelines.

(b) Appeals process

A sanctioning organization shall not be entitled to receive any compensation, directly or indirectly, in connection with a boxing match, until it provides the boxers with notice that the sanctioning organization shall, within 7 days after receiving a request from a boxer questioning that organization's rating of the boxer—

(1) provide to the boxer a written explanation of the organization's criteria, its rating of the

boxer, and the rationale or basis for its rating (including a response to any specific questions submitted by the boxer); and

(2) submit a copy of its explanation to the Association of Boxing Commissions.

(c) Notification of change in rating

A sanctioning organization shall not be entitled to receive any compensation, directly or indirectly, in connection with a boxing match, until, with respect to a change in the rating of a boxer previously rated by such organization in the top 10 boxers, the organization—

(1) posts a copy, within 7 days of such change, on its Internet website or home page, if any, including an explanation of such change, for a period of not less than 30 days; and

(2) provides a copy of the rating change and explanation to an association to which at least a majority of the State boxing commissions belong.

(d) Public disclosure

(1) Federal Trade Commission filing

A sanctioning organization shall not be entitled to receive any compensation directly or indirectly in connection with a boxing match unless, not later than January 31 of each year, it submits to the Federal Trade Commission and to the ABC—

(A) a complete description of the organization's ratings criteria, policies, and general sanctioning fee schedule;

(B) the bylaws of the organization;

(C) the appeals procedure of the organization for a boxer's rating; and

(D) a list and business address of the organization's officials who vote on the ratings of boxers.

(2) Format; updates

A sanctioning organization shall—

(A) provide the information required under paragraph (1) in writing, and, for any document greater than 2 pages in length, also in electronic form; and

(B) promptly notify the Federal Trade Commission of any material change in the information submitted.

(3) Federal Trade Commission to make information available to public

The Federal Trade Commission shall make information received under this subsection available to the public. The Commission may assess sanctioning organizations a fee to offset the costs it incurs in processing the information and making it available to the public.

(4) Internet alternative

In lieu of submitting the information required by paragraph (1) to the Federal Trade Commission, a sanctioning organization may provide the information to the public by maintaining a website on the Internet that—

(A) is readily accessible by the general public using generally available search engines and does not require a password or payment of a fee for full access to all the information;

(B) contains all the information required to be submitted to the Federal Trade Commission by paragraph (1) in an easy to search and use format; and

(C) is updated whenever there is a material change in the information.

(Pub. L. 104–272, §11, as added Pub. L. 106–210, §4(2), May 26, 2000, 114 Stat. 323.)

PRIOR PROVISIONS

A prior section 11 of Pub. L. 104–272 was renumbered section 19 and is classified to section 6310 of this title.

§6307d. Required disclosures to State boxing commissions by sanctioning organizations

A sanctioning organization shall not be entitled to receive any compensation directly or indirectly in connection with a boxing match until it provides to the boxing commission responsible for regulating the match in a State a statement of—

(1) all charges, fees, and costs the organization will assess any boxer participating in that match;

(2) all payments, benefits, complimentary benefits, and fees the organization will receive for its affiliation with the event, from the promoter, host of the event, and all other sources; and

(3) such additional information as the commission may require.

(Pub. L. 104–272, §12, as added Pub. L. 106–210, §4(2), May 26, 2000, 114 Stat. 324.)

PRIOR PROVISIONS

A prior section 12 of Pub. L. 104–272 was renumbered section 20 and is classified to section 6311 of this title.

§6307e. Required disclosures for promoters

(a) Disclosures to the boxing commissions

A promoter shall not be entitled to receive any compensation directly or indirectly in connection with a boxing match until it provides to the boxing commission responsible for regulating the match in a State a statement of—

(1) a copy of any agreement in writing to which the promoter is a party with any boxer participating in the match;

(2) a statement made under penalty of perjury that there are no other agreements, written or oral, between the promoter and the boxer with respect to that match; and

(3)(A) all fees, charges, and expenses that will be assessed by or through the promoter on the boxer pertaining to the event, including any portion of the boxer's purse that the promoter will receive, and training expenses;

(B) all payments, gifts, or benefits the promoter is providing to any sanctioning organization affiliated with the event; and

(C) any reduction in a boxer's purse contrary to a previous agreement between the promoter and the boxer or a purse bid held for the event.

(b) Disclosures to the boxer

A promoter shall not be entitled to receive any compensation directly or indirectly in connection with a boxing match until it provides to the boxer it promotes—

(1) the amounts of any compensation or consideration that a promoter has contracted to receive from such match;

(2) all fees, charges, and expenses that will be assessed by or through the promoter on the boxer pertaining to the event, including any portion of the boxer's purse that the promoter will receive, and training expenses; and

(3) any reduction in a boxer's purse contrary to a previous agreement between the promoter and the boxer or a purse bid held for the event.

(c) Information to be available to State Attorney General

A promoter shall make information required to be disclosed under this section available to the chief law enforcement officer of the State in which the match is to be held upon request of such officer.

(Pub. L. 104–272, §13, as added Pub. L. 106–210, §4(2), May 26, 2000, 114 Stat. 324.)

PRIOR PROVISIONS

A prior section 13 of Pub. L. 104–272 was renumbered section 21 and is classified to section 6312 of this title.

§6307f. Required disclosures for judges and referees

A judge or referee shall not be entitled to receive any compensation, directly or indirectly, in connection with a boxing match until it provides to the boxing commission responsible for regulating the match in a State a statement of all consideration, including reimbursement for expenses, that will be received from any source for participation in the match.

(Pub. L. 104–272, §14, as added Pub. L. 106–210, §4(2), May 26, 2000, 114 Stat. 325.)

PRIOR PROVISIONS

A prior section 14 of Pub. L. 104–272 was renumbered section 22 and is classified to section 6313 of this title.

§6307g. Confidentiality

(a) In general

Neither a boxing commission or [1] an Attorney General may disclose to the public any matter furnished by a promoter under section 6307e of this title except to the extent required in a legal, administrative, or judicial proceeding.

(b) Effect of contrary State law

If a State law governing a boxing commission requires that information that would be furnished by a promoter under section 6307e of this title shall be made public, then a promoter is not required to file such information with such State if the promoter files such information with the ABC.

(Pub. L. 104–272, §15, as added Pub. L. 106–210, §4(2), May 26, 2000, 114 Stat. 325.)

PRIOR PROVISIONS

A prior section 15 of Pub. L. 104–272 was renumbered section 23 and is set out as a note under section 6301 of this title.

[1] So in original. Probably should be "nor".

§6307h. Judges and referees

No person may arrange, promote, organize, produce, or fight in a professional boxing match unless all referees and judges participating in the match have been certified and approved by the boxing commission responsible for regulating the match in the State where the match is held.

(Pub. L. 104–272, §16, as added Pub. L. 106–210, §4(2), May 26, 2000, 114 Stat. 325.)

§6308. Conflicts of interest

(a) Regulatory personnel

No member or employee of a boxing commission, no person who administers or enforces State boxing laws, and no member of the Association of Boxing Commissions may belong to, contract with, or receive any compensation from, any person who sanctions, arranges, or promotes professional boxing matches or who otherwise has a financial interest in an active boxer currently registered with a boxer registry. For purposes of this section, the term "compensation" does not include funds held in escrow for payment to another person in connection with a professional boxing match. The prohibition set forth in this section shall not apply to any contract entered into, or any reasonable compensation received, by a boxing commission to supervise a professional boxing match in another State as described in section 6303 of this title.

(b) Firewall between promoters and managers

(1) In general

It is unlawful for—

(A) a promoter to have a direct or indirect financial interest in the management of a boxer; or

(B) a manager—

(i) to have a direct or indirect financial interest in the promotion of a boxer; or

(ii) to be employed by or receive compensation or other benefits from a promoter, except for amounts received as consideration under the manager's contract with the boxer.

(2) Exceptions

Paragraph (1)—

(A) does not prohibit a boxer from acting as his own promoter or manager; and

(B) only applies to boxers participating in a boxing match of 10 rounds or more.

(c) Sanctioning organizations

(1) Prohibition on receipts

Except as provided in paragraph (2), no officer or employee of a sanctioning organization may receive any compensation, gift, or benefit, directly or indirectly, from a promoter, boxer, or manager.

(2) Exceptions

Paragraph (1) does not apply to—

(A) the receipt of payment by a promoter, boxer, or manager of a sanctioning organization's published fee for sanctioning a professional boxing match or reasonable expenses in connection therewith if the payment is reported to the responsible boxing commission; or

(B) the receipt of a gift or benefit of de minimis value.

(Pub. L. 104–272, §17, formerly §9, Oct. 9, 1996, 110 Stat. 3311; renumbered §17 and amended Pub. L. 106–210, §§4(1), 5, May 26, 2000, 114 Stat. 322, 325.)

AMENDMENTS

2000—Pub. L. 106–210, §5, designated existing provisions as subsec. (a), inserted subsec. heading, and added subsecs. (b) and (c).

§6309. Enforcement

(a) Injunctions

Whenever the Attorney General of the United States has reasonable cause to believe that a person is engaged in a violation of this chapter, the Attorney General may bring a civil action in the appropriate district court of the United States requesting such relief, including a permanent or temporary injunction, restraining order, or other order, against the person, as the Attorney General determines to be necessary to restrain the person from continuing to engage in, sanction, promote, or otherwise participate in a professional boxing match in violation of this chapter.

(b) Criminal penalties

(1) Managers, promoters, matchmakers, and licensees

Any manager, promoter, matchmaker, and licensee who knowingly violates, or coerces or causes any other person to violate, any provision of this chapter, other than section 6307a(b),[1] 6307b, 6307c, 6307d, 6307e, 6307f, or 6307h of this title, shall, upon conviction, be imprisoned for not more than 1 year or fined not more than $20,000, or both.

(2) Violation of antiexploitation, sanctioning organization, or disclosure provisions

Any person who knowingly violates any provision of section 6307a(b),[1] 6307b, 6307c, 6307d, 6307e, 6307f, or 6307h of this title shall, upon conviction, be imprisoned for not more than 1 year or fined not more than—

(A) $100,000; and

(B) if a violation occurs in connection with a professional boxing match the gross revenues for which exceed $2,000,000, an additional amount which bears the same ratio to $100,000 as the amount of such revenues compared to $2,000,000, or both.

(3) Conflict of interest

Any member or employee of a boxing commission, any person who administers or enforces State boxing laws, and any member of the Association of Boxing Commissions who knowingly violates section 6308(a) of this title shall, upon conviction, be imprisoned for not more than 1 year or fined not more than $20,000, or both.

(4) Boxers

Any boxer who knowingly violates any provision of this chapter shall, upon conviction, be fined not more than $1,000.

(c) Actions by States

Whenever the chief law enforcement officer of any State has reason to believe that a person or organization is engaging in practices which violate any requirement of this chapter, the State, as parens patriae, may bring a civil action on behalf of its residents in an appropriate district court of the United States—

(1) to enjoin the holding of any professional boxing match which the practice involves;

(2) to enforce compliance with this chapter;

(3) to obtain the fines provided under subsection (b) of this section or appropriate restitution; or

(4) to obtain such other relief as the court may deem appropriate.

(d) Private right of action

Any boxer who suffers economic injury as a result of a violation of any provision of this chapter may bring an action in the appropriate Federal or State court and recover the damages suffered, court costs, and reasonable attorneys fees and expenses.

(e) Enforcement against Federal Trade Commission, State Attorneys General, etc.

Nothing in this chapter authorizes the enforcement of—

(1) any provision of this chapter against the Federal Trade Commission, the United States Attorney General, or the chief legal officer of any State for acting or failing to act in an official capacity;

(2) subsection (d) of this section against a State or political subdivision of a State, or any agency or instrumentality thereof; or

(3) section 6307b of this title against a boxer acting in his capacity as a boxer.

(Pub. L. 104–272, §18, formerly §10, Oct. 9, 1996, 110 Stat. 3312; renumbered §18 and amended Pub. L. 106–210, §§4(1), 6, May 26, 2000, 114 Stat. 322, 326.)

AMENDMENTS

2000—Subsec. (b)(1). Pub. L. 106–210, §6(1), inserted ", other than section 6307a(b), 6307b, 6307c, 6307d, 6307e, 6307f, or 6307h of this title," after "this chapter".

Subsec. (b)(2). Pub. L. 106–210, §6(3), added par. (2). Former par. (2) redesignated (3).

Subsec. (b)(3), (4). Pub. L. 106–210, §6(2), (4), redesignated pars. (2) and (3) as (3) and (4), respectively, and in par. (3) substituted "section 6308(a)" for "section 6308".

Subsecs. (c) to (e). Pub. L. 106–210, §6(5), added subsecs. (c) to (e).

[1] *So in original. Section 6307a does not contain a subsec. (b).*

§6310. Notification of supervising boxing commission

Each promoter who intends to hold a professional boxing match in a State that does not have a boxing commission shall, not later than 14 days before the intended date of that match, provide

written notification to the supervising boxing commission designated under section 6303 of this title. Such notification shall contain each of the following:

(1) Assurances that, with respect to that professional boxing match, all applicable requirements of this chapter will be met.

(2) The name of any person who, at the time of the submission of the notification—

(A) is under suspension from a boxing commission; and

(B) will be involved in organizing or participating in the event.

(3) For any individual listed under paragraph (2), the identity of the boxing commission that issued the suspension described in paragraph (2)(A).

(Pub. L. 104–272, §19, formerly §11, Oct. 9, 1996, 110 Stat. 3312; renumbered §19, Pub. L. 106–210, §4(1), May 26, 2000, 114 Stat. 322.)

§6311. Studies

(a) Pension

The Secretary of Labor shall conduct a study on the feasibility and cost of a national pension system for boxers, including potential funding sources.

(b) Health, safety, and equipment

The Secretary of Health and Human Services shall conduct a study to develop recommendations for health, safety, and equipment standards for boxers and for professional boxing matches.

(c) Reports

Not later than one year after October 9, 1996, the Secretary of Labor shall submit a report to the Congress on the findings of the study conducted pursuant to subsection (a) of this section. Not later than 180 days after October 9, 1996, the Secretary of Health and Human Services shall submit a report to the Congress on the findings of the study conducted pursuant to subsection (b) of this section.

(Pub. L. 104–272, §20, formerly §12, Oct. 9, 1996, 110 Stat. 3313; renumbered §20, Pub. L. 106–210, §4(1), May 26, 2000, 114 Stat. 322.)

§6312. Professional boxing matches conducted on Indian reservations

(a) Definitions

For purposes of this section, the following definitions shall apply:

(1) Indian tribe

The term "Indian tribe" has the same meaning as in section 450b(e) of title 25.

(2) Reservation

The term "reservation" means the geographically defined area over which a tribal organization exercises governmental jurisdiction.

(3) Tribal organization

The term "tribal organization" has the same meaning as in section 450b(l) of title 25.

(b) Requirements

(1) In general

Notwithstanding any other provision of law, a tribal organization of an Indian tribe may, upon the initiative of the tribal organization—

(A) regulate professional boxing matches held within the reservation under the jurisdiction of that tribal organization; and

(B) carry out that regulation or enter into a contract with a boxing commission to carry out that regulation.

(2) Standards and licensing

If a tribal organization regulates professional boxing matches pursuant to paragraph (1), the tribal organization shall, by tribal ordinance or resolution, establish and provide for the implementation of health and safety standards, licensing requirements, and other requirements relating to the conduct of professional boxing matches that are at least as restrictive as—

(A) the otherwise applicable standards and requirements of a State in which the reservation is located; or

(B) the most recently published version of the recommended regulatory guidelines certified and published by the Association of Boxing Commissions.

(Pub. L. 104–272, §21, formerly §13, Oct. 9, 1996, 110 Stat. 3313; renumbered §21, Pub. L. 106–210, §4(1), May 26, 2000, 114 Stat. 322.)

§6313. Relationship with State law

Nothing in this chapter shall prohibit a State from adopting or enforcing supplemental or more stringent laws or regulations not inconsistent with this chapter, or criminal, civil, or administrative fines for violations of such laws or regulations.

(Pub. L. 104–272, §22, formerly §14, Oct. 9, 1996, 110 Stat. 3313; renumbered §22, Pub. L. 106–210, §4(1), May 26, 2000, 114 Stat. 322.)

CHAPTER 90—PROPANE EDUCATION AND RESEARCH

Sec.

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§6401. Findings

The Congress finds that—

(1) propane gas, or liquefied petroleum gas, is an essential energy commodity providing heat, hot water, cooking fuel, and motor fuel among its many uses to millions of Americans;

(2) the use of propane is especially important to rural citizens and farmers, offering an efficient and economical source of gas energy;

(3) propane has been recognized as a clean fuel and can contribute in many ways to reducing the pollution in our cities and towns; and

(4) propane is primarily domestically produced and its use provides energy security and jobs for Americans.

(Pub. L. 104–284, §2, Oct. 11, 1996, 110 Stat. 3370.)

SHORT TITLE

Pub. L. 104–284, §1, Oct. 11, 1996, 110 Stat. 3370, provided that: "This Act [enacting this chapter] may be cited as the 'Propane Education and Research Act of 1996'."

§6402. Definitions

For the purposes of this chapter—

(1) the term "Council" means a Propane Education and Research Council created pursuant to section 6403 of this title;

(2) the term "industry" means those persons involved in the production, transportation, and sale of propane, and in the manufacture and distribution of propane utilization equipment, in the United States;

(3) the term "industry trade association" means an organization exempt from tax, under section 501(c)(3) or (6) of title 26, representing the propane industry;

(4) the term "odorized propane" means propane which has had odorant added to it;

(5) the term "producer" means the owner of propane at the time it is recovered at a gas processing plant or refinery;

(6) the term "propane" means a hydrocarbon whose chemical composition is predominantly $C^3 H^8$, whether recovered from natural gas or crude oil, and includes liquefied petroleum gases and mixtures thereof;

(7) the term "public member" means a member of the Council, other than a representative of producers or retail marketers, representing significant users of propane, public safety officials, academia, the propane research community, or other groups knowledgeable about propane;

(8) the term "qualified industry organization" means the National Propane Gas Association, the Gas Processors Association, a successor association of such associations, or a group of retail marketers or producers who collectively represent at least 25 percent of the volume of propane sold or produced in the United States;

(9) the term "retail marketer" means a person engaged primarily in the sale of odorized propane to the ultimate consumer or to retail propane dispensers;

(10) the term "retail propane dispenser" means a person who sells odorized propane to the ultimate consumer but is not engaged primarily in the business of such sales; and

(11) the term "Secretary" means the Secretary of Energy.

(Pub. L. 104–284, §3, Oct. 11, 1996, 110 Stat. 3370.)

§6403. Referenda

(a) Creation of program

The qualified industry organizations may conduct, at their own expense, a referendum among producers and retail marketers for the creation of a Propane Education and Research Council. The Council, if established, shall reimburse the qualified industry organizations for the cost of the referendum accounting and documentation. Such referendum shall be conducted by an independent auditing firm agreed to by the qualified industry organizations. Voting rights in such referendum shall be based on the volume of propane produced or odorized propane sold in the previous calendar year or other representative period. Upon approval of those persons representing two-thirds of the total volume of propane voted in the retail marketer class and two-thirds of all propane voted in the producer class, the Council shall be established, and shall be authorized to levy an assessment on odorized propane in accordance with section 6405 of this title. All persons voting in the referendum shall certify to the independent auditing firm the volume of propane represented by their vote.

(b) Termination

On the Council's own initiative, or on petition to the Council by producers and retail marketers representing 35 percent of the volume of propane in each class, the Council shall, at its own expense, hold a referendum, to be conducted by an independent auditing firm selected by the Council, to

determine whether the industry favors termination or suspension of the Council. Termination or suspension shall not take effect unless it is approved by persons representing more than one-half of the total volume of odorized propane in the retail marketer class and more than one-half of the total volume of propane in the producer class, or is approved by persons representing more than two-thirds of the total volume of propane in either such class.

(Pub. L. 104–284, §4, Oct. 11, 1996, 110 Stat. 3371.)

§6404. Propane Education and Research Council

(a) Selection of members

The qualified industry organizations shall select all retail marketer, public, and producer members of the Council. The producer organizations shall select the producer members of the Council, the retail marketer organizations shall select retail marketer members, and all qualified industry organizations shall jointly select the public members. Vacancies in unfinished terms of Council members shall be filled in the same manner as were the original appointments.

(b) Representation

In selecting members of the Council, the qualified industry organizations shall give due regard to selecting a Council that is representative of the industry, including representation of—

(1) gas processors and oil refiners among producers;

(2) interstate and intrastate operators among retail marketers;

(3) large and small companies among producers and retail marketers, including agricultural cooperatives; and

(4) diverse geographic regions of the country.

(c) Membership

The Council shall consist of 21 members, with 9 members representing retail marketers, 9 members representing producers, and 3 public members. Other than the public members, Council members shall be full-time employees or owners of businesses in the industry or representatives of agricultural cooperatives. No employee of a qualified industry organization or other industry trade association shall serve as a member of the Council, and no member of the Council may serve concurrently as an officer of the Board of Directors of a qualified industry organization or other industry trade association. Only one person at a time from any company or its affiliate may serve on the Council.

(d) Compensation

Council members shall receive no compensation for their services, nor shall Council members be reimbursed for expenses relating to their service, except that public members, upon request, may be reimbursed for reasonable expenses directly related to their participation in Council meetings.

(e) Terms

Council members shall serve terms of 3 years and may serve not more than 2 full consecutive terms. Members filling unexpired terms may serve not more than a total of 7 consecutive years. Former members of the Council may be returned to the Council if they have not been members for a period of 2 years. Initial appointments to the Council shall be for terms of 1, 2, and 3 years, staggered to provide for the selection of 7 members each year.

(f) Functions

The Council shall develop programs and projects and enter into contracts or agreements for implementing this chapter, including programs to enhance consumer and employee safety and training, to provide for research and development of clean and efficient propane utilization equipment, to inform and educate the public about safety and other issues associated with the use of propane, and to provide for the payment of the costs thereof with funds collected pursuant to this chapter. The Council shall coordinate its activities with industry trade association and others as

appropriate to provide efficient delivery of services and to avoid unnecessary duplication of activities.

(g) Use of funds

Not less than 5 percent of the funds collected through assessments pursuant to this chapter shall be used for programs and projects intended to benefit the agriculture industry in the United States. The Council shall coordinate its activities in this regard with agriculture industry trade associations and other organizations representing the agriculture industry. The percentage of funds collected through assessments pursuant to this chapter to be used for projects relating to the use of propane as an over-the-road motor fuel shall not exceed the percentage of the total market for odorized propane that is used as a motor vehicle fuel, based on the historical average of such use over the previous 3-year period.

(h) Priorities

Issues related to research and development, safety, education, and training shall be given priority by the Council in the development of its programs and projects.

(i) Administration

The Council shall select from among its members a Chairman and other officers as necessary, may establish committees and subcommittees of the Council, and shall adopt rules and bylaws for the conduct of business and the implementation of this chapter. The Council shall establish procedures for the solicitation of industry comment and recommendations on any significant plans, programs, and projects to be funded by the Council. The Council may establish advisory committees of persons other than Council members.

(j) Administrative expenses

(1) The administrative expenses of operating the Council (not including costs incurred in the collection of the assessment pursuant to section 6406 of this title) plus amounts paid under paragraph (2) shall not exceed 10 percent of the funds collected in any fiscal year.

(2) The Council shall annually reimburse the Secretary for costs incurred by the Federal Government relating to the Council, except that such reimbursement for any fiscal year shall not exceed the amount that the Secretary determines is the average annual salary of two employees of the Department of Energy.

(k) Budget

Before August 1 each year, the Council shall publish for public review and comment a budget plan for the next calendar year, including the probable costs of all programs, projects, and contracts and a recommended rate of assessment sufficient to cover such costs. Following this review and comment, the Council shall submit the proposed budget to the Secretary and to the Congress. The Secretary may recommend programs and activities the Secretary considers appropriate.

(l) Records; audits

The Council shall keep minutes, books, and records that clearly reflect all of the acts and transactions of the Council and make public such information. The books of the Council shall be audited by a certified public accountant at least once each fiscal year and at such other times as the Council may designate. Copies of such audit shall be provided to all members of the Council, all qualified industry organizations, and to other members of the industry upon request. The Secretary shall receive notice of meetings and may require reports on the activities of the Council, as well as reports on compliance, violations, and complaints regarding the implementation of this chapter.

(m) Public access to Council proceedings

(1) All meetings of the Council shall be open to the public after at least 30 days advance public notice.

(2) The minutes of all meetings of the Council shall be made available to and readily accessible by the public.

(n) Annual report

Each year the Council shall prepare and make publicly available a report which includes an identification and description of all programs and projects undertaken by the Council during the previous year as well as those planned for the coming year. Such report shall also detail the allocation or planned allocation of Council resources for each such program and project.

(Pub. L. 104–284, §5, Oct. 11, 1996, 110 Stat. 3371.)

§6405. Assessments

(a) Amount

The Council shall set the initial assessment at no greater than one tenth of 1 cent per gallon of odorized propane. Thereafter, annual assessments shall be sufficient to cover the costs of the plans and programs developed by the Council. The assessment shall not be greater than one-half cent per gallon of odorized propane, unless approved by a majority of those voting in a referendum in both the producer and the retail marketer class. In no case may the assessment be raised by more than one tenth of 1 cent per gallon of odorized propane annually.

(b) Ownership

The owner of odorized propane at the time of odorization, or the time of import of odorized propane, shall make the assessment based on the volume of odorized propane sold and placed into commerce. Assessments collected are payable to the Council on a monthly basis by the 25th of the month following the month of such collection. Propane exported from the United States to another country is not subject to the assessment.

(c) Alternative collection rules

The Council may establish an alternative means of collecting the assessment if another means is found to be more efficient and effective. The Council may establish a late payment charge and rate of interest to be imposed on any person who fails to remit or pay to the Council any amount due under this chapter.

(d) Investment of funds

Pending disbursement pursuant to a program, plan, or project, the Council may invest funds collected through assessments, and any other funds received by the Council, only in obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States.

(e) State programs

The Council shall establish a program coordinating the operation of the Council with those of any State propane education and research council created by State law or regulation, or similar entity. Such coordination shall include a joint or coordinated assessment collection process, a reduced assessment, or an assessment rebate. A reduced assessment or rebate shall be 20 percent of the regular assessment collected in that State under this section. Assessment rebates shall be paid only to—

(1) a State propane education and research council created by State law or regulation that meets requirements established by the Council for specific programs approved by the Council; or

(2) a similar entity, such as a foundation established by the retail propane gas industry in that State, that meets requirements established by the Council for specific programs approved by the Council.

(Pub. L. 104–284, §6, Oct. 11, 1996, 110 Stat. 3374.)

§6406. Compliance

The Council may bring suit in Federal court to compel compliance with an assessment levied by the Council under this chapter. A successful action for compliance under this section may also require payment by the defendant of the costs incurred by the Council in bringing such action.

(Pub. L. 104–284, §7, Oct. 11, 1996, 110 Stat. 3374.)

§6407. Lobbying restrictions

No funds collected by the Council shall be used in any manner for influencing legislation or elections, except that the Council may recommend to the Secretary changes in this chapter or other statutes that would further the purposes of this chapter.

(Pub. L. 104–284, §8, Oct. 11, 1996, 110 Stat. 3375.)

§6408. Market survey and consumer protection

(a) Price analysis

Beginning 2 years after establishment of the Council and annually thereafter, the Secretary of Commerce, using only data provided by the Energy Information Administration and other public sources, shall prepare and make available to the Council, the Secretary of Energy, and the public an analysis of changes in the price of propane relative to other energy sources. The propane price analysis shall compare indexed changes in the price of consumer grade propane to a composite of indexed changes in the price of residential electricity, residential natural gas, and refiner price to end users of No. 2 fuel oil on an annual national average basis. For purposes of indexing changes in consumer grade propane, residential electricity, residential natural gas, and end user No. 2 fuel oil prices, the Secretary of Commerce shall use a 5-year rolling average price beginning with the year 4 years prior to the establishment of the Council.

(b) Authority to restrict activities

If in any year the 5-year average rolling price index of consumer grade propane exceeds the 5-year rolling average price composite index of residential electricity, residential natural gas, and refiner price to end users of No. 2 fuel oil in an amount greater than 10.1 percent, the activities of the Council shall be restricted to research and development, training, and safety matters. The Council shall inform the Secretary of Energy and the Congress of any restriction of activities under this subsection. Upon expiration of 180 days after the beginning of any such restriction of activities, the Secretary of Commerce shall again conduct the propane price analysis described in subsection (a) of this section. Activities of the Council shall continue to be restricted under this subsection until the price index excess is 10.1 percent or less.

(Pub. L. 104–284, §9, Oct. 11, 1996, 110 Stat. 3375.)

§6409. Pricing

In all cases, the price of propane shall be determined by market forces. Consistent with the antitrust laws, the Council may take no action, nor may any provision of this chapter be interpreted as establishing an agreement to pass along to consumers the cost of the assessment provided for in section 6405 of this title.

(Pub. L. 104–284, §10, Oct. 11, 1996, 110 Stat. 3375.)

§6410. Relation to other programs

Nothing in this chapter may be construed to preempt or supersede any other program relating to propane education and research organized and operated under the laws of the United States or any

State.

(Pub. L. 104–284, §11, Oct. 11, 1996, 110 Stat. 3375.)

§6411. Reports

Within 2 years after October 11, 1996, and at least once every 2 years thereafter, the Secretary of Commerce shall prepare and submit to the Congress and the Secretary a report examining whether operation of the Council, in conjunction with the cumulative effects of market changes and Federal programs, has had an effect on propane consumers, including residential, agriculture, process, and nonfuel users of propane. The Secretary of Commerce shall consider and, to the extent practicable, shall include in the report submissions by propane consumers, and shall consider whether there have been long-term and short-term effects on propane prices as a result of Council activities and Federal programs, and whether there have been changes in the proportion of propane demand attributable to various market segments. To the extent that the report demonstrates that there has been an adverse effect, the Secretary of Commerce shall include recommendations for correcting the situation. Upon petition by affected parties or upon request by the Secretary of Energy, the Secretary of Commerce may prepare and submit the report required by this section at less than 2-year intervals.

(Pub. L. 104–284, §12, Oct. 11, 1996, 110 Stat. 3375.)

CHAPTER 91—CHILDREN'S ONLINE PRIVACY PROTECTION

Sec.

6501. Definitions.
6502. Regulation of unfair and deceptive acts and practices in connection with collection and use of personal information from and about children on the Internet.
6503. Safe harbors.
6504. Actions by States.
6505. Administration and applicability.
6506. Review.

§6501. Definitions

In this chapter:

(1) Child

The term "child" means an individual under the age of 13.

(2) Operator

The term "operator"—

(A) means any person who operates a website located on the Internet or an online service and who collects or maintains personal information from or about the users of or visitors to such website or online service, or on whose behalf such information is collected or maintained, where such website or online service is operated for commercial purposes, including any person offering products or services for sale through that website or online service, involving commerce—

(i) among the several States or with 1 or more foreign nations;

(ii) in any territory of the United States or in the District of Columbia, or between any such territory and—

(I) another such territory; or

(II) any State or foreign nation; or

(iii) between the District of Columbia and any State, territory, or foreign nation; but

(B) does not include any nonprofit entity that would otherwise be exempt from coverage under section 45 of this title.

(3) Commission

The term "Commission" means the Federal Trade Commission.

(4) Disclosure

The term "disclosure" means, with respect to personal information—

(A) the release of personal information collected from a child in identifiable form by an operator for any purpose, except where such information is provided to a person other than the operator who provides support for the internal operations of the website and does not disclose or use that information for any other purpose; and

(B) making personal information collected from a child by a website or online service directed to children or with actual knowledge that such information was collected from a child, publicly available in identifiable form, by any means including by a public posting, through the Internet, or through—

(i) a home page of a website;
(ii) a pen pal service;
(iii) an electronic mail service;
(iv) a message board; or
(v) a chat room.

(5) Federal agency

The term "Federal agency" means an agency, as that term is defined in section 551(1) of title 5.

(6) Internet

The term "Internet" means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

(7) Parent

The term "parent" includes a legal guardian.

(8) Personal information

The term "personal information" means individually identifiable information about an individual collected online, including—

(A) a first and last name;
(B) a home or other physical address including street name and name of a city or town;
(C) an e-mail address;
(D) a telephone number;
(E) a Social Security number;
(F) any other identifier that the Commission determines permits the physical or online contacting of a specific individual; or
(G) information concerning the child or the parents of that child that the website collects online from the child and combines with an identifier described in this paragraph.

(9) Verifiable parental consent

The term "verifiable parental consent" means any reasonable effort (taking into consideration available technology), including a request for authorization for future collection, use, and disclosure described in the notice, to ensure that a parent of a child receives notice of the operator's personal information collection, use, and disclosure practices, and authorizes the collection, use, and disclosure, as applicable, of personal information and the subsequent use of that information before that information is collected from that child.

(10) Website or online service directed to children

(A) In general

The term "website or online service directed to children" means—

(i) a commercial website or online service that is targeted to children; or

(ii) that portion of a commercial website or online service that is targeted to children.

(B) Limitation

A commercial website or online service, or a portion of a commercial website or online service, shall not be deemed directed to children solely for referring or linking to a commercial website or online service directed to children by using information location tools, including a directory, index, reference, pointer, or hypertext link.

(11) Person

The term "person" means any individual, partnership, corporation, trust, estate, cooperative, association, or other entity.

(12) Online contact information

The term "online contact information" means an e-mail address or another substantially similar identifier that permits direct contact with a person online.

(Pub. L. 105–277, div. C, title XIII, §1302, Oct. 21, 1998, 112 Stat. 2681–728.)

EFFECTIVE DATE

Pub. L. 105–277, div. C, title XIII, §1308, Oct. 21, 1998, 112 Stat. 2681–735, provided that: "Sections 1303(a), 1305, and 1306 of this title [enacting sections 6502(a), 6504, and 6505 of this title] take effect on the later of—

"(1) the date that is 18 months after the date of enactment of this Act [Oct. 21, 1998]; or

"(2) the date on which the Commission rules on the first application filed for safe harbor treatment under section 1304 [enacting section 6503 of this title] if the Commission does not rule on the first such application within one year after the date of enactment of this Act, but in no case later than the date that is 30 months after the date of enactment of this Act."

SHORT TITLE

Pub. L. 105–277, div. C, title XIII, §1301, Oct. 21, 1998, 112 Stat. 2681–728, provided that: "This title [enacting this chapter] may be cited as the 'Children's Online Privacy Protection Act of 1998'."

§6502. Regulation of unfair and deceptive acts and practices in connection with collection and use of personal information from and about children on the Internet

(a) Acts prohibited

(1) In general

It is unlawful for an operator of a website or online service directed to children, or any operator that has actual knowledge that it is collecting personal information from a child, to collect personal information from a child in a manner that violates the regulations prescribed under subsection (b) of this section.

(2) Disclosure to parent protected

Notwithstanding paragraph (1), neither an operator of such a website or online service nor the operator's agent shall be held to be liable under any Federal or State law for any disclosure made in good faith and following reasonable procedures in responding to a request for disclosure of personal information under subsection (b)(1)(B)(iii) of this section to the parent of a child.

(b) Regulations

(1) In general

Not later than 1 year after October 21, 1998, the Commission shall promulgate under section 553 of title 5 regulations that—

(A) require the operator of any website or online service directed to children that collects personal information from children or the operator of a website or online service that has actual knowledge that it is collecting personal information from a child—

(i) to provide notice on the website of what information is collected from children by the operator, how the operator uses such information, and the operator's disclosure practices for such information; and

(ii) to obtain verifiable parental consent for the collection, use, or disclosure of personal information from children;

(B) require the operator to provide, upon request of a parent under this subparagraph whose child has provided personal information to that website or online service, upon proper identification of that parent, to such parent—

(i) a description of the specific types of personal information collected from the child by that operator;

(ii) the opportunity at any time to refuse to permit the operator's further use or maintenance in retrievable form, or future online collection, of personal information from that child; and

(iii) notwithstanding any other provision of law, a means that is reasonable under the circumstances for the parent to obtain any personal information collected from that child;

(C) prohibit conditioning a child's participation in a game, the offering of a prize, or another activity on the child disclosing more personal information than is reasonably necessary to participate in such activity; and

(D) require the operator of such a website or online service to establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children.

(2) When consent not required

The regulations shall provide that verifiable parental consent under paragraph (1)(A)(ii) is not required in the case of—

(A) online contact information collected from a child that is used only to respond directly on a one-time basis to a specific request from the child and is not used to recontact the child and is not maintained in retrievable form by the operator;

(B) a request for the name or online contact information of a parent or child that is used for the sole purpose of obtaining parental consent or providing notice under this section and where such information is not maintained in retrievable form by the operator if parental consent is not obtained after a reasonable time;

(C) online contact information collected from a child that is used only to respond more than once directly to a specific request from the child and is not used to recontact the child beyond the scope of that request—

(i) if, before any additional response after the initial response to the child, the operator uses reasonable efforts to provide a parent notice of the online contact information collected from the child, the purposes for which it is to be used, and an opportunity for the parent to request that the operator make no further use of the information and that it not be maintained in retrievable form; or

(ii) without notice to the parent in such circumstances as the Commission may determine are appropriate, taking into consideration the benefits to the child of access to information and services, and risks to the security and privacy of the child, in regulations promulgated under this subsection;

(D) the name of the child and online contact information (to the extent reasonably necessary to protect the safety of a child participant on the site)—

(i) used only for the purpose of protecting such safety;

(ii) not used to recontact the child or for any other purpose; and
(iii) not disclosed on the site,

if the operator uses reasonable efforts to provide a parent notice of the name and online contact information collected from the child, the purposes for which it is to be used, and an opportunity for the parent to request that the operator make no further use of the information and that it not be maintained in retrievable form; or

(E) the collection, use, or dissemination of such information by the operator of such a website or online service necessary—

(i) to protect the security or integrity of its website;
(ii) to take precautions against liability;
(iii) to respond to judicial process; or
(iv) to the extent permitted under other provisions of law, to provide information to law enforcement agencies or for an investigation on a matter related to public safety.

(3) Termination of service

The regulations shall permit the operator of a website or an online service to terminate service provided to a child whose parent has refused, under the regulations prescribed under paragraph (1)(B)(ii), to permit the operator's further use or maintenance in retrievable form, or future online collection, of personal information from that child.

(c) Enforcement

Subject to sections 6503 and 6505 of this title, a violation of a regulation prescribed under subsection (a) of this section shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 57a(a)(1)(B) of this title.

(d) Inconsistent State law

No State or local government may impose any liability for commercial activities or actions by operators in interstate or foreign commerce in connection with an activity or action described in this chapter that is inconsistent with the treatment of those activities or actions under this section.

(Pub. L. 105–277, div. C, title XIII, §1303, Oct. 21, 1998, 112 Stat. 2681–730.)

EFFECTIVE DATE

For effective date of subsec. (a) of this section, see section 1308 of Pub. L. 105–277, set out as a note under section 6501 of this title.

§6503. Safe harbors

(a) Guidelines

An operator may satisfy the requirements of regulations issued under section 6502(b) of this title by following a set of self-regulatory guidelines, issued by representatives of the marketing or online industries, or by other persons, approved under subsection (b) of this section.

(b) Incentives

(1) Self-regulatory incentives

In prescribing regulations under section 6502 of this title, the Commission shall provide incentives for self-regulation by operators to implement the protections afforded children under the regulatory requirements described in subsection (b) of that section.

(2) Deemed compliance

Such incentives shall include provisions for ensuring that a person will be deemed to be in compliance with the requirements of the regulations under section 6502 of this title if that person

complies with guidelines that, after notice and comment, are approved by the Commission upon making a determination that the guidelines meet the requirements of the regulations issued under section 6502 of this title.

(3) Expedited response to requests

The Commission shall act upon requests for safe harbor treatment within 180 days of the filing of the request, and shall set forth in writing its conclusions with regard to such requests.

(c) Appeals

Final action by the Commission on a request for approval of guidelines, or the failure to act within 180 days on a request for approval of guidelines, submitted under subsection (b) of this section may be appealed to a district court of the United States of appropriate jurisdiction as provided for in section 706 of title 5.

(Pub. L. 105–277, div. C, title XIII, §1304, Oct. 21, 1998, 112 Stat. 2681–732.)

§6504. Actions by States

(a) In general

(1) Civil actions

In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any person in a practice that violates any regulation of the Commission prescribed under section 6502(b) of this title, the State, as parens patriae, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to—

(A) enjoin that practice;

(B) enforce compliance with the regulation;

(C) obtain damage, restitution, or other compensation on behalf of residents of the State; or

(D) obtain such other relief as the court may consider to be appropriate.

(2) Notice

(A) In general

Before filing an action under paragraph (1), the attorney general of the State involved shall provide to the Commission—

(i) written notice of that action; and

(ii) a copy of the complaint for that action.

(B) Exemption

(i) In general

Subparagraph (A) shall not apply with respect to the filing of an action by an attorney general of a State under this subsection, if the attorney general determines that it is not feasible to provide the notice described in that subparagraph before the filing of the action.

(ii) Notification

In an action described in clause (i), the attorney general of a State shall provide notice and a copy of the complaint to the Commission at the same time as the attorney general files the action.

(b) Intervention

(1) In general

On receiving notice under subsection (a)(2) of this section, the Commission shall have the right to intervene in the action that is the subject of the notice.

(2) Effect of intervention

If the Commission intervenes in an action under subsection (a) of this section, it shall have the right—

(A) to be heard with respect to any matter that arises in that action; and

(B) to file a petition for appeal.

(3) Amicus curiae

Upon application to the court, a person whose self-regulatory guidelines have been approved by the Commission and are relied upon as a defense by any defendant to a proceeding under this section may file amicus curiae in that proceeding.

(c) Construction

For purposes of bringing any civil action under subsection (a) of this section, nothing in this chapter shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—

(1) conduct investigations;

(2) administer oaths or affirmations; or

(3) compel the attendance of witnesses or the production of documentary and other evidence.

(d) Actions by Commission

In any case in which an action is instituted by or on behalf of the Commission for violation of any regulation prescribed under section 6502 of this title, no State may, during the pendency of that action, institute an action under subsection (a) of this section against any defendant named in the complaint in that action for violation of that regulation.

(e) Venue; service of process

(1) Venue

Any action brought under subsection (a) of this section may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28.

(2) Service of process

In an action brought under subsection (a) of this section, process may be served in any district in which the defendant—

(A) is an inhabitant; or

(B) may be found.

(Pub. L. 105–277, div. C, title XIII, §1305, Oct. 21, 1998, 112 Stat. 2681–733.)

EFFECTIVE DATE

For effective date of section, see section 1308 of Pub. L. 105–277, set out as a note under section 6501 of this title.

§6505. Administration and applicability

(a) In general

Except as otherwise provided, this chapter shall be enforced by the Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(b) Provisions

Compliance with the requirements imposed under this chapter shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the case of—

(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign

banks, and organizations operating under section 25 or 25(a) [1] of the Federal Reserve Act (12 U.S.C. 601 et seq. and 611 et. seq.), by the Board; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;

(3) the Federal Credit Union Act (12 U.S.C. 1751 et seq.) by the National Credit Union Administration Board with respect to any Federal credit union;

(4) part A of subtitle VII of title 49 by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that part;

(5) the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et. seq.) (except as provided in section 406 of that Act (7 U.S.C. 226, 227)), by the Secretary of Agriculture with respect to any activities subject to that Act; and

(6) the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association.

(c) Exercise of certain powers

For the purpose of the exercise by any agency referred to in subsection (a) [2] of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this chapter shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (a) [2] of this section, each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this chapter, any other authority conferred on it by law.

(d) Actions by Commission

The Commission shall prevent any person from violating a rule of the Commission under section 6502 of this title in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this chapter. Any entity that violates such rule shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this chapter.

(e) Effect on other laws

Nothing contained in this chapter shall be construed to limit the authority of the Commission under any other provisions of law.

(Pub. L. 105–277, div. C, title XIII, §1306, Oct. 21, 1998, 112 Stat. 2681–734.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsecs. (a) and (d), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

Section 25(a) of the Federal Reserve Act, referred to in subsec. (b)(1)(B), which is classified to subchapter II (§611 et seq.) of chapter 6 of Title 12, Banks and Banking, was renumbered section 25A of that act by Pub. L. 102–242, title I, §142(e)(2), Dec. 19, 1991, 105 Stat. 2281. Section 25 of the Federal Reserve Act is classified to subchapter I (§601 et seq.) of chapter 6 of Title 12.

The Federal Credit Union Act, referred to in subsec. (b)(3), is act June 26, 1934, ch. 750, 48 Stat. 1216, as amended, which is classified generally to chapter 14 (§1751 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1751 of Title 12 and Tables.

The Packers and Stockyards Act, 1921, referred to in subsec. (b)(5), is act Aug. 15, 1921, ch. 64, 42 Stat.

159, as amended, which is classified generally to chapter 9 (§181 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 181 of Title 7 and Tables.

The Farm Credit Act of 1971, referred to in subsec. (b)(6), is Pub. L. 92–181, Dec. 10, 1971, 85 Stat. 583, as amended, which is classified generally to chapter 23 (§2001 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 12 and Tables.

This chapter, referred to in subsec. (e), was in the original "Act" and "the Act", respectively, and was translated as reading "this title" to reflect the probable intent of Congress.

EFFECTIVE DATE

For effective date of section, see section 1308 of Pub. L. 105–277, set out as a note under section 6501 of this title.

[1] See References in Text note below.

[2] So in original. Probably should be subsection "(b)".

§6506. Review

Not later than 5 years after the effective date of the regulations initially issued under section 6502 of this title, the Commission shall—

(1) review the implementation of this chapter, including the effect of the implementation of this chapter on practices relating to the collection and disclosure of information relating to children, children's ability to obtain access to information of their choice online, and on the availability of websites directed to children; and

(2) prepare and submit to Congress a report on the results of the review under paragraph (1).

(Pub. L. 105–277, div. C, title XIII, §1307, Oct. 21, 1998, 112 Stat. 2681–735.)

CHAPTER 91A—PROMOTING A SAFE INTERNET FOR CHILDREN

Sec.

6551. Internet safety.
6552. Public awareness campaign.
6553. Annual reports.
6554. Online Safety and Technology working group.
6555. Definitions.

§6551. Internet safety

For the purposes of this chapter, the issue of Internet safety includes issues regarding the use of the Internet in a manner that promotes safe online activity for children, protects children from cybercrimes, including crimes by online predators, and helps parents shield their children from material that is inappropriate for minors.

(Pub. L. 110–385, title II, §211, Oct. 10, 2008, 122 Stat. 4102.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title", meaning title II of Pub. L. 110–385, Oct. 10, 2008, 122 Stat. 4102, which is classified principally to this chapter. For complete classification of title II to the Code, see Short Title note below and Tables.

SHORT TITLE

Pub. L. 110–385, title II, §201(a), Oct. 10, 2008, 122 Stat. 4102, provided that: "This title [enacting this chapter and amending sections 254 and 503 of Title 47, Telecommunications] may be cited as the 'Protecting

Children in the 21st Century Act'."

§6552. Public awareness campaign

The Federal Trade Commission shall carry out a nationwide program to increase public awareness and provide education regarding strategies to promote the safe use of the Internet by children. The program shall utilize existing resources and efforts of the Federal Government, State and local governments, nonprofit organizations, private technology and financial companies, Internet service providers, World Wide Web-based resources, and other appropriate entities, that includes—

(1) identifying, promoting, and encouraging best practices for Internet safety;

(2) establishing and carrying out a national outreach and education campaign regarding Internet safety utilizing various media and Internet-based resources;

(3) facilitating access to, and the exchange of, information regarding Internet safety to promote up-to-date knowledge regarding current issues; and

(4) facilitating access to Internet safety education and public awareness efforts the Commission considers appropriate by States, units of local government, schools, police departments, nonprofit organizations, and other appropriate entities.

(Pub. L. 110–385, title II, §212, Oct. 10, 2008, 122 Stat. 4103.)

§6553. Annual reports

The Commission shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives not later than March 31 of each year that describes the activities carried out under section 6552 [1] of this title by the Commission during the preceding calendar year.

(Pub. L. 110–385, title II, §213, Oct. 10, 2008, 122 Stat. 4103.)

REFERENCES IN TEXT

Section 6552 of this title, referred to in text, was in the original "section 103" and was translated as reading "section 212", meaning section 212 of Pub. L. 110–385, to reflect the probable intent of Congress. See sections 102 and 103 of S. 1965 (110th Cong., 2d Sess.) as passed by the Senate on May 22, 2008.

[1] *See References in Text note below.*

§6554. Online Safety and Technology working group

(a) Establishment

Within 90 days after October 10, 2008, the Assistant Secretary of Commerce for Communications and Information shall establish an Online Safety and Technology working group comprised of representatives of relevant sectors of the business community, public interest groups, and other appropriate groups and Federal agencies to review and evaluate—

(1) the status of industry efforts to promote online safety through educational efforts, parental control technology, blocking and filtering software, age-appropriate labels for content or other technologies or initiatives designed to promote a safe online environment for children;

(2) the status of industry efforts to promote online safety among providers of electronic communications services and remote computing services by reporting apparent child pornography under section 13032 [1] of title 42, including any obstacles to such reporting;

(3) the practices of electronic communications service providers and remote computing service providers related to record retention in connection with crimes against children; and

(4) the development of technologies to help parents shield their children from inappropriate material on the Internet.

(b) Report

Within 1 year after the working group is first convened, it shall submit a report to the Assistant Secretary, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Energy and Commerce of the House of Representatives that—

(1) describes in detail its findings, including any information related to the effectiveness of such strategies and technologies and any information about the prevalence within industry of educational campaigns, parental control technologies, blocking and filtering software, labeling, or other technologies to assist parents; and

(2) includes recommendations as to what types of incentives could be used or developed to increase the effectiveness and implementation of such strategies and technologies.

(c) FACA not to apply to working group

The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the working group.

(Pub. L. 110–385, title II, §214, Oct. 10, 2008, 122 Stat. 4103.)

REFERENCES IN TEXT

Section 13032 of title 42, referred to in the original in subsec. (a)(2), probably should have been a reference to section 227 of Pub. L. 101–647, which was classified to section 13032 of title 42, prior to repeal by Pub. L. 110–401, title V, §501(b)(1), Oct. 13, 2008, 122 Stat. 4251.

The Federal Advisory Committee Act, referred to in subsec. (c), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

[1] *See References in Text note below.*

§6555. Definitions

In this chapter:

(1) Commission

The term "Commission" means the Federal Trade Commission.

(2) Internet

The term "Internet" means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor successor [1] protocols to such protocol, to communicate information of all kinds by wire or radio.

(Pub. L. 110–385, title II, §216, Oct. 10, 2008, 122 Stat. 4104.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title", meaning title II of Pub. L. 110–385, Oct. 10, 2008, 122 Stat. 4102, which is classified principally to this chapter. For complete classification of title II to the Code, see Short Title note set out under section 6551 of this title and Tables.

[1] *So in original. Probably should be preceded by "or".*

CHAPTER 92—YEAR 2000 COMPUTER DATE CHANGE

Sec.

6601. Findings and purposes.
6602. Definitions.
6603. Application of chapter.
6604. Punitive damages limitations.

6605. Proportionate liability.
6606. Prelitigation notice.
6607. Pleading requirements.
6608. Duty to mitigate.
6609. Application of existing impossibility or commercial impracticability doctrines.
6610. Damages limitation by contract.
6611. Damages in tort claims.
6612. State of mind; bystander liability; control.
6613. Appointment of special masters or magistrate judges for Y2K actions.
6614. Y2K actions as class actions.
6615. Applicability of State law.
6616. Admissible evidence ultimate issue in State courts.
6617. Suspension of penalties for certain year 2000 failures by small business concerns.

§6601. Findings and purposes

(a) Findings

The Congress finds the following:

(1)(A) Many information technology systems, devices, and programs are not capable of recognizing certain dates in 1999 and after December 31, 1999, and will read dates in the year 2000 and thereafter as if those dates represent the year 1900 or thereafter or will fail to process dates after December 31, 1999.

(B) If not corrected, the problem described in subparagraph (A) and resulting failures could incapacitate systems that are essential to the functioning of markets, commerce, consumer products, utilities, Government, and safety and defense systems, in the United States and throughout the world.

(2) It is in the national interest that producers and users of technology products concentrate their attention and resources in the time remaining before January 1, 2000, on assessing, fixing, testing, and developing contingency plans to address any and all outstanding year 2000 computer date-change problems, so as to minimize possible disruptions associated with computer failures.

(3)(A) Because year 2000 computer date-change problems may affect virtually all businesses and other users of technology products to some degree, there is a substantial likelihood that actual or potential year 2000 failures will prompt a significant volume of litigation, much of it insubstantial.

(B) The litigation described in subparagraph (A) would have a range of undesirable effects, including the following:

(i) It would threaten to waste technical and financial resources that are better devoted to curing year 2000 computer date-change problems and ensuring that systems remain or become operational.

(ii) It could threaten the network of valued and trusted business and customer relationships that are important to the effective functioning of the national economy.

(iii) It would strain the Nation's legal system, causing particular problems for the small businesses and individuals who already find that system inaccessible because of its complexity and expense.

(iv) The delays, expense, uncertainties, loss of control, adverse publicity, and animosities that frequently accompany litigation of business disputes could exacerbate the difficulties associated with the date change and work against the successful resolution of those difficulties.

(4) It is appropriate for the Congress to enact legislation to assure that the year 2000 problems described in this section do not unnecessarily disrupt interstate commerce or create unnecessary caseloads in Federal courts and to provide initiatives to help businesses prepare and be in a position to withstand the potentially devastating economic impact of such problems.

(5) Resorting to the legal system for resolution of year 2000 problems described in this section

is not feasible for many businesses and individuals who already find the legal system inaccessible, particularly small businesses and individuals who already find the legal system inaccessible, because of its complexity and expense.

(6) Concern about the potential for liability—in particular, concern about the substantial litigation expense associated with defending against even the most insubstantial lawsuits—is prompting many persons and businesses with technical expertise to avoid projects aimed at curing year 2000 computer date-change problems.

(7) A proliferation of frivolous lawsuits relating to year 2000 computer date-change problems by opportunistic parties may further limit access to courts by straining the resources of the legal system and depriving deserving parties of their legitimate rights to relief.

(8) Congress encourages businesses to approach their disputes relating to year 2000 computer date-change problems responsibly, and to avoid unnecessary, time-consuming, and costly litigation about Y2K failures, particularly those that are not material. Congress supports good faith negotiations between parties when there is such a dispute, and, if necessary, urges the parties to enter into voluntary, nonbinding mediation rather than litigation.

(b) Purposes

Based upon the power of the Congress under Article I, Section 8, Clause 3 of the Constitution of the United States, the purposes of this chapter are—

(1) to establish uniform legal standards that give all businesses and users of technology products reasonable incentives to solve year 2000 computer date-change problems before they develop;

(2) to encourage continued remediation and testing efforts to solve such problems by providers, suppliers, customers, and other contracting partners;

(3) to encourage private and public parties alike to resolve disputes relating to year 2000 computer date-change problems by alternative dispute mechanisms in order to avoid costly and time-consuming litigation, to initiate those mechanisms as early as possible, and to encourage the prompt identification and correction of such problems; and

(4) to lessen the burdens on interstate commerce by discouraging insubstantial lawsuits while preserving the ability of individuals and businesses that have suffered real injury to obtain complete relief.

(Pub. L. 106–37, §2, July 20, 1999, 113 Stat. 185.)

SHORT TITLE

Pub. L. 106–37, §1(a), July 20, 1999, 113 Stat. 185, provided that: "This Act [enacting this chapter] may be cited as the 'Y2K Act'."

§6602. Definitions

In this chapter:

(1) Y2K action

The term "Y2K action"—

(A) means a civil action commenced in any Federal or State court, or an agency board of contract appeal proceeding, in which the plaintiff's alleged harm or injury arises from or is related to an actual or potential Y2K failure, or a claim or defense arises from or is related to an actual or potential Y2K failure;

(B) includes a civil action commenced in any Federal or State court by a government entity when acting in a commercial or contracting capacity; but

(C) does not include an action brought by a government entity acting in a regulatory, supervisory, or enforcement capacity.

(2) Y2K failure

The term "Y2K failure" means failure by any device or system (including any computer system and any microchip or integrated circuit embedded in another device or product), or any software,

firmware, or other set or collection of processing instructions to process, to calculate, to compare, to sequence, to display, to store, to transmit, or to receive year-2000 date-related data, including failures—

(A) to deal with or account for transitions or comparisons from, into, and between the years 1999 and 2000 accurately;

(B) to recognize or accurately to process any specific date in 1999, 2000, or 2001; or

(C) accurately to account for the year 2000's status as a leap year, including recognition and processing of the correct date on February 29, 2000.

(3) Government entity

The term "government entity" means an agency, instrumentality, or other entity of Federal, State, or local government (including multijurisdictional agencies, instrumentalities, and entities).

(4) Material defect

The term "material defect" means a defect in any item, whether tangible or intangible, or in the provision of a service, that substantially prevents the item or service from operating or functioning as designed or according to its specifications. The term "material defect" does not include a defect that—

(A) has an insignificant or de minimis effect on the operation or functioning of an item or computer program;

(B) affects only a component of an item or program that, as a whole, substantially operates or functions as designed; or

(C) has an insignificant or de minimis effect on the efficacy of the service provided.

(5) Personal injury

The term "personal injury" means physical injury to a natural person, including—

(A) death as a result of a physical injury; and

(B) mental suffering, emotional distress, or similar injuries suffered by that person in connection with a physical injury.

(6) State

The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, and any political subdivision thereof.

(7) Contract

The term "contract" means a contract, tariff, license, or warranty.

(8) Alternative dispute resolution

The term "alternative dispute resolution" means any process or proceeding, other than adjudication by a court or in an administrative proceeding, to assist in the resolution of issues in controversy, through processes such as early neutral evaluation, mediation, minitrial, and arbitration.

(Pub. L. 106–37, §3, July 20, 1999, 113 Stat. 187.)

§6603. Application of chapter

(a) General rule

This chapter applies to any Y2K action brought after January 1, 1999, for a Y2K failure occurring before January 1, 2003, or for a potential Y2K failure that could occur or has allegedly caused harm or injury before January 1, 2003, including any appeal, remand, stay, or other judicial, administrative, or alternative dispute resolution proceeding in such an action.

(b) No new cause of action created

Nothing in this chapter creates a new cause of action, and, except as otherwise explicitly provided in this chapter, nothing in this chapter expands any liability otherwise imposed or limits any defense otherwise available under Federal or State law.

(c) Claims for personal injury or wrongful death excluded

This chapter does not apply to a claim for personal injury or for wrongful death.

(d) Warranty and contract preservation

(1) In general

Subject to paragraph (2), in any Y2K action any written contractual term, including a limitation or an exclusion of liability, or a disclaimer of warranty, shall be strictly enforced unless the enforcement of that term would manifestly and directly contravene applicable State law embodied in any statute in effect on January 1, 1999, specifically addressing that term.

(2) Interpretation of contract

In any Y2K action in which a contract to which paragraph (1) applies is silent as to a particular issue, the interpretation of the contract as to that issue shall be determined by applicable law in effect at the time the contract was executed.

(3) Unconscionability

Nothing in paragraph (1) shall prevent enforcement of State law doctrines of unconscionability, including adhesion, recognized as of January 1, 1999, in controlling judicial precedent by the courts of the State whose law applies to the Y2K action.

(e) Preemption of State law

This chapter supersedes State law to the extent that it establishes a rule of law applicable to a Y2K action that is inconsistent with State law, but nothing in this chapter implicates, alters, or diminishes the ability of a State to defend itself against any claim on the basis of sovereign immunity.

(f) Application with Year 2000 Information and Readiness Disclosure Act

Nothing in this chapter supersedes any provision of the Year 2000 Information and Readiness Disclosure Act.

(g) Application to actions brought by a government entity

(1) In general

To the extent provided in this subsection, this chapter shall apply to an action brought by a government entity described in section 6602(1)(C) of this title.

(2) Definitions

In this subsection:

(A) Defendant

(i) In general

The term "defendant" includes a State or local government.

(ii) State

The term "State" means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(iii) Local government

The term "local government" means—

(I) any county, city, town, township, parish, village, or other general purpose political subdivision of a State; and

(II) any combination of political subdivisions described in subclause (I) recognized by the Secretary of Housing and Urban Development.

(B) Y2K upset

The term "Y2K upset"—

(i) means an exceptional temporary noncompliance with applicable federally enforceable measurement, monitoring, or reporting requirements directly related to a Y2K failure that are beyond the reasonable control of the defendant charged with compliance; and

(ii) does not include—

(I) noncompliance with applicable federally enforceable measurement, monitoring, or reporting requirements that constitutes or would create an imminent threat to public health, safety, or the environment;

(II) noncompliance with applicable federally enforceable measurement, monitoring, or reporting requirements that provide for the safety and soundness of the banking or monetary system, or for the integrity of the national securities markets, including the protection of depositors and investors;

(III) noncompliance with applicable federally enforceable measurement, monitoring, or reporting requirements to the extent caused by operational error or negligence;

(IV) lack of reasonable preventative maintenance;

(V) lack of preparedness for a Y2K failure; or

(VI) noncompliance with the underlying federally enforceable requirements to which the applicable federally enforceable measurement, monitoring, or reporting requirement relates.

(3) Conditions necessary for a demonstration of a Y2K upset

A defendant who wishes to establish the affirmative defense of Y2K upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that—

(A) the defendant previously made a reasonable good faith effort to anticipate, prevent, and effectively remediate a potential Y2K failure;

(B) a Y2K upset occurred as a result of a Y2K failure or other emergency directly related to a Y2K failure;

(C) noncompliance with the applicable federally enforceable measurement, monitoring, or reporting requirement was unavoidable in the face of an emergency directly related to a Y2K failure and was necessary to prevent the disruption of critical functions or services that could result in harm to life or property;

(D) upon identification of noncompliance the defendant invoking the defense began immediate actions to correct any violation of federally enforceable measurement, monitoring, or reporting requirements; and

(E) the defendant submitted notice to the appropriate Federal regulatory authority of a Y2K upset within 72 hours from the time that the defendant became aware of the upset.

(4) Grant of a Y2K upset defense

Subject to the other provisions of this subsection, the Y2K upset defense shall be a complete defense to the imposition of a penalty in any action brought as a result of noncompliance with federally enforceable measurement, monitoring, or reporting requirements for any defendant who establishes by a preponderance of the evidence that the conditions set forth in paragraph (3) are met.

(5) Length of Y2K upset

The maximum allowable length of the Y2K upset shall be not more than 15 days beginning on the date of the upset unless specific relief by the appropriate regulatory authority is granted.

(6) Fraudulent invocation of Y2K upset defense

Fraudulent use of the Y2K upset defense provided for in this subsection shall be subject to the sanctions provided in section 1001 of title 18.

(7) Expiration of defense

The Y2K upset defense may not be asserted for a Y2K upset occurring after June 30, 2000.

(8) Preservation of authority

Nothing in this subsection shall affect the authority of a government entity to seek injunctive relief or require a defendant to correct a violation of a federally enforceable measurement, monitoring, or reporting requirement.

(h) Consumer protection from Y2K failures

(1) In general

No person who transacts business on matters directly or indirectly affecting residential mortgages shall cause or permit a foreclosure on any such mortgage against a consumer as a result of an actual Y2K failure that results in an inability to accurately or timely process any mortgage payment transaction.

(2) Notice

A consumer who is affected by an inability described in paragraph (1) shall notify the servicer for the mortgage, in writing and within 7 business days from the time that the consumer becomes aware of the Y2K failure and the consumer's inability to accurately or timely fulfill his or her obligation to pay, of such failure and inability and shall provide to the servicer any available documentation with respect to the failure.

(3) Actions may resume after grace period

Notwithstanding paragraph (1), an action prohibited under paragraph (1) may be resumed, if the consumer's mortgage obligation has not been paid and the servicer of the mortgage has not expressly and in writing granted the consumer an extension of time during which to pay the consumer's mortgage obligation, but only after the later of—

(A) four weeks after January 1, 2000; or

(B) four weeks after notification is made as required under paragraph (2), except that any notification made on or after March 15, 2000, shall not be effective for purposes of this subsection.

(4) Applicability

This subsection does not apply to transactions upon which a default has occurred before December 15, 1999, or with respect to which an imminent default was foreseeable before December 15, 1999.

(5) Enforcement of obligations merely tolled

This subsection delays but does not prevent the enforcement of financial obligations, and does not otherwise affect or extinguish the obligation to pay.

(6) Definition

In this subsection—

(A) The term "consumer" means a natural person.

(B) The term "residential mortgage" has the meaning given the term "federally related mortgage loan" under section 2602 of title 12.

(C) The term "servicer" means the person, including any successor, responsible for receiving any scheduled periodic payments from a consumer pursuant to the terms of a residential mortgage, including amounts for any escrow account, and for making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the mortgage. Such term includes the person, including any successor, who makes or holds a loan if such person also services the loan.

(i) Applicability to securities litigation

In any Y2K action in which the underlying claim arises under the securities laws (as defined in section 78c(a) of this title), the provisions of this chapter, other than section 6612(b) of this title, shall not apply.

(Pub. L. 106–37, §4, July 20, 1999, 113 Stat. 188.)

REFERENCES IN TEXT

The Year 2000 Information and Readiness Disclosure Act, referred to in subsec. (f), is Pub. L. 105–271, Oct. 19, 1998, 112 Stat. 2386, which was formerly set out as a note under section 1 of this title.

§6604. Punitive damages limitations

(a) In general

In any Y2K action in which punitive damages are permitted by applicable law, the defendant shall not be liable for punitive damages unless the plaintiff proves by clear and convincing evidence that the applicable standard for awarding damages has been met.

(b) Caps on punitive damages

(1) In general

Subject to the evidentiary standard established by subsection (a) of this section, punitive damages permitted under applicable law against a defendant described in paragraph (2) in a Y2K action may not exceed the lesser of—

(A) three times the amount awarded for compensatory damages; or

(B) $250,000.

(2) Defendant described

A defendant described in this paragraph is a defendant—

(A) who—

(i) is sued in his or her capacity as an individual; and

(ii) whose net worth does not exceed $500,000; or

(B) that is an unincorporated business, a partnership, corporation, association, or organization, with fewer than 50 full-time employees.

(3) No cap if injury specifically intended

Paragraph (1) does not apply if the plaintiff establishes by clear and convincing evidence that the defendant acted with specific intent to injure the plaintiff.

(c) Government entities

Punitive damages in a Y2K action may not be awarded against a government entity.

(d) Institutions of higher education

(1) In general

Subject to paragraph (2), punitive damages in a Y2K action may not be awarded against an instituion [1] of higher education as defined in section 1001(a) of title 20.

(2) Exception

Paragraph (1) shall not apply to an institution of higher education if the Y2K failure in the Y2K action occurred in a computer-based student financial aid system of that institution of higher education, and the institution—

(A) has passed Y2K data exchange testing with the Department of Education; or

(B) is not or was not in the process of performing data exchange testing with the Department of Education at the time the Department terminates such testing.

(Pub. L. 106–37, §5, July 20, 1999, 113 Stat. 192; Pub. L. 106–113, div. B, §1000(a)(4) [title III, §311], Nov. 29, 1999, 113 Stat. 1535, 1501A–265.)

AMENDMENTS

1999—Subsec. (d). Pub. L. 106–113 added subsec. (d).

[1] *So in original. Probably should be "institution".*

§6605. Proportionate liability

(a) In general

Except in a Y2K action that is a contract action, and except as provided in subsections (b) through (g) of this section, a person against whom a final judgment is entered in a Y2K action shall be liable solely for the portion of the judgment that corresponds to the relative and proportionate responsibility of that person. In determining the percentage of responsibility of any defendant, the trier of fact shall determine that percentage as a percentage of the total fault of all persons, including the plaintiff, who caused or contributed to the total loss incurred by the plaintiff.

(b) Proportionate liability

(1) Determination of responsibility

In any Y2K action that is not a contract action, the court shall instruct the jury to answer special interrogatories, or, if there is no jury, the court shall make findings with respect to each defendant, including defendants who have entered into settlements with the plaintiff or plaintiffs, concerning—

(A) the percentage of responsibility, if any, of each defendant, measured as a percentage of the total fault of all persons who caused or contributed to the loss incurred by the plaintiff; and

(B) if alleged by the plaintiff, whether the defendant (other than a defendant who has entered into a settlement agreement with the plaintiff)—

(i) acted with specific intent to injure the plaintiff; or

(ii) knowingly committed fraud.

(2) Contents of special interrogatories or findings

The responses to interrogatories or findings under paragraph (1) shall specify the total amount of damages that the plaintiff is entitled to recover and the percentage of responsibility of each defendant found to have caused or contributed to the loss incurred by the plaintiff.

(3) Factors for consideration

In determining the percentage of responsibility under this subsection, the trier of fact shall consider—

(A) the nature of the conduct of each person found to have caused or contributed to the loss incurred by the plaintiff; and

(B) the nature and extent of the causal relationship between the conduct of each such person and the damages incurred by the plaintiff.

(c) Joint liability for specific intent or fraud

(1) In general

Notwithstanding subsection (a) of this section, the liability of a defendant in a Y2K action that is not a contract action is joint and several if the trier of fact specifically determines that the defendant—

(A) acted with specific intent to injure the plaintiff; or

(B) knowingly committed fraud.

(2) Fraud; recklessness

(A) Knowing commission of fraud described

For purposes of subsection (b)(1)(B)(ii) of this section and paragraph (1)(B) of this subsection, a defendant knowingly committed fraud if the defendant—

(i) made an untrue statement of a material fact, with actual knowledge that the statement was false;

(ii) omitted a fact necessary to make the statement not be misleading, with actual knowledge that, as a result of the omission, the statement was false; and

(iii) knew that the plaintiff was reasonably likely to rely on the false statement.

(B) Recklessness

For purposes of subsection (b)(1)(B) of this section and paragraph (1) of this subsection, reckless conduct by the defendant does not constitute either a specific intent to injure, or the knowing commission of fraud, by the defendant.

(3) Right to contribution not affected

Nothing in this section affects the right, under any other law, of a defendant to contribution with respect to another defendant found under subsection (b)(1)(B) of this section, or determined under paragraph (1)(B) of this subsection, to have acted with specific intent to injure the plaintiff or to have knowingly committed fraud.

(d) Special rules

(1) Uncollectible share

(A) In general

Notwithstanding subsection (a) of this section, if, upon motion made not later than 6 months after a final judgment is entered in any Y2K action that is not a contract action, the court determines that all or part of the share of the judgment against a defendant for compensatory damages is not collectible against that defendant, then each other defendant in the action is liable for the uncollectible share as follows:

(i) Percentage of net worth

The other defendants are jointly and severally liable for the uncollectible share if the plaintiff establishes that—

(I) the plaintiff is an individual whose recoverable damages under the final judgment are equal to more than 10 percent of the net worth of the plaintiff; and

(II) the net worth of the plaintiff is less than $200,000.

(ii) Other plaintiffs

For a plaintiff not described in clause (i), each of the other defendants is liable for the uncollectible share in proportion to the percentage of responsibility of that defendant.

(iii) Additional liability

For a plaintiff not described in clause (i), in addition to the share identified in clause (ii), the defendant is liable for an additional portion of the uncollectible share in an amount equal to 50 percent of the amount determined under clause (ii) if the plaintiff demonstrates by a preponderance of the evidence that the defendant acted with reckless disregard for the likelihood that its acts would cause injury of the sort suffered by the plaintiff.

(B) Overall limit

The total payments required under subparagraph (A) from all defendants may not exceed the amount of the uncollectible share.

(C) Subject to contribution

A defendant against whom judgment is not collectible is subject to contribution and to any continuing liability to the plaintiff on the judgment.

(D) Suits by consumers

(i) Notwithstanding subparagraph (A), the other defendants are jointly and severally liable for the uncollectible share if—

(I) the plaintiff is a consumer whose suit alleges or arises out of a defect in a consumer product; and

(II) the plaintiff is suing as an individual and not as part of a class action.

(ii) In this subparagraph:

(I) The term "class action" means—

(aa) a single lawsuit in which: (1) damages are sought on behalf of more than 10 persons or prospective class members; or (2) one or more named parties seek to recover damages on a representative basis on behalf of themselves and other unnamed parties similarly situated; or

(bb) any group of lawsuits filed in or pending in the same court in which: (1) damages are sought on behalf of more than 10 persons; and (2) the lawsuits are joined, consolidated, or otherwise proceed as a single action for any purpose.

(II) The term "consumer" means an individual who acquires a consumer product for purposes other than resale.

(III) The term "consumer product" means any personal property or service which is normally used for personal, family, or household purposes.

(2) Special right of contribution

To the extent that a defendant is required to make an additional payment under paragraph (1), that defendant may recover contribution—

(A) from the defendant originally liable to make the payment;

(B) from any other defendant that is jointly and severally liable;

(C) from any other defendant held proportionately liable who is liable to make the same payment and has paid less than that other defendant's proportionate share of that payment; or

(D) from any other person responsible for the conduct giving rise to the payment that would have been liable to make the same payment.

(3) Nondisclosure to jury

The standard for allocation of damages under subsection (a) of this section and subsection (b)(1) of this section, and the procedure for reallocation of uncollectible shares under paragraph (1) of this subsection, shall not be disclosed to members of the jury.

(e) Settlement discharge

(1) In general

A defendant who settles a Y2K action that is not a contract action at any time before final verdict or judgment shall be discharged from all claims for contribution brought by other persons. Upon entry of the settlement by the court, the court shall enter an order constituting the final discharge of all obligations to the plaintiff of the settling defendant arising out of the action. The order shall bar all future claims for contribution arising out of the action—

(A) by any person against the settling defendant; and

(B) by the settling defendant against any person other than a person whose liability has been extinguished by the settlement of the settling defendant.

(2) Reduction

If a defendant enters into a settlement with the plaintiff before the final verdict or judgment, the verdict or judgment shall be reduced by the greater of—

(A) an amount that corresponds to the percentage of responsibility of that defendant; or

(B) the amount paid to the plaintiff by that defendant.

(f) General right of contribution

(1) In general

A defendant who is jointly and severally liable for damages in any Y2K action that is not a contract action may recover contribution from any other person who, if joined in the original action, would have been liable for the same damages. A claim for contribution shall be determined based on the percentage of responsibility of the claimant and of each person against whom a claim for contribution is made.

(2) Statute of limitations for contribution

An action for contribution in connection with a Y2K action that is not a contract action shall be brought not later than 6 months after the entry of a final, nonappealable judgment in the Y2K action, except that an action for contribution brought by a defendant who was required to make an additional payment under subsection (d)(1) of this section may be brought not later than 6 months after the date on which such payment was made.

(g) More protective State law not preempted

Nothing in this section preempts or supersedes any provision of State law that—

(1) limits the liability of a defendant in a Y2K action to a lesser amount than the amount determined under this section; or

(2) otherwise affords a greater degree of protection from joint or several liability than is afforded by this section.

(Pub. L. 106–37, §6, July 20, 1999, 113 Stat. 192.)

§6606. Prelitigation notice

(a) In general

Before commencing a Y2K action, except an action that seeks only injunctive relief, a prospective plaintiff in a Y2K action shall send a written notice by certified mail (with either return receipt requested or other means of verification that the notice was sent) to each prospective defendant in that action. The notice shall provide specific and detailed information about—

(1) the manifestations of any material defect alleged to have caused harm or loss;

(2) the harm or loss allegedly suffered by the prospective plaintiff;

(3) how the prospective plaintiff would like the prospective defendant to remedy the problem;

(4) the basis upon which the prospective plaintiff seeks that remedy; and

(5) the name, title, address, and telephone number of any individual who has authority to negotiate a resolution of the dispute on behalf of the prospective plaintiff.

(b) Person to whom notice to be sent

The notice required by subsection (a) of this section shall be sent—

(1) to the registered agent of the prospective defendant for service of legal process;

(2) if the prospective defendant does not have a registered agent, then to the chief executive officer if the prospective defendant is a corporation, to the managing partner if the prospective defendant is a partnership, to the proprietor if the prospective defendant is a sole proprietorship, or to a similarly-situated person if the prospective defendant is any other enterprise; or

(3) if the prospective defendant has designated a person to receive prelitigation notices on a Year 2000 Internet Website (as defined in section 3(7) of the Year 2000 Information and Readiness Disclosure Act), to the designated person, if the prospective plaintiff has reasonable access to the Internet.

(c) Response to notice

(1) In general

Within 30 days after receipt of the notice specified in subsection (a) of this section, each prospective defendant shall send by certified mail with return receipt requested to each prospective plaintiff a written statement acknowledging receipt of the notice, and describing the actions it has taken or will take to address the problem identified by the prospective plaintiff.

(2) Willingness to engage in ADR

The written statement shall state whether the prospective defendant is willing to engage in alternative dispute resolution.

(3) Inadmissibility

A written statement required by this subsection is not admissible in evidence, under Rule 408 of the Federal Rules of Evidence or any analogous rule of evidence in any State, in any proceeding to

prove liability for, or the invalidity of, a claim or its amount, or otherwise as evidence of conduct or statements made in compromise negotiations.

(4) Presumptive time of receipt

For purposes of paragraph (1), a notice under subsection (a) of this section is presumed to be received 7 days after it was sent.

(5) Priority

A prospective defendant receiving more than one notice under this section may give priority to notices with respect to a product or service that involves a health or safety related Y2K failure.

(d) Failure to respond

If a prospective defendant—

(1) fails to respond to a notice provided pursuant to subsection (a) of this section within the 30 days specified in subsection (c)(1) of this section; or

(2) does not describe the action, if any, the prospective defendant has taken, or will take, to address the problem identified by the prospective plaintiff,

the prospective plaintiff may immediately commence a legal action against that prospective defendant.

(e) Remediation period

(1) In general

If the prospective defendant responds and proposes remedial action it will take, or offers to engage in alternative dispute resolution, then the prospective plaintiff shall allow the prospective defendant an additional 60 days from the end of the 30-day notice period to complete the proposed remedial action or alternative dispute resolution before commencing a legal action against that prospective defendant.

(2) Extension by agreement

The prospective plaintiff and prospective defendant may change the length of the 60-day remediation period by written agreement.

(3) Multiple extensions not allowed

Except as provided in paragraph (2), a defendant in a Y2K action is entitled to no more than one 30-day period and one 60-day remediation period under paragraph (1).

(4) Statutes of limitation, etc., tolled

Any applicable statute of limitations or doctrine of laches in a Y2K action to which paragraph (1) applies shall be tolled during the notice and remediation period under that paragraph.

(f) Failure to provide notice

If a defendant determines that a plaintiff has filed a Y2K action without providing the notice specified in subsection (a) of this section or without awaiting the expiration of the appropriate waiting period specified in subsection (c) of this section, the defendant may treat the plaintiff's complaint as such a notice by so informing the court and the plaintiff in its initial response to the plaintiff. If any defendant elects to treat the complaint as such a notice—

(1) the court shall stay all discovery and all other proceedings in the action for the appropriate period after filing of the complaint; and

(2) the time for filing answers and all other pleadings shall be tolled during the appropriate period.

(g) Effect of contractual or statutory waiting periods

In cases in which a contract, or a statute enacted before January 1, 1999, requires notice of nonperformance and provides for a period of delay prior to the initiation of suit for breach or repudiation of contract, the period of delay provided by contract or the statute is controlling over the waiting period specified in subsections (c) and (d) of this section.

(h) State law controls alternative methods

Nothing in this section supersedes or otherwise preempts any State law or rule of civil procedure with respect to the use of alternative dispute resolution for Y2K actions.

(i) Provisional remedies unaffected

Nothing in this section interferes with the right of a litigant to provisional remedies otherwise available under Rule 65 of the Federal Rules of Civil Procedure or any State rule of civil procedure providing extraordinary or provisional remedies in any civil action in which the underlying complaint seeks both injunctive and monetary relief.

(j) Special rule for class actions

For the purpose of applying this section to a Y2K action that is maintained as a class action in Federal or State court, the requirements of the preceding subsections of this section apply only to named plaintiffs in the class action.

(Pub. L. 106–37, §7, July 20, 1999, 113 Stat. 196.)

REFERENCES IN TEXT

Section 3(7) of the Year 2000 Information and Readiness Disclosure Act, referred to in subsec. (b)(3), is section 3(7) of Pub. L. 105–271, which was formerly set out in a note under section 1 of this title.

The Federal Rules of Evidence, referred to in subsec. (c)(3), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Federal Rules of Civil Procedure, referred to in subsec. (i), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§6607. Pleading requirements

(a) Application with rules of civil procedure

This section applies exclusively to Y2K actions and, except to the extent that this section requires additional information to be contained in or attached to pleadings, nothing in this section is intended to amend or otherwise supersede applicable rules of Federal or State civil procedure.

(b) Nature and amount of damages

In all Y2K actions in which damages are requested, there shall be filed with the complaint a statement of specific information as to the nature and amount of each element of damages and the factual basis for the damages calculation.

(c) Material defects

In any Y2K action in which the plaintiff alleges that there is a material defect in a product or service, there shall be filed with the complaint a statement of specific information regarding the manifestations of the material defects and the facts supporting a conclusion that the defects are material.

(d) Required state of mind

In any Y2K action in which a claim is asserted on which the plaintiff may prevail only on proof that the defendant acted with a particular state of mind, there shall be filed with the complaint, with respect to each element of that claim, a statement of the facts giving rise to a strong inference that the defendant acted with the required state of mind.

(Pub. L. 106–37, §8, July 20, 1999, 113 Stat. 198.)

REFERENCES IN TEXT

Rules of Federal civil procedure, referred to in subsec. (a), are contained in the Federal Rules of Civil Procedure which are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§6608. Duty to mitigate

(a) In general

Damages awarded in any Y2K action shall exclude compensation for damages the plaintiff could reasonably have avoided in light of any disclosure or other information of which the plaintiff was, or reasonably should have been, aware, including information made available by the defendant to purchasers or users of the defendant's product or services concerning means of remedying or avoiding the Y2K failure involved in the action.

(b) Preservation of existing law

The duty imposed by this section is in addition to any duty to mitigate imposed by State law.

(c) Exception for intentional fraud

Subsection (a) of this section does not apply to damages suffered by reason of the plaintiff's justifiable reliance upon an affirmative material misrepresentation by the defendant, made by the defendant with actual knowledge of its falsity, concerning the potential for Y2K failure of the device or system used or sold by the defendant that experienced the Y2K failure alleged to have caused the plaintiff's harm.

(Pub. L. 106–37, §9, July 20, 1999, 113 Stat. 198.)

§6609. Application of existing impossibility or commercial impracticability doctrines

In any Y2K action for breach or repudiation of contract, the applicability of the doctrines of impossibility and commercial impracticability shall be determined by the law in existence on January 1, 1999. Nothing in this chapter shall be construed as limiting or impairing a party's right to assert defenses based upon such doctrines.

(Pub. L. 106–37, §10, July 20, 1999, 113 Stat. 199.)

§6610. Damages limitation by contract

In any Y2K action for breach or repudiation of contract, no party may claim, or be awarded, any category of damages unless such damages are allowed—

(1) by the express terms of the contract; or

(2) if the contract is silent on such damages, by operation of State law at the time the contract was effective or by operation of Federal law.

(Pub. L. 106–37, §11, July 20, 1999, 113 Stat. 199.)

§6611. Damages in tort claims

(a) In general

A party to a Y2K action making a tort claim, other than a claim of intentional tort arising independent of a contract, may not recover damages for economic loss unless—

(1) the recovery of such losses is provided for in a contract to which the party seeking to recover such losses is a party; or

(2) such losses result directly from damage to tangible personal or real property caused by the Y2K failure involved in the action (other than damage to property that is the subject of the contract between the parties to the Y2K action or, in the event there is no contract between the parties, other than damage caused only to the property that experienced the Y2K failure),

and such damages are permitted under applicable Federal or State law.

(b) Economic loss

For purposes of this section only, and except as otherwise specifically provided in a valid and enforceable written contract between the plaintiff and the defendant in a Y2K action, the term "economic loss" means amounts awarded to compensate an injured party for any loss, and includes amounts awarded for damages such as—

(1) lost profits or sales;

(2) business interruption;

(3) losses indirectly suffered as a result of the defendant's wrongful act or omission;

(4) losses that arise because of the claims of third parties;

(5) losses that must be pled as special damages; and

(6) consequential damages (as defined in the Uniform Commercial Code or analogous State commercial law).

(c) Certain other actions

A person liable for damages, whether by settlement or judgment, in a civil action to which this chapter does not apply because of section 6603(c) of this title whose liability, in whole or in part, is the result of a Y2K failure may, notwithstanding any other provision of this chapter, pursue any remedy otherwise available under Federal or State law against the person responsible for that Y2K failure to the extent of recovering the amount of those damages.

(Pub. L. 106–37, §12, July 20, 1999, 113 Stat. 199.)

§6612. State of mind; bystander liability; control

(a) Defendant's state of mind

In a Y2K action other than a claim for breach or repudiation of contract, and in which the defendant's actual or constructive awareness of an actual or potential Y2K failure is an element of the claim, the defendant is not liable unless the plaintiff establishes that element of the claim by the standard of evidence under applicable State law in effect on the day before January 1, 1999.

(b) Limitation on bystander liability for Y2K failures

(1) In general

With respect to any Y2K action for money damages in which—

(A) the defendant is not the manufacturer, seller, or distributor of a product, or the provider of a service, that suffers or causes the Y2K failure at issue;

(B) the plaintiff is not in substantial privity with the defendant; and

(C) the defendant's actual or constructive awareness of an actual or potential Y2K failure is an element of the claim under applicable law,

the defendant shall not be liable unless the plaintiff, in addition to establishing all other requisite elements of the claim, proves, by the standard of evidence under applicable State law in effect on the day before January 1, 1999, that the defendant actually knew, or recklessly disregarded a known and substantial risk, that such failure would occur.

(2) Substantial privity

For purposes of paragraph (1)(B), a plaintiff and a defendant are in substantial privity when, in a Y2K action arising out of the performance of professional services, the plaintiff and the defendant either have contractual relations with one another or the plaintiff is a person who, prior to the defendant's performance of such services, was specifically identified to and acknowledged by the defendant as a person for whose special benefit the services were being performed.

(3) Certain claims excluded

For purposes of paragraph (1)(C), claims in which the defendant's actual or constructive awareness of an actual or potential Y2K failure is an element of the claim under applicable law do

not include claims for negligence but do include claims such as fraud, constructive fraud, breach of fiduciary duty, negligent misrepresentation, and interference with contract or economic advantage.

(c) Control not determinative of liability

The fact that a Y2K failure occurred in an entity, facility, system, product, or component that was sold, leased, rented, or otherwise within the control of the party against whom a claim is asserted in a Y2K action shall not constitute the sole basis for recovery of damages in that action. A claim in a Y2K action for breach or repudiation of contract for such a failure is governed by the terms of the contract.

(d) Protections of the Year 2000 Information and Readiness Disclosure Act apply

The protections for the exchanges of information provided by section 4 of the Year 2000 Information and Readiness Disclosure Act (Public Law 105–271) shall apply to any Y2K action.

(Pub. L. 106–37, §13, July 20, 1999, 113 Stat. 200.)

REFERENCES IN TEXT

Section 4 of the Year 2000 Information and Readiness Disclosure Act, referred to in subsec. (d), is section 4 of Pub. L. 105–271, which was formerly set out in a note under section 1 of this title.

§6613. Appointment of special masters or magistrate judges for Y2K actions

Any district court of the United States in which a Y2K action is pending may appoint a special master or a magistrate judge to hear the matter and to make findings of fact and conclusions of law in accordance with Rule 53 of the Federal Rules of Civil Procedure.

(Pub. L. 106–37, §14, July 20, 1999, 113 Stat. 201.)

REFERENCES IN TEXT

Rule 53 of the Federal Rules of Civil Procedure, referred to in text, is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§6614. Y2K actions as class actions

(a) Material defect requirement

A Y2K action involving a claim that a product or service is defective may be maintained as a class action in Federal or State court as to that claim only if—

(1) it satisfies all other prerequisites established by applicable Federal or State law, including applicable rules of civil procedure; and

(2) the court finds that the defect in a product or service as alleged would be a material defect for the majority of the members of the class.

(b) Notification

In any Y2K action that is maintained as a class action, the court, in addition to any other notice required by applicable Federal or State law, shall direct notice of the action to each member of the class, which shall include—

(1) a concise and clear description of the nature of the action;

(2) the jurisdiction where the case is pending; and

(3) the fee arrangements with class counsel, including the hourly fee being charged, or, if it is a contingency fee, the percentage of the final award which will be paid, including an estimate of the total amount that would be paid if the requested damages were to be granted.

(c) Forum for Y2K class actions

(1) Jurisdiction

Except as provided in paragraph (2), the district courts of the United States shall have original jurisdiction of any Y2K action that is brought as a class action.

(2) Exceptions

The district courts of the United States shall not have original jurisdiction over a Y2K action brought as a class action if—

(A)(i) a substantial majority of the members of the proposed plaintiff class are citizens of a single State;

(ii) the primary defendants are citizens of that State; and

(iii) the claims asserted will be governed primarily by the laws of that State;

(B) the primary defendants are States, State officials, or other governmental entities against whom the district courts of the United States may be foreclosed from ordering relief;

(C) the plaintiff class does not seek an award of punitive damages, and the amount in controversy is less than the sum of $10,000,000 (exclusive of interest and costs), computed on the basis of all claims to be determined in the action; or

(D) there are less than 100 members of the proposed plaintiff class.

A party urging that any exception described in subparagraph (A), (B), (C), or (D) applies to an action shall bear the full burden of demonstrating the applicability of the exception.

(3) Procedure if requirements not met

(A) Dismissal or remand

A United States district court shall dismiss, or, if after removal, strike the class allegations and remand, any Y2K action brought or removed under this subsection as a class action if—

(i) the action is subject to the jurisdiction of the court solely under this subsection; and

(ii) the court determines the action may not proceed as a class action based on a failure to satisfy the conditions of Rule 23 of the Federal Rules of Civil Procedure.

(B) Amendment; removal

Nothing in paragraph (A) shall prohibit plaintiffs from filing an amended class action in Federal or State court. A defendant shall have the right to remove such an amended class action to a United States district court under this subsection.

(C) Period of limitations tolled

Upon dismissal or remand, the period of limitations for any claim that was asserted in an action on behalf of any named or unnamed member of any proposed class shall be deemed tolled to the full extent provided under Federal law.

(D) Dismissal without prejudice

The dismissal of a Y2K action under subparagraph (A) shall be without prejudice.

(d) Effect on rules of civil procedure

Except as otherwise provided in this section, nothing in this section supersedes any rule of Federal or State civil procedure applicable to class actions.

(Pub. L. 106–37, §15, July 20, 1999, 113 Stat. 201.)

REFERENCES IN TEXT

Rules of Federal civil procedure, referred to in subsecs. (a)(1), (c)(3)(A)(ii), and (d), are contained in the Federal Rules of Civil Procedure which are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§6615. Applicability of State law

Nothing in this chapter shall be construed to affect the applicability of any State law that provides stricter limits on damages and liabilities, affording greater protection to defendants in Y2K actions,

than are provided in this chapter.

(Pub. L. 106–37, §16, July 20, 1999, 113 Stat. 202.)

§6616. Admissible evidence ultimate issue in State courts

Any party to a Y2K action in a State court in a State that has not adopted a rule of evidence substantially similar to Rule 704 of the Federal Rules of Evidence may introduce in such action evidence that would be admissible if Rule 704 applied in that jurisdiction.

(Pub. L. 106–37, §17, July 20, 1999, 113 Stat. 202.)

REFERENCES IN TEXT

Rule 704 of the Federal Rules of Evidence, referred to in text, is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§6617. Suspension of penalties for certain year 2000 failures by small business concerns

(a) Definitions

In this section—

(1) the term "agency" means any executive agency, as defined in section 105 of title 5, that has the authority to impose civil penalties on small business concerns;

(2) the term "first-time violation" means a violation by a small business concern of a federally enforceable rule or regulation (other than a Federal rule or regulation that relates to the safety and soundness of the banking or monetary system or for the integrity of the National Securities markets, including protection of depositors and investors) caused by a Y2K failure if that Federal rule or regulation had not been violated by that small business concern within the preceding 3 years; and

(3) the term "small business concern" has the same meaning as a defendant described in section 6604(b)(2)(B) of this title.

(b) Establishment of liaisons

Not later than 30 days after July 20, 1999, each agency shall—

(1) establish a point of contact within the agency to act as a liaison between the agency and small business concerns with respect to problems arising out of Y2K failures and compliance with Federal rules or regulations; and

(2) publish the name and phone number of the point of contact for the agency in the Federal Register.

(c) General rule

Subject to subsections (d) and (e) of this section, no agency shall impose any civil money penalty on a small business concern for a first-time violation.

(d) Standards for waiver

An agency shall provide a waiver of civil money penalties for a first-time violation, provided that a small business concern demonstrates, and the agency determines, that—

(1) the small business concern previously made a reasonable good faith effort to anticipate, prevent, and effectively remediate a potential Y2K failure;

(2) a first-time violation occurred as a result of the Y2K failure of the small business concern or other entity, which significantly affected the small business concern's ability to comply with a Federal rule or regulation;

(3) the first-time violation was unavoidable in the face of a Y2K failure or occurred as a result of efforts to prevent the disruption of critical functions or services that could result in harm to life or property;

(4) upon identification of a first-time violation, the small business concern initiated reasonable and prompt measures to correct the violation; and

(5) the small business concern submitted notice to the appropriate agency of the first-time violation within a reasonable time not to exceed 5 business days from the time that the small business concern became aware that the first-time violation had occurred.

(e) Exceptions

An agency may impose civil money penalties authorized under Federal law on a small business concern for a first-time violation if—

(1) the small business concern's failure to comply with Federal rules or regulations resulted in actual harm, or constitutes or creates an imminent threat to public health, safety, or the environment; or

(2) the small business concern fails to correct the violation not later than 1 month after initial notification to the agency.

(f) Expiration

This section shall not apply to first-time violations caused by a Y2K failure occurring after December 31, 2000.

(Pub. L. 106–37, §18, July 20, 1999, 113 Stat. 202.)

CHAPTER 93—INSURANCE

Sec.

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§6701. Operation of State law

(a) State regulation of the business of insurance

The Act entitled "An Act to express the intent of Congress with reference to the regulation of the business of insurance" and approved March 9, 1945 (15 U.S.C. 1011 et seq.) (commonly referred to as the "McCarran-Ferguson Act") remains the law of the United States.

(b) Mandatory insurance licensing requirements

No person shall engage in the business of insurance in a State as principal or agent unless such person is licensed as required by the appropriate insurance regulator of such State in accordance with the relevant State insurance law, subject to subsections (c), (d), and (e) of this section.

(c) Affiliations

(1) In general

Except as provided in paragraph (2), no State may, by statute, regulation, order, interpretation, or other action, prevent or restrict a depository institution, or an affiliate thereof, from being affiliated directly or indirectly or associated with any person, as authorized or permitted by this Act or any other provision of Federal law.

(2) Insurance

With respect to affiliations between depository institutions, or any affiliate thereof, and any insurer, paragraph (1) does not prohibit—

(A) any State from—

(i) collecting, reviewing, and taking actions (including approval and disapproval) on applications and other documents or reports concerning any proposed acquisition of, or a change or continuation of control of, an insurer domiciled in that State; and

(ii) exercising authority granted under applicable State law to collect information concerning any proposed acquisition of, or a change or continuation of control of, an insurer engaged in the business of insurance in, and regulated as an insurer by, such State;

during the 60-day period preceding the effective date of the acquisition or change or continuation of control, so long as the collecting, reviewing, taking actions, or exercising authority by the State does not have the effect of discriminating, intentionally or unintentionally, against a depository institution or an affiliate thereof, or against any other person based upon an association of such person with a depository institution;

(B) any State from requiring any person that is acquiring control of an insurer domiciled in that State to maintain or restore the capital requirements of that insurer to the level required under the capital regulations of general applicability in that State to avoid the requirement of preparing and filing with the insurance regulatory authority of that State a plan to increase the capital of the insurer, except that any determination by the State insurance regulatory authority with respect to such requirement shall be made not later than 60 days after the date of notification under subparagraph (A); or

(C) any State from restricting a change in the ownership of stock in an insurer, or a company formed for the purpose of controlling such insurer, after the conversion of the insurer from

mutual to stock form so long as such restriction does not have the effect of discriminating, intentionally or unintentionally, against a depository institution or an affiliate thereof, or against any other person based upon an association of such person with a depository institution.

(d) Activities

(1) In general

Except as provided in paragraph (3), and except with respect to insurance sales, solicitation, and cross marketing activities, which shall be governed by paragraph (2), no State may, by statute, regulation, order, interpretation, or other action, prevent or restrict a depository institution or an affiliate thereof from engaging directly or indirectly, either by itself or in conjunction with an affiliate, or any other person, in any activity authorized or permitted under this Act and the amendments made by this Act.

(2) Insurance sales

(A) In general

In accordance with the legal standards for preemption set forth in the decision of the Supreme Court of the United States in Barnett Bank of Marion County N.A. v. Nelson, 517 U.S. 25 (1996), no State may, by statute, regulation, order, interpretation, or other action, prevent or significantly interfere with the ability of a depository institution, or an affiliate thereof, to engage, directly or indirectly, either by itself or in conjunction with an affiliate or any other person, in any insurance sales, solicitation, or crossmarketing activity.

(B) Certain State laws preserved

Notwithstanding subparagraph (A), a State may impose any of the following restrictions, or restrictions that are substantially the same as but no more burdensome or restrictive than those in each of the following clauses:

(i) Restrictions prohibiting the rejection of an insurance policy by a depository institution or an affiliate of a depository institution, solely because the policy has been issued or underwritten by any person who is not associated with such depository institution or affiliate when the insurance is required in connection with a loan or extension of credit.

(ii) Restrictions prohibiting a requirement for any debtor, insurer, or insurance agent or broker to pay a separate charge in connection with the handling of insurance that is required in connection with a loan or other extension of credit or the provision of another traditional banking product by a depository institution, or any affiliate of a depository institution, unless such charge would be required when the depository institution or affiliate is the licensed insurance agent or broker providing the insurance.

(iii) Restrictions prohibiting the use of any advertisement or other insurance promotional material by a depository institution or any affiliate of a depository institution that would cause a reasonable person to believe mistakenly that—

(I) the Federal Government or a State is responsible for the insurance sales activities of, or stands behind the credit of, the institution or affiliate; or

(II) a State, or the Federal Government guarantees any returns on insurance products, or is a source of payment on any insurance obligation of or sold by the institution or affiliate;

(iv) Restrictions prohibiting the payment or receipt of any commission or brokerage fee or other valuable consideration for services as an insurance agent or broker to or by any person, unless such person holds a valid State license regarding the applicable class of insurance at the time at which the services are performed, except that, in this clause, the term "services as an insurance agent or broker" does not include a referral by an unlicensed person of a customer or potential customer to a licensed insurance agent or broker that does not include a discussion of specific insurance policy terms and conditions.

(v) Restrictions prohibiting any compensation paid to or received by any individual who is not licensed to sell insurance, for the referral of a customer that seeks to purchase, or seeks an opinion or advice on, any insurance product to a person that sells or provides opinions or

advice on such product, based on the purchase of insurance by the customer.

(vi) Restrictions prohibiting the release of the insurance information of a customer (defined as information concerning the premiums, terms, and conditions of insurance coverage, including expiration dates and rates, and insurance claims of a customer contained in the records of the depository institution or an affiliate thereof) to any person other than an officer, director, employee, agent, or affiliate of a depository institution, for the purpose of soliciting or selling insurance, without the express consent of the customer, other than a provision that prohibits—

(I) a transfer of insurance information to an unaffiliated insurer in connection with transferring insurance in force on existing insureds of the depository institution or an affiliate thereof, or in connection with a merger with or acquisition of an unaffiliated insurer; or

(II) the release of information as otherwise authorized by State or Federal law.

(vii) Restrictions prohibiting the use of health information obtained from the insurance records of a customer for any purpose, other than for its activities as a licensed agent or broker, without the express consent of the customer.

(viii) Restrictions prohibiting the extension of credit or any product or service that is equivalent to an extension of credit, lease or sale of property of any kind, or furnishing of any services or fixing or varying the consideration for any of the foregoing, on the condition or requirement that the customer obtain insurance from a depository institution or an affiliate of a depository institution, or a particular insurer, agent, or broker, other than a prohibition that would prevent any such depository institution or affiliate—

(I) from engaging in any activity described in this clause that would not violate section 106 of the Bank Holding Company Act Amendments of 1970 [12 U.S.C. 1971 et seq.], as interpreted by the Board of Governors of the Federal Reserve System; or

(II) from informing a customer or prospective customer that insurance is required in order to obtain a loan or credit, that loan or credit approval is contingent upon the procurement by the customer of acceptable insurance, or that insurance is available from the depository institution or an affiliate of the depository institution.

(ix) Restrictions requiring, when an application by a consumer for a loan or other extension of credit from a depository institution is pending, and insurance is offered or sold to the consumer or is required in connection with the loan or extension of credit by the depository institution or any affiliate thereof, that a written disclosure be provided to the consumer or prospective customer indicating that the customer's choice of an insurance provider will not affect the credit decision or credit terms in any way, except that the depository institution may impose reasonable requirements concerning the creditworthiness of the insurer and scope of coverage chosen.

(x) Restrictions requiring clear and conspicuous disclosure, in writing, where practicable, to the customer prior to the sale of any insurance policy that such policy—

(I) is not a deposit;

(II) is not insured by the Federal Deposit Insurance Corporation;

(III) is not guaranteed by any depository institution or, if appropriate, an affiliate of any such institution or any person soliciting the purchase of or selling insurance on the premises thereof; and

(IV) where appropriate, involves investment risk, including potential loss of principal.

(xi) Restrictions requiring that, when a customer obtains insurance (other than credit insurance or flood insurance) and credit from a depository institution, or any affiliate of such institution, or any person soliciting the purchase of or selling insurance on the premises thereof, the credit and insurance transactions be completed through separate documents.

(xii) Restrictions prohibiting, when a customer obtains insurance (other than credit

insurance or flood insurance) and credit from a depository institution or an affiliate of such institution, or any person soliciting the purchase of or selling insurance on the premises thereof, inclusion of the expense of insurance premiums in the primary credit transaction without the express written consent of the customer.

(xiii) Restrictions requiring maintenance of separate and distinct books and records relating to insurance transactions, including all files relating to and reflecting consumer complaints, and requiring that such insurance books and records be made available to the appropriate State insurance regulator for inspection upon reasonable notice.

(C) Limitations

(i) OCC deference

Section 6714(e) of this title does not apply with respect to any State statute, regulation, order, interpretation, or other action regarding insurance sales, solicitation, or cross marketing activities described in subparagraph (A) that was issued, adopted, or enacted before September 3, 1998, and that is not described in subparagraph (B).

(ii) Nondiscrimination

Subsection (e) of this section does not apply with respect to any State statute, regulation, order, interpretation, or other action regarding insurance sales, solicitation, or cross marketing activities described in subparagraph (A) that was issued, adopted, or enacted before September 3, 1998, and that is not described in subparagraph (B).

(iii) Construction

Nothing in this paragraph shall be construed—

(I) to limit the applicability of the decision of the Supreme Court in Barnett Bank of Marion County N.A. v. Nelson, 517 U.S. 25 (1996) with respect to any State statute, regulation, order, interpretation, or other action that is not referred to or described in subparagraph (B); or

(II) to create any inference with respect to any State statute, regulation, order, interpretation, or other action that is not described in this paragraph.

(3) Insurance activities other than sales

State statutes, regulations, interpretations, orders, and other actions shall not be preempted under paragraph (1) to the extent that they—

(A) relate to, or are issued, adopted, or enacted for the purpose of regulating the business of insurance in accordance with the Act entitled "An Act to express the intent of Congress with reference to the regulation of the business of insurance" and approved March 9, 1945 (15 U.S.C. 1011 et seq.) (commonly referred to as the "McCarran-Ferguson Act");

(B) apply only to persons that are not depository institutions, but that are directly engaged in the business of insurance (except that they may apply to depository institutions engaged in providing savings bank life insurance as principal to the extent of regulating such insurance);

(C) do not relate to or directly or indirectly regulate insurance sales, solicitations, or cross marketing activities; and

(D) are not prohibited under subsection (e) of this section.

(4) Financial activities other than insurance

No State statute, regulation, order, interpretation, or other action shall be preempted under paragraph (1) to the extent that—

(A) it does not relate to, and is not issued and adopted, or enacted for the purpose of regulating, directly or indirectly, insurance sales, solicitations, or cross marketing activities covered under paragraph (2);

(B) it does not relate to, and is not issued and adopted, or enacted for the purpose of regulating, directly or indirectly, the business of insurance activities other than sales, solicitations, or cross marketing activities, covered under paragraph (3);

(C) it does not relate to securities investigations or enforcement actions referred to in

subsection (f) of this section; and

(D) it—

(i) does not distinguish by its terms between depository institutions, and affiliates thereof, engaged in the activity at issue and other persons engaged in the same activity in a manner that is in any way adverse with respect to the conduct of the activity by any such depository institution or affiliate engaged in the activity at issue;

(ii) as interpreted or applied, does not have, and will not have, an impact on depository institutions, or affiliates thereof, engaged in the activity at issue, or any person who has an association with any such depository institution or affiliate, that is substantially more adverse than its impact on other persons engaged in the same activity that are not depository institutions or affiliates thereof, or persons who do not have an association with any such depository institution or affiliate;

(iii) does not effectively prevent a depository institution or affiliate thereof from engaging in activities authorized or permitted by this Act or any other provision of Federal law; and

(iv) does not conflict with the intent of this Act generally to permit affiliations that are authorized or permitted by Federal law.

(e) Nondiscrimination

Except as provided in any restrictions described in subsection (d)(2)(B) of this section, no State may, by statute, regulation, order, interpretation, or other action, regulate the insurance activities authorized or permitted under this Act or any other provision of Federal law of a depository institution, or affiliate thereof, to the extent that such statute, regulation, order, interpretation, or other action—

(1) distinguishes by its terms between depository institutions, or affiliates thereof, and other persons engaged in such activities, in a manner that is in any way adverse to any such depository institution, or affiliate thereof;

(2) as interpreted or applied, has or will have an impact on depository institutions, or affiliates thereof, that is substantially more adverse than its impact on other persons providing the same products or services or engaged in the same activities that are not depository institutions, or affiliates thereof, or persons or entities affiliated therewith;

(3) effectively prevents a depository institution, or affiliate thereof, from engaging in insurance activities authorized or permitted by this Act or any other provision of Federal law; or

(4) conflicts with the intent of this Act generally to permit affiliations that are authorized or permitted by Federal law between depository institutions, or affiliates thereof, and persons engaged in the business of insurance.

(f) Limitation

Subsections (c) and (d) of this section shall not be construed to affect—

(1) the jurisdiction of the securities commission (or any agency or office performing like functions) of any State, under the laws of such State—

(A) to investigate and bring enforcement actions, consistent with section 77r(c) of this title, with respect to fraud or deceit or unlawful conduct by any person, in connection with securities or securities transactions; or

(B) to require the registration of securities or the licensure or registration of brokers, dealers, or investment advisers (consistent with section 80b–3a of this title), or the associated persons of a broker, dealer, or investment adviser (consistent with such section 80b–3a of this title); or

(2) State laws, regulations, orders, interpretations, or other actions of general applicability relating to the governance of corporations, partnerships, limited liability companies, or other business associations incorporated or formed under the laws of that State or domiciled in that State, or the applicability of the antitrust laws of any State or any State law that is similar to the antitrust laws if such laws, regulations, orders, interpretations, or other actions are not inconsistent with the purposes of this Act to authorize or permit certain affiliations and to remove barriers to such affiliations.

(g) Definitions

For purposes of this section, the following definitions shall apply:

(1) Affiliate

The term "affiliate" means any company that controls, is controlled by, or is under common control with another company.

(2) Antitrust laws

The term "antitrust laws" has the meaning given the term in subsection (a) of section 12 of this title, and includes section 45 of this title (to the extent that such section 45 relates to unfair methods of competition).

(3) Depository institution

The term "depository institution"—

(A) has the meaning given the term in section 1813 of title 12; and

(B) includes any foreign bank that maintains a branch, agency, or commercial lending company in the United States.

(4) Insurer

The term "insurer" means any person engaged in the business of insurance.

(5) State

The term "State" means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(Pub. L. 106–102, title I, §104, Nov. 12, 1999, 113 Stat. 1352.)

REFERENCES IN TEXT

The McCarran-Ferguson Act, referred to in subsecs. (a) and (d)(3)(A), is act Mar. 9, 1945, ch. 20, 59 Stat. 33, which is classified generally to chapter 20 (§1011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1011 of this title and Tables.

This Act, referred to in subsecs. (c)(1), (d)(1), (4)(D)(iii), (iv), (e), and (f)(2), is Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1338, known as the Gramm-Leach-Bliley Act. For complete classification of this Act to the Code, see Short Title of 1999 Amendment note set out under section 1811 of Title 12, Banks and Banking, and Tables.

Section 106 of the Bank Holding Company Act Amendments of 1970, referred to in subsec. (d)(2)(B)(viii)(I), is Pub. L. 91–607, title I, §106, Dec. 31, 1970, 84 Stat. 1766, as amended, which is classified generally to chapter 22 (§1971 et seq.) of Title 12, Banks and Banking.

SHORT TITLE OF 2007 AMENDMENT

Pub. L. 110–160, §1(a), Dec. 26, 2007, 121 Stat. 1839, provided that: "This Act [amending provisions set out as a note under this section] may be cited as the 'Terrorism Risk Insurance Program Reauthorization Act of 2007'."

SHORT TITLE OF 2005 AMENDMENT

Pub. L. 109–144, §1, Dec. 22, 2005, 119 Stat. 2660, provided that: "This Act [amending provisions set out as a note under this section] may be cited as the 'Terrorism Risk Insurance Extension Act of 2005'."

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107–297, §1(a), Nov. 26, 2002, 116 Stat. 2322, provided that: "This Act [amending section 248 of Title 12, Banks and Banking, and sections 1606 and 1610 of Title 28, Judiciary and Judicial Procedure, enacting provisions set out as notes under this section and section 1610 of Title 28, and amending provisions set out as a note under section 1610 of Title 28] may be cited as the 'Terrorism Risk Insurance Act of 2002'."

TERRORISM INSURANCE PROGRAM

Pub. L. 107–297, title I, Nov. 26, 2002, 116 Stat. 2322, as amended by Pub. L. 109–144, §§2–8, Dec. 22, 2005, 119 Stat. 2660–2662; Pub. L. 110–160, §§2–5, Dec. 26, 2007, 121 Stat. 1839–1841, provided that:

"SEC. 101. CONGRESSIONAL FINDINGS AND PURPOSE.

"(a) FINDINGS.—The Congress finds that—

"(1) the ability of businesses and individuals to obtain property and casualty insurance at reasonable and predictable prices, in order to spread the risk of both routine and catastrophic loss, is critical to economic growth, urban development, and the construction and maintenance of public and private housing, as well as to the promotion of United States exports and foreign trade in an increasingly interconnected world;

"(2) property and casualty insurance firms are important financial institutions, the products of which allow mutualization of risk and the efficient use of financial resources and enhance the ability of the economy to maintain stability, while responding to a variety of economic, political, environmental, and other risks with a minimum of disruption;

"(3) the ability of the insurance industry to cover the unprecedented financial risks presented by potential acts of terrorism in the United States can be a major factor in the recovery from terrorist attacks, while maintaining the stability of the economy;

"(4) widespread financial market uncertainties have arisen following the terrorist attacks of September 11, 2001, including the absence of information from which financial institutions can make statistically valid estimates of the probability and cost of future terrorist events, and therefore the size, funding, and allocation of the risk of loss caused by such acts of terrorism;

"(5) a decision by property and casualty insurers to deal with such uncertainties, either by terminating property and casualty coverage for losses arising from terrorist events, or by radically escalating premium coverage to compensate for risks of loss that are not readily predictable, could seriously hamper ongoing and planned construction, property acquisition, and other business projects, generate a dramatic increase in rents, and otherwise suppress economic activity; and

"(6) the United States Government should provide temporary financial compensation to insured parties, contributing to the stabilization of the United States economy in a time of national crisis, while the financial services industry develops the systems, mechanisms, products, and programs necessary to create a viable financial services market for private terrorism risk insurance.

"(b) PURPOSE.—The purpose of this title is to establish a temporary Federal program that provides for a transparent system of shared public and private compensation for insured losses resulting from acts of terrorism, in order to—

"(1) protect consumers by addressing market disruptions and ensure the continued widespread availability and affordability of property and casualty insurance for terrorism risk; and

"(2) allow for a transitional period for the private markets to stabilize, resume pricing of such insurance, and build capacity to absorb any future losses, while preserving State insurance regulation and consumer protections.

"SEC. 102. DEFINITIONS.

"In this title, the following definitions shall apply:

"(1) ACT OF TERRORISM.—

"(A) CERTIFICATION.—The term 'act of terrorism' means any act that is certified by the Secretary, in concurrence with the Secretary of State, and the Attorney General of the United States—

"(i) to be an act of terrorism;

"(ii) to be a violent act or an act that is dangerous to—

"(I) human life;

"(II) property; or

"(III) infrastructure;

"(iii) to have resulted in damage within the United States, or outside of the United States in the case of—

"(I) an air carrier or vessel described in paragraph (5)(B); or

"(II) the premises of a United States mission; and

"(iv) to have been committed by an individual or individuals, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

"(B) LIMITATION.—No act shall be certified by the Secretary as an act of terrorism if—

"(i) the act is committed as part of the course of a war declared by the Congress, except that this clause shall not apply with respect to any coverage for workers' compensation; or

"(ii) property and casualty insurance losses resulting from the act, in the aggregate, do not exceed $5,000,000.

"(C) DETERMINATIONS FINAL.—Any certification of, or determination not to certify, an act as an act of terrorism under this paragraph shall be final, and shall not be subject to judicial review.

"(D) NONDELEGATION.—The Secretary may not delegate or designate to any other officer, employee, or person, any determination under this paragraph of whether, during the effective period of the Program, an act of terrorism has occurred.

"(2) AFFILIATE.—The term 'affiliate' means, with respect to an insurer, any entity that controls, is controlled by, or is under common control with the insurer.

"(3) CONTROL.—An entity has 'control' over another entity, if—

"(A) the entity directly or indirectly or acting through 1 or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other entity;

"(B) the entity controls in any manner the election of a majority of the directors or trustees of the other entity; or

"(C) the Secretary determines, after notice and opportunity for hearing, that the entity directly or indirectly exercises a controlling influence over the management or policies of the other entity.

"(4) DIRECT EARNED PREMIUM.—The term 'direct earned premium' means a direct earned premium for property and casualty insurance issued by any insurer for insurance against losses occurring at the locations described in subparagraphs (A) and (B) of paragraph (5).

"(5) INSURED LOSS.—The term 'insured loss' means any loss resulting from an act of terrorism (including an act of war, in the case of workers' compensation) that is covered by primary or excess property and casualty insurance issued by an insurer if such loss—

"(A) occurs within the United States; or

"(B) occurs to an air carrier (as defined in section 40102 of title 49, United States Code), to a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), regardless of where the loss occurs, or at the premises of any United States mission.

"(6) INSURER.—The term 'insurer' means any entity, including any affiliate thereof—

"(A) that is—

"(i) licensed or admitted to engage in the business of providing primary or excess insurance in any State;

"(ii) not licensed or admitted as described in clause (i), if it is an eligible surplus line carrier listed on the Quarterly Listing of Alien Insurers of the NAIC, or any successor thereto;

"(iii) approved for the purpose of offering property and casualty insurance by a Federal agency in connection with maritime, energy, or aviation activity;

"(iv) a State residual market insurance entity or State workers' compensation fund; or

"(v) any other entity described in section 103(f), to the extent provided in the rules of the Secretary issued under section 103(f);

"(B) that receives direct earned premiums for any type of commercial property and casualty insurance coverage, other than in the case of entities described in sections 103(d) and 103(f); and

"(C) that meets any other criteria that the Secretary may reasonably prescribe.

"(7) INSURER DEDUCTIBLE.—The term 'insurer deductible' means—

"(A) for the Transition Period, the value of an insurer's direct earned premiums over the calendar year immediately preceding the date of enactment of this Act [Nov. 26, 2002], multiplied by 1 percent;

"(B) for Program Year 1, the value of an insurer's direct earned premiums over the calendar year immediately preceding Program Year 1, multiplied by 7 percent;

"(C) for Program Year 2, the value of an insurer's direct earned premiums over the calendar year immediately preceding Program Year 2, multiplied by 10 percent;

"(D) for Program Year 3, the value of an insurer's direct earned premiums over the calendar year immediately preceding Program Year 3, multiplied by 15 percent;

"(E) for Program Year 4, the value of an insurer's direct earned premiums over the calendar year immediately preceding Program Year 4, multiplied by 17.5 percent;

"(F) for Program Year 5 and each Program Year thereafter, the value of an insurer's direct earned premiums over the calendar year immediately preceding that Program Year, multiplied by 20 percent; and

"(G) notwithstanding subparagraphs (A) through (F), for the Transition Period or any Program Year, if an insurer has not had a full year of operations during the calendar year immediately preceding such Period or Program Year, such portion of the direct earned premiums of the insurer as the Secretary determines appropriate, subject to appropriate methodologies established by the Secretary for measuring such direct earned premiums.

"(8) NAIC.—The term 'NAIC' means the National Association of Insurance Commissioners.

"(9) PERSON.—The term 'person' means any individual, business or nonprofit entity (including those

organized in the form of a partnership, limited liability company, corporation, or association), trust or estate, or a State or political subdivision of a State or other governmental unit.

"(10) PROGRAM.—The term 'Program' means the Terrorism Insurance Program established by this title.

"(11) PROGRAM YEARS.—

"(A) TRANSITION PERIOD.—The term 'Transition Period' means the period beginning on the date of enactment of this Act [Nov. 26, 2002] and ending on December 31, 2002.

"(B) PROGRAM YEAR 1.—The term 'Program Year 1' means the period beginning on January 1, 2003 and ending on December 31, 2003.

"(C) PROGRAM YEAR 2.—The term 'Program Year 2' means the period beginning on January 1, 2004 and ending on December 31, 2004.

"(D) PROGRAM YEAR 3.—The term 'Program Year 3' means the period beginning on January 1, 2005 and ending on December 31, 2005.

"(E) PROGRAM YEAR 4.—The term 'Program Year 4' means the period beginning on January 1, 2006 and ending on December 31, 2006.

"(F) PROGRAM YEAR 5.—The term 'Program Year 5' means the period beginning on January 1, 2007 and ending on December 31, 2007.

"(G) ADDITIONAL PROGRAM YEARS.—Except when used as provided in subparagraphs (B) through (F), the term 'Program Year' means, as the context requires, any of Program Year 1, Program Year 2, Program Year 3, Program Year 4, Program Year 5, or any of calendar years 2008 through 2014.

"(12) PROPERTY AND CASUALTY INSURANCE.—The term 'property and casualty insurance'—

"(A) means commercial lines of property and casualty insurance, including excess insurance, workers' compensation insurance, and directors and officers liability insurance; and

"(B) does not include—

"(i) Federal crop insurance issued or reinsured under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.), or any other type of crop or livestock insurance that is privately issued or reinsured;

"(ii) private mortgage insurance (as that term is defined in section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901)) or title insurance;

"(iii) financial guaranty insurance issued by monoline financial guaranty insurance corporations;

"(iv) insurance for medical malpractice;

"(v) health or life insurance, including group life insurance;

"(vi) flood insurance provided under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.);

"(vii) reinsurance or retrocessional reinsurance;

"(viii) commercial automobile insurance;

"(ix) burglary and theft insurance;

"(x) surety insurance;

"(xi) professional liability insurance; or

"(xii) farm owners multiple peril insurance.

"(13) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury.

"(14) STATE.—The term 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, each of the United States Virgin Islands, and any territory or possession of the United States.

"(15) UNITED STATES.—The term 'United States' means the several States, and includes the territorial sea and the continental shelf of the United States, as those terms are defined in the Violent Crime Control and Law Enforcement Act of 1994 (18 U.S.C. 2280, 2281).

"(16) RULE OF CONSTRUCTION FOR DATES.—With respect to any reference to a date in this title, such day shall be construed—

"(A) to begin at 12:01 a.m. on that date; and

"(B) to end at midnight on that date.

"SEC. 103. TERRORISM INSURANCE PROGRAM.

"(a) ESTABLISHMENT OF PROGRAM.—

"(1) IN GENERAL.—There is established in the Department of the Treasury the Terrorism Insurance Program.

"(2) AUTHORITY OF THE SECRETARY.—Notwithstanding any other provision of State or Federal law, the Secretary shall administer the Program, and shall pay the Federal share of compensation for insured

losses in accordance with subsection (e).

"(3) MANDATORY PARTICIPATION.—Each entity that meets the definition of an insurer under this title shall participate in the Program.

"(b) CONDITIONS FOR FEDERAL PAYMENTS.—No payment may be made by the Secretary under this section with respect to an insured loss that is covered by an insurer, unless—

"(1) the person that suffers the insured loss, or a person acting on behalf of that person, files a claim with the insurer;

"(2) the insurer provides clear and conspicuous disclosure to the policyholder of the premium charged for insured losses covered by the Program and the Federal share of compensation for insured losses under the Program—

"(A) in the case of any policy that is issued before the date of enactment of this Act [Nov. 26, 2002], not later than 90 days after that date of enactment;

"(B) in the case of any policy that is issued within 90 days of the date of enactment of this Act, at the time of offer, purchase, and renewal of the policy; and

"(C) in the case of any policy that is issued more than 90 days after the date of enactment of this Act, on a separate line item in the policy, at the time of offer, purchase, and renewal of the policy;

"(3) in the case of any policy that is issued after the date of enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2007 [Dec. 26, 2007], the insurer provides clear and conspicuous disclosure to the policyholder of the existence of the $100,000,000,000 cap under subsection (e)(2), at the time of offer, purchase, and renewal of the policy;

"(4) the insurer processes the claim for the insured loss in accordance with appropriate business practices, and any reasonable procedures that the Secretary may prescribe; and

"(5) the insurer submits to the Secretary, in accordance with such reasonable procedures as the Secretary may establish—

"(A) a claim for payment of the Federal share of compensation for insured losses under the Program;

"(B) written certification—

"(i) of the underlying claim; and

"(ii) of all payments made for insured losses; and

"(C) certification of its compliance with the provisions of this subsection.

"(c) MANDATORY AVAILABILITY.—During each Program Year, each entity that meets the definition of an insurer under section 102—

"(1) shall make available, in all of its property and casualty insurance policies, coverage for insured losses; and

"(2) shall make available property and casualty insurance coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism.

"(d) STATE RESIDUAL MARKET INSURANCE ENTITIES.—

"(1) IN GENERAL.—The Secretary shall issue regulations, as soon as practicable after the date of enactment of this Act [Nov. 26, 2002], that apply the provisions of this title to State residual market insurance entities and State workers' compensation funds.

"(2) TREATMENT OF CERTAIN ENTITIES.—For purposes of the regulations issued pursuant to paragraph (1)—

"(A) a State residual market insurance entity that does not share its profits and losses with private sector insurers shall be treated as a separate insurer; and

"(B) a State residual market insurance entity that shares its profits and losses with private sector insurers shall not be treated as a separate insurer, and shall report to each private sector insurance participant its share of the insured losses of the entity, which shall be included in each private sector insurer's insured losses.

"(3) TREATMENT OF PARTICIPATION IN CERTAIN ENTITIES.—Any insurer that participates in sharing profits and losses of a State residual market insurance entity shall include in its calculations of premiums any premiums distributed to the insurer by the State residual market insurance entity.

"(e) INSURED LOSS SHARED COMPENSATION.—

"(1) FEDERAL SHARE.—

"(A) IN GENERAL.—The Federal share of compensation under the Program to be paid by the Secretary for insured losses of an insurer during the Transition Period and each Program Year through

Program Year 4 shall be equal to 90 percent, and during Program Year 5 and each Program Year thereafter shall be equal to 85 percent, of that portion of the amount of such insured losses that exceeds the applicable insurer deductible required to be paid during such Transition Period or such Program Year.

"(B) PROGRAM TRIGGER.—In the case of a certified act of terrorism occurring after March 31, 2006, no compensation shall be paid by the Secretary under subsection (a), unless the aggregate industry insured losses resulting from such certified act of terrorism exceed—

"(i) $50,000,000, with respect to such insured losses occurring in Program Year 4; or

"(ii) $100,000,000, with respect to such insured losses occurring in Program Year 5 and any Program Year thereafter.

"(C) PROHIBITION ON DUPLICATIVE COMPENSATION.—The Federal share of compensation for insured losses under the Program shall be reduced by the amount of compensation provided by the Federal Government to any person under any other Federal program for those insured losses.

"(2) CAP ON ANNUAL LIABILITY.—

"(A) IN GENERAL.—Notwithstanding paragraph (1) or any other provision of Federal or State law, if the aggregate insured losses exceed $100,000,000,000, during the period beginning on the first day of the Transition Period and ending on the last day of Program Year 1, or during any Program Year thereafter—

"(i) the Secretary shall not make any payment under this title for any portion of the amount of such losses that exceeds $100,000,000,000; and

"(ii) no insurer that has met its insurer deductible shall be liable for the payment of any portion of the amount of such losses that exceeds $100,000,000,000.

"(B) INSURER SHARE.—

"(i) IN GENERAL.—For purposes of subparagraph (A), the Secretary shall determine the pro rata share of insured losses to be paid by each insurer that incurs insured losses under the Program, except that, notwithstanding paragraph (1) or any other provision of Federal or State law, no insurer may be required to make any payment for insured losses in excess of its deductible under section 102(7) combined with its share of insured losses under paragraph (1)(A) of this subsection.

"(ii) REGULATIONS.—Not later than 240 days after the date of enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2007 [Dec. 26, 2007], the Secretary shall issue final regulations for determining the pro rata share of insured losses under the Program when insured losses exceed $100,000,000,000, in accordance with clause (i).

"(iii) REPORT TO CONGRESS.—Not later than 120 days after the date of enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2007, the Secretary shall provide a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives describing the process to be used by the Secretary for determining the allocation of pro rata payments for insured losses under the Program when such losses exceed $100,000,000,000.

"(3) NOTICE TO CONGRESS.—The Secretary shall notify the Congress if estimated or actual aggregate insured losses exceed $100,000,000,000 during the period beginning on the first day of the Transition Period and ending on the last day of Program Year 1, or during any other Program Year. The Secretary shall provide an initial notice to Congress not later than 15 days after the date of an act of terrorism, stating whether the Secretary estimates that aggregate insured losses will exceed $100,000,000,000.

"(4) FINAL NETTING.—The Secretary shall have sole discretion to determine the time at which claims relating to any insured loss or act of terrorism shall become final.

"(5) DETERMINATIONS FINAL.—Any determination of the Secretary under this subsection shall be final, unless expressly provided, and shall not be subject to judicial review.

"(6) INSURANCE MARKETPLACE AGGREGATE RETENTION AMOUNT.—For purposes of paragraph (7), the insurance marketplace aggregate retention amount shall be—

"(A) for the period beginning on the first day of the Transition Period and ending on the last day of Program Year 1, the lesser of—

"(i) $10,000,000,000; and

"(ii) the aggregate amount, for all insurers, of insured losses during such period;

"(B) for Program Year 2, the lesser of—

"(i) $12,500,000,000; and

"(ii) the aggregate amount, for all insurers, of insured losses during such Program Year;

"(C) for Program Year 3, the lesser of—

"(i) $15,000,000,000; and

"(ii) the aggregate amount, for all insurers, of insured losses during such Program Year;

"(D) for Program Year 4, the lesser of—

"(i) $25,000,000,000; and

"(ii) the aggregate amount, for all insurers, of insured losses during such Program Year; and

"(E) for Program Year 5 and any Program Year thereafter, the lesser of—

"(i) $27,500,000,000; and

"(ii) the aggregate amount, for all insurers, of insured losses during such Program Year.

"(7) RECOUPMENT OF FEDERAL SHARE.—

"(A) MANDATORY RECOUPMENT AMOUNT.—For purposes of this paragraph, the mandatory recoupment amount for each of the periods referred to in subparagraphs (A) through (E) of paragraph (6) shall be the difference between—

"(i) the insurance marketplace aggregate retention amount under paragraph (6) for such period; and

"(ii) the aggregate amount, for all insurers, of insured losses during such period that are not compensated by the Federal Government because such losses—

"(I) are within the insurer deductible for the insurer subject to the losses; or

"(II) are within the portion of losses of the insurer that exceed the insurer deductible, but are not compensated pursuant to paragraph (1).

"(B) NO MANDATORY RECOUPMENT IF UNCOMPENSATED LOSSES EXCEED INSURANCE MARKETPLACE RETENTION.—Notwithstanding subparagraph (A), if the aggregate amount of uncompensated insured losses referred to in clause (ii) of such subparagraph for any period referred to in any of subparagraphs (A) through (E) of paragraph (6) is greater than the insurance marketplace aggregate retention amount under paragraph (6) for such period, the mandatory recoupment amount shall be $0.

"(C) MANDATORY ESTABLISHMENT OF SURCHARGES TO RECOUP MANDATORY RECOUPMENT AMOUNT.—The Secretary shall collect, for repayment of the Federal financial assistance provided in connection with all acts of terrorism (or acts of war, in the case of workers compensation) occurring during any of the periods referred to in any of subparagraphs (A) through (E) of paragraph (6), terrorism loss risk-spreading premiums in an amount equal to 133 percent of any mandatory recoupment amount for such period.

"(D) DISCRETIONARY RECOUPMENT OF REMAINDER OF FINANCIAL ASSISTANCE .—To the extent that the amount of Federal financial assistance provided exceeds any mandatory recoupment amount, the Secretary may recoup, through terrorism loss risk-spreading premiums, such additional amounts that the Secretary believes can be recouped, based on—

"(i) the ultimate costs to taxpayers of no additional recoupment;

"(ii) the economic conditions in the commercial marketplace, including the capitalization, profitability, and investment returns of the insurance industry and the current cycle of the insurance markets;

"(iii) the affordability of commercial insurance for small- and medium-sized businesses; and

"(iv) such other factors as the Secretary considers appropriate.

"(E) TIMING OF MANDATORY RECOUPMENT.—

"(i) IN GENERAL.—If the Secretary is required to collect terrorism loss risk-spreading premiums under subparagraph (C)—

"(I) for any act of terrorism that occurs on or before December 31, 2010, the Secretary shall collect all required premiums by September 30, 2012;

"(II) for any act of terrorism that occurs between January 1 and December 31, 2011, the Secretary shall collect 35 percent of any required premiums by September 30, 2012, and the remainder by September 30, 2017; and

"(III) for any act of terrorism that occurs on or after January 1, 2012, the Secretary shall collect all required premiums by September 30, 2017.

"(ii) REGULATIONS REQUIRED.—Not later than 180 days after the date of enactment of this subparagraph [Dec. 26, 2007], the Secretary shall issue regulations describing the procedures to be used for collecting the required premiums in the time periods referred to in clause (i).

"(F) NOTICE OF ESTIMATED LOSSES.—Not later than 90 days after the date of an act of terrorism, the Secretary shall publish an estimate of aggregate insured losses, which shall be used as the basis for determining whether mandatory recoupment will be required under this paragraph. Such estimate shall be updated as appropriate, and at least annually.

"(8) POLICY SURCHARGE FOR TERRORISM LOSS RISK-SPREADING PREMIUMS.—

"(A) POLICYHOLDER PREMIUM.—Any amount established by the Secretary as a terrorism loss risk-spreading premium shall—

"(i) be imposed as a policyholder premium surcharge on property and casualty insurance policies in force after the date of such establishment;

"(ii) begin with such period of coverage during the year as the Secretary determines appropriate; and

"(iii) be based on a percentage of the premium amount charged for property and casualty insurance coverage under the policy.

"(B) COLLECTION.—The Secretary shall provide for insurers to collect terrorism loss risk-spreading premiums and remit such amounts collected to the Secretary.

"(C) PERCENTAGE LIMITATION.—A terrorism loss risk-spreading premium collected on a discretionary basis pursuant to paragraph (7)(D) may not exceed, on an annual basis, the amount equal to 3 percent of the premium charged for property and casualty insurance coverage under the policy.

"(D) Adjustment for urban and smaller commercial and rural areas and different lines of insurance.—

"(i) ADJUSTMENTS.—In determining the method and manner of imposing terrorism loss risk-spreading premiums, including the amount of such premiums, the Secretary shall take into consideration—

"(I) the economic impact on commercial centers of urban areas, including the effect on commercial rents and commercial insurance premiums, particularly rents and premiums charged to small businesses, and the availability of lease space and commercial insurance within urban areas;

"(II) the risk factors related to rural areas and smaller commercial centers, including the potential exposure to loss and the likely magnitude of such loss, as well as any resulting cross-subsidization that might result; and

"(III) the various exposures to terrorism risk for different lines of insurance.

"(ii) RECOUPMENT OF ADJUSTMENTS.—Any mandatory recoupment amounts not collected by the Secretary because of adjustments under this subparagraph shall be recouped through additional terrorism loss risk-spreading premiums, in accordance with the timing requirements of paragraph (7)(E).

"(E) TIMING OF PREMIUMS.—The Secretary may adjust the timing of terrorism loss risk-spreading premiums to provide for equivalent application of the provisions of this title to policies that are not based on a calendar year, or to apply such provisions on a daily, monthly, or quarterly basis, as appropriate.

"(f) CAPTIVE INSURERS AND OTHER SELF-INSURANCE ARRANGEMENTS.—The Secretary may, in consultation with the NAIC or the appropriate State regulatory authority, apply the provisions of this title, as appropriate, to other classes or types of captive insurers and other self-insurance arrangements by municipalities and other entities (such as workers' compensation self-insurance programs and State workers' compensation reinsurance pools), but only if such application is determined before the occurrence of an act of terrorism in which such an entity incurs an insured loss and all of the provisions of this title are applied comparably to such entities.

"(g) REINSURANCE TO COVER EXPOSURE.—

"(1) OBTAINING COVERAGE.—This title may not be construed to limit or prevent insurers from obtaining reinsurance coverage for insurer deductibles or insured losses retained by insurers pursuant to this section, nor shall the obtaining of such coverage affect the calculation of such deductibles or retentions.

"(2) LIMITATION ON FINANCIAL ASSISTANCE.—The amount of financial assistance provided pursuant to this section shall not be reduced by reinsurance paid or payable to an insurer from other sources, except that recoveries from such other sources, taken together with financial assistance for the Transition Period or a Program Year provided pursuant to this section, may not exceed the aggregate amount of the insurer's insured losses for such period. If such recoveries and financial assistance for the Transition Period or a Program Year exceed such aggregate amount of insured losses for that period and there is no agreement between the insurer and any reinsurer to the contrary, an amount in excess of such aggregate insured losses shall be returned to the Secretary.

"(h) GROUP LIFE INSURANCE STUDY.—

"(1) STUDY.—The Secretary shall study, on an expedited basis, whether adequate and affordable catastrophe reinsurance for acts of terrorism is available to life insurers in the United States that issue group life insurance, and the extent to which the threat of terrorism is reducing the availability of group life insurance coverage for consumers in the United States.

"(2) CONDITIONAL COVERAGE.—To the extent that the Secretary determines that such coverage is not or will not be reasonably available to both such insurers and consumers, the Secretary shall, in consultation with the NAIC—

"(A) apply the provisions of this title, as appropriate, to providers of group life insurance; and

"(B) provide such restrictions, limitations, or conditions with respect to any financial assistance provided that the Secretary deems appropriate, based on the study under paragraph (1).

"(i) STUDY AND REPORT.—

"(1) STUDY.—The Secretary, after consultation with the NAIC, representatives of the insurance industry, and other experts in the insurance field, shall conduct a study of the potential effects of acts of terrorism on the availability of life insurance and other lines of insurance coverage, including personal lines.

"(2) REPORT.—Not later than 9 months after the date of enactment of this Act [Nov. 26, 2002], the Secretary shall submit a report to the Congress on the results of the study conducted under paragraph (1).

"SEC. 104. GENERAL AUTHORITY AND ADMINISTRATION OF CLAIMS.

"(a) GENERAL AUTHORITY.—The Secretary shall have the powers and authorities necessary to carry out the Program, including authority—

"(1) to investigate and audit all claims under the Program; and

"(2) to prescribe regulations and procedures to effectively administer and implement the Program, and to ensure that all insurers and self-insured entities that participate in the Program are treated comparably under the Program.

"(b) INTERIM RULES AND PROCEDURES.—The Secretary may issue interim final rules or procedures specifying the manner in which—

"(1) insurers may file and certify claims under the Program;

"(2) the Federal share of compensation for insured losses will be paid under the Program, including payments based on estimates of or actual insured losses;

"(3) the Secretary may, at any time, seek repayment from or reimburse any insurer, based on estimates of insured losses under the Program, to effectuate the insured loss sharing provisions in section 103; and

"(4) the Secretary will determine any final netting of payments under the Program, including payments owed to the Federal Government from any insurer and any Federal share of compensation for insured losses owed to any insurer, to effectuate the insured loss sharing provisions in section 103.

"(c) CONSULTATION.—The Secretary shall consult with the NAIC, as the Secretary determines appropriate, concerning the Program.

"(d) CONTRACTS FOR SERVICES.—The Secretary may employ persons or contract for services as may be necessary to implement the Program.

"(e) CIVIL PENALTIES.—

"(1) IN GENERAL.—The Secretary may assess a civil monetary penalty in an amount not exceeding the amount under paragraph (2) against any insurer that the Secretary determines, on the record after opportunity for a hearing—

"(A) has failed to charge, collect, or remit terrorism loss risk-spreading premiums under section 103(e) in accordance with the requirements of, or regulations issued under, this title;

"(B) has intentionally provided to the Secretary erroneous information regarding premium or loss amounts;

"(C) submits to the Secretary fraudulent claims under the Program for insured losses;

"(D) has failed to provide the disclosures required under subsection (f); or

"(E) has otherwise failed to comply with the provisions of, or the regulations issued under, this title.

"(2) AMOUNT.—The amount under this paragraph is the greater of $1,000,000 and, in the case of any failure to pay, charge, collect, or remit amounts in accordance with this title or the regulations issued under this title, such amount in dispute.

"(3) RECOVERY OF AMOUNT IN DISPUTE.—A penalty under this subsection for any failure to pay, charge, collect, or remit amounts in accordance with this title or the regulations under this title shall be in addition to any such amounts recovered by the Secretary.

"(f) SUBMISSION OF PREMIUM INFORMATION.—

"(1) IN GENERAL.—The Secretary shall annually compile information on the terrorism risk insurance premium rates of insurers for the preceding year.

"(2) ACCESS TO INFORMATION.—To the extent that such information is not otherwise available to the Secretary, the Secretary may require each insurer to submit to the NAIC terrorism risk insurance premium rates, as necessary to carry out paragraph (1), and the NAIC shall make such information available

to the Secretary.

"(3) AVAILABILITY TO CONGRESS.—The Secretary shall make information compiled under this subsection available to the Congress, upon request.

"(g) FUNDING.—

"(1) FEDERAL PAYMENTS.—There are hereby appropriated, out of funds in the Treasury not otherwise appropriated, such sums as may be necessary to pay the Federal share of compensation for insured losses under the Program.

"(2) ADMINISTRATIVE EXPENSES.—There are hereby appropriated, out of funds in the Treasury not otherwise appropriated, such sums as may be necessary to pay reasonable costs of administering the Program.

"SEC. 105. PREEMPTION AND NULLIFICATION OF PRE-EXISTING TERRORISM EXCLUSIONS.

"(a) GENERAL NULLIFICATION.—Any terrorism exclusion in a contract for property and casualty insurance that is in force on the date of enactment of this Act [Nov. 26, 2002] shall be void to the extent that it excludes losses that would otherwise be insured losses.

"(b) GENERAL PREEMPTION.—Any State approval of any terrorism exclusion from a contract for property and casualty insurance that is in force on the date of enactment of this Act, shall be void to the extent that it excludes losses that would otherwise be insured losses.

"(c) REINSTATEMENT OF TERRORISM EXCLUSIONS.—Notwithstanding subsections (a) and (b) or any provision of State law, an insurer may reinstate a preexisting provision in a contract for property and casualty insurance that is in force on the date of enactment of this Act [Nov. 26, 2002] and that excludes coverage for an act of terrorism only—

"(1) if the insurer has received a written statement from the insured that affirmatively authorizes such reinstatement; or

"(2) if—

"(A) the insured fails to pay any increased premium charged by the insurer for providing such terrorism coverage; and

"(B) the insurer provided notice, at least 30 days before any such reinstatement, of—

"(i) the increased premium for such terrorism coverage; and

"(ii) the rights of the insured with respect to such coverage, including any date upon which the exclusion would be reinstated if no payment is received.

"SEC. 106. PRESERVATION PROVISIONS.

"(a) STATE LAW.—Nothing in this title shall affect the jurisdiction or regulatory authority of the insurance commissioner (or any agency or office performing like functions) of any State over any insurer or other person—

"(1) except as specifically provided in this title; and

"(2) except that—

"(A) the definition of the term 'act of terrorism' in section 102 shall be the exclusive definition of that term for purposes of compensation for insured losses under this title, and shall preempt any provision of State law that is inconsistent with that definition, to the extent that such provision of law would otherwise apply to any type of insurance covered by this title;

"(B) during the period beginning on the date of enactment of this Act [Nov. 26, 2002] and ending on December 31, 2003, rates and forms for terrorism risk insurance covered by this title and filed with any State shall not be subject to prior approval or a waiting period under any law of a State that would otherwise be applicable, except that nothing in this title affects the ability of any State to invalidate a rate as excessive, inadequate, or unfairly discriminatory, and, with respect to forms, where a State has prior approval authority, it shall apply to allow subsequent review of such forms; and

"(C) during the period beginning on the date of enactment of this Act and for so long as the Program is in effect, as provided in section 108, including authority in subsection 108(b), books and records of any insurer that are relevant to the Program shall be provided, or caused to be provided, to the Secretary, upon request by the Secretary, notwithstanding any provision of the laws of any State prohibiting or limiting such access.

"(b) EXISTING REINSURANCE AGREEMENTS.—Nothing in this title shall be construed to alter, amend, or expand the terms of coverage under any reinsurance agreement in effect on the date of enactment of this Act [Nov. 26, 2002]. The terms and conditions of such an agreement shall be determined by the language of that agreement.

"SEC. 107. LITIGATION MANAGEMENT.

"(a) PROCEDURES AND DAMAGES.—

"(1) IN GENERAL.—If the Secretary makes a determination pursuant to section 102 that an act of terrorism has occurred, there shall exist a Federal cause of action for property damage, personal injury, or death arising out of or resulting from such act of terrorism, which shall be the exclusive cause of action and remedy for claims for property damage, personal injury, or death arising out of or relating to such act of terrorism, except as provided in subsection (b).

"(2) PREEMPTION OF STATE ACTIONS.—All State causes of action of any kind for property damage, personal injury, or death arising out of or resulting from an act of terrorism that are otherwise available under State law are hereby preempted, except as provided in subsection (b).

"(3) SUBSTANTIVE LAW.—The substantive law for decision in any such action described in paragraph (1) shall be derived from the law, including choice of law principles, of the State in which such act of terrorism occurred, unless such law is otherwise inconsistent with or preempted by Federal law.

"(4) JURISDICTION.—For each determination described in paragraph (1), not later than 90 days after the occurrence of an act of terrorism, the Judicial Panel on Multidistrict Litigation shall designate 1 district court or, if necessary, multiple district courts of the United States that shall have original and exclusive jurisdiction over all actions for any claim (including any claim for loss of property, personal injury, or death) relating to or arising out of an act of terrorism subject to this section. The Judicial Panel on Multidistrict Litigation shall select and assign the district court or courts based on the convenience of the parties and the just and efficient conduct of the proceedings. For purposes of personal jurisdiction, the district court or courts designated by the Judicial Panel on Multidistrict Litigation shall be deemed to sit in all judicial districts in the United States.

"(5) PUNITIVE DAMAGES.—Any amounts awarded in an action under paragraph (1) that are attributable to punitive damages shall not count as insured losses for purposes of this title.

"(6) AUTHORITY OF THE SECRETARY.—Procedures and requirements established by the Secretary under section 50.82 of part 50 of title 31 of the Code of Federal Regulations (as in effect on the date of issuance of that section in final form) shall apply to any cause of action described in paragraph (1) of this subsection.

"(b) EXCLUSION.—Nothing in this section shall in any way limit the liability of any government, an organization, or person who knowingly participates in, conspires to commit, aids and abets, or commits any act of terrorism with respect to which a determination described in subsection (a)(1) was made.

"(c) RIGHT OF SUBROGATION.—The United States shall have the right of subrogation with respect to any payment or claim paid by the United States under this title.

"(d) RELATIONSHIP TO OTHER LAW.—Nothing in this section shall be construed to affect—

"(1) any party's contractual right to arbitrate a dispute; or

"(2) any provision of the Air Transportation Safety and System Stabilization Act (Public Law 107–42; 49 U.S.C. 40101 note.).

"(e) EFFECTIVE PERIOD.—This section shall apply only to actions described in subsection (a)(1) that arise out of or result from acts of terrorism that occur or occurred during the effective period of the Program.

"SEC. 108. TERMINATION OF PROGRAM.

"(a) TERMINATION OF PROGRAM.—The Program shall terminate on December 31, 2014.

"(b) CONTINUING AUTHORITY TO PAY OR ADJUST COMPENSATION.—Following the termination of the Program, the Secretary may take such actions as may be necessary to ensure payment, recoupment, reimbursement, or adjustment of compensation for insured losses arising out of any act of terrorism occurring during the period in which the Program was in effect under this title, in accordance with the provisions of section 103 and regulations promulgated thereunder.

"(c) REPEAL; SAVINGS CLAUSE.—This title is repealed on the final termination date of the Program under subsection (a), except that such repeal shall not be construed—

"(1) to prevent the Secretary from taking, or causing to be taken, such actions under subsection (b) of this section, paragraph (4), (5), (6), (7), or (8) of section 103(e), or subsection (a)(1), (c), (d), or (e) of section 104, as in effect on the day before the date of such repeal, or applicable regulations promulgated thereunder, during any period in which the authority of the Secretary under subsection (b) of this section is in effect; or

"(2) to prevent the availability of funding under section 104(g) during any period in which the authority of the Secretary under subsection (b) of this section is in effect.

"(d) STUDY AND REPORT ON THE PROGRAM.—

"(1) STUDY.—The Secretary, in consultation with the NAIC, representatives of the insurance industry and of policy holders, other experts in the insurance field, and other experts as needed, shall assess the effectiveness of the Program and the likely capacity of the property and casualty insurance industry to offer

insurance for terrorism risk after termination of the Program, and the availability and affordability of such insurance for various policyholders, including railroads, trucking, and public transit.

"(2) REPORT.—The Secretary shall submit a report to the Congress on the results of the study conducted under paragraph (1) not later than June 30, 2005.

"(e) ANALYSIS OF MARKET CONDITIONS FOR TERRORISM RISK INSURANCE.—

"(1) IN GENERAL.—The President's Working Group on Financial Markets, in consultation with the National Association of Insurance Commissioners, representatives of the insurance industry, representatives of the securities industry, and representatives of policy holders, shall perform an ongoing analysis regarding the long-term availability and affordability of insurance for terrorism risk.

"(2) REPORT.—Not later than September 30, 2006, and thereafter in 2010 and 2013, the President's Working Group on Financial Markets shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on its findings pursuant to the analysis conducted under paragraph (1).

"(f) INSURANCE FOR NUCLEAR, BIOLOGICAL, CHEMICAL, AND RADIOLOGICAL TERRORIST EVENTS.—

"(1) STUDY.—The Comptroller General of the United States shall examine—

"(A) the availability and affordability of insurance coverage for losses caused by terrorist attacks involving nuclear, biological, chemical, or radiological materials;

"(B) the outlook for such coverage in the future; and

"(C) the capacity of private insurers and State workers compensation funds to manage risk associated with nuclear, biological, chemical, and radiological terrorist events.

"(2) REPORT.—Not later than 1 year after the date of enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2007 [Dec. 26, 2007], the Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report containing a detailed statement of the findings under paragraph (1), and recommendations for any legislative, regulatory, administrative, or other actions at the Federal, State, or local levels that the Comptroller General considers appropriate to expand the availability and affordability of insurance for nuclear, biological, chemical, or radiological terrorist events.

"(g) AVAILABILITY AND AFFORDABILITY OF TERRORISM INSURANCE IN SPECIFIC MARKETS.—

"(1) STUDY.—The Comptroller General of the United States shall conduct a study to determine whether there are specific markets in the United States where there are unique capacity constraints on the amount of terrorism risk insurance available.

"(2) ELEMENTS OF STUDY.—The study required by paragraph (1) shall contain—

"(A) an analysis of both insurance and reinsurance capacity in specific markets, including pricing and coverage limits in existing policies;

"(B) an assessment of the factors contributing to any capacity constraints that are identified; and

"(C) recommendations for addressing those capacity constraints.

"(3) REPORT.—Not later than 180 days after the date of enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2007 [Dec. 26, 2007], the Comptroller General shall submit a report on the study required by paragraph (1) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives."

[Pub. L. 110–160, §4(b)(2), Dec. 26, 2007, 121 Stat. 1840, which directed amendment of section 103(e)(3) of Pub. L. 107–297, set out above, by substituting period for " 'and the Congress shall' and all that follows through the end of the paragraph", was executed by substituting period for "and the Congress shall" and all that followed through end of first sentence, to reflect the probable intent of Congress, in light of insertion of last sentence of par. (3) by Pub. L. 110–160, §4(b)(1).]

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SUBCHAPTER I—STATE REGULATION OF INSURANCE

§6711. Functional regulation of insurance

The insurance activities of any person (including a national bank exercising its power to act as agent under section 92 of title 12) shall be functionally regulated by the States, subject to section 6701 of this title.

(Pub. L. 106–102, title III, §301, Nov. 12, 1999, 113 Stat. 1407.)

§6712. Insurance underwriting in national banks

(a) In general

Except as provided in section 6713 of this title, a national bank and the subsidiaries of a national bank may not provide insurance in a State as principal except that this prohibition shall not apply to authorized products.

(b) Authorized products

For the purposes of this section, a product is authorized if—

(1) as of January 1, 1999, the Comptroller of the Currency had determined in writing that national banks may provide such product as principal, or national banks were in fact lawfully providing such product as principal;

(2) no court of relevant jurisdiction had, by final judgment, overturned a determination of the Comptroller of the Currency that national banks may provide such product as principal; and

(3) the product is not title insurance, or an annuity contract the income of which is subject to tax treatment under section 72 of title 26.

(c) Definition

For purposes of this section, the term "insurance" means—

(1) any product regulated as insurance as of January 1, 1999, in accordance with the relevant State insurance law, in the State in which the product is provided;

(2) any product first offered after January 1, 1999, which—

(A) a State insurance regulator determines shall be regulated as insurance in the State in which the product is provided because the product insures, guarantees, or indemnifies against liability, loss of life, loss of health, or loss through damage to or destruction of property, including, but not limited to, surety bonds, life insurance, health insurance, title insurance, and property and casualty insurance (such as private passenger or commercial automobile, homeowners, mortgage, commercial multiperil, general liability, professional liability, workers' compensation, fire and allied lines, farm owners multiperil, aircraft, fidelity, surety, medical malpractice, ocean marine, inland marine, and boiler and machinery insurance); and

(B) is not a product or service of a bank that is—

(i) a deposit product;

(ii) a loan, discount, letter of credit, or other extension of credit;

(iii) a trust or other fiduciary service;

(iv) a qualified financial contract (as defined in or determined pursuant to section 1821(e)(8)(D)(i) of title 12); or

(v) a financial guaranty, except that this subparagraph (B) shall not apply to a product that includes an insurance component such that if the product is offered or proposed to be offered by the bank as principal—

(I) it would be treated as a life insurance contract under section 7702 of title 26; or

(II) in the event that the product is not a letter of credit or other similar extension of credit, a qualified financial contract, or a financial guaranty, it would qualify for treatment for losses incurred with respect to such product under section 832(b)(5) of title 26, if the bank were subject to tax as an insurance company under section 831 of that title; or

(3) any annuity contract, the income on which is subject to tax treatment under section 72 of

title 26.

(d) Rule of construction

For purposes of this section, providing insurance (including reinsurance) outside the United States that insures, guarantees, or indemnifies insurance products provided in a State, or that indemnifies an insurance company with regard to insurance products provided in a State, shall be considered to be providing insurance as principal in that State.

(Pub. L. 106–102, title III, §302, Nov. 12, 1999, 113 Stat. 1407.)

§6713. Title insurance activities of national banks and their affiliates

(a) General prohibition

No national bank may engage in any activity involving the underwriting or sale of title insurance.

(b) Nondiscrimination parity exception

(1) In general

Notwithstanding any other provision of law (including section 6701 of this title), in the case of any State in which banks organized under the laws of such State are authorized to sell title insurance as agent, a national bank may sell title insurance as agent in such State, but only in the same manner, to the same extent, and under the same restrictions as such State banks are authorized to sell title insurance as agent in such State.

(2) Coordination with "wildcard" provision

A State law which authorizes State banks to engage in any activities in such State in which a national bank may engage shall not be treated as a statute which authorizes State banks to sell title insurance as agent, for purposes of paragraph (1).

(c) Grandfathering with consistent regulation

(1) In general

Except as provided in paragraphs (2) and (3) and notwithstanding subsections (a) and (b) of this section, a national bank, and a subsidiary of a national bank, may conduct title insurance activities which such national bank or subsidiary was actively and lawfully conducting before November 12, 1999.

(2) Insurance affiliate

In the case of a national bank which has an affiliate which provides insurance as principal and is not a subsidiary of the bank, the national bank and any subsidiary of the national bank may not engage in the underwriting of title insurance pursuant to paragraph (1).

(3) Insurance subsidiary

In the case of a national bank which has a subsidiary which provides insurance as principal and has no affiliate other than a subsidiary which provides insurance as principal, the national bank may not directly engage in any activity involving the underwriting of title insurance.

(d) "Affiliate" and "subsidiary" defined

For purposes of this section, the terms "affiliate" and "subsidiary" have the same meanings as in section 1841 of title 12.

(e) Rule of construction

No provision of this Act or any other Federal law shall be construed as superseding or affecting a State law which was in effect before November 12, 1999, and which prohibits title insurance from being offered, provided, or sold in such State, or from being underwritten with respect to real property in such State, by any person whatsoever.

(Pub. L. 106–102, title III, §303, Nov. 12, 1999, 113 Stat. 1408.)

REFERENCES IN TEXT

This Act, referred to in subsec. (e), is Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1338, known as the Gramm-Leach-Bliley Act. For complete classification of this Act to the Code, see Short Title of 1999 Amendment note set out under section 1811 of Title 12, Banks and Banking, and Tables.

§6714. Expedited and equalized dispute resolution for Federal regulators

(a) Filing in Court of Appeals

In the case of a regulatory conflict between a State insurance regulator and a Federal regulator regarding insurance issues, including whether a State law, rule, regulation, order, or interpretation regarding any insurance sales or solicitation activity is properly treated as preempted under Federal law, the Federal or State regulator may seek expedited judicial review of such determination by the United States Court of Appeals for the circuit in which the State is located or in the United States Court of Appeals for the District of Columbia Circuit by filing a petition for review in such court.

(b) Expedited review

The United States Court of Appeals in which a petition for review is filed in accordance with subsection (a) of this section shall complete all action on such petition, including rendering a judgment, before the end of the 60-day period beginning on the date on which such petition is filed, unless all parties to such proceeding agree to any extension of such period.

(c) Supreme Court review

Any request for certiorari to the Supreme Court of the United States of any judgment of a United States Court of Appeals with respect to a petition for review under this section shall be filed with the Supreme Court of the United States as soon as practicable after such judgment is issued.

(d) Statute of limitation

No petition may be filed under this section challenging an order, ruling, determination, or other action of a Federal regulator or State insurance regulator after the later of—

(1) the end of the 12-month period beginning on the date on which the first public notice is made of such order, ruling, determination or other action in its final form; or

(2) the end of the 6-month period beginning on the date on which such order, ruling, determination, or other action takes effect.

(e) Standard of review

The court shall decide a petition filed under this section based on its review on the merits of all questions presented under State and Federal law, including the nature of the product or activity and the history and purpose of its regulation under State and Federal law, without unequal deference.

(Pub. L. 106–102, title III, §304, Nov. 12, 1999, 113 Stat. 1409.)

§6715. Certain State affiliation laws preempted for insurance companies and affiliates

Except as provided in section 6701(c)(2) of this title, no State may, by law, regulation, order, interpretation, or otherwise—

(1) prevent or significantly interfere with the ability of any insurer, or any affiliate of an insurer (whether such affiliate is organized as a stock company, mutual holding company, or otherwise), to become a financial holding company or to acquire control of a depository institution;

(2) limit the amount of an insurer's assets that may be invested in the voting securities of a depository institution (or any company which controls such institution), except that the laws of an insurer's State of domicile may limit the amount of such investment to an amount that is not less than 5 percent of the insurer's admitted assets; or

(3) prevent, significantly interfere with, or have the authority to review, approve, or disapprove

a plan of reorganization by which an insurer proposes to reorganize from mutual form to become a stock insurer (whether as a direct or indirect subsidiary of a mutual holding company or otherwise) unless such State is the State of domicile of the insurer.

(Pub. L. 106–102, title III, §306, Nov. 12, 1999, 113 Stat. 1415.)

§6716. Interagency consultation

(a) Purpose

It is the intention of the Congress that the Board of Governors of the Federal Reserve System, as the umbrella supervisor for financial holding companies, and the State insurance regulators, as the functional regulators of companies engaged in insurance activities, coordinate efforts to supervise companies that control both a depository institution and a company engaged in insurance activities regulated under State law. In particular, Congress believes that the Board and the State insurance regulators should share, on a confidential basis, information relevant to the supervision of companies that control both a depository institution and a company engaged in insurance activities, including information regarding the financial health of the consolidated organization and information regarding transactions and relationships between insurance companies and affiliated depository institutions. The appropriate Federal banking agencies for depository institutions should also share, on a confidential basis, information with the relevant State insurance regulators regarding transactions and relationships between depository institutions and affiliated companies engaged in insurance activities. The purpose of this section is to encourage this coordination and confidential sharing of information, and to thereby improve both the efficiency and the quality of the supervision of financial holding companies and their affiliated depository institutions and companies engaged in insurance activities.

(b) Examination results and other information

(1) Information of the Board

Upon the request of the appropriate insurance regulator of any State, the Board may provide any information of the Board regarding the financial condition, risk management policies, and operations of any financial holding company that controls a company that is engaged in insurance activities and is regulated by such State insurance regulator, and regarding any transaction or relationship between such an insurance company and any affiliated depository institution. The Board may provide any other information to the appropriate State insurance regulator that the Board believes is necessary or appropriate to permit the State insurance regulator to administer and enforce applicable State insurance laws.

(2) Banking agency information

Upon the request of the appropriate insurance regulator of any State, the appropriate Federal banking agency may provide any information of the agency regarding any transaction or relationship between a depository institution supervised by such Federal banking agency and any affiliated company that is engaged in insurance activities regulated by such State insurance regulator. The appropriate Federal banking agency may provide any other information to the appropriate State insurance regulator that the agency believes is necessary or appropriate to permit the State insurance regulator to administer and enforce applicable State insurance laws.

(3) State insurance regulator information

Upon the request of the Board or the appropriate Federal banking agency, a State insurance regulator may provide any examination or other reports, records, or other information to which such insurance regulator may have access with respect to a company which—

(A) is engaged in insurance activities and regulated by such insurance regulator; and

(B) is an affiliate of a depository institution or financial holding company.

(c) Consultation

Before making any determination relating to the initial affiliation of, or the continuing affiliation of, a depository institution or financial holding company with a company engaged in insurance activities, the appropriate Federal banking agency shall consult with the appropriate State insurance regulator of such company and take the views of such insurance regulator into account in making such determination.

(d) Effect on other authority

Nothing in this section shall limit in any respect the authority of the appropriate Federal banking agency with respect to a depository institution or bank holding company or any affiliate thereof under any provision of law.

(e) Confidentiality and privilege

(1) Confidentiality

The appropriate Federal banking agency shall not provide any information or material that is entitled to confidential treatment under applicable Federal banking agency regulations, or other applicable law, to a State insurance regulator unless such regulator agrees to maintain the information or material in confidence and to take all reasonable steps to oppose any effort to secure disclosure of the information or material by the regulator. The appropriate Federal banking agency shall treat as confidential any information or material obtained from a State insurance regulator that is entitled to confidential treatment under applicable State regulations, or other applicable law, and take all reasonable steps to oppose any effort to secure disclosure of the information or material by the Federal banking agency.

(2) Privilege

The provision pursuant to this section of information or material by a Federal banking agency or State insurance regulator shall not constitute a waiver of, or otherwise affect, any privilege to which the information or material is otherwise subject.

(f) Definitions

For purposes of this section, the following definitions shall apply:

(1) Appropriate Federal banking agency; depository institution

The terms "appropriate Federal banking agency" and "depository institution" have the same meanings as in section 1813 of title 12.

(2) Board and financial holding company

The terms "Board" and "financial holding company" have the same meanings as in section 1841 of title 12.

(Pub. L. 106–102, title III, §307, Nov. 12, 1999, 113 Stat. 1415.)

§6717. Definition of State

For purposes of this subchapter, the term "State" means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(Pub. L. 106–102, title III, §308, Nov. 12, 1999, 113 Stat. 1417.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in original "this subtitle", meaning subtitle A (§301 et seq.) of title III of Pub. L. 106–102, which enacted this subchapter and section 1831x of Title 12, Banks and Banking. For complete classification of this subtitle to the Code, see Tables.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SUBCHAPTER II—REDOMESTICATION OF MUTUAL INSURERS

§6731. General application

This subchapter shall only apply to a mutual insurance company in a State which has not enacted a law which expressly establishes reasonable terms and conditions for a mutual insurance company domiciled in such State to reorganize into a mutual holding company.

(Pub. L. 106–102, title III, §311, Nov. 12, 1999, 113 Stat. 1417.)

EFFECTIVE DATE

Pub. L. 106–102, title III, §316, Nov. 12, 1999, 113 Stat. 1422, provided that: "This subtitle [subtitle B (§§311–316) of title III of Pub. L. 106–102, enacting this subchapter] shall take effect on the date of the enactment of this Act [Nov. 12, 1999]."

§6732. Redomestication of mutual insurers

(a) Redomestication

A mutual insurer organized under the laws of any State may transfer its domicile to a transferee domicile as a step in a reorganization in which, pursuant to the laws of the transferee domicile and consistent with the standards in subsection (f) of this section, the mutual insurer becomes a stock insurer that is a direct or indirect subsidiary of a mutual holding company.

(b) Resulting domicile

Upon complying with the applicable law of the transferee domicile governing transfers of domicile and completion of a transfer pursuant to this section, the mutual insurer shall cease to be a domestic insurer in the transferor domicile and, as a continuation of its corporate existence, shall be a domestic insurer of the transferee domicile.

(c) Licenses preserved

The certificate of authority, agents' appointments and licenses, rates, approvals and other items that a licensed State allows and that are in existence immediately prior to the date that a redomesticating insurer transfers its domicile pursuant to this subchapter shall continue in full force and effect upon transfer, if the insurer remains duly qualified to transact the business of insurance in such licensed State.

(d) Effectiveness of outstanding policies and contracts

(1) In general

All outstanding insurance policies and annuities contracts of a redomesticating insurer shall remain in full force and effect and need not be endorsed as to the new domicile of the insurer, unless so ordered by the State insurance regulator of a licensed State, and then only in the case of outstanding policies and contracts whose owners reside in such licensed State.

(2) Forms

(A) Applicable State law may require a redomesticating insurer to file new policy forms with the State insurance regulator of a licensed State on or before the effective date of the transfer.

(B) Notwithstanding subparagraph (A), a redomesticating insurer may use existing policy forms with appropriate endorsements to reflect the new domicile of the redomesticating insurer until the new policy forms are approved for use by the State insurance regulator of such licensed State.

(e) Notice

A redomesticating insurer shall give notice of the proposed transfer to the State insurance regulator of each licensed State and shall file promptly any resulting amendments to corporate

documents required to be filed by a foreign licensed mutual insurer with the insurance regulator of each such licensed State.

(f) Procedural requirements

No mutual insurer may redomesticate to another State and reorganize into a mutual holding company pursuant to this section unless the State insurance regulator of the transferee domicile determines that the plan of reorganization of the insurer includes the following requirements:

(1) Approval by board of directors and policyholders

The reorganization is approved by at least a majority of the board of directors of the mutual insurer and at least a majority of the policyholders who vote after notice, disclosure of the reorganization and the effects of the transaction on policyholder contractual rights, and reasonable opportunity to vote, in accordance with such notice, disclosure, and voting procedures as are approved by the State insurance regulator of the transferee domicile.

(2) Continued voting control by policyholders; review of public stock offering

After the consummation of a reorganization, the policyholders of the reorganized insurer shall have the same voting rights with respect to the mutual holding company as they had before the reorganization with respect to the mutual insurer. With respect to an initial public offering of stock, the offering shall be conducted in compliance with applicable securities laws and in a manner approved by the State insurance regulator of the transferee domicile.

(3) Award of stock or grant of options to officers and directors

During the applicable period provided for under the State law of the transferee domicile following completion of an initial public offering, or for a period of six months if no such applicable period is provided, neither a stock holding company nor the converted insurer shall award any stock options or stock grants to persons who are elected officers or directors of the mutual holding company, the stock holding company, or the converted insurer, except with respect to any such awards or options to which a person is entitled as a policyholder and as approved by the State insurance regulator of the transferee domicile.

(4) Policyholder rights

Upon reorganization into a mutual holding company, the contractual rights of the policyholders are preserved.

(5) Fair and equitable treatment of policyholders

The reorganization is approved as fair and equitable to the policyholders by the insurance regulator of the transferee domicile.

(Pub. L. 106–102, title III, §312, Nov. 12, 1999, 113 Stat. 1417.)

§6733. Effect on State laws restricting redomestication

(a) In general

Unless otherwise permitted by this subchapter, State laws of any transferor domicile that conflict with the purposes and intent of this subchapter are preempted, including but not limited to—

(1) any law that has the purpose or effect of impeding the activities of, taking any action against, or applying any provision of law or regulation to, any insurer or an affiliate of such insurer because that insurer or any affiliate plans to redomesticate, or has redomesticated, pursuant to this subchapter;

(2) any law that has the purpose or effect of impeding the activities of, taking action against, or applying any provision of law or regulation to, any insured or any insurance licensee or other intermediary because such person has procured insurance from or placed insurance with any insurer or affiliate of such insurer that plans to redomesticate, or has redomesticated, pursuant to

this subchapter, but only to the extent that such law would treat such insured licensee or other intermediary differently than if the person procured insurance from, or placed insurance with, an insured licensee or other intermediary which had not redomesticated; and

(3) any law that has the purpose or effect of terminating, because of the redomestication of a mutual insurer pursuant to this subchapter, any certificate of authority, agent appointment or license, rate approval, or other approval, of any State insurance regulator or other State authority in existence immediately prior to the redomestication in any State other than the transferee domicile.

(b) Differential treatment prohibited

No State law, regulation, interpretation, or functional equivalent thereof, of a State other than a transferee domicile may treat a redomesticating or redomesticated insurer or any affiliate thereof any differently than an insurer operating in that State that is not a redomesticating or redomesticated insurer.

(c) Laws prohibiting operations

If any licensed State fails to issue, delays the issuance of, or seeks to revoke an original or renewal certificate of authority of a redomesticated insurer promptly following redomestication, except on grounds and in a manner consistent with its past practices regarding the issuance of certificates of authority to foreign insurers that are not redomesticating, then the redomesticating insurer shall be exempt from any State law of the licensed State to the extent that such State law or the operation of such State law would make unlawful, or regulate, directly or indirectly, the operation of the redomesticated insurer, except that such licensed State may require the redomesticated insurer to—

(1) comply with the unfair claim settlement practices law of the licensed State;

(2) pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on licensed insurers or policyholders under the laws of the licensed State;

(3) register with and designate the State insurance regulator as its agent solely for the purpose of receiving service of legal documents or process;

(4) submit to an examination by the State insurance regulator in any licensed State in which the redomesticated insurer is doing business to determine the insurer's financial condition, if—

(A) the State insurance regulator of the transferee domicile has not begun an examination of the redomesticated insurer and has not scheduled such an examination to begin before the end of the 1-year period beginning on the date of the redomestication; and

(B) any such examination is coordinated to avoid unjustified duplication and repetition;

(5) comply with a lawful order issued in—

(A) a delinquency proceeding commenced by the State insurance regulator of any licensed State if there has been a judicial finding of financial impairment under paragraph (7); or

(B) a voluntary dissolution proceeding;

(6) comply with any State law regarding deceptive, false, or fraudulent acts or practices, except that if the licensed State seeks an injunction regarding the conduct described in this paragraph, such injunction must be obtained from a court of competent jurisdiction as provided in section 6734(a) of this title;

(7) comply with an injunction issued by a court of competent jurisdiction, upon a petition by the State insurance regulator alleging that the redomesticating insurer is in hazardous financial condition or is financially impaired;

(8) participate in any insurance insolvency guaranty association on the same basis as any other insurer licensed in the licensed State; and

(9) require a person acting, or offering to act, as an insurance licensee for a redomesticated insurer in the licensed State to obtain a license from that State, except that such State may not impose any qualification or requirement that discriminates against a nonresident insurance licensee.

(Pub. L. 106–102, title III, §313, Nov. 12, 1999, 113 Stat. 1419.)

§6734. Other provisions

(a) Judicial review

The appropriate United States district court shall have exclusive jurisdiction over litigation arising under this section [1] involving any redomesticating or redomesticated insurer.

(b) Severability

If any provision of this section,[1] or the application thereof to any person or circumstances, is held invalid, the remainder of the section,[1] and the application of such provision to other persons or circumstances, shall not be affected thereby.

(Pub. L. 106–102, title III, §314, Nov. 12, 1999, 113 Stat. 1420.)

REFERENCES IN TEXT

This section, referred to in text, probably should be a reference to this subtitle, meaning subtitle B (§§311–316) of title III of Pub. L. 106–102, which is classified generally to this subchapter.

[1] *See References in Text note below.*

§6735. Definitions

For purposes of this subchapter, the following definitions shall apply:

(1) Court of competent jurisdiction

The term "court of competent jurisdiction" means a court authorized pursuant to section 6734(a) of this title to adjudicate litigation arising under this subchapter.

(2) Domicile

The term "domicile" means the State in which an insurer is incorporated, chartered, or organized.

(3) Insurance licensee

The term "insurance licensee" means any person holding a license under State law to act as insurance agent, subagent, broker, or consultant.

(4) Institution

The term "institution" means a corporation, joint stock company, limited liability company, limited liability partnership, association, trust, partnership, or any similar entity.

(5) Licensed State

The term "licensed State" means any State, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands in which the redomesticating insurer has a certificate of authority in effect immediately prior to the redomestication.

(6) Mutual insurer

The term "mutual insurer" means a mutual insurer organized under the laws of any State.

(7) Person

The term "person" means an individual, institution, government or governmental agency, State or political subdivision of a State, public corporation, board, association, estate, trustee, or fiduciary, or other similar entity.

(8) Policyholder

The term "policyholder" means the owner of a policy issued by a mutual insurer, except that,

with respect to voting rights, the term means a member of a mutual insurer or mutual holding company granted the right to vote, as determined under applicable State law.

(9) Redomesticated insurer

The term "redomesticated insurer" means a mutual insurer that has redomesticated pursuant to this subchapter.

(10) Redomesticating insurer

The term "redomesticating insurer" means a mutual insurer that is redomesticating pursuant to this subchapter.

(11) Redomestication or transfer

The term "redomestication" or "transfer" means the transfer of the domicile of a mutual insurer from one State to another State pursuant to this subchapter.

(12) State insurance regulator

The term "State insurance regulator" means the principal insurance regulatory authority of a State, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(13) State law

The term "State law" means the statutes of any State, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands and any regulation, order, or requirement prescribed pursuant to any such statute.

(14) Transferee domicile

The term "transferee domicile" means the State to which a mutual insurer is redomesticating pursuant to this subchapter.

(15) Transferor domicile

The term "transferor domicile" means the State from which a mutual insurer is redomesticating pursuant to this subchapter.

(Pub. L. 106–102, title III, §315, Nov. 12, 1999, 113 Stat. 1420.)

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SUBCHAPTER III—NATIONAL ASSOCIATION OF REGISTERED AGENTS AND BROKERS

§6751. State flexibility in multistate licensing reforms

(a) In general

The provisions of this subchapter shall take effect unless, not later than 3 years after November 12, 1999, at least a majority of the States—

(1) have enacted uniform laws and regulations governing the licensure of individuals and entities authorized to sell and solicit the purchase of insurance within the State; or

(2) have enacted reciprocity laws and regulations governing the licensure of nonresident individuals and entities authorized to sell and solicit insurance within those States.

(b) Uniformity required

States shall be deemed to have established the uniformity necessary to satisfy subsection (a)(1) of this section if the States—

(1) establish uniform criteria regarding the integrity, personal qualifications, education, training, and experience of licensed insurance producers, including the qualification and training of sales personnel in ascertaining the appropriateness of a particular insurance product for a prospective customer;

(2) establish uniform continuing education requirements for licensed insurance producers;

(3) establish uniform ethics course requirements for licensed insurance producers in conjunction with the continuing education requirements under paragraph (2);

(4) establish uniform criteria to ensure that an insurance product, including any annuity contract, sold to a consumer is suitable and appropriate for the consumer based on financial information disclosed by the consumer; and

(5) do not impose any requirement upon any insurance producer to be licensed or otherwise qualified to do business as a nonresident that has the effect of limiting or conditioning that producer's activities because of its residence or place of operations, except that countersignature requirements imposed on nonresident producers shall not be deemed to have the effect of limiting or conditioning a producer's activities because of its residence or place of operations under this section.

(c) Reciprocity required

States shall be deemed to have established the reciprocity required to satisfy subsection (a)(2) of this section if the following conditions are met:

(1) Administrative licensing procedures

At least a majority of the States permit a producer that has a resident license for selling or soliciting the purchase of insurance in its home State to receive a license to sell or solicit the purchase of insurance in such majority of States as a nonresident to the same extent that such producer is permitted to sell or solicit the purchase of insurance in its State, if the producer's home State also awards such licenses on such a reciprocal basis, without satisfying any additional requirements other than submitting—

(A) a request for licensure;

(B) the application for licensure that the producer submitted to its home State;

(C) proof that the producer is licensed and in good standing in its home State; and

(D) the payment of any requisite fee to the appropriate authority.

(2) Continuing education requirements

A majority of the States accept an insurance producer's satisfaction of its home State's continuing education requirements for licensed insurance producers to satisfy the States' own continuing education requirements if the producer's home State also recognizes the satisfaction of continuing education requirements on such a reciprocal basis.

(3) No limiting nonresident requirements

A majority of the States do not impose any requirement upon any insurance producer to be licensed or otherwise qualified to do business as a nonresident that has the effect of limiting or conditioning that producer's activities because of its residence or place of operations, except that countersignature requirements imposed on nonresident producers shall not be deemed to have the effect of limiting or conditioning a producer's activities because of its residence or place of operations under this section.

(4) Reciprocal reciprocity

Each of the States that satisfies paragraphs (1), (2), and (3) grants reciprocity to residents of all of the other States that satisfy such paragraphs.

(d) Determination

(1) NAIC determination

At the end of the 3-year period beginning on November 12, 1999, the National Association of Insurance Commissioners (hereafter in this subchapter referred to as the "NAIC") shall determine, in consultation with the insurance commissioners or chief insurance regulatory officials of the States, whether the uniformity or reciprocity required by subsections (b) and (c) of this section has been achieved.

(2) Judicial review

The appropriate United States district court shall have exclusive jurisdiction over any challenge to the NAIC's determination under this section and such court shall apply the standards set forth in section 706 of title 5 when reviewing any such challenge.

(e) Continued application

If, at any time, the uniformity or reciprocity required by subsections (b) and (c) of this section no longer exists, the provisions of this subchapter shall take effect 2 years after the date on which such uniformity or reciprocity ceases to exist, unless the uniformity or reciprocity required by those provisions is satisfied before the expiration of that 2-year period.

(f) Savings provision

No provision of this section shall be construed as requiring that any law, regulation, provision, or action of any State which purports to regulate insurance producers, including any such law, regulation, provision, or action which purports to regulate unfair trade practices or establish consumer protections, including countersignature laws, be altered or amended in order to satisfy the uniformity or reciprocity required by subsections (b) and (c) of this section, unless any such law, regulation, provision, or action is inconsistent with a specific requirement of any such subsection and then only to the extent of such inconsistency.

(g) Uniform licensing

Nothing in this section shall be construed to require any State to adopt new or additional licensing requirements to achieve the uniformity necessary to satisfy subsection (a)(1) of this section.

(Pub. L. 106–102, title III, §321, Nov. 12, 1999, 113 Stat. 1422.)

§6752. National Association of Registered Agents and Brokers

(a) Establishment

There is established the National Association of Registered Agents and Brokers (hereafter in this subchapter referred to as the "Association").

(b) Status

The Association shall—

(1) be a nonprofit corporation;

(2) have succession until dissolved by an Act of Congress;

(3) not be an agent or instrumentality of the United States Government; and

(4) except as otherwise provided in this Act, be subject to, and have all the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act (D.C. Code, sec. 29y–1001 et seq.).

(Pub. L. 106–102, title III, §322, Nov. 12, 1999, 113 Stat. 1424.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b)(4), is Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1338, known as the Gramm-Leach-Bliley Act. For complete classification of this Act to the Code, see Short title of 1999 Amendment note set out under section 1811 of Title 12, Banks and Banking, and Tables.

The District of Columbia Nonprofit Corporation Act, referred to in subsec. (b)(4), is Pub. L. 87–569, Aug. 6, 1962, 76 Stat. 265, as amended, which is not classified to the Code.

§6753. Purpose

The purpose of the Association shall be to provide a mechanism through which uniform licensing, appointment, continuing education, and other insurance producer sales qualification requirements and conditions can be adopted and applied on a multistate basis, while preserving the right of States to license, supervise, and discipline insurance producers and to prescribe and enforce laws and regulations with regard to insurance-related consumer protection and unfair trade practices.

(Pub. L. 106–102, title III, §323, Nov. 12, 1999, 113 Stat. 1424.)

§6754. Relationship to the Federal Government

The Association shall be subject to the supervision and oversight of the NAIC.

(Pub. L. 106–102, title III, §324, Nov. 12, 1999, 113 Stat. 1424.)

§6755. Membership

(a) Eligibility

(1) In general

Any State-licensed insurance producer shall be eligible to become a member in the Association.

(2) Ineligibility for suspension or revocation of license

Notwithstanding paragraph (1), a State-licensed insurance producer shall not be eligible to become a member if a State insurance regulator has suspended or revoked such producer's license in that State during the 3-year period preceding the date on which such producer applies for membership.

(3) Resumption of eligibility

Paragraph (2) shall cease to apply to any insurance producer if—

(A) the State insurance regulator renews the license of such producer in the State in which the license was suspended or revoked; or

(B) the suspension or revocation is subsequently overturned.

(b) Authority to establish membership criteria

The Association shall have the authority to establish membership criteria that—

(1) bear a reasonable relationship to the purposes for which the Association was established; and

(2) do not unfairly limit the access of smaller agencies to the Association membership.

(c) Establishment of classes and categories

(1) Classes of membership

The Association may establish separate classes of membership, with separate criteria, if the Association reasonably determines that performance of different duties requires different levels of education, training, or experience.

(2) Categories

The Association may establish separate categories of membership for individuals and for other persons. The establishment of any such categories of membership shall be based either on the types of licensing categories that exist under State laws or on the aggregate amount of business handled by an insurance producer. No special categories of membership, and no distinct membership criteria, shall be established for members which are depository institutions or for their employees, agents, or affiliates.

(d) Membership criteria

(1) In general

The Association may establish criteria for membership which shall include standards for integrity, personal qualifications, education, training, and experience.

(2) Minimum standard

In establishing criteria under paragraph (1), the Association shall consider the highest levels of insurance producer qualifications established under the licensing laws of the States.

(e) Effect of membership

Membership in the Association shall entitle the member to licensure in each State for which the member pays the requisite fees, including licensing fees and, where applicable, bonding requirements, set by such State.

(f) Annual renewal

Membership in the Association shall be renewed on an annual basis.

(g) Continuing education

The Association shall establish, as a condition of membership, continuing education requirements which shall be comparable to or greater than the continuing education requirements under the licensing laws of a majority of the States.

(h) Suspension and revocation

The Association may—

(1) inspect and examine the records and offices of the members of the Association to determine compliance with the criteria for membership established by the Association; and

(2) suspend or revoke the membership of an insurance producer if—

(A) the producer fails to meet the applicable membership criteria of the Association; or

(B) the producer has been subject to disciplinary action pursuant to a final adjudicatory proceeding under the jurisdiction of a State insurance regulator, and the Association concludes that retention of membership in the Association would not be in the public interest.

(i) Office of consumer complaints

(1) In general

The Association shall establish an office of consumer complaints that shall—

(A) receive and investigate complaints from both consumers and State insurance regulators related to members of the Association; and

(B) recommend to the Association any disciplinary actions that the office considers appropriate, to the extent that any such recommendation is not inconsistent with State law.

(2) Records and referrals

The office of consumer complaints of the Association shall—

(A) maintain records of all complaints received in accordance with paragraph (1) and make such records available to the NAIC and to each State insurance regulator for the State of residence of the consumer who filed the complaint; and

(B) refer, when appropriate, any such complaint to any appropriate State insurance regulator.

(3) Telephone and other access

The office of consumer complaints shall maintain a toll-free telephone number for the purpose of this subsection and, as practicable, other alternative means of communication with consumers, such as an Internet home page.

(Pub. L. 106–102, title III, §325, Nov. 12, 1999, 113 Stat. 1424.)

§6756. Board of directors

(a) Establishment

There is established the board of directors of the Association (hereafter in this subchapter referred to as the "Board") for the purpose of governing and supervising the activities of the Association and the members of the Association.

(b) Powers

The Board shall have such powers and authority as may be specified in the bylaws of the Association.

(c) Composition

(1) Members

The Board shall be composed of 7 members appointed by the NAIC.

(2) Requirement

At least 4 of the members of the Board shall each have significant experience with the regulation of commercial lines of insurance in at least 1 of the 20 States in which the greatest total dollar amount of commercial-lines insurance is placed in the United States.

(3) Initial Board membership

(A) In general

If, by the end of the 2-year period beginning on November 12, 1999, the NAIC has not appointed the initial 7 members of the Board of the Association, the initial Board shall consist of the 7 State insurance regulators of the 7 States with the greatest total dollar amount of commercial-lines insurance in place as of the end of such period.

(B) Alternate composition

If any of the State insurance regulators described in subparagraph (A) declines to serve on the Board, the State insurance regulator with the next greatest total dollar amount of commercial-lines insurance in place, as determined by the NAIC as of the end of such period, shall serve as a member of the Board.

(C) Inoperability

If fewer than 7 State insurance regulators accept appointment to the Board, the Association shall be established without NAIC oversight pursuant to section 6762 of this title.

(d) Terms

The term of each director shall, after the initial appointment of the members of the Board, be for 3 years, with one-third of the directors to be appointed each year.

(e) Board vacancies

A vacancy on the Board shall be filled in the same manner as the original appointment of the initial Board for the remainder of the term of the vacating member.

(f) Meetings

The Board shall meet at the call of the chairperson, or as otherwise provided by the bylaws of the Association.

(Pub. L. 106–102, title III, §326, Nov. 12, 1999, 113 Stat. 1426.)

§6757. Officers

(a) In general

(1) Positions

The officers of the Association shall consist of a chairperson and a vice chairperson of the Board, a president, secretary, and treasurer of the Association, and such other officers and assistant officers as may be deemed necessary.

(2) Manner of selection

Each officer of the Board and the Association shall be elected or appointed at such time and in such manner and for such terms not exceeding 3 years as may be prescribed in the bylaws of the Association.

(b) Criteria for chairperson

Only individuals who are members of the NAIC shall be eligible to serve as the chairperson of the board of directors.

(Pub. L. 106–102, title III, §327, Nov. 12, 1999, 113 Stat. 1427.)

§6758. Bylaws, rules, and disciplinary action

(a) Adoption and amendment of bylaws

(1) Copy required to be filed with the NAIC

The board of directors of the Association shall file with the NAIC a copy of the proposed bylaws or any proposed amendment to the bylaws, accompanied by a concise general statement of the basis and purpose of such proposal.

(2) Effective date

Except as provided in paragraph (3), any proposed bylaw or proposed amendment shall take effect—

(A) 30 days after the date of the filing of a copy with the NAIC;

(B) upon such later date as the Association may designate; or

(C) upon such earlier date as the NAIC may determine.

(3) Disapproval by the NAIC

Notwithstanding paragraph (2), a proposed bylaw or amendment shall not take effect if, after public notice and opportunity to participate in a public hearing—

(A) the NAIC disapproves such proposal as being contrary to the public interest or contrary to the purposes of this subchapter and provides notice to the Association setting forth the reasons for such disapproval; or

(B) the NAIC finds that such proposal involves a matter of such significant public interest that public comment should be obtained, in which case it may, after notifying the Association in writing of such finding, require that the procedures set forth in subsection (b) of this section be followed with respect to such proposal, in the same manner as if such proposed bylaw change were a proposed rule change within the meaning of such subsection.

(b) Adoption and amendment of rules

(1) Filing proposed regulations with the NAIC

(A) In general

The board of directors of the Association shall file with the NAIC a copy of any proposed rule or any proposed amendment to a rule of the Association which shall be accompanied by a concise general statement of the basis and purpose of such proposal.

(B) Other rules and amendments ineffective

No proposed rule or amendment shall take effect unless approved by the NAIC or otherwise permitted in accordance with this paragraph.

(2) Initial consideration by the NAIC

Not later than 35 days after the date of publication of notice of filing of a proposal, or before the end of such longer period not to exceed 90 days as the NAIC may designate after such date, if the NAIC finds such longer period to be appropriate and sets forth its reasons for so finding, or as to which the Association consents, the NAIC shall—

(A) by order approve such proposed rule or amendment; or

(B) institute proceedings to determine whether such proposed rule or amendment should be modified or disapproved.

(3) NAIC proceedings

(A) In general

Proceedings instituted by the NAIC with respect to a proposed rule or amendment pursuant to paragraph (2) shall—

(i) include notice of the grounds for disapproval under consideration;

(ii) provide opportunity for hearing; and

(iii) be concluded not later than 180 days after the date of the Association's filing of such proposed rule or amendment.

(B) Disposition of proposal

At the conclusion of any proceeding under subparagraph (A), the NAIC shall, by order, approve or disapprove the proposed rule or amendment.

(C) Extension of time for consideration

The NAIC may extend the time for concluding any proceeding under subparagraph (A) for—

(i) not more than 60 days if the NAIC finds good cause for such extension and sets forth its reasons for so finding; or

(ii) such longer period as to which the Association consents.

(4) Standards for review

(A) Grounds for approval

The NAIC shall approve a proposed rule or amendment if the NAIC finds that the rule or amendment is in the public interest and is consistent with the purposes of this Act.

(B) Approval before end of notice period

The NAIC shall not approve any proposed rule before the end of the 30-day period beginning on the date on which the Association files proposed rules or amendments in accordance with paragraph (1), unless the NAIC finds good cause for so doing and sets forth the reasons for so finding.

(5) Alternate procedure

(A) In general

Notwithstanding any provision of this subsection other than subparagraph (B), a proposed rule or amendment relating to the administration or organization of the Association shall take effect—

(i) upon the date of filing with the NAIC, if such proposed rule or amendment is designated by the Association as relating solely to matters which the NAIC, consistent with the public interest and the purposes of this subsection, determines by rule do not require the procedures set forth in this paragraph; or

(ii) upon such date as the NAIC shall for good cause determine.

(B) Abrogation by the NAIC

(i) In general

At any time within 60 days after the date of filing of any proposed rule or amendment under subparagraph (A)(i) or clause (ii) of this subparagraph, the NAIC may repeal such rule or amendment and require that the rule or amendment be refiled and reviewed in accordance with this paragraph, if the NAIC finds that such action is necessary or appropriate in the public interest, for the protection of insurance producers or policyholders, or otherwise in furtherance of the purposes of this subchapter.

(ii) Effect of reconsideration by the NAIC

Any action of the NAIC pursuant to clause (i) shall—

(I) not affect the validity or force of a rule change during the period such rule or amendment was in effect; and

(II) not be considered to be a final action.

(c) Action required by the NAIC

The NAIC may, in accordance with such rules as the NAIC determines to be necessary or appropriate to the public interest or to carry out the purposes of this subchapter, require the Association to adopt, amend, or repeal any bylaw, rule, or amendment of the Association, whenever adopted.

(d) Disciplinary action by the Association

(1) Specification of charges

In any proceeding to determine whether membership shall be denied, suspended, revoked, or not renewed (hereafter in this section referred to as a "disciplinary action"), the Association shall bring specific charges, notify such member of such charges, give the member an opportunity to defend against the charges, and keep a record.

(2) Supporting statement

A determination to take disciplinary action shall be supported by a statement setting forth—

(A) any act or practice in which such member has been found to have been engaged;

(B) the specific provision of this subchapter, the rules or regulations under this subchapter, or the rules of the Association which any such act or practice is deemed to violate; and

(C) the sanction imposed and the reason for such sanction.

(e) NAIC review of disciplinary action

(1) Notice to the NAIC

If the Association orders any disciplinary action, the Association shall promptly notify the NAIC of such action.

(2) Review by the NAIC

Any disciplinary action taken by the Association shall be subject to review by the NAIC—

(A) on the NAIC's own motion; or

(B) upon application by any person aggrieved by such action if such application is filed with the NAIC not more than 30 days after the later of—

(i) the date the notice was filed with the NAIC pursuant to paragraph (1); or

(ii) the date the notice of the disciplinary action was received by such aggrieved person.

(f) Effect of review

The filing of an application to the NAIC for review of a disciplinary action, or the institution of review by the NAIC on the NAIC's own motion, shall not operate as a stay of disciplinary action unless the NAIC otherwise orders.

(g) Scope of review

(1) In general

In any proceeding to review such action, after notice and the opportunity for hearing, the NAIC shall—

(A) determine whether the action should be taken;

(B) affirm, modify, or rescind the disciplinary sanction; or

(C) remand to the Association for further proceedings.

(2) Dismissal of review

The NAIC may dismiss a proceeding to review disciplinary action if the NAIC finds that—

(A) the specific grounds on which the action is based exist in fact;

(B) the action is in accordance with applicable rules and regulations; and

(C) such rules and regulations are, and were, applied in a manner consistent with the purposes of this subchapter.

(Pub. L. 106–102, title III, §328, Nov. 12, 1999, 113 Stat. 1427.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b)(4)(A), is Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1338, known as the Gramm-Leach-Bliley Act. For complete classification of this Act to the Code, see Short Title of 1999 Amendment note set out under section 1811 of Title 12, Banks and Banking, and Tables.

§6759. Assessments

(a) Insurance producers subject to assessment

The Association may establish such application and membership fees as the Association finds necessary to cover the costs of its operations, including fees made reimbursable to the NAIC under subsection (b) of this section, except that, in setting such fees, the Association may not discriminate against smaller insurance producers.

(b) NAIC assessments

The NAIC may assess the Association for any costs that the NAIC incurs under this subchapter.

(Pub. L. 106–102, title III, §329, Nov. 12, 1999, 113 Stat. 1430.)

§6760. Functions of the NAIC

(a) Administrative procedure

Determinations of the NAIC, for purposes of making rules pursuant to section 6758 of this title, shall be made after appropriate notice and opportunity for a hearing and for submission of views of interested persons.

(b) Examinations and reports

(1) Examinations

The NAIC may make such examinations and inspections of the Association and require the Association to furnish to the NAIC such reports and records or copies thereof as the NAIC may consider necessary or appropriate in the public interest or to effectuate the purposes of this subchapter.

(2) Report by Association

As soon as practicable after the close of each fiscal year, the Association shall submit to the NAIC a written report regarding the conduct of its business, and the exercise of the other rights and powers granted by this subchapter, during such fiscal year. Such report shall include financial statements setting forth the financial position of the Association at the end of such fiscal year and the results of its operations (including the source and application of its funds) for such fiscal year. The NAIC shall transmit such report to the President and the Congress with such comment thereon as the NAIC determines to be appropriate.

(Pub. L. 106–102, title III, §330, Nov. 12, 1999, 113 Stat. 1430.)

§6761. Liability of the Association and the directors, officers, and employees of the Association

(a) In general

The Association shall not be deemed to be an insurer or insurance producer within the meaning of any State law, rule, regulation, or order regulating or taxing insurers, insurance producers, or other

entities engaged in the business of insurance, including provisions imposing premium taxes, regulating insurer solvency or financial condition, establishing guaranty funds and levying assessments, or requiring claims settlement practices.

(b) Liability of the Association, its directors, officers, and employees

Neither the Association nor any of its directors, officers, or employees shall have any liability to any person for any action taken or omitted in good faith under or in connection with any matter subject to this subchapter.

(Pub. L. 106–102, title III, §331, Nov. 12, 1999, 113 Stat. 1430.)

§6762. Elimination of NAIC oversight

(a) In general

The Association shall be established without NAIC oversight and the provisions set forth in section 6754 of this title, subsections (a), (b), (c), and (e) of section 6758 of this title, and sections 6759(b) and 6760 of this title shall cease to be effective if, at the end of the 2-year period beginning on the date on which the provisions of this subchapter take effect pursuant to section 6751 of this title—

(1) at least a majority of the States representing at least 50 percent of the total United States commercial-lines insurance premiums have not satisfied the uniformity or reciprocity requirements of subsections (a), (b), and (c) of section 6751 of this title; and

(2) the NAIC has not approved the Association's bylaws as required by section 6758 of this title or is unable to operate or supervise the Association, or the Association is not conducting its activities as required under this Act.

(b) Board appointments

If the repeals required by subsection (a) of this section are implemented, the following shall apply:

(1) General appointment power

The President, with the advice and consent of the Senate, shall appoint the members of the Association's Board established under section 6756 of this title from lists of candidates recommended to the President by the NAIC.

(2) Procedures for obtaining NAIC appointment recommendations

(A) Initial determination and recommendations

After the date on which the provisions of subsection (a) of this section take effect, the NAIC shall, not later than 60 days thereafter, provide a list of recommended candidates to the President. If the NAIC fails to provide a list by that date, or if any list that is provided does not include at least 14 recommended candidates or comply with the requirements of section 6756(c) of this title, the President shall, with the advice and consent of the Senate, make the requisite appointments without considering the views of the NAIC.

(B) Subsequent appointments

After the initial appointments, the NAIC shall provide a list of at least six recommended candidates for the Board to the President by January 15 of each subsequent year. If the NAIC fails to provide a list by that date, or if any list that is provided does not include at least six recommended candidates or comply with the requirements of section 6756(c) of this title, the President, with the advice and consent of the Senate, shall make the requisite appointments without considering the views of the NAIC.

(C) Presidential oversight

(i) Removal

If the President determines that the Association is not acting in the interests of the public, the President may remove the entire existing Board for the remainder of the term to which the

members of the Board were appointed and appoint, with the advice and consent of the Senate, new members to fill the vacancies on the Board for the remainder of such terms.

(ii) Suspension of rules or actions

The President, or a person designated by the President for such purpose, may suspend the effectiveness of any rule, or prohibit any action, of the Association which the President or the designee determines is contrary to the public interest.

(c) Annual report

As soon as practicable after the close of each fiscal year, the Association shall submit to the President and to the Congress a written report relative to the conduct of its business, and the exercise of the other rights and powers granted by this subchapter, during such fiscal year. Such report shall include financial statements setting forth the financial position of the Association at the end of such fiscal year and the results of its operations (including the source and application of its funds) for such fiscal year.

(Pub. L. 106–102, title III, §332, Nov. 12, 1999, 113 Stat. 1431.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(2), is Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1338, known as the Gramm-Leach-Bliley Act. For complete classification of this Act to the Code, see Short Title of 1999 Amendment note set out under section 1811 of Title 12, Banks and Banking, and Tables.

§6763. Relationship to State law

(a) Preemption of State laws

State laws, regulations, provisions, or other actions purporting to regulate insurance producers shall be preempted as provided in subsection (b) of this section.

(b) Prohibited actions

No State shall—

(1) impede the activities of, take any action against, or apply any provision of law or regulation to, any insurance producer because that insurance producer or any affiliate plans to become, has applied to become, or is a member of the Association;

(2) impose any requirement upon a member of the Association that it pay different fees to be licensed or otherwise qualified to do business in that State, including bonding requirements, based on its residency;

(3) impose any licensing, appointment, integrity, personal or corporate qualifications, education, training, experience, residency, or continuing education requirement upon a member of the Association that is different from the criteria for membership in the Association or renewal of such membership, except that countersignature requirements imposed on nonresident producers shall not be deemed to have the effect of limiting or conditioning a producer's activities because of its residence or place of operations under this section; or

(4) implement the procedures of such State's system of licensing or renewing the licenses of insurance producers in a manner different from the authority of the Association under section 6755 of this title.

(c) Savings provision

Except as provided in subsections (a) and (b) of this section, no provision of this section shall be construed as altering or affecting the continuing effectiveness of any law, regulation, provision, or other action of any State which purports to regulate insurance producers, including any such law, regulation, provision, or action which purports to regulate unfair trade practices or establish consumer protections, including countersignature laws.

(Pub. L. 106–102, title III, §333, Nov. 12, 1999, 113 Stat. 1432.)

§6764. Coordination with other regulators

(a) Coordination with State insurance regulators

The Association shall have the authority to—

(1) issue uniform insurance producer applications and renewal applications that may be used to apply for the issuance or removal of State licenses, while preserving the ability of each State to impose such conditions on the issuance or renewal of a license as are consistent with section 6763 of this title;

(2) establish a central clearinghouse through which members of the Association may apply for the issuance or renewal of licenses in multiple States; and

(3) establish or utilize a national database for the collection of regulatory information concerning the activities of insurance producers.

(b) Coordination with the National Association of Securities Dealers

The Association shall coordinate with the National Association of Securities Dealers in order to ease any administrative burdens that fall on persons that are members of both associations, consistent with the purposes of this subchapter and the Federal securities laws.

(Pub. L. 106–102, title III, §334, Nov. 12, 1999, 113 Stat. 1433.)

§6765. Judicial review

(a) Jurisdiction

The appropriate United States district court shall have exclusive jurisdiction over litigation involving the Association, including disputes between the Association and its members that arise under this subchapter. Suits brought in State court involving the Association shall be deemed to have arisen under Federal law and therefore be subject to jurisdiction in the appropriate United States district court.

(b) Exhaustion of remedies

An aggrieved person shall be required to exhaust all available administrative remedies before the Association and the NAIC before it may seek judicial review of an Association decision.

(c) Standards of review

The standards set forth in section 553 of title 5 shall be applied whenever a rule or bylaw of the Association is under judicial review, and the standards set forth in section 554 of title 5 shall be applied whenever a disciplinary action of the Association is judicially reviewed.

(Pub. L. 106–102, title III, §335, Nov. 12, 1999, 113 Stat. 1433.)

§6766. Definitions

For purposes of this subchapter, the following definitions shall apply:

(1) Home State

The term "home State" means the State in which the insurance producer maintains its principal place of residence and is licensed to act as an insurance producer.

(2) Insurance

The term "insurance" means any product, other than title insurance, defined or regulated as insurance by the appropriate State insurance regulatory authority.

(3) Insurance producer

The term "insurance producer" means any insurance agent or broker, surplus lines broker, insurance consultant, limited insurance representative, and any other person that solicits,

negotiates, effects, procures, delivers, renews, continues or binds policies of insurance or offers advice, counsel, opinions or services related to insurance.

(4) State

The term "State" includes any State, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(5) State law

The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

(Pub. L. 106–102, title III, §336, Nov. 12, 1999, 113 Stat. 1433.)

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SUBCHAPTER IV—RENTAL CAR AGENCY INSURANCE ACTIVITIES

§6781. Standard of regulation for motor vehicle rentals

(a) Protection against retroactive application of regulatory and legal action

Except as provided in subsection (b) of this section, during the 3-year period beginning on November 12, 1999, it shall be a presumption that no State law imposes any licensing, appointment, or education requirements on any person who solicits the purchase of or sells insurance connected with, and incidental to, the lease or rental of a motor vehicle.

(b) Preeminence of State insurance law

No provision of this section shall be construed as altering the validity, interpretation, construction, or effect of—

(1) any State statute;

(2) the prospective application of any court judgment interpreting or applying any State statute; or

(3) the prospective application of any final State regulation, order, bulletin, or other statutorily authorized interpretation or action,

which, by its specific terms, expressly regulates or exempts from regulation any person who solicits the purchase of or sells insurance connected with, and incidental to, the short-term lease or rental of a motor vehicle.

(c) Scope of application

This section shall apply with respect to—

(1) the lease or rental of a motor vehicle for a total period of 90 consecutive days or less; and

(2) insurance which is provided in connection with, and incidentally to, such lease or rental for a period of consecutive days not exceeding the lease or rental period.

(d) Motor vehicle defined

For purposes of this section, the term "motor vehicle" has the same meaning as in section 13102 of title 49.

(Pub. L. 106–102, title III, §341, Nov. 12, 1999, 113 Stat. 1434.)

CHAPTER 94—PRIVACY

SUBCHAPTER I—DISCLOSURE OF NONPUBLIC PERSONAL INFORMATION

Sec.
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SUBCHAPTER I—DISCLOSURE OF NONPUBLIC PERSONAL INFORMATION

§6801. Protection of nonpublic personal information

(a) Privacy obligation policy

It is the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information.

(b) Financial institutions safeguards

In furtherance of the policy in subsection (a) of this section, each agency or authority described in section 6805(a) of this title, other than the Bureau of Consumer Financial Protection, shall establish appropriate standards for the financial institutions subject to their jurisdiction relating to administrative, technical, and physical safeguards—

(1) to insure the security and confidentiality of customer records and information;

(2) to protect against any anticipated threats or hazards to the security or integrity of such records; and

(3) to protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer.

(Pub. L. 106–102, title V, §501, Nov. 12, 1999, 113 Stat. 1436; Pub. L. 111–203, title X, §1093(1), July 21, 2010, 124 Stat. 2095.)

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–203 inserted ", other than the Bureau of Consumer Financial Protection," after "section 6805(a) of this title" in introductory provisions.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Pub. L. 106–102, title V, §510, Nov. 12, 1999, 113 Stat. 1445, provided that: "This subtitle [subtitle A (§§501–510) of title V of Pub. L. 106–102, enacting this subchapter and amending section 1681s of this title] shall take effect 6 months after the date on which rules are required to be prescribed under section 504(a)(3) [15 U.S.C. 6804(a)(3)], except—

"(1) to the extent that a later date is specified in the rules prescribed under section 504; and

"(2) that sections 504 [15 U.S.C. 6804] and 506 [enacting section 6806 of this title and amending section 1681s of this title] shall be effective upon enactment [Nov. 12, 1999]."

§6802. Obligations with respect to disclosures of personal information

(a) Notice requirements

Except as otherwise provided in this subchapter, a financial institution may not, directly or through any affiliate, disclose to a nonaffiliated third party any nonpublic personal information, unless such financial institution provides or has provided to the consumer a notice that complies with section 6803 of this title.

(b) Opt out

(1) In general

A financial institution may not disclose nonpublic personal information to a nonaffiliated third party unless—

(A) such financial institution clearly and conspicuously discloses to the consumer, in writing or in electronic form or other form permitted by the regulations prescribed under section 6804 of this title, that such information may be disclosed to such third party;

(B) the consumer is given the opportunity, before the time that such information is initially disclosed, to direct that such information not be disclosed to such third party; and

(C) the consumer is given an explanation of how the consumer can exercise that nondisclosure option.

(2) Exception

This subsection shall not prevent a financial institution from providing nonpublic personal information to a nonaffiliated third party to perform services for or functions on behalf of the financial institution, including marketing of the financial institution's own products or services, or financial products or services offered pursuant to joint agreements between two or more financial institutions that comply with the requirements imposed by the regulations prescribed under section 6804 of this title, if the financial institution fully discloses the providing of such information and enters into a contractual agreement with the third party that requires the third party to maintain the confidentiality of such information.

(c) Limits on reuse of information

Except as otherwise provided in this subchapter, a nonaffiliated third party that receives from a financial institution nonpublic personal information under this section shall not, directly or through an affiliate of such receiving third party, disclose such information to any other person that is a nonaffiliated third party of both the financial institution and such receiving third party, unless such disclosure would be lawful if made directly to such other person by the financial institution.

(d) Limitations on the sharing of account number information for marketing purposes

A financial institution shall not disclose, other than to a consumer reporting agency, an account number or similar form of access number or access code for a credit card account, deposit account, or transaction account of a consumer to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer.

(e) General exceptions

Subsections (a) and (b) of this section shall not prohibit the disclosure of nonpublic personal

information—

(1) as necessary to effect, administer, or enforce a transaction requested or authorized by the consumer, or in connection with—

(A) servicing or processing a financial product or service requested or authorized by the consumer;

(B) maintaining or servicing the consumer's account with the financial institution, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity; or

(C) a proposed or actual securitization, secondary market sale (including sales of servicing rights), or similar transaction related to a transaction of the consumer;

(2) with the consent or at the direction of the consumer;

(3)(A) to protect the confidentiality or security of the financial institution's records pertaining to the consumer, the service or product, or the transaction therein; (B) to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability; (C) for required institutional risk control, or for resolving customer disputes or inquiries; (D) to persons holding a legal or beneficial interest relating to the consumer; or (E) to persons acting in a fiduciary or representative capacity on behalf of the consumer;

(4) to provide information to insurance rate advisory organizations, guaranty funds or agencies, applicable rating agencies of the financial institution, persons assessing the institution's compliance with industry standards, and the institution's attorneys, accountants, and auditors;

(5) to the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.], to law enforcement agencies (including the Bureau of Consumer Financial Protection [1] a Federal functional regulator, the Secretary of the Treasury with respect to subchapter II of chapter 53 of title 31, and chapter 2 of title I of Public Law 91–508 (12 U.S.C. 1951–1959), a State insurance authority, or the Federal Trade Commission), self-regulatory organizations, or for an investigation on a matter related to public safety;

(6)(A) to a consumer reporting agency in accordance with the Fair Credit Reporting Act [15 U.S.C. 1681 et seq.], or (B) from a consumer report reported by a consumer reporting agency;

(7) in connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of such business or unit; or

(8) to comply with Federal, State, or local laws, rules, and other applicable legal requirements; to comply with a properly authorized civil, criminal, or regulatory investigation or subpoena or summons by Federal, State, or local authorities; or to respond to judicial process or government regulatory authorities having jurisdiction over the financial institution for examination, compliance, or other purposes as authorized by law.

(Pub. L. 106–102, title V, §502, Nov. 12, 1999, 113 Stat. 1437; Pub. L. 111–203, title X, §1093(2), July 21, 2010, 124 Stat. 2095.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a) and (c), was in the original "this subtitle", meaning subtitle A (§§501–510) of title V of Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1436, which is classified principally to this subchapter. For complete classification of subtitle A to the Code, see Tables.

The Right to Financial Privacy Act of 1978, referred to in subsec. (e)(5), is title XI of Pub. L. 95–630, Nov. 10, 1978, 92 Stat. 3697, which is classified generally to chapter 35 (§3401 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 3401 of Title 12 and Tables.

Chapter 2 of title I of Public Law 91–508, referred to in subsec. (e)(5), is chapter 2 (§§121–129) of title I of Pub. L. 91–508, Oct. 26, 1970, 84 Stat. 1116, which is classified generally to chapter 21 (§1951 et seq.) of Title 12, Banks and Banking. For complete classification of chapter 2 to the Code, see Tables.

The Fair Credit Reporting Act, referred to in subsec. (e)(6)(A), is title VI of Pub. L. 90–321, as added by Pub. L. 91–508, title VI, §601, Oct. 26, 1970, 84 Stat. 1127, which is classified generally to subchapter III

(§1681 et seq.) of chapter 41 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

AMENDMENTS

2010—Subsec. (e)(5). Pub. L. 111–203 inserted "the Bureau of Consumer Financial Protection" after "(including".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

[1] *So in original. Probably should be followed by a comma.*

§6803. Disclosure of institution privacy policy

(a) Disclosure required

At the time of establishing a customer relationship with a consumer and not less than annually during the continuation of such relationship, a financial institution shall provide a clear and conspicuous disclosure to such consumer, in writing or in electronic form or other form permitted by the regulations prescribed under section 6804 of this title, of such financial institution's policies and practices with respect to—

(1) disclosing nonpublic personal information to affiliates and nonaffiliated third parties, consistent with section 6802 of this title, including the categories of information that may be disclosed;

(2) disclosing nonpublic personal information of persons who have ceased to be customers of the financial institution; and

(3) protecting the nonpublic personal information of consumers.

(b) Regulations

Disclosures required by subsection (a) shall be made in accordance with the regulations prescribed under section 6804 of this title.

(c) Information to be included

The disclosure required by subsection (a) of this section shall include—

(1) the policies and practices of the institution with respect to disclosing nonpublic personal information to nonaffiliated third parties, other than agents of the institution, consistent with section 6802 of this title, and including—

(A) the categories of persons to whom the information is or may be disclosed, other than the persons to whom the information may be provided pursuant to section 6802(e) of this title; and

(B) the policies and practices of the institution with respect to disclosing of nonpublic personal information of persons who have ceased to be customers of the financial institution;

(2) the categories of nonpublic personal information that are collected by the financial institution;

(3) the policies that the institution maintains to protect the confidentiality and security of nonpublic personal information in accordance with section 6801 of this title; and

(4) the disclosures required, if any, under section 1681a(d)(2)(A)(iii) of this title.

(d) Exemption for certified public accountants

(1) In general

The disclosure requirements of subsection (a) do not apply to any person, to the extent that the person is—

(A) a certified public accountant;

(B) certified or licensed for such purpose by a State; and

(C) subject to any provision of law, rule, or regulation issued by a legislative or regulatory body of the State, including rules of professional conduct or ethics, that prohibits disclosure of nonpublic personal information without the knowing and expressed consent of the consumer.

(2) Limitation

Nothing in this subsection shall be construed to exempt or otherwise exclude any financial institution that is affiliated or becomes affiliated with a certified public accountant described in paragraph (1) from any provision of this section.

(3) Definitions

For purposes of this subsection, the term "State" means any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, or the Northern Mariana Islands.

(e) Model forms

(1) In general

The agencies referred to in section 6804(a)(1) of this title shall jointly develop a model form which may be used, at the option of the financial institution, for the provision of disclosures under this section.

(2) Format

A model form developed under paragraph (1) shall—

(A) be comprehensible to consumers, with a clear format and design;

(B) provide for clear and conspicuous disclosures;

(C) enable consumers easily to identify the sharing practices of a financial institution and to compare privacy practices among financial institutions; and

(D) be succinct, and use an easily readable type font.

(3) Timing

A model form required to be developed by this subsection shall be issued in proposed form for public comment not later than 180 days after October 13, 2006.

(4) Safe harbor

Any financial institution that elects to provide the model form developed by the agencies under this subsection shall be deemed to be in compliance with the disclosures required under this section.

(Pub. L. 106–102, title V, §503, Nov. 12, 1999, 113 Stat. 1439; Pub. L. 109–351, title VI, §609, title VII, §728, Oct. 13, 2006, 120 Stat. 1983, 2003.)

AMENDMENTS

2006—Pub. L. 109–351 designated concluding provisions of subsec. (a) as (b), inserted heading, substituted "Disclosures required by subsection (a)" for "Such disclosures", redesignated former subsec. (b) as (c), and added subsecs. (d) and (e).

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§6804. Rulemaking

(a) Regulatory authority

(1) Rulemaking

(A) In general

Except as provided in subparagraph (C), the Bureau of Consumer Financial Protection and

the Securities and Exchange Commission shall have authority to prescribe such regulations as may be necessary to carry out the purposes of this subchapter with respect to financial institutions and other persons subject to their respective jurisdiction under section 6805 of this title (and notwithstanding subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.]), except that the Bureau of Consumer Financial Protection shall not have authority to prescribe regulations with respect to the standards under section 6801 of this title.

(B) CFTC

The Commodity Futures Trading Commission shall have authority to prescribe such regulations as may be necessary to carry out the purposes of this subchapter with respect to financial institutions and other persons subject to the jurisdiction of the Commodity Futures Trading Commission under section 7b–2 of title 7.

(C) Federal Trade Commission authority

Notwithstanding the authority of the Bureau of Consumer Financial Protection under subparagraph (A), the Federal Trade Commission shall have authority to prescribe such regulations as may be necessary to carry out the purposes of this subchapter with respect to any financial institution that is a person described in section 1029(a) of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5519(a)].

(D) Rule of construction

Nothing in this paragraph shall be construed to alter, affect, or otherwise limit the authority of a State insurance authority to adopt regulations to carry out this subchapter.

(2) Coordination, consistency, and comparability

Each of the agencies authorized under paragraph (1) to prescribe regulations shall consult and coordinate with the other such agencies and, as appropriate, and with [1] representatives of State insurance authorities designated by the National Association of Insurance Commissioners, for the purpose of assuring, to the extent possible, that the regulations prescribed by each such agency are consistent and comparable with the regulations prescribed by the other such agencies.

(3) Procedures and deadline

Such regulations shall be prescribed in accordance with applicable requirements of title 5.

(b) Authority to grant exceptions

The regulations prescribed under subsection (a) of this section may include such additional exceptions to subsections (a) through (d) of section 6802 of this title as are deemed consistent with the purposes of this subchapter.

(Pub. L. 106–102, title V, §504, Nov. 12, 1999, 113 Stat. 1439; Pub. L. 111–203, title X, §1093(3), July 21, 2010, 124 Stat. 2095.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a)(1) and (b), was in the original "this subtitle", meaning subtitle A (§§501–510) of title V of Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1436, which is classified principally to this subchapter. For complete classification of subtitle A to the Code, see Tables.

The Consumer Financial Protection Act of 2010, referred to in subsec. (a)(1)(A), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955. Subtitle B (§§1021–1029A) of the Act is classified generally to part B (§5511 et seq.) of subchapter V of chapter 53 of Title 12, Banks and Banking. For complete classification of subtitle B to the Code, see Tables.

AMENDMENTS

2010—Subsec. (a)(1), (2). Pub. L. 111–203, §1093(3)(A), added pars. (1) and (2) and struck out former pars. (1) and (2) which related, respectively, to rulemaking by the Federal banking agencies, the National Credit Union Administration, the Secretary of the Treasury, the Securities and Exchange Commission, and the Federal Trade Commission, and consultation and coordination among these agencies and authorities to assure consistency and comparability of regulations.

Subsec. (a)(3). Pub. L. 111–203, §1093(3)(B), struck out "and shall be issued in final form not later than 6

months after November 12, 1999" after "title 5".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

[1] *So in original. Probably should be "and, as appropriate, with".*

§6805. Enforcement

(a) In general

Subject to subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.], this subchapter and the regulations prescribed thereunder shall be enforced by the Bureau of Consumer Financial Protection, the Federal functional regulators, the State insurance authorities, and the Federal Trade Commission with respect to financial institutions and other persons subject to their jurisdiction under applicable law, as follows:

(1) Under section 1818 of title 12, by the appropriate Federal banking agency, as defined in section 1813(q) of title 12, in the case of—

(A) national banks, Federal branches and Federal agencies of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers);

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, organizations operating under section 25 or 25A of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.], and bank holding companies and their nonbank subsidiaries or affiliates (except brokers, dealers, persons providing insurance, investment companies, and investment advisers);

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), insured State branches of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers); and

(D) savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation, and any subsidiaries of such savings associations (except brokers, dealers, persons providing insurance, investment companies, and investment advisers).

(2) Under the Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the Board of the National Credit Union Administration with respect to any federally insured credit union, and any subsidiaries of such an entity.

(3) Under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], by the Securities and Exchange Commission with respect to any broker or dealer.

(4) Under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.], by the Securities and Exchange Commission with respect to investment companies.

(5) Under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.], by the Securities and Exchange Commission with respect to investment advisers registered with the Commission under such Act.

(6) Under State insurance law, in the case of any person engaged in providing insurance, by the applicable State insurance authority of the State in which the person is domiciled, subject to section 6701 of this title.

(7) Under the Federal Trade Commission Act [15 U.S.C. 41 et seq.], by the Federal Trade Commission for any other financial institution or other person that is not subject to the jurisdiction of any agency or authority under paragraphs (1) through (6) of this subsection.

(8) Under subtitle E of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5561 et seq.],

by the Bureau of Consumer Financial Protection, in the case of any financial institution and other covered person or service provider that is subject to the jurisdiction of the Bureau and any person subject to this subchapter, but not with respect to the standards under section 6801 of this title.

(b) Enforcement of section 6801

(1) In general

Except as provided in paragraph (2), the agencies and authorities described in subsection (a), other than the Bureau of Consumer Financial Protection, of this section shall implement the standards prescribed under section 6801(b) of this title in the same manner, to the extent practicable, as standards prescribed pursuant to section 1831p–1(a) of title 12 are implemented pursuant to such section.

(2) Exception

The agencies and authorities described in paragraphs (3), (4), (5), (6), and (7) of subsection (a) of this section shall implement the standards prescribed under section 6801(b) of this title by rule with respect to the financial institutions and other persons subject to their respective jurisdictions under subsection (a) of this section.

(c) Absence of State action

If a State insurance authority fails to adopt regulations to carry out this subchapter, such State shall not be eligible to override, pursuant to section 1831x(g)(2)(B)(iii) of title 12, the insurance customer protection regulations prescribed by a Federal banking agency under section 1831x(a) of title 12.

(d) Definitions

The terms used in subsection (a)(1) of this section that are not defined in this subchapter or otherwise defined in section 1813(s) of title 12 shall have the same meaning as given in section 3101 of title 12.

(Pub. L. 106–102, title V, §505, Nov. 12, 1999, 113 Stat. 1440; Pub. L. 111–203, title X, §1093(4), (5), July 21, 2010, 124 Stat. 2096, 2097.)

REFERENCES IN TEXT

The Consumer Financial Protection Act of 2010, referred to in subsec. (a), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955. Subtitles B (§§1021–1029A) and E (§§1051–1058) of the Act are classified generally to parts B (§5511 et seq.) and E (§5561 et seq.), respectively, of subchapter V of chapter 53 of Title 12, Banks and Banking. For complete classification of subtitles B and E to the Code, see Tables.

This subchapter, referred to in subsecs. (a), (c), and (d), was in the original "this subtitle", meaning subtitle A (§§501–510) of title V of Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1436, which is classified principally to this subchapter. For complete classification of subtitle A to the Code, see Tables.

Section 25 of the Federal Reserve Act, referred to in subsec. (a)(1)(B), is classified to subchapter I (§601 et seq.) of chapter 6 of Title 12, Banks and Banking. Section 25A of the Federal Reserve Act is classified to subchapter II (§611 et seq.) of chapter 6 of Title 12.

The Federal Credit Union Act, referred to in subsec. (a)(2), is act June 26, 1934, ch. 750, 48 Stat. 1216, which is classified generally to chapter 14 (§1751 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1751 of Title 12 and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (a)(3), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

The Investment Company Act of 1940, referred to in subsec. (a)(4), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a–51 of this title and Tables.

The Investment Advisers Act of 1940, referred to in subsec. (a)(5), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, which is classified generally to subchapter II (§80b–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80b–20 of this title and Tables.

The Federal Trade Commission Act, referred to in subsec. (a)(7), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, §1093(4)(A), substituted "Subject to subtitle B of the Consumer Financial Protection Act of 2010, this subchapter and the regulations prescribed thereunder shall be enforced by the Bureau of Consumer Financial Protection, the Federal functional regulators, the State insurance authorities, and the Federal Trade Commission with respect to financial institutions and other persons subject to their jurisdiction under applicable law, as follows:" for "This subchapter and the regulations prescribed thereunder shall be enforced by the Federal functional regulators, the State insurance authorities, and the Federal Trade Commission with respect to financial institutions and other persons subject to their jurisdiction under applicable law, as follows:".

Subsec. (a)(1). Pub. L. 111–203, §1093(4)(B)(i), inserted "by the appropriate Federal banking agency, as defined in section 1813(q) of title 12," before "in the case of—".

Subsec. (a)(1)(A). Pub. L. 111–203, §1093(4)(B)(ii), struck out ", by the Office of the Comptroller of the Currency" before semicolon at end.

Subsec. (a)(1)(B). Pub. L. 111–203, §1093(4)(B)(iii), struck out ", by the Board of Governors of the Federal Reserve System" before semicolon at end.

Subsec. (a)(1)(C). Pub. L. 111–203, §1093(4)(B)(iv), struck out ", by the Board of Directors of the Federal Deposit Insurance Corporation" before "; and".

Subsec. (a)(1)(D). Pub. L. 111–203, §1093(4)(B)(v), struck out ", by the Director of the Office of Thrift Supervision" before period at end.

Subsec. (a)(8). Pub. L. 111–203, §1093(4)(C), added par. (8).

Subsec. (b)(1). Pub. L. 111–203, §1093(5), inserted ", other than the Bureau of Consumer Financial Protection," before "shall implement the standards".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§6806. Relation to other provisions

Except for the amendments made by subsections (a) and (b), nothing in this chapter shall be construed to modify, limit, or supersede the operation of the Fair Credit Reporting Act [15 U.S.C. 1681 et seq.], and no inference shall be drawn on the basis of the provisions of this chapter regarding whether information is transaction or experience information under section 603 of such Act [15 U.S.C. 1681a].

(Pub. L. 106–102, title V, §506(c), Nov. 12, 1999, 113 Stat. 1442.)

REFERENCES IN TEXT

Amendments made by subsections (a) and (b), referred to in text, means amendments made by section 506(a) and (b) of Pub. L. 106–102, which amended section 1681s of this title.

This chapter, referred to in text, was in the original "this title", meaning title V of Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1436, as amended, which enacted this chapter and amended section 1681s of this title. For complete classification of title V to the Code, see Tables.

The Fair Credit Reporting Act, referred to in text, is title VI of Pub. L. 90–321, as added by Pub. L. 91–508, title VI, §601, Oct. 26, 1970, 84 Stat. 1127, as amended, which is classified generally to subchapter III (§1681 et seq.) of chapter 41 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

§6807. Relation to State laws

(a) In general

This subchapter and the amendments made by this subchapter shall not be construed as superseding, altering, or affecting any statute, regulation, order, or interpretation in effect in any State, except to the extent that such statute, regulation, order, or interpretation is inconsistent with the provisions of this subchapter, and then only to the extent of the inconsistency.

(b) Greater protection under State law

For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this subchapter if the protection such statute, regulation, order, or interpretation affords any person is greater than the protection provided under this subchapter and the amendments made by this subchapter, as determined by the Bureau of Consumer Financial Protection, after consultation with the agency or authority with jurisdiction under section 6805(a) of this title of either the person that initiated the complaint or that is the subject of the complaint, on its own motion or upon the petition of any interested party.

(Pub. L. 106–102, title V, §507, Nov. 12, 1999, 113 Stat. 1442; Pub. L. 111–203, title X, §1093(6), July 21, 2010, 124 Stat. 2097.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original "this subtitle", meaning subtitle A (§§501–510) of title V of Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1436, which is classified principally to this subchapter. For complete classification of subtitle A to the Code, see Tables.

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–203 substituted "Bureau of Consumer Financial Protection" for "Federal Trade Commission".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§6808. Study of information sharing among financial affiliates

(a) In general

The Secretary of the Treasury, in conjunction with the Federal functional regulators and the Federal Trade Commission, shall conduct a study of information sharing practices among financial institutions and their affiliates. Such study shall include—

(1) the purposes for the sharing of confidential customer information with affiliates or with nonaffiliated third parties;

(2) the extent and adequacy of security protections for such information;

(3) the potential risks for customer privacy of such sharing of information;

(4) the potential benefits for financial institutions and affiliates of such sharing of information;

(5) the potential benefits for customers of such sharing of information;

(6) the adequacy of existing laws to protect customer privacy;

(7) the adequacy of financial institution privacy policy and privacy rights disclosure under existing law;

(8) the feasibility of different approaches, including opt-out and opt-in, to permit customers to direct that confidential information not be shared with affiliates and nonaffiliated third parties; and

(9) the feasibility of restricting sharing of information for specific uses or of permitting customers to direct the uses for which information may be shared.

(b) Consultation

The Secretary shall consult with representatives of State insurance authorities designated by the National Association of Insurance Commissioners, and also with financial services industry, consumer organizations and privacy groups, and other representatives of the general public, in formulating and conducting the study required by subsection (a) of this section.

(c) Report

On or before January 1, 2002, the Secretary shall submit a report to the Congress containing the findings and conclusions of the study required under subsection (a) of this section, together with such recommendations for legislative or administrative action as may be appropriate.

(Pub. L. 106–102, title V, §508, Nov. 12, 1999, 113 Stat. 1442.)

§6809. Definitions

As used in this subchapter:

(1) Federal banking agency

The term "Federal banking agency" has the same meaning as given in section 1813 of title 12.

(2) Federal functional regulator

The term "Federal functional regulator" means—

(A) the Board of Governors of the Federal Reserve System;
(B) the Office of the Comptroller of the Currency;
(C) the Board of Directors of the Federal Deposit Insurance Corporation;
(D) the Director of the Office of Thrift Supervision;
(E) the National Credit Union Administration Board; and
(F) the Securities and Exchange Commission.

(3) Financial institution

(A) In general

The term "financial institution" means any institution the business of which is engaging in financial activities as described in section 1843(k) of title 12.

(B) Persons subject to CFTC regulation

Notwithstanding subparagraph (A), the term "financial institution" does not include any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act [7 U.S.C. 1 et seq.].

(C) Farm credit institutions

Notwithstanding subparagraph (A), the term "financial institution" does not include the Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 [12 U.S.C. 2001 et seq.].

(D) Other secondary market institutions

Notwithstanding subparagraph (A), the term "financial institution" does not include institutions chartered by Congress specifically to engage in transactions described in section 6802(e)(1)(C) of this title, as long as such institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

(4) Nonpublic personal information

(A) The term "nonpublic personal information" means personally identifiable financial information—

(i) provided by a consumer to a financial institution;
(ii) resulting from any transaction with the consumer or any service performed for the consumer; or
(iii) otherwise obtained by the financial institution.

(B) Such term does not include publicly available information, as such term is defined by the regulations prescribed under section 6804 of this title.

(C) Notwithstanding subparagraph (B), such term—

(i) shall include any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any nonpublic personal information other than publicly available information; but
(ii) shall not include any list, description, or other grouping of consumers (and publicly

available information pertaining to them) that is derived without using any nonpublic personal information.

(5) Nonaffiliated third party

The term "nonaffiliated third party" means any entity that is not an affiliate of, or related by common ownership or affiliated by corporate control with, the financial institution, but does not include a joint employee of such institution.

(6) Affiliate

The term "affiliate" means any company that controls, is controlled by, or is under common control with another company.

(7) Necessary to effect, administer, or enforce

The term "as necessary to effect, administer, or enforce the transaction" means—

(A) the disclosure is required, or is a usual, appropriate, or acceptable method, to carry out the transaction or the product or service business of which the transaction is a part, and record or service or maintain the consumer's account in the ordinary course of providing the financial service or financial product, or to administer or service benefits or claims relating to the transaction or the product or service business of which it is a part, and includes—

(i) providing the consumer or the consumer's agent or broker with a confirmation, statement, or other record of the transaction, or information on the status or value of the financial service or financial product; and

(ii) the accrual or recognition of incentives or bonuses associated with the transaction that are provided by the financial institution or any other party;

(B) the disclosure is required, or is one of the lawful or appropriate methods, to enforce the rights of the financial institution or of other persons engaged in carrying out the financial transaction, or providing the product or service;

(C) the disclosure is required, or is a usual, appropriate, or acceptable method, for insurance underwriting at the consumer's request or for reinsurance purposes, or for any of the following purposes as they relate to a consumer's insurance: Account administration, reporting, investigating, or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects, or as otherwise required or specifically permitted by Federal or State law; or

(D) the disclosure is required, or is a usual, appropriate or acceptable method, in connection with—

(i) the authorization, settlement, billing, processing, clearing, transferring, reconciling, or collection of amounts charged, debited, or otherwise paid using a debit, credit or other payment card, check, or account number, or by other payment means;

(ii) the transfer of receivables, accounts or interests therein; or

(iii) the audit of debit, credit or other payment information.

(8) State insurance authority

The term "State insurance authority" means, in the case of any person engaged in providing insurance, the State insurance authority of the State in which the person is domiciled.

(9) Consumer

The term "consumer" means an individual who obtains, from a financial institution, financial products or services which are to be used primarily for personal, family, or household purposes, and also means the legal representative of such an individual.

(10) Joint agreement

The term "joint agreement" means a formal written contract pursuant to which two or more financial institutions jointly offer, endorse, or sponsor a financial product or service, and as may be further defined in the regulations prescribed under section 6804 of this title.

(11) Customer relationship

The term "time of establishing a customer relationship" shall be defined by the regulations prescribed under section 6804 of this title, and shall, in the case of a financial institution engaged in extending credit directly to consumers to finance purchases of goods or services, mean the time of establishing the credit relationship with the consumer.

(Pub. L. 106–102, title V, §509, Nov. 12, 1999, 113 Stat. 1443.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original "this subtitle", meaning subtitle A (§§501–510) of title V of Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1436, which is classified principally to this subchapter. For complete classification of subtitle A to the Code, see Tables.

The Commodity Exchange Act, referred to in par. (3)(B), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

The Farm Credit Act of 1971, referred to in par. (3)(C), is Pub. L. 92–181, Dec. 10, 1971, 85 Stat. 583, as amended, which is classified generally to chapter 23 (§2001 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 12 and Tables.

SUBCHAPTER II—FRAUDULENT ACCESS TO FINANCIAL INFORMATION

§6821. Privacy protection for customer information of financial institutions

(a) Prohibition on obtaining customer information by false pretenses

It shall be a violation of this subchapter for any person to obtain or attempt to obtain, or cause to be disclosed or attempt to cause to be disclosed to any person, customer information of a financial institution relating to another person—

(1) by making a false, fictitious, or fraudulent statement or representation to an officer, employee, or agent of a financial institution;

(2) by making a false, fictitious, or fraudulent statement or representation to a customer of a financial institution; or

(3) by providing any document to an officer, employee, or agent of a financial institution, knowing that the document is forged, counterfeit, lost, or stolen, was fraudulently obtained, or contains a false, fictitious, or fraudulent statement or representation.

(b) Prohibition on solicitation of a person to obtain customer information from financial institution under false pretenses

It shall be a violation of this subchapter to request a person to obtain customer information of a financial institution, knowing that the person will obtain, or attempt to obtain, the information from the institution in any manner described in subsection (a) of this section.

(c) Nonapplicability to law enforcement agencies

No provision of this section shall be construed so as to prevent any action by a law enforcement agency, or any officer, employee, or agent of such agency, to obtain customer information of a financial institution in connection with the performance of the official duties of the agency.

(d) Nonapplicability to financial institutions in certain cases

No provision of this section shall be construed so as to prevent any financial institution, or any officer, employee, or agent of a financial institution, from obtaining customer information of such financial institution in the course of—

(1) testing the security procedures or systems of such institution for maintaining the

confidentiality of customer information;

(2) investigating allegations of misconduct or negligence on the part of any officer, employee, or agent of the financial institution; or

(3) recovering customer information of the financial institution which was obtained or received by another person in any manner described in subsection (a) or (b) of this section.

(e) Nonapplicability to insurance institutions for investigation of insurance fraud

No provision of this section shall be construed so as to prevent any insurance institution, or any officer, employee, or agency of an insurance institution, from obtaining information as part of an insurance investigation into criminal activity, fraud, material misrepresentation, or material nondisclosure that is authorized for such institution under State law, regulation, interpretation, or order.

(f) Nonapplicability to certain types of customer information of financial institutions

No provision of this section shall be construed so as to prevent any person from obtaining customer information of a financial institution that otherwise is available as a public record filed pursuant to the securities laws (as defined in section 78c(a)(47) of this title).

(g) Nonapplicability to collection of child support judgments

No provision of this section shall be construed to prevent any State-licensed private investigator, or any officer, employee, or agent of such private investigator, from obtaining customer information of a financial institution, to the extent reasonably necessary to collect child support from a person adjudged to have been delinquent in his or her obligations by a Federal or State court, and to the extent that such action by a State-licensed private investigator is not unlawful under any other Federal or State law or regulation, and has been authorized by an order or judgment of a court of competent jurisdiction.

(Pub. L. 106–102, title V, §521, Nov. 12, 1999, 113 Stat. 1446.)

§6822. Administrative enforcement

(a) Enforcement by Federal Trade Commission

Except as provided in subsection (b) of this section, compliance with this subchapter shall be enforced by the Federal Trade Commission in the same manner and with the same power and authority as the Commission has under the Fair Debt Collection Practices Act [15 U.S.C. 1692 et seq.] to enforce compliance with such Act.

(b) Enforcement by other agencies in certain cases

(1) In general

Compliance with this subchapter shall be enforced under—

(A) section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], in the case of—

(i) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(ii) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.], by the Board;

(iii) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System and national nonmember banks) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation; and

(iv) savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation, by the Director of the Office of Thrift Supervision; and

(B) the Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the Administrator of the National Credit Union Administration with respect to any Federal credit union.

(2) Violations of this subchapter treated as violations of other laws

For the purpose of the exercise by any agency referred to in paragraph (1) of its powers under any Act referred to in that paragraph, a violation of this subchapter shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in paragraph (1), each of the agencies referred to in that paragraph may exercise, for the purpose of enforcing compliance with this subchapter, any other authority conferred on such agency by law.

(Pub. L. 106–102, title V, §522, Nov. 12, 1999, 113 Stat. 1447.)

REFERENCES IN TEXT

The Fair Debt Collection Practices Act, referred to in subsec. (a), is title VIII of Pub. L. 90–321, as added by Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 874, as amended, which is classified generally to subchapter V (§1692 et seq.) of chapter 41 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

Section 25 of the Federal Reserve Act, referred to in subsec. (b)(1)(A)(ii), is classified to subchapter I (§601 et seq.) of chapter 6 of Title 12, Banks and Banking. Section 25A of the Federal Reserve Act is classified to subchapter II (§611 et seq.) of chapter 6 of Title 12.

The Federal Credit Union Act, referred to in subsec. (b)(1)(B), is act June 26, 1934, ch. 750, 48 Stat. 1216, as amended, which is classified generally to chapter 14 (§1751 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1751 of Title 12 and Tables.

TRANSFER OF FUNCTIONS

Functions vested in Administrator of National Credit Union Administration transferred and vested in National Credit Union Administration Board pursuant to section 1752a of Title 12, Banks and Banking.

§6823. Criminal penalty

(a) In general

Whoever knowingly and intentionally violates, or knowingly and intentionally attempts to violate, section 6821 of this title shall be fined in accordance with title 18 or imprisoned for not more than 5 years, or both.

(b) Enhanced penalty for aggravated cases

Whoever violates, or attempts to violate, section 6821 of this title while violating another law of the United States or as part of a pattern of any illegal activity involving more than $100,000 in a 12-month period shall be fined twice the amount provided in subsection (b)(3) or (c)(3) (as the case may be) of section 3571 of title 18, imprisoned for not more than 10 years, or both.

(Pub. L. 106–102, title V, §523, Nov. 12, 1999, 113 Stat. 1448.)

§6824. Relation to State laws

(a) In general

This subchapter shall not be construed as superseding, altering, or affecting the statutes, regulations, orders, or interpretations in effect in any State, except to the extent that such statutes, regulations, orders, or interpretations are inconsistent with the provisions of this subchapter, and then only to the extent of the inconsistency.

(b) Greater protection under State law

For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this subchapter if the protection such statute, regulation, order, or interpretation affords any person is greater than the protection provided under this subchapter as

determined by the Federal Trade Commission, after consultation with the agency or authority with jurisdiction under section 6822 of this title of either the person that initiated the complaint or that is the subject of the complaint, on its own motion or upon the petition of any interested party.

(Pub. L. 106–102, title V, §524, Nov. 12, 1999, 113 Stat. 1448.)

§6825. Agency guidance

In furtherance of the objectives of this subchapter, each Federal banking agency (as defined in section 1813(z) of title 12), the National Credit Union Administration, and the Securities and Exchange Commission or self-regulatory organizations, as appropriate, shall review regulations and guidelines applicable to financial institutions under their respective jurisdictions and shall prescribe such revisions to such regulations and guidelines as may be necessary to ensure that such financial institutions have policies, procedures, and controls in place to prevent the unauthorized disclosure of customer financial information and to deter and detect activities proscribed under section 6821 of this title.

(Pub. L. 106–102, title V, §525, Nov. 12, 1999, 113 Stat. 1448.)

§6826. Reports

(a) Report to the Congress

Before the end of the 18-month period beginning on November 12, 1999, the Comptroller General, in consultation with the Federal Trade Commission, Federal banking agencies, the National Credit Union Administration, the Securities and Exchange Commission, appropriate Federal law enforcement agencies, and appropriate State insurance regulators, shall submit to the Congress a report on the following:

(1) The efficacy and adequacy of the remedies provided in this subchapter in addressing attempts to obtain financial information by fraudulent means or by false pretenses.

(2) Any recommendations for additional legislative or regulatory action to address threats to the privacy of financial information created by attempts to obtain information by fraudulent means or false pretenses.

(b) Annual report by administering agencies

The Federal Trade Commission and the Attorney General shall submit to Congress an annual report on number and disposition of all enforcement actions taken pursuant to this subchapter.

(Pub. L. 106–102, title V, §526, Nov. 12, 1999, 113 Stat. 1448.)

§6827. Definitions

For purposes of this subchapter, the following definitions shall apply:

(1) Customer

The term "customer" means, with respect to a financial institution, any person (or authorized representative of a person) to whom the financial institution provides a product or service, including that of acting as a fiduciary.

(2) Customer information of a financial institution

The term "customer information of a financial institution" means any information maintained by or for a financial institution which is derived from the relationship between the financial institution and a customer of the financial institution and is identified with the customer.

(3) Document

The term "document" means any information in any form.

(4) Financial institution

(A) In general

The term "financial institution" means any institution engaged in the business of providing financial services to customers who maintain a credit, deposit, trust, or other financial account or relationship with the institution.

(B) Certain financial institutions specifically included

The term "financial institution" includes any depository institution (as defined in section 461(b)(1)(A) of title 12), any broker or dealer, any investment adviser or investment company, any insurance company, any loan or finance company, any credit card issuer or operator of a credit card system, and any consumer reporting agency that compiles and maintains files on consumers on a nationwide basis (as defined in section 1681a(p) of this title).

(C) Securities institutions

For purposes of subparagraph (B)—

(i) the terms "broker" and "dealer" have the same meanings as given in section 78c of this title;

(ii) the term "investment adviser" has the same meaning as given in section 80b–2(a)(11) of this title; and

(iii) the term "investment company" has the same meaning as given in section 80a–3 of this title.

(D) Certain persons and entities specifically excluded

The term "financial institution" does not include any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act [7 U.S.C. 1 et seq.] and does not include the Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 [12 U.S.C. 2001 et seq.].

(E) Further definition by regulation

The Federal Trade Commission, after consultation with Federal banking agencies and the Securities and Exchange Commission, may prescribe regulations clarifying or describing the types of institutions which shall be treated as financial institutions for purposes of this subchapter.

(Pub. L. 106–102, title V, §527, Nov. 12, 1999, 113 Stat. 1449.)

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in par. (4)(D), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

The Farm Credit Act of 1971, referred to in par. (4)(D), is Pub. L. 92–181, Dec. 10, 1971, 85 Stat. 583, as amended, which is classified generally to chapter 23 (§2001 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 12 and Tables.

CHAPTER 95—MICROENTERPRISE TECHNICAL ASSISTANCE AND CAPACITY BUILDING PROGRAM

Sec.

6901. Definitions.
6902. Establishment of program.
6903. Uses of assistance.
6904. Qualified organizations.
6905. Allocation of assistance; subgrants.

6906. Matching requirements.
6907. Applications for assistance.
6908. Recordkeeping.
6909. Authorization.
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§6901. Definitions

For purposes of this chapter, the following definitions shall apply:

(1) Administration

The term "Administration" means the Small Business Administration.

(2) Administrator

The term "Administrator" means the Administrator of the Small Business Administration.

(3) Capacity building services

The term "capacity building services" means services provided to an organization that is, or that is in the process of becoming, a microenterprise development organization or program, for the purpose of enhancing its ability to provide training and services to disadvantaged entrepreneurs.

(4) Collaborative

The term "collaborative" means 2 or more nonprofit entities that agree to act jointly as a qualified organization under this chapter.

(5) Disadvantaged entrepreneur

The term "disadvantaged entrepreneur" means a microentrepreneur that is—

(A) a low-income person;

(B) a very low-income person; or

(C) an entrepreneur that lacks adequate access to capital or other resources essential for business success, or is economically disadvantaged, as determined by the Administrator.

(6) Indian tribe

The term "Indian tribe" has the meaning given the term in section 4702 of title 12.

(7) Intermediary

The term "intermediary" means a private, nonprofit entity that seeks to serve microenterprise development organizations and programs as authorized under section 6904 of this title.

(8) Low-income person

The term "low-income person" has the meaning given the term in section 4702 of title 12.

(9) Microentrepreneur

The term "microentrepreneur" means the owner or developer of a microenterprise.

(10) Microenterprise

The term "microenterprise" means a sole proprietorship, partnership, or corporation that—

(A) has fewer than 5 employees; and

(B) generally lacks access to conventional loans, equity, or other banking services.

(11) Microenterprise development organization or program

The term "microenterprise development organization or program" means a nonprofit entity, or a program administered by such an entity, including community development corporations or other nonprofit development organizations and social service organizations, that provides services to disadvantaged entrepreneurs.

(12) Training and technical assistance

The term "training and technical assistance" means services and support provided to

disadvantaged entrepreneurs, such as assistance for the purpose of enhancing business planning, marketing, management, financial management skills, and assistance for the purpose of accessing financial services.

(13) Very low-income person

The term "very low-income person" means having an income, adjusted for family size, of not more than 150 percent of the poverty line (as defined in section 9902(2) of title 42, including any revision required by that section).

(Pub. L. 103–325, title I, §172, as added Pub. L. 106–102, title VII, §725, Nov. 12, 1999, 113 Stat. 1472.)

SHORT TITLE

Pub. L. 103–325, title I, §171, as added by Pub. L. 106–102, title VII, §725, Nov. 12, 1999, 113 Stat. 1471, provided that: "This subtitle [subtitle C (§§171–181) of title I of Pub. L. 103–325, as added by Pub. L. 106–102, enacting this chapter] may be cited as the 'Program for Investment in Microentrepreneurs Act of 1999', also referred to as the 'PRIME Act'."

§6902. Establishment of program

The Administrator shall establish a microenterprise technical assistance and capacity building grant program to provide assistance from the Administration in the form of grants to qualified organizations in accordance with this chapter.

(Pub. L. 103–325, title I, §173, as added Pub. L. 106–102, title VII, §725, Nov. 12, 1999, 113 Stat. 1473.)

§6903. Uses of assistance

A qualified organization shall use grants made under this chapter—

(1) to provide training and technical assistance to disadvantaged entrepreneurs;

(2) to provide training and capacity building services to microenterprise development organizations and programs and groups of such organizations to assist such organizations and programs in developing microenterprise training and services;

(3) to aid in researching and developing the best practices in the field of microenterprise and technical assistance programs for disadvantaged entrepreneurs; and

(4) for such other activities as the Administrator determines are consistent with the purposes of this chapter.

(Pub. L. 103–325, title I, §174, as added Pub. L. 106–102, title VII, §725, Nov. 12, 1999, 113 Stat. 1473.)

§6904. Qualified organizations

For purposes of eligibility for assistance under this chapter, a qualified organization shall be—

(1) a nonprofit microenterprise development organization or program (or a group or collaborative thereof) that has a demonstrated record of delivering microenterprise services to disadvantaged entrepreneurs;

(2) an intermediary;

(3) a microenterprise development organization or program that is accountable to a local community, working in conjunction with a State or local government or Indian tribe; or

(4) an Indian tribe acting on its own, if the Indian tribe can certify that no private organization or program referred to in this paragraph exists within its jurisdiction.

(Pub. L. 103–325, title I, §175, as added Pub. L. 106–102, title VII, §725, Nov. 12, 1999, 113 Stat. 1473.)

§6905. Allocation of assistance; subgrants

(a) Allocation of assistance

(1) In general

The Administrator shall allocate assistance from the Administration under this chapter to ensure that—

(A) activities described in section 6903(1) of this title are funded using not less than 75 percent of amounts made available for such assistance; and

(B) activities described in section 6903(2) of this title are funded using not less than 15 percent of amounts made available for such assistance.

(2) Limit on individual assistance

No single person may receive more than 10 percent of the total funds appropriated under this chapter in a single fiscal year.

(b) Targeted assistance

The Administrator shall ensure that not less than 50 percent of the grants made under this chapter are used to benefit very low-income persons, including those residing on Indian reservations.

(c) Subgrants authorized

(1) In general

A qualified organization receiving assistance under this chapter may provide grants using that assistance to qualified small and emerging microenterprise organizations and programs, subject to such rules and regulations as the Administrator determines to be appropriate.

(2) Limit on administrative expenses

Not more than 7.5 percent of assistance received by a qualified organization under this chapter may be used for administrative expenses in connection with the making of subgrants under paragraph (1).

(d) Diversity

In making grants under this chapter, the Administrator shall ensure that grant recipients include both large and small microenterprise organizations, serving urban, rural, and Indian tribal communities serving diverse populations.

(e) Prohibition on preferential consideration of certain SBA program participants

In making grants under this chapter, the Administrator shall ensure that any application made by a qualified organization that is a participant in the program established under section 636(m) of this title does not receive preferential consideration over applications from other qualified organizations that are not participants in such program.

(Pub. L. 103–325, title I, §176, as added Pub. L. 106–102, title VII, §725, Nov. 12, 1999, 113 Stat. 1473.)

§6906. Matching requirements

(a) In general

Financial assistance under this chapter shall be matched with funds from sources other than the Federal Government on the basis of not less than 50 percent of each dollar provided by the Administration.

(b) Sources of matching funds

Fees, grants, gifts, funds from loan sources, and in-kind resources of a grant recipient from public

or private sources may be used to comply with the matching requirement in subsection (a) of this section.

(c) Exception

(1) In general

In the case of an applicant for assistance under this chapter with severe constraints on available sources of matching funds, the Administrator may reduce or eliminate the matching requirements of subsection (a) of this section.

(2) Limitation

Not more than 10 percent of the total funds made available from the Administration in any fiscal year to carry out this chapter may be excepted from the matching requirements of subsection (a) of this section, as authorized by paragraph (1) of this subsection.

(Pub. L. 103–325, title I, §177, as added Pub. L. 106–102, title VII, §725, Nov. 12, 1999, 113 Stat. 1474.)

§6907. Applications for assistance

An application for assistance under this chapter shall be submitted in such form and in accordance with such procedures as the Administrator shall establish.

(Pub. L. 103–325, title I, §178, as added Pub. L. 106–102, title VII, §725, Nov. 12, 1999, 113 Stat. 1474.)

§6908. Recordkeeping

The requirements of section 4714 of title 12 shall apply to a qualified organization receiving assistance from the Administration under this chapter as if it were a community development financial institution receiving assistance from the Fund under subtitle A.

(Pub. L. 103–325, title I, §179, as added Pub. L. 106–102, title VII, §725, Nov. 12, 1999, 113 Stat. 1474.)

REFERENCES IN TEXT

Subtitle A, referred to in text, is subtitle A (§§101–121) of title I of Pub. L. 103–325, Sept. 23, 1994, 108 Stat. 2163, known as the Community Development Banking and Financial Institutions Act of 1994, which is classified principally to subchapter I (§4701 et seq.) of chapter 47 of Title 12, Banks and Banking. For complete classification of subtitle A to the Code, see Short Title note set out under section 4701 of Title 12 and Tables.

§6909. Authorization

In addition to funds otherwise authorized to be appropriated to the Fund to carry out this title,[1] there are authorized to be appropriated to the Administrator to carry out this chapter—

(1) $15,000,000 for fiscal year 2000;
(2) $15,000,000 for fiscal year 2001;
(3) $15,000,000 for fiscal year 2002; and
(4) $15,000,000 for fiscal year 2003.

(Pub. L. 103–325, title I, §180, as added Pub. L. 106–102, title VII, §725, Nov. 12, 1999, 113 Stat. 1474.)

REFERENCES IN TEXT

This title, referred to in text, is title I of Pub. L. 103–325, Sept. 23, 1994, 108 Stat. 2163. Subtitle A (§§101–121) of title I, known as the Community Development Banking and Financial Institutions Act of

1994, is classified principally to subchapter I (§4701 et seq.) of chapter 47 of Title 12, Banks and Banking. Subtitle B (§§151–158) of title I, known as the Home Ownership and Equity Protection Act of 1994, enacted sections 1639 and 1648 of this title, amended sections 1602, 1604, 1610, 1640, 1641, and 1647 of this title, and enacted provisions set out as notes under sections 1601 and 1602 of this title. Subtitle C (§§171–181) of title I, known as the Program for Investment in Microentrepreneurs Act of 1999 or PRIME Act, is classified generally to this chapter. For complete classification of title I of Pub. L. 103–325 to the Code, see Tables.

[1] *See References in Text note below.*

§6910. Implementation

The Administrator shall, by regulation, establish such requirements as may be necessary to carry out this chapter.

(Pub. L. 103–325, title I, §181, as added Pub. L. 106–102, title VII, §725, Nov. 12, 1999, 113 Stat. 1475.)

CHAPTER 96—ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE

SUBCHAPTER I—ELECTRONIC RECORDS AND SIGNATURES IN COMMERCE

Sec.
7001. General rule of validity.
7002. Exemption to preemption.
7003. Specific exceptions.
7004. Applicability to Federal and State governments.
7005. Studies.
7006. Definitions.

SUBCHAPTER II—TRANSFERABLE RECORDS

7021. Transferable records.

SUBCHAPTER III—PROMOTION OF INTERNATIONAL ELECTRONIC COMMERCE

7031. Principles governing the use of electronic signatures in international transactions.

SUBCHAPTER I—ELECTRONIC RECORDS AND SIGNATURES IN COMMERCE

§7001. General rule of validity

(a) In general

Notwithstanding any statute, regulation, or other rule of law (other than this subchapter and subchapter II of this chapter), with respect to any transaction in or affecting interstate or foreign commerce—

(1) a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and

(2) a contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation.

(b) Preservation of rights and obligations

This subchapter does not—

(1) limit, alter, or otherwise affect any requirement imposed by a statute, regulation, or rule of law relating to the rights and obligations of persons under such statute, regulation, or rule of law other than a requirement that contracts or other records be written, signed, or in nonelectronic form; or

(2) require any person to agree to use or accept electronic records or electronic signatures, other than a governmental agency with respect to a record other than a contract to which it is a party.

(c) Consumer disclosures

(1) Consent to electronic records

Notwithstanding subsection (a) of this section, if a statute, regulation, or other rule of law requires that information relating to a transaction or transactions in or affecting interstate or foreign commerce be provided or made available to a consumer in writing, the use of an electronic record to provide or make available (whichever is required) such information satisfies the requirement that such information be in writing if—

(A) the consumer has affirmatively consented to such use and has not withdrawn such consent;

(B) the consumer, prior to consenting, is provided with a clear and conspicuous statement—

(i) informing the consumer of (I) any right or option of the consumer to have the record provided or made available on paper or in nonelectronic form, and (II) the right of the consumer to withdraw the consent to have the record provided or made available in an electronic form and of any conditions, consequences (which may include termination of the parties' relationship), or fees in the event of such withdrawal;

(ii) informing the consumer of whether the consent applies (I) only to the particular transaction which gave rise to the obligation to provide the record, or (II) to identified categories of records that may be provided or made available during the course of the parties' relationship;

(iii) describing the procedures the consumer must use to withdraw consent as provided in clause (i) and to update information needed to contact the consumer electronically; and

(iv) informing the consumer (I) how, after the consent, the consumer may, upon request, obtain a paper copy of an electronic record, and (II) whether any fee will be charged for such copy;

(C) the consumer—

(i) prior to consenting, is provided with a statement of the hardware and software requirements for access to and retention of the electronic records; and

(ii) consents electronically, or confirms his or her consent electronically, in a manner that reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent; and

(D) after the consent of a consumer in accordance with subparagraph (A), if a change in the hardware or software requirements needed to access or retain electronic records creates a material risk that the consumer will not be able to access or retain a subsequent electronic record that was the subject of the consent, the person providing the electronic record—

(i) provides the consumer with a statement of (I) the revised hardware and software requirements for access to and retention of the electronic records, and (II) the right to withdraw consent without the imposition of any fees for such withdrawal and without the imposition of any condition or consequence that was not disclosed under subparagraph (B)(i); and

(ii) again complies with subparagraph (C).

(2) Other rights

(A) Preservation of consumer protections

Nothing in this subchapter affects the content or timing of any disclosure or other record required to be provided or made available to any consumer under any statute, regulation, or other rule of law.

(B) Verification or acknowledgment

If a law that was enacted prior to this chapter expressly requires a record to be provided or made available by a specified method that requires verification or acknowledgment of receipt, the record may be provided or made available electronically only if the method used provides verification or acknowledgment of receipt (whichever is required).

(3) Effect of failure to obtain electronic consent or confirmation of consent

The legal effectiveness, validity, or enforceability of any contract executed by a consumer shall not be denied solely because of the failure to obtain electronic consent or confirmation of consent by that consumer in accordance with paragraph (1)(C)(ii).

(4) Prospective effect

Withdrawal of consent by a consumer shall not affect the legal effectiveness, validity, or enforceability of electronic records provided or made available to that consumer in accordance with paragraph (1) prior to implementation of the consumer's withdrawal of consent. A consumer's withdrawal of consent shall be effective within a reasonable period of time after receipt of the withdrawal by the provider of the record. Failure to comply with paragraph (1)(D) may, at the election of the consumer, be treated as a withdrawal of consent for purposes of this paragraph.

(5) Prior consent

This subsection does not apply to any records that are provided or made available to a consumer who has consented prior to the effective date of this subchapter to receive such records in electronic form as permitted by any statute, regulation, or other rule of law.

(6) Oral communications

An oral communication or a recording of an oral communication shall not qualify as an electronic record for purposes of this subsection except as otherwise provided under applicable law.

(d) Retention of contracts and records

(1) Accuracy and accessibility

If a statute, regulation, or other rule of law requires that a contract or other record relating to a transaction in or affecting interstate or foreign commerce be retained, that requirement is met by retaining an electronic record of the information in the contract or other record that—

(A) accurately reflects the information set forth in the contract or other record; and

(B) remains accessible to all persons who are entitled to access by statute, regulation, or rule of law, for the period required by such statute, regulation, or rule of law, in a form that is capable of being accurately reproduced for later reference, whether by transmission, printing, or otherwise.

(2) Exception

A requirement to retain a contract or other record in accordance with paragraph (1) does not apply to any information whose sole purpose is to enable the contract or other record to be sent, communicated, or received.

(3) Originals

If a statute, regulation, or other rule of law requires a contract or other record relating to a transaction in or affecting interstate or foreign commerce to be provided, available, or retained in its original form, or provides consequences if the contract or other record is not provided, available, or retained in its original form, that statute, regulation, or rule of law is satisfied by an electronic record that complies with paragraph (1).

(4) Checks

If a statute, regulation, or other rule of law requires the retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with paragraph (1).

(e) Accuracy and ability to retain contracts and other records

Notwithstanding subsection (a) of this section, if a statute, regulation, or other rule of law requires that a contract or other record relating to a transaction in or affecting interstate or foreign commerce be in writing, the legal effect, validity, or enforceability of an electronic record of such contract or other record may be denied if such electronic record is not in a form that is capable of being retained and accurately reproduced for later reference by all parties or persons who are entitled to retain the contract or other record.

(f) Proximity

Nothing in this subchapter affects the proximity required by any statute, regulation, or other rule of law with respect to any warning, notice, disclosure, or other record required to be posted, displayed, or publicly affixed.

(g) Notarization and acknowledgment

If a statute, regulation, or other rule of law requires a signature or record relating to a transaction in or affecting interstate or foreign commerce to be notarized, acknowledged, verified, or made under oath, that requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable statute, regulation, or rule of law, is attached to or logically associated with the signature or record.

(h) Electronic agents

A contract or other record relating to a transaction in or affecting interstate or foreign commerce may not be denied legal effect, validity, or enforceability solely because its formation, creation, or delivery involved the action of one or more electronic agents so long as the action of any such electronic agent is legally attributable to the person to be bound.

(i) Insurance

It is the specific intent of the Congress that this subchapter and subchapter II of this chapter apply to the business of insurance.

(j) Insurance agents and brokers

An insurance agent or broker acting under the direction of a party that enters into a contract by means of an electronic record or electronic signature may not be held liable for any deficiency in the electronic procedures agreed to by the parties under that contract if—

(1) the agent or broker has not engaged in negligent, reckless, or intentional tortious conduct;

(2) the agent or broker was not involved in the development or establishment of such electronic procedures; and

(3) the agent or broker did not deviate from such procedures.

(Pub. L. 106–229, title I, §101, June 30, 2000, 114 Stat. 464.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c)(2)(B), was in the original "this Act", meaning Pub. L. 106–229, June 30, 2000, 114 Stat. 464, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note below and Tables.

For the effective date of this subchapter, referred to in subsec. (c)(5), see Effective Date note below.

EFFECTIVE DATE

Pub. L. 106–229, title I, §107, June 30, 2000, 114 Stat. 473, provided that:

"(a) IN GENERAL.—Except as provided in subsection (b), this title [enacting this subchapter] shall be effective on October 1, 2000.

"(b) EXCEPTIONS.—

"(1) RECORD RETENTION.—

"(A) IN GENERAL.—Subject to subparagraph (B), this title [enacting this subchapter] shall be

effective on March 1, 2001, with respect to a requirement that a record be retained imposed by—

"(i) a Federal statute, regulation, or other rule of law, or

"(ii) a State statute, regulation, or other rule of law administered or promulgated by a State regulatory agency.

"(B) DELAYED EFFECT FOR PENDING RULEMAKINGS.—If on March 1, 2001, a Federal regulatory agency or State regulatory agency has announced, proposed, or initiated, but not completed, a rulemaking proceeding to prescribe a regulation under section 104(b)(3) [15 U.S.C. 7004(b)(3)] with respect to a requirement described in subparagraph (A), this title shall be effective on June 1, 2001, with respect to such requirement.

"(2) CERTAIN GUARANTEED AND INSURED LOANS.—With regard to any transaction involving a loan guarantee or loan guarantee commitment (as those terms are defined in section 502 of the Federal Credit Reform Act of 1990 [2 U.S.C. 661a]), or involving a program listed in the Federal Credit Supplement, Budget of the United States, FY 2001, this title applies only to such transactions entered into, and to any loan or mortgage made, insured, or guaranteed by the United States Government thereunder, on and after one year after the date of enactment of this Act [June 30, 2000].

"(3) STUDENT LOANS.—With respect to any records that are provided or made available to a consumer pursuant to an application for a loan, or a loan made, pursuant to title IV of the Higher Education Act of 1965 [20 U.S.C. 1070 et seq., 42 U.S.C. 2751 et seq.], section 101(c) of this Act [15 U.S.C. 7001(c)] shall not apply until the earlier of—

"(A) such time as the Secretary of Education publishes revised promissory notes under section 432(m) of the Higher Education Act of 1965 [20 U.S.C. 1082(m)]; or

"(B) one year after the date of enactment of this Act [June 30, 2000]."

SHORT TITLE

Pub. L. 106–229, §1, June 30, 2000, 114 Stat. 464, provided that: "This Act [enacting this chapter and amending provisions set out as a note under section 231 of Title 47, Telecommunications] may be cited as the 'Electronic Signatures in Global and National Commerce Act'."

§7002. Exemption to preemption

(a) In general

A State statute, regulation, or other rule of law may modify, limit, or supersede the provisions of section 7001 of this title with respect to State law only if such statute, regulation, or rule of law—

(1) constitutes an enactment or adoption of the Uniform Electronic Transactions Act as approved and recommended for enactment in all the States by the National Conference of Commissioners on Uniform State Laws in 1999, except that any exception to the scope of such Act enacted by a State under section 3(b)(4) of such Act shall be preempted to the extent such exception is inconsistent with this subchapter or subchapter II of this chapter, or would not be permitted under paragraph (2)(A)(ii) of this subsection; or

(2)(A) specifies the alternative procedures or requirements for the use or acceptance (or both) of electronic records or electronic signatures to establish the legal effect, validity, or enforceability of contracts or other records, if—

(i) such alternative procedures or requirements are consistent with this subchapter and subchapter II of this chapter; and

(ii) such alternative procedures or requirements do not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification for performing the functions of creating, storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures; and

(B) if enacted or adopted after June 30, 2000, makes specific reference to this chapter.

(b) Exceptions for actions by States as market participants

Subsection (a)(2)(A)(ii) of this section shall not apply to the statutes, regulations, or other rules of law governing procurement by any State, or any agency or instrumentality thereof.

(c) Prevention of circumvention

Subsection (a) of this section does not permit a State to circumvent this subchapter or subchapter II of this chapter through the imposition of nonelectronic delivery methods under section 8(b)(2) of the Uniform Electronic Transactions Act.

(Pub. L. 106–229, title I, §102, June 30, 2000, 114 Stat. 467.)

§7003. Specific exceptions

(a) Excepted requirements

The provisions of section 7001 of this title shall not apply to a contract or other record to the extent it is governed by—

(1) a statute, regulation, or other rule of law governing the creation and execution of wills, codicils, or testamentary trusts;

(2) a State statute, regulation, or other rule of law governing adoption, divorce, or other matters of family law; or

(3) the Uniform Commercial Code, as in effect in any State, other than sections 1–107 and 1–206 and Articles 2 and 2A.

(b) Additional exceptions

The provisions of section 7001 of this title shall not apply to—

(1) court orders or notices, or official court documents (including briefs, pleadings, and other writings) required to be executed in connection with court proceedings;

(2) any notice of—

(A) the cancellation or termination of utility services (including water, heat, and power);

(B) default, acceleration, repossession, foreclosure, or eviction, or the right to cure, under a credit agreement secured by, or a rental agreement for, a primary residence of an individual;

(C) the cancellation or termination of health insurance or benefits or life insurance benefits (excluding annuities); or

(D) recall of a product, or material failure of a product, that risks endangering health or safety; or

(3) any document required to accompany any transportation or handling of hazardous materials, pesticides, or other toxic or dangerous materials.

(c) Review of exceptions

(1) Evaluation required

The Secretary of Commerce, acting through the Assistant Secretary for Communications and Information, shall review the operation of the exceptions in subsections (a) and (b) of this section to evaluate, over a period of 3 years, whether such exceptions continue to be necessary for the protection of consumers. Within 3 years after June 30, 2000, the Assistant Secretary shall submit a report to the Congress on the results of such evaluation.

(2) Determinations

If a Federal regulatory agency, with respect to matter within its jurisdiction, determines after notice and an opportunity for public comment, and publishes a finding, that one or more such exceptions are no longer necessary for the protection of consumers and eliminating such exceptions will not increase the material risk of harm to consumers, such agency may extend the application of section 7001 of this title to the exceptions identified in such finding.

(Pub. L. 106–229, title I, §103, June 30, 2000, 114 Stat. 468.)

§7004. Applicability to Federal and State governments

(a) Filing and access requirements

Subject to subsection (c)(2) of this section, nothing in this subchapter limits or supersedes any requirement by a Federal regulatory agency, self-regulatory organization, or State regulatory agency that records be filed with such agency or organization in accordance with specified standards or formats.

(b) Preservation of existing rulemaking authority

(1) Use of authority to interpret

Subject to paragraph (2) and subsection (c) of this section, a Federal regulatory agency or State regulatory agency that is responsible for rulemaking under any other statute may interpret section 7001 of this title with respect to such statute through—

(A) the issuance of regulations pursuant to a statute; or

(B) to the extent such agency is authorized by statute to issue orders or guidance, the issuance of orders or guidance of general applicability that are publicly available and published (in the Federal Register in the case of an order or guidance issued by a Federal regulatory agency).

This paragraph does not grant any Federal regulatory agency or State regulatory agency authority to issue regulations, orders, or guidance pursuant to any statute that does not authorize such issuance.

(2) Limitations on interpretation authority

Notwithstanding paragraph (1), a Federal regulatory agency shall not adopt any regulation, order, or guidance described in paragraph (1), and a State regulatory agency is preempted by section 7001 of this title from adopting any regulation, order, or guidance described in paragraph (1), unless—

(A) such regulation, order, or guidance is consistent with section 7001 of this title;

(B) such regulation, order, or guidance does not add to the requirements of such section; and

(C) such agency finds, in connection with the issuance of such regulation, order, or guidance, that—

(i) there is a substantial justification for the regulation, order, or guidance;

(ii) the methods selected to carry out that purpose—

(I) are substantially equivalent to the requirements imposed on records that are not electronic records; and

(II) will not impose unreasonable costs on the acceptance and use of electronic records; and

(iii) the methods selected to carry out that purpose do not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification for performing the functions of creating, storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures.

(3) Performance standards

(A) Accuracy, record integrity, accessibility

Notwithstanding paragraph (2)(C)(iii), a Federal regulatory agency or State regulatory agency may interpret section 7001(d) of this title to specify performance standards to assure accuracy, record integrity, and accessibility of records that are required to be retained. Such performance standards may be specified in a manner that imposes a requirement in violation of paragraph (2)(C)(iii) if the requirement (i) serves an important governmental objective; and (ii) is substantially related to the achievement of that objective. Nothing in this paragraph shall be construed to grant any Federal regulatory agency or State regulatory agency authority to require use of a particular type of software or hardware in order to comply with section 7001(d) of this title.

(B) Paper or printed form

Notwithstanding subsection (c)(1) of this section, a Federal regulatory agency or State

regulatory agency may interpret section 7001(d) of this title to require retention of a record in a tangible printed or paper form if—

(i) there is a compelling governmental interest relating to law enforcement or national security for imposing such requirement; and

(ii) imposing such requirement is essential to attaining such interest.

(4) Exceptions for actions by government as market participant

Paragraph (2)(C)(iii) shall not apply to the statutes, regulations, or other rules of law governing procurement by the Federal or any State government, or any agency or instrumentality thereof.

(c) Additional limitations

(1) Reimposing paper prohibited

Nothing in subsection (b) of this section (other than paragraph (3)(B) thereof) shall be construed to grant any Federal regulatory agency or State regulatory agency authority to impose or reimpose any requirement that a record be in a tangible printed or paper form.

(2) Continuing obligation under Government Paperwork Elimination Act

Nothing in subsection (a) or (b) of this section relieves any Federal regulatory agency of its obligations under the Government Paperwork Elimination Act (title XVII of Public Law 105–277).

(d) Authority to exempt from consent provision

(1) In general

A Federal regulatory agency may, with respect to matter within its jurisdiction, by regulation or order issued after notice and an opportunity for public comment, exempt without condition a specified category or type of record from the requirements relating to consent in section 7001(c) of this title if such exemption is necessary to eliminate a substantial burden on electronic commerce and will not increase the material risk of harm to consumers.

(2) Prospectuses

Within 30 days after June 30, 2000, the Securities and Exchange Commission shall issue a regulation or order pursuant to paragraph (1) exempting from section 7001(c) of this title any records that are required to be provided in order to allow advertising, sales literature, or other information concerning a security issued by an investment company that is registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.], or concerning the issuer thereof, to be excluded from the definition of a prospectus under section 77b(a)(10)(A) of this title.

(e) Electronic letters of agency

The Federal Communications Commission shall not hold any contract for telecommunications service or letter of agency for a preferred carrier change, that otherwise complies with the Commission's rules, to be legally ineffective, invalid, or unenforceable solely because an electronic record or electronic signature was used in its formation or authorization.

(Pub. L. 106–229, title I, §104, June 30, 2000, 114 Stat. 469.)

REFERENCES IN TEXT

The Government Paperwork Elimination Act, referred to in subsec. (c)(2), is title XVII of Pub. L. 105–277, div. C, Oct. 21, 1998, 112 Stat. 2681–749, which amended section 3504 of Title 44, Public Printing and Documents, and enacted provisions set out as a note under section 3504 of Title 44. For complete classification of this Act to the Code, see Tables.

The Investment Company Act of 1940, referred to in subsec. (d)(2), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a–51 of this title and Tables.

§7005. Studies

(a) Delivery

Within 12 months after June 30, 2000, the Secretary of Commerce shall conduct an inquiry regarding the effectiveness of the delivery of electronic records to consumers using electronic mail as compared with delivery of written records via the United States Postal Service and private express mail services. The Secretary shall submit a report to the Congress regarding the results of such inquiry by the conclusion of such 12-month period.

(b) Study of electronic consent

Within 12 months after June 30, 2000, the Secretary of Commerce and the Federal Trade Commission shall submit a report to the Congress evaluating any benefits provided to consumers by the procedure required by section 7001(c)(1)(C)(ii) of this title; any burdens imposed on electronic commerce by that provision; whether the benefits outweigh the burdens; whether the absence of the procedure required by section 7001(c)(1)(C)(ii) of this title would increase the incidence of fraud directed against consumers; and suggesting any revisions to the provision deemed appropriate by the Secretary and the Commission. In conducting this evaluation, the Secretary and the Commission shall solicit comment from the general public, consumer representatives, and electronic commerce businesses.

(Pub. L. 106–229, title I, §105, June 30, 2000, 114 Stat. 471.)

§7006. Definitions

For purposes of this subchapter:

(1) Consumer

The term "consumer" means an individual who obtains, through a transaction, products or services which are used primarily for personal, family, or household purposes, and also means the legal representative of such an individual.

(2) Electronic

The term "electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(3) Electronic agent

The term "electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part without review or action by an individual at the time of the action or response.

(4) Electronic record

The term "electronic record" means a contract or other record created, generated, sent, communicated, received, or stored by electronic means.

(5) Electronic signature

The term "electronic signature" means an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record.

(6) Federal regulatory agency

The term "Federal regulatory agency" means an agency, as that term is defined in section 552(f) of title 5.

(7) Information

The term "information" means data, text, images, sounds, codes, computer programs, software, databases, or the like.

(8) Person

The term "person" means an individual, corporation, business trust, estate, trust, partnership,

limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity.

(9) Record

The term "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(10) Requirement

The term "requirement" includes a prohibition.

(11) Self-regulatory organization

The term "self-regulatory organization" means an organization or entity that is not a Federal regulatory agency or a State, but that is under the supervision of a Federal regulatory agency and is authorized under Federal law to adopt and administer rules applicable to its members that are enforced by such organization or entity, by a Federal regulatory agency, or by another self-regulatory organization.

(12) State

The term "State" includes the District of Columbia and the territories and possessions of the United States.

(13) Transaction

The term "transaction" means an action or set of actions relating to the conduct of business, consumer, or commercial affairs between two or more persons, including any of the following types of conduct—

(A) the sale, lease, exchange, licensing, or other disposition of (i) personal property, including goods and intangibles, (ii) services, and (iii) any combination thereof; and

(B) the sale, lease, exchange, or other disposition of any interest in real property, or any combination thereof.

(Pub. L. 106–229, title I, §106, June 30, 2000, 114 Stat. 472.)

SUBCHAPTER II—TRANSFERABLE RECORDS

§7021. Transferable records

(a) Definitions

For purposes of this section:

(1) Transferable record

The term "transferable record" means an electronic record that—

(A) would be a note under Article 3 of the Uniform Commercial Code if the electronic record were in writing;

(B) the issuer of the electronic record expressly has agreed is a transferable record; and

(C) relates to a loan secured by real property.

A transferable record may be executed using an electronic signature.

(2) Other definitions

The terms "electronic record", "electronic signature", and "person" have the same meanings provided in section 7006 of this title.

(b) Control

A person has control of a transferable record if a system employed for evidencing the transfer of

interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

(c) Conditions

A system satisfies subsection (b) of this section, and a person is deemed to have control of a transferable record, if the transferable record is created, stored, and assigned in such a manner that—

(1) a single authoritative copy of the transferable record exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the person asserting control as—

(A) the person to which the transferable record was issued; or

(B) if the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;

(3) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

(d) Status as holder

Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in section 1–201(20) of the Uniform Commercial Code, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the Uniform Commercial Code, including, if the applicable statutory requirements under section 3–302(a), 9–308, or revised section 9–330 of the Uniform Commercial Code are satisfied, the rights and defenses of a holder in due course or a purchaser, respectively. Delivery, possession, and endorsement are not required to obtain or exercise any of the rights under this subsection.

(e) Obligor rights

Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under the Uniform Commercial Code.

(f) Proof of control

If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

(g) UCC references

For purposes of this subsection, all references to the Uniform Commercial Code are to the Uniform Commercial Code as in effect in the jurisdiction the law of which governs the transferable record.

(Pub. L. 106–229, title II, §201, June 30, 2000, 114 Stat. 473.)

EFFECTIVE DATE

Pub. L. 106–229, title II, §202, June 30, 2000, 114 Stat. 475, provided that: "This title [enacting this subchapter] shall be effective 90 days after the date of enactment of this Act [June 30, 2000]."

SUBCHAPTER III—PROMOTION OF INTERNATIONAL ELECTRONIC

§7031. Principles governing the use of electronic signatures in international transactions

(a) Promotion of electronic signatures

(1) Required actions

The Secretary of Commerce shall promote the acceptance and use, on an international basis, of electronic signatures in accordance with the principles specified in paragraph (2) and in a manner consistent with section 7001 of this title. The Secretary of Commerce shall take all actions necessary in a manner consistent with such principles to eliminate or reduce, to the maximum extent possible, the impediments to commerce in electronic signatures, for the purpose of facilitating the development of interstate and foreign commerce.

(2) Principles

The principles specified in this paragraph are the following:

(A) Remove paper-based obstacles to electronic transactions by adopting relevant principles from the Model Law on Electronic Commerce adopted in 1996 by the United Nations Commission on International Trade Law.

(B) Permit parties to a transaction to determine the appropriate authentication technologies and implementation models for their transactions, with assurance that those technologies and implementation models will be recognized and enforced.

(C) Permit parties to a transaction to have the opportunity to prove in court or other proceedings that their authentication approaches and their transactions are valid.

(D) Take a nondiscriminatory approach to electronic signatures and authentication methods from other jurisdictions.

(b) Consultation

In conducting the activities required by this section, the Secretary shall consult with users and providers of electronic signature products and services and other interested persons.

(c) Definitions

As used in this section, the terms "electronic record" and "electronic signature" have the same meanings provided in section 7006 of this title.

(Pub. L. 106–229, title III, §301, June 30, 2000, 114 Stat. 475.)

CHAPTER 97—WOMEN'S BUSINESS ENTERPRISE DEVELOPMENT

Sec.

7101. Establishment of the Interagency Committee.
7102. Duties of the Interagency Committee.
7103. Membership of the Interagency Committee.
7104. Reports from the Interagency Committee.
7105. Establishment of the National Women's Business Council.
7106. Duties of the Council.
7107. Membership of the Council.
7108. Definitions.
7109. Studies and other research.
7110. Authorization of appropriations.

CODIFICATION

This chapter is comprised of title IV of Pub. L. 100–533, as added by Pub. L. 103–403, title IV, §413, Oct. 22, 1994, 108 Stat. 4193, and amended. Title IV of Pub. L. 100–533 was formerly set out as a note under

section 631 of this title.

§7101. Establishment of the Interagency Committee

There is established an interagency committee to be known as the Interagency Committee on Women's Business Enterprise.

(Pub. L. 100–533, title IV, §401, as added Pub. L. 103–403, title IV, §413, Oct. 22, 1994, 108 Stat. 4193.)

PRIOR PROVISIONS

A prior section 401 of Pub. L. 100–533, title IV, Oct. 25, 1988, 102 Stat. 2694, related to the establishment of the National Women's Business Council, prior to the general amendment of title IV of Pub. L. 100–533 by Pub. L. 103–403. See section 7105 of this title.

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(9) [title VII, §701], Dec. 21, 2000, 114 Stat. 2763, 2763A–701, provided that: "This title [amending sections 7107, 7109, and 7110 of this title and repealing former section 7109 of this title] may be cited as the 'National Women's Business Council Reauthorization Act of 2000'."

EX. ORD. NO. 12138. NATIONAL WOMEN'S BUSINESS ENTERPRISE POLICY AND NATIONAL PROGRAM FOR WOMEN'S BUSINESS ENTERPRISE

Ex. Ord. No. 12138, May 18, 1979, 44 F.R. 29637, as amended by Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

In response to the findings of the Interagency Task Force on Women Business Owners and congressional findings that recognize:

1. the significant role which small business and women entrepreneurs can play in promoting full employment and balanced growth in our economy;

2. the many obstacles facing women entrepreneurs; and

3. the need to aid and stimulate women's business enterprise;

By the authority vested in me as President of the United States of America, in order to create a National Women's Business Enterprise Policy and to prescribe arrangements for developing, coordinating and implementing a national program for women's business enterprise, it is ordered as follows:

1–1. RESPONSIBILITIES OF THE FEDERAL DEPARTMENTS AND AGENCIES

1–101. Within the constraints of statutory authority and as otherwise permitted by law:

(a) Each department and agency of the Executive Branch shall take appropriate action to facilitate, preserve and strengthen women's business enterprise and to ensure full participation by women in the free enterprise system.

(b) Each department and agency shall take affirmative action in support of women's business enterprise in appropriate programs and activities including but not limited to:

(1) management, technical, financial and procurement assistance,

(2) business-related education, training, counseling and information dissemination, and

(3) procurement.

(c) Each department or agency empowered to extend Federal financial assistance to any program or activity shall issue regulations requiring the recipient of such assistance to take appropriate affirmative action in support of women's business enterprise and to prohibit actions or policies which discriminate against women's business enterprise on the ground of sex. For purposes of this subsection, Federal financial assistance means assistance extended by way of grant, cooperative agreement, loan or contract other than a contract of insurance or guaranty. These regulations shall prescribe sanctions for noncompliance. Unless otherwise specified by law, no agency sanctions shall be applied until the agency or department concerned has advised the appropriate person or persons of the failure to comply with its regulations and has determined that compliance cannot be secured by voluntary means.

1–102. For purposes of this Order, affirmative action may include, but is not limited to, creating or supporting new programs responsive to the special needs of women's business enterprise, establishing incentives to promote business or business-related opportunities for women's business enterprise, collecting and disseminating information in support of women's business enterprise, and insuring to women's business enterprise knowledge of and ready access to business-related services and resources. If, in implementing this

Order, an agency undertakes to use or to require compliance with numerical set-asides, or similar measures, it shall state the purpose of such measure, and the measure shall be designed on the basis of pertinent factual findings of discrimination against women's business enterprise and the need for such measure.

1–103. In carrying out their responsibilities under Section 1–1, the departments and agencies shall consult the Department of Justice, and the Department of Justice shall provide legal guidance concerning these responsibilities.

1–2. ESTABLISHMENT OF THE INTERAGENCY COMMITTEE ON WOMEN'S BUSINESS ENTERPRISE

1–201. To help insure that the actions ordered above are carried out in an effective manner, I hereby establish the Interagency Committee on Women's Business Enterprise (hereinafter called the Committee).

1–202. The Chairperson of the Committee (hereinafter called the Chairperson) shall be appointed by the President. The Chairperson shall be the presiding officer of the Committee and shall have such duties as prescribed in this Order or by the Committee in its rules of procedure. The Chairperson may also represent his or her department, agency or office on the Committee.

1–203. The Committee shall be composed of the Chairperson and other members appointed by the heads of departments and agencies from among high level policy-making officials. In making these appointments, the recommendations of the Chairperson shall be taken into consideration. The following departments and agencies and such other departments and agencies as the Chairperson shall select shall be members of the Committee: the Departments of Agriculture; Commerce; Defense; Energy; Health and Human Services; Housing and Urban Development; Interior; Justice; Labor; Transportation; Treasury; the Federal Trade Commission; General Services Administration; National Science Foundation; Office of Federal Procurement Policy; and the Small Business Administration. These members shall have a vote. Nonvoting members shall include the Executive Director of the Committee and at least one but no more than three representatives from the Executive Office of the President appointed by the President.

1–204. The Committee shall meet at least quarterly at the call of the Chairperson, and at such other times as may be determined to be useful according to the rules of procedure adopted by the Committee.

1–205. The Administrator of the Small Business Administration shall provide an Executive Director and adequate staff and administrative support for the Committee. The staff shall be located in the Office of the Chief Counsel for Advocacy of the Small Business Administration, or in such other office as may be established specifically to further the policies expressed herein. Nothing in this Section prohibits the use of other properly available funds and resources in support of the Committee.

1–3. FUNCTIONS OF THE COMMITTEE

The Committee shall in a manner consistent with law:

1–301. Promote, coordinate and monitor the plans, programs and operations of the departments and agencies of the Executive Branch which may contribute to the establishment, preservation and strengthening of women's business enterprise. It may, as appropriate, develop comprehensive interagency plans and specific program goals for women's business enterprise with the cooperation of the departments and agencies.

1–302. Establish such policies, definitions, procedures and guidelines to govern the implementation, interpretation and application of this order, and generally perform such functions and take such steps as the Committee may deem to be necessary or appropriate to achieve the purposes and carry out the provisions hereof.

1–303. Promote the mobilization of activities and resources of State and local governments, business and trade associations, private industry, colleges and universities, foundations, professional organizations, and volunteer and other groups toward the growth of women's business enterprise, and facilitate the coordination of the efforts of these groups with those of the departments and agencies.

1–304. Make an annual assessment of the progress made in the Federal Government toward assisting women's business enterprise to enter the mainstream of business ownership and to provide recommendations for future actions to the President.

1–305. Convene and consult as necessary with persons inside and outside government to develop and promote new ideas concerning the development of women's business enterprise.

1–306. Consider the findings and recommendations of government and private sector investigations and studies of the problems of women entrepreneurs, and promote further research into such problems.

1–307. Design a comprehensive and innovative plan for a joint Federal and private sector effort to develop increased numbers of new women-owned businesses and larger and more successful women-owned businesses. The plan should set specific reasonable targets which can be achieved at reasonable and identifiable costs and should provide for the measurement of progress towards these targets at the end of two

and five years. Related outcomes such as income and tax revenues generated, jobs created, new products and services introduced or new domestic or foreign markets created should also be projected and measured in relation to costs wherever possible. The Committee should submit the plan to the President for approval within six months of the effective date of this Order.

1–4. OTHER RESPONSIBILITIES OF THE FEDERAL DEPARTMENTS AND AGENCIES

1–401. The head of each department and agency shall designate a high level official to have the responsibility for the participation and cooperation of that department or agency in carrying out this Executive order. This person may be the same person who is the department or agency's representative to the Committee.

1–402. To the extent permitted by law, each department and agency upon request by the Chairperson shall furnish information, assistance and reports and otherwise cooperate with the Chairperson and the Committee in the performance of their functions hereunder. Each department or agency shall ensure that systematic data collection processes are capable of providing the Committee current data helpful in evaluating and promoting the efforts herein described.

1–403. The officials designated under Section 1–401, when so requested, shall review the policies and programs of the women's business enterprise program, and shall keep the Chairperson informed of proposed budget, plans and programs of their departments or agencies affecting women's business enterprise.

1–404. Each Federal department or agency, within constraints of law, shall continue current efforts to foster and promote women's business enterprise and to support the program herein set forth, and shall cooperate with the Chairperson and the Committee in increasing the total Federal effort.

1–5. REPORTS

1–501. The Chairperson shall, promptly after the close of the fiscal year, submit to the President a full report of the activities of the Committee hereunder during the previous fiscal year. Further, the Chairperson shall, from time to time, submit to the President the Committee's recommendations for legislation or other action to promote the purposes of this Order.

1–502. Each Federal department and agency shall report to the Chairperson as hereinabove provided on a timely basis so that the Chairperson and the Committee can consider such reports for the Committee report to the President.

1–6. DEFINITIONS

For the purposes of this Order, the following definitions shall apply:

1–601. "Women-owned business" means a business that is at least 51 percent owned by a woman or women who also control and operate it. "Control" in this context means exercising the power to make policy decisions. "Operate" in this context means being actively involved in the day-to-day management.

1–602. "Women's business enterprise" means a woman-owned business or businesses or the efforts of a woman or women to establish, maintain or develop such a business or businesses.

1–603. Nothing in subsections 1–601 or 1–602 of this Section (1–6) should be construed to prohibit the use of other definitions of a woman-owned business or women's business enterprise by departments and agencies of the Executive Branch where other definitions are deemed reasonable and useful for any purpose not inconsistent with the purposes of this Order. Wherever feasible, departments and agencies should use the definition of a woman-owned business in subsection 1–601 above for monitoring performance with respect to women's business enterprise in order to assure comparability of data throughout the Federal Government.

1–7. CONSTRUCTION

Nothing in this Order shall be construed as limiting the meaning or effect of any existing Executive order.

§7102. Duties of the Interagency Committee

(a) In general

The Interagency Committee shall—

(1) monitor, coordinate, and promote the plans, programs, and operations of the departments and agencies of the Federal Government that may contribute to the establishment and growth of women's business enterprise;

(2) develop and promote new public sector initiatives, policies, programs, and plans designed to foster women's business enterprise;

(3) review, monitor, and coordinate plans and programs, developed in the public sector, which affect the ability of women-owned businesses to obtain capital and credit;

(4) promote and assist, as appropriate, in the development of surveys of women-owned business; and

(5) design a comprehensive plan for a joint public-private sector effort to facilitate growth and development of women's business enterprise, which plan shall, not later than 1 year after October 22, 1994, be submitted to the President for review.

(b) Meetings

The Interagency Committee shall meet not less than biannually at such times as the Interagency Committee determines to be necessary to perform the duties under subsection (a) of this section. A majority of the members of the Committee shall constitute a quorum for the approval of recommendations or reports issued pursuant to this section.

(c) Interaction with Council

In performing its duties under subsection (a) of this section, the Interagency Committee shall consult with the Council. The Interagency Committee may meet jointly with the Council at the discretion of the chairperson of the Interagency Committee and the chairperson of the Council, but not less frequently than twice annually. The chairperson of the Interagency Committee shall serve as chairperson of any joint meetings of the Interagency Committee and the Council.

(Pub. L. 100–533, title IV, §402, as added Pub. L. 103–403, title IV, §413, Oct. 22, 1994, 108 Stat. 4193.)

PRIOR PROVISIONS

A prior section 402 of Pub. L. 100–533, title IV, Oct. 25, 1988, 102 Stat. 2694, related to duties of the National Women's Business Council, prior to the general amendment of title IV of Pub. L. 100–533 by Pub. L. 103–403. See section 7106 of this title.

§7103. Membership of the Interagency Committee

(a) In general

(1) Participants

The Interagency Committee shall be composed of 1 representative from each of the following:

(A) The Department of Commerce.

(B) The Department of Defense.

(C) The Department of Health and Human Services.

(D) The Department of Labor.

(E) The Small Business Administration.

(F) The Department of Transportation.

(G) The Department of the Treasury.

(H) The General Services Administration.

(I) The Board of Governors of the Federal Reserve.

(J) The Executive staff of the President engaged in policymaking activities.

(2) Appointments

(A) In general

Except as provided in subparagraph (B), the head of each department and agency listed in paragraph (1) shall, not later than 45 days after December 2, 1997, designate a representative who shall be a policymaking official within the department or agency, and who shall report directly to the head of the agency on the status of the activities of the Interagency Committee.

(B) Small Business Administration

With respect to the Small Business Administration, the representative shall be the Assistant

Administrator of the Office of Women's Business Ownership, who also shall serve as the vice chairperson of the Interagency Committee and shall report directly to the Administrator on the status of the activities on the Interagency Committee and shall serve as the Interagency Committee Liaison to the National Women's Business Council established under section 7105 of this title.

(3) Other participation

Other representatives of the Federal Government not listed in paragraph (1) may participate in the meetings and functions of the Interagency Committee on a temporary basis as needed to carry out specific Interagency Committee goals.

(b) Appointment of chairperson

Not later than 45 days after December 2, 1997, the President, in consultation with the Administrator of the Small Business Administration, shall appoint 1 of the members of the Interagency Committee to serve as chairperson.

(c) Noncompensation

The members of the Interagency Committee shall serve without additional pay for such membership.

(d) Detail of Federal employees

Upon request by the chairperson of the Interagency Committee, the head of any Federal department or agency may detail any of the personnel of such agency to assist the Interagency Committee in carrying out its duties under this chapter without regard to section 3341 of title 5.

(Pub. L. 100–533, title IV, §403, as added Pub. L. 103–403, title IV, §413, Oct. 22, 1994, 108 Stat. 4194; amended Pub. L. 105–135, title III, §301, Dec. 2, 1997, 111 Stat. 2608.)

CODIFICATION

December 2, 1997, referred to in subsec. (a)(2)(A), was in the original "the date of enactment of the Small Business Administration Reauthorization Act of 1997" and December 2, 1997, referred to in subsec. (b), was in the original "enactment of the Small Business Administration Reauthorization Act of 1997", both of which were translated as meaning the date of enactment of the Small Business Reauthorization Act of 1997, Pub. L. 105–135, which was approved Dec. 2, 1997, to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 403 of Pub. L. 100–533, title IV, Oct. 25, 1988, 102 Stat. 2694; Pub. L. 102–191, §5, Dec. 5, 1991, 105 Stat. 1591, related to membership of the National Women's Business Council, prior to the general amendment of title IV of Pub. L. 100–533 by Pub. L. 103–403. See section 7107 of this title.

AMENDMENTS

1997—Subsec. (a)(2)(A). Pub. L. 105–135, §301(1), substituted "December 2, 1997" for "October 22, 1994" and inserted before period at end ", and who shall report directly to the head of the agency on the status of the activities of the Interagency Committee". See Codification note above.

Subsec. (a)(2)(B). Pub. L. 105–135, §301(2), inserted before period at end "and shall report directly to the Administrator on the status of the activities on the Interagency Committee and shall serve as the Interagency Committee Liaison to the National Women's Business Council established under section 7105 of this title".

Subsec. (b). Pub. L. 105–135, §301(3), substituted "December 2, 1997" for "October 22, 1994". See Codification note above.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

§7104. Reports from the Interagency Committee

Not later than September 30, 1995, and annually thereafter, the Interagency Committee shall transmit, through the Small Business Administration, to the President and to the Committees on

Small Business of the Senate and the House of Representatives, a report containing—

(1) a detailed description of the activities of the Interagency Committee, including a verbatim report on the status of progress of the Interagency Committee in meeting its responsibilities and duties under section 7102(a) of this title;

(2) the findings and conclusions of the Interagency Committee; and

(3) the Interagency Committee's recommendations for such legislation and administrative actions as the Interagency Committee considers appropriate to promote the development of small business concerns owned and controlled by women.

(Pub. L. 100–533, title IV, §404, as added Pub. L. 103–403, title IV, §413, Oct. 22, 1994, 108 Stat. 4194; amended Pub. L. 105–135, title III, §302, Dec. 2, 1997, 111 Stat. 2608.)

PRIOR PROVISIONS

A prior section 404 of Pub. L. 100–533, title IV, Oct. 25, 1988, 102 Stat. 2695, related to appointment and pay of the Director and staff of the National Women's Business Council, prior to the general amendment of title IV of Pub. L. 100–533 by Pub. L. 103–403. See section 7107 of this title.

AMENDMENTS

1997—Pub. L. 105–135, §302(1), in introductory provisions, inserted ", through the Small Business Administration," after "transmit".

Par. (1). Pub. L. 105–135, §302(3), inserted before semicolon at end ", including a verbatim report on the status of progress of the Interagency Committee in meeting its responsibilities and duties under section 7102(a) of this title".

Pub. L. 105–135, §302(2), redesignated par. (2) as (1) and struck out former par. (1) which read as follows: "any recommendations of the Council and any comments of the Interagency Committee thereon;".

Pars. (2) to (4). Pub. L. 105–135, §302(2), redesignated pars. (2) to (4) as (1) to (3), respectively.

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

§7105. Establishment of the National Women's Business Council

There is established a council to be known as the National Women's Business Council, which shall serve as an independent source of advice and policy recommendations to the Interagency Committee, to the Administrator through the Assistant Administrator of the Office of Women's Business Ownership, to the Congress, and to the President.

(Pub. L. 100–533, title IV, §405, as added Pub. L. 103–403, title IV, §413, Oct. 22, 1994, 108 Stat. 4195.)

PRIOR PROVISIONS

A prior section 405 of Pub. L. 100–533, title IV, Oct. 25, 1988, 102 Stat. 2696, related to powers of the National Women's Business Council, prior to the general amendment of title IV of Pub. L. 100–533 by Pub. L. 103–403.

§7106. Duties of the Council

(a) In general

The Council shall advise and consult with the Interagency Committee on matters relating to the activities, functions, and policies of the Interagency Committee, as provided in this chapter. The Council shall meet jointly with the Interagency Committee at the discretion of the chairperson of the

Council and the chairperson of the Interagency Committee, but not less than biannually.

(b) Meetings

The Council shall meet separately at such times as the Council deems necessary. A majority of the members of the Council shall constitute a quorum for the approval of recommendations or reports issued pursuant to this section.

(c) Recommendations

The Council shall make annual recommendations for consideration by the Interagency Committee. The Council shall also provide reports and make such other recommendations as it deems appropriate to the Interagency Committee, to the President, to the Administrator (through the Assistant Administrator of the Office of Women's Business Ownership), and to the Committees on Small Business of the Senate and the House of Representatives.

(d) Other duties

The Council shall—

(1) review, coordinate, and monitor plans and programs developed in the public and private sectors, which affect the ability of women-owned business enterprises to obtain capital and credit;

(2) promote and assist in the development of a women's business census and other surveys of women-owned businesses;

(3) monitor and promote the plans, programs, and operations of the departments and agencies of the Federal Government which may contribute to the establishment and growth of women's business enterprise;

(4) develop and promote new initiatives, policies, programs, and plans designed to foster women's business enterprise;

(5) advise and consult with the Interagency Committee in the design of a comprehensive plan for a joint public-private sector effort to facilitate growth and development of women's business enterprise; [1]

(6) not later than 90 days after the last day of each fiscal year, submit to the President and to the Committee on Small Business of the Senate and the Committee on Small Business of the House of Representatives, a report containing—

(A) a detailed description of the activities of the council,[2] including a status report on the Council's progress toward meeting its duties outlined in subsections (a) and (d) of this section;

(B) the findings, conclusions, and recommendations of the Council; and

(C) the Council's recommendations for such legislation and administrative actions as the Council considers appropriate to promote the development of small business concerns owned and controlled by women.

(e) Form of transmittal

The information included in each report under subsection (d) of this section that is described in subparagraphs (A) through (C) of subsection (d)(6) of this section, shall be reported verbatim, together with any separate additional, concurring, or dissenting views of the Administrator.

(Pub. L. 100–533, title IV, §406, as added Pub. L. 103–403, title IV, §413, Oct. 22, 1994, 108 Stat. 4195; amended Pub. L. 105–135, title III, §303, Dec. 2, 1997, 111 Stat. 2609.)

PRIOR PROVISIONS

A prior section 406 of Pub. L. 100–533, title IV, Oct. 25, 1988, 102 Stat. 2696, related to requirement of reports to the President and Congress by the National Women's Business Council, prior to the general amendment of title IV of Pub. L. 100–533 by Pub. L. 103–403.

AMENDMENTS

1997—Subsec. (c). Pub. L. 105–135, §303(1), inserted "(through the Assistant Administrator of the Office of Women's Business Ownership)" after "Administrator".

Subsec. (d)(6). Pub. L. 105–135, §303(2), added par. (6).

Subsec. (e). Pub. L. 105–135, §303(2), added subsec. (e).

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

[1] So in original. Semicolon probably should be followed by "and".

[2] So in original. Probably should be capitalized.

§7107. Membership of the Council

(a) Chairperson

The President shall appoint an individual to serve as chairperson of the Council, in consultation with the Administrator. The chairperson of the Council shall be a prominent business woman who is qualified to head the Council by virtue of her education, training, and experience.

(b) Other members

The Administrator shall, after receiving the recommendations of the Chairman and the Ranking Member of the Committees on Small Business of the House of Representatives and the Senate, appoint, in consultation with the chairperson of the Council appointed under subsection (a) of this section, 14 members of the Council, of whom—

(1) 4 shall be—

(A) owners of small businesses, as such term is defined in section 632 of this title; and

(B) members of the same political party as the President;

(2) 4 shall—

(A) be owners of small businesses, as such term is defined in section 632 of this title; and

(B) not be members of the same political party as the President; and

(3) 6 shall be representatives of women's business organizations, including representatives of women's business center sites.

(c) Diversity

In appointing members of the Council, the Administrator shall, to the extent possible, ensure that the members appointed reflect geographic (including both urban and rural areas), racial, economic, and sectoral diversity.

(d) Terms

Each member of the Council shall be appointed for a term of 3 years.

(e) Other Federal service

If any member of the Council subsequently becomes an officer or employee of the Federal Government or of the Congress, such individual may continue as a member of the Council for not longer than the 30-day period beginning on the date on which such individual becomes such an officer or employee.

(f) Vacancies

(1) In general

A vacancy on the Council shall be filled not later than 30 days after the date on which the vacancy occurs, in the manner in which the original appointment was made, and shall be subject to any conditions that applied to the original appointment.

(2) Unexpired term

An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(g) Reimbursements

Members of the Council shall serve without pay for such membership, except that members shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out the functions of the Council, in the same manner as persons serving on advisory boards pursuant to section 637(b) of this title.

(h) Executive director

The Administrator, in consultation with the chairperson of the Council, shall appoint an executive director of the Council. Upon the recommendation by the executive director, the chairperson of the Council may appoint and fix the pay of 4 additional employees of the Council, at a rate of pay not to exceed the maximum rate of pay payable for a position at GS–15 of the General Schedule. All such appointments shall be subject to the appropriation of funds.

(i) Rates of pay

The executive director and staff of the Council may be appointed without regard to the provisions of title 5 governing appointments in the competitive service, and except as provided in subsection (e) of this section, may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that the executive director may not receive pay in excess of the annual rate of basic pay payable for a position at ES–3 of the Senior Executive Pay Schedule under section 5832 [1] of title 5.

(Pub. L. 100–533, title IV, §407, as added Pub. L. 103–403, title IV, §413, Oct. 22, 1994, 108 Stat. 4196; amended Pub. L. 105–135, title III, §304, Dec. 2, 1997, 111 Stat. 2609; Pub. L. 106–554, §1(a)(9) [title VII, §702], Dec. 21, 2000, 114 Stat. 2763, 2763A–701.)

REFERENCES IN TEXT

The General Schedule, referred to in subsecs. (h) and (i), is set out under section 5332 of Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 407 of Pub. L. 100–533, title IV, Oct. 25, 1988, 102 Stat. 2696; Pub. L. 103–81, §11, Aug. 13, 1993, 107 Stat. 783, related to authorization of appropriations to carry out this chapter, prior to the general amendment of title IV of Pub. L. 100–533 by Pub. L. 103–403. See section 7110 of this title.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–554, §1(a)(9) [title VII, §702(1)], substituted "The President" for "Not later than 45 days after December 2, 1997, the President".

Subsec. (b). Pub. L. 106–554, §1(a)(9) [title VII, §702(2)], in introductory provisions, substituted "The Administrator" for "Not later than 60 days after December 2, 1997, the Administrator" and struck out "the Assistant Administrator of the Office of Women's Business Ownership and" after "in consultation with".

Subsec. (d). Pub. L. 106–554, §1(a)(9) [title VII, §702(3)], struck out before period at end ", except that, of the initial members appointed to the Council—

"(1) 2 members appointed under subsection (b)(1) of this section shall be appointed for a term of 1 year;

"(2) 2 members appointed under subsection (b)(2) of this section shall be appointed for a term of 1 year; and

"(3) each member appointed under subsection (b)(3) of this section shall be appointed for a term of 2 years".

Subsec. (h). Pub. L. 106–554, §1(a)(9) [title VII, §702(4)], substituted "The Administrator" for "Not later than 60 days after October 22, 1994, the Administrator".

1997—Subsec. (a). Pub. L. 105–135, §304(1), made substitution in original which was executed by substituting "December 2, 1997" for "October 22, 1994" to reflect the probable intent of Congress.

Subsec. (b). Pub. L. 105–135, §304(2)(A)–(C), in introductory provisions made substitution in original which was executed by substituting "December 2, 1997" for "October 22, 1994" to reflect the probable intent

of Congress, inserted ", after receiving the recommendations of the Chairman and the Ranking Member of the Committees on Small Business of the House of Representatives and the Senate," after "the Administrator shall", and substituted "14" for "9".

Subsec. (b)(1), (2). Pub. L. 105–135, §304(2)(D), (E), substituted "4" for "2" in introductory provisions.

Subsec. (b)(3). Pub. L. 105–135, §304(2)(F), substituted "6" for "5", struck out "national" after "representatives of", and inserted before period at end ", including representatives of women's business center sites".

Subsec. (c). Pub. L. 105–135, §304(3), inserted "(including both urban and rural areas)" after "geographic".

Subsec. (d). Pub. L. 105–135, §304(4), added subsec. (d) and struck out heading and text of former subsec. (d). Text read as follows: "The term of service of the members of the Council shall be 3 years."

Subsec. (f). Pub. L. 105–135, §304(5), added subsec. (f) and struck out heading and text of former subsec. (f). Text read as follows: "A vacancy on the Council shall, not later than 30 days after the date on which the vacancy occurs, be filled in the same manner in which the original appointment was made."

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

[1] *So in original. Probably should be section "5382".*

§7108. Definitions

For purposes of this chapter—

(1) the term "Administration" means the Small Business Administration;

(2) the term "Administrator" means the Administrator of the Small Business Administration;

(3) the term "control" means exercising the power to make policy decisions concerning a business;

(4) the term "Council" means the National Women's Business Council, established under section 7105 of this title;

(5) the term "Interagency Committee" means the Interagency Committee on Women's Business Enterprise, established under section 7101 of this title;

(6) the term "operate" means being actively involved in the day-to-day management of a business;

(7) the term "women's business enterprise" means—

(A) a business or businesses owned by a woman or a group of women; or

(B) the establishment, maintenance, or development of a business or businesses by a woman or a group of women; and

(8) the term "women-owned business" means a small business which a woman or a group of women—

(A) control and operate; and

(B) own not less than 51 percent of the business.

(Pub. L. 100–533, title IV, §408, as added Pub. L. 103–403, title IV, §413, Oct. 22, 1994, 108 Stat. 4197.)

§7109. Studies and other research

(a) In general

The Council may conduct such studies and other research relating to the award of Federal prime

contracts and subcontracts to women-owned businesses, to access to credit and investment capital by women entrepreneurs, or to other issues relating to women-owned businesses, as the Council determines to be appropriate.

(b) Contract authority

In conducting any study or other research under this section, the Council may contract with one or more public or private entities.

(Pub. L. 100–533, title IV, §409, formerly §410, as added Pub. L. 105–135, title III, §307, Dec. 2, 1997, 111 Stat. 2611; renumbered §409 and amended Pub. L. 106–554, §1(a)(9) [title VII, §704], Dec. 21, 2000, 114 Stat. 2763, 2763A–701.)

PRIOR PROVISIONS

A prior section 409 of Pub. L. 100–533, as added Pub. L. 105–135, title III, §306, Dec. 2, 1997, 111 Stat. 2610, related to the National Women's Business Council procurement project, prior to repeal by Pub. L. 106–554, §1(a)(9) [title VII, §703], Dec. 21, 2000, 114 Stat. 2763, 2763A–701.

Another prior section 409 of Pub. L. 100–533 was renumbered section 410 and is classified to section 7110 of this title.

AMENDMENTS

2000—Pub. L. 106–554 amended section catchline and text generally. Prior to amendment, text provided conditional authorization for the Council to conduct studies and research relating to the award of Federal prime contracts and subcontracts to women-owned businesses or to issues relating to access to credit and investment capital by women entrepreneurs and to contract with other entities to conduct such studies and research.

EFFECTIVE DATE

Section effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as an Effective Date of 1997 Amendment note under section 631 of this title.

§7110. Authorization of appropriations

(a) In general

There is authorized to be appropriated to carry out this chapter $1,000,000, for each of fiscal years 2001 through 2003, of which $550,000 shall be available in each such fiscal year to carry out section 7109 of this title.

(b) Budget review

No amount made available under this section for any fiscal year may be obligated or expended by the Council before the date on which the Council reviews and approves the operating budget of the Council to carry out the responsibilities of the Council for that fiscal year.

(Pub. L. 100–533, title IV, §410, formerly §409, as added Pub. L. 103–403, title IV, §413, Oct. 22, 1994, 108 Stat. 4197; renumbered §411 and amended Pub. L. 105–135, title III, §305, Dec. 2, 1997, 111 Stat. 2610; renumbered §410 and amended Pub. L. 106–554, §1(a)(9) [title VII, §705], Dec. 21, 2000, 114 Stat. 2763, 2763A–702.)

PRIOR PROVISIONS

A prior section 410 of Pub. L. 100–533 was renumbered section 409 and is classified to section 7109 of this title.

AMENDMENTS

2000—Pub. L. 106–554 amended section catchline and text generally. Prior to amendment, text authorized appropriations to carry out this chapter for fiscal years 1998 through 2000 and limited obligation or expenditure of those funds prior to the budget review by the Council for that fiscal year.

1997—Pub. L. 105–135 amended section catchline and text generally. Prior to amendment, text read as follows: "There are authorized to be appropriated for each of fiscal years 1995 through 1997, to carry out this chapter, $350,000."

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

CHAPTER 98—PUBLIC COMPANY ACCOUNTING REFORM AND CORPORATE RESPONSIBILITY

Sec.

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§7201. Definitions

Except as otherwise specifically provided in this Act, in this Act, the following definitions shall apply:

(1) Appropriate State regulatory authority

The term "appropriate State regulatory authority" means the State agency or other authority responsible for the licensure or other regulation of the practice of accounting in the State or States having jurisdiction over a registered public accounting firm or associated person thereof, with respect to the matter in question.

(2) Audit

The term "audit" means an examination of the financial statements of any issuer by an independent public accounting firm in accordance with the rules of the Board or the Commission (or, for the period preceding the adoption of applicable rules of the Board under section 7213 of this title, in accordance with then-applicable generally accepted auditing and related standards for such purposes), for the purpose of expressing an opinion on such statements.

(3) Audit committee

The term "audit committee" means—

(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer; and

(B) if no such committee exists with respect to an issuer, the entire board of directors of the issuer.

(4) Audit report

The term "audit report" means a document or other record—

(A) prepared following an audit performed for purposes of compliance by an issuer with the requirements of the securities laws; and

(B) in which a public accounting firm either—

(i) sets forth the opinion of that firm regarding a financial statement, report, or other document; or

(ii) asserts that no such opinion can be expressed.

(5) Board

The term "Board" means the Public Company Accounting Oversight Board established under section 7211 of this title.

(6) Commission

The term "Commission" means the Securities and Exchange Commission.

(7) Issuer

The term "issuer" means an issuer (as defined in section 78c of this title), the securities of which are registered under section 78l of this title, or that is required to file reports under section 78o(d) of this title, or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a et seq.), and that it has not withdrawn.

(8) Non-audit services

The term "non-audit services" means any professional services provided to an issuer by a registered public accounting firm, other than those provided to an issuer in connection with an audit or a review of the financial statements of an issuer.

(9) Person associated with a public accounting firm

(A) In general

The terms "person associated with a public accounting firm" (or with a "registered public accounting firm") and "associated person of a public accounting firm" (or of a "registered public accounting firm") mean any individual proprietor, partner, shareholder, principal, accountant, or other professional employee of a public accounting firm, or any other independent contractor or entity that, in connection with the preparation or issuance of any audit report—

(i) shares in the profits of, or receives compensation in any other form from, that firm; or

(ii) participates as agent or otherwise on behalf of such accounting firm in any activity of that firm.

(B) Exemption authority

The Board may, by rule, exempt persons engaged only in ministerial tasks from the definition in subparagraph (A), to the extent that the Board determines that any such exemption is

consistent with the purposes of this Act, the public interest, or the protection of investors.

(C) Investigative and enforcement authority

For purposes of sections 7202(c), 7211(c), 7215, and 7217(c) of this title and the rules of the Board and Commission issued thereunder, except to the extent specifically excepted by such rules, the terms defined in subparagraph (A) shall include any person associated, seeking to become associated, or formerly associated with a public accounting firm, except that—

(i) the authority to conduct an investigation of such person under section 7215(b) of this title shall apply only with respect to any act or practice, or omission to act, by the person while such person was associated or seeking to become associated with a registered public accounting firm; and

(ii) the authority to commence a disciplinary proceeding under section 7215(c)(1) of this title, or impose sanctions under section 7215(c)(4) of this title, against such person shall apply only with respect to—

(I) conduct occurring while such person was associated or seeking to become associated with a registered public accounting firm; or

(II) non-cooperation, as described in section 7215(b)(3) of this title, with respect to a demand in a Board investigation for testimony, documents, or other information relating to a period when such person was associated or seeking to become associated with a registered public accounting firm.

(10) Professional standards

The term "professional standards" means—

(A) accounting principles that are—

(i) established by the standard setting body described in section 19(b) of the Securities Act of 1933 [15 U.S.C. 77s(b)], or prescribed by the Commission under section 19(a) of that Act [15 U.S.C. 77s(a)] or section 78m(b) of this title; and

(ii) relevant to audit reports for particular issuers, or dealt with in the quality control system of a particular registered public accounting firm; and

(B) auditing standards, standards for attestation engagements, quality control policies and procedures, ethical and competency standards, and independence standards (including rules implementing title II) that the Board or the Commission determines—

(i) relate to the preparation or issuance of audit reports for issuers; and

(ii) are established or adopted by the Board under section 7213(a) of this title, or are promulgated as rules of the Commission.

(11) Public accounting firm

The term "public accounting firm" means—

(A) a proprietorship, partnership, incorporated association, corporation, limited liability company, limited liability partnership, or other legal entity that is engaged in the practice of public accounting or preparing or issuing audit reports; and

(B) to the extent so designated by the rules of the Board, any associated person of any entity described in subparagraph (A).

(12) Registered public accounting firm

The term "registered public accounting firm" means a public accounting firm registered with the Board in accordance with this Act.

(13) Rules of the Board

The term "rules of the Board" means the bylaws and rules of the Board (as submitted to, and approved, modified, or amended by the Commission, in accordance with section 7217 of this title), and those stated policies, practices, and interpretations of the Board that the Commission, by rule, may deem to be rules of the Board, as necessary or appropriate in the public interest or for the protection of investors.

(14) Security

The term "security" has the same meaning as in section 78c(a) of this title.

(15) Securities laws

The term "securities laws" means the provisions of law referred to in section 78c(a)(47) of this title and includes the rules, regulations, and orders issued by the Commission thereunder.

(16) State

The term "State" means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other territory or possession of the United States.

(17) Foreign auditor oversight authority

The term "foreign auditor oversight authority" means any governmental body or other entity empowered by a foreign government to conduct inspections of public accounting firms or otherwise to administer or enforce laws related to the regulation of public accounting firms.

(Pub. L. 107–204, §2(a), July 30, 2002, 116 Stat. 746; Pub. L. 111–203, title IX, §§929F(g)(1), 981(a), 982(a)(2), July 21, 2010, 124 Stat. 1854, 1926, 1928.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 107–204, July 30, 2002, 116 Stat. 745, known as the Sarbanes-Oxley Act of 2002. For complete classification of this Act to the Code, see Tables.

The Securities Act of 1933, referred to in par. (7), is title I of act May 27, 1933, ch. 38, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

Title II, referred to in par. (10)(B), means title II of Pub. L. 107–204, July 30, 2002, 116 Stat. 771, which enacted subchapter II of this chapter and amended sections 78c, 78j–1, 78l and 78q of this title. For complete classification of title II to the Code, see Tables.

AMENDMENTS

2010—Pub. L. 111–203, §982(a)(2), substituted "Except as otherwise specifically provided in this Act, in this" for "In this" in introductory provisions.

Par. (9)(C). Pub. L. 111–203, §929F(g)(1), added subpar. (C).

Par. (17). Pub. L. 111–203, §981(a), added par. (17).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

SHORT TITLE

Pub. L. 107–204, §1(a), July 30, 2002, 116 Stat. 745, provided that: "This Act [see Tables for classification] may be cited as the 'Sarbanes-Oxley Act of 2002'."

GAO STUDY AND REPORT REGARDING CONSOLIDATION OF PUBLIC ACCOUNTING FIRMS

Pub. L. 107–204, title VII, §701, July 30, 2002, 116 Stat. 797, directed the Comptroller General, in consultation with the Commission, regulatory agencies in other countries of the Group of Seven Industrialized Nations, the Justice Department, and others, to study the factors resulting in the consolidation of public accounting firms and their impact, and to report the study findings to Congress not later than 1 year after July 30, 2002.

§7202. Commission rules and enforcement

(a) Regulatory action

The Commission shall promulgate such rules and regulations, as may be necessary or appropriate in the public interest or for the protection of investors, and in furtherance of this Act.

(b) Enforcement

(1) In general

A violation by any person of this Act, any rule or regulation of the Commission issued under this Act, or any rule of the Board shall be treated for all purposes in the same manner as a violation of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or the rules and regulations issued thereunder, consistent with the provisions of this Act, and any such person shall be subject to the same penalties, and to the same extent, as for a violation of that Act or such rules or regulations.

(2) to (4) Omitted

(c) Effect on Commission authority

Nothing in this Act or the rules of the Board shall be construed to impair or limit—

(1) the authority of the Commission to regulate the accounting profession, accounting firms, or persons associated with such firms for purposes of enforcement of the securities laws;

(2) the authority of the Commission to set standards for accounting or auditing practices or auditor independence, derived from other provisions of the securities laws or the rules or regulations thereunder, for purposes of the preparation and issuance of any audit report, or otherwise under applicable law; or

(3) the ability of the Commission to take, on the initiative of the Commission, legal, administrative, or disciplinary action against any registered public accounting firm or any associated person thereof.

(Pub. L. 107–204, §3, July 30, 2002, 116 Stat. 749.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 107–204, July 30, 2002, 116 Stat. 745, known as the Sarbanes-Oxley Act of 2002. For complete classification of this Act to the Code, see Tables.

The Securities Exchange Act of 1934, referred to in subsec. (b)(1), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

CODIFICATION

Section is comprised of section 3 of Pub. L. 107–204. Subsec. (b)(2)–(4) of section 3 of Pub. L. 107–204 amended sections 78l, 78u, and 78u–3 of this title.

SUBCHAPTER I—PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

§7211. Establishment; administrative provisions

(a) Establishment of Board

There is established the Public Company Accounting Oversight Board, to oversee the audit of companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports. The Board shall be a body corporate, operate as a nonprofit corporation, and have succession until dissolved by an Act of Congress.

(b) Status

The Board shall not be an agency or establishment of the United States Government, and, except as otherwise provided in this Act, shall be subject to, and have all the powers conferred upon a

nonprofit corporation by, the District of Columbia Nonprofit Corporation Act. No member or person employed by, or agent for, the Board shall be deemed to be an officer or employee of or agent for the Federal Government by reason of such service.

(c) Duties of the Board

The Board shall, subject to action by the Commission under section 7217 of this title, and once a determination is made by the Commission under subsection (d) of this section—

(1) register public accounting firms that prepare audit reports for issuers, brokers, and dealers, in accordance with section 7212 of this title;

(2) establish or adopt, or both, by rule, auditing, quality control, ethics, independence, and other standards relating to the preparation of audit reports for issuers, brokers, and dealers, in accordance with section 7213 of this title;

(3) conduct inspections of registered public accounting firms, in accordance with section 7214 of this title and the rules of the Board;

(4) conduct investigations and disciplinary proceedings concerning, and impose appropriate sanctions where justified upon, registered public accounting firms and associated persons of such firms, in accordance with section 7215 of this title;

(5) perform such other duties or functions as the Board (or the Commission, by rule or order) determines are necessary or appropriate to promote high professional standards among, and improve the quality of audit services offered by, registered public accounting firms and associated persons thereof, or otherwise to carry out this Act, in order to protect investors, or to further the public interest;

(6) enforce compliance with this Act, the rules of the Board, professional standards, and the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, by registered public accounting firms and associated persons thereof; and

(7) set the budget and manage the operations of the Board and the staff of the Board.

(d) Commission determination

The members of the Board shall take such action (including hiring of staff, proposal of rules, and adoption of initial and transitional auditing and other professional standards) as may be necessary or appropriate to enable the Commission to determine, not later than 270 days after July 30, 2002, that the Board is so organized and has the capacity to carry out the requirements of this subchapter, and to enforce compliance with this subchapter by registered public accounting firms and associated persons thereof. The Commission shall be responsible, prior to the appointment of the Board, for the planning for the establishment and administrative transition to the Board's operation.

(e) Board membership

(1) Composition

The Board shall have 5 members, appointed from among prominent individuals of integrity and reputation who have a demonstrated commitment to the interests of investors and the public, and an understanding of the responsibilities for and nature of the financial disclosures required of issuers, brokers, and dealers under the securities laws and the obligations of accountants with respect to the preparation and issuance of audit reports with respect to such disclosures.

(2) Limitation

Two members, and only 2 members, of the Board shall be or have been certified public accountants pursuant to the laws of 1 or more States, provided that, if 1 of those 2 members is the chairperson, he or she may not have been a practicing certified public accountant for at least 5 years prior to his or her appointment to the Board.

(3) Full-time independent service

Each member of the Board shall serve on a full-time basis, and may not, concurrent with service on the Board, be employed by any other person or engage in any other professional or business activity. No member of the Board may share in any of the profits of, or receive payments from, a

public accounting firm (or any other person, as determined by rule of the Commission), other than fixed continuing payments, subject to such conditions as the Commission may impose, under standard arrangements for the retirement of members of public accounting firms.

(4) Appointment of Board members

(A) Initial Board

Not later than 90 days after July 30, 2002, the Commission, after consultation with the Chairman of the Board of Governors of the Federal Reserve System and the Secretary of the Treasury, shall appoint the chairperson and other initial members of the Board, and shall designate a term of service for each.

(B) Vacancies

A vacancy on the Board shall not affect the powers of the Board, but shall be filled in the same manner as provided for appointments under this section.

(5) Term of service

(A) In general

The term of service of each Board member shall be 5 years, and until a successor is appointed, except that—

(i) the terms of office of the initial Board members (other than the chairperson) shall expire in annual increments, 1 on each of the first 4 anniversaries of the initial date of appointment; and

(ii) any Board member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor was appointed shall be appointed only for the remainder of that term.

(B) Term limitation

No person may serve as a member of the Board, or as chairperson of the Board, for more than 2 terms, whether or not such terms of service are consecutive.

(6) Removal from office

A member of the Board may be removed by the Commission from office, in accordance with section 7217(d)(3) of this title, for good cause shown before the expiration of the term of that member.

(f) Powers of the Board

In addition to any authority granted to the Board otherwise in this Act, the Board shall have the power, subject to section 7217 of this title—

(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel, with the approval of the Commission, in any Federal, State, or other court;

(2) to conduct its operations and maintain offices, and to exercise all other rights and powers authorized by this Act, in any State, without regard to any qualification, licensing, or other provision of law in effect in such State (or a political subdivision thereof);

(3) to lease, purchase, accept gifts or donations of or otherwise acquire, improve, use, sell, exchange, or convey, all of or an interest in any property, wherever situated;

(4) to appoint such employees, accountants, attorneys, and other agents as may be necessary or appropriate, and to determine their qualifications, define their duties, and fix their salaries or other compensation (at a level that is comparable to private sector self-regulatory, accounting, technical, supervisory, or other staff or management positions);

(5) to allocate, assess, and collect accounting support fees established pursuant to section 7219 of this title, for the Board, and other fees and charges imposed under this subchapter; and

(6) to enter into contracts, execute instruments, incur liabilities, and do any and all other acts and things necessary, appropriate, or incidental to the conduct of its operations and the exercise of its obligations, rights, and powers imposed or granted by this subchapter.

(g) Rules of the Board

The rules of the Board shall, subject to the approval of the Commission—

(1) provide for the operation and administration of the Board, the exercise of its authority, and the performance of its responsibilities under this Act;

(2) permit, as the Board determines necessary or appropriate, delegation by the Board of any of its functions to an individual member or employee of the Board, or to a division of the Board, including functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting as to any matter, except that—

(A) the Board shall retain a discretionary right to review any action pursuant to any such delegated function, upon its own motion;

(B) a person shall be entitled to a review by the Board with respect to any matter so delegated, and the decision of the Board upon such review shall be deemed to be the action of the Board for all purposes (including appeal or review thereof); and

(C) if the right to exercise a review described in subparagraph (A) is declined, or if no such review is sought within the time stated in the rules of the Board, then the action taken by the holder of such delegation shall for all purposes, including appeal or review thereof, be deemed to be the action of the Board;

(3) establish ethics rules and standards of conduct for Board members and staff, including a bar on practice before the Board (and the Commission, with respect to Board-related matters) of 1 year for former members of the Board, and appropriate periods (not to exceed 1 year) for former staff of the Board; and

(4) provide as otherwise required by this Act.

(h) Annual report to the Commission

The Board shall submit an annual report (including its audited financial statements) to the Commission, and the Commission shall transmit a copy of that report to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives, not later than 30 days after the date of receipt of that report by the Commission.

(Pub. L. 107–204, title I, §101, July 30, 2002, 116 Stat. 750; Pub. L. 111–203, title IX, §982(b), July 21, 2010, 124 Stat. 1928.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (b), (c)(5), (6), (f), and (g)(1), (4), is Pub. L. 107–204, July 30, 2002, 116 Stat. 745, known as the Sarbanes-Oxley Act of 2002. For complete classification of this Act to the Code, see Tables.

The District of Columbia Nonprofit Corporation Act, referred to in subsec. (b), is Pub. L. 87–569, Aug. 6, 1962, 76 Stat. 265, as amended, which is not classified to the Code.

CONSTITUTIONALITY

For information regarding constitutionality of certain provisions of section 101 of Pub. L. 107–204, see Congressional Research Service, The Constitution of the United States of America: Analysis and Interpretation, Appendix 1, Acts of Congress Held Unconstitutional in Whole or in Part by the Supreme Court of the United States.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, §982(b)(2), substituted "companies that" for "public companies that" and struck out "for companies the securities of which are sold to, and held by and for, public investors" after "independent audit reports".

Subsecs. (c)(1), (2), (e)(1). Pub. L. 111–203, §982(b)(1), substituted "issuers, brokers, and dealers" for "issuers".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

§7212. Registration with the Board

(a) Mandatory registration

It shall be unlawful for any person that is not a registered public accounting firm to prepare or issue, or to participate in the preparation or issuance of, any audit report with respect to any issuer, broker, or dealer.

(b) Applications for registration

(1) Form of application

A public accounting firm shall use such form as the Board may prescribe, by rule, to apply for registration under this section.

(2) Contents of applications

Each public accounting firm shall submit, as part of its application for registration, in such detail as the Board shall specify—

(A) the names of all issuers, brokers, and dealers for which the firm prepared or issued audit reports during the immediately preceding calendar year, and for which the firm expects to prepare or issue audit reports during the current calendar year;

(B) the annual fees received by the firm from each such issuer, broker, or dealer for audit services, other accounting services, and non-audit services, respectively;

(C) such other current financial information for the most recently completed fiscal year of the firm as the Board may reasonably request;

(D) a statement of the quality control policies of the firm for its accounting and auditing practices;

(E) a list of all accountants associated with the firm who participate in or contribute to the preparation of audit reports, stating the license or certification number of each such person, as well as the State license numbers of the firm itself;

(F) information relating to criminal, civil, or administrative actions or disciplinary proceedings pending against the firm or any associated person of the firm in connection with any audit report;

(G) copies of any periodic or annual disclosure filed by an issuer, broker, or dealer with the Commission during the immediately preceding calendar year which discloses accounting disagreements between such issuer, broker, or dealer and the firm in connection with an audit report furnished or prepared by the firm for such issuer, broker, or dealer; and

(H) such other information as the rules of the Board or the Commission shall specify as necessary or appropriate in the public interest or for the protection of investors.

(3) Consents

Each application for registration under this subsection shall include—

(A) a consent executed by the public accounting firm to cooperation in and compliance with any request for testimony or the production of documents made by the Board in the furtherance of its authority and responsibilities under this subchapter (and an agreement to secure and enforce similar consents from each of the associated persons of the public accounting firm as a condition of their continued employment by or other association with such firm); and

(B) a statement that such firm understands and agrees that cooperation and compliance, as described in the consent required by subparagraph (A), and the securing and enforcement of such consents from its associated persons, in accordance with the rules of the Board, shall be a condition to the continuing effectiveness of the registration of the firm with the Board.

(c) Action on applications

(1) Timing

The Board shall approve a completed application for registration not later than 45 days after the date of receipt of the application, in accordance with the rules of the Board, unless the Board, prior

to such date, issues a written notice of disapproval to, or requests more information from, the prospective registrant.

(2) Treatment

A written notice of disapproval of a completed application under paragraph (1) for registration shall be treated as a disciplinary sanction for purposes of sections 7215(d) and 7217(c) of this title.

(d) Periodic reports

Each registered public accounting firm shall submit an annual report to the Board, and may be required to report more frequently, as necessary to update the information contained in its application for registration under this section, and to provide to the Board such additional information as the Board or the Commission may specify, in accordance with subsection (b)(2) of this section.

(e) Public availability

Registration applications and annual reports required by this subsection, or such portions of such applications or reports as may be designated under rules of the Board, shall be made available for public inspection, subject to rules of the Board or the Commission, and to applicable laws relating to the confidentiality of proprietary, personal, or other information contained in such applications or reports, provided that, in all events, the Board shall protect from public disclosure information reasonably identified by the subject accounting firm as proprietary information.

(f) Registration and annual fees

The Board shall assess and collect a registration fee and an annual fee from each registered public accounting firm, in amounts that are sufficient to recover the costs of processing and reviewing applications and annual reports.

(Pub. L. 107–204, title I, §102, July 30, 2002, 116 Stat. 753; Pub. L. 111–203, title IX, §982(c), July 21, 2010, 124 Stat. 1928.)

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, §982(c)(1), substituted "It" for "Beginning 180 days after the date of the determination of the Commission under section 7211(d) of this title, it".

Subsec. (b)(2)(A). Pub. L. 111–203, §982(c)(2)(A), substituted "issuers, brokers, and dealers" for "issuers".

Subsec. (b)(2)(B), (G). Pub. L. 111–203, §982(c)(2)(B), substituted "issuer, broker, or dealer" for "issuer" wherever appearing.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

§7213. Auditing, quality control, and independence standards and rules

(a) Auditing, quality control, and ethics standards

(1) In general

The Board shall, by rule, establish, including, to the extent it determines appropriate, through adoption of standards proposed by 1 or more professional groups of accountants designated pursuant to paragraph (3)(A) or advisory groups convened pursuant to paragraph (4), and amend or otherwise modify or alter, such auditing and related attestation standards, such quality control standards, such ethics standards, and such independence standards to be used by registered public accounting firms in the preparation and issuance of audit reports, as required by this Act or the rules of the Commission, or as may be necessary or appropriate in the public interest or for the protection of investors.

(2) Rule requirements

In carrying out paragraph (1), the Board—

(A) shall include in the auditing standards that it adopts, requirements that each registered public accounting firm shall—

(i) prepare, and maintain for a period of not less than 7 years, audit work papers, and other information related to any audit report, in sufficient detail to support the conclusions reached in such report;

(ii) provide a concurring or second partner review and approval of such audit report (and other related information), and concurring approval in its issuance, by a qualified person (as prescribed by the Board) associated with the public accounting firm, other than the person in charge of the audit, or by an independent reviewer (as prescribed by the Board); and

(iii) in each audit report for an issuer, describe the scope of the auditor's testing of the internal control structure and procedures of the issuer, required by section 7262(b) of this title, and present (in such report or in a separate report)—

(I) the findings of the auditor from such testing;

(II) an evaluation of whether such internal control structure and procedures—

(aa) include maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the issuer;

(bb) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the issuer are being made only in accordance with authorizations of management and directors of the issuer; and

(III) a description, at a minimum, of material weaknesses in such internal controls, and of any material noncompliance found on the basis of such testing.

(B) shall include, in the quality control standards that it adopts with respect to the issuance of audit reports, requirements for every registered public accounting firm relating to—

(i) monitoring of professional ethics and independence from issuers, brokers, and dealers on behalf of which the firm issues audit reports;

(ii) consultation within such firm on accounting and auditing questions;

(iii) supervision of audit work;

(iv) hiring, professional development, and advancement of personnel;

(v) the acceptance and continuation of engagements;

(vi) internal inspection; and

(vii) such other requirements as the Board may prescribe, subject to subsection (a)(1) of this section.

(3) Authority to adopt other standards

(A) In general

In carrying out this subsection, the Board—

(i) may adopt as its rules, subject to the terms of section 7217 of this title, any portion of any statement of auditing standards or other professional standards that the Board determines satisfy the requirements of paragraph (1), and that were proposed by 1 or more professional groups of accountants that shall be designated or recognized by the Board, by rule, for such purpose, pursuant to this paragraph or 1 or more advisory groups convened pursuant to paragraph (4); and

(ii) notwithstanding clause (i), shall retain full authority to modify, supplement, revise, or subsequently amend, modify, or repeal, in whole or in part, any portion of any statement described in clause (i).

(B) Initial and transitional standards

The Board shall adopt standards described in subparagraph (A)(i) as initial or transitional standards, to the extent the Board determines necessary, prior to a determination of the

Commission under section 7211(d) of this title, and such standards shall be separately approved by the Commission at the time of that determination, without regard to the procedures required by section 7217 of this title that otherwise would apply to the approval of rules of the Board.

(C) Transition period for emerging growth companies

Any rules of the Board requiring mandatory audit firm rotation or a supplement to the auditor's report in which the auditor would be required to provide additional information about the audit and the financial statements of the issuer (auditor discussion and analysis) shall not apply to an audit of an emerging growth company, as defined in section 78c of this title. Any additional rules adopted by the Board after April 5, 2012, shall not apply to an audit of any emerging growth company, unless the Commission determines that the application of such additional requirements is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation.

(4) Advisory groups

The Board shall convene, or authorize its staff to convene, such expert advisory groups as may be appropriate, which may include practicing accountants and other experts, as well as representatives of other interested groups, subject to such rules as the Board may prescribe to prevent conflicts of interest, to make recommendations concerning the content (including proposed drafts) of auditing, quality control, ethics, independence, or other standards required to be established under this section.

(b) Independence standards and rules

The Board shall establish such rules as may be necessary or appropriate in the public interest or for the protection of investors, to implement, or as authorized under, title II of this Act.

(c) Cooperation with designated professional groups of accountants and advisory groups

(1) In general

The Board shall cooperate on an ongoing basis with professional groups of accountants designated under subsection (a)(3)(A) of this section and advisory groups convened under subsection (a)(4) of this section in the examination of the need for changes in any standards subject to its authority under subsection (a) of this section, recommend issues for inclusion on the agendas of such designated professional groups of accountants or advisory groups, and take such other steps as it deems appropriate to increase the effectiveness of the standard setting process.

(2) Board responses

The Board shall respond in a timely fashion to requests from designated professional groups of accountants and advisory groups referred to in paragraph (1) for any changes in standards over which the Board has authority.

(d) Evaluation of standard setting process

The Board shall include in the annual report required by section 7211(h) of this title the results of its standard setting responsibilities during the period to which the report relates, including a discussion of the work of the Board with any designated professional groups of accountants and advisory groups described in paragraphs (3)(A) and (4) of subsection (a) of this section, and its pending issues agenda for future standard setting projects.

(Pub. L. 107–204, title I, §103, July 30, 2002, 116 Stat. 755; Pub. L. 111–203, title IX, §982(d), July 21, 2010, 124 Stat. 1929; Pub. L. 112–106, title I, §104, Apr. 5, 2012, 126 Stat. 310.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(1), is Pub. L. 107–204, July 30, 2002, 116 Stat. 745, known as the Sarbanes-Oxley Act of 2002. For complete classification of this Act to the Code, see Tables.

Title II of this Act, referred to in subsec. (b), is title II of Pub. L. 107–204, July 30, 2002, 116 Stat. 771, which enacted subchapter II of this chapter and amended sections 78c, 78j–1, 78l, and 78q of this title. For complete classification of title II to the Code, see Tables.

AMENDMENTS

2012—Subsec. (a)(3)(C). Pub. L. 112–106 added subpar. (C).

2010—Subsec. (a)(1). Pub. L. 111–203, §982(d)(1), substituted "such ethics standards, and such independence standards" for "and such ethics standards".

Subsec. (a)(2)(A)(iii). Pub. L. 111–203, §982(d)(2), substituted "in each audit report for an issuer, describe" for "describe in each audit report" in introductory provisions.

Subsec. (a)(2)(B)(i). Pub. L. 111–203, §982(d)(3), substituted "issuers, brokers, and dealers" for "issuers".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

§7214. Inspections of registered public accounting firms

(a) In general

(1) Inspections generally

The Board shall conduct a continuing program of inspections to assess the degree of compliance of each registered public accounting firm and associated persons of that firm with this Act, the rules of the Board, the rules of the Commission, or professional standards, in connection with its performance of audits, issuance of audit reports, and related matters involving issuers.

(2) Inspections of audit reports for brokers and dealers

(A) The Board may, by rule, conduct and require a program of inspection in accordance with paragraph (1), on a basis to be determined by the Board, of registered public accounting firms that provide one or more audit reports for a broker or dealer. The Board, in establishing such a program, may allow for differentiation among classes of brokers and dealers, as appropriate.

(B) If the Board determines to establish a program of inspection pursuant to subparagraph (A), the Board shall consider in establishing any inspection schedules whether differing schedules would be appropriate with respect to registered public accounting firms that issue audit reports only for one or more brokers or dealers that do not receive, handle, or hold customer securities or cash or are not a member of the Securities Investor Protection Corporation.

(C) Any rules of the Board pursuant to this paragraph shall be subject to prior approval by the Commission pursuant to section 7217(b) of this title before the rules become effective, including an opportunity for public notice and comment.

(D) Notwithstanding anything to the contrary in section 7212 of this title, a public accounting firm shall not be required to register with the Board if the public accounting firm is exempt from the inspection program which may be established by the Board under subparagraph (A).

(b) Inspection frequency

(1) In general

Subject to paragraph (2), inspections required by this section shall be conducted—

(A) annually with respect to each registered public accounting firm that regularly provides audit reports for more than 100 issuers; and

(B) not less frequently than once every 3 years with respect to each registered public accounting firm that regularly provides audit reports for 100 or fewer issuers.

(2) Adjustments to schedules

The Board may, by rule, adjust the inspection schedules set under paragraph (1) if the Board finds that different inspection schedules are consistent with the purposes of this Act, the public interest, and the protection of investors. The Board may conduct special inspections at the request of the Commission or upon its own motion.

(c) Procedures

The Board shall, in each inspection under this section, and in accordance with its rules for such inspections—

(1) identify any act or practice or omission to act by the registered public accounting firm, or by any associated person thereof, revealed by such inspection that may be in violation of this Act, the rules of the Board, the rules of the Commission, the firm's own quality control policies, or professional standards;

(2) report any such act, practice, or omission, if appropriate, to the Commission and each appropriate State regulatory authority; and

(3) begin a formal investigation or take disciplinary action, if appropriate, with respect to any such violation, in accordance with this Act and the rules of the Board.

(d) Conduct of inspections

In conducting an inspection of a registered public accounting firm under this section, the Board shall—

(1) inspect and review selected audit and review engagements of the firm (which may include audit engagements that are the subject of ongoing litigation or other controversy between the firm and 1 or more third parties), performed at various offices and by various associated persons of the firm, as selected by the Board;

(2) evaluate the sufficiency of the quality control system of the firm, and the manner of the documentation and communication of that system by the firm; and

(3) perform such other testing of the audit, supervisory, and quality control procedures of the firm as are necessary or appropriate in light of the purpose of the inspection and the responsibilities of the Board.

(e) Record retention

The rules of the Board may require the retention by registered public accounting firms for inspection purposes of records whose retention is not otherwise required by section 7213 of this title or the rules issued thereunder.

(f) Procedures for review

The rules of the Board shall provide a procedure for the review of and response to a draft inspection report by the registered public accounting firm under inspection. The Board shall take such action with respect to such response as it considers appropriate (including revising the draft report or continuing or supplementing its inspection activities before issuing a final report), but the text of any such response, appropriately redacted to protect information reasonably identified by the accounting firm as confidential, shall be attached to and made part of the inspection report.

(g) Report

A written report of the findings of the Board for each inspection under this section, subject to subsection (h) of this section, shall be—

(1) transmitted, in appropriate detail, to the Commission and each appropriate State regulatory authority, accompanied by any letter or comments by the Board or the inspector, and any letter of response from the registered public accounting firm; and

(2) made available in appropriate detail to the public (subject to section 7215(b)(5)(A) of this title, and to the protection of such confidential and proprietary information as the Board may determine to be appropriate, or as may be required by law), except that no portions of the inspection report that deal with criticisms of or potential defects in the quality control systems of the firm under inspection shall be made public if those criticisms or defects are addressed by the firm, to the satisfaction of the Board, not later than 12 months after the date of the inspection report.

(h) Interim Commission review

(1) Reviewable matters

A registered public accounting firm may seek review by the Commission, pursuant to such rules as the Commission shall promulgate, if the firm—

(A) has provided the Board with a response, pursuant to rules issued by the Board under subsection (f) of this section, to the substance of particular items in a draft inspection report, and disagrees with the assessments contained in any final report prepared by the Board following such response; or

(B) disagrees with the determination of the Board that criticisms or defects identified in an inspection report have not been addressed to the satisfaction of the Board within 12 months of the date of the inspection report, for purposes of subsection (g)(2) of this section.

(2) Treatment of review

Any decision of the Commission with respect to a review under paragraph (1) shall not be reviewable under section 78y of this title, or deemed to be "final agency action" for purposes of section 704 of title 5.

(3) Timing

Review under paragraph (1) may be sought during the 30-day period following the date of the event giving rise to the review under subparagraph (A) or (B) of paragraph (1).

(Pub. L. 107–204, title I, §104, July 30, 2002, 116 Stat. 757; Pub. L. 111–203, title IX, §982(e)(1), July 21, 2010, 124 Stat. 1929.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a)(1), (b), and (c), is Pub. L. 107–204, July 30, 2002, 116 Stat. 745, known as the Sarbanes-Oxley Act of 2002. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203 designated existing provisions as par. (1), inserted heading, and added par. (2).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

§7215. Investigations and disciplinary proceedings

(a) In general

The Board shall establish, by rule, subject to the requirements of this section, fair procedures for the investigation and disciplining of registered public accounting firms and associated persons of such firms.

(b) Investigations

(1) Authority

In accordance with the rules of the Board, the Board may conduct an investigation of any act or practice, or omission to act, by a registered public accounting firm, any associated person of such firm, or both, that may violate any provision of this Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under this Act, or professional standards, regardless of how the act, practice, or omission is brought to the attention of the Board.

(2) Testimony and document production

In addition to such other actions as the Board determines to be necessary or appropriate, the rules of the Board may—

(A) require the testimony of the firm or of any person associated with a registered public accounting firm, with respect to any matter that the Board considers relevant or material to an investigation;

(B) require the production of audit work papers and any other document or information in the possession of a registered public accounting firm or any associated person thereof, wherever domiciled, that the Board considers relevant or material to the investigation, and may inspect the books and records of such firm or associated person to verify the accuracy of any documents or information supplied;

(C) request the testimony of, and production of any document in the possession of, any other person, including any client of a registered public accounting firm that the Board considers relevant or material to an investigation under this section, with appropriate notice, subject to the needs of the investigation, as permitted under the rules of the Board; and

(D) provide for procedures to seek issuance by the Commission, in a manner established by the Commission, of a subpoena to require the testimony of, and production of any document in the possession of, any person, including any client of a registered public accounting firm, that the Board considers relevant or material to an investigation under this section.

(3) Noncooperation with investigations

(A) In general

If a registered public accounting firm or any associated person thereof refuses to testify, produce documents, or otherwise cooperate with the Board in connection with an investigation under this section, the Board may—

(i) suspend or bar such person from being associated with a registered public accounting firm, or require the registered public accounting firm to end such association;

(ii) suspend or revoke the registration of the public accounting firm; and

(iii) invoke such other lesser sanctions as the Board considers appropriate, and as specified by rule of the Board.

(B) Procedure

Any action taken by the Board under this paragraph shall be subject to the terms of section 7217(c) of this title.

(4) Coordination and referral of investigations

(A) Coordination

The Board shall notify the Commission of any pending Board investigation involving a potential violation of the securities laws, and thereafter coordinate its work with the work of the Commission's Division of Enforcement, as necessary to protect an ongoing Commission investigation.

(B) Referral

The Board may refer an investigation under this section—

(i) to the Commission;

(ii) to a self-regulatory organization, in the case of an investigation that concerns an audit report for a broker or dealer that is under the jurisdiction of such self-regulatory organization;

(iii) to any other Federal functional regulator (as defined in section 6809 of this title), in the case of an investigation that concerns an audit report for an institution that is subject to the jurisdiction of such regulator; and

(iv) at the direction of the Commission, to—

(I) the Attorney General of the United States;

(II) the attorney general of 1 or more States; and

(III) the appropriate State regulatory authority.

(5) Use of documents

(A) Confidentiality

Except as provided in subparagraphs (B) and (C), all documents and information prepared or received by or specifically for the Board, and deliberations of the Board and its employees and agents, in connection with an inspection under section 7214 of this title or with an investigation

under this section, shall be confidential and privileged as an evidentiary matter (and shall not be subject to civil discovery or other legal process) in any proceeding in any Federal or State court or administrative agency, and shall be exempt from disclosure, in the hands of an agency or establishment of the Federal Government, under the Freedom of Information Act (5 U.S.C. 552a),[1] or otherwise, unless and until presented in connection with a public proceeding or released in accordance with subsection (c) of this section.

(B) Availability to Government agencies

Without the loss of its status as confidential and privileged in the hands of the Board, all information referred to in subparagraph (A) may—

(i) be made available to the Commission; and

(ii) in the discretion of the Board, when determined by the Board to be necessary to accomplish the purposes of this Act or to protect investors, be made available to—

(I) the Attorney General of the United States;

(II) the appropriate Federal functional regulator (as defined in section 6809 of this title), other than the Commission, and the Director of the Federal Housing Finance Agency, with respect to an audit report for an institution subject to the jurisdiction of such regulator;

(III) State attorneys general in connection with any criminal investigation;

(IV) any appropriate State regulatory authority; and

(V) a self-regulatory organization, with respect to an audit report for a broker or dealer that is under the jurisdiction of such self-regulatory organization,

each of which shall maintain such information as confidential and privileged.

(C) Availability to foreign oversight authorities

Without the loss of its status as confidential and privileged in the hands of the Board, all information referred to in subparagraph (A) that relates to a public accounting firm that a foreign government has empowered a foreign auditor oversight authority to inspect or otherwise enforce laws with respect to, may, at the discretion of the Board, be made available to the foreign auditor oversight authority, if—

(i) the Board finds that it is necessary to accomplish the purposes of this Act or to protect investors;

(ii) the foreign auditor oversight authority provides—

(I) such assurances of confidentiality as the Board may request;

(II) a description of the applicable information systems and controls of the foreign auditor oversight authority; and

(III) a description of the laws and regulations of the foreign government of the foreign auditor oversight authority that are relevant to information access; and

(iii) the Board determines that it is appropriate to share such information.

(6) Immunity

Any employee of the Board engaged in carrying out an investigation under this Act shall be immune from any civil liability arising out of such investigation in the same manner and to the same extent as an employee of the Federal Government in similar circumstances.

(c) Disciplinary procedures

(1) Notification; recordkeeping

The rules of the Board shall provide that in any proceeding by the Board to determine whether a registered public accounting firm, or an associated person thereof, should be disciplined, the Board shall—

(A) bring specific charges with respect to the firm or associated person;

(B) notify such firm or associated person of, and provide to the firm or associated person an opportunity to defend against, such charges; and

(C) keep a record of the proceedings.

(2) Public hearings

Hearings under this section shall not be public, unless otherwise ordered by the Board for good cause shown, with the consent of the parties to such hearing.

(3) Supporting statement

A determination by the Board to impose a sanction under this subsection shall be supported by a statement setting forth—

(A) each act or practice in which the registered public accounting firm, or associated person, has engaged (or omitted to engage), or that forms a basis for all or a part of such sanction;

(B) the specific provision of this Act, the securities laws, the rules of the Board, or professional standards which the Board determines has been violated; and

(C) the sanction imposed, including a justification for that sanction.

(4) Sanctions

If the Board finds, based on all of the facts and circumstances, that a registered public accounting firm or associated person thereof has engaged in any act or practice, or omitted to act, in violation of this Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under this Act, or professional standards, the Board may impose such disciplinary or remedial sanctions as it determines appropriate, subject to applicable limitations under paragraph (5), including—

(A) temporary suspension or permanent revocation of registration under this subchapter;

(B) temporary or permanent suspension or bar of a person from further association with any registered public accounting firm;

(C) temporary or permanent limitation on the activities, functions, or operations of such firm or person (other than in connection with required additional professional education or training);

(D) a civil money penalty for each such violation, in an amount equal to—

(i) not more than $100,000 for a natural person or $2,000,000 for any other person; and

(ii) in any case to which paragraph (5) applies, not more than $750,000 for a natural person or $15,000,000 for any other person;

(E) censure;

(F) required additional professional education or training; or

(G) any other appropriate sanction provided for in the rules of the Board.

(5) Intentional or other knowing conduct

The sanctions and penalties described in subparagraphs (A) through (C) and (D)(ii) of paragraph (4) shall only apply to—

(A) intentional or knowing conduct, including reckless conduct, that results in violation of the applicable statutory, regulatory, or professional standard; or

(B) repeated instances of negligent conduct, each resulting in a violation of the applicable statutory, regulatory, or professional standard.

(6) Failure to supervise

(A) In general

The Board may impose sanctions under this section on a registered accounting firm or upon any person who is, or at the time of the alleged failure reasonably to supervise was, a supervisory person of such firm, if the Board finds that—

(i) the firm has failed reasonably to supervise an associated person, either as required by the rules of the Board relating to auditing or quality control standards, or otherwise, with a view to preventing violations of this Act, the rules of the Board, the provisions of the

securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission under this Act, or professional standards; and

(ii) such associated person commits a violation of this Act, or any of such rules, laws, or standards.

(B) Rule of construction

No current or former supervisory person of a registered public accounting firm shall be deemed to have failed reasonably to supervise any associated person for purposes of subparagraph (A), if—

(i) there have been established in and for that firm procedures, and a system for applying such procedures, that comply with applicable rules of the Board and that would reasonably be expected to prevent and detect any such violation by such associated person; and

(ii) such person has reasonably discharged the duties and obligations incumbent upon that person by reason of such procedures and system, and had no reasonable cause to believe that such procedures and system were not being complied with.

(7) Effect of suspension

(A) Association with a public accounting firm

It shall be unlawful for any person that is suspended or barred from being associated with a registered public accounting firm under this subsection willfully to become or remain associated with any registered public accounting firm, or for any registered public accounting firm that knew, or, in the exercise of reasonable care should have known, of the suspension or bar, to permit such an association, without the consent of the Board or the Commission.

(B) Association with an issuer, broker, or dealer

It shall be unlawful for any person that is suspended or barred from being associated with a registered public accounting firm under this subsection willfully to become or remain associated with any issuer, broker, or dealer in an accountancy or a financial management capacity, and for any issuer, broker, or dealer that knew, or in the exercise of reasonable care should have known, of such suspension or bar, to permit such an association, without the consent of the Board or the Commission.

(d) Reporting of sanctions

(1) Recipients

If the Board imposes a disciplinary sanction, in accordance with this section, the Board shall report the sanction to—

(A) the Commission;

(B) any appropriate State regulatory authority or any foreign accountancy licensing board with which such firm or person is licensed or certified; and

(C) the public (once any stay on the imposition of such sanction has been lifted).

(2) Contents

The information reported under paragraph (1) shall include—

(A) the name of the sanctioned person;

(B) a description of the sanction and the basis for its imposition; and

(C) such other information as the Board deems appropriate.

(e) Stay of sanctions

(1) In general

Application to the Commission for review, or the institution by the Commission of review, of any disciplinary action of the Board shall operate as a stay of any such disciplinary action, unless

and until the Commission orders (summarily or after notice and opportunity for hearing on the question of a stay, which hearing may consist solely of the submission of affidavits or presentation of oral arguments) that no such stay shall continue to operate.

(2) Expedited procedures

The Commission shall establish for appropriate cases an expedited procedure for consideration and determination of the question of the duration of a stay pending review of any disciplinary action of the Board under this subsection.

(Pub. L. 107–204, title I, §105, July 30, 2002, 116 Stat. 759; Pub. L. 110–289, div. A, title I, §1161(h), July 30, 2008, 122 Stat. 2781; Pub. L. 111–203, title IX, §§929F(h), 981(b), (c), 982(f), (i), (j), July 21, 2010, 124 Stat. 1855, 1926, 1927, 1929–1931.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (b)(1), (5)(B)(ii), (C)(i), (6) and (c)(3)(B), (4), (6)(A), is Pub. L. 107–204, July 30, 2002, 116 Stat. 745, known as the Sarbanes-Oxley Act of 2002. For complete classification of this Act to the Code, see Tables.

The Freedom of Information Act, referred to in subsec. (b)(5)(A), is section 552 of Title 5, Government Organization and Employees. Section 552a of Title 5 is commonly known as the "Privacy Act".

AMENDMENTS

2010—Subsec. (b)(4)(B)(ii) to (iv). Pub. L. 111–203, §982(i), added cl. (ii) and redesignated former cls. (ii) and (iii) as (iii) and (iv), respectively.

Subsec. (b)(5)(A). Pub. L. 111–203, §981(c), substituted "subparagraphs (B) and (C)" for "subparagraph (B)".

Subsec. (b)(5)(B)(ii)(V). Pub. L. 111–203, §982(j), added subcl. (V).

Subsec. (b)(5)(C). Pub. L. 111–203, §981(b), added subpar. (C).

Subsec. (c)(6)(A). Pub. L. 111–203, §929F(h)(1), substituted "any person who is, or at the time of the alleged failure reasonably to supervise was, a supervisory person" for "the supervisory personnel" in introductory provisions.

Subsec. (c)(6)(B). Pub. L. 111–203, §929F(h)(2), in introductory provisions, substituted "No current or former supervisory person" for "No associated person" and "any associated person" for "any other person".

Subsec. (c)(7)(B). Pub. L. 111–203, §982(f), in heading, inserted ", broker, or dealer" after "issuer" and, in text, substituted "a registered public accounting firm under this subsection" for "an issuer under this subsection" and "any issuer, broker, or dealer" for "any issuer" in two places.

2008—Subsec. (b)(5)(B)(ii)(II). Pub. L. 110–289 inserted "and the Director of the Federal Housing Finance Agency," after "Commission,".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

[1] *See References in Text note below.*

§7216. Foreign public accounting firms

(a) Applicability to certain foreign firms

(1) In general

Any foreign public accounting firm that prepares or furnishes an audit report with respect to any issuer, broker, or dealer, shall be subject to this Act and the rules of the Board and the Commission issued under this Act, in the same manner and to the same extent as a public accounting firm that is organized and operates under the laws of the United States or any State, except that registration pursuant to section 7212 of this title shall not by itself provide a basis for subjecting such a foreign public accounting firm to the jurisdiction of the Federal or State courts, other than with respect to controversies between such firms and the Board.

(2) Board authority

The Board may, by rule, determine that a foreign public accounting firm (or a class of such firms) that does not issue audit reports nonetheless plays such a substantial role in the preparation and furnishing of such reports for particular issuers, brokers, or dealers, that it is necessary or appropriate, in light of the purposes of this Act and in the public interest or for the protection of investors, that such firm (or class of firms) should be treated as a public accounting firm (or firms) for purposes of registration under, and oversight by the Board in accordance with, this subchapter.

(b) Production of documents

(1) Production by foreign firms

If a foreign public accounting firm performs material services upon which a registered public accounting firm relies in the conduct of an audit or interim review, issues an audit report, performs audit work, or conducts interim reviews, the foreign public accounting firm shall—

(A) produce the audit work papers of the foreign public accounting firm and all other documents of the firm related to any such audit work or interim review to the Commission or the Board, upon request of the Commission or the Board; and

(B) be subject to the jurisdiction of the courts of the United States for purposes of enforcement of any request for such documents.

(2) Other production

Any registered public accounting firm that relies, in whole or in part, on the work of a foreign public accounting firm in issuing an audit report, performing audit work, or conducting an interim review, shall—

(A) produce the audit work papers of the foreign public accounting firm and all other documents related to any such work in response to a request for production by the Commission or the Board; and

(B) secure the agreement of any foreign public accounting firm to such production, as a condition of the reliance by the registered public accounting firm on the work of that foreign public accounting firm.

(c) Exemption authority

The Commission, and the Board, subject to the approval of the Commission, may, by rule, regulation, or order, and as the Commission (or Board) determines necessary or appropriate in the public interest or for the protection of investors, either unconditionally or upon specified terms and conditions exempt any foreign public accounting firm, or any class of such firms, from any provision of this Act or the rules of the Board or the Commission issued under this Act.

(d) Service of requests or process

(1) In general

Any foreign public accounting firm that performs work for a domestic registered public accounting firm shall furnish to the domestic registered public accounting firm a written irrevocable consent and power of attorney that designates the domestic registered public accounting firm as an agent upon whom may be served any request by the Commission or the Board under this section or upon whom may be served any process, pleadings, or other papers in any action brought to enforce this section.

(2) Specific audit work

Any foreign public accounting firm that performs material services upon which a registered public accounting firm relies in the conduct of an audit or interim review, issues an audit report, performs audit work, or, performs interim reviews, shall designate to the Commission or the Board an agent in the United States upon whom may be served any request by the Commission or the Board under this section or upon whom may be served any process, pleading, or other papers in any action brought to enforce this section.

(e) Sanctions

A willful refusal to comply, in whole in or in part, with any request by the Commission or the Board under this section, shall be deemed a violation of this Act.

(f) Other means of satisfying production obligations

Notwithstanding any other provisions of this section, the staff of the Commission or the Board may allow a foreign public accounting firm that is subject to this section to meet production obligations under this section through alternate means, such as through foreign counterparts of the Commission or the Board.

(g) Definition

In this section, the term "foreign public accounting firm" means a public accounting firm that is organized and operates under the laws of a foreign government or political subdivision thereof.

(Pub. L. 107–204, title I, §106, July 30, 2002, 116 Stat. 764; Pub. L. 111–203, title IX, §§929J, 982(g), July 21, 2010, 124 Stat. 1859, 1930.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a), (c), and (e), is Pub. L. 107–204, July 30, 2002, 116 Stat. 745, known as the Sarbanes-Oxley Act of 2002. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111–203, §982(g)(1), substituted "issuer, broker, or dealer" for "issuer".

Subsec. (a)(2). Pub. L. 111–203, §982(g)(2), substituted "issuers, brokers, or dealers" for "issuers".

Subsec. (b). Pub. L. 111–203, §929J(1), added subsec. (b) and struck out former subsec. (b) which related to deemed consent to production of audit workpapers by foreign and domestic firms.

Subsecs. (d) to (g). Pub. L. 111–203, §929J(2), (3), added subsecs. (d) to (f) and redesignated former subsec. (d) as (g).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

§7217. Commission oversight of the Board

(a) General oversight responsibility

The Commission shall have oversight and enforcement authority over the Board, as provided in this Act. The provisions of section 78q(a)(1) of this title, and of section 78q(b)(1) of this title shall apply to the Board as fully as if the Board were a "registered securities association" for purposes of those sections 78q(a)(1) and 78q(b)(1).

(b) Rules of the Board

(1) Definition

In this section, the term "proposed rule" means any proposed rule of the Board, and any modification of any such rule.

(2) Prior approval required

No rule of the Board shall become effective without prior approval of the Commission in accordance with this section, other than as provided in section 7213(a)(3)(B) of this title with respect to initial or transitional standards.

(3) Approval criteria

The Commission shall approve a proposed rule, if it finds that the rule is consistent with the requirements of this Act and the securities laws, or is necessary or appropriate in the public interest or for the protection of investors.

(4) Proposed rule procedures

The provisions of paragraphs (1) through (3) of section 78s(b) of this title shall govern the proposed rules of the Board, as fully as if the Board were a "registered securities association" for purposes of that section 78s(b), except that, for purposes of this paragraph—

(A) the phrase "consistent with the requirements of this chapter and the rules and regulations thereunder applicable to such organization" in section 78s(b)(2) of this title shall be deemed to read "consistent with the requirements of title I of the Sarbanes-Oxley Act of 2002, and the rules and regulations issued thereunder applicable to such organization, or as necessary or appropriate in the public interest or for the protection of investors"; and

(B) the phrase "otherwise in furtherance of the purposes of this chapter" in section 78s(b)(3)(C) of this title shall be deemed to read "otherwise in furtherance of the purposes of title I of the Sarbanes-Oxley Act of 2002".

(5) Commission authority to amend rules of the Board

The provisions of section 78s(c) of this title shall govern the abrogation, deletion, or addition to portions of the rules of the Board by the Commission as fully as if the Board were a "registered securities association" for purposes of that section 78s(c), except that the phrase "to conform its rules to the requirements of this chapter and the rules and regulations thereunder applicable to such organization, or otherwise in furtherance of the purposes of this chapter" in section 78s(c) of this title shall, for purposes of this paragraph, be deemed to read "to assure the fair administration of the Public Company Accounting Oversight Board, conform the rules promulgated by that Board to the requirements of title I of the Sarbanes-Oxley Act of 2002, or otherwise further the purposes of that Act, the securities laws, and the rules and regulations thereunder applicable to that Board".

(c) Commission review of disciplinary action taken by the Board

(1) Notice of sanction

The Board shall promptly file notice with the Commission of any final sanction on any registered public accounting firm or on any associated person thereof, in such form and containing such information as the Commission, by rule, may prescribe.

(2) Review of sanctions

The provisions of sections 78s(d)(2) and 78s(e)(1) of this title shall govern the review by the Commission of final disciplinary sanctions imposed by the Board (including sanctions imposed under section 7215(b)(3) of this title for noncooperation in an investigation of the Board), as fully as if the Board were a self-regulatory organization and the Commission were the appropriate regulatory agency for such organization for purposes of those sections 78s(d)(2) and 78s(e)(1), except that, for purposes of this paragraph—

(A) section 7215(e) of this title (rather than that section 78s(d)(2)) shall govern the extent to which application for, or institution by the Commission on its own motion of, review of any disciplinary action of the Board operates as a stay of such action;

(B) references in that section 78s(e)(1) to "members" of such an organization shall be deemed to be references to registered public accounting firms;

(C) the phrase "consistent with the purposes of this chapter" in that section 78s(e)(1) shall be deemed to read "consistent with the purposes of this chapter and title I of the Sarbanes-Oxley Act of 2002";

(D) references to rules of the Municipal Securities Rulemaking Board in that section 78s(e)(1) shall not apply; and

(E) the reference to section 78s(e)(2) of this title shall refer instead to section 7217(c)(3) of this title.

(3) Commission modification authority

The Commission may enhance, modify, cancel, reduce, or require the remission of a sanction imposed by the Board upon a registered public accounting firm or associated person thereof, if the Commission, having due regard for the public interest and the protection of investors, finds, after a

proceeding in accordance with this subsection, that the sanction—

(A) is not necessary or appropriate in furtherance of this Act or the securities laws; or

(B) is excessive, oppressive, inadequate, or otherwise not appropriate to the finding or the basis on which the sanction was imposed.

(d) Censure of the Board; other sanctions

(1) Rescission of Board authority

The Commission, by rule, consistent with the public interest, the protection of investors, and the other purposes of this Act and the securities laws, may relieve the Board of any responsibility to enforce compliance with any provision of this Act, the securities laws, the rules of the Board, or professional standards.

(2) Censure of the Board; limitations

The Commission may, by order, as it determines necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act or the securities laws, censure or impose limitations upon the activities, functions, and operations of the Board, if the Commission finds, on the record, after notice and opportunity for a hearing, that the Board—

(A) has violated or is unable to comply with any provision of this Act, the rules of the Board, or the securities laws; or

(B) without reasonable justification or excuse, has failed to enforce compliance with any such provision or rule, or any professional standard by a registered public accounting firm or an associated person thereof.

(3) Censure of Board members; removal from office

The Commission may, as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act or the securities laws, remove from office or censure any person who is, or at the time of the alleged misconduct was, a member of the Board, if the Commission finds, on the record, after notice and opportunity for a hearing, that such member—

(A) has willfully violated any provision of this Act, the rules of the Board, or the securities laws;

(B) has willfully abused the authority of that member; or

(C) without reasonable justification or excuse, has failed to enforce compliance with any such provision or rule, or any professional standard by any registered public accounting firm or any associated person thereof.

(Pub. L. 107–204, title I, §107, July 30, 2002, 116 Stat. 765; Pub. L. 111–203, title IX, §929F(i), July 21, 2010, 124 Stat. 1855.)

REFERENCES IN TEXT

This Act and the Sarbanes-Oxley Act of 2002, referred to in text, are Pub. L. 107–204, July 30, 2002, 116 Stat. 745. Title I of the Act is classified generally to this subchapter. For complete classification of this Act to the Code, see Tables.

CONSTITUTIONALITY

For information regarding constitutionality of certain provisions of section 107 of Pub. L. 107–204, see Congressional Research Service, The Constitution of the United States of America: Analysis and Interpretation, Appendix 1, Acts of Congress Held Unconstitutional in Whole or in Part by the Supreme Court of the United States.

AMENDMENTS

2010—Subsec. (d)(3). Pub. L. 111–203 substituted "any person who is, or at the time of the alleged misconduct was, a member" for "any member" in introductory provisions.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see

section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

§7218. Accounting standards

(a) Omitted

(b) Commission authority

The Commission shall promulgate such rules and regulations to carry out section 77s(b) of this title as it deems necessary or appropriate in the public interest or for the protection of investors.

(c) No effect on Commission powers

Nothing in this Act, including this section and the amendment made by this section, shall be construed to impair or limit the authority of the Commission to establish accounting principles or standards for purposes of enforcement of the securities laws.

(d) Study and report on adopting principles-based accounting

(1) Study

(A) In general

The Commission shall conduct a study on the adoption by the United States financial reporting system of a principles-based accounting system.

(B) Study topics

The study required by subparagraph (A) shall include an examination of—

(i) the extent to which principles-based accounting and financial reporting exists in the United States;

(ii) the length of time required for change from a rules-based to a principles-based financial reporting system;

(iii) the feasibility of and proposed methods by which a principles-based system may be implemented; and

(iv) a thorough economic analysis of the implementation of a principles-based system.

(2) Report

Not later than 1 year after July 30, 2002, the Commission shall submit a report on the results of the study required by paragraph (1) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

(Pub. L. 107–204, title I, §108, July 30, 2002, 116 Stat. 768.)

REFERENCES IN TEXT

This Act, referred to in subsec. (c), is Pub. L. 107–204, July 30, 2002, 116 Stat. 745, known as the Sarbanes-Oxley Act of 2002. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section is comprised of section 108 of Pub. L. 107–204. Subsec. (a) of section 108 of Pub. L. 107–204 amended section 77s of this title.

§7219. Funding

(a) In general

The Board, and the standard setting body designated pursuant to section 77s(b) of this title, shall be funded as provided in this section.

(b) Annual budgets

The Board and the standard setting body referred to in subsection (a) of this section shall each

establish a budget for each fiscal year, which shall be reviewed and approved according to their respective internal procedures not less than 1 month prior to the commencement of the fiscal year to which the budget pertains (or at the beginning of the Board's first fiscal year, which may be a short fiscal year). The budget of the Board shall be subject to approval by the Commission. The budget for the first fiscal year of the Board shall be prepared and approved promptly following the appointment of the initial five Board members, to permit action by the Board of the organizational tasks contemplated by section 7211(d) of this title.

(c) Sources and uses of funds

(1) Recoverable budget expenses

The budget of the Board (reduced by any registration or annual fees received under section 7212(e) of this title for the year preceding the year for which the budget is being computed), and all of the budget of the standard setting body referred to in subsection (a) of this section, for each fiscal year of each of those 2 entities, shall be payable from annual accounting support fees, in accordance with subsections (d) and (e) of this section. Accounting support fees and other receipts of the Board and of such standard-setting body shall not be considered public monies of the United States.

(2) Funds generated from the collection of monetary penalties

Subject to the availability in advance in an appropriations Act, and notwithstanding subsection (j) of this section, all funds collected by the Board as a result of the assessment of monetary penalties shall be used to fund a merit scholarship program for undergraduate and graduate students enrolled in accredited accounting degree programs, which program is to be administered by the Board or by an entity or agent identified by the Board.

(d) Annual accounting support fee for the Board

(1) Establishment of fee

The Board shall establish, with the approval of the Commission, a reasonable annual accounting support fee (or a formula for the computation thereof), as may be necessary or appropriate to establish and maintain the Board. Such fee may also cover costs incurred in the Board's first fiscal year (which may be a short fiscal year), or may be levied separately with respect to such short fiscal year.

(2) Assessments

The rules of the Board under paragraph (1) shall provide for the equitable allocation, assessment, and collection by the Board (or an agent appointed by the Board) of the fee established under paragraph (1), among issuers, in accordance with subsection (g) of this section, and among brokers and dealers, in accordance with subsection (h), and allowing for differentiation among classes of issuers, brokers and dealers, as appropriate.

(3) Brokers and dealers

The Board shall begin the allocation, assessment, and collection of fees under paragraph (2) with respect to brokers and dealers with the payment of support fees to fund the first full fiscal year beginning after July 21, 2010.

(e) Annual accounting support fee for standard setting body

The annual accounting support fee for the standard setting body referred to in subsection (a) of this section—

(1) shall be allocated in accordance with subsection (g) of this section, and assessed and collected against each issuer, on behalf of the standard setting body, by 1 or more appropriate designated collection agents, as may be necessary or appropriate to pay for the budget and provide for the expenses of that standard setting body, and to provide for an independent, stable source of funding for such body, subject to review by the Commission; and

(2) may differentiate among different classes of issuers.

(f) Limitation on fee

The amount of fees collected under this section for a fiscal year on behalf of the Board or the standards setting body, as the case may be, shall not exceed the recoverable budget expenses of the Board or body, respectively (which may include operating, capital, and accrued items), referred to in subsection (c)(1) of this section.

(g) Allocation of accounting support fees among issuers

Any amount due from issuers (or a particular class of issuers) under this section to fund the budget of the Board or the standard setting body referred to in subsection (a) of this section shall be allocated among and payable by each issuer (or each issuer in a particular class, as applicable) in an amount equal to the total of such amount, multiplied by a fraction—

(1) the numerator of which is the average monthly equity market capitalization of the issuer for the 12-month period immediately preceding the beginning of the fiscal year to which such budget relates; and

(2) the denominator of which is the average monthly equity market capitalization of all such issuers for such 12-month period.

(h) Allocation of accounting support fees among brokers and dealers

(1) Obligation to pay

Each broker or dealer shall pay to the Board the annual accounting support fee allocated to such broker or dealer under this section.

(2) Allocation

Any amount due from a broker or dealer (or from a particular class of brokers and dealers) under this section shall be allocated among brokers and dealers and payable by the broker or dealer (or the brokers and dealers in the particular class, as applicable).

(3) Proportionality

The amount due from a broker or dealer shall be in proportion to the net capital of the broker or dealer (before or after any adjustments), compared to the total net capital of all brokers and dealers (before or after any adjustments), in accordance with rules issued by the Board.

(i) Omitted

(j) Rule of construction

Nothing in this section shall be construed to render either the Board, the standard setting body referred to in subsection (a) of this section, or both, subject to procedures in Congress to authorize or appropriate public funds, or to prevent such organization from utilizing additional sources of revenue for its activities, such as earnings from publication sales, provided that each additional source of revenue shall not jeopardize, in the judgment of the Commission, the actual and perceived independence of such organization.

(k) Start-up expenses of the Board

From the unexpended balances of the appropriations to the Commission for fiscal year 2003, the Secretary of the Treasury is authorized to advance to the Board not to exceed the amount necessary to cover the expenses of the Board during its first fiscal year (which may be a short fiscal year).

(Pub. L. 107–204, title I, §109, July 30, 2002, 116 Stat. 769; Pub. L. 111–203, title IX, §982(h), July 21, 2010, 124 Stat. 1930.)

CODIFICATION

Section is comprised of section 109 of Pub. L. 107–204. Subsec. (i) of section 109 of Pub. L. 107–204 amended section 78m of this title.

AMENDMENTS

2010—Subsec. (c)(2). Pub. L. 111–203, §982(h)(1), substituted "subsection (j)" for "subsection (i)".

Subsec. (d)(2). Pub. L. 111–203, §982(h)(2)(A), substituted "and among brokers and dealers, in accordance

with subsection (h), and allowing for differentiation among classes of issuers, brokers and dealers, as appropriate" for "allowing for differentiation among classes of issuers, as appropriate".

Subsec. (d)(3). Pub. L. 111–203, §982(h)(2)(B), added par. (3).

Subsecs. (h) to (k). Pub. L. 111–203, §982(h)(3), (4), added subsec. (h) and redesignated former subsecs. (h) to (j) as (i) to (k), respectively.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

§7220. Definitions

For the purposes of this subchapter, the following definitions shall apply:

(1) Audit

The term "audit" means an examination of the financial statements, reports, documents, procedures, controls, or notices of any issuer, broker, or dealer by an independent public accounting firm in accordance with the rules of the Board or the Commission, for the purpose of expressing an opinion on the financial statements or providing an audit report.

(2) Audit report

The term "audit report" means a document, report, notice, or other record—

(A) prepared following an audit performed for purposes of compliance by an issuer, broker, or dealer with the requirements of the securities laws; and

(B) in which a public accounting firm either—

(i) sets forth the opinion of that firm regarding a financial statement, report, notice, or other document, procedures, or controls; or

(ii) asserts that no such opinion can be expressed.

(3) Broker

The term "broker" means a broker (as such term is defined in section 78c(a)(4) of this title) that is required to file a balance sheet, income statement, or other financial statement under section 78q(e)(1)(A) of this title, where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

(4) Dealer

The term "dealer" means a dealer (as such term is defined in section 78c(a)(5) of this title) that is required to file a balance sheet, income statement, or other financial statement under section 78q(e)(1)(A) of this title, where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

(5) Professional standards

The term "professional standards" means—

(A) accounting principles that are—

(i) established by the standard setting body described in section 77s(b) of this title, as amended by this Act, or prescribed by the Commission under section 77s(a) of this title or section 78m(b) of this title; and

(ii) relevant to audit reports for particular issuers, brokers, or dealers, or dealt with in the quality control system of a particular registered public accounting firm; and

(B) auditing standards, standards for attestation engagements, quality control policies and procedures, ethical and competency standards, and independence standards (including rules implementing title II) that the Board or the Commission determines—

(i) relate to the preparation or issuance of audit reports for issuers, brokers, or dealers; and

(ii) are established or adopted by the Board under section 7213(a) of this title, or are

promulgated as rules of the Commission.

(6) Self-regulatory organization

The term "self-regulatory organization" has the same meaning as in section 78c(a) of this title.

(Pub. L. 107–204, title I, §110, as added Pub. L. 111–203, title IX, §982(a)(1), July 21, 2010, 124 Stat. 1927.)

REFERENCES IN TEXT

Section 77s(b) of this title, as amended by this Act, referred to in par. (5)(A)(i), means section 77s(b) of this title, as amended by Pub. L. 107–204.

Title II, referred to in par. (5)(B), means title II of Pub. L. 107–204, July 30, 2002, 116 Stat. 771, which enacted subchapter II of this chapter and amended sections 78c, 78j–1, 78l and 78q of this title. For complete classification of title II to the Code, see Tables.

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of Title 12, Banks and Banking.

SUBCHAPTER II—AUDITOR INDEPENDENCE

§7231. Exemption authority

The Board may, on a case by case basis, exempt any person, issuer, public accounting firm, or transaction from the prohibition on the provision of services under section 78j–1(g) of this title, to the extent that such exemption is necessary or appropriate in the public interest and is consistent with the protection of investors, and subject to review by the Commission in the same manner as for rules of the Board under section 7217 of this title.

(Pub. L. 107–204, title II, §201(b), July 30, 2002, 116 Stat. 772.)

§7232. Study of mandatory rotation of registered public accounting firms

(a) Study and review required

The Comptroller General of the United States shall conduct a study and review of the potential effects of requiring the mandatory rotation of registered public accounting firms.

(b) Report required

Not later than 1 year after July 30, 2002, the Comptroller General shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the results of the study and review required by this section.

(c) Definition

For purposes of this section, the term "mandatory rotation" refers to the imposition of a limit on the period of years in which a particular registered public accounting firm may be the auditor of record for a particular issuer.

(Pub. L. 107–204, title II, §207, July 30, 2002, 116 Stat. 775.)

§7233. Commission authority

(a) Commission regulations

Not later than 180 days after July 30, 2002, the Commission shall issue final regulations to carry

out each of subsections (g) through (l) of section 78j–1 of this title.

(b) Auditor independence

It shall be unlawful for any registered public accounting firm (or an associated person thereof, as applicable) to prepare or issue any audit report with respect to any issuer, if the firm or associated person engages in any activity with respect to that issuer prohibited by any of subsections (g) through (l) of section 78j–1 of this title or any rule or regulation of the Commission or of the Board issued thereunder.

(Pub. L. 107–204, title II, §208, July 30, 2002, 116 Stat. 775.)

§7234. Considerations by appropriate State regulatory authorities

In supervising nonregistered public accounting firms and their associated persons, appropriate State regulatory authorities should make an independent determination of the proper standards applicable, particularly taking into consideration the size and nature of the business of the accounting firms they supervise and the size and nature of the business of the clients of those firms. The standards applied by the Board under this Act should not be presumed to be applicable for purposes of this section for small and medium sized nonregistered public accounting firms.

(Pub. L. 107–204, title II, §209, July 30, 2002, 116 Stat. 775.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 107–204, July 30, 2002, 116 Stat. 745, known as the Sarbanes-Oxley Act of 2002. For complete classification of this Act to the Code, see Tables.

SUBCHAPTER III—CORPORATE RESPONSIBILITY

§7241. Corporate responsibility for financial reports

(a) Regulations required

The Commission shall, by rule, require, for each company filing periodic reports under section 78m(a) or 78o(d) of this title, that the principal executive officer or officers and the principal financial officer or officers, or persons performing similar functions, certify in each annual or quarterly report filed or submitted under either such section of this title that—

(1) the signing officer has reviewed the report;

(2) based on the officer's knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading;

(3) based on such officer's knowledge, the financial statements, and other financial information included in the report, fairly present in all material respects the financial condition and results of operations of the issuer as of, and for, the periods presented in the report;

(4) the signing officers—

(A) are responsible for establishing and maintaining internal controls;

(B) have designed such internal controls to ensure that material information relating to the issuer and its consolidated subsidiaries is made known to such officers by others within those entities, particularly during the period in which the periodic reports are being prepared;

(C) have evaluated the effectiveness of the issuer's internal controls as of a date within 90 days prior to the report; and

(D) have presented in the report their conclusions about the effectiveness of their internal controls based on their evaluation as of that date;

(5) the signing officers have disclosed to the issuer's auditors and the audit committee of the board of directors (or persons fulfilling the equivalent function)—

(A) all significant deficiencies in the design or operation of internal controls which could adversely affect the issuer's ability to record, process, summarize, and report financial data and have identified for the issuer's auditors any material weaknesses in internal controls; and

(B) any fraud, whether or not material, that involves management or other employees who have a significant role in the issuer's internal controls; and

(6) the signing officers have indicated in the report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

(b) Foreign reincorporations have no effect

Nothing in this section shall be interpreted or applied in any way to allow any issuer to lessen the legal force of the statement required under this section, by an issuer having reincorporated or having engaged in any other transaction that resulted in the transfer of the corporate domicile or offices of the issuer from inside the United States to outside of the United States.

(c) Deadline

The rules required by subsection (a) of this section shall be effective not later than 30 days after July 30, 2002.

(Pub. L. 107–204, title III, §302, July 30, 2002, 116 Stat. 777.)

§7242. Improper influence on conduct of audits

(a) Rules to prohibit

It shall be unlawful, in contravention of such rules or regulations as the Commission shall prescribe as necessary and appropriate in the public interest or for the protection of investors, for any officer or director of an issuer, or any other person acting under the direction thereof, to take any action to fraudulently influence, coerce, manipulate, or mislead any independent public or certified accountant engaged in the performance of an audit of the financial statements of that issuer for the purpose of rendering such financial statements materially misleading.

(b) Enforcement

In any civil proceeding, the Commission shall have exclusive authority to enforce this section and any rule or regulation issued under this section.

(c) No preemption of other law

The provisions of subsection (a) of this section shall be in addition to, and shall not supersede or preempt, any other provision of law or any rule or regulation issued thereunder.

(d) Deadline for rulemaking

The Commission shall—

(1) propose the rules or regulations required by this section, not later than 90 days after July 30, 2002; and

(2) issue final rules or regulations required by this section, not later than 270 days after July 30, 2002.

(Pub. L. 107–204, title III, §303, July 30, 2002, 116 Stat. 778.)

§7243. Forfeiture of certain bonuses and profits

(a) Additional compensation prior to noncompliance with Commission financial reporting

requirements

If an issuer is required to prepare an accounting restatement due to the material noncompliance of the issuer, as a result of misconduct, with any financial reporting requirement under the securities laws, the chief executive officer and chief financial officer of the issuer shall reimburse the issuer for—

(1) any bonus or other incentive-based or equity-based compensation received by that person from the issuer during the 12-month period following the first public issuance or filing with the Commission (whichever first occurs) of the financial document embodying such financial reporting requirement; and

(2) any profits realized from the sale of securities of the issuer during that 12-month period.

(b) Commission exemption authority

The Commission may exempt any person from the application of subsection (a) of this section, as it deems necessary and appropriate.

(Pub. L. 107–204, title III, §304, July 30, 2002, 116 Stat. 778.)

§7244. Insider trades during pension fund blackout periods

(a) Prohibition of insider trading during pension fund blackout periods

(1) In general

Except to the extent otherwise provided by rule of the Commission pursuant to paragraph (3), it shall be unlawful for any director or executive officer of an issuer of any equity security (other than an exempted security), directly or indirectly, to purchase, sell, or otherwise acquire or transfer any equity security of the issuer (other than an exempted security) during any blackout period with respect to such equity security if such director or officer acquires such equity security in connection with his or her service or employment as a director or executive officer.

(2) Remedy

(A) In general

Any profit realized by a director or executive officer referred to in paragraph (1) from any purchase, sale, or other acquisition or transfer in violation of this subsection shall inure to and be recoverable by the issuer, irrespective of any intention on the part of such director or executive officer in entering into the transaction.

(B) Actions to recover profits

An action to recover profits in accordance with this subsection may be instituted at law or in equity in any court of competent jurisdiction by the issuer, or by the owner of any security of the issuer in the name and in behalf of the issuer if the issuer fails or refuses to bring such action within 60 days after the date of request, or fails diligently to prosecute the action thereafter, except that no such suit shall be brought more than 2 years after the date on which such profit was realized.

(3) Rulemaking authorized

The Commission shall, in consultation with the Secretary of Labor, issue rules to clarify the application of this subsection and to prevent evasion thereof. Such rules shall provide for the application of the requirements of paragraph (1) with respect to entities treated as a single employer with respect to an issuer under section 414(b), (c), (m), or (o) of title 26 to the extent necessary to clarify the application of such requirements and to prevent evasion thereof. Such rules may also provide for appropriate exceptions from the requirements of this subsection, including exceptions for purchases pursuant to an automatic dividend reinvestment program or purchases or sales made pursuant to an advance election.

(4) Blackout period

For purposes of this subsection, the term "blackout period", with respect to the equity securities of any issuer—

(A) means any period of more than 3 consecutive business days during which the ability of not fewer than 50 percent of the participants or beneficiaries under all individual account plans maintained by the issuer to purchase, sell, or otherwise acquire or transfer an interest in any equity of such issuer held in such an individual account plan is temporarily suspended by the issuer or by a fiduciary of the plan; and

(B) does not include, under regulations which shall be prescribed by the Commission—

(i) a regularly scheduled period in which the participants and beneficiaries may not purchase, sell, or otherwise acquire or transfer an interest in any equity of such issuer, if such period is—

(I) incorporated into the individual account plan; and

(II) timely disclosed to employees before becoming participants under the individual account plan or as a subsequent amendment to the plan; or

(ii) any suspension described in subparagraph (A) that is imposed solely in connection with persons becoming participants or beneficiaries, or ceasing to be participants or beneficiaries, in an individual account plan by reason of a corporate merger, acquisition, divestiture, or similar transaction involving the plan or plan sponsor.

(5) Individual account plan

For purposes of this subsection, the term "individual account plan" has the meaning provided in section 1002(34) of title 29, except that such term shall not include a one-participant retirement plan (within the meaning of section 1021(i)(8)(B) of title 29).

(6) Notice to directors, executive officers, and the Commission

In any case in which a director or executive officer is subject to the requirements of this subsection in connection with a blackout period (as defined in paragraph (4)) with respect to any equity securities, the issuer of such equity securities shall timely notify such director or officer and the Securities and Exchange Commission of such blackout period.

(b) Notice requirements to participants and beneficiaries under ERISA

(1) Omitted

(2) Issuance of initial guidance and model notice

The Secretary of Labor shall issue initial guidance and a model notice pursuant to section 1021(i)(6) of title 29 not later than January 1, 2003. Not later than 75 days after July 30, 2002, the Secretary shall promulgate interim final rules necessary to carry out the amendments made by this subsection.

(3) Plan amendments

If any amendment made by this subsection requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after the effective date of this section, if—

(A) during the period after such amendment made by this subsection takes effect and before such first plan year, the plan is operated in good faith compliance with the requirements of such amendment made by this subsection, and

(B) such plan amendment applies retroactively to the period after such amendment made by this subsection takes effect and before such first plan year.

(c) Effective date

The provisions of this section (including the amendments made thereby) shall take effect 180 days after July 30, 2002. Good faith compliance with the requirements of such provisions in advance of the issuance of applicable regulations thereunder shall be treated as compliance with such provisions.

(Pub. L. 107–204, title III, §306, July 30, 2002, 116 Stat. 779.)

REFERENCES IN TEXT

For amendments made by this subsection and this section, referred to in subsecs. (b) and (c), see Codification note below.

CODIFICATION

Section is comprised of section 306 of Pub. L. 107–204. Subsec. (b)(1) of section 306 of Pub. L. 107–204 amended section 1021 of Title 29, Labor, and another par. (3) of subsec. (b) amended section 1132 of Title 29.

§7245. Rules of professional responsibility for attorneys

Not later than 180 days after July 30, 2002, the Commission shall issue rules, in the public interest and for the protection of investors, setting forth minimum standards of professional conduct for attorneys appearing and practicing before the Commission in any way in the representation of issuers, including a rule—

(1) requiring an attorney to report evidence of a material violation of securities law or breach of fiduciary duty or similar violation by the company or any agent thereof, to the chief legal counsel or the chief executive officer of the company (or the equivalent thereof); and

(2) if the counsel or officer does not appropriately respond to the evidence (adopting, as necessary, appropriate remedial measures or sanctions with respect to the violation), requiring the attorney to report the evidence to the audit committee of the board of directors of the issuer or to another committee of the board of directors comprised solely of directors not employed directly or indirectly by the issuer, or to the board of directors.

(Pub. L. 107–204, title III, §307, July 30, 2002, 116 Stat. 784.)

§7246. Fair funds for investors

(a) Civil penalties to be used for the relief of victims

If, in any judicial or administrative action brought by the Commission under the securities laws, the Commission obtains a civil penalty against any person for a violation of such laws, or such person agrees, in settlement of any such action, to such civil penalty, the amount of such civil penalty shall, on the motion or at the direction of the Commission, be added to and become part of a disgorgement fund or other fund established for the benefit of the victims of such violation.

(b) Acceptance of additional donations

The Commission is authorized to accept, hold, administer, and utilize gifts, bequests and devises of property, both real and personal, to the United States for a disgorgement fund or other fund described in subsection (a) of this section. Such gifts, bequests, and devises of money and proceeds from sales of other property received as gifts, bequests, or devises shall be deposited in such fund and shall be available for allocation in accordance with subsection (a) of this section.

(c) Study required

(1) Subject of study

The Commission shall review and analyze—

(A) enforcement actions by the Commission over the five years preceding July 30, 2002, that have included proceedings to obtain civil penalties or disgorgements to identify areas where such proceedings may be utilized to efficiently, effectively, and fairly provide restitution for injured investors; and

(B) other methods to more efficiently, effectively, and fairly provide restitution to injured investors, including methods to improve the collection rates for civil penalties and disgorgements.

(2) Report required

The Commission shall report its findings to the Committee on Financial Services of the House

of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate within 180 days after of [1] July 30, 2002, and shall use such findings to revise its rules and regulations as necessary. The report shall include a discussion of regulatory or legislative actions that are recommended or that may be necessary to address concerns identified in the study.

(Pub. L. 107–204, title III, §308, July 30, 2002, 116 Stat. 784; Pub. L. 111–203, title IX, §929B, July 21, 2010, 124 Stat. 1852.)

CODIFICATION

Section is comprised of section 308 of Pub. L. 107–204. Subsec. (d) of section 308 of Pub. L. 107–204 amended sections 77t, 78u, 78u–1, 80a–41, and 80b–9 of this title.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, §929B(1), added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: "If in any judicial or administrative action brought by the Commission under the securities laws (as such term is defined in section 78c(a)(47) of this title) the Commission obtains an order requiring disgorgement against any person for a violation of such laws or the rules or regulations thereunder, or such person agrees in settlement of any such action to such disgorgement, and the Commission also obtains pursuant to such laws a civil penalty against such person, the amount of such civil penalty shall, on the motion or at the direction of the Commission, be added to and become part of the disgorgement fund for the benefit of the victims of such violation."

Subsec. (b). Pub. L. 111–203, §929B(2), substituted "for a disgorgement fund or other fund described in subsection (a)" for "for a disgorgement fund described in subsection (a)" and "in such fund" for "in the disgorgement fund".

Subsec. (e). Pub. L. 111–203, §929B(3), struck out subsec. (e). Text read as follows: "As used in this section, the term 'disgorgement fund' means a fund established in any administrative or judicial proceeding described in subsection (a) of this section."

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

[1] So in original. The word "of" probably should not appear.

SUBCHAPTER IV—ENHANCED FINANCIAL DISCLOSURES

§7261. Disclosures in periodic reports

(a) Omitted

(b) Commission rules on pro forma figures

Not later than 180 days after July 30, 2002, the Commission shall issue final rules providing that pro forma financial information included in any periodic or other report filed with the Commission pursuant to the securities laws, or in any public disclosure or press or other release, shall be presented in a manner that—

(1) does not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the pro forma financial information, in light of the circumstances under which it is presented, not misleading; and

(2) reconciles it with the financial condition and results of operations of the issuer under generally accepted accounting principles.

(c) Study and report on special purpose entities

(1) Study required

The Commission shall, not later than 1 year after the effective date of adoption of off-balance sheet disclosure rules required by section 78m(j) of this title, complete a study of filings by issuers and their disclosures to determine—

(A) the extent of off-balance sheet transactions, including assets, liabilities, leases, losses, and the use of special purpose entities; and

(B) whether generally accepted accounting rules result in financial statements of issuers reflecting the economics of such off-balance sheet transactions to investors in a transparent fashion.

(2) Report and recommendations

Not later than 6 months after the date of completion of the study required by paragraph (1), the Commission shall submit a report to the President, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives, setting forth—

(A) the amount or an estimate of the amount of off-balance sheet transactions, including assets, liabilities, leases, and losses of, and the use of special purpose entities by, issuers filing periodic reports pursuant to section 78m or 78o of this title;

(B) the extent to which special purpose entities are used to facilitate off-balance sheet transactions;

(C) whether generally accepted accounting principles or the rules of the Commission result in financial statements of issuers reflecting the economics of such transactions to investors in a transparent fashion;

(D) whether generally accepted accounting principles specifically result in the consolidation of special purpose entities sponsored by an issuer in cases in which the issuer has the majority of the risks and rewards of the special purpose entity; and

(E) any recommendations of the Commission for improving the transparency and quality of reporting off-balance sheet transactions in the financial statements and disclosures required to be filed by an issuer with the Commission.

(Pub. L. 107–204, title IV, §401, July 30, 2002, 116 Stat. 785.)

CODIFICATION

Section is comprised of section 401 of Pub. L. 107–204. Subsec. (a) of section 401 of Pub. L. 107–204 amended section 78m of this title.

§7262. Management assessment of internal controls

(a) Rules required

The Commission shall prescribe rules requiring each annual report required by section 78m(a) or 78o(d) of this title to contain an internal control report, which shall—

(1) state the responsibility of management for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and

(2) contain an assessment, as of the end of the most recent fiscal year of the issuer, of the effectiveness of the internal control structure and procedures of the issuer for financial reporting.

(b) Internal control evaluation and reporting

With respect to the internal control assessment required by subsection (a) of this section, each registered public accounting firm that prepares or issues the audit report for the issuer, other than an issuer that is an emerging growth company (as defined in section 78c of this title), shall attest to, and report on, the assessment made by the management of the issuer. An attestation made under this subsection shall be made in accordance with standards for attestation engagements issued or adopted by the Board. Any such attestation shall not be the subject of a separate engagement.

(c) Exemption for smaller issuers

Subsection (b) shall not apply with respect to any audit report prepared for an issuer that is neither

a "large accelerated filer" nor an "accelerated filer" as those terms are defined in Rule 12b–2 of the Commission (17 C.F.R. 240.12b–2).

(Pub. L. 107–204, title IV, §404, July 30, 2002, 116 Stat. 789; Pub. L. 111–203, title IX, §989G(a), July 21, 2010, 124 Stat. 1948; Pub. L. 112–106, title I, §103, Apr. 5, 2012, 126 Stat. 310.)

AMENDMENTS

2012—Subsec. (b). Pub. L. 112–106 inserted ", other than an issuer that is an emerging growth company (as defined in section 78c of this title)," before "shall attest to".

2010—Subsec. (c). Pub. L. 111–203 added subsec. (c).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

§7263. Exemption

Nothing in section 401, 402, or 404, the amendments made by those sections, or the rules of the Commission under those sections shall apply to any investment company registered under section 80a–8 of this title.

(Pub. L. 107–204, title IV, §405, July 30, 2002, 116 Stat. 789.)

REFERENCES IN TEXT

Sections 401, 402, and 404, referred to in text, mean sections 401, 402, and 404 of Pub. L. 107–204. Section 401 enacted section 7261 of this title and amended section 78m of this title. Section 402 amended section 78m of this title. Section 404 enacted section 7262 of this title.

§7264. Code of ethics for senior financial officers

(a) Code of ethics disclosure

The Commission shall issue rules to require each issuer, together with periodic reports required pursuant to section 78m(a) or 78o(d) of this title, to disclose whether or not, and if not, the reason therefor, such issuer has adopted a code of ethics for senior financial officers, applicable to its principal financial officer and comptroller or principal accounting officer, or persons performing similar functions.

(b) Changes in codes of ethics

The Commission shall revise its regulations concerning matters requiring prompt disclosure on Form 8–K (or any successor thereto) to require the immediate disclosure, by means of the filing of such form, dissemination by the Internet or by other electronic means, by any issuer of any change in or waiver of the code of ethics for senior financial officers.

(c) Definition

In this section, the term "code of ethics" means such standards as are reasonably necessary to promote—

(1) honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;

(2) full, fair, accurate, timely, and understandable disclosure in the periodic reports required to be filed by the issuer; and

(3) compliance with applicable governmental rules and regulations.

(d) Deadline for rulemaking

The Commission shall—

(1) propose rules to implement this section, not later than 90 days after July 30, 2002; and

(2) issue final rules to implement this section, not later than 180 days after July 30, 2002.

(Pub. L. 107–204, title IV, §406, July 30, 2002, 116 Stat. 789.)

§7265. Disclosure of audit committee financial expert

(a) Rules defining "financial expert"

The Commission shall issue rules, as necessary or appropriate in the public interest and consistent with the protection of investors, to require each issuer, together with periodic reports required pursuant to sections 78m(a) and 78o(d) of this title, to disclose whether or not, and if not, the reasons therefor, the audit committee of that issuer is comprised of at least 1 member who is a financial expert, as such term is defined by the Commission.

(b) Considerations

In defining the term "financial expert" for purposes of subsection (a) of this section, the Commission shall consider whether a person has, through education and experience as a public accountant or auditor or a principal financial officer, comptroller, or principal accounting officer of an issuer, or from a position involving the performance of similar functions—

(1) an understanding of generally accepted accounting principles and financial statements;

(2) experience in—

(A) the preparation or auditing of financial statements of generally comparable issuers; and

(B) the application of such principles in connection with the accounting for estimates, accruals, and reserves;

(3) experience with internal accounting controls; and

(4) an understanding of audit committee functions.

(c) Deadline for rulemaking

The Commission shall—

(1) propose rules to implement this section, not later than 90 days after July 30, 2002; and

(2) issue final rules to implement this section, not later than 180 days after July 30, 2002.

(Pub. L. 107–204, title IV, §407, July 30, 2002, 116 Stat. 790.)

§7266. Enhanced review of periodic disclosures by issuers

(a) Regular and systematic review

The Commission shall review disclosures made by issuers reporting under section 78m(a) of this title (including reports filed on Form 10–K), and which have a class of securities listed on a national securities exchange or traded on an automated quotation facility of a national securities association, on a regular and systematic basis for the protection of investors. Such review shall include a review of an issuer's financial statement.

(b) Review criteria

For purposes of scheduling the reviews required by subsection (a) of this section, the Commission shall consider, among other factors—

(1) issuers that have issued material restatements of financial results;

(2) issuers that experience significant volatility in their stock price as compared to other issuers;

(3) issuers with the largest market capitalization;

(4) emerging companies with disparities in price to earning ratios;

(5) issuers whose operations significantly affect any material sector of the economy; and

(6) any other factors that the Commission may consider relevant.

(c) Minimum review period

In no event shall an issuer required to file reports under section 78m(a) or 78o(d) of this title be reviewed under this section less frequently than once every 3 years.

(Pub. L. 107–204, title IV, §408, July 30, 2002, 116 Stat. 790.)

CHAPTER 99—NATIONAL CONSTRUCTION SAFETY TEAM

Sec.

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§7301. National Construction Safety Teams

(a) Establishment

The Director of the National Institute of Standards and Technology (in this chapter referred to as the "Director") is authorized to establish National Construction Safety Teams (in this chapter referred to as a "Team") for deployment after events causing the failure of a building or buildings that has resulted in substantial loss of life or that posed significant potential for substantial loss of life. To the maximum extent practicable, the Director shall establish and deploy a Team within 48 hours after such an event. The Director shall promptly publish in the Federal Register notice of the establishment of each Team.

(b) Purpose of investigation; duties

(1) Purpose

The purpose of investigations by Teams is to improve the safety and structural integrity of buildings in the United States.

(2) Duties

A Team shall—

(A) establish the likely technical cause or causes of the building failure;

(B) evaluate the technical aspects of evacuation and emergency response procedures;

(C) recommend, as necessary, specific improvements to building standards, codes, and practices based on the findings made pursuant to subparagraphs (A) and (B); and

(D) recommend any research and other appropriate actions needed to improve the structural safety of buildings, and improve evacuation and emergency response procedures, based on the findings of the investigation.

(c) Procedures

(1) Development

Not later than 3 months after October 1, 2002, the Director, in consultation with the United States Fire Administration and other appropriate Federal agencies, shall develop procedures for the establishment and deployment of Teams. The Director shall update such procedures as

appropriate. Such procedures shall include provisions—

(A) regarding conflicts of interest related to service on the Team;

(B) defining the circumstances under which the Director will establish and deploy a Team;

(C) prescribing the appropriate size of Teams;

(D) guiding the disclosure of information under section 7306 of this title;

(E) guiding the conduct of investigations under this chapter, including procedures for providing written notice of inspection authority under section 7303(a) of this title and for ensuring compliance with any other applicable law;

(F) identifying and prescribing appropriate conditions for the provision by the Director of additional resources and services Teams may need;

(G) to ensure that investigations under this chapter do not impede and are coordinated with any search and rescue efforts being undertaken at the site of the building failure;

(H) for regular briefings of the public on the status of the investigative proceedings and findings;

(I) guiding the Teams in moving and preserving evidence as described in section 7303(a)(4), (b)(2), and (d)(4) of this title;

(J) providing for coordination with Federal, State, and local entities that may sponsor research or investigations of building failures, including research conducted under the Earthquake Hazards Reduction Act of 1977 [42 U.S.C. 7701 et seq.]; and

(K) regarding such other issues as the Director considers appropriate.

(2) Publication

The Director shall publish promptly in the Federal Register final procedures, and subsequent updates thereof, developed under paragraph (1).

(Pub. L. 107–231, §2, Oct. 1, 2002, 116 Stat. 1471; Pub. L. 107–305, §15, Nov. 27, 2002, 116 Stat. 2381.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (c)(1)(E), (G), was in the original "this Act", meaning Pub. L. 107–231, Oct. 1, 2002, 116 Stat. 1471, known as the National Construction Safety Team Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note below and Tables.

The Earthquake Hazards Reduction Act of 1977, referred to in subsec. (c)(1)(J), is Pub. L. 95–124, Oct. 7, 1977, 91 Stat. 1098, as amended, which is classified generally to chapter 86 (§7701 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7701 of Title 42 and Tables.

AMENDMENTS

2002—Subsec. (c)(1)(D). Pub. L. 107–305, which directed the substitution of "section 7306 of this title;" for "section 7307 of this title;" in subsec. (c)(1)(d), was executed to subsec. (c)(1)(D), to reflect the probable intent of Congress.

SHORT TITLE

Pub. L. 107–231, §1, Oct. 1, 2002, 116 Stat. 1471, provided that: "This Act [enacting this chapter and amending section 281a of this title] may be cited as the 'National Construction Safety Team Act'."

§7302. Composition of Teams

Each Team shall be composed of individuals selected by the Director and led by an individual designated by the Director. Team members shall include at least 1 employee of the National Institute of Standards and Technology and shall include other experts who are not employees of the National Institute of Standards and Technology, who may include private sector experts, university experts, representatives of professional organizations with appropriate expertise, and appropriate Federal, State, or local officials. Team members who are not Federal employees shall be considered Federal Government contractors.

(Pub. L. 107–231, §3, Oct. 1, 2002, 116 Stat. 1472.)

§7303. Authorities

(a) Entry and inspection

In investigating a building failure under this chapter, members of a Team, and any other person authorized by the Director to support a Team, on display of appropriate credentials provided by the Director and written notice of inspection authority, may—

(1) enter property where a building failure being investigated has occurred, or where building components, materials, and artifacts with respect to the building failure are located, and take action necessary, appropriate, and reasonable in light of the nature of the property to be inspected to carry out the duties of the Team under section 7301(b)(2)(A) and (B) of this title;

(2) during reasonable hours, inspect any record (including any design, construction, or maintenance record), process, or facility related to the investigation;

(3) inspect and test any building components, materials, and artifacts related to the building failure; and

(4) move such records, components, materials, and artifacts as provided by the procedures developed under section 7301(c)(1) of this title.

(b) Avoiding unnecessary interference and preserving evidence

An inspection, test, or other action taken by a Team under this section shall be conducted in a way that—

(1) does not interfere unnecessarily with services provided by the owner or operator of the building components, materials, or artifacts, property, records, process, or facility; and

(2) to the maximum extent feasible, preserves evidence related to the building failure, consistent with the ongoing needs of the investigation.

(c) Coordination

(1) With search and rescue efforts

A Team shall not impede, and shall coordinate its investigation with, any search and rescue efforts being undertaken at the site of the building failure.

(2) With other research

A Team shall coordinate its investigation, to the extent practicable, with qualified researchers who are conducting engineering or scientific (including social science) research relating to the building failure.

(3) Memoranda of understanding

The National Institute of Standards and Technology shall enter into a memorandum of understanding with each Federal agency that may conduct or sponsor a related investigation, providing for coordination of investigations.

(4) With State and local authorities

A Team shall cooperate with State and local authorities carrying out any activities related to a Team's investigation.

(d) Interagency priorities

(1) In general

Except as provided in paragraph (2) or (3), a Team investigation shall have priority over any other investigation of any other Federal agency.

(2) National Transportation Safety Board

If the National Transportation Safety Board is conducting an investigation related to an investigation of a Team, the National Transportation Safety Board investigation shall have priority

over the Team investigation. Such priority shall not otherwise affect the authority of the Team to continue its investigation under this chapter.

(3) Criminal acts

If the Attorney General, in consultation with the Director, determines, and notifies the Director, that circumstances reasonably indicate that the building failure being investigated by a Team may have been caused by a criminal act, the Team shall relinquish investigative priority to the appropriate law enforcement agency. The relinquishment of investigative priority by the Team shall not otherwise affect the authority of the Team to continue its investigation under this chapter.

(4) Preservation of evidence

If a Federal law enforcement agency suspects and notifies the Director that a building failure being investigated by a Team under this chapter may have been caused by a criminal act, the Team, in consultation with the Federal law enforcement agency, shall take necessary actions to ensure that evidence of the criminal act is preserved.

(Pub. L. 107–231, §4, Oct. 1, 2002, 116 Stat. 1472.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (d)(2) to (4), was in the original "this Act", meaning Pub. L. 107–231, Oct. 1, 2002, 116 Stat. 1471, known as the National Construction Safety Team Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7301 of this title and Tables.

§7304. Briefings, hearings, witnesses, and subpoenas

(a) General authority

The Director or his designee, on behalf of a Team, may conduct hearings, administer oaths, and require, by subpoena (pursuant to subsection (e) of this section) and otherwise, necessary witnesses and evidence as necessary to carry out this chapter.

(b) Briefings

The Director or his designee (who may be the leader or a member of a Team), on behalf of a Team, shall hold regular public briefings on the status of investigative proceedings and findings, including a final briefing after the report required by section 7307 of this title is issued.

(c) Public hearings

During the course of an investigation by a Team, the National Institute of Standards and Technology may, if the Director considers it to be in the public interest, hold a public hearing for the purposes of—

(1) gathering testimony from witnesses; and

(2) informing the public on the progress of the investigation.

(d) Production of witnesses

A witness or evidence in an investigation under this chapter may be summoned or required to be produced from any place in the United States. A witness summoned under this subsection is entitled to the same fee and mileage the witness would have been paid in a court of the United States.

(e) Issuance of subpoenas

A subpoena shall be issued only under the signature of the Director but may be served by any person designated by the Director.

(f) Failure to obey subpoena

If a person disobeys a subpoena issued by the Director under this chapter, the Attorney General, acting on behalf of the Director, may bring a civil action in a district court of the United States to enforce the subpoena. An action under this subsection may be brought in the judicial district in which the person against whom the action is brought resides, is found, or does business. The court

may punish a failure to obey an order of the court to comply with the subpoena as a contempt of court.

(Pub. L. 107–231, §5, Oct. 1, 2002, 116 Stat. 1474.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (d), and (f), was in the original "this Act", meaning Pub. L. 107–231, Oct. 1, 2002, 116 Stat. 1471, known as the National Construction Safety Team Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7301 of this title and Tables.

§7305. Additional powers

In order to support Teams in carrying out this chapter, the Director may—

(1) procure the temporary or intermittent services of experts or consultants under section 3109 of title 5;

(2) request the use, when appropriate, of available services, equipment, personnel, and facilities of a department, agency, or instrumentality of the United States Government on a reimbursable or other basis;

(3) confer with employees and request the use of services, records, and facilities of State and local governmental authorities;

(4) accept voluntary and uncompensated services;

(5) accept and use gifts of money and other property, to the extent provided in advance in appropriations Acts;

(6) make contracts with nonprofit entities to carry out studies related to purpose, functions, and authorities of the Teams; and

(7) provide nongovernmental members of the Team reasonable compensation for time spent carrying out activities under this chapter.

(Pub. L. 107–231, §6, Oct. 1, 2002, 116 Stat. 1474.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 107–231, Oct. 1, 2002, 116 Stat. 1471, known as the National Construction Safety Team Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7301 of this title and Tables.

§7306. Disclosure of information

(a) General rule

Except as otherwise provided in this section, a copy of a record, information, or investigation submitted or received by a Team shall be made available to the public on request and at reasonable cost.

(b) Exceptions

Subsection (a) of this section does not require the release of—

(1) information described by section 552(b) of title 5 or protected from disclosure by any other law of the United States; or

(2) information described in subsection (a) of this section by the National Institute of Standards and Technology or by a Team until the report required by section 7307 of this title is issued.

(c) Protection of voluntary submission of information

Notwithstanding any other provision of law, a Team, the National Institute of Standards and Technology, and any agency receiving information from a Team or the National Institute of Standards and Technology, shall not disclose voluntarily provided safety-related information if that

information is not directly related to the building failure being investigated and the Director finds that the disclosure of the information would inhibit the voluntary provision of that type of information.

(d) Public safety information

A Team and the National Institute of Standards and Technology shall not publicly release any information it receives in the course of an investigation under this chapter if the Director finds that the disclosure of that information might jeopardize public safety.

(Pub. L. 107–231, §7, Oct. 1, 2002, 116 Stat. 1475.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (d), was in the original "this Act", meaning Pub. L. 107–231, Oct. 1, 2002, 116 Stat. 1471, known as the National Construction Safety Team Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7301 of this title and Tables.

§7307. National Construction Safety Team report

Not later than 90 days after completing an investigation, a Team shall issue a public report which includes—

(1) an analysis of the likely technical cause or causes of the building failure investigated;

(2) any technical recommendations for changes to or the establishment of evacuation and emergency response procedures;

(3) any recommended specific improvements to building standards, codes, and practices; and

(4) recommendations for research and other appropriate actions needed to help prevent future building failures.

(Pub. L. 107–231, §8, Oct. 1, 2002, 116 Stat. 1475.)

§7308. National Institute of Standards and Technology actions

After the issuance of a public report under section 7307 of this title, the National Institute of Standards and Technology shall comprehensively review the report and, working with the United States Fire Administration and other appropriate Federal and non-Federal agencies and organizations—

(1) conduct, or enable or encourage the conducting of, appropriate research recommended by the Team; and

(2) promote (consistent with existing procedures for the establishment of building standards, codes, and practices) the appropriate adoption by the Federal Government, and encourage the appropriate adoption by other agencies and organizations, of the recommendations of the Team with respect to—

(A) technical aspects of evacuation and emergency response procedures;

(B) specific improvements to building standards, codes, and practices; and

(C) other actions needed to help prevent future building failures.

(Pub. L. 107–231, §9, Oct. 1, 2002, 116 Stat. 1475.)

§7309. National Institute of Standards and Technology annual report

Not later than February 15 of each year, the Director shall transmit to the Committee on Science of the House of Representatives and to the Committee on Commerce, Science, and Transportation of the Senate a report that includes—

(1) a summary of the investigations conducted by Teams during the prior fiscal year;

(2) a summary of recommendations made by the Teams in reports issued under section 7307 of

this title during the prior fiscal year and a description of the extent to which those recommendations have been implemented; and

(3) a description of the actions taken to improve building safety and structural integrity by the National Institute of Standards and Technology during the prior fiscal year in response to reports issued under section 7307 of this title.

(Pub. L. 107–231, §10, Oct. 1, 2002, 116 Stat. 1476.)

CHANGE OF NAME

Committee on Science of House of Representatives changed to Committee on Science and Technology of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

§7310. Advisory committee

(a) Establishment and functions

The Director, in consultation with the United States Fire Administration and other appropriate Federal agencies, shall establish an advisory committee to advise the Director on carrying out this chapter and to review the procedures developed under section 7301(c)(1) of this title and the reports issued under section 7307 of this title.

(b) Annual report

On January 1 of each year, the advisory committee shall transmit to the Committee on Science of the House of Representatives and to the Committee on Commerce, Science, and Transportation of the Senate a report that includes—

(1) an evaluation of Team activities, along with recommendations to improve the operation and effectiveness of Teams; and

(2) an assessment of the implementation of the recommendations of Teams and of the advisory committee.

(c) Duration of advisory committee

Section 14 of the Federal Advisory Committee Act shall not apply to the advisory committee established under this section.

(Pub. L. 107–231, §11, Oct. 1, 2002, 116 Stat. 1476.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 107–231, Oct. 1, 2002, 116 Stat. 1471, known as the National Construction Safety Team Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7301 of this title and Tables.

Section 14 of the Federal Advisory Committee Act, referred to in subsec. (c), is section 14 of Pub. L. 92–463, which is set out in the Appendix to Title 5, Government Organization and Employees.

CHANGE OF NAME

Committee on Science of House of Representatives changed to Committee on Science and Technology of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

§7311. Additional applicability

The authorities and restrictions applicable under this chapter to the Director and to Teams shall

apply to the activities of the National Institute of Standards and Technology in response to the attacks of September 11, 2001.

(Pub. L. 107–231, §12, Oct. 1, 2002, 116 Stat. 1476.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 107–231, Oct. 1, 2002, 116 Stat. 1471, known as the National Construction Safety Team Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7301 of this title and Tables.

§7312. Construction

Nothing in this chapter shall be construed to confer any authority on the National Institute of Standards and Technology to require the adoption of building standards, codes, or practices.

(Pub. L. 107–231, §14, Oct. 1, 2002, 116 Stat. 1477.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 107–231, Oct. 1, 2002, 116 Stat. 1471, known as the National Construction Safety Team Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7301 of this title and Tables.

§7313. Authorization of appropriations

The National Institute of Standards and Technology is authorized to use funds otherwise authorized by law to carry out this chapter.

(Pub. L. 107–231, §15, Oct. 1, 2002, 116 Stat. 1477.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 107–231, Oct. 1, 2002, 116 Stat. 1471, known as the National Construction Safety Team Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7301 of this title and Tables.

CHAPTER 100—CYBER SECURITY RESEARCH AND DEVELOPMENT

Sec.

7401. Findings.
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7403. National Science Foundation research.
7404. National Science Foundation computer and network security programs.
7405. Consultation.
7406. National Institute of Standards and Technology programs.
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7408. National Academy of Sciences study on computer and network security in critical infrastructures.
7409. Coordination of Federal cyber security research and development.
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§7401. Findings

The Congress finds the following:

(1) Revolutionary advancements in computing and communications technology have interconnected government, commercial, scientific, and educational infrastructures—including critical infrastructures for electric power, natural gas and petroleum production and distribution, telecommunications, transportation, water supply, banking and finance, and emergency and government services—in a vast, interdependent physical and electronic network.

(2) Exponential increases in interconnectivity have facilitated enhanced communications, economic growth, and the delivery of services critical to the public welfare, but have also increased the consequences of temporary or prolonged failure.

(3) A Department of Defense Joint Task Force concluded after a 1997 United States information warfare exercise that the results "clearly demonstrated our lack of preparation for a coordinated cyber and physical attack on our critical military and civilian infrastructure".

(4) Computer security technology and systems implementation lack—

(A) sufficient long term research funding;

(B) adequate coordination across Federal and State government agencies and among government, academia, and industry; and

(C) sufficient numbers of outstanding researchers in the field.

(5) Accordingly, Federal investment in computer and network security research and development must be significantly increased to—

(A) improve vulnerability assessment and technological and systems solutions;

(B) expand and improve the pool of information security professionals, including researchers, in the United States workforce; and

(C) better coordinate information sharing and collaboration among industry, government, and academic research projects.

(6) While African-Americans, Hispanics, and Native Americans constitute 25 percent of the total United States workforce and 30 percent of the college-age population, members of these minorities comprise less than 7 percent of the United States computer and information science workforce.

(Pub. L. 107–305, §2, Nov. 27, 2002, 116 Stat. 2367.)

SHORT TITLE

Pub. L. 107–305, §1, Nov. 27, 2002, 116 Stat. 2367, provided that: "This Act [enacting this chapter and section 278h of this title, amending sections 278g–3, 1511e, and 7301 of this title and section 1862 of Title 42, The Public Health and Welfare, and redesignating section 278h of this title as 278q of this title] may be cited as the 'Cyber Security Research and Development Act'."

§7402. Definitions

In this chapter:

(1) Director

The term "Director" means the Director of the National Science Foundation.

(2) Institution of higher education

The term "institution of higher education" has the meaning given that term in section 1001(a) of title 20.

(Pub. L. 107–305, §3, Nov. 27, 2002, 116 Stat. 2368.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 107–305, Nov. 27, 2002, 116 Stat. 2367, known as the Cyber Security Research and Development Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section

7401 of this title and Tables.

§7403. National Science Foundation research

(a) Computer and network security research grants

(1) In general

The Director shall award grants for basic research on innovative approaches to the structure of computer and network hardware and software that are aimed at enhancing computer security. Research areas may include—

(A) authentication, cryptography, and other secure data communications technology;

(B) computer forensics and intrusion detection;

(C) reliability of computer and network applications, middleware, operating systems, control systems, and communications infrastructure;

(D) privacy and confidentiality;

(E) network security architecture, including tools for security administration and analysis;

(F) emerging threats;

(G) vulnerability assessments and techniques for quantifying risk;

(H) remote access and wireless security; and

(I) enhancement of law enforcement ability to detect, investigate, and prosecute cyber-crimes, including those that involve piracy of intellectual property.

(2) Merit review; competition

Grants shall be awarded under this section on a merit-reviewed competitive basis.

(3) Authorization of appropriations

There are authorized to be appropriated to the National Science Foundation to carry out this subsection—

(A) $35,000,000 for fiscal year 2003;

(B) $40,000,000 for fiscal year 2004;

(C) $46,000,000 for fiscal year 2005;

(D) $52,000,000 for fiscal year 2006; and

(E) $60,000,000 for fiscal year 2007.

(b) Computer and network security research centers

(1) In general

The Director shall award multiyear grants, subject to the availability of appropriations, to institutions of higher education, nonprofit research institutions, or consortia thereof to establish multidisciplinary Centers for Computer and Network Security Research. Institutions of higher education, nonprofit research institutions, or consortia thereof receiving such grants may partner with 1 or more government laboratories or for-profit institutions, or other institutions of higher education or nonprofit research institutions.

(2) Merit review; competition

Grants shall be awarded under this subsection on a merit-reviewed competitive basis.

(3) Purpose

The purpose of the Centers shall be to generate innovative approaches to computer and network security by conducting cutting-edge, multidisciplinary research in computer and network security, including the research areas described in subsection (a)(1) of this section.

(4) Applications

An institution of higher education, nonprofit research institution, or consortia thereof seeking funding under this subsection shall submit an application to the Director at such time, in such manner, and containing such information as the Director may require. The application shall

include, at a minimum, a description of—

(A) the research projects that will be undertaken by the Center and the contributions of each of the participating entities;

(B) how the Center will promote active collaboration among scientists and engineers from different disciplines, such as computer scientists, engineers, mathematicians, and social science researchers;

(C) how the Center will contribute to increasing the number and quality of computer and network security researchers and other professionals, including individuals from groups historically underrepresented in these fields; and

(D) how the center [1] will disseminate research results quickly and widely to improve cyber security in information technology networks, products, and services.

(5) Criteria

In evaluating the applications submitted under paragraph (4), the Director shall consider, at a minimum—

(A) the ability of the applicant to generate innovative approaches to computer and network security and effectively carry out the research program;

(B) the experience of the applicant in conducting research on computer and network security and the capacity of the applicant to foster new multidisciplinary collaborations;

(C) the capacity of the applicant to attract and provide adequate support for a diverse group of undergraduate and graduate students and postdoctoral fellows to pursue computer and network security research; and

(D) the extent to which the applicant will partner with government laboratories, for-profit entities, other institutions of higher education, or nonprofit research institutions, and the role the partners will play in the research undertaken by the Center.

(6) Annual meeting

The Director shall convene an annual meeting of the Centers in order to foster collaboration and communication between Center participants.

(7) Authorization of appropriations

There are authorized to be appropriated for the National Science Foundation to carry out this subsection—

(A) $12,000,000 for fiscal year 2003;

(B) $24,000,000 for fiscal year 2004;

(C) $36,000,000 for fiscal year 2005;

(D) $36,000,000 for fiscal year 2006; and

(E) $36,000,000 for fiscal year 2007.

(Pub. L. 107–305, §4, Nov. 27, 2002, 116 Stat. 2368.)

[1] *So in original. Probably should be capitalized.*

§7404. National Science Foundation computer and network security programs

(a) Computer and network security capacity building grants

(1) In general

The Director shall establish a program to award grants to institutions of higher education (or consortia thereof) to establish or improve undergraduate and master's degree programs in computer and network security, to increase the number of students, including the number of students from groups historically underrepresented in these fields, who pursue undergraduate or master's degrees in fields related to computer and network security, and to provide students with experience in government or industry related to their computer and network security studies.

(2) Merit review

Grants shall be awarded under this subsection on a merit-reviewed competitive basis.

(3) Use of funds

Grants awarded under this subsection shall be used for activities that enhance the ability of an institution of higher education (or consortium thereof) to provide high-quality undergraduate and master's degree programs in computer and network security and to recruit and retain increased numbers of students to such programs. Activities may include—

(A) revising curriculum to better prepare undergraduate and master's degree students for careers in computer and network security;

(B) establishing degree and certificate programs in computer and network security;

(C) creating opportunities for undergraduate students to participate in computer and network security research projects;

(D) acquiring equipment necessary for student instruction in computer and network security, including the installation of testbed networks for student use;

(E) providing opportunities for faculty to work with local or Federal Government agencies, private industry, nonprofit research institutions, or other academic institutions to develop new expertise or to formulate new research directions in computer and network security;

(F) establishing collaborations with other academic institutions or academic departments that seek to establish, expand, or enhance programs in computer and network security;

(G) establishing student internships in computer and network security at government agencies or in private industry;

(H) establishing collaborations with other academic institutions to establish or enhance a web-based collection of computer and network security courseware and laboratory exercises for sharing with other institutions of higher education, including community colleges;

(I) establishing or enhancing bridge programs in computer and network security between community colleges and universities; and

(J) any other activities the Director determines will accomplish the goals of this subsection.

(4) Selection process

(A) Application

An institution of higher education (or a consortium thereof) seeking funding under this subsection shall submit an application to the Director at such time, in such manner, and containing such information as the Director may require. The application shall include, at a minimum—

(i) a description of the applicant's computer and network security research and instructional capacity, and in the case of an application from a consortium of institutions of higher education, a description of the role that each member will play in implementing the proposal;

(ii) a comprehensive plan by which the institution or consortium will build instructional capacity in computer and information security;

(iii) a description of relevant collaborations with government agencies or private industry that inform the instructional program in computer and network security;

(iv) a survey of the applicant's historic student enrollment and placement data in fields related to computer and network security and a study of potential enrollment and placement for students enrolled in the proposed computer and network security program; and

(v) a plan to evaluate the success of the proposed computer and network security program, including post-graduation assessment of graduate school and job placement and retention rates as well as the relevance of the instructional program to graduate study and to the workplace.

(B) Awards

(i) The Director shall ensure, to the extent practicable, that grants are awarded under this subsection in a wide range of geographic areas and categories of institutions of higher education, including minority serving institutions.

(ii) The Director shall award grants under this subsection for a period not to exceed 5 years.

(5) Assessment required

The Director shall evaluate the program established under this subsection no later than 6 years after the establishment of the program. At a minimum, the Director shall evaluate the extent to which the program achieved its objectives of increasing the quality and quantity of students, including students from groups historically underrepresented in computer and network security related disciplines, pursuing undergraduate or master's degrees in computer and network security.

(6) Authorization of appropriations

There are authorized to be appropriated to the National Science Foundation to carry out this subsection—

(A) $15,000,000 for fiscal year 2003;
(B) $20,000,000 for fiscal year 2004;
(C) $20,000,000 for fiscal year 2005;
(D) $20,000,000 for fiscal year 2006; and
(E) $20,000,000 for fiscal year 2007.

(b) Scientific and Advanced Technology Act of 1992

(1) Grants

The Director shall provide grants under the Scientific and Advanced Technology Act of 1992 (42 U.S.C. 1862i) [42 U.S.C. 1862h et seq.] for the purposes of section 3(a) and (b) of that Act [42 U.S.C. 1862i(a), (b)], except that the activities supported pursuant to this subsection shall be limited to improving education in fields related to computer and network security.

(2) Authorization of appropriations

There are authorized to be appropriated to the National Science Foundation to carry out this subsection—

(A) $1,000,000 for fiscal year 2003;
(B) $1,250,000 for fiscal year 2004;
(C) $1,250,000 for fiscal year 2005;
(D) $1,250,000 for fiscal year 2006; and
(E) $1,250,000 for fiscal year 2007.

(c) Graduate traineeships in computer and network security research

(1) In general

The Director shall establish a program to award grants to institutions of higher education to establish traineeship programs for graduate students who pursue computer and network security research leading to a doctorate degree by providing funding and other assistance, and by providing graduate students with research experience in government or industry related to the students' computer and network security studies.

(2) Merit review

Grants shall be provided under this subsection on a merit-reviewed competitive basis.

(3) Use of funds

An institution of higher education shall use grant funds for the purposes of—

(A) providing traineeships to students who are citizens, nationals, or lawfully admitted permanent resident aliens of the United States and are pursuing research in computer or network security leading to a doctorate degree;

(B) paying tuition and fees for students receiving traineeships under subparagraph (A);

(C) establishing scientific internship programs for students receiving traineeships under subparagraph (A) in computer and network security at for-profit institutions, nonprofit research institutions, or government laboratories; and

(D) other costs associated with the administration of the program.

(4) Traineeship amount

Traineeships provided under paragraph (3)(A) shall be in the amount of $25,000 per year, or the level of the National Science Foundation Graduate Research Fellowships, whichever is greater, for up to 3 years.

(5) Selection process

An institution of higher education seeking funding under this subsection shall submit an application to the Director at such time, in such manner, and containing such information as the Director may require. The application shall include, at a minimum, a description of—

(A) the instructional program and research opportunities in computer and network security available to graduate students at the applicant's institution; and

(B) the internship program to be established, including the opportunities that will be made available to students for internships at for-profit institutions, nonprofit research institutions, and government laboratories.

(6) Review of applications

In evaluating the applications submitted under paragraph (5), the Director shall consider—

(A) the ability of the applicant to effectively carry out the proposed program;

(B) the quality of the applicant's existing research and education programs;

(C) the likelihood that the program will recruit increased numbers of students, including students from groups historically underrepresented in computer and network security related disciplines, to pursue and earn doctorate degrees in computer and network security;

(D) the nature and quality of the internship program established through collaborations with government laboratories, nonprofit research institutions, and for-profit institutions;

(E) the integration of internship opportunities into graduate students' research; and

(F) the relevance of the proposed program to current and future computer and network security needs.

(7) Authorization of appropriations

There are authorized to be appropriated to the National Science Foundation to carry out this subsection—

(A) $10,000,000 for fiscal year 2003;

(B) $20,000,000 for fiscal year 2004;

(C) $20,000,000 for fiscal year 2005;

(D) $20,000,000 for fiscal year 2006; and

(E) $20,000,000 for fiscal year 2007.

(d) Graduate Research Fellowships program support

Computer and network security shall be included among the fields of specialization supported by the National Science Foundation's Graduate Research Fellowships program under section 1869 of title 42.

(e) Cyber security faculty development traineeship program

(1) In general

The Director shall establish a program to award grants to institutions of higher education to establish traineeship programs to enable graduate students to pursue academic careers in cyber security upon completion of doctoral degrees.

(2) Merit review; competition

Grants shall be awarded under this section on a merit-reviewed competitive basis.

(3) Application

Each institution of higher education desiring to receive a grant under this subsection shall submit an application to the Director at such time, in such manner, and containing such information as the Director shall require.

(4) Use of funds

Funds received by an institution of higher education under this paragraph shall—

(A) be made available to individuals on a merit-reviewed competitive basis and in accordance with the requirements established in paragraph (7);

(B) be in an amount that is sufficient to cover annual tuition and fees for doctoral study at an institution of higher education for the duration of the graduate traineeship, and shall include, in addition, an annual living stipend of $25,000; and

(C) be provided to individuals for a duration of no more than 5 years, the specific duration of each graduate traineeship to be determined by the institution of higher education, on a case-by-case basis.

(5) Repayment

Each graduate traineeship shall—

(A) subject to paragraph (5)(B), be subject to full repayment upon completion of the doctoral degree according to a repayment schedule established and administered by the institution of higher education;

(B) be forgiven at the rate of 20 percent of the total amount of the graduate traineeship assistance received under this section for each academic year that a recipient is employed as a full-time faculty member at an institution of higher education for a period not to exceed 5 years; and

(C) be monitored by the institution of higher education receiving a grant under this subsection to ensure compliance with this subsection.

(6) Exceptions

The Director may provide for the partial or total waiver or suspension of any service obligation or payment by an individual under this section whenever compliance by the individual is impossible or would involve extreme hardship to the individual, or if enforcement of such obligation with respect to the individual would be unconscionable.

(7) Eligibility

To be eligible to receive a graduate traineeship under this section, an individual shall—

(A) be a citizen, national, or lawfully admitted permanent resident alien of the United States; and

(B) demonstrate a commitment to a career in higher education.

(8) Consideration

In making selections for graduate traineeships under this paragraph, an institution receiving a grant under this subsection shall consider, to the extent possible, a diverse pool of applicants whose interests are of an interdisciplinary nature, encompassing the social scientific as well as the technical dimensions of cyber security.

(9) Authorization of appropriations

There are authorized to be appropriated to the National Science Foundation to carry out this paragraph $5,000,000 for each of fiscal years 2003 through 2007.

(Pub. L. 107–305, §5, Nov. 27, 2002, 116 Stat. 2370.)

REFERENCES IN TEXT

The Scientific and Advanced Technology Act of 1992, referred to in subsec. (b)(1), is Pub. L. 102–476, Oct. 23, 1992, 106 Stat. 2297, as amended, which is classified generally to section 1862h et seq. of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1861 of Title 42 and Tables.

§7405. Consultation

In carrying out sections 7403 and 7404 of this title, the Director shall consult with other Federal

agencies.

(Pub. L. 107–305, §6, Nov. 27, 2002, 116 Stat. 2374.)

§7406. National Institute of Standards and Technology programs

(a), (b) Omitted

(c) Checklists for Government systems

(1) In general

The Director of the National Institute of Standards and Technology shall develop, and revise as necessary, a checklist setting forth settings and option selections that minimize the security risks associated with each computer hardware or software system that is, or is likely to become, widely used within the Federal Government.

(2) Priorities for development; excluded systems

The Director of the National Institute of Standards and Technology may establish priorities for the development of checklists under this paragraph on the basis of the security risks associated with the use of the system, the number of agencies that use a particular system, the usefulness of the checklist to Federal agencies that are users or potential users of the system, or such other factors as the Director determines to be appropriate. The Director of the National Institute of Standards and Technology may exclude from the application of paragraph (1) any computer hardware or software system for which the Director of the National Institute of Standards and Technology determines that the development of a checklist is inappropriate because of the infrequency of use of the system, the obsolescence of the system, or the inutility or impracticability of developing a checklist for the system.

(3) Dissemination of checklists

The Director of the National Institute of Standards and Technology shall make any checklist developed under this paragraph for any computer hardware or software system available to each Federal agency that is a user or potential user of the system.

(4) Agency use requirements

The development of a checklist under paragraph (1) for a computer hardware or software system does not—

(A) require any Federal agency to select the specific settings or options recommended by the checklist for the system;

(B) establish conditions or prerequisites for Federal agency procurement or deployment of any such system;

(C) represent an endorsement of any such system by the Director of the National Institute of Standards and Technology; nor

(D) preclude any Federal agency from procuring or deploying other computer hardware or software systems for which no such checklist has been developed.

(d) Federal agency information security programs

(1) In general

In developing the agencywide information security program required by section 3534(b) of title 44, an agency that deploys a computer hardware or software system for which the Director of the National Institute of Standards and Technology has developed a checklist under subsection (c) of this section—

(A) shall include in that program an explanation of how the agency has considered such checklist in deploying that system; and

(B) may treat the explanation as if it were a portion of the agency's annual performance plan properly classified under criteria established by an Executive Order (within the meaning of

section 1115(d) of title 31).

(2) Limitation

Paragraph (1) does not apply to any computer hardware or software system for which the National Institute of Standards and Technology does not have responsibility under section 278g–3(a)(3) of this title.

(Pub. L. 107–305, §8, Nov. 27, 2002, 116 Stat. 2375.)

CODIFICATION

Section is comprised of section 8 of Pub. L. 107–305. Subsec. (a) of section 8 of Pub. L. 107–305 enacted section 278h of this title and renumbered former section 278h of this title as section 278q of this title. Subsec. (b) of section 8 of Pub. L. 107–305 amended section 278g–3 of this title.

§7407. Authorization of appropriations

There are authorized to be appropriated to the Secretary of Commerce for the National Institute of Standards and Technology—

(1) for activities under section 278h of this title—
(A) $25,000,000 for fiscal year 2003;
(B) $40,000,000 for fiscal year 2004;
(C) $55,000,000 for fiscal year 2005;
(D) $70,000,000 for fiscal year 2006;
(E) $85,000,000 for fiscal year 2007; and

(2) for activities under section 278g–3(f) of this title—
(A) $6,000,000 for fiscal year 2003;
(B) $6,200,000 for fiscal year 2004;
(C) $6,400,000 for fiscal year 2005;
(D) $6,600,000 for fiscal year 2006; and
(E) $6,800,000 for fiscal year 2007.

(Pub. L. 107–305, §11, Nov. 27, 2002, 116 Stat. 2379.)

§7408. National Academy of Sciences study on computer and network security in critical infrastructures

(a) Study

Not later than 3 months after November 27, 2002, the Director of the National Institute of Standards and Technology shall enter into an arrangement with the National Research Council of the National Academy of Sciences to conduct a study of the vulnerabilities of the Nation's network infrastructure and make recommendations for appropriate improvements. The National Research Council shall—

(1) review existing studies and associated data on the architectural, hardware, and software vulnerabilities and interdependencies in United States critical infrastructure networks;

(2) identify and assess gaps in technical capability for robust critical infrastructure network security and make recommendations for research priorities and resource requirements; and

(3) review any and all other essential elements of computer and network security, including security of industrial process controls, to be determined in the conduct of the study.

(b) Report

The Director of the National Institute of Standards and Technology shall transmit a report containing the results of the study and recommendations required by subsection (a) of this section to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives

Committee on Science not later than 21 months after November 27, 2002.

(c) Security

The Director of the National Institute of Standards and Technology shall ensure that no information that is classified is included in any publicly released version of the report required by this section.

(d) Authorization of appropriations

There are authorized to be appropriated to the Secretary of Commerce for the National Institute of Standards and Technology for the purposes of carrying out this section, $700,000.

(Pub. L. 107–305, §12, Nov. 27, 2002, 116 Stat. 2380.)

CHANGE OF NAME

Committee on Science of House of Representatives changed to Committee on Science and Technology of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

§7409. Coordination of Federal cyber security research and development

The Director of the National Science Foundation and the Director of the National Institute of Standards and Technology shall coordinate the research programs authorized by this chapter or pursuant to amendments made by this chapter. The Director of the Office of Science and Technology Policy shall work with the Director of the National Science Foundation and the Director of the National Institute of Standards and Technology to ensure that programs authorized by this chapter or pursuant to amendments made by this chapter are taken into account in any government-wide cyber security research effort.

(Pub. L. 107–305, §13, Nov. 27, 2002, 116 Stat. 2380.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 107–305, Nov. 27, 2002, 116 Stat. 2367, known as the Cyber Security Research and Development Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title.

§7410. Grant eligibility requirements and compliance with immigration laws

(a) Immigration status

No grant or fellowship may be awarded under this chapter, directly or indirectly, to any individual who is in violation of the terms of his or her status as a nonimmigrant under section 1101(a)(15)(F), (M), or (J) of title 8.

(b) Aliens from certain countries

No grant or fellowship may be awarded under this chapter, directly or indirectly, to any alien from a country that is a state sponsor of international terrorism, as defined under section 1735(b) of title 8, unless the Secretary of State determines, in consultation with the Attorney General and the heads of other appropriate agencies, that such alien does not pose a threat to the safety or national security of the United States.

(c) Non-complying institutions

No grant or fellowship may be awarded under this chapter, directly or indirectly, to any institution of higher education or non-profit institution (or consortia thereof) that has—

(1) materially failed to comply with the recordkeeping and reporting requirements to receive

nonimmigrant students or exchange visitor program participants under section 1101(a)(15)(F), (M), or (J) of title 8, or section 1372 of title 8, as required by section 1762 of title 8; or

(2) been suspended or terminated pursuant to section 1762(c) of title 8.

(Pub. L. 107–305, §16, Nov. 27, 2002, 116 Stat. 2381.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 107–305, Nov. 27, 2002, 116 Stat. 2367, known as the Cyber Security Research and Development Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

§7411. Report on grant and fellowship programs

Within 24 months after November 27, 2002, the Director, in consultation with the Assistant to the President for National Security Affairs, shall submit to Congress a report reviewing this chapter to ensure that the programs and fellowships are being awarded under this chapter to individuals and institutions of higher education who are in compliance with the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) in order to protect our national security.

(Pub. L. 107–305, §17, Nov. 27, 2002, 116 Stat. 2381.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 107–305, Nov. 27, 2002, 116 Stat. 2367, known as the Cyber Security Research and Development Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Immigration and Nationality Act, referred to in text, is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to chapter 12 (§1101 et seq.) of Title 8, Aliens and Nationality. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

CHAPTER 101—NANOTECHNOLOGY RESEARCH AND DEVELOPMENT

Sec.

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§7501. National Nanotechnology Program

(a) National Nanotechnology Program

The President shall implement a National Nanotechnology Program. Through appropriate agencies, councils, and the National Nanotechnology Coordination Office established in section 7502 of this title, the Program shall—

(1) establish the goals, priorities, and metrics for evaluation for Federal nanotechnology research, development, and other activities;

(2) invest in Federal research and development programs in nanotechnology and related sciences to achieve those goals; and

(3) provide for interagency coordination of Federal nanotechnology research, development, and other activities undertaken pursuant to the Program.

(b) Program activities

The activities of the Program shall include—

(1) developing a fundamental understanding of matter that enables control and manipulation at the nanoscale;

(2) providing grants to individual investigators and interdisciplinary teams of investigators;

(3) establishing a network of advanced technology user facilities and centers;

(4) establishing, on a merit-reviewed and competitive basis, interdisciplinary nanotechnology research centers, which shall—

(A) interact and collaborate to foster the exchange of technical information and best practices;

(B) involve academic institutions or national laboratories and other partners, which may include States and industry;

(C) make use of existing expertise in nanotechnology in their regions and nationally;

(D) make use of ongoing research and development at the micrometer scale to support their work in nanotechnology; and

(E) to the greatest extent possible, be established in geographically diverse locations, encourage the participation of Historically Black Colleges and Universities that are part B institutions as defined in section 1061(2) of title 20 and minority institutions (as defined in section 1067k(3) of title 20), and include institutions located in States participating in the Experimental Program to Stimulate Competitive Research (EPSCoR);

(5) ensuring United States global leadership in the development and application of nanotechnology;

(6) advancing the United States productivity and industrial competitiveness through stable, consistent, and coordinated investments in long-term scientific and engineering research in nanotechnology;

(7) accelerating the deployment and application of nanotechnology research and development in the private sector, including startup companies;

(8) encouraging interdisciplinary research, and ensuring that processes for solicitation and evaluation of proposals under the Program encourage interdisciplinary projects and collaborations;

(9) providing effective education and training for researchers and professionals skilled in the interdisciplinary perspectives necessary for nanotechnology so that a true interdisciplinary research culture for nanoscale science, engineering, and technology can emerge;

(10) ensuring that ethical, legal, environmental, and other appropriate societal concerns, including the potential use of nanotechnology in enhancing human intelligence and in developing artificial intelligence which exceeds human capacity, are considered during the development of nanotechnology by—

(A) establishing a research program to identify ethical, legal, environmental, and other appropriate societal concerns related to nanotechnology, and ensuring that the results of such research are widely disseminated;

(B) requiring that interdisciplinary nanotechnology research centers established under paragraph (4) include activities that address societal, ethical, and environmental concerns;

(C) insofar as possible, integrating research on societal, ethical, and environmental concerns with nanotechnology research and development, and ensuring that advances in nanotechnology bring about improvements in quality of life for all Americans; and

(D) providing, through the National Nanotechnology Coordination Office established in section 7502 of this title, for public input and outreach to be integrated into the Program by the convening of regular and ongoing public discussions, through mechanisms such as citizens' panels, consensus conferences, and educational events, as appropriate; and

(11) encouraging research on nanotechnology advances that utilize existing processes and

technologies.

(c) Program management

The National Science and Technology Council shall oversee the planning, management, and coordination of the Program. The Council, itself or through an appropriate subgroup it designates or establishes, shall—

(1) establish goals and priorities for the Program, based on national needs for a set of broad applications of nanotechnology;

(2) establish program component areas, with specific priorities and technical goals, that reflect the goals and priorities established for the Program;

(3) oversee interagency coordination of the Program, including with the activities of the Defense Nanotechnology Research and Development Program established under section 246 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314) and the National Institutes of Health;

(4) develop, within 12 months after December 3, 2003, and update every 3 years thereafter, a strategic plan to guide the activities described under subsection (b), meet the goals, priorities, and anticipated outcomes of the participating agencies, and describe—

(A) how the Program will move results out of the laboratory and into application for the benefit of society;

(B) the Program's support for long-term funding for interdisciplinary research and development in nanotechnology; and

(C) the allocation of funding for interagency nanotechnology projects;

(5) propose a coordinated interagency budget for the Program to the Office of Management and Budget to ensure the maintenance of a balanced nanotechnology research portfolio and an appropriate level of research effort;

(6) exchange information with academic, industry, State and local government (including State and regional nanotechnology programs), and other appropriate groups conducting research on and using nanotechnology;

(7) develop a plan to utilize Federal programs, such as the Small Business Innovation Research Program and the Small Business Technology Transfer Research Program, in support of the activity stated in subsection (b)(7);

(8) identify research areas that are not being adequately addressed by the agencies' current research programs and address such research areas;

(9) encourage progress on Program activities through the utilization of existing manufacturing facilities and industrial infrastructures such as, but not limited to, the employment of underutilized manufacturing facilities in areas of high unemployment as production engineering and research testbeds; and

(10) in carrying out its responsibilities under paragraphs (1) through (9), take into consideration the recommendations of the Advisory Panel, suggestions or recommendations developed pursuant to subsection (b)(10)(D), and the views of academic, State, industry, and other appropriate groups conducting research on and using nanotechnology.

(d) Annual report

The Council shall prepare an annual report, to be submitted to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science, and other appropriate committees, at the time of the President's budget request to Congress, that includes—

(1) the Program budget, for the current fiscal year, for each agency that participates in the Program, including a breakout of spending for the development and acquisition of research facilities and instrumentation, for each program component area, and for all activities pursuant to subsection (b)(10);

(2) the proposed Program budget for the next fiscal year, for each agency that participates in the Program, including a breakout of spending for the development and acquisition of research

facilities and instrumentation, for each program component area, and for all activities pursuant to subsection (b)(10);

(3) an analysis of the progress made toward achieving the goals and priorities established for the Program;

(4) an analysis of the extent to which the Program has incorporated the recommendations of the Advisory Panel; and

(5) an assessment of how Federal agencies are implementing the plan described in subsection (c)(7), and a description of the amount of Small Business Innovative Research and Small Business Technology Transfer Research funds supporting the plan.

(Pub. L. 108–153, §2, Dec. 3, 2003, 117 Stat. 1923.)

REFERENCES IN TEXT

Section 246 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003, referred to in subsec. (c)(3), is section 246 of Pub. L. 107–314, which is set out as a note under section 2358 of Title 10, Armed Forces.

CHANGE OF NAME

Committee on Science of House of Representatives changed to Committee on Science and Technology of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

SHORT TITLE

Pub. L. 108–153, §1, Dec. 3, 2003, 117 Stat. 1923, provided that: "This Act [enacting this chapter] may be cited as the '21st Century Nanotechnology Research and Development Act'."

§7502. Program coordination

(a) In general

The President shall establish a National Nanotechnology Coordination Office, with a Director and full-time staff, which shall—

(1) provide technical and administrative support to the Council and the Advisory Panel;

(2) serve as the point of contact on Federal nanotechnology activities for government organizations, academia, industry, professional societies, State nanotechnology programs, interested citizen groups, and others to exchange technical and programmatic information;

(3) conduct public outreach, including dissemination of findings and recommendations of the Advisory Panel, as appropriate; and

(4) promote access to and early application of the technologies, innovations, and expertise derived from Program activities to agency missions and systems across the Federal Government, and to United States industry, including startup companies.

(b) Funding

The National Nanotechnology Coordination Office shall be funded through interagency funding in accordance with section 631 of Public Law 108–7.

(c) Report

Within 90 days after December 3, 2003, the Director of the Office of Science and Technology Policy shall report to the Senate Committee on Commerce, Science, and Transportation, and the House of Representatives Committee on Science on the funding of the National Nanotechnology Coordination Office. The report shall include—

(1) the amount of funding required to adequately fund the Office;

(2) the adequacy of existing mechanisms to fund this Office; and

(3) the actions taken by the Director to ensure stable funding of this Office.

(Pub. L. 108–153, §3, Dec. 3, 2003, 117 Stat. 1926.)

REFERENCES IN TEXT

Section 631 of Public Law 108–7, referred to in subsec. (b), is section 631 of Pub. L. 108–7, div. J, title VI, Feb. 20, 2003, 117 Stat. 471, which is not classified to the Code.

CHANGE OF NAME

Committee on Science of House of Representatives changed to Committee on Science and Technology of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

§7503. Advisory Panel

(a) In general

The President shall establish or designate a National Nanotechnology Advisory Panel.

(b) Qualifications

The Advisory Panel established or designated by the President under subsection (a) shall consist primarily of members from academic institutions and industry. Members of the Advisory Panel shall be qualified to provide advice and information on nanotechnology research, development, demonstrations, education, technology transfer, commercial application, or societal and ethical concerns. In selecting or designating an Advisory Panel, the President may also seek and give consideration to recommendations from the Congress, industry, the scientific community (including the National Academy of Sciences, scientific professional societies, and academia), the defense community, State and local governments, regional nanotechnology programs, and other appropriate organizations.

(c) Duties

The Advisory Panel shall advise the President and the Council on matters relating to the Program, including assessing—

(1) trends and developments in nanotechnology science and engineering;

(2) progress made in implementing the Program;

(3) the need to revise the Program;

(4) the balance among the components of the Program, including funding levels for the program component areas;

(5) whether the program component areas, priorities, and technical goals developed by the Council are helping to maintain United States leadership in nanotechnology;

(6) the management, coordination, implementation, and activities of the Program; and

(7) whether societal, ethical, legal, environmental, and workforce concerns are adequately addressed by the Program.

(d) Reports

The Advisory Panel shall report, not less frequently than once every 2 fiscal years, to the President on its assessments under subsection (c) and its recommendations for ways to improve the Program. The first report under this subsection shall be submitted within 1 year after December 3, 2003. The Director of the Office of Science and Technology Policy shall transmit a copy of each report under this subsection to the Senate Committee on Commerce, Science, and Technology, the House of Representatives Committee on Science, and other appropriate committees of the Congress.

(e) Travel expenses of non-Federal members

Non-Federal members of the Advisory Panel, while attending meetings of the Advisory Panel or while otherwise serving at the request of the head of the Advisory Panel away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence,

as authorized by section 5703 of title 5 for individuals in the government serving without pay. Nothing in this subsection shall be construed to prohibit members of the Advisory Panel who are officers or employees of the United States from being allowed travel expenses, including per diem in lieu of subsistence, in accordance with existing law.

(f) Exemption from sunset

Section 14 of the Federal Advisory Committee Act shall not apply to the Advisory Panel.

(Pub. L. 108–153, §4, Dec. 3, 2003, 117 Stat. 1927.)

REFERENCES IN TEXT

Section 14 of the Federal Advisory Committee Act, referred to in subsec. (f), is section 14 of Pub. L. 92–463, which is set out in the Appendix to Title 5, Government Organization and Employees.

CHANGE OF NAME

Committee on Science of House of Representatives changed to Committee on Science and Technology of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

TRANSFER OF FUNCTIONS

President's Council of Advisors on Science and Technology to serve as the advisory panel identified in this section and to be known as the National Nanotechnology Advisory Panel when performing the functions of such advisory committee, see section 2(a)(iv) of Ex. Ord. No. 13539, set out as a note under section 6601 of Title 42, The Public Health and Welfare.

§7504. Triennial external review of the National Nanotechnology Program

(a) In general

The Director of the National Nanotechnology Coordination Office shall enter into an arrangement with the National Research Council of the National Academy of Sciences to conduct a triennial evaluation of the Program, including—

(1) an evaluation of the technical accomplishments of the Program, including a review of whether the Program has achieved the goals under the metrics established by the Council;

(2) a review of the Program's management and coordination across agencies and disciplines;

(3) a review of the funding levels at each agency for the Program's activities and the ability of each agency to achieve the Program's stated goals with that funding;

(4) an evaluation of the Program's success in transferring technology to the private sector;

(5) an evaluation of whether the Program has been successful in fostering interdisciplinary research and development;

(6) an evaluation of the extent to which the Program has adequately considered ethical, legal, environmental, and other appropriate societal concerns;

(7) recommendations for new or revised Program goals;

(8) recommendations for new research areas, partnerships, coordination and management mechanisms, or programs to be established to achieve the Program's stated goals;

(9) recommendations on policy, program, and budget changes with respect to nanotechnology research and development activities;

(10) recommendations for improved metrics to evaluate the success of the Program in accomplishing its stated goals;

(11) a review of the performance of the National Nanotechnology Coordination Office and its efforts to promote access to and early application of the technologies, innovations, and expertise derived from Program activities to agency missions and systems across the Federal Government and to United States industry;

(12) an analysis of the relative position of the United States compared to other nations with

respect to nanotechnology research and development, including the identification of any critical research areas where the United States should be the world leader to best achieve the goals of the Program; and

(13) an analysis of the current impact of nanotechnology on the United States economy and recommendations for increasing its future impact.

(b) Study on molecular self-assembly

As part of the first triennial review conducted in accordance with subsection (a), the National Research Council shall conduct a one-time study to determine the technical feasibility of molecular self-assembly for the manufacture of materials and devices at the molecular scale.

(c) Study on the responsible development of nanotechnology

As part of the first triennial review conducted in accordance with subsection (a), the National Research Council shall conduct a one-time study to assess the need for standards, guidelines, or strategies for ensuring the responsible development of nanotechnology, including, but not limited to—

(1) self-replicating nanoscale machines or devices;
(2) the release of such machines in natural environments;
(3) encryption;
(4) the development of defensive technologies;
(5) the use of nanotechnology in the enhancement of human intelligence; and
(6) the use of nanotechnology in developing artificial intelligence.

(d) Evaluation to be transmitted to Congress

The Director of the National Nanotechnology Coordination Office shall transmit the results of any evaluation for which it made arrangements under subsection (a) to the Advisory Panel, the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science upon receipt. The first such evaluation shall be transmitted no later than June 10, 2005, with subsequent evaluations transmitted to the Committees every 3 years thereafter.

(Pub. L. 108–153, §5, Dec. 3, 2003, 117 Stat. 1928.)

CHANGE OF NAME

Committee on Science of House of Representatives changed to Committee on Science and Technology of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

§7505. Authorization of appropriations

(a) National Science Foundation

There are authorized to be appropriated to the Director of the National Science Foundation to carry out the Director's responsibilities under this chapter—

(1) $385,000,000 for fiscal year 2005;
(2) $424,000,000 for fiscal year 2006;
(3) $449,000,000 for fiscal year 2007; and
(4) $476,000,000 for fiscal year 2008.

(b) Department of Energy

There are authorized to be appropriated to the Secretary of Energy to carry out the Secretary's responsibilities under this chapter—

(1) $317,000,000 for fiscal year 2005;
(2) $347,000,000 for fiscal year 2006;
(3) $380,000,000 for fiscal year 2007; and

(4) $415,000,000 for fiscal year 2008.

(c) National Aeronautics and Space Administration

There are authorized to be appropriated to the Administrator of the National Aeronautics and Space Administration to carry out the Administrator's responsibilities under this chapter—

(1) $34,100,000 for fiscal year 2005;
(2) $37,500,000 for fiscal year 2006;
(3) $40,000,000 for fiscal year 2007; and
(4) $42,300,000 for fiscal year 2008.

(d) National Institute of Standards and Technology

There are authorized to be appropriated to the Director of the National Institute of Standards and Technology to carry out the Director's responsibilities under this chapter—

(1) $68,200,000 for fiscal year 2005;
(2) $75,000,000 for fiscal year 2006;
(3) $80,000,000 for fiscal year 2007; and
(4) $84,000,000 for fiscal year 2008.

(e) Environmental Protection Agency

There are authorized to be appropriated to the Administrator of the Environmental Protection Agency to carry out the Administrator's responsibilities under this chapter—

(1) $5,500,000 for fiscal year 2005;
(2) $6,050,000 for fiscal year 2006;
(3) $6,413,000 for fiscal year 2007; and
(4) $6,800,000 for fiscal year 2008.

(Pub. L. 108–153, §6, Dec. 3, 2003, 117 Stat. 1929.)

§7506. Department of Commerce programs

(a) NIST programs

The Director of the National Institute of Standards and Technology shall—

(1) as part of the Program activities under section 7501(b)(7) of this title, establish a program to conduct basic research on issues related to the development and manufacture of nanotechnology, including metrology; reliability and quality assurance; processes control; and manufacturing best practices; and

(2) utilize the Manufacturing Extension Partnership program [1] to the extent possible to ensure that the research conducted under paragraph (1) reaches small- and medium-sized manufacturing companies.

(b) Clearinghouse

The Secretary of Commerce or his designee, in consultation with the National Nanotechnology Coordination Office and, to the extent possible, utilizing resources at the National Technical Information Service, shall establish a clearinghouse of information related to commercialization of nanotechnology research, including information relating to activities by regional, State, and local commercial nanotechnology initiatives; transition of research, technologies, and concepts from Federal nanotechnology research and development programs into commercial and military products; best practices by government, universities and private sector laboratories transitioning technology to commercial use; examples of ways to overcome barriers and challenges to technology deployment; and use of manufacturing infrastructure and workforce.

(Pub. L. 108–153, §7, Dec. 3, 2003, 117 Stat. 1930.)

CHANGE OF NAME

The Manufacturing Extension Partnership Program, referred to in subsec. (a), redesignated the Hollings Manufacturing Partnership Program by a provision of title II of div. B of Pub. L. 108–447, formerly set out as

a note under section 278k of this title.

[1] *See Change of Name note below.*

§7507. Department of Energy programs

(a) Research consortia

(1) Department of Energy program

The Secretary of Energy shall establish a program to support, on a merit-reviewed and competitive basis, consortia to conduct interdisciplinary nanotechnology research and development designed to integrate newly developed nanotechnology and microfluidic tools with systems biology and molecular imaging.

(2) Authorization of appropriations

Of the sums authorized for the Department of Energy under section 7505(b) of this title, $25,000,000 shall be used for each fiscal year 2005 through 2008 to carry out this section. Of these amounts, not less than $10,000,000 shall be provided to at least 1 consortium for each fiscal year.

(b) Research centers and major instrumentation

The Secretary of Energy shall carry out projects to develop, plan, construct, acquire, operate, or support special equipment, instrumentation, or facilities for investigators conducting research and development in nanotechnology.

(Pub. L. 108–153, §8, Dec. 3, 2003, 117 Stat. 1930.)

§7508. Additional centers

(a) American Nanotechnology Preparedness Center

The Program shall provide for the establishment, on a merit-reviewed and competitive basis, of an American Nanotechnology Preparedness Center which shall—

(1) conduct, coordinate, collect, and disseminate studies on the societal, ethical, environmental, educational, legal, and workforce implications of nanotechnology; and

(2) identify anticipated issues related to the responsible research, development, and application of nanotechnology, as well as provide recommendations for preventing or addressing such issues.

(b) Center for nanomaterials manufacturing

The Program shall provide for the establishment, on a merit reviewed and competitive basis, of a center to—

(1) encourage, conduct, coordinate, commission, collect, and disseminate research on new manufacturing technologies for materials, devices, and systems with new combinations of characteristics, such as, but not limited to, strength, toughness, density, conductivity, flame resistance, and membrane separation characteristics; and

(2) develop mechanisms to transfer such manufacturing technologies to United States industries.

(c) Reports

The Council, through the Director of the National Nanotechnology Coordination Office, shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science—

(1) within 6 months after December 3, 2003, a report identifying which agency shall be the lead agency and which other agencies, if any, will be responsible for establishing the Centers described in this section; and

(2) within 18 months after December 3, 2003, a report describing how the Centers described in this section have been established.

(Pub. L. 108–153, §9, Dec. 3, 2003, 117 Stat. 1930.)

CHANGE OF NAME

Committee on Science of House of Representatives changed to Committee on Science and Technology of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

§7509. Definitions

In this chapter:

(1) Advisory Panel

The term "Advisory Panel" means the President's National Nanotechnology Advisory Panel established or designated under section 7503 of this title.

(2) Nanotechnology

The term "nanotechnology" means the science and technology that will enable one to understand, measure, manipulate, and manufacture at the atomic, molecular, and supramolecular levels, aimed at creating materials, devices, and systems with fundamentally new molecular organization, properties, and functions.

(3) Program

The term "Program" means the National Nanotechnology Program established under section 7501 of this title.

(4) Council

The term "Council" means the National Science and Technology Council or an appropriate subgroup designated by the Council under section 7501(c) of this title.

(5) Advanced technology user facility

The term "advanced technology user facility" means a nanotechnology research and development facility supported, in whole or in part, by Federal funds that is open to all United States researchers on a competitive, merit-reviewed basis.

(6) Program component area

The term "program component area" means a major subject area established under section 7501(c)(2) of this title under which is [1] grouped related individual projects and activities carried out under the Program.

(Pub. L. 108–153, §10, Dec. 3, 2003, 117 Stat. 1931.)

[1] *So in original. Probably should be "are".*

CHAPTER 102—FAIRNESS TO CONTACT LENS CONSUMERS

Sec.

7601. Availability of contact lens prescriptions to patients.
7602. Immediate payment of fees in limited circumstances.
7603. Prescriber verification.
7604. Expiration of contact lens prescriptions.
7605. Content of advertisements and other representations.

7606. Prohibition of certain waivers.
7607. Rulemaking by Federal Trade Commission.
7608. Violations.
7609. Study and report.
7610. Definitions.

§7601. Availability of contact lens prescriptions to patients

(a) In general

When a prescriber completes a contact lens fitting, the prescriber—

(1) whether or not requested by the patient, shall provide to the patient a copy of the contact lens prescription; and

(2) shall, as directed by any person designated to act on behalf of the patient, provide or verify the contact lens prescription by electronic or other means.

(b) Limitations

A prescriber may not—

(1) require purchase of contact lenses from the prescriber or from another person as a condition of providing a copy of a prescription under subsection (a)(1) or (a)(2) or verification of a prescription under subsection (a)(2);

(2) require payment in addition to, or as part of, the fee for an eye examination, fitting, and evaluation as a condition of providing a copy of a prescription under subsection (a)(1) or (a)(2) or verification of a prescription under subsection (a)(2); or

(3) require the patient to sign a waiver or release as a condition of verifying or releasing a prescription.

(Pub. L. 108–164, §2, Dec. 6, 2003, 117 Stat. 2024.)

EFFECTIVE DATE

Pub. L. 108–164, §12, Dec. 6, 2003, 117 Stat. 2028, provided that: "This Act [enacting this chapter and provisions set out as a note below] shall take effect 60 days after the date of the enactment of this Act [Dec. 6, 2003]."

SHORT TITLE

Pub. L. 108–164, §1, Dec. 6, 2003, 117 Stat. 2024, provided that: "This Act [enacting this chapter and provisions set out as a note above] may be cited as the 'Fairness to Contact Lens Consumers Act'."

§7602. Immediate payment of fees in limited circumstances

A prescriber may require payment of fees for an eye examination, fitting, and evaluation before the release of a contact lens prescription, but only if the prescriber requires immediate payment in the case of an examination that reveals no requirement for ophthalmic goods. For purposes of the preceding sentence, presentation of proof of insurance coverage for that service shall be deemed to be a payment.

(Pub. L. 108–164, §3, Dec. 6, 2003, 117 Stat. 2024.)

§7603. Prescriber verification

(a) Prescription requirement

A seller may sell contact lenses only in accordance with a contact lens prescription for the patient that is—

(1) presented to the seller by the patient or prescriber directly or by facsimile; or

(2) verified by direct communication.

(b) Record requirement

A seller shall maintain a record of all direct communications referred to in subsection (a).

(c) Information

When seeking verification of a contact lens prescription, a seller shall provide the prescriber with the following information:

(1) Patient's full name and address.

(2) Contact lens power, manufacturer, base curve or appropriate designation, and diameter when appropriate.

(3) Quantity of lenses ordered.

(4) Date of patient request.

(5) Date and time of verification request.

(6) Name of contact person at seller's company, including facsimile and telephone number.

(d) Verification events

A prescription is verified under this chapter only if one of the following occurs:

(1) The prescriber confirms the prescription is accurate by direct communication with the seller.

(2) The prescriber informs the seller that the prescription is inaccurate and provides the accurate prescription.

(3) The prescriber fails to communicate with the seller within 8 business hours, or a similar time as defined by the Federal Trade Commission, after receiving from the seller the information described in subsection (c).

(e) Invalid prescription

If a prescriber informs a seller before the deadline under subsection (d)(3) that the contact lens prescription is inaccurate, expired, or otherwise invalid, the seller shall not fill the prescription. The prescriber shall specify the basis for the inaccuracy or invalidity of the prescription. If the prescription communicated by the seller to the prescriber is inaccurate, the prescriber shall correct it.

(f) No alteration

A seller may not alter a contact lens prescription. Notwithstanding the preceding sentence, if the same contact lens is manufactured by the same company and sold under multiple labels to individual providers, the seller may fill the prescription with a contact lens manufactured by that company under another label.

(g) Direct communication

As used in this section, the term "direct communication" includes communication by telephone, facsimile, or electronic mail.

(Pub. L. 108–164, §4, Dec. 6, 2003, 117 Stat. 2024.)

§7604. Expiration of contact lens prescriptions

(a) In general

A contact lens prescription shall expire—

(1) on the date specified by the law of the State in which the prescription was written, if that date is one year or more after the issue date of the prescription;

(2) not less than one year after the issue date of the prescription if such State law specifies no date or a date that is less than one year after the issue date of the prescription; or

(3) notwithstanding paragraphs (1) and (2), on the date specified by the prescriber, if that date is based on the medical judgment of the prescriber with respect to the ocular health of the patient.

(b) Special rules for prescriptions of less than 1 year

If a prescription expires in less than 1 year, the reasons for the judgment referred to in subsection (a)(3) shall be documented in the patient's medical record. In no circumstance shall the prescription

expiration date be less than the period of time recommended by the prescriber for a reexamination of the patient that is medically necessary.

(c) Definition

As used in this section, the term "issue date" means the date on which the patient receives a copy of the prescription.

(Pub. L. 108–164, §5, Dec. 6, 2003, 117 Stat. 2025.)

§7605. Content of advertisements and other representations

Any person that engages in the manufacture, processing, assembly, sale, offering for sale, or distribution of contact lenses may not represent, by advertisement, sales presentation, or otherwise, that contact lenses may be obtained without a prescription.

(Pub. L. 108–164, §6, Dec. 6, 2003, 117 Stat. 2026.)

§7606. Prohibition of certain waivers

A prescriber may not place on the prescription, or require the patient to sign, or deliver to the patient a form or notice waiving or disclaiming the liability or responsibility of the prescriber for the accuracy of the eye examination. The preceding sentence does not impose liability on a prescriber for the ophthalmic goods and services dispensed by another seller pursuant to the prescriber's correctly verified prescription.

(Pub. L. 108–164, §7, Dec. 6, 2003, 117 Stat. 2026.)

§7607. Rulemaking by Federal Trade Commission

The Federal Trade Commission shall prescribe rules pursuant to section 57a of this title to carry out this chapter. Rules so prescribed shall be exempt from the requirements of the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act (15 U.S.C. 2301 et seq.). Any such regulations shall be issued in accordance with section 553 of title 5. The first rules under this section shall take effect not later than 180 days after the effective date of this chapter.

(Pub. L. 108–164, §8, Dec. 6, 2003, 117 Stat. 2026.)

REFERENCES IN TEXT

The Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, referred to in text, is Pub. L. 93–637, Jan. 4, 1975, 88 Stat. 2183, as amended. Title I of the Act is classified generally to chapter 50 (§2301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of this title and Tables.

For effective date of this chapter, referred to in text, see section 12 of Pub. L. 108–164, set out as an Effective Date note under section 7601 of this title.

§7608. Violations

(a) In general

Any violation of this chapter or the rules required under section 7607 of this title shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices.

(b) Actions by the Commission

The Federal Trade Commission shall enforce this chapter in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of

the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this chapter.

(Pub. L. 108–164, §9, Dec. 6, 2003, 117 Stat. 2026.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (b), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

§7609. Study and report

(a) Study

The Federal Trade Commission shall undertake a study to examine the strength of competition in the sale of prescription contact lenses. The study shall include an examination of the following issues:

(1) Incidence of exclusive relationships between prescribers or sellers and contact lens manufacturers and the impact of such relationships on competition.

(2) Difference between online and offline sellers of contact lenses, including price, access, and availability.

(3) Incidence, if any, of contact lens prescriptions that specify brand name or custom labeled contact lenses, the reasons for the incidence, and the effect on consumers and competition.

(4) The impact of the Federal Trade Commission eyeglasses rule (16 CFR 456 et seq.) on competition, the nature of the enforcement of the rule, and how such enforcement has impacted competition.

(5) Any other issue that has an impact on competition in the sale of prescription contact lenses.

(b) Report

Not later than 12 months after the effective date of this chapter, the Chairman of the Federal Trade Commission shall submit to the Congress a report of the study required by subsection (a).

(Pub. L. 108–164, §10, Dec. 6, 2003, 117 Stat. 2026.)

REFERENCES IN TEXT

For effective date of this chapter, referred to in subsec. (b), see section 12 of Pub. L. 108–164, set out as an Effective Date note under section 7601 of this title.

§7610. Definitions

As used in this chapter:

(1) Contact lens fitting

The term "contact lens fitting" means the process that begins after the initial eye examination and ends when a successful fit has been achieved or, in the case of a renewal prescription, ends when the prescriber determines that no change in prescription is required, and such term may include—

(A) an examination to determine lens specifications;

(B) except in the case of a renewal of a prescription, an initial evaluation of the fit of the lens on the eye; and

(C) medically necessary follow up examinations.

(2) Prescriber

The term "prescriber" means, with respect to contact lens prescriptions, an ophthalmologist, optometrist, or other person permitted under State law to issue prescriptions for contact lenses in compliance with any applicable requirements established by the Food and Drug Administration.

(3) Contact lens prescription

The term "contact lens prescription" means a prescription, issued in accordance with State and Federal law, that contains sufficient information for the complete and accurate filling of a prescription, including the following:

(A) Name of the patient.
(B) Date of examination.
(C) Issue date and expiration date of prescription.
(D) Name, postal address, telephone number, and facsimile telephone number of prescriber.
(E) Power, material or manufacturer or both.
(F) Base curve or appropriate designation.
(G) Diameter, when appropriate.
(H) In the case of a private label contact lens, name of manufacturer, trade name of private label brand, and, if applicable, trade name of equivalent brand name.

(Pub. L. 108–164, §11, Dec. 6, 2003, 117 Stat. 2027.)

CHAPTER 103—CONTROLLING THE ASSAULT OF NON-SOLICITED PORNOGRAPHY AND MARKETING

Sec.

7701. Congressional findings and policy.
7702. Definitions.
7703. Prohibition against predatory and abusive commercial e-mail.
7704. Other protections for users of commercial electronic mail.
7705. Businesses knowingly promoted by electronic mail with false or misleading transmission information.
7706. Enforcement generally.
7707. Effect on other laws.
7708. Do-Not-E-Mail registry.
7709. Study of effects of commercial electronic mail.
7710. Improving enforcement by providing rewards for information about violations; labeling.
7711. Regulations.
7712. Application to wireless.
7713. Separability.

§7701. Congressional findings and policy

(a) Findings

The Congress finds the following:

(1) Electronic mail has become an extremely important and popular means of communication, relied on by millions of Americans on a daily basis for personal and commercial purposes. Its low cost and global reach make it extremely convenient and efficient, and offer unique opportunities for the development and growth of frictionless commerce.

(2) The convenience and efficiency of electronic mail are threatened by the extremely rapid growth in the volume of unsolicited commercial electronic mail. Unsolicited commercial electronic mail is currently estimated to account for over half of all electronic mail traffic, up from an estimated 7 percent in 2001, and the volume continues to rise. Most of these messages are fraudulent or deceptive in one or more respects.

(3) The receipt of unsolicited commercial electronic mail may result in costs to recipients who cannot refuse to accept such mail and who incur costs for the storage of such mail, or for the time spent accessing, reviewing, and discarding such mail, or for both.

(4) The receipt of a large number of unwanted messages also decreases the convenience of

electronic mail and creates a risk that wanted electronic mail messages, both commercial and noncommercial, will be lost, overlooked, or discarded amidst the larger volume of unwanted messages, thus reducing the reliability and usefulness of electronic mail to the recipient.

(5) Some commercial electronic mail contains material that many recipients may consider vulgar or pornographic in nature.

(6) The growth in unsolicited commercial electronic mail imposes significant monetary costs on providers of Internet access services, businesses, and educational and nonprofit institutions that carry and receive such mail, as there is a finite volume of mail that such providers, businesses, and institutions can handle without further investment in infrastructure.

(7) Many senders of unsolicited commercial electronic mail purposefully disguise the source of such mail.

(8) Many senders of unsolicited commercial electronic mail purposefully include misleading information in the messages' subject lines in order to induce the recipients to view the messages.

(9) While some senders of commercial electronic mail messages provide simple and reliable ways for recipients to reject (or "opt-out" of) receipt of commercial electronic mail from such senders in the future, other senders provide no such "opt-out" mechanism, or refuse to honor the requests of recipients not to receive electronic mail from such senders in the future, or both.

(10) Many senders of bulk unsolicited commercial electronic mail use computer programs to gather large numbers of electronic mail addresses on an automated basis from Internet websites or online services where users must post their addresses in order to make full use of the website or service.

(11) Many States have enacted legislation intended to regulate or reduce unsolicited commercial electronic mail, but these statutes impose different standards and requirements. As a result, they do not appear to have been successful in addressing the problems associated with unsolicited commercial electronic mail, in part because, since an electronic mail address does not specify a geographic location, it can be extremely difficult for law-abiding businesses to know with which of these disparate statutes they are required to comply.

(12) The problems associated with the rapid growth and abuse of unsolicited commercial electronic mail cannot be solved by Federal legislation alone. The development and adoption of technological approaches and the pursuit of cooperative efforts with other countries will be necessary as well.

(b) Congressional determination of public policy

On the basis of the findings in subsection (a), the Congress determines that—

(1) there is a substantial government interest in regulation of commercial electronic mail on a nationwide basis;

(2) senders of commercial electronic mail should not mislead recipients as to the source or content of such mail; and

(3) recipients of commercial electronic mail have a right to decline to receive additional commercial electronic mail from the same source.

(Pub. L. 108–187, §2, Dec. 16, 2003, 117 Stat. 2699.)

EFFECTIVE DATE

Pub. L. 108–187, §16, Dec. 16, 2003, 117 Stat. 2719, provided that: "The provisions of this Act [see Short Title note below], other than section 9 [enacting section 7708 of this title], shall take effect on January 1, 2004."

SHORT TITLE

Pub. L. 108–187, §1, Dec. 16, 2003, 117 Stat. 2699, provided that: "This Act [enacting this chapter and section 1037 of Title 18, Crimes and Criminal Procedure, amending section 227 of Title 47, Telecommunications, and enacting provisions listed in a table relating to sentencing guidelines set out as a note under section 994 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003', or the 'CAN-SPAM Act of 2003'."

§7702. Definitions

In this chapter:

(1) Affirmative consent

The term "affirmative consent", when used with respect to a commercial electronic mail message, means that—

(A) the recipient expressly consented to receive the message, either in response to a clear and conspicuous request for such consent or at the recipient's own initiative; and

(B) if the message is from a party other than the party to which the recipient communicated such consent, the recipient was given clear and conspicuous notice at the time the consent was communicated that the recipient's electronic mail address could be transferred to such other party for the purpose of initiating commercial electronic mail messages.

(2) Commercial electronic mail message

(A) In general

The term "commercial electronic mail message" means any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service (including content on an Internet website operated for a commercial purpose).

(B) Transactional or relationship messages

The term "commercial electronic mail message" does not include a transactional or relationship message.

(C) Regulations regarding primary purpose

Not later than 12 months after December 16, 2003, the Commission shall issue regulations pursuant to section 7711 of this title defining the relevant criteria to facilitate the determination of the primary purpose of an electronic mail message.

(D) Reference to company or website

The inclusion of a reference to a commercial entity or a link to the website of a commercial entity in an electronic mail message does not, by itself, cause such message to be treated as a commercial electronic mail message for purposes of this chapter if the contents or circumstances of the message indicate a primary purpose other than commercial advertisement or promotion of a commercial product or service.

(3) Commission

The term "Commission" means the Federal Trade Commission.

(4) Domain name

The term "domain name" means any alphanumeric designation which is registered with or assigned by any domain name registrar, domain name registry, or other domain name registration authority as part of an electronic address on the Internet.

(5) Electronic mail address

The term "electronic mail address" means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the "local part") and a reference to an Internet domain (commonly referred to as the "domain part"), whether or not displayed, to which an electronic mail message can be sent or delivered.

(6) Electronic mail message

The term "electronic mail message" means a message sent to a unique electronic mail address.

(7) FTC Act

The term "FTC Act" means the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(8) Header information

The term "header information" means the source, destination, and routing information attached to an electronic mail message, including the originating domain name and originating electronic mail address, and any other information that appears in the line identifying, or purporting to identify, a person initiating the message.

(9) Initiate

The term "initiate", when used with respect to a commercial electronic mail message, means to originate or transmit such message or to procure the origination or transmission of such message, but shall not include actions that constitute routine conveyance of such message. For purposes of this paragraph, more than one person may be considered to have initiated a message.

(10) Internet

The term "Internet" has the meaning given that term in the Internet Tax Freedom Act (47 U.S.C. 151 nt).

(11) Internet access service

The term "Internet access service" has the meaning given that term in section 231(e)(4) of title 47.

(12) Procure

The term "procure", when used with respect to the initiation of a commercial electronic mail message, means intentionally to pay or provide other consideration to, or induce, another person to initiate such a message on one's behalf.

(13) Protected computer

The term "protected computer" has the meaning given that term in section 1030(e)(2)(B) of title 18.

(14) Recipient

The term "recipient", when used with respect to a commercial electronic mail message, means an authorized user of the electronic mail address to which the message was sent or delivered. If a recipient of a commercial electronic mail message has one or more electronic mail addresses in addition to the address to which the message was sent or delivered, the recipient shall be treated as a separate recipient with respect to each such address. If an electronic mail address is reassigned to a new user, the new user shall not be treated as a recipient of any commercial electronic mail message sent or delivered to that address before it was reassigned.

(15) Routine conveyance

The term "routine conveyance" means the transmission, routing, relaying, handling, or storing, through an automatic technical process, of an electronic mail message for which another person has identified the recipients or provided the recipient addresses.

(16) Sender

(A) In general

Except as provided in subparagraph (B), the term "sender", when used with respect to a commercial electronic mail message, means a person who initiates such a message and whose product, service, or Internet web site is advertised or promoted by the message.

(B) Separate lines of business or divisions

If an entity operates through separate lines of business or divisions and holds itself out to the recipient throughout the message as that particular line of business or division rather than as the entity of which such line of business or division is a part, then the line of business or the division shall be treated as the sender of such message for purposes of this chapter.

(17) Transactional or relationship message

(A) In general

The term "transactional or relationship message" means an electronic mail message the primary purpose of which is—

(i) to facilitate, complete, or confirm a commercial transaction that the recipient has previously agreed to enter into with the sender;

(ii) to provide warranty information, product recall information, or safety or security information with respect to a commercial product or service used or purchased by the recipient;

(iii) to provide—

(I) notification concerning a change in the terms or features of;

(II) notification of a change in the recipient's standing or status with respect to; or

(III) at regular periodic intervals, account balance information or other type of account statement with respect to,

a subscription, membership, account, loan, or comparable ongoing commercial relationship involving the ongoing purchase or use by the recipient of products or services offered by the sender;

(iv) to provide information directly related to an employment relationship or related benefit plan in which the recipient is currently involved, participating, or enrolled; or

(v) to deliver goods or services, including product updates or upgrades, that the recipient is entitled to receive under the terms of a transaction that the recipient has previously agreed to enter into with the sender.

(B) Modification of definition

The Commission by regulation pursuant to section 7711 of this title may modify the definition in subparagraph (A) to expand or contract the categories of messages that are treated as transactional or relationship messages for purposes of this chapter to the extent that such modification is necessary to accommodate changes in electronic mail technology or practices and accomplish the purposes of this chapter.

(Pub. L. 108–187, §3, Dec. 16, 2003, 117 Stat. 2700.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 108–187, Dec. 16, 2003, 117 Stat. 2699, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7701 of this title and Tables.

The Federal Trade Commission Act, referred to in par. (7), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

The Internet Tax Freedom Act, referred to in par. (10), is title XI of Pub. L. 105–277, div. C, Oct. 21, 1998, 112 Stat. 2681–719, which is set out as a note under section 151 of Title 47, Telecommunications.

§7703. Prohibition against predatory and abusive commercial e-mail

(a) Omitted

(b) United States Sentencing Commission

(1) Directive

Pursuant to its authority under section 994(p) of title 28 and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the sentencing guidelines and policy statements to provide appropriate penalties for violations of section 1037 of title 18, as added by this section, and other offenses that may be facilitated by the sending of large quantities of unsolicited electronic mail.

(2) Requirements

In carrying out this subsection, the Sentencing Commission shall consider providing sentencing

enhancements for—

(A) those convicted under section 1037 of title 18 who—

(i) obtained electronic mail addresses through improper means, including—

(I) harvesting electronic mail addresses of the users of a website, proprietary service, or other online public forum operated by another person, without the authorization of such person; and

(II) randomly generating electronic mail addresses by computer; or

(ii) knew that the commercial electronic mail messages involved in the offense contained or advertised an Internet domain for which the registrant of the domain had provided false registration information; and

(B) those convicted of other offenses, including offenses involving fraud, identity theft, obscenity, child pornography, and the sexual exploitation of children, if such offenses involved the sending of large quantities of electronic mail.

(c) Sense of Congress

It is the sense of Congress that—

(1) Spam has become the method of choice for those who distribute pornography, perpetrate fraudulent schemes, and introduce viruses, worms, and Trojan horses into personal and business computer systems; and

(2) the Department of Justice should use all existing law enforcement tools to investigate and prosecute those who send bulk commercial e-mail to facilitate the commission of Federal crimes, including the tools contained in chapters 47 and 63 of title 18 (relating to fraud and false statements); chapter 71 of title 18 (relating to obscenity); chapter 110 of title 18 (relating to the sexual exploitation of children); and chapter 95 of title 18 (relating to racketeering), as appropriate.

(Pub. L. 108–187, §4, Dec. 16, 2003, 117 Stat. 2703.)

CODIFICATION

Section is comprised of section 4 of Pub. L. 108–187. Subsec. (a) of section 4 of Pub. L. 108–187 enacted section 1037 of Title 18, Crimes and Criminal Procedure, and amended analysis for chapter 47 of Title 18. The provisions of subsec. (b) of section 4 of Pub. L. 108–187 are also listed in a table relating to sentencing guidelines set out as a note under section 994 of Title 28, Judiciary and Judicial Procedure.

§7704. Other protections for users of commercial electronic mail

(a) Requirements for transmission of messages

(1) Prohibition of false or misleading transmission information

It is unlawful for any person to initiate the transmission, to a protected computer, of a commercial electronic mail message, or a transactional or relationship message, that contains, or is accompanied by, header information that is materially false or materially misleading. For purposes of this paragraph—

(A) header information that is technically accurate but includes an originating electronic mail address, domain name, or Internet Protocol address the access to which for purposes of initiating the message was obtained by means of false or fraudulent pretenses or representations shall be considered materially misleading;

(B) a "from" line (the line identifying or purporting to identify a person initiating the message) that accurately identifies any person who initiated the message shall not be considered materially false or materially misleading; and

(C) header information shall be considered materially misleading if it fails to identify accurately a protected computer used to initiate the message because the person initiating the message knowingly uses another protected computer to relay or retransmit the message for

purposes of disguising its origin.

(2) Prohibition of deceptive subject headings

It is unlawful for any person to initiate the transmission to a protected computer of a commercial electronic mail message if such person has actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that a subject heading of the message would be likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message (consistent with the criteria used in enforcement of section 45 of this title).

(3) Inclusion of return address or comparable mechanism in commercial electronic mail

(A) In general

It is unlawful for any person to initiate the transmission to a protected computer of a commercial electronic mail message that does not contain a functioning return electronic mail address or other Internet-based mechanism, clearly and conspicuously displayed, that—

(i) a recipient may use to submit, in a manner specified in the message, a reply electronic mail message or other form of Internet-based communication requesting not to receive future commercial electronic mail messages from that sender at the electronic mail address where the message was received; and

(ii) remains capable of receiving such messages or communications for no less than 30 days after the transmission of the original message.

(B) More detailed options possible

The person initiating a commercial electronic mail message may comply with subparagraph (A)(i) by providing the recipient a list or menu from which the recipient may choose the specific types of commercial electronic mail messages the recipient wants to receive or does not want to receive from the sender, if the list or menu includes an option under which the recipient may choose not to receive any commercial electronic mail messages from the sender.

(C) Temporary inability to receive messages or process requests

A return electronic mail address or other mechanism does not fail to satisfy the requirements of subparagraph (A) if it is unexpectedly and temporarily unable to receive messages or process requests due to a technical problem beyond the control of the sender if the problem is corrected within a reasonable time period.

(4) Prohibition of transmission of commercial electronic mail after objection

(A) In general

If a recipient makes a request using a mechanism provided pursuant to paragraph (3) not to receive some or any commercial electronic mail messages from such sender, then it is unlawful—

(i) for the sender to initiate the transmission to the recipient, more than 10 business days after the receipt of such request, of a commercial electronic mail message that falls within the scope of the request;

(ii) for any person acting on behalf of the sender to initiate the transmission to the recipient, more than 10 business days after the receipt of such request, of a commercial electronic mail message with actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that such message falls within the scope of the request;

(iii) for any person acting on behalf of the sender to assist in initiating the transmission to the recipient, through the provision or selection of addresses to which the message will be sent, of a commercial electronic mail message with actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that such message would violate clause (i) or (ii); or

(iv) for the sender, or any other person who knows that the recipient has made such a request, to sell, lease, exchange, or otherwise transfer or release the electronic mail address of

the recipient (including through any transaction or other transfer involving mailing lists bearing the electronic mail address of the recipient) for any purpose other than compliance with this chapter or other provision of law.

(B) Subsequent affirmative consent

A prohibition in subparagraph (A) does not apply if there is affirmative consent by the recipient subsequent to the request under subparagraph (A).

(5) Inclusion of identifier, opt-out, and physical address in commercial electronic mail

(A) It is unlawful for any person to initiate the transmission of any commercial electronic mail message to a protected computer unless the message provides—

(i) clear and conspicuous identification that the message is an advertisement or solicitation;

(ii) clear and conspicuous notice of the opportunity under paragraph (3) to decline to receive further commercial electronic mail messages from the sender; and

(iii) a valid physical postal address of the sender.

(B) Subparagraph (A)(i) does not apply to the transmission of a commercial electronic mail message if the recipient has given prior affirmative consent to receipt of the message.

(6) Materially

For purposes of paragraph (1), the term "materially", when used with respect to false or misleading header information, includes the alteration or concealment of header information in a manner that would impair the ability of an Internet access service processing the message on behalf of a recipient, a person alleging a violation of this section, or a law enforcement agency to identify, locate, or respond to a person who initiated the electronic mail message or to investigate the alleged violation, or the ability of a recipient of the message to respond to a person who initiated the electronic message.

(b) Aggravated violations relating to commercial electronic mail

(1) Address harvesting and dictionary attacks

(A) In general

It is unlawful for any person to initiate the transmission, to a protected computer, of a commercial electronic mail message that is unlawful under subsection (a), or to assist in the origination of such message through the provision or selection of addresses to which the message will be transmitted, if such person had actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that—

(i) the electronic mail address of the recipient was obtained using an automated means from an Internet website or proprietary online service operated by another person, and such website or online service included, at the time the address was obtained, a notice stating that the operator of such website or online service will not give, sell, or otherwise transfer addresses maintained by such website or online service to any other party for the purposes of initiating, or enabling others to initiate, electronic mail messages; or

(ii) the electronic mail address of the recipient was obtained using an automated means that generates possible electronic mail addresses by combining names, letters, or numbers into numerous permutations.

(B) Disclaimer

Nothing in this paragraph creates an ownership or proprietary interest in such electronic mail addresses.

(2) Automated creation of multiple electronic mail accounts

It is unlawful for any person to use scripts or other automated means to register for multiple electronic mail accounts or online user accounts from which to transmit to a protected computer, or enable another person to transmit to a protected computer, a commercial electronic mail message that is unlawful under subsection (a).

(3) Relay or retransmission through unauthorized access

It is unlawful for any person knowingly to relay or retransmit a commercial electronic mail message that is unlawful under subsection (a) from a protected computer or computer network that such person has accessed without authorization.

(c) Supplementary rulemaking authority

The Commission shall by regulation, pursuant to section 7711 of this title—

(1) modify the 10-business-day period under subsection (a)(4)(A) or subsection (a)(4)(B), or both, if the Commission determines that a different period would be more reasonable after taking into account—

(A) the purposes of subsection (a);

(B) the interests of recipients of commercial electronic mail; and

(C) the burdens imposed on senders of lawful commercial electronic mail; and

(2) specify additional activities or practices to which subsection (b) applies if the Commission determines that those activities or practices are contributing substantially to the proliferation of commercial electronic mail messages that are unlawful under subsection (a).

(d) Requirement to place warning labels on commercial electronic mail containing sexually oriented material

(1) In general

No person may initiate in or affecting interstate commerce the transmission, to a protected computer, of any commercial electronic mail message that includes sexually oriented material and—

(A) fail to include in subject heading for the electronic mail message the marks or notices prescribed by the Commission under this subsection; or

(B) fail to provide that the matter in the message that is initially viewable to the recipient, when the message is opened by any recipient and absent any further actions by the recipient, includes only—

(i) to the extent required or authorized pursuant to paragraph (2), any such marks or notices;

(ii) the information required to be included in the message pursuant to subsection (a)(5); and

(iii) instructions on how to access, or a mechanism to access, the sexually oriented material.

(2) Prior affirmative consent

Paragraph (1) does not apply to the transmission of an electronic mail message if the recipient has given prior affirmative consent to receipt of the message.

(3) Prescription of marks and notices

Not later than 120 days after December 16, 2003, the Commission in consultation with the Attorney General shall prescribe clearly identifiable marks or notices to be included in or associated with commercial electronic mail that contains sexually oriented material, in order to inform the recipient of that fact and to facilitate filtering of such electronic mail. The Commission shall publish in the Federal Register and provide notice to the public of the marks or notices prescribed under this paragraph.

(4) Definition

In this subsection, the term "sexually oriented material" means any material that depicts sexually explicit conduct (as that term is defined in section 2256 of title 18), unless the depiction constitutes a small and insignificant part of the whole, the remainder of which is not primarily devoted to sexual matters.

(5) Penalty

Whoever knowingly violates paragraph (1) shall be fined under title 18, or imprisoned not more than 5 years, or both.

(Pub. L. 108–187, §5, Dec. 16, 2003, 117 Stat. 2706.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(4)(A)(iv), was in the original "this Act", meaning Pub. L. 108–187, Dec. 16, 2003, 117 Stat. 2699, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7701 of this title and Tables.

§7705. Businesses knowingly promoted by electronic mail with false or misleading transmission information

(a) In general

It is unlawful for a person to promote, or allow the promotion of, that person's trade or business, or goods, products, property, or services sold, offered for sale, leased or offered for lease, or otherwise made available through that trade or business, in a commercial electronic mail message the transmission of which is in violation of section 7704(a)(1) of this title if that person—

(1) knows, or should have known in the ordinary course of that person's trade or business, that the goods, products, property, or services sold, offered for sale, leased or offered for lease, or otherwise made available through that trade or business were being promoted in such a message;

(2) received or expected to receive an economic benefit from such promotion; and

(3) took no reasonable action—

(A) to prevent the transmission; or

(B) to detect the transmission and report it to the Commission.

(b) Limited enforcement against third parties

(1) In general

Except as provided in paragraph (2), a person (hereinafter referred to as the "third party") that provides goods, products, property, or services to another person that violates subsection (a) shall not be held liable for such violation.

(2) Exception

Liability for a violation of subsection (a) shall be imputed to a third party that provides goods, products, property, or services to another person that violates subsection (a) if that third party—

(A) owns, or has a greater than 50 percent ownership or economic interest in, the trade or business of the person that violated subsection (a); or

(B)(i) has actual knowledge that goods, products, property, or services are promoted in a commercial electronic mail message the transmission of which is in violation of section 7704(a)(1) of this title; and

(ii) receives, or expects to receive, an economic benefit from such promotion.

(c) Exclusive enforcement by FTC

Subsections (f) and (g) of section 7706 of this title do not apply to violations of this section.

(d) Savings provision

Except as provided in section 7706(f)(8) of this title, nothing in this section may be construed to limit or prevent any action that may be taken under this chapter with respect to any violation of any other section of this chapter.

(Pub. L. 108–187, §6, Dec. 16, 2003, 117 Stat. 2710.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (d), was in the original "this Act", meaning Pub. L. 108–187, Dec. 16, 2003, 117 Stat. 2699, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7701 of this title and Tables.

§7706. Enforcement generally

(a) Violation is unfair or deceptive act or practice

Except as provided in subsection (b), this chapter shall be enforced by the Commission as if the violation of this chapter were an unfair or deceptive act or practice proscribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(b) Enforcement by certain other agencies

Compliance with this chapter shall be enforced—

(1) under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the case of—

(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 and 611), and bank holding companies, by the Board;

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation; and

(D) savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation, by the Director of the Office of Thrift Supervision;

(2) under the Federal Credit Union Act (12 U.S.C. 1751 et seq.) by the Board of the National Credit Union Administration with respect to any Federally insured credit union;

(3) under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) by the Securities and Exchange Commission with respect to any broker or dealer;

(4) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) by the Securities and Exchange Commission with respect to investment companies;

(5) under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) by the Securities and Exchange Commission with respect to investment advisers registered under that Act;

(6) under State insurance law in the case of any person engaged in providing insurance, by the applicable State insurance authority of the State in which the person is domiciled, subject to section 104 of the Gramm-Bliley-Leach Act (15 U.S.C. 6701), except that in any State in which the State insurance authority elects not to exercise this power, the enforcement authority pursuant to this chapter shall be exercised by the Commission in accordance with subsection (a);

(7) under part A of subtitle VII of title 49 by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that part;

(8) under the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.) (except as provided in section 406 of that Act (7 U.S.C. 226, 227)), by the Secretary of Agriculture with respect to any activities subject to that Act;

(9) under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association; and

(10) under the Communications Act of 1934 (47 U.S.C. 151 et seq.) by the Federal Communications Commission with respect to any person subject to the provisions of that Act.

(c) Exercise of certain powers

For the purpose of the exercise by any agency referred to in subsection (b) of its powers under any Act referred to in that subsection, a violation of this chapter is deemed to be a violation of a Federal Trade Commission trade regulation rule. In addition to its powers under any provision of law

specifically referred to in subsection (b), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this chapter, any other authority conferred on it by law.

(d) Actions by the Commission

The Commission shall prevent any person from violating this chapter in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this chapter. Any entity that violates any provision of that subtitle [1] is subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of that subtitle.[1]

(e) Availability of cease-and-desist orders and injunctive relief without showing of knowledge

Notwithstanding any other provision of this chapter, in any proceeding or action pursuant to subsection (a), (b), (c), or (d) of this section to enforce compliance, through an order to cease and desist or an injunction, with section 7704(a)(1)(C) of this title, section 7704(a)(2) of this title, clause (ii), (iii), or (iv) of section 7704(a)(4)(A) of this title, section 7704(b)(1)(A) of this title, or section 7704(b)(3) of this title, neither the Commission nor the Federal Communications Commission shall be required to allege or prove the state of mind required by such section or subparagraph.

(f) Enforcement by States

(1) Civil action

In any case in which the attorney general of a State, or an official or agency of a State, has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by any person who violates paragraph (1) or (2) of section 7704(a), who violates section 7704(d), or who engages in a pattern or practice that violates paragraph (3), (4), or (5) of section 7704(a), of this title, the attorney general, official, or agency of the State, as parens patriae, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction—

(A) to enjoin further violation of section 7704 of this title by the defendant; or

(B) to obtain damages on behalf of residents of the State, in an amount equal to the greater of—

(i) the actual monetary loss suffered by such residents; or

(ii) the amount determined under paragraph (3).

(2) Availability of injunctive relief without showing of knowledge

Notwithstanding any other provision of this chapter, in a civil action under paragraph (1)(A) of this subsection, the attorney general, official, or agency of the State shall not be required to allege or prove the state of mind required by section 7704(a)(1)(C) of this title, section 7704(a)(2) of this title, clause (ii), (iii), or (iv) of section 7704(a)(4)(A) of this title, section 7704(b)(1)(A) of this title, or section 7704(b)(3) of this title.

(3) Statutory damages

(A) In general

For purposes of paragraph (1)(B)(ii), the amount determined under this paragraph is the amount calculated by multiplying the number of violations (with each separately addressed unlawful message received by or addressed to such residents treated as a separate violation) by up to $250.

(B) Limitation

For any violation of section 7704 of this title (other than section 7704(a)(1) of this title), the amount determined under subparagraph (A) may not exceed $2,000,000.

(C) Aggravated damages

The court may increase a damage award to an amount equal to not more than three times the amount otherwise available under this paragraph if—

(i) the court determines that the defendant committed the violation willfully and knowingly; or

(ii) the defendant's unlawful activity included one or more of the aggravating violations set forth in section 7704(b) of this title.

(D) Reduction of damages

In assessing damages under subparagraph (A), the court may consider whether—

(i) the defendant has established and implemented, with due care, commercially reasonable practices and procedures designed to effectively prevent such violations; or

(ii) the violation occurred despite commercially reasonable efforts to maintain compliance the practices and procedures to which reference is made in clause (i).

(4) Attorney fees

In the case of any successful action under paragraph (1), the court, in its discretion, may award the costs of the action and reasonable attorney fees to the State.

(5) Rights of Federal regulators

The State shall serve prior written notice of any action under paragraph (1) upon the Federal Trade Commission or the appropriate Federal regulator determined under subsection (b) and provide the Commission or appropriate Federal regulator with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Federal Trade Commission or appropriate Federal regulator shall have the right—

(A) to intervene in the action;

(B) upon so intervening, to be heard on all matters arising therein;

(C) to remove the action to the appropriate United States district court; and

(D) to file petitions for appeal.

(6) Construction

For purposes of bringing any civil action under paragraph (1), nothing in this chapter shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—

(A) conduct investigations;

(B) administer oaths or affirmations; or

(C) compel the attendance of witnesses or the production of documentary and other evidence.

(7) Venue; service of process

(A) Venue

Any action brought under paragraph (1) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28.

(B) Service of process

In an action brought under paragraph (1), process may be served in any district in which the defendant—

(i) is an inhabitant; or

(ii) maintains a physical place of business.

(8) Limitation on State action while Federal action is pending

If the Commission, or other appropriate Federal agency under subsection (b), has instituted a civil action or an administrative action for violation of this chapter, no State attorney general, or

official or agency of a State, may bring an action under this subsection during the pendency of that action against any defendant named in the complaint of the Commission or the other agency for any violation of this chapter alleged in the complaint.

(9) Requisite scienter for certain civil actions

Except as provided in section 7704(a)(1)(C) of this title, section 7704(a)(2) of this title, clause (ii), (iii), or (iv) of section 7704(a)(4)(A) of this title, section 7704(b)(1)(A) of this title, or section 7704(b)(3) of this title, in a civil action brought by a State attorney general, or an official or agency of a State, to recover monetary damages for a violation of this chapter, the court shall not grant the relief sought unless the attorney general, official, or agency establishes that the defendant acted with actual knowledge, or knowledge fairly implied on the basis of objective circumstances, of the act or omission that constitutes the violation.

(g) Action by provider of Internet access service

(1) Action authorized

A provider of Internet access service adversely affected by a violation of section 7704(a)(1), (b), or (d) of this title, or a pattern or practice that violates paragraph (2), (3), (4), or (5) of section 7704(a) of this title, may bring a civil action in any district court of the United States with jurisdiction over the defendant—

(A) to enjoin further violation by the defendant; or

(B) to recover damages in an amount equal to the greater of—

(i) actual monetary loss incurred by the provider of Internet access service as a result of such violation; or

(ii) the amount determined under paragraph (3).

(2) Special definition of "procure"

In any action brought under paragraph (1), this chapter shall be applied as if the definition of the term "procure" in section 7702(12) of this title contained, after "behalf" the words "with actual knowledge, or by consciously avoiding knowing, whether such person is engaging, or will engage, in a pattern or practice that violates this chapter".

(3) Statutory damages

(A) In general

For purposes of paragraph (1)(B)(ii), the amount determined under this paragraph is the amount calculated by multiplying the number of violations (with each separately addressed unlawful message that is transmitted or attempted to be transmitted over the facilities of the provider of Internet access service, or that is transmitted or attempted to be transmitted to an electronic mail address obtained from the provider of Internet access service in violation of section 7704(b)(1)(A)(i) of this title, treated as a separate violation) by—

(i) up to $100, in the case of a violation of section 7704(a)(1) of this title; or

(ii) up to $25, in the case of any other violation of section 7704 of this title.

(B) Limitation

For any violation of section 7704 of this title (other than section 7704(a)(1) of this title), the amount determined under subparagraph (A) may not exceed $1,000,000.

(C) Aggravated damages

The court may increase a damage award to an amount equal to not more than three times the amount otherwise available under this paragraph if—

(i) the court determines that the defendant committed the violation willfully and knowingly; or

(ii) the defendant's unlawful activity included one or more of the aggravated violations set forth in section 7704(b) of this title.

(D) Reduction of damages

In assessing damages under subparagraph (A), the court may consider whether—

(i) the defendant has established and implemented, with due care, commercially reasonable practices and procedures designed to effectively prevent such violations; or

(ii) the violation occurred despite commercially reasonable efforts to maintain compliance with the practices and procedures to which reference is made in clause (i).

(4) Attorney fees

In any action brought pursuant to paragraph (1), the court may, in its discretion, require an undertaking for the payment of the costs of such action, and assess reasonable costs, including reasonable attorneys' fees, against any party.

(Pub. L. 108–187, §7, Dec. 16, 2003, 117 Stat. 2711.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 108–187, Dec. 16, 2003, 117 Stat. 2699, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7701 of this title and Tables.

Sections 25 and 25A of the Federal Reserve Act, referred to in subsec. (b)(1)(B), are classified to subchapters I (§601 et seq.) and II (§611 et seq.), respectively, of chapter 6 of Title 12, Banks and Banking.

The Federal Credit Union Act, referred to in subsec. (b)(2), is act June 26, 1934, ch. 750, 48 Stat. 1216, as amended, which is classified generally to chapter 14 (§1751 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1751 of Title 12 and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (b)(3), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

The Investment Company Act of 1940, referred to in subsec. (b)(4), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a–51 of this title and Tables.

The Investment Advisers Act of 1940, referred to in subsec. (b)(5), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, as amended, which is classified generally to subchapter II (§80b–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80b–20 of this title and Tables.

The Packers and Stockyards Act, 1921, referred to in subsec. (b)(8), is act Aug. 15, 1921, ch. 64, 42 Stat. 159, as amended, which is classified generally to chapter 9 (§181 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 181 of Title 7 and Tables.

The Farm Credit Act of 1971, referred to in subsec. (b)(9), is Pub. L. 92–181, Dec. 10, 1971, 85 Stat. 583, as amended, which is classified principally to chapter 23 (§2001 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 12 and Tables.

The Communications Act of 1934, referred to in subsec. (b)(10), is act June 19, 1934, ch. 652, 48 Stat. 1064, as amended, which is classified principally to chapter 5 (§151 et seq.) of Title 47, Telecommunications. For complete classification of this Act to the Code, see section 609 of Title 47 and Tables.

The Federal Trade Commission Act, referred to in subsec. (d), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

[1] *So in original.*

§7707. Effect on other laws

(a) Federal law

(1) Nothing in this chapter shall be construed to impair the enforcement of section 223 or 231 of title 47, chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of title 18, or any other Federal criminal statute.

(2) Nothing in this chapter shall be construed to affect in any way the Commission's authority to bring enforcement actions under FTC Act for materially false or deceptive representations or unfair practices in commercial electronic mail messages.

(b) State law

(1) In general

This chapter supersedes any statute, regulation, or rule of a State or political subdivision of a State that expressly regulates the use of electronic mail to send commercial messages, except to the extent that any such statute, regulation, or rule prohibits falsity or deception in any portion of a commercial electronic mail message or information attached thereto.

(2) State law not specific to electronic mail

This chapter shall not be construed to preempt the applicability of—

(A) State laws that are not specific to electronic mail, including State trespass, contract, or tort law; or

(B) other State laws to the extent that those laws relate to acts of fraud or computer crime.

(c) No effect on policies of providers of Internet access service

Nothing in this chapter shall be construed to have any effect on the lawfulness or unlawfulness, under any other provision of law, of the adoption, implementation, or enforcement by a provider of Internet access service of a policy of declining to transmit, route, relay, handle, or store certain types of electronic mail messages.

(Pub. L. 108–187, §8, Dec. 16, 2003, 117 Stat. 2716.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 108–187, Dec. 16, 2003, 117 Stat. 2699, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7701 of this title and Tables.

§7708. Do-Not-E-Mail registry

(a) In general

Not later than 6 months after December 16, 2003, the Commission shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce a report that—

(1) sets forth a plan and timetable for establishing a nationwide marketing Do-Not-E-Mail registry;

(2) includes an explanation of any practical, technical, security, privacy, enforceability, or other concerns that the Commission has regarding such a registry; and

(3) includes an explanation of how the registry would be applied with respect to children with e-mail accounts.

(b) Authorization to implement

The Commission may establish and implement the plan, but not earlier than 9 months after December 16, 2003.

(Pub. L. 108–187, §9, Dec. 16, 2003, 117 Stat. 2716.)

§7709. Study of effects of commercial electronic mail

(a) In general

Not later than 24 months after December 16, 2003, the Commission, in consultation with the Department of Justice and other appropriate agencies, shall submit a report to the Congress that provides a detailed analysis of the effectiveness and enforcement of the provisions of this chapter and the need (if any) for the Congress to modify such provisions.

(b) Required analysis

The Commission shall include in the report required by subsection (a)—

(1) an analysis of the extent to which technological and marketplace developments, including changes in the nature of the devices through which consumers access their electronic mail messages, may affect the practicality and effectiveness of the provisions of this chapter;

(2) analysis and recommendations concerning how to address commercial electronic mail that originates in or is transmitted through or to facilities or computers in other nations, including initiatives or policy positions that the Federal Government could pursue through international negotiations, fora, organizations, or institutions; and

(3) analysis and recommendations concerning options for protecting consumers, including children, from the receipt and viewing of commercial electronic mail that is obscene or pornographic.

(Pub. L. 108–187, §10, Dec. 16, 2003, 117 Stat. 2716.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b)(1), was in the original "this Act", meaning Pub. L. 108–187, Dec. 16, 2003, 117 Stat. 2699, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7701 of this title and Tables.

§7710. Improving enforcement by providing rewards for information about violations; labeling

The Commission shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce—

(1) a report, within 9 months after December 16, 2003, that sets forth a system for rewarding those who supply information about violations of this chapter, including—

(A) procedures for the Commission to grant a reward of not less than 20 percent of the total civil penalty collected for a violation of this chapter to the first person that—

(i) identifies the person in violation of this chapter; and

(ii) supplies information that leads to the successful collection of a civil penalty by the Commission; and

(B) procedures to minimize the burden of submitting a complaint to the Commission concerning violations of this chapter, including procedures to allow the electronic submission of complaints to the Commission; and

(2) a report, within 18 months after December 16, 2003, that sets forth a plan for requiring commercial electronic mail to be identifiable from its subject line, by means of compliance with Internet Engineering Task Force Standards, the use of the characters "ADV" in the subject line, or other comparable identifier, or an explanation of any concerns the Commission has that cause the Commission to recommend against the plan.

(Pub. L. 108–187, §11, Dec. 16, 2003, 117 Stat. 2717.)

REFERENCES IN TEXT

This chapter, referred to in par. (1), was in the original "this Act", meaning Pub. L. 108–187, Dec. 16, 2003, 117 Stat. 2699, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7701 of this title and Tables.

§7711. Regulations

(a) In general

The Commission may issue regulations to implement the provisions of this Act (not including the amendments made by sections 4 and 12). Any such regulations shall be issued in accordance with

section 553 of title 5.

(b) Limitation

Subsection (a) may not be construed to authorize the Commission to establish a requirement pursuant to section 7704(a)(5)(A) of this title to include any specific words, characters, marks, or labels in a commercial electronic mail message, or to include the identification required by section 7704(a)(5)(A) of this title in any particular part of such a mail message (such as the subject line or body).

(Pub. L. 108–187, §13, Dec. 16, 2003, 117 Stat. 2717.)

REFERENCES IN TEXT

This Act (not including the amendments made by sections 4 and 12), referred to in subsec. (a), is Pub. L. 108–187, Dec. 16, 2003, 117 Stat. 2699, which is classified principally to this chapter. Section 4 enacted section 7703 of this title, section 1037 of Title 18, Crimes and Criminal Procedure, and provisions listed in a table relating to sentencing guidelines set out as a note under section 994 of Title 28, Judiciary and Judicial Procedure. Section 12 amended section 227 of Title 47, Telecommunications. For complete classification of this Act to the Code, see Short Title note set out under section 7701 of this title and Tables.

§7712. Application to wireless

(a) Effect on other law

Nothing in this chapter shall be interpreted to preclude or override the applicability of section 227 of title 47 or the rules prescribed under section 6102 of this title.

(b) FCC rulemaking

The Federal Communications Commission, in consultation with the Federal Trade Commission, shall promulgate rules within 270 days to protect consumers from unwanted mobile service commercial messages. The Federal Communications Commission, in promulgating the rules, shall, to the extent consistent with subsection (c)—

(1) provide subscribers to commercial mobile services the ability to avoid receiving mobile service commercial messages unless the subscriber has provided express prior authorization to the sender, except as provided in paragraph (3);

(2) allow recipients of mobile service commercial messages to indicate electronically a desire not to receive future mobile service commercial messages from the sender;

(3) take into consideration, in determining whether to subject providers of commercial mobile services to paragraph (1), the relationship that exists between providers of such services and their subscribers, but if the Commission determines that such providers should not be subject to paragraph (1), the rules shall require such providers, in addition to complying with the other provisions of this chapter, to allow subscribers to indicate a desire not to receive future mobile service commercial messages from the provider—

(A) at the time of subscribing to such service; and

(B) in any billing mechanism; and

(4) determine how a sender of mobile service commercial messages may comply with the provisions of this chapter, considering the unique technical aspects, including the functional and character limitations, of devices that receive such messages.

(c) Other factors considered

The Federal Communications Commission shall consider the ability of a sender of a commercial electronic mail message to reasonably determine that the message is a mobile service commercial message.

(d) Mobile service commercial message defined

In this section, the term "mobile service commercial message" means a commercial electronic mail message that is transmitted directly to a wireless device that is utilized by a subscriber of

commercial mobile service (as such term is defined in section 332(d) of title 47) in connection with such service.

(Pub. L. 108–187, §14, Dec. 16, 2003, 117 Stat. 2718.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b)(3), (4), was in the original "this Act", meaning Pub. L. 108–187, Dec. 16, 2003, 117 Stat. 2699, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7701 of this title and Tables.

§7713. Separability

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of this chapter and the application of such provision to other persons or circumstances shall not be affected.

(Pub. L. 108–187, §15, Dec. 16, 2003, 117 Stat. 2718.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 108–187, Dec. 16, 2003, 117 Stat. 2699, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7701 of this title and Tables.

CHAPTER 104—SPORTS AGENT RESPONSIBILITY AND TRUST

Sec.

7801. Definitions.
7802. Regulation of unfair and deceptive acts and practices in connection with the contact between an athlete agent and a student athlete.
7803. Enforcement.
7804. Actions by States.
7805. Protection of educational institution.
7806. Limitation.
7807. Sense of Congress.

§7801. Definitions

As used in this chapter, the following definitions apply:

(1) Agency contract

The term "agency contract" means an oral or written agreement in which a student athlete authorizes a person to negotiate or solicit on behalf of the student athlete a professional sports contract or an endorsement contract.

(2) Athlete agent

The term "athlete agent" means an individual who enters into an agency contract with a student athlete, or directly or indirectly recruits or solicits a student athlete to enter into an agency contract, and does not include a spouse, parent, sibling, grandparent, or guardian of such student athlete, any legal counsel for purposes other than that of representative agency, or an individual acting solely on behalf of a professional sports team or professional sports organization.

(3) Athletic director

The term "athletic director" means an individual responsible for administering the athletic program of an educational institution or, in the case that such program is administered separately, the athletic program for male students or the athletic program for female students, as appropriate.

(4) Commission

The term "Commission" means the Federal Trade Commission.

(5) Endorsement contract

The term "endorsement contract" means an agreement under which a student athlete is employed or receives consideration for the use by the other party of that individual's person, name, image, or likeness in the promotion of any product, service, or event.

(6) Intercollegiate sport

The term "intercollegiate sport" means a sport played at the collegiate level for which eligibility requirements for participation by a student athlete are established by a national association for the promotion or regulation of college athletics.

(7) Professional sports contract

The term "professional sports contract" means an agreement under which an individual is employed, or agrees to render services, as a player on a professional sports team, with a professional sports organization, or as a professional athlete.

(8) State

The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(9) Student athlete

The term "student athlete" means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport. An individual who is permanently ineligible to participate in a particular intercollegiate sport is not a student athlete for purposes of that sport.

(Pub. L. 108–304, §2, Sept. 24, 2004, 118 Stat. 1125.)

SHORT TITLE

Pub. L. 108–304, §1, Sept. 24, 2004, 118 Stat. 1125, provided that: "This Act [enacting this chapter] may be cited as the 'Sports Agent Responsibility and Trust Act'."

§7802. Regulation of unfair and deceptive acts and practices in connection with the contact between an athlete agent and a student athlete

(a) Conduct prohibited

It is unlawful for an athlete agent to—

(1) directly or indirectly recruit or solicit a student athlete to enter into an agency contract, by—

(A) giving any false or misleading information or making a false promise or representation; or

(B) providing anything of value to a student athlete or anyone associated with the student athlete before the student athlete enters into an agency contract, including any consideration in the form of a loan, or acting in the capacity of a guarantor or co-guarantor for any debt;

(2) enter into an agency contract with a student athlete without providing the student athlete with the disclosure document described in subsection (b); or

(3) predate or postdate an agency contract.

(b) Required disclosure by athlete agents to student athletes

(1) In general

In conjunction with the entering into of an agency contract, an athlete agent shall provide to the student athlete, or, if the student athlete is under the age of 18, to such student athlete's parent or

legal guardian, a disclosure document that meets the requirements of this subsection. Such disclosure document is separate from and in addition to any disclosure which may be required under State law.

(2) Signature of student athlete

The disclosure document must be signed by the student athlete, or, if the student athlete is under the age of 18, by such student athlete's parent or legal guardian, prior to entering into the agency contract.

(3) Required language

The disclosure document must contain, in close proximity to the signature of the student athlete, or, if the student athlete is under the age of 18, the signature of such student athlete's parent or legal guardian, a conspicuous notice in boldface type stating: "Warning to Student Athlete: If you agree orally or in writing to be represented by an agent now or in the future you may lose your eligibility to compete as a student athlete in your sport. Within 72 hours after entering into this contract or before the next athletic event in which you are eligible to participate, whichever occurs first, both you and the agent by whom you are agreeing to be represented must notify the athletic director of the educational institution at which you are enrolled, or other individual responsible for athletic programs at such educational institution, that you have entered into an agency contract."

(Pub. L. 108–304, §3, Sept. 24, 2004, 118 Stat. 1126.)

§7803. Enforcement

(a) Unfair or deceptive act or practice

A violation of this chapter shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(b) Actions by the Commission

The Commission shall enforce this chapter in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this chapter.

(Pub. L. 108–304, §4, Sept. 24, 2004, 118 Stat. 1127.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (b), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

§7804. Actions by States

(a) In general

(1) Civil actions

In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any athlete agent in a practice that violates section 7802 of this title, the State may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to—

(A) enjoin that practice;

(B) enforce compliance with this chapter; or

(C) obtain damage, restitution, or other compensation on behalf of residents of the State.

(2) Notice

(A) In general

Before filing an action under paragraph (1), the attorney general of the State involved shall provide to the Commission—

(i) written notice of that action; and

(ii) a copy of the complaint for that action.

(B) Exemption

Subparagraph (A) shall not apply with respect to the filing of an action by an attorney general of a State under this subsection, if the attorney general determines that it is not feasible to provide the notice described in that subparagraph before filing of the action. In such case, the attorney general of a State shall provide notice and a copy of the complaint to the Commission at the same time as the attorney general files the action.

(b) Intervention

(1) In general

On receiving notice under subsection (a)(2), the Commission shall have the right to intervene in the action that is the subject of the notice.

(2) Effect of intervention

If the Commission intervenes in an action under subsection (a), it shall have the right—

(A) to be heard with respect to any matter that arises in that action; and

(B) to file a petition for appeal.

(c) Construction

For purposes of bringing any civil action under subsection (a), nothing in this chapter [1] shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—

(1) conduct investigations;

(2) administer oaths or affirmations; or

(3) compel the attendance of witnesses or the production of documentary and other evidence.

(d) Actions by the Commission

In any case in which an action is instituted by or on behalf of the Commission for a violation of section 7802 of this title, no State may, during the pendency of that action, institute an action under subsection (a) against any defendant named in the complaint in that action.

(e) Venue

Any action brought under subsection (a) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28.

(f) Service of process

In an action brought under subsection (a), process may be served in any district in which the defendant—

(1) is an inhabitant; or

(2) may be found.

(Pub. L. 108–304, §5, Sept. 24, 2004, 118 Stat. 1127.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original "this title" and was translated as reading "this Act", meaning Pub. L. 108–304, to reflect the probable intent of Congress, because Pub. L. 108–304 does not contain titles.

[1] *See References in Text note below.*

§7805. Protection of educational institution

(a) Notice required

Within 72 hours after entering into an agency contract or before the next athletic event in which the student athlete may participate, whichever occurs first, the athlete agent and the student athlete shall each inform the athletic director of the educational institution at which the student athlete is enrolled, or other individual responsible for athletic programs at such educational institution, that the student athlete has entered into an agency contract, and the athlete agent shall provide the athletic director with notice in writing of such a contract.

(b) Civil remedy

(1) In general

An educational institution has a right of action against an athlete agent for damages caused by a violation of this chapter.

(2) Damages

Damages of an educational institution may include and are limited to actual losses and expenses incurred because, as a result of the conduct of the athlete agent, the educational institution was injured by a violation of this chapter or was penalized, disqualified, or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference, or by reasonable self-imposed disciplinary action taken to mitigate actions likely to be imposed by such an association or conference.

(3) Costs and attorneys fees

In an action taken under this section, the court may award to the prevailing party costs and reasonable attorneys fees.

(4) Effect on other rights, remedies and defenses

This section does not restrict the rights, remedies, or defenses of any person under law or equity.

(Pub. L. 108–304, §6, Sept. 24, 2004, 118 Stat. 1128.)

§7806. Limitation

Nothing in this chapter shall be construed to prohibit an individual from seeking any remedies available under existing Federal or State law or equity.

(Pub. L. 108–304, §7, Sept. 24, 2004, 118 Stat. 1128.)

§7807. Sense of Congress

It is the sense of Congress that States should enact the Uniform Athlete Agents Act of 2000 drafted by the National Conference of Commissioners on Uniform State Laws, to protect student athletes and the integrity of amateur sports from unscrupulous sports agents. In particular, it is the sense of Congress that States should enact the provisions relating to the registration of sports agents, the required form of contract, the right of the student athlete to cancel an agency contract, the disclosure requirements relating to record maintenance, reporting, renewal, notice, warning, and security, and the provisions for reciprocity among the States.

(Pub. L. 108–304, §8, Sept. 24, 2004, 118 Stat. 1129.)

CHAPTER 105—PROTECTION OF LAWFUL COMMERCE IN ARMS

Sec.

7901. Findings; purposes.
7902. Prohibition on bringing of qualified civil liability actions in Federal or State court.
7903. Definitions.

§7901. Findings; purposes

(a) Findings

Congress finds the following:

(1) The Second Amendment to the United States Constitution provides that the right of the people to keep and bear arms shall not be infringed.

(2) The Second Amendment to the United States Constitution protects the rights of individuals, including those who are not members of a militia or engaged in military service or training, to keep and bear arms.

(3) Lawsuits have been commenced against manufacturers, distributors, dealers, and importers of firearms that operate as designed and intended, which seek money damages and other relief for the harm caused by the misuse of firearms by third parties, including criminals.

(4) The manufacture, importation, possession, sale, and use of firearms and ammunition in the United States are heavily regulated by Federal, State, and local laws. Such Federal laws include the Gun Control Act of 1968, the National Firearms Act [26 U.S.C. 5801 et seq.], and the Arms Export Control Act [22 U.S.C. 2751 et seq.].

(5) Businesses in the United States that are engaged in interstate and foreign commerce through the lawful design, manufacture, marketing, distribution, importation, or sale to the public of firearms or ammunition products that have been shipped or transported in interstate or foreign commerce are not, and should not, be liable for the harm caused by those who criminally or unlawfully misuse firearm products or ammunition products that function as designed and intended.

(6) The possibility of imposing liability on an entire industry for harm that is solely caused by others is an abuse of the legal system, erodes public confidence in our Nation's laws, threatens the diminution of a basic constitutional right and civil liberty, invites the disassembly and destabilization of other industries and economic sectors lawfully competing in the free enterprise system of the United States, and constitutes an unreasonable burden on interstate and foreign commerce of the United States.

(7) The liability actions commenced or contemplated by the Federal Government, States, municipalities, and private interest groups and others are based on theories without foundation in hundreds of years of the common law and jurisprudence of the United States and do not represent a bona fide expansion of the common law. The possible sustaining of these actions by a maverick judicial officer or petit jury would expand civil liability in a manner never contemplated by the framers of the Constitution, by Congress, or by the legislatures of the several States. Such an expansion of liability would constitute a deprivation of the rights, privileges, and immunities guaranteed to a citizen of the United States under the Fourteenth Amendment to the United States Constitution.

(8) The liability actions commenced or contemplated by the Federal Government, States, municipalities, private interest groups and others attempt to use the judicial branch to circumvent the Legislative branch of government to regulate interstate and foreign commerce through judgments and judicial decrees thereby threatening the Separation of Powers doctrine and weakening and undermining important principles of federalism, State sovereignty and comity between the sister States.

(b) Purposes

The purposes of this chapter are as follows:

(1) To prohibit causes of action against manufacturers, distributors, dealers, and importers of firearms or ammunition products, and their trade associations, for the harm solely caused by the criminal or unlawful misuse of firearm products or ammunition products by others when the

product functioned as designed and intended.

(2) To preserve a citizen's access to a supply of firearms and ammunition for all lawful purposes, including hunting, self-defense, collecting, and competitive or recreational shooting.

(3) To guarantee a citizen's rights, privileges, and immunities, as applied to the States, under the Fourteenth Amendment to the United States Constitution, pursuant to section 5 of that Amendment.

(4) To prevent the use of such lawsuits to impose unreasonable burdens on interstate and foreign commerce.

(5) To protect the right, under the First Amendment to the Constitution, of manufacturers, distributors, dealers, and importers of firearms or ammunition products, and trade associations, to speak freely, to assemble peaceably, and to petition the Government for a redress of their grievances.

(6) To preserve and protect the Separation of Powers doctrine and important principles of federalism, State sovereignty and comity between sister States.

(7) To exercise congressional power under article IV, section 1 (the Full Faith and Credit Clause) of the United States Constitution.

(Pub. L. 109–92, §2, Oct. 26, 2005, 119 Stat. 2095.)

REFERENCES IN TEXT

The Gun Control Act of 1968, referred to in subsec. (a)(4), is Pub. L. 90–618, Oct. 22, 1968, 82 Stat. 1213, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 921 of Title 18, Crimes and Criminal Procedure, and Tables.

The National Firearms Act, referred to in subsec. (a)(4), is classified generally to chapter 53 (§5801 et seq.) of Title 26, Internal Revenue Code. See section 5849 of Title 26.

The Arms Export Control Act, referred to in subsec. (a)(4), is Pub. L. 90–629, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (§2751 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

This chapter, referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 109–92, Oct. 26, 2005, 119 Stat. 2095, known as the Protection of Lawful Commerce in Arms Act. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

SHORT TITLE

Pub. L. 109–92, §1, Oct. 26, 2005, 119 Stat. 2095, provided that: "This Act [enacting this chapter, amending sections 922 and 924 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as notes under sections 921 and 922 of Title 18] may be cited as the 'Protection of Lawful Commerce in Arms Act'."

§7902. Prohibition on bringing of qualified civil liability actions in Federal or State court

(a) In general

A qualified civil liability action may not be brought in any Federal or State court.

(b) Dismissal of pending actions

A qualified civil liability action that is pending on October 26, 2005, shall be immediately dismissed by the court in which the action was brought or is currently pending.

(Pub. L. 109–92, §3, Oct. 26, 2005, 119 Stat. 2096.)

§7903. Definitions

In this chapter:

(1) Engaged in the business

The term "engaged in the business" has the meaning given that term in section 921(a)(21) of title 18, and, as applied to a seller of ammunition, means a person who devotes time, attention, and labor to the sale of ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of ammunition.

(2) Manufacturer

The term "manufacturer" means, with respect to a qualified product, a person who is engaged in the business of manufacturing the product in interstate or foreign commerce and who is licensed to engage in business as such a manufacturer under chapter 44 of title 18.

(3) Person

The term "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity, including any governmental entity.

(4) Qualified product

The term "qualified product" means a firearm (as defined in subparagraph (A) or (B) of section 921(a)(3) of title 18), including any antique firearm (as defined in section 921(a)(16) of such title), or ammunition (as defined in section 921(a)(17)(A) of such title), or a component part of a firearm or ammunition, that has been shipped or transported in interstate or foreign commerce.

(5) Qualified civil liability action

(A) In general

The term "qualified civil liability action" means a civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief, resulting from the criminal or unlawful misuse of a qualified product by the person or a third party, but shall not include—

(i) an action brought against a transferor convicted under section 924(h) of title 18, or a comparable or identical State felony law, by a party directly harmed by the conduct of which the transferee is so convicted;

(ii) an action brought against a seller for negligent entrustment or negligence per se;

(iii) an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought, including—

(I) any case in which the manufacturer or seller knowingly made any false entry in, or failed to make appropriate entry in, any record required to be kept under Federal or State law with respect to the qualified product, or aided, abetted, or conspired with any person in making any false or fictitious oral or written statement with respect to any fact material to the lawfulness of the sale or other disposition of a qualified product; or

(II) any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a qualified product, knowing, or having reasonable cause to believe, that the actual buyer of the qualified product was prohibited from possessing or receiving a firearm or ammunition under subsection (g) or (n) of section 922 of title 18;

(iv) an action for breach of contract or warranty in connection with the purchase of the product;

(v) an action for death, physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that where the discharge of the product was caused by a volitional act that constituted a criminal offense, then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage; or

(vi) an action or proceeding commenced by the Attorney General to enforce the provisions of chapter 44 of title 18 or chapter 53 of title 26.

(B) Negligent entrustment

As used in subparagraph (A)(ii), the term "negligent entrustment" means the supplying of a qualified product by a seller for use by another person when the seller knows, or reasonably should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others.

(C) Rule of construction

The exceptions enumerated under clauses (i) through (v) of subparagraph (A) shall be construed so as not to be in conflict, and no provision of this chapter shall be construed to create a public or private cause of action or remedy.

(D) Minor child exception

Nothing in this chapter shall be construed to limit the right of a person under 17 years of age to recover damages authorized under Federal or State law in a civil action that meets 1 of the requirements under clauses (i) through (v) of subparagraph (A).

(6) Seller

The term "seller" means, with respect to a qualified product—

(A) an importer (as defined in section 921(a)(9) of title 18) who is engaged in the business as such an importer in interstate or foreign commerce and who is licensed to engage in business as such an importer under chapter 44 of title 18;

(B) a dealer (as defined in section 921(a)(11) of title 18) who is engaged in the business as such a dealer in interstate or foreign commerce and who is licensed to engage in business as such a dealer under chapter 44 of title 18; or

(C) a person engaged in the business of selling ammunition (as defined in section 921(a)(17)(A) of title 18) in interstate or foreign commerce at the wholesale or retail level.

(7) State

The term "State" includes each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States, and any political subdivision of any such place.

(8) Trade association

The term "trade association" means—

(A) any corporation, unincorporated association, federation, business league, professional or business organization not organized or operated for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(B) that is an organization described in section 501(c)(6) of title 26 and exempt from tax under section 501(a) of such title; and

(C) 2 or more members of which are manufacturers or sellers of a qualified product.

(9) Unlawful misuse

The term "unlawful misuse" means conduct that violates a statute, ordinance, or regulation as it relates to the use of a qualified product.

(Pub. L. 109–92, §4, Oct. 26, 2005, 119 Stat. 2097.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 109–92, Oct. 26, 2005, 119 Stat. 2095, known as the Protection of Lawful Commerce in Arms Act. For complete classification of this Act to the Code, see Short Title note set out under section 7901 of this title and Tables.

CHAPTER 106—POOL AND SPA SAFETY

Sec.

8001. Findings.
8002. Definitions.
8003. Federal swimming pool and spa drain cover standard.
8004. State swimming pool safety grant program.
8005. Minimum State law requirements.
8006. Education program.
8007. CPSC report.
8008. Applicability.

§8001. Findings

Congress finds the following:

(1) Of injury-related deaths, drowning is the second leading cause of death in children aged 1 to 14 in the United States.

(2) In 2004, 761 children aged 14 and under died as a result of unintentional drowning.

(3) Adult supervision at all aquatic venues is a critical safety factor in preventing children from drowning.

(4) Research studies show that the installation and proper use of barriers or fencing, as well as additional layers of protection, could substantially reduce the number of childhood residential swimming pool drownings and near drownings.

(Pub. L. 110–140, title XIV, §1402, Dec. 19, 2007, 121 Stat. 1794.)

EFFECTIVE DATE

Chapter effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as a note under section 1824 of Title 2, The Congress.

SHORT TITLE

Pub. L. 110–140, title XIV, §1401, Dec. 19, 2007, 121 Stat. 1794, provided that: "This title [enacting this chapter] may be cited as the 'Virginia Graeme Baker Pool and Spa Safety Act'."

§8002. Definitions

In this chapter:

(1) ASME/ANSI

The term "ASME/ANSI" as applied to a safety standard means such a standard that is accredited by the American National Standards Institute and published by the American Society of Mechanical Engineers.

(2) Barrier

The term "barrier" includes a natural or constructed topographical feature that prevents unpermitted access by children to a swimming pool, and, with respect to a hot tub, a lockable cover.

(3) Commission

The term "Commission" means the Consumer Product Safety Commission.

(4) Main drain

The term "main drain" means a submerged suction outlet typically located at the bottom of a pool or spa to conduct water to a recirculating pump.

(5) Safety vacuum release system

The term "safety vacuum release system" means a vacuum release system capable of providing vacuum release at a suction outlet caused by a high vacuum occurrence due to a suction outlet flow blockage.

(6) Swimming pool; spa

The term "swimming pool" or "spa" means any outdoor or indoor structure intended for swimming or recreational bathing, including in-ground and above-ground structures, and includes hot tubs, spas, portable spas, and non-portable wading pools.

(7) Unblockable drain

The term "unblockable drain" means a drain of any size and shape that a human body cannot sufficiently block to create a suction entrapment hazard.

(8) State

The term "State" has the meaning given such term in section 2052(10) [1] of this title, and includes the Northern Mariana Islands. For purposes of eligibility for the grants authorized under section 8004 of this title, such term shall also include any political subdivision of a State.

(Pub. L. 110–140, title XIV, §1403, Dec. 19, 2007, 121 Stat. 1795; Pub. L. 110–314, title II, §238(1), Aug. 14, 2008, 122 Stat. 3076; Pub. L. 112–10, div. B, title V, §1576(a), Apr. 15, 2011, 125 Stat. 139.)

REFERENCES IN TEXT

Section 2052(10) of this title, referred to in par. (8), was redesignated section 2052(15) of this title by Pub. L. 110–314, title II, §235(b)(4), Aug. 14, 2008, 122 Stat. 3074.

AMENDMENTS

2011—Par. (8). Pub. L. 112–10 inserted at end "For purposes of eligibility for the grants authorized under section 8004 of this title, such term shall also include any political subdivision of a State."

2008—Par. (8). Pub. L. 110–314 added par. (8).

[1] *See References in Text note below.*

§8003. Federal swimming pool and spa drain cover standard

(a) Consumer product safety rule

The requirements described in subsection (b) shall be treated as a consumer product safety rule issued by the Consumer Product Safety Commission under the Consumer Product Safety Act (15 U.S.C. 2051 et seq.).

(b) Drain cover standard

Effective 1 year after December 19, 2007, each swimming pool or spa drain cover manufactured, distributed, or entered into commerce in the United States shall conform to the entrapment protection standards of the ASME/ANSI A112.19.8 performance standard, or any successor standard regulating such swimming pool or drain cover. If a successor standard is proposed, the American Society of Mechanical Engineers shall notify the Commission of the proposed revision. If the Commission determines that the proposed revision is in the public interest, it shall incorporate the revision into the standard after providing 30 days notice to the public.

(c) Public pools

(1) Required equipment

(A) In general

Beginning 1 year after December 19, 2007—

(i) each public pool and spa in the United States shall be equipped with anti-entrapment devices or systems that comply with the ASME/ANSI A112.19.8 performance standard, or any successor standard; and

(ii) each public pool and spa in the United States with a single main drain other than an unblockable drain shall be equipped, at a minimum, with 1 or more of the following devices

or systems designed to prevent entrapment by pool or spa drains that meets the requirements of subparagraph (B):

(I) Safety vacuum release system

A safety vacuum release system which ceases operation of the pump, reverses the circulation flow, or otherwise provides a vacuum release at a suction outlet when a blockage is detected, that has been tested by an independent third party and found to conform to ASME/ANSI standard A112.19.17 or ASTM standard F2387.

(II) Suction-limiting vent system

A suction-limiting vent system with a tamper-resistant atmospheric opening.

(III) Gravity drainage system

A gravity drainage system that utilizes a collector tank.

(IV) Automatic pump shut-off system

An automatic pump shut-off system.

(V) Drain disablement

A device or system that disables the drain.

(VI) Other systems

Any other system determined by the Commission to be equally effective as, or better than, the systems described in subclauses (I) through (V) of this clause at preventing or eliminating the risk of injury or death associated with pool drainage systems.

(B) Applicable standards

Any device or system described in subparagraph (A)(ii) shall meet the requirements of any ASME/ANSI or ASTM performance standard if there is such a standard for such a device or system, or any applicable consumer product safety standard.

(2) Public pool and spa defined

In this subsection, the term "public pool and spa" means a swimming pool or spa that is—

(A) open to the public generally, whether for a fee or free of charge;

(B) open exclusively to—

(i) members of an organization and their guests;

(ii) residents of a multi-unit apartment building, apartment complex, residential real estate development, or other multi-family residential area (other than a municipality, township, or other local government jurisdiction); or

(iii) patrons of a hotel or other public accommodations facility; or

(C) operated by the Federal Government (or by a concessionaire on behalf of the Federal Government) for the benefit of members of the Armed Forces and their dependents or employees of any department or agency and their dependents.

(3) Enforcement

Violation of paragraph (1) shall be considered to be a violation of section 19(a)(1) of the Consumer Product Safety Act (15 U.S.C. 2068(a)(1)) and may also be enforced under section 17 of that Act (15 U.S.C. 2066).

(Pub. L. 110–140, title XIV, §1404, Dec. 19, 2007, 121 Stat. 1795; Pub. L. 110–314, title II, §238(2), Aug. 14, 2008, 122 Stat. 3076.)

REFERENCES IN TEXT

The Consumer Product Safety Act, referred to in subsec. (a), is Pub. L. 92–573, Oct. 27, 1972, 86 Stat. 1207, which is classified generally to chapter 47 (§2051 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2051 of this title and Tables.

AMENDMENTS

2008—Subsec. (b). Pub. L. 110–314 inserted at end "If a successor standard is proposed, the American Society of Mechanical Engineers shall notify the Commission of the proposed revision. If the Commission determines that the proposed revision is in the public interest, it shall incorporate the revision into the standard after providing 30 days notice to the public."

§8004. State swimming pool safety grant program

(a) In general

Subject to the availability of appropriations authorized by subsection (e), the Commission shall establish a grant program to provide assistance to eligible States.

(b) Eligibility

To be eligible for a grant under the program, a State shall—

(1) demonstrate to the satisfaction of the Commission that it has a State statute, or that, after December 19, 2007, it has enacted a statute, or amended an existing statute, and provides for the enforcement of,[1] a law that—

(A) except as provided in section 8005(a)(1)(A)(i) of this title, applies to all swimming pools constructed in the State after the date the State submits an application to the Commission for a grant under this section; and

(B) meets the minimum State law requirements of section 8005 of this title; and

(2) submit an application to the Commission at such time, in such form, and containing such additional information as the Commission may require.

(c) Amount of grant

The Commission shall determine the amount of a grant awarded under this chapter, and shall consider—

(1) the population and relative enforcement needs of each qualifying State; and

(2) allocation of grant funds in a manner designed to provide the maximum benefit from the program in terms of protecting children from drowning or entrapment, and, in making that allocation, shall give priority to States that have not received a grant under this chapter in a preceding fiscal year.

(d) Use of grant funds

A State receiving a grant under this section shall use—

(1) at least 50 percent of amounts made available to hire and train enforcement personnel for implementation and enforcement of standards under the State swimming pool and spa safety law; and

(2) the remainder—

(A) to educate pool construction and installation companies and pool service companies about the standards;

(B) to educate pool owners, pool operators, and other members of the public about the standards under the swimming pool and spa safety law and about the prevention of drowning or entrapment of children using swimming pools and spas; and

(C) to defray administrative costs associated with such training and education programs.

(e) Authorization of appropriations

There is authorized to be appropriated to the Commission such sums as may be necessary to carry out this section through fiscal year 2016. Any amounts appropriated pursuant to this subsection that remain unexpended and unobligated at the end of fiscal year 2016 shall be retained by the Commission and credited to the appropriations account that funds enforcement of the Consumer Product Safety Act [15 U.S.C. 2051 et seq.].

(Pub. L. 110–140, title XIV, §1405, Dec. 19, 2007, 121 Stat. 1796; Pub. L. 112–10, div. B, title V, §1576(b), Apr. 15, 2011, 125 Stat. 139; Pub. L. 112–74, div. C, title V, §502, Dec. 23, 2011, 125

Stat. 908; Pub. L. 113–76, div. E, title V, §501(1), Jan. 17, 2014, 128 Stat. 208.)

REFERENCES IN TEXT

The Consumer Product Safety Act, referred to in subsec. (e), is Pub. L. 92–573, Oct. 27, 1972, 86 Stat. 1207, which is classified generally to chapter 47 (§2051 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2051 of this title and Tables.

AMENDMENTS

2014—Subsec. (b)(1)(A). Pub. L. 113–76, §501(1)(A), substituted "all swimming pools constructed in the State after the date the State submits an application to the Commission for a grant under this section" for "all swimming pools constructed after the date that is 6 months after December 23, 2011, in the State".

Subsec. (e). Pub. L. 113–76, §501(1)(B), substituted "There is authorized to be appropriated to the Commission such sums as may be necessary to carry out this section through fiscal year 2016." for "There are authorized to be appropriated to the Commission for each of fiscal years 2009 and 2010 $2,000,000 to carry out this section, such sums to remain available until expended." and "the end of fiscal year 2016" for "the end of fiscal year 2012".

2011—Subsec. (b)(1)(A). Pub. L. 112–74, §502(b), inserted "constructed after the date that is 6 months after December 23, 2011," after "swimming pools".

Subsec. (e). Pub. L. 112–74, §502(a), substituted "2012" for "2011".

Pub. L. 112–10, which directed substitution of "2011" for "2010", was executed by making the substitution for "2010" the second place appearing to reflect the probable intent of Congress.

[1] So in original. The comma probably should not appear.

§8005. Minimum State law requirements

(a) In general

(1) Safety standards

A State meets the minimum State law requirements of this section if—

(A) the State requires by statute—

(i) the enclosure of all outdoor residential pools and spas by barriers to entry that will effectively prevent small children from gaining unsupervised and unfettered access to the pool or spa; and

(ii) that pools and spas built more than 1 year after the date of the enactment of such statute have—

(I) more than 1 drain;

(II) 1 or more unblockable drains; or

(III) no main drain; and

(B) the State meets such additional State law requirements for pools and spas as the Commission may establish after public notice and a 30-day public comment period.

(2) Use of minimum State law requirements

The Commission—

(A) shall use the minimum State law requirements under paragraph (1) solely for the purpose of determining the eligibility of a State for a grant under section 8004 of this title; and

(B) may not enforce any requirement under paragraph (1) except for the purpose of determining the eligibility of a State for a grant under section 8004 of this title.

(3) Requirements to reflect national performance standards and Commission guidelines

In establishing minimum State law requirements under paragraph (1)(B), the Commission shall—

(A) consider current or revised national performance standards on pool and spa barrier protection and entrapment prevention; and

(B) ensure that any such requirements are consistent with the guidelines contained in the Commission's publication 362, entitled "Safety Barrier Guidelines for Home Pools", the Commission's publication entitled "Guidelines for Entrapment Hazards: Making Pools and Spas Safer", and any other pool safety guidelines established by the Commission.

(b) Standards

Nothing in this section prevents the Commission from promulgating standards regulating pool and spa safety or from relying on an applicable national performance standard.

(c) Basic access-related safety devices and equipment requirements to be considered

In establishing minimum State law requirements for swimming pools and spas under subsection (a)(1), the Commission shall consider the following requirements:

(1) Covers

A safety pool cover.

(2) Gates

A gate with direct access to the swimming pool or spa that is equipped with a self-closing, self-latching device.

(3) Doors

Any door with direct access to the swimming pool or spa that is equipped with an audible alert device or alarm which sounds when the door is opened.

(4) Pool alarm

A device designed to provide rapid detection of an entry into the water of a swimming pool or spa.

(d) Entrapment, entanglement, and evisceration prevention standards to be required

(1) In general

In establishing additional minimum State law requirements for swimming pools and spas under subsection (a)(1), the Commission shall require, at a minimum, 1 or more of the following (except for pools constructed without a single main drain):

(A) Safety vacuum release system

A safety vacuum release system which ceases operation of the pump, reverses the circulation flow, or otherwise provides a vacuum release at a suction outlet when a blockage is detected, that has been tested by an independent third party and found to conform to ASME/ANSI standard A112.19.17 or ASTM standard F2387, or any successor standard.

(B) Suction-limiting vent system

A suction-limiting vent system with a tamper-resistant atmospheric opening.

(C) Gravity drainage system

A gravity drainage system that utilizes a collector tank.

(D) Automatic pump shut-off system

An automatic pump shut-off system.

(E) Drain disablement

A device or system that disables the drain.

(F) Other systems

Any other system determined by the Commission to be equally effective as, or better than, the systems described in subparagraphs (A) through (E) of this paragraph at preventing or eliminating the risk of injury or death associated with pool drainage systems.

(2) Applicable standards

Any device or system described in subparagraphs (B) through (E) of paragraph (1) shall meet

the requirements of any ASME/ANSI or ASTM performance standard if there is such a standard for such a device or system, or any applicable consumer product safety standard.

(Pub. L. 110–140, title XIV, §1406, Dec. 19, 2007, 121 Stat. 1797; Pub. L. 113–76, div. E, title V, §501(2), Jan. 17, 2014, 128 Stat. 209.)

AMENDMENTS

2014—Subsec. (a)(1)(A)(i). Pub. L. 113–76, §501(2)(A)(i), inserted "and" after semicolon.

Subsec. (a)(1)(A)(ii), (iii). Pub. L. 113–76, §501(2)(A)(ii), (iii), redesignated cl. (iii) as (ii), inserted "and" at end, and struck out former cl. (ii) which read as follows: "that all pools and spas be equipped with devices and systems designed to prevent entrapment by pool or spa drains;".

Subsec. (a)(1)(A)(iv), (v). Pub. L. 113–76, §501(2)(A)(ii), struck out cls. (iv) and (v) which read as follows:

"(iv) every swimming pool and spa that has a main drain, other than an unblockable drain, be equipped with a drain cover that meets the consumer product safety standard established by section 8003 of this title; and

"(v) that periodic notification is provided to owners of residential swimming pools or spas about compliance with the entrapment protection standards of the ASME/ANSI A112.19.8 performance standard, or any successor standard; and".

Subsec. (a)(2) to (4). Pub. L. 113–76, §501(2)(B), (C), redesignated pars. (3) and (4) as (2) and (3), respectively, substituted "paragraph (1)(B)" for "paragraph (1)" in introductory provisions of par. (3), and struck out former par. (2) which read as follows: "The minimum State law notification requirement under paragraph (1)(A)(v) shall not be construed to imply any liability on the part of a State related to that requirement."

§8006. Education program

(a) In general

The Commission shall establish and carry out an education program to inform the public of methods to prevent drowning and entrapment in swimming pools and spas. In carrying out the program, the Commission shall develop—

(1) educational materials designed for pool manufacturers, pool service companies, and pool supply retail outlets;

(2) educational materials designed for pool owners and operators; and

(3) a national media campaign to promote awareness of pool and spa safety.

(b) Authorization of appropriations

There are authorized to be appropriated to the Commission for each of the fiscal years 2008 through 2012 $5,000,000 to carry out the education program authorized by subsection (a).

(Pub. L. 110–140, title XIV, §1407, Dec. 19, 2007, 121 Stat. 1799.)

§8007. CPSC report

Not later than 1 year after the last day of each fiscal year for which grants are made under section 8004 of this title, the Commission shall submit to Congress a report evaluating the implementation of the grant program authorized by that section.

(Pub. L. 110–140, title XIV, §1408, Dec. 19, 2007, 121 Stat. 1800.)

§8008. Applicability

This chapter [1] is applicable to the United States and its territories, including American Samoa, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, and the United States Virgin Islands.

(Pub. L. 110–140, title XIV, §1409, as added Pub. L. 110–314, title II, §238(3), Aug. 14, 2008, 122 Stat. 3076.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act" and was translated as reading "this title", meaning title XIV of Pub. L. 110–140, known as the Virginia Graeme Baker Pool and Spa Safety Act, to reflect the probable intent of Congress.

[1] *See References in Text note below.*

CHAPTER 107—PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

Sec.

8101. Definition.

SUBCHAPTER I—COORDINATION AND STRATEGIC PLANNING OF FEDERAL EFFORT AGAINST COUNTERFEITING AND INFRINGEMENT

8111. Intellectual Property Enforcement Coordinator.
8112. Definition.
8113. Joint Strategic Plan.
8114. Reporting.
8115. Savings and repeals.
8116. Authorization of appropriations.

SUBCHAPTER II—CYBERSQUATTING PROTECTION

8131. Cyberpiracy protections for individuals.

§8101. Definition

In this Act, the term "United States person" means—

(1) any United States resident or national,

(2) any domestic concern (including any permanent domestic establishment of any foreign concern), and

(3) any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern that is controlled in fact by such domestic concern,

except that such term does not include an individual who resides outside the United States and is employed by an individual or entity other than an individual or entity described in paragraph (1), (2), or (3).

(Pub. L. 110–403, §3, Oct. 13, 2008, 122 Stat. 4257.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 110–403, Oct. 13, 2008, 122 Stat. 4256, known as the Prioritizing Resources and Organization for Intellectual Property Act of 2008, which enacted this chapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note below and Tables.

SHORT TITLE

Pub. L. 110–403, §1(a), Oct. 13, 2008, 122 Stat. 4256, provided that: "This Act [enacting this chapter, section 2323 of Title 18, Crimes and Criminal Procedure, and sections 3713a to 3713d of Title 42, The Public Health and Welfare, amending sections 1116 and 1117 of this title, sections 109, 111, 115, 119, 122, 411, 412, 503, 506, 601, and 602 of Title 17, Copyrights, sections 1834 and 2318 to 2320 of Title 18, section 1595a of Title 19, Customs Duties, and section 3713 of Title 42, and repealing section 1128 of this title and section 509 of Title 17] may be cited as the 'Prioritizing Resources and Organization for Intellectual Property Act of 2008'."

SUBCHAPTER I—COORDINATION AND STRATEGIC PLANNING OF FEDERAL EFFORT AGAINST COUNTERFEITING AND INFRINGEMENT

§8111. Intellectual Property Enforcement Coordinator

(a) Intellectual Property Enforcement Coordinator

The President shall appoint, by and with the advice and consent of the Senate, an Intellectual Property Enforcement Coordinator (in this subchapter referred to as the "IPEC") to serve within the Executive Office of the President. As an exercise of the rulemaking power of the Senate, any nomination of the IPEC submitted to the Senate for confirmation, and referred to a committee, shall be referred to the Committee on the Judiciary.

(b) Duties of IPEC

(1) In general

The IPEC shall—

(A) chair the interagency intellectual property enforcement advisory committee established under subsection (b)(3)(A);

(B) coordinate the development of the Joint Strategic Plan against counterfeiting and infringement by the advisory committee under section 8113 of this title;

(C) assist, at the request of the departments and agencies listed in subsection (b)(3)(A), in the implementation of the Joint Strategic Plan;

(D) facilitate the issuance of policy guidance to departments and agencies on basic issues of policy and interpretation, to the extent necessary to assure the coordination of intellectual property enforcement policy and consistency with other law;

(E) report to the President and report to Congress, to the extent consistent with law, regarding domestic and international intellectual property enforcement programs;

(F) report to Congress, as provided in section 8114 of this title, on the implementation of the Joint Strategic Plan, and make recommendations, if any and as appropriate, to Congress for improvements in Federal intellectual property laws and enforcement efforts; and

(G) carry out such other functions as the President may direct.

(2) Limitation on authority

The IPEC may not control or direct any law enforcement agency, including the Department of Justice, in the exercise of its investigative or prosecutorial authority.

(3) Advisory committee

(A) Establishment

There is established an interagency intellectual property enforcement advisory committee composed of the IPEC, who shall chair the committee, and the following members:

(i) Senate-confirmed representatives of the following departments and agencies who are involved in intellectual property enforcement, and who are, or are appointed by, the respective heads of those departments and agencies:

(I) The Office of Management and Budget.

(II) Relevant units within the Department of Justice, including the Federal Bureau of Investigation and the Criminal Division.

(III) The United States Patent and Trademark Office and other relevant units of the Department of Commerce.

(IV) The Office of the United States Trade Representative.

(V) The Department of State, the United States Agency for International Development, and the Bureau of International Narcotics Law Enforcement.

(VI) The Department of Homeland Security, United States Customs and Border

Protection, and United States Immigration and Customs Enforcement.

(VII) The Food and Drug Administration of the Department of Health and Human Services.

(VIII) The Department of Agriculture.

(IX) Any such other agencies as the President determines to be substantially involved in the efforts of the Federal Government to combat counterfeiting and infringement.

(ii) The Register of Copyrights, or a senior representative of the United States Copyright Office appointed by the Register of Copyrights.

(B) Functions

The advisory committee established under subparagraph (A) shall develop the Joint Strategic Plan against counterfeiting and infringement under section 8113 of this title.

(Pub. L. 110–403, title III, §301, Oct. 13, 2008, 122 Stat. 4264.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (a), was in the original "this title", meaning title III of Pub. L. 110–403, Oct. 13, 2008, 122 Stat. 4264, which is classified principally to this subchapter. For complete classification of title III to the Code, see Tables.

EX. ORD. NO. 13565. ESTABLISHMENT OF THE INTELLECTUAL PROPERTY ENFORCEMENT ADVISORY COMMITTEES

Ex. Ord. No. 13565, Feb. 8, 2011, 76 F.R. 7681, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including title III of the Prioritizing Resources and Organization for Intellectual Property Act of 2008 (Public Law 110–403) (15 U.S.C. 8111–8116) (the "PRO IP Act"), and in order to strengthen the efforts of the Federal Government to encourage innovation through the effective and efficient enforcement of laws protecting copyrights, patents, trademarks, trade secrets, and other forms of intellectual property, both in the United States and abroad, including matters relating to combating infringement, and thereby support efforts to reinvigorate the Nation's global competitiveness, accelerate export growth, promote job creation, and reduce threats posed to national security and to public health and safety, it is hereby ordered as follows:

SECTION 1. *Senior Intellectual Property Enforcement Advisory Committee*.

(a) *Establishment of Committee*. There is established an interagency Senior Intellectual Property Enforcement Advisory Committee (Senior Advisory Committee), which shall be chaired by the Intellectual Property Enforcement Coordinator (Coordinator), Executive Office of the President.

(b) *Membership*. The Senior Advisory Committee shall be composed of the Coordinator, who shall chair it, and the heads of, or the deputies to the heads of:

(i) the Department of State;

(ii) the Department of the Treasury;

(iii) the Department of Justice;

(iv) the Department of Agriculture;

(v) the Department of Commerce;

(vi) the Department of Health and Human Services;

(vii) the Department of Homeland Security;

(viii) the Office of Management and Budget; and

(ix) the Office of the United States Trade Representative.

A member of the Senior Advisory Committee may, in consultation with the Coordinator, designate a senior-level official from the member's department or agency who holds a position for which Senate confirmation is required to perform the Senior Advisory Committee functions of the member.

(c) *Mission and Functions*. Consistent with the authorities assigned to the Coordinator, and other applicable law, the Senior Advisory Committee shall advise the Coordinator and facilitate the formation and implementation of each Joint Strategic Plan required every 3 years under title III of the PRO IP Act (15 U.S.C. 8113), consistent with this order.

(d) *Administration*. The Coordinator shall coordinate and support the work of the Senior Advisory Committee in fulfilling its functions under this order. The Coordinator shall convene the first meeting of the Senior Advisory Committee within 90 days of the date of this order and shall thereafter convene such meetings as appropriate.

SEC. 2. *Intellectual Property Enforcement Advisory Committee*.

(a) *Establishment of Committee*. There is established an interagency Intellectual Property Enforcement Advisory Committee (Enforcement Advisory Committee), which shall be chaired by the Coordinator. The Enforcement Advisory Committee shall serve as the committee established by section 301(b)(3) of the PRO IP Act (15 U.S.C. 8111(b)(3)).

(b) *Membership*. The Enforcement Advisory Committee shall be composed of the Coordinator, who shall chair it, and representatives from the following departments and agencies, or units of departments and agencies, who hold a position for which Senate confirmation is required, who are involved in intellectual property enforcement, and who are, or are designated by, the respective heads of those departments and agencies:

(i) the Office of Management and Budget;

(ii) relevant units within the Department of Justice, including the Criminal Division, the Civil Division, and the Federal Bureau of Investigation;

(iii) the United States Patent and Trademark Office, the International Trade Administration, and other relevant units of the Department of Commerce;

(iv) the Office of the United States Trade Representative;

(v) the Department of State, the Bureau of Economic, Energy, and Business Affairs, the United States Agency for International Development and the Bureau of International Narcotics and Law Enforcement Affairs;

(vi) the Department of Homeland Security, United States Customs and Border Protection, and United States Immigration and Customs Enforcement;

(vii) the Food and Drug Administration of the Department of Health and Human Services;

(viii) the Department of Agriculture;

(ix) the Department of the Treasury; and

(x) such other executive branch departments, agencies, or offices as the President determines to be substantially involved in the efforts of the Federal Government to combat counterfeiting and infringement.

Pursuant to the PRO IP Act (15 U.S.C. 8111), the Coordinator shall also invite the Register of Copyrights, or a senior representative of the United States Copyright Office designated by the Register of Copyrights, to serve as a member of the Enforcement Advisory Committee.

(c) *Mission and Functions*.

(i) Consistent with the authorities assigned to the Coordinator and the Enforcement Advisory Committee, and other applicable law, the Enforcement Advisory Committee shall develop each Joint Strategic Plan as provided for in title III of the PRO IP Act. In the development and implementation of the Joint Strategic Plan, the heads of the departments and agencies identified in section 2(b) of this order shall share with the Coordinator and the other members of the Enforcement Advisory Committee relevant department or agency information, to the extent permitted by law, including requirements relating to confidentiality and privacy, and to the extent that such sharing of information is consistent with law enforcement protocols for handling such information. Such information shall include:

(A) plans for addressing the Joint Strategic Plan;

(B) statistical information on the enforcement activities taken by that department or agency against counterfeiting or infringement; and

(C) recommendations to enhance cooperation among Federal, State, and local authorities responsible for intellectual property enforcement.

(ii) The Coordinator may establish subgroups, consisting exclusively of Enforcement Advisory Committee members or their designees, who must be officials from the designating member's department or agency, to support the functions of the Enforcement Advisory Committee. The subgroups shall be chaired by the Coordinator, or the Coordinator's designee with expertise and experience in intellectual property enforcement matters, and may include:

(A) an Enforcement Subcommittee; and

(B) other subcommittees as the Coordinator deems appropriate, including subcommittees addressing particular enforcement issues, efforts, training, and information sharing among departments and agencies.

(d) *Administration*. The Coordinator shall coordinate and support the work of the Enforcement Advisory Committee in fulfilling its functions under this order and under section 301(b)(3)(B) of the PRO IP Act (15 U.S.C. 8111(b)(3)(B)). The Coordinator shall convene meetings of the Enforcement Advisory Committee as appropriate.

SEC. 3. *General Provisions*.

(a) Nothing in this order shall be construed to impair or otherwise affect the:

(i) authority granted by law to an executive department, agency, or the head thereof, or the status of that

department or agency within the Federal Government; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations. Consistent with section 301(b)(2) of the PRO IP Act (15 U.S.C. 8111(b)(2)), the Coordinator may not control or direct any Federal law enforcement agency in the exercise of its investigative or prosecutorial authority.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

§8112. Definition

For purposes of this subchapter, the term "intellectual property enforcement" means matters relating to the enforcement of laws protecting copyrights, patents, trademarks, other forms of intellectual property, and trade secrets, both in the United States and abroad, including in particular matters relating to combating counterfeit and infringing goods.

(Pub. L. 110–403, title III, §302, Oct. 13, 2008, 122 Stat. 4266.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original "this title", meaning title III of Pub. L. 110–403, Oct. 13, 2008, 122 Stat. 4264, which is classified principally to this subchapter. For complete classification of title III to the Code, see Tables.

§8113. Joint Strategic Plan

(a) Purpose

The objectives of the Joint Strategic Plan against counterfeiting and infringement that is referred to in section 8111(b)(1)(B) of this title (in this section referred to as the "joint strategic plan") are the following:

(1) Reducing counterfeit and infringing goods in the domestic and international supply chain.

(2) Identifying and addressing structural weaknesses, systemic flaws, or other unjustified impediments to effective enforcement action against the financing, production, trafficking, or sale of counterfeit or infringing goods, including identifying duplicative efforts to enforce, investigate, and prosecute intellectual property crimes across the Federal agencies and Departments that comprise the Advisory Committee and recommending how such duplicative efforts may be minimized. Such recommendations may include recommendations on how to reduce duplication in personnel, materials, technologies, and facilities utilized by the agencies and Departments responsible for the enforcement, investigation, or prosecution of intellectual property crimes.

(3) Ensuring that information is identified and shared among the relevant departments and agencies, to the extent permitted by law, including requirements relating to confidentiality and privacy, and to the extent that such sharing of information is consistent with Department of Justice and other law enforcement protocols for handling such information, to aid in the objective of arresting and prosecuting individuals and entities that are knowingly involved in the financing, production, trafficking, or sale of counterfeit or infringing goods.

(4) Disrupting and eliminating domestic and international counterfeiting and infringement networks.

(5) Strengthening the capacity of other countries to protect and enforce intellectual property rights, and reducing the number of countries that fail to enforce laws preventing the financing, production, trafficking, and sale of counterfeit and infringing goods.

(6) Working with other countries to establish international standards and policies for the effective protection and enforcement of intellectual property rights.

(7) Protecting intellectual property rights overseas by—

(A) working with other countries and exchanging information with appropriate law enforcement agencies in other countries relating to individuals and entities involved in the financing, production, trafficking, or sale of counterfeit and infringing goods;

(B) ensuring that the information referred to in subparagraph (A) is provided to appropriate United States law enforcement agencies in order to assist, as warranted, enforcement activities in cooperation with appropriate law enforcement agencies in other countries; and

(C) building a formal process for consulting with companies, industry associations, labor unions, and other interested groups in other countries with respect to intellectual property enforcement.

(b) Timing

Not later than 12 months after October 13, 2008, and not later than December 31 of every third year thereafter, the IPEC shall submit the joint strategic plan to the Committee on the Judiciary and the Committee on Appropriations of the Senate, and to the Committee on the Judiciary and the Committee on Appropriations of the House of Representatives.

(c) Responsibility of the IPEC

During the development of the joint strategic plan, the IPEC—

(1) shall provide assistance to, and coordinate the meetings and efforts of, the appropriate officers and employees of departments and agencies represented on the advisory committee appointed under section 8111(b)(3) of this title who are involved in intellectual property enforcement; and

(2) may consult with private sector experts in intellectual property enforcement in furtherance of providing assistance to the members of the advisory committee appointed under section 8111(b)(3) of this title.

(d) Responsibilities of other departments and agencies

In the development and implementation of the joint strategic plan, the heads of the departments and agencies identified under section 8111(b)(3) of this title shall—

(1) designate personnel with expertise and experience in intellectual property enforcement matters to work with the IPEC and other members of the advisory committee; and

(2) share relevant department or agency information with the IPEC and other members of the advisory committee, including statistical information on the enforcement activities of the department or agency against counterfeiting or infringement, and plans for addressing the joint strategic plan, to the extent permitted by law, including requirements relating to confidentiality and privacy, and to the extent that such sharing of information is consistent with Department of Justice and other law enforcement protocols for handling such information.

(e) Contents of the joint strategic plan

Each joint strategic plan shall include the following:

(1) A description of the priorities identified for carrying out the objectives in the joint strategic plan, including activities of the Federal Government relating to intellectual property enforcement.

(2) A description of the means to be employed to achieve the priorities, including the means for improving the efficiency and effectiveness of the Federal Government's enforcement efforts against counterfeiting and infringement.

(3) Estimates of the resources necessary to fulfill the priorities identified under paragraph (1).

(4) The performance measures to be used to monitor results under the joint strategic plan during the following year.

(5) An analysis of the threat posed by violations of intellectual property rights, including the costs to the economy of the United States resulting from violations of intellectual property laws, and the threats to public health and safety created by counterfeiting and infringement.

(6) An identification of the departments and agencies that will be involved in implementing each priority under paragraph (1).

(7) A strategy for ensuring coordination among the departments and agencies identified under

paragraph (6), which will facilitate oversight by the executive branch of, and accountability among, the departments and agencies responsible for carrying out the strategy.

(8) Such other information as is necessary to convey the costs imposed on the United States economy by, and the threats to public health and safety created by, counterfeiting and infringement, and those steps that the Federal Government intends to take over the period covered by the succeeding joint strategic plan to reduce those costs and counter those threats.

(f) Enhancing enforcement efforts of foreign governments

The joint strategic plan shall include programs to provide training and technical assistance to foreign governments for the purpose of enhancing the efforts of such governments to enforce laws against counterfeiting and infringement. With respect to such programs, the joint strategic plan shall—

(1) seek to enhance the efficiency and consistency with which Federal resources are expended, and seek to minimize duplication, overlap, or inconsistency of efforts;

(2) identify and give priority to those countries where programs of training and technical assistance can be carried out most effectively and with the greatest benefit to reducing counterfeit and infringing products in the United States market, to protecting the intellectual property rights of United States persons and their licensees, and to protecting the interests of United States persons otherwise harmed by violations of intellectual property rights in those countries;

(3) in identifying the priorities under paragraph (2), be guided by the list of countries identified by the United States Trade Representative under section 2242(a) of title 19; and

(4) develop metrics to measure the effectiveness of the Federal Government's efforts to improve the laws and enforcement practices of foreign governments against counterfeiting and infringement.

(g) Dissemination of the joint strategic plan

The joint strategic plan shall be posted for public access on the website of the White House, and shall be disseminated to the public through such other means as the IPEC may identify.

(Pub. L. 110–403, title III, §303, Oct. 13, 2008, 122 Stat. 4266.)

§8114. Reporting

(a) Annual report

Not later than December 31 of each calendar year beginning in 2009, the IPEC shall submit a report on the activities of the advisory committee during the preceding fiscal year. The annual report shall be submitted to Congress, and disseminated to the people of the United States, in the manner specified in subsections (b) and (g) of section 8113 of this title.

(b) Contents

The report required by this section shall include the following:

(1) The progress made on implementing the strategic plan and on the progress toward fulfillment of the priorities identified under section 8113(e)(1) of this title.

(2) The progress made in efforts to encourage Federal, State, and local government departments and agencies to accord higher priority to intellectual property enforcement.

(3) The progress made in working with foreign countries to investigate, arrest, and prosecute entities and individuals involved in the financing, production, trafficking, and sale of counterfeit and infringing goods.

(4) The manner in which the relevant departments and agencies are working together and sharing information to strengthen intellectual property enforcement.

(5) An assessment of the successes and shortcomings of the efforts of the Federal Government, including departments and agencies represented on the committee established under section 8111(b)(3) of this title.

(6) Recommendations, if any and as appropriate, for any changes in enforcement statutes,

regulations, or funding levels that the advisory committee considers would significantly improve the effectiveness or efficiency of the effort of the Federal Government to combat counterfeiting and infringement and otherwise strengthen intellectual property enforcement, including through the elimination or consolidation of duplicative programs or initiatives.

(7) The progress made in strengthening the capacity of countries to protect and enforce intellectual property rights.

(8) The successes and challenges in sharing with other countries information relating to intellectual property enforcement.

(9) The progress made under trade agreements and treaties to protect intellectual property rights of United States persons and their licensees.

(10) The progress made in minimizing duplicative efforts, materials, facilities, and procedures of the Federal agencies and Departments responsible for the enforcement, investigation, or prosecution of intellectual property crimes.

(11) Recommendations, if any and as appropriate, on how to enhance the efficiency and consistency with which Federal funds and resources are expended to enforce, investigate, or prosecute intellectual property crimes, including the extent to which the agencies and Departments responsible for the enforcement, investigation, or prosecution of intellectual property crimes have utilized existing personnel, materials, technologies, and facilities.

(Pub. L. 110–403, title III, §304, Oct. 13, 2008, 122 Stat. 4269.)

§8115. Savings and repeals

(a) Transition from NIPLECC to IPEC

(1) Omitted

(2) Continuity of performance of duties

Upon confirmation by the Senate, and notwithstanding paragraph (1), the IPEC may use the services and personnel of the National Intellectual Property Law Enforcement Coordination Council, for such time as is reasonable, to perform any functions or duties which in the discretion of the IPEC are necessary to facilitate the orderly transition of any functions or duties transferred from the Council to the IPEC pursuant to any provision of this Act or any amendment made by this Act.

(b) Current authorities not affected

Except as provided in subsection (a), nothing in this subchapter shall alter the authority of any department or agency of the United States (including any independent agency) that relates to—

(1) the investigation and prosecution of violations of laws that protect intellectual property rights;

(2) the administrative enforcement, at the borders of the United States, of laws that protect intellectual property rights; or

(3) the United States trade agreements program or international trade.

(c) Rules of construction

Nothing in this subchapter—

(1) shall derogate from the powers, duties, and functions of any of the agencies, departments, or other entities listed or included under section 8111(b)(3)(A) of this title; and

(2) shall be construed to transfer authority regarding the control, use, or allocation of law enforcement resources, or the initiation or prosecution of individual cases or types of cases, from the responsible law enforcement department or agency.

(Pub. L. 110–403, title III, §305, Oct. 13, 2008, 122 Stat. 4270.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(2), is Pub. L. 110–403, Oct. 13, 2008, 122 Stat. 4256, known as the

Prioritizing Resources and Organization for Intellectual Property Act of 2008, which enacted this chapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 8101 of this title and Tables.

This subchapter, referred to in subsecs. (b) and (c), was in the original "this title", meaning title III of Pub. L. 110–403, Oct. 13, 2008, 122 Stat. 4264, which is classified principally to this subchapter. For complete classification of title III to the Code, see Tables.

CODIFICATION

Section is comprised of section 305 of Pub. L. 110–403. Subsec. (a)(1) of section 305 of Pub. L. 110–403 repealed section 1128 of this title.

§8116. Authorization of appropriations

(a) [1] In general

There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out this subchapter.

(Pub. L. 110–403, title III, §306, Oct. 13, 2008, 122 Stat. 4270.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (a), was in the original "this title", meaning title III of Pub. L. 110–403, Oct. 13, 2008, 122 Stat. 4264, which is classified principally to this subchapter. For complete classification of title III to the Code, see Tables.

[1] So in original. No subsec. (b) has been enacted.

SUBCHAPTER II—CYBERSQUATTING PROTECTION

§8131. Cyberpiracy protections for individuals

(1) In general

(A) Civil liability

Any person who registers a domain name that consists of the name of another living person, or a name substantially and confusingly similar thereto, without that person's consent, with the specific intent to profit from such name by selling the domain name for financial gain to that person or any third party, shall be liable in a civil action by such person.

(B) Exception

A person who in good faith registers a domain name consisting of the name of another living person, or a name substantially and confusingly similar thereto, shall not be liable under this paragraph if such name is used in, affiliated with, or related to a work of authorship protected under title 17, including a work made for hire as defined in section 101 of title 17, and if the person registering the domain name is the copyright owner or licensee of the work, the person intends to sell the domain name in conjunction with the lawful exploitation of the work, and such registration is not prohibited by a contract between the registrant and the named person. The exception under this subparagraph shall apply only to a civil action brought under paragraph (1) and shall in no manner limit the protections afforded under the Trademark Act of 1946 (15 U.S.C. 1051 et seq.) or other provision of Federal or State law.

(2) Remedies

In any civil action brought under paragraph (1), a court may award injunctive relief, including the forfeiture or cancellation of the domain name or the transfer of the domain name to the plaintiff. The

court may also, in its discretion, award costs and attorneys fees to the prevailing party.

(3) Definition

In this section, the term "domain name" has the meaning given that term in section 45 of the Trademark Act of 1946 (15 U.S.C. 1127).

(4) Effective date

This section shall apply to domain names registered on or after November 29, 1999.

(Pub. L. 106–113, div. B, §1000(a)(9) [title III, §3002(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–548.)

REFERENCES IN TEXT

The Trademark Act of 1946, referred to in par. (1)(B), is act July 5, 1946, ch. 540, 60 Stat. 427, also popularly known as the Lanham Act, which is classified generally to chapter 22 (§1051 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1051 of this title and Tables.

CODIFICATION

Section was formerly classified to section 1129 of this title.

Section was enacted as part of the Anticybersquatting Consumer Protection Act, and not as part of the Prioritizing Resources and Organization for Intellectual Property Act of 2008, which comprises this chapter.

CHAPTER 108—STATE-BASED INSURANCE REFORM

SUBCHAPTER I—NONADMITTED INSURANCE

Sec.
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8202. Regulation of nonadmitted insurance by insured's home State.
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SUBCHAPTER I—NONADMITTED INSURANCE

§8201. Reporting, payment, and allocation of premium taxes

(a) Home State's exclusive authority

No State other than the home State of an insured may require any premium tax payment for nonadmitted insurance.

(b) Allocation of nonadmitted premium taxes

(1) In general

The States may enter into a compact or otherwise establish procedures to allocate among the

States the premium taxes paid to an insured's home State described in subsection (a).

(2) Effective date

Except as expressly otherwise provided in such compact or other procedures, any such compact or other procedures—

(A) if adopted on or before the expiration of the 330-day period that begins on July 21, 2010, shall apply to any premium taxes that, on or after July 21, 2010, are required to be paid to any State that is subject to such compact or procedures; and

(B) if adopted after the expiration of such 330-day period, shall apply to any premium taxes that, on or after January 1 of the first calendar year that begins after the expiration of such 330-day period, are required to be paid to any State that is subject to such compact or procedures.

(3) Report

Upon the expiration of the 330-day period referred to in paragraph (2), the NAIC may submit a report to the Committee on Financial Services and the Committee on the Judiciary of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate identifying and describing any compact or other procedures for allocation among the States of premium taxes that have been adopted during such period by any States.

(4) Nationwide system

The Congress intends that each State adopt nationwide uniform requirements, forms, and procedures, such as an interstate compact, that provide for the reporting, payment, collection, and allocation of premium taxes for nonadmitted insurance consistent with this section.

(c) Allocation based on tax allocation report

To facilitate the payment of premium taxes among the States, an insured's home State may require surplus lines brokers and insureds who have independently procured insurance to annually file tax allocation reports with the insured's home State detailing the portion of the nonadmitted insurance policy premium or premiums attributable to properties, risks, or exposures located in each State. The filing of a nonadmitted insurance tax allocation report and the payment of tax may be made by a person authorized by the insured to act as its agent.

(Pub. L. 111–203, title V, §521, July 21, 2010, 124 Stat. 1589.)

EFFECTIVE DATE

Pub. L. 111–203, title V, §512, July 21, 2010, 124 Stat. 1589, provided that: "Except as otherwise specifically provided in this subtitle [see Short Title note below], this subtitle shall take effect upon the expiration of the 12-month period beginning on the date of the enactment of this subtitle [July 21, 2010]."

SHORT TITLE

Pub. L. 111–203, title V, §511, July 21, 2010, 124 Stat. 1589, provided that: "This subtitle [subtitle B (§§511–542) of title V of Pub. L. 111–203, enacting this chapter and provisions set out as a note under this section] may be cited as the 'Nonadmitted and Reinsurance Reform Act of 2010'."

§8202. Regulation of nonadmitted insurance by insured's home State

(a) Home State authority

Except as otherwise provided in this section, the placement of nonadmitted insurance shall be subject to the statutory and regulatory requirements solely of the insured's home State.

(b) Broker licensing

No State other than an insured's home State may require a surplus lines broker to be licensed in order to sell, solicit, or negotiate nonadmitted insurance with respect to such insured.

(c) Enforcement provision

With respect to section 8201 of this title and subsections (a) and (b) of this section, any law,

regulation, provision, or action of any State that applies or purports to apply to nonadmitted insurance sold to, solicited by, or negotiated with an insured whose home State is another State shall be preempted with respect to such application.

(d) Workers' compensation exception

This section may not be construed to preempt any State law, rule, or regulation that restricts the placement of workers' compensation insurance or excess insurance for self-funded workers' compensation plans with a nonadmitted insurer.

(Pub. L. 111–203, title V, §522, July 21, 2010, 124 Stat. 1590.)

§8203. Participation in national producer database

After the expiration of the 2-year period beginning on July 21, 2010, a State may not collect any fees relating to licensing of an individual or entity as a surplus lines broker in the State unless the State has in effect at such time laws or regulations that provide for participation by the State in the national insurance producer database of the NAIC, or any other equivalent uniform national database, for the licensure of surplus lines brokers and the renewal of such licenses.

(Pub. L. 111–203, title V, §523, July 21, 2010, 124 Stat. 1590.)

§8204. Uniform standards for surplus lines eligibility

A State may not—

(1) impose eligibility requirements on, or otherwise establish eligibility criteria for, nonadmitted insurers domiciled in a United States jurisdiction, except in conformance with such requirements and criteria in sections 5A(2) and 5C(2)(a) of the Non-Admitted Insurance Model Act, unless the State has adopted nationwide uniform requirements, forms, and procedures developed in accordance with section 8201(b) of this title that include alternative nationwide uniform eligibility requirements; or

(2) prohibit a surplus lines broker from placing nonadmitted insurance with, or procuring nonadmitted insurance from, a nonadmitted insurer domiciled outside the United States that is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC.

(Pub. L. 111–203, title V, §524, July 21, 2010, 124 Stat. 1590.)

§8205. Streamlined application for commercial purchasers

A surplus lines broker seeking to procure or place nonadmitted insurance in a State for an exempt commercial purchaser shall not be required to satisfy any State requirement to make a due diligence search to determine whether the full amount or type of insurance sought by such exempt commercial purchaser can be obtained from admitted insurers if—

(1) the broker procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that such insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and

(2) the exempt commercial purchaser has subsequently requested in writing the broker to procure or place such insurance from a nonadmitted insurer.

(Pub. L. 111–203, title V, §525, July 21, 2010, 124 Stat. 1591.)

§8206. Definitions

For purposes of this subchapter, the following definitions shall apply:

(1) Admitted insurer

The term "admitted insurer" means, with respect to a State, an insurer licensed to engage in the business of insurance in such State.

(2) Affiliate

The term "affiliate" means, with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured.

(3) Affiliated group

The term "affiliated group" means any group of entities that are all affiliated.

(4) Control

An entity has "control" over another entity if—

(A) the entity directly or indirectly or acting through 1 or more other persons owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the other entity; or

(B) the entity controls in any manner the election of a majority of the directors or trustees of the other entity.

(5) Exempt commercial purchaser

The term "exempt commercial purchaser" means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:

(A) The person employs or retains a qualified risk manager to negotiate insurance coverage.

(B) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of $100,000 in the immediately preceding 12 months.

(C)(i) The person meets at least 1 of the following criteria:

(I) The person possesses a net worth in excess of $20,000,000, as such amount is adjusted pursuant to clause (ii).

(II) The person generates annual revenues in excess of $50,000,000, as such amount is adjusted pursuant to clause (ii).

(III) The person employs more than 500 full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than 1,000 employees in the aggregate.

(IV) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least $30,000,000, as such amount is adjusted pursuant to clause (ii).

(V) The person is a municipality with a population in excess of 50,000 persons.

(ii) Effective on the fifth January 1 occurring after July 21, 2010, and each fifth January 1 occurring thereafter, the amounts in subclauses (I), (II), and (IV) of clause (i) shall be adjusted to reflect the percentage change for such 5-year period in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

(6) Home State

(A) In general

Except as provided in subparagraph (B), the term "home State" means, with respect to an insured—

(i) the State in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or

(ii) if 100 percent of the insured risk is located out of the State referred to in clause (i), the State to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(B) Affiliated groups

If more than 1 insured from an affiliated group are named insureds on a single nonadmitted insurance contract, the term "home State" means the home State, as determined pursuant to

subparagraph (A), of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

(7) Independently procured insurance

The term "independently procured insurance" means insurance procured directly by an insured from a nonadmitted insurer.

(8) NAIC

The term "NAIC" means the National Association of Insurance Commissioners or any successor entity.

(9) Nonadmitted insurance

The term "nonadmitted insurance" means any property and casualty insurance permitted to be placed directly or through a surplus lines broker with a nonadmitted insurer eligible to accept such insurance.

(10) Non-Admitted Insurance Model Act

The term "Non-Admitted Insurance Model Act" means the provisions of the Non-Admitted Insurance Model Act, as adopted by the NAIC on August 3, 1994, and amended on September 30, 1996, December 6, 1997, October 2, 1999, and June 8, 2002.

(11) Nonadmitted insurer

The term "nonadmitted insurer"—

(A) means, with respect to a State, an insurer not licensed to engage in the business of insurance in such State; but

(B) does not include a risk retention group, as that term is defined in section 3901(a)(4) of this title.

(12) Premium tax

The term "premium tax" means, with respect to surplus lines or independently procured insurance coverage, any tax, fee, assessment, or other charge imposed by a government entity directly or indirectly based on any payment made as consideration for an insurance contract for such insurance, including premium deposits, assessments, registration fees, and any other compensation given in consideration for a contract of insurance.

(13) Qualified risk manager

The term "qualified risk manager" means, with respect to a policyholder of commercial insurance, a person who meets all of the following requirements:

(A) The person is an employee of, or third-party consultant retained by, the commercial policyholder.

(B) The person provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis, and purchase of insurance.

(C) The person—

(i)(I) has a bachelor's degree or higher from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by a State insurance commissioner or other State regulatory official or entity to demonstrate minimum competence in risk management; and

(II)(aa) has 3 years of experience in risk financing, claims administration, loss prevention, risk and insurance analysis, or purchasing commercial lines of insurance; or

(bb) has—

(AA) a designation as a Chartered Property and Casualty Underwriter (in this subparagraph referred to as "CPCU") issued by the American Institute for CPCU/Insurance Institute of America;

(BB) a designation as an Associate in Risk Management (ARM) issued by the American Institute for CPCU/Insurance Institute of America;

(CC) a designation as Certified Risk Manager (CRM) issued by the National Alliance

for Insurance Education & Research;

(DD) a designation as a RIMS Fellow (RF) issued by the Global Risk Management Institute; or

(EE) any other designation, certification, or license determined by a State insurance commissioner or other State insurance regulatory official or entity to demonstrate minimum competency in risk management;

(ii)(I) has at least 7 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; and

(II) has any 1 of the designations specified in subitems (AA) through (EE) of clause (i)(II)(bb);

(iii) has at least 10 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; or

(iv) has a graduate degree from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by a State insurance commissioner or other State regulatory official or entity to demonstrate minimum competence in risk management.

(14) Reinsurance

The term "reinsurance" means the assumption by an insurer of all or part of a risk undertaken originally by another insurer.

(15) Surplus lines broker

The term "surplus lines broker" means an individual, firm, or corporation which is licensed in a State to sell, solicit, or negotiate insurance on properties, risks, or exposures located or to be performed in a State with nonadmitted insurers.

(16) State

The term "State" includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

(Pub. L. 111–203, title V, §527, July 21, 2010, 124 Stat. 1591.)

DEFINITIONS

For definitions of terms used in this section, see section 5301 of Title 12, Banks and Banking.

SUBCHAPTER II—REINSURANCE

§8221. Regulation of credit for reinsurance and reinsurance agreements

(a) Credit for reinsurance

If the State of domicile of a ceding insurer is an NAIC-accredited State, or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, and recognizes credit for reinsurance for the insurer's ceded risk, then no other State may deny such credit for reinsurance.

(b) Additional preemption of extraterritorial application of State law

In addition to the application of subsection (a), all laws, regulations, provisions, or other actions of a State that is not the domiciliary State of the ceding insurer, except those with respect to taxes and assessments on insurance companies or insurance income, are preempted to the extent that they—

(1) restrict or eliminate the rights of the ceding insurer or the assuming insurer to resolve disputes pursuant to contractual arbitration to the extent such contractual provision is not inconsistent with the provisions of title 9;

(2) require that a certain State's law shall govern the reinsurance contract, disputes arising from the reinsurance contract, or requirements of the reinsurance contract;

(3) attempt to enforce a reinsurance contract on terms different than those set forth in the reinsurance contract, to the extent that the terms are not inconsistent with this subchapter; or

(4) otherwise apply the laws of the State to reinsurance agreements of ceding insurers not domiciled in that State.

(Pub. L. 111–203, title V, §531, July 21, 2010, 124 Stat. 1595.)

§8222. Regulation of reinsurer solvency

(a) Domiciliary State regulation

If the State of domicile of a reinsurer is an NAIC-accredited State or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, such State shall be solely responsible for regulating the financial solvency of the reinsurer.

(b) Nondomiciliary States

(1) Limitation on financial information requirements

If the State of domicile of a reinsurer is an NAIC-accredited State or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, no other State may require the reinsurer to provide any additional financial information other than the information the reinsurer is required to file with its domiciliary State.

(2) Receipt of information

No provision of this section shall be construed as preventing or prohibiting a State that is not the State of domicile of a reinsurer from receiving a copy of any financial statement filed with its domiciliary State.

(Pub. L. 111–203, title V, §532, July 21, 2010, 124 Stat. 1595.)

§8223. Definitions

For purposes of this subchapter, the following definitions shall apply:

(1) Ceding insurer

The term "ceding insurer" means an insurer that purchases reinsurance.

(2) Domiciliary State

The terms "State of domicile" and "domiciliary State" mean, with respect to an insurer or reinsurer, the State in which the insurer or reinsurer is incorporated or entered through, and licensed.

(3) NAIC

The term "NAIC" means the National Association of Insurance Commissioners or any successor entity.

(4) Reinsurance

The term "reinsurance" means the assumption by an insurer of all or part of a risk undertaken originally by another insurer.

(5) Reinsurer

(A) In general

The term "reinsurer" means an insurer to the extent that the insurer—

(i) is principally engaged in the business of reinsurance;

(ii) does not conduct significant amounts of direct insurance as a percentage of its net premiums; and

(iii) is not engaged in an ongoing basis in the business of soliciting direct insurance.

(B) Determination

A determination of whether an insurer is a reinsurer shall be made under the laws of the State of domicile in accordance with this paragraph.

(6) State

The term "State" includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

(Pub. L. 111–203, title V, §533, July 21, 2010, 124 Stat. 1595.)

SUBCHAPTER III—RULE OF CONSTRUCTION

§8231. Rule of construction

Nothing in this chapter or the amendments made by this subtitle [1] shall be construed to modify, impair, or supersede the application of the antitrust laws. Any implied or actual conflict between this chapter and any amendments to this chapter and the antitrust laws shall be resolved in favor of the operation of the antitrust laws.

(Pub. L. 111–203, title V, §541, July 21, 2010, 124 Stat. 1596.)

REFERENCES IN TEXT

This subtitle, referred to in text, is subtitle B (§§511–542) of title V of Pub. L. 111–203, which enacted this chapter and provisions set out as notes under section 8201 of this title. Subtitle B did not make any amendments.

[1] *See References in Text note below.*

§8232. Severability

If any section or subsection of this chapter, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this chapter, and the application of the provision to any other person or circumstance, shall not be affected.

(Pub. L. 111–203, title V, §542, July 21, 2010, 124 Stat. 1596.)

CHAPTER 109—WALL STREET TRANSPARENCY AND ACCOUNTABILITY

SUBCHAPTER I—REGULATION OF OVER-THE-COUNTER SWAPS MARKETS

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SUBCHAPTER I—REGULATION OF OVER-THE-COUNTER SWAPS MARKETS

PART A—REGULATORY AUTHORITY

§8301. Definitions

In this subtitle, the terms "prudential regulator", "swap", "swap dealer", "major swap participant", "swap data repository", "associated person of a swap dealer or major swap participant", "eligible contract participant", "swap execution facility", "security-based swap", "security-based swap dealer", "major security-based swap participant", and "associated person of a security-based swap dealer or major security-based swap participant" have the meanings given the terms in section 1a of title 7, including any modification of the meanings under section 8321(a) of this title.

(Pub. L. 111–203, title VII, §711, July 21, 2010, 124 Stat. 1641.)

REFERENCES IN TEXT

This subtitle, referred to in text, is subtitle A (§§711–754) of title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1641, which enacted this subchapter, section 78c–2 of this title, and sections 1b, 6b–1, 6r to 6t, 7b–3, 24a, and 26 of Title 7, Agriculture, amended sections 78f, 78o, and 78s of this title, sections 1a, 2, 6 to 6b, 6c, 6d, 6m, 6q, 6s, 7 to 7b, 8 to 9a, 12, 12a, 13, 13–1, 13a–1, 13b, 15, 16, 21, 24, 25, 27 to 27b, 27e, and 27f of Title 7, section 761 of Title 11, Bankruptcy, and sections 4421 and 4422 of Title 12, Banks and Banking, enacted provisions set out as notes under sections 1a, 2, 6a, 7a–1, 7a–3, and 9 of Title 7, and amended provisions set out as a note under section 78c of this title. For complete classification of subtitle A to the Code, see Tables.

EFFECTIVE DATE

Provisions of subchapter effective on the later of 360 days after July 21, 2010, or, to the extent the provision requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision, see section 754 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1a of Title 7, Agriculture.

SHORT TITLE

Pub. L. 111–203, title VII, §701, July 21, 2010, 124 Stat. 1641, provided that: "This title [enacting this chapter, sections 78c–2 to 78c–5, 78j–2, 78m–1, and 78o–10 of this title, and sections 1b, 6b–1, 6r to 6t, 7b–3, 24a, and 26 of Title 7, Agriculture, amending sections 77b, 77b–1, 77e, 77q, 78c, 78c–1, 78f, 78i, 78j, 78m,

78o, 78p, 78q–1, 78s, 78t, 78u–1, 78u–2, 78bb, 78dd, 78mm, 80a–2, and 80b–2 of this title, sections 1a, 2, 6 to 6b, 6c, 6d, 6m, 6q, 6s, 7 to 7b, 8 to 9a, 12, 12a, 13, 13–1, 13a–1, 13b, 15, 16, 21, 24, 25, 27 to 27b, 27e, and 27f of Title 7, section 761 of Title 11, Bankruptcy, and sections 4421 and 4422 of Title 12, Banks and Banking, enacting provisions set out as notes under section 77b of this title and sections 1a, 2, 6a, 7a–1, 7a–3, and 9 of Title 7, and amending provisions set out as notes under section 78c of this title] may be cited as the 'Wall Street Transparency and Accountability Act of 2010'."

DEFINITION

For definition of "including" as used in this section, see section 5301 of Title 12, Banks and Banking.

§8302. Review of regulatory authority

(a) Consultation

(1) Commodity Futures Trading Commission

Before commencing any rulemaking or issuing an order regarding swaps, swap dealers, major swap participants, swap data repositories, derivative clearing organizations with regard to swaps, persons associated with a swap dealer or major swap participant, eligible contract participants, or swap execution facilities pursuant to this subtitle, the Commodity Futures Trading Commission shall consult and coordinate to the extent possible with the Securities and Exchange Commission and the prudential regulators for the purposes of assuring regulatory consistency and comparability, to the extent possible.

(2) Securities and Exchange Commission

Before commencing any rulemaking or issuing an order regarding security-based swaps, security-based swap dealers, major security-based swap participants, security-based swap data repositories, clearing agencies with regard to security-based swaps, persons associated with a security-based swap dealer or major security-based swap participant, eligible contract participants with regard to security-based swaps, or security-based swap execution facilities pursuant to subtitle B, the Securities and Exchange Commission shall consult and coordinate to the extent possible with the Commodity Futures Trading Commission and the prudential regulators for the purposes of assuring regulatory consistency and comparability, to the extent possible.

(3) Procedures and deadline

Such regulations shall be prescribed in accordance with applicable requirements of title 5 and shall be issued in final form not later than 360 days after July 21, 2010.

(4) Applicability

The requirements of paragraphs (1) and (2) shall not apply to an order issued—

(A) in connection with or arising from a violation or potential violation of any provision of the Commodity Exchange Act (7 U.S.C. 1 et seq.);

(B) in connection with or arising from a violation or potential violation of any provision of the securities laws; or

(C) in any proceeding that is conducted on the record in accordance with sections 556 and 557 of title 5.

(5) Effect

Nothing in this subsection authorizes any consultation or procedure for consultation that is not consistent with the requirements of subchapter II of chapter 5, and chapter 7, of title 5 (commonly known as the "Administrative Procedure Act").

(6) Rules; orders

In developing and promulgating rules or orders pursuant to this subsection, each Commission shall consider the views of the prudential regulators.

(7) Treatment of similar products and entities

(A) In general

In adopting rules and orders under this subsection, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall treat functionally or economically similar products or entities described in paragraphs (1) and (2) in a similar manner.

(B) Effect

Nothing in this subtitle requires the Commodity Futures Trading Commission or the Securities and Exchange Commission to adopt joint rules or orders that treat functionally or economically similar products or entities described in paragraphs (1) and (2) in an identical manner.

(8) Mixed swaps

The Commodity Futures Trading Commission and the Securities and Exchange Commission, after consultation with the Board of Governors, shall jointly prescribe such regulations regarding mixed swaps, as described in section 1a(47)(D) of the Commodity Exchange Act (7 U.S.C. 1a(47)(D)) and in section 78c(a)(68)(D) of this title, as may be necessary to carry out the purposes of this title.[1]

(b) Limitation

(1) Commodity Futures Trading Commission

Nothing in this title,[1] unless specifically provided, confers jurisdiction on the Commodity Futures Trading Commission to issue a rule, regulation, or order providing for oversight or regulation of—

(A) security-based swaps; or

(B) with regard to its activities or functions concerning security-based swaps—

(i) security-based swap dealers;

(ii) major security-based swap participants;

(iii) security-based swap data repositories;

(iv) associated persons of a security-based swap dealer or major security-based swap participant;

(v) eligible contract participants with respect to security-based swaps; or

(vi) swap execution facilities with respect to security-based swaps.

(2) Securities and Exchange Commission

Nothing in this title,[1] unless specifically provided, confers jurisdiction on the Securities and Exchange Commission or State securities regulators to issue a rule, regulation, or order providing for oversight or regulation of—

(A) swaps; or

(B) with regard to its activities or functions concerning swaps—

(i) swap dealers;

(ii) major swap participants;

(iii) swap data repositories;

(iv) persons associated with a swap dealer or major swap participant;

(v) eligible contract participants with respect to swaps; or

(vi) swap execution facilities with respect to swaps.

(3) Prohibition on certain futures associations and national securities associations

(A) Futures associations

Notwithstanding any other provision of law (including regulations), unless otherwise authorized by this title,[1] no futures association registered under section 17 of the Commodity Exchange Act (7 U.S.C. 21) may issue a rule, regulation, or order for the oversight or regulation of, or otherwise assert jurisdiction over, for any purpose, any security-based swap, except that

this subparagraph shall not limit the authority of a registered futures association to examine for compliance with, and enforce, its rules on capital adequacy.

(B) National securities associations

Notwithstanding any other provision of law (including regulations), unless otherwise authorized by this title,[1] no national securities association registered under section 78o–3 of this title may issue a rule, regulation, or order for the oversight or regulation of, or otherwise assert jurisdiction over, for any purpose, any swap, except that this subparagraph shall not limit the authority of a national securities association to examine for compliance with, and enforce, its rules on capital adequacy.

(c) Objection to Commission regulation

(1) Filing of petition for review

(A) In general

If either Commission referred to in this section determines that a final rule, regulation, or order of the other Commission conflicts with subsection (a)(7) or (b), then the complaining Commission may obtain review of the final rule, regulation, or order in the United States Court of Appeals for the District of Columbia Circuit by filing in the court, not later than 60 days after the date of publication of the final rule, regulation, or order, a written petition requesting that the rule, regulation, or order be set aside.

(B) Expedited proceeding

A proceeding described in subparagraph (A) shall be expedited by the United States Court of Appeals for the District of Columbia Circuit.

(2) Transmittal of petition and record

(A) In general

A copy of a petition described in paragraph (1) shall be transmitted not later than 1 business day after the date of filing by the complaining Commission to the Secretary of the responding Commission.

(B) Duty of responding Commission

On receipt of the copy of a petition described in paragraph (1), the responding Commission shall file with the United States Court of Appeals for the District of Columbia Circuit—

(i) a copy of the rule, regulation, or order under review (including any documents referred to therein); and

(ii) any other materials prescribed by the United States Court of Appeals for the District of Columbia Circuit.

(3) Standard of review

The United States Court of Appeals for the District of Columbia Circuit shall—

(A) give deference to the views of neither Commission; and

(B) determine to affirm or set aside a rule, regulation, or order of the responding Commission under this subsection, based on the determination of the court as to whether the rule, regulation, or order is in conflict with subsection (a)(7) or (b), as applicable.

(4) Judicial stay

The filing of a petition by the complaining Commission pursuant to paragraph (1) shall operate as a stay of the rule, regulation, or order until the date on which the determination of the United States Court of Appeals for the District of Columbia Circuit is final (including any appeal of the determination).

(d) Joint rulemaking

(1) In general

Notwithstanding any other provision of this title [1] and subsections (b) and (c), the Commodity Futures Trading Commission and the Securities and Exchange Commission, in consultation with the Board of Governors, shall further define the terms "swap", "security-based swap", "swap dealer", "security-based swap dealer", "major swap participant", "major security-based swap participant", "eligible contract participant", and "security-based swap agreement" in section 1a(47)(A)(v) of the Commodity Exchange Act (7 U.S.C. 1a(47)(A)(v)) and section 78c(a)(78) of this title.

(2) Authority of the Commissions

(A) In general

Notwithstanding any other provision of this title,[1] the Commodity Futures Trading Commission and the Securities and Exchange Commission, in consultation with the Board of Governors, shall jointly adopt such other rules regarding such definitions as the Commodity Futures Trading Commission and the Securities and Exchange Commission determine are necessary and appropriate, in the public interest, and for the protection of investors.

(B) Trade repository recordkeeping

Notwithstanding any other provision of this title,[1] the Commodity Futures Trading Commission and the Securities and Exchange Commission, in consultation with the Board of Governors, shall engage in joint rulemaking to jointly adopt a rule or rules governing the books and records that are required to be kept and maintained regarding security-based swap agreements by persons that are registered as swap data repositories under the Commodity Exchange Act, including uniform rules that specify the data elements that shall be collected and maintained by each repository.

(C) Books and records

Notwithstanding any other provision of this title,[1] the Commodity Futures Trading Commission and the Securities and Exchange Commission, in consultation with the Board of Governors, shall engage in joint rulemaking to jointly adopt a rule or rules governing books and records regarding security-based swap agreements, including daily trading records, for swap dealers, major swap participants, security-based swap dealers, and security-based swap participants.

(D) Comparable rules

Rules and regulations prescribed jointly under this title [1] by the Commodity Futures Trading Commission and the Securities and Exchange Commission shall be comparable to the maximum extent possible, taking into consideration differences in instruments and in the applicable statutory requirements.

(E) Tracking uncleared transactions

Any rules prescribed under subparagraph (A) shall require the maintenance of records of all activities relating to security-based swap agreement transactions defined under subparagraph (A) that are not cleared.

(F) Sharing of information

The Commodity Futures Trading Commission shall make available to the Securities and Exchange Commission information relating to security-based swap agreement transactions defined in subparagraph (A) that are not cleared.

(3) Financial Stability Oversight Council

In the event that the Commodity Futures Trading Commission and the Securities and Exchange Commission fail to jointly prescribe rules pursuant to paragraph (1) or (2) in a timely manner, at the request of either Commission, the Financial Stability Oversight Council shall resolve the dispute—

(A) within a reasonable time after receiving the request;

(B) after consideration of relevant information provided by each Commission; and

(C) by agreeing with 1 of the Commissions regarding the entirety of the matter or by determining a compromise position.

(4) Joint interpretation

Any interpretation of, or guidance by either Commission regarding, a provision of this title,[1] shall be effective only if issued jointly by the Commodity Futures Trading Commission and the Securities and Exchange Commission, after consultation with the Board of Governors, if this title [1] requires the Commodity Futures Trading Commission and the Securities and Exchange Commission to issue joint regulations to implement the provision.

(e) Global rulemaking timeframe

Unless otherwise provided in this title,[1] or an amendment made by this title,[1] the Commodity Futures Trading Commission or the Securities and Exchange Commission, or both, shall individually, and not jointly, promulgate rules and regulations required of each Commission under this title [1] or an amendment made by this title [1] not later than 360 days after July 21, 2010.

(f) Rules and registration before final effective dates

Beginning on July 21, 2010, and notwithstanding the effective date of any provision of this Act, the Commodity Futures Trading Commission and the Securities and Exchange Commission may, in order to prepare for the effective dates of the provisions of this Act—

(1) promulgate rules, regulations, or orders permitted or required by this Act;

(2) conduct studies and prepare reports and recommendations required by this Act;

(3) register persons under the provisions of this Act; and

(4) exempt persons, agreements, contracts, or transactions from provisions of this Act, under the terms contained in this Act,

provided, however, that no action by the Commodity Futures Trading Commission or the Securities and Exchange Commission described in paragraphs (1) through (4) shall become effective prior to the effective date applicable to such action under the provisions of this Act.

(Pub. L. 111–203, title VII, §712, July 21, 2010, 124 Stat. 1641.)

REFERENCES IN TEXT

This subtitle, referred to in subsec. (a)(1), (7)(B), is subtitle A (§§711–754) of title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1641, which enacted this subchapter, section 78c–2 of this title, and sections 1b, 6b–1, 6r to 6t, 7b–3, 24a, and 26 of Title 7, Agriculture, amended sections 78f, 78o, and 78s of this title, sections 1a, 2, 6 to 6b, 6c, 6d, 6m, 6q, 6s, 7 to 7b, 8 to 9a, 12, 12a, 13, 13–1, 13a–1, 13b, 15, 16, 21, 24, 25, 27 to 27b, 27e, and 27f of Title 7, section 761 of Title 11, Bankruptcy, and sections 4421 and 4422 of Title 12, Banks and Banking, enacted provisions set out as notes under sections 1a, 2, 6a, 7a–1, 7a–3, and 9 of Title 7, and amended provisions set out as a note under section 78c of this title. For complete classification of subtitle A to the Code, see Tables.

Subtitle B, referred to in subsec. (a)(2), is subtitle B (§§761–774) of title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1754, which enacted subchapter II of this chapter and sections 78c–3 to 78c–5, 78j–2, 78m–1, and 78o–10 of this title, amended sections 77b, 77b–1, 77e, 77q, 78c, 78c–1, 78f, 78i, 78j, 78m, 78o, 78p, 78q–1, 78t, 78u–1, 78u–2, 78bb, 78dd, 78mm, 80a–2, and 80b–2 of this title, enacted provisions set out as a note under section 77b of this title, and amended provisions set out as a note under section 78c of this title. For complete classification of subtitle B to the Code, see Tables.

The Commodity Exchange Act, referred to in subsecs. (a)(4)(A) and (d)(2)(B), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

This title, where footnoted in subsecs. (a)(8), (b), (d)(1), (2)(A)–(D), (4), and (e), is title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1641, known as the Wall Street Transparency and Accountability Act of 2010, which enacted this chapter and enacted and amended numerous other sections and notes in the Code. For complete classification of title VII to the Code, see Short Title note set out under section 8301 of this title and Tables.

This Act, referred to in subsec. (f), is Pub. L. 111–203, July 21, 2010, 124 Stat. 1376, known as the Dodd-Frank Wall Street Reform and Consumer Protection Act. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 12, Banks and Banking, and Tables.

DEFINITIONS

For definitions of terms used in this section, see section 5301 of Title 12, Banks and Banking.

[1] *See References in Text note below.*

§8303. Abusive swaps

The Commodity Futures Trading Commission or the Securities and Exchange Commission, or both, individually may, by rule or order—

(1) collect information as may be necessary concerning the markets for any types of—

(A) swap (as defined in section 1a of title 7); or

(B) security-based swap (as defined in section 1a of title 7); and

(2) issue a report with respect to any types of swaps or security-based swaps that the Commodity Futures Trading Commission or the Securities and Exchange Commission determines to be detrimental to—

(A) the stability of a financial market; or

(B) participants in a financial market.

(Pub. L. 111–203, title VII, §714, July 21, 2010, 124 Stat. 1647.)

§8304. Authority to prohibit participation in swap activities

Except as provided in section 6 of title 7, if the Commodity Futures Trading Commission or the Securities and Exchange Commission determines that the regulation of swaps or security-based swaps markets in a foreign country undermines the stability of the United States financial system, either Commission, in consultation with the Secretary of the Treasury, may prohibit an entity domiciled in the foreign country from participating in the United States in any swap or security-based swap activities.

(Pub. L. 111–203, title VII, §715, July 21, 2010, 124 Stat. 1647.)

§8305. Prohibition against Federal Government bailouts of swaps entities

(a) Prohibition on Federal assistance

Notwithstanding any other provision of law (including regulations), no Federal assistance may be provided to any swaps entity with respect to any swap, security-based swap, or other activity of the swaps entity.

(b) Definitions

In this section:

(1) Federal assistance

The term "Federal assistance" means the use of any advances from any Federal Reserve credit facility or discount window that is not part of a program or facility with broad-based eligibility under section 343(3)(A) of title 12, Federal Deposit Insurance Corporation insurance or guarantees for the purpose of—

(A) making any loan to, or purchasing any stock, equity interest, or debt obligation of, any swaps entity;

(B) purchasing the assets of any swaps entity;

(C) guaranteeing any loan or debt issuance of any swaps entity; or

(D) entering into any assistance arrangement (including tax breaks), loss sharing, or profit sharing with any swaps entity.

(2) Swaps entity

(A) In general

The term "swaps entity" means any swap dealer, security-based swap dealer, major swap participant, major security-based swap participant, that is registered under—

(i) the Commodity Exchange Act (7 U.S.C. 1 et seq.); or

(ii) the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

(B) Exclusion

The term "swaps entity" does not include any major swap participant or major security-based swap participant that is an insured depository institution.

(c) Affiliates of insured depository institutions

The prohibition on Federal assistance contained in subsection (a) does not apply to and shall not prevent an insured depository institution from having or establishing an affiliate which is a swaps entity, as long as such insured depository institution is part of a bank holding company, or savings and loan holding company, that is supervised by the Federal Reserve and such swaps entity affiliate complies with sections 371c and 371c–1 of title 12 and such other requirements as the Commodity Futures Trading Commission or the Securities Exchange Commission, as appropriate, and the Board of Governors of the Federal Reserve System, may determine to be necessary and appropriate.

(d) Only bona fide hedging and traditional bank activities permitted

The prohibition in subsection (a) shall apply to any insured depository institution unless the insured depository institution limits its swap or security-based swap activities to:

(1) Hedging and other similar risk mitigating activities directly related to the insured depository institution's activities.

(2) Acting as a swaps entity for swaps or security-based swaps involving rates or reference assets that are permissible for investment by a national bank under the paragraph designated as "Seventh." of section 24 of title 12, other than as described in paragraph (3).

(3) Limitation on credit default swaps

Acting as a swaps entity for credit default swaps, including swaps or security-based swaps referencing the credit risk of asset-backed securities as defined in section 3(a)(77) [1] of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(77)) (as amended by this Act) shall not be considered a bank permissible activity for purposes of subsection (d)(2) unless such swaps or security-based swaps are cleared by a derivatives clearing organization (as such term is defined in section la of the Commodity Exchange Act (7 U.S.C. la)) or a clearing agency (as such term is defined in section 3 of the Securities Exchange Act (15 U.S.C. 78c)) that is registered, or exempt from registration, as a derivatives clearing organization under the Commodity Exchange Act or as a clearing agency under the Securities Exchange Act, respectively.

(e) Existing swaps and security-based swaps

The prohibition in subsection (a) shall only apply to swaps or security-based swaps entered into by an insured depository institution after the end of the transition period described in subsection (f).

(f) Transition period

To the extent an insured depository institution qualifies as a "swaps entity" and would be subject to the Federal assistance prohibition in subsection (a), the appropriate Federal banking agency, after consulting with and considering the views of the Commodity Futures Trading Commission or the Securities Exchange Commission, as appropriate, shall permit the insured depository institution up to 24 months to divest the swaps entity or cease the activities that require registration as a swaps entity. In establishing the appropriate transition period to effect such divestiture or cessation of activities,

which may include making the swaps entity an affiliate of the insured depository institution, the appropriate Federal banking agency shall take into account and make written findings regarding the potential impact of such divestiture or cessation of activities on the insured depository institution's (1) mortgage lending, (2) small business lending, (3) job creation, and (4) capital formation versus the potential negative impact on insured depositors and the Deposit Insurance Fund of the Federal Deposit Insurance Corporation. The appropriate Federal banking agency may consider such other factors as may be appropriate. The appropriate Federal banking agency may place such conditions on the insured depository institution's divestiture or ceasing of activities of the swaps entity as it deems necessary and appropriate. The transition period under this subsection may be extended by the appropriate Federal banking agency, after consultation with the Commodity Futures Trading Commission and the Securities and Exchange Commission, for a period of up to 1 additional year.

(g) Excluded entities

For purposes of this section, the term "swaps entity" shall not include any insured depository institution under the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.] or a covered financial company under title II which is in a conservatorship, receivership, or a bridge bank operated by the Federal Deposit Insurance Corporation.

(h) Effective date

The prohibition in subsection (a) shall be effective 2 years following the date on which this Act is effective.

(i) Liquidation required

(1) In general

(A) FDIC insured institutions

All swaps entities that are FDIC insured institutions that are put into receivership or declared insolvent as a result of swap or security-based swap activity of the swaps entities shall be subject to the termination or transfer of that swap or security-based swap activity in accordance with applicable law prescribing the treatment of those contracts. No taxpayer funds shall be used to prevent the receivership of any swap entity resulting from swap or security-based swap activity of the swaps entity.

(B) Institutions that pose a systemic risk and are subject to heightened prudential supervision as regulated under section 5323 of title 12

All swaps entities that are institutions that pose a systemic risk and are subject to heightened prudential supervision as regulated under section 5323 of title 12, that are put into receivership or declared insolvent as a result of swap or security-based swap activity of the swaps entities shall be subject to the termination or transfer of that swap or security-based swap activity in accordance with applicable law prescribing the treatment of those contracts. No taxpayer funds shall be used to prevent the receivership of any swap entity resulting from swap or security-based swap activity of the swaps entity.

(C) Non-FDIC insured, non-systemically significant institutions not subject to heightened prudential supervision as regulated under section 5323 of title 12

No taxpayer resources shall be used for the orderly liquidation of any swaps entities that are non-FDIC insured, non-systemically significant institutions not subject to heightened prudential supervision as regulated under section 5323 of title 12.

(2) Recovery of funds

All funds expended on the termination or transfer of the swap or security-based swap activity of the swaps entity shall be recovered in accordance with applicable law from the disposition of assets of such swap entity or through assessments, including on the financial sector as provided under applicable law.

(3) No losses to taxpayers

Taxpayers shall bear no losses from the exercise of any authority under this title.[1]

(j) Prohibition on unregulated combination of swaps entities and banking

At no time following adoption of the rules in subsection (k) may a bank or bank holding company be permitted to be or become a swap entity unless it conducts its swap or security-based swap activity in compliance with such minimum standards set by its prudential regulator as are reasonably calculated to permit the swaps entity to conduct its swap or security-based swap activities in a safe and sound manner and mitigate systemic risk.

(k) Rules

In prescribing rules, the prudential regulator for a swaps entity shall consider the following factors:

(1) The expertise and managerial strength of the swaps entity, including systems for effective oversight.

(2) The financial strength of the swaps entity.

(3) Systems for identifying, measuring and controlling risks arising from the swaps entity's operations.

(4) Systems for identifying, measuring and controlling the swaps entity's participation in existing markets.

(5) Systems for controlling the swaps entity's participation or entry into in [2] new markets and products.

(l) Authority of the Financial Stability Oversight Council

The Financial Stability Oversight Council may determine that,[3] when other provisions established by this Act are insufficient to effectively mitigate systemic risk and protect taxpayers, that swaps entities may no longer access Federal assistance with respect to any swap, security-based swap, or other activity of the swaps entity. Any such determination by the Financial Stability Oversight Council of a prohibition of federal assistance shall be made on an institution-by-institution basis, and shall require the vote of not fewer than two-thirds of the members of the Financial Stability Oversight Council, which must include the vote by the Chairman of the Council, the Chairman of the Board of Governors of the Federal Reserve System, and the Chairperson of the Federal Deposit Insurance Corporation. Notice and hearing requirements for such determinations shall be consistent with the standards provided in title I.

(m) Ban on proprietary trading in derivatives

An insured depository institution shall comply with the prohibition on proprietary trading in derivatives as required by section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act [12 U.S.C. 1851].

(Pub. L. 111–203, title VII, §716, July 21, 2010, 124 Stat. 1648.)

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in subsecs. (b)(2)(A)(i) and (d)(3), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

The Securities Exchange Act of 1934, referred to in subsecs. (b)(2)(A)(ii) and (d)(3), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

Section 3(a)(77) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(77)) (as amended by this Act), referred to in subsec. (d)(3), was section 3(a)(77) of act June 6, 1934, as amended by Pub. L. 111–203, which was redesignated section 3(a)(79) of the Act by Pub. L. 112–106, title I, §101(b)(1), Apr. 5, 2012, 126 Stat. 307, and is classified to section 78c(a)(79) of this title.

The Federal Deposit Insurance Act, referred to in subsec. (g), is act Sept. 21, 1950, ch. 967, §2, 64 Stat. 873, which is classified generally to chapter 16 (§1811 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of Title 12 and Tables.

Title II, referred to in subsec. (g), is title II of Pub. L. 111–203, July 21, 2010, 124 Stat. 1442, which is classified principally to subchapter II (§5381 et seq.) of chapter 53 of Title 12, Banks and Banking. For

complete classification of title II to the Code, see Tables.

For the date on which this Act is effective, referred to in subsec. (h), see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking, and section 754 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1a of Title 7, Agriculture.

This title, referred to in subsec. (i)(3), is title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1641, known as the Wall Street Transparency and Accountability Act of 2010, which enacted this chapter and enacted and amended numerous other sections and notes in the Code. For complete classification of title VII to the Code, see Short Title note set out under section 8301 of this title and Tables.

This Act, referred to in subsec. (l), is Pub. L. 111–203, July 21, 2010, 124 Stat. 1376, known as the Dodd-Frank Wall Street Reform and Consumer Protection Act. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 12, Banks and Banking, and Tables.

Title I, referred to in subsec. (l), is title I of Pub. L. 111–203, July 21, 2010, 124 Stat. 1391, known as the Financial Stability Act of 2010, which is classified principally to subchapter I (§5311 et seq.) of chapter 53 of Title 12, Banks and Banking. For complete classification of title I to the Code, see Short Title note set out under section 5301 of Title 12 and Tables.

Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, referred to in subsec. (m), is section 619 of Pub. L. 111–203, which enacted section 1851 of Title 12, Banks and Banking.

DEFINITIONS

For definitions of terms used in this section, see section 5301 of Title 12, Banks and Banking.

[1] See References in Text note below.

[2] So in original.

[3] So in original. The word "that" probably should not appear.

§8306. Determining status of novel derivative products

(a) Process for determining the status of a novel derivative product

(1) Notice

(A) In general

Any person filing a proposal to list or trade a novel derivative product that may have elements of both securities and contracts of sale of a commodity for future delivery (or options on such contracts or options on commodities) may concurrently provide notice and furnish a copy of such filing with the Securities and Exchange Commission and the Commodity Futures Trading Commission. Any such notice shall state that notice has been made with both Commissions.

(B) Notification

If no concurrent notice is made pursuant to subparagraph (A), within 5 business days after determining that a proposal that seeks to list or trade a novel derivative product may have elements of both securities and contracts of sale of a commodity for future delivery (or options on such contracts or options on commodities), the Securities and Exchange Commission or the Commodity Futures Trading Commission, as applicable, shall notify the other Commission and provide a copy of such filing to the other Commission.

(2) Request for determination

(A) In general

No later than 21 days after receipt of a notice under paragraph (1), or upon its own initiative if no such notice is received, the Commodity Futures Trading Commission may request that the Securities and Exchange Commission issue a determination as to whether a product is a security, as defined in section 78c(a)(10) of this title.

(B) Request

No later than 21 days after receipt of a notice under paragraph (1), or upon its own initiative if no such notice is received, the Securities and Exchange Commission may request that the Commodity Futures Trading Commission issue a determination as to whether a product is a contract of sale of a commodity for future delivery, an option on such a contract, or an option on a commodity subject to the Commodity Futures Trading Commission's exclusive jurisdiction under section 2(a)(1)(A) of title 7.

(C) Requirement relating to request

A request under subparagraph (A) or (B) shall be made by submitting such request, in writing, to the Securities and Exchange Commission or the Commodity Futures Trading Commission, as applicable.

(D) Effect

Nothing in this paragraph shall be construed to prevent—

(i) the Commodity Futures Trading Commission from requesting that the Securities and Exchange Commission grant an exemption pursuant to section 78mm(a)(1) of this title with respect to a product that is the subject of a filing under paragraph (1); or

(ii) the Securities and Exchange Commission from requesting that the Commodity Futures Trading Commission grant an exemption pursuant to section 6(c)(1) of title 7 with respect to a product that is the subject of a filing under paragraph (1),

Provided, however, that nothing in this subparagraph shall be construed to require the Commodity Futures Trading Commission or the Securities and Exchange Commission to issue an exemption requested pursuant to this subparagraph; *provided further*, That an order granting or denying an exemption described in this subparagraph and issued under paragraph (3)(B) shall not be subject to judicial review pursuant to subsection (b).

(E) Withdrawal of request

A request under subparagraph (A) or (B) may be withdrawn by the Commission making the request at any time prior to a determination being made pursuant to paragraph (3) for any reason by providing written notice to the head of the other Commission.

(3) Determination

Notwithstanding any other provision of law, no later than 120 days after the date of receipt of a request—

(A) under subparagraph (A) or (B) of paragraph (2), unless such request has been withdrawn pursuant to paragraph (2)(E), the Securities and Exchange Commission or the Commodity Futures Trading Commission, as applicable, shall, by order, issue the determination requested in subparagraph (A) or (B) of paragraph (2), as applicable, and the reasons therefor; or

(B) under paragraph (2)(D), unless such request has been withdrawn, the Securities and Exchange Commission or the Commodity Futures Trading Commission, as applicable, shall grant an exemption or provide reasons for not granting such exemption, provided that any decision by the Securities and Exchange Commission not to grant such exemption shall not be reviewable under section 78y of this title.

(b) Judicial resolution

(1) In general

The Commodity Futures Trading Commission or the Securities and Exchange Commission may petition the United States Court of Appeals for the District of Columbia Circuit for review of a final order of the other Commission issued pursuant to subsection (a)(3)(A), with respect to a novel derivative product that may have elements of both securities and contracts of sale of a commodity for future delivery (or options on such contracts or options on commodities) that it

believes affects its statutory jurisdiction within 60 days after the date of entry of such order, a written petition requesting a review of the order. Any such proceeding shall be expedited by the Court of Appeals.

(2) Transmittal of petition and record

A copy of a petition described in paragraph (1) shall be transmitted not later than 1 business day after filing by the complaining Commission to the responding Commission. On receipt of the petition, the responding Commission shall file with the court a copy of the order under review and any documents referred to therein, and any other materials prescribed by the court.

(3) Standard of review

The court, in considering a petition filed pursuant to paragraph (1), shall give no deference to, or presumption in favor of, the views of either Commission.

(4) Judicial stay

The filing of a petition by the complaining Commission pursuant to paragraph (1) shall operate as a stay of the order, until the date on which the determination of the court is final (including any appeal of the determination).

(Pub. L. 111–203, title VII, §718, July 21, 2010, 124 Stat. 1652.)

DEFINITION

For definition of "including" as used in this section, see section 5301 of Title 12, Banks and Banking.

§8307. Studies

(a) Study on effects of position limits on trading on exchanges in the United States

(1) Study

The Commodity Futures Trading Commission, in consultation with each entity that is a designated contract market under the Commodity Exchange Act [7 U.S.C. 1 et seq.], shall conduct a study of the effects (if any) of the position limits imposed pursuant to the other provisions of this title [1] on excessive speculation and on the movement of transactions from exchanges in the United States to trading venues outside the United States.

(2) Report to the Congress

Within 12 months after the imposition of position limits pursuant to the other provisions of this title,[1] the Commodity Futures Trading Commission, in consultation with each entity that is a designated contract market under the Commodity Exchange Act, shall submit to the Congress a report on the matters described in paragraph (1).

(3) Required hearing

Within 30 legislative days after the submission to the Congress of the report described in paragraph (2), the Committee on Agriculture of the House of Representatives shall hold a hearing examining the findings of the report.

(4) Biennial reporting

In addition to the study required in paragraph (1), the Chairman of the Commodity Futures Trading Commission shall prepare and submit to the Congress biennial reports on the growth or decline of the derivatives markets in the United States and abroad, which shall include assessments of the causes of any such growth or decline, the effectiveness of regulatory regimes in managing systemic risk, a comparison of the costs of compliance at the time of the report for market participants subject to regulation by the United States with the costs of compliance in December 2008 for the market participants, and the quality of the available data. In preparing the report, the Chairman shall solicit the views of, consult with, and address the concerns raised by, market participants, regulators, legislators, and other interested parties.

(b) Study on feasibility of requiring use of standardized algorithmic descriptions for financial derivatives

(1) In general

The Securities and Exchange Commission and the Commodity Futures Trading Commission shall conduct a joint study of the feasibility of requiring the derivatives industry to adopt standardized computer-readable algorithmic descriptions which may be used to describe complex and standardized financial derivatives.

(2) Goals

The algorithmic descriptions defined in the study shall be designed to facilitate computerized analysis of individual derivative contracts and to calculate net exposures to complex derivatives. The algorithmic descriptions shall be optimized for simultaneous use by—

(A) commercial users and traders of derivatives;
(B) derivative clearing houses, exchanges and electronic trading platforms;
(C) trade repositories and regulator investigations of market activities; and
(D) systemic risk regulators.

The study will also examine the extent to which the algorithmic description, together with standardized and extensible legal definitions, may serve as the binding legal definition of derivative contracts. The study will examine the logistics of possible implementations of standardized algorithmic descriptions for derivatives contracts. The study shall be limited to electronic formats for exchange of derivative contract descriptions and will not contemplate disclosure of proprietary valuation models.

(3) International coordination

In conducting the study, the Securities and Exchange Commission and the Commodity Futures Trading Commission shall coordinate the study with international financial institutions and regulators as appropriate and practical.

(4) Report

Within 8 months after July 21, 2010, the Securities and Exchange Commission and the Commodity Futures Trading Commission shall jointly submit to the Committees on Agriculture and on Financial Services of the House of Representatives and the Committees on Agriculture, Nutrition, and Forestry and on Banking, Housing, and Urban Affairs of the Senate a written report which contains the results of the study required by paragraphs (1) through (3).

(c) International swap regulation

(1) In general

The Commodity Futures Trading Commission and the Securities and Exchange Commission shall jointly conduct a study—

(A) relating to—
(i) swap regulation in the United States, Asia, and Europe; and
(ii) clearing house and clearing agency regulation in the United States, Asia, and Europe; and

(B) that identifies areas of regulation that are similar in the United States, Asia and Europe and other areas of regulation that could be harmonized [2]

(2) Report

Not later than 18 months after July 21, 2010, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall submit to the Committee on Agriculture, Nutrition, and Forestry and the Committee on Banking, Housing, and Urban Affairs of the Senate and the

Committee on Agriculture and the Committee on Financial Services of the House of Representatives a report that includes a description of the results of the study under subsection (a), including—

(A) identification of the major exchanges and their regulator in each geographic area for the trading of swaps and security-based swaps including a listing of the major contracts and their trading volumes and notional values as well as identification of the major swap dealers participating in such markets;

(B) identification of the major clearing houses and clearing agencies and their regulator in each geographic area for the clearing of swaps and security-based swaps, including a listing of the major contracts and the clearing volumes and notional values as well as identification of the major clearing members of such clearing houses and clearing agencies in such markets;

(C) a description of the comparative methods of clearing swaps in the United States, Asia, and Europe; and

(D) a description of the various systems used for establishing margin on individual swaps, security-based swaps, and swap portfolios.

(d) Stable value contracts

(1) Determination

(A) Status

Not later than 15 months after July 21, 2010, the Securities and Exchange Commission and the Commodity Futures Trading Commission shall, jointly, conduct a study to determine whether stable value contracts fall within the definition of a swap. In making the determination required under this subparagraph, the Commissions jointly shall consult with the Department of Labor, the Department of the Treasury, and the State entities that regulate the issuers of stable value contracts.

(B) Regulations

If the Commissions determine that stable value contracts fall within the definition of a swap, the Commissions jointly shall determine if an exemption for stable value contracts from the definition of swap is appropriate and in the public interest. The Commissions shall issue regulations implementing the determinations required under this paragraph. Until the effective date of such regulations, and notwithstanding any other provision of this title,[1] the requirements of this title [1] shall not apply to stable value contracts.

(C) Legal certainty

Stable value contracts in effect prior to the effective date of the regulations described in subparagraph (B) shall not be considered swaps.

(2) Definition

For purposes of this subsection, the term "stable value contract" means any contract, agreement, or transaction that provides a crediting interest rate and guaranty or financial assurance of liquidity at contract or book value prior to maturity offered by a bank, insurance company, or other State or federally regulated financial institution for the benefit of any individual or commingled fund available as an investment in an employee benefit plan (as defined in section 1002(3) of title 29, including plans described in section 1002(32) of title 29) subject to participant direction, an eligible deferred compensation plan (as defined in section 457(b) of title 26) that is maintained by an eligible employer described in section 457(e)(1)(A) of title 26, an arrangement described in section 403(b) of title 26, or a qualified tuition program (as defined in section 529 of title 26).

(Pub. L. 111–203, title VII, §719, July 21, 2010, 124 Stat. 1654.)

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in subsec. (a)(1), (2), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

This title, referred to in subsecs. (a)(1), (2), and (d)(1)(B), is title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1641, known as the Wall Street Transparency and Accountability Act of 2010, which enacted this chapter and enacted and amended numerous other sections and notes in the Code. For complete classification of title VII to the Code, see Short Title note set out under section 8301 of this title and Tables.

DEFINITIONS

For definitions of terms used in this section, see section 5301 of Title 12, Banks and Banking.

[1] *See References in Text note below.*

[2] *So in original. Probably should be followed by a period.*

§8308. Memorandum

(a)(1) The Commodity Futures Trading Commission and the Federal Energy Regulatory Commission shall, not later than 180 days after July 21, 2010, negotiate a memorandum of understanding to establish procedures for—

(A) applying their respective authorities in a manner so as to ensure effective and efficient regulation in the public interest;

(B) resolving conflicts concerning overlapping jurisdiction between the 2 agencies; and

(C) avoiding, to the extent possible, conflicting or duplicative regulation.

(2) Such memorandum and any subsequent amendments to the memorandum shall be promptly submitted to the appropriate committees of Congress.

(b) The Commodity Futures Trading Commission and the Federal Energy Regulatory Commission shall, not later than July 21, 2010, negotiate a memorandum of understanding to share information that may be requested where either Commission is conducting an investigation into potential manipulation, fraud, or market power abuse in markets subject to such Commission's regulation or oversight. Shared information shall remain subject to the same restrictions on disclosure applicable to the Commission initially holding the information.

(Pub. L. 111–203, title VII, §720, July 21, 2010, 124 Stat. 1657.)

PART B—REGULATION OF SWAP MARKETS

§8321. Authority to define terms

(a) Authority to define terms

The Commodity Futures Trading Commission may adopt a rule to define—

(1) the term "commercial risk"; and

(2) any other term included in an amendment to the Commodity Exchange Act (7 U.S.C. 1 et seq.) made by this subtitle.

(b) Modification of definitions

To include transactions and entities that have been structured to evade this subtitle (or an amendment made by this subtitle), the Commodity Futures Trading Commission shall adopt a rule to further define the terms "swap", "swap dealer", "major swap participant", and "eligible contract participant".

(Pub. L. 111–203, title VII, §721(b), (c), July 21, 2010, 124 Stat. 1670.)

REFERENCES IN TEXT

This subtitle, referred to in text, is subtitle A (§§711–754) of title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1641, which enacted this subchapter, section 78c–2 of this title, and sections 1b, 6b–1, 6r to 6t, 7b–3, 24a, and 26 of Title 7, Agriculture, amended sections 78f, 78o, and 78s of this title, sections 1a, 2, 6 to 6b, 6c, 6d, 6m, 6q, 6s, 7 to 7b, 8 to 9a, 12, 12a, 13, 13–1, 13a–1, 13b, 15, 16, 21, 24, 25, 27 to 27b, 27e, and 27f of Title 7, section 761 of Title 11, Bankruptcy, and sections 4421 and 4422 of Title 12, Banks and Banking, enacted provisions set out as notes under sections 1a, 2, 6a, 7a–1, 7a–3, and 9 of Title 7, and amended provisions set out as a note under section 78c of this title. For complete classification of subtitle A to the Code, see Tables.

The Commodity Exchange Act, referred to in subsec. (a)(2), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

CODIFICATION

Section is comprised of subsecs. (b) and (c) of section 721 of Pub. L. 111–203, which were redesignated as subsecs. (a) and (b), respectively, of this section for purposes of codification.

§8322. Authority of FERC

Nothing in the Wall Street Transparency and Accountability Act of 2010 or the amendments to the Commodity Exchange Act [7 U.S.C. 1 et seq.] made by such Act shall limit or affect any statutory enforcement authority of the Federal Energy Regulatory Commission pursuant to section 824v of title 16 and section 717c–1 of this title that existed prior to July 21, 2010.

(Pub. L. 111–203, title VII, §722(g), July 21, 2010, 124 Stat. 1674.)

REFERENCES IN TEXT

The Wall Street Transparency and Accountability Act of 2010, referred to in text, is title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1641, which enacted this chapter and enacted and amended numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of this title and Tables.

The Commodity Exchange Act, referred to in text, is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

§8323. Rulemaking on conflict of interest

(a) In general

In order to mitigate conflicts of interest, not later than 180 days after July 21, 2010, the Commodity Futures Trading Commission shall adopt rules which may include numerical limits on the control of, or the voting rights with respect to, any derivatives clearing organization that clears swaps, or swap execution facility or board of trade designated as a contract market that posts swaps or makes swaps available for trading, by a bank holding company (as defined in section 1841 of title 12) with total consolidated assets of $50,000,000,000 or more, a nonbank financial company (as defined in section 5311 of title 12) supervised by the Board, an affiliate of such a bank holding company or nonbank financial company, a swap dealer, major swap participant, or associated person of a swap dealer or major swap participant.

(b) Purposes

The Commission shall adopt rules if it determines, after the review described in subsection (a), that such rules are necessary or appropriate to improve the governance of, or to mitigate systemic risk, promote competition, or mitigate conflicts of interest in connection with a swap dealer or major swap participant's conduct of business with, a derivatives clearing organization, contract market, or swap execution facility that clears or posts swaps or makes swaps available for trading and in which such swap dealer or major swap participant has a material debt or equity investment.

(c) Considerations

In adopting rules pursuant to this section, the Commodity Futures Trading Commission shall consider any conflicts of interest arising from the amount of equity owned by a single investor, the ability to vote, cause the vote of, or withhold votes entitled to be cast on any matters by the holders of the ownership interest, and the governance arrangements of any derivatives clearing organization that clears swaps, or swap execution facility or board of trade designated as a contract market that posts swaps or makes swaps available for trading.

(Pub. L. 111–203, title VII, §726, July 21, 2010, 124 Stat. 1695.)

DEFINITIONS

For definitions of terms used in this section, see section 5301 of Title 12, Banks and Banking.

§8324. Savings clause

Notwithstanding any other provision of this title,[1] nothing in this subtitle shall be construed as divesting any appropriate Federal banking agency of any authority it may have to establish or enforce, with respect to a person for which such agency is the appropriate Federal banking agency, prudential or other standards pursuant to authority granted by Federal law other than this title.[1]

(Pub. L. 111–203, title VII, §741(c), July 21, 2010, 124 Stat. 1732.)

REFERENCES IN TEXT

This title, referred to in text, is title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1641, known as the Wall Street Transparency and Accountability Act of 2010, which enacted this chapter and enacted and amended numerous other sections and notes in the Code. For complete classification of title VII to the Code, see Short Title note set out under section 8301 of this title and Tables.

This subtitle, referred to in text, is subtitle A (§§711–754) of title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1641, which enacted this subchapter, section 78c–2 of this title, and sections 1b, 6b–1, 6r to 6t, 7b–3, 24a, and 26 of Title 7, Agriculture, amended sections 78f, 78o, and 78s of this title, sections 1a, 2, 6 to 6b, 6c, 6d, 6m, 6q, 6s, 7 to 7b, 8 to 9a, 12, 12a, 13, 13–1, 13a–1, 13b, 15, 16, 21, 24, 25, 27 to 27b, 27e, and 27f of Title 7, section 761 of Title 11, Bankruptcy, and sections 4421 and 4422 of Title 12, Banks and Banking, enacted provisions set out as notes under sections 1a, 2, 6a, 7a–1, 7a–3, and 9 of Title 7, and amended provisions set out as a note under section 78c of this title. For complete classification of subtitle A to the Code, see Tables.

DEFINITIONS

For definitions of terms used in this section, see section 5301 of Title 12, Banks and Banking.

[1] *See References in Text note below.*

§8325. International harmonization

(a) In order to promote effective and consistent global regulation of swaps and security-based swaps, the Commodity Futures Trading Commission, the Securities and Exchange Commission, and the prudential regulators (as that term is defined in section 1a(39) of title 7), as appropriate, shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation (including fees) of swaps, security-based swaps, swap entities, and security-based swap entities and may agree to such information-sharing arrangements as may be deemed to be necessary or appropriate in the public interest or for the protection of investors, swap counterparties, and security-based swap counterparties.

(b) In order to promote effective and consistent global regulation of contracts of sale of a commodity for future delivery and options on such contracts, the Commodity Futures Trading Commission shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation of contracts of sale of a commodity for future delivery and options on such contracts, and may agree to such information-sharing

arrangements as may be deemed necessary or appropriate in the public interest for the protection of users of contracts of sale of a commodity for future delivery.

(Pub. L. 111–203, title VII, §752, July 21, 2010, 124 Stat. 1749.)

DEFINITION

For definition of "including" as used in this section, see section 5301 of Title 12, Banks and Banking.

SUBCHAPTER II—REGULATION OF SECURITY-BASED SWAP MARKETS

§8341. Authority to further define terms

The Securities and Exchange Commission may, by rule, further define—

(1) the term "commercial risk";

(2) any other term included in an amendment to the Securities Exchange Act of 1934 [1] (15 U.S.C. 78c(a)) made by this subtitle; and

(3) the terms "security-based swap", "security-based swap dealer", "major security-based swap participant", and "eligible contract participant", with regard to security-based swaps (as such terms are defined in the amendments made by subsection (a)) for the purpose of including transactions and entities that have been structured to evade this subtitle or the amendments made by this subtitle.

(Pub. L. 111–203, title VII, §761(b), July 21, 2010, 124 Stat. 1759.)

REFERENCES IN TEXT

This subtitle, referred to in pars. (2) and (3), is subtitle B (§§761–774) of title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1754, which enacted this subchapter and sections 78c–3 to 78c–5, 78j–2, 78m–1, and 78o–10 of this title, amended sections 77b, 77b–1, 77e, 77q, 78c, 78c–1, 78f, 78i, 78j, 78m, 78o, 78p, 78q–1, 78t, 78u–1, 78u–2, 78bb, 78dd, 78mm, 80a–2, and 80b–2 of this title, enacted provisions set out as a note under section 77b of this title, and amended provisions set out as a note under section 78c of this title. For complete classification of subtitle B to the Code, see Tables.

Subsection (a), referred to in par. (3), is subsec. (a) of section 761 of title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1754, which amended section 78c of this title.

EFFECTIVE DATE

Provisions of subchapter effective on the later of 360 days after July 21, 2010, or, to the extent the provision requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision, see section 774 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 77b of this title.

DEFINITION

For definition of "including" as used in this section, see section 5301 of Title 12, Banks and Banking.

[1] So in original. Probably should be "section 3(a) of the Securities Exchange Act of 1934".

§8342. Savings clause

Notwithstanding any other provision of this title,[1] nothing in this subtitle shall be construed as divesting any appropriate Federal banking agency of any authority it may have to establish or enforce, with respect to a person for which such agency is the appropriate Federal banking agency, prudential or other standards pursuant to authority by Federal law other than this title.[1]

(Pub. L. 111–203, title VII, §764(b), July 21, 2010, 124 Stat. 1796.)

REFERENCES IN TEXT

This title, referred to in text, is title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1641, known as the Wall Street Transparency and Accountability Act of 2010, which enacted this chapter and enacted and amended numerous other sections and notes in the Code. For complete classification of title VII to the Code, see Short Title note set out under section 8301 of this title and Tables.

This subtitle, referred to in text, is subtitle B (§§761–774) of title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1754, which enacted this subchapter and sections 78c–3 to 78c–5, 78j–2, 78m–1, and 78o–10 of this title, amended sections 77b, 77b–1, 77e, 77q, 78c, 78c–1, 78f, 78i, 78j, 78m, 78o, 78p, 78q–1, 78t, 78u–1, 78u–2, 78bb, 78dd, 78mm, 80a–2, and 80b–2 of this title, enacted provisions set out as a note under section 77b of this title, and amended provisions set out as a note under section 78c of this title. For complete classification of subtitle B to the Code, see Tables.

DEFINITIONS

For definitions of terms used in this section, see section 5301 of Title 12, Banks and Banking.

[1] *See References in Text note below.*

§8343. Rulemaking on conflict of interest

(a) In general

In order to mitigate conflicts of interest, not later than 180 days after July 21, 2010, the Securities and Exchange Commission shall adopt rules which may include numerical limits on the control of, or the voting rights with respect to, any clearing agency that clears security-based swaps, or on the control of any security-based swap execution facility or national securities exchange that posts or makes available for trading security-based swaps, by a bank holding company (as defined in section 1841 of title 12) with total consolidated assets of $50,000,000,000 or more, a nonbank financial company (as defined in section 5311 of title 12) supervised by the Board of Governors of the Federal Reserve System, affiliate of such a bank holding company or nonbank financial company, a security-based swap dealer, major security-based swap participant, or person associated with a security-based swap dealer or major security-based swap participant.

(b) Purposes

The Securities and Exchange Commission shall adopt rules if the Commission determines, after the review described in subsection (a), that such rules are necessary or appropriate to improve the governance of, or to mitigate systemic risk, promote competition, or mitigate conflicts of interest in connection with a security-based swap dealer or major security-based swap participant's conduct of business with, a clearing agency, national securities exchange, or security-based swap execution facility that clears, posts, or makes available for trading security-based swaps and in which such security-based swap dealer or major security-based swap participant has a material debt or equity investment.

(c) Considerations

In adopting rules pursuant to this section, the Securities and Exchange Commission shall consider any conflicts of interest arising from the amount of equity owned by a single investor, the ability to vote, cause the vote of, or withhold votes entitled to be cast on any matters by the holders of the ownership interest, and the governance arrangements of any derivatives clearing organization that clears swaps, or swap execution facility or board of trade designated as a contract market that posts swaps or makes swaps available for trading.

(Pub. L. 111–203, title VII, §765, July 21, 2010, 124 Stat. 1796.)

DEFINITIONS

For definitions of terms used in this section, see section 5301 of Title 12, Banks and Banking.

§8344. Other authority

Unless otherwise provided by its terms, this subtitle does not divest any appropriate Federal banking agency, the Securities and Exchange Commission, the Commodity Futures Trading Commission, or any other Federal or State agency, of any authority derived from any other provision of applicable law.

(Pub. L. 111–203, title VII, §771, July 21, 2010, 124 Stat. 1801.)

REFERENCES IN TEXT

This subtitle, referred to in text, is subtitle B (§§761–774) of title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1754, which enacted this subchapter and sections 78c–3 to 78c–5, 78j–2, 78m–1, and 78o–10 of this title, amended sections 77b, 77b–1, 77e, 77q, 78c, 78c–1, 78f, 78i, 78j, 78m, 78o, 78p, 78q–1, 78t, 78u–1, 78u–2, 78bb, 78dd, 78mm, 80a–2, and 80b–2 of this title, enacted provisions set out as a note under section 77b of this title, and amended provisions set out as a note under section 78c of this title. For complete classification of subtitle B to the Code, see Tables.

DEFINITIONS

For definitions of terms used in this section, see section 5301 of Title 12, Banks and Banking.

CHAPTER 110—ONLINE SHOPPER PROTECTION

Sec.

8401. Findings; declaration of policy.
8402. Prohibitions against certain unfair and deceptive Internet sales practices.
8403. Negative option marketing on the Internet.
8404. Enforcement by Federal Trade Commission.
8405. Enforcement by State attorneys general.

§8401. Findings; declaration of policy

The Congress finds the following:

(1) The Internet has become an important channel of commerce in the United States, accounting for billions of dollars in retail sales every year. Over half of all American adults have now either made an online purchase or an online travel reservation.

(2) Consumer confidence is essential to the growth of online commerce. To continue its development as a marketplace, the Internet must provide consumers with clear, accurate information and give sellers an opportunity to fairly compete with one another for consumers' business.

(3) An investigation by the Senate Committee on Commerce, Science, and Transportation found abundant evidence that the aggressive sales tactics many companies use against their online customers have undermined consumer confidence in the Internet and thereby harmed the American economy.

(4) The Committee showed that, in exchange for "bounties" and other payments, hundreds of reputable online retailers and websites shared their customers' billing information, including credit card and debit card numbers, with third party sellers through a process known as "data pass". These third party sellers in turn used aggressive, misleading sales tactics to charge millions of American consumers for membership clubs the consumers did not want.

(5) Third party sellers offered membership clubs to consumers as they were in the process of completing their initial transactions on hundreds of websites. These third party "post-transaction" offers were designed to make consumers think the offers were part of the initial purchase, rather than a new transaction with a new seller.

(6) Third party sellers charged millions of consumers for membership clubs without ever obtaining consumers' billing information, including their credit or debit card information, directly from the consumers. Because third party sellers acquired consumers' billing information from the

initial merchant through "data pass", millions of consumers were unaware they had been enrolled in membership clubs.

(7) The use of a "data pass" process defied consumers' expectations that they could only be charged for a good or a service if they submitted their billing information, including their complete credit or debit card numbers.

(8) Third party sellers used a free trial period to enroll members, after which they periodically charged consumers until consumers affirmatively canceled the memberships. This use of "free-to-pay conversion" and "negative option" sales took advantage of consumers' expectations that they would have an opportunity to accept or reject the membership club offer at the end of the trial period.

(Pub. L. 111–345, §2, Dec. 29, 2010, 124 Stat. 3618.)

SHORT TITLE

Pub. L. 111–345, §1, Dec. 29, 2010, 124 Stat. 3618, provided that: "This Act [enacting this chapter] may be cited as the 'Restore Online Shoppers' Confidence Act'."

§8402. Prohibitions against certain unfair and deceptive Internet sales practices

(a) Requirements for certain Internet-based sales

It shall be unlawful for any post-transaction third party seller to charge or attempt to charge any consumer's credit card, debit card, bank account, or other financial account for any good or service sold in a transaction effected on the Internet, unless—

(1) before obtaining the consumer's billing information, the post-transaction third party seller has clearly and conspicuously disclosed to the consumer all material terms of the transaction, including—

(A) a description of the goods or services being offered;

(B) the fact that the post-transaction third party seller is not affiliated with the initial merchant, which may include disclosure of the name of the post-transaction third party in a manner that clearly differentiates the post-transaction third party seller from the initial merchant; and

(C) the cost of such goods or services; and

(2) the post-transaction third party seller has received the express informed consent for the charge from the consumer whose credit card, debit card, bank account, or other financial account will be charged by—

(A) obtaining from the consumer—

(i) the full account number of the account to be charged; and

(ii) the consumer's name and address and a means to contact the consumer; and

(B) requiring the consumer to perform an additional affirmative action, such as clicking on a confirmation button or checking a box that indicates the consumer's consent to be charged the amount disclosed.

(b) Prohibition on data-pass used to facilitate certain deceptive Internet sales transactions

It shall be unlawful for an initial merchant to disclose a credit card, debit card, bank account, or other financial account number, or to disclose other billing information that is used to charge a customer of the initial merchant, to any post-transaction third party seller for use in an Internet-based sale of any goods or services from that post-transaction third party seller.

(c) Application with other law

Nothing in this chapter shall be construed to supersede, modify, or otherwise affect the requirements of the Electronic Funds [1] Transfer Act (15 U.S.C. 1693 et seq.) or any regulation promulgated thereunder.

(d) Definitions

In this section:

(1) Initial merchant

The term "initial merchant" means a person that has obtained a consumer's billing information directly from the consumer through an Internet transaction initiated by the consumer.

(2) Post-transaction third party seller

The term "post-transaction third party seller" means a person that—

(A) sells, or offers for sale, any good or service on the Internet;

(B) solicits the purchase of such goods or services on the Internet through an initial merchant after the consumer has initiated a transaction with the initial merchant; and

(C) is not—

(i) the initial merchant;

(ii) a subsidiary or corporate affiliate of the initial merchant; or

(iii) a successor of an entity described in clause (i) or (ii).

(Pub. L. 111–345, §3, Dec. 29, 2010, 124 Stat. 3619.)

REFERENCES IN TEXT

The Electronic Fund Transfer Act, referred to in subsec. (c), is title IX of Pub. L. 90–321, as added by Pub. L. 95–630, title XX, §2001, Nov. 10, 1978, 92 Stat. 3728, which is classified generally to subchapter VI (§1693 et seq.) of chapter 41 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

[1] *So in original. Probably should be "Fund".*

§8403. Negative option marketing on the Internet

It shall be unlawful for any person to charge or attempt to charge any consumer for any goods or services sold in a transaction effected on the Internet through a negative option feature (as defined in the Federal Trade Commission's Telemarketing Sales Rule in part 310 of title 16, Code of Federal Regulations), unless the person—

(1) provides text that clearly and conspicuously discloses all material terms of the transaction before obtaining the consumer's billing information;

(2) obtains a consumer's express informed consent before charging the consumer's credit card, debit card, bank account, or other financial account for products or services through such transaction; and

(3) provides simple mechanisms for a consumer to stop recurring charges from being placed on the consumer's credit card, debit card, bank account, or other financial account.

(Pub. L. 111–345, §4, Dec. 29, 2010, 124 Stat. 3620.)

§8404. Enforcement by Federal Trade Commission

(a) In general

Violation of this chapter or any regulation prescribed under this chapter shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices. The Federal Trade Commission shall enforce this chapter in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this chapter.

(b) Penalties

Any person who violates this chapter or any regulation prescribed under this chapter shall be

subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated in and made part of this chapter.

(c) Authority preserved

Nothing in this section shall be construed to limit the authority of the Commission under any other provision of law.

(Pub. L. 111–345, §5, Dec. 29, 2010, 124 Stat. 3620.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsecs. (a) and (b), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

§8405. Enforcement by State attorneys general

(a) Right of action

Except as provided in subsection (e), the attorney general of a State, or other authorized State officer, alleging a violation of this chapter or any regulation issued under this chapter that affects or may affect such State or its residents may bring an action on behalf of the residents of the State in any United States district court for the district in which the defendant is found, resides, or transacts business, or wherever venue is proper under section 1391 of title 28, to obtain appropriate injunctive relief.

(b) Notice to Commission required

A State shall provide prior written notice to the Federal Trade Commission of any civil action under subsection (a) together with a copy of its complaint, except that if it is not feasible for the State to provide such prior notice, the State shall provide such notice immediately upon instituting such action.

(c) Intervention by the Commission

The Commission may intervene in such civil action and upon intervening—

(1) be heard on all matters arising in such civil action; and

(2) file petitions for appeal of a decision in such civil action.

(d) Construction

Nothing in this section shall be construed—

(1) to prevent the attorney general of a State, or other authorized State officer, from exercising the powers conferred on the attorney general, or other authorized State officer, by the laws of such State; or

(2) to prohibit the attorney general of a State, or other authorized State officer, from proceeding in State or Federal court on the basis of an alleged violation of any civil or criminal statute of that State.

(e) Limitation

No separate suit shall be brought under this section if, at the time the suit is brought, the same alleged violation is the subject of a pending action by the Federal Trade Commission or the United States under this chapter.

(Pub. L. 111–345, §6, Dec. 29, 2010, 124 Stat. 3621.)